

1 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
 2 R.I. DEPARTMENT OF HEALTH  
 3 \* \* \* \* \*  
 4 PUBLIC HEARING: R.I. HOSPITAL,  
 5 CON APPLICATION FOR HIGH  
 6 INTENSITY ONCOLOGY/BONE MARROW  
 7 TRANSPLANTATION PROGRAM  
 8 \* \* \* \* \*  
 9 VOLUME V  
 10 R.I. DEPARTMENT OF HEALTH  
 11 3 CAPITOL HILL  
 12 PROVIDENCE, RI 02908  
 13 JUNE 27, 2007  
 14 9:00 A.M.  
 15 BEFORE: BRUCE McINTYRE, HEARING OFFICER  
 16 PRESENT:  
 17 FOR R.I. HOSPITAL.... NIXON PEABODY, LLP  
 18 BY: LINN FREEDMAN, ESQUIRE  
 19 STEPHEN ZUBIAGO, ESQUIRE  
 20 FOR ROGER WILLIAMS  
 21 HOSPITAL..... ROGER WILLIAMS HOSPITAL  
 22 BY: KIMBERLY O'CONNELL, ESQUIRE  
 23 - and -  
 24 NORMAND LAW, LTD.  
 25 BY: CHARLES W. NORMAND, ESQUIRE  
 26 - and -  
 27 PANNONE, LOPES &  
 28 DEVEREAUX, LLC  
 29 BY: WILLIAM P. DEVEREAUX,  
 30 ESQUIRE  
 31 JOHN WALSH, ESQUIRE  
 32 FOR THE DEPARTMENT... LAW OFFICE OF JOSEPH MILLER  
 33 BY: JOSEPH MILLER, ESQUIRE  
 34 ALSO PRESENT: MICHAEL DEXTER  
 35 VALENTINA ADAMOVA  
 36 LAWRENCE ROSS  
 37 ANDREW KARLBERG  
 38 SAJEL SHAH  
 39 657

1 E X H I B I T S  
 2 NO. DESCRIPTION PAGE  
 3 (RIH)  
 4 15 PREVIOUS ZIMMERMAN REPORT  
 5 16 PROVIDENCE JOURNAL ARTICLE  
 6 17 CENTER FOR BLOOD AND MARROW  
 7 TRANSPLANT RESEARCH E-MAIL  
 8 (INTERESTED PARTY)  
 9 7 NORMAND LAW LETTER,  
 10 JUNE 19, 2007  
 11 8 DOOLEY CV  
 12 9 PACHECO CV 758  
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 24 659

1 I N D E X  
 2 WITNESS PAGE  
 3 JOSEPH LUBINER  
 4 FURTHER EXAMINATION BY MS. FREEDMAN 660  
 5 FURTHER EXAMINATION BY MR. DEVEREAUX 711  
 6 JOANNE DOOLEY, RN  
 7 EXAMINATION BY MR. WALSH 734  
 8 EXAMINATION BY MS. FREEDMAN 744  
 9 BETTY PACHECO  
 10 EXAMINATION BY MR. WALSH 757  
 11 EXAMINATION BY MS. FREEDMAN 765  
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1 (COMMENCED AT 8:58 A.M.)  
 2 MR. McINTYRE: Good morning,  
 3 ladies and gentlemen. We are back on for  
 4 the, with regard to the questioning of  
 5 Mr. Lubiner. I expect to wrap this up this  
 6 morning by noon, so that's the goal; and if  
 7 we can do it before that, all the better.  
 8 Everyone else has commitments for this  
 9 afternoon.  
 10 THE WITNESS: I'm going to  
 11 stand.  
 12 MR. McINTYRE: Just to remind  
 13 you, you're still under oath.  
 14 THE WITNESS: Yes.  
 15 MR. McINTYRE:  
 16 Miss Freedman?  
 17 MS. FREEDMAN: Thank you.  
 18 FURTHER EXAMINATION BY MS. FREEDMAN  
 19 Q. Do you want to stand?  
 20 A. I would like to stand, yes.  
 21 Q. Better?  
 22 A. Not so good for my back.  
 23 Q. Okay. You stated the other day that there  
 24 were sufficient alternatives in the Roger  
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1 Williams Hospital or specifically the Roger  
2 Williams Hospital program that is more than  
3 adequate for the people of Rhode Island to  
4 be able to receive a bone marrow  
5 transplantation and that no one goes  
6 without; do you recall that?

7 A. Yes.

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

11 A. Patients do that, yes.

12 Q. So, although it's your opinion that the  
13 program here is adequate, you will agree  
14 with me that people in Rhode Island are  
15 seeking treatment elsewhere; they are  
16 leaving Rhode Island for that treatment?

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

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

24 A. I don't think it is a significant

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1 portion of those patients who have an option  
2 of choosing a Rhode Island facility. I  
3 think actually it's a, it's a minority of  
4 those patients.

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

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

10 Q. The answer is, yes?

11 A. Yeah, only two, yes.

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

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

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

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

24 Q. Well, basically, you testified that

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1 according to NMDP requirements?

2 A. Uh-huh, right.

3 Q. A facility needs to perform ten allos and  
4 ten autos in a year, correct?

5 A. Yes.

6 Q. And isn't it true that based upon the data  
7 that Roger Williams Hospital provided to the  
8 Department, they have only met that criteria  
9 twice between 2002 and 2006?

10 A. Right. It would be unlikely that they  
11 would be able to meet much more than that  
12 criteria during that time frame.

13 Q. Mr. Lubiner, in 2002, they met the  
14 requirement, correct?

15 A. Uh-huh.

16 Q. In 2003, they did not meet the requirement,  
17 correct?

18 THE WITNESS: What was the --

19 MS. FREEDMAN: May I approach.

20 MR. McINTYRE: Sure.

21 Q. I'm going to show you Exhibit K of Roger  
22 Williams Hospital's exhibits, and this is  
23 the survey. I don't know if you have seen  
24 that.

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1 A. Yes.

2 Q. Have you seen that?

3 A. Uh-huh.

4 Q. So, in 2003, according to Roger Williams'  
5 own data, they performed 11 autos?

6 A. Yeah.

7 Q. And 16 allos, right?

8 A. Yeah.

9 Q. So, they met the requirement there, right?

10 A. Yes.

11 Q. But in 2003, they did six autos and twelve  
12 allos, right?

13 A. Yes.

14 Q. So, they didn't meet the requirement there,  
15 correct?

16 A. Correct.

17 Q. And they didn't meet the requirement in  
18 2004, correct?

19 A. Correct.

20 Q. And they didn't meet the criteria in 2005,  
21 correct?

22 A. Correct.

23 Q. And they didn't meet the criteria in 2006,  
24 correct?

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1 A. Correct.  
 2 Q. And they probably won't meet the criteria in  
 3 2007, correct?  
 4 A. I don't know what will happen in  
 5 2007.  
 6 Q. Well, they have done two.  
 7 MR. DEVEREAUX: Objection.  
 8 Now, we are going to get into argumentative  
 9 and speculation, crystal ball gazing?  
 10 MR. McINTYRE: Yes --  
 11 Q. Well, they are not on track; is that fair?  
 12 A. I don't know what will happen in  
 13 2007.  
 14 Q. Okay. Now, you also said that the referral  
 15 patterns of physicians are important with  
 16 respect to where a patient gets  
 17 transplantation, correct?  
 18 A. Yes.  
 19 Q. And based upon the numbers for 2007, is it  
 20 fair to say that Roger Williams Hospital is  
 21 not receiving physician referrals for bone  
 22 marrow transplants at the present time?  
 23 A. I don't know that. No, I don't know  
 24 that based on those numbers. I don't

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1 it.  
 2 Q. Okay. It's not like he's overwhelmed with  
 3 referrals, correct?  
 4 A. I don't know what they are being  
 5 referred and how they are deciding whether  
 6 or not they can accept the referrals that  
 7 they are getting --  
 8 Q. Okay.  
 9 A. -- based on the physician work force  
 10 that they presently have.  
 11 Q. Two physicians; that's what Dr. Rathore  
 12 said.  
 13 A. I believe so, yes.  
 14 Q. And no transplants so far this month?  
 15 A. I believe that's what he said, yeah.  
 16 Q. Does that indicate to you a robust physician  
 17 referral base?  
 18 A. It doesn't indicate to me anything  
 19 about the referral base. It indicates to me  
 20 what the capacity of the medical staff can  
 21 handle right now, now that it's below  
 22 normal.  
 23 Q. I don't recall Dr. Rathore testifying at all  
 24 about the fact that they didn't have the

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1 know.  
 2 Q. So, let me ask you this. Is it your opinion  
 3 that Roger Williams Hospital is receiving  
 4 and has a good physician referral base for  
 5 bone marrow transplants since they have done  
 6 two in 2007?  
 7 A. Well, I think the volume at Roger  
 8 Williams Hospital is a function of the fact  
 9 that they have lost, their clinical director  
 10 has been recruited away and two of their  
 11 physicians.  
 12 Q. But they still have two physicians that are  
 13 performing bone marrow transplants,  
 14 correct?  
 15 A. I don't know that two physicians can  
 16 handle the workload of five.  
 17 Q. Well, they haven't done any in June,  
 18 correct?  
 19 A. I don't know about June.  
 20 Q. Were you here for Dr. Rathore's testimony?  
 21 A. Yes.  
 22 Q. And Dr. Rathore said that no bone marrow  
 23 transplants have taken place in June?  
 24 A. If that's what he said, I don't dispute

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1 capacity for bone marrow transplants at the  
 2 present time, did you?  
 3 A. I didn't say that they didn't have the  
 4 capacity for bone marrow transplants. I  
 5 said that their capacity, I would suspect,  
 6 is, is temporarily lower than normal because  
 7 three physicians have been or have left the  
 8 staff.  
 9 Q. Dr. Rathore didn't testify that they were  
 10 unable to perform any bone marrow  
 11 transplants due to capacity, correct?  
 12 MR. DEVEREAUX: Objection.  
 13 That's argumentative as to what  
 14 Dr. Rathore -- I mean she is asking him to  
 15 confirm what Dr. Rathore testified to.  
 16 MR. McINTYRE: I have to  
 17 agree, and the other part, more importantly,  
 18 it seems to me that we worked this subject  
 19 area over about the numbers really well, and  
 20 it would probably be more helpful if you  
 21 went to another area. I don't want to  
 22 disrupt the flow of your examination.  
 23 MS. FREEDMAN: That's fine. I  
 24 will move on.

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1 Q. You said in your direct testimony that the  
2 Connecticut and Massachusetts populations  
3 for market share should be excluded, and you  
4 also commented that Mr. Zimmerman did that  
5 in his 1992 report; do you recall that?

6 A. I recall saying that he did exclude  
7 those populations in his analysis --

8 Q. And you also testified --

9 A. -- as far as I understood.

10 Q. And that you felt those populations should  
11 be excluded with respect to Rhode Island  
12 Hospital's market share?

13 A. No, I didn't say that, and I didn't  
14 exclude the Massachusetts population.

15 Q. But it's true, is it not, that  
16 Mr. Zimmerman, in fact, did take  
17 Massachusetts and Connecticut population  
18 into effect in his report? He did not  
19 dismiss those populations, correct?

20 A. Not as I read it, no.

21 MS. FREEDMAN: May I approach.

22 MR. McINTYRE: Sure.

23 Q. I'm going to refer you to Page 55 of  
24 Mr. Zimmerman's report, which I believe is

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1 A. Uh-huh.

2 Q. He says, based on the availability of space  
3 in these programs and the substantial  
4 experience of these hospitals with  
5 transplantation, some Rhode Island patients  
6 are expected to use these programs, even if  
7 there's a program established in Rhode  
8 Island, thus any inflow of patients from out  
9 of state is likely to be offset set by use  
10 of out-of-state programs by Rhode Island  
11 residents.

12 A. Uh-huh.

13 Q. So, he basically says that, and he addressed  
14 that issue in the report by saying that the  
15 out, that the patients that are seeking care  
16 out of state will be a wash for the patients  
17 coming in from out of state to use the  
18 program, correct?

19 A. I don't think that's what he says.  
20 What he says in that statement -- I don't  
21 know how many pages that report is. It's a  
22 very comprehensive, very, thorough report in  
23 which he addresses the issue of market share  
24 and what populations to include and what

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1 Rhode Island Hospital's Tab 6, which I would  
2 like to put into evidence or put into the  
3 record at this time as Applicant -- I think  
4 we are on 13?

5 MR. McINTYRE: I believe it's  
6 14 -- 15, actually.

7 MS. FREEDMAN: 15.

8 MR. McINTYRE: It's Tab?

9 MS. FREEDMAN: It's Tab 6.

10 MR. McINTYRE: Of the Rhode  
11 Island Hospital --

12 MS. FREEDMAN: Submission.

13 MR. McINTYRE: Application?

14 MS. FREEDMAN: The exhibits.

15 (R.I. HOSPITAL EXHIBIT 15,  
16 PREVIOUS ZIMMERMAN REPORT, MARKED IN FULL)

17 Q. You read the Zimmerman report?

18 A. I did.

19 Q. The 1992 report. And if you look at  
20 Page 55, he specifically talks about  
21 programs in Connecticut and Massachusetts --

22 A. Uh-huh.

23 Q. -- they have 52 beds and they treated nearly  
24 400 patients annually, correct?

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1 populations not to include in a variety of  
2 places; so, that is one statement that's in  
3 the report. I don't know -- that,  
4 ultimately, was not his conclusion. He  
5 didn't base his estimate of the population  
6 in need on the Connecticut population.

7 Q. But he did, in that statement in his report,  
8 he did acknowledge that it would be a wash,  
9 correct; he did acknowledge out-migration  
10 and in-migration, correct?

11 A. I don't know that he acknowledged that.  
12 I don't believe he acknowledged that in his  
13 conclusions.

14 Q. But he did on Page 55, right, Mr. Lubiner?

15 A. That sentence is there, yes.

16 Q. Right. Thank you. And Rhode Island  
17 Hospital did not take any Connecticut  
18 residents that may use its program into  
19 effect in its numbers, correct?

20 A. No, no, they didn't.

21 Q. So, the answer is, yes, they didn't?

22 A. They did not take any Connecticut  
23 residents into account, correct.

24 Q. Now, were you a consultant on the Landmark

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1 cardiac CON?  
 2 A. Yes.  
 3 Q. You were a paid consultant by Landmark?  
 4 A. Uh-huh.  
 5 Q. And you testified in your direct examination  
 6 that Life Span objected to that CON,  
 7 correct?  
 8 A. Yes.  
 9 Q. And you are aware, are you not, that Life  
 10 Span withdraw its objection for a public  
 11 hearing?  
 12 A. I wasn't, no.  
 13 Q. You weren't aware --  
 14 A. I don't recall. I was involved -- I  
 15 don't recall all the particulars.  
 16 Q. Well, you testified in your direct  
 17 examination that in Rhode Island Hospital's  
 18 objection to the cardiac --  
 19 A. Yes, I --  
 20 Q. -- CON --  
 21 A. Yes.  
 22 Q. But you don't recall that Life Span did, in  
 23 fact, withdraw its objection to the cardiac  
 24 CON?

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1 A. I don't know what you meant by  
 2 withdraw. They testified before the Health  
 3 Services Council that it was not  
 4 necessary.  
 5 Q. They didn't testify before the Health  
 6 Services Council, in the public arena, not  
 7 in a process like we are in today. In the  
 8 regular Health Services Council meeting,  
 9 they made certain statements, correct?  
 10 A. Yeah, they made the statements that the  
 11 program wasn't needed.  
 12 Q. Correct, but it was not in a public meeting  
 13 process and a true objection, correct?  
 14 A. That I don't recall, and I wasn't  
 15 involved in the entire process. I was  
 16 involved in the portions of it.  
 17 MS. FREEDMAN: May I approach.  
 18 MR. McINTYRE: Sure.  
 19 Q. I'm going to show you an article from the  
 20 Providence Journal dated May 5, 2000.  
 21 (DOCUMENT HANDED TO WITNESS)  
 22 Q. You were a paid consultant for Landmark, but  
 23 you weren't aware that Life Span withdrew  
 24 its objection for a public hearing

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1 process?  
 2 A. I recall that. I recall this article  
 3 now that you show it to me.  
 4 Q. Okay.  
 5 A. I recall that there were several months  
 6 of negotiations, contentions, back and forth  
 7 regarding their request for a proceeding  
 8 like this one.  
 9 Q. And --  
 10 A. And that, according to this article,  
 11 they apparently decided to withdraw them.  
 12 Q. So, ultimately, Life Span did withdraw its  
 13 request for a hearing or a public meeting  
 14 like we are at today, correct?  
 15 A. Yeah.  
 16 MS. FREEDMAN: Okay. Can I  
 17 please --  
 18 A. Yes.  
 19 MS. FREEDMAN: -- I guess mark  
 20 that and ask that it be marked Exhibit 16  
 21 for the record?  
 22 MR. DEVEREAUX: Providence  
 23 Journal article?  
 24 MR. McINTYRE: Yes. Mark it

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1 as Exhibit 16. Do you have an objection?  
 2 MR. DEVEREAUX: No.  
 3 (R.I. HOSPITAL EXHIBIT 16,  
 4 PROVIDENCE JOURNAL ARTICLE, MARKED IN FULL)  
 5 A. It was after the proceeding had  
 6 started.  
 7 Q. Mr. Lubiner, there's no question.  
 8 A. That they withdrew the request.  
 9 MR. McINTYRE: It's a  
 10 continuation of the answer.  
 11 MS. FREEDMAN: What number is  
 12 that?  
 13 MR. McINTYRE: 16.  
 14 MS. FREEDMAN: Thank you.  
 15 Q. Now, one of the contentions of Landmark,  
 16 which you're very familiar with because you  
 17 were a consultant, was that it was difficult  
 18 for patients to travel for cardiac care from  
 19 Woonsocket to Providence, correct?  
 20 A. Yes.  
 21 Q. And you have discounted in your report the  
 22 fact that bone marrow transplant patients,  
 23 if they don't seek care at Roger Williams  
 24 Hospital, have to go to Boston and other

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1 places, correct?  
 2 A. Yes, but -- yes.  
 3 Q. And certainly, you would agree with me that  
 4 the treatment for a bone marrow transplant  
 5 is significantly longer inpatient time than  
 6 for cardiac, correct?  
 7 A. The length of stay is longer, yeah.  
 8 Q. Certainly, the travel and the expenses on a  
 9 family is significantly different going to  
 10 Boston than going from Woonsocket to  
 11 Providence; is that fair?  
 12 A. Well, I, actually, I don't know that  
 13 because there are many people -- and we made  
 14 this point at the time in Woonsocket -- who  
 15 don't have private transportation, have to  
 16 use the bus schedule. At that time, the bus  
 17 schedule wasn't very comprehensive.  
 18 Q. So, it was based on the bus schedule?  
 19 A. Well, whatever means they could find to  
 20 get to Providence.  
 21 Q. And the bus schedule from Providence to  
 22 Boston is better, I guess; is that what you  
 23 are saying?  
 24 A. No.

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1 Q. What about Woonsocket?  
 2 A. No, I said the bus schedule within  
 3 Woonsocket is better.  
 4 Q. What about Woonsocket to Boston?  
 5 A. I don't know.  
 6 Q. That's easier than Woonsocket to  
 7 Providence?  
 8 A. I don't know.  
 9 Q. Now, you testified that you have discounted  
 10 Rhode Island Hospital's numbers for the  
 11 Boston effect, and you estimate that to be  
 12 10 percent, correct?  
 13 THE WITNESS: Which  
 14 application are you talking about, the bone  
 15 marrow?  
 16 Q. The present one we are here for today.  
 17 A. Yes, yes, I did.  
 18 Q. And you don't have any statistical analysis  
 19 or data to back that up, do you?  
 20 A. Only the market share analysis, which  
 21 shows that 10 percent of the population of  
 22 the service area uses not just Massachusetts  
 23 hospitals but the Boston hospitals.  
 24 Q. And we have already discussed that at length

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1 as to why that may be true. There's a lot  
 2 of different factors as to why patients  
 3 would go to Boston, correct?  
 4 A. There are a lot of important clinical  
 5 reasons and compare reasons, yes.  
 6 Q. There's a lot of other reasons, too, that we  
 7 already discussed, correct?  
 8 A. Yes.  
 9 Q. Physician referrals, patterns?  
 10 A. People listen to their physicians.  
 11 Q. What's good for their families, expenses?  
 12 A. I'm not sure that expenses --  
 13 Q. There's lots of different factors?  
 14 A. -- play an important role in their  
 15 decision to go to Boston. I think they  
 16 decide for other reasons, and they consider  
 17 the expenses; but I don't believe that the  
 18 expenses are the determining overriding  
 19 factor.  
 20 Q. But it's one of the considerations?  
 21 A. It's a consideration, sure.  
 22 Q. Particularly for those people from  
 23 Woonsocket who can't get a bus to  
 24 Providence?

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1 THE WITNESS: Which  
 2 application are we talking about?  
 3 MS. FREDMAN: I'm talking  
 4 about this application.  
 5 THE WITNESS: Are we talking  
 6 about cardiac surgery or?  
 7 Q. No, I'm talking about this application. And  
 8 certainly expenses is going to be a  
 9 factor --  
 10 A. Yes, I said --  
 11 Q. -- that people who have to -- can you please  
 12 let me finish?  
 13 A. Sure.  
 14 Q. -- who need to take public transportation,  
 15 correct?  
 16 A. Yes.  
 17 Q. Thank you. Now, some of that 10 percent,  
 18 some of that 10 percent overlaps, does it  
 19 not, with the United Health Care issue that  
 20 you brought up?  
 21 A. No, I don't think so.  
 22 Q. So, you don't think that there's any overlap  
 23 between the people going to Boston because  
 24 they have United Health Care?

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1 A. Not the way that we used it in our  
2 analysis.  
3 Q. You also discounted the unrelated allogeneic  
4 estimate by 18 percent, correct?  
5 A. Yes.  
6 Q. And you specifically said -- because I went  
7 back, you specifically said that you, that  
8 18 percent of patients who are, who meet the  
9 criteria who need the bone marrow transplant  
10 need an unrelated allogeneic transplant,  
11 correct?  
12 A. Yes.  
13 Q. But in fact, the national statistic is  
14 really 13 percent, isn't it?  
15 A. I, you have to show me where you're  
16 referring to, because that's not the, that  
17 was not my conclusion based on the material  
18 that I reviewed.  
19 Q. And refresh my recollection on what material  
20 you reviewed to make that conclusion?  
21 A. I reviewed material from the American  
22 Society for Bone Marrow Transplant Centers,  
23 and also, from the International Registry of  
24 Bone Marrow Transplant Procedures. I

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1 reviewed the report that they had done on  
2 procedures in the United States.  
3 Q. And so, did you, did you contact anyone from  
4 the Center for International Blood and  
5 Marrow Transplant Research to get that  
6 actual figure?  
7 A. No. I used their report.  
8 Q. Okay. So, you didn't confirm with anyone  
9 who would be able to confirm that 18  
10 percent?  
11 A. Well, I assumed if they published it,  
12 they believed it was correct.  
13 MS. FREEDMAN: May I approach.  
14 MR. McINTYRE: Yes.  
15 THE WITNESS: Yes.  
16 Q. So, I'm going to show you an e-mail -- what  
17 do you call it, an e-mail trail --  
18 A. Uh-huh.  
19 Q. -- from Tanya Peterson, the senior clinical  
20 research specialist of the Center for  
21 International Blood and Marrow Transplant  
22 Research. Are you familiar with that  
23 entity?  
24 A. I need one moment, please. Yes, I'm

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1 familiar with the entity.  
2 Q. And you would consider that an entity that  
3 would be able to provide accurate numbers  
4 with respect to unrelated allogeneic  
5 transplants nationally?  
6 A. Unrelated allogeneic blood cells, stem  
7 cell transplants, yes. There's other kinds  
8 of transplants, right.  
9 Q. But I guess my question is, and what I would  
10 like your affirmation of, is there's no  
11 reason to doubt the numbers that this entity  
12 has provided, correct?  
13 A. There's no reason to doubt them. There  
14 is, but they are not a complete  
15 representation of all of the  
16 transplantations that are done in the United  
17 States. They are primarily representative  
18 of the stem cell transplants.  
19 Q. But certainly, you don't have any  
20 independent information to doubt the  
21 statistics that they have provided in this  
22 e-mail, correct?  
23 A. No. But they are not the complete  
24 picture.

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1 Q. And you will see that based upon the numbers  
2 provided by the Center for International  
3 Blood and Marrow Transplant Research that,  
4 in fact, 13 percent of transplants are  
5 unrelated allogeneic?  
6 A. You keep using the term transplants,  
7 and I would like to clarify that that does  
8 not include all bone marrow transplants.  
9 These data are with regard to stem cell  
10 transplants. There are other kinds of bone  
11 marrow transplants.  
12 Q. Okay.  
13 A. So, I just want to make that  
14 clarification.  
15 Q. Thank you.  
16 A. When you take that other kind of bone  
17 marrow transplant into account, the average  
18 is higher.  
19 Q. But we don't have any numbers; we only have  
20 your estimates. We don't have any actual  
21 data on that in the record, do we?  
22 A. Well, I considered data --  
23 Q. From web sites?  
24 A. Yes, right.

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1 MS. FREEDMAN: I'd like to  
2 introduce, mark it and introduce this into  
3 the record.

4 MR. McINTYRE: Applicants's  
5 17. Any objection? You're smiling.

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

11 MS. FREEDMAN: Sure.

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

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

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

24 MS. FREEDMAN: Susan Thompson

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1 now, let me see, the next one is Susan  
2 Thompson to Melody Nugent on utilization  
3 rates?

4 MS. FREEDMAN: Right.

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

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

11 MR. DEVEREAUX: Guess.

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

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

17 MR. McINTYRE: Okay. This is  
18 in as Applicant's 17.

19 (R.I. HOSPITAL EXHIBIT 17,  
20 CENTER ON BLOOD AND MARROW TRANSPLANT  
21 RESEARCH E-MAIL, MARKED IN FULL)

22 Q. In preparing your analysis, Mr. Lubiner, I  
23 take it you looked at Roger Williams  
24 Hospital's 1992 application for the bone

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1 is an employee of Life Span.

2 MR. DEVEREAUX: Susan Thompson  
3 is sending an e-mail to Rachel Schwartz at  
4 11:00 a.m.?

5 MS. FREEDMAN: Right.

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

10 MS. FREEDMAN: Correct.

11 MR. DEVEREAUX: Who's Melody  
12 Nugent. Just trying to get some idea of the  
13 authentication the document.

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

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

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

21 MR. DEVEREAUX: Probably works  
22 for them.

23 MS. FREEDMAN: Maybe.

24 MR. DEVEREAUX: Okay. And

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1 marrow transplant program, correct?

2 A. Yes.

3 Q. And do you recall that, at that time, Roger  
4 Williams Hospital estimated that there were  
5 130 potential bone marrow transplant  
6 patients in Rhode Island?

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

9 Q. You recall that?

10 A. Yes.

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

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

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

19 A. Yes.

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

21 A. Yeah.

22 Q. And they also --

23 A. Yes.

24 Q. -- estimated another 70 from the Brown

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1 physician network; do you recall that --  
 2 A. I, I recall.  
 3 Q. -- which --  
 4 A. I interpreted it as overlapping.  
 5 Q. But then they say it's 130; so, that adds  
 6 up, right?  
 7 A. Yup.  
 8 Q. And in their application, they indicated  
 9 that they would obtain about 33 of those  
 10 referrals, correct?  
 11 A. That's what it says in the  
 12 application.  
 13 Q. Do you want me to show you?  
 14 A. If you want to, sure.  
 15 MS. FREEDMAN: May I approach.  
 16 MR. McINTYRE: Yes.  
 17 A. Okay. During the first year, yes,  
 18 that's what they said.  
 19 Q. During the first year, they said 33 and then  
 20 they would anticipate that that would grow  
 21 as they were able to grow their referral  
 22 base, right?  
 23 A. Yes.  
 24 Q. And that's a reasonable assumption that the

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1 Q. Well, they said there were 130 patients out  
 2 there; they were going to get 33?  
 3 A. Uh-huh.  
 4 Q. They have averaged 24, right?  
 5 A. Right.  
 6 Q. So, there's --  
 7 A. That was.  
 8 Q. I'm not finished with my question. They say  
 9 that there are 130 patients out there and  
 10 they have done an average of 24, right?  
 11 A. They said in 1992 that there were 130  
 12 patients out there, right.  
 13 Q. And even if you take the numbers today and  
 14 say, I think you said 70, rounded off 70,  
 15 and they have done two this year, there's a  
 16 lot of need there not being met, correct?  
 17 MR. DEVEREAUX: Objection to  
 18 the form of that question. Go ahead.  
 19 MR. McINTYRE: I'm going to  
 20 allow it.  
 21 A. I wouldn't say there's a lot of need  
 22 that's out there not being met. I would say  
 23 that they are not, their volume levels are  
 24 lower.

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1 first year would be the lowest number, and  
 2 hopefully, you would grow from there,  
 3 right?  
 4 A. That's a reasonable assumption.  
 5 Q. Of any new program?  
 6 A. Yes.  
 7 Q. And in fact, Roger Williams Hospital, since  
 8 they were awarded the CON, has never  
 9 performed 33 in a year, correct?  
 10 A. They performed approximately 33. I  
 11 don't know if it was actually 33.  
 12 Q. Well, the average was 24, right?  
 13 A. The average for the last five years,  
 14 yeah.  
 15 Q. And they did not, they did not meet the need  
 16 that they set forth in their CON, correct?  
 17 MR. DEVEREAUX: Objection to  
 18 the form of that question. Just noted.  
 19 MR. McINTYRE: I will note the  
 20 objection.  
 21 A. I don't, I don't know that they met --  
 22 they didn't meet the volume projections that  
 23 they set forth. It's not the same as the  
 24 need.

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1 Q. And so, there's need out there for  
 2 approximately 68 people to have a BMT,  
 3 correct?  
 4 A. Yeah. I don't know that that's unmet.  
 5 Q. Oh, and why are you having difficulty with  
 6 the concept that the need is not being  
 7 met?  
 8 A. I'm not having any difficulty.  
 9 Q. Because the volume at Roger Williams  
 10 certainly it doesn't show that they are  
 11 capturing those procedures, correct?  
 12 MR. DEVEREAUX: Objection as  
 13 to the form of the question. It's  
 14 argumentative.  
 15 MR. McINTYRE: It's a fair  
 16 question. I'm going to allow it.  
 17 THE WITNESS: What's the  
 18 question again? Why am I --  
 19 Q. There's 68 patients out there right now who  
 20 aren't getting their procedure done at Roger  
 21 Williams Hospital. You're saying --  
 22 A. Right.  
 23 Q. -- you're saying that that need is being  
 24 met?

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1 A. That the volume of Roger Williams  
2 Hospital is not the same as the need for the  
3 BMT and is not an indicator of whether or  
4 not, at the moment, whether or not that need  
5 is being met. It's not the same thing as  
6 the need for the service.

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

13 MR. DEVEREAUX: Objection.

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

16 Q. In your power point presentation, you  
17 indicated that the demand for Rhode Island  
18 bone marrow transplants between 2002 and  
19 2006 was 28. That's just actually the  
20 average of how many procedures were done at  
21 Roger Williams Hospital, correct?

22 A. That's what we indicated, right.

23 Q. So, you're saying --

24 A. We indicated that the number of persons

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

4 A. No. I think the average was 24.

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

10 A. Yes.

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

13 A. You keep -- yup.

14 Q. Right?

15 A. Yes.

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

22 A. I have to look at it.

23 (WITNESS PERUSING DOCUMENT)

24 A. Yes.

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1 who needed bone marrow transplant that could  
2 have received them at any facility in Rhode  
3 Island based on certain barriers and  
4 clinical issues was 28.

5 Q. It just happens to be the average of how  
6 many procedures Roger Williams Hospital has  
7 undergone, correct?

8 A. Roger Williams Hospital --

9 Q. You have to let me finish, please.

10 THE WITNESS: Go ahead,  
11 finish.

12 MS. FREEDMAN: I did.

13 THE WITNESS: There's no more  
14 to your question?

15 MS. FREEDMAN: You spoke over  
16 the end of my question.

17 THE WITNESS: Okay.

18 MR. McINTYRE: I'm getting a  
19 little frustrated.

20 THE WITNESS: Yeah, I'm  
21 getting a little confused.

22 MS. FREEDMAN: Me, too.

23 MR. McINTYRE: Next  
24 question.

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

3 A. I discounted those procedures, right.  
4 I don't know what the percentage was --

5 Q. Well --

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

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

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

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

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

23 Q. Across the board, right?

24 A. Right.

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1 Q. And the 2006 numbers aren't even out yet,  
 2 correct?  
 3 A. At the time I did the analysis, no.  
 4 Q. So that the last column on the bottom, you  
 5 speculated that, correct?  
 6 A. Well, the 2006, at the time that that  
 7 exhibit was prepared, not at the time of my  
 8 report, at the time that exhibit was  
 9 prepared, we used whatever we had for 2006  
 10 to date.  
 11 Q. But they are not out yet, correct,  
 12 publicly?  
 13 A. I think they may be.  
 14 Q. The full data?  
 15 THE WITNESS: For 2006?  
 16 MS. FREEDMAN: Correct.  
 17 A. I don't know.  
 18 Q. You don't know if the full data is actually  
 19 out?  
 20 A. I know that it's out for, I believe  
 21 it's out for Rhode Island. I'm not sure if  
 22 it's out for Massachusetts.  
 23 Q. Okay. And certainly, for, let's just take  
 24 your number of 2006, that there's a demand

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1 Q. Despite the fact that Roger Williams  
 2 Hospital is not meeting the demand of 29 in  
 3 2006?  
 4 A. Roger Williams Hospital's volume  
 5 doesn't have anything to do with the need.  
 6 It has to do with their volume.  
 7 Q. I said demand. I didn't say need.  
 8 A. Demand, I don't know. I'm not sure  
 9 what the difference is.  
 10 Q. Well, that's your word.  
 11 A. Yeah, the, they are relatively  
 12 interchangeable the way I used them.  
 13 Q. So, you would agree with me, though, that  
 14 there's capacity out there for more  
 15 procedures to be done in the State of Rhode  
 16 Island?  
 17 A. There's even more capacity at Roger  
 18 Williams than there is need by among the  
 19 residents of Rhode Island.  
 20 Q. You also indicated that --  
 21 MR. DEVEREAUX: I'm just going  
 22 to note, you know, I think we have had him  
 23 on for almost an hour and a half.  
 24 MS. FREEDMAN: I'm almost

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1 for 29, Roger Williams Hospital is not  
 2 meeting that demand, correct?  
 3 A. I don't want to confuse Roger Williams  
 4 Hospital's volume with need.  
 5 Q. Okay.  
 6 A. The need --  
 7 Q. I will rephrase the question for you.  
 8 MR. DEVEREAUX: I would like  
 9 to let him finish his answer.  
 10 A. Well, that I don't want to confuse  
 11 Rhode Island -- I don't want to confuse the  
 12 need for BMT's in Rhode Island with Roger  
 13 Williams' volume. Whatever Roger Williams'  
 14 volume is doesn't have any, whether Roger  
 15 Williams' volume goes up or down, Roger  
 16 Williams' volume doesn't affect the need for  
 17 the service nor does it have any impact on  
 18 my conclusion that there's only, that Rhode  
 19 Island only has sufficient need for one -- I  
 20 just want to wait until you're ready.  
 21 Q. You can keep going.  
 22 A. Rhode Island only has sufficient need  
 23 for one BMT program. It can't support two  
 24 independent programs.

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1 done.  
 2 MR. DEVEREAUX: I was limited  
 3 to fifty some minutes with Mr. Macri.  
 4 MS. FREEDMAN: You weren't  
 5 limited at all.  
 6 MR. McINTYRE: Hold on. We  
 7 are going to allow you to continue.  
 8 MS. FREEDMAN: I'm almost  
 9 done.  
 10 Q. You would agree with me that it's  
 11 advantageous for the State of Rhode Island  
 12 to keep procedures and the money flowing  
 13 from procedures in the state, correct?  
 14 A. Not necessarily.  
 15 Q. You wouldn't agree with me that it is  
 16 important for the State of Rhode Island for  
 17 high-end tertiary services, such as bone  
 18 marrow transplants, to be performed in Rhode  
 19 Island?  
 20 A. There will always be a number of people  
 21 who, for clinical reasons, the services, no  
 22 matter how good they are, no matter how  
 23 comprehensive they are, will not be able to  
 24 meet their particular needs; so, I don't

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1 think we should force those people to stay  
 2 in Rhode Island.  
 3 Q. That wasn't my question. My question is,  
 4 it's advantageous to Rhode Island to have  
 5 high-end services here, correct?  
 6 A. Yes.  
 7 Q. It's advantageous for the economy; isn't  
 8 it?  
 9 A. When you're talking about 40 or 50  
 10 procedures, technically, I suppose it is.  
 11 Q. Yes, because you need additional employees;  
 12 you need additional qualified personnel; you  
 13 have money coming in for research?  
 14 A. Uh-huh.  
 15 Q. Those are all important to the health care  
 16 system, correct?  
 17 A. Yeah, they are important, yeah, sure.  
 18 Q. And in fact, when an institution is  
 19 receiving funds for high-end services, they  
 20 are able to provide a broader range of  
 21 services to the people of Rhode Island,  
 22 correct?  
 23 A. It depends on how much the cost -- how  
 24 the revenue compares to the costs.

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1 out of control. I don't like that. It's  
 2 difficult for her. It's hard for the  
 3 Committee. Whether he's answering the  
 4 questions to your satisfaction or not, you  
 5 are not permitted to talk over one another;  
 6 so, take a breath and let's get started  
 7 again.  
 8 Q. Mr. Lubiner, you didn't consider the impact  
 9 of research money at all in your analysis of  
 10 affordability, did you?  
 11 A. Yes, I did.  
 12 Q. And where in your report did you talk at all  
 13 about the fact that having a bone marrow  
 14 transplant program is important for research  
 15 dollars in Rhode Island --  
 16 A. I don't believe --  
 17 Q. -- and the affordability?  
 18 A. I don't believe that it is important,  
 19 that having an additional bone marrow  
 20 transplant program is important. The  
 21 research dollars are available now. If the  
 22 researchers would collaborate and go after  
 23 them, we would get them. That was, that's  
 24 my conclusion, and that's what I found when

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1 Q. But in general --  
 2 A. It's a benefit when they --  
 3 Q. -- when the volume goes up, the cost goes  
 4 down, in general?  
 5 A. In general, when you're talking about  
 6 very, very small volumes like we are talking  
 7 about here, that's less true.  
 8 Q. I'm not talking -- I'm talking generally,  
 9 Mr. Lubiner.  
 10 THE WITNESS: About any  
 11 hospital service?  
 12 Q. I'm talking generally.  
 13 MR. McINTYRE: We are going to  
 14 generally move on to another subject.  
 15 THE WITNESS: This is --  
 16 MR. McINTYRE: Hold on a  
 17 minute. Hold on a minute.  
 18 Q. Isn't it true --  
 19 MR. McINTYRE: Hold on a  
 20 minute.  
 21 MS. FREEDMAN: I'm going to  
 22 move on.  
 23 MR. McINTYRE: But first,  
 24 you're going to hold on. This is getting

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1 I did my review.  
 2 Q. So, your conclusion is that research money  
 3 coming into Rhode Island is important for  
 4 the affordability criteria, correct?  
 5 A. It's -- no, I think the affordability  
 6 of this program depends on whether or not it  
 7 would improve the chances of getting  
 8 research dollars into Rhode Island, and I  
 9 believe that it would not. That all the  
 10 necessary conditions are there, and  
 11 researchers need to go get the research  
 12 dollars without -- that the availability of  
 13 the new program doesn't enhance in any way  
 14 the chances of research funding.  
 15 Q. And what about Dr. Schwartz and the  
 16 pediatric aspect of it? I'm having a tough  
 17 time with your analysis on that, because  
 18 certainly, she can't get research into Rhode  
 19 Island without a program, correct?  
 20 MR. DEVEREAUX: I object to  
 21 that. That's a statement not a question,  
 22 that she is having a tough time.  
 23 MR. McINTYRE: I would  
 24 agree.

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1 Q. Mr. Lubiner, that analysis is not applicable  
2 to the pediatric portion of this  
3 application, correct?

4 A. I don't see why not, and I didn't hear  
5 Dr. Schwartz say that. I heard Dr. Schwartz  
6 actually say she participates in a number of  
7 protocols around the country.

8 Q. And that she cannot offer those protocols to  
9 her patient in her own institution?

10 A. Well, she doesn't have a program.

11 MS. FREEDMAN: Please,  
12 Mr. McIntyre, I'm trying --

13 MR. McINTYRE: Well, he may  
14 have an answering style that you don't like,  
15 but you can't leap to the next question; and  
16 I have to agree that Mr. Devereaux has got  
17 a point. We went for a good half hour, 40  
18 minutes Monday, and we have been at another  
19 45 or 50 minutes now, so how much longer do  
20 you have?

21 MS. FREEDMAN: Ten minutes.  
22 All I'm asking is that I get to finish my  
23 question. That's all I'm asking.

24 MR. McINTYRE: Well, you have

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1 that, that Rhode Island Hospital stated in  
2 its application that, quote, approval of the  
3 proposed program is absolutely essential to  
4 its approval as an NCI center; do you recall  
5 that?

6 A. Yes.

7 Q. And you said that Rhode Island Hospital  
8 stated in the application that it was  
9 absolutely essential, right?

10 A. I believe those were the words, yes.

11 Q. And that's also in this chart that you  
12 prepared, correct?

13 A. It may be, yes.

14 Q. But in fact, Question 38 specifically never  
15 uses the word absolutely, correct?

16 A. I don't know. I would have to read the  
17 question -- I would have to read the  
18 answer.

19 Q. There's no --

20 A. I didn't memorize the application.

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

24 A. I believe that there are at least a

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1 to let him finish his answer. You can't  
2 jump in. That's what you're doing, Linn.

3 MS. FREEDMAN: Well, the  
4 record --

5 MR. McINTYRE: The record  
6 definitely -- just...

7 Q. Isn't it true that Dr. Schwartz is unable to  
8 perform research at her own institution --

9 A. No.

10 Q. -- on bone marrow transplant?

11 A. No, she can perform research.

12 Q. See, now, I'm sorry, I wasn't finished.

13 A. She testified she performed research.

14 MR. McINTYRE: I will tell you  
15 what. We are going to take a five-minute  
16 break. Five-minute break. I would like to  
17 see counsel.

18 (SHORT RECESS)

19 Q. Mr. Lubiner, were you involved in preparing  
20 Exhibit I, which is the chart of alleged  
21 inaccuracies of the application?

22 A. Yes.

23 Q. And do you recall in that chart, and  
24 actually in your report on Page 24 you state

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1 couple of references in the application  
2 where they, where it's categorically stated  
3 that it's necessary. I don't know perhaps  
4 the word that was used wasn't absolutely. I  
5 also believe that at least one point in the  
6 application they said or implied that their  
7 approval, their NCI approval, the last thing  
8 that they needed to obtain in order to have  
9 their NCI approval was the bone marrow  
10 transplant program.

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

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

21 Q. That you then, you then stated that it was  
22 absolutely necessary, despite the fact that  
23 they didn't use those words; you inferred  
24 that?

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1 MR. DEVEREAUX: I object.  
 2 A. I may have been paraphrasing them. I  
 3 may have been quoting them.  
 4 Q. For the record, the chart that counsel  
 5 alluded to in cross-examination of Rhode  
 6 Island Hospital's witnesses and that is in  
 7 the record as Tab I, I think, in fact, the  
 8 application states the development of HIOBMT  
 9 service at RIH is an important step in the  
 10 evolution of the cancer program, which will  
 11 enable Life Span and Rhode Island Hospital  
 12 to become a regional academic and clinical  
 13 leader in cancer care.  
 14 A. That's one of the statements that's in  
 15 there.  
 16 Q. It doesn't say absolutely, correct?  
 17 A. That's one of the statements in the  
 18 document.  
 19 Q. It doesn't say absolutely?  
 20 A. That statement does not say absolutely.  
 21 Q. The development of a strong, independent  
 22 service program at RIH is integral to  
 23 becoming an NCI designated center, is a  
 24 critical step in meeting the goals of the

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1 Brown-Life Span partnership, and will be  
 2 critical for attracting new biomedical  
 3 enterprises to Rhode Island. That's the  
 4 quote from the application.  
 5 A. I think that's one of the quotes,  
 6 yes.  
 7 Q. Doesn't say absolutely necessary.  
 8 A. No, it says critical.  
 9 Q. Right. Doesn't say absolutely necessary.  
 10 MR. DEVEREAUX: I object.  
 11 MR. McINTYRE: I'm going to  
 12 agree. You are arguing with the witness  
 13 again, and I might point out, for the  
 14 record, that the effectiveness of this  
 15 questioning is diminishing by the moment.  
 16 Q. Isn't it true that all NCI cancer center  
 17 designations have a bone marrow transplant  
 18 program?  
 19 A. No.  
 20 Q. You're saying that's not true?  
 21 A. No.  
 22 MS. FREEDMAN: Okay. No  
 23 further questions.  
 24 A. No, not true.

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1 MR. McINTYRE: Mr. Devereaux?  
 2 MR. DEVEREAUX: I will try and  
 3 be brief, Mr. McIntyre. I'm going to  
 4 approach the witness, if that's okay.  
 5 MR. McINTYRE: Please.  
 6 FURTHER EXAMINATION BY MR. DEVEREAUX  
 7 Q. I'm looking at the Rhode Island Hospital --  
 8 THE WITNESS: Can I take one  
 9 minute?  
 10 MR. McINTYRE: Sure.  
 11 MR. DEVEREAUX: You want to  
 12 take a break?  
 13 MR. McINTYRE: We will take a  
 14 few-minute break.  
 15 (SHORT RECESS)  
 16 Q. Mr. Lubiner, I'm going to refer to the Rhode  
 17 Island Hospital application in this case.  
 18 Not to belabor the point, but on Page 2 of  
 19 that application, let me put my glasses on  
 20 here, can you read that paragraph in  
 21 Section 3, not the paragraph, the last  
 22 sentence there? Could you read that out  
 23 loud?  
 24 A. Yes. The only cancer treatment service

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1 not currently offered at RIH is HIO, slash,  
 2 BMT, is an absolutely necessary addition in  
 3 order for Rhode Island Hospital to become a  
 4 federally funded cancer center supported by  
 5 the cancer support -- supported by a cancer  
 6 support grant.  
 7 Q. All right. May I just have a minute. I  
 8 will have you look at Page 29 of 65 of the  
 9 same application, and could you read the  
 10 second paragraph there that's a short  
 11 paragraph, but would you read it into the  
 12 record?  
 13 A. Okay. Finally, as stated in the  
 14 responses to Question 3, Questions 3 and  
 15 30B, HIOBMT is the only treatment service  
 16 not offered at RIH and is absolutely  
 17 necessary in order --  
 18 Q. Let me --  
 19 A. Is an, is an absolute necessity --  
 20 Q. Necessity?  
 21 A. I don't have my long glasses. Is an  
 22 absolutely necessity --  
 23 Q. Necessity?  
 24 A. In order for RIH, the leading academic

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1 center in the state, with the largest  
2 portion of Rhode Island cancer center  
3 patients receiving care, to move forward to  
4 become an NCI comprehensive program.

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

10 A. I recall that was said.

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

15 MR. McINTYRE: Is this in the  
16 record already?

17 MR. DEVEREAUX: Is that in the  
18 record already?

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

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

24 Q. This is from Rhode Island Hospital

713

1 the number of liver transplants would be  
2 insufficient to maintain satisfactory skills  
3 for optimal transplant care. Did I read  
4 that correctly?

5 A. Yes.

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

9 A. Yes.

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

16 A. Uh-huh.

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

23 A. Yes.

24 Q. And then in the next column what does he

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

13 A. Yes.

14 Q. You would agree that a liver transplant is a  
15 life-saving procedure?

16 A. Yes.

17 Q. And then it says, given the proximity to  
18 other centers, our administrators and we  
19 have not pursued liver transplantation at  
20 Rhode Island Hospital. Such a pursuit would  
21 require enormous resources, including  
22 more ICU beds, specialists in hepatology and  
23 pathology and dedicated teams in  
24 anesthesiology and nursing. It appears that

714

1 have?

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

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

6 A. Yes.

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

11 A. That's correct.

12 Q. Was 33?

13 A. Yes.

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

17 A. Correct.

18 Q. Mr. Zimmerman, when he did this report of  
19 1992, noted, it should be noted that there  
20 is not sufficient demand to justify two bone  
21 marrow transplant units in Rhode Island.  
22 Did I read that correctly?

23 A. Yes.

24 Q. Two units would result in insufficient

716

1 patient volume and would give rise to  
2 unnecessary dilution and or duplication of  
3 the talent and resources needed to treat  
4 these patients?

5 A. Right.

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

10 A. Correct.

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

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

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

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

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

24 MR. DEVEREAUX: I would ask

717

1 Q. Do you recall that?

2 A. I do.

3 Q. And you were also asked some questions about  
4 your participation in the Landmark  
5 analysis?

6 A. Yes.

7 Q. And is it true that there were concerns that  
8 were brought up in the Landmark application  
9 by Rhode Island Hospital about volume if  
10 there were three cardiac care centers in  
11 Rhode Island?

12 A. Yes.

13 Q. All right. And in fact, you were shown a  
14 newspaper article, which I believe was put  
15 into evidence by Felice Fryer.

16 A. Uh-huh.

17 Q. And I will just read a section that wasn't  
18 read before where George Vecchione, Life  
19 Span's president and chief executive  
20 officer, said that Life Span, the state's  
21 biggest hospital system, still strongly  
22 objects to Landmarks's plans to introduce  
23 cardiac surgery and angioplasty. Are those  
24 tertiary services?

719

1 that this be marked as Interested Party,  
2 Affected Party. I think we are in the  
3 alphabet. I think it's 7.

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

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

11 THE WITNESS: 2007 letter  
12 signed by Mr. Normand.

13 MR. NORMAND: Correct.

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

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

21 A. Uh-huh.

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

24 A. Yes.

718

1 A. Yes.

2 Q. Currently, only two Life Span hospitals,  
3 Miriam Hospital and the Rhode Island  
4 Hospital, offer those services. Did I read  
5 that correctly?

6 A. Yes.

7 Q. And do you recall that they -- you  
8 participated on behalf of Landmark at the  
9 time in that debate?

10 A. I did.

11 Q. And let me just refer to Tab A in this  
12 exhibit marked, it's tertiary cardiac care  
13 services in Rhode Island by J. Bootner,  
14 Ph.D. (phonetic). Do you know who  
15 J. Bootner is?

16 A. Yes.

17 Q. Who is he?

18 A. He's an employee of the Department of  
19 Health who was in charge of statistical  
20 analyses of health data.

21 Q. And down in the Page 41, he says, however,  
22 volumes for procedures requiring CPB  
23 capability including, G -- CABG fell in both  
24 facilities between 2001 and 2004 by 26

720

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

9 A. Yes.

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

16 A. Correct.

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

20 A. Yes, it's from Rachel Schwartz.

21 Q. And on, and then this is the letter on  
22 May 15 that I showed Dr. Klein that he  
23 authored where it says, therefore, we  
24 believe our mutual efforts to improve

721

1 Thompson. And it says here, the data  
2 presented, this is on the issue of whether  
3 it's 13 percent or 18 percent on unrelated  
4 allogeneic transplants. Do you remember  
5 that line of questioning?

6 A. Yup, yes.

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

10 A. Uh-huh.

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

14 A. Yes.

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

18 A. Correct.

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

21 A. Yes, it says that.

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

24 A. I looked at data from that source.

723

1 patient care can best be advanced through an  
2 open and full dialogue regarding the  
3 complexities of this type of request. Did I  
4 read that correctly?

5 A. Yes.

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

10 MS. FREEDMAN: Is that a  
11 question?

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

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

16 A. Yes.

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

20 MR. ZUBIAGO: You did.

21 Q. And this is, I just want to point your  
22 attention to, it looks like the first one  
23 that's signed, best regards, Tanya. It's  
24 actually sent by Melody Nugent to S.

722

1 Q. And it said --

2 A. As well as other sources.

3 Q. As well as other sources?

4 A. Yes.

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

7 A. Yes.

8 Q. Of unrelated allogeneic transplants?

9 A. Yes.

10 MR. DEVEREAUX: Just a couple  
11 more questions.

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

16 A. No.

17 Q. You were asked a series of questions about  
18 the current volume at Roger Williams,  
19 correct?

20 A. Yes.

21 Q. And does the current volume level at Roger  
22 Williams affect your opinion concerning the  
23 issue of public need?

24 A. No. The -- no.

724

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

14 The point that I want to keep  
 15 emphasizing is that the volume at Roger  
 16 Williams Hospital doesn't, is not the same  
 17 as the measure of need for bone marrow  
 18 transplant programs in Rhode Island.  
 19 There's only need for one. That's all.

20 MR. DEVEREAUX: No further  
 21 questions.

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

24 MR. ROSS: Mr. McIntyre?

725

1 MR. ROSS: -- or so is higher  
 2 than that?

3 THE WITNESS: Yes, and I would  
 4 expect it to be a little higher, yes.

5 MR. ROSS: Okay. On this  
 6 particular chart, I just have some trouble  
 7 that you have taken the four areas that you  
 8 have discounted and they are all kind of  
 9 accumulated.

10 THE WITNESS: Yes.

11 MR. ROSS: There should be  
 12 some overlap; because when you first talk  
 13 about market share direction, you talk about  
 14 people go out of state based on the overall  
 15 assumption of cancer patients, and where  
 16 they have gone, and they choose that based  
 17 on referral basis and other factors  
 18 affecting patient choice.

19 THE WITNESS: Right.

20 MR. ROSS: Then you go on to  
 21 identify three specific other factors.

22 THE WITNESS: Right.

23 MR. ROSS: It just  
 24 accumulates, so you get to the point where

727

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

4 MR. ROSS: In your report, on  
 5 Page 14, you indicated, made a reference to  
 6 a national average of five to six cases per  
 7 100,000 persons.

8 THE WITNESS: Yes.

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

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

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

19 THE WITNESS: No, They don't.

20 MR. ROSS: They don't. And  
 21 yet, in Rhode Island, the need that you have  
 22 indicated on your chart of, you know, around  
 23 72 --

24 THE WITNESS: Yes.

726

1 it's really not an 80 percent reduction.  
 2 It's a 60 percent reduction the way you  
 3 calculated it, and I don't know why they are  
 4 accumulated that way.

5 THE WITNESS: I think that you  
 6 find, regardless of the order in which you  
 7 apply them, number one, regardless of the  
 8 order you apply them, you come up with the  
 9 same result at the end.

10 MR. ROSS: I agree with that.  
 11 I understand that.

12 THE WITNESS: Just wanted to  
 13 make that clear, how it works. What we  
 14 tried to do was we tried to show that  
 15 there's a volume of people that need the  
 16 procedure and then identify the number who  
 17 would actually be even reasonably likely to  
 18 seek it in Rhode Island. So, we took off  
 19 the top the, based on market share data of  
 20 Massachusetts hospitals, based on market  
 21 share for patients hospitalized for cancer,  
 22 with that disease category, we eliminated  
 23 those patients on the theory that they are  
 24 being treated by physicians who have

728

1 referral relations and practice within the  
2 Massachusetts hospital community and that  
3 was 32 percent. That left 68 percent. Of  
4 that 68 percent, the, there's still  
5 approximately 20 percent of those persons  
6 have United, and that's an estimate. So,  
7 even of those people that remain, even of  
8 those people that are not seeing physicians  
9 that are practicing within the Massachusetts  
10 hospital system, even 20 percent of those  
11 persons would not be able to obtain a bone  
12 marrow transplant in Rhode Island, because  
13 United would not allow it or at least would  
14 require, you know, special application; and  
15 my experience is that they are not very...

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

729

1 with you. If, for example, you're talking  
2 about the United cases that were treated in  
3 Rhode Island, they would have not been  
4 included in the 32 percent, because they  
5 were treated in Rhode Island.

6 MR. ROSS: See, just that the  
7 32 percent, the market share correction is a  
8 broad umbrella that you have taken that  
9 includes every reason.

10 THE WITNESS: Right.

11 MR. ROSS: It's not to say  
12 that that percentage is equally applicable  
13 just to bone marrow versus any cancer. The  
14 data doesn't exist, but it includes  
15 everything, so there's going to be patients  
16 that are included in that reduction that are  
17 probably United patients that went out of  
18 state because of, quote, unquote, the Boston  
19 effect.

20 THE WITNESS: Uh-huh.

21 MR. ROSS: And went out of  
22 state because they needed an unrelated  
23 allogeneic correction and may have gone up  
24 to Boston for that reason based on the

731

1 cases patients in Rhode Island that went to  
2 Boston.

3 THE WITNESS: Right.

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

19 THE WITNESS: I understand,  
20 you know, the difficulty, the questions that  
21 are raised. But I don't, I don't believe  
22 that's the case. If, for example, you know,  
23 I don't, I just want to clarify. I  
24 certainly don't want to argue about it

730

1 Boston effect; so, again, there just seems  
2 to be, I'm saying that taking the market  
3 share correction and adding these others  
4 seems to overstate the overall reduction,  
5 and I just wanted to get your opinion.  
6 That's what I'm saying.

7 THE WITNESS: I understand  
8 what you're saying. I don't think it is,  
9 you know, it's not a clinically accurate  
10 analysis. I think it's a reasonable  
11 analysis of what the, what the market, the  
12 demand would be in Rhode Island, and it  
13 demonstrates that there are lots of reasons  
14 why patients couldn't have used the services  
15 at Roger Williams. That patients didn't  
16 necessarily vote with their feet, but there  
17 were actual barriers. Now, whether it is 28  
18 or 29 or 27 --

19 MR. ROSS: Or 40 or 45,  
20 depends on the cumulative nature.

21 THE WITNESS: Uh-huh.

22 MR. ROSS: I have just one  
23 other question. In terms of the total  
24 numbers and that comes from that, I use the

732

1 term the all-payers data base. Is there a  
2 particular DRG that I think everyone focuses  
3 in and agrees on these numbers? I just  
4 don't know when you pull in a data base  
5 that's got 100,000 admissions --

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

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

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

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

14 MR. McINTYRE: Thank you.

15 MR. DEVEREAUX: Nothing  
16 further.

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

19 THE WITNESS: Thank you.

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

23 MR. McINTYRE: Good morning.

24 THE WITNESS: Good morning.

733

1 approximately 37 years.

2 Q. And what was your first position there?

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

9 Q. And what is your current position now?

10 A. My current position is vice-president  
11 patient care services and chief nursing  
12 officer.

13 Q. And what was your position just before that,  
14 '98 to 2006?

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

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

19 A. Yes.

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

22 THE WITNESS: As in the  
23 director role?

24 MR. WALSH: Yes.

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1 JOANNE DOOLEY, RN

2 Being duly sworn, testifies as follows:

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

5 THE WITNESS: Joanne Dooley.

6 EXAMINATION BY MR. WALSH

7 Q. Miss Dooley, where do you work?

8 A. Roger Williams Medical Center.

9 MR. WALSH: May I approach the  
10 witness.

11 MR. McINTYRE: Yes.

12 Q. Do you recognize that document?

13 A. Yes.

14 Q. What is that document?

15 A. That's my CV.

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

19 MR. McINTYRE: Okay. IP-8.

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

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

24 A. I have been at Roger Williams

734

1 A. I had oversight of many of the  
2 inpatient areas within the hospital  
3 including the oncology divisions and that  
4 included the bone marrow transplant.

5 Q. In your current position, do you also have  
6 some relation to the BMT program?

7 A. Yes, I do.

8 Q. And what is that?

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

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

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

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

23 A. Uh-huh.

24 Q. And I would assume that with that experience

736

1 you have a good sense of what it takes to  
2 have a good nursing program and to have good  
3 nurses?

4 A. Yes.

5 Q. And you're familiar with the BMT nursing  
6 staff at Roger Williams?

7 A. Yes.

8 Q. How many full-time nurses do you have in  
9 that program?

10 A. We have eight full-time RN's.

11 Q. And do you use per diem nurses?

12 A. We currently have three per diems from  
13 within the transplant.

14 Q. And could you describe what a per diem nurse  
15 is?

16 A. A per diem is a nurse that's trained  
17 and has the skill set to care for the  
18 patients within any particular service line,  
19 and they are there to augment our staffing,  
20 as needed, according to patient needs.

21 Q. And are there other nurses within other  
22 programs that you use to help augment your  
23 BMT nursing staff?

24 A. Yes, we do.

737

1 the right skill to meet the current needs of  
2 the patient.

3 Q. You feel comfortable that you have  
4 sufficient flexibility with the nursing  
5 staff?

6 A. Yes.

7 Q. An issue has come up of turnover, the  
8 importance of low turnover. What is the  
9 turnover of the Roger Williams BMT  
10 program?

11 A. Geez, actually, turnover is impressive  
12 in that we don't have a high turnover in the  
13 transplant unit. Many of those nurses have  
14 been there many, many years, right from the,  
15 you know, beginning of the transplant  
16 unit.

17 Q. And do you find that to be an extraordinary  
18 turnover rate as opposed to some of your  
19 other experiences in the nursing programs?

20 A. That's very extraordinary. If there's  
21 any nurses in the room, we know recruitment  
22 and retention is an ever-challenging issue  
23 for us. Yes, we are very pleased with the  
24 lack of turnover in our bone marrow unit.

739

1 Q. And could you describe that?

2 A. We have, obviously, at Roger Williams  
3 we have a long history of commitment to  
4 oncology, and obviously, that includes the  
5 bone marrow transplant unit; so, we have had  
6 a continuous education plan of nursing that  
7 work in many of our cancer-related programs.  
8 So, I include nurses from, say, our surgical  
9 oncology division and some from our critical  
10 care as well to participate in the ongoing  
11 education and receive certifications as  
12 necessary so that they can support.

13 Q. You had indicated the importance of the  
14 staffing decisions concerning patient nurse  
15 ratios. Could you explain how you deal with  
16 some of those issues in the BMT program?

17 THE WITNESS: In the BMT  
18 program?

19 MR. WALSH: Yes.

20 A. It's actually universal for meeting  
21 patient needs no matter where the patients  
22 are in the hospital. So, what we do is  
23 assess patient need. Actually, three times  
24 a day we look at that to ensure that we have

738

1 Q. And what would you attribute that low  
2 turnover to?

3 A. I would say job satisfaction, first and  
4 foremost, and clearly, this is a very  
5 dedicated, committed staff that like what  
6 they do; and I expound on that. I think  
7 it's because of the commitment that Roger  
8 Williams has invested into the continued  
9 support of the nursing staff in the bone  
10 marrow unit.

11 Q. Does that support include education and  
12 training and the like?

13 A. Yes, it does.

14 Q. Could you explain a little bit about the  
15 training programs you have for your nursing  
16 staff in the BMT program?

17 A. In the bone marrow unit. Right from,  
18 obviously, the initial training was  
19 intensive when we first brought up the bone  
20 marrow unit, but it's an area that requires  
21 continuous education and certifications and  
22 recertifications.

23 Q. Are you talking about certifications, does  
24 Rhode Island -- Roger Williams have a focus

740

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

16 Q. Could you just explain a little bit about  
17 what the ONS is?

18 A. As I just started to say, the ONS is  
19 the national considered best practice  
20 guidelines for care of the oncology patient.  
21 Any organization can provide continuous  
22 education to their nursing staff from  
23 within, you know, their own facility. We  
24 have chosen to use the ONS guidelines

741

1 certified for chemotherapy, biotherapy  
2 through the ONS standards.

3 Q. Miss Dooley, do you have a nurse educator in  
4 your staff?

5 A. For specific, I have a few nurse  
6 educators.

7 Q. Could you go through that with the nurse  
8 educators?

9 A. The nurse educators with expertise in  
10 the service lines that we have at Roger  
11 Williams are all competent and have the  
12 skill set to do general continuous nursing  
13 orientation and education; but we also have  
14 those with expertise in particular, very  
15 specific types of programs, and obviously,  
16 you're referring to bone marrow.

17 MR. WALSH: Yes.

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

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1 because that is the highest level of  
2 certification for chemotherapy and  
3 biotherapy certification, for instance.

4 Q. Can you explain what a nurse goes through  
5 when they are going through the ONS  
6 program?

7 A. Well, the last, you know, the major  
8 series we just did took us pretty much over  
9 a year to do both formal and informal  
10 education, classroom didactic study, and  
11 then, obviously, the practical, you know,  
12 hands-on; so, it took us about a year to  
13 complete that. What that allowed us to do  
14 is have our nursing staff then sit for the  
15 national testing to become OCN certified.

16 Q. And how many nurses are OCN certified at  
17 this point?

18 A. In the bone marrow unit right now, out  
19 of the eight, six are OCN certified.

20 Q. Are the others working towards  
21 certification?

22 A. It's constant, yes. We have probably  
23 trained at least up to 20 nurses in our  
24 surgical oncology division as well to be

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1 oncology nurse education.

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

8 A. Yes, I would.

9 MR. WALSH: I have no further  
10 questions.

11 MR. McINTYRE: Thank you very  
12 much. Questions from Ms. Freedman?

13 EXAMINATION BY MS. FREEDMAN

14 Q. Miss Dooley, my name is Linn Freedman, and  
15 this is Steve Zubiago, and we represent  
16 Rhode Island Hospital.

17 A. Good morning.

18 Q. Have you read the Rhode Island Hospital  
19 application for a certificate of need for a  
20 bone marrow transplant program?

21 A. I have reviewed some of the contents.

22 Q. And you don't have any experience with  
23 respect to the criteria that Rhode Island  
24 Hospital has to approve or set forth to the

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1 Health Services Council, correct?  
 2 A. I probably have some understanding.  
 3 Q. You have some understanding, but do you have  
 4 any --

5 THE WITNESS: The specifics?  
 6 Q. -- experience with respect to the criteria  
 7 or the things that Rhode Island Hospital has  
 8 to show to the Health Services Council in  
 9 this type of setting?

10 A. Probably not specific to the bone  
 11 marrow.

12 Q. Okay. You talked a little bit about the  
 13 fact that you had, that you have loyal  
 14 staff, correct?

15 A. Uh-huh.

16 Q. But you have had some turnover, haven't you,  
 17 in the bone marrow transplant program?

18 A. We did have a couple of nurses -- if  
 19 you would like me to expound.

20 MS. FREEDMAN: Sure.

21 A. Yes, over the years, as we have had a  
 22 couple of nurses who continued to advance  
 23 their nursing practice and actually moved  
 24 into the research department of our hospital

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1 who left, was that Eileen Silveira?

2 A. Yes.

3 Q. And before she left, she indicated to you  
 4 some of the issues that she had and why she  
 5 was leaving, correct?

6 A. She discussed with me, yup.

7 Q. And you were aware that she received another  
 8 job offer from Memorial Hospital, correct?

9 A. Memorial. No, I don't know that.

10 Q. Are you saying she didn't tell you that?

11 A. I don't recall her mentioning that.

12 Q. And she had issues with her patient load,  
 13 correct?

14 A. That was not exactly what she shared  
 15 with me.

16 Q. Is it one of the things that she shared  
 17 with you that she felt that her patient load  
 18 was decreasing?

19 A. Yes. She did have some concerns in the  
 20 out-patient area, uh-huh.

21 Q. And were you involved in the hiring of  
 22 Deborah Morgan as the nurse manager of the  
 23 BMT?

24 A. Deborah Morgan is not the manager of

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1 in a nurse practitioner role; and from  
 2 there, I believe, one got married and moved  
 3 out of state.

4 Q. You have had some other nurses leave as  
 5 well, correct?

6 A. We have had one nurse who was not  
 7 actually in our bone marrow transplant unit  
 8 but in our clinic out-patient setting that,  
 9 yes, has left.

10 Q. So, you do have turnover with respect to  
 11 your staff, correct?

12 A. Extremely minimally.

13 Q. And a social worker left the bone marrow  
 14 transplant program as well, correct?

15 A. Yes. That person did not report to me,  
 16 so I don't know the, so I couldn't answer to  
 17 that one.

18 Q. And I believe, I could be wrong, that a  
 19 nurse educator also left, correct, who had  
 20 some responsibilities for the bone marrow  
 21 transplant program?

22 A. Not since I have been connected to the  
 23 bone marrow unit.

24 Q. Okay. The one nurse that you talked about

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1 the BMT.

2 Q. I'm sorry. What is her --

3 A. She's the transplant coordinator.

4 Q. Were you involved at all in his hiring  
 5 her?

6 A. No. She does not report to me.

7 Q. Were you involved in hiring Colleen  
 8 Goldberg?

9 A. Yes.

10 Q. You know who Colleen Goldberg is?

11 A. Yes.

12 Q. What is her position?

13 A. She's currently the clinical manager.

14 Q. Is that the same thing as nurse manager or  
 15 is that a different position?

16 A. It's comparable, yes.

17 Q. And Miss Goldberg, before she became nurse  
 18 manager or clinical manager of the bone  
 19 marrow transplant program, she was an ICU  
 20 nurse, correct?

21 A. Not at Roger Williams, no.

22 Q. She had ICU experience?

23 A. She had critical care background and  
 24 oncology background.

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1 Q. And she didn't have any bone marrow  
 2 transplant program when she became nurse  
 3 manager?  
 4 A. Not bone marrow specific but a long  
 5 history in oncology.  
 6 Q. In oncology, but she became nurse manager of  
 7 the bone marrow transplant program without  
 8 having any experience in bone marrow,  
 9 correct?  
 10 A. That would be correct.  
 11 Q. Okay. And with respect to just the bone  
 12 marrow transplant --  
 13 A. Uh-huh.  
 14 Q. -- unit?  
 15 A. Uh-huh.  
 16 Q. Okay?  
 17 A. Uh-huh.  
 18 Q. You do not have any formal education for  
 19 those nurses in protocols and trials for  
 20 those patients, correct?  
 21 A. Part of the continuous education that  
 22 has been provided through some of our  
 23 physician staff, people in the protocol  
 24 office in conjunction with our director of

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1 people from within the oncology area to help  
 2 with education in the areas that they had  
 3 the expertise in.  
 4 Q. So, is it -- I'm sorry. My question was  
 5 specific to bone marrow transplant  
 6 protocols? --  
 7 A. Uh-huh.  
 8 Q. -- and trials? Are the nurses specifically  
 9 trained on treatment schedules on the  
 10 protocols of these patients that undergo,  
 11 specific to that, formal education?  
 12 A. I can't address specific protocols  
 13 without having knowledge of which ones; but  
 14 I know when new protocols come in place,  
 15 they are discussed at a formal scientific  
 16 meeting that's held weekly within the  
 17 department, and those protocols are reviewed  
 18 with the multi-disciplinary team and shared  
 19 with the nursing staff.  
 20 Q. Nurse Dooley, presently we heard testimony  
 21 from Dr. Rathore that no bone marrow  
 22 transplants have been done at Roger Williams  
 23 Hospital for the month of June. Are you  
 24 aware of that?

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1 education.  
 2 Q. Is that recent?  
 3 A. That has been ongoing.  
 4 Q. It's your testimony today --  
 5 A. Uh-huh.  
 6 Q. -- that you provide formal education --  
 7 A. Uh-huh.  
 8 Q. -- to the bone marrow transplant nurses on  
 9 the bone marrow transplant protocols for  
 10 those patients?  
 11 MR. WALSH: Objection. I  
 12 think she just answered the question. I  
 13 don't think it's appropriate for her to keep  
 14 rephrasing the questions to recharacterize  
 15 testimony, and she asked the question. I  
 16 think Miss Dooley answered the question. I  
 17 don't think we need to keep going through  
 18 this.  
 19 MR. McINTYRE: Well, I'm going  
 20 to let her answer this one last question.  
 21 Your objection is noted.  
 22 A. As part of the ongoing education, there  
 23 has been, over the last few years, the  
 24 director of education has engaged other

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1 A. Yes.  
 2 Q. So, you have nurses trained in bone marrow  
 3 transplant but you haven't had any  
 4 transplants this month, correct?  
 5 A. I do believe that we have not actually  
 6 done a transplant this particular month.  
 7 Q. But you use the bone marrow transplant unit  
 8 for oncology patients and for chemo  
 9 patients, correct?  
 10 A. Well, at this point in time, I mean I  
 11 actually visited a patient yesterday who is  
 12 a transplant patient. It's not uncommon for  
 13 transplant patients to have to make a  
 14 revisit to the hospital, and yes, we would  
 15 put those patients into the bone marrow unit  
 16 to provide continuity of care in an area  
 17 that they are comfortable with the people  
 18 that know them best and know their history  
 19 well so we would do that.  
 20 Q. So, the answer is you're using the bone  
 21 marrow transplant unit for chemotherapy  
 22 patients, correct?  
 23 MR. WALSH: Objection.  
 24 Objection. I think her answer is what her

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1 answer is.  
2 MR. McINTYRE: I will let her  
3 answer this question.  
4 THE WITNESS: Not that we are  
5 using it for, for only chemotherapy? I'm  
6 not following you. Maybe if you could be  
7 just a little more specific.  
8 Q. Sure. If there's no transplants being done  
9 in the unit --  
10 A. Uh-huh.  
11 Q. -- you still have patients in that unit,  
12 correct?  
13 A. Yes.  
14 Q. And the nurses are still caring for those  
15 parents, right?  
16 A. Yes.  
17 Q. And but those patients aren't receiving a  
18 transplant; they are receiving chemo,  
19 right?  
20 A. They may be receiving chemo. They may  
21 be, you know, former transplant patients  
22 that require some other adjunct therapy at  
23 any given time. As you probably know,  
24 transplant patients are with you for a long

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1 time. They do come back, and yes, I would  
2 put them in there to give them the most  
3 optimal environment.  
4 Q. And the specialty of the nurses, correct?  
5 A. Absolutely.  
6 Q. Okay. Now, do you know who Mary Grande  
7 is?  
8 A. Yes, I do.  
9 Q. And is she in the clinic?  
10 A. She is part of our cancer center  
11 out-patient department.  
12 Q. And she is able to give chemotherapy to  
13 patients, correct?  
14 A. Yes.  
15 Q. Are there any other nurses who are able to  
16 give chemotherapy to patients in the  
17 clinic?  
18 A. We have another nurse within the  
19 clinic. We have a per diem nurse as well.  
20 Q. Okay. And isn't it true that when a nurse  
21 gives chemo or blood --  
22 A. Yes.  
23 Q. -- that under JACHO guidelines it has to be  
24 cross-checked with two nurses?

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1 A. Yes.  
2 Q. How does the cross-checking work when Mary  
3 Grande is providing the chemo?  
4 MS. WALSH: Objection.  
5 Mr. Hearing Officer, if we are going to go  
6 through every employee or former employee  
7 and what they have done and not done --  
8 MR. McINTYRE: I'm having  
9 trouble of trying to ascertain what the  
10 purpose of this is. Could you give me a  
11 little offer of proof?  
12 MS. FREEDMAN: Miss Dooley has  
13 given us a certain picture of the bone  
14 marrow transplant unit, and I think there's  
15 always two sides to that; and it basically,  
16 for some reason, felt that it was necessary  
17 to talk about the nursing staff. We have  
18 information that there is --  
19 MR. McINTYRE: So, some of the  
20 nurses do other things and --  
21 MS. FREEDMAN: And that it's  
22 insufficiently staffed.  
23 MS. WALSH: Mr. McIntyre, they  
24 are also dealing with the different

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1 programs, out-patient services. It's  
2 getting lost on what the focus is here.  
3 MR. McINTYRE: Feel free to  
4 use whatever little time you're going to  
5 have next with this on this issue, but it's  
6 not going to be a lot longer.  
7 Q. The nurse educator that is over the bone  
8 marrow transplant program presently she  
9 doesn't have any bone marrow transplant  
10 experience, correct?  
11 A. She has been with us since the  
12 inception of the bone marrow unit.  
13 Q. And prior to that time, she didn't have any  
14 experience in bone marrow transplant,  
15 correct?  
16 A. No, not that I have knowledge of, no.  
17 MS. FREEDMAN: Okay. No  
18 further questions.  
19 MR. McINTYRE: Okay.  
20 MR. WALSH: No further  
21 questions.  
22 MR. McINTYRE: Thank you very  
23 much. I'm sorry, counsel?  
24 MR. MILLER: No questions.

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1 MR. ROSS: No questions.  
 2 MR. McINTYRE: Thank you.  
 3 THE WITNESS: Thank you.  
 4 MR. WALSH: We have one last  
 5 witness.  
 6 MR. McINTYRE: Why don't we  
 7 just take a two-minute stretch?  
 8 (SHORT RECESS)  
 9 MR. McINTYRE: All right. We  
 10 are back on the record.  
 11 MR. McINTYRE: It's  
 12 approximately eleven o'clock. A race to the  
 13 finish. Who's first?  
 14 THE WITNESS: Good morning,  
 15 everyone. It's still morning.  
 16 BETTY PACHECO  
 17 Being duly sworn, testifies as follows:  
 18 COURT REPORTER: Please state  
 19 your full name for the record.  
 20 THE WITNESS: Betty Pacheco.  
 21 EXAMINATION BY MR. WALSH  
 22 Q. Miss Pacheco, where do you currently work?  
 23 A. Roger Williams Medical Center.  
 24 Q. And do you recognize that document?

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1 A. Yes. That's my resume.  
 2 MR. WALSH: I would like to  
 3 offer it as the next exhibit.  
 4 MR. McINTYRE: IP-16.  
 5 (INTERESTED PARTY EXHIBIT 9,  
 6 PACHECO CV, MARKED IN FULL)  
 7 Q. Miss Pacheco, what is your current post at  
 8 Roger Williams?  
 9 A. I'm the medical secretary for the  
 10 transplant injury and the day chemotherapy  
 11 unit.  
 12 Q. What does that entail?  
 13 A. That's register the patients, checking  
 14 in the patients, ordering procedures,  
 15 guiding the patients to where they have to  
 16 go, interacting with the physicians,  
 17 interacting with the nurses. Basically, it  
 18 involves patient care as well.  
 19 Q. So, you're very involved in the day-to-day  
 20 activity?  
 21 A. Yes.  
 22 Q. And you're very involved with the patient at  
 23 the BMT program?  
 24 A. Yes, I am.

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1 Q. And could you give us your interaction with  
 2 the patients as they go through the  
 3 process?  
 4 A. The patients. I can tell you, they are  
 5 my family. I have been with these patients  
 6 since 2000 -- actually, 1996. I have held  
 7 their hands. I have cried with them. I  
 8 have laughed with them. I make sure that  
 9 when they come in they get the fullest  
 10 attention; and if they call, I don't put  
 11 them -- I don't say to them I will call you.  
 12 I put them on hold. I have the back lines  
 13 to these physicians; and when I tell you  
 14 that the physician will call me back, they  
 15 will call me back. This patient is not  
 16 standing. I make sure that they get what  
 17 they have to get. If they need a nurse, I  
 18 make sure. I walk over to the transplant  
 19 unit and get the nurse. I make sure that  
 20 she gets on the phone, that these patients  
 21 get the attention that they need; and they  
 22 will get it as long as I'm there. They will  
 23 get it.  
 24 Q. And what has been your experience with the

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1 patient's reaction to being in the  
 2 program?  
 3 A. They, I mean they, they love it there.  
 4 They love it there. They will call just to  
 5 talk to you. They will call. They will  
 6 come in. I have had patients come in and  
 7 sit with me. I have had a patient two days  
 8 ago that lost his wife, and I was on the  
 9 phone with him for 20 minutes, 20 minutes  
 10 guiding him that we have support programs  
 11 for him to go to and the family members.  
 12 This is what I do. This is what we do at  
 13 Roger Williams.  
 14 Q. Now, you're very familiar with the nursing  
 15 staff, are you not?  
 16 A. Yes, I am.  
 17 Q. Can you give us a background of what you  
 18 think of the nursing staff there?  
 19 A. They are an excellent team; and when I  
 20 tell you an excellent team, I'm talking a  
 21 transplant nurse of 20 years, 20 years. I  
 22 have worked as a CNA in 1996 with one nurse  
 23 over 30 years experience. These nurses are  
 24 highly qualified for this position on the

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1 bone marrow transplant unit, and I enjoy  
2 working with them. We have an excellent  
3 relationship. If I pick up that phone, they  
4 are there. If they pick up the phone for  
5 me, I'm there. This is how we interact.  
6 This is a transplant program.

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

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

13 MR. WALSH: That wasn't my  
14 question.

15 MR. McINTYRE: Let her  
16 answer.

17 A. It was just hearsay.

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

21 A. Yes, I did hear that.

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

24 THE WITNESS: I'm not sure.

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1 understanding that you had had some problems  
2 with some of the comments he was making on  
3 his way out of the program. Could you  
4 describe that?

5 MS. FREEDMAN: I'm going to  
6 object.

7 MR. McINTYRE: Overruled.

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

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

20 A. Dr. Colvin, on October 18, 2006 -- this  
21 I will never forget -- he was in front of me  
22 and there was a patient with her husband,  
23 and he had a chart opened, and I think I can  
24 mention her name, Eileen Silveira was on the

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1 Could you repeat that?

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

4 MS. FREEDMAN: I object.

5 A. They were ecstatic. They were  
6 ecstatic. They couldn't believe that he  
7 said -- I couldn't believe that he said  
8 that, for the attention that we have always  
9 given him. Anything that Dr. Winer asked,  
10 it was done with his patients. Anything he  
11 asked of the nurses, it was done without  
12 hesitation, without hesitation. Please  
13 forgive me. I'm just, I'm...

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

16 A. No, none whatsoever.

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

19 A. Yes, I am.

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

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

24 Q. In regards to Dr. Quesenberry, it's my

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1 right of him, and he was in front of me, and  
2 he was talking about how, employees going  
3 over to Rhode Island Hospital to, for  
4 employment. And he turned around and he  
5 said, well, Betty is coming over, because  
6 all the patients were asking is Betty coming  
7 over to Rhode Island. And the answer is,  
8 no, I was not. So, he turned around in  
9 front of the patient and her husband and  
10 said, well, Rhode Island Hospital is going  
11 to buy Roger Williams. I was floored. And  
12 I looked up at him, and he said to me, why,  
13 you don't think so, and I said, no, and this  
14 is not the place to discuss this.

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

19 A. Oh, yes, yes, and I'm really, and I'm  
20 just -- I have been there for eleven years;  
21 and when they asked me to look at the  
22 pamphlet with the flooring, I said, oh, I  
23 said, you're including me in this, and they  
24 said, of course, we are including you in it;

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1 and we looked at the floor plan, and I said  
2 it has to be bright. It has to be a bright  
3 color for the patients, and I have the floor  
4 plan here, and they picked out a beautiful  
5 color for the flooring, and the border just  
6 a shade darker, and it's absolutely  
7 beautiful. It really is beautiful, and I  
8 was just, I just thanked them for including  
9 me in that there, and I do have the floor  
10 plan, if you would like to see it. It's  
11 gorgeous. It's gorgeous.

12 Q. And I assume the floor is going to be some  
13 form of tile?

14 A. Yes, yes.

15 MS. WALSH: I have no further  
16 questions.

17 EXAMINATION BY MS. FREEDMAN

18 Q. Hi, Miss Pacheco, my name is Linn Freedman,  
19 and this is Steve Zubiago. We represent  
20 Rhode Island Hospital. You weren't here  
21 when Dr. Winer testified, correct?

22 A. No.

23 Q. So, everything that you know or have heard  
24 are from other people, right?

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1 A. Right, correct.

2 Q. And Dr. Winer always indicated to you that  
3 he felt the nursing staff was very good at  
4 Roger Williams, correct?

5 A. Absolutely.

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

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

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

21 THE WITNESS: Could you repeat  
22 that, please?

23 Q. Let me back up. Is it fair to say that bone  
24 marrow transplant patients are usually

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1 really ill?

2 A. Uh-huh.

3 Q. Yes?

4 A. Yes, they are.

5 Q. You have to answer out loud.

6 A. Oh, I'm sorry. Yes.

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

9 A. Correct.

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

12 A. Correct.

13 Q. And that's an intense time for them,  
14 right?

15 A. Correct.

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

21 A. Correct.

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

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1 A. Correct.

2 Q. And Dr. Winer was asked some questions  
3 during this meeting from Mr. Devereaux  
4 regarding his referrals or his privileges at  
5 Roger Williams and why he hasn't done any  
6 transplants at Roger Williams. Were you  
7 told that?

8 A. No.

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

14 MR. WALSH: Objection.

15 MR. McINTYRE: Yes, I think  
16 she's asked and answered this question. You  
17 have asked it. She's answered the  
18 question.

19 Q. And you weren't told that, right?

20 MR. WALSH: Objection.

21 MR. McINTYRE: I'm going to  
22 sustain the objection. You don't have to  
23 answer that.

24 THE WITNESS: Okay.

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1 Q. And you said that the nurses were upset  
2 about the fact that he said something was  
3 unsafe. You don't know what the nurses were  
4 told, do you?

5 A. No.

6 Q. Do you know what they were told or what you  
7 were told he said was unsafe?

8 MS. WALSH: Objection. She  
9 just answered.

10 Q. No?

11 MR. McINTYRE: Wait a minute.

12 MR. WALSH: She just answered  
13 that. She didn't know what they were  
14 told.

15 MS. FREEDMAN: I'm asking her  
16 what she was told.

17 MR. McINTYRE: This is not a  
18 trial. This is a public meeting. If you  
19 have a real objection, object to it, but  
20 otherwise, let's keep a clean record.

21 MR. McINTYRE: May I proceed.

22 MR. McINTYRE: You may.

23 Q. Miss Pacheco, what were you specifically  
24 told that Dr. Winer said was unsafe?

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1 A. Well, I'm not the maintenance  
2 department, so I really don't know how long  
3 it's going to be closed for; but I assume  
4 it will be closed a few days, anyway.

5 Q. Just a few days?

6 A. Could be a few days. Could be a  
7 week.

8 Q. And the transplant unit has been closed  
9 before, correct?

10 A. Transplant unit has never been closed.

11 Q. They had a water --

12 A. The transplant unit has never been  
13 closed. If it has been shut down, it's only  
14 because they do, not only a renovation, but  
15 they clean out the water system. The  
16 transplant unit is never closed.

17 Q. I meant it was shut down for maintenance  
18 reasons before, correct?

19 A. Correct.

20 Q. And it's true, isn't it, that patients that  
21 treated with Dr. Colvin and Dr. Winer have  
22 left their care from Roger Williams and gone  
23 to Rhode Island Hospital?

24 A. Correct, and that's even the three

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1 A. But he didn't tell me anything was  
2 unsafe.

3 Q. No. I want to know what you were told he  
4 said at this public meeting. What were you  
5 told that he said specifically was unsafe?

6 A. What I just said. I didn't know. I  
7 don't know that. I don't know.

8 Q. So, you weren't told --

9 A. No, I wasn't.

10 Q. He said this was unsafe or this was  
11 unsafe?

12 A. No. The only thing that I heard was  
13 that he just said it was unsafe, but there  
14 was nothing stated as to what that unsafe  
15 was.

16 Q. Okay. All right. Now, you said that the  
17 carpeting was going to be replaced?

18 A. Right.

19 Q. When is that going to happen?

20 A. That's going to happen in July.

21 Q. July. And when that happens, the unit is  
22 going to have to be closed, correct?

23 A. Exactly.

24 Q. How long is it going to be closed for?

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1 transplant patients that should have stayed  
2 at Roger Williams.

3 Q. But patients have left Roger Williams?

4 A. Yes, they have.

5 Q. Just to seek treatment at Rhode Island  
6 Hospital, correct?

7 A. Yes, they have.

8 MS. FREEDMAN: No further  
9 questions.

10 MR. WALSH: No further  
11 questions.

12 MR. McINTYRE: Council?  
13 Mr. Miller?

14 MR. MILLER: No questions.

15 MR. McINTYRE: Thank you very  
16 much, Miss Pacheco.

17 THE WITNESS: You're welcome.

18 MR. McINTYRE: Okay. We have  
19 had some brief discussion regarding  
20 scheduling. We have some vacation schedules  
21 to accommodate. In addition, and more  
22 importantly, we have the report of  
23 Mr. Zimmerman, which is going to be  
24 reasonably shortly, and I would like to

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1 leave at least a one week between the  
2 receipt of that report and the next date of  
3 testimony, which would be Mr. Zimmerman. On  
4 that date, I would like to do a couple of  
5 things. The direct testimony of  
6 Mr. Zimmerman regarding his report and the  
7 questioning of all the parties of  
8 Mr. Zimmerman as well as the final  
9 arguments.

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

15 MR. DEVEREAUX: 26th?  
16 MS. FREEDMAN: 26th.  
17 MR. McINTYRE: Does that sound  
18 reasonable. Does that meet everyone's...  
19 MR. ZUBIAGO: That would be  
20 fine with me. I will call you immediately.  
21 MS. FREEDMAN: At nine?  
22 We will start at nine?  
23 MR. McINTYRE: We are going to  
24 start at nine.

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C-E-R-T-I-F-I-C-A-T-E

1 I, MARY ELLEN HALL, Notary Public, do  
2 hereby certify that I reported in shorthand  
3 the foregoing proceedings, and that the  
4 foregoing transcript contains a true,  
5 accurate, and complete record of the  
6 proceedings at the above-entitled hearing.

7 IN WITNESS WHEREOF, I have hereunto  
8 set my hand and seal this 20th day of July,  
9 2007.

10 MARY ELLEN HALL, NOTARY PUBLIC/  
11 CERTIFIED COURT REPORTER

12 IN RE: BONE MARROW CON APPLICATION OF RIH

13 DATE: JUNE 27, 2007

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1 MS. FREEDMAN: Or 8:30?  
2 MR. McINTYRE: We will start  
3 at nine o'clock.  
4 MR. MILLER: Did you say the  
5 26th?  
6 MR. McINTYRE: Thursday, the  
7 26th, at nine. Okay. Very good. Thank you  
8 all for a good public hearing.  
9 MR. DEVEREAUX: Thank you very  
10 much, Mr. McIntyre.  
11 MS. FREEDMAN: Thank you.  
12 (HEARING ADJOURNED AT 11:16  
13 A.M.)

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