AUSTIN KNUDSEN
Montana Attorney General
DAVID M.S. DEWHIRST
Solicitor General
CHRISTIAN B. CORRIGAN
Deputy Solicitor General
BRENT MEAD
Assistant Solicitor General
P.O. Box 201401
Helena, MT 59620-1401
Phone: (406) 444-2026
Fax: (406) 444-3549
david.dewhirst@mt.gov
christian.corrigan@mt.gov
brent.mead2@mt.gov

Attorneys for Defendants

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA, MISSOULA DIVISION

MONTANA MEDICAL ASSOCIATION, ET. AL.,

Plaintiffs,

and

MONTANA NURSES ASSOCIATION,

Plaintiff-Intervenors,

v.

AUSTIN KNUDSEN, ET AL.,

Defendants.

No. CV-21-108-M-DWM

DECLARATION OF BRENT MEAD

I, Brent Mead, make the following Declaration under penalty of perjury:

1. I am counsel for Defendants in the above action, am competent to testify as to the matters set forth herein, and make this Declaration based on my own personal knowledge and/or belief. I am generally familiar with the claims, materials, documents, and pleadings regarding this matter.

2. Attached as Exhibit 1 is a true and correct copy of Plaintiffs' First Supplemental Responses to Defendants' First Combined Discovery Requests dated August 5, 2022.

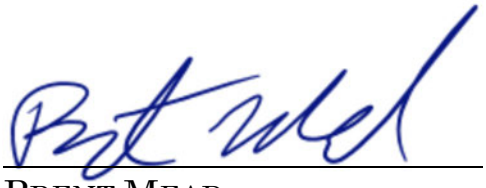
3. Attached as Exhibit 2 is a true and correct copy of Plaintiffs' Second Supplemental Responses to Defendants' First Combined Discovery Requests dated August 8, 2022.

4. Attached as Exhibit 3 is a true and correct copy of Plaintiffs' Fifth Supplemental Responses to Defendants' First Combined Discovery Requests dated September 9, 2022.

5. Attached as Exhibit 4 is a true and correct copy of Plaintiffs' Rebuttal Expert Disclosure—and the attached Rebuttal Expert reports of Dr. David Taylor and Dr. David King—dated August 15, 2022.

6. Attached as Exhibit 5 is a true and correct copy of excerpts of the deposition of Dr. Ram Duriseti taken on August 17, 2022.

DATED this 14th day of September, 2022.



BRENT MEAD

CERTIFICATE OF SERVICE

I certify that on this date, an accurate copy of the foregoing document was served electronically through the Court's CM/ECF system on registered counsel.

Dated: September 14, 2022

/s/ *Brent Mead*
BRENT MEAD

Justin K. Cole
Kathryn S. Mahe
GARLINGTON, LOHN & ROBINSON, PLLP
350 Ryman Street • P. O. Box 7909
Missoula, MT 59807-7909
Phone (406) 523-2500
Fax (406) 523-2595
jkcole@garlington.com
ksmahe@garlington.com

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

MONTANA MEDICAL ASSOCIATION, et al., Plaintiffs, and MONTANA NURSES ASSOCIATION, Plaintiff-Intervenors, v. AUSTIN KNUDSEN, et al., Defendants.	Case No. CV 21-00108-DWM PLAINTIFFS' FIRST SUPPLEMENTAL RESPONSES TO DEFENDANTS' FIRST COMBINED DISCOVERY REQUESTS

Plaintiffs submit the following supplemental answers/responses to Defendants' First Combined Discovery Requests dated June 29, 2022.

Exhibit 1

These answers/responses are prepared and submitted in accordance with Federal Rules of Civil Procedure 26, 33, 34, and 36. Plaintiffs do not recognize or accept any obligation to supplement answers/responses to discovery requests except as required by Federal Rule of Civil Procedure 26(e). The preface included in these discovery requests is not within the express or implied provisions of the Federal Rules of Civil Procedure and, as such, has been disregarded in preparing these answers/responses.

In the event Plaintiffs inadvertently or otherwise produce copies of documents that are subject to protection from discovery under the doctrines of attorney-client privilege, work-product, trade secrets, confidentiality, proprietary or confidential business or commercial information, or are not relevant and not reasonably calculated to lead to the discovery of the admissible evidence, any production herewith shall not be deemed a waiver of such protection or any subsequent obligation to use for admissibility in any proceedings herein.

REQUEST FOR PRODUCTION NO. 15: Please produce any and all documents in your possession, custody, or control related to how you comply with 29 U.S.C. § 654(a)(1), including but not limited to relevant facility plans, operational plans, employment requirements, and employee assignments.

Exhibit 1

RESPONSE: Plaintiffs objects that this request is overly broad, not limited in time or scope, unduly burdensome, and not proportionate to the needs of the case. Plaintiffs further object to the extent this request seeks information from the individual Plaintiffs or the MMA. Plaintiffs object to the extent this request calls for a legal conclusion, and to the extent it seeks documents protected by the attorney-client privilege and/or work product doctrine. As to the non-objectionable portion of the request, and limiting the request as seeking OSHA policies pertaining to infectious disease prevention from January 1, 2020 to present, please see the documents produced herewith.

FIRST SUPPLEMENTAL RESPONSE: In addition to the foregoing response and documents produced therewith, please see PL 1544-1598.

REQUEST FOR PRODUCTION NO. 16: Please produce any and all documents in your possession, custody, or control related to how you comply with 29 C.F.R. § 1910.502, including but not limited to relevant facility plans, operational plans, employment requirements, and employment assignments.

RESPONSE: Plaintiffs objects that this request is overly broad, unduly burdensome, and not proportionate to the needs of the case. Plaintiffs further object to the extent this request seeks information from the individual Plaintiffs or the MMA. Plaintiffs object to the extent this request calls for a legal conclusion,

and to the extent it seeks documents protected by the attorney-client privilege and/or work product doctrine. As to the non-objectionable portion of the request, and limiting the request as seeking policies pertaining to 29 C.F.R. § 1910.502 from January 1, 2020 to present, please see the policy documents of the Clinic, Five Valleys and Providence produced herewith.

FIRST SUPPLEMENTAL RESPONSE: In addition to the foregoing response and documents produced therewith, please see PL 1448-1461; 1514-1524.

REQUEST FOR PRODUCTION NO. 18: Please produce any and all documents in your possession, custody, or control related to how you comply with 42 C.F.R. § 482.42, including but not limited to facility plans, operational plans, employment requirements, and employee assignments.

RESPONSE: Plaintiffs objects that this request is overly broad, not limited in time or scope, unduly burdensome, and not proportionate to the needs of the case. Plaintiffs further object to the extent this request seeks information from the individual Plaintiffs, MMA, Clinic, and Five Valleys. Plaintiffs object to the extent this request calls for a legal conclusion, and to the extent it seeks documents protected by the attorney-client privilege and/or work product doctrine. As to the non-objectionable portion of the request, and limiting the request as seeking policies only from Providence pertaining to infectious disease prevention from

January 1, 2020 to present, please see the Providence policy documents produced herewith.

FIRST SUPPLEMENTAL RESPONSE: In addition to the foregoing response and documents produced therewith, please see PL 1493-1507.

REQUEST FOR PRODUCTION NO. 21: Please produce any and all documents in your possession, custody, or control related to employment policies at Providence, Five Valleys, and Clinic from January 1, 2018, to the present, including any amendments, recissions, or additions to hiring and employment policies.

RESPONSE: Plaintiffs object that this request is overly broad, unduly burdensome, seeks information beyond the scope of allowable discovery and is not proportionate to the needs of the case. The request is overly broad in that "all policies" "related to" employment policies or practices implicates an innumerable number of different documents pertaining to things such as clocking in and clocking out, breaks, dress codes, paid time off policies, and other employment-related issues that have nothing to do with the claims at issue in this case. As to the non-objectionable portion of the request, and limiting the request as seeking general employee handbooks and policies specifically pertaining to infectious

disease control and disability discrimination, please see documents produced herewith.

FIRST SUPPLEMENTAL RESPONSE: In addition to the foregoing response and documents produced therewith, please see PL 1462-1475.

INTERROGATORY NO. 7: Please provide data explaining the relative health status of patients at PH&S, FVU, and WMC, respectively. Relative health status means the number of patients who are immunocompromised or otherwise disabled (as that term is used in Paragraph 64 of the Second Amended Complaint) compared to the number of patients who are not immunocompromised or otherwise disabled (as that term is used in Paragraph 64 of the Second Amended Complaint), both in terms of number of patients and number of patient visits. Production must be done for each facility separately. This response asks for monthly data totals from January 2020 through June 2022. Defendants provide the following template to the extent Plaintiffs find it helpful in answering this Interrogatory:

ANSWER: Plaintiffs object that this interrogatory is three separate interrogatories and will be counted as such against Defendants' total number of allowable interrogatories. Plaintiffs object to and are ignoring the suggested template provided in the request as not permitted under the Rules.

Plaintiffs further object that this request is overly broad, unduly burdensome, seeks information beyond the scope of allowable discovery, and is not proportional to the needs of the case. Plaintiffs object that "relative health status" is vague and ambiguous. Plaintiffs further object to the extent it seeks protected health information of individual patients.

Providence sees approximately 138 inpatients patients per day at the St. Patrick Hospital location alone, and has had 149,207 outpatient visits and 164,795 physician office and ER visits from January 1, 2022 through June 30, 2022. St. Joseph Medical Center sees an average of 6 inpatients per day, and has had 28,214 outpatient visits and 20,881 physician office and ER visits from January 1, 2022 through June 30, 2022. Patient totals for 2021 and 2020 are approximately double these figures. Five Valleys sees approximately 1,400 patients on average per month. The Clinic sees approximately 110 patients on average per day, including additional patients of the lab and infusion center, which constitute an additional 40-80 patients per day.

These entities do not maintain a data set that would permit a response to this request as drafted, and moreover a given patient's medical status changes over time and can change over a given course of treatment.

Accordingly, to respond to this request would require Providence, Five Valleys, and the Clinic to review every patient record for the past two and a half years, and attempt to interpret each patient's chart under a vague and ambiguous standard.

FIRST SUPPLEMENTAL ANSWER: The prior response is amended to clarify that the Clinic sees, on average, 385 patients per day throughout its various departments. Including the additional patients seen in the lab and infusion departments, the Clinic sees over 400 patients on average per day.

INTERROGATORY NO. 9: Please explain in detail the current infectious disease prevention protocols (as that term is used in Paragraph 18 of the Second Amended Complaint) in operation by PH&S, FVU, and WMC.

ANSWER: Plaintiffs object that this request is overly broad, unduly burdensome, as infectious disease prevention protocols are numerous and can take numerous forms. As to the non-objectionable portion of the request, please see the infection control policies of the institutional Plaintiffs produced herewith.

FIRST SUPPLEMENTAL ANSWER: Plaintiffs restate the prior response and objections to this request. In addition, and not by way of limitation, infectious disease prevention protocols include immunizations, following CDC guidance and recommendations pertaining to infectious disease prevention, providers consulting

Exhibit 1

and following applicable guidance from professional societies related to individual physician specialties, handwashing, sanitization of rooms and equipment, sanitization and cleaning of instruments, cleaning protocols, use of personal protective equipment including but not limited to gowns, shields, gloves, and masks, health screenings, and keeping individuals who are sick or who have symptoms out of the care environment.

INTERROGATORY NO. 11: Please explain in detail every instance, from January 1, 2018, though the date these discovery requests are served, in which any Plaintiff declined to refer a patient to another provider or facility due to that other provider's or facility's staff vaccination status.

ANSWER: Plaintiffs object that this request is overly broad and unduly burdensome, and not proportional to the needs of the case. Providence has approximately 178 physician providers and 107 midlevel providers in the Montana service area, Five Valleys has 5 physician providers and 2 midlevel providers, and the Clinic has 31 physicians and numerous midlevel providers. This request implicates individual medical decisions by individual medical providers. Moreover, Providence sees approximately 138 inpatients patients per day at the St. Patrick Hospital location alone, and has had 149,207 outpatient visits and 164,795 physician office and ER visits from January 1, 2022 through June 30, 2022. St.

Exhibit 1

Joseph Medical Center sees an average of 6 inpatients per day, and has had 28,214 outpatient visits and 20,881 physician office and ER visits from January 1, 2022 through June 30, 2022. Patient totals for 2021 and 2020 are approximately double these figures. Five Valleys sees approximately 1,400 patients on average per month. The Clinic sees approximately 110 patients on average per day, including additional patients of the lab and infusion center, which constitute an additional 40-80 patients per day.

Plaintiffs further object to the extent this request seeks protected health information of patients.

FIRST SUPPLEMENTAL ANSWER: The prior response is amended to clarify that the Clinic sees, on average, 385 patients per day throughout its various departments. Including the additional patients seen in the lab and infusion departments, the Clinic sees over 400 patients on average per day.

REQUEST FOR PRODUCTION NO. 27: Please produce any and all documents in your possession, custody, or control related to complaints filed under MCA § 49-2-312.

RESPONSE: Plaintiffs object to the extent "related to" implicates documents protected by the attorney-client privilege and work product doctrine. As to the non-objectionable portion of the request, please see the documents

Exhibit 1

produced herewith related to complaints filed against Providence pursuant to MCA § 49-2-312.

FIRST SUPPLEMENTAL RESPONSE: In addition to the foregoing response and documents produced therewith, please see PL 1525-1527.

REQUEST FOR PRODUCTION NO. 33: Please produce any and all documents in your possession, custody, or control, including communications to or from employees or members, plans, or policies related to vaccination requirements or recommendations for any disease since January 1, 2018.

RESPONSE: Plaintiffs object to the extent this request seeks information from the individual Plaintiffs or the MMA. Plaintiffs object that this request is overly broad and unduly burdensome as to every communication made to any employee, and further object that the request is vague as to what is meant by "members" and "plans." Providence currently has 2,838 employee positions in the Montana service area, Five Valleys has 40 employees, and the Clinic has 190 employees. Plaintiffs cannot possibly know or locate every communication with every person on this topic. To the extent this topic is limited to the last three years and relates to official statements and bulletins made on behalf of Providence, Five Valleys, and the Clinic to employees and policies related to vaccination requirements and recommendation, please see the documents produced herewith.

Exhibit 1

FIRST SUPPLEMENTAL RESPONSE: In addition to the foregoing response and documents produced therewith, please see PL 1508-1513; 1540-1543; 1599.

REQUEST FOR PRODUCTION NO. 34: Please produce any and all documents in your possession, custody, or control, including communications to or from employees or members, plans, or policies related to minimizing the spread (as that term is used in Paragraph 25 of the Second Amended Complaint) of pathogens since January 1, 2018.

RESPONSE: Plaintiffs object to the extent this request seeks information from the individual Plaintiffs or the MMA. Plaintiffs object that this request is overly broad and unduly burdensome as to every communication made to any employee, and further object that the request is vague as to what is meant by "members" and "plans." Providence currently has 2,838 employee positions in the Montana service area, Five Valleys has 40 employees, and the Clinic has 190 employees. Plaintiffs cannot possibly know or locate every communication with every person on this topic. To the extent this topic is limited to the last three years and relates to official statements and bulletins made on behalf of Providence, Five Valleys, and the Clinic to employees and policies related to vaccination

requirements and recommendation, please see the email communications and policies pertaining to Providence, Five Valleys and the Clinic produced herewith.

FIRST SUPPLEMENTAL RESPONSE: In addition to the foregoing response and documents produced therewith, please see PL 1448-1461; 1526-1539.

DATED this 5th day of August, 2022.

Attorneys for Plaintiffs:

GARLINGTON, LOHN & ROBINSON, PLLP

By _____
Justin K. Cole

Exhibit 1

CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2022, a copy of the foregoing document was served on the following persons by the following means:

_____	Hand Delivery
1-3	Mail
_____	Overnight Delivery Service
_____	Fax (include fax number in address)
1-3	E-Mail (include email in address)

1. Austin Knudsen
David M.S. Dewhirst
Christian Corrigan
Brent Mead
Office of the Attorney General
P.O. Box 201401
Helena, MT 59620
David.dewhirst@mt.gov
Christian.corrigan@mt.gov
Brent.mead2@mt.gov
Attorneys for Defendants

2. Emily Jones
Jones Law Firm, PLLC
115 N Broadway, Suite 410
Billings, MT 59101
emily@joneslawmt.com
Attorneys for Defendants

3. Raph Graybill
Graybill Law Firm, PC
300 4th Street North
Great Falls, MT 59403
rgraybill@silverstatelaw.net
Attorneys for Plaintiff-Intervenor

Exhibit 1

Justin K. Cole
Kathryn S. Mahe
GARLINGTON, LOHN & ROBINSON, PLLP
350 Ryman Street • P. O. Box 7909
Missoula, MT 59807-7909
Phone (406) 523-2500
Fax (406) 523-2595
jkcole@garlington.com
ksmahe@garlington.com

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

MONTANA MEDICAL ASSOCIATION, et al., Plaintiffs, and MONTANA NURSES ASSOCIATION, Plaintiff-Intervenors, v. AUSTIN KNUDSEN, et al., Defendants.	Case No. CV 21-00108-DWM PLAINTIFFS' SECOND SUPPLEMENTAL RESPONSES TO DEFENDANTS' FIRST COMBINED DISCOVERY REQUESTS

Plaintiffs submit the following supplemental answers/responses to Defendants' First Combined Discovery Requests dated June 29, 2022.

Exhibit 2

These answers/responses are prepared and submitted in accordance with Federal Rules of Civil Procedure 26 and 34. Plaintiffs do not recognize or accept any obligation to supplement answers/responses to discovery requests except as required by Federal Rule of Civil Procedure 26(e). The preface included in these discovery requests is not within the express or implied provisions of the Federal Rules of Civil Procedure and, as such, has been disregarded in preparing these answers/responses.

In the event Plaintiffs inadvertently or otherwise produce copies of documents that are subject to protection from discovery under the doctrines of attorney-client privilege, work-product, trade secrets, confidentiality, proprietary or confidential business or commercial information, or are not relevant and not reasonably calculated to lead to the discovery of the admissible evidence, any production herewith shall not be deemed a waiver of such protection or any subsequent obligation to use for admissibility in any proceedings herein.

REQUEST FOR PRODUCTION NO. 15: Please produce any and all documents in your possession, custody, or control related to how you comply with 29 U.S.C. § 654(a)(1), including but not limited to relevant facility plans, operational plans, employment requirements, and employee assignments.

Exhibit 2

RESPONSE: Plaintiffs objects that this request is overly broad, not limited in time or scope, unduly burdensome, and not proportionate to the needs of the case. Plaintiffs further object to the extent this request seeks information from the individual Plaintiffs or the MMA. Plaintiffs object to the extent this request calls for a legal conclusion, and to the extent it seeks documents protected by the attorney-client privilege and/or work product doctrine. As to the non-objectionable portion of the request, and limiting the request as seeking OSHA policies pertaining to infectious disease prevention from January 1, 2020 to present, please see the documents produced herewith.

FIRST SUPPLEMENTAL RESPONSE: In addition to the foregoing response and documents produced therewith, please see PL 1544-1598.

SECOND SUPPLEMENTAL RESPONSE: In addition to the foregoing response and documents herewith, please see PL 1600-1799.

REQUEST FOR PRODUCTION NO. 21: Please produce any and all documents in your possession, custody, or control related to employment policies at Providence, Five Valleys, and Clinic from January 1, 2018, to the present, including any amendments, recissions, or additions to hiring and employment policies.

RESPONSE: Plaintiffs object that this request is overly broad, unduly burdensome, seeks information beyond the scope of allowable discovery and is not proportionate to the needs of the case. The request is overly broad in that "all policies" "related to" employment policies or practices implicates an innumerable number of different documents pertaining to things such as clocking in and clocking out, breaks, dress codes, paid time off policies, and other employment-related issues that have nothing to do with the claims at issue in this case. As to the non-objectionable portion of the request, and limiting the request as seeking general employee handbooks and policies specifically pertaining to infectious disease control and disability discrimination, please see documents produced herewith.

FIRST SUPPLEMENTAL RESPONSE: In addition to the foregoing response and documents produced herewith, please see PL 1462-1475.

SECOND SUPPLEMENTAL RESPONSE: In addition to the foregoing response and documents produced herewith, please see PL 1801-1832.

REQUEST FOR PRODUCTION NO. 33: Please produce any and all documents in your possession, custody, or control, including communications to or from employees or members, plans, or policies related to vaccination requirements or recommendations for any disease since January 1, 2018.

RESPONSE: Plaintiffs object to the extent this request seeks information from the individual Plaintiffs or the MMA. Plaintiffs object that this request is overly broad and unduly burdensome as to every communication made to any employee, and further object that the request is vague as to what is meant by "members" and "plans." Providence currently has 2,838 employee positions in the Montana service area, Five Valleys has 40 employees, and the Clinic has 190 employees. Plaintiffs cannot possibly know or locate every communication with every person on this topic. To the extent this topic is limited to the last three years and relates to official statements and bulletins made on behalf of Providence, Five Valleys, and the Clinic to employees and policies related to vaccination requirements and recommendation, please see the documents produced herewith.

FIRST SUPPLEMENTAL RESPONSE: In addition to the foregoing response and documents produced therewith, please see PL 1508-1513; 1540-1543; 1599.

SECOND SUPPLEMENTAL RESPONSE: In addition to the foregoing response and documents produced herewith, please see PL 1600-1868.

REQUEST FOR PRODUCTION NO. 34: Please produce any and all documents in your possession, custody, or control, including communications to or from employees or members, plans, or policies related to minimizing the spread (as

that term is used in Paragraph 25 of the Second Amended Complaint) of pathogens since January 1, 2018.

RESPONSE: Plaintiffs object to the extent this request seeks information from the individual Plaintiffs or the MMA. Plaintiffs object that this request is overly broad and unduly burdensome as to every communication made to any employee, and further object that the request is vague as to what is meant by "members" and "plans." Providence currently has 2,838 employee positions in the Montana service area, Five Valleys has 40 employees, and the Clinic has 190 employees. Plaintiffs cannot possibly know or locate every communication with every person on this topic. To the extent this topic is limited to the last three years and relates to official statements and bulletins made on behalf of Providence, Five Valleys, and the Clinic to employees and policies related to vaccination requirements and recommendation, please see the email communications and policies pertaining to Providence, Five Valleys and the Clinic produced herewith.

FIRST SUPPLEMENTAL RESPONSE: In addition to the foregoing response and documents produced therewith, please see PL 1448-1461; 1526-1539.

SECOND SUPPLEMENTAL RESPONSE: In addition to the foregoing response and documents produced herewith, please see PL 1600-1868.

DATED this 8th day of August, 2022.

Attorneys for Plaintiffs:

GARLINGTON, LOHN & ROBINSON, PLLP

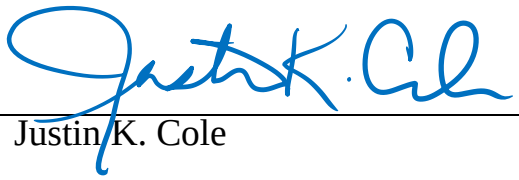
By 
Justin K. Cole

Exhibit 2

CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2022, a copy of the foregoing document was served on the following persons by the following means:

_____	Hand Delivery
1-3	Mail
_____	Overnight Delivery Service
_____	Fax (include fax number in address)
1-3	E-Mail (include email in address)

1. Austin Knudsen
David M.S. Dewhirst
Christian Corrigan
Brent Mead
Office of the Attorney General
P.O. Box 201401
Helena, MT 59620
David.dewhirst@mt.gov
Christian.corrigan@mt.gov
Brent.mead2@mt.gov
Attorneys for Defendants

2. Emily Jones
Jones Law Firm, PLLC
115 N Broadway, Suite 410
Billings, MT 59101
emily@joneslawmt.com
Attorneys for Defendants

3. Raph Graybill
Graybill Law Firm, PC
300 4th Street North
Great Falls, MT 59403
rgraybill@silverstatelaw.net
Attorneys for Plaintiff-Intervenor

Exhibit 2

Justin K. Cole
Kathryn S. Mahe
GARLINGTON, LOHN & ROBINSON, PLLP
350 Ryman Street • P. O. Box 7909
Missoula, MT 59807-7909
Phone (406) 523-2500
Fax (406) 523-2595
jkcole@garlington.com
ksmahe@garlington.com

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

MONTANA MEDICAL ASSOCIATION, et al., Plaintiffs, and MONTANA NURSES ASSOCIATION, Plaintiff-Intervenors, v. AUSTIN KNUDSEN, et al., Defendants.	Case No. CV 21-00108-DWM PLAINTIFFS' FIFTH SUPPLEMENTAL RESPONSES TO DEFENDANTS' FIRST COMBINED DISCOVERY REQUESTS

Plaintiffs submit the following supplemental answers/responses to Defendants' First Combined Discovery Requests dated June 29, 2022.

Exhibit 3

These answers/responses are prepared and submitted in accordance with Federal Rules of Civil Procedure 26 and 34. Plaintiffs do not recognize or accept any obligation to supplement answers/responses to discovery requests except as required by Federal Rule of Civil Procedure 26(e). The preface included in these discovery requests is not within the express or implied provisions of the Federal Rules of Civil Procedure and, as such, has been disregarded in preparing these answers/responses.

In the event Plaintiffs inadvertently or otherwise produce copies of documents that are subject to protection from discovery under the doctrines of attorney-client privilege, work-product, trade secrets, confidentiality, proprietary or confidential business or commercial information, or are not relevant and not reasonably calculated to lead to the discovery of the admissible evidence, any production herewith shall not be deemed a waiver of such protection or any subsequent obligation to use for admissibility in any proceedings herein.

REQUEST FOR PRODUCTION NO. 21: Please produce any and all documents in your possession, custody, or control related to employment policies at Providence, Five Valleys, and Clinic from January 1, 2018, to the present, including any amendments, recissions, or additions to hiring and employment policies.

RESPONSE: Plaintiffs object that this request is overly broad, unduly burdensome, seeks information beyond the scope of allowable discovery and is not proportionate to the needs of the case. The request is overly broad in that "all policies" "related to" employment policies or practices implicates an innumerable number of different documents pertaining to things such as clocking in and clocking out, breaks, dress codes, paid time off policies, and other employment-related issues that have nothing to do with the claims at issue in this case. As to the non-objectionable portion of the request, and limiting the request as seeking general employee handbooks and policies specifically pertaining to infectious disease control and disability discrimination, please see documents produced herewith.

FIRST SUPPLEMENTAL RESPONSE: In addition to the foregoing response and documents produced herewith, please see PL 1462-1475.

SECOND SUPPLEMENTAL RESPONSE: In addition to the foregoing response and documents produced herewith, please see PL 1801-1832.

THIRD SUPPLEMENTAL RESPONSE: In addition to the foregoing response, please see PL 2038-2077, which were recently located.

DATED this 9th day of September, 2022.

Attorneys for Plaintiffs:

GARLINGTON, LOHN & ROBINSON, PLLP

By _____
Justin K. Cole

Exhibit 3

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2022, a copy of the foregoing document was served on the following persons by the following means:

_____	Hand Delivery
1-3	Mail
_____	Overnight Delivery Service
_____	Fax (include fax number in address)
1-3	E-Mail (include email in address)

1. Austin Knudsen
David M.S. Dewhirst
Christian Corrigan
Brent Mead
Office of the Attorney General
P.O. Box 201401
Helena, MT 59620
David.dewhirst@mt.gov
Christian.corrigan@mt.gov
Brent.mead2@mt.gov
Attorneys for Defendants

2. Emily Jones
Jones Law Firm, PLLC
115 N Broadway, Suite 410
Billings, MT 59101
emily@joneslawmt.com
Attorneys for Defendants

3. Raph Graybill
Graybill Law Firm, PC
300 4th Street North
Great Falls, MT 59403
rgraybill@silverstatelaw.net
Attorneys for Plaintiff-Intervenor

Exhibit 3

Justin K. Cole
Kathryn S. Mahe
GARLINGTON, LOHN & ROBINSON, PLLP
350 Ryman Street • P. O. Box 7909
Missoula, MT 59807-7909
Phone (406) 523-2500
Fax (406) 523-2595
jkcole@garlington.com
ksmahe@garlington.com

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

MONTANA MEDICAL ASSOCIATION, et al., Plaintiffs, and MONTANA NURSES ASSOCIATION, Plaintiff-Intervenors, v. AUSTIN KNUDSEN, et al., Defendants.	Case No. CV 21-00108-DWM PLAINTIFFS' REBUTTAL EXPERT DISCLOSURE

Plaintiffs, Montana Medical Association ("Association"), Five Valleys Urology, PLLC ("Five Valleys"), Providence Health & Services – MT ("Providence"), Western Montana Clinic, PC (the "Clinic"), Pat Appleby, Mark

Carpenter, Diana Jo Page, Wallace L. Page, and Cheyenne Smith, pursuant to the Court's May 20, 2022 Order (Doc. 77), and Federal Rule of Civil Procedure 26(a)(2)(D)(ii), hereby provide their Rebuttal Expert Disclosures. Plaintiffs may call one or more of the following witnesses to rebut the testimony of Defendants' expert witnesses:

1. **David Taylor, M.D., MSc**., 915 Highland Boulevard, Bozeman, MT 59715. Dr. Taylor's rebuttal expert report is attached to this disclosure as Exhibit 1.

   a. Dr. Taylor's rebuttal report, initial expert report, and deposition contain a complete statement of the opinions Dr. Taylor will express and the basis and reasons for them;

   b. Dr. Taylor's rebuttal report, initial expert report, and deposition contain the facts and data considered by Dr. Taylor in forming his opinions;

   c. Dr. Taylor's rebuttal report, initial expert report, and deposition contain and/or reference the exhibits that will be used to summarize and/or support his opinions;

   d. Dr. Taylor's CV, which was previously produced, as well as his original expert report, outline his qualifications and all publications he has authored in the previous ten years;

e. Dr. Taylor has not, during the previous 4 years, testified as an expert at trial or by deposition (with the exception of his deposition in this matter);

f. Dr. Taylor is being compensated $400/hour for his testimony in this matter, though initial work on his written disclosure was deeply discounted; and

g. Dr. Taylor reserves the right to supplement his opinions. He also reserves the right to offer rebuttal opinions.

2. **David King, M.D**., 931 Highland Boulevard, Bozeman, MT, 59715.

Dr. King's rebuttal expert report is attached to this disclosure as Exhibit 2.

a. Dr. King's rebuttal report, initial expert report, and deposition contain a complete statement of the opinions Dr. King will express and the basis and reasons for them;

b. Dr. King's rebuttal report, initial expert report, and deposition contain the facts and data considered by Dr. King in forming his opinions;

c. Dr. King's rebuttal report, initial expert report, and deposition contain and/or references the exhibits that will be used to summarize and/or support his opinions;

d. Dr. King's CV, which was previously provided, outlines his qualifications; he has not authored any publications in the previous ten years;

e. Dr. King has not, during the previous 4 years, testified as an expert at trial or by deposition (with the exception of his deposition in this matter);

f. Dr. King is being compensated $400/hour for his testimony in this matter, though initial work on his written disclosure was deeply discounted; and,

g. Dr. King reserves the right to supplement his opinions. He also reserves the right to offer rebuttal opinions.

Cross-Designation of Plaintiff Montana Nurses Association Experts

3. Plaintiffs cross-designate all retained and non-retained rebuttal experts disclosed by Plaintiff-Intervenor Montana Nurses Association ("MNA"), and incorporate MNA's Rebuttal Expert Disclosure by this reference.

Other Experts

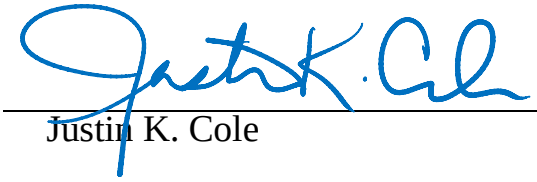
4. Any expert witness identified by any party, whether called or not.

5. Expert witnesses for appropriate impeachment or rebuttal.

DATED this 15th day of August, 2022.

Attorneys for Plaintiffs:

GARLINGTON, LOHN & ROBINSON, PLLP

By 
Justin K. Cole

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2022, a copy of the foregoing document was served on the following persons by the following means:

_____	Hand Delivery
1-3	Mail
_____	Overnight Delivery Service
_____	Fax (include fax number in address)
1-3	E-Mail (include email in address)

1. Austin Knudsen
Kristin Hansen
David M.S. Dewhirst
Christian Corrigan
Brent Mead
Office of the Attorney General
P.O. Box 201401
Helena, MT 59620
David.dewhirst@mt.gov
Christian.corrigan@mt.gov
Brent.mead2@mt.gov
Attorneys for Defendants

2. Emily Jones
Jones Law Firm, PLLC
115 N Broadway, Suite 410
Billings, MT 59101
emily@joneslawmt.com
Attorneys for Defendants

3. Raph Graybill
Graybill Law Firm, PC
300 4th Street North
Great Falls, MT 59403
rgraybill@silverstatelaw.net
Attorneys for Plaintiff-Intervenor

Justin K. Cole
Kathryn S. Mahe
GARLINGTON, LOHN & ROBINSON, PLLP
350 Ryman Street • P. O. Box 7909
Missoula, MT 59807-7909
Phone (406) 523-2500
Fax (406) 523-2595
jkcole@garlington.com
ksmahe@garlington.com

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

MONTANA MEDICAL ASSOCIATION, et al., Plaintiffs, and MONTANA NURSES ASSOCIATION, Plaintiff-Intervenors, v. AUSTIN KNUDSEN, et al., Defendants.	Case No. CV 21-00108-DWM DECLARATION OF DAVID TAYLOR M.D.

I, David Taylor, M.D., declare, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, that the foregoing is true and correct:

1. In his expert testimony, Dr. Duriseti goes to great lengths to explain that the Covid vaccines are not very good because they do not reduce viral transmission. He does, however, acknowledge that Covid vaccines protect some non-immunes from severe illness (page 4). This is a profound understatement. It has been estimated that Covid vaccines have averted 2.2 million deaths, 17 million hospitalizations and 66 million infections in the US from December 2020 to March 31, 2022 (Schneider). Besides averting an enormous amount of morbidity and mortality, vaccines saved $900 billion in health care costs. These vaccines have been monumentally successful. It should be noted that viral transmission is only possible during infection. Averting 66 million Covid infections means that there are 66 million less people transmitting the virus thanks to these vaccines.

> Eric C. Schneider et al., "Impact of U.S. COVID-19 Vaccination Efforts: An Update on Averted Deaths, Hospitalizations, and Health Care Costs Through March 2022," To the Point (blog), Commonwealth Fund, Apr. 8, 2022. https://doi.org/10.26099/d3dm-fa91

2. On page 6 of his testimony, Dr. Duriseti incorporates a table that purports to show that "there was no association between staff vaccination rates and transmission to residents regardless of vaccination status." This table is found in the supplemental material from a 2-page letter to the editor by Elizabeth White and colleagues from Brown University. They reviewed the electronic records from

Genesis HealthCare which manages long-term care facilities in 21 states in the US. The purpose of the study was to determine the protection afforded by the mRNA Covid vaccines. In these nursing homes, 82% of 22,232 residents were vaccinated and 18% were not vaccinated. The study showed that Covid infection and disease rates dropped from 4.5% to less than 1% in both the vaccinated and unvaccinated groups. This is an example of herd immunity where vaccination in 82% of residents protected the 18% who were unvaccinated. The investigators could not show a difference in rates according to nursing staff vaccination status because infection rates dropped in all groups. The authors conclude, "Our observation of reduced incidence of infection in unvaccinated residents suggests that robust vaccine coverage among residents and staff, together with the continued use of face masks and other infection-control measures, is likely to afford protection for small numbers of unvaccinated residents in congregate settings" (White et al.).

> White EM, Yang X, Blackman C, Feifer RA, Gravenstein S, Mor V. Incident SARS-CoV-2 Infection among mRNA-Vaccinated and Unvaccinated Nursing Home Residents. N Engl J Med. 2021 Jul 29;385(5):474-476. doi: 10.1056/NEJMc2104849. Epub 2021 May 19. PMID: 34010526; PMCID: PMC8174028.

3. Six months later in January 2022, McGarry et al. reported on the results among 12,364 nursing homes. The investigators divided the nursing homes into 4 groups according to the staff vaccination rates which ranged from 31% in

the lowest to 83% in the highest. Similar to the White study, 80% of the residents had received at least one of the mRNA Covid vaccines. In areas of high community Covid prevalence, they found that nursing homes with low staff vaccination rates had significantly greater number of Covid cases among the residents and staff as well as a higher number of resident deaths than the nursing homes with high staff vaccination rates. They concluded that, "these findings show the extent to which staff vaccination protects nursing home residents, particularly in communities with high Covid-19 transmission."

> McGarry BE, Barnett ML, Grabowski DC, Gandhi AD. Nursing Home Staff Vaccination and Covid-19 Outcomes. N Engl J Med. 2022 Jan 27;386(4):397-398. doi: 10.1056/NEJMc2115674. Epub 2021 Dec 8. PMID: 34879189; PMCID: PMC8693685.

4. On pages 9-12 of his expert testimony Dr. Bhattacharya cites sero-prevalence studies to suggest that the Covid case-fatality rate is low. In other words, using detection of Covid antibodies as the method to determine the number of exposed individuals results in much lower disease rates than obtained by illness reporting. That has been shown to be true for almost all communicable diseases. There are nearly always more infections than illness reports. So how does that change our perception of Covid? Below is a table of deaths due to Covid reported from the beginning of the outbreak in 2020 until August 2022. To date there have

been over 1 million deaths due to Covid. Most deaths are concentrated in the older age groups. However, as a percent of all cause mortality, deaths due to Covid are in the 12 to 13% range for every age group over 40 years of age. Even in the 18-40 year age group over 5% of excess mortality is due to Covid. This means that adults over 40 can reduce their chances of dying by 12% by avoiding Covid and vaccination is the single best way to avoid Covid mortality.

Age group	Covid deaths	Deaths all causes	Percent of all cause mortality
0-17	1,201	87,979	1.4
18-29	6,480	163,269	4.0
30-39	18,648	243,710	7.7
40-49	43,877	363,462	12.1
50-64	191,282	1,470,697	13.0
65-74	235,649	1,787,254	13.2
75-84	266,395	2,128,084	12.5
85+	267,612	2,493,022	10.7
Total	1,031,144	8,737,477	11.8

COVID-19 Provisional Counts - Weekly Updates by Select Demographic and Geographic Characteristics (cdc.gov).

5. One of the more recent sero-prevalence studies has shown that children have been more affected in the Omicron outbreak. The study by Clarke et al. was performed from September 2021 to February 2022 during the time of the delta and Omicron outbreaks and after vaccination efforts had begun. They detected Covid antibody to a viral component (nucleocapsid) not included in the vaccine so that they could study antibody conferred only by natural infection and not by vaccination. They found that the sero-prevalence in children (0-11 year olds) had the greatest increase of any age group. In all age groups the seroconversion rate increase from 34 to 58% and in children the rate increased from 44 to 75% in children. The authors suggest that the high sero-conversion rate in children is due to the low vaccination rates in this age group. Children were the last highly susceptible group. This demonstrates the need to broadly immunize the entire population, even those who can tolerate the infection better such as children.

> Clarke KEN, Jones JM, Deng Y, Nycz E, Lee A, Iachan R, Gundlapalli AV, Hall AJ, MacNeil A. Seroprevalence of Infection-Induced SARS-CoV-2 Antibodies - United States, September 2021-February 2022. MMWR Morb Mortal Wkly Rep. 2022 Apr 29;71(17):606-608. doi: 10.15585/mmwr.mm7117e3. PMID: 35482574; PMCID: PMC9098232.

6. Data from a CDC network called COVID-NET also demonstrated increased hospitalization rates of children (0-4 years old) during the Omicron outbreak. Rates of weekly COVID-19–associated hospitalizations was 7.1 per 100,000 children during the Omicron variant peak which was four times higher than the Delta variant peak (1.8) (Marks).

> Marks KJ, Whitaker M, Agathis NT, et al. Hospitalization of Infants and Children Aged 0–4 Years with Laboratory-Confirmed COVID-19 — COVID-NET, 14 States, March 2020–February 2022. MMWR Morb Mortal Wkly Rep 2022;71:429–436. DOI: http://dx.doi.org/10.15585/mmwr.mm7111e2.

7. A study compared excess mortality in the state of Massachusetts during the Delta and Omicron waves (Faust et al). This study found a higher excess mortality during the first 8 weeks of the Omicron outbreak than in the entire 23-week Delta period. They concluded that although on a case-by-case basis Omicron causes a milder illness than Delta, the higher excess mortality is due to a moderately lower infection fatality rate multiplied by a far higher infection rate (Faust).

> Faust JS, Du C, Liang C, et al. Excess Mortality in Massachusetts During the Delta and Omicron Waves of COVID-19. JAMA. 2022;328(1):74–76. doi:10.1001/jama.2022.8045.

8. The Omicron outbreak has demonstrated a different Covid epidemiology than observed earlier in the epidemic. What Omicron lost in severity,

it more than made up in transmissibility, and children who were seldom affected the early waves were much more affected during the Omicron wave. Early on in the outbreak, some thought that Covid would run its course and once the entire population was naturally infected that the outbreak would be over, but that did not happen. The virus continued to mutate and evade immunity induced by previous variants. Natural infection will not stop this outbreak, but vaccines and public health measures can (Aschwanden). Laws that prevent the best use of our public health tools are detrimental to society.

Aschwanden C. The false promise of herd immunity for COVID-19. Nature. 2020 Nov;587(7832):26-28. doi: 10.1038/d41586-020-02948-4. PMID: 33087872.

DATED this 15th day of August, 2022.

David Taylor, M.D.

Justin K. Cole
Kathryn S. Mahe
GARLINGTON, LOHN & ROBINSON, PLLP
350 Ryman Street • P. O. Box 7909
Missoula, MT 59807-7909
Phone (406) 523-2500
Fax (406) 523-2595
jkcole@garlington.com
ksmahe@garlington.com

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

MONTANA MEDICAL ASSOCIATION, et al., Plaintiffs, and MONTANA NURSES ASSOCIATION, Plaintiff-Intervenors, v. AUSTIN KNUDSEN, et al., Defendants.	Case No. CV 21-00108-DWM DECLARATION OF DAVID KING

I, David King, M.D., declare, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, that the foregoing is true and correct:

1. I was interested to review Dr. Ram Duriseti's studies, as his

conclusions derived from them are so divergent from what I have learned in studying COVID-19.

2. I began by reviewing the "Danish Household study" he cites. This involved measurement of ***transmission*** [emphasis mine] of Omicron subvariants BA.1 and BA.2 in unvaccinated, "fully vaccinated" [the equivalent of two mRNA doses], and "booster-vaccinated" [two doses of vaccine followed by condition-appropriate booster doses] individuals in Denmark, a country with a comprehensive health care system which tracks illness and vaccination status. Expert Report Ram Duriseti, MD, PHD, 6-7 (July 15, 2022) ("Rep. Duriseti").

3. Dr. Duriseti's confusing conclusion upon citing this study is "Most importantly, there was no such reduction in susceptibility when comparing vaccinated alone compared to the vaccinated." Rep. Duriseti, 7.

4. The authors of the study, however, came to very different conclusions. For example, in their discussion, they "found that booster-vaccinated individuals had a reduced susceptibility and transmissibility for both BA.1 and BA.2 compared to fully vaccinated individuals." "SARS-CoV-2 Omicron VOC Transmission in Danish Households", Lyngse, Mortensen, Denwood, Christiansen, Møller, Skov, Spiess, Fomsgaard, Lassaunière, Rasmussen, Stegger, Nielsen, Siber, Cohen, Møller, Overvad, Mølbak, Krause, Kirkeby, Dec. 22, 2021, at 15. They did note that "Efficient transmission to vaccinated individuals corroborates previous

findings that the Omicron VOC [Variants Of Concern] possess immune-evasive properties.". However, the study authors, in their next sentence, state that "However, both booster-vaccinated individuals and fully-vaccinated individuals had reduced susceptibility and transmissibility compared to unvaccinated individuals for both subvariants, suggesting that the effectiveness of vaccines remains significant."

5. Further, Dr. Duriseti states that, as opposed to early success of vaccines in preventing COVID-19, including early iterations of Omicron, "the subsequent ecological waves from late December 2022 [sic] forward in heavily boosted countries previously lauded for the "COVID success" demonstrated otherwise." Rep. Duriseti, 7. While he would tell us that the vaccines are a failure and therefore should not be required (or even used?), this breakthrough since December 2021 is not caused by the failure of vaccination, but by the failure to vaccinate enough people soon enough, and by the overwhelming immune-evasive mutation rate of COVID. From my reading, we have had over 130 mutations in the influenza virus in the many scores of years we have been studying it. In only 9 months we have seen, depending on the source, up to 70 Omicron mutations alone.

6. Far from being something that both Dr. Duriseti and Dr. Bhattacharya would have us believe is now just a nuisance, the extraordinary mutability of COVID-19 clearly indicates that it will further plague us. There is absolutely no

way to conclude that the next mutation will not combine the transmissibility of this month's Omicron with the lethality of Delta.

7. Similarly, there are issues with Dr. Duriseti's reliance upon the Walgreen's data (Walgreen's COVID-19 Index) that comprised the bulk of his presentation. He states that "The data show that vaccinated and boosted individuals are testing positive for COVID-19 at a higher rate than unvaccinated individuals." Rep. Duriseti, 8.

8. To be able to support such a stark and counter-intuitive claim, a study would need to be rigorously controlled, with placebo groups, blinding of researchers, and careful mitigation of confounding variables.

9. This Walgreen's data is not even a study. It is just a collection of data without a control arm, and without any effort to screen out confounding or biasing variables. It is a list of compiled vaccination dates and test results. Following are some of the many warnings and disclaimers presented by the data's authors but ignored by Dr. Duriseti. The authors' words will invalidate Dr. Duriseti's contentions better than mine could.

10. They state that "All results, including the positivity rates by vaccination status graph, are unadjusted. The team has observed that the positivity rates among unvaccinated individuals appear to be lower in comparison to vaccinated individuals. Furthermore, repeat testing among those who were

previously positive in the last 90 days appear [sic] to confound the results. The team conducted additional analyses examining characteristics of the patient population by vaccination status and the impact of excluding recent COVID-19 cases (5.0% [of] total tests). Findings show that the unvaccinated group are [sic] typically younger and healthier, less symptomatic and less likely to report direct COVID-19 exposure or recent travel compared to vaccinated groups. **Controlling for recent COVID-19 cases, results show that the unvaccinated group has a 17.1% higher positivity rate compared to the 3-dose group. Controlling for additional factors leads to a larger difference between groups**." (emphasis added)

11. They also state "To reiterate, the nature of the Walgreen's COVID-19 Index, unless explicitly noted, presents unadjusted results with minimal interpretation. Positivity rates are based on specimens collected at Walgreen's Pharmacies… In addition to the changing level of circulating virus in the population, positivity rates are influenced by many factors such as who among the population choose to be tested at Walgreen's. Among these factors are patient composition changes over time as the population has become more vaccinated, tolerance of an ongoing pandemic and lessening of precautionary measures (e.g. masking), availability of home tests, changes in workplace and travel screening requirements, severity of symptoms, and by changes in cost-sharing… These

factors can both increase and decrease the positivity metric…"

12. Walgreen's data could be explained by a myriad of factors, as it was not a controlled study. For example the data could be skewed by the fact that younger and healthier unvaccinated people reported COVID exposure less often, their diminished positivity could be because they were medically less at risk, or less exposed, or simply because they needed testing to meet travel requirements. Further, it could be that the vaccinated cohort was positive more often because their being vaccinated is proof that they accept the realities of COVID, are more worried about their health and survival, and more concerned that they not jeopardize the health of others than those in the unvaccinated group. It could also be that unvaccinated people tend to have more severe disease after testing positive and are, therefore, more likely to test at a hospital or clinic (rather than Walgreens) due to the severity of their symptoms. Dr. Duriseti, rather than attempting to recognize the flaws in using this data from a non-study, instead uses it in a way that the authors warn specifically against.

13. Drs. Bhattacharya and Duriseti both seem to opine that COVID-19, while never as bad as it was made out to be, has permanently changed into a minor annoyance not worth the attention it has been getting.

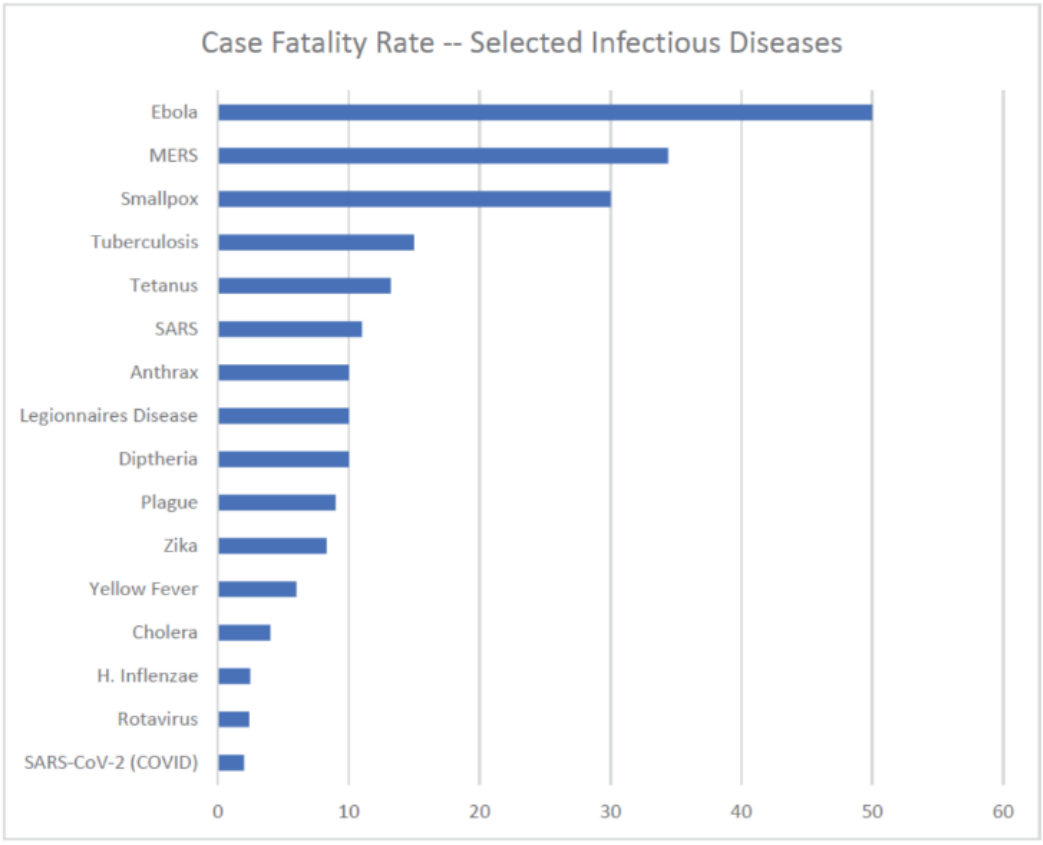
14. As a sort of proof, Dr. Bhattacharya offers a bar graph using the mortality rates of various viruses which displays COVID-19 as being by far the

least dangerous of those listed. While this proves that it is far preferable to contract COVID than to catch Ebola, it does not take into account the negligible risk in the US of catching Ebola, and of most of the other infections he graphs.

15. Below Dr. Bhattacharya's graph, I have taken the same list of diseases, and ranked them instead by number of fatalities per year in the US. I have chosen to limit these results arbitrarily to this century, as going too far back in time will bring us to the pre-vaccine era. As COVID did not exist until two years ago, its denominator is two. Many of the listed diseases, in fact, have had no deaths or even cases in the US for many years.

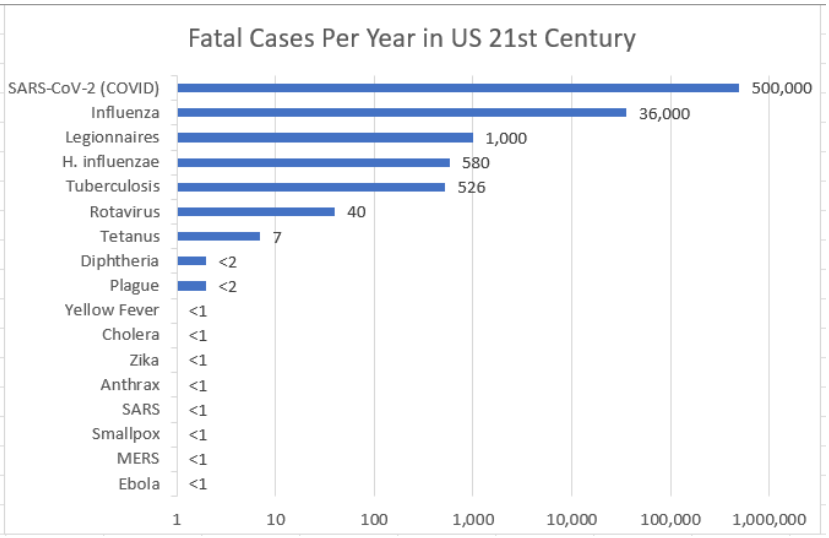
16. This arrangement by numbers of dead from an individual disease tracks better as a surrogate marker for morbidity from these diseases, as well as for societal costs incurred in their course.

17. It is important to note that while Dr. Bhattacharya's graph is linear, mine had to be logarithmic. Otherwise the number of COVID fatalities would so vastly overwhelm the other diseases that all but influenza would be erased from significance, as are many of the diseases he cited even with the logarithmic scale.



(Expert Opinion of Dr. Bhattacharya, 15 July, 2022.)

Disease	Cases
SARS-CoV-2 (COVID)	500,000
Influenza	36,000
Legionnaires	1,000
H. influenzae	580
Tuberculosis	526
Rotavirus	40
Tetanus	7
Diphtheria	<2
Plague	<2
Yellow Fever	<1
Cholera	<1
Zika	<1
Anthrax	<1
SARS	<1
Smallpox	<1
MERS	<1
Ebola	<1



(Data from CDC, MMWR, and various other sources.)

18. As of 10 August, 2022, the US is reporting 471 deaths ***per day*** from COVID-19. Those deaths are accompanied by many more COVID-19-related illnesses, and huge societal costs.

19. While that is only a fifth of the average number of reported COVID-19 deaths per day averaged over the past two years in the US, it is not a reason for celebration or for laxity in our efforts to prevent this disease. Nor can this death rate be guaranteed not to rise steeply with the next Omicron mutation. Or the mutation which earns the designation of Pi or Rho as we go deeper into the Greek alphabet.

20. Vaccination remains our most effective tool in the fight against this and other vaccine-preventable diseases. Lamentably, HB702 deliberately and dangerously gives viruses like COVID and Polio a new advantage in their efforts to harm us.

DATED this 13 day of August, 2022.

David King, M.D.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

MONTANA MEDICAL ASSOCIATION, et al., Plaintiffs, and MONTANA NURSES ASSOCIATION, Plaintiff-Intervenors, v. AUSTIN KNUDSEN, et al. Defendants.	Case No. CV 21-00108-DWM

Witness located at 100 Encina Commons
Stanford, California
Wednesday, August 17, 2022 - 1:00 p.m. MDT

VIDEOTAPED VIDEOCONFERENCE DEPOSITION

OF

DR. RAM DURISETI

Reported by Deborah Meredith, RPR, CRR, Jeffries Court Reporting, Inc., 1015 Mount Avenue, Suite B, Missoula, Montana 59801, (406)721-1143, Freelance Court Reporter and Notary Public for the State of Montana, residing in Hamilton, Montana, jcrcourt@montana.com

APPEARANCES

Justin K. Cole, Esq.
Kathryn S. Mahe, Esq.
Garlington, Lohn & Robinson, PLLP
350 Ryman Street
P.O. Box 7909
Missoula, Montana 59807-7909
jkcole@garlington.com
ksmahe@garlington.com
Associated Staff:
jmdeshner@garlington.com
appearing via Zoom on behalf of the Plaintiffs.

Raph Graybill, Esq.
Graybill Law Firm, P.C.
300 4th Street North
P.o. Box 3586
Great Falls, Montana 59403
rgraybill@silverstatelaw.net
Associated Staff:
eedwards@silverstatelaw.net
appearing via Zoom on behalf of Plaintiff-Intervenor.

David M.S. Dewhirst, Esq.
Christian Corrigan, Esq.
Brent Mead, Esq.
Office of the Attorney General
P.O. Box 201401
Helena, Montana 59620
david.dewhirst@mt.gov
christian.corrigan@mt.gov
brent.mead2@mt.gov
Associated Staff:
dia.lang@mt.gov
appearing via Zoom on behalf of Defendants.

INDEX

STIPULATIONS

It was stipulated by and between counsel for the respective parties that the deposition be taken by Deborah Meredith, RPR, CRR, Freelance Court Reporter and Notary Public for the State of Montana, residing in Hamilton, Montana.

It was further stipulated and agreed by and between counsel for the respective parties that the deposition be taken in accordance with the Federal Rules of Civil Procedure.

It was further stipulated and agreed by and between counsel for the respective parties that all objections except as to form would be reserved until time of trial, and that said objections would have the same force and effect as if interposed at the time of taking the deposition.

It was further stipulated and agreed by and between counsel for the respective parties and the witness that the reading and signing of the deposition would be expressly reserved.

WEDNESDAY, AUGUST 17, 2022

ZOOM VOICE: Recording in progress.

COURT REPORTER: Doctor, I'll have you raise your right hand, please.

Thereupon,

DR. RAM DURISETI,

a witness of lawful age, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified upon his oath as follows:

EXAMINATION

BY MR. COLE:

Q. Dr. Duriseti, my name's Justin Cole, we were introduced just a moment ago over the Zoom. You may call me Justin, you indicated I can call you Ram today, is that --

A. Yes, please do so.

Q. I represent the plaintiffs in this lawsuit which has been filed against the Attorney General of the State of Montana and the Commissioner of the Department of Labor & Industry. With me, appearing on the Zoom, is Katie Mahe, she's a colleague of mine and she's with our office also representing the plaintiffs.

And you've been retained in this matter to provide expert testimony on behalf of the

Page 6

defendants in this case; is that correct?
A. Correct.
Q. And have you worked with these defendants to provide expert testimony in any matter other than this one?
A. No.
Q. Have you been engaged to provide expert testimony on behalf of any other lawyers in the state of Montana before?
A. Not to my knowledge.
Q. Have you been engaged to offer opinions in any of the federal vaccine mandate cases?
A. Not at the federal level, no.
Q. And have you listed on your CV all of your other cases that you've provided expert testimony within the last four years?
MR. DEWHIRST: Objection, foundation.
Q. (BY MR. COLE) You may answer the question if you know the answer to it.
THE WITNESS: May I answer?
MR. COLE: Yes.
MR. DEWHIRST: You may.
A. Oh, can you repeat the question? I'm sorry, I forgot.
Q. (BY MR. COLE) Sure, sure. You indicated

Page 7

that you haven't provided testimony for the federal vaccine mandates, and we'll get into this in a minute, but did you list in your CV all of the other cases that you provided expert testimony within the last four years?
A. Yes, I did, to the best of my knowledge, I did.
Q. Okay. We'll go through that in a minute.
A. Sure.
Q. How did you become engaged in this case with these defendants?
A. I honestly don't recall specifically. The -- I think the Montana Attorney General's Office reached out to me. I certainly didn't reach out to them, that I can tell you.
Q. And did you coordinate with anyone else, say, at Stanford University, or did you engage directly with the defense lawyers in this case?
A. Not that I know of. Directly me. I'm not representing anybody at Stanford, no.
Q. And you're currently in California; correct?
A. That's correct.
Q. And we're appearing by Zoom. Have you had your deposition taken before in any fashion?

Page 8

A. On this case or in general?
Q. In general.
A. Yes, I have.
Q. And have you had a deposition taken where everybody's appearing by Zoom?
A. No, actually.
Q. So we'll take particular caution and effort to have some pauses between my questions and your answers, and that's for the benefit of Deb, our court reporter. Any time we're talking over each other, particularly over the Zoom, our court reporter just can't hear. And so I'll try very hard to not talk over you, and I'd just ask for you to do the same; is that fair?
A. Absolutely.
Q. A couple other ground rules for depositions in general. You understand that you are under oath; correct?
A. Yes.
Q. And that the court reporter is taking down everything we are saying stenographically?
A. (Witness nods head.)
Q. Do you understand that as well?
A. Yes, yes.
Q. And are you under the influence of any

Page 9

medications or alcohol that would affect your ability to answer and understand my questions today?
A. No.
Q. For the record, I'm going to be referring to what's previously been marked as Exhibit 3, and what I'm going to do is share Exhibit 3 on my screen so you can see it, Ram.
A. Okay, thanks.
COURT REPORTER: Hey, Justin, can you hang on one second? Let me -- let me pin the witness, like Raph had asked me to do earlier.
MR. COLE: Absolutely.
COURT REPORTER: There we go. All right, thank you.
Q. (BY MR. COLE) Ram, do you see a document on the screen being shared in front of you?
A. I do, yes.
Q. Okay. And this is marked as Exhibit 3 and was previously introduced as an exhibit in a prior deposition, but does this appear to be the report that you provided in this lawsuit?
A. If you can scroll down, I could verify that.
Q. Absolutely. I'll scroll somewhat slowly

Page 10

through the document.
A. Yeah, that looks -- that looks about right.
Q. I'll go ahead and get to the end of the declaration. Did you sign this document under penalty of perjury under the laws of the state of Montana on July 15th, 2022?
A. Yes, if that's -- if that's dated there, yes.
Q. And is this the only report you have issued in this case that expresses your expert opinions?
A. In terms of a report that's been submitted to a court, yes.
Q. Is it the only report that you have offered expressing your opinions in this case at all?
A. Well, I prepared some notes for the deposition, but in terms of, I think, issued for the court, I guess this is the only one.
Q. And do you have those notes in front of you today?
A. I do.
Q. And I'm going to ask to make those notes an exhibit to this deposition. Following this

Page 11

deposition, could you scan and send us a copy of whatever notes you've prepared for today?
A. Are you asking me?
Q. Yes.
A. Oh, sure, I'll provide it to the Attorney General's Office and they can share it, I suppose.
MR. COLE: Okay. So for the record, we'll mark Dr. Duriseti's notes as Exhibit 29.
MR. DEWHIRST: Exhibit 29, Justin?
MR. COLE: That's what I have. Is that what you have?
MR. DEWHIRST: I think that's right.
EXHIBITS:
(Deposition Exhibit Number 29 marked for identification.)
Q. (BY MR. COLE) Other than your notes, Dr. Duriseti, do you have any other documents in front of you right now?
A. No, I don't -- well, I have -- actually, no, just what you're showing me.
Q. Okay. Did you make notes on your expert report or on a blank piece of paper?
A. I am using paper, yeah, I mean, I created a document that I have in front of me.
Q. Is it in front of you electronically?

Page 12

A. Correct.
Q. On the screen marked as Exhibit A to your declaration is your CV; is that correct?
A. Yes.
Q. On the last page of your CV, under the heading Previous Expert Witness Testimony --
A. Uh-huh.
Q. -- you have five cases listed.
A. Yes.
Q. And were you asked to provide all of the cases in which you have provided expert testimony within the last four years?
A. I don't remember that specific time frame, but as it turns out, that's all I've ever done anyway.
Q. So there are no other cases that you've provided expert testimony, other than what's provided in your CV and this case; is that accurate?
A. Not that I'm aware of, but, again, sometimes I'm a little unclear of the rules. For example, as an emergency physician, if someone gets assaulted and I've cared for the patient, I often get called in to provide testimony for the DA, I've done that at least two or three times, and I don't

Page 13

know if that constitutes expert testimony or just witness -- I don't know what the official declaration of that is. But there's been nothing like that within the last four years that isn't listed there.
Q. Understood. I'd like to go through each of these. Can you tell me, and I can zoom up, this first case, Elijah Brown versus Mills-Peninsula, what was at issue in that case?
A. It was a medical malpractice suit. Do you need me to go into the details or --
Q. Were you providing standard of care opinions in that case?
A. I think I was called as a material witness.
Q. So you were a witness providing perhaps your expert testimony regarding the medicine, but you weren't --
A. Right, yes, it's a little gray, but yes, I think it was as a material witness.
Q. Understood. And it's difficult to keep that question and answer with spaces in between it. Just to be clear, you were retained by either the plaintiff or the defendant in the lawsuit to give expert testimony unrelated to your

Page 14

sort of witness testimony as a physician; is that fair?
A. That's a fair statement, I think.
Q. And these other cases -- did all of these other cases include medical malpractice cases for which you were providing fact witness testimony?
A. No, these were not malpractice cases. These appear to be -- and I apologize, because sometimes I'm not always -- I'll provide an opinion, but I'm not always familiar with the name of the case, so I've copied and pasted sort of the cases that I've had where I've been shown the case numbers or what have you. But these are not medical malpractice cases, if I had to guess, they appear to be mandate-related cases.
Q. Let's just take them one by one. The first case, the Julia Sullivan case, what was the subject matter of that case?
A. I apologize, I think that might be a vaccine mandate case, I'm not a hundred percent certain.
Q. And were you retained to offer opinions in that case regarding a vaccine mandate?
A. Yes.
Q. And who retained you in that case?

Page 15

A. I think that case is an attorney by the name of Scott Street, I don't know his firm's name.
Q. Do these cases involve vaccine mandates that were implemented by the government, the state government?
MR. DEWHIRST: Object to form on that.
Q. (BY MR. COLE) Do you understand my question?
A. Why don't you restate it so I can --
Q. Let's start with just the Julia Sullivan case, did that case involve a vaccine mandate implemented by state government?
A. I don't think so, because it looks like the plaintiff {sic} is Santa Clara, but I'm not a hundred percent positive.
Q. So to your knowledge and recollection --
A. Or the defendant, I'm sorry, is Santa Clara, Santa Clara County.
Q. Right the defendant listed is the Superior Court of Santa Clara. To your knowledge, who implemented the vaccine mandate that was at issue in that case, or what entity?
A. So the reason I'm hesitating in reply is there are federal guidelines, there are state guidelines which may supercede the federal

Page 16

guidelines, and maybe county guidelines that supercede the state guidelines. So I think it was the county, but I don't know for certain.
Q. And were you represented -- or excuse me, were you retained by the lawyer representing Julia Sullivan in that case?
A. I assume so. I've never been retained by a government entity in the Bay Area or California, to my knowledge.
Q. And she was challenging the vaccine mandate?
A. Again, without -- I don't have specific recollection of that case, and it's probably still ongoing, and I just provided -- I was probably asked to provide an expert opinion in a pretty narrow component of the case, which is probably very similar to what I provided here, meaning a narrow component, so I don't actually -- for example, in many of these, I haven't read the actual Complaint, for example, in fact, it's not pertinent to my expert testimony, so I often don't. That's why -- if I sound a little uninformed on specifics, part of it is procedural, and part of it is because I stick to what I'm asked to talk about.

Page 17

Q. Understood. And does that hold true in this case, that you haven't reviewed the Complaint or the claims at issue in this case?
A. Yes.
Q. And the testimony you were asked to give in the Julia Sullivan case, was that testimony -- or expert testimony challenging -- supporting the challenge to the vaccine mandate?
A. Yes. So what I will say is that in all of these cases, so for Sullivan and that very long acronym and Vincent Tsai cases, I provided expert reports in all those three cases for the plaintiff, and the defendant appears to be either a public official or the county. And I have not done anything beyond provide an expert report with no deposition or other testimony at this point. The last case, if I'm not mistaken, I think Austin Beutner is the Attorney General in Missouri, I think, someone can help me with that here, but I provided an expert opinion on a mask mandate case in that state that ultimately never went to trial because the plaintiff, which I think was Columbia Public Schools, withdrew their case. So again, once again, I never provided actual testimony or was involved in a deposition in that

Page 18

case.
I'm sorry, I'm just trying to speed that up for you, that's all.
Q. I appreciate it. So the last case listed, Jennifer Guilfoyle, I'll spell it, G-u-i-l-f-o-y-l-e, that involved a mask mandate, not a vaccine mandate at school?
A. Mask mandate specifically. Again, I'm assuming Austin Beutner was the Attorney General of Missouri, I don't actually remember specifically.
Q. And what did you do to prepare for today's deposition?
A. I was provided with, I think, your -- the plaintiffs' rebuttal and I reviewed that, and I prepared some deposition notes to basically reinforce my original declaration and addressing what appeared to be some data misinterpretations of my original declarations.
Q. And when were you first provided with Plaintiffs' Rebuttal Expert Opinions?
A. I don't know the exact date. I assume it --
THE WITNESS: I mean, David, do you know?
A. I don't remember what date you sent them over. I could check my email if you want.

Page 19

Q. (BY MR. COLE) Did you get it this week?
A. Yes.
Q. You indicated that the notes you created indicate some data misconception --
A. Uh-huh.
Q. -- with your report that you did issue?
A. Correct.
Q. Can I ask you to provide -- just email us those notes now? We'll take a break and I'll look at them, and then we'll reengage and I'll be able to ask you questions about your notes.
THE WITNESS: Oh, can I respond?
MR. DEWHIRST: You can respond.
A. Yeah, absolutely.
MR. COLE: Okay.
MR. DEWHIRST: I'll send those to you once we go off here, Justin.
MR. COLE: Okay. We'll go off the record and we'll get a copy of those note.
MR. DEWHIRST: And I've labeled them -- I've already labeled them Exhibit -- is it 29?
MR. COLE: Correct.
MR. DEWHIRST: Okay.
ZOOM VOICE: Recording stopped.
(Whereupon, the proceedings were in

Page 20

recess at 1:17 p.m. and subsequently reconvened at 1:59 p.m., and the following proceedings were entered of record:)
ZOOM VOICE: Recording in progress.
COURT REPORTER: Go ahead, Justin.
Q. (BY MR. COLE) Ram, before we took that short break, you had indicated you had taken some notes before this deposition and that you had them in front of you, so I asked to see them. They were sent to me directly by Mr. Dewhirst.
You indicated earlier that these notes were made by you off your declaration that you submitted in this case, that's what you testified earlier to; correct?
A. No, I said these notes were made in preparation for the deposition, but they were meant to support, you know, my general position --
Q. Okay.
A. -- so, yeah.
Q. Yeah. The document that you sent me, and it's been marked as Exhibit 29, it's a 47-page document --
A. Uh-huh.
Q. -- is that correct?
A. Let me -- let me scroll through, please.

Page 21

Yes, it is.
Q. You have 78 cited footnotes?
A. That appears to be the case, yes.
Q. And it bears your signature on the signature page, page 47?
A. Yes, it does.
Q. And you signed this document under penalty of perjury?
A. Yes.
Q. Do you typically sign your notes under penalty of perjury?
A. Well, it was suggested that anything -- it's been my practice that whenever I provide anything -- yeah, I want to make sure people understand that it's meant to be something I'm doing in good faith, so yeah, I generally --
Q. So these aren't notes that you took to prepare for the deposition, it's a document that you provided to somebody?
MR. DEWHIRST: Objection, that's not his testimony.
Q. (BY MR. COLE) You can answer the question.
A. Can you repeat the question?
Q. So these aren't notes that you made to

Page 22

prepare for the deposition, but it's a document that you prepared to deliver to somebody, is that what you just testified to?

MR. DEWHIRST: Objection to form, and that's not his testimony.

Q. (BY MR. COLE) You can answer.

A. No, these are notes that I prepared. I understand that any time I'm preparing notes for -- I mean, this is a very complicated topic. I've done primary research on this topic. I'm a physician who cares for COVID patients, I've been doing so for more than two and a half years. I've acted and done research with certain public health departments in our area, so I've done a lot of research.

So for me, it's a matter of collating thoughts over years now and including current data, and it allows me to deliver my best opinion on the topic. So, no, it's not meant for anyone. But I'm also aware of the fact that if I'm using my notes somewhere that someone may want them, and I understand that. They're not meant for anyone, but they're meant for me.

Q. So these notes were meant only for you?

A. Well, they're meant --

Page 23

MR. DEWHIRST: Objection, objection, to the extent that that calls for, you know, communications that Mr. Duriseti had with the defendants in preparation for the deposition. And I'm gonna instruct you not to answer that, as phrased.

Q. (BY MR. COLE) Is it your testimony that these notes were made just for you?

A. My testimony is these notes were made for me to prepare for the deposition.

Q. And it's your custom and practice to sign notes made by you to prepare for a deposition or a meeting under penalty of perjury, that's your custom and practice?

MR. DEWHIRST: Objection, form, asked and answered.

Q. (BY MR. COLE) You can answer.

A. (Witness nods head.)

Q. Do you need to have the question read back?

A. Oh, I'm sorry. I thought I was instructed not to answer. Please repeat that.

MR. COLE: Deb, could you read the question back, please.

(Whereupon, the court reporter read back

Page 24

the following:)

"QUESTION: And it's your custom and practice to sign notes made by you to prepare for a deposition or a meeting under penalty of perjury, that's your custom and practice?"

A. I mean, I've been involved in -- this is my only deposition, and it's my understanding that I take an oath at the deposition under penalty of perjury, so any notes that I have, I know that you could ask for. So, yeah, I put the same thing -- and, honestly, I don't think there's any particular intent here, I basically just use a template that I have for various declarations I write, that's all I can say.

Q. (BY MR. COLE) Is it your testimony that this is a template that you maintain yourself?

A. Well, what my testimony is is that I took the Word document I had, my original declaration, I deleted the content of it and I just added new content with a signature and what have you, as far as I can recall, but, yeah.

Q. And you updated the signature on August 16th, 2022, is that right, on this document?

A. Correct.

MR. DEWHIRST: Justin -- Justin, I'm

Page 25

gonna stop you. If you're gonna continue down this line of questioning, you're gonna have to actually explain why it's relevant to Mr. Duriseti's deposition.

MR. GRAYBILL: It's notes about the deposition, how could that not be relevant? He's claiming these are notes and not a late disclosed report.

MR. DEWHIRST: Yeah, Raph, he answered a question for Justin about the existence of notes, and you all introduced them as an exhibit. He didn't ask to introduce them. We didn't introduce them, you did.

MR. GRAYBILL: I can see the motion you're writing, but let's stop here for a second. I'd like to lodge an objection to the -- this is clearly a report that you neglected to file on time and you're trying to backdoor it in as notes, and you're not gonna be able to say, oh, the plaintiffs introduced it. This is a late-disclosed expert report and, you know, I guess we're gonna have to go through it for two hours at the end of this deposition, if you try and introduce it as direct testimony.

MR. DEWHIRST: Well, your

Page 26

characterization of this can be whatever you'd like it to be, Raph. Dr. Duriseti has already testified these are his notes. He didn't volunteer them, we didn't ask to introduce them. You asked for them and the plaintiffs introduced them into the record, so that's what -- I mean, that's where we are.

MR. COLE: May I continue my examination?

MR. DEWHIRST: As long as it's on relevant grounds, yeah.

MR. GRAYBILL: You can ask him -- Yeah.

MR. COLE: David, you can instruct the witness not to answer, you know, if you believe that's an appropriate course of action, but relevancy is not an objection and not a basis to ask the witness not to answer a question.

Q. (BY MR. COLE) Ram, I have a couple more questions on the notes you provided, which is Exhibit 29. Who drafted this document?

A. Oh, I drafted it.

Q. How long did it take you to draft this document?

A. So, I can check the hours I logged for it, would you like me to do that?

Q. Are you charging for your time spent drafting this document?

Page 27

A. I'm charging for any time that I'm spending preparing for the deposition, this is part of my preparation, so, yes.

Q. And you're charging $300 an hour to the defendants for preparation of your expert opinions in this case?

A. Yeah, that's the rate that they provided for me, that's not the rate I requested.

Q. How many hours did you spend preparing these notes?

A. Do you mind if I go into the file and take a look?

Q. Can I ask you what you're consulting to answer that question?

A. I keep a tabulation of my hours in an Excel file.

So it looks like this week I've spent 8 -- looks like about 10 hours preparing this document and going through notes, going through studies, and this morning I was just reviewing it for about an hour.

Q. So is that 11 hours total?

A. Looks like more like 12, including this morning. But in terms of preparing the actual report, reading the rebuttal that you provided,

Page 28

that was about 10 hours.

Q. And you indicated that $300 an hour is a rate that was requested by defendants for you to charge. What was the rate you requested?

A. 250.

Q. Were you asked to prepare these notes by the lawyers representing the defendants in this case?

A. No, I think I've said repeatedly this is what I needed to do to get all my thoughts in one place.

Q. You cite a number of studies in these notes; correct?

A. Yeah, there's quite a few, yeah.

Q. And clearly we haven't had the opportunity to review all 47 pages, there are 78 footnotes cited in these notes. Are there any studies cited in this document that weren't cited n your initial report, which is Exhibit 3?

A. I'd have to go through them. I'm certain that that's the case.

Q. And were you aware that the deadline to submit a rebuttal expert report was August 15th in this case?

MR. DEWHIRST: And I'm -- sorry, Justin.

Page 29

I'm gonna object on the basis that that calls for a legal conclusion, and it's also outside the scope of this witness.

Q. (BY MR. COLE) Were you aware that the deadline for submitting expert rebuttal reports in this case was August 15th?

MR. DEWHIRST: Same objection.

A. No.

Q. (BY MR. COLE) So you were not aware of that?

A. I don't claim to know anything about the process.

Q. And you weren't asked to prepare a rebuttal report?

A. Absolutely not.

MR. COLE: I'm going to make a statement and lodge an objection for the record. These are not notes. This is a form that appears to be an expert disclosure, it cites detailed additional opinions that were not disclosed in this case, not disclosed in a timely manner, it's signed under penalty of perjury, it dated August 16th, 2022, which is a day after the deadline for disclosing rebuttal testimony. It's a clear attempt to inject untimely and substantive expert opinions into the

Page 30

case during the deposition of this witness. We object to the document and we'll move to exclude it and any testimony regarding it. It impedes our ability to conduct a meaningful examination regarding this document, and if the court does not exclude this document, we'll reserve our right to reopen the deposition at the defendant's cost.

MR. DEWHIRST: Okay. The response to that, Justin, just to ask for some clarity, you're talking about Exhibit 29 when you make that objection?

MR. COLE: Correct.

MR. DEWHIRST: Okay. The document that you admitted into the record, that's the one you're going to seek to exclude?

MR. GRAYBILL: That's not gonna do it, David.

MR. COLE: Do you need any further clarification, David?

MR. DEWHIRST: But to be clear, that -- and you're assuming that a document that you put into the record is an attempt by the defendants to inject untimely evidence into the record?

MR. COLE: These were represented to be notes that Dr. Duriseti made regarding -- in

Page 31

preparation for this deposition, and it's clearly not what they are, and that's why we will be moving to exclude it.

MR. GRAYBILL: And we'll join that objection. It is standard practice in depositions in America to ask for an expert's notes. The defendants in this case did that yesterday. This is clearly an attempt to smuggle a report in that wasn't disclosed timely. We join the objection.

MR. DEWHIRST: Well, that's fine, join in the objection. I will just note for the record that you've asked him repeatedly whether he was asked by anyone to prepare these notes and he's testified no, so...

Q. (BY MR. COLE) Ram, I apologize for those statements on the record, we'll get back to asking you questions.

A. Thank you.

Q. Have you ever been a plaintiff in a lawsuit before?

A. As a -- Just so I get it straight, I've been a defendant.

Q. So you've been sued?

A. Yeah, medical malpractice.

Q. Okay. How many times have you been sued

Page 32

for medical malpractice?

A. Twice, yeah.

Q. And when was the first time you were sued for medical malpractice?

A. 2015.

Q. What was the nature of the underlying care?

A. I was --

MR. DEWHIRST: Objection, objection. Did you say "care" or "case."

MR. COLE: "Care."

MR. DEWHIRST: Do you understand the question, Ram?

A. Sure. So you want to hear -- I just want to make sure I understand the difference between care and case.

Q. (BY MR. COLE) Well, sure. I was asking what was the underlying care that was at issue?

A. Oh, it was a -- I was one of multiple defendants, the radiologist, the children's hospital to which I transferred the kid. I was working at a community hospital, a kid came in, had abdominal pain, I did a CT scan and labs, the CT was misread by our -- we call it NightHawk, meaning nighttime radiologist service, and that led to some

Page 33

alleged delay in care, which led to some alleged delay in transfer. I did transfer the kid to Stanford Hospital, the kid stayed in the emergency room for four and a half hours before they took him to surgery, so, like I said, multiple parties were named.

Q. And did you resolve that lawsuit?

A. I mean, I settled. The insurance company wanted me to argue it, and I settled because I was about to get married, with a baby on the way.

Q. Was it reported to the National Practitioner Data Bank?

A. Yes.

Q. And the second med mal case, what year did that occur in? And I should be clear. What year did the care occur in?

A. Yeah, I understood. The dates that I told you for the first case was when the care occurred. The date I'm about to tell you for the second case, and I'm sorry, because it's been so long, it was either 2017 or 2018, and it's still ongoing.

Q. And what's just a basic explanation of the allegations in that case?

A. It was a woman who was traveling from

Page 54

correct?
A. No.
Q. And would you agree it's important to take into account the conclusions drawn by the researchers conducting the studies when forming your own opinions about a paper such as this?
A. I think it's very important to read both the data and the conclusions, because the conclusions the authors derive may be discordant with the data they present, and the discussion is part of those conclusions that the authors derive. So it's important to look at both, because it's not uncommon, in fact, it's extremely common, and I think if you look at the research on this, that it is very often that the conclusions drawn in the paper are not supported by the data.
Q. Do you disagree with the conclusions drawn by the authors in this study?
A. Well, I mean, I think if the authors concluded -- and I don't remember the exact wording, I remember reading the rebuttal response and maybe they quoted the exact wording, I can look up that document if you'd like, but I think in the exact wording, it was their conclusion that there was a correlation, and I think Dr. Taylor

Page 55

specifically noted that the drop in infection rates across the board were clearly attributable to vaccinations.
Q. So I'll zoom in here on Exhibit 30. This is the conclusion these authors draw in their study. They say, Our observation of a reduced incidence of infection among unvaccinated residents suggests that robust vaccine coverage among residents and staff, together with the continued use of face masks and other infection-control measures, is likely to afford protection for small numbers of unvaccinated residents in congregate settings. They go on to conclude that, Still, the continued observation of incident cases after vaccination highlights the critical need for ongoing vaccination programs and surveillance testing in nursing homes to mitigate future outbreaks.
Did you take the conclusion into account when drawing your conclusion as set forth of your report?
A. I did.
Q. Going back to your report, page 6, going into page 7, you discuss a December 2021 paper in Danish Households, it was an observational study,

Page 56

do you recall reviewing that paper?
A. I do.
Q. And I'm putting that paper on the screen --
A. Uh-huh.
Q. -- and we'll mark this as Exhibit 31, which I will make a note of.
MR. COLE: And for the record, the electronic document is titled Danish Household Study, Exhibit 31.
EXHIBITS:
(Deposition Exhibit Number 31 marked for identification.)
Q. (BY MR. COLE) And this is not a peer-reviewed paper; correct?
A. Correct, it's a preprint.
Q. For the record, this document is titled SARS-CoV-2 Omicron VOC -- and that's variant of concern; correct?
A. Yes.
Q. -- Transmission in Danish Households, dated December 22nd, 2021.
So just for clarity this is the document that you cited on page 6 and 7 of your report?
A. Correct, and a follow-up study, but yes.

Page 57

Q. The opinion you draw in your report from this paper is that there was no reduction in susceptibility to infection when comparing vaccinated alone compared to the vaccinated; and there may be a typo there. I'll bring it --
A. There is a typo, yeah, that's a typo.
Q. What did you mean to say on page 7 of your report?
A. So I would say the proper verbiage should be, Most importantly, there was no such reduction in susceptibility to infection when comparing vaccinated alone compared to unvaccinated.
Q. Well, that's what the sentence says; correct?
A. Well, that's what they sentence is attempting to say, but there's a typo meaning, the second "vaccinated" should be "unvaccinated."
Q. Oh, I did not hear you say "unvaccinated."
A. Yeah.
Q. So your opinion is that there was no reduction in susceptibility to infection when comparing vaccinated to the unvaccinated?
A. Correct, because in the data table that's provided, I'm scrolling to it right now so I can

Page 58

tell you the exact data table, the figure number -- hold on one moment, please. Sorry, I'm trying to find it. But if you can scroll in there, I can probably show it to you in the paper.

Q. Yes, I will scroll to that now.

A. Thank you.

Q. It's on page 10?

A. Yeah, that's the table.

So if you look at the odds ratio -- so this table -- it's the next paper the table is crazy complicated, this one's still a little complicated.

So what they're doing is they're looking at reference cases of vaccinated, so that's what the reference is for, that's your point of reference.

And then if you look at Unvaccinated Omicron Households versus Booster-Vaccinated Omicron Households, those are infection rates, that's the odds ratio.

So, for example, so in this example, Booster-Vaccinated, people who are booster-vaccinated in the time interval of this study appeared to have a .54 odds ratio, meaning a little over half, with a confidence interval of .4

Page 59

to .71, so anywhere in that interval we would call a 95 percent confidence interval reduced reduction infection.

Conversely, if you look at the unvaccinated odds ratio, it's 1.04, with a confidence interval of 0.87 to 1.24, meaning both lower risk and slightly higher risks of infection are covered in the 95 percent confidence interval, and the center of that interval is 1.04, meaning -- I guess you could argue there's a 4 percent increased risk of unvaccinated getting an infection versus vaccinated being the reference, but that would be a very -- yeah, that would be kind of a statistical conclusion whether that's significant or not, so. Yeah, there is no difference.

And to that point, in reviewing the rebuttal of Dr. King, he cites that the August -- and this is kind of what I actually said earlier --

COURT REPORTER: I'm sorry, Doctor, say that again, I'm just kind of losing you.

A. In the rebuttal from Dr. King, he states that the authors concluded that there is reduced infection in the un -- in the fully vaccinated versus the unvaccinated, and he has a quote in there and we can look at it.

Page 60

But, yeah, it is true that the authors wrote that, but from the data table, you can clearly see that that's not the case. And this is why it's really important that you review both the data and what the author says.

And, you know, there was a study in 2018 that's -- it was quite interesting, that basically took a single dataset and applied 29 different statistical methods to the dataset. Two-thirds of the statistical methods yielded significant results, one-third did not, which emphasizes the notion of, like, how you look at the data can really affect the conclusions that you draw.

In this case, however, this is simply an example of text in a preprint that doesn't corroborate with the data table itself. And there's examples of this same thing in the nursing home paper that you just presented by White, et al., where the conclusions they drew were actually incorrect, because it did not account for community infection rates.

Now, it's not that they didn't see a correlation, they did, in the data that they looked at, but if they'd looked at controlling for baseline community transmission rates, that effect

Page 61

would've largely washed out.

Q. (BY MR. COLE) And it's important to look at all of the data in a study, not just one piece of the data in a study when drawing conclusions from it, do you agree?

A. I do agree with looking at everything you can possibly look at, as well as the statements made by the author. There are times, when looking at the data tables themselves where the data presented might not corroborate the conclusions drawn by the author. So when we have a paper, we talk about sort of the methods, the results, and the discussion and conclusions. Discussions and conclusions are -- I'm not sure editorial is the right word, but maybe it is, I mean, you're kind of extending what you've seen as sort of an opinion. And that's okay, I mean, that's part of academics, it's discussing either side of a particular data point and discussing the opinions that one might formulate based upon that, but I would say the meat in most papers is in the data itself and then looking at whether or not the conclusions that were drawn are justified by the data.

Q. Let's look at the data in this study. So to support the opinion you expressed in page 6 and

Page 62

7 of your report, you were comparing, under the Omicron Households only, unvaccinated versus fully vaccinated; correct?

A. Correct.

Q. And when you compare fully vaccinated to booster-vaccinated, they're a little more than half as likely to become infected; correct?

A. Roughly. And that's -- I think I cite that in my expert report, I say 40 percent reduction, approximately.

Q. And then when you look at Delta Households --

A. I don't know, I don't remember what I wrote. I can look at it if you'd like.

Q. To complete the thought, when we look at Delta Households as compared to fully vaccinated, the unvaccinated were over 2 times more likely to be infected; correct?

A. Correct.

Q. And the booster-vaccinated were a little over a third as likely to be infected as compared to fully vaccinated; correct?

A. Yeah, roughly, sure.

Q. Yeah. When you look at transmissibility of both sets of households, the booster-vaccinated

Page 63

are less likely than fully vaccinated to become infected; correct?

A. That's transmission that you're looking at.

Q. Correct.

A. So secondary contacts who are boosted are less likely to test positive with symptoms, and unvaccinated are more likely to test positive with symptoms.

Q. And that's a mark on how transmissible one person is, depending on their vaccination status?

A. Well, so this is why this table is complicated.

MR. DEWHIRST: Yeah, object -- sorry, Ram, I'm gonna object on the basis that that's vague.

THE WITNESS: Can I answer?

MR. DEWHIRST: You can still answer.

A. Okay. This table is complicated because what it's doing is it's looking at the primary infection in the first two columns and the secondary contact in the third column. So the interpretation of that third column is transmissibility in all households is referring to

Page 64

the probability that if someone who is unvaccinated tests positive relative to an index condition, meaning an index infection somewhere else in the household.

Q. (BY MR. COLE) So we'll look at some of the conclusions these authors who conducted this study drew, just under the Abstract on page 2 of the document. I'll just direct your attention to the sentence where they state, which is what we were talking about, We found an increased transmission for unvaccinated individuals, and a reduced transmission for booster-vaccinated individuals, compared to fully vaccinated individuals. That was the conclusion that they made; correct?

A. It is, with regards to transmission, correct.

Q. And then we'll go to the body of the paper, and this is under --

A. And by the way, I don't disagree with that conclusion.

Q. So then the last section of the report is titled Discussion and Conclusion. And then at the bottom there's a concluding paragraph, and they draw four conclusions.

Page 65

First, let me just ask you, did you review this aspect of these authors' conclusions in forming the opinions expressed in your report?

A. I read the paper, I looked at the data, yes.

Q. And their first conclusion is that they found an increased susceptibility for unvaccinated individuals, and a reduced susceptibility for boosted individuals as compared to fully vaccinated individuals in households infected with the Delta variant of concern, that's the conclusion they drew?

A. That's a correct conclusion for the Delta, yes.

Q. And that's inconsistent with an expression that there's no reduction in susceptibility as comparing vaccinated versus unvaccinated?

MR. DEWHIRST: Objection, compound, vague and ambiguous.

THE WITNESS: May I answer?

MR. DEWHIRST: Yeah.

A. Yeah. My entire expert report is focused on what we're facing now. I'm not talking about 2021, although, that first paper is talking about

Page 66

that. My point in talking about this paper, and perhaps more degree of precision is required in the sentence of my report that you provided, is that in the Omicron era, that hasn't helped, and that's what their data table shows and that's what I'm referring.

Q. (BY MR. COLE) So is it fair to say that you ignored this aspect of their conclusions because it dealt with Delta and not Omicron?

A. I didn't ignore it, I was dealing with the conditions we're facing right now, since basically about November/December of 2021.

Q. The second conclusion is that they found a reduced susceptibility for booster-vaccinated individuals in households infected with the Omicron variant of concern, and that's what we looked at in the table, correct, booster-vaccinated individuals to Omicron were less susceptible to becoming infected; correct?

A. That's correct.

Q. And you didn't incorporate that component into the opinion you drew in your report. The opinion you drew in your report compares only vaccinated versus unvaccinated, not booster-vaccinated; correct?

Page 67

A. I don't think --

MR. DEWHIRST: Objection, misstates the testimony.

THE WITNESS: Go ahead, David. I'm sorry.

MR. DEWHIRST: Sorry. Just objection on the basis that it misstates the testimony.

A. If you'd like to go to my report, we can see basically what I said. So I say, Focusing on Table 2, during the early December 2021 study period, booster vaccination cut the risk of contracting Omicron by roughly 45 percent plus and passing on Omicron by roughly 40 percent.

So it seems that I did cite quite precisely the tables that they found, and then they also wrote it in their conclusions, and I don't disagree with that.

Q. (BY MR. COLE) So when it comes to booster-vaccinated, it still has a positive effect, even in the Omicron era?

A. Yes, but it's transient, that's what I get to later in the discussion.

Q. But your opinion is that it reduced it by roughly 45 percent?

A. From the study results, yes, meaning in

Page 68

the study population at the time of the actual study.

Q. And just finishing the conclusions the authors drew in the Danish Household Study, they talk about transmissibility, we talked about this before, but their conclusion is that they found increased transmissibility from unvaccinated individuals, and a reduced transmissibility from booster-vaccinated individuals, compared to fully vaccinated individuals, and that applied to both Delta and Omicron?

A. Well, let's go back to the table. Increased transmissibility from unvaccinated -- so if you're saying -- if we can go back to the table? Thank you.

Q. I went past it.

A. Yeah, I think you did. There you go.

So what they found is unvaccinated individuals, that 1.41 there, do you see that?

Q. I do.

A. The unvaccinated individuals were more likely to contract infection from a primary index case.

So if you read -- so if you scroll down a little bit, Column 3 shows the transmissibility

Page 69

based on a vaccination status of the primary case, unconditional on the variant in the household. So they're not -- they're not controlling for Omicron or Delta, that's all households.

Q. Right.

A. So it's mixed.

Q. Yep.

How're you doing? Do you need a break, or are you good to keep going?

A. I'm good. When it's empty, I'll need more.

Q. Or a bathroom break, whichever occurs first?

A. Bladder of steel.

Q. Okay. I'm going to page 8 of your report, I want to talk about the Walgreens data that you cited and drew opinions from.

A. Uh-huh.

Q. So Walgreens maintains this COVID-19 Index; correct?

A. (Witness nods head.)

Q. And I'll need a verbal response for the court reporter.

A. Oh, I'm sorry. Yeah. I always forget that. Yes. They maintain a dashboard, yes.

Page 74

Q. So on page 11 you indicate, when collecting Walgreens data for a testing week April 28, 2022, for every age cohort, vaccinated individuals are testing positive at a higher rate, and you underlined and italicize "higher rate." That is the conclusion you drew from this data when you issued your report; correct?

A. That's what the data showed, whether or not there were cofounders is a separate topic, but that's what the data showed.

Q. So it no longer shows that individuals who have been vaccinated are testing positive at a higher rate?

A. Well, let me take a look, actually. So I pulled a screenshot from yesterday, and currently, not vaccinated -- after their correction that was applied that Dr. King pointed out, not vaccinated positivity rate is 39.8, one dose is 39.4. But I point out in my analysis that they have a very thin one-dose sample of whatever. Two doses more than five months ago is 40 percent versus 39.8 percent not vaccinated. Two doses less than five months ago, positivity rate is 25.3 percent, which is lower. Three doses more than five months ago is 40.6 percent versus 39 percent -- 39.8 percent

Page 75

unvaccinated and 40 percent in two doses more than five months ago, but less than five months, three doses, positivity rate is 29.7 percent.

So this is completely consistent with my conclusion that depending on time intervals since boost, that determines how often you're gonna test positive.

Q. So you maintain your opinion that if you are vaccinated, you are more likely to test positive for COVID?

A. No, that's not what I said. It depends upon the time since the last dose.

MR. DEWHIRST: I would've objected to that question, but I think the witness did.

Q. (BY MR. COLE) So then on the dashboard, if you scroll to the right, there's lab notes.

A. I can go to it and look if you'd like.

Q. Did you consult the lab notes when you drew the opinions on the Walgreens data in your report?

A. Well, those have changed, the notes that are in there have changed, I assume, but I looked at them previously when I did the original analysis back in early May.

Q. So you did consult the lab notes when drawing the opinions expressed in your report?

Page 76

A. I'm pretty sure I did, but I also don't remember what the lab notes said in May, because it would be very different from what they would've said in -- recently, in the screen-catch recently, because, again, we met on June 16th, 2022 and discussed the weaknesses of the data and there were attempts to correct it, which I think it seems like they've done to the best of their ability.

Q. In June you discussed the weaknesses of the data which you cite to support the opinions in your report; is that accurate?

A. I think I do, yeah. I didn't cite all of them. I think, one thing I neglected to -- I mean, I elude to it, but I don't specifically state it, it is repeated, repeat testing occurs which might artificially drive down the positivity rate.

But, you know, as noted, in the current portion of the dashboard that Dr. King cites is that, Controlling for additional factors lead to a larger difference between groups. In addition to the changing level of circulating virus in the population, positivity rates are influenced by many factors. These factors can both increase --

THE WITNESS: Oh, I'm sorry.

Page 77

COURT REPORTER: I need you to slow down, Doc, you're killing me here. (Laughter.)

THE WITNESS: Oh, I'm sorry.

MR. COLE: Yeah, we need to go in a question and answer format.

COURT REPORTER: You've gotta slow down a little bit, this is thick stuff.

THE WITNESS: I'm sorry. Yeah, it's technical stuff.

A. So anyway, to summarize, quote, Controlling for recent COVID-19 cases, results show that the unvaccinated group has a 17.1 percent higher positivity rate compared to the three-dose group. Controlling for additional factors leads to a larger difference between groups. In addition to the changing level of circulating virus in the population, positivity rates are influenced by many factors. These factors can both increase and decrease the positivity metric.

Q. (BY MR. COLE) And did you -- so it's your testimony that you did review and consider those lab notes before you drafted your opinions in your expert report; correct?

MR. DEWHIRST: Object to form.

A. I reviewed -- Sorry, go ahead.

Page 78

MR. DEWHIRST: Objection to form. You can answer.
A. I reviewed the lab notes at which time I grabbed the data in late April, and I further informed my opinion based upon discussions with the Walgreens team in June of 2022 -- June 16, 2022.
MR. COLE: So for the record, we'll mark as Exhibit 32 the document that's titled electronically Walgreens COVID Index Lab Notes, and those are on the screen, Ram.
EXHIBITS:
(Deposition Exhibit Number 32 marked for identification.)
A. Yeah, so it looks like that's from a July screen capture, so I would not have seen that one.
Q. (BY MR. COLE) Okay. If we scroll down, this toggles to the right, to the lab notes, and they're all dated.
A. Uh-huh.
Q. So if we look at this -- I'll zoom in -- March 11, 2022, so this is before you looked at this data in drawing your opinions. These lab notes express a number of things in this dated note, including, All results, including the positivity rates by vaccinated status graph, are

Page 79

unadjusted.
A. Correct.
Q. And "unadjusted" means you haven't taken into account certain statistical biases in the data, it's just raw data; correct?
A. And that's why my statements in my expert report indicate, "the data show." It doesn't mean "the conclusion is." And -- yeah, go ahead.
Q. So that whole portion of your report, is it your testimony now that those are observations and they're not actually conclusions, it's just observations on the data?
A. That's correct. The conclusion I would draw from that -- would you like me to draw a conclusion from it?
Q. I think it's stated in your report.
A. Okay. No, once again, the report -- if you want to go back to my report -- it says, "The data show."
Q. In the top corner of the lab notes there's a little link to the COVID-19 White paper. Did you consult the White paper before forming your opinion on this data?
A. I don't recall. My suspicion is that I may have looked at it before the meeting of

Page 80

June 16th, but I don't have that specific recollection.
Q. But you didn't consult it before drawing the opinions expressed in your report?
A. You're saying before -- Again, so I drew the data in late April, I did the analysis in May, subsequently had a meeting with Walgreens on July -- on June 16th, as I stated, and my opinions -- or I should say, the data that I presented is from that data late April screen capture.
Q. So you don't recall looking at the White paper before forming your opinions in the report?
A. No, I didn't look at it immediately before forming my opinions or presenting my -- I didn't -- Let me rephrase that.
I didn't look at it before presenting the data for my analysis in early May.
MR. COLE: So for the record, Exhibit 33 will be the document titled National Surveillance of COVID-19 Infections Variants Vaccination Status and Viral Spread, and the title of the paper is COVID-19 positivity by Vaccination Status Data Interpretation.
EXHIBITS:

Page 81

(Deposition Exhibit Number 33 marked for identification.)
Q. (BY MR. COLE) And this is the White paper that was linked to the dashboard on the Walgreens website. And just to be clear, have you seen this document before?
A. This is the one I'm telling you I suspect that I looked at it during our meeting on June 16th. I don't know -- prior to that, I'm not 100 percent positive. I may have actually looked at it before I gathered the screenshots and ran the data in May, I'm not a hundred percent positive.
Q. And you certainly did not cite it in your report; correct?
A. I did not cite it, no, that's correct.
Q. We talked earlier about the importance of reviewing conclusions and analyses drawn by the collectors of data when you draw opinions from the data, and do you agree that this document is an analysis by Walgreens who collected the data as to what opinions you can and should draw from that data?
A. I haven't read the document, so I can't really make that statement. I'm happy to read it now, if you'd like.

Page 82

Q. I'll draw your attention to the Introduction, second paragraph, midway down it starts, During the pre-Omicron era, the data demonstrated higher positivity rates among the unvaccinated group. However, in early 2022 the data indicated a lower positivity rate among unvaccinated individuals compared to those who have received at least one dose of vaccine. On the surface, these results are counterintuitive and may lead to misinterpretation.

So this is a warning by the authors of this report about drawing conclusions based on the data; is that true?

A. I would agree with that statement.

Q. The next paragraph says, Inherently, disease surveillance systems are built on unadjusted observational data and therefore conclusions may be heavily influenced by patient testing behavior. And you agree with that sentence?

A. Yeah, I actually cite that.

MR. DEWHIRST: I'm gonna object on the basis that -- {audio cuts out}. If you want to let him actually read the document, it would probably be more helpful. But I'm gonna object that you

Page 83

didn't lay foundation, you just asked about specifics.

Q. (BY MR. COLE) Since you've not reviewed this document, Ram, do you want to take a minute and review the whole document now?

A. I'm okay going through it with you.

Q. Okay. So then the next sentence says, The goal of this analysis is to better understand differences in positivity by vaccination status and identify emerging trends within the Walgreens testing population.

And that's sort of the point of the whole paper is to better understand these differences in positivity rates. And so would you agree with me that data biases in terms of the two groups we're talking about, unvaccinated and vaccinated, can actually skew the results and the conclusions you can draw from the results?

A. If you can go to my expert report, I'd appreciate it, and I can show you where I address this.

Q. Yeah, can you answer the question first?

A. Not without looking at my expert report to see exactly what I said.

Q. You need to look at your expert report in

Page 84

order to answer that question?

A. I do.

Q. And I asked a general question, not a specific question on your report, just to be clear.

A. I understand what you're asking. I'm saying that I want my response to be consistent with the declaration where I clearly site this issue, as you're going to see in a moment, if we go to it.

Q. Okay. So you can't answer my question without consulting the report?

MR. DEWHIRST: Objection, asked and answered.

A. I can, but I'd prefer to answer it looking at my declaration where I clearly address this point.

Q. (BY MR. COLE) I guess I'd just ask you to answer the question first, and then I'll be happy to pull up your report.

A. I will answer the question by saying my report addresses these concerns.

Q. Okay. And so to ask the question again, because you didn't answer the question directly, would you agree that when we're looking at the two categories of individuals, vaccinated and

Page 85

unvaccinated, the different characteristics of those groups can have an impact on the data that is shown through this Walgreens data; do you agree with that statement generally?

A. I agree with that statement.

Q. Okay. And these authors discuss some of those differences, under Research Findings. It says, The analysis found several significant differences between vaccination status groups. First, those who were not vaccinated were substantially younger than those that were vaccinated; were you aware of that before you cited this data in your report?

A. Yes. It's actually also demonstrated in the Omicron -- I'm sorry, the household transmission study, as well.

Q. So you were aware that the unvaccinated testing group in the Walgreens data was significantly younger than the vaccinated?

A. I'm aware that it was younger, yeah, and I would anticipate that as well, because you have to remember, of course, at that time, vaccination of the younger age groups was lower, so it's necessarily gonna be biased towards that, yes.

Q. And that's a nay this year?

Page 86

A. That's correct.
Q. Other differences are listed in bullet points under Research Findings, it says, Several of the differences between groups may have led to an apparent decreased probability of unvaccinated patients testing positive for COVID-19. And those include that the unvaccinated group was 32.51 percent less likely to report having close contact with someone infected by COVID-19, compared to vaccinated, and clearly that'll affect whether you are going to test positive for the disease; would you agree?
MR. DEWHIRST: Objection to form. You can answer.
MR. COLE: What's wrong with the form of the question?
MR. DEWHIRST: It's confusing and vague.
Q. (BY MR. COLE) Do you understand my question, Ram?
A. I think I do, but I'd prefer you to say it again for me.
Q. Patients in the unvaccinated group in this dataset were 32.51 percent less likely to report having close contact with someone infected by COVID-19 as compared to the vaccinated group.

Page 87

A. Yeah, so -- yes, and I do cite this in my declaration, when I refer to the fact that often unvaccinated folks are mandated to test more often, yes.
Q. And if you're less likely to have contact with someone who's infected, you're also less likely to become infected yourself?
A. They didn't say that they were less likely to have contact, they said they're less likely to report it.
Q. And the next bullet point is that the unvaccinated group was 23.5 percent less likely to live in a county with a positivity rate greater than 5 percent. And were you aware of that computation in the data?
A. That, I was not.
Q. And the next bullet point is the unvaccinated group was 61.78 percent more likely to report a previous COVID-19 infection. Were you aware of that aspect of the unvaccinated group?
A. I was aware of the fact that in datasets around the world, that those who remain unvaccinated are more likely to have had a prior infection, yes.
Q. And they were more likely to repeat

Page 88

testing weekly?
A. Which I cite directly in my report, because it's often mandated, and that they will tend to drive down the positivity rate, which I also said in my report.
Q. They're also less likely to report testing for travel purposes, and more likely to use a Rapid versus PCR test at Walgreens. Were you aware of those two limitations in the dataset?
A. That Rapid versus PCR actually came up in our June 16th meeting, I don't consider that clearly significantly different, and that's why they don't provide a P value on it, whereas they provided one on every one of those other points.
But the travel purposes one, it dovetails with the fact that more unvaccinated are just being asked to test, maintenance testing, because they're unvaccinated and the policies will state, you need to test.
Q. So they're more likely to test when they're not having symptoms?
A. Yeah, yeah.
Q. So let me scroll through the discussion of these authors on this data, we'll just go over a few more points that they raise.

Page 89

Another limitation -- and this is in the first paragraph, and this goes without saying -- is that this surveillance system is not capturing severe cases, like hospitalizations and deaths, obviously; correct?
A. Yeah, I don't -- yes. They have data on comorbidities and the health status of various people they test, partly because of integrated pharmacy data, because some of those patients get their medications filled at Walgreens as well, as you might imagine, but they wouldn't have any data on outcomes.
Q. And current data, according to this report, shows that recent vaccination or boosters are provided against severe illness and death from the Omicron variant.
A. Oh, I think that's -- I would say that --
MR. DEWHIRST: Objection, objection, objection to form on that.
MR. COLE: And what's wrong with the form?
MR. DEWHIRST: It wasn't a question.
Q. (BY MR. COLE) Is that the opinion -- is that another component of the conclusion that these authors wrote in their report?

Page 90

A. Okay. Can you -- can we back up and you ask the question again, please?
Q. Sure. Did these authors also cite, after discussing another limitation of the surveillance system, that current data shows that recent vaccinations or boosters are protected against severe illness and death from the Omicron variant?
A. Yeah, nobody argues that.
Q. These are just more limitations in the data. The results show that the vaccinated and unvaccinated groups vary significantly in their exposure. And would you agree with me, as a general proposition, that if you're less likely to be exposed to the virus, you're less likely to test positive for the virus?
A. I would say reported exposure --
MR. DEWHIRST: Objection, objection, compound.
A. Sorry, go ahead, please. What was the question again?
Q. (BY MR. COLE) Would you agree that if you are less likely to be exposed to the virus, you're less likely to test positive for the virus?
MR. DEWHIRST: Same objection. You can answer.

Page 91

A. If you're less likely to be exposed to a known case of the virus, you are less likely to test positive for the virus, yes.
Q. (BY MR. COLE) And the repeat testing, we discussed this and these authors also cite it as a limitation, repeat testers are more likely to test negative because their reason for testing is unrelated to exposure; right?
A. Correct. And that applies to all categories, which is why in their statement, which I cite, these factors can increase and decrease the positivity metric, correct.
Q. And when the unadjusted positivity rate was calculated for those with previous infection, unvaccinated patients were significantly more likely to test positive than vaccinated patients, and you cited that previously; correct?
A. Well, I mean, in my notes, I think Dr. King brought that issue up. When you say I cited it, can you be more clear about that?
Q. Yeah, I'll withdraw that question.
We all disagree that these authors are providing in this paper that when they analyzed the data, the unadjusted positivity, if they adjust that for those with previous COVID-19 infection,

Page 92

unvaccinated patients were significantly more likely to test positive than unvaccinated.
A. Yeah, that's generally the case, that if you had a prior infection, it's very protective against subsequent infection and reduces your risk of both infection and transmission; correct.
Q. And they conclude this sentence with, While natural immunity does offer some protection for unvaccinated patients, previous infection and vaccination combined offers even more robust protection, and that's a conclusion that these authors have drawn; correct?
A. That conclusion is correct, within roughly 90 days of the last shot.
Q. And then under the Conclusion here, I'll just read the concluding remarks. It says, Importantly, recent studies have demonstrated that the COVID-19 vaccine continues to offer strong protection against the most severe illnesses that result in hospitalizations and deaths; and you don't disagree with the statement?
A. In the immune naive and especially the at-risk, not at all, I don't disagree with that.
Q. And then they conclude their analysis by saying, It demonstrates significant differences

Page 93

between vaccinated and unvaccinated patients who are getting tested positive for COVID-19 at Walgreens pharmacies. And these differences help explain the trends in positivity by vaccination status and validates the limitations of drawing conclusions from observational surveillance data; correct?
A. That's what they wrote there, yes.
MR. DEWHIRST: Justin, is now a good time to take a short break?
MR. COLE: Yeah, let's take five or ten -- want to take five minutes?
MR. DEWHIRST: Why don't we do -- yeah, that's fine, five minutes is fine.
MR. COLE: Five minutes.
MR. DEWHIRST: All right. Thanks.
ZOOM VOICE: Recording stopped.
(Whereupon, the proceedings were in recess at 3:29 p.m. and subsequently reconvened at 3:41 p.m., and the following proceedings were entered of record:)
ZOOM VOICE: Recording in progress.
Q. (BY MR. COLE) Ram, Exhibit 3, your expert report we've been discussing, nowhere in that report do you mention either Dr. King or

Page 94

Dr. Taylor; correct?
A. I don't recall specifically. If those words didn't appear, that's correct.
Q. Do you need to look at your report to --
A. I mean, if I could pull it up and control F search it for those words, sure. Would you like me to do that?
Q. I'll pull it up.
A. I'm sorry.
Q. Yeah, I've pulled it up.
A. Okay. If you could just control F for those words.
Q. Yeah, "pdf can't be searched."
Do you agree -- and we can take a break if you need to, but you did not discuss any of Dr. King's or Dr. Taylor's opinions in your report that you submitted in July; correct?
A. I don't want to answer that question without looking.
MR. COLE: Okay, let's take a break and I'll let you look at your report.
THE WITNESS: Thank you.
ZOOM VOICE: Recording stopped.
(Discussion held off the record.)
ZOOM VOICE: Recording in progress.

Page 95

A. Yeah, so a control F search for Taylor and King in my original declaration did not return any results.
MR. COLE: I have no further questions.
MR. DEWHIRST: Sorry, say that again, Ram, I didn't hear that.
THE WITNESS: Sorry. A control F search of my original declaration for Taylor and King did not return any hits, any results.
MR. COLE: And I have no further questions.
(Distorted sound coming from Mr. Graybill.)
MR. COLE: Hey, Raph, I think as you're talking, we're getting some sound effects. Why don't we all go off the record.
ZOOM VOICE: Recording stopped.
(Discussion held off the record.)
ZOOM VOICE: Recording in progress.
MR. GRAYBILL: Debi, could you read back the last question and answer?
COURT REPORTER: That -- that Justin asked?
MR. GRAYBILL: That Justin asked, yes.
COURT REPORTER: Okay. Well, we went off

Page 96

the record for a bit, but the witness came back on and said, So a control F search for Taylor and King in my original declaration did not return hits, any results.
MR. GRAYBILL: Okay.
EXAMINATION
BY MR. GRAYBILL:
Q. Dr. Duriseti, did you reference Dr. Taylor and Dr. King in your subsequent declaration?
MR. DEWHIRST: Objection, that misstates a lot of things. Also, I don't know what document you're talking about, Raph.
Q. (BY MR. GRAYBILL) If you understand my question, you can answer.
THE WITNESS: Can I answer?
MR. GRAYBILL: Yes.
MR. DEWHIRST: If you can understand it.
A. If you're referring to my deposition notes, I do reference their comments in there, yes.
Q. (BY MR. GRAYBILL) Okay. You used the phrase my original declaration, why did you call it your original declaration?
A. I could've called it declaration.
Q. Did you write a second declaration in

Page 97

this case?
MR. DEWHIRST: Objection, asked and answered.
MR. GRAYBILL: I don't believe I've asked that, and I don't believe we've gotten an answer. You can answer it.
THE WITNESS: Can I answer that?
MR. DEWHIRST: Yeah.
A. I have deposition notes, which you have.
MR. GRAYBILL: That's all have. Thank you.
MR. DEWHIRST: All right. Well, I hate to do this right after a break, but can we actually take a few minutes, is that okay, gentlemen?
MR. COLE: Yes.
MR. DEWHIRST: Okay.
MR. GRAYBILL: Not a problem.
MR. DEWHIRST: All right, thanks.
ZOOM VOICE: Recording stopped.
(Whereupon, the proceedings were in recess at 3:46 p.m. and subsequently reconvened at 3:54 p.m., and the following proceedings were entered of record:)
ZOOM VOICE: Recording in progress.
EXAMINATION

Page 98

BY MR. DEWHIRST:
Q. Just a few additional questions, Dr. Duriseti. So first of all, I think you've already answered this question, but did the defendants or defendants' counsel ask you to write your deposition notes?
A. As I stated previously, no.
Q. Okay. Now, you were asked several questions by Mr. Cole about your analysis of the data in the Danish Household Study; is that correct?
A. Yes.
Q. Okay. And I'm just going to pull this up real quick and take a look. Okay, can you see that, Dr. Duriseti?
A. I can.
Q. Okay. And I'll just scroll up to sort of show you here, when discussing the topic of transmission, do you see that paragraph?
A. Uh-huh.
Q. Okay. You were asked several questions about your analysis of this study; correct?
A. Yes.
Q. Could you summarize your conclusions about the significance of this study for this case.

Page 99

A. Yes. So this was in an era where you had a freshly-vaccinated population, and so the sort of 90-day wane that you've heard me say over and over again, which has been demonstrated now in current literature over and over again, even during the Delta era, by the way, largely in this countrywide study, that wouldn't be active here, and this would also be against strains that the vaccines have been most ideally formulated against, meaning very little immune escape.

And my point in pointing out this study is that there was no clear trend, meaning the values kind of jumped. When I say monotonic, I mean, if you're looking at a variable, there's an effect every time that variable goes up, it monotonically increases, and that's not what you'd see.

Now, that doesn't constitute a full analysis, but if you look at the community rates in the United States to the course of this study, through March, I think it was the 31st, 2021, if I recall correctly, if you look at the community case rates in the United States, they went from a peak in the study, about 790-something, down to, at the end of the study period, around 190, meaning there

Page 100

was about a -- I can run the numbers real quick, but it was like a 3.7- to 3.9-fold drop in cases, even though community vaccination rates had only gotten to about .5 percent or .53 percent, I think, by the end of March.

So things rise and fall, correlation is not causation, and you really need to control the community transmission rates, which, interestingly, and I'm referring -- which interestingly, in a subsequent study that Dr. Taylor introduced, they did try to do.

Now, there's some other weaknesses in that that we can discuss if we need to, but having said that, I don't think either Dr. King or Dr. Taylor would argue that on March 31st, the market drop in cases that we had in the United States was because .53 percent of the population being vaccinated was protecting 99.5 percent of the population that was unvaccinated. So there's more at play here.
Q. Thank you.
You also -- you also answered a number of questions from Mr. Cole about your analysis of the Walgreens data; is that correct?
A. Correct.

Page 101

Q. Okay. So I've pulled up page 3 of your expert report.
A. Uh-huh.
Q. Could you please summarize again your conclusions about the importance of the data drawn from this study for purposes of this report in this case.
A. Well, let's be clear, this is not a study. This is just simply data that's presented by Walgreens, and it's data that was a nice national survey of what's going on.

The conclusion from this data is not -- is not that vaccination does not help prevent severe disease, it is not that vaccination in near term can decrease risk of infection and can decrease transmission, it does do those things, but that's the problem, it's in the near term. And once you start getting a few months out from that last dose, you'll fall back to what you call your baseline risk, your baseline of infection, your baseline risk -- if you want to talk about prerequisites for a transmission, it's gonna be infections. And that's kind of the point. And if this was something we were just seeing in the United States, then so be it.

Page 110

Q. And the other matters you were discussing, these are matters that aren't included explicitly in your expert report, is that --

MR. DEWHIRST: Objection -- I'm sorry, I talked -- could you -- what was the last word of your question?

Q. (BY MR. COLE) The other discussion you were having, including that long narrative you just gave, that's not explicitly included in your expert report; correct?

MR. DEWHIRST: Object -- objection, vague.

THE WITNESS: Can I answer the question?

Q. (BY MR. COLE) Do you understand my question?

A. Well, yeah, if you can repeat it, that way I can answer, it, please.

Q. That initial discussion you were having with Mr. Dewhirst, including that long narrative that you just gave, that's not explicitly included in Exhibit 3; correct?

A. That's correct.

MR. DEWHIRST: Same objection.

MR. COLE: No further questions.

MR. GRAYBILL: None from us.

Page 111

ZOOM VOICE: Recording stopped.

(Deposition concluded at 4:11 p.m. Witness excused, signature reserved.)

* * *

Page 112

CERTIFICATE OF WITNESS

PAGE LINE

I hereby certify that this is a true and correct copy of my testimony, together with any changes I have made on this and any subsequent pages attached hereto.

Dated on this the_____ day of _____, 2022.

_____

DR. RAM DURISETI, Deponent.