MR. McINTYRE: Good morning, ladies and gentlemen. We are back on for the, with regard to the questioning of Mr. Lubiner. I expect to wrap this up this morning by noon, so that's the goal; and if we can do it before that, all the better. Everyone else has commitments for this afternoon.

THE WITNESS: I'm going to stand.

MR. McINTYRE: Just to remind you, you're still under oath.

THE WITNESS: Yes.

MR. McINTYRE: Miss Freedman?

MS. FREEDMAN: Thank you.

FURTHER EXAMINATION BY MS. FREEDMAN

Q. Do you want to stand?

A. I would like to stand, yes.

Q. Better?

A. Not so good for my back.

Q. Okay. You stated the other day that there were sufficient alternatives in the Roger
Williams Hospital or specifically the Roger Williams Hospital program that is more than adequate for the people of Rhode Island to be able to receive a bone marrow transplantation and that no one goes without; do you recall that?

A. Yes.

Q. But certainly, you will agree with me that patients are seeking bone marrow transplantation outside of Rhode Island?

A. Patients do that, yes.

Q. So, although it's your opinion that the program here is adequate, you will agree with me that people in Rhode Island are leaving Rhode Island for that treatment?

A. And I would expect that to be the case, yes, under any circumstances.

Q. A significant portion, particularly when you view the fact that in 2007, only two patients from the State of Rhode Island have received bone marrow transplantation here, correct?

A. I don't think it is a significant portion of those patients who have an option of choosing a Rhode Island facility. I think actually it's a, it's a minority of those patients.

Q. But you will agree with me that only two patients so far in 2007 have received transplantation?

A. Yeah. 2007 I think is a unique period, yeah.

Q. The answer is, yes?

A. Yeah, only two, yes.

Q. Okay. And you're aware that Roger Williams Hospital only performed 20 bone marrow transplants in the calendar year 2006?

A. That seems consistent with the information I have seen, yes.

Q. Okay. And you're aware, are you not, that in the last five years, Roger Williams Hospital has only performed the minimum NMDP bone marrow transplants of ten and ten on two occasions; you're aware of that?

A. I believe they performed more than the minimum on an average basis.

Q. Well, basically, you testified that according to NMDP requirements?
Q. And they probably won't meet the criteria in 2007, correct?
A. I don't know what will happen in 2007.

Q. Well, they have done two.

MR. DEVEREAUX: Objection.

Now, we are going to get into argumentative and speculation, crystal ball gazing?

MR. McINTYRE: Yes --

Q. Well, they are not on track; is that fair?
A. I don't know what will happen in 2007.

Q. Okay. Now, you also said that the referral patterns of physicians are important with respect to where a patient gets transplantation, correct?
A. Yes.

Q. And based upon the numbers for 2007, is it fair to say that Roger Williams Hospital is not receiving physician referrals for bone marrow transplants at the present time?
A. I don't know that. No, I don't know that based on those numbers. I don't know.

Q. So, let me ask you this. Is it your opinion that Roger Williams Hospital is receiving and has a good physician referral base for bone marrow transplants since they have done two in 2007?
A. Well, I think the volume at Roger Williams Hospital is a function of the fact that they have lost, their clinical director has been recruited away and two of their physicians.

Q. But they still have two physicians that are performing bone marrow transplants, correct?
A. I don't know that two physicians can handle the workload of five.

Q. Well, they haven't done any in June, correct?
A. I don't know about June.

Q. Were you here for Dr. Rathore's testimony?
A. Yes.

Q. And Dr. Rathore said that no bone marrow transplants have taken place in June?
A. If that's what he said, I don't dispute it.
Q. You said in your direct testimony that the Connecticut and Massachusetts populations for market share should be excluded, and you also commented that Mr. Zimmerman did that in his 1992 report; do you recall that?
A. I recall saying that he did exclude those populations in his analysis --
Q. And you also testified --
A. -- as far as I understood.
Q. And that you felt those populations should be excluded with respect to Rhode Island Hospital's market share?
A. No, I didn't say that, and I didn't exclude the Massachusetts population.
Q. But it's true, is it not, that Mr. Zimmerman, in fact, did take Massachusetts and Connecticut population into effect in his report? He did not dismiss those populations, correct?
A. Not as I read it, no.

MS. FREEDMAN: May I approach.
MR. McINTYRE: Sure.
Q. I'm going to refer you to Page 55 of Mr. Zimmerman's report, which I believe is Rhode Island Hospital's Tab 6, which I would like to put into evidence or put into the record at this time as Applicant -- I think we are on 13?
MR. McINTYRE: 14 -- 15, actually.
MS. FREEDMAN: 15.
MR. McINTYRE: It's Tab?
MS. FREEDMAN: It's Tab 6.
MR. McINTYRE: Of the Rhode Island Hospital --

PREVIOUS ZIMMERMAN REPORT, MARKED IN FULL)
Q. You read the Zimmerman report?
A. I did.
Q. The 1992 report. And if you look at Page 55, he specifically talks about programs in Connecticut and Massachusetts --
A. Uh-huh.
Q. -- they have 52 beds and they treated nearly 400 patients annually, correct?
A. Uh-huh.
Q. He says, based on the availability of space in these programs and the substantial experience of these hospitals with transplantation, some Rhode Island patients are expected to use these programs, even if there's a program established in Rhode Island, thus any inflow of patients from out of state is likely to be offset by use of out-of-state programs by Rhode Island residents.
A. Uh-huh.
Q. So, he basically says that, and he addressed that issue in the report by saying that the out, that the patients that are seeking care out of state will be a wash for the patients coming in from out of state to use the program, correct?
A. I don't think that's what he says. What he says in that statement -- I don't know how many pages that report is. It's a very comprehensive, very thorough report in which he addresses the issue of market share and what populations to include and what populations not to include in a variety of places; so, that is one statement that's in the report. I don't know -- that, ultimately, was not his conclusion. He didn't base his estimate of the population in need on the Connecticut population.
Q. But he did, in that statement in his report, he did acknowledge that it would be a wash, correct; he did acknowledge out-migration and in-migration, correct?
A. I don't know that he acknowledged that. I don't believe he acknowledged that in his conclusions.
Q. But he did on Page 55, right, Mr. Lubiner?
A. That sentence is there, yes.
Q. Right. Thank you. And Rhode Island Hospital did not take any Connecticut residents that may use its program into effect in its numbers, correct?
A. No, no, they didn't.
Q. So, the answer is, yes, they didn't?
A. They did not take any Connecticut residents into account, correct.
Q. Now, were you a consultant on the Landmark
17  
A. Yes.

Q. You were a paid consultant by Landmark?

A. Uh-huh.

Q. And you testified in your direct examination that Life Span objected to that CON, correct?

A. Yes.

Q. And you are aware, are you not, that Life Span withdraw its objection for a public hearing?

A. I wasn't, no.

Q. You weren't aware --

A. I don't recall. I was involved -- I don't recall all the particulars.

Q. Well, you testified in your direct examination that in Rhode Island Hospital's objection to the cardiac --

A. Yes, I --

Q. -- CON --

A. Yes.

Q. But you don't recall that Life Span did, in fact, withdraw its objection to the cardiac CON?

A. I don't know what you meant by withdraw. They testified before the Health Services Council that it was not necessary.

Q. They didn't testify before the Health Services Council, in the public arena, not in a process like we are in today. In the regular Health Services Council meeting, they made certain statements, correct?

A. Yeah, they made the statements that the program wasn't needed.

Q. Correct, but it was not in a public meeting process and a true objection, correct?

A. That I don't recall, and I wasn't involved in the entire process. I was involved in the portions of it.

MS. FREEDMAN: May I approach.

MR. McINTYRE: Sure.

Q. I'm going to show you an article from the Providence Journal dated May 5, 2000. (DOCUMENT HANDED TO WITNESS)

A. I don't recall that. I recall this article now that you show it to me.

Q. Okay.

A. I recall that there were several months of negotiations, contentions, back and forth regarding their request for a proceeding like this one.

Q. And --

A. And that, according to this article, they apparently decided to withdraw them.

Q. So, ultimately, Life Span did withdraw its request for a hearing or a public meeting like we are at today, correct?

A. Yeah.

MS. FREEDMAN: Okay. Can I please --

A. Yes.

MS. FREEDMAN: -- I guess mark that and ask that it be marked Exhibit 16 for the record?

MR. DEVEREAUX: Providence Journal article?

MR. McINTYRE: Yes. Mark it as Exhibit 16. Do you have an objection?

MR. DEVEREAUX: No.

(R.I. HOSPITAL EXHIBIT 16, PROVIDENCE JOURNAL ARTICLE, MARKED IN FULL)

Q. Mr. Lubiner, there's no question.

A. That they withdrew the request.

MR. McINTYRE: It's a continuation of the answer.

MS. FREEDMAN: What number is that?

MR. McINTYRE: 16.

MS. FREEDMAN: Thank you.

Q. Now, one of the contentions of Landmark, which you're very familiar with because you were a consultant, was that it was difficult for patients to travel for cardiac care from Woonsocket to Providence, correct?

A. Yes.

Q. And you have discounted in your report the fact that bone marrow transplant patients, if they don't seek care at Roger Williams Hospital, have to go to Boston and other
places, correct?
A. Yes, but -- yes.

Q. And certainly, you would agree with me that the treatment for a bone marrow transplant is significantly longer inpatient time than for cardiac, correct?
A. The length of stay is longer, yeah.

Q. Certainly, the travel and the expenses on a family is significantly different going to Boston than going from Woonsocket to Providence; is that fair?
A. Well, I, actually, I don't know that because there are many people -- and we made this point at the time in Woonsocket -- who don't have private transportation, have to use the bus schedule. At that time, the bus schedule wasn't very comprehensive.

Q. So, it was based on the bus schedule?
A. Well, whatever means they could find to get to Providence.

Q. What about Woonsocket?
A. No, I said the bus schedule within Woonsocket is better.

Q. That's easier than Woonsocket to Providence?
A. I don't know.

Q. Now, you testified that you have discounted Rhode Island Hospital's numbers for the Boston effect, and you estimate that to be 10 percent, correct?

THE WITNESS: Which application are we talking about?
MS. FREEDMAN: I'm talking about this application.

THE WITNESS: Are we talking about cardiac surgery or?

Q. No, I'm talking about this application. And certainly expenses is going to be a factor --
A. Yes, I said --

Q. -- that people who have to -- can you please let me finish?
A. Sure.

Q. -- who need to take public transportation, correct?
A. Yes.

Q. Thank you. Now, some of that 10 percent, some of that 10 percent overlaps, does it not, with the United Health Care issue that you brought up?
A. No, I don't think so.

Q. So, you don't think that there's any overlap between the people going to Boston because they have United Health Care?
Q. You also discounted the unrelated allogeneic estimate by 18 percent, correct?

A. Yes.

Q. And you specifically said that you, that 18 percent of patients who are, who meet the criteria who need the bone marrow transplant need an unrelated allogeneic transplant, correct?

A. Yes.

Q. But in fact, the national statistic is really 13 percent, isn't it?

A. I have to show you where you're referring to, because that's not the conclusion based on the material that I reviewed.

Q. And refresh my recollection on what material you reviewed to make that conclusion?

A. I reviewed material from the American Society for Bone Marrow Transplant Centers, and also, from the International Registry of Bone Marrow Transplant Procedures. And I also reviewed the report that they had done on procedures in the United States.

Q. And so, did you contact anyone from the Center for International Blood and Marrow Transplant Research to get that actual figure?

A. No. I used their report.

Q. Okay. So, you didn't confirm with anyone who would be able to confirm that 18 percent?

A. Well, I assumed if they published it, they believed it was correct.

MS. FREEDMAN: May I approach.

MR. McINTYRE: Yes.

THE WITNESS: Yes.

Q. So, I'm going to show you an e-mail trail from Tanya Peterson, the senior clinical research specialist of the Center for International Blood and Marrow Transplant Research. Are you familiar with that entity?

A. I need one moment, please. Yes, I'm familiar with the entity.

Q. And you would consider that an entity that would be able to provide accurate numbers with respect to unrelated allogeneic transplants nationally?

A. Unrelated allogeneic blood cells, stem cell transplants, yes. There's other kinds of transplants, right.

Q. But I guess my question is, and what I would like your affirmation of, is there's no reason to doubt the numbers that this entity has provided, correct?

A. There's no reason to doubt them. There is, but they are not a complete representation of all of the transplants. These data are with regard to stem cell transplant procedures that they have provided in terms of the number of patients who receive the transplant.

Q. Thank you.

A. So, I just want to make that clear.

Q. And you will see that based upon the numbers provided by the Center for International Blood and Marrow Transplant Research that, in fact, 13 percent of transplants are unrelated allogeneic?

A. You keep using the term transplants, and I would like to clarify that that does not include all bone marrow transplants. These data are with regard to stem cell transplants. There are other kinds of bone marrow transplants.

Q. Okay.

A. So, I just want to make that clear.

Q. Thank you.

A. When you take that other kind of bone marrow transplant into account, the average would be higher.

Q. But we don't have any numbers on that either.

A. Right.

Q. And you don't have any numbers on that either?

A. No.

Q. And so, did you just make your estimate from the procedures in the United States?

A. From the data we have, yes.

Q. But, you don't have any independent information to doubt the statistics that they have provided in this e-mail, correct?

A. No. But they are not the complete picture. They are not a complete representation of the number of patients who receive the transplant.

Q. But, there's no reason to doubt the statistic that they have provided in this e-mail, correct?

A. There is, but they are not the complete picture. They are not the complete representation of all of the transplants.

Q. In other words, there are not a complete reason to doubt the numbers that this entity has provided.

A. No, but they are not the complete representation of all of the transplants.

Q. And so, from the international registry of bone marrow transplant centers, the international registry of bone marrow transplant centers, there are no numbers that can be used to confirm that 18 percent?

A. No.

Q. And so, did you just make your estimate from the procedures in the United States?

A. From the data we have, yes.

Q. But, you don't have any independent information to doubt the statistics that they have provided in this e-mail, correct?

A. No. But they are not the complete picture.

Q. But certainly, you don't have any independent information to doubt the statistics that they have provided in this e-mail, correct?

A. There's no reason to doubt them. There is, but they are not a complete representation of all of the transplants. These data are with regard to stem cell transplants. There are other kinds of bone marrow transplants.

Q. Okay.

A. So, I just want to make that clear.

Q. Thank you.

A. When you take that other kind of bone marrow transplant into account, the average would be higher.

Q. But we don't have any numbers on that either.

A. Right.

Q. And you don't have any numbers on that either?

A. No.

Q. And so, did you just make your estimate from the procedures in the United States?

A. From the data we have, yes.

Q. But, you don't have any independent information to doubt the statistics that they have provided in this e-mail, correct?

A. There's no reason to doubt them. There is, but they are not the complete picture. They are not the complete representation of all of the transplants.

Q. In other words, there are not a complete reason to doubt the numbers that this entity has provided.

A. No, but they are not the complete representation of all of the transplants.

Q. And so, from the international registry of bone marrow transplant centers, the international registry of bone marrow transplant centers, there are no numbers that can be used to confirm that 18 percent?

A. No.

Q. And so, did you just make your estimate from the procedures in the United States?

A. From the data we have, yes.

Q. But, you don't have any independent information to doubt the statistics that they have provided in this e-mail, correct?

A. There's no reason to doubt them. There is, but they are not the complete picture. They are not the complete representation of all of the transplants. These data are with regard to stem cell transplants. There are other kinds of bone marrow transplants.

Q. Okay.

A. So, I just want to make that clear.

Q. Thank you.
MS. FREEDMAN: I'd like to introduce, mark it and introduce this into the record.


MR. DEVEREAUX: This is a little bit unusual. I don't generally want to object to the free flow of information. I would just like to note, for the record, or maybe counsel can clear it up --

MS. FREEDMAN: Sure.

MR. DEVEREAUX: Rachel Schwartz, I believe, is an employee of Life Span?

MS. FREEDMAN: She forwarded the e-mail to me, correct. She forwarded the e-mail from Tanya Peterson of the Center for International Blood and Marrow Transplant Research, which is on the bottom of Page 1.

MR. DEVEREAUX: Who's Susan Schwartz? Wait a minute. There's no question. Who's Susan Thompson?

MS. FREEDMAN: Susan Thompson is an employee of Life Span.

MR. DEVEREAUX: Susan Thompson is sending an e-mail to Rachel Schwartz at 11:00 a.m.?

MS. FREEDMAN: Right.

MR. DEVEREAUX: Is there a Life Span employee, Susan Thompson, sending an e-mail on Thursday at 11:42 to Rachel Schwartz? Is that one of the entries?

MS. FREEDMAN: Correct.


MS. FREEDMAN: I don't know who Melody Nugent is.

MR. DEVEREAUX: She was sent an e-mail?

MS. FREEDMAN: She forwarded Tanya Peterson. See, that's just a forward from Tanya Peterson.

MR. DEVEREAUX: Probably works for them.

MS. FREEDMAN: Maybe.

MR. DEVEREAUX: Okay. And now, let me see, the next one is Susan Thompson to Melody Nugent on utilization rates?

MS. FREEDMAN: Right.

MR. DEVEREAUX: That's Melody Thompson -- Melody Nugent, okay. Then we have Melody Nugent to S.D. Thompson.

MS. FREEDMAN: Actually, it's from Tanya, best regards, Tanya. Melody Nugent is probably Tanya's assistant.

MR. DEVEREAUX: Guess.

MS. FREEDMAN: It would be my good guess, since it says, best regards, Tanya.

MR. DEVEREAUX: For what it's worth, I have no objection.

MR. McINTYRE: Okay. This is in as Applicant's 17. (R.I. HOSPITAL EXHIBIT 17, CENTER ON BLOOD AND MARROW TRANSPLANT RESEARCH E-MAIL, MARKED IN FULL)

Q. In preparing your analysis, Mr. Lubiner, I take it you looked at Roger Williams Hospital's 1992 application for the bone marrow transplant program, correct?

A. Yes.

Q. And do you recall that, at that time, Roger Williams Hospital estimated that there were 130 potential bone marrow transplant patients in Rhode Island?

A. That's what they said in their application, right.

Q. You recall that?

A. Yes.

Q. And that they estimated that they would receive 60 patients referred from their own physicians?

A. I don't recall that; but if that was in the application, I don't dispute it.

Q. And that's consistent with your testimony that there are 50 to 60 patients out there --

A. Yes.

Q. -- that are in need of transplants, right?

A. Yeah.

Q. And they also --

A. Yes.

Q. -- estimated another 70 from the Brown
physician network; do you recall that --
A. I, I recall.
Q. -- which --
A. I interpreted it as overlapping.
Q. But then they say it's 130; so, that adds up, right?
A. Yup.
Q. And in their application, they indicated that they would obtain about 33 of those referrals, correct?
A. That's what it says in the application.
Q. Do you want me to show you?
A. If you want to, sure.
MS. FREEDMAN: May I approach.
MR. McINTYRE: Yes.
A. Okay. During the first year, yes, that's what they said.
Q. During the first year, they said 33 and then they would anticipate that that would grow as they were able to grow their referral base, right?
A. Yes.
Q. And that's a reasonable assumption that the first year would be the lowest number, and hopefully, you would grow from there, right?
A. That's a reasonable assumption.
Q. Of any new program?
A. Yes.
Q. And in fact, Roger Williams Hospital, since they were awarded the CON, has never performed 33 in a year, correct?
A. They performed approximately 33. I don't know if it was actually 33.
Q. Well, the average was 24, right?
A. The average for the last five years, yeah.
Q. And they did not, they did not meet the need that they set forth in their CON, correct?
MR. DEVEREAUX: Objection to the form of that question. It's argumentative.
MR. McINTYRE: It's a fair question. I'm going to allow it.
THE WITNESS: What's the question again? Why am I --
Q. There's 68 patients out there right now who aren't getting their procedure done at Roger Williams Hospital. You're saying --
A. Right.
Q. -- you're saying that that need is being met?
A. I don't, I don't know that they met -- they didn't meet the volume projections that they set forth. It's not the same as the need.
A. That the volume of Roger Williams Hospital is not the same as the need for the BMT and is not an indicator of whether or not, at the moment, whether or not that need is being met. It's not the same thing as the need for the service.

Q. Well, certainly, if I was one of those 68 people, I have a need for that procedure and if I choose not to go to Rhode Island Hospital -- go to Roger Williams Hospital, my need is not being met by Roger Williams, correct?

MR. DEVEREAUX: Objection.

MR. McINTYRE: I'm going to sustain that. I think we are...

Q. In your power point presentation, you indicated that the demand for Rhode Island bone marrow transplants between 2002 and 2006 was 28. That's just actually the average of how many procedures were done at Roger Williams Hospital, correct?

A. That's what we indicated, right.

Q. So, you're saying --

A. We indicated that the number of persons who needed bone marrow transplant that could have received them at any facility in Rhode Island based on certain barriers and clinical issues was 28.

Q. The 28 happens to be the average of the procedures performed at Roger Williams Hospital, correct?

A. No. I think the average was 24.

Q. So, if you look at the slide where it says total demand after you discounted 80 percent from the actual numbers, you will see that the numbers are, you took those numbers and you averaged them, correct?

A. Yes.

Q. Okay. And that was after you deducted 80 percent?

A. You keep -- yup.

Q. Right?

A. Yes.

Q. So, the actual numbers on that slide, the chart, which I don't have a number, says demand for Rhode Island BMT's, the actual number of people who received, or received or needed BMT's is in the far left, correct?

A. I have to look at it.

(WITNESS PERUSING DOCUMENT)

Q. And then you discounted those numbers 80 percent to get to your demand, correct?

A. I discounted those procedures, right.

Q. I don't know what the percentage was --

A. -- for certain factors that would prevent people from using the services in Rhode Island, whether they were at Roger Williams or anywhere else. Whatever that percentage comes up to, that's, for those individual factors, whatever that total is, that's what I discounted by.

Q. 32, 20, 10 and 18 adds up to 80 percent, correct?

A. Yeah, doing, I mean, quick arithmetic in my head, sure.

Q. So, the barriers out there for Rhode Island Hospital or Roger Williams Hospital are on percent, discounted at 80 percent?

A. Yes. They are whatever they are indicated as on that sheet of paper, right.

Q. Across the board, right?

A. Right.
Q. And the 2006 numbers aren't even out yet, correct?
A. At the time I did the analysis, no.
Q. So that the last column on the bottom, you speculated that, correct?
A. Well, the 2006, at the time that that exhibit was prepared, not at the time of my report, at the time that exhibit was prepared, we used whatever we had for 2006 to date.
Q. But they are not out yet, correct, publicly?
A. I think they may be.
Q. The full data?
THE WITNESS: For 2006?
MS. FREEDMAN: Correct.
A. I don't know.
Q. You don't know if the full data is actually out?
A. I know that it's out for, I believe it's out for Rhode Island. I'm not sure if it's out for Massachusetts.
Q. Okay. And certainly, for, let's just take your number of 2006, that there's a demand for 29, Roger Williams Hospital is not meeting that demand, correct?
A. Roger Williams Hospital's volume doesn't have anything to do with the need. It has to do with their volume.
Q. I said demand. I didn't say need.
A. Demand, I don't know. I'm not sure what the difference is.
Q. Well, that's your word.
A. Yeah, the, they are relatively interchangeable the way I used them.
Q. So, you would agree with me, though, that there's capacity out there for more procedures to be done in the State of Rhode Island?
A. There's even more capacity at Roger Williams than there is need by among the residents of Rhode Island.
Q. You also indicated that --
MR. DEVEREAUX: I'm just going to note, you know, I think we have had him on for almost an hour and a half.
MS. FREEDMAN: I'm almost done.
MR. DEVEREAUX: I was limited to fifty some minutes with Mr. Macri.
MS. FREEDMAN: You weren't limited at all.
MR. McINTYRE: Hold on. We are going to allow you to continue.
MS. FREEDMAN: I'm almost done.
Q. You would agree with me that it's advantageous for the State of Rhode Island to keep procedures and the money flowing from procedures in the state, correct?
A. Not necessarily.
Q. You wouldn't agree with me that it is important for the State of Rhode Island for high-end tertiary services, such as bone marrow transplants, to be performed in Rhode Island?
A. There will always be a number of people who, for clinical reasons, the services, no matter how good they are, no matter how comprehensive they are, will not be able to meet their particular needs; so, I don't...
think we should force those people to stay in Rhode Island.

Q. That wasn't my question. My question is, it's advantageous to Rhode Island to have high-end services here, correct?
A. Yes.

Q. It's advantageous for the economy; isn't it?
A. When you're talking about 40 or 50 procedures, technically, I suppose it is.

Q. Yes, because you need additional employees; you need additional qualified personnel; you have money coming in for research?
A. Uh-huh.

Q. Those are all important to the health care system, correct?
A. Yeah, they are important, yeah, sure.

Q. And in fact, when an institution is receiving funds for high-end services, they are able to provide a broader range of services to the people of Rhode Island, correct?
A. It depends on how much the cost -- how the revenue compares to the costs.

Q. But in general --
A. It's a benefit when they --

Q. -- when the volume goes up, the cost goes down, in general?
A. In general, when you're talking about very, very small volumes like we are talking about here, that's less true.

Q. I'm not talking -- I'm talking generally, Mr. Lubiner.
THE WITNESS: About any hospital service?

Q. I'm talking generally.
MR. McINTYRE: We are going to generally move on to another subject.

THE WITNESS: This is --
MR. McINTYRE: Hold on a minute. Hold on a minute.

Q. Isn't it true --
MR. McINTYRE: Hold on a minute.

MS. FREEDMAN: I'm going to move on.
MR. McINTYRE: But first, you're going to hold on. This is getting out of control. I don't like that. It's difficult for her. It's hard for the Committee. Whether he's answering the questions to your satisfaction or not, you are not permitted to talk over one another; so, take a breath and let's get started again.

Q. Mr. Lubiner, you didn't consider the impact of research money at all in your analysis of affordability, did you?
A. Yes, I did.

Q. And where in your report did you talk at all about the fact that having a bone marrow transplant program is important for research dollars in Rhode Island --
A. I don't believe --

Q. -- and the affordability?
A. I don't believe that it is important, that having an additional bone marrow transplant program is important. The research dollars are available now. If the researchers would collaborate and go after them, we would get them. That was, that's my conclusion, and that's what I found when I did my review.

Q. So, your conclusion is that research money coming into Rhode Island is important for the affordability criteria, correct?
A. It's -- no, I think the affordability of this program depends on whether or not it would improve the chances of getting research dollars into Rhode Island, and I believe that it would not. That all the necessary conditions are there, and researchers need to go get the research dollars without -- that the availability of the new program doesn't enhance in any way the chances of research funding.

Q. And what about Dr. Schwartz and the pediatric aspect of it? I'm having a tough time with your analysis on that, because certainly, she can't get research into Rhode Island without a program, correct?
MR. DEVEREAUX: I object to that. That's a statement not a question, that she is having a tough time.
MR. McINTYRE: I would agree.
Q. Mr. Lubiner, that analysis is not applicable to the pediatric portion of this application, correct?
A. I don't see why not, and I didn't hear Dr. Schwartz say that. I heard Dr. Schwartz actually say she participates in a number of protocols around the country.

Q. And that she cannot offer those protocols to her patient in her own institution?
A. Well, she doesn't have a program.

MS. FREEDMAN: Please, Mr. McIntyre, I'm trying --
MR. McINTYRE: Well, he may have an answering style that you don't like, but you can't leap to the next question; and I have to agree that Mr. Devereaux has got a point. We went for a good half hour, 40 minutes Monday, and we have been at another 45 or 50 minutes now, so how much longer do you have?
MS. FREEDMAN: Ten minutes. All I'm asking is that I get to finish my question. That's all I'm asking.
MR. McINTYRE: Well, you have to let him finish his answer. You can't jump in. That's what you're doing, Linn.

Q. Isn't it true that Dr. Schwartz is unable to perform research at her own institution -- on bone marrow transplant?
A. No.

Q. -- on bone marrow transplant?
A. No, she can perform research.

Q. See, now, I'm sorry, I wasn't finished.
A. She testified she performed research.

MR. McINTYRE: I will tell you what. We are going to take a five-minute break. Five-minute break. I would like to see counsel.
(SHORT RECESS)
Q. Mr. Lubiner, were you involved in preparing Exhibit I, which is the chart of alleged inaccuracies of the application?
A. Yes.

Q. And do you recall in that chart, and actually in your report on Page 24 you state that, that Rhode Island Hospital stated in its application that, quote, approval of the proposed program is absolutely essential to its approval as an NCI center; do you recall that?
A. Yes.

Q. And you said that Rhode Island Hospital stated in the application that it was absolutely essential, right?
A. I believe those were the words, yes.

Q. And that's also in this chart that you prepared, correct?
A. It may be, yes.

Q. But in fact, Question 38 specifically never uses the word absolutely, correct?
A. I don't know. I would have to read the question -- I would have to read the answer.

Q. There's no --
A. I didn't memorize the application.

Q. There's nowhere in the Rhode Island Hospital application where it says that it's absolutely essential, correct?

Q. My question, I will repeat, was nowhere in the application did it say the word absolutely essential, which you quoted in your report; that's true, isn't it?

A. I would have to read the application or have the application to refer to to know whether those terms were used. What I'm saying is if they weren't exactly those words, they were very much words to that effect.

Q. That you then, you then stated that it was absolutely necessary, despite the fact that they didn't use those words; you inferred that?
MR. DEVEREAUX: I object.
A. I may have been paraphrasing them. I may have been quoting them.

Q. For the record, the chart that counsel alluded to in cross-examination of Rhode Island Hospital's witnesses and that is in the record as Tab I, I think, in fact, the application states the development of HIOBMT service at RIH is an important step in the evolution of the cancer program, which will enable Life Span and Rhode Island Hospital to become a regional academic and clinical leader in cancer care.

A. That's one of the statements that's in there.

Q. It doesn't say absolutely, correct?
A. That's one of the statements in the document.

Q. It doesn't say absolutely?
A. That statement does not say absolutely.

Q. The development of a strong, independent service program at RIH is integral to becoming an NCI designated center, is a critical step in meeting the goals of the Brown-Life Span partnership, and will be critical for attracting new biomedical enterprises to Rhode Island. That's the quote from the application.

A. I think that's one of the quotes, yes.

Q. Doesn't say absolutely necessary.
A. No, it says critical.

Q. Right. Doesn't say absolutely necessary.

MR. DEVEREAUX: I object.

MR. McINTYRE: I'm going to agree. You are arguing with the witness again, and I might point out, for the record, that the effectiveness of this questioning is diminishing by the moment.

Q. All right. May I just have a minute. I will have you look at Page 29 of 65 of the same application, and could you read the second paragraph there that's a short paragraph, but would you read it into the record?

A. Okay. Finally, as stated in the responses to Question 3, Questions 3 and 30B, HIOBMT is the only treatment service not offered at RIH and is absolutely necessary in order --

Q. Let me --
A. Is an absolute necessity --

Q. Necessity?
A. I don't have my long glasses. Is an absolutely necessity --

Q. Necessity?
A. In order for RIH, the leading academic
center in the state, with the largest portion of Rhode Island cancer center patients receiving care, to move forward to become an NCI comprehensive program.

Q. Do you remember, I think it was Dr. Klein's testimony, that Rhode Island Hospital hadn't made up its mind yet whether they were going to apply for that designation; they were looking at it?

A. I recall that was said.

Q. And you were asked questions about the pediatric volume -- and I just, think I need to have this marked as, for identification purposes.

MR. McINTYRE: Is this in the record already?

MR. DEVEREAUX: Is that in the record already?

MR. NORMAND: Yes. That is Rhode Island Hospital, May 31 documents submission, Tab 14.

MR. DEVEREAUX: So, I guess I will refer to it as Tab 14.

Q. This is from Rhode Island Hospital submission, for the record, Medicine Health Rhode Island, Publication Number of the Rhode Island Medical Society, Volume 90, Number 3, March, 2007. And it says on Page 2 in this column, in the United States there are over 120 centers performing liver transplantation, including eight in New England, Harvard Hospital, UMMC, Yale, Lahey and four centers in Boston. Approximately eight to twelve people from Rhode Island receive a liver transplant each year. Have I read that correctly?

A. Yes.

Q. And then it says, given the proximity to other centers, our administrators and we have not pursued liver transplantation at Rhode Island Hospital. Such a pursuit would require enormous resources, including more ICU beds, specialists in hepatology and pathology and dedicated teams in anesthesiology and nursing. It appears that the number of liver transplants would be insufficient to maintain satisfactory skills for optimal transplant care. Did I read that correctly?

A. Yes.

Q. And is that the same type of analysis that you did on the pediatric volume that, when you reached your conclusion in this case?

A. Yes.

Q. You also were asked some things in the Zimmerman report. I'm going to refer to that. Specifically, you were asked about, you know, the discounting of whatever the outside demand might be to what were actually treatable patients?

A. Uh-huh.

Q. I'm going to refer -- I think Miss Freedman referred to Page 56, but I'm going to look at the chart Mr. Zimmerman put together on Page 55, and he has, in this left column, after he identified the diseases, maximum treatable Rhode Island patients.

A. Yes.

Q. And then in the next column what does he have?

A. Demand for treatment with HMO patients under 20 and 20 to 59.

Q. And the maximum treatable patients he projected was 72?

A. Yes.

Q. And the demand for treatment that he came up with, which you would agree was based on projections because he didn't have any history at that time?

A. That's correct.

Q. Was 33?

A. Yes.

Q. And 33, that was Mr. Zimmerman's projection. Roger Williams averaged 24 during at least a, a what, a six, a five-year period?

A. Correct.

Q. Mr. Zimmerman, when he did this report of 1992, noted, it should be noted that there is not sufficient demand to justify two bone marrow transplant units in Rhode Island. Did I read that correctly?

A. Yes.

Q. Two units would result in insufficient
patient volume and would give rise to unnecessary dilution and or duplication of the talent and resources needed to treat these patients?

A. Right.

Q. Obviously, he was referring, when he was looking at the model, that there might be 72 treatable patients but only 33 would actually treat?

A. Correct.

Q. And your conclusion after looking at the data, as I understand it, is essentially the same today?

A. Yes, absolutely, absolutely or critically necessarily so.

Q. I'm not going to ask you anything about absolutely necessary.

MR. DEVEREAUX: I'm going to offer this. I'm going to ask that this be marked as the exhibit next in order.

MS. FREEDMAN: I'm sorry, I just need a minute. I don't think I have any objection.

MR. DEVEREAUX: I would ask that this be marked as Interested Party, Affected Party. I think we are in the alphabet. I think it's 7.

MR. McINTYRE: I believe so, also, but I... okay. I'm going to mark this as Interested Party Exhibit Number 7, subject to further correction of the exhibit numbers.

MR. MILLER: Just to identify that it is that the June 19 --

THE WITNESS: 2007 letter signed by Mr. Normand.

MR. NORMAND: Correct.

(INTERESTED PARTY EXHIBIT 7, NORMAND LAW LETTER, JUNE 19, 2007, MARKED IN FULL)

Q. Mr. Lubiner, I'm going to show you what's been marked IP-7. It actually starts off with a letter from Mr. Normand to Mr. Dexter.

A. Uh-huh.

Q. You were asked a series of questions about volume and concerns for volume?

A. Yes.
percent at Rhode Island and by 21 percent at Miriam. In 2004, volumes at both hospitals were approaching the minimum of 500 procedures below which a hospital must submit to the Department, a plan to achieve optimal volume standard or refer patients to other appropriate facilities. Did I read that correctly?

A. Yes.

Q. And the concern, as I understand it, that Rhode Island had at that time, Rhode Island Hospital, Life Span, was that adding this extra tertiary care service could affect volumes across the board to all three entities?

A. Correct.

Q. And that's followed up in this exhibit by letters from Rachel Schwartz to Don Williams reporting statistics, correct?

A. Yes, it's from Rachel Schwartz.

Q. And he also indicated previously, as you know, data analysis is complicated and can lead to faulty conclusions even under the best circumstances.

MS. FREEDMAN: Is that a question?

MR. DEVEREAUX: This is going in as an exhibit.

Q. So, that actually the concerns about cardiac came true?

A. Yes.

Q. I'm also going to show you -- I think this was marked -- it was an e-mail, an e-mail trail. Did I use the right word?

MR. ZUBIAGO: You did.

Q. And this is, I just want to point your attention to, it looks like the first one that's signed, best regards, Tanya. It's actually sent by Melody Nugent to S. Thompson. And it says here, the data presented, this is on the issue of whether it's 13 percent or 18 percent on unrelated allogeneic transplants. Do you remember that line of questioning?

A. Yup, yes.

Q. I don't know if you had a chance to read this, but do you see this, the data presented here are preliminary --

A. Uh-huh.

Q. -- and were obtained from the statistical center of the Center for International Blood and Marrow Transplant Research?

A. Yes.

Q. The analysis has not been reviewed or approved by the advisory or scientific committee of the CIBMTR?

A. Correct.

Q. The data may not be published without the approval of the advisory committee.

A. Yes, it says that.

Q. And you looked at data from another source that said --

A. I looked at data from that source.

Q. And it said --

A. As well as other sources.

Q. As well as other sources?

A. Yes.

Q. And that's where you got the number of, was it 18 percent?

A. Yes.

Q. Based on your review of all the data, your knowledge and experience, does Rhode Island have sufficient demand to support a second BMT unit?

A. No.
Q. Could you explain?
A. No, the current volume level at Roger Williams is a function of the fact that they have recently lost their transplant program director and two of the BMT physicians. I, my assumption and my, was and my assumption is that when they hire a new director, as they are presently in the process of doing, the volume levels will return to the long historical pattern that we have seen, and this is what I would expect. This is what's happened at Roger Williams before when a transplant coordinator has left.

The point that I want to keep emphasizing is that the volume at Roger Williams Hospital doesn't, is not the same as the measure of need for bone marrow transplant programs in Rhode Island.

There's only need for one. That's all.

MR. DEVEREAUX: No further questions.

MR. McINTYRE: Thank you. Thank you, Mr. Lubiner.

MR. ROSS: Mr. McIntyre?

MR. McINTYRE: Sorry. The Health Services Council has a question. I apologize.

MR. ROSS: In your report, on Page 14, you indicated, made a reference to a national average of five to six cases per 100,000 persons.

THE WITNESS: Yes.

MR. ROSS: I'm not sure what the source of that was.

THE WITNESS: The source was both of the data sources that we were just talking about, the National Bone Marrow Donor Program and the Registry of the National and International Registries.

MR. ROSS: They just list it nationally? They don't break it down further by region or state?

THE WITNESS: No, They don't. And yet, in Rhode Island, the need that you have indicated on your chart of, you know, around 72 --

THE WITNESS: Yes.
referral relations and practice within the Massachusetts hospital community and that was 32 percent. That left 68 percent. Of that 68 percent, those still approximately 20 percent of those persons have United, and that's an estimate. So, even of those people that remain, even of those people that are not seeing physicians that are practicing within the Massachusetts hospital system, even 20 percent of those persons would not be able to obtain a bone marrow transplant in Rhode Island, because United would not allow it or at least would require, you know, special application; and my experience is that they are not very...

MR. ROSS: I guess the point is when you take the overall market share correction, you're factoring in, to some extent, the fact that people are going out of state for these other reasons, and there was already information presented -- I can't recall if it was testimony or not. I don't have the documentation with respect to United -- that there were three cases of

cases patients in Rhode Island that went to Boston.

THE WITNESS: Right.

MR. ROSS: If, in fact, the 20 percent is accurate and from an overall market share, I wouldn't disagree with that. There's a lot of United patients getting bone marrow transplants, are going to other than Boston for a variety of reasons. That's kind of an overlap. Getting back to the Boston effect unrelated allogeneic connection again, there's an overlap. I'm concerned that the way you add these on, and regardless of what order they are in, there is an overlap automatically; so, you're coming down to 29, which may, in fact, be an underestimate in terms of what the total demand is.

THE WITNESS: I understand, you know, the difficulty, the questions that are raised. But I don't, I don't believe that's the case. If, for example, you know, I don't, I just want to clarify. I certainly don't want to argue about it.
term the all-payers data base. Is there a particular DRG that I think everyone focuses in and agrees on these numbers? I just don't know when you pull in a data base that's got 100,000 admissions --

THE WITNESS: Yes, there's a DRG for BMT.

MR. ROSS: And that's the ultimate source?

THE WITNESS: When we are looking at that, we are looking at that DRG.

MR. ROSS: Thank you. I have no further questions.

MR. McINTYRE: Thank you.

MR. DEVEREAUX: Nothing further.

MR. McINTYRE: Thank you, Mr. Lubiner.

THE WITNESS: Thank you.

MR. WALSH: I would like to call Joanne Dooley. They are out in the hallway.

MR. McINTYRE: Good morning.

THE WITNESS: Good morning.

JOANNE DOOLEY, RN

Being duly sworn, testifies as follows:

COURT REPORTER: Please state your full name for the record.

THE WITNESS: Joanne Dooley.

EXAMINATION BY MR. WALSH

Q. Miss Dooley, where do you work?

A. Roger Williams Medical Center.

MR. WALSH: May I approach the witness.

MR. McINTYRE: Yes.

Q. Do you recognize that document?

A. Yes.

Q. What is that document?

A. That's my CV.

MR. WALSH: Okay. Mr. Hearing Officer, I would like to admit that as the next exhibit.

MR. McINTYRE: Okay. IP-8.

(INTERESTED PARTY EXHIBIT 8, DOOLEY CV, MARKED IN FULL)

Q. Miss Dooley, how long have you been at Roger Williams?

A. I have been at Roger Williams approximately 37 years.

Q. And what was your first position there?

A. That's a long time ago. Actually, as a clinical nurse in the areas of oncology and critical care; and then from there, into managerial roles, nursing supervision, clinical education, director of multiple areas.

Q. And what is your current position now?

A. My current position then was as director of patient care services.

Q. Okay. And were some of your duties related to the BMT in that position?

A. Yes.

Q. And what was some of those duties related to the BMT program?

A. In my current role as a member of the senior management team, I have oversight and strategic development for nursing operations and clinical services within the patient care services departments that report up through me.

Q. And I would just like to note that in 2003 you received an award for leadership. Could you explain to us what that was?

A. It was a nursing leadership award for innovations in nursing.

Q. Okay. So, in your 30 years of experience, you have come from a staff level to the executive level?

A. Uh-huh.

Q. And I would assume that with that experience...
you have a good sense of what it takes to
have a good nursing program and to have good
nurses?
A. Yes.
Q. And you're familiar with the BMT nursing
staff at Roger Williams?
A. Yes.
Q. How many full-time nurses do you have in
that program?
A. We have eight full-time RN's.
Q. And do you use per diem nurses?
A. We currently have three per diems from
within the transplant.
Q. And could you describe what a per diem nurse
is?
A. A per diem is a nurse that's trained
and has the skill set to care for the
patients within any particular service line,
and they are there to augment our staffing,
as needed, according to patient needs.
Q. And are there other nurses within other
programs that you use to help augment your
BMT nursing staff?
A. Yes, we do.

Q. And could you describe that?
A. We have, obviously, at Roger Williams
we have a long history of commitment to
oncology, and obviously, that includes the
bone marrow transplant unit; so, we have had
a continuous education plan of nursing that
work in many of our cancer-related programs.
So, I include nurses from, say, our surgical
oncology division and some from our critical
care as well to participate in the ongoing
education and receive certifications as
necessary so that they can support.
Q. You had indicated the importance of the
staffing decisions concerning patient nurse
ratios. Could you explain how you deal with
some of those issues in the BMT program?
THE WITNESS: In the BMT
program?
MR. WALSH: Yes.
A. It's actually universal for meeting
patient needs no matter where the patients
are in the hospital. So, what we do is
assess patient need. Actually, three times
a day we look at that to ensure that we have
the right skill to meet the current needs of
the patient.
Q. You feel comfortable that you have
sufficient flexibility with the nursing
staff?
A. Yes.
Q. An issue has come up of turnover, the
importance of low turnover. What is the
turnover of the Roger Williams BMT
program?
A. Geez, actually, turnover is impressive
in that we don't have a high turnover in the
transplant unit. Many of those nurses have
been there many, many years, right from the,
you know, beginning of the transplant
unit.
Q. And do you find that to be an extraordinary
turnover rate as opposed to some of your
other experiences in the nursing programs?
A. That's very extraordinary. If there's
any nurses in the room, we know recruitment
and retention is an ever-challenging issue
for us. Yes, we are very pleased with the
lack of turnover in our bone marrow unit.

Q. And what would you attribute that low
turnover to?
A. I would say job satisfaction, first and
foremost, and clearly, this is a very
dedicated, committed staff that like what
they do; and I expound on that. I think
it's because of the commitment that Roger
Williams has invested into the continued
support of the nursing staff in the bone
marrow unit.
Q. Does that support include education and
training and the like?
A. Yes, it does.
Q. Could you explain a little bit about the
training programs you have for your nursing
staff in the BMT program?
A. In the bone marrow unit. Right from,
obviously, the initial training was
intensive when we first brought up the bone
marrow unit, but it's an area that requires
continuous education and certifications and
recertifications.
Q. Are you talking about certifications, does
Rhode Island -- Roger Williams have a focus

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of nurse certification for their BMT program?
A. Part of our education plan for the bone marrow unit, and others participated in it as well, since we have such a focus at Roger Williams in oncology, I include other nurses into this program, and we utilize, for education, actually, what's considered the goal standard, and that's utilizing the guidelines provided through the National Oncology Nursing Society. There's a certification through them called OCU, which stands for oncology nurse certification, and we have done our training and education through the ONS.

Q. Could you just explain a little bit about what the ONS is?
A. As I just started to say, the ONS is the national considered best practice guidelines for care of the oncology patient. Any organization can provide continuous education to their nursing staff from within, you know, their own facility. We have chosen to use the ONS guidelines because that is the highest level of certification for chemotherapy and biotherapy certification, for instance.

Q. Can you explain what a nurse goes through when they are going through the ONS program?
A. Well, the last, you know, the major series we just did took us pretty much over a year to do both formal and informal education, classroom didactic study, and then, obviously, the practical, you know, hands-on; so, it took us about a year to complete that. What that allowed us to do is have our nursing staff then sit for the national testing to become OCN certified.

Q. And how many nurses are OCN certified at this point?
A. In the bone marrow unit right now, out of the eight, six are OCN certified.

Q. Are the others working towards certification?
A. It's constant, yes. We have probably trained at least up to 20 nurses in our surgical oncology division as well to be certified for chemotherapy, biotherapy through the ONS standards.

Q. Miss Dooley, do you have a nurse educator in your staff?
A. For specific, I have a few nurse educators.

Q. Could you go through that with the nurse educators?
A. The nurse educators with expertise in the service lines that we have at Roger Williams are all competent and have the skill set to do general continuous nursing orientation and education; but we also have those with expertise in particular, very specific types of programs, and obviously, you're referring to bone marrow.

MR. WALSH: Yes.

A. Actually, our director of education, the director of what we call at Roger Williams, the nursing center for practicing education, that director is also oncology trained, has provided much of the education through the ONS, of which she is a member herself, and she's also certified for her oncology nurse education.

Q. Miss Dooley, I don't know if you know this. Dr. Rathore testified on Monday. He described the BMT nurses, I believe, as an elite unit or one of the more elite units in Rhode Island. Would you agree with that assessment?
A. Yes, I would.

MR. WALSH: I have no further questions.
MR. McINTYRE: Thank you very much. Questions from Ms. Freedman?

EXAMINATION BY MS. FREEDMAN

Q. Miss Dooley, my name is Linn Freedman, and this is Steve Zubiago, and we represent Rhode Island Hospital.
A. Good morning.

Q. Have you read the Rhode Island Hospital application for a certificate of need for a bone marrow transplant program?
A. I have reviewed some of the contents.

Q. And you don't have any experience with respect to the criteria that Rhode Island Hospital has to approve or set forth to the
Health Services Council, correct?
A. I probably have some understanding.
Q. You have some understanding, but do you have any --
THE WITNESS: The specifics?
Q -- experience with respect to the criteria or the things that Rhode Island Hospital has to show to the Health Services Council in this type of setting?
A. Probably not specific to the bone marrow.
Q. Okay. You talked a little bit about the fact that you had, that you have loyal staff, correct?
A. Uh-huh.
Q. But you have had some turnover, haven't you, in the bone marrow transplant program?
A. We did have a couple of nurses -- if you would like me to expound.
MS. FREEDMAN: Sure.
A. Yes, over the years, as we have had a couple of nurses who continued to advance their nursing practice and actually moved into the research department of our hospital in a nurse practitioner role; and from there, I believe, one got married and moved out of state.
Q. You have had some other nurses leave as well, correct?
A. We have had one nurse who was not actually in our bone marrow transplant unit but in our clinic out-patient setting that, yes, has left.
Q. So, you do have turnover with respect to your staff, correct?
A. Extremely minimally.
Q. And a social worker left the bone marrow transplant program as well, correct?
A. Yes. That person did not report to me, so I don't know the, so I couldn't answer to that one.
Q. And I believe, I could be wrong, that a nurse educator also left, correct, who had some responsibilities for the bone marrow transplant program?
A. Not since I have been connected to the bone marrow unit.
Q. Okay. The one nurse that you talked about who left, was that Eileen Silveira?
A. Yes.
Q. And before she left, she indicated to you some of the issues that she had and why she was leaving, correct?
A. She discussed with me, yup.
Q. And you were aware that she received another job offer from Memorial Hospital, correct?
A. Memorial. No, I don't know that.
Q. Are you saying she didn't tell you that?
A. I don't recall her mentioning that.
Q. And she had issues with her patient load, correct?
A. That was not exactly what she shared with me.
Q. Is it one of the things that she shared with you that she felt that her patient load was decreasing?
A. Yes. She did have some concerns in the out-patient area, uh-huh.
Q. And were you involved in the hiring of Deborah Morgan as the nurse manager of the BMT?
A. Deborah Morgan is not the manager of the BMT.
Q. I'm sorry. What is her --
A. She's the transplant coordinator.
Q. Were you involved at all in his hiring her?
A. No. She does not report to me.
Q. Were you involved in hiring Colleen Goldberg?
A. Yes.
Q. You know who Colleen Goldberg is?
A. Yes.
Q. What is her position?
A. She's currently the clinical manager.
Q. Is that the same thing as nurse manager or is that a different position?
A. It's comparable, yes.
Q. And Miss Goldberg, before she became nurse manager or clinical manager of the bone marrow transplant program, she was an ICU nurse, correct?
A. Not at Roger Williams, no.
Q. She had ICU experience?
A. She had critical care background and oncology background.
Q. And she didn’t have any bone marrow transplant program when she became nurse manager?

A. Not bone marrow specific but a long history in oncology.

Q. In oncology, but she became nurse manager of the bone marrow transplant program without having any experience in bone marrow, correct?

A. That would be correct.

Q. Okay. And with respect to just the bone marrow transplant --

A. Uh-huh.

Q. -- unit?

A. Uh-huh.

Q. Okay?

A. Uh-huh.

Q. You do not have any formal education for those nurses in protocols and trials for those patients, correct?

A. Part of the continuous education that has been provided through some of our physician staff, people in the protocol office in conjunction with our director of  education.

Q. Is that recent?

A. That has been ongoing.

Q. It’s your testimony today --

A. Uh-huh.

Q. -- that you provide formal education --

A. Uh-huh.

Q. -- to the bone marrow transplant nurses on the bone marrow transplant protocols for those patients?

MR. WALSH: Objection. I think she just answered the question. I don't think it's appropriate for her to keep rephrasing the questions to recharacterize testimony, and she asked the question. I think Miss Dooley answered the question. I don't think we need to keep going through this.

MR. McINTYRE: Well, I'm going to let her answer this one last question.

Your objection is noted.

A. As part of the ongoing education, there has been, over the last few years, the director of education has engaged other people from within the oncology area to help with education in the areas that they had the expertise in.

Q. So, is it -- I'm sorry. My question was specific to bone marrow transplant protocols? --

A. Uh-huh.

Q. -- and trials? Are the nurses specifically trained on treatment schedules on the protocols of these patients that undergo, specific to that, formal education?

A. I can't address specific protocols without having knowledge of which ones; but I know when new protocols come in place, they are discussed at a formal scientific meeting that's held weekly within the department, and those protocols are reviewed with the multi-disciplinary team and shared with the nursing staff.

Q. Nurse Dooley, presently we heard testimony from Dr. Rathore that no bone marrow transplants have been done at Roger Williams Hospital for the month of June. Are you aware of that?

A. Yes.

Q. So, you have nurses trained in bone marrow transplant but you haven't had any transplants this month, correct?

A. I do believe that we have not actually done a transplant this particular month.

Q. But you use the bone marrow transplant unit for oncology patients and for chemo patients, correct?

A. Well, at this point in time, I mean I actually visited a patient yesterday who is a transplant patient. It's not uncommon for transplant patients to have to make a revisit to the hospital, and yes, we would put those patients into the bone marrow unit to provide continuity of care in an area that they are comfortable with the people that know them best and know their history well so we would do that.

Q. So, the answer is you're using the bone marrow transplant unit for chemotherapy patients, correct?

A. As part of the ongoing education, there has been, over the last few years, the director of education has engaged other
MR. McINTYRE: I will let her answer this question.

THE WITNESS: Not that we are using it for, for only chemotherapy? I'm not following you. Maybe if you could be just a little more specific.

Q. Sure. If there's no transplants being done in the unit --
A. Uh-huh.

Q. -- you still have patients in that unit, correct?
A. Yes.

Q. And the nurses are still caring for those parents, right?
A. Yes.

Q. And but those patients aren't receiving a transplant; they are receiving chemo, right?
A. They may be receiving chemo. They may be, you know, former transplant patients that require some other adjunct therapy at any given time. As you probably know, transplant patients are with you for a long time. They do come back, and yes, I would put them in there to give them the most optimal environment.

Q. And the specialty of the nurses, correct?
A. Absolutely.

Q. Okay. Now, do you know who Mary Grande is?
A. Yes, I do.

Q. And is she in the clinic?
A. She is part of our cancer center out-patient department.

Q. And she is able to give chemotherapy to patients, correct?
A. Yes.

Q. Are there any other nurses who are able to give chemotherapy to patients in the clinic?
A. We have another nurse within the clinic. We have a per diem nurse as well.

Q. Okay. And isn't it true that when a nurse gives chemo or blood --
A. Yes.

Q. -- that under JACHO guidelines it has to be cross-checked with two nurses?
MR. ROSS: No questions.

MR. McINTYRE: Thank you.

THE WITNESS: Thank you.

MR. WALSH: We have one last witness.

MR. McINTYRE: Why don't we just take a two-minute stretch?

(SHORT RECESS)

MR. McINTYRE: All right. We are back on the record.

MR. McINTYRE: It's approximately eleven o'clock. A race to the finish. Who's first?

THE WITNESS: Good morning, everyone. It's still morning.

BETTY PACHECO

Being duly sworn, testifies as follows:

COURT REPORTER: Please state your full name for the record.

THE WITNESS: Betty Pacheco.

EXAMINATION BY MR. WALSH

Q. Miss Pacheco, where do you currently work?

A. Roger Williams Medical Center.

Q. And do you recognize that document?

A. Yes. That's my resume.

MR. WALSH: I would like to offer it as the next exhibit.

MR. McINTYRE: IP-16.

(PARTY EXHIBIT 9, PACHECO CV, MARKED IN FULL)

Q. Miss Pacheco, what is your current post at Roger Williams?

A. I'm the medical secretary for the transplant injury and the day chemotherapy unit.

Q. What does that entail?

A. That's register the patients, checking in the patients, ordering procedures, guiding the patients to where they have to go, interacting with the physicians, interacting with the nurses. Basically, it involves patient care as well.

Q. So, you're very involved in the day-to-day activity?

A. Yes.

Q. And you're very involved with the patient at the BMT program?

A. Yes, I am.

Q. And could you give us your interaction with the patients as they go through the process?

A. The patients. I can tell you, they are my family. I have been with these patients since 2000 -- actually, 1996. I have held their hands. I have cried with them. I have laughed with them. I make sure that when they come in they get the fullest attention; and if they call, I don't put them -- I don't say to them I will call you. I put them on hold. I have the back lines to these physicians; and when I tell you that the physician will call me back, they will call me back. This patient is not standing. I make sure that they get what they have to get. If they need a nurse, I make sure. I walk over to the transplant unit and get the nurse. I make sure that she gets on the phone, that these patients get the attention that they need; and they will get it as long as I'm there. They will get it.

Q. Now, you're very familiar with the nursing staff, are you not?

A. Yes, I am.

Q. Can you give us a background of what you think of the nursing staff there?

A. They are an excellent team; and when I tell you an excellent team, I'm talking a transplant nurse of 20 years, 20 years. I have worked as a CNA in 1996 with one nurse over 30 years experience. These nurses are highly qualified for this position on the patient's reaction to being in the program?
bone marrow transplant unit, and I enjoy working with them. We have an excellent relationship. If I pick up that phone, they are there. If they pick up the phone for me, I'm there. This is how we interact. This is a transplant program.

Q. Now, you had heard some comments by Dr. Winer about the BMT program, did you not, recently?

MS. FREEDMAN: I, I object. I don't think she was here during Dr. Winer's testimony.

MR. WALSH: That wasn't my question.

MR. McINTYRE: Let her answer.

A. It was just hearsay.

Q. Did someone inform you that Dr. Winer had said that the BMT program, based on his experience, was unsafe?

A. Yes, I did hear that.

Q. Did the nursing staff hear those comments regarding what Dr. Winer said?

THE WITNESS: I'm not sure.

Q. Could you repeat that?

A. It was just hearsay.

Q. Did someone inform you that Dr. Winer had said that the BMT program, based on his experience, was unsafe?

A. Yes, I did hear that.

Q. Did the nursing staff hear those comments regarding what Dr. Winer said?

THE WITNESS: I'm not sure.

Q. What was the reaction staff's to Dr. Winer's comments?

MS. FREEDMAN: I object. They were ecstatic. They couldn't believe that he said -- I couldn't believe that he said that, for the attention that we have always given him. Anything that Dr. Winer asked, it was done with his patients. Anything he asked of the nurses, it was done without hesitation, without hesitation. Please forgive me. I'm just, I'm...

Q. I assume Dr. Winer didn't make any of those comments when he was in the BMT program?

A. No, none whatsoever.

Q. Now, you're familiar with Dr. Quesenberry and Dr. Colvin?

A. Yes, I am.

Q. And you worked with Dr. Quesenberry and Dr. Colvin when they were in the program?

A. Yes, I did. I was Dr. Colvin's secretary from the day he started there.

Q. In regards to Dr. Quesenberry, it's my understanding that you had had some problems with some of the comments he was making on his way out of the program. Could you describe that?

MS. FREEDMAN: I'm going to object.

MR. McINTYRE: Overruled.

A. It was in the spring when he announced to a few of us that he had accepted the job at Rhode Island Hospital, and I will never forget it. He was in front of me. He had a chart open, excuse me, and he said to me, well, he said the referrals stop here, and I just looked at him, and I just shook my head; and that's exactly what he said. The referrals, and this was in the spring. This was in April.

Q. And what about Dr. Colvin, were there any comments from him?

A. Dr. Colvin, on October 18, 2006 -- this I will never forget -- he was in front of me and there was a patient with her husband, and he had a chart opened, and I think I can mention her name, Eileen Silveira was on the right of him, and he was in front of me, and he was talking about how, employees going over to Rhode Island Hospital to, for employment. And he turned around and he said, well, Betty is coming over, because all the patients were asking is Betty coming over to Rhode Island. And the answer is, no, I was not. So, he turned around in front of the patient and her husband and said, well, Rhode Island Hospital is going to buy Roger Williams. I was floored. And I looked up at him, and he said to me, why, you don't think so, and I said, no, and this is not the place to discuss this.

Q. Miss Pacheco, an issue has come up regarding the carpets at the Roger Williams program. It's my understanding the carpet is going to be replaced; is that correct?

A. Oh, yes, yes, and I'm really, and I'm just -- I have been there for eleven years; and when they asked me to look at the pamphlet with the flooring, I said, oh, I said, you're including me in this, and they said, of course, we are including you in it;
and we looked at the floor plan, and I said it has to be bright. It has to be a bright color for the patients, and I have the floor plan here, and they picked out a beautiful color for the flooring, and the border just a shade darker, and it's absolutely beautiful. It really is beautiful, and I was just, I just thanked them for including me in that there, and I do have the floor plan, if you would like to see it. It's gorgeous. It's gorgeous.

Q. And I assume the floor is going to be some form of tile?
A. Yes, yes.

MS. WALSH: I have no further questions.

EXAMINATION BY MS. FREEDMAN

Q. Hi, Miss Pacheco, my name is Linn Freedman, and this is Steve Zubiago. We represent Rhode Island Hospital. You weren't here when Dr. Winer testified, correct?
A. No.

Q. And in fact, were you told that Dr. Winer, when he said that he felt something was unsafe, that it had to do with the fact that he was at Rhode Island Hospital and he didn't feel it was safe for his patients to go to Roger Williams Hospital to care for them there when his practice was at Rhode Island Hospital? Were you told that?

MS. WALSH: I'm going to object, because I just don't think that's his testimony.

MR. McINTYRE: All right. I will note the objection, for the record; but I'm going to let her ask the answer the question.

THE WITNESS: Could you repeat that, please?

Q. Let me back up. Is it fair to say that bone marrow transplant patients are usually really ill?
A. Uh-huh.

Q. Yes?
A. Yes, they are.

Q. You have to answer out loud.
A. Oh, I'm sorry. Yes.

Q. That's okay. And need care on a 24-hour basis, correct?
A. Correct.

Q. When they have had a transplant and they are usually in the hospital for 20 to 30 days?
A. Correct.

Q. And that's an intense time for them, right?
A. Correct.

Q. And you're there to support them, which is wonderful, and all the staff is there to support them; but it is important that the physicians be there to support them, too, right?
A. Correct.

Q. And it is important that the physicians are available when you or the nursing staff needs them, correct?
A. Correct.

Q. And Dr. Winer was asked some questions during this meeting from Mr. Devereaux regarding his referrals or his privileges at Roger Williams and why he hasn't done any transplants at Roger Williams. Were you told that?
A. No.

Q. And his answer to that was that he didn't feel it was safe for him to care for his patients, who were very ill across town, when he presently worked at Rhode Island Hospital.

THE WITNESS: Okay.
<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
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<tr>
<td>Q. And you said that the nurses were upset about the fact that he said something was unsafe. You don't know what the nurses were told, do you?</td>
<td>A. No.</td>
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<td>Q. Do you know what they were told or what you were told he said was unsafe?</td>
<td>MS. WALSH: Objection. She just answered.</td>
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<tr>
<td>Q. Do you know what they were told or what you were told he said was unsafe?</td>
<td>MR. McINTYRE: Wait a minute. MR. WALSH: She just answered that. She didn't know what they were told.</td>
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<tr>
<td>Q. Miss Pacheco, what were you specifically told that Dr. Winer said was unsafe?</td>
<td>A. But he didn't tell me anything was unsafe.</td>
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<tr>
<td>Q. No. I want to know what you were told he said at this public meeting. What were you told that he said specifically was unsafe?</td>
<td>A. What I just said. I didn't know. I don't know that. I don't know.</td>
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<td>Q. So, you weren't told -- A. No, I wasn't.</td>
<td>A. He said this was unsafe or this was unsafe?</td>
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<td>Q. He said this was unsafe or this was unsafe?</td>
<td>A. No. The only thing that I heard was that he just said it was unsafe, but there was nothing stated as to what that unsafe was.</td>
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<td>Q. Okay. All right. Now, you said that the carpeting was going to be replaced? A. Right.</td>
<td>Q. When is that going to happen? A. That's going to happen in July.</td>
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<td>Q. July. And when that happens, the unit is going to have to be closed, correct? A. Exactly.</td>
<td>Q. How long is it going to be closed for?</td>
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leave at least a one week between the
receipt of that report and the next date of
testimony, which would be Mr. Zimmerman. On
that date, I would like to do a couple of
things. The direct testimony of
Mr. Zimmerman regarding his report and the
questioning of all the parties of
Mr. Zimmerman as well as the final
arguments.

To that end, I think the week
of the 23rd would be appropriate, and the
date I had in mind or the day I have in mind
is that Thursday, which would be the 27th, I
believe.

MR. DEVEREAUX: 26th?
MS. FREEDMAN: 26th.
MR. McINTYRE: Does that sound
reasonable. Does that meet everyone's...
MR. ZUBIAGO: That would be
fine with me. I will call you immediately.
MS. FREEDMAN: At nine?
We will start at nine?
MR. McINTYRE: We are going to
start at nine.

MR. McINTYRE: We are going to
start at nine o'clock.
MR. MILLER: Did you say the
26th?
MR. McINTYRE: Thursday, the
26th, at nine. Okay. Very good. Thank you
all for a good public hearing.
MR. DEVEREAUX: Thank you very
much, Mr. McIntyre.
MS. FREEDMAN: Thank you.

(HEARING ADJOURNED AT 11:16
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