IN THE COURT OF COMMON PLEAS

CUYAHOGA COUNTY, OH

****

JOHN T. MURRAY, As Administration of the Estate of Dale D. Dukeshire, Jr. deceased, et al,

Plaintiffs,

vs. CV 18 905172

RITE AID OF OHIO, INC., and JAMES GALLAGHER, MD, et al.,

Defendants.

****

The virtual deposition of ROBERT S. LITMAN, R.PH., C.PH., CGP, taken by the defendants under the Ohio Rules of Civil Procedure in the above-entitled action, pursuant to notice, before Kristina Guthrie, Professional Court Reporter, held via Zoom video conferencing, on Monday, November 9, 2021, commencing at approximately 12:01 p.m.

REALTIME REPORTERS, LLC
KRISTINA GUTHRIE, REPORTER
713 Lee Street
Charleston, West Virginia 25271
(304) 344-8463
realtimereporters.net

APPEARANCES:

APPEARING ON BEHALF OF THE PLAINTIFFS:

Mark M. Abramowitz, Esquire
Christopher Stombaugh, Esquire
DiCELLO LEVITT & CASEY, LLC
7556 Mentor Avenue
Mentor, Ohio 44060
440-953-8888
mabramowitz@dlcfirm.com

APPEARING ON BEHALF OF RITE AID OF OHIO, INC.:

Tamela J. White-Farrell, Esquire
FARRELL WHITE & LEGG, PLLC
914 Fifth Avenue
Huntington, West Virginia 25701
304-522-9100
tjw@farrell3.com

John M. McManus, Esquire
McMANUS LAW, PLLC
117 W. Fourth Street, Suite 201
Royal Oak, MI 48067
248-268-8989
john@mcmanusfirm.com

APPEARING ON BEHALF OF JAMES GALLAGHER, MD:

Chad W. Beck, Esquire
REMINGER CO, LPA
101 West Prospect Avenue, Suite 1400
Cleveland, Ohio 44115
216-687-1311
cbeck@reminger.com

Stephen Griffin, Esquire
Griffin Law
4051 Whipple Avenue, NW
Canton, Ohio 44718
234-360-8090
sgriffin@griff-law.com

Also Present:

Mrs. Dukeshire

EXAMINATION INDEX

EXHIBIT INDEX

-- oOo --

PROCEEDINGS

COURT REPORTER: We're here today for the deposition of Robert S. Litman, R.PH., C.PH., CGP in the Court of Common Pleas in Cuyahoga County, Ohio, in the matter of John T. Murray, et al. versus Rite Aid of Ohio, Inc., et al., being Civil Action No. CV 18 905172.

Today's date is November 8th of 2021, and the time on the monitor is 12:01.

My name is Kristy Guthrie and I'm a court reporter representing Realtime Reporters out of Charleston, West Virginia.

If counsel will please identify themselves and whom they represent, and I guess we'll start with the noticing attorney, please.

MS. WHITE-FARRELL: This is Tamela White-Farrell. I and John McManus are here on behalf of Rite Aid of Ohio, Inc.

MR. BECK: This is Chad Beck here on behalf of Dr. James Gallagher.

MR. ABRAMOWITZ: We have Mark Abramowitz and Christopher Stombaugh from DiCello Levitt Gusler on behalf of the plaintiffs and the Estate of Dukeshire, Ms. Dukeshire, as well --

MR. GRIFFIN: -- for Dr. Gallagher.

(Audio interference).

MR. ABRAMOWITZ: I'm sorry, Steven. My apology. I didn't mean to cut you off there. Sorry about that.

COURT REPORTER: Do we have someone else that needed to -- I believe.

WITNESS: I am Robert Litman, the expert witness, pharmacist.

COURT REPORTER: Great. Thank you. And I forgot to state, if anyone has an objection to me swearing in the witness remotely if they could say so at this time. Are there no objections? Thank you.

All right, I am going to put you under oath if you'll please raise your right hand.

ROBERT S. LITMAN, R.PH., C.PH., CGP,
was called as a witness, pursuant to notice, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. WHITE-FARRELL:

Q. Would you state your name for the record, please.

A. Robert Litman.

Q. And you are a pharmacist; true?
A. True.
Q. What is Ultimed Health Advisors, Inc.?
A. That is my company, my business company. It's a consulting firm. We provide retail pharmacy management services, long term care pharmacy, nursing home consulting, and also, I also use it for my legal consulting.
Q. What percent of the income of Ultimed Health Advisors is for legal consulting?
A. It's approximately 10 to 15 percent I would say. It's a rough estimate.
Q. Are you currently employed anywhere else as a pharmacist?
A. Yes.
Q. Where?
A. Well, under my company, Ultimed, I have several long-term care nursing home accounts that I service. Do you need the names of the homes? I can relay the names of the homes. Coral Gables Nursing and Rehab Center, Okeechobee Nursing and Rehabilitation Center, Hampton Court Nursing and Rehabilitation Center.
I also do independent consulting for a

fellow named Robert Rosenthal, Bobby Rosenthal, who was the former President of Florida Healthcare Association. He also has management contracts for long-term care facilities and I work with him, you know, doing troubled -- helping fix troubled homes.

Q. When was the last time you worked at a retail pharmacy?

A. I believe that was 2017.

Q. And what retail pharmacy was that?

A. It was Black and White Pharmacy. It's on Flagler Street in Miami.

Q. Do you have all of the -- you know, before I do that, Ultimed Health Advisors, Inc., where is it incorporated, in Florida?

A. Yes.

Q. Okay. Other than yourself, are there any other owners?

A. No.

Q. Do you have all of the information you need to render any opinion you would attempt to render in this matter?

A. Yes.

Q. Have you asked for any information that has not been provided to you?

A. Not that I can think of off the top of my head.
Q. Have you interviewed anyone from the Dukeshire family?
A. No, I have not.
Q. Have you interviewed anyone at all whether it be a party to this lawsuit or a colleague or a, for instance, a retail pharmacist, have you interviewed anyone at all for purposes of this case?
MR. ABRAMOWITZ: Objection, but you can answer.
A. No, I haven't.
Q. I sent to the court reporter this morning my Notice of Deposition. Have you seen it before?
A. Yes.
Q. Have you brought with you your file?
A. Yes.
Q. Would you share with me what you brought?
A. I brought a -- well, let me -- excuse me one second. I brought these. I don't know if you can see these records. I brought -- these are mostly depositions that I have reviewed. And I put all my bills and correspondence on a USB drive.
Q. Okay.

A. So they're not on paper. I have on a drive.

Q. I will mark your bills and correspondence -- well, I'll mark the Notice of Deposition as Exhibit 1.

DEPOSITION EXHIBIT NO. 1

(Notice of Deposition was marked for identification purposes as Deposition Exhibit No. 1.)

I'll mark your bills and correspondence as Exhibit 2 and at a break, we will work with the court reporter to determine how to get those transmitted to her; okay?

DEPOSITION EXHIBIT NO. 2

(Bills and Correspondence were marked for identification purposes as Deposition Exhibit No. 2.)

MR. ABRAMOWITZ: Wait, we have to -- I need to enter an objection here. We believe there's some attorney-client privileged material inside of the bills. We are happy to provide a redacted version of them. We believe you are absolutely owed the numbers but any sort of detail about what was discussed between counsel and the experts witness

that are listed on those bills will be redact it.

Is that subject to us claiming our privilege on those matters? Is that okay?

MS. WHITE-FARRELL: I don't have any problem with that so long as the Goose/Gander role applies that the defendant can likewise redact anything that it contends is work product.

MR. ABRAMOWITZ: Well, of course. I mean, I believe those rules go both ways.

MS. WHITE-FARRELL: Yep. Okay. So at a break, let's talk about the housekeeping aspect of that rather than wasting time on the record; okay?

MR. ABRAMOWITZ: Fair enough.

BY MS. WHITE-FARRELL:

Q. On medical records, Doctor, on page 2 of your November -- on page 3 of your November 18, 2020, report, you listed a number of medical records.

A. I'm trying to find that report. One second. What page was that? I'm sorry.

Q. Page 3.

A. All right. And the question again?

Q. Well, first, I was just orienting you, but the question is, is this a list of all of the

medical records for Mr. Dukeshire or Janet Dukeshire that you've received and reviewed in this case?

A. Yes.

Q. If you --

MR. ABRAMOWITZ: Object to the time of --

A. -- as of that time. I believe this is the US.

Q. Do you have any more medical records other than what are on this list?

A. To be -- I can't be sure at this point. There may have been some other materials I may have reviewed since I got, created this opinion letter but I would have to go through my files at home, because I prepared all of this prior to, you know, this, you know, when I submitted this report.

Q. Do you rely on any medical record whether they be listed in this report or otherwise as the basis of any opinion you would offer?

A. Yes. It's based on all of the records that I reviewed on this paper, yes.

Q. What about medical records that you have at home, is there any opinion that you have that you would rely upon any medical record that is not included in this list?

A. There may be some files I've added since I created this document. They were research documents that I, were checking from the other expert reports that I read trying to verify the data that was presented. So I do have some other studies that I've put in my file.

Q. My question is medical records. Let's focus on medical records.

A. Oh, medical records from the patient? No. This is the complete list of medical records.

Q. All right. So that the record is clear, the list on page 3 of your report is the complete list of all medical records that you've reviewed?

MR. ABRAMOWITZ: Objection, but you can answer.

A. I believe so. I believe that is the complete list.

Q. And what are the studies that you have at home that you did not bring with you?

A. Actually, I brought them with me here in paper but not on the hard drive. They are -- one is from the chief medical examiner at North Carolina and it was the interpretation of toxicology results.

Q. I'll mark that as Exhibit 3.

DEPOSITION EXHIBIT NO. 3

(Interpretation of Toxicology Results, Chief Medical Examiner in North Carolina was marked for identification purposes as Deposition Exhibit No. 3.)

Q. All right. Any others?

A. The explanation of an overdose risk score.

Q. The explanation, the overdose risk score. I'll mark that as Exhibit 4.

DEPOSITION EXHIBIT NO. 4

(Explanation of Overdose Risk Score was marked for identification purposes as Deposition Exhibit No. 4.)

A. A --

Q. -- morphine equivalent dosing, I'll mark as Exhibit 5.

DEPOSITION EXHIBIT NO. 5

(Morphine Equivalent Dosing was marked for identification purposes as Deposition Exhibit No. 5.)

A. Right. This is from -- now, if you can see this, on this, our Experts Industry highlight, Insights.

Q. And that's Exhibit 5.

MR. ABRAMOWITZ: Hang on here one second, I'm sorry, Tammy. I know you're on a roll and I want to get things listed up so we can get this to you. So Exhibit 4 is explaining overdose risk.

WITNESS: That was 4.

MR. ABRAMOWITZ: And what's in 5?

MS. WHITE-FARRELL: 5 was the last one he held up which I think was the Morphine equivalence.

MR. ABRAMOWITZ: Thank you. I'm sorry, Tammy. I got some sticky notes now to keep track of this.

WITNESS: This one.

MS. WHITE-FARRELL: Exhibit 6 is the Pharmacokinetics and Pharmacodynamics of Carfentanil After Recreational Exposure, A Case Report.

DEPOSITION EXHIBIT NO. 6

(Pharmacokinetics and Pharmacodynamics of Carfentanil After Recreational Exposure, A Case Report was marked for identification purposes as Deposition Exhibit No. 6.)

MR. ABRAMOWITZ: All right.

A. And this was from Wolters Kluwer

Q. Wolters Kluwer, this is No. 7.

DEPOSITION EXHIBIT NO. 7

(Module 5 - Wolters Kluwer was marked for identification purposes as Deposition Exhibit No. 7.)

A. It's a module Addressing and assessing opiate use disorder.

Q. All right. No. 7, module 5.

Any more independent research that you've done?

A. No. I believe that should cover everything.

Q. Have you consulted any trade journals or retail pharmacies concerning the filling of prescriptions one to two days before a prior prescription will expire?

A. No. I don't believe I have.

Q. Going back to the deposition notice, Exhibit 1, do you have any notes regarding this case?

A. Yes, I do.

Q. We'll make your notes the next exhibit which I believe is 8.

MS. WHITE-FARRELL: Am I right, Ms. Court Reporter?

COURT REPORTER: Correct.

DEPOSITION EXHIBIT NO. 8

(Notes of Robert S. Litman were marked for identification purposes as Deposition Exhibit No. 8.)

MR. ABRAMOWITZ: This is again subject to review for any attorney-client privilege work product information that might be inside of them which we would ask for a review before presenting.

WITNESS: All right. This is the report that I put together. It's a five-page report on the prescriptions from, based on the list I was provided.

MR. ABRAMOWITZ: Exactly. If it's a draft report, we're not going to be producing that.

WITNESS: What do you mean a draft report?

MR. ABRAMOWITZ: You used the term "report." Again, Tammy, I'm going to be speaking here. It's not to be insulting, use the term draft on a report.

WITNESS: I don't really -- I don't understand what you mean by draft. I mean, you asked for notes. This is notes.

MR. ABRAMOWITZ: Okay. I just want to make sure.

WITNESS: Didn't you ask me for notes, Tammy?
MS. WHITE-FARRELL: I did.
WITNESS: Yeah. These are the notes, right.
BY MR. WHITE-FARRELL:
Q. And what are those notes from? Were they from the patient profile or are they from prescriptions? Are they from medical records? What's the source of those notes?
A. Those are from Rite Aid's medical records.
Q. So the patient profile?
A. Yes.
Q. Okay. Did you match those notes with the Oarrs report?
A. I did from the reports that I had. I didn't have the complete reports, but what I did have I did match to some of the Oarrs statement.
Q. All right. And what are you saying to yourself on these notes that are Exhibit 8?
A. I was just merely noting the dates, the drugs dispensed, the prescriptions, the quantities, the date supplied, the number of days that that prescription should cover and then the doctor who

wrote it. And it goes from April 4, 2013, through August 21, 2017.

COURT REPORTER: May I ask --

MS. WHITE-FARRELL: Yes.

WITNESS: I'm sorry. I'm sorry. It goes through October 9, 2017.

COURT REPORTER: May I asked Oarrs data - O-r-r data?

MS. WHITE-FARRELL: O-a-r-r-s.

COURT REPORTER: Thank you.

WITNESS: Right.

BY MS. WHITE-FARRELL:

Q. What is it that you are communicating through these notes?

A. Well, I was doing these to assess the dispensing frequency, the retail status, when they would be filling scripts and to establish how long these prescriptions should be lasting on each dispensing and how often they were refilled or refilled early, or in many, in several cases, they may have been refilled a little late.

Q. On how many -- well, strike that.

Are you looking -- when you're using the words "refill," are you referring to C-IIs?

A. I know. I realize there's no refills in C-IIs. They're all new prescriptions.
Q. All right.
A. So I've used the term refills. It should be from one new prescription to the next new prescription.
Q. So let's complete that thought. For each of the prescriptions that Dale Dukeshire had for a C-II substance, he had to present a new prescription; didn't he?
A. Yes.
Q. And which meant there had to be a new original prescription; true?
A. That's true.
Q. Which meant that he had to see his provider in order to or have some direct communication with his provider in order to have that new prescription written?
A. Yes.
Q. Okay. So where you have referred to early refill, what you're really referring to is presentation of a new prescription before an old one completely expired; right?
A. Yes. Correct.

Q. Do have you experience in, at any pharmacy in policies of refilling prescriptions or filling new prescriptions to prevent a patient from running out on the day that they are to expire?

MR. ABRAMOWITZ: Objection, but you can answer.

A. I'm not sure I understand that question. You're asking if I worked at a pharmacy where they had policies addressing that?

Q. Yes.

A. Yes, I have.

Q. And what is the purpose of a policy -- let's take an anti-hypertensive, for instance. The patient that's on an anti-hypertensive, you do not want them to run out of that drug because you want them to keep a steady state of control of their blood pressure; right?

A. Yes. That's correct.

Q. Same way with an anti-diabetic medication; right?

A. Yes.

Q. And when patients are on chronic pain therapy, those patients require around the clock pain medication; true?

MR. ABRAMOWITZ: Objection, but you can answer.

A. Not necessarily.

Q. Don't they require the same steady state of maintenance of their medication as does someone who is on an anti-hypertensive or anti-diabetic medication?

MR. ABRAMOWITZ: Objection, but you can answer.

A. No. I don't believe so.

Q. Not chronic pain patients that are prescribed chronic opiate therapy. That's your testimony?

A. Yes.

Q. And why is it that you say that?

A. Because pain is very subjective and one day a patient may have worse pain than another day. There may be a weather influence on the pain. There may be a physical excursion that occurred that exacerbated the pain. Pain can change from moment to moment. It is not like a chronic diabetic condition in which blood sugar needs to be maintained between 90 and 120. It's nothing like that.

As I said, it's very subjective and some days a patient may not need any pain medication even if they have a chronic issue. Some days they may require a little bit more. It depends on the conditions. So chronic pain cannot be equated to a chronic disease state like diabetes or hypertension.

Q. It depends on the individual patient; right?

A. Yes.

Q. And is it a positive thing for a pharmacist to have a personal relationship with a patient?

A. Could you repeat that question?

Q. Is it a positive occurrence for a pharmacist to have a personal relationship with a patient and know them?

A. I believe that's a benefit to know your patients.

Q. What information do you have about what Ms. Boroff and Ms. Shriver knew about Dale Dukeshire other than what you've read in their depositions?

MR. ABRAMOWITZ: Objection, but you can answer.

A. I only know from what I've read in their depositions.

Q. Have you actually read Ms. Boroff's deposition? It's not on your list.

A. I'm not sure. I believe -- yeah. I believe I have. I should have added it. Sorry.

Q. We'll get to your list in a minute.

A. Okay.

Q. You mentioned that you've worked at pharmacies that have policies with respect to fills of new prescriptions such as C-IIs and refills of expiring prescriptions. Do you remember that? You said you worked with pharmacies with policies in that regard?

MR. ABRAMOWITZ: Objection, but you can answer.

A. Yes, I remember.

Q. Under what policies have you worked with respect to either early fills or fills of a new prescription?

MR. ABRAMOWITZ: Just for clarity. What kind -- because we're dealing with two different types of drugs in the question. Which are you referencing? In terms of C-II versus non-C-II? I'm not a pharmacist so I (audio interference). I apologize.

MS. WHITE-FARRELL: However the way the witness wants to do it. I'll flow with it.

MR. ABRAMOWITZ: Thank you.

WITNESS: I'm sorry. Could you repeat the question?

BY MS. WHITE-FARRELL:

Q. Sure. I want to know about the policies that you've worked under.

A. Oh, okay. The policies, it depends. It varies from pharmacy to pharmacy. The pharmacies in which I have been a personal manager at, I have ensured that there would be a policy of no early refills on C-IIs.

Q. Have you worked at -- so for purposes of this deposition, whenever a patient presents a new prescription for a C-II, you're calling that early refill?

MR. ABRAMOWITZ: Objection, but you can answer.

A. So you're saying any time they present a prescription, it's early? No. Well, I don't understand.

Q. That's what I didn't understand your answer. So what I'm trying to -- let's take the

C-IIs first.

A. Right.

Q. When you say "no early refill," what do you mean by that?

A. I'm sorry. I used the term refill. We do not fill a new C-II prescription for people for the same medication if it arrives early, you know, earlier than the usage should be by based on the instructions in the original prescription.

Q. Now, you said that was at pharmacies at which you were a manager. Have you worked at pharmacies in which you were not the manager and the policy was different?

A. Not that I'm aware of. The pharmacies that I've worked at that I was not the manager were primarily through agencies, pharmacy agencies, and I was not there routinely and I did not have a chance to look at their policies and procedures.

So they may have had them but I did not have a chance to read them. The pharmacies that I've been the manager at, I've gone through the policy and procedure manuals.

Q. Is there any industry standard or protocol or published best practices from a trade association

that would adopt your personal practice versus that which Rite Aid had here which was a 48-hour rule?

MR. ABRAMOWITZ: Objection, but you can answer.

A. I'm sorry. Every time he objects, I forget the question. What was the question?

Q. Is there any written standard, trade organization policy, document, or thing you can refer me to that says your personal method of no fill except on the day of expiration is superior to a practice such as what Rite Aid had which was a 48-hour rule?

MR. ABRAMOWITZ: Objection, but you can answer it.

Q. Again, every time you do that it throws me off. I'm sorry. I hate to ask you to repeat it. I know you're going to raise the objection again.

MR. ABRAMOWITZ: Before you say the question, for the record, I'm objecting. I apologize, Tammy, but I'm objecting now. Ask the question.

A. All right, I understand. You asked about trade journals that reflect my personal policy.

I have not, I'm not really familiar with

trade journals, although, there are many guidelines on dispensing narcotics that will reflect that what I call early refills or early requests for new prescriptions, I should say, where they would be considered a red flag of an opiate use disorder or drug seeking behavior.

And that's listed in publications such as the Pharmacist's Manual which is a DEA publication. It lists red flags and warnings that pharmacists should clear before filling C-II prescriptions.

Q. Is there any written standard that you can refer me to from any source that says that the standard of care in the industry is to only fill on the date that a prior C-II expires?

MR. ABRAMOWITZ: Objection, you can answer.

A. Not that I'm aware of. I feel I could probably do some research and find some policies that reflect that. But, again, the fact that early, seeking early new prescriptions, rather than use the term "refills", would be a red flag for pharmacists to have to clear before dispensing.

Q. I'll come back to that in a little while. How many times did Dale Dukeshire present with his controlled, his C-II prescription having expired?

In other words, not present either a day or two early or on the day of an expiration.

A. I'm sorry. The question that you're asking is how many times did he present it early?

Q. No. Did he present late meaning the prescription had expired and he's several days late.

A. Okay. Initially, in his therapy in 2013 and 2014, he was pretty much on time. We did have a couple -- one, two, three, four -- I have five, six incidences in 2013 and '14 which he came for early fills.

There were, when we start getting into 2016, his -- well, to me it became problematic and the problems were becoming obvious with his opiate use disorder.

In 2016, it was -- one, two, three -- in 2016, there were about ten different instances he brought it in early, in the early part of the year. And then if you consider two days early, there were at least 22 incidences where he brought it early, two days.

And we have, I actually have one that he brought ten days early, one he brought eight days early, another six days early, another four days

early. So there's quite a few. I mean, he did have a total of 112 prescriptions filled in that four-year period and there were approximately 17 different doctors writing narcotic prescriptions for him.

Q. I'll get to that in a little while.

My question was, did you tabulate and count the number of times that he actually presented prescriptions late meaning they had expired and he was coming after the fact to get a prescription filled.

A. I did document a few of them. I don't have -- I was really looking for early refills. As I said, in 2013 and 2014, he was pretty much on time with the exception of a handful of refills that he did come early. I did not document the late refills.

Q. Is Exhibit 8 --

A. -- '16 and '17. I don't believe there were any late refills.

Q. In Exhibit 8 which are just your notes, are there any other notes that you have regarding the case?

MR. ABRAMOWITZ: Objection, but you can

answer.

A. I may have some more notes at home. I'm not sure. I'd have to go through it. I tried to bring my whole file with me today and I did, I might have had some handwritten notes I left at home.

Q. If you'd pick up the pile that you held up at the very beginning, on the very back page it looked like there were some notes.

A. I may be have some notes for this.

MR. ABRAMOWITZ: Can we pull this apart now as well to get those exhibits together?

WITNESS: And I do have notes throughout my, you know, throughout myself.

MR. ABRAMOWITZ: I mean, there are various notes on some of these hand, on these printed things here.

MS. WHITE-FARRELL: On these depositions?

MR. ABRAMOWITZ: Some are depositions. I think maybe on a break, if it's okay with you, Tammy, at break we can maybe find a way to figure this out. I do not have a scanner. I have no cell coverage here. We just have Internet at the location we're at, so logistically we might need to figure something else, if that's okay.

MS. WHITE-FARRELL: Okay. We'll do that at a break.

BY MS. WHITE-FARRELL:

Q. What depositions -- if you would look at page 3 and 4 of your November 18, 2020, report and compare the depositions you have and tell me what depositions are not listed on that -- what depositions you have that are not listed on that list.

MR. ABRAMOWITZ: Aside from Boroff that we've already established?

MS, WHITE-FARRELL: Right.

COURT REPORTER: I'm sorry, could you repeat that objection or comment?

MR. ABRAMOWITZ: Aside from Boroff that we've already established.

COURT REPORTER: Thank you.

WITNESS: That's the only deposition that I believe I'm missing here. Again, I would want to check through my, you know, to see if there's any other records I have or on my drive but I believe this is everything that I've read except for the Emily Boroff deposition.

BY MS. WHITE-FARRELL:

Q. Now you're not a physician; right?
A. No, I am not.
Q. You're not here to talk about medical diagnoses or medical treatment. Is that true?
A. I am here to talk about pharmacy issues.
Q. All right. As far as cause of death, are you likewise deferring to a physician on causation and cause of death?
A. Well, I would really say on that that the coroner's report well documents the cause of death and my work, you know, reviewing notes says that it's very consistent with the coroner's report, that the cause of death is consistent based on my files.
Q. Okay. So other than the coroner's report, would you say anything else with respect to cause of death?
MR. ABRAMOWITZ: Other than rebuttal testimony for your expert witnesses?
MS. WHITE-FARRELL: Translate. I don't know what you're trying to coach him here on.
MR. ABRAMOWITZ: I'm not trying to coach him. I want to make sure we're clear here. Giving rebutting comments made by your experts is different than him giving an independent opinion. So I just

want to make sure we're clear that if whatever answer he gives here does not include the potential for rebutting whatever testimony experts might talk about related to pharmacological issues in his cause of death.

MS. WHITE-FARRELL: Okay. Now, I understand what you were saying.

MR. ABRAMOWITZ: My apologies.

BY MS. WHITE-FARRELL:

Q. The medical records that you have listed here, I'm trying to understand, since you are a pharmacist, what, if anything, is it from these medical records that you would base any opinion?

A. I'm sorry. I really don't understand the question.

Q. You're here to offer pharmacy opinions; right?

A. Yes.

Q. Is there any information that you gleaned from any of these medical records that supports any particular opinion that you have?

A. Well, are you talking about from the other depositions or from other expert reports?

Q. I'm talking about from the medical records.

You've listed Gallagher & Gallagher, Sandusky County EMS.

A. I have.

Q. Belleview Hospital, Bethesda Care Center and a total of close to 20 medical records. I'd like to know, do you intend to point to any one particular medical record and say that it demonstrates X as it relates to any opinion you would offer?

A. No. I don't believe so.

Q. Okay. Did you gain anything from any of the medical records that you reviewed as it relates to the case?

A. I was -- I guess the medical records did provide me with information on Mr. Dukeshire's comorbidities and, you know, medical issues.

Q. Do you agree that from time to time Mr. Dukeshire had health problems for which he sought acute healthcare interventions such as at emergency departments?

MR. ABRAMOWITZ: Objection, but you can answer.

A. Yes. I saw that he did.

Q. Do you agree that he had chronic health

conditions including, for instance, a chronic wound on his buttocks and low back pain as in accordance with some of the medical records you reviewed?

A. Yes.

Q. When you talk about the 17 doctors from whom Mr. Dukeshire obtained prescriptions, which doctors in particular are you referencing?

A. I'm afraid I don't have their first names but I have last names. Dr. Diamond, Dr. Maderer, Dr. Huddleson, Dr. Laussane, Dr. Milner, Dr. Walsh, Dr. Vargos, Dr. John Smith -- I have the first name on that one -- Dr. Ronald Curl, Dr. George -- I can't read my writing -- Stepanek, Dr. Patricia Matu, James Huddleston. I think I mentioned him already. Dr. Jeffrey Dickenson. Those are some of the other doctors.

I have a few -- as you see, the extra doctors I put in blue and I highlighted it and I can't read a couple of the things I highlighted over.

Q. And you're referencing to Exhibit 8, your list of your, your yellow pad notes; right?

A. Yes.

Q. How many of these physicians, if you know,

wrote prescriptions for an acute episodic event such as a septic knee?

MR. ABRAMOWITZ: Objection, you can answer.

A. I don't know off the top of my head. There were various doctors. He went to emergency rooms, dentists, various doctors for various issues.

Q. Did you consider for any of your opinions, the clinical context in which Mr. Dukeshire saw any of these 17 physicians, and what I mean by that is was it an emergency medicine visit? Was it a septic knee? Was it his chronic ulcer on his bottom? Did you consider that at all with respect to any of those 17?

A. Yes, I did.

Q. And how did you factor that into your analysis?

A. Well, my analysis is actually just raw data. There was no factoring or figuring anything out. It was just literally transcribing the raw data and looking at the prescribing frequencies.

I did not take into account the causes of his acute treatments based on these other doctors but I'm not convinced that these other doctors were aware that he was being treated for, chronically for

pain.
Q. Do you know the converse that they did not know?
MR. ABRAMOWITZ: Objection, but you can answer.
A. No. I don't know what they knew or did not know.
Q. Do you agree that Mr. Dukeshire's death was investigated?
MR. ABRAMOWITZ: Objection, you can answer.
A. I can't, do not know.
Q. Okay. Do you agree that the Ohio Board Pharmacy has not issued any criticism of which you or anyone is aware of Rite Aid or any of its pharmacists arising out of Dale Dukeshire's death?
MR. ABRAMOWITZ: Objection, you can answer.
A. Not specifically, no.
Q. Generally, are you aware whether or not there's been any investigation, criticism, citation, disciplinary action or otherwise, issued against Emily Boroff or Ms. Shriver from the Ohio Board of Pharmacy arising out of Dale Dukeshire's death?
MR. ABRAMOWITZ: Objection, but you can answer.

A. Not to my knowledge.
Q. And likewise, the Ohio Board of Pharmacy regulates Rite Aid of Ohio; true?
A. I'm sorry. Could you repeat the question?
Q. The Ohio Board of Pharmacy also regulates the retail pharmacy known as Rite Aid of Ohio; doesn't it?
A. Yes, it does.
Q. Has the Ohio Board of Pharmacy taken any adverse action against Rite Aid of Ohio arising out of Dale Dukeshire's death?
MR. ABRAMOWITZ: Objection, you can answer.
A. Not that I'm aware of.
Q. Do you have any photographs in this case?
MR. ABRAMOWITZ: Objection, but you can answer.
A. No.
Q. Okay. The pile that you held up, are those all depositions with notes on them?
MR. ABRAMOWITZ: Objection, but you can answer.
A. Yes, they are. Almost all of them have notes.
Q. But they're all depositions?

A. Yes.
Q. Okay. The literature that we marked, I think they are Exhibits 3 through 7, is that all of the independent material, meaning non-medical record, non-deposition, that you have in this case?
MR. ABRAMOWITZ: Objection, but you can answer.
A. Yes, I believe so.
Q. Okay. Are there any text books, Internet search results, standards, or protocols of any kind that you've not identified here on the record that you would use for any purpose in this case?
MR. ABRAMOWITZ: Objection, as there's some purposes we can't know yet.
A. -- not that I'm aware of, no. (audio interference.)
Q. Do you have any written statements or affidavits from any witness regarding the case?
MR. ABRAMOWITZ: Objection, but you can answer.
A. Are you referring to expert reports?
Q. No. I'm talking about an affidavit or a statement from someone such as a fact witness that's not given a deposition.

A. No.
Q. Have you seen the expert reports from the Rite Aid witnesses?
A. I --
Q. Such as Dr. Weiner, Dr. Lucas, Dr. Dragovich?
A. Yes. I did review several of the doctors' reports.
Q. What, if any, disagreement do you have with Dr. Weiner's report?
MR. ABRAMOWITZ: Objection, but you can answer.
A. I don't know off the top of my head. I'd have to review that. I don't believe that was --
Q. Did you bring it with you?
A. It's on the thumb drive, electronically.
Q. Okay. But as you sit here today in answering the question, you can't identify any particular item with Dr. Weiner that you disagree with?
MR. ABRAMOWITZ: Objection. I don't think he's saying he can't -- you said identify everything. Your question --
MS. WHITE-FARRELL: -- I said anything.

WITNESS: Not that I -- I would have to look at the report again and his summary to give that opinion.

BY MS. WHITE-FARRELL:

Q. Going back to your report of November 18, 2020, is this the only version of this document that exists?

MR. ABRAMOWITZ: Objection. Any drafts are work product and under Ohio, they are not -- they are excluded from discovery.

A. Well, I did make an earlier draft that I had to edit. Actually, I probably made several before I submitted it to Mr. Abramowitz. I usually have to review my own work and go through things and I add things as I do, so there were a couple of drafts that I did right before I submitted it to him before I submitted the original one.

MR. ABRAMOWITZ: But do you have --

Q. Since you wrote this in November of 2020 -- is that when you wrote it, November of 2020?

MR. ABRAMOWITZ: Objection; attorney-client. That's his attorney work product.

A. Yes.

Q. Have you had occasion to review the

documents since then?
A. I did look at some of the documents in the last 48 hours.
Q. Do you have any changes that you would make to this document?
A. There probably would be a few addendums I would have added but I think that the report is pretty complete as it is.
Q. What are the addendums you would add?
A. Well, it would be based on another expert's report, one of the medical doctors. Let me see which doctor that was. I don't have his data here. One of the expert reports, once of the physicians changed the Lucas County Coroner's report and added in his own therapeutic and toxic blood levels for carfentanil. Dr. McManus?
MR. ABRAMOWITZ: No, Lucas.
A. Lucas. Dr. Lucas, right, Dr. Lucas. And I would have made a comment on my report about his addition of a therapeutic or a toxic level that was not provided by the Ohio coroner.
Q. And what would that be?
A. Well, that he basically cherry picked the data and did not provide the entire report which

actually contradicted his therapeutic and toxic goal Range. It's -- the way he wrote it in his report it was misleading to believe that this data was accurate when it was in fact not accurate and he was kind of cherry picking the data.

Q. What data was that?

A. That was the data referring to the toxic therapeutic or toxic levels, blood levels, of carfentanil.

Q. And what do you contend was misleading about that?

A. Well, the initial report from the Lucas County Coroner's office did not have a listing for a therapeutic or a toxic level for that drug because they're really is none and he found an isolated study based on six patients and, which he took the lowest levels for toxicity and just inserted it in there as if it was a fact, in which case the actual mean, an average for the overdose levels was almost three or four times higher than what he indicated on his report.

Q. And that's based on the study that he relied upon.

A. Yes.

Q. Is that right?
A. Based on the study that he referenced.
Q. Okay. Any other addendum you would make to your report?
A. Not that I can think of at this time.
Q. Of the -- you've listed on page 1 of your report retail pharmacies where you've managed. Have you worked as a staff pharmacist at any retail pharmacy or have you always been a manager?
A. I have worked, as I mentioned earlier, I have worked agency. I have worked for two different agencies, Healthcare Consultants and Empire Pharmacy Consultant agencies where I was placed in a pharmacy, and I still get offers from them from time to time and I would work there as a staff pharmacist.

It was always on a per diem basis. Whenever I've worked in retail, I've pretty much always been the manager. I can't think of a time when I was a staff pharmacist.

Q. What do you mean on page 2 of your report where you say that you devote time to active clinical practice of pharmacy in retail pharmacies?
A. Okay. That means that I do clinical

practice and work in retail pharmacies.

Q. Well, you then have the word "or." You say you do clinical practice of pharmacy in retail pharmacies and long-term care facilities or pharmacy instruction, so I don't understand what you --

A. -- that should be "and." And pharmacy instruction at accredited schools. I teach clinical rotations. So the students are sent to me by the different universities and are kind of like an entourage.

They follow me around as I work and I do stop to lecture and teach throughout the day as for evaluating charts or seeing patients or even going through pharmacy shelves if we're at a retail setting. I may just, you know, go through the shelves and talk to them about different therapies and drugs and things like that.

So it shouldn't be "or," it should be "and."

Q. All right. And what do you mean here when you say that you have reviewed well over 150,000 medical charts?

A. That's part of my job. That's what I do for, you know, in the nursing homes. I review the

patient's medical charts, the drug regimen. They're called drug regimen reviews. We review the medication therapies, we look at the labs, we look at physician orders, we look at ancillary notes. Basically, we look at the whole chart.

Q. And that's in the long-term care context; right?

A. Well, it's long-term care. I've also done it for the agency, for healthcare administration in which I would review patients for the Medicaid Waiver program, and these were mostly patients residing in ICFMRs, intermediate care facilities for the mentally retarded, and so I would do chart reviews for them as well.

That was a separate type of work I did. I've done so much in pharmacy it's hard to keep track of everything. I've been doing this for over 40 years.

Q. But you've not reviewed 150,000 charts as a retail pharmacist?

A. No. But I filled well over 500,000 prescriptions as a retail pharmacist. It's probably close to a million at this point.

Q. Okay. A retail pharmacist does not obtain

a medical chart and review a medical chart in the ordinary course and scope of their practice; right?

A. Well, not in a medical chart but they do review medical profiles and drug regimens for patients. So when I do the chart in the nursing homes we do the whole chart. When we're doing it in the retail setting, we're just looking at the medications and doing a review of medications. So I would call that a drug regimen review.

Q. Now, you are familiar with the DUR process; right?

A. Yes, I am.

Q. And I take it from your report you have no criticism of the DUR process that any pharmacist followed here?

MR. ABRAMOWITZ: Objection, you can answer.

A. I honestly had trouble determining how they measured their DURs at this pharmacy. There was no documentation or indication that there was any pharmacist interventions that would arise from doing a DUR.

Q. So you have no criticism of any DUR process that was or was not followed; true?

A. Well, I didn't see a process. I didn't see

a DUR process being followed at all.

Q. Do you -- are you going to --

A. -- to me, that's problematic.

Q. Are you going to come to the trial of this matter and say that Ms. Boroff, Ms. Shriver, or any pharmacist deviated from a standard of care with respect to a DUR process and Dale Dukeshire?

A. Yeah. I'd be willing to testify that they lacked the DUR process.

Q. And what specifically did they lack?

MR. ABRAMOWITZ: Objection, but you can answer.

A. Well, I didn't see any consulting. They basically glossed over several glaring red flags that were very problematic and are well documented and outlined in the DEA's pharmacist manual.

They basically, in my opinion, were just taking each individual prescription as it came in and filled it as quickly as possible without any clinical intervention or DUR processing being, you know, being done.

Q. What is your basis to say there was no consulting? That you see no documentation of consulting?

MR. ABRAMOWITZ: Objection, but you can answer.

A. Yes. I saw no indication, no records of consulting. The fact that the prescriptions were being filled early consistently, especially in 2016 and '17 without any interventions, documentation, that there was no pharmacist logs or communication logs or anything that would provide any information for anybody, you know, assessing his prescriptions.

Q. Do you know of any particular conversations that any Rite Aid pharmacist had with Dale Dukeshire in his lifetime?

MR. ABRAMOWITZ: Objection but you can answer.

A. I believe there was in one of the depositions I read, there may have been a communication at one time during the four-year period that I noted.

MR. ABRAMOWITZ: And Tammy, are we getting -- it's been about an hour.

MS. WHITE-FARRELL: Sure. You want to take a break?

MR. ABRAMOWITZ: If it's okay. If it's a good time for you now or if you want to --

MS. WHITE-FARRELL: Yeah, that's fine.
MR. ABRAMOWITZ: Great.
MS. WHITE-FARRELL: Okay.
MR. ABRAMOWITZ: Thank you.
(Short break in proceedings.).
BY MS. WHITE-FARRELL.
Q. We'll start where we left off and it's about the documentation of consulting or no documentation of consulting.
Do you agree that conversations happened between pharmacists and their patients and even family members that do not recorded?
A. Yes. There are conversations that are not recorded.
Q. And do you agree that a patient has the right to refuse counseling?
A. Yes. A patient does have a right to either accept or refuse counseling, but in my opinion there are circumstances in which the pharmacist should offer counseling even if it's unsolicited.
Q. Do you have any factual basis to say that Dale Dukeshire did not understand the addictive nature of opiates?
MR. ABRAMOWITZ: Objection, but you can

answer.
A. I'm sorry. Could you rephrase that?
Q. Do you have any factual basis to say that Dale Dukeshire in his lifetime did not understand the addictive nature of opiates?
MR. ABRAMOWITZ: Objection, you can answer.
A. No. I don't have any documentation of that.
Q. In your report you do not mention the DUR therapy or DUR processes; do you?
MR. ABRAMOWITZ: Objection, but you can answer.
A. I would have to look through my report again, but I don't recall if I mentioned DURs in my report.
Q. Look at your report and tell me if there's anything that you refer to that relates to the new opinion that you've offered today regarding the DUR process.
A. I don't see anything that I mentioned specifically using the terms DUR, but several of the issues that evolved in the DUR process are mentioned in my report.
Q. And which are those?

A. Things talking about accessing the Oarrs prior to dispensing narcotics. That's part of the DUR process. The corresponding duty that is mentioned in my report is part of the DUR process. So although it's not listed as under DUR, those are aspects of the DUR process that the Rite Aid pharmacists failed to do.

Q. Are there any other new opinions that are not in your report that you would attempt to offer at trial?

A. The only opinion that I can think of at this time would be the coroner's report alteration done by the defense expert.

Q. And that's by the pharmacologist Dr. Lucas; right?

A. Yes.

Q. But you're not a pharmacologist; are you?

A. No. I'm a clinical pharmacist and retail pharmacist.

Q. And you're not a toxicologist; are you?

A. No. I'm not a toxicologist by trade.

Q. What qualifies you then to say that Dr. Lucas is wrong?

MR. ABRAMOWITZ: Objection, but you can

answer.

A. I know how to read a study and I looked at the data that he took, the study that he took his data from and he selectively cherry picked the data that would benefit him or his, you know, his employers rather than the actual data, the complete set of data which indicated something completely different.

I don't have to be a pharmacologist to be able to realize that he did not provide all the data that was in his report.

Q. Do you agree that carfentanil is a C-I, it's an illegal substance?

A. I'm not sure of the status of carfentanil in this country right now if it's a C-I or C-II. I know that there is a brand named drug called Wildnil which is Carfentanil. It's used in zoological practices, veterinary practices for sedation of large animals like rhinos, elephants, hippos things like that. They would use it, I believe, with horses.

So I'm not sure what the schedule status of carfentanil at this time, since I know that in the past it has been used as a C-II in veterinary

practicing.

Q. Do you agree that there's no legitimate medical purpose for the use carfentanil in humans?

A. Yes. I would agree with that.

Q. Exhibit 8 were notes. That's based upon the patient profile as I understand it, your yellow notes?

A. Oh. My yellow notes. Which exhibit was it?

MR. ABRAMOWITZ: Note Exhibits 8 list down here are records, exhibit 8 notice of the deposition.

(Inaudible.)

MS. WHITE-FARRELL: No. 8.

MR. ABRAMOWITZ: My apologies, Tammy. Is it Exhibit 8.

WITNESS: Yes, I have it.

BY MS. WHITE-FARRELL:

Q. I just want to make sure I understand. You have not gone back to the medical record for any of those acute fills or prescriptions to determine what the health care problem was relating to the reason that the patient got acute fills; right?

MR. ABRAMOWITZ: Objection, but you can

answer.

A. Not necessarily. In several of the -- I believe in several of the records that I may have reviewed there may have been indications why he was going to the dentist or the emergency room.

Q. Have you matched those up to the patient profile into your chart that you created as Exhibit 8?

A. No. I don't believe that I have.

Q. Do you agree that Mr. Dukeshire's Oarrs report was, in fact, accessed by the Rite Aid pharmacist?

MR. BRAHMOISM: Objection, but you can answer.

A. I believe they may have looked at the Oarrs report on one or two occasions, that I'm aware of. But according to their own depositions I believe Ms. Shriver in her deposition said that she if she knows a patient she doesn't have to look it up, if she knows who it is and she's comfortable she doesn't bother accessing it.

So I don't believe that there was access to the Oarrs reports on every prescription that was presented to that pharmacy.

Q. You're not here to tell the jury that it's the standard of care to check the Oarrs report for every prescription presented; are you?

MR. ABRAMOWITZ: Objection. Are we talking about C-I or C-II? I'm sorry.

Q. It would be C-II.

MR. ABRAMOWITZ: Okay. Thank you.

A. Yes. I am here to say that the pharmacists should be checking the Oarrs report on every C-II prescription.

Q. Is there any writing, standard, publication, or document that you can point me to that supports that proposition?

MR. ABRAMOWITZ: Objection, but you can answer.

A. I don't know the documents off the top of my head, specifically, but I would believe that the pharmacist manual, you know, a document produced by the DEA may have that information in there. The Board of Pharmacy records from Ohio may have something, although I have not seen it myself directly or have not looked it up but it may be in those records. I'm not familiar with that so I don't know.

Q. Have you looked it up from any source that you can point me to that would say that the standard of care requires a pharmacist to check an Oarrs report with each knew C-II prescription that is presented?

A. Off the top of my head, no. I can't come up with any documents that would confirm that; although there maybe some out there that I'm not aware of or that I have not reviewed thoroughly.

Q. What is the Acugenasis team, a-c-u-g-e-n-a-s-i-s team?

A. The Acugenasis team is a group of researchers at the Imperial College of London that are doing drug studies and studies on chemotherapeutics and I had done some work in the biomechanical engineering field with a professor named James Moore who runs that team.

And he asked me if I would work with some of his Ph.D. students and the Acugenasis team on development of these testing apparatus for determining skin cancers.

Q. Does that have any role or relationship to outpatient pharmacy practice?

A. Not yet. I mean, the goal of them was to

produce this test they were doing. It was a topical test and they wanted to get it into retail pharmacies and wanted to know how pharmacists would interact with the patient on both the recommendation and evaluation of these tests.

And so I was their consultant in it from the retail pharmacy field and give them an idea of where this could be placed, whether OTC status, prescriptions status, how pharmacists would interact in interpreting the results and how to get physicians involved in this process as well.

Q. I think you told me you last worked in a retail pharmacy in 2017. Is that right?

A. Yes. That's right.

Q. Was that full time? Part time? Per diem? What basis was that?

A. I believe that was the Black and White pharmacy and I was the pharmacy manager there for a short time. I was there, I believe, working two days a week, one week and three days a week the other week. Every other week I'd be working two or three days.

Q. Did you have to exercise your independent pharmacist judgement from time to time in filling

prescriptions when you worked last as a retail pharmacists?

A. Yes.

Q. Do you agree that in the everyday practice of pharmacy a retail pharmacist must exercise his or her pharmacist judgement?

A. Absolutely.

Q. Have you ever offered the opinion that you offer here today anywhere else that a C-II can only be filled on the day that it expires or a day after that?

A. You're asking if I have testified as this before?

Q. Have you ever offered that opinion anywhere before?

MR. ABRAMOWITZ: Objection, but you can answer.

A. No. I don't believe I've been asked that before.

Q. Going to your report, page four --

A. Okay.

Q. -- what is it from the Social Security Administration records that you would rely upon; anything?

A. Not that I can think of right now.
Q. Would you rely upon anything from the Freemont and Sandusky police departments?
A. I don't recall the exact records but perhaps it would play into my opinion.
Q. And how?
A. Well, if there was a history of DUIs, any type of, you know, drug-related, you know, events that may have occurred, you know, that he was in trouble with the police, anything like that.
Q. Was Rite Aid or any of its pharmacists ever put on notice that Dale Dukeshire had any DUIs?
MR. ABRAMOWITZ: Objection, you can answer.
A. Not that I'm aware of.
Q. Was Rite Aid or any of its pharmacists ever on notice that Dale Dukeshire had any drug related instances or events happen in his life?
MR. ABRAMOWITZ: Objection, you can answer.
A. Not that I'm aware of.
Q. Back to your report, there's a list of legal documents, discovery responses. Tell me what you would rely upon, if anything, from any of those discovery responses.
MR. ABRAMOWITZ: Objection, but you can

answer.

A. I honestly would have to look at them again. I mean, I'm sure that there's information from responses to Rite Aid as to their policies and procedures, on their training a pharmacist, and dispensing of narcotics and C-II drugs and things like that.

Q. What do you understand Rite Aid's training to be of its pharmacists with respect to C-II drugs?

MR. ABRAMOWITZ: Objection, but you can answer.

A. From my opinion, it's virtually nothing. The pharmacists, as I, that I read their depositions said that they had no training. One of them I believe said they had no training. The other might have watched a video, one video or something like that. I don't recall exactly. But the training, if there was any at all, it was minimal.

Q. And what training do you contend should have occurred?

MR. ABRAMOWITZ: Objection. You can answer it if you can.

A. Well, I believe that the pharmacists need to at least sign off that they've reviewed the DEA's

document, the pharmacists manual, that they have at least reviewed Rite Aid's policies and procedures on dispensing of C-II drugs, that they really need to do -- I mean at least, you know, in Florida, we have to do continuing education on a yearly basis addressing narcotics and C-II dispensing and opiate dispensing.

They should require specialty courses in that and training in that. There's quite a bit. I mean, pharmacists can always be learning more. There's always more we need to know.

And the environment changes, you know. In the last ten years or so it's become a major problem. Prior to this they were not a major problem. So, you know, things change and policies have to develop to address those changes in the community.

Q. Are you familiar with the continuing education that the State of Ohio required of pharmacists prior to Dale Dukeshire's death as it relates to controlled substances?

MR. ABRAMOWITZ: Objection, but you can answer.

A. I believe that they do require a course in

opiate use disorder or something similar to that for their continuing education.

Q. Do you have any basis to say that Ms. Boroff and Ms. Shriver or any Rite Aid pharmacist was not in compliance with the required continuing education on opiate dependance?

MR. ABRAMOWITZ: Objection, but you can answer.

A. Well, I'm sure that they were compliant with the regulations to do the continued education to renew their license. That does not mean that they were well educated and informed in the, the risk of dispensing opiates, the MMEs, assessment of MMEs for dispensing of opiates and other issues that may deal with the red flags and clearing red flags prior to dispensing opiates.

Q. Isn't the MME for opiates a physician responsibility?

MR. ABRAMOWITZ: Objection, but you can answer.

A. Yes. It is a physicians responsibility as well as a pharmacist's responsibility.

Q. What source, document, publication, regulation, can you refer me to that MME calculation

is a pharmacist's obligation?
A. I don't have it in front of me, but there is a record that I reviewed that I can provide to you that mentions pharmacists, intervention, and accessing MMEs.
Q. If you would and we'll make that Exhibit 9.
DEPOSITION EXHIBIT NO. 9
(Record Concerning MMEs was marked for identification purposes as Deposition Exhibit No. 9.)
MR. ABRAMOWITZ: Can you write that down so I can dig out that file?
WITNESS: It's about pharmacists (audio interference, speaking inaudibly.)
BY MS. WHITE-FARRELL:
Q. You mentioned the pharmacist manual, you've mentioned that several times. Where is this publication? Is it online? Is it hard copy? Where do we get a copy of it?
A. You can find it easily online. You can also request a copy from the DEA. They will send you one, and most likely they'll refer you to their website and tell you to download it.
Q. And the DEA pharmacist manual provides

specific guidance with respect to the filling of opiate prescriptions. Is that true?

A. Yes, it is.

Q. Those are guidelines not standards of care. Isn't that true?

MR. ABRAMOWITZ: Objection, but you can answer if you can.

A. I wouldn't be able to answer that question without actually looking at the document. I don't have it in front of me right now.

Q. Turning to the next page of your report, do you agree with Rite Aid's statement in their policy that you quote in block quotes at the middle of page 5 that begins with the phrase "Rite Aid acknowledges that misuse and abuse of prescription drugs is a growing national epidemic?"

A. Do I agree with the statement?

Q. Yes.

A. Well, in some ways I do agree with it. I mean, they have developed certain procedures and I think a lot of them are based on the pharmacists manual; however, you know, they say that procedures for assisting validation and dispensing the substances however they don't add that there's any

checks or balances as to whether the pharmacists have reviewed this, have they, you know, have they utilized it or is it mandatory or is this optional for the pharmacists.

There's nothing that says it's a regulation. They just say we acknowledge that there's an abusive of drugs and in order to address this we have set up procedures. But, you know, the procedures obviously have been failing because their policies have allowed for, you know, basically a violation or ignoring of red flags.

Their pharmacists have ignored many red flags. It's hard to -- I mean, I agree with the state that they acknowledge that there's a problem but I question whether that they really done a lot to really prevent abuse or diversion.

Q. And that's because in this case you contend red flags were ignored?

A. Yes.

Q. Is there any specific written procedure of Rite Aid that, of which you have criticism?

MR. ABRAMOWITZ: Objection.

A. I don't have the policies in front of me so I wouldn't be able to determine that right at this

point. And I could in the future look through specifically at all their policies and can point out failings and things like that, I'm sure.

Q. Well, you've been involved in this case for how long?

MR. ABRAMOWITZ: Objection. It was the work of the attorney work product as to when we retained services or when we started he reviewing matters for us. I mean, generally, you can -- I mean the cases he's been on since the beginning as he -- certificate of merit -- (audio interference) -- we're not letting him share anything beyond that.

Q. So, you've known of this case for at least two years. Is that correct?

A. Yes.

Q. And through the present day, have you formulated any criticism of any written policy or procedure published by Rite Aid?

MR. ABRAMOWITZ: Objection, but you can answer.

A. Again, I would have to have that in front of me to look at it to make, to determine that. I do have objections with the way the pharmacists who were filling Dale Dukeshire's prescriptions. I have

issues with that. I would have to look at their specific policies again.

And again, I've looked at these records, as you said, it's been a couple of years. It's nothing I look at every day for the last two years. It's something I looked at two years ago and then I looked at it again a few days ago. So it's been a long period of time between, you know, the time I initially looked at and now.

Q. In the time that you have spent in reviewing materials in this case, have you formulated any opinion critical of any written document published by Rite Aid?

MR. ABRAMOWITZ: Other than what's in his report?

MS. WHITE-FARRELL: Any written document -- there's no criticism of a written document in his report, so if there is point it out to me.

MR. ABRAMOWITZ: I mean, the first heading is Rite Aid designed a blind spot, that would be a culmination of the procedures he's pointing at. I just want to make sure, in these pages -- there's a lot of policy and procedures out there beyond what are applicable and what's been provided in this

case.

I'm just trying, I guess, maybe if you rephrase it maybe I would be very helpful.

MS. WHITE-FARRELL: I'll do it one more time, because this is about the fifth time I've asked the question.

BY MS. WHITE-FARRELL:

Q. Is there any particular written policy or procedure by Rite Aid that as of this date you have formed any opinion critical of?

A. Well, I believe that their 48-hour, allowing 48-hour overlap of C-II prescriptions to be filled, I am critical of that policy.

Q. Any other?

A. That's the only written policy that I can answer that at this time.

Q. So let's go to the six steps that are listed in your report. You agree that for each C-II prescription that was presented to Rite Aid it was a valid prescription?

MR. ABRAMOWITZ: Objection, you can answer.

A. You're asking me if every prescription was a valid prescription presented to Rite Aid?

Q. Every original C-II prescription.

A. I can't answer that because I don't know if they were valid based on, they may have been valid based on a physician, a licensed physician writing it and it may have been valid based on a physician with a patient relationship.

But it may not have been valid if there was not a legitimate medical purpose for the use of these drugs.

Q. And what did you undertake, if anything, prior to today's deposition to determine whether or not any of the prescriptions presented were not for legitimate medical purpose?

Did you undertake any activity?

A. Other than reviewing the records provided, no.

Q. Did you identify from any medical record or records provided that any prescription that was presented to Rite Aid was not for a legitimate medical purpose?

MR. ABRAMOWITZ: Objection. Are you overly broad but you can answer.

A. Well, I realize that he had chronic conditions that were treated by Dr. Gallagher; however, there were other physicians that he would

seek out that would write narcotics and those may not have been for a legitimate medical purpose; although, the physicians may have been duped into thinking they were.

Q. And so my question is simply, do you have any factual basis to say that Rite Aid was on notice that any particular prescription was not for a legitimate medical purpose?

MR. ABRAMOWITZ: Objection.

A. Well, as far as I know Rite Aid did not validate many of the prescriptions, so there would not be any record of that.

Q. Do you know from any source that Rite Aid was on notice that any of the prescriptions were not for a legitimate medical purpose?

MR. ABRAMOWITZ: Objection, you can answer.

A. Not that I know of.

Q. Each time a C-II original prescription was presented, steps 1 through 6 were completed by Rite Aid. Were they not?

MR. ABRAMOWITZ: Objection, over broad. Answer if you can.

A. No. I don't believe they did.

Q. Which one of the step or steps was not

completed? And I'd like to know when.

A. Well, just -- I would say that the validation of the prescription, to validate a prescription from, and I'm going to say this for any of the other 12 doctors other than Dr. Gallagher was writing for narcotics, that those prescriptions should all be validated when the physicians call, informed that they were receiving, you know, routine opiate prescriptions from a, not a pain management doctor.

So the pharmacists failed to validate each of these other extra-when I say "extra" I mean other than Dr. Gallagher prescriptions, and using professional judgement, whether to dispense or not dispense a prescription and report suspicious activity such as seeking early refills, coming to the pharmacy and saying I lost my prescription, somebody stole my prescription I need another one, that type of thing.

Those are suspicious activities and behaviors that I believe the Rite Aid pharmacists did not pursue to follow up on.

Q. I know it's your opinion that it was a suspicious activity that Mr. Dukeshire presented new

prescriptions 48-hours before an old one expired; right? That's your opinion.

A. Yes. And some of them more than 48 hours. Some of them were, you know, 72 hours, some of them were even longer. I mean, there was a variety. And as time went on from 2015, '16, '17, the numbers and the shortened refills -- I shouldn't say refills -- shortened presentation of new prescriptions became more frequent and more often.

Q. How many, if any, new refills -- well, strike that.

Did Dale Dukeshire ever present claiming that his prescription was stolen, lost, or destroyed and it was actually, and a new prescription was actually obtained and filled?

MR. ABRAMOWITZ: Objection, you can answer if you can.

A. Not to my knowledge.

Q. What is your comment regarding the Nexgen system that's on the next page of your report. I'm not sure I understand what you're trying to communicate there.

MR. ABRAMOWITZ: For the record we're on page 6 of his report, 7. We're on page 6 you're

referencing?

Q. Let me count them here. It would be six, where you talk about, at the top of the page, where you talk about the Nexgen system.

MR. ABRAMOWITZ: Thank you for that.

WITNESS: I'm sorry can you repeat the question for this?

BY MS. WHITE-FARRELL:

Q. Yeah. I'm trying to understand what you're trying to communicate in that first paragraph.

A. I was just saying that there seems to be a gap in the Nexgen system. There's basically a hole in that they allow for a 48-hour early presentation of new C-II prescription without flagging it, that they find that to be acceptable.

Where in my opinion, that is a problem with the, it's an inherent systematic problem with the Rite Aid computer system, that they should be flagging these as red flags when they come in, you know, less than, you know, 24 hours, you know, before acceptable refill status is obtained.

Q. If other similar situated retail pharmacies like Walgreens and Giant Eagle have a policy that permits a 48 or 72 hour fill, would you have the

same opinion critical of those?

MR. ABRAMOWITZ: Objection. Are you referencing the opioid MBL and the settlements that were recently achieved in Ohio based on some of those specific pharmacies, you know, in requesting to exit the litigation based on their policies and practice and how it hurt the community?

Q. No. It's just a simple question. What about the witness, not a dialog about the MDL. I'm sure you need me to repeat the question given that objection?

A. Yes. I do. I'm sorry.

Q. My question is, if other similarly situated retail pharmacies such as Walgreens, Giant Eagle, Kroger, Walmart have fill policies that would allow for 48 or even 72 hours of fill before a prior C-II expires, would you likewise be critical of them?

MR. ABRAMOWITZ: Objection.

A. Yes, I would.

Q. Okay. Do you know of anybody that agrees with you?

MR. ABRAMOWITZ: Objection, but you can answer.

A. Well, I haven't presented this opinion to

my colleagues or anything like that; although, when I do train my students I do specifically spend an afternoon discussing opiate prescriptions, verification of opiate prescriptions, and so I do teach that in my pharmacy rotations, that they you have to go above and beyond the policies of the pharmacy you're working at.

Q. For an individual pharmacists, that's what you teach?

A. Yes.

Q. Is there a text book or a publication that you rely upon for that statement or is it a personal practice?

MR. ABRAMOWITZ: Objection, but you can answer.

A. It is my personal practice; although, I do provide my students with a copy of the pharmacists manual, and we review that, you know, during the afternoon course. We'll take a break from doing charts and we'll talk about the pharmacist's manual or go through the different red flags are and how to clear a red flags and that type of thing.

Q. Now, in the next paragraph on page 6 you say that Mr. Dukeshire was dispensed 112 narcotic

prescriptions.

A. Yes.

Q. I don't understand your statement then, on average were dispensed 144 days early.

How do you come up with an average of 144?

A. That was based on the 100 -- that was based on what I consider early fillings in that four-year period of those 112 prescriptions. If I added up the days that were filled early it turned out, in that four-year period, it was 144 days early.

Q. So that's really a sum, not an average?

A. Yes. Yes. I would agree with that.

Q. Did you calculate what the average was, meaning was it one day? Two days? Zero days? Did you calculate it?

MR. ABRAMOWITZ: Objection, but you can answer.

A. I did calculate that out and I'm afraid I don't have that document with me, but I can provide it for you later.

Q. Yes. And we'll make that Exhibit 10.

DEPOSITION EXHIBIT NO. 10

(Calculation of Days Early was marked for identification purposes as Deposition

Exhibit No. 10.)

A. Okay.

MR. ABRAMOWITZ: Again, subject to or review for attorney-client privilege in that exhibit.

And just so we're clear, Tammy, that is the document with the calculation of the average?

MS. WHITE-FARRELL: Yes.

MR. ABRAMOWITZ: Thank you.

Have you worked in pharmacies where pharmacist's write notes on the back of the original prescription?

A. I have in the past, yes.

Q. And was that the custom and practice at that particular, those particular pharmacies?

A. Well, that was the practice at the pharmacies that I worked at probably in the 1980's and '90s. More recently, the pharmacies that I worked at may have pharmacist's log books or communication logs, which whenever I've managed a pharmacy I always send install a pharmacist's communication log book.

So rather than look at the Post-it notes on past prescriptions it will all be in one area so

pharmacists can look and see what another pharmacist has been doing if they don't happen to be on shift at the same time.

Q. Do you know of any particular instance with respect to Mr. Dukeshire where pharmacists wrote a note on the back of the prescription that did not get communicated to another pharmacist at a later time if they needed it?

MR. ABRAMOWITZ: Objection, over board and you can answer.

A. Well, I wouldn't know specifically whether, you know, the pharmacist was reading the other pharmacist's communications. But I know the system was set up so that it was difficult and that if you needed to look at past prescription you had to go into the back files, the whole hard copy files, and look back to see it.

There was no one central place where you can make notes from one pharmacist to another. So it was very difficult and it would be time consuming to have to go back through those files without having a centralized area where you would just refer to a communication log or a computer note when, you know, when you bring up that patient's profile.

Q. Can you name one instance where a pharmacist had information on the back of one of Dale Dukeshire's original prescriptions that did not get appropriately communicated to another pharmacist?

MR. ABRAMOWITZ: Objection. Over broad. You can answer if you can.

A. I can't answer that specifically.

Q. What are the red flags that you contend were overlooked in this case?

A. Well, there's several hard red flags to me and then some suttle red flags, but the hard red flags would be the, you know, the increasing, as time went on the increasing desire for him to fill new prescriptions early, that's a red flag, seeking early refills.

The other really hard red flag is what we call doctor shopping, where a patient goes to an emergency -- he's getting chronic pain meds from a pain medication doctor like Dr. Gallagher but then they're also going to emergency rooms, they're going to dentists, they're going to other doctors, orthopedists, to seek out prescriptions for other narcotics because their pain management doctors are

not giving them enough drugs.

Q. Any other red flags that you contend were overlooked in this case?

A. Well, those are the two big red flags. But the fact that the patients, I mean, the pharmacists did not talk with the patients about coming in and seeking early fills of their prescriptions, that there was virtually no counseling, that the patient, you know, was perhaps overusing his medication.

There's no questioning that I had seen, no documentation on that. I'm sure there were other things that I'm not remembering at this point. But I think those two red flags, the two hard flags would definitely have to be cleared, the ones I mentioned before about doctor shopping and early refills, early fills.

Q. I want to make sure I have the number of physicians that you -- I, early in the deposition I thought you said there were 17 physicians but in your report you say 12. Which one is it?

A. It's both. There were 17 from the onset of the Rite Aid prescriptions. But once he started seeing Dr. Gallagher at that point there were only 12 other physicians other than Dr. Gallagher, once

he started becoming a patient of Dr. Gallagher's. Prior to that there were five other doctors that he sought medications from.

Q. Okay. Now, I got it.

MS. WHITE-FARRELL: We've been going about another hour and I've had to much to water drink so I need to take a break.

MR. ABRAMOWITZ: I'm with you. I got you.

MS. WHITE-FARRELL: All right. Let's take another break.

(Short break in proceedings.)

BY MS. WHITE-FARRELL:

Q. Doctor, I don't which page of your report is, you say Both pharmacists who were deposed claim a lack of knowledge as to narcotic drugs such as other opiates.

What are you saying by that in your report?

A. That was based on the information I read in their depositions. I was actually pretty shocked to find out that one of the pharmacists did not know that what heroin was, which is, you know, pretty much explained in every continuing education on opiate use disorder.

The required courses from boards of

pharmacy I'll mention it, and the pharmacists didn't know what it was. To me it seemed she had a complete lack of knowledge of opiates. And then that actually brings to mind another red flag that I forgot to mention, was the assessment of morphine milli equivalents in dispensing of drugs and looking at the risks involved in patients taking high MMEs.

As you mentioned earlier you said that's what doctors do. What I said pharmacists do it, too. And when we look at it we could, I don't know if you're familiar with what MMEs are, but an MME is a morphine milli equivalent and it gives you a risk factor based on your MME cut, daily MME count.

So an MME of 50 is generally a warning. When you get to an MME of 90 it may become a red flag that the patient's taking very high doses and has a very high risk of overdose death.

So this is when a pharmacists vigilance needs to go up when they do an assessment of MMEs on their patients. By 2016, Mr. Dukeshire was receiving approximately 135 MMEs every day of opiates, which is in the very high risk range.

That would actually would, should trigger another red flag for the pharmacist to do more due

diligence in clarifying the scripts, counseling the patient, and actually warning the patient of the dangers of high MMEs on a daily basis.

Q. When did you come up with the MME red flag opinion?

MR. ABRAMOWITZ: Objection, attorney-client work product, but for that objection you can answer.

A. Well, throughout the case I thought about MMEs but I didn't really apply it to this case probably until within the last few weeks.

Q. And what was it that caused you to apply it to this case in the last few weeks?

MR. ABRAMOWITZ: Objection, but you can answer.

A. It was just, you know, I was contacted again by the attorneys after a long period of time that we hadn't talked and I wanted to refresh myself so I was looking through some different files. I reviewed the pharmacist's manual and things like that again.

And the issue of MMEs came up in some of the literature I read. So I said, let me go back and take a look and calculate how many MMEs

Dukeshire was taking on a daily basis. And when I did that I realized he was taking an extremely high MME count.

So I didn't put in my report initially that I did, you know, a year or so ago but, you know, it's something that I would add as an adjunctive or addendum to it as far as a red flag.

Q. Is there a particular writing or source or guideline that you can refer me to as to what MME would have been acceptable non-red flag range for a chronic pain patient such as Dale Dukeshire?

MR. ABRAMOWITZ: Objection, but you can answer.

A. I wouldn't know specifically that, you know, met all of the criteria of your question. But one of the documents I gave you, you know, that we have in the exhibits that details MMEs and the importance of assessment of MMEs.

Q. What is heroin?

MR. ABRAMOWITZ: Objection, you can answer.

A. It is a synthetic opiate. It's called diacetylmorphine. It's a stronger opiate than say, then morphine itself.

Q. Is it a C-I?

A. In the United States it's a C-I. In various other countries like Europe it's a C-II.

Q. For any opinion that you have, do you rely upon any Ohio statute or regulation?

MR. ABRAMOWITZ: Objection, but you can answer if you can.

A. That's a good question. I think -- I don't know the Ohio standards and regulations by heart. I would have to go through them, but I think they would be similar to the general federal regulations on assessments of, you know, narcotic dispensing.

Q. As you sit here today, is it a correct statement that you cannot point me to any Ohio regulation or statute that you contend was not met?

MR. ABRAMOWITZ: Objection, but you can answer.

A. Not off the top of my head. But I'm sure that if I had the Board of Pharmacy regulations in front of me I could find a listing of regulations and red flags that would have, that would pertain to what you're asking, but I personally don't have that knowledge memorized.

Q. At any time have you undertaken to look at the Ohio statute or regulations to determine if any

was not complied with in this case?
MR. ABRAMOWITZ: Objection, but you can answer.
A. I don't recall if I looked at specifically at that Ohio regs. I may have. I believe I was looking at the federal regulations, and whenever there's conflicting regulations being state and federal, the strictness of the two are to be followed.
Q. So I think the answer to my question is no. Is that right?
MR. ABRAMOWITZ: Objection.
A. It's, I don't remember. I may have looked at the Ohio Board of Pharmacy regulations.
Q. As you sit here today, can you recall identifying anyone that was not met?
MR. ABRAMOWITZ: Objection; asked and answered but you can answer.
A. Not off the top of my head. Again, I would have to look at a regulations.
Q. What claimed lack of understanding about narcotic prescriptions do you claim the pharmacists had here?
A. The lack of understanding? You know --

Q. You say --

MR. ABRAMOWITZ: Wait, he's answering.

A. Ho ahead. I'm sorry.

Q. You say in your report, "The claimed lack of understanding about narcotic prescriptions, if true, would also be a violation of Rite Aid's e training and supervision of their pharmacists."

So I'm trying to understand what claimed lack of understanding about narcotic prescriptions existed.

A. Well, according to the depositions of the pharmacists that I read, as I mentioned, they didn't know what heroin was, they didn't due, calculate MMEs, and I don't believe they were asked about it so I don't know their knowledge about it but I did not see anything in the record that showed they address that or looked at the MMEs on the patients.

The fact that they were filling the drugs without calling doctors, when multiple doctors are writing scripts they weren't calling doctors, when patients were coming in with, when a patient, Mr. Dukeshire was coming in several days early for new prescriptions there were not calls to doctors.

It was pretty much, you know, they were

isolating every prescription as it came in as one prescription and we'll just fill that one prescription without looking at the whole big picture of how many scrips he's been getting, how frequently he's seen coming for early fills.

They didn't bother -- in my knowledge I saw no record of them calling these other 12 doctors to let them know that the patient was receiving narcotics from other physicians. All these things accumulate to my assessment that they have a lack of understanding about narcotic prescriptions and the potential harm that could be caused by things such as early fills and multiple physicians prescribing.

Q. How much of your current work load is consumed by expert witness work?

A. It varies from month to month. I would say last month zero. This month about 15 percent of my work. Many months I do no expert witness work. The expert witness work tends to come in waves where you'll get a case and do a lot of work for a week or so and then it sits idle for a year or two.

And that's pretty much what happened with this case as well. And so I don't do expert witness work all the time. I do pharmacy work all the time.

Q. How many active cases do you have right now?

A. Five, maybe six that are active. I'm not actually sure. I actually spoke to a lawyer last week who wanted to refer me a case and I asked him, you know, I said something about, well, we did good on the other case that you did.

And he says that case is still active. And that was six years ago. And I didn't even know the case was still active. I thought it had already settled. So that's why I said five and then I would change it to six because I wanted to add that case.

I haven't been in contact with the lawyer for six years but he considers it still an active case.

Q. What percentage of your case work is for the plaintiff versus for the defense?

A. I would say it's about 50/50.

Q. What do you charge for record review?

A. Well, do you want to know what I charged for this case? Because I've changed my fees last year and I'm still basing this case on previous billing. So do you want my current or do you want the one that's on this case?

Q. Both.
A. Okay. On this case I charged $300 an hour for record reviews, $400 an hour for depositions and trial testimony. That was old fees.
My new fees are, let me get this straight. $350 an hour for reviews and $500 for depositions and trial testimony. So I raised my rates a little bit about a year ago.
Q. Okay. Have you ever been qualified to testify at trial by a court?
A. Have I ever testified at trial by court? Yes.
Q. How many occasions?
A. I believe there were four trial testimonies.
Q. Have you ever testified in Ohio at trail?
A. No, not at trial. I have worked on another Ohio case.
Q. Do you know of any evidence in this case that by filling a prescription up to two days early from when a prior C-II prescription expired that Rite Aid was on notice that Dale Dukeshire was abusing any of his medicines?
MR. ABRAMOWITZ: Objection, but you can

answer.
A. Can you repeat the first part of the question?
Q. Sure. Do you have evidence that by allowing the 48-hour time period to apply that Rite Aid was on actual notice that Dale Dukeshire was abusing any of his prescriptions?
A. I can't answer that. I don't know what Rite Aid knew or did not know based on that.
Q. Do you have any knowledge from any source that Rite Aid was on notice that Dale Dukeshire was not taking his meds appropriately?
MR. ABRAMOWITZ: Objection, but you can answer.
A. Not that I know from their records.
Q. From any source?
MR. ABRAMOWITZ: Objection, but you can answer.
A. Well, when you look at any source there was deposition of a nurse practitioner that had spoken to Dr. Gallagher, I believe, talked to Dale Dukeshire's family, that showed concern that he may -- according to her the family told her he crushing and snorting medication, that he was buying pills on

street and that type of thing. So there was some knowledge from a nurse practitioner who tried to intervene.

Q. But my question was, was Rite Aid ever on notice that Mr. Dukeshire was not taking his medicines appropriately?

MR. ABRAMOWITZ: Objection, but you can answer.

A. Not that I know of.

Q. Do you have any evidence that Rite Aid was ever on notice that Mr. Dukeshire was taking street drugs?

MR. ABRAMOWITZ: Objection, but you can answer.

A. Not that I noticed in the records.

Q. From any source, was Rite Aid on notice that he was taking street drugs?

A. Not that I know of.

Q. Do you agree that's it's not in the pharmacist's scope of practice to say whether or not a patient's pain is legitimate?

MR. ABRAMOWITZ: Objection, but you can answer.

A. That's not the pharmacist's duty; although,

a pharmacist does have to have confidence that there is a legitimate medical reason for each prescription that's being dispensed.

Q. Was the 12 physicians that wrote episodic scripts, did each of those physicians just write one script?

A. I'd have to look at the records.

MR. ABRAMOWITZ: Objection, but you can answer.

A. There were a couple of physicians that wrote the scripts a couple times. Dr. Stephanie George wrote two prescriptions, and James Huddleston wrote two prescriptions, and Robert Cook also wrote two prescriptions.

So there were several, there were three doctors that wrote multiple scripts, two scrips for him, in addition to the, you know, the other 108 from Dr. Gallagher, whatever, over 100 from Dr. Gallagher.

Q. Looking at my notes here. Give me a few minutes.

A. Sure.

Q. Do you agree that pharmacists do not and cannot render medical opinions?

MR. ABRAMOWITZ: Objection, but you can answer.

A. Yes. I understand that.

Q. And pharmacists cannot and do not render medical diagnoses?

MR. ABRAMOWITZ: Objection, but you can answer.

A. Yes. We do not render though; although, we do have to document them in many cases.

Q. When you -- for the record, you are unaware of any specific conversation that any of the pharmacists had with Dale Dukeshire or with Mrs. Dukeshire; true?

MR. ABRAMOWITZ: Objection.

A. Only from what I've read in the depositions.

Q. Okay. The universe what you know about those conversations, if any, are in the depositions?

A. That is correct.

Q. Let me check with Mr. McManus. We may be about done, so let's take just a five minute, a quick break.

(Short break in Proceedings.)

BY MS. WHITE-FARRELL:

Q. Mr. Litman, have we discussed all of the opinions with will attempt to offer in this case?

A. I believe you've covered most of my opinions; although, specifically, my summary, you know, and how I look at the whole thing has not been isolated. Everything has been kind of thrown into that one report.

Q. What do you mean by that?

A. I mean that, you know, going into the dispensing patterns of this pharmacy, when I look at the dispensing volume of prescriptions that they're processing, you know, between 200 and 300 a day in a 12-hour period, allowing two to three minutes per prescription, it seemed to me that, you know, that Rite Aid was, you know, kind of woefully blind as to clearing red flags because it would interfere with their dispensing of prescriptions.

They literally had, the pharmacists literally had two to two and half, maybe three minutes to process a prescription and that includes verifying it, calling physicians, insuring that it's not too soon, you know, all these different factors that are involved.

And their system was kind of set up for

failure because the weren't checking. They didn't give their pharmacists enough time to process things properly and as well as not really verifying that the pharmacist were well trained and well versed in, you know, opiate use disorders and dispensing of opioid products, clearing red flags.

It seems like there was just a whole, you know -- I guess it's all summarized in my report. But I guess we just didn't discuss it today, some of the details that were in my report.

That's why I said when you asked if there's anything else, I think there were other things in my report that were not brought to light in our discussion today.

Q. Anything else that I've not brought to light other than what you just mentioned?

A. Not that I can think of off the top of my head, but I think that those were very important key points.

Q. Can you take a moment and look at your report and double check for me?

A. Okay.

About the flags, standard of care, the violation of standard of care and not informing

other physicians along with primaries that he's seeing other doctors. That's important to discuss that. (Reading to himself, inaudible.)

One statistic I listed in the report that we didn't bring up is that, you know, when you keep isolating these new prescriptions and say, it's an isolated script, they were filling it two days early, there not a problem in that, but when you look at the pattern of that over a period of time like we did this four-year period of time we came to a summary of early fills over that period of time of 144 days.

And that doesn't even include the one day early refills. That -- I didn't even include those. If we included those it would be even more. So Mr. Dukeshire probably -- they basically dispensed an extra five months worth of medications to this patient. So there was no control on his usage, no monitoring of him being in compliance with a physicians guidelines for using these drugs.

And that was in my report that was not discussed today. Let's go on -- I think we've covered most of my opinions that are listed in the report.

Q. Well, look at your report and tell me if there's any that we have not because -- and the question is broader than that because you gave me two extra opinions today, a DUR opinion and a MME opinion.

MR. ABRAMOWITZ: Objection, but you can answer.

A. Okay. I think aside from those other two opinions that I've added that we have my opinions in the report.

Q. All right. Have you likewise, have you shared with me the basis for your opinions, meaning where the things that you rely upon for the opinions you would attempt to offer?

A. Well, I mentioned the pharmacist manual,

MR. ABRAMOWITZ: I'm sorry. Objection.

A. The pharmacist manual and I rely on my 40 years of experience as a pharmacist, my 35 years of experience a pharmacy professor in providing solid, sound, ethical pharmaceutical care to my patients.

Q. Anything else?

MR. ABRAMOWITZ: Objection, but you can answer.

A. I think that's the summary of where I

developed my opinions.

MS. WHITE-FARRELL: Those are all my questions. Thank you.

MR. BECK: This is Chad Beck. I don't have any questions for the witness.

MR. ABRAMOWITZ: I might have few -- well I have just one question to clarify here.

EXAMINATION

BY MR. ABRAMOWITZ:

Q. Mr. Litman, about thirty minutes or so Tammy used the term, "was Rite Aid on notice."

How did you take that term to mean? Can you just explain to us what your understanding is?

A. She asked if they were on notice, I assume a third-party entity had contacted Rite Aid, like the DEA or the Board of Pharmacy contacted them and, you know, and said that they were flagged or, you know, having an issue with the dispensing of narcotics.

That's what you meant right, Tammy?

EXAMINATION

BY MS. WHITE-FARRELL:

Q. I meant notice from any source.

A. Okay. I assumed that you meant a third-

party source.

I mean, they really, you know, should have been on notice themselves based on the, based on the filling patterns.

Q. On notice of what?

MR. ABRAMOWITZ: That, for the record, we'll hand the question over to Tammy, just so it's cleared for the record.

A. I'm sorry. Repeat the question again?

Q. On notice of what.

A. On notice that their, that Mr. Dukeshire had an opiate use disorder, that he was consistently requiring early fills of his C-II prescriptions, that I guess it looks like a blindness on Rite Aid's part to not want to intercede and just got the scripts filled.

I think their motivation was to fill, sell drugs, and they weren't really looking out for the safety or well being of the patients or community. They just wanted to make their sales. So that's how I feel that, you know, they should have put themselves on notice.

But when you said it I thought you were referring to another regulatory agency putting them

on notice for, you know, either somebody reported something to the DEA or the Board of Pharmacy about that pharmacy.

MS. WHITE-FARRELL: All right. Those are all my questions.

Do you want to read and sign, Mark?

MR. ABRAMOWITZ: Yes, please. I'm sorry --

MS. WHITE-FARRELL: Mark, are you sending these exhibits to me and then me to the court reporter or are you sending them to the court reporter directly?

MR. ABRAMOWITZ: I'm happy to send them both to you at the exact same time if you'd like it, and include Chad or Stephen on that as well. Whatever ever you guys like, copy everybody at the same time.

(Short discussion off the record.)

COURT REPORTER: And I guess Mr. Beck do you want to order a copy on the doctor's behalf since there's several of you on here?

MR. BECK: Yes, ma'am.

(Having chosen to read and sign, the deposition concluded at 2:50 p.m.)

ERRATA SHEET

I, ROBERT A. LITMAN, do hereby certify that the foregoing is a true and correct transcript of my deposition with the exception of the following corrections:

PAGE LINE CORRECTION

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Deponents's Signature

State of _____,
County of _____,

Sworn to before me,
_____,
Notary Public, this _____ day of _____, 2021.

_____

Notary Public

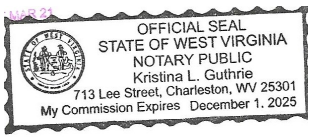
STATE OF WEST VIRGINIA

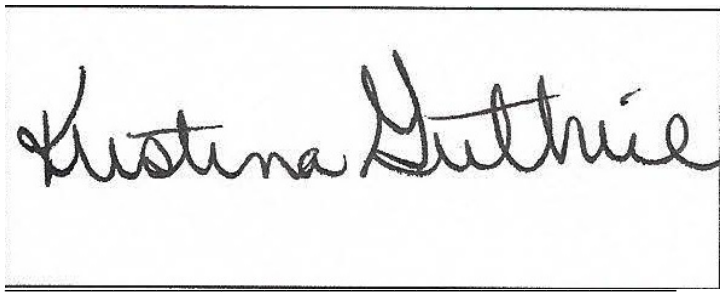
COUNTY OF KANAWHA, to wit:

I, Kristina Guthrie, Professional Reporter and Notary Public within and for the County and State aforesaid, duly commissioned and qualified, do hereby certify that the foregoing proceedings were duly transcribed by me from stenographic notes taken in the foregoing proceedings to the best of my skill and ability.

I do further certify that the said proceedings were correctly taken by me in shorthand notes, and that the same were accurately written out in full and reduced to typewriting by means of computer-aided transcription.

Given under my hand this 15th day of November, 2021.





Kristina Guthrie, Professional Reporter and Notary Public