

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

IN RE: RISPERDAL® LITIGATION :
March Term, 2010, No. 296 :
:
PHILLIP PLEDGER, by BENITA : APRIL TERM 2012
PLEDGER, as Guardian of his :
Person and Conservator of his :
Estate, :
Plaintiffs, :
:
v. :
:
JANSSEN PHARMACEUTICALS, INC., :
JOHNSON & JOHNSON COMPANY :
and Janssen Pharmaceutical :
Research and Development, :
L.L.C. :
Defendants : NO. 01997

TUESDAY, FEBRUARY 3, 2015

**VOLUME VII
MORNING SESSION**

COURTROOM 425
CITY HALL
PHILADELPHIA, PENNSYLVANIA

B E F O R E: THE HONORABLE RAMI I. DJERASSI, J.,
and a Jury

REPORTED BY:
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(Pledger v Janssen, et al.)

I N D E X

WITNESS

AS ON CROSS

JASON GILBREATH
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(Hearing is reconvened at 9:43 a.m.,
and the following transpired in open court:)

MS. SULLIVAN: Your Honor, the
Plaintiffs alerted us last night that they are
dropping Dr. Goldstein, their causation
expert, and would like to substitute an
expert. I submit, Your Honor, that's a
violation of Pennsylvania Rule of Civil
Procedure 4003.5, which says that an expert
whose identity is not disclosed in compliance
with the discovery rule "shall not be
permitted to testify on behalf of the
defaulting party at trial. However, if the
failure to disclose the identity of the
witness is the result of extenuating
circumstances beyond the control of the
defaulting party, the court may grant a
continuance or other appropriate relief."

I submit, Your Honor, that the
Plaintiff sending an expert to Alabama when he
was not licensed under applicable Alabama law
is not extenuating circumstances. I request
that Your Honor exclude the new expert. It
would be dramatically an unprecedented

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evidence that he consulted with an Alabama
doctor. They caused this problem. We should
not be punished. We complied with the law,
they did not. Unprecedented and
dramatic prejudice to switch their major
causation expert --

THE COURT: Ms. Sullivan, I haven't
heard anything yet from the Plaintiff
formally. Let's hear from the Plaintiff and
then we will look at the situation in the
context of what is planned other than
causation testimony today.

MR. KLINE: Good morning, Your Honor.

THE COURT: Good morning.

MR. KLINE: Dr. Goldstein has gone
home, he is no longer in Philadelphia. Per
the Court's discussion with us yesterday, I
had a discussion with him. There are just a
series of complicating factors which are --
which he cannot be exposed to. And so I put
in the works, per the Court's directive that I
could have another expert, that which will be
done today.

The Plaintiff will be examined, I

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prejudice to us. We have framed our whole
case, our opening, our cross-examination is
based on their causation theory of this
expert. Our experts have been lined up for a
year in response to their causation expert and
his report. They have specifically referenced
findings and material in their expert's
report. This dramatically changes the face of
the entire case, and so I request that Your
Honor exclude the witness.

If Your Honor is inclined not to, the
Defendants would request a mistrial in light
of the circumstances and the significant
prejudice. And also, Your Honor, we submit
that no additional witnesses should be called
in light of the fact that we don't even have
any report, and so we are going to have
witnesses testify when we are cross-examining
witnesses without notice of the theory of the
case. This is unprecedented.

We did not cause this situation, Your
Honor, it came to our attention when they
tried to hide Dr. Goldstein behind this de
bene esse issue. They did not produce any

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expect a report tomorrow, I expect to have the
expert testify Thursday.

The surprise and prejudice which is
mentioned here is down right silly. The
theory of the case, Plaintiff's case has
always been and will remain that this boy has
gynecomastia as a result of this drug
Risperdal, and the bases are also well-known.
My word, we have been at this for years. And
they knew about this issue, as the Court
knows, a year ago and they are the ones who
sat on it in ambush, and all I did last night
was follow the Court's directive, and I am in
the process, at my client's cost, prejudice,
and inconvenience, to be examined and to have
a new expert report.

The rule that Ms. Sullivan cites, right
in that rule, the part she didn't emphasize,
gives the Court considerable latitude, and
indeed, the Court exercised that discretion.

THE COURT: Which rule are we
discussing here?

MS. SULLIVAN: Your Honor, this is
Pennsylvania Rule of Civil Procedure 4003.5.

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THE COURT: I am looking at it.

All right, so the first question is, what is planned for today?

MR. KLINE: The plan for today, Your Honor, is to call the sales representative Mr. Gilbreath. I have considerable examination for him. And to the extent that we complete that, I am prepared to put the mom on as well. I want to push the case forward.

MS. SULLIVAN: The problem, Your Honor, with that, without even knowing -- if the Court is going to permit this --

THE COURT: I have not ruled on anything, and we are going to hold it under advisement, but we are going to continue now. We have a jury waiting.

MS. SULLIVAN: Your Honor, we would object to that and move for a mistrial.

THE COURT: Either they have the causation evidence or they don't. If they don't, it will be a nonsuit. So therefore --

MS. SULLIVAN: Your Honor, it's significant prejudice --

THE COURT: Ms. Sullivan. Bring in the

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are now proceeding with Plaintiff's next witness.

MS. SULLIVAN: I object to that, Your Honor, and move --

THE COURT: Mistrial is denied. There is nothing on this record yet the Court has decided that has been prejudicial that I can see to the Defendant in this matter. The Plaintiff is entitled to bring witnesses in the order they see at this time.

MS. SULLIVAN: And I would move for a stay of that, Your Honor, because we don't have a causation expert anymore in this case.

THE COURT: Sit down.

MS. SULLIVAN: You are denying a stay, Your Honor?

THE COURT: A stay of what?

MS. SULLIVAN: A stay of --

THE COURT: I am denying a stay as to the order of the witnesses of the Plaintiff.

MS. SULLIVAN: Thank you, Your Honor.

THE COURT: I will also remind both parties that this particular matter is more complicated than it seems at first because of

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jury.

MS. SULLIVAN: It's significant prejudice, Your Honor, it goes to the timing and onset. The entire case was framed around this expert's opinion. We object to --

THE COURT: The order of admission of witnesses is up to the Plaintiff or the Court.

MS. SULLIVAN: But, Your Honor --

THE COURT: And I am permitting right now new testimony with the jury waiting at ten of 11 from whoever the Plaintiff wants to bring that's admissible. That's the ruling of the Court. Please sit down.

MS. SULLIVAN: Your Honor, the direct and cross examination would differ depending on the causation expert they have.

THE COURT: I am sorry, this is your motion.

MS. SULLIVAN: And, Your Honor, I move for mistrial and I move for a stay of Your Honor's ruling so we can take it up to the Superior Court.

THE COURT: I haven't made any ruling. I said I will hold it under advisement. We

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the late filing of the motion that defense filed yesterday on the eve of the testimony of Dr. Goldstein. It is more complicated; there are provisions for extraordinary circumstances in Rule 4003.5, and also, there are provisions there. "Upon cause shown, the court may further order discovery by other means, subject to such restrictions as to scope and such provisions concerning fees and expenses as the Court may deem appropriate." That is at 4003.5(2).

We will review the matter and hold it under advisement.

I will say this, though, if it's possible to prove causation through existing witnesses, that is also acceptable to this Court. From what I have seen, because I have read Dr. Goldstein's expert report, there are two aspects of his expert opinion, one has to do with the effect of Risperdal generally, and one specifically as to this client. You may be able to prove it by inferential evidence, circumstantial evidence, I just don't know.

(The jury enters the room at 9:53 a.m.)

(Gilbreath - As on Cross)

THE COURT: Good morning, everybody.

Please be seated. Mr. Kline, you may call your next witness.

MR. KLINE: Your Honor, thank you.

Good morning, all. Plaintiff calls Jason Gilbreath, sales representative.

(JASON GILBREATH, is duly sworn.)

- - -

AS ON CROSS EXAMINATION

- - -

BY MR. KLINE:

Q Hi, Mr. Gilbreath.

A Good morning.

Q You work for Johnson & Johnson?

A I do.

Q Yes. And in 2002 you were a salesman, correct?

A Yes, I was.

Q And the job of a salesman is to sell, correct?

A Yes. We talk about our products to physicians where they are appropriate to use.

Q I asked you is it your job to sell. Is the answer yes, sir?

A A sales representative, yes.

(Gilbreath - As on Cross)

at either Janssen or Johnson & Johnson?

A I have been with Johnson & Johnson for 15-plus years. I was actually in the role of representative from 1999 through 2005.

Q So from 1999 to 2005, you were in sales, correct?

A Yes.

Q And you were compensated like a salesman, correct?

A Yes.

Q You were compensated on how much was sold that you were out trying to sell, correct?

A A small portion was in accordance with that but, primarily, we had a salary and then there were --

Q Bonuses?

A Yes.

Q And the bonuses were linked to how much was purchased through the customer, correct?

A The customer didn't "purchase", but according to their prescriptions, yes, and there was a smaller portion --

Q Yes, and you tracked -- I am sorry, I was talking over you, I apologize. You were finishing?

(Gilbreath - As on Cross)

Q And part of sales is to promote, correct?

A Yes. I would say promote for appropriate uses.

Q Well, I am just talking about sales generally. The definition of sales is to sell, having nothing to do with appropriate or inappropriate use, correct?

MR. MURPHY: Objection. Asked and answered.

THE COURT: Overruled. It's too early in the morning for this fussiness. Go ahead.

Q Correct, sir?

A Repeat the question, please.

Q Yes. As a general proposition, the objective of sales is to promote, correct?

A Yes, we describe appropriate uses in appropriate patients --

Q I am not talking about patients or anything, sir, I am just talking about establishing a dialogue here. Is the word "sell" meaning that you promote something, yes or no?

A Yes.

Q That's what I wanted to know. Now a specific question: How long were you in a position of sales

(Gilbreath - As on Cross)

A I think I had nothing else. I am sorry.

Q Okay. Let's try to pin some things down. So the way you define "customer" and I know he didn't buy it, but the customer was the physician, correct?

A Yes, they were the folks who we spoke to who prescribed our medications and made the decision whether or not the patient was appropriate for our medications.

Q Yes, sir, when you say that was the person who you -- who prescribed, the physician, you in documents called the physician the customer, correct?

A Yes, I think that's in some cases true.

Q And while the doctor did not actually buy the drug, he was in a position to direct the purchasing of the drug, correct?

A Yes.

Q And so that's why in the Janssen documents you call him the customer, correct?

MR. MURPHY: Objection, Your Honor, lack of foundation.

MR. KLINE: I will rephrase.

THE COURT: I thought we already had the answer, though.

(Gilbreath - As on Cross)

MR. KLINE: Okay.

Q Now, you would not only get a salary you would get a bonus, correct?

A Yes.

Q And the bonus was determined in part by the amount that the customers that you were seeing would have purchased through patients, correct?

A Not entirely, but partially, yes.

Q And you were incentivized, sir, you were incentivized to see that the drug was sold, correct?

A We were incentivized to see that the drug was represented appropriately, and for appropriate patients, if there were more than one medication that was appropriate, we would ask them to consider ours, if both were appropriate.

Q My question, sir, was you were incentivized by whether the drug was sold, correct, sir?

A I don't know if I really agree with the way the question is framed, but in terms of if a physician prescribed our medication, was that a good thing, yes.

Q Yes, and then there were records kept of how much the doctors who you saw actually prescribed, correct?

(Gilbreath - As on Cross)

that as well.

Q There is IMS data on Dr. Mathisen, correct?

A Yes. I don't have specific recollection of his data, just due to the timeframe it was, but I am sure if he was on the list he might have been included at some point.

Q Yes, I am going to later on today try to refresh your recollection on that very point.

A Sure.

Q By showing you the IMS data?

A Okay.

Q And how much he was prescribing and whether you knew it.

Now, let's have a discussion of your movement up the J&J line. First of all, back in 1999 through -- you came to Johnson & Johnson when?

A I believe it was May of 1999.

Q May of 1999. That was a good day, correct, sir?

A Yes, it was.

Q And you have been with them ever since, correct?

A Yes, I have.

Q And let's see. When you came to them in 1999

(Gilbreath - As on Cross)

A Yes. We had information on what a physician would use from time to time. It was not always available but in many cases it was.

Q And you looked at that data, correct?

A Yes, when it was available.

Q Yes, and you would know if a doctor was -- whether it was worth your while to go see a doctor and whether he was actually prescribing the drug, correct?

MR. MURPHY: Objection, argumentative, Your Honor.

THE COURT: I think this has been established.

MR. KLINE: I don't think that was, but okay.

THE COURT: Sustained.

Q You knew if a doctor that you were going to see over and over and over again was using your drug, correct, sir?

A Yes, but primarily because they stated that they were or were not.

Q And also you had access to data, which was called IMS data, correct?

A Yes, when it was available we would refer to

(Gilbreath - As on Cross)

you had been to junior college at Snead State Community College, correct?

A That is correct.

Q And I think your major there was in animals, something with animals?

A Pre-veterinary animal science curriculum, yes.

Q And you did not go to veterinary school, correct?

A I did not.

Q And I think your major was in aviary, I think in birds?

A It was animal science, specifically avian or poultry, yes.

Q And then you finished there in 1991, and then you went to Auburn from 1995 to 1996, correct?

A That is correct.

Q What was your degree at Auburn in?

A It was in avian science, avian and poultry science.

Q Any training there in epidemiology, sir?

A Not specifically. It may have been contained in some of the biology, pharmacology, other courses like that, but not specifically epidemiology, no.

Q Okay. Now, what did you do after you got out

(Gilbreath - As on Cross)

of college? Because I see a three-year gap?

A My wife and I, we actually married shortly after high school, so I married my high school sweetheart, and we actually worked our way through college. So we actually purchased a farm of our own in 1990, February of 1990, and by operating that farm, I did that concurrently while I was at Snead State. I had the farm full time as well as Snead State. And so we ran the farm in order to pay for college.

So that's why the gap was there, we had the farm and to save up enough money to finish college, but that's what we were able to do.

Q My question was after college. What did you do, between 1996 and 1999 where did you work?

A I apologize.

Q That was my question.

A I apologize.

Q It sounds interesting on the farm, by the way. We don't have many farms here in our parts.

A Well, there are some rather beautiful ones out in Pennsylvania, it's a beautiful state.

Q I know, but in the City we have some vacant lots, in the summer we do some gardening and that

(Gilbreath - As on Cross)

A I do.

Q Did you ever get a check?

A I don't recall getting one. I think it's always been direct. So I apologize.

Q So sales rep from 1999 to 2006; is that correct?

A Yes.

Q And when you were in that job did you have a supervisor?

A Yes. All the time.

Q And who did you report to?

A In '99 or throughout?

Q No, from 1999 to 2006, what's the person's title?

A District manager, I reported to a district manager.

Q All this time, and I am in particular interested in 2002 through 2006. What was your official title?

A In 2002 through 2006, it would have been elder care representative.

Q Elder care representative. Did Dr. Mathisen treat any elder cares?

A Not to my knowledge, no. I would say, he

(Gilbreath - As on Cross)

stuff.

A I apologize, I misinterpreted your question.

Q Chickens are against the code but you know all of that stuff.

THE COURT: Only in Philadelphia County.

MR. KLINE: I know that, too. I have been to court on one of those.

A So after I completed college I went to work for an animal health company, an agricultural company, it was called Gold Kist, Incorporated, based out of Atlanta, Georgia.

Q And then did you go to work for Janssen, or did you go to work for Johnson & Johnson?

A I went to work at Johnson & Johnson, but specifically they are a subsidiary of Janssen, so my actual employment was with Janssen Pharmaceutica.

Q That's an important thing. At all times when you got your paycheck, including your salary as well as your bonus for what the customers bought, that would be a Janssen Pharmaceuticals check, correct?

A To my knowledge. I really don't recall exactly the way it would appear.

Q Do you have direct deposit?

(Gilbreath - As on Cross)

actually did say he treated adults. Now I didn't know the exact age of those adults --

Q There is no question pending, sir. And we are going to talk about what you knew and didn't know. But as to what your title -- is that your title, elder care representative?

A Yes, it was.

Q And one of the drugs that you were handling was this stuff Risperdal, correct?

A Yes.

Q Were you handling other drugs, too, at the time?

A Yes, we had multiple other medications.

Q You. I am not talking about we as Janssen?

A Yes, I had responsibility for other medications.

Q How many others?

A Two or three.

Q Two or three, okay, and Risperdal, was that a substantial part of your repertoire?

A I don't recall the specific breakout but probably a third.

Q Okay, that's helpful. And were the other drugs for the elderly? Because I would assume if

(Gilbreath - As on Cross)

you were an elder care representative, the drugs would all be marketed to doctors who were treating elderly patients; is that correct?

A Not exclusively, but some of them were. One was a medication for Alzheimer's disease, and so that was one. The other one was for chronic pain, and that was for all adult ages. And then Risperdal, which was also for all adult ages at the time.

Q And just to have a record, the Alzheimer's drug, that was what drug?

A It was galanthamine was the chemical name, but Reminyl was the name when it was presented to the market.

Q So you were doing Reminyl, which is an Alzheimer's drug. Chronic pain drug was what?

A Duragesic.

Q And Duragesic is a drug that's used significantly in the elderly population, correct?

A It's used significantly but not exclusively there.

Q By question was whether it was used significantly there. Is the answer yes, sir?

A Yes.

(Gilbreath - As on Cross)

correct?

A Yes.

Q Now, at the time were there pediatric drug representatives?

A With our company or with other companies?

Q Your company, that you knew of?

A Yes. I think so. I know we had consumer healthcare with drugs like Tylenol and other medications like that.

Q Just to finish with your background -- by the way, do you work from home, largely, or do you go to an office?

A No, my office is out of my home. But I am out and about a good bit.

Q Let's take that one at a time. When you were a sales rep between 2002 and 2006, did you report to an office daily or did you work out of your home?

A No, I worked out of my home.

Q On the farm, correct?

A No. This was not on the farm at this time. I had --

Q No more farm?

A No more farm. I still visit my parents there a good bit, but no, I did not live on a farm at that

(Gilbreath - As on Cross)

Q And then you have Risperdal, which is also both indicated for and was used significantly in the elderly, correct?

A Yes, there was some use there, at physician discretion.

Q Nothing to do with physician discretion, sir, was it used significantly in the elderly population, yes or no?

A I can't say to what extent it was used. I know it was used in adults and that included adults from 18 all the way through 80s, 90s, whatever they would be.

Q You went to doctors who treat geriatric patients, their practices specialized in geriatrics, correct?

A Some of them, not all of them.

Q Not all of them but some of them?

A Yes.

Q And you would go to visit those doctors who were geriatric doctors, correct?

A Yes.

Q For Risperdal?

A Yes.

Q For Risperdal. And it was on-label there,

(Gilbreath - As on Cross)

time.

Q Okay, but you were working out of your home. It's like you get up in the morning, you go out and you go see doctors, correct?

A Yes. Generally, we would see physicians on a daily basis unless we had another engagement, a company meeting or an internal meeting.

Q In fact, you were well familiar with the term targeting doctors, correct, you knew that term?

A There was a physician list, people that we would see on a routine basis.

Q That's not my question. My question is you were familiar with the term used at the Janssen Pharmaceutical company called targeting doctors, correct? You knew that term, it's not something you heard from me for the first time?

A I heard it before, but not everyone used that term. We used physician list, prescriber list, things like that.

Q My question is, you were well familiar with the term targeting physicians, can you agree with me?

MR. MURPHY: Objection, Your Honor, asked and answered.

(Gilbreath - As on Cross)

THE COURT: Overruled.

Q You were well familiar with the concept and term targeting doctors, that's my only question?

A I know what you mean by it, but it's not vernacular we used all the time.

Q It's not vernacular you used all the time, it was vernacular you used some of the time, correct?

A I know what the term means, yes, but I did not refer to it. I referred to it as a prescriber list or a physician list.

Q Now, you then became a district manager. You got a promotion in 2006, correct?

A I did move into a district manager role in 2006.

Q And when you were a sales rep you were a sales rep in the Birmingham, Alabama area, correct?

A That is correct.

Q And your home was in or around Birmingham; is that correct?

A Yes, I lived in or around Birmingham for seven years, I suppose, '99 to the end of 2005, early 2006.

Q And then you were a district manager in Tennessee and Mississippi. So did you move away?

(Gilbreath - As on Cross)

providers, Medicare carriers, if you will. Like Medicare is administered through Medicare administration carriers, so both the medical benefit through Medicare as well as the pharmacy benefit through Medicare. I work with them as well as state medicare agencies and some of the commercial insurance carriers that folks may have through their employers, something like that.

Q I see. And I see here -- I happen to pull up your LinkedIn, page. I figured you and I would be linked in today, so last night we might as well get LinkedIn. And I see here everything you say here is Johnson & Johnson.

A Okay.

Q It doesn't say a thing about Janssen. I just wondered about that. Are you working for Johnson & Johnson or Janssen?

A I work for a subsidiary of Johnson & Johnson, specifically Janssen. They are multiple subsidiaries.

Q Used interchangeably, Johnson & Johnson and Janssen, you see it?

A We primarily use the subsidiary. So my business card carried Janssen Pharmaceutica during

(Gilbreath - As on Cross)

A I did, I moved to Nashville. The Greater Nashville, Tennessee area is where I reside now.

Q On a farm?

A I have 11 acres, so it's on the outskirts but it is -- it's one where we are able to have cattle and, you know, some other livestock if needed.

Q Wow.

A We still maintain a presence with the farm. It's not everyday, but it is something our family has been very close to our whole life so I really enjoy that.

Q That's great. On a salesman. Wow. Okay. Then you became a business development manager from 2010 to 2011?

A Yes.

Q Covering Tennessee and Alabama. And now since 2011, you have made your way up the food chain, you are the strategic market director, correct?

A Yes, that's a role that I have held recently.

Q Yes, well, you have held it since 2011?

A Yes.

Q And you deal with key commercial customers, correct?

A Yes. I also have responsibility for Medicare

(Gilbreath - As on Cross)

the timeframe that we were speaking about.

Q How come on your LinkedIn everything is listed including back as being a sales representative -- and I have this on my Ipad but it's photo screened so I will mark it as an exhibit and we will print it momentarily, Exhibit No. 60.

How come you list yourself as being a senior sales representative from 1999 to 2006 --

THE COURT: Is this a profile?

MR. KLINE: Yes, his profile.

Q -- at Johnson & Johnson?

MR. MURPHY: Objection, Your Honor, irrelevant.

THE COURT: It's a little unorthodox evidentiary procedure, but we will permit P-60 being your presentation of this man's profile on LinkedIn.

(P-60 is marked for identification.)

Q I will walk up to you. Is this your profile on LinkedIn?

A It looks like it.

Q And just tell me why do you say you worked for Johnson & Johnson from 1999 to 2006 when you really worked for Janssen?

(Gilbreath - As on Cross)

MR. MURPHY: Objection, Your Honor.

THE COURT: Sustained.

Q Sir, you have been aware for a couple of weeks that I asked for you to testify in this case, correct?

A Yes, I became aware about two weeks ago, maybe three.

Q And you met with various people in preparation for your testimony, correct?

A Yes. I met with a couple of folks representing our organization, yes.

Q Yes, lawyers, to be specific?

A Yes. Not all of them but some of them.

Q How many lawyers have you met with all told?

A Three.

Q Before testifying. Three?

A Yes, I think primarily. I have been introduced to others but I met three.

Q How many other lawyers were you introduced to?

MR. MURPHY: Objection, Your Honor.

THE COURT: Overruled.

A Maybe two additional.

Q So five lawyers you have met, company lawyers, correct?

(Gilbreath - As on Cross)

customer, you go back and you review their prior history to the extent you can find it, right?

A If it's available. It's not always available.

Q There are computer records in the company and you would be able to look at the prior notes, of course?

A Not necessarily. It depends on if a physician is actually in the database, if you will. Not all of them are in there and sometimes you have to actually go through a process to have them added to make sure they are a licensed provider in that state and things like that.

Q But if there are prior call notes, sir, if there are prior call notes, they are accessible, correct?

A Once the profile is in the system the prior call notes might be available, but not before then.

Q And you were aware that there were prior call notes for Dr. Mathisen prior to your seeing this customer, correct?

A Actually, I don't recall. I don't recall them being available because he was not in the database until he requested to see me. And then when I did see him, that's when I requested to have him added

(Gilbreath - As on Cross)

A Yes.

Q Okay. And you sat down and went over what testimony you would be expected to be giving here?

MR. MURPHY: Objection, Your Honor, it's whole totally inappropriate.

THE COURT: Overruled as to that question, yes.

A Yes, we did review -- I gave a deposition about this time last year regarding this case, and so we did review that, the questions that were asked at that time, and also, what might be spoken about and discussed in the courtroom today.

Q Okay, and by the way, sir, did you review your call notes? I just want to try to know what you are familiar with. Did you review your call notes?

A Yes, I saw those in the deposition. I don't think that I have reviewed them this year, but I do recall seeing them when we were preparing for the deposition.

Q And by the way -- I am sorry, did I cut you off?

A No. I saw them during the deposition process.

Q And by the way, when you first call on a new customer, in this case Dr. Mathisen, but on any

(Gilbreath - As on Cross)

based on his feedback.

Q You are well aware of the fact that there were call notes back in 1997- 1998 of this doctor by a prior salesman, correct?

A I have not seen those notes, but I am aware that another person visited him.

Q I am going to show them to you and see if it refreshes your recollection?

A Sure.

Q Okay, now, let's talk about some other things -- oh, by the way, did you -- I am going to use the term because the jury may hear it, "detailing". When you say you "detail" someone, that means you give them information about a drug and you answer questions, correct?

A Yes. When -- detailing is referring to the exchange of information with the physician maybe regarding efficacy information, how well a product works, safety information, things to be aware of when prescribing, as well as clinical studies and how to dose it. So that would be really what I would describe as detailing.

Q And did you ever detail Dr. Mathisen on any Alzheimer's patients?

(Gilbreath - As on Cross)

A I did not.

Q And Risperdal, sir, was Risperdal approved for use in elderly, use in dementia?

A No, it was not in dementia. It was approved for use in schizophrenia in elderly but not for dementia.

Q So as to going to see doctors about Risperdal use in dementia, for Alzheimer's, that was off-label, correct?

A Yes. The label supported the use of Risperdal in schizophrenia at the time in adult patients.

Q You would go to see doctors who were using the drugs for dementia, correct?

A I didn't know if they were using the drug for dementia, we discussed their use of Risperdal in adults with schizophrenia, because young patients with severe mental illness, they obviously grow old as well and need treatment.

Q Let's get something out on the table, sir. You are not allowed to promote a drug off-label when it's not an approved indication in the label, correct?

A Correct. When we discuss the use of our medication --

(Gilbreath - As on Cross)

A We actually asked the physician if they treated patients or had appropriate patients, adults with schizophrenia for discussion of our medication, and if the answer is yes, then we would move forward. We didn't ask them to quantify if it was a hundred or 50 or 30 or whatever it was, but we would ask them the question, Do you treat adult patients with schizophrenia. If the answer was yes, then we would discuss it with them.

Q Yeah, and the really important question, sir, is whether they are treating all, or nearly all, children, not whether they are treating one adult, correct?

MR. MURPHY: Objection, Your Honor, argumentative.

THE COURT: Overruled.

Q Correct, sir?

A No. In fact, we had multiple physicians that we would see sometimes that treated all ages. There were general psychiatrists, general neurologists, who treated patients of all ages, as well as children and adolescent psychiatrists who treated -- they treated a lot of children, sure, like Dr. Mathisen, but they also had adults.

(Gilbreath - As on Cross)

Q That's all I need to know right now. Is that yes?

A Yes, if it's in the label it's appropriate for us to discuss it. If it's not in the label, we do not discuss it.

Q It's not discussed?

A Correct.

Q Right, so if you go to a doctor's office you only need to ask them one question, which is, as to Risperdal with children, are you using this drug in children? Correct?

A No, actually, my question would be, are you using this product in adults, or do you treat adult patients with schizophrenia? That's actually the question.

Q And if you got the answer, yes, I treat one patient, then it's okay to get in there, right, with a wink, correct sir?

MR. MURPHY: Objection, Your Honor.

THE COURT: Sustained.

Q Then you can get in there, correct, sir?

MR. MURPHY: Objection, Your Honor, he asked the question again.

THE COURT: Overruled.

(Gilbreath - As on Cross)

Q Do you remember the question?

A Yes.

Q Sir, you kept no records with Dr. Mathisen as to whether you ever asked him the question about whether he treated adults, correct?

A We actually ask every physician the question if he treats adults.

Q You have no record is my question, sir, you have no record that shows that you ever asked that question, correct?

A Not to my knowledge.

Q You have no box checked anywhere that says, Asked and established the doctor is treating adult patients. Correct?

A Because it was implied. We asked --

Q I asked you if this is a correct statement?

MR. MURPHY: Objection, Your Honor, he should let the witness answer the question.

THE COURT: May I hear the question again, Judy?

(The pending question is read by the court reporter.)

THE COURT: I am going to sustain that question. You need to tell us what that is

(Gilbreath - As on Cross)

about.

MR. KLINE: I will get there with the documents.

Q Sir, what did you review prior to coming in the courtroom, I would like to know? Your call notes, I am sure.

MR. MURPHY: Objection, Your Honor, that calls for privileged information.

MR. KLINE: Not the documents he reviewed, Your Honor, I don't want to know his discussions with the lawyers.

THE COURT: You may ask him specifically documents that you know exist and ask if they have been reviewed.

MR. KLINE: I would like to know --

THE COURT: No, sustained.

Q Did you review the call notes?

A I reviewed call notes as part of the deposition. I don't recall reviewing them over the past couple of weeks.

Q Now, let's talk about Dr. Mathisen.

A Sure.

Q Have you reviewed his testimony from the trial the other day?

(Gilbreath - As on Cross)

for any use, correct?

A Correct, but it was approved for use in adults and he stated that he had adults, like many other physicians with a children and adolescent psychiatry specialty.

Q Do you remember the question, sir?

A Yes.

Q What was the question?

A You asked me if he actually was a child neurologist, and -- actually, I don't know if I do know the question verbatim, I apologize.

Q The question was a simple one. Do you have any knowledge that he was anything other than a child neurologist, yes or no?

A No, I do not have any evidence that he was anything other than a child neurologist. But other physicians did, so I was thinking the possibility would exist.

Q The question wasn't to other physicians, sir, my question was to him, and whether he was a child neurologist.

And you knew, sir, at the time that it was illegal to promote a drug to a child neurologist that wasn't indicated in the label, correct, you

(Gilbreath - As on Cross)

A Actually, I have not.

Q Do you remember Dr. Mathisen?

A I do remember Dr. Mathisen.

Q And do you remember visiting him in his office?

A Yes, I remember visiting with him.

Q Do you remember his specialty?

A Yes. He was child neurology, as I understand, as a primary specialty, but I am not sure of his secondary specialties.

Q Did he have a secondary specialty?

A I don't recall at the moment.

Q If I told you, sir, that he came in here and he told us that he was a child neurologist, that was his job, would you have any evidence to dispute that?

A No.

Q So you were going to see a child neurologist. Do you count 20 times or 21 times?

A I think it was 21 times, over a period of a couple of years.

Q Twenty-one times you went to see a child neurologist. During that entire period of time, sir, the drug was not approved for use in children

(Gilbreath - As on Cross)

knew that much?

A That's exactly why I didn't promote --

Q I didn't ask you that, I only asked you if you knew that fact, sir, yes or no?

A Yes. I would not have promoted, because from day one we only promoted from inside the FDA label.

Q We are going to see that you dropped off sample packets, correct?

A Yes, at his request, like every other physician.

Q Not like any other physician, sir, not at his request. Did you or did you not, that's my only question, did you or did you not drop off samples, yes or no?

A Yes, but it was at his request.

Q Well, did you tell him, sir, I can't drop you off children samples, that would be promoting?

A No, I could not describe where they can or cannot use their samples. Once it's in their custody it's their discretion where they use them.

Q Let me understand, sir, we are going to get into this. You got a lot of understanding about a lot of this from your training at Janssen, correct?

A Yes.

(Gilbreath - As on Cross)

Q They told you what you could and couldn't do, correct?

A Yes.

Q You didn't make these decisions on your own, correct?

A No, we did not.

Q So when you had this idea that if a doctor who was a child neurologist asked you for samples, that that was okay, according to what you knew, correct? That was okay?

A It was only okay if I asked him if he saw adult patients. If the answer was yes, then I could discuss it and provide samples. If the answer was no, then I would discontinue discussions.

Q Let me try this one on you, sir. Someone says, Hey, can I have some samples? You know he is a child neurologist. Are you with me so far?

A Yes.

Q And you say, Doctor, do you treat adults? And he says, Oh, yeah, I treated an adult or two. Is it okay to give him samples now, yes or no?

MR. MURPHY: Objection, Your Honor.

THE COURT: Overruled.

A It would really depend on the number of

(Gilbreath - As on Cross)

kinds of adult patients with special needs and special considerations, so the .25 was a starter dose, as well as the .5 and even 1 milligram.

Q .25 was the starter dose for children, correct, sir? And you know it.

MR. MURPHY: Objection, Your Honor, argumentative.

THE COURT: I don't know whether he knows it or not. Overruled.

A I do not actually know that to be a starter dose for children because the label supported adults, and I do know it was an appropriate starter dose for adults with considerations.

Q You knew that that was the most commonly used starter dose for children, correct, sir?

A I did not know that to be true because we did not discuss children nor have we been trained on children because it was not on the label at the time.

Q You are in a child neurologist office and you weren't trained at all on the use of the drug in children? Is that your testimony?

A Yes, it is my testimony. We were not trained on the use of Risperdal in children because we were

(Gilbreath - As on Cross)

patients and samples and things like that he requested. So if he had one or two patients I would probably quantify that a little more. So are you considering starting Risperdal for this patient or two, and then I would leave an appropriate amount of samples, which would be the case then.

Q And, sir, would it be okay, would it be legal to drop off, and as you understood it back then, to drop off children's dosing of the medication? Would that be okay?

MR. MURPHY: Objection, Your Honor, lack of foundation.

THE COURT: Overruled.

MR. KLINE: I am going to show .25 milligrams.

THE COURT: Overruled. You can proceed with the question and the answer.

Q Would it be okay to drop off children's doses of the drugs, yes or no?

A We actually did not have children doses of the drug at that time.

Q Sir, what's .25 milligrams of that drug?

A It's a starter dose. Kind of terminology at the time was start low and go slow. We had all

(Gilbreath - As on Cross)

trained on the use of Risperdal in adults.

Q Let me ask you a question.

A Yes.

Q Looking back at this today, and we have a long way to go on your testimony?

A Sure.

Q Just looking back on this today, looking back on it today, it was wrong to be in that child neurologist's office whose practice was almost exclusively for children. Can you agree with me?

A Absolutely not. I would repeat the --

Q You would do the same thing again?

A I would, because he told me he had adult patients with schizophrenia that he managed, many of them he began treating as they were children and adolescents, but as they aged into adulthood he would continue to manage them. So that was the basis.

Q I just want to get it down right. You would do it again, right, same thing?

A Yes, I have no regrets about seeing Dr. Mathisen.

Q How many --

MR. MURPHY: Objection. Let him answer

(Gilbreath - As on Cross)

the question.

THE COURT: I thought we had the answer to the question. Do you have another question?

MR. KLINE: I do.

Q How many adult schizophrenia patients did Dr. Mathisen have, sir, tell me?

A He never described the actual number to me, but no one that we saw ever actually described the actual number because I don't know if they actually knew.

Q A doctor knows how many patients he has, doesn't he?

A No, not all the time.

Q All you got to do is say what percentage of your practice is adults and what percentage is children, correct?

A They can take an estimate, I presume. They may not have the actual number.

Q Do you have any estimates written down for Dr. Mathisen?

A I do not.

Q Do you know what he told this jury?

A I do not.

(Gilbreath - As on Cross)

Q Did you count them up?

A I did not.

Q Would 103 sound about right in the math? 103 samples that you dropped off to him, sir, does that sound right?

A Yes, but that's actually a small number compared to --

Q What you have done with others?

A Yes, because it was their request. If we had the samples we would make them available to start patients that they deemed appropriate.

Q Right, because every sample that you give out, sir, is a potential for a new customer, correct?

A That's at the physician's discretion.

Q That's the idea, though, of the pharmaceutical company and the representative. Every sample could be a new customer, correct?

A The idea of samples was to provide for patients starting therapy, but it's up to them how they used them. They may have used it in patients that needed medication until they got it filled at the pharmacy or something, I don't know, but primarily it was used to start patients.

MR. KLINE: It's a good time for a

(Gilbreath - As on Cross)

Q He told this juror it was exclusively children except when they crossed over to adulthood.

MS. SULLIVAN: Objection, Your Honor, that's not the testimony.

THE COURT: Overruled. The question is just the question. I don't know whether he knows the answer or not.

MR. KLINE: I will ask it in the form of a question.

Q Did you know, sir, that he was treating children at the time, nearly exclusively? Did you know that?

A I did not know nearly exclusively. He told me he had some he managed into adulthood, and therefore, treated patients above 18 with schizophrenia.

Q If you knew, sir, that he was nearly exclusively treating children, would it have been proper for you to be dropping off large numbers of samples to him? Yes or no?

A Describe large numbers of samples.

Q How many sample packs did you drop off in those two years, sir, do you know?

A I would have to look at the records.

(Gilbreath - As on Cross)

break.

THE COURT: We are going to take a break here, ladies and gentlemen. For about ten minutes. Please do not discuss this matter with each other or anyone at this time, keep an open mind, and we will be back in a few minutes.

(A brief recess is taken.)

(The jury enters the courtroom at 11:03 a.m., and the following transpired in open court:)

THE COURT: You may be seated everyone.

BY MR. KLINE:

Q Sir, you said before the break that .25 was an adult dose. Do you remember saying that?

A Yes.

Q Now, sir, I want to see if this might refresh your recollection. I would like to show P-9, display page, previously marked and admitted and has been previously displayed, a different portion of it, I would like to look at Bates JJRP 00838263.

As you know, the drug was approved in 2006 for autism, correct?

A Yes.

(Gilbreath - As on Cross)

Q And there is dosing information. I want to look at the dosing information for adult schizophrenia, sir.

A So the label says as to adult schizophrenia, says right here, "Risperdal is generally administered". Do you see "generally administered"?

A Yes.

Q "At 1 milligram BID," and BID is twice a day, correct?

A Yes.

Q And then highlight the word "Initially." Do you see that?

A I do.

Q The initial dose for adult schizophrenics, sir, is, Adult, 1 milligram initially. Not .25. .25 is a quarter of the dose, correct, sir?

A Yes.

Q So .25 wasn't an adult dose, was it?

A Actually, it was. There were, you know, it says generally. And there were situations where someone might have a renal or hepatic impairment, something that might require a lower dose.

Q Sir, the general adult dose as stated in the

(Gilbreath - As on Cross)

can you first show that it's Pediatric Use.

Pediatric Use, and what does it say?

"Drug should be initiated at .25." Correct?

A Yes, that's what it states.

Q So when you told the jury before our break, sir, that when you were dropping off .25s, that was the starting dose for adults, that's not correct.

Can we agree?

A It was one of the starting doses for adults. They could use that at their discretion in patients who might need a lower dose.

Q The prescribing information, sir, in the label says that 1 to 2 milligrams, depending on if it's schizophrenia or bipolar, is the usual starting dose. Can we agree?

A Yes, generally.

Q And .25 is the usual starting dose for children, correct?

A With the label in 2006, I think that's what it was referred to. I don't know if it referred to that prior to 2006.

Q So, sir, if we see you dropping off

.25 milligrams, a person could conclude that that was intended for children when handed off from your

(Gilbreath - As on Cross)

label is 1 milligram. Not a quarter of a milligram. Correct, sir? The general dose?

A Yes. That's what it states.

Q Not for the off, odd person who has a renal problem or something like that.

A By the way, if you go to bipolar mania -- that's for schizophrenia. Bipolar mania adults, where did they start that, sir? You should know this from your days selling the drug. Where did they start that as a dosage?

A I don't recall exactly, but it was generally 1 milligram as well, I believe.

Q Yeah, well, let's look.

A Bipolar: Bipolar adults was 2 to 3 milligrams. Do you see that?

A Yes, I do.

Q Starting. Meaning that's what you generally start a patient with that on. Correct?

A Yes.

Q So, sir, if you are in an office and you are dropping off quarter doses, .25 milligrams, let's see if that corresponds to what eventually got in the label.

Can we see the Pediatric section, and

(Gilbreath - As on Cross)

hands to a pediatric child neurologist. Correct?

MR. MURPHY: Objection. Argumentative, Your Honor.

THE COURT: Overruled.

Q Correct, sir?

A No, actually, that's what the physician requested, like many others, because beyond the starting dose they would also use the lower doses in titration, sometimes.

Q You don't remember that happening, you don't remember any conversation like that, do you?

A No, I don't specifically with Dr. Mathisen, no.

Q The fact of the matter is that you knew that a child neurologist was asking you for child doses, correct?

A Dr. Mathisen asked for all doses, and I think we provided multiple strengths, as well as other physicians, too.

Q The tablets, when the tablets are started with children you know that they move up in doses, correct?

A I don't always know that. That's the physician's response.

(Gilbreath - As on Cross)

Q You know as a general fact, having detailed the drug for how many years?

A Six or seven.

Q For six years. You know that generally speaking, they start out at a lower dose, .25, and generally speaking, children then move up, correct?

MR. MURPHY: Objection to form.

THE COURT: Overruled.

Q Correct?

A I don't actually know what they move to on the dose. It really is the physician discretion. They will oftentimes start low and go slow on titration. So we don't have information on what exactly that looks like because we are not privy to that.

Q In six years you didn't have any conversation with any doctor as to whether they started low and then went higher? Yes or no, sir?

A Yes, it was common. They would start lower and go higher.

Q That's my question.

A Yes.

Q Now, how did you get involved with Dr. Mathisen? How did you learn that he was acceptable to a sales call from you?

(Gilbreath - As on Cross)

Q You literally had to walk over toys and small people furniture to get in to see him, correct?

A Actually, that's not correct. I don't recall walking over toys or small people to see him.

Q I didn't ask you -- let me ask you this: Did you see toys?

A I don't recall seeing toys. It's possible they were there but I don't recall seeing them.

Q Do you recall seeing small people furniture?

A I do not.

Q Is there any doubt in your mind that you were in a children's office, sir?

A No, I knew he treated children, but once again, I also asked him if he had adults. He said yes, I manage them into adulthood, I would like to discuss Risperdal with you.

Q Yes, you knew that the adult patients he had were the ones he happen to carry over into adulthood, correct?

A I don't know that specifically to be true.

Q That's what you just said.

A He told me he managed children and then he did not dismiss them when they turned 18, and then I don't know at what point he would initiate

(Gilbreath - As on Cross)

A Actually, I responded to the request from another colleague that worked for another operating company, a sister company of ours that was in there and stating that he had requested to see a Risperdal representative, and he actually was on the same campus as some other physicians that I saw, so I went, investigated subsequent to that request.

Q You investigated, you meant you found out if that was true, if this was a potential customer, correct?

A Yes, I found out if it would be appropriate to meet his request. He requested discussion and samples, and I wanted to make sure that it was appropriate to see him and provide samples.

Q Did you look him up?

A I don't know what you mean by look him up.

Q On the Internet, did you look him up and see what kind of doctor he was?

A No, he was in the building that I was already in so I just went by.

Q You knew he was a child neurologist, correct?

A Yes, I am sure there was --

Q You were in his office 21 times, correct?

A Yes.

(Gilbreath - As on Cross)

Risperdal. It might have been before, it might have been after.

Q Do you think, sir, that he was telling you that he treated all of these children and then, oh, when they turn 18 he decided he was going to put them on Risperdal, is that what you thought?

A No, I would not have thought that.

Q You would have thought he was a child neurologist giving Risperdal to children. Can we admit that?

A No, I did not presume that he was a child neurologist giving Risperdal to children.

Q Would you admit to me, sir, that you knew that a man who substantially treated children, he told you that was his practice, that was on his door, that was what was evidenced in his waiting room, are you telling me that you believe he was not giving this Risperdal to children? Is that your testimony?

A Well, my testimony is I did not know specifically if he was providing Risperdal to certain children patients. I do know it was widely known in the community at the time that it was being studied, I know that Risperdal was being used in children, but bear in mind, we were under strict

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(Gilbreath - As on Cross)

guidance not to promote outside the FDA-approved label and that's why I had the discussion that I did.

Q You were under strict guidance because it was illegal to do it, correct?

A It was against company policy, for sure. I don't know the legality of that.

Q You were told that it was illegal?

A I was told that we were restricted to speaking with inside the scope of the label.

Q And sir, did you have an idea that so long as you didn't find out, that that would be okay?

MR. MURPHY: Objection, Your Honor.

THE COURT: Sustained.

MR. KLINE: I will take the question back, I will go back, I will start again.

Q Sir, when you gave samples to this doctor, who was a child neurologist, you had a very good idea that these pills and these liquid formulations were going to end up in the bodies of children, correct?

MR. MURPHY: Objection, asked and answered.

THE COURT: That's sustained.

Q All right, now, you see the patient --

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(Gilbreath - As on Cross)

MR. KLINE: Oh, let's quickly mark my adult thing as P-61. We are going to mark the LinkedIn page as -- we already marked it?

P-61 is the dosing, child versus adult dosing.

(P-61 is marked for identification.)

Q Now, we were talking, you and I, we're having a discussion.

A Okay.

Q About the dosing or -- how you found out. So who was the colleague who told you that Dr. Mathisen might be amenable to a visit?

A You know, I don't recall the exact colleague. It was either one of our consumer folks like, you know, Tylenol and Motrin and things like that, or one of the others in, like, McNeil pediatrics.

Q And so how did you contact Dr. Mathisen?

A I just dropped by the office.

Q Just stopped by?

A Yes. I was in that building and campus for other purposes.

Q Cold call?

A Yes, I went in as requested, they said he would like to see a Risperdal representative, so I

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(Gilbreath - As on Cross)

was in the building, I went by to inquire.

Q Okay, now, Dr. Mathisen had a -- I am going to the 1997 stuff -- Dr. Mathisen had a history of prescribing the drug, correct?

A I don't know that at the time. I would not have known that at the time.

Q Well, are you sure you wouldn't have known it at the time?

A I did not know that.

Q There were call notes, sir. Let me see if it refreshes your recollection.

A Sure.

MR. KLINE: I am marking what was marked as a whole packet of call notes, all the call notes to Dr. Mathisen, as Exhibit P-62. And there are Bates numbers within them.

(P-62 is marked for identification.)

MR. MURPHY: Your Honor, I have an objection at this point. We have a stipulation regarding what call notes were appropriate as to the time period.

THE COURT: I don't know, let me see what the stipulation is. Is there a

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(Gilbreath - As on Cross)

stipulation here?

MR. KLINE: No, there was a discovery stipulation as to what documents needed or not needed to be produced. The 1997 ones were produced and I want to ask him whether he had knowledge of all of this prior detailing of this doctor and refresh his recollection as to what he knows or what he doesn't know.

THE COURT: About this doctor?

MR. KLINE: Yeah, they are documents they produced.

THE COURT: I don't understand what the objection is about.

MR. MURPHY: The agreement between counsel, myself and Mr. Gomez is --

THE COURT: You know what, let me see these documents before we get into some kind of an agreement that I know nothing about in front of this jury. Let me see these documents.

Is there a specific one that you want to show?

MR. KLINE: I will tell you what I want to do, Your Honor, there were 98 samples

(Gilbreath - As on Cross)

before --

THE COURT: No, no. You know what, we are going to take a recess right here.

MR. KLINE: You know what, instead of a recess --

THE COURT: Why don't you go to something else.

MR. KLINE: That will be much better.

THE COURT: Rather than waste the time.

MR. KLINE: Okay.

BY MR. KLINE:

Q Okay, now, we will put the 1997-1998 ones aside and --

MR. KLINE: We did mark, Your Honor, as P-62 all the call notes which were produced which include 1997 as well as through 2006?

THE COURT: I understand that, but again --

MR. KLINE: I am only going to refer now to 2002.

THE COURT: What I am going to ask you to do to help the Court is when you have a specific document that we marked in some kind of notation as part of P-62, so P-62(A) or (B)

(Gilbreath - As on Cross)

document and see what these are all about. I don't think any of us really know what a call note is.

MR. KLINE: I think if I am hand him a packet he will be familiar with them, Your Honor.

THE COURT: Give him one document to refresh his memory about what these things are.

MR. KLINE: I will start while Mr. Gomez does that.

Q What's a call note, sir?

A A call note is a record of a discussion or visit with a physician.

Q You are required to do one every time that you visit a physician?

A Yes. If we have an in-person interaction with a physician, we usually record that in the form of a call note.

Q And is that done on a computer screen?

A Yes, generally.

Q And that information is in the computer, correct?

A Yes.

(Gilbreath - As on Cross)

or whatever you want to do, so that these individual documents are reflected in the record and understood by us as to what it's about.

MR. KLINE: Will do. I will give them A, B, C numbers and --

THE COURT: If it's something about 1997, we will examine that when we have a chance.

MR. MURPHY: That is a violation of the rule on the in limine motion regarding call notes. We will take it up later.

THE COURT: Are you saying you object to any use of call notes?

MR. MURPHY: No.

THE COURT: Do you concede as to what is admissible under any previous rulings by this Court?

MR. KLINE: Yes, Your Honor, I am going to focus on 2002 through 2004 with this man.

BY MR. KLINE:

Q I am first of all looking at the call note -- and let's get a packet up in front of him if we can.

THE COURT: Why don't we just take one

(Gilbreath - As on Cross)

Q And you could go to the computer and punch up your call notes, correct?

A Yes.

Q You could also punch up call notes by physicians who were detailed previously, correct?

A If it was someone that we had overlap with.

Q Not only overlap, sir, you could go to Dr. Mathisen and look in his call notes and see what was entered by prior individuals who saw him, correct?

A Only after I got him "into the system." So the initial visit -- so we had a list that was generated, if you will, and then if someone like Dr. Mathisen, or another example would be if a resident came out of residency and went into practice, then we would add them. They would not be there. or if it's someone like, in this case Dr. Mathisen who was not in my existing system, we would have to add them, and then the records would follow at a later time.

Q Let me try to ask it simply, sir.

A Sure.

Q Ginger took over from you, correct?

A Yes, that's my understanding.

Q What's Ginger's last name?

(Gilbreath - As on Cross)

A Ginger Owens.

Q And all she would need to do to know how you were detailing Dr. Mathisen was punch up Jan Mathisen, and what you entered in the Janssen computer would come up as to his prior history, correct?

A You know, I don't know that to be true. It's possible, it's certainly possible, but I don't know that to be true. It really depended on what was made available through the system at that time. So I don't know what information about Dr. Mathisen was available.

Q What's your title again?

A My title?

Q Yeah, at Johnson and Johnson.

A Currently?

Q Yeah.

A Strategic marketing director.

Q As the strategic marketing director you can't tell this jury, as somebody who has been with this company since 1996, you can't tell this jury whether the call notes which are entered in the computer can be pulled up by the next individual who comes along? Is that what you are telling us, you can't tell us?

(Gilbreath - As on Cross)

Q And you can put in there, there is room in the call note we are going to see, for information that you want to put in there, correct?

A Yes. I believe there is a space where you can type something extra if needed.

Q You can type something called "details", correct?

A Yes, I think that's probably correct.

Q Okay, and let's take a look at the one I am ready to display -- I will give it a number.

MR. MURPHY: May I have it.

THE COURT: We will get there, Mr. Murphy and Mr. Kline. P-62-something. Let Ms. Sullivan and Ms. Brown look at it, and then if there is no objection we will show it on the screen. If there is an objection, I will rule on it.

MR. KLINE: I have marked the packet of call notes as P-62. I am marking as 62(A) the call note from May 30, 2002.

(P-62(A) is marked for identification.)

THE COURT: Do you have a copy of that, counsel?

MR. KLINE: I am sorry, he was there

(Gilbreath - As on Cross)

A I cannot tell you that it was available immediately. At some point, after you got them, it was a process we called them certified or verified. If there wasn't a clear record we had to make sure internally that they were a licensed provider in the state where they were practicing, and then at that point they were, I think it was called certified or something in our system, and then the information would follow.

Q Sir, I don't want to belabor this, but a long-time prescriber has a history of call notes that are punched into the computer sequentially by the sales reps who come along. Can we agree on that?

A Yes. I am sure there is a record. I am just telling you it's not immediately available to us in terms of who was there previously.

Q So you go to see Dr. Mathisen on 5-30-02, correct?

A Yes.

Q You have gone over these call notes, and a call note details the information about the visit, correct?

A Generally, yes.

(Gilbreath - As on Cross)

May the 3rd of 2002. I want to show him 5-30-02 as an exhibit.

THE COURT: Is it 5-3 or 5-30?

MR. KLINE: It's 5-3-02. This is Exhibit 62(A), it's on Bates numbers, Ken, 118.

THE COURT: At the top left, Mr. Murphy, if says 5/3/2002.

MR. MURPHY: I have it.

THE COURT: Is there any objection to showing this to the witness?

MR. MURPHY: There is none.

THE COURT: Let's get it on the screen and the witness can look at a hard copy or on the screen. Marianne, why don't you give him the hard copy so he has that himself.

Q Now this is a call note, correct?

A Yes, it looks like that.

Q The first question I would like to ask you, sir, is this -- when is this information entered? Is it entered after you get home from notes and then you enter it in the computer when you do your paperwork for the day?

A Generally, within 24 hours.

(Gilbreath - As on Cross)

Q But you don't enter this like on the spot?

A Some do. I wouldn't say it's routine, but some do.

Q I don't care about some. How about you?

A Sometimes it was entered on the spot. Other times it was entered later that night or at the convenient time.

Q When you entered it on the spot, did you do it on a computer, a laptop, an Ipad?

A I believe at this time it was probably on a laptop computer.

Q And by the way, sir, we are going to see a lot about samples. How did you get the samples? How did you get the samples?

A The samples were provided by our sample supplier, our home office sample supply department, if you will.

Q And were you responsible to keep track of the samples?

A Absolutely. We had to maintain custody of them, and if they were lost or damaged or stolen or anything like that, we would have to report that accordingly. So, yes, we had custody of those samples until they were requested by the physician

(Gilbreath - As on Cross)

and we provided them.

Q And when you kept track of them, would you eventually have a record separate from this call note where you would give the company back the disposition of the samples, that is to say, these went to Dr. Mathisen, these went to Dr. Kline, these went to Dr. Djerassi, these went to Dr. Murphy?

A There was a record in a call note like this. That would be the method.

Q Would there be a separate list that you would account for all of your samples, for example, before you got new samples?

A We would do annually like a sample audit to make sure our inventory was correct, and I don't think that would be specific to physician, though.

Q Okay, now, what I would like to do is, you are familiar with these call notes from 2002, correct?

A The one that we are looking at right now?

Q Well, generally you are. You met with the lawyers, you have gone over these call notes, correct?

MR. MURPHY: Objection, Your Honor.

THE COURT: Objection is overruled. Go ahead.

(Gilbreath - As on Cross)

A Actually, we did not review these in depth. I knew some call notes existed. I did not review this specific one.

Q Let's put this one out in front of you, and let's also put -- this is 62(A). I actually want to do 62(B), which is the call note from 8-8-02?

MR. MURPHY: Your Honor, for the record, 62(A) is not a call note of the witness.

THE COURT: It's already been admitted.

MR. MURPHY: Understood.

(P-62(B) is marked for identification.)

MR. KLINE: And 62(B) -- your Honor, do you want them or do you just want to follow these up there?

THE COURT: I need to hear there is no objection to the showing of --

MR. KLINE: 62(B) is the call note from 8-8-02.

MR. MURPHY: There is no objection.

THE COURT: 8-8 may be shown. This is 62(B).

Q I have (A) and (B) up. Let's start with (A). (A) is a call note, and a call note from a

(Gilbreath - As on Cross)

representative whose name is Scott Hansen, correct?

A Yes.

Q And I am going to do a chart as we go along. A call note shows whether there was a presentation, correct?

A Yes. Presentation really indicates that an in-person discussion took place.

Q Okay, and there is information as to whether samples were provided, correct?

A Yes. That would be presentation with sample.

Q And if samples are provided, the number of samples that are provided, correct?

A Yes, that is correct.

Q Now, as for 2002, 5-3-02, do you see that? Do you see that document, sir?

A Yes, I do, on the screen.

Q Okay, now, do you see, also, that samples were given of Risperdal?

A I do.

Q And how much samples were given? What does it say there?

A A quantity of ten of one strength, a quantity of ten of another strength.

Q Quantity of ten of one strength and ten of

(Gilbreath - As on Cross)

another strength?

A Yes.

Q So that's 20, correct?

A Yes.

Q And when you say ten of one strength and ten of another strength, ten of .5 milligrams, correct?

A Yes.

Q Ten of .5 milligrams, and it says there one by seven. What does one by seven mean? We can highlight that.

A Sure, one by seven means a blister pack of seven pills.

Q What pack?

A A blister pack.

Q One of those packs that you pop the pills out of?

A Yes. So that's what that suggests is a blister pack containing seven of those pills.

Q A starter pack?

A Yes.

Q And so here, Dr. Mathisen was given ten .5s, and ten .25 milligrams, or if we are going to do a little math, that would be -- when it's one times seven, the one means one pack times seven pills?

(Gilbreath - As on Cross)

A That's correct.

Q So he was given on this day -- and we are going to put an asterisk here, I am going to put it out in the column, this is Mr. Hansen. Do you know Mr. Hansen? What is his first name?

A I do know Mr. Hansen. His first name is Scott.

Q Mr. Scott Hansen. Does he still work for J&J?

A Yes, it's my understanding that he does.

Q And what was his title at the time, sir?

A I think he was CNS representative.

Q What does CNS stand for?

A Central nervous system.

Q Was he a specialist in pediatrics?

A No, he was not.

Q He was a specialist in adults, wasn't he?

A Yes. We all were.

Q None of you were pediatric salesmen, neither you nor Mr. Hansen, correct?

A No, that's correct.

Q So on 5-3-02, correct me if I am wrong, Mr. Hansen dropped off to this doctor 140 pills of Risperdal, 140 pills, correct?

A Yes, that seems to be indicated.

(Gilbreath - As on Cross)

Q To a child neurologist?

A Yes, who stated he also treated adults.

Q You don't know what he stated to Mr. Hansen, do you?

A I don't.

Q You weren't there?

A I know what he stated to me, though.

Q You don't know what he stated to Mr. Hansen at all. You don't even know if the question was asked, do you?

MR. MURPHY: Objection, asked and answered.

THE COURT: That's sustained.

Q That's Mr. Hansen. I thought you told us awhile ago that you learned from somebody else that Dr. Mathisen wanted to see a representative. Do you remember telling us that?

A I do, that's correct.

Q And that would have been sometime around the time that you visited him. Do you know when that conversation took place?

A I am thinking it was probably in the middle of 2002. I don't recall the exact date of that conversation.

(Gilbreath - As on Cross)

Q Well, by the middle of 2002, sir, Dr. Mathisen had been detailed and had been supplied literally 140 pills. Correct?

A It looks like that was left at this visit, yes.

Q Now, that takes us to -- and by the way, I am just going to keep a running tab of pills.

By the way, sir, did you have kind of limits on the amount of samples that you would be giving out, like maybe it was a general rule, maybe five packs, maybe three? Was there any rule, any limit?

A Not a specific limit, no. We would have guidance, I mean we got a finite supply, it wasn't unlimited. And certainly when physicians like Dr. Mathisen, they would oftentimes tell us that they wanted to maintain a certain number on hand, and whether their nurse was the one that managed that for them or a staff person, or they would ask us to check it sometimes, but that's why I think you will probably see the quantity of five or ten. It was multiples of five that we could leave, as I recall. So that would be the rationale.

Q There was another rationale, too, wasn't

(Gilbreath - As on Cross)

there, sir, which was the bigger the user the bigger the samples they might get?

A Not necessarily.

Q But not -- not necessarily. Not necessarily in my parts means maybe yes, maybe no. Does it mean the same in yours?

A Repeat that, please? I am sorry.

Q Now we go to 8-8-02. By the way, sir, if I may go back to -- if we can just look at the call note generally. The way a call note sets up, so we all are familiar with it, let's look at the left box and the middle box and the right box. So let's start with the left top box.

Left top box gives an indication, there is an event date, a promotional event ID -- what is that, sir?

A I don't recall what that means. There was a -- I really don't know.

Q There is plenty of room for comment, correct?

A Yes, there are boxes for comment.

Q And in a comment section, if one truly had said, had asked the question or had verified the doctor was treating mostly adults or partly adults or even some adults, you could put it in the

(Gilbreath - As on Cross)

A I did not quantify the number of adults, but the way I asked the question was do you have adults, patients over 18 with schizophrenia. If the answer was yes, we proceeded.

Q And you never asked the question, what percentage of your patients are adults, correct? You never asked that question?

A No.

Q Now let's go to the next section, I just want to establish what these sections are.

Here, you have got the name of the doctor, the city, the state, the zip code, the print name. The person ID, sir, what was the person ID? Dr. Mathisen looks like he has got a number, 1408197.

A I do not know what that number represents, actually.

Q And a DDD number. What is a DDD number, sir?

A The best of my recollection, it's like drug distribution data. I don't know what all that actually constitutes, though.

Q A legal entity ID, what is that?

A I don't know.

Q And physician seen, do you know what that box

(Gilbreath - As on Cross)

comments section, you could?

A We could, but we really -- at least let me speak for myself. I did not use the comment section for things that were really common and understood. I used the comment section for something that was out of the ordinary.

Q Sir, it was out of the ordinary to be in a children's neurologist office with an adult drug, wasn't it?

A No, actually, there were a number of child psychiatrists, there were a number of general psychiatrists and general neurologists who actually saw all ages.

Q Yeah, you went to see other child neurologists and other child psychologists in Birmingham and its environs as well, correct?

A Yes, because they also saw adults, just like Dr. Mathisen.

Q Right, one adult and you get in the door, correct?

MR. MURPHY: Objection, Your Honor. Argumentative.

THE COURT: Overruled.

Q One adult and you get in the door?

(Gilbreath - As on Cross)

is for? It's blank here.

A I do not.

Q Let's look at the next section. The next section of one of these documents is the name of the person, and you see it's Scott Hansen, 6043, Division JAN. Is that Janssen?

A Yes, I would assume so.

Q EMPL ID is employee ID, correct?

A I would think so, yes.

Q And the territory is J2400701. It's almost as long as one of our Bates numbers. Did you divide the country -- did Janssen divide the country by territories?

A Yes. With all our representatives we had certain geography that we had responsibility for. It was generally by zip code, and so those were certain zip codes that would have been included in the territory.

Q Help me on this, sir. How did Hansen have him in May and you had Dr. Mathisen as a customer in August?

A Well, responsibilities change from time to time and there are changes in territories and changes in geographies as well as responsibilities

(Gilbreath - As on Cross)

on certain products and settings. So I don't know exactly what the case was in the middle of 2002, it's been a little while, obviously, but those were frequently the case.

Q Let's look together at the next section just so we know what these are. There is Details, so there is Professional ID -- I assume that's a doctor number. Was that a Janssen number, his license number, what is it?

A You know, I don't know.

Q You filled out these forms for six years, sir?

A We did not fill out this portion.

Q Who filled out that portion?

A Once we submitted a physician's name and information to the visit with them and the verification, that's where the company had an internal process where they would actually take a look at the physician's information, there is a state database of license numbers, there is also -- there is ways that they can verify that the physician is valid and licensed to practice medicine.

Q Right, and using the drug. They verify that, too, you know that?

(Gilbreath - As on Cross)

Q And it says Sample Description Risperdal, .5, one times seven, and then sample number, and sample product C D. Is that sample product code?

A I don't know for certain, but that's a fair assumption, I think.

Q Do you know?

A I do not know.

Q This is a form that you used everyday for six years, sir, correct?

A I don't know if it was everyday, but yes, we used it.

Q And when you told me there were two different samples, the ten and ten, the ten is on a different place, I think it is.

Sample quantity is ten of each. I believe it's in front of the jury.

Now, where does it say whether a presentation was made or not?

A (No response.)

MR. KLINE: We can take that part down, please, and in fact, would you simply pull out the sample description in a full pullout? I just want to do a snapshot of it, real quickly.

(Gilbreath - As on Cross)

A I don't know that to be true.

Q You don't know that one way or the other?

A I don't, no.

Q Okay. We see here the next section as Details -- I am sorry, did we finish that, Details? Yes. And then underneath that it's Samples. I am looking for the portion, sir, here is Samples, and let's go across it. An it has the Professional ID again --

THE COURT: Excuse me. Can we have that zoomed in or something?

MR. KLINE: So everyone knows, the problem is you can only enlarge it so far.

THE COURT: Some members of the jury cannot see it, otherwise we would have to publish the document.

MR. KLINE: No, we will get it. When it stretches this way you can't get it bigger so we have to take a piece of it. So we will do exactly that.

Can that be seen now? Yes? No?

Q There is a portion of it that is specifically for samples, correct?

A Yes.

(Gilbreath - As on Cross)

I am doing a snapshot, what's the next exhibit number with a full number, please?

THE COURT: P-62(C)? Is that what you want?

MR. KLINE: 62(C). It's a call out of the May 3, 2002.

(P-62(C) is marked for identification.)

Q Now, let's move to 62(B), which is the 8-8-02 call out.

Sir, this format is somewhat different than the format we just saw, correct?

A Yes.

Q And why is that?

A We had different IT systems that supported, you know, the way we captured activity with physicians. So I am assuming that there was a change about this time is the reason.

Q And so we now need to look at this call note which is marked as 62(B). And 62(B) is your call note, correct?

A Yes.

Q 8-8-02?

A Yes.

Q This, sir, let's look at the left column --

(Gilbreath - As on Cross)

let's look at these boxes right across sequentially, bing, bing, bing. You type in Jan Mathisen, MD with his address, correct?

A I don't believe we type them in. We make the request and we select the physician from a menu, if you will. If they are not in there we would have to type it in.

Q That's what I was talking about earlier. It wouldn't be typed in because the guy is already in the system, correct?

A In this case I am not sure. I don't think he was in the system at the time, so I probably would have had to have searched and select.

Q Sir, you just told us just a second ago it would have been typed in for you. Which is it?

A If he was existing in the database, then we would select it. But if he was not, I would have had to type it in.

Q Sir, when you say if he was in the database, you are there 8-8, my word, three months earlier he had been given 140 pills. Of course, he is in the database, correct?

A Let me describe, there is --

Q Correct, sir? That's my question.

(Gilbreath - As on Cross)

MR. MURPHY: Objection, argumentative.

There is no foundation for that.

THE COURT: That's sustained as to the way it's phrased, "you should have."

Q That's information which you would have searched for to determine whether this doctor had been seen and detailed and had been given samples before you showed up in his office. Can we agree?

MR. MURPHY: Objection, no foundation.

THE COURT: Overruled.

A I had to request the information --

Q Can we agree, sir, to that proposition?

A Would you repeat it one more time, please?

Q Let's move on. 8-8-02, Presentation. Now, sir, if I look in here at the next column, briefly, the next column, that provides other information, correct?

A Yes.

Q What does that tell us, briefly?

A It tells us IMS number, professional ID, J&J ID.

Q Let's get the IMS number. Where does it say that?

A The first column to the right.

(Gilbreath - As on Cross)

MR. MURPHY: Objection, Your Honor.

THE COURT: Overruled. There is a question, was he in the database or not?

Q That's the question. Would a doctor who had just been detailed three months earlier, having been given 140 pills, been in the database, yes or no?

A He would not have been in my database. He would have been in the company's database.

Q And you worked for the company?

A I did, but I didn't have access to all of the records.

Q All you have to do is get the record of this particular doctor. You were a supervisor, correct?

A No, I was not at that time, no.

Q Are you telling us that when you went to see this doctor you didn't know that three months earlier he had been dropped off 140 pills, 20 packets?

A Yes, I did not know that.

Q You were just clueless to that, seriously?

A I did not know that information when I saw him.

Q You should have, correct? It should have been information that you knew, correct?

(Gilbreath - As on Cross)

Q Now the IMS number, tell the members of the jury what the IMS number is?

A To the best of my knowledge, the IMS is a separate company that they actually work with physicians and collect information and they in turn make that available to industry partners.

Q Industry partners. That would be pharmaceutical companies, so that they can track how much drugs the doctors are actually prescribing, correct?

A I don't know exactly what all they track, but I do know the prescription information is generally available. But the physician also has the option of blinding that information, so if they don't want to provide that they don't have to.

Q And in this case Dr. Mathisen provided it, correct?

A I do not know, actually.

Q I am going to show you to see if it refreshes your recollection.

A Sure.

Q Now, sir, who typed in IMS number, would that be you?

A I don't know. I normally did not have IMS

(Gilbreath - As on Cross)

numbers.

Q Do you know?

A I do not.

Q Let's look at the next column. Here you listed it as a professional call, and you say there is a presentation only. When there is a presentation I am going to put a check mark here, okay?

A Yes.

Q On my sheet. We see there is no presentation mentioned in this one, on 5-3-02.

Now, sir, on that day you made a professional call, on 8-8-02, and did a presentation only, correct?

A Yes.

Q You did not provide any samples, correct?

A I did not.

Q Well, he didn't need any samples, he had 20 packs already from May, correct?

A No, actually, as I recall, the reason I did not provide samples is because I had to verify that it was appropriate for me to provide samples, both with the question as well as making sure he was a licensed provider in the state in which he was

(Gilbreath - As on Cross)

Q Every time?

A Yes, before we provided samples.

Q And every time, would you take that same care to make sure absolutely and write it down that he wasn't treating almost all children? Would you take that care?

A No, I did not write down who all he was treating.

Q Did you ever, sir, in any of these 21 visits write down on anyone of these sales calls or anywhere else that you asked this doctor if he was treating adults? Did you ever write it down?

A No, because it was implied. We asked most every physician if they saw appropriate patients.

Q You did not write it down, correct?

A No, because it was standard practice.

Q You did not write it down, correct?

A No, I did not. It was standard practice.

Q Standard practice not to write down the most important question, as to whether what you are doing would be legal or illegal? Do I have that right, too?

MR. MURPHY: Objection, Your Honor, argumentative.

(Gilbreath - As on Cross)

practicing.

Q Sir, you keep saying that, I had to verify whether he was a licensed provider. That takes about a second to find out for a pharma rep if a doctor is licensed, doesn't it?

A True, but it's not my words. It's actually is it on record at the home office that this physician is appropriate, and it takes a little time.

Q Did you really think that was an issue here, that Dr. Mathisen was a licensed doctor? Can we get through that issue?

A It was.

Q Did you do it every time?

A Before we provided samples, absolutely.

Q So you would go back every time -- let me understand this. You would take the time to check whether the doctor still had his medical license every time you gave him samples; is that correct?

A We would absolutely look and see if they were still --

Q My question is, sir, every time that you saw a doctor, would you go back and check to see if he was still licensed, yes or no?

A I would check our system, yes.

(Gilbreath - As on Cross)

THE COURT: Sustained.

Q Now, you provided no samples on that day, but it does say you gave a presentation.

Now, Dr. Mathisen told us -- what was the presentation, sir?

A The presentation --

Q The man was a child neurologist, what did you have to say to him?

A It would have contained essential information, such as package insert, we would have used the package insert, the one that was approved at the time, we would have discussed that, the efficacy of how the product works, is it safe, and probably before any of that we would have asked -- I would have asked because I routinely asked, did he see adult patients.

Q And if he saw one he got the green light, correct?

MR. MURPHY: Objection, Your Honor, same basis.

THE COURT: Sustained. We have been over that, counsel.

MR. KLINE: I know, but I don't ask the same question, I just hear the same thing

(Gilbreath - As on Cross)

back.

THE COURT: It's the same point, though.

Q Now presentation, sir, you couldn't tell him anything about use in children, correct?

A Correct.

Q First of all, sitting here today, can you tell us what you said to him?

A Verbatim, no.

Q Do you have any notes as to what you said to him?

A No, but I do recollect what we said to virtually everyone at that time.

Q Were you allowed to talk to him about the use of it in children?

A No. And if it came up, if he brought it up to me, then there was a process that I would, you know, triage that and provide it to the appropriate parties so they can respond.

Q Why were you not, sir?

A Because it was not contained in the FDA label.

Q It was not something you could even mention, was it, children?

A No, we were not able to speak to children at

(Gilbreath - As on Cross)

A Yes, the label was adult schizophrenia.

Q How many schizophrenia patients did Dr. Mathisen have?

A I don't know. He never quantified that.

Q Did you ever ask him to quantify that?

A No, I didn't ask to quantify. I asked him, as I stated earlier, do you have patients.

Q My question is a different one. Did you ever ask him to quantify the number of adults he had with schizophrenia in his practice, yes or no?

MR. MURPHY: Objection, Your Honor, it's the third time he has asked the same question.

Q Yes or no?

THE COURT: You are directed to answer the question.

A Repeat the question one more time.

Q Did you ever ask Dr. Mathisen to quantify, that is to say, state the number of adult patients who have schizophrenia, which was the only use legal use for this drug? Did you ever ask him? I heard your explanation, sir, my question is yes or no?

A No. It was not routine that we asked the exact quantity.

(Gilbreath - As on Cross)

that time because the label supported use in adults, those 18 and above who had schizophrenia.

Q Right, and by the way, sir, do you have any documents -- it was only approved for adults and only approved for adults with schizophrenia, correct?

A Yes.

Q Do you have anything in any document of any kind that he actually treated not just adults, but an adult with schizophrenia? Do you have any evidence of that?

A No, but he said he did.

Q No, I am asking you do you have anything written down?

A No.

Q Do you have anything -- you couldn't detail him even as to adults that didn't have schizophrenia, correct?

A Correct. I --

Q The only thing that this drug was approved for, the only thing this drug was approved for when you were in a child neurologist's office 21 times, the only thing it was approved for was adults with schizophrenia, correct?

(Gilbreath - As on Cross)

Q Now, you gave him a presentation, so I assume, sir, the only presentation you could give him would be on adults who had schizophrenia, correct?

A Yes, that's correct.

Q So you would be -- let me get the picture. You would be -- you were in a child neurologist's office on August 8, 2002, talking to him about adult usage for schizophrenia, which was the only legal thing that you could talk to him about. Do I have it correct?

A Yes, that's correct, and it was at his request.

Q Now, let's go forward. I think we can do it much quicker. 9-9-02.

You are back. It's not even a month later and you are back, correct?

A Yes.

MR. KLINE: 62(D).

(P-62(D) is marked for identification.)

Q 62(D), let's get it right up. You saw him on 9-9-02?

A Yes.

Q And it says here you gave a presentation, correct?

(Gilbreath - As on Cross)

A Yes.

Q Is that really truthful, sir, that you gave a presentation again?

A Yes. The presentation would have indicated a discussion with Dr. Mathisen. Now exactly the verbiage on that discussion, I am not sure.

Q Okay, but again, the presentation could only legally have been about adult schizophrenics, correct?

A Yes, correct, it would be within the scope of the FDA-approved label.

Q It would go something like this: Hi, Dr. Mathisen, how are you, I am here today to see you, I know your practice is child neurologist, do you treat an adult patient, and by the way, let me talk to you now about adult schizophrenia.

Do I have it about right what you were saying?

A Yes. We described clinical studies supportive in the use of Risperdal in adults, we would describe the efficacy, how well the drug worked, safety to be aware of, and also dosing.

Q Tell me about all your schizophrenic adults you were treating, that would be your basic input

(Gilbreath - As on Cross)

Q Did you ever go to anyone at the company, Janssen, you have big resources at this company, don't you?

A We have resources, I don't know whether they would be considered big or enough.

Q You have heard big pharma, you heard that term, haven't you?

MR. MURPHY: Objection, Your Honor.

THE COURT: Sustained.

Q The fact of the matter is if you wanted to find out about a doctor's practice you had resources to find out, correct? You had people to say, Hey I want to find out about this doctor and who he really treats?

A Yes, and that's exactly what we did through the process.

Q Do you know if anybody gave you a report back to show you that 90-some percent of his patients were children?

A No --

Q Did you ever get that kind of report?

A We would not have that information available.

Q If you knew, sir, that 99 percent of his patients were children, would you still have gone in

(Gilbreath - As on Cross)

you would want back from him, correct?

A We didn't discuss specific patients that he was treating due to confidentiality and so forth, so we would talk about available data supported by the label.

Q Of course, that discussion would be about adult schizophrenics, correct?

A Yes.

Q Okay, and you gave him no pills at the time, none, correct?

A Yes, and I do recall that he was not verified in the system to provide samples. So I don't know if this was exactly the case but --

Q Tell me how you remember that. Is that why you didn't give him samples these two days, he wasn't verified in the system yet to get them?

A Perhaps, yes.

Q Okay. By the way, was there anybody back -- when you say "verify", did you have like an assistant or somebody working with you or people back in the home office back up here in Pennsylvania and New Jersey?

A Yeah, we had home office personnel. I did not have someone working with me personally.

(Gilbreath - As on Cross)

there and given him these samples, yes or no?

A If I knew that 99 percent --

Q 99 percent were children and 1 percent was adults, would you still have given him these samples, yes or no?

A If he requested them and he had appropriate patients, 99 percent of what? It could have been a big number, depending on how large his practice was.

Q So you would have done it?

A Depending on the context, yes.

Q Now, that's 9-9 and we don't know if he is in the system yet. Let's go to the next time you go to see him, 11-19. 62(E).

(P-62(E) is marked for identification.)

Q Now we are at 11-19-02. Are all of these calls generally, sir, cold calls, or do you make an appointment at some point?

A It really depends on the individual and the office. Sometimes they will want you to establish a set appointment, sometimes they will say come by on this day during this window.

Q How about this doctor, do you have any recollection?

A My best recollection, I don't remember

(Gilbreath - As on Cross)

exactly, but my best recollection was, come by during this window of time during a certain day, and I don't remember what days those were.

Q 11-19 you go, and it says here, let's look at 11-19, it says -- 11-19, Presentation and Samples. Okay, I will check off Presentation, and Samples. This is the first time you are giving him samples, correct?

A Yes.

Q Did he tell you he needed a resupply from Mr. Hansen's 140 pills?

A I don't know specifically, but every time we provided samples it was at the physician's request. It's not something where we would go and simply drop them. They had to sign saying they requested them.

Q You get kind of into a routine with these things, don't you? You know when a particular physician is going to ask you for samples, don't you?

A Not all the time, but yes, there is some predictability to it.

Q You have a good idea who the askers are, don't you?

A In general. Some folks asked for general

(Gilbreath - As on Cross)

MR. MURPHY: Objection, Your Honor, we have been down this road.

THE COURT: Yes. Sustained. "Did you pay attention to."

MR. KLINE: I will can it a different way.

Q Is it of any consequence to you what the office door says?

A Not necessarily, no, because we would, as mentioned before, we would have general psychiatrists, general neurologists, child and adolescent psychiatrists, and in this case a child neurologist, who also treated adults.

Q Would you tread more carefully if it said child neurologist or child psychiatrist? Would you tread more carefully, yes or no?

MR. MURPHY: Objection, Your Honor, basis. There is no foundation here.

THE COURT: Overruled.

Q It's simply a yes or no question, sir. Would you tread more carefully if the front door said child neurologist or child psychiatrist when you knew it was illegal to promote to them, yes or no?

A Yes, it would be logical to ask the question,

(Gilbreath - As on Cross)

samples routinely. Others not as often.

Q And as this went on, you knew he was a doctor who asked for samples, correct?

A He had requested samples, yes.

Q My question is a different one. My question is you knew that he was one of those physicians who routinely wanted samples. He wanted to see you so he could get them samples, correct?

A I did not know him to be a physician who routinely asked because I was really just getting to know him at this point.

Q How about as it went on? As it went on there was a pattern here. You were showing up and he was taking samples, correct?

A He was requesting samples and I was providing them, but that was the case with virtually, I would say the majority of the physicians that we saw.

Q I forgot to ask you this. What did the door of his office say was his specialty?

A You know, I don't recall the door of his office.

Q Did you pay attention to what the door of an office of a doctor said, whether it said child neurologist?

(Gilbreath - As on Cross)

look, you are a child neurologist but this medication is approved for adults, do you have adults that you actually treat, what was your basis for requesting the visit. If the answer is yes, I saw him, if the answer was no, I would not.

Q I can understand that. By the way, sir --

A Yes.

Q By the way, sir, child psychiatrists and child neurologists, sir, you recognize are treating probably the most vulnerable people in our society. Would you agree?

MR. MURPHY: Objection, relevance.

Q Would you agree that you knew that?

THE COURT: Sustained as to any characterization for him to decide.

Q So 11-19, Professional call, Samples. Let's get to your samples, sir. The samples are on the bottom of each page.

Oh, by the way, let's look in the place up above, where it says Next Call? Where there is room for notes? Do you see that section, that long box there, sir? That's long field where you can type in whatever notes you want, and on some of them you did type in notes, correct?

(Gilbreath - As on Cross)

A Yes.

Q There is plenty of time to type in things like -- whatever you want, correct?

A Yes, it's a free text box.

Q And it's on every one of these call notes, correct?

A Yes.

Q Let's go down to the bottom, Samples? Quantity, how many, sir?

A Ten, ten, and five.

Q Hold on, let's get there. Ten, ten and five. So let's see what we have.

We have ten at -- maybe we can highlight -- we have ten .25, one times seven, and what do we also have? Ten 50s, one by seven. And five 30 milliliter solution, correct?

A Yes.

Q Now, the five 30 milliliter solution, that's a bottle, correct?

A Yes.

Q About how big?

A A bottle about that big.

Q And it contains how many 25-milligram doses does it contain in it, approximately?

(Gilbreath - As on Cross)

other.

Q You can split up the oral -- I want to go back here. We have a 30 milliliter bottle. After the lunch hour I will show you a bottle and see if we agree if that's the bottle.

THE COURT: Lunch hour, by the way, counsel, is about 15 minutes.

MR. KLINE: I am not going to get through this section but I will get to the 15-minute mark, Your Honor. Much appreciated for the heads up.

Q So it's 1 milligram per milliliter.

MR. KLINE: Now we are in chemistry, Your Honor.

THE COURT: I haven't had it since tenth grade.

MR. KLINE: We had it in my high school in 12th. I don't know how good I did.

Q So it was 1 milligram, so when we divide it by 30 and it would be times four if we want to get it to -- there are 120 .25-milligram doses in this bottle. Correct? It's 30, 30 times one would be 30, but I divide it by four, so I got 120 kids' doses at .25 milligrams. Correct?

(Gilbreath - As on Cross)

A I do not know the answer to that question. My best recollection is 1 milligram per one milliliter.

Q 1 milligram per milliliter. And, sir, you are well aware of the fact that the oral dosage was used in children, correct?

A I am not aware of that. It was used in multiple patients with multiple ages.

Q Were you aware at the time that doctors were using this off-label orally in children? My question is simply were you aware at the time that it was being used by doctors for children, yes or no?

A They certainly had the opportunity to if they wanted.

Q My question is whether you knew. That's the question?

A No, I did not have specific knowledge that they were using this specific sample in children.

Q No, that's not my question about the specific sample. Were you aware that the oral solution was being used by doctors in children, yes or no?

A There was a general knowledge that Risperdal as a whole. I don't have knowledge as to which dose might have been inclined more or less than the

(Gilbreath - As on Cross)

A I don't agree that they were kids' doses per se but I agree that the math there were 120 .25 milligrams.

Q You don't agree they were kids' doses, but you would agree that's the kids dose in the 2006 label, correct?

A That's what the label stated in 2006, but this was not 2006.

Q I know, yeah, we do know that. And so if we were going to, just keeping track of doses that were dropped off, this would be five of 30 milliliter bottles, that would be 120 25-milligram doses.

So what you dropped off that day would be, in 25-milligram doses -- well, you dropped off ten 7-packs, so that would be 70 doses, correct?

A Yeah, 70 pills.

Q You dropped off ten 50s, which would be 170 doses, if you doubled it to 25, we won't even do that. Then you dropped off the equivalent of 120 more doses in the bottles, correct?

A Yes, I provided all three doses.

Q So I count up here, in terms of 25-milligram doses, if I times two for the 50s, I have 140 and 120, and 70. So I have 140 and 120 is 260, and 70,

(Gilbreath - As on Cross)

330 .25-milligram doses, correct?

330 doses were dropped off at this doctor's office that day. That would be a seven pack of 25s, a seven pack of 50s, so we would have to times it by two to get it to 25, and we know that the 30 milliliter bottles are 120 .25 milliliter doses.

330 of 25 milliliter doses. Can we agree? .25. Can we agree?

A Are you asking me, sir?

Q Yes.

A Yes, of course, I can agree to that.

Q Wow, 130. One more Question: Those 50s could be broken in half, correct?

A It's actually .5, but yes.

Q .5, they can be broken in half and made into .25s, correct?

A I don't know. Some tablets were scored, I can't recall if they were or not.

Q Sir, you detailed this drug for six years and you can't tell us whether you could break it in half?

A Some of them were scored for that purpose, but I don't recall if the .5 was not. In fact --

(Gilbreath - As on Cross)

A If you are looking at increments of .25, that's correct.

Q I am. I am.

MR. KLINE: Let's try to get one more in. The next visit is marked as P 62(F).

(P-62(F) is marked for identification.)

Q We are at 3-11-03. So once again I think we have it up there, and our trusted friend Corey can show us whether there is a presentation. Was there a presentation?

A Yes.

Q Same old about adult schizophrenia, you had a discussion?

A Yes, it was the context of every presentation at that time.

Q And let's see. Did you drop off samples?

A Yes, it looks like I did.

Q Let's go to work on samples. You dropped off five .25s, one by seven, correct?

A Yes.

Q So you dropped off there 35 .25-milligram doses, correct?

A Yes.

Q And then you dropped off, what's next, five

(Gilbreath - As on Cross)

Q Even if a tablet is not scored, you are familiar with this tablet, aren't you?

A Yes.

Q All you do is (indicating) and you got half, correct?

A Some were splitting them, yes.

Q People split pills all the time, right?

MR. MURPHY: Objection.

THE COURT: Sustained.

Indicating for the record by counsel that he made a biting motion on a pill.

MR. KLINE: I did, and I broke my tooth.

THE COURT: The objection is sustained, though, why don't we move on.

MR. KLINE: I think I got it. Let's try to do one more. I am going to put on my chart 330 of .25s.

Q By the way, if I can go back, sir, to when my math was 140, actually, ten 50 milligrams is 70 doses at 50, but it's really times two as a .25. So it would be 140 and 140 is 280, in terms of 25-milligram doses that Mr. Hansen dropped off, correct?

(Gilbreath - As on Cross)

.5s.

And by the way, sir, you may or may not know this, that with a label that said that the adults schizophrenic dose was 1 milligram, and the bipolar dose was 2 milligrams, can you tell us as someone who was selling this drug why it was being made in .25-milligram pills?

A Special populations, special considerations, once again, liver or kidney conditions, special populations in general, as well as for titration.

So I know sometimes if one was moving from a 1-milligram to 2-milligram, that's an entire doubling of the dose. They might use the .25 or .5 in increments to maybe not go as high that fast.

Q Maybe you can help us with this, sir.

Yesterday at the end of the day we saw 1.26 million doses were being used for children. Do you know whether the .25 milligrams had anything to do with the 1.25 million children's use doses?

A I don't know that, actually.

Q Sitting here today as a Janssen/Johnson & Johnson representative?

A Yes.

Q Is that the first time that you found that

(Gilbreath - As on Cross)

out, that 1.26 million children's doses were being used in 2002?

A That is the first time I have heard the 1.26 million, but I mean, I have known that Risperdal was used in children. I mean it was common knowledge.

Q It was common knowledge it was being used in children. And let's see if we can agree on something that is almost a blinding flash of the obvious, that these 2.5s were being used in children by a child neurologist. Can you agree?

A No. I mean, I had to --

Q Can you?

THE COURT: Let him finish, please.

A If I were to question Dr. Mathisen, I guess I could have asked him specifically. But we didn't ask about specific patients, did you use this dose for these particular patients or this dose for these patients.

Q Sir, on 3-11-03, you dropped off 35 pills in the .25-milligram dose. And you never asked him a question about it? You never said to him, sir, you are a child neurologist, are you using them in children? You never asked that question?

(Gilbreath - As on Cross)

doses, did you ask him, Sir, you are a child neurologist, are these going to be used for kiddies? Did you ask him that question?

A Of course, not. We did not make it a routine to ask how they would use a specific sample. They would request samples and we would provide them per their request, as per our discussion.

Q Did you ever hear of Nancy Reagan?

A Yes, of course.

Q Do you recall the saying -- I want to see if this applies to this day -- do you recall the saying, Don't ask don't tell?

MR. GOMEZ: Objection.

MS. SULLIVAN: That's Bill Clinton.

THE COURT: Sustained.

Q Let's finish this out, hopefully, in three minutes. You drop offed five of .50s one by seven?

A Yes.

Q So that's 35, of course, we have to have it times two. That would be the equivalent of 70 .25 milligrams, and then you had continuing on, five of 1 milligrams. And that would be one times seven. So that would be 35 times four, would be 140 at .25 milligrams.

(Gilbreath - As on Cross)

MR. MURPHY: Objection. Asked and answered, Your Honor.

Q On this day. On this day --

THE COURT: Sustained.

Q On this day --

THE COURT: Well, then get the day right. March 17, not March 11.

Q Okay, my mistake. On March 11, on that day, when you handed off -- this was, by the way, hand to hand, wasn't it? He would take the pills from you? You to him, correct?

A No, I don't recall hand-to-hand transaction.

Q Who would you give the pills to? Who would be the recipient?

A I don't recall if it was a staff person, many offices had a staff person. I don't recall Dr. Mathisen's exact setup. But they would usually have a closet or some kind of locked cabinet that they would keep medications just for security.

Q Do you know if this doctor's office did, do you know?

A I don't really recall.

Q Let's talk about this office. On that day when you handed him thirty-five .25 milligrams

(Gilbreath - As on Cross)

And by the way, sir, you were aware -- let me ask you this. Have you become aware that children who are started on Risperdal, in fact, like Austin Pledger, start at a low dose like .25 and then are moved up to .5 and sometimes as much as one? Are you aware of that fact?

A No, I am not. I am not aware of the specific dosing with any patient, much less Mr. Pledger.

Q You handled the drug for six years, sir, were you not aware at any time how these pediatricians and pediatric psychiatrists and pediatric neurologists were using and dosing the drug when they were using it off-label?

A No, because we did not ask them nor speak to off-label usage. We really spoke to the context what the label did support. If they brought it up we would inform them that it was outside the scope of the label. If they had a question we would submit it and get the answer from the appropriate department.

Q And then you dropped off eight bottles of 30 milliliter solution. And that, of course, would be, eight times three is 240 grams, and if you broke it out into four, it's 964 of .25 milliliter doses. Do

(Gilbreath - As on Cross)

I have that right?

A If you are looking at .25 increments.

Q So dropped off in this pediatric neurologist's office by you, on behalf of the Janssen Pharmaceutical Company, part of the Johnson & Johnson Company, on that day, was in a child neurologist's office, 1,205 25-milligram doses of Risperdal, correct? You handed that off to a child neurologist, correct, sir?

A I provided those samples to Dr. Mathisen, yes.

Q Yes.

MR. KLINE: Good time for a break.

THE COURT: Then we are going to take a recess here, members of the jury. We will reconvene today at -- I want you back between 1:30 and 1:45 to start at 1:45. Same instructions as always.

(The jury is excused and the following transpired in open court:)

THE COURT: We are adjourned until 1:45. Mr. Gilbreath, you are under instruction at this point not to talk to any lawyers. If you have lunch, whatever, please do not discuss your testimony or your

(Gilbreath - As on Cross)

I HEREBY CERTIFY THAT THE PROCEEDINGS AND EVIDENCE ARE CONTAINED FULLY AND ACCURATELY IN THE NOTES TAKEN BY ME ON THE TRIAL OF THE ABOVE CAUSE, AND THAT THIS COPY IS A CORRECT TRANSCRIPT OF THE SAME.

JUDITH ANN ROMANO, RPR-CM-CRR
OFFICIAL COURT REPORTER
COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

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(Gilbreath - As on Cross)

involvement with any lawyers at this time.

All right, thank you.

All right, we are in recess, everybody until about 1:30.

(A luncheon recess is taken.)

- - -

<p>- PLEDGER, et al. -vs- JANSSEN, et al. - Page 5</p> <p>1 COURT CRIER: Come to order, please. 2 THE COURT: All right. Please be 3 seated everybody. 4 Counselor, I think you should be 5 aware that we are going to adjourn today at 6 4:15. 7 COURT CRIER: All rise as the jury 8 enters the room. 9 - - - 10 (The following transpired in open 11 court in the presence of the jury:) 12 - - - 13 (Whereupon the jury entered the 14 courtroom at 1:55 p.m.) 15 - - - 16 THE COURT: All right. Please be 17 seated everybody. 18 All right. We're ready to continue 19 the examination of Mr. Gilbreath. 20 MR. KLINE: Yes. Ready to continue 21 the cross-examination, sir. Thank you. 22 Good afternoon, Your Honor. 23 And good afternoon all. 24 JURY PANEL: Good afternoon. 25 - - -</p>	<p>- JASON GILBREATH - AS ON CROSS - Page 7</p> <p>1 A. Of course. 2 Q. -- and discuss with you the 1,205 .2-milligram 3 doses. 4 Now, if we were to look at it 5 somewhat differently, we know, because we've 6 established from the label, the 2006 label, that the 7 adult schizophrenic dose was 1 milligram, which was 8 the only indication back in 2002, '03, when we're 9 talking about. 10 If we were to look at it this way, 11 correct me if I'm wrong, 1,205 milligrams were 12 dropped off in one day. And if I divide 1,205 by 13 365, since it was 1-milligram-a-day adult dose, you 14 dropped off enough medicine that day, sir, to last 15 in one patient 3.3 years for one -- how do you spell 16 schizophrenic? 17 A. S-C-H-I-Z-O-P-H-R-E-N-I-A. 18 Q. You dropped off in that doctor's office that 19 day, in that child neurologist office, 3.3 years of 20 medication for one schizophrenic patient, correct? 21 A. Is that in the 1-milligram dosing? I don't 22 know if I'm fully following you. 23 Q. Yes. At what we saw on the package, the 24 starting dose for a schizophrenic patient, the 25 recommended starting dose, not somebody who might</p>
<p>- JASON GILBREATH - AS ON CROSS - Page 6</p> <p>1 CROSS-EXAMINATION 2 - - - 3 BY MR. KLINE: 4 Q. At the lunch break, sir -- hi. 5 A. Yes. Good afternoon. 6 Q. Hi. How are you? 7 A. I'm well. Thank you. 8 Q. We were on 3/11/03. 9 And I want to try something now that 10 the jury is in. 11 MR. KLINE: And I'll be responsible 12 to get it out of the way, too, Your Honor. I 13 promise. It's just in the corner over there. 14 (Referring to the easel.) 15 THE COURT: Counsel, one of you might 16 want to go over there. It's hard for us to 17 see it, including the witness, Mr. Kline. 18 MR. KLINE: Okay. I see those 19 issues. 20 Okay. I'll go back. 21 I see that issue. 22 I'm just struggling with the 23 demonstrative issues. Okay. 24 BY MR. KLINE: 25 Q. I'd like to pick up, sir --</p>	<p>- JASON GILBREATH - AS ON CROSS - Page 8</p> <p>1 have a problem, not somebody who might be an 2 oddball, but the starting dose in the label, it 3 would be -- you dropped off 3.3 years' worth for a 4 schizophrenic patient, correct? 5 A. I understand the milligrams, yes, that -- the 6 amount of samples was provided. 7 Q. And this date was 3/11/03. 8 MR. KLINE: Next exhibit number, 9 please, Mr. Gomez. 10 MR. GOMEZ: 62-G. 11 MR. KLINE: P-62-G is this chart. 12 (Exhibit P-62-G marked for 13 identification.) 14 BY MR. KLINE: 15 Q. And let's move back to our going through it. 16 So now we established in the 17 beginning that you had been there 21 times, and 18 we've gone through four of them. And also just to 19 keep a running record, we have 1,205 .25-milligram 20 dose equivalents, 330 equivalents, and 280 21 equivalents so far, correct, sir? 22 A. I see what you're referring to. 23 Q. Doing the math. 24 A. Yes. 25 Q. Okay. So let's move forward.</p>

1 **By the way, were these samples free?**
2 A. Yes. They were provided to the physician for
3 use in their patients if they wanted to start
4 someone or if someone was in between pharmacy visits
5 and they needed kind of a bridge medication, we
6 provided it to them, the doses of .25, all the way
7 up to 2 milligrams.
8 **Q. My only question, sir, was: Is it free? Yes**
9 **or no?**
10 A. Yes.
11 **Q. Okay. So let's use the same format as we go**
12 **along: Date, presentation, number, samples.**
13 **Date, whether there was a**
14 **presentation.**
15 **Okay. Next time you're in this**
16 **office of Dr. Mathisen was 8/5/03.**
17 **Did you do a presentation, according**
18 **to the -- oh, and we've marked it as Plaintiff's**
19 **Exhibit -- it would have a letter number, Mr. Gomez.**
20 **MR. GOMEZ: H.**
21 **MR. KLINE: H. The number?**
22 **MR. GOMEZ: 62-H.**
23 **MR. KLINE: 62-H. That would be**
24 **helpful.**
25 **(Exhibit P-62-H marked for**

1 **what was commonplace, but rather what you actually**
2 **remember at the time not having written a note.**
3 A. Sure.
4 **Q. Do you remember anything?**
5 A. No, not from the specific interaction.
6 **Q. Do you remember any specific interaction --**
7 **rather than saying this was commonplace, this is**
8 **what I would have done, this is what I usually do,**
9 **do you have any specific recollection of any**
10 **interaction with you and Dr. Mathisen on all these**
11 **visits?**
12 A. No, not verbatim. I know what --
13 **Q. No. My question isn't not verbatim. My**
14 **question is: Do you have any specific recollection**
15 **of anything that happened in these office visits**
16 **with Dr. Mathisen? Yes or no, sir?**
17 A. Yes.
18 **Q. Okay. Tell me what you remember so that when**
19 **I get there, I know what you specifically remember.**
20 A. I remember him asking specifically, you know,
21 about Risperdal. Me asking him about his
22 opportunity to treat adult patients with
23 schizophrenia; him telling me how he had them. And
24 then I also remember him at another time inquiring
25 about an article for the use of autism.

1 identification.)
2 **BY MR. KLINE:**
3 **Q. 62-H is in front of the jury on the screen.**
4 **My developing chart is in front of the jury with my**
5 **hand, and I am at 8/03.**
6 **MR. KLINE: Do you need the call-out**
7 **numbers, Cory, or are you okay as we follow**
8 **these?**
9 **Okay.**
10 **BY MR. KLINE:**
11 **Q. And so we have 8/5/03; is that correct?**
12 A. Yes. That's what I see.
13 **Q. And it says you did a presentation only,**
14 **correct?**
15 A. Yes.
16 **Q. And the spot for the notes, sir --**
17 A. Yes.
18 **Q. -- as to anything you said to him and he said**
19 **to you, blank, correct?**
20 A. It is blank.
21 **Q. And you have no specific recollection of that**
22 **day, correct, sir?**
23 A. No. I can only speak to what was commonplace
24 at the time.
25 **Q. Yes. No, sir. My questions will go to not**

1 **Q. Okay. That's what you remember.**
2 **Do you remember when you had this**
3 **discussion about him telling you that he treated**
4 **adult schizophrenic patients?**
5 A. No, I don't remember the exact date. It would
6 have been one of our first interactions.
7 **Q. And you're not privy to what he told the jury**
8 **here about only treating adult patients that carried**
9 **over from his children's practice; you're not privy**
10 **to that, correct?**
11 A. No. But that's somewhat what he referred to
12 me -- mentioned to me when I asked the question as
13 well. That's my recollection.
14 **Q. Okay. And you do have a specific recollection**
15 **of when he asked you for the New England Journal**
16 **article? something that we're going to get to.**
17 A. Yes.
18 **Q. Okay. And the --**
19 A. And the reason I do is I saw it in a -- I did
20 see the call note for that where that was a specific
21 call-out.
22 **Q. Well, I know that it says that in the note,**
23 **but do you actually remember? When I say do you**
24 **remember, do you like in your mind say I can**
25 **remember being there?**

1 A. Oh, no, I don't remember that.
2 **Q. That's what I'm asking you.**
3 A. No. I apologize.
4 **Q. I'm asking like I remember -- I remember last**
5 **December 25th standing in front of the Christmas**
6 **tree, that kind of recollection. Do you remember**
7 **that?**
8 A. I do not recall the actual interaction with
9 Dr. Mathisen that day.
10 **Q. Okay. Of any of these days?**
11 A. The initial ones where we had the discussion
12 as to how he had patients with adults -- or excuse
13 me, patients that were adults with schizophrenia. I
14 do remember that interaction.
15 **Q. Oh, you remember that very specifically?**
16 A. Yes, I do, just because it was, you know --
17 **Q. Sure.**
18 A. -- I asked the question. He was a child
19 neurologist. And I had a similar recollection with
20 other folks who -- where I needed to ask the
21 question especially.
22 **Q. Yeah.**
23 **Okay. Now, let's continue on, sir.**
24 **We're by 8/5. We're at 8 -- that was**
25 **8/5/03, correct?**

1 **The next visit is marked as 62-I.**
2 **And it's 8/26/03.**
3 **(Exhibit 62-I marked for**
4 **identification.)**
5 **Now, you're back just a few weeks**
6 **later, correct?**
7 A. Yes.
8 **Q. Was that, sir -- I probably drew the line too**
9 **quick.**
10 **Was that, sir, because you were, you**
11 **know, running low that day? You probably didn't**
12 **have any samples, so you were back three weeks later**
13 **when you had a fresh supply?**
14 A. You know, I really don't recall the exact
15 reason that I was back at that time. It could have
16 been just due to scheduling, calendaring, things
17 like that.
18 **Q. Well, you didn't usually see him every three**
19 **weeks and you didn't have any pills to give out or**
20 **any bottles to give out or you didn't give out any**
21 **bottles on 8/5. So would it make sense, based on**
22 **custom and practice which you've been telling the**
23 **jury about, that the reason is that you got back**
24 **here three weeks later because the good doctor might**
25 **need some samples?**

1 A. No, I don't remember that, because I remember
2 no time when we did not have the availability of
3 samples when a physician requested them. So I don't
4 think that would be the reason for the increased or
5 decreased visit.
6 **Q. You tried to keep your sample supply healthy,**
7 **correct, sir?**
8 A. What do you mean by "healthy"?
9 **Q. Healthy meaning a full supply so you didn't --**
10 **you tried not to run out, correct?**
11 A. Yes. Again, I mean, we were provided the
12 ability to obtain samples when we needed them and
13 there was a frequency with that.
14 **Q. Yeah. Samples were an important part of**
15 **promoting the product, correct?**
16 A. It was an important part of what we did.
17 Physicians requested them.
18 **Q. No, that wasn't my question.**
19 **My specific question was: It was an**
20 **important part of promoting the product? Yes or no?**
21 A. No.
22 **Q. Well, now let's see what happened here on**
23 **8/26. Was there a presentation? Yes.**
24 **I assume, once again, you're deep**
25 **into adult schizophrenics; is that correct?**

1 A. Yes. That would have been correct with any
2 interaction at that time.
3 **Q. No; I meant on this visit. You would have**
4 **been discussing adult schizophrenics again, correct?**
5 A. Yes, like I would have on any visit with any
6 physician.
7 **Q. And what did your presentation on this day**
8 **involve about adult schizophrenics?**
9 A. It would have involved the package insert that
10 was --
11 **Q. First of all, do you have any recollection?**
12 A. No.
13 **Q. Okay. Then you don't know.**
14 **Now, let's see -- we do know that you**
15 **dropped off a lot of samples. What did you drop off**
16 **that day? Let's see what you have going here.**
17 **First of all, you have five .5s, five**
18 **half milligrams, 4 by 20s.**
19 **Now, I haven't seen that before.**
20 **What are the 4 by 20s?**
21 A. Just another, I guess, packaging, as the way
22 it's packaged.
23 **Q. Well, explain it for us. Four times 20, how**
24 **many pills does that total?**
25 A. I'm quite certain it was 20. I --

1 **Q. So you had four 20-packs; is that correct?**
2 A. Yes, I think that is correct.
3 **Q. Four 20-packs. 20-packs last longer than the**
4 **ones we saw, correct, before?**
5 A. If there's more medication in them, yes.
6 **Q. Because we were watching -- we were seeing one**
7 **by sevens, which were seven-packs. Now we have 4 by**
8 **20s. Would that be -- did they have a name for it?**
9 **Like was it a super starter pack?**
10 A. I don't recall.
11 **Q. And that would be 80 pills. Of course, we**
12 **have to -- we now know that if we wanted to look at**
13 **the .25 equivalent, it would be eighty .50s or 160**
14 **.25s, correct?**
15 A. I'm following your math, but, yes.
16 **Q. I think that's correct, right?**
17 A. Yeah.
18 **Q. A hundred and sixty .25s.**
19 **Okay. And let's see what else. Was**
20 **that the end of it or did you give out more?**
21 A. I also provided another strength of the
22 1-milligram samples.
23 **Q. So you gave him the 1-milligram tablets. And**
24 **that would be -- was that 4 by 20s, too?**
25 A. Yes. It indicates it was 4 by 1 by 20.

1 so that would be 80 pills. And 80 pills, they're
2 hundreds this time. So it's 8, 4 -- so it's 320 .25
3 doses, .25-milligram doses, correct?
4 A. I follow your math, yes.
5 **Q. Okay. So that day -- and we can move on to**
6 **the next day -- that day you did 160 .25s and 320**
7 **.25 equivalents.**
8 **So we have 480 .25s if someone were**
9 **to break them apart or if someone were to use them**
10 **as .25s, correct?**
11 A. Yes, if they were to use them in that manner.
12 **Q. Yeah. Someone like a pediatric, or someone**
13 **like a child neurologist's patients, if they were to**
14 **use them that way, correct?**
15 **MR. MURPHY:** Objection, Your Honor;
16 argumentative.
17 **MR. KLINE:** Okay. Now, let's --
18 **THE COURT:** Sustained.
19 Do you have another one?
20 **MR. KLINE:** Yes. Next one.
21 62-J.
22 (Exhibit P-62-J was marked for
23 identification.)
24 **BY MR. KLINE:**
25 **Q. 62-J, the date on it is 9/12/03. Eighteen**

1 **Q. What does 4 by 1 by 20 mean? Four times 1**
2 **milligram times 20 tablets?**
3 A. That's my understanding. I don't -- I
4 actually don't remember exactly what that makeup
5 was, but as I understand, it would be that. It
6 would be four -- four blister packs.
7 **Q. Blizzard packs?**
8 A. Blister packs.
9 **Q. Oh, blister packs. I thought you said**
10 **"blizzard."**
11 A. They're the ones, you know, you peel off the
12 back and get the pill out of there, that type of
13 thing. These -- I don't think these -- these were
14 M-Tabs. I don't think you pressed these through
15 because they were soft.
16 But nonetheless, the way I understand
17 the packaging on it is it was four blister packs, so
18 each one of those had medication with 20, I guess,
19 dosages in there. So I really don't have a specific
20 recollection. I'm sure we could refer to the
21 package insert to be crystal clear on what was
22 represented in that.
23 **Q. Were they childproof?**
24 A. I don't recall them being childproof, no.
25 **Q. So four -- let me understand -- 4 by 1 by 20,**

1 **days later you're back in his office doing another**
2 **presentation, sir. It says here you checked**
3 **"presentation."**
4 A. Yes.
5 **Q. Uh-huh. Another adult schizophrenia**
6 **presentation again?**
7 A. Yes. That would have been the context of that
8 call as well.
9 **Q. Sure. To the child neurologist, correct?**
10 A. Yes.
11 **Q. Yeah. Okay. I get it.**
12 **And, by the way, let's see how much.**
13 **Are you giving out samples that day?**
14 A. Yes, I did.
15 **Q. Oh, oral solution.**
16 **Did you have a fresh stock of oral**
17 **solution, sir?**
18 A. I don't recall if the stock was fresh or not.
19 **Q. This stuff has expiration dates on it, this**
20 **medication, correct?**
21 A. It does have -- all medications have an
22 expiration date on them.
23 **Q. Yes. I asked about this medication. It has**
24 **an expiration date?**
25 A. Yes, this medication would have an expiration

1 date on it also.
 2 **Q. Okay. And, by the way, sir, on these**
 3 **entries -- I'll cover all entries with this one --**
 4 **you're the one who's writing this in because you're**
 5 **the only one who knows the amounts that you're**
 6 **giving out, correct? Correct?**
 7 A. Yes. The way this would have worked, it would
 8 have been a drop-down menu on the medication, the
 9 strength and dosage, if you will. That would have
 10 been selected. I would have physically typed in the
 11 amount, you know, "10," and that would have been the
 12 extent of what I would have captured and entered
 13 freehand.
 14 **Q. Well, for those of us who use computers a lot,**
 15 **sir, this would actually -- you wouldn't have to**
 16 **type it in. You would just have to click and the**
 17 **click would -- you got a preset menu and you just**
 18 **would click and Risperdal 30-milliliter oral**
 19 **solution would come in. You didn't have to type**
 20 **that each time.**
 21 A. Correct. It would have been a drop-down menu,
 22 and I would have selected Risperdal 30-milliliter
 23 oral solution.
 24 **Q. But that's not what you said a minute ago.**
 25 **You said you typed it in. It's a drop-down menu,**

1 **Q. Like a little thing with a plunger on the top?**
 2 A. Yes, I believe that's what it was.
 3 **Q. And it was right there in that bottle, too,**
 4 **wasn't it?**
 5 A. I think so, yes.
 6 **Q. Yeah. So you can dispense little amounts,**
 7 **correct?**
 8 A. The needed amount, yes.
 9 **Q. Yeah.**
 10 **And how much would a full milliliter**
 11 **be, equivalent to a milligram, would that be a**
 12 **teaspoon?**
 13 A. I don't think so.
 14 **Q. Would it be near a teaspoon; do you know? You**
 15 **did it.**
 16 A. Probably near. I actually don't know exactly.
 17 **Q. Well, you wouldn't need that little -- that**
 18 **little -- what do you call that? I call it a**
 19 **plunger. The little...**
 20 **MR. ITKIN: Droplet.**
 21 **BY MR. KLINE:**
 22 **Q. Droplet. Little droplet. You wouldn't need**
 23 **the little dropper if you were just doing it by**
 24 **teaspoon, would you?**
 25 A. I really can't answer that question. I've

1 **correct?**
 2 A. I believe it to be a drop-down menu, yes.
 3 **Q. Okay. And let's see -- let's see what you --**
 4 **what free samples you handed out that day. Ten**
 5 **30-milliliter solutions, correct?**
 6 A. Yes.
 7 **Q. A milliliter equaling a milligram. The**
 8 **liquid, by the way, you don't have to -- you don't**
 9 **have to either chop up or cut up. It's just liquid.**
 10 **You use it as much or as little as you need,**
 11 **correct?**
 12 A. Yes, it is.
 13 **Q. By the way, .25 milliliter, give us an idea,**
 14 **is that a teaspoon?**
 15 A. No. It's a very small amount.
 16 **Q. Is it a -- when you say a small amount, is it**
 17 **two, three drops, five drops?**
 18 A. I don't know the exact number of drops
 19 actually.
 20 **Q. How is it used? Like how would you give it to**
 21 **a child?**
 22 A. It would be -- there's a little dispenser
 23 that's in the bottle like any type of medication,
 24 like oral medication dispenser like we are
 25 accustomed to.

1 never used it myself personally.
 2 **THE COURT: Next.**
 3 **BY MR. KLINE:**
 4 **Q. Let's look, ten times 30 is -- that would be**
 5 **30 milliliters, and it would be 10 times 30 is 300.**
 6 **And if you divide it by four, that would be**
 7 **30-milligram equivalent. So it would be the**
 8 **equivalent of 1,200 .25s, correct?**
 9 A. Yes, if you're going, again, by .25
 10 increments.
 11 **Q. Yes.**
 12 **Next one is 10/14/03.**
 13 **You gave another one of these**
 14 **presentations on schizophrenia, correct?**
 15 A. Yes, I did.
 16 **MR. MURPHY: I'm sorry. Counsel, is**
 17 **this marked as an exhibit?**
 18 **MR. GOMEZ: 62-K.**
 19 **MR. KLINE: Oh, yes, 62.**
 20 **MR. GOMEZ: K.**
 21 **MR. KLINE: K.**
 22 **(Exhibit P-62-K marked for**
 23 **identification.)**
 24 **BY MR. KLINE:**
 25 **Q. And did you give out samples that day?**

1 A. Yes, it's indicated that I did.
2 **Q. Okay. And what did you give out that day?**
3 A. It looks like I gave five of the .5-milligram
4 samples.
5 **Q. And, by the way, .5s, putting aside the .25,**
6 **.5 is half a dose, correct? Half an adult dose?**
7 A. It depends on the adult. And that would be
8 only in consultation with a physician.
9 **Q. .5 is only half of the recommended adult dose,**
10 **correct?**
11 A. Of the recommended starting adult dosage,
12 generally speaking, per the label language, yes.
13 **Q. Yes.**
14 **Okay. So you had five, and let's see**
15 **what these packs were. It says they're 1 by 7s,**
16 **correct?**
17 A. Yes.
18 **Q. And is there anything else that you handed out**
19 **that day?**
20 A. I don't see it, if there was.
21 **Q. So what you have here is 7 times 5 is 35. You**
22 **have thirty-five .5s; thirty-five .50s equal seventy**
23 **.25s. That would be the math, correct?**
24 A. Yes.
25 **Q. 62-L.**

1 (Exhibit P-62-L marked for
2 identification.)
3 **BY MR. KLINE:**
4 **Q. 62-L is 11/17/03.**
5 **You indicate here -- and we'll put it**
6 **up there -- that you did another presentation,**
7 **correct?**
8 A. Yes.
9 **Q. Does a presentation include any slide show or**
10 **any -- any handouts or anything like that? I**
11 **haven't asked you that.**
12 A. No. A presentation really only indicated that
13 we had a face-to-face discussion with the physician.
14 So there were no slide shows or anything like that.
15 But that might have involved a brochure or clinical
16 study or certainly the package insert, but the
17 presentation really only indicates that a in-person
18 discussion took place.
19 **Q. And you got -- on this visit let's see what**
20 **you did. Let's go to your -- let's go to your**
21 **sample handouts.**
22 **Among -- let's see here, you gave a**
23 **free handout of five times .50s. And it looks like**
24 **it's a 1-by-7 packet.**
25 A. Correct.

1 **Q. And so what you were giving out was the same**
2 **as before, thirty-five .50s; seventy .25s, correct?**
3 A. Yes.
4 **Q. Next.**
5 **Next exhibit is 62-M.**
6 **THE COURT: 64-M.**
7 **COURT CRIER: Sixty-two.**
8 **THE COURT: 62-M.**
9 **MR. KLINE: Yeah.**
10 **THE COURT: Okay.**
11 **MR. KLINE: 62-M.**
12 - - -
13 (Exhibit P-62-M marked for
14 identification.)
15 - - -
16 **BY MR. KLINE:**
17 **Q. Okay. And according to this on 12/9/03, this**
18 **was a presentation, another presentation on adult**
19 **schizophrenia, correct?**
20 A. Yes, that would be correct.
21 **Q. And it looks like you're there on 12/9/03.**
22 **This is the holiday season, correct?**
23 A. Yes. It was December. It was the holiday
24 season.
25 **Q. And you had 13 packets on -- 13 December**

1 **packets, correct?**
2 A. I would not call them that; but that we
3 provided 13 quantities of the Risperdal oral
4 solution.
5 **Q. Well, actually, you provided 13 bottles of the**
6 **solution. So that would be 13 times 30, 393. And**
7 **if someone were using it in .25s, that would be**
8 **times four.**
9 **1,592 .25s for this child**
10 **neurologist, correct, sir?**
11 A. Yes.
12 **Q. It was a holiday season. Did you say "Merry**
13 **Christmas" to him?**
14 **MR. MURPHY: Objection, Your Honor.**
15 **THE COURT: That's sustained.**
16 **BY MR. KLINE:**
17 **Q. And you're right back in January.**
18 **62-N, N as in Nancy.**
19 - - -
20 (Exhibit P-62-N marked for
21 identification.)
22 - - -
23 **BY MR. KLINE:**
24 **Q. Now, you're back. It's a new year, January 3**
25 **of '04. According to your notes, you said**

1 **"presentation." Do you see that?**
 2 A. I do.
 3 **Q. May I ask you a question, sir?**
 4 A. Of course.
 5 **Q. Would it be fair to say -- would it be fair to**
 6 **say really that you didn't do a presentation on**
 7 **adult schizophrenics every time? Would it really be**
 8 **fair to say that?**
 9 A. No, it would not be fair to say that. That
 10 was the context of our discussions on each and every
 11 call because that's what the label supported at the
 12 time.
 13 **Q. Because that's what the law required. That's**
 14 **why you're saying that, correct?**
 15 **MR. MURPHY:** Objection, Your Honor.
 16 **THE WITNESS:** Yes. And I could have
 17 lost my job had I not followed the company
 18 policy.
 19 **MR. MURPHY:** Objection.
 20 **THE COURT:** All right. That's
 21 sustained. Sustained. Sustained.
 22 **BY MR. KLINE:**
 23 **Q. Let's talk about that. Let's talk about that.**
 24 **Did you ever have any discussions**
 25 **with any of the higher-ups at Janssen as to whether**

1 **kids, wasn't it?**
 2 A. Yes. It was off-limits for me to discuss. I
 3 mean, it's the physician's discretion how they would
 4 want to use it.
 5 **Q. So it's off-limits for you to discuss, but not**
 6 **off-limits for you to give the samples; is that your**
 7 **belief? Was that your belief back then?**
 8 A. We provided samples if the physicians --
 9 **Q. Was that your belief back then?**
 10 **MR. MURPHY:** Objection, Your Honor.
 11 **THE COURT:** Overruled.
 12 **BY MR. KLINE:**
 13 **Q. That's the question.**
 14 **MR. MURPHY:** He's answering the
 15 questions.
 16 **MR. KLINE:** No, he wasn't.
 17 **BY MR. KLINE:**
 18 **Q. Was it your belief back then that it was**
 19 **illegal to talk about it but legal to give the drugs**
 20 **out? Yes or no?**
 21 **MR. MURPHY:** Objection.
 22 **THE WITNESS:** It was --
 23 **BY MR. KLINE:**
 24 **Q. Yes or no?**
 25 **MR. MURPHY:** He's asking about

1 **they really knew what they were doing here with the**
 2 **1.26 million children prescriptions?**
 3 **MR. MURPHY:** Objection.
 4 **BY MR. KLINE:**
 5 **Q. Did you have any discussions with them about**
 6 **that?**
 7 **MR. MURPHY:** Objection, Your Honor.
 8 **THE COURT:** That's sustained, as to
 9 that number. He testified earlier he didn't
 10 know about that number.
 11 **BY MR. KLINE:**
 12 **Q. Did you ever have any discussions with the**
 13 **Janssen higher-ups as to whether, sir, that they**
 14 **knew that this was being prescribed, these samples**
 15 **were being prescribed to children? Did you ever**
 16 **have any discussions?**
 17 A. No. I would have not had discussions for
 18 that. It wouldn't have helped me in my job.
 19 **Q. It wouldn't have come up in your mind, right?**
 20 A. No, not really. We had the label. And what
 21 we were asked to do is to represent within the scope
 22 of the FDA label; and if at some point there was an
 23 indication or an approved usage, well, then, by all
 24 means. But before that it was off-limits.
 25 **Q. Oh, it was off-limits. It was off-limits to**

1 **legality, Your Honor.**
 2 **THE COURT:** Overruled.
 3 **THE WITNESS:** It was the belief that
 4 I had that any samples we provided would be
 5 in the sole custody of the physician to use
 6 in the discretion of their practice, and
 7 anything I discussed was within the scope of
 8 the label. And so if it's their judgment
 9 that they need to use it in this population
 10 or this one or this patient or that one, that
 11 was their discretion.
 12 **BY MR. KLINE:**
 13 **Q. Right. At their discretion. And you**
 14 **certainly empowered them to do it because you gave**
 15 **it to them for free, correct?**
 16 **MR. MURPHY:** Objection;
 17 argumentative, Your Honor.
 18 **THE COURT:** All right. That's
 19 sustained. Sustained.
 20 **MR. KLINE:** I'll move on.
 21 **BY MR. KLINE:**
 22 **Q. 1/3/04, you're back in the office.**
 23 A. It's actually 1/13.
 24 **Q. 1/13/04.**
 25 A. Yes.

<p>- JASON GILBREATH - AS ON CROSS - Page 33</p> <p>1 Q. Presentation? 2 A. Yes. 3 Q. Any samples? 4 A. No. 5 Q. Well, sir, would a doctor who was just given 6 1,592 doses of .25 milligrams, would a child 7 neurologist who had been given those doses need any 8 samples a month later? 9 MR. MURPHY: Objection, Your Honor. 10 THE COURT: All right. That's 11 sustained. Sustained. 12 BY MR. KLINE: 13 Q. Did you have a discussion with him that day 14 that amounted to "I don't need any samples because I 15 have plenty from before," sir? Does that jog your 16 recollection as to what might have happened that 17 day? 18 A. No, I don't have a specific recollection of 19 that specific day. 20 Q. Next. 62-O. 21 (Whereupon Exhibit P-62-O was marked 22 for identification.) 23 BY MR. KLINE: 24 Q. 62-O is from 2/12/04. It says you did a 25 presentation. You checked that box, correct?</p>	<p>- JASON GILBREATH - AS ON CROSS - Page 35</p> <p>1 that says "presentation." There would be a box that 2 says "presentation and samples"? 3 A. Yes. As I recall, there were a couple of 4 boxes there. One would be "presentation," which 5 suggested a discussion took place. Presentation 6 with sample, a discussion took place and samples 7 were requested and provided. And then there was one 8 for "service." That means I went by and attempted 9 to visit or see the physician but was unable to do 10 so. 11 Q. 2/12/04, you -- let's see what you gave. 12 Five. You gave five 4 by 1 by 20s? 13 A. Yes. 14 Q. Of .50s. 15 So you gave -- you gave eighty .50s, 16 which would be the equivalent of 160 .25s, correct? 17 A. Yeah, I'm following your math. 18 Q. Okay. Next. 19 We would be at 62-P. 20 - - - 21 (Exhibit P-62-P marked for 22 identification.) 23 BY MR. KLINE: 24 Q. Which is 3/2/04. 25 A. Yes.</p>
<p>- JASON GILBREATH - AS ON CROSS - Page 34</p> <p>1 A. (No response.) 2 Q. Do you see when it says "presentation and 3 samples," sir? 4 A. You're referring to 2/12, and this one is 5 indicative of 3/2. 6 Q. Ah, yeah. 7 MR. KLINE: Do we have 2/12/04, which 8 is Bates number ending in 130? 9 (Technician complied with request.) 10 (Displaying document on screen.) 11 MR. KLINE: Which we've marked as 12 60-O. And, for the record, it's in the 60 as 13 in a letter O. 14 COURT CRIER: Sixty-two. 15 MR. KLINE: Sixty-two, yes. Thank 16 you. Thank you, Marianne. 17 62-O. 18 BY MR. KLINE: 19 Q. Sir -- 20 A. Yes. 21 Q. -- it says here -- do you see where it says 22 "presentation and samples"? 23 A. I do. 24 Q. I neglected to ask you, sir, is that just a -- 25 is that a click-on box, too? There would be a box</p>	<p>- JASON GILBREATH - AS ON CROSS - Page 36</p> <p>1 Q. Back within about three weeks to see him 2 again, correct? 3 A. Yes. 4 Q. It says you did a presentation again, correct? 5 A. Yes, that's correct. 6 Q. And you had at that point, you gave out -- 7 let's get to the sample, see what you handed out 8 that day. Five 4 by 1 by 20s. 9 A. Yes. 10 Q. So we have the same thing. Within three weeks 11 you give him eighty .50s, equivalent of 160 .25s, 12 correct? 13 A. Yes, using the methodology, yes. 14 MR. KLINE: 62-Q. 15 We're getting there. 16 - - - 17 (Exhibit P-62-Q marked for 18 identification.) 19 - - - 20 BY MR. KLINE: 21 Q. You gave -- this time were you there 4/5? 22 A. The one I see is 5/18. 23 Q. 4/5/04. Another presentation, correct, sir? 24 A. The one I see is 5/18. 25 Q. Now, can I ask you a question, sir --</p>

<p>- JASON GILBREATH - AS ON CROSS - Page 37</p> <p>1 THE COURT: Wait, Counsel.</p> <p>2 MR. KLINE: Oh.</p> <p>3 THE COURT: Is this 5/18?</p> <p>4 MR. KLINE: Oh, I've marked 62-Q.</p> <p>5 MR. MURPHY: It's 5/18.</p> <p>6 MR. KLINE: Which is 4 -- I'm not</p> <p>7 sure. What's the question being asked?</p> <p>8 THE COURT: What's the date we're</p> <p>9 looking at? The one after March 2nd.</p> <p>10 MR. KLINE: 4/5.</p> <p>11 COURT CRIER: No. That's not Q.</p> <p>12 MR. MURPHY: That's not the next one</p> <p>13 in the order.</p> <p>14 COURT CRIER: Okay.</p> <p>15 MR. KLINE: Okay. Let me get the</p> <p>16 next one in order.</p> <p>17 I have by my tally, which I thought I</p> <p>18 went through carefully next, is 4/5/04.</p> <p>19 There is a 4/5/04 visit.</p> <p>20 THE COURT: All right. If you have</p> <p>21 it, we'll return to it. Right now we're</p> <p>22 looking at 5/18/04.</p> <p>23 MR. KLINE: Okay. Well, maybe Cory</p> <p>24 is a step ahead of me, but I want 4/5/04.</p> <p>25 You don't have 4/5/04?</p>	<p>- JASON GILBREATH - AS ON CROSS - Page 39</p> <p>1 Q. Uh-huh.</p> <p>2 And if it doesn't have unscored, then</p> <p>3 it would be the opposite, it would be, correct?</p> <p>4 A. It would.</p> <p>5 Q. Breakable?</p> <p>6 A. If it was scored, it would have a line across</p> <p>7 it that would, yeah.</p> <p>8 Q. But the only time that an indication is given</p> <p>9 here in this whole two years that we've been</p> <p>10 discussing is this one time when you gave one</p> <p>11 milligram unscored. Every other time it doesn't say</p> <p>12 that they were unscored, correct?</p> <p>13 A. I don't recall seeing any other time, no.</p> <p>14 Q. Yeah. That's my question.</p> <p>15 A. No, I don't see it.</p> <p>16 Q. Okay. So here five 1 by 7s. It's seven fives</p> <p>17 are 35. Thirty-five one milligrams. And if you</p> <p>18 were to do it in .25-milliliter doses, it would be</p> <p>19 140 .25s, the equivalent of, correct?</p> <p>20 A. Yes, using that math.</p> <p>21 Q. And, sir, even not using that, it's 35</p> <p>22 one-milligram pills, correct?</p> <p>23 A. (No response.)</p> <p>24 Q. Thirty-five one-milligram pills is what you</p> <p>25 dropped off that day, correct?</p>
<p>- JASON GILBREATH - AS ON CROSS - Page 38</p> <p>1 (Conferring with technician.)</p> <p>2 Here. We all know what it looks</p> <p>3 like. But we'll mark 4/5/04 as what number,</p> <p>4 62-Q. We'll do it right from here. Put it</p> <p>5 in front of the witness, please. We don't</p> <p>6 have to display it. We all know what these</p> <p>7 look like now.</p> <p>8 Do you have it, Mr. Murphy, 4/5/04?</p> <p>9 MR. MURPHY: Yes, I do.</p> <p>10 MR. KLINE: Okay. Thank you, sir.</p> <p>11 Marianne is making a copy for</p> <p>12 convenience, Your Honor.</p> <p>13 VIDEO TECHNICIAN: It's out of order.</p> <p>14 MR. KLINE: Okay. It's out of order</p> <p>15 and found it.</p> <p>16 Quickly, I know that this has been</p> <p>17 tedious, 4/5/04.</p> <p>18 62-Q is now displayed to the jury.</p> <p>19 BY MR. KLINE:</p> <p>20 Q. Five 1 milligram by 7 unscored. What does</p> <p>21 "unscored" mean, sir?</p> <p>22 A. That means that, to the best of my knowledge,</p> <p>23 it does not have a line across the center of the</p> <p>24 pill. That way it would not be easy to break in an</p> <p>25 even half.</p>	<p>- JASON GILBREATH - AS ON CROSS - Page 40</p> <p>1 A. Yes, that is correct.</p> <p>2 Q. The next one is 62-R.</p> <p>3 MR. KLINE: I only have one copy for</p> <p>4 some reason of this, Marianne.</p> <p>5 COURT CRIER: I have it.</p> <p>6 MR. KLINE: You have it already?</p> <p>7 COURT CRIER: I do.</p> <p>8 MR. KLINE: And this is 5/18/04.</p> <p>9 - - -</p> <p>10 (Exhibit P-62-R marked for</p> <p>11 identification.)</p> <p>12 - - -</p> <p>13 THE WITNESS: Yes, I see that.</p> <p>14 BY MR. KLINE:</p> <p>15 Q. It says you gave a presentation, correct?</p> <p>16 A. Yes.</p> <p>17 Q. By the way, sir, when it says you did a</p> <p>18 presentation on adult schizophrenia, is -- did -- I</p> <p>19 mean, is there something about Dr. Mathisen that he</p> <p>20 would have to be given the same -- the information</p> <p>21 one, two, three, four, five times in five months?</p> <p>22 A. Yes. Any physician that we saw would have</p> <p>23 been the discussion in the context of the label,</p> <p>24 which was for adults with schizophrenia. But there</p> <p>25 are multiple topics contained within that. You have</p>

1 the efficacy, the clinical studies, the safety
2 information, dosing, things like that. So the
3 interaction did not last -- it was not a very
4 lengthy interaction, and so we would talk about any
5 of those things, any number of those things.
6 **Q. But you don't remember any of them on this**
7 **visit either, correct?**
8 A. No. I actually don't have specific
9 recollection of this visit.
10 **Q. Can I just look and see if there's a place**
11 **there for -- no, above there. Above where it**
12 **says -- where there's a place for notes. Yes.**
13 **Blank again, correct, sir?**
14 A. Yes, that is blank.
15 **Q. It's always blank, isn't it? Except for one**
16 **time, that we're going to go to, when he asked for a**
17 **New England Journal article.**
18 **Let's look at 5/18. Is that correct,**
19 **sir? It's always blank other than that one time**
20 **when he looked for a New England Journal article?**
21 A. Okay.
22 **Q. Well, you've reviewed them as well before**
23 **coming in here; am I correct?**
24 A. I did not this week, no. I did, I think, as
25 part of the deposition. But the only one I do

1 recall that there was entries on was the one where
2 he had the special request.
3 **Q. Right. Now, 5/18, you gave five 1 by 7 --**
4 A. Yes, that's correct.
5 **Q. -- unscored?**
6 A. Yes, that's what it says.
7 **Q. Which is the equivalent of 140 .25s, correct?**
8 A. Yes, using the .25.
9 **Q. You do know -- okay. Moving on. Two more.**
10 **The next to the last visit.**
11 **And, by the way, sir, sometimes you**
12 **gave out what you had, meaning there were some times**
13 **when you didn't have a full complement of oral .25s,**
14 **.50s, and therefore, when you went to see a doctor,**
15 **even if he had a request for .25s or .50s, you'd say**
16 **hey, this is all I have? That happened on occasion,**
17 **not just with Dr. Mathisen but other doctors,**
18 **correct?**
19 A. I don't recall that happening per se, but
20 certainly I could not provide something that I
21 didn't have.
22 **Q. And we now get to 62-S.**
23 **- - -**
24 **(Exhibit P-62-S marked for**
25 **identification.)**

1 **BY MR. KLINE:**
2 **Q. 62-S is 6/1/04. And it says you gave a**
3 **presentation again?**
4 A. Yes.
5 **Q. And samples?**
6 A. Yes.
7 **Q. Hmm. Ten .5?**
8 A. Yes.
9 **Q. One by 7s?**
10 A. That's correct.
11 **Q. It would be seventy .50s, or if you broke them**
12 **in half, it would be a hundred and forty .25s,**
13 **correct?**
14 A. Yes.
15 **Q. And I haven't used this term, but I think you**
16 **use this term in the pharma world: All courtesy of**
17 **Janssen, correct? You use that term, don't you?**
18 **MR. MURPHY:** Objection, Your Honor.
19 **MR. KLINE:** "Courtesy."
20 **THE COURT:** Overruled.
21 **THE WITNESS:** No, I do not use that
22 term. And I don't recall it being used --
23 what -- I don't really know if I really
24 understand the context of the question.
25 **BY MR. KLINE:**

1 **Q. Okay. And now if we go to the June 30th.**
2 **Okay. Here we go. Wow, 6/30.**
3 **Twenty-nine days later. And another one of them**
4 **presentations, sir?**
5 A. Yes. It says a "presentation and sample."
6 **Q. Was it -- was there no -- I haven't asked you**
7 **this.**
8 **On the drop-down menu, there was no**
9 **choice to say anything other than you gave a**
10 **presentation, on the drop-down menu, correct?**
11 A. No. There was a presentation; presentation
12 with samples, both of which indicated a in-person
13 discussion took place; and then there was one to say
14 "service," if you went by and were unable to have a
15 discussion.
16 **Q. Was there a fourth box which said "samples**
17 **only"?**
18 A. No. We only provided samples when the
19 physician could sign in person and in which a
20 discussion would have taken place.
21 **Q. My question was -- I want to make sure I pin**
22 **it down.**
23 **Was there a box that said "samples**
24 **only"? Yes or no?**
25 A. Not that I recall.

1 **Q. And, sir, you've said this two or three times**
2 **today; this thing about doctors signing for them.**
3 A. Yes.
4 **Q. So you give a form and the doctor signed on**
5 **the form?**
6 A. Yes. It's a sample request form. It
7 stated -- not only for the doctors to sign, it said
8 the request is made for the samples listed above and
9 that was what the physician requested.
10 **Q. All right. Let me understand it, then. You**
11 **go in, you cold call a doctor. You know what it**
12 **means by cold call. You just show up at the**
13 **doctor's office, correct?**
14 A. I did not cold call Dr. Mathisen. He had
15 called and requested me to visit him.
16 **Q. On the first time. You already told us hours**
17 **ago that you would go to his office and you would**
18 **see him if he was available during a certain**
19 **prescribed period.**
20 A. Yes. But he requested --
21 **Q. It was okay to get in?**
22 A. He requested us to come by with a certain
23 frequency over time.
24 **Q. Well, is that written down anywhere?**
25 A. (No response.)

1 **Q. Where's any of this correspondence? Is there**
2 **a memo about that?**
3 A. No, I don't recall a memo about that.
4 **Q. Do you have any notes about any conversations**
5 **you had with Dr. Mathisen?**
6 A. Ummm...
7 **Q. Nothing?**
8 A. No. The call note is what would be the record
9 of my interaction with Dr. Mathisen.
10 **Q. Nothing else?**
11 A. No. I don't recall anything else being
12 captured.
13 **Q. And here, let's see what happened on that day.**
14 **Well, twenty .5s.**
15 **And, by the way, there's something**
16 **here which I haven't covered this whole time. What**
17 **are M-Tabs? You see right up there.**
18 **Could we just take everything down**
19 **but M-Tabs.**
20 A. Yes.
21 **Q. What are M-Tabs?**
22 A. It's an orally disintegrating tablet. Meaning
23 it actually dissolves in your mouth.
24 **Q. Right. Easy for a kid to use?**
25 **MR. MURPHY: Objection.**

1 **BY MR. KLINE:**
2 **Q. Dissolves right in your mouth, correct? And**
3 **you knew it?**
4 **MR. MURPHY: Objection, Your Honor;**
5 **argumentative.**
6 **THE COURT: Well, sustained as**
7 **phrased.**
8 **MR. KLINE: I'll ask it in the form**
9 **of a question.**
10 **BY MR. KLINE:**
11 **Q. Is a dissolvable tablet in the mouth easier to**
12 **use for a child than a swallowable pill? Yes or no,**
13 **sir?**
14 A. I can't really answer that in a yes-or-no
15 question.
16 **Q. Do you have any --**
17 A. I can tell you that due to the nature of the
18 illness, patients with severe mental illness
19 oftentimes thought their medication was poison or
20 something like that. And something like with a
21 pill, they could hold it in their cheek and then
22 when people were gone, they would spit it out. So
23 they would not get their medication and they
24 obviously wouldn't get the benefit from it.
25 So I know the M-Tab was a orally

1 disintegrating tablet to help for purposes like
2 that.
3 **Q. Yeah. And, of course, that would have nothing**
4 **to do with some of the children that were being**
5 **treated by a child neurologist, correct?**
6 A. I do not know if Dr. Mathisen prescribed the
7 M-Tab product to children.
8 **Q. Did you ever have a discussion -- you don't**
9 **know if he prescribed it for children?**
10 A. I don't.
11 **Q. He's a child neurologist, sir. And you**
12 **dropped off -- you dropped off twenty .5 by 4 by**
13 **20s. So let's look at that.**
14 **These are M-Tabs. You prescribed in**
15 **.5, four times 20, that's 80, equaling 160 .25s,**
16 **correct?**
17 A. Yes, if you did the .25 methodology, yes.
18 **Q. Yeah.**
19 **And, sir, up until this time, during**
20 **this whole -- up and through this entire time**
21 **period, had you had any training in pediatric uses**
22 **of medications? Yes or no?**
23 A. No. I would not have expected to have
24 training on pediatric uses.
25 **Q. Well, you certainly would expect it if a large**

1 part of the use of the drug was in children
2 off-label. You would certainly have expected to
3 know something, wouldn't you?
4 MR. MURPHY: Objection, Your Honor;
5 argumentative.
6 MR. KLINE: I'll rephrase.
7 THE COURT: Overruled.
8 MR. KLINE: I'll rephrase.
9 THE COURT: I'll let him answer that.
10 I'll let him answer that. I'll surprise you.
11 Go ahead.
12 Answer that.
13 THE WITNESS: No, I wouldn't expect
14 to know that. And the reason being is any
15 discussion that I had regarding children
16 would have been inappropriate; or if a
17 question was posed to us from a physician, we
18 would have acknowledged that your question or
19 comment was resulting from an off-label use
20 and I'm not able to speak about that. If you
21 have a question or something you need
22 information on, you know, state what that is
23 and I will provide it to the -- provide your
24 question to the appropriate department and
25 they can respond.

1 BY MR. KLINE:
2 Q. Would you have educated yourself on the use of
3 this in children? Yes or no?
4 THE COURT: Sustained. Sustained.
5 Sustained.
6 BY MR. KLINE:
7 Q. Did the company ever tell you, sir -- under
8 oath tell us this --
9 A. Sure.
10 Q. -- did the company ever tell you that the drug
11 had as much as a 2.3 percent incidence of
12 gynecomastia in children and adolescents? Yes or
13 no?
14 A. The company did make that available in the
15 label once the FDA reviewed it and approved the
16 label.
17 Q. Okay. Let's do it the hard way.
18 A. Sure.
19 Q. Did the company ever tell you any time between
20 2002 and 2004 when you were in Dr. Mathisen's office
21 that they had information that the incidence of
22 gynecomastia in children and adolescents was at
23 least 2.3 percent; were you ever told that?
24 MR. MURPHY: Objection.
25 THE WITNESS: No, I wasn't, because

1 BY MR. KLINE:
2 Q. That's how you were handling it in this
3 period, '02 to '04, when you were visiting
4 Dr. Mathisen, just what you told the jury is how you
5 saw it, correct?
6 A. Yes.
7 Q. Okay. Did you know that the jury knows that
8 20 percent of the drug was being sold off-label to
9 children? Did you know that fact sitting here
10 today?
11 A. I did not know that fact.
12 Q. Did you know that fact back then, sir? Yes or
13 no?
14 A. No, I didn't.
15 Q. If you knew that fact, sir, back then, that
16 20 percent, one out of five, doses were being used
17 for children, would you have educated yourself? Yes
18 or no?
19 MR. MURPHY: Objection, Your Honor;
20 irrelevant.
21 BY MR. KLINE:
22 Q. Yes or no?
23 THE COURT: Would he have educated
24 himself?
25 MR. KLINE: Yes; on children.

1 we were --
2 BY MR. KLINE:
3 Q. Not "because," sir. Were you ever told it?
4 Yes or no?
5 A. We were told that the usage that we spoke to
6 was in adults and we were not trained on children.
7 Q. If you knew that, sir, would you have told --
8 MR. MURPHY: Your Honor, objection.
9 THE COURT: Is there an objection?
10 MR. MURPHY: Yes, there is an
11 objection.
12 THE COURT: That's been overruled.
13 He asked for a yes or a no, and I didn't get
14 that.
15 MR. MURPHY: My objection is that the
16 witness had not been allowed to answer the
17 question that was posed.
18 THE COURT: Right now it's either yes
19 or no and then he'll ask another question.
20 MR. KLINE: Yes.
21 THE WITNESS: I apologize, rephrase
22 the question. I'm sorry.
23 MR. KLINE: Sure.
24 THE WITNESS: Or the same question.
25 I apologize. So rephrase. You can ask the

1 question again. I just don't recall it
2 exactly.
3 **THE COURT:** John, what's the
4 question?
5 **MR. KLINE:** I'll -- I know where I
6 am, Your Honor.
7 **THE COURT:** You got the question?
8 **MR. KLINE:** I know where I am. I do.
9 **BY MR. KLINE:**
10 **Q. I want to ask whether he knew a bunch of**
11 **stuff.**
12 **THE COURT:** Yes or nos. Are these
13 yes or nos, Counsel?
14 **MR. KLINE:** Yeah, these are -- yeah.
15 I believe the next few questions are
16 susceptible to yes-or-no questions.
17 **THE WITNESS:** I think you asked me
18 did I know, did the company tell us, that
19 that known risk was with hyperprolactinemia
20 or gynecomastia; was that the question?
21 **BY MR. KLINE:**
22 **Q. No. But you're ahead of me, because you now**
23 **know that there's a risk of hyperprolactinemia,**
24 **correct? You know that sitting here today?**
25 **A. That's in the label, yes.**

1 professionals that drugs with a strong dopamine
2 blockade, Dopamine-2 specifically, could be
3 associated with elevated prolactin levels.
4 **Q. Let's look at the 2006 label. I'm going to**
5 **have two questions for you, sir.**
6 **A. Sure.**
7 **Q. By the way, when you were in a pediatric child**
8 **neurologist's office, sir --**
9 **A. Yes.**
10 **Q. -- in a child neurologist's office, in 2002**
11 **and 2003, like we're looking at, did you believe**
12 **that you had an obligation to know how this drug**
13 **interacted with children? Yes or no?**
14 **MR. MURPHY:** Same objection, Your
15 Honor.
16 **THE COURT:** Overruled.
17 **THE WITNESS:** No. I wouldn't expect
18 to have training or knowledge of the use in
19 children.
20 **BY MR. KLINE:**
21 **Q. And why did you go to a pediatric neurologist**
22 **to start?**
23 **A. Because he requested --**
24 **MR. MURPHY:** Objection; asked and
25 answered.

1 **Q. You know that the drug is worse than the other**
2 **competitor drugs as to hyperprolactinemia, correct?**
3 **A. For prolactin elevation, yes.**
4 **Q. When did you first learn that, sir?**
5 **A. When it went into the label.**
6 **Q. That's the first time you learned it?**
7 **A. Yes. One thing that was known in the entire**
8 **community, the psychiatric community, was that**
9 **drugs --**
10 **MR. KLINE:** Objection, Your Honor.
11 He doesn't know what's known in the
12 psychiatric community.
13 **MR. MURPHY:** Objection, Your Honor.
14 Does he decide what the answer is?
15 **THE COURT:** Right now I'm going to
16 permit him to answer and go from there.
17 **MR. KLINE:** Take it from there.
18 **BY MR. KLINE:**
19 **Q. What was known in the psychiatric community,**
20 **sir, that the drug was worse than the other**
21 **competitors' drugs?**
22 **A. Let me rephrase.**
23 It was known in my study of
24 psychiatric medications and through my interactions
25 with psychiatrists and other mental health

1 **THE COURT:** Overruled. Overruled.
2 Why did you go there?
3 **BY MR. KLINE:**
4 **Q. Why did you go there?**
5 **A. Because he requested the visit.**
6 **Q. Once you found out that he was a child**
7 **neurologist, didn't you say "I can't treat -- I**
8 **can't give stuff to a child neurologist," sir? Did**
9 **you say that?**
10 **A. No, I didn't. Actually --**
11 **MR. MURPHY:** Objection, Your Honor.
12 **THE COURT:** Overruled.
13 **THE WITNESS:** Once I found out that
14 he treated adults was the basis of our
15 discussion.
16 **BY MR. KLINE:**
17 **Q. What if you had found out that he only treated**
18 **a few adults who followed through from the**
19 **childhood, would you have then stopped --**
20 **MR. MURPHY:** Objection. This is the
21 fifth time.
22 **THE COURT:** All right. That's
23 sustained.
24 "What ifs" are sustained.
25 **MR. KLINE:** My word.

1 **BY MR. KLINE:**
2 **Q. Let's look at the 2006 label. You said you're**
3 **familiar with it. There are two things in the 2006**
4 **label as to children which stand out like a sore**
5 **thumb, correct, sir?**
6 **A. I don't know what you're referring to,**
7 **actually.**
8 **Q. Well, let's look at one thing.**
9 **A. Sure.**
10 **Q. 2.3 percent of children and adults -- children**
11 **and adolescents. We have it right up in front of**
12 **us. In clinical trials in 1,885 children and**
13 **adolescents --**
14 **A. Yes.**
15 **Q. -- with autistic disorders and other**
16 **psychiatric disorders treated with risperidone,**
17 **gynecomastia was reported in 2.3 of**
18 **risperidone-treated patients.**
19 **I have a few very simple, basic**
20 **questions, sir. You ready for them?**
21 **Did you know that fact in 2002 and**
22 **2003?**
23 **A. No, I did not.**
24 **Q. Did you know whether Janssen knew those facts**
25 **in 2002, 2003?**

1 **A. I do not know.**
2 **Q. Did you know anything about a study that we've**
3 **spent a day on in this courtroom called RIS-41,**
4 **which was known by 2001 to have gynecomastia rates**
5 **in children and adolescents of somewhere in the**
6 **neighborhood of 5.1 percent? Did you know about**
7 **that study?**
8 **A. No, of course not. We were trained on the**
9 **label which was for adults. And I would -- for my**
10 **responsibilities, only after that information came**
11 **inside the label was I permitted to speak about it.**
12 **Q. Sir, did you rehearse the testimony before**
13 **giving it?**
14 **MR. MURPHY: Objection, Your Honor.**
15 **THE COURT: All right. That's**
16 **sustained.**
17 **We're going to take a recess shortly.**
18 **So do you have much more?**
19 **MR. KLINE: Yes; on this I'd like to**
20 **finish this question.**
21 **THE COURT: All right. Go ahead.**
22 **BY MR. KLINE:**
23 **Q. You didn't know -- that's what I want to know.**
24 **Did you or didn't you know about the 2.3 increase**
25 **when you were visiting that child neurologist 21**

1 **times? Did you or didn't you know?**
2 **MR. MURPHY: Objection; asked and**
3 **answered.**
4 **THE WITNESS: No.**
5 **THE COURT: Overruled. Overruled.**
6 **Just answer the question one way or the**
7 **other.**
8 **BY MR. KLINE:**
9 **Q. Did you or didn't you know?**
10 **A. No, I did not know that.**
11 **Q. I'm going to ask you one more thing.**
12 **A. Yes.**
13 **Q. There's something else in the 2006 label that**
14 **we now know was known to Janssen back in 2000 and**
15 **2001. Let me show it to you.**
16 **A. Okay.**
17 **Q. Risperidone is associated with higher levels**
18 **of prolactin elevation than other antipsychotic**
19 **drugs; do you see that?**
20 **A. Yes, I do.**
21 **Q. When's the first time you learned that, sir?**
22 **A. Whenever it came into the label, I suppose.**
23 **Q. You didn't know it before 2006, correct?**
24 **A. No. I knew that Risperdal was a strong D2**
25 **blocker.**

1 **Q. No, sir. I'm looking at those words.**
2 **We know it's a strong D2 blocker. We**
3 **know that other drugs are strong D2 blockers. I'm**
4 **talking about this sentence, sir.**
5 **When did you learn -- when did you**
6 **learn that risperidone is associated with higher**
7 **levels of prolactin elevation than any other**
8 **antipsychotic drugs? When did you learn that?**
9 **MR. MURPHY: Objection; asked and**
10 **answered.**
11 **THE COURT: Overruled.**
12 **BY MR. KLINE:**
13 **Q. When did you learn that?**
14 **A. That would have been made known to me when it**
15 **came into the label. But from day one we knew that**
16 **Risperdal was a strong dopamine drug due to the way**
17 **it worked, along with other Risperdal -- or excuse**
18 **me, along with other dopamine drugs.**
19 **Q. Are you suggesting that you knew this before**
20 **or after it came into the label in October 2006;**
21 **that it was worse than the other drugs and that it**
22 **elevated it more? Did you know that at any time**
23 **before '06?**
24 **A. Actually, I am suggesting I knew what was in**
25 **the label prior to this particular label; and**

<p>- JASON GILBREATH - AS ON CROSS - Page 61</p> <p>1 prolactin was mentioned in the label before. 2 Q. That's another talking point, sir, correct? 3 MR. MURPHY: Objection. 4 THE COURT: All right. 5 MR. KLINE: May I, please? 6 BY MR. KLINE: 7 Q. Was that a talking point of Janssen, what you 8 just said? 9 A. The entire safety profile was, which included 10 verbiage on hyperprolactinemia. 11 Q. So you would have told doctor -- if 12 Dr. Mathisen had asked the question, well, how does 13 this drug compare on gynecomastia, you would have 14 told him that it's no different than any of the 15 others, correct? 16 A. I would have pointed him to the FDA-approved 17 label at the time, which was within the scope of my 18 responsibility. 19 Q. And if he said is it any better or worse than 20 the others, what would you say? 21 A. I would have pointed him to the label. 22 Q. And the label said that gynecomastia is rare; 23 did you know that fact? 24 A. I don't know that specific fact, but I know it 25 was included in the package insert.</p>	<p>- JASON GILBREATH - AS ON CROSS - Page 63</p> <p>1 prolactin elevation than other antipsychotic agents 2 because you learned that for the first time in 2006, 3 correct? 4 A. I don't know exactly when that verbiage went 5 into the label. 6 Q. October 2006. Is that when you would have 7 first known it? 8 A. If that's when it went into the label, that's 9 when I would have first known it. 10 Q. Okay. 11 MR. KLINE: If Your Honor would like 12 a break, it's a good time. 13 THE COURT: You're not concluded with 14 this witness? 15 MR. KLINE: Pardon me? Oh, no. I 16 have to go through the ends of the things 17 with him. 18 THE COURT: All right. We'll take a 19 recess for a few minutes and then we'll 20 resume. 21 COURT CRIER: All rise as the jury 22 exits. 23 - - - 24 (Whereupon the jury exited the 25 courtroom at 2:59 p.m.)</p>
<p>- JASON GILBREATH - AS ON CROSS - Page 62</p> <p>1 Q. You don't know sitting here today that that 2 label says that gynecomastia is less than one in a 3 thousand? 4 A. As part of the deposition -- 5 Q. In 2002 -- 6 MR. MURPHY: Your Honor -- 7 BY MR. KLINE: 8 Q. Did you know back -- I have a specific 9 question. 10 Did you know back in 2002 and 2003, 11 did you know that the label said at the time that 12 gynecomastia was rare, meaning less than one in a 13 thousand? Yes or no? 14 A. If it was in the label, yes, I would have 15 known it. I would have known what the label stated. 16 Q. And what you didn't know was that risperidone 17 is associated with higher levels of prolactin 18 elevation than other antipsychotic agents back when 19 you were in the child neurologist, Mathisen's 20 office, correct? 21 A. I would have known what was in the label at 22 the time. 23 Q. Sir, can you answer my question? You wouldn't 24 have known what ended up in the 2006 label, which is 25 risperidone is associated with higher levels of</p>	<p>- S I D E B A R - Page 64</p> <p>1 - - - 2 (Whereupon a recess was taken.) 3 - - - 4 COURT CRIER: The Judge would like to 5 see you in the back. 6 - - - 7 (The following discussion transpired 8 in the Judge's robing room, out of the 9 hearing of the jury and the parties in the 10 courtroom.) 11 (The Judge, Mr. Kline, Mr. Sheller, 12 Mr. Gomez, Mr. Itkin, Ms. Sullivan, Mr. 13 Murphy, and Ms. Brown present.) 14 - - - 15 THE COURT: Okay. Have a seat. 16 I just want to go over a situation 17 that arose this morning regarding the whole 18 situation involving Dr. Goldstein, because I 19 want the parties to be very clear about this. 20 I have not promised that the expert 21 witness could be changed. So I want to be 22 very clear about that. There's a lot of law 23 involving this that we've researched today. 24 So there's a possibility that that 25 witness may not be replaceable, so that's</p>

<p>- S I D E B A R - Page 65</p> <p>1 really up to the plaintiff.</p> <p>2 The problem here is, is that the</p> <p>3 fault is on the plaintiff for the plaintiff's</p> <p>4 unavailability. If there was an upon cause</p> <p>5 shown as part of the Rules of Evidence --</p> <p>6 Rules of Civil Procedure that I looked at</p> <p>7 earlier, that might be a different situation.</p> <p>8 So I do not want the child to just go</p> <p>9 to random, willy-nilly, to any particular</p> <p>10 doctor in Alabama or Tennessee or wherever or</p> <p>11 Philadelphia, for that matter, on the</p> <p>12 assumption that I'm going to make that ruling</p> <p>13 in favor of a new one.</p> <p>14 There is, however, the possibility</p> <p>15 that upon some argument and research, we</p> <p>16 could be persuaded to grant an IME in</p> <p>17 Philadelphia, with the possibility of taking</p> <p>18 a day or two off from this trial in order,</p> <p>19 once and for all, to get a diagnosis for this</p> <p>20 child. Because it is a shame to suspend all</p> <p>21 this time and money, on the jurors' parts and</p> <p>22 the Court's time, in the case that does</p> <p>23 exist.</p> <p>24 MS. SULLIVAN: And, Your Honor, the</p> <p>25 problem with that obviously is we have framed</p>	<p>- S I D E B A R - Page 67</p> <p>1 MR. KLINE: May I be heard?</p> <p>2 THE COURT: Yes.</p> <p>3 MR. KLINE: Okay. Based on the</p> <p>4 Court's statements on the record last night</p> <p>5 and based upon the direction and the ruling,</p> <p>6 we took the following actions: I told</p> <p>7 Dr. Goldstein that he was dismissed. I also</p> <p>8 had a discussion with him about it and he</p> <p>9 told me he's not available. He has a -- he's</p> <p>10 not available. He's not in the jurisdiction.</p> <p>11 Now, here's the steps that we have</p> <p>12 taken, to no prejudice to the defendants, if</p> <p>13 I'm allowed to speak long enough to say it on</p> <p>14 the record.</p> <p>15 They are -- they knew for a year</p> <p>16 about this problem. Let me just say -- let</p> <p>17 me just lay it out. They knew for a year.</p> <p>18 For a year they claim that they knew about</p> <p>19 what they claim to be a crime. Whether</p> <p>20 they're right about that or not is another</p> <p>21 story. And they did nothing, nothing.</p> <p>22 Number two, they've done nothing --</p> <p>23 they did nothing but come in here yesterday</p> <p>24 to try to chill a plaintiff's ability to</p> <p>25 obtain justice. And, by the way, they did it</p>
<p>- S I D E B A R - Page 66</p> <p>1 our whole case based on the causation expert</p> <p>2 they've submitted. We've got expert reports</p> <p>3 lined up and experts directly responsive to</p> <p>4 him. I opened in large measure on the</p> <p>5 specific causation --</p> <p>6 THE COURT: Well, there wouldn't be</p> <p>7 any undue surprise.</p> <p>8 MS. SULLIVAN: Specifically, Your</p> <p>9 Honor, it was a specific causation opinion.</p> <p>10 THE COURT: I have not made a ruling.</p> <p>11 I would like argument in that one way or the</p> <p>12 other, because it is in my power upon a</p> <p>13 motion to grant an IME.</p> <p>14 But I think the preferable route is</p> <p>15 to go with this particular doctor.</p> <p>16 MR. KLINE: He's not available, Your</p> <p>17 Honor. I sent him home.</p> <p>18 THE COURT: Then we may have to</p> <p>19 call -- this case may be nonsuited, or we may</p> <p>20 put it into an IME, because all the research</p> <p>21 that I've seen about this case is without the</p> <p>22 specific causation -- what was that case,</p> <p>23 India? -- without the specific causation,</p> <p>24 we've got a problem here, according to the</p> <p>25 Superior Court two years ago.</p>	<p>- S I D E B A R - Page 68</p> <p>1 by essentially in that paper using a threat</p> <p>2 that he was somehow subject to -- that the</p> <p>3 plaintiff's expert was subject to some kind</p> <p>4 of criminal prosecution.</p> <p>5 Whether right or wrong, Judge, that</p> <p>6 is a violation. And I did the research on</p> <p>7 that. That's a separate violation. And</p> <p>8 everyone knows what I'm talking about. And</p> <p>9 that's an issue that the Court will have to</p> <p>10 wrestle with as to whether or not to report</p> <p>11 that.</p> <p>12 THE COURT: Well, I'm --</p> <p>13 MR. KLINE: Number three --</p> <p>14 THE COURT: Well, the reporting</p> <p>15 aspects of this are really --</p> <p>16 MR. KLINE: Different stories.</p> <p>17 THE COURT: Different issues.</p> <p>18 MR. KLINE: Different issues.</p> <p>19 Number three, if they really believe</p> <p>20 that and really knew that, but even what they</p> <p>21 did was they used this paper yesterday to try</p> <p>22 to chill our witness and destroy our witness</p> <p>23 from coming into the courtroom. How dare</p> <p>24 they. That's how I feel.</p> <p>25 THE COURT: All right. You're</p>

<p>- S I D E B A R -</p> <p>Page 69</p> <p>1 talking about the motion that I had ruled 2 yesterday was untimely? 3 MR. KLINE: Yes, yes. Your Honor, 4 any record that's reviewed by any appellate 5 court will see that Your Honor was furious 6 about it, rightly so. 7 THE COURT: Well, I can say this and 8 then I'll hear from the plaintiff. I can say 9 this: I can always reverse my order 10 yesterday as to this particular matter being 11 untimely under the circumstances and have it 12 ruled on on the merits. 13 MR. KLINE: Okay. Well, I'm going to 14 suggest merits. 15 THE COURT: And if it was ruled on on 16 the merits and I was forced to exclude this 17 person because on the merits it was unfair, 18 then we have upon cause shown in order to 19 permit an IME or a new -- so the issue is 20 whether I need to or should reverse my order, 21 because I do recall yesterday I did not give 22 Mr. Kline a chance to argue. 23 Now, he may or may not have realized 24 that the upon cause shown depended on whether 25 or not this particular motion was denied.</p>	<p>- S I D E B A R -</p> <p>Page 71</p> <p>1 going to get drawn in an argument with her. 2 THE COURT: Anyway -- 3 MR. KLINE: I want to be able to 4 finish. 5 THE COURT: -- from my point of view, 6 why don't you finish laying out the record. 7 And the reason I wanted a sidebar now is 8 because there are issues that are involved as 9 to whether or not there is a remedy, short of 10 a nonsuit or a mistrial, that are available 11 after so much effort has been put into by 12 this jury. 13 And the way I see it is the motion 14 that was filed yesterday was in fact a motion 15 that should have been filed before this trial 16 began to give the other side a chance to ask 17 for a new IME or whatever was necessary. And 18 since it wasn't filed and it was done under 19 that pretext, I made a ruling that was late. 20 However, given the ramifications 21 under the law as I see it of a waiver here, 22 I'm prepared to reverse that ruling and to 23 hear the whole matter on the merits, because, 24 frankly, fair play is at stake here. 25 MR. KLINE: Okay.</p>
<p>- S I D E B A R -</p> <p>Page 70</p> <p>1 But I am prepared, under these 2 circumstances, to reverse my order and to 3 permit argument on the merits of that 4 particular motion that was filed yesterday, 5 motion to exclude. 6 MS. SULLIVAN: And, Your Honor -- 7 MR. KLINE: Here's -- I thought I 8 still had the floor long enough to lay out 9 the plaintiff's position. 10 We're going to be out of court, 11 Judge, I'm telling you right now. We're not 12 going to have an expert. And we'll take this 13 up. And I guess the case will end up in The 14 Hague or the US Supreme Court or the 15 Pennsylvania Superior Court. But this is a 16 disgrace here, what's happened here. 17 MS. SULLIVAN: It's a disgrace you 18 guys didn't look at the law. 19 MR. KLINE: No, no. It's a disgrace 20 that you thought there was a crime and sat on 21 it. 22 MS. SULLIVAN: No, no. We thought 23 you actually complied with the law. 24 MR. KLINE: I'm not going to get 25 drawn into an argument with her. I'm not</p>	<p>- S I D E B A R -</p> <p>Page 72</p> <p>1 THE COURT: Not whether or not a case 2 management rule was complied with or not. 3 MR. KLINE: Well, I know -- I'm 4 sorry, Your Honor. 5 I just would like some opportunity to 6 lay out what is a grave injustice here. So 7 when I have the chance, I would like to be 8 able to do it. 9 THE COURT: You have the chance. Go 10 ahead. I've said what I have to say. 11 Because this is not going to be resolved now. 12 MR. KLINE: Okay. This change -- 13 THE COURT: You know -- 14 MR. KLINE: I can tell the Court what 15 I'm doing today, so that you know. 16 I'm in the process of getting a new 17 expert. On the merits, there's no prejudice 18 here. It is downright somewhere between 19 silly and ridiculous. And if I could be 20 heard long enough without being interrupted, 21 I will tell you why. 22 THE COURT: All right. 23 MR. KLINE: First of all, this case 24 involves a -- this case involves right now a 25 jury which has heard a couple of weeks of</p>

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<p>1 testimony. I have been directed by the Court</p> <p>2 under an order on this record that I was</p> <p>3 allowed to get a new expert yesterday.</p> <p>4 What I did was, I dismissed</p> <p>5 Dr. Goldstein for all times.</p> <p>6 THE COURT: I did not say that. I</p> <p>7 want to be clear. I want the record to be</p> <p>8 clear.</p> <p>9 MR. KLINE: I'm telling you what I</p> <p>10 did.</p> <p>11 THE COURT: You did. But I did not</p> <p>12 instruct you that I was going to permit it.</p> <p>13 MR. KLINE: Your Honor, I don't want</p> <p>14 to argue, honestly. The last thing in the</p> <p>15 world I want to do is have a dispute with</p> <p>16 Your Honor.</p> <p>17 But let me tell you what the</p> <p>18 consequences are and aren't on the merits.</p> <p>19 On the merits, I just want to be able to say</p> <p>20 what the merits are.</p> <p>21 THE COURT: No. But you're</p> <p>22 misrepresenting the record, if I may. I did</p> <p>23 not by any means make any other ruling other</p> <p>24 than the motion to exclude was dismissed</p> <p>25 based on lateness. Other than that, I made</p>		<p>1 said in this courtroom yesterday, which was I</p> <p>2 should have a discussion with Dr. Goldstein,</p> <p>3 I dismissed Dr. Goldstein, and he wants no</p> <p>4 part of this anymore.</p> <p>5 So my expert is somewhere between he</p> <p>6 is not available; he is ruined; and he is,</p> <p>7 rightly so, chilled.</p> <p>8 Now, what I've done, all as a result</p> <p>9 of what happened, what I've done is I have</p> <p>10 immediately, so as not to delay the trial, I</p> <p>11 might add, I have flown the boy up at my</p> <p>12 expense. Having him examined tonight at 5</p> <p>13 o'clock, and expect to have a report</p> <p>14 tomorrow, and expect to have a witness on the</p> <p>15 stand Thursday to say one simple thing, by</p> <p>16 the way, which is the same thing that</p> <p>17 Dr. Goldstein was going to say, nothing</p> <p>18 different.</p> <p>19 THE COURT: What's that?</p> <p>20 MR. KLINE: Which is that this boy</p> <p>21 has gynecomastia which was induced by</p> <p>22 Risperdal.</p> <p>23 THE COURT: No.</p> <p>24 MR. KLINE: Now --</p> <p>25 THE COURT: One second. I'm going to</p>	
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<p>1 no promise whatsoever. That is in fact why</p> <p>2 we're having the discussion now -- to clear</p> <p>3 up any understanding that you're going to</p> <p>4 have a new expert witness examine this boy</p> <p>5 without understanding ahead of time that it</p> <p>6 may not be admissible. That's why we're</p> <p>7 having this discussion at this hour.</p> <p>8 MR. KLINE: Okay. Now, what I'll --</p> <p>9 okay. Here's -- when I say "okay," I hear</p> <p>10 you. I don't know that I agree. But I'm</p> <p>11 certainly entitled to not. And I know Your</p> <p>12 Honor respects that.</p> <p>13 Here's where I am: I don't have</p> <p>14 Dr. Goldstein. I have a new -- here's what</p> <p>15 I've put into place, and here's why there's</p> <p>16 no prejudice on the merits, okay: The simple</p> <p>17 issue that needs to be addressed in this case</p> <p>18 is causation. It is no secret and no</p> <p>19 surprise to anybody that we say that it's</p> <p>20 prolactin, gynecomastia from Risperdal and</p> <p>21 they say it t'ain't. And they say it's</p> <p>22 something different.</p> <p>23 Now, I have -- there are a variety of</p> <p>24 experts who could say that.</p> <p>25 What I've done is based upon what was</p>		<p>1 ask that the jury -- we're going to have to</p> <p>2 dismiss the jury and discuss this. We're not</p> <p>3 going to be able to resolve this today right</p> <p>4 now, unless you want to go back to it.</p> <p>5 That is not acceptable at this point.</p> <p>6 And we can go back to the transcripts of</p> <p>7 yesterday. I did not authorize that. And</p> <p>8 I'm trying to see whether -- you haven't had</p> <p>9 the boy examined yet. It may be that we can</p> <p>10 figure out a lawful response to this</p> <p>11 situation.</p> <p>12 MR. KLINE: I thought you had.</p> <p>13 THE COURT: But that is not</p> <p>14 authorized.</p> <p>15 MR. KLINE: Well --</p> <p>16 THE COURT: You can do what you want</p> <p>17 to do. You can have him -- it may not be</p> <p>18 admissible. You can have him --</p> <p>19 MR. KLINE: You totally changed your</p> <p>20 mind.</p> <p>21 THE COURT: All right. Off the</p> <p>22 record.</p> <p>23 MR. KLINE: I don't want to argue</p> <p>24 about it.</p> <p>25 (Whereupon an off-the-record</p>	

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<p>1 discussion was held.) 2 THE COURT: I'm going to ask you to 3 look at the transcripts from yesterday. But 4 I am certain that I made no ruling yesterday 5 other than to deny the motion to exclude. 6 Off the record. 7 - - - 8 (Whereupon an off-the-record 9 discussion was held.) 10 - - - 11 THE COURT: All right. We'll excuse 12 the jury. 13 - - - 14 (Whereupon an off-the-record 15 discussion was held.) 16 - - - 17 (Whereupon the sidebar discussion was 18 suspended.) 19 (Whereupon a short recess was taken.) 20 - - - 21 THE COURT: All right. Marianne, 22 let's bring the jury in. We're going to 23 dismiss them and then we're going to have the 24 argument here. 25 COURT CRIER: Yes, Your Honor.</p>	<p>1 continuation of the examination of 2 Mr. Gilbreath, we will wait on that till 3 tomorrow morning and you are excused for the 4 rest of the day, okay? How about that. 5 All right. Now, wait, wait. This is 6 a reminder, this is a reminder again that the 7 same rules, same instructions apply, all 8 right? This is like an early dismissal. 9 Wear the yellow badges, okay? Please 10 remember to keep an open mind about the case. 11 Far from over. And also to make sure that 12 you do not discuss this case with anybody or 13 be involved in any way with the TV, media, 14 Internet, radio, newspapers, magazines. 15 Anything that might have to do with this 16 case, please ignore it or don't even look at 17 it, how's that? Okay. Thank you. 18 See you tomorrow. Try to be here for 19 9:30. 20 COURT CRIER: All rise as the jury 21 exits. 22 - - - 23 (Whereupon the jury exited the 24 courtroom at 3:32 p.m.) 25 - - -</p>
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<p>1 (Pause.) 2 COURT CRIER: May I, Your Honor? 3 THE COURT: Yes. 4 COURT CRIER: All rise as the jurors 5 enter the room. 6 - - - 7 (Whereupon the jury entered the 8 courtroom at 3:30 p.m.) 9 - - - 10 (The following transpired in open 11 court in the presence of the jury:) 12 - - - 13 THE COURT: All right. Please be 14 seated. 15 All right. Members of the jury, 16 there's always a wrinkle in everything, and 17 that's like a snow day, and that's what's 18 happening to us right now as far as -- we're 19 going to continue this matter until tomorrow, 20 okay? We're going to continue the case till 21 tomorrow. There's some legal discussions 22 that need to be made, and right now we think 23 that -- or I think anyway that the best time 24 to do it is right now. 25 So instead of going forward with the</p>	<p>1 (The following transpired in open 2 court outside the presence of the jury:) 3 - - - 4 THE COURT: All right. 5 Mr. Gilbreath, you are excused till tomorrow 6 as well. You're still under oath and you're 7 also still under this examination, so I'm 8 going to ask you not to discuss this case now 9 with any lawyers whatsoever -- 10 THE WITNESS: Okay. 11 THE COURT: -- involved in this case. 12 MR. KLINE: Or any Janssen people. 13 THE COURT: Or any lawyers; or any 14 people from your employer. 15 THE WITNESS: Okay. 16 THE COURT: Okay? 17 THE WITNESS: Agreed. 18 THE COURT: All right. Thank you. 19 You're excused. 20 THE WITNESS: Thank you. 21 (Witness excused.) 22 THE COURT: All right. You may be 23 seated everybody. 24 As soon as we have this door closed. 25 All right. This is now a follow-up</p>

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<p>1 on the discussion first raised yesterday by a</p> <p>2 motion that had been filed on -- when was</p> <p>3 that filed formally, Mr. Murphy? You're</p> <p>4 talking about the Defendants, Janssen</p> <p>5 Pharmaceuticals, Johnson & Johnson Bench</p> <p>6 Memorandum.</p> <p>7 MR. MURPHY: It was filed yesterday,</p> <p>8 Your Honor.</p> <p>9 THE COURT: Yesterday being</p> <p>10 February 2nd.</p> <p>11 MR. KLINE: In the afternoon.</p> <p>12 THE COURT: In the afternoon.</p> <p>13 I'm not clear, to be very clear, how</p> <p>14 much time the plaintiffs had in order to</p> <p>15 review that document.</p> <p>16 How much time did you have in order</p> <p>17 to review that document?</p> <p>18 MR. KLINE: None. I was handed the</p> <p>19 document and the Court at -- sometime, I</p> <p>20 believe, after the noon hour. And I</p> <p>21 literally was reviewing it while I was</p> <p>22 dealing with Dr. Kessler's testimony.</p> <p>23 THE COURT: All right.</p> <p>24 MR. KLINE: I had no time at all.</p> <p>25 THE COURT: So without a doubt, there</p>		<p>1 issue is joined by the de bene esse.</p> <p>2 So what happened here is, there was a</p> <p>3 statute always on the books in Alabama.</p> <p>4 THE COURT: No, no. I'm not getting</p> <p>5 to the merits yet. I'm right now just laying</p> <p>6 out what happened, because now I'm being told</p> <p>7 this motion wasn't even formally filed, even</p> <p>8 though it was considered and ruled on by this</p> <p>9 Court.</p> <p>10 MS. SULLIVAN: Well, Mr. Murphy filed</p> <p>11 it -- or he moved orally, Your Honor, to</p> <p>12 exclude it.</p> <p>13 THE COURT: I think I was handling it</p> <p>14 as if it were an oral motion. But at the</p> <p>15 same time, it is clear that the plaintiff did</p> <p>16 not have an opportunity to review the actual</p> <p>17 document or to study it for any ramifications</p> <p>18 as to what may -- might occur if this matter</p> <p>19 was resolved without its complete review.</p> <p>20 The reason I say that is because</p> <p>21 ultimately this Court made a ruling without</p> <p>22 the benefit of plaintiff's argument on the</p> <p>23 procedural aspect of this filing -- or this</p> <p>24 motion.</p> <p>25 And this Court ruled that it was</p>	
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<p>1 was no time for any office study of that</p> <p>2 particular document?</p> <p>3 MR. KLINE: None. I can tell the</p> <p>4 Court what I did was I looked at it for the</p> <p>5 first time then and assessed it, but had no</p> <p>6 time to do any -- to do anything.</p> <p>7 THE COURT: All right.</p> <p>8 MR. MURPHY: Your Honor --</p> <p>9 THE COURT: Please be seated.</p> <p>10 I am laying out the scenario for the</p> <p>11 record and also for review and for</p> <p>12 resolution.</p> <p>13 MR. MURPHY: Your Honor, just if I</p> <p>14 may. I understand.</p> <p>15 THE COURT: Yes, sir.</p> <p>16 MR. MURPHY: It was not formally</p> <p>17 filed.</p> <p>18 THE COURT: Pardon me?</p> <p>19 MR. MURPHY: It was not formally</p> <p>20 filed. It was handed up as a bench memo to</p> <p>21 you when it was provided to counsel.</p> <p>22 THE COURT: All right. Well, that</p> <p>23 makes it even clearer then as to the</p> <p>24 resolution of this matter.</p> <p>25 MS. SULLIVAN: And, Your Honor, the</p>		<p>1 untimely according to the case management</p> <p>2 order, which was an argument never made by</p> <p>3 the plaintiff. And I now believe that my</p> <p>4 ruling on this matter was unripe for actual</p> <p>5 decision because the particular grounds that</p> <p>6 I found it on was not argued by plaintiff and</p> <p>7 may in fact be prejudicial to their interests</p> <p>8 in this case.</p> <p>9 Therefore, I vacate that order of</p> <p>10 yesterday. And this particular matter,</p> <p>11 Defendant Janssen, if you wish it considered,</p> <p>12 you may have it considered, if it has been</p> <p>13 filed or not filed. If it's been reviewed by</p> <p>14 this Court, I consider it to be filed. And</p> <p>15 I'm prepared to hear argument on this</p> <p>16 particular motion at this time.</p> <p>17 Because I presume by now plaintiffs</p> <p>18 have had the chance, the opportunity to</p> <p>19 review this document and be prepared for this</p> <p>20 particular matter.</p> <p>21 Is that correct, Mr. Kline?</p> <p>22 MR. KLINE: No, it would not be</p> <p>23 correct. I'll tell you why, Your Honor,</p> <p>24 because -- because -- because the Court --</p> <p>25 I -- the Court said specifically: "And for</p>	

<p>- PLEDGER -vs- JANSSEN - Page 85</p> <p>1 that reason I will" -- and I'm talking about 2 Page 141 of the transcript. The Court 3 said -- and I will -- and I will talk about 4 the merits in a moment, if I may. 5 THE COURT: Well, let me -- I don't 6 mean to cut you off exactly, but I know what 7 I said, which is I would provide the 8 plaintiff with a remedy, which I am doing. 9 MR. KLINE: I think I could prove to 10 the Court that I deserve a remedy under the 11 merits. 12 THE COURT: That's exactly where 13 we're going, Mr. Kline. 14 MR. KLINE: Okay. 15 THE COURT: If you allow me to follow 16 up. 17 I never promised that I was going to 18 allow a new expert witness to testify or be 19 examined unless we had such an order. You do 20 not have such an order now. 21 What I did provide was -- and it's 22 all over the record yesterday -- that you 23 were the victim of unfair surprise in the 24 filing of that particular motion to exclude a 25 particular witness when the facts known</p>	<p>- PLEDGER -vs- JANSSEN - Page 87</p> <p>1 were -- I don't mind on the record now a 2 complete procedural review of the issue 3 involving Dr. Goldstein and Alabama and the 4 ethical or criminal rules down there and the 5 knowledge that was involving the parties. 6 Obviously this matter is going to be 7 reviewed. I have no problem with it being 8 reviewed, but I do want a fair trial. No 9 surprises. 10 MR. KLINE: All we wanted ever was a 11 fair trial, Your Honor. 12 And I might add, it is the most 13 difficult, laborious task to try a case 14 against a pharmaceutical company. I'll start 15 with that. And it is about the most 16 challenging professional experience that a 17 plaintiff's lawyer could have. Because right 18 here as we're sitting here, according to 19 their records, there are 12 lawyers who get 20 the live feed and in the courtroom. So make 21 no mistake about it, this is not easy 22 business. 23 Now, I've never been in this position 24 before, Your Honor. I've been doing this 37 25 years and I've never been in this position,</p>
<p>- PLEDGER -vs- JANSSEN - Page 86</p> <p>1 concerning that witness were known as early 2 as a motion to exclude back in March of 2014. 3 So from that point of view, I am 4 vacating the order that I made yesterday. 5 This particular motion on the merits is on 6 the table, and that's where we are. 7 MR. KLINE: Okay. 8 THE COURT: You ready to proceed? 9 MR. KLINE: I think even I get it. 10 THE COURT: Okay. 11 MR. KLINE: I'm sometimes accused of 12 being a little slow and sometimes not. 13 Your Honor, for the record, I plan to 14 argue this motion, but I would like to 15 reserve, if I'm not persuasive enough on 16 this, I would say to the Court that based on 17 what happened yesterday -- not to recite 18 everything -- I certainly did nothing but 19 devote my energies to getting a new expert. 20 So just so you know, I haven't been 21 pouring over their papers. 22 THE COURT: No; I understand that. 23 MR. KLINE: I viewed their papers 24 as -- 25 THE COURT: I understand. But you</p>	<p>- PLEDGER -vs- JANSSEN - Page 88</p> <p>1 never. Never heard of it, frankly, before 2 yesterday, this attempt to sabotage the case. 3 I've heard Ms. Sullivan say at least 4 a half a dozen times some utter, complete 5 nonsense about we were tipped off to this the 6 first time that they wanted to take a 7 deposition. I want to start there. 8 We wanted to take -- that has nothing 9 to do with anything. I had a science teacher 10 at Albright College who said, What does that 11 have to do with the price of peas in Peru? 12 Used to say that all the time. Has nothing 13 to do with the price of peas in Peru. 14 What that was all about -- and you 15 need to understand the background -- was 16 Dr. Goldstein who is a physician in Missouri, 17 out of this venue and out of this 18 jurisdiction, I might add -- and not within 19 my subpoena power either -- came here all 20 last week and sat around. And I might add, I 21 would be unhappy if I sat around all week 22 while another witness testified. And I 23 cajoled him into coming back after, to come 24 back, and I wanted to take a deposition of 25 him, not because I knew some nefarious --</p>

<p>- PLEDGER -vs- JANSSEN - Page 89</p> <p>1 like I had some nefarious plot in my mind. 2 I'll represent to you as an officer 3 of the court I didn't have any idea that 4 there was any issue about this witness, 5 despite all of the pretrial contact, despite 6 all of the litigation, and I might add, sir, 7 despite all of the rancor and difficulty it 8 is to deal with the other side in this case. 9 And maybe we're a little difficult 10 too. But, my word, we can't get anything. 11 We can't agree on the -- on the time of day 12 sometimes. 13 Now -- and that's part of the 14 difficulty and challenge. But they never 15 once said anything about this or they never 16 once say we have a problem or we have an 17 issue with your expert or anything. 18 They want to say that because I 19 wanted to de bene esse him -- by the way, 20 what I wanted to do was -- and, by the way, 21 if you notice, Your Honor ruled against me on 22 that before I could even say anything. 23 THE COURT: Absolutely. Absolutely. 24 MR. KLINE: And, by the way, I didn't 25 try to say anything because I understand, by</p>	<p>- PLEDGER -vs- JANSSEN - Page 91</p> <p>1 medical literature?" 2 And, of course, knowing me by now, 3 Your Honor, you know I'll say something like, 4 "And did you know this drug was worse than 5 any other drug in producing gynecomastia?" 6 And then they would cross-examine him either 7 on a video or not. 8 Your Honor said we couldn't do that, 9 okay. So I was prepared -- 10 THE COURT: Not on video anyway, no. 11 MR. KLINE: So I was prepared. I had 12 him in town. 13 THE COURT: Not at that hour. 14 MR. KLINE: What's that? 15 THE COURT: Not on video and not at 16 that hour, the night before the trial. 17 MR. KLINE: Okay. No, no. I'm not 18 complaining. 19 THE COURT: That's right. 20 MR. KLINE: But I do want you to know 21 and understand that contrary to what she 22 represents, which is often, frankly, a 23 misrepresentation -- 24 MS. SULLIVAN: Here we go. 25 MR. KLINE: -- when she says -- what</p>
<p>- PLEDGER -vs- JANSSEN - Page 90</p> <p>1 the way. 2 THE COURT: Well, that, for the 3 record, is a decision that this Court made 4 not to permit a motion for Dr. Goldstein to 5 have a videotaped deposition, trial 6 deposition done at 6 o'clock p.m. last night 7 after a full day of trial. Yes, I ruled that 8 out of hand. 9 MR. KLINE: Okay. I didn't -- you 10 didn't hear me arguing about it or anything. 11 THE COURT: Right. 12 MR. KLINE: But I do want to tell the 13 Court what was going on. 14 The man -- there's nothing 15 nefarious -- it's against my interest to have 16 him on videotape, against my interest. But 17 you know what, I wanted to make sure that I 18 got him in and out of town and I got it 19 preserved. And, frankly, he's the causation 20 expert. He's a half-an-hour witness. He's a 21 "Good morning, Doctor, do you know, have you 22 examined the boy?" "Have you done the" -- 23 "Witness: Do you believe the boy's 24 gynecomastia was caused by this?" "Do you 25 know and understand and appreciate the</p>	<p>- PLEDGER -vs- JANSSEN - Page 92</p> <p>1 she tries to say to the Court is that there's 2 some way that I knew that my witness was like 3 a felon and I wanted to hide it, like she 4 couldn't ask the question on a videotape 5 under bright lights. It's palpably absurd. 6 Now, I had him here -- this is an 7 important part on the merits. I had him here 8 in Philadelphia, prepared to testify Tuesday 9 morning until they -- and, by the way, had I 10 put him on, had I put him on the witness 11 stand, they presumably could have said to 12 him, Dr. Goldstein, did you know -- right 13 here, right in this seat, they could have 14 said, Dr. Goldstein, did you know that you 15 were violating Alabama law? And they could 16 have made him look foolish if they thought 17 they could. They could have said a whole 18 bunch of stuff. I would have objected. I 19 think the Court would have kept it out 20 because there's no -- because that statute -- 21 please, just if you'd indulge me, Your Honor, 22 I would appreciate it. 23 THE COURT: No, no, no. The issue 24 from -- we researched this issue overnight. 25 Unless there's some issue of competency, it</p>

<p>- PLEDGER -vs- JANSSEN - Page 93</p> <p>1 would have been permitted in this Court most likely.</p> <p>2</p> <p>3 MR. KLINE: Okay. So there you have</p> <p>4 it.</p> <p>5 Now, the issue on -- the issue on --</p> <p>6 THE COURT: His testimony would have</p> <p>7 been permitted most likely since I have not</p> <p>8 seen anything that would have ruled out his</p> <p>9 competency to testify. The weight of it,</p> <p>10 absolutely, but not the competency.</p> <p>11 MR. KLINE: Okay. Now, on the</p> <p>12 merits, to continue on the merits, and I'm</p> <p>13 going to cite the rule to the Court as well.</p> <p>14 On the merits, so where we are is we</p> <p>15 then have a hearing or we have a discussion</p> <p>16 about it, and the record says what it says.</p> <p>17 And I don't want to fight with Your Honor</p> <p>18 about this, but it does say [reading]: And</p> <p>19 for that reason I will permit a new report or</p> <p>20 a new IME. [reading]: Or we can have the</p> <p>21 doctor conduct another investigation over the</p> <p>22 next week will be permitted.</p> <p>23 And it was further said -- that was</p> <p>24 on Page 141 of yesterday's testimony. It was</p> <p>25 further said [reading]: I would give the</p>	<p>- PLEDGER -vs- JANSSEN - Page 95</p> <p>1 subjected to this. They started this fight,</p> <p>2 Your Honor. They injected this -- this</p> <p>3 Molotov cocktail into this litigation on the</p> <p>4 eve before he's going to testify.</p> <p>5 Now, what's a fair remedy, under all</p> <p>6 these circumstances? That's really what you</p> <p>7 have to --</p> <p>8 THE COURT: No. What's a fair remedy</p> <p>9 under the law is where we're going.</p> <p>10 MR. KLINE: Okay. Of course. Under</p> <p>11 the law and the rules, of course. Of course.</p> <p>12 First of all, first of all, this is</p> <p>13 the way I see it: I think I have a pretty</p> <p>14 good understanding of the appellate law of</p> <p>15 this state. Since I was a law clerk for the</p> <p>16 Honorable Thomas Pomeroy in 1978, I think I</p> <p>17 have a pretty good understanding of what's</p> <p>18 discretionary and what's not. And it is my</p> <p>19 view, Your Honor, for what it's worth in your</p> <p>20 consideration, that what you have here is a</p> <p>21 discretionary ruling to be applied under a</p> <p>22 discretionary rule on the merits. And what</p> <p>23 we have is they've asked to knock him out.</p> <p>24 Their -- they want to have it both ways.</p> <p>25 They don't want to file the motion and then</p>
<p>- PLEDGER -vs- JANSSEN - Page 94</p> <p>1 plaintiff the opportunity to have a new IME</p> <p>2 produced because of the untimeliness of your</p> <p>3 motion.</p> <p>4 Now, I want to talk merits. I don't</p> <p>5 want to go back there. But I do want to tell</p> <p>6 you where I stand and what happened to me as</p> <p>7 counsel -- and I would add, however this</p> <p>8 cuts -- hardly inexperienced counsel, I would</p> <p>9 concede.</p> <p>10 And so where this cuts is, okay, so</p> <p>11 I'm now told what I can do by a court. And</p> <p>12 so I would never -- I won't do it then, and I</p> <p>13 won't do it now, I won't be part of</p> <p>14 subjecting Dr. Goldstein, a nice man of</p> <p>15 50-some-year practitioner, or 50 years I</p> <p>16 think he told me, I'm not sure the exact</p> <p>17 math, a sweet man, I might add, and somebody</p> <p>18 who is going to spend the rest of his life</p> <p>19 doing this. His wife's a lawyer, by the way.</p> <p>20 And so he doesn't only have me, he's got, as</p> <p>21 I like to say, a lawyer in the bedroom. And</p> <p>22 he is under a cloud by what they say.</p> <p>23 Now, there are a number of tentacles</p> <p>24 to this, including I don't want to get sued</p> <p>25 by the man. I don't want my client to be</p>	<p>- PLEDGER -vs- JANSSEN - Page 96</p> <p>1 they ask in their bench memo for him to be</p> <p>2 disqualified because he's no longer competent</p> <p>3 to testify. And they don't file it in a</p> <p>4 timely manner. That's what they say in that</p> <p>5 motion.</p> <p>6 By the way, I haven't studied it, but</p> <p>7 I can read English. And what they say is</p> <p>8 that they should get the benefit of throwing</p> <p>9 him -- throwing him and, therefore, the</p> <p>10 plaintiff out of court because they</p> <p>11 discovered something a year ago, a year ago.</p> <p>12 Now, under that circumstance, their</p> <p>13 motion can be granted. Now, of course if</p> <p>14 their motion is granted, they asked to have</p> <p>15 this witness disqualified. Well, the logic</p> <p>16 of that should be he shouldn't be</p> <p>17 disqualified and then us left with nothing</p> <p>18 based on the conduct that we've had here by</p> <p>19 them, my word.</p> <p>20 What we are entitled to is to put on</p> <p>21 our case and get our case heard.</p> <p>22 Now, this abject silliness about the</p> <p>23 hammering of prejudice, oh, prejudice,</p> <p>24 prejudice, prejudice. My word, Your Honor.</p> <p>25 We're dealing with a team of 12 lawyers, with</p>

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<p>1 a lawyer who is seen and known to be among</p> <p>2 the most skillful in the country, and says</p> <p>3 so, by the way, herself.</p> <p>4 THE COURT: All right. You're no</p> <p>5 first-year rookie yourself.</p> <p>6 MR. KLINE: I'm not any first-year</p> <p>7 rookie, but I've never been in this position</p> <p>8 before, nor put in that position. I am no</p> <p>9 rookie, that's correct.</p> <p>10 I tried my first one of these, a</p> <p>11 Bendectin case 32 years ago -- a Dalkon</p> <p>12 Shield case 32 years ago in federal court. I</p> <p>13 volunteered for this one, "volunteered."</p> <p>14 Help Mr. Sheller, my friend.</p> <p>15 THE COURT: You don't pick your</p> <p>16 witnesses. That's what they used to say in</p> <p>17 criminal court when I was doing prosecution</p> <p>18 or defense. You don't pick your clients,</p> <p>19 okay.</p> <p>20 MR. KLINE: You don't -- well,</p> <p>21 actually I did pick my clients. When I</p> <p>22 examined this, I knew that that woman has a</p> <p>23 wonderful, beautiful son, and I felt that</p> <p>24 they deserved representation.</p> <p>25 THE COURT: Got it.</p>		<p>1 whose" -- and this may not be the only</p> <p>2 section that applies, or this may not --</p> <p>3 sorry. I'm trying to be careful.</p> <p>4 But if you just look at that section</p> <p>5 it says, "An expert witness whose identity is</p> <p>6 not disclosed in compliance with</p> <p>7 the subdivision" -- okay. We wouldn't have</p> <p>8 provided an expert -- "shall not be permitted</p> <p>9 to testify on behalf of the defaulting</p> <p>10 party."</p> <p>11 First of all, I'm not a defaulting</p> <p>12 party. But this does give you guidance, the</p> <p>13 next sentence, I believe. "The failure to</p> <p>14 disclose the identity of a witness" -- which</p> <p>15 is what they're basically saying, we wouldn't</p> <p>16 have had identity of this witness -- "is the</p> <p>17 result of extenuating circumstances."</p> <p>18 Well, my word, we couldn't have more</p> <p>19 extenuating circumstances than a motion by</p> <p>20 the defendant to knock out a witness that</p> <p>21 they sat on for a year.</p> <p>22 And it says here, "Is beyond the</p> <p>23 control of the defaulting party." I guess</p> <p>24 that would be me. It says here, "The court</p> <p>25 may grant a continuance" -- we don't want a</p>	
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<p>1 MR. KLINE: Now, now, here's where we</p> <p>2 are --</p> <p>3 THE COURT: I understand the</p> <p>4 situation, believe me. I want to hear from</p> <p>5 the other side.</p> <p>6 MR. KLINE: Sure. I want to get to</p> <p>7 the end point on the merits.</p> <p>8 THE COURT: What is the remedy that</p> <p>9 you're proposing?</p> <p>10 MR. KLINE: End point on the merits.</p> <p>11 The simple solution is, based on</p> <p>12 their motion, which was to knock out our</p> <p>13 witness, based upon the Court's ruling on</p> <p>14 the -- I understand. It was a procedural</p> <p>15 ruling yesterday. I get that. But based</p> <p>16 upon where we are, the Court has to decide</p> <p>17 the following, I believe -- and, again, I</p> <p>18 didn't scour the books last night. I was</p> <p>19 doing other stuff in case that wasn't evident</p> <p>20 in the courtroom today.</p> <p>21 The rule that they cited -- and, by</p> <p>22 the way, there may be other applicable rules</p> <p>23 and I don't want to waive anything because I</p> <p>24 didn't come prepared to argue this exactly,</p> <p>25 but 4003.5(b), I believe. "An expert witness</p>		<p>1 continuance -- "or other appropriate relief."</p> <p>2 It's wide open. Other appropriate relief.</p> <p>3 Well, this is ripe for the other</p> <p>4 appropriate relief. If ever there were a</p> <p>5 discretionary call by a court on a matter, it</p> <p>6 would be this one.</p> <p>7 Now, last points. What would be the</p> <p>8 prejudice? Let's look at this. I'm going to</p> <p>9 get another expert, okay. The expert is</p> <p>10 going to provide a report under the rules. I</p> <p>11 can represent to the Court that the report</p> <p>12 will, I believe -- I'm hoping -- will be</p> <p>13 essentially consistent with the ultimate</p> <p>14 opinions of Dr. Goldstein.</p> <p>15 There's this kind of fantasy argument</p> <p>16 out there that they "structured" their whole</p> <p>17 case around that. Well, no one could believe</p> <p>18 that --</p> <p>19 THE COURT: It's a three-page report,</p> <p>20 from what I could tell, four pages.</p> <p>21 MR. KLINE: It is a report, yes, much</p> <p>22 of which would not have even been in</p> <p>23 evidence. I plan to put in --</p> <p>24 THE COURT: The only part of which</p> <p>25 that is really particular to your client is</p>	

<p>- PLEDGER -vs- JANSSEN - Page 101</p> <p>1 the diagnosis of gynecomastia?</p> <p>2 MR. KLINE: Gynecomastia. And that's</p> <p>3 what I'm -- that's all I need.</p> <p>4 THE COURT: Well, isn't that all you</p> <p>5 need, is just some kind of independent</p> <p>6 diagnosis of the disease itself?</p> <p>7 MR. KLINE: And, well, I need someone</p> <p>8 who also can say that it is a -- that it is</p> <p>9 causally related; that it is a substantial</p> <p>10 contributing factor.</p> <p>11 THE COURT: So two questions.</p> <p>12 Dr. Goldstein is not available for that part</p> <p>13 of the testimony?</p> <p>14 MR. KLINE: He has -- it's a separate</p> <p>15 issue, Your Honor.</p> <p>16 He has been thrown into this morass.</p> <p>17 And he has been based on what I believed -- I</p> <p>18 guess you could say I was wrong, but I</p> <p>19 certainly don't see it from what I read the</p> <p>20 words in front of me -- what I believed was</p> <p>21 permissible. I dismissed him. And he told</p> <p>22 me that he was going away. And he</p> <p>23 essentially told me, as I heard it, that he</p> <p>24 wanted no part of this.</p> <p>25 Now, I have all kinds of</p>	<p>- PLEDGER -vs- JANSSEN - Page 103</p> <p>1 the defense?</p> <p>2 MR. KLINE: Yes.</p> <p>3 THE COURT: As to the first part?</p> <p>4 MR. KLINE: Yes. I can tell you what</p> <p>5 I have. And this is another reason why</p> <p>6 they're not prejudiced, but since the Court</p> <p>7 asked, I will play the card, okay. I know</p> <p>8 who my --</p> <p>9 THE COURT: See, there are two</p> <p>10 aspects of this. Because what we don't have</p> <p>11 in this case, as far as I can tell, a true</p> <p>12 surprise one way or the other, is the actual</p> <p>13 diagnosis of this boy, unless you have some</p> <p>14 testimony about that. And that apparently is</p> <p>15 what you were relying on Dr. Goldstein for.</p> <p>16 MR. KLINE: Yes. And I --</p> <p>17 THE COURT: And that is the part that</p> <p>18 cannot be duplicated short of another</p> <p>19 examination by another doctor.</p> <p>20 MR. KLINE: Right. And I plan to</p> <p>21 have him examined.</p> <p>22 THE COURT: All right. Well, if</p> <p>23 that's going to be admissible, I would</p> <p>24 recommend that you do that. We're not quite</p> <p>25 there yet. But let me hear now from the</p>
<p>- PLEDGER -vs- JANSSEN - Page 102</p> <p>1 disadvantages and prejudice by that. I have</p> <p>2 a witness who's being thrown under the bus --</p> <p>3 THE COURT: All right. You're saying</p> <p>4 he's not available.</p> <p>5 MR. KLINE: -- and run over.</p> <p>6 THE COURT: Because he for some</p> <p>7 reason is --</p> <p>8 MR. KLINE: He's been thrown under</p> <p>9 the bus and run over.</p> <p>10 THE COURT: -- he's been chilled or</p> <p>11 something like that.</p> <p>12 MR. KLINE: He has been. And --</p> <p>13 THE COURT: All right. Let me ask</p> <p>14 you this: See, the way I see the --</p> <p>15 MR. KLINE: And I can't get him back</p> <p>16 here. He's told me he's not available.</p> <p>17 THE COURT: The way I see the expert</p> <p>18 report of Dr. Goldstein, there were two parts</p> <p>19 to that. One is the overall relationship</p> <p>20 between prolactin and gynecomastia; and the</p> <p>21 other is as related to the specific child or</p> <p>22 young man.</p> <p>23 MR. KLINE: Yes.</p> <p>24 THE COURT: You don't have any other</p> <p>25 experts that are known to the plaintiff -- to</p>	<p>- PLEDGER -vs- JANSSEN - Page 104</p> <p>1 defense.</p> <p>2 By the way, so that we can frame the</p> <p>3 defense argument, you are mentioning in</p> <p>4 particular 4003.5, I think it's 3(b).</p> <p>5 MR. KLINE: I was on 4003.5. But,</p> <p>6 Your Honor, I didn't come prepared today --</p> <p>7 THE COURT: Well, I'm going to</p> <p>8 suggest to you that the Court is also looking</p> <p>9 at another one of that particular rule.</p> <p>10 MR. KLINE: Which is what?</p> <p>11 THE COURT: It is 4003.5(2). "Upon</p> <p>12 cause shown --</p> <p>13 MR. KLINE: Yes.</p> <p>14 THE COURT: -- "the court may order</p> <p>15 further discovery by other means, subject to</p> <p>16 such restrictions as to scope and such</p> <p>17 provisions concerning fees and expenses as</p> <p>18 the court may deem appropriate."</p> <p>19 MR. KLINE: My question --</p> <p>20 THE COURT: You like that one better?</p> <p>21 MR. KLINE: I like them both. But I</p> <p>22 like that better. And it goes to show you,</p> <p>23 the Court knows more.</p> <p>24 THE COURT: I didn't know more. I</p> <p>25 just had more time.</p>

<p>- PLEDGER -vs- JANSSEN - Page 105</p> <p>1 MR. KLINE: Yeah. But the -- yes. 2 That's applicable. 3 I would add one more thing. There 4 will be no prejudice as well because I'm 5 having the plaintiff seen by -- 6 THE COURT: Well, let's hear the 7 argument. I haven't granted anything. I 8 want to hear from the defense point of view. 9 The concern I have from the defense 10 point of view was what I related earlier in 11 the discussion when I said -- and I'd like an 12 answer to this. Yesterday on February 2, 13 2015, Page 141 of the transcript, this Court 14 specifically said [reading]: "And I see this 15 as really a tactical measure by the defense 16 in order to cause some kind of unfair 17 surprise. And for that reason I will in fact 18 permit a new report or a new IME." 19 All right. I said that because at 20 the time that we did the argument and we had 21 the discussion, that's how I saw it. 22 So I'm prepared now, Ms. Sullivan, 23 for your response to Mr. Kline and then we'll 24 have a ruling on this and then we'll go from 25 there.</p>	<p>- PLEDGER -vs- JANSSEN - Page 107</p> <p>1 First, Judge, I'm not going to 2 respond to the personal attacks, but they've 3 been ongoing throughout this trial. 4 Second, the problem was caused by the 5 plaintiffs, not by us. They have an army of 6 lawyers as well. We all do IMEs all the 7 time. Different states have different rules. 8 They didn't check Alabama's statute. We did. 9 We got a local guy. They did not. We had 10 given them the benefit of the doubt that they 11 had at least satisfied the second prong of 12 Alabama's law, which is if Dr. Goldstein had 13 consulted with a local lawyer, he could come 14 in and testify. And we were prepared to get 15 that information from him. 16 Then we saw the de bene esse notice 17 and we said, well, maybe they didn't do it. 18 I raised it with Mr. Kline in the morning, 19 and I said you've got a big problem if we 20 don't have this. And they didn't have it. 21 They didn't do it. The first time we got 22 confirmation that they did not comply with 23 the law. They're officers of the court. 24 We're officers of the court. Everybody was 25 on notice of this statute. They caused this</p>
<p>- PLEDGER -vs- JANSSEN - Page 106</p> <p>1 MR. KLINE: I have one other point 2 and I promise to sit down. I think it's an 3 important piece of information. 4 THE COURT: Yes, sir. 5 MR. KLINE: He's being seen at 5 6 o'clock today by a physician who has rendered 7 multiple reports in this litigation, who is 8 well-known to the defense -- 9 THE COURT: No. Well, let's -- 10 MR. KLINE: -- and who's been deposed 11 twice. 12 THE COURT: All right. I don't want 13 anything specific. 14 MR. KLINE: Including by Mr. Champion, 15 one of the most famous lawyers in town. 16 THE COURT: I don't want to get 17 specific yet. 18 The rules do not require an IME under 19 4003.5(b). 20 But let me hear from Ms. Sullivan, a 21 response to this Court's concern yesterday 22 about this entire procedure that was used in 23 order to, essentially, scare off a witness, 24 from what Mr. Kline is saying. 25 MS. SULLIVAN: Your Honor, thank you.</p>	<p>- PLEDGER -vs- JANSSEN - Page 108</p> <p>1 problem, not us. 2 And the Court and Mr. Kline are 3 suggesting that Janssen should be punished by 4 their failure to secure an expert who 5 conducted an exam in compliance with 6 applicable law. They didn't do it. 7 And one thing you didn't hear, Judge, 8 is that Dr. Goldstein did not violate the 9 law, because he clearly did. And the 10 plaintiffs asked him to do it. He did it at 11 their request. They caused this problem. 12 And so now what Mr. Kline is suggesting is 13 that the Court cure his problem at great 14 prejudice to us. 15 And the problem, Your Honor, with 16 permitting a new expert in the middle of a 17 trial -- I mean, we've had three -- two 18 cross-examinations already, much of which was 19 focused on the specifics of Dr. Goldstein's. 20 He's not just a specific causation expert in 21 this case, Your Honor. He is their major 22 general causation expert. He's got two 23 reports. Major general causation expert and 24 major specific causation experts. 25 We cross-examined Dr. Kessler and the</p>

<p>- PLEDGER -vs- JANSSEN - Page 109</p> <p>1 prescriber with specific knowledge of what 2 Dr. Goldstein had found and said in terms of 3 timing, severity, dosing. We framed our 4 entire defense on this general and specific 5 causation report. We opened to the jury. I 6 spent at least ten minutes of my opening on 7 Dr. Goldstein's exam and the Holiday Inn in 8 Alabama, unlicensed, et cetera. We framed 9 our entire defense. We were on notice of 10 Dr. Goldstein's report more than a year ago. 11 We got experts lined up who specifically 12 respond, in their expert reports, to 13 Dr. Goldstein's general and case-specific 14 opinions. 15 To now completely throw a wrench, 16 it's clearly prejudicial. They're going to 17 say, oh, any guy can come in and say specific 18 and general causation. But Dr. Goldstein 19 made very specific findings on severity, on 20 timing, based on photographs. The 21 cross-examination of Mrs. Pledger, we can't 22 do it without knowing what their expert's 23 going to say on the history and causation 24 experts. 25 This trial, Your Honor, cannot</p>	<p>- PLEDGER -vs- JANSSEN - Page 111</p> <p>1 to comply with the clear statutory dictates 2 of doing an IME in Alabama. 3 As the Court made clear, Mr. Kline, 4 Mr. Sheller, they're not rookies. When you 5 do an IME, check the -- check the rules. 6 They didn't. They caused this problem. And, 7 Your Honor, I understand you may rule that 8 Dr. Goldstein can testify. We think that he 9 violated the law, and so I'm not sure we 10 should all be officers of the court 11 supporting a felony. But certainly you can't 12 let them change an expert in the middle of 13 the game. Clear prejudice. 14 Our experts are lined up and have 15 been prepared and have written extensive 16 reports in direct response to Dr. Goldstein's 17 medical history, his finding, his opinions on 18 timing and dosing, on background rates of 19 gynecomastia. It changes the entire case. 20 We opened based on their causation opinions. 21 We cross-examined based on it. It's clear 22 prejudice, not caused by us, Your Honor, but 23 caused by their failure to comply with the 24 law here. And I submit Your Honor should not 25 permit it.</p>
<p>- PLEDGER -vs- JANSSEN - Page 110</p> <p>1 proceed in any fair fashion at this juncture 2 if you're going to permit them to have a 3 whole new expert after cross-examination of 4 their liability expert and the key 5 prescriber, which was keyed in part to 6 Dr. Goldstein's opinions. Clearly 7 prejudicial, and a prejudice that they caused 8 by not complying with the Alabama law. 9 And, Your Honor, looking at 4003.5, 10 it says that an expert -- and, Your Honor, I 11 think the -- and I submit to the Court that 12 4003.5(a)2 that the Court cites relates to 13 discovery, not trial. Section 3(b) that we 14 cited to the Court relates to expert 15 witnesses at trial. And it says plainly that 16 the court shall not -- not discretionary -- 17 they shall not be permitted to testify... an 18 expert witness who wasn't disclosed if the 19 failure to disclose the identity of the 20 witness is the result of extenuating 21 circumstances beyond the control of the 22 defaulting party. 23 It was not beyond their control. 24 They caused it. They caused the extenuating 25 circumstances. They are the ones who failed</p>	<p>- PLEDGER -vs- JANSSEN - Page 112</p> <p>1 Thank you. 2 THE COURT: Okay. All right. Well, 3 let me just see something here. I was -- I 4 did look at your opening argument yesterday 5 as related to Dr. Goldstein. I just want to 6 see where that is. 7 MS. BROWN: Your Honor, I think the 8 references in the opening are at 95, 6 to 20; 9 96, 15 to 19; and 98, 9 to 13. 10 THE COURT: Well, I've read it. It 11 was Page 96. But there's a reference to ten 12 minutes of argument. It was Page 95, 96 and 13 97. 14 MS. BROWN: 98 as well. 15 THE COURT: Yeah. A couple minutes 16 talking about Goldstein. 17 I'm not convinced that there's a -- I 18 mean, I have no idea what the new -- what the 19 new expert testimony is; and until I see it, 20 I can't rule on it as to whether or not it's 21 something that could not be responded to 22 given the amount of time that would be 23 available to the defense. 24 I mean, the way I see this case is 25 we're not even completed with the plaintiff's</p>

<p>- PLEDGER -vs- JANSSEN - Page 113</p> <p>1 case yet, let alone a couple of days that I 2 might give the defense in order to prepare 3 for any such report and excuse the jury for a 4 couple of days. So I don't see that the 5 prejudice part necessarily will come into 6 play here. 7 What I do see is a situation where 8 what Mr. Kline was suggesting was he was 9 prepared to put on a witness; and if he put 10 on that witness first, he wouldn't have had 11 the motion to exclude. And at that point 12 circumstances changed. A witness of theirs 13 took a few days and now all of a sudden, he 14 has a motion to exclude; and as a result of 15 that motion to exclude, his witness has been 16 chilled. 17 I have no idea whether Alabama law 18 would or would not prosecute this doctor. I 19 doubt it, as a matter of fact, based on what 20 I have read. The question in Alabama law 21 would probably revolve around whether or not 22 Dr. Goldstein was practicing medicine when he 23 took an examination at a hotel room in order 24 to prepare for this trial and to check to see 25 whether he was prepared to testify as an</p>	<p>- PLEDGER -vs- JANSSEN - Page 115</p> <p>1 which I will discuss now -- as the Court may 2 deem appropriate. And that is the ruling of 3 this Court. 4 MS. SULLIVAN: And, Your Honor, if 5 you're going to permit this, we need 6 obviously discovery. We need the ability to 7 get new experts, supplemental expert reports. 8 We can't -- 9 THE COURT: You will have -- first of 10 all, the first thing's first is the question 11 of who is this doctor and whether it should 12 be permitted under this Rule 4003.5 or under 13 a different rule, 4010.1, the IME statute. I 14 believe that either one is applicable here. 15 MS. SULLIVAN: And, Your Honor, just 16 for the record, you are denying our motion 17 for an injunction to prevent a new witness, a 18 new expert witness from them? 19 THE COURT: The first thing I'm doing 20 is, as far as your particular motion is 21 concerned, the one that is on the record now, 22 I am ruling that it is moot, under the unfair 23 surprise. It is just not -- I cannot address 24 the merits of that particular issue because 25 it was unfair.</p>
<p>- PLEDGER -vs- JANSSEN - Page 114</p> <p>1 expert in this case. It also has to do with 2 a wrinkle in Alabama law as to whether or not 3 a visiting doctor who's licensed in another 4 state is permitted to practice in Alabama for 5 less than ten days. 6 I have no idea under Alabama law 7 whether that is permissible. 8 What I do know is that almost 9 certainly -- though we wouldn't argue this 10 directly -- that his competency to testify at 11 this civil trial here would not have been 12 precluded. 13 So, therefore, under the 14 circumstances here, I do see cause, cause, 15 because this particular motion was held by 16 the defense in order to provide unfair 17 surprise and to put the plaintiff in this 18 position here. Therefore, I find under 19 4003.5(2), that upon cause shown -- and I 20 find there has been cause shown here of 21 unfair surprise -- the Court may order 22 further discovery, which I do, subject to 23 such restrictions and to scope -- which I am 24 prepared to discuss now -- and such 25 provisions concerning fees and expenses --</p>	<p>- PLEDGER -vs- JANSSEN - Page 116</p> <p>1 So, therefore, that bench memorandum 2 is moot. Is denied as moot. 3 I am ruling that under 4003.5, 4 because of the filing of the motion and 5 because of the chilling effect that evidently 6 occurred with this particular witness, that 7 fairness requires, cause has been shown, for 8 a discovery to continue in this matter and 9 now for this Court to address particular 10 incidentals regarding this Court order. 11 MS. SULLIVAN: Then, Your Honor, then 12 we move for a mistrial. 13 THE COURT: And that is denied. 14 MS. SULLIVAN: And then, Your Honor, 15 we move for a stay so we can take it up to 16 the Superior Court. 17 THE COURT: That is denied. 18 MS. SULLIVAN: Thank you, Your Honor. 19 THE COURT: Okay. Now, as far as the 20 question, whether it's 4003.5 to operate 21 under or 4010, does it make a difference? 22 MR. KLINE: Well, I think we're under 23 4003.5. 24 THE COURT: Well, there's another one 25 that provides for IME. Neither one are final</p>

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<p>1 orders. So we have checked that.</p> <p>2 MR. KLINE: We -- are you asking me?</p> <p>3 THE COURT: The question is the</p> <p>4 mechanism. I want -- what's most important</p> <p>5 to this Court is to have a diagnosis that is</p> <p>6 essentially an independent diagnosis.</p> <p>7 MR. KLINE: I plan to provide,</p> <p>8 barring some unforeseen circumstance, I plan</p> <p>9 to have this young man examined tonight. I</p> <p>10 plan to provide a report sometime tomorrow,</p> <p>11 barring some unforeseen circumstance, and --</p> <p>12 THE COURT: Well, what I'm trying to</p> <p>13 get at is for the Court's purposes, I would</p> <p>14 like a report from a doctor who, as far as</p> <p>15 I'm concerned, is also provided by the</p> <p>16 defense.</p> <p>17 MR. KLINE: Well, I can't do that.</p> <p>18 THE COURT: Well --</p> <p>19 MR. KLINE: They --</p> <p>20 THE COURT: Well, then I don't want</p> <p>21 to come back and say, you know, that doctor</p> <p>22 is wrong, that doctor -- I want --</p> <p>23 MR. KLINE: Your Honor, at issue,</p> <p>24 respectfully, at issue, this isn't a</p> <p>25 court-ordered exam.</p>		<p>1 MS. SULLIVAN: Get it right.</p> <p>2 MR. KLINE: -- as to children was</p> <p>3 shameful.</p> <p>4 MS. SULLIVAN: Not to children.</p> <p>5 MR. KLINE: Shameful. That's who you</p> <p>6 represent.</p> <p>7 THE COURT: All right, Mr. Kline --</p> <p>8 MR. KLINE: Shameful. Attorney</p> <p>9 General of the United States.</p> <p>10 THE COURT: All right. Mr. Kline, I</p> <p>11 do understand the passion involved on this</p> <p>12 case. However, what I'm interested in from a</p> <p>13 Court's perspective is some kind of</p> <p>14 resolution from the morass that has been --</p> <p>15 MR. KLINE: I can give it to you.</p> <p>16 THE COURT: Well, I don't want to</p> <p>17 then have a -- well, are you requesting a</p> <p>18 IME?</p> <p>19 MS. SULLIVAN: Your Honor --</p> <p>20 MR. KLINE: They already have an IME.</p> <p>21 MS. SULLIVAN: Well, Your Honor,</p> <p>22 here's our issue: We have, in response to</p> <p>23 Dr. Goldstein's report, we have experts who</p> <p>24 have specifically responded to his opinions.</p> <p>25 THE COURT: Have they themselves --</p>	
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<p>1 MS. SULLIVAN: They don't want the</p> <p>2 truth.</p> <p>3 THE COURT: Well, that's what I'm</p> <p>4 saying, whether we go --</p> <p>5 MR. KLINE: I don't want a -- when</p> <p>6 you say --</p> <p>7 MS. SULLIVAN: They don't want the</p> <p>8 truth, Judge.</p> <p>9 MR. KLINE: That's right, we don't</p> <p>10 want the truth. You want the truth.</p> <p>11 You heard the truth here today. You</p> <p>12 heard the truth about off-label promotion</p> <p>13 where a company was fined 2.8 million --</p> <p>14 billion dollars. \$2.2 billion.</p> <p>15 MS. SULLIVAN: Not to children,</p> <p>16 Mr. Kline.</p> <p>17 MR. KLINE: Oh, yeah.</p> <p>18 MS. SULLIVAN: Not to children.</p> <p>19 MR. KLINE: Attorney General Holder</p> <p>20 said that Janssen Pharmaceuticals and Johnson</p> <p>21 & Johnson's conduct --</p> <p>22 MS. SULLIVAN: Not to children. Get</p> <p>23 it right.</p> <p>24 MR. KLINE: Johnson & Johnson's</p> <p>25 conduct as to children --</p>		<p>1 MS. SULLIVAN: We had a local Alabama</p> <p>2 doctor, in compliance with the law, do an</p> <p>3 IME. If everybody's going to get new</p> <p>4 experts, we'd like that opportunity as well,</p> <p>5 Judge, because the whole game is changing.</p> <p>6 THE COURT: I haven't seen that</p> <p>7 report from that other -- was that an IME?</p> <p>8 MR. KLINE: We're not having an IME,</p> <p>9 Your Honor.</p> <p>10 THE COURT: Well, why is she</p> <p>11 referring to an IME?</p> <p>12 MR. KLINE: Because she's trying to</p> <p>13 muddy it up, as usual.</p> <p>14 THE COURT: Did you agree to an IME</p> <p>15 for some doctor in Alabama?</p> <p>16 MS. SULLIVAN: No; I'm sorry.</p> <p>17 MR. KLINE: When I get the floor, I</p> <p>18 will explain.</p> <p>19 MS. SULLIVAN: Your Honor --</p> <p>20 MR. KLINE: Whenever I get the floor.</p> <p>21 MS. SULLIVAN: And just so the record</p> <p>22 is clear, you are denying our request to</p> <p>23 enjoin a new expert for them?</p> <p>24 THE COURT: I haven't made -- this is</p> <p>25 the first time I heard such a motion.</p>	

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1 **MS. SULLIVAN:** Okay. Your Honor,
2 we're moving to enjoin a new expert in this
3 case from the plaintiff.
4 **THE COURT:** To enjoin?
5 **MS. SULLIVAN:** Yes, Your Honor.
6 **THE COURT:** What do you mean by that?
7 **MS. SULLIVAN:** We're moving for an
8 injunction to prevent a new expert in this
9 case, because it's enormously prejudicial,
10 irreparable harm to Janssen and our defense.
11 We're moving for an injunction to prevent a
12 new expert.
13 **THE COURT:** There is no such motion
14 in Pennsylvania civil procedure. If you can
15 show it to me, I will look at it.
16 **MS. SULLIVAN:** Very good, Your Honor.
17 **MR. KLINE:** Whenever I have a chance
18 to explain, I will.
19 **THE COURT:** I am specifically --
20 **MS. SULLIVAN:** Your Honor --
21 **THE COURT:** I am specifically
22 following Rule 4003.5 in which the remedy
23 falls to the Court, absent abuse of
24 discretion, upon cause shown, the Court may
25 order further discovery by other means,

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1 subject to such restrictions as to scope and
2 such provisions concerning fees and expenses
3 as the Court may deem appropriate.
4 There is no enjoinder rule or
5 statute that applies to that particular Rule
6 of Civil Procedure.
7 Therefore, I will permit at this
8 point for the examination of this patient to
9 take place at 5 o'clock today, and we'll go
10 from there.
11 **MR. KLINE:** Yes.
12 **THE COURT:** This Court is adjourned.
13 **MR. KLINE:** Thank you, Your Honor.
14 - - -
15 (Court adjourned at 4:15 p.m.)
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1 **CERTIFICATION**
2
3 I hereby certify that the proceedings
4 and evidence are contained fully and
5 accurately in the notes taken by me on the
6 trial of the above cause, and that this copy
7 is a correct transcript of the same.
8 I further certify that I am not a
9 relative or employee of any attorney or
10 counsel employed in this case.
11
12
13
14
15 _____
16 John J. Kurz, RMR, CRR
17 Registered Merit Reporter
18 Certified Realtime Reporter
19 Official Court Reporter
20
21 (The foregoing Certification of this
22 transcript does not apply to any reproduction
23 of the same by any means unless under the
24 direct control and/or supervision of the
25 certifying reporter.)

(Gilbreath - As on Cross)

witness who is on the Plaintiff's case, all right, this is a witness on the Plaintiff's case so it should be evaluated according to the Plaintiff's proof.

So, Mr. Kline, you may proceed now with your direct examination.

- - -

AS ON CROSS-EXAMINATION

- - -

BY MR. KLINE:

Q Your Honor, good morning. Members of the jury, good morning all, and good morning, sir. Second night in our city.

A It's a great city.

Q I couldn't agree with you more. We left off with your sales calls, and I have been preparing a chart listing them all and I would like to continue.

My first goal is to go back and cover a few visits. Having the benefit of last night, I picked up a few more samples that you dropped off that were not previously found by you and me, so I might want to go there for starters, that's my goal.

A Okay.

Q And then my hope is to go through those and

(Gilbreath - As on Cross)

For example, 80 .5s would be --

MR. MURPHY: Objection, Your Honor, is this a question? This is just testimony.

MR. KLINE: I am getting back to where we were.

THE COURT: That's overruled. You may generally lay a foundation, but I am aware of time issues involved in this trial.

MR. KLINE: I know, Your Honor, I just want to put it back where we are: And the 160 .25s equal 80 .5s, and that's where we are. That's all I was trying to do.

BY MR. KLINE:

Q Now I want to go back and pick some things up as efficiently as we can. I would like to display 62(J), which takes us back to 9-12-03. I simply want to go to the samples. This would be for 9-12-03. Do you have it?

A Yes.

MR. KLINE: All right, we are allowed to display. I would -- do you need the Bates number? Okay, it was a switching issue.

Q For 9-12-03, we had picked up the 30 milliliter solution, the 300 milligrams equivalent

(Gilbreath - As on Cross)

ask you some other questions.

A Of course.

Q Thank you, sir. We were in the middle of a number of exhibits. We talked about milligrams, math, milligrams with milliliters, and I marked that 65 for the jury's benefit. And I had marked a chart of sales calls under the 64 exhibit number, now bearing 64(A), the visits 5-3-02, 8-8-02, 9-9-02, 11-19-02, and 3-11-03. And we are going to go back to just a few of them. New stuff, not old stuff.

And then 64(B) now has a sticker and I marked that as the chart of 8-5-03, 8-26-03, 9-12-03 and 10-14-03, 11-17-03.

And then 64(C) I marked the visits of 12-9-03, 1-13-04, 2-12-04, 3-2-04, 4-5-04, 5-18-04. And we were currently working on 62(D), which is 6-1-04 and 6-3-04, and we had left off with a discussion of you dropping off 20 M-tabs, and we were consistently doing it, as a recollection here, to put it in perspective, when we had .25 milligrams we were counting up the number of tablets in the packet, and then if they were .5 milligrams we were breaking down the .25 equivalent, which are the numbers out in the right-hand column.

(Gilbreath - As on Cross)

of the drug, and we did not pick up that you also dropped off ten .25 packs. Do you see it?

A I do see that.

Q I think we just collectively missed it maybe. But ten .25 milligrams, 1X7. So that would be 70 more .25s dropped off to Dr. Mathisen for when we do a final total here. Would you agree?

A Yes.

Q Moving right along, also, if I can pull up P-62(L), which was the visit of 11-17, also on our display chart 64(B).

On 11-17, you and I had picked up that you had dropped off five .5 milligrams doses, 1X7 packs, and we did not pick up that there was an additional group of samples you dropped off that day. Do you see them there, sir?

A I do.

Q And you dropped off some M-Tabs, correct?

A Yes, that's indicated in the record.

Q And those are .5 milligrams, half milligrams, correct?

A That is correct.

Q And let's see what you dropped off. You dropped off five 4x20s?

(Gilbreath - As on Cross)

A Yes.

Q So that would be 20 times five. That would be a hundred .50s, correct?

A One hundred .5s, yes.

Q When I put on this chart 50, 50s are .5 milligrams?

A I apologize, yes.

Q I just want to make sure we all know the lingo I adopted here.

So in .25s, that would be the equivalent of a hundred more .25 doses, if they were broken into .25 doses, correct? Quarter doses, correct?

A Yeah.

Q Okay. So we picked up that one which I missed yesterday. So for 2-12-04, which is?

THE COURT: P-62(O).

Q Yes, P-62(O), the calculation is in my hand chart in front of me, 64(C), and bear with me, this is 2-12-04, and we have -- we picked up five 4x1x20s, if we can highlight that quickly, what we picked up. Those appear to be M-Tabs, correct, sir?

A Yes.

Q The dissolvable tablet in the mouth?

(Gilbreath - As on Cross)

.25 milligrams, if it were broken down into that dose. Correct, sir?

A Repeat that one more time, please.

Q Yes, it would be 70 .25s in that packet, 30 .50s equaling 70 .25s -- I am sorry, oh, no, I am wrong.

Seven times ten is 70. They are 1X7s, so they are ten packs of seven, it's 70 .50 tablets, if you broke them in half equaling 140 .25s, correct?

A Yes.

Q And 62(S), which is 6-1-04. I don't think we got to 6-1-04 yet yesterday. Correct, Mr. Gomez?

MR. GOMEZ: We did.

THE COURT: 62(S).

Q 62(S) is displayed to the jury, and I am working on my chart 64(D), having previously made the entry on 64(C).

So 64(D) on 6-1-04, we had picked up that you dropped off ten .5 milligrams, 1X7s, which would be 70 of .50s, broken in half would be 140 of .25s. We also did not pick up yesterday on 6-1-04, Exhibit 62(S), that there were also five .25 milligrams in an 1X7 pack, correct?

(Gilbreath - As on Cross)

A Yes.

Q But we missed a bunch more. Do you see that?

A I do see two additional entries.

Q And we are going to add for 2-12, ten of .25-milligram 1X7s, so that's an additional 70 .25s, correct?

A Yes.

Q And by the way, in .25-milligram dosages, correct?

A In .25-milligram dosages, yes.

Q Right. And we also missed five M-Tabs in .5 milligrams, and those were 4x1x20s. So that would be 20 times five equals a hundred of .5s, or in .25s, that would be 200 more .25s, correct? If they were broken in half.

A Yes.

Q Okay. 62(Q). 62(Q) is 4-5-04. We had picked up five 1X7s unscored. And we had our discussion about unscored, just to put it in context?

A Yes.

Q And you also dropped off that day, ten .50s in 1X7. Correct?

A Yes.

Q So that's 35 .50s, equaling 70 of

(Gilbreath - As on Cross)

A Yes.

Q So that would be an additional 35 of .25s that you dropped off that day, correct?

A Yes.

Q And on 6-30, that would be P-62(T) -- correct, Mr. Gomez?

MR. GOMEZ: Correct.

MR. KLINE: Is this now a new display? The jury, I do not believe, has seen this one before, correct?

THE COURT: 62(T) was shown.

MR. KLINE: Okay, I lost track.

THE COURT: 6-30-04.

MR. KLINE: Yes, thank you.

Q 6-30-04, we picked up the 20 M-Tabs, you also in addition to the 20 M-Tabs dropped off five .25s in a 1X7 pack. So that's an additional thirty-five .25s, correct?

A Yes.

Q Okay, now, we are moving forward to 7-27-04. You were back again within a month, correct?

A Yes, about a month.

Q 62(U), we are marking as 62(U), the sales call of 6-30-04.

(Gilbreath - As on Cross)

(P-62(U) is marked for identification.)

MR. MURPHY: I thought (T) was 6-30.

MR. GOMEZ: 62(U) should be 7-27-04.

MR. MURPHY: Thank you.

Q 62(U) is 7-27-04. We are back again that you did a presentation, correct?

A Yes.

Q And you had Risperdal, let's see what you dropped off that day.

We have 7-27-04, which was Risperdal -- you dropped off five .5 milligrams?

A Yes.

Q In a 1X7. That would be 35 .50s or 70 .25s, correct?

A Yes.

Q And you also dropped off 1 milligrams, you dropped off five 1 milligrams, 1X7s.

So that would be thirty-five 1 milligram tablets. You divide them in four it would be 35 times four, 140 of .25 equivalence. Correct?

A Yes.

Q Then you saw Dr. Mathisen on 8-17-04, correct?

A Yes.

MR. KLINE: And that will be marked as

(Gilbreath - As on Cross)

We actually had been doing that, as I mentioned many times, up to that point, but this was a way to formally capture it and have it recorded, if you will.

Q Yes, sir, the formal policy changed because there were lots of sales reps going into lots of offices with lots of these medication --

MR. MURPHY: Objection.

MR. KLINE: I am finishing the question. Let me take it one at a time.

Q There were lots of sales reps who were dropping off medication to doctors, correct, of Risperdal? Can we go that far?

MR. MURPHY: Objection.

MR. KLINE: Let me start again.

THE COURT: What is the basis of the objection?

MR. MURPHY: It's irrelevant, Your Honor.

THE COURT: Sustained. We are concerned about this case.

MR. KLINE: I am about this case.

There was a change in the policy because they were dropping the stuff off like water --

(Gilbreath - As on Cross)

62(V) as in Victor.

(P-62(V) is marked for identification.)

Q You did a presentation or not?

A Yes.

Q And there, you have some writing. And by the way, sir, in 2004 -- I like to use an expression, I think it's actually a southern expression, there was a big hullabaloo in the company about qualifying doctors, about not going into the offices and giving all of this medication out off-label. Do you recall that?

MR. MURPHY: Objection to form, Your Honor. It's argumentative.

MR. KLINE: I will rephrase it.

Q Do you recall there being big discussion in 2004 about making sure that you absolutely qualified doctors who were really qualified to get all these samples, rather than doctors who were seeing children? Do you recall that hullabaloo, sir?

MR. MURPHY: Same objection.

THE COURT: That's overruled.

Hullabaloo is a known word. Go ahead.

A I do recall that we had a formal way of capturing the qualifying the customer initiative.

(Gilbreath - As on Cross)

MR. MURPHY: Objection.

THE COURT: Again, only if he knows what the policy is.

MR. KLINE: He told me he knew the policy change.

THE COURT: Ask him about that policy.

Q The policy changed, correct?

A There was a policy that we would formally capture it, yes.

Q It was a new policy --

MR. MURPHY: Your Honor, the witness ought to be allowed to finish answering the question.

BY THE COURT:

Q Please, that was a new policy, that's my question?

THE COURT: He may answer.

A It was a new policy, but we had informally captured that all along. Due to the requirements of the label, we had to ensure all along that they were appropriate to receive samples and discussion. So this was a time when we actually formally captured that to have it on record.

Q Yes, "we" formally captured it. Now as a

(Gilbreath - As on Cross)

matter of fact, what we have seen here today, or yesterday, is how the policy of -- in these exhibits which are 64(A), (B), (C) and (D), we show how you meticulously followed the policy of not giving drugs to an unqualified pediatrician, correct, sir?

MR. MURPHY: Objection, argumentative.

THE COURT: Sustained.

Q So when the policy changed, sir, it was about the middle of 2004, correct, about?

A I don't recall the exact date, but that sounds appropriate.

Q And there was discussion in the company, of which you were aware as a sales representative, that it was important to actually follow the rules.

Correct, sir?

A Yes. We always --

Q That's not my question. My question is -- we will judge whether the rules were followed.

A Okay.

Q The question, sir, is was there a policy put into effect, a new policy put into effect in 2004, that's all I need to know, about actually following the rules? Yes or no?

MR. MURPHY: Objection, asked and

(Gilbreath - As on Cross)

A It was pre-populated, meaning there were a menu of options to select what was discussed with the physician.

Q Okay, and so what was discussed was the "flexible dosing for easy titration including oral disintegrating formulation," correct?

A Yes, that's what was selected.

Q And that was the discussion that you had with Child Neurologist Mathisen that day, correct?

A Yes, it's indicated in the record.

Q And then you saw him again on 9-8-04. And you didn't drop off any samples, correct?

A Correct.

Q By the way, at this point did you know, sir, that it was in the works by Janssen to try to get approval for an indication for children with autism? Did you know that was in the works?

A I don't know if I knew at this time. I mean we became aware of it at some time, but I don't know if it was at this juncture or not.

Q Well, when the company was trying to get a new indication, would you as a salesperson back then, generally know what the company was up to and what indications were coming next?

(Gilbreath - As on Cross)

answered.

THE COURT: I don't understand the answer. Go ahead and ask it again.

MR. KLINE: I will withdraw it. If it was asked and answered I withdraw it. Let's go to 8-17-04.

Q 8-17-04, which is Exhibit 62(V), it's up there, it's listed as another professional call. With a presentation only, correct?

A Yes.

Q And, sir, there is a message that you actually typed in this time, correct?

A Actually, as I recall, I did not physically type that in. There was a time where drop-down menus were actually included to capture the majority of the discussion, you know, what was the item presented.

So this was not typed in at this time. It was free text up until a period of time, but this one was not free-handed in there, it was a drop-down.

Q Did you call it pretext?

A I am sorry?

Q I didn't hear the word you said?

(Gilbreath - As on Cross)

A No, generally only when it was near term, like 12 months or less, would we know about it. But I don't recall exactly what time we became aware of the pursuit of an indication for this.

Q Well, this is within 12 months of the company going to the FDA. Do you know if you knew or you didn't know?

A I don't think I knew. I mean at some point I did, I just don't know when it was right now. I really don't know.

MR. KLINE: Okay, 62(W). Is that 9-8-04?

(P-62(W) is marked for identification.)

Q No samples again, correct, sir?

A That's correct.

Q Right. Because by this time, sir, by this time, you knew that you weren't supposed to drop off samples to a doctor like Dr. Mathisen, correct, sir?

MR. MURPHY: Objection, Your Honor, argumentative.

THE COURT: Overruled.

Q Is that correct, sir? That's why this changed all of a sudden?

A That's not correct. It was appropriate to

(Gilbreath - As on Cross)

drop samples off with Dr. Mathisen at his request all along because he told me initially and all along that he saw adults with schizophrenia.

Q I didn't ask you all along, I didn't ask you at his request. I said, now you knew, sir, we have been watching you drop off samples in the hundreds of doses, at one point over a thousand doses. Now all of a sudden there were no samples being dropped off. What changed?

A I only suggest that he didn't request them, because I would have provided them had he requested them as I always had.

Q I am going to suggest something different to you. I am going to suggest that the company admonished people and told them there was a new policy here?

MR. MURPHY: Objection, Your Honor, it's not a question.

THE COURT: As far as the term "admonish", I am going to sustain that. Ask him another way, get an answer and let's move on.

Q The company cracked down, correct, sir?

A Not in my opinion it was a crack down, we had

(Gilbreath - As on Cross)

Q No samples again, correct?

A That is correct.

Q Fifteen times previously you had given samples, and now three times in a row you don't. Correct?

A Three times at the end, that is correct.

Q Would you agree with me, sir, that something changed other than Dr. Mathisen all of a sudden not wanting the medicine?

A No, not in my recollection anything changed. I don't know -- the only thing I can read into this is that he simply didn't request them.

Q You don't have any -- go ahead, finish?

A If I had samples at the time and he had requested them, I would have provided them as I had all along.

Q But you have no recollection, correct?

A Correct.

Q No note, correct?

A Correct.

Q No record, correct?

A Correct. Not from these records but --

Q Just an explanation, correct?

A I don't know if I understand an explanation.

(Gilbreath - As on Cross)

had the policy in place all along, it was just a formal way to capture it at this point.

Q And the company knew they were in trouble, correct?

MR. MURPHY: Objection, Your Honor.

THE COURT: Sustained.

Q And you saw him one more time, 62(X).

(62(X) is marked for identification.)

Q Did you read the newspapers at that time, sir? Were you reading the newspapers?

MR. MURPHY: Objection.

THE COURT: I am going to caution counsel here.

MR. KLINE: Okay.

Q The last one, I think, and then we are going -- and he handed him over to another -- I think to Ginger. This is 10-18-04. And if I can go back to the other two previous ones. (Pause.)

MR. KLINE: Chris, he doesn't have (X).

It may be out of order. Bear with us. Thank you all for being patient.

Q For (X) it's a presentation only, on 10-18-04, correct?

A Yes.

(Gilbreath - As on Cross)

What do you mean by that?

Q So let's now look at this last one that you did, and you say that, your message drop-down on your presentation, this is about the presentation, correct?

A Yes.

Q It says, "Risperdal flexible dosing for easy titration including orally disintegrating formulation (Risperdal M-Tab)." Correct?

A Yes.

Q Now I would like to do a call out of 62(V), (W) and (X), for these three dates.

Sir, three times in a row, on this date, this date, and this date, being 8-17-04, 9-18-04, and 10-18-04, you, in addition to dropping off no samples, claim to have given the same exact presentation. Correct?

A The same record was selected, yes.

Q When you say the same record was selected, this says what you would have talked to him about, correct?

A Yes. It's one of the things, yes.

Q This is a serious question: do you think Dr. Mathisen had a learning disability and he didn't

(Gilbreath - As on Cross)

pick it up the first time?

A I am not aware of Dr. Mathisen having a learning disability, no.

Q You didn't talk to him three different times about Risperdal's flexible dosing for easy titration, did you, sir? That doesn't make any sense. Can we agree?

A No, that would have been one of the things that we spoke about. In every interaction we used the guidance included in the FDA-approved label as well as the approved materials that were supplied. So this was probably not the entire balance of the discussion but it was on the select menu.

Q In two days, sir, how many times have you said the FDA's approved label and the FDA's-whatever you keep saying? How many times have you said that, do you think?

MR. MURPHY: Objection, Your Honor, it's argumentative.

MR. KLINE: It's a question.

THE COURT: That's a question, I will permit that.

Q How many times do you think you have in front of this jury recited those same words that you

(Gilbreath - As on Cross)

eventually was established December 13, 2004. Does that sound familiar to you?

A I don't know exactly the date that it was established but --

Q Does it sound it would have been around December, sir?

A I really don't know.

Q And did you know that beginning immediately at that point you needed to ask the current or perspective customers a qualifying question? Do you remember that, sir?

A Yes, the Qualifying Customer Initiative was where we asked a physician what we had asked all along, do you see patients that meet the qualifications of the label.

Q But you see, sir, you don't usually need a policy to enforce if that's what was happening all along, usually in a company and including one that you have now made your way up the ranks, correct?

MR. MURPHY: Objection, Your Honor.

THE COURT: That's sustained as to what the company usually does.

Q Sir, after the qualifying customer policy went into effect, and you do agree with me that a

(Gilbreath - As on Cross)

recited in your last answer? How many times?

A I really haven't kept count.

Q Would it surprise you if it was more than ten when we go back to the transcript before closings?

A No, it's common --

Q Common parlance? That's how you talk?

A Yes.

Q Okay. I get it. Now, let's finish a couple of things here. Bear with me.

Now, sir, I am going to suggest something to you, maybe we can do it without a lot of exhibits and things. On December 13 of 2004, there was a memo. Did you go over it prior to your testimony here today, sir, in preparation? I would just like to know, then I will know if you are familiar with it.

A I don't have a specific recollection of that, no. It's possible during the deposition preparation and this, but I don't have a recollection of it as I sit here right now. If I see it I may recognize it.

Q You know there was a thing called Qualifying Customers Initiative, correct?

A Yes.

Q And this is what was the formal policy that

(Gilbreath - As on Cross)

qualifying customer policy went into effect, do you agree with me on that?

A Yes.

Q And can we agree it was in December of 2004?

A We had asked the question all along.

Q I heard you say that over and over, sir. You asked it over and over again to Dr. Mathisen, you said, Dr. Mathisen, on the day that you handed him 1592 doses of the drug, you asked him that question. I have heard you say that.

A I don't know if I asked him the question that day, but I asked him periodically, yes.

Q You did. And everyday you went there, sir, the sign didn't change on his office door, did it?

A I don't really recall his sign on his door.

Q Pediatric Neurologist. If you don't recall.

A Okay.

Q And, sir, this qualifying the customer policy that you say was just something you did anyway, the fact of the matter is that after that policy went into effect, you stopped seeing Dr. Mathisen. Correct?

MR. MURPHY: Objection, Your Honor.

THE COURT: Overruled.

		33	
1	(Gilbreath - As on Cross)		
2	Q Correct?		
3	A Yes, but at the same time, it was towards the		
4	end of the year and as best as I can recall, we had		
5	a change in focus with our group where we had		
6	multiple other medications, and so our Alzheimer's		
7	product was particularly important, so we had to		
8	allocate our time accordingly.		
9	Q So all of a sudden you became too busy to see		
10	poor Dr. Mathisen; is that correct?		
11	A I don't recall it being too busy, I think it		
12	was more of a business decision.		
13	Q You decided you were going to sell your		
14	Alzheimer's drug instead of supplying him the		
15	samples that he needed; is that correct? For his		
16	schizophrenia patients, by the way. He had all		
17	these schizophrenia patients that needed the drug.		
18	MR. MURPHY: Objection, Your Honor,		
19	argumentative.		
20	THE COURT: Overruled.		
21	A Would you repeat the question?		
22	Q Yeah. Dr. Mathisen had all these adult		
23	schizophrenia patients using all these drugs, you		
24	abandoned him. Why?		
25	A I didn't abandon him.		

		34	
1	(Gilbreath - As on Cross)		
2	Q Sure. You are laughing because you know it's		
3	silly.		
4	MR. MURPHY: Objection, Your Honor.		
5	THE COURT: That's sustained.		
6	Q You left Dr. Mathisen because the policy		
7	changed and they said you couldn't hustle the drug		
8	anymore, that's what happened?		
9	MR. MURPHY: Objection, Your Honor.		
10	THE COURT: Sustained, sustained,		
11	sustained.		
12	Q And you didn't see him, you didn't see him		
13	from 10-04 -- no Janssen representative saw him all		
14	of 2005, correct? You know this?		
15	A Yes, I do recall that through some of the		
16	notes.		
17	Q And nobody saw him until they got the autism		
18	approval, correct?		
19	A I don't know exactly when they resumed seeing		
20	him.		
21	Q Well, you have a memo that says you handed him		
22	over to Ginger. Do you remember that?		
23	A I don't remember a memo of handing over.		
24	Q When the autism label changed, when it became		
25	legal to go into a child neurologist's office and		

		35	
1	(Gilbreath - As on Cross)		
2	talk about the drug, correct?		
3	MR. MURPHY: Objection, Your Honor,		
4	that's argument. It always was legal.		
5	THE COURT: Sustained as phrased. You		
6	might want to rephrase that.		
7	MR. KLINE: Yes, I will.		
8	Q Janssen sales reps started to go back after it		
9	became legal to talk to a child neurologist about		
10	the indications for autism, correct?		
11	A I do not agree with that. In fact, it was		
12	legal all along, due to the items I have mentioned		
13	previously.		
14	Q No, I think we will agree it was illegal if		
15	you said one word to that doctor or knew anything		
16	that he was using this drug for children. Correct?		
17	MR. MURPHY: Objection, Your Honor.		
18	THE COURT: Overruled.		
19	Q These samples, these samples. Correct, sir?		
20	A I did not discuss children with Dr. Mathisen,		
21	as I have mentioned many times. When I was there I		
22	asked him the nature of his request, I let him know		
23	what the label supported when I began seeing him and		
24	revisited that during the process, and then when we		
25	had the discussion it was in the context of the		

		36	
1	(Gilbreath - As on Cross)		
2	label.		
3	Q It was illegal if you knew you were giving him		
4	those drugs for use for children. Correct, sir?		
5	MR. MURPHY: Objection.		
6	Q Yes or no?		
7	MR. MURPHY: Objection, asked and		
8	answered.		
9	THE COURT: Overruled.		
10	Q As you understood it, sir, you knew it was		
11	illegal to give this child neurologist drugs that		
12	would end up in the hands of children; correct, sir?		
13	MR. MURPHY: Objection. That is not		
14	the law. And that has not been the testimony.		
15	MR. KLINE: I am asking his		
16	understanding.		
17	THE COURT: Overruled. I need his		
18	answer one way or the other and we have to		
19	move on very shortly.		
20	A I don't know the legality of things. I know		
21	that we had a policy in place that if the customer		
22	requested a visit, we asked if they had the		
23	opportunity to use our products for patients that		
24	the label supported. If the answer was yes, we		
25	would continue to see them in that context.		

(Gilbreath - As on Cross)

Now what he actually, after he had custody of those samples, who he provided those to were explicitly his --

Q His business. His business?

A Yes.

Q Right. I get it.

And to follow up on that question, sir, so on this day when you gave him 13 bottles containing --

THE COURT: What day was that, counsel?

MR. KLINE: 12-9-03.

Q When you gave him 13 bottles of 592 .25-milligram doses, what he did with them was his business, correct, sir? Yes or no?

A Yes, it was the discretion of every prescriber. Once samples left our custody they were in the custody of the prescriber to do with in their professional medical judgment.

Q And could you agree with the statement I made, once you handed him those 30 bottles, what he did with them was his business; correct, sir?

MR. MURPHY: Objection. Asked and answered.

Q Is that a correct statement?

(Gilbreath - As on Cross)

A I cannot dispute that, no. I don't have them in front of me, but I know there was a gap.

Q And by the way, sir, the term that you used for these were "sales calls," correct?

A They were used interchangeably. Physician visit, sales call, that's the same thing.

MR. KLINE: I want to mark this as the next exhibit number. P-66, no sales calls time period.

(P-66 is marked for identification.)

Q By the way, sir, I believe we have learned from another witness that approval for autism was 10-6-06, approval, with the new label. And you became familiar with that new label, didn't you?

A I did.

Q And you knew that that new label had a pediatric indication. Correct?

A It was for treatment of irritability associated with autism disorder, yes.

Q And you also knew it contained different warnings than were previously on the package insert, correct?

A Yes. There was an updated label with the -- supportive of the newly approved use.

(Gilbreath - As on Cross)

THE COURT: I believe that question is related to the previous question.

A Would you repeat the question?

Q I will, the fourth time.

MR. MURPHY: Exactly.

Q Once the 1592 doses got in the hands of the child neurologist, what he did with them was his business; can you agree, yes or no?

A It was his business, yes, and --

Q That's what I needed to know.

A And I would also submit, though, every physician had the responsibility of that because I have no bearing on what a physician -- how they use sample medication after it leaves my custody because we can't weigh in on individual patient cases of any kind or of any age.

Q Yes, I have the answer, sir.

Now, no visits, according to the records, and tell me if you have any evidence to contradict this, sir. By the way, you went through the call notes, you sat down, I think you told me with three lawyers, went through the call notes. You saw no call notes from 11-18-04, no visits, from 11-18-04 through 10-30-06. Correct?

(Gilbreath - As on Cross)

Q I know it was an updated label, I know it was supportive of the new use. My question was a completely different one. It had new warnings on it, correct, sir?

A It had new safety information which included warnings and precautions and any other clinical trial data as well.

Q I didn't ask about clinical trial data or any other stuff. I asked you if it had new warnings on it?

MR. MURPHY: Objection, Your Honor, he answered the question.

THE COURT: I am going to direct the witness to answer just the question. Otherwise we will be here for a little.

Q It contained new warnings?

A Yes. I don't have the label in front of me, but, yes.

Q You darn well know that it contained 2.3 incidence of gynecomastia, correct?

MR. MURPHY: Objection, Your Honor. That's argumentative.

THE COURT: That's sustained as asked.

MR. KLINE: What can't I ask?

(Gilbreath - As on Cross)

THE COURT: "Darn well".

MR. KLINE: I am sorry. I was trying to make him feel at home. Okay.

Q Let's go to 10-30-02, and I think I have an E-mail.

I think you were about to get promoted in 2006, correct, up the company chain?

A I took the district manager job in February of 2006.

Q Now the sales reps are working for you?

A Yes, I had supervision responsibility over them.

Q How many?

A Ten, I think.

Q That's pretty good. And you had earned your stripes, correct, in the company?

A I don't know in there were stripes associated, but it was a good opportunity.

Q Well, my word, would you agree that part of earning your stripes was the good job you did with many different doctors, correct?

A Yes.

Q And that would include Dr. Mathisen. That would have been included in your evaluation as to

(Gilbreath - As on Cross)

him.

THE COURT: Whatever you do, we are going to take a break shortly.

MR. KLINE: But you want to take a break in ten minutes?

THE COURT: Yes. Whatever you do, bear in mind the issues involving timing in this entire case.

MR. KLINE: I understand well. Let's take a break, I will reorganize and try to finish him up.

THE COURT: Ladies and gentlemen, we will take a recess right here, and just keep the same rules in effect, please do not discuss the trial with each other right now, and we will come back in ten minutes.

(The following transpired in open court out of the hearing of the jury:)

MR. MURPHY: In the course of his questioning --

THE COURT: Wait a minute, I am going to excuse our witness at the moment. Why don't you step outside, Mr. Gilbreath.

(The witness exits the courtroom.)

(Gilbreath - As on Cross)

whether you got this promotion, correct?

A He was one of many that I visited with.

Q He was. He was one of many child psychiatrists and child neurologists who you saw regarding Risperdal, correct?

A I wouldn't say "many", but there were others.

Q And here you are in 2006 and you now have a promotion. So now Dr. Mathisen, who we now know prescribes a lot of Risperdal, this would be someone who you would tell the sales rep, who he hadn't seen in two years, to get back into his office. Correct?

MR. MURPHY: Objection. No foundation.

THE COURT: Overruled. Unless you don't understand the question.

A I do understand the question. Actually, that was not the geography within my responsibilities as district manager. I only had Tennessee at the time.

Q Had you moved to Tennessee by this time?

A I had.

Q Just one second.

THE COURT: Counsel, in about ten minutes we are going to take a break.

MR. KLINE: I will do something different and then take a break and finish

(Gilbreath - As on Cross)

MR. MURPHY: In the course of questioning Mr. Gilbreath, Mr. Kline violated the Court's order regarding the in limine motion related to other matters regarding Risperdal, including plea agreements, investigations, and things of that nature. Blatantly and knowingly, he made reference to, Were you reading the newspaper at that time, the company was in trouble, asking him about violations of the law, and gave the jury the impression that that, in fact, was occurring.

It wasn't a turn of phrase, it wasn't inadvertent, it was blatant, and he knows it. The jury ought to be instructed to disregard those comments.

THE COURT: My belief is that all that's on the record is a question, and I cautioned Mr. Kline and he did not pursue it. If you want me to call attention to it, I will be happy to. I will be happy to call attention to the issue, saying, ladies and gentlemen, there has been a reference to newspapers, you know that you are not supposed to read the newspapers about this case or

(Gilbreath - As on Cross)

anything having to do with Risperdal. Do you want me to do that now? There was no answer to the question.

MS. SULLIVAN: The better instruction is to disregard all comments by counsel. It's not evidence.

THE COURT: That goes for you as well. I will do that any time.

MS. SULLIVAN: This was a blatant and knowing violation --

THE COURT: I will do that any time.

MS. SULLIVAN: Did you read the newspaper about violations of the law --

THE COURT: I know you have been very quiet so far, Mrs. Sullivan, but I will do that at any time for both counsel to disregard all the side comments that were made as part of your compounded questions for both counsel.

MR. MURPHY: That would satisfy me, Your Honor.

THE COURT: I will do it right now.

MR. MURPHY: I appreciate it.

THE COURT: We will take a recess for ten minutes.

(Gilbreath - As on Cross)

MR. KLINE: Your Honor, thank you.

BY MR. KLINE:

Q Home stretch, at least for me, sir.

A Okay.

Q During the break I did some math, and hopefully, we won't have to stand here with a pencil, we can check it at some point, but I am marking it as the next exhibit, P-67.

(P-67 is marked for identification.)

Q Sir, when we go through all of your exhibits, all of your sales calls, which were in the 64 Exhibit series, your sales calls to Dr. Mathisen in that period of time from 2002 through 2004, you visited him 21 times, correct, sir?

A Yes.

Q And if you were to break it down in .25-milligram categories, you provided 16,505 .25 doses to this child neurologist. Does that sound about right, without having to run through all the math? Would you trust me on it?

A I have not done the math, but I understood how you got there so I am in no position to dispute that.

Q Okay, sir, even if you looked at it in 1

(Gilbreath - As on Cross)

(A brief recess is taken.)

(The jury enters the courtroom at 11:14 a.m.)

THE COURT: All right, members of the jury, a couple of things I want to point out, actually tell you. We have a juror here who is a teacher at a charter school, I want to let you know some good news, that the board of trustees has voted to change its policy, and all persons who are on a jury shall be paid beyond the five days.

So our juror who is serving on the jury who is a teacher at the charter school in question has no worries. So that's nice to know.

The other thing is a reminder that questions by any attorney who is asking any questions at any time, that is not evidence. Just remember that. That is not evidence. Only testimony from the witness stand or other things that have been admitted pursuant to these rules over here, the Rules of Evidence, that's evidence. Questions are not. Okay?

All right, you may proceed.

(Gilbreath - As on Cross)

milligram, and we had a discussion about whether they were scored or unscored tablets, whether you could break the ones or not, whether you could bite the ones or not down, even if you look at this in 1 milligram tablets, you provided 4,126. That would be if some schizophrenic patient was taking four of the .25s rather than a child taking .25 out of the 1s. Even at that, you have 4,126 milligrams of this drug which you dropped off. Correct?

A I see how you got the math, yes.

Q Now, at the time, sir, and I am happy to show you a document or happy to just have an agreement on this, at the time, Janssen, on Risperdal prescriptions for individuals under the age of 18, you sales reps, sir, were being incentivized, on those prescriptions. Correct, sir?

A I do not know. I know there was a time when those were carved out. I don't recall exactly when that time was.

Q Yeah, that's the point. In December 13, 2004, and I am referring to -- I will mark Plaintiff's Exhibit No. 68.

(P-68 is marked for identification.)

MR. KLINE: I marked the chart

(Gilbreath - As on Cross)

Marianne, marked Gilbreath-Mathisen's Sales Calls as P-67. And if I hadn't said it, my apologies to you.

THE COURT: No, she did. Any objection to this document?

MR. MURPHY: Objection, Your Honor, beyond the scope. Beyond the time period in question, Your Honor. He stopped detailing this doctor in October. This is a December 17 --

THE COURT: On that basis, overruled. Go ahead.

BY MR. KLINE:

Q Sir, I am referring to an exhibit which we have marked as Plaintiff Exhibit 67. I have a copy for the Court --

THE COURT: I have it.

Q -- 68. Do you have a copy for the witness as well?

THE COURT CRIER: P-68 is handed to the witness.

Q This is a sales communication document and it's to all Janssen Elder Care CNS Sales Reps. Who are CNS sales reps? Central nervous system sales

(Gilbreath - As on Cross)

A Yes.

Q And it says in the sixth paragraph, which we will display, Exhibit JJ RE 00748285.

"In addition to qualifying each of your customers" -- can you see it? Let's look at this.

"In addition to qualifying each of your customers, Janssen will be employing the use of new IMS database that will enable all Risperdal prescriptions for all individuals under the age of 18 to be removed from incentive measurements."

Highlight "removed from incentive measurements."

Sir, if something is being removed from incentives, it means that it previously was incentivized, correct?

A It was my understanding that they had no way of breaking it out, so I assume that it probably was.

Q Yes, it probably was. So when you were selling to Dr. Mathisen as a salesman, your bonus system is on an incentive system, correct, so far?

A It's performance related, yes.

Q It's performance related. It's how much the doctor then actually prescribes to patients,

(Gilbreath - As on Cross)

reps?

A Yes.

Q And ROCs. Who are ROCs?

A I think that stands for Region Office Coordinator.

Q And Field Sales Management. And the subject is "Qualifying Customers Initiative." Do you see that?

A I see Qualifying Customer Initiative, yes.

Q And of course, you were -- when did you get your promotion, sir, when in 2004?

A I was actually promoted in February of 2006.

Q Oh, okay. So as of 2004, were you still a Janssen elder care sales rep?

A I was.

Q Oh, okay. Then you got this E-mail? This E-mail was addressed to all Janssen Elder Care Reps, correct?

A I cannot see that, actually -- okay, second page, I apologize.

Q Second page, do you see it? To all Janssen Elder Care Sales Reps?

A Yes, I see that.

Q That's you?

(Gilbreath - As on Cross)

correct?

A Yes.

Q Prior to this December 13, 2004 directive, you were incentivized on all of the Risperdal that was prescribed by Dr. Mathisen. Correct?

A I don't have any reason to dispute that so, to my knowledge.

Q Yes, right, and then what happened was in December of -- and you knew that at the time, correct? Of course, you knew how you were being bonused?

A Yes, the bonus included multiple layers, we had an institutional setting, an office base setting, with three or four different products.

Q Right. So as a salesman, you had good reason to be in Dr. Mathisen's office, because you knew when he would prescribe the medication it would then count towards your book, if you will, correct?

MR. MURPHY: Objection, Judge. It's argumentative.

THE COURT: Overruled.

Q Correct?

A Yes.

Q Now, transitioning the doctor, Dr. Mathisen,

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(Gilbreath - As on Cross)

we know that you left off on 10-18-04. That was your last sales call, right?

A Yes.

Q And, sir, you remained an elder care sales rep in this region until how long?

A I think it was January or February of 2006.

Q So I am going to mark in here on Exhibit 66, the label change was 10-30-06, and Gilbreath promotion -- what date?

A I think officially, February of 2006.

Q 2006. So we now know that from 10-18-04 through 2/06, you remained as a sales rep in that region yet never went near Dr. Mathisen, correct?

A I did not see him after 10-18-04.

Q In any capacity, correct?

A Not to my recollection, no.

Q Do you have any notes or records that you tried?

A No.

Q And then what happened was in March of 2006, your having gotten your promotion 2/06, I am writing on P-66, "2/06 Gilbreath promotion."

On March 6, 2006, I have an E-mail -- I

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(Gilbreath - As on Cross)

BY MR. KLINE:

Q Sir, let me show you an exhibit, before displaying it I will put it in your hands, P-69.

This comes March and it's an E-mail from you to Marc Marano. Who is Marc Marano?

A In March of 2006, he would have been my boss.

Q And this is, you are now leaving, and of course, in leaving there needs to be a smooth transition and get everybody put in the right places. That's what this is about, correct?

A I will have to read it, but it sounds reasonable.

Q Yeah. It says "Attached is a work-with letter for our session last Thursday and Friday. Hard copy to follow. You are off to a great start"?

A Yes.

Q Nice to hear.

A Yes.

Q "And I look forward to catching up with you soon. If you have any questions, don't hesitate to call." Marc Marano, and that's to you.

And then attached to this there is an E-mail from your boss to you dated 3-5-06?

A Yes.

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(Gilbreath - As on Cross)

don't have a JJ RE number on this. And I will mark it as an exhibit, JJ RE-15727492.

Exhibit P-69. It is an E-mail with attachments, being handed to the Court. I will wait before I discuss it with the witness.

THE COURT: Any objection?

MR. MURPHY: We don't have it.

MR. KLINE: It's coming.

(P-69 is marked for identification.)

Q And by the way, while we are marking it and they are examining it, let me ask you a few questions. The pills themselves, have you ever had them in your hands, Risperdal pills?

A I don't recall having anything besides the sample packages in my hands.

Q You are well aware of the fact, whether scored or unscored, they could simply be either broken or just bitten. You are aware of that fact?

A Yes.

MR. MURPHY: Your Honor, with regard to what's been marked as P-69, it is again irrelevant, beyond the time period. That's my objection to it for the record.

THE COURT: Overruled.

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(Gilbreath - As on Cross)

Q Do you see it?

A Yes.

Q And it is marked as part of P-69. For the technician's benefit it is JJ RE-15727493.

And it says, Rep Responsibilities?

A Yes.

Q "For the most part territory activity is complete. You have transitioned" -- and it's called a key appointment -- "key appointments, samples and programs to Ginger Owen in late February."

Do you see that?

A Yes.

Q So when you left in late February of 2006, Ginger Owen is now in this position of key appointments, samples and programs, correct?

A Yes.

Q And then I have marked as 62(Y), the appointment of -- well, I will show it to counsel, 62(Y). It's a call note, 10-30-2006.

MR. MURPHY: 10-30, counsel?

MR. KLINE: Yes.

MR. MURPHY: No objection.

(P-62(Y) is marked for identification.)

MR. KLINE: I would request to display

(Gilbreath - As on Cross)

it as per our usual custom.

Q This is 62(Y). We are now in October of 2006. 10-30-06. I am marking my hand tablet as 64(E), which is a continuation of sales calls.

And what is Ginger's last name?

A Owen. O-W-E-N.

Q And we can look at it and see that there was a presentation. By the way, on 10-30-06 -- do you see it?

A I do.

Q The day the drug got an autism approval, the saleslady was in Dr. Mathisen's office. Correct?

MR. MURPHY: Objection, Your Honor.

THE COURT: Basis?

MR. MURPHY: It's not what the prior testimony has been.

THE COURT: No, that's overruled. I think it was during that month.

MR. KLINE: Oh, it was 10-6. Brain rewind.

Q 10-6 to 10-30. New Question: It took the Janssen sales force 24 days to get into Dr. Mathisen's office after the autism approval, correct?

(Gilbreath - As on Cross)

A It looks like she provided .25.

Q .25. Based on the new autism label, correct?

A I don't know what it was based upon. I know it looks like she spoke about the autism label.

Q Well, the new autism label applied to children, correct?

A Yes.

Q She gave him new autism information. Autism information is about children now, it's the new indication. There is no autism -- that's what it's for, correct?

A No, it still had indication for schizophrenia, it had indication for bipolar mania, and now autism.

Q But it says here that she talked to him about autism. It says it right up there, sir. Do you see it?

A Yes.

Q And talking about autism -- it says "the new autism information", the new autism information is for pediatrics, correct?

A The autism indication was in children and adolescents.

Q Children and adolescents, right?

A Yes.

(Gilbreath - As on Cross)

A Yes.

Q Not having seen him in the time period we have already discussed from 10-18-04 through 10-3-06. Correct?

A Yes.

Q Do you know Ginger personally?

A I do.

Q Had she been an elder care rep?

A No, she was a CNS, Ginger was CNS.

Q But not pediatric?

A No. None of them were pediatric. We were all adults.

Q And Dr. Mathisen, there is a little note there about, that he was "so very happy" -- not just happy, very happy -- "to see a Risperdal rep again. He says he writes more Risperdal than anyone in the state. Thanked him, gave him new autism information." And of course, what else did she give him?

A (No response.)

Q Samples? It says presentation and samples?

A Yes, I see that. I just didn't see the specific sample. I apologize.

Q And what samples are given?

(Gilbreath - As on Cross)

Q And when she prescribed the medication, let's compare with what she gave -- it doesn't say anything about having any discussion with him about schizophrenia, does it?

A No, it's not indicated in that box.

Q Right. So she is not there, you would agree, talking about schizophrenia, she is there on the new autism information?

A It says she provided it.

Q And if we go back to 64(A) -- let's see here for a minute. On 5-30-02, do you see how she gave .25 milligrams, 1x7, child dose, as described in the label? Do you see that?

A It says she provided .25, yes.

Q Well, .25 was the new dosing suggestion for starting children in that label. We don't have to take it out again, do we, sir, can we agree?

A On the new label, yes.

Q Right. She is giving a .25 child dose 1x7 starter pack, correct?

A Yes.

Q Looking back at 64(A), just like Scott Hansen did, when he gave ten starter packs of .25 milligrams back in 2002, correct?

(Gilbreath - As on Cross)

A I don't recall exactly what Scott provided.
 Q It says it right here, right here in front of your eyes, ten .25s. We spent sometime doing it.
 A I am sorry, I didn't know you were referencing Scott Hansen's call.
 Q Can we agree?
 A Yes.
 Q And when you first showed up, you gave ten .25s, .25 1x7s, correct?
 A Yes.
 Q And the second time you showed up, you gave five 1x7s, correct?
 A Yes.
 Q Of .25 milligrams, correct?
 A Yes.
 Q Just like she did when it's now approved with new warnings on the label. Correct?
 A Yes. I don't have the label in front of me, but, yes.
 Q A kid's dose, correct? A kid's starter dose?
 A The .25 dose was in the label all along. It was -- it's a provided strength is what I am saying.
 Q Do we have to go back and see that the indicating starting dose where we were way yesterday

(Gilbreath - As on Cross)

here until, you know, tomorrow, Mr. Gilbreath. We just need the answers and then we can move on.
 THE WITNESS: Of course.
 Q Do you remember where you were?
 A Actually, I don't, I apologize.
 Q What I was trying to --
 A Oh, special population.
 Q I was trying to see if you would agree with me, okay?
 A I don't know the actual scope of a special population, but I do know it's referenced in the label.
 Q Sir, when a bottle of this medicine was provided, like one of those 30 milliliter bottles?
 A The oral solution?
 Q Yeah.
 A Yes.
 Q What was that worth?
 A Financially?
 Q What would it cost at the pharmacy, yeah.
 150 bucks?
 A I don't know the cost at the time.
 Q No idea?

(Gilbreath - As on Cross)

for adult schizophrenics was 1 milligram, four times .25, and the starting dose for bipolar was 2 milligrams, eight times of .25. Do you recall talking about that yesterday?
 A Yes, I recall it from yesterday.
 Q The company was making it in .25s, at that time, correct?
 A Yes, FDA had approved it in .25s.
 Q But there was no indication as a starting dose for any adult at .25?
 A There were special populations in the label, and once again, they used it in titration and things like that.
 Q I get it. Special populations are that narrow band of people that may need some special consideration, correct?
 A Yeah, I don't know the definition of special population per se but I --
 Q You would expect it to be small, that's my point.
 MR. MURPHY: Objection, Your Honor, the witness should be allowed to answer the question.
 THE COURT: Sustained. But we will be

(Gilbreath - As on Cross)

A Probably 100, \$200. I really don't know.
 Q In terms of the value of what you were dropping off, the value of these pills on some of these days was literally a few thousand dollars; correct?
 A I would have to look at the pricing sheets but --
 Q That wouldn't surprise you?
 A Yeah, if it was bought at a retail pharmacy, it would be several dollars.
 Q Sir, you actually weren't the first -- Scott Hansen and you weren't the first sales reps in Mathisen's office. You are aware of the fact that back in 1997, when we have already heard in this courtroom there was meager safety data, there was a Janssen -- I am going to rephrase the question.
 In 1997 to 1998, there was a sales representative in the office of Dr. Mathisen of Janssen dropping off samples, correct?
 MR. MURPHY: Objection, Your Honor.
 THE COURT: If you know. Do you know?
 THE WITNESS: I don't. That was before I even joined the company.
 Q I know it was before you joined the company,

(Gilbreath - As on Cross)

sir, but you are telling me that you haven't reviewed the documents of the prior sales rep even to the point of sitting in this witness stand today?

A I can tell you I knew that Scott Hansen was in there previously, but I am aware of no one else.

Q Really?

A Yes, really.

Q Let me see if I can refresh your recollection. I need the full 62 exhibit in front of me, quickly.

Okay, I am going to move on.

Sir, there are a couple of things I want to pin down. Am I correct that you as a sales rep back then were not allowed to share any information about Risperdal, whether safety or efficacy, if not approved by Janssen?

A That's correct. Or the FDA-approved label.

Q Nothing to do with the FDA-approved label. I want to know, I am asking you the same exact question you said yes to in your deposition, sir.

You are not allowed to share any information about Risperdal, whether safety or efficacy, if not approved by Janssen. You said yes to that question without any explanation. Would you agree you said yes to that?

(Gilbreath - As on Cross)

THE COURT: Overruled. Again, this has to do with just answer the question. Answer the question so we can move forward.

A His was a busy office.

Q Yes. And when you waited in there in that office, I want you to search your memory. The office waiting room was full of parents and children, almost all the time?

A I really don't remember the waiting room. I don't even know if I went through the waiting room to see him.

Q Do you know?

A I don't, actually.

Q Do you have any memory?

A No, not really.

Q So maybe you were in the waiting room, correct?

A It's possible, but I don't have recollection of that.

Q Sir, maybe I can save some time on redirect --

THE COURT: If there is going to be any. I am not sure. I am not sure.

MR. KLINE: This is my cross, I mean on redirect.

(Gilbreath - As on Cross)

MR. MURPHY: Objection, Your Honor, it's argumentative.

THE COURT: I know you are trying to save time, but if that's not going to work, ask him the old-fashioned way.

Q Simple straight up, sir: You were not allowed to share any information about Risperdal, whether safety or efficacy, if not approved by Janssen, correct?

A Correct.

Q When you would go to Dr. Mathisen's office, sir, you would not always get to see him right away, you would have to wait, correct?

A Yes. It's common that we would have to wait sometimes and I am sure that was the case with Dr. Mathisen.

Q And his office was a busy office, correct, sir?

A Yes. I recall him being busy, but virtually all doctors' offices are busy.

Q I didn't ask you that. Some doctors' offices are not busy, you know that. Maybe only the ones you go to were busy.

MR. MURPHY: Objection, Your Honor.

(Gilbreath - As on Cross)

THE COURT: This has to end sometime before the summer.

MR. KLINE: I hope so. I am trying hard with a lot of information.

THE COURT: There will be cross examination, and if there is redirect it will be in the format we did with the other witness, ten or 15 minutes.

MR. KLINE: Right. I get it.

THE COURT: So you have the witness here, ask whatever you wish. I have been very indulgent that way, but after cross examination is over, that's it. Except for about a 15-minute period. So wrap it up.

MR. KLINE: When I was referring to direct I was thinking of me being on cross and them being on direct.

THE COURT: I understand that. You are on direct examination as if on cross, I think is how we call it.

MR. KLINE: That, too, I agree.

BY MR. KLINE:

Q What else do you want to tell us, sir? What did I miss?

(Gilbreath - As on Cross)

MR. MURPHY: Objection, Your Honor.

THE COURT: That's sustained.

Q No, I would like to know if in answer to any of my questions, in case I want some follow-up on it, there is anything else that you would add to the jury that they haven't seen about your visits to Dr. Mathisen?

A No.

MR. MURPHY: Objection, Your Honor, for the record.

THE COURT: Overruled. You have the answer.

A No, I have nothing else to add.

Q Do you believe that we have covered it fully, the way you have seen our discussions?

MR. MURPHY: Objection, Your Honor, these are counsel's questions, its not for the witness to determine whether there has been a full discussion.

MR. KLINE: I want to know what he believes.

THE COURT: That's sustained.

MR. KLINE: Okay, thank you, sir.

THE WITNESS: Thank you, Mr. Kline.

(Gilbreath - Redirect)

Dr. Mathisen. Do you recall that?

A Yes.

Q And during the course of his questioning, Mr. Kline suggested to you that toward the end of the time that you were calling upon Dr. Mathisen, those last three times, that those were the only times that you had made presentations. Do you recall that?

A I recall him pointing those three out.

Q But that wasn't true, was it? That is to say, you made a presentation only to Dr. Mathisen on prior occasions, hadn't you?

A Yes, I had.

Q So the suggestion that those last three times were the only three times that you made presentations only would not be correct?

A Correct.

Q One other thing I wanted to clear up is something that you were confronted with regarding the 1 milligram denomination, and whether it was unscored?

A Yes, right.

Q And Mr. Kline's question to you was along the lines that when you made a call in April of 2004,

(Gilbreath - Redirect)

MR. KLINE: Thank you. I wish you safe travel, sir.

THE WITNESS: Thank you very much.

THE COURT: You may proceed with cross examination. Counsel, we will be going until about 12:30, 12:45.

MR. MURPHY: May I proceed, Your Honor?

THE COURT: Yes, sir.

MR. MURPHY: Thank you. Good morning, everyone.

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REDIRECT EXAMINATION

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BY MR. MURPHY:

Q Mr. Gilbreath, I want to ask you a few questions, clarify a few things, and march through some questions that I had for you initially.

A Sure.

Q And I am going to ask you and the jury to indulge me a little bit because I will probably have to use the elmo as well as the screen to make sure that everyone can see.

One thing I want to clear up, you were asked questions about presentations that you made to

(Gilbreath - Redirect)

that was the first time that you had provided to Dr. Mathisen unscored Risperdal in the denomination of 1 milligram. Do you recall that?

A I do recall that discussion.

Q But it is a fact that every time you dropped off a 1 milligram denomination, it was unscored because all 1 milligram denominations are unscored. Right?

A To my knowledge, we only had one denomination. I don't recall at what point it was scored or not scored, but I do know it was called out like that.

Q Well, let's be fair to you, the record and to the jury, all right?

A Yeah.

Q I am going to use the elmo at this point, and using Mr. Kline's nomenclature, we are looking at 62(F).

MR. KLINE: Ken, would you kindly give me the date?

Q So can you see, Mr. Gilbreath, the reference two from the bottom that says, "Risperdal, 1 milligram, 1X7, unscored"?

A I do.

Q And just to zoom out, this is what we have