UNITED STATES
COURT OF FEDERAL CLAIMS

COLTEN SNYDER BY AND THROUGH KATHERINE SNYDER AND JOSEPH SNYDER, HIS NATURAL GUARDIANS AND NEXT FRIENDS,	)	
Petitioners,	)	
	)	Docket No.: 01-162V
v.	)	
SECRETARY OF HEALTH AND HUMAN SERVICES,	)	
Respondent.	)	

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UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

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Petitioners,	)	Docket No.: 01-162V
v.	)	
SECRETARY OF HEALTH AND HUMAN SERVICES,	)	
Respondent.	)	

Courtroom 56
U.S. District Court
401 West Central Boulevard
Orlando, Florida 32801

Monday
November 5, 2007

The hearing in the above-entitled matter was convened, pursuant to notice, at 9:00 a.m.

BEFORE: HONORABLE DENISE K. VOWELL
Special Master

APPEARANCES:

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C O N T E N T S

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
Katherine Snyder	35	72	--	--	
Samantha Noonan	81	--	--	--	
Katherine Timlin	102	128	137	138	
James Bradstreet	140	217	284	285	

E X H I B I T S

PETITIONERS' EXHIBITS:	IDENTIFIED	RECEIVED	DESCRIPTION
1	141	--	Bradstreet Curriculum Vitae
2	145	--	Bradstreet Case Review
12	223	--	Child Evaluation Form
RESPONDENT'S Trial Exhibit			
1	228	--	Medications and Supplements Listed in Bradstreet's Medical Records

P R O C E E D I N G S

(9:00 a.m.)

THE COURT: Good morning. We are on the record in the matter of Snyder versus The Secretary of the Department of Health and Human Services Case No. 01-162.

Today's proceeding has two purposes. The first is to resolve the petition of Mr. and Mrs. Snyder who are present here in the courtroom on behalf of their son Colten by hearing factual and expert testimony on their claim under the National Childhood Vaccine Injury Act.

And the claim is that immunizations Colten received caused his pervasive developmental delay.

This case has been assigned to me, Special Master Denise Vowell for resolution.

After the conclusion of today's proceedings and this week's proceedings actually and the submission of post trial matters I alone will determine whether the Snyders are entitled to compensation.

However this case also serves as the third of the first three test cases under the Omnibus Autism Proceedings which is sometimes called the OAP.

The first theory of causation is advanced by

the Petitioners' Steering Committee. While the Snyders are bringing a specific claim on behalf of Colten they have also agreed to permit their case to be heard as one of the first group of test cases in the Omnibus Autism Proceedings.

Thus this case will help the Court resolve the general question of whether childhood vaccines can cause the neurodevelopmental problems known generally as autism spectrum disorders.

The OAP was designed as a method to fairly and efficiently resolve the nearly 5000 individual vaccine claims filed by families on behalf of children who have a disorder on the autism spectrum.

Under the omnibus procedures established three Special Masters will hear the expert medical and scientific testimony on each of the three theories advanced by the autism petitioners within the context of individual cases for a total of nine test cases.

In resolving the question of causation under each theory the Special Master assigned to the individual case will issue an opinion on a specific case while also evaluating the general causation theory advanced.

Each test case is decided on its particular facts as well as the specific scientific evidence

deduced in that case and such of the general causation evidence from the other test cases as the parties ask the Court to consider.

Thus the scientific evidence deduced in this case may be applied in the other two test cases and in the OAP in general.

Because this is one of the three test cases on the first theory of causation the Snyder Family has agreed to permit this hearing to be open to the public and further to permit the testimony in this case to be publicly available in the form of audio files and transcripts to be posted on the court's web site soon after the conclusion of this hearing.

The families of Michelle Cedillo and Yates Hazlehurst, the other two test cases, have likewise permitted the testimony in their hearings to be publicly disclosed.

Because the evidence in each of the three test cases will be available to help us resolve the other cases in the OAP, Special Master Campbell-Smith is here in the courtroom today and will be joined later today by Special Master George Hastings. They are the other two Special Masters assigned to the autism docket.

Based on the sensitive and confidential

nature of evidence in vaccine cases and the statutory protections against disclosure of evidence in such cases, most vaccine hearings are not open to the public.

Mr. and Mrs. Snyder, like the two families who had their test cases heard earlier this year, have taken the unusual and courageous step of permitting public access and public disclosure of the testimony in Colten's case so that the other families affected by this omnibus proceeding have the benefit of hearing and reading the testimony that may help to resolve their claims.

Mr. and Mrs. Snyder, we thank you for stepping forward and agreeing to have Colten's case serve as one of these three test cases on this first theory of whether Thimerosal containing vaccines and the MMR vaccine can combine to cause autism spectrum disorders which include Colten's condition.

Turning now to some housekeeping matters, I anticipate beginning testimony each day of this hearing promptly at 9:00 a.m. We'll conclude the day's proceedings at approximately 5:00 p.m. with an hour break for lunch and a mid morning and mid afternoon recess.

And finally I remind all of the aforesaid

present here that we are guests in this brand new Federal Courthouse and ask that you do everything possible to minimize our impact on our host, the Judges and Court support staff of the Middle District of Florida.

With that are there matters we need to take up before we begin with opening statements?

MR. POWERS: Yes, Special Master.

THE COURT: Mr. Powers, I'm going to ask that at this point if you would introduce yourself and co-counsel for the record and then Mr. Matanoski if you would do the same for the Respondent.

MR. MATANOSKI: Yes, ma'am.

MR. POWERS: Be delighted to, Special Master. My name is Tom Powers. I'm actually here in two roles. The first role is as an attorney representing the Petitioners' Steering Committee. It's the group of lawyers with claims in the OAP and we're here with an interest obviously as the Special Master described about the general causation issues.

I'm also privileged to be able to participate in the presentation of Colten Snyder's individual petition.

I'm at counsel table with Chris Wickersham.

MR. WICKERSHAM: Good morning.

MR. POWERS: Also for Petitioners and Lloyd Bowers with Petitioners.

And the Snyders obviously are here and you've introduced them so good morning to everybody. And I'll let Mr. Matanoski introduce himself and then I'll bring up the matters I have before opening.

MR. MATANOSKI: Thank you. I'm Vince Matanoski representing the United States. I'm joined by "Vo" Johnson, Alexis Babcock and Katherine Esposito, all trial attorneys at the Department of Justice.

THE COURT: Thank you, Mr. Matanoski.

Mr. Powers, would you bring up the issue you mentioned?

MR. POWERS: Yes. Before delivering an opening statement in this case there's one matter for the Special Master.

On October 12th, excuse me, October 19th there was a filing in this case. It's, I believe Respondent's Exhibit AA. It's an October 12, 2007 letter apparently from Dr. Michael Oldstone to Dr. Ward. Dr. Ward obviously is designated as an expert and has submitted a report and is on the appearance list for the Respondents.

Dr. Oldstone is not. He hasn't been

designated. He has not filed a report.

There are two specific issues with this letter to raise. And I wanted to raise them now. I anticipate it might be the subject of briefing down the road and put the flag up ahead of time.

The first is if one looks at the letter it has what is essentially expert opinion on ultimate causation. We are moving right now to exclude completely that portion of the letter.

It's expert opinion that's not timely filed. There has been a strict pre hearing schedule of filings particularly for expert submissions in this proceeding.

In the Special Master's order of August 10th, 2007 it stated Respondent's expert materials to be due by October 3rd, 2007. This is two weeks late and it's not supported by any sort of documentation; citations. Dr. Oldstone who reportedly is tendering this opinion, isn't here to testify and is not available for cross-examination.

I understand that the rules of evidence don't apply but there's also the issue of double hearsay. And this is hearsay and medical hearsay, late filed and thinly veiled expert opinion that's not timely.

So we would move to exclude or to strike that portion of Dr. Oldstone's letter.

THE COURT: And by that portion you are to referring to paragraph two of his letter?

MR. POWERS: That's correct, Special Master.

THE COURT: Okay.

MR. POWERS: And then the other issue in paragraph three is that there are issues of fact that I think are fair game so to speak for this proceeding.

One thing that I would ask for up front is leave of the Special Master to introduce any additional exhibits if we can find any that are responsive to the new points raised here.

And what I've gone through in the record that's been filed in the Snyder case is this, what looks like it might be a fairly lengthy correspondence or work relationship between Dr. Oldstone and other people has not been an issue and we are at this point actively seeing what we can do to gather facts that would be relevant if we discover those facts.

I'm just asking for your leave to bring that evidence in. Obviously it's not anything to be stamped or designated ahead of time. But coming the week before trial this is new enough that we would ask for your leave in advance to bring in evidence that we

need to rebut or address the fact issues raised herein.

THE COURT: Okay.

MR. POWERS: And that's the extent of the issue we have for --

THE COURT: Mr. Matanoski, do you wish to respond?

MR. MATANOSKI: Briefly, ma'am, I can, if --

THE COURT: I can hear you from there, that's fine.

MR. MATANOSKI: First, Dr. Oldstone views have been put in controversy by the Petitioners' expert.

I don't recall exactly how many times I heard Dr. Oldstone's name mentioned in the Cedillo trial but it was fairly frequent.

THE COURT: His words were read to us a great deal.

MR. MATANOSKI: Yes, yes, ma'am.

I think the Petitioners' Steering Committee can expect that when we hear from experts that they're calling who have little or no experience in the fields that they are testifying in, neurology or autism, when they're using the words of others in the field that we will try when appropriate to contact those individuals

and see if they adopt what these experts for the PSC are saying.

If they agree with how their work in the field is being portrayed by these other experts that are being called by the PSC -- Dr. Oldstone has pretty clearly stated what he thinks of what Dr. Kinsbourne and others have made of his work who have been called on behalf of the PSC.

He doesn't find any link there as rebuttal to the way his work was being used by the Petitioners previously.

As far as the second point that's being addressed here that is specific to the O'Leary lab and Unigenetics -- and this is apparently not new and was brought up in Congressional testimony back I think it might have been 2003.

This was first mentioned that there was this correspondence between the labs, that some coded samples had been sent that essentially when the Unigenetics lab was -- knowing it was being tested it failed that test.

Now we have some further facts on that developed.

Dr. Wakefield, who is mentioned in this letter, has been noticed as Petitioners' expert in the

past. Petitioners' Steering Committee has had access to Dr. Wakefield throughout this and could clearly have questioned him about any of the matters in here.

I expect we're going to be doing further briefing on this, ma'am, and I'll just close my remarks with that.

THE COURT: Just so I make sure I understand what you're saying. You're not challenging Petitioners' rebuttal of Dr. Oldstone's --

MR. MATANOSKI: No, no, ma'am, I am not.

THE COURT: In other words, you're willing for me to consider anything that they may offer?

MR. MATANOSKI: Yes, ma'am.

THE COURT: That rebuts that. So the only issue it appears that we are quarreling about then is Dr. Oldstone's opinion.

Again given the informal nature and the way the rules of evidence are handled in these I will certainly permit this to be included in post trial briefing.

I will say up front that it does appear to me based on the way Dr. Oldstone's work was used repeatedly in the Cedillo case that to the extent that I read Dr. Oldstone's letter as saying my work does not support the purposes for which it was used, I will

consider it for that purpose in terms of whether it's an expert opinion on causation or not.

You certainly may brief and you certainly may respond.

MR. MATANOSKI: Thank you, ma'am.

THE COURT: Okay. All right, Mr. Powers, would you proceed with your opening statement.

MR. POWERS: Yes, thank you, Special Master.

And one other very quick housekeeping. I understand we have 30 minutes to open and if I do what I think I'm going to do and get done in significantly less than 30 minutes, I would like to reserve a few minutes for opening rebuttal if I could have leave to do that.

THE COURT: Certainly. That's an unusual one for me. Certainly. Go ahead.

MR. POWERS: Well, having already introduced myself I will skip over those introductions and I will say again why I'm here and what I want to describe in the next few minutes for the benefit of the Special Master, for the benefit of the record.

As the Special Master described early on we have a dual purpose here. We're resolving the individual claim for compensation that the Snyder Family has brought on behalf of Colten.

And you'll hear evidence that's very specific to Colten Snyder, his medical progress, his medical history and his medical prognosis.

But we're also going to hear testimony that's going to be applicable in general to the theory of causation that the Petitioners' Steering Committee has advanced in this first round of cases in the omnibus process and proceedings.

At the onset I am not going to detail for you and read to you from my pre hearing submission summarizing our case.

The medical records have been filed. The journal records, the journal articles have been filed. Both sides have submitted pretty thorough summaries of their theories of the case identifying key facts in the case so I'm not going to go through all of that.

I anticipate we'll have to do that again post hearing so we don't need to do it four and five times.

What I want to talk about though are some issues to frame the evidence that you're going to hear to give us some context.

The first is we need to keep in mind at the outset what the burden of proof and what Petitioners' obligation is here to entitle Petitioners to

compensation in this particular claim.

We're here because we have to satisfy the 50 percent preponderance of the evidence standard. And the evidence that you're going to hear is going to meet that standard. It will clear that hurdle.

The basic elements of the evidence are that the measles virus persisted in Colten Snyder. We're got reliable evidence showing that the measles virus was introduced to him through the MMR and through no other mechanism. So we've got a root of exposure.

We know when it happened and we know how it happened. There's reliable evidence showing that that, the attenuated measles virus from the vaccine specific to the vaccine, persisted in his body.

There's some evidence indicating that it continued to exist in his gastrointestinal tract but really this is a case about a virus persisting in Colten Snyder's brain. And that's really going to be critical in this case.

The findings of vaccine strain measles virus in the cerebral spinal fluid of Colten Snyder is the key bit of evidence. It is powerful circumstantial evidence that that's what caused his injury.

And we will prove more likely than not that that happened. The that I'm referring to is the

persistence of the measles virus in his system far beyond what would have been expected from a typical immune response by a typical child.

We're also going to show you, and this is very significant, how his medical history is entirely consistent with the idea that the measles virus via the MMR was the causalization; was a significant contributing cause to his injuries.

You'll hear testimony, particularly today is when you're going to hear it, that sheds light on the medical records, that brings life to the medical records.

Detailed testimony describing how Colten Snyder was a normally developing, typically developing happy, healthy little boy until days after that MMR shot.

And that the traumatic, dramatic regression, the before and after, the distinctive difference, the black and white difference between the before and after is compelling evidence supporting Petitioners' theory of causation in this case and in a way that you can extrapolate generally to other cases advancing on this theory in the omnibus autism proceedings.

This theory also makes the most sense. At some point one needs to say if it isn't really

sufficient -- as has been Respondent's position that we just don't know what happened, we just don't know, we just don't know -- at some point given the evidence accumulating in the Cedillo case, in the Hazlehurst case and it will come in in the Snyder case this week, at some point the scale is going to tip personally, and on behalf of the PSC we think the scale has already tipped.

But we believe that the evidence that you have heard by the end of this week should tip the scale for you to say it is not more likely that we just don't know. We just don't know.

And in fact it's more likely that it's a persistent vaccine strain, the measles virus that caused these neurological injuries.

And that's what we expect to prove.

I want to move on to address a couple of issues that have come up in Respondent's position in their papers and particularly so the arguments in opening and closing in the Cedillo matter.

First is discussion about the Daubert standard. There's gray -- that Respondent attempts to make out of claiming that the evidence that the Petitioners are putting forward in these cases doesn't satisfy Daubert's standard for admissibility. I beg

to differ.

And strongly in fact, the United States Supreme Court in the Daubert decision, beg to differ and they did take a different position.

It's important to remember that the focus in Daubert is not on the conclusions. It's not on the substance so to speak of the experts' opinions when you're talking about scientific evidence and we're certainly talking about a lot, a lot of science in these cases.

It's about methodology and the scientific method. And the question that you need to ask, Special Master, in evaluating the testimony of both sides is the methodology, the procedure that each of these experts use -- is it scientific as the Supreme Court has defined it in Daubert?

Regardless of whether the opinion is a minority opinion, a consensus opinion, a plurality opinion, whatever the conclusion is, it could be as it was in Daubert; as it was in Daubert it could be almost a solitary voice in the scientific forest. One tree among many that's different from the other trees.

That satisfies Daubert as long as that solitary voice is informed by the scientific method and the scientific process.

The experts that you've heard and the experts you're going to hear are qualified and credentialed. There are some backhanded attacks on the experts that I'll talk about in a little bit, but these folks -- there's no doubt they are qualified and are credentialed. They bring a lifetime of experience whether it's clinical work, teaching work, research work, academic work -- they bring a lot to the table and they're qualified to testify about the areas that they're here to talk about and that you've seen reports on.

These folks do what scientists do. They develop a hypothesis and they have hypotheses that are testable. They are subject to falsification as the Supreme Court described in Daubert.

It's a process that's ongoing. It's not static. In these kind of cases -- and often it's the case in science and medicine what's true yesterday might not be true today as we explore and develop hypotheses.

This is good science. It is not junk science. And having seen the experts who have come forward for petitioners in cases so far described as junk scientists, frankly I'm -- it's at a point now where it's offensive.

It's offensive to those folks professionally. As an attorney representing them and even as an attorney if I was watching with disinterest in the outcome from the sidelines, it is unbecoming.

This isn't junk. Just because it's not consensus doesn't make it junk. Just because Respondent's experts disagree with the conclusion doesn't make the conclusion junk. It doesn't make the methodology junk. And it doesn't make the expert junk.

Just because it's not 95 or 99 percent scientifically certain that doesn't make it junk. We're here in that complicated and demanding intersection of law and science and when those two disciplines meet we have a standard that applies. And it's not 95 and 99 percent of certainty and everything else is bunk and junk.

Just because it's new, just because it may be novel that doesn't make it junk. Every good idea at some point is a new idea. Every change in scientific opinion at some point is new.

And newness does not make for junk. Newness makes for good science because as I said science is dynamic. It develops hypotheses. It tests hypotheses. It's based on the evidence that the

testing of the hypotheses generates and it leads to conclusions sometimes thumbs up, sometimes thumbs down, but always a new hypotheses and that's how it works.

You don't stop it in time and say the way it's always been is the way that it is now, it's the only way it ever could be, and everything else is junk. It's not junk. It's science. And that's what we're putting out in this case.

I do want to talk about beyond the labeling that this is junk. The distress that the Petitioners individually -- really the Petitioners as far as about the extent that these proceedings have become a setting for what essentially is a smear campaign, whether it's against Andy Wakefield -- people who have been associated with Dr. Wakefield in different settings.

The level of in absentia ad hominem attacks on somebody who's not a party, isn't here, is just outrageous. The idea that somebody who may be facing, for example as Dr. Wakefield is, an extensive disciplinary proceeding in the United Kingdom, the fact that he's facing that seems to then make it assumed to be true that everything that's said about him is true. And it's not.

It starts raising issues of having to address collateral proceedings in a foreign jurisdiction. A jurisdiction that we as Petitioners don't have the access to as we talk about Cedillo that the government does. The federal government being able to sovereign to sovereign get information from the UK litigation that we can't get from our end.

Our experts respect the integrity of the court's order over there about confidentiality and quite frankly those experts and myself personally would love to bring some evidence that we think is relevant from that litigation in, but none of us want to be on the other side of a V in a civil contempt claim brought by Glaxo, brought by Merck, and have to answer in the Hague for violating a court's confidentiality order.

It's a smear campaign that has been fueled in the UK by people who have axes to grind and books to sell. Journalists with web sites that seem to be fanatically obsessed with smearing Andy Wakefield and his associates.

It's a campaign that's gone on for years and has resulted in a lot of experts being harassed either by the blogosphere or the unwelcome attention that that brings.

But even in the course of that UK litigation the pharmaceutical industry brought unbelievable pressure on these people. If you wonder, Special Master, why some of those folks aren't appearing over here, at some point some day in this omnibus proceedings I would love to have some of the folks who were on Plaintiffs' side come over here and tell you what it was like to be beaten up for three years by the pharmaceutical industry, being prevented from doing their jobs, from treating patients, from running the lab, from publishing research and from teaching because they were barraged with endless interrogatories and requests for documents, endless and endless.

So if you ever do wonder why some of those folks aren't over here that may be informative.

It's a smear campaign that really doesn't have a place in this program. It's a no fault program. It's a science based, evidence based program and there are folks who are distressed that sort of the train is coming off the tracks.

When the cases are defended with the type of junk science smear campaign hyperbole I would hope that it ends because the folks that we're bringing up here as I said are scientists, are credentialed, are

qualified, are legitimate. They use the scientific method.

The case is based on evidence. It's based on their testimony. It's testable. If it was a civil court it would be admissible under Daubert and as admissible under Daubert it's going to satisfy our burden of proof to show that exposure to Thimerosals combined with an exposure to the MMR vaccine as is the case in Colten Snyder's presentation, can lead to persistent measles virus infection that causes these injuries, severe neurological injuries.

That's what we're going to put evidence on. That's what we're going to prove. And junk and smear ought not to have a place in the room.

Thank you.

THE COURT: Mr. Matanoski.

MR. MATANOSKI: Thank you. At this time, Mr. Johnson will be giving our opening statement.

MR. JOHNSON: Good morning, Special Master. Throughout these proceedings the government has been asking the Court to focus on science and to evaluate the reliability and the validity of the evidence submitted by the parties.

We have fought with the PSC over whether the Daubert standard should apply and I'm happy to see

that it appears that they have now come around to agreeing that the Daubert standard does apply to the evidence that is being submitted by the parties in this case.

In Daubert the Supreme Court specifically held that evidence is not scientifically reliable if it is nothing more than unsupported speculation or subjective belief.

And for a trial court to determine that evidence is more than unsupported speculation, the Court in Daubert stressed the importance of probing the evidence to determine whether it has been tested and subjected to peer review and publication and stressed the importance of looking at techniques that generate scientific data to determine if they had a high error rate.

And it stressed asking whether the scientific community has generally accepted the theory that's at issue.

Now, Mr. Powers is correct that the Daubert case did ask the trial courts to focus on the methodology. But Mr. Powers may have also forgotten about the substantive case Joiner in which the Supreme Court did say that conclusions reached by an expert are important.

Then in Joiner the Supreme Court said that if there had been an analytical gap between the data that the expert is relying on and the conclusions that they have reached, then that alone can render the expert's opinion unreliable.

And that is the situation that we've got here. There is a gap between the data that the scientific community has generated on this issue and the opinions that the experts are offering.

The Petitioners and Mr. Powers have focused understandably on a preponderance standard. But that one is really key here because the evidence is not scientifically reliable. And in civil court it wouldn't even be admissible.

Here because of the relaxed evidence rules we understand that the evidence comes in but it should be given very little if any weight because it just does not reach up to the level of scientific reliability required by Daubert.

The evidence that Petitioners will offer in this case is nothing more than unproved hypotheticals based on unreliable data.

In a nutshell the Petitioners' experts have postulated that autism is caused when the measles component of the MMR vaccine infests the brain causing

neurological disruption that manifests as autism.

Not only is this an unproven hypothesis, it is actually contrary to what we know about the measles virus. We know what a persistent measles virus infection in the brain looks like and it's not autism.

As Doctors Wade and Rima will explain a measles infected brain results in two well documented conditions,` SSPE and MIBE. Both conditions are progressive and almost always fatal. This is not the clinical picture that we see in Colten Snyder or in other children with ASD.

We also know what an autoimmune reaction to a measles infection looks like. And again it's not autism. It's a condition called ADEM, which is also known as post infectious encephalomyelitis. This condition is not specific to a measles infection and it's also monophasic.

Again this is a clinical picture that is not consistent with what we see in Colten Snyder or in other children with ASD.

In short the medical theory that Petitioners will offer is truly novel and their own literature acknowledges that at this point it is an unproven hypothesis.

Mr. Powers made the point that just because

this is a new hypothesis that that shouldn't mean that the Court should reject it. Well, this is not a new hypothesis. This is a hypothesis that was raised ten years ago. There has been substantial research into this hypothesis in an attempt to validate it. Well respected labs and well respected scientists have been unable to and they have rejected the hypothesis. It is not new.

Mr. Powers also raised the issue of ad hominem attacks on the Petitioners' experts. I disagree. I do not believe that these are ad hominem attacks. I think that what we are seeing here are experts, professionals, scientists who do not testify for a living who have a great interest in understanding what the Petitioners' hypothesis is and understanding whether there's anything to it.

They have looked at it. They have tested it and quite frankly many of them are outraged at the fact that this hypothesis is still being put out because there has been so much substantial research that has debunked it.

So I don't believe these are ad hominem attacks. I think that these are experts who are putting themselves out there when they don't necessarily have to in order to provide the Court with

the best information that's possible on this issue.

And then as Dr. Kinsbourne testified at the Cedillo hearing -- as Mr. Powers alluded to during his opening -- the critical piece of evidence in this case are the test results from the Unigenetics lab that purportedly showed measles virus are in Colten's central nervous system, specifically his cerebral spinal fluid and also perhaps in his gut.

The government has already presented substantial evidence on this issue most notably from Dr. Stephen Bustin, one of the world's foremost experts on the PCR technique used by the Unigenetics lab.

Dr. Bustin explained during the Cedillo trial the many problems in the Unigenetics lab with contamination, careless lab techniques and questionable recording practices.

Dr. Ward also testified at the Cedillo trial regarding the inability of his lab and other reputable labs to reproduce the Unigenetics findings which is a key aspect of scientific validation.

While Dr. Kennedy will likely try to rehabilitate the Unigenetics testing the government will be presenting additional evidence during this trial from Dr. Burt Rima who like Dr. Bustin was an

expert in the UK litigation and who was also very familiar with the problems at the Unigenetics lab.

Dr. Rima will reiterate that those test results cannot be trusted and they certainly cannot be validly used as proof that MMR causes autism.

The government's position in these proceedings has always been driven by a search for reliable science. We simply ask the Court today to accept that same approach when considering the evidence presented by the parties in this case.

And we submit that if you do it will be clear that Petitioners' evidence is not scientifically reliable and cannot satisfy their burden of proof.

Thank you.

THE COURT: Thank you, Mr. Johnson. Mr. Powers, a brief rebuttal?

MR. POWERS: Very brief. One specific point to take issue with -- that was the comment by Mr. Johnson that somehow general acceptance is a standard post Daubert. That is the one part of Daubert that was the one unanimous part of the decision rejecting the Fry general acceptance test.

So we just have to disengage from that now 17 year old Supreme Court discredited test. In fact it's not general acceptance. We just need to be clear

about that.

And again as the filter for the evidence -- not that you're excluding it, not serving in the role of a judge under the federal rules of evidence in 702 and 703. But just as you evaluate it it's not about general acceptance. It specifically rejects that. I just want to make that point and I have nothing else to add.

THE COURT: I'll just add that I've read Daubert and will apply my interpretation of it. All right.

With that are we prepared to produce evidence?

MR. WICKERSHAM: Yes, we are.

THE COURT: Thank you, Mr. Wickersham. Who is your first witness?

MR. WICKERSHAM: If it please the Special Master the Petitioners would call as their first witness Ms. Katherine Snyder.

THE COURT: Mrs. Snyder, if you would step over there in front of the witness chair and raise your right hand please.

Whereupon,

KATHERINE SNYDER

having been duly sworn, was called as a

witness and was examined and testified as follows:

THE COURT: Thank you.

DIRECT EXAMINATION

BY MR. WICKERSHAM:

Q Please be seated.

For the purpose of our record here this morning will you state your full name for me please, ma'am?

A Katherine Elaine Snyder.

Q And your address?

A 2419 Meadowlane, Port Orange, Florida 32128.

Q Are you married, ma'am?

A Yes, I am.

Q And your husband's name?

A Joseph George Snyder.

Q Are you related to Colten Snyder?

A I am his mother.

Q And is your husband his father?

A Yes, he is.

Q And does Colten live with you and his father?

A Yes, he does.

Q Do you recall when Colten was born?

A Excuse me?

Q Do you recall when Colten was born?

A Yes.

Q Could you tell the Court his date of birth?

A 1/9/97.

Q And where was he born?

A At Halifax Medical Center in Daytona Beach, Florida.

Q And can you tell the Court if you would during the time of your pregnancy with Colten did you have any type of complications or medical difficulties?

A No, I didn't other than high blood pressure at the end.

Q Do you have other children?

A Yes, I do.

Q How many other children do you have?

A Three.

Q And were your other three children -- were they normal pregnancies?

A Yes, except for the second one.

Q Okay. So you had prior pregnancies with normal and Colten's as you called it was normal?

A Correct.

Q And his delivery? Was that a natural childbirth?

A Yes, it was.

Q Any complications with his childbirth?

A No.

Q How long were you and Colten in the hospital together?

A Two days.

Q Two days?

A Uh-huh.

Q Were you then discharged to your home?

A Yes, we were.

Q And how many kids were living in the home when you were discharged?

A Three others besides Colten.

Q Okay. And how did Colten progress at home after the discharge?

A Well, other than a formula intolerance which I had with my other children he developed normally. He had the eye contact. He had facial expressions. He responded to us.

Q And the formula situation you mentioned a complication with that. How was that handled?

A Well, I went to breast feeding. And once he was on breast milk he was fine.

Q Did that resolve the issues?

A Yes, it did.

Q At a point in time are you aware that Colten

had an MMR vaccination?

A Yes.

Q Do you recall approximately when that was?

A I believe it was my daughter's birthday April 23rd.

Q Of which year?

A 1998.

Q Okay. And was that administered here in the United States of America?

A Yes. In Ormond Beach, Florida.

Q Okay. I'd like to concentrate briefly on the period of time between Colten's birth and the time that he had the MMR.

And if you would I would like you to share with Special Master Colten's progress at home from the time he came home from the hospital up through the period of time that he ultimately had his vaccination.

A When we brought Colten home I didn't see anything out of the ordinary. I had a, with my second pregnancy, my second daughter, she was premature so she was developmentally delayed. I didn't see any of that in Colten.

He played with the toys and he played with his siblings. He responded when we, when we talked to him, played patty cake.

He walked at 10 months. He started developing words. He was, had about 15, 20 words that he used quite often. He was typical. There was nothing different between him and my other children.

Q How did he react with the other children?

A He interacted great. And he loved his oldest sister and he still does. He -- when they would try to pick him up he was fine with that.

Q How did he respond with you and your husband?

A Like a normal child does. He'd laugh and he'd coo and, you know, he'd want mamma, he'd want dada.

Q Any problems with his sleeping pattern?

A No. Not up until, not up prior to the MMR there was no problem with his sleeping pattern. He was colicky a little bit at birth but other than that he slept through the night.

Q Other than the formula and colic that you mentioned earlier were there any other dietary problems?

A No, no.

Q How was his weight gain?

A It was very well. He was pretty chubby as a baby.

Q His general growth height?

A It was, it was above normal.

Q Now you of course have other children to compare your child to --

A Yes, I did.

Q -- and do you also have extended family in the area where you live?

A Yeah, I have nine nieces and nephews and that general thing. And they were all born one year apart. So every year in our family we had a birth of a child. And we all live within three miles of each other so we saw each other pretty regularly.

Q Is there a lot of family interaction?

A Yeah, yeah.

Q How did Colten react or respond with his other relatives?

A He loved his cousins. He interacted with them. My sister's boys live right down the street and they all, they were always at my house. I was kind of like the place where everybody put their kids.

Q Did you get to observe and watch him play?

A Oh, yes.

Q How was his play?

A He played just fine. He didn't, he played with his toys typically. He has a cousin who's nine

months older than him and then, and I took care of him on and off. They'd go out to dinner or something and they interacted just fine. And I didn't see any differences between him and my nephew.

Q About his appetite itself?

A Oh, it was fine. He --

Q During this period of time between the concentration, the period we're using is date of birth up to the point of the MMR, did he have any problems with diarrhea --

A No.

Q -- or other types of gastrointestinal type problems?

A No. I think he had transient things but sicknesses -- when you have other siblings in the house especially three of them that are going to school you're going to catch things.

Q And the other siblings what is their age range?

A Right now?

Q Back then when Colten was --

A Back then when Colten was born my daughter was nine, my daughter was seven and my son was five.

Q Were all three of those engaged in either

some school activity or daycare activity?

A Oh, yes.

Q And being exposed to other children?

A Uh-huh.

Q Did those children bring home problems such as colds from being in day school or public schools?

A Yes, they did.

Q Were there occasions when Colten was exposed to those types of colds?

A Yes.

Q How did he react with --

A The same way the other kids did and it ran its course and it was done with.

Q Well, with the background you've had as a mom with other children and the extended family that you have were you seeing Colten meet his developmental milestones?

A Yes, I was.

Q Now when I use the term developmental milestones what does that mean to you as Colten's mom?

A Periods where, that he was developing, what he was supposed to be doing at a certain time.

Q And were you observing that at those time periods where you expected Colten to develop in certain fashions he was?

A Yes, he was.
Q How about things like rolling over?
A Well, it was in the medical records --
Q I'm just wondering what you saw?
A Okay. I didn't see anything wrong with him rolling over at four months.
Q Did he?
A Yeah.
Q Sitting up?
A He sat up between six and seven months. And then he was walking by ten months.
Q So standing was the next?
A Yeah.
Q That progressed?
A Uh-huh.
Q And right into walking?
A Right into walking.
Q Earlier you mentioned his vocabulary. How did the vocabulary develop?
A Oh, he developed just like my other children. My, as I said my second child she didn't start talking until after she was two. And I didn't see that with Colten. He, he had words mamma, dada, car, bye bye. He had his siblings names. Gramma, Pappa.

Q How about his own name? Did he respond when people would say his name?

A Yes. He would turn his head. He would respond.

Q Okay.

A He knew his name.

Q How about eye contact with you?

A That, it was there from breast feeding.

Q And eye contact with the other siblings in the family?

A Oh, yeah.

Q And those that he was playing with and the extended family?

A Uh-huh, yes.

Q Yes? And how about speech with the other children? Did you overhear what he was saying with his siblings and extended family?

A Yes, we could.

Q And was he communicating with them by words?

A Yes, he was.

Q During the period of time between his date of birth and the time of the vaccination on April 23rd how was his overall health?

A He was pretty healthy. He had, like I said he had his routine sicknesses but other than that he

was healthy.

Q When he had routine sickness would you take him to a physician?

A Yes, I took him to his pediatrician.

Q And who was his pediatrician?

A Dr. Steven Sahai.

Q Would you be the one that accompanied Colten to Dr. Sahai?

A Yes, I would.

Q Okay. And when you reported to Dr. Sahai what were you observing with Colten? The symptoms that were manifesting themselves if he had a cold for example?

A Yes.

Q Okay. Did you seem to have a good rapport with Dr. Sahai?

A At the time, yes.

Q Okay. Now there comes a time then that he does go for an MMR vaccination?

A Uh-huh.

Q Yes?

A Yes.

Q Were you told in advance that that was coming?

A No.

Q Okay. So did you take Colten for a regular follow-up evaluation on or about April 23rd?

A I took him for a follow up from an illness.

Q Up to that point in time other than the routine type childhood illnesses had you seen any developmental lagging?

A No.

Q Any problems with speech?

A Absolutely not.

Q And the visit in April when he went for his MMR how was he on that occasion?

A He was just getting over being sick. He was still on the antibiotic.

Q Okay. And what was then the nature of the illness that he had just prior to the MMR vaccination being administered?

A I believe it was a throat infection.

Q Did he have a cough?

A Yes, he did.

Q Are you aware that the doctor's records says eats poop?

A Yeah, I am now.

Q Okay. Did he?

A No. He didn't eat poop. He never ate anything he wasn't supposed to. And on one instance

he had woken up from his nap and uh-uh I can snap my diaper off, you get it on your hands, he put it on the crib. That was the extent of it. But he never ate poop.

Q So he was treated for an E-coli infection?

A Right. And then it, and then it went away and it never came back because he didn't eat poop.

Q So he was fine on the treatment and overcame whatever the illness was --

A Yes.

Q -- at that time? And then that follow up visit is where the MMR vaccination was administered?

A Correct.

Q And were you present?

A Yes, I was.

Q And that vaccination was administered in the United States of America?

A Yes, it was.

Q And was Colten a citizen at that time?

A Yes.

Q As you and your husband are?

A Yes.

Q Okay. Now following the administration of the vaccination how did Colten start to behave within let's say the first 30 days following the vaccination?

A Well, the first symptom that I noticed was his leg was red and swollen and warm to the touch. And he kind of dragged it a little bit, had difficulty walking. And then it increased to being just, being generally fussy and then it escalated into spiking high fevers.

Q How high did you recall them spiking?

A 104.8.

Q Okay.

A And it was not able to be controlled with Tylenol or Ibuprofen. And I was alternating them back and forth.

Q Was his sleeping pattern disrupted?

A Yes. He no longer slept. He would scream all night long. He would throw himself backwards. At one time --

Q Were you able to console him while he was screaming?

A No. He was inconsolable. It was like he wasn't even listening to me.

Q Was he responding to his name?

A No.

Q How about eye contact with you when you would try to console him when he was screaming?

A No. He was just, he wasn't really there. It was just, he was just screaming. Like when a child has a tantrum and there's vocalizing with him it's not going to help that, that was him.

Q Facial expressions?

A No.

Q How about words?

A I recall a few words. The, but the main ones that I recall after the MMR were the mamma and the baba. And then they just eventually disappeared.

Q As a mother were you concerned about what you were seeing occurring with Colten?

A Yes, I was.

Q And what action did you take as his mother?

A On several occasions I took him to the different emergency rooms. And then I followed up with his pediatrician on a Monday.

Q So did you take him, one of the records show Halifax Hospital Emergency Room?

A At first I took him to Armen Memorial Hospital and they just didn't seem to get the scope of what I was seeing because I knew what my child was supposed to be acting like. And they sent us home and then the next day when he wasn't better and he was getting worse I felt they made a mistake in diagnosing

him so I took him to Memorial Hospital.

And then the next day he was, he was very, very ill and I took him to his pediatrician.

Q And all of this was within the first month of having the MMR vaccination?

A Yes, sir.

Q Was he developing or did he develop diarrhea?

A Yes, he did.

Q Was it proficient or profuse?

A In, yeah, and it caused horrible blistering rashes on his bottom.

Q And the fever would continue to spike?

A Yes, it would.

Q So when you took him back to his pediatrician did you explain to the pediatrician what you had been observing?

A Yes, I did.

Q Did you get answers to your questions?

A That he was very ill and lethargic by that time and then he was hospitalized.

Q And for how many days was he hospitalized?

A I believe it was two days.

Q Was he, in addition to being hospitalized for these other issues also suffering from

dehydration?

A Excuse me?

Q Was he also suffering from dehydration?

A Yes, he was. He was not eating.

Q He wouldn't eat?

A Uh-uh, no.

Q Had he lost weight?

A Yes, he had.

Q And how long was he in the hospital?

A For two days.

Q And was he then discharged to home?

A Yes.

Q Any special type of medication or diet to follow or regiment the doctor told you?

A Just the, the BRAT diet which is bananas, rice, applesauce, toast.

Q Okay. And then how did he progress at home under that?

A He didn't really have much of an appetite after that.

Q Okay. And did the fevers start to subside?

A They started to subside but they would periodically come back. They would cycle.

Q Okay. Was there a continued loss of weight?

A Yes, there was. He considerably, he kept

losing weight.

Q After he got home and away from the hospital environment did his normal temperament resume?

A No. He was very cranky, very fussy. He still cried all night long. We still had a hard time trying to console him.

Q And was he consolable?

A No. On Memorial Day weekend which was right after he was hospitalized we were at my brother's for a gathering and he didn't get down and he didn't interact with the kids. He just sat in my lap and was lifeless more or less.

Q How was he with you and your husband as opposed to then the extended family?

A Actually I just held him the whole time we were there.

Q You were holding him. How about facial expression and eye contact?

A No. Because he was resting on my shoulder.

Q Okay. From Memorial Day forward how did he seem to progress?

A He progressively got worse.

Q What did you see that you believed was indicating that he was getting worse?

A Well, the fevers kept coming back. And when

he would get ill he wouldn't be able to get rid of it like he used to. Then we started seeing, you know, the withdrawal behaviors.

Q Did the appetite return?

A No. The appetite didn't return --

Q Continued to lose weight?

A He continued, he still kept losing weight.

Q Did he resume his pre MMR sleeping pattern?

A No.

Q How about words and speech?

A They disappeared. He started communicating with sounds. It would be eh, eh, eh through his nose. Vocabulary left.

Q And pre MMR there were distinct words?

A Yes, they were.

Q I think I heard your testimony there were like 15?

A Uh-huh, yes, sir.

Q And they were distinct?

A Yes, they were.

Q Post MMR any distinct words?

A Other than the mamma and the baba after, right after the hospital they just disappeared.

Q Interaction with others?

A No. He was withdrawn. He would play by

himself. If you would try to interact with him he'd actually turn his body away from you so because he didn't want to interact.

Q How about play? Would he play with particular types of toys?

A After the MMR?

Q After the MMR.

A He would play with the toys but it wasn't like he did before the MMR. Before the MMR --

Q Compare --

A Before the MMR he would, they were typical, you know, is what you would see if you were playing with a barn he'd put the horsey in the barn and then he'd take the horsey and go around the barn.

After the MMR with the barn he would open up the barn doors and put an object in and close the doors. Then immediately open up the doors and take the object out and he would just keep doing things like that.

Q Repetitively?

A Repetitively.

Q Is that a type of play that he engaged in pre MMR?

A Absolutely not.

Q So the repetitive play occurred after the

MMR?

A Yes, sir.

Q Okay. Did you continue to be concerned about what you were observing and witnessing with Colten?

A Yes. And I kept taking him back to his pediatrician.

Q Would you tell the pediatrician what you were seeing in Colten?

A I would tell him that he's not responding to his name. He's not listening to me. And at one time the pediatrician said to put a piece of plywood kitty-corner and put the child in it and wait for him to respond to you, you know. He said it was a discipline issue. And it clearly wasn't a discipline issue.

Q Did you voice your concern to the pediatrician that you did not believe it was a discipline issue?

A At that point I thought maybe it was a hearing issue.

Q Okay. So as this problem progressed did you stick with the same pediatrician for a period of time?

A Yes, I did.

Q Did a time come when the pediatrician made any kind of referrals to others?

A By the time he had turned two and I took him in he finally said well okay you're right there is something going on. And he made a referral for developmental evaluation. And at that point he still didn't think he had a developmental disorder. He thought it was his hearing.

Q Was Colten dragging one of his legs?

A Yes, he was. He was dragging his right leg.

Q His right leg. How do you mean dragging? Can you describe it for us?

A It would just, when you're supposed to be walking normally he would walk and just kind of drag his leg a little bit.

Q Now up to this point before these referrals start post MMR did he continue with diarrhea?

A Yes, he did. It never went away.

Q And are we talking about profuse amount of diarrhea?

A Yes, we are. I would think that that would be contributing to his weight loss.

Q And did he continue to lose weight?

A Yes, he did.

Q Prior to the referrals to others did his temperament ever return to his pre MMR status?

A No.

Q Did his speech ever come back?

A No, sir.

Q Eye contact with his siblings or his parents or his extended family?

A No.

Q Did he appear to you to be depressed or withdrawn?

A Very withdrawn.

Q Did you try to stimulate him in order to bring out facial expressions?

A Yes. My sister-in-law had a daycare that she ran for the children and I would try to immerse him with the other children in her daycare and it didn't work.

Q What would he do with the other children?

A If they were over in a small group or something he would go off to the corner by himself. If one of the children would come over and try to take something that he had he would have a meltdown.

Q Did you get to observe him in the daycare setting?

A Yes, I did.

Q Earlier you talked about the repetitive play that he started engaging in after the MMR. Did you see that when he was at the daycare setting?

A Yes, I did.

Q What was the repetitive play that you saw there?

A Well, when he would play in the sandbox he used to take the shovel and put it into the bucket; now he would take and fill up the buckets and he would dump them back and forth. There was -- he just did it repetitively.

With his little toy cars he would line them up and if you touched one or moved one he would have a severe meltdown.

Q When you say severe meltdown share with us what that's like? What does he do?

A He's unreachable. And there's nothing you can do to try to calm him. He cannot calm himself. You just have to make sure he's where he can't hurt himself and let it run its course.

Q Well, after repeatedly mentioning this to his pediatrician what type of referrals were ultimately made?

A He was referred to Child Find for developmental delay. And for a hearing screening.

Q Did he go through the hearing screenings?

A Yes. And he had --

Q Were you told how the results turned out?

A Yeah. They said there was nothing wrong with his hearing.

Q What about the rest of the work up? Were you told what the results were?

A Yes. They told me that he had a pervasive developmental disorder and on the scale of the autism, and that they were going to reevaluate him in six months.

Q Did they do any other kinds of referrals or recommendations for any forms of therapy?

A Speech therapy.

Q And did he engage in speech therapy?

A Yes, he did.

Q Did you take him?

A Yes, I did.

Q Do you recall the name of the speech therapist?

A Kathy Timlin.

Q And during this period of time were you starting to be concerned over leaving him with just the one pediatrician that you were working with?

A Yes. After he failed to pick up on the developmental disorder and the autism I found another physician.

Q How did you find another physician?

A I had previously used that physician in the past with my other children.

Q Okay. And who was that?

A It was the Halifax Family Health Center.

Q And did you go there?

A Yes, I did.

Q Did you tell them of your concerns with Colten?

A Yes, I did.

Q What recommendations or treatment did they recommend?

A They just -- it was a follow up with the Child Find.

Q And did you continue with them?

A Yes, I did.

Q Did you search for another doctor?

A Yes, I did.

Q Okay.

A After he had been going to speech therapy I wasn't there very long and the speech therapist had mentioned that she had another parent who had a child that was on the autism spectrum and that she was seeing good results with Dr. Bradstreet. And told me that I needed to see Dr. Bradstreet.

Q Prior to that occasion with the speech

therapist mentioning this comparison that she had with another child with the suffering from autism and mentioning Dr. Bradstreet's name had you ever heard of him before?

A No.

Q No?

A No, sir.

Q Did you find out how to locate him?

A Yes, I did. I got the information from the speech therapist.

Q And did you make contact with his office?

A Yes, I did.

Q And what did they ask you to do before seeing Dr. Bradstreet?

A I needed to have some tests run and fill out a child evaluation form.

Q And did you do both?

A Yes, I did.

Q Ultimately did you take Colten to see Dr. Bradstreet?

A Yes. I believe it was like three months later.

Q When you first met with Dr. Bradstreet did you explain to him the child's history and what you had observed and watched the child going through?

A Yes.

Q Do you recall what you told him?

A Basically what I've already told the Court. I told him the same thing about the diarrhea and the symptoms of the autism, the regression after his vaccination.

Q What were your main concerns at the time you took him to Dr. Bradstreet?

A My main concerns were probably with his illnesses and with the fact that he was very withdrawn and he had no language.

Q Did you mention the fact that he had no language to Dr. Bradstreet?

A Yes.

Q As a result of visiting Dr. Bradstreet's office what were the recommendations made to you as Colten's mom?

A The main recommendation that sticks out in my mind was the use of Secretin. We had already been on the gluten- free casein-free diet. So and we did very various supplements.

Q How did you first hear of the gluten-free diet?

A The speech therapist -- the other mom that I was talking about she had her daughter on the same

diet.

Q Did you institute that diet at your home?

A Immediately.

Q And was Colten doing more in daycare at that time?

A I don't believe he was there on a continuous basis. When she had an opening I was able to bring him over.

Q Wherever he was if he wasn't with you did you ask them to follow the diet?

A Oh, yes, most definitely.

Q So then when you went to Dr. Bradstreet he was already on the gluten-free diet?

A Yes.

Q And what then did Dr. Bradstreet recommend to go along with the diet?

A The Secretin and various supplements and to do, excuse me, de-yeasting because he felt that he had a lot of yeast.

Q Okay. And did he undergo further testing then?

A He went on, he had a lot of testing, yes.

Q And while still under Dr. Bradstreet's care when this first started was he also still receiving the language therapy?

A Yes, he was.

Q How did you see him progress, I mean Colten, under Dr. Bradstreet's care and treatment?

A Prior to his third birthday we would see with the diet and the Secretin little glimpses of the old Colten but they were very sporadic. After the Secretin we finally started sleeping through the night. And I say we because it was me, my husband and Colten.

Q So he finally started sleeping again through the night?

A Right. And his diarrhea although it didn't totally go away it was much better.

Q What other changes did you start to see?

A I started to see a little more eye contact.

Q How about facial expression?

A Like I said you'd get glimpses but he still if you wanted to interact with him you had to pull him into your vision and you had to engage him. You really had to engage him.

Q And then you would get the contact?

A Uh-huh.

Q Yes?

A Yes.

Q But even before Dr. Bradstreet, back after

the MMR, before that treatment if you pulled him in would you even get a reaction?

A We'd get a tantrum.

Q You'd get a tantrum?

A Uh-huh.

Q So even the fact that you had to pull him in it was still an improvement?

A Correct.

Q Continue if you would, ma'am, about Dr. Bradstreet's care and how Colten was responding to it as you saw it?

A Prior to his third birthday?

Q Yes.

A He was doing sign language. Although he had no language before they tried to introduce picture system to him and he wanted nothing to do with it. But we were able to get him to start doing sign language.

Q Were there changes in his treatment around his third birthday?

A Yes, sir.

Q What were those changes?

A We had run a test for antibodies to myelin basic protein and they came back extremely high and we started on a course of IVIG treatment.

Q And that occurred in approximately his third birthday timeframe?

A I believe it was a few months after he turned three.

Q Okay. And how was that administered to your knowledge?

A Through IV.

Q Okay. And would you take him for those appointments?

A At first my husband and I both took him and then I would normally take him or my father would accompany me because I was still unable to take that long drive with just Colten by myself.

Q And why is that?

A He was a lot of work. He would tantrum in the back seat and I would try to calm him down.

Q And after the IVIG therapy started after his third birthday how did Colten progress?

A We started seeing -- Colten started to come back. His personality started to come back. He would start, his language was starting back up again but we would see instead of the eh, eh, eh you'd get bits and pieces of words in there.

So if you were familiar with him as I was I could understand what he was saying.

Q During that period after the IVIG therapy had started were you seeing facial expressions?

A We were seeing facial expressions. He still had repetitive play but it was coming along. He was, it was getting better.

Q Responding to his name?

A Yes.

Q How was he interacting with both you and your husband, his siblings and his extended family?

A Right after the IVIG he, it was better. The more IVIG he got the more he came back to us.

Q What's the period of time that you see from the starting of the IVIG therapy to the point that you think you're getting him back?

A We started when he was three and I enrolled him in a pre kindergarten when he was I believe five. So in that timeframe he had gone from not wanting to socialize, not wanting to interact to being able to be put in a setting, in a school setting and I hadn't even told the teacher about his previous history because I didn't want her to be biased and say -- I wanted to actually know how he was doing.

I wanted to see -- or if she was to say okay he had a great day, you know, there was no problem. I wanted her to be saying that from a knowledge that she

didn't have of him previously.

Q Were you getting those good day reports?

A Yes, I was.

Q Okay. Now were there times during the IVIG therapy where it wasn't possible for Colten to have therapy?

A Yes, at times we were not able to afford it. And if we were between insurances or certain insurances would pay for it and then certain insurances wouldn't pay for it.

Q What was the effect that you would see or the observations you had with Colten when he had been on the IVIG and now was off it for a period of time?

A He would regress. He would slide back. We would see all the old symptoms of the autism reappear. The longer he went without IVIG the more severe he got.

Q Share with us that regression. What comes back?

A With his language he would lose words that he previously knew. Or they would come out in the wrong order. Slurry speech. Sometimes he would talk very rapidly and you couldn't understand him.

He would lose the ability to have the sensation that he had to go to the bathroom. He would

-- so even though he was potty trained he would say I didn't get the signal. I didn't know I had to go and then he didn't even know he was wet.

Q And when the IVIG would be resumed how did he progress?

A He would slowly come back and then he would make even more gains than he had previously.

Q How old is Colten now?

A He's ten.

Q And how's he doing?

A He's doing well.

Q Is he still on the IVIG therapy?

A Yes, he is. Sporadically but yes he is.

Q How's his speech?

A He was released from his speech therapy I believe when he was six and I kept taking him every year for a few years after that to make sure that he was still on target.

Q How about his personality?

A He has a wonderful personality.

Q What kind of kid is Colten then?

A He's a scientist. He can remember anything. He has close friends although at times when we don't have IVIG he had difficulty with those friends because without IVIG it has to be his way, this way or I'm not

playing with you.

Q Do you still occasionally experience the episodes where for whatever reason he cannot have the therapy?

A Yes. At this time we have no insurance.

Q So there are times when he has to go without the therapy?

A Yes.

Q And what occurs?

A He bombs. He regresses. And then I take him to Dr. Bradstreet and he sees the backslide and on many occasions he's given it to him for free through the ministry.

Q Now we have introduced into evidence in this cause exhibits consisting of video tapes that you took and you've seen those videos?

A Yes.

Q I'm not going to replay them today because the Special Master has viewed them in their entirety and so for brevity's sake I just wanted to ask you first did you take them?

A Yes, I did.

Q And are they true and accurate and unaltered?

A Yes, they are.

Q Now in the taping of the videos there is a period of time -- and then there is an approximately 13 month gap and then they resume.

What happened in the gap?

A In that gap is when he had regressed severely and I really didn't have the time to pick up that camera because it was a 24 hour job with him. Plus I had my other three children to take care of. So I, why would I want to pick up a camera and video him when he's that bad.

Q Looking over the lifespan of Colten from his day of birth until now -- and we've talked about how he was afterward and then the problems that you've been through --

based on the timing and everything that you've lived through do you see a connection between Colten's conduct and the MMR?

A Yes. Even before I knew there was a so called connection I knew it was the vaccine that had done it. I just didn't know that -- how can I explain this? I knew what happened to my son but I didn't know how to present it if that makes any sense.

Q And when you developed that belief that it was the vaccine were you aware of this program?

A No.

Q Did you talk to lawyers?

A No.

Q That was just your mother's instinct telling you that this is where it came from?

A Yes.

Q Thank you, Mrs. Snyder.

THE COURT: Cross-examination.

MR. MATANOSKI: Thank you. Katherine Esposito will be doing the cross-examination.

THE COURT: Ms. Esposito, please proceed.

CROSS-EXAMINATION

BY MS. ESPOSITO:

Q Good morning, Mrs. Snyder. I am Katherine Esposito as he said.

Before we get started today I'm going to say this quite clearly for the record and videos that we have seen, that both you and Colten's father are loving parents and very dedicated to his well being. We know it's been a difficult road and we appreciate your testimony today so thank you.

Of your four children how many of the other three are full siblings to Colten? Are they half siblings?

A None. They're half siblings.

Q They're half siblings, okay. There's a

report in the record where there's a history that says that you have a history of chronic fatigue syndrome.

Were you ever diagnosed with chronic fatigue syndrome by a physician?

A No.

Q No. Those are the notes that you had made or reported to a nurse?

A I don't recall ever making that. I might have. I know that during the time when Colten was very ill I was very exhausted.

Q Okay. When you were pregnant with Colten what types of pain medications did you take?

A I don't recall the pain medications --

Q Were you --

A I recall, I did have a few headaches in the beginning.

Q Okay. Did you take any drugs, any, I think there's a mention of Zoloft and Tylenol.

A I took, I took Zoloft for I believe maybe a month if that and had no improvement either way so I stopped taking it.

Q Were there any other drugs that you took during your pregnancy that you recall?

A I believe having a few yeast infections.

Q Okay. Do you smoke?

A No.

Q Does anyone in the house smoke?

A No. My husband does smoke but he's not allowed to smoke in my house. Nobody smokes in my house.

Q Nobody smokes in your house. Has anyone ever smoked in your house?

A No.

Q No, okay. There's a mention in the records about an air filter?

A Uh-huh.

Q Was an air filter ever installed in your home?

A We had it, one of those little air filters.

Q Was that for Colten's health?

A Yes. It was in his room.

Q Okay. When did Colten start attending the daycare with his aunt?

A Actually right after he was born he was enrolled because she was certified through the state so he had to be enrolled. And so I would take him at first if I had to take my kids to the doctors or I had an appointment or if my husband and I wanted to go out to dinner she would watch him at night.

Q And how often was he there in the first say

two years of his life?

A How often was he there -- I would say at least a couple times a week.

Q A couple times a week, okay. Did you ever have a problem with pests in your home, insects?

A We had a dog.

Q You had a dog, okay. Any problem with cockroaches?

A No.

Q No, okay. There's a note in the records that Colten had pica from eating wood chips. Can you give me a little more information about that?

A I don't recall him eating wood chips. If we took him to the park or something he might have picked them up and put them in his mouth.

Q And that's something he was doing occasionally or?

A I'd say occasionally.

Q Okay. And the note about Colten eating poop. You say that you never told Dr. or Colten's physician that --

A I don't recall telling him that --

Q -- is that correct --

A I would have to say that I didn't tell him that.

Q Okay. Looking at that time period after the MMR shot I noted on your direct that you said that you took Colten to the doctors and to the ER because he was dragging his leg and he threw himself backwards and wasn't really there and didn't have facial expressions.

Are those the reasons why you went to the ER?

A The main reason was the extremely high fever and the -- I could not console him.

Q All right.

A And that was not characteristic of him.

Q Okay. I want to talk about that diet that Colten has been put on.

Is he still on the gluten-free casein-free diet today?

A Yes, he is. Actually the diet that Colten is on -- he eats fresh meat that we raise ourselves because we have difficulty giving him foods from a grocery store.

Q Okay.

A So we raise our own cows, turkeys, chickens. He eats venison. And we buy organic fruits and vegetables.

Q Does Colten eat any seafood products? Any

fish?

A Absolutely not.

Q Has he ever eaten fish?

A No.

Q Is that something --

A He might have eaten tuna fish a few times in the beginning but he doesn't care for tuna.

Q Do you monitor what he eats very carefully?

A Yes, I do.

Q Okay. How did you first find out about Dr. Bradstreet again?

A Through his speech therapist.

Q Now when you went to the first visit with Dr. Bradstreet on July 28th of 1999 did you take any medical records with Colten, with you to that visit?

A I don't recall if I did or not.

Q Okay. What supplements was Colten put on after he started with Dr. Bradstreet?

A I know he was put on I believe COQ10, some flax, SuperNuThera. But I don't recall the rest of them.

Q And when would --

A And Colten would take things, he would do fine with some things for a little bit and then he would bottom out and we'd have to discontinue it.

Q So you were trying a variety of different supplements at --

A Yes.

Q When you first went to Dr. Bradstreet's office did someone at the office help you fill out the form, the intake form?

A Actually the child evaluation form I filled out at home and I faxed it to them.

Q And then you filled out another one I think in the office. Did someone else help you fill that out?

A My, I believe my father was there.

Q Okay. Did you remember the MMR shot prior to this visit with Dr. Bradstreet when you were convinced was the MMR shot that had changed Colten's behavior?

A Yes.

Q Okay. And this is something that you would bring up on each visit to the emergency room doctors or the pediatrician after his reactions started in May of 1999, 1998, sorry?

A I would. I would bring up that he was still ill from after he had the MMR.

Q But did you talk about the change? Is that something you were continually raising? You're

talking about a drastic change in his behavior and --

A I discussed with his pediatrician on many occasions what I was seeing with Colten.

Q So that was something you were continually bringing up?

A And it fell on deaf ears. Like I said he would say it was, you know, it was a discipline issue. He would always blow me off. He would always find a reason for the behavior.

Q Okay. There's a bill at one in the records from Dr. Bradstreet where the total charge is $31,328.

How were Colten's visits, how were they paid for?

A My parents helped us. The ministry helped us.

Q Can you explain the ministry? What is that background?

A Dr. Bradstreet's runs on donations and if a parent or a family cannot afford their child to be seen and the ministry has the funds they would help pay for it.

Q Okay. In your direct you mentioned that Colten had an MBP test done. Why was that test conducted, do you recall?

A I don't recall why it was.

Q About his vocabulary at the beginning, you said he was speaking about 15 words before he regressed.

A Uh-huh.

Q Were most of those words names of family members?

A There were some family members but like I said there was ball, there was bye bye. There was baba. There was car. It was a variety I guess between the two.

Q Thank you, I have nothing further.

MR. WICKERSHAM: No redirect, Your Honor.

THE COURT: Let me just check my notes for a minute. I don't have any questions for Mrs. Snyder.

MR. WICKERSHAM: May the Witness step down?

THE COURT: She may.

MR. WICKERSHAM: If it please the Special Master the Petitioners would call as their next witness Samantha Noonan.

THE COURT: Okay.

MR. WICKERSHAM: Stand right there and she'll place you under oath.

THE COURT: Would you raise your right hand, Mrs. Noonan.

Whereupon,

SAMANTHA NOONAN

having been duly sworn, was called as a witness and was examined and testified as follows:

THE COURT: Please be seated, Mrs. Noonan. I'm going to ask you to speak toward the microphone. Your voice sounds a little low, okay.

THE WITNESS: Okay.

DIRECT EXAMINATION

BY MR. WICKERSHAM:

Q For the purposes of our record here this morning would you state your full name and address please?

A Samantha Jane Noonan.

Q Would you spell your last name?

A N-O-O-N-A-N.

Q Are you married, ma'am?

A Yes.

Q Your husband's name?

A Michael James Noonan.

Q And do you and your husband have children?

A Yes, we do.

Q How many?

A We have one child together and I have a child.

Q And the two children which you have -- what

are their respective ages?

A I have a 16 year old and an 11 year old.

Q Are you related to Colten Snyder?

A He is my nephew.

Q And are you aware when Colten was born?

A Yes. I was waiting outside the delivery room door for his arrival.

Q Did you hear his first cry?

A I did.

Q Okay. During the time prior to Colten's birth that Kathy was pregnant and carrying Colten what was the contact between you and her as far as frequency during that period of time?

A Oh, we were frequently together. We -- not only is Kathy my sister-in-law so we have a lot of common family gatherings, but we've been friends since we were in high school so we've been very close for a long time.

Q And how about the living proximity? How close do you all live together?

A At that time it was about three miles.

Q So during the time that Kathy was carrying Colten and prior to this delivery were you aware of any complications or difficulties of any nature that Kathy had with her pregnancy?

A No.

Q And as far as your being outside the door when Colten was born did you see him in the hospital?

A I did.

Q How long were they there?

A I recall it was just a couple of days. I don't -- it was about the same amount of time I was in with Austin.

Q Anything abnormal about the length of time they were there?

A No.

Q Were you aware of any complications during the delivery process?

A No.

Q And when you saw Colten in the hospital did he appear to be anything other than a healthy young baby boy?

A No, he didn't.

Q Now after Kathy and Colten were discharged from the hospital did they go home?

A Yes.

Q And what would then be the frequency that you would have had to visit with Kathy in her home and see Colten?

A Pretty regularly. We often met at her mom's

house in the evenings for dinner and family gatherings, things like that a couple times a week at least.

Q What was your observation of Colten during these early days?

A He seemed to be developing normally as I would compare to my own child and her three children that I was a part of their life as well. Very happy.

Q In addition to your own children what is the nature of your occupation?

A I am, at that time I was the owner and operator of a licensed childcare in my home.

Q Licensed by the state of Florida?

A Licensed by the state of Florida, as well.

Q And did your license govern the number of children that you could have in your home?

A Yes.

Q And what was the number of children you could have?

A Six children.

Q And did the license also put age restrictions on what age of children could --

A Yes, it did.

Q And what --

A The children were under five and there were

to be no more than six.

Q So anywhere from an infant to five, you could have six children in your home?

A Right. Unless four of them were infants. If there were four infants you couldn't have --

Q What was your normal, I hate to call them -- but how many children in your home?

A Typically I was at full capacity most of the time.

Q Which would have been six children?

A Yes.

Q So you have a lot of experience not only raising your own but in watching other people's children who you are licensed to do so?

A Yes.

Q Are you familiar with the term developmental model study?

A Yes.

Q What does that mean to you as a mother and a daycare provider?

A Those steps that a child takes in developing be it eye contact, sitting up, eating.

Q Did there come a time where you started providing some kind of daycare for Colten?

A Actually I was looking back at my records

and I had him enrolled as of the 27th of January the year he was born and I did that because being licensed I periodically was inspected. And if I did have an opening and could help Kathy out and she needed somebody I could let her know and Colten would be in my care at that time.

So, yes, I did keep him there periodically.

Q So he was not actually on your roster or --

A He was on my roster, yes.

Q Okay. Were you aware that at some point in time Colten had an MMR vaccine?

A Yes.

Q That inoculation -- how did you become aware that Colten had it?

A Well, because we saw each other pretty periodically I knew he hadn't been feeling well and he'd been to the doctor. And I remember -- and don't recall dates because I just struggle with that in general but I remember her telling me that he was just not feeling well at all. And that he had a doctor's appointment and it was not going very well. He just wasn't feeling good.

Q Was the MMR vaccination specifically discussed with you and Kathy?

A I remember us talking after the MMR about

her being concerned because he had such a high fever and wondering if it had anything to do with the immunization because oftentimes we're told -- I know I was when I took my son, sometimes you can expect a high fever after an immunization.

Q So after his MMR she called you for kind of advice as to if --

A Just to --

Q -- these occurrences seem normal?

A Reassurance.

Q Reassurance.

A Am I crazy.

Q Okay. I'd like to break this into a timeframe if we could then from the day you heard him cry outside the door in his room at the hospital up to a point that you learned that he had the MRR vaccination.

And I'd like you to describe to the Court, Colten, how was he, how did he progress, how did he develop during that period of time?

A He appeared to be very on target with my child, with Austin who was only nine months older. Austin adored him. Every time they were together he just catered to his every whim. He thought he was the cutest baby.

But he -- in my estimation and my observation he appeared to be very typical. He loved to be held and talked to and interacted with. I enjoyed him very much.

Q And during that period of time to the date of birth up to your knowledge that he had the MMR vaccination were there times that you cared for him?

A Several uh-huh.

Q Did he seem to have a normal sleep pattern?

A He did. He was right on schedule.

Q How about his diet?

A He was breast fed so she pumped mother's milk and he seemed fine.

Q During that period of time that we're talking about versus the MMR did you note any problems also being one of his care givers with chronic diarrhea?

A No.

Q When he would be with the other children at the daycare and your children did they play together at times?

A As, as babies do, yes. Ball and, you know.

Q Was he interactive?

A Yes.

Q And how about with you personally was he

interactive?

A Absolutely. He would respond to his name when I called it. He would allow me to pick him up and hold him and talk to him.

Q Facial expressions -- did he respond?

A He did.

Q And when he would play with an object during this period of time did it appear to you appropriate play?

A Yes.

Q And as far as his interaction with other children did he interact and share?

A Uh-huh he did. Well, they all kind of sometimes struggle with sharing but he did as typical as I would have expected, yes.

Q Eye contact?

A Uh-huh.

Q With you?

A With me, with my son, with my husband.

Q With other children?

A With his parents --

Q With other children?

A Other children, uh-huh.

Q What would you describe his general temperament to be during that period of time?

A He seemed to be a very joyful child. He was always happy. I didn't have any problem, I mean he would come into my care and be left and adapt without a problem.

Q Now let's take the period of time you learned that he's had the MMR vaccination. And following that knowledge on your part are you still caring at times for Colten?

A Periodically, yes.

Q You --

A Uh-huh. About, well, it was more irregular after the MMR because he was sick so much. But there came a time when he actually became a full time participant in the pre school.

Q How did you find him post MMR?

A Well, not so much from my work standpoint but from a family standpoint what stuck out in my mind the most was on a Memorial Day family gathering just seeing him totally nonresponsive. Very lethargic, very ill. That was the first time I actually saw him like that.

Q Am I correct that that Memorial Day picnic gathering would have been just a few days after the MMR?

A If April 23rd -- she said it was Katie's

birthday and so it would have been about a month later.

Q Okay. What's the difference in that month that you see in Colten?

A Very unresponsive, totally lethargic, pale, thin. He didn't look healthy.

Q Listless?

A He didn't get off of his mother's shoulder the whole time we were there.

Q Did he interact with the other children who were present at the gathering?

A No.

Q Eye contact with you?

A No. He didn't want anything to do with me.

Q Is that the first you experienced that with Colten? I see you nodding but I need you to answer verbally.

A Yes.

Q For our record, thank you.

Were you aware during that family gathering whether he was having diarrhea?

A I don't recall her specifically telling me that. I know that he had not been well and she'd been really struggling and had not had much sleep.

Q And did you then look after him for periods

of time after that to help out?

A On occasion, yes.

Q How did you find him during this period of time?

A He was like a different child. He didn't, it's very hard to describe because it was a very drastic change. He was not participating in play with the other children. He did not really want to be near anyone. I take pride interacting with each child that I care for and he did not want to be interacted with.

Q What would he do when you would try?

A He would pull away. He would -- he'd seclude himself to other areas of the room and did not want to be brought into the circle.

Q How about play itself? How would his play habits be after the MMR?

A One particular thing comes to mind. Very repetitive. He had a ball pit and he would take the balls and push them into the crevice of it in a pattern. And he would just repeatedly do this. And if anybody touched a ball or took it out of the pattern that he had created it would send him into a tailspin and you could not console him. You could not calm him. He was just erratic.

Q The toys that he played with -- did he seem

to play with them appropriately as they were designed or intended for?

A It did not seem to me that he played with them in the way that my son played with them. Everything seemed to be very patterned, repetitive, constantly looking to have things exact.

Q He liked to play with Legos?

A He did. He did. And again with the Legos it would be a pattern. He would create four blue, four red, four yellow, four green and he would have it exact. And if my son would come in and want to build with him or participate in that play and would take one out of order it wasn't pretty. It wasn't a good thing. He did not interact at all at that point. I have very vivid memories of that.

Q Watching this change that occurred is there then a time that you relate when the change occurred?

A It was between the time of caring for him before the MMR and seeing him on that Memorial weekend. That was where, that's where I recognized it wasn't the same child.

Q Did that same child ever start coming back?

A After time, changing diet. It was very hard to have him in my care until he got on to the diet.

Q What would you experience while he was in

your care before the diet?

A Tantrums. Required constant, constant care. You could not be in a room with six children with Colten there unless you had a one on one with Colten because it was not safe for Colten. He required constant attention.

Q And is that in total contrast to how he was the last time you saw him --

A Complete and total --

Q -- before the MMR?

A Complete and total contrast.

Q Now with change in diet did you notice changes in Colten?

A When she started the diet I did see minor changes. And the diet was very strict. I remember being fearful of him getting a goldfish because I knew if he got the goldfish it could cause his whole day to be off kilter.

Q And you're taking about the food, the little goldfish --

A I'm talking about a little goldfish cracker.

Q Okay.

A I would be fearful of him getting one because his behavior could totally become irrational from it.

Q So the care you provided -- and you were also following a strict regimen as far as his diet was concerned?

A Yes, sir.

Q And were there benefits that you observed from the diet in Colten's behavior?

A Yes. He was much more controlled and calm and able to be around the children; not necessarily interact with the children but could tolerate our presence --

Q As, as time --

A -- on the diet.

Q -- progressed were you aware that Colten's mother, Kathy, sought out the care of Dr. Bradstreet?

A Yes.

Q Were you aware of approximately when that started?

A I don't recall dates but I remember her beginning to see Dr. Bradstreet, yes.

Q After she starting Colten seeing Dr. Bradstreet, follow with us if you could, are there changes you see or does he remain the same?

A There are changes. I remember thinking at the time not having connected any of this either, thinking oh my gosh the things they have this child

eating and taking. This is, thinking that it was very strange because my child never experienced these things, never had to do these things.

But I could see that without them he was just, you couldn't manage him. So yes, I did notice changes and I did notice improvement.

Q Now the period of time birth to the MMR, where you get knowledge of that from your practice and your business and also with your children, do you believe that Colten was on target meeting his developmental milestones?

A He appeared to be, yes.

Q MMR and post did he appear to be on target meeting his milestones?

A He was, he didn't even speak after the MMR. I didn't even hear words. So I would say no.

Q Now in terms of care with Dr. Bradstreet, what are the progressions or positive developments that you see occurring and over what period of time?

A It was over, I didn't have him regularly in my care. But she would bring him frequently. He started part time half day and he could be at the table with the children and sit and participate, whereas before he would simply remove himself from the group and be off in a corner on his own.

So I did start seeing improvements. I did start seeing him be able to be with a child one on one and do some play.

It was gradual but it did happen.

Q At a point and course in time while Colten was treating with Dr. Bradstreet were you aware that he came under a form of treatment known as IVIG?

A Yes.

Q Using that then as a date to go forward from, from the time he started the IVIG therapy, did you note changes in Colten?

A Yes. He definitely started to become a part of the group. He would play, he would participate in outdoor play again. And seemed to just be more a part of the family again. He didn't --

Q What about his speech?

A He started speaking slowly. Again like Kathy -- I recall her saying that she understood him because she was around him a lot. There were times she understood him that I didn't but there were also a lot of things that he said that I could understand.

Q Was he starting to recapture his words?

A Yes.

Q How about his facial expressions?

A He was becoming himself again, yes.

Q Happy little boy you described initially?
A Yes.
Q Interaction with you?
A Yes.
Q And other people?
A Would respond to me. Would participate in circle time, answer a question, would go up to the flannel board with a story piece and put it on and be a part of what we were doing not, just a spectator.
Q While you were caring for him and he was having the IVIG therapy, any problems with diarrhea?
A I don't recall it being constant. He was potty trained at the time that I had him more full time.
Q Okay. So that was better?
A Yeah.
Q Okay. And the interaction with other children had been markedly improved?
A Uh-huh.
Q How has Colten progressed then since that time?
A I just saw him just the other day and he is very, very jovial. He amazed me because he ran for class treasurer and I was so proud because he is normally pretty quiet and doesn't like the camera,

doesn't want his picture taken. But he was so proud of himself for doing that that he actually stood in front of his poster that he made with his hand up to it so proud and let mom take his picture. And that was a huge milestone for Colten. And he is a wonderful boy.

Q And during the time that you were aware that he became, being under Dr. Bradstreet's care under IVIG and had made progress were you also aware that there times that that therapy for financial reasons could not occur?

A Yes.

Q Did you see any changes in Colten when the IVIG therapy had to be discontinued for a period?

A Yes, he would be a lot less apt to be cooperative. Cooperative play was a lot more, it didn't happen as frequently when he was without it.

A lot of times Colten would spend the night with us because my son and he are nine months apart and they're close and you can tell, I can tell when Colten is on regimen and when he's not because he is able to stay and do fine when he is and if he isn't he just doesn't tolerate it well.

He tends to want to call mom and doesn't want to stay. Doesn't want to work things through.

Q How about the temperament; does that change?

A Definitely, yeah. He just isn't as cooperative and does not, you can't mediate with him, you know. He's not willing to compromise when he's off of his regimen.

Q How about the interaction with other kids?

A He avoids it. He avoids it. If he can't have things just the way he wants them he will avoid the interaction.

Q While off of therapy how about vocabulary and words?

A I haven't heard his words stop, just his willingness to use them, his willingness to engage in conversation lessons I would say in my observation.

Q How about play?

A Play. He likes to play on his own a lot. Video games, Legos, things like that. He will do that and then put himself in a situation where he doesn't have to interact if he's without his IVIG in my observation.

Q On the resumption of the IVIG what do you see?

A I see him playing with Austin. Playing cars on the floor and interacting in some sort of combined imaginative play where they're actually thinking

through a process and making it happen together.

Q Are these differences that you note while he's on the therapy and when he's off the therapy very subtle or are they dramatic?

A It depends on how long it's been. It's mostly subtle. If it's been a long time it's more obvious.

Q Thank you.

THE COURT: Respondent, cross-examination.

MS. ESPOSITO: We have no questions.

THE COURT: I have no questions for you either. Thank you very much. You may return to --

It looks like we're at about ten minutes to 11:00 and perhaps a mid morning break of 15 minutes would be appropriate here.

So we'll reconvene at five after 11:00.

(Whereupon, a short recess was taken.)

THE COURT: Back on the record then in the Snyder case. Mr. Wickersham, would you proceed.

MR. WICKERSHAM: Yes, may it please the Court, we would call on behalf of the Petitioners our next witness, Ms. Kathy Timlin.

THE COURT: Ms. Timlin, would you please raise your right hand.

Whereupon,

KATHERINE TIMLIN

having been duly sworn, was called as a witness and was examined and testified as follows:

THE COURT: Please be seated.

MR. WICKERSHAM: May it please the Court.

THE COURT: You may.

DIRECT EXAMINATION

BY MR. WICKERSHAM:

Q Ma'am, for the purposes of our record here today would you state your full name for us please?

A Katherine, K-A-T-H-E-R-I-N-E, Love Timlin, T-I-M-L-I-N.

Q Okay. And your business address?

A 1104 Beville, B-E-V-I-L-L-E, Road, Suite J, Daytona Beach.

Q And what is the nature of your profession?

A I am a pediatric speech and language pathologist.

Q Could you relate to the Court what's the nature of your professional training and education to become that profession?

A I completed my graduate work at the University of Montana in 1976. I received my certificate of clinical competence in 1997 and was duly licensed by the state of Florida since that time.

Q And in the course of your professional practice have you come to see and meet a child known as Colten Snyder?

A I have.

Q And you have cared for him in regards to speech therapy?

A I have.

Q Would you relate to the Court if you would when is the first time that you very first encountered Colten Snyder?

A The first time I met Colten was at our early intervention program clinic in April of 1999. At that time he was referred for speech and language issues delays as stated, or as reported by his physician. And he had severe temper tantrums as well.

The early intervention program clinic is designed and as it was designed at that time as an inter disciplinary team evaluation.

I provided the speech pathology component and that was in April of 1999.

Q What are the other specialties involved in the intervention evaluation?

A At that time we had a pediatrician on the team. We had a licensed psychologist on the team. An occupational therapist, a nurse case manager and a

family service coordinator, excuse me, and our team has changed since then.

Our pediatrician, Dr. Hartmann, our psychologist, Dr. Wenk, our occupational therapist, myself, the nurse and the case manager.

Q And in regards to your role in that evaluation could you relate to the Court what it is you did?

A I, excuse me, I provided the speech pathology section. I administered the pre school language scale three with the following results. It is divided into three segments.

Q Now the results you're getting ready to reference would those be Petitioners' Exhibit 14 at page 0035?

A No, it's a family support plan from the early intervention program clinic.

Q Okay. Here's one more step.

A There we go.

Q There we go. Let's pause here for just a second if you flash that one higher, up there.

What I'm looking at is patient/parent concerns.

A Uh-huh.

Q When they first presented. Now in front of

this, Exhibit 13 at page 0015 family concerns and priorities, were you made aware of these?

A Yes. I was part of the team that developed those.

Q And do these come from the family themselves the Colten --

A Yes. Those --

Q What were the family concerns and priorities?

A They were concerned about Colten's speech and language development. At that point he had a three to five word vocabulary. He did not use, he does not use two words together in a phrase. He will obey some commands. He used to use more words when he was younger but then stopped.

He seems very frustrated when not understood. He frequently has tantrums and throws himself backwards.

Q Now I note at the top of the page it gives the date of birth of 1/9 of '97. Is that Colten's date of birth as you understand it?

A Yes.

Q The behavior described in the family concerns from your specialty -- does that seem to be appropriate behavior?

A No.

Q Is the vocabulary of three to five words normal for that age level?

A No, it is not.

Q In addressing concerns as part of the team did you conduct a work up, is that correct?

A Correct.

Q And really again what are the items included in the work up? What do you do? Do you meet with the child?

A Again, I'm going back in memory trying to reconstruct because our team has changed a little bit.

At that time our clients were brought in with their case manager. We met in an arena type of evaluation model with the parents, the child, the case manager and other disciplines as appropriate.

Q And do each of you then interact with the child?

A Yes.

Q And how did your interaction proceed? What did you do?

A I, excuse me, I was able to obtain standardized scores with Colten at that time. He appeared to be functioning at a total language age equivalent of nine months according to the pre school

language scale three.

At that time he was a little over two.

Q And that would be shown on Petitioners' Exhibit 14 at page 0035 -- your findings?

A Yes, that's it.

Q And would you explain to us first how do you obtain those findings and what is the significance if any of them?

A The auditory comprehension scale is that scale that measures the child's ability to comprehend language, language structures.

For an example show me the object. Show me the picture. Those kinds of questions. He obtained a standard score, remember that 100 is the average so one standard deviation above and below the mean is 15 points.

He obtained a standard score of 61 with an age equivalent of seven months.

Q And his actual physical age at the time this is 26 months? Two and a half years?

A Correct.

Q Actually a little older than 26 months?

A Uh-huh. By some days. The express communication section of that test deals with the child's ability to -- for example name things, to

communicate pragmatically, usefully use words and phrases, sentences if you will, to request, to label, to comment, to request information.

Where mommy go, for example. Or naming objects or naming pictures, naming actions and pictures. Using language as a means to an end.

He scored a 63 which again is greater than two standard deviations below the mean.

Q And --

A And an age equivalent of ten months.

Q How does that compare to what you would have expected for his actual age level?

A I would have expected him at that age to be putting sentences, short little sentences together. I would be expecting him to use language pragmatically as a means to an end to accomplish something, to request, to request information, to explain, to tell his mommy or daddy that he was hurt, that he was hungry, that he was tired, sleepy.

Those are the things that I would expect of a child who is typically developing at that age.

Q So at two and a half he did not have those skills?

A He was not using any pragmatic language to my recollection at that time.

Q And then total language score?

A The total language score is a statistical combination of the two scores. It is not a true average. And it was a 58 which is significantly below the mean. And an age score of nine months at that time.

Q And so is it fair to say it's substantially below what his actual chronologic age is?

A Yes.

Q Do you find these scores that you have here to be slight deviations, large deviations, how do you rate them?

A I would consider those severe, I would consider those severe language -- at least a language delay if not a disorder.

Q After you had done your section of this team approach did the team reach conclusions?

A We did. At the end of that arena assessment we meet then with the parents and the team and we review all of the scores that were obtained by each discipline.

Then each of us makes our own recommendation and the team recommendations were one through five.

Q And are those shown on Plaintiff's Exhibit 13 page 0003?

A Refer to a psychologist? Yes.

Q And relate those recommendations to the Court.

THE COURT: Mr. Wickersham, I have this --

MR. WICKERSHAM: Sufficient.

THE COURT: Sufficient. I can read it. People in the courtroom can read it. We don't need anybody to read it to us.

MR. WICKERSHAM: Thank you.

BY MR. WICKERSHAM:

Q Following the assessment by the team did you then start out to effectuate the recommendations?

A Yes. I began then -- when I saw Colten the first time was on 4/6/99. At that time because I have already completed my evaluation all I really needed to do then were to make goals for him. And those goals are --

Q How do you go about trying to achieve the goals?

A How can I explain therapy in one easy step. Well, I always start here my children are.

Colten at that time as far as I was concerned and and I was going from what I what I discovered on my evaluation and parent report.

And we formulated these goals and then worked towards those by using a variety of means.

I always try to use a very eclectic approach with my kid and I'll try one thing and if that doesn't work I'll try something else and try something else.

At this point in time my goals reflected that I began with a picture exchange communication system which is a system of communication that is based on part behavior analysis and a speech pathologist developed this plan.

And it is, the child learns to request simple objects, activities etcetera through the use of pictures. Where an actual exchange of communication is being made between the child as the speaker and his recipient.

We start with pictures, single pictures. We progress to sentences and then from sentences we try to diversify those types of sentences.

Q Is this basically one on one --

A It is one on one with the parent present in order to carry it over at home.

Q But you're having active interaction --

A Yes.

Q -- with the child? Can you explain to the Court in your first observations while you're engaged

with Colten as to the temperament of the child and his general demeanor when you're working with him?

A When when I first started seeing Colten in April of 1999, I could not obtain and see behavior. He would not sit at the table for example and do a traditional approach to the picture exchange communication system.

He was very resistant to that. He was very internally motivated if you will. He was interested in doing what he was interested in doing and that was pretty much the end of the conversation.

I would have to work my way into and work around him to get my goals and my objectives for each treatment session accomplished.

For example on my notes for 4/9/99 he does not like playing with toys requiring cause and effect and resists hand over hand. He wants to play very ritualistically at that time.

For example I had a Fisher Price barn. All he wanted to do was take the animals instead of playing with them like a typically developing child of that age. He would simply push them through the windows one after one after one after one until he exhausted the numbers of animals I had in my box which were numerous.

Q Were you seeing --

A And then start all over again.

Q Were you seeing then a type of play that was not appropriate for the type of toy he was using?

A Yes.

Q Were you seeing repetitive type actions on his part?

A I was seeing repetitive actions, over-selectivity in the toys that he would play with which means he kept selecting them over and over and over and over again. Refusing if you will to play with anything that I initiated.

His play was very ritualistic. And non productive if you will.

Q What would be the reactions of the ritualistic behavior play if you interceded?

A He would become very angry and scream at me and if I persisted he would evolve into a temper tantrum.

Q How about imagination? Was there --

A There was no imaginative play nor was there any representational play or parallel play at that time. I could not play in close proximity to Colten. I could play maybe if there was three or four feet between us if I recall. But if I got any closer he

would move, he would move again. So there wasn't any attempt at cooperation at that point in time.

Q Was he in the contrary he was trying to isolate himself from being with you --

A Yeah --

Q -- in playing?

A That's the way I interpreted that, yeah.

Q In your dealing with him one on one how was your eye contact with him and his exchange with you?

A Eye contact with Colten was interesting because at times I would have an increased eye contact if it was something that he wanted. And if it was something that I initiated there was aversion. And at times he would give me aberrant if you will for any better word or just, visual behaviors in that he would look to the side, side glancing like that and walk up and down my wall, either side.

I interpreted that as a visual self stimulatory behavior.

Q And as far as his facial expressions would you --

A I can't recollect and I didn't have any documentation about that particularly.

Q Okay. Now as your therapy sessions with him progressed what was the frequency?

A I was seeing Colten two times a week for 30 minute sessions each.

Q In your course of care and treatment of Colten -- you had conversations with his mother?

A Every session.

Q Did she report from historical perspective for you what was occurring at home?

A Uh-huh. Yes.

Q How were things going at home?

A I can glean from my notes, we were focusing on playing, on increasing play skills and interactions with his sister.

And although I do not have that documented I am making the assumption that those play skills were much the same at home as they were with me.

Q So what you were seeing in the therapy sessions was pretty much being replicated at home?

A That was my assumption.

Q At a point in time did Mrs. Snyder confide in you that she had certain concerns about Colten's progress?

A That was always a concern. It was, is he progressing? Well, slowly, yes. I mean is he making little bits of progress, yes. But it wasn't significant. It wasn't really significant until we

started looking at the gluten-free casein-free diet.

Q As you were progressing with Colten and dealing with his mother did his mother appear to you to be an accurate reporter to you historically in what was occurring at home?

A Yes.

Q There's no reason to doubt her accuracy?

A No. She provided me on several occasions with when words started to emerge and things like that; she provided me with many lists of words that she had heard at home and would not spare the difficulty in understanding. She would transcribe them exactly the way Colten was saying them. So there was no misunderstanding about is he really saying this. Is this what you're hearing. And that's very, very, very beneficial to the therapist.

Q And at some time she mentioned that the gluten- free diet came up?

A On 5/28/99 I noted in my records that we implemented GFCF diet and he is not as irritable and more compliant today. I can tell a difference in compliance with decreased tantrums and screaming when things don't go his way or something falls or otherwise won't do what he wants it to do.

Q Now those aren't reports from the mother,

those are your direct observations?

A Those are my observations.

Q And you were seeing the improvement?

A Uh-huh.

Q How did he continue to progress under the diet?

A When I was going over my notes I could see a very significant progression of improvement from one month to the next.

For example on 6/11/99 I saw no ritualistic behaviors on that particular day. 6/1/99 no more screaming since GFCF diet. Rings under his eyes are disappearing. Playing better.

Q You mentioned rings under the eyes. Could we go back in time when you first started with him. What rings were you noticing?

A Really, really dark circles under his eyes that I had always -- that I had seen ever since I met Colten.

Q Did that have any significance to you in your --

A At that time I was working with another little girl whose mother was working through some food allergies and she made note to me about her daughter that well, we cleared up this particular allergy, the

dark ring circles under her eyes started to disappear. And I had two other clients with the same experience as well.

So I just felt that that was significant enough to note at that time.

Q Okay. Were you aware of what was the medical care, treatment besides the therapy that Colten was receiving during this time period?

A Other than the GFCF diet I was not aware of -- I didn't put anything in my documents to tell me that I was aware of anything else going on.

Q Did you become aware at a point in time that Mrs. Snyder took Colten to see Dr. Jeff Bradstreet?

A Yes.

Q How did you become aware of it?

A As best I can recall Mrs. Snyder told me that they had been seeing Dr. Bradstreet and about his plans. Like I said I don't have that documented so I don't really know exact --

Q But you did become aware of --

A -- conversations. Yes, but I was aware of it.

Q After Colten had started his care and treatment with Dr. Bradstreet, in your therapy sessions did you note any differences or changes?

A I began to see changes right away from the point at which we were speaking in June of 1999. In fact as in therapy it was the beginning of approximations to true words, I would say a word and he would echo it back to me. It was not echolaliac behavior, a mindless, purposeless imitation of a word but it had -- I felt it had true meaning.

Q What does that mean to you in your practice?

A That means I'm making significant progress to communication skills. I mean and too, when you start getting true words then you know you're on your way to oral communication and you're not going to get -- have to stay if you will at an assistive technology or other sort of augmentative system for the kids.

Q So then as he's treating with Dr. Bradstreet what are the continuing changes if any that you note?

A 7/6/99 improved attending behavior and tolerance to increased parallel play. He does not appreciate my interaction with him but no longer turns his back to me. And that brought back my smile because that's a pleasant memory -- he would literally turn his back around to me, look over his shoulder to see if I was anywhere near. If I approximated he would still turn around just so and at that time I'm

not sure that it was as much avoidance as it was playfulness, his way that he knew how to play with me.

7/6/99 lots more frequent smiles and increased eye contact. I did make a note is now on Nystatin for yeast control and doing well on GFCF diet.

Q So you are seeing progress with the use of the diet and --

A And increased jargoning and compliance to direction, increased eye contact, much more compliance with directions, jargoning more but having difficulty with any kind of imitation.

His ability to imitate at the very beginning was very inconsistent. And at one point in time I felt that he may have a motor speech disorder which means that he has a very difficult time planning one speech sound to the next.

Typically, you see a lot of groping and a lot of struggling behavior with a child who's dysphrasic. And at times I had seen that. But as time went on that cleared.

Q While you were working with Colten through this point in time did you derive in your mind or your opinion what is going on with Colten? Why is he having these problems?

A There had been discussion. To my best recollection I think we had discussed at that time we were calling it a pervasive developmental disorder. We were talking about PDD. We had recommended, the psychologist had recommended in her piece on the family support plan that she would like to have a psychological evaluation done to rule that out.

Q Now continuing then with his care under Dr. Bradstreet, were you aware at a point in time where Colten came under IVIG therapy?

A I recall the time but I don't recall specific dates.

Q Rather than just the date you're aware that he did ultimately come to that therapy?

A Yes, yes.

Q Then after that knowledge came to you did you see changes in Colten?

A Yes. I had been seeing significant progress all along. And at about 34 months I was starting to see more and more clear imitations of single words with purpose.

Q How was his vocabulary at that point?

A At that point if we can go to my evaluation report of 10/99. At that point in time I was not able to redirect Colten's behavior well enough to really

sit down and give a real solid set of scores again.

Q And this is in 12/99?

A This is in 10/99.

Q 10 of '99?

A Yes.

Q Excuse my --

A Okay. And if you refer to my background information at that time Dr. Wenk had, according to my records, diagnosed him as pervasive development disorder.

And then I noted he is currently being followed locally by his pediatrician Dr. Sahai and Dr. Jeff Bradstreet. He receives Secretin treatments by infusion on a regular basis and follows a gluten-free casein-free diet strictly.

His behavior, ability to attend to task, play skills, and communication have all improved significantly since nutrition and medical management interventions were initiated. Colten's behavior is more manageable. He does not engage in over-selective behavior and does not tantrum as often.

His ability to attend to a task of his choice has increased proportionately to the increase and variety of play skills. He has recently begun to use more imaginative and representational play and on

one occasion has initiated play with another child.

He was resistive to the picture exchange communication system so we discontinued those goals and started using sign language because he was starting to do some of this on his own.

At that point in time he had signs for car, cookie, drink, eat and open. And I did state under the language section: On occasion and usually at the time of infusion of Secretin he uses a three word sentence orally and appropriately.

For example, 'I want open it up,' 'where is,' or 'who _____.' Intelligent when he is fair in these sentences when present with context cues. In other words if I didn't know what he was talking about or have Mom there to tell me what he said, I wasn't able to understand it.

Q And that's as of this date?

A That is as of 10/99, uh-huh.

Q Tell us how he progresses after that while still under the care of Dr. Bradstreet and your therapy?

A By the end of November of that year, 11/30/99, I noted more echoic behavior today and gross approximations but appropriate inflection and syllableness which to me is very, very important that

a child understand that there is more than one syllable to a word or more than two syllables to a sentence; that he really understands how sentences and how words are put together in terms of units.

By 12/99 I was getting spontaneous words and spontaneous phrases. At the end of that year he was spontaneously responding to my question, "what do you see?" with taps. "What do you see?" "Car." "What do you see?"

"Cow."

We were working on receptive vocabulary for feature function and context with feature and function. "What do you use to drink water?" "What do you wear on your feet?" for example. "Which one is red?"

Q And as of your 4/12/2000 he's still under the gluten-free casein-free diet, correct?

A Yes.

Q And still under the care of Dr. Bradstreet?

A That's my assumption, yes.

Q It's actually in your report, isn't it?

A Is it? Oh, I have the wrong -- I have the other.

Q So through your therapeutic approach, the medical care and treatment he's receiving from Dr.

Bradstreet and the diet and the protocols that he's following this child is progressing?

A And significantly so, yes.

Q Is this type of significant progress you see -- is it common in dealing with young children of this age that start off as deeply affected as Colten was to begin with?

Is this unusual?

A It's a rare occasion that I see this kind of result. I'm thinking of another child I've seen recently who was also on a GFCF diet and I don't -- from a parallel perspective he is the only other child, with the exception of one other years ago, who I have seen this kind of results with.

But we're doing a lot of medical management and on GFCF diet as well.

Q As part of the medical management did you become aware that he was on IVIG therapy?

A Yes.

Q And did he seem to progress well while under that therapy?

A Yes. And in fact it was in my notes on 3/10/2000 he was more -- I was getting spontaneous 'I wants,' to request. For example, "I want the cow." "I want the drink." With improved intelligibility I

could understand him better.

My note says he was more focused today, had IVIG on Wednesday. So I did see enough of a significant difference in his focusing or in his attending behavior to make a note of that.

Q You're saying a cause -- the IVIG had an effect in your therapeutic sessions?

A At that time, yes. At that session, yes.

Q As he continued under Dr. Bradstreet's care and the IVIG therapy, were there times that you became aware that for financial reasons he was off the therapy?

A Yes.

Q Did you see any changes in Colten in the therapeutic language, therapeutic environment when he was off the IVIG therapy?

A I did not make note of that. I was aware of that. And my documentation does not reflect that but I do recall seeing significant differences in, in fact I do have -- I think I do have one -- it is my recollection that yes, I saw significant frustration levels with Colten because he was -- now at this point in time remember he's using language fairly well to communicate, to request, to label; and he would become very, very frustrated and if I recall correctly very

short tempered and very sad if you will that he was not able to communicate effectively.

Q Would you see a retrograde downward of his attainments when he was off the IVIG therapy?

A I could see significant losses, yes.

Q Okay. And since this period of time how is Colten progressing now?

A He must be doing very very well because the last time I saw him was in May of '04. We had, well let me backtrack a little bit. In 4/14/03 I did a re-evaluation of just his language skills. At this point in time we did a pre school language skill four. The fourth edition had come out in the meantime, between the time we started with Colten and now.

If you notice the standard scores are 103 in comprehension, expressive communication was 107. The total language score was 106. The mean being 100 and the standard deviation plus minus 15.

Q Compare this with when you first saw Colten?

A Compare that to when I first saw him?

Q Yes.

A He was at 61, 63 and a total language score of 58.

Q How does this 4/14/03 compare to a child chronologically Colten's age?

A Well, when reading down to his age equivalency scores because they're imbedding, his chronological age at that time was six years three months. At the time that we looked at his expressive language, the expressive communication he had an age score of six years nine months. And a receptive or comprehension of age equivalency score of six years six months.

Q Thank you.

THE COURT: Cross-examination.

MR. MATANOSKI: Ma'am, may we have a few moments?

THE COURT: You may.

MR. MATANOSKI: Thank you.

Ms. Esposito will conduct the cross.

THE COURT: You may proceed, Ms. Esposito.

MS. ESPOSITO: Thank you.

CROSS-EXAMINATION

BY MS. ESPOSITO:

Q Good morning, Ms. Timlin. You're not a medical doctor, correct?

A No, I'm not.

Q Do you diagnose autism spectrum disorder?

A No, I do not.

Q Speech delay?

A Speech and language disorders and delays, yes.

Q You do that, okay. And you're not here to testify regarding Colten's diagnosis?

A No, I am not. The part that is regarding speech and language, yes.

Q Got you, okay. Is it true that the first time you saw Colten was almost a year after his MMR shot? Are you familiar with the dates that --

A I am --

Q That shot was April 23rd of 1998. And your first visit from what I can tell is April 6th of 1999, is that correct? Does that sound right?

A My -- evaluation through the early intervention program was March 25th, 1999.

Q Okay. And so it's almost a year, 11 months after that MMR shot, okay.

What is your success rate with your patients in terms of their speech improving from the beginning of their care with you towards the end of their care with you? Do most of them improve?

A All of them improve to their own intellectual and cognitive abilities, yes.

Q Can you explain to us how you became aware of Dr. Bradstreet?

A I was seeing another little girl at the same time who we assumed to be or suspected to be per our psychologist at the early intervention program to also have a pervasive developmental disorder.

That parent was very aggressive in seeking out why her daughter was acting the way she was and was not using language.

In her quest for finding a medical answer to this, above and beyond what her pediatrician was able to afford, she sought out Dr. Bradstreet and that was my -- through my other patient was my real first contact with his name.

Q And you then referred the Snyders to Dr. Bradstreet?

A I referred, if I can recall correctly, I referred the mothers to each other. A lot of times what I do is I know that there are some mothers who can help other mothers or, because I deal mostly with mothers I will connect the two. And through that is how I believe that Mrs. Snyder became aware of Dr. Bradstreet.

Q Are there any other patients that you referred to Dr. Bradstreet?

A I have made suggestions that he was available. I don't recall making direct referral to

him.

Q So approximately how many are patients that you sent --

A Oh, I can't recall. I can't, I truly can't recall.

Q So you, you first heard about him from, kind of anectodally from another patient's mother?

A Uh-huh.

Q Did you hear about him at all from any of your other colleagues in your field suggesting that he --

A Not that I recall.

Q Not that you recall. How many of the children that you treat receive IVIG therapy that you know?

A That I am aware of? One.

Q And is that Colten or another --

A It's another child.

Q So two children. How many patients do you have, how many clients do have right now?

A On my current caseload? My current caseload -- I have 37.

Q Thirty seven. In the past ten years since you started treating Colten how many --

A Oh, don't ask me how many. Go ahead.

Q How many clients. How many would you approximate that you've seen in the past ten years since -- including Colten then the current 37, how many children have you seen? Hundreds?

A Probably at least 100. In the last ten years, oh gosh. I'm sure if I counted probably well over 100, yes.

Q Okay. And of those you're saying that then two, Colten and one other child who have had IVIG --

A With whom I'm -- that I was aware of, yes.

Q That you're aware of, okay. From your education and training, is IVIG therapy the standard treatment for developmental delays and language delays?

A Not solely for language delays, no.

Q No, okay. Do children with behavioral issues usually improve when their language issues start to improve?

A Anecdotally, yes.

Q Okay. Do you recall if you or the clinician recommended the gluten-free casein-free diet to the Snyders?

A Could you repeat please?

Q Was it you that suggested that they go on --

A No. That was the other mother that I had

introduced Mrs. Snyder to.

Q So from your knowledge started his diet based on the other mother's suggestion?

A Yes.

Q Okay. I have nothing further, thank you.

A You're welcome.

THE COURT: I have a few questions for you, Ms. Timlin.

BY THE COURT:

Q What percentage of the children --

A Sorry --

Q Thank you.

A I'll move my mike over.

Q What percentage of the children you've treated with speech therapy have a diagnosis of ASD or PDD roughly?

A It has increased so exponentially over the last ten years that I can safely say that right now probably about half my caseload are children who are either on the spectrum or who will be diagnosed on the spectrum.

Q And ten years ago what was the percentage?

A Maybe one in -- I may have had a kid, 30 kids on my caseload. I probably had maybe one or two.

Q You indicated on direct examination that you

saw ups and downs in Colten's progress.

Did you document those in your notes?

A Excuse me. I documented a couple of those items of those times when --

Q And it's not necessary to read them to me but if you could refer me to the dates in your daily notes that would be helpful.

A It's going to take me a little bit.

Q Not a problem.

A Okay. No, I can tell you when I saw ups and downs in Colten's behavior and his ability to function communicatively I'm not sure that those dovetailed with the dates of infusions or the dates around which he had infusions.

So for example 8/11/2000.

Q Okay.

A 8/11/2000 to 8/22/2000 those two entries I wrote not himself today. Speech --

Q I can read it. I can read your handwriting.

A Okay. My shorthand --

Q Okay. So those two timeframes. Any other ones that come to mind?

A On 12/5/2000 I noted that the INTL, abbreviation of intelligibility.

Q Okay. So it was better than he had been

previously?

A It was significantly clearer. And again on 3/20/01 I noted his speech was significantly clearer. 6/12/01 well, go back up to 6/5/01.

Q Okay.

A If you go down to the second sentence where I start his behavior, it's a problem today, very moody.

Q Yes.

A Then if you go to 6/12/01 had IVIG yesterday. For some reason I was really concerned about the circles under his eyes. Are decreased and behavior is significantly improved.

7/17/01 if you recall how unproductive his play was at the beginning and if you look at my note on 7/17/01 we were playing Pappa John's Pizza and that is just -- with a trip to the store, cokes and the works and he was playing with imagination and with props and representational play and that was a particular high point.

And again through 8/22/01, 10/10/01 we're seeing more and more complex play strategies that may have been around the same time as the IVIG infusion but I wasn't sure.

Q And then it appears in your daily notes and

in '02 --

A Correct.

Q -- and is that when Colten was discharged from receiving speech therapy?

A Uh-huh.

Q And that's a yes?

A Yes.

Q Okay. In the progress of speech therapy with the average child do you see peaks and valleys in a generally improving line --

A We see little aberrations. You know, if he -- you know, bad mood -- or just isn't complying or not feeling well but you don't see these significant ups and downs. He's real -- very significant peaks and valleys over the course of therapy.

Q Okay. Did you see significant peaks and valleys in the course of Colten's therapy because it seems to me what you've given me are primarily significant improvements.

A Uh-huh.

Q With one bad day?

A Yeah, if --

Q So what I'm trying to understand --

A If I comb through them I probably could find

but --

Q Well, what I'm trying to do is understand what you note, Ms. Timlin. And are you noting improvements rather than declines or are you trying to note what happens in a session?

A I'm trying to note the latter.

Q Okay. So if your notes indicate fairly significant, fairly steady improvement then that would be what is happening?

A Yes.

Q And you would note a decline if you saw it but it's not there?

A If it was significant decline I'd note it.

Q Okay. If it's just he is not pronouncing his leading consonants that well today that might not get noted?

A Right. Correct.

Q Okay.

THE COURT: Questions from the other side based on mine?

MR. WICKERSHAM: Just very briefly.

THE COURT: Please, Mr. Wickersham.

REDIRECT EXAMINATION

BY MR. WICKERSHAM:

Q In Colten's individual case you did see

progress from the time that you started treating him, am I correct?

A Yes, I did.

Q But of your own personal recollection do you remember these peak and valleys aberrations in his treatment or in his behavior?

A As I recall, yes.

Q And are those more marked than what you would normally see in the course of treating a regular patient that you had?

A I would say so.

Q Thank you.

THE COURT: Ms. Esposito.

RECROSS-EXAMINATION

BY MS. ESPOSITO:

Q Ms. Timlin, in terms of what you note as significant about Colten's behavior is there just really the one valley where he had a bad day, that's the one valley and aside from that he's generally improving?

A Yes.

Q Okay, thank you.

THE COURT: All right. Anything further. Ms. Timlin, thank you very much. You're excused.

THE WITNESS: Thank you.

THE COURT: As a witness. It's now noon. Who is your next witness, Mr. Wickersham?

MR. WICKERSHAM: We anticipate calling Dr. Jeff Bradstreet.

THE COURT: Then it would appear that this would be a good time to take a lunch break.

MR. WICKERSHAM: I think we will be somewhat occupied.

THE COURT: I think we will be. All right. Let's reconvene then at five after 1:00.

MR. WICKERSHAM: Thank you.

(Whereupon, a short recess was taken.)

THE COURT: Mr. Wickersham, you may proceed.

MR. WICKERSHAM: May it please the Court the Petitioners would next call the witness Dr. Jeffery Bradstreet.

THE COURT: Dr. Bradstreet, would you please take your seat in the witness chair and raise your right hand.

Whereupon,

DR. JAMES BRADSTREET

having been duly sworn, was called as a witness and was examined and testified as follows:

THE COURT: Thank you.

MR. WICKERSHAM: May it please the Court.

DIRECT EXAMINATION

BY MR. WICKERSHAM:

Q For our record, sir, would you state your full name please?

A James Jeffrey Bradstreet.

Q And your business address?

A Is 3800 West Eau Gallie Boulevard, Melbourne, Florida 32934.

Q And the nature of your profession, sir?

A I'm a medical doctor.

Q And in what states do you practice, or are you licensed to practice medicine?

A Florida and Arizona.

Q Sir, you previously filed in this case in Exhibit 16 your curriculum vitae. Are you aware of that?

A Yes.

Q In regards to your curriculum vitae are there any updates or additions that we need to make the Court aware of?

A Yeah, I think that's a fairly old 2001 version. There's been a lot that has happened since then. So I have updated one.

MR. WICKERSHAM: May it please the Court in compliance with your instructions there were nine

copies available of the updated -- if I may approach?

THE COURT: You may.

THE WITNESS: That's actually the Power Point, not the updated CD.

MR. WICKERSHAM: Yes.

BY MR. WICKERSHAM:

Q Do you have the, do you --

A I have it also, yes.

Q Additionally the updates contained in the curriculum vitae which we've now shared with the Court and with counsel for the government, are there any --

THE COURT: Mr. Wickersham, may I interrupt for a just a moment. Do you intend to file this as an exhibit or in the electronic file or do you wish me just to consider it as a trial exhibit?

We can do it either way.

MR. WICKERSHAM: Either way. If you would just consider it as a trial exhibit --

THE COURT: Okay. Petitioners' trial exhibit 1 then.

MR. WICKERSHAM: Thank you.

(The document referred to was marked for identification as Petitioners' Exhibit No. 1.)

BY MR. WICKERSHAM:

Q In addition to what we've now marked as Trial Exhibit for the Petitioners No. 1, are there any changes in your previously published curriculum vitae or articles that we need to correct with the Court?

A There is one correction in a published paper that needs to be corrected. In the Journal of American Physicians and Surgeons report on MMR, it states that I'm an adjunct professor in psychology at Stetson.

I was led to that conclusion by Professor and Vice President Ameri (ph) at the time; he told me that he had arranged for that appointment. I have subsequently learned that that was in fact not true. That he didn't have the authority to do that.

Through counsel I contacted the college and said would you like me to withdraw with the publication, Stetson's identification. They said no that's not necessary. We're content, we understand what the circumstances were.

Q Are you in fact an adjunct professor at Stetson?

A No.

Q Everything else about your curriculum vitae is true and accurate to the best of your knowledge and belief?

A Yes.

Q Doctor, in the course and the scope of your professional practice have you come to see Colten Snyder?

A Yes.

Q What is the course and scope of your practice, what do you specialize in?

A I'm a family practitioner and I have chosen to limit my practice to children with autism spectrum disorders and ADHD.

Q Have you been treating physician for Colten Snyder?

A I have.

Q In your capacity as the treating physician of Colten Snyder do you recall when it is you first came to see or become involved in Colten's care and treatment?

A It was in July of 1999.

Q Do you know how the Snyders first came to see you?

A How they first came to see me. They filled out a child evaluation form and arranged with the office staff to create an appointment and came, and visited the office.

Q The child evaluation form -- does that tell

you as the physician what are the concerns of the parents that they're seeking to address?

A It goes through a variety of things. It goes through chronic symptoms. It goes through history. It goes through diagnostic evaluations that have taken place to that point in time. It does address their concerns and things that are foremost on their mind as well.

Q And you receive this before you see the patient?

A Yes.

Q And in regards to Colten Snyder did you receive one?

A Yes, we did.

Q And in advance of seeing him then what was your idea of the purpose that you were going to be seeing him for?

A For evaluation of his developmental disorders and what we might be able to do to help him on a bio medical basis.

Q And did you in fact see him?

A We did.

Q What is the date of your first visit?

A I'll just look into that real quick. Which is 7/28/99.

MR. WICKERSHAM: May it please the Court.

THE COURT: Yes.

MR. WICKERSHAM: In regards to what's now going to be portrayed on the video address system we have nine copies to share with the Court.

THE COURT: And this then will be Petitioners Trial Exhibit 2.

(The document referred to was marked for identification as Petitioners' Exhibit No. 2.)

BY MR. WICKERSHAM:

Q You have in front of you Trial Exhibit No. 2 for the Petitioners?

A I do.

Q Okay. And in regards then to your first visit with Colten could you take us through it what history you obtained?

A We have, this is my typed record. We also had a handwritten form for the mother that's part of his medical record as well.

And then the nurse, intake nurse took a history and filled out a form, Esther Kennedy my nurse, as well.

And then I interviewed Kathy regarding the various aspects. And we went through the history, we

went through his current symptoms. I evaluated Colten physically, talked about the existing data that had been acquired and the work up to date.

Q What was important to you as the treating physician in the history?

A Colten had numerous aspects of his history that stood out. He had an essentially normal prenatal course. He had an essentially normal developmental progress as noted by mom. And then confirmed by the pediatrician's records up until about 15 to 16 months of life at which time things seemed to change for him.

Mom notes specifically in her form to us and we confirmed that with her that she felt there was a reaction to MMR given on that date in April or so of his second year of life when he was about 15, 16 months.

At that point in time he started to decline. He was hospitalized about a month later. And subsequently lost language. He had words that were present and lost those. He had developmental progress that he lost at that point in time.

And that was again confirmed by the evaluation of the pediatrician and the Easter Seals early intervention team.

Q Now the day that you saw him besides

obtaining the history from the mother as you related to the Court, did you personally speak and examine Colten?

A I did see him and examine him, yes.

Q Could you relate the course of that to the Court?

A That's a few pages down. But this is just a summary of the physical examination. He was combative. It was extremely difficult. He was very agitated and you couldn't really get near him. I mean if you tried to touch him and hold him it would take usually two or three people and we had to invite some of our staff in to actually handle him for the course of this. We couldn't obtain vital signs from him or weigh him or check his height because of that.

He was able to make fairly good eye contact which was fleeting but it was still present. He had social interest in his parents. He had no interest in anybody else other than primarily his mother. He seemed to have some interest in going up to his mom.

We attempted to get him to use pencil and paper and he really couldn't do anything except a couple of scribbles. He was very hyperactive and very self stimulatory, had a lot of unusual behaviors and he was toe walking at the time.

Q And these were personal observations --

A These are my observations --

Q -- from you?

A Yes, yes. Very limited speech. He had two or three words like mamma, baba, those kinds, very rudimentary language at that point in time.

He was thin and had dark circles that have been previously described as you've heard about. And appeared to be on the autism spectrum.

Q How did his general appearance appear that day?

A Just looked thin and relatively, you know, poor. He had, you know, the dark circles, just kind of looked like a kid that wasn't really doing well.

Q Based on the history you obtained and your physical examination of Colten that day did you arrive at a working diagnosis?

A Yeah, I felt that he had autism. I think we also felt at the time that he had yeast overgrowth in his intestinal tract based on laboratory data. And that he had evidence based on organic acid testing for metabolites from clostridium bacteria in his urine which was concerning as well.

Q As part of your continuing workup on this young man, did you set out to obtain his prior medical

records and testing?

A Yes. It is routine for us to have the mom either bring with her or preferentially send ahead of time the medical records to date which to the extent that they can get evidence for MRIs or pediatric records and then if there's been evaluations by speech language, OT, psychologists, neurologists. We like to get all those in advance.

Q In the course of your treatment of Colten and your workup on Colten, did you review the prior medicals and prior histories?

A We did. I had a chance to review many of the records. He had extensive records.

Q Could you share with the Court what in his prior medical records was of significance to you as his treating physician?

A Yeah, we can probably go down to Dr. Sahai's records which were available to me.

And in his early time course this was a child that mom was adamant when she saw me that he was a normal kid up until about 15 months or so. And that's confirmed at multiple points in the record of Dr. Sahai where here at six months he says he passes all his developmental milestones.

And again at 12 months he says he passes all

of his developmental milestones.

Q In pediatrics are those particular timeframes, I mean 12 months and six months where the pediatrician is specifically looking to see how the child is progressing in regards to developmental milestones?

A Yeah. Generally I assume that the pediatrician is always looking to see how a child is developing from milestone perspective -- these are nice landmark dates that stand out. Six months, 12 months in terms of he's continuing to make progress through that first year of life.

Q What else in the records was of significance to you?

A As we work down through that, again he had a fairly routine course, let me go back up if I might to again this is page six but where --

THE COURT: You're referring to page six of Petitioners' exhibit.

THE WITNESS: Six of the -- what you have, yes.

THE COURT: Is that the place under -- because I'm trying to describe something for the record. Petitioners' Trial Exhibit 2.

THE WITNESS: Yeah, this is Dr. Sahai's

patient problem list. And I just note the time course with the arrow where the MMR HIB combination was

received. And he goes through a series of relatively normal observations. He does note mild motor delay. And he specifically goes back at other times in his record even at the time of his hospitalization and notes that Colten's motor delay was seemingly incidental. And by six months it was gone, by 12 months there was no reoccurrence of it. And he stated that he had progressed well.

He had a few minor infection type symptoms that you'd typically expect in a child who is in daycare. Kids in daycare tend to get numerous --

BY MR. WICKERSHAM:

Q Are those charted on your timeline? On page five?

A They're reported on the patient problem list and then if you go to the pre MMR timeline which winds up being I believe on page five of the handout which is on this graphic representation, you can see --

Q And just for the record it's Petitioners' Exhibit No. 210.

A Two-ten, right. You can see where we've attempted just to make this a bit visually more easy to get a handle on the time course of it, but there's a clustering in the first period of time from about January to May where there's a few things that

happened.

Conjunctivitis, mild URI, a bit of a cough and gastroenteritis; pretty much typical daycare sort of syndromes so that's nothing exciting.

Q So in Colten's history that you heard where he was in a daycare facility operated by his aunt with up to six children and he had other siblings in his home who are going to public schools or daycare -- are any of these out of the ordinary for a child to pick up?

A No, I think they're very compatible with being in that sort of environment.

Q What else in his medical records did you find of significance?

A As you progress into that time period following the MMR HIB in April of '98 and we'll go to those records and look at those, but you see this developing febrile illness that becomes refractory and doesn't go away.

Mom's history to me was that it was a bit more involved, that Colten was sicker than what's being reflected in the pediatric record.

With the pediatric record itself it reflects that there's a fair amount going on. Mom's concerned. She's bringing him back to the clinic on several

occasions. And then ultimately twice to the ER and finally he gets admitted.

Q Prior to the administration of his MMR which was on 4/23 of '98 based on the records that you've examined, the histories that you obtained, was Colten meeting his developmental milestones?

A I did not examine him so I have to rely on the records at that point in time and the history that mom relates to me. There was no evidence of any sustained or significant delay with Colten at all.

The pediatrician felt that he was on track.

Q And the records --

A And the records reflect that.

Q Do you see any developmental disorders prior to the administration of the MMR vaccine?

A No, there's no evidence of any development disorders.

Q Using that as the date of the MMR, 4/23 of '98, did you obtain records after that day?

A We did.

Q And have you had a chance to review those?

A I have.

Q So prior to your treatment which commenced on what date, sir?

A We saw him July, late July of 2000 or no,

excuse me '99, of '99.

Q So between late July of 1999 and the

administration of the MMR on 4/23/98, what significance to you as the treating physician do you find in the medical records?

A Yeah, rather unusual course. And I put together, if we go down a few slides that's the 12 month checkup and then into April he's in for, he's 15 months old. He's supposed to be and basically at this point in time -- for his MMR HIB 15 months sort of administration which was the routine for this pediatrician and is completely standard.

But the pediatrician felt that he had a pharyngitis and at that point in time did not want to administer the vaccines and so they would do that later.

But he describes him at that point in time as being happy, playful and in no acute distress despite having the viral syndrome.

That's again very consistent with what we heard from mom this morning and from his aunt, that playful, happy kid generally -- even when he's a bit sick he's a playful, happy kid -- he's not that difficult to deal with.

And then he comes back. He is followed up from his pharyngitis, he's at this point in time -- this is 4/23 when he actually gets the MMR and HIB.

His weight at that point in time is 25 pounds which puts him in the 50th percentile. His head circumference puts him in the 45th percentile. And he's a tall kid; he's in the 95th percentile which is the way the pediatrician who saw him at about, oh eight months later described him as an ectomorph so he's a tall thin kid.

He was essentially well on that day. There's no issues. There's no annotations that there were any concerns about his language. In fact the pediatrician says no signs of any receptive language disorder at that point in time.

And he comments about the E-coli and his interpretation was that he ate poop and mom hotly debates that and says no such thing happened.

Q As of the very day that Dr. Sahai is administering the MMR vaccination on 4/23 of '98, he describes him, am I correct, as a well child?

A Yes.

Q He describes him that he ambulates well?

A Yes.

Q He describes him as no signs of any receptive language disorders?

A Correct.

Q And he's doing well?

A Appears to be fine at that point in time.

Q What's his course following the administration of the MMR vaccine?

A The next we see documented in the medical record is this visit on 5/6 which is approximately 13 days later. And he's described as being fussy, crying, poor appetite -- although he doesn't have a fever at that point in time. He doesn't any have apparent diarrhea or vomiting or abdominal distress.

Despite the history that was presented by mom, according to the pediatrician he appears quite well. And they checked him for strep because on his physical examination he had white patchy exudates, little white patchy exudates which is kind of interesting, on his tonsils or at least in his throat.

The strep screen was negative. Despite a negative strep screen he got a shot of antibiotics, I'm not sure why, and was sent on his way.

Q Well, as of that date which is 5/6/98 when he says that he does have little white patchy exudes, what does that mean to you as a pediatrician?

A Well, I'm not a pediatrician, I'm a family practitioner.

Q Excuse me. Family practitioner.

A That, it's just interesting. It's

consistent with, you know, some of the descriptions of Koplik spots, and one at least in retrospect has to wonder whether or not that's what the pediatrician was describing. I don't have a picture of it and it's just interesting.

Q But that made a note in your mind?

A It's consistent with our overall observations of where we think he went.

Q Continue if you would then as to how the records affect your ultimate diagnosis?

A So as we moved into this -- again mom brings him back to the pediatrician's office, this is on 5/19, complaining of eye discharge as well as recheck on his throat. Overall the pediatrician doesn't seem to be very impressed with anything going on although he does describe Colten as being very unhappy to be here, which that in of itself for Colten is a bit atypical.

Just a month or so previously even though he was ill with a viral illness at that point in time, he was happy and in no distress at the doctor's office. So it wasn't as though he had something about going to doctors' offices that caused him to behave that way. This is some new change for him. So he's an unhappy

kid at this point in time.

He's described as being easily consolable until in the presence of the clinician, a physician. That's a new observation. He never need to be consoled previously. He had an okay relationship with his pediatrician who had been his pediatrician since essentially birth.

He goes on to basically describing him as having a condition consistent with conjunctivitis which is an eye -- superficial infection, prescribed some antibiotic solution drops for him. And again sends him on his way.

We don't have a temperature or a weight or anything else recorded at this point in time.

Q How does he continue to progress prior to seeing you?

A Then -- this is actually the treating physician -- and I choose this example of where we wound up rather than going to the ER records because this is the doctor who's kind of known him his whole life.

So he's evaluated him after two visits now to the ER. He's gone to two separate ERs and is now in the physician's office with a reported temperature of 102.6 on that day. He's been as high as 104.8.

He's on penicillin from one of the ER visits; he received a shot of Rocephin as well and is on alternating Advil and Tylenol suppositories with very poor control described as symptoms at that point in time.

And then he goes on to describe him as being quite limp. And then says easily accessible which for Colten is an abnormal finding. I'm not sure exactly what he means by that. But he chooses at that point in time to admit him for IV hydration. He's concerned that he has a pharyngitis and/or bacteremia, which is bacteria in the blood, and to give him some antibiotics pending culture and evaluations. And doesn't know --

Q And that, if you'd stay back on the prior one.

A Sure.

Q That's occurring on 5/26/98?

A Yes.

Q How far are we now post MMR?

A Thirty-one or two days approximately.

Q Is this a relatively quick downhill turn for a child this age?

A This is a child who is ill at this point in time, ill enough to be hospitalized. This is a child

who has been struggling for at least two weeks fairly

significantly in terms of irritability, fussiness.

The history that I obtained from mom during that period of time is that he was, you know, the doctor described him as being fussy and he was pretty much fussy the whole time during that point in time.

Is it a rapid change in -- persistent change? Particularly when combined -- this could just be a sick kid at this point in time -- just maybe coincidentally ill.

What's intriguing is the fact that he never really recovers from this illness. He doesn't get back to the old Colten.

During the next one, two, three, four months and in fact about six months after this in January of the following year he's described as having a significant developmental delay.

So this course linked to what happens after it, becomes to me very significant.

Q So in your review of the records -- I know you've seen them all at this point -- but this, 5/26/98 becomes a milestone for your diagnosis?

A He seems to be, even before that, okay, you can go back to 5/24 where he's already had a few days with a fever. So that takes you back to 5/22.

So by 5/22 he's ill with a fever that

doesn't go away, winds up with a concerned mom taking him to two different ERs trying to get some sort of help. The child doesn't seem to be responding to that. And then winds up being hospitalized for two days.

So that's a six day course from the onset of things to the discharge from the hospital that seems to have really changed Colten.

Q And all subsequent to the administration of the MMR?

A Yes.

Q How did he continue to progress?

A This is just -- I think something that was fairly important to me from the history now -- this is the same pediatrician writing his hospital admission note. It's a little more fleshed out in terms of what's going on for us. So --

Q So prior to what we just looked at, not to interrupt, was the doctor's office notes?

A That was the office note. This is the hospital admission.

Q This is the same doctor, he's writing his hospital admission.

A Exactly. Where he describes him as having an obvious mental status type change, and is dry,

wasn't crying tears. And he also again notes in his past medical history, the child was initially, some mild delay but has done quite well since.

And essentially means that there was no delay. That kids develop at different sorts of rates and different sorts of times. And by six and 12 months none of that was an issue for him.

Q And even the doctor writing this had said he met his development mile markers immediately before this?

A By six and 12 months yes. Same clinician, right.

Q How did this progress?

A Basically shortly after discharge he was back in the doctor's office with recurrent fevers at this point in time. And this is from 6/10, moving everybody forward.

Q This is Petitioners' Exhibit No. 8 at page 0092 bearing date 6/10 of '98?

A Right. It shows up on page 11 of the Exhibit 2.

So at this point in time the same physician, Steven Sahai, is concerned about a variety of things. So he's concerned about his throat still being a little bit erythematous, that his musculoskeletal

system seems to be showing some signs that are concerned about, warm joints maybe a little bit swollen joints, he's concerned about rheumatoid arthritis, and other sorts of immunological issues at this point in time.

And he notes in his record, his assessment is possible juvenile rheumatoid arthritis, the pediatric rule at this point in time.

Q Does he also deal with his weight?

A He does. He goes through that, and he says very concerned about significant weight loss. That's in the plan, it didn't wind up upstairs in the objective and the subjective. He actually reports his vital signs. A temperature of 102. And then we get the weight down in the plan which is a little strange in terms of the organization of the record. But he's lost a significant amount of weight in the past month going down probably about a pound, on 5/19/98 he was 26 pounds 2 ounces and now he's 24 pounds 13 ounces. He just appears quite ill and does not appear to be improving. And developing a little more chronicity of symptoms than I'm happy with. And he refers him to rheumatologist immunologist, Dr. Otegbeye, here in Orlando.

Q The findings that you're reading in this

report from Dr. Sahai dated 6/10 of '98 -- do those affect your view of your care and treatment of Colten and your diagnosis?

A Yes. It's all part of the continuity of his symptoms, his decline, his immunological problems that have initiated at this point in time.

Q Is the weight loss significant?

A It is.

Q Did you chart it?

A Well, I didn't chart it, I just put some red marks on the page to --

Q On that grey chart from --

A -- to draw attention to what's in the record, yeah. This is what's in the pediatric records. And this is Exhibit 8-0058 from Dr. Sahai's records.

And it shows a rather typical course of development. He's in about the 50th percentile for his weight all along. And then suddenly slides down to a 10 percentile.

Q The 10th percentile for a child his age?

A Yes. This is actually graphed at 21 months. There's an un-graphed weight that you could put in between there, I mean it would still be down around the 10th percentile in terms of where he was.

So this was an acute slide in terms of his overall well being.

Q He was at the 50th and now he's at the 10th?

A Exactly.

Q If you could continue with your records as to what in them affects your ultimate diagnosis and your care and treatment of this young man.

A Again along the immunological lines he sees the immunologist essentially the next day which is pretty impressive that he could get in that quick.

But again he notes that he was essentially well, and you can look at Dr. Otegbeye's records, they speak for themselves. But he says essentially doing -- good health and doing well until May of 1998 when he developed this conjunctival injection and discharge.

And as you go down through it he just basically notes his hospitalization and still is having issues.

At this point in time Colten is 17 months old and Dr. Otegbeye notes that he has a three word vocabulary consisting of mama, dada and the sister's name. And that's pretty shocking actually. That's not a lot of vocabulary for a 17 month old.

And he's describing him as being afebrile and not acutely ill, more chronically at this point in

time, but apathetic, which is based on the history we've heard from mom and aunt this morning, and based on the history that mom provided me, based on the pediatric record, that's again that's a different change for Colten. He's apathetic now.

He was a happy playful kid in no acute distress a month earlier, a little bit more than a month earlier, six weeks earlier.

And he notes a faint rash on the trunk that is minimally erythematous at best, which is again just an interesting observation -- was that a mild measles rash or exanthem -- it's just interesting. I didn't observe it, it's just noted there in the record.

Q But is that, the way it's worded, similar to that which you would expect for a mild measles rash?

A It's probably even less. Sometimes you'll see with attenuated viruses that they cause the same sorts of symptoms that the non attenuated wild strain virus does but they just seem to cause less of them. So this wouldn't be unusual for a measles like rash after MMR.

Q And how did he continue?

A Well, he's got some laboratory workup which I show here -- this is the first evidence that he has relatively low IgA deficiency. It's down around 24.9,

so 25 -- and the normals from this laboratory are called 36 to 136. This is serum IgA not the stuff that's in your mucus membranes.

His RA screen, rheumatoid arthritis screen was positive and the titer was 36.5 which is about twice the range of normal.

And again it would indicate some immunological activation. It's a nonspecific finding. It has been reported as measles but it's been reported with a lot of other things as well.

Q So the two items that you have the arrows by were of significance to you for what reason?

A Again it just shows this is a somewhat immune deficient child. He's got some IgA deficiency and he's got immune activation at the same time. So he has dysregulation of his immune system at this point.

And again from that same blood draw there's some other issues. His lymphocyte count is mildly elevated. He's developed some degree of eosinophilias so his eosinophils count is higher than should be at 8.

And his SED rate is a bit high at 24 with a normal range of zero to 20. The SED rate is a nonspecific marker for inflammation and/or infection

as is -- a lymphocyte proliferation can be a nonspecific marker for immune activation that tends to follow more of a viral pattern. And then the eosinophils tend to follow more of an allergy sort of a pattern.

So again this just looks like a dysregulated immune system at this point in time.

And the laboratory was in June and by July we're back with a febrile episode, lasts a few days, 101, 102. No real localizing symptoms at this point in time but the pediatric record reflects that mom's calling, what do we do about this.

The pediatrician knowing the past history calls Dr. Otegbeye's office and says and gets a response from that office from Dr. DeSai who I don't know, saying, you know, let's get a SED rate, let's do some more evaluation, kind of see -- another CBC and see what happens.

So I don't think that bloodwork was drawn. He seemed to recover from that fever within a few days and I think they didn't pursue it further.

This is on 7/8/96 --

Q This is his regular pediatrician again?

A This is back with Dr. Sahai.

Q Dr. Sahai?

A That's back with Dr. Sahai. Those other, these records were Dr. Sahai around 7/15. These are, I apologize, these are slightly out of order.

But this is noteworthy to me because he's still around the 85th percentile for height and his weight is now at the 10th percentile again, this is what gets reported on the chart at 23 pounds and 12 ounces. Head circumference is at the 25th percentile.

He talks about Dr. Otegbeye's evaluation showing some mild elevated RA and other sorts of issues. And I think he's still generally concerned about it.

What's noteworthy to me is he says in his assessment, well child 18 months of age and yet notes that he's in the 10th percentile for weight and so much so that in his plan he says we administered a DTaP. His prolonged weight loss is quite a concern to me and I'm going to have him follow up with Dr. Otegbeye immediately.

The history that Kathy has related, mom has related to me on several occasions, is that she was trying to get the attention of the pediatrician, that the pediatrician -- and she said in her own words this morning --- blew her off at various occasions.

This is just intriguing to me that in his --

his language says he's a well kid but he's not a well kid. He's a kid that's lost a bunch of weight so much so that he's going to immediately refer him back to the rheumatologist to see what's going on. So that's inconsistent.

So those, and if you go back to the timeline I can flip back to if it you want but --

Q If you would.

A To the post --

Q I believe we had a pre MMR timeline -- earlier and this is a post MMR time line?

A Exhibit 209 in the record. And so you'll see the 7/15 fever of 100 to 101 for a few days and then I put a red arrow. I added a red arrow to the exhibit. That red arrow is not on Exhibit 209. That's just my annotation for emphasis.

There's a period of time from 7/15/98 to 7/28/99 when I evaluated him that's not on this timeline. A lot happens to Colten during that period of time that we can pick up in specific parts of the records from other individuals.

But essentially he has multiple courses of otitis medea at that point in time. Those are easier to pick up on this page actually. Just to kind of summarize --

THE COURT: And on this page you're referring to?

THE WITNESS: This page would be Exhibit 8-0009 which is on page six of the handout, top of the page.

BY MR. WICKERSHAM:

Q Which is Trial Exhibit 2.

A And this -- he has not had otitis medea prior to the April, May timeframe of '98. And now in, I believe that's September and October and then again in December he winds up with, I think that's around December, three more courses of otitis medea, three courses of otitis medea and some viral syndrome and some other flu-like symptoms.

So again he seems to have changed his pattern where now he's getting more significant infections, essentially every month, practically even month.

And ultimately in January of the next year is diagnosed by the pediatrician as having a significant delay in language and he's concerned about some motor issues which we'll get to, his gait issue that was described earlier by Kathy in her testimony.

And if we go back to this slide which --

Q Is in page 15 of Trial Exhibit 2?

A Yeah. So on page 15 just to kind of summarize that. Unfortunately there's not a lot of discussion during that period of time about weights until we get to the two year old checkup. So we kind of lose track with what happened with that very -- the pediatrician expressed a lot of concern about his weight loss, it kind of evaporated.

I guess there's nothing noted -- I've looked at the growth chart. I don't see anything and I looked at the medical records and I don't see anything noted on the weights at that point in time.

So it's just an unknown. And we get to the January 1999 two year old checkup here. Well actually this is before that.

So this is in November and this is interesting to me. He's sick. He's got greenish yellow discharge from his eyes and he's running around the office very happy, playful and spitting out a few words.

Now this is a 21 month old child at this point in time. This is not a comprehensive language evaluation by the pediatrician obviously. But it sounds like he only has a few words. He only had a few words three or four months prior to that as well.

And in talking to Kathy, the mom about this

sort of issue, this is the time that she's saying something is not right. My kid's not talking very much. He had words, he's lost words, you know, we're down to his three words or so at this point in time.

So it's fairly supportive and consistent with what she was telling me about his loss of language during this period of time.

Q So from an historical presentation from Mrs. Snyder to you as a physician, did you then find backup in the actual medical records for what she was telling you?

A It's hard to find all of it. But there are issues here and this is one of those examples where you would like to see a bit more robust language. You'd like to see the pediatrician documenting, you know, even on a Denver developmental scale where he's at with some more objective substance of the amount of language. But it looks sparse.

Q Did you find her to be an accurate historian?

A She's amazing. Kathy is so detailed in observing Colten's behavior. She's one of the most remarkable moms that I have in my practice and I have, well, I have probably have over 3000 kids with autism that we take care of and have evaluated and treated.

She knows immediately what's going on with him and she's very quick to pick up on change and she's very quick to bring that to my attention for sure. And it would appear from the record that she was quick to bring that to the attention of the pediatrician as well.

So she's an experienced mom. This is her fourth kid. She seems to know what's going on. She's very attentive, very loving, very supportive and I've never seen anything that she's told me not play out to be accurate about his behavior.

Like if she called me the day before and said Colten's lost it, he's not doing well again, you know, he's squinting, he's, you know, not connected any more, when he shows up in the office the next day we see those same sorts of behaviors. So I think she's very accurate.

Q Continue if you would in the medical records as to what they're showing you as you're preparing to treat Colten.

A This is his two year old supposed to be well baby checkup. And it turns out to be not such a well baby checkup at this point in time.

And if you look at the objective analysis Colten has by this point in time got his weight back

on track up to 28 pounds to the 50th percentile. He's in the 95th percentile for height, tall lean kid.

Head circumference is in the 75th percentile. Maybe a touch of anemia, 11.5 for a hemoglobin but nothing that significant.

But there's this rather, at this point in time the time out techniques which -- this is the first that I've heard about timeout techniques and Kathy in terms of the first time in the record that it shows up, Kathy described -- the pediatrician's plan was to put him in timeout in the corner and see if that would change his tantrums and his bad behaviors.

So he's saying, he's admitting that the timeout technique doesn't seem to be working well. He's tantruming, his developmental milestones were handed out to mom and yet when he looks at him he says you know, motor-wise this kid has got something funky going on. He describes it in his subjective.

When you get down to the objective and he actually describes it he talks about a kid dragging his right leg and he's weak, relatively weak on the right side, grip-wise in terms of upper body strength as well.

And now admits that he has significant speech delay and there's something funky motor-wise

that he is concerned about. He doesn't know exactly what it is and he wants him to be evaluated by Easter Seals and a neurologist to see what's going on. And he makes a referral at that point in time, appropriately.

Q Okay. And that would be the appropriate referral?

A Yes. It was. No labs were drawn at this point in time. And again if you put this into the light of the rheumatological problems, the referral to the immunology rheumatologist, the possible JRA that was in his record from six months or so previously, while I'm happy with the referral, still concerned about what's going on with this child immunologically at this point in time.

Q Okay. And you progressed into the records.

A Now this is --

Q This is entitled family concerns and priorities. Do you know to whom this form is being directed or who publishes it?

A Yeah. This is the Child Five, this is Florida's family support plan. This is a state of Florida document that's for the early child program that we heard earlier from his speech language therapist who was part of that evaluation.

So this was just, and this is Exhibit 13-0015 and it's on page 16 of the handout.

And where I just thought it was noteworthy because again it's, they were concerned about Colten's speech and language development. He only had three to five words and he still only had three to five words. And it sounds like at this point in time, maybe for the last nine months, he's only had three to five words and it really hasn't changed very much.

Q And this is dated 3/25 of '99, am I correct?

A Right. And if you remember --

Q And that's prior to your starting actual treatment?

A It is. And if you remember Dr. Otegbeye in June described him as having three words. So June to now March, late March of the following year, we're still at three words, three to five words. He doesn't use two words together.

And then the tantrum issues are still present. And again this notes when he was younger he had more language and then he stopped. So this kind of consistent history that mom related to me that's at multiple points in the record of he had language and he lost it.

This just shows the team that evaluated him.

Dr. Hartmann who's a pediatrician, the psychologist, an RN, an OTR and Kathy Timlin who was here earlier discussing the evaluation. He's 26 months and 16 days at this point in time.

Dr. Hartmann feels that his presentation is consistent with a PDD. And says that he's an uncooperative kid during examination with poor interpersonal relationships and his kind of Gestalt diagnosis is probably a PDD and hypo situation.

Q And for the record PDD?

A Pervasive developmental disorder.

Q Thank you.

A Of which autism is one sub type of that.

And again this is extracting from Exhibit A and this is, now we're on 0040 of that exhibit which is on page 18 of the handout.

Q This is by Kathy Timlin --

A This is Kathy's stuff she referred to earlier. I don't really need to go over it. But this is a dramatic delay at this point in time. So this is a child who is two years three months essentially who has the auditory comprehension of a seven month old at this point.

The best he's doing is in expressive and he doesn't even get up to a year at that point in time.

He's at 10 months.

And then this is from the psychologist who looks at different domains -- communication, daily living, socialization, motor and adaptive behaviors off of the Vineland interview that she did -- wasn't able to do a Bayley's because he was so uncooperative. He kept leaving the room.

And he rates out between nine months and 20 months with motor skills actually being his best domain which seems a bit unusual to me because he was dragging his foot in the pediatrician's office three months earlier.

So this is a significant change motor-wise it would appear over the last three months which is encouraging. I'm happy to see it but it's just different than what was previously observed.

Q But all of them are below what you would have expected for a child Colten's age which was two and a half at the time this was done?

A Two years three months and he's coming in between nine months and close, he's getting a little bit closer at the 20 months with the motor domain; that's still fairly far behind, that's only up to 79 on the standard score.

I've kind of gone over my evaluation which

was in July. This is in August about a month after my evaluation. I felt that he had autism.

And I think we've kind of heard from this morning that with the initiation of a gluten/casein-free diet that mom put him on eliminating milk products and wheat products he was starting to show some improvement and was on a positive trajectory at that point in time.

The psychologist sees him a month later however and despite what may be appearing as a positive trajectory there's still a lot of pretty significant issues. So --

Q Not to interrupt your train of thought --

A Sure.

Q -- this particular evaluation is 8/20/99 am I correct?

A This is the same psychologist looking at him in August, 8/20 of '99, in August of '99 -- a month, not quite, three weeks or so after I saw him.

Q And this is after your first visit with him, correct?

A Yes. And this is Exhibit 13-0007 and it's on the bottom of page 19 in the handout.

Q If we could pause here for just a second and let me ask you a question.

A Sure.

Q Now that you've had the opportunity of getting history from the family, you've had the opportunity, you've seen Colten yourself observing his conduct, you've had the opportunity of obtaining his prior medical records and his testing and having reviewed them.

Based on all that you'd obtained and all that you'd personally seen had you arrived at a continued working diagnosis?

A Yes.

Q And what was that diagnosis, sir?

A At this point in time I felt that Colten had an autism spectrum disorder. I felt that he had immune issues that needed further evaluation. We drew some labs on that, the data, the first evaluation to further look at those.

And he had issues with his gut and he had loose stools. He had pathogens in his GI tract that we were treating.

Q Okay. So that was your diagnosis at that time?

A Right.

Q Okay. Continue if you would with the initial, now as you then continued treating him you

continued to obtain his ongoing medical records from other providers?

A We continued to get more labs and we continued to get more of a time course with him and yes, more experience with him, yes. What's interesting in this is if you compare this five month time course with the same psychologist doing the testing, he's moved forward really very little. His socialization domain is 11 months. I believe it was nine months earlier. His communication domain is 12 months. I think it was 11 months earlier.

So over five months he's actually continued to slide. So if the history of him making progress in the last -- since the gluten and casein administration -- it would appear that it's reflecting, you know, maybe one month worth of developmental gain over a five month period of time. He still has significant issues at this point.

Q So over the five months he should have been expected to have increased more than what this is showing.

A Well, a normal child would get five months of gain for five months.

Q And he's getting how much for five months?

A You know, one to two. But again, his motor

domain appears to be his strength. So his motor domain is getting in the adequate range. It's in the -- so it's average at 30. So that has improved but some of his other -- his adaptive behavior score and his socialization and communication still are severely affected. Enough so that the CARS, the autism rating scale, places him in the 36, which is in the mild to moderate range. And then she goes through and describes a lot of very unusual behavior --

Q Mild to moderate autistic range?

A Autistic range, yes. And then she describes a lot of his unusual behavior, which is the squinting, the pushing in his eyes, the covering his ears, his unusual sorts of mannerisms, his lack of language, those sorts of things.

Q And as a physician that's treating children with autism, what do those types of findings tell you? The squinting, the pushing in his eyes, looking out the sides of his eyes?

A Those are things that many kids with autism do, but not all. They're the unusual mannerisms, these stereotypical sorts of behaviors that are part of the diagnostic criteria under the DSM for what autism is. What it represents biologically is probably a little bit different in each child.

Q Continuing with the same thought; verbal communication and minimal meaningful speech. What does that indicate to you?

A Again, the major domain in autism is the language domain. In this situation he has essentially none. He has no significant expressive language.

She goes on to say that this is consistent with PDD, Pervasive Development Disorder, 299.80, which is PDD NOS, Not Otherwise Specified. And says that he's got a lot of stuff going on that looks like autism but she doesn't think it's quite intense enough for her to label him as being fully autistic. He's just two and-a-half at this point in time. So it's not unusual in my experience, seeing how other psychologists will catalogue children for them to be conservative prior to three years of age and say, PDD NOS and then reevaluate the children between three and three and-a-half to see before they will render a diagnosis.

I don't actually know Dr. Wenk's protocol in terms of where she's at but she stated for herself that she didn't think it's quite severe enough at this point.

Q And you're continuing to treat him during the same time period that this record has now

generated.

A Yeah, he's been prescribed antibiotics for the clostridia and antifungals for the yeast overgrowth at this point in time. And we'd drawn the labs.

Q So at this point your course of treatment is what? And I'm talking now in terms of August of '99.

A He had treatment for what I would globally refer to as dysbiosis, which are atypical potentially pathogenic organisms residing in the GI tract, which would be the clostridium. He had one dose of Secretin intravenously at this point in time, which in 1999 was something that was fairly routinely given to children who presented with the GI symptoms, particularly if they had a regressive type history, based on some work from Dr. Horvath at the University of Maryland.

Q Colten had both?

A He had all that treatment at that point in time.

Q As far as the --

A Symptoms?

Q -- all giving him, he had both of --

A He had diarrhea, he had one to three loose watery stools a day at the time I saw him initially in July and had a history of regression.

Q How did he react to the treatments?

A He, you know, the other observers, and it's reflected in my records as well, is that he had a fairly marked uptick in his rate of progress. So the trajectory that he was on, which was giving him one to two months worth of language and socialization gains in five months seemed to accelerate fairly noticeably to mom, to me, to the Occupational Therapist and other people who were working with him, family members.

Q So what you were seeing in your office as far as the improvements based on the therapy you recommended and treatment, did you then find outside providers also showing improvement?

A Well, at this point in time we received routine progress notes from the therapist. So, even though I never met Kathy Timlin before, she was sending us her progress notes. So we were getting feedback. Mom was providing us feedback in terms of what the therapists were saying and what she was observing and we recorded those types of progress, yes.

Q And what were those records revealing to you that you felt impacted the treatment you were rendering?

A Well, we felt that we were on the right

course. We felt that eliminating certain things he may have had some sensitivity to in his diet, whatever the mechanism sensitivity was, treating some of the potential pathogens in his GI tract and giving him Secretin, which is neuropeptide, was being beneficial for him.

Q He seemed to be progressing. Is that improving?

A Everybody had the same impression. So the family, myself, and the treating therapists all felt that his progress was significant.

Q And in the records you have this --

A This is, again, this was shown earlier. I don't think we need to go over it again. It's just the speech/language evaluation showing that he's responding to significantly since starting nutritional medical management. So at that point in time, she had -- my read of it and she can answer for herself, but she felt like she hadn't had that much speech, language therapy opportunities with him to really get these kind of gains, that there was some additional contribution from the medical management that was making things move forward faster than she would have expected otherwise.

And then to move forward, this is in 4 of

2000, shortly after the initiation of IVIG, intravenous immunoglobulin therapy, and this is where, from my observations, from the feedback from the family and from the therapists, was that Colten started to make remarkable dramatic improvements. And it's described in this note from Ms. Timlin as, Colten continues to make dramatic progress in all areas of socialization and language; he's becoming increasingly cooperative and just developing very nicely.

And that's the feedback that we would receive on a regular basis from mom -- now, there will be and we'll talk about bumps in the road. But in general, at this point, his rate of forward progress has moved, has accelerated significantly.

Q So in the course and scope of your treatment of Colten Snyder, did you reach a point based on your findings and the test results you reviewed, the history and all the medical records, that you felt that a treatment of IVIG was a proper treatment?

A Exactly.

Q What led you to that belief?

A In 2000, I had a close working relationship with two immunologists that I relied on. One of them is Dr. Gupta and the other is Dr. Jane El-Dahr. Dr. Gupta's at University of California Irvine, one of the

foremost experts on Intravenous Immunological Therapy for Immune Diseases. And Dr. El-Dahr is a Pediatric Immunologist at Tulane.

And we'd already been, for probably two months at this point in time, using in selective cases, IVIG in children who presented with a similar type of picture as Colten. Dr. Gupta was pretty emphatic, actually, on several occasions with me trying to encourage me to get involved in doing IVIG therapy.

He had his nurse, Cathy Hess, actually train my nurse, Esther Kennedy, in all their procedures and how they did it, where they ordered the material. We used the forms from the University of California initially in our Center. And then Dr. Gupta taught me what the methodology were, how to apply it, what his criteria selection -- criteria were very broad actually for the application of this to children with autism.

Q And did Colten meet that selection criteria?

A He did. Colten had this long history of immunological dysregulation and we had further at this point in time had obtained the antibodies to myelin basic protein numbers that were pretty high. Some of the highest I've ever seen, over 40 on the titer.

So, we were concerned with his ongoing GI

problems, his immunological history, his regressive history after the MMR HIB that he received at 15, 16 months. That he probably had what was a prevailing theory of autism in terms, for a subset of his anyway, in the regressive group that they have autoimmune related encephalopathy and that he might benefit from IVIG. And so we tried it.

Q And how did he progress under the treatment?

A It's my impression that he's done remarkably well. Colten has gone from a child who was severely delayed to fully included, meeting all of his milestones. He's an A/B student. Is he getting B's or is he just an A student? A/B?

Q Just from your memory.

A I think he's an A/B student, I think, at this point in time. But he's doing well. I mean, he's charming, he's social. He's got wonderful language most of the time. He still occasionally will have a bump on the road and has issues.

Q In regards to some of those bumps, have there been times where Colten has not been able to have the IVIG therapy?

A In the 2002 timeframe he lost his approval under Medicaid to continue to get IVIG. And so there was fewer, he started to get less frequent IVIG

therapies at that point in time.

Q What, if any, did you note as far as changes in Colten while he was not able to take the IVIG due to Medicaid?

A What I observed and what mom observed at the same time was that if we went more than even 30 days, we would oftentimes see recurrence of irritability, poor sleep, he would start to squint and close his eyes when he tried to talk to you. He'd become much more obsessive compulsive with things and less socially interactive.

So he was, at that point in time, seemingly very dependent upon immunological therapy to maintain his forward progress.

Q All those changes, were they regressive in nature?

A They took him back, yes.

Q Dramatically at times?

A There were occasions where, I mean, certainly never to the level that he was, you know, in '99 where he would lose significant language abilities and significant socialization. Where Colten who would at some occasions could come in and essentially carry on a conversation with me about the latest thing he learned about Pokemon, wouldn't even talk to me. All

he would do is close his eyes and turn his head away.

And then, as we re-instituted therapy, all of that would go away.

Q So the times that he's on it you were seeing a steady progression. When he came off of it you saw this retrograde problem that he was having. And then when he would go back on it he would improve again.

A Exactly.

Q Does that, as a practitioner and clinician, tell you anything about the treatment?

A To me it reinforces the working idea that there's immunological dysregulation. It's certainly consistent with my belief at the time that this was autoimmune in nature and that with IVIG, which is commonly applied in autoimmune types of conditions, that it seemed to be doing what we wanted it to.

Q And in the progress that you continue to see, is it backed up by your continued receipt of records from other providers of Colten's language and medical care?

A Yes. And we can go just a couple of steps down through this. Again, these are his speech/language records. But he was as -- four years and ten months he was getting close to normal on language scores. His composition score was 91, which

was adequate. He's a little bit lower on auditory comprehension. So he'd gone from severely delayed a couple of years earlier to now seemingly catching up.

And during that time he did have speech and language therapy. But the overall picture was one of he still needed the biological intervention, the immunological support, in order to maintain this kind of progress.

As we go on through history, we're now up to, this is Exhibit 140002, which is on Page 22 of the handout, he's now, as noted earlier by his therapist, just normal. So at six years of age, he's normalized his language scores.

For us, this is a remarkable recovery. And quite honestly unexpected apart from either intense behavioral therapy, which he was not able to get because it's not paid for by the state of Florida and the family can't afford it, or biological interventions combined with therapies.

Q Did you keep records and a track of Colten's administration of the IVIG?

A Yes. We'll get to that. It's down, I think, a little bit further.

Q Go through with me, if you would then, your clinical concept of Colten's medical problems.

A You know, let me just finish this, if I may.
Q If you would.
A Seven years, four months he had a more complex school type of testing of his vocabulary and language abilities, which I thought was very impressive in terms of his overall progress. So he is seven years old. The vocabulary is at a nine year old level. His grammatical morphemes is at a seven/six month, which is right on target. And his elaborative phrases and sentences is at a nine year level.

So this is great. I mean, this is tremendous progress and recovery.

Q And this is the same child that at two and a third years, he was at nine months.
A Yes.
Q Dramatic improvement, in your opinion?
A It is. I wish we could do this for every child with autism.

So his overall, you know, time course of interventions and therapeutic modalities was kind of based on this paradigm, if you will, of what I thought was happening with Colten.

Q Explain to us and particularly, if you would, to the Court and the Special Master, what is your clinical concept of Colten's medical problems.

THE COURT: And this is the bottom slide on Page 23 of Trial Exhibit 2?

THE WITNESS: Yes.

BY MR. WICKERSHAM:

Q If you can walk us through.

A Yeah. And we will actually go through, not in exhaustive detail just for time's sake and it's in the medical records, but based on the accumulating evidence from both the medical literature and what we were seeing specifically on testing with Colten, what I felt consistent -- his documentation and his history time course was -- that he had exposure to mercury early in life and he had Thimerosal at the same time he had his MMR vaccine.

He had exposure to the measles vaccine. I think, dysregulated his immune system, that combination, triggered what we saw in the immunological records, what we saw in the hospitalization, and the subsequent follow up and what does the laboratory show us.

I think that that allowed both brain and gut inflammation to take place. We'll see the evidence of the gut inflammation. The evidence of the brain inflammation is based on his overall cognitive abilities and his response to therapies that are anti-

inflammatory in nature.

I think he developed oxidative stress. We'll see the documentation of that. I think that was probably present long before I could document it in the record because of the changes in sophistication of laboratory methods. I think he developed, and I know he developed measle virus persistence. We have evidence of it in the CSF and the GI tract.

And then part of his immune dysregulation is this inability to properly manage the pathogens in the GI tract in part because of his immune function and in part because of his exposure to antibiotics.

So those interact in many ways. And oftentimes the inflammation oxidative stress become interactive with one another. The virus persistence seems to trigger more immunological disruption and more autoimmunity, in my opinion.

So, this is what we tried to work with to stabilize, addressing all of these essentially simultaneously with Colten. And the result is a kid who's got his life back.

Q Did you do a timeline concerning the laboratory testing?

A Yeah, this is certainly not all of it but it's certain highlights from his laboratory testing.

And you see the MMR HIB. That's 4/23 of '98 and then shortly thereafter with Dr.Otegbeye he has the low IgA, the stuff we already talked about; the immunological markers of dysregulation.

And then we saw him, a lab that we drew up at that point in time on 7-28 confirmed the low IgA. We saw very high IgE consistent with an allergic type of process. And, again, the persistent what we would call in medicine lymphocytosis, which just means there's too many white cells of the lymphocyte population, which looks like immune dysregulation. But, again, it's consistent with viral types of issues.

And then the very high level of myelin basic protein autoantibodies early in 2000. He received, again, in 2000 a provocation challenge to assess for mercury and lead. And we really only got mercury. We didn't see any lead.

Q In the course of his vaccination history, had he had vaccines that contained mercury?

A Yes. And he was not a fish eater and he didn't have any mercury restorations in his mouth.

And just further evidence of some immune dysregulation with the adenosine deaminase level, it was pretty high. The TNF alpha was reported as normal

by the laboratory but based on subsequent literature probably was also high.

And then the measles virus that we found in the CSF, in his GI tract and his ileitis, that was observed by Dr. Thek of the Pediatric Gastroenterologists to evaluate that.

Q Now, I note on 4-17 of 2002 on your time line, we have a Dr. Singh. It says CSF negative for measles virus antibody.

A Yes.

Q Can you tell us what that is?

A Yeah. We actually did two tests with Dr. Singh. We did one about probably March of 2000 that documented conversion to measles in the blood, to measles virus antibodies in the blood, which you would expect after a vaccination. And then he did not have measles virus autoantibodies or myelin basic protein antibodies in his CSF at this point in time. However, it would be important to note that he'd been on a couple of years with the IVIG at this point in time.

So the time course of his immunological history was modified at the time of his spinal tap. He did have measles virus RNA that was detected by Dr. O'Leary's lab in Dublin.

Q And we'll come to that. As a treating

physician do you, in the course of your practice, continue to always analyze and check your diagnoses on patients?

A We're constantly getting new data, new laboratories. The medical literature changes, the science is updating and improving the methodologies and technologies are always improving and updating. So we're always refining our diagnosis, especially in very complex cases like Colten.

Q And is it actually the standard practice of your profession to do such?

A I would --

Q Now in regards to Colten, did there reach a point in time where you ordered particular tests, one to determine the content of his cerebral spinal fluid?

A Yeah, actually the sequence --

Q I'm going to ask you about both.

A Uh?

Q I'm going to ask you about both.

A Okay.

Q Did you also reach a point where you had a biopsy of the ileum performed?

A Yes, we did. We did, well, I didn't do that but Dr. Thek biopsied his ileum and the materials sent to the Unigenetics laboratory for testing.

Q What I'd like you to do, if you would, Doctor, is to tell the Special Master, if you would, why you elected and prescribed these tests for Colten Snyder.

A Well, we had, if you look at the total course of Colten's presentation, we had a history of a fairly dramatic change in his cognitive abilities and his language that occurred within 30 days of his receiving the MMR vaccine.

There was concern on my part, on the mother's part that there was a cause and effect relationship between that vaccine, which contained live viruses, and his ongoing symptoms.

The medical literature was beginning to document at this point in time with what Dr. O'Leary was finding and Dr. Shields in his laboratory with measles virus present in the GI tract, that the methodologies were available to be able to detect measles virus at this point in time.

To me it seemed logical and reasonable to, in an effort to try and confirm the diagnosis that we should look at the CSF. I didn't know anybody at the time who could do that, who could detect both copies of potential viral RNA in the CSF other than O'Leary. I actually traveled to Dublin to meet with Dr. O'Leary

and Dr. Shields.

Q Personally?

A Personally to ask the question, one, should we look at the CSF? This is a virus that is known to be able to replicate in the brain. It's known to be able to cause neurological problems. Should we look at the CSF? And if we do look at the CSF is your lab capable of finding it if it's there?

His answer was if there is viral RNA there we can find it. And we went through his methodologies for collecting specimens and for shipping specimens and how he wanted things handled. We went through the laboratory. Through the laboratory he showed me his methodologies, he showed me how he controlled for false positives and for contamination, and we reviewed the process of how we were going to try to do this.

And then I started sending him samples.

Q The tests themselves, the examination of cerebrospinal fluid, is that some hocus-pocus medical matter?

A No. There was a very nice study published by Dr. Chez from Chicago where he looked at TNF alpha levels, another inflammatory marker, in the spinal fluid of children with autism and found that to be abnormally high as well.

Q Even outside of autism, are there other types of ailments, diseases or problems that children have that people use in evaluations cerebrospinal fluid check?

A Spinal tap is a common medical procedure.

Q How about the ileum? The procedure for getting a biopsy? Is that used in the diagnosis of other kinds of health concerns and medical problems?

A Certainly in individuals with inflammatory bowel disease or other concerns with their intestinal tract. They get biopsied when they get endoscoped, yes.

Q So these procedures, are they used commonly in medicine?

A Yeah.

Q Now in regards to the way these procedures were done and in the taking of the samples, did you and your office have a protocol on how to obtain it?

A Yes, we did.

Q And if you would, to the Special Master and tell her how did you do the sample taking?

A Dr. O'Leary had established protocol for blood, spinal fluid and ileal biopsies or tissue biopsies that he wanted. The tissue biopsies, which go into RNA later and then be frozen, at minus 70 or

dry ice temperatures or just to be flash frozen at minus 70, he was happy with either one of those. If you had dry ice immediately available or a sub-zero freezer.

The blood was just frozen on dry ice or at minus 70. We had a minus 70 research refrigerator in our office. And then the spinal fluid -- we had two different protocols, we changed over time. One was to use RNAlater, which was a method to preserve RNA. The other one's just to freeze it instantly. Colten's was just frozen at a minus 70 immediately.

We had special tubes that could withstand the freezing temperatures. And in situations where we worked with Dr. Thek, my nurse would go to the endoscopy and just hold it in the cryo container and let the physician, Dr. Thek actually put the specimen in herself, seal it and freeze it at that point in time.

Q Did your office thereafter maintain the chain of custody of the sample obtained by the endoscopy?

A We labeled the samples. We maintained them and shipped them to Dublin, yes.

Q And the cerebrospinal fluid, where was it drawn?

A It was in my office.

Q And was the chain of custody preserved of the cerebrospinal fluid?

A We kept it frozen at minus 70 and shipped it to Dublin under ice.

Q After the samples were taken and Dr. O'Leary received them in his laboratory, were they tested?

A They were tested.

Q And did you receive the results?

A We did.

Q And what did those results tell you?

A We're going to jump way ahead to Page 28 of the handout. These are Exhibit 12-0419 and 12-0417, which the CSF shows approved by Dr. O'Leary. He signed off on it as positive for measles at 3.7 times 10^4 copies per nanogram, it's a ratio of per nanogram of total RNA.

And then he also notes -- and this is important because he rejected some of our samples. There were certain samples that we would send him that they arrived for whatever reason without dry ice and were not frozen. He wouldn't even study them.

So condition of sample satisfactory means that it was -- the way the sample was received in the

laboratory. Was it frozen appropriately the way he would process it.

And the whole blood is noted as being zero. They found no RNA. The whole blood in it was negative for measles.

Q What findings did you --

A And there's another report on a different page of the intestinal biopsies, but I go through the evaluation of the endoscope first before I get to that.

Q Let's go through the CSF that's on the board at this particular point. What does that tell you as a treating physician?

A This confirms my worst suspicions that, in fact, not only are Colten's symptoms caused by the reaction to the measles component of the MMR vaccine but the virus hasn't gone away. In order to have this, to have RNA at detectable levels in the spinal fluid, in talking to other physicians and researchers and reading the medical literature, it would seem to me that that indicates that the virus is still reproducing in the brain and showing up in the CSF.

And I felt at the time that that was consistent with why Colten was staying dependent on IVIG, why we couldn't get to the point of resolution

of his symptoms. And they would keep coming back if we would try to withdraw the IVIG.

Q Does this finding support your diagnostic workup of Colten Snyder as far as the behavioral symptoms that he was exhibiting; the lack of speech and the other matters that you related that you perceived historically and from medical records?

A It's, I think, consistent with the entirety of our working diagnosis which was a child who received a measles containing live viral vaccine that had a reaction to it. This took us, I think, to the next level. It took us beyond where we were. We, I think at this point in time in 2002, largely felt that the measles component of the vaccine triggered an immune dysregulation and reaction exclusively. We didn't anticipate that it was persisting in the brain. We were concerned about it as a possibility. We actually didn't anticipate that we would find this.

Q And the date of this testing, for the record?

A The sample was drawn April 26th of 2002 -- this is a European style date.

Q So he's had the measles in his system since April the 23rd of 1998.

A Approximately four years, yes.

Q And discovered through that exam, if you would, please, sir?

A So this is the pictures that were generated by the Halifax Medical Center GI Lab with Dr. Thek. I underscored, although it's difficult to read and I apologize. This is Exhibit 21. And it's on Page 29 of the handout.

Got it?

THE COURT: Actually it's, sorry, it's on page twenty what of the handout?

THE WITNESS: It's on Page 29 of the handout.

THE COURT: Okay.

THE WITNESS: And it's, I was told it was Exhibit --

MR. WICKERSHAM: Twenty-one.

THE WITNESS: Twenty-one. This is actually extracted from my report to Wickersham and Bowers. But it's what I received from Thek. It's also in her records and you could reference where it shows up in her records as well.

BY MR. WICKERSHAM:

Q And No. 2 does not turn out well on the screen; we're all viewing the handout. Can you tell us what it is?

A No. 2 is the cecum and she doesn't make any specific notation about the cecum. She gives you the location of where she took the biopsies from. They're color coded on the intestinal map that you see, which is if I use the arrow, this is the intestinal map. And so she's showing this is the cecal biopsy, actually this is the cecal biopsy and this would be the sigmoid biopsy. And then right here in the green is where she did the ilial biopsy. And then this is the picture of the ileum that she took at the time.

THE COURT: And you're referring to the picture with the red arrow pointing --

THE WITNESS: It's the red arrow, yes, which is, winds up being the ileitis, what she calls ileitis.

BY MR. WICKERSHAM:

Q And the picture with the red arrow means what or shows what to you as the treating physician?

A Well, to both her and I it indicated a degree of inflammation. This is more than the mere nodular hyperplasia that was described by the GI publications from the Royal Free. This, in fact had some hemorrhages in it. It was friable mucosa and she referred to it as essentially more than that, ileitis inflammation of the ileum.

Q The samples that were obtained by the endoscopic examination, were they also sent off for testing?

A They were sent off for pathology and they were sent off for Virology, both.

Q And what were the results of those? What did they tell you, the results, as the treating physician?

A Again, this is just the supporting evidence, which is Exhibit 36-0003 from Dr. Thek's operative notes showing the hemorrhages and ileitis that were present as well as nodular hyperplasia that she noted at the time of her endoscopy.

Q Which is the same reading you have by looking at it.

A Well, I didn't see the bleeding. I'm relying on her describing the mild hemorrhages. I wasn't present for the endoscopy.

The pathology report from Halifax shows some eosinophilic esophagitis and is otherwise not very demonstrative. I don't know if Dr. Steven Popok had ever looked at this sort of condition before -- I don't know what his background is in terms of pathology.

I do know that Dr. Anthony has published on

this finding so we asked for a second opinion from Dr. Anthony. And we sent the tissue blocks so he could make his own slides and cut deeper. Just trying to get a further evaluation and this is his evaluation, which is --

Q So he wasn't just reevaluating somebody's written report?

A No, he actually had the tissue blocks and was able to make his own slide.

THE COURT: Let me interrupt for just a moment. This slide does not, and this is the bottom slide on Page 30 of Petitioners' Trial --

THE WITNESS: It doesn't have a notation?

THE COURT: It does not have an exhibit number on it.

THE WITNESS: I will get that for you. I apologize, Special Master. It's from my records and I can get you a number and I will find out for you. Okay? Maybe Lloyd can find me a number for this report. I thought I had all of the but I missed one.

So in that he notes -- finds in the esophagus the eosinophilic esophagitis. Significant eosinophils in the terminal ileum and a large germinal lymphoid center. He also notes some eosinophils in the cecum and some otherwise, you know, low grade

inflammation there. And then he talks about the eosinophilic changes and the mild chronic changes of inflammation in the cecum. So --

Q What does this tell you as the treating physician?

A Well, this essentially is a pathological diagnosis of eosinophilic gastroenteritis or enteritis that certainly matches up with his high IgA's and some of his other observations and is consistent with his immune dysregulation.

And when combined with the measles virus report from the biopsy is concerning about the persistence of that virus triggering some of these changes.

Q The samples that you had taken during the endoscopic examination -- were they tested?

A Dr. Thek actually collected the samples, I hadn't seen them, they were tested by Dr. O'Leary's laboratory, the Unigenetics laboratory as well.

Q And the findings of this laboratory?

A Dr. O'Leary refers to it as being positive for measles virus at seven copies for a total RNA.

Q What does that tell you as treating physician?

A That there's RNA from measles virus present.

Q So this young man, Colten Snyder, has measles virus in his cerebral spinal fluid and in his gut?

A Yes.

Q So based on the testing that you had conducted with Colten Snyder and the workup that you did on him, your care and treatment of him, histories that you obtained, the review of the prior medical records, did you arrive at an opinion within a reasonable degree of medical probability as to the final diagnosis of Colten Snyder?

A Yes, I think he has measles virus induced encephalopathy from persistence of the measles virus in his CNS. I think he has immune dysregulation presumably secondary to the same viral persistence. And in part, dysregulated from his exposure to Thimerosal. And he has ongoing immunological dysregulation at this time that would indicate despite the fact we don't have any additional testing to determine that, it is consistent with a probability that the virus is still there, still persistent.

Q Problems that Colten suffers from, do you believe it is more likely than not that they are causally related to the MMR vaccination that he received?

A Yes, I do.

Q And what is that opinion, sir?

A The opinion is that without the exposure to a live viral vaccine that Colten wouldn't have virus in his CSF or his intestinal tract and wouldn't have the associated neurological and gastrointestinal symptoms that he is experiencing.

Q Sir, would you have a professional opinion that probably more likely than not the measles virus inoculation, the MMR that Colten Snyder received, has caused him injury?

A It has.

Q And what is your opinion, sir, as to what is that injury?

A The injury is the encephalopathic process that generally presents in Colten as having autistic features and his chronic immune dysregulation.

Q When you say chronic, is he still suffering from this?

A He is.

Q Is this an ongoing process for this young man?

A It's much better than it was but it is still ongoing.

Q Is it better because of the treatment, in

your opinion?

A I believe so, yes.

Q And is this treatment he's going to have to continue to have?

A For the time being we're hopeful that we can, you know, continue to find other ways to help his immune system to deal with this and to support him.

Q And have all the opinions that you expressed in reports that you have filed with the Court as well as your testimony here today been based upon a reasonable degree of medical probability?

A Yes, they have.

Q And do you believe that it is more likely than not that the measle vaccine administered on April 23rd, 1998 has, in fact, caused injury to Colten Snyder?

A I do.

Q And that opinion, sir, again is?

A That absent the exposure to the measles component of the vaccine, he would not have this condition.

Q Thank you, sir.

THE COURT: All right.

THE WITNESS: Would, I don't know --

THE COURT: Well, Mr. Wickersham, are you

done with this witness?

MR. WICKERSHAM: Well, let me just ask a final closing, if I might, of your testimony.

BY MR. WICKERSHAM:

Q In comparing Colten where he is now, what is the summary of your major additional and normal findings that he has?

A Yes. This is a graphic I kind of put together to kind of help go over that and summarize it. Is that his history is a very significant part. It's not exclusively laboratory finds. Obviously they're very consistent with what the history led us to believe.

But the history of a post MMR mental status change, the loss of developmental function, which is his regression. The measles virus RNA in his CSF and his gut, his elevated inflammatory markers and his overall immune dysregulation. His elevated antibodies to myelin basic protein which were quite significant at the beginning of treatment.

His ileitis on endoscopy and his eosinophilic enteritis on pathology. We noted that he had on a DMSA provocation challenge mercury but not lead. It rules out a potential cause of mental retardation and early developmental delay, which is

lead exposure. There doesn't seem to be much lead in this child at all.

He does have abnormal porphyrins which is consistent with the observation of mercury exposure. Oxidative stress, which is, again, consistent with mercury and other features of his dysregulated metabolism.

And then the interesting finds of neopterin and elevated IgE and low IgA and his overall immune sensitivity where he's extraordinarily sensitive to the food that he eats and mom has to grow his own food to keep him on track.

Q Does that conclude your --

A If you're done with me.

MR. WICKERSHAM: I am. Thank you, Your Honor. I thank the Court, and I thank Dr. Bradstreet.

THE WITNESS: Thank you.

THE COURT: Government, would you prefer that we take our afternoon recess before the cross-examination?

THE WITNESS: I would too.

THE COURT: Dr. Bradstreet would prefer it as well. In that case it's unanimous.

THE WITNESS: It was a large glass of tea.

THE COURT: We'll reconvene at, let's say,

five after 3:00. If you need more time, government, please let me know in advance.

MR. MATANOSKI: Yes, ma'am.

THE COURT: Thank you.

(Whereupon, a short recess was taken.)

THE COURT: You may proceed.

MR. JOHNSON: Thank you.

THE COURT: We're back on the record then. Go ahead.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q Good afternoon, Dr. Bradstreet.

A Hi.

Q We've not been introduced. My name is Vo Johnson. And I'm an attorney with the Department of Justice. Nice to meet you.

Doctor, you first saw Colten Snyder on July 28th, 1999. Correct?

A Yes.

Q And that was when he was almost three and-a-half years old. Is that right?

A Yes.

Q Okay. So about 15 months after his MMR vaccination. Is that right?

A He would have been two and-a-half years old,

two and-a-half years old.

Q Oh, I'm sorry, two and-a-half years old. I mis-spoke. That's correct.

A Yes.

Q But you first saw him about 15 months after his MMR vaccination. Is that right?

A Exactly. Yeah, 15.

Q And prior -- I believe you were here for Mrs. Snyder's testimony earlier this morning. Is that right?

A Correct.

Q And I believe she testified that prior to coming to see you she filled out a child evaluation form and faxed it to your office. Is that right?

A Yes.

Q And on the first page of your form, and for the record this is at Page 633 of Exhibit 12. On the first page of that form you asked do you believe your child's symptoms are vaccine related. Is that accurate?

A That's the question, yes.

Q Okay. Approximately what percentage --

A Actually I don't think that's the exact wording but, what was your exact reference?

Q Page 633.

A All right. On that one it does say: Do you believe your child's symptoms are vaccine related? Yes or no?

Q Okay. And approximately what percentage of your patients answer that question yes?

A Over what timeframe are we talking about? The entire ten years that we've been asking that question?

Q Sure. Let's start there.

A Probably 40 to 60 percent but I don't have any statistical analysis of it.

Q Okay. And I believe you testified earlier that you have treated about 3,000 autistic patients who are diagnosed with an ASD. Is that correct?

A Correct.

Q And of those 3,000 patients, approximately how many of those do you conclude that their autism or ASD was caused by a vaccine?

A Again, I have no statistical analysis of it. It would be a guess.

Q More or less than 50 percent?

A Less than 50 percent.

Q 40 percent?

A Again, I haven't systematically evaluated the records to look at that. More than ten percent,

less than 50 percent.

Q Okay. And I believe on the form that we were just talking about, the Childhood Evaluation Form, you also ask when developmental delay was first suspected. Is that right?

A Yes.

Q And in this case, Colten's mother indicated on the form that she first suspected developmental delay at about 18 months. Is that right?

A Yes.

Q Now I want to direct you to Petitioners' Exhibit No. 2, which are your slides. And the second slide, which is on Page 1, indicates that, and I'm looking at eighth bullet point down. It says pharyngitis and regressive symptoms begin at 5/6/1998. Is that right?

A That's my impression, yes.

Q When you use the term regressive symptoms, what are you referring to?

A When he starts to become irritable and fussy and when that continues on to the rest of the time course of his condition. So it's connected to what happens after it.

Q So you are not using the term regressive in terms of developmental issues. Is that right?

A I think he's starting to develop his

encephalopathic symptoms. I think his fussiness, his irritability, his crying, his sleep disorder is all part of that, yes.

Q Okay. But I'm talking about developmental issues like language and motor skill. Are you using the term regressive symptoms to refer to those types of things on Slide 2?

A There's no way to distinguish between the process. So is there a notation of language change on 5/16? No, there's a notation of his mental status change, which is part of his overall process.

Q So would you accept the notation on the child evaluation form by Mrs. Snyder that the developmental delays began around 18 months?

A That's when she -- this is her language, okay? So she noted it about 18 months.

Q Okay. And I believe you testified earlier that you believe she's an accurate historian. Is that correct?

A Yes.

Q You also, in your testimony, refer to some of Dr. Sahai's records prior to the MMR to support the idea or fact that Colten was developing normally up to the time of his MMR. Is that an accurate reflection of your testimony?

A Yes, it is.

Q And then, I believe, there were some records following the MMR where you were critical of Dr. Sahai's failure to record things that Mrs. Snyder was apparently reporting to him regarding Colten's development. Is that correct?

A There are things that -- my main criticism of him was the lack of weight -- when he had specifically been concerned about the two previous weight loss situation.

Q Okay. So developmentally you don't take issue with Dr. Sahai's records in what he's noting about Colten's development following his MMR. Is that right?

A I think I said it would have been nice to have a more complete evaluation like a development assessment or something.

Q And I guess I'm wondering how you decide when you are going to trust Dr. Sahai's records regarding Colten's development and when you are going to not rely on those.

A I don't think I said I'm not relying on them. To the extent that he's recording his observations, those are his impressions.

Q Now you, I believe, testified that you

initially diagnosed Colten with autism. Is that correct?

A Yes.

Q And when you use the term autism, are you talking about autism disorder or are you talking about some disorder on the autistic spectrum?

A I actually felt that he was autistic in the sense of the 299.00 DSM 4 criteria.

Q And what behaviors did Colten exhibit that led you to that conclusion?

A He exhibited lack, near total lack of language. He had marked bizarre stereotypical behaviors and numerous different ones. He was socially withdrawn from strangers. He had some social connection to his family. But he didn't have even a normal level of social-ability with the family.

So within the three domains of what autism is required, diagnosis of his insufficiencies is called an autism.

Q Doctor, I hope I have enough copies of this. I'm going to hand you Petitioners' Exhibit 12, Page 632.

(The document referred to was marked for identification as Petitioners' Exhibit 12.)

BY MR. JOHNSON

Q Doctor, can you tell us what this form is?

A Yes, it's a requisition for laboratory data to be drawn.

Q And what is the date of the form?

A 7/28/99.

Q So this was the first time that you saw Colten as a patient. Is that correct?

A Correct.

Q And this notes under the section Diagnosis and Short History: Autism, which I believe you testified earlier, was your initial diagnosis.

A Yes.

Q Prior to filling out this form, please describe for me what your interaction had been with Colten up until the time that you filled out this form?

A We spent about two hours with the family during an initial evaluation. So I had an opportunity to evaluate him, his records, talk to his mom, look at Colten, examine him, observe his behaviors.

Q And what does your typical examination consist of?

A It depends on the child, depends on the age of the child and the willingness of the child to

cooperate. So we try and tailor it to the kids as much as we can.

Q Do you recall in Colten's case what your examination consisted of?

A It's reported in the record, yes.

Q You note on this form as well, and I hope I'm reading this correctly, MMR responder. Is that what that says?

A That's what it says.

Q What do you mean by that?

A That's just relating to mom's history that she felt that he had a post MMR event, a decline following the MMR.

Q You had not run any laboratory test to confirm that fact at this point, had you?

A This is historical.

Q I believe Colten, through his early intervention testing was diagnosed with PDD. Is that correct?

A Correct.

Q Do you believe that Colten ever met the diagnostic criteria for PDD?

A PDD is the overall category that includes autism. So, autism is a subcategory of PDD. So, yes.

Q So you felt that that diagnosis was

accurate at the time?

A It's very consistent with mine. The psychologist who made that diagnosis said he has many of the features or all of the features of autism. I just don't think they're bad enough to call it autism. So she called it PDD NOS.

Q Okay. And when you say that her diagnosis is consistent with yours is that the measles virus induced encephalopathy. Is that your diagnosis, your current diagnosis?

A That's one of my diagnoses.

Q Okay. And refresh my memory. What are your other diagnoses?

A If you look at the way the diagnostic categories are structured in the DSM 4, as an example, autism is a Level 1 diagnosis. So it's a psychological diagnosis. It's not a physiological diagnosis. So on Axis 1 he's autistic or PDD. On Axis 3 he has multiple other medical problems that are either co-morbid or, in fact, contributory to the symptoms of autism.

Q And are all of these -- and tell me what you're thinking right now in terms of the co-morbid conditions.

A Co-morbidity, by definition, are things that

are existing at the same time as other symptoms or another diagnosis. So he has immunological dysregulation. He has measles virus persistent in his CSF and to some extent in his GI tract. He has evidence of inflammatory bowel disease based on endoscopy and oxidative stress based on laboratory measures and an apparent dysregulation of his metabolism consistent with mercury exposure.

Q Let me direct your attention again to your slides. And it's on Page 23 of this file on the bottom of that page. And based on the testimony that you gave, is this slide your basically graphic summarization of what you believe Colten's conditions are?

A From a biomedical perspective, yeah. The underlying pathophysiology of what's going with on, yes.

Q Okay. So this is the mechanism that you believe is causing Colten's symptoms. Is that correct?

A The interplay of these symptoms. They're not all equally weighted, I guess.

Q And do you, to a reasonable degree of medical probability, believe that this slide describes what is going on with Colten?

A Yes.

Q Doctor, I'm going to hand you a list that I've prepared from your medical records just of some of the different medications that you prescribed Colten.

THE COURT: And this will be Respondent's Trial Exhibit No. 1.

MR. JOHNSON: Yes.

(The document referred to was marked for identification as Respondent's Exhibit No. 1.)

BY MR. JOHNSON:

Q Doctor, you prescribed a number of different medications and supplements to Colten over the years. Is that correct?

A I'm not his only treating physician at our Center. But, yes, I have.

Q Okay. So your practice, and I'm going to assume that when you talk about your Center, you're talking about your practice partners and physicians' assistants and things of that nature. Is that correct?

A Well, and, yeah, there's two other physicians, yes.

Q Okay. And I just want go through -- this is a list that I've just compiled going through your

records from essentially over a five year period, the first five years that Colten was seeing you. I just want to ask you about some of these medications and have you explain what they're intended to do.

The first one is Nystatin?

A Yeah, I think he came to us on Nystatin actually, prescribed by his pediatrician.

Q Okay. And what is the purpose of Nystatin?

A It's an anti-fungal.

Q Okay. I saw references to OIG and I wasn't sure what that was.

A Oral Immunoglobulin.

Q Okay. And what is that?

A Oral Immunoglobulin is essentially pooled human immunoglobulins; passive immunity.

Q And taken by mouth I assume?

A Yes.

Q And that's different than IVIG. Is that right?

A Correct.

Q What is Chemet?

A Chemet is a brand name for succimer, which is DMSA.

Q And what is the purpose of Chemet?

A Chemet was initially prescribed as a

provocation challenge to provoke either lead or mercury or other heavy metals into urine for assessment for testing.

Q Okay, is that the same thing as a chelator?

A It is a chelator.

Q What is Diflucan?

A Diflucan is an anti-fungal.

Q And what was that prescribed for?

A His candida overgrowth in his intestine.

Q What about Syclovir?

A That's not a prescription. That's a nutritional supplement that Dr. Kartzinel uses.

Q And I apologize, Doctor. It was sometimes difficult to tell what was a medication and what was a supplement.

What does Syclovir do?

A I don't use Syclovir. I think Dr. Kartzinel believed that it was helpful at treating inflammatory changes in the GI tract.

Q We talked a little bit about Secretin. What is that?

A Secretin's a neuropeptide, a 27 amino acid sequence. It's a tiny protein that has effects in the GI tract and the brain.

Q I think you mentioned, was it in 1999 -- it

was indicated by some physicians for use with GI issues. You just mentioned that you're also using it for issues in the brain. What was it supposed to do in the brain?

A I don't know that I said I was using it for issues in the brain. I said that it's active in the brain. It has activity in the brain. So the findings with Dr. Horvath at the University of Maryland were that children with autism who presented with Colten's type of gastrointestinal symptoms did not produce secretin in response to normal stimuli. So they were essentially secretin deficient. And that by giving them Secretin in his challenge test, they had dramatic responses to the outflow of pancreatic digestive enzymes.

Simultaneously with that he reported improvements in their behavior and autistic symptoms after the administration of Secretin and published that.

Q Is Secretin still indicated for use for those types of conditions?

A There's still actually ongoing research with secretin. It's been through multiple different types of trials with, you know, various results.

Q Let's skip down to several references to

Gamunex and Gamimune. Are those the IVIG --

A They're different brand names for IVIG, yes.

Q Okay.

A Or actually Gamunex, I believe, is, no, they're both IVIG. Gamunex and Gamimune are different brand names.

Q Okay. What about BayGam?

A BayGam is immunoglobulin but it's injectable rather than IV.

Q Okay. And Vermox?

A That's for pinworms.

Q Okay. And looking at some of the supplements; alpha lipoic acid. What is it supposed to do?

A Alpha lipoic acid is an antioxidant. It's normally created by the liver and has a nice antioxidant effect.

Q And how about Flax? I saw that you prescibed that.

A Essential fatty acids. Colten, and particularly with a limited diet and very common with these kids is that they don't really consume food that we give them and the essential fatty acids that they need for normal brain level. So it's just a nutritional supplemental.

Q Okay. What about Primal Defense?

A Those are just what we refer to as probiotics. And probiotics are healthy organisms to replace what's missing.

Q And then there was another one I'm interested in that's called NAC? N-A-C.

A N-acetyl cystine.

Q What is that?

A It's an orally absorbable form of a thiol amino acid. Colten was system deficient on blood test. It's a fairly critical amino acid for the development of glutathione, the main antioxidant for the body. And something that the brain needs to function properly.

Q And then there are a number of other supplements and I won't go through all of those. Doctor, you mentioned Dr. Sahai and discussed some of his records during your direct testimony. Were you aware that in October of 1999, Dr. Sahai told Colten's mother that he was concerned about the number of medications that Colten was on and recommended that she actually discontinue some of those?

A I don't see any, I don't see reference to that. He didn't contact me with that.

Q Okay. And that was nothing that Mrs. Snyder

ever mentioned to you.

A I have no recollection of that, no.

Q One of the supplements, other supplements that was on the list is Taurine. What is Taurine?

A Taurine is a neutral amino acid that is essential for the formation of bile salts and has been observed by individuals to aid with overall calming, easing of behavioral symptoms.

Q Is this a supplement that you prescribe frequently to your patients with autism?

A Fairly frequently.

Q Have you heard of Kirkman Laboratory?

A I have.

Q And are you aware that in 2002 the FDA seized a taurine product from Kirkman Labs, based on a finding that they were promoting it for use in treating autistic patients and as the FDA found even though there was no scientific support for that claim?

A Well, first of all, in, I'm not a party to any of that action of Kirkman and their claims. There's regulations on how the FDA allows nutrition companies to promote their products and what they require.

Q The website for Kirkman Labs actually used you as a testimonial for their product. Didn't they?

A They did without my permission.

Q And Kirkman Labs ultimately agreed to take corrective action and did not oppose the seizure of the taurine product. Is that right?

A I don't know what their actions were. I'm not a party to that.

Q Doctor, what is the International Autism Resource Center?

A It was a transitional name that we used before developing the bigger name, the International Child Development Resource Center. So it was essentially the same foundation going through its early development stages.

Q Okay. And I was confused about that because your first report in this case is on the IARC letterhead.

A We changed the name, correct.

Q And when did the name change?

A Probably 2000'ish, 2001, approximately.

Q Is the ICDRC a for profit or not for profit organization?

A It's a not for profit.

Q What is Creation's Own?

A It's a for profit.

Q Okay. And is that an organization that

you're affiliated with?

A I own it.

Q Okay. Is that your medical practice?

A It is, in part.

Q And I've seen on the website for, I guess, ICDRC a link to the Learner's Edge System. What is that?

A It's five nutritional supplements that were developed in association with nutritionists and naturopaths at Ismac Therapy, which is now Integrated Therapeutics that I collaborated with.

Q And do you have any ownership stake in that company?

A No.

Q Is it a company?

A Integrated Therapeutics?

Q Yes.

A Yeah, it's a large company.

Q Okay.

A I have no ownership interest in it at all.

Q Do you sell supplements through Creation's Own?

A Yes.

Q Do you sell any of the supplements that you prescribe to your patients through Creation's Own?

A Some of them, yes.

Q And have any of the supplements that you prescribed Colten been sold through Creation's Own?

A I would assume so, yes.

Q Approximately how much does Creation's Own make off its supplements each year?

A Approximately nothing. No, we sell the supplements for essentially what we had purchased them for. So there's essentially no mark-up at all.

Q Okay, so your testimony today is that you are making no profit off of the supplements that you're selling.

A Oftentimes we give supplements away to families in need or we go out and buy them for them.

Q Doctor, I'm going to talk a little bit about IVIG. It's been discussed to some length this morning. I believe you testified on direct that you started Colten on IVIG in March 2000. Is that right?

A Yes.

Q Let's talk generally, and if you can explain how you determine whether IVIG is clinically indicated in a patient.

A Now or in 2000?

Q Let's talk about in 2000.

A In 2000, what I wanted to see was the

presence of a dysregulated immune system and I would prefer to see auto antibodies, particularly something like anti-myelin antibodies or anti-endothelial antibodies. But a dysregulated immune system and the presence of autistic type systems, particularly in a regressive case particularly where there was a fairly strong history of immune dysfunction would be our typical indications.

Q Let me take immune dysregulation first. How do you tell if a patient has immune dysregulation?

A Actually, Dr. Gupta did a very good job of describing that in his IVIG paper on autism in 1996. His immune dysregulation paper that he published on IVIG. So he went through a rather disparate group of immune dysregulation. Some of the kids had IgA deficiencies. Some of them had sub-class of IgG deficiencies. Some of them had IgM deficiencies. Some of them had the defects of cell mediated immunity. Others of them had evidence of autoimmunity. So he went through, I think, a nice description of that, so.

Q What in Colten's case led you to conclude that he had immune dysregulation?

A He had significant titers of autoantibodies to myelin basic protein. He had a history of

rheumatoid factor being positive. He had evidence of IgA deficiency and he had very high levels of IgE.

Q So would it be fair to say that the anti-MBP levels were the greatest concern to you?

A No. I think anti-MBP in the presence of his history and symptoms was the greatest concern to me. So it was a confluence of those.

Q Going back to IVIG treatment, what is your specific treatment objective with IVIG?

A Improving the overall projectory or behavior to the point that the child is recovered or largely recovered.

Q So it's largely a behaviorally based measure and not some lab values that you're monitoring. Is that accurate?

A It's helpful to monitor lab values but you always have to treat the patient. You have to combine your assessment to what's going on with the patient, whatever the laboratory's telling you.

Q What is the mechanism for IVIG's effectiveness in Colten?

A IT's unknown.

Q So you just have no idea why it's working. Is that right?

A I have theories on why it's working but the

mechanism of how IVIG works, even with Dr. Gupta who I would consider to be the world's leading authority on IVIGs and autism, it's unknown.

Q You testified earlier that you believed that a finding by Dr. Singh in 2002 of no antibodies to the measles virus in the CSF was likely explained by the IVIG treatment that Colten's receiving. Is that what you testified?

A No, I don't think so. I said I think that's it's important to remember that the absence of measles virus antibodies in the CSF or antibodies to myelin basic protein in CSF comes after two years of IVIG therapy. So it needs to be interpreted in the light of his previous therapy.

Q But you testified that you don't know what IVIG does. Is that right?

A There are a variety of different theories on what IVIG does. It's an anti-inflammatory and it's used in various cases. It's used in very similar condition to autism, Landau-Kelffner Syndrome. There have been some very successful reports.

Q What is the preparation of IVIG that you're using in Colten?

A It really depends on market availability. I mean, you don't always have access to, you know, the

same product. So different manufacturers have different ones, but I prefer Gamunex when it's available.

Q And do you know what the titers are in the IVIG that you're giving Colten?

A On a batch by batch basis? The titers to what are you referring to.

Q Let's say titers to any antibodies of the measles virus.

A The literature that I'm familiar with would indicate that most batches of IVIG have significant anti measles virus antibody activity.

Q Is it important to you at all what titers are in the IVIG that you're giving Colten?

A The purpose of IVIG is not to give him titers, if that's what you're asking. So is it important to me? It may be, may be part of the functional role of what IVIG does. It's not known.

Q So to make sure that I'm understanding your testimony, since we don't know what IVIG does, it doesn't really matter what its preparation is as long as it looks like it's working. Is that --

A We don't know methods of action, a specific method of action. We know that it's effective in Colten. We know that it's effective in many people

with autism.

Q And that's based solely on the fact that they appear to improve?

A Sometimes dramatically over a very short period of time, yes.

Q Going back to the anti-MBP levels that we were talking about, you mentioned it in your direct examination that Colten had a value of 46. And I think you said that was one of the highest that you've ever seen. Is that right?

A It was striking, yes.

Q And that lab result was from a sample that was taken in January of 2000. Is that correct?

A Yes.

Q And I believe you testified that Dr. Singh also did some testing in March of 2000. Is that right?

A Yes.

Q Doctor, I've just handed you what I believe to be the results from the testing that we were just talking about that Dr. Singh did in March of 2000. Is that right?

A The specimen was collected in March of 2000. But if you look at the report date, it's September 24th of 2001.

Q Okay, I apologize for that. But the

specimen was collect on March 8, 2000?

A Correct.

Q Okay. And that was actually the date of the first IVIG treatment that Colten received. Is that correct?

A Correct.

Q So was the purpose of this testing to take some kind of baseline reading or what was the purpose of collecting this specimen?

A Just to get another laboratory look and Singh was also looking at neurofiliment, he was looking at measles virus. He was looking at HHV6 just to look at another pattern with a different --

Q Okay. And the result of this test says that it was negative for antibody to myelin basic protein. Is that correct?

A Yes.

Q And you prepared a timeline of the testing that you had done. I believe that's on Page 24 of your slides. And you don't include these test results on your timeline. Is that correct?

A Well, I didn't actually prepare the timeline. But it was prepared by the nurse working with Wickersham & Bowers, extracting it from the records. But on the next page, which is 25, you'll

see a representation of the time course of different treatments. And then also on 25 is all the dates of the different laboratories where we did anti-MBP when he got his IVIG slits laid out by the end of this page.

THE COURT: And by Page 25 you're referring to Page 25 of Petitioners' Trial Exhibit 2?

THE WITNESS: Correct, Ma'am, yes.

BY MR. JOHNSON:

Q And then in the -- again the test for the antibodies to MBP, anti-MBP was negative. Is that right?

A From Singh's laboratory on that date, yes, it was.

Q Doctor, approximately what percentage of your patients are chelated?

A Of my patients? Over what time period? Over the time course of their treatment with me or over the last ten years or?

Q Of all the patients that you see, and how many patients do you determine that chelation is appropriate?

A Again, I have no statistical analysis of that. I would say probably 30 percent, 40 percent.

Q And has that number gone up or down in the

last five years?

A I think it's been pretty stable, pretty consistent.

Q And how do you determine if chelation is clinically indicated?

A Basically there's several parameters I use. One is a history of exposure. So if we can document a significant exposure to a heavy metal whether it's lead or mercury at some point in time, that's an indication for a potential chelation if the dose is large enough. Current levels of elevated lead or mercury in the blood. High levels of porphyrin in the urine combined with oxidated stress.

A very strong result to a provocation challenge for urine is measured after provoking agent is given to see what metals were in the urine. A very positive hair study; sometimes kids will come with laboratory showing very high levels in hair of lead or mercury.

Q Do you typically do some form of lab testing to determine mercury levels before you chelate a patient?

A Not necessarily because in essence a provocation challenge is a single dose or, you know, a short course of chelation to determine what comes out

in the urine. So it's a diagnostic chelation challenge. So that may actually be part of the testing to work on.

Q There, in this case, I was only able to find one elevated mercury level from all the testing that was done. Is that consistent with your understanding of the testing that you did?

A In terms of actual lab value for mercury, he had one. And then later on he's had porphyrin testing twice.

Q Okay. So the lab testing that was done, the one time it showed the elevated level, that was done by a lab called Doctors Data; is that correct?

A Correct.

Q And that was a urine specimen, if I'm --

A Is a urine test, yes.

Q And so is that the challenge that you were talking about? Is that the test that you were doing to, the challenge test, basically, where they do the short course of chelation to try to draw out the heavy metals?

A Yes.

Q Okay. And none of the blood testing that was ever done showed elevated levels of mercury in Colten. Is that correct?

A No, but I wouldn't anticipate blood to be a reflector of past exposure.

Q And the one hair study that was done was also normal. Is that correct?

A Actually it was potentially abnormal. It was very low and given his exposure pattern you would anticipate perhaps quite a bit more mercury if he was a good excreter of mercury. And it's been published twice; once by MIT and once by Amy Holmes (ph) that there's an inverse relationship between symptom scores and the amount of mercury in hair.

Q Is it your understanding that mercury is excreted through the hair?

A One of the aspects that where it gets excreted, yes.

Q Doctor, is Doctor's Data, the lab, Doctor's Data, are they a research partner of yours?

A We have published one paper. They're not a research partner. They're a commercial laboratory.

Q But you have published one paper in conjunction with them?

A We used their laboratory results in a paper that we published, not in conjunction with them.

Q Colten actually didn't respond very well to chelation, did he?

A No, he hasn't.

Q In fact, I believe his mother and the records stated that he regressed after chelation. Is that right?

A He didn't do well after chelation.

Q Doctor, it's been reported in the past that you have recommended exorcism for treatment as autism. Is that right?

A No.

Q So you --

A Reported where?

Q It's been reported by certain individuals who have followed autism and I was just asking you if it's correct or not.

A I have no idea where that comes from.

Q Doctor, what is the Good News Doctor?

A The Good News Doctor is a foundation. It's a non-profit. It's actually, ICDRC is a component of that. It's a not for profit designed to raise health awareness, personal responsibility for health care and fund care for the needy.

Q Mrs. Snyder testified earlier about the ministry. Is that the same thing as Good News Doctor?

A Yes. She's referring to the non-profit, yes.

Q Maybe you can explain to me how the ICDRC and the Good News Doctor and Creation's Own are all interrelated.

A It's simple enough. The Foundation, which would consist of Good News Doctor, and I think our official name is the Good News Doctor and the International Child Development Resource Center. It is a not for profit foundation. We raise hundreds of thousands of dollars to take care of needy kids. And fund care by supplements. We've bought durable medical equipment for their homes. Whatever was necessary where we could raise the money to do that.

And then Creation's Own is the for profit aspect of the medical practice. The original intent was to have a not for profit medical practice. The lawyer said that the state of Florida really expects doctors to have a for profit motive, which we really didn't have. So they anticipated that the medical practice part of it needed to be in a for profit wing. So that's where we got that from.

Q So just to make sure I understand, ICDRC and the Good News Doctor basically receive donations. And then those donations are used to pay for the treatment that you provide your patients. Is that accurate?

A Some of it pays for my treatment but some of

it pays for treatment of other doctors. As an example, we paid $15,000 recently to have a child endoscoped in New York. But, you know, we get requests from all over to pay for care.

Q But your for profit company, Creation's Own, does receive money from ICDRC.

A It does.

Q Doctor, what is Children of Destiny?

A Children of Destiny is a ministry that's interested in helping kids with autism.

Q Do you have an affiliation with that group?

A I don't have an affiliation with them. One of the people who's in that group works for me but I don't have an affiliation with Children of Destiny. I'm not on their board, I don't participate with them or anything.

Q Okay. And would that be Jack Sytsema.

A Jack Sytsema works for me, yes.

Q And he is, I believe, is he the Vice President of Finance for --

A He is the Chief Financial Officer, yes.

Q Doctor, you mentioned some porphyrin testing that you were relying on to indicate that -- and you used a report to indicate that Colten had mercury toxicity.

The first thing I wanted to ask you about that, when you had that testing done, was that based on a 24 hour urine collection?

A No, first morning.

Q First morning? So that means that the first time that Colten went in the morning, that was the time of the sample.

A Yes.

Q What are you relying on for your interpretation of the results of the porphyrin testing?

A Again, I think it's consistent with our observations that he has low thiols, low cystine, low glutathione and probably is not a good excreter of mercury. The ratios are the most important aspect to me. The precoporphyrin level is greater than the uriporphyrin level. And that's an atypical presentation. It's in the medical literature anyway.

Q And I asked a poor question. I guess I was asking is there specific literature that you're relying on to help you interpret the porphyrin results?

A Okay. Yeah, the literature that's been produced by Dr. Wood's group at the University of Washington. The literature that's been produced by

Dr. Nataf's group in Paris combined together create a constellation of literature about porphyrins.

Q Has Dr. Geier also published on that issue?

A Recently I think he has, yes.

Q Why did you select -- and the lab that you selected is a lab in France. Is that correct?

A Yes.

Q And I'll probably butcher this pronunciation but it's the Lab Phillippe August. Is that --

A You can say it anyway you want. That's the lab.

Q Why did you select that lab?

A Because they had published their findings and their controls. And I thought that they would be a reliable indicator. Prior to selecting that laboratory we sent split samples to LabCorp and Quest to compare to them. And we were satisfied that they were consistent.

Q So there are other laboratories that do perform this testing?

A That do, yes. The unfortunate thing with the U.S. laboratories is they don't report the precoporphyrin level, the peak right before coporphyrin. And that's really the most critical thing when you're looking at mercury exposure based

on the research from Dr. Wood's group and others.

Q And is the reason that other labs don't test for that is because it's a fairly novel test or a new test?

A I would love for them to incorporate that. There's ten to 15 years worth of literature on it. I don't know why they don't incorporate it.

Q It's just not part of their standard protocol at this point.

A It isn't.

Q Do you know Robert Nataf?

A Yes.

Q You know him personally.

A Yes.

Q What is his connection with Lab Phillippe August?

A I think he's the medical director.

Q And he's promoted this testing as a way to detect mercury toxicity. Is that right?

A I think he has.

Q And he specifically markets this test to people that connect mercury toxicity and autism. Is that right?

A He markets it to everybody. I don't think he's strictly, he doesn't really care what your

background is. If you think you have, if your

clinician feels that you need testing for mercury, he markets it for many implications.

Q So anyone who is interested in that testing he's going to --

A I think if anybody's willing to pay the price, they can have the test.

Q How much was the testing? How much did it cost?

A We paid for it for Colten. And I think it's $130 US.

Q You know Andrew Wakefield, correct?

A I do.

Q How do you know Andrew Wakefield?

A He and I were joint participants in a think tank on autism in Cherry Hill, New Jersey in 1998.

Q You and Andrew Wakefield have collaborated on research in the past. Is that correct?

A We have.

Q And, in fact, he's been a consultant for ICDRC. Is that right?

A He was.

Q He's no longer a consultant?

A No.

Q On the ICDRC website he's listed as, on one page under the Research page as Director of Research.

Is that no longer correct?

A That must be an old link. I don't know where you'd be getting this. That's probably two and-a-half to three years old.

Q But he was at one time the Director of Research.

A Yes, he was.

Q And you authored an article with Dr. Wakefield. Is that correct?

A Yes.

Q Doctor, is this the article that you authored with Dr. Wakefield?

A Yes.

Q Okay. And in this article you report findings of measles virus are in the CSF of three of your patients. Is that right?

A Correct.

Q And one of the cases that's reported in this article is Colten. Is that right?

A Yes.

Q He's Case No. 3?

A Correct.

Q I want to direct your attention to Page 43 of the article, in the second column, in the third completed paragraph down.

A Second column, third paragraph down? According to literature?

Q Child 3 developed.

A Okay.

Q That paragraph begins, Child 3 developed a new onset of immune dysfunction following MMR exposure. This is consistent with the observations of all type measles infection and the ongoing immune destruction caused by viral persistence rather than prior immune deficiency.

Doctor, does that indicate that you believe that Colten experienced immune dysregulation followed his MMR vaccination?

A Yes, I think I stated that several times already.

Q And you do not believe that he was experiencing immune dysregulation before his MMR vaccination. Is that right?

A I don't.

Q Doctor, in the conflict of interest statement for this article that is on Page 44, you disclose, and I'm looking about half way through the declared potential conflicts paragraph: Parents of two of the children are seeking compensation under the National Vaccine Injury Compensation Program in the

U.S. The cases were filed after the detection of measles virus in the CSF, not prior to these findings.

Is that what that says?

A Yes.

Q Colten's CSF testing was done in April of 2002. Is that right?

A Yes.

Q And this case was filed in March 2001. Is that right?

A I don't know when it was filed. But my understanding is that it was filed later in the Compensation Act.

Q Okay. I will tell you that it was filed in March 2001. So based on that information, the declared conflict statement is inaccurate. Is that right?

A Correct.

Q Unigenetics, as you indicated in your slides, performed all of the testing for the measles virus in this case. Is that right?

A Yes.

Q Did you select Unigenetics because of your relationship with Dr. Wakefield?

A No, Dr. Wakefield didn't even attend the meeting on the CSF. It was Dr. O'Leary, Dr. Orla

Shields (ph) and myself. And Andy was not part of the CSF concept or the brain issues.

Q Were you aware of Unigenetics lab through Dr. Wakefield?

A I had known of their published work. I don't think I learned it from Andy. But, yeah, I was familiar that they were publishing in the field.

Q Do you know how much Unigenetics charged to run the tests on Colten's samples?

A A thousand Irish pounds, I believe. Something like that, 1,100 Irish pounds.

Q Do you know how that was paid for?

A We paid for most of them from the Foundation. I don't know in Colten's situation how it was paid for.

Q You were an expert in the UK litigation. Is that right?

A That's what they called me.

Q And you were actually paid around 21,000 pounds for your work in that case. Is that right?

A Was it pounds or was it dollars? I'm not, it was a while ago. I'm not quite sure.

Q I believe it's pounds sterling.

A Pounds, okay.

Q And you filed a report in the UK

litigation in 2003. Is that correct?

A I'd have to go back but it sounds about right.

Q And that same year you published an article on mercury burden, is that right?

A Yes, 2003, yes.

Q Okay. And that was an article that you co-authored with Mark and David Geier?

A And others.

Q And you did not disclose in that article that you were a paid expert in the UK litigation. Did you?

A I don't see the relationship.

Q And why don't you see a relationship?

A The UK litigation was about measles virus. Ours was an article about mercury.

Q At the time that you published both the article with Wakefield and article with the Geiers, you yourself had two claims pending this program on behalf of your son and your daughter. Is that correct?

A Yes.

Q And those claims were filed in the Office of Special Masters in November of 2002. Is that right?

A I would have to look and see.

Q Okay. We did and I'll represent to you that

that was when they were filed.

A Okay.

Q And I believe they were dismissed in November of 2004?

A Again --

Q I'm sorry, May 2004.

A Okay.

Q And did you also at one time file a civil lawsuit against several vaccine manufacturers, a power company and the American Dental Association, alleging that they caused your child's developmental issues?

A I believe that was part of the whole process of the attorneys, yes.

Q And you do not disclose any of those lawsuits in either your 2003 or 2004 article. Is that right?

A No. And those have all been withdrawn, too.

Q I'm sorry?

A And all those have been withdrawn too.

Q The lawsuits is what you're referring to?

A Yes.

Q But you've not gone back to correct the conflict of interest statement, or make a correction on that, have you?

A No.

Q Doctor, you are not board certified. Is that right?

A Correct.

Q And you are not an immunologist?

A No.

Q And you are not a gastroenterologist?

A No.

Q You provided a slide and gave some testimony about some gastrointestinal findings by Dr. Thek and by Dr. Andrew Anthony. Is that right?

A Correct.

Q And I believe that you testified that their findings was that Colten has ileitis. Is that right?

A Their findings speak for themselves.

Q I believe if you look at Dr. Thek's conclusions, the conclusion is possible ileitis. Is that right?

A On her report?

Q Yes.

A It says possible ileitis, yes.

Q And --

A She actually says ileonodular hyperplasia with possible ileitis.

Q And Dr. Andrew Anthony, his report, which we have not yet seen until today, he is a colleague of

Andrew Wakefield. Is that right?

A At this time? I'm not sure they were still affiliated. I think Andrew was gone at that point. He's a previous colleague of Andrew Wakefield.

Q Okay. But they've written three papers together. Is that right?

A They have -- at least several.

Q Doctor, you're not a neurologist, are you?

A No.

Q And you're not a virologist?

A No.

Q I believe you testified that you don't currently have any hospital privileges. Is that right?

A I don't think I testified that but it's in my CV.

Q I apologize. That's correct. That's where I saw it.

On the ICDRC website you indicate that you have affiliations for research with a variety of institutions. And they include McGill University, Tulane, Washington University, Utah State, Arizona University or University of Arizona, I apologize, University of Cambridge, Boston University and the University of Copenhagen.

Have you ever held a formal position --

A Just give me kind of a time because some of those are old and some of those are ongoing.

Q Okay. And this may be have been from an older version of your website. I was really just wondering if you'd ever held a formal position at any of those institutions?

A No. If you would like to describe -- each one is a little bit different. But in terms of the affiliation -- they were various research projects where they would come to us and want access to our patient list.

Q Okay. So when you say research affiliation, you were providing patients for research that was being done at these institutions.

A Correct.

Q Have you ever personally conducted research at any of those institutions?

A I don't remember the full list but the collaborations, several of them are ongoing. I'm not at the faculty of those universities doing them, no.

Q Doctor, in your state of Florida Practitioner profile, and I believe on your CV as well, on Page 10, you indicate that you are a fellow of the American Academy of Pain Medicine and of the

American Back Society.

We contacted both of those organizations and neither can find any record of your affiliation with them. Does that surprise you?

A Yeah, because actually I was back in, those are previous. I don't think those are current. And I'm not sure that those would be on the current practitioner profile.

Q They're on the most recent one that we --

A It needs to be updated but --

Q Because you're aware that those are supposed to be maintained as current. Is that right?

A Those are not current affiliations. I was a member and a fellow of both of those situations. And I have the documentation to substantiate that.

Q How long ago was that?

A Up until about '94.

Q So about 13 years ago.

A Yes.

Q You also indicate on your CV on Page 8.

A Which CV are we on, by the way?

Q This is the one that was just provided to us today.

THE COURT: So Petitioners' Trial Exhibit 1.

THE WITNESS: Because the CV that was just

provided to you today doesn't state that I'm a fellow of the Back Society or the Pain Society.

BY MR. JOHNSON:

Q It does say Past.

A Past -- on the Back Society, yes.

Q And on Page 8 it indicates that you are a reviewer for the International Journal of Toxicology?

A Correct.

Q We contacted the International Journal of Toxicology and they told us that you are not currently a member of their editorial board nor were you since at least 1996. Do you dispute that?

A Well, the editorial board is different than a reviewer. I have reviewed articles for them. And that's --

Q And how are you using the term review, reviewer? How many articles have you reviewed for this journal?

A For this journal? At least one and maybe two.

Q The one or two articles that you reviewed for that journal, do you remember when that was?

A Two years ago.

Q Doctor, you testified in a case involving a child named Jordan Easter. Is that correct?

A Yes.

Q And is it your understanding that your opinions were excluded from that case?

A That would be a legal conclusion. I don't know what the actual legal context was.

Q Okay. Is it your understanding that the judge in that case ultimately found your opinion not sufficient to keep the case going forward?

A Again, I'm not going to give you a legal interpretation of what happened. I know the case didn't go forward. The exact circumstances for why I'm not sure.

MR. JOHNSON: Thank you. That's all I have.

THE COURT: Dr. Bradstreet, I have a few questions for you.

THE WITNESS: Yes, ma'am.

CROSS-EXAMINATION

BY THE COURT:

Q And I may jump around a little bit. Bear with me. As I was going through your medical records, I noticed that the diagnosis code you used for Colten varies from day to day. Can you explain to me how your office uses diagnostic codes?

A Can you give me a specific of the variability of the diagnosis code?

Q Yes. For example, do you have your medical records with you on computer? I can give you page numbers.

A I do.

Q For example, if you look at Pages 63 to 66, and I'm not sure which one of those it'll be on, but it is the computer generated printed record Colten's diagnosis there is encephalopathy, not elsewhere classified, and autoimmune disorder, not elsewhere classified.

A Those would probably represent his most frequently used diagnostic codes.

Q Okay. Well, let's then go up to Page 74 where you have a diagnosis of autoimmune disease, not elsewhere classified but you're not using the encephalopathy diagnosis. Can you explain to me how your office generates these codes and why you generate them?

A The codes are generated just in the routine course of what it is that we're evaluating on that particular day or what we're treating on that particular day, what the course of intervention is.

Q So the fact that a code dropped off doesn't mean anything.

A They don't actually drop off. They're

actually maintained in the computer record in the active problem list. So that's just a code that was selected that day by the nurse. If you look at the entry, that's a nurse, and counted up by me but I believe -- the other one was by Charlotte, excuse me.

Q Yes, most of them I'm referring to are by you.

A Most of them would be, yes. But his active problem list is maintained on the computer. So the medical record system maintains those. We just select what is the most important reason for that visit on that day.

Q So it relates specifically to that visit but you have a master code list that's somewhere else.

A Yes. We do.

Q Okay, that helps explain that for me.

A Okay.

Q Several places in your record you have a diagnosis of gastroenteritis and colitis. Did you make that diagnosis or did someone else make that diagnosis?

A Again, there's probably four providers that have been taking care of Colten during the last several years. And part of it is related presumably to Dr. Thek's diagnosis as well.

Q Okay. So Dr. Thek is the gastroenterologist who made a diagnosis at some point of either colitis or gastroenteritis or both.

A Yes. Well, and we might have as well based on symptoms of how he's presenting that day too.

Q What is your criteria, Doctor Bradstreet, for chronic diarrhea?

A Diarrhea that lasts, well, first of all, the nature of the stool; so loose, watery, inconsistent, non-formed stool that is more frequent than once a day, typically, that lasts in duration for usually more than two weeks but oftentimes Colten's lasted for a long period of time.

Q So a loose stool in and of itself would constitute or loose stools for a period of time will constitute chronic diarrhea?

A Yes.

Q Under your criteria, okay.

You talked a little bit about with Mr. Johnson the first -- the urine mercury levels. The first mercury level I found in the records was on 4/29/2000. And let me see if I can get that.

A I believe that's correct.

Q Excuse me? Is that correct?

A I believe that's correct, yes.

Q Okay. And that one was within the reference range, 0.1 with a reference range of --

A Oh, is that the hair sample you're referring to?

Q This is a urine sample, I think. Perhaps, let me look at it and see if I've written it down wrong. I think we're talking about a urine sample. Page 575 to 576 of your records, in that range.

A And what was the date on your sample?

Q The sample would be 4/29/00.

A Do you have any reference number on that?

Q I'm looking at this now and I may have written these down wrong.

A The first one --

Q Yes, it's on Page 575, mercury at Great Plains Laboratory, in the middle of the page.

A Five seventy-five.

Q Is this hair? This is the hair sample?

A I think it's hair, yeah.

Q Okay, this is the hair sample. Thank you. Okay.

And so that hair sample, you say, it's within a reference range but you're calling it low.

A Well, no, I want to be clear on that. Given his exposure I certainly might have anticipated it

being higher. But it's very low. And that is consistent with other published reports that would indicate that there's an inverse relationship in autism that is concerning. And I believe Dr. Aposhian testified previously about the poor excretion concept where hair is not showing mercury when it should be. That was his testimony at the Institute of Medicine as well.

Q But this is within the reference range.

A It's very low actually. It's at the low end of the reference range.

Q Okay.

A And given his exposure you would anticipate potentially more.

Q Okay.

A And I don't want to make a big deal --

Q And by his exposure you mean his exposure to the Thimerosal containing vaccines.

A Yes, it's enough that we would have anticipated potentially more.

Q Okay.

A But again, I don't really rely on hair particularly.

Q Okay.

A It's not something that I think is a particularly reliable indicator and I don't want to make a big deal out of it.

Q All right. Then let's move to the urine sample from Doctor's Data. This was a urine sample collected on 7/21/2000 and would be somewhere between Pages 544 and 55 of your records.

A It's 0544?

Q Yes.

A I have it.

Q Okay. This, and it's also on your slide, Doctor Petitioners' Trial Exhibit 2. It's slide, the top slide on Page 27.

A Yes.

Q This seems to be an unusual measurement system you used. Can you or did you convert this to the parts per billion or micrograms that were being used elsewhere?

A You mean in the medical literature?

Q Yes.

A Their system of using -- this is micrograms per gram of creatinine as a ratio.

Q Right.

A I don't think it's particularly unusual. You do have to, if you want to compare it to different

literature reports, different amounts within the medical literature, you would have to convert that over.

Q So you don't know what the conversion is.

A Well, again, but it's a ratio.

Q Okay.

A We're not measuring total quantity because this is essentially a short time collection.

Q I understand that, Doctor, but on Page 54, see if I can find it here. I tried to work out the math based on a formula they gave and was not having much luck so I was hoping you could help me. There's a formula provided in that report for conversion. But you have no idea what it is.

A I haven't done the math to convert it over.

Q Okay, you haven't done the math and I am apparently incapable of doing the math.

A Well, I wouldn't, yeah.

Q I couldn't make it come out to make sense.

A I would probably call Dr. Aposhian, if you want me to do that, and ask him to help you with that process.

Q Okay. Now, I note that this is listed as a post provocation challenge. So was he actually chelated before this urine sample?

A He would have been given a dose of DMSA orally.

Q Okay. And when would he have been given that dose of DMSA?

A Our strategy would have been to give him ten milligrams per kilogram of body weight and then collect the next six hours worth of urine.

Q And that would have been there in your office on the 21st.

A Well, we would have potentially sent them home with a collection, we wouldn't necessarily have held him in the office for six hours.

Q Okay.

A WE probably didn't.

Q So that would have been the first time he was chelated.

A To my knowledge, yes.

Q And so there were no urine, there were no mercury urine levels drawn prior to that.

A No.

Q All right. And then after that he is put on, you write a prescription for Chemet on Page --

A Just for the record, just to be clear.

Q That would have been at Page 543 of your records.

A I just want to make sure that that wasn't the actual prescription for the challenge.

Q Well, it's dated several days after this sample was taken. So, I would hope not.

A Okay. I would presume, correct, 8/3 of 2000. And then 8/4.

Q But your records don't reflect, or do they and I'm just missing it, the actual administration of Chemet or any other chelator prior to this urine sample being taken?

A We would have typically just given mom a capsule and said administer this to your kid and then collect the samples. So it's kind of part of the testing.

Q Okay. But it wouldn't, it's not documented in the medical records anywhere.

A I would have to go back and look.

Q But he was seen in your office on 7/19/00 and then this lab report reflects that the sample was taken on 7/21/00. But I didn't see --

A Where it was actually written down that we ordered it?

Q Right. And I didn't see it, an entry for Colten making a visit on that day. I'm just trying to see if I'm missing something or the record is missing

it.

A Again, well, again it would be fairly common for us to give mom the kit, give her the medication. And then when it was appropriate for her to do it to go ahead and collect the specimen at some point in time.

Q Okay. Does Colten have any allergies to antibiotics that you're aware of?

A He has an adverse reaction to amoxicillin. But no allergies to antibiotics I'm aware of.

Q And when did that adverse reaction to amoxicillin begin? Do you recall?

A It was noted on our first visit, when he first came to see me. So it was sometime prior to that.

Q And that's not documented anywhere in Dr. Sahai's records, is it, that you noted?

A I didn't see any note, behavioral change to Amoxicillin or Augmentin.

Q You never saw any behavioral, you never saw a notation regarding --

A In Dr. Sahai's records, no.

Q Okay. And he had taken Amoxicillin a number of times.

A Or Augmentin. I think this was Augmentin,

not Amoxicillin. Augmentin is a combination of Amoxicillin and potassium clavulanate so I believe it's referring to Augmentin but I'd like to just go look at that real quick.

Q There is a note in your screening evaluation form on 5/11/99 talking about a severe adverse response to Augmentin after an inspect bite.

A Yeah, I believe that was a behavioral reaction, not an allergy reaction.

Q Okay. Did you find any documentation of that behavioral reaction in the records?

A I haven't seen any of that in Dr. Sahai's records.

Q Okay. So as far as you know he is not actually allergic to any antibiotics. He simply has a behavioral reaction to them.

A Correct.

Q And he has a behavioral reaction to a number of things you prescribed. You're nodding positively.

A Yes, yes, I am, yes. I didn't know if there was, I was waiting for the whole question of it. Yes, he hasn't, he's done well on many things but not on everything, yes.

Q And he seems to have trouble tolerating new things.

A Well, I mean, we've done some new things that have been very good for him. He needs to have like, as an example, if we wanted to give him a medication we would almost always have to compound it so that he doesn't have the incipients, the binders, the lactose, things like that.

Q Dyes.

A Coloring dyes, et cetera. So we have to be careful about those sorts of things.

Q And I noted some indications in the medical records about hyperbaric oxygen treatments for Colten.

A Yes.

Q Do you know who is administering those or where they're administered?

A Well, we actually have a hyperbaric oxygen center. Our Center has conducted or collaborated in three of the significant trials with hyperbarics. And Dr. Rossignol, who's my partner, has published those findings. And we just had our most recent paper -- we've done a lot of work in hyperbarics and it would have been administered with us.

Q So the fact that we don't have any records pertaining to that.

A Actually you should have a separate hyperbaric therapy list or record that you may not

have been provided. You may have noticed I was out of the office when they provided the records.

Q In your records on Page 454, this would be on December 4th of '01. This is a report to the Florida Department of Health on Colten. You indicate --

A 450 what?

Q 454, I believe.

A 454 on my record is --

Q Okay, that would be there. Okay. This is now, and you probably don't have Exhibits 15, Page 14.

A I don't think so.

Q Okay. Do you recall making a report to the Florida Department of Health on Colten that would refer to motor planning and impulse issues? I'm trying to figure out what you mean by motor planning and impulse issues.

A I don't, impulsivity and motor planning would be his ability to orchestrate complex motor tasks, handwriting, those sorts of things. And impulsivity is impulse control problems. But I don't have the report, so.

Q Okay.

A Is it my report or is it --

Q It does appear to be. Let me see if I can

find a copy of it and we'll provide it to you.

A And what was the date again, on that?

Q It would have been December of '01, December 4th, '01.

THE COURT: Do you have that other exhibit? Did you give it back?

MR. WICKERSHAM: The exhibit from?

THE COURT: I'm looking for Exhibit 15. It's in a binder that we took the binder from me.

BY THE COURT:

Q Well, we'll move on from that, Doctor.

A Okay.

Q Let's see. We're trying to find it in electronics just to confirm that.

MR. WICKERSHAM: Special Master, it's on our screen, if you don't mind --

THE COURT: Do you have --

MR. WICKERSHAM: -- if I approach the witness.

THE COURT: No, that's fine.

THE WITNESS: Or I can just go over there and look at it.

MR. WICKERSHAM: Or the witness can step down and we can show it to him.

THE COURT: No, that's fine.

BY THE COURT:

Q This looks like, it looks like your signature, Dr. Bradstreet. I'm going to go ahead and hand it to you, Exhibit 15, Page 15. Just so I'm, we're both on the same sheet of music I'm just trying to figure out what you mean by that, so.

A Oh, okay. This is a school physical form.

Q Okay.

A That's what that is.

Q It's just listed in my records as a --

A Yeah, no, it's just a school physical form.

Q Okay. And so the school physical form you're indicating at that point as --

A Those are things that it would be important for the school to recognize and to observe in terms of his potential limitations and abilities. So, yes, that's for the school.

Q And so by motor planning you mean his ability to write, fine motor skills?

A Well, as an example, when we try to test him for his handwriting it was, you know, he had no ability to do pen and paper sort of work. So, it's just, yeah, it's noting that he may have some motor planning problems.

Q Okay. And impulse issues are that he might

act out or do something without thinking.

A Yes, tantrum or impulse control problems, yes.

Q Okay. All right. One more place to check for notes and I think I'm done, Dr. Bradstreet.

There is a reference in one of Dr. Sahai's reports, one of his evaluations. And it was during the initial, just before he began IVIG that indicates -- there was a handwritten note in Dr. Sahai's records that refers to a phone conversation with you.

A Would you be able to give me a reference number and I'll be there in just a second.

Q It is not going to, maybe in your records but I think, I know it's in, on Exhibit 7, Page 54.

A Okay. 8 is what I recall Sahai. 7 is Halifax Health Center.

Q Yes, and it's Page 54.

A Which one is this? Is it 7?

Q 7, Page 54.

A Five four?

Q Five four.

A Okay. So this is the hospital?

Q Excuse me, Doctor. I'm sorry, it's Dr. Van Alton, not Dr. Sahai. That's why I have it.

A Christopher Van Alton, okay.

Q Mr. Von Elton? He's not a doctor?

A No, I said Christopher Van Alton.

Q Okay, Christopher Van Alton. It indicates that there was a phone conversation with you and he's written down on 2/11/00 and zero with a slash through it, which I interpreted as no. Is that correct?

A Typically I would assume the same.

Q Typically. Immune deficiency, a mild IgA subtype deficiency not clinically significant. Is that something you told Dr. Van Alton?

A No, I don't think I would have. It may have been his conclusion. I'm not sure.

Q Okay. But you don't recall the conversation.

A Not really, no. I have no recollection of that conversation.

Q Okay. And this is when you offered to fax the protocol over to him and offered him an externship to learn and visit the Autism Research Center. Does that help?

A Where did we offer him an internship?

Q No, a half day externship.

A Oh, yes. We have lots of doctors from all over the world actually come and work at our Center,

so.

Q But that doesn't help refresh your recollection about the conversation.

A No.

Q So you did not conclude that Colten did not have an immune deficiency.

A No, actually he has IgA deficiency on two separate tests. But it doesn't really, I'm not sure that I would, given his history, ever conclude that with him.

Q Okay. And you wouldn't, is that IgA sufficiency clinically significant?

A It would appear to be based on the frequency of his upper respiratory tract infections, yes.

THE COURT: All right, questions, Mr. Wickersham, based on mine?

MR. WICKERSHAM: May we have just a moment?

THE COURT: You may.

MR. WICKERSHAM: If it pleases the Court, we just one very brief.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. WICKERSHAM:

Q I heard you ask the question that some un-named source from un-named place at an un-named time,

maybe it was Joe McCarthy, asked whether or not you would engage in an exorcism. Do you remember that question?

A Yeah.

Q I remember our opening about arguments ad hominem and trying to discredit people. Doctor, do you engage in exorcism in the care and treatment of your patients?

A No, I don't engage in it in any capacity whatsoever.

MR. WICKERSHAM: Thank you.

THE COURT: Go ahead, Mr. Johnson.

RECROSS-EXAMINATION

BY MR. JOHNSON:

Q Doctor, the Special Master was asking you a little bit more about the hair test for mercury. And you had indicated it was kind of on the low end of the range from what you would have expected to see based on Colten's exposure. And I was wondering if you could tell me what exposure you're referring to.

A His hundred plus micrograms of mercury in the form of Thimerosal.

Q Okay. And so just the exposure to the Thimerosal in the vaccines that you're referring to in terms of the mercury?

A There is -- everyone in the planet has background mercury exposure. So we all have some, you know, persistent level that we are exposed to for which the Thimerosal would be an additional burden. But given the background burden plus the Thimerosal I might have expected a larger amount.

Q You might have expected what? I'm sorry.

A A higher level in his hair than what we saw.

Q Around what range would you have expected?

A Might have seen, it really depends on the timing of the hair sample and the exposure. So it could have been as high as one to ten parts per million.

Q You also mentioned an article I believe on hyperbaric treatment that's just been accepted for publication. Did I hear that correctly?

A Yes, Dr. Rossignol just had it accepted a couple of days ago.

Q Okay. Is that an article that you are also an author on?

A No, it's Dr. Rossignol.

Q And what journal is that accepted in?

A It's actually Biomed Central. And I don't think they've allocated the journal yet. So the process goes through their central clearinghouse and

they find a journal for it. So.

Q Okay, so Biomed Central is not actually a journal. It's just --

A No, they have, Biomed Central has numerous journals that the publish. They just haven't notified him yet of the journal that it's going to be placed in.

Q Okay.

A They've notified him it's accepted. Which journal, I don't think he knows yet.

Q Okay.

MR. JOHNSON: That's all I have.

THE COURT: Anything further?

MR. WICKERSHAM: Nothing further. May the witness be excused?

THE COURT: Okay, thank you, Dr. Bradstreet. You are excused.

THE WITNESS: Thank you.

THE COURT: All right. Given where we stand, it looks like it would be -- we probably won't try to proceed with anyone else today. We'll go over a couple of things here.

I just remind the parties if you're going to hand out exhibits make sure, or hand out documents make sure you have nine copies. Okay? The pretrial

order does indicate who they are to be distributed to. And I know that some of the ones you used have been previously filed as exhibits. But the idea is that we're going to refer to something.

MR. JOHNSON: Sure. And I actually believe I have extra copies of some of the ones that --

THE COURT: Okay, we would like to make sure we get a clean copy because I use the one you give me to take notes on.

MR. JOHNSON: I apologize.

THE COURT: Just so we have that. If they're previously filed as exhibits, it's not necessary. It's things like your Trial Exhibit 1 that was not previously filed as an exhibit.

And I note, Mr. Wickersham, you're going to file that second opinion letter dealing with Professor Anthony's biopsy reading as Petitioners' Trial Exhibit 3 tomorrow morning and nine copies.

MR. WICKERSHAM: Yes.

THE COURT: Okay. Are there any other matters we need to take up on the record before we recess?

MR. WICKERSHAM: Maybe a housekeeping matter.

THE COURT: Certainly.

MR. WICKERSHAM: The rules, since I know we're in a new courtroom and they're being very nice in loaning to us -- are we at liberty to leave the large volume of paperwork?

THE COURT: I'm not going to guarantee that nothing will disappear. But I do know that they're very security conscience in this building and the courtroom will be locked. So we can take it up with Court Security Officers if we have a problem. But I intend to leave my materials here. Let me say it that way.

Does that guide you without advising you?

All right. And what is your lineup for tomorrow? How do you expect to proceed? Mr. Powers?

MR. POWERS: We expect, Special Master, to call Dr. Kennedy first and then call Dr. Kinsbourne.

THE COURT: And then at that point that's your last witness?

MR. POWERS: Dr. Kinsbourne we anticipate will be the last witness. Obviously, then Friday we reserve to work on our case in chief. That's it for tomorrow.

THE COURT: Exactly. Okay. And how long do you anticipate direct examination will take?

MR. POWERS: Dr. Kennedy likely will take

the morning.

THE COURT: Okay.

MR. POWERS: It's hard to say how late Dr. Kinsbourne will go. I would say, well, on direct at least, I should back up, it won't take the whole morning on direct. But given how long I expect direct to take I would anticipate that with a reasonable cross, that would take the morning.

THE COURT: Okay.

MR. POWERS: With Dr. Kennedy, after the lunch break, direct Dr. Kinsbourne I think would be somewhat shorter. But, again, I would anticipate overall it would take the bulk of the afternoon.

THE COURT: Okay. Then for your planning purposes, government, we'll probably not make you proceed immediately with your next witness given the time constraints.

And you're confident you can get all four of your witnesses in in the two days I've allotted you?

MR. MATANOSKI: Yes, ma'am. We'll --

THE COURT: Five witnesses? All right. Okay? We'll recess then until 9:00 o'clock tomorrow morning.

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(Whereupon, at 4:45 p.m., the hearing in the above-entitled matter was adjourned, to reconvene at 9:00 a.m., Tuesday, November 6, 2007.)

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REPORTER'S CERTIFICATE

DOCKET NO.: 01-162V

CASE TITLE: Colten Snyder by and through Katherine Snyder and Joseph Snyder, his natural guardians vs. Secretary of Health and Human Services

HEARING DATE: November 5, 2007

LOCATION: Orlando, Florida

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Department of Health and Human Services.

Date: November 5, 2007

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