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Transcript of IRIS DOMINY, M.D.

Date: May 14, 2015

Case: O'CONNELL v. ASSOCIATES IN OB/GYN CARE, LLC, ET AL.

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<div>1</div> <div>IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND ----- x CHRISTY T. O'CONNELL, : Plaintiff, : Case No. -v- : JFM-14-1339 ASSOCIATES IN OB/GYN CARE, LLC, et al., : Defendants. : ----- x Videotaped Deposition of IRIS DOMINY, M.D. Frederick, Maryland Thursday, May 14, 2015 11:09 a.m. Job No.: 81884 Pages: 1 - 155 Reported by: Fazier Walle</div>	<div>1</div> <div>3</div> <div>1 APPEARANCES 2 ON BEHALF OF THE PLAINTIFF: 3 EMILY C. MALARKEY, ESQUIRE 4 SALSBUry, CLEMENTS, BEKMAN, 5 MARDER & ADKINS, L.L.C. 6 300 W. Pratt Street, Suite 450 7 Baltimore, Maryland 21201 8 (410)539-6633 9 10 ON BEHALF OF THE DEFENDANT ASSOCIATES IN OB/GYN 11 CARE, LLC, d/b/a AMERICAN WOMEN'S SERVICES and 12 AMERICAN MEDICAL ASSOCIATES 13 CONRAD VARNER, ESQUIRE 14 MATTHEW FOGELSON, ESQUIRE 15 VARNER & GOUNDRY, P.C. 16 121 E. Patrick Street 17 Frederick, Maryland 21701 18 (301)631-1800 19 20 ALSO PRESENT: 21 PATRICK RUFFNER, Video Technician 22 MICHAEL J. DOLL, JR., Medical Mutual</div>
<div>2</div> <div>1 Videotaped Deposition of IRIS DOMINY, M.D., 2 held at the offices of: 3 4 VARNER & GOUNDRY, P.C. 5 121 E. Patrick Street 6 Frederick, Maryland 21701 7 (301)631-1800 8 9 10 11 12 13 14 15 16 17 18 Pursuant to Notice, before Fazier Walle, 19 a Shorthand Court Reporter and Notary Public in and 20 for the State of Maryland. 21 22</div>	<div>4</div> <div>1 C O N T E N T S 2 EXAMINATION OF IRIS DOMINY, M.D. PAGE 3 By Ms. Malarkey 6 4 5 6 E X H I B I T S 7 (*Attached to transcript) 8 DOMINY, M.D. DEPOSITION EXHIBIT PAGE 9 Ex. 1 Documents 77 10 Ex. 2 May 3, 2013, letter 151 11 12 13 14 15 16 17 18 19 20 21 22</div>

<p>5</p> <p>1 THE VIDEOGRAPHER: Here begins Videotape</p> <p>2 No. 1 in today's deposition of Iris Dominy, M.D., in</p> <p>3 the matter of Christy T. O'Connell versus Associates</p> <p>4 in OB/GYN Care, LLC, et al., in the United States</p> <p>5 District Court for the District of Maryland, Case</p> <p>6 No. JFM-14-1339. Today's date is May 14, 2015. The</p> <p>7 time is 11:09 a.m. The videographer is Patrick</p> <p>8 Ruffner with Planet Depos.</p> <p>9 This deposition is taking place at 121</p> <p>10 East Patrick Street, Frederick, Maryland.</p> <p>11 Would counsel please voice-identify</p> <p>12 themselves and state whom they represent.</p> <p>13 MS. MALARKEY: This is Emily Malarkey. I</p> <p>14 represent the plaintiff, Christy O'Connell.</p> <p>15 MR. VARNER: I'm Conrad Varner for</p> <p>16 Dr. Dominy.</p> <p>17 THE VIDEOGRAPHER: The court reporter is</p> <p>18 Fazier Walle of Planet Depos.</p> <p>19 Would the reporter please swear in the</p> <p>20 witness.</p> <p>21</p> <p>22</p>	<p>7</p> <p>1 done a very good job for me. I got other lawyers,</p> <p>2 and those lawyers sued me for their full bill. So I</p> <p>3 went to court to defend myself against their charges</p> <p>4 and have them reduced, since they really didn't do</p> <p>5 very much for me.</p> <p>6 Q Okay. So if I'm understanding you, you, in</p> <p>7 a business dispute with former partners, hired</p> <p>8 laws --</p> <p>9 A Yes.</p> <p>10 Q -- who then subsequently sued you?</p> <p>11 A Yes.</p> <p>12 Q I see. And have you ever testified in</p> <p>13 your capacity as a physician in court?</p> <p>14 A No, I have not.</p> <p>15 Q The three depositions that you've given</p> <p>16 before, have they all been as a defendant in a</p> <p>17 lawsuit?</p> <p>18 A Yes. They were malpractice suits.</p> <p>19 Q Okay. And we'll talk about those in a</p> <p>20 little while. But before we get there, have you</p> <p>21 ever testified as an expert witness by deposition</p> <p>22 or --</p>
<p>6</p> <p>1 Whereupon,</p> <p>2 IRIS DOMINY, M.D.,</p> <p>3 being first duly sworn or affirmed to testify to the</p> <p>4 truth, the whole truth, and nothing but the truth, was</p> <p>5 examined and testified as follows:</p> <p>6 EXAMINATION BY COUNSEL FOR PLAINTIFF</p> <p>7 BY MS. MALARKEY:</p> <p>8 Q Good morning, Dr. Dominy. We just met</p> <p>9 briefly off the record. I'm Emily Malarkey. I</p> <p>10 understand you have given a deposition before.</p> <p>11 A Yes, I have.</p> <p>12 Q On how many occasions, do you recall?</p> <p>13 A Three.</p> <p>14 Q Okay. Have you ever testified at trial in</p> <p>15 court?</p> <p>16 A Yes.</p> <p>17 Q On how many occasions?</p> <p>18 A Once.</p> <p>19 Q And can you tell me the circumstances that</p> <p>20 brought you to testify as a witness in court?</p> <p>21 A It was involving legal representation of</p> <p>22 mine involving ex partners. These lawyers had not</p>	<p>8</p> <p>1 A No, I have not.</p> <p>2 Q Have you ever reviewed cases as an expert</p> <p>3 witness?</p> <p>4 A No, I have not.</p> <p>5 Q I understand you currently are not</p> <p>6 practicing medicine?</p> <p>7 A That is true.</p> <p>8 Q And that has been true since when?</p> <p>9 A Since May of 2013.</p> <p>10 Q Okay. And what brought you to stop</p> <p>11 practicing medicine in May of 2013?</p> <p>12 A The clinics I was -- I was staffing were</p> <p>13 closed, and the three physicians staffing them were</p> <p>14 summarily suspended.</p> <p>15 Q Okay. And you have been -- or your</p> <p>16 license has been reinstated, has it not?</p> <p>17 A Yes it has.</p> <p>18 Q Are there any conditions on the</p> <p>19 reinstatement of your license currently?</p> <p>20 A There are no conditions or restrictions.</p> <p>21 Q Do you have any intention to go back to</p> <p>22 the practice of medicine sitting here today?</p>

<p style="text-align: right;">9</p> <p>1 A My plans in the future are murky, but I do 2 not plan to practice medicine in Maryland again. I 3 may indeed be retired from medicine completely. 4 Q When you say your plans are murky, what do 5 you mean? 6 A I didn't really plan to retire at this 7 point in my life and I may very well look for other 8 branches of employment. 9 Q You mean other branches outside of 10 medicine? 11 A Yes. 12 Q Okay. 13 A I don't know what might come next. 14 Q Okay. So sitting here today you may -- 15 you may want to seek out other employment in the 16 future, just not medical employment. 17 A Yes. 18 Q But you do not intend today to seek out 19 any further medical employment? 20 A Not in Maryland. 21 Q Okay. Do you have a medical license in 22 any other state?</p>	<p style="text-align: right;">11</p> <p>1 doing the examination about the articles in December 2 2013, and then separately and apart from that you 3 did a separate three-hour examination that was the 4 oral examination? You're looking at me like I 5 missed -- 6 A No oral examination that I can -- only the 7 initial Boards are oral. 8 Q Okay. I'm sorry. So what is the 9 difference though -- let me ask it that way. What's 10 the difference between the two tests that you have 11 or two certifications that you have listed on your 12 CV under the date December of 2013? 13 A Because in order to be eligible to sit for 14 the -- for the written exam, I have to maintain the 15 25 credits of the articles that are advised that I 16 read during the year. I have to read those, take a 17 test on them, answer over 80 percent of the 18 questions correct. If I do that, then I'm permitted 19 to sit for the written boards. 20 Q I see. And the written boards is once 21 every six years now? 22 A Yes.</p>
<p style="text-align: right;">10</p> <p>1 A Only in Maryland currently. 2 Q Okay. I see, looking at your CV, that you 3 took a test in December of 2013. Well, it looks 4 like two. You recertified through the American 5 Board of Obstetrics and Gynecology; right? 6 A Yes. 7 Q And how about the Part 3 secure written 8 test; what is that? Is that part of the ACOG -- I 9 mean, the -- 10 A That's part of, yes, ABOG. And we -- we 11 maintain our licensure by reading articles that 12 are referred -- that are given to us by the American 13 College and the American Board in the off years. We 14 have to read articles in gynecology, office surgical 15 gynecology, answer questions, and pass those to 16 maintain our Board certification. But every six 17 years it is now, the gray hairs keep changing it, we 18 have a proctored three-hour exam. 19 Q And that's what is reflected in -- 20 A Yes. And that's what I took in 2013. 21 Q So just to let me finish my question so 22 we're not talking over one another, you recertified</p>	<p style="text-align: right;">12</p> <p>1 Q All right. How did you come to be -- 2 well, let me back up for just one second. 3 In 2012 you were an independent contractor 4 for American Women's Services? 5 A Getting my years straight. Yes, in 2012 I 6 became an independent contractor for American 7 Women's Services, yes. 8 Q According to your CV, it says April 2012 9 to May 2013 Associates in OB/GYN Care, Silver 10 Spring. Do you see that? 11 A Associates in -- that's here; yes. 12 Q I just want to know are those -- are those 13 the correct dates that you worked for Associates in 14 OB/GYN Care? 15 A Yes, they are the correct dates. 16 Q And you were not an employee of Associates 17 in OB/GYN Care; correct? 18 A Correct. 19 Q You were an independent contractor of what 20 entity then? 21 A American Medical Association or Associates 22 was on the contract. American Women's Services was</p>

<p style="text-align: right;">13</p> <p>1 the name of some of the clinics. And the clinic</p> <p>2 plaque outside of the Silver Spring office stated</p> <p>3 Associates in OB/GYN Care.</p> <p>4 Q Did you practice at all four of the</p> <p>5 Maryland branches of Associates in OB/GYN Care?</p> <p>6 A I did.</p> <p>7 Q And which of them were labeled outside or</p> <p>8 on the building Associates in OB/GYN Care as best</p> <p>9 you recall?</p> <p>10 A Only the office in Silver Spring.</p> <p>11 Q And were the offices in Cheverly,</p> <p>12 Baltimore, and here in Frederick labeled American</p> <p>13 Women's Services?</p> <p>14 A The Baltimore office was in the bottom of</p> <p>15 a tall apartment building and had very little</p> <p>16 labeling at all. You needed to be buzzed in and</p> <p>17 know where it was and it just said private entrance.</p> <p>18 There was nothing outside.</p> <p>19 The Frederick office had something about</p> <p>20 women's care. I don't remember if it said</p> <p>21 Associates in Women's Care, but it said something</p> <p>22 like that.</p>	<p style="text-align: right;">15</p> <p>1 A Yes.</p> <p>2 Q You were not delivering babies.</p> <p>3 A True.</p> <p>4 Q When is the last time you regularly</p> <p>5 delivered babies or practiced obstetrics?</p> <p>6 A 2001.</p> <p>7 Q All right. And so in 2005 I think you</p> <p>8 said you shared office space with a family</p> <p>9 practitioner?</p> <p>10 A Yes.</p> <p>11 Q Were you business partners or did you just</p> <p>12 share space?</p> <p>13 A I was just paying her for space, her</p> <p>14 staff.</p> <p>15 Q Oh, I see.</p> <p>16 A It was the matter of splitting costs.</p> <p>17 Q So when she decided that she could no</p> <p>18 longer run her practice, you had nowhere to run your</p> <p>19 practice out of.</p> <p>20 A That is true.</p> <p>21 Q And rather than pick up and move somewhere</p> <p>22 else and do it on your own, you decided to seek out</p>
<p style="text-align: right;">14</p> <p>1 And in Cheverly it was also in -- it was</p> <p>2 in a facility right next to a pediatric and OB</p> <p>3 office in fact, where it was not really publicized</p> <p>4 what was done there.</p> <p>5 Q Okay. And how did you become to become an</p> <p>6 independent contractor for American Medical</p> <p>7 Associates, since that's who your contract was with?</p> <p>8 A I had been sharing office space with</p> <p>9 another physician, who was a family practitioner,</p> <p>10 since I reopened a practice limited to gynecology on</p> <p>11 my own in 2005. She very abruptly wanted to change</p> <p>12 our agreement that was not tenable for me and was a</p> <p>13 definite had to be done soon and now for her. So I</p> <p>14 had six weeks to find another form of employment.</p> <p>15 And during my employment search Associates in OB/GYN</p> <p>16 Care in Silver Spring popped up and they mentioned</p> <p>17 they had part-time and full-time positions and I</p> <p>18 contacted them.</p> <p>19 Q Okay. So just backing up for a second,</p> <p>20 and I'm looking at your CV, you stated and it says</p> <p>21 on your CV that starting in June of 2005 you had a</p> <p>22 solo practice limited to gynecology.</p>	<p style="text-align: right;">16</p> <p>1 employment with another entity?</p> <p>2 A It is extremely hard to find space in any</p> <p>3 office anywhere. Everybody would like more doctors</p> <p>4 and more space, but keeping overhead to a minimum is</p> <p>5 important. And limiting myself to gynecology made</p> <p>6 it more limiting for me to find a position. And I</p> <p>7 would have stayed in my office with Carolyn had it</p> <p>8 been at all feasible, but what she really wanted me</p> <p>9 to do was to pay for her shortages, and I would have</p> <p>10 ended up with very little at the end of the year.</p> <p>11 Q What was the name of that family</p> <p>12 practitioner?</p> <p>13 A Carolyn Harrington.</p> <p>14 Q And is she practicing now, do you know?</p> <p>15 A I don't know.</p> <p>16 Q In 2000 -- from 2005 to 2012 what was the</p> <p>17 name of your solo practice?</p> <p>18 A Iris E. Dominy, M.D.</p> <p>19 Q Was it M.D. PA or LLC, anything like that?</p> <p>20 A I was in an -- an LLC, so yes.</p> <p>21 Q Okay. Did you perform abortions as a solo</p> <p>22 practitioner from 2005 to 2012?</p>

<p style="text-align: right;">17</p> <p>1 A No, I didn't.</p> <p>2 Q Had you in your private practice before</p> <p>3 having a solo practice -- because you were with</p> <p>4 partners, it looks like, for a --</p> <p>5 A Yes.</p> <p>6 Q -- number of years.</p> <p>7 A Yes.</p> <p>8 Q When you were with, for example, Margolis,</p> <p>9 Orleans, Alter & Dominy and when it changed over to</p> <p>10 Capital Women's Care, did you perform abortions?</p> <p>11 A I did.</p> <p>12 Q Why did you leave the Margolis, Orleans,</p> <p>13 Alter & Dominy practice which later became Capital</p> <p>14 Women's Care?</p> <p>15 A Because I decided that I was going to</p> <p>16 either have to cut down or stop OB, and my partners</p> <p>17 weren't very happy about that.</p> <p>18 Q Why did you decide you needed to cut down</p> <p>19 or stop OB?</p> <p>20 A Because at -- I found that in my 50s I</p> <p>21 just wasn't snapping awake at 3 o'clock in the</p> <p>22 morning the way I used to, and the next day in the</p>	<p style="text-align: right;">19</p> <p>1 Q The contract that your counsel provided to</p> <p>2 us ahead of the deposition has Dr. Brigham's name on</p> <p>3 it as a cosignatory. Did you know Dr. Brigham?</p> <p>4 A Yes.</p> <p>5 Q Did you know him before you applied for an</p> <p>6 independent contractor position with American</p> <p>7 Medical Associates?</p> <p>8 A No, I did not.</p> <p>9 Q Did you know of him?</p> <p>10 A Yes, I did.</p> <p>11 Q What did you know of him before you became</p> <p>12 an independent contractor with his clinics?</p> <p>13 A I had seen patients in follow-up who had</p> <p>14 had terminations at clinics run by American Women's</p> <p>15 Services and I had asked where did you have your</p> <p>16 abortion and how was it done, any problems, and I</p> <p>17 would do their follow-up because that's what they</p> <p>18 chose, so I knew of the group. They had had a</p> <p>19 previous office in College Park that was very busy,</p> <p>20 and a lot of these young women came to me for their</p> <p>21 follow-ups rather than go back to the clinic.</p> <p>22 Q Okay. So what made you interested in</p>
<p style="text-align: right;">18</p> <p>1 office I wasn't getting my second and third winds,</p> <p>2 it was just beginning -- the hours were beginning to</p> <p>3 tell on me.</p> <p>4 Q So if I'm following you, around 2001, when</p> <p>5 you made it known that you wanted to slow down or</p> <p>6 stop obstetrics, that was not received well at your</p> <p>7 practice?</p> <p>8 A True.</p> <p>9 Q And then it looks like for four years you</p> <p>10 took time off from medicine altogether and --</p> <p>11 A Yes, I did.</p> <p>12 Q -- to be with your family --</p> <p>13 A I took a hiatus, yes.</p> <p>14 Q All right. So when you came back in 2005,</p> <p>15 for about seven years your practice was regular,</p> <p>16 routine gynecologic care?</p> <p>17 A Yes.</p> <p>18 Q All right. And then in 2012, when you</p> <p>19 came to be an independent contractor for American</p> <p>20 Medical Associates, I think you said you -- you just</p> <p>21 found an advertisement somewhere?</p> <p>22 A Yes.</p>	<p style="text-align: right;">20</p> <p>1 wanting to work for Associates in OB/GYN Care or</p> <p>2 American Medical Associates?</p> <p>3 A Basically I wanted to keep working. And I</p> <p>4 literally went from one office, I un -- I packed --</p> <p>5 I unpacked my office in Gaithersburg or North</p> <p>6 Potomac that weekend and started with American</p> <p>7 Women's Services on Monday.</p> <p>8 I wanted to be earning, I wanted to be</p> <p>9 taking care of patients, I wanted to be doing</p> <p>10 gynecology, and since I had a -- a practice of over</p> <p>11 2,500 patients, I was hoping to be able to see them</p> <p>12 in the Silver Spring and Frederick offices, which</p> <p>13 Dr. Brigham had indicated he was very interested in</p> <p>14 expanding the gynecology services.</p> <p>15 Q And I saw some reference to that in the</p> <p>16 contract, that your practice was purchased as part</p> <p>17 of your employment or your independent contractor</p> <p>18 agreement.</p> <p>19 Did some of your patients then go on to be</p> <p>20 seen by you at the Silver Spring and any other</p> <p>21 location of American Medical Associates?</p> <p>22 A Unfortunately that part of the contract</p>

21	<p>1 never worked out. Dr. Brigham really didn't have an</p> <p>2 interest in opening proper gynecology offices in</p> <p>3 those two locations, and it just never happened.</p> <p>4 So I sent postcards to my patients</p> <p>5 initially saying that I had left and would be</p> <p>6 available soon, and then I sent another mailing</p> <p>7 saying that they would need to seek other care and I</p> <p>8 had their records if they needed.</p> <p>9 Q Okay. I'm sorry. I think I got confused</p> <p>10 about something.</p> <p>11 Initially I thought you said Dr. Brigham</p> <p>12 was very interested in expanding and wanted to be</p> <p>13 able to see your patients in his clinics. Did I</p> <p>14 not understand --</p> <p>15 A That is true.</p> <p>16 Q And it just turned out that that was not</p> <p>17 correct?</p> <p>18 A After many meetings where the regional</p> <p>19 manager was supposed to meet me in one of the</p> <p>20 offices and discuss the things I would require for</p> <p>21 seeing private patients and doing procedures,</p> <p>22 evaluating abnormal Pap smears and colposcopy, lots</p>	23	<p>1 A Yes, that's fair.</p> <p>2 Q So did you see any routine gynecology</p> <p>3 patients for that year and a couple of months?</p> <p>4 A Very few.</p> <p>5 Q What is the name of the regional manager</p> <p>6 that you mentioned a moment ago?</p> <p>7 A The regional manager was Kim Walker.</p> <p>8 Q And was she in Maryland?</p> <p>9 A She was.</p> <p>10 Q Where did she work?</p> <p>11 A She was the Maryland regional manager. My</p> <p>12 understanding was that she was the overseer for the</p> <p>13 four Maryland offices.</p> <p>14 Q Did you know where her office was located?</p> <p>15 A I don't believe -- I wasn't aware she had</p> <p>16 an office. I think her car, going from office to</p> <p>17 office to office where she was needed, dealing with</p> <p>18 problems, that type of thing.</p> <p>19 Q Besides the meetings that you were</p> <p>20 supposed to have with her while you were negotiating</p> <p>21 the contract, did you ever see her in the clinics</p> <p>22 once you became an independent contractor for the</p>
22	<p>1 of equipment, and several times I had appointments</p> <p>2 with the regional manager, they never showed. I had</p> <p>3 a few discussions with him and there were just more</p> <p>4 important things for him to do. So it was clear</p> <p>5 that abortion services were going to be the main</p> <p>6 thrust.</p> <p>7 Q And is -- was that your experience for the</p> <p>8 year or so that you did work at the clinics, that it</p> <p>9 was focused mainly on abortion services?</p> <p>10 A Yes, it was.</p> <p>11 Q When you were working at American Women's</p> <p>12 Services -- and just for ease, when I say American</p> <p>13 Women's Services, I'm referring to the four Maryland</p> <p>14 clinics that you physically saw patients at from</p> <p>15 April 2012 to May 2013.</p> <p>16 Is that fair?</p> <p>17 A Yes. I understand.</p> <p>18 Q And if I say Associates in OB/GYN in</p> <p>19 Care -- Associates in OB/GYN Care, I'm talking about</p> <p>20 the same four practices --</p> <p>21 A All four offices.</p> <p>22 Q -- is that -- is that fair?</p>	24	<p>1 clinic?</p> <p>2 A Yes, I did.</p> <p>3 Q At what point did you first meet</p> <p>4 Dr. Brigham?</p> <p>5 A I met Dr. Brigham on my first day of work,</p> <p>6 that first Monday. He came down from New Jersey,</p> <p>7 met me in Baltimore, introduced himself. We had</p> <p>8 talked at length on the phone for my interview, his</p> <p>9 ideas, my ideas.</p> <p>10 And I had sent him a CV. And he made a</p> <p>11 point of coming down Monday to orient me as to how</p> <p>12 the clinics worked, to meet me personally and ask me</p> <p>13 if I had any other questions, that type of thing.</p> <p>14 Q So your start date was April 2012,</p> <p>15 according to your CV.</p> <p>16 A Yes. It was the -- yes. I literally</p> <p>17 moved out of north Potomac on the weekend and</p> <p>18 started that Monday, whatever Monday that -- that</p> <p>19 was.</p> <p>20 Q So do you know in relation to April when</p> <p>21 you found the advertisement and submitted a resume</p> <p>22 for consideration?</p>

<p style="text-align: right;">25</p> <p>1 A Well, I had six weeks after Carolyn 2 dropped the new contract on me so I was looking at a 3 lot of positions, and it was sometime in that point. 4 Q And you had a phone interview with 5 Dr. Brigham? 6 A A couple. 7 Q Was he the first person that contacted you 8 from American Women's Services once you submitted 9 your resume for consideration? 10 A I called the offices and asked about 11 positions. And he himself got back to me later that 12 day. Then I sent him my CV and we discussed at 13 length my -- my career, my qualifications, as well 14 as what he expected, and was, of course, very 15 interested in how I felt about women having a 16 choice. 17 Q And so once you -- once you contacted -- I 18 think you said that you contacted the clinics and 19 you heard back from him directly; right? 20 A I contacted the number given on the 21 internet for -- for physicians interested in 22 employment, which was the number in Voorhees, New</p>	<p style="text-align: right;">27</p> <p>1 You mean the issuer? 2 MS. MALARKEY: Right, right, right. 3 Q Obviously they were made out to you, but 4 from whose bank account were they drawn? 5 A Sometimes from Dr. -- Dr. -- no. 6 Dr. Brigham signed them all. 7 Q Right. He signed them, but do you recall 8 what entity's name was on the front? Was it him 9 personally? 10 A No, no. It was American Medical 11 Associates or American Women's Services. It was the 12 name of an entity, not a person. 13 Q Did you ever practice at any clinic 14 affiliated with American Women's Services or 15 American Medical Associates outside the State of 16 Maryland? 17 A No. 18 Q I think I asked you this, I apologize if 19 I'm repeating myself, but you visited all four 20 clinics in your practice; right? 21 A Yes, I did. 22 Q What, if you -- if there was a schedule or</p>
<p style="text-align: right;">26</p> <p>1 Jersey, which was their main office. Had a very 2 long voicemail. You could speak to everybody's 3 secretary, including him. 4 Q Okay. And when you say they their 5 voicemail, which entity are you talking about? 6 A They said when they answered the phone 7 American Women's Services, I believe. 8 Q Is it your understanding that American 9 Women's Services owns the four Maryland clinics that 10 we talked about? Baltimore, Cheverly, Silver 11 Spring, and Frederick? 12 A That's the best understanding I have, yes. 13 Q And are you aware of any other clinics in 14 the State of Maryland that are owned by American 15 Women's Services besides those four? 16 A No, I'm not. 17 Q When you received paychecks for the year 18 or so that you worked for American Women's Services 19 as an independent contractor, whose name was on the 20 checks? 21 A Who signed the checks-- 22 MR. VARNER: You mean the issuing person?</p>	<p style="text-align: right;">28</p> <p>1 rounds that you made, can you tell me how your 2 schedule was set up seeing patients among the four 3 different clinics? 4 A There was a schedule divided into 5 sessions. Sessions were morning or afternoon. 6 I had two sessions on Monday, one session 7 on Tuesday, two sessions on Thursday, two sessions 8 on Friday, and initially a session in Baltimore on 9 Saturday. 10 Q None on Wednesday? 11 A Well, did I miss Wednesday? 12 Q You did miss Wednesday. 13 A Oh, I'm sorry. I had two sessions on 14 Wednesday too. 15 Q So your only day off completely was 16 Sunday? 17 A Yes. 18 Q And you had a half a day Tuesday and 19 Saturday? 20 A Yes. 21 Q How did it work or how did you know where 22 to go each particular day? Was it a set schedule</p>

<p style="text-align: right;">29</p> <p>1 or --</p> <p>2 A It was a setschedule.</p> <p>3 Q And do you recall what that schedule was?</p> <p>4 A I may be able to. Monday Baltimore in the</p> <p>5 a.m., Cheverly in the p.m.; Tuesday a.m. Cheverly;</p> <p>6 Wednesday a.m. Baltimore, p.m. Cheverly; Thursday</p> <p>7 a.m. Silver Spring, p.m. Frederick; Friday a.m.</p> <p>8 Silver Spring, p.m. Frederick; and until I stopped</p> <p>9 the Saturdays, it was Saturday a.m. session in</p> <p>10 Baltimore.</p> <p>11 Q When did you stop the Saturday sessions?</p> <p>12 A I don't remember exactly, but it was early</p> <p>13 fall.</p> <p>14 Q And why did you stop the Saturday</p> <p>15 sessions?</p> <p>16 A I was exhausted, and my family never saw</p> <p>17 me.</p> <p>18 Q And was Dr. Brigham okay with that?</p> <p>19 A He understood it. He loved my doing</p> <p>20 Saturdays but understood it waskilling.</p> <p>21 Q So if there was an issue that you needed</p> <p>22 to discuss in terms of what was going on at the</p>	<p style="text-align: right;">31</p> <p>1 whose name I don't recall.</p> <p>2 And the manager in Silver Spring changed a</p> <p>3 couple of times. I don't remember their names</p> <p>4 either.</p> <p>5 Q Where did Arlene work?</p> <p>6 A Arlene worked in Baltimore, and she could</p> <p>7 work anywhere. She often helped with staffing</p> <p>8 problems too. She spent a fair amount of time in</p> <p>9 Frederick too since it was a reasonable drive.</p> <p>10 Q So after initially being hired, did you</p> <p>11 have any further interaction with Dr. Brigham from</p> <p>12 April 2012 through May of 2013?</p> <p>13 A After meeting him my first day of work at</p> <p>14 both offices, we did talk. He would call at an</p> <p>15 office and ask about things, how they were going or</p> <p>16 if he heard about patients complaining about an</p> <p>17 excessively long wait, he'd asked me about staffing,</p> <p>18 were they doing what they should be doing, that type</p> <p>19 of thing.</p> <p>20 And, of course, there were Christmas</p> <p>21 parties and had that kind of arrangement, but day to</p> <p>22 day I didn't have contact with Steven Brigham.</p>
<p style="text-align: right;">30</p> <p>1 clinics or your compensation, was Dr. Brigham the</p> <p>2 one that you would discuss that with?</p> <p>3 A Issues, you have to be a little more</p> <p>4 specific. But if it's the running of the office and</p> <p>5 supplies, I would speak to the officemanager.</p> <p>6 Q Okay. Well, how -- I'm just -- I guess</p> <p>7 what -- what may be a better way of asking it is who</p> <p>8 did you consider to be your immediate supervisor?</p> <p>9 A The office manager.</p> <p>10 Q And what was her name or his name?</p> <p>11 A There were two. Crystal and Arlene.</p> <p>12 Q Do you remember either of their last</p> <p>13 names?</p> <p>14 A I do not.</p> <p>15 And Kim Walker sometimes came to an office</p> <p>16 to act as a manager if there were a staffing</p> <p>17 problem.</p> <p>18 Q From what locations did Crystal and Arlene</p> <p>19 work out of?</p> <p>20 A Crystal, Frederick was her main office,</p> <p>21 and she did go to Baltimore.</p> <p>22 There was another manager in Cheverly</p>	<p style="text-align: right;">32</p> <p>1 Q Okay. But periodically through the course</p> <p>2 of that year he would check in with you or vice</p> <p>3 versa?</p> <p>4 A Yes.</p> <p>5 Q And what -- where were the Christmas</p> <p>6 parties?</p> <p>7 A The Christmas party was on a boat out of</p> <p>8 the Harbor in D.C. I didn't go because my</p> <p>9 father-in-law fell down a flight of stairs that</p> <p>10 morning.</p> <p>11 Q I'm sorry.</p> <p>12 A Thank you.</p> <p>13 Q You didn't go either of the Christmases</p> <p>14 that you --</p> <p>15 A I know.</p> <p>16 Q Either 2012 or 2013?</p> <p>17 A No, I did not.</p> <p>18 Q Was a Christmas party just for the</p> <p>19 Maryland clinics or for clinics outside of Maryland</p> <p>20 as well?</p> <p>21 A It was for Maryland, all the staff.</p> <p>22 Q Do you know what other states, if any,</p>

<p style="text-align: right;">33</p> <p>1 Dr. Brigham has clinics in through American Women's</p> <p>2 Services or American Medical Associates?</p> <p>3 A I knew he had clinics in many states.</p> <p>4 There was an old directory in one of the offices</p> <p>5 going pretty far down south, Virginia, etcetera. I</p> <p>6 was -- I knew he had them in Virginia and I knew he</p> <p>7 had a Pennsylvania clinic.</p> <p>8 And one of them had recently closed</p> <p>9 because we were getting patients who would have gone</p> <p>10 to that clinic, at the Frederick clinic.</p> <p>11 But there were many offices in many other</p> <p>12 states initially, but he still was operating out of</p> <p>13 multiple states besides Maryland.</p> <p>14 Q So in May of 2013, it's my understanding</p> <p>15 that all four of the Maryland clinics were closed.</p> <p>16 A They were.</p> <p>17 Q Do you know for how long they remained</p> <p>18 closed?</p> <p>19 A I do not.</p> <p>20 Q But if they reopened, you certainly didn't</p> <p>21 go back to work for any of them?</p> <p>22 A No.</p>	<p style="text-align: right;">35</p> <p>1 A Yes.</p> <p>2 Q Did any four of the Maryland clinics have</p> <p>3 the capability to do a transvaginal ultrasound?</p> <p>4 A No.</p> <p>5 Q They didn't have the equipment?</p> <p>6 A That is true.</p> <p>7 Q So the sonogram -- I know we're going to</p> <p>8 get to it eventually, but -- for Ms. O'Connell and</p> <p>9 the printouts that we have from the machine, that's</p> <p>10 all transabdominal?</p> <p>11 A Transabdominal, correct.</p> <p>12 Q Do you know anything about the training of</p> <p>13 Crystal or Arlene to perform transabdominal</p> <p>14 sonogram?</p> <p>15 A I do not.</p> <p>16 Q Had you ever asked?</p> <p>17 A No.</p> <p>18 Q While you were working there, you never</p> <p>19 inquired as to what their training was?</p> <p>20 A No, I did not.</p> <p>21 Q Did you believe that they did have</p> <p>22 training?</p>
<p style="text-align: right;">34</p> <p>1 Q And how many sonographers worked at each</p> <p>2 of the clinics?</p> <p>3 A One.</p> <p>4 Q One per clinic?</p> <p>5 A Yes.</p> <p>6 Q And do you recall the names of any of the</p> <p>7 sonographers?</p> <p>8 A The people that performed the sonography</p> <p>9 were the office managers.</p> <p>10 Q Okay. So Crystal and Arlene performed</p> <p>11 sonograms?</p> <p>12 A Yes.</p> <p>13 Q And those are the two office managers</p> <p>14 whose names you can recall sitting here today?</p> <p>15 A Yes.</p> <p>16 Q But if I'm understanding you, generally</p> <p>17 speaking, no matter who was the office manager at a</p> <p>18 particular location at a particular time, it would</p> <p>19 be part of their job as the office manager to</p> <p>20 perform sonograms?</p> <p>21 A Yes.</p> <p>22 Q These are all transabdominal sonograms?</p>	<p style="text-align: right;">36</p> <p>1 A Yes.</p> <p>2 Q Did you ever see a certificate or a</p> <p>3 license or anything displayed in the office that</p> <p>4 they had been trained?</p> <p>5 A No, I had not.</p> <p>6 Q What other job responsibilities did the</p> <p>7 office managers have as it relates to patient care?</p> <p>8 So I'm not talking about ordering supplies or being</p> <p>9 a receptionist duties, things like that, but as it</p> <p>10 relates to actually seeing patients or laying hands</p> <p>11 on patients, besides sonograms did the office</p> <p>12 managers have any other responsibilities?</p> <p>13 A The office managers always had their own</p> <p>14 office where they could speak privately with</p> <p>15 patients. And besides taking care of the insurance</p> <p>16 or the Medicaid or the payment, which is, of course,</p> <p>17 handled, they also did the counseling, the</p> <p>18 discussion of the patient's gestational age, and</p> <p>19 after counseling the patient, they would do the</p> <p>20 sonogram, then take them back to their office to</p> <p>21 complete the consult since, of course, the estimated</p> <p>22 gestational age could have changed the patient's</p>

<p style="text-align: right;">37</p> <p>1 plans.</p> <p>2 Q Okay. So let's just walk through a</p> <p>3 typical appointment for a new patient who comes in</p> <p>4 and is interested in having an abortion. Just</p> <p>5 trying to figure out all the steps along the way and</p> <p>6 who they'd see. So I take it they'd come in and</p> <p>7 they'd see a receptionist?</p> <p>8 A Patients scheduled for a session through a</p> <p>9 central -- a service, there is not a time for those.</p> <p>10 They sign in when they come in. And they sign in in</p> <p>11 a very private way, where they can write their name</p> <p>12 down, the name is pulled off the clipboard so only a</p> <p>13 number is there, first-come, first-served. A chart</p> <p>14 is built for them with a clipboard they're given, as</p> <p>15 in any doctor's office, their name, address, social</p> <p>16 information, medical history, OB history, focal</p> <p>17 history, and, of course, the forms with names and</p> <p>18 addresses to contact a patient if that patient fails</p> <p>19 to come in for the follow-up.</p> <p>20 Q So are any abortions done on a -- well,</p> <p>21 maybe I'm misunderstanding. Are abortions done on a</p> <p>22 walk-in, first-come, first-served basis, or do you</p>	<p style="text-align: right;">39</p> <p>1 A Yes.</p> <p>2 Q Do you recall the name of the Frederick</p> <p>3 receptionist in the summer of 2012?</p> <p>4 A I wouldn't because the receptionist is not</p> <p>5 a permanent job. Everybody who's not a manager</p> <p>6 rotates through all of the various stations, which</p> <p>7 is the lab, reception, tissue, and, of course, to</p> <p>8 assist me and to help with recovery.</p> <p>9 We also had an RN to staff the recovery</p> <p>10 room. But the other girls rotated through every</p> <p>11 other station.</p> <p>12 Q And those are the five stations you've</p> <p>13 listed for me: Laboratory, reception --</p> <p>14 A Reception; lab; tissue; helping me, I need</p> <p>15 an assistant; and recovery.</p> <p>16 Q Okay. So what was the title of the</p> <p>17 individuals who rotated through those five stations?</p> <p>18 A Employees.</p> <p>19 Q I just want to call them something. I --</p> <p>20 A Yes. Well, some were -- they all had some</p> <p>21 sort of title. There were so many of the medical</p> <p>22 assistants, nursing assistants, med techs --</p>
<p style="text-align: right;">38</p> <p>1 have to make an appointment ahead of time?</p> <p>2 A The -- the appointment for the session is</p> <p>3 made through the service.</p> <p>4 Q You're talking about phone service?</p> <p>5 A Yes.</p> <p>6 Q So you -- you call in, you'd get a</p> <p>7 scheduled date and time that you would show up for,</p> <p>8 like any doctor's appointment --</p> <p>9 A Yes.</p> <p>10 Q -- and then once you arrive, you register</p> <p>11 and do the paperwork as you've described?</p> <p>12 A You sign in --</p> <p>13 Q Yes.</p> <p>14 A -- and you're given a clipboard for your</p> <p>15 health information.</p> <p>16 Q So what person, and I'm not talking about</p> <p>17 a name or specific identity, but generically</p> <p>18 speaking, would be the first person a patient would</p> <p>19 see? Would it be a --</p> <p>20 A Would be a receptionist.</p> <p>21 Q Separate from -- a receptionist is a</p> <p>22 separate individual from the office manager?</p>	<p style="text-align: right;">40</p> <p>1 Q Okay.</p> <p>2 A -- those types of things.</p> <p>3 Q All right. So then once the patient came</p> <p>4 in and met the initial receptionist and received the</p> <p>5 paperwork to fill out, who is the next individual</p> <p>6 they saw? What's the next step in the process?</p> <p>7 A The office manager would call them back.</p> <p>8 Q And that would be to do the counseling</p> <p>9 that you mentioned a moment ago?</p> <p>10 A That would be to ask what the patient</p> <p>11 wanted, how far along she thought she was, that type</p> <p>12 of thing, and begin the counseling and not complete</p> <p>13 the counseling until the sonogram was done so it</p> <p>14 wasn't in vain, to make sure somebody wasn't too</p> <p>15 early or too far along.</p> <p>16 Q And so specifically what counseling are</p> <p>17 you referring to that would be done by the office</p> <p>18 manager before the sonogram was performed?</p> <p>19 A To make sure this patient did want to</p> <p>20 terminate her -- her pregnancy, there was no signs</p> <p>21 of coercion or force or threats. We kept an eye as</p> <p>22 to who came with the patient too.</p>

<p style="text-align: right;">41</p> <p>1 And then she would ask what kind of</p> <p>2 abortion she preferred, did she have an idea that</p> <p>3 there were two, and discuss that.</p> <p>4 Explain that if her dates -- if her</p> <p>5 estimated gestational age was what it was, she</p> <p>6 should be an excellent candidate for that, but that</p> <p>7 would have to be confirmed.</p> <p>8 So they walk down a short hall to the</p> <p>9 sonogram room, private, dark, took the pictures and</p> <p>10 did the measurements and then she took the patient</p> <p>11 back to her office to finalize the procedure.</p> <p>12 Q Okay. So just picking up on something you</p> <p>13 said a moment ago, initially would you get</p> <p>14 information from the patient about how far along</p> <p>15 they thought they were before a sonogram was</p> <p>16 performed?</p> <p>17 A They gave that to the service. The</p> <p>18 service asked them when they called.</p> <p>19 Q I see. And what -- what is that -- what</p> <p>20 did the -- what does the service specifically ask</p> <p>21 them, if you know?</p> <p>22 A Her service sheet may be in there, the</p>	<p style="text-align: right;">43</p> <p>1 embryo is obtained, a crown-rump length is measured,</p> <p>2 and if the fetus is -- the embryo is very active,</p> <p>3 it's in a transverse lie, then the gestational sac</p> <p>4 is measured. And there's a chart that is easily</p> <p>5 utilized. It correlates with those millimeters to</p> <p>6 weeks.</p> <p>7 Q Okay. So if I'm understanding, it could</p> <p>8 be either using the crown-rump length or using the</p> <p>9 gestational sac?</p> <p>10 A Yes.</p> <p>11 Q And it depended on the co-operability of</p> <p>12 the fetus --</p> <p>13 A Of the baby, exactly.</p> <p>14 Q And you mentioned there were two types of</p> <p>15 abortions that were offered at American Women's</p> <p>16 Services.</p> <p>17 Those are medical and surgical?</p> <p>18 A Yes. Basically what we call surgical and</p> <p>19 nonsurgical.</p> <p>20 Q And a surgical would be a D&C?</p> <p>21 A Yes.</p> <p>22 Q And a nonsurgical was using methotrexate</p>
<p style="text-align: right;">42</p> <p>1 appointment slip. They ask them their name, their</p> <p>2 date of birth, the last period, how far along they</p> <p>3 think they are, are they under a doctor's care,</p> <p>4 taking any medications, have any allergies --</p> <p>5 Q Okay.</p> <p>6 A -- what day is good for you, what office</p> <p>7 is close to you.</p> <p>8 Q And then you said that the -- all women</p> <p>9 who sought out an abortion had a sonogram; correct?</p> <p>10 A Yes, yes.</p> <p>11 Q And the reason was to -- well, tell me</p> <p>12 what the reason was.</p> <p>13 A The reason was to be as -- to ascertain</p> <p>14 the estimated gestational age.</p> <p>15 Q And how -- how do you ascertain the</p> <p>16 estimated gestational age through a transabdominal</p> <p>17 ultrasound?</p> <p>18 A With the patient with a full bladder the</p> <p>19 transducer is placed over the bladder, the uterus is</p> <p>20 right behind it, and the transducer is moved to get</p> <p>21 a good view of the uterine cavity. And when an</p> <p>22 adequate view of the fetus -- no; pardon me --</p>	<p style="text-align: right;">44</p> <p>1 and --</p> <p>2 A Misoprostol.</p> <p>3 Q Misoprostol?</p> <p>4 A M&M.</p> <p>5 Q And they're -- as I understand it,</p> <p>6 mifepristone, or RU-486, was not offered through</p> <p>7 American Women's Services.</p> <p>8 A That is true.</p> <p>9 Q At any time when you practiced there.</p> <p>10 A True.</p> <p>11 Q Now, is it called a medical abortion using</p> <p>12 the methotrexate and the --</p> <p>13 A Yes.</p> <p>14 Q -- misoprostol?</p> <p>15 A Yes.</p> <p>16 Q And I understand that -- and I think</p> <p>17 you've alluded to it in some of your prior</p> <p>18 answers -- that there is a cutoff date, if you will,</p> <p>19 which is the -- a last point in time when you can do</p> <p>20 a medical abortion; is that correct?</p> <p>21 A Yes.</p> <p>22 Q What -- and what's that date?</p>

<p style="text-align: right;">45</p> <p>1 A A medical abortion was nine weeks.</p> <p>2 Q And is it nine weeks -- well, nine weeks</p> <p>3 measured how?</p> <p>4 A By a sonogram.</p> <p>5 Q So no matter what the patient told you</p> <p>6 about her last menstrual period, you always used at</p> <p>7 American Women's Services the sonogram that you did</p> <p>8 in the office?</p> <p>9 A Yes.</p> <p>10 Q So if she was anything less than nine</p> <p>11 weeks, medical abortion was on option for--</p> <p>12 A Yes, it was.</p> <p>13 Q What if she was nine weeks even?</p> <p>14 A She would be a candidate.</p> <p>15 Q Nine weeks and one day not a candidate?</p> <p>16 A I always bring the patient in on that</p> <p>17 decision. You're on the cusp. If you really,</p> <p>18 really want a medical and she really did, I'd give</p> <p>19 it a try for her.</p> <p>20 Q Got it. Okay. And when you say you'd</p> <p>21 give it a try, you would certainly counsel her that</p> <p>22 it might not be successful.</p>	<p style="text-align: right;">47</p> <p>1 practice?</p> <p>2 A Yes, I did.</p> <p>3 Q Both medical and surgical?</p> <p>4 A Not medical.</p> <p>5 Q Only surgical?</p> <p>6 A Yes.</p> <p>7 Q And how about at Dr. Margolis' practice;</p> <p>8 did you do medical, surgical, or both?</p> <p>9 A Only surgical.</p> <p>10 Q So is April of 2012, when you started</p> <p>11 working with Associates in OB/GYN Care, was that the</p> <p>12 first experience you had performing medical</p> <p>13 abortions?</p> <p>14 A Yes.</p> <p>15 Q So you had never used RU-486 in your</p> <p>16 clinical practice at all?</p> <p>17 A No, I never had.</p> <p>18 Q Do you know why RU-486 was not used at the</p> <p>19 Associates in OB/GYN Care clinics?</p> <p>20 A No, I don't know why the -- why that</p> <p>21 decision was made.</p> <p>22 Q So before you started practicing at</p>
<p style="text-align: right;">46</p> <p>1 A Yes.</p> <p>2 Q And that she may have to have a surgical</p> <p>3 abortion anyway.</p> <p>4 A Yes.</p> <p>5 Q And why is it that nine weeks was the</p> <p>6 cutoff for a medical abortion?</p> <p>7 A With methotrexate and misoprostol, I think</p> <p>8 even with RU-486, I think the -- in fact, I'm sure</p> <p>9 that the success rates fall off rather dramatically</p> <p>10 at ten weeks.</p> <p>11 Q When you were -- I think you told me when</p> <p>12 you were practicing privately with the Margolis</p> <p>13 practice, you performed abortions there too?</p> <p>14 A Yes.</p> <p>15 Q How about from 1984 through 1989,</p> <p>16 according to your CV, it says you were an associate</p> <p>17 at Obstetrics and Gynecology Associates in Silver</p> <p>18 Spring.</p> <p>19 Is that a different practice from</p> <p>20 Dr. Margolis' practice?</p> <p>21 A Yes, it is.</p> <p>22 Q Did you perform abortions at that</p>	<p style="text-align: right;">48</p> <p>1 Associates in OB/GYN Care, were you given or did you</p> <p>2 have any education by them, separate and apart from</p> <p>3 all of your OB/GYN training that you had in your</p> <p>4 experience that you had clinically, were you given</p> <p>5 any training by Associates in OB/GYN Care or</p> <p>6 American Medical Associates about medical abortion?</p> <p>7 A No.</p> <p>8 Q Just what you knew from your years of</p> <p>9 experience.</p> <p>10 A Yes.</p> <p>11 Q Did you have an understanding as to</p> <p>12 whether there's a difference in the success rate</p> <p>13 between RU-486 and had methotrexate and misoprostol?</p> <p>14 A Yes.</p> <p>15 Q And what is that?</p> <p>16 A That they are six of one, half a dozen of</p> <p>17 the other.</p> <p>18 Q RU-486 in 2012 was FDA-approved for</p> <p>19 medical abortion; correct?</p> <p>20 A Yes, it was.</p> <p>21 Q Methotrexate and misoprostol were not</p> <p>22 FDA-approved for medical abortion?</p>

<p style="text-align: right;">49</p> <p>1 A Methotrexate is not and misoprostol is 2 still not to this day. 3 Q So to answer my question, no, they are not 4 FDA-approved for the purposes of medical abortion? 5 A Misoprostol is not appropriate for 6 anything but gastric ulcers, according to the 7 non-off label use, and methotrexate also is not 8 FDA-approved for terminating pregnancies. 9 Q Do you know why Associates in OB/GYN Care 10 used those two drugs to achieve medical abortions? 11 A No, I don't. But it's a perfectly 12 excellent way to do so. It may be because while 13 RU-486 was invented in France -- it was and still is 14 called the French abortion pill -- it was invented 15 to be an abortifacient. Methotrexate came decades 16 before and we've been finding many excellent 17 off-label uses for it. 18 So RU-487 came with data to make it -- 19 improve it to be adequate for abortion. But it is 20 limited for use up to seven weeks or 49 days. And 21 RU-486 also has a few medical contraindications 22 involving hypertension, cardiovascular disease that</p>	<p style="text-align: right;">51</p> <p>1 Q And you said that once the methotrexate is 2 given, the pregnancy must be terminated even if 3 there's a failure? 4 A Yes, I did. 5 Q Why is that? 6 A Because it is a pregnancy Category X, 7 which means that it may have effects on a developing 8 mammal. 9 Q How about RU-486; does that have the same 10 effects? 11 A It's also a pregnancy Category X, it 12 should not be given to a pregnant women; and, if it 13 is, that pregnancy should terminate. 14 Q Okay. And that caveat that you just 15 mentioned, the pregnancy should terminate even if 16 it's not a success, does that apply to the end of 17 the pregnancy? 18 A I'm not sure I understand. 19 Q Okay. Maybe that was a bad question. 20 So, for example, at Associates in OB/GYN 21 Care the reason you had patients -- well, one of the 22 reasons you had patients come back for a follow-up</p>
<p style="text-align: right;">50</p> <p>1 have to be taken into consideration. It may be a 2 little more cumbersome to use. I'm just trying to 3 think if I were a medical director why I would 4 choose that. And they're both used with 5 misoprostol, they both work very well, they both 6 have very few side effects, and they both are 7 category -- are pregnancy Category X. Once the 8 medications are given, the pregnancy should not 9 continue even if there is a failure. 10 Q Okay. So -- you mentioned a moment ago in 11 your answer that one, it was limited to use up to 49 12 days. Which one were you referring to? 13 A RU-486. 14 Q So just getting back to my initial 15 question, are you aware of any specific reason why 16 Associates in OB/GYN Care used methotrexate plus 17 misoprostol instead of RU-486 plus misoprostol? 18 A I am not. 19 Q And based on your prior answer, I take it, 20 it's your opinion that either one is perfectly 21 adequate. 22 A Yes. They are both efficacious, safe.</p>	<p style="text-align: right;">52</p> <p>1 after a medical abortion was to confirm that the 2 pregnant -- that the termination was a success? 3 A Yes. 4 Q And if, in fact, the termination was not a 5 success, then, as I've read in the educational 6 materials that were given to the patients, they were 7 advised they would need to have a surgical abortion. 8 A Yes. But that is not entirely true. 9 Methotrexate is very nice, medically speaking, 10 because it does give us a gray zone. It's not one 11 of those black-and-white responses. Methotrexate is 12 extremely, extremely specific to chorionic villi, as 13 is RU-486, and it attacks them and, of course, keeps 14 them from absorbing folic acid so they can't 15 survive. Chorionic villi are needed to implant the 16 fertilized egg and to form the pre-placenta. And it 17 is not uncommon to inject a patient with 18 methotrexate and see her back in three weeks and 19 realize the pregnancy is still in the uterus. 20 But a woman I injected at eight weeks 21 three weeks ago is now eight weeks and three days by 22 measurements, clearly the pregnancy is not</p>

<p style="text-align: right;">53</p> <p>1 developing normally. Clearly the majority of the 2 villi have been damaged and the pregnancy is failing 3 in front of our eyes. So it is not necessary to 4 jump to a dilatation and aspiration curettage. 5 It is very easy to explain the situation 6 to the patient and give her another course of 7 methotrexate and misoprostol with an excellent 8 success rate, and I do see them back sooner for 9 their peace of mind. 10 Q Okay. So just -- just getting back, if a 11 patient comes in and they have a medical abortion 12 using the methotrexate and the misoprostol that was 13 used at American Women's Services in 2012, they 14 would have a follow-up appointment; correct? 15 A They would, yes. 16 Q At what time interval? 17 A Three weeks, some two weeks, depending on 18 patients' schedules too. 19 Q And what were -- what was the purpose or 20 purposes -- purposes of that visit? 21 A Was to be sure that the abortion had been 22 successful and also to be able to answer patients'</p>	<p style="text-align: right;">55</p> <p>1 they had not refilled and that's why this happened, 2 were they unhappy with their birth control, or were 3 they following up with their private physician. 4 Q Okay. And I take it a second scenario 5 would be one that you just described, where there 6 was some products of conception seen on the 7 sonogram -- 8 A A partial response. 9 Q And if there was a partial response seen 10 on sonogram, then another dose of methotrexate would 11 be given? 12 A I would explain the situation to the 13 patient fully and explain to her why a second 14 application had a very, very high success rate. 15 Keep in mind, I often didn't have to 16 repeat the methotrexate, just the misoprostol too, 17 nice room to move. And this worked out well because 18 patients that wanted a nonsurgical abortion really 19 want a nonsurgical abortion. Their biggest fear 20 when the sonographer told them that there was still 21 tissue, was that they'd have to have the med -- the 22 surgical procedure. And once they learned from me</p>
<p style="text-align: right;">54</p> <p>1 questions about their cycles, their fertility, and 2 advise about contraception. 3 Q Okay. So then let's talk about what might 4 happen at that follow-up visit. I take it there 5 were instances when the medical abortion was 6 completely successful and there was no more fetus 7 seen on sonogram. 8 A Yes. 9 Q And in those cases what advice, generally 10 speaking, would the patient be given, if any, about 11 what to do next? 12 A I will tell her it was successful, she was 13 always very pleased, and I would ask her how it 14 went, was it bad, was -- did the pain medication I 15 gave her adequate. 16 And they were usually extremely pleased at 17 the shortness of the time of the bleeding and 18 cramping. It's intense but short. They were very 19 happy it was successful, always had questions about 20 when they could expect their periods to recur. 21 And I always offered them birth control, 22 did they need a prescription from something that</p>	<p style="text-align: right;">56</p> <p>1 that that wasn't true, they were always much more 2 relaxed. But if they elected to, they would have 3 had the surgical. 4 Q Okay. So if the sonogram is done at the 5 three-week follow-up visit and it shows that it's a 6 partially successful medical abortion, then the 7 patient has the choice either to have a surgical 8 termination or to have a second try at a medical 9 termination? 10 A Yes, a repeat of all or part of the M&M. 11 Q And when you say, "all or part of the 12 M&M," you're talking about methotrexate and 13 misoprostol? 14 A Yes. 15 Q And how do you decide whether to give one 16 or the other or both? 17 A If there are -- if there is no clearly 18 seen fetus, just an irregular sac and a lot of 19 tissue in the lower uterine segment, I don't need to 20 work on the embryo anymore, I need to further soften 21 the cervix, develop the lower uterine segment, and 22 get just enough cramping to expel the tissue, which</p>

<p style="text-align: right;">57</p> <p>1 is what misoprostol, being a prostaglandin, does</p> <p>2 terrifically well.</p> <p>3 Q So the job of misoprostol is to open up</p> <p>4 the cervix and allow the uterus to contract and</p> <p>5 expel the products; right?</p> <p>6 A Yes. It is to soften the cervix, dilate</p> <p>7 the cervix, develop partially the lower uterine</p> <p>8 segment, which is the part that does cramp, to help</p> <p>9 expel the products.</p> <p>10 Q And the purpose of the methotrexate is to</p> <p>11 interfere with the development of the chorionic</p> <p>12 villi that you've described?</p> <p>13 A Yes. The methotrexate affects the</p> <p>14 chorionic villi by killing them, by making it --</p> <p>15 them unable to take folic acid from the mother. And</p> <p>16 we are mammals, folic acid is not negotiable, we</p> <p>17 must have it. And since it is so very, very, very</p> <p>18 site-specific, it leaves other rapidly turning over</p> <p>19 tissues alone, targets the -- the villi so well that</p> <p>20 side effects are minimal.</p> <p>21 Q And so if a patient came for her</p> <p>22 three-week follow-up visit after having a medical</p>	<p style="text-align: right;">59</p> <p>1 A You -- it could be in three weeks.</p> <p>2 Usually I encourage these patients to come back</p> <p>3 sooner since they wanted to know. And gynecologists</p> <p>4 treat minds as well as bodies.</p> <p>5 Q Right.</p> <p>6 A I said if you want to come back in five</p> <p>7 days, I don't care, it's going to be successful and</p> <p>8 it's going to be successful quickly. And it was and</p> <p>9 they were happy. I let them pick when they were</p> <p>10 comfortable coming back so they wouldn't worry.</p> <p>11 Q Have you ever had a case where a patient</p> <p>12 came back for the third time, so she had -- she had</p> <p>13 come in for a medical abortion, she came back for</p> <p>14 her follow-up and it was not completely successful,</p> <p>15 and then she came back for her second follow-up,</p> <p>16 which would be her third visit, and it still was not</p> <p>17 successful?</p> <p>18 A No, I never had that experience.</p> <p>19 Q So your experience with methotrexate and</p> <p>20 misoprostol is that at least by the second try it is</p> <p>21 successful?</p> <p>22 A Oh, yes.</p>
<p style="text-align: right;">58</p> <p>1 abortion and the sonogram revealed that it was only</p> <p>2 partially successful, what would her chart say to</p> <p>3 reflect that?</p> <p>4 A She would have the sonogram, the two, at</p> <p>5 seven weeks and seven-four weeks, three weeks apart.</p> <p>6 And I would sit down and discuss it with her fully</p> <p>7 and what I recommended, and always letting her know</p> <p>8 we would always be happy and capable of doing the</p> <p>9 dilatation and aspiration.</p> <p>10 Q But what I'm asking you is if you found</p> <p>11 that the first attempt at a medical abortion was</p> <p>12 only partially successful, would her chart reflect</p> <p>13 that?</p> <p>14 A Oh, yes, it would.</p> <p>15 Q And her chart would reflect that she was</p> <p>16 given the opportunity to complete the termination</p> <p>17 either with a second try at the medical abortion or</p> <p>18 with a surgical abortion.</p> <p>19 A Yes.</p> <p>20 Q And then let's -- let's say that the</p> <p>21 patient elected a second try at a medical abortion.</p> <p>22 Would there be another follow-up three weeks later?</p>	<p style="text-align: right;">60</p> <p>1 Q During the second visit, the follow-up</p> <p>2 visit, after a medical abortion, if there are any</p> <p>3 products of conception left in the uterus, are they</p> <p>4 measured the same way they were measured at the</p> <p>5 first visit?</p> <p>6 A It depends if you mean an embryo and sac</p> <p>7 or whether you just mean tissue.</p> <p>8 Q Well, I -- it depend -- I'm asking</p> <p>9 regardless of what's scene.</p> <p>10 A If we see just a small amount of tissue in</p> <p>11 the cervical canal or the lower uterine segment, we</p> <p>12 don't need to do anything.</p> <p>13 Q Okay. And if you see something else, then</p> <p>14 what do you do?</p> <p>15 A I offer the patient misoprostol.</p> <p>16 Q I guess what I'm trying to ask is is there</p> <p>17 any -- ever a circumstance during the follow-up</p> <p>18 visit where you see material in the uterus, whatever</p> <p>19 that material may be, and you measure it, for</p> <p>20 instance, using a crown-rump length or a gestational</p> <p>21 sac size like you do for the first --</p> <p>22 A Oh, yes. It would be -- if it were</p>

<p style="text-align: right;">61</p> <p>1 recognizable fetal tissue, it would most definitely</p> <p>2 be measured and assessed just as it was the first</p> <p>3 time.</p> <p>4 Q So after the nine-week mark, understanding</p> <p>5 that that's a gray zone and that it may be that</p> <p>6 someone after nine weeks is offered and elects to</p> <p>7 try a medical abortion?</p> <p>8 A Some do go to ten weeks and some doctors</p> <p>9 won't go past eight weeks, it's --</p> <p>10 Q So just tell me generally in 2012 what was</p> <p>11 your rule of thumb?</p> <p>12 A Nine weeks.</p> <p>13 Q Nine weeks. All right. And after that</p> <p>14 point surgical abortion was offered?</p> <p>15 A If necessary; yes.</p> <p>16 Q Up to what point at American Women's</p> <p>17 Services was surgical abortion offered for patients</p> <p>18 in 2012?</p> <p>19 A Initially only till 13 weeks because I do</p> <p>20 not do second-trimester surgical abortions. I don't</p> <p>21 do dilatations and extractions. So -- but very soon</p> <p>22 after I joined, another doctor joined and he did do</p>	<p style="text-align: right;">63</p> <p>1 Q What is the difference between a</p> <p>2 dilatation and aspiration curettage and a dilatation</p> <p>3 and extraction?</p> <p>4 A Well, an aspiration of the fetus and the</p> <p>5 placenta can be easily and thoroughly accomplished</p> <p>6 via an aspiration catheter. We use long catheters</p> <p>7 in millimeters based on their weeks. After that it</p> <p>8 just can't be done, a fetus is simply too big.</p> <p>9 So the cervix has to be massively dilated</p> <p>10 well before the procedure, that often takes days,</p> <p>11 with things called laminaria, and then under heavy</p> <p>12 sedation as well as local different types of</p> <p>13 instruments are used to take the fetus out in parts.</p> <p>14 Q So the use of the laminaria and the use of</p> <p>15 instrumentation is a D&E?</p> <p>16 A Yes.</p> <p>17 Q Okay. And that is done after 13 weeks?</p> <p>18 A Yes.</p> <p>19 Q Why did you not perform D&Es?</p> <p>20 A I only assisted on a couple during my</p> <p>21 training. And I also decided that's not something I</p> <p>22 wanted to do, I couldn't do. It was a personal</p>
<p style="text-align: right;">62</p> <p>1 second trimesters. And they were done up through 24</p> <p>2 weeks.</p> <p>3 Q Okay. Because I think I read something in</p> <p>4 the contract -- the independent contractor</p> <p>5 agreement -- and I'm paraphrasing, I don't have it</p> <p>6 in front of me; we can look at it if you need</p> <p>7 to but -- that you agreed, in the contract at least,</p> <p>8 to perform abortions up to 24 weeks. But I'm</p> <p>9 understanding that in practice you did not do that?</p> <p>10 A Yes, I did not do that.</p> <p>11 Q So you performed D&Cs, which are dilation</p> <p>12 and curettage?</p> <p>13 A Well, it's really a dilatation and a</p> <p>14 suction curettage. We use aspiration. The days of</p> <p>15 sharp curettage is long gone, thank goodness, and</p> <p>16 not missed.</p> <p>17 Q Suction using a machine?</p> <p>18 A Yes. A vacuum extractor, very gentle,</p> <p>19 very thorough.</p> <p>20 Q And you said you personally did not do</p> <p>21 dilatation and extractions; correct?</p> <p>22 A Yes.</p>	<p style="text-align: right;">64</p> <p>1 choice as a doctor and as a person.</p> <p>2 Q Okay. So multi-factorial, partly your</p> <p>3 training and partly that you made a personal choice</p> <p>4 that that was not a procedure you wanted to perform?</p> <p>5 A Yes.</p> <p>6 Q Are you aware of any abortion being</p> <p>7 performed at American Women's Services after the</p> <p>8 28 -- I'm sorry -- after the 24-week mark while you</p> <p>9 were there?</p> <p>10 A No.</p> <p>11 Q Who is the doctor that performed the D&E</p> <p>12 procedures that you mentioned?</p> <p>13 A That was Michael Basco.</p> <p>14 Q I forgot to ask you before, how many other</p> <p>15 physicians were practicing at American Women's</p> <p>16 Services during the year and a couple of months that</p> <p>17 you were?</p> <p>18 A Three.</p> <p>19 Q Three total or three in addition to you?</p> <p>20 A Three total.</p> <p>21 Q And what were the names of others? I take</p> <p>22 it Dr. Basco is one and you were one.</p>

<p style="text-align: right;">65</p> <p>1 A Michael Basco was one and Dr. Panah, 2 Mansour Panah, was the other doctor. 3 Q Do you know how to spell Dr. Panah's name? 4 A P-A-N-A-H. And I think Mansour is M, as 5 in Mary, O-N, as in Nancy, S-O-O-R. 6 Q Did Dr. Panah perform dilatation and 7 extraction procedures? 8 A No. 9 Q So only Dr. Basco? 10 A Yes. 11 Q Do you recall when he came to work for 12 American Women's Services? 13 A Not exactly. 14 Q So if a woman came in, hypothetically, to 15 American Women's Services before Dr. Basco was 16 working there and she was later than 13 weeks 17 pregnant, what advice, if any, would she be given 18 about obtaining an abortion? 19 A She was referred to clinics that did do 20 second trimesters. 21 Q And are there such clinics in the State of 22 Maryland?</p>	<p style="text-align: right;">67</p> <p>1 The time is 12:16. 2 BY MS. MALARKEY: 3 Q Before we talk about Ms. O'Connell, I just 4 want to go back to a couple of things. 5 I think you mentioned with respect to 6 methotrexate, because it's a Category X drug, that 7 if it's not successful in completely terminating the 8 pregnancy, that it -- eventually it has to be 9 terminated. 10 A Yes. 11 Q And is that true regardless of when it is 12 discovered that the patient is still pregnant? 13 A Yes. 14 Q So if a patient finds out, for example, 15 when they're 25 or 26 weeks pregnant that they still 16 are pregnant and that their methotrexate abortion 17 was unsuccessful, then do they still need to 18 terminate? 19 A That would be the advice. It wouldn't 20 change no matter what. I'm not sure how easy that 21 would be to effect. But it would never be 22 recommended to continue a pregnancy exposed to such</p>
<p style="text-align: right;">66</p> <p>1 A Oh, yes; several. 2 Q Did Dr. Brigham have any issue with your 3 personal decision not to perform D&Es? 4 A He really wanted me to perform D&Es, but I 5 wasn't having it. He really would have made me the 6 complete doctor, but I explained to him that that's 7 not something I could do. 8 Q What do you mean he would have made you 9 the complete doctor? 10 A That he really wanted somebody who did 11 first and seconds and he would have been thrilled to 12 death. And he knew I had had experience with them 13 and wanted me to, but I wasn't going to. It just 14 wasn't going to work. 15 Q Okay. Okay. 16 MS. MALARKEY: Let's take a quick break. 17 And then maybe when we get back, we can talk about 18 Ms. O'Connell. Thank you. 19 THE VIDEOGRAPHER: Going off the record. 20 The time is 12:09. 21 (A recess was taken.) 22 THE VIDEOGRAPHER: Back on the record.</p>	<p style="text-align: right;">68</p> <p>1 a substance. 2 Q Do you know what the Maryland State law is 3 and was in 2012 with respect to at what point it was 4 no longer legal to terminate a pregnancy? 5 A I remember my last far-along one when I 6 had an anencephalic that had to be terminated. She 7 was done at 23 weeks. And at that time I was with 8 the Margolis group, it was in the '90s, it was 24 9 weeks. It may have changed, but it was 24 weeks in 10 Maryland. 11 Q That was your understanding of the law -- 12 A Yes. 13 Q -- was 24 weeks was the last legal point? 14 A Yes. 15 Q Do you have any understanding as to 16 whether there are circumstances after 24 weeks when 17 abortion is legal in Maryland? 18 A Not aware, no. 19 Q So if such a law exists, you just don't 20 know about it? 21 A I -- I would assume such exigent 22 circumstances will always lead to special</p>

<p style="text-align: right;">69</p> <p>1 considerations being made: a Trisomy 13, a Trisomy</p> <p>2 18, chromosomal abnormalities which are not</p> <p>3 compatible with life, anencephalics who are</p> <p>4 notoriously -- they, of course, have no brain,</p> <p>5 there's massive excess fluid, they don't go into</p> <p>6 labor, it's very, very, very dangerous for mom. So</p> <p>7 there are always ways to get medical okay, usually</p> <p>8 from your hospital or your State board, to do what</p> <p>9 you have to do for a pregnancy which is not</p> <p>10 compatible with life or for -- or is very risky for</p> <p>11 mom's health.</p> <p>12 Q So at Associates in OB/GYN Care let's say</p> <p>13 while Dr. Basco was there -- well, actually,</p> <p>14 let's -- let's start before Dr. Basco was there. So</p> <p>15 at Associates in OB/GYN Care before Dr. Basco came</p> <p>16 on the scene, when it was just you and Dr. Panah--</p> <p>17 who only did D&Cs, correct, both of you?</p> <p>18 A Yes. He did medicals and surgicals, but</p> <p>19 he didn't go past first trimester either. In fact,</p> <p>20 he didn't like going to 13 weeks and small change.</p> <p>21 He cut himself off at 12, I believe.</p> <p>22 Q Okay. So before Dr. Basco arrived and it</p>	<p style="text-align: right;">71</p> <p>1 Q Got it. Excuse me. Might be a strange</p> <p>2 question, did you enjoy the work that you did at</p> <p>3 Associates in OB/GYN Care?</p> <p>4 MR. VARNER: Objection for -- for</p> <p>5 relevance, among other things. Note my objection.</p> <p>6 Q You can still answer.</p> <p>7 A Yes. It's providing a service women</p> <p>8 desperately need and one that is still not treated</p> <p>9 the way it should be.</p> <p>10 One of the first things I discussed with</p> <p>11 Dr. Brigham was my firm belief that women have that</p> <p>12 right and that decision should be made by two people</p> <p>13 only, doctor and a patient, period.</p> <p>14 Q So what I wanted to ask you then is if the</p> <p>15 clinics had not closed -- because you stopped</p> <p>16 practicing when the clinics closed; right?</p> <p>17 A Yes.</p> <p>18 Q And it's my understanding that the clinics</p> <p>19 reopened, yet your -- you did not go back to work</p> <p>20 for them, right, obviously?</p> <p>21 A Yes.</p> <p>22 Q Is there a reason you didn't go back to</p>
<p style="text-align: right;">70</p> <p>1 was just you and Dr. Panah doing medical abortions</p> <p>2 and D&C-type surgical abortions up to 12 or 13</p> <p>3 weeks, whatever it was --</p> <p>4 A Mm-hmm, first trimester.</p> <p>5 Q Okay. That's a better way to say it. So</p> <p>6 if a patient came in past the first trimester at</p> <p>7 Associates in OB/GYN Care, you would refer them to a</p> <p>8 different clinic that could help them?</p> <p>9 A Yes.</p> <p>10 Q And how about after Dr. Basco came on the</p> <p>11 scene if a patient came in with a pregnancy that was</p> <p>12 later than 24 weeks; what advice, if any, was the</p> <p>13 patient given at that point if she was seeking an</p> <p>14 abortion, but she was beyond 24 weeks?</p> <p>15 A Well, that I -- I really don't know.</p> <p>16 Q You never had such a patient?</p> <p>17 A I had patients well past 24 weeks, but it</p> <p>18 was patients that came in at 30 weeks and 34 weeks</p> <p>19 and the girls would almost be are you kidding me,</p> <p>20 this baby's going to deliver in a couple of weeks.</p> <p>21 We would just tell them nothing can be done, but</p> <p>22 you're doing to have a baby.</p>	<p style="text-align: right;">72</p> <p>1 work for the clinics, the Associate in OB/GYN Care</p> <p>2 clinics, once your license was reinstated and they</p> <p>3 were reopened?</p> <p>4 A They apparently were not cooperating with</p> <p>5 the Maryland inspections, the new laws, et cetera,</p> <p>6 et cetera, unbeknownst to me, and that was a big</p> <p>7 problem with Maryland and the clinics. And if -- in</p> <p>8 the paperwork I saw they said repeated faxes,</p> <p>9 visits, phone calls, everything, they didn't comply.</p> <p>10 If the office cannot comply with the</p> <p>11 Maryland laws for that type of clinic -- and</p> <p>12 Maryland can't be tougher about being sure it gets</p> <p>13 done when it should get done -- I wasn't going to be</p> <p>14 involved with that anymore.</p> <p>15 Q Did you have that experience with</p> <p>16 Associates in OB/GYN Care before the clinics were</p> <p>17 closed?</p> <p>18 A Which experience?</p> <p>19 Q The experience that they weren't complying</p> <p>20 with Maryland regulations, that they weren't keeping</p> <p>21 up with the regulations.</p> <p>22 A No.</p>

<p style="text-align: right;">73</p> <p>1 Q So until the time the clinics closed in</p> <p>2 March or May of 2013, everything seemed okay to you?</p> <p>3 A Yes.</p> <p>4 Q In terms of the way they were run and the</p> <p>5 cleanliness of the facilities and the training of</p> <p>6 the staff, everything seemed appropriate?</p> <p>7 A Staff, they're doing their jobs correctly,</p> <p>8 they're being supportive and nonjudgmental to the</p> <p>9 patients, people working in an effective way,</p> <p>10 because it did take a lot of waiting. It worked out</p> <p>11 very, very well.</p> <p>12 Q You never felt like there was any</p> <p>13 inadequate equipment or that you needed anything</p> <p>14 additional that you didn't have?</p> <p>15 A When there was a problem with equipment,</p> <p>16 which there was occasionally, a sonographer -- a</p> <p>17 sonogram transducer wasn't working quite well and</p> <p>18 they kind of fixed it a little, I -- nope, not</p> <p>19 working on that, close the clinic.</p> <p>20 We had a problem with a sterilizer that</p> <p>21 didn't turn red the first time. I wouldn't use it.</p> <p>22 I wanted it serviced. I didn't -- I wouldn't use</p>	<p style="text-align: right;">75</p> <p>1 the Frederick facilities?</p> <p>2 A No.</p> <p>3 Q Which of the four was the busiest clinic?</p> <p>4 A Gee, I'm not sure I could answer that</p> <p>5 adequately.</p> <p>6 Silver Spring was such a tiny, tiny</p> <p>7 facility. It was the smallest definitely.</p> <p>8 Cheverly very, very, very busy.</p> <p>9 And Frederick very, very busy. A lot of</p> <p>10 out-of-state people.</p> <p>11 Baltimore, variable.</p> <p>12 Q Did Drs. Basco and Panah have rotating</p> <p>13 schedules similar to yours?</p> <p>14 A Yes.</p> <p>15 Q They covered all four clinics?</p> <p>16 A Yes.</p> <p>17 Q Did your shifts ever overlap such that</p> <p>18 there were two doctors on a site at one time?</p> <p>19 A Our shifts didn't overlap, but we</p> <p>20 sometimes passed each other in the hall coming and</p> <p>21 going.</p> <p>22 Q Now, before we -- or during the break,</p>
<p style="text-align: right;">74</p> <p>1 those instruments. That kind of thing, yes.</p> <p>2 Q So the problem with the sonogram</p> <p>3 transducer actually caused you to close the clinic</p> <p>4 because it wasn't functional?</p> <p>5 A Yes. That's another reason why I got rid</p> <p>6 of that Baltimore Saturday, driving all the way to</p> <p>7 Baltimore, finding out they have no sonogram</p> <p>8 machine. I was not a happy girl.</p> <p>9 Q Where do you live?</p> <p>10 A Potomac, Montgomery County.</p> <p>11 Q But eventually the sonogram transducer got</p> <p>12 fixed or replaced?</p> <p>13 A Yes. It was fixed or replaced. My Monday</p> <p>14 it was fine. They got somebody out there on</p> <p>15 Saturday afternoon.</p> <p>16 Q And that was the transducer in the</p> <p>17 Baltimore clinic?</p> <p>18 A Yes.</p> <p>19 Q Did you ever have any problems with the</p> <p>20 sonogram equipment in Frederick?</p> <p>21 A No.</p> <p>22 Q Did you ever have any issues with any of</p>	<p style="text-align: right;">76</p> <p>1 actually, you handed me a paper that I'm just going</p> <p>2 to --</p> <p>3 MS. MALARKEY: Conrad, I'm going to have</p> <p>4 this marked. I don't have this in my chart, but</p> <p>5 Dr. Dominy gave it to me. It's the appointment log</p> <p>6 she was referring to.</p> <p>7 MR. VARNER: Okay.</p> <p>8 THE WITNESS: That's what goes to the</p> <p>9 clinics from the central call center.</p> <p>10 MR. VARNER: Right. Okay.</p> <p>11 MS. MALARKEY: I'm just going to have it</p> <p>12 marked because I have it --</p> <p>13 MR. VARNER: Sure.</p> <p>14 MS. MALARKEY: -- I don't have a copy of</p> <p>15 it and I don't want to lose track.</p> <p>16 MR. VARNER: I don't have a copy.</p> <p>17 THE WITNESS: You have it there. It's</p> <p>18 behind something.</p> <p>19 MS. MALARKEY: I don't think so.</p> <p>20 Yeah, yeah. Off the record.</p> <p>21 THE VIDEOGRAPHER: Going off the record.</p> <p>22 The time is 12:26.</p>

<p style="text-align: right;">77</p> <p>1 (A discussion was held off the record.) 2 (Exhibit 1 was marked for identification and is 3 attached to the transcript.) 4 THE VIDEOGRAPHER: Back on therecord. 5 The time is 12:30. 6 BY MS. MALARKEY: 7 Q Okay, Dr. Dominy, while we were off the 8 record, we decided to mark as Exhibit 1 a complete 9 copy of the chart for Ms. O'Connell, which I have in 10 front of you if you need to refer to it. 11 I think during the break you told me the 12 first page of Exhibit 1, which is the one that 13 actually has the sticker on it, is the computerized 14 information that is recorded by the call center when 15 the patient first makes the call to get an 16 appointment. 17 A Yes, it is. 18 Q And this paper at some point is printed 19 out and available to you if you need it in the local 20 location? 21 A Yeah. It's more for the staff. They're 22 all sitting there in a pile so they know what to</p>	<p style="text-align: right;">79</p> <p>1 Q Okay. Page 2 of Exhibit 1 looks like it 2 reflects the cost of the procedure Ms. O'Connell 3 had, \$310; is that right? 4 A Yes. 5 Q Was that the charge for anyone undergoing 6 a medical abortion, \$310? 7 A I do not know that. I would assume such, 8 but I don't know. 9 Q You were compensated, as I understand it, 10 per procedure? 11 A Procedure, administration of moderate 12 analgesia, and follow-ups. 13 Q Do you recall what you were compensated 14 for each of those things? 15 A I don't remember. 16 Q So you'd be compensated one amount of 17 money for actually performing the abortion either 18 medically or surgically? 19 A Yes, yes. 20 Q And was it a different fee if that 21 abortion was medical versus surgical? 22 A Yes.</p>
<p style="text-align: right;">78</p> <p>1 expect for their day. 2 Q Okay. It says on the first page of 3 Exhibit 1 -- there's various categories of 4 abortion. 5 It says: "Nonsurgical abortion, surgical 6 abortion-local, surgical abortion-twilight, and 7 surgical abortion-second trimester, only MD or PA." 8 Do you see that? 9 A Yes. 10 Q So if a patient was going to have a 11 surgical abortion at Associates in OB/GYN Care, did 12 they have the option to have anesthesia either 13 locally or using twilight sleep? 14 A They did. 15 Q And did you administer twilight sleep 16 while you were practicing? 17 A I did. 18 Q The second trimester abortion says: "Only 19 MD or PA." 20 What does that mean, if you know? 21 A It looks like only Maryland and 22 Pennsylvania, I would guess.</p>	<p style="text-align: right;">80</p> <p>1 Q And then there was a separate fee on top 2 of that if you administered -- 3 A The moderate sedation IV. 4 Q When you say, "moderate sedation IV," 5 specifically what are you talking about? 6 A Medications to ease patients' anxiety, 7 pain, and remembrance. 8 Q That's through an intravenous line? 9 A It's not a line that's maintained. A vein 10 is found with a very small scalp vein, place that, 11 and then inject slowly. 12 Q So it's an -- it's an intravenous 13 injection, but not like a drip? 14 A Exactly. There is no IV set up. It's 15 just medication given slow IV push. 16 Q And what medication was given, what drug? 17 A Well, that would depend. It was usually 18 ketamine, midazolam, and fentanyl. But sometimes we 19 didn't have ketamine so we didn't use it. 20 Q You used the other two? 21 A Yes. 22 Q When you say sometimes it was and then you</p>

<p style="text-align: right;">81</p> <p>1 listed the three drugs, do you mean sometimes it was</p> <p>2 a combination of all three drugs?</p> <p>3 A It was usually a combination of all three,</p> <p>4 but there were problems with both fentanyl and</p> <p>5 ketamine with just shortages.</p> <p>6 Q And when it was local anesthesia that was</p> <p>7 chosen by the patient, what -- how did that -- how</p> <p>8 was that administered and what drug was it?</p> <p>9 A That was usually 2 percent lidocaine and</p> <p>10 was injected into the cervix at -- well, the way I</p> <p>11 did it was at 3 o'clock, 12 o'clock, and 9 o'clock.</p> <p>12 Q Talking from the cervix?</p> <p>13 A Yes.</p> <p>14 Q Of the cervix.</p> <p>15 A The cervix is round. It's nice and easy</p> <p>16 to give it clock numbers.</p> <p>17 Q Now, the next page in Exhibit 1 is a page</p> <p>18 entitled, "Medical Termination of Pregnancy." It</p> <p>19 has Ms. O'Connell's name at the top.</p> <p>20 Let me just ask you, is that your</p> <p>21 signature at the bottom of page?</p> <p>22 A It is.</p>	<p style="text-align: right;">83</p> <p>1 Q And this is July 26, 2012?</p> <p>2 A It is.</p> <p>3 Q Okay. Let me just stop you for a moment.</p> <p>4 The body surface that you mentioned was</p> <p>5 written by a staff member. Is this 19 or 1.9?</p> <p>6 A 1.9.</p> <p>7 Q And what -- what does that mean, body</p> <p>8 surface 1.9 --</p> <p>9 A It's mill -- it's a centimeter squared</p> <p>10 body surface area. The same type of computation</p> <p>11 used for chemotherapy, by size and weight of the</p> <p>12 patient, kilograms and centimeters. There's a</p> <p>13 nomogram where you can put the weight and the height</p> <p>14 and adjust -- and find out what the patient's dose</p> <p>15 is.</p> <p>16 Q So the dose of methotrexate is calculated</p> <p>17 based on the patient's body surface?</p> <p>18 A Yes, which is based on her height and</p> <p>19 weight.</p> <p>20 Q Okay. Go ahead. I'm sorry. I</p> <p>21 interrupted you. The last thing you said was that</p> <p>22 you initialed next to --</p>
<p style="text-align: right;">82</p> <p>1 Q And what, if any, other writing on this</p> <p>2 page is your writing?</p> <p>3 A The writing on the page that is mine is --</p> <p>4 I put that caret there because I'm very particular</p> <p>5 about Rh status. Hers is positive. The "See sono</p> <p>6 report" as per her gestational age is my</p> <p>7 handwriting. This was figured out by whoever was</p> <p>8 doing medications that day.</p> <p>9 Q And wait. Hang on. Just for the record,</p> <p>10 since they don't know what you're pointing to.</p> <p>11 When you say --</p> <p>12 A Oh.</p> <p>13 Q -- this was --</p> <p>14 A Oh. These numbers, "body service," and</p> <p>15 "dose of methotrexate," those numbers were written</p> <p>16 by the staff member who was in charge of the</p> <p>17 methotrexate that day. The methotrexate injection</p> <p>18 site, left arm, that is my writing, those are</p> <p>19 my initials.</p> <p>20 Q So you injected the methotrexate in</p> <p>21 Ms. O'Connell's left arm?</p> <p>22 A Yes, indeed.</p>	<p style="text-align: right;">84</p> <p>1 A I initialed that I injected the</p> <p>2 methotrexate and I wrote which arm, which buttock,</p> <p>3 whatever, to document.</p> <p>4 Q Okay.</p> <p>5 A This is the patient. I had -- Initial</p> <p>6 here where it says, "Misoprostol Dispensed." That's</p> <p>7 a little packet with the eight tablets for the</p> <p>8 cervix.</p> <p>9 Q And those tablets are to be inserted by</p> <p>10 the patient at home vaginally; right?</p> <p>11 A Yes. They're in a little pill packet.</p> <p>12 And I always wrote the dates, four pills on this</p> <p>13 date, four pills on this date, and then when I</p> <p>14 explained it to them, I would explain in the easiest</p> <p>15 and most efficient way to place them.</p> <p>16 Q Okay.</p> <p>17 A So I initialed that I gave them the two</p> <p>18 sets of four with instructions, which I write on the</p> <p>19 packet.</p> <p>20 I always ask them about cramps with their</p> <p>21 periods. People who had cramps like mine I would</p> <p>22 expect to cramp with something like this. And I</p>

<p style="text-align: right;">85</p> <p>1 would offer them pain medication, because with</p> <p>2 methotrexate you cannot use a nonsteroidal</p> <p>3 anti-inflammatory, Motrin, those types of things,</p> <p>4 because it blocks the action. So you have to stick</p> <p>5 to plain Tylenol.</p> <p>6 And if you do have or anticipate pain, I</p> <p>7 would write them a stronger prescription. If I did,</p> <p>8 I would note it there --</p> <p>9 Q So it would --</p> <p>10 A -- the number and refills.</p> <p>11 Q I'm sorry. So it looks like you did not</p> <p>12 prescribe a -- a narcotic pain medicine for</p> <p>13 Ms. O'Connell.</p> <p>14 A I didn't -- I did not prescribe any pain</p> <p>15 medication for Ms. O'Connell.</p> <p>16 Q Okay.</p> <p>17 A And I noted here, this is my writing,</p> <p>18 "Allergy, sulfa." I always -- that was my notation.</p> <p>19 The post-treatment instructions, I initialed that.</p> <p>20 And with the micro RhoGAM, RhoGAM is given to Rh</p> <p>21 negative women to avoid problems down the line with</p> <p>22 pregnancies. Since she was Rh positive, I crossed</p>	<p style="text-align: right;">87</p> <p>1 Q Period.</p> <p>2 A Period.</p> <p>3 Q When you say, "blood was not drawn in that</p> <p>4 office," do you mean across the board there was no</p> <p>5 blood drawn ever or for abortions there were no --</p> <p>6 was no blood drawn?</p> <p>7 A There was no blood drawn. Finger sticks</p> <p>8 only for blood group and type, that all-important Rh</p> <p>9 factor, and for a hematocrit the -- to check for</p> <p>10 anemia.</p> <p>11 Q Okay. So patients coming in for a medical</p> <p>12 abortion did have a finger stick?</p> <p>13 A Yes.</p> <p>14 Q And was that processed in a lab that you</p> <p>15 mentioned earlier?</p> <p>16 A Yes.</p> <p>17 Q And it was simply blood type and</p> <p>18 hematocrit.</p> <p>19 A Yes, hematocrit, which is the red cell</p> <p>20 mass.</p> <p>21 Q Is the hematocrit recorded on the form we</p> <p>22 were just talking about or somewhere else?</p>
<p style="text-align: right;">86</p> <p>1 that out and indicated such and then I signed it.</p> <p>2 Q Okay. So if I'm following you, the only</p> <p>3 writing on this page then that is not yours, besides</p> <p>4 Ms. O'Connell's signature, is the notation for the</p> <p>5 body surface, and the methotrexate dosage, and the</p> <p>6 vital signs, and the patient information at the very</p> <p>7 top portion of the form.</p> <p>8 A Yes.</p> <p>9 Q And this is a form that's completed the</p> <p>10 day that she presented for her medical abortion --</p> <p>11 A Yes.</p> <p>12 Q -- July 26.</p> <p>13 A Yes, yes.</p> <p>14 Q Ms. O'Connell testified in her deposition</p> <p>15 that she recalls having blood drawn the first visit</p> <p>16 when she came for her medical abortion.</p> <p>17 Was that routine?</p> <p>18 A There was no blood drawn.</p> <p>19 Q Okay. And do you know that because blood</p> <p>20 was never drawn for patients undergoing a medical</p> <p>21 abortion or --</p> <p>22 A Blood was not drawn in that office.</p>	<p style="text-align: right;">88</p> <p>1 A I believe it is.</p> <p>2 Q Okay. I see it. 34; right?</p> <p>3 A Yes.</p> <p>4 Q What is the notation on the form we were</p> <p>5 just talking about where it says, "HSPT" and it's</p> <p>6 indicated plus?</p> <p>7 A High-sensitivity pregnancy test positive.</p> <p>8 Q What's a high-sensitivity pregnancy test?</p> <p>9 A The current urine tests are all high</p> <p>10 sensitivity, but ours is a little more sensitive</p> <p>11 than the drugstore test. It measures up to 25</p> <p>12 international units, which is extremely low.</p> <p>13 Q So you have patients who come in for an</p> <p>14 abortion take a urine pregnancy test.</p> <p>15 A Yes.</p> <p>16 Q Is their pregnancy confirmed by any type</p> <p>17 of blood test?</p> <p>18 A No.</p> <p>19 Q So is there any point in the care of a</p> <p>20 patient undergoing a medical or surgical abortion</p> <p>21 where they would have an hCG test?</p> <p>22 A No.</p>

<p style="text-align: right;">89</p> <p>1 Q To measure the level I mean.</p> <p>2 A It would not be indicated in this clinical</p> <p>3 situation.</p> <p>4 Q Okay. Then the next page that I'm going</p> <p>5 to show you in Exhibit 1 is entitled, "Obstetrical</p> <p>6 Sonogram Report" and it has a date on it, the same</p> <p>7 date, July 26, 2012, with a picture behind it.</p> <p>8 Is any writing on this page yours?</p> <p>9 A Yes.</p> <p>10 Q What is yours</p> <p>11 A The arrow with the "8 EGA" is my writing.</p> <p>12 Q And does that mean?</p> <p>13 A It means that based on her last menstrual</p> <p>14 period of May 30, 2012, her estimated gestational</p> <p>15 age should have been eight weeks.</p> <p>16 Q Okay. Anything else on this page your</p> <p>17 writing?</p> <p>18 A My signature.</p> <p>19 Q So if I'm understanding from the procedure</p> <p>20 that you described earlier in your deposition,</p> <p>21 typically speaking the patient would come in, do</p> <p>22 the registration paperwork, be counseled by the</p>	<p style="text-align: right;">91</p> <p>1 A The office man -- manager would say, yes,</p> <p>2 you're a candidate. And there's a sheet for being</p> <p>3 informed on one-on-one counseling that it is not</p> <p>4 FDA-approved and that if it does not work, the</p> <p>5 pregnancy still needs to be terminated.</p> <p>6 Q And those are preprint -- the sheets</p> <p>7 you're referring are preprinted informed consent</p> <p>8 forms that are --</p> <p>9 A They are.</p> <p>10 Q So the office manager is the individual</p> <p>11 who goes over those with the patient?</p> <p>12 A Yes, she is.</p> <p>13 Q And then I think you said the next step</p> <p>14 was labs?</p> <p>15 A Labs.</p> <p>16 Q And what labs would be done besides the</p> <p>17 finger prick?</p> <p>18 A The urine pregnancy test, the finger</p> <p>19 prick.</p> <p>20 Q That's it?</p> <p>21 A Blood pressure, weight, vital signs.</p> <p>22 Q Okay. And then after vital signs, finger</p>
<p style="text-align: right;">90</p> <p>1 office manager, have a sonogram done, and then I</p> <p>2 think you said there was additional counseling by</p> <p>3 the office --</p> <p>4 A It's -- she would have to finish her</p> <p>5 counseling, depending on if the EGA was as expected,</p> <p>6 and then do the fine point. It's kind of silly to</p> <p>7 talk to somebody about a medical termination then</p> <p>8 find out they're 12 weeks pregnant. So they</p> <p>9 finished it then and then the patient was -- went</p> <p>10 through the labs.</p> <p>11 Q Okay. So I don't know that we ever</p> <p>12 finished this discussion, so let's.</p> <p>13 A Mm-hmm.</p> <p>14 Q After the sonogram there would be the</p> <p>15 additional counseling that you've described about</p> <p>16 the choice, the method, if you will; right?</p> <p>17 A Yes.</p> <p>18 Q And if -- if the dates were okay and the</p> <p>19 medical abortion was an option, would there be that</p> <p>20 additional counseling?</p> <p>21 A Yes.</p> <p>22 Q What would that consist of?</p>	<p style="text-align: right;">92</p> <p>1 prick, urine pregnancy test, then where does the</p> <p>2 patient go?</p> <p>3 A Then she would be all set for her surgical</p> <p>4 with twilight or not or her nonsurgical, and her</p> <p>5 chart with all of this information and these forms</p> <p>6 and the moderate sedation would be drawn up and in</p> <p>7 the chart, and the chart would be in a box on the</p> <p>8 door so I could pick it up and tell what it was.</p> <p>9 The medical is the same way, they were</p> <p>10 seated in an office, there was a seat right opposite</p> <p>11 and a desk, I would pick up their chart, the</p> <p>12 methotrexate and the packet would be in there, as</p> <p>13 well as all the info. I'd look through it quickly</p> <p>14 then go into the office, introduce myself, and</p> <p>15 review what I had to review pregnancy-wise and, more</p> <p>16 importantly, health-wise.</p> <p>17 Q Okay. So after the office manager</p> <p>18 counseling, sonogram, additional office manager</p> <p>19 counseling, and consent, the patient would next see</p> <p>20 you?</p> <p>21 A Once everything was done, the last person</p> <p>22 she saw was me --</p>

<p style="text-align: right;">93</p> <p>1 Q Okay.</p> <p>2 A -- ready for a procedure.</p> <p>3 Q So was -- is there any point prior to</p> <p>4 being in that room that you described with two</p> <p>5 chairs and a desk and seeing the patient, is there</p> <p>6 any point before then where you would see the</p> <p>7 patient --</p> <p>8 A No.</p> <p>9 Q -- during the visit?</p> <p>10 A No.</p> <p>11 Q That would be the first time?</p> <p>12 A Yes.</p> <p>13 Q So before you see a patient, she's already</p> <p>14 had her on sonogram, she's already been counseled by</p> <p>15 the office manager, it's already been decided that</p> <p>16 this is an appropriate method?</p> <p>17 A Yes.</p> <p>18 Q And certainly you double check.</p> <p>19 A Yes.</p> <p>20 Q Do you remember Ms. O'Connell</p> <p>21 specifically?</p> <p>22 A I refreshed and reviewed the records</p>	<p style="text-align: right;">95</p> <p>1 jogged my memory as why she went off her Sprintec or</p> <p>2 why she wasn't happy with her Sprintec, her first --</p> <p>3 the birth control pill she conceived on.</p> <p>4 She takes Topamax for headaches. And I</p> <p>5 was trying to elicit a history of estrogen-</p> <p>6 withdrawal headache, which is common. And she</p> <p>7 definitely had the -- those types of complaints.</p> <p>8 And I explained to her lowering the</p> <p>9 estrogen and spreading out the dosages with few days</p> <p>10 off, because estrogen-withdrawal headaches, of</p> <p>11 course, result in a drop in estrogen, which gives us</p> <p>12 a vascular headache. It usually doesn't happen for</p> <p>13 three to four days.</p> <p>14 So I gave her the various options. And we</p> <p>15 discussed birth control pills, and I remember that.</p> <p>16 And I wouldn't have had that type of discussion with</p> <p>17 a patient who wasn't interested and informed and</p> <p>18 educated.</p> <p>19 Q So after reviewing the chart, is it safe</p> <p>20 to say that the only thing that you specifically</p> <p>21 remembered about her was this discussion regarding</p> <p>22 what type of birth control she should be on after</p>
<p style="text-align: right;">94</p> <p>1 thoroughly, and I really do expect to have details</p> <p>2 pop into my head as questioning continues, because I</p> <p>3 have a very good memory.</p> <p>4 Q Okay. And you can tell me -- if something</p> <p>5 pops into your head, you can certainly tell me</p> <p>6 that -- what you remember versus what you've gleaned</p> <p>7 from reviewing. But, for example, when you were</p> <p>8 served with a lawsuit in this case and you -- I</p> <p>9 presume you read the Complaint. Did you read the</p> <p>10 lawsuit?</p> <p>11 A Yes.</p> <p>12 Q When you read the lawsuit, did you have</p> <p>13 any memory of Christy O'Connell or the events that</p> <p>14 are described in the lawsuit?</p> <p>15 A No, not really.</p> <p>16 Q And so at some point later you obviously</p> <p>17 reviewed the chart?</p> <p>18 A Yes.</p> <p>19 Q Did reviewing the chart specifically jog</p> <p>20 your memory as to any event that happened or what</p> <p>21 she looked like or anything you may have discussed?</p> <p>22 A Yes. The follow-up visit did, because it</p>	<p style="text-align: right;">96</p> <p>1 having had the medical abortion?</p> <p>2 A Yes. She was concerned about that,</p> <p>3 headaches, blood pressure, et cetera. We discussed</p> <p>4 that to -- to a good extent.</p> <p>5 Q And certainly you can jump in if something</p> <p>6 pops into your head later, but sitting here now is</p> <p>7 there anything else that you can specifically</p> <p>8 remember about either of the visits that you had</p> <p>9 with Ms. O'Connell besides that discussion?</p> <p>10 A No, I don't think so.</p> <p>11 Q Okay. So getting back to the chart that</p> <p>12 we've been looking through and the page that is in</p> <p>13 front of you, that is your signature on the bottom</p> <p>14 right; correct?</p> <p>15 A It is.</p> <p>16 Q Do you recognize the signature on the</p> <p>17 bottom left?</p> <p>18 A Not really. I think it's Arlene, but I</p> <p>19 wouldn't want to bet on it.</p> <p>20 Q Okay. And so Arlene, if it was Arlene or</p> <p>21 whoever it was --</p> <p>22 A Very -- yes.</p>

<p style="text-align: right;">97</p> <p>1 Q -- that was the individual who recorded</p> <p>2 the estimated gestational age by sonogram; right?</p> <p>3 A Yes.</p> <p>4 Q Does that sheet record whether or not the</p> <p>5 fetus was measured using crown to rump or</p> <p>6 gestational sac?</p> <p>7 A Gestational sac is noted here.</p> <p>8 Q And that is down at the bottom where it</p> <p>9 says: "GS: 7.4"?</p> <p>10 A Well, here it says: "Gestational sac --</p> <p>11 Q Oh.</p> <p>12 A -- 28 millimeters, seven weeks four days,"</p> <p>13 which is repeated down here.</p> <p>14 Q Okay.</p> <p>15 A And this was -- this eight weeks up at the</p> <p>16 top was completed by Arlene or Crystal also. I</p> <p>17 don't take anybody's word for anything. I wheel out</p> <p>18 my own dates and talk to my own patients, which is</p> <p>19 why that's there.</p> <p>20 Q When you say you "wheel out," you're</p> <p>21 talking literally about that cardboard wheel?</p> <p>22 A Yes. I -- all OBs have them glued. I've</p>	<p style="text-align: right;">99</p> <p>1 Q Okay. So when you went into the room to</p> <p>2 talk to Ms. O'Connell about doing a medical abortion</p> <p>3 on July 26, 2012, you didn't have any personal</p> <p>4 information yourself about her sonogram or what it</p> <p>5 showed?</p> <p>6 A The son -- the sonogram was in the chart.</p> <p>7 Everything was in the chart. It's complete. She's</p> <p>8 ready for me to see. And the first thing I do is</p> <p>9 take the medications out of the chart so they don't</p> <p>10 fall on the floor, introduce myself, and say, oh,</p> <p>11 let's start with how pregnant you are. Your last</p> <p>12 period was May 30, et cetera, et cetera, are they</p> <p>13 within a -- a normal period, do you have regular</p> <p>14 periods, and it shows this, which makes you an</p> <p>15 excellent candidate for a nonsurgical abortion.</p> <p>16 Q And -- but the office manager is not in</p> <p>17 the room during that discussion; right?</p> <p>18 A She is not. It is just me and the</p> <p>19 patient.</p> <p>20 Q Okay. And so I guess what I'm asking is</p> <p>21 when you say the sonogram is in the chart, you're</p> <p>22 talking about the Polaroid?</p>
<p style="text-align: right;">98</p> <p>1 gone through more of them than I can remember.</p> <p>2 Q Okay. Was it part of your normal habit</p> <p>3 and practice in 2012 and '13, when you were working</p> <p>4 for Associates in OB/GYN Care, to review the</p> <p>5 sonogram itself?</p> <p>6 A No, it was not.</p> <p>7 Q Did you look at the photograph that was</p> <p>8 printed out by the sonographer?</p> <p>9 A Sometimes.</p> <p>10 Q And by -- is this, the very next page that</p> <p>11 is sitting adjacent to the page we've been</p> <p>12 discussing, is that a photocopy of a photograph</p> <p>13 printed from the sonogram machine?</p> <p>14 A It is a photocopy of a Polaroid picture</p> <p>15 taken from that machine, yes.</p> <p>16 Q So it's an actual image that's printed</p> <p>17 from the machine?</p> <p>18 A Yes. It's a Polaroid picture.</p> <p>19 Q And the original, I presume, is in</p> <p>20 Ms. O'Connell's chart somewhere?</p> <p>21 A It's usually paper-clipped, later stapled</p> <p>22 to the chart.</p>	<p style="text-align: right;">100</p> <p>1 A This in the chart.</p> <p>2 Q Okay.</p> <p>3 A And the -- the Polaroid is either in front</p> <p>4 of it or in back of it with a paper clip. I often</p> <p>5 have to move it out of the way.</p> <p>6 Q The papers you're holding up are the</p> <p>7 photograph, the Polaroid, and the obstetrical</p> <p>8 sonogram report that is completed by the</p> <p>9 sonographer.</p> <p>10 A Yes.</p> <p>11 Q So you rely exclusively then on the</p> <p>12 sonographer to accurately measure the gestational</p> <p>13 sac or the crown-to-rump length or however they are</p> <p>14 going to do it; right?</p> <p>15 A I rely on a sonogram report, yes, indeed.</p> <p>16 Q Is there ever a time that you yourself</p> <p>17 performed a sonogram when you were working for</p> <p>18 Associates in OB/GYN Care?</p> <p>19 A No, there was not.</p> <p>20 Q During the entire 14 for 15 months you</p> <p>21 worked there you never performed a sonogram?</p> <p>22 A No, I did not.</p>

<p style="text-align: right;">101</p> <p>1 Q You always relied on the sonographers?</p> <p>2 A I did.</p> <p>3 Q And so where you signed at the bottom of</p> <p>4 that page, what does that indicate?</p> <p>5 A That indicates that I was present in the</p> <p>6 office that day and there was a doctor in the office</p> <p>7 who was responsible for her care. Everything has to</p> <p>8 be signed for insurance purpose.</p> <p>9 Q Everything has to be signed by a doctor.</p> <p>10 A Yes.</p> <p>11 Q And that's because you're ultimately</p> <p>12 responsible for the patient?</p> <p>13 A I'm definitely ultimately responsible for</p> <p>14 the patient.</p> <p>15 MR. VARNER: Well, let me object for the</p> <p>16 record.</p> <p>17 Q And if there's an error on the sonogram</p> <p>18 report, ultimately it's your responsibility?</p> <p>19 MR. VARNER: Objection --</p> <p>20 A I don't agree with that at all.</p> <p>21 MR. VARNER: Wait a minute. When I</p> <p>22 object, don't talk.</p>	<p style="text-align: right;">103</p> <p>1 Q But it was your responsibility to review</p> <p>2 the sonogram report; right?</p> <p>3 A It was my responsibility to read the</p> <p>4 report.</p> <p>5 Q Just to read it or to read it and process</p> <p>6 the information?</p> <p>7 A Read it, the report, the bottom line, and</p> <p>8 correlate it with the patient.</p> <p>9 Q When you say, "the bottom line," which</p> <p>10 line are you talking about?</p> <p>11 A It says 7.4 weeks. If the patient's dates</p> <p>12 didn't go along with that or she had no date, that's</p> <p>13 important too.</p> <p>14 Q Okay. And it was your responsibility to</p> <p>15 sign the report at the bottom.</p> <p>16 A Yes.</p> <p>17 Q Indicating that you had read it.</p> <p>18 A Yes.</p> <p>19 Q So you do not believe that your signature</p> <p>20 at the bottom of that report indicates a concurrence</p> <p>21 with the gestational age as measured by the</p> <p>22 sonographer?</p>
<p style="text-align: right;">102</p> <p>1 My objection, for the record, is that's</p> <p>2 incorrect legally. I think counsel's aware of that.</p> <p>3 MS. MALARKEY: Well, I disagree.</p> <p>4 Q You can answer that.</p> <p>5 MR. VARNER: Well, I object to it</p> <p>6 nevertheless.</p> <p>7 You're not required to give legal</p> <p>8 opinions, Doctor.</p> <p>9 But you can repeat the question.</p> <p>10 A Legal opinions...</p> <p>11 Q My question is: If the sonographer --</p> <p>12 well, let me back up a step.</p> <p>13 MR. VARNER: You know that's not true,</p> <p>14 Emily. I mean, come on.</p> <p>15 Q The sonographer is responsible for doing</p> <p>16 the sonogram based on the protocol that was put in</p> <p>17 place at Associates in OB/GYN Care; right?</p> <p>18 A I would assume such, yes.</p> <p>19 Q It was not -- in your experience, it was</p> <p>20 not the doctor's responsibility to actually perform</p> <p>21 the sonogram.</p> <p>22 A That is true.</p>	<p style="text-align: right;">104</p> <p>1 A No, it does not.</p> <p>2 Q I'm going to hand you a document that's</p> <p>3 contained in Exhibit 1. It's called Medical</p> <p>4 Counseling Record. It has a date at the bottom</p> <p>5 7/26/2012, which the date we've had been talking</p> <p>6 about, Ms. O'Connell's first visit.</p> <p>7 Can you just generally describe for me</p> <p>8 what is that document?</p> <p>9 A It is a medical counseling record with</p> <p>10 points that are considered important in counseling a</p> <p>11 patient who is considering terminating her</p> <p>12 pregnancy.</p> <p>13 Q And do you recognize the signature at the</p> <p>14 bottom of that form?</p> <p>15 A Again, not positively, but that "A" looks</p> <p>16 like Arlene, but I can't be positive.</p> <p>17 Q Do you know who wrote: "Patient sure of</p> <p>18 decision"?</p> <p>19 A That would have been the manager who</p> <p>20 signed this.</p> <p>21 Q Is this a form that would have been</p> <p>22 completed during the counseling with the office</p>

<p style="text-align: right;">105</p> <p>1 manager that you described earlier?</p> <p>2 A Yes.</p> <p>3 Q Do you know who fills out the circles that</p> <p>4 are circled yes or no? Would that be the patient or</p> <p>5 would it be the office manager?</p> <p>6 A That I don't -- don't know.</p> <p>7 Q Other than consent forms, is there -- is</p> <p>8 there any other paperwork -- well, strike that. Let</p> <p>9 me...</p> <p>10 Do you actually write on any of the</p> <p>11 consent forms for the first visit where the medical</p> <p>12 abortions actually began?</p> <p>13 A Well, there really is a consent form built</p> <p>14 into the medical portion piece of paper saying that</p> <p>15 she understands that once she receives the</p> <p>16 methotrexate, the pregnancy cannot continue. So</p> <p>17 there's kind of a built-in extra consent on that</p> <p>18 form which I always have the patient's sign.</p> <p>19 Q Right. Is this the form you're talking</p> <p>20 about? I'm not trying to trick you. I'm --</p> <p>21 A No. I'm talking about the sheet, the --</p> <p>22 our nonsurgical abortion procedure sheet.</p>	<p style="text-align: right;">107</p> <p>1 Q Is that a form that is signed with the</p> <p>2 office manager or with you?</p> <p>3 A Office manager.</p> <p>4 Q Okay. Is there anywhere on this</p> <p>5 three-page document where you sign?</p> <p>6 A No, there is not.</p> <p>7 Q And I take it then that you do not walk</p> <p>8 through this document and explain it to the patient</p> <p>9 when you are in the room with the patient?</p> <p>10 A I do not.</p> <p>11 Q How about this form that I'm sending you</p> <p>12 which is two pages long, it's entitled,</p> <p>13 "Supplemental Informed Consent Form for Medical</p> <p>14 Abortions"; is your signature on this page</p> <p>15 anywhere --</p> <p>16 A It is --</p> <p>17 Q -- or this document?</p> <p>18 A It is not.</p> <p>19 Q And is this document something that's also</p> <p>20 filled out when the patient is counseled with the</p> <p>21 office manager?</p> <p>22 A Yes.</p>
<p style="text-align: right;">106</p> <p>1 Q Okay. Well, let me hand that -- let me</p> <p>2 hand you the chart --</p> <p>3 A Okay.</p> <p>4 Q -- and you can tell me what sheet you're</p> <p>5 talking about so we're on the same page.</p> <p>6 A The one that the -- left arm. That one.</p> <p>7 Q Oh, the one we've already discussed.</p> <p>8 A Mm-hmm. 'Cause I pointed to my right arm.</p> <p>9 That should be it. And there should be somewhere, I</p> <p>10 recall -- yes.</p> <p>11 "I am aware that severe birth defects are</p> <p>12 a possibility if this pregnancy were to continue."</p> <p>13 Patient's signature. So she also signs that in my</p> <p>14 presence.</p> <p>15 Q Okay. So then let me ask you about two</p> <p>16 other forms, which are each -- have multi --</p> <p>17 multiple pages. The first one is entitled, "Medical</p> <p>18 Abortion Consent. Consent to Voluntarily" -- sorry</p> <p>19 -- "Consent to Voluntary Medical Termination of</p> <p>20 Pregnancy," and it's three pages long.</p> <p>21 Do you see that?</p> <p>22 A Yes.</p>	<p style="text-align: right;">108</p> <p>1 Q Is this document reviewed by you in the</p> <p>2 little room when you see the patient?</p> <p>3 A No, it is not.</p> <p>4 Q So tell me then what, if any, consent or</p> <p>5 explanation of the procedure did you typically</p> <p>6 provide to the patient once the patient got into the</p> <p>7 room with you?</p> <p>8 A I review, of course, her medical and</p> <p>9 obstetrical history, her medications, allergies, any</p> <p>10 adverse effects to surgery, any other health</p> <p>11 problems, and I ask her if she is absolutely</p> <p>12 positively 100 percent sure this is what she want to</p> <p>13 do. If she indicates that is the case, then I</p> <p>14 explain the procedure to her in detail.</p> <p>15 Q Tell me what you explain to her in detail.</p> <p>16 A I tell her it's a two-step procedure,</p> <p>17 pills, injection. Put them down. I hold up the</p> <p>18 methotrexate and I explain to her what it does, how</p> <p>19 site-specific it is, and because it is so</p> <p>20 site-specific, it cares about chorionic villi more</p> <p>21 than anything else, it's a very well-tolerated</p> <p>22 treatment for her. I explain how it works and then</p>

<p style="text-align: right;">109</p> <p>1 I follow it up with the tablets and their part in</p> <p>2 the procedure, that she should -- how and when she</p> <p>3 should place them and what she should expect in</p> <p>4 what -- what timeframe.</p> <p>5 Q Okay. And then do you counsel her at all</p> <p>6 about what she should expect after the-- well, in</p> <p>7 the follow-up visit, I guess I should say? Do you</p> <p>8 talk about that at all in the follow-up visit?</p> <p>9 A They're aware they have a have a follow-up</p> <p>10 visit always.</p> <p>11 Q Sure. And what -- it was a poor question,</p> <p>12 but do you discuss the fact that they will need to</p> <p>13 come back for a follow-up visit or is that done by</p> <p>14 the office manager ahead of time?</p> <p>15 A All of us reinforce that. And I always</p> <p>16 say, see you in three weeks, see you in two weeks,</p> <p>17 that type of thing. Very, very much is that. When</p> <p>18 you come back, you'll be a happy person.</p> <p>19 Q Okay. And the patients understand that</p> <p>20 the reason they need to come back is to confirm that</p> <p>21 it's been a success?</p> <p>22 A Yes. They -- they want that confirmed</p>	<p style="text-align: right;">111</p> <p>1 A Yes.</p> <p>2 Q -- are there any other papers that you</p> <p>3 typically would right write on during the first</p> <p>4 visit?</p> <p>5 A No. Only my prescription pad, if she</p> <p>6 needs some medication, and I -- what I write on the</p> <p>7 little pill envelope, I put dates and days so it was</p> <p>8 very clear when they should use the vaginal tablets.</p> <p>9 Q So then you do the injection of the</p> <p>10 methotrexate and you give the patient the pills for</p> <p>11 the misoprostol, you obviously talk to them about</p> <p>12 what to expect, and that concludes the appointment?</p> <p>13 A Yes.</p> <p>14 Q You don't--</p> <p>15 A And any other -- I ask if they have any</p> <p>16 other questions, let them know that I can be reached</p> <p>17 through the service. They always know what office</p> <p>18 I'm at if they have any questions. And we give them</p> <p>19 the other instructions that are important.</p> <p>20 Methotrexate is a folic acid and an</p> <p>21 antagonist, and they get a huge list of foods to</p> <p>22 avoid, which is a bit overboard. I give them the</p>
<p style="text-align: right;">110</p> <p>1 more than we do.</p> <p>2 Q And I take it from the answers that you</p> <p>3 gave earlier that you do not specifically discuss</p> <p>4 with the patients, or did not at the, time</p> <p>5 specifically discuss with patients, the option to</p> <p>6 use RU-486 as an alternate medication besides</p> <p>7 methotrexate.</p> <p>8 A I did not, unless the patient herself</p> <p>9 asked.</p> <p>10 Q And if she did ask, what would you say?</p> <p>11 A I would explain to her how -- what RU-486</p> <p>12 was, how it works, and that it is available in a</p> <p>13 good number of clinics, I consider it the same as</p> <p>14 methotrexate and misoprostol, safe, effective, and</p> <p>15 the other is available if she would prefer it.</p> <p>16 Q And do you give her options of places she</p> <p>17 could go if she chooses to use that drug?</p> <p>18 A Yes. We have lists of clinics that do</p> <p>19 just about everything.</p> <p>20 Q Other than the sheets that we have already</p> <p>21 talked about, the sonogram report, the one where you</p> <p>22 initial for the injection in the arm--</p>	<p style="text-align: right;">112</p> <p>1 standards, avoiding green leafies and other</p> <p>2 folic-rich acid foods, because there's no reason to</p> <p>3 fill yourself up with folic acid when you're taking</p> <p>4 a folic acid antagonist, no vitamins, no</p> <p>5 nonsteroidal anti-inflammatories.</p> <p>6 And once they begin with the pills, no</p> <p>7 intercourse, douching, or tampons, what we call</p> <p>8 pelvic rest, because we don't know when the cervix</p> <p>9 will dilate, and we don't want to risk an infection.</p> <p>10 Q You mentioned a list of foods. That was</p> <p>11 actually a printed document, a paper, that was given</p> <p>12 to patients?</p> <p>13 A Yes.</p> <p>14 Q Were there any other papers that were</p> <p>15 given to patients, educational materials,</p> <p>16 instructions, pamphlets, besides that list of foods?</p> <p>17 A Foods, medications, and it would say if</p> <p>18 you experience heavy bleeding or severe pain,</p> <p>19 there's a number to call.</p> <p>20 Q Are we talking about one sheet?</p> <p>21 A I don't know if they're on the same</p> <p>22 sheets. I think they -- we just -- they had the</p>

<p style="text-align: right;">113</p> <p>1 central number they could always reach one of us.</p> <p>2 It was mainly the dos and don'ts, foods and</p> <p>3 medications to avoid once you've received</p> <p>4 methotrexate.</p> <p>5 Q Was the central number a Maryland number?</p> <p>6 A I don't know.</p> <p>7 Q All right. So then the second visit with</p> <p>8 Ms. O'Connell, her follow-up visit, was on</p> <p>9 August 17, 2012, and two pages to show you. One is</p> <p>10 the obstetrical sonogram report, the other is the</p> <p>11 follow-up visit.</p> <p>12 A Follow-up sheet, mm-hmm.</p> <p>13 Q Is your signature at the bottom of both of</p> <p>14 these pages?</p> <p>15 A Yes, it is.</p> <p>16 Q Were there any other paperwork -- was</p> <p>17 there any other paperwork, generally speaking, that</p> <p>18 was completed during a follow-up visit to a medical</p> <p>19 abortion?</p> <p>20 A No.</p> <p>21 Q So then let's take them one at a time.</p> <p>22 We'll just start with the one on right, follow-up</p>	<p style="text-align: right;">115</p> <p>1 in no man's land.</p> <p>2 Q Okay.</p> <p>3 A I'm not sure what she has checked.</p> <p>4 Q All right. Well, let's say a patient</p> <p>5 hypothetically had checked yes to that question.</p> <p>6 A Yes.</p> <p>7 Q Would you ask them what symptoms they were</p> <p>8 experiencing?</p> <p>9 A Oh, of course.</p> <p>10 Q Would you note that?</p> <p>11 A Yes, I would.</p> <p>12 Q Why would that be important information</p> <p>13 for you?</p> <p>14 A Only because everything a patient reports</p> <p>15 to you and your response to it in this situation is</p> <p>16 clinically important. I would explain to her how</p> <p>17 her symptoms should resolve and explain to her that</p> <p>18 when the pregnancy is gone, the pregnancy hormone</p> <p>19 takes a while for the body to clear it, so you can</p> <p>20 feel pregnant for a little while after a termination</p> <p>21 just like you can after a baby. Things don't change</p> <p>22 quite that fast. Any other concerns I address</p>
<p style="text-align: right;">114</p> <p>1 visit. The writing that is in the top half of this</p> <p>2 page before the line of little asterisks [sic] --</p> <p>3 A Mm-hmm.</p> <p>4 Q -- asterisks [sic] whatever is</p> <p>5 grammatically correct.</p> <p>6 A Asterisks.</p> <p>7 Q Thank you. It's one of those --</p> <p>8 A Let's try asterisks.</p> <p>9 Q Thank you.</p> <p>10 A Okay.</p> <p>11 Q Is any of the writing above the asterisks</p> <p>12 yours?</p> <p>13 A Only the "allergy sulfa" part.</p> <p>14 Q Okay. And do you see where it asks at the</p> <p>15 top of the form: "Are you experiencing any of the</p> <p>16 following," and there's a line for, "Symptoms of</p> <p>17 pregnancy." Do you see --</p> <p>18 A Yes.</p> <p>19 Q Do you see Ms. O'Connell has checked yes?</p> <p>20 A I don't think she's checked yes.</p> <p>21 Q Oh. What do you think she's checked?</p> <p>22 A I think she has missed the no line and is</p>	<p style="text-align: right;">116</p> <p>1 fully.</p> <p>2 Q So do you expect at a three-week follow-up</p> <p>3 visit after a medical abortion for the patient still</p> <p>4 to be experiencing some symptoms of pregnancy?</p> <p>5 A Not routinely, no.</p> <p>6 Q Is it -- I don't want to put words in your</p> <p>7 mouth, but is it common that women do come back for</p> <p>8 their three-week follow-up visit with symptoms of</p> <p>9 pregnancy?</p> <p>10 A No, it is not common.</p> <p>11 Q But does it happen from time to time?</p> <p>12 A It does.</p> <p>13 Q And when it happens from time to time, is</p> <p>14 it something that you are concerned about?</p> <p>15 A Usually not.</p> <p>16 Q And is that because it can sometimes take</p> <p>17 a little bit longer for women to stop feeling like</p> <p>18 they're pregnant?</p> <p>19 A Yes. But it's also because every patient</p> <p>20 who comes for follow-up hasn't necessarily cleared</p> <p>21 her pregnancy hormone completely yet.</p> <p>22 We -- we know as scientists, as</p>

<p style="text-align: right;">117</p> <p>1 obstetricians, through earlier studies that the hCG 2 level, the pregnancy hormone, goes up in the first 3 eight weeks or so of pregnancy in a very predictable 4 fashion. 5 We also learned, watching them go down, 6 that that is as variable as people are. Some people 7 take three, four weeks to clear an hCG, some are 8 negative right away. 9 When a patient has a high-sensitivity 10 pregnancy test that is slightly positive, that can 11 be the cause of her symptoms and I will -- it is my 12 practice to send her home with free urine pregnancy 13 tests to do one week apart for two weeks. And I 14 assure her it will become negative, and it does; if 15 not, she is to call me. 16 Q Okay. So is the fact that Ms. O'Connell 17 was still experiencing -- well, strike that, because 18 you said you aren't sure she checked yes; right? 19 A I am sure she did not check yes, because 20 none of the notes in my record indicate pregnancy 21 symptoms as a complaint at all. 22 Q So it's your interpretation of this form</p>	<p style="text-align: right;">119</p> <p>1 Q Have you ever had a situation other than 2 Ms. O'Connell's where a patient came back for her 3 three-week follow-up visit and had an audible 4 heartbeat on sonogram? 5 A Heartbeats are not something that we look 6 for, check, or note so I can't answer that question. 7 Q I guess I didn't ask you that before when 8 we were talking about the sonogram that's done 9 during the first visit. We talked about how a 10 measurement is taken to measure gestational age. 11 A Yes. 12 Q Is there any attempt to listen to a 13 heartbeat at that visit, the first visit? 14 A No. There is not at any visit. 15 Q At any visit, including follow-up visit. 16 A Yes. 17 Q So is -- is the sonogram equipment that 18 existed when you were practicing for American 19 Women's Services, did it have the capability to hear 20 an audible heartbeat if one were there? 21 A On a sonogram you see it. 22 Q I don't know that that was quite an answer</p>
<p style="text-align: right;">118</p> <p>1 that she did not check yes to continuing symptoms of 2 pregnancy. 3 A That is true. 4 Q If a patient is still experiencing 5 symptoms of pregnancy at the three-week follow-up 6 visit, could it also be an indication that they 7 still may be pregnant? 8 A That would depend completely on the -- the 9 lab findings and the exam of the patient. 10 Q So it's possible. 11 A I don't think so. 12 Q Have you ever had a situation besides 13 Ms. O'Connell's where a patient came back for a 14 three-week follow-up visit and was still actually 15 pregnant? 16 A That would depend whether you meant a 17 partial response or a pregnancy just going on its 18 way that hadn't been affected by the medication. 19 Q Well, how do you distinguish those two? 20 A Two different scenarios. By sonogram 21 mainly, but the people with partial responses rarely 22 have severe pregnancy symptoms.</p>	<p style="text-align: right;">120</p> <p>1 to my question. Did the equipment have the 2 capability to listen to a heartbeat if one were 3 there? 4 A I don't know. If you're referring to a 5 Doptone or a fetoscope, none of those were there, 6 no. 7 Q I'm just thinking from my personal 8 experience, having had sonograms when I was pregnant 9 with babies, I could always listen to the heartbeat. 10 I don't know what that -- how you do that. 11 A A Doptone. 12 Q Okay. 13 A And then with pregnancy, "There it is." 14 It's a lot different from a pregnancy you want to 15 the pregnancy you don't. 16 Q Absolutely. 17 What I'm just trying to find out is was 18 there equipment, a Doptone, available at American 19 Women's Services when you worked there? 20 A There was not. There was no need for it 21 when we can do abdominal sonography. 22 Q Okay. Now, looking below the asterisks</p>

<p style="text-align: right;">121</p> <p>1 line, is all of the writing below the line yours?</p> <p>2 A It is.</p> <p>3 Q Could you read it into the record,</p> <p>4 starting here where you have "S/P"?</p> <p>5 A I'd be happy to.</p> <p>6 Q Thank you.</p> <p>7 A Are you saying you can't read my writing?</p> <p>8 Q Actually, I can read that copy, but the</p> <p>9 one I have is very gray and I--</p> <p>10 A It says: "Clinical History: Status post</p> <p>11 M&M without problems. All above questions answered.</p> <p>12 Patient with headache and is not happy with</p> <p>13 Sprintec," which is a birth control pill. "All</p> <p>14 discussed fully and patient given prescription for</p> <p>15 Loestrin 24 FE with detailed instructions to begin</p> <p>16 this Sunday and follow up with her primary care</p> <p>17 physician in three months," which is the time of her</p> <p>18 annual visit.</p> <p>19 I wrote: "See above. D.C. clinic on new</p> <p>20 OCP." And at "Lab Tests Performed" I wrote, "See</p> <p>21 sono report."</p> <p>22 Q Okay. In the second office visit--</p>	<p style="text-align: right;">123</p> <p>1 A Yes.</p> <p>2 Q Is there any lab work done during the</p> <p>3 second visit for a follow-up?</p> <p>4 A Usually a urine pregnancy test is done.</p> <p>5 Q Can we tell from this chart whether one</p> <p>6 was done for Ms. O'Connell?</p> <p>7 A It appears as if one was not.</p> <p>8 Q Where would -- where would that be</p> <p>9 recorded in the chart if one were there?</p> <p>10 A Right here, high-sensitivity pregnancy</p> <p>11 test, negative, positive.</p> <p>12 Q And it's blank.</p> <p>13 A Yes.</p> <p>14 Q Okay. So ordinarily it was the practice</p> <p>15 when you were working for Associates at OB/GYN Care</p> <p>16 that during the follow-up visit for a medical</p> <p>17 abortion, a urine pregnancy test would be done?</p> <p>18 A A urine pregnancy test was done for any</p> <p>19 follow-up for any kind of abortion.</p> <p>20 Q Do you have any idea why one was not done</p> <p>21 for Ms. O'Connell's August 2012 follow-up visit?</p> <p>22 A Yes, indeedy.</p>
<p style="text-align: right;">122</p> <p>1 earlier you described to me the routine that happens</p> <p>2 during the first office visit where the patient</p> <p>3 comes in and they do paperwork and they see the</p> <p>4 office manager. What is the routine, if you will,</p> <p>5 for a follow-up visit after a medical abortion?</p> <p>6 A The same type of routine: Signing up --</p> <p>7 signing in, the chart is pulled, the patient is</p> <p>8 given a form to fill out about her experience, and</p> <p>9 she is advised to start filling her bladder so she</p> <p>10 can have her sonogram, and she is expected to leave</p> <p>11 a urine specimen.</p> <p>12 Q Does she have any counseling by the office</p> <p>13 manager?</p> <p>14 A No.</p> <p>15 Q In the second visit does she meet with the</p> <p>16 office manager for any reason?</p> <p>17 A For payment, I would think; yes.</p> <p>18 Q Other than payment, any other reasons she</p> <p>19 would meet with the office manager?</p> <p>20 A Not that I'm aware of.</p> <p>21 Q So mainly that visit is with you and the</p> <p>22 sonographer?</p>	<p style="text-align: right;">124</p> <p>1 Q Why?</p> <p>2 A Urines are always a problem in gynecology</p> <p>3 offices. Women have to fill their bladders for the</p> <p>4 sonogram, sometimes they're not full enough, then</p> <p>5 they're too full, they can't hold it, they run to</p> <p>6 the bathroom, the bathrooms are full, there is not</p> <p>7 a -- the pee cups aren't there, the marker doesn't</p> <p>8 work, things like that. There are plenty of slips.</p> <p>9 I've had to have many people wait to refill their</p> <p>10 bladders for a urine test.</p> <p>11 Q So those things that you just described to</p> <p>12 me are things that you've seen happen over the</p> <p>13 course of your time working there?</p> <p>14 A There and in my own private practice,</p> <p>15 urines are always an issue.</p> <p>16 Q So my question is: Do you have a specific</p> <p>17 knowledge or understanding today as to what occurred</p> <p>18 with Ms. O'Connell?</p> <p>19 A I do not.</p> <p>20 Q We just know one was not done.</p> <p>21 A Yes. I can only opine as to what</p> <p>22 happened.</p>

<p style="text-align: right;">125</p> <p>1 Q And ordinarily at the time you saw the</p> <p>2 patient -- oh, I presume you wrote the notes that</p> <p>3 you just read into the record at the time you were</p> <p>4 sitting down with her and talking to her?</p> <p>5 A Indeed, yes, I did.</p> <p>6 Q So you were aware at the time you were</p> <p>7 sitting down with her and talking with her that as</p> <p>8 of that moment, she hadn't yet been able to give</p> <p>9 urine for the urine pregnancy test.</p> <p>10 A That is true.</p> <p>11 Q And so what, if anything, would you</p> <p>12 counsel her about giving a specimen for a urine</p> <p>13 pregnancy test before she left?</p> <p>14 A With a sonogram showing an empty uterus,</p> <p>15 no IUP, no intrauterine pregnancy, it was not</p> <p>16 necessary.</p> <p>17 Q Okay. So the fact that she hadn't yet</p> <p>18 been able to give a urine specimen for a urine</p> <p>19 pregnancy test didn't concern you because you were</p> <p>20 aware that the sonogram showed no intrauterine</p> <p>21 pregnancy.</p> <p>22 A I don't know if she hadn't yet been able</p>	<p style="text-align: right;">127</p> <p>1 A That is true.</p> <p>2 Q Did you look at the picture?</p> <p>3 A I did not.</p> <p>4 Q Why not?</p> <p>5 A No need to.</p> <p>6 Q Why?</p> <p>7 A I read reports. I'm an obstetrician-</p> <p>8 gynecologist, not a radiologist.</p> <p>9 Q When you were practicing at the Margolis</p> <p>10 practice and in private practice before coming to</p> <p>11 Associates in OB/GYN Care, did you have any training</p> <p>12 on obstetric sonogram?</p> <p>13 A I did a month on obstetrical sonograph --</p> <p>14 sonogram in the third year of my residency back at</p> <p>15 Duke 1983.</p> <p>16 Q Is that the extent of your obstetric</p> <p>17 sonogram training ever?</p> <p>18 A Yes.</p> <p>19 Q So when you were practicing at the</p> <p>20 Margolis group, I take it you had sonographers</p> <p>21 there, trained ultrasound techs --</p> <p>22 A We had one sonographer, an RN, named</p>
<p style="text-align: right;">126</p> <p>1 to. I don't know why a specimen wasn't left and</p> <p>2 tested, but it certainly was not necessary with a</p> <p>3 negative sonogram.</p> <p>4 Q And the sonogram was done again by the</p> <p>5 office manager?</p> <p>6 A Yes.</p> <p>7 Q Can you recognize the signature that is at</p> <p>8 the bottom left of the sonogram report for August?</p> <p>9 A No, I can't. It's still Arlene or</p> <p>10 Crystal. I just don't remember their signatures.</p> <p>11 Q But you're fairly confident it was either</p> <p>12 Arlene or Crystal.</p> <p>13 A Yes.</p> <p>14 Q You don't remember either of their last</p> <p>15 names; right?</p> <p>16 A No.</p> <p>17 Q Okay. And Arlene or Crystal has written:</p> <p>18 "Transabdominal US," for ultrasound, "No IUP" for</p> <p>19 IUP; correct?</p> <p>20 A Yes.</p> <p>21 Q And, again, that's not an actual sonogram</p> <p>22 that you yourself performed.</p>	<p style="text-align: right;">128</p> <p>1 Margo, who was always getting new letters and</p> <p>2 certificates and everything. She was a very</p> <p>3 excellent Level 3 sonographer. She had to work to</p> <p>4 get there, take classes and courses.</p> <p>5 Q What does Level 3 sonographer mean?</p> <p>6 A They can do very advanced OB sonography,</p> <p>7 look for anatomic defects, those types of things.</p> <p>8 Q Do you remember what level sonographer</p> <p>9 Arlene and Crystal were?</p> <p>10 A I don't know. I didn't -- I didn't</p> <p>11 forget. I'm not aware.</p> <p>12 Q And so if I'm understanding you, when you</p> <p>13 were in private practice at the Margolis group or</p> <p>14 working on your own -- well, when you were working</p> <p>15 on your own, you didn't do obstetrics at all; right?</p> <p>16 A No. But I ordered lots of sonograms.</p> <p>17 Q Sure. And you reviewed the reports when</p> <p>18 they came in?</p> <p>19 A Yes.</p> <p>20 Q I take it when you -- when you were doing</p> <p>21 gynecologic practice, you still had occasion to</p> <p>22 order a lot of sonograms?</p>

<p style="text-align: right;">129</p> <p>1 A Yes.</p> <p>2 Q When you were in private practice for</p> <p>3 either the Dr. Margolis group or in solo -- well, in</p> <p>4 solo practice you would have to send your patients</p> <p>5 for an outpatient sonogram; right?</p> <p>6 A Yes.</p> <p>7 Q When you were working for Dr. Margolis'</p> <p>8 group, did you have the -- did you have a facility</p> <p>9 or a room in your practice to do the sonograms</p> <p>10 in-house, if you will?</p> <p>11 A In one of our offices, yes.</p> <p>12 Q Okay. And did you ever have occasion to</p> <p>13 go into the ultrasound room while a sonogram was</p> <p>14 being performed?</p> <p>15 A Yes.</p> <p>16 Q Did you do that regularly?</p> <p>17 A No.</p> <p>18 Q What -- what would lead you to go into a</p> <p>19 sonogram room during that time?</p> <p>20 A When the sonogram was being done to find a</p> <p>21 spot for me to perform an amniocentesis and for</p> <p>22 saline hysterosonograms, when I have to put a</p>	<p style="text-align: right;">131</p> <p>1 Q I'm talking about this visit and the</p> <p>2 follow-up visit; you relied on their interpretation?</p> <p>3 A I did.</p> <p>4 Q You signed the report.</p> <p>5 A I did.</p> <p>6 Q Indicating that you had read it.</p> <p>7 A Yes.</p> <p>8 Q But not that you necessarily concurred</p> <p>9 with the findings.</p> <p>10 A True.</p> <p>11 Q Because you don't know what the findings</p> <p>12 were really.</p> <p>13 A I believed the findings. There was really</p> <p>14 no reason for me not to.</p> <p>15 Q Was there ever a time that there was a</p> <p>16 discrepancy in the measurement of a fetal</p> <p>17 gestational age as recorded by one of the office</p> <p>18 managers at American Women's Services, in your mind,</p> <p>19 that lead you to believe that their measurement was</p> <p>20 inaccurate?</p> <p>21 A I'm not sure I understand what you're</p> <p>22 asking.</p>
<p style="text-align: right;">130</p> <p>1 speculum in, a small catheter, and inject saline</p> <p>2 into the patient's uterus so that we can look for</p> <p>3 endometrial polyps or fibroids that impinge on the</p> <p>4 cavity.</p> <p>5 Q Okay. But not to measure any type of</p> <p>6 fetal measurement or --</p> <p>7 A No. That's why we had a sonographer and</p> <p>8 that's why God invented radiologists.</p> <p>9 Q Crystal and Arlene were not radiologists;</p> <p>10 right?</p> <p>11 A No.</p> <p>12 Q Well, I'm right that they were not</p> <p>13 radiologists.</p> <p>14 A True.</p> <p>15 Q And so, again, you relied on Crystal or</p> <p>16 Arlene's interpretation of the sonogram for</p> <p>17 information that the medical abortion was successful</p> <p>18 and that there was no longer any intrauterine</p> <p>19 pregnancy?</p> <p>20 A Yes.</p> <p>21 MR. VARNER: Asked and answered.</p> <p>22 Go ahead. You can do it again.</p>	<p style="text-align: right;">132</p> <p>1 Q So when the patient would come in for</p> <p>2 their initial consultation for a medical abortion or</p> <p>3 for any type of abortion --</p> <p>4 A Mm-hmm.</p> <p>5 Q -- and they'd have their sonogram, you'd</p> <p>6 get a report like the ones we've been looking at</p> <p>7 that had the office manager's interpretation of the</p> <p>8 sonogram, their estimation of the fetal age as</p> <p>9 measured on that sonogram; right?</p> <p>10 A Yes, yes.</p> <p>11 Q What I'm trying to ask you, inartfully --</p> <p>12 A Mm-hmm.</p> <p>13 Q -- is did -- was there ever a time when</p> <p>14 you were working at American Women's Services where</p> <p>15 you got a report from one of the office managers, a</p> <p>16 sonogram report, and their estimation seemed way off</p> <p>17 to you?</p> <p>18 A No.</p> <p>19 Q Did you ever have occasion ever to</p> <p>20 question the information that was on one of the</p> <p>21 office manager's sonogram reports while you were</p> <p>22 working for American Women's Services?</p>

<p style="text-align: right;">133</p> <p>1 A No. When surgical procedures are done, 2 they're preceded by a pelvic examination. We never 3 instrument a uterus without introducing ourselves to 4 it. And clearly if I felt a 12-week size uterus and 5 they're telling me she's nine weeks and three days, 6 we're going to be looking again, but that didn't 7 happen. 8 Q Is there a pelvic examination done for a 9 woman who's undergoing a medical abortion? 10 A No. 11 Q Never? 12 A Not never. If they have other complaints, 13 they, of course, can have a pelvic exam. Plenty of 14 women do have a discharge or an itch and after the 15 procedure, when they come back for the follow-up, if 16 it's still present, I can do that, or a Papsmear if 17 they request. 18 Q But on the first visit, the initial 19 consultation and the visit where they're actually 20 given the medications, is it routine, was it routine 21 at American Women's Services to perform a pelvic 22 exam?</p>	<p style="text-align: right;">135</p> <p>1 Q All I'm trying to ask you is can you 2 remember a time when what you felt doing that pelvic 3 exam did not jive in your mind with what was on the 4 sonogram report? 5 A No. I was very happy with the sonograms; 6 what they were was what they were. 7 Q Obviously this one was wrong; right? 8 A It certainly was. 9 Q When you were reading the note into the 10 record, you mentioned, "answered all above 11 questions" or something along those lines. Just to 12 clarify, are those the questions that Ms. O'Connell 13 has written in the space above the asterisks that 14 you were referring to? 15 A Yes. 16 Q And you mentioned that you -- it said -- I 17 think you said, "D.C. discharge clinic" -- 18 A "On new oral contraceptive pill." 19 Q So it was your understanding on August 20 20 -- 21 A 6. 22 Q -- 6? Thank you.</p>
<p style="text-align: right;">134</p> <p>1 A No, it was not. 2 Q And same question for the follow-up visit, 3 was it routine to do a pelvic exam, assuming the 4 patient had no other complaints, like a discharge or 5 an odor or anything like that? 6 A No, it was not. 7 Q And then getting back to our discussion, 8 you mention an example of if you were going to do a 9 surgical abortion and you did do a pelvic exam and 10 you felt like the uterus was a 12-week uterus, but 11 the report showed that it was a nine-week pregnancy, 12 you've never had a situation like that occur while 13 you were working with American Women's Services? 14 A No, no. But it isn't that I sometimes do 15 a pelvic exam before a surgical abortion, always. 16 Q Sure. 17 A Always. Never instrument uterus you 18 haven't introduced yourself to. 19 Q Understood. 20 A So I had an automatic way to make sure. 21 Dates, the patient is telling me, what I feel, and 22 the report.</p>	<p style="text-align: right;">136</p> <p>1 A August. Oh-- 2 Q I think it was -- 3 A -- 17. 4 Q Right. 5 A It was July 26. 6 Q On August 17 of 2012 you had no intention 7 of seeing Ms. O'Connell again. 8 A Not -- no, I did not, unless she needed to 9 be seen again. 10 Q For this particular pregnancy and issue 11 that she came to you for, you did not intend to see 12 her again. 13 A To clarify, American Women's Services 14 offers the follow-up visit at cost the first time. 15 You can come back to the clinic with as many 16 complaints as you want as many times as you want 17 with no further charge. 18 Q Right. All I'm asking is that you didn't 19 expect that to happen for this particular issue, for 20 this particular pregnancy, as of August 17 of 2012. 21 A I did not, no. 22 Q And you mentioned you advised</p>

<p style="text-align: right;">137</p> <p>1 Ms. O'Connell to follow up with her primary care 2 provider in three months for her annual exam. Is 3 that specific to her or advice that is always given 4 after a medical abortion? 5 A Specific to her. 6 Q Why? 7 A She had an annual visit coming up. 8 Because a pill, when it's changed, should be 9 evaluated at the end of three months to see if the 10 patient's doing well on it, happy with it, 11 headaches, blood pressure. And she mentioned that 12 she had an annual visit coming up, so it would be 13 perfect. 14 Q So if she did not have that appointment 15 coming up in three months, would there be any advice 16 given to a routine patient after a medical abortion 17 with respect to follow-up by a physician? 18 A Yes. 19 Q What would it be? 20 A I would ask her to contact her doctor for 21 a pill follow-up and a blood pressure check, and if 22 she's happy, receive her prescription for the rest</p>	<p style="text-align: right;">139</p> <p>1 Q Were they usually done in conjunction with 2 a patient who was coming for an abortion or did you 3 provide that service to members of the community 4 regardless? 5 A It was members of the community. 6 Q Other than routine GYN exams and abortion 7 services, what other types of patient care did you 8 provide when you were working for American Women's 9 Services? 10 A Sexually transmitted disease screening and 11 treatment for vaginal infections, birth control 12 counseling. 13 Q If a patient had an abnormal Pap smear, 14 would that be something that would be handled 15 through American Women's Services in terms of 16 follow-up care for an abnormal? 17 A Yes. Since the -- the promise for the 18 colposcope and the other things never came through, 19 I wouldn't have been able to evaluate an abnormal 20 Pap. I need equipment to do that. So I would have 21 had to refer a patient with an abnormal Pap smear to 22 a community gynecologist.</p>
<p style="text-align: right;">138</p> <p>1 of the year. 2 Q Okay. 3 A If she didn't -- didn't have a primary 4 doctor, she could come back to the clinic for a 5 blood pressure check and I'd refill it too. 6 Q Got it. So any time you prescribe a new 7 birth control for someone, you want to see them 8 back. 9 A Yes. 10 Q Let's assume you did not prescribe any new 11 birth control for a patient who had just undergone a 12 medical abortion, would there be any follow-up after 13 the follow-up visit? 14 A I would merely ask the patient when she 15 was due for her Pap and her visit, and, of course, 16 the name of the pill she was on that she was happy 17 with and whether she -- her prescription plan gave 18 it to her one pack at a time or three packs at a 19 time and I would cover her through her annual visit. 20 Q Did you do annual GYN exams at American 21 Women's Services? 22 A We did.</p>	<p style="text-align: right;">140</p> <p>1 Q Right. Okay. I think we're on the same 2 page, but it might not be clear on the record. 3 So if a patient had a routine GYN exam 4 through American Women's Services and their Pap 5 smear came back abnormal and they needed follow-up 6 care, you would have not been able to provide that 7 at American Women's Services? 8 A That is true. 9 Q Is there anything else that you can recall 10 about Ms. O'Connell specifically that we haven't 11 talked about? 12 A No. 13 Q Have you looked at the photograph, the 14 Polaroid, the original picture of Ms. O'Connell's 15 August 2012 sonogram since the day that you saw her 16 in August of 2012? 17 A I took it off the report to copy it. Did 18 I really look at it? I can't say. 19 Q What do you mean you took it off the 20 report to copy it? 21 A It was stapled and when I received your 22 letter requesting records, I made the copy. And I</p>

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1 took it apart, copied everything, put it back
2 together, put it back in the chart, and put it back
3 in the storage box.
4 Q Were you able to tell looking at the
5 Polaroid whether or not there was anything in the
6 uterine cavity from the Polaroid?
7 A I really didn't look at the Polaroid. I
8 just wanted to get the records out.
9 Q So you can't answer my question one way or
10 the other?
11 A I didn't look at it.
12 Q Why not?
13 A Because I was making copies for a lawyer
14 in the middle of a busy day. I always think a
15 prompt response to a request for records is a good
16 thing.
17 Q Thank you.
18 When did you become aware -- or let me
19 back up for a second.
20 Did you ever become aware prior to this
21 lawsuit being filed that Ms. O'Connell's medical
22 abortion was not a success?

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1 A I didn't know it. No, I did not know it.
2 Q Until the suit was filed.
3 A True.
4 Q Did anyone at American Women's Services
5 ever tell you that Ms. O'Connell had tried to call
6 back and tell people there or complain that her
7 abortion was not a success and that she was still
8 pregnant once she learned that she was still
9 pregnant?
10 A No, I never heard anything about that.
11 Q And you never had any discussion with her
12 then after August 27 -- I'm sorry -- August 17 --
13 A August 17.
14 Q -- 2012?
15 A No, I didn't.
16 Q In your written discovery responses that
17 you provided to me a couple of weeks ago, maybe
18 longer now, you mention three other lawsuits that
19 you had been involved in in the past. Can you just
20 tell me a brief nutshell about when were they, what
21 were the allegations in each one as best you
22 remember?

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1 A Surely. The first one was very early in
2 my private practice with my first group, mid-'80s,
3 had to do with failure to do a timely C-section,
4 secondary to poor beat-to-beat variability.
5 (Whereupon, a discussion was held off the
6 record.)
7 A (Continuing) And the other two were also
8 OB cases, '90s -- mid to late '90s, there were two
9 within a year of each other. One was a vaginal
10 birth after C-section, delivery effected with vacuum
11 assistance, baby had a mild brachial plexus injury.
12 And the other was a full-term baby who was delivered
13 uneventfully and developed sepsis with Proteus.
14 Q What's the allegation against you in the
15 sepsis case?
16 A Again, while she was pushing, there
17 were -- there was fetal distress, very deep
18 variables, and a timely C-section should have been
19 performed.
20 Q So all three cases were obstetric cases.
21 A Yes.
22 Q So with respect to the two office managers

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1 who did the sonograms at the Frederick location of
2 American Women's Services in 2012 and 2011 --
3 A 2013?
4 Q I'm sorry. Thank you. 2012 and 2013 --
5 A Yes.
6 Q You know nothing of their training to do
7 sonogram; right?
8 A That is true.
9 Q And was it -- I think you said earlier at
10 all four locations of American Women's Services it
11 was always the office managers who performed the
12 sonograms?
13 A Yes, it was.
14 Q And is it also true that you didn't know
15 their training levels either at the other ones?
16 A That is true.
17 Q You just presumed that they were
18 appropriately trained?
19 A I did.
20 Q I've read in some of the materials that
21 have been made public about the closing of the
22 clinics, and it may have even been in some of the

<p style="text-align: right;">145</p> <p>1 public documents regarding your license action, that</p> <p>2 there were some indications by the board that the</p> <p>3 sonographers at American Women's Services were</p> <p>4 inadequately trained. While you were working there,</p> <p>5 did you have any indication that that was true?</p> <p>6 A I did not.</p> <p>7 Q After leaving your independent</p> <p>8 contractorship with American Women's Services, did</p> <p>9 you learn anything about the training of the</p> <p>10 sonographers?</p> <p>11 A I did not.</p> <p>12 Q So even sitting here today you don't know</p> <p>13 anything about their training or experience level or</p> <p>14 qualifications to perform OB sonograms?</p> <p>15 A Their -- yes, yes, I do not know anything</p> <p>16 about them. The -- you have to -- well, the -- an</p> <p>17 OB sonogram done in this setting is a very simple</p> <p>18 thing to do. They're early pregnancies, full</p> <p>19 bladder. All we are looking for is estimated</p> <p>20 gestational age. It doesn't take a great deal of</p> <p>21 training, it just takes practice.</p> <p>22 Q So notwithstanding the fact that you are</p>	<p style="text-align: right;">147</p> <p>1 contractor agreement that you were guaranteed a</p> <p>2 specific minimum salary even if the number of the</p> <p>3 procedures and the cost for each of those procedures</p> <p>4 didn't total the minimum, you still got the minimum.</p> <p>5 Is this ringing a bell?</p> <p>6 A That isn't the way that worked out either.</p> <p>7 Q What do -- tell me what you mean.</p> <p>8 A A figure was shot for, but that figure was</p> <p>9 only going to be achieved if it were achieved.</p> <p>10 Q What -- I'm sorry; I don't follow you.</p> <p>11 A Well, it was kind of some tricky -- I</p> <p>12 don't really follow it either. Dr. Brigham was</p> <p>13 being rather clever. He was trying to put pressure</p> <p>14 on me to do second trimesters and say, oh, you will</p> <p>15 have no trouble achieving that number more if you do</p> <p>16 second trimesters. I'm not sure you'll achievethat</p> <p>17 otherwise. I said then sobeit.</p> <p>18 Q So you did not ever achieve the minimum</p> <p>19 salary that's in your contract?</p> <p>20 A The 1 -- the 175--</p> <p>21 Q Yeah.</p> <p>22 A -- in the -- the contract I did not</p>
<p style="text-align: right;">146</p> <p>1 not a radiologist, you could have done it yourself</p> <p>2 in 2012 if the office manager were not present;</p> <p>3 right?</p> <p>4 A Yes, I could.</p> <p>5 Q Based on the fact that the -- well, let me</p> <p>6 ask it this way: The August of 2012 sonogram report</p> <p>7 that is written by either Arlene or Crystal that</p> <p>8 says, "no IUP," did that -- what did that mean to</p> <p>9 you, no IUP?</p> <p>10 A It means she had a successful nonsurgical</p> <p>11 abortion.</p> <p>12 Q And did you presume by no IUP that there</p> <p>13 was no contents left in her uterus at all?</p> <p>14 A Yes.</p> <p>15 Q Do you know how many abortions you</p> <p>16 performed during the year and a couple of months</p> <p>17 that you were at American Women's Services?</p> <p>18 A I am absolutely the worst person in the</p> <p>19 world for estimating numbers of anything. So, no, I</p> <p>20 really couldn't come up with that number.</p> <p>21 Q Well, let me ask you this: I saw in your</p> <p>22 employment agreement that -- or your independent</p>	<p style="text-align: right;">148</p> <p>1 achieve.</p> <p>2 Q And you didn't push to get it even though</p> <p>3 the contract said you were entitled to it.</p> <p>4 A True.</p> <p>5 Q Do you know anything about the</p> <p>6 relationship between Associates in OB/GYN Care and</p> <p>7 American Medical Associates and American Women's</p> <p>8 Services, anything about their relationships with</p> <p>9 one another?</p> <p>10 A I do not.</p> <p>11 Q In your mind are they all one and the</p> <p>12 same?</p> <p>13 A In my mind they are. Different branches</p> <p>14 of the same business, but that doesn't mean that's</p> <p>15 true.</p> <p>16 Q Have you ever heard of an entity called</p> <p>17 Rose Health Services?</p> <p>18 A Only when I saw its name on a -- on the</p> <p>19 list other clinics against -- you know, taped to a</p> <p>20 file cabinet in I think the Silver Spring office.</p> <p>21 And I knew it was in Pennsylvania, that's all, just</p> <p>22 that it was another one of the clinics.</p>

<p style="text-align: right;">149</p> <p>1 Q And in your mind all of the clinics, 2 Associates in OB/GYN Care, American Medical 3 Associates, American Women's Services, were all 4 owned by Dr. Brigham? 5 A Yes. 6 Q Does he have any partners? 7 A Not that I know of. 8 MS. MALARKEY: Let's go off the record for 9 a moment. I might be done, but I want to review 10 some of the papers that I have, and rather than have 11 all that shuffling on the video, I'll shuffle off 12 the record. 13 THE VIDEOGRAPHER: Going off the record. 14 The time is 13:41. 15 (A recess was taken.) 16 THE VIDEOGRAPHER: Back on record. The 17 time is 13:45. 18 BY MS. MALARKEY: 19 Q We talked about this earlier, but just so 20 that we're absolutely clear, you mentioned that you 21 personally photocopied the chart to send to my 22 office when it was requested. And I have in my</p>	<p style="text-align: right;">151</p> <p>1 Q As far as you know, you left it there. 2 A Oh, yes. I put the chart back in the 3 storage box. 4 (Exhibit 2 was marked for 5 identification and is attached to the transcript.) 6 BY MS. MALARKEY: 7 Q Did you ever -- the consent documents that 8 we talked about earlier that were initialed and 9 signed by Ms. O'Connell that were reviewed by the 10 office manager and her together before you saw her, 11 do you remember those? 12 A Yes. 13 Q Did you ever read those while you were 14 working at American Women's Services? 15 A No, I can't say I did. 16 Q So were you aware when you were working at 17 American Women's Services that the consent documents 18 told women that RU-486 was not available in the 19 United States? 20 A I was not aware of that until the suit, 21 when I read everything. 22 Q Did you notice anything -- well, that</p>
<p style="text-align: right;">150</p> <p>1 hands -- I guess we'll mark this as Exhibit 2. It's 2 a letter dated May 3, 2013, that my office sent to 3 you requesting a copy of Mrs. O'Connell's 8/17/2012 4 sonogram film. 5 And am I correct that you wrote this note 6 on the back of the letter and sent it back to my 7 office? 8 A Yes, you -- that is correct. 9 Q Okay. So this is your writing and your 10 signature. 11 A It is. 12 Q And you left the original-- 13 A Your original request was in the chart and 14 I write: Records sent, date, IED. 15 Q Got it. 16 A And when I got this, I answered 17 immediately. And I put a copy of this in the chart 18 too. 19 Q And so the original Polaroid picture is 20 still in Ms. O'Connell's original chart at American 21 Women's Services. 22 A I would assume so.</p>	<p style="text-align: right;">152</p> <p>1 would be inaccurate, would it not be? 2 A Yes, that is inaccurate. 3 Q Was there anything else that you read in 4 the consent documents after reading them when this 5 lawsuit was filed that was inaccurate? 6 A I made little notes on mine, on my copy of 7 that, which -- well, it said something about 8 drinking the methotrexate, that's not in the best 9 way to do it, I remember that. RU-486 not being 10 available in America, which is wrong. I can't 11 recall anything else at this time. 12 Q Do you agree that accurate determination 13 of gestational age is critical to the efficacy of 14 methotrexate and misoprostol? 15 A Yes. 16 MS. MALARKEY: Okay. I think those are 17 all the questions I have for you. Thank you for 18 being here. 19 MR. VARNER: No questions. Thank you. 20 We'll read and sign, please. 21 THE VIDEOGRAPHER: Here ends today's 22 deposition. Going off the record. The time is</p>

<p style="text-align: right;">153</p> <p>1 13:49.</p> <p>2 THE REPORTER: Before we go off the</p> <p>3 record, counsel, would you like to receive a copy of</p> <p>4 the transcript?</p> <p>5 MR. VARNER: E-Tran and usual. I always</p> <p>6 like the four-sided mini for sure. I think I always</p> <p>7 get a regular copy too. So I think those three:</p> <p>8 E-Tran, regular copy, and four-sided mini.</p> <p>9 (A discussion was held off the record.)</p> <p>10 MS. MALARKEY: E-Tran and I'll have a copy</p> <p>11 of the video.</p> <p>12 (Time noted: 1:49 p.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">155</p> <p>1 CERTIFICATE OF NOTARY PUBLIC</p> <p>2 I, FAZIER WALLE, the officer before whom the</p> <p>3 foregoing deposition was taken, do hereby certify that</p> <p>4 the witness whose testimony appears in the foregoing</p> <p>5 deposition was duly sworn by me; that the testimony of</p> <p>6 said witness was taken by me in stenotypy and thereafter</p> <p>7 reduced to typewriting under my direction; that said</p> <p>8 deposition is a true record of the testimony given by</p> <p>9 said witness; that I am neither counsel for, related to,</p> <p>10 nor employed by and of the parties to the action in which</p> <p>11 this deposition was taken; and, further, that I am not a</p> <p>12 relative or employee of any counsel or attorney employed</p> <p>13 by the parties hereto, nor financially or otherwise</p> <p>14 interested in the outcome of this action.</p> <p>15</p> <p>16</p> <p>17 _____</p> <p>18 FAZIER WALLE</p> <p>19 Notary Public in and for the</p> <p>20 State of Maryland</p> <p>21 My commission expires:</p> <p>22 March 26, 2018</p>
<p style="text-align: right;">154</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2 I, IRIS DOMINY, M.D., do hereby acknowledge that I</p> <p>3 have read and examined the foregoing testimony, and the</p> <p>4 same is a true, correct and complete transcription of the</p> <p>5 testimony given by me and any corrections appear on the</p> <p>6 attached Errata sheet signed by me.</p> <p>7</p> <p>8</p> <p>9 _____</p> <p>10 (DATE) (SIGNATURE)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	

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