COMMISSION OF INQUIRY
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

September 22, 2008

Appearances:

Bernard Coffey, Q.C. . . . . Commission Co-counsel
Sandra Chaytor, Q.C. . . . . Commission Co-counsel

Rolf Pritchard/Jackie Brazil . . . . Her Majesty in Right of NL

Peter Browne . . . . . Doctors Kara Laing et al

Daniel Simmons . . . . . Eastern Regional Integrated
. . . . . Health Authority

Laura Brocklehurst. . . . . Members of the Breast Cancer
. . . . . Testing Class Action

Mark Pike . . . . . NL Medical Association
Jennifer Newbury . . . . . Canadian Cancer Society (NL Division)
David Eaton, Q.C.. . . . Central, Western and Labrador-Grenfell
Regional Integrated Health Authorities

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Certificate



COFFEY, Q.C.:
Q. Dr. Jenkins is the next witness, Commissioner.
THE COMMISSIONER:
Q. All right, then.
DR. KENNETH JENKINS (SWORN) EXAMINATION BY BERNARD COFFEY, Q.C.
REGISTRAR:
Q. Would you state and spell your full name for the Commissioner?
DR. JENKINS:
A. Sure. My name is Kenneth Guy Jenkins, K-E-N-N-E-T-H, G-U-Y, J-EN-K-I-N-S.
REGISTRAR:
Q. Thank you.
COFFEY, Q.C.:
Q. And it is Dr. Ken Jenkins, though?
DR. JENKINS:
A. That's right, Mr. Coffey.
COFFEY, Q.C.:
Q. Thank you. Dr. Jenkins, could you give the Commissioner, please, an overview of your educational and professional background?
DR. JENKINS:
A. Sure, be glad to. Graduated from Memorial University's Medical School in 1984. Did a

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rotating internship there until 1985 and began my career with the Canadian Armed Forces at that point in time. I was sponsored through the military during my medical school and then went on to a career with them until 2001 and served in a variety of roles during that time.

COFFEY, Q.C.:

Q. And toward the end of your career in the military what position did you have?

DR. JENKINS:

A. My last posting, actually, was a non-medical one. It was serving as wing commander or commonly known as base commander at Nine Wing, Gander for two years.

COFFEY, Q.C.:

Q. And so you retired from the military, Doctor, in what year?

DR. JENKINS:

A. In 2001.

COFFEY, Q.C.:

Q. 2001. And what did you do then?

DR. JENKINS:

A. And then I went back to Corner Brook and worked for a year as a medical officer health with Health and Community Services, Western.

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And then went on to work with Western Health Care Corp at the time as Vice-President Medical Services, and that was in April of 2002. And subsequently when the boards amalgamated in 2005 went on to serve as Vice-President Medical Services for Western Health, as well.

COFFEY, Q.C.:

Q. Now, Commissioner, if I could, please, there are a number of other exhibits I'm going to ask to be entered. They're exhibits P-2731 through P-2825, inclusive?

THE COMMISSIONER:

Q. Entered.

EXHIBITS ENTERED AND MARKED P-2731 THROUGH P-2825, INCLUSIVE.

COFFEY, Q.C.:

Q. Thank you, Commissioner. Doctor, so when you joined what is now Western Health, the predecessor organization that you joined at the time was known as what?

DR. JENKINS:

A. Western Health Care Corporation.

COFFEY, Q.C.:

Q. And at that time what geographic area did that

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encompass?

DR. JENKINS:

A. The boundaries have remained unchanged pretty much and the southern end of our service area starts down around Port-aux-Basques and Burgeo. In north we extend up to around the Port Saunders area on the Northern Peninsula. And we extend also as far out as Deer Lake and White Bay South, Jackson's Arm, Sopp's Arm, Hampton, those areas. That's basically what the boundaries of our region are.

COFFEY, Q.C.:

Q. And prior to 2005 the Western Health Care Corp, you call it?

DR. JENKINS:

A. Yes.

COFFEY, Q.C.:

Q. I take it, was an organization that involved acute care facilities?

DR. JENKINS:

A. Yes, it was strictly limited to the provision of acute care services in the western region.

COFFEY, Q.C.:

Q. And how has that changed, if at all, since April 1st, 2005?

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DR. JENKINS:

A. With the amalgamation of the boards, of course, community services have now come under the same umbrella with acute care services. So, you know, there is some integration of programs and services that has occurred that has also been a change in terms of the mandate of the particular position that I serve in with a broadening of the scope and responsibilities for vice-president medical services. And specifically, when I took over the role in the new Western Health Authority, I took on also responsibility for laboratory, diagnostic imaging or medical imaging, as we call it now, pharmacy, respiratory therapy and EMS or ambulance services, as well, so there was an increase in the mandate.

COFFEY, Q.C.:

Q. And that's been since April 1st, 2005?

DR. JENKINS:

A. That's correct.

COFFEY, Q.C.:

Q. Before April 1st, 2005 who was responsible within the Western Health Care Corporation for clinical laboratory services?

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DR. JENKINS:
A. So our chief operating officer was responsible at that particular time and most of the diagnostic services were under the mandate of that particular individual.
COFFEY, Q.C.:
Q. And who was that?
DR. JENKINS:
A. At that time when I was working with Western Health Care Corporation, it was Mr. Max Powell.
COFFEY, Q.C.:
Q. And he was not a physician?
DR. JENKINS:
A. No, he was a non-physician, yeah.
COFFEY, Q.C.:
Q. Doctor, then, the structure then before April 1st, 2005 in the Western Health Care Corporation in terms of clinical laboratory services was what? Who reported to whom?
DR. JENKINS:
A. Yeah. So at that particular time then the regional director for lab services would report to the chief operating officer and would be responsible directly to that

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particular individual. That was our reporting structure at that time.
COFFEY, Q.C.:
Q. And how about the pathologists?
DR. JENKINS:
A. And the pathologists would report to myself, as VP for medical services, as well. So there was a dual reporting sort of structure in place.
COFFEY, Q.C.:
Q. So the technologists and administrative end of the clinical laboratory services before April 1st, 2005 involved reporting to the chief operating officer?
DR. JENKINS:
A. Correct.
COFFEY, Q.C.:
Q. And the medical end of it, in the sense of the clinical end?
DR. JENKINS:
A. Yes.
COFFEY, Q.C.:
Q. The pathologists reported to you?
DR. JENKINS:
A. That's correct.

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COFFEY, Q.C.:
Q. And since April 1st, 2005 you're now responsible for both sides?
DR. JENKINS:
A. That's correct.
COFFEY, Q.C.:
Q. The technologists and the pathologists report up -
DR. JENKINS:
A. Exactly.
COFFEY, Q.C.:
Q. - through you, okay. Doctor, since--when you took over the VP medical or assumed the VP medical position on April 1st, 2005, was it actually that day or was it sometime subsequent that you actually assumed that position?
DR. JENKINS:
A. I think pretty much it was effective on that particular day. The actual letter of appointment may have come a little later, but I think from a responsibility perspective and an organizational perspective, it would have been on April 1st.
COFFEY, Q.C.:

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Q. And, Doctor, can you tell the Commissioner, please, in relation to the clinical laboratory services for Western Health, I'll refer to it as it is now.
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. What quality assurance or quality control measures there were in place in respect of pathology?
DR. JENKINS:
A. Right. And certainly I can speak from my time since coming with the organization and certainly reflecting on some of the testimony that Dr. Neil had provided as well. The pathologists themselves have a mechanism by which they consult with each other, verify results when there are cases of question. That is what I would call a relatively informal process of quality assurance. There's also times when we would send samples out for assessment. Again, that was not part of a formal quality assurance program, as such, but would serve as a mechanism for us to have a look at, you know, what we're doing and

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how we were testing. Within the--that's, you're specifically talking about pathology itself now. And in terms of, you know, processing of samples and the technologist piece of that, there would be very specific measures with respect to making sure that processes were done in a proper manner and verification of that by laboratory managers and by the staff in terms of the processing of samples themselves, so those would be some of the elements that would have been in place as part of a quality assurance mechanism.

COFFEY, Q.C.:

Q. Was there any external proficiency activity?

DR. JENKINS:

A. Not specifically, as such.

COFFEY, Q.C.:

Q. And how about now?

DR. JENKINS:

A. Now we still haven't introduced a formal QA program at this point in time. It's part of, you know, what we're wanting to look at as part of this whole Inquiry and we'll see, of course, what the recommendations are and what resources can be put in place. One of the

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things that we've been fortunate enough to have some investment in as this Inquiry has progressed has been in the area of quality assurance supports for our organization. We recently received some funding from Department of Health and Community Services for a quality assurance position and so we will be using this particular person when we are able to hire somebody to really formalize, ramp up and get our quality assurance program going in a very significant way.

COFFEY, Q.C.:

Q. And this will be in what department or division?

DR. JENKINS:

A. Be within laboratory services under the regional director.

COFFEY, Q.C.:

Q. And the funding for same, you were advised of that when, Doctor?

DR. JENKINS:

A. That would have been within the last two months or so. Don't have the exact date, Mr. Coffey, but approximately.

COFFEY, Q.C.:

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Q. And, Doctor, will you, yourself, be involved in the recruiting efforts for that position?

DR. JENKINS:

A. Yes, I've had a number of dialogues with our regional director for laboratory services about the job posting and, you know, how we intend to proceed with the job description and so on.

COFFEY, Q.C.:

Q. So the job description itself is not yet finalized?

DR. JENKINS:

A. Yeah, we've got in draft we have a position description available.

COFFEY, Q.C.:

Q. And if I could, please, could you have, pass that on, such as it is?

DR. JENKINS:

A. Sure.

COFFEY, Q.C.:

Q. The current to Mr. Eaton and he'll pass it on to ourselves.

DR. JENKINS:

A. I certainly will.

COFFEY, Q.C.:

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Q. Doctor, in relation to the idea of, you know, adverse events or incident reports, you'd be familiar with that?

DR. JENKINS:

A. Yes.

COFFEY, Q.C.:

Q. Are there any such policies or procedures in place in Western Health in relation?

DR. JENKINS:

A. Yes, we do have, we do have some policy in that regard and on disclosure, as well. So we have drafted some, yes.

COFFEY, Q.C.:

Q. I'm sorry, you do have -

DR. JENKINS:

A. Yes, we do have policy to that effect, yeah.

COFFEY, Q.C.:

Q. Doctor, in relation to this whole ER/PR matter, and I'm taking you through it, has there, to your knowledge, ever been an adverse event report filed?

DR. JENKINS:

A. On ER/PR specifically?

COFFEY, Q.C.:

Q. Yes.

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DR. JENKINS:
A. Not that I can recall, Mr. Coffey.
COFFEY, Q.C.:
Q. And why is that, Doctor?
DR. JENKINS:
A. I don't have any particular reason as to why there haven't been. I think we've been very much engaged in, you know, the process of, you know, responding to and dealing with the issues that have arisen, arisen from. Where it had originated, I think, externally, not within the organization, that may be one of the reasons why we didn't particularly report on it as an event. But there's no particular reason why we did or didn't report on that.
COFFEY, Q.C.:
Q. And I will be taking you to now shortly, you know, how you actually became aware of this in the beginning.
DR. JENKINS:
A. Yeah.
COFFEY, Q.C.:
Q. And if we could, please, look at Exhibit, Registrar, P-0919? Now, Doctor, I'm going to take you first of all, though, to a series of

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exhibits which really begin in the spring of 2005.
DR. JENKINS:
A. Okay.
COFFEY, Q.C.:
Q. And continue through the summer, 2005. I'll just briefly touch on them. This is a Health Care Corporation of St. John's, April 18, 2005 letter to yourself as the chair of the Service Coverage Committee?
DR. JENKINS:
A. Correct, yeah.
COFFEY, Q.C.:
Q. And it's from Dr. Williams?
DR. JENKINS:
A. Williams, um-hm.
COFFEY, Q.C.:
Q. Doctor, can you tell us, please, about the nature of your involvement in this chair Service coverage Committee?
DR. JENKINS:
A. Sure. Several negotiations ago, when I say negotiations, I'm talking about negotiations between the Department of Health and Community Services and Newfoundland and Labrador Medical

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Association, there was a provision in an agreement whereby a service coverage committee would be stood up to deal with joint service delivery issues of interest to the department and to the Medical Association. And at the time I was asked to chair that committee, which I gladly accepted. And we dealt with sort of broad range of service delivery issues and pathology services was one of those issues.
COFFEY, Q.C.:
Q. Yes, in fact, when you look at the third paragraph of this letter, it says, and this is Dr. Williams, of course, writing here, he says, "Recruitment and retention of pathologists within this organization," that's his own, "has proved to be challenging. We've lost a number of physicians over the past few years to retirement and to other jurisdictions across the country. Currently we have two vacant positions and three more retirements scheduled over the next year or so." I'm going to ask you, Doctor, in terms of Western Health and its predecessors, what was the situation while you've been with Western

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Health in relation to pathologists?
DR. JENKINS:
A. Um-hm. We have had some challenges with recruitment and retention. We've had a flow through of pathologists. A number of our pathologists have been in place for an extended period of time, but over the last four or five years we've had several who have come and gone. So we face similar challenges as other health regions have across the province.
COFFEY, Q.C.:
Q. Doctor, I take it then the Service Coverage Committee which you were chairing, your role or this committee's role then in this issue of recruitment and retention of pathologists then became what?
DR. JENKINS:
A. Was to present the information to the Physician Services Liaison Committee which was a senior level committee that had involvement by the deputy minister with senior members of the Department of Health and Community Services, with senior representation from the Newfoundland and Labrador Medical Association,

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as well. So our job was to put the issues that we were dealing with on the table with recommendations as to how some of these challenges could be addressed and receive the feedback from the PSLC then or Physician Services Liaison Committee on their response to our suggestions.

THE COMMISSIONER:

Q. Sorry, Dr. Jenkins, could you tell me again the Physician Services Liaison Committee?

DR. JENKINS:

A. Um-hm.

THE COMMISSIONER:

Q. Was comprised of who?

DR. JENKINS:

A. The deputy minister would be part of that, senior representatives from the Department of Health and Community Services, so maybe assistant deputy ministers and other senior bureaucrats within the department, and also senior representation from the Medical Association, as well.

THE COMMISSIONER:

Q. Thank you.

COFFEY, Q.C.:

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Q. Doctor, I take it then in the spring, going into the summer of 2005, the idea that there were problems of some--then some duration province-wide in relation to the recruitment and retention of pathologists was not a secret?

DR. JENKINS:

A. Not at all.

COFFEY, Q.C.:

Q. It was well known in your world?

DR. JENKINS:

A. Yes, that's correct.

COFFEY, Q.C.:

Q. If we could look, please, at Exhibit P-1286. Doctor, this is a document entitled "Medical Services Coverage Committee, Pathology Services Report" of September 15th, 2005. This is a report prepared by yourself and others?

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. And this was forwarded to whom then, do you recall?

DR. JENKINS:

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A. This would have been forwarded to the PSLC, Physician Services Liaison Committee.

COFFEY, Q.C.:

Q. This senior group?

DR. JENKINS:

A. Yes, that's correct.

COFFEY, Q.C.:

Q. Doctor, from that point on then, at least in terms of your recollection of it, how did the matter of addressing the concerns about pathologists and their remuneration then evolve?

DR. JENKINS:

A. Once we delivered our reports to PSLC, much of the occurrences or happenings from that point on really were not obvious to the Medical Services Coverage Committee at that particular point. It was an internal discussion decision, I guess, or discussions around what the best way to proceed would have been happening internally within the Department of Health, and I wasn't privy to those as Chair of the committee, so I wouldn't be able to sort of give you any further understanding of what had happened subsequent to the submission

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of our report.

COFFEY, Q.C.:

Q. That was the point I was--I wanted to elicit, is that the Medical Services Coverage Committee by September 15th, 2005, in effect, had done its work?

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. Its understanding of the nature of its involvement.

DR. JENKINS:

A. That's correct.

COFFEY, Q.C.:

Q. Had passed it on to the senior committee and the department and whomever else might address the matter?

DR. JENKINS:

A. That's right.

COFFEY, Q.C.:

Q. Doctor, between then April 18th, 2005, which is that first letter from Dr. Williams I referred you to earlier -

DR. JENKINS:

A. Right.

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COFFEY, Q.C.:
Q. And P-919, up to September 15th, 2005, P-1286, in effect five months, would you have had contact then on a number of occasions concerns pathologists and pathology related matters with Dr. Williams?
DR. JENKINS:
A. Yes, we would have had some ongoing discussion. You know, I can't recall off the top of my head when those might have been or the context of them. I'd really need to sort of refer back to any notes we might have on file, and maybe perhaps if you have in some of your submissions.
COFFEY, Q.C.:
Q. Yeah.
DR. JENKINS:
A. But I know we were having active dialogue over the course of the spring and leading up until September, a bit of a break, I think, over that summer when things were slowing down a little bit, but there had been a number of discussions.
COFFEY, Q.C.:
Q. And, Doctor, if I could, please, bring up

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Exhibit P-1647. Doctor, these are the Service Coverage Committee Minutes of September 8th, 2005.
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. And the attendees are listed here. You're the first, Dr. Williams is the third.
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. And there is--I don't have here the minutes of the July 8th, 2005, meeting, but there apparently was such a meeting.
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. Doctor, the point I wanted to canvass with you, though, is this meeting is indicated to be one to three p.m. on September 8th, 2005.
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. Listed attendees--just so the Commissioner is clear, you were VP Medical Western, Dr.

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Williams was VP Medical Eastern.
DR. JENKINS:
A. Um.
COFFEY, Q.C.:
Q. Who's Dr. King?
DR. JENKINS:
A. Sue King. She was an NLMA representative, past president. I think--I'm not sure if she was president or past president at that time, but she was former president.
COFFEY, Q.C.:
Q. Dr. Hagee?
DR. JENKINS:
A. John Hagee, general surgeon in Gander. Similarly had been president of the NLMA at one point in time.
COFFEY, Q.C.:
Q. Dr. Jong?
DR. JENKINS:
A. Michael Jong is my counterpart, VP Medical for Labrador Grenfell.
COFFEY, Q.C.:
Q. Dr. O'Shea?
DR. JENKINS:
A. Dr. O'Shea is a general surgeon in Clarenville

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and actively involved with the Medical Association.
COFFEY, Q.C.:
Q. And Dr. Fleming?
DR. JENKINS:
A. Dr. Fleming is the senior representative in the Department of Health with MCP, physician.
COFFEY, Q.C.:
Q. And apologies from Dr. Alteen, your counterpart in Central?
DR. JENKINS:
A. In Central, yeah.
COFFEY, Q.C.:
Q. And -
DR. JENKINS:
A. Steve Jerrett, who is one of the administrators with the Medical Association.
COFFEY, Q.C.:
Q. Doctor, and this sort of a meeting on September 8th, would that have been a meeting in person?
DR. JENKINS:
A. A lot of our meetings were done by teleconference and I'm not sure, though, with this particular one, but it probably was a

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teleconference meeting. Most of them were.
THE COMMISSIONER:
Q. I just want to make sure I understand. Your committee which you were involved in, the purpose of which was to do this work and report to another committee -
DR. JENKINS:
A. Right.
THE COMMISSIONER:
Q. Would have representatives of various health authorities and the NLMA?
DR. JENKINS:
A. NLMA, correct.
THE COMMISSIONER:
Q. And the group to which you reported had officials from the government.
DR. JENKINS:
A. Uh-hm.
THE COMMISSIONER:
Q. And representatives of -
DR. JENKINS:
A. NLMA as well.
THE COMMISSIONER:
Q. - NLMA?
DR. JENKINS:

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A. Yes, that's correct.
THE COMMISSIONER:
Q. So they turned up in both places?
DR. JENKINS:
A. Yes, that's correct.
THE COMMISSIONER:
Q. Do you know whether they might have been the same people?
DR. JENKINS:
A. I think actually it probably was in some instances, Commissioner. I believe Dr. King was sitting on both committees at some points in time. I'd have to refer to some of the PSLC minutes to be absolutely certain for you as to where they may have been cross representation, but I do believe you're correct in observing that.
THE COMMISSIONER:
Q. And the purpose of your committee was to, among other things, perhaps it was much wider, but vis a vis the issue of pathology, was to make recommendations regarding recruitment and retention?
DR. JENKINS:
A. That's correct.

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THE COMMISSIONER:
Q. Thank you.
COFFEY, Q.C.:
Q. And, Doctor, here looking at the minutes of the September 8th meeting, look at the second page, paragraph "D", pathology services?
DR. JENKINS:
A. Yes.
COFFEY, Q.C.:
Q. And it refers to this final meeting of the pathology working group have been held July 20th, 2005. It talks about changes to the draft report being approved, and it goes on then to talk about the document, and, of course, the document in question, the subject matter here is the average pathologist's incomes across the country and so on?
DR. JENKINS:
A. Yes.
COFFEY, Q.C.:
Q. The point being, Doctor, that certainly at the meeting of September 8th, there was a certain amount of discussion about pathology itself and the state of pathology -
DR. JENKINS:

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A. Right.
COFFEY, Q.C.:
Q. In terms of staffing and so on in the province?
DR. JENKINS:
A. Indeed there was.
COFFEY, Q.C.:
Q. And, Doctor, I take it that--because of a document we're about to look at shortly, that all through April, May, June, July, August, into September, that the ER/PR matter, as we now refer to it, you weren't aware of it?
DR. JENKINS:
A. No, that's correct.
COFFEY, Q.C.:
Q. Exhibit P-2731, please. Doctor, these are the minutes of the Newfoundland and Labrador Health Boards Association.
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. VP of Medical Services, minutes of meeting approved by VPs of Medical Services on December 22nd, 2005, but the actual meeting itself of which these are the minutes, was

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Thursday, September 29th, 2005, at nine a.m.
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. In the Audit Boardroom at the Belvedere site?
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. And in attendance are Larry Alteen, Ken Jenkins, Ed Hunt, John Peddle, Robert Williams, Cathi Bradbury, Michael Jong, and Scarlet Hann, and Sheila Tucker and Regina Coady were there for part of the meeting, the latter two. Would this meeting have been held in person?
DR. JENKINS:
A. Yes, it was.
COFFEY, Q.C.:
Q. Doctor, there is then a presentation on a CCOHTA update.
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. By Ms. Tucker, and do you recall what the CCOHTA was about?

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DR. JENKINS:
A. Well, itself as an organization, you mean?
COFFEY, Q.C.:
Q. Yes.
DR. JENKINS:
A. It's a health technology organization and helps provide advice and guidance to the health system individuals and the managers, what sort of the latest happenings and occurrences are with respect to technological advances in health care in Canada and beyond. It's really an international sort of flavour and perspective and the work that it does.
COFFEY, Q.C.:
Q. Doctor, here's it refers to Ms. Tucker having explained her role, is to work with the authorities so that the authorities can identify areas that they would like to have CCOHTA work on and provide reports.
DR. JENKINS:
A. Yeah.
COFFEY, Q.C.:
Q. And the second paragraph notes, "She went through the handout, highlighting key points that she wished the VPs of Medical Services to

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be aware of".
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. "CCOHTA tries to cover off new technologies and what new drugs are being promoted. A review of some of these technologies and pharmaceuticals is needed before a decision is made by the federal and provincial governments to use them".
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. "What seems to be happening is that the technology is being promoted by the various companies with frontline physicians, and that creates a demand for the product, service, or drug. Sheila asked if there was any merit to having a committee in place that could vent issues on a reasonable basis", and she talked about or advised them about a workshop coming at the end of October.
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:

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Q. Doctor, a couple of other points in these minutes I'd like to take you to.
DR. JENKINS:
A. Okay.
COFFEY, Q.C.:
Q. This business arising from minutes not already under agenda, under (a) Newfoundland and Labrador College of Physicians and Surgeons.
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. And it's redacted here, but there is a statement, "There appear to be no guidelines or standards at the College, for example, on who is eligible for licensure. It was agreed that John would write to Bob Young to ask for copies of the policy and procedure manual. Once the manual is received, it will be forwarded to the VPs of Medical Services". Do you recall what this was about?
DR. JENKINS:
A. Not the context, I'm not recalling what it was about specifically. No, I can't, Mr. Coffey, off the top of my head recall what that particular item was about. There's no way for

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me to look at an unredacted version of that, is there?

COFFEY, Q.C.:

Q. Perhaps we'll do that -

DR. JENKINS:

A. We'll do that -

COFFEY, Q.C.:

Q. Later on, and you may be able to put it in context then.

DR. JENKINS:

A. All right, good.

COFFEY, Q.C.:

Q. Then there's a report of physician recruitment, and then on the next page, paragraph five, quality issues.

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. And it says, "This issue flows directly from the comments made by Sheila Tucker on what CCOHTA is doing, as well as other work that needs to be done. Ed Hunt said the feeling from the department is that the quality issues are provincial issues, and not just for the department".

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DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. "A number of options were discussed for addressing quality issues, such as a provincial quality council or a quality council in each health authority or a quality council in the tertiary care centre".

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. "After a quick review around the table, it was realized that each of the authorities has a different person responsible for quality issues. In some cases, it is the VP of Medical Services, and in other cases it is not. The VPs of Medical Services were asked for their input and comments. It was commented that the quality issues should be part of the training and education for all health professionals. Standards for referral and test are needed. Rather than leaving decisions up to the person ordering the tests and referrals, it was generally felt that we need a provincial approach and if at all possible, we need to have ways to make it enforceable".

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DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. "It was suggested that regional authority legislation should have a section setting out standards for test procedures and referrals. Bob Williams gave a detailed example of some situations that are occurring in Eastern". Now I'm going to stop right there.

DR. JENKINS:

A. Sure.

COFFEY, Q.C.:

Q. You've been talking generally about quality assurance measures generally in the health system, I take it, is what this is referring to?

DR. JENKINS:

A. Yes, yeah.

COFFEY, Q.C.:

Q. "And Dr. Williams is noted to have given a detailed example of some situations that are occurring in Eastern".

DR. JENKINS:

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A. Uh-hm.

COFFEY, Q.C.:

Q. Did he raise the ER/PR at that time that you can recall?

DR. JENKINS:

A. During that particular part of the discussion?

COFFEY, Q.C.:

Q. Yes.

DR. JENKINS:

A. No, I don't think so. I mean, that was done in a separate discussion, not in that part of the agenda, to the best of my recollection.

COFFEY, Q.C.:

Q. And then there's a reference to Mike Doyle having done a report on prostate cancer, should be made available for the VPs of Medical Services, and he should look at what's happening in other provinces are note there, and then there was a note, "Ed Hunt advises Stephen Lewis, who has done some considerable work in this area will be in the province in November close to the date of meeting. We may need to change the date of our next meeting to accommodate Stephen Lewis so that he can be invited to attend the meeting. It was also

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suggested that the CEOs need to discuss quality issues for all jurisdictions within the health system and not just the medical area". So, Doctor, at the time then, this is late September, 2005, amongst the VPs Medical Services, I take it there was a recognition then addressing quality issues there's a fair amount of work to be done?

DR. JENKINS:

A. Uh-hm, indeed.

COFFEY, Q.C.:

Q. Up to that point, what if anything really had been done to your knowledge on a provincial basis?

DR. JENKINS:

A. Well, the organizations had various means by which they dealt with quality. Some had quality councils. There were varying responsibilities for senior managers within the health authorities. I know, for example, in Eastern Health it did come under the VP Medical mandate. In our organization, it was another of our senior managers who had responsibility for the quality, so to speak.

COFFEY, Q.C.:

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Q. Who within Western?

DR. JENKINS:

A. We had a VP for Quality Management and Research. So it would have been that particular person who had the main thrust and responsibility for quality, so to speak, within the organization.

COFFEY, Q.C.:

Q. And who was that?

DR. JENKINS:

A. Lisa Hoddinott is our current, and Kelly O'Brien had been involved with quality management as well.

COFFEY, Q.C.:

Q. And that had dated back to the time you joined Western?

DR. JENKINS:

A. Yes, that's correct.

COFFEY, Q.C.:

Q. And where is it now, the same -

DR. JENKINS:

A. Who does it sit with now, do you mean?

COFFEY, Q.C.:

Q. Yes.

DR. JENKINS:

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A. Lisa Hoddinott is our current senior manager responsible.

COFFEY, Q.C.:

Q. If we can look, please, at Exhibit P-1949. Doctor, this exhibit is a series of e-mails of September 30th--well, actually, September 29th, the beginning, 2005.

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. The first one, September 29th, 2005, is from Heather Predham.

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. And it's addressed to Susan Sullivan.

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. And Ms. Budgell.

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. At Western, September 29th, 2005, at 3:13 p.m.

DR. JENKINS:

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A. Right.

COFFEY, Q.C.:

Q. And she writes, "Hi Guys, we've had an issue with our ER/PR testing. This has been an issue that we've been dealing with all summer", and she goes on from there. The Commissioner has seen the text of this before. She concludes by saying, "Why am I telling you two all this? Well, since June Dr. Cook, our Chief of Pathology, requested that your two boards send in your blocks to be retested in Mount Sinai to no avail", I think it reads. "I wanted to give you a heads-up as we have to begin to inform people individually about this issue. The Department of Health wants us to make a public statement. Since your labs have not responded yet to our request, I may be asked about the reasons why. What do you think", signed Heather.

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. Doctor, who is Ms. Sullivan?

DR. JENKINS:

A. Susan Sullivan was our risk manager at that

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particular time, since retired, but that was her position.

COFFEY, Q.C.:

Q. And Ms. Budgell?

DR. JENKINS:

A. That is Central West Health Corp. So that's somebody who was in Central region.

COFFEY, Q.C.:

Q. So Ms. Predham was sending this e-mail to Western's risk manager?

DR. JENKINS:

A. Correct.

COFFEY, Q.C.:

Q. Who the next morning, September 30th, forwarded it on to Kelly O'Brien. Who's Kelly O'Brien?

DR. JENKINS:

A. Kelly O'Brien was the senior manager I mentioned, who was responsible at that time for quality management.

COFFEY, Q.C.:

Q. And she writes, "Hi Kelly, I just spoke to Heather and this is apparently hitting the media today. George Tilley is going to contact the CEOs re; this matter. I wanted

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you to be aware so that you can ensure which senior person/people responsible for our lab such that they can follow up. Regards, Sue", and Ms. O'Brien sent it on to Susan Gillam. Who's Ms. Gillam?

DR. JENKINS:

A. Our Chief Executive Officer.

COFFEY, Q.C.:

Q. And copied it to yourself within minutes actually, 11:36. She says, "Hi Susan, Do you want me to follow up with the lab and Dr. Neil so that a response can be prepared? I've cc'd Ken, but realize that he's off today. Do you wish me to contact Heidi as well. Many thanks". Then there's an e-mail from yourself, Doctor, at 12:08 p.m, despite the fact indeed you were off. You write to a number of individuals within Western saying, "I have heard about this for the first time at the Med Director's meeting yesterday. There was no indication that this would be hitting the media today. This will be a very sensitive and complicated issue to communicate. Dr. Neil will need to be involved. I suggest that, Heidi, you should

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contact him immediately. If there's any local reaction, he will probably be the best person to be involved. You may want to consider asking him to talk to our group by telephone when we're in Bonne Bay on Monday morning. Perhaps Heidi could coordinate that if Susan thinks it is a good idea", signed Ken.

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. Doctor, can you tell the Commissioner then about your having heard about this for the first time at the Medical Director's meeting on September 29th? That would be the day before. What happened?

DR. JENKINS:

A. Well, Dr. Williams did give us, you know, a fairly detailed overview of, you know, what was going on at the time, what the concerns were, the actions that were going to have to be taken to deal with it. So really it was, I guess, our first heads-up on some of the technical aspects of what was going on, but also most importantly, what some of the implications were going to be for patients and

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families as a result of this, and some of the communications issues that were going to be involved as well, and, you know, I did keep some detailed notes from that meeting, I'm sure you probably have them handy here as well, but they--I think, you know, they would reflect reasonably accurately what Dr. Williams was sharing with us at that particular time.

COFFEY, Q.C.:

Q. Okay, and Doctor, in terms of yourself -

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. Because as Ms. Predham has pointed out, they had contacted, Eastern Health had contacted-- I'll just go back and show you here. Now, in her e-mail of September 29th, she has said, "Well since June, Dr. Cook, our chief of pathology, requested your two boards send in your blocks to be retested at Mount Sinai."

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. For that year, and that year in question is

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the 2002 year.
DR. JENKINS:
A. 2002, right.
COFFEY, Q.C.:
Q. Doctor, have you ever made any inquiries about why you had not been alerted to the fact that Western's pathologists had been asked to send 2002 material in?
DR. JENKINS:
A. Yeah, Paul and I have--excuse me, Dr. Neil and I have spoken about that and, you know, he was certainly under the understanding that there was a certain amount of work that needed to be done and he was just getting on with it, basically. And, you know, I think that's the kind of understanding and relationship that Dr. Neil and I have, is with a lot of our clinical leaders, if there's work to be done, then they get on with it. If they feel that there's things that they need to advise me on, then certainly I would hope that, you know, they would bring that forward. But, you know, there's--I think Dr. Neil's action was really to try to deal with the request that was before him.

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COFFEY, Q.C.:
Q. Okay. Exhibit P-2240 please? Doctor, this is an e-mail of September 30th, 2005 and it's copied to yourself. It's from Ms. O'Brien and she writes to Ms. Gillam saying, "Hi Susan, I just wanted to let you know, we spoke to Paul Neil who is very aware of this issue and the department has been working to prepare the blocks to be sent for retesting. They have a year's worth completed. They worked very hard and worked overtime to get this much done. He did know that they are now requesting blocks from five to seven years be sent. This will again take some time. So since June we have not ignored the request and are responding. We have tried to contact Frank, but are unable to reach him, as he is out of town." And she goes on to talk about something else. Actually and perhaps this does relate to the same thing, "On another note, spoke to Minnie who was aware and talked--asked about Department of Health and Community Services. Tried to call John Rumboldt, who was not available, so I spoke to Derek Penney who will communicate the same to Moira, thanks.

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Kelly." So, Doctor, first of all, who is Frank?
DR. JENKINS:
A. Frank Holloway was the former regional director for laboratory services, since retired.
COFFEY, Q.C.:
Q. Was he still working at this time?
DR. JENKINS:
A. No, he's not, he's retired now.
COFFEY, Q.C.:
Q. No, no, but at that time.
DR. JENKINS:
A. Oh, sorry, at that time, yes, at that particular time, that's correct.
COFFEY, Q.C.:
Q. So I take it he would be involved in assisting in locating where the blocks--locating the blocks.
DR. JENKINS:
A. That's correct, yes.
COFFEY, Q.C.:
Q. And Minnie, who is Minnie?
DR. JENKINS:
A. Minnie is Dr. Minnie Weisemier who is our

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chief operating officer for secondary services.
COFFEY, Q.C.:
Q. And "asked about Department of Health and Community Services", does this comment here have anything to do with ER/PR, do you know, this whole thing here?
DR. JENKINS:
A. I would think it probably relates to this, although, you know, it doesn't specifically say that there, I would interpret it as meaning, you know, Dr. Weisemier would have asked whether DOHCS was involved or aware of that, you know, particular issue as it related to Western Health, but you know, I'm drawing some conclusions there, Mr. Coffey, without being the writer, so just surmising.
COFFEY, Q.C.:
Q. And, Doctor, on that point, and this is the first day, September 30th, that Western is advised apparently that it's going to go public.
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:

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Q. Shortly. From that point on, what if anything was the nature of the communication, to your knowledge, between Western Health and the Department of Health on this matter?

DR. JENKINS:

A. We had a fairly open dialogue between all of the sort of key players on this particular issue, Eastern Health and the Department. It was back and forth, there would be occasions when we would initiate communications and, you know, all around in many different directions in terms of how the issues surrounding ER/PR evolved. So I would say it was fairly open, Mr. Coffey, yes.

COFFEY, Q.C.:

Q. And who was responsible for dealing with the Department of Health?

DR. JENKINS:

A. I think it would depend on the particular issue at the time. It would vary, I think our CEO would, from time to time, make contact and our usual approach within our organization is typically our CEO would have dealings with the deputy minister or some of the assistant deputy ministers. I would also, sometimes

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myself, have direct dealings with some of the assistant deputy ministers and my colleagues, of course, in other health authorities and other, you know, bureaucrats within Department of Health and whatnot, and similarly with my own senior management colleagues in Western Health. They would have contact within the Department of Health within their colleagues in Eastern Health as well, so that's kind of how we tended to work it, although there was no sort of strict lines of communication; it was relatively free flowing.

COFFEY, Q.C.:

Q. Doctor, within Western Health and I appreciate it was ultimately the CEO was responsible for the activities within the organization, but in terms of the ER/PR matter then, who, from an administrative perspective then, beginning at September 30th, kind of took on the primary role in this regard?

DR. JENKINS:

A. It was principally myself, as VP Medical.

COFFEY, Q.C.:

Q. And then who then would be reporting to you in relation to this, in relation to different

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functions?

DR. JENKINS:

A. Oh, there were a couple of people within our organization who would be involved, of course, within the Department of Pathology and Laboratory which directly line report to me in any case, but there's also a fair amount of assistance provided by quality management and research folks as well who were engaged in various aspects of that. So we certainly did share in some of the responsibilities, CEO was involved with some of the follow-up as well, so we kept in regular and close contact with each other in that regard.

COFFEY, Q.C.:

Q. Now, if we could look, please, at exhibit P-0087? Doctor, these are notes, typed version of notes kept by Dr. Williams and just refer you, October 4, 2005, refers to a conference call with other regional boards, listed for Western are yourself and Ms. Gillam, I take it?

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

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Q. And who is Heidi Staeben-Simmons?

DR. JENKINS:

A. The spelling in wrong, but it's Heidi Staeben-Simmons and she's our director of communications.

COFFEY, Q.C.:

Q. And there are other health authority representatives here and it's noted, "The full overview of the background is given by Dr. Williams. The specific issues are reviewed by DCU, which would be Don Cook and questions of whether we should notify all patients who are being retested arose at this point." Now, Doctor, and the Commissioner has already heard that The Independent published a newspaper story on this on Sunday, October 2nd.

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. This would be two days later on the 4th. What was the view within Western as to the notification of patients at this--at that stage?

DR. JENKINS:

A. And when you say "view" how do you--what

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exactly do you mean -
COFFEY, Q.C.:
Q. Within the organization, within senior management.
DR. JENKINS:
A. Well I think we fully anticipated that there was going to be notification and disclosure, you know, to patients at some particular point and that, you know, it really was going to be dependent upon how this was going to come together and what our role would be in relationship to the results being obtained and guidance from the Department of Health and from Eastern Health as to how this was going to flow. And we were wanting to make sure or we felt that it would be important, as well, that there be some consistency in terms of how communications would be handled in terms of reporting to patients. So that was kind of the general sort of thinking that was around our table at that point in time.
COFFEY, Q.C.:
Q. And this would be consistency, I take it province wide?
DR. JENKINS:

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A. Yes.
COFFEY, Q.C.:
Q. Between authorities.
DR. JENKINS:
A. That's right.
COFFEY, Q.C.:
Q. In those early stages after it went public or it became publicly known, was Western at the time given any thought to contacting its own patients to let them know that the testing was going on?
DR. JENKINS:
A. Well we did, in fact, and it was on request of Eastern Health to provide notification to patients that there was testing and retesting that was occurring and, you know, I don't have the timeframe exactly on the top of my head, Mr. Coffey, you may be able to help me out with that.
COFFEY, Q.C.:
Q. Okay, so we'll get--there is material we'll look at that shows us October and it goes on -
DR. JENKINS:
A. Right.
COFFEY, Q.C.:

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Q. - where that comes up. But in the beginning then -
DR. JENKINS:
A. Not in the beginning, yeah.
COFFEY, Q.C.:
Q. - I take it, Doctor, Western's approach was to communicate with Eastern and the Department of Health -
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. With a view to adopting an approach that might be taken province wide at the lead of the Department and Eastern?
DR. JENKINS:
A. That's correct, we really weren't, you know, planning on an independent mechanism by which we would notify patients.
COFFEY, Q.C.:
Q. Exhibit P-2732? Doctor, this is a memorandum on Western Regional Integrated Health Authority letterhead. It's from yourself in your capacity as VP Medical Services, October 4, 2005. Subject is ER/PR receptors and it's to all physicians, nursing administrators,

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public health nurses, diagnostic imaging department, population of health consultants and breast screening clinic.
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. And it's noted to be distributed October 4th and 5th, '05.
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. And the initials here -
DR. JENKINS:
A. HS.
COFFEY, Q.C.:
Q. Who is?
DR. JENKINS:
A. And that's Hellen Sparkes, who is my administrative assistant.
COFFEY, Q.C.:
Q. And you write, "Please find attached some questions and answers that may be helpful in addressing concerns by clients who have had breast cancer and have concerns about the resting of ER/PR receptors. The retesting is

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being conducted by Eastern Health through Mount Sinai Hospital in Toronto, Ontario. Should you wish to contact me regarding this issue, please call"--a particular number. Signed yourself. And the attachment, page two of the exhibit and it's on Western Health Authority letterhead. It's entitled "Client Handout" and there's a question, "What is ER/PR?" And an answer. "What is happening now? Why are some test results different?" There's an answer and then there's a question "As a breast cancer patient, I haven't been contacted, what should I do?" And a response. Doctor, the drafting of this client handout was done by whom?

DR. JENKINS:

A. By Eastern Health.

COFFEY, Q.C.:

Q. I take it you just substituted here of -

DR. JENKINS:

A. That's correct, we just substituted in Western Region and the Western Health name at the top of the document as well.

COFFEY, Q.C.:

Q. In the body and in the heading at the top?

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DR. JENKINS:

A. Yes, that's correct, yes.

COFFEY, Q.C.:

Q. Now, Doctor, here under the question, "What is happening now? Why are some test results different?"

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. And in the first paragraph, middle of it, the third sentence, it reads, "In 2004, the lab at the Health Sciences Centre that does all the Provincial ER and PR testing introduced a new piece of technology and discovered some inconsistent results from the old system."

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. Now, Doctor, at that point in time, this is early October 2005, what was your understanding about how this had come about, the resting?

DR. JENKINS:

A. Well certainly Dr. Williams had provided us with, you know, a large portion of the

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information as to what had been evolving. There were some concerns in terms of the technology and whether it was working the way it should, you know, whether there were some issues in terms of the accuracy of the testing from a technical perspective. There had been, of course, the introduction of an automated process instead of a semi-automated process that had been in place previously, and, you know, I think I was under the understanding that there were really technical issues related to that, that was the main issue around why we're starting to run into challenges with some of the test results now.

THE COMMISSIONER:

Q. When you say "we're getting to that", do you mean relating to the introduction of the new system or something different?

DR. JENKINS:

A. Yes, well both relating to the introduction of the new system and processing of samples themselves, as well.

THE COMMISSIONER:

Q. Had Dr. Williams told you how this was discovered?

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DR. JENKINS:

A. My recollection is that we didn't get into highly specific detail on the technical aspects of it, but just that there were problems in terms of some of the steps in the process, but I don't recall that he, you know, gave a specific technical reason as to why that had occurred.

THE COMMISSIONER:

Q. Or how they discovered it?

DR. JENKINS:

A. Oh yes, now in terms of how it was discovered, yes, there was a discussion around that which related to a specific breast cancer patient that Dr. Laing had consulted with one of her US colleagues on and discussed the case, shared some information about it and then the feedback from her colleague was that it should have expected a different, perhaps a different result and that that was my understanding of what actually triggered then the look back or the decision for the need to look back.

COFFEY, Q.C.:

Q. Exhibit P-1949 again please? This is page two of it, this is the e-mail from Ms. Predham on

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September 29th. Doctor, here on the second last paragraph of her e-mail she begins by saying, "We have had external reviews done on our Ventana machine on a pathology side of the service and the technical side, all those reports are pending, but we do have some recommendations that we can implement right now." And she goes on about having stopped all testing. She concludes that paragraph by saying, "Results are starting to come in and it looks like we will have to contact up to 200 people to tell them that they were initially tested as negative but were, in fact, positive."

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. She had earlier, in the third paragraph, referred to, at one point in 2005, 57 having been retested on a Ventana system, 38 now showed positive results. And you can do the arithmetic, it's about a sixty-odd percent conversion. Now, Doctor, at the time, the idea that you might have to tell or it might be required to tell 200 people, as many as 200

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people that based upon the initial results started to come in, that their test results had changed and of course, at that point in time Western hadn't even sent its material.

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. You would have known that.

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. Did it strike you at the time that, look, there are going to be a lot of people involved in this, a lot of people's treatments are going to change?

DR. JENKINS:

A. Indeed, yes.

COFFEY, Q.C.:

Q. Bearing in mind, Doctor, if we could look back then at exhibit P-2732? I take it this client handout, this was passed out, I take it?

DR. JENKINS:

A. It was provided to the individuals on the distribution list and it was intended to provide them with some early information about

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the ER/PR issues and, you know, with the understanding that patients would start to become notified and be asking questions and we wanted to try to get some information in advance out to our providers, so they could be prepared for those questions.

COFFEY, Q.C.:

Q. Now by this point, early October, the two external reviewers had been here in Newfoundland had gone.

DR. JENKINS:

A. Um-hm.

COFFEY, Q.C.:

Q. Doctor, were you ever told by Dr. Williams or anyone else from Eastern Health what the external reviewers had found, at least in their opinion?

DR. JENKINS:

A. No, we hadn't been, Mr. Coffey.

COFFEY, Q.C.:

Q. In fact, Doctor, in relation to that, what is now exhibits, I think, P-0046, 0047, 0048, and 0049, okay, Dr. Banerjee and Trish Wegrynowski's reports 2005-2006, you first saw those when?

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DR. JENKINS:

A. At the time when they were published through this Commission of Inquiry.

COFFEY, Q.C.:

Q. Doctor, the question posed here, "why are some test results different?" here, the actual answer to that, prior to you seeing those reports, I'm not saying necessarily that they determine why some test results are different, but prior to seeing those reports, what was your understanding about why some test results were different?

DR. JENKINS:

A. It had been, as Dr. Williams had explained to us, some concerns around, perhaps, the introduction of new technology and some of the process steps that were involved with that. It was a general description that he provided to us, as I had mentioned earlier. So I think to my understanding, it was, you know, based upon some of the technical aspects of the processing of tissue samples themselves.

COFFEY, Q.C.:

Q. And so really from September 29th, 2005, Dr. Williams spoke to you about it, until you saw

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the reports and have heard whatever you have involving the Commission process itself, your understanding never changed?

DR. JENKINS:

A. No, that was the first new information that we had really, in terms of -

COFFEY, Q.C.:

Q. Since the Commission process has begun?

DR. JENKINS:

A. Correct.

THE COMMISSIONER:

Q. Sorry, interrupting again. So are you saying that the question of what went wrong did not get discussed between this time very early in the process to the time when the reports were introduced earlier this year or revealed earlier this year or that the information you were getting was essentially the same as Dr. Williams had given you early in the day?

DR. JENKINS:

A. Yes, it would be the latter aspect, which was, you know, the initial information we were provided was what we were aware of throughout the course, and then the new information that came as a result of the publishing of the

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report was at the time of that being made available through the Commission.

THE COMMISSIONER:

Q. Thank you.

COFFEY, Q.C.:

Q. Exhibit P-2242? Doctor, this is just some e-mails, one that's dated as October 6th, 2005. It's from Ms. Sullivan to Ms. O'Brien and yourself. She's sending an article from The Globe and Mail and the article refers to or deals with "flawed test imperils scores of cancer patients. Hundreds of tissue samples subject to retest after lab flaws uncovered." And then I take it, you forwarded this on to Dr. Neil?

DR. JENKINS:

A. Um-hm.

COFFEY, Q.C.:

Q. Saying "for your information, please feel free to share with the staff. We need to keep the momentum going to get our samples in. Sincere thanks to all who are making the extra efforts to deal with this." Now Doctor, could you tell the Commissioner then about the efforts that you recall occurred within Western from

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the time you got involved?

DR. JENKINS:

A. Certainly. You know, I think we realized fairly quickly, once the news was shared with us, that there was, you know, a significant effort that needed to be made to deal with the submission of the tissue samples that were being requested, and I had spoken with our regional director laboratory services at the time regarding the level of urgency and indicated that, you know, basically we needed to pull out all stops here, gave the authority to bring staff in on overtime at that particular point to get samples collected and submitted, and there was a very significant piece of work that had to be done and you know, the technologists themselves and the secretaries and administrative supports were very much involved with looking back through large numbers of files and archived materials to pull this all together. So it was a really significant effort that was made on behalf of our staff to provide that for Eastern Health.

COFFEY, Q.C.:

Q. And at Western, Doctor, that, I take it, in

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terms of your involvement, started--well, you were first told about this September 29th, so it would have started--and you were in St. John's at that point, so it would have started September 30th, Friday, or the following week?

DR. JENKINS:

A. It was the following week, I believe, because we--I know we had a senior management retreat down in Bonne Bay. There was a reference to one of the other items that we were away for a day or two, so it was shortly thereafter when we got back that week that we sort of spun things up and got things moving fairly quickly.

COFFEY, Q.C.:

Q. Now Doctor, could you tell the Commissioner then, within Western then, who was assigned to do what?

DR. JENKINS:

A. In terms of the collection of samples?

COFFEY, Q.C.:

Q. Yes.

DR. JENKINS:

A. So I would have given direction to our regional director for laboratory services to

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go ahead and get the people in place to get the materials together. So he would have pulled in then, his technologists and the other support people within the Department of Pathology and the regional laboratory office to get all those materials together. So it would have been a direct line of responsibility from myself to the regional director and then to his people as well.

COFFEY, Q.C.:

Q. Who's the regional director?

DR. JENKINS:

A. That was Frank Holloway at the time.

COFFEY, Q.C.:

Q. And how did he go about identifying the patients, do you know?

DR. JENKINS:

A. They had a number of lists that they made up. They cross referenced in a number of different ways, both through their own information base that they had and some of it, as I know Dr. Neil gave testimony to, was computerized in an older system. Some was in our Meditech system, and there was also an attempt to cross reference with the Newfoundland Cancer

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Treatment Research Foundation on patients that they had on their list as well. So we used a number of cross referencing means to try to sort out, you know, which patients were involved and make sure that we had everything covered off as best we could at that time.

COFFEY, Q.C.:

Q. Were you told, during that effort, as it was going on, Doctor, were you ever told that there was a possibility that some patients might be missed?

DR. JENKINS:

A. Dr. Neil and I had had some discussions. I think he felt confident and shared with us that he felt we had, you know, all of the information that was available to us at that point in time, but there was always a bit of a concern because we were, you know, going back and digging out archival materials and because we were dealing with different systems, in effect, that were used for logging patients results and whatnot, that there was always some possibility that some samples or some patients might be missed in the process, but I know they were very thorough and complete in

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what work they had, based upon the resources they had available to them.

COFFEY, Q.C.:

Q. Now Doctor, could you tell the Commissioner, please, how cancer care within Western Health generally is structured?

DR. JENKINS:

A. Sure. There is a cancer clinic in Western, but it really falls under the mandate and umbrella of the Newfoundland Cancer Treatment and Research Foundation at the time and Cancer Care now. Our staff physicians will provide some support and service to the unit, both for therapy and in consultation at times and we do get visiting oncologists and radiation oncologists as well, medical oncologists and radiation oncologists that will come out and provide service on a visiting basis. So, I guess, it's a partnership, I think I would call it, in terms of our relationship between Eastern Health and with the local providers.

COFFEY, Q.C.:

Q. And the clinic itself though is under whose jurisdiction?

DR. JENKINS:

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A. It's actually under the jurisdiction of Cancer Care, but it's housed within Western Memorial Regional Hospital.

COFFEY, Q.C.:

Q. And how many employees work there, do you know?

DR. JENKINS:

A. I'm not sure, Mr. Coffey, off the top of my head how many are there.

COFFEY, Q.C.:

Q. And they though report actually to -

DR. JENKINS:

A. To Eastern Health.

COFFEY, Q.C.:

Q. - Eastern Health?

DR. JENKINS:

A. That's correct.

COFFEY, Q.C.:

Q. Exhibit P-2733. Now Doctor, this is a series of e-mails of October 5th and 6th 2005. The first is October 5 from Ms. O'Brien to a number of individuals, including yourself, and she writes "for your information, I received a call from Sue Sullivan this evening regarding a patient from" a particular area, "who's

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quite upset regarding the lab issue. Cannot believe Sue forwarded the voice message from the Patient Relation Officer at Eastern Regional Integrated Health Authority to you this evening. Just wanted everyone to be aware as I think this is the first of many. I anticipate we will have meeting involvement as patients and families reflect on what this all means. Thanks, Kelli." And then you, on the next day, respond to the individuals covered by the earlier e-mail. "We will be directing patients to their family physicians or other attending physician for advice and will be providing info to providers to help them explain the situation to their patients."

DR. JENKINS:

A. Um-hm.

COFFEY, Q.C.:

Q. And then, Doctor, on the same day, October 6th, the morning thereof, you advise Ms. Sparkes, your administrative assistant, you write "please start a file on 'breast cancer ER/PR issue 2005' and put this in it. More to follow. Thanks."

DR. JENKINS:

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A. Um-hm.

COFFEY, Q.C.:

Q. I take it this was the beginning of kind of a formal file for yourself?

DR. JENKINS:

A. That's correct.

COFFEY, Q.C.:

Q. P-2734, please. Now Doctor, here on October 6th, you--I take it when you send things to Ms. Sparkes, you're just simply having her file them?

DR. JENKINS:

A. Correct, materials which are felt would be of importance or relevance, I would has Hellen to keep for me.

COFFEY, Q.C.:

Q. And then the e-mail that you're asking that she keep track of for you is dated October 5th, 2005. It's from Heidi Simmons and it's to--I'm just going to look down through the names. There's a long list.

DR. JENKINS:

A. Long list.

COFFEY, Q.C.:

Q. And then she writes, they're all the

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addressees, she writes "many of you may have heard in the media about the issue of breast cancer"--I'm sorry "issue with breast cancer patients and the testing for estrogen receptors, progesterone receptors at Eastern Health. We are currently working with Eastern Health to resubmit previously collected tissue samples from breast cancer patients for retesting for the period 1997 to 2004. The retesting will not change an individual's diagnosis, but may be one of the factors considered in determining the type of treatment a patient will receive. We have prepared a hand out for physicians, public health nurses, the Provincial Breast Screening Program, nursing, administration and other groups to provide to their clients who may have concerns about this issue. For your information, I have attached a link to this information which has been posted on our organization's website." And that's it there. So I take it that this hand out we looked at earlier was up on your website by this point?

DR. JENKINS:

A. That's correct.

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COFFEY, Q.C.:

Q. And now, Doctor, could you tell the Commissioner then, this list of people, addressees, is meant to cover whom?

DR. JENKINS:

A. Mr. Coffey, I suspect it's probably a truncated list and it was likely, you know, through a wide section of our leadership structure within our organization. I mean, just having a quick look at it, those are kind of people who would be in the leadership management positions and in sort of key positions otherwise throughout the organization. So it's intended to go broadly. Now it might have been--that might have been a send all. We do have a capability to, you know, I guess, blast e-mail to everybody in the organization who has access on our e-mail system, and I'm not sure if that was one of those. It could very well have been. Might have been a send all type e-mail.

COFFEY, Q.C.:

Q. Exhibit P-0630. Doctor, this is a series of e-mails of October 7th. I apologize, perhaps if instead we could look at Exhibit P-2735?

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Doctor, this is a series of e-mails of October 7th, 2005. The first is from Diane Smith, who is the executive assistant to the COO Cancer Care Eastern Health. She writes to a number of individuals, including yourself, in effect the three other health authorities VP Medicals, Dr. Jong, yourself and Dr. Alteen. She says "please see attached communique from Dr. Paul Gardiner, Medical Director of the Bliss Murphy Cancer Centre, regarding the ER/PR testing issue. We ask that you ensure surgeons in your area who perform breast surgery receive a copy of this communique." The actual communique, Doctor, is here, dated October 4th, 2005 from Dr. Gardiner.

DR. JENKINS:

A. Right, yeah.

COFFEY, Q.C.:

Q. And then on the same day, Ms. Smith also sends it on to Dr. Baker in Carbonear and she notes that it was sent to Ms. Pilgrim, it was sent to Doctors Jong, Jenkins and Alteen. Doctor, in relation to this matter then, what, if anything, did you do with Dr. Gardiner's letter?

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DR. JENKINS:

A. I believe we had forwarded that on then to physicians in the area, to make them aware, and I think there is some correspondence somewhere to that effect, where I did forward that information along. I think it's on file somewhere, Mr. Coffey.

COFFEY, Q.C.:

Q. Yes, and if we could, please, look at Exhibit P-2246? Doctor, the bottom of the exhibit is the e-mail from Diane Smith that we just looked at.

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. And then on October 11, 2005, you've sent this to Ms. Sparkes, but as well to Dr. Neil and Mr. Holloway and you write, "please print the attachment for the ER/PR file and forward a copy to all docs in the region."

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. "Thanks, Ken." So in relation to this, Doctor, does then Western have a listing of

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all physicians who practice within this geographic area?

DR. JENKINS:

A. Yes, we do.

COFFEY, Q.C.:

Q. You have a mailing list?

DR. JENKINS:

A. That's correct.

COFFEY, Q.C.:

Q. And that sort of a list would be utilized here to send out Dr. Gardiner's letter?

DR. JENKINS:

A. Yes, sir, that's correct.

COFFEY, Q.C.:

Q. Now Doctor, here in the same exhibit, you, on October 11th, received an e-mail from Dr. Neil indicating "we are almost complete, 2002 and 2000 are sent. 2001 and 2003 to go today. Hopefully 2004 to go tomorrow. 1997 and 1999 will be a little more time consuming since we were not on Meditech, but we are striving to get all done by week's end." Signed Paul.

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

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Q. And you respond indicating you appreciate the hard work being done by all concerned. Doctor, I'm going to refer you to one other exhibit right now, up to this point in time, Exhibit P-2736. Doctor, what is this? Obviously it's Western Regional Integrated Health Authority letterhead and it's from yourself.

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. Are these kind of your notes?

DR. JENKINS:

A. This is a minute sheet that I use for informal correspondence, just in--mostly for internal use.

COFFEY, Q.C.:

Q. And the subject here is ER/PR file.

DR. JENKINS:

A. Um-hm.

COFFEY, Q.C.:

Q. It's October 11th, 2005. Provincial telephone call?

DR. JENKINS:

A. Tele--TC is tele conference, correct.

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COFFEY, Q.C.:
Q. Tele conference, and then here, what's this, DW?
DR. JENKINS:
A. D/W is discussion with Bob Williams.
COFFEY, Q.C.:
Q. Bob Williams, and then you identify a particular patient whose name is redacted here, and the doctor's name, and "tested October '03. Wants someone to talk to."
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. And so why would that come up then in this context?
DR. JENKINS:
A. My recollection of that was that there was a specific request to talk to a patient in our region, that there had been some inquiry that had been made by this particular individual and that was a request for some further information. That's what I'm recalling on that particular one. I'm not sure why there was a particular individual that came out of that discussion. I just remember that there

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was a specific request regarding an individual.
COFFEY, Q.C.:
Q. I refer you to that, Doctor, because I wanted to ask you about this. If a patient actually wanted to have a technical or semi-technical discussion about this, was there anyone actually at Western at the time who was in a position to formally discuss it with the patient?
DR. JENKINS:
A. I don't think so really, and I think we would have very much relied upon Eastern Health and, you know, their resources to be able to provide specific technical questions. We could certainly provide the sorts of information that we've--some which we've looked at already that were shared with physicians and others, and we could certainly share that directly with patients, but beyond that, I think we were somewhat limited, in terms of what we were able to provide to patients.
COFFEY, Q.C.:
Q. And -

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THE COMMISSIONER:
Q. Sorry, Mr. Coffey. Do I take it from that that it would have been frequent referring of patients on to Eastern Health or were you a conduit through which that information flowed?
DR. JENKINS:
A. It could be a little bit of both, Commissioner. Certainly there was--Eastern Health, in the early days, I'm not sure exactly when it commenced, but they did stand up a capability for having a person answer a phone and provide responses to patients and family members who may have concerns or questions, and that was--that resource was made available to us and so, you know, we may be able to answer some of the questions ourselves, but we certainly had a reliance upon the resources of Eastern Health as well to provide support to us.
COFFEY, Q.C.:
Q. And here then, Doctor, under number two, there's a discussion, here Pat Pilgrim and Heather Predham, Bob Williams and Betty -
DR. JENKINS:
A. Let's see. Betty Forward, I think.

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COFFEY, Q.C.:
Q. Forward, and Larry Alteen.
DR. JENKINS:
A. And Larry Alteen.
COFFEY, Q.C.:
Q. George in St. John's, that would be George Tilley?
DR. JENKINS:
A. George Tilley, yeah.
COFFEY, Q.C.:
Q. David Diamond in Central, and I take it this is the tele conference?
DR. JENKINS:
A. So the people, I think I just made notes of who was actually on the line, yeah.
COFFEY, Q.C.:
Q. And there's a note here, "Pat's comments," so you're attributing these to Pat Pilgrim.
DR. JENKINS:
A. To Pat Pilgrim.
COFFEY, Q.C.:
Q. "Some confusion with mammogram -
DR. JENKINS:
A. Yes, yes, services
COFFEY, Q.C.:

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Q. - services due to media coverage. Feedback line staffed by QI personnel. Staff speak with Dr. Williams and Pat -

DR. JENKINS:

A. PRN as necessary.

COFFEY, Q.C.:

Q. Okay, "as necessary, not a hot line, just a regular line. Dave asked to use this line and Eastern is okay with that."

DR. JENKINS:

A. Yes.

COFFEY, Q.C.:

Q. Dave would be Mr. Diamond?

DR. JENKINS:

A. Yes.

COFFEY, Q.C.:

Q. Then "Bob Williams: not all patients may be offered Tamoxifen or other treatment if doing well and five plus years out. Will be a variety of decisions depending on the unique patient circumstances. Info on NLMA website too. HIROC has been consulted. Advised against massive mail out. Bringing in a -

DR. JENKINS:

A. SME, subject matter expert.

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COFFEY, Q.C.:

Q. Okay, from Seattle to do a review.

DR. JENKINS:

A. Um-hm.

COFFEY, Q.C.:

Q. And there's a remark attributed to Larry Alteen, "how are we going to access oncology services to deal with treatment decisions?" And then "regular updates to be provided to contacts in each region. Ken is the representative for Western. Eastern Health will keep global registry. George will take to national level." Now Doctor, a couple of questions in relation to this. Do you know if this information line required, for example, a patient from Western to spend money to access it? Is it a long distance call?

DR. JENKINS:

A. There was a 1-800 number, I believe, at one point in time. I'm not sure if that was initially, Mr. Coffey, and I know there was another number, just a regular phone number, which persons would have had to dial long distance to access.

COFFEY, Q.C.:

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Q. Doctor, too, in relation to this, the idea of accessing oncology services to deal with treatment decisions, I appreciate if a patient is in St. John's or in the St. John's region, they could simply go to the oncology centre here and see their doctor. As events unfolded, are you aware of how financial costs were treated for patients who might have to go to St. John's, you know, due to treatment changes?

DR. JENKINS:

A. I'm not aware that there were any special arrangements put in place to, you know, provide supports for these particular patients. There may have been, there may not have been. I'm not aware of them, to the best of my recollection now, but I know it was a real concern for us.

COFFEY, Q.C.:

Q. Who would be aware of any special arrangements, if there were any, within your organization?

DR. JENKINS:

A. I think I probably would be aware of it myself.

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COFFEY, Q.C.:

Q. You would be aware. So if they existed, you'd be aware of it.

DR. JENKINS:

A. I would think so.

COFFEY, Q.C.:

Q. And you don't know of any.

DR. JENKINS:

A. But, yeah, my memory is not 100 percent perfect, Mr. Coffey, but -

COFFEY, Q.C.:

Q. And that's something though, as a subject matter, at least Larry Alteen, of course, earlier Larry raised, he's your counterpart in Central, he raised it early on and would have occurred to you early on too?

DR. JENKINS:

A. Yes.

COFFEY, Q.C.:

Q. The point being that if the doctors can come to the medical centre in Central or Western, well, fine.

DR. JENKINS:

A. That's right.

COFFEY, Q.C.:

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Q. But if they can't, and the patients have to go to St. John's, then there'd be costs associated with that?
DR. JENKINS:
A. Correct, yeah. It was access that was our concern.
COFFEY, Q.C.:
Q. And to your knowledge, there were never any special arrangements made in relation to this?
DR. JENKINS:
A. No.
COFFEY, Q.C.:
Q. Did that come up as a subject matter from time to time?
DR. JENKINS:
A. I think we had some discussions around that. I think the greater focus was about getting information out and how to get it out, but there wasn't a lot of detailed discussion around how people were going to--whether or not they were going to be visiting St. John's or whatnot. There was discussion around, for example, the tumour boards, which is a piece of information we may be talking about later and how that--how cases would get discussed in

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that context.
COFFEY, Q.C.:
Q. Doctor, here, reference, you've noted here at the bottom of the first page of the exhibit here to "HIROC has been consulted. Advised against massive mail out." What was that about?
DR. JENKINS:
A. I hadn't been directly involved with that particular conversation. That came through, I think, Sue Sullivan, who was around at the particular time and she had had some discussions, to the best of my recollection, with HIROC about how we were going to deal with this particular issue and how we would communicate it, and I think this might have been also--and this was a Bob Williams comment, so this was specifically in relationship to a comment that came from Bob Williams, although our own risk manager had been talking about it as well. So yes, and Bob had indicated that there had been some conversation with them and that they were going to look at having an independent evaluator do a review. I'm not sure that that

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ever happened though, Mr. Coffey, in terms of bringing in a subject matter expert.
COFFEY, Q.C.:
Q. Subject matter expert, yes, and I think we have some idea, perhaps, who that is.
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. But not so much that as I'm interested right now in this idea of a massive mail out.
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. Mail out of what to whom, for what purpose? Would that be to advise the patients of what was going on?
DR. JENKINS:
A. I think this was the context of the discussion at the time, would be how we were going to provide information to individuals or the public in general.
COFFEY, Q.C.:
Q. And your notes indicate that you heard Dr. Williams say that HIROC was not in favour of same?

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DR. JENKINS:
A. That's what I did document there, yeah.
COFFEY, Q.C.:
Q. Can you recall if he explained why HIROC was not in favour of same?
DR. JENKINS:
A. No, I don't recall that there was any particular explanation. I think he was just passing on to us that there was an opinion that had been generated from HIROC about that.
COFFEY, Q.C.:
Q. Doctor, from your perspective, might there be advantages to actually sending something in writing to patients?
DR. JENKINS:
A. Well, certainly, I think we felt early on, that it was important that information start to get out there and, you know, I had done a media interview early on as well, where we did talk about it. So yes, I think we felt that as an organization it was important that some of this information be shared with the public, and they start to have an understanding about what was going on. Of course, we don't, you know, share individual patient information in

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any kind of sort of public communication, but in a general sense, it was, I think, an important exercise.

COFFEY, Q.C.:

Q. In the public, but I'm thinking about patients in particular, Doctor.

DR. JENKINS:

A. Yes.

COFFEY, Q.C.:

Q. Because we will see that there is a whole series of phone calls made that month to patients.

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. But is there an advantage, from your perspective possibly to having something in writing, in addition to a phone call?

DR. JENKINS:

A. In terms of contact with patients?

COFFEY, Q.C.:

Q. Yes.

DR. JENKINS:

A. Yes, indeed, yes.

COFFEY, Q.C.:

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Q. And if we could look, please, at exhibit P-2249? Now, Doctor, this is a whole series of e-mails. We looked at the ones towards the end of the exhibit already, we looked at them already, but at the bottom of the first page, Doctor, there's an e-mail from yourself, October 11th--here it is, 2005, to a number of individuals within your organization. You write, "Hi, Susan. Regarding the teleconference today, Eastern has offered to provide their patient"--something--"feedback line"--info probably--"info feedback line as a service to the entire province. It is not a 1-800 style hotline and patients would have to call long distance to the number. This line is staffed by QI personnel. We should consider adding this to our website. HIROC is bring in an SME from Seattle to review the situation at Eastern. I asked Bob Williams to start thinking about plans for additional oncology clinic time in Western to coincide with the reporting and follow-up requirements for our patients. It is anticipated that there will be a variety of individualized treatment plans. Eastern will be keeping a

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global registry and I have asked to see a sample of their database so that we can develop a similar format for ease of use and sharing. George will be taking this issue to the national level. A group is being formed by a Western rep. to track issues and consult on a weekly basis. I updated senior management today. Hope all is well with you in a belle province." And then she responds thanking you and "would you be able to touch base with Heidi, re the line, and if you feel that is appropriate, how do we communicate it? Thanks." And, Doctor, was there such a weekly meeting afterward or weekly meeting or conference call?

DR. JENKINS:

A. There were regular meetings for a period of time, I can't say that it was--continued to be over a long period of time on a weekly basis. I think it became on an as necessary basis, as time went on. But I know in the early stages there were frequent phone calls that did occur and I should have certainly documentation and notes to that effect on any of those calls, so we'd be able to sort of track those.

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COFFEY, Q.C.:

Q. And, Doctor, these teleconferences from time to time or telephone calls from time to time, generally were organized or initiated by whom?

DR. JENKINS:

A. Usually by Eastern Health.

COFFEY, Q.C.:

Q. Who was your chief contact then at Eastern Health?

DR. JENKINS:

A. Well a variety of sources, it would be either Dr. Williams, Pat Pilgrim would have been another sort of regular one. We did get occasional contact from Heather Predham as well and those would have been the sort of main people that I would have dealt with.

COFFEY, Q.C.:

Q. Exhibit P-2250? Now the idea, Doctor, and we just saw a reference to it, Eastern Health would be the central repository of data. Did you ever actually see an electronic database from Eastern Health?

DR. JENKINS:

A. No, not as such. We, I mean subsequently there were hard copies of spreadsheets that

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were provided to us, but no electronic version so to speak.

COFFEY, Q.C.:

Q. Doctor, this is two e-mails of October 13th, the main one here from Dr. Neil to S. Ryan. Who is S. Ryan, Newfoundland Cancer Treatment Foundation?

DR. JENKINS:

A. Yes, I can't remember the first name.

COFFEY, Q.C.:

Q. But somebody at the Cancer Treatment Foundation in St. John's.

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. It's copied to yourself and ER and that presumably should be PR cases for Western. Writes, "Hi, Susan, as per our telephone conversation, I would appreciate your help in retrieving the following data for Western Health concerning patients for repeat of ER/PR testing as outlined by Eastern Health, we are required to send all ER negative cases on primary breast lesions from May '97 to March 31, 2004. We have been able to retrieve most

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from our Meditech system, however in the earlier years, we were on another pathology program which is not searchable. We require your help from May '97 to include the years '98 and '99. Please provide us with all patients with breast cancer diagnosed in that timeframe by name and MCP. These are from all hospitals from our area, including Western Memorial, Stephenville, Port aux Basques, Burgeo, Bonne Bay and Port Saunders. This information was supplied to you as weekly tumour registry reports. You aware of the urgency of this exercise. Our retrieval of cases will depend on the data you provide. I sincerely appreciate your help. If you have any questions, please call." So this then is in mid October, Dr. Neil, I gather, had been able to locate what he could from 2000 onward.

DR. JENKINS:

A. Yes.

COFFEY, Q.C.:

Q. But anything before that was going to require as well the assistance or information from the Cancer Treatment Foundation.

DR. JENKINS:

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A. Uh-hm.

COFFEY, Q.C.:

Q. Exhibit P-2251? Doctor, this is an e-mail of October 13th, 2005 from yourself to senior management mail group, copied to Dr. Neil, Frank Holloway, Hellen Sparkes, ER/PR update, and you write, "Hi, I just had a call from Pat Pilgrim. Eastern Health is assembling an expert panel staffed by three medical oncologists, a radiation oncologist, two surgeons and a pathologist will be available to review results and provide advise to physicians in their dealings with individual patients. The group is just assembling now and as soon as we have some detail on the service they will provide, I will communicate that to our physicians." Signed Ken. So I take it this is the first indication you had had about this review panel?

DR. JENKINS:

A. That's correct, Mr. Coffey.

COFFEY, Q.C.:

Q. From Western's perspective, how did Western feel about the idea of utilizing a review panel?

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DR. JENKINS:

A. We thought that was a valuable and important exercise would be to have the subject matter of clinical experts, you know, review the cases and to make sure that whatever action was required would be taken. So we felt that that was a positive move.

COFFEY, Q.C.:

Q. Exhibit P-2737? And, Doctor, here this is a fax coversheet to yourself from Patricia Pilgrim, October 13th, '05. It's two pages, including the coversheet. She writes, "As per our telephone conversation"--and you ask that it be copied for your ER/PR file and cc it to Ms. Gillam, the CEO?

DR. JENKINS:

A. Correct, yes.

COFFEY, Q.C.:

Q. And then here Ms. Pilgrim has sent you a memo, I take it, of October 12th, 2005 addressed to a number of doctors and Ms. Predham in St. John's, from Dr. Williams, discussing this review panel.

DR. JENKINS:

A. Uh-hm.

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COFFEY, Q.C.:
Q. And it's mandate.
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. So you were not only advised by Ms. Pilgrim verbally, but she also sent you kind of the initiating memo?
DR. JENKINS:
A. Yes.
COFFEY, Q.C.:
Q. Exhibit P-2738? This is an e-mail, Doctor, from Dr. Neil to yourself, October 18th, 2005. He writes, "Ken, as per our discussion, I spoke with Barry Dyer who is indeed gathering an extensive amount of data on all cases from each region and will be producing results on spreadsheets for each region, I thought he would. As of now, the information is on paper and when complete, all will be computerized. On the second point of our discussion, the one that really concerns me, Barry can also send us another list of patients that had immunohistochemical tests ordered from Western that we can cross reference. He thinks that

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that test should be all inclusive. Looks like we have done all we can do. I'll keep you informed." Signed Paul.
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. Now, Doctor, did you then interpret this e-mail from Dr. Neil as him being a bit uneasy about missing people and wanting to cross-reference as much as he could?
DR. JENKINS:
A. That was my understanding that he had a certain level of discomfort and he wanted to make sure there were sort of no missed cases and that was his sentiment that I took from that.
COFFEY, Q.C.:
Q. Doctor, here it was envisaged at that point in time that eventually spreadsheets and in fact eventually computerized spreadsheets would be made available. Did you ever ask Eastern Health why they didn't give you the information electronically?
DR. JENKINS:
A. No, I don't recall that I specifically asked

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that question. I think my understanding was that they wanted to, you know, try and maintain the integrity of the database as best they could, but no, I didn't specifically ask to the best of my recollection as to why they did or didn't give us an electronic copy.
COFFEY, Q.C.:
Q. Now we will see when you do get these reporting lists, spreadsheets on paper -
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. I take it then that whatever is on paper had to be somehow or another recorded by Western in its electronic records.
DR. JENKINS:
A. Yes.
COFFEY, Q.C.:
Q. Did you create electronic spreadsheets for Western or have somebody do it for you?
DR. JENKINS:
A. We did, yes, and some of our other staff, in particular I mentioned to you earlier, other quality management research people were very much involved with a lot of the tracking of

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patients and there were subsequent requests that were made, so we did develop our own sort of spreadsheets subsequently as well.
COFFEY, Q.C.:
Q. Exhibit P-2739 please? Doctor, this is again one of your memos to follow, as it were, on the ER/PR file, October 19th, 2005. It's a phone call from Dr. Williams and you've written, "We'll be starting to notify patients tomorrow and will place notices in newspapers." I take it that that's Eastern Health?
DR. JENKINS:
A. Eastern Health.
COFFEY, Q.C.:
Q. Notify patients of what, do you recall?
DR. JENKINS:
A. Of results is what I would recall from that.
COFFEY, Q.C.:
Q. And place notices in newspapers. What kind of notices were they?
DR. JENKINS:
A. Regarding retesting procedures, that's to the best of my recollection what was going on, in fact, at that particular point in time with

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respect to ER/PR.
COFFEY, Q.C.:
Q. You've written here, "Once Western to follow suit"--which would be, I take it Dr. Williams wanted Western to follow suit by what, putting notices in newspapers or -
DR. JENKINS:
A. That's correct.
COFFEY, Q.C.:
Q. In your own area.
DR. JENKINS:
A. Yes.
COFFEY, Q.C.:
Q. Do you recall if Western actually did so?
DR. JENKINS:
A. We did--yes, we did, we used the template I believe that came from Eastern Health and I'm fairly certain that we did publish some of those as well.
COFFEY, Q.C.:
Q. Now the test reports that have come back and are negative will be reported to patients.
DR. JENKINS:
A. Um.
COFFEY, Q.C.:

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Q. "Will advise others who are being retested, but results not yet known."
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. Presumably be told that they are being retested.
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. "Heather Predham is the contact person for Eastern and contact Susan Bonnell."
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. I take it contacting Ms. Bonnell would be about the communication's piece.
DR. JENKINS:
A. Yes.
COFFEY, Q.C.:
Q. In terms of communication through newspaper ads. Doctor, you understood then that the patients whose results came back negative, negative in the sense of Mount Sinai was reporting the ER and PR as zero, zero or less

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than one in each case. You understood that they were going to be told how?
DR. JENKINS:
A. That we, I think we were going to take on the responsibility of notifying the negative cases ourselves and that we were going to be asked or provided with a list of names to make those contacts.
COFFEY, Q.C.:
Q. Exhibit P-1311? Doctor, this is a series of e-mails. The first of them is October 19th, 2005. It's from Heidi Simmons to a number of people in Western and the subject is "A Message to Breast Cancer Patients." And it says, it's erprforpapers.doc. This is an ad that Eastern Health will be using for the ER/PR issue." Signed Heidi.
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. And then you've written on October--same day, October 19th, to Ms. Simmons and copied it to others saying "Dr. Williams called me last this afternoon and advised me of a release that they're planning for the weekend print

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media, indicated that there may be some changes yet, so if this is the same document he's referring to, there may be another iteration. I anticipate that this may be something that we want to add to our website when finalized. Could you please confirm with Susan Bonnell what their final version looks like. Dr. Williams also indicated to me that Eastern is about to start notifying all of their patients who are being retested, that testing is underway. For those they have retesting results on, they will advise the patients of the result. Dr. Williams is asking that the other regions contact all patients who have been retested. Could I obtain your help in working through this by contacting Heather Predham or on my behalf to determine what message they will be giving to their patients. Please share this feedback with Frank, who I will ask to develop a plan to begin contacting our patients."
DR. JENKINS:
A. Yes.
COFFEY, Q.C.:
Q. And you indicated that you are away from the

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hospital at the time, but you could still be contacted.

DR. JENKINS:

A. Um-hm.

COFFEY, Q.C.:

Q. But you could still be contacted. And, Doctor, I take it does that then reflect what was going on at the time, Doctor?

DR. JENKINS:

A. That's correct, yes. And I think the initial part of, just thinking back to your last question, as well, Mr. Coffey, the initial part of our advice to patients was that, of course, the retesting was being done. And it was really how we started out to become involved with notification to patients from the Western Region was to let them know that retesting was under way.

COFFEY, Q.C.:

Q. And Heidi then on the--two days later, on the 21st of October, wrote to you, "Hi Ken, left another message for Heather today. This time I reached a person but they didn't sound too promising that I would be getting a call back. We may have to go ahead and handle this on our

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own." Signed, "Heidi." And then you, on the same day, sent an e-mail to Dr. Williams say, "Hi Bob, can you please advise me on the message that you are giving to patients who are being retested? We'd like to have"--I'm sorry, "to take a consistent approach. Thanks, Ken."

DR. JENKINS:

A. Yeah.

COFFEY, Q.C.:

Q. So I take it, Doctor, that this would be the message to patients who are being retested, some kind of script?

DR. JENKINS:

A. That's right, yeah.

COFFEY, Q.C.:

Q. Exhibit P-2258? Doctor, this is two e-mails of October 28th, 2005. The first is from Paul Neil to yourself, copied to Ms. Gillam. Writes, "The cases for repeat ER/PR testing have been sent to the Health Sciences Centre for retesting as requested. The last batch went yesterday, Thursday, October 27th. We are confident that we have sent all the cases that we could identify. Have been as thorough as

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we could possibly be, however, there is always the possibility we may have missed someone. We sincerely hope not. I don't know how HSC is handling that. Is that a PR issue? Should patients suspect that their test should be repeated contact someone to ask that question?" I take it in this context that would be PR would be public relations issue?

DR. JENKINS:

A. That's right.

COFFEY, Q.C.:

Q. "In that light I have given a complete list of cases sent from here to Marilyn Saunders in the Cancer Clinic. She has received calls from patients wondering if their test has been sent out. As of today she will be able to tell any patient when the tissue left here. I wonder where we should take this issue. Any thoughts?" Signed, "Paul." And you responded, Doctor, by saying, "Thanks for the update and all the great efforts in attending promptly to this issue. We are referring patients with questions to the patient relations officer in St. John's and/or their family doctors who are being provided with the

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background info. We are also working with Eastern Health to confirm the mechanism for notification of patients that their tissue samples are being retested. I wonder if Marilyn may be able to assist with the notification process? I'll have Hellen arrange a meeting with her to discuss. Once again, my sincere thanks to everyone involved for their excellent efforts. Ken." So I take it, Doctor, as of late October then you're trying to get the script in place and find someone to actually do the -

DR. JENKINS:

A. That's correct.

THE COMMISSIONER:

Q. Mr. Coffey, it's getting near the break time.

COFFEY, Q.C.:

Q. Thank you.

THE COMMISSIONER:

Q. Wherever you can find a spot.

COFFEY, Q.C.:

Q. If we could, one more, please, Commissioner. Exhibit P-2740? Doctor, this is a series of e-mails. The first of them is dated November 1st, 2005, it's from Ms. Predham to Heidi

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Simmons. She says, "Hi, here's the script. We changed it a bit to reflect our conversations. Call me if you need me. Also make sure you have actually sent the sample prior to calling. I would recommend that someone with a clinical background make the calls." Signed, "Heather." And the document is "Potential Script.doc."

DR. JENKINS:

A. Um-hm.

COFFEY, Q.C.:

Q. And, right there. And, Doctor, Ms. Simmons sent it on to you on the same day. And then you sent an e-mail to Ms. Barnes. Who is Ms. Barnes?

DR. JENKINS:

A. Sharon Barnes currently is our senior nurse, nursing officer at Western Memorial Regional Hospital.

COFFEY, Q.C.:

Q. Okay. You write, "Hi Sharon, as per our telephone conversation, could you please advise me on the availability of one of your AOs." What -

DR. JENKINS:

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A. Administrative officers.

COFFEY, Q.C.:

Q. "Administrative officers to serve as our point person to contact patients for whom we have submitted negative samples for review at Mount Sinai. We expect that this issue will be addressed by the minister in the legislature next week. We discussed this issue with senior management this week and we have decided to follow Eastern Health's lead in notifying patients. The lab is compiling a list of names and contact phone numbers and should have something for us on Monday. It would be best for one person to handle this for consistency sake. Please let me know if you have someone available and what the budget impact will be for this overtime service. Eastern Health provides a contact phone number if patients have additional questions. I'm available as a resource person, as well. Thanks kindly, Ken." And, Doctor, what lead you to believe that this issue, "We expect this issue will be addressed by the minister in the legislature next week."? This is November 18th, 2005.

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DR. JENKINS:

A. We must have had some discussion, you know, I think I'm referring here to the discussion at senior management and I think it must have been in the context of that. But I don't recall specifically, Mr. Coffey, what came up in that discussion that would have referenced the reason why the minister was going to be addressing it in the following week, to be honest with you.

COFFEY, Q.C.:

Q. And, Doctor, there's another e-mail the same day from Ms. Barnes to yourself. She says, "Dr. Jenkins, unable to reach Louise today, but left a message for her to call me on Monday. Should be able to accommodate relieving her regular shifts to allow her to do this for us if she is willing. This could be done at her regular pay and estimating three days to do it. Cost us about $730. I really don't have any money in the nursing admin budget to cover this cost, although minimal. It would have to be recognized as an overexpenditure for nursing administration. I expect to hear from Louise on Monday and if

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she's available and willing, the process could be started on Tuesday or Wednesday."

DR. JENKINS:

A. Um-hm.

COFFEY, Q.C.:

Q. So, Doctor, why was someone then, an administrative officer from nursing, tasked with this?

DR. JENKINS:

A. Well, we felt it really should be somebody who had some clinical knowledge and felt that we had, you know, greatest ability to access somebody, you know, through that particular part of the structure. And so we had the consultation with our senior nurse in that regard and we did ultimately have somebody from her pool of nursing support managers to make those calls for us.

COFFEY, Q.C.:

Q. And, Doctor, November 22nd, Ms. Barnes gets back to you saying, "Dr. Jenkins, this is to give you an update on the calls for ER/PR. I have the files from the lab as of today and had hoped to get the calls started this week. However, Louise is not available and other

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resources are taken up with a beds issue," or "bed issues." "I will get to it as quickly as possible and it will be no later than next week. I know patients will be asking if they will hear once the testing is done. I don't think that was covered under the script. Do you know what the process will be once the testing is finished?" Signed, "Sharon." And you responded on the same day saying, "When we get the results, they will be distributed to attending physicians for follow-up. There has been an expert panel formed in St. John's to provide advice to physicians on follow-up. There will probably be some orphan patients that we will need to contact. Please ask the person who is doing the calling to confirm who is contacted and record any concerns that individuals and/or relatives may have. In particular, if there are any indications of potential legal action, we will need to advise our risk manager. Thanks kindly." So, Doctor, I take it then that as of the middle, toward the end of November, Western was still getting organized in terms of telling patients that they were being retested?

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DR. JENKINS:

A. That's correct.

COFFEY, Q.C.:

Q. Doctor, the reference to potential legal action "will need to advise our risk manager" I take it that is if the contact person was told the -

DR. JENKINS:

A. Yeah, that's correct. If they--you know, in the context of their discussion with any patients or others, if there is, you know, any sort of mention regarding that. And that's a typical action, Mr. Coffey, we would take within our health authority. If there is any particular mention of statements of claim or any type of legal action that may be taken, we would certainly pass it on to our risk manager, who would share it accordingly.

COFFEY, Q.C.:

Q. Thank you, Commissioner.

THE COMMISSIONER:

Q. Do I take it that Ms. Barnes, who you've described as the senior nursing officer, is she what used to be called a director of nurses?

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DR. JENKINS:

A. Similarly. And we have a new name on it now, as well, but the role would be very similar -

THE COMMISSIONER:

Q. Is it that function?

DR. JENKINS:

A. That function would be very similar, correct.

THE COMMISSIONER:

Q. So at Western the function of some person who is a senior person responsible for nursing and all its aspects continues?

DR. JENKINS:

A. Yes, that's correct.

THE COMMISSIONER:

Q. All right, thank you.

DR. JENKINS:

A. You're welcome.

THE COMMISSIONER:

Q. We'll take the morning break.

(BREAK)

THE COMMISSIONER:

Q. Please be seated. Mr. Coffey.

COFFEY, Q.C.:

Q. Thank you, Commissioner. Exhibit 2741, please? Doctor, these are some e-mails of

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December 5th and 6th, 2005. Doctor, the first of them is a December 5th from Marilyn Saunders to yourself. The subject matter is "ER/PR Rescreening Phone Calls", yeah, "Rescreening Phone Calls, Two Patients." "Dr. Jenkins," she writes, "We have received two phone calls from upset patients who say someone called them about some sort of retesting. These patients are really upset, do not understand what they are being told and are calling us for clarification. Have you arranged for someone to call the patients who have to have ER/PR retesting? Whoever is making these calls needs to be able to explain clearly what type of retesting and be able to answer any questions these patients have. Could you contact this person and let her know we are receiving phone calls from upset patients looking for answers. We are not sure what they are being told or what they've been told, which makes it difficult to answer questions. Thank you for your time." Now, Ms. Saunders is whom?

DR. JENKINS:

A. Marilyn Saunders is one of the nurses in the

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Cancer Clinic at Western Memorial.

COFFEY, Q.C.:

Q. Doctor, you respond then to her the next day by saying, "We are following the approach used in the rest of the province and have a script developed by Eastern Health to communicate consistently to patients. This contact task has been assigned to an AO, but I don't expect this person to act as a subject matter expert. Here is a phone number for Eastern Health that the contact person has if the patient has questions that cannot be answered. We anticipate that people would be upset, but we feel that people need to be notified of the situation. I'm copying Sharon Barnes on this so she can provide feedback to the AO involved. If you can give me specific detail on the questions posed by the two people who contacted you, I can provide info to the AO to answer similar questions in the future. As well, I'll be happy to contact these people myself if you wish to provide me with their contact info. Your feedback is appreciated." Signed, "Ken." And, then she comes back to you the next--the same day, actually, December

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6th and says, "Thanks for this feedback. I will certainly advise Bonnie of this as she will continue to call patients today." I'm sorry, this is from Sharon Barnes, I apologize. "Thanks for this feedback. I will certainly advise Bonnie of this and she will continue to call patients today and one week--day next week. I actually just had an update from her before receiving this e-mail and she felt all was going well. People are appreciative for the call and she was not getting the sense that there were concerns. She is keeping a record of the contact she's making and if concerns are expressed to her personally she will have them followed up." Signed, "Sharon." Now, Doctor, at the time, I take it, by early then December, first week of December into the second week of December, 2005 Western was having Bonnie contact the patients?

DR. JENKINS:

A. That's correct.

COFFEY, Q.C.:

Q. Who is Bonnie?

DR. JENKINS:

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A. Bonnie is Bonnie Walker, who was at that time serving in an administrative officer role.

COFFEY, Q.C.:

Q. And, Doctor, here the reference by Ms. Saunders to these two particular patients, anyway, being really upset. "They do not understand what they are being told and are calling us for clarification."

DR. JENKINS:

A. Um-hm.

COFFEY, Q.C.:

Q. Doctor, would sending something in writing to the patients as well as calling them perhaps have better explained to people the nature of what was involved there?

DR. JENKINS:

A. Oh, I think there's merit in both approaches.

COFFEY, Q.C.:

Q. And using both?

DR. JENKINS:

A. And using both approaches. And there are pros and cons, I think, of using each individually. And, you know, I certainly think having direct contact by verbally with patients is wise and to try to answer as best you can. I think

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either way, method of communication is going to, you know, raise concerns in people when you're dealing with issues of such significance and such importance, so I think there would be benefit to both.

COFFEY, Q.C.:

Q. Was any further consideration given in early December, 2005, to having written communication with the patients?

DR. JENKINS:

A. On Western Health's behalf?

COFFEY, Q.C.:

Q. Yes.

DR. JENKINS:

A. No, I think we decided we would pretty much follow the consistent approach that was being taken provincially, and we would adopt those measures.

COFFEY, Q.C.:

Q. And, Doctor, in relation to that then, the objection to sending a written communication to patients, the basis for that was what, to your--up to this point in time?

DR. JENKINS:

A. Which objection are you referring to?

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COFFEY, Q.C.:
Q. Well, there had been--we had looked at something in your handwritten notes, in fact, the contemplation that there might be something written and sent to patients outlining HIROC had raised some concerns about massive mailout. Recall that?
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. Other than that, the concerns expressed by HIROC about any massive mailout, were you aware of any other concern expressed by anyone, objection?
DR. JENKINS:
A. No, I don't think there was really any other objection on anybody's part, you know, that that particular approach would be adopted. I think it was just a decision that was made that the mechanism that would be used would be by direct contact to try to be as personal as possible about it.
COFFEY, Q.C.:
Q. Exhibit P-2742, please. Doctor, this is a couple of e-mails, but in the main it's an e-

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mail, December 8th, 2005, from Heidi Simmons to yourself and others within Western, but she's copied it to Susan Bonnell and Deborah Thomas in Eastern Health, and attached to it a transcript and an e-mail of December 8th, 2005, for a broadcast entitled "False Cancer Test Results", and it's apparently an interview that was conducted on December 8th, 2005.
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. I'll just try to get this right here now - yeah, at 8:22 a.m, Item #21, CBC, Corner Brook, and there was an interview by Dorothy King of yourself?
DR. JENKINS:
A. Correct.
COFFEY, Q.C.:
Q. How is it that you came then to be interviewed, Doctor?
DR. JENKINS:
A. Usually with media requests, they would come in through our Director of Communications, who would then approach the Chief Executive

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Officer for a decision on how we would respond, and then a decision would be made as to who would be the most appropriate person to respond. So I think in this particular case it likely came in that particular fashion.
COFFEY, Q.C.:
Q. Doctor, looking at the actual transcript, Ms. King introduces the story by saying, "It's been months since the Health Board in Eastern Newfoundland admitted some of its test results may have been wrong, but patients on the west coast are only now finding out that they're affected. Eastern Health said last May that about 800 breast cancer patients needed to have some tests rechecked. The false results could mean that women didn't get the best treatment available. Dr. Ken Jenkins, as Vice President of Medical Services for the Western Health Authority approached by our studio earlier this morning, what's your understanding of what went wrong here", and you respond, "In terms of the results themselves, Dorothy", and she says, "Indeed", and then you say, "Well, what's been happening here over the summer is that the lab personnel

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and pathologists have been doing their own level of consulting with respect to the results and the work that was required. This particular issue came to our executive level attention, Dorothy, actually the end of September and early October, and at that particular time, I made a decision to assign some additional resources so the lab personnel so the pathologist could, in fact, get on with the work of identifying these particular specimens", and then it goes on from there, Doctor. Toward the bottom of the first page of the transcript, Ms. King says, "Fair enough, but would it not have been a better procedure to have at least released some kind of an announcement to the general public that there was a situation and that women may be contacted with these test results that were not, in fact, accurate", and you respond, "Yes, there was actually a fair bit of indication early on and we certainly were relying upon Eastern Health to a certain extent in taking the lead on this", and then, "Why Eastern Health", and then you respond, "Well, because they were responsible actually

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for the conduct of the tests. Our samples are actually submitted to Eastern Health for processing and in that, in fact, there was communication from Eastern that was in our paper in the Western region, and we also had communication internally with our staff", and you go on from there. So, Doctor, from Western's perspective, and you speaking as the VP Medical, primarily whose problem was this? I appreciate it's the patient's problem ultimately, but in an organizational sense?

DR. JENKINS:

A. Well, certainly, I mean, the focus was with Eastern Health. I mean, we had clearly a role to play as it related to our patients in Western Health and that was very important, as the rest of the health authorities did as well. We relied to a significant extent on the expertise and the feedback and inputs from Eastern Health to judge and guide our activities.

COFFEY, Q.C.:

Q. Doctor, continuing on the interview, Ms. King asked you a question, "And those results should be finalized when", because you're

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talking about the total number sent out from Western?

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. And the number of people who have been to that point contacted and you respond, "We don't have an ideas as to when we can expect Mount Sinai to complete these tests, and that's where all of the samples are being resubmitted. We haven't been provided with a date either from Eastern Health or through Mount Sinai, so we do have to wait for those results to be completed before we can move to the next step".

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. Now, Doctor, your own understanding as the VP Medical in relation to when the results might be forthcoming of the retesting, what was your initial understanding, who did you receive it from, and if it changed over time, how did it evolve?

DR. JENKINS:

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A. Well, certainly we understood that our samples would be going in batched with others, there would be a significant amount of work that was going to be on the table for Mount Sinai. I think the understanding of any sort of time frames around that would have come up in the teleconferences, the Vice Presidents of Medical Services meetings, discussions with Dr. Neil, that I had with him, and that he had with his pathology colleagues, and in terms of how that may have changed, we really--we only started to know as test results came back and we were advised by Eastern Health, you know, expect results back, you know, today, tomorrow, within the next short time frame, and we'll share those with you. So that was really how we became informed was through our regular and ongoing communications with Eastern Health through the various channels.

THE COMMISSIONER:

Q. Doctor, did that mean that you had no expectation on the time frame before you start sending your blocks in?

DR. JENKINS:

A. I don't think we really understood how short

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or long that may be, that's correct.

THE COMMISSIONER:

Q. So if you anticipated any period of time, it was on the basis of what the first, or the second, or the third batch had taken in terms of turnaround time?

DR. JENKINS:

A. Correct.

COFFEY, Q.C.:

Q. Up to this point, and this would be early December, 2005, to your knowledge had any results come back to Western that you're aware of?

DR. JENKINS:

A. Mr. Coffey, I don't recall off the top of my head what date we started seeing the first results coming back.

COFFEY, Q.C.:

Q. And we're going to see some certainly in 2006. There are large batches of results come in '06. I'm just -

DR. JENKINS:

A. Okay. Yeah, no, I'm not recalling off the top of my head that we saw any at that particular point in time.

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COFFEY, Q.C.:
Q. Doctor, here then toward the end of the interview, Ms. King poses a question, "I know this concerns Eastern Health Care, but I'm sure it's something that has been discussed by you with other people, and that is the length of time that it took to realize that these test results were, in fact, flawed". See that?
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. And then you responded by saying, "Well, there's an interesting background on this which we should probably consider and it really relates to the whole spectre of new technology coming into the health system, and the background on this is that they started testing for ER/PR receptors back in 1997, and in 2004 at health care, Eastern Health introduced a new system, an automated system. Now prior to that, it had been a semi-automated system, and, you know I know some of your listeners have been hearing from other people who have been online here describing,

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for example, the 40 steps that were involved in this previous process. So what happened then in 2004 was that this new technology was introduced, more sensitive, and picked up results the previous older technology may not have been able to pick up, and, Dorothy, this is something that we certainly face in Health Care all the time. You know, they have new technologies that come along, they find things that the previous technologies couldn't find, and we end up having to adjust and adapt to that and that creates difficulties and concern for patients because now they have a diagnosis that they didn't have before, and that may have made a difference in terms of the type of treatment. I think the good news here really is that I think Eastern Health has been very responsible in what they have done here by going public and by letting people how what's happening, for taking the testing to another level external to validate and confirm whether or not the suspicion they had was correct. So I think that is very good news for the patients that are out there. Despite the difficult part of it, we do know that with

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this particular type of tumour that there is a window that may be up to ten years long within which treatment with other drugs such as Tamoxifen can be given".
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. And she thanks you then for the interview. Now, Doctor, where had you gotten the information about this ten years?
DR. JENKINS:
A. That would have been in discussions and representations made by Dr. Williams principally at our VP Medical Services meeting and the subsequent teleconferences as well.
COFFEY, Q.C.:
Q. Doctor, were you aware that--you understood that certainly here based upon what you said here that there had been a semi--what you have described as a semi-automated system.
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. And then the new system, a more automated system. Had anyone advised you that these

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semi-automated systems, the DAKO system, was in fact being utilized in Mount Sinai to do the retesting?
DR. JENKINS:
A. No, I wasn't aware of that, no.
COFFEY, Q.C.:
Q. Might that have been of interest to you, do you think at the time?
DR. JENKINS:
A. I think that would have been of interest, yeah.
COFFEY, Q.C.:
Q. And why is that, Doctor?
DR. JENKINS:
A. Well, in particular, I mean, there were issues that were brought up regarding, you know, the multi step process and whether or not there had been contributing factors from that as it relates to reliability for test results.
COFFEY, Q.C.:
Q. If you were to be told at the time that, in fact, it's the same system that was utilized in St. John's for years, Mount Sinai is actually using it to do the retesting -
DR. JENKINS:

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A. Uh-hm.
COFFEY, Q.C.:
Q. Would you have asked any questions in relation to, for example, why had it taken--why the test had gone on for so long and not been--the flaws discovered?
DR. JENKINS:
A. Yeah, I think that would have been of relevancy and importance to us to understand that.
COFFEY, Q.C.:
Q. So, Doctor, the types of things identified in what is now P-0046 and P-0047, Trish Wegrynowski's and Dr. Banerjee's reports -
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. That you're now aware of -
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. Doctor, if you had been aware at the time, in December, 2005, been made aware of the subject matters there in any kind of detail, would you have said this to the people on the west coast

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of Newfoundland?
DR. JENKINS:
A. Certain aspects of it, I think, would ring true to a certain extent, Mr. Coffey, and, you know, I think the new technology piece has a certain degree of relevance because as technology changes and improves, there certainly is likely that things would be picked up may not have been picked up before. We see that in many aspects of diagnostic technology. As it relates here, you know, specifically to ER/PR testing and a comparison between semi-automated process and now an automated process, so I think there's--yeah, having that information would have been valuable in terms of positioning or concluding what the underlying factors may be here, and certainly would have been relevant to the discussion at hand, but that was the information that we were provided with at that particular point in time.
COFFEY, Q.C.:
Q. And that you had got from Eastern Health?
DR. JENKINS:
A. Yes, that's correct.

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THE COMMISSIONER:
Q. I'm not quite sure I understand what it is you are intending to convey in this particular -
DR. JENKINS:
A. Okay.
THE COMMISSIONER:
Q. There seemed to me to be two aspects. One is the matter of the new technology.
DR. JENKINS:
A. Yes.
THE COMMISSIONER:
Q. And if I'm looking at this transcript, it seems to me that what you are saying to people is that not that there was anything wrong with what occurred prior years, it was just that we now have a technology that enables us to pick up things that we could not pick up before.
DR. JENKINS:
A. And I think that was our understanding at that particular point in time. It was mainly an issue related around changing technology, and sensitivity, and specificity perhaps of new testing procedures.
THE COMMISSIONER:
Q. So at that stage, when you were doing this

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interview, you had no knowledge of any other factors entering into the determination of why a change occurred, factors like those that we've heard so often here about fixation, for example, processing of the--within the laboratory in St. John's, et cetera, et cetera? None of that was within your radar at the time?
DR. JENKINS:
A. We didn't have a significant amount of detail on it. I think we did have some general discussion and I think I referred to it earlier in terms of the early presentations that Dr. Williams had made, an early understanding that there may be some process issues related to how the semi-automated process was conducted itself, and that that could be an issue, but that was--I mean, when I made that particular comment, it was in specific reference to new technology. It wasn't a full description of all of the issues at hand, I don't think. I think it was, you know, a comment on that specific aspect of new technology being introduced.
THE COMMISSIONER:

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Q. And then you say, "So what happened then in 2004 was this new technology was introduced, more sensitive and picked up results that previous older technology had not been able to pick up".
DR. JENKINS:
A. Uh-hm, that's right, so that was the -
THE COMMISSIONER:
Q. And then you go on to talk about how that happens all the time in health care, as I'm sure it does.
DR. JENKINS:
A. Right.
THE COMMISSIONER:
Q. But you're saying that that isn't the full story, and while you may not have known at the time what the full story was, you knew there was more than that to it?
DR. JENKINS:
A. That's correct.
THE COMMISSIONER:
Q. All right, thank you.
COFFEY, Q.C.:
Q. Doctor, did you ever--at the time, did you expect that at some point you would be told in

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detail what the fuller story was?
DR. JENKINS:
A. Yes, I think we fully anticipated that we would--at some point in time we would have an understanding of what went on here, you know, from a learning perspective, and we would need to know what went on.
COFFEY, Q.C.:
Q. Prior to May of 2007, was your understanding any wider than it was in December of '05?
DR. JENKINS:
A. Not particularly, no.
COFFEY, Q.C.:
Q. Exhibit P-0692. Doctor, this is a series of e-mails, and Ms. Simmons sent an e-mail to Tansy Mundon here on December 8th, "For your information, Ken Jenkins, VP Medical Services, did an interview this morning with CBC on ER/PR, and in particular to Western. They also had Peter Dawe on yesterday a.m", and then she responds by saying, "Hi Heidi, are you ordering a transcript? Can you give me the status of testing in the Western region, how many people have been notified of the retesting, total number of samples being

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retested, and the status of the retesting", and then there's a response from Ms. Simmons to Ms. Mundon on the same day saying, "I've requested the transcript and will forward it along. We have 249 cases sent in for retesting. Ken was checking last yesterday, but I think that most if not all the women have been notified. We are unsure of the status. They were sent from here the end of October to Eastern and then on to Mount Sinai for retesting. Mount Sinai is hoping to have all the retesting completed by the end of January. It seems like 10 percent of the samples are coming back as inaccurate, so that translates in Western to about 25 women who could have benefited from a different course of treatment". Signed, Heidi. "I will also send you Minnie's transcript on the surgical bed issue". Now, Doctor, the reference to "it seems like 10 percent of the samples are coming back as inaccurate, so that translates in Western to about 25 women", so 10 percent of 249 would be 25, rounded.
DR. JENKINS:
A. Right.

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COFFEY, Q.C.:
Q. Doctor, the idea that 25 percent of the samples are coming back as inaccurate, where did that figure come from?
DR. JENKINS:
A. That 10 percent number you gave me, Mr. Coffey?
COFFEY, Q.C.:
Q. Yes.
DR. JENKINS:
A. I'm not sure where Heidi would have come up with that figure. I'm not sure.
COFFEY, Q.C.:
Q. But it certainly because of the arithmetic suggests that, well, out of approximately 250 cases sent for retesting as of December 8th, 2005, in Western Health, it was thought that 10 percent of the total retested -
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. Would convert? That's what this suggests.
DR. JENKINS:
A. Yeah.
COFFEY, Q.C.:

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Q. Up to that point, did you have any understanding of how many might--what percentage might have converted?
DR. JENKINS:
A. Yeah, there had ben some discussion along the way. I recall at one of our--I think it was VP Medical Services meeting, or one of our teleconferences, that Dr. Williams had given - once they started getting some of the early results back, that there was some indication as to what those numbers might look like. So there had been some discussion about that at some point in time. Exact date, I'm not sure.
COFFEY, Q.C.:
Q. Do you recall what fraction or percentage was being utilized at that time?
DR. JENKINS:
A. I think it was around that range, Mr. Coffey, to the best of my recollection early on. That seems to be consistent with what I'm recalling from the early discussions.
COFFEY, Q.C.:
Q. Ten percent, do you recall of what, Doctor, was it of the total number of original tests done?

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DR. JENKINS:
A. That's my recollection.
COFFEY, Q.C.:
Q. Ten percent of all breast -
DR. JENKINS:
A. Yes.
COFFEY, Q.C.:
Q. Including the positives?
DR. JENKINS:
A. Correct, yeah.
COFFEY, Q.C.:
Q. So it wouldn't be 10 percent of the retest, it would be 10 percent of the total?
DR. JENKINS:
A. That's my--that's what I'm recalling.
COFFEY, Q.C.:
Q. Which would--10 percent of the total would probably give you a higher figure than 10 percent of the retests?
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. That would be your understanding?
DR. JENKINS:
A. I'd have to go back - I'd have to go back to my notes. I'm not 100 percent on that.

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COFFEY, Q.C.:
Q. Doctor, up to the point, and just after all the samples for retesting had been gathered in Western and shipped to St. John's for forwarding to Mount Sinai -
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. Doctor, can you tell us, please, if there was any analysis conducted within Western, to your knowledge, as to what our positivity rate of negativity rate is?
DR. JENKINS:
A. Yeah, we -
COFFEY, Q.C.:
Q. Between '97 and '04 or '05?
DR. JENKINS:
A. We didn't do any significant statistical analysis on, you know, what we were--the results that we were getting. I know--I had a review of Dr. Neil's testimony here as well, and I think he had indicated as well that, you know, there wasn't sort of a hard statistical analysis that was conducted. We were aware of what the numbers were in terms of the ultimately results that came back, but we didn't go about a specific statistical analysis.

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COFFEY, Q.C.:
Q. I appreciate that's after the bulk results come back?
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. But I'm asking, Doctor--I take it no statistics had been kept as to positivity or negativity rates, to your knowledge, before this arose in 2005?
DR. JENKINS:
A. Oh, I see--no, no, that's right.
COFFEY, Q.C.:
Q. But after in the fall of '05 before you got the results back -
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. But you packaged the blocks for retesting -
DR. JENKINS:
A. Right.

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COFFEY, Q.C.:
Q. Was there any calculation done at that point as to, well, how have we done in the past in terms of positivity rates?
DR. JENKINS:
A. Uh-hm, uh-hm, not that I can recall, Mr. Coffey.
COFFEY, Q.C.:
Q. No, because we've seen--the Commissioner has seen a certain amount of evidence, or heard a certain amount of evidence and seen it calculations done within Eastern Health.
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. As to what their local positivity rate and negativity rates were.
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. Western didn't engage in that?
DR. JENKINS:
A. I don't recall that, and Dr. Neil may be aware, but I don't recall that.
COFFEY, Q.C.:

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Q. Exhibit P-2743, please. Doctor, this is a couple of e-mails on December 8th and 9th. On December 8th, Ms. Walker, Bonnie Walker, wrote to Ms. Barnes regarding breast sample retesting calls saying, "Hi, Sharon, here's an update of patient calls re; breast sample retesting as of December 7th. 142 patient charts reviewed up to and including 2002 file. Files 2003 to 2005 remaining, and predict two to three days required to complete".
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. "Especially if recall is required. Many recalls required, sometimes three calls, especially the 2000 file. Successful with many of the recalls completed last evening. Recalls still required, 12 of 142 patients, and have not done recalls for 2002 file yet, which equals 6 out of the 12. Total number of patients without updated contact information, including next of kin contact information, equals 11 of 142 patients. Total number of patients expired, 70 out of 142, many discovered after the calls were made". I take

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it Ms. Walker was finding that in a number of instances the patients were deceased?
DR. JENKINS:
A. Yes, and some difficulty with contact, yeah.
COFFEY, Q.C.:
Q. Doctor, was any thought given at the time by Western to accessing any kind of computerized mortality, provincial mortality database?
DR. JENKINS:
A. We did look through MCP databases as a means of securing some patient contact information. I don't think we utilized any provincial mortality database, though, to the best of my recollection.
COFFEY, Q.C.:
Q. Like Vital Statistics database for births and deaths.
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. I take it, it just didn't occur to anyone -
DR. JENKINS:
A. Yeah, I don't think that was accessed.
COFFEY, Q.C.:
Q. "Also Dr. Jenkins has questioned possible

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percentage of patients who commented they were on Tamoxifen". Ms. Walker says, "I calculated 27 of 142 patients who reported this. I thought it seemed to be more. I hope this is helpful". Doctor, had you done any checking as to how many of the patients from Western were already on Tamoxifen?
DR. JENKINS:
A. Apart from the information that we have here, no.
THE COMMISSIONER:
Q. These are patient calls to tell people that there will be retests?
DR. JENKINS:
A. That there will be retesting, that's correct, Commissioner.
COFFEY, Q.C.:
Q. And then Ms. Barnes on September 9th, e-mails you saying "For your information, I will proceed to arrange to have the remaining patients called."
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. Sharon. So the actual management of the--the

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day-to-day management of having these patient calls and recalls made was in Ms. Barnes' hands?

DR. JENKINS:

A. Yes, and her administrative officer was carrying that function out, that's correct.

THE COMMISSIONER:

Q. Just because it happens to be flowing through my head at the moment, can you tell me whether the content of the phone call to patients was to the effect that there will be retests, or was it to the effect of here's the reason, would you like a retest? Was there a consent element to it or was it just merely information that this was going to happen?

DR. JENKINS:

A. It would be information that it was going to occur and it was along the lines of the script that was provided through Eastern Health and that was the information we were using.

COFFEY, Q.C.:

Q. Exhibit P-2744? Doctor, these are the minutes of a meeting of December 22nd, 2005, VP of Medical Services. You'll note that yourself and a number of others are in attendance.

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And, yes, it's page 6 of the exhibit, paragraph 20. Update on screening for breast cancer. And I take it, Doctor, of course you would have understood this didn't involve breast cancer screening?

DR. JENKINS:

A. Correct.

COFFEY, Q.C.:

Q. It reads, "Bob Williams gave an update on some of the problems incurred with getting results back from Mount Sinai Hospital. It was hoped by the end of January most of the backlog will be eliminated. There was the question raised about what is happening in Nova Scotia as it was understood that Nova Scotia started some of their testing. Bob noted that one of the key recommendations coming from the consultants is that there be a smaller group of pathologists actually reading the test results with regard to breast cancer." Well first of all, Doctor, the idea that there was something going on in Nova Scotia related to this, do you recall what that was about?

DR. JENKINS:

A. No, just as I was reading down through there,

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I was trying to recollect what that discussion was all about, but I don't have much memory for that, Mr. Coffey, in terms of what that discussion was.

COFFEY, Q.C.:

Q. And you conclude by, the minutes conclude by referring to Dr. Williams saying that one of the key recommendations is that small or smaller group of pathologists should actually read the test results.

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. Was the reason for that discussed at the time? Why would you need a smaller, why was it being suggested that a smaller group of pathologists actually read all the--report the results.

DR. JENKINS:

A. If I had my notes from the reading in front of me, it would be helpful, but I think in just going back, it would be around issues with respect to, you know, volumes and ability for individual pathologists to be able to remain current, you know, in terms of their experience and subject matter expertise. But

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again, this is--I'm not a hundred percent sure about that, Mr. Coffey.

COFFEY, Q.C.:

Q. Exhibit P-2745? Doctor, this is a series of e-mails of the end of--well the middle to the end of December of 2005. And the first of them is December 16th, 2005. It's from Ms. Walker to Ms. Barnes and she says, "As you probably have already noted, there are 15 recalls still required after I finish calls December 14th. I have called these patients two to five times each, in addition the contact numbers that were updated still were unchanged from what was originally provided. I have recalled anyways and confirmed these were wrong numbers. I am not sure what the plan is now, but if you still require I make recalls, please let me know. Maybe I can do a few hours after my risk management orientation next week. I think the total number of patients involved in calls equals 202 or 204. Thanks. Bonnie Walker."

DR. JENKINS:

A. Umm.

COFFEY, Q.C.:

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Q. And then Ms. Barnes forwards that on December 21st to yourself saying, "Please see Bonnie's message below re the calls regarding ER/PR. Still some clients unable to be contacted after a number of attempts and others without appropriate contact information. I have all the information in my office. Please advise how you wish to proceed." And then, Doctor, on December 28th you responded to Ms. Barnes saying, "Could you please pass the consolidated list to me and I'll ask Hellen to troubleshoot the numbers that Bonnie was unable to get through to. Many thanks to you and Bonnie for the help here. Cheers." Doctor, what then happened with respect to following up on the people who had not been able to be contacted by Ms. Walker?

DR. JENKINS:

A. So I know my administrative assistant then made an effort to search through and find an alternate means of contacting those particular individuals, but I think didn't have any further success than what Ms. Walker had at the time. And then I believe there was some follow up and feedback provided. I think

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there is some subsequent e-mail traffic to that that refers specifically to that and I think there was a request to look further into--I believe we went--I think I asked Bonnie to go back through the lab data banks to see if they had any further contact information I believe is what happened subsequent to that, Mr. Coffey.

COFFEY, Q.C.:

Q. Exhibit P-2746? Doctor, this is a series of e-mails of January 30th, 2006. Doctor here on January 30th, you wrote to senior management to Dr. Neil and Mr. Holloway and others, saying "Hi Folks, I just had a call from Dr. Bob Williams, the ER/PR test results from Mount Sinai are back and I should be getting a call from Heather Predham today with the results for Western Region patients. We will be required to notify the patients with negative results. For those with positive results, however, the patients of the Cancer Clinic in St. John's and expert panel in St. John's will review the results and provide advice to treating provider. For those with positive results who are not Cancer Clinic

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patients, it is anticipated that further clinical information will need to be provided so that cases can be reviewed by the expert panel and advice provided. We will need to have some staffing supports to call the patients who are negative and advise the attending physicians of the positive converters for whom further info is required. For Kelli, can Bonnie Walker be made available to do this or should I look elsewhere? Thanks, Ken Jenkins." And so, Doctor, I take it then that this is advice to all concerned within Western Health about the fact that the results are back and we have to move forward on it.

DR. JENKINS:

A. That's correct.

COFFEY, Q.C.:

Q. Doctor, was any thought ever given to just simply getting the results from Eastern at this point and passing them directly on to the attending physicians, whether the results were positive or negative in the sense of the retest results?

DR. JENKINS:

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A. No, I think we were wanting to sort of maintain consistency with the approach that Eastern Health was using, so we really didn't consider alternate means of communication with the physicians at that point in time.

COFFEY, Q.C.:

Q. And, Doctor, on the 30th, Ms. O'Brien responded to you saying "Bonnie is probably the most appropriate one to do this." Which would be to make the calls, I take it, to tell people that their retest was still zero or negative?

DR. JENKINS:

A. That's correct.

COFFEY, Q.C.:

Q. And you, on the same day, advised Ms. O'Brien "Wednesday will be fine, if she could start on it first thing." Ms. O'Brien had told you that Ms. Walker was away at the time.

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. "Bonnie will be able to give you an idea as to how long it will take her to do the calls. I believe she was at it for about a week."

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DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. That would be a week before. "It would make best sense for her to do the calls, so I am really appreciative that you are open to this." So in effect, you were asking the head of nursing staff to provide you with personnel to have the calls concerning the negative results?
DR. JENKINS:
A. That's right, and I think Ms. Walker had indicated there she was in the process of switching over into another position into risk management, which is the position she currently serves in. So it was just a matter of trying to free up some time for her in the transition.
COFFEY, Q.C.:
Q. If I could, exhibit P-2747? This is some e-mails of January 30th, again, Doctor, one of them we just looked at, which is your e-mail advising all concerned about the phone call from Dr. Williams.
DR. JENKINS:

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A. Uh-hm.
COFFEY, Q.C.:
Q. But then Susan Gillam on the same day, your CEO, responds to you saying, "Thanks Ken. Will Heidi need to be involved regarding communication and notification of the department?"
DR. JENKINS:
A. I think department.
COFFEY, Q.C.:
Q. "Thanks. Susan." That will be the Department of Health?
DR. JENKINS:
A. Yes.
COFFEY, Q.C.:
Q. And then you responded to Ms. Gillam saying, "I believe that Eastern is liaisoning with Department of Health. It is perhaps wise for Heidi to do so to ensure that we aren't missing out on anything. Okay with you? Heidi."
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. I take it then she would be responsible for

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dealing with the public relations end of it with the public?
DR. JENKINS:
A. That's correct.
COFFEY, Q.C.:
Q. Exhibit P-2748? Doctor, this is an e-mail of January 30th, 2006 from Ms. Predham to yourself, ER/PR results. She writes simply, "Hi, here are the results."
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. Spreadsheet, if we look then, Doctor, here, attached to this, is a redacted version of the spreadsheets you received that day, I take it?
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. Doctor, here in relation to this, I'm going to bring to the Commissioner's attention, under the comments column there's a note, for example, this is about ten down, I haven't counted them, it's about ten rows down.
DR. JENKINS:
A. Yes.

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COFFEY, Q.C.:
Q. It's 00SU3738 and under comments column, there's path report says Sir Thomas Roddick?
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. And there's some others, patients are noted to be deceased and then path report says Sir Thomas Roddick, and then if we look down through it, there are a number of other references to Sir Thomas Roddick. Where is Sir Thomas Roddick?
DR. JENKINS:
A. Sir Thomas Roddick Hospital is in Stephenville.
COFFEY, Q.C.:
Q. Exhibit P-1088. Doctor, this is an e-mail from Heather Predham, January 31st, 2006 to yourself and Dr. Alteen. It's Mount Sinai abbreviations and she writes, "I have finally found an e-mail with the definitions of the abbreviations on the Mount Sinai report. If you have any questions, please call me. The Cancer Clinic are reviewing the patients that are not 'confirmed negative' for your regions

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and will let me know which ones are Cancer Clinic patients. As soon as they have completed this, I will forward the names from your region on to you. That will be a listing of the patients that we will be panelling in the coming weeks. Signed Heather."

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. So I take it that that list of patients would be someone who Ms. Walker would not be calling?

DR. JENKINS:

A. That's correct.

COFFEY, Q.C.:

Q. Exhibit P-2264 please? Doctor, this is difficult to see, but it's an e-mail of January 31st, 2006. It's to Ms. Walker, it's copied to a number of individuals, including yourself, Frank Holloway and Dr. Neil. Subject is ER/PR results. And it says, "Hi Bonnie, here is the list for our patients. I have confirmed with Heather that our responsibility for patient notification is just the negatives at this point. The

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attending physicians of the positives will need to be notified and if they require advice from the expert panel in St. John's, then they will need to provide some clinical info, not specifically defined, for the panel. Best to speak with Heather before you start. She can be reached at"--and a particular phone number. "Thanks, Connie for your help. Signed Ken." And that's at the Mount Sinai's abbreviations and ER/PR results.

DR. JENKINS:

A. Um-hm.

COFFEY, Q.C.:

Q. So, Doctor, by sending Ms. Walker this e-mail you understood what was going to happen?

DR. JENKINS:

A. Um-hm. Well, in fact, that there would be action taken now regarding with respect to, you know, the notification of the negatives and that, you know, the follow-up would be occurring as far as the expert panel would occur and subsequent that physicians would be notified accordingly.

COFFEY, Q.C.:

Q. Doctor, here, though, in the second line,

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third sentence, you write "The attending physicians" -

DR. JENKINS:

A. Negatives, yeah.

COFFEY, Q.C.:

Q. - "of the positives will need to be notified."

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. "And if they require advice from the expert panel in St. John's, then they will need to provide some clinical info., not specifically defined for the panel."

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. Doctor, this seemingly suggests that it was contemplated that the positives, patients with positive results on retest?

DR. JENKINS:

A.

COFFEY, Q.C.:

Q. Their physicians would be notified directly, initially?

DR. JENKINS:

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A. Um-hm.

COFFEY, Q.C.:

Q. And with a view to, if necessary, getting records. So was that contemplated at the time that you'd actually go out to the physicians first?

DR. JENKINS:

A. That Western -

COFFEY, Q.C.:

Q. Yes, Western.

DR. JENKINS:

A. That Western Health would actually go out to the physicians first. Can we actually go back to the actual previous list?

COFFEY, Q.C.:

Q. Yes.

DR. JENKINS:

A. The Excel spreadsheet?

COFFEY, Q.C.:

Q. The spreadsheet itself?

DR. JENKINS:

A. Yeah.

COFFEY, Q.C.:

Q. The spreadsheet is Exhibit 2748, please? There's two different ones, Doctor. This is

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the actual spreadsheet itself, 2748 is.
DR. JENKINS:
A. Right. Okay, yes.
THE COMMISSIONER:
Q. Both are referenced in the immediate one before.
COFFEY, Q.C.:
Q. Yes, that's the one that -
THE COMMISSIONER:
Q. You may need -
DR. JENKINS:
A. Yes, that's the one I was -
COFFEY, Q.C.:
Q. That's the one -
DR. JENKINS:
A. I think that's the one I'm thinking about, yeah.
COFFEY, Q.C.:
Q. It's 1088, please. Doctor.
DR. JENKINS:
A. Right. So your question being, Mr. Coffey, is that was there an expectation that Western was going to contact the physicians regarding positives, I think that's your question?
COFFEY, Q.C.:

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Q. Yes. Because that's, you know -
DR. JENKINS:
A. Yeah.
COFFEY, Q.C.:
Q. And I appreciate this is just the day after you first get the results.
DR. JENKINS:
A. Yeah, I'm trying--to the best of my recollection, Mr. Coffey, our responsibility and focus was on reporting of the negatives. I'm not recalling that we were given, being given responsibility for reporting to the physicians regarding positives at that time.
COFFEY, Q.C.:
Q. And, Doctor, so it was contemplated then that Ms. Walker would contact the patients with negative retest results?
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. By phone?
DR. JENKINS:
A. Correct.
COFFEY, Q.C.:
Q. Was any thought given to following up in

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writing with them?
DR. JENKINS:
A. No, no, we didn't, we didn't think about that as a strategy.
COFFEY, Q.C.:
Q. And how about telling their physicians what the results were?
DR. JENKINS:
A. Um-hm.
COFFEY, Q.C.:
Q. Was any thought given to contacting the attending physicians for the negatives?
DR. JENKINS:
A. Not apart from the general information that we had initially provided to physicians about the process that was undergoing.
COFFEY, Q.C.:
Q. Did that ever come up, do you know, Doctor?
DR. JENKINS:
A. I believe, Mr. Coffey, at one particular point in time, yes, it was a request that, you know, we look at helping with notifications. Because there was some uncertainty, I know at least one point in time, as to whether Eastern Health was successful in contacting all of the

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physicians, and so there was a request that came in to us to have a look at that or to help them with notification.
COFFEY, Q.C.:
Q. Notification of physicians for which group of patients?
DR. JENKINS:
A. I'm not--and I can't remember if it was a combination of groupings of patients or if it was just for positives. It was probably mostly the positives, Mr. Coffey, because we would have been responsible for the negatives notifications, so and would have conducted that ourselves and have known that that was completed. So it must have been, it must have been positive patients.
COFFEY, Q.C.:
Q. So to this day, Doctor, to your knowledge, at least in Western, have the physicians of patients who had negative results on retest, have the physicians been told by Western?
DR. JENKINS:
A. By Western?
COFFEY, Q.C.:
Q. Yes.

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DR. JENKINS:
A. I can't say that I could confirm that each and every case that would be the instance.
COFFEY, Q.C.:
Q. In fact, was there ever any -
DR. JENKINS:
A. No.
COFFEY, Q.C.:
Q. - initiative to contact the physicians for those with negative retest results?
DR. JENKINS:
A. No, no. It was the patient notification was the principle methodology that we had utilized.
COFFEY, Q.C.:
Q. Patients directly?
DR. JENKINS:
A. Yeah.
COFFEY, Q.C.:
Q. Exhibit P-2749? Doctor, this again VP of medical services, minutes of meeting of February 2nd, 2006. A number in attendance, including yourself by phone this time.
DR. JENKINS:
A. Um-hm.

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COFFEY, Q.C.:
Q. And on page 3 of the exhibit, Doctor, is a reference to ER and PR receptors.
DR. JENKINS:
A. Um-hm.
COFFEY, Q.C.:
Q. Paragraph 11(g). "Dr. Bob Williams provided an update on reports being returned from Mount Sinai Hospital. Larry advised that there's been no follow-up with any of the patients in the Central area. Bob Williams advised that by April, 2006 they hope to start testing patients in Eastern Health rather than continue to send the test to Mount Sinai Hospital. The difference will be that the report will include an interpretation of the slide. It is expected two or three pathologists will do the work associated with breast cancer. There was some discussion on the type of correspondence that should go to families of patients who are deceased. It was agreed that we need to have a standard letter so the same information will go to all families." Doctor, I have a couple of question in relation to this. At that point

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in time what was the situation in relation to the deceased in Western?
DR. JENKINS:
A. In terms of, Mr. Coffey?
COFFEY, Q.C.:
Q. Retesting having been done, families having--well, I understand that Ms. Walker had inadvertently called a number of patients.
DR. JENKINS:
A. Yeah. And this was February--what's the date again on these particular minutes?
COFFEY, Q.C.:
Q. It's is February the 2nd.
DR. JENKINS:
A. That's February, 2006, yeah. So I know the initial focus, of course, was not on, you know, deceased patients and reprocessing of test results. And at some point in time a decision was made to do so, but I think that would be post this particular set of minutes.
COFFEY, Q.C.:
Q. Doctor, the idea of resuming testing for ER/PR at Eastern Health, which is referred to here.
DR. JENKINS:
A. Yes.

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COFFEY, Q.C.:
Q. And the Commissioner has heard it didn't occur until early 2007. I'm going to ask you about it now generally. Have you ever been asked or discussed the idea of Western utilizing Eastern to do ER/PR results since this time?
DR. JENKINS:
A. Um-hm. Well, there had been some discussion at the VP Medical Services meeting regarding the fact that, you know, they were hoping to start back up with the testing again at some particular point in time. But we had decided internally within Western Health that we would continue to send our results to Mount Sinai. We understood that there were workload challenges in Eastern Health, given the situation with their numbers of pathologists and whatnot, and we felt as an organization that we just wanted to, you know, continue to send out work out to Mount Sinai. We were getting, you know, reasonably good turnaround times and good support from them and given the complicated situation that the Eastern Health was facing, we felt it would be appropriate to continue with that.

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COFFEY, Q.C.:
Q. Doctor, here then as of the beginning of February, 2006 amongst the VP medicals who are meeting, the idea that the reporting of ER/PR, anyway, would be limited to two or three pathologists throughout the province, in fact, it's put here, do all the work associated with breast cancer, what was Western's attitude towards that at the time, were you accepting of the idea of having a limited number of people do this?
DR. JENKINS:
A. Well, certainly, you know, our pathologists had been engaged in interpreting slides, as you would be aware, once they were processed in Eastern Health. We didn't really have a large discussion around, you know, the, I guess you'd call it the centralization of that particular process at that particular point in time. And Dr. Neil and I, I think, had some brief discussion around it, but it wasn't a huge point of discussion or concern for us at that particular point in time.
COFFEY, Q.C.:
Q. I take it that's because Mount Sinai was doing

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the ongoing testing anyway?
DR. JENKINS:
A. That's correct.
COFFEY, Q.C.:
Q. The idea that some discussion, the type of correspondence that should go to families of patients who are deceased, so I take it at that point, early February, serious thought was being given by the VP medicals to sending a letter to the families of patients who were known to be deceased?
DR. JENKINS:
A. Um-hm.
COFFEY, Q.C.:
Q. About ER/PR?
DR. JENKINS:
A. Um-hm.
COFFEY, Q.C.:
Q. And utilizing a standard letter?
DR. JENKINS:
A. Um-hm.
COFFEY, Q.C.:
Q. Standard, I take it, across the province?
DR. JENKINS:
A. Right.

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COFFEY, Q.C.:
Q. What was contemplated at that time might be told to the families of deceased patients?
DR. JENKINS:
A. I don't think we had had a particular text that was worked up, a message, so to speak, that would be communicated. I think it was more of a discussion around, you know, the issue of somehow notification being something that needed to be considered. But at that particular meeting, Mr. Coffey, I don't recall that we had hammered out any particular points of what that communication should look like.
COFFEY, Q.C.:
Q. Exhibit P-2750? And, Doctor, again, this is a series of e-mails of February 2nd, 2006. Ms. Walker on that day e-mails you saying "Apologies for delayed reply, been away until today. In answer to the question re clients/patients that may be deceased, there was a list I started when I was making the calls that noted any deceased clients/patients discovered. In addition there were some clients/patients that had been unreachable after several calls and some that did not have

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up-to-date contact information. Unsure if these were reached. If so, were they noted as deceased if discovered during the call?" Signed by Ms. Walker, the risk manager and patient safety advisor.
DR. JENKINS:
A. Um-hm.
COFFEY, Q.C.:
Q. And then you responded on the same day saying, "I thought that the file may have been passed back to you for this follow-up. I'll ask Hellen to advise Susan of the list of those who are deceased. We did not have any luck with making contact with those that you could not get a hold of. As well, I'll have Hellen send the file back to you for this piece of the work so that everything remains together." I take it, Doctor, that is the--this is one of these e-mails you referred to earlier about the idea that there were some people Western up to that point just couldn't contact?
DR. JENKINS:
A. That's correct, yeah, that's what I was referring to previously, Mr. Coffey.
COFFEY, Q.C.:

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Q. Sure. And as well there's Ms. Gillam who has been included in this e-mail exchange on that day tells you by e-mail, "Thanks, Ken. I don't need to receive the list. Thanks for the follow-up."

DR. JENKINS:

A. Um-hm.

COFFEY, Q.C.:

Q. So I take it Ms. Gillam was being kept in the loop as to what was going on -

DR. JENKINS:

A. Yes.

COFFEY, Q.C.:

Q. - but the nitty gritty of who remained to be called or who had been contacted, she didn't wish to be -

DR. JENKINS:

A. That's right. And she trusted that follow-up to us in terms of the detail work.

COFFEY, Q.C.:

Q. Exhibit P-2751? This is an e-mail of February 7th, 2006. It's from Ms. Walker to yourself and others, and Ms. O'Brien. She says "I have just finished calling the list of negatives, ER/PR provided by Heather Predham. There were

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63 patients identified to call. I made those calls Friday and Monday, required approximately four hours. Here is an update of those calls. There are four clients that were not on the original ER/PR call list." They list them, redacted. "Will require contact information for these. Number two, there are three clients with incorrect contact information as previously identified, but still cannot find any contact information on sheets I provided from last calls." And there's three names redacted. "Number three, there were ten of the 63 clients were deceased (this was known from previous calls made). There are two of the 63 clients I have to recall in order to reach, excluding patients with no contact information (3) and not on the original list (4)." And then she goes on to say, "Also, Heather advises the decision to panel all positives still to be decided, but she will keep us informed. A team (oncologists, pathologists, Heather ..) are looking at this over the next week or so. Following she will inform us regarding that decision. Also, she will inform re what

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clinical care will be required from the attending physician. She says it will likely involve progress notes, discharge summaries, significant lab, etcetera. In addition Heather advises we will be deciding on how to approach the issue for patients that have since deceased. Also, that for clients that have unavailable contact information, we will have to get creative on how to get a proper telephone contact. Note, I have previously called Next of Kin and Information for clients with no contact information, but unsuccessful it obtain new telephone numbers. Also, Heather advises that we should be keeping documentation of calls made throughout this process. I have kept a spreadsheet of calls throughout this process. Also, Ken, I was unsure if the list I had previously left with Hellen Sparkes regarding clients that were not reached after multiple calls had been contacted by you. I reached four of the 14 of these during my calls regarding results, but was unsure regarding the other ten." So, I take it, Doctor, this is reflective of the communications efforts that were going on from

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Western involving the negative patients at that time?

DR. JENKINS:

A. That's correct.

COFFEY, Q.C.:

Q. And Exhibit P-1100? Doctor, this is an e-mail of February 10th, 2006 from Ms. Predham to a number of individuals within Eastern Health. But she says, "This is an update as of this morning, February 10th, 2006." Under the heading "Confirmed Negative" the fourth entry is "Western" and it reads, "All the confirmed negative have been informed except for one that needs to be checked. They have three that they don't have contact information on and they have four that were not on their original list. Dr. Jenkins is following up on that." Doctor, what then happened in relation to contacting the balance of the patients?

DR. JENKINS:

A. Those specific ones, Mr. Coffey, I'm not 100 percent sure, but I know we--you know, we followed through in whatever mechanisms we could have, in terms of going back through our information contact systems and those sorts of

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things, but I can't recall off the top of my head what actually happened then with those other ones. I'm hoping you may have something there in the list of documents that might help us with that.

COFFEY, Q.C.:

Q. Exhibit P-2752. Doctor, this is a series of e-mails, beginning in February and extending into March. The first of them is from Bonnie Walker to yourself, February 14th, 2006. She writes "Heather Predham has requested we provide MCP numbers for the remaining list of patients/clients, patients identified as not repeat negative. There are a large number of patients still on the list. Can the lab possibly provide this information? The list provided by Heather provides the ER/PR result related to name and tissue sample number. I feel it's safer for the lab to confirm the match of MCP to this information. Also, I understand the recalls or no contact clients/patients previously identified were not contacted by you. Therefore, do you feel these calls should be done at this stage or is it more appropriate to await the time the

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panel attending physician will be calling them regarding their result?" So I take it, Doctor, this -

DR. JENKINS:

A. Um-hm.

COFFEY, Q.C.:

Q. - and then you, on March 4th, Doctor, responded to Ms. Walker saying "Hi, Bonnie. Did this all get sorted and the lab can provide MCP numbers?" Signed Ken.

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. And then she responded March 6th saying she had "visited Dennis Boone in the lab. He was very helpful. The MCP numbers were provided approximately two weeks ago." And she said, "at this time, I am awaiting Heather's feedback regarding the remaining clients, patients, awaiting the decision, are remaining patients/clients to be all panelled or will some be notified through their attending physician. Otherwise, all the patients/clients I was asked to contact have been contacted, except one client I am still

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having difficulty contacting due to no contact information and another I am still attempting to contact, but cannot reach. Also, I was successful contacting three clients/patients that previously did not have correct contact information and discovered through family members that they have since deceased." So I take it that is the e-mail you're referring to?

DR. JENKINS:

A. That was the follow through, yeah.

COFFEY, Q.C.:

Q. If we could, please, Exhibit P-2753? Doctor, this is--these are minutes of a meeting of June 5th, 2006, the VP of Medical Services, you are in attendance. Doctor, there's a paragraph here entitled recruitment--number four, recruitment of diagnostic imaging and laboratory technologists.

DR. JENKINS:

A. Um.

COFFEY, Q.C.:

Q. And I'm not going to take you all the way through, but it begins "Ken Jenkins requested this item be raised as there are concerns that

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there will be a desperate need for both lab and x-ray technologists in the province in the next few years," and then it goes on in some detail to discuss that.

DR. JENKINS:

A. Yes.

COFFEY, Q.C.:

Q. Doctor, how is it you are involved in that aspect of medicine?

DR. JENKINS:

A. Well, that, of course, relates to my line responsibility for diagnostic imaging or medical imaging and laboratory services and certainly our regional directors would have been indicating to us, you know, that there are significant recruitment challenges for technologists in both those areas of professional practice and it was significant enough that we felt, you know, we really needed to get things moving from an educational perspective and from a recruitment and retention perspective as well.

COFFEY, Q.C.:

Q. The notes here, in about the fifth line, say "there was considerable discussion over the

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selection method by the College of the North Atlantic as it is understood the selection of students in both the lab and x-ray programs are based on first-come first-selected and not on the best candidates. As a result, the failure rate for both programs is fairly high. It was agreed that the association should initiate discussions between the Department of Health and Community Services and the Department of Education with regards to the College of North Atlantic's selection process," and it goes on to talk about suggesting meetings between all parties concerned.

DR. JENKINS:

A. Yes.

COFFEY, Q.C.:

Q. Up to and including the CEOs of the health authorities.

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. Doctor, can you tell us where that has gone from that point? Where is that now?

DR. JENKINS:

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A. There has been some development and principally, our VP of Human Resources has taken the ball and run with it, from Western Health's perspective, and developed a number of documents which have been submitted to provincial groups regarding proposed methodologies for addressing this issue. I haven't been directly involved with this myself, but I'm aware of what's going on. I know at one particular point in time, they were looking at some variable training options, in terms of expansion of the program to meet needs. But it really hasn't changed all that much in terms of how the program works and it's still basically as described here.

COFFEY, Q.C.:

Q. In terms of the concern about not necessarily the best qualified academically, not necessarily those -

DR. JENKINS:

A. Yes, in terms of the first-come first-serve methodology for application to programs.

COFFEY, Q.C.:

Q. Exhibit 2754, please. Doctor, this is an e-

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mail of July 9th, 2006 from Heather Predham to yourself. She has attached a briefing note July 4.doc and she writes "Hello, Dr. Jenkins. Dr. Williams asked me to contact you regarding a development in our ER/PR review. We have determined that there are two categories of patients that require further review and/or disclosure as a result of our retesting. I have attached a briefing note that explains the situation more clearly. As the organization conducting the review, we are asking for direction, in particular to the DCIS patients. Would you prefer to conduct this review of the previous pathology slides and blocks by the pathology lab in your region or would you like that review to be conducted by Eastern Health? There are approximately four patients in this category from your region. In the case of the retroconverters, there is one patient from your region affected and this information will have to be disclosed to her. Of course, if you need any further contact" contact her or Dr. Williams directly.

DR. JENKINS:

A. Um-hm.

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COFFEY, Q.C.:

Q. And Doctor, attached is a memo of July 4th, 2006. It's to a number of individuals within Eastern Health from Heather Predham. It's regarding estrogen and progesterone receptor testing, DCIS and retroconverters.

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. Is this the first you heard about the matter involving the concern about DCIS and retroconverters?

DR. JENKINS:

A. To any significant detail. I know there had been some discussion by Dr. Williams along the way. I'm not sure if it predates this particular memo, but in terms of having, you know, a better understanding of what it actually meant, this is my first recollection of having, you know, a significant description of the impact of that.

COFFEY, Q.C.:

Q. Exhibit P-2755. Doctor, here is again a series of e-mails of July 9th through the 11th. The bottom of the first page here, see

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one from Lorraine Woolgar to yourself, July 10th, 2006. She says "Dr. Jenkins, please see attached from Heather Predham" and the attachment from Heather Predham is in fact that ER/PR developments we just looked at.

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. Or at least one of them anyway, and July 10th, you then forwarded that e-mail to Dr. Neil saying "could you please provide your recommendation?" and then Dr. Neil responded on July 11th to you saying "I have no problem with Eastern doing this. However, I would like Western to have the opportunity to review as well. I am unclear as to what the problem really entails. Mount Sinai says DCIS, they may only have reviewed the slide and block we sent them. There may indeed be only DCIS left on the slide, but other blocks they did not review may show invasive. Only review of the entire case would show this. Therefore, I would like to have the original pathology reviewed here as well. Thanks, Paul."

DR. JENKINS:

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A. Right.

COFFEY, Q.C.:

Q. And then you sent that on to Ms. Woolgar saying "please see feedback from our chief of pathology, Dr. Paul Neil, below." So your understanding then, Doctor, in terms of Dr. Neil was prepared to certainly have or be involved with Eastern -

DR. JENKINS:

A. Yeah.

COFFEY, Q.C.:

Q. - in reviewing these cases, but he was going to take an active role -

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. - himself as well?

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. In terms of then dealing with the DCIS or retroconverters from the Western Health area, who then actually dealt with them? I take it there were some such cases?

DR. JENKINS:

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A. Yeah, and I know certainly Dr. Neil had a lot of involvement himself in terms of reviewing those particular cases, because he has stated here, he felt, you know, there was some potential that with the limited amounts of information and sampling that Mount Sinai might have, that there, you know, they would not have the full context and the full picture. So he felt, you know, he wanted to be involved with a full case review when these cases were being looked at to make sure nothing was missed.

COFFEY, Q.C.:

Q. And then what happened, Doctor, in terms of were there any such patients who, when the dust settled, were from Western DCIS or retroconverters?

DR. JENKINS:

A. There were a number and not sure of the total number of those, but I know there would have been some follow-up communication then between Dr. Neil and his colleagues in St. John's regarding the cases and what they meant and any support that was required would have been provided by Eastern Health.

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COFFEY, Q.C.:

Q. Were the patients met with by Western personnel?

DR. JENKINS:

A. Were they met with to describe?

COFFEY, Q.C.:

Q. Yes.

DR. JENKINS:

A. To the best of my knowledge, not.

COFFEY, Q.C.:

Q. Okay. So who was to meet with those patients then? That was left to whom?

DR. JENKINS:

A. I believe that was left with Eastern, Mr. Coffey.

COFFEY, Q.C.:

Q. Exhibit P-2756, please. Doctor, this is an e-mail of May 24th, 2007. It's from Denise Dunn to yourself and Dr. Alteen and Dr. Jong, and it's an urgent conference call. It reads "Dr. Oscar Howell asked that I contact you with a request to the Minister of Health for you, your CEO and head pathologist to participate in a conference call on May 24th," like 45 minutes later, at ten a.m.

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DR. JENKINS:
A. Um-hm.
COFFEY, Q.C.:
Q. Now Doctor, by this point in time, of course, the establishment of the Commission of Inquiry had already been made.
DR. JENKINS:
A. Indeed, yeah.
COFFEY, Q.C.:
Q. Days before. Doctor, could you describe then for the Commissioner then, when the bulk of the results came back in early 2006 and you received them the end of January and the calls were made to patients with negative results, from your perspective, as the VP Medical, how then did events unfold from Western's perspective? What happened overall?
DR. JENKINS:
A. Subsequently, from our perspective, then we had significant involvement with our Quality Management Research side of the house as well. They were very actively involved with follow ups on the results that were being reported and we were also asked--you know, there was a number of times we were asked to scrub down

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lists and confirm, you know, from a number of different perspectives, what had been coming back in terms of results and requirements for re-analysis. You know, of course, we had the involvement of the provincial group with respect to, you know, developing a database of all the retesting results.
COFFEY, Q.C.:
Q. That came after the -
DR. JENKINS:
A. Yes.
COFFEY, Q.C.:
Q. I'll come to that in a minute.
DR. JENKINS:
A. Right, okay.
COFFEY, Q.C.:
Q. I'm just thinking between the announcement of the Commission of Inquiry, going back in time to the results coming back from Mount Sinai, what happened between the Mount Sinai results arriving at the end of January on your computer and the announcement of the Commission of Inquiry? What, if anything, was Western involved in?
DR. JENKINS:

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A. I'd have to almost refer back to my notes at the time to say what our particular activities were. You know, I think principally, we were reacting and responding to requests that were being made of us at that particular time, and we were certainly wanting to go about, you know, carrying out those responsibilities in terms of contact with patients, you know, in terms of advising them of the retesting procedure. But Mr. Coffey, I don't recall any other specific activities apart from that. So we have the initial retest results coming back, that's what you're talking about?
COFFEY, Q.C.:
Q. Yes, and we've gone through the e-mails about the -
DR. JENKINS:
A. Yes, we've gone through that series of events.
COFFEY, Q.C.:
Q. - calls and attempts to contact the patients with the negative results.
DR. JENKINS:
A. Yes.
COFFEY, Q.C.:
Q. The patients who had positive results were

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attended to or addressed by whom?
DR. JENKINS:
A. By Eastern Health.
COFFEY, Q.C.:
Q. Eastern Health?
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. Was Western, in fact, in any formally, ever advised as to what the status was in relation to contacting the positive result patients?
DR. JENKINS:
A. Not through my channels. There may have been--and again, understand that there would be communication at a number of different levels, but not to my understanding.
COFFEY, Q.C.:
Q. What I'm getting at is this, because we looked at--we could look through that list and see a list of negatives.
DR. JENKINS:
A. Um-hm.
COFFEY, Q.C.:
Q. Then there were the positives, and in terms of whether or not or when any particular Western

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positive patient was contacted with a panel review letter, for example -

DR. JENKINS:

A. Right, yes.

COFFEY, Q.C.:

Q. - Western wasn't apprised of that?

DR. JENKINS:

A. No.

COFFEY, Q.C.:

Q. I take it, in any kind of formal way?

DR. JENKINS:

A. No. Now, I think, you know, physicians would have been notified themselves and been made aware, but I don't recall that we were specifically notified about that follow up.

COFFEY, Q.C.:

Q. To actually have kind of your spreadsheet checklist for all the positive patients to finally confirm that they'd been contacted?

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. You weren't being kept in a loop in any formal way?

DR. JENKINS:

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A. Not to the best of my recollection.

THE COMMISSIONER:

Q. Mr. Coffey, it's getting near the luncheon break. Where you can find a convenient spot, we'll break.

COFFEY, Q.C.:

Q. Commissioner, this would be a convenient time.

THE COMMISSIONER:

Q. All right then, we'll meet again at five after two.

(LUNCH BREAK)

THE COMMISSIONER:

Q. Please be seated. Mr. Coffey.

COFFEY, Q.C.:

Q. Thank you, Commissioner. Exhibit P-2757, please, Registrar? Doctor, this is a series of e-mails of May 24th and 25th, 2007. Doctor, the first in the series is from Heidi Simmons to yourself. She writes "Hi, Ken. The Western Star has called today wondering how many of our patients were involved in the ER/PR issue and how many would have had an incorrect treatment as a result and how many have since died. Would you have a few minutes to discuss?" And you responded by saying "I

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am away most of the next two weeks, as of tomorrow morning. Hellen has my file. Bonnie Walker has detailed knowledge of the numbers. It may be best to ask Paul Neil to respond to this request in my absence."

DR. JENKINS:

A. Um-hm.

COFFEY, Q.C.:

Q. And then Paul, the next day, Dr. Neil sends an e-mail saying--to Heidi saying "I really don't have all that information. I was not involved in the treatment issue. All that was handled by a panel set up by Eastern Health to review. Bonnie may have more information. Also, I believe Dr. Hutton may have the info on deaths." Doctor, I take it that you would be able to--or Western has been able to figure out how many patients from the Western Region had been retested?

DR. JENKINS:

A. Yes.

COFFEY, Q.C.:

Q. That could be done?

DR. JENKINS:

A. Yes.

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COFFEY, Q.C.:

Q. Have you ever been given or have you ever calculated how many patients from the Western region had an incorrect treatment as a result, in other words, incorrect in the sense of had to have their treatment changed?

DR. JENKINS:

A. No, we haven't tabulated that.

COFFEY, Q.C.:

Q. In fact, would you actually--as it is right now, would you even have that readily available to you or would you have to go to St. John's to ask them?

DR. JENKINS:

A. I think I'd have to confer with my colleagues in Eastern to be able to get an accurate determine of that.

COFFEY, Q.C.:

Q. And they've never offered one?

DR. JENKINS:

A. Not to the best of my knowledge.

COFFEY, Q.C.:

Q. Exhibit P-0973, please, and Doctor, this is a letter of July 10th, 2007. It's from Susan Gillam to Robert Thompson.

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DR. JENKINS:
A. Um-hm.
COFFEY, Q.C.:
Q. And here, in the second paragraph, she writes "Dr. Ken Jenkins, VP of Medical Services, has agreed to be your point of contact." That would be in relation to his role as Secretary to Cabinet for the management of health issues?
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. Including the Commission of Inquiry.
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. As well, Doctor, I believe this is a handwritten note by yourself, July 26th, 2007.
DR. JENKINS:
A. It is.
COFFEY, Q.C.:
Q. You write "Hi, Susan. Would it be possible to clarify in writing to Robert that I will be the point of contact re: ER/PR and that Lisa will be a point of contact for the Task Force

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on Adverse Events. Thanks, Ken."
DR. JENKINS:
A. Correct.
COFFEY, Q.C.:
Q. Lisa is?
DR. JENKINS:
A. Lisa Hoddinott, our VP for Quality Management Research.
COFFEY, Q.C.:
Q. Exhibit P-2760, please. Doctor, this is a memo to yourself from Bonnie Walker, July 12th, 2007. The subject is ER/PR recall, no contact/expired, which I take it means deceased, that would be the -
DR. JENKINS:
A. That's correct.
COFFEY, Q.C.:
Q. And she says "Dear Ken, please find enclosed a spreadsheet outlining Western Health's clients called regarding ER/PR retesting process. The spreadsheet includes clients called in December 2005 and also includes, indicated by an asterisk by the name, who of those clients were recalled in February 2006. There were 63 requested to call in February 2006 and 59 of

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those were from the original list requested to call in December 2005. Contact details of all 63 clients recalled are indicated on the spreadsheet list provided by Eastern Health," and this "requested to recall," requested by whom?
DR. JENKINS:
A. I'm thinking it must be Eastern Health, but I'm not exactly sure.
COFFEY, Q.C.:
Q. So the calls in December of 2005, would have been the original calls to tell people they were being retested?
DR. JENKINS:
A. That's correct.
COFFEY, Q.C.:
Q. Those in February of '06 would be the results of the retesting?
DR. JENKINS:
A. Yes.
COFFEY, Q.C.:
Q. The negatives?
DR. JENKINS:
A. That's right.
COFFEY, Q.C.:

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Q. That would be the negatives.
DR. JENKINS:
A. Yeah.
COFFEY, Q.C.:
Q. And she goes on to say, "for clarification purposes, the list of names for recall were generated at the direction of Eastern Health."
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. Heather Predham provided a spreadsheet of names for Western Health and advised names from the list for recall.
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. "My understanding was names chosen for Western Health to recall based on ER/PR values. Not all clients on the spreadsheet list from Eastern were requested to be called."
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. "My spreadsheet includes 196 clients called in

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December. This number is different from total samples sent from Western to Eastern, as not all were chosen for us to recall. I understood some clients would be handled by Eastern Health. In summary, my spreadsheet indicates the unsuccessful contacts and expired clients. Unsuccessful contacts is 13 plus one for February recall, see the spreadsheet for the list, and expired, meaning deceased, is 21.

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. See spreadsheet for list. Regards, Bonnie." Doctor, I take it then, Doctor, this, in the middle of July 2007, was arising because of requests from Robert Thompson and his, the people working for him, I take it it would have bene around that time?

DR. JENKINS:

A. Yeah, there were a number of requests that followed subsequent to the stand up of that came that came, so it perhaps did originate from that.

COFFEY, Q.C.:

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Q. Exhibit P-2280, please. Doctor, this is a letter from yourself, copied to Ms. Gillam and Dr. Neil, to Don MacDonald of NLCHI, as it's been referred to.

DR. JENKINS:

A. Yeah.

COFFEY, Q.C.:

Q. Re: ER/PR testing and patient notification, Western Health. You write "further to our telephone conversation of July 11th, 2007, please find enclosed the copies of the reports and related documents that you had requested. Our regional director of laboratory services has made contact with Dr. Neil regarding the pathology summary report. The reference to 'report' on the table refers to cases where it was uncertain whether tissue blocks needed to be submitted in accordance with the criteria for the review. Tissue samples related to these 'reports' were submitted, if requested by Eastern Health. As well, please note, that there is some variation in the total number of the pathology summary, 249, versus the total number in a final summary, as reflected in the enclosed table dated July 12th, 2007. Actual

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total is 254. All cases are accounted for from a patient contact perspective. Do not hesitate to contact me if you have any questions."

DR. JENKINS:

A. Um-hm.

COFFEY, Q.C.:

Q. So I take it, Doctor, this is you're providing then information or data requested by NLCHI?

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. For their database.

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. Exhibit P-1475. Doctor, I'm going to ask you about this just simply because I use it as an example for the Commissioner.

DR. JENKINS:

A. Okay.

COFFEY, Q.C.:

Q. It's an e-mail from yourself of July 27th, 2007 to Moira Hennessey and you write "just an update on this file related to an e-mail

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received in the Minister's office in early June. This lady had breast cancer and was wondering why she hadn't been contacted in the ER/PR review process, as she understood her results were negative. On review of her file, we determined that she was, in fact, ER/PR positive and had been started on Tamoxifen. I explained this all to her personally and reassured her that she is on the proper treatment. She has been seen by her oncologist on routine follow up recently and is doing well. She was satisfied with the explanation provided." Signed Ken.

DR. JENKINS:

A. Um-hm.

COFFEY, Q.C.:

Q. So Doctor, I take it then, there were times that you had direct contact with patients?

DR. JENKINS:

A. Yes, there were unique situations where that requirement arose.

COFFEY, Q.C.:

Q. And you had been contacted by the Minister's office in early June, I take it about a query that they had had from this lady?

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DR. JENKINS:
A. Yes.
COFFEY, Q.C.:
Q. And when you checked, you found that, in fact, she wasn't retested because she was positive all along?
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. And was on Tamoxifen all along?
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. Doctor, did that--and you spoke to her, explained it, and she was satisfied with your explanation and reassured.
DR. JENKINS:
A. Um-hm.
COFFEY, Q.C.:
Q. Doctor, this is June and July 2007. The fact that a particular patient did not understand that, in fact, she was already positive and in fact was already on Tamoxifen, were you surprised by that, at that point?
DR. JENKINS:

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A. To a certain degree, because there had been, you know, certainly a fair amount of media coverage obviously about ER/PR and you know, I would have thought that by that time, if people had sort of issues or concerns, perhaps they would have heard about it in some way, shape or form, and if had questions, perhaps may have approached their care providers to seek answers to that question. So in some ways, yes, it was surprising. In other ways, you know, sometimes people don't have easy access to public information, depending on where they live or if they're out of the province and been out for a while and there can be circumstances whereby, you know, folks are just out of touch with what's going on locally and have to get those questions answered. So we, you know, expected to find some unique situations like that.
COFFEY, Q.C.:
Q. And Doctor, the idea then of perhaps communicating with patients who are positive all along, like were put in the group that weren't to be retested, as this woman would be, at least would belong to that group, was

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any thought given, at any point, to contacting all of the positive patients in writing?
DR. JENKINS:
A. No, we never really included that as part of our communication strategy either, in terms of following up in writing.
COFFEY, Q.C.:
Q. Exhibit P-2775, please. Now Doctor, this particular version of this e-mail is undated, but it's an e-mail to yourself. It's a letter form actually, it's a letter, probably sent in e-mail format, from Don MacDonald, and he writes "as you are aware, the Centre for Health Information is working on behalf of the Minister of Health to develop a database that will document events surrounding ER/PR testing for breast cancer patients from '97 to 2005. The Western Health Authority recently provided the Centre with demographic and pathology results for all patients," and he thanks you for having done so, saying "it's very valuable." He then tells you, "we are now moving to the second phase of the project, which involves events on how the retesting/results were communicated to those

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patients who had their ER/PR retested at Mount Sinai. Specifically, we are asking for the following:" and there's a list of one to seven, and they've been asked to compile and report this information to the Ministry of Health by September 7th.
Doctor, had Western, in fact, sent all the pathology reports?
DR. JENKINS:
A. To?
COFFEY, Q.C.:
Q. To NLCHI.
DR. JENKINS:
A. To NLCHI?
COFFEY, Q.C.:
Q. As far as -
DR. JENKINS:
A. Yes, we had. We had submitted a very full and complete package of reports, which included pathology reports, to NLCHI.
COFFEY, Q.C.:
Q. Exhibit P-2776? This is e-mails of August 16th, 2007, Doctor. The one at the bottom of the page here is from yourself to Don MacDonald and you write, "Hi Don, I've met

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with some members of our team to discuss your questions, to answer your questions"--and then he answers them one to seven in the format, in the order he had set them out. Now, Doctor, Western then did have, I take it, a database or at least a listing of data, a database setting out when people were contacted and for what purpose.

DR. JENKINS:

A. Yes, that's correct.

COFFEY, Q.C.:

Q. And that's having been made by Ms. Walker?

DR. JENKINS:

A. That's correct.

COFFEY, Q.C.:

Q. Here, Doctor, you've written, paragraph 7, "Western Health was not asked to take responsibility for contacting physicians regarding verification that all of the treating physicians have reviewed all the retest results. There was a short list of 32 patients that Eastern Health forwarded to us in October, 2006. Western Health has made contact with the treating physicians of eight of those 32 that were positive converters over

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the past month, and the remaining 24 patients were negative on retesting. I hope this answers your questions."

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. So you're being asked and you had been asked to provide the date of verification by Western Health, the treating physician review the retest results with the patient?

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. And that would be the retest results where it went from negative to positive?

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. Doctor, again I would just use one of these as an example, exhibit P-2777 please? Doctor, this is again a handwritten memorandum by yourself. It's to Marilyn Saunders of the Cancer Clinic. The patient's name is redacted. It's ER/PR retesting, August 16th, '07 and you write, "Hi Marilyn, further to our

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discussion today, I have not yet heard back from Dr. (blank) office regarding follow up on Mrs. So and So. Could you please confirm what the status on her follow up is and let me know. Thanks for your help. Signed Ken." Now, Doctor, this is just one I've picked here and there are others here in the documents entered before the Commissioner this morning. Would this be representative of the sort of contact that you might have from time to time with--internally within your own organization and elsewhere, in terms of following up on particular aspects of the matter?

DR. JENKINS:

A. Yes, there were some specific and unique circumstances where, you know, I would have become involved personally and this would be a representative sample of that and of course, Marilyn Saunders, as we had mentioned earlier, one of the senior nurses within the Cancer Clinic, and so there had been some back and forth discussions between her and I and various other people, in terms of some of this follow up.

COFFEY, Q.C.:

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Q. Exhibit P-2778 please?

DR. JENKINS:

A. Doctor, this is a letter of November 1st, 2007 to Robert Thompson, it's from Ms. Gillam, it's copied to yourself, suggesting perhaps that you had a hand in drafting it. You could just have a look.

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. I would be right on that, would I? You had input into this?

DR. JENKINS:

A. This particular one, I believe I did. There was some periods of time I know when some of the other staff, you know, were involved principally with drafting correspondence when I was away, but I can't recall if that was one of these particular dates or not. But this would normally be something I would either be involved in, either before the fact or after the fact certainly.

COFFEY, Q.C.:

Q. Doctor, here Ms. Gillam writes, "Mr. Thompson, this letter is in follow up to your

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correspondence of October 29, 2007 regarding patients who had original ER/PR results between 1997 and 2005 in the Western region. Following the review of case information by NLCHI, questions arose on a portion of these cases and were sent to Western Health for review. The results of the review are attached in the charts as follows." List one is a) Western region cases negative ER/PR results not tested due to patients deceased, the number is eight.

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. And it goes on to list, to various categories of test results. List two, again has one category, actually, it's Western Regional cases be tested at Mount Sinai. Patient family contact regarding the retest process, the number is four.

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. And then she concludes by saying, "There are a number of cases for which retesting was not

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complete in 2005, due to patients being deceased. This was consistent with the criteria established by Eastern Health for retesting in 2005. We have briefly discussed the issue of re-sending the samples for retesting on October 29, 2007. Please advise if retesting is required and we will make arrangements to send the cases as soon as possible. Please contact Dr. Jenkins if you require clarification or further information."

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. Now, Doctor, and here, a redacted version of the spreadsheets that accompany this letter -

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. List one and two.

DR. JENKINS:

A. Yes.

COFFEY, Q.C.:

Q. Can you tell the Commissioner, please, what this was about generally?

DR. JENKINS:

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A. Well in general, I think this was the process whereby NLCHI was starting to scrub down the information that they had and were attempting to, where they found questions that had arisen as a result of the review of the database, they were looking for clarification from the health authorities, so, you know, we were doing our bit then to try to clarify on the specific cases that had come forward through their request. And there were a number of occasions when we were asked to relook, rather through NLCHI or through Mr. Thompson's office to look at numbers to clarify in the database.

THE COMMISSIONER:

Q. Forgive me, but the term "scrub down"?

DR. JENKINS:

A. So in terms of trying to provide further detail to, to provide answers to specific questions that were posed to us.

THE COMMISSIONER:

Q. So when you say they were starting to scrub down, they were trying to--they were starting to examine the detail of the information.

DR. JENKINS:

A. Perhaps analyze would be a better word,

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Commissioner.

THE COMMISSIONER:

Q. Thank you.

COFFEY, Q.C.:

Q. And here, Doctor, I'm just looking at list one, all the patients listed on this first page of list one, the rationale for retest not required, it says "did not meet criteria for retesting in 2005 as patient was deceased." And it list them all here.

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. I take it, Doctor, that it was the understanding of Western Health in 2005 that at that point the retesting of deceased was not going to occur at that moment?

DR. JENKINS:

A. That's correct, that was the direction we were given.

COFFEY, Q.C.:

Q. And therefore, where it was known, the deceased's tissue sample were weeded out and put aside.

DR. JENKINS:

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A. Correct.
COFFEY, Q.C.:
Q. There are a number of others of these, Doctor, I'm not going to take you through all of them, but at page 5, again on list one, this is category C you'll notice, it's bottom two refer to "did not meet criteria for retesting, original breast lesion in 1996, 2001 sample was a pleural biopsy" and then "did not meet criteria for retesting. Two biopsies, ER positive in 1992 treated with Tamoxifen."
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. And then finally, page 6 of the exhibit, category D, "rationale for retest not required, specimen obtained March 11, 1997. The retesting criteria indicated that specimens for May 1997 be sent for retesting; therefore, this specimen did not meet retesting criteria." And then the next one is specimen obtained March, 1997. The retesting criteria indicated the specimens obtained for May, 1997 be sent for retesting; therefore, this sample was not submitted for retesting.

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Additionally the original breast tumour was in 1990, but unable to complete ER/PR due to insufficient sample. The 1997 tumour was a chest wall tumour."
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. So, Doctor, I take it then that there was some issue arose at this point in 1997, this is towards the end of 1997, NLCHI was querying why patients who, their ER/PR test would have occurred between January and May of 1997?
DR. JENKINS:
A. Yes.
COFFEY, Q.C.:
Q. And I take it, Dr. Neil, when you made inquiries, you found Dr. Neil said, look, I was literally told May of 1997.
DR. JENKINS:
A. That's correct.
COFFEY, Q.C.:
Q. That's what I did.
DR. JENKINS:
A. That's correct, and that's how we used that cut-off date.

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COFFEY, Q.C.:
Q. And I say he was told, he was requested by Eastern Health, he understood that was the cut off.
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. What was then done in respect of those patients, Doctor, and the deceased, for that matter?
DR. JENKINS:
A. So in those particular cases, the specimen between January and May, is your question of 1997.
COFFEY, Q.C.:
Q. Yes.
DR. JENKINS:
A. And those samples would have been resubmitted for testing through Eastern Health.
COFFEY, Q.C.:
Q. What about the deceased, Doctor? What happened then with the deceased?
DR. JENKINS:
A. There was subsequent retesting, but in terms of the context--what's the date on this one

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again, Mr. Coffey?
COFFEY, Q.C.:
Q. This is November 1st, I believe.
DR. JENKINS:
A. That's November 1st, is it?
COFFEY, Q.C.:
Q. 2007.
DR. JENKINS:
A. I think it's subsequent to this particular date, but then there was a retesting of negatives as well, to the best of my recollection.
COFFEY, Q.C.:
Q. Of the deceased.
DR. JENKINS:
A. I'm sorry, of the deceased.
COFFEY, Q.C.:
Q. Deceased negatives.
DR. JENKINS:
A. Yes.
COFFEY, Q.C.:
Q. If we could look, please, at exhibit P-2779? Here, Doctor, this is a series of e-mails, November 5th, 2007, the first of them is from Hellen Sparkes to yourself, November 5. She

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writes, "Dr. Jenkins, Dr. Neil wasn't sure if you were aware re the number of cases that would need to be reviewed. He notes it would be a monumental task, number of cases is 37,000 and he notes this would need to be a manual review."

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. And you go on to say, you responded the same day to her saying, "Yes, I am aware of this from Heidi. I think Monica is aware of the number too." And then there's an exchange about the replies for discovery undertakings. Doctor, was this--did this relate to the ER/PR matter? And I ask you that in the context of discovery undertakings.

DR. JENKINS:

A. The discovery undertakings.

COFFEY, Q.C.:

Q. Yes.

DR. JENKINS:

A. Yes, I believe, Mr. Coffey, it was related -

COFFEY, Q.C.:

Q. So that discovery undertakings, was that like

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a lawsuit or was that a Commission of Inquiry.

DR. JENKINS:

A. No, Commission of Inquiry. And we're -

COFFEY, Q.C.:

Q. That's the way it's just phrased, okay, that's -

DR. JENKINS:

A. Right, yeah.

COFFEY, Q.C.:

Q. I just want to be careful about that.

DR. JENKINS:

A. Okay.

COFFEY, Q.C.:

Q. And -

THE COMMISSIONER:

Q. Are you all right with that (phonetic), Mr. Browne.

MR. BROWNE:

Q. Yes, I think and we discussed the issue with Dr. Neil and I don't think it does--it relates to another matter but we need to clarify that at some point.

DR. JENKINS:

A. Okay, I could be wrong.

COFFEY, Q.C.:

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Q. And -

THE COMMISSIONER:

Q. So, Mr. Browne, you're raising a question of whether--what this actually relates to?

MR. BROWNE:

Q. Yes, and it actually may relate to -

THE COMMISSIONER:

Q. To something entirely different?

MR. BROWNE:

Q. The legal proceeding unrelated to the Commission of Inquiry.

THE COMMISSIONER:

Q. Oh, okay.

MR. BROWNE:

Q. This did come up in Dr. Neil, as you recall and I'll go through this with Mr. Coffey on the break, perhaps.

COFFEY, Q.C.:

Q. Sure. And Doctor, it's only because the subject matter is referred to as ER/PR.

MR. BROWNE:

Q. Yes, and I think there was a mix up in terms of, from the administration as to which matter.

COFFEY, Q.C.:

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Q. If we could, please, Exhibit P-2782? Doctor, this is an exchange of e-mails November 26th, 2007. The first is from Robert Thompson to Susan Gillam and yourself. Mr. Thompson writes, "Based on further discussion with Eastern Health it has been determined that all cases back to January, '97 should be retested rather than back to May, 1997 as you may have previously understood." And he goes on to speak about that and that's something you just discussed with me now.

DR. JENKINS:

A. Um-hm.

COFFEY, Q.C.:

Q. And then, Doctor, the same day you responded to Mr. Thompson saying, Hi Robert, I have asked our lab folks to compile the requested info ASAP." So it was then put in the works?

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. Has that been done, Doctor, the retests have been performed?

DR. JENKINS:

A. Has it been done?

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COFFEY, Q.C.:
Q. Yes.
DR. JENKINS:
A. Yes, to the best of my knowledge.
COFFEY, Q.C.:
Q. And the results, have they been communicated to the patients?
DR. JENKINS:
A. To the best of my knowledge, Mr. Coffey, that's correct.
COFFEY, Q.C.:
Q. Exhibit P-2783? And, Doctor, this is a series of e-mails November 27th, 26th, 27th and 18th. I take it, Doctor, I'm just going to--as of the 26th you had written to Dr. Neil saying, "We have some more work to do here. Could you please arrange to have this worked on as soon as possible and brief Susan and I before we submit our follow-up report? Thanks." And then I'm just going to scroll through this, Doctor. November 28th is Hedy Dalton Kenny to yourself re (phonetic) the list of patients for that period, January, '97 to April '97 has been compiled and Dr. Neil had gone through it.

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DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. So this is really when it's being done?
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. Exhibit P-2785, please? Actually, before I leave it, 2784, please? Page, second page, Doctor, is a letter of November 28th, 2007 to Mr. Dyer from Dr. Neil. I take it this him sending in the ER/PR negative cases for the period in question in 1997. He also, he said, "I've included two patients. Both of them were never done before but should have been." from '97?
DR. JENKINS:
A. Um-hm.
COFFEY, Q.C.:
Q. And the other cases which are three cases from January to April.
DR. JENKINS:
A. Um-hm.
COFFEY, Q.C.:
Q. So I take it Dr. Neil must have found two

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others in the meantime?
DR. JENKINS:
A. Yes.
COFFEY, Q.C.:
Q. From 1997. If we could go back then, please, to 2785? Doctor, this an e-mail of November 30th, 2007 to yourself from Pat, Patricia Pilgrim. Its subject is "Communication of Test Results ER/PR." And she advises you she's now coordinating Eastern Health's activities relating to the continuing ER/PR retesting, Commission of Inquiry and class action lawsuit. And she says, "As you are aware, we have recently referred the Mount Sinai some specimens for retesting for patients who are still living, patients who, for whatever reason, were not sent back in 2005. Also, Eastern Health has completed the submission of the specimens for all deceased patients who originally tested negative for the prescribed testing period, 1997 through 2005. The results of the retests are now being received within Eastern Health and the patients or the next of kin, in the case of the deceased, will now have to be contacted.

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I need to ensure that we have agreement of the process of communication for this. Eastern Health is proposing the following process." And she sets out a process.
DR. JENKINS:
A. Um-hm.
COFFEY, Q.C.:
Q. One is for the living patients whose results have not changed and there's two for the living patients whose results have changed. Three, for deceased patients within the Eastern Health region for those who have not changed, those whose results changed. And then finally, for deceased patients from other regions. Doctor, the time you received this what was Western's view of the proposal by Ms. Pilgrim?
DR. JENKINS:
A. Well, I mean, at the time there were some discussions that were held between Ms. Pilgrim's office and ourselves and colleagues from Central Region, as well. You know, I think we felt at the time that we, you know, we particularly were prepared to help out where we could. We thought, you know, the

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notification of the negatives would be appropriate for us. And then we had some discussion around how we would, you know, deal with the rest of them, specifically the positives.

THE COMMISSIONER:

Q. Wait now, this is November 30th, 2007.

DR. JENKINS:

A. Um-hm.

THE COMMISSIONER:

Q. So in terms of the total number of persons you would have had to contact, what would come after November 30th, 2007 as opposed to before?

DR. JENKINS:

A. Okay. My understanding is the deceased negatives, I think, is the ones that I'm referring to here.

THE COMMISSIONER:

Q. But the process includes living patients whose results have not changed, living patients whose results have changed, etcetera.

DR. JENKINS:

A. Right.

THE COMMISSIONER:

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Q. Wouldn't they have been contacted by you? There might have been the occasional person who was missed, but -

DR. JENKINS:

A. Right.

THE COMMISSIONER:

Q. Wouldn't have all the contacts essentially for those you would have identified been done by then?

DR. JENKINS:

A. Previously, yes.

THE COMMISSIONER:

Q. Yeah, okay.

COFFEY, Q.C.:

Q. Was there ever any effort to recontact everybody again?

DR. JENKINS:

A. No, not to the best of my knowledge.

THE COMMISSIONER:

Q. So you saw this communique as really applying to contact with--in respect of the deceased patients?

DR. JENKINS:

A. Yes, in particular.

COFFEY, Q.C.:

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Q. Exhibit P-2786, please? Doctor, these are your handwritten notes of a telephone conversation you had with Patricia Pilgrim on February 13, 2008?

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. The subject is "Communication to Deceased Next of Kin."

DR. JENKINS:

A. Um-hm.

COFFEY, Q.C.:

Q. And here it says, "Process proposed by Eastern has changed. Unable to find an oncologist to support the process. NLCHI is finishing their database. Government is about to release details. Minister of health will have a press conference. Comment will be made that families can get info by contacting a phone number. Other boards agreed to one number which will be Sharon Smith's office. She will direct to other boards. Kara Laing has developed a Q and A," question and answer. "Sharon will provide results and offer a Q and A sheet. Will suggest follow-up with family

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doctor or appropriate oncologist. Sharon will not give results for other regions." And "Quality people will be talking in other regions. Release not this week. More detail coming next few days. One contact number for each region. Late next week is anticipated release."

DR. JENKINS:

A. Um-hm.

COFFEY, Q.C.:

Q. So, Doctor, the reference to "Process proposed by Eastern has changed. Unable to find an oncologist to support the process." what did that relate to?

DR. JENKINS:

A. There was some discussion regarding, you know, attempts to have subject matter expertise from a clinical perspective engage in, you know, advise in notification to patients and families, and I think there was difficulty with obtaining that advice in support of the Eastern Health administration in conducting this particular exercise. So that's my recollection of what that comment was referring to, specifically.

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COFFEY, Q.C.:
Q. I take it that they couldn't find an oncologist who would become involved -
DR. JENKINS:
A. Participate in the process, yeah.
COFFEY, Q.C.:
Q. Exhibit P-2296, please? Now, Doctor, there's two e-mails here of May 6th, 2008 and there's a memorandum attached, it's to surgeons in the OR, to yourself and Dr. E. Mercer, Chief of Diagnostic Imaging from Dr. Paul Neil, May 5, 2008. Said, "It's my understanding that breast surgery was not performed in this or any other institution of Western Health on Fridays. However, it has come to my attention on Monday, May 5th that this is, indeed, not the case." He underlines "not". "It is imperative" he's underlined the word "imperative", "that pathologists receive all," in caps, "breast specimens removed from malignancy in a timely manner in order to process properly for ER/PR analysis. No cases should be done on a Friday afternoon as they cannot be dealt with properly. In addition, all cases should be scheduled early in the

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morning in order for the specimen to reach our lab in a timely manner. Surgery should be done Monday through Wednesday. This is to facilitate proper fixation for ER/PR testing. For needle core biopsies all samples should be sent from Monday through Thursday. None should be done on Friday." That takes or suggests, I'm going to suggest to you, Doctor, a certain firmness of tone?
DR. JENKINS:
A. Um-hm.
COFFEY, Q.C.:
Q. By Dr. Neil. Did you discuss this with Dr. Neil at the time?
DR. JENKINS:
A. We had a number of discussions about this, including at our Regional Medical Advisory Committee level. And I mean, Dr. Neil had--was very clear in his communications with myself and with colleagues that, you know, there were important processing issues at play here and that there needed to be a respective time line for submission for the samples in order to meet the standards that had been set.
COFFEY, Q.C.:

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Q. And if we look here at the first page of the exhibit, on May 6th Dr. Neil has sent this to a lady named Jeanette asking Sharon to distribute this memo to the appropriate people because he didn't know who to send it to in the OR.
DR. JENKINS:
A. Um-hm.
COFFEY, Q.C.:
Q. Doctor, what, if anything, had been done in relation to addressing this subject matter before May 5th, 2008?
DR. JENKINS:
A. I know Dr. Neil had had some direct communications with some of his surgical colleagues. I'm not sure if that predated the 5th of May or not, but I know he did approach individuals to say that this was an issue and a concern, and that, you know, there needed to be some arrangements made to ensure that the timelines would be respected, but again I'm not entirely certain if that was predating the May 5th date or not.
COFFEY, Q.C.:
Q. Doctor, to your knowledge, was there anything

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kind of like this in writing?
DR. JENKINS:
A. Not that I can recall. I think this was the first sort of major -
COFFEY, Q.C.:
Q. A formal memo.
DR. JENKINS:
A. Formal correspondence, yes.
COFFEY, Q.C.:
Q. Now the idea that there might be concerns about fixation, fixation protocols, I'm going to suggest to you that that first arose back in May of 2007.
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. You would have become aware of it probably back then with Dr. Denic?
DR. JENKINS:
A. Dr. Denic--Dr. Denic had certainly raised this issue to the pathologists, and, you know, in terms of the requirement for fixation for a certain period of time.
COFFEY, Q.C.:
Q. Doctor, this matter of--the idea or the notion

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of a physician or somebody being able to tell people within a hospital, if you're going to do surgery of a particular type, you are to go it on these days, and if possible at all, on particular times of the day -

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. Who has that sort of authority within Western?

DR. JENKINS:

A. Well, it would be at a number of levels, and certainly Dr. Neil in his own role as Chief of Pathology would have ever ability and opportunity to be able to speak to his colleagues in surgery through the discipline chief there or with contact with individual surgeons and certainly at a more regional level, we would deal with it through my office, and he would also have opportunity to deal with it directly at our other hospital in Stephenville where surgeries are done. So there's a couple of different avenues by which we could certain spread that message, and through my office, through his office, and through our Regional Medical Advisory

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Committee, and our local medical advisory committees as well. Those would be the structures we would rely on.

COFFEY, Q.C.:

Q. What about in terms of, though--it's one thing to discuss it with somebody and perhaps sometimes it's something different to tell them to do it, to order them to do it.

DR. JENKINS:

A. Sure.

COFFEY, Q.C.:

Q. Who would have that sort of ability within your institution?

DR. JENKINS:

A. In terms of responsibility, it would be myself from a medical services perspective in terms of somebody having overall authority and responsibility, excuse me, for passing on those types of policy directions.

COFFEY, Q.C.:

Q. Exhibit P-2809, please. Doctor, this is a meeting of July 2nd, 2008. It says, "Meeting with CEO, Lisa Hoddinott, Dr. Neil, Hedy Dalton Kenny, and Jeanette -

DR. JENKINS:

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A. Grabka.

COFFEY, Q.C.:

Q. Grabka?

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. And I take it as these are your notes involved yourself as well?

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. For ER/PR.

DR. JENKINS:

A. Indeed.

COFFEY, Q.C.:

Q. And then there's 2003 peer review report, "Is there a copy". What's that about, is that Dr. Ejeckam's -

DR. JENKINS:

A. Yes, that's correct, that's what it's referring to.

COFFEY, Q.C.:

Q. So up to that point in time at least, you hadn't readily been able to lay your hands on a copy?

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DR. JENKINS:

A. No. That was more of a question, did we have a hard copy in our files is really what that note was about.

COFFEY, Q.C.:

Q. And then there's issues listed. One, "PH testing on formalin not done when opened". So I take it you had ascertained that that up to that point in time had not been done?

DR. JENKINS:

A. That's what was being reported to me at that meeting.

COFFEY, Q.C.:

Q. Number two, "Not sure if OR fridge temperature is checked on a regular basis. Three, that pH of formalin is checked about once per month for recycled formalin, and four, pH formalin needs to be documented when checked on each run".

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. So I take it you were being given at this point an update by Dr. Neil?

DR. JENKINS:

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A. And the lab managers and leaders, yes, that's correct.
COFFEY, Q.C.:
Q. And who are the lab managers and leaders here?
DR. JENKINS:
A. Okay, so Hedy Dalton Kenny is our Regional Director for Laboratory Services, and Jeanette Grabka is one of her two assistant managers.
COFFEY, Q.C.:
Q. And then there's--you refer to textbook/internet/resource materials. "Hedy and Jeanette feel that these are adequate" by that point.
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. Another point, "Policies and procedures manual is outdated and needs development in some areas of histology. That applies to both technologists and pathologists".
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. So this is what was being reported to you at that time?

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DR. JENKINS:
A. At that time.
COFFEY, Q.C.:
Q. Had you known that before this?
DR. JENKINS:
A. Not--not to that extent. I was aware that there was a general updating of policies and procedures that was required throughout laboratory services program, but specific to histology--but I wasn't surprised because I knew we had challenges in policy and procedure throughout the lab.
COFFEY, Q.C.:
Q. When did you become aware of that, Doctor?
DR. JENKINS:
A. That would have been apparent in terms of our accreditation process that we had engaged in in the prior fall. So the fall of 2007 when we're engaged in the accreditation process.
COFFEY, Q.C.:
Q. And had that come to your attention at any time before that?
DR. JENKINS:
A. In a formal way?
COFFEY, Q.C.:

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Q. Yes.
DR. JENKINS:
A. Not that I can recall in a formal way.
COFFEY, Q.C.:
Q. How about in an informal way?
DR. JENKINS:
A. We may have had some discussions. I'm not recalling anything that particularly stands out in my mind that, you know, sinks home as a real important variable there.
COFFEY, Q.C.:
Q. What happened then in the fall of 2007, what was--hospital accreditation, I take it?
DR. JENKINS:
A. Yes.
COFFEY, Q.C.:
Q. What was different--was there anything different about that in relation to the laboratory compared to earlier accreditation?
DR. JENKINS:
A. Well, we actually haven't been participating in specific laboratory accreditation process at this particular point in time, but we did - I did ask my regional director, in fact, to start to get ready to participate in that

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process, and she actually made a visit to Eastern Health to look at what they were doing because they were engaging in an accreditation process for--or looking at an accreditation process for their lab. So we wanted to try to get on top of that, get ourselves ready for what was--what is to come from this particular inquiry, and to pick up the standard, so to speak, from an accreditation and quality assurance perspective. So that's when these kinds of things start to become more obvious to us.
COFFEY, Q.C.:
Q. And you've written here, "CAP for histology not started yet, can start soon". What's CAP here?
DR. JENKINS:
A. I'm just trying to remember what CAP is, what that acronym was for.
COFFEY, Q.C.:
Q. There's a College of American Pathologists and there's a Canadian Association of Pathologists?
DR. JENKINS:
A. Yeah.

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COFFEY, Q.C.:
Q. We've heard -
DR. JENKINS:
A. I can't recall, Mr. Coffey, what the context was for that acronym.
COFFEY, Q.C.:
Q. And I'm assuming that that is a "C".
DR. JENKINS:
A. That is a "C", it's CAP.
COFFEY, Q.C.:
Q. And then there's pathologist QA, quality assurance.
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. "For small samples, example, core biopsies, a review is done by another pathologist and is documented in Meditech".
DR. JENKINS:
A. Uh-hm.
COFFEY, Q.C.:
Q. So I take it that was Dr. Neil advising you -
DR. JENKINS:
A. Yes.
COFFEY, Q.C.:

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Q. That they were checking each other's work?
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. Small samples.
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. And then consider "best practice", external site visit, Jeanette and pathologist.
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. What was that about, Doctor?
DR. JENKINS:
A. So what we talked about there was the possibility of our assistant manager who had primary responsibility for the pathology department and histology to--and one of our pathologists to basically go to some places where it was felt the best practice was being used from a laboratory pathology perspective to look at their operations, how they're conducting their business, particularly from a QA perspective, and bring whatever learnings

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that they could back to our organization to consider implementing some of those measures.
COFFEY, Q.C.:
Q. And has anything further been done in that regard?
DR. JENKINS:
A. Not yet, and we have had--Jeanette Grabka, as referred to here, has just recently been attending an international conference in Pittsburg where is bringing together networking technologists and subject matter experts in histology. So that is one of the steps that we've decided to take, but we haven't conducted any of the external site visits yet.
COFFEY, Q.C.:
Q. And finally a note here, Doctor, "Consider using lab accreditation framework to help conduct an internal review".
DR. JENKINS:
A. Right.
COFFEY, Q.C.:
Q. What was that about, Doctor?
DR. JENKINS:
A. So that this would be similar to what Eastern

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Health had begun to explore, which would be through an appropriate agency to look at what measures we could implement then in terms of establishing for ourselves a QA process, and, in particular, getting ourselves ready for lab accreditation, as we anticipated that would be a mandatory requirement down the road in future surveys by Accreditation Canada.
COFFEY, Q.C.:
Q. Exhibit P-2813, please. Doctor, in the main e-mail of August 15th, 2008, from Donna Brewer to a number of individuals, primarily CEOs of the health authorities and she says, "Further to my previous e-mail, here is the correspondence for CEOs being forward on behalf of Robert Thompson", and he addresses it to CEOs and he says, "I would like to discuss the following matter with you during your meeting on Monday, August 18th" and then he talks about the fact that, "Since mid March, 11 new ER/PR patients have come to light that should have been retested in 2005/2006. Eight of these patients were discovered through calls from the patients or their families and three were discovered

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through further file searches in Central Health".

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. And he goes on to talk about it, and then he states, "New search strategies have been examined by NLCHI on the Meditech System in Eastern. A preliminary test for one year showed that the strategy was broad enough to include the newly identified case, but it would still require significant effort to review pathology reports to determine if additional cases existed. To expand this process province-wide, we propose the following three step approach", and there are steps one, two, and three. Okay.

DR. JENKINS:

A. Uh-hm.

COFFEY, Q.C.:

Q. Now, Doctor, with that in mind, I'm going to ask, Registrar, please, to open Exhibit P-2814. Look at page two. Are they your notes, Doctor?

DR. JENKINS:

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A. They are indeed.

COFFEY, Q.C.:

Q. And it's for teleconference of August 18th, 2008, involving Mr. Thompson, CEOs, ADMs, VP Medical Services, re; ER/PR follow-up, and you've written, "Robert offered to cover any overtime costs related to further searching. Briefing note likely to be tabled as evidence at the Commission of Inquiry. Wants to get alternate search strategy off the ground. Karen responded". Who's Karen?

DR. JENKINS:

A. This would be Karen McGrath, the CEO in Central Health.

COFFEY, Q.C.:

Q. "Karen responded on behalf of the three CEOs external to Eastern and indicated disagreement with the need for search, and indicated government should direct and conduct the review if deemed necessary. Robert asked for assurances that we would provide access to the lab leaders, IT, Director of Pathology, if government proceeds. Further telephone call to follow-up the -

DR. JENKINS:

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A. Discussion with -

COFFEY, Q.C.:

Q. "Discussion with the directors of pathology". Doctor, what was this about and what's happened with it since?

DR. JENKINS:

A. There was a particular effort and this involved--there was some discussions that happened at the CEOs table and also involved the medical directors, as you can see here, and I think there was an indication that there was a need or a desire that Mr. Thompson was expressing to go back and do this further review, and he was looking for, I guess, the health authorities to engage in that, but I think at the time the CEOs felt that it should be really directed by government and followed through on if it was felt to be appropriate. So that's my basic understanding of what that discussion was about.

COFFEY, Q.C.:

Q. And I take it that it had arisen because since March of 2008, 10 or 11 people, certainly 10, anyway, had--not all of the 10, but a number of them had self-identified, as it were?

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DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. And it was ascertained that they'd been missed?

DR. JENKINS:

A. Right.

COFFEY, Q.C.:

Q. What is the current status of that, do you know, Doctor?

DR. JENKINS:

A. In terms of the search strategies, we're actually still engaging--we're trying to sort out a date with NLCHI to have that discussion. We actually haven't organized our teleconference with them yet. So that particular piece is pending, Mr. Coffey.

COFFEY, Q.C.:

Q. Thank you.

THE COMMISSIONER:

Q. Those are your questions?

COFFEY, Q.C.:

Q. No, Doctor, I will ask one final one. Is there anything that we haven't covered, Doctor --you'd be familiar with the Commissioner's

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mandate.
DR. JENKINS:
A. uh-hm.
COFFEY, Q.C.:
Q. Is there anything we haven't covered that you think she should know, from your perspective?
DR. JENKINS:
A. I have a general statement which I think Mr. Eaton would -
COFFEY, Q.C.:
Q. Yes, at the very end.
DR. JENKINS:
A. Well, at the end. Other than that, no, nothing else, in particular, Mr. Coffey, thank you.
COFFEY, Q.C.:
Q. Thank you, Doctor. Thank you, Commissioner.
THE COMMISSIONER:
Q. Mr. Pritchard?
MR. PRITCHARD:
Q. Thank you, Commissioner. No questions for this witness. Thank you for your evidence.
THE COMMISSIONER:
Q. Mr. Simmons?
MR. SIMMONS:

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Q. I have no questions.
THE COMMISSIONER:
Q. Mr. Browne.
MR. BROWNE:
Q. No questions for Dr. Jenkins.
THE COMMISSIONER:
Q. Ms. Newbury.
MS. NEWBURY:
Q. No questions.
THE COMMISSIONER:
Q. Ms. Brocklehurst.
MS. BROCKLEHURST:
Q. No questions.
THE COMMISSIONER:
Q. Mr. Pike?
MR. PIKE:
Q. No, thank you.
THE COMMISSIONER:
Q. You hold the record. Mr. Eaton? I don't think it's about this. Mr. Browne has already indicated that he has no questions.
MR. KENNETH JENKINS, EXAMINATION BY EATON, Q.C.:
Q. Just one area to touch on generally, Dr. Jenkins, and that is something that really hasn't come up specifically yet, and that is

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the need for pathology generally in the regional systems, I guess, or the regional health authorities. We've heard a fair bit of evidence to date about very specialized areas of pathology, but nobody has spoken or indicated about the need for pathology within the regional health authorities.
DR. JENKINS:
A. Right.
EATON, Q.C.:
Q. Can you comment on that?
DR. JENKINS:
A. Sure.
EATON, Q.C.:
Q. Perhaps give the Commissioner some idea of how it works on the regional basis, just in a general way.
DR. JENKINS:
A. Sure. So in terms of looking at our, you know major health centres in the Western region which would be located in Corner Brook and Stephenville where our two hospitals are located, any time there's a provision of specialty service and particularly for surgical programs, but also in some other

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areas, you know, pathology--excuse me, dermatology would be one that comes to mind. You know, there's a fair amount of demand for general pathology service, in particular, and there's a need to have ready access and availability between colleagues, you know, to be able to deal with samples that may need some immediate attention and for colleagues to converse directly on aspects of patient care. So certainly it's very important, from our perspective, that we do have access to general pathology supports, and I think you would find that in secondary centres, which basically everything outside of St. John's in hospitals is considered a secondary centre, for the most part. Yeah, there certainly is a need to provide some of those types of services, particularly in support of the surgical program that I've mentioned, particularly significant.
EATON, Q.C.:
Q. What's your knowledge generally about the level of communication back and forth between the pathologists and the surgeons or the other physicians in Western Regional, in particular?

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DR. JENKINS:
A. I think it's fairly open and fairly good. We are a small region. Most people know each other fairly well, and I think folks feel that if they need to, whether it's Dr. Neil or his pathologists have a need to talk the colleagues or vice versa, that that kind of open discussion will occur. We have opportunities through our medical advisory committee structure as well where, you know, leaders in those various disciplines can pose questions to each other and whereby exchange information as well. So for us, it's a really valuable and very important part of how we do our business, very much so.

EATON, Q.C.:
Q. Okay, and I know that you have come prepared. There are some things that you would like to address to the Commissioner before you finish.

DR. JENKINS:
A. Sure. A few things I'd just like to add on behalf of Western Health. Certainly, first of all, we would join in extending our regrets for any hardship experienced by our patients, families, significant others, staff, managers,

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and physicians, that are a result of these circumstances. We are very committed to taking appropriate action as the results and recommendations of this inquiry come forth. We really feel very importantly that utilization of electronic health records is very essential to tracking and managing the large amounts of patient information that are out there in the health system, and we do feel that investments are required in health information technology infrastructure and staff in order to manage such a system. We do value the relationship that we have with Eastern Health and we're certainly very committed to working with all our partners to improve the laboratory system. We do feel there's a greater participation in quality assurance activities. That is essential in order for us to ensure safe and quality service for our patients, our clients, and our residents, and specifically Western Health commits to participation in accreditation of its laboratory services. We acknowledge recent investments made in laboratory services, staffing, and equipment by the

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Department of Health and Community Services, and we certainly will continue to work with the department for further investment in that area. We feel transparency and timeliness in communications is essential to maintaining public trust. We should continue to be open and honest, be prepared to acknowledge when adverse events occur, and be prepared to respond accordingly, and Western Health is committed to these principles. The Newfoundland and Labrador health system must have a critical look at how and where the more sophisticated aspects of its services are delivered, and as a system, we must be able to ensure that we can deliver quality service to the people of Newfoundland and Labrador, and if reasonable assurances for quality and safety cannot be confirmed, look for other means of delivering that service. Those are my comments, Commissioner.

THE COMMISSIONER:
Q. Thank you. Anything arising?

COFFEY, Q.C.:
Q. No, Commissioner.

THE COMMISSIONER:

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Q. Thank you, Mr. Coffey. Do you have anything to say regarding the matter of participation within your organization in the ER/PR process, or are you content with a system, whether it be with Eastern Health or with some other organization where essentially the blocks are shipped out of your hospital to another place for processing and reading?

DR. JENKINS:
A. Uh-hm. Well, I think what we would need to conclude at the end of the day once, I guess the results and determinations are in, is what's best for the patient. I think that's what we have to keep our mind to. So if there are issues around, for example, maintenance of competency for pathologists, if there's a determination that a pathologist needs to be able to read a certain number, for examples, of specimens in an particular given year, we'd have to consider that. You know, I think we heard from Dr. Neil in his testimony that there will be a limited number of such specimens and slides that may have to be interpreted by pathologists in our region. So I think we have to rely upon, you know, the

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expert advice that we're given in that regard, for example, to make decisions and provide comment upon whether it's best, you know, for processing and interpretation, or interpretation specifically, to occur in our region and whether--you know, the whole processing piece as well, how that impacts. It's very important that obviously--and we've heard throughout this Commission of Inquiry that the steps that are involved in testing, whether it's current automated technology or whatever may come in the future, that there's a very significant degree of importance on how things occur, and that will be very relevant to all of our laboratory operations whatever we do. So I think it will be important and critical for us to understand as we move forward that we need to be able to put all those pieces into place in order to ensure safe and quality service to our patients, and that would be the ultimate test for us.

THE COMMISSIONER:

Q. Thank you. Thank you very much for assisting us.

DR. JENKINS:

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A. You're welcome.

THE COMMISSIONER:

Q. We do appreciate you coming.

DR. JENKINS:

A. Thank you for the opportunity to be here.

THE COMMISSIONER:

Q. I suggest we take the afternoon break and then we'll continue with the next witness.

(BREAK)

THE COMMISSIONER:

Q. Please be seated. Mr. Coffey.

COFFEY, Q.C.:

Q. Dr. Lawrence Alteen, please, Commissioner.

DR. LAWRENCE ALTEEN (SWORN) EXAMINATION BY BERNARD COFFEY, Q.C.

REGISTRAR:

Q. And would you please state and spell your complete name for the Commission?

DR. ALTEEN:

A. Lawrence Walter Alteen. L-A-W-R-E-N-C-E, W-A-L-T-E-R, A-L-T-E-E-N.

REGISTRAR:

Q. Thank you.

COFFEY, Q.C.:

Q. Commissioner, I have some more exhibits that I

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ask be entered, please? They're exhibits P-2890 through P-2932, inclusive.

THE COMMISSIONER:

Q. All right.

COFFEY, Q.C.:

Q. And as well, Exhibit C-0262 and 0263, C-0262, C-0263.

THE COMMISSIONER:

Q. Entered.

EXHIBITS ENTERED AND MARKED P-2890 THROUGH P-2932, INCLUSIVE.

EXHIBIT ENTERED AND MARKED C-0262.

EXHIBIT ENTERED AND MARKED C-0263.

COFFEY, Q.C.:

Q. Thank you, Commissioner. Dr. Alteen, would you please outline for the Commissioner your educational and professional background?

DR. ALTEEN:

A. Yes. I did a Bachelor of Science degree at Acadia University, graduated in 1978, then went to Memorial Medical School completing medical school in 1982 and did a one-year rotating internship, finishing that in the end of June of 1983. Since that time I've worked first as a family physician in Grand Falls

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from 1983 to 1998, from 1998 to 2005 I was a medical director at the old Central West Health Corporation and from April of 2005 until June 22nd, I believe it was, of 2007 I was the medical director for the new Central Regional Health Authority.

COFFEY, Q.C.:

Q. Now, Doctor, and your actual medical practice was as a general practitioner?

DR. ALTEEN:

A. That's correct.

COFFEY, Q.C.:

Q. Doctor, you started your work as the VP of Medical Services with what is now Central Health in April of 1998?

DR. ALTEEN:

A. In April of 1998, correct.

COFFEY, Q.C.:

Q. And you continued in that position until March 31st, 2005 when the current Central Health was created. Doctor, you were based in what part of what is now Central Health, in Grand Falls?

DR. ALTEEN:

A. Located physically in Grand Falls-Windsor.

COFFEY, Q.C.:

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Q. Grand Falls, yes. And before the March--April 1st, 2005 creation of Central Health as it now is, what were the predecessor organizations?
DR. ALTEEN:
A. They were the Central West Health Care Board and Central East, if I have the terminology right, I think probably Institutions Health Board.
COFFEY, Q.C.:
Q. Okay. And you worked with which one?
DR. ALTEEN:
A. I worked with Central West.
COFFEY, Q.C.:
Q. So Central West was--sorry, was Grand Falls-Windsor?
DR. ALTEEN:
A. Grand Falls-Windsor and surrounding -
COFFEY, Q.C.:
Q. Surrounding area.
DR. ALTEEN:
A. - communities.
COFFEY, Q.C.:
Q. And Central East, I'll call it, for my purposes.
DR. ALTEEN:

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A. Right.
COFFEY, Q.C.:
Q. Was Gander and the environment the east?
DR. ALTEEN:
A. That's right.
COFFEY, Q.C.:
Q. Doctor, in your position as VP Medical Services for Central West, as it then was, you were responsible for what, who reported to you, what were you responsible for and whom did you report to?
DR. ALTEEN:
A. General reporting was, I guess, or I guess the function generally was the recruitment and credentialling of medical staff and retention of medical staff, functioning in terms of the organization of the medical staff, medical staff bylaws, policies and procedures, rules and regulations, those sort of things was an ex-officio member of the Medical Advisory Committee, obviously a member of the senior team and attended board meetings to provide a report in terms of medical services during my involvement with the organization. I reported to the CEO of the organization. And for

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reporting structure to me, also had under my responsibilities was the laboratory diagnostic imaging and cardiopulmonary services during at least the first number of years that I was in the role, so those managers reported to me. Generally from a medical staff perspective we'd have a medical staff structure and the various chairmen of the various departments and that would report up through that Medical Advisory Committee and on to me, but also they would be, have a function of reporting up through the board, as well.
COFFEY, Q.C.:
Q. and so the technologists end of the laboratory medicine program reported to you?
DR. ALTEEN:
A. That's correct.
COFFEY, Q.C.:
Q. Up through their senior technologist, administrator?
DR. ALTEEN:
A. That's correct.
COFFEY, Q.C.:
Q. And as well the pathologists did?
DR. ALTEEN:

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A. Yes.
COFFEY, Q.C.:
Q. Now, I take it that when I say "the pathologists", I take it it was very often just Dr. Dalton?
DR. ALTEEN:
A. Dalton.
COFFEY, Q.C.:
Q. Maurice Dalton?
DR. ALTEEN:
A. Correct.
COFFEY, Q.C.:
Q. And sometimes there would be a second pathologist?
DR. ALTEEN:
A. Yes.
COFFEY, Q.C.:
Q. Doctor, what about after the creation of what is now Central Health, what or how, if at all, did your--who reported to you, what your responsible for and whom you reported to change?
DR. ALTEEN:
A. Again, who I reported to, again, would have been the CEO. The responsibilities are just

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expanded to a much wider geographic and physical area as well as more medical staff. When it came to the laboratory, diagnostic imaging, cardiopulmonary services, and I don't recall the specific dates, but the responsibilities of those departments reporting to me changed over time, as at the time there was a major problem with just getting the medical staff organized. But I can't be specific, I don't recall the specific dates of when those responsibilities changed.

COFFEY, Q.C.:

Q. Now, responsibility for the laboratory medicine program, you still had that effective April 1, 2005?

DR. ALTEEN:

A. Effective April 1, that's correct.

COFFEY, Q.C.:

Q. You still have it?

DR. ALTEEN:

A. Yes.

COFFEY, Q.C.:

Q. But sometime after that and before you resigned as VP Medical in 2007, laboratory services went -

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DR. ALTEEN:

A. Under somebody else.

COFFEY, Q.C.:

Q. - under somebody else?

DR. ALTEEN:

A. Yes.

COFFEY, Q.C.:

Q. And who, when you left, who were they under at that point, do you recall?

DR. ALTEEN:

A. I cannot recall, no.

COFFEY, Q.C.:

Q. You can't recall. In the meantime with the April 1st, 2005 date, as that passed into 2005 in the main the pathologists still reported to you?

DR. ALTEEN:

A. Correct.

COFFEY, Q.C.:

Q. Until--well, they continued, I take it, until the time you left?

DR. ALTEEN:

A. That's right.

COFFEY, Q.C.:

Q. The pathologists. But the technologists and

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administrators in the clinical laboratory program -

DR. ALTEEN:

A. Would report up -

COFFEY, Q.C.:

Q. - continued to report to your for awhile, but eventually to someone else?

DR. ALTEEN:

A. Yeah.

COFFEY, Q.C.:

Q. Doctor, issues of quality assurance, quality initiatives, quality control within the hospital, within Central, in your day there, who was responsible for that in a hospital-wide sense?

DR. ALTEEN:

A. In a hospital-wide sense we would have had quality teams in place. And again, I can't go back and remember the time frame as to when they started, but we had quality teams for a number of years. Reporting structure up through we had a, one of the senior people had quality under their initiatives, but all of us as senior managers would have had quality teams report up through us. Most of the

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clinical teams either reported to myself or through the VP nursing for the organization. Again, those roles changed over time. The responsibility in the laboratory I would assume that generally the overall responsibility of quality assurance in the lab would have gone through the senior technologist, the manager of the department, but again, the pathologist would have had responsibility, as well, in terms of some quality controls.

COFFEY, Q.C.:

Q. And what, if any, external proficiency activities was the clinical laboratory involved in, do you know, external proficiency?

DR. ALTEEN:

A. There were a number of them, but again, the specifics of that I wouldn't be able to tell you the specific programs they were involved in, but there were a number of programs that they were involved in over time.

COFFEY, Q.C.:

Q. Doctor, when did you first become aware of, you know, estrogen receptors and progesterone

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receptors as an issue medically in the context of the testing that was carried out?

DR. ALTEEN:

A. The issue around the testing?

COFFEY, Q.C.:

Q. Yes.

DR. ALTEEN:

A. My first recollection was when Dr. Dalton came to me in, I think it was on September 28th of 2005.

COFFEY, Q.C.:

Q. And what do you recall about that, Doctor?

DR. ALTEEN:

A. Specifically I remember him coming to me and saying that there's an issue that's started in St. John's that relates to the ER/PR testing, that there are concerns about the qualities, or the quality of the testing, and that there are going to be some retesting going on, and this is going to be a significant problem.

COFFEY, Q.C.:

Q. Did he tell you how long he'd been aware of this as a problem?

DR. ALTEEN:

A. Again, at that time I don't remember him

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saying specifically how long he may have been aware of that. I do know as I've gone through all this over time that we were requested to have information sent out to St. John's in June and again some requests in September, but I don't recall, I can't say specifically in September that at that time I remember that occurring, no.

COFFEY, Q.C.:

Q. And in terms of as an attention riveting way it was the end of September?

DR. ALTEEN:

A. It was the end of September.

COFFEY, Q.C.:

Q. Before this really caught your--brought to your attention squarely?

DR. ALTEEN:

A. Yeah.

COFFEY, Q.C.:

Q. This had to be attended to. Doctor, do you recall at the time what it was that occasioned it being brought to your attention, was there anything going on at that particular time or about to happen?

DR. ALTEEN:

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A. At that particular time? My understanding that this was again, had come up in St. John's, this may be out in the media and that's my recollection of why it became a problem at that particular time.

COFFEY, Q.C.:

Q. And, Doctor, what then--okay, what were you told by Dr. Dalton about the then state of affairs in Grand Falls as to where things were in terms of addressing the ER/PR problem.

DR. ALTEEN:

A. Well, generally in terms of the ER/PR problem, we would have to identify all the patients who had been diagnosed with breast cancer who were reported as being ER/PR negative, because that was the concern, the people that are ER/PR negative may be positive, and have to ensure that we have collected all that information and make sure this is sent to St. John's and that would go off to Mount Sinai to be retested. The concern was that we had people that may have not been receiving appropriate treatment based on their ER/PR testing.

COFFEY, Q.C.:

Q. And, Doctor, we've seen, the Commissioner has

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seen a number of occasions, a letter of June 29th, 2005 that Dr. Dalton wrote to Dr. Cook sending--accompanying a number of tissue samples from 2002 in Grand Falls.

DR. ALTEEN:

A. Right.

COFFEY, Q.C.:

Q. Okay. And Dr. Dalton has testified that, already, that in September he was already engaged in having been asked in early September to gather up more material.

DR. ALTEEN:

A. Yes.

COFFEY, Q.C.:

Q. Doctor, when you first heard this from Dr. Dalton, did you communicate with Dr. Gallagher in Gander about this, do you know?

DR. ALTEEN:

A. I can't say specifically, I can't recall whether I had that conversation with him. Certainly my recall is Dr. Dalton was probably in conversation with Dr. Gallagher in terms of the issues with the laboratory, because obviously this was not just a problem that was related, or associated with Grand Falls, but

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again, it was across the province, so we would have to have all of our specimens for both sides of the region collected and sent to St. John's.

COFFEY, Q.C.:

Q. And when you became aware of this in late September, did you communicate it further up to your boss?

DR. ALTEEN:

A. Yes. My recollection is that specific day that we talked with--either myself and Dr. Dalton met with our CEO and informed -

COFFEY, Q.C.:

Q. Who was that?

DR. ALTEEN:

A. That was Mr. David Diamond.

COFFEY, Q.C.:

Q. And what was Mr. Diamond told about the matter at the time?

DR. ALTEEN:

A. Again, the issue that we have potential changes in the diagnosis made around ER/PR testing, that there would be retesting going on, that we have to collect these specimens, send them out and obviously once those, that

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information gets back, we'll have to look at how we communicate that on further to patients.

COFFEY, Q.C.:

Q. If we could look, please, at exhibit P-2351? Now, Doctor, this exhibit is comprised of handwritten notes. Do you recognize the handwriting?

DR. ALTEEN:

A. Yes, it's mine.

COFFEY, Q.C.:

Q. Okay, I take it these are some notes that you kept from time to time about your dealings with this matter?

DR. ALTEEN:

A. That's correct.

COFFEY, Q.C.:

Q. And in particular, Doctor, these notes we're looking at here on page 1 of the exhibit, has Maurice Dalton's name, September 28th, 2005. You have written "ER/PR, negative patients who may be false negatives. The issue with testing at the Health Sciences Centre since 1997, process in St. John's, this is problem. We would read whether positive or negative.

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Negative was less than 30 percent since 2001, less than ten percent called negative. Across country, negative is anything from zero to 30 percent. HCCSJ changed process in 2004 with new system and since June/July, 2005, everything in St. John's"--something--"is sent outside province." Are you able to--do you know what that is, Doctor?

THE COMMISSIONER:

Q. Can you translate -

COFFEY, Q.C.:

Q. No, he's not, he's shaking his head no, Commissioner, thank you.

DR. ALTEEN:

A. No, I can't.

COFFEY, Q.C.:

Q. And then I think you've written, "identified, had issue with false negative and trying to get volume of problem. 40 mastectomies per year. 30 will be positive, about 10 negative, approximately 70 cases over this time", which would be about 10 a year in seven years, I take it is the calculation?

DR. ALTEEN:

A. Right.

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COFFEY, Q.C.:

Q. "Question Minister going public soon. We are sending all negatives as defined by HCCSJ to them, which are then sending all of the specimens to mainland. At present suggest the false negative rate is 10 to 20 percent and therefore, 7 to 14 people potentially affected." Which I take it is 10 to 20 percent of 70 -

DR. ALTEEN:

A. Correct.

COFFEY, Q.C.:

Q. - amount to be retested, which would be the negatives, am I right on that, Doctor?

DR. ALTEEN:

A. That's what I'm assuming.

COFFEY, Q.C.:

Q. It's not 10 to 20 percent of the total number of breast cases, at least in this calculation.

DR. ALTEEN:

A. No, I think by, I mean, 10 patients per year over the time frame, 70 cases over that time which would be the negative cases.

COFFEY, Q.C.:

Q. And they were the ones to be retested, so and

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10 to 20 percent of 70 would be 7 to 14.
DR. ALTEEN:
A. Correct.
COFFEY, Q.C.:
Q. "And our percentage positive, negative, has stayed within generally accepted reference levels."
DR. ALTEEN:
A. Correct.
COFFEY, Q.C.:
Q. "We will be compiling two lists with specimens of 1997 to 2001 and 2002 to 2004 to send to St. John's. They will be reviewing all with outside lab, as well as tracking patient outcomes who have outside laboratory retest with today's standards." Now, Doctor, I take it then these are the notes you made during and after your conversation with Dr. Dalton that day?
DR. ALTEEN:
A. Yes.
COFFEY, Q.C.:
Q. And would pass this on to Mr. Diamond?
DR. ALTEEN:
A. We would have discussed that, whether I

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actually gave him the notes -
COFFEY, Q.C.:
Q. Oh no, I say pass the information, pass the information on to him. Now, Doctor, I just ask you this, Doctor, up to this point in your career, up to that point in your career, what if any exposure have you had to estrogen receptor, progesterone receptor as a subject matter?
DR. ALTEEN:
A. Not a lot.
COFFEY, Q.C.:
Q. I take it just whatever -
DR. ALTEEN:
A. Just what you would have as a family physician.
COFFEY, Q.C.:
Q. And in your experience and you've been in Grand Falls for a number of years before going to work with Central West, what was your experience then in terms of breast cancer patients and how much contact really would a GP have once breast cancer was diagnosed?
DR. ALTEEN:
A. With the patient after? I mean, generally

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most of these people would be, obviously initially you may have seen the patient in terms of making a diagnosis, send them off to the surgeon. Once the surgery is performed, they would then be, a lot of times seen by the medical oncologist who would visit. They would either travel to St. John's and the medical oncologist would be in Grand Falls and they would be seen and again, treatment options would be discussed then as to what is necessary in terms of the treatment for that particular cancer. After that, you would see people generally, not necessarily in follow up to their breast cancer because obviously the oncologist would follow them for a period of time, but obviously you would have people come back, they may have various ailments which may or may not be related to their original diagnosis.
COFFEY, Q.C.:
Q. And, Doctor, could you tell the Commissioner, please, what the arrangement was for Cancer Clinics or Cancer Care Clinics in Grand Falls in your time as VP? What was the structure there at the time?

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DR. ALTEEN:
A. Generally the structure was that the medical and radiation oncologist would visit our organization. The staff that was part of the Cancer Clinic in Grand Falls were employees of the old Newfoundland and Labrador Cancer Research Foundation, they were not Central Health employees, so they had physical space within our premise, but the organization of that was all run through the Newfoundland and Labrador Cancer Treatment Research Foundation. But they would visit on, and again, timeframes may vary, but at times it may be on a quarterly basis over the years and with the improved recruitment and retention of medical and radiation oncologists, obviously this would be more often than that, but they would provide follow up to these patients. And again, all these patients when chemotherapy or other treatment options were discussed, that was done generally with the oncologist. Again, over the last, probably five years, I'm trying to remember when one of our physicians was involved with the cancer clinic who worked in Grand Falls, they would do follow up, but

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again, that would be in conjunction with the medical oncologist. But the medical oncologists were the ones who decided on generally the treatment options for the patient.

COFFEY, Q.C.:

Q. Doctor, what was the situation in Gander, to your knowledge?

DR. ALTEEN:

A. Again, prior to 2005, there was again similar clinics that were run and again a physician there who was an internal medicine physician did some of the follow up of these patients in conjunction with the medical oncologist. After 2005, and again, the timeline, I can't recall specifically, but he left and then one of the family physicians took over doing some of the follow up, again in conjunction with the medical oncologist from St. John's.

COFFEY, Q.C.:

Q. Doctor, while it's been crossing my mind, I'll ask you now. As a result of the retests, a number of patients, of course in Central Newfoundland did have changed results and a number did go from negative to positive, ER

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status. Doctor, to your knowledge, what, if any, financial assistance or compensation was provided to them to cover any travel costs associated with having to attend because of the changed results, attend either in St. John's or in Grand Falls, Gander?

DR. ALTEEN:

A. I have no knowledge of any financial consideration.

COFFEY, Q.C.:

Q. I'm not suggesting there ever was, I'm just asking to your knowledge.

DR. ALTEEN:

A. I have no knowledge and I can't recall it ever coming up in my conversations with anybody that that was an issue.

COFFEY, Q.C.:

Q. Doctor, the reference here on your notes of September 28th to the--at present suggest the false negative rate is 10 to 20 percent.

DR. ALTEEN:

A. Yes.

COFFEY, Q.C.:

Q. That estimate was coming from whom?

DR. ALTEEN:

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A. Dr. Dalton, I believe.

COFFEY, Q.C.:

Q. Dr. Dalton.

DR. ALTEEN:

A. Yeah, he would provide me that information.

COFFEY, Q.C.:

Q. And the reference to "our" which presumably is the local Grand Falls positive negative percent--or percentage positive negative rates had stayed within generally accepted reference levels.

DR. ALTEEN:

A. Right.

COFFEY, Q.C.:

Q. Who was telling you that?

DR. ALTEEN:

A. Again, this was Dr. Dalton who was passing this information to me.

THE COMMISSIONER:

Q. In what context though, was that our percentage positive negative stayed within generally accepted, was that prior to the retest?

DR. ALTEEN:

A. Yes.

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THE COMMISSIONER:

Q. I mean, on the basis of what you believed the test results to be up to that point or was that having -

DR. ALTEEN:

A. I think part of that conversation was around the fact that if we had "X" number of breast cancer patients, you'd expect generally a certain percentage to be positive, a certain percentage to be negative over time.

THE COMMISSIONER:

Q. Uh-hm.

DR. ALTEEN:

A. And my recollection is that he had felt when he looked at this, that we were probably staying within that -

THE COMMISSIONER:

Q. So he's talking about the 10 negative out of the total of 40--or no, total of 30.

COFFEY, Q.C.:

Q. 40 mastectomies per year, 30 will be positive.

THE COMMISSIONER:

Q. 40, yes, ten of the ten.

DR. ALTEEN:

A. That's right, so you're talking a 75/25 Split.

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THE COMMISSIONER:
Q. Okay. So, that last remark refers to those numbers.
DR. ALTEEN:
A. To those numbers, that we stay within that--again, there's a range certainly. I think really he was trying to make the point that there's nothing that jumped out at him to suggest that we had a problem before this came up.
COFFEY, Q.C.:
Q. Doctor, do you recall what the status of identifying the patients in Grand Falls was and for that matter, in Gander, that had to be retested at the time you were first told about this at the end of September? I presume you made inquiries about where Dr. Dalton and Dr. Gallagher were with identifying the patients.
DR. ALTEEN:
A. Right.
COFFEY, Q.C.:
Q. Do you recall what the status was at that time when you got involved?
DR. ALTEEN:
A. At that point in time, other than providing

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the information, my recollection is that there were certain specimens that were sent out to St. John's, based on a request back in June, further testing or further requests, again about information, but what we decided to do, we had to ensure, and our issue was trying to ensure that we captured every single patient that needed to be tested, which went to the point of making sure we went back through, and some of this--appreciating some of this was on paper, so much was electronic. You're in that merging between two types of processes that you had to go back and we went back repetitively over time, at that point in time, to make sure we had captured everybody.
COFFEY, Q.C.:
Q. So did you actually get involved in organizing that yourself, Doctor?
DR. ALTEEN:
A. I was involved certainly on the Grand Falls side. On the Gander side, I do believe Betty Forward probably, who was the COO at the time, might have been involved in that process in Gander of getting--again, there's some other individuals from management perspective along

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with some of the physicians and sitting down and going through all these files, because one thing was to identify them and the other thing was, you know, which people had received treatment and those sort of things. So there was a number of things that we had to go through and identify with these patients.
COFFEY, Q.C.:
Q. So Doctor, in terms of--we'll deal first of all with then Grand Falls. What do you know about what happened in Grand Falls in that regard? At the time you got involved, what happened?
DR. ALTEEN:
A. What happened? Generally, we went through, pulled files on cancer patients and reviewed all of those files to make sure again we had the right--as much as we could ascertain, the right people that were ER positive ER negative and that we sent the right information to St. John's. So that meant, again, individually going through patient charts and that.
COFFEY, Q.C.:
Q. Would these be electronic charts?
DR. ALTEEN:

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A. No, most of this was paper.
COFFEY, Q.C.:
Q. Paper. When did the Meditech system come into usage first in Grand Falls, do you know?
DR. ALTEEN:
A. I'm going to say probably 1996, 1997, somewhere around there, in terms of a clinical application. Prior to that, there may have been some use of that from the materials management, financial side, but the clinical side, I think it was somewhere around 1996.
COFFEY, Q.C.:
Q. So then if it had been in--and the retesting dated back to 1997.
DR. ALTEEN:
A. Right.
COFFEY, Q.C.:
Q. So why was it necessary then to go through the paper from '97 onward?
DR. ALTEEN:
A. But again, appreciate that when Meditech started, from a clinical sense, the laboratory was not--or certainly the pathology side of the laboratory was not part of the Meditech. So they had a stand alone pathology module.

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So we had not had the pathology module in place at that time, and I believe it was probably in the early 2000's before the Meditech pathology model went to play in our organization.

COFFEY, Q.C.:

Q. And so certainly before the Meditech pathology module was used, one would have to go through the paper?

DR. ALTEEN:

A. Paper, and plus you would obviously--they certainly had an electronic system and again, I can't tell you when the first system started, but I'm assuming it was before 1997, that they were able to pull some of the data, but we still had to go through individual patient files.

COFFEY, Q.C.:

Q. And was that true all the way up to 2005?

DR. ALTEEN:

A. We pulled files, yeah. While we may be cross referencing things with paper and with electronic, we were pulling files as well.

COFFEY, Q.C.:

Q. Doctor, so you'd be identifying patients, and

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what, if anything, efforts were made to keep track of this, to keep track of the data?

DR. ALTEEN:

A. We had, again, developed various spreadsheets to try and keep track of this. Obviously in the lab, they were doing some. I was doing some myself, but we were trying to ensure, again, and then we cross-referenced to make sure we had captured everything appropriately. We were, at times, conveying that information on to St. John's for their cross referencing. Again, there was a lot of information being shared between various organizations, and again, the emphasis was on making sure we had identified all the patients.

COFFEY, Q.C.:

Q. Doctor, how, at that point, were the deceased being--people who were known to be deceased, how was that being handled?

DR. ALTEEN:

A. Again, as part of that, we were identifying all the breast cancer patients, deceased or not. When it came to--and again, I'm going with my recollection and my recollection is that when it came to the retesting, you're

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going to priorize your retesting, the deceased would not be done first, obviously. We'd be more concerned with people who were alive and making sure that they got appropriately dealt with, but the deceased would be part of the process, in terms of making sure that we retested everybody.

COFFEY, Q.C.:

Q. So that all breast cancer patients who had had an ER/PR test done were initially identified?

DR. ALTEEN:

A. That's right.

COFFEY, Q.C.:

Q. And then -

DR. ALTEEN:

A. Deceased or not.

COFFEY, Q.C.:

Q. - and then the deceased were put to one side initially.

DR. ALTEEN:

A. I think, again when it came to the specimens, I think. When it came to us doing the data collection, we were making sure we identified everybody.

COFFEY, Q.C.:

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Q. But the specimens for the deceased would be put aside and for the living, would be sent to St. John's?

DR. ALTEEN:

A. That's, again, my assumption of that they wouldn't be done first.

COFFEY, Q.C.:

Q. Doctor, do you know if any effort was made by Central to utilize the Vital Statistics database concerning the Registry of Deaths at that time?

DR. ALTEEN:

A. I don't recall, no.

COFFEY, Q.C.:

Q. Doctor, we've also heard that--if we could just bring up, please, and I'll refer you to Exhibit P-0590? Doctor, this is September 6th, 2005 memo to all laboratory directors. Doctors Dalton and Gallagher are in there.

DR. ALTEEN:

A. Right.

COFFEY, Q.C.:

Q. It's from Dr. Cook and this is the one where he--the first bullet says "further to my memo dated June 13th, 2005, I am requesting that

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you forward all ER negative cases on primary breast lesions, independent of PR status, from May '97 to March 31, 2004 to Mr. Barry Dyer at the General Hospital site." And there's also a reference then in the fourth bullet to "all ERs and PRs performed on the Ventana system from April 1, 2004 to August 9th, 2005 will also be referred to Mount Sinai for retesting. You can also forward these cases to Mr. Barry Dyer." Doctor, the idea of focusing on and utilizing only the primary breast lesions -

DR. ALTEEN:

A. Right.

COFFEY, Q.C.:

Q. - what was Central Newfoundland's approach to that? Were your cases, your patients that had samples sent to St. John's for retesting solely breast cancer lesions or were they all ER/PR tests?

DR. ALTEEN:

A. I'm assuming they were breast cancer.

COFFEY, Q.C.:

Q. And in terms of addressing that though, I mean, gathering what was to be sent to meet these criteria was Dr. Dalton and Dr.

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Gallagher's responsibility, from your perspective?

DR. ALTEEN:

A. That's right, and in fact, I guess, at that point in time, they had already--I mean, my recollection goes back to September 28th when we had that meeting. Prior to that, there had been samples sent out, prior to that, and I can't say I wasn't aware of it. I just don't recall being made specifically aware of it, that things were happening before the September 28th note that I made.

COFFEY, Q.C.:

Q. Doctor, the second bullet here refers to different periods to be utilized for deciding whether someone's tissue sample was ER negative.

DR. ALTEEN:

A. Correct.

COFFEY, Q.C.:

Q. Did you ever have any discussion, in 2005, with any one about why this was so?

DR. ALTEEN:

A. I recall having a discussion, and I think I perhaps--I certainly have talked to Dr. Dalton

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about that.

COFFEY, Q.C.:

Q. Yes, because -

DR. ALTEEN:

A. But I recall specifically having a conversation, I think, with Dr. McCarthy, just to get her perspective on what the changes were, because obviously for myself, as a primary care physician, most of the times we would get information back, you're positive or negative. You know, the percentages and these sort of things, most of the times, we, as primary care physicians, didn't get involved in that information, just are you or aren't you, do we treat you or are you treated, are you not. So I just wanted to have some background knowledge from Dr. McCarthy as to her perspective on this and what the changes were.

COFFEY, Q.C.:

Q. Do you recall when that was?

DR. ALTEEN:

A. I thought I recalled seeing that I may have had a note about that.

COFFEY, Q.C.:

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Q. Okay, so this would be--and we'll be going--it's October 6th, 2005 actually, Doctor. It's page six of Exhibit 2351, please?

DR. ALTEEN:

A. Right.

COFFEY, Q.C.:

Q. And that, Doctor, is what you're speaking of. So I'll come to that in a moment. But you did certainly, yourself at least, address your mind to that early on?

DR. ALTEEN:

A. Yes, just to understand the differences and the changes that had occurred. Because I think one of the things, and again, recognizing that when you're going through this, over time, that you're--when things happen, the chronology of things is a little bit fuzzy at times, but when you're going through the patient files, it seemed at times you were getting this information that some people may have been treated in a time frame when 30 percent was considered--or less than 30 percent was considered negative, may still have been put on Tamoxifen, and that may be the discretion of the individual oncologist,

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may have made a decision based on other factors that I was not aware of as to why they may have treated them.

COFFEY, Q.C.:

Q. But you had noticed that in reviewing -

DR. ALTEEN:

A. I think some of it came up as--and again, like I said, it's hard to keep track of when things specifically have occurred and how you thought about those things, but it does strike me that over time, you notice that there were people treated who may have historically been called negative, but were--and one of the things that Dr. McCarthy did mention to me was that when, from her training, that she was treating everybody that was, I think, less than ten percent at that--or greater than ten percent at that time, she would have treated them.

COFFEY, Q.C.:

Q. Actually, Doctor, while we have this here, I'll take you through this now. This is a record of a conversation you had with Dr. Joy McCarthy, October 6th, 2005. You've noted her--she's telling you, I take it, she always treated the patients at ten percent?

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DR. ALTEEN:

A. Right.

COFFEY, Q.C.:

Q. "Letter going out to every family doctor in Newfoundland of what to do, from Paul Gardiner." She's telling you about that.

DR. ALTEEN:

A. Right.

COFFEY, Q.C.:

Q. "Medical oncologists will be available to talk with the GP or see"--and that would be?

DR. ALTEEN:

A. See patient.

COFFEY, Q.C.:

Q. "To see patient, but will not be immediate. Maybe within a few months, which is fine." I take it that was her -

DR. ALTEEN:

A. That's her comment.

COFFEY, Q.C.:

Q. - expression or comment. "Support calling patients and advising them on the list and will recall with results with a letter from Dr. Gardiner and accessibility of oncologists." What was that about, Doctor?

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DR. ALTEEN:

A. I think it was her comment that she supported notifying the patients that they were on a list to be retested and then we will get the results back and once we do that, we'll notify them again that there is--your status has changed or hasn't changed and what will happen from that point on.

COFFEY, Q.C.:

Q. And "the treatment will vary from patient to patient, depending on the time from original diagnosis, node status at the time of surgery, the present status, etcetera," she's telling you?

DR. ALTEEN:

A. Correct.

COFFEY, Q.C.:

Q. And "there's no change in treatment from 2001, i.e. ten percent or more positive ER/PR. However, this was both her and Kara's training. American training may have been different, so treatment options not necessarily the same." What was that about?

DR. ALTEEN:

A. I think the point was being made that not all

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oncologists, at a specific point in time, and it may be 2001, were necessarily treating at a ten percent level. So dependent on some of the training, I think that was her comment. That's certainly what I'm written down there is her comment to me.

COFFEY, Q.C.:

Q. Doctor, did you get any sense, at the time, that there could possibly be patients in 2001 who were treated but they, because their ER, for example, was 20, they were still considered by some oncologists to be negative? In other words, that the ten percent didn't begin effective January 1, 2001, and maybe it began later for some oncologists? Did you get that sense at times? Getting a fuzziness of this cut off.

DR. ALTEEN:

A. Yeah, I--again, I can't specifically say that I recall, in 2001 when we were looking back through this, whether we saw patients who might have been treated differently, based on a ten percent cut off.

COFFEY, Q.C.:

Q. Going to go back, Doctor, now to October the

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3rd, page three of the exhibit. Your note here is a conversation you had with Susan Bonnell.

DR. ALTEEN:

A. Correct.

COFFEY, Q.C.:

Q. Why was it you spoke to Ms. Bonnell? I take it because of communications issues?

DR. ALTEEN:

A. Yeah, and again, whether that was a call with myself and other people. Usually, and I can't say all the time, but a lot of times I would write down if there's other people in the room who were listening to our conversation. But I, I mean, other than looking at my notes, I can't recall specifically talking to her myself, as an individual, but I may well have done that. I don't--I just don't recall the specifics of it right now.

COFFEY, Q.C.:

Q. It's possible that you had a conversation with a larger group and you're just attributing a remark to her?

DR. ALTEEN:

A. Yeah, that's right, or it's possible that I

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did phone her or she phoned me and we had a conversation.

COFFEY, Q.C.:

Q. And you've noted here, "not doing a press release," which I take it is Eastern Health is not doing a press release?

DR. ALTEEN:

A. Correct, yeah.

COFFEY, Q.C.:

Q. "Less than ten percent of breast cancer patients would be affected." Doctor, was it your understanding it would be less than the total of all breast cancer patients would be affected or less than ten percent of those being retested?

DR. ALTEEN:

A. My assumption that it was, again, less than ten percent of the ER negative patients, not the total breast cancer patients.

COFFEY, Q.C.:

Q. And the third note here you've got is "when story broke on Friday, was actually thought to be -

DR. ALTEEN:

A. To be mammography.

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COFFEY, Q.C.:

Q. - mammography related." So she's telling you this?

DR. ALTEEN:

A. That's right.

COFFEY, Q.C.:

Q. "Dr. Williams did an NTV interview and is doing Telegram, based on the premise that retested one patient who was negative and became positive. That this led to further testing, info, this has to be individualized because of various treatment options based on a number of factors. Note here, media not interested in this story yet. Will host on website few frequently asked questions along with patient liaison officer. 25 percent of patients who are negative will change to positive." That assertion, would that be something she was telling you? The answer is yes?

DR. ALTEEN:

A. I'm assuming yes, yes.

COFFEY, Q.C.:

Q. And then there's here, Larry Gallagher 62, Maurice Dalton 88.

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DR. ALTEEN:

A. That's Barry, that should be Barry Gallagher.

COFFEY, Q.C.:

Q. Barry, should be Barry. I apologize. That would be, that's a B for Barry.

DR. ALTEEN:

A. Yes.

COFFEY, Q.C.:

Q. The total of those two figures are 150, which you've written here. ER/PR negative, alive, not treated. So what is this? What are these figures about, Doctor?

DR. ALTEEN:

A. I'm assuming the information that we had at that time of the number of patients that were identified that were ER/PR negative, and again, that were alive and had not had any treatment.

COFFEY, Q.C.:

Q. So Doctor, was Central, at least to your understanding or knowledge, keeping track where it could of whether patients had been or had not been treated?

DR. ALTEEN:

A. We were trying. Now again, recognizing that

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our access to some of the information about treatment, some of it we could find from our hospital records. Some, if I recall, there may have been even phone calls made to some of the family physicians to see if patients had been treated. We had, I'm trying to think, we may have had some access to the Newfoundland and Labrador Cancer Treatment notes, if they were on the patient files, but obviously wouldn't have access to their information systems to get that information. We would have to, obviously, make calls or do some discussions with people to find out if people had been treated.

COFFEY, Q.C.:

Q. If we could bring up Exhibit P-0087, please? Now Doctor, these are a typed version of handwritten notes that Dr. Williams made.

DR. ALTEEN:

A. Okay.

COFFEY, Q.C.:

Q. Of a tele conference, a conference call, with other regional boards on October 4th, 2005. Noted to be participating from Central are Mr. Diamond, yourself and Stephanie Power.

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DR. ALTEEN:

A. Correct.

COFFEY, Q.C.:

Q. Who's Stephanie Power?

DR. ALTEEN:

A. Stephanie Power was our communications director, I think was her title probably.

COFFEY, Q.C.:

Q. Okay, and if we could look at Exhibit P-2351, please? Doctor, looking at page four of the exhibit, under the heading ER/PR testing, October 4th '05, I take it these would be notes you made of that conversation?

DR. ALTEEN:

A. I think so, yes.

COFFEY, Q.C.:

Q. So you've written "those who would be positive without any further testing, based on changing criteria. Those who are negative, zero to one percent, and may now be positive" and then you got "70 to 80 percent of breast cancer ER/PR positive, but also present in normal breast tissue." And then "prior to 2001, need to be 30 percent, greater than 30 percent positive for Tamoxifen. After 2001, greater than ten

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percent positive. Most labs, less than one percent negative to be considered negative." Doctor, and then you go on to say "prior to 1997, biochemical markers used. 1997 started immunohistochemistry with DAKO semi-automated system, a 40-step process, and then May 2005, Dr. Laing discussed Sloan-Kettering re: lobular cancer patient who was initially ER/PR negative, zero, zero, and retested and found to be positive." Doctor, what do you recall then, what was all this about?

DR. ALTEEN:

A. That again was the whole issue around the, I guess the changing criteria for how you called negative and positive when it came to ER/PR, recognizing that if we're looking at retesting people, prior to 2001, if you had 30 percent positive as your criteria, are we going to apply, I guess, 2005 or 2006 standards at the time, that you may have people that you would call, if you diagnosed them at that point in time, positive based on a ten percent or one percent rule, when if you look back, the criteria that you used at the time, you would have called them negative still. So you had

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to make sure that you weren't muddying the waters, I guess, by your criteria change, as well as that your test changed.

COFFEY, Q.C.:

Q. And I take it though, you would have understood, by this point in time, by October 4th, that some of the underlying percentage positivities for individual patients would likely change?

DR. ALTEEN:

A. Correct.

COFFEY, Q.C.:

Q. And the issue then here would be, for example, if somebody was, say I'll pick a figure of 20 in 1999, they'd be negative at the time.

DR. ALTEEN:

A. Right.

COFFEY, Q.C.:

Q. And if they went to 60 on retest, then they were positive no matter which number?

DR. ALTEEN:

A. No matter what, that's right.

COFFEY, Q.C.:

Q. But if they repeated at 10 or 20 -

DR. ALTEEN:

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A. You still had--you're using a different criteria.
COFFEY, Q.C.:
Q. Which criteria would be utilized now in 2005/06 further treatment?
DR. ALTEEN:
A. That's right, and again, those are the kind of questions you were straighten out as to--because you've changed your knowledge base, based on that.
THE COMMISSIONER:
Q. Sorry, would you repeat that again? The response. Are you saying you were trying to figure out what to do with a changed result that puts you in a category which would be positive now but was not positive when you were originally -
DR. ALTEEN:
A. Correct. If you, for example, in 2000 or in 1999 that you were 20 percent and you were considered negative at that time, and retest you and you're still 20 percent, but now you're considered positive, what do we do? I mean, you have to have those discussions. What to do with those patients? The criteria

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has changed. It's not the test that made the difference. It's the criteria change. Now you're still notifying those patients, and that was the kind of conversation we were having, what do you do with those. Because you've retested, do you let people know that the criteria has changed, are you going to do something different at that point in time? But the test did not change, so it's trying to understand--I guess, we were trying to understand and recognizing that my experience at that point in time, very limited in this, and you're trying to get your head around was this--it's not that, again, you've retested. Your test has not changed, but we now have you're calling it positive or are you still calling it negative.
COFFEY, Q.C.:
Q. For some patients that -
DR. ALTEEN:
A. For some patients, yeah.
COFFEY, Q.C.:
Q. Okay.
DR. ALTEEN:
A. But again, if you had a change from, you know,

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ten percent to 60 percent, the criteria doesn't--you know, you're still positive by any criteria at that point in time.
THE COMMISSIONER:
Q. But it seems to me there are two different issues. There's the issue of whether or not, on a strictly scientific analysis, if you want to know what did or did not go wrong, you could determine that a change in result was so marked that it could have affected treatment at the time.
DR. ALTEEN:
A. Correct.
THE COMMISSIONER:
Q. And the other was whether or not now you have this new knowledge, you had some kind of an obligation to talk to your patients.
DR. ALTEEN:
A. So I think, I guess from my perspective -
THE COMMISSIONER:
Q. One seems to me to be an ethical question, more than a question of some kind of a theoretical view of what the result should have been back at the time that they were done.

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DR. ALTEEN:
A. Yeah, but I guess I was still driving at the point of at that time, if we get this information back--and again, if we had not had any of these changing ER/PR numbers, we would never have gone back and reviewed these people. So now that we have this knowledge and you're talking to patients, does any of this impact their care now? Because I was more interested in, you know, whether it's a lab change or whether in fact the criteria changed, do we change how we're dealing with the patients. That's what I was just trying to understand with pathologists and with the oncologists, would we change anybody's treatment based on knowing that knowledge now. If we had never done this retesting, we would never have been doing this. So there's no way you'd be talking to the patient about it, but with the change in criteria, do we change anything now? And the assumption was generally, you probably wouldn't. The focus was going to be on the changing test result. So the test remained the same, you would not change anything in terms of treatment.

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COFFEY, Q.C.:
Q. That was the initial -
DR. ALTEEN:
A. Yes.
THE COMMISSIONER:
Q. At that point?
DR. ALTEEN:
A. At that point.
COFFEY, Q.C.:
Q. At that point, yes. That's not, I take it, how things ultimately turned out, Doctor?
DR. ALTEEN:
A. I don't think.
COFFEY, Q.C.:
Q. Your understanding.
DR. ALTEEN:
A. Yeah.
COFFEY, Q.C.:
Q. Okay, and I'll be discussing that with you. Doctor, go on then, there's a--you've noted here, "Mount Sinai," what's that, Doctor?
DR. ALTEEN:
A. I know what it looks like, but I'm assuming it's supposed to mean it's the only certified lab in Canada, but -

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COFFEY, Q.C.:
Q. Only, yeah. It seems to be O.
DR. ALTEEN:
A. It's a harsh scribble.
COFFEY, Q.C.:
Q. Yes, "certified lab in Canada. 25 to 30 percent converting"
DR. ALTEEN:
A. Correct.
COFFEY, Q.C.:
Q. What was 25 to 30 percent converting, who was providing that information?
DR. ALTEEN:
A. At that, from my notes, I can't tell you who. That was part of a conversation or tele conference, but who actually said that, I don't know.
COFFEY, Q.C.:
Q. And the people--I take it, though, this would have been coming from Eastern Health, whoever -
DR. ALTEEN:
A. Oh, it's coming, yes.
COFFEY, Q.C.:
Q. Whoever was -

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DR. ALTEEN:
A. From Eastern, and it might have been Dr. Williams who was talking about that at the time. I don't--I didn't mark down specifically who was saying what at that tele conference.
COFFEY, Q.C.:
Q. And there's a "chief tech from Mount Sinai has reviewed procedures. Pathologist also visited. Big issue of quality. Will recommend all slides be read by two to three pathologists in St. John's." So I take it then that somebody from Eastern Health is telling you that there's been a pathologist by to look at some aspect of Eastern Health, a chief technologist from Mount Sinai has done the same.
DR. ALTEEN:
A. Correct.
COFFEY, Q.C.:
Q. Looked at the clinical laboratory end of things, and big issue of quality, do you recall what that was about?
DR. ALTEEN:
A. No.

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COFFEY, Q.C.:
Q. Other than an assertion?
DR. ALTEEN:
A. Yeah, and I don't know the specifics. I don't recall the specifics of what that was about.
COFFEY, Q.C.:
Q. I take it though that noting this here, there were problems with the quality?
DR. ALTEEN:
A. Correct.
COFFEY, Q.C.:
Q. That was what you were noting, and "will recommend all slides be read by two to three pathologists in St. John's." Up to this point, your understanding had been what? Who had been reading the slides?
DR. ALTEEN:
A. My understanding originally is that the slides would be prepared, in terms of fixing the cutting and that. They would go to St. John's. They would do then the staining for this particular procedure, and then those slides would be sent back and interpreted by the pathologist at the specific site, be it Gander or Grand Falls. What they were

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recommending, on reading this, is that they were recommending that once the slides go to St. John's, they will do the processing and that and they will also do the reading of that particular--so you'd have it read by two or three pathologists, rather than a number of pathologists around the province doing their own interpretation.

COFFEY, Q.C.:

Q. And what was the significance of that change? Why would that be necessary? Why would you--what were you led to believe about why it might be advisable?

DR. ALTEEN:

A. And again, my recollection is that generally they would want--they were concerned about having more standardization, I guess, around this and limiting that to two or three pathologists who would develop some expertise in reading this and interpreted slides the same, and I can't say that I'm certainly anyone that can give you information about how you sit down and look at a one percent, ten percent, 30 percent reading on a slide, but I would suggest that there may have been some

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variability between readers and interpretation, but that's certainly well beyond me.

COFFEY, Q.C.:

Q. And so Doctor, was it your understanding then, by the time this conference call ended on October 4th, that the outside reviewers, one or more of them, were suggesting that the problem involving ER/PR might, at least in part, be related to the fact that so many different pathologists were involved in it? Did you have that understanding at the time? I'm just -

DR. ALTEEN:

A. Again, I don't recall specifically, but the fact that they would recommend or someone recommended only two or three pathologists, would that have any bearing on this. So I'd be led to believe that it may have been somebody's recommendation, but where specifically it came from, I don't know.

COFFEY, Q.C.:

Q. And why it might have been so recommended, the actual practicalities of why somebody was saying that, you -

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DR. ALTEEN:

A. I didn't--I can't say I remember all the details, no.

COFFEY, Q.C.:

Q. Doctor, we have, the Commissioner has seen, on a number of occasions, a report by Dr. Banerjee, Diponkar Banerjee, done--the report is October 7th, dated October 17th 2005. Trish Wegrynowski's report, I believe is dated November 9th, 2005. It's P-0047. She's the chief technologist referred to there.

DR. ALTEEN:

A. Okay.

COFFEY, Q.C.:

Q. Doctor, have you ever seen those reports?

DR. ALTEEN:

A. No.

COFFEY, Q.C.:

Q. Dr. Banerjee's report certainly refers to issues relating to fixation, poor fixation of tissue specimens and he talks about internal controls not being utilized or being there and not staining appropriately. When did you first become aware of the fact that there were potentially fixation issues or issues related

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to the usage of internal controls?

DR. ALTEEN:

A. Again, date wise, can't recall. I do recall that I have some notes written about that, but off the top of my head I can't remember the specific date. There was a teleconference that we had been on, I think myself and Dr. Dalton and maybe others that this came up. But we were not, and my understanding up to that point in time I was never aware and I don't think Dr. Dalton or Dr. Gallagher were ever aware that there were issues related to fixation or the quality of that from our laboratory, or certainly nobody passed on that information to us that I recall.

COFFEY, Q.C.:

Q. And I'll be coming to that. That I believe is probably late or midway through 2007.

DR. ALTEEN:

A. Okay.

COFFEY, Q.C.:

Q. But with respect to whatever that chief technologist and the pathologist who were at Eastern Health in 2005 found, as the VP for Central Newfoundland, VP Medical Services for

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Central Newfoundland, did you ever feel that you actually had any knowledge of what these two individuals had reported?

DR. ALTEEN:

A. I never had any knowledge of what they reported, no.

COFFEY, Q.C.:

Q. Here, Doctor, on the next page is a reference to 142 specimens back, 19, it's probably '97,'98, less than 30 percent and there's 2001 cutoff less than ten percent. And you have scribbled out some of this, too.

DR. ALTEEN:

A. Yeah.

COFFEY, Q.C.:

Q. And then you go on to say, "All the ER negative independent of PR status, patients who were ER"--I'm sorry, "PR positive greater than 30 percent were treated." And do you know what that's about?

DR. ALTEEN:

A. Again, just reading this, it's just that the PR positive that it seems like the oncologists were treating people who were PR positive and that may have been irrespective of their ER

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status. My first comment in terms of "all ER negative independent of PR status," no, I don't recall what it was about.

COFFEY, Q.C.:

Q. And then there's a reference to "Need pathology assistants to prepare specimens. Need dedicated lab staff doing this immunohistochemistry. Regional issues need to ensure collection/preparation done in a standard procedure across the province. This would include standardizing formalin." Okay?

DR. ALTEEN:

A. Yes.

COFFEY, Q.C.:

Q. Now, Doctor, from your perspective at the time, in early October, 2005, who would have to coordinate and implement such activities?

DR. ALTEEN:

A. Those activities in terms of ensuring that collection, preparation?

COFFEY, Q.C.:

Q. And across the province, is what I'm getting at.

DR. ALTEEN:

A. Across the province?

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COFFEY, Q.C.:

Q. Yes.

DR. ALTEEN:

A. I don't know that anybody would have the abilities across the province to standardize that. Obviously we're in a relatively small province when it comes to population and most of us knew each other so that most of the lab, the managers of the laboratories, pathologists would know each other across the province so they may have worked together in terms of doing this. But most of this would be left to a regional site, if you had that information that you'd be--it would be part of your, I guess, responsibility to ensure that these things are done properly. So this would devolve--or go down to the manager of the laboratory along with the pathologists, perhaps, in terms of making sure these things were done on a standard approach.

THE COMMISSIONER:

Q. So do I--the bottom line is there was nobody in a position to require that it be done, it was up to those who were within the regions to make the effort to come to some kind of a

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consensus to do it?

DR. ALTEEN:

A. I think so. I mean, up to that point in time I don't think anybody, even at this point in time perhaps has the authority or the wherewithal to tell someone that you must do A, B or C as a regional health authority. Now again, most times the people worked--I mean, it's a small province and people work together in terms of standardizing those things, but I don't think that anybody had that responsibility or, again, the authority to do it.

COFFEY, Q.C.:

Q. Doctor, there's a reference here to "Need dedicated lab staff doing this immunohistochemistry." You would have understood that would be in St. John's?

DR. ALTEEN:

A. Correct.

COFFEY, Q.C.:

Q. Okay. "Pathology assistants to prepare specimens." Are there any pathology, or at least while you were VP Medical, was there any thought given to having pathology assistant or

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assistants in Grand Falls or Gander?
DR. ALTEEN:
A. Again, I think at one time we probably did have a pathology assistant. Now, again, the titles may be different in that, but we had somebody working in the pathology area that was not a lab technologist, per se. So I don't know if that's the same individuals we're talking about, but certainly there may have been people out in the system already that were doing some work in this way.
COFFEY, Q.C.:
Q. And "Sixty slides to go out from St. John's to Toronto from Central."
DR. ALTEEN:
A. "West Health Corporation."
COFFEY, Q.C.:
Q. "West Health Corp," which would be Grand Falls, in effect?
DR. ALTEEN:
A. Correct.
COFFEY, Q.C.:
Q. And "Will get report from the Health Care Corporation, St. John's from Mount Sinai." In other words, I take it you understood that the

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Mount Sinai's retest results would come back through the Health Care Corporation?
DR. ALTEEN:
A. Yeah.
COFFEY, Q.C.:
Q. To yourself. "327 send mid August. 142 reported." That would be, I take it, to date then?
DR. ALTEEN:
A. Correct.
COFFEY, Q.C.:
Q. And "Good turnaround times for the new cases." Central's new cases at this point were being done in Mount Sinai?
DR. ALTEEN:
A. Correct.
COFFEY, Q.C.:
Q. And, Doctor, I'll ask you now while I'm on it, I appreciate you're not VP Medical now, but up to the time you left that position Mount Sinai continued t do the current ER/PR cases?
DR. ALTEEN:
A. That's correct. And, in fact, I had a phone call to Dr. Dalton yesterday and we are still doing the testing at Mount Sinai.

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COFFEY, Q.C.:
Q. Okay, Mount Sinai. And, Doctor, while you were VP Medical in Central, was there ever any discussion about resuming retesting or testing for ER/PR in St. John's? This would be toward the end of your time.
DR. ALTEEN:
A. Yeah. Again, I recall some conversation, it was probably again a teleconference, where St. John's may have done the retesting, the verification, their work through with the various players from outside the province to ensure that they were up to whatever standards, and a question was raised in terms of doing that. But I think for some of us, and I remember having a conversation at some point with, probably with Dr. Jenkins, is that we had--I guess the pathologists had to be happy at our various sites, that they were content with having that completed back in St. John's. And where they were content with where it was being done, they wanted to continue that for the present time and it's continued, I'm assuming, up until now.
COFFEY, Q.C.:

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Q. Here, Doctor, you've written "360 cases per year breast cancer." I take it and then there's a listing, a breakdown from 1997, '98, '99, 2000, 2001, 2002. And perhaps '03 is cut off because '04 is over here to the side.
DR. ALTEEN:
A. Right.
COFFEY, Q.C.:
Q. So you had listed, somebody at least, had listed out the total number of cases per year at that point, or known to that point in time?
DR. ALTEEN:
A. Correct.
COFFEY, Q.C.:
Q. For various years across the province?
DR. ALTEEN:
A. Correct.
COFFEY, Q.C.:
Q. That information would have come from Eastern Health, I take it?
DR. ALTEEN:
A. Eastern Health, yes.
COFFEY, Q.C.:
Q. Doctor, on that point as a general proposition, you know, speaking from the

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perspective of the VP Medical Services for Central Health Authority in 2005 and 2006 and for that matter in '07, who was, from your perspective, taking the lead or responsible for taking the lead in this? From your, you know, you're sitting in Central Newfoundland and -

DR. ALTEEN:

A. From my perspective?

COFFEY, Q.C.:

Q. Yes.

DR. ALTEEN:

A. Probably myself.

COFFEY, Q.C.:

Q. Within your own organization?

DR. ALTEEN:

A. Within the organization and trying to facilitate the coordination, again, our emphasis around collecting the right patient information, again, making sure we hadn't missed anybody, getting this information out and then what's the process once we get back in terms of discussing with patients, the ones that had--certainly we've had conversation provincially around how those things were

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going to approach with people who have changed and that. But the big thing that we were stuck on initially was, again, collecting the right information and capturing everybody.

COFFEY, Q.C.:

Q. And, Doctor, within the province who was responsible, from your perspective. I mean, I take you would accept responsibility on behalf of Central, but who were you looking to, if anyone, to take the lead on this overall?

DR. ALTEEN:

A. In terms of somebody taking the lead for the whole province, Eastern Health most of the times had driven that. And certainly as medical directors at this point in time there were only four medical directors in the province, we met on a fairly regular basis and Dr. Williams certainly would give us updates on where things were with this issue from the Eastern Health perspective. But in terms of who took the lead on this provincially, I mean, my assumption that because most--again, the testing or the preparation of these slides and the immunohistochemistry was done in St. John's, so it was their, it was their

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laboratory test that was being done. The interpretation obviously was done at other sites.

COFFEY, Q.C.:

Q. And, Doctor, if I could, go again, please, Registrar, to Exhibit P-2352, please? Now, Doctor, I've gone a couple of days ahead of this in your notes, but to--looking at this exhibit toward the bottom of the first page there's an e-mail from Heather Predham, September 29th, 2005 to Susan Sullivan and J. Budgell at Central West Health Care, or Health Corporation.

DR. ALTEEN:

A. Judy Budgell was--Susan Sullivan, I'm not sure who Susan Sullivan is.

COFFEY, Q.C.:

Q. But Ms. Budgell was whom?

DR. ALTEEN:

A. Ms. Budgell was our utilization manager at the Central Health.

COFFEY, Q.C.:

Q. And regional utilization and risk manager, I take it, right here?

DR. ALTEEN:

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A. Yeah.

COFFEY, Q.C.:

Q. She's described as. And, Doctor, here in this e-mail Ms. Predham had said, "We have had an issue with our ER/PR testing. This has been an issue we've been dealing with all summer." And she goes on about that. Commissioner was referred to this a number of times before and this morning. And she concludes, Ms. Predham does, by saying, "Why am I telling you all of this? Well, since June Dr. Cook has requested that your two boards send in your blocks to be retested at Mount Sinai to no avail and I want to give you a heads up as we have to being to inform people individually about this issue but the Department of Health wants us to make a public statement. Since your laboratories have not responded yet to our request, you may be asked about the reasons why. What do you think?" And then, Doctor, Ms. Budgell e-mails you on the Monday, October 3rd saying, "Larry, this needs to be discussed." That is Ms. Budgell's--I'm sorry, Ms. Predham's e-mail. And then Dr. Dalton advises Ms. Budgell about the then current status of the matter from his

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perspective in terms of preparing the blocks to be sent to St. John's or that they'd already been sent. And she then, of course, Ms. Budgell then forwarded the whole of those list of e-mails to yourself. So I take it then that Ms. Predham's heads up, as it were, that this is about to go public, potentially, because the department was pressing to make a public announcement, there make a public statement on September 29th, occasioned the reply here as of October 3rd from Dr. Dalton setting out the then status of the matter from Central, Grand Fall's perspective? That would be -

DR. ALTEEN:

A. Correct.

COFFEY, Q.C.:

Q. - accurate? If we could look, please, then at Exhibit P-2900? Now, Doctor, this is a series of e-mails on, again, first of them on this exhibit is the September 29th one from Ms. Predham. And on October 3rd Ms. Budgell advised Ms. Predham that she had spoken to yourself and you're aware of the issue and has been in conversation with Bob Williams as of

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this weekend. "It will be discussed today. Thanks for the information." Do you recall the conversation with Bob Williams of that weekend?

DR. ALTEEN:

A. Specifically again, there's some vague recollection of that. Again, each knew each other in terms of medical directors. I do recall having a conversation with him, because again, I was a little bothered by that e-mail suggesting that we weren't doing things. And my conversation, as I recall, and again, I can't get into specifics, I can't recall the specifics, but generally was around the fact that usually when Eastern needed certain things done, but this may be related to bed utilization and transferring patients to a whole bunch of things, we usually try and comply if we can. I was a little frustrated that we had--and I had been brief by Dr. Dalton that all this stuff had occurred and it had been sent off and I get an e-mail saying that it's not, you're saying, where is this coming from. And that, you know, and again, and I think I responded to Heather at some

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point -

COFFEY, Q.C.:

Q. Yes, we'll see that in a moment. So at the same time then, Doctor, October 3rd, Ms. Predham is e-mailing again Ms. Budgell, saying "The Independent ran a story on Sunday, NTV are doing a story tonight, have to get in contact with all of you about communicating with the surgeons later today or tomorrow. I'll send you something on what we are doing in case you want to do something similar", and, of course, Ms. Budgell forwards that on to you as well the same day.

DR. ALTEEN:

A. Uh-hm.

COFFEY, Q.C.:

Q. And then on the same day, same morning, in fact, you wrote to Ms. Predham saying, "I wanted to respond to your e-mail to Judy regarding our response to Dr. Cook's request. For the record, we have responded to his verbal request in June within two weeks, and the September 6th written request within three weeks. This I feel is a quite adequate turnaround time, particularly in view of the

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fact that it will take months for these specimens to be processed in Mount Sinai and a report available to us. I feel the last sentence in your e-mail is not helpful to any of us in this trying time. I've had extensive discussions with Dr. Williams recently regarding this, and one of our pathologists, Dr. Maurice Dalton, has been communicating with Dr. Cook personally. As mentioned, we always try to comply with requests from your facility in a timely manner. Thanks for listening". So I take it, this is your comment to express your views to Ms. Predham at the time?

DR. ALTEEN:

A. Yes, correct.

COFFEY, Q.C.:

Q. Doctor, what about Gander at the time, what was the situation in Gander, do you know?

DR. ALTEEN:

A. Again specifics, no, I don't know, but Gander in my understanding was complying and sending their specimens out in an appropriate time as well.

COFFEY, Q.C.:

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Q. Doctor, in terms of then at that point, and I appreciate Gander and Grand Falls had only in theory merged back on April 1st, 2005 -

DR. ALTEEN:

A. Right.

COFFEY, Q.C.:

Q. Int one board. In a practical way, who was overseeing the response by the hospital in Gander? I mean, you were doing it in Grand Falls?

DR. ALTEEN:

A. Again I'm going to think that perhaps Betty Ford was.

COFFEY, Q.C.:

Q. Oh, Ms. Ford, that was Ms. Ford?

DR. ALTEEN:

A. I think so.

COFFEY, Q.C.:

Q. So she was kind of doing parallel -

DR. ALTEEN:

A. She was overseeing that and we were sort of communicating back and forth, but making sure that we're doing basically the same thing on both sides of our region, and she was again the CEO, she was probably one of the staple

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people that had been around Gander for a period of time, knew the laboratory, and I think facilitated bringing some staff together to get these things done.

THE COMMISSIONER:

Q. Doctor, before you leave this e-mail, I'm going to butt in again. Dr. Alteen, you say four lines down, "I feel that this is a quite appropriate turnaround time, particularly in view of the fact that it will take months for these specimens to be processed in Mount Sinai and report available to us". Had anyone talked to you about the turnaround time out of Mount Sinai, and if so, who, and what did they say?

DR. ALTEEN:

A. It may have been Dr. Dalton that may have provided me some information. Again I think we already at that point in time had some information in terms of specimens that were returned. So many sent out and then again, there's some recall now, that we just went through 100 and some odd that were back. These things were taking time, and again I-- certainly Dr. Williams may have provided me

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some information as well. Generally most of my conversation would have been with Dr. Dalton in terms of the amount of time it was taking to get specimen results back and that.

THE COMMISSIONER:

Q. Thank you.

COFFEY, Q.C.:

Q. Doctor, if we could look, please, at Exhibit P-2903. Doctor, this is a letter dated October 4th, 2005. It's from Dr. Paul Gardiner, Medical Director at the Bliss Murphy Cancer Centre. It's addressed to "Dear Colleague", which is really the physicians of Newfoundland.

DR. ALTEEN:

A. Correct.

COFFEY, Q.C.:

Q. Advising them about the ER/PR matter, and do you recognize the handwriting here?

DR. ALTEEN:

A. That's mine.

COFFEY, Q.C.:

Q. And you've noted here, received October 7th, 2005, copied to Drs. Dobbin, Heneghan, O'Driscoll, Blackwood, Hagee, Cox, Barnhill

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and -

DR. ALTEEN:

A. Naijfi.

COFFEY, Q.C.:

Q. Naijfi.

DR. ALTEEN:

A. Who was the general surgeons in our region, both sides.

COFFEY, Q.C.:

Q. So both sides of the region?

DR. ALTEEN:

A. Correct.

COFFEY, Q.C.:

Q. And this was your effort to ensure that Dr. Gardiner's message got out to the people concerned?

DR. ALTEEN:

A. That's right. They may have potentially have already had that from Dr. Gardiner himself, but I was making sure that they had a copy from me, and again during--I think during this whole process, there would have been communications going on between the various physicians as well.

COFFEY, Q.C.

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Q. Exhibit P-0613, please. Doctor, this is a series of e-mails, but one of them is October 3rd, 2005, e-mail from yourself to Ms. Predham that I just took you through.

DR. ALTEEN:

A. Right.

COFFEY, Q.C.:

Q. She then responded to you the next day, October 4th, saying, "Please understand I did not intend my e-mail as anything, but a heads up. I was of the understanding, obviously incorrectly, that your area had not responded to Dr. Cook's request. When I was briefing our insurer, they asked if I would mention this to the risk managers in the two authorities, yours and another. As you can appreciate, this situation has immense potential from the insurer's point of view and they are concerned that any miscommunication could add to it. This is a trying time, a lot of people involved in recording any activities and information, and I obviously made a mistake. My only intent was to be helpful, and I apologize if you have taken any offense", and there's--if we could look then

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at Exhibit P-1951, please. Doctor, there's a response by yourself, October 4th, 2005, to Ms. Predham saying, "I do appreciate the seriousness of this issue, and I don't think I was offended as much as frustrated after reviewing the charts of the 80 plus cases from the old central west side of our region last night, and then after reading your e-mail, probably just the lateness of the day. As mentioned, this is a significant issue for all of us and I want to avoid placing blame on people versus just trying to sort this out for the benefit of our patients/communities. I appreciate your reply". So, Doctor, that is just one simple e-mail exchange. Were there any similar ones that you recall afterward?

DR. ALTEEN:

A. Not that I recall.

COFFEY, Q.C.:

Q. That was it.

DR. ALTEEN:

A. Yeah.

COFFEY, Q.C.:

Q. That was your first addressing what you thought perhaps was a--perhaps an unfair

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suggestion that you hadn't responded, your organization?

DR. ALTEEN:

A. Well, first off, I mean, I was made aware by Dr. Dalton, and certainly made aware by Dr. Gallagher, that we had sent out our slides and that. So when someone suggests to us that we weren't, I mean, you're just frustrated at the time, I guess, and at the end of the day, I mean, that's not the important thing, having the patients looked after was more important.

COFFEY, Q.C.:

Q. Doctor, if we could look, please, at Exhibit P-2904. Doctor, this is again a continuation of that series of e-mails. Ms. Predham responded to you on October 5th. She says, "Thanks for your e-mail". She notes, "This has taken a majority of my waking hours since June, I think, and I totally appreciate your frustration". She goes on to say, "I need your advice, though. I was going through the database yesterday evening, and after the conference call yesterday, I noticed that some of the people whose samples we have sent away have addresses in other regions, such as Grand

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Falls, Labrador, Deer Lake. Would it be of any benefit to you and the other regions if I sent you their names, other demographics, and sample dates. We did do the test, but do you think there might be duplication - I'm sorry, may be duplication of effort. I would appreciate your thoughts". Do you recall how that worked itself out afterward, Doctor?

DR. ALTEEN:

A. I did at some point, and again timing-wise, I can't be specific, but I, in fact, met with Heather Predham at her office down at the old Miller Centre on one, perhaps two occasions, to go back and compare databases and again make sure we have--again you're not counting twice, make sure you have everybody, you identified people appropriately, you got the right information in. So in terms of--yes, there was work done in terms of sharing information between the organizations.

COFFEY, Q.C.:

Q. Exhibit P-1955. Doctor, this is an e-mail from Stephanie Power, October 5th, 2005, to Kelly Keats and copied to yourself. The subject is a briefing note. So who's Kelly

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Keats?
DR. ALTEEN:
A. Kelly Keats was my secretary at the time.
COFFEY, Q.C.:
Q. And Ms. Power was working -
DR. ALTEEN:
A. She was communications.
COFFEY, Q.C.:
Q. Communications, and she writes, "Attached is a briefing note that I prepared for Dave and Larry. They may need to distribute this to some stakeholders in the near future. However, I know that Larry will want to make several changes to it before that occurs. As I will be away for the next week, I'm forwarding this to you so that you will be able to do so in my absence. Thank you". Then this is the then briefing note from Ms. Power, approved by her, October 4th, 2005. Doctor, how was it that Ms. Power came to prepare a briefing note for yourself and Mr. Diamond?
DR. ALTEEN:
A. Again I don't know that I can give you a lot of information as to how that came to be. She

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sat in on most of the meetings or teleconferences that we would have had, would have compiled the data, and she was somebody that probably would put all this information together for us that we can then look at that and make some edits rather than having to do it ourselves, but again it's more of an information assurance that we have the right--captured the right information.
COFFEY, Q.C.:
Q. Doctor, briefing note, the idea of something labelled a briefing note, in this particular case it's issue, ER/PR receptor tests resulting in false negatives.
DR. ALTEEN:
A. Uh-hm.
COFFEY, Q.C.:
Q. And it's got a background, current status, key message, and then other. How often in your job as VP Medical would you get a briefing note in this sort of style?
DR. ALTEEN:
A. Not very often. Again up until we had communication people, I would never see a briefing note as in this style, as you

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mentioned. Again when you have communication people involved, they have a background in terms of how you do these things, and again, I guess, one was trying to be consistent that if we had to do any discussions with the media, we'd make sure that we were talking from basically the same page in terms of understanding information to be able to present that in a fair and reasonable manner to people.
COFFEY, Q.C.:
Q. Doctor, at that time in the fall of 2005, from Central Health's perspective, if anyone was going to speak to the media, who would it have been?
DR. ALTEEN:
A. It would probably be me.
COFFEY, Q.C.:
Q. And did you, in fact, end up speaking to the media in the fall of 2005 that you recall?
DR. ALTEEN:
A. I have never spoken to the media about this ever.
COFFEY, Q.C.:
Q. Were you ever asked to?

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DR. ALTEEN:
A. Never.
COFFEY, Q.C.:
Q. The media never did contact yourself or Central to your knowledge?
DR. ALTEEN:
A. Certainly not myself personally, and no one that would have come to me in terms of asking about it.
COFFEY, Q.C.:
Q. I take it, though, Doctor, the idea of the briefing note would be that if it turned out that there was a request for media interaction, some kind of media interview, and you or the--yourself or Mr. Diamond was the person who was going to do so, that this would form at least potentially part of the basis for the interview?
DR. ALTEEN:
A. Yes, and it was her--I mean, it was her written briefing notes. Obviously, her comments about "that I may want to make changes to that" are based that she may have had some--if some errors in that that I would not--that I would want rectified, I guess.

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COFFEY, Q.C.:
Q. Doctor, here looking down through the background, it mirrors--replicates much of, or at least other briefing notes the Commissioner as seen in other exhibits, or other style briefing notes. The last paragraph here says under background, "Additionally, on September 6th, 2005, a list of all patients that tested negative for ER/PR receptors for the period May, 1997, and March, 2004, was compiled and sent with the corresponding specimens to Eastern Health. Combined, these lists include 88 patients from CNRHC, and 62 patients from JPMH", which I take it is 88 from Grand Falls -
DR. ALTEEN:
A. Grand Falls.
COFFEY, Q.C.:
Q. And 62 from Gander?
DR. ALTEEN:
A. Correct.
COFFEY, Q.C.:
Q. Doctor, here under current status is a reference to external pathology and technical reviews have been completed on the Ventana

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machine. These reports are pending. Doctor, and I appreciate that--well, first of all, do you know if, in fact, there were ever any external pathology and technical reviews on the Ventana?
DR. ALTEEN:
A. Specifically, I can't say, no.
COFFEY, Q.C.:
Q. Did you ever ask Eastern Health or anybody from Eastern Health for the external pathology reviews or technical reviews or results?
DR. ALTEEN:
A. No.
COFFEY, Q.C.:
Q. Why not?
DR. ALTEEN:
A. I guess, from my perspective as a medical director, we would have to rely on Eastern Health as being the experts when it came to the immunohistochemistry. We don't do this in our laboratory in a general sense. Certainly getting that information, I mean, you're sitting down and saying who's going to sit down and review all this and interpret that and say does it make sense--obviously the

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pathologists may have been involved in that, but if you're not doing this on a regular basis, so, I mean, Eastern Health I would have thought would have had to get that information back, review that, and present it to us and it might have been through Dr. Williams at our medical director's meeting or whatever saying that they have things back up to standard, but would the thought have crossed my mind to get those repots and have somebody for us externally review that and say does it meet, no, it didn't cross my mind at the time.
COFFEY, Q.C.:
Q. At the time, Doctor, did you have any understanding that these were somehow confidential, peer review matters at that time?
DR. ALTEEN:
A. I would not have had any knowledge one way or the other, no.
THE COMMISSIONER:
Q. Okay, Mr. Coffey. Dr. Alteen, would your attitude towards the reviews have been any different had you had any knowledge that activities within your own organization might

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be the subject of the review?
DR. ALTEEN:
A. Certainly.
THE COMMISSIONER:
Q. Thank you.
COFFEY, Q.C.:
Q. So if you had known that the reviews might reflect upon, arguably reflect upon something going on in your own organization.
DR. ALTEEN:
A. Well I mean, I would have thought at that point that we deserve to have a copy of a report, because I mean, at that point in time if we don't get that, how do you make any changes if you don't have the knowledge.
COFFEY, Q.C.:
Q. And we will be returning to this fixation matter toward the end of your evidence, Doctor. Here, Doctor, Ms. Power has said "results are arriving at the Health Sciences Centre in batches, although none of the retests today have been for patients of Central Health, it is predicted that there may be a 25 percent conversion rate. This means that approximately 38 patients of Central

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Health will need to be contacted to and told that the result of their initial test was incorrect. They tested negative but were in fact positive. For many patients this will mean that they underwent a harsher more evasive course of treatment chemotherapy unnecessarily." That information, Doctor, where would that have come from?

DR. ALTEEN:

A. I'm not sure whether Stephanie picked that up as part of the information she had from listening to teleconferences and I can't say specifically because, again, we did not talk to the media about this, but I don't know and again, whether I did edit some of this after, but certainly I don't think I would have worded it specifically the same way.

COFFEY, Q.C.:

Q. If it had come to that.

DR. ALTEEN:

A. If it had come to that, we probably would have made some changes on how that was presented.

COFFEY, Q.C.:

Q. What would you have, you anticipate you would -

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DR. ALTEEN:

A. Again, just looking at this point in time, I certainly would have probably said for some patients, rather than many patients because I don't know that I could at that point in time say who would have undergone chemotherapy, because it's not all based on ER/PR status in terms of chemotherapy and that, so you would have to be, you know, more general. I don't think that I would, again, that I would put in the word "many" just looking at that from a view point right now.

COFFEY, Q.C.:

Q. Doctor, we go to the next page, the final page of this, there's key messages and the idea of key messages, up to that point in your career, had you encountered key messages?

DR. ALTEEN:

A. Again, specifically and it's hard to go back, I mean key messages, yes, over time I would have, with communication with people and one of our VPs at the time who was, who had had the communication side of the organization responsibility, this was something that they were used to talking about. So at some point,

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but whether it was then, before that, after that, I don't recall specifically, but yes, key messages would have come up as when you're doing briefings with the media, there are key points that you want to get out to people.

COFFEY, Q.C.:

Q. And here under key messages, the fourth bullet notes, "Once all patients have been identified, general practitioners and senior medical officers will contact those clients." See that?

DR. ALTEEN:

A. Yes.

COFFEY, Q.C.:

Q. Now by that point in time, this would be the beginning of October, 2005, Central, at least in Grand Falls, had identified all the hundred, well the hundred and fifty, Central and Gander.

DR. ALTEEN:

A. And Gander.

COFFEY, Q.C.:

Q. Had identified about a hundred and fifty patients whose samples were going to be retested. Were any steps taken to notify the

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GPs and senior medical officers as to who those 150 patients were, so that they could be identified? I mean, were any steps actually taken to do this?

DR. ALTEEN:

A. I, again, the recollection of this, we had had a number of conversations and meetings around how this was going to be communicated to people, whether it's general practitioners, whether Eastern Health was going to do all this, whether we were doing part of this. I mean, it changed over time and while at one point it may have been thought that perhaps we just send this information to the general practitioner and let them know, there was some concerns raised about this because obviously a patient who may have been seen in the past and had Doctor A as their, particularly their family practitioner, with the turn over particularly in our rural sites, Dr. A was probably long gone and how do you make sure that you have the right person identified who is going to do this. And if I'm getting that back on a patient of mine who was treated by somebody else in the past, I mean, whose

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responsibility is it to do all of that? It's like the way we were going to do this perhaps changed over time.

COFFEY, Q.C.:

Q. And certainly that didn't end up being done?

DR. ALTEEN:

A. No.

COFFEY, Q.C.:

Q. The fifth bullet under "key messages", is "It is anticipated that retesting results from Mount Sinai may not be available for four to six months." Now this is the beginning of October, 2005. Had you seen any such estimate and you would have received this at the time?

DR. ALTEEN:

A. Correct.

COFFEY, Q.C.:

Q. On October 5th, this briefing note from Ms. Power.

DR. ALTEEN:

A. Right.

COFFEY, Q.C.:

Q. Did that strike you as, you know, outside the ballpark at the time or -

DR. ALTEEN:

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A. I don't think so, because I think again and I have to say again it's really difficult to go back and try and keep all these dates and timings and that straight, because obviously the numbers changed over time. But, I mean, we were made aware I think that Mount Sinai may have been, again, they were another organization trying to run their own programs, as well as trying to do this extra work, that things may have been slowing down with them. But as I look at it now, would I look at that as being outside what we were expecting? Probably not.

COFFEY, Q.C.:

Q. Because, Doctor, this is the beginning of October, if you actually do the arithmetic, October, November, December, January, in fact towards the end of January that the results are forthcoming.

DR. ALTEEN:

A. Right, so like I said, when you look at it now, you say yeah, that was probably what we were talking about, but at that point in time would that have struck me as being outside of what we had talked about at that time? I don't think so.

COFFEY, Q.C.:

Q. And what I'm getting at here, Doctor, is you weren't under, at that time, the beginning of October, you weren't thinking, look, the results will be back in three weeks, what's she talking about, four to six months?

DR. ALTEEN:

A. No, no, not at all.

COFFEY, Q.C.:

Q. In the final bullet under "key messages" Doctor, is "All patients whose test results show a variance will be contacted at the earliest possible opportunity." So, Doctor, at that point in time, this is again the beginning of October of 2005, what did you envisage would happen when the results came back?

DR. ALTEEN:

A. Again, trying to remember specifically what we were talking about in October, early October of '05 verses what we did after, but the recollection was initially that Eastern was going to take the lead and make the notification, informing people both that they

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may have been tested and that their test results have come back and here are the results, but over time obviously that changed. So back then I can't say which way we were actually discussing at that point in time.

COFFEY, Q.C.:

Q. And here, Doctor, under "other", the category of "other", Ms. Power as written, "Eastern Health has been in contact with several hospitals across the country that previously used the DAKO system. None had identified this issue, however upon retesting of their own specimens, many have also encountered a similar conversion rate. As a result, they are also in the process of beginning a retesting at other laboratories." Now did you at the time have any reason to believe that that was so?

DR. ALTEEN:

A. Again, timing wise, I can't say specifically, but certainly over a period of time and conversations specifically with Dr. Williams in terms of giving us briefings on teleconferences, as well as on the medical director's meetings, it was my understanding

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that this is just the tip of the iceberg across the country and possibly across North America in terms of some of the results having to be retested.

COFFEY, Q.C.:

Q. And here, this attributes it to the usage of the DAKO system.

DR. ALTEEN:

A. Correct.

COFFEY, Q.C.:

Q. Doctor, at that point in the beginning of October, 2005, did you understand that Mount Sinai which was doing the retesting, was in fact utilizing that very DAKO system?

DR. ALTEEN:

A. I can't say I know, no.

COFFEY, Q.C.:

Q. And when I say that, that's what we've been told generally that if it's not the exact same machine, it was one very close to it, so -

DR. ALTEEN:

A. I can't say that I -

COFFEY, Q.C.:

Q. Do you think if that had been brought home to you by Dr. Williams, look, Mount Sinai, where

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we're sending all these is using the same machine that we got rid of a year ago, would you have remembered that, do you think?

DR. ALTEEN:

A. I think I would have remembered that and certainly might have asked the question, you know, well how reliable is that if it's not reliable here, why is it reliable there?

COFFEY, Q.C.:

Q. And finally then, Doctor, "as there are very few specialized laboratories in the country, the increased demand for retesting will likely make for a lengthy waiting period" and I take it, well wherever else, whether there was any other retesting elsewhere, the shear demand out of St. John's, you understood over time did require or delayed Mount Sinai's ability to respond?

DR. ALTEEN:

A. Yes.

THE COMMISSIONER:

Q. Mr. Coffey, it's near the break time for the day, so wherever there's a convenient spot.

COFFEY, Q.C.:

Q. Commissioner, if we could then come back in

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the morning and I'll take you to October 7th, Doctor, thank you.

DR. ALTEEN:

A. Great, thank you.

THE COMMISSIONER:

Q. All right then, 9:30, thank you.

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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 22nd day of September, 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 22nd day of September, A.D., 2008

Judy Moss

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