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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA, MISSOULA DIVISION

MONTANA MEDICAL ASSOCIATION, ET. AL.,

Plaintiffs,

and

MONTANA NURSES ASSOCIATION,

Plaintiff-Intervenors,

v.

AUSTIN KNUDSEN, ET AL.,

Defendants.

No. CV-21-108-M-DWM

**DECLARATION OF
BRENT MEAD**

I, Brent Mead, make the following Declaration under penalty of perjury:

1. I am counsel for Defendants in the above action, am competent to testify as to the matters set forth herein, and make this Declaration based on my own personal knowledge and/or belief. I am generally familiar with the claims, materials, documents, and pleadings regarding this matter.

2. Attached as Exhibit 1 is a true and correct copy of excerpts of the deposition of Dr. Lauren Wilson taken on August 3, 2022.

3. Attached as Exhibit 2 is a true and correct copy of excerpts of the deposition of Dr. Bonnie Stephens taken on August 15, 2022.

4. Attached as Exhibit 3 is a true and correct copy of excerpts of the deposition of Dr. David King taken on August 2, 2022.

5. Attached as Exhibit 4 is a true and correct copy of excerpts of the deposition of Dr. David Taylor taken on August 4, 2022.

6. Attached as Exhibit 5 is a true and correct copy of excerpts of the deposition of Dr. Gregory Holzman taken on August 16, 2022.

7. Attached as Exhibit 6 is a true and correct copy of excerpts of Plaintiff-Intervenor's Responses to Defendants' First Combined Discovery Requests dated August 15, 2022.

8. Attached as Exhibit 7 is a true and correct copy of Defendants' 30(b)(6) designation for the Montana Department of Justice dated August 16, 2022.

9. Attached as Exhibit 8 is a true and correct copy of Defendants' 30(b)(6) designation for the Montana Department of Labor and Industry dated August 15, 2022.

10. Attached as Exhibit 9 is a true and correct copy of Defendants' 30(b)(6) designation for the Montana Human Rights Bureau dated August 17, 2022.

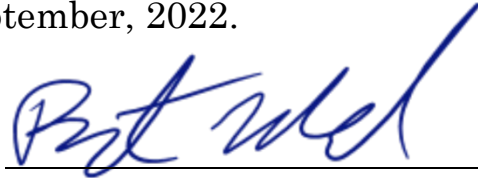
11. Attached as Exhibit 10 is a true and correct copy of the Montana Department of Public Health and Human Services' letter dated August 3, 2022, objecting to deposition topics.

12. Attached as Exhibit 11 is a true and correct copy of excerpts of the deposition of Five Valley Urology's Rule 30(b)(6) designee taken on August 8, 2022.

13. Attached as Exhibit 12 is a true and correct copy of excerpts of the deposition of Western Montana Clinic's Rule 30(b)(6) designee Meghan Morris taken on August 8, 2022.

14. Attached as Exhibit 13 is a true and correct copy of excerpts of the deposition of Providence's Rule 30(b)(6) designee Karyn Trainor taken on August 10, 2022.

DATED this 2nd day of September, 2022.



BRENT MEAD

CERTIFICATE OF SERVICE

I certify that on this date, an accurate copy of the foregoing document was served electronically through the Court's CM/ECF system on registered counsel.

Dated: September 2, 2022

/s/ Brent Mead
BRENT MEAD

Exhibit 1

*Montana Medical Association, et al. v
Austin Knudsen, et al.*

*Lauren Wilson
August 3, 2022*

*Charles Fisher Court Reporting
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Min-U-Script® with Word Index

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MONTANA
3 MISSOULA DIVISION
4 MONTANA MEDICAL ASSOCIATION,
5 et al.,
6 Plaintiffs, No. CV-21-108-M-DWM
7 and
8 MONTANA NURSES ASSOCIATION,
9 Plaintiff-Intervenors,
10 v.
11 AUSTIN KNUDSEN, et al.,
12 Defendants.

13 VIDEOCONFERENCE/VIDEOTAPED DEPOSITION
14 UPON ORAL EXAMINATION OF
15 LAUREN WILSON

16 BE IT REMEMBERED, that the
17 videoconference/videotaped deposition upon oral
18 examination of Lauren Wilson, appearing at the
19 instance of the Defendants, was taken at 2704 Glen
20 Drive, Missoula, Montana, on Wednesday,
21 August 3, 2022, beginning at the hour of

Page 2

1 9:02 a.m., pursuant to the Federal Rules of Civil
2 Procedure, before Mary R. Sullivan, Registered
3 Merit Reporter, Certified Realtime Reporter, and
4 Notary Public.
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Page 3

A P P E A R A N C E S

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4 et al.:
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Page 4

A P P E A R A N C E S

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5 Videoconference)
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17 **ALSO PRESENT:** Nicole Tomac, Videographer
18
19
20
21
22
23
24
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Page 5

I N D E X

DEPONENT: PAGE:

LAUREN WILSON

Examination by Mr. Corrigan..... 8

Examination by Mr. Graybill..... 130

EXHIBITS:

Exhibit 6 "DECLARATION AND EXPERT REPORT OF LAUREN WILSON, M.D."..... 63

Exhibit 7 Sep 23, 2021 Tweet..... 81

Page 7

WEDNESDAY, AUGUST 3, 2022

THE VIDEOGRAPHER: This is the video-recorded and videoconference deposition of Dr. Lauren Wilson taken in the United States District Court for the District of Montana, Missoula Division. Cause No. CV-21-108-M-DWM, Montana Medical Association, et al., and Montana Nurses Association vs. Austin Knudsen, et al. Today is August 3rd, 2022. The time is 9:03 a.m.

The deposition is being taken remotely with the witness appearing via video from Missoula, Montana.

The court reporter is Mary Sullivan, and the video operator is Nicole Tomac of Fisher Court Reporting.

The deposition is being taken pursuant to notice.

All parties have agreed to conduct this deposition by videoconference.

I would now ask the attorneys to identify themselves, who they represent, and whoever else is present. Please note from where you are appearing.

MR. CORRIGAN: Hi. This is Christian

Page 6

S T I P U L A T I O N S

It was stipulated by and between counsel for the respective parties that the deposition be taken by Mary R. Sullivan, Freelance Court Reporter and Notary Public for the State of Montana, residing in Missoula, Montana.

It was further stipulated and agreed by and between counsel for the respective parties that the deposition be taken in accordance with the Federal Rules of Civil Procedure.

It was further stipulated and agreed by and between counsel for the respective parties and the deponent that the reading and signing of the deposition would be expressly reserved.

Page 8

Corrigan with the Montana Attorney General's office appearing remotely from Helena, Montana. Also on the line are Brent Mead and David Dewhirst from the Montana Attorney General's Office as well, all representing defendants.

MR. GRAYBILL: This is Raph Graybill representing plaintiff-intervenor, the Montana Nurses Association, appearing by video from Helena, Montana.

MS. MAHE: And this is Katie Mahe representing the plaintiffs in this matter appearing from Missoula, Montana.

THE VIDEOGRAPHER: The court reporter will now administer the oath.

Thereupon,

LAUREN WILSON,

a witness of lawful age, having been sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. CORRIGAN:

Q. All right. Well, let's get started. Good morning, Dr. Wilson.

A. Good morning.

Q. My name's Christian Corrigan. I'm the

1 ask whether they were going to appear, and we
 2 didn't discuss the content of anything that we
 3 were seeing.
 4 **Q. Okay. And we spoke a second ago about**
 5 **the -- the vaping trial and your participation in**
 6 **that. Other than that trial, have you ever**
 7 **appeared as an expert witness?**
 8 A. No, I have not.
 9 **Q. Okay. Have you ever been retained as a**
 10 **consultant for a lawsuit?**
 11 A. I'm not sure what that means exactly.
 12 I've written a report before, but it didn't end up
 13 being used.
 14 **Q. Okay.**
 15 A. Yeah.
 16 **Q. Have you ever been subject to a**
 17 **malpractice lawsuit or a malpractice complaint?**
 18 A. No, I have not.
 19 **Q. Have you ever been the subject of an**
 20 **ethical complaint or ethics investigation in your**
 21 **professional or academic career?**
 22 A. No, I have not.
 23 **Q. All right. So let's talk a little bit**
 24 **about your background. Is it fair to say from your**
 25 **CV that your specialty is pediatrics?**

1 **you need to stop and take a drink, anything like**
 2 **that, please feel free. You'll see me reach for my**
 3 **coffee from time to time. So please feel free to**
 4 **do that, it's not considered rude or anything along**
 5 **those lines. I just wanted to make sure and -- and**
 6 **mention that.**
 7 A. Thank you.
 8 **Q. How does your practice as -- as a**
 9 **pediatrician and what you do day to day, how does**
 10 **that relate to public health? How does that**
 11 **interact with public health?**
 12 A. So public health -- health for the larger
 13 community is something that pediatricians learn
 14 about in residency -- in the residency training
 15 and in medical school. We are not masters of
 16 public health, we are not public health officials,
 17 but we learn about the basic principles of public
 18 health.
 19 **Q. Is it fair to say you have an interest in**
 20 **public health issues?**
 21 A. Yes.
 22 **Q. But you wouldn't necessarily consider**
 23 **yourself a public health expert. It just happens**
 24 **to overlap with what you do.**
 25 A. No, I would not consider myself --

1 A. I'm -- I'm board certified in both
 2 general pediatrics and pediatric hospital
 3 medicine, so I have those two specialty areas.
 4 **Q. Okay. Tell me a little bit about your**
 5 **day-to-day responsibilities with**
 6 **Providence St. Patrick's and Community Medical**
 7 **Center.**
 8 A. Yeah. So as a pediatric hospitalist, I
 9 practice in the hospital setting. So when
 10 children require admission to the hospital for a
 11 serious illness, I'm the one who evaluates them
 12 either in the emergency room or takes a phone call
 13 from a colleague at a smaller hospital around
 14 Missoula, and takes the information and then
 15 admits the child to the hospital. So I assess
 16 them, evaluate them, set a treatment plan, and
 17 throughout their hospital stay I take care of
 18 them, I see them at least daily, and interface
 19 with the multidisciplinary team, including nursing
 20 and other therapists like speech language
 21 pathology and nutrition and all sorts of other
 22 people in executing that treatment plan until the
 23 child's well enough to be discharged from the
 24 hospital.
 25 **Q. Great. One thing I forgot to mention, if**

1 **Q. Okay.**
 2 A. -- an expert.
 3 **Q. In your role -- In your current role where**
 4 **you're employed, do you see it as part of your role**
 5 **to educate the public about scientific research and**
 6 **public health issues?**
 7 A. So I am a member of the Montana Chapter
 8 of the American Academy of Pediatrics, and that
 9 chapter and our larger organization, which
 10 represents around 70,000 pediatricians in the
 11 U.S., see that as an important role of the
 12 pediatrician is to educate parents and educate
 13 children about their personal health.
 14 **Q. Great. And I have some questions later**
 15 **about the American Academy of Pediatrics we'll get**
 16 **to, and I -- I definitely want to come back to**
 17 **this -- to this topic.**
 18 **Would you consider yourself a public**
 19 **health advocate?**
 20 A. I would consider myself an advocate for
 21 the health of children.
 22 **Q. Do you think you have a responsibility to**
 23 **combat disinformation about public health issues**
 24 **and children's health issues?**
 25 A. In helping promote children's health, I

1 think I have an opportunity to highlight true
2 facts and to draw attention to things that can be
3 misleading so that people can make better
4 decisions.

5 **Q. And do you think you have a responsibility**
6 **to be honest and direct with the public regarding**
7 **public health issues?**

8 A. I absolutely do.

9 **Q. Turning now to your CV, is it correct that**
10 **you're a member of the board of trustees of the**
11 **Montana Medical Association?**

12 A. That's correct.

13 **Q. And is it true that the Montana Medical**
14 **Association is a plaintiff in this case?**

15 A. That's correct.

16 **Q. Were you involved in any decisions related**
17 **to participation in this particular lawsuit by the**
18 **Montana Medical Association in your role as a**
19 **member of the board of trustees?**

20 A. I believe that the board -- the executive
21 board, of which I am not a member, was the entity
22 that made a decision to be a plaintiff on this
23 lawsuit. The board of trustees was kept informed
24 about the lawsuit and the fact that we were a part
25 of it.

1 Montana.

2 **Q. What legislation have you testified**
3 **against?**

4 A. There were multiple pieces of legislation
5 that the Montana chapter of the American Academy
6 of Pediatrics testified about, all impacting child
7 health. I think there were probably at least 40
8 bills that we testified on last year, but I'm not
9 sure of the exact number.

10 **Q. Has all your testimony been in your**
11 **capacity with the Montana chapter of the American**
12 **Academy of Pediatrics?**

13 A. Yes.

14 **Q. Okay. Did you give any federal or state**
15 **campaign contributions during the 2020 election**
16 **cycle?**

17 A. Yes, I did.

18 **Q. What were those?**

19 A. I don't remember. I gave multiple
20 contributions. I'd have to look them up.

21 **Q. Did you give any contributions to the**
22 **opponent of Governor Greg Gianforte?**

23 A. I believe I did.

24 **Q. Did you give any contribution to the**
25 **opponent of Attorney General Austin Knudsen?**

1 **Q. Did you have any role with either the**
2 **Montana Medical Association or the Montana Nurses**
3 **Association in the lead up to the passage of**
4 **House Bill 702?**

5 A. I did not have a role with the Montana
6 Nurses Association. With the Montana Medical
7 Association there were multiple physicians who
8 were speaking up or testifying about the impact of
9 this bill on the health of Montanans in general
10 and specifically on health care setting.

11 **Q. Do you have any professional or financial**
12 **connection to the Montana Nurses Association other**
13 **than being retained as an expert witness in this**
14 **case?**

15 A. No, I have no connection.

16 **Q. So you haven't provided services to them**
17 **in any capacity prior to being designated as an**
18 **expert witness?**

19 A. No.

20 **Q. Okay. Have you in the -- well, let's just**
21 **say in the last five years, have you ever testified**
22 **in support of or against legislation at the state**
23 **or federal level?**

24 A. Yes. I have testified against or in
25 support of legislation at the state level in

1 A. I believe I did, but I'm not sure. I
2 would have to check.

3 **Q. Have you given any federal or state**
4 **campaign contributions during the 2022 election**
5 **cycle?**

6 A. Yes, I have.

7 **Q. And what have those been?**

8 A. Again, I've given multiple contributions,
9 so I don't have a complete list.

10 **Q. Do you hold any positions in any state or**
11 **local political parties?**

12 A. Yes. I am currently the vice chair and
13 acting chair of the Missoula County Democratic
14 Central Committee.

15 **Q. Do you hold any positions in any civic**
16 **organizations or public policy organizations or**
17 **advocacy organizations other than what we've**
18 **already discussed?**

19 A. No, I don't believe I do.

20 **Q. Have you ever been employed by a political**
21 **campaign for state, federal, or local office?**

22 A. No, I have not.

23 **Q. Have you ever served as -- as an advisor,**
24 **even unpaid, to a political campaign?**

25 A. No.

1 with at least those two people.
 2 **Q. And then do you sit on any advisory boards**
 3 **or councils or task forces or any type of a entity**
 4 **that is either set up, sanctioned, or in any form**
 5 **associated with the Montana Department of Health**
 6 **and Human Services?**
 7 A. I sit on the regional genetics panel of
 8 which there are some members of DPHHS, but I don't
 9 believe that DPHHS is the driving force behind it.
 10 **Q. In the past have you been on any boards,**
 11 **task forces, anything of that nature, that were**
 12 **sanctioned or put together in any capacity by the**
 13 **Montana Department of Health and Human Services?**
 14 **MR. GRAYBILL:** Object to the form of the
 15 question; compound.
 16 You can answer, if you know, or Christian
 17 can rephrase.
 18 A. Sure. I can answer, I think.
 19 So DPHHS put together a phone call that
 20 was weekly during, you know, Delta -- the Delta
 21 wave of COVID when we had very high
 22 hospitalizations, and I reported out on pediatric
 23 hospitalization numbers for Community Medical
 24 Center.
 25 ///

1 **Q. When the media interviews you regarding**
 2 **the COVID-19 vaccines, would you say they consider**
 3 **you an expert on the subject matter?**
 4 A. I would say that I am clear with the
 5 media that I am a pediatrician who prescribes and
 6 supports the COVID-19 vaccine for my patients, and
 7 that our organization, the AAP, is supportive of
 8 the COVID-19 vaccine. But when you ask if I'm a
 9 vaccine expert, I am not a basic researcher, I'm
 10 not a vaccine scientist, I'm not a virologist.
 11 **Q. Do you think the media considers the**
 12 **American Academy of Pediatrics experts on the**
 13 **COVID-19 vaccine, properly or improperly?**
 14 **MR. GRAYBILL:** Objection. Foundation and
 15 speculation.
 16 **MS. MAHE:** Join.
 17 **MR. GRAYBILL:** You can answer, if you
 18 know.
 19 A. I think the media sees the AAP as an
 20 organization that represents the opinions and
 21 advice that their pediatrician might be able to
 22 give them as interpreters of guidelines and of the
 23 science on the COVID-19 vaccine. When you say
 24 "expert," we're not the ones producing the
 25 science, but we are experts in child health, we're

1 **BY MR. CORRIGAN:**
 2 **Q. Do you remember approximately when you**
 3 **gave your first statement to the media regarding**
 4 **COVID-19?**
 5 A. I don't.
 6 **Q. Have you given media interviews about any**
 7 **subjects other than COVID-19 and the COVID-19**
 8 **vaccines?**
 9 A. Yes.
 10 **Q. Let's just -- Let's just say in the last**
 11 **ten years.**
 12 A. Yes.
 13 **Q. What subjects were those?**
 14 A. I gave a media interview about
 15 gender-affirming care, and what that means. I
 16 can't recall other topics. Oh, I gave a media
 17 interview on the process of prior authorization
 18 for insurance approvals.
 19 **Q. Do you recall when you gave your first**
 20 **statement to the media regarding the COVID-19**
 21 **vaccine, specifically, and not just COVID-19?**
 22 A. I don't recall.
 23 **Q. Would you consider yourself an expert on**
 24 **the COVID-19 vaccine?**
 25 A. No.

1 experts in how to communicate with families, and
 2 we do that in our capacity with the media.
 3 **MS. MAHE:** This is Katie. And I'm sorry
 4 to interrupt. I was wondering, Brent, if we could
 5 just have an agreement that when Raph objects,
 6 that we join so that I don't have to jump in and
 7 make it even more complex?
 8 **MR. CORRIGAN:** Yeah, that's fine. I'd
 9 prefer that.
 10 **MS. MAHE:** Okay.
 11 **BY MR. CORRIGAN:**
 12 **Q. Did you make any public statements to the**
 13 **media or statements on social media about the**
 14 **COVID-19 vaccine prior to November 3rd, 2020?**
 15 A. I don't recall.
 16 **Q. Did you make any statements about the**
 17 **safety or efficacy of the COVID-19 vaccine or**
 18 **Operation Warp Speed prior to November 3rd, 2020?**
 19 A. I don't recall.
 20 **Q. And just to confirm, it's your testimony**
 21 **that you have not deleted social media posts en**
 22 **masse that would cover the period prior to**
 23 **November 3rd, 2020.**
 24 **MR. GRAYBILL:** Objection.
 25 Mischaracterizes her testimony.

1 facts or data in advance of writing the report?

2 A. No.

3 Q. Did they provide you with any assumptions
4 to make in writing your report?

5 A. No.

6 Q. Were you the sole author of the report?

7 A. Yes.

8 MR. GRAYBILL: And I'm just going to
9 lodge an objection here to the extent we get into
10 drafts or communications. Those are obviously
11 protected by Rule 26, and I'll instruct Lauren not
12 to discuss anything that we talked about, not to
13 discuss drafts. Christian can ask you --

14 Mr. Corrigan, excuse me -- can ask you about data
15 or facts or assumptions we gave you. Beyond that,
16 I'm going to instruct you not to answer.

17 BY MR. CORRIGAN:

18 Q. Did you have any other scientific help in
19 constructing -- did anyone -- did any other doctor
20 or any other scientist help you write your report
21 other than, say, using research, but did any other
22 individual help you --

23 A. No.

24 Q. -- that's a scientist or a doctor?

25 A. I'm sorry. No.

1 where some of those pieces of information are to
2 be found, I included it.

3 Q. And what's the difference in your process
4 for citing any sources for expert report versus,
5 say, what you would highlight for the public on
6 Twitter?

7 A. I don't understand the question.

8 Q. So in the expert report you obviously
9 can't cite every single study that's out there, you
10 can't cite every piece of research. You have to
11 pick and choose what you cite; is that correct?

12 A. Correct.

13 Q. And does the same apply to either giving
14 media interviews or making statements on Twitter
15 that highlight particular studies in that you have
16 to decide what's worth highlighting and what -- and
17 what's not worth highlighting?

18 A. I guess I'm not quite understanding the
19 question still. When I give --

20 Q. That's fine. That's fine.

21 A. Okay.

22 Q. Let me see if I can rephrase to help you.

23 What's the difference in your thought
24 process for what you would include in an expert
25 report -- in an expert report versus what you

1 Q. In forming your opinion for your expert
2 report, did you rely on the opinions of anyone or
3 anything not contained within the expert report?

4 A. Can you clarify rely on the opinions of
5 someone? Is that the research that I reviewed or?

6 Q. Yeah. So are there -- Is there any
7 research that you consulted for purposes of the
8 expert report that you did not cite in the expert
9 report?

10 A. The expert report is on the basis of my
11 training, experience, and knowledge as a
12 pediatrician, and I cited three sources just to
13 show the impact of vaccines on vaccine-preventable
14 diseases, the CDC, and the red book, which is a
15 resource that we use frequently.

16 Q. Is it fair to say that there's a great
17 deal of medical research out there on vaccines and
18 vaccine preventable diseases? Is it fair to say
19 that there's a lot of research out there?

20 A. Yes.

21 Q. How do you decide, when forming an expert
22 opinion, which studies to rely on?

23 A. I write what I know from my training,
24 knowledge, and experience, and if I felt that a
25 source would be beneficial to further clarify

1 would, say, share with the public as it pertains to
2 information related -- relating to the COVID-19
3 vaccine?

4 A. So my expert report I was asked to -- to
5 write my experience as a pediatrician in a
6 hospital and my knowledge of patient safety and
7 the impact of vaccination on keeping patients safe
8 and keeping my colleagues and coworkers safe. So
9 that subject matter is different than COVID-19
10 vaccination itself, yeah.

11 Q. So is it safe to say that you were not
12 asked to comment on the efficacy of the COVID-19
13 vaccines for purposes of this report?

14 A. So I was not asked to comment on the
15 efficacy of the vaccine itself, no.

16 Q. What about the efficacy of the vaccine in
17 preventing transmission?

18 A. I was not asked to comment on that.

19 Q. All right. So I want to take you to
20 paragraph 10 of your report. And paragraph 10
21 begins with the phrase "Vaccination is an effective
22 way of preventing the transmission of disease and
23 of preventing death from disease."

24 Is that correct?

25 A. Correct.

1 Q. And then you go on to discuss historical
2 data. I think the two examples there are pertussis
3 and measles, and then you cite a -- a study, a -- a
4 footnote, a study from Roush, Murphy, et cetera.

5 Is that -- that a fair characterization of
6 that paragraph?

7 A. Yes.

8 Q. Does the statement "Vaccination is an
9 effective way of preventing the transmission of
10 disease" apply to all vaccines or just some?

11 A. Vaccines differ in their efficacy, but
12 what I'm saying here is that the technique of
13 vaccination or priming the immune system prevents
14 transmission of disease generally, yes.

15 Q. What metric defines whether a vaccine is
16 an effective way of preventing transmission of a
17 disease?

18 A. So there are different ways to conduct
19 studies on transmission of disease. You can
20 randomize people, as they did in the initial
21 vaccine trials, and you can then regularly test
22 them to see if they have become infected, and with
23 that you come to an efficacy of a vaccine against
24 infection, but you can also talk about efficacy
25 against symptomatic infection or against

1 A. I don't -- I don't recall specific
2 sentences from that study. I read it and then
3 skimmed through it this morning, but that sounds
4 accurate.

5 BY MR. CORRIGAN:

6 Q. And just to confirm, you're acknowledging
7 that influenza was not covered in that study?

8 A. So they didn't report the same reductions
9 in disease on influenza that they did for other
10 vaccine-preventable diseases, to my knowledge.

11 Q. And does that study say that studying the
12 effectiveness of vaccines for influenza -- of the
13 influenza vaccine requires a different approach
14 than for other vaccines?

15 MR. GRAYBILL: Objection. Foundation.

16 A. Yes, that's the -- the sentence you just
17 read says that, yes.

18 BY MR. CORRIGAN:

19 Q. Would the approach for studying the
20 effectiveness of the COVID-19 vaccine on preventing
21 transmission be more similar than the -- to the
22 approach of studying the influenza vaccine than
23 other types of vaccines such as the ones that were
24 covered in the 2007 study that you cited?

25 MR. GRAYBILL: Objection. Oh, excuse me,

1 hospitalization or against -- or in preventing
2 death.

3 Q. And earlier you told me that in reviewing
4 your expert report you also reviewed the studies
5 that were cited in your expert report. Is that
6 correct?

7 A. Correct.

8 Q. And that includes this Roush/Murphy study
9 cited in paragraph 10.

10 A. Correct.

11 Q. Is it correct that that study was from
12 2007?

13 A. Correct.

14 Q. And is it correct that influenza was not
15 covered in that study?

16 A. It was not.

17 Q. And is it correct that the study said [As
18 Read]: "Assessing the effects of -- of the
19 influenza vaccine requires a different approach
20 than is used for other vaccine-preventable diseases
21 because the prevalent influenza viruses and vaccine
22 changed annually, and yearly vaccination is
23 required for protection."

24 Does that sound accurate?

25 MR. GRAYBILL: Objection. Foundation.

1 Christian. Objection. Form and foundation.

2 BY MR. CORRIGAN:

3 Q. If you understand the question -- If you
4 don't understand the question I can -- I can
5 rephrase it.

6 A. Go ahead and rephrase it. Yeah, thank
7 you.

8 Q. So the 2007 study didn't cover influenza
9 and said that influenza essentially requires a
10 different approach than is used for other
11 vaccine-preventable diseases. Does that logic also
12 apply for studying the COVID-19 vaccine?

13 A. So I didn't write the study, but my
14 interpretation of that is that we reformulate the
15 influenza vaccine every year based on circulating
16 strains because the influenza virus is one that
17 has antigenic drift and shift, so it changes over
18 time.

19 The COVID -- The SARS-CoV-2 also changes
20 over time in different ways than the influenza
21 virus, so it makes it challenging to come up with
22 one specific efficacy data point because we are
23 looking at what is essentially a different virus
24 that comes up in different peaks, so we have to
25 generate new data all the time, and you can't

1 encompass that in one single number.
2 **Q. So for the line vaccine -- "Vaccination is**
3 **an effective way of preventing transmission of**
4 **disease," is there anything in paragraph 10 that**
5 **you cite or elsewhere in the report that would**
6 **support the contention that vaccination is an**
7 **effective way in preventing transmission of**
8 **COVID-19?**

9 A. I don't cite any specific articles on
10 vaccination and its efficacy in preventing the
11 transmission of COVID-19 in this report.

12 **Q. Are you aware of any research on the**
13 **COVID-19 vaccine's efficacy in preventing infection**
14 **or transmission?**

15 **MR. GRAYBILL:** Objection. Relevance.
16 She wasn't disclosed as a vaccine efficacy expert.
17 I think she's testified to the same here today.

18 You can, of course, answer if you know
19 the answer.

20 A. I have reviewed multiple studies on the
21 efficacy of the COVID-19 vaccine, including the
22 initial study that was submitted for FDA
23 authorization.

24 **BY MR. CORRIGAN:**

25 **Q. And has the efficacy of the vaccine for --**

1 after infection and immunity versus -- and
2 immunity after vaccination, correct, yeah.

3 **Q. What does the science say regarding**
4 **natural immunity in COVID-19?**

5 **MR. GRAYBILL:** Objection. Relevance;
6 form; and foundation.

7 A. Previous infection from -- with COVID-19
8 provides some protection against severe outcomes
9 and reinfection, as does vaccination.

10 **BY MR. CORRIGAN:**

11 **Q. Is natural immunity from COVID-19 more or**
12 **less durable than immunity required through**
13 **vaccination?**

14 **MR. GRAYBILL:** Excuse me. Same
15 objections. It's -- Relevance; it's outside the
16 scope of her disclosure. And that's my only
17 objection.

18 A. I'm not -- I don't have precise numbers
19 on that to share today, so they both provide some
20 protection.

21 **BY MR. CORRIGAN:**

22 **Q. Are you familiar with any studies**
23 **beginning in June of 2021 regarding waning immunity**
24 **to COVID-19 after receiving the COVID-19**
25 **vaccinations?**

1 **for preventing either infection or transmission**
2 **changed from either the original variant to the**
3 **Delta variant to the now Omicron variant?**

4 **MR. GRAYBILL:** Same objection.
5 Relevance; outside the scope of her disclosure.

6 **BY MR. CORRIGAN:**

7 **Q. So before I get in to the next line of**
8 **questioning --**

9 **THE COURT REPORTER:** I didn't get an
10 answer.

11 **MR. CORRIGAN:** Oh.

12 A. Yes, it has changed over time, and that's
13 why we continue to gather new information.

14 **BY MR. CORRIGAN:**

15 **Q. So before I go on to the next line of**
16 **questioning, 'cause this may save us some time, I**
17 **do want to be very clear here that you were not**
18 **asked to give any expert opinion on whether**
19 **vaccination is an effective way of preventing the**
20 **transmission of disease. That is not what your**
21 **testimony is aimed at.**

22 A. Correct.

23 **Q. Are you familiar with studies regarding**
24 **natural immunity in COVID-19?**

25 A. I have reviewed some studies on immunity

1 A. I don't know if you're referring to a
2 specific study, but it's a commonly acknowledged
3 phenomenon that vaccination provides immunity
4 which wanes over time for COVID-19.

5 **Q. Yeah. So let's -- let's -- let's explore**
6 **that a little bit more.**

7 **Is it true -- So I think you just**
8 **acknowledged that vaccination immunity wanes over**
9 **time, and is it correct that that is the basis for**
10 **the need for what's commonly referred to as a**
11 **booster shot to a -- a disease like COVID-19?**

12 **MR. GRAYBILL:** Again, objection.
13 Relevance. I think this is far afield from what
14 she was disclosed to talk about, and I'll also
15 object on the basis of foundation.

16 **MS. MAHE:** Yeah. And form from me.
17 Mary, did you get that?

18 **THE COURT REPORTER:** Yes.

19 **MS. MAHE:** Okay.

20 **THE DEPONENT:** Should I answer that
21 anyway, then?

22 **MR. GRAYBILL:** If you know the answer,
23 you can answer.

24 **THE DEPONENT:** Yeah.

25 A. So we've just talked about a number of

Page 105

1 **BY MR. CORRIGAN:**
 2 **Q. Have you ever been involved in making**
 3 **decisions about unvaccinated healthcare workers and**
 4 **their role as it relates to interacting with**
 5 **patients?**
 6 A. No, I have not been involved. The
 7 decision would, I think, be made by different
 8 members of the hospital staff who have access to
 9 employees' records.
 10 **Q. So generally you work alongside other**
 11 **hospital employees without knowledge of their**
 12 **vaccination status. Is that correct?**
 13 A. I know that everyone has gone through the
 14 onboarding process and has been asked to provide
 15 proof of vaccinations, so I generally assume that
 16 those I work with are vaccinated and protected.
 17 The exception is with COVID-19 as there is
 18 currently a -- a process for obtaining a waiver.
 19 **Q. And do you know of anyone in your work**
 20 **environment that has received a waiver for the**
 21 **COVID-19 vaccination?**
 22 A. I've not got direct information to prove
 23 that one way or the other, but I think I know of
 24 someone in my work environment who's received a
 25 waiver.

Page 106

1 **Q. Same question as it relates to influenza.**
 2 **Are you aware of employees at your work environment**
 3 **who have not received their influenza vaccine as**
 4 **it's supposed to be given seasonally?**
 5 A. I don't think I know of anyone in my work
 6 environment who has not obtained the seasonal
 7 influenza vaccine.
 8 **Q. Have you ever seen -- We'll -- We'll just**
 9 **go back -- Let's go back ten years. Have you ever**
 10 **been in a situation where special precautions have**
 11 **been taken due to an unvaccinated healthcare**
 12 **worker?**
 13 A. So we verify that everyone is vaccinated
 14 -- let's talk about pre-COVID -- so that we
 15 generally are not in the position of having to
 16 take special precautions, and I personally have
 17 not been involved in any situation in which I've
 18 been in -- in -- you know, having to decide or,
 19 you know, anyone I supervise having to decide
 20 about their work duties as a result of their
 21 vaccine status.
 22 **Q. So that -- that brings me back to**
 23 **paragraph 22 of your expert report, and that second**
 24 **sentence which says [As Read]: "It is also my**
 25 **opinion that healthcare settings must be able to**

Page 107

1 condition and treat healthcare workers differently
 2 based on actual knowledges of their immunity
 3 status."
 4 The full quote is [As Read]: "in order to
 5 secure a safe work environment and secure a safe
 6 environment for patients."
 7 Do you have any examples of a healthcare
 8 setting conditioning and treating healthcare
 9 workers differently based on actual knowledge of
 10 their immunity status?
 11 A. So your question for me prior to this had
 12 been have I personally been involved in any -- any
 13 situations in which we had to decide to treat
 14 someone differently, and I am not really in a
 15 supervisory role for other employees, so that's
 16 not really been my purpose, but I do know that,
 17 you know, there are people who are unimmunized for
 18 certain diseases or unprotected because they, you
 19 know, maybe were medically unable to receive a
 20 vaccine that they would have liked to have gotten,
 21 or they didn't have a robust immune response to a
 22 vaccine. And for those people I believe that it's
 23 important to treat them differently in order to
 24 keep everyone safe. And, in fact, I take my
 25 guidance from, you know, the CDC's infection

Page 108

1 prevention guidelines which I cited that said, you
 2 know, what hospital precautions must be taken with
 3 different diseases. And, you know, one of -- one
 4 of -- one great example is that, you know, if you
 5 are going into a room with someone with measles,
 6 you should be vaccinated. You should not send an
 7 unprotected worker with no immunity to measles
 8 into a room of someone with measles, and that is
 9 the CDC guidance and that is the guidance that we
 10 follow in trying to keep patients safe from
 11 nosocomial or hospital-transmitted infections. So
 12 to do that I would have to know someone's vaccine
 13 status in order to -- to exclude them from that
 14 setting.
 15 **Q. So your opinion in the second sentence of**
 16 **paragraph 22 is based on CDC guidance and your**
 17 **personal experience? Is that correct?**
 18 A. It's based on CDC guidance; to some
 19 extent my personal experience, but again, I don't
 20 supervise employees or make these decisions, but
 21 it's also based on my medical knowledge from my
 22 training and knowledge of how diseases are
 23 transmitted and the fact that, you know,
 24 vaccination is an important layer of protection in
 25 preventing transmission of disease including in

Exhibit 2

*Montana Medical Association, et al. v
Austin Knudsen, et al.*

*Bonnie Stephens
August 15, 2022*

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Page 13

1 declaration.

2 **Q. Okay. And so other than your**

3 **conversations with counsel -- I'm not asking for**

4 **anything that you discussed with Justin-- did you**

5 **review any studies to prepare for your deposition**

6 **today?**

7 A. No.

8 **Q. Did you review any infection control**

9 **policies at any hospital you're employed at --**

10 A. No.

11 **Q. -- to prepare today?**

12 **Did you review any staff vaccination**

13 **policies at any of the facilities you're employed**

14 **at --**

15 A. No.

16 **Q. -- to prepare today?**

17 A. No.

18 **Q. Okay. Have you ever been subject to a**

19 **medical malpractice lawsuit?**

20 A. No.

21 **Q. Have you ever been the subject of an**

22 **ethical complaint or ethics investigation in your**

23 **professional career?**

24 A. No.

25 **Q. Did the plaintiffs supply you any facts or**

Page 14

1 **data in advance of writing your report?**

2 A. No.

3 **Q. Did they provide you with any assumptions**

4 **for your report?**

5 A. No. We had a conversation about me

6 writing the report, and then I -- I did so.

7 **Q. Okay. And so along with that, were you**

8 **the sole author of your report?**

9 A. Yes.

10 **Q. In forming the opinions found in your**

11 **report, did you rely on the opinions of anyone or**

12 **anything not cited or contained in your report?**

13 A. No.

14 **Q. And finally, are all of the studies and**

15 **research you used to form the opinions in your**

16 **report, are all of those studies and research found**

17 **within your expert report?**

18 **MR. COLE:** Object to form.

19 You can answer.

20 A. So I -- I wrote my opinion, I -- I didn't

21 cite any research. I -- I was not using

22 research -- specific -- specific research to -- to

23 formulate my opinion.

24 **Q. Okay. So Dr. Stephens, can you -- Can you**

25 **please state the scope of the opinions that you're**

Page 15

1 **offering in your report?**

2 **MR. COLE:** Object to form.

3 A. I don't understand your question.

4 **BY MR. MEAD:**

5 **Q. Sure. So Dr. Stephens, what are you being**

6 **asked to testify to in your expert report?**

7 **MR. COLE:** Object to form, and, you know,

8 we're not gonna discuss any conversations you and

9 I had, but you can answer the question under those

10 parameters.

11 A. So I am - what I have provided in my

12 report is my opinion about the subject matter.

13 **BY MR. MEAD:**

14 **Q. And Dr. Stephens, what is that subject**

15 **matter?**

16 **MR. COLE:** Object to form.

17 A. The subject matter of -- of vaccinations

18 and House Bill 702.

19 **BY MR. MEAD:**

20 **Q. Okay. And the -- Is it correct to say**

21 **that the basis for your opinions is your personal**

22 **experience and knowledge?**

23 **MR. COLE:** Object to form.

24 Mischaracterizes her report.

25 A. I guess I'm not sure what you're asking.

Page 16

1 **BY MR. MEAD:**

2 **Q. So Dr. Stephens, looking at the big**

3 **picture of your report, can you explain the basis**

4 **for the opinions that you're reaching?**

5 **MR. COLE:** Yeah. Object to form.

6 A. I can say -- I can say that my opinion

7 is -- is based on my expertise in my clinical

8 field. I don't know if that's what you're looking

9 for, but...

10 **BY MR. MEAD:**

11 **Q. And -- And can you -- Sorry. Strike that.**

12 **So Dr. Stephens, what is your clinical**

13 **field?**

14 A. So I am a neonatologist and a

15 developmental and behavioral pediatrician.

16 **Q. Okay. And Dr. Stephens, I want to turn to**

17 **Exhibit 22, your CV real quick. And give me one**

18 **moment to pull up the pages.**

19 **So looking at -- it will be pages 4**

20 **through 6, the section that is labeled "Peer**

21 **Reviewed Publications."**

22 A. Okay.

23 **Q. Do any of those publications concern the**

24 **efficacy of any vaccine?**

25 A. No.

Page 17

1 **MR. COLE:** Object -- Object to form.
 2 **BY MR. MEAD:**
 3 **Q. Dr. Stephens, do any of those peer**
 4 **reviewed articles concern the efficacy of infection**
 5 **control practices at any healthcare setting?**
 6 **MR. COLE:** Object to form. It's vague.
 7 A. No.
 8 **BY MR. MEAD:**
 9 **Q. Okay. And so turning to the next section**
 10 **of your CV, which is labeled "Abstracts" from pages**
 11 **6 to 8.**
 12 **Dr. Stephens, do any of those abstracts**
 13 **concern the efficacy of any vaccine?**
 14 **MR. COLE:** Object to form.
 15 A. No.
 16 **BY MR. MEAD:**
 17 **Q. And Dr. Stephens, do any of those**
 18 **abstracts concern infection control practices --**
 19 **MR. COLE:** Object to form.
 20 **BY MR. MEAD:**
 21 **Q. -- in any healthcare setting?**
 22 **MR. COLE:** Sorry. Object to form.
 23 A. No.
 24 **BY MR. MEAD:**
 25 **Q. Thank you, Dr. Stephens.**

Page 18

1 **So I think I want to turn now to your**
 2 **declaration labeled Exhibit 21, and start with**
 3 **paragraph 16. Strike that.**
 4 **I think I have the wrong paragraph on**
 5 **here. Paragraph -- Dr. Stephens, I'd like to turn**
 6 **to paragraph 15, which is the bottom of page 6.**
 7 **The second sentence reads, "In my opinion,**
 8 **every eligible healthcare provider should be**
 9 **vaccinated against vaccine preventable diseases."**
 10 **Is that correct?**
 11 A. That's correct.
 12 **Q. Dr. Stephens, what did you base this**
 13 **opinion on?**
 14 A. The fact that vaccine-preventable
 15 diseases are, in large part, preventable by
 16 vaccines, and that if we are working with
 17 vulnerable populations, we should be protecting
 18 ourselves from -- and our patients from
 19 vaccine-preventable illness.
 20 **Q. Okay. Dr. Stephens, did you rely on any**
 21 **studies to reach this opinion?**
 22 A. No -- No specific studies, no; just my
 23 medical knowledge.
 24 **Q. Okay. In looking at that sentence, can**
 25 **you please describe what you mean by "vaccine**

Page 19

1 **preventable diseases"?**
 2 A. So diseases that have been shown to -- to
 3 occur less frequently and with less severe side
 4 effects and less risk of death with -- with
 5 vaccines.
 6 **Q. Dr. Stephens, does that phrase also**
 7 **include -- Strike that.**
 8 **Dr. Stephens, is it fair to say that**
 9 **COVID-19 is a vaccine-preventable disease?**
 10 A. Yes.
 11 **Q. And Dr. Stephens, looking specifically**
 12 **towards transmissibility of COVID-19 within**
 13 **vaccinated individuals, can an individual who has**
 14 **been vaccinated for COVID-19 become infected with**
 15 **COVID-19?**
 16 **MR. COLE:** Object to form.
 17 A. Yes, they can.
 18 **BY MR. MEAD:**
 19 **Q. Dr. Stephens, can an individual who has**
 20 **been vaccinated for COVID-19 spread COVID-19 to**
 21 **others?**
 22 **MR. COLE:** Object to form.
 23 A. An individual that's been vaccinated
 24 against COVID-19 can, yes. They're less likely to
 25 get sick, so they're less likely to then spread

Page 20

1 COVID-19, they're less likely to have severe
 2 illness, and they're less likely to die.
 3 **BY MR. MEAD:**
 4 **Q. Okay. And Dr. Stephens, is -- can an**
 5 **individual who is vaccinated for COVID-19 and who**
 6 **is asymptomatic spread COVID-19 to others?**
 7 **MR. COLE:** Object to form.
 8 A. Theoretically they could.
 9 **BY MR. MEAD:**
 10 **Q. Okay. And so Dr. Stephens, when we're**
 11 **talking about an individual who is vaccinated for**
 12 **COVID-19 who, nevertheless, becomes infected with**
 13 **COVID-19, that's called a breakthrough case. Is**
 14 **that correct?**
 15 A. Yes.
 16 **Q. So Dr. Stephens, in -- in preparing your**
 17 **report, did you look to the prevalence of**
 18 **breakthrough cases with different variants of**
 19 **COVID-19?**
 20 **MR. COLE:** Object to form.
 21 A. No, I did not. I don't actually find it
 22 relevant to my opinion because my opinion is about
 23 vaccine-preventable diseases in general. COVID-19
 24 being only one of many.
 25 ///

Page 21

1 **BY MR. MEAD:**
 2 **Q. So under -- understood on that, Dr.**
 3 **Stephens, but do you think it is relevant to your**
 4 **opinion if breakthrough cases increase with**
 5 **Omicron?**
 6 **MR. COLE:** Object to form.
 7 A. I -- I don't, no.
 8 **BY MR. MEAD:**
 9 **Q. And why is that, Dr. Stephens?**
 10 A. Because there's a lot of
 11 vaccine-preventable diseases out there that can
 12 cause a problem for immunocompromised individuals
 13 in healthcare settings. COVID-19, again, just
 14 being one of many.
 15 **Q. And so on that, Dr. Stephens, when we look**
 16 **at the universe of vaccine-preventable diseases and**
 17 **vaccines, is it fair to say that each vaccine is**
 18 **different in its efficacy in preventing infection?**
 19 **MR. COLE:** Object to form; vague and
 20 overbroad.
 21 A. I -- I would say -- I mean, yes, each
 22 vaccine is different, yes.
 23 **BY MR. MEAD:**
 24 **Q. And so, Dr. Stephens, would it also be**
 25 **accurate that in looking at preventative measures**

Page 22

1 **for any given disease, you would also need to look**
 2 **at the unique characteristics of that disease and**
 3 **associated vaccines?**
 4 **MR. COLE:** Object to form; vague;
 5 overbroad.
 6 A. I'm not sure I understand your question.
 7 **BY MR. MEAD:**
 8 **Q. Sure. So Dr. Stephens, you -- earlier you**
 9 **had just said that you did not think Omicron was**
 10 **relevant to your report because it's one of many**
 11 **vaccine-preventable diseases. So on that**
 12 **understanding, is it fair to say that considering**
 13 **each disease and each vaccine that you need to look**
 14 **at them on a case-by-case basis?**
 15 **MR. COLE:** Object to form, and misstates
 16 the witness's prior testimony.
 17 A. That's not -- Yeah, that's not actually
 18 what I said. I -- I said that I -- I didn't find
 19 it relevant to look at the number of breakthrough
 20 cases that we were seeing with Omicron in the
 21 writing of my report.
 22 **BY MR. MEAD:**
 23 **Q. Okay. So give me one moment here.**
 24 **So Dr. Stephens, I want to turn to**
 25 **paragraph 12 of your report, and the first sentence**

Page 23

1 **starts "The standard of care." Correct?**
 2 A. Correct.
 3 **Q. Can you please describe what you mean by**
 4 **that term?**
 5 A. By this term "the standard of care"?
 6 **Q. Yes.**
 7 A. So the standard of care is the standard
 8 that's generally accepted in the field of medicine
 9 in -- in our provision of care. It's a -- It's a
 10 broad term, but it's -- it's the generally
 11 accepted standard by which we provide care.
 12 **Q. Dr. Stephens, does the standard of care**
 13 **change based on the specific -- Strike that.**
 14 **So Dr. Stephens, does the standard of care**
 15 **vary based on a specific disease that a patient**
 16 **might be at risk of becoming infected with?**
 17 **MR. COLE:** Object to form; vague; and
 18 overbroad.
 19 A. So the standard of care is based -- The
 20 standard of care is the standard in any given
 21 situation.
 22 **BY MR. MEAD:**
 23 **Q. So the -- Would it be accurate that the**
 24 **standard of care to protect a patient from, say,**
 25 **influenza would be different than the standard of**

Page 24

1 **care to protect a patient from rubella?**
 2 **MR. COLE:** Object to form.
 3 A. That's still too broad. I mean, the
 4 standard of care, again, is going to -- to be
 5 different depending on a -- on a individual
 6 situation.
 7 **BY MR. MEAD:**
 8 **Q. So can you -- So Dr. Stephens, can you go**
 9 **into a little detail, then, about what goes into**
 10 **determining a standard of care?**
 11 **MR. COLE:** Object to form.
 12 You can answer.
 13 A. It's -- The standard of care is a
 14 generally accepted standard by which we provide
 15 our care. It's something that is -- is, again,
 16 generally accepted. So, you know, in our field
 17 it's what any -- any provider would consider to be
 18 the acceptable standard in a given situation. So
 19 it requires knowledge of an individual situation,
 20 an individual patient, et cetera.
 21 **BY MR. MEAD:**
 22 **Q. Okay. And Dr. Stephens, does that also**
 23 **incorporate regulations from, say, the State**
 24 **Department of Public Health and Human Services?**
 25 **MR. COLE:** Object to form.

Page 25

1 A. No.
 2 **BY MR. MEAD:**
 3 **Q. Why not?**
 4 A. 'Cause that's not what it's speaking to.
 5 It's speaking to what's generally accepted in the
 6 field as how we should be providing care in a
 7 given situation.
 8 **Q. So -- So Dr. Stephens, again staying with**
 9 **the standard of care, in the vaccine context, to**
 10 **determine the standard of care, would you look to**
 11 **the vaccination rate of healthcare workers in that**
 12 **setting?**
 13 **MR. COLE:** Object to form. It's vague.
 14 A. No.
 15 **BY MR. MEAD:**
 16 **Q. So I guess, Dr. Stephens, what I'm trying**
 17 **to get at, when you're determining the standard of**
 18 **care, is it your opinion that you would not look to**
 19 **the average vaccination rate of healthcare**
 20 **workers --**
 21 **MR. COLE:** Object to form.
 22 **BY MR. MEAD:**
 23 **Q. -- in any given setting?**
 24 A. I guess --
 25 **MR. COLE:** Sorry. Object to form.

Page 26

1 A. -- it would depend on the standard of
 2 care for what and in what situation you're
 3 referring to, 'cause again, the standard's not
 4 going to be the same for every single patient in
 5 every single situation. So -- So, no, I wouldn't
 6 look to a general number like that because I would
 7 look to the specifics of a given situation.
 8 **Q. Okay. One moment here.**
 9 **Dr. Stephens, turning to paragraph 15 of**
 10 **your report, about halfway into that paragraph you**
 11 **state [As Read]: "In particular, lower rates of**
 12 **immunity lead to increased presence of variants of**
 13 **the COVID-19" -- or "of the COVID virus, which will**
 14 **perpetuate the pandemic and place people at**
 15 **unnecessary risk."**
 16 Is that correct?
 17 A. That's correct.
 18 **Q. Dr. Stephens, what studies or research did**
 19 **you rely on to reach this opinion?**
 20 A. That's just based on my knowledge of --
 21 of vaccines and -- and basic knowledge of
 22 virology, not based on a specific study.
 23 **Q. Okay. And Dr. Stephens, in that opinion,**
 24 **did you consider the latest variants of COVID-19**
 25 **such as Omicron?**

Page 27

1 **MR. COLE:** Object to form.
 2 A. I don't understand your question. I
 3 mean, it wasn't a statement based on that, but...
 4 **BY MR. MEAD:**
 5 **Q. So I guess, Dr. Stephens, did you consider**
 6 **the increased prevalence of Omicron in both**
 7 **vaccinated and unvaccinated people in reaching this**
 8 **opinion?**
 9 A. In reaching that -- that particular
 10 sentence, no.
 11 **Q. Okay.**
 12 A. I mean, I guess I would flip it around
 13 and say that the reason that there are more
 14 variants has to do with the fact that there were
 15 lower vaccination rates for COVID-19 than for
 16 other vaccine-preventable illnesses.
 17 **Q. Dr. Stephens, turning to paragraph 16, the**
 18 **first sentence says "Montana has a relatively high**
 19 **rate of exemption from the COVID vaccine**
 20 **requirements." Correct?**
 21 A. Correct.
 22 **Q. What data or studies is that study based**
 23 **on?**
 24 A. It's not based on specific studies. It's
 25 just based on my knowledge of rates of vaccine of

Page 28

1 healthcare employees in my institution.
 2 **Q. Okay. And Dr. Stephens, I -- I want to**
 3 **clarify that when you say "Montana" in that**
 4 **sentence, are you referring specifically to**
 5 **Community Hospital or are you referring to the**
 6 **state, generally?**
 7 A. I'm -- I'm referring to the state
 8 generally. That's the state...
 9 **Q. Okay. The -- The next sentence says "When**
 10 **staff are not vaccinated against COVID, more staff**
 11 **will contract COVID."**
 12 **Is that accurate?**
 13 A. That's correct.
 14 **Q. Dr. Stephens, in -- did you consider the**
 15 **efficacy of natural immunity in reaching this**
 16 **opinion?**
 17 A. Yes.
 18 **Q. And Dr. Stephens, which studies or data**
 19 **did you rely on concerning natural immunity in**
 20 **reaching this opinion?**
 21 A. No specific study, just my general
 22 knowledge.
 23 **Q. Okay. And Dr. Stephens, turning to the**
 24 **last sentence in that paragraph, "Staff who**
 25 **contract COVID are required to quarantine,**

Page 33

1 A. Against vaccine requirement or vaccine
 2 knowledge.
 3 **BY MR. MEAD:**
 4 **Q. Okay. So Dr. Stephens, the -- the second**
 5 **clause of that sentence, [As Read]: "Montana**
 6 **House Bill 702 directly conflicts with the CMS**
 7 **conditions of participation," can you please**
 8 **explain what you mean by "directly conflicts"?**
 9 A. Yeah, absolutely. So CMS conditions of
 10 participation include that we need to have a
 11 record of vaccine status for all of our employees,
 12 and that record can include either their -- that
 13 they are vaccinated that -- or that they are
 14 unvaccinated and have an exemption, and -- but
 15 we -- we are required to know the vaccine status
 16 of those employees. My understanding of
 17 House Bill 702 is that we are -- that -- that
 18 organizations can't ask for that status.
 19 **Q. So Dr. Stephens, regarding your**
 20 **understanding of House Bill 702, what is to your**
 21 **understanding that you just stated, what is that**
 22 **based on?**
 23 **MR. COLE:** Objection to form.
 24 A. It's based on the -- what I have learned
 25 about House Bill 702 and, you know, what we

Page 34

1 have -- have discussed as -- as a hospital in
 2 terms of what we need to be doing with our
 3 employees.
 4 **BY MR. MEAD:**
 5 **Q. Okay. So Dr. Stephens, in reaching that**
 6 **opinion, what -- what did you consult to reach that**
 7 **opinion?**
 8 **MR. COLE:** Object to form.
 9 A. I don't -- I don't understand.
 10 **BY MR. MEAD:**
 11 **Q. Sure. Dr. Stephens, correct me if I'm**
 12 **mischaracterizing what you said, but I believe you**
 13 **said that your understanding is that House Bill 702**
 14 **prevents or limits hospitals from having actual**
 15 **knowledge of an individual's vaccination status.**
 16 **Is that accurate?**
 17 **MR. COLE:** Object to form.
 18 A. So my understanding of House Bill 702 is
 19 that we are -- that -- that there are many
 20 businesses that are not allowed to require or even
 21 ask about vaccine status.
 22 **BY MR. MEAD:**
 23 **Q. And Dr. Stephens, when you say "many**
 24 **businesses," does that include Community?**
 25 A. It includes at least parts of Community,

Page 35

1 yes.
 2 **Q. Okay. And Dr. Stephens, when you say that**
 3 **House Bill 702 -- So strike that.**
 4 **Dr. Stephens, can you sort of just explain**
 5 **what you look at in terms of the law itself,**
 6 **policies of the hospital? Just sort of walk me**
 7 **through the documents that you would have consulted**
 8 **to reach this opinion that there is a direct**
 9 **conflict.**
 10 **MR. COLE:** Objection. It's vague,
 11 overbroad, and to the extent it calls for a legal
 12 conclusion.
 13 A. So, I mean, this is just based on my
 14 everyday work at the hospital and not based on
 15 specific readings.
 16 **BY MR. MEAD:**
 17 **Q. And so Dr. Stephens, does your everyday**
 18 **work include determining conflicts between state**
 19 **and federal regulation?**
 20 **MR. COLE:** Object to form.
 21 A. My everyday work does not, no. I do need
 22 to have a general working understanding.
 23 **BY MR. MEAD:**
 24 **Q. Thank you.**
 25 **Dr. Stephens, I want to turn back to**

Page 36

1 **paragraph 11 now in your report. And in the first**
 2 **and second sentences, you reference cancer care**
 3 **settings. Is that correct?**
 4 A. That's correct.
 5 **Q. And Dr. Stephens, can you just briefly**
 6 **describe your professional experience working in**
 7 **cancer care settings?**
 8 A. My -- My current professional experience
 9 is as the chief medical officer overseeing the
 10 clinical care provided at my hospital. I have not
 11 personally provided care myself in a cancer care
 12 setting in many years, but as a resident in a
 13 children's hospital I did.
 14 **Q. Okay.**
 15 **MR. MEAD:** So Justin, rather than launch
 16 into my next sort of set of questions, I'm at a
 17 natural breaking place if we want to take ten
 18 minutes?
 19 **MR. COLE:** Sounds good.
 20 **MR. MEAD:** Okay.
 21 **THE VIDEOGRAPHER:** We are going off the
 22 record. The time is 10:49.
 23 (Recess taken from 10:49 a.m. to
 24 11:02 a.m.)
 25 **THE VIDEOGRAPHER:** We are back on the

Page 41

1 **BY MR. MEAD:**
 2 **Q. Okay. And so Dr. Stephens, specific to**
 3 **pertussis and the Tdap vaccine, when you say**
 4 **"current vaccination," are you referring to, let's**
 5 **say, a completed childhood or adult dose and the**
 6 **recommended booster, or just the childhood, or what**
 7 **type of adult dose?**
 8 A. No, I'm referring to the complete
 9 vaccination and boosted for Tdap.
 10 **Q. And -- And Dr. Stephens, so regarding**
 11 **Tdap, what is the recommended timeframe to get a**
 12 **booster?**
 13 A. Every ten years.
 14 **Q. Dr. Stephens, what -- what is that -- what**
 15 **is that ten-year recommendation? Where does that**
 16 **come from?**
 17 A. It's based on the fact that with
 18 vaccination, you develop immunity, and then that
 19 immunity wanes over time, and so a booster dose is
 20 required to boost that immunity again.
 21 **Q. And Dr. Stephens, does -- so on that**
 22 **question of waning immunity, did you consult any**
 23 **studies looking at what that curve of waning**
 24 **immunity looks like for the pertussis component --**
 25 **MR. COLE: Objection.**

Page 42

1 **Q. -- of Tdap?**
 2 **MR. COLE: Objection. Vague as to time.**
 3 A. I have in the past read studies. I
 4 haven't read anything recently.
 5 **BY MR. MEAD:**
 6 **Q. Okay. And so Dr. Stephens, are you aware**
 7 **of any studies that would demonstrate the Tdap**
 8 **vaccine is fully efficacious over that entire**
 9 **ten-year period?**
 10 **MR. COLE: Objection to form. It's vague;**
 11 **it's overbroad.**
 12 A. I mean, I agree I think that's a really
 13 overbroad statement.
 14 **BY MR. MEAD:**
 15 **Q. So Dr. Stephens, I guess what I'm asking,**
 16 **did you look at any studies about when the efficacy**
 17 **of the pertussis component starts to drop off?**
 18 **MR. COLE: Objection to form. Vague as to**
 19 **time.**
 20 A. Again, I haven't looked at any studies
 21 recently about what you're asking.
 22 **BY MR. MEAD:**
 23 **Q. Okay. And so looking at the next sentence**
 24 **in paragraph 7, you mentioned COVID, and so I just**
 25 **want to be clear, is it your opinion that boosters**

Page 43

1 **of COVID are required to be currently vaccinated?**
 2 **MR. COLE: Objection to form.**
 3 A. Are required? I would say that in -- in
 4 order to have up-to-date vaccination status, that
 5 would include having had COVID vaccine and being
 6 boosted, and once the new vaccine for -- or once
 7 the -- once the upcoming Omicron variant vaccine
 8 comes out this fall, I would -- I would say
 9 that -- that that would -- that being up to date
 10 would include that.
 11 **BY MR. MEAD:**
 12 **Q. Okay. And so Dr. Stephens, turning back**
 13 **to paragraph 17, when you say "as well as complying**
 14 **with the new COVID vaccine requirements," to your**
 15 **knowledge, does the new COVID vaccine requirements**
 16 **include booster shots?**
 17 **MR. COLE: Objection. Calls for a legal**
 18 **conclusion.**
 19 A. I -- I actually don't know. I would -- I
 20 -- I don't know whether CMS requires a booster or
 21 not right now. I would have to look.
 22 **BY MR. MEAD:**
 23 **Q. Okay. So I want to turn to paragraph 11**
 24 **now, and starting with the sentence "Faced with a**
 25 **situation where an employee is unvaccinated", you**

Page 44

1 **then say "a facility needs to be informed."**
 2 **Can you just describe what you mean by "a**
 3 **facility needs to be informed"?**
 4 A. So we need the opportunity to have a
 5 record of whether our employees are vaccinated or
 6 not vaccinated.
 7 **Q. Okay. And then when you continue with "so**
 8 **that they can perform an individualized assessment**
 9 **of whether a reasonable accommodation under the ADA**
 10 **is available," to whom are you talking about the**
 11 **reasonable accommodation being available? The**
 12 **patient or a medical provider?**
 13 **MR. COLE: Objection to form.**
 14 A. So I need to be able to protect the
 15 patients that are cared for in my hospital. I
 16 need to know if there's an accommodation that can
 17 be made for that employee such that then -- and
 18 that then they can provide care -- that the
 19 patient can receive care that protects them
 20 because they are the one with the -- the -- the
 21 patient is the one I'm referring to with --
 22 that -- that has -- the disabled patient is the
 23 one that I'm referring to.
 24 **BY MR. MEAD:**
 25 **Q. Okay. And then you go on to say "absent**

Exhibit 3

*Montana Medical Association, et al. v
Austin Knudsen, et al.*

*David B. King, MD
August 2, 2022*

*Charles Fisher Court Reporting
442 East Mendenhall
Bozeman, MT 59715
(406) 587-9016
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Min-U-Script® with Word Index

Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

MONTANA MEDICAL ASSOCIATION,
ET AL.,

Plaintiffs,

and Cause Number
CV-21-108-M-DWM

MONTANA NURSES ASSOCIATION,

Plaintiff-intervenors,

vs.

AUSTIN KNUDSEN, ET AL.,

Defendants

VIDEORECORDED DEPOSITION UPON ORAL EXAMINATION OF
DAVID B. KING, MD

BE IT REMEMBERED, that videorecorded
deposition upon oral examination of DAVID B. KING,
MD, appearing at the instance of Defendants, was
taken at the offices of Fisher Court Reporting, 442
E. Mendenhall, Bozeman, Montana, on Tuesday,
August 2nd, 2022, beginning at the hour of 9:00 a.m.,
pursuant to the Federal Rules of Civil Procedure,
before Deborah L. Fabritz, Court Reporter - Notary
Public.

Page 2

APPEARANCES

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and

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ATTORNEYS APPEARING VIA ZOOM ON BEHALF
OF THE DEFENDANTS, AUSTIN KNUDSEN, ET AL.:

Mr. Brent Mead, Esq.
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PO Box 201401
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ALSO PRESENT: Nicole Tomac, videographer

Page 3

I N D E X

	EXAMINATION OF DAVID B. KING, MD	PAGE
1	Mr. Brent Mead.....	5
2	Ms. Kathryn S. Mahe.....	138
3	Mr. Brent Mead.....	152
4	Ms. Kathryn S. Mahe.....	154
5		
6		
7		
8		
9	E X H I B I T S	
10	DEPOSITION EXHIBIT NUMBER	PAGE
11	Exhibit 1 Declaration of David King, MD.....	27
12	Exhibit 2 David B. King, MD, CV.....	28
13	Exhibit 3 Expert report of Ram Duriseti, MD, PhD.....	40
14	Exhibit 4 Plaintiffs' Responses to Defendants' First Combined Discovery Requests.....	107
15	Exhibit 5 Joint Statement in Support of COVID-19 Vaccine Mandates for All Workers in Health and Long-Term Care.....	139
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

Page 4

1 WHEREUPON, the following proceedings were had
2 and testimony taken, to-wit:
3 * * * * *

4 **THE VIDEOGRAPHER:** This is the -- this is
5 the videorecorded and videoconferenced deposition of
6 Dr. David King, taken in the United States District
7 Court for the District of Montana, Missoula Division.
8 Cause Number CV-21-108-M-DWM. Montana Medical
9 Association, et al., and Montana Nurses Association
10 versus Austin Knudsen, et al.

11 Today is August 2nd, 2022. The time is
12 9:04 a.m. We are present with the witness at the
13 offices of Fisher Court Reporting at 442 East
14 Mendenhall Street in Bozeman, Montana.

15 The court reporter is Deb Fabritz, and the
16 video operator is Nicole Tomac of Fisher Court
17 Reporting. The deposition is being taken pursuant to
18 notice.

19 I would now ask the attorneys to identify
20 themselves, who they represent, and whoever else is
21 present. For those appearing remotely, please note
22 from where you are appearing.

23 **MR. MEAD:** This is Brent Mead,
24 representing the defendants in this case, Austin
25 Knudsen and Laurie Esau. And with me by Zoom are

Page 5

1 Christian Corrigan and David Dewhirst.
 2 **MS. MAHE:** I'm Katie Mahe, and I represent
 3 the plaintiffs in this lawsuit. And via Zoom from
 4 Missoula is Justin Cole, who also represents the
 5 plaintiffs.
 6 **MR. GRAYBILL:** I'm Raph Graybill. I
 7 represent the plaintiff-intervenor in this lawsuit,
 8 appearing by phone.
 9 **THE VIDEOGRAPHER:** The court reporter will
 10 now administer the oath.
 11 **EXAMINATION**
 12 **BY MR. MEAD:**
 13 **Q. So, Dr. King, I want to start with some**
 14 **basic questions here. Can you please spell your**
 15 **name?**
 16 A. David, D-A-V-I-D, King, K-I-N-G.
 17 **Q. And what address do you reside at?**
 18 A. 4775 East Gallatin Road, Belgrade, 59714.
 19 **Q. Dr. King, I just want to make sure that**
 20 **you are not under the influence of any substance that**
 21 **prevents you from fully, accurately, and truthfully**
 22 **answering questions today.**
 23 A. Correct. Other than perhaps adrenalin.
 24 **Q. Understood. So before we go into some**
 25 **stuff, I just want to make sure you're okay with some**

Page 6

1 **things. If you do not understand a question I ask,**
 2 **please let me know. I'll restate it. Is that okay**
 3 **with you?**
 4 A. Yes.
 5 **Q. If you at any time need to take a break,**
 6 **let me know. I would just ask that if we have a**
 7 **question that we're in the middle of answering, that**
 8 **we finish answering that question, and then we'll go**
 9 **on break. Is that all right?**
 10 A. Yes. I'm -- I'm on call, so I will -- I
 11 have my pager, if you will, muted, but I'll need to
 12 check it every hour or two.
 13 **Q. Okay. And then, again, Dr. King, just if**
 14 **you have any questions, if you need us -- if you need**
 15 **me to restate, rephrase, if you don't understand me,**
 16 **again, please just stop.**
 17 **I know this is remote, so I want to avoid**
 18 **talking over each other. So I'll make sure on my end**
 19 **to pause after you answer to make sure that you have**
 20 **time to continue answering if you want, but just to**
 21 **avoid talking over each other. Is that okay?**
 22 A. Copy.
 23 **Q. All right, Dr. King. I want to start by**
 24 **just kind of going over your CV. Can you tell me --**
 25 **what is your current position?**

Page 7

1 A. So I -- actually, I have several. I am a
 2 -- the medical director of a skilled nursing
 3 facility, which because of COVID and staffing
 4 problems and reimbursements will be closing in
 5 Bozeman here. I've been doing that work for decades.
 6 I'm the medical director of Bozeman Health
 7 geriatrics team, which is comprised of a number of
 8 providers, mostly advanced practice RNs. We take
 9 care of people in skilled nursing facilities,
 10 assisted living facilities, and at home who are, for
 11 one reason or another, challenged in their ability to
 12 leave where they live. That's just been a couple of
 13 years.
 14 I do aviation medical examinations. So
 15 our colleague who is in the airport now will be
 16 riding behind somebody that I could conceivably have
 17 okayed to have continued flying. And I do
 18 immigration physicals as a civil surgeon for the
 19 government. Each of those things I've been doing for
 20 decades as well.
 21 I do not practice any longer day-to-day
 22 family medicine kind of patient visits. I do see
 23 people in hospitals and nursing homes but not any
 24 longer -- other than those physicals I do, not any
 25 longer in the office. And I recently until a year

Page 8

1 ago October was the medical director of Bozeman
 2 Health's clinical research department for about five
 3 years.
 4 **Q. Okay. Doctor, can you describe -- I guess**
 5 **we'll start with the skilled nursing facility. Can**
 6 **you just describe what's entailed in being the**
 7 **medical director there? What -- what do the**
 8 **day-to-day duties look like?**
 9 A. Day-to-day doesn't require my presence. I
 10 am there weekly at least. But I am responsible for
 11 helping them with local policies, health care
 12 policies. I sit on a committee that discusses all of
 13 the rehab patients and any other residents who have
 14 medical difficulties that need to be discussed
 15 providing an educational viewpoint, and that can be
 16 both -- and occasionally criticism, let's say.
 17 I'm also available by telephone, 24/7/365
 18 for phone calls from them. Thankfully, that's
 19 relatively infrequent. And in addition, with the
 20 geriatrics team I'm involved multiple times a day
 21 with telephone calls, giving advice on how to manage
 22 medical problems and, again, on how to -- how to
 23 interpret it and make sure we're complying with
 24 whatever policies are necessary.
 25 Does that help?

Page 65

1 **Q. So in that 1971 law, are you aware of any**
 2 **medical or religious exceptions for --**
 3 A. I'm not. I -- I would assume that such is
 4 there, but I do not know. I'm sorry.
 5 **Q. Okay. Dr. King, are you aware of**
 6 **Montana's school-age vaccination law which is**
 7 **referenced in House Bill 702?**
 8 A. I am aware from a practitioner's
 9 standpoint, which is to say that I know which
 10 vaccines should be given when. As far as exclusions,
 11 no. If parents refuse, I'm not going to assault
 12 their children with a needle.
 13 **Q. So, Dr. King, when you say assault, what**
 14 **do you mean?**
 15 A. I'm not going to take any action --
 16 physical action that would cause discomfort in the
 17 face of parental refusal. So I don't know what the
 18 law specifically is. I -- I try not to get into
 19 legal argument during my clinic visits.
 20 I would also say it's been quite awhile
 21 other than my immigration physicals since I've been
 22 in a position to offer immunizations, so about 11
 23 years now. But then it wasn't as much of an issue as
 24 it is now. Antivaxing has become more and more
 25 common, and the -- the argument that personal rights

Page 66

1 supersede public safety, I think we can look at the
 2 world around us and understand that -- that there's
 3 been a shift toward personal rights other than for
 4 people who have a uterus.
 5 **Q. So, Dr. King, when you -- when you talk**
 6 **about personal rights, are -- are you referencing a**
 7 **right to refuse medical treatment? Is that a fair**
 8 **summation?**
 9 **MS. MAHE:** Object to the form.
 10 **THE WITNESS:** That's one aspect of it. I
 11 mean, the political arena does not allow us to
 12 separate things. Right now you've got to be -- if
 13 you're a certain identified political person, you got
 14 to be anti-abortion. You've got to be for unlimited
 15 weaponry in the hands of everyone.
 16 This is a -- a -- it's become confused --
 17 and you've got to be against immunizations. It's
 18 gotten confused and conflated, and so it's very
 19 difficult to talk about personal rights in a way that
 20 doesn't offend somebody's pet peeve.
 21 **BY MR. MEAD:**
 22 **Q. So, Dr. King, it -- it's your opinion that**
 23 **-- to align yourself with one political party or**
 24 **another requires you to both support House Bill 702**
 25 **and support some unlimited view of gun ownership?**

Page 67

1 **MS. MAHE:** Object to the form. That
 2 misstates his testimony. I don't know if you're
 3 trying to be argumentative, Brent, but I -- I think
 4 it's a little inappropriate to misstate his testimony
 5 to that extreme.
 6 **THE WITNESS:** And I apologize. I allowed
 7 politics to take a place in this discussion that
 8 probably I shouldn't have done.
 9 The fact is that there are commonalities
 10 and views that tie certain things together in our
 11 politics. And -- and I think anybody who is aware of
 12 what's going on in our country realizes that that
 13 creates problems.
 14 **BY MR. MEAD:**
 15 **Q. So, Dr. King, I want to turn back to the**
 16 **Montana's school-age vaccination law and this Texas**
 17 **study you cite. Are you aware of any, you know,**
 18 **comparative differences or similarities between**
 19 **Montana's current law, even post 702, and the Texas**
 20 **law in 1971?**
 21 **MS. MAHE:** Object to the form.
 22 You can answer.
 23 **THE WITNESS:** I have -- I don't have --
 24 the word used to be granular enough knowledge of the
 25 two laws. What I paid attention to with the Texas

Page 68

1 trial was, A, the irony that Texas parents got
 2 together with Texas providers in favor of vaccination
 3 only 50 years ago and how successful a mandatory
 4 vaccination law was without even having teeth.
 5 That's all -- that's as deeply as I dug
 6 with the Texas data. I didn't look at -- you know, I
 7 didn't read the law itself. I didn't read the
 8 arguments pro and con to the law itself. I looked at
 9 the benefits of the law and the profound and rapid
 10 improvement in the public health of Texans as a
 11 result of the law. And Montana I haven't had reason
 12 to immerse myself in the minutia of why we have what
 13 we have for a law.
 14 **Q. So, Dr. King, with Montana's experience**
 15 **with school-age vaccinations, do you have experience,**
 16 **knowledge of what is the prevalence of some of the**
 17 **diseases you're citing in this Texas case as in how**
 18 **many annual cases do we have of pertussis per year in**
 19 **Montana, how many cases of tetanus, how many cases of**
 20 **measles?**
 21 A. Not in Montana. I have --
 22 **Q. Not in Montana?**
 23 A. I have a pretty good idea nationally, but
 24 I haven't looked at Montana in particular.
 25 **Q. Okay.**

1 -- it's somewhere around 30,000 for influenza each
2 year. Compared to a little more than 500,000 --
3 500,000 a year for the first two years of COVID.
4 Now, if Omicron were to stay the same and
5 never change again, then we'd be under influenza.
6 We'd be 22,000. Based on yesterday's incidents, we'd
7 be 22,000 deaths a year in this country.

8 But, of course, as I have said repeatedly,
9 anybody who believes that the lull we're in now is
10 going to stay is indulging in wishful thinking, not
11 reality. So bottom line, yeah. I think we should,
12 because, frankly, it kills more people than any other
13 vaccine dependable [sic] -- vaccine in this country,
14 mind you, than -- than any other vaccine preventable
15 disease with the exception of Coronavirus-19 when
16 averaged out.

17 **BY MR. MEAD:**

18 **Q. So, Dr. King, would it then be your**
19 **opinion that if a health care worker declined getting**
20 **their seasonal flu shot, that other measures such as**
21 **wearing an appropriately fitted mask and maintaining**
22 **a specific distance, say six feet, from patients,**
23 **that that would not -- that that would be**
24 **insufficient?**

25 **MS. MAHE:** Object to the form.

1 **THE WITNESS:** That data doesn't really
2 exist, and I rely on, again, decades of clinical
3 practice, decades beyond that of medical knowledge.
4 And a certain amount of common sense needs to play
5 into it as well.

6 **BY MR. MEAD:**

7 **Q. So looking towards your opinion in**
8 **paragraph 36 about -- about the standards of care, is**
9 **it -- is it your opinion that to meet that national**
10 **standard of care, health care facilities must require**
11 **seasonal flu shots of their workers?**

12 **MS. MAHE:** Object to the form.

13 You can answer.

14 **THE WITNESS:** With the exceptions as
15 certain -- certain people can't because of how
16 they're grown. If we can get an MRNA flu shot,
17 which, of course, is being worked on now, and then --
18 then that objection, but there are people that are
19 allergic to eggs and things like that. So you've got
20 to take into account that the flu shot is not quite
21 as clean as the MRNA COVID shots.

22 Having left an opening for legitimate
23 medical reasons to decline the vaccination, I would
24 say we should be doing that. It is numerically,
25 after COVID, the number two cause of vaccine

1 You can answer.

2 **THE WITNESS:** Never mind the six feet.
3 How are you going to listen to somebody's lungs or
4 look in their throat from six feet away? So that's
5 irrelevant because it's impossible.

6 It's insufficient. PPE is insufficient by
7 itself, not unless -- now, truly if you had a
8 self-contained breathing apparatus, you had, you
9 know, taped joints in a -- in a clean room the way
10 you do in the highest level of bioscience labs that
11 handle things like small pox and Ebola, if -- if
12 everybody in health care wore those, then it would be
13 hard to spread it in a health care setting.

14 But, of course, there are many reasons
15 that that's not affordable or practical. But that's
16 what it would take. Masks, gowns, distancing all
17 help, but they're clearly inadequate.

18 **BY MR. MEAD:**

19 **Q. Okay. So, Dr. King, on that -- again,**
20 **just sticking with the seasonal influenza, what do**
21 **you -- what facts or studies do you rely on related**
22 **to transmissibility based on whether or not health**
23 **care workers have received their flu shot?**

24 **MS. MAHE:** Objection to form.

25 You can answer.

1 preventable death in this country. So, of course, we
2 should be doing that. And that doesn't take into
3 account morbidity, time lost from work, all those
4 ancillary costs that turn a bad epidemic into an
5 economic and social catastrophe such as we have seen
6 for the last two years.

7 **BY MR. MEAD:**

8 **Q. So on the topic of exemptions, is it your**
9 **opinion that in order to meet that standard of care**
10 **in paragraph 36, that health care facilities should**
11 **not allow for religious exemptions?**

12 **MS. MAHE:** Object to the form. Calls for
13 a legal conclusion.

14 You can answer.

15 **THE WITNESS:** Yeah. And -- and I'll tell
16 you why, and -- and this goes to personal experience.
17 I've been told that I'm -- because I'm pro vaccine,
18 I'm a minion of Satan. I'm not making any of this
19 up, and I'm giving you accurate quotations. That
20 because I do it but I mean well, I'm just an ignorant
21 minion of Satan, not a deliberate minion of Satan,
22 although that's -- I've been told both.

23 I've been told that it has aborted fetus
24 parts in it, and, of course, I've been told it has
25 magnetic particles and iron filings and -- and

Page 89

1 microchips, all by someone who -- or by people who
 2 claim that that's the basis of their religious
 3 exemption.
 4 I've been told repeatedly that it has the
 5 mark of the beast in it, which is very tough to
 6 disprove because there's not a good scientific assay
 7 that identifies or quantifies the mark of the beast.
 8 And then finally tied in with all of this, I've been
 9 told that it's a socialist plot by a woman whose
 10 husband is on Medicare and wouldn't give it up. He's
 11 a little early because of some disabilities and who
 12 would only work in jobs that have full benefits,
 13 never mind that unfettered capitalism would have had
 14 her working in an unheated building without
 15 ventilation seven days a week.
 16 So this whole thing is mixed. And this
 17 was presented to me in -- in -- particularly in one
 18 case, as being the reason for my religious exemption.
 19 So in other words, there's a lot of BS out there.
 20 Right?
 21 Medically speaking, there's a lot of
 22 irrelevant, inappropriate stuff called religious
 23 exemption. I have yet to hear a bona fide one that I
 24 really understand the science behind.
 25 **BY MR. MEAD:**

Page 90

1 **Q. So, Dr. King, I want to -- does this BS,**
 2 **as you call it -- does it shade your view on people**
 3 **who claim religious exemptions?**
 4 A. Absolutely.
 5 **MS. MAHE:** I'm going to object to the
 6 form.
 7 You can answer.
 8 **THE WITNESS:** Absolutely. As a
 9 professional who has worked 42 years at roughly 60 or
 10 70 hours a week for those 42 years and who has
 11 dedicated myself to the well-being of my patients
 12 before my own well-being and before my family's
 13 well-being, I do find it objectionable to be told
 14 that I am a fool and an evil person. I do.
 15 **BY MR. MEAD:**
 16 **Q. So, Dr. King, what -- what is your opinion**
 17 **and experience working with other health care workers**
 18 **who claim religious exemptions for vaccines?**
 19 **MS. MAHE:** Object to the form.
 20 You can answer.
 21 **THE WITNESS:** I haven't had personal
 22 discussions that I can remember with anybody in the
 23 medical field who has specific religious. Just
 24 hasn't come up in my life.
 25 Misunderstood medical things I've had

Page 91

1 discussions with people about. I could go into a lot
 2 of the mythology of mRNA vaccines and how they get
 3 misinterpreted and -- and -- and so on.
 4 I would say in terms of physicians the
 5 likeliest nonvaccinated physicians are very
 6 conservative, I got my rights, kind of folks. I'm an
 7 American. I got a right to kill you if I want to. I
 8 don't -- you can't make me wear a mask. I won't be
 9 told what to do.
 10 That's the -- the attitude I think in
 11 medical care people -- that's most likely the
 12 explanation behind their refusal. It's -- it's a
 13 personal rights viewpoint.
 14 And there's plenty of constitutional
 15 background supporting that, except for in 1905 when
 16 the Supreme Court said -- again, the quotation
 17 accurate -- I have it written down somewhere, but I
 18 don't have it in front of me. The quotation was, in
 19 summary, that the public welfare trumps private
 20 rights when the issue is big enough. And we talked
 21 about that earlier.
 22 **BY MR. MEAD:**
 23 **Q. Yeah. So, Dr. King, I have a couple of**
 24 **follow-ups here, but let's -- let's start with**
 25 **Jacobson since you brought it up again. In your**

Page 92

1 **opinion who gets to determine the public welfare in**
 2 **that scenario?**
 3 **MS. MAHE:** Object to the form. Calls for
 4 a legal conclusion.
 5 You can answer.
 6 **THE WITNESS:** I -- I'd probably ask the
 7 CDC to do that or the NIH. I think you -- you got to
 8 go where the experts are, and they have better
 9 understanding than any individuals of what the true
 10 cost to society is of these special events that
 11 occur, thankfully -- or up until now, I should say,
 12 infrequently.
 13 We're having a big spill over that is
 14 dangerous every five years now. So even if we got
 15 COVID behind us, there's another one coming. We need
 16 to solve this somehow.
 17 **BY MR. MEAD:**
 18 **Q. So, Dr. King, one last question on this**
 19 **point. Is it fair -- is it fair to categorize your**
 20 **opinion as an appropriate government agency should**
 21 **determine the public welfare?**
 22 **MS. MAHE:** Object to the form. Calls for
 23 a legal conclusion.
 24 **THE WITNESS:** Yes. I think for -- if
 25 we're talking about pandemics or epidemics, I would

Page 93

1 say yes. And I would say that that should be a
 2 national not a state-based organization because we
 3 need to have a -- a uniform approach.
 4 If we have -- you know, we have sanctuary
 5 cities. If we have sanctuary states, sanctuaries for
 6 the viruses, then with travel being what it is,
 7 unless you eliminated intra -- I'm sorry --
 8 interstate travel, you wouldn't have any ability. So
 9 it has to be national I think.
 10 **BY MR. MEAD:**
 11 **Q. Okay. So -- all right. I want to go back**
 12 **now to your characterization of physicians who**
 13 **decline vaccinations, and I want to -- I want to**
 14 **understand your opinion as to whether or not those**
 15 **physicians would be meeting their standard of care.**
 16 **MS. MAHE:** Object to the form.
 17 **THE WITNESS:** In my opinion, no. The
 18 difficulty comes when you have a department -- a
 19 small department as in run by or -- run by, will --
 20 will have to suffice, by a small number of providers
 21 that's critical to the community, and you have a
 22 provider that says I'll leave if you make me do that.
 23 This has happened.
 24 At that point the parent institution has
 25 to decide what's more important, having this

Page 94

1 particular service in the community for other people
 2 who need it or the principle. And -- and generally,
 3 the institutions have come to the need to have the
 4 line of service because they can't imagine not
 5 providing that.
 6 **Q. So, Dr. King, again in your experience,**
 7 **what -- what are the obligations of the other**
 8 **providers in a practice to report their fellow health**
 9 **care providers who are unvaccinated if it violates**
 10 **the standard of care?**
 11 **MS. MAHE:** Object to the form.
 12 You can answer.
 13 **THE WITNESS:** House Bill 702 would make it
 14 illegal to act on such a thing. In fact, I don't
 15 believe it's legal to ask them and expect an answer
 16 anyway. You can't -- according to House Bill 702,
 17 you're -- you're not allowed to mess with that unless
 18 it's a nursing home.
 19 **BY MR. MEAD:**
 20 **Q. So, Dr. King, prior to House Bill 702 in**
 21 **your experience, what -- what were the obligations on**
 22 **providers to report other health care providers who**
 23 **were unvaccinated if that violated their standard of**
 24 **care?**
 25 **MS. MAHE:** Object to the form. Calls for

Page 95

1 a legal conclusion.
 2 You can answer.
 3 **THE WITNESS:** No such thing. There's no
 4 -- we -- until COVID exposed the degree to which
 5 anti-vaxing has ingrained itself in our society, I
 6 don't think anybody realized that this was an issue.
 7 So how many times since COVID started? Well, let's
 8 just say that in Montana we wouldn't dare anyway now.
 9 So the bottom line is, it wasn't an issue
 10 we were aware of. Now that COVID has exposed it as
 11 an issue, we're going to have to figure out what
 12 we're going to do about it.
 13 **BY MR. MEAD:**
 14 **Q. Dr. King, so then is it your opinion that**
 15 **-- we'll call it this anti-vaccine attitude, did it**
 16 **preexist House Bill 702 and preexist COVID within the**
 17 **health care workforce?**
 18 **MS. MAHE:** Object to the form.
 19 You can answer if you understand it and if
 20 you know.
 21 **THE WITNESS:** It's not completely de novo,
 22 is it? I suspect it's been there and we haven't had
 23 the impetus to confront it, discuss it, understand
 24 it, or even identify it. Now COVID has showed us
 25 that that's -- that's something we need to pay

Page 96

1 attention to.
 2 **BY MR. MEAD:**
 3 **Q. So, Dr. King, if that attitude preexisted**
 4 **COVID, are you aware of any consequences that have**
 5 **flowed from it in patient care and patient safety**
 6 **from that attitude of anti-vaccine within the health**
 7 **care workforce?**
 8 **MS. MAHE:** Objection. Form.
 9 You can answer.
 10 **THE WITNESS:** I don't even know how
 11 prevalent it is in the workforce. It is -- medical
 12 providers -- and I'm not just talking about
 13 physicians. I'm talking about aides and LPNs and so
 14 on, all the way through the system -- are not
 15 necessarily fully up-to-date on the science behind
 16 health policy.
 17 So it is obvious to me, based on the --
 18 the experience of the last year or so, that there's
 19 an unresolved issue there, and unidentified and --
 20 and underappreciated issue, which we need to deal
 21 with, because in my personal opinion, it's unethical
 22 for a provider of medical care not to be vaccinated
 23 in my personal opinion.
 24 **BY MR. MEAD:**
 25 **Q. Okay. So, Dr. King, on that point on your**

1 **personal opinion, does your personal opinion cross**
2 **over into or equate to a violation of the national**
3 **standards of care that you cite in paragraph 36?**

4 **MS. MAHE:** Object to the form.

5 **THE WITNESS:** My personal opinion.

6 **BY MR. MEAD:**

7 **Q. Can you expound on that a little bit, like**

8 --

9 A. I think we --

10 **MS. MAHE:** Object to the form.

11 **THE WITNESS:** I -- we should behave

12 ethically. I have my understanding of ethics that is
13 grounded two millennia ago in what Hippocrates said.
14 I hold to that. And anything in my personal opinion
15 that does not agree with that does not fit with the
16 Hippocratic oath, if you will, I think that's an
17 ethical lapse. That's my opinion.

18 **BY MR. MEAD:**

19 **Q. So returning to the question of medical**
20 **exemptions or religious -- or sorry -- religious**
21 **exemptions, to be clear, turning to the question of**
22 **religious exemptions, I want to understand. Is it**
23 **your opinion that there needs to be a scientific**
24 **basis for the religious exemption?**

25 **MS. MAHE:** Object to the form.

1 powerless position, which I resigned from as soon as
2 I realized what I was advocating had already been
3 decided against. The hospital just basically took
4 the blueprint from their insurers on what to do.

5 But at that time, among other things, I
6 wrote to the hospital staff, medical staff and
7 administration, which is perhaps publicly a little
8 bit overstates it, although I certainly wasn't quiet
9 about it, that we should stand such a board, so --

10 **THE REPORTER:** Stand such a board?

11 **THE WITNESS:** Stand up -- stand such a
12 board, yes.

13 **BY MR. MEAD:**

14 **Q. When did all of this occur?**

15 A. Shortly after availability of the Pfizer
16 vaccine, I believe, so in the last -- let's call it a
17 year ago-ish.

18 **Q. Okay. So spring, summer 2021?**

19 A. I don't know. Frankly, it could have been
20 before that or after that. I --

21 **Q. Okay. So --**

22 A. It could have even been fall. I don't
23 know.

24 **Q. So on this idea -- like in your opinion**
25 **how would you -- how would you qualify a valid**

1 You can answer.

2 **THE WITNESS:** I think that the religious
3 exemption should not be honored in cases where the
4 scientific explanation shows that the religious
5 exemption request is falsified. Right? If the
6 science falsifies the claim, then that should not be
7 allowed.

8 On the other hand -- and I publicly have
9 stated this -- I think to resolve this, it will be
10 necessary to stand an exemption review board of
11 ethically trained, as in ethics trained, laypeople
12 plus providers to do a fair but rigorous job of
13 religious exemptions, because I have heard, as I
14 detailed earlier, nonsensical claims that were cited
15 as religious justification for nonvaccination.

16 **BY MR. MEAD:**

17 **Q. So, Dr. King, you said you publicly stated**
18 **what you just defined. When and where did you state**
19 **that?**

20 **MS. MAHE:** Object to the form.

21 You can answer.

22 **THE WITNESS:** Bozeman Health appointed me
23 medical director for employee health and human
24 resources centering on this issue of how do we define
25 legitimate exemptions. It turned out to be a

1 **religious exemption from an invalid religious**
2 **exemption? Does it depend on the scientific**
3 **evidence, or does it depend on the nature of the**
4 **religious belief?**

5 **MS. MAHE:** Object to form. Lack of
6 foundation. Calls for a legal conclusion.

7 You can answer.

8 **THE WITNESS:** That's why I suggested we
9 stand a board of -- of Ephesus, or people with
10 ethical training to include laypeople, particularly
11 to include religious people -- leaders and medical
12 leaders. The only thing I'm qualified to say is that
13 a religious exemption should not be granted in my
14 opinion based on a fallacious argument that can be
15 proved fallacious scientifically.

16 In other words, that's no longer religion.
17 That's science misunderstood perhaps. But the idea
18 that it contains metal so that magnets can change how
19 you act repeatedly presented, that can be falsified.
20 That should not be a religious exemption.

21 The fact they say there's aborted fetus
22 cells in there. That's not what was -- how mRNA
23 vaccines are made, period. It's falsifiable. Those
24 should not be religious exemptions. That's all I'm
25 saying.

Page 109

1 **Q. So -- so, Dr. King, you -- any -- I just**
 2 **want to be clear that any study that you relied on to**
 3 **form your opinion in your expert report, not in**
 4 **preparing this deposition but in forming and drafting**
 5 **your expert report, that you cited each study that**
 6 **you relied on to reach your opinion.**
 7 **MS. MAHE:** Object to the form. It
 8 misstates his testimony.
 9 You can answer.
 10 **THE WITNESS:** Yeah. Again, my opinion at
 11 the time I was writing this was formed from a great
 12 many sources, not all of which are cited -- news
 13 media, conversations, studies that I thought were of
 14 interest enough to read but not of interest enough to
 15 pursue as major argument points. Those are not going
 16 to be in there and I couldn't even begin to tell you.
 17 I mean, there's a lot more of them than there are
 18 cited studies. And I would guess that that would be
 19 -- an answer that would in keeping with what some of
 20 the other deponents will tell you.
 21 **BY MR. MEAD:**
 22 **Q. So, Dr. King, I have a similar question**
 23 **related to what is labeled as interrogatory number**
 24 **14; that is, it's the same question for -- it's on**
 25 **page 53. It relates to vaccinations for diseases**

Page 110

1 **other than COVID-19.**
 2 **So, again, I just want to confirm that any**
 3 **studies you relied on to form your opinions for**
 4 **diseases other than COVID-19 are cited in your expert**
 5 **report.**
 6 **MS. MAHE:** Objection. Misstates his
 7 testimony. Misstates his report.
 8 You can answer.
 9 **THE WITNESS:** And, furthermore, it refers
 10 to study, data, statistics, findings, or other
 11 information. In 42 years of administering vaccines,
 12 I developed opinions which went into this report. In
 13 fact, I've made it clear that -- that this is -- this
 14 report is my opinion.
 15 And I couldn't begin to tell you how many
 16 conversations in residency 1980 I had about
 17 vaccinations or -- you know, I know that they
 18 required us to have hepatitis B vaccines in
 19 residency. That helped me understand my role as
 20 someone who couldn't -- didn't want to get it but
 21 also couldn't want to -- didn't want to take the
 22 chance of spreading it.
 23 So that's an overly broad question,
 24 frankly. I could never begin to answer that no
 25 matter how much time you gave me.

Page 111

1 **BY MR. MEAD:**
 2 **Q. So just to clarify, Dr. King, you're**
 3 **referring to your personal opinion based on your**
 4 **experience --**
 5 **MS. MAHE:** Object.
 6 **BY MR. MEAD:**
 7 **Q. -- practicing medicine?**
 8 **MS. MAHE:** Object to the form. That
 9 misstates his testimony.
 10 **THE WITNESS:** Among studies, data,
 11 statistics, findings, we would put my clinical
 12 experience, which as a little old country doctor I
 13 think is relevant, that would be in the other
 14 information part of the question.
 15 **BY MR. MEAD:**
 16 **Q. So, Dr. King, as to the first part for**
 17 **studies, data, information, sorry to keep harping on**
 18 **this, but I just want to make sure that other than**
 19 **your personal experience all data, statistics, and**
 20 **studies that you relied on are cited by your expert**
 21 **report?**
 22 **MS. MAHE:** Object to the form. That
 23 misstates his prior testimony, and it misstates his
 24 report. This has been asked and answered.
 25 You can answer.

Page 112

1 **THE WITNESS:** Again, I can't remember, nor
 2 would you want me to try to remember all of the data
 3 I consumed in learning about this and in making my
 4 opinion known about this. I -- I -- can't even begin
 5 to tell you what all the sources of data, statistics,
 6 findings, and studies would be. Certainly I cited
 7 the ones that I thought most telling, most important,
 8 but I ignored or didn't cite the ones that didn't
 9 seem relevant to my report.
 10 **BY MR. MEAD:**
 11 **Q. Okay. Dr. King, so on that -- on that,**
 12 **how did you determine relevancy of -- specific to**
 13 **COVID-19, what was your method of determining**
 14 **relevancy as to some COVID studies but not others?**
 15 **MS. MAHE:** Object to the form.
 16 You can answer.
 17 **THE WITNESS:** I'm actually an English
 18 major, and I guess my answer is I have a story to
 19 tell. And if it fit, then it got in, and if it
 20 didn't fit in the story I was trying to tell, then I
 21 didn't cite it.
 22 **BY MR. MEAD:**
 23 **Q. So, Dr. King, if -- if a study had**
 24 **contrary evidence to the studies that you're citing,**
 25 **you determined it was irrelevant because it didn't**

Page 117

1 **Q. So that -- that first clause, "the**
 2 **presence of unvaccinated medical workers undermines**
 3 **the credibility of health care providers when they**
 4 **urge vaccine-hesitant patients to become vaccinated."**
 5 **What -- what studies or facts did you rely**
 6 **on to reach that opinion?**
 7 A. This is anecdotal. This is my experience.
 8 I relied on no studies. I'm not sure that there is
 9 such a study. I rely on my interpretation of what
 10 people tell me.
 11 **Q. So in that personal experience, have**
 12 **patients approached you that -- that they're**
 13 **vaccine-hesitant because of the presence of**
 14 **unvaccinated workers?**
 15 A. Why should I believe you over my friend
 16 who is a ward clerk? You're just a doctor and you're
 17 in that -- remember, I'm a minion of Satan. I'm also
 18 a minion of Pfizer because I participated in the
 19 Pfizer trial, and I have been told that.
 20 **Q. So just to make sure I -- I heard your**
 21 **answer correctly, like has -- has that scenario**
 22 **occurred in your personal experience --**
 23 A. Correct.
 24 **Q. -- where a patient has declined**
 25 **vaccination because of the presence of an**

Page 118

1 **unvaccinated medical worker?**
 2 **MS. MAHE:** Object to the form.
 3 We have to be careful to let him finish
 4 his question before you answer.
 5 **THE WITNESS:** Yes, ma'am. I'm sorry.
 6 I -- I -- I have had -- not just I but
 7 it's been well publicized. The nation has seen a
 8 great many people who needed medical care and avoided
 9 getting it because they didn't want to catch COVID
 10 going in the hospital, part of the issue being and --
 11 and -- and part of the issue being that -- that one
 12 of the vectors of disease is staff not just other
 13 patients.
 14 We've seen that in our nursing homes here
 15 where staff repeatedly have brought in COVID to the
 16 -- unvaccinated staff have repeatedly brought COVID
 17 into the -- into the nursing homes over the years,
 18 the last couple of years. So this is
 19 well-established.
 20 Cancer death rates have gone up. Heart
 21 disease death rates have gone up because people are
 22 avoiding care out of fear of catching COVID. This is
 23 another cost of the COVID epidemic and our failure to
 24 properly take advantage of the fact that we could
 25 have rubbed it out if we could have gotten enough

Page 119

1 vaccine into people back when it was Alpha.
 2 **BY MR. MEAD:**
 3 **Q. So, Dr. King, again, to come back to the**
 4 **question, what -- what studies or facts do you rely**
 5 **on for that contention that people are putting off**
 6 **care due to the presence of unvaccinated medical**
 7 **workers?**
 8 **MS. MAHE:** Objection. Asked and answered.
 9 **THE WITNESS:** Answered already, but I'll
 10 say it again. This is personal experience, coupled
 11 with -- we'll call it the news. I don't have a study
 12 in particular that I can point out and cite, saying
 13 this is what happened. It's been evident to me that
 14 this has happened.
 15 **BY MR. MEAD:**
 16 **Q. So, Dr. King, is it fair to say, then,**
 17 **that there's nothing in your expert report beyond**
 18 **your personal opinion citing that?**
 19 **MS. MAHE:** Objection. That misstates his
 20 testimony. His expert report is based upon his
 21 experience, his education, and his career.
 22 You can answer.
 23 **MR. MEAD:** Respectfully, Counsel, I -- I
 24 qualified the question to personal experience.
 25 **BY MR. MEAD:**

Page 120

1 **Q. So, again, Dr. King, is there anything in**
 2 **your expert report beyond your personal experience**
 3 **that you cite to for that opinion that people are**
 4 **putting off care due to the presence of unvaccinated**
 5 **workers?**
 6 **MS. MAHE:** Same objection and object to
 7 form.
 8 You can answer.
 9 **THE WITNESS:** If you include in personal
 10 experience, newspaper articles, news broadcasts,
 11 letters to the editor, et cetera, the kind of things
 12 that I call media, if you include that in personal
 13 experience, then I would agree with you.
 14 **BY MR. MEAD:**
 15 **Q. Okay. So I -- I want to turn to paragraph**
 16 **48 of your opinion and ask you some questions on**
 17 **specifics related to your knowledge of various health**
 18 **care settings.**
 19 A. Okay.
 20 **Q. Can you explain to me what -- what makes a**
 21 **skilled nursing facility a skilled nursing facility,**
 22 **for example? What is it about that -- that setting**
 23 **that designates it as such?**
 24 **MS. MAHE:** Objection to form.
 25 You can answer.

Exhibit 4

*Montana Medical Association, et al. v
Austin Knudsen, et al.*

*David N. Taylor, MD
August 4, 2022*

*Charles Fisher Court Reporting
442 East Mendenhall
Bozeman, MT 59715
(406) 587-9016
maindesk@fishercourtreporting.com*

Min-U-Script® with Word Index

Page 1

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MONTANA
3 MISSOULA DIVISION

4 MONTANA MEDICAL ASSOCIATION,
5 ET AL.,

6 Plaintiffs,

7 and Cause Number
CV-21-108-M-DWM

8 MONTANA NURSES ASSOCIATION,
9 Plaintiff-intervenors,

10 vs.

11 AUSTIN KNUDSEN, ET AL.,
12 Defendants

13 VIDEORECORDED DEPOSITION UPON ORAL EXAMINATION OF
14 DAVID N. TAYLOR, MD

15 BE IT REMEMBERED, that videorecorded
16 deposition upon oral examination of DAVID N. TAYLOR,
17 MD, appearing at the instance of Defendants, was
18 taken at the offices of Fisher Court Reporting, 442
19 E. Mendenhall, Bozeman, Montana, on Tuesday,
20 August 4th, 2022, beginning at the hour of 9:00 a.m.,
21 pursuant to the Federal Rules of Civil Procedure,
22 before Deborah L. Fabritz, Court Reporter - Notary
23 Public.
24
25

Page 2

1 APPEARANCES

2 ATTORNEY APPEARING ON BEHALF OF THE
3 PLAINTIFFS, MONTANA MEDICAL ASSOCIATION:

4 Mr. Justin K. Cole, Esq.
5 Garlington, Lohn & Robinson, PLLP
6 350 Ryman Street
7 Missoula, MT 59807-7909
8 and

9 ATTORNEYS APPEARING VIA ZOOM ON BEHALF
10 OF THE DEFENDANTS, AUSTIN KNUDSEN, ET AL.:

11 Mr. Brent Mead, Esq.
12 Mr. Christian B. Corrigan, Esq.
13 Mr. David M.S. Dewhirst, Esq.
14 PO Box 201401
15 Helena, MT 59620-1401

16
17
18 ALSO PRESENT:

19 Nate Trejo, videographer
20
21
22
23
24
25

Page 3

1 I N D E X

2

3 EXAMINATION OF DAVID N. TAYLOR, MD PAGE

4

5 Mr. Brent Mead..... 5

6

7

8

9 E X H I B I T S

10 DEPOSITION EXHIBIT NUMBER PAGE

11 Exhibit 8 Declaration Expert Report of
12 David Taylor, MD..... 22

13 Exhibit 9 Article - Vaccination Coverage
14 with Selected Vaccines and
15 Exemption Rates Among Children
16 in Kindergarten - United
17 States, 2020-21 School Year.. 86

18
19
20
21
22
23
24
25

Page 4

1 WHEREUPON, the following proceedings were had
2 and testimony taken, to-wit:

3 * * * * *

4 **THE VIDEOGRAPHER:** This is the
5 videorecorded and videoconferenced deposition of
6 David Taylor, MD, taken in the United States District
7 Court of Montana, Missoula Division. Cause Number
8 CV-21-180-M-DWM [sic]. Montana Medical Association,
9 et al. and Montana Nurses Association verse Austin
10 Knudsen, et al.

11 Today is August 4th, 2022. The time is
12 9:09. We are present with the witness at Bozeman
13 Health Deaconess Hospital, 915 Highland Boulevard,
14 Bozeman, Montana 59715.

15 The court reporter is Deb Fabritz, and the
16 video operator is Nate Trejo of Fisher Court
17 Reporting. The deposition is being taken pursuant to
18 notice.

19 I would now ask the attorneys to identify
20 themselves, who they represent, and whoever else is
21 present. For those attending remotely, please note
22 from where you are appearing.

23 **MR. MEAD:** Brent Mead representing
24 defendants Austin Knudsen and Laurie Esau, appearing
25 remotely from Helena, Montana. I also have Christian

Page 5

1 Corrigan and David Dewhirst also -- with the attorney
 2 general's office also appearing remotely from Helena,
 3 Montana.
 4 **MR. COLE:** Justin Cole from Garlington,
 5 Lohn, and Robinson representing the plaintiffs,
 6 appearing in person.
 7 **THE VIDEOGRAPHER:** The court reporter will
 8 now administer the oath.
 9 **DAVID N. TAYLOR, MD,**
 10 called as a witness, having been first duly sworn,
 11 was examined and testified as follows:
 12 **EXAMINATION**
 13 **BY MR. MEAD:**
 14 **Q. Good morning, Dr. Taylor.**
 15 A. Good morning.
 16 **Q. As I said, my name is Brent Mead, an**
 17 **assistant solicitor general for the State of Montana.**
 18 **What that means in this case, I'm one of the lawyers**
 19 **representing the defendants.**
 20 **So I want to start by going over just a**
 21 **few general guidelines for this morning to hopefully**
 22 **make this go as easy as possible. My goal here today**
 23 **is just to learn about you and what you've stated in**
 24 **your report.**
 25 **I'm going to be asking you questions.**

Page 6

1 **We're both on Zoom. I'm sure you're aware by now**
 2 **that that format does create some issues**
 3 **occasionally. So I will try to speak as slow as I**
 4 **can. I will -- I can't promise I won't speed up at**
 5 **times, but the idea I'll speak as slow as I can, as**
 6 **clear as I can, pause and allow you to answer. I**
 7 **want to avoid that we talk over each other as much as**
 8 **possible. So, again, it -- it's going to happen, but**
 9 **we'll try and make this easy as we can.**
 10 **If I ask you a question and you don't**
 11 **understand it, please ask me to rephrase it or tell**
 12 **me that you don't understand it. And I'll try and**
 13 **reword it so that I can -- so I can get the answer to**
 14 **the question I'm looking at.**
 15 **If you need to take a break, please just**
 16 **ask. The only thing is that if we're in the middle**
 17 **of answering a question, I'd ask that you complete**
 18 **answering the question, and then we'll step away for**
 19 **a break. And on that, as a general rule, I'll try**
 20 **and make sure that we take a break for five or ten**
 21 **minutes every hour. I believe Justin will let us**
 22 **know -- Mr. Cole I should say. Mr. Cole let us know**
 23 **that you're on call. So if there's a need for you to**
 24 **step away, again please just let us know, and we'll**
 25 **pick up when you're available. Does that all sound**

Page 7

1 **good?**
 2 A. Sounds good.
 3 **Q. So I would like to start with the easy**
 4 **question. Could you please state and spell your**
 5 **name.**
 6 A. David Taylor, D-A-V-I-D, T-A-Y-L-O-R.
 7 **Q. Where is your residential address?**
 8 A. Bozeman, Montana.
 9 **Q. Do you have the street address?**
 10 A. 518 South 3rd Avenue.
 11 **Q. And, Dr. Taylor, where are you currently**
 12 **employed?**
 13 A. Bozeman Health, Bozeman, Montana.
 14 **Q. Have you ever participated in a deposition**
 15 **before?**
 16 A. No, I haven't.
 17 **Q. Have you ever testified as an expert**
 18 **witness before?**
 19 A. No, I haven't.
 20 **Q. Dr. Taylor, are you under the influence of**
 21 **any substance that could affect your ability to**
 22 **provide true and accurate testimony today?**
 23 A. No, I am not.
 24 **Q. I want to ask you just a little bit about**
 25 **your preparation for today. What did you do to**

Page 8

1 **prepare for your deposition this morning?**
 2 A. I reread my deposition and the deposition
 3 of the two opposing depositions or expert testimony.
 4 **Q. Did you discuss your deposition today with**
 5 **anyone other than the attorneys for plaintiffs,**
 6 **Mr. Cole or Ms. Mahe?**
 7 A. No, I did not.
 8 **Q. Now, Dr. Taylor, in your career, have you**
 9 **ever been subject to a malpractice lawsuit?**
 10 A. No, I have not.
 11 **Q. Have you ever been the subject of an**
 12 **ethical complaint or ethics investigation in your**
 13 **professional or academic career?**
 14 A. No, I have not.
 15 **Q. Okay. So, Dr. Taylor, I -- want to start**
 16 **-- can you just -- can you please describe what your**
 17 **day-to-day responsibilities are at Bozeman Deaconess?**
 18 A. I'm the medical director for the
 19 Department of Clinical Research. I in that role
 20 provide medical expertise for the clinical work that
 21 we're doing and also support work on COVID
 22 surveillance in collaboration with Montana State
 23 University.
 24 And I also have a role in teaching medical
 25 students at our medical school here.

Page 29

1 **Q. Please do.**
 2 A. So, for example, the MRNA vaccines were
 3 completely new. They had not been subject to
 4 large-scale trials. And so, you know, by looking at
 5 the efficacy of the influenza vaccines, which is
 6 around 60 percent, you know, I was assuming that we
 7 would have something like that for COVID as well.
 8 So I was astounded by two things. One was
 9 the rapidity with which the vaccine was manufactured,
 10 and the vaccine was tested for efficacy and also
 11 astounded by the high efficacy which was in the 90 to
 12 95 percent range. I mean, I think none of us would
 13 have anticipated the vaccine would have worked that
 14 well.
 15 **Q. So, Dr. Taylor, regarding COVID-19 vaccine**
 16 **efficacy, has your opinion remained constant with**
 17 **subsequent COVID-19 strains such as Delta and**
 18 **Omicron?**
 19 A. My opinion never remains constant. In
 20 other words, everything we learn new needs to be, you
 21 know, assimilated with what we already know. So, for
 22 example, with Delta, we found that there was very
 23 strong protection in -- in our hospital and every
 24 hospital around the country. The vast majority of
 25 people who were hospitalized were unvaccinated.

Page 30

1 The only vaccinated people were those over
 2 the age of 70 that, you know, probably did not have a
 3 good immune response to the vaccine. So, you know,
 4 there was -- you know, despite, you know, minor
 5 changes, minor mutations to produce the Delta
 6 variant, the vaccine worked very well.
 7 With Omicron, which began essentially at
 8 the beginning of this calendar year, the vaccines
 9 were not as protective, and so that's when we started
 10 to go to the booster approach. And so over the last
 11 six months or so, we've seen that -- the
 12 recommendation for the first booster and now the
 13 second booster.
 14 And so the ability to protect against
 15 severe disease and hospitalization, being put in the
 16 ICU and death are still very high even with the
 17 Omicron. What we are seeing, though, is the Omicron
 18 does evade some of that immune response, and so there
 19 can be minor infections occurring.
 20 So the approach now is to craft a new
 21 vaccine that would be a combination of the Wuhan
 22 strain, the original strain, plus one of the Omicron
 23 strains, probably to the BA.5 variant of Omicron.
 24 And so that will be released sometime in the fall.
 25 And so I think that that would perhaps be best

Page 31

1 described, you know, as a vaccine preparing us for
 2 the winter season.
 3 **Q. So, Dr. Taylor, would it be fair to say**
 4 **that because of Omicron, the vaccines currently in**
 5 **use are not as effective in preventing disease**
 6 **transmission even among vaccinated individuals?**
 7 **MR. COLE:** Object to the form of the
 8 question. It's vague.
 9 **THE WITNESS:** The -- after boosting, the
 10 protection against severe disease and death are very
 11 similar to the originals.
 12 **BY MR. MEAD:**
 13 **Q. Dr. Taylor, what about disease**
 14 **transmission?**
 15 **MR. COLE:** Objection. Vague.
 16 **THE WITNESS:** What about it?
 17 **BY MR. MEAD:**
 18 **Q. Dr. Taylor, are the vaccines efficacious**
 19 **-- are they -- strike that.**
 20 **Dr. Taylor, are -- are the current**
 21 **vaccines as efficacious in preventing COVID-19**
 22 **disease transmission as -- post-Omicron as they were**
 23 **for Delta or Alpha strains?**
 24 **MR. COLE:** Object to the form of the
 25 question.

Page 32

1 **THE WITNESS:** Well, I think it's true. I
 2 mean, the Omicron, as you probably read, you know, is
 3 considerably different than the original strains.
 4 There are a multitude of additional mutations in the
 5 spike protein, which is the basis for the Omicron
 6 vaccines or -- or for the COVID vaccines.
 7 So yeah. The -- the Omicron is -- is a
 8 mutant that, you know, was selected by immune
 9 pressure. So as more and more people in the -- in
 10 the world or in the United States became immunized
 11 either through vaccine or natural infection or a
 12 combination of the two, then the mutations, you know,
 13 that could survive that immune response was selected
 14 out. So that's, you know, a good example of natural
 15 selection, you know, how that worked.
 16 And so, you know -- and we have seen this
 17 over and over again with influenza. I mean, we
 18 wouldn't change the influenza vaccine on an annual
 19 basis if the old one would work just as well as the
 20 new one. So this is a phenomenon that we've seen.
 21 I think that the Omicron, you know, with
 22 so many different mutations seem to be different than
 23 -- than others. But clearly, you know, it's, you
 24 know, has two aspects. You know, one, it's a milder
 25 infection. It's an infection that really is in the

1 upper respiratory tract rather than in the -- in the
2 lungs which is where the original strains were. So
3 it's a -- it's a less severe infection, but it's
4 highly transmissible. And so I think that we will
5 see a new vaccine directed at the Omicron strains
6 coming out in the fall.

7 **MR. MEAD:** So Justin, Dr. Taylor, I think
8 now is a good time to take a break before I jump into
9 my next set of questions. Would it be good to break
10 until say 10:05?

11 **MR. COLE:** Works for us.

12 **MR. MEAD:** Okay. Thank you.

13 **THE WITNESS:** Thank you.

14 **THE VIDEOGRAPHER:** We're going off the
15 record. The time is 9:57.

16 (Whereupon, a break was then
17 taken.)

18 **THE VIDEOGRAPHER:** We are back on the
19 record. The time is 10:06.

20 **BY MR. MEAD:**

21 **Q. Dr. Taylor, I want to start -- can you
22 please describe to me the conclusions that you reach
23 in your report?**

24 **MR. COLE:** Objection. Vague and overly
25 broad.

1 So we could go through all 65 paragraphs and -- and
2 -- and determine what those conclusions are for each
3 paragraph.

4 **BY MR. MEAD:**

5 **Q. Dr. Taylor, I'm trying to understand what
6 you view the scope of your expert report to be. Is
7 it fair to categorize that your expert report is
8 limited to, one, the safety of vaccine trials, and,
9 two, the overall public policy behind vaccination
10 campaigns?**

11 **MR. COLE:** Object to the form of the
12 question. It misstates Dr. Taylor's report, and it
13 misstates his testimony.

14 **BY MR. MEAD:**

15 **Q. Can you please answer, Dr. Taylor?**

16 A. I'm -- my report is based on the idea that
17 vaccines are a major cornerstone of public health,
18 that they have been since the inception of vaccine
19 development, which really started in the 1940s, an
20 absolutely key part of public health. We would not
21 have the healthy population that we have now without
22 vaccination.

23 In my view reading the law HB 702, I -- I
24 think that this law has the effect of trying to
25 decrease the importance of vaccines as a public

1 **THE WITNESS:** May I refer to those?

2 **BY MR. MEAD:**

3 **Q. So, Dr. Taylor -- yes. And, again,
4 Dr. Taylor, if you don't understand a question that I
5 ask, please ask me and I will try to rephrase it for
6 you.**

7 **So, Dr. Taylor, can you please just
8 describe the -- the main conclusions that you reach
9 in your report? And if it helps you to sort of
10 number them out and refer me to those paragraphs,
11 please do so.**

12 **MR. COLE:** And same objection. Overbroad
13 and vague.

14 **THE WITNESS:** Well, I'll start out with
15 the last paragraph, Mr. Mead, paragraph 65 on page
16 37.

17 **BY MR. MEAD:**

18 **Q. Are there -- Dr. Taylor, are there other
19 subconclusions that you reached in your expert
20 report?**

21 **MR. COLE:** Object. Vague.

22 **THE WITNESS:** Well, I think every
23 paragraph I try to make a statement, provide the
24 information that supports that statement and then
25 conclude, you know, what the importance of that is.

1 health tool. What in my view happens is that if we
2 say that it's up to the individual -- in other words,
3 there's a personal freedom issue here -- that that's
4 abdicating our duty to the community.

5 And so I think that it's our -- an
6 important duty of the state to educate the -- the
7 population in the state on the importance of vaccines
8 and other public health measures and that we should
9 do everything we can to encourage our -- people in
10 our state to -- to receive vaccines and to embrace
11 other public health measures that would keep them
12 healthy.

13 So by saying that -- that it's an
14 individual decision and not giving the individuals
15 the tools to make an informed decision, I think, is
16 -- is a problem with the law. I think that the other
17 problem is that it doesn't address the common good
18 that is part of vaccination. We vaccinate to protect
19 ourselves, but we also vaccinate to -- to protect our
20 community.

21 **Q. So, Dr. Taylor, it's fair to say that you
22 are familiar with House Bill 702?**

23 A. I'm not a lawyer, obviously, and so I'm --
24 I'm familiar with the wording of it. I may not
25 understand all the nuances of the law.

Page 49

1 **MR. COLE:** Objection to the form of the
 2 question.
 3 **THE WITNESS:** No. That's not the subject
 4 of that report.
 5 **BY MR. MEAD:**
 6 **Q.** So that report does not track the percent
 7 change in any exemption from -- since the 2019-2020
 8 school year?
 9 **MR. COLE:** Sorry. For the record, Brent,
 10 your camera cut out. I think we missed a word in
 11 your question.
 12 **MR. MEAD:** Of course.
 13 **BY MR. MEAD:**
 14 **Q.** So, Dr. Taylor, the study you cited in
 15 paragraph 23, it's -- are you aware that that study
 16 tracks the percentage point change in any exemption
 17 since the 2019-2020 school year?
 18 **MR. COLE:** I'm going to object. Asked and
 19 answered and to the extent it mischaracterizes the
 20 study.
 21 But you can answer the question.
 22 **THE WITNESS:** That information is not in
 23 that report.
 24 **BY MR. MEAD:**
 25 **Q.** So, Dr. Taylor, it's -- it's your opinion

Page 50

1 that that study or that report -- strike that.
 2 So, Dr. Taylor, it's your opinion that
 3 report does not show a negative .8 percent change in
 4 the percentage of medical and religious exemptions
 5 granted to school children in Montana?
 6 **MR. COLE:** I'm going to object to the form
 7 of the question and it misstates the witness's
 8 testimony, and you're questioning him about a
 9 document he does not have in front of him.
 10 You may answer if you know.
 11 **THE WITNESS:** I don't know the answer to
 12 that question.
 13 **BY MR. MEAD:**
 14 **Q.** So perhaps we can come back to this. Also
 15 in paragraph 23, Dr. Taylor, after the citation for
 16 the study, you state: "When parents do bring their
 17 children for well-child visits, concerns about
 18 Coronavirus vaccines are now reflected in attitudes
 19 toward routine immunizations." Can you please
 20 describe what data or studies you relied on to reach
 21 that opinion?
 22 A. That is an opinion, my personal opinion.
 23 I don't have data for that.
 24 **Q.** Dr. Taylor, the next sentence in paragraph
 25 23, COVID vaccine hesitation can influence acceptance

Page 51

1 of the routine childhood immunizations.
 2 What is the basis -- what studies or data
 3 did you rely on to base that opinion?
 4 A. Same. This is my own personal opinion.
 5 **Q.** Okay. Thank you. I now want to move on
 6 to paragraph 24. And, Dr. Taylor, you state that
 7 immunization rates of 95 percent are needed to
 8 interrupt disease transmission. What data or studies
 9 did you rely on for that opinion?
 10 A. You know, this goes back to the currently
 11 accepted levels that are required for herd immunity,
 12 I can't give you a reference for that right now.
 13 **Q.** Sure. So, Dr. Taylor, a couple sentences
 14 later you cite what I believe we have just been
 15 discussing about COVID vaccine exemptions in health
 16 care facilities. I am -- can you please describe the
 17 link between school-age vaccinations and health care
 18 worker vaccine exemptions?
 19 **MR. COLE:** Object to the extent it's
 20 vague.
 21 But if you understand the question you may
 22 answer it.
 23 **THE WITNESS:** I'm not sure I understand
 24 length there, Mr. Mead.
 25 **BY MR. MEAD:**

Page 52

1 **Q.** Dr. Taylor, in paragraph 24 you start by
 2 discussing the unknown vaccination status of 10
 3 percent of kindergarten-aged children. In the next
 4 sentence you move to the COVID vaccine exemption rate
 5 in Montana health care facilities. Can you please
 6 describe what -- what the link between those two is?
 7 **MR. COLE:** Same objection. And object
 8 that it mischaracterizes the language of the report.
 9 You may answer.
 10 **THE WITNESS:** So I think that this is
 11 looking at the multifactorial issues that are
 12 involved in -- in immunizations. So, you know, when
 13 we started to receive immunizations when I was a kid,
 14 you know, we were in the middle of a polio outbreak,
 15 and every child, you know, was immunized in the
 16 school for polio. And we were very glad to have it,
 17 and, you know, these vaccines were welcomed with open
 18 arms.
 19 So since that time, I think there's been a
 20 general back and forth between those that, you know,
 21 feel that vaccines are important and those that feel
 22 that vaccines are intrusive into personal freedoms,
 23 for example. And so anything that erodes confidence
 24 in vaccines or deters families from getting their
 25 children vaccinated, whether it's a fear of side

1 effects, whether it's, you know, some sort of
2 political consideration, whether it's a personal
3 freedom issue, anything that erodes our ability to
4 have a strong shield against these diseases is going
5 to allow these diseases to recur.

6 So I feel that, you know, the COVID
7 outbreak and -- and the question about the
8 kindergartners is one part of it. I think that the
9 use of high numbers of exemptions is another one.

10 So these are two examples of things that
11 can impact childhood immunization rates.

12 **Q. So, Dr. Taylor, turning back, then, to**
13 **paragraph 23 and the report you cite, are you aware**
14 **of the reasons stated in that report for the decline**
15 **in childhood vaccination rates from 95 to 94 percent?**

16 **THE REPORTER:** I'm sorry, you cut out.
17 You said the decline in childhood vaccination rates
18 From 95 to --

19 **MR. MEAD:** 94 percent.

20 **THE REPORTER:** Thank you.

21 **THE WITNESS:** Well, this report doesn't
22 know specifically why all of those 400,000 children
23 didn't attend kindergarten, you know. Whether
24 they're being homeschooled, whether there is delays
25 for reasons of the COVID outbreak, they don't feel

1 cornerstone of this report. I think that this is,
2 you know, speculative information. I mean, it's
3 correct information, but it's -- you know, whether or
4 not, you know, they -- these people are getting less
5 immunizations or not is really unknown. I -- I'm not
6 sure that it's worth the time to go over it multiple
7 times, sir.

8 **Q. So, Dr. Taylor, I want to move back to**
9 **paragraph 24, and in paragraph 24 you state: "In**
10 **Montana, COVID vaccine exemptions in health care**
11 **facilities were approximately twice as high as the**
12 **national average" -- then the important part --**
13 **"which in part is caused by the opposing state and**
14 **federal mandates."**

15 **Can you please explain what you mean by**
16 **opposing state and federal mandates?**

17 A. Well, federal mandates is probably a
18 mistake. But opposing state mandates is correct.
19 So, you know, my -- my feeling is that, you know, if
20 you have -- so there were -- there were -- I think in
21 the United States there were a number of states that
22 mandated vaccines very early on, and then there are a
23 number of states that were like Montana that mandated
24 only when, you know, it was necessary to observe
25 federal law.

1 that schools are -- are back to normal, any number of
2 reasons. All they have is a number that the number
3 of children that normally would go to kindergarten is
4 400,000 less this -- during this year 2021 than it
5 was in previous years.

6 So they don't know why they didn't go to
7 school. But, you know, since that's the way that
8 they know immunization rates, there's 400,000
9 unaccounted children. So that's -- that's all that's
10 saying.

11 **BY MR. MEAD:**

12 **Q. Dr. Taylor, that study does cite reasons**
13 **given to the authors by schools for declining**
14 **vaccination rates. That's -- that's correct. Right?**

15 **MR. COLE:** Objection. The question is
16 argumentative, and you're asking him about a study
17 that he does not have in front of him.

18 **THE WITNESS:** So, you know, if -- if you
19 got the study in front of you, I'd be happy to learn
20 what those specific reasons were.

21 **BY MR. MEAD:**

22 **Q. Dr. Taylor, I do think that we can return**
23 **to this perhaps after the next break. Now, I want to**
24 **move to --**

25 A. In my opinion it's -- it's not a

1 So in those early states with -- that, you
2 know, the exemption rates were, you know, always less
3 than 5 percent -- 1 percent, 2 percent, et cetera.
4 And these were, you know, big states -- New York, New
5 Jersey, et cetera.

6 And so, you know, this was data that I
7 gleaned out of the -- you know, looking at various
8 reports in the literature, you know. So, you know,
9 it looked like in those early states.

10 And then in the later states where there
11 had been something holding back the state to -- to,
12 you know, impose these mandates, the exemption rate
13 was much higher. And so we have a situation in
14 Montana where, you know, people, you know, were going
15 by the state law which, you know, is important that
16 people follow the law. And -- and so I think that
17 they felt that -- that they had been -- that the
18 state encouraged them not to be vaccinated.

19 **Q. Dr. Taylor, I want to follow up on that.**
20 **What do you mean that the state failed to encourage**
21 **them to get vaccinated?**

22 A. Well, by saying that, you know, the state
23 does not hold an opinion about the usefulness of
24 vaccines, that it's up to you to decide, then, you
25 know, how do people decide? You know, they -- the

Page 57

1 vaccines are -- you know, that's a -- that's a hard
 2 question for a layperson to come to.
 3 And so, again, I think that, you know, the
 4 state has some duty to advocate for these vaccines in
 5 terms of promoting community welfare.
 6 **Q. So, Dr. Taylor, you -- you just mentioned**
 7 **laypeople, and I -- I want to be clear that the**
 8 **sentence we're discussing, is that your opinion about**
 9 **health care workers in that sentence, that COVID**
 10 **vaccine exemptions in health care facilities were**
 11 **approximately twice as high? So I want to be**
 12 **clear --**
 13 A. Sorry about that. I thought what you were
 14 saying was how do you know that this is going to have
 15 an impact on childhood immunizations. I was looking
 16 at it from that point of view.
 17 **Q. So Dr. -- Dr. Taylor, then I guess in that**
 18 **sentence in paragraph 23, the COVID vaccine**
 19 **exemptions in health care facilities were**
 20 **approximately twice as high as the national average.**
 21 **In that last part, in part is caused by the opposing**
 22 **state and federal mandates.**
 23 **Specific to health care workers, what do**
 24 **you mean by opposing state and federal mandates?**
 25 **MR. COLE:** I'm going to object. Vague.

Page 58

1 It's paragraph 24 and you may answer the
 2 question.
 3 **THE WITNESS:** So I look at HB 702 as an
 4 opposing state mandate which indicates that it is a
 5 personal decision to -- to decide whether you want to
 6 get vaccinated. Is that the essence of that law in
 7 your opinion?
 8 **Q. Dr. Taylor, please just answer the**
 9 **question.**
 10 A. So that's how I would answer the question,
 11 that -- that I believe that that, you know, has a
 12 negative impact on -- on getting people vaccinated.
 13 **Q. So, Dr. Taylor, it's your opinion, then,**
 14 **that the state allowing individuals to choose to**
 15 **become vaccinated, that is a mandate?**
 16 **MR. COLE:** Objection to the extent it
 17 mischaracterizes testimony.
 18 **THE WITNESS:** How would you characterize a
 19 law if not a mandate? I could say opposing state
 20 laws. Would that be -- clarify that?
 21 **BY MR. MEAD:**
 22 **Q. So, Dr. Taylor, again, going to HB 702,**
 23 **would you agree that the law allows for the**
 24 **recommendation of vaccines?**
 25 **MR. COLE:** Objection. Calls for a legal

Page 59

1 conclusion.
 2 **THE WITNESS:** I see no language in there
 3 that calls for a recommendation of vaccines.
 4 **BY MR. MEAD:**
 5 **Q. So, Dr. Taylor, in paragraph 24, the last**
 6 **sentence, you use a phrase "safe care environment."**
 7 **What do you mean by that?**
 8 A. We want to create a workplace where our
 9 patients and our staff are protected from diseases.
 10 This is done in any number of ways. Bozeman Health,
 11 for example, has had a mask mandate since the
 12 beginning of the -- of the pandemic and we still have
 13 it, you know. And we do that in order to create a
 14 safe care environment.
 15 We also to the best extent we can try and
 16 get everybody vaccinated. That's an important tool
 17 in providing a safe care environment. The worst
 18 thing that could happen is that one of our cancer
 19 patients, for example, or someone debilitated would
 20 catch a disease in the hospital, such as COVID, you
 21 know. We -- we certainly do not want that to ever
 22 happen, and we want to take measures to protect our
 23 patients from -- from disease. And that is a safe
 24 care environment.
 25 **Q. So, Dr. Taylor, what -- what data or**

Page 60

1 **studies do you cite in your report to form that**
 2 **opinion?**
 3 A. I would say that this is common knowledge.
 4 **Q. So, Dr. Taylor, you -- you don't cite any**
 5 **specific data or studies that -- to reach that**
 6 **opinion of what constitutes a safe care environment?**
 7 **MR. COLE:** I'm going to object that it
 8 mischaracterizes the balance of the report.
 9 **THE WITNESS:** So I think that the hospital
 10 personnel here that are -- do the best we can to --
 11 to try and make everything as safe as possible for
 12 our patients. That's our responsibility and our
 13 obligation to them.
 14 We will look at the information available.
 15 If COVID didn't exist right now, we would not
 16 recommend COVID vaccines, because they do not make
 17 the environment any safer.
 18 If we had a vaccine, for example, for some
 19 other disease that our patients might get in the
 20 hospital, we would advocate that that vaccine be
 21 used. We also advocate hand washing. We advocate,
 22 you know, gloves and PPE when working with a patient
 23 who is infected with COVID or some other infectious
 24 disease. So we have any number of safeguards that we
 25 -- we utilize to provide that safe environment.

Page 77

1 I'll see what the data looks like and then make my
 2 decision. They, you know, studies had shown that
 3 the, you know, over half the population or, you know,
 4 whatever, you know, the people, the group was that
 5 didn't want to get vaccinated had already made up
 6 their mind well ahead of -- of the information
 7 available on the vaccines.
 8 **BY MR. MEAD:**
 9 **Q. Dr. Taylor, where in your expert report do**
 10 **you cite to those studies?**
 11 A. I don't cite it in my report. I just
 12 learned about this recently.
 13 **Q. Okay. So, Dr. Taylor, I want to turn to**
 14 **the mRNA vaccines. And can you please describe some**
 15 **of the common side effects of those vaccines?**
 16 **MR. COLE:** Objection. Overbroad.
 17 **THE WITNESS:** I think soreness at the site
 18 of injection is by far the most common side effect,
 19 headache, you know, malaise, those sort of things.
 20 All of these symptoms subside in a 24- or 48-hour
 21 period.
 22 **BY MR. MEAD:**
 23 **Q. Dr. Taylor, are there more serious side**
 24 **effects that can be associated with the mRNA**
 25 **vaccines, such as myocarditis or pericarditis?**

Page 78

1 A. I'm not sure what the status of those
 2 reports are. I do know that those are exceedingly
 3 rare events, whether there -- you know, there is a
 4 temporal or causal association with the vaccine,
 5 whether that's been proved, I'm just not sure.
 6 **Q. Okay. And, Dr. Taylor, to your knowledge,**
 7 **are you aware of myocarditis or pericarditis being**
 8 **associated with the mRNA vaccines during their**
 9 **trials?**
 10 A. Not specifically, no.
 11 **Q. During the trials for the mRNA vaccines,**
 12 **are you aware of any attempt to study the efficacy of**
 13 **those vaccines related to transmission?**
 14 **MR. COLE:** Objection. Foundation.
 15 But you may answer to the extent you
 16 understand and know.
 17 **THE WITNESS:** So yes. There was a number
 18 of studies looking at transmission issues. I think
 19 the original studies concentrated on, you know,
 20 reduction in disease, so reduction in moderate
 21 disease, reduction in severe disease, reduction in
 22 hospitalization, for example.
 23 So those studies -- per se those -- those
 24 original studies were not built to also look at
 25 transmission. They were built to look at immune

Page 79

1 response and efficacy, the ability to prevent
 2 disease. And, of course, that's what the FDA uses
 3 when they're making a decision to license a vaccine
 4 or grant an EUA.
 5 **THE REPORTER:** NUA?
 6 **THE WITNESS:** EUA, emergency use
 7 authorization.
 8 So the -- the final line studies, though,
 9 did look at transmission, so -- and these were
 10 studies that were done both in the United States and
 11 in Europe and elsewhere. And so I cited a number of
 12 them which showed that there was a decrease in viral
 13 load.
 14 So there's been a lot of -- I don't know
 15 if you want me to go into this any further, Mr. Mead.
 16 I'll just let you -- did I answer your question?
 17 **BY MR. MEAD:**
 18 **Q. Dr. Taylor, please do continue on because**
 19 **I do want to turn to the question of COVID-19**
 20 **transmissibility and the studies you cite. So to**
 21 **start, do you cite any studies related to**
 22 **transmissibility regarding the Omicron variant?**
 23 A. No. The studies that I cited were prior
 24 to the Omicron outbreak.
 25 **Q. Dr. Taylor, in your opinion what is the**

Page 80

1 **rate of change in the scientific literature regarding**
 2 **how much changes from Alpha to Delta and then from**
 3 **Delta to Omicron?**
 4 **MR. COLE:** I'm going to object that the
 5 question is vague.
 6 But if you understand it you can answer.
 7 **THE WITNESS:** Are you referring to the
 8 number of mutations?
 9 **BY MR. MEAD:**
 10 **Q. So, Dr. Taylor, I'm happy to clarify this**
 11 **one. The -- the studies you cite are regarding Alpha**
 12 **and Delta. Correct?**
 13 A. Yes.
 14 **Q. With Omicron, is it true that Omicron is**
 15 **more transmissible?**
 16 **MR. COLE:** Objection. Vague.
 17 **THE WITNESS:** Yes. In general, Omicron
 18 has proven to be highly transmissible. So the
 19 disease is somewhat less severe than Delta, for
 20 example, but more transmissible. So, you know, what
 21 we saw was this great arc of disease occurring in the
 22 January, February time frame, you know, as that
 23 strain spread through the population.
 24 **BY MR. MEAD:**
 25 **Q. So, Dr. Taylor, is Omicron more**

Page 85

1 as an example where we have a predictable pattern for
 2 influenza. You know, it starts in the wintertime in
 3 December. It goes through January, February, March,
 4 and then declines. And so that's our influenza
 5 season. We don't have that -- that type of
 6 predictable pattern for COVID yet.
 7 **Q. Is that also true for being able to**
 8 **predict what the next strain of COVID will look like?**
 9 A. We cannot predict that.
 10 **Q. Okay.**
 11 **MR. MEAD:** So, Justin, if it's okay, I'd
 12 like to take a quick five-minute break. I do have
 13 another series of questions, but if -- now I think
 14 would be a good time to sort of review the study that
 15 was sent over, and then I'll be prepared to wrap up
 16 fairly quickly.
 17 **MR. COLE:** Sounds good. Thank you.
 18 **THE VIDEOGRAPHER:** We are going off the
 19 record. The time 11:49.
 20 (Whereupon, a break was then
 21 taken.)
 22 **THE VIDEOGRAPHER:** We are back on the
 23 record. The time is 11:59.
 24 **BY MR. MEAD:**
 25 **Q. Dr. Taylor, I want to turn back to the**

Page 86

1 **study you cite in paragraph 23 of your report. And**
 2 **do you have a copy of that study in front of you now?**
 3 A. Yes, I do.
 4 **Q. Is -- can you please verify that it is the**
 5 **study that you cite in paragraph 23?**
 6 A. Yes, it is.
 7 **Q. Okay. Can we get that entered -- I**
 8 **believe it will be Exhibit Number 9, if my numbering**
 9 **is right?**
 10 **MR. COLE:** I agree with the numbering.
 11 Brent, this copy has some markings on it. Could we
 12 have the official version marked be the one that you
 13 e-mailed to the court reporter?
 14 **MR. MEAD:** Of course.
 15 **MR. COLE:** Okay.
 16 (Whereupon, Exhibit 9 was
 17 marked for identification.)
 18 **BY MR. MEAD:**
 19 **Q. So, Dr. Taylor, I -- I just want to**
 20 **confirm that according to that report, the percentage**
 21 **of Montana kindergartners who claimed an exemption in**
 22 **2020-2021, was lower than the percentage of Montana**
 23 **kindergartners who claimed an exemption in 2019-2020.**
 24 A. Yes. So the line says that there were
 25 kindergarten population of 11,279; that the rates of

Page 87

1 -- for vaccines -- the common vaccine is around 92
 2 percent; that the percent of any exemption is 3.5
 3 percent, which was a minus .8 percent lower than
 4 previous year.
 5 **Q. So, Dr. Taylor, in paragraph 23, you state**
 6 **that concerns about Coronavirus vaccines are now**
 7 **reflected in attitudes towards routine immunizations.**
 8 **Does a decrease in the number of claimed exemptions**
 9 **-- does that support your opinion?**
 10 A. Not necessarily, no.
 11 **Q. Okay. So I want to go back to the MRNA**
 12 **vaccine trials now. And to your knowledge,**
 13 **Dr. Taylor, did the MRNA vaccine trials include**
 14 **individuals who had been previously infected with**
 15 **COVID-19?**
 16 A. Yes. So there -- I'm recalling the Pfizer
 17 trial, Mr. Mead, that looked at both population sets,
 18 one that had a history of COVID infection plus
 19 vaccination and another data set that had those who
 20 said that didn't. I believe there were something
 21 like 2,000 out of the 40,000 that were eliminated in
 22 the -- in the first -- the percent efficacy was
 23 essentially identical in both groups.
 24 **Q. Okay. And, Dr. Taylor, is that data set**
 25 **cited in your expert report?**

Page 88

1 A. Yes. I believe it is.
 2 **Q. Can you please -- and if you need to take**
 3 **some time finding it, can you please point me to**
 4 **where in your report it is?**
 5 A. Yeah. Where's that nice figure that I put
 6 in here? I'd have to look for it. So this is figure
 7 3 is the study, and Polack on page 21 is the
 8 reference.
 9 **Q. Okay. Thank you. Thank you for that,**
 10 **Dr. Taylor.**
 11 **So turning to paragraph 49 of your report**
 12 **-- you'll have to give me a moment, too. I seem to**
 13 **have -- I know the paragraph number, but I seem to**
 14 **have lost my place on it, though.**
 15 A. It's page 26.
 16 **Q. So, Dr. Taylor, turning to paragraph 49**
 17 **you state: "This is particularly true for persons**
 18 **under the age of 70 where vaccines are highly**
 19 **effective." Then you continue. "The elderly do not**
 20 **have as robust an immune response after vaccination."**
 21 **Can you please explain what you mean by**
 22 **the elderly do not have as robust an immune response**
 23 **after vaccination?**
 24 A. Yes. So if you immunized 100 20-year-olds
 25 and 100 70-year-olds, you would see that the mean

Exhibit 5

*Montana Medical Association, et al. v
Austin Knudsen, et al.*

*Dr Gregory Holzman
August 16, 2022*

*Charles Fisher Court Reporting
442 East Mendenhall
Bozeman, MT 59715
(406) 587-9016
maindesk@fishercourtreporting.com*

Min-U-Script® with Word Index

Page 1

1 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA
 2 MISSOULA DIVISION
 3
 4 MONTANA MEDICAL ASSOCIATION, ET AL.,
 5
 6 Plaintiffs,
 7
 8 and Cause No. DV-21-108-M-DWM
 9
 10 MONTANA NURSES ASSOCIATION,
 11
 12 Plaintiff-Intervenors,
 13
 14 vs.
 15
 16 AUSTIN KNUDSEN, ET AL.,
 17
 18 Defendants.
 19
 20
 21 VIDEO DEPOSITION UPON ORAL EXAMINATION OF
 22 DR. GREGORY HOLZMAN
 23
 24
 25

Page 2

1 BE IT REMEMBERED, that the video-taped deposition
 2 upon oral examination of DR. GREGORY HOLZMAN, appearing at
 3 the instance of the Defendants, was taken via Zoom, on
 4 August 16, 2022, beginning at 9:00 a.m., pursuant to
 5 Montana Rules of Civil Procedure, before Robyn Ori
 6 English, Court Reporter - Notary Public.
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Page 3

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Page 4

1 I N D E X
 2
 3
 4 EXAMINATION OF DR. GREGORY HOLZMAN BY: PAGE:
 5
 6 Mr. Brent Mead, Esq..... 7,94
 7 Mr. Raph Graybill, Esq..... 90
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
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 24
 25

Page 5

E X H I B I T S

1

2

3 DEPOSITION EXHIBITS: PAGE:

4

5 Exhibit 23 Dr. Holzman Expert Report..... 9

6

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Page 7

1 appearing remotely from Missoula.

2 **VIDEO OPERATOR:** The Court Reporter will now

3 administer the oath.

4

5 WHEREUPON, the following proceedings were had and

6 testimony taken, to wit.

7

8

9
 9 DR. GREGORY HOLZMAN,

10 called as a witness herein, having been first duly sworn,

11 was examined and testified as follows:

12

13 EXAMINATION

14

15 **BY MR. MEAD:**

16 **Q. Good morning, Dr. Holzman.**

17 **A. Good morning.**

18 **Q. Thank you for taking time this morning.**

19 **As I said, my name is Brent Mead, one of the**

20 **attorneys representing the Defendants in this case.**

21 **And before we start, I just want to go**

22 **over a couple general guidelines for you. My goal**

23 **today is to learn more about your expert report and**

24 **learn more about your background. Because we are**

25 **over Zoom, I will do my best to avoid talking over**

Page 6

1 **VIDEO OPERATOR:** This is the video-recorded and video

2 conference deposition of Dr. Greg Holzman, taken in the

3 United States District Court for the District of Montana,

4 Missoula Division, Cause No. CV-21-108-M-DWM, Montana

5 Medical Association, et al and Montana Nurses Association

6 versus Austin Knudsen, et al.

7 Today is August 16, 2022. The time is 9:04.

8 The deposition is being taken remotely with the witness

9 appearing via video from Helena, Montana. The Court

10 Reporter is Robyn Ori English and the video operator is

11 Nate Trejo from Fisher Court Reporting.

12 The deposition is being taken pursuant to

13 Notice. All parties have agreed to conduct this

14 deposition by video conference. I would now ask the

15 attorneys to identify themselves, who they represent and

16 whoever is present. Please note from where you are

17 appearing.

18 **MR. GRAYBILL:** Raph Graybill on behalf of

19 Plaintiff-intervenor, Montana Nurses Association,

20 appearing from Helena, Montana.

21 **MR. MEAD:** Brent Mead representing Defendants, Austin

22 Knudsen and Laurie Esau, appearing remotely from Helena,

23 Montana. Also on the lines with me are David Dewhirst and

24 Christian Corrigan, also representing the Defendants.

25 **MS. MAHE:** Katie Mahe representing the Plaintiffs

Page 8

1 **you. So I'll be sure to leave plenty of pauses**

2 **after -- while you're answering before I start my**

3 **next question. If we do have -- if our lines do get**

4 **crossed there, please continue to answer. I'll stop**

5 **talking.**

6 **And along with that, if I ask you a**

7 **question and you don't hear or don't understand the**

8 **question, please just ask me to repeat it. If the**

9 **phrasing is confusing, please ask me to rephrase it,**

10 **and I will just ask the question again and rephrase**

11 **as-needed.**

12 **A. Okay.**

13 **Q. If you need a break at any point this**

14 **morning, please just ask. The answer is going to be**

15 **yes. The only thing is, if we're in the middle of**

16 **answering a question, I'm just going to ask that you**

17 **finish answering that question and then we'll go on**

18 **break.**

19 **And finally, I'm going to take a five or**

20 **10-minute break about every hour or so so we can all**

21 **get some more coffee or water as needed.**

22 **Does that all sound good to you?**

23 **A. Yep, sounds good. Thank you.**

24 **Q. So to start, can you please state and**

25 **spell your name for the record?**

1 **THE WITNESS:** The answer, I would say the Centers for
2 Disease Control which is not a regulatory institution, has
3 put through its clear guidance of what it recommends on
4 all of these vaccines, and it does talk about the
5 vaccinations being recommended; not only recommended, but
6 that the status of the individuals' immunizations of these
7 vaccines are kept at the hospital so that they can know in
8 an outbreak situation or others to respond quickly and in
9 a quick fashion to know how and why and where to move to
10 decrease the risk and spread of disease and to make sure
11 that people can get appropriate treatment when treatment
12 is available for that.

13 It also talks about having times to educate and
14 making sure that each healthcare provider knows their true
15 risk and benefits for them of getting these vaccinations,
16 but not only for them, but their ability to spread the
17 disease to others. So they talk about the importance of
18 all this and why that interaction needs to happen.

19 If I'm not mistaken, I believe CMS has put that
20 in as a quality index to see how well people are doing as
21 far as what is the vaccination rates in different areas,
22 and even if I'm not mistaken, unless anything has changed,
23 OSHA has not only -- talks about recommending the
24 hepatitis B vaccine but saying that the hospital or the
25 institution should pay for the cost of giving that

1 you know.

2 **THE WITNESS:** I have not read through the CMS
3 regulations, so I don't know if they have or have not.

4 **Q. (By Mr. Mead) And so, Dr. Holzman,**
5 **specific to the OSHA hep B regulation that you had**
6 **mentioned, it's correct to say that the OSHA**
7 **regulation requires healthcare facilities to offer**
8 **the hep B vaccine, but it does not require that the**
9 **individual be vaccinated for hep B, correct?**

10 **MR. GRAYBILL:** Object to form, objection to the
11 extent it calls for a legal conclusion. You can answer if
12 you know.

13 **THE WITNESS:** I can just, again, read the document of
14 what it says specifically here talking about the OSHA
15 rules, but in this document of going through this, it does
16 not state that a person is mandated to have the hepatitis
17 B vaccine.

18 **Q. (By Mr. Mead) Okay.**

19 **MR. MEAD:** Raph, I'm at a good stopping point if we
20 want to take five or ten-minute break here.

21 **MR. GRAYBILL:** Great. Why don't would he come back
22 at 10:05?

23 **MR. MEAD:** Sounds good.

24 **MR. GRAYBILL:** Great.

25 **VIDEO OPERATOR:** We are going off the record. The

1 vaccine. And they talk about that for all of these
2 vaccines; for ways to increase the use of these very
3 important medical tools to help decrease the spread of
4 disease in a high-risk population.

5 **Q. (By Mr. Mead) So Dr. Holzman, the ACIP**
6 **recommendations are just that, they're**
7 **recommendations, they're not a legal requirement; is**
8 **that correct?**

9 **MS. MAHE:** Object to form. You can answer.

10 **THE WITNESS:** That's not their mission. The ACIP
11 only gives recommendations.

12 **Q. (By Mr. Mead) And Dr. Holzman, setting**
13 **aside COVID-19, has CMS ever required the ACIP**
14 **recommendations as a condition of participating in**
15 **Medicaid?**

16 **MR. GRAYBILL:** Object to form and objection on the
17 basis of relevance. I think that's outside of his
18 disclosure. You can answer if you know.

19 **THE WITNESS:** I don't know.

20 **Q. (By Mr. Mead) Sorry. Dr. Holzman, to**
21 **clarify, you don't know? So are you not aware of**
22 **CMS ever requiring any ACIP recommended vaccine as a**
23 **condition of participation in Medicaid?**

24 **MR. GRAYBILL:** Object to form. Object to the extent
25 that it calls for a legal conclusion. You can answer if

1 time is 9:55.

2

3

(Whereupon a recess was taken)

4

5 **VIDEO OPERATOR:** We are back on the record. The time
6 is 10:07.

7 **Q. (By Mr. Mead) Dr. Holzman, before we**
8 **start back up again, I want to note, so there have**
9 **been a lot of objections to my questions so far this**
10 **morning, and so I want to be clear, that unless**
11 **Mr. Graybill instructs you not to answer, once the**
12 **objections are done, please move into answering the**
13 **question, or if you don't understand, ask me to**
14 **repeat it, and we'll go from there.**

15 **But do you understand that just because**
16 **an objection is raised, you still should answer, do**
17 **you understand?**

18 A. Okay.

19 **Q. Thank you. So Dr. Holzman, looking at**
20 **your report, is it fair to say that you do not**
21 **express any opinions as to the efficacy of a**
22 **specific vaccine in preventing disease transmission?**

23 A. Can you clarify that question?

24 **Q. Sure. So, Dr. Holzman, does your Expert**
25 **Report express an opinion as to, say, the efficacy**

Exhibit 6

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Attorneys for Plaintiff-Intervenor

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

MONTANA MEDICAL
ASSOCIATION, et al.,

Plaintiffs,

and

MONTANA NURSES
ASSOCIATION,

Plaintiff-Intervenor

v.

AUSTIN KNUDSEN, Montana
Attorney General, and LAURIE ESAU,
Montana Commissioner of Labor and
Industry,

Defendants.

Cause No. 9:21-cv-108

Hon. Donald W. Molloy

**PLAINTIFF-INTERVENOR'S
RESPONSES TO DEFENDANTS'
FIRST COMBINED DISCOVERY
REQUESTS**

COMES NOW Plaintiff-Intervenor the Montana Nurses Association
("MNA" or "the Nurses") and, in accordance with Rules 26, 33, 34, and 36,

submits the following answers/responses to Defendants' First Combined Discovery Requests dated July 5, 2022.

Plaintiff-Intervenor objects to the extent that to these Interrogatories and/or Requests for Production seek discovery of information or documents protected by the attorney-client privilege or work product doctrine, or concern actions taken, or materials prepared by or for counsel in anticipation of or for trial. Plaintiff-Intervenor does not intend to divulge any information protected by any applicable privilege or to waive any such privilege. Any such disclosure is inadvertent and shall not be deemed a waiver of any applicable privilege.

Plaintiff-Intervenor objects to the extent that to these Interrogatories and/or Requests for Production seek confidential or personal information of a third party, the disclosure of which is not permitted by reason of contract, privacy laws or other binding legal obligation.

INTERROGATORY NO. 1: Please identify each person who prepared or assisted in the preparation of answering these discovery requests.

ANSWER:

1. Vicky Byrd
2. Robin Haux

RESPONSE: Plaintiff-Intervenor refers Defendants to Plaintiff-Intervenor's Expert Witness Disclosure dated July 15, 2022, and incorporates those disclosures and attachments by this reference.

REQUEST FOR PRODUCTION NO. 3: Please produce all data, photographs, videos, and other documents or information upon which the opinions of each expert identified in your Answer to Interrogatory No. 4 are based.

RESPONSE: Plaintiff-Intervenor refers Defendants to Plaintiff-Intervenor's Expert Witness Disclosure dated July 15, 2022, and incorporate those disclosures and attachments by this reference.

REQUEST FOR PRODUCTION NO. 4: Please produce all documents, including medical information substantiating the claims made in Paragraphs 16 and 17 of the First Amended Complaint that the MNA has members that have "a compromised immune system" that qualify as disabilities under the Americans with Disabilities Act.

RESPONSE: No documents are known by Plaintiff-Intervenor to be in its possession. Plaintiff-Intervenor does not maintain its members' individual medical records. Plaintiff-Intervenor will continue to search and to the extent it identifies any responsive information, Plaintiff-Intervenor will provide it. To the extent that

Defendants seek information contained in confidential employee grievance files, Plaintiff-Intervenor objects that such a request is unduly burdensome, oppressive, and not proportional to the needs of the case, and further objects to the release of its private membership information under its First Amendment associational privilege.

REQUEST FOR PRODUCTION NO. 5: Please produce all documents related to MNA members' requests for reasonable accommodations pursuant to the Montana Human Rights Act and any complaints filed under the Montana Human Rights Act by MNA members against any place of public accommodation. This request seeks responsive documents from the time period beginning January 1, 2018, through the date these discovery requests were served.

RESPONSE: Pursuant to the meet and confer between Plaintiff-Intervenor and Defendants regarding RFP Nos 5, 6, 7, 23, 25, 26, 27, 28 and 29 (*see* MNA counsel letter to Brent Mead, Aug. 10, 2022), Plaintiff-Intervenor understands these requests to seek only MNA documents that show MNA member requests/complaints that relate to vaccine-preventable disease—not other, unrelated workplace matters that could implicate the ADA or other requests for accommodations. Applying this limitation, Plaintiff-Intervenor is currently unaware of any documents in its

INTERROGATORY NO. 8: Please list each and every “health care facility,” as that term is defined by MCA § 50-5-101(26)(a), where MNA or MNA members may set the terms and conditions of employment, including but not limited to establishing or enforcing employee vaccination requirements and granting or denying reasonable accommodation requests for employees under the Americans with Disabilities Act or the Montana Human Rights Act.

ANSWER: Plaintiff-Intervenor objects that this request is vague, overly broad, unduly burdensome, seeks information beyond the scope of allowable discovery, and is not proportional to the needs of the case. MNA does not maintain a data set that would permit a response to this request as drafted. Health care facilities are listed in the documents produced herewith, but MNA does not maintain a centralized or complete list of every such facility.

INTERROGATORY NO. 9: Please explain in detail the current infectious disease prevention protocols (as that term is used in Paragraph 20 of the First Amended Complaint) in operation at healthcare settings (as that term is defined in Paragraph 6 of the First Amended Complaint) that employ MNA members.

ANSWER: Plaintiff-Intervenor objects that this request is overly broad, unduly burdensome, as infectious disease prevention protocols are numerous and

can take numerous forms. MNA does not maintain a data set that would permit a response to this request as drafted. As to the non-objectionable portion of the request, please see the responses to RFP Nos. 15 and 33.

REQUEST FOR PRODUCTION NO. 34: Please produce all documents in your possession, custody, or control identified in your Answer to Interrogatory No. 9.

RESPONSE: Please see the responses to RFP Nos. 15 and 33.

INTERROGATORY NO. 10: Please explain in detail the infectious disease prevention protocols (as that term is used in Paragraph 20 of the First Amended Complaint) in operation at healthcare settings (as that term is defined in Paragraph 6 of the First Amended Complaint) that employ MNA members between January 1, 2019, and March 1, 2020.

ANSWER: Plaintiff-Intervenor objects that this request is overly broad, unduly burdensome, as infectious disease prevention protocols are numerous and can take numerous forms. MNA does not maintain a data set that would permit a response to this request as drafted. As to the non-objectionable portion of the request, please see the response to RFP No. 15.

REQUEST FOR PRODUCTION NO. 35: Please produce all documents in your possession, custody, or control identified in your Answer to Interrogatory No. 10.

RESPONSE: Please see the response to RFP No. 15.

INTERROGATORY NO. 11: Please explain in detail every instance, from January 1, 2018, though the date these discovery requests are served, in which any of your members declined to refer a patient to another provider or facility due to that other provider's or facility's staff vaccination status or staff vaccination policies.

ANSWER: Plaintiff-Intervenor objects that this request is overly broad and unduly burdensome, and not proportional to the needs of the case. This request implicates individual medical decisions by individual medical providers. Plaintiff-Intervenor further objects to the extent this request seeks protected health information of patients. MNA does not maintain patient information.

REQUEST FOR PRODUCTION NO. 36: Please produce all documents in your possession, custody, or control identified in your Answer to Interrogatory No. 11.

RESPONSE: None.

ANSWER: Plaintiff-Intervenor refers Defendants to Plaintiffs' expert disclosures, cross-designated by Plaintiff-Intervenor, and the studies and other supporting material referenced therein.

REQUEST FOR PRODUCTION NO. 42: Please produce all documents in your possession, custody, or control identified in your Answer to Interrogatory No. 13.

RESPONSE: Please see Plaintiffs' expert disclosures, cross-designated by Plaintiff-Intervenor, and the supporting documents and information produced therewith and referenced therein.

DATED this 15th day of August, 2022.



Raph Graybill
GRAYBILL LAW FIRM, P.C.

Attorneys for Plaintiff-Intervenor

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2022, an accurate copy of the foregoing document was served by electronic transfer and email on the following:

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Exhibit 7

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA,
MISSOULA DIVISION

MONTANA MEDICAL ASSOCIATION,
ET. AL.,

Plaintiffs,

and

MONTANA NURSES ASSOCIATION,

Plaintiff-Intervenor,

v.

AUSTIN KNUDSEN, ET AL.,

Defendants.

No. CV-21-108-M-DWM

**DEFENDANT'S 30(b)(6)
DESIGNATION FOR THE
MONTANA DEPARTMENT OF
JUSTICE**

Pursuant to Federal Rule of Civil Procedure 30(b)(6), Defendants hereby designate the following individual(s) to testify to the topics as set forth in Plaintiffs' 30(b)(6) Deposition Notice of the Montana Department of Justice ("DOJ"). Defendants reserve all objections and are not waiving any objections by this designation.

1. All documents, communications, and information related to AG's and Attorney General Knudsen's interpretation, investigation, and enforcement of Montana Code Annotated §§ 49-2-312 and 313.

DOJ objects to the extent this topic seeks information protected by attorney client privilege, attorney work product privilege, and the deliberative process privilege. DOJ also objects to the extent this topic calls for legal conclusions. *See Zeleny v. Newsom*, 2020 U.S. Dist. LEXIS 100944, at *6 (N.D. Cal. June 9, 2020) (denying motion to compel the Attorney General to produce a Rule 30(b)(6) deponent who would testify about the state's interpretation of its open carry laws).

Accordingly, DOJ will permit the deposition of a Rule 30(b)(6) deponent to testify about non-privileged and permissible subjects, such as the documents produced in discovery and DOJ's public-facing statements regarding HB 702. DOJ designates Derek Oestreicher.

2. The AG’s and Attorney General Knudsen’s position on the State of Montana’s interest in and basis for enacting House Bill 702, codified as Montana Code Annotated §§ 49-2-312 and 313, including all communications or statements made by AG and Attorney General Knudsen related to the same.

DOJ objects to this topic as improperly seeking a legal conclusion and legislative facts. *See Zeleny v. Newsom*, 2020 U.S. Dist. LEXIS 100944, at *6 (N.D. Cal. June 9, 2020) (denying motion to compel the Attorney General to produce a Rule 30(b)(6) deponent on the interpretation of state’s open carry laws); *Mitchell v. Atkins*, 2019 U.S. Dist. LEXIS 203464, at *6 (W.D. Wash. Nov. 22, 2019) (granting protective order because 30(b)(6) topics improperly sought legal opinions and were designed to elicit information pertinent to specific legal standards used to evaluate the constitutionality of state law); *see also Snapp v. United Transp. Union*, 889 F.3d 1088, 1104 (9th Cir. 2018) (“a Rule 30(b)(6) deponent’s ... legal conclusions do not bind the entity.”). Oral testimony in which the witness must answer questions on the spot about a party’s legal contentions is an improper use of a 30(b)(6) deposition. *Zeleny*, 2020 U.S. Dist. LEXIS 100944, at *7.

More specifically, testimony about the State’s interest and basis for enacting HB 702 would collectively amount to legal conclusions about

what these constitutional standards require. *See Mitchell*, 2019 U.S. Dist. LEXIS 203464, at *6. “Courts in this circuit have generally held that such topics are better addressed, *if at all*, through contention interrogatories.” *Id.* at 7 (emphasis added). “However, ... the type of legislative facts Plaintiffs seek may not be proper objects of interrogatories or requests for production at all.” *Id.*

Finally, DOJ is not authorized to articulate the State’s “interest in and basis for enacting House Bill 702;” nor may it bind the State to any such articulated interests for purposes of defending the law under the requisite standard(s) of review. *Id.*

Plaintiffs’ topic is improper and should be immediately withdrawn.

3. Any statements, communications, directions or guidance given to the AG and/or Attorney General Knudsen or promulgated by the AG and/or Attorney General Knudsen related to the lobbying, advocacy, passage or enforcement of Montana Code Annotated §§ 49-2-312 and 313.

DOJ objects to the extent this topic (particularly “enforcement”) seeks information protected by attorney client privilege, attorney work product privilege, and the deliberative process privilege.

DOJ also objects to the extent this topic calls for legal conclusions. *See Zeleny v. Newsom*, 2020 U.S. Dist. LEXIS 100944, at *6 (N.D. Cal.

June 9, 2020) (denying motion to compel the Attorney General to produce a Rule 30(b)(6) deponent who would testify about the state's interpretation of its open carry laws).

To the extent this topic covers non-privileged and permissible subjects, DOJ designates Derek Oestreicher.

4. AG's and/or Attorney General Knudsen's interpretation, enforcement and application of Montana Code Annotated § 49-2-312(b).

DOJ objects to the topic of "DOJ's interpretation ... and application of Montana Code Annotated § 49-2-312(b)" as improperly seeking legal conclusions. *See Zeleny v. Newsom*, 2020 U.S. Dist. LEXIS 100944, at *6 (N.D. Cal. June 9, 2020) (denying motion to compel the Attorney General to produce a Rule 30(b)(6) deponent on the interpretation of state's open carry laws); *see also Snapp v. United Transp. Union*, 889 F.3d 1088, 1104 (9th Cir. 2018) ("a Rule 30(b)(6) deponent's ... legal conclusions do not bind the entity."). Oral testimony in which the witness must answer questions on the spot about a party's legal contentions is an improper use of a 30(b)(6) deposition. *Zeleny*, 2020 U.S. Dist. LEXIS 100944, at *7. Please withdraw this part of the topic immediately.

DOJ further objects because MCA § 49-2-312(b) does not exist and is therefore vague and ambiguous.

To the extent this topic covers non-privileged and permissible topics coextensive with other non-privileged and permissible topics, DOJ designates Derek Oestreicher.

5. All actions taken and communications made by the AG and/or Attorney General Knudsen related to Montana Code Annotated §§ 49-2-312 and 313 and vaccinations from January 1, 2020 to present, including but not limited to all presentations, statements, communications, programs, or other private or public events at which Attorney General Austin Knudsen or other representative of the AG participated in and/or presented at (either in person or via videoconference), or provided input for, related to Montana Code Annotated §§ 49-2-312 and 313, discrimination based upon vaccination status, vaccines, and/or CMS regulations and OSHA regulations, including but not limited to a program held on or about November or December 2021, titled “Sidney Health Center Stopping the Tyranny – A Special Meeting for Sidney Health Care Employees”. This topic includes those present at any presentations and additional information/topics presented at such presentations.

To the extent Defendants understand this topic, DOJ objects to the topic as overbroad, unduly burdensome and not proportionate to the needs of the case. *See Mailhoit v. Home Depot U.S.A., Inc.*, 2012 U.S. Dist. LEXIS 196297, at *7 (C.D. Cal. Aug. 27, 2012); *cf. Largan Precision Co. v. Samsung Elecs. Co.*, 2015 U.S. Dist. LEXIS 191942, at *10 (S.D. Cal. May 5, 2015). First, HB 702 did not become law until May 2021.

Attorney General Knudsen did not become the Attorney General of Montana and Industry until January 4, 2021. The COVID-19 vaccine did not become available until late 2020. Second, the word “actions” is vague and ambiguous. Moreover, Plaintiffs use of examples (“including but not limited to all presentations, statements, communications, programs, or other private or public events at which Attorney General Austin Knudsen or other representative of the AG participated in and/or presented at (either in person or via videoconference), or provided input for, related to HB 702 (Montana Code Annotated §§ 49-2-312 and 313), discrimination based upon vaccination status, vaccines, and/or CMS regulations and OSHA regulations”) would require DOJ to recall every instance where one of its employees communicated with anyone via any medium, including in person, about any of three to four very broad subjects—subjects that have, for the last year, occupied much of the National (and international) conversation.

To the extent this topic is limited to presentations, statements, communications, programs, or events Attorney General Knudsen or other DOJ representatives participated in or presented at regarding HB 702, DOJ designates Derek Oestreicher.

6. AG’s and Attorney General Knudsen’s position regarding competing interests between the Americans with Disabilities Act (ADA), Centers for Medicaid and Medicare (CMS) regulations, the Occupational Health and Safety Act (OSHA) and regulations, and Montana Code Annotated §§ 49-2-312 and 313.

DOJ objects to this topic as improperly seeking legal conclusions. *See Zeleny v. Newsom*, 2020 U.S. Dist. LEXIS 100944, at *6 (N.D. Cal. June 9, 2020) (denying motion to compel the Attorney General to produce a Rule 30(b)(6) deponent on the interpretation of state’s open carry laws); *see also Snapp v. United Transp. Union*, 889 F.3d 1088, 1104 (9th Cir. 2018) (“a Rule 30(b)(6) deponent’s ... legal conclusions do not bind the entity.”). Oral testimony in which the witness must answer questions on the spot about a party’s legal contentions is an improper use of a 30(b)(6) deposition. *Zeleny*, 2020 U.S. Dist. LEXIS 100944, at *7.

DOJ also objects to the extent this topic seeks information protected by attorney client privilege or the work product doctrine.

As to any non-privileged and permissible subject matter covered by this topic, DOJ designates Derek Oestreicher.

7. All documents created by the AG and/or Attorney General Knudsen or provided to the AG and/or Attorney General Knudsen related to Montana Code Annotated §§ 49-2-312 and 313.

DOJ objects to the topic as overbroad, unduly burdensome and not proportionate to the needs of the case. *See Mailhoit v. Home Depot U.S.A., Inc.*, 2012 U.S. Dist. LEXIS 196297, at *7 (C.D. Cal. Aug. 27, 2012); *cf. Largan Precision Co. v. Samsung Elecs. Co.*, 2015 U.S. Dist. LEXIS 191942, at *10 (S.D. Cal. May 5, 2015). DOJ additionally objects to the extent this topic covers information protected by the attorney client privilege, the attorney work product privilege, and the deliberative process privilege.

As to any non-privileged and permissible portions of the topic, DOJ designates Derek Oestreicher.

8. All documents produced by Defendants in discovery.

DOJ designates Derek Oestreicher.

DATED this 16th day of August, 2022.

/s/ Christian B. Corrigan

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CERTIFICATE OF SERVICE

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/s/Christian B. Corrigan
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Exhibit 8

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Attorneys for Defendants

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA,
MISSOULA DIVISION

MONTANA MEDICAL ASSOCIATION,
ET. AL.,

Plaintiffs,

and

MONTANA NURSES ASSOCIATION,

Plaintiff-Intervenor,

v.

AUSTIN KNUDSEN, ET AL.,

Defendants.

No. CV-21-108-M-DWM

**DEFENDANT'S RESPONSES TO
PLAINTIFFS' SECOND
COMBINED DISCOVERY
REQUESTS**

Pursuant to Federal Rule of Civil Procedure 30(b)(6), Defendants hereby designate the following individual(s) to testify to the topics as set forth in Defendants' 30(b)(6) Deposition Notice of the Montana Department of Labor and Industry. Defendants reserve all objections and are not waiving any objections by this designation.

1. All documents, communications, and information related to DLI's and/or Commissioner Esau's interpretation, investigation, and enforcement of Montana Code Annotated §§ 49-2-312 and 313.

DLI objects to the extent this topic seeks information protected by attorney client privilege, attorney work product privilege, and the deliberative process privilege.

DLI also objects to the extent this topic covers information confidential by law such as Montana Human Rights Act complaints, Final Investigative Reports, For Cause Findings, or unemployment insurance claims. *See* 20 C.F.R. Part 603; Mont. Code Ann. 39-51-603; and Admin. R. Mont. 24.11.915, 24.8.210. DLI also objects to the extent this topic seeks any information specifically from the Montana Human Rights Bureau ("HRB") as unduly burdensome and duplicative because Plaintiffs have noticed a separate 30(b)(6) deposition for HRB on these

exact topics. HRB is the agency within DLI that enforces the Montana Human Rights Act. *See* ARM 24.8.103(11).

DLI also objects to the extent this topic calls for legal conclusions. *See Zeleny v. Newsom*, 2020 U.S. Dist. LEXIS 100944, at *6 (N.D. Cal. June 9, 2020) (denying motion to compel the Attorney General to produce a Rule 30(b)(6) deponent who would testify about the state's interpretation of its open carry laws).

Accordingly, DLI will permit the deposition of a Rule 30(b)(6) deponent to testify about non-privileged and permissible subjects, such as the documents produced in discovery and the Department's public-facing guidance regarding HB 702. DLI designates John Elizandro.

2. The State of Montana's interest in and basis for enacting House Bill 702, codified as Montana Code Annotated §§ 49-2-312 and 313, including all communications or statements made by DLI and/or Commissioner Esau related to the same.

DLI objects to this topic as improperly seeking a legal conclusion and legislative facts. *See Zeleny v. Newsom*, 2020 U.S. Dist. LEXIS 100944, at *6 (N.D. Cal. June 9, 2020) (denying motion to compel the Attorney General to produce a Rule 30(b)(6) deponent on the interpretation of state's open carry laws); *Mitchell v. Atkins*, 2019 U.S. Dist. LEXIS 203464, at *6 (W.D. Wash. Nov. 22, 2019) (granting

protective order because 30(b)(6) topics improperly sought legal opinions and were designed to elicit information pertinent to specific legal standards used to evaluate the constitutionality of state law); *see also Snapp v. United Transp. Union*, 889 F.3d 1088, 1104 (9th Cir. 2018) (“a Rule 30(b)(6) deponent’s ... legal conclusions do not bind the entity.”). Oral testimony in which the witness must answer questions on the spot about a party’s legal contentions is an improper use of a 30(b)(6) deposition. *Zeleny*, 2020 U.S. Dist. LEXIS 100944, at *7.

More specifically, testimony about the State’s interest and basis for enacting HB 702 would collectively amount to legal conclusions about what these constitutional standards require. *See Mitchell*, 2019 U.S. Dist. LEXIS 203464, at *6. “Courts in this circuit have generally held that such topics are better addressed, *if at all*, through contention interrogatories.” *Id.* at 7 (emphasis added). “However, ... the type of legislative facts Plaintiffs seek may not be proper objects of interrogatories or requests for production at all.” *Id.*

Finally, DLI is not authorized to articulate the State’s “interest in and basis for enacting House Bill 702;” nor may it bind the State to any

such articulated interests for purposes of defending the law under the requisite standard(s) of review. *Id.*

Plaintiffs' topic is improper and should be immediately withdrawn.

3. Any statements, communications, directions or guidance given to the DLI or promulgated by the DLI or Commissioner Essau related to the lobbying, advocacy, passage or enforcement of Montana Code Annotated §§ 49-2-312 and 313, including but not limited to letters, emails and other correspondence from Commissioner Esau and/or other representatives of DLI directly to Montana individuals and businesses.

DLI objects to the extent this topic (particularly “enforcement”) seeks information protected by attorney client privilege, attorney work product privilege, and the deliberative process privilege.

DLI also objects to the extent this topic covers information confidential by law such as Montana Human Rights Act complaints, Final Investigative Reports, For Cause Findings, or unemployment insurance claims. *See* 20 C.F.R. Part 603; Mont. Code Ann. 39-51-603; and Admin. R. Mont. 24.11.915, 24.8.210. DLI also objects to the extent this topic seeks any information specifically from the Human Rights Bureau (“HRB”) as unduly burdensome and duplicative because Plaintiffs have noticed a separate 30(b)(6) deposition for HRB on these

exact topics. HRB is the agency within DLI that enforces the Montana Human Rights Act. *See* ARM 24.8.103(11).

DLI also objects to the extent this topic calls for legal conclusions. *See Zeleny v. Newsom*, 2020 U.S. Dist. LEXIS 100944, at *6 (N.D. Cal. June 9, 2020) (denying motion to compel the Attorney General to produce a Rule 30(b)(6) deponent who would testify about the state's interpretation of its open carry laws).

To the extent this topic covers non-privileged and permissible subjects, DLI designates John Elizandro.

4. DLI's interpretation, enforcement and application of Montana Code Annotated § 49-2-312(b).

DLI objects to the topic of "DLI's interpretation ... and application of Montana Code Annotated § 49-2-312(b)" as improperly seeking legal conclusions. *See Zeleny v. Newsom*, 2020 U.S. Dist. LEXIS 100944, at *6 (N.D. Cal. June 9, 2020) (denying motion to compel the Attorney General to produce a Rule 30(b)(6) deponent on the interpretation of state's open carry laws); *see also Snapp v. United Transp. Union*, 889 F.3d 1088, 1104 (9th Cir. 2018) ("a Rule 30(b)(6) deponent's ... legal conclusions do not bind the entity."). Oral testimony in which the witness must answer questions on the spot about a party's legal contentions is an improper use

of a 30(b)(6) deposition. *Zeleny*, 2020 U.S. Dist. LEXIS 100944, at *7. Please withdraw this part of the topic immediately.

DLI further objects because MCA § 49-2-312(b) does not exist and is therefore vague and ambiguous. DLI also objects to the topic of “enforcement” of HB 702 to the extent this topic covers information confidential by law such as Montana Human Rights Act complaints, Final Investigative Reports, For Cause Findings, or unemployment insurance claims. *See* 20 CFR Part 603; Mont. Code Ann. 39-51-603; and Admin. R. Mont. 24.11.915, 24.8.210. DLI also objects to the extent this topic seeks information from the Human Rights Bureau (“HRB”) as unduly burdensome and duplicative because Plaintiffs have noticed a separate 30(b)(6) deposition for HRB on these exact topics. HRB is the enforcement mechanism for DLI. *See* ARM 24.8.103(11).

To the extent this topic covers non-privileged and permissible topics coextensive with other non-privileged and permissible topics, DLI designates John Elizandro.

5. All actions taken by the DLI and Commissioner Esau related to HB 702 and/or vaccinations or immunity status from January 1, 2020 to present, including but not limited to all presentations, statements, communications, programs, or other private or public events at which Commissioner Esau or other representative of the DLI participated in and/or presented at

(either in person or via videoconference), or provided input for, related to HB 702 (Montana Code Annotated §§ 49-2-312 and 313), discrimination based upon vaccination status, vaccines, and/or CMS regulations and OSHA regulations.

To the extent Defendants understand this topic, DLI objects to the topic as overbroad, unduly burdensome and not proportionate to the needs of the case. *See Mailhoit v. Home Depot U.S.A., Inc.*, 2012 U.S. Dist. LEXIS 196297, at *7 (C.D. Cal. Aug. 27, 2012); *cf. Largan Precision Co. v. Samsung Elecs. Co.*, 2015 U.S. Dist. LEXIS 191942, at *10 (S.D. Cal. May 5, 2015). First, HB 702 did not become law until May 2021. Commissioner Esau did not become the Commissioner of Labor and Industry until January 2021. The COVID-19 vaccine did not become available until late 2020. Second, the word “actions” is vague and ambiguous. Moreover, Plaintiffs use of examples (“including but not limited to all presentations, statements, communications, programs, or other private or public events at which Commissioner Esau or other representative of the DLI participated in and/or presented at (either in person or via videoconference), or provided input for, related to HB 702 (Montana Code Annotated §§ 49-2-312 and 313), discrimination based upon vaccination status, vaccines, and/or CMS regulations and OSHA regulations”) would require DLI to recall every instance where one of its

employees communicated with anyone via any medium, including in person, about any of three to four very broad subjects—subjects that have, for the last year, occupied much of the National (and international) conversation.

DLI also objects to the extent this topic covers information confidential by law such as Montana Human Rights Act complaints, Final Investigative Reports, For Cause Findings, or unemployment insurance claims. *See* 20 C.F.R. Part 603; Mont. Code Ann. 39-51-603; and Admin. R. Mont. 24.11.915, 24.8.210. DLI additionally objects to the extent this topic covers information protected by the attorney client privilege, the attorney work product privilege, and the deliberative process privilege.

To the extent this topic is limited to presentations, statements, communications, programs, or events Commissioner Esau or other DLI representatives participated in or presented at regarding HB 702, DLI designates John Elizandro.

6. DLI's position regarding competing interests between the Americans with Disabilities Act (ADA), Centers for Medicaid and Medicare (CMS) regulations, the Occupational Health and Safety Act (OSHA) and regulations, and Montana Code Annotated §§ 49-2-312 and 313.

DLI objects to this topic as improperly seeking legal conclusions. *See Zeleny v. Newsom*, 2020 U.S. Dist. LEXIS 100944, at *6 (N.D. Cal. June 9, 2020) (denying motion to compel the Attorney General to produce a Rule 30(b)(6) deponent on the interpretation of state's open carry laws); *see also Snapp v. United Transp. Union*, 889 F.3d 1088, 1104 (9th Cir. 2018) (“a Rule 30(b)(6) deponent's ... legal conclusions do not bind the entity.”). Oral testimony in which the witness must answer questions on the spot about a party's legal contentions is an improper use of a 30(b)(6) deposition. *Zeleny*, 2020 U.S. Dist. LEXIS 100944, at *7.

DLI also objects to the extent this topic seeks information protected by attorney client privilege or the work product doctrine. DLI also objects to the extent this topic seeks information confidential by law such as Montana Human Rights Act complaints, Final Investigative Reports, For Cause Findings, or unemployment insurance claims. *See* 20 C.F.R. Part 603; Mont. Code Ann. 39-51-603; and Admin. R. Mont. 24.11.915, 24.8.210. DLI also objects to the extent this topic seeks information from

the Human Rights Bureau (“HRB”) as unduly burdensome and duplicative because Plaintiffs have noticed a separate 30(b)(6) deposition for HRB on these exact topics. HRB is the enforcement mechanism for DLI. *See* ARM 24.8.103(11).

As to any non-privileged and permissible subject matter covered by this topic, DLI designates John Elizandro.

7. All documents created by the DLI or Commissioner Esau or provided to the DLI or Commissioner Esau related to Montana Code Annotated §§ 49-2-312 and 313.

DLI objects to the topic as overbroad, unduly burdensome and not proportionate to the needs of the case. *See Mailhoit v. Home Depot U.S.A., Inc.*, 2012 U.S. Dist. LEXIS 196297, at *7 (C.D. Cal. Aug. 27, 2012); *cf. Largan Precision Co. v. Samsung Elecs. Co.*, 2015 U.S. Dist. LEXIS 191942, at *10 (S.D. Cal. May 5, 2015).

DLI additionally objects to the extent this topic covers information protected by the attorney client privilege, the attorney work product privilege, and the deliberative process privilege. DLI also objects to the extent this topic covers information confidential by law such as Montana Human Rights Act complaints, Final Investigative Reports, For Cause

Findings, or unemployment insurance claims. *See* 20 C.F.R. Part 603; Mont. Code Ann. 39-51-603; and Admin. R. Mont. 24.11.915, 24.8.210.

As to any non-privileged and permissible portions of the topic, DLI designates John Elizandro.

8. All documents produced by Defendants in discovery.

DLI designates John Elizandro.

DATED this 15th day of August, 2022.

/s/ Christian B. Corrigan

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CERTIFICATE OF SERVICE

I certify a true and correct copy of the foregoing was delivered by
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Date: August 15, 2022

/s/Christian B. Corrigan
Christian B. Corrigan

Exhibit 9

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Attorneys for Defendants

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA,
MISSOULA DIVISION**

MONTANA MEDICAL ASSOCIATION, ET. AL.,

Plaintiffs,

and

MONTANA NURSES ASSOCIATION,

Plaintiff-Intervenor,

v.

AUSTIN KNUDSEN, ET AL.,

Defendants.

No. CV-21-108-M-DWM

**DEFENDANT'S 30(b)(6)
DESIGNATION FOR THE
MONTANA HUMAN RIGHTS
BUREAU**

Pursuant to Federal Rule of Civil Procedure 30(b)(6), the Montana Human Rights Bureau ("HRB") hereby designates the following individual(s) to testify to the topics set forth in Plaintiffs' 30(b)(6)

Deposition Notice. Please note that the Defendants reserve all objections and are not waiving any objections by this designation.

1. All documents, communications, and information related to HRB's interpretation, investigation, and enforcement of Montana Code Annotated §§ 49-2-312 and 313.

HRB objects to the extent this topic seeks information protected by attorney client privilege, attorney work product privilege, and the deliberative process privilege. HRB also objects to the extent this topic covers information confidential by law such as Montana Human Rights Act complaints, Final Investigative Reports, For Cause Findings, or unemployment insurance claims. *See* 20 C.F.R. Part 603; Mont. Code Ann. 39-51-603; and Admin. R. Mont. 24.11.915, 24.8.210. HRB also objects to the extent this topic calls for legal conclusions. *See Zeleny v. Newsom*, 2020 U.S. Dist. LEXIS 100944, at *6 (N.D. Cal. June 9, 2020) (denying motion to compel the Attorney General to produce a Rule 30(b)(6) deponent who would testify about the state's interpretation of its open carry laws).

Accordingly, HRB will permit the deposition of a Rule 30(b)(6) deponent to testify about non-privileged and permissible subjects, such

as the documents produced in discovery and the Department's public-facing guidance regarding HB 702. HRB designates Marieke Beck.

2. Alleged violations of Montana Code Annotated § 49-2-312 brought to the HRB, including, but not limited to, number of claims asserted, intake process and claims screened out, number of claims dismissed, number of claims with for cause findings, types of claims raised, entities against whom the claims were raised, resolutions of any such claims, and any claims asserted against Plaintiffs.

HRB objects that this topic seeks confidential information of non-parties, is vague, and calls for legal conclusions. HRB objects to the extent this topic covers information confidential by law such as Montana Human Rights Act complaints, Final Investigative Reports, For Cause Findings, or unemployment insurance claims. *See* 20 C.F.R. Part 603; Mont. Code Ann. 39-51-603; and Admin. R. Mont. 24.11.915, 24.8.210.

"Not limited to" is vague as it is unclear what additional information Plaintiffs seek in this deposition. Defendants reserve possible objections based on Plaintiffs' "not limited to" related inquiries. It is unclear what Plaintiffs mean by "claims screened out" and is therefore vague. Defendants further object to the phrase "screened out" in so far as it calls for a legal conclusion. It is unclear what Plaintiffs mean by "types of claims raised" and the phrase is therefore vague. To
DEFENDANT'S 30(b)(6) DESIGNATION FOR THE
MONTANA HUMAN RIGHTS BUREAU | 3

the extent the phrase call for a legal determination as to what is meant by “types” Defendants object.

As to the non-objectionable portions, HRB designates Marieke Beck.

3. Any directions or guidance given to the HRB or promulgated by the HRB related to the enforcement of Montana Code Annotated §§ 49-2-312 and 313.

HRB objects that this topic is vague, unduly burdensome, not proportional to the needs of the case, and calls for legal conclusions. HRB also objects to the extent this topic (particularly “enforcement”) seeks information protected by attorney client privilege, attorney work product privilege, and the deliberative process privilege.

To the extent that “directions or guidance given to the HRB or promulgated by the HRB” means something other than “documentation, communications, or guidance ... issued by” the topic is vague, unduly burdensome, and not proportional to the needs of the case as the Defendants responded to Plaintiffs’ written discovery Request for Production No. 5 with all responsive documents.

It is also unclear what Plaintiffs mean by “enforcement.” As Defendants made clear in their Responses to Requests for Admission 1

and 2, to the extent that “enforcement” encompasses penalties and affirmative relief that calls for the application of law to specific facts, it constitutes a legal conclusion that falls outside the proper scope of a 30(b)(6) deposition. *See Zeleny v. Newsom*, 2020 U.S. Dist. LEXIS 100944, at *6 (N.D. Cal. June 9, 2020) (denying motion to compel the Attorney General to produce a Rule 30(b)(6) deponent who would testify about the state’s interpretation of its open carry laws); *see also Snapp v. United Transp. Union*, 889 F.3d 1088, 1104 (9th Cir. 2018) (“a Rule 30(b)(6) deponent’s ... legal conclusions do not bind the entity.”).

As to the non-objectionable portions, HRB designates Marieke Beck.

4. HRB’s interpretation and application of Montana Code Annotated § 49-2-312(b).

HRB objects to the topic as improperly seeking legal conclusions. *See Zeleny v. Newsom*, 2020 U.S. Dist. LEXIS 100944, at *6 (N.D. Cal. June 9, 2020) (denying motion to compel the Attorney General to produce a Rule 30(b)(6) deponent on the interpretation of state’s open carry laws); *see also Snapp v. United Transp. Union*, 889 F.3d 1088, 1104 (9th Cir. 2018) (“a Rule 30(b)(6) deponent’s ... legal conclusions do not bind the

entity.”). Oral testimony in which the witness must answer questions on the spot about a party’s legal contentions is an improper use of a 30(b)(6) deposition. *Zeleny*, 2020 U.S. Dist. LEXIS 100944, at *7. Please withdraw this part of the topic immediately.

HRB further objects because MCA § 49-2-312(b) does not exist and is therefore vague and ambiguous. HRB also objects to the topic of “enforcement” of HB 702 to the extent this topic covers information confidential by law such as Montana Human Rights Act complaints, Final Investigative Reports, For Cause Findings, or unemployment insurance claims. *See* 20 C.F.R. Part 603; Mont. Code Ann. 39-51-603; and Admin. R. Mont. 24.11.915, 24.8.210.

To the extent this topic covers non-privileged and permissible topics coextensive with other non-privileged and permissible topics, HRB designates Marieke Beck.

5. HRB’s interpretation, investigation, and enforcement of the Americans with Disabilities’ Act (“ADA”) as a deferral agency, including but not limited to enforcement/investigation of reasonable accommodation requirement. This includes, but is not limited to, the HRB’s interpretation of whether an employer or public accommodation must grant accommodations to disabled individuals related to vaccination status, and HRB’s interpretation of the same.

Defendants object to this topic because it is vague, speculative, and calls for legal conclusions. It is unclear what Plaintiffs mean by “enforcement.” As Defendants made clear in their Responses to Requests for Admission 1 and 2, to the extent that “enforcement” encompasses the application of law to specific facts, it constitutes a legal conclusion that falls outside the proper scope of a 30(b)(6) deposition. *See Zeleny v. Newsom*, 2020 U.S. Dist. LEXIS 100944, at *6 (N.D. Cal. June 9, 2020) (denying motion to compel the Attorney General to produce a Rule 30(b)(6) deponent on the interpretation of state’s open carry laws); *see also Snapp v. United Transp. Union*, 889 F.3d 1088, 1104 (9th Cir. 2018) (“a Rule 30(b)(6) deponent’s ... legal conclusions do not bind the entity.”). “Interpretation” unambiguously refers to an interpretation of law and therefore unambiguously calls for an impermissible legal conclusion. To the extent “investigation” means something other than purely factual inquiries, then this also calls for a legal conclusion. Defendants further object that the topic unambiguously seeks a legal conclusion as to “HRB’s interpretation of whether an employer or public accommodation must grant accommodations to disabled individuals related to vaccination

status, and HRB's interpretation of the same." *See Zeleny*, 2020 U.S. Dist. LEXIS 100944, at *2-8.

Setting that aside, it is unclear what Plaintiffs mean by "HRB's interpretation of the same" when they seek "HRB's interpretation," this is also speculative as to what unknown facts may suffice to form the basis for a response. *Cf. Baker v. Perez*, 2011 U.S. Dist. LEXIS 94613, at *14 (E.D. Cal. Aug. 24, 2011) (denying motion to compel interrogatory response because it was based on an incomplete hypothetical); *Smith v. Rodriguez*, 2015 U.S. Dist. LEXIS 133640, at *35 (E.D. Cal. Sep. 29, 2015) (denying motion compel because plaintiff's request for an opinion was not sufficiently particularized); *Martin v. Fox*, 2020 U.S. Dist. LEXIS 190713, at *17-18 (E.D. Cal. Oct. 13, 2020) (finding that request presented an incomplete hypothetical in that it did not state enough facts for defendant to provide an opinion).

HRB also objects to the extent this topic covers information confidential by law such as Montana Human Rights Act complaints, Final Investigative Reports, For Cause Findings, or unemployment insurance claims. *See* 20 C.F.R. Part 603; Mont. Code Ann. 39-51-603; and Admin. R. Mont. 24.11.915, 24.8.210.

As to the non-objectionable portions, HRB designates Marieke Beck.

6. HRB's position regarding competing interests between the ADA and Montana Code Annotated §§ 49-2-312 and 313.

HRB objects to this topic as improperly seeking legal conclusions. *See Zeleny v. Newsom*, 2020 U.S. Dist. LEXIS 100944, at *6 (N.D. Cal. June 9, 2020) (denying motion to compel the Attorney General to produce a Rule 30(b)(6) deponent on the interpretation of state's open carry laws); *see also Snapp v. United Transp. Union*, 889 F.3d 1088, 1104 (9th Cir. 2018) (“a Rule 30(b)(6) deponent’s ... legal conclusions do not bind the entity.”). Oral testimony in which the witness must answer questions on the spot about a party’s legal contentions is an improper use of a 30(b)(6) deposition. *Zeleny*, 2020 U.S. Dist. LEXIS 100944, at *7.

HRB also objects to the extent this topic seeks information protected by attorney client privilege or the work product doctrine. HRB also objects to the extent this topic seeks information confidential by law such as Montana Human Rights Act complaints, Final Investigative Reports, For Cause Findings, or unemployment insurance claims. *See 20*

C.F.R. Part 603; Mont. Code Ann. 39-51-603; and Admin. R. Mont. 24.11.915, 24.8.210.

Defendants object to this topic because it is vague and speculative. It is unclear what is meant by “competing interests.” Further, to the extent the topic seeks some response as to balancing these undefined “competing interests” it calls for a legal conclusion. *See Zeleny*, 2020 U.S. Dist. LEXIS 100944, at *2-8. Finally, the topic presupposes unknown facts in order for HRB to have a position—i.e. a legal conclusion—as to these undefined “competing interests.” That’s speculative. *See Zeleny*, 2020 U.S. Dist. LEXIS 100944, at *2-8; *cf. Baker v. Perez*, 2011 U.S. Dist. LEXIS 94613, at *14 (E.D. Cal. Aug. 24, 2011) (denying motion to compel interrogatory response because it was based on an incomplete hypothetical); *Smith v. Rodriguez*, 2015 U.S. Dist. LEXIS 133640, at *35 (E.D. Cal. Sep. 29, 2015) (denying motion compel because plaintiff’s request for an opinion was not sufficiently particularized); *Martin v. Fox*, 2020 U.S. Dist. LEXIS 190713, at *17-18 (E.D. Cal. Oct. 13, 2020) (finding that request presented an incomplete hypothetical in that it did not state enough facts for defendant to provide an opinion).

As to the non-objectionable portions, HRB designates Marieke Beck.

7. All documents created by the HRB or provided to the HRB related to Montana Code Annotated §§ 49-2-312 and 313.

HRB objects to the topic as overbroad, unduly burdensome and not proportionate to the needs of the case. *See Mailhoit v. Home Depot U.S.A., Inc.*, 2012 U.S. Dist. LEXIS 196297, at *7 (C.D. Cal. Aug. 27, 2012); *cf. Largan Precision Co. v. Samsung Elecs. Co.*, 2015 U.S. Dist. LEXIS 191942, at *10 (S.D. Cal. May 5, 2015). To the extent “documents created by the HRB or provided to the HRB” means something other than “documentation, communications, or guidance ... issued by” HRB objects that it is vague and overly broad. Defendants responded to Plaintiffs’ written discovery Request for Production No. 5 and produced all relevant documents. To the extent this request expands the scope of discovery at this late stage it is unduly burdensome, overly broad, and not proportional to the needs of a case involving pure questions of law.

HRB additionally objects to the extent this topic covers information protected by the attorney client privilege, the attorney work product privilege, and the deliberative process privilege. HRB also objects to the

extent this topic covers information confidential by law such as Montana Human Rights Act complaints, Final Investigative Reports, For Cause Findings, or unemployment insurance claims. *See* 20 C.F.R. Part 603; Mont. Code Ann. 39-51-603; and Admin. R. Mont. 24.11.915, 24.8.210.

As to the non-objectionable portions, HRB designates Marieke Beck.

DATED this 17th day of August, 2022.

/s/ Christian B. Corrigan

CHRISTIAN B. CORRIGAN
Deputy Solicitor General
P.O. Box 201401
Helena, MT 59620-1401
christian.corrigan@mt.gov

Attorney for Defendants

CERTIFICATE OF SERVICE

I certify a true and correct copy of the foregoing was delivered by email to the following:

Justin K. Cole:
jkcole@garlington.com,
dvtolle@garlington.com

Raphael Graybill:
rgraybill@silverstatelaw.net

Kathryn Mahe:
ksmahe@garlington.com
kjpetererson@garlington.com

Date: August 17, 2022

/s/Christian B. Corrigan
CHRISTIAN B. CORRIGAN

Exhibit 10



Department of Public Health and Human Services
Office of Legal Affairs ♦ PO Box 4210, 111 N. Sanders ♦ Helena, MT 59604-4210
Telephone: 406-444-6863 Fax: 406-444-9744

Greg Gianforte, Governor

Charlie Brereton, Director

August 3, 2022

Sent via email

Justin K. Cole
Garlington, Lohn, & Robinson
P.O. Box 7909
Missoula, MT 59807
(406) 523-2500
jkcole@garlington.com

Re: Subpoena to Testify at a Deposition and Subpoena Duces Tecum
MMA v. Knudsen, Civil Action No. 21-00108-DWM
Objection to Deposition and Subpoena Duces Tecum

Mr. Cole:

On July 20, 2022, you served by email, a Subpoena to Testify at a Deposition and a Subpoena Duces Tecum, directed to the Montana Department of Public Health and Human Services (“DPHHS”), on the Montana Attorney General’s Office in the above-referenced matter. DPHHS is a non-party to this civil action. Carter Anderson has been identified as the Rule 30(b)(6) witness to testify at the deposition on behalf of DPHHS. You identified six topic areas for the Rule 30(b)(6) deposition scheduled for August 18, 2022, and four specific requests for production (“RFPs”).

Pursuant to Rule 45(d)(2)(B), F. R. Civ. P., DPHHS objects to the Deposition and Subpoena Duces Tecum for the following reasons:

1. The information requested is subject to attorney client privilege, executive privilege, work product, and trial preparation material. A privilege log will be provided on or before August 18, 2022, consistent with the production request. Please contact me to make arrangements if you are requesting the privilege log in advance of the deposition.
2. The six topics for the deposition and the four RFPs for the subpoena are overbroad and not directly relevant to the litigation. Courts have routinely held that “[a] non-party has the right to object on relevance grounds to avoid production and courts have routinely held that it is a generally accepted rule that standards for non[-]party discovery ... require a stronger showing of relevance than for simple party discovery.” *Brandstetter v. City of Riverside*, No. 5:20-cv-01866-FLA(SHKx), 2021 U.S. Dist. LEXIS 247059, at *10 (C.D. Cal. Sep. 10, 2021) (quoting *Laxalt v. McClatchy*, 116 F.R.D. 455, 458 (D. Nev. 1986)). For example, in *Dart Indus. Co. v. Westwood Chem. Co.*, 649 F.2d 646, 649 (9th Cir. 1980) “[t]here appear to be quite strong considerations indicating that discovery would be more limited to protect [non-]parties from harassment, inconvenience, or disclosure of confidential documents.” The following are general examples of the ways in which the categories are overbroad, as I review

the responsive documents, I may identify additional ways the request is overbroad. First, the Medicare and Medicaid Conditions of Participation encompass a broad array of regulatory requirements unrelated to the subject matter of this litigation. Second, the Centers for Medicare and Medicaid Services (“CMS”) findings, with respect to the Montana State Hospital’s compliance and/or noncompliance with the Conditions of Participation which led to termination of its provider agreement include findings unrelated to infection control or the Omnibus COVID-19 Health Care Staff Vaccination final rule, 86 Federal Register 61555 (Nov. 5, 2021) (“CMS vaccine mandate”). Therefore, any documents or questions regarding those topics is not relevant to the litigation. Third, the vast majority of DPHHS employees are not covered by the CMS vaccine mandate; information on such employees’ vaccination status is, therefore, irrelevant. I have included in number 4 and 5 specific objections to the topics and requests for production.

3. DPHHS cannot release information or documents prohibited by the federal Health Insurance Portability and Accountability Act (“HIPAA”), 42 USC 1320d et seq., and associated federal regulations at 45 C.F.R. Part 164 Subparts A and E or the Government Health Care Information Act, Title 50, Chapter 16, Part 6, Mont. Code Ann. If I identify responsive documents that are subject to these provisions, I will notify you as soon as reasonably possible and request a protective order, as necessary.
4. Specific objections to topics:
 - a. Topic #1: This topic is overbroad because it fails to identify with reasonable particularity the subject of the requested compliance and enforcement activities. This request is also overbroad because it is not limited to a timeframe or subject matter.
 - b. Topic #2: This topic is overbroad because it is beyond the claims asserted in the pleadings. Next, the findings of CMS, with respect to the Montana State Hospital include findings unrelated to infection control or the CMS vaccine mandate and therefore any documents or questions regarding those topics is not relevant to the litigation.
 - c. Topic #3: This topic is irrelevant. The vaccination status of DPHHS employees is not at issue in this litigation. Additionally, the vast majority of DPHHS employees are not covered by the CMS vaccine mandate.
 - d. Topic #4: This topic is overbroad because it does not limit the requested documents or testimony to the issues in this litigation. As drafted, this covers all communications at all times relating to aspects of Conditions of Participation. Second, Topic #4 is overbroad because it does not describe the requested documents nor testimony with reasonable particularity.
 - e. Topic #6: This topic is overbroad and unduly burdensome. DPHHS will identify and provide documents it prepared relating to MCA 49-2-312 and MCA 49-2-313. Counsel is invited to discuss what documents provided by DPHHS they seek and DPHHS will attempt to locate and produce them.
5. Specific objections to requests for production:
 - a. RFP #1: DPHHS assumes these requests are limited to documents it received, and/or has in its possession. To the extent this request seeks documents in the possession of other entities and not DPHHS, DPHHS objects as overbroad and unduly burdensome.
 - b. RFP #2: DPHHS incorporates its objections set forth in response to Topic #2 above. Rule 30(b)(6) depositions are limited to the claims asserted in the pleadings.
 - c. RFP #4: This RFP is overbroad. As set forth in response to Topic #6 above, all documents provided to DPHHS from any source relating to these statutes is overbroad,

unduly burdensome, and fails the proportionality analysis of the benefit to resolving the issues compared to the burden of attempting to identify all such documents.

The statutes and regulations DPHHS rely on in support of these objections are:

Rule 45(d)(2)(B), F. R. Civ. P

Rule 45(e)(2), F. R. Civ. P

Health Insurance Portability and Accountability Act (HIPAA), 42 USC 1320d et seq. and 45 C.F.R. Part 164 Subparts A and E

Government Health Care Information Act, Title 50, Chapter 16, Part 6, Mont. Code Ann

Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination, 86 Federal Register 61555 (Nov. 5, 2021).

As you are aware, the State of Montana is being represented in this matter by Brent Mead, David Dewhirst, Christian Corrigan, and Emily Jones. If you would like to discuss this objection further and the upcoming DPHHS deposition, please contact us at your earliest convenience.

Sincerely,



Justin Kraske

Staff Attorney, Office of Legal Affairs

(406) 444-1258

justin.kraske@mt.gov

cc: brent.mead2@mt.gov, christian.corrigan@mt.gov

Exhibit 11

*Montana Medical Association, et al. v
Austin Knudsen, et al.*

*John O'Connor
August 9, 2022*

*Charles Fisher Court Reporting
442 East Mendenhall
Bozeman, MT 59715
(406) 587-9016
maindesk@fishercourtreporting.com*

Min-U-Script® with Word Index

Page 1

1 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA
2 MISSOULA DIVISION
3
4 MONTANA MEDICAL ASSOCIATION, ET AL.,
5
6 Plaintiffs,
7
8 and Cause No. DV-21-108-M-DWM
9
10 MONTANA NURSES ASSOCIATION,
11
12 Plaintiff-Intervenor,
13
14 vs.
15
16 AUSTIN KNUDSEN, ET AL.,
17
18 Defendants.
19
20
21 _____
22 VIDEO DEPOSITION UPON ORAL EXAMINATION OF
23 JOHN O'CONNOR
24
25

Page 2

1 BE IT REMEMBERED, that the video-taped deposition
2 upon oral examination of JOHN O'CONNOR, appearing at the
3 instance of the Defendants, was taken at the offices of
4 Fisher Court Reporting, 211 N. Higgins Avenue, Suite 303,
5 Missoula, Montana, on August 9, 2022, beginning at 9:00
6 a.m., pursuant to Montana Rules of Civil Procedure, before
7 Robyn Ori English, Court Reporter - Notary Public.
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Page 3

1 APPEARANCES OF COUNSEL
2 ATTORNEY APPEARING ON BEHALF OF THE
3 PLAINTIFFS:
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11 ATTORNEY APPEARING ON BEHALF OF THE
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14 Graybill Law Firm
15 300 4th Street North
16 Great Falls, MT 59403
17 rgraybill@silverstatelaw.net
18
19 ATTORNEY APPEARING ON BEHALF OF THE
20 DEFENDANTS:
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22 Deputy Solicitor General
23 P.O. Box 210401
24 Helena, MT 59624-1401
25 christian.corrigan.mt.gov

Page 4

1 I N D E X
2
3
4 EXAMINATION OF JOHN O'CONNOR BY: PAGE:
5
6
7 Mr. Christian Corrigan, Esq..... 7
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9
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11
12
13
14
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16
17
18
19
20
21
22
23
24
25

Page 5

E X H I B I T S

1

2

3 DEPOSITION EXHIBITS: PAGE:

4

5 Exhibit 15 30(b)(6) Notice of 10

6 Deposition

7 Exhibit 16 Plaintiffs' 30(b)(6) 11

8 Deposition Designations for

9 Five Valleys Urology

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Page 6

1 **VIDEO OPERATOR:** This is the video-recorded and video

2 conference deposition of John O'Connor 30(b)(6)

3 Representative of Five Valleys Urology, taken in the

4 United States District Court for the District of Montana,

5 Missoula Division, Cause No. CV-21-108-M-DWM, Montana

6 Medical Association, et al, and Montana Nurses

7 Association, versus Austin Knudsen, et al.

8 Today is August 9th, 2022. The time is 9:00 a.m. We

9 are present with the witness at the offices of Fisher

10 Court Reporting, at 211 North Higgins Avenue, Suite 303,

11 in Missoula, Montana. The Court Reporter is Robyn Ori

12 English and the video operator is Nicole Tomac of Fisher

13 Court Reporting. The deposition is being taken pursuant

14 to Notice.

15 I would now ask the attorneys to identify themselves,

16 who they represent and whoever else is present. For those

17 attending remotely, please note from where you are

18 appearing.

19 **MS. MAHE:** I'm Katie Mahe, and I represent the

20 Plaintiffs in this lawsuit. With me today is Britton

21 Fraser who is just observing this deposition from our

22 office.

23 **MR. CORRIGAN:** This is Christian Corrigan

24 representing Defendants in the matter of the Office of the

25 Montana Attorney General. I'm appearing remotely via Zoom

Page 7

1 from Helena, Montana. Also on the line with me are David

2 Dewhirst and Brent Mead from the Office of the Attorney

3 General, appearing remotely from Helena, Montana, and they

4 won't be speaking.

5 **MR. GRAYBILL:** This is Raph Graybill on behalf of

6 Plaintiff-Intervenor, the Montana Nurses Association, and

7 I'm appearing remotely from Helena, Montana.

8 **VIDEO OPERATOR:** The Court Reporter will now

9 administer the oath.

10 WHEREUPON, the following proceedings were had and

11 testimony taken, to wit.

12

13

14
 JOHN O'CONNOR,

15 called as a witness herein, having been first duly sworn,

16 was examined and testified as follows:

17

18 **EXAMINATION**

19

20 **BY MR. CORRIGAN:**

21 **Q. All right. Good morning, Mr. O'Connor.**

22 **A. Good morning.**

23 **Q. Before we get started, I just want to go**

24 **over a few general guidelines for a deposition, some**

25 **things to help us make sure that we can communicate**

Page 8

1 **efficiently since we're over Zoom. My goal today is**

2 **to ask you questions and learn about Five Valleys.**

3 **As I do that, because we are on Zoom, I'm**

4 **going to do my best to take a pause and give you as**

5 **much time as possible to answer a question. I'll do**

6 **my best not to talk over you so we don't end up in a**

7 **situation where we're talking back and forth.**

8 **Sometimes that's accidentally going to happen due to**

9 **the nature of the online format, but we'll try to**

10 **stop if that happens and let you finish and even**

11 **clear up and re-ask the question if we need to to**

12 **make sure we're on the same page.**

13 **Please feel free to ask me to repeat the**

14 **question if you don't understand. Ask me to clarify**

15 **something if you need to. Take your time answering**

16 **and think about it. Sometimes my questions may seem**

17 **overly simple, and we're not trying to trick, we're**

18 **trying to establish basic things before we move on**

19 **and discuss more specific items.**

20 **And sometimes my questions are going to**

21 **be a little bit longer because we'll need to discuss**

22 **about a time frame or make sure we include specific**

23 **language that particularizes the question. So**

24 **please, again, feel free to ask me to repeat the**

25 **question if it's -- if you need it repeated because**

1 they need to have a procedure scheduled or they need
2 to have another appointment scheduled or they can
3 just go home. Depending upon those paths, then it
4 proceeds from there.

5 **Q. Okay. And it seems like perhaps the time**
6 **frame that I offered may have complicated the**
7 **question, so I'm going to ask it again and let me**
8 **know if it changes the answer to get some**
9 **clarification. So let's just say from January 1st,**
10 **2019, prior to the COVID-19 pandemic, whenever --**
11 **whenever new precautions were taken for COVID,**
12 **correct, so let's use that time frame. So from**
13 **January 1st, 2019 to -- prior to the onset of the**
14 **COVID pandemic, if a patient did not indicate that**
15 **they had received the influenza vaccine, did FVU**
16 **take any special precautions when that patient first**
17 **visited FVU?**

18 **MS. MAHE:** Objection, form.

19 **THE WITNESS:** When you say first visited, what do you
20 mean?

21 **Q. (By Mr. Corrigan) The first time they**
22 **entered into FVU facilities.**

23 A. Upon entry, no.

24 **Q. And I'm taking an aside here because I**
25 **think it's important to understand as we're talking**

1 **what the FVU facility entails. Does the FVU**
2 **facility have a shared waiting room for patients?**

3 A. Yes.

4 **Q. And does the FVU facility have a shared**
5 **common space for employees like a break room or**
6 **lunch room or something along those lines?**

7 A. Yes.

8 **Q. Great, that's helpful. Now I'd like to**
9 **ask you about -- I would like to ask you those -- or**
10 **excuse me, I apologize -- about those same questions**
11 **but as it relates to current FVU policy for new**
12 **patients.**

13 **Does FVU currently ask new patients to**
14 **disclose their vaccination status for any vaccine**
15 **preventable diseases?**

16 **MS. MAHE:** Object to the form.

17 **THE WITNESS:** We have the same paperwork and the same
18 questions for the flu and for pneumonia.

19 **Q. (By Mr. Corrigan) And so it's just the**
20 **influenza and pneumonia. Excuse me. You said**
21 **pneumonia?**

22 A. Pneumococcal, sorry.

23 **Q. Pneumococcal. And so those are the only**
24 **two vaccines that patients are given the option to**
25 **indicate that they've received?**

1 A. That is correct.

2 **Q. And currently, if FVU learns that a new**
3 **patient is -- or excuse me, strike that. If a new**
4 **patient indicates they have not received the**
5 **influenza vaccine, does FVU take any special**
6 **precautions when that patient first enters into an**
7 **FVU facility?**

8 **MS. MAHE:** Objection. Did you say currently,
9 Christian?

10 **MR. CORRIGAN:** Currently, yes.

11 **Q. (By Mr. Corrigan) So this would be a**
12 **current policy when a new patient who has not**
13 **indicated on their intake form that they've received**
14 **the influenza vaccine. The question is, does FVU**
15 **take any special precautions when that new patient**
16 **first enters into an FVU facility?**

17 **MS. MAHE:** Yeah, and I think I'm going to have to
18 object that and assert the 5th Amendment privilege here
19 because 702 doesn't allow entities to treat people
20 differently based upon vaccination status, and with the
21 criminal component of the law, there is the potential for
22 criminal prosecution based upon his answer.

23 **Q. (By Mr. Corrigan) All right.**

24 **Mr. O'Connor, are you familiar with a general term**
25 **called a health status check?**

1 A. I don't know what context that would be
2 in. I might have heard that word before, but I'm
3 not sure.

4 **Q. Sure. If I said that a health status**
5 **check is asking patients if they're experiencing**
6 **symptoms of a communicable disease such as influenza**
7 **or COVID-19, does that term generally make sense to**
8 **you?**

9 A. Yes.

10 **Q. So from January 1st, 2019 up until the**
11 **start of the COVID-19 pandemic, did FVU conduct**
12 **health status checks of patients prior to office**
13 **visits?**

14 A. Remind me again what you're including in
15 that definition.

16 **Q. Sure. So I think the examples would be**
17 **asking patients if they had a temperature, if they**
18 **were -- if they were coughing, if they were**
19 **sneezing, if they were exhibiting any of the types**
20 **of symptoms of having influenza, for example.**

21 A. That would depend upon the time of the
22 year.

23 **Q. And so what time of year would FVU**
24 **conduct a health status check of a patient prior to**
25 **any office visit?**

Exhibit 12

*Montana Medical Association, et al. v
Austin Knudsen, et al.*

*Meghan Morris 30(b)(6)
August 8, 2022*

*Charles Fisher Court Reporting
442 East Mendenhall
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Min-U-Script® with Word Index

Page 1

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF MONTANA
 3 MISSOULA DIVISION
 4 MONTANA MEDICAL ASSOCIATION,
 5 et al.,
 6 Plaintiff, No. CV-21-108-M-DWM
 7 and
 8 MONTANA NURSES ASSOCIATION,
 9 Plaintiff-Intervenors,
 10 v.
 11 AUSTIN KNUDSEN, et al.,
 12 Defendants.

13
 14
 15 VIDEOCONFERENCE/VIDEOTAPED DEPOSITION
 16 UPON ORAL EXAMINATION OF
 17 WESTERN MONTANA CLINIC 30(b)(6) DESIGNEE
 18 MEGHAN MORRIS

19
 20
 21 BE IT REMEMBERED, that the
 22 videoconference/videotaped deposition upon oral
 23 examination of Western Montana Clinic 30(b)(6)
 24 Designee Meghan Morris, appearing at the instance
 25 of the Defendants, was taken at 211 North Higgins,

Page 2

1 Suite 303, Missoula, Montana, on Monday,
 2 August 8, 2022, beginning at the hour of
 3 9:18 a.m., pursuant to the Federal Rules of Civil
 4 Procedure, before Mary R. Sullivan, Registered
 5 Merit Reporter, Certified Realtime Reporter, and
 6 Notary Public.
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Page 3

1 A P P E A R A N C E S
 2
 3 For the Plaintiffs Montana Medical Association, et
 4 al.:
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13
 14 For the Defendants Austin Knudsen, et al.:
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 22 Helena, Montana 59620
 23 christian.corrigan@mt.gov
 24 david.dewhirst@mt.gov
 25 brent.mead2@mt.gov

Page 4

1 A P P E A R A N C E S (Contd.)
 2
 3 ALSO PRESENT: Nicole Tomac, Videographer
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Page 5

I N D E X

DEPONENT: PAGE:

WESTERN MONTANA CLINIC 30(b) (6) DESIGNEE

MEGHAN MORRIS

Examination by Mr. Corrigan..... 8

EXHIBITS:

Exhibit 10 Montana Code Annotated 2021 TITLE 50. HEALTH AND SAFETY. CHAPTER 5. HOSPITALS AND RELATED FACILITIES Part 1. General Provisions..... 15

Exhibit 11 Montana Code Annotated 2021 Title 50. HEALTH AND SAFETY CHAPTER 5. HOSPITALS AND RELATED FACILITIES PART 2. Licensing..... 16

Exhibit 12 "Declination of Influenza Vaccination"..... 67

Exhibit 13 April 2, 2020 email from Dr. Pamela Cutler with attachments Subject: Masks during close patient contact..... 95

Exhibit 14 "PLAINTIFFS' 30(b) (6) DEPOSITION DESIGNATIONS FOR WESTERN MONTANA CLINIC"..... 107

Page 7

MONDAY, AUGUST 8, 2022

THE VIDEOGRAPHER: This is the video-recorded and videoconference deposition of Megan Morris, 30(b)(6) representative of Western Montana Clinic, taken in the United States District Court for the District of Montana, Missoula Division. Cause No. CV-21-108-M-DWM. Montana Medical Association, et al., and Montana Nurses Association vs. Austin Knudsen, et al.

Today is August 8th, 2022. The time is 9:18 a.m.

We are present with the witness at the offices of Fisher Court Reporting at 211 North Higgins Avenue, Suite 303 in Missoula, Montana.

The court reporter is Mary Sullivan, and the video operator is Nicole Tomac of Fisher Court Reporting.

The deposition is being taken pursuant to notice.

I would now ask the attorneys to identify themselves, who they represent, and whoever else is present. For those attending remotely, please note from where you are appearing.

MS. MAHE: Katie Mahe representing the plaintiffs. And appearing via Zoom from Missoula

Page 6

S T I P U L A T I O N S

It was stipulated by and between counsel for the respective parties that the deposition be taken by Mary R. Sullivan, Freelance Court Reporter and Notary Public for the State of Montana, residing in Missoula, Montana.

It was further stipulated and agreed by and between counsel for the respective parties that the deposition be taken in accordance with the Federal Rules of Civil Procedure.

It was further stipulated and agreed by and between counsel for the respective parties and the deponent that the reading and signing of the deposition would be expressly reserved.

Page 8

is Justin Cole for the plaintiffs.

MR. CORRIGAN: And this is Christian Corrigan from the office of the Montana Attorney General representing defendants in the case. Also on the line -- excuse me, I'll -- and I'll be appearing via Zoom from Helena, Montana. Also on the line is Brent Mead and David Dewhirst from the Montana Attorney General's Office appearing via Zoom from Helena.

THE VIDEOGRAPHER: The court reporter will now administer the oath.

Thereupon,

WESTERN MONTANA CLINIC 30(b)(6) DESIGNEE
MEGHAN MORRIS,
a witness of lawful age, having been sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. CORRIGAN:

Q. All right. Good morning.

A. Morning.

Q. Ms. Morris, thank you for being here today. Before we get started, I just want to go over a few guidelines for the deposition and make sure we're on the same page.

1 **BY MR. CORRIGAN:**
2 **Q. Which vaccinations or proof of immunity**
3 **were required for physicians, nurses, or other**
4 **licensed healthcare professionals as that term is**
5 **defined --**

6 **MS. MAHE:** Object.

7 **BY MR. CORRIGAN:**

8 **Q. -- by 50-5-101 (36)?**

9 **MS. MAHE:** Object to the form. Sorry,
10 Christian, I didn't mean to talk over you.

11 A. So we have an annual flu vaccine drive
12 where during that time period there would have
13 been one drive where we offer flu vaccine to all
14 employees, and we would have tracked whether an
15 employee or licensed healthcare professional
16 received or didn't receive that flu vaccination,
17 and that was intended to -- if flu reached a
18 certain level of risk or transmissibility in the
19 community, we would have then taken additional
20 steps to protect other employees and patients from
21 those who had not received the flu vaccine.

22 **BY MR. CORRIGAN:**

23 **Q. So that's on influenza. And as I**
24 **understand it, employees were not required to**
25 **disclose? Is that correct?**

1 **were discussing tracking the most recent iteration**
2 **of the influenza vaccine that's put out every year**
3 **or so? Is that fair to say? I -- I --**

4 **MS. MAHE:** Object to the form.

5 **BY MR. CORRIGAN:**

6 **Q. The influenza vaccine is one that**
7 **requires a new iteration of the vaccine every so**
8 **often to be effective. Is that fair to say?**

9 **MS. MAHE:** Object to the form. It
10 exceeds her designation.

11 A. I was answering your question based on
12 the timeframe you gave of January 1, 2019 to
13 January 1, 2020, what we did in that particular
14 year.

15 **BY MR. CORRIGAN:**

16 **Q. Yeah. So when you were -- when you were**
17 **ascertaining the vaccination status during that**
18 **period, you weren't asking employees if they had**
19 **ever received the influenza vaccine, you were**
20 **asking them if they had received a recent**
21 **influenza vaccine. Is that fair to say?**

22 **MS. MAHE:** Object to the form.

23 A. We ask annually in the fall, yes.

24 **BY MR. CORRIGAN:**

25 **Q. Okay. And why do you ask annually in the**

1 **MS. MAHE:** Object to the form.

2 You can answer.

3 A. Yes. We asked employees to either accept
4 a flu vaccine or sign a declination form.

5 **BY MR. CORRIGAN:**

6 **Q. All right. We'll get back to the flu**
7 **vaccine in a second, but I want to make sure we're**
8 **clear on which vaccines were required as a**
9 **condition of employment from January 1st, 2019 to**
10 **January 1st, 2021. Can you list for me the**
11 **vaccines that were required as a condition of**
12 **employment for that time period?**

13 **MS. MAHE:** Object to the form.

14 A. I discussed flu vaccine because that is
15 the vaccine that we track annually in that
16 timeframe that you described, but your question
17 now asks about condition of employment, and those
18 individuals' employment was not at risk. We would
19 just have taken infection prevention spread based
20 on that status.

21 **BY MR. CORRIGAN:**

22 **Q. That's helpful, and I will get back to**
23 **the infection prevention that you just mentioned.**

24 **So when you -- when we were just**
25 **discussing the flu vaccine that you tracked, you**

1 **fall?**

2 A. That's generally when flu season becomes
3 more prevalent, and there is also a timeframe for
4 that vaccine to become effective, and so we try to
5 offer it to employees strategically at a timeframe
6 that protects them through the height of a flu
7 season.

8 **Q. And for the influenza vaccine in the time**
9 **period you mentioned, what was WMC policy if an**
10 **employee refused to disclose their vaccination**
11 **status for influenza?**

12 **MS. MAHE:** Objection. Asked and
13 answered.

14 A. So there was no general policy about
15 actions that would be taken. If an employee
16 refused to answer that question, we would have
17 dealt with that on a case-by-case basis, and
18 frankly we never had that situation arise.

19 **BY MR. CORRIGAN:**

20 **Q. So a minute ago you mentioned, I think,**
21 **infection prevention for employees that declined**
22 **to receive the influenza vaccine for this time**
23 **period. Can you describe what those infection**
24 **prevention measures entailed for that time period?**

25 A. Well, let me be clear that I mentioned

Page 65

1 infection prevention generally in our facilities,
 2 not just as related to employees or providers.
 3 And for that time period from 2019 to 2020, my
 4 recollection is we didn't have this occur, but in
 5 prior history if flu became highly prevalent in
 6 the community and an employer provider was not flu
 7 vaccinated, they would be asked to wear a mask and
 8 potentially reassigned to a nondirect patient care
 9 role to avoid infection measures for patients, to
 10 protect patients and other employees.
 11 **Q. So you just discussed that in the context**
 12 **of -- or strike that.**
 13 **Let -- Let -- Let me ask you. When you**
 14 **discussed re-assigning employees at a nonpatient**
 15 **direct patient care roles, was that just for**
 16 **influenza or was that for vaccines generally?**
 17 A. That was our process for influenza.
 18 **Q. For influenza, okay. From the time**
 19 **period of January 1st, 2019 to January 1st, 2021,**
 20 **what was the process if an employee had a**
 21 **religious or medical exemption to a vaccine other**
 22 **than the influenza vaccine?**
 23 **MS. MAHE:** I'm gonna object. We just
 24 switched time periods. Before we were talking
 25 about January 1st, 2019 to January 1st, 2020. Now

Page 66

1 we're going to 2021? I just want to make sure
 2 that we're all talking about the same time period.
 3 **MR. CORRIGAN:** Yeah. And I -- I think
 4 there was a -- I think there was a -- but
 5 let's -- let's be clear.
 6 **BY MR. CORRIGAN:**
 7 **Q. January 1st, 2019 to January 1st, 2021,**
 8 **if an employee had a medical or religious**
 9 **exemption to a vaccine, what was the process for**
 10 **infection control that WMC utilized?**
 11 **MS. MAHE:** Object to the form.
 12 A. Well, and it -- it -- the answer would be
 13 speculative because that situation didn't arise.
 14 If you're asking me about the process for a
 15 medical or religious exemption, that would have
 16 been handled through our managers and our HR
 17 department, and then the speculation is that we
 18 deal with every employee situation individually as
 19 needed. They're unique, and so we have to take
 20 that into account.
 21 **BY MR. CORRIGAN:**
 22 **Q. So if we could, I'd like to introduce an**
 23 **exhibit. It's gonna -- Well, we're out of order**
 24 **here, so I want to make sure we get this correct.**
 25 **MR. CORRIGAN:** For the Fisher staff, this

Page 67

1 is a -- the first page is the "Declination of
 2 Influenza Vaccination" form. And for -- And for
 3 plaintiffs' counsel, this is labeled as WMC-6.
 4 **THE COURT REPORTER:** Would you like this
 5 marked as the next exhibit?
 6 **MR. CORRIGAN:** Yes, please.
 7 **EXHIBIT:**
 8 (Deposition Exhibit 12 marked for
 9 identification.)
 10 **MR. CORRIGAN:** Does that put us at 12?
 11 **THE COURT REPORTER:** Yes.
 12 **MR. CORRIGAN:** Great. And I note for the
 13 record that these were produced as -- in
 14 plaintiffs' discovery production as PL 1033
 15 through PL 1039.
 16 **MS. MAHE:** Well, that's -- maybe that's
 17 just not the one I have.
 18 Oh, okay. The -- The way that they were
 19 titled has the wrong Bates numbers on them, that's
 20 why I was confused.
 21 **BY MR. CORRIGAN:**
 22 **Q. So when we spoke just now about the flu**
 23 **vaccination drive and WMC's request that employees**
 24 **disclose their vaccination status for influenza,**
 25 **are these the documents that were given to the**

Page 68

1 **employees in the course of that flu vaccination**
 2 **drive?**
 3 **MS. MAHE:** Object--
 4 **BY MR. CORRIGAN:**
 5 **Q. Go ahead and take your time and -- and**
 6 **qualify if you need to.**
 7 **MS. MAHE:** Object to the form. Vague as
 8 to period of time.
 9 A. So the first three pages, 1033, 1034, and
 10 1035 were responsive to the discovery request from
 11 2018, 2019, and 2020, so that's a representative
 12 form from those timeframes.
 13 **BY MR. CORRIGAN:**
 14 **Q. And did any form such as this exist for a**
 15 **vaccine other than the influenza vaccine --**
 16 **MS. MAHE:** Object to the form.
 17 A. And as I --
 18 **BY MR. CORRIGAN:**
 19 **Q. -- during this time period?**
 20 A. -- described it earlier, the flu vaccine
 21 was the vaccine that we focused on delivering to
 22 employees.
 23 **Q. So now I'd like to shift from the time**
 24 **period we were just discussing, which was**
 25 **January 1st, 2019 to January 1st, 2020 to the**

Page 69

1 **present time period, meaning current WMC policy.**
 2 **Does WMC currently require all**
 3 **physicians, nurses, or other licensed healthcare**
 4 **professionals, as that term is defined in**
 5 **Section 50-5-101 subpart (36) of Montana Code, to**
 6 **disclose their vaccination status for any**
 7 **vaccine-preventable diseases as a condition of**
 8 **employment?**
 9 **MS. MAHE:** Object to the form, and also I
 10 want to be careful here, Christian, are you asking
 11 them to admit whether or not they're committing a
 12 crime under the Montana statute that imposes
 13 criminal penalties for taking action based upon
 14 vaccination or immunity status?
 15 **MR. CORRIGAN:** I -- No, I'm not. I'm
 16 asking what their current vaccination policy is.
 17 **MS. MAHE:** Right. But if that current
 18 vaccination policy conflicts with the law, then
 19 there's a Fifth Amendment implication in there
 20 since there are criminal penalties associated with
 21 House Bill 702.
 22 **MR. CORRIGAN:** We may have to take a
 23 break and think about that question and discuss
 24 what's proper and what isn't because I think
 25 that's an important line of questioning. So

Page 70

1 we -- we may need to take a break. But I've got
 2 a -- I've got another line of questioning that I
 3 can get to that doesn't implicate that, and then
 4 we take a break after that, if that works.
 5 **BY MR. CORRIGAN:**
 6 **Q. So from January 1st, 2019 to January 1st,**
 7 **2021, did WMC require staff such as receptionists,**
 8 **janitorial staff, administrative staff, or other**
 9 **nonhealthcare professionals employed or contracted**
 10 **with WMC to provide proof of vaccination or**
 11 **immunity for any vaccine-preventable disease as a**
 12 **condition of employment?**
 13 **MS. MAHE:** Object to the form.
 14 A. No.
 15 **BY MR. CORRIGAN:**
 16 **Q. For those employees in that time period,**
 17 **were they asked to disclose their vaccination**
 18 **status for any vaccine-preventable disease?**
 19 A. And you're referring back to the time
 20 period of January 2019 to January 2021?
 21 **Q. Correct. And for staff such as**
 22 **receptionists, janitorial staff, administrative**
 23 **staff, or other nonhealthcare professionals.**
 24 A. This is an evolving question that has
 25 different answers depending on different segments

Page 71

1 of time within that broad swath of time you
 2 designated.
 3 **Q. Is it helpful if I clarify -- if I**
 4 **shorten the time period from January 1st, 2019 to**
 5 **March 1st, 2020 and ask if WMC required**
 6 **receptionists, janitorial staff, administrative**
 7 **staff, or other nonhealthcare professionals**
 8 **employed or contracted with WMC to disclose their**
 9 **vaccination status as a condition of employment?**
 10 **Sorry. Strike that. I asked the wrong question.**
 11 **Is it helpful if I shorten the time**
 12 **period from January 1st, 2019 to March 1st, 2020**
 13 **to ask whether WMC asked receptionists, janitorial**
 14 **staff, administrative staff, or other**
 15 **nonhealthcare professionals employed or contracted**
 16 **with WMC about their vaccination status for**
 17 **vaccine-preventable diseases?**
 18 **MS. MAHE:** Object to the form.
 19 A. I'll refer us back to the previous
 20 discussion about flu vaccine, and I do want to
 21 clarify that you're not asking about as a
 22 condition of employment. We did that as a matter
 23 of course with offering flu vaccine like we
 24 discussed before.
 25 ///

Page 72

1 **BY MR. CORRIGAN:**
 2 **Q. Right. And is the influenza vaccine the**
 3 **only one that would satisfy the answer to my**
 4 **question there about whether WMC asked about**
 5 **vaccination status?**
 6 A. Between January of 2019 and January
 7 of 2020 we did ask for these declination forms as
 8 presented to you in discovery. That practice
 9 changed from the declination forms; we did not ask
 10 that after 2020 completed.
 11 **Q. Got it. And I guess -- And maybe --**
 12 **maybe we have a little bit confusion. I'm -- I'm**
 13 **-- I'm wondering if you asked about any other**
 14 **vaccines other than the influenza vaccine for that**
 15 **time period from January 1st, 2019 to March 1st,**
 16 **2020.**
 17 A. Flu was primarily what we've discussed,
 18 what we asked about. For roles in our
 19 organization where you may be exposed to blood or
 20 bodily fluids, we have offered hepatitis B
 21 vaccination. And so by nature of offering that
 22 and some employees accepting, we become aware of
 23 their status.
 24 **Q. And just to clarify, would the**
 25 **hepatitis B vaccination be offered to all**

1 provider for a certain kind of procedure, we do
 2 our best to accommodate that.
 3 **BY MR. CORRIGAN:**
 4 **Q. So for the next series of questions I**
 5 **want to be clear that I'm not asking about or**
 6 **seeking any personally identifiable information**
 7 **about any particular employee or patient. Your**
 8 **counsel will probably object, but I want to make**
 9 **sure that -- to make clear that I'm not asking for**
 10 **any personally identifiable information, and I'm**
 11 **-- I'm not seeking anything along those lines.**
 12 **From January 1st, 2019 to January 1st,**
 13 **2021, did WMC provide reasonable accommodations**
 14 **under the Montana Human Rights Act to prospective**
 15 **employees or contractors due to the vaccination**
 16 **status of that prospective employee or contractor?**
 17 **MS. MAHE:** I'm gonna object to the form.
 18 Calls for a legal conclusion.
 19 You can answer.
 20 A. For an employee, for a contractor, I'll
 21 separate those two out in the answer. For a
 22 contractor I don't believe there were any requests
 23 made to respond to or needs for accommodation. We
 24 have one employee provider who has a hearing
 25 impairment, and so we provided alternate PPE with

1 **to prospective employees or contractors due to the**
 2 **vaccination status of WMC patients?**
 3 **MS. MAHE:** Object to the form, and calls
 4 for a legal conclusion.
 5 A. And -- And truly I'm not sure I
 6 understand your question.
 7 **BY MR. CORRIGAN:**
 8 **Q. So I -- I'm asking if during that time**
 9 **period, WMC, under the Montana Human Rights Act,**
 10 **provided an accommodation to an employee or a**
 11 **contractor due to the vaccination status of a**
 12 **patient. So, for example, was an accommodation --**
 13 **was there an accommodation to an employee based on**
 14 **a patient being unvaccinated for a particular**
 15 **disease?**
 16 **MS. MAHE:** Object to the form, and calls
 17 for a legal conclusion.
 18 A. As I understand that question, that
 19 present -- that situation did not present itself.
 20 So, no.
 21 **BY MR. CORRIGAN:**
 22 **Q. From January 1st, 2019 to January 1st,**
 23 **2021, did WMC provide reasonable accommodations**
 24 **under the Montana Human Rights Act to current**
 25 **employees or contractors due to the vaccination**

1 clear facing so that that person could be heard
 2 and also understand patients better.
 3 **BY MR. CORRIGAN:**
 4 **Q. From January 1st, 2019 to January 1st,**
 5 **2021, did WMC provide reasonable accommodations**
 6 **under -- under the Montana Human Rights Act to a**
 7 **prospective employer or contractor due to the**
 8 **vaccination status of an existing WMC employee?**
 9 **MS. MAHE:** Object to the form, and it
 10 calls for a legal conclusion.
 11 A. And I -- Again, I'll ask you to restate
 12 that very long question.
 13 **BY MR. CORRIGAN:**
 14 **Q. Sure. So the time period I'm asking**
 15 **about is January 1st, 2019 to January 1st, 2021,**
 16 **and my question is did WMC provide reasonable**
 17 **accommodations under the Montana Human Rights Act**
 18 **to a prospective employee or contractor due to the**
 19 **vaccination status of an existing WMC employee?**
 20 **MS. MAHE:** Same objections.
 21 A. Not that I'm aware of.
 22 **BY MR. CORRIGAN:**
 23 **Q. Same question for January 1st, 2019 to**
 24 **January 1st, 2021. Did WMC provide reasonable**
 25 **accommodations under the Montana Human Rights Act**

1 **status of other WMC employees?**
 2 **MS. MAHE:** Object to the form, and calls
 3 for a legal conclusion.
 4 A. And as I understand the question actually
 5 providing an accommodation, no, that situation did
 6 not arise.
 7 **BY MR. CORRIGAN:**
 8 **Q. All right. So I'd like to ask the -- the**
 9 **same set of questions, but start after**
 10 **January 1st, 2021, and I'll -- I'll rephrase or**
 11 **I'll -- I'll restate the question.**
 12 **Has WMC provided reasonable**
 13 **accommodations under the Montana Human Rights Act**
 14 **to employees or contractors since January 1st,**
 15 **2021 due to the vaccination status of another WMC**
 16 **employee or employees?**
 17 **MS. MAHE:** I'm gonna object to the form.
 18 I'm also gonna object that it calls for a legal
 19 conclusion, and to the extent that your answer
 20 would implicate you required others to take
 21 specific action or treated others differently
 22 based upon vaccination status, that implicates the
 23 Fifth Amendment because there's potential criminal
 24 penalties after the enactment of House Bill 702,
 25 so it might make sense for us to take a quick --

1 well, do you understand what I'm -- where -- how
2 I'm instructing you not to answer?

3 **THE DEPONENT:** I do, and I'm also still
4 trying to make sure I understand the question as
5 it's being phrased.

6 A. That you are asking about accommodations
7 provided from employee or contractor to employee
8 or contractor. Is that correct?

9 **BY MR. CORRIGAN:**

10 **Q. Yeah. So this scenario would be an**
11 **employee asks for an accommodation due to the**
12 **vaccination status of a fellow employee.**

13 **MS. MAHE:** I -- I -- Yeah, I think all of
14 that implicates the Fifth Amendment concerns that
15 we've noted after the passage of House Bill 702.
16 So you can answer from the period of January 1st
17 to the passage of 702, but beyond that, that would
18 implicate potential criminal penalties.

19 A. And I would answer from a broader
20 perspective that, you know, you're asking
21 specifically about vaccination status, but we
22 would make our best efforts. If truly an employee
23 had any safety or health concern related to
24 another employee, we would do our best to address
25 that based on the unique circumstances. And to my

1 **BY MR. CORRIGAN:**

2 **Q. For that time period, from January 1st,**
3 **2019 to January 1st, 2021, did WMC provide**
4 **reasonable accommodations under the ADA to**
5 **prospective employees or contractors due to the**
6 **vaccination status of WMC employees?**

7 **MS. MAHE:** Object to the form, and calls
8 for a legal conclusion.

9 A. And, I'm sorry, I'll ask for clarity
10 because to me that sounded like the question that
11 I just answered.

12 **BY MR. CORRIGAN:**

13 **Q. Yeah. So the question before was**
14 **about -- was due to the vaccination status of the**
15 **prospective employee. This question asks about**
16 **the accommodation due to the vaccination status of**
17 **existing WMC employees.**

18 **MS. MAHE:** Object to the form, and calls
19 for a legal conclusion.

20 A. And I will say that my answer is the same
21 for prospective versus new, although we haven't
22 had that circumstance arise.

23 **BY MR. CORRIGAN:**

24 **Q. And from the period from January 1st,**
25 **2019 to January 1st, 2021, did WMC provide**

1 knowledge, as the rep of WMC, we haven't had that
2 circumstance arise.

3 **MS. MAHE:** Limited to the time period we
4 stated.

5 **BY MR. CORRIGAN:**

6 **Q. All right. I want to move on now to**
7 **accommodations under the Americans with**
8 **Disabilities Act or ADA. If I use the term "ADA,"**
9 **do you understand that to mean the Americans with**
10 **Disabilities Act?**

11 A. Yes, I do.

12 **Q. Okay. Great. So from the time period of**
13 **January 1st, 2019 to January 1st, 2021, did WMC**
14 **provide reasonable accommodations under the ADA to**
15 **prospective employees or contractors due to the**
16 **vaccination status of the prospective employee or**
17 **contractor?**

18 **MS. MAHE:** Object to the form. Compound
19 question, and calls for a legal conclusion.

20 A. And during that timeframe you
21 referenced -- and again, in -- understanding the
22 question from employee/contractor to
23 employee/contractor, a combination between those
24 two groups, I'm not aware of that request or
25 circumstance having arisen.

1 **reasonable accommodations under the ADA to**
2 **employees or contractors due to the vaccination**
3 **status of WMC patients?**

4 **MS. MAHE:** Object to the form, and calls
5 for a legal conclusion.

6 A. And you are asking me about providing an
7 accommodation to employees or contractors due to
8 the vaccination of patients -- status of
9 patients --

10 **BY MR. CORRIGAN:**

11 **Q. Correct.**

12 A. -- which -- which we can't presume to
13 know outside of the context of the individual
14 confidential patient visit, so it's difficult for
15 me to even imagine a situation where a contractor
16 could make even a request because they wouldn't be
17 privy to that, and certainly employees in other
18 departments with no contact with a patient in
19 particular wouldn't be able to either. It's sort
20 of a nonplausible situation that -- as I hear you
21 describing it.

22 **Q. Apologies. I'll be ready to start again**
23 **in just a second.**

24 A. Sure.

25 **Q. Are you aware of any current reasonable**

Exhibit 13

*Montana Medical Association, et al. v
Austin Knudsen, et al.*

*Karyn Trainor 30(b)(6)
August 10, 2022*

*Charles Fisher Court Reporting
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Min-U-Script® with Word Index

Page 1

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF MONTANA
 3 MISSOULA DIVISION
 4 MONTANA MEDICAL ASSOCIATION,
 5 et al.,
 6 Plaintiff, Case No. CV-21-00108-DWM
 7 and
 8 MONTANA NURSES ASSOCIATION,
 9 Plaintiff-Intervenors,
 10 v.
 11 AUSTIN KNUDSEN, et al.,
 12 Defendants.

16 VIDEOCONFERENCE/VIDEOTAPED DEPOSITION
 17 UPON ORAL EXAMINATION OF
 18 PROVIDENCE HEALTH & SERVICES 30(b)(6) DESIGNEE
 19 KARYN TRAINOR

21 BE IT REMEMBERED, that the
 22 videoconference/videotaped deposition upon oral
 23 examination of Providence Health & Services
 24 30(b)(6) Designee Karyn Trainor, appearing at the
 25 instance of the Defendants, was taken at 500 West

Page 2

1 Broadway, Missoula, Montana, on Monday,
 2 August 10, 2022, beginning at the hour of
 3 9:03 a.m., pursuant to the Federal Rules of Civil
 4 Procedure, before Mary R. Sullivan, Registered
 5 Merit Reporter, Certified Realtime Reporter, and
 6 Notary Public.

Page 3

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Page 4

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 14 brent.mead2@mt.gov

17 **ALSO PRESENT:** Nicole Tomac, Videographer

Page 5

I N D E X

1

2 DEPONENT: PAGE:

3 PROVIDENCE HEALTH & SERVICES 30(b)(6) DESIGNEE

4 KARYN TRAINOR

5 Examination by Mr. Mead..... 8

6

7

8 EXHIBITS:

9 Exhibit 17 "DEFENDANTS' NOTICE OF FED. R.

10 CIV. P. 30(B)(6) DEPOSITION OF

11 PLAINTIFF PROVIDENCE HEALTH AND

12 SERVICES"..... 11

13 Exhibit 18 "PLAINTIFFS' AMENDED 30(b)(6)

14 DEPOSITION DESIGNATIONS FOR

15 PROVIDENCE HEALTH AND SERVICES".... 11

16 Exhibit 19 "Additional actions for our

17 COVID-10 Medical and religious

18 Exemption population:"

19 Bates Nos. PL 84 through PL 235.... 27

20

21

22

23

24

25

Page 7

1 WEDNESDAY, AUGUST 10, 2022

2 **THE VIDEOGRAPHER:** This is the

3 video-recorded and videoconference deposition of

4 Karyn Trainor, 30(b)(6) representative of

5 Providence Health & Services taken in the United

6 States District Court for the District of Montana,

7 Missoula Division. Cause No. CV-21-108-M-DWM,

8 Montana Medical Association, et al., and Montana

9 Nurses Association vs. Austin Knudsen, et al.

10 Today is August 10th, 2022. The time is

11 9:04 a.m.

12 We are present with the witness at

13 St. Patrick's Hospital at 500 West Broadway Street

14 in Missoula, Montana.

15 The court reporter is Mary Sullivan, and

16 the video operator is Nicole Tomac of Fisher Court

17 Reporting.

18 The deposition is being taken pursuant to

19 notice.

20 I would now ask the attorneys to identify

21 themselves, who they represent, and whoever else

22 is present. For those attending remotely, please

23 note from where you are appearing.

24 **MS. MAHE:** Katie Mahe appearing on behalf

25 of the plaintiffs. And with me today is Justin

Page 6

S T I P U L A T I O N S

1

2

3 It was stipulated by and between

4 counsel for the respective parties that the

5 deposition be taken by Mary R. Sullivan, Freelance

6 Court Reporter and Notary Public for the State of

7 Montana, residing in Missoula, Montana.

8

9 It was further stipulated and agreed by

10 and between counsel for the respective parties

11 that the deposition be taken in accordance with

12 the Federal Rules of Civil Procedure.

13

14 It was further stipulated and agreed by

15 and between counsel for the respective parties and

16 the deponent that the reading and signing of the

17 deposition would be expressly reserved.

18

19

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Page 8

1 Cole.

2 **MR. MEAD:** Brett Mead with the Montana

3 Attorney General's Office appearing remotely from

4 Helena, Montana. Also on the line are David

5 Dewhirst and Christian Corrigan with the Montana

6 Attorney General's Office, all representing the

7 defendants.

8 **MR. GRAYBILL:** Raph Graybill on behalf of

9 plaintiff-intervenor, the Montana Nurses

10 Association, appearing remotely from Helena,

11 Montana.

12 **THE VIDEOGRAPHER:** The court reporter

13 will now administer the oath.

14 Thereupon,

15 PROVIDENCE HEALTH & SERVICES 30(b)(6) DESIGNEE

16 KARYN TRAINOR,

17 a witness of lawful age, having been sworn to tell

18 the truth, the whole truth, and nothing but the

19 truth, testified as follows:

20 **EXAMINATION**

21 **BY MR. MEAD:**

22 **Q. Good morning, Ms. Trainor. My name -- As**

23 **I said, my name's Brent Mead. I'm with the Montana**

24 **Attorney General's Office. I'm representing the**

25 **defendants in this case. My goal today is to**

Page 25

1 something that maybe we don't know. Again, not
 2 something that happened very often, but it is
 3 a -- it's an interactive process in trying to make
 4 that determination and honor their belief.
 5 **BY MR. MEAD:**
 6 **Q. And Ms. Trainor, prior to House Bill 702,**
 7 **did Providence deny any request for a religious**
 8 **exemption to an otherwise required vaccination?**
 9 A. Prior to House Bill 702 I am not aware of
 10 any denials, nor am I aware of really any real
 11 requests.
 12 **Q. Okay. So we've -- we've been talking**
 13 **about the health care workforce at Providence, so I**
 14 **just want to shift focus a little bit. And prior**
 15 **to House Bill 702, did Providence require any**
 16 **receptionist, janitorial staff, administrative**
 17 **staff or nonhealthcare employees to provide proof**
 18 **of vaccination or be as a condition of employment?**
 19 **MS. MAHE:** I'm going to object to the
 20 form.
 21 You can answer.
 22 A. So as -- as -- as you're listing out
 23 these individual types of employees, we call all
 24 of our employees caregivers because they do
 25 interact with our -- with our patient population.

Page 26

1 So janitorial is environmental services, they're
 2 cleaning the rooms, they interact with the
 3 patients, they see them in the hallways. All of
 4 our, if you will, administrative staff -- we don't
 5 really have receptionists -- would also be
 6 potentially checking a patient in, being able to
 7 greet them. It could be that they are doing --
 8 helping them get to a location. And so the
 9 ability to intersect with somebody who could be
 10 contagious for them or they could be contagious to
 11 a patient visitor, we have required the same --
 12 the same process and the same information as we
 13 would for clinical.
 14 **BY MR. MEAD:**
 15 **Q. Okay. So just to be clear, and I think**
 16 **you answered this, Providence -- prior to**
 17 **House Bill 702 Providence had the same vaccination**
 18 **requirements for its healthcare staff as its**
 19 **nonhealthcare staff.**
 20 **MS. MAHE:** Object to the form.
 21 A. Yes, 'cause they're all caregivers and
 22 they have the ability to intersect with our
 23 patient population.
 24 **BY MR. MEAD:**
 25 **Q. Okay. I now want to introduce the**

Page 27

1 **documents that were sent over labeled PL 84 to 235.**
 2 **I believe this will be Exhibit 19.**
 3 **EXHIBIT:**
 4 (Deposition Exhibit 19 marked for
 5 identification.)
 6 **MR. GRAYBILL:** Brent, can you repeat
 7 those numbers?
 8 **MR. MEAD:** Sure. That was --
 9 **THE COURT REPORTER:** I'm sorry, who was
 10 that?
 11 **MS. MAHE:** That was Raph.
 12 **MR. MEAD:** PL 48 to 235.
 13 **MS. MAHE:** So guys, just one comment. We
 14 have to be really careful because Mary's trying to
 15 get the exhibit, and she's also trying to take
 16 down everything that everybody's saying, so -- so
 17 it's just a little hard for her. We can slow down
 18 a little bit, that'd be good.
 19 **THE COURT REPORTER:** And -- And Raph, if
 20 you could please put yourself up on the video so I
 21 know who's speaking?
 22 **BY MR. MEAD:**
 23 **Q. Ms. Trainor, I'd ask you to turn to the**
 24 **pages labeled PL 171 to PL 174.**
 25 **THE DEPONENT:** Do you need to see?

Page 28

1 **THE COURT REPORTER:** No.
 2 **MS. MAHE:** Brent, did you want her to
 3 read those pages?
 4 **MR. MEAD:** I -- If she would just take a
 5 minute or two to review.
 6 A. Okay.
 7 **BY MR. MEAD:**
 8 **Q. So Ms. Trainor, are you familiar with the**
 9 **policy that is on those pages PL 171 to PL 174?**
 10 A. I -- I am familiar with it. I don't
 11 administer this because it's for our physicians.
 12 So if it's -- Yes, I'm familiar with it.
 13 **Q. So -- So Ms. Trainor, to your knowledge,**
 14 **is this policy currently in effect at Providence?**
 15 **MS. MAHE:** I'm gonna object and instruct
 16 you not to answer.
 17 You can answer prior to House Bill 702,
 18 but with the Fifth Amendment criminal penalties
 19 potentially available.
 20 A. So prior to House Bill 702, this would
 21 have been how we would have proceeded.
 22 **BY MR. MEAD:**
 23 **Q. Ms. Trainor, what is the effective date of**
 24 **this policy?**
 25 **MS. MAHE:** I'm gonna object to the form,

Page 29

1 and also object that the policy has a date on it.
 2 What are you asking as far as "effective"?

3 **BY MR. MEAD:**
 4 **Q. Ms. Trainor, on PL 171, what is the**
 5 **effective date of this policy?**
 6 **MS. MAHE:** Object to the form. It's
 7 vague as to what is meant by "effective."
 8 You can answer.
 9 A. So it's -- So it states 5/20 -- or
 10 5/2022.
 11 **BY MR. MEAD:**
 12 **Q. So Ms. Trainor, is this policy still in**
 13 **effect?**
 14 **MS. MAHE:** I'm gonna object and instruct
 15 you not it answer based on the Fifth Amendment and
 16 criminal penalties that have come with 702.
 17 You can answer prior to House Bill 702.
 18 A. So prior to House Bill 702, this would
 19 have been the overview of what we had done.
 20 **BY MR. MEAD:**
 21 **Q. So Ms. Trainor, does Providence currently**
 22 **have a immunization requirement for a physician and**
 23 **Allied Health professional policy that is in**
 24 **effect?**
 25 **MS. MAHE:** Same objections, and I'll

Page 30

1 instruct you not to answer. You can answer prior
 2 to House Bill 702.
 3 A. Prior to House Bill 702 we have had for
 4 physician and Allied Health professionals a policy
 5 that would be indicated like this.
 6 **BY MR. MEAD:**
 7 **Q. So Ms. Trainor, since House Bill 702, does**
 8 **Providence have an immunization requirement policy**
 9 **that is in effect for physicians and Allied Health**
 10 **professionals?**
 11 **MS. MAHE:** Same objections.
 12 I'm gonna instruct you not to answer.
 13 This has been asked and answered now three times,
 14 Brent. This is getting argumentative.
 15 **MR. MEAD:** Counsel, respectfully it has
 16 not been answered.
 17 **MS. MAHE:** And it will not be answered
 18 the way that you're asking it because it
 19 implicates a Fifth Amendment right against
 20 self-incrimination because there are criminal
 21 penalties associated with House Bill 702.
 22 **MR. MEAD:** Counsel, no such right has
 23 been asserted.
 24 **MS. MAHE:** I literally just said it three
 25 times.

Page 31

1 **MR. MEAD:** Okay. Counsel, no witness has
 2 asserted any Fifth Amendment rights.
 3 **BY MR. MEAD:**
 4 **Q. So again I'm going to ask, does Providence**
 5 **have a current policy for immunization requirements**
 6 **for physicians and allied health professionals?**
 7 **MS. MAHE:** Karyn, are you asserting your
 8 Fifth Amendment right?
 9 A. I am asserting my Fifth Amendment right.
 10 **BY MR. MEAD:**
 11 **Q. So Ms. Trainor, on PL 172 and PL 173, for**
 12 **procedure No. 1, it says "Each provider must**
 13 **provide documentation of Hepatitis B immunization**
 14 **series." Correct?**
 15 **THE DEPONENT:** Am I okay to answer?
 16 **MS. MAHE:** Yeah. I mean, the policy says
 17 what it says.
 18 A. Yeah. I mean, yes, it says that.
 19 **BY MR. MEAD:**
 20 **Q. Procedure 5 says "Each provider is**
 21 **strongly recommended to receive the influenza**
 22 **vaccination yearly." Correct?**
 23 A. Correct.
 24 **Q. Can you describe to me the difference**
 25 **between "must provide documentation" and "strongly**

Page 32

1 **recommended to receive"?**
 2 **MS. MAHE:** And, Karyn, your answer should
 3 be tailored to pre House Bill 702.
 4 A. So prior to House Bill 702 the -- the
 5 number one where we are asking about hepatitis, it
 6 is for the safety of patients and the caregiver
 7 themselves that we need to know the status under
 8 CMS regulations, for tracking purposes, and
 9 any -- any procedures if somebody were exposed.
 10 And in No. 5, prior to House Bill 702, influenza,
 11 again, is highly recommended and not a
 12 requirement, but there would have been PPE that
 13 would have been needed had we had an outbreak.
 14 **BY MR. MEAD:**
 15 **Q. Okay. And so Ms. Trainor, looking at**
 16 **procedure No. 6 on PL 173 and PL 174, when**
 17 **procedure No. 6 says each provider is strongly**
 18 **recommended to receive a onetime dose of the Tdap**
 19 **vaccine, that means that shot is not required.**
 20 **Correct?**
 21 **MS. MAHE:** Object to the form.
 22 A. So in No. 6, with Tdap, the -- the view
 23 of one time is that technically diphtheria and
 24 pertussis you need it one time or an exposure of
 25 it to have immunization. Tetanus you generally

1 see every ten years. And in today's world, you
2 wouldn't need to have it very often, so that's why
3 this would be limited. And again, prior to
4 House Bill 702 we offer that as a -- as a shot if
5 they haven't had it or a booster if they feel like
6 it has been too long or if they did a tighter and
7 it wasn't -- they didn't feel it was strong
8 enough.

9 **BY MR. MEAD:**

10 **Q. So to be clear, Ms. Trainor, under**
11 **procedure No. 6, Providence did not require --**
12 **prior to House Bill 702, Providence did not require**
13 **the Tdap vaccine?**

14 **MS. MAHE:** Object to form. Asked and
15 answered.

16 You can answer.

17 A. So generally this is determined through a
18 titer to determine the efficacy and to not
19 overdose, so don't require it. It wouldn't be
20 required again.

21 **BY MR. MEAD:**

22 **Q. Okay. So Ms. Trainor, then, is there a**
23 **difference in how strongly recommended its used in**
24 **procedure 5 and procedure 6?**

25 **MS. MAHE:** Object to the form.

1 A. I -- I don't -- I'm sorry, I don't think
2 I understand what you're asking.

3 **BY MR. MEAD:**

4 **Q. Sure. So Ms. Trainor, when we discussed**
5 **procedure No. 5, you said that the influenza**
6 **vaccine is strongly recommended but it's not**
7 **required. So I'm wondering because procedure No. 6**
8 **uses very similar language, does that also hold**
9 **true for the Tdap vaccine in that Providence only**
10 **strongly recommends but does not require the Tdap**
11 **vaccine?**

12 **MS. MAHE:** Object to the form.

13 A. So prior to House Bill 702, again,
14 Tdap -- Tdap isn't necessarily a requirement,
15 it -- these are highly recommended. There are
16 usually only -- usually the people who object have
17 some kind of medical or potentially religious
18 exemption as to why they wouldn't receive it.
19 Unfortunately pertussis is extremely -- extremely
20 spreadable and has the ability to truly harm our
21 most immunocompromised and children. And so,
22 again, it's highly recommended in all of these to
23 get them to be able to protect themselves and our
24 patients.

25 ///

1 **BY MR. MEAD:**

2 **Q. So Ms. Trainor, if a Providence employee**
3 **declined to get the Tdap vaccine, what were**
4 **Providence's policies prior to HB 702 on**
5 **accommodations?**

6 **MS. MAHE:** Object to the form, and asked
7 and answered.

8 You can answer.

9 A. So, again, prior to House Bill 702 we
10 have a process to go through any -- any kind of an
11 accommodation, religious or medical, to follow
12 that. There would be different PPE, potentially,
13 if an outbreak had occurred for any of these
14 issues, whether it was measles, mumps, rubella, or
15 pertussis, et cetera, in order to protect them and
16 our patients.

17 **BY MR. MEAD:**

18 **Q. Okay. And so Ms. Trainor, as what -- I**
19 **think the last question in the series, prior to**
20 **CMS's COVID-19 vaccine rule in November 2021, did**
21 **CMS require Providence to mandate any vaccination**
22 **for its employees?**

23 **MS. MAHE:** Object to the form. It calls
24 for a legal conclusion.

25 A. C -- Sorry. CMS requires us to track the

1 status. It does not require the vaccination,
2 knowing that there are exemptions that must be
3 honored through, you know, civil rights, EEOC,
4 ADA, and Montana human rights, and so they --
5 the -- the encouragement is they should either be
6 vaccinated, have an exemption, or if declining, we
7 have to track the status so that they can have --
8 they could have had whatever additional PPE would
9 be needed to protect them and the patients they
10 might be serving.

11 **BY MR. MEAD:**

12 **Q. Okay.**

13 **MR. MEAD:** Counsel, I think now is a good
14 time for me to take a break if we want to break
15 until, say, 10:00 a.m.?

16 **MS. MAHE:** That works.

17 **MR. MEAD:** Okay.

18 **THE VIDEOGRAPHER:** We are going off the
19 record. The time is 9:48 a.m.

20 (Recess taken from 9:48 a.m. to
21 10:07 a.m.)

22 **THE VIDEOGRAPHER:** We are back on the
23 record. The time is 10:07 a.m.

24 **BY MR. MEAD:**

25 **Q. So Ms. Trainor, I have one question just**

1 **to clarify on PL 171, 174, that policy we've been**
 2 **discussing. I just want to clarify that prior to**
 3 **House Bill 702, that was Providence's vaccination**
 4 **policy for healthcare professionals.**
 5 A. Prior to House Bill 702, yes, we would
 6 have followed these -- these rules.
 7 **Q. Okay. Thank you.**
 8 **So I want to move over into the Americans**
 9 **with Disability Act and Montana Human Rights Act.**
 10 **If I use the acronym ADA, do you understand that to**
 11 **mean the Americans with Disability Act?**
 12 A. Yes.
 13 **Q. If I use "the Human Rights Act," do you**
 14 **understand that to mean the Montana Human Rights**
 15 **Act?**
 16 A. Yes, I can.
 17 **Q. Thank you. So prior to House Bill 702,**
 18 **are you aware of any instance where a patient**
 19 **requested that they be treated by Providence**
 20 **employees that were vaccinated for a**
 21 **vaccine-preventable disease?**
 22 A. I'm sorry, can you restate that?
 23 **Q. Sure. Prior to House Bill 702, are you**
 24 **aware of any instance where a patient requested**
 25 **that they only be treated by Providence employees**

1 A. Prior to House Bill 702, we would try to
 2 accommodate as best we could, and trying to be
 3 able to provide appropriate PPE or to be able to
 4 do a temporary assignment in order to provide
 5 safe -- safe and effective care.
 6 **Q. And so Ms. Trainor, you had said that**
 7 **these requests came in after the onset of the**
 8 **COVID-19 pandemic. So for January 2019 to, let's**
 9 **say, March 2020, so the onset of the COVID**
 10 **pandemic, are you aware of any request by patients**
 11 **to only be treated by Providence employees that**
 12 **were vaccinated?**
 13 A. Timeframe-wise people were very nervous.
 14 And again, part of it is looking at how many
 15 people had access to the vaccine during that time.
 16 So, again, we have requests for lots of things to
 17 ensure that people are going to be safe. I
 18 don't -- I -- I don't recall exactly during that
 19 time what may have happened, but we have lots of
 20 requests that come in from patients to ensure that
 21 we can provide them a safe place to get care.
 22 **Q. So Ms. Trainor, from the time period when**
 23 **COVID-19 vaccines were made available to healthcare**
 24 **workers until House Bill 702 was enacted, so**
 25 **May 2021, in that timeframe, were these types of**

1 **that were vaccinated for a vaccine-preventable**
 2 **disease?**
 3 A. Prior to House Bill 702 during COVID, the
 4 answer would be yes. We have had patients who
 5 have asked to only be treated by vaccinated
 6 caregivers. Generally they tend to be patients
 7 who have immunocompromised situations like
 8 chemotherapy, could be a heart condition. People
 9 have been very concerned about not being exposed
 10 unduly to somebody who could have been vaccinated.
 11 **Q. And prior to House Bill 702, what was**
 12 **Providence policy if a patient requested that they**
 13 **only be treated by employees that were vaccinated**
 14 **for a vaccine-preventable disease?**
 15 **MS. MAHE:** Object to the form. And
 16 Brent, your beep is still happening.
 17 **MR. MEAD:** Thank you, Counsel.
 18 **BY MR. MEAD:**
 19 **Q. Did you understand the question,**
 20 **Ms. Trainor, or did I need to repeat it?**
 21 A. Sorry. Please repeat.
 22 **Q. Okay. Prior to House Bill 702, what was**
 23 **Providence's policy if a patient requested that**
 24 **they only be treated by employees that were**
 25 **vaccinated for a vaccine-preventable disease?**

1 **patient requests to only be treated by vaccinated**
 2 **employees, were they limited to COVID-19?**
 3 **MS. MAHE:** Object to the form.
 4 A. At that point I would say most of it
 5 would be COVID, yes.
 6 **BY MR. MEAD:**
 7 **Q. Are -- During this time period, are you**
 8 **aware of any request to be treated by patients who**
 9 **were vaccinated for any other specific diseases?**
 10 **MS. MAHE:** Object to the form.
 11 A. I'm sorry. Can you say that again?
 12 **BY MR. MEAD:**
 13 **Q. Sure. So you have -- you said that these**
 14 **requests were largely limited to COVID-19, so I'm**
 15 **wondering during this time period from when**
 16 **COVID-19 vaccines were available until House Bill**
 17 **702 was enacted, are you aware of any similar**
 18 **requests to be treated by employees who were**
 19 **vaccinated for any other specific disease?**
 20 **MS. MAHE:** Object to the form.
 21 A. So I would tell you the general public
 22 assumes that our people are vaccinated and were
 23 required to be vaccinated in many cases, so
 24 the -- the -- the types of questions we would get
 25 would have been very limited because, again, you