COMMISSION OF INQUIRY
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

July 23, 2008

Appearances:

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Certificate

THE COMMISSIONER:
Q. Please be seated. Ms. Chaytor.
MR. BARRY DYER, RESUMES STAND, EXAMINATION BY SANDRA CHAYTOR, Q.C. (CONT'D)
CHAYTOR, Q.C.:
Q. Good morning, Commissioner. Good morning, Mr. Dyer.
MR. DYER:
A. Good morning, Ms. Chaytor.
CHAYTOR, Q.C.:
Q. If we could have, please, C-0184? Mr. Dyer, this is one of the pathology reports that I took you to yesterday that had two different results.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And you indicated that you would have went with the more recent result and if it showed that there was positivity, that would not have gone into your pile, in terms of the ones you would be forwarding on for retest?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:

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Q. Okay, and you would look at the most recent test and see whether it was positive or negative?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay. In this particular case, it's 12 days apart, the two tests, I mean, are 12 days apart. What system is in place, to your knowledge, to ensure that the treating physician would be made aware of the second addendum to this report?
MR. DYER:
A. Currently you mean or -
CHAYTOR, Q.C.:
Q. Back in 2002, when this was happening, presumably the oncologist or the treating physician would have received the report on, I think this one is July 10th, 2002, and would have received the addendum saying that there's negative--no positivity for estrogen receptors. 12 days later it's repeated. Would that necessarily have been brought to the attention of the oncologist or the treating physician, and if so, how?

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MR. DYER:
A. I think that would--that's a clinical question. I wouldn't be able to explain. I know from a technical point of view, the system automatically generates a report. So technically speaking, from my point, what happens is this report would have been automatically generated the next morning at six a.m. when it was--the day before. If it's signed out yesterday, it would be generated today, and then it would be sent to the physician. So I guess it would be a clinical issue of if the pathologist actually contacted them or anything like this. I wouldn't know.
CHAYTOR, Q.C.:
Q. Okay. So would a hard copy be sent every time there's an addendum, a new -
MR. DYER:
A. Every single time, yes.
CHAYTOR, Q.C.:
Q. There should be?
MR. DYER:
A. The system automatically would generate the report, based on what we call sign out. So when a physician signs out a report, that

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triggers the computer to print that report six a.m. the next morning.
CHAYTOR, Q.C.:
Q. Okay, and so hopefully or you would expect, in any event, that the treating physician would have received 12 days later or thereabouts would have received the addendum number two?
MR. DYER:
A. Yes.
THE COMMISSIONER:
Q. Is it marked as addendum number two on what's produced the next morning?
MR. DYER:
A. Yes, just as you see it there, Madam Commissioner.
THE COMMISSIONER:
Q. So if--what I'm inquiring about is whether or not if a pathologist did a report within a week or say two of the first report, is there something on the second report so that the person receiving it knows this is not just a second copy of what I just read a few days ago?
MR. DYER:
A. Yes, if they put in addendum number one, the

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report would actually print out addendum number one, as you see there, or then it would say addendum number two, as you would see there.
THE COMMISSIONER:
Q. Okay, thank you.
MR. DYER:
A. And you can put in as many addendums as you like. It would just keep track of the numbers.
THE COMMISSIONER:
Q. But the report you get notes that it is an addendum?
MR. DYER:
A. Yes.
THE COMMISSIONER:
Q. Okay.
CHAYTOR, Q.C.:
Q. And can you access Meditec for something that's been entered or does it have to be signed out before you can access it?
MR. DYER:
A. For pathology itself?
CHAYTOR, Q.C.:
Q. Yes.

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MR. DYER:
A. The report has to be signed out before anybody can access it.
CHAYTOR, Q.C.:
Q. Okay. So in a situation where we have two different reports in a relatively short time period or whenever you saw this in going through your process, you and Mr. Gulliver in 2005, you didn't just look at those as well as this equivocal, should we put it to one side and bring those to Dr. Cook's attention as well?
MR. DYER:
A. Again, it all came down to, you know, like if the cutoff was ten and we had a ten or if it commented on like faintly positive, something like this, I would contact Dr. Cook. But something like this, I would imagine if it's 30 percent are positive and the cutoff was ten percent, this would be considered a positive.
CHAYTOR, Q.C.:
Q. Yes. So there wasn't any--you didn't have a rule of thumb if there were more than one report on ER and PR that we'll put that to one side and bring it to Dr. Cook's attention and

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then he can check to see whether or not in fact the second report was ever -
MR. DYER:
A. No, I don't think so. I think we just went by what the report would say.
CHAYTOR, Q.C.:
Q. You just went by the numbers on the second report?
MR. DYER:
A. Yes, and I don't even know if we would have been cognizant at the time, like when we read that addendum two and it said it was 30 percent, then that patient was not sent for retest, in this scenario.
CHAYTOR, Q.C.:
Q. The next day when the report is generated, does the entire report come out again or is it just the addendum?
MR. DYER:
A. No, the previous diagnosis and that would also be printed.
CHAYTOR, Q.C.:
Q. So the entire report?
MR. DYER:
A. The entire report would print again.

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CHAYTOR, Q.C.:
Q. So the treating physician might not be alerted to this is a difference in the report? There's nothing to bring to their attention that there's actually an addendum? Whether or not they might look at it and say "well, gee, I already got this yesterday" or four days ago.
MR. DYER:
A. It was just the data section, the addendum data section was what would highlight.
THE COMMISSIONER:
Q. I'm sorry, what you're highlight?
MR. DYER:
A. As you can see there, it has a--the word addendum, that's an actual what we call a data section and that's what would be highlighted on the report.
CHAYTOR, Q.C.:
Q. Yes, and that's highlighted for all the addendums?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. You mean like we're looking at here, it's in

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black?
MR. DYER:
A. Yes, it's in black.
CHAYTOR, Q.C.:
Q. Okay, and that's standard. Like here we see -
MR. DYER:
A. Yes, that's standard.
CHAYTOR, Q.C.:
Q. Yes, so those are your headings?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. But there wouldn't be, for example, in this case, the second addendum wouldn't otherwise be highlighted to alert the treating physician to pay attention to this portion of the report? You're not saying that--what I'm seeing is that a treating physician is getting a report again 10 or 12 days later.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Is there anything done to bring to their attention that this is not, in fact, the same report you received before there's a new

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portion?
MR. DYER:
A. No, technically no.
CHAYTOR, Q.C.:
Q. Okay, and is that still the case today?
MR. DYER:
A. I believe it is, yes.
CHAYTOR, Q.C.:
Q. Okay. Just one other question, in the August 1 meeting, '05 meeting when Dr. Carter made the comment about there not having been any positives in a certain time period, any positive ERs in a certain time period, and you testified yesterday that that was certainly directed towards Mr. Gulliver and you. Was that comment directed towards any other particular group in attendance?
MR. DYER:
A. I don't--no, I don't think so. It didn't appear, but again, it was a different time. I don't know if it was--I thought that she was actually--she was looking right at us, I believe, when those statements were being said.
CHAYTOR, Q.C.:

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Q. And so was there anything said in terms of the oncologists and the oncologists, whether or not they were tracking any trends?
MR. DYER:
A. Not that I can remember, no.
CHAYTOR, Q.C.:
Q. And you told us that Mr. Gulliver's response at the time was basically "why, if you've known this, are you only telling us this now?"
MR. DYER:
A. Yes, I think that was his response at the time. "you're saying those things, why am I only hearing it now?" something to that effect.
CHAYTOR, Q.C.:
Q. Okay, and that was aimed at the pathologists?
MR. DYER:
A. That was aimed at Dr. Carter.
CHAYTOR, Q.C.:
Q. At Dr. Carter. In the task that you and Mr. Gulliver, the task that you were assigned back in August of 2005 in trying to identify the patients and pull the appropriate reports and specimens, in doing that, did you ever engage anyone from information management or any IT

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specialist?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. Okay, and why not?
MR. DYER:
A. I think in terms of--I don't know if we never thought of it at the time, but when it came to the actual Meditec system, they didn't have a lot of knowledge about it. It was like for example, back in '91, I was the one who was sent away. None of the staff--I think Mr. Gulliver might have went away in '87 or '88, around that time, when they set it up. So we were the people who really understood the Meditec system.
CHAYTOR, Q.C.:
Q. So anybody who would have been in house at Eastern Health at the time, in terms of IT, you felt that your knowledge of the system was equal, if not better, than theirs?
MR. DYER:
A. Yes, for sure. We had--just as a note to that, in '07, I did get together with IT, a bunch of their staff, to see and explain to

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them about the--I took them completely through the Meditec system to see if they could actually put together, I guess, a database, if you will, of all this information, and they couldn't. They really struggled. They felt that the only way that it could have been done, at the end of the day, was the way we actually did it.
CHAYTOR, Q.C.:
Q. And did you make any inquiries of Meditec, the company?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. And why not?
THE COMMISSIONER:
Q. Who does your servicing?
MR. DYER:
A. Who does the servicing?
THE COMMISSIONER:
Q. Yes, if you have problems with your Meditec system?
MR. DYER:
A. It goes through information management. I think there's a contact person with Lab who

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would deal directly with Meditec.
THE COMMISSIONER:
Q. So if your Meditec system goes down today -
MR. DYER:
A. Then I -
THE COMMISSIONER:
Q. - do you have to contact someone from outside the province to get it up again?
MR. DYER:
A. Yes. Yes, they do, but that--when things go down, it doesn't usually have an impact or doesn't have--how can I explain it? When things--when the system shuts down, it's not usually something that we're using on the system, like a search or like how we do data entry. It's more--I think it's more complicated to the overall system. Am I making--I don't know if I explained it.
THE COMMISSIONER:
Q. Okay, I understand that there is a difference in the question of the development of programs and their capability and the actual troubleshooting, to use the terminology that seems to be used, of problems with your computer system and that perhaps different

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people would do it, but since your IT people don't seem to be up on Meditec, does that mean they don't service it either?
MR. DYER:
A. No, they're up on Meditec, but I don't think they're up on the actual like how to do a search or how to add markers or how to add--how to write specific dictionaries, things like this.
THE COMMISSIONER:
Q. Okay. So what you're saying really is your IT people are service people for IT. They're not in the development of programs or that kind of -
MR. DYER:
A. Not that I know of, not too much for Meditec, for laboratory.
CHAYTOR, Q.C.:
Q. And so you, yourself, in going through your process in August 2005, didn't see the need to contact Meditec or seek any assistance from that?
MR. DYER:
A. To be honest, I don't even think it came to my mind. I think the focus was we just went

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right at it, to get as much as we could done. I don't think I even thought of it.
CHAYTOR, Q.C.:
Q. And for example, the people that we talked about, it came to your knowledge some time later that somebody had been missed or at least one patient had been missed because there had been an ER test ordered, but not actually reported and -
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. - whether or not there were other patients that fit that category and how you might be able to access them in the system, no inquiries were made of anyone as to how that might be accessed?
MR. DYER:
A. Not from me, no.
CHAYTOR, Q.C.:
Q. Okay, and well, would it be made from anyone else, if -
MR. DYER:
A. I don't know, but I personally didn't, no.
CHAYTOR, Q.C.:

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Q. I'd like to turn now then and discuss the external reviews which took place in--sorry?
MR. DYER:
A. Can I just go through one more thing with -
CHAYTOR, Q.C.:
Q. Sure, absolutely.
MR. DYER:
A. - with this whole review?
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. Just to show, like it was a really--it was like an organizational nightmare. When we started the review, of course, in pathology, we have--everything is identified as a department. So one thing that's big, as you've heard all throughout this Inquiry, is called surgicals and so mostly when you're looking at these cases, you'll see the number, you know, SU. So we had--I think we had eight or nine labs in Newfoundland who were doing testing or doing breast work and they would send in their cases to us. So you can see this here, this SU for example. So everybody in the province today, like starting January

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1, has SU1, SU2, SU3, SU4. So when all this stuff was coming in, you know, we could--everybody was SU and so it was very challenging because as multiple cases came in, there could have been an SU-2000 from Health Science and there could have been an SU-2000 from St. Clare's. So it was like it was an organizational nightmare to try and keep everything separate and organized so that we wouldn't--so that those types of things wouldn't be missed. It was unreal what we had to go through.

CHAYTOR, Q.C.:

Q. Okay, and in looking then at the external reviews, we understand that Trish Wegrynowski came in in September, around September 20th, 2005. Did you meet with her while she was here for her first visit?

MR. DYER:

A. Yes, I did, I believe.

CHAYTOR, Q.C.:

Q. Okay, and were you also involved in any coordination for her to come in?

MR. DYER:

A. I think I was to a degree, yes.

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CHAYTOR, Q.C.:

Q. If we could look, please, at P-1746? And this is an e-mail exchange between you and Ms. Wegrynowski, for the most part, working out logistics, I believe, for her travel. I'll just take you down to the bottom of the page here. On August 19th, 2005, she's writing back to you and she says "Hi, Barry. It was very nice to touch base with you to discuss my upcoming trip to your institution. Below is a copy of the e-mail I sent Bev. Dr. Cook has since suggested the week of September 20th to 25th." She goes on to say "thank you for your candour. I have a better understanding of the situation. I will await your call on Monday after your meeting for you to outline your expectations before making any arrangements." What do you recall discussing with her prior to her actually arriving in St. John's? What would she be referring to in saying "thank you for your candour" and she now has a better understanding of the situation?

MR. DYER:

A. I think I took her through what we were going through, about we had--in our immunohistochemistry, we had cases, I believe, at the time that were negative and now were positive, and so we had concerns, I guess concerns--or concerns were raised about how immuno was being performed. So I took her through that situation, what it was all about.

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CHAYTOR, Q.C.:

Q. So just the fact that there were retests going on which indicated that--which were leading to inconsistent results?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And was there anything other than that discussed with her?

MR. DYER:

A. No, I don't--you know, again, candour, I think I might have explained to her, you know, that the lab was under a lot of stress at the time, you know, so I might have said something like that to her too, just to let her know that, you know, it's like--it's not a Pandora's Box or anything, but it was really stressful times.

CHAYTOR, Q.C.:

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Q. So she's have a better understanding as to what she was walking into to do the review?

MR. DYER:

A. Yes, more than anything else, I believe.

CHAYTOR, Q.C.:

Q. In terms of people's mind frames?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay, and what in particular was causing--what was causing the stress at that point in time?

MR. DYER:

A. I just think it's just the fact that, you know, we thought that, you know, I guess seriously, I think the issue was that, you know, errors--there was--not errors, but there were conversions. We knew that there were conversions by this time and I guess we were all worried that, you know, did we make a mistake.

CHAYTOR, Q.C.:

Q. Okay, and then you met with her when she arrived in St. John's?

MR. DYER:

A. Yes.

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CHAYTOR, Q.C.:
Q. And what do you recall discussing with her at that time?
MR. DYER:
A. I think we met in my office and I just gave her the outline, the lay out of the land, like what we were doing, you know, a reference lab. Specimens were coming in from all over. We had just consolidated. We were doing work over at--grossing was occurring at St. Clare's. Like I took her through pretty well everything of how the lab was working.
CHAYTOR, Q.C.:
Q. Okay. If we could look, please, at P-1745? And these, we understand, are Ms. Wegrynowski's notes of her meeting, conversation with you, September 20th, 2005, and she makes reference to the '96 reorganize. Do you have any notes of your meeting with her?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. And in terms of the other--we do have your notes from the May 17th meeting.

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MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Did you take any notes at the August 1st meeting?
MR. DYER:
A. None. I'm not a note taker usually. It has to be something that's big, before I actually take notes, I'll be honest.
CHAYTOR, Q.C.:
Q. And there's a note here "fixation site dependent." So I take it that's referring to -
MR. DYER:
A. She must have asked about that, so I said yes.
CHAYTOR, Q.C.:
Q. And you're being a--you're referring--there's samples being referred in from outside, I guess, and so -
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. - the fixation is not standard. "2002, complete for organizations in St. John's, all immunos." So St. John's doing the immunos?

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MR. DYER:
A. All the immunos, I guess.
CHAYTOR, Q.C.:
Q. And then there's a note here, "St. Clare's do 60 to 70 percent of breast and 50 percent are reprocessed." Do you recall indicating that to Ms. Wegrynowski?
MR. DYER:
A. I don't know if I might have said it to her, but--and we may have discussed it. She may have asked, you know, how do we process specimens. She may have actually asked me those types of questions. I don't know if I actually told her we were reprocessing.
CHAYTOR, Q.C.:
Q. And her making a note of your conversation to indicate that 50 percent are being reprocessed, if you provided her with that information, where would you have gotten that statistic that it's up to 50 percent?
MR. DYER:
A. In '05? I don't know if I said 50 percent. And again, no, I don't know where that came from, where that number came from. I mean, if she says I said it, I must have said it, but I

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don't remember saying 50 percent are reprocessed.
CHAYTOR, Q.C.:
Q. Well, in 2005, would that be, in your opinion, a reasonable estimate?
MR. DYER:
A. Maybe based on what techs told me, you know, but that was--and again, I think we talked about--this was about old specimens, I believe, yes, right.
CHAYTOR, Q.C.:
Q. I'm sorry?
MR. DYER:
A. I think this was about old cases.
CHAYTOR, Q.C.:
Q. Old cases?
MR. DYER:
A. Yeah, not what was actually happening in '05. I think she was asking me about, you know, our history of how we processed and that over the years.
CHAYTOR, Q.C.:
Q. So by 2005, you indicated yesterday things -- reprocessing was still happening, although to a lesser extent?

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MR. DYER:
A. In '05, very little, I would imagine, very little by then. In '05 when we consolidated and started doing all the embedding at Health Science, I don't think we were doing much reprocessing of anybody then.
CHAYTOR, Q.C.:
Q. Okay. So the 50 percent figure may be representative of over the years?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. What was coming out of St. Clare's?
MR. DYER:
A. Yes, and again I didn't have any stats or anything. It might have came from the techs.
CHAYTOR, Q.C.:
Q. Okay. Did you just have the one meeting with Ms. Wegrynowski, or did you meet with her again?
MR. DYER:
A. I think we met at the end -- before she left or before she had her -- I think her exit interview. It stands out for some reason that we actually met in Terry's office. I can see

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three or four people there.
CHAYTOR, Q.C.:
Q. And who attended that meeting besides yourself and Terry?
MR. DYER:
A. I can see Mr. Gulliver and myself, Trish, and Don Cook and -- I thought there was someone else in the office, but I can't place them.
CHAYTOR, Q.C.:
Q. So it was all lab people?
MR. DYER:
A. Yes, I think another pathologist was there, but I can't remember who it was.
CHAYTOR, Q.C.:
Q. Okay, and do you recall what was discussed in that meeting?
MR. DYER:
A. I think she just discussed about -- she made some point -- I mean, the first thing she said it was a great lab, great people, great staff, and she thinks they're all willing to move towards any recommendations -- she got the impression from just the way they talked that they're all very open and open to any suggestions, any ideas, and she talked about -

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- the big one she talked about was documentation and SOPs.
CHAYTOR, Q.C.:
Q. Okay.
MR. DYER:
A. I believe those two things definitely stood out in that meeting.
CHAYTOR, Q.C.:
Q. And in terms of saying great lab, great people, she's talking about the atmosphere and the people that are working there?
MR. DYER:
A. The staff themselves, yes. You know, we were very open. Whatever Ms. Wegrynowski wanted, we did. You know, like, whatever she wanted to see, she got to see. We didn't do anything to impede that process.
CHAYTOR, Q.C.:
Q. And given your efforts since taking on the position of manager in 2002 to bring about standardization and processes, I take it you didn't take issue with the fact that she was recommending or one of her key findings was the lack of SOPs?
MR. DYER:

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A. At that time?
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. No, I didn't. She also talked about the consolidation -- not consolidation, but she talked about all the equipment should be on one site, things like this, and it's things that I agreed with.
CHAYTOR, Q.C.:
Q. And those were things that you had been advocating for some time?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And in terms of her findings regarding the state of affairs with respect to documentation, I take it you didn't take issue with that either?
MR. DYER:
A. Well, again I -- we never actually documented, but my answer and defense to her was we were performing all those procedures, like, we were doing our pH's and things like this before we ran reagents that would come in, but we

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weren't documenting, so I said we will -- so we started documenting within a couple of days. We actually started to documentation process immediately.

CHAYTOR, Q.C.:

Q. And your knowledge as to what was or was not happening in the IHC lab in that respect, you've told us that you didn't spend a whole lot of time in the IHC lab?

MR. DYER:

A. No, I didn't.

CHAYTOR, Q.C.:

Q. So whether that's happening, you're relying on who to tell you that?

MR. DYER:

A. Back then?

CHAYTOR, Q.C.:

Q. Yes.

MR. DYER:

A. No, but once we started, I relied on the techs to tell me.

CHAYTOR, Q.C.:

Q. Okay.

MR. DYER:

A. Now that we have a quality management program

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in place, they're actually monitoring.

CHAYTOR, Q.C.:

Q. Yes.

MR. DYER:

A. So now --

CHAYTOR, Q.C.:

Q. There's a system in place now to verify exactly what's happening?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And Mr. Dyer, why had there not been documentation before this?

MR. DYER:

A. I don't think -- I just -- it's a good question and I thought about that, and I don't think anyone -- I don't think any lab was doing very much documentation at the time. We were extremely busy and the goal was just to get the work done. We did very little documentation.

CHAYTOR, Q.C.:

Q. Well, any lab in terms of -- you would have been familiar with the Janeway lab and you would have been familiar with Eastern Health

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or Health Care Corporation lab?

MR. DYER:

A. Yes, and from what I understand, there was very little documentation through a lot of the labs in terms of --

CHAYTOR, Q.C.:

Q. In St. John's.

MR. DYER:

A. In St. John's, in terms of what we're doing now.

CHAYTOR, Q.C.:

Q. If we could have, please, P-0048. I take it you did not attend the exit interview Ms. Wegrynowski had?

MR. DYER:

A. No.

CHAYTOR, Q.C.:

Q. But you had sort of a mini exit interview with the lab medicine program people?

MR. DYER:

A. Yes, I'm pretty sure we did.

CHAYTOR, Q.C.:

Q. Okay, and this is a copy of her first report then on May 2nd, 2006, and this is indicated this particular copy is one of four.

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MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And this was -- I'm sorry, this is not the right report. I'm looking for the November -- P-0047. Yes, this is the right one. Sorry about that, Mr. Dyer.

MR. DYER:

A. That's okay.

CHAYTOR, Q.C.:

Q. And this is the November 9th report. So this, in fact, is the first report, copy seven of eight or one of four. Did you receive a copy of this report?

MR. DYER:

A. At the time?

CHAYTOR, Q.C.:

Q. Yes.

MR. DYER:

A. No.

CHAYTOR, Q.C.:

Q. Have you ever received a copy?

MR. DYER:

A. I got a phone call, I think, February of this year.

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CHAYTOR, Q.C.:
Q. February, 2008?
MR. DYER:
A. Yes, permission to read the report. So then I read the report.
CHAYTOR, Q.C.:
Q. And that's after, I take it, Judge Dymond's decision?
MR. DYER:
A. I think so, yes.
CHAYTOR, Q.C.:
Q. So you didn't receive a copy before that?
MR. DYER:
A. Of this one, no.
CHAYTOR, Q.C.:
Q. Well, did you receive a copy of either of her reports?
MR. DYER:
A. I think I was involved to a degree with the second report.
CHAYTOR, Q.C.:
Q. And you received a copy of the second --
MR. DYER:
A. Oh, no, I didn't receive an actual copy, but I did get to see parts of it.

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CHAYTOR, Q.C.:
Q. Okay, and who would have shown you parts of that?
MR. DYER:
A. I think it was Dr. Williams.
CHAYTOR, Q.C.:
Q. And in what context were you shown copies of the reports?
MR. DYER:
A. To identify what actions needed to be done for certain things that they felt may fall within my responsibility.
CHAYTOR, Q.C.:
Q. So were you involved in the actual implementation of the recommendations?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And you were shown portions of the second report, but not the first report?
MR. DYER:
A. Correct.
CHAYTOR, Q.C.:
Q. And you read the report, I take it, when you received it in February?

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MR. DYER:
A. Yes, I actually read it, and I read it to the entire technical staff.
CHAYTOR, Q.C.:
Q. Did you also provide them with copies of it?
MR. DYER:
A. Yes, I did.
CHAYTOR, Q.C.:
Q. And what were your overall impressions, did you take issue with any portion of it or --
MR. DYER:
A. No, it was a very -- I thought it was a very good report, good criticism, and again I felt like we were doing a lot of the things that the report was suggesting, however, we weren't documenting what we were doing, so -- but it is a good report.
CHAYTOR, Q.C.:
Q. Okay and, of course, ultimately there's a spreadsheet prepared which has 52 recommendations, some of which were Dr. Banerjee's, I think the majority are Ms. Wegrynowski's, and some are both -- some are both Dr. Banerjee and Ms. Wegrynowski's. Mr. Dyer, when Ms. Wegrynowski was here, I think

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in interpreting what she had to say to the Commissioner, most of what she had set out here in her first report, and indeed her second report where further recommendations came forward, seemed to be fairly basic things. Would you agree with that in terms of lab -- how to run IHC procedures?
MR. DYER:
A. I don't understand the question.
CHAYTOR, Q.C.:
Q. In terms of -- for example, let's look at a few then. Well, the standard operating procedures, okay, "refrigerator to be available in quick section rooms", the issue of recommending, I guess, amalgamation to one site of the tissue processing, that's something you had been looking for, "sign daily cleaning and maintenance schedules for the processors", and I'll come back to the designated staff. I think if we look ahead at page -- this is about your record keeping, "minimal record keeping of daily, weekly, monthly equipment maintenance, no pipette and thermometer calibration of accuracy, no reagent antibody or detection system

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evaluation and no validation documentation". So those sort of things seem from her evidence to be what she would have classified as fairly basic or routine issues?

MR. DYER:

A. Some of them may be routine, but some of them I would consider not basic. For example, again we'll go back to the pipette because that seems to be an issue. When the recommendation came about the pipette and the pipette accuracy --

CHAYTOR, Q.C.:

Q. And temperature accuracy.

MR. DYER:

A. Again temperature accuracy, we weren't using what they were using in, I guess, in Ontario, through their accreditation. They were using, I believe they call it, the NIST. They're special calibrated thermometers. We were using routine laboratory thermometers to check temperatures at the time and that's what everybody in the laboratory was doing in here in St. John's at the time. The same thing with the pipette accuracy, I brought that to our management group, and as far as I

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understand, none of our laboratories were actually doing pipette accuracy testing at the time. Again in pathology, we always run a -- I always go back -- this is how I was trained. We always ran an external control and as long as the external control was working, that means our protocol, our procedure was working. So I felt that we were doing a good job because our controls were working.

CHAYTOR, Q.C.:

Q. So there was a high reliance on the external controls?

MR. DYER:

A. Definitely. In pathology, that's how its been.

CHAYTOR, Q.C.:

Q. And the idea here in terms of reagents with predefined pH should be monitored, and she also says, "Primary antibodies, even if they're pre-diluted and concentrated, any change in lot number or concentration, specificity of the antibody must be verified. Staining results should be compared to the previous lot using the appropriate control".

MR. DYER:

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A. Now we didn't compare our results with the previous lot, but every new -- every time an antibody came in, it was run against a current external control that we were using.

CHAYTOR, Q.C.:

Q. Okay.

MR. DYER:

A. And in terms of documentation for, like, lot numbers and things like this, that was all done on the Ventana system. Each time a reagent or an antibody came in, unlike the DAKO system, where there was no documentation, everything comes in with a button and you wand it into the system, and everything -- as you've seen in the reports, when I printed a detailed report, it tells you the lot number, when it's introduced, when it expired. So a lot of those things were tracked electronically.

CHAYTOR, Q.C.:

Q. And all issues, concerns, and corrective actions must be documented and you've told us that you've since started doing that, there's now corrective action logged?

MR. DYER:

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A. We didn't have a true correction action format at the time, but we do now, yes.

CHAYTOR, Q.C.:

Q. So basically there were 52 recommendations generated through both of the reviewers.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Some of which may be basic and some of which you might take issue with that and say are more than basic or more detailed than what you would have thought?

MR. DYER:

A. More than what I think our organization was doing at the time, however, we still did -- everything she recommended, we proceeded to put in place.

CHAYTOR, Q.C.:

Q. Started putting in place.

MR. DYER:

A. That was our goal.

CHAYTOR, Q.C.:

Q. I guess my question then, Mr. Dyer, is when I look at this report and look at her second report then in the spring of 2006, why would

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it take an externa person coming in to identify all of this?

MR. DYER:

A. I don't understand.

CHAYTOR, Q.C.:

Q. How could that state of affairs exist that it would take an external reviewer to come into your lab and identify all of those issues?

MR. DYER:

A. Well, again - I guess at the time again with pathology, like, I wasn't receiving any complaints that there was anything wrong, so I guess at the time we probably -- I felt -- not that I felt we didn't need her, but I wasn't getting any complaints or nothing was being identified that we were actually having issues. All of our -- again we run a control with everything and they were all going out and there was nothing coming back to say there were issues. I mean, and again when you work in pathology, we're doing 1100, 1200 slides a day. If you get the odd issue -- as we go through our history, you can see most of the complaints that were written down were all technical, not IHC, and that's a daily thing

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depending on the type of tissue that comes in every day. You're not going to get a perfect section on every single slide, no lab can do that, but most of the complaints that I received were all just technical complaints and we would address them as we would go through.

CHAYTOR, Q.C.:

Q. Of course there were Dr. Ejeckam's concerns in 2003, so you were aware of those concerns?

MR. DYER:

A. Yes, but again he was handling it, and the slides were still being read by pathologists, and so -- his major concern is he wanted the techs -- again I think they wanted to lead the techs into interpreting controls more so.

CHAYTOR, Q.C.:

Q. And in terms of any issues -- then what you're saying is I didn't hear anything, so no new is good news. In terms of whether or not there were a high number of repeats on a ER/PR test, that wasn't brought to your attention?

MR. DYER:

A. Again a high number -- it was never brought to my attention. Like, I really believed that we

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were doing a really good job, and again I always said, like, every slide that leaves our program is reviewed by a physician, not like other labs. That's what's so special about pathology and that's why I thought, you know, we were doing a great job.

CHAYTOR, Q.C.:

Q. And in terms of those repeats, whether or not any of them resulted in inconsistent results, again that was never brought to your attention?

MR. DYER:

A. The first time anything about inconsistent results came to me was from Dr. Ejeckam in '03.

CHAYTOR, Q.C.:

Q. So Dr. Ejeckam had inconsistent results?

MR. DYER:

A. It was the letter that he wrote stopping the antibodies. That's the first time that was brought to my attention to that degree, and again my understanding was that he solved all those issues.

CHAYTOR, Q.C.:

Q. Were you aware then in 2003 that there had

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been patients retested and there were changed results?

MR. DYER:

A. I was never -- if that happened, I was never informed.

CHAYTOR, Q.C.:

Q. You were never -- when did that first come to your attention?

MR. DYER:

A. That first truly came to my attention in 2005, the May 17th meeting, when they discussed a patient who had a change in results.

CHAYTOR, Q.C.:

Q. And then you further became aware of other patients in going through the pathology reports with Reza in 2007?

MR. DYER:

A. Well, in 2005 -- I don't think we truly paid attention to it in 2005, but when we started the retesting -- you know, I read a lot of those reports.

CHAYTOR, Q.C.:

Q. So you would have noticed it then?

MR. DYER:

A. I might have seen -- like, that report we just

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looked at, I might have actually seen that there then, but our focus was if it had to go for retesting, send it for retesting, so that's what we did.

CHAYTOR, Q.C.:

Q. And at that point in time it didn't really come to your attention in terms of what you told me yesterday in looking through the pathology reports. It didn't jump out at you, even though on May 17th you had had a finger pointed at you and said this is a changed result and that was upsetting for you, when you're going through two or three months later and seeing others with changed results, that didn't --

MR. DYER:

A. Honestly, our focus was just -- I mean, Mr. Gulliver might have actually made a comment, I mean, realistically speaking, but in terms of anything else, no, the idea was just to get things identified -- get the patients identified so we can send them out.

CHAYTOR, Q.C.:

Q. So in coming across those reports, and you and Mr. Gulliver perhaps commenting on them in

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2005, August, 2005, did you bring that to the attention of Dr. Cook or any pathologist?

MR. DYER:

A. Only if it was required for a retest.

CHAYTOR, Q.C.:

Q. And do you recall whether or not any of those were brought to the attention of Dr. Cook?

MR. DYER:

A. I wouldn't be able to say.

CHAYTOR, Q.C.:

Q. Or Dr. Fontaine?

MR. DYER:

A. I can't remember. I wouldn't be able to say if I actually did.

CHAYTOR, Q.C.:

Q. So only if there was something equivocal in the result?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. So while you didn't actually receive a copy of the November, 2005 report of Ms. Wegrynowski, were you otherwise told the contents of her report?

MR. DYER:

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A. I think what happened, I think Mr. Gulliver created a spreadsheet, and that's when I -- that's when I got involved in terms of what may have been in the report.

CHAYTOR, Q.C.:

Q. Spreadsheet of recommendations?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And you were then tasked with implementing certain recommendations?

MR. DYER:

A. I think we looked at them and to see what we could start and so, if there's parts of it that I probably could, I could start, then we would start.

CHAYTOR, Q.C.:

Q. On page 7 of the exhibit, her first report, she writes as recommendation No. 9, "Three technologists to be dedicated to perform IHC staining, optimization and validation. The microtomy to be evaluated at the pathology manager's discretion." The idea of three technologists dedicated, had that not already been the situation or how is this something

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new, what's being proposed here?

MR. DYER:

A. No, that was going on at the time in '05. We had a dedicated pathologist, I mean, we had dedicated pathologists, I'm not sure if she was--even though the techs down in immuno were doing IHC, they were also doing the immunofluorescence and so even though they were dedicated to IHC, immunofluorescence became--was also one of their duties. So from time to time when--what happens is a technologist will actually go to the patient side when they're performing kidney biopsies, so a tech would leave the lab from time to time and go and assist with that.

CHAYTOR, Q.C.:

Q. Because there was, you will recall yesterday I showed you the May 24th letter from Dr. Cook in which he was also suggesting that the three techs be dedicated and then we see in September, Ms. Wegrynowski is making the same recommendation, so there seems to be, if it's not in fact that case, there seems to be some confusion on the issue.

MR. DYER:

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A. At that time there were two other techs outside of the immuno group who were grossing, there were.
CHAYTOR, Q.C.:
Q. Okay. And in being involved in the implementation of the recommendations without having seen this first report and the context in which the recommendations arise, do you think it would have been beneficial to have actually had the report and to have been able to work from the report?
MR. DYER:
A. Sure, yes.
CHAYTOR, Q.C.:
Q. If we could have, please, P-0277? This is a series of the worksheets that I believe you're referring to, Mr. Dyer?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And the first version you'll see there's 30.
MR. DYER:
A. Okay.
CHAYTOR, Q.C.:
Q. 30 recommendations, April 25th, '06 and then

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the last version is a year later, April--this one here, April 26th, '07. And this one has, in fact, 52 recommendations. So this is what you would have worked on, I take it?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. You will see that there are a number here which have asterisks, do you know why they have asterisks or if there's any significance to that?
MR. DYER:
A. I think you asked me that question before. I think -
CHAYTOR, Q.C.:
Q. Not today. You were going to think about it the last time I asked.
MR. DYER:
A. Yes. I believe it was that they were ones that we have actually started, they were either in progress or completed. These are the ones that we're actually moving on at the time.
CHAYTOR, Q.C.:
Q. Okay, and in terms of implementing these

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recommendations, did you run into any concerns or delays along the way?
MR. DYER:
A. Again, my schedule, I was already--I had a huge plate that I was trying to deal with at the time and also to take on some of this, so what I did was whenever I could get help, like if there's certain things that would involve a tech or things of that nature, I would try to get them to help. For example, one of the recommendations was proficiency testing and again, NEQAS is the group that was recommended and in NEQAS, I read all about NEQAS just to see what it was all about and it involved actual, an assessor where they would review the slides, but also in the program our own staff, technologists and pathologists would have to review the slides, so what I did is I took the proficiency testing and handed it off to Dr. Ejeckam and he actually determined exactly what would be done for proficiency. So things like this I started to do. If we could read some of them, then I probably could tell you exactly what we did.
CHAYTOR, Q.C.:

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Q. Sure, for example, No. 33 seemed to be fairly straightforward, but it's refrigerators for ORs and this is again April 26, '07. It's received but St. Clare's wasn't done--and that's a year after Ms. Wegrynowski had been back in again. So St. Clare's, it appears had not been done.
MR. DYER:
A. Yes, there was no space to put a fridge at St. Clare's, so -
CHAYTOR, Q.C.:
Q. And we're talking, I understand, a little bar fridge.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And there was no space in the OR for a bar fridge?
MR. DYER:
A. No, there was not. We had a frozen section room there and that room is not much bigger than a closet and it was completely full. So what we had to do was they actually, if you look at the benches and that that were there, the way the floor was designed, it was

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actually--it was, you know, it was built up into the benches, the flooring, so actually they had to do, hard work to have all this stuff broken down, have the floor re-done and we had to get a door with a window put in because the only place that we actually could put it was behind the door. So we had to wait for all these things to be done by Facilities Management before we could actually put the fridge in.

CHAYTOR, Q.C.:

Q. And was there anything that could be done on an interim basis to -

MR. DYER:

A. I think what happened was, I think Dr. Cook sent out a memo asking that for large breast specimens in particular, they would be brought directly to the lab or we would be notified and we would send someone down to get them, so they would be dry and after hour specimens, a pathologist on call would have to be phoned. So I felt comfortable that that would alleviate it for the time being.

CHAYTOR, Q.C.:

Q. And when Ms. Wegrynowski came back to do a

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second review in April of 2006, about six months after her first review, she's indicated to the Commissioner that while she was certainly pleased that certain things had taken place, and in particular the enrolment in the external proficiency programs, I think it's fair to say that she felt there was a long way to go, I think may have been her words. So in that regard, in terms of even that six month period, were there other things logistically that were causing delay?

MR. DYER:

A. I think it's just that, you know, we had a lot of things on our plate and things got written--things were written down, like I believe we actually wrote down fixation, a process of what we should follow. We started writing things on paper but nothing was actually put in official documentation. For example, with the Ventana system, all the procedures were already, when Ms. Wegrynowski came in, in '05, all the procedures for all of the antibodies were already printed out in a binder, but--and we had an operating manual printed out, we had a training guide manual already there. This

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was all done with this system was set up in '04. We also had, I also created--I think I explained yesterday, I created easy steps to using the benchmark, things like this. All that stuff was there. I think, but when she was looking for SOPs, she was looking for procedures that were actually put in a specific, you know, a template, which was not what we had done at the time.

CHAYTOR, Q.C.:

Q. And you had no formal policies actually passed, adopted and implemented?

MR. DYER:

A. When she came back? No. What happened was we knew, I think we knew that we were struggling and I believe Dr. Williams gave us at the time, I think Dr. Williams gave us funds to create a total quality management group and so then we advertised and got that set up. And that was going to be, from my point of view, that was going to be one of our main groups to help get, especially the documentation that needed to be written, written.

CHAYTOR, Q.C.:

Q. Okay. What about the issue of--and this, I

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think originated as your idea of having all the equipment and processing taking place on one site, when did that actually happen?

MR. DYER:

A. That happened after her report.

CHAYTOR, Q.C.:

Q. After her first report.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Did it happen after her second report? She came back in April of 2006.

MR. DYER:

A. I think all of the technology was done by the time she got back in '06 of April.

CHAYTOR, Q.C.:

Q. And how close to her second visit did that occur?

MR. DYER:

A. About a week before.

CHAYTOR, Q.C.:

Q. And the change in the reporting format on pathology reports?

MR. DYER:

A. About a week before.

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CHAYTOR, Q.C.:
Q. About a week before.
MR. DYER:
A. Yeah, like that stuff, I couldn't do that on my own, I had to have agreement from other areas to make that happen.
CHAYTOR, Q.C.:
Q. So there was a bit of a push knowing she's coming to get some of these things done?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And Dr. Banerjee, did you also meet with him when he was in attendance?
MR. DYER:
A. I believe we sat down for about an hour, that sounds familiar.
CHAYTOR, Q.C.:
Q. And when Ms. Wegrynowski came back in the spring of 2006, did you meet with her again?
MR. DYER:
A. I'm sure I must have, yes.
CHAYTOR, Q.C.:
Q. Is there anything at that point in time in terms of your discussions with her?

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MR. DYER:
A. I think she talked about, again the SOPs, that's what stood out was policies and when I say "SOPs", not so much SOPs but the policies themselves, that's what she was looking for.
CHAYTOR, Q.C.:
Q. And did you attend her exit interview at that time?
MR. DYER:
A. No, I don't think so.
CHAYTOR, Q.C.:
Q. And a meeting then with Dr. Banerjee, was that the first visit in the fall of 2005?
MR. DYER:
A. Yes, I met him, yes.
CHAYTOR, Q.C.:
Q. Did you also meet with him the second time?
MR. DYER:
A. I don't think so.
CHAYTOR, Q.C.:
Q. And do you recall what you discussed with Dr. Banerjee on his first visit?
MR. DYER:
A. Yeah, we had a--I think we had an interesting discussion about how we did things in the lab

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more so, but I think our big plan was, I'm not sure if I received a phone call, I don't think it was a plan for me to see him, but I think I might have got a phone call from Mr. Gulliver that he wanted to sit down and review some of our current slides, some of our current--our ER/PRs from the Ventana system. So I remember I just want and, I did a quick search and pulled some random slides for him to look at?
CHAYTOR, Q.C.:
Q. Okay, and those were current cases?
MR. DYER:
A. Those were current cases that were run on the Ventana.
CHAYTOR, Q.C.:
Q. And so that would have been in the fall of 2005, so the cases which were being -
MR. DYER:
A. Reviewed were probably from, I would imagine, I would say like from probably January, February, March of '05. It was probably that year.
CHAYTOR, Q.C.:
Q. Okay. So not current in terms of people who were actually being tested at that point in

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time.
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. It was during the 2005 year.
MR. DYER:
A. It was cases that were already signed out.
CHAYTOR, Q.C.:
Q. Okay. If we could have, please, P-0046? And this is the letter to Dr. Cook enclosing the first report from Dr. Banerjee and the report is here at page 2 of the exhibit, October 17th, 2005. Did you receive a copy of this?
MR. DYER:
A. No. I'm sorry, again, I got permission, I believe in February of this year.
CHAYTOR, Q.C.:
Q. Same time then that you received Ms. Wegrynowski -
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And at page 5 of the exhibit, No. 5, under the heading "Other system flaws observed", Dr. Banerjee writes about "disconnect between

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laboratory program director, division manager"--would you be the division manager?

MR. DYER:

A. I was at the time, yes.

CHAYTOR, Q.C.:

Q. "Clinical site chief and laboratory director in decision making. The organizational charts indicate a complete separation of reporting structures into technical and clinical streams with no matrix cross-reporting between technical and medical leadership. This leads to frustration and resentment on both sides, lack of communication, lack of accountability and lack of buy in. The division manager and program director appear enthusiastic and keen on modernizing the laboratory, but their efforts have not been appreciated by the pathologists and workflow changes have not been mapped out and implemented. Example, Sakura Express implementation has failed due to lack of planning of workflow changes. Superior outcomes could be achieved by ensuring better linkages between technical managerial and medical leadership." Do you recall having had a discussion with Dr.

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Banerjee on that issue?

MR. DYER:

A. On that actual issue? I think we did discuss the Express and we did discuss the benchmark. He was impressed by the technology that our lab had, very few labs in the country had the type of technology that we actually had and he was impressed by it.

CHAYTOR, Q.C.:

Q. So the lab was progressive in terms of the equipment that it had?

MR. DYER:

A. Very much so, yes.

CHAYTOR, Q.C.:

Q. But this whole issue that he's saying here in terms of the disconnect between the two arms, the technical and the clinical and the fact that it leads to frustration and resentment on both sides and lack of communication, lack of accountability and lack of buy in. Did you discuss those issues with Dr. Banerjee? Was that your perception?

MR. DYER:

A. I may have discussed frustration, but you know, about the Express, but I think with the

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Express, again from my point of view and from my style, all pathologists were involved with the Express, so I think he just--I don't know how he let--I wasn't sure why the Express, why we stopped using it, we just stopped using the Express and I guess that's how he expressed himself there.

CHAYTOR, Q.C.:

Q. What would you have been frustrated with? If you mentioned frustration to him, what was the source of your frustration at this point in time in 2005?

MR. DYER:

A. Well again, I think we just would have discussed that, you know, all this stuff was happening and, you know, there's things that I wanted to do over time, like consolidate and bring technology here and again, you know, it's only a couple of pathologists that I'm ever involved with when it comes to this, this frustration, but again, I'm always trying to--want to do different things and try different things, but I'm always challenged from higher up as to those types of issues.

CHAYTOR, Q.C.:

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Q. So what was your view on the management structure at the time, the two arms. In your view, had it caused difficulty over time?

MR. DYER:

A. Again, from my point of view, I don't think there was difficulty because anything major that I wanted to do had to be approved by all involved, so I was truly--I know that I would report to Terry Gulliver, but I was always under the impression that, and as you can see because of the things that I wanted to do, that didn't happen. Still our clinical chief had a direct say also, so even though Terry--even though Mr. Gulliver and Dr. Cook reported, we had different reporting systems and they reported to Dr. Williams, things--for example, if I wanted to consolidate and Mr. Gulliver supported it, it still didn't happen unless Dr. Cook agreed. So my interpretation was anything that I wanted to do had to be agreed by Dr. Cook, just like Dr. (sic.) Gulliver.

CHAYTOR, Q.C.:

Q. So, whether or not a flow chart or an organizational chart actually showed any

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formal reporting to the clinical chief, in your view, that was the reality of what you were operating under.

MR. DYER:

A. That was definitely the reality, yes.

CHAYTOR, Q.C.:

Q. And did you have any difficulty or did you think that the management structure as it was at that point in time was fine, it was operating the way it should?

MR. DYER:

A. I thought it was operating fine.

CHAYTOR, Q.C.:

Q. Okay. And we understand there's been a change since in the management structure.

MR. DYER:

A. Well, I understand that, yes, Dr. Denic is totally accountable or totally in charge of laboratory medicine and Mr. Gulliver reports to both him and the VP, but again, that change didn't mean anything to me because that's how we were working at the time.

CHAYTOR, Q.C.:

Q. So, for you that's just a change on paper.

MR. DYER:

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A. That was just a change on paper.

CHAYTOR, Q.C.:

Q. You were reporting to Mr. Gulliver and in any event, any change or idea for innovation within the laboratory had to go through the clinical chief in any event.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And so I guess that's been formalized on paper now too is what you're saying.

MR. DYER:

A. I believe there is a new chart out, yes.

CHAYTOR, Q.C.:

Q. When you read Dr. Banerjee's report in February of this year, was the content of this surprising to you or was this basically -

MR. DYER:

A. When I read this in '07, I -

CHAYTOR, Q.C.:

Q. I'm sorry, you read it in '07?

MR. DYER:

A. I'm sorry, '08, this year.

CHAYTOR, Q.C.:

Q. February 2008.

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MR. DYER:

A. Yes, when I read it in '08, what he had said was, I think by then it was pretty well identified or I think I knew, I had an idea of all this stuff by then, yes. It's just that this is the first time I've actually seen it in writing.

CHAYTOR, Q.C.:

Q. So, in terms of issues identified regarding poor fixation, negative internal controls, absent internal controls, you were aware of that before you ever read the report.

MR. DYER:

A. I think in '05 we were--these were the types of things I know I heard when we were actually going through the process of identifying patients.

CHAYTOR, Q.C.:

Q. And you had heard that from Dr. Cook?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. So, I take it there wasn't anything in here that was particularly revealing or surprising to you?

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MR. DYER:

A. No.

CHAYTOR, Q.C.:

Q. And he drew a number of conclusions about the reasons for test failure. And the first being is the DAKO system faulty? And he states this is unlikely as there are many laboratories using the DAKO system successfully. The reason for test failure is most likely due to a lack of test optimization including antigen retrieval method and antibody detection system titration, as positive controls showed weak staining in general. And internal controls failed in all of the false negative cases. So, would all that have been known to you in 2005?

MR. DYER:

A. No. Internal controls failed in all false negative cases, no, I wouldn't have known that in 2005.

CHAYTOR, Q.C.:

Q. And in fairness, when he's saying that, he's talking about the cases that he reviewed.

MR. DYER:

A. Okay. I didn't sit with him for review of the

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DAKO system cases. I think I just sat with him for the current Ventana system.

CHAYTOR, Q.C.:

Q. The idea of the reason for test failure, most likely due to lack of test optimization including antigen retrieval method and antibody detection system titration, that particular reason, was that--when did you become aware of that?

MR. DYER:

A. When did I become aware of -

CHAYTOR, Q.C.:

Q. The reason for test failure, in his opinion was -

MR. DYER:

A. Antigen retrieval?

CHAYTOR, Q.C.:

Q. - being due to, yes, well, test optimization which, he says, includes the antigen retrieval method.

MR. DYER:

A. That's part of optimization, yes, is antigen retrieval. I believe we--when did we--again, antigen retrieval, by February of this year, I had already had known that. When did I

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actually pick up on that? Maybe in '06.

CHAYTOR, Q.C.:

Q. And who was that discussed with?

MR. DYER:

A. I don't know if I discussed it with anybody. When we started discussing all of this and going through things like this and when I say discussing, I don't think I've ever discussed anything like this with the physician. So, I don't even know if I discussed it with Terry; it might have just been with the techs. But we were looking the Ventana system for antigen retrieval and the difference between the Ventana system antigen retrieval and the DAKO, as I explained earlier this week was the pH 6, using citrate versus EDTA at 8.4 and the higher pH, I believe, I believe is actually making the true differences in the--it's definitely, I believe, unmasking more epitope sites.

CHAYTOR, Q.C.:

Q. And long before Dr. Banerjee ever stepped foot in your laboratory, the issue of antigen retrieval had been of some concern to you. And in fact, that was one of the factors that

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caused you to go looking for the Ventana system which would have antigen retrieval on board.

MR. DYER:

A. Yes, and again, it wasn't about the actual antigen retrieval not working. The purpose was, it appeared as that's where the fatty tissue was washing off the slide.

CHAYTOR, Q.C.:

Q. Yes. And the second point is, is the Ventana system too sensitive? And he indicates there's no evidence of that. The system still requires optimization to avoid non-specific cytoplasmic staining. Was that brought to your attention in 2005?

MR. DYER:

A. I don't think it was said that way, but I believe back in August, I know there were statements made by Dr. Carter about, I'm not sure if she said over-staining. And so in '05 we undertook a project to re-validate the ER and PR based on her concerns.

CHAYTOR, Q.C.:

Q. Now, he's in in October of 2005, so what further optimization took place with respect

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to the Ventana system after Dr. Banerjee's visit?

MR. DYER:

A. In October of '05?

CHAYTOR, Q.C.:

Q. Post his visit, yes.

MR. DYER:

A. I'm not sure if we actually, in October '05, I think what we did was in terms of -

CHAYTOR, Q.C.:

Q. The system still requires optimization to avoid non-specific cytoplasmic staining.

MR. DYER:

A. My interpretation there is the system needs to be monitored all the time to make sure that we don't get the non-specific cytoplasmic staining.

CHAYTOR, Q.C.:

Q. So, it's an ongoing thing that this needs to be kept--you need to keep an eye on this.

MR. DYER:

A. Right. That was my interpretation. And so what happened was again, we started the process in--now see, it's not considered as urgent anymore because by this time we're not

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doing ER/PRs clinically. So, I think what happened was again, in August we attempted re-validate. And I believe over the next year, we did another validation, I believe when Dr. Ford Elms came on site. We did another re-validation before he started.

CHAYTOR, Q.C.:

Q. Did you ever hear anyone suggest, I mean, Dr. Banerjee here seems to say he doesn't expect that it was the DAKO system and he doesn't think there's a problem with the Ventana being too sensitive. Did you ever hear it suggested in 2005 and perhaps beyond that the reason for the changes in the results may, in fact, have been an equipment issue?

MR. DYER:

A. I don't know if I actually heard that. It could have been construed that way that we had a new system that was totally automated and it may be more sensitive, but I wouldn't have made that statement, that that was more sensitive.

CHAYTOR, Q.C.:

Q. Did you hear anyone else make any statement along those lines?

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MR. DYER:

A. I can't remember, but--I don't know.

CHAYTOR, Q.C.:

Q. That this could be due to technology or changes in technology.

MR. DYER:

A. I think that was being thrown around. I think that concept was being thrown around, but again, I don't think I would have made that kind of statement.

CHAYTOR, Q.C.:

Q. Would you have agreed with that statement?

MR. DYER:

A. I don't know if I would have agreed with--based on what I understand for protocols and how things work, interactions, I don't know if I would have agreed to it. I mean, you certainly can get the perception that it could be an equipment--technology could do it because we eliminate a lot of variabilities from the DAKO system to the Ventana. So, you certainly could get that impression, there's no doubt about it.

CHAYTOR, Q.C.:

Q. And who did you hear throwing around that -

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MR. DYER:

A. I don't know who was actually saying it at the time, but I know, I do believe it was being said.

CHAYTOR, Q.C.:

Q. Were you ever told or did you ever hear anyone say, in fact, what did cause the problem?

MR. DYER:

A. What did cause the -

CHAYTOR, Q.C.:

Q. Yes, what caused the changed results.

MR. DYER:

A. Did anyone actually tell me what they thought, no, I don't think so.

CHAYTOR, Q.C.:

Q. As manager of the lab, were you ever told, well, here's what the problem was, we've identified it, now, Barry, go fix it.

MR. DYER:

A. Again, I think what I was told was back in August of '05, concerns from Dr. Carter about the validation of the ER/PR and so we should re-validate. That's what I was told, I think in '05.

CHAYTOR, Q.C.:

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Q. Yes, but after Dr. Banerjee had been in and after Trish Wegrynowski had been in, were you told them anything in terms of the causes of the problem?

MR. DYER:

A. Again, just based on what was written on specification sheets.

CHAYTOR, Q.C.:

Q. On the recommendation -

MR. DYER:

A. Yes, I'm sorry, on the recommendation sheets, yes. I think that's where we started our discussion.

CHAYTOR, Q.C.:

Q. And any indication as to any problems with fixation and linking fixation to the change in results, was that ever told to you?

MR. DYER:

A. I don't think so. I mean, it might have been, but I can't remember at the time if it was. I know that Ms. Wegrynowski wanted us to write a fixation policy. So, that's what we said we would do.

CHAYTOR, Q.C.:

Q. But in terms of her wanting you to write a

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fixation policy -
MR. DYER:
A. So, we would standardize.
CHAYTOR, Q.C.:
Q. - so you would standardize, and you linking that and it being linked to or potentially linked to any changes in the results, that line was never drawn for you?
MR. DYER:
A. I think I might have drawn that line myself, yes.
CHAYTOR, Q.C.:
Q. So, wouldn't have increased the urgency to standardize the policy?
MR. DYER:
A. Again, we put things in writing and we standardize what we were doing. We just didn't have it in a formal policy, but I think the committee--what happened? Yes, I think Dr. Carter actually wrote one. I think she had something put down in writing, it's just that it wasn't formalized, just so we would start doing something immediately with the fixation.
CHAYTOR, Q.C.:

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Q. If we could look at, please, P-2110, and this is minutes of the pathology quality management committee that you continued on with, December 11th and this December 11th is 2006 we understand.
MR. DYER:
A. So, this is the new one that Dr. Williams approved funding for.
CHAYTOR, Q.C.:
Q. Okay. And so it's now into December 11th, 2006. So, Trish Wegrynowski has been back April of 2006 or March of 2006 and business arising--now, you're not in attendance at this particular meeting, but you're on the committee?
MR. DYER:
A. Very busy.
CHAYTOR, Q.C.:
Q. "Fixation, word buffer to be added, B. Carter. T. Chafe to add changes, add B. Carter as originator. Include issue date, effective date add signature line for N. Denic. After sign off B. Carter and C. Parnell's composed letter for distribution with policy. Two, following Lynn Morris-Larkin and Don Cook", et

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cetera and yourself, your name there as well.
So, in terms of policy implementation or development, the fixation policy is still being word smithed.
MR. DYER:
A. Yes, I think we were trying to actually put together an official one at that time, something that we would put into a format.
CHAYTOR, Q.C.:
Q. And the policy was finally signed off on when?
MR. DYER:
A. I wouldn't be able to tell you when it was signed off.
CHAYTOR, Q.C.:
Q. 2008?
MR. DYER:
A. Could be.
CHAYTOR, Q.C.:
Q. If we could look, please at P-2362. And this is an e-mail from Ms. Predham to yourself, November 18, 2005. "Hi Barry, we received the list of questions from the minister of health that have to be answered today in anticipation of the House opening on Monday. I can't answer these two question and Terry and Dr.

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Cook are on annual leave. Can you answer them for me? I need the answers ASAP. Number one, has a review occurred to determine how this could have happened? How could there be inaccurate tests for a period of five years without being detected? Will there be a disciplinary action taken? Number two, can the Minister ensure the public that this is not reflective of other unreliable methods of testing in the province? Is our health system safe? Thanks".
Did you receive this e-mail?
MR. DYER:
A. Yes, I did.
CHAYTOR, Q.C.:
Q. And did you provide Ms. Predham with answers to those questions?
MR. DYER:
A. Those were big questions and I wasn't sure if I was qualified to answer something like that. So what I did was I put down what I felt was the answers, I wrote down and I tracked down Dr. Dan Fontaine and I believe we discussed for a few minutes and then I think he may have made some of his own notes and I believe he

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was the one who actually responded.
CHAYTOR, Q.C.:
Q. Okay, so you and Dr. Fontaine worked together on it. Did you see the ultimate answers that went forward?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. So basically they're asking if the review occurred, to figure out what caused this to happen in the first place for over five years; and secondly, whether or not the Minister can assure the people in the province that there aren't other unreliable methods in the lab.
MR. DYER:
A. In the system.
CHAYTOR, Q.C.:
Q. In the system. If we could look at, please, P-0154? We don't have a written response to that e-mail. Do you know whether or not you provided anything in writing back to Ms. Predham?
MR. DYER:
A. No, I think it was done by phone call.
CHAYTOR, Q.C.:

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Q. By phone call.
MR. DYER:
A. Yes. I didn't talk to Ms. Predham myself about the answers. I talked with Dr. Fontaine and I believe he may have spoken to her through phone. I'm not sure if he actually sent anything in writing.
CHAYTOR, Q.C.:
Q. You didn't see any written answer.
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. And this then is a--I'll just take you back to the beginning, sorry--this is then November 21st and it's e-mail to Tansy Mundon who was, at the time, director of communications for the Department of Health and Community Services. It's coming from Deborah Thomas-Pennell who was working with Susan Bonnell at the time. And we'll see here in this bullet, on page three, "has a review occurred to determine how this could have happened? How could there be inaccurate tests for a period of five years without be detected? Will there be disciplinary action taken"? And the answer

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is, "there is still an ongoing investigation into this situation. However, there is"--and that should be ample, I take it--"ample literature to suggest that these tests have limitations and are not guided by national standards. In the meantime, until all the results from retesting are obtained, it is impossible to determine the exact details of the cause of the problem. Three reviews have taken place of our current testing procedure, our pathology services and our technical services. Recommendations have been made and are being acted upon which will immediate ensure the quality and reproducibility of results".
Mr. Dyer, what, if any, portion of that answer would you have provided?
MR. DYER:
A. I think I may have provided that we went through two--we went through external reviews. Based on what's said there--I think from what I see there, probably I think the only thing I may have said is we went through two reviews.
CHAYTOR, Q.C.:
Q. Two reviews or three?

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MR. DYER:
A. Well, I was cognizant of two at the time.
CHAYTOR, Q.C.:
Q. Okay. What would the third be?
MR. DYER:
A. Yes, right, there were three. I think I was only cognizant of two at the time, but I think there was a third review. I can't remember the physician's name who came in, but there was another review done.
CHAYTOR, Q.C.:
Q. Okay. And would that perhaps have been done for litigation purposes?
MR. DYER:
A. It may very well have been. I'm just trying to remember that one now.
CHAYTOR, Q.C.:
Q. So, you would have said that there were two reviews done.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. That part would have been yours.
MR. DYER:
A. Yes.

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CHAYTOR, Q.C.:
Q. The notion that in the meantime until all the retesting results from the patients, until those are back, it being impossible to determine the exact details of the cause of the problem, was that your idea or was that something you heard Dr. Fontaine say? Was -
MR. DYER:
A. I don't know if he said it. I don't think I would have said it.
CHAYTOR, Q.C.:
Q. Is that something you heard discussed at all?
MR. DYER:
A. No, I don't think so.
CHAYTOR, Q.C.:
Q. Do you agree with that statement?
MR. DYER:
A. When was this written?
CHAYTOR, Q.C.:
Q. This is November 2005.
MR. DYER:
A. No, I think we might have--I think by then, I think Dr. Cook was probably getting results back at the time.
CHAYTOR, Q.C.:

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Q. Getting results back and the reports in terms of Dr. Banerjee's report being back and certainly the two reviewers have been in and gone. So, in terms of some of the things that you knew yourself at this point in time, your knowledge of the internal controls issue, for example, how could this go on for a period of five years without being detected?
MR. DYER:
A. Again, that would be a clinical issue. I don't think I was really qualified to make that statement, even though, I think I knew myself at the time, based on what I was learning, I still don't think I was qualified to make that statement. So, I don't think I would have said something like that.
CHAYTOR, Q.C.:
Q. And was that something that you and Dr. Fontaine discussed in your discussions as to how to respond?
MR. DYER:
A. Again, I think we might have discussed how to respond and in terms, you know, again I think all I actually spoke about was, from what I know, we've gone through two reviews and we're

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starting the process of putting the recommendations in place.
CHAYTOR, Q.C.:
Q. So, did the issue of internal controls come up in your discussions with Dr. Fontaine as to how to respond?
MR. DYER:
A. I doubt it. I don't think I would have even said it to him at the time.
CHAYTOR, Q.C.:
Q. And here we see the question, "can the minister ensure the public that this is not reflective of other unreliable methods of testing in the province? Is our health system safe? Eastern Health responds successfully to the needs of thousands of patients in any one year. Furthermore, it has quality monitoring programs in place and has highly qualified professionals"--I guess that should be--"on staff. While regrettable, the fact that this situation was identified in the first place is reflective of the importance of quality in the organization. I am confident this is not reflective of the services provided". Mr. Dyer, did you give any portion of that answer?

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MR. DYER:
A. I don't think so. I don't think I did.
CHAYTOR, Q.C.:
Q. And at the time that this answer is being given in November of 2005, what quality monitoring programs were in place in the pathology lab?
MR. DYER:
A. Again, the quality monitoring programs at that time would be the Check Path for CAP for the physicians and again, the quality monitoring would be the ASCP PIP program, again for the pathologists. And I think at that point too the agreement was that we were going to start proficiency testing, I believe. I think we might have discussed that with--proficiency testing was recommended and that we were going to start.
CHAYTOR, Q.C.:
Q. And for the IHC portion of the lab, which is the subject matter obviously of what's being discussed here and what the minister will be discussing, what was in place in terms of quality monitoring programs in November 2005 for IHC?

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MR. DYER:
A. The only quality monitoring programs would be that all of the slides that were produced from IHC were being interpreted by a physician. And I consider that a quality monitoring program also. Do you understand what I mean? Like, every slide that came out of our lab was read by a qualified physician.
CHAYTOR, Q.C.:
Q. I understand that, that you feel that and that you've said that before, but how is that quality monitoring?
MR. DYER:
A. Again, my interpretation would be as every single slide that comes out of the lab is read by a physician. So, they would tell us if there was an issue with quality.
CHAYTOR, Q.C.:
Q. At this point in time when this answer is given, there's no external quality proficiency testing -
MR. DYER:
A. In place, no.
CHAYTOR, Q.C.:
Q. - in place.

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MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. The idea that the fact that this situation was identified in the first place is reflective of the importance of quality in the organization. Was that your idea?
MR. DYER:
A. I don't think so. I don't think I would have said that.
CHAYTOR, Q.C.:
Q. Did you hear Dr. Fontaine say that?
MR. DYER:
A. No, I don't think so.
CHAYTOR, Q.C.:
Q. Do you believe that to be accurate?
MR. DYER:
A. Importance of quality--definitely. We need quality in the organization.
CHAYTOR, Q.C.:
Q. The fact that the situation was identified in the first place is reflective of the importance of quality. The suggestion that somehow this was detected through quality assurances practices, that's what's being implied there, isn't it?
MR. DYER:
A. I guess it could be interpreted that way.
CHAYTOR, Q.C.:
Q. Do you agree with it?
MR. DYER:
A. Can you rephrase? I guess I agree.
CHAYTOR, Q.C.:
Q. You agree -
MR. DYER:
A. I guess I do.
CHAYTOR, Q.C.:
Q. - that this situation was identified through quality assurance practices.
MR. SIMMONS:
Q. Commissioner, I don't -
MR. DYER:
A. Pardon?
MR. SIMMONS:
Q. I don't read anything in this -
MR. DYER:
A. I'm not -
MR. SIMMONS:
Q. - which suggests it was identified as a result of quality assurance procedure. It says it's

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reflective of the importance -
MR. DYER:
A. Of quality. Yes, I think that's why I'm struggling to understand.
THE COMMISSIONER:
Q. All right. Now, just to make sure that everybody understands what your question is, would you make that question clear please, Ms. Chaytor?
CHAYTOR, Q.C.:
Q. It says, the exact wording is "while regrettable, the fact that this situation was identified in the first place is reflective of the importance of quality in the organization".
MR. DYER:
A. In the organization, yes.
CHAYTOR, Q.C.:
Q. Now, my interpretation of that and perhaps, it's not correct, but my interpretation of that led me, as a reader, to think that the situation was identified because of some quality assurance practice that was happening in the organization.
MR. DYER:

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A. I don't believe that's how this was identified, in my opinion.
CHAYTOR, Q.C.:
Q. Okay. And so, perhaps--you don't believe, it wasn't picked up through any quality assurance process in the organization?
MR. DYER:
A. Not, not--well, again, I learned about it May 17th, and my interpretation was from a patient's chart being sent away for a second opinion.
CHAYTOR, Q.C.:
Q. And the idea that "I am confident that this is not reflective of the services provided," is that an answer that you would have provided or Mr.--or sorry, Dr. Fontaine would have provided?
MR. DYER:
A. Again, that wouldn't--I don't think that would come from me, because again, I view that as clinical. I don't think that would have come from me.
CHAYTOR, Q.C.:
Q. And did you hear Dr. Fontaine say anything along those lines?

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MR. DYER:
A. No, I don't think I was there when he actually spoke to Ms. Predham about it.
CHAYTOR, Q.C.:
Q. Okay.
MR. DYER:
A. I think we just had a general discussion about what we were doing at the time.
CHAYTOR, Q.C.:
Q. Okay, thank you, and if we could have, please--I'm sorry, I should finish. The answer then also talked about "across the country, laboratories are looking at their testing procedures, in light of the findings in Newfoundland and Labrador." Were you aware of that at the time, that other labs, according to this, were looking at their testing procedures, given what's happening here?
MR. DYER:
A. I can't remember exactly, but yes, I think Mr. Gulliver received a couple of phone calls from directors across the country.
CHAYTOR, Q.C.:
Q. And were they looking at their ER/PR testing?
MR. DYER:

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A. I don't know if it was exactly ER/PR testing itself.
CHAYTOR, Q.C.:
Q. And "Eastern Health has shared its learnings with other centres and has asked the Association of Canadian Pathologists to investigate the need to develop national standards for this testing process." Were you aware of that?
MR. DYER:
A. No, not me, no.
CHAYTOR, Q.C.:
Q. Okay. So Mr. Gulliver might have some information on that?
MR. DYER:
A. Well, in terms of sharing its learnings with other centres, it could have been Mr. Gulliver or it could have been -
CHAYTOR, Q.C.:
Q. Mr. Denic.
MR. DYER:
A. Or Doctor -
CHAYTOR, Q.C.:
Q. Or Dr. Denic.
MR. DYER:

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A. - Dr. Cook at the time.
CHAYTOR, Q.C.:
Q. Okay, and the idea for the answer that "across the country, laboratories are looking at their testing procedures," did you provide that portion of the answer to Ms. Predham?
MR. DYER:
A. You mean to Dr. Fontaine, because I spoke to Dr. Fontaine about this, not Ms. Predham.
CHAYTOR, Q.C.:
Q. Okay.
MR. DYER:
A. And I don't know, I may have made that comment that Terry has received some phone calls from other parts of the country.
CHAYTOR, Q.C.:
Q. Thank you. If we could have P-0101, please? And this is a letter of Dr. Carter, December 7th, 2005 to Dr. Williams, and it's almost a three-page letter. It's copied to Dr. Cook, to Mr. Gulliver and to Dr. Ejeckam, and she writes "I was most recently asked by Dr. Don Cook to comment on the suggestion of Mr. Barry Dyer that stated that he felt the Ventana testing for estrogen receptor progesterone

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receptor and HER2/neu could be started at any time. I find this comment quite startling in the face of the two fairly damning reports sent by Dr. Banerjee and Trish Wegrynowski on their review of our immunohistochemistry laboratory, with special emphasis on the predictive factors for breast cancer patients," and she goes on from there.

Were you aware that Dr. Carter had written this letter in December of 2005?

MR. DYER:

A. No, I don't think I was.

CHAYTOR, Q.C.:

Q. Okay, and in December 2005, had you suggested that you felt the Ventana testing could come back online for ER/PR?

MR. DYER:

A. Honestly speaking, you know, I don't recall ever making such a statement that the Ventana system--that he felt that we could actually start running the Ventana system.

CHAYTOR, Q.C.:

Q. That you felt that you could -

MR. DYER:

A. That I felt that we could start running the

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Ventana system.

CHAYTOR, Q.C.:

Q. At that point in time?

MR. DYER:

A. At that point. I believe at that time, I know that one of the recommendations from Dr. Banerjee was that we could actually implement the Ventana system, but I don't think I've ever made that statement.

CHAYTOR, Q.C.:

Q. Dr. Banerjee doesn't recommend that until he's back in the spring of '06.

MR. DYER:

A. Oh, is that when it was recommended?

CHAYTOR, Q.C.:

Q. Yes.

MR. DYER:

A. Can we go--are you sure? I thought that was recommended back in '05.

CHAYTOR, Q.C.:

Q. Okay, could be wrong, but we can look at 40 -

MR. DYER:

A. But again, I don't recall ever saying that we could start testing.

CHAYTOR, Q.C.:

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Q. If we could go back to, it was 0046, I believe was his original report?

MR. DYER:

A. Oh, I'm sorry, not the report, the actual recommendation sheet that was made.

CHAYTOR, Q.C.:

Q. Okay. Well then, we can go back to that too.

MR. DYER:

A. I'm sorry.

CHAYTOR, Q.C.:

Q. We have that at--I think that's 2--what was it, 0277, Registrar? Here we go, and that, the earliest recommendation sheet that we have is '06. So it would appear on the recommendation sheet, but I'm fairly confident Dr. Banerjee, that shows up in his second report in the spring of '06, and the earliest recommendation sheet that we have anyhow is the spring of '06. So certainly by December 2005, now we're not--I'm not aware of anything to suggest that.

MR. DYER:

A. This was updated April '06. Oh, so we don't have the one prior to that?

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CHAYTOR, Q.C.:

Q. That's the first we have. Do you have others?

MR. DYER:

A. No, I don't. I searched, I don't have them. I thought that was written in one of the actual recommendations, but -

CHAYTOR, Q.C.:

Q. Okay.

MR. SIMMONS:

Q. Which refers to the recommendation eight from Dr. Banerjee's first report.

CHAYTOR, Q.C.:

Q. Okay.

MR. SIMMONS:

Q. Page six.

CHAYTOR, Q.C.:

Q. We'll go back to page -

MR. SIMMONS:

Q. That would be the reference.

CHAYTOR, Q.C.:

Q. Okay, page eight, "the Ventana platform is performing adequately and with improvements in standardizations, there's no reason service could not be resumed without further delay."

MR. DYER:

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A. Okay.
CHAYTOR, Q.C.:
Q. Okay, thank you, Mr. Simmons.
MR. DYER:
A. I think that might have been in one of the original--in the--I'm sure that's where I read it.
CHAYTOR, Q.C.:
Q. Okay.
MR. DYER:
A. Was in the original spreadsheet that was made by Mr. Gulliver.
CHAYTOR, Q.C.:
Q. And so what he's suggesting is the Ventana platform itself is performing adequately and with improvement in and standardization of fixation protocol.
MR. DYER:
A. There would be no reason -
CHAYTOR, Q.C.:
Q. Right, so he's not saying that you're ready to go as of writing this report in the fall of '05.
MR. DYER:
A. No, what he was saying, I believe, that the

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Ventana system was performing adequately.
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. But again, I don't recall ever making an actual statement like that to Dr. Cook that we can be up and running.
CHAYTOR, Q.C.:
Q. And by December 2005, I take it you hadn't had--your fixation protocol hadn't been standardized at that point in time?
MR. DYER:
A. No, we did not.
CHAYTOR, Q.C.:
Q. Okay. So if we could go back then, please, to 0101? So what you're saying is that you, in any event, don't recall having said this?
MR. DYER:
A. I don't recall ever saying that to Dr. Cook.
CHAYTOR, Q.C.:
Q. That things were ready to go in 2005?
MR. DYER:
A. That things--no, I honestly can't, I honestly cannot remember saying that.
CHAYTOR, Q.C.:

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Q. And were you of the view, in December 2005, that that was the state of affairs, that things--the Ventana testing could be brought back on?
MR. DYER:
A. Well, it's not that it could be brought back on, but I felt that the Ventana system was performing adequately at the time and Dr. Banerjee actually said that to me himself when he was reading the--when we were reading the slides. I remember his exact statement during that time and he said, the slides that he reviewed, I just did a random review, and he said they were just as good or better than anything he's seen in Canada.
CHAYTOR, Q.C.:
Q. The slides from the Ventana system?
MR. DYER:
A. Yes, the random picks from the Ventana system.
CHAYTOR, Q.C.:
Q. And Dr. Carter then goes on and writes, in some detail, and we've been through this before here at the Commission, which seems to summarize a lot of the recommendations that came out of the two reviews, and then she -

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MR. DYER:
A. Very, very much so, yes.
CHAYTOR, Q.C.:
Q. Yes. You've read the letter. I take it you've had an opportunity to read it since?
MR. DYER:
A. Just in the past week or so, two weeks, yes.
CHAYTOR, Q.C.:
Q. And then she concludes with, "I will be happy after a presentation by Mr. Dyer proving that all of the above have occurred and a tour of the immunohistochemistry laboratory to review the changes made, to advise my clinical colleagues that our laboratory and the results it generates are reliable, accurate and not dangerous to those Newfoundlanders and Labradorians having breast cancer." Did that ever happen, Mr. Dyer, prior to then it coming back on? Did you have to do a presentation to assure that all of the recommendations in fact had been implemented?
MR. DYER:
A. No, and reading that, I mean, Dr. Ejeckam was in charge of the immunohistochemistry lab, so I don't know why she--I guess she wanted it

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too. I mean, if she wanted a tour of the lab, she certainly could have gotten one. If she had an issue with the stain itself, she should have spoke to Dr. Ejeckam. So I don't--now that I've read it, but no, I did not give--I was never asked to give her a tour of the immunohistochemistry lab.

CHAYTOR, Q.C.:

Q. How far along were you by December 2005 in implementing the recommendations? Had you already been assigned to that task?

MR. DYER:

A. Assigned to some of them, yes, but we weren't very far along.

CHAYTOR, Q.C.:

Q. And was it your intention to have all the recommendations implemented prior to the testing resuming?

MR. DYER:

A. I think it came down to--again, you have to take each recommendation at face value and see how it impacts, how it would impact the testing, and I think that's what we were trying to do. So that we could get the testing up and running.

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CHAYTOR, Q.C.:

Q. So there may be some that you'd feel comfortable that you could go ahead and implement the testing without those recommendations necessarily being finalized?

MR. DYER:

A. Well again, like putting the protocols into a CLSI standard format. Well, all the protocols were already in the system and they were already printed off and in a binder. So to actually transfer them over to that format was going to have no impact on what the techs were doing. So again, see, each thing had to be taken at its value to how it would impact.

CHAYTOR, Q.C.:

Q. And in terms of having signed off policies and procedures that had been approved and agreed to, how important was that in terms of having that done before the service was -

MR. DYER:

A. I believe that was considered to be policies and procedures that were going to have a direct impact, I believe was considered to get done.

CHAYTOR, Q.C.:

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Q. So, but now the service came back on in February 2007.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Was there any fixation policy approved and signed off on by that point in time?

MR. DYER:

A. An official one written off, I don't think so.

CHAYTOR, Q.C.:

Q. Okay. In December 2005, are you even in your position as manager of Eastern Health, regional manager, at this point in time?

MR. DYER:

A. I don't think so, no.

CHAYTOR, Q.C.:

Q. That doesn't happen until 2006, I believe you told us?

MR. DYER:

A. Yeah, I think at that time, we--again, a lot of pressure on the management team. Our jobs were going to be made redundant and we would have to reapply for our positions, if--I think at that time, they were making a decision as to how the program was going to be dealt with,

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was it going to be regional, and so I think Mr. Gulliver was, by then, I think in '05? Yes, in '05, I think that's when it happened. I think Mr. Gulliver was director and I think by then a decision might have been made it was going to be regional and our jobs were going to be posted again.

CHAYTOR, Q.C.:

Q. Okay. So then in 2006, so you had to apply--in the midst of this, you had to apply for your job again?

MR. DYER:

A. Oh yes.

CHAYTOR, Q.C.:

Q. Okay.

MR. DYER:

A. I remember our management group, it was stressful times. There's no doubt.

CHAYTOR, Q.C.:

Q. And you still though were in your position as manager of the pathology lab for the St. John's sites?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

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Q. So that--and then in reapplying, when it became a regional position and obviously you were successful in getting that position, you then became also responsible for which sites?
MR. DYER:
A. Anatomic pathology for Carbonear and anatomic pathology for Clarenville.
CHAYTOR, Q.C.:
Q. And what does that mean? How did your job duties change?
MR. DYER:
A. More work, more responsibility.
CHAYTOR, Q.C.:
Q. Okay, and how do you manage Carbonear and Clarenville?
MR. DYER:
A. What happens is I would take the lead role for administrative, in terms of major policies and procedures, myself and I believe Dr. Denic, and we have managers on site out there for day-to-day operations.
CHAYTOR, Q.C.:
Q. And so how frequent would you be in contact with Carbonear or Clarenville?
MR. DYER:

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A. Not very frequent, maybe a month or every other month I may see how things are going. I relied on the manager out there for the day-to-day operations. When we started this process, we had to--in '06, once the positions were finally finalized, we had to--we wrote new goals and objectives and our primary goal, our first step was to try and standardize how things are being done throughout the organization for laboratory medicine.
CHAYTOR, Q.C.:
Q. And how far along are you in that process?
MR. DYER:
A. What I did was I made a visit to Carbonear and got whatever policies and procedures they had and I made a visit to Clarenville and picked up theirs also, and then I introduced them to our quality management team.
CHAYTOR, Q.C.:
Q. And so you said that it's probably once a month that you're in touch. Do you actually visit their labs once a month?
MR. DYER:
A. I think I've made--I've only visited--again, life was very difficult. I only made probably

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two or three visits since I got the position.
CHAYTOR, Q.C.:
Q. Since 2006?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And likewise Carbonear and Clarenville, I guess?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And are you in--then in terms of being in touch once a month, I take it, are there regular telephone or conference calls?
MR. DYER:
A. Again, if they had issues, they would phone me. If I would have--you know, if we had issues with technology, they want a new piece of equipment, things like that, that may have required my approval or Mr. Gulliver's approval, they would contact me for stuff like that. But they're both small groups. I think each lab only has one technologist and pathologists and they run hand in hand or they run together, and any real--any issues in

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terms of relief and things like this or payroll or union issues and that, the manager on site was dealing with it and we would have monthly meetings with the managers to see how things were going. So we kept in constant contact.
CHAYTOR, Q.C.:
Q. The policies, and we have them now as P-2157, that were brought into effect, do they--insofar as they are applicable to Clarenville and Carbonear, are they throughout? Are they regional policies throughout Eastern Health?
MR. DYER:
A. The larger policies such as suboptimal specimen and fixation and that, yes, they would be sent out.
CHAYTOR, Q.C.:
Q. Okay.
MR. DYER:
A. But the more--the smaller policies, like the more technical procedures that are done right now, they will stay on site for how they do things. You know, like -
CHAYTOR, Q.C.:
Q. So there might have to be variations in your

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procedure, depending on what equipment, I would take it, you have on site?
MR. DYER:
A. Exactly, yes.
CHAYTOR, Q.C.:
Q. Wouldn't be practical to have all the same.
MR. DYER:
A. Right.
CHAYTOR, Q.C.:
Q. But the larger policies, in terms of fixation, that's standard now throughout Eastern Health?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay, and also for--what about like corrective actions and how to deal with that, is that a regional policy?
MR. DYER:
A. That's a good question. I wouldn't be able to tell you if correct--I think if corrective action, I'm not sure if it was a written as a major policy. Our policies are classified type one, type two, type three, type four, and I'm not--where I haven't been involved in the last eight or nine months, I can't really tell

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you.
CHAYTOR, Q.C.:
Q. Okay. So we would look for a type one would be across the region, is that right?
MR. DYER:
A. Again, I can't--I know, but I just can't--I don't know right now.
CHAYTOR, Q.C.:
Q. That's fine. There are other people, I'm sure, will be able to speak to that.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay. If we could have, please, 1810? This is an e-mail January 17th, 2006 or an e-mail exchange. Start down here. You write to Vince D'Mello at Mount Sinai. "Hi, Vince. How are things? Would it be possible for your lab to review some ER/PR slides for us? They come from a grid of procedures and require a grade for our in-house purpose only, not diagnostic purposes. We will be glad to pay. Mary brought them with her." So this is around the time Mary Butler is going to Mount Sinai for her training?

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MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. What was this about? Why were you sending up some ER/PR slides for Mount Sinai to review at that point in time?
MR. DYER:
A. Right, back in August, we did an actual grid, because--I'm not sure how it came about, but I believe i was asked by Dr. Cook that Dr. Carter was going to do revalidation of ER/PR on the Ventana system. So what we did was we did a grid, identified patients and did a grid and I think Ken ran multiple, multiple protocols and procedures for Dr. Carter to review. So I believe Dr. Carter read all of the slides and then sent everything back to Ken. He gave it to me. I had an index--I had the answers to each slide. So I sent--I put that on and sent it back to Dr. Carter to pick out what she felt would be the best protocols, and it never happened. She never did identify the protocols. So what I decided was--I think I might have spoke to Mr. Gulliver and asked if, you know, where Mary was going up, could

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she take the slides up and ask someone up there to give us an idea at the time.
CHAYTOR, Q.C.:
Q. And did that happen?
MR. DYER:
A. No, it didn't happen.
CHAYTOR, Q.C.:
Q. So who ultimately read the slides for you?
MR. DYER:
A. No, the slides were read, but there was no decision made on what protocol to pick.
CHAYTOR, Q.C.:
Q. And so who ultimately decided that?
MR. DYER:
A. I believe--ultimately decided the protocol?
CHAYTOR, Q.C.:
Q. Yes, who did what you wanted Dr. Carter to do and then Mount Sinai to do?
MR. DYER:
A. Well, no one did it on those slides. I think when Dr. Ford Elms got hired, he revalidated himself. So I would just--he asked me to identify patients and we started the whole process over again.
CHAYTOR, Q.C.:

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Q. And why hadn't Dr. Carter done it?
MR. DYER:
A. I don't know if she just -- I mean, she read them. I don't know if she just didn't do it or the fact that we had the -- at the time we had the people coming in to start the peer reviews. I'm not sure why it didn't happen.
CHAYTOR, Q.C.:
Q. If we could have, please, 2050. This is a meeting of laboratory managers, February 14th, 2006, and yourself and Mr. Gulliver are in attendance along with Ms. Wade and the rest of these people, I take it, are laboratory managers throughout Eastern Health?
MR. DYER:
A. Yes, in town and out of town.
CHAYTOR, Q.C.:
Q. So would they -- the ones who are out of town, do they get together, is this face to face, or are they joining you by conference call?
MR. DYER:
A. No, they would come in for face to face.
CHAYTOR, Q.C.:
Q. Okay, and how often do those laboratory manager's meetings take place?

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MR. DYER:
A. Every month.
CHAYTOR, Q.C.:
Q. Once a month?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay, and on page two of this document, pathology update, and then it flows over into page three, "Interviews of the external candidates for the PA positions will be held on Thursday", so that's your pathologist assistant positions?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And then it says, "Barry informed that all the retesting of ER/PRs has been completed by Mount Sinai and 97 percent of the original results were accurate with no converts of those tested on the Ventana system". Do you recall making that statement in that meeting?
MR. DYER:
A. I don't recall making the statement, but obviously I made that statement, yes.

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CHAYTOR, Q.C.:
Q. What would have been the source of your knowledge? Now this again, this is --
MR. DYER:
A. Pathology update back in --
CHAYTOR, Q.C.:
Q. This is February 14th, 2006.
CHAYTOR, Q.C.:
Q. Well, the only -- as far as I know, the only person who actually had access to the results was Dr. Cook and Dr. Carter, so I must have got that from Dr. Cook.
CHAYTOR, Q.C.:
Q. So in February, mid February, 2006, you were of the understanding that 97 percent of the original results were accurate?
MR. DYER:
A. From the Ventana system.
CHAYTOR, Q.C.:
Q. It says, "No converts from the Ventana", so I guess they were 100 percent accurate.
MR. DYER:
A. No conversions. Yes, that's what it says. Obviously, I must have said it.
CHAYTOR, Q.C.:

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Q. And where did you get that information?
MR. DYER:
A. Again the only person who had access to the results -- I didn't have access to the results at the time, so it must have come from Dr. Cook. I don't know where else I would have got those results because at the time I wasn't -- at that time, I still wasn't reading the reports that were coming back from Mount Sinai.
CHAYTOR, Q.C.:
Q. Okay. Do you still believe that to be the case?
MR. DYER:
A. I believe I was told since that there's been a couple of -- what do they call it, is that retro conversions, they said? I'm not sure.
CHAYTOR, Q.C.:
Q. Those we understand are the positives that went negative, the retro conversions.
MR. DYER:
A. Yes, yes, and I believe -- I believe there was a couple that didn't match up from the -- I only learned this from the Jewish General. I think I only learned that recently.

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CHAYTOR, Q.C.:
Q. So a couple of the retro conversions what?
MR. DYER:
A. No, I think -- I think I learned that -- we sent some slides -- what, from Mount Sinai?
CHAYTOR, Q.C.:
Q. Okay, this is Mount Sinai.
MR. DYER:
A. Right, I'm sorry, I'm confused.
CHAYTOR, Q.C.:
Q. You're saying 97 percent of the original results were accurate or this is what's attributed to you, with no converts of those tested on the Ventana system.
MR. DYER:
A. Yeah, I don't --
CHAYTOR, Q.C.:
Q. You're saying the only person who would have the results -- you weren't getting the results?
MR. DYER:
A. No, the results weren't coming to me. I don't know where I got those numbers, and I don't even know what we were talking about. I don't know if we were talking about all the actual

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retesting we sent out or cases that we sent out for them. This might have been from cases that we sent to them -- this might have just been cases that were sent from the Ventana system, I don't know. Now I can't answer to it.
CHAYTOR, Q.C.:
Q. And do you believe -- my question was whether or not you believe that this to be an accurate statement today?
MR. DYER:
A. No, I think I was told that there was a couple of converts from the Ventana system.
CHAYTOR, Q.C.:
Q. And what about the idea that 97 percent of the original results were accurate, do you believe that to be accurate?
MR. DYER:
A. Again I think if I'm saying the 97 percent, again I would believe I'm saying that about the Ventana system.
CHAYTOR, Q.C.:
Q. Okay.
MR. DYER:
A. Patients that were actually tested on the

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Ventana system and then retested at Mount Sinai.
CHAYTOR, Q.C.:
Q. So you're --
MR. DYER:
A. I don't think this has anything to do with DAKO. I think this has to do with the results from the Ventana system because, I guess, at the time it was still -- we were doing Ventana system. I guess at the time the issues were around the Ventana system.
CHAYTOR, Q.C.:
Q. So you're saying that if you said this, you must have meant the Ventana system?
MR. DYER:
A. Yes, this would have been cases that were sent out that were negative on the Ventana system and then retested from Mount Sinai.
CHAYTOR, Q.C.:
Q. And 97 percent would still be about an accurate statement in terms of Ventana tests?
MR. DYER:
A. Well, I think I heard it was only one or two conversions from what I understand.
CHAYTOR, Q.C.:

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Q. And that's still your understanding?
MR. DYER:
A. That's still my understanding, I believe, right now.
CHAYTOR, Q.C.:
Q. So you wouldn't be making that statement in terms of the overall retest results?
MR. DYER:
A. No, because I don't think we probably would have even had the results back by then for everything.
CHAYTOR, Q.C.:
Q. And you wouldn't today be making -- having the results back, you wouldn't be making that statement today about the overall results?
MR. DYER:
A. No, not from what I -- no, not at all.
CHAYTOR, Q.C.:
Q. If we could have, please, 2366.
COMMISSIONER:
Q. Ms. Chaytor, when you find a spot, we'll take the morning break.
CHAYTOR, Q.C.:
Q. Thank you. This is a meeting of April 20th, 2006, laboratory medicine program, and again

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it's -- you're not in attendance. It's Drs. Denic, Williams, and Gulliver, and page three of this document, Item 10 is, "Dr. Carter, discussion in regards to the recent approval of Dr. Carter as QA coordinator for pathology. Terry will work with Barry Dyer to facilitate implementation of this new function", and then it says, "off the agenda". Again this is April 20th, 2006. What does it mean that Terry will work with you to facilitate the implementation of Dr. Carter's new function?

MR. DYER:

A. So Dr. Carter was starting a new QA program for the pathology lab itself, and were given funds to hire a coordinator or hire a technical staff to be involved, and that would be a permanent position just for that QA.

CHAYTOR, Q.C.:

Q. So this is when -- who was it came on, the position for --

MR. DYER:

A. This would have been the technical -- we had money approved to hire a permanent full time technical staff to be part of the total quality management group for pathology.

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CHAYTOR, Q.C.:

Q. Okay, and who was that, who was that position?

MR. DYER:

A. Ms. Catherine Parnell.

CHAYTOR, Q.C.:

Q. That's Catherine Parnell.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And if we could have, please, 1754. This is a meeting June 30th, 2006, and these are Dr. Cook's notes.

MR. DYER:

A. Okay.

CHAYTOR, Q.C.:

Q. Present Dr. Cook, Dr. Morris-Larkin, Denic, Elms, Makarla, is it?

MR. DYER:

A. Yes, Makarla.

CHAYTOR, Q.C.:

Q. Carter, Williams, yourself, Pam Decker, is it?

MR. DYER:

A. I think so.

CHAYTOR, Q.C.:

Q. And Heather Predham, and it's re;

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implementation of ER/PR testing. So June 30th, 2006, do you recall attending that meeting and what was discussed about the implementation?

MR. DYER:

A. I don't remember it, but I was there.

CHAYTOR, Q.C.:

Q. And Dr. Denic, Dr. Elms, there's comments attributed to them, along with Dr. Carter and Dr. Williams, and Dr. Makarla, but there's nothing contributed -- attributed, anyhow, to you in Dr. Cook's notes. So this was, I take it, getting ready to discuss where you are to bring the ER/PR testing back on?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. But you don't remember much about that or what was discussed. So there's nothing further you'd be able to add to that. Okay, perhaps this is a good place then, Commissioner, and we'll discuss the implementation then of the testing when we come back.

COMMISSIONER:

Q. All right then, morning break.

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(BREAK)

COMMISSIONER:

Q. Ms. Chaytor.

CHAYTOR, Q.C.:

Q. Thank you, Commissioner. We have two new exhibits which I would ask, please, to have entered, P-2409 and P-2429.

EXHIBIT P-2409 AND P-2429 ENTERED

CHAYTOR, Q.C.:

Q. If we could bring up, please, 2429. You'll recall I had asked you about the questions and answers for the Minister of Health, and I had referred you to a document, November 21st, I believe it was, 2005.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And this appears to be an earlier exchange, November 18th, 2005, between Ms. Predham and Ms. Deborah Thomas-Pennell, and on page three of the document under the question, "Has a review occurred", you'll see that there is in italics here, "These are details supplied by the lab", and it states, "It was found there were problems with interpretation and quality

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of specimens used for interpretation. There was no QA program in place, being monitored by one individual. Too many individuals were involved without delegated responsibility and required individuals may be unfamiliar with standards required for interpretation. Actions, implementation of a sub-specialty sign out, so only a few individuals will be responsible for overseeing the performance and interpretation and will also allow for individuals to maintain expertise in sub-specialty area. CME will be provided for interpretation, labs will undergo accreditation". In terms of that type of an answer, Mr. Dyer, do you recall is any of that your thinking or what you discussed with Dr. Fontaine?

MR. DYER:

A. Again when it came to -- I think the statement was interpretation and quality. I think interpretation -- I don't think -- again I wouldn't have said something like that because again that's a clinical issue and I wasn't one at the time to make statements about the clinical issues. Quality of specimens, I may

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certainly have said something like that. No QA program, I certainly -- I certainly would have said something like that in terms of an official QA program.

CHAYTOR, Q.C.:

Q. Then if we could turn to the issue of reinstating ER/PR and I understand that happened in February, 2007?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Were you involved in reinstituting the testing?

MR. DYER:

A. I think the main focus for me at that time was before we reinstituted testing, we wanted to come up with a validation, we wanted to come up with an actual written validation protocol. So what happened was I think Dr. Elms provided me with some documentation from a conference he attended in, I believe it was Texas, and it was -- it was just all in paragraphs. It was complicated to read, so what I did is I took it, I deciphered it, and from it I created a chart based on my interpretation of that

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document, and then what I did is I sat down with Dr. Elms and he reviewed it, and my question was, you know, is this how you interpret it. We went over it together and we accepted it and said, yes, this is what we're going to do, this will now be our new protocol. So what I did then was I took the document, I went and met with the techs in immuno, explained to them exactly step by step what this document meant and how we will go about the process. From there, Dr. Ford Elms took over.

CHAYTOR, Q.C.:

Q. Okay, and when they came on, were you aware that the testing had resumed?

MR. DYER:

A. What do you mean?

CHAYTOR, Q.C.:

Q. When the ER/PR testing resumed, were you aware that had happened?

MR. DYER:

A. No.

CHAYTOR, Q.C.:

Q. And how did you learn that it had happened?

MR. DYER:

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A. I think I was in the lab one day and one of the techs told me that we're now testing ER/PR again.

CHAYTOR, Q.C.:

Q. Were you consulted in terms of how far along you were on implementing the recommendations from the reviews?

MR. DYER:

A. I can't --

CHAYTOR, Q.C.:

Q. Prior to the testing coming back on, did anyone come to you and ask you how far along you were in terms of implementing the recommendations and whether you thought it would now be okay from a technical point of view to resume the testing?

MR. DYER:

A. That's a good question. I think -- I know we -- I know we were in discussion about what was being done technically, but I -- I'm not sure if I was. I think -- you know, when I met with the staff over this time period, we had all the forms created, the technical forms we were going to use for documentation and things like that. All that stuff was already done

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and in place. When Mary and Ken came back, we took their information and started doing things like that immediately. So I know all that was in place at the time. I was involved, in one sense, I guess, yes.

CHAYTOR, Q.C.:

Q. But it actually then came on and was resumed prior to -- and you learned that it actually was up and running from one of the technologists?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And do you know in February of 2007 whether all the recommendations, in fact, had been implemented at that point in time?

MR. DYER:

A. In terms of -- in what sense? Again it's all at face value. You know, again when it came to -- I keep going back to the protocols. They weren't transferred over to the CSLI standard, but they were there all printed off and in binders, things like this, but in terms of all the SOPs actually officially being signed off, I don't think they were. We were

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using -- I think at the time we had handwritten things, and that's what we were using at the time.

CHAYTOR, Q.C.:

Q. And in terms of any surgeries that were taking place at that point in time, any surgeries taking place at the Health Sciences, what would happen to the specimen, breast specimen at Health Sciences, where were they being processed, what was happening?

MR. DYER:

A. In 2007?

CHAYTOR, Q.C.:

Q. Yes, when it first came back on?

MR. DYER:

A. The breast specimens from Health Science were -- again I'm sorry, I don't understand your question.

CHAYTOR, Q.C.:

Q. Where was the grossing of the breast specimen, for example, taking place?

MR. DYER:

A. Okay ,thank you. I'm not sure when it has changed since, but I think in early '07 we had a sub-speciality group put together and I

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believe the breast cancers were actually being sent to St. Clare's for grossing.

CHAYTOR, Q.C.:

Q. So the surgery was taking place at the Health Sciences?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And then being -- and the specimen being transported to?

MR. DYER:

A. To the lab.

CHAYTOR, Q.C.:

Q. And how as it being transported?

MR. DYER:

A. Well, it all depended on the situation. If the specimen came down and it was early in the day, we would phone -- we had a courier system in place, a stat courier system. So a specimen would come down in formalin and what would happen is it would be -- we would phone the courier system. When they showed up, we would drain excess formalin off the specimen so it could be actually transferred. It would be -- it was bagged in a special bag and

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sealed and sent directly over to St. Clare's.

A document was -- it was documented and St. Clare's was phoned immediately to let them know it was on its way.

CHAYTOR, Q.C.:

Q. So you would -- when it came down from the OR, it was in formalin?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And no bread loafing or anything done at the Health Sciences?

MR. DYER:

A. Not if it was going to be sent immediately. Only if breast cases came down after 4 o'clock, then they would get bread loafed and would be left at the Health Science until the next day.

CHAYTOR, Q.C.:

Q. And then transported over?

MR. DYER:

A. And then transported over. That was the protocol.

CHAYTOR, Q.C.:

Q. So the ones that were going to be transported

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the same day as surgery would come down still in formalin?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And a courier called. When the courier showed up?
MR. DYER:
A. Yes, then we would actually have prepared a specimen to be sent.
CHAYTOR, Q.C.:
Q. Okay, and the formalin would be drained?
MR. DYER:
A. Well, most of it would be drained. Some would be left on, it would be sealed in a bag.
CHAYTOR, Q.C.:
Q. Okay, and where did that procedure come from?
MR. DYER:
A. I'm not sure if I came up with that procedure myself or if myself and Dr. Fontaine came up with it. He actually signed off the procedure, but -
CHAYTOR, Q.C.:
Q. Was there a written procedure to that effect?
MR. DYER:

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A. Yes, there was.
CHAYTOR, Q.C.:
Q. And in terms of how long would the specimen be left without adequate formalin?
MR. DYER:
A. Usually it was about, the actual stat service was 15 minutes.
CHAYTOR, Q.C.:
Q. So 15 minutes to go from one site to the other?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And on the other end, what was the procedure in terms of ensuring that immediately upon receipt that it's put back in formalin?
MR. DYER:
A. It would be put back in formalin immediately, like we were through constant contact all the time for specimens that got sent over.
CHAYTOR, Q.C.:
Q. And in terms of, are you aware whether or not there was ever any delays in getting the specimen to St. Clare's?
MR. DYER:

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A. I don't know if I was aware of delays, I mean, it could happen, but I don't think I was aware of any delays where cases actually got, you know, traffic jams or accidents or anything like that.
CHAYTOR, Q.C.:
Q. And I take it that wasn't a procedure that Ms. Wegrynowski recommended when she was in?
MR. DYER:
A. No, I don't think so. I'm not sure when we started--no, we weren't doing that when Ms. Wegrynowski was here, no. I think that was started when they put together the breast group. They wanted everything to be grossed by the same, I guess by the same group. Also in '07 when we were doing this, I would constantly talk to Dr. Ford Elms and talk--and I would constantly talk to pathologists to see if there were any fixation issues, I would talk to the staff down there and I would even talk to our technical staff to see if they were getting tissue with, you know, the softness and things like that, to identify issues. And there was none and there was no occurrences at the time either, to that point,

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so it was being monitored carefully.
CHAYTOR, Q.C.:
Q. And the times being recorded as to when the specimen was received from the OR, when the formalin was drained, when the formalin was put on the specimen, all those times were being recorded?
MR. DYER:
A. I think in '07, I still don't think we were recording early in '07 when the specimen was actually put on formalin from the OR and that, but from our point of view, from delivery and things like that, it was all recorded, yes.
CHAYTOR, Q.C.:
Q. And is that now happening? Is there now a recording of when the specimen is originally put on formalin?
MR. DYER:
A. Every specimen, yes.
CHAYTOR, Q.C.:
Q. So what was happening when the testing resumed in February of 2007, for any surgeries from the Health Science, the breast specimen would be sent to the lab in formalin -
MR. DYER:

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A. The cancer cases, yes.
CHAYTOR, Q.C.:
Q. Yes, and sent in formalin, the formalin, when the courier arrived, would be drained to the point of putting it then in a sealed bag, sent over and at St. Clare's it would then be grossed?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Would it also be put into blocks at St. Clare's?
MR. DYER:
A. Yes, St. Clare's still does the grossing, that was the purpose that--the one group would actually gross all these tissues.
CHAYTOR, Q.C.:
Q. Okay, so they would do the grossing, produce the blocks?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And then send it back to the Health Science, the blocks would come back to the Health Science, to the IHC lab for staining -

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MR. DYER:
A. The blocks would come back for processing, so then we would start the whole processing -
CHAYTOR, Q.C.:
Q. Yes, because the processor is now at the Health Science too.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. So the processing happens then at the Health Sciences.
MR. DYER:
A. Yes, the processing, then we would embed, we would cut, stain, send the H&Es back to their pathologists and then they would make their orders and they if they would order IHC, then they would order IHC.
CHAYTOR, Q.C.:
Q. And then that would be done, the slides would be done and stained at the IHC lab?
MR. DYER:
A. Yes.
THE COMMISSIONER:
Q. And the breast group was at St. Clare's, then you'd send the slides back to St. Clare's?

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MR. DYER:
A. Yes, they're still six pathologists at St. Clare's, so not just the breast group, any specimen that's assigned to a pathologist over there, the slides would be sent back to them, today.
CHAYTOR, Q.C.:
Q. So that's what was happening first when it started up and we know that the ER/PR is not now happening again at the Health Sciences, is that right?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And so up to it, I believe it continued, though, until certainly May or June of 2008?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And up to the point of discontinuing the service again, which we understand is intended to be temporarily suspended, was that still the process? Is that still what was happening?
MR. DYER:

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A. Yes.
CHAYTOR, Q.C.:
Q. And when it resumes again, will that still be the process?
MR. DYER:
A. I think that will still be the process until we actually consolidate. The only real change that's occurred in that process right now is that the PAs are actually grossing the breasts, our pathology assistants, they have been trained and they are now grossing breasts.
CHAYTOR, Q.C.:
Q. And are there not PAs at both sites?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. So the grossing of the breast specimen could be done, the ones from the Health Science could be done at the Health Science by the PAs there?
MR. DYER:
A. I think so, but I believe still the breast may be still under the direction of the pathologist, so I believe we're still sending

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the breast cancer cases over there and again, when it comes to these cases, there's different things that need to be done. I think the -

THE COMMISSIONER:

Q. Sorry, Ms. Chaytor in one of her questions said to you when the courier arrived, effectively the formalin was drained and then it went off.

MR. DYER:

A. Yes, we would leave so many centimetres deep.

THE COMMISSIONER:

Q. Ah, but my question is when the courier arrives, do you wait until the courier arrives before you drain?

MR. DYER:

A. Yes, so there would be no delay, we always wait for the courier to get here. When the courier gets here, then we do the process because it takes, like, two minutes.

THE COMMISSIONER:

Q. Okay, thank you.

CHAYTOR, Q.C.:

Q. And whether or not that time period or the keeping of some of the formalin on the

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specimen, when did you become aware of that, that in fact it's not all the formalin that's drained?

MR. DYER:

A. No, that's just--because the specimen is soaked in formalin, so it will retain a lot of the formalin.

CHAYTOR, Q.C.:

Q. So all the formalin is drained off, except of what may have already been absorbed by the tissue?

MR. DYER:

A. Yes, like every time you look in the bag, it's always, you know, the bag is placed back into the original containers, usually a couple of centimetres deep.

CHAYTOR, Q.C.:

Q. Okay, so it's drained off.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And whatever is left then in the bag is what has been absorbed by the tissue?

MR. DYER:

A. Yes.

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CHAYTOR, Q.C.:

Q. And whether or not the delay, in terms of the courier service could be as much as 30 or 40 minutes.

MR. DYER:

A. I guess, how long they take to get over the-- in our contract, the courier service is stated as a stat, which is 15 minutes from one side to the other.

CHAYTOR, Q.C.:

Q. And the time that it actually has the formalin drained is recorded -

MR. DYER:

A. Yes, as far as I know it is, yes.

CHAYTOR, Q.C.:

Q. And is that part of the written procedure?

MR. DYER:

A. Not the original one, no, but I believe that's what they're doing today, yes. The original was written back in '06, late '06 when I think they started putting together the breast pathology group.

CHAYTOR, Q.C.:

Q. And so at the time you weren't recording the time that the formalin came off and the tissue

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sent back or the specimen went back in the formalin, but that's now being done?

MR. DYER:

A. Yes, that only started, I believe in the past, like this year or late last year when we got agreement.

CHAYTOR, Q.C.:

Q. And is there a policy or procedure in the recent procedures and policies that have been passed which outline this -

MR. DYER:

A. How to do that?

CHAYTOR, Q.C.:

Q. Which outline this procedure that the breast comes down, the specimen has the formalin drained and shipped and what timeframes are acceptable?

MR. DYER:

A. It's not in an actual format, but there is a written protocol, yes.

CHAYTOR, Q.C.:

Q. And do you know if that's in the policy and procedure manual?

MR. DYER:

A. I don't know if it's actually in their policy

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procedure manual yet, but there is a written protocol and it's posted in the gross rooms and signed off.

CHAYTOR, Q.C.:

Q. And why wouldn't that be in a written policy or procedure?

MR. DYER:

A. Again, our physicians are working on it because they're working on the SOPs for the grossing, that's clinical, so they're working on it.

CHAYTOR, Q.C.:

Q. So you're saying today, even though regardless of ER/PR, but obviously breast surgeries are still happening and why are the breasts still being sent to St. Clare's, the ones from Health Science if there's no breast pathologist right now at St. Clare's?

MR. DYER:

A. I think you should ask clinical that, I'm going to get too far into it and I'm not sure of all the reasons, so I think that's more of a physician answer, a physician question because that decision would be made by them. That wasn't a decision that I would make.

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CHAYTOR, Q.C.:

Q. And you're not aware of the reason for it?

MR. DYER:

A. As to why we're doing it right now?

CHAYTOR, Q.C.:

Q. Yes.

MR. DYER:

A. No, I don't think I'm aware of why we're actually doing it right now.

CHAYTOR, Q.C.:

Q. And has it dawned on you to ask that question, well why are we doing this when there is no breast pathologist there?

MR. DYER:

A. No, I haven't asked the question, if that's what the plan is, then that's what the plan is. That's a decision made by our clinical staff.

CHAYTOR, Q.C.:

Q. And in terms of the procedure in sending the breast tissue over to the Health Science with the formalin drained or, sorry, over to St. Clare's with the formalin drained, has that been, has that been approved by any external group?

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MR. DYER:

A. No, I don't think so, an external group?

CHAYTOR, Q.C.:

Q. Yes, like in terms of well, QMPLS was in, were they ware of that happening in December of 2007?

MR. DYER:

A. I wasn't here, I wasn't here when QMPLS came in, so I don't know. I assume that they talked to him about all these things, I don't know.

CHAYTOR, Q.C.:

Q. So you don't know whether or not they were aware of it and whether or not they thought it was an acceptable procedure?

MR. DYER:

A. I don't know.

CHAYTOR, Q.C.:

Q. If we could have, please, P-0114? And this is a document feedback from immunohistochemistry technology, technologists, May 29th, 2007. Do you know the source of this document, Mr. Dyer?

MR. DYER:

A. Yes, there was a meeting held down in the

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resident's room with my staff.

CHAYTOR, Q.C.:

Q. And who attended that meeting?

MR. DYER:

A. This exact meeting right here? I believe it was the immuno staff and myself and I believe Ms. Predham.

CHAYTOR, Q.C.:

Q. And did you draft this document or who drafted -

MR. DYER:

A. Did I draft this document? No, I didn't draft this document.

CHAYTOR, Q.C.:

Q. So this might be Ms. Predham's document?

MR. DYER:

A. It must be, I only just sent it recently, like in the last week or so.

CHAYTOR, Q.C.:

Q. Okay, and so you've had a chance to read through it?

MR. DYER:

A. I have.

CHAYTOR, Q.C.:

Q. And does it accurately capture the concerns

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which were expressed by the technologists in the meeting?

MR. DYER:

A. It's hard to remember, what had happened that day, May 29th, was an interesting day. A very, very stressful day. I think this was around the time I think the litigation was actually announced--was starting and everybody was -

CHAYTOR, Q.C.:

Q. Litigation -

MR. DYER:

A. Oh, I'm sorry, this is when -

CHAYTOR, Q.C.:

Q. The inquiry had been announced.

MR. DYER:

A. Yes, I think the inquiry and I think the lawsuit might have been at the time, or something.

CHAYTOR, Q.C.:

Q. And the class action certification had just recently occurred as well.

MR. DYER:

A. Had just been announced and there was a lot of stress in the lab, the staff didn't know how

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they were going to be impacted, what was going to happen to anyone, and it was a very--it was a horrible atmosphere at the time, everybody was worried and concerned. And so I asked, I think I asked Ms. Predham to have a meeting with all staff, the entire laboratory, technical staff, for question and answer. And so I think what happened was I think we got together that day and all of us had a meeting and I think it went on for, you know, a couple of hours of just concerns and that. I think by now what was happening also was like the staff were in the news and a lot of the pictures that were shown in the paper were on the Evening News of staff who had nothing to do--who were not involved with IHC at all and they were very upset. So that's what was going on and then from that, I think came--the staff stayed, the immuno staff in particular, to discuss what was going on in the lab at the time. So at that time all the SOPs were not signed off, so I think what was happening, all SOPs were not signed off for IHC. The big ones, like ER and PR were and I think other quantitative ones were, but the routine ones,

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what we call non-quantitative were not. So there were just, in telling her that this wasn't happening or they felt it wasn't happening fast enough. No knowledge of feedback from the external proficiency testing, they weren't being informed, I guess as a laboratory group, there was no outcomes happening from the external proficiency group. It's just results would come back, they would be told what the results are and that's it. There were no outcomes being set up. No knowledge of overall action or status of the same, I guess, you know, what's happening with immuno. Where are we going? Recommended training for technologists to read controls has not occurred. They know by now we were discussing about techs being trained to read the actual controls to interpretation and that had not started. Overall feeling that QA activities for ER/PR were in place, but not for the remaining, again, I guess what they meant was for ER/PR was actually the protocol was signed off; whereas others were not.

CHAYTOR, Q.C.:

Q. And in terms of the knowledge of the overall

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action plan or status of same, who would be responsible for keeping the technologists up to date?

MR. DYER:

A. I guess at that time it would be myself and Dr. Elms. I think he was in charge of the immuno at the time. But he was an extremely busy pathologist and he wasn't around a lot. Also he never had an office at this site, his office -

CHAYTOR, Q.C.:

Q. So Dr. Elms works out of St. Clare's?

MR. DYER:

A. Yes, he works out of St. Clare's.

CHAYTOR, Q.C.:

Q. And he's responsible for the IHC service at the Health Sciences?

MR. DYER:

A. Yes, for Eastern Health, yes, but it was being performed at Health Science.

CHAYTOR, Q.C.:

Q. So were the technologists finding that he wasn't available enough for them?

MR. DYER:

A. I think that was the issue, he was always

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extremely busy and so it was hard to nail him down to get help on things.

CHAYTOR, Q.C.:

Q. And is Dr. Elms still situate at St. Clare's?

MR. DYER:

A. Yes, he is.

CHAYTOR, Q.C.:

Q. And is there any thought to bringing Dr. Elms to the Health Sciences?

MR. DYER:

A. Again, I think you'd have to talk to Dr. Denic about that. Again, I don't know if they're trying to get him on site, I don't think there are any--there are no offices right now at Health Science, but once they start the consolidation process, he will then be on site and it will probably make it a much easier--he is over a lot, it's just that he's always gone in and out because he has so many things to do.

CHAYTOR, Q.C.:

Q. So there's physically no space for new pathologists at the Health Sciences?

MR. DYER:

A. Right now there's no office space for

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physicians right now, all the offices are full. The consolidation that's planned involves building all new offices.

CHAYTOR, Q.C.:

Q. Okay, and expressed concerns regarding communication?

MR. DYER:

A. Again, requests for project work are coming from numerous sources, that's a standard thing, that was a complaint probably back in '02.

CHAYTOR, Q.C.:

Q. And it's still a complaint in '07?

MR. DYER:

A. Yes, again, Ford is not there as much, so people would come in and want things done and again, I guess the question was, you know, you know, when should they do what? See, when I, as manager, the thing that I would set up as manager is that everybody has specific duties and those duties need to be maintained to get the work done, but I guess, you know, staff, physicians would come in and say, you know, stop doing that, I need this done. And I guess it would put them in a quandary or a

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conundrum because now their work is not getting done, so that would happen on a regular basis.

CHAYTOR, Q.C.:

Q. And this says "without explanation or knowledge of manager".

MR. DYER:

A. They would just go in and make demands. They didn't go through me.

CHAYTOR, Q.C.:

Q. But if the IHC chief, if Dr. Elms requires anything of the immunohistochemical technologists, can't he directly ask that of them without having to go through you?

MR. DYER:

A. Yes, definitely and he does.

CHAYTOR, Q.C.:

Q. So that wouldn't be an issue.

MR. DYER:

A. No, that wasn't an issue, right. "Requests for documentation are coming without knowledge of the manager", I guess what that was, I think that was around the lawsuit. And "ER/PR retests restarted without knowledge of the manager", again, they brought that up, I don't

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know why, but they did. I guess they're just trying to reinforce that things are being done without me being kept in the loop.

CHAYTOR, Q.C.:

Q. And if we could have, please, P-2304? And this is a meeting that actually predates the meeting with the technologists, but it's April 10th, 2007 and Dr. Howell is replacing--has replaced Dr. Williams at this point, Dr. Gulliver, Dr. Denic and if we look at page 2, it indicates "ER/PR, HER2 receptors, Dr. Denic gave an update and informed the lab has reinstated testing and it is going well. Dr. Denic also informed that we are doing comparison testing with respect to HER2 testing. Terry will arrange meeting with Dr. Denic, Dr. Elms and Barry Dyer to review roles and responsibility for the immunohistochemistry lab." And again, this is April, 2007. Do you recall what that was about and did such a meeting take place?

MR. DYER:

A. I don't think a meeting took place.

CHAYTOR, Q.C.:

Q. Was there any discussion with you about that,

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about the roles and responsibilities for the IHC lab?

MR. DYER:

A. I don't know if there was a discussion, I think I was just under the understanding that Dr. Denic would take over from where Dr. Ejeckam left and he would just continue doing the same things he was doing.

REGISTRAR:

Q. Excuse me, Ms. Chaytor, 2304 is an exhibit that is not yet entered into the system. It's (inaudible). So we have to request it be transferred over -

THE COMMISSIONER:

Q. You want it as an exhibit?

CHAYTOR, Q.C.:

Q. Yes, please, if we could please enter 2304?

REGISTRAR:

Q. And I'll get it switched.

THE COMMISSIONER:

Q. 2304 is entered then.

EXHIBIT ENTERED AND MARKED P-2304

CHAYTOR, Q.C.:

Q. Thank you. What did you say about who did Dr. Denic replace? I just missed it.

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MR. DYER:

A. Dr. Denic?

CHAYTOR, Q.C.:

Q. I just missed the last part you said there with the confusion regarding the exhibit, what was it that you said about somebody being replaced?

MR. DYER:

A. Oh, Dr. Elms?

CHAYTOR, Q.C.:

Q. Yes.

MR. DYER:

A. He was the director, I just -

CHAYTOR, Q.C.:

Q. Who did he replace?

MR. DYER:

A. I believe he replaced, well, Dr. Ejeckam in the end.

CHAYTOR, Q.C.:

Q. Dr. Ejeckam.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And do you know when that happened?

MR. DYER:

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A. I think a letter came out, I can't remember exactly when, I know there was an in between time when Ejeckam was leaving when the looked at Dr. Makarla and looked at Dr. Fontaine, but I think in the end, Dr. Elms was the person.

CHAYTOR, Q.C.:

Q. And if we could have, please, P-1831? And this is April 30th exchange, if we go to the-- or an e-mail from Maria Mendes to yourself and "Hi Barry, Vince let me know that you require the SOPs that were used for the ER/PR cases. Attached is the information. Please let me know if you will be requiring any further information." So this is Maria Mendes from Mount Sinai and why were you in April of 2007 looking for the SOPs that were used in the ER/PR cases?

MR. DYER:

A. I believe that was directly related to the class action.

CHAYTOR, Q.C.:

Q. Okay, so that was a request -

MR. DYER:

A. That was a request that came that they wanted me to contact them for this information.

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CHAYTOR, Q.C.:

Q. Okay. And if we could have, please, P-0455? So I take it you just forwarded that on then to Ms. Predham?

MR. DYER:

A. Yes, yes.

CHAYTOR, Q.C.:

Q. And this one, I believe, starts on page 2 with your involvement and this is an e-mail from yourself to Mr. Gulliver, May 23rd, 2007, importance high. "Hi, Terry, Trish was notified on Wednesday, May 23rd at 1240 hours. She does not want the report to go public. Barry." What was that about? What do you recall about that?

MR. DYER:

A. Well, I believe, again what happened that day was I believe, I'm not sure if I got a phone call or if Mr. Gulliver actually came over to my office and he said that there's a possibility that the report may go public, let Trish know.

CHAYTOR, Q.C.:

Q. And what did you understand from Mr. Gulliver, why was there a possibility on May 23rd that

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her report might go public?
MR. DYER:
A. I can't--there was a lot of things going on and I think there was going to be, I think Mr. Tilley was going to be involved with--he was going to give an interview or something to that effect, and therefore the report may actually be made to go public.
CHAYTOR, Q.C.:
Q. And I believe Mr. Tilley's interview, in fact, may have been before this, May 18th.
MR. DYER:
A. Oh again, it could be around that time. I don't know why, it's just Mr. Gulliver informed me that the reports may go public, so let Trish know and I think he wanted me to let Trish know because I believe, I can't really remember, I believe the agreement was that this was not a public report.
CHAYTOR, Q.C.:
Q. Now, had you had any contact with Trish? She hadn't been in Newfoundland since April of 2006. Had you been still in contact back and forth with her?
MR. DYER:

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A. I might have been in contact with her over one or two of our recommendations, I'm not quite sure.
CHAYTOR, Q.C.:
Q. Did you consult her on those, on the recommendations?
MR. DYER:
A. I might have consulted her on one or two of them.
CHAYTOR, Q.C.:
Q. And so I take it you phoned her?
MR. DYER:
A. Yes, I phoned her.
CHAYTOR, Q.C.:
Q. And what did you tell her?
MR. DYER:
A. All I explained to her was, I said, Trish, I was just speaking to Mr. Gulliver, Terry, and he told me that there's a lot of pressure, I don't know where from, but the reports may actually go public.
CHAYTOR, Q.C.:
Q. Okay. Now Ms. Wegrynowski, I'm not sure if you heard her evidence on this point or not.
MR. DYER:

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A. I wasn't listening.
CHAYTOR, Q.C.:
Q. But she indicated that you told her that the Premier might read her report or was going to read her report.
MR. DYER:
A. I don't think I said that, I think I'm pretty sure I told her that it looks like her report is going to go public and I remember her answer right back to me, it was "Do I need a lawyer?" That was her response. And I remember saying, no, I don't know if you need a lawyer, you know, but that's pretty well all we spoke--that's all we talked about.
CHAYTOR, Q.C.:
Q. And in saying you don't think you told her that.
MR. DYER:
A. It doesn't sound familiar if I actually said the Premier was going to read the report, I don't know.
CHAYTOR, Q.C.:
Q. That's something that you would remember, wouldn't you?
MR. DYER:

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A. I think that's something that would stand out. It doesn't sound familiar that I actually would say the Premier is going to read her report, I don't even know if I knew at that time if the Premier was actually going to read her report.
CHAYTOR, Q.C.:
Q. Had you heard anyone else say that, that the Premier was looking for her report or anyone in government was looking for the report?
MR. DYER:
A. That's a good question. The Minister for some reason stands out, but -
CHAYTOR, Q.C.:
Q. And what do you recall about that?
MR. DYER:
A. I don't know if it was the Minister of Health, again, there were so many things going on at the time, but I really don't think I would have said the Premier and I don't know why I would have even thought--why would I have even thought that the Premier would be reading this report, I don't know.
CHAYTOR, Q.C.:
Q. So you do have some recollection about the

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Minister.
MR. DYER:
A. Maybe, again, I might be confused, maybe the Minister was mentioned or the word "minister", I don't know, but I don't think it was the Premier.
CHAYTOR, Q.C.:
Q. Who would have mentioned the Minister?
MR. DYER:
A. Again, I don't know, I'm only trying to speculate, I don't even know if that really happened.
CHAYTOR, Q.C.:
Q. What had you heard about the distribution of this report? How would it become public at this point in time?
MR. DYER:
A. I don't know, there was pressure on the go, that's all I know at the time over these reports and I think it was around, again, what's the--see, I'm just speculating and I shouldn't.
CHAYTOR, Q.C.:
Q. So what do you mean, pressure? Who is the pressure coming from?

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MR. DYER:
A. No, I think at the time it was a lawsuit, was the class action announced then? The class action was on the go, so maybe there was pressure coming from that end, I don't know or maybe from the public, from the media, I don't know where it was coming from, but I was under the impression that her report may go public and I was instructed to let her know. And that's what I did.
CHAYTOR, Q.C.:
Q. So, Mr. Gulliver said the report may go public.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And you don't ask Mr. Gulliver why, what's this all about?
MR. DYER:
A. I don't think so, I think it might have been just the atmosphere at the time, I don't know, but I don't think that Terry and I actually discussed why it would go public.
CHAYTOR, Q.C.:
Q. What about with anyone else?

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MR. DYER:
A. Not at the time, I don't think so, I think I just phoned her.
CHAYTOR, Q.C.:
Q. What about since, what do you know about it since?
MR. DYER:
A. What do I know about it since?
CHAYTOR, Q.C.:
Q. Uh-hm. Who was looking for the reports and who was putting pressure -
MR. DYER:
A. I honestly can't tell you right now, I don't know. I probably know, I just can't think of it.
CHAYTOR, Q.C.:
Q. You probably know but you can't think of it?
MR. DYER:
A. Yeah, just right this minute I don't know, because I know they did go public after the fact.
CHAYTOR, Q.C.:
Q. Well they didn't go public until February 2008.
MR. DYER:

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A. Yes.
CHAYTOR, Q.C.:
Q. After Court applications.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. So this is almost a year before that.
MR. DYER:
A. Yes, but for some reason there was some kind of pressure or something was happening for this statement to come up that I had to phone her.
CHAYTOR, Q.C.:
Q. And this, I take it would be a bit of an unusual phone call for you to have to make.
MR. DYER:
A. Very much so, yes.
CHAYTOR, Q.C.:
Q. But any more details of it, escape you right now.
MR. DYER:
A. Yeah, I don't think--we didn't speak very much at all, I just let her know because I remember her asking me does she need a lawyer and I said I don't think--I said, I didn't know if

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you need a lawyer, you know, but that's all I remember talking to her about was that.

CHAYTOR, Q.C.:

Q. And anything that led up it before your phone call to Ms. Wegrynowski -

MR. DYER:

A. I just remember Terry either calling me in his office or coming over, but right out of the blue he just said, you know, the reports may go public, you need to let Trish know because I think she was informed that it was a confidential report, or something, it wouldn't go public.

CHAYTOR, Q.C.:

Q. Mr. Dyer, why would it be high importance and why would you bother noting the date and the time that you told her that in your -

MR. DYER:

A. I guess by then I was into documentation big time. I will be honest.

CHAYTOR, Q.C.:

Q. I can take you to other e-mails you sent around that time and they don't have the time -

MR. DYER:

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A. Well that one was, again, that was a very strange request, so that was very important to me, for some reason, that was very important. But again, I can't tell you specifically. I just know I was asked to phone her and tell her that this report may go public.

CHAYTOR, Q.C.:

Q. And in terms of it being a very strange request, your curiosity didn't go beyond that in terms of saying why?

MR. DYER:

A. If it did, right this minute, I just can't recall if it did.

CHAYTOR, Q.C.:

Q. Well you can let us know when and if you do recall.

MR. DYER:

A. I certainly will.

CHAYTOR, Q.C.:

Q. And then that gets passed on, as you can see up the chain.

MR. DYER:

A. Yes, I sent it to Mr. Gulliver.

CHAYTOR, Q.C.:

Q. You sent it to Mr. Gulliver and Mr. Gulliver

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sent it 2:26 p.m. to Dr. Denic, 3:45 p.m. it goes from Dr. Denic to Dr. Howell and next day it goes all the way up to George Tilley. So you weren't aware of that, that it had gone all the way up to the CEO of Eastern Health, your e-mail?

MR. DYER:

A. No, actually I think this is the first time I've seen this.

CHAYTOR, Q.C.:

Q. So in terms of the importance of this matter and the background to it and how the report was going to be public or who was asking for the report.

MR. DYER:

A. I can't say. It was important to me, I believe, because I know we told Trish that this wouldn't go public or not go public, but that this was a confidential report, that's what was said to me and so I knew it was a confidential report.

CHAYTOR, Q.C.:

Q. And why it was--why the concern had come up that it could go public at this point in time, you don't know?

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MR. DYER:

A. I don't know. There had to be a reason. Talk to Mr. Gulliver. He might be able to help.

CHAYTOR, Q.C.:

Q. Yes, he might be able to jog your memory too.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay. If we could have, please, then 2379? And this is an e-mail from Mr. Gulliver, Pat Pilgrim, Heather Predham, Dr. Denic, Oscar Howell, and yourself, and Mr. Gulliver writes to Ms. Pilgrim "Barry Dyer and I have now finalized the list that was given on Friday. We have cross-referenced each of the 80 plus patients with our original master sheet. We have reviewed all reports for each patient and documented or found why they were not sent for retest yet. We have created a new template like our originals with all the patients info. We are now ready to start pulling original block slides for review and retest so we need. Six patients on our original list that are deceased were not on the list given Friday. Should we retest them anyway? Some patients

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have already been retested with no result change. Do we need to retest again? One patient has no evidence of breast cancer but is being asked to be retested. Several patients on the list are from out of town, so who should call and request the blocks?"

Now this is July of 2007. Do you recall what was this about? What were you now involved in, in terms of finalizing the list?

MR. DYER:

A. I think this was all about the deceased patients.

CHAYTOR, Q.C.:

Q. This is all deceased patients?

MR. DYER:

A. I think so, for the most part, yes. I think that's what--I believe this is what it was all about.

CHAYTOR, Q.C.:

Q. In July of 2007?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay.

THE COMMISSIONER:

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Q. There's a slash after deceased. What does that say?

CHAYTOR, Q.C.:

Q. Yes.

MR. DYER:

A. All pathology--I guess, patient -

CHAYTOR, Q.C.:

Q. "ER/PR deceased/" is that "other retests"?

MR. DYER:

A. Maybe that's what it is, "other retests".

CHAYTOR, Q.C.:

Q. Should be an O instead of a P. So were there other patients, other than deceased, at this point in time, who were requiring retests?

MR. DYER:

A. There may have been, or there may have been patients phoning in and asking to be retested.

CHAYTOR, Q.C.:

Q. Okay. For example, number two says "we have reviewed all reports for each patient and documented or found why they were not sent for retest yet." You weren't sending--at the time, you weren't sending deceased. So that can't be about deceased patients.

MR. DYER:

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A. No, those were the two, I believe the Labrador patients that we identified.

CHAYTOR, Q.C.:

Q. So to your knowledge, the only extra patients then in July of 2007 that you were involved with were the deceased and those two patients from Labrador?

MR. DYER:

A. Yes. And again, I think some patients may have been calling in at the time asking for retests.

CHAYTOR, Q.C.:

Q. And if we could have then--and were those patients who were looking for retests, patients who had been missed the first time round?

MR. DYER:

A. For patients phoning in, no, I don't think so. I think it was just patients who, I guess, was following what was going on and may have had breast cancer and may have wanted to be retested.

CHAYTOR, Q.C.:

Q. So if we could have then, please, 2381? And this is another e-mail from yourself to Maria

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Mendes, August 7th, 2007. "As per our conversation, this is the requested material. To send this as soon as possible would be deeply appreciated. Full details of antigen retrieval to include instrument used, type of buffer," and it goes on from there. "Full details of antibody dilution, full details of DAB used, to include supplier and supplier code number. Lastly, I need to know if they used an automated platform, such as Ventana or DAKO auto stainer or whether they tested everything manually without an automated system."

So what's this? This is now August 2007. Why are you requesting this information now?

MR. DYER:

A. Again, I believe that's linked directly to the class action.

CHAYTOR, Q.C.:

Q. So Ms. Predham was asking you to obtain this information?

MR. DYER:

A. I would imagine, yes.

CHAYTOR, Q.C.:

Q. And if we could have then, please, 2383? And

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it's October 15th '07, and you're included in this e-mail from Mr. Gulliver, and it says "the list attached, upon review by me and Barry, has produced three more patients that have not been sent to Mount Sinai for retesting. They're on list number three, patient 6, 9, 17. Two are from Lab City and one from St. Clare's."

MR. DYER:

A. Okay, that's Lab -

CHAYTOR, Q.C.:

Q. "Info is all there on the sheet. Should you contact these patients to let them know?" So now this is October, mid October '07.

MR. DYER:

A. Okay.

CHAYTOR, Q.C.:

Q. That the Lab City issue appears to have come up.

MR. DYER:

A. Good point. Okay, well, again, it must have--it may have been patients that were phoning then. It's all--you know, it's all come together as one.

CHAYTOR, Q.C.:

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Q. So July obviously had to be other patients.

MR. DYER:

A. And maybe it was, yes.

CHAYTOR, Q.C.:

Q. And what about the one from St. Clare's, do you know how was that patient missed?

MR. DYER:

A. I can't remember now. If I had the report, I'd be able to--I might be able to tell you.

CHAYTOR, Q.C.:

Q. I don't know if this is helpful to you then. This is--so nothing else stands out as to some issue in the system which caused the person to be overlooked?

MR. DYER:

A. I don't think so. I think we honestly just missed those--I think we just honestly missed those patients, those couple of patients.

CHAYTOR, Q.C.:

Q. And if we could have, please, 1836? And this is an exchange again with Maria Mendes, November 6th, 2007, re: retrospective study versus consultation. "Hi, Barry and Dr. Denic. Dr. Denic, I mentioned in my phone conversation that I would give you a time line

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for the retrospective samples we have" and she goes on from there. "In regards to Barry's question, the reason why you are not getting slides from the consults is that it is not our general process to send the stained consult slides back to the client. We only send the blocks. In the case of the retrospective study, we sent the slides and blocks back as this was a special case. I am therefore copying Dr. Pritzker on this e-mail in order for him to okay this deviation from our consult protocol."

So I take it you were looking for the slides from the consults?

MR. DYER:

A. Well, what happened was this is in the summer of -

CHAYTOR, Q.C.:

Q. This is November.

MR. DYER:

A. Oh, this is fall. Yes, what we started doing was we started to document every single slide that came back from Mount Sinai for the retesting, and as we were going through the documentation, as we were going through each

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one, this is one of the things that Mary was doing in the evenings, and this is one of her big documentation things she was doing for me. We had, you know, thousands of slides came back and so did the blocks. So I wanted to record every single thing that came back. Everything that came back, I believe it came back that summer, but it was all in Dr. Cook's office locked away. So I got permission to access it and start documenting everything that came back, and as I was going through the documentation, I was noticing that we had patient results with no slides. So then I sent her an e-mail and asked her, you know, why weren't we getting the--why weren't we getting everything back, and she explained their protocol was is if they did a consultation, they interpreted that and they kept it. So for those cases, I don't have those slides.

CHAYTOR, Q.C.:

Q. So you never did receive the slides?

MR. DYER:

A. No, I did not.

CHAYTOR, Q.C.:

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Q. Okay. If we could have, please, P-0488? And page 100, please? And this is an executive management committee meeting, November 14th, 2007. Sorry, I'm having trouble with my mouse again. If you could scroll down, please, for me, Registrar? Okay, this is good. Thank you. 3.13, ER/PR. It says "with respect to the retesting of ER/PR, Eastern Health St. John's unilaterally decided, i.e. director and manager, to go back to January 1997 when the first testing was carried out. However, in correspondence from the clinical chief, Dr. Don Cook, to the other boards, it referenced May 1997. Pat Pilgrim and Oscar Howell are following up on the reasons why Eastern Health managers retested back to January 1997."

First of all, Mr. Dyer, is that correct? Did you go back to January 1997 to start identifying patients for retesting?

MR. DYER:

A. Mr. Gulliver ran the searches and I believe he did start January 1.

CHAYTOR, Q.C.:

Q. Okay, and was any discrepancy as to what was asked of other boards, in terms of time

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frames, brought to your attention?

MR. DYER:

A. Yes, I believe that the actual--when I saw the actual form, it was--I believe they're right, it was May of '97, yes.

CHAYTOR, Q.C.:

Q. Okay, and so were inquiries made of you or Mr. Gulliver by Ms. Pilgrim or Dr. Howell about this issue?

MR. DYER:

A. Not to me, I don't think.

CHAYTOR, Q.C.:

Q. Do you know anything further about that issue?

MR. DYER:

A. I think--no, I think Terry and I might have talked about it after the fact, but I believe we or Terry went back to 1997 to start the actual search was because Dr. Khalifa was reading all ER/PRs in the province for 1997. So I believe he went back--I think that's why he went back to January 1, but I don't think that either of those people actually spoke to me about it.

CHAYTOR, Q.C.:

Q. Whereas in the other--it may have been May

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of1997 for the other regions?

MR. DYER:

A. Yes, I think it came up after the fact. It might have been months later, I believe. I think Dr. Cook might have actually spoke to me or something about it, but it was months and months later.

CHAYTOR, Q.C.:

Q. Your test parameters included January 1997?

MR. DYER:

A. Yes, for all patients.

CHAYTOR, Q.C.:

Q. And that would have been all patients for the province?

MR. DYER:

A. Well, I believe at the time--again, I was told at the time that Dr. Khalifa was reading all ER/PRs for the province in 1997.

CHAYTOR, Q.C.:

Q. And so there shouldn't be--I just want to make sure that there's no gap, that the patients in the other regions of the province, if the start date was May 1997 for them, that shouldn't be of any concern because they should have been tested at St. John's between

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January and May. Is that your understanding?

MR. DYER:

A. That's my understanding.

CHAYTOR, Q.C.:

Q. Okay. Mr. Dyer, I take it that Eastern Health continues to do other IHC work for the other regions?

MR. DYER:

A. Yes, they do.

CHAYTOR, Q.C.:

Q. Okay, and I realize not ER/PR right now.

MR. DYER:

A. Yes, correct.

CHAYTOR, Q.C.:

Q. Do they send--in doing ER/PR work, do they send blocks or do they now create their own slides?

MR. DYER:

A. I believe--again, I'm not in there right now. I believe that Corner Brook actually sends slides. I think everyone else sends blocks. I'm not quite sure though.

CHAYTOR, Q.C.:

Q. Is there anything--so Corner Brook does their own slides?

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MR. DYER:
A. I think Corner Brook has been sending some of their slides.
CHAYTOR, Q.C.:
Q. Okay, and do you know whether or not any thought has been given--is it to be the intention, if ER/PR is resumed at Eastern Health for other regions, would it be the intention to have them send blocks or send slides?
MR. DYER:
A. I don't know if we've actually made that type of decision.
CHAYTOR, Q.C.:
Q. And in terms of Western sending slides -
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. - is there any concern that depending on the processing used by Western, that their tissue may not have been exposed to the same processing as your control slides in St. John's?
MR. DYER:
A. Again, where we're a reference centre, it

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wouldn't make a difference if they sent the block or the slide. If they sent us a block, it's already gone through their whole processing system, their whole process.
CHAYTOR, Q.C.:
Q. Their process?
MR. DYER:
A. Right, so if they sent us a block, all we would do is cut the slide at three microns--cut the block at three microns and put it on a positively charged slide and when Corner Brook wanted to start sending slides, I spoke to their manager to ensure that they were using the same slides that we were using, and that's what they're doing.
CHAYTOR, Q.C.:
Q. So there's no concern if that--if in processing the block, their procedures weren't the same as what your control tissue may have gone through at Eastern Health?
MR. DYER:
A. Again, we have no control over how they processed the tissue.
CHAYTOR, Q.C.:
Q. No, I realize that. I'm just asking you, you

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know, as someone who knows about technology, whether that would be a concern to you?
MR. DYER:
A. For--again, that's more of a clinical question, I think. Technically -
CHAYTOR, Q.C.:
Q. In terms of how the tissue is processed?
MR. DYER:
A. Well, technically, when it comes to--our system is critiqued around, just like any system, I would imagine, in the country, our system is critiqued around the control tissue that we use. We don't critique our tissue--we don't critique our protocol based on how all of the eight laboratories would process their tissue. That would be--I don't think that would be possible.
CHAYTOR, Q.C.:
Q. Okay. If we could have, please, P-2380? This is an e-mail from yourself to Reza, copied to Mr. Gulliver, August 3rd, 2007.
MR. DYER:
A. Okay.
CHAYTOR, Q.C.:
Q. And unfortunately, my mouse is not working.

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Okay, that's fine. And it says "as a follow up to our meeting from this morning and as per your request, please see below challenges around requested information. Date specimen sent out, not all patients have this information. To get a complete list, you may have to reference the missing data with the original retested result from Mount Sinai. There may be 500 to 700 reports to review." Then you have a second bullet, "specimen ID, all the specimen numbers currently documented in your system are the original numbers from the corresponding hospitals. All of the actual results are reported in multiple manners. There are four internal sites, three application databases in St. John's alone. Not all original specimen numbers may be attached to the Mount Sinai report. Also, all out-of-town patients were given a specimen number which is linked to the original Health Sciences testing specimen number, which is not directly linked to the original list of our out-of-town patients. We will hard copy all of out-of-town results for cross-referencing," I think you mean there.

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"Pathologists original report, the Health Science referred specimen number identifies the ordering pathologist for each specimen. However, it will ID who actually read the report. You will have to read each individual original report to determine." What's this all about?

MR. DYER:

A. This is information that--is it NLCHI, I believe?

CHAYTOR, Q.C.:

Q. Yes.

MR. DYER:

A. Was recommending--was looking for. So which one do you want me to try and explain?

CHAYTOR, Q.C.:

Q. Well, let's start at the bottom and work our way up.

MR. DYER:

A. So the HSC referred specimen number identifies the ordering pathologist for each specimen. However will ID--however, it will not ID -

CHAYTOR, Q.C.:

Q. Should that be it will not ID?

MR. DYER:

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A. Yes, it will not ID who actually read the report. You would have to read each individual original report to determine this. Yes.

CHAYTOR, Q.C.:

Q. Okay. So the referred specimen number will tell you who ordered the test?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Which pathologist ordered the test?

MR. DYER:

A. Correct.

CHAYTOR, Q.C.:

Q. But the word "not" is left out of there.

MR. DYER:

A. It is.

CHAYTOR, Q.C.:

Q. It will not ID who actually read the report.

MR. DYER:

A. Correct.

CHAYTOR, Q.C.:

Q. So in order to get that pathologist's identity, you'd have to actually look at who signed off on the pathology report?

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MR. DYER:

A. You would have to read the actual original report.

CHAYTOR, Q.C.:

Q. Yes, okay.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay, and how does the specimen, referred specimen number, how does that identify the ordering pathologist?

MR. DYER:

A. So this -- this statement is mainly about out of town patients. So what would happen is every specimen that came in would come in with a requisition and we would give it a referral number. We would give it a referral number and the pathologist who was ordering it would be identified as the ordering pathologist, but I could not confirm just because pathologist "A" actually ordered this test, that they actually read the result.

CHAYTOR, Q.C.:

Q. And I would take it normally, though, the pathologist who orders the test in the normal

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situation would be also the pathologist who interprets the test?

MR. DYER:

A. That's the usual practice, I believe.

CHAYTOR, Q.C.:

Q. That's the usual practice?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. So is there a way in your Meditec system to identify which pathologist ordered the test or the out of town -- for those specimens that are referred in from outside Eastern Health, can you in Meditec identify who ordered the test?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay.

MR. DYER:

A. It was all done through data -- through order entry.

CHAYTOR, Q.C.:

Q. Okay.

MR. DYER:

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A. So, yes.
CHAYTOR, Q.C.:
Q. Thank you.
COMMISSIONER:
Q. So when you get a request from out of town, you give it your number?
MR. DYER:
A. We give it a reference number so we can track it.
COMMISSIONER:
Q. And enter that into your Meditec system?
MR. DYER:
A. Yes.
COMMISSIONER:
Q. The fact that you got the request and who requested it and from where it came, etc, etc?
MR. DYER:
A. Yes.
COMMISSIONER:
Q. So that from there on in within your internal system, you can track it by your own number?
MR. DYER:
A. We would track it by our number, yes.
COMMISSIONER:
Q. Okay.

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CHAYTOR, Q.C.:
Q. Now, Mr. Dyer, thank you so much for your patience. It's been a bit longer than we anticipated. Is there anything else that I haven't covered with you that you think would be useful to the Commissioner and her mandate?
MR. DYER:
A. No, I think we were pretty good detail.
CHAYTOR, Q.C.:
Q. Okay, thank you. I'm sure some of my colleagues will have questions.
COMMISSIONER:
Q. Mr. Pritchard.
MR. PRITCHARD:
Q. Commissioner, Ms. Brazil is going to (inaudible).
COMMISSIONER:
Q. All right. Ms. Brazil.
MR. BARRY DYER - EXAMINATION BY MS. JACKIE BRAZIL
MS. BRAZIL:
Q. Good afternoon, Mr. Dyer. My name is Jacqueline Brazil and I appear on behalf of Her Majesty, on behalf of the province, and I just have a couple of very quick questions for you. Mr. Dyer, Ms. Chaytor just questioned

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you about the telephone conversation that you had with Trish Wegrynowski in May of 2007, and as she told you, when Ms. Wegrynowski testified here, she said that you told her that the Premier may read her report, and I just wanted to clarify a couple of points with you with respect to that.
MR. DYER:
A. Sure.
MS. BRAZIL:
Q. With respect to her testimony and then your subsequent testimony. Mr. Dyer, you've already testified that you don't have a whole lot of recall around what you were told when you were asked to make that call.
MR. DYER:
A. Yes.
MS. BRAZIL:
Q. But could it have been that you -- you said you heard that maybe the Minister, who you thought to be the Minister of Health, may read the report.
MR. DYER:
A. Yes.
MS. BRAZIL:

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Q. Could that have been the Deputy Minister of Health?
MR. DYER:
A. Again I can't -- I really don't remember. Again I can't really remember who it was. It could have been the Deputy Minister, it could have been the Minister, I don't know.
MS. BRAZIL:
Q. Right, and -- because there's been testimony here at the inquiry already that John Abbott, who was the Deputy Minister at the time, requested the reports and that Mr. Tilley, George Tilley, was prepared to provide the reports, placed them in an envelope on his desk, subsequently left the position, and when Louise Jones found the reports, she decided that she wouldn't send them. Now do you recall hearing any information about that?
MR. DYER:
A. Of that actually happening?
MS. BRAZIL:
Q. Yes.
MR. DYER:
A. No.
MS. BRAZIL:

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Q. So you weren't involved?
MR. DYER:
A. No.
MS. BRAZIL:
Q. You weren't party to that whole situation at all, you have no knowledge of that?
MR. DYER:
A. That doesn't -- no.
MS. BRAZIL:
Q. And irrespective of whether you heard that maybe the Minister or the Deputy Minister might read the reports, do you have any knowledge of whether they actually did or didn't read the reports?
MR. DYER:
A. No.
MS. BRAZIL:
Q. You don't. So that's where the issue ended for you, you heard no more about it?
MR. DYER:
A. No, I didn't follow anything after that, so I don't recall anything after that.
MS. BRAZIL:
Q. All right, those are my questions, Mr. Dyer.
COMMISSIONER:

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Q. Thank you, Ms. Brazil. Mr. Browne.
MR. BROWNE:
Q. Yes, Commissioner, thank you.
MR. BARRY DYER - EXAMINATION BY MR. PETER BROWNE
MR. BROWNE:
Q. Good morning, Mr. Dyer. My name is Peter Browne, I represent a number of physicians who have been asked to testify here at the inquiry. I want to go back to your evidence on Monday and just sort of talk about a couple of subjects and that is first of all your training and your experience as you moved up through the system. So you started at the Janeway in 1989, is that right?
MR. DYER:
A. 1986.
MR. BROWNE:
Q. 1986, okay, and the Janeway -- well, before we deal with that. So you were practising at the Janeway when the Health Care Corporation of St. John's, all hospitals were merged and became Health Care Corporation of St. John's?
MR. DYER:
A. That was in '96, yes.
MR. BROWNE:

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Q. 1995/1996, I think that happened we've heard. Was there -- do you recall back then was there any apprehension, concerns among, I guess the technical side, what may happen, what this consolidation or merger may do to technical services and so on?
MR. DYER:
A. Yes, I'm sure there was discussion about it.
MR. BROWNE:
Q. No, but do you recall?
MR. DYER:
A. Do I recall; yes, I do recall.
MR. BROWNE:
Q. And was there apprehension, was there fear, what do you recall?
MR. DYER:
A. There was -- definitely there was apprehension, yes. I went through it myself.
MR. BROWNE:
Q. And what sort of apprehension did you have?
MR. DYER:
A. The major apprehension?
MR. BROWNE:
Q. Uh-hm.
MR. DYER:

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A. Will I have a job at the end of the day.
MR. BROWNE:
Q. So there were concerns about job losses at that time?
MR. DYER:
A. Yes.
MR. BROWNE:
Q. And then in -- was it 1998/1999 the Janeway closed and moved?
MR. DYER:
A. I believe it was 2001.
MR. BROWNE:
Q. 2001, okay. So prior to that then, the Grace closed in 2000.
MR. DYER:
A. Okay.
MR. BROWNE:
Q. Do you recall any transfer of services to Health Sciences of technical staff and pathologists around that time?
MR. DYER:
A. I wasn't involved if there was. I didn't work at the Grace.
MR. BROWNE:
Q. No, no, you worked at the Health Sciences.

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MR. DYER:
A. No, I didn't move to the Health Sciences until 2001.
MR. BROWNE:
Q. 2001. Sorry, my apologies. So you moved in 2001, okay. So prior to that we understand the Grace closed. When you moved, was there any discussion about -- at that time about, I guess, what had happened previously with the Grace personnel coming over and technicians? Did you know any technicians --
MR. DYER:
A. Prior to the 2001 move, Mr. Gulliver had already and I -- he became -- I think in 1996 he became manager of pathology, and he took over the Janeway, and we actually consolidated services from the Janeway to the Health Science prior to the actual move. So in '98/'99, we were actually already in that process.
MR. BROWNE:
Q. Okay.
MR. DYER:
A. For pediatrics.
MR. BROWNE:

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Q. Okay, and you mentioned as well, I think, around that time that there were different ideas at different sites. The Janeway had its own ideas --
MR. DYER:
A. I think everyone had their own different protocols for how they did things, yes.
MR. BROWNE:
Q. And did you experience that sort of, I guess, differences when you moved to the Health Sciences?
MR. DYER:
A. Yes.
MR. BROWNE:
Q. We've heard about around this time period -- you moved in 2001. Was there emphasis, at least from your perception, about efficiency and concerns about cut backs that existed around that time?
MR. DYER:
A. All the time.
MR. BROWNE:
Q. And while you were at the Health Sciences, were you involved in any way to provide input into the HAY report? Did you know about that?

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MR. DYER:
A. Provide information, no; did I know about it at the time, not initially, no, I didn't.
MR. BROWNE:
Q. Did you subsequently when you -- you became in March, you said, 2002, you became manager?
MR. DYER:
A. Yes.
MR. BROWNE:
Q. Did you become aware of the HAY report at that time?
MR. DYER:
A. Yes, I did.
MR. BROWNE:
Q. Do you recall whether or not there was anything in the HAY report addressing the consolidation of technical services between the two sites, St. Clare's and --
MR. DYER:
A. I wouldn't -- I wouldn't remember. I don't remember if there was.
MR. BROWNE:
Q. Would you look to that in terms -- you later wanted to look to consolidation of services. Did you look in there to see if that was

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addressed at the time?
MR. DYER:
A. I think as the new manager at the time, no, I don't think I -- I don't recall reading it for that purpose at all. I don't think -- I don't even recall reading it.
MR. BROWNE:
Q. So you never - you knew it existed, but you never read it?
MR. DYER:
A. Yes.
MR. BROWNE:
Q. Have you subsequently read it at any point?
MR. DYER:
A. I can't remember if I actually sat down and read the entire document.
MR. BROWNE:
Q. Okay, did you talk to anybody about the issue -- I mean, Mr. Gulliver was your immediate superior. Was it -- was there any discussion around the HAY report that that may have been addressed in the HAY report about consolidation or not to consolidate both sites?
MR. DYER:

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A. I think -- the things that stand out most for me in the HAY report was -- I believe the HAY report was already being discussed by managers when I actually got hired, so I came in after the fact. What I remember was -- the big thing that stood out for me was reduction of staff.

MR. BROWNE:

Q. And more efficiency?

MR. DYER:

A. Yes.

MR. BROWNE:

Q. There was emphasis on efficiency in the HAY report as well?

MR. DYER:

A. I think there was -- when I actually got involved, I think there was a debate over our units, our workload.

MR. BROWNE:

Q. And I'll come to that in a bit because that is something that you do address later on in your divisional meetings and your planning?

MR. DYER:

A. I actually wrote the program for part of it, yes.

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MR. BROWNE:

Q. Right, but those issues were in -- you understood were in the HAY report and then subsequently issues that you addressed in, I think, lab planning day and so on?

MR. DYER:

A. Yes.

MR. BROWNE:

Q. Now in 2002, you become -- is it March, 2002, you become the manager?

MR. DYER:

A. Yes, I believe so.

MR. BROWNE:

Q. Prior to that, what training did you have in -- did you undergo any special training to become a manager?

MR. DYER:

A. From -- special training from 19 -- I mean, when I got hired at the Janeway, every year I would do courses, either university or college. I did leadership training, things like this. I went to all the conferences, I would lecture, things of that nature. So it was good progress. I think I had a very good background. I was also involved with the union, so I had a good background in how to negotiate, how to deal with -- you know, as a shop steward, you would be involved with arbitrations and occurrences and things like that, so I had a wide range of training.

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MR. BROWNE:

Q. But actual hands-on management, did you have any experience to that degree?

MR. DYER:

A. No, not -- there was a couple of techs who worked with me at the Janeway.

MR. BROWNE:

Q. And you mentioned you did some courses. Where did you do those courses?

MR. DYER:

A. Memorial University.

MR. BROWNE:

Q. Was it Faculty of Business?

MR. DYER:

A. Yes.

MR. BROWNE:

Q. And did you actually complete -- did you --

MR. DYER:

A. No, for personal reasons, I stopped.

MR. BROWNE:

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Q. Okay, and you had those courses completed before you became a manager, did you?

MR. DYER:

A. Oh, yes.

MR. BROWNE:

Q. And were you enthusiastic when you came to -- you strike me as an enthusiastic individual.

MR. DYER:

A. Very much so.

MR. BROWNE:

Q. And you had ideas that you wanted to implement?

MR. DYER:

A. Yes.

MR. BROWNE:

Q. Okay. One of those was to have consistency and standardization, is that what I wrote down?

MR. DYER:

A. Yes. We actually tried -- we actually started with that process back in '98 with all four sites under the direction of Mr. Gulliver.

MR. BROWNE:

Q. So Mr. Gulliver attempted to do that in --

MR. DYER:

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A. Back in 1998.
MR. BROWNE:
Q. So this is something that both you and Mr. Gulliver had talked about when you came to the job?
MR. DYER:
A. This wasn't something new.
MR. BROWNE:
Q. Right, but was it something that he talked to you about when you came to the manager's position?
MR. DYER:
A. In terms of?
MR. BROWNE:
Q. Well, in terms of vision and your ideas and so on?
MR. DYER:
A. Yes, I had my own vision, I believe, or ideas of what I thought would help benefit.
MR. BROWNE:
Q. And you discussed this with Mr. Gulliver?
MR. DYER:
A. With all our team leaders.
MR. BROWNE:
Q. What discussions did you have with Dr. Cook

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about sort of creating standards and protocols for both sites around that time?
MR. DYER:
A. I believe I had discussions with Dr. Cook and Dr. Parai at our site chief meetings.
MR. BROWNE:
Q. And did you suggest at that time having protocols? I mean, this is something that wouldn't happen overnight --
MR. DYER:
A. No, this was going to be a process.
MR. BROWNE:
Q. Right.
MR. DYER:
A. There was no doubt about it.
MR. BROWNE:
Q. But in the interim did you think about if you want to have standardization, the notion of having protocols or standards?
MR. DYER:
A. Again just to give you an example, and again I'm not trying to pick on St. Clare's, but in the frozen section at St. Clare's, they had two different protocols for H & E staining and I asked Dr. Cook can we standardize that down

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to one and the answer was no. I think there was one physician there who insisted on having that protocol and the other five insisted on another. Therefore, we had to carry two.
MR. BROWNE:
Q. Now you also mentioned that the previous manager at St. Clare's -- who was that?
MR. DYER:
A. I believe his name was Mr. John Murphy.
MR. BROWNE:
Q. Okay, and you took over his position? There were two -- at the time that you came into your position, you became manager for both sites, is that right?
MR. DYER:
A. Yes, I became manager for, I think, of Health Care Corporation.
MR. BROWNE:
Q. Right. Prior to that, there was two managers on both -- one for Health Sciences and one for --
MR. DYER:
A. St. Clare's, I believe, yes.
MR. BROWNE:
Q. And you mentioned that -- I made a note that

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the manager at St. Clare's didn't manage, he just answered to the pathologists. What experience had you had at that point to make that judgment?
MR. DYER:
A. Mr. Murphy and I had a discussion one day. I think we had a discussion when we took him out for his retirement dinner.
MR. BROWNE:
Q. Was there good environment at the lab at St. Clare's when you started between techs and pathologists?
MR. DYER:
A. Well, again pathologists would come in and talk to them all the time, and I believe they were on a first name basis.
MR. BROWNE:
Q. And you mentioned you only spent a couple of hours each day. You'd start your day with a couple of hours at St. Clare's?
MR. DYER:
A. Yes, I had -- Catherine Parnell was a Tech III, and she came from the Grace, a lot of experience. So she was pretty well there.
MR. BROWNE:

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Q. And did you have meetings -- I think you said you'd have informal meetings with technologists from time to time. At any point prior to, I guess, February, 2003, did you have any meetings with the St. Clare's technicians?
MR. DYER:
A. Technologists?
MR. BROWNE:
Q. Technologists, sorry.
MR. DYER:
A. Regularly.
MR. BROWNE:
Q. And did you discuss at any of those meetings about timelines for consolidation?
MR. DYER:
A. Timelines themselves?
MR. BROWNE:
Q. Yes.
MR. DYER:
A. I may have. I don't know if we did specifically.
MR. BROWNE:
Q. Did you mention to them your views about timelines as to when this consolidation would

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occur?
MR. DYER:
A. I may have. You know, I may certainly have done that.
MR. BROWNE:
Q. Okay, and did you -- did they express any apprehension as to what may happen with the consolidation and these timelines?
MR. DYER:
A. I think they reacted pretty well the same way I reacted when I was at the Janeway.
MR. BROWNE:
Q. Right, so they had apprehension?
MR. DYER:
A. Most definitely. Again, you know, working somewhere for 30 years, it's a huge thing, I imagine, to get up and move. I mean, I was at the Janeway 15/16 years.
MR. BROWNE:
Q. And was there any expression about what effect a move such as that may have on morale and so on by the technologists?
MR. DYER:
A. Did we discuss that?
MR. BROWNE:

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Q. Yes.
MR. DYER:
A. I don't know if we actually discussed the morale specifically.
MR. BROWNE:
Q. And did you share the concerns of the technologists with Dr. Cook?
MR. DYER:
A. Did we ever discuss -- I don't know if we ever discussed it. I'm sure -- I believe Dr. Cook was already aware of it.
MR. BROWNE:
Q. Right, and did he come to you and ask you -- tell you or suggest to you that some of the technologists came to him and they were concerned, and he asked you to tone down the rhetoric about consolidation?
MR. DYER:
A. No, the only time he asked me to tone it down was when the pathologists actually threatened to quit over it. That's when we had our -- we had that discussion.
MR. BROWNE:
Q. Is it possible he spoke to you about concerns of the technologists as well?

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MR. DYER:
A. If he did, I'm sure I would have spoke back to him about it, yes. I can't -- anything is possible, I guess.
MR. BROWNE:
Q. Did you ever suggest to him at any point that you weren't answerable to the clinical chief but you were answerable to the program director?
MR. DYER:
A. In that one meeting where he was -- in that one meeting where I wrote my letter, I explained to him that I reported to Terry Gulliver, yes.
MR. BROWNE:
Q. is it in that meeting as well that he raised with you the concerns that were being relayed to him by the staff at St. Clare's about the consolidation?
MR. DYER:
A. No, he did not at that time.
MR. BROWNE:
Q. Did Dr. Cook ever suggest to you in terms of discussing around consolidation the fact that there should be a quality initiatives review?

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MR. DYER:
A. I think later on that came up. I think -- I'm not sure if that came out of our planning day, but I think that came up at some point.
MR. BROWNE:
Q. And did you have a strategic plan for, I guess, a long term plan for both pathology and surgery and what effect the consolidation of technical services may have on surgery and pathology at St. Clare's? Was that part of your game plan?
MR. DYER:
A. I received a lot of advice from around the country as to how hospitals were actually -- when it came to consolidation of pathology, actually in Newfoundland we were behind. Many hospitals throughout the country had already been doing that, and residents and pathologists who were currently working with us even talked to me about how when they were away, how it was done, so it just wasn't something we were just going to do -- we had a plan in place. We would slowly work towards how we thought this would work, and it was never the intention to remove the frozen

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section or anything like that from St. Clare's.
MR. BROWNE:
Q. We'll come to that, but were you aware that Dr. Cook also did surveys across the country?
MR. DYER:
A. No, I was not.
MR. BROWNE:
Q. Were you aware that, in fact, he went and visited Kingston about the merger that occurred between two hospitals in Kingston?
MR. DYER:
A. If he did, he didn't tell me about it.
MR. BROWNE:
Q. Now did he express to you any -- did he express to you the fact that he was against consolidation, St. Clare's was against consolidation, or that they were concerned about the timing?
MR. DYER:
A. My impression was he was against consolidation. He never -- he never ever said to me that it was a timing issue. From what I understand, this issue was actually brought up back in 1997 and 1998 when Health Care

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Corporation became involved.
MR. BROWNE:
Q. But you weren't -- you weren't involved in any discussion with Dr. Cook in 1997 around that?
MR. DYER:
A. No.
MR. BROWNE:
Q. So you can't really speak to that?
MR. DYER:
A. No, I can just tell you what I've been told.
MR. BROWNE:
Q. Now were you aware that Dr. Cook asked for and there was done a quality initiatives review?
MR. DYER:
A. I believe I was informed by Mr. Gulliver.
MR. BROWNE:
Q. Right, and were you also told that there was discussion with Dr. Cook around the Tek Xpress?
MR. DYER:
A. Pardon?
MR. BROWNE:
Q. Were you told about discussions -- or maybe you did have them with Dr. Cook around the introduction of the Tek Xpress around this

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time?
MR. DYER:
A. What kind of discussion?
MR. BROWNE:
Q. Well, in terms of what efficiency that may have for workloads for technologists?
MR. DYER:
A. We may have discussed that.
MR. BROWNE:
Q. Were you aware that eventually Dr. Cook, in fact, supported consolidation?
MR. DYER:
A. I think I've read it, but he never ever verbally told me.
MR. BROWNE:
Q. Registrar, can we have Exhibit P-1927. Now you see this item #5 there?
MR. DYER:
A. Yes.
MR. BROWNE:
Q. And this is May/June, 2005, and it says here, "We have centralized our pathology technical services, General Hospital. I thought, though I was initially opposed to this, the advent of new technology, particularly automated tissue

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processor and future requisition of tissue embedder, have alleviated many of my concerns. There are currently some problems with turnaround times and delivery of slides to pathologists at St. Clare's. However, I anticipate this problem to be overcome in the next few weeks". So this is one indication that Dr. Cook supported the consolidation?

MR. DYER:

A. Was this actually sent to me?

MR. BROWNE:

Q. This is MAC minutes.

MR. DYER:

A. Oh, okay. Again I don't get MAC minutes.

MR. BROWNE:

Q. So it was never brought to your attention that he, in fact, supported the consolidation?

MR. DYER:

A. He must have -- again verbally he never told me, but he must have supported it because eventually it happened.

MR. BROWNE:

Q. Were you made aware of the results of the quality initiatives review?

MR. DYER:

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A. I don't -- I didn't read it, but I think I was made aware of it.

MR. BROWNE:

Q. Around that time in terms of the notion around consolidation, was there a workload study, work structure study prepared?

MR. DYER:

A. Not officially, but like I said, we struck a committee, and went through everything that we were doing.

MR. BROWNE:

Q. Okay, and I noticed a couple of exhibits we had, you're invited to the site chief's meetings and are you invited to the sort of clinical chief's meetings as well, as manager?

MR. DYER:

A. What's clinical chief's meetings?

MR. BROWNE:

Q. Sorry, not -- let me rephrase that. The departmental meetings, you were invited to departmental meetings at some point. We've seen --

MR. DYER:

A. At some point I was, yes.

MR. BROWNE:

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Q. Right, is there a corresponding protocol for, say, pathologists or site chiefs or clinical chiefs to be invited to lab manager meetings?

MR. DYER:

A. You would have to ask Mr. Gulliver that. I wouldn't be able to tell you.

MR. BROWNE:

Q. I mean, I just -- I was struck by some of the meetings you have here and there doesn't seem to be any pathologists at any of your division meetings, the various division meetings.

MR. DYER:

A. No, not -- not that I can remember. I don't think there was. There is today, but I don't think there was.

MR. BROWNE:

Q. There is today?

MR. DYER:

A. Yes.

COMMISSIONER:

Q. Mr. Browne, when you find a convenient spot.

MR. BROWNE:

Q. Sure. Maybe this would be a good point. Thank you, Commissioner.

COMMISSIONER:

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Q. Okay, we'll break until ten after two.

(LUNCH BREAK)

COMMISSIONER:

Q. Mr. Browne.

MR. BROWNE:

Q. Thank you, Commissioner. Good afternoon, Mr. Dyer.

MR. DYER:

A. Good afternoon, Mr. Browne.

MR. BROWNE:

Q. Now I just want to go back to again to talk --

COMMISSIONER:

Q. Mr. Browne, I don't know if you've been notified, but the mouse is now working for you, in any event, so you can scroll at your heart's content.

MR. BROWNE:

Q. Thank you very much.

COMMISSIONER:

Q. And I believe that yours is working as well, Mr. Dyer.

MR. DYER:

A. Thank you.

MR. BROWNE:

Q. Now I just want to go back to a couple of

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things you mentioned to me this morning. You mentioned one of the sort of leadership experiences you had prior to becoming manager was your were shop steward, is that right?

MR. DYER:

A. I was the shop steward at the Janeway, yes.

MR. BROWNE:

Q. Yes, and how long were you shop steward for?

MR. DYER:

A. I'm not sure, six or seven years.

MR. BROWNE:

Q. And I guess in that time period as shop steward, there were various duties you would do on behalf of your members in the union, including grievances and so on?

MR. DYER:

A. Yes.

MR. BROWNE:

Q. So you're used to documenting matters and incidents as part of being a shop steward, is that right?

MR. DYER:

A. What I would do is if someone came to me and I had to speak to a manager, they would already have that written for me.

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MR. BROWNE:

Q. But the notion of having documentation regarding incidents and so on, you were quite familiar with?

MR. DYER:

A. For an incident like that, yes.

MR. BROWNE:

Q. Now if we could look at -- now if we could look at Exhibit, Registrar, 2316, please. Mr. Dyer, you were shown this earlier by Ms. Chaytor, and I just have a couple of questions. I'm trying to look -- oh, yes, workload measurement, see that there.

MR. DYER:

A. Yes.

MR. BROWNE:

Q. Okay, now I know this is not attributed to you, but you were at this meeting if you see up above there. This is Mr. Gulliver who was speaking, but I'm curious to know this statement. It says, "Terry informed the group that by the next fiscal year, 2002/2003, he would like to see all divisions reporting their workload based upon patient care versus non-patient care".

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MR. DYER:

A. Yes.

MR. BROWNE:

Q. Now I'm struck by that, because I thought this was all about patient care, and I'm -- what does this mean?

MR. DYER:

A. I believe non-patient care refers to having -- like, this would be considered non-patient care, I guess, is when you have meetings.

MR. BROWNE:

Q. Okay, so it's referring to --

MR. DYER:

A. So referring to duties that actually does not -- is not actual technical work, but is required to be able to perform technical work, I guess.

MR. BROWNE:

Q. Okay, so we've heard the notion of protected time here. Is that something what's being generated here about having this ability --

MR. DYER:

A. Yes, I think -- yes, I guess -- I don't know if it's protected time, but, I guess, it's more like if you have a staff meeting or if

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you go to education seminars, that it should be documented. I think what happens, I think that came out of the actual HAY report.

MR. BROWNE:

Q. Okay, so that's what that's referring to?

MR. DYER:

A. Yes, there was an issue, I think, based on how we -- how the units were collected.

MR. BROWNE:

Q. And then he also talks about in the next paragraph, "We'll supply multi-productivity statistics for the program". What was the importance of having that information?

MR. DYER:

A. I guess to see -- that was one of our benchmarks at the time.

MR. BROWNE:

Q. And when you say benchmarks, is that again coming out of this HAY report?

MR. DYER:

A. Yes, yes.

MR. BROWNE:

Q. But again you hadn't read the report, this was your understanding?

MR. DYER:

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A. No, I think I was new. I was --
MR. BROWNE:
Q. Sure.
MR. DYER:
A. At this time.
MR. BROWNE:
Q. And this is the document we saw yesterday, or maybe even on Monday, was that this meeting that you informed, I guess, your colleagues about your plans for the pathology lab in terms of the consolidation?
MR. DYER:
A. What we actually were talking about at the time.
MR. BROWNE:
Q. Okay. Now in the -- was there any feedback in terms of your colleagues about your plans?
MR. DYER:
A. I don't know. I can't remember, to be honest with you. It was a long time ago.
MR. BROWNE:
Q. Now looking at that time period, because I think we talked about today -- earlier this morning about your planning day in March 2003, and you said you spent most of your time at

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the Health Sciences in that time period?
MR. DYER:
A. Yes.
MR. BROWNE:
Q. Correct, and you would spend a couple of hours probably each morning, you say, at St. Clare's?
MR. DYER:
A. Yes.
MR. BROWNE:
Q. And during that time period as well, we've heard from two technologists, Mr. Green and Mr. Simms, that they were transferred, were they not?
MR. DYER:
A. At some point they were, yes.
MR. BROWNE:
Q. Right, so --
MR. DYER:
A. But I don't think -- Mr. Green wasn't transferred, he actually applied for a position at Health Science.
MR. BROWNE:
Q. Okay.
MR. DYER:

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A. But I believe Mr. Simms was transferred.
MR. BROWNE:
Q. But at -- so at least two -- and both of these gentlemen were senior technologists, were they not?
MR. DYER:
A. Yes.
MR. BROWNE:
Q. So this is happening around the same time as well, two senior technologists at St. Clare's moved to the Health Sciences?
MR. DYER:
A. One moved in '02 and I believe one moved in '03.
MR. BROWNE:
Q. Okay, and then you have your planning day in March?
MR. DYER:
A. I believe if the --
MR. BROWNE:
Q. Okay, well, maybe --
MR. DYER:
A. I'm not sure exactly what day it was.
MR. BROWNE:
Q. Why don't we bring it up. I think it's

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exhibit, if you want to have a look at it, 2317.
MR. DYER:
A. If it says March, that's when we had it, correct.
MR. BROWNE:
Q. Okay, and the date there, you'll see now, Mr. Dyer, is March 24th. If we turn to page four, again were you involved with the compilation of the information in this or was this sort of -- how did this come about?
MR. DYER:
A. No, I was involved -- I was involved with it.
MR. BROWNE:
Q. And in terms of the goals, were they your goals again relating back to what was suggested in the HAY report?
MR. DYER:
A. Those objectives?
MR. BROWNE:
Q. Yes.
MR. DYER:
A. I can't really tell you for sure. I think Mr. Gulliver would be the best person to answer that.

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MR. BROWNE:
Q. Because there's some themes in here that strike well with some of the information that was in the HAY report, and if we look -- we have page four on the screen there, the last two bullets, "Workload increase, reduce worked hours".
MR. DYER:
A. Yes.
MR. BROWNE:
Q. And that's for, I'm assuming, your technologists, is that right?
MR. DYER:
A. Yes. I believe we were doing a lot of overtime at that point and we were trying to reduce the overtime.
MR. BROWNE:
Q. Trying to reduce the overtime?
MR. DYER:
A. Yes.
MR. BROWNE:
Q. Was it -- in terms of reducing the overtime, was it contemplated to add more staff?
MR. DYER:
A. Again it may have been. I can't tell you for

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sure.
MR. BROWNE:
Q. Because if we go to -- again it may be just my misunderstanding here, but if you go to page 11 and just scroll down here, and it may simply be my misunderstanding of the document. Potential savings. So you're looking at potential savings, you're looking at a downgrading of one technical FT position and the reduction of one half clerical position. So you're looking at downgrading positions at this time?
MR. DYER:
A. I think what was happening there was we had two part time staff working full time in our budget, and we didn't have the money for it. So what we were doing was we were letting go one of those, and just making one permanent position, but -- understand what I mean?
MR. BROWNE:
Q. Sure.
MR. DYER:
A. They were two half time staff working full time hours.
MR. BROWNE:

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Q. Right.
MR. DYER:
A. So what we were doing was I was going to -- we were eliminating the two half time positions and making just one permanent, which is what I had the money for in my budget.
MR. BROWNE:
Q. And again trying to become more and more efficient at that point in time. Now how did that relate back to the overtime because I'm sort of not understanding here?
MR. DYER:
A. Oh, that was overtime. Like, those two positions were working a lot of overtime because that's -- they were actually working full time hours.
MR. BROWNE:
Q. Okay. And do you know how many cases were being, and I guess surgery, surgical specimens were being generated at St. Clare's and at the Health Sciences at that time?
MR. DYER:
A. I can only give rough estimates.
MR. BROWNE:
Q. Okay.

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MR. DYER:
A. I would say approximately 9,000.
MR. BROWNE:
Q. At St. Clare's?
MR. DYER:
A. Nine to 10,000 at St. Clare's.
MR. BROWNE:
Q. And Health Sciences?
MR. DYER:
A. I'd say about 16 or 17,000 rough estimate.
MR. BROWNE:
Q. And if everything was going to be consolidated, there would need to be some sort of real understanding of how specimens would be transported back and forth, would that be --
MR. DYER:
A. Yes, I think that was one of our plans, to put in a transport system.
MR. BROWNE:
Q. Right, but -- I guess we look at -- before putting one in, is it not -- maybe again I'm sort of naive here, but would it not be more prudent to look at what potential problems may occur before you put one in?

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MR. DYER:
A. We struck a committee.
MR. BROWNE:
Q. Yes.
MR. DYER:
A. And those are the things we looked at. We looked at a whole variety of things that will be involved, and transfer of specimens was one part of it.
MR. BROWNE:
Q. And was there a report generated to sort of --
MR. DYER:
A. No, there wasn't a report actually generated.
MR. BROWNE:
Q. Okay and was there any outside consultation to sort of --
MR. DYER:
A. When we looked at -- when we looked at this?
MR. BROWNE:
Q. Right.
MR. DYER:
A. Yes, we had -- the engineering group came in.
MR. BROWNE:
Q. Right, but I guess --
MR. DYER:

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A. To give ideas, and I don't know if that was one of the recommendations also.
MR. BROWNE:
Q. Okay, but you mentioned other hospitals. Did you talk about -- to other hospitals about whether they encountered any problems transporting specimens back and forth?
MR. DYER:
A. I did talk to -- oh, God, I can't remember the group in Ontario who was doing it, and I did also visit Ottawa General because they were also doing it. I actually met with the lead PA up there.
MR. BROWNE:
Q. And again did you do up any report or anything like that in terms of --
MR. DYER:
A. No, no.
MR. BROWNE:
Q. Just bear with me one second, Mr. Dyer. Your timeline, I think we have for making the transition, is at page eight, and it's highlighted right here, "Technical consolidation to Health Sciences, thereby expanding pathology services and standardizing

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quality and improving turnaround times", and it looks like the time period you're talking about is from March to June completion?
MR. DYER:
A. Yes.
MR. BROWNE:
Q. 2003?
MR. DYER:
A. Yes.
MR. BROWNE:
Q. Sorry, September.
MR. DYER:
A. September, yes.
MR. BROWNE:
Q. Replace the vacant position. So between March and September, 2003, you hoped to have all that completed?
MR. DYER:
A. Yes, and I think we had some of the stuff already done. I believe at the time we already had a engineering report done, or around that time it was done.
MR. BROWNE:
Q. But I think -- I mentioned to you today, and you weren't aware of it. You didn't consider

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inviting quality initiatives in to see if there were any quality assurance issues associated with this, did you?
MR. DYER:
A. Not at that time, no.
MR. BROWNE:
Q. In fact, Dr. Cook, I understand, initiated that?
MR. DYER:
A. Yes, but again the decision wasn't going to be made without Dr. Cook's approval, so --
MR. BROWNE:
Q. But -- and Ms. Chaytor went over this with you yesterday in terms of your goals and objectives. Quality assurance was not among the topics in your goals and objectives?
MR. DYER:
A. Again in the goals and objectives for our group -- goals and objectives, I think, again you should refer to Dr. Gulliver about, Mr. Gulliver about that, but when it came to action steps in how we could go about things like that, Dr. Cook had input as well as Dr. Parai and myself.
MR. BROWNE:

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Q. Right, but, I mean, in fairness, quality assurance is everybody's job, is it not?
MR. DYER:
A. It is.
MR. BROWNE:
Q. So everybody has to come together and look at various areas of quality assurance?
MR. DYER:
A. Yes.
MR. BROWNE:
Q. Right.
MR. DYER:
A. But at that time nobody -- I didn't bring it up, Dr. Cook didn't bring it up, and neither did Dr. Parai bring it up.
MR. BROWNE:
Q. No. Are you aware whether Dr. Cook brought it up in his own performance appraisal in terms of focusing on quality assurance?
MR. DYER:
A. I wouldn't know because I wouldn't -- I'm not privy to that.
MR. BROWNE:
Q. Okay. I'm going to move away from that now for a minute, Mr. Dyer, and ask you about in

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2003, and you were shown the memos of Dr. Ejeckam, the April, May, and June memo?
MR. DYER:
A. Yes.
MR. BROWNE:
Q. When the first memo, the April memo came out in 2003, did you speak to any pathologist about that memo?
MR. DYER:
A. I don't think I -- I don't recall speaking to anyone about it.
MR. BROWNE:
Q. Is it possible you spoke to Dr. Parai about the memo?
MR. DYER:
A. Not that I can recall. I may have, but I don't remember actually speaking to him about it.
MR. BROWNE:
Q. Do you recall what your reaction was when you got the memo?
MR. DYER:
A. I was very--when I actually spoke with Dr. Ejeckam?
MR. BROWNE:

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Q. No, when you saw the memo.
MR. DYER:
A. Well, Dr. Ejeckam spoke to me and handed me the memo at the same time.
MR. BROWNE:
Q. Right, and what was your reaction?
MR. DYER:
A. I was very surprised.
MR. BROWNE:
Q. Right. Were you upset?
MR. DYER:
A. Maybe to a degree, over the fact that, you know, nothing has ever been brought to my attention about the words that he had in that statement about inconsistent staining and that.
MR. BROWNE:
Q. Did you raise that with him? Did you speak to him about it?
MR. DYER:
A. I can't remember. We probably did talk about it, but I can't remember what we actually--what transpired.
MR. BROWNE:
Q. And do you recall speaking to any other

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individuals? Is it possible you did and you just don't recall?
MR. DYER:
A. I guess it could be possible. I think the next person I spoke to was Terry, to let him know that we were going to stop this testing.
MR. BROWNE:
Q. What about any other pathologists?
MR. DYER:
A. I don't know if I actually spoke to any other pathologists about it.
MR. BROWNE:
Q. Would you recall--do you think you would recall having a discussion -
MR. DYER:
A. I can't say.
MR. BROWNE:
Q. Now you mentioned an incident as well where you had to speak to Dr. Ejeckam about him going to the stenographers and asking for requisitions.
MR. DYER:
A. Yes.
MR. BROWNE:
Q. A large amount of requisitions.

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MR. DYER:
A. Yes.
MR. BROWNE:
Q. Do you recall when that occurred?
MR. DYER:
A. No. It was some time around the Surgical Report Committee, when he wanted this information.
MR. BROWNE:
Q. Do you know--okay, we--let's sort of work around the time frame here. We have the memo in April. Was it before the memo, do you recall?
MR. DYER:
A. I can't tell you if it was before or after.
MR. BROWNE:
Q. We've seen documentation that the Surgical Pathology Review Committee started, I think, with its first meeting around April of 2003.
MR. DYER:
A. Okay.
MR. BROWNE:
Q. Would it have been before that or at the start of that?
MR. DYER:

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A. I wouldn't be able to tell you.
MR. BROWNE:
Q. Would it have been after that?
MR. DYER:
A. Again, I wouldn't be able to tell you. I don't know.
MR. BROWNE:
Q. Was it in 2004?
MR. DYER:
A. I'm not sure.
MR. BROWNE:
Q. You have no recollection when this happened at all?
MR. DYER:
A. I can't remember when it actually happened, no. All I--what I can recollect is that Mr. Gulliver spoke to me about it. I remember when the secretary came down to me upset and I remember when Mr. Gulliver spoke to me about it. That's why I know it happened.
MR. BROWNE:
Q. And you can't tell me if it was in 2003, 2004 or 2005?
MR. DYER:
A. Again, you're not going to be able to tie me

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down on it. I don't know. It was sometime when the Surgical Committee was on the go.
MR. BROWNE:
Q. So it was already started and up and running?
MR. DYER:
A. All I know is that's when I found out that a surgical committee existed.
MR. BROWNE:
Q. Okay, but -
MR. DYER:
A. Was that first time. So was it up and running, I don't know. That's when I knew one existed.
MR. BROWNE:
Q. Well, did you--I thought you spoke to Dr. Ejeckam.
MR. DYER:
A. Pardon?
MR. BROWNE:
Q. Did you speak to Dr. Ejeckam about this?
MR. DYER:
A. About that, yes.
MR. BROWNE:
Q. Yes.
MR. DYER:

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A. About that incident?
MR. BROWNE:
Q. Yes.
MR. DYER:
A. About the--yes, I did.
MR. BROWNE:
Q. Okay, and did you ask him what the Surgical Pathological Review Committee was about?
MR. DYER:
A. No, I did not. I wasn't on it. It wasn't pertinent to me.
MR. BROWNE:
Q. Right, but you weren't least bit curious as to know what -
MR. DYER:
A. I don't think we discussed it, no.
MR. BROWNE:
Q. And why he was looking for this information?
MR. DYER:
A. I knew why he was looking for the information. He told me why he was looking for it.
MR. BROWNE:
Q. Right.
MR. DYER:
A. He was looking for the information to

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determine how many cases came in that never had clinical history on them.

MR. BROWNE:

Q. And you're not able to recall when, if it was before or after the Surgical Pathology Review Committee was started?

MR. DYER:

A. No, I wouldn't be able to tell you.

MR. BROWNE:

Q. Okay. Do you recall any discussion with Dr. Ejeckam that he was asking pathologists to flag cases and those cases were being--were to be collected by secretarial staff?

MR. DYER:

A. I think that's what we--yeah, I think that's what the plan was, after the fact, I believe. Because up to then, nothing was flagged. I believe that's when--that was one of the things I recommended, or not to flag cases, but if he wanted us to--if he wanted the--when we discussed the situation about him wanting those three or four months supply of reports, my recommendation was that if we start today, then every single case that came in, if it was identified that there was no clinical history,

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then our stenos, at the same time, could photocopy it, instead of taking on one big project that would take a day or two. Do it as they're doing their regular work. So that may be where the flagging came from. I don't know.

MR. BROWNE:

Q. And you're saying the flagging came from your suggestion to Dr. Ejeckam?

MR. DYER:

A. I'm saying I don't know if that's where it came from.

MR. BROWNE:

Q. Okay.

MR. DYER:

A. But that's one of the things I suggested, that it would be--they would be identified while we're actually doing that, while they're actually typing in the gross that day.

MR. BROWNE:

Q. Okay, and was there any discussion with Dr. Ejeckam about the types of cases?

MR. DYER:

A. Not that I know of. I think they were just trying to determine how many had clinical--how

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many had pertinent information or how many didn't.

MR. BROWNE:

Q. Ever have any recollection of speaking to Dr. Ejeckam about concerns or Dr. Ejeckam coming to you about concerns over frozen sections and how they were being taken, the utilization of technical staff?

MR. DYER:

A. What do you mean by -

MR. BROWNE:

Q. Well, in terms of whether--specifically whether or not it would be more prudent to have two technologists up in the frozen section room, one cutting, one staining?

MR. DYER:

A. I think we did have one discussion about that.

MR. BROWNE:

Q. And what was your response to him about that?

MR. DYER:

A. No, I think the way the discussion was led was how I described the instance yesterday or the day before, but we didn't have the staff to send two techs up there. So we may have--I know we discussed the issue of him wanting--

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going to the OR and he actually suggested that why not pathologists instead of going to the OR, why can't all the frozens come down. That was one of the things that he asked.

MR. BROWNE:

Q. Okay. Did you suggest to him pathologists should go to the frozen section room, along with the technologists?

MR. DYER:

A. Excuse me, I don't understand.

MR. BROWNE:

Q. Well, in that discussion, did you suggest to him that one or more pathologists should go up at the same time as technologists go up?

MR. DYER:

A. No, I still don't understand the question. Like that was--I think that was the policy, pathologists went to the frozen section room.

MR. BROWNE:

Q. Right, was it a policy that technicians go up at the same time?

MR. DYER:

A. Yes.

MR. BROWNE:

Q. Okay.

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MR. DYER:
A. No, it wasn't a policy, I don't think, but that was one of our practices we brought in.
MR. BROWNE:
Q. Right, and you said your response to him having a second technician go up was that there was insufficient staff?
MR. DYER:
A. That's correct.
MR. BROWNE:
Q. You mentioned--Ms. Chaytor asked you about controls being on the same slide, and you suggested that was your initiative. Is that--did I understand that correctly?
MR. DYER:
A. That was one of the things I know I learned when I was away.
MR. BROWNE:
Q. Right, and -
MR. DYER:
A. Again, I believe that--the idea might have been tossed around once or twice, I believe.
MR. BROWNE:
Q. Okay, who tossed the idea around?
MR. DYER:

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A. Oh, I don't know.
MR. BROWNE:
Q. Was it potentially Dr. Ejeckam?
MR. DYER:
A. It might--it may have been. I don't know, but I would imagine it came from pathologists, because I don't think the techs were exposed to it.
MR. BROWNE:
Q. I would suggest to you that it was Dr. Ejeckam, when he came, first came in 2002. Would you be able to -
MR. DYER:
A. I honestly don't ever remember him and I having a discussion about putting controls on--putting--doing the twin slide technique, is what I learned away, but putting the control on the same slide as the patient, I don't think we ever had a discussion about it.
MR. BROWNE:
Q. And around that time as well, you mentioned that you would go to other labs to see what they were doing on your spare time, on vacations and stuff like that. Did I capture that?

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MR. DYER:
A. Oh, I think, you know, I have visited other labs when I've been away on vacation.
MR. BROWNE:
Q. And what sort of things would you be looking for to see what they were doing?
MR. DYER:
A. More or less just to see what kind of technology they have.
MR. BROWNE:
Q. Okay.
MR. DYER:
A. What kind of--how many staff they have, you know, because always interested in things like that.
MR. BROWNE:
Q. What about protocols and standards?
MR. DYER:
A. No, that wasn't something that would have been on my mind.
MR. BROWNE:
Q. P-1919, please? There was a reference here about Dr. Carter doing--I'm just trying to find it now. Yes, at the top right here, page three, you see that paragraph. "The

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pathologist will assess and diagnose for concordance in whether discordant cases have been handled appropriately." In the meetings, the quality assurance committee meetings with Dr. Carter, did you ever get the sense that it was her focus to want to get immediately started into looking and doing and performing quality assurance and assessing discordance, the possibility of discordant cases? That was her focus, less so -
MR. DYER:
A. Oh, definitely.
MR. BROWNE:
Q. Okay.
MR. DYER:
A. I would imagine. She was a physician, that would be.
MR. BROWNE:
Q. Less so than sort of worrying about trying to get the policies together, her focus was trying to get in there and look for discordant cases? Would that be a fair description?
MR. DYER:
A. I think we actually agreed on this committee that that would be the first thing we would

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do.
MR. BROWNE:
Q. Okay.
MR. DYER:
A. I believe, again, I'm not sure, but I think that was our plan was to deal with those things, to get those things started right away.
MR. BROWNE:
Q. And that was Dr. Carter's--that was her focus, was to try to be able to do that and look for discordant cases?
MR. DYER:
A. Yes.
MR. BROWNE:
Q. Okay, thank you. P-2317, please? Now I'm just going to go back to that for one second, Mr. Dyer, and there's a couple of documents, but maybe--oh yes, okay. Just as a--you'll see, these are the various divisions in, I guess, the Lab Medicine program. Is that right? Looking at immunogenetics, cytology, pathology, microbiology, hematology, biochemistry.
MR. DYER:

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A. Okay.
MR. BROWNE:
Q. Okay.
MR. DYER:
A. Yes, it sounds -
MR. BROWNE:
Q. These would be various--and each one of these had division managers?
MR. DYER:
A. Yes.
MR. BROWNE:
Q. Okay. You mentioned, I think, a couple of times that pathology was the only one of these divisions that required interpretation, or words to that effect. Is that -
MR. DYER:
A. No, I don't think I said that.
MR. BROWNE:
Q. Okay, I must have misunderstood you.
MR. DYER:
A. I think what I said -
MR. BROWNE:
Q. Interpretation of slides?
MR. DYER:
A. No, what I said is every slide that leaves the

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pathology lab is interpreted--is reviewed by a pathologist.
MR. BROWNE:
Q. Okay. So are you including all of these other divisions in that statement as well?
MR. DYER:
A. I don't understand.
MR. BROWNE:
Q. Well, I guess, your comment was in relation to quality assurance.
MR. DYER:
A. Yes.
MR. BROWNE:
Q. In your view, the quality assurance was the pathologist looking at that slide.
MR. DYER:
A. Yes.
MR. BROWNE:
Q. Okay.
MR. DYER:
A. That was one of our--running controls was another one, yes.
MR. BROWNE:
Q. Right, and I understood that that was sort of the only one, that was unique, and maybe I

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misunderstood you -
MR. DYER:
A. Again, I know I said every slide.
MR. BROWNE:
Q. Right.
MR. DYER:
A. Yes.
MR. BROWNE:
Q. So am I understanding you to say that pathology was unique from the other divisions because of that?
MR. DYER:
A. I think so, yes.
MR. BROWNE:
Q. Okay. What about cytology, Mr. Dyer?
MR. DYER:
A. Cytology does--you know, they do 50-60,000 specimens and I think only a few thousand are actually reviewed by a pathologist.
MR. BROWNE:
Q. Right, but there's pathologists who interpret those slides.
MR. DYER:
A. But I didn't say every single slide. 40 or 50,000 of them are reviewed by techs, not by

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pathologists.
MR. BROWNE:
Q. But point being, there are slides that are created?
MR. DYER:
A. Yes.
MR. BROWNE:
Q. They are reviewed by techs?
MR. DYER:
A. Yes.
MR. BROWNE:
Q. And reviewed by pathologists?
MR. DYER:
A. Right, and that happens in hematology too, but not every single slide, as what I said in my statement.
MR. BROWNE:
Q. And those divisions have quality assurance?
MR. DYER:
A. Again, you would have to ask them.
MR. BROWNE:
Q. Okay.
MR. DYER:
A. So you would have to ask cytology what kind of quality assurance program they had in place.

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MR. BROWNE:
Q. Are you aware of whether they had one or not?
MR. DYER:
A. I can't comment right here. I don't know for sure what it was or what kind they had or if they were doing proficiency testing. That, I wouldn't be able to tell you.
MR. BROWNE:
Q. Okay, and just on the point of proficiency testing, if we could, Mr. Dyer, can we, Registrar, see Exhibit P-2311, please? Now this is a manual, Mr. Dyer, that was entered in through you, I understand.
MR. DYER:
A. Yes, I just took the manual and sent it in.
MR. BROWNE:
Q. And how did you come into possession of this manual?
MR. DYER:
A. This manual?
MR. BROWNE:
Q. Yes.
MR. DYER:
A. It comes with the proficiency testing.
MR. BROWNE:

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Q. And this is UK NEQAS manual?
MR. DYER:
A. Yes.
MR. BROWNE:
Q. And you'll see here that--what's your understanding of the UK NEQAS program?
MR. DYER:
A. In what sense?
MR. BROWNE:
Q. What it does, what it's main goal is to achieve?
MR. DYER:
A. It's main goal, they would assess the quality of our stains and I guess, in a way, assess the quality of our assessors.
MR. BROWNE:
Q. Right, but you'll see this, "the main aim of the scheme is to provide useful information on the methods and reagents that allow for improved quality of immunohistochemistry. To this end, the main technical steps employed by participants at the assessment are collected onto a database." So the focus here, seems to me, is at the technical end. Is it not?
MR. DYER:

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A. When we do the NEQAS, what happens is the slides come in, we stain them and then they're assessed by our staff, which includes our physicians, and then it's sent back and they give us their grading. So it's not just technical.
MR. BROWNE:
Q. Yes, and I recognize that there are two components.
MR. DYER:
A. Yes.
MR. BROWNE:
Q. But one of them is technical.
MR. DYER:
A. For sure, yes, one has to be technical, yes.
MR. BROWNE:
Q. But the main aim of the scheme is to provide useful information on methods and reagents that allow for improved quality of immunohistochemistry.
MR. DYER:
A. Yes.
MR. BROWNE:
Q. Would that be technical?
MR. DYER:

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A. Okay, let's say that's technical, sure.
MR. BROWNE:
Q. Thank you. Registrar, Exhibit P-2361? This is the voice mail message that Dr. Carter left you and you were shown this, I think, yesterday. And in particular here, I'm trying--looking at this statement where she says "I withdrew from the project after that meeting on Monday due to what I felt was incorrect handling of the validation and just lack of cooperation between pathologists and administrative technical staff here." Now I understood from your evidence that you never ever saw any problems between pathologists and administrative technical staff, right?
MR. DYER:
A. What I said was I thought they had a good relationship.
MR. BROWNE:
Q. Right. Now, this seems to be suggesting, at least from Dr. Carter's point of view, that that doesn't exist. I'm curious as to -
MR. DYER:
A. When I see administrative technical staff, I assume she means me, I'm the administrator.

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MR. BROWNE:
Q. Or, presumably Mr. Gulliver as well.
MR. DYER:
A. Yes.
MR. BROWNE:
Q. With that being there and your view that, hey, I think everything was going fine from my perspective, would that not make you want to pick up the phone and ask her what she meant by that?
MR. DYER:
A. No, I think after the meeting on Monday, I think I understood she was--what was going on at the time. And again, if you look at this, Dr. Carter started in '03 and I don't think she's ever written a letter about me or anything of that nature until this incident.
MR. BROWNE:
Q. Right, but the fact is that she's perceiving something which she perceives you're part of.
MR. DYER:
A. Yes.
MR. BROWNE:
Q. Would you not feel inclined to pick up the phone and ask her, what's going on here? Why

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do you feel this way?
MR. DYER:
A. No, I didn't at the time.
MR. BROWNE:
Q. Mr. Dyer, I think if I captured Ms. Wegrynowski's evidence here, she made the comment, I think referring to technologists, "they were there to do, not to think". Do you recall that?
MR. DYER:
A. I don't recall that, that statement.
MR. BROWNE:
Q. That's what I was going to ask you, did she ever make that comment to you during your encounters with her?
MR. DYER:
A. That they were there to do and not to think?
MR. BROWNE:
Q. Yes.
MR. DYER:
A. I don't think she's ever said that actually to me.
MR. BROWNE:
Q. She never ever shared those thoughts with you?
MR. DYER:

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A. I don't think so.
MR. BROWNE:
Q. And you did not keep notes of your meetings with Ms. Wegrynowski when she was here in October?
MR. DYER:
A. I don't think I took any notes at the time, no.
MR. BROWNE:
Q. What was your understanding of the purpose of her visit?
MR. DYER:
A. The purpose of her visit was to do an overall assessment of the lab.
MR. BROWNE:
Q. Was the mention of peer review ever mentioned to you?
MR. DYER:
A. No, like that word came up, but I don't know if it was at that time, but I've heard that word "peer review", but again, with that, all I know is once we met, at some point we did meet, I think it might have been at our group, at the end, that she was confirmed, she was told that this would be a confidential -

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MR. BROWNE:
Q. So at least not beforehand.
MR. DYER:
A. Again, I don't remember before, but I do remember I think after. I know we discussed it, but not before.
MR. BROWNE:
Q. But she came in the fall and she came after this whole incident was out in the media.
MR. DYER:
A. Yes.
MR. BROWNE:
Q. And wouldn't that be something that you would consider important and big for someone to come down from Mount Sinai to be looking at your lab?
MR. DYER:
A. In what sense?
MR. BROWNE:
Q. Well, that someone is now coming in, we've now got this big review, you knew the review was -
MR. DYER:
A. This came from higher up, they wanted someone to come in, so someone came in.
MR. BROWNE:

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Q. Right, but from your perspective, wouldn't that be something important or big that someone is coming in from the outside to look at our lab, in light of what was going on?
MR. DYER:
A. That was important to us.
MR. BROWNE:
Q. Yes, is this something big?
MR. DYER:
A. I don't know if I would deem it as being big, but it was important to us.
MR. BROWNE:
Q. It was important, okay, but big in light of the fact that you're now undergoing a review of all your cases between 1997 and 2005?
MR. DYER:
A. Obviously I'm not understanding your question.
MR. BROWNE:
Q. By the time Ms. Wegrynowski came down in the fall of 2005.
MR. DYER:
A. Yes.
MR. BROWNE:
Q. You were involved at that point, I guess, in terms of collecting blocks and slides for the

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review at Mount Sinai.
MR. DYER:
A. Yes.
MR. BROWNE:
Q. And you knew that there was going to be a review between 1997 and 2005.
MR. DYER:
A. Yes.
MR. BROWNE:
Q. Is that something big?
MR. DYER:
A. That is a definite significance, yes.
MR. BROWNE:
Q. And did you connect that to what her visit was about?
MR. DYER:
A. I connected her visit to coming in to moving us into the future. So in terms of, she wasn't coming in to tell us what went wrong, that wasn't my interpretation, if that's what you're getting at. I'm still not understanding your question.
MR. BROWNE:
Q. My question is the connection to what the review was about, in terms of the review of

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the slides by Mount Sinai and her visit, did you connect the two together? The fact that she was coming down was probably in relation to the fact that we're now undergoing review of work done at the Health Sciences Lab between 1997 and 2005.
MR. DYER:
A. Yes, okay, yes, I think, yes.
MR. BROWNE:
Q. You made that connection?
MR. DYER:
A. Yes, I should have, yes.
MR. BROWNE:
Q. Exhibit P-0154? Thank you, Registrar. There was a reference there to, I'll come back to that, actually let me just find that because I think that may be the last thing--there was reference there at least to professional services or services, that you were asked this about what information you may have--you recalled this this morning, Ms. Chaytor asked you about the pathology services, yes, qualified professionals on staff. Now, did I understand you correctly that that, in your view, related to pathologists?

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MR. DYER:
A. Yes, from what I'm reading here, yes.
MR. BROWNE:
Q. That would not relate to the services provided by the lab?
MR. DYER:
A. I guess it could, but when I just--I only read it the other day, I put it towards the -
MR. BROWNE:
Q. Because I understood you the other day to take offence to Dr. Carter's language of para professionals and you -
MR. DYER:
A. That was at me.
MR. BROWNE:
Q. I don't know if it was at you, but paraprofessionals, I don't know, and again -
MR. DYER:
A. Well I think in that letter it was paraprofessional and--pull up the letter and let's have a read.
MR. BROWNE:
Q. I don't have the letter here, but you felt it was related to you, did you?
MR. DYER:

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A. It wasn't directed at my staff, it was directed at me.
MR. BROWNE:
Q. Nevertheless, you felt your professional services, the technologists at the Health Sciences, would you consider those professionals -
MR. DYER:
A. Professional staff?
MR. BROWNE:
Q. Yes.
MR. DYER:
A. Yes.
MR. BROWNE:
Q. Okay, so this, in your view, would apply both to pathologists and technologists?
MR. DYER:
A. Yeah, that's what I just said, I said it could be linked to the technical staff also.
MR. BROWNE:
Q. Okay, thank you. Mr. Dyer, thank you very much.
MR. DYER:
A. Thank you, Mr. Browne.
THE COMMISSIONER:

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Q. Mr. Pritchett?
MR. BARRY DYER, EXAMINATION BY MR. BLAIR PRITCHETT
MR. PRITCHETT:
Q. Good afternoon, Mr. Dyer, my name is Blair Pritchett and I'm here on behalf of the Central Western and Labrador Grenfell Authorities. I just have a few questions arising from your discussion with Ms. Chaytor. And in your evidence, you testified that in the period, I guess there were other times, but relevant to this inquiry in the period of 1997 to 2007, that all of the pathology services for Labrador City would have been performed in St. John's, is that correct?
MR. DYER:
A. I can't go back to '97, but I know when I was hired in 2002, we were doing the referral work for Labrador City or Labrador in general.
MR. PRITCHETT:
Q. Okay, well let's focus on the time then with which you're familiar, from 2002 and at that time your understanding was that in Labrador City there would have been no practising pathologist at the time?
MR. DYER:

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A. Correct.
MR. PRITCHETT:
Q. And so there would have been no technicians or assistants to do pathology work there either.
MR. DYER:
A. No, I think they had a pathology lab, but they just--no, no, no, I think I'm getting mixed up with Labrador City, no, let's just say I think you're correct, yes.
MR. PRITCHETT:
Q. So in essence, there would have been no pathology expertise situated in Labrador City at the time?
MR. DYER:
A. Not that I know for.
MR. PRITCHETT:
Q. That you were aware of.
MR. DYER:
A. Yes.
MR. PRITCHETT:
Q. And in that context, that institution would essentially have been relying on St. John's to provide it with pathology services and pathology expertise.
MR. DYER:

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A. Okay, sure.
MR. PRITCHETT:
Q. Does that sound reasonable to you?
MR. DYER:
A. That sounds reasonable to me.
MR. PRITCHETT:
Q. And for the time period that we're talking about, this pathology work would have been done in the lab for which you were responsible?
MR. DYER:
A. Health Sciences.
MR. PRITCHETT:
Q. Yes.
MR. DYER:
A. Yes.
MR. PRITCHETT:
Q. And the hands-on work would have been done by the technicians who were directly under your supervision?
MR. DYER:
A. The technologists? Yes.
MR. PRITCHETT:
Q. Technologists, sorry. And on the clinical side, it would have been the pathologist with

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whom you worked on a regular basis?
MR. DYER:
A. Yes.
MR. PRITCHETT:
Q. And I think you just covered this point again with Mr. Browne, but I think your evidence is quite clear that you felt that the people with whom you worked were very competent and were indeed professionals in what they did?
MR. DYER:
A. I certainly felt that way, yes.
MR. PRITCHETT:
Q. So in that environment, I take it you'd agree with me that it was a reasonable thing for officials in Labrador City to rely on St. John's for this kind of expertise and this kind of service?
MR. DYER:
A. It was already in place when I was hired, so yes.
MR. PRITCHETT:
Q. But given your opinion of the quality of work and quality of people in St. John's, that was a reasonable thing to do?
MR. DYER:

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A. Yes.
MR. PRITCHETT:
Q. And I'd suggest to you as well that it would be reasonable for the administrators in Labrador City to expect, given the expertise that they were relying on, that if there were any meaningful problems with the pathology work being done, that it would be reported back to the people in Labrador City?
MR. DYER:
A. That's reasonable.
MR. PRITCHETT:
Q. And again, because St. John's is sort of the centre of expertise in the area.
MR. DYER:
A. I think, yeah, I think they were identified as the referral centre, yes.
MR. PRITCHETT:
Q. And just so I'm clear, I think your evidence earlier was that samples would come in from Labrador City and I guess for lack of a better term, in a raw form, they wouldn't have been breadloafed or processed in the blocks or anything like that?
MR. DYER:

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A. They weren't processed in blocks and I've never seen them breadloafed myself, that doesn't mean it didn't happen, it's just from my point of view, for the breadloaf purpose, it might be better to talk to one of our pathologists.
MR. PRITCHETT:
Q. But your understanding was they weren't being dealt with in Labrador City because there wasn't personnel there qualified to do the work.
MR. DYER:
A. No, they would just come in a box with--they were in formalin fixed containers, all different sizes and shapes.
MR. PRITCHETT:
Q. So in essence they would come in and someone in your lab would receive the tissue and open the package?
MR. DYER:
A. They would receive the tissue, open the package, enter the specimens and then they were grossed for the, the way we always did our grossing.
MR. PRITCHETT:

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Q. So they'd go through the normal fixation, grossing, processing of the blocks, all of that stuff.
MR. DYER:
A. All of that would be done, yes.
MR. PRITCHETT:
Q. And once that was done, presumably the relevant pathology test would be done on them, like H&E slides for example?
MR. DYER:
A. H&E was done automatically. H&Es are done on everything, but it's decided of the gross as to, you know, if they take 20 blocks, but H&E is automatic for every block.
MR. PRITCHETT:
Q. And any additional tests were, for instance, ER and PR in particular would be done sort of as needed or as ordered?
MR. DYER:
A. It would be again, you know, the blocks were cut, stained and the slides were sent to the pathologists.
MR. PRITCHETT:
Q. And in this particular case, involving Labrador City, of course, the interpretation

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work would be done in St. John's as well?
MR. DYER:
A. All of it was, and I can't confirm, you know, I don't know if I've ever seen a breast come down from Lab City, just we were talking about ER/PR, but all specimens did come down to us like that.
MR. PRITCHETT:
Q. And would be, in essence what would go back would be a report?
MR. DYER:
A. Yes.
MR. PRITCHETT:
Q. So if we look at the whole different stages of the process from receipt and fixation and breadloafing, tissue preparation and analysis, sort of the whole St. John's pathology team would have their hands in these samples that came down from Labrador City?
MR. DYER:
A. Yes.
MR. PRITCHETT:
Q. And I take it you'd fully expect that the team here in the City would treat Lab City's samples with the same sort of care and

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professionalism that they treat samples from their own institution?
MR. DYER:
A. As a matter of fact, it was--I know they came down on Thursdays, for the most part, and they were always grossed on Friday, it became a part, automatic that Lab City got done.
MR. PRITCHETT:
Q. And when you were speaking with Ms. Chaytor again earlier, I believe yesterday you had indicated that surgical samples and you repeated here would come in on a Thursday, specifically.
MR. DYER:
A. Yeah, Thursday stands out.
MR. PRITCHETT:
Q. And I believe she asked you, does this mean that surgeries were done on Wednesday and you said you had the impression they could have been done at any time.
MR. DYER:
A. Well sometimes, you know, like 20, 25 case specimens, specimens would come down, so I wouldn't naturally assume, myself, that it was over that week, it wouldn't have just been all

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in one day.
MR. PRITCHETT:
Q. So I take it the implication from that is that you're suggesting tissue could have been sitting for days and days before being shipped to St. John's?
MR. DYER:
A. Again, you could talk to Lab City about that, but that would be my impression.
MR. PRITCHETT:
Q. I guess, and the reason I ask is I'm a little puzzled by this evidence because I would assume the professionals in your lab wouldn't just sort of blindly process tremendously old or degraded samples without raising the alarm or indicating there's a problem with them.
MR. DYER:
A. Again, if there was a problem, it would have been indicated by one of our physicians, one of our pathologists.
MR. PRITCHETT:
Q. Well would you have expected your technical staff to speak up if they felt they were getting degraded samples from Labrador?
MR. DYER:

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A. Well the only way they would be able to identify that would be probably through cutting, if they were soft and I don't think we've had any complaints about soft tissue, the tissue was definitely well fixed. I mean, yes, if soft blocks were identified, we do inform, you know, I am informed about it by the techs, but I don't think we ever had any from Lab City, nothing stands out.

MR. PRITCHETT:

Q. Your recollection is that there weren't any such problems, but your expectation as manager would be if a bad block comes in or a soft block, as you say, then it gets reported, you'd expect your technical staff to do that?

MR. DYER:

A. Yes, they did, they would tell me, yes.

MR. PRITCHETT:

Q. And I take it your interaction with the pathologists in St. John's was such that you wouldn't expect them to gloss over a serious problem with samples or a pattern of serious problems with samples, would you?

MR. DYER:

A. Again, I don't understand the question.

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MR. PRITCHETT:

Q. Well, what I'm saying is that the pathologists in St. John's, would your expectation be that if they're receiving troublesome samples from Labrador, that they would simply process them, report back and not raise any issues -

MR. DYER:

A. No, I think they would have told me.

MR. PRITCHETT:

Q. And I think in particular some of the specific individuals you've talked about, like Dr. Ejeckam, was certainly not someone to keep his concerns to himself.

MR. DYER:

A. No, he would definitely--I say, he would have told me if he found an issue, a technical issue like that because at some point, for a short period, they were recording, but there was still communication with issues, if they found issues.

MR. PRITCHETT:

Q. And again, Dr. Carter is someone who you would have expected to be fully vocal if she observed a serious problem.

MR. DYER:

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A. For sure.

MR. PRITCHETT:

Q. Mr. Dyer, just sort of shifting gears a little bit, in your earlier testimony, I think you've spoken a fair bit about the rather significant demands on your time that were placed on you as a manger, sort of, in this period of 2002 to 2007, I take it that's a fair characterization of your -

MR. DYER:

A. Very fair, yes.

MR. PRITCHETT:

Q. And I think you said at different times you felt you were constantly having more duties, sort of, heaped upon you as you went forward.

MR. DYER:

A. I think that's standard, yes.

MR. PRITCHETT:

Q. And the consolidation and mergers of institutions in St. John's would have, sort of, been part of that whole process.

MR. DYER:

A. Definitely.

MR. PRITCHETT:

Q. So, as such I take it, it's fair to say that

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you were, pretty much, consumed with your duties within the St. John's area or Eastern Health area as time went on.

MR. DYER:

A. Yes.

MR. PRITCHETT:

Q. In other words, you had more than enough to do in your own job. You didn't need to worry about other places.

MR. DYER:

A. Again, worry about other places in what sense?

MR. PRITCHETT:

Q. Well, I guess what I'm suggesting to you is that you had so much to do in St. John's that you wouldn't have been concerned about, you wouldn't have been inquiring or meddling, if you will, in what was taking place in other institutions, not under Eastern Health's -

MR. DYER:

A. No, not normally, no.

MR. PRITCHETT:

Q. So, you wouldn't have had any kind of role or regular contact with the Labrador City institution, for example?

MR. DYER:

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A. No, I mean, I talk to labs from time to time, but that's mostly if they were calling me for advice or something that they would do or they were planning on doing.

MR. PRITCHETT:

Q. And again, in your evidence, I think it's been a fairly consistent theme that there's sort of a technical side of the work in the lab and there's a clinical side. And I think you've often said here, well, such and such an issue is a clinical matter and that's not really under my bailiwick. Is that fair to say?

MR. DYER:

A. Yes, I think that's fair to say.

MR. PRITCHETT:

Q. So, as such, you have a technical role and you're not someone who necessarily is giving input or direction into clinical activity?

MR. DYER:

A. No.

MR. PRITCHETT:

Q. So, in terms of going back to the surger in Labrador City, as a technical manager in St. John's, you really have no way of knowing how or when surgical services were delivered in a

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institution that far away?

MR. DYER:

A. None, I didn't.

MR. PRITCHETT:

Q. Okay. Thank you, those are my questions.

MR. DYER:

A. Thank you, Mr. Pritchett.

THE COMMISSIONER:

Q. Ms. Newbury. Mr. Dyer, why is it that in the current world, the formalin is taken--the tissue sample is taken out of formalin for going across town?

MR. DYER:

A. Formalin is a hazardous material. So, you're only allowed to ship so much at a time. So, we can't ship formalin based on our current system across town.

THE COMMISSIONER:

Q. But you can put it on a plane and bring it in from Lab City?

MR. DYER:

A. Again, I guess--yes, that's how they did it, but I guess that's a different mode of transportation. But yes -

THE COMMISSIONER:

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Q. Do you know when you stopped doing the Lab City?

MR. DYER:

A. I can't give you an actual date. It was probably a couple of years ago.

THE COMMISSIONER:

Q. All right, thank you. Ms. Newbury.

MR. BARRY DYER, EXAMINATION BY MS. JENNIFER NEWBURY

MS. NEWBURY:

Q. Thank you. Good afternoon, Mr. Dyer, I'm Jennifer Newbury appearing for the Canadian Cancer Society, Newfoundland and Labrador Division. I have a few topics I want to cover with you this afternoon. First of all, I wanted to ask you about the process that was in place for validating the Ventana equipment and the protocols to be run with that and you had talked a bit about the parallel run. I'm wondering if you know whether the specimens that were used for this parallel run or the parallel study, some were, I believe, from the DAKO, previously run through the DAKO system.

MR. DYER:

A. Yes.

MS. NEWBURY:

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Q. Were those specimens randomly chosen?

MR. DYER:

A. I'm not sure if we randomly chose them or not. I can't remember exactly what we did in terms of picking cases. I'm not sure, that might have just been all positive cases.

MS. NEWBURY:

Q. Okay. And who would have been involved and who would have that information?

MR. DYER:

A. No, I don't think we have that information.

MS. NEWBURY:

Q. But who would--I guess you don't have a document of that.

MR. DYER:

A. Right.

MS. NEWBURY:

Q. But would anyone recall?

MR. DYER:

A. Oh, I don't know if anyone would recall. Like I said, we had different pathologists reading the slides at the time. And it was mostly Ken--mostly Mr. Green did the validations, I helped out to help get them done.

MS. NEWBURY:

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Q. Okay. So, Mr. Green would have been the one to select the specimens?
MR. DYER:
A. I guess, I think we might have based it on patients that already had results in the system.
MS. NEWBURY:
Q. Okay. And you indicated that there were a variety of pathologists who were involved in assessing the quality of the slides.
MR. DYER:
A. Yes.
MS. NEWBURY:
Q. Okay. And were they all pathologists at Health Sciences Centre or St. Clare's?
MR. DYER:
A. Health Science because they were on site.
MS. NEWBURY:
Q. Okay. And do you know if the pathologists did this as a blind study, would they know what slide came from which system?
MR. DYER:
A. I think they would have known because of the labelling, so I think they knew what came from where.

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MS. NEWBURY:
Q. So when they're looking at the quality of a particular slide, they would know this is a slide produced on Ventana?
MR. DYER:
A. Yes.
MS. NEWBURY:
Q. Okay. And do you know if any calculations were done to determine if the results from this study, the parallel study, were statistically significant?
MR. DYER:
A. I don't think so, no.
MS. NEWBURY:
Q. Okay, and do you know, I guess, in your background, in your experience as a technologist, what the requirements are in terms of validating a new system and the protocols to be used?
MR. DYER:
A. I don't think we had an actual validation protocol set up at that time. Again we only developed one with Dr. Elms in late 2006. So I think what was happening at the time was multiple protocols were run based on the

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recommended -- the recommended procedure from the company itself or whoever produced that antibody, and from there we just -- we would make up multiple -- again do like a grid style, and use a positive control.
MS. NEWBURY:
Q. Okay, and in terms of sitting down and looking at the feedback that you were getting from all of the pathologists from the different types of protocols run through the new system, there wasn't any --
MR. DYER:
A. Any document --
MS. NEWBURY:
Q. Any tipping point you needed to get so many slides with a certain grade of quality?
MR. DYER:
A. No, there wasn't, I don't think. I think they were just picking what they felt was best at the time.
MS. NEWBURY:
Q. Okay, so was it more like a gut reaction that, yeah, we've reached the point now that this is the protocol that we're comfortable with?
MR. DYER:

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A. I think so, yes. They -- yes.
MS. NEWBURY:
Q. When you were discussing the phone message that you'd received from Dr. Carter, there was a note or a comment made there about 11 specimens that were tested positive on the Ventana equipment and were determined to be negative from Mount Sinai. Can you recall that or do you need to see -
MR. DYER:
A. I have to see it, I don't recall it.
MS. NEWBURY:
Q. Exhibit P-2361, please. Okay, and if you look part way down message number one, it says, concerns about Ventana arose. The 11 cases that we sent up to Mount Sinai which showed cases that were negative by the original pathologists, were positive on Ventana and then were negative up in Mount Sinai. And this most, especially true for the progesterone and less true for the estrogen. So, you recall receiving this message?
MR. DYER:
A. Yes.
MS. NEWBURY:

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Q. And I believe in your evidence the other day, it was your, I guess--I guess you surmised at a possible explanation for the conflicting results between the Ventana equipment and the testing done at Mount Sinai was an issue of interpretation of the slides.
MR. DYER:
A. I think my question asked was, were those cases from Ventana re-read to see if it had cytoplasmic staining because over-staining can occur from time to time. Even today, even though -
MS. NEWBURY:
Q. Okay. And you said that you'd recently learned about this possibility of cytoplasmic staining. Could you be more specific when you learned that?
MR. DYER:
A. I learned that back in 2005.
MS. NEWBURY:
Q. Okay, from whom?
MR. DYER:
A. I believe it was Dr. Banerjee when we were looking at the slides.
MS. NEWBURY:

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Q. Okay. And do you have any reason to believe that this possible cytoplasmic staining is a more likely problem or more prominent problem with the Ventana equipment as opposed to what had been used previously, the DAKO equipment?
MR. DYER:
A. I don't know if I understand your question. It's not that the Ventana system was--I don't think it's the equipment that would do it. It's all about how the slides were read, I guess, during our validation.
MS. NEWBURY:
Q. Okay.
MR. DYER:
A. It's whoever read the slides, again, you know, my staff nor I were qualified in determining what was--nuclear staining versus cytoplasmic staining. So, it was handed off to a physician for that.
MS. NEWBURY:
Q. Right. So, I guess that you took from your discussion or the comment made by Dr. Banerjee when he was reviewing the slides and you were in his proximity was that cytoplasmic staining is an important issue and it shouldn't be

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misinterpreted as being -
MR. DYER:
A. Positive, yes.
MS. NEWBURY:
Q. - positive. And when looking at an ER/PR test slide, you should look for nuclear staining. But did he make any comment that cytoplasmic staining might be more likely with Ventana versus--not the interpretation of it, but the actual occurrence of cytoplasmic staining.
MR. DYER:
A. No, I don't think he made any type of statement like that.
MS. NEWBURY:
Q. Okay. And since that issue was brought to your attention, are you aware whether there's been any investigation to determine whether the interpretation of cytoplasmic staining is an issue with slides produced on either the Ventana equipment or the DAKO equipment?
MR. DYER:
A. What I remember is, I think I only just drew the parallels the past few weeks when I was reading over some of this testimony, but I think when Dr. Ejeckam actually wrote his memo

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back in '03 and sent it out to all the pathologists, one of the statements he made was for ER staining, I believe he said, these are nuclear stains. And if cytoplasmic staining is deemed to be negative.
MS. NEWBURY:
Q. Right.
MR. DYER:
A. So, no, nothing was drawn at that time.
MS. NEWBURY:
Q. Okay. But since 2005 when it first came into your mind that this is a possible problem, the interpretation of cytoplasmic staining as being positive, you're not aware if anyone, whether a pathologist or other technologist in your lab or quality assurance people suggested or took any steps to do an analysis or to do a review to see if that has been a problem.
MR. DYER:
A. You mean by reviewing slides?
MS. NEWBURY:
Q. Yes.
MR. DYER:
A. Not to my knowledge.
MS. NEWBURY:

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Q. If you could bring up Exhibit P-0046, please. And you said you'd asked a question on that, did you ask a question of someone specifically? Did you ask -
MR. DYER:
A. No, I think just myself. I didn't discuss it with anyone else.
MS. NEWBURY:
Q. So, you didn't pose that question -
MR. DYER:
A. I might have talked to Mr. Gulliver, but I don't know.
MS. NEWBURY:
Q. And is there any reason why you haven't pursued that any further?
MR. DYER:
A. At that time?
MS. NEWBURY:
Q. At any time?
MR. DYER:
A. No, well, we went through a re-validation. So, no, I didn't discuss it.
MS. NEWBURY:
Q. The re-validation would be--that would take care of any prospective testing, any future

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testing.
MR. DYER:
A. Yes.
MS. NEWBURY:
Q. But how about what may have happened prior to that?
MR. DYER:
A. Again, that would have been a clinical thing for interpretation, not me.
MS. NEWBURY:
Q. Okay. This is Dr. Banerjee's report which you've seen a few times. I'm going to turn to page four and you were shown this again this morning. Item number two under conclusions about the reasons for test failure. Item number two, it says, "is the Ventana system too sensitive? There's no evidence that the Ventana system creates false positive results. However, the system still requires optimization to avoid non specific cytoplasmic staining. And presumably that was taken into account when re-validating your Ventana equipment?
MR. DYER:
A. I would imagine, yes. Then again, when we say

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non-specific, again, that's like an over-stain style, so yes.
MS. NEWBURY:
Q. Okay, but would that fit with the comment earlier that you made about cytoplasmic staining being interpreted as a positive result?
MR. DYER:
A. Yes, could be, yes.
MS. NEWBURY:
Q. And his comment there is that the system still requires optimization to avoid non-specific cytoplasmic staining. And he's referring there specifically to the Ventana system, but do you know if the DAKO system which had been used prior to 2004 had ever been optimized to avoid non-specific cytoplasmic staining in the event that it's also required for that system? Do you have any records or knowledge of whether or not the DAKO system had -
MR. DYER:
A. No, again, the system requires optimization, again, I think--my interpretation reading that here is it needs to be monitored all the time. I assume the DAKO system went through--was

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optimized the way the Ventana was optimized, I would assume, but I wasn't -
MS. NEWBURY:
Q. You weren't there.
MR. DYER:
A. Right.
MS. NEWBURY:
Q. And there's no documentation that you've ever come across.
MR. DYER:
A. No.
MS. NEWBURY:
Q. Okay. And you don't know whether or not anyone had focused on the issue of non-specific cytoplasmic staining.
MR. DYER:
A. Again, I would assume when it was being interpreted, it would be commented if there was cytoplasmic versus nuclear staining.
MS. NEWBURY:
Q. And do you have any reason to believe that that had been done prior to 2005 when you first learned about this possibility?
MR. DYER:
A. Again -

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MS. NEWBURY:
Q. Do you have any reason to believe that that had been the focus of someone's attention prior to that?
MR. DYER:
A. No, again, it's the physicians who interpret it, so I wouldn't be able to say if that's what they did or not.
MS. NEWBURY:
Q. But the optimization of the system itself, would a technologist have a role in that?
MR. DYER:
A. The optimization is we actually use controls and critique the stain to get it to a point where it's doing what it's supposed to do. That's how you optimize and when you optimize, you can change your antigen retrieval, your times, your incubations, your dilutions, all that and that's what optimizing is.
MS. NEWBURY:
Q. Right, but when -
MR. DYER:
A. So, when we were bringing on the system, we were optimizing the antibody which is optimizing the system.

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MS. NEWBURY:
Q. Right.
MR. DYER:
A. Do you understand what I'm -
MS. NEWBURY:
Q. I understand, but I guess what I'm trying to get at is, as a technologist when you were participating in the process of optimizing a system and the procedures and protocols used on that system, do you have in your mind that one of the things that we aim to do is to avoid non-specific cytoplasmic staining? Or do you rely solely on the physicians involved in the -
MR. DYER:
A. You rely solely on the physicians involved.
MS. NEWBURY:
Q. Okay. You've talked a bit about the quality assurance committee that you were invited to sit on and Dr. Carter was the one, I believe, who wrote a memo or letter to you asking you to sit on this quality assurance committee?
MR. DYER:
A. In '04, yes.
MS. NEWBURY:

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Q. Okay. And you'd indicated she wasn't in favour of your particular committee getting involved in the preparing of standard operating procedures?
MR. DYER:
A. No, that was in the second committee.
MS. NEWBURY:
Q. That was in the second committee, okay.
MR. DYER:
A. Yes.
MS. NEWBURY:
Q. Was the issue of SOPs discussed in the first committee or was it just the second?
MR. DYER:
A. I think it was discussed, but we never really got that far. What we started to do first was focus on clinical indicators.
MS. NEWBURY:
Q. Okay. So, her reluctance then to get into the standard operating procedures didn't come to light until the second committee was formed.
MR. DYER:
A. Yes.
MS. NEWBURY:
Q. And did she offer any alternative proposals as

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to who, if anyone, should be involved in prepared those standard operating procedures or was she against the idea all together?
MR. DYER:
A. No, I think she--no, she wasn't against the idea all together. I think she was just against the idea that this particular committee wasn't set up to do that.
MS. NEWBURY:
Q. Okay. And did she state whether it was an issue of time or resources for the members of the committee or whether the committee lacked the necessary expertise for that. Did she explain in any detail why?
MR. DYER:
A. I believe she felt this committee was a monitoring system. So, we would monitor everything. Again, you'd have to ask her what her--I know at one point there was a suggestion, I believe, that we strike a sub-committee, but it never came to fruition. I don't think there was a lot of time or I don't think we had time for more committees. We were hoping to have things go through this one.

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MS. NEWBURY:
Q. Right, and I think your comment on that, or your observation was that if we don't have standard operating procedures, then how can we monitor what's going on?
MR. DYER:
A. I guess from a reasonable point of view, you need policies and procedures written in and in place before you can monitor.
MS. NEWBURY:
Q. Okay, and did you pose that to Dr. Carter?
MR. DYER:
A. Yes.
MS. NEWBURY:
Q. And so did you get a response?
MR. DYER:
A. The response was we weren't writing SOPs.
MS. NEWBURY:
Q. Okay, and so you have a committee formed, and I guess it has a very good goal of trying to monitor quality?
MR. DYER:
A. Yes.
MS. NEWBURY:
Q. Quality issues.

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MR. DYER:
A. Yes, I think it was --
MS. NEWBURY:
Q. And you feel that there should be standard operating procedures?
MR. DYER:
A. Yes.
MS. NEWBURY:
Q. And you're willing for this particular committee to do it. Dr. Carter doesn't feel that it's appropriate for that committee to do it. So it would appear that you were at a bit of an impasse there?
MR. DYER:
A. Yes.
MS. NEWBURY:
Q. Was there a mechanism in place that you could speak to someone to help to resolve that, that fairly fundamental problem?
MR. DYER:
A. I don't think there was a mechanism at the time. The clinical chief was actually on that committee, and it wasn't pushed that we get the SOPs written from this committee.
MS. NEWBURY:

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Q. Okay. So you feel that the person that probably could help you actually sat on the committee?
MR. DYER:
A. Yes.
MS. NEWBURY:
Q. And there was nowhere else that you felt you could go to try to resolve that issue?
MR. DYER:
A. Well, I mean, I talked to Mr. Gulliver about it, but he -- you know, again the same thing, we should be writing -- we should have been writing the SOPs at the time.
MS. NEWBURY:
Q. Mr. Dyer, I wanted to just get you to clarify a comment that you made the other day that related to the technologist checking external controls for ER/PR tests.
MR. DYER:
A. Yes.
MS. NEWBURY:
Q. And I believe -- and this was on Monday, and I believe that you had expressed a concern about any practice that might require that a technologist check such external controls, and

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you distinguished the ER/PR test from routine stains, and I think you had indicated that routine stains are taught in college and for that reason, you had no concern with technologists reading those external controls.
MR. DYER:
A. Right.
MS. NEWBURY:
Q. But ER/PR testing was not taught in college, and that gave rise to your concern. So that was one piece of evidence that you gave on Monday. You had also indicated at the time, and I think I got this correct, that while you were at the Janeway, Dr. Pushpanathan had taught you on the job about muscle histochemistry?
MR. DYER:
A. Yes, we developed a muscle histochemistry program.
MS. NEWBURY:
Q. Okay, and you had also done some independent reading on your own to learn about muscle histochemistry?
MR. DYER:
A. Oh, yes, that's how you do it.

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MS. NEWBURY:
Q. Okay, and was muscle histochemistry taught at all, was that part of the curriculum when you did your course at college?
MR. DYER:
A. Enzymatic staining, no. I mean, we learned about enzymes and things like this.
MS. NEWBURY:
Q. Right.
MR. DYER:
A. But in terms of any of these types of protocols, no, none.
MS. NEWBURY:
Q. Okay, and I guess the question that I have is if you were able to learn through on the job training and independent reading a completely new technique with the assistance of Dr. Pushpanathan of the enzymatic staining or the muscle histochemistry, then how would you distinguish that from a technologist through on the job training or independent reading learning to read external controls for ER/PR? Is there a distinction between the two?
MR. DYER:
A. No, actually developing and performing the

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procedure, that's what they're doing now, just like that's what I did at the Janeway.
MS. NEWBURY:
Q. Okay.
MR. DYER:
A. But I didn't actually interpret any controls or anything like that at the Janeway for enzymatic stains. That was all done by the physician.
MS. NEWBURY:
Q. Okay. So the problem was not so much that it's not taught at college, but the problem that you had with the technologist reading the external controls is that that's not the role of a technologist, this is something in your view that should be done by a pathologist?
MR. DYER:
A. No, no, I don't have an issue with technologists reading external controls. I just feel that -- I don't think the external controls should actually have a final sign off by the tech. I think there should be a secondary check by the physician because when you're actually interpreting as you're learning from all this IHC, it's very

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variable, and very subjective.
MS. NEWBURY:
Q. Okay.
MR. DYER:
A. And so I don't know -- you know, like, the physicians go through many, many years of medical school whereas a tech doesn't, and I think I compared it to the gross, whereas with gross there's actually standardized protocols and photos and all this of doing it step by step, whereas it's very subjective when it comes to interpretation. No, I think that the techs should actually learn to interpret them.
MS. NEWBURY:
Q. Okay.
MR. DYER:
A. But I think there should be a secondary sign off.
MS. NEWBURY:
Q. So the final say on the reading of or an interpretation of an external control in your view should be with the pathologist regardless of whether or not the technologist learned that procedure in college?
MR. DYER:

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A. They don't learn that in college.
MS. NEWBURY:
Q. No, but even if they did -- the issue isn't with whether or not they learn it in college, the issue is with the roles and responsibilities, and in your view, it's the pathologist?
MR. DYER:
A. That's -- yes, and again I don't know if the pathologists -- I don't know if it's a good idea for pathologists to rely 100 percent on what a tech said about a control.
MS. NEWBURY:
Q. Okay.
MR. DYER:
A. I mean, versus positivity and negativity, well, that's different because if it's negative, it's negative. Then you would repeat, but when it comes to a specific -- you know, is this a cytoplasmic stain, versus a membraneous stain, versus a nuclear stain, that's much more challenging and very subjective.
MS. NEWBURY:
Q. And the routine stains that are taught in

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college, do technologists have a final sign off on those external --

MR. DYER:

A. Again -- yes, those controls don't leave the lab. They're actually read by the techs.

MS. NEWBURY:

Q. Okay.

MR. DYER:

A. And -- but we have a QC system in place so that what happens is we have a QC number set up for, say, like for iron, and that's put on the top of every single slide where an iron was done, and a pathologist, when they get the actual slide, it says there's a QC number there they can go in and type in that QC number and actually read the result.

MS. NEWBURY:

Q. Okay.

MR. DYER:

A. Because they're very different stains. They're just a -- they're not like an antibody, antigen reaction, or enzymatic, any of this style. They're a very -- they're chemical reactions which are much different.

MS. NEWBURY:

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Q. Right. So it's the nature of the stain?

MR. DYER:

A. I think it's just the nature, yes.

MS. NEWBURY:

Q. And even if it ever comes to a point that that whole procedure is introduced as part of the curriculum in a college, then you would still expect that the pathologist would have final sign off?

MR. DYER:

A. Well, I'd feel uncomfortable, but at the end of the day, if that's what the physicians want, then that's what we will do.

MS. NEWBURY:

Q. Okay. Are there any guidelines in place just to -- I guess, new procedures, new lab techniques and testing protocols are being introduced all the time. Are there any guidelines in place to allocate the role or responsibility as between the technologists and pathologists? Is there a system just to make it clear that everyone knows who is responsible and who is able to read the controls?

MR. DYER:

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A. I don't know if they are actually written in place, but, yes, there is when it comes to IHC. Dr. Ford Elms is the director.

MS. NEWBURY:

Q. Okay, that's what you have now, but generally speaking before Dr. Elms became the director of IHC?

MR. DYER:

A. What would happen is if the physician wanted a new antibody, they would just come and ask me can they have a new antibody, and I said we would buy the antibody, and they would start a titration process based on again the specification sheet, and then bring those slides back to that pathologist for interpretation.

MS. NEWBURY:

Q. So it's done on a test by test basis?

MR. DYER:

A. Yes.

MS. NEWBURY:

Q. Who's going to do what?

MR. DYER:

A. Yes.

MS. NEWBURY:

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Q. I just wanted to explore with you a little bit about the types of things that are covered in medical laboratory technologist program, such as the one that you attended, I guess, in the early 1980s.

MR. DYER:

A. Yes.

MS. NEWBURY:

Q. At the time you attended college, did the program include instruction on the validation of equipment and testing protocols and procedures?

MR. DYER:

A. Actual validation protocols?

MS. NEWBURY:

Q. Yes.

MR. DYER:

A. I don't think so.

MS. NEWBURY:

Q. Or just generally how would you go about doing it. I know that equipment ages all the time.

MR. DYER:

A. How to -- well, they went about to teach you how to use different types of equipment. Actual validation, I don't think that was

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actually discussed.
MS. NEWBURY:
Q. That wasn't discussed?
MR. DYER:
A. The word "validation", I don't think that was used.
MS. NEWBURY:
Q. Or anything -- I guess maybe the terms change from time to time. Was there even the concept of validating equipment to make sure that it's working properly, checking it against known results? Was that concept ever discussed as part of your training?
MR. DYER:
A. I think checking against known results might have been a concept, yes, because that's how we did -- I know in pathology that's how we did things, we always used a control as a known result.
MS. NEWBURY:
Q. And how about, you know, the mechanical steps of how you go about doing that, taking different titrations and incubation times, and --
MR. DYER:

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A. Yes.
MS. NEWBURY:
Q. I'm talking generally, not about ER/PR, but generally speaking, that whole process, was that part of your curriculum?
MR. DYER:
A. Well, again, you know, in chemistry you learned about dilutions and those things. To put them together into one form as a validation, I'm not sure, but you learned all those things while you're in school.
MS. NEWBURY:
Q. Okay, but are you learning a specific technique for a specific test, or do you learn generally, you know, as a lab technologist over the course of you're career, you're going to encounter new tests and new equipment coming in, and we want to make sure that you're familiar with the process of making sure that this equipment and these protocols work fine; here are the steps that you follow?
MR. DYER:
A. No, I think you learn that on the job because that was more done by senior techs.
MS. NEWBURY:

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Q. Okay, and do you know if that's still something that's learned only on the job or would the current programs -- this is 20 some years later.
MR. DYER:
A. I don't know. You'll have to talk to CONA and see.
MS. NEWBURY:
Q. You don't know?
MR. DYER:
A. I don't know exactly what the --
MS. NEWBURY:
Q. And how about quality assurance, was that a part of your curriculum when you did your course?
MR. DYER:
A. Again for pathology, quality assurance was to always run controls, and we were always taught in school to run controls with everything you did.
MS. NEWBURY:
Q. Okay, and that was the only method of quality assurance that you were taught at the time?
MR. DYER:
A. Yes, at that time, yes.

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MS. NEWBURY:
Q. And that was focusing on pathology?
MR. DYER:
A. Yes, on pathology, but you ran controls -- in chemistry, you ran controls in chemistry and hematology, so controls were always taught at that time, yes.
MS. NEWBURY:
Q. Were you even familiar then with the term of external proficiency testing?
MR. DYER:
A. In school, no.
MS. NEWBURY:
Q. And do you know if that's something that's now taught?
MR. DYER:
A. Again I wouldn't be able to --
MS. NEWBURY:
Q. So you have no idea now what's included in the curriculum for --
MR. DYER:
A. I haven't read it in the -- I don't think I've read any this year, the actual curriculum.
MS. NEWBURY:
Q. And quality control generally, you've

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mentioned already the idea of running controls with all of your tests?

MR. DYER:

A. Yes.

MS. NEWBURY:

Q. How about things such as the need for documenting your various procedures?

MR. DYER:

A. In terms of --

MS. NEWBURY:

Q. Perhaps what we could do -- if we could bring up Exhibit P-0047, please. I'm going to show you Trish Wegrynowski's report.

MR. DYER:

A. Sure.

COMMISSIONER:

Q. Ms. Newbury, once you've done this, perhaps we'll take the afternoon break.

MR. DYER:

A. Okay. I'm just going to refer you again to something that you were shown this morning. This is Trish Wegrynowski's report and Section 3.2 deals with IHC documentation, and she notes that documentation in general was deficient and highlights a few areas and

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you've discussed this generally, but I guess my focus on showing you this now is to find out which of these types of issues that Ms. Wegrynowski raised would have been something that was part of your training when you attended college, and the concept of having procedure manuals and standard operating procedures, keeping manufacturer's specification data sheets organized, record keeping for daily, weekly, monthly equipment maintenance, were any of those issues taught as part of your curriculum?

MR. DYER:

A. I'm not sure if we were actually taught record keeping itself. Again some of this stuff is not pertinent to school where it's IHC, but test procedures, you know, we had test procedures. When she came in we already -- again I will tell you we had the test procedures there.

MS. NEWBURY:

Q. But you didn't have standard operating procedures?

MR. DYER:

A. Not in the format she wanted, but every

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protocol was already there and printed off before she ever came in.

COMMISSIONER:

Q. Wasn't the question (inaudible).

MS. NEWBURY:

Q. Yes.

MR. DYER:

A. Oh I'm sorry, okay, so generally? I think no.

MS. NEWBURY:

Q. Okay, so the difference -- obviously there was something that Ms. Wegrynowski saw to be deficient?

MR. DYER:

A. Yes.

MS. NEWBURY:

Q. In what you had, and you've since taken steps to put procedures in to a proper format?

MR. DYER:

A. Put documentation --

MS. NEWBURY:

Q. I guess the type of formatting, what -- what is considered generally acceptable in terms of documenting standard operating procedures, would that have been a topic covered in college?

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MR. DYER:

A. I don't think so. It doesn't sound familiar.

MS. NEWBURY:

Q. And the need to keep records for the daily, weekly, monthly equipment maintenance?

MR. DYER:

A. We were trained on -- not keeping records, but doing the work, but keeping records, I don't think we did much in terms of document it.

MS. NEWBURY:

Q. And how about keeping, the fifth last bullet, "No equipment documentation and calibration records", would that have been something included --

MR. DYER:

A. Again we did it, we just -- we didn't document it. So back then at the school, I don't if we were actually taught that.

MS. NEWBURY:

Q. How about the idea of having an error log and a corrective action --

MR. DYER:

A. No, that wouldn't have been taught at school.

MS. NEWBURY:

Q. That wasn't taught at college?

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MR. DYER:
A. I don't think so.
MS. NEWBURY:
Q. Okay, and you have no idea -- you have never inquired of some of the new people that have come on board with Eastern Health -- you've had a couple of new people hired. Have you inquired whether they're familiar with these types of requirements, whether they were taught this in college?
MR. DYER:
A. In college, no, not were they taught in college. I didn't inquire.
MS. NEWBURY:
Q. Do your new lab technologists appear familiar with these ideas?
MR. DYER:
A. Again I don't -- they're assigned to techs in the lab, so I'm not too involved with the actual technologists coming. One of the senior techs are assigned to them.
MS. NEWBURY:
Q. Okay. This is a good time for a break.
COMMISSIONER:
Q. Okay, take the afternoon break.

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(BREAK)
COMMISSIONER:
Q. Ms. Newbury.
MS. NEWBURY:
Q. Thank you. Mr. Dyer, I wonder if you could compare for me the continuing medical education available to technologists now and compare it from what you had before May of 2005, and what is available currently?
MR. DYER:
A. Continuing education for techs?
MS. NEWBURY:
Q. Yes.
MR. DYER:
A. I think -- prior to 2005, we did on the job training. Today we still do mostly on the job training, but what we're doing is with NSH, where they teach a lot of academics -- not hands on, they just teach academics about immunohistochemistry, so we're ensuring that the techs are sent to that, and we have much more communication or interaction with a single physician.
MS. NEWBURY:
Q. Okay.

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MR. DYER:
A. To teach microscope work and things like that, and we ensure that everyone is trained on the actual technology.
MS. NEWBURY:
Q. Okay.
MR. DYER:
A. And I think when money was approved, we're sending at least one IHC tech away each year for academics.
MS. NEWBURY:
Q. And when you say NSH, that's National Society of Histotechnology?
MR. DYER:
A. Yes, that seems to be the best one in North America that would actually have a lot of lectures and that on immunohistochemistry.
MS. NEWBURY:
Q. Right, that's the best one specific to immunohistochemistry?
MR. DYER:
A. It appears to be, in North America, yes.
MS. NEWBURY:
Q. Okay, and do each of the techs go every year.

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MR. DYER:
A. No, right now, I think what we're trying--what we've been doing is sending two a year. So there's four techs there.
MS. NEWBURY:
Q. Okay. So every second year then -
MR. DYER:
A. Well, let's say I think the plan is every third year for sure.
MS. NEWBURY:
Q. Every third year?
MR. DYER:
A. Every third year will be the plan, I think.
MS. NEWBURY:
Q. Okay, and you said you send away one technologist every year, is that for the NSH or something different?
MR. DYER:
A. No, that--right now, like--I'm sorry, again, for IHC--well, we have funding for one to go away each year, but we try to send two.
MS. NEWBURY:
Q. Okay.
MR. DYER:
A. So there's three actual techs doing the work

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and so for sure every third year, but we try to do every second year.

MS. NEWBURY:

Q. Okay, so the one IHC technologist that you send away every year, that's to the National Society for Histotechnology convention?

MR. DYER:

A. Yes.

MS. NEWBURY:

Q. Okay, and do you try to keep track of what seminars they might attend? I don't know if this is a convention where you can choose to go to a certain -

MR. DYER:

A. No, usually what happens is what I've been doing since we started this in '05 is we sit down together and also with the physician to determine what will be the best things for them to go to.

MS. NEWBURY:

Q. Okay.

MR. DYER:

A. And we have an academic day, I'm not sure if it's every week, I can't remember now, every Friday, and lectures are then given at that

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for all, for techs and for physicians.

MS. NEWBURY:

Q. Who runs that program?

MR. DYER:

A. That's run by our quality management group.

MS. NEWBURY:

Q. Okay.

MR. DYER:

A. For pathology.

MS. NEWBURY:

Q. When did that start?

MR. DYER:

A. That started a couple of years ago.

MS. NEWBURY:

Q. Okay, and every single week that takes place?

MR. DYER:

A. I think, yes. Now not a--now a tech don't give a lecture every time. There's always someone giving a different lecture. Like I would give lectures at it, administrators, pathologists, residents and technologists.

MS. NEWBURY:

Q. But do your technologists in immunohistochemistry attend every single week?

MR. DYER:

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A. That's the intent, yes.

MS. NEWBURY:

Q. Okay, they attend to observe?

MR. DYER:

A. Yes.

MS. NEWBURY:

Q. And about how long is that session?

MR. DYER:

A. It's one hour, one and a half hour sessions, Friday mornings.

MS. NEWBURY:

Q. I wonder if I could bring up Exhibit, I think it's entered, 2409? Thank you. This is a Distance Education calendar or portions of a distance education calendar from the Canadian Society for Medical Laboratory Science, and this is a course calendar current as of July 22nd, 2008. Are you familiar with this program or the Society generally?

MR. DYER:

A. Society generally, yes.

MS. NEWBURY:

Q. Okay, are you familiar with the distance education courses offered by this -

MR. DYER:

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A. I haven't seen this one, but yeah, I have gone through it from time to time.

MS. NEWBURY:

Q. Okay. Have you ever done any courses through -

MR. DYER:

A. Myself?

MS. NEWBURY:

Q. Yes.

MR. DYER:

A. No, I haven't.

MS. NEWBURY:

Q. And do you know if any of the technologists at Eastern Health have done any of these courses?

MR. DYER:

A. In Eastern Health?

MS. NEWBURY:

Q. Yes.

MR. DYER:

A. Yes, I believe techs from other labs have probably, yes.

MS. NEWBURY:

Q. Okay. How about the immunohistochemical technologists?

MR. DYER:

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A. No, I don't think so.
MS. NEWBURY:
Q. Okay. Turning to page--just wanted to go through some basic information here. The first paragraph there, just to set out what the purpose of this distance education calendar is all about. It says that "professionals in health care must evolve as fast as they can just to stay in the game. As a learning professional, you have made a decision to stay on the leading edge of your profession. You place a high value on continuing education as an effective means to react to rapid and ongoing changes in medical laboratory technology. CSMLS offers access to new information and excellent learning opportunities for you to upgrade your technical skills, as well as develop an area of expertise." So this would appear to be continuing education, as opposed to someone necessarily starting out as a medical laboratory technologist?
MR. DYER:
A. Yes.
MS. NEWBURY:

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Q. And that's consistent with your understanding?
MR. DYER:
A. That's my understanding, yes.
MS. NEWBURY:
Q. Okay, and if we turn to page three, this is a table of contents with a number of different programs available, and a couple there I want to highlight. The interdisciplinary section there has a couple of courses I just wanted to bring to your attention, and that would be on page seven of the exhibit, and one of the courses here, interdisciplinary course, An Introduction to Ethics and Professionalism for Medical Technologists, and if you look at the very small print there, the second paragraph, just where the cursor is located, says "this is an important course for all lab professionals. We, at CSMLS, are pleased to introduce this unique offering. Whether you are new to the lab, currently supervising staff or looking to move ahead in the profession, ethics is a hot topic. Course highlights include" and they set out description of ethics and professionalism, and down--there's a section there with some

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bullets. "At the completion of this course, the learner will be able to:" and the first bullet, "examine and apply the CSMLS standards of practice and code of ethics." Bullet number two, "evaluate and apply ISO 15189 ethics and quality policies," and there are a number of other bullets there, but the last one "solve problems in the laboratory including troubleshooting." Do you know if this is a type of course that would be of benefit or perhaps something that would be considered in the future for your laboratory?
MR. DYER:
A. I don't see why not, sure.
MS. NEWBURY:
Q. Okay, and do you know if this is a type of course that has been available for some time through this organization?
MR. DYER:
A. No, I wouldn't be able to tell you.
MS. NEWBURY:
Q. Okay. So this is not a course that's ever been taken by any of your technologists, as far as you're aware?
MR. DYER:

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A. No, not that I'm aware of.
MS. NEWBURY:
Q. And you would be, presumably, told about it if -
MR. DYER:
A. Usually if they go through and they apply for funds, yes.
MS. NEWBURY:
Q. Okay, just wanted to point out there the course fees as well.
MR. DYER:
A. Again, the troubleshooting, I guess what kind of trouble--what would--again, you'll have to read to understand troubleshooting.
MS. NEWBURY:
Q. Sure, and -
MR. DYER:
A. That's more ethical.
MS. NEWBURY:
Q. - it's a very broad statement, sure.
MR. DYER:
A. Yes, that's -
MS. NEWBURY:
Q. Okay, but it's not something that anyone has ever looked into to see is this something that

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would be useful for our technologists?
MR. DYER:
A. I haven't.
MS. NEWBURY:
Q. Okay, and the course fees down there at the bottom, they have a fee for members and non-members.
MR. DYER:
A. Yes.
MS. NEWBURY:
Q. Are the technologists members of this organization, do you know?
MR. DYER:
A. Are they actually members, I don't think it's mandatory to be a member of the CSMLS. I think we're bringing in--I think Mr. Gulliver is trying to bring in regulations so that you have to be a member, but -
MS. NEWBURY:
Q. Regulations for -
MR. DYER:
A. To be a member of--to get hired in Eastern Health, you have to be certified with the CSMLS.
MS. NEWBURY:

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Q. So it's a job requirement then?
MR. DYER:
A. Yes, it is a job requirement.
MS. NEWBURY:
Q. Okay. I believe from reading something, that only New Brunswick requires membership in this particular organization.
MR. DYER:
A. Okay.
MS. NEWBURY:
Q. So that's not what you're talking about?
MR. DYER:
A. No.
MS. NEWBURY:
Q. You're talking about Eastern Health's own job requirements?
MR. DYER:
A. Yes.
MS. NEWBURY:
Q. And another section there is on quality. In particular, if you turn to page 16 of the exhibit, and I just wanted to point out, it doesn't appear that--I mean, this appears to be a general -
MR. DYER:

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A. Very general, yes.
MS. NEWBURY:
Q. - course for all medical laboratory technologists, not necessary for immunohistochemical testing. Now this has a few courses dealing with quality systems and the one on the top of the page there is actually part two of a program called Quality Systems for the Clinical Laboratory, and if you turn over to part one is actually described on page 19. So I'll start with that one on page 19. "Quality Systems for the Clinical Laboratory, Part I, Introduction. This course is an introduction to the quality systems with a particular focus on their application to medical laboratories within Canada. The course is divided into three modules: Introduction to Quality Management; Essential Components of a Quality System; Quality Standards, Models and Programs. Completion of this course will provide the learner with the skills and knowledge required to function within a laboratory quality system, as well as necessary prerequisite for the second course in this series, Quality

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Systems for the Clinical Laboratory, Part II. Who should take this course? MLTs and MLAs who want to learn more about quality systems and managers or potential managers who may be required to plan and/or implement a formal quality system or components in their clinical laboratory. At the completion of this course, the learner will be able to discuss the relevance of a quality system to the laboratory, describe the essential components of a quality system, describe the quality standards, models and programs available to medical laboratories."

And then if you turn to page 16, and I'll bring you back to that, and this is Part II of the program. "The course includes basic steps to planning formal quality system for a laboratory. The participants will: consider the relative advantages and disadvantages of three quality system alternatives, ISO, CAP and CLSI; assess the current state or their laboratory quality--of their own laboratory's quality system with respect to the ten essential quality system components; prepare a customized quality system plan for their own

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laboratory. At the completion of the course," this is down this section here, "the learner will be able to: select the quality system model most suitable for the learner's own organization; identify managerial issues and potential barriers to successful implementation of a QS; conduct a QS gap analysis; and prepare a quality system implementation plan."

Now in terms of those quality systems for clinical laboratory, is this the type of thing that you think would be beneficial for your technologists or managers, for that matter?

MR. DYER:

A. I believe you should talk to Lynn Wade about that, because I believe we are doing things like this now.

MS. NEWBURY:

Q. Okay.

MR. DYER:

A. Yes.

MS. NEWBURY:

Q. But regardless if there are people now hired specifically to work in quality systems and quality assurance committee, would there still

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not be some value in the technologists who -

MR. DYER:

A. Definitely.

MS. NEWBURY:

Q. - who have to implement the programs to be familiar with that?

MR. DYER:

A. Yes, definitely, yes.

MS. NEWBURY:

Q. Okay, and again looking at the course fees at the bottom, it appears to be fairly, you know, certainly under $1,000. Cheaper than, I think, some of the -

MR. DYER:

A. University.

MS. NEWBURY:

Q. - courses that people have to travel to attend.

MR. DYER:

A. Yes.

MS. NEWBURY:

Q. Okay, so it's 300 for members and 450 for non members. And I won't go through it in the same sort of detail, but there's also a two-part course for quality control, as compared

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to quality systems, and at the bottom of page 16, it starts and on the next page it says "this is a three-parts series on laboratory controls" and I'll just go down to what the learner will be able to do at the end, and the first bullet "understand why we perform laboratory quality control; describe how quality control relates to total quality management; describe key requirements of quality control material; understand fundamental terms; understand the relationship between Gaussian distribution and Levey-Jennings QC charts; analyze data on quality control charts; demonstrate an understanding of probability of error detection and false rejection; describe errors in patient samples that will not be detected by routine quality control."

Now is this something that you think would be of value to technologists or managers for that matter?

MR. DYER:

A. Some of it can be related to pathology, yes.

MS. NEWBURY:

Q. Okay, and what about immunohistochemical

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testing?

MR. DYER:

A. Yes, I think some of it can be. Again, like understanding the purpose of quality controls and things like this can. Other parts, it looks like it's directed directly at biochemistry.

MS. NEWBURY:

Q. So you think that's not necessarily directed at IHC?

MR. DYER:

A. Well, for Levey-Jennings and stuff like this, that's all based on numbers and everything we do is interpretation.

MS. NEWBURY:

Q. Okay, and what about -

MR. DYER:

A. But still some of it definitely, I think, can be used towards anatomic pathology.

MS. NEWBURY:

Q. Okay. So that's not something to date that has been investigated as a possible program, relatively inexpensive, I guess?

MR. DYER:

A. No, I think--no, we just hired again for our

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total quality management group, we just hired a new--Ms. Parnell retired and that's what we're--Ms. Rowe was hired and that's what we're in discussions with now as to where can we send her to for some training.

MS. NEWBURY:

Q. Right, okay. But in terms of whether or not there would still be some additional benefit for the technologists -

MR. DYER:

A. No, I think there will always be additional benefit for technologists.

MS. NEWBURY:

Q. Okay, and do you know how long these types of distance courses have been offered by -

MR. DYER:

A. I haven't seen--again, I haven't seen this detail, but I know they've been on the go for quite a while, CSMLS.

MS. NEWBURY:

Q. Okay.

MR. DYER:

A. Most of it that I've actually read is histotechnology, but none of that was pertinent to IHC.

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MS. NEWBURY:

Q. And there's actually a section there, now that you bring that up, on histotechnology, Section O which I think is included in the excerpt at page 21, if anyone's interested in looking at that. I didn't see anything that related specifically to this, but -

MR. DYER:

A. Specific to IHC, no.

MS. NEWBURY:

Q. Yes, but presumably the course offerings vary from semester to semester or from year to year.

MR. DYER:

A. Yes, but for histotechnology, most of them are always the same. If you--from years and years.

MS. NEWBURY:

Q. Okay. So you are familiar then with what has been offered over the years?

MR. DYER:

A. Yes, level one, level two, like that, for histology, yes.

MS. NEWBURY:

Q. Okay, and -

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MR. DYER:

A. But still, even these types of concepts are--you know, of course, all that kind of material is valuable.

MS. NEWBURY:

Q. Right. So even if someone ought to have known this from, you know, their course when they became a medical laboratory technologist, there still could be some value in taking refresher courses on it?

MR. DYER:

A. For sure, yes.

MS. NEWBURY:

Q. Especially when things do evolve over time?

MR. DYER:

A. Yes, and we go through--medical laboratory technology changes every day.

MS. NEWBURY:

Q. Right, I'm certainly getting the impression that there's rapid change in the -

MR. DYER:

A. It is. It's amazing.

MS. NEWBURY:

Q. Yes, okay, thank you. And I just want to refer you to one more exhibit, that is Exhibit

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P-2356, and I just want to show you this to refresh your memory. You were shown this the other day.

MR. DYER:

A. Yes.

MS. NEWBURY:

Q. This is the lab log book, and on page five, there's an entry there by Dr. Morris-Larkin that you'd mentioned and that related to all smalls, and you'd noted that--or she had noted that there was "variable fixation, nuclei very poorly preserved."

MR. DYER:

A. Yes.

MS. NEWBURY:

Q. When you were discussing the other day, you had referred to this, I believe, to be an event?

MR. DYER:

A. Yes.

MS. NEWBURY:

Q. Can you explain what you meant by that?

MR. DYER:

A. No, I think it's just--it's something that stood out. It was because multiple patients

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were--multiple specimens were impacted.
MS. NEWBURY:
Q. Right, you said that.
MR. DYER:
A. At one time.
MS. NEWBURY:
Q. Yes, and I think you gave the number of 20, there might have been 20 biopsies.
MR. DYER:
A. I'm not sure what the exact number was, but -
MS. NEWBURY:
Q. I think you threw that out as a figure, but -
MR. DYER:
A. - but it had to be a number like that.
MS. NEWBURY:
Q. And what do you mean by an event? What is an event? Is that a formal term?
MR. DYER:
A. No, it's just that's just what I called it. It's something that stood out to me.
MS. NEWBURY:
Q. Okay, and what is it--why would the number of specimens involved make it an event?
MR. DYER:
A. No, again, that's just my term. I could have

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said that was an issue, that was a situation. I could have called it anything. I just happened to say event that day.
MS. NEWBURY:
Q. Okay, and are you aware whether this would be an event captured by any policies that were in place at the time?
MR. DYER:
A. Again, I don't understand.
MS. NEWBURY:
Q. Any occurrence reporting requirements or any sort of formal reporting requirements?
MR. DYER:
A. I'm--you'll have to rephrase. I don't understand.
MS. NEWBURY:
Q. Okay. I'm just wondering if--you call this an event, something that stood out in your mind.
MR. DYER:
A. Yes.
MS. NEWBURY:
Q. Particularly because it involved a number of different specimens.
MR. DYER:
A. Yes.

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MS. NEWBURY:
Q. Given that it was significant in your mind to the point that you call it an event, are there any policies that were in place at the time that would capture how you respond to this event?
MR. DYER:
A. No.
MS. NEWBURY:
Q. So you don't think -
MR. DYER:
A. There was no policy to tell me what to do, if that's what you mean, or the steps to take to correct this event, do you mean something like that?
MS. NEWBURY:
Q. Anything, even, not necessarily something specific to the pathology department or to the Medical Laboratory Program, but policies regarding occurrences or adverse events.
MR. DYER:
A. No, if this came to me, I would have just dealt with it, for example, when we realized what happened, I would have called PD, who was actually filling up (phonetic) and let me know

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what happened and we would have also let the--all smalls, I imagine was surgical daycare, so I would have phoned them and let them know what happened. And I would have let the physicians know what happened and I think, this wasn't written that day, I would imagine, I think what happened was this was Dr. Lynn Morris-Larkin's way of recording that this actually happened.
MS. NEWBURY:
Q. Okay, so there was no formal process in place.
MR. DYER:
A. No.
MS. NEWBURY:
Q. But you responded by communicating with a variety of individuals -
MR. DYER:
A. Everyone who I felt was probably involved at the time.
MS. NEWBURY:
Q. Okay, and what was your purpose of contacting those individuals?
MR. DYER:
A. Just to let them know that something, that, you know, we received specimens and someone

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who was filling them up, had to be one of their staff, must have selected--so just so we could let them know.

MS. NEWBURY:

Q. And the point of that is presumably to avoid it from happening again?

MR. DYER:

A. Right, yes, that was the purpose.

MS. NEWBURY:

Q. Did you also consider whether or not you should check to see whether there was a negative impact upon anyone as a result of this problem?

MR. DYER:

A. I think the physicians, I think that might have been Dr. Lynn Morris-Larkin, you can speak to her about that, because that's a clinical thing.

MS. NEWBURY:

Q. Right, but is there a procedure in place, now that you've been alerted to this problem, is there a procedure in place to make absolutely sure that someone is taking care of this?

MR. DYER:

A. Yes, well we have the occurrences and the

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occurrences if it's something that's considered very important, immediate, it would be brought to the attention of either myself or the site chief and other than that, all occurrences are monitored through our total quality management group.

MS. NEWBURY:

Q. Okay, and at the time that was happening as well?

MR. DYER:

A. At the time -

MS. NEWBURY:

Q. This is 2004, just to -

MR. DYER:

A. No, that's what's happening today.

MS. NEWBURY:

Q. That's what's happening today, but in 2004 -

MR. DYER:

A. Yes, we didn't have a quality group doing that at the time.

MS. NEWBURY:

Q. And I just wanted to, perhaps I'll bring up Exhibit P-0056 please? These are policies that were in place between, I believe 1997 and 2004 for the Health Care Corporation of St.

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John's.

MR. DYER:

A. Administrative, yes.

MS. NEWBURY:

Q. And if I show you, there's a number there, this is page 8 of the exhibit, a policy on critical occurrence incident review, if you go a little further on page 12, this is a policy on occurrence reporting. Now when you say occurrence that you just mentioned earlier, are you referring to this type of a policy?

MR. DYER:

A. I think so.

MS. NEWBURY:

Q. Okay, and now you have a new policy in place to deal with reporting occurrences.

MR. DYER:

A. Well we have how we actually do it in our own lab, yes.

MS. NEWBURY:

Q. Okay, so it's something specific to the pathology lab.

MR. DYER:

A. Yes.

MS. NEWBURY:

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Q. It's not an Eastern Health broad policy?

MR. DYER:

A. No, it's something how we would actually--if something happened, how we would actually go about to deal with it, yes.

MS. NEWBURY:

Q. Okay. And at the time did you--were you familiar with these policies?

MR. DYER:

A. I probably was familiar with them.

MS. NEWBURY:

Q. Okay.

MR. DYER:

A. I would have read them.

MS. NEWBURY:

Q. I'm going to show you, there's one more policy there, just for completeness, I'll show you page 18, it's a guideline on disclosure of adverse events, and I'm not suggesting that that one is or any of the necessarily are applicable here, but would you have given any thought to something that you describe to be an event, involving 20 specimens should possibly be considered to be the subject of one of these reports?

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MR. DYER:
A. Could be, I didn't fill anything out at that time, again, what we did was how we dealt with it on technical and then for the clinical went to Dr. Lynn Morris-Larkin.
MS. NEWBURY:
Q. Have you ever filled out any occurrence reports due to any technical problems prior to the new policies coming in place, have you ever -
MR. DYER:
A. Occurrence?
MS. NEWBURY:
Q. Any sort of a report that would be along the lines of this, these are the ones I'm familiar with.
MR. DYER:
A. I think pretty well all of the reports we would fill out were mainly around data entry, how specimens came in, that's pretty well all of what we fill out all the time.
MS. NEWBURY:
Q. So labelling problems or wrong MCP numbers.
MR. DYER:
A. Yes, exactly.

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MS. NEWBURY:
Q. Or improper name or switched labels or something of that sort.
MR. DYER:
A. Right, yes, for all that stuff we always filled out occurrences.
MS. NEWBURY:
Q. And the occurrences that you filled out at the time, was it through this particular policy -
MR. DYER:
A. I don't know if it was through this particular policy, I know that when we had an occurrence like that, whenever we had an issue with a specimen of that nature, we always filled out an occurrence report.
MS. NEWBURY:
Q. So this was from, before 2005 you had an occurrence form that you filled out for these--was it a special form for that purpose?
MR. DYER:
A. No, I think it was a general occurrence form that they were using in Eastern Health.
MS. NEWBURY:
Q. Okay, and you never ever filled one out when you encountered problems on a more technical

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nature, as opposed to the -
MR. DYER:
A. No, not technical nature in house, no.
MS. NEWBURY:
Q. But today you would?
MR. DYER:
A. Well now that we have the occurrence, yes.
MS. NEWBURY:
Q. And is there something different about the policy now as compared to what was in place at the time?
MR. DYER:
A. No, I think we have, the one we fill out now is not occurrence of this nature, we have our own occurrence form in house for every little thing that happens, every single thing is documented.
MS. NEWBURY:
Q. Thank you, Mr. Dyer, those are all the questions I have for you.
MR. DYER:
A. Thank you, Ms. Newbury.
THE COMMISSIONER:
Q. Thank you, Ms. Newbury. Ms. Taylor?
MS. TAYLOR:

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Q. No questions, Commissioner.
THE COMMISSIONER:
Q. Mr. Pike?
MR. PIKE:
Q. No questions, thank you.
THE COMMISSIONER:
Q. Mr. Simmons?
MR. BARRY DYER, EXAMINATION BY MR. DAN SIMMONS
MR. SIMMONS:
Q. Mr. Dyer, I do have a few questions for you. I'm going to start with Ms. Wegrynowski's second report, after her return visit to the Eastern Health lab in 2006 and it's at P-0048 please? You've told us that you didn't see the full text of this report, I believe, until probably February of this year, but you had been read portions of it by Mr. Gulliver after the report was received, some time in the Spring of 2006, is that right?
MR. DYER:
A. Yes.
MR. SIMMONS:
Q. And you've also told us as well that you had seen spreadsheets that were prepared and you were shown one earlier today, I believe.

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MR. DYER:
A. Yes.
MR. SIMMONS:
Q. Which captured summaries of what some of the recommendations were from this report.
MR. DYER:
A. Correct.
MR. SIMMONS:
Q. And you told us as well that you were involved, I believe, in the implementation of some of those recommendations?
MR. DYER:
A. Yes.
MR. SIMMONS:
Q. Were there some that weren't assigned to you for implementation?
MR. DYER:
A. Yes.
MR. SIMMONS:
Q. Okay, I'm going to take a look at some of the recommendations in this report and ask you a number of questions and if I do ask you about some where someone else is the better person to answer those questions or comment on it, please let me know. The first section with

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the recommendations is a section that's headed "Fixation Grossing" and it appears on the 6th page of the exhibit, the recommendations start on the bottom of that page. There are two-- these recommendations, one and two, deal with standard operating procedures for excisioning, grossing, fixation procedures and documentation with regards to pathologist assistants. And I understand from what you've told us already that there are now four pathology assistants working within anatomical pathology in Eastern Health, correct?
MR. DYER:
A. Correct.
MR. SIMMONS:
Q. And what proportion -
MR. DYER:
A. And also a senior tech.
MR. SIMMONS:
Q. And a senior technologist.
MR. DYER:
A. Yes, so really there's four PAs and another additional person for grossing.
MR. SIMMONS:
Q. And what portion of the grossing of specimens

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is done by the pathology assistants now, compared to what's left for the pathologists, would you know that?
MR. DYER:
A. I'd say it must be around 95 percent for sure.
MR. SIMMONS:
Q. Okay, so the grossing function is not substantially transferred over to the pathology assistants and the one senior technologist?
MR. DYER:
A. Yes.
MR. SIMMONS:
Q. Can you tell what the current situation is regarding the development of operating procedures, policies, protocols for the work of the pathologist? What point has it reached at the present time?
MR. DYER:
A. The team leader and I believe Dr. Lynn Morris-Larkin are working together on getting as many as they can written, there's quite a few grossing protocols written right now, or grossing SOPs as we would call it, and we have a few in draft also.

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MR. SIMMONS:
Q. Okay, so once that process reaches its conclusion, well I don't know if it will ever be concluded, but once it reaches a point where all the functions have been addressed with signed off protocols, will that address these two recommendations that are -
MR. DYER:
A. Again, once they're signed off, they will be checked yearly and there's always changes or as advancements occur, there's always going to be changes, even in those protocols.
MR. SIMMONS:
Q. Right.
MR. DYER:
A. But I think, you know, for the most part, yes, then we'll be into the more monitoring process.
MR. SIMMONS:
Q. Okay, can you give me a description of what the process is leading to the development and final signing off on a standard operating procedure as it's done within anatomical pathology now at Eastern Health?
MR. DYER:

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A. Well what would happen is we will take, our protocols that we are already using, we will now take those and submit them to the total quality management group. They will do research to determine if it's best practice. After that research is done, if there's any changes that they feel need to be made, those changes are noted and then they're sent out to all the staff who will be involved. For example, for grossing protocol, they would be sent out to physicians, they would give so many weeks for them to actually make any changes or any comments. Once that is done, then it's brought back to the committee and the committee will discuss those changes and people on the committee who would have knowledge, like a physician on the committee would then make comments again to see if there's an agreement. If there's no agreement, then we have to discuss with those people or those people who made the comments that we didn't agree with, as to why. Once that is done, eventually we will come to some kind of an agreement, then it will be put into a formal document. Once it's put into a

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formal document, then it has to be sent out to the clinical chief and the director and the program director for signage. Once that is done, then it has to be sent to control documents, so it would be given an actual document number. When that's done, then it's brought back, put into binders and made available for the staff, whoever uses that procedure, to read.

MR. SIMMONS:

Q. While this process is ongoing, leading to the final stand off of a standard operating procedure, where do the people doing the work look to for their guidance about how to carry out their activities while waiting for this final completion of this long process?

MR. DYER:

A. Usually if it's for grossing, they will look to the pathologists, if it's grossing.

MR. SIMMONS:

Q. And the pathology assistants, for those areas where there are not yet standard operating procedures finally signed off, to what extent do the pathologists or a pathologist remain involved in supervising the work of the

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pathology assistants?

MR. DYER:

A. A pathologist is assigned each day who has direct supervision, so if there's any issue, there's a person there who they would go to. I believe they have rounds every morning to discuss cases, also before the grossing actually starts.

MR. SIMMONS:

Q. Okay, now is it any part of your job responsibilities to actually supervise the work or oversee any work of the pathology assistants?

MR. DYER:

A. That's mainly a clinical function, I would only be there for administrative purposes.

MR. SIMMONS:

Q. Right, okay, and who would be the best person if we needed to talk to someone to understand just how the work of the pathology assistants is being supervised today?

MR. DYER:

A. Dr. Lynn Morris-Larkin would be a good person.

MR. SIMMONS:

Q. Okay. Recommendation No. 3 is for a

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refrigerator in the operating room, quick section room at all sites. Has that been done now?

MR. DYER:

A. That is done.

MR. SIMMONS:

Q. Yes.

MR. DYER:

A. Again, I have to speak on that one. Constantly when you're investigating or when we're doing a research to determine best practice, there's so much information out there that it's, you know, it's conflicting. Currently we do have refrigerators in the ORs; however, you know, I know CAP, they've printed guidelines recently back in March with issues about putting tissues in the fridge.

MR. SIMMONS:

Q. CAP, that's Canadian Association -

MR. DYER:

A. No, the College of American Pathologists.

MR. SIMMONS:

Q. College of American Pathologists.

MR. DYER:

A. And I was just away to a seminar or to a

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congress back last month and I actually went to the lectures by Mr. Bryan Hewlett, who is considered an expert and I asked a specific question to him, you know, should we be putting formalin fixed tissues in the fridge and he said, no. And again, you know, it's a real tough one when you're told to do it and we are doing it, but you know, formalin reacts best at room temperature, I believe the stats say 22 to 37, so when you put it in the fridge, you're actually impeding fixation and you can actually cause precipitation, you're causing the formalin to precipitate out. So it's a real--it's a tough decision what to do, so currently we are putting them in the fridge because that's what was recommended by Ms. Wegrynowski, but I found multiple documentation as to that shouldn't be done.

MR. SIMMONS:

Q. So there is then--there are then competing views that you were aware of as to whether tissues that have been placed in formalin in the operating room should be put in refrigeration or kept at room temperature?

MR. DYER:

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A. Yes.

MR. SIMMONS:

Q. Now, when you write a standard operating procedure or adopt a policy that chooses one of those options or the other, does that fix it for all time or is there any process by which that would come up for review in the future?

MR. DYER:

A. Every year we go through review--every year we will go through a review, however, I think for things like this, as new information is brought forward, you know, we do have the ability to go in and change it right away.

MR. SIMMONS:

Q. Right, okay, in order to do something differently than what had been recommended here, to consciously make to do a different choice, what level of decision making would have to be involved in -

MR. DYER:

A. Again, it would be brought to the total quality management group where we have a pathologist and we have the site chief--or not the site chief, the clinical chief and for

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something of that nature, that would have to be their decision because it impacts on the clinical, on the final result of how the slide will look.

MR. SIMMONS:

Q. Okay. Recommendation four suggests a time stamp for receipt of specimens from the courier and I take it from what you said earlier, that that's been implemented.

MR. DYER:

A. Yes.

MR. SIMMONS:

Q. The next section here deals with tissue processing and there are three recommendations here on the 8th page of the exhibit, all dealing with standard operating procedures for different aspects of tissue processing. Do you know if those have been now completed and signed off?

MR. DYER:

A. Yes, they have.

MR. SIMMONS:

Q. And the next section deals with IHC staffing. There are two recommendations there, recommendation No. 8 is lines of communication

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need to be enhanced to ensure uninterrupted workflow to accommodate the changes in protocols. Once a protocol has been adopted in the IHC laboratory now, is there a written process that would have to be followed in order to implement a change to a protocol? Is that part of your operating procedures?

MR. DYER:

A. To actually -

MR. SIMMONS:

Q. To change a protocol once it's been adopted?

MR. DYER:

A. I'm not sure actually to change a protocol itself, again, we have the new validation protocol set up.

MR. SIMMONS:

Q. Yes.

MR. DYER:

A. And what normally happens is if there's an issue with a slide or with a stain, it's brought to Dr. Ford Elms and then he would initiate what changes he would like, so I'm not sure if we actually have a written protocol as to that, but I know we have a protocol in place where everything should be

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brought to him and then he would initiate or direct the staff as to what to do.

MR. SIMMONS:

Q. Okay, so the recommendation dealing with uninterrupted workflow here, currently if there's an issue raised in respect to any particular IHC stain, that would have to go to the director of immunohistochemistry, Dr. Elms.

MR. DYER:

A. Yes, or his designate.

MR. SIMMONS:

Q. Or his designate.

MR. DYER:

A. And his designate would then bring it to him.

MR. SIMMONS:

Q. And if they were to initiate then any change in a protocol as a result, would they then have to follow the written operating procedures for revalidation of that antibody?

MR. DYER:

A. Yes, that's what would have to happen.

MR. SIMMONS:

Q. And recommendation No. 9 deals with succession planning at the technical level and I believe

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we heard that you have had two technologists retire and there are two new technologists training to replace them.

MR. DYER:

A. Yes.

MR. SIMMONS:

Q. And for the immediate term, does that address your succession planning issues for technologists in IHC?

MR. DYER:

A. Yes, it is, they'll be here for awhile, I think.

MR. SIMMONS:

Q. Now the next section is IHC documentation and the first recommendation there, No. 10, deals with procedure manual outlining all standard operating procedures to be written in compliance with the clinical and laboratory standard institute using GP2 A4 guidelines for clinical laboratory technical procedure manuals. Now, your SOP manual in immunohistochemistry, now in anatomic pathology, does it follow that particular standard or is there a different standard now in use?

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MR. DYER:

A. No, through the mandatory accreditation that our laboratory is going through, Eastern Health has adopted their own standard format that we will use and that's the one that we've been using.

MR. SIMMONS:

Q. Okay, and is that a framework for policy and procedure that's been adopted by Eastern Health for application across the whole organization?

MR. DYER:

A. Yes.

MR. SIMMONS:

Q. And the laboratory is adhering to that standardized format within the whole organization, is it?

MR. DYER:

A. Yes.

MR. SIMMONS:

Q. Do you know approximately when that framework for policy and procedure was adopted within Eastern Health?

MR. DYER:

A. I think Lynn Wade might be the best person for

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that.

MR. SIMMONS:

Q. Okay, good. Now if we were to pull up and look at the relatively recent version of this procedure manual, with the standard operating procedures, we'd see that some have been signed off and some have not. For those that have not yet been signed off, do you know whether they are being followed on an interim basis or if there is some other existing policy or procedure that we could look to, to guide the work of the technologist in those areas?

MR. DYER:

A. Again, our practice is things that we're doing that we deem are okay, we are--that's what we're doing in the meantime while we're waiting for them to be signed off.

MR. SIMMONS:

Q. Okay, good. On the next page, there are a number of other recommendations dealing with things like antibody specification sheets, microscope maintenance, documentation guaranteeing pipette accuracy and calibration, digital temperature readings, these are all

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under the documentation heading, have these recommendations all now been addressed by documentation and record keeping within the lab?

MR. DYER:

A. Yes, they have.

MR. SIMMONS:

Q. And on the next page, recommendation 15 deals with documenting evaluation to ensure sensitivity and specificity of test results. Take a look at that. Does this deal generally with the testing process and the validation process?

MR. DYER:

A. Yes.

MR. SIMMONS:

Q. And have those -- all the items addressed here now been addressed with documentation in the lab?

MR. DYER:

A. Yes.

MR. SIMMONS:

Q. Sixteen is new equipment instrumentation selection criteria. Has that been addressed through a --

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MR. DYER:

A. We've written a policy on equipment selection.

MR. SIMMONS:

Q. Right, and that one is not yet signed off?

MR. DYER:

A. No, that one is not signed off. It's a general policy.

MR. SIMMONS:

Q. Okay, and then 17 is the corrective action log and you've told us that that's in place?

MR. DYER:

A. That's in place.

MR. SIMMONS:

Q. And told us how that's implemented. Eighteen is a very specific one relating to non-specific false positive staining from endogenous biotin.

MR. DYER:

A. Yes.

MR. SIMMONS:

Q. I don't know -- are you in any position to comment on that particular --

MR. DYER:

A. That would have been written by Dr. Ford Elms.

MR. SIMMONS:

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Q. Okay. Then there's a heading for immunofluorescence which is not immunohistochemical testing.

MR. DYER:

A. No, that's a different -- that's a different section.

MR. SIMMONS:

Q. And it's coming up slowly -- there's a section on controls which has two recommendations, number 22 and 23, addressing negative controls. Have those now been addressed by the way that negative controls are run on every patient for all patient tissue, and a negative control for each batch?

MR. DYER:

A. Negative controls are run on every patient for quantitative antibodies like ER/PR, cyclin D1, yes.

MR. SIMMONS:

Q. Okay.

MR. DYER:

A. And we've also done the sausage block, yes.

MR. SIMMONS:

Q. So both those have been addressed, and number 24 is the technologists to be trained to

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assess the quality of external positive and negative patient controls tested daily. Now there's been some discussion about that already.

MR. DYER:

A. Yes.

MR. SIMMONS:

Q. You've told us that the training of technologists is under way with Dr. Elms.

MR. DYER:

A. It is.

MR. SIMMONS:

Q. And I believe you've also told us that the person occupying the new position -- I can never remember the name, Ms. Gamberg's position.

MR. DYER:

A. Yes.

MR. SIMMONS:

Q. That your expectation is that she will, in fact, be the person who will take on this role of assessing positive controls?

MR. DYER:

A. I think that plan is to teach all of them, but she will be the lead.

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MR. SIMMONS:
Q. She will be the lead, okay, and is there currently any decision made as to whether or not that will relieve the pathologists of the obligation to finally sign off on those controls?
MR. DYER:
A. I don't know if an actual decision has been made -- I mean, a final decision, but that is the intent.
MR. SIMMONS:
Q. In the meantime, has the system remained in place where positive controls will go to pathologists, either the breast group, or some other designated person for review before patient tissues are interpreted?
MR. DYER:
A. Yes, and I believe Dr. Morris-Larkin also wrote a memo. She met with all the pathologists to ensure that this was being done.
MR. SIMMONS:
Q. Okay, and recommendation 25 deals with the Sakura Xpress tissue processor. You've told us that currently at least there's no plan to

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implement that in the meantime?
MR. DYER:
A. Not in the immediate future, I don't think, no.
MR. SIMMONS:
Q. The next section is surgical reports. There are three recommendations there. Are you in any position to comment for us on those, whether they've been implemented?
MR. DYER:
A. I think number 26, I may have been involved with.
MR. SIMMONS:
Q. Yes.
MR. DYER:
A. So that we actually would standardize what we call the data sections, where information would go, and 27 -- and I think 28 was done by the clinicians.
MR. SIMMONS:
Q. Okay, and then under quality assurance, there are some comments here on the steps that had been taken prior to Ms. Wegrynowski's second visit concerning proficiency testing and other matters, and she has a number of

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recommendations there. Twenty-nine deals with sharing quality management initiatives with other authorities. Is this something you would have had any involvement in?
MR. DYER:
A. No, I don't think so.
MR. SIMMONS:
Q. Thirty, quality management team should be involved in quality improvement activities within the organization. Would this be something undertaken by the total quality management group that you referred to earlier?
MR. DYER:
A. Yes.
MR. SIMMONS:
Q. Thirty, establishing quality indicators to monitor the laboratory's contribution to patient care, where does that one now stand?
MR. DYER:
A. Again I think that that would be part of the total quality management group.
MR. SIMMONS:
Q. Okay.
MR. DYER:
A. Where indicators were actually being -- were

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developed.
MR. SIMMONS:
Q. And --
MR. DYER:
A. You have two 30s there.
MR. SIMMONS:
Q. There is two 30s there. The first 30 was the quality management team being involved in quality improvement activities, and the second 30 then is establishing quality indicators. Thirty one, laboratory management shall ensure opportunities identified for improvement are dealt with. Is there a system now in place that when the total quality management team identifies opportunities for improvement, that there is follow up and action taken on those?
MR. DYER:
A. Yes, we call it "outcomes", yes.
MR. SIMMONS:
Q. And those are monitored, are they?
MR. DYER:
A. Yes.
MR. SIMMONS:
Q. Okay, and 32 again is the corrective action logs and the system is in place for monitoring

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those and taking action in response, is it?
MR. DYER:
A. Yes.
MR. SIMMONS:
Q. And that's all of them. Mr. Dyer, compared to when you became the pathology manager at Health Care Corporation and then Eastern Health in 2005, have there been -- has there been any substantive change in the staffing levels within anatomical pathology?
MR. DYER:
A. Since 2005 to today?
MR. SIMMONS:
Q. Well, let's say first from when you became manager or when you joined the Health Care Corporation in 2001, and you physically moved into the pathology lab at Health Science Centre, correct?
MR. DYER:
A. Yes.
MR. SIMMONS:
Q. From then up until 2005, was there any real change in the number of people who worked doing the work of anatomical pathology?
MR. DYER:

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A. No.
MR. SIMMONS:
Q. In that time period, was there any growth in demand for the services provided by anatomical pathology?
MR. DYER:
A. Yes.
MR. SIMMONS:
Q. Do you know the range of annual growth of procedures that were requested from that lab?
MR. DYER:
A. I think it was around 7 or 8 percent every year.
MR. SIMMONS:
Q. Every year?
MR. DYER:
A. Yes.
MR. SIMMONS:
Q. And do you know how long that's been the case?
MR. DYER:
A. That's been the case, I think -- I think last year might have been our first year where we actually had maybe 1 percent.
MR. SIMMONS:
Q. Okay.

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MR. DYER:
A. But all that time there was a major increase in workload.
MR. SIMMONS:
Q. Right, and from the time you became manager up until 2005 there had been no increase in the number of staff that were available to handle that work?
MR. DYER:
A. There was no new hires, no.
MR. SIMMONS:
Q. Before you became manager, I think you've told us as well that you were aware that there had actually been some reductions in staffing in the laboratory generally?
MR. DYER:
A. Yes.
MR. SIMMONS:
Q. And at the management level, in particular?
MR. DYER:
A. Yes.
MR. SIMMONS:
Q. Since 2005, what's happened with staffing levels in anatomical pathology?
MR. DYER:

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A. Anatomical pathology staff technically has increased by about 50 percent.
MR. SIMMONS:
Q. And what sort of positions have been added?
MR. DYER:
A. The four PA's have been added. We've gotten the new position for total quality management, a new position for our team leader, I guess, for IHC.
MR. SIMMONS:
Q. Uh-hm.
MR. DYER:
A. We've been given eight to ten technical support, like, laboratory technologists and clerical support as in stenos and secretaries.
MR. SIMMONS:
Q. Uh-hm, and those eight or ten additional positions, are those all filled yet or are some of those relatively newly added?
MR. DYER:
A. No, some of them are relatively new. I think we're expecting about four or five new staff in September, and I think -- I've just been given permission about two weeks ago to post for another five positions. So that would

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give us about 15 to 16 brand new positions.

MR. SIMMONS:

Q. And what effect will the increase in the staffing of anatomical pathology have on the ability of the lab to perform its work and keep up to date with the things that it needs to do?

MR. DYER:

A. Well, now training is easier because there's more staff available to help train. The workload -- patient care, much -- it will definitely benefit the turnaround times. Very important for quality and documentation. If we didn't have the staff, documentation is pretty well impossible.

MR. SIMMONS:

Q. Uh-hm.

MR. DYER:

A. It's going to make our lab fantastic. It's going to be excellent in every sense of the word. In her report what she commented on, we will be able to do that even more. It's also -- like, this year even it's surprising because we actually now have some dedicated time where techs are actually reading the

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protocols and signing off saying that they're reading these things. Our quality safety manual, which we had designed, things like this.

MR. SIMMONS:

Q. Uh-hm.

MR. DYER:

A. So it's very different and it's very good.

MR. SIMMONS:

Q. Has the effect been, at least in part, to free people from the immediate demands of the everyday work and give them more time to devote to extra things that they wouldn't have had an opportunity to do before?

MR. DYER:

A. Yes, big time.

MR. SIMMONS:

Q. There was an accreditation of the Health Care Corporation by the Canadian Council on Health Services Accreditation in 2004. Can you tell me what you recall of the -- what was done in the lab or in the pathology lab, in particular, when that accreditation took place?

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MR. DYER:

A. The most that I can remember was the day when the lab was going to be--the day when they were actually going to do their tour through the labs, I was asked just to be available in case they needed me for questions, but for the most part, they just walked through the lab.

MR. SIMMONS:

Q. Okay, and how long did the process of the review of the lab take, in 2004?

MR. DYER:

A. Well, for example, pathology, you know, maybe ten minutes. They would just walk through the lab. It was like a tour more than anything else.

MR. SIMMONS:

Q. Okay. There was an accreditation again in 2008, this time for Eastern Health.

MR. DYER:

A. Yes.

MR. SIMMONS:

Q. Were you involved in that accreditation process?

MR. DYER:

A. Yes.

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MR. SIMMONS:

Q. Okay, tell me about that.

MR. DYER:

A. That was a major, a major amount of work that had to be done. What happened was they separate--they asked for--we put together three teams based on information. So this was the first time where we went--accreditation where information was asked of us. So what happened was we put together three groups, one administrative, one for technical and one for blood bank. That's how this group was actually coined. And I think we spent about 45 hours just filling out documents of types of questions they asked to see what our lab was doing, very, very specific, right down to even hand washing, and from there, we filled all this documentation out, to give them ideas of what we did, and then it was all sent back to them. This was done in the spring and then in fall, they came in and they did a tour of the lab, but once they did the tour of the lab, the next thing they did is there was a room set up and they would go through all these things and ask very specifically "I want

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your--I want to see--I want an SOP for this. I want procedures for this. I want maintenance for this. I want how specimens are signed out." Like it was very, very detailed. From the moment that a specimen entered our lab to the moment that the report was sent out, they wanted to know every single thing we were doing and how it was being documented, how it was being followed.

They even put you through almost like a test. For example, I don't think we got selected, but they would do a test at each laboratory and what they would do, for example, is a blood would be drawn in emerg and they would track that blood right until the report got to the patient, just so even the processes of how a blood was collected and how it got to the lab or how specimens--like it was extremely detailed.

MR. SIMMONS:

Q. Okay. Mr. Dyer, I don't have any other questions for you. Is there anything that you would like to say to the Commission before you finish your evidence?

MR. DYER:

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A. I do have a statement, if I can make it?

MR. SIMMONS:

Q. Okay.

MR. DYER:

A. When I started as a medical laboratory technologist at the Janeway Child Health Centre in 1986, I quickly experienced and learned the pain and suffering of children. It was heart breaking to watch the torment they lived through and the despair in the eyes of their families. When I moved to anatomic pathology, the caring and compassion demonstrated by Dr. P for all of these patients was addictive and one in the same with myself. The main reason I went to work was for the patient. That was our primary focus. We worked long hours, many evenings and nights, putting our personal lives second. I believe I brought this philosophy to my management position. When times were tough, working in an environment with many challenges and few rewards, I constantly reminded myself and the staff, "think how must the patient at the end of this biopsy be feeling right now?"

The profession of medical laboratory

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technology is a critical link between the patient and their care provider. I believe that the profession should be licensed in Newfoundland and Labrador and all laboratories should go through a mandatory accreditation, such as the CCHSA or what we'd say Accreditation Canada. The Government of Newfoundland and Labrador must recognize the value of a medical laboratory technologist and their impact on patient care.

As it goes for the current anatomic pathology division at Eastern Health, they have definitely stepped up to the plate. Since 2006, approval has been given to increase both technical and clerical staff by approximately 50 percent. The infusion of new capital into continuing medical education will guarantee additional staff training. Four pathology assistants have been hired and trained in the surgical gross and autopsy suites. This promotes a standardization of practices and provides much needed support to the pathologists. Having a director to lead the immuno lab will offer leadership to streamline communication, as well as a good

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resource person to avail of. The addition of a PhD can only enhance and complement the quality of work already being performed. Eight new technical and clerical positions will support the current hard working and dedicated staff in pathology to achieve our goals and objectives. Time can now be allotted for them also for continuing education.

With the development and implementation of a total quality management department for pathology, a new position was created, a technical staff to co-chair. This committee provides the direction, both clinical and technical, in writing SOPs, identifying best practices and maintaining our clinical indicators. The most important part is the monitoring of all the practices that are currently performed in anatomic pathology. The participation in NEQAS, CAP and ASEP proficiency testing, coupled with intra and inter laboratory comparisons, we can be assured of consistent and accurate results.

We have also been given approval for another laboratory technologist III, a senior

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position, to assist me with day-to-day operations. This will give me dedicated time to research and engage in major projects required to keep anatomical pathology on the leading edge.

Laboratory Medicine created and hired a new quality manager. This position is leading the program into mandatory accreditation for our laboratory. The manager is a great resource person in the development of Eastern Health's quality assurance program for laboratory medicine.

The leadership team for the Laboratory Medicine is one of excellence. The visionary qualities demonstrated through the action by our program director has put our program into the forefront for quality, safety and technology. With constant support from this team and our clinical chief, with the above mentioned, the public can be reassured Eastern Health's anatomic pathology division of Laboratory Medicine is one of the best in Canada.

Finally, I would like to thank the Commission of Inquiry for giving me the

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opportunity to speak here this week. Thank you.

THE COMMISSIONER:

Q. Thank you.

MR. SIMMONS:

Q. Thank you, Mr. Dyer.

THE COMMISSIONER:

Q. Thank you, Mr. Simmons. Is there anything arising, Ms. Chaytor?

CHAYTOR, Q.C.:

Q. Just a couple of things quickly.

THE COMMISSIONER:

Q. Okay.

MR. BARRY DYER, EXAMINATION BY SANDRA CHAYTOR, Q.C.

CHAYTOR, Q.C.:

Q. Mr. Dyer, in the time period when your workload was increasing but your number of personnel was stable or there had been some reductions or it was least stable, was there anything offset in terms of management? Was management doing anything to offset that? For example, was there an increase in automation in the laboratory in that time period?

MR. DYER:

A. Automation, no. I mean, I think--well, we

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brought in the Benchmark, but in terms of automation, like our processes were the same, and our stainers and that were all the same. In 2004, we brought in the--when the Benchmark came in, we brought in one special stainer to do the special stains, to help them move the special stains, but at the time, we already had a person--we already had just one person assigned to special stains, so that person just continued to do that work.

CHAYTOR, Q.C.:

Q. So, were there any measures to try to alleviate that disconnect between increasing workload and no extra bodies to do the work.

MR. DYER:

A. I think, we tried, again, like standardization, for example, and it made a little difference because the workload still increased, but we would do, like, you know some sites were doing probably three H & Es on a skin, others were doing ten. So, we'd try to standardize and just do a number in between. So, we did do things like that. But the workload itself, you know, like the complication--how can I explain? When the

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workload increased, it's not necessarily that the actual number of patients increased. What happened was the complexity of the specimens started becoming more difficult and therefore, that would increase our number of blocks. And I believe another big one was with the prostates where they were--I can't explain technically why, but at one point, I guess, through their practices, you know, we would get--you would have two containers that would come down on a prostate. And so then there'd be four prostates in each one, but I think as they started getting better at cancer treatment, those two turned into eight. So, we would have one container here with four and you would do five slides. Now, four of them came down, so instead of doing five, we did 20. So, like this, this is what was happening in terms of workload increases.

CHAYTOR, Q.C.:

Q. Okay. The next positions that have been created, I understand that you have looked for PAs prior to and we've had some discussion around that. Had the laboratory medicine program ever sought out the other positions

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which have now been created? Had that ever happened prior to this happening in 2005?
MR. DYER:
A. I think, again, maybe at our management meetings I would ask. I mean, we would always talk about our workload and how it's increased and I'm sure we probably would have discussed, you know, we need staff.
CHAYTOR, Q.C.:
Q. The idea of a quality manager, was that ever sought out before or put forward as -
MR. DYER:
A. Again, talk to Mr. Gulliver about that.
CHAYTOR, Q.C.:
Q. Okay. And in terms of the new positions, when were all these new positions actually, finally approved?
MR. DYER:
A. Within the last couple of years, like in '05, late '05 I think we got the approval for the actual PAs.
CHAYTOR, Q.C.:
Q. And the approval for the quality people, when did that happen?
MR. DYER:

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A. Well, for our quality person, that happened in, I think it was referenced, that might have been in April '06.
CHAYTOR, Q.C.:
Q. And the accreditation that took place in 2007, did any of that relate to the IHC lab, the IHC portion of the lab?
MR. DYER:
A. Yes, again, I think, like they were looking for SOPs and all these types of things. Yes, they came from all areas.
CHAYTOR, Q.C.:
Q. Okay. And this just from our own understanding. You referred to and there was reference to total quality management group.
MR. DYER:
A. That's what we call our group, total quality management group.
CHAYTOR, Q.C.:
Q. Total management quality group.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And is that the group for the laboratory medicine program?

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MR. DYER:
A. No, that's just for--we have our own in pathology.
CHAYTOR, Q.C.:
Q. That's just strictly for pathology.
MR. DYER:
A. That's just pathology alone. We actually have our own quality management group.
CHAYTOR, Q.C.:
Q. And it's called total -
MR. DYER:
A. Because it's total from beginning to end.
CHAYTOR, Q.C.:
Q. Okay. And so any reference--are there any other quality management groups because sometimes we see reference in the documentation to just quality management group and -
MR. DYER:
A. You mean in laboratories?
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. You'd have to ask Mr. Gulliver.
CHAYTOR, Q.C.:

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Q. So, the new group that's been put in place for pathology is called total quality management -
MR. DYER:
A. I think that's what Dr. Carter called it back in '06.
CHAYTOR, Q.C.:
Q. Okay. In terms of the development and final signing off on protocols, you indicated that they're submitted to the total quality management group.
MR. DYER:
A. Yes, to start the process.
CHAYTOR, Q.C.:
Q. Right, to determine if their best practices?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And then it's sent out to the physicians, the -
MR. DYER:
A. Or whoever would be involved.
CHAYTOR, Q.C.:
Q. Right, okay. And then they're given a number of weeks in which they can provide feed back to the committee.

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MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Any comments or feedback come back to the committee -
MR. DYER:
A. Is discussed at the committee level.
CHAYTOR, Q.C.:
Q. - is discussed at the committee and if there's not agreement with the comments then it has to go back to the people who supplied the comments for further feedback or to try convince them as to why their comments aren't accepted. And you said, you discussed that with the people involved.
MR. DYER:
A. I think they do, yes, for the clinical and the technical, yes.
CHAYTOR, Q.C.:
Q. And eventually we come to agreement and then it's sent to the clinical chief and the director -
MR. DYER:
A. Well, it's--yes, again, then it comes back to the committee. It's formalized and then it's

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signed off by the--I say clinical, but it's signed off by, I guess, based on policy, who would sign off what protocols.
CHAYTOR, Q.C.:
Q. And is there anything in place in terms of what has to happen to say, well, agreement has to be reached by a certain time period, that there has to be a time limit put on it in terms of reaching? Like, what is no agreement is reached?
MR. DYER:
A. Oh, I guess then the decision is made by our clinical chief.
CHAYTOR, Q.C.:
Q. So, ultimately the authority, for saying enough is enough, enough time is passed, this is going to be the protocol, that rests with the clinical chief.
MR. DYER:
A. Yeah, I don't think that's happened yet, but I think that would, I guess what would happen.
CHAYTOR, Q.C.:
Q. Okay. So, ultimate authority would rest with the clinical chief to say when to say when.
MR. DYER:

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A. I think for clinical and I think for technical, I guess it would be with Mr. Gulliver.
CHAYTOR, Q.C.:
Q. Okay. Thank you, Commissioner, those are my questions.
THE COMMISSIONER:
Q. Thank you. Mr. Dyer, we've kept you somewhat longer than we anticipated, but I very much appreciate your contribution and thank you very much for that.
MR. DYER:
A. Thank you.
THE COMMISSIONER:
Q. It's now going for ten to five. I suspect it's a little late to be starting with the next witness. So, I suggest we adjourn until the morning. 9:30.
Upon conclusion.

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CERTIFICATE

I, Judy Moss, hereby certify that the foregoing is a true and correct transcript in the matter of the Commission of Inquiry on Hormone Receptor Testing, heard on the 23rd day of July, A.D., 2008 before the Honourable Justice Margaret A. Cameron, Commissioner, at the Commission of Inquiry, St. John's, Newfoundland and Labrador and was transcribed by me to the best of my ability by means of a sound apparatus.
Dated at St. John's, Newfoundland and Labrador this 23rd day of July, A.D., 2008
Judy Moss

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