

COMMISSION OF INQUIRY
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

July 22, 2008

Appearances:

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

- Jackie Brazil Her Majesty in Right of NL

- Peter Browne/Jane Hennebury Doctors Kara Laing et al

- Daniel Simmons Eastern Regional Integrated
. Health Authority

- Pamela Taylor. Members of the Breast Cancer
. Testing Class Action

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

LIST OF EXHIBITS

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- MR. BARRY DYER - RESUMES THE STAND

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- 1 THE COMMISSIONER:
- 2 Q. Please be seated. Ms. Chaytor.
- 3 MR. BARRY DYER, RESUMES STAND, EXAMINATION BY SANDRA
- 4 CHAYTOR, Q.C. (CONT'D)
- 5 CHAYTOR, Q.C.:
- 6 Q. Thank you, Commissioner. Good morning, Mr.
- 7 Dyer.
- 8 MR. DYER:
- 9 A. Good morning, Ms. Chaytor.
- 10 CHAYTOR, Q.C.:
- 11 Q. If we could have, please, P-2322? Mr. Dyer,
- 12 this document is entitled Performance Goals
- 13 and Objectives 2003-2004 for the division
- 14 Anatomical Pathology, Barry Dyer, and at the
- 15 seventh page of the exhibit we see Mr.
- 16 Gulliver's signature dated June 2004 and your
- 17 signature, June 2004. How are--first of all,
- 18 how are the goals and objectives set?
- 19 MR. DYER:
- 20 A. What we do as a group that the management team
- 21 will sit down and identify four or five major
- 22 goals that the program should try to achieve.
- 23 CHAYTOR, Q.C.:
- 24 Q. Okay, so who would sit down with you to do
- 25 that?

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1 MR. DYER:
 2 A. The actual goals themselves?
 3 CHAYTOR, Q.C.:
 4 Q. Yes.
 5 MR. DYER:
 6 A. I think the management team did.
 7 CHAYTOR, Q.C.:
 8 Q. And who would that be?
 9 MR. DYER:
 10 A. That would be like all the managers of the
 11 Laboratory Medicine program.
 12 CHAYTOR, Q.C.:
 13 Q. So all the technical managers?
 14 MR. DYER:
 15 A. All the technical managers and the director.
 16 CHAYTOR, Q.C.:
 17 Q. Mr. Gulliver?
 18 MR. DYER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. And would you--would any of the clinical
 22 people of the Laboratory Medicine program be
 23 included in that?
 24 MR. DYER:
 25 A. I'm not sure if Mr. Gulliver actually would

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1 take it up to the next level to approve the
 2 goals before we would actually put a plan in
 3 place to achieve them. You'd have to talk to
 4 -
 5 CHAYTOR, Q.C.:
 6 Q. So you're not sure how far up it has to go to
 7 be approved?
 8 MR. DYER:
 9 A. Correct.
 10 CHAYTOR, Q.C.:
 11 Q. So in terms of making sure what you would plan
 12 as your goals and objectives are in fact in
 13 line with the rest of the program?
 14 MR. DYER:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. That would be done by Mr. Gulliver. If that
 18 needed to be done, it would be done by Mr.
 19 Gulliver and he would take it to either the
 20 clinical chief or beyond that?
 21 MR. DYER:
 22 A. For actually writing the actual goals.
 23 CHAYTOR, Q.C.:
 24 Q. For setting your goals and objectives.
 25 MR. DYER:

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1 A. For setting the actual four or five goals and
 2 objectives, yes.
 3 CHAYTOR, Q.C.:
 4 Q. Yes, okay. So from your point of view, you
 5 sit around with the other managers of the
 6 technical branch of the program and Mr.
 7 Gulliver, okay, and whether or not it has to
 8 get approved beyond that, we'll talk to Mr.
 9 Gulliver about that.
 10 MR. DYER:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. Okay. So what time of year then would these
 14 goals and objectives be set? We see here a
 15 list of goals and objectives and then we have
 16 a time frame, April 1st 2003 to September
 17 30th, 2003, and then the second time frame,
 18 October 1, 2003 through March 31st, 2004. So
 19 when would you actually sit around and set
 20 your goals and objectives?
 21 MR. DYER:
 22 A. So what we did first was once the goals and
 23 objectives were identified, I sat down with
 24 the clinical chief and the site chief to
 25 formulate a plan as to how we would actually

Page 8

1 achieve these goals.
 2 CHAYTOR, Q.C.:
 3 Q. Okay. So there is consultation by yourself
 4 with the clinical chief and the site chief?
 5 MR. DYER:
 6 A. A plan how to achieve them, yes.
 7 CHAYTOR, Q.C.:
 8 Q. Okay. So once they're actually achieved--or
 9 actually set -
 10 MR. DYER:
 11 A. They're identified.
 12 CHAYTOR, Q.C.:
 13 Q. - how you're going to actually implement that
 14 or achieve those goals and objectives is
 15 discussed then with the clinical people?
 16 MR. DYER:
 17 A. Done as each individual group.
 18 CHAYTOR, Q.C.:
 19 Q. Okay. Sorry, so go ahead.
 20 MR. DYER:
 21 A. So then what we would do is we would set a
 22 plan of how we would do it and then every six
 23 months, we do updates to see where we are.
 24 CHAYTOR, Q.C.:
 25 Q. Okay, and did you ever have the experience of

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1 sitting down with the clinical people, the
 2 clinical chief and/or the site chief and
 3 anybody having objection to what your goals
 4 and objectives were?
 5 MR. DYER:
 6 A. I think these goals and objectives were set
 7 through our planning day and I think like I
 8 said yesterday, yes, some of the goals and
 9 objectives weren't totally agreed by all.
 10 CHAYTOR, Q.C.:
 11 Q. So for example, the consolidation issue that
 12 we discussed yesterday for the technical
 13 staff?
 14 MR. DYER:
 15 A. Correct.
 16 CHAYTOR, Q.C.:
 17 Q. Okay. But nonetheless, that is part of your
 18 goals and objectives. So you may not have
 19 consensus on it, but you move forward with it
 20 in any event?
 21 MR. DYER:
 22 A. We would move forward with the anticipation of
 23 some kind of agreement later on.
 24 CHAYTOR, Q.C.:
 25 Q. And how do you come to the determination that

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1 it's okay to go forward even without
 2 consensus? Who has to agree for it to be your
 3 goal and your objective?
 4 MR. DYER:
 5 A. I think we all have to agree, at the end of
 6 the day.
 7 CHAYTOR, Q.C.:
 8 Q. So even if the--in this instance, the clinical
 9 chief was not in favour of technical
 10 consolidation, you were still able to move
 11 forward and include that as a goal and
 12 objective?
 13 MR. DYER:
 14 A. It would still be put on the agenda, yes.
 15 CHAYTOR, Q.C.:
 16 Q. And actually put on your -
 17 MR. DYER:
 18 A. On this goal, yes, it would.
 19 CHAYTOR, Q.C.:
 20 Q. Your goals and--performance goals and
 21 objectives for the year?
 22 MR. DYER:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. So basically, can the--so basically, from a--

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1 I'm just trying to get a sense of how the
 2 program was working because--and we'll talk
 3 some more about the whole management structure
 4 and it being two arms between the clinical and
 5 the technical side and I'm just trying to get
 6 a sense in terms of could the technical side
 7 of the laboratory medicine program set its own
 8 goals and objectives and continue on with that
 9 even in the face of the clinical chief not
 10 being in agreement with certain aspects of
 11 those goals?
 12 MR. DYER:
 13 A. My interpretation is we could actually the
 14 goals, but whether they would actually be
 15 completed could be another issue, and as in
 16 consolidation, that's what happened. Like I
 17 didn't--I don't think myself nor Mr. Gulliver
 18 had the power to make consolidation happen
 19 without an agreement from Dr. Cook.
 20 CHAYTOR, Q.C.:
 21 Q. Okay, and so if we look then, it says here
 22 your program vision, "to provide a
 23 comprehensive, timely, high quality service
 24 utilizing available technology and human
 25 resources in an efficient manner within

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1 existing financial capacity," and you spoke to
 2 us yesterday about the financial constraints
 3 under which you were working, and if we read
 4 this, in terms of what you're going to
 5 provide, being "comprehensive, timely, high
 6 quality service," you're going to do that
 7 "utilizing available technology and human
 8 resources and in an efficient manner within
 9 the existing financial capacity." So I take
 10 it there's to be no increase in your funding
 11 for the year?
 12 MR. DYER:
 13 A. That was my interpretation.
 14 CHAYTOR, Q.C.:
 15 Q. Okay, and then if we look at what the goals
 16 and objectives are, the first one is "to be
 17 benchmarked in the top quartile for
 18 productivity within Canada and capture NPC
 19 workload, update MIS guidelines." Perhaps you
 20 could tell us, what's that, "update MIS
 21 guidelines"?
 22 MR. DYER:
 23 A. MIS, that's management information systems
 24 guidelines. Laboratory medicine across the
 25 country, every single test that we perform is

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1 given a unit value and that unit value is used
 2 to determine how much or how many staff we
 3 should have.
 4 CHAYTOR, Q.C.:
 5 Q. Okay, and then the third bullet says "workload
 6 increase" and the fourth bullet is "reduce
 7 work hours." So you're going to increase the
 8 workload and do it in shorter time period?
 9 MR. DYER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, and that was the goal?
 13 MR. DYER:
 14 A. And that would be through technology.
 15 CHAYTOR, Q.C.:
 16 Q. Through updating your technology, and this is
 17 the time period, I take it, that you're
 18 bringing on or contemplating bringing on the
 19 Ventana system, in terms of IHC? I realize
 20 there's a lot more to your pathology lab, but
 21 that would be one piece of technology that
 22 came on.
 23 MR. DYER:
 24 A. That could help then, yes.
 25 CHAYTOR, Q.C.:

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1 Q. So for example, when we look over at October
 2 1st, 2003 to March 31st, 2004, you have
 3 "increased referral workload by expanding
 4 benchmark more and the start of HPV research
 5 project." Has that got anything to do with
 6 IHC?
 7 MR. DYER:
 8 A. HPV? HPV, human papillomavirus, that's to do
 9 with cytology.
 10 CHAYTOR, Q.C.:
 11 Q. What about the expanding benchmark, referral
 12 work by expanding benchmark?
 13 MR. DYER:
 14 A. Yes, that could be, yes.
 15 CHAYTOR, Q.C.:
 16 Q. Is that the Ventana system?
 17 MR. DYER:
 18 A. No, I don't think that's the Ventana system,
 19 "increase referral workload by expanding
 20 benchmark." No, I think you're correct. I
 21 think that is expanding the Benchmark, yes,
 22 because the Benchmark had capabilities to
 23 perform more testing, more different types of
 24 IHC testing like HER2/neu and F FISH, and SISH
 25 was then coming out also. So this system

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1 actually had the capability to do that, but we
 2 weren't doing it at the time.
 3 CHAYTOR, Q.C.:
 4 Q. Okay. So your first goal overall, your first
 5 goal is that you're going to increase
 6 productivity?
 7 MR. DYER:
 8 A. Yes, or maintain our productivity. We were--I
 9 think through the Hay report that came out -
 10 CHAYTOR, Q.C.:
 11 Q. Yes.
 12 MR. DYER:
 13 A. - benchmarks became important, and pathology
 14 lab, we were always extremely busy and we
 15 always--every indicator always showed
 16 pathology technically was in the top quartile
 17 in Canada every time.
 18 CHAYTOR, Q.C.:
 19 Q. Yes, and that's what your goal is, is to be
 20 benchmarked in the top quartile.
 21 MR. DYER:
 22 A. To stay there.
 23 CHAYTOR, Q.C.:
 24 Q. Yes, and then your second goal is "to provide
 25 the Health Care Corporation and/or the

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1 Province with a comprehensive lab service and
 2 also expand test menu to provide in-province
 3 testing." Now whose decision would that be in
 4 terms of what you're going to provide for the
 5 province and what you're going to expand?
 6 MR. DYER:
 7 A. That would have been the decision of the site
 8 chiefs and myself.
 9 CHAYTOR, Q.C.:
 10 Q. And the decision being here, it appears, to
 11 expand HER2/neu testing for all breast
 12 biopsies?
 13 MR. DYER:
 14 A. Yes.
 15 CHAYTOR, Q.C.:
 16 Q. To offer in-house FISH on all -
 17 MR. DYER:
 18 A. Two plus.
 19 CHAYTOR, Q.C.:
 20 Q. - two plus HER2/neus. Change current muscular
 21 dystrophy method and to develop extensive
 22 gross training program for senior
 23 technologists. So in terms of expanding the
 24 HER2/neu testing -
 25 MR. DYER:

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1 A. At the time, only ER/PR was routinely ordered.
 2 CHAYTOR, Q.C.:
 3 Q. Yes.
 4 MR. DYER:
 5 A. And I think the pathologists wanted to move
 6 forward with having HER2/neu as an equal part.
 7 CHAYTOR, Q.C.:
 8 Q. Okay, and I guess that's my question, who
 9 would be making that decision that this is a
 10 test that should be offered in the province
 11 and should be done through your laboratory?
 12 MR. DYER:
 13 A. HER2/neu is part of IHC and we perform IHC. I
 14 would imagine that must have come from one of
 15 the physicians. That wouldn't have been
 16 something I would have talked about.
 17 CHAYTOR, Q.C.:
 18 Q. And would there be any analysis done at the
 19 time to determine whether or not, for example,
 20 you have sufficient volumes to be offering the
 21 test?
 22 MR. DYER:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. There would have been?

Page 18

1 MR. DYER:
 2 A. There would have to be, yes.
 3 CHAYTOR, Q.C.:
 4 Q. Okay, and do you know whether or not there was
 5 analysis done as to whether or not--you're
 6 trying to do this within certain financial
 7 constraints, whether or not this was, in fact,
 8 a cost effective test to be offering?
 9 MR. DYER:
 10 A. Yes, we did do--well, what we did was--I don't
 11 know if you can say it's an analysis, but what
 12 we did, I think when it came to HER2/neu,
 13 again we were sending it out and they wanted
 14 them set up here. Oh, I'm sorry, I'm sorry.
 15 Yes, we were actually doing HER2/neu here.
 16 CHAYTOR, Q.C.:
 17 Q. You were doing HER2?
 18 MR. DYER:
 19 A. Yes, we were doing--but -
 20 CHAYTOR, Q.C.:
 21 Q. But this seems to be expanding it.
 22 MR. DYER:
 23 A. Right, we were doing them on orders that were
 24 being made, I believe either by the
 25 oncologists or by the physician, by the

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1 pathologist, and I believe it was the kit
 2 method that they were actually doing and so we
 3 had already been doing HER2/neu, I'm sorry,
 4 and the decision was, I think pathologists
 5 wanted it to be done on every single case. So
 6 -
 7 CHAYTOR, Q.C.:
 8 Q. Okay, and you're going--sorry go ahead.
 9 MR. DYER:
 10 A. So where we were running them anyway, the plan
 11 would be to move all to HER--move all patients
 12 onto HER2/neu.
 13 CHAYTOR, Q.C.:
 14 Q. And this was going to include, according to
 15 this, all breast biopsies as well?
 16 MR. DYER:
 17 A. What they meant was all breast biopsies that
 18 had a ER/PR ordered.
 19 CHAYTOR, Q.C.:
 20 Q. Yes. So presumably you weren't doing HER2/neu
 21 on the biopsies?
 22 MR. DYER:
 23 A. No, we weren't.
 24 CHAYTOR, Q.C.:
 25 Q. And this is also to offer in-house FISH, and

Page 20

1 were you already offering FISH?
 2 MR. DYER:
 3 A. No, we've never done FISH.
 4 CHAYTOR, Q.C.:
 5 Q. And you've never moved to that?
 6 MR. DYER:
 7 A. We've never moved to FISH. That's more of a--
 8 again, it's immunohistochemistry, but it's
 9 what we would call a probe and it's directly
 10 linked to the DNA, so it's a little more
 11 challenging again to do, and right now, what
 12 happens, I believe, with HER2/neu is that
 13 three plus is automatically positive; one and
 14 two, it's very--zero and one is very weak, but
 15 a two could be either a three or a one,
 16 they're not sure. So what we do is we
 17 actually confirm all of our twos on FISH. We
 18 send them away.
 19 CHAYTOR, Q.C.:
 20 Q. And I guess I'm just thinking why would you be
 21 looking to expand the work at the same time
 22 that you're looking at reducing hours and
 23 working within constrained financial
 24 circumstances?
 25 MR. DYER:

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1 A. Again, we were always persevering, trying to
 2 move forward. That was our goal was to always
 3 move--try to move the lab forward and do
 4 things that the pathologist felt we needed
 5 done in house. So FISH was always being sent
 6 away. I don't know if it took two or three
 7 weeks. So if we could actually offer it in
 8 house and read it quickly, it would be much
 9 quicker for the--it would add to the
 10 turnaround times.
 11 CHAYTOR, Q.C.:
 12 Q. So the turnaround times were seen as
 13 important?
 14 MR. DYER:
 15 A. Definitely.
 16 CHAYTOR, Q.C.:
 17 Q. Productivity levels?
 18 MR. DYER:
 19 A. Well, again, this wouldn't have been truly for
 20 productivity. This would increase our
 21 workload there for sure, yes.
 22 CHAYTOR, Q.C.:
 23 Q. Yes, yes, so in terms of moving forward and
 24 defining how you're moving forward, offering
 25 new -

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1 MR. DYER:
 2 A. Services.
 3 CHAYTOR, Q.C.:
 4 Q. - services is considered something good and
 5 something you should be aiming towards?
 6 MR. DYER:
 7 A. For sure, for sure.
 8 CHAYTOR, Q.C.:
 9 Q. And that's done regardless of the workload
 10 situation you find yourself in or the
 11 financial situation?
 12 MR. DYER:
 13 A. That's how it's done.
 14 CHAYTOR, Q.C.:
 15 Q. That's how it was done?
 16 MR. DYER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. And the third goal is to make available the
 20 most up-to-date laboratory technology ensuring
 21 that the Health Sciences--or sorry, the Health
 22 Care Corporation lab program is a leader in
 23 Canada, and the first bullet towards achieving
 24 that is technical consolidation of pathology
 25 staff, thereby utilizing current technology in

Page 23

1 a more efficient and expanded manner, and I
 2 take it that was your goal in terms of
 3 bringing everybody onto the one site?
 4 MR. DYER:
 5 A. Yes, and bringing over the technology.
 6 CHAYTOR, Q.C.:
 7 Q. The technology.
 8 MR. DYER:
 9 A. Because our stainers at the time, our routine
 10 stainers, for example, could do more than just
 11 a H & E. So you know, we had two large
 12 stainers. One could be doing H & E's all day
 13 and the other one could be doing dehydrations
 14 for special stains. Like we could just really
 15 organize things more efficiently.
 16 CHAYTOR, Q.C.:
 17 Q. Okay, and you have "acquire new technology for
 18 immunopathology, improving quality, efficiency
 19 and turnaround times."
 20 MR. DYER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. And under the first time frame, you then have
 24 "plan five-year reagent lease with existing
 25 operational resources. Tender is written" and

Page 24

1 then by the October through March 31st, 2004
 2 time frame, it's been completed. So that's
 3 your new Ventana Benchmark I take it?
 4 MR. DYER:
 5 A. Yes.
 6 CHAYTOR, Q.C.:
 7 Q. And then thirdly, you're going to make
 8 available the most--I'm sorry, still the same,
 9 third, that's your third goal?
 10 MR. DYER:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. And then there's other bullets as to how
 14 you're going to achieve that, to have the most
 15 up-to-date technology available. Fourthly,
 16 you're going--your goal is "to ensure that
 17 there is the proper number of qualified staff,
 18 the correct skill mix of staff and to utilize
 19 human resources in an efficient manner" and
 20 again the point about the technical
 21 consolidation to the Health Sciences thereby
 22 expanding pathology service, standardizing
 23 quality and improving your turnaround times.
 24 MR. DYER:
 25 A. Just again, for pathology turnarounds times,

Page 25

1 it's very important because it all impacts on
 2 the patient. So our goal would be like, you
 3 know, all biopsies that come down within 48
 4 hours would be--H & E would be already on a
 5 pathologist's desk, so a report can be out
 6 within three days.
 7 CHAYTOR, Q.C.:
 8 Q. So there's not--you don't specifically mention
 9 the pathology assistants, but would that be
 10 included in the correct skill mix of staff?
 11 MR. DYER:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. Okay, and then there's not a separate bullet
 15 clarifying that you're looking for pathology
 16 assistants, but in 2003, that in fact was on
 17 your agenda?
 18 MR. DYER:
 19 A. Constantly, all the time.
 20 CHAYTOR, Q.C.:
 21 Q. Okay, and you refer here to "reduce number of
 22 hard copies of pathology reports for send
 23 out." What's that referring to?
 24 MR. DYER:
 25 A. I'm very computer orientated and what we do in

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1 pathology, unlike any other lab, is we run
 2 multiple, multiple types of reports, and we
 3 still do it today. What happens is when we do
 4 a gross on a tissue, we actually have to--we
 5 actually gross it. It's dictated and
 6 transcribed and then when we send the slides
 7 to the pathologist's office, it's sent with
 8 the original requisition and the gross report.
 9 Then they would interpret and once they
 10 interpret, they may do a micro. So they would
 11 read under the scope. So then that would go
 12 back to the clerical group. That's
 13 transcribed and then another report is typed.
 14 Then they may do a diagnosis and when the
 15 diagnosis is dictated, transcribed, that's a
 16 report that's typed. Then they may do an
 17 addendum and it goes on and on until we get to
 18 the final report. So we can do four or five
 19 reports. So it's a huge amount of paperwork
 20 for just one patient, and so my target was to
 21 reduce the number of hard copies so that the
 22 more--if they can get more comfortable with
 23 the PC, they can just go right on the PC and
 24 read those reports.
 25 CHAYTOR, Q.C.:

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1 Q. Okay, and you had set a target date for the
 2 fall of 2004 for that to happen?
 3 MR. DYER:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. And consultation meetings were ongoing and
 7 work was in progress as of the end of March
 8 2004.
 9 MR. DYER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. And was that eventually achieved?
 13 MR. DYER:
 14 A. No.
 15 CHAYTOR, Q.C.:
 16 Q. Still not?
 17 MR. DYER:
 18 A. Still not achieved. I think, I believe our
 19 tissue--our quality group that I was on at the
 20 time was trying to do it.
 21 CHAYTOR, Q.C.:
 22 Q. Okay.
 23 MR. DYER:
 24 A. So it was a rigorous and slow process indeed.
 25 CHAYTOR, Q.C.:

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1 Q. And what was the reason? Why was it taking so
 2 long to--I would take it what you were looking
 3 to do was put an additional category onto your
 4 requisition form which would allow for
 5 clinical history and to say if it's not there,
 6 you're not going to process the specimen, so
 7 why was it taking so long?
 8 MR. DYER:
 9 A. I know we re-wrote the entire requisition and
 10 so, all aspects were changed as to what type
 11 of information we wanted, demographics and
 12 things of this nature, where signatures would
 13 go--believe it or not, it's all an issue, so
 14 like where the surgeon would put their
 15 signature, all that stuff was looked at.
 16 CHAYTOR, Q.C.:
 17 Q. So in terms of just changing the form for the
 18 particular purpose which seemed to be the main
 19 focus at the time for the Tissue Audit
 20 Committee, to include the clinical history,
 21 there was no thought to, well, let's just make
 22 that update for now?
 23 MR. DYER:
 24 A. No, the entire form was changed.
 25 CHAYTOR, Q.C.:

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1 Q. The entire form had to be changed.
 2 MR. DYER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. When did that eventually get done or did it
 6 get done?
 7 MR. DYER:
 8 A. It got done, I wouldn't be able to tell you
 9 exactly when it got done, but it did get done.
 10 CHAYTOR, Q.C.:
 11 Q. So sometime after February, 2005?
 12 MR. DYER:
 13 A. Yes.
 14 CHAYTOR, Q.C.:
 15 Q. Okay, you said that this was taken on by the
 16 quality group that you were part of at the
 17 time, what quality group was that and when was
 18 that group formed?
 19 MR. DYER:
 20 A. I think in the fall of '04, I'm not sure if I
 21 got a phone call or received a letter asking
 22 me to attend a new committee being formed.
 23 And I believe it was Dr. Ejeckam, Dr. Carter,
 24 Judy Thomas, which is the secretary, and
 25 myself.

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1 CHAYTOR, Q.C.:
 2 Q. If we could look at, please, P-1919? And this
 3 is an interoffice memorandum to yourself, Dr.
 4 Ejeckam and Ms. Thomas and it's from Dr.
 5 Beverley Carter and she's indicated to be the
 6 chair of the Quality Assurance Committee.
 7 Subject, first meeting, October 14th, 2004.
 8 And it's copied to Dr. Cook as clinical chief.
 9 And she writes, "I would like to set up the
 10 first meeting of the Quality Assurance
 11 Committee for Tuesday, November 9th, 2004.
 12 Please call me if you are unavailable at that
 13 time. I've enclosed an introductory document
 14 which should be read prior to the meeting, as
 15 well as an agenda for the meeting." So this
 16 was the group that you're referring to?
 17 MR. DYER:
 18 A. I believe so.
 19 CHAYTOR, Q.C.:
 20 Q. And then Dr. Carter has a three-page document
 21 here, which is a memo that she wrote to Dr.
 22 Cook. Did you receive this at the time?
 23 MR. DYER:
 24 A. I must have, yes.
 25 CHAYTOR, Q.C.:

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1 Q. August 31st, 2004. And the subject is,
 2 "Quality Control and Quality Assurance
 3 Committee and Surgical Pathology for the
 4 Health Care Corporation of St. John's." And
 5 in her memo, it's a two-age memo, she has a
 6 number of ideas listed out, including "a
 7 random review of two percent of surgical
 8 pathology cases should be carried out on a
 9 weekly basis; clinical parameter review should
 10 take place on a monthly basis; inter-
 11 institutional reviews should be forwarded on a
 12 monthly basis to the chair of the QC QA
 13 committee; on a weekly basis, the technical
 14 member of the committee should forward a
 15 report to the chair of the committee, which
 16 includes a special adequacy record" and she
 17 goes on from there. "Detailed protocols and
 18 policies for the above-mentioned programs will
 19 be provided to the members of the laboratory
 20 staff of technical medical in the form of a
 21 quality control, quality assurance manual."
 22 So it looks like this was a fairly
 23 comprehensive start to your committee?
 24 MR. DYER:
 25 A. Yes.

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1 CHAYTOR, Q.C.:
 2 Q. And then I think on the last page was what
 3 your agenda was going to be for your first
 4 meeting, you were going to look at that
 5 introductory document; secondly, documentation
 6 of QA activities; collection of data;
 7 designing a QA manual and other. So take us
 8 forward from there, did you agree to sit on
 9 the committee and did you attend the meetings?
 10 MR. DYER:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. Okay, and was the mandate of the committee
 14 basically what's outlined here in Dr. Carter's
 15 memorandum?
 16 MR. DYER:
 17 A. That was definitely our intent.
 18 CHAYTOR, Q.C.:
 19 Q. That was your intent.
 20 MR. DYER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. And so yourself, Dr. Carter, Dr. Ejeckam and
 24 Ms. Thomas' clerical support, is that who
 25 comprised the committee?

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1 MR. DYER:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. And what happened, how did it go?
 5 MR. DYER:
 6 A. A very small committee for such a huge
 7 mandate. Yes, I believe we started, yes, in
 8 November, December and I haven't read any of
 9 this, so it's going to be hard to tell you.
 10 CHAYTOR, Q.C.:
 11 Q. Did you want to read down through it?
 12 MR. DYER:
 13 A. No, that's okay, no, I mean, even the minutes
 14 of what we actually did, but I think what we
 15 started doing was when we sat down and had out
 16 first meeting, I believe we came to a
 17 consensus that the most important thing to do
 18 was to develop clinical indicators.
 19 THE COMMISSIONER:
 20 Q. I'm sorry, developed?
 21 MR. DYER:
 22 A. Clinical indicators.
 23 THE COMMISSIONER:
 24 Q. Indicators.
 25 MR. DYER:

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1 A. So, for example, like a two percent review,
 2 things like this, are more clinical, that was
 3 our prime focus at the beginning.
 4 CHAYTOR, Q.C.:
 5 Q. So those things here, the bullet here a random
 6 review of two percent, those -
 7 MR. DYER:
 8 A. Yes, frozen section review, random review, I
 9 believe--I think we made an agreement right
 10 away that these are the things we should try
 11 and get up and running.
 12 CHAYTOR, Q.C.:
 13 Q. And what's the purpose of clinical indicators?
 14 MR. DYER:
 15 A. Clinical indicators would help identify any
 16 issues on a clinical side, for example,
 17 correlate--make sure we get into correlation
 18 with the frozen section report, verses the
 19 final report; ensure a two percent--probably
 20 impossible, but a two percent surgical and
 21 pathology cases, so what would happen or the
 22 intent there would be we would pick a
 23 diagnosis this month and search them and then
 24 pull the slides and have a second pathologist
 25 compare, to make sure that we are on with our

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1 diagnosis.
 2 THE COMMISSIONER:
 3 Q. It's internally.
 4 MR. DYER:
 5 A. Yes, all internal.
 6 CHAYTOR, Q.C.:
 7 Q. So, for example, put it in the context for us
 8 of ER/PR, how would you go about doing
 9 clinical indicators for that?
 10 MR. DYER:
 11 A. For ER/PR itself?
 12 CHAYTOR, Q.C.:
 13 Q. Yes.
 14 MR. DYER:
 15 A. I guess if we put it in that context, I'm not
 16 sure if they would actually grade the ER/PRs
 17 as such. This was more so, my interpretation
 18 was for actual diagnosis itself, not
 19 something--not that type of nature, although
 20 I'm sure it would have been something we could
 21 have looked at.
 22 CHAYTOR, Q.C.:
 23 Q. So would you be looking at things like
 24 tracking trends, positivity rates, anything
 25 like that? Would that be part of -

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1 MR. DYER:
 2 A. Not necessarily trends, but I guess trying to
 3 identify if we had a discordance between one
 4 pathologist that did a diagnosis and another.
 5 CHAYTOR, Q.C.:
 6 Q. So pathologists could review one another
 7 slides, for example?
 8 MR. DYER:
 9 A. Well that would have been the intent with
 10 this, yes.
 11 THE COMMISSIONER:
 12 Q. Just make sure I understand this now, you're
 13 plan was at the time directed to the work of
 14 the pathologist which goes towards diagnosis
 15 in any event.
 16 MR. DYER:
 17 A. Yes.
 18 THE COMMISSIONER:
 19 Q. And that you would choose for each month a
 20 sort of diagnosis of the month.
 21 MR. DYER:
 22 A. Diagnosis or a tissue.
 23 THE COMMISSIONER:
 24 Q. Okay, and then you'd pull all the slides and
 25 randomly select, I presume, two percent of

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1 those slides and have them read by someone
 2 other than the person who original read -
 3 MR. DYER:
 4 A. Correct.
 5 THE COMMISSIONER:
 6 Q. And what would you do with the results?
 7 MR. DYER:
 8 A. The results would come back to this committee
 9 and it there's discordance, it would be
 10 brought to the clinical chief, who would then
 11 pass the information on to the appropriate
 12 individual.
 13 CHAYTOR, Q.C.:
 14 Q. Okay. So that was the plan, did that get off
 15 the ground?
 16 MR. DYER:
 17 A. It took time to get started because we had to,
 18 you know, we had to start creating what we
 19 would call markers to aid or make it much
 20 easier to identify these cases, so I would
 21 actually--I created reports to find these
 22 patients is what I started doing first.
 23 CHAYTOR, Q.C.:
 24 Q. So that was our work on the committee?
 25 MR. DYER:

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1 A. Yes, myself or Judy. Judy was like me, she
 2 was a representative who was sent away for
 3 pathology from St. Clare's when they actually
 4 went on the Meditec system, so she was well
 5 versed also. And we would set up what we
 6 would call tags on frozen section, so we could
 7 hunt down all our frozen sections, things like
 8 this, so those were the processes that slowed,
 9 that got started. And I believe also it was
 10 at this committee where I brought in the
 11 requisition to be changed and so we got
 12 started.
 13 CHAYTOR, Q.C.:
 14 Q. And what happened?
 15 MR. DYER:
 16 A. There was, again it was a challenging
 17 committee, very slow process. Dr. Ejeckam and
 18 Dr. Carter had different views on how this
 19 committee should operate and so there was a
 20 lot of constant debate during the committee,
 21 during the committee time and so in the first
 22 few months, like very little was getting done,
 23 it was just constant debate back and forth.
 24 CHAYTOR, Q.C.:
 25 Q. Between who?

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1 MR. DYER:
 2 A. Dr. Carter and Dr. Ejeckam and then I believe
 3 within a couple of months, Dr. Ejeckam
 4 resigned from the committee.
 5 CHAYTOR, Q.C.:
 6 Q. And did the committee then continue on -
 7 MR. DYER:
 8 A. So weeks--so then two more pathologists were
 9 asked to come on board and we tried to move
 10 forward.
 11 CHAYTOR, Q.C.:
 12 Q. So up to the point after a couple of months
 13 and Dr. Ejeckam resigned from the committee,
 14 had anything been achieved?
 15 MR. DYER:
 16 A. In terms of some of these reports? I can't
 17 say, but I don't think there was.
 18 CHAYTOR, Q.C.:
 19 Q. So overall up to that point in time, in any
 20 event, it hadn't been a very productive
 21 endeavour?
 22 MR. DYER:
 23 A. No, it had not.
 24 CHAYTOR, Q.C.:
 25 Q. So the committee didn't dissolve though with

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1 Dr. Ejeckam resigning?
 2 MR. DYER:
 3 A. No, two more pathologists were brought on
 4 board.
 5 CHAYTOR, Q.C.:
 6 Q. And who were they?
 7 MR. DYER:
 8 A. I believe it was Dr. Mira Parai and Dr. Jane
 9 Barron, I'm just trying to visualize the
 10 committee. And so then we attempted to move
 11 forward and so then we started working on the
 12 frozen section reviews. I believe we were
 13 actually working on the random reviews also
 14 and we started on some records for pathology.
 15 So I believe one of the big ones that stood
 16 out was a way of setting up, I guess something
 17 like occurrence reporting, so we created a
 18 requisition like to histology and from
 19 histology, so to histology would be a form
 20 that a pathologist could write down issues,
 21 and from histology would be a form that
 22 technologists could write down issues. So
 23 that stands out for some reason, so I think we
 24 started developing a form like that also.
 25 CHAYTOR, Q.C.:

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1 Q. And so then how did things progress from
 2 there? Did it become a productive committee
 3 or what happened, did it continue on?
 4 MR. DYER:
 5 A. I don't think it came, personally, I don't
 6 think it became a very productive committee
 7 and within, I think this was in '04, yes?
 8 CHAYTOR, Q.C.:
 9 Q. Well it started in -
 10 MR. DYER:
 11 A. It started late in '04, this is in '05?
 12 CHAYTOR, Q.C.:
 13 Q. October '04 and then Dr. Ejeckam was gone
 14 within a couple of months, so I guess that
 15 takes us close to the end of '04.
 16 MR. DYER:
 17 A. Yes, well our first meeting was in November
 18 and I don't even know if he was at that one,
 19 he might have been, November, December, I
 20 think he missed one of them, but I think by
 21 January he left.
 22 CHAYTOR, Q.C.:
 23 Q. And so was your meeting on a monthly basis?
 24 MR. DYER:
 25 A. I think we were trying to meet monthly and so

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1 I think he left and then maybe by February,
 2 might have had two new ones. Again, I may be
 3 off timelines by a month or so, but we started
 4 pursuing, I think in February or March,
 5 February, March and maybe April and then all I
 6 remember is the ER/PR completely took over.
 7 CHAYTOR, Q.C.:
 8 Q. By May of 2005, ER/PR became a big issue.
 9 MR. DYER:
 10 A. I think so.
 11 CHAYTOR, Q.C.:
 12 Q. So up to May of 2005, had the Quality
 13 Assurance Committee ever really gotten off the
 14 ground?
 15 MR. DYER:
 16 A. It may have gotten off the ground, but in
 17 terms of actual reports and that, I don't
 18 think anything was produced. We learned a lot
 19 from it, there's no doubt, but I don't think
 20 anything was actually produced from it or I
 21 can't remember an actual report coming down to
 22 the committee to discuss any discordance or
 23 anything like that.
 24 THE COMMISSIONER:
 25 Q. Mr. Dyer, can we come back to Meditec again?

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1 It just seems to me that every time you'd go
 2 to do something, you kind of have to think
 3 about ways of tagging something, identifying
 4 material, getting that into the system,
 5 allowing you to get information back. There
 6 seems to be a what, a lot of time spent
 7 figuring out how to use the system, am I
 8 right?
 9 MR. DYER:
 10 A. I think the system was capable of doing what
 11 we required it to do, it's just that there was
 12 no true standardization about how things were
 13 being done, so I could ask the system to do a
 14 search, but the way one person would report
 15 that search is different from someone else, so
 16 there was no true standards.
 17 THE COMMISSIONER:
 18 Q. So is the problem what goes into Meditec or is
 19 the problem the identifying of the fields for
 20 searching in Meditec or is there some kind of
 21 combination of both?
 22 MR. DYER:
 23 A. Combination of both, it's truly how things are
 24 actually put into the system. So then you
 25 have to determine the variables of

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1 combinations of how it is put in, you know,
 2 when a physician is probably putting in the
 3 final diagnosis and we're trying to identify
 4 the tissue, I mean, a tissue might be called
 5 five or six different things or they might
 6 have an extra letter or something like that
 7 added to the tissue, so when we go in and ask
 8 for just one word, if it's not spelled that
 9 way, the system would not pick it up. So it
 10 was the way things were entered, which is what
 11 made it a little more challenging.
 12 THE COMMISSIONER:
 13 Q. So it's, in the early days of this endeavour,
 14 there was a lot of discussion about the
 15 difficulties in identifying even the people
 16 who had had testing for ER/PR and I discovered
 17 it wasn't as simple as just sort of firing up
 18 your computers and even at different
 19 institutions that either was giving inadequate
 20 results or results upon which you could not
 21 rely for having indicated to you the proper
 22 numbers of people who had testing. So you
 23 sort of sit here and say to yourself, the
 24 technology is there, it should have been able
 25 to be done and you explained yesterday that in

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1 part that was because different systems were
 2 being used and when improvements were made, I
 3 guess the information wasn't transferred to
 4 the new system in a way that was searchable.
 5 CHAYTOR, Q.C.:
 6 Q. And your fifth goal was to meet your budget
 7 targets, and you were going to do that through
 8 monitoring, performance against budget and
 9 take action to correct variances by
 10 identifying means and methods of cost saving
 11 as a part of regular review, and you completed
 12 monthly variance reports. You were also going
 13 to increase revenue. That was to be done.
 14 Accepted workload from Grand Falls and
 15 Clarendville, expanded benchmark more, and the
 16 start of HPV research project. So in
 17 increasing your revenue, you were making
 18 money, or increasing your revenue through
 19 taking on work for Grand Falls and
 20 Clarendville?
 21 MR. DYER:
 22 A. In 2003, I think what happened in Grand Falls,
 23 and I believe in Clarendville, is they couldn't
 24 get a locum pathologist for the summer, so I
 25 believe St. Clare's agreed to take on their

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1 workload while pathologists were away.
 2 CHAYTOR, Q.C.:
 3 Q. Okay, and then your sixth goal, "Participate
 4 in the development of the laboratory
 5 management team philosophy, make decisions
 6 based upon the interest of the program first
 7 and the Department of Pathology second".
 8 What's that referring to?
 9 MR. DYER:
 10 A. I guess just to work as a team group. Only so
 11 much money came to the program, so I think we
 12 would collaborate as a group to determine who
 13 needs what the most.
 14 CHAYTOR, Q.C.:
 15 Q. When it says, "Make your decisions upon the
 16 interest of the program first"?
 17 MR. DYER:
 18 A. Right, so as a program --
 19 CHAYTOR, Q.C.:
 20 Q. The whole laboratory medicine program versus
 21 just your own department?
 22 MR. DYER:
 23 A. Correct, although I constantly was an advocate
 24 just for pathology.
 25 CHAYTOR, Q.C.:

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1 Q. And I guess that was your job really, wasn't
 2 it?
 3 MR. DYER:
 4 A. Yes, that was my job.
 5 CHAYTOR, Q.C.:
 6 Q. "To facilitate", then finally, "the
 7 utilization of the Meditec information system
 8 for the efficient organization of the
 9 laboratory", and you were going to do that
 10 through accurate delivery of reports and the
 11 overall functionality of statistical reports,
 12 we can determine benchmarks and pinpoint areas
 13 of concern?
 14 MR. DYER:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. And that's the same thing then in the second
 18 time frame. What exactly is that referring
 19 to?
 20 MR. DYER:
 21 A. What we would do is -- again when I started
 22 over at Health Science and came to the
 23 management position, at the Janeway, Dr.
 24 Pushpanathan and myself, we were really into
 25 computers and again like with the reporting,

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1 we hardly ever printed out a report,
 2 everything was done through the system. So
 3 when I moved to Health Science and St.
 4 Clare's, one of the big things I wanted to do
 5 was the computer actually has the ability to
 6 generate reports on its own. So one thing
 7 I've noticed was, like, manually printing out
 8 reports, reports could be missed, so I started
 9 putting the proper checks in place so that the
 10 computer would actually identify every single
 11 report that would require a printout after
 12 sign out and would automatically just print so
 13 that nothing would be missed.
 14 CHAYTOR, Q.C.:
 15 Q. Okay.
 16 MR. DYER:
 17 A. And that's what we did.
 18 CHAYTOR, Q.C.:
 19 Q. And then that's it. So those were the seven
 20 goals for 2003/2004, and I take it the March
 21 31st, 2004, is because that's the fiscal year
 22 end for the corporation?
 23 MR. DYER:
 24 A. Yes, every six months.
 25 CHAYTOR, Q.C.:

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1 Q. So when I look at that, we've got the
 2 facilitating the utilization of Meditec, as
 3 you've just described, participating in the
 4 team philosophy. We've got meeting budget
 5 targets, ensuring that you have the proper
 6 number and proper skill mix of qualified staff
 7 and utilizing your human resources in an
 8 efficient manner, making sure you have the
 9 most up to date technology, and you're going
 10 to provide a comprehensive lab service and
 11 expand your testing, and the first one being
 12 your productivity. I guess what I don't see
 13 in there is any reference to efforts towards
 14 quality assurance and quality assurance
 15 programs?
 16 MR. DYER:
 17 A. Yes, I -- that's been brought to my attention.
 18 I've noticed that too.
 19 CHAYTOR, Q.C.:
 20 Q. And why is that, Mr. Dyer, why was that not a
 21 goal and objective?
 22 MR. DYER:
 23 A. I don't know if it was just overlooked because
 24 I know at the time we were working on a --
 25 with the site chief, we were working on a QC

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1 program, but I can't -- I don't know why it's
 2 not actually in the goals and objectives.
 3 CHAYTOR, Q.C.:
 4 Q. So what you're telling me is that there was
 5 some effort to get a quality assurance program
 6 up and running?
 7 MR. DYER:
 8 A. Well, we were involved -- I think at the site
 9 chief level, we were putting together some
 10 form of a QA program.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, you were putting it together?
 13 MR. DYER:
 14 A. Yes.
 15 CHAYTOR, Q.C.:
 16 Q. In this time frame?
 17 MR. DYER:
 18 A. Yes, I believe it was in '03.
 19 CHAYTOR, Q.C.:
 20 Q. Yes, and I'm going to take you through some of
 21 the efforts.
 22 MR. DYER:
 23 A. Okay.
 24 CHAYTOR, Q.C.:
 25 Q. That happened around that time period and

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1 beyond, but it wasn't specifically identified
 2 as a goal for you as the lab manager?
 3 MR. DYER:
 4 A. Not at the time, no.
 5 CHAYTOR, Q.C.:
 6 Q. If we could have, please, 2323. This then
 7 moves into the next year, and up to March
 8 31st, 2005, and, of course, beyond that then
 9 would be Eastern Health days. So this takes
 10 us up to the end of the Health Care
 11 Corporation days. I won't take you through
 12 all of this, but when we go through it, it
 13 appears to me that your goals and objectives
 14 are really the same as what you had the year
 15 before. We have productivity as number one;
 16 number two, again the comprehensive lab
 17 service; number three, and there's --
 18 MR. DYER:
 19 A. A little more detail.
 20 CHAYTOR, Q.C.:
 21 Q. A little more detail.
 22 MR. DYER:
 23 A. I believe it was a three year program.
 24 CHAYTOR, Q.C.:
 25 Q. I'm sorry, a three year --

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1 MR. DYER:
 2 A. This was a three year program.
 3 CHAYTOR, Q.C.:
 4 Q. Okay, so you would expect them to be the same?
 5 MR. DYER:
 6 A. Yes.
 7 CHAYTOR, Q.C.:
 8 Q. And then perhaps adding some bullets
 9 underneath each goal?
 10 MR. DYER:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. And the final one which is added, number eight
 14 on page five of the exhibit, is for all
 15 technical staff are being scheduled for
 16 performance evaluations in November/December,
 17 2004. "All staff scheduled for
 18 November/December, 2004", and then you've got
 19 "with new equipment and staff turnover, this
 20 was not completed. Planning to do the staff
 21 in April or June, 2005". How often were your
 22 staff given performance evaluations?
 23 MR. DYER:
 24 A. Not too often, no. Based on my schedule, I
 25 was always extremely busy, so what I would do

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1 was whenever somebody new came in, I would
 2 actually -- again when you come into a lab,
 3 you pick out your technologists for training,
 4 who was going to train and for what, and I
 5 would discuss with them, and if I had issues
 6 with staff, that's when I would write
 7 performance evaluations.
 8 CHAYTOR, Q.C.:
 9 Q. Okay, and so was it supposed to be scheduled
 10 every year, every two, three years?
 11 MR. DYER:
 12 A. Every three years is what the plan -- is what
 13 they wanted done.
 14 CHAYTOR, Q.C.:
 15 Q. Okay, but it didn't actually happen because
 16 you were busy?
 17 MR. DYER:
 18 A. We were -- my schedule and even the techs
 19 schedule are extremely busy all the time.
 20 Like, you would come to work with a "to do"
 21 list of ten and go home with 20, and this was
 22 just an average day.
 23 CHAYTOR, Q.C.:
 24 Q. I can sort of relate to that. Okay. So this
 25 here says, "Planning to do the staff at that

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1 point in April or June of 2005". Do you know
 2 whether or not this took place then?
 3 MR. DYER:
 4 A. Pardon?
 5 CHAYTOR, Q.C.:
 6 Q. Do you know whether or not their reviews or
 7 their performance evaluations took place in
 8 April or June, 2005?
 9 MR. DYER:
 10 A. Some may have, but not all staff, no.
 11 CHAYTOR, Q.C.:
 12 Q. And whether or not it took place for the IHC
 13 technologists?
 14 MR. DYER:
 15 A. I believe Ken and Mary had it done, but I
 16 didn't get Les done. I think Les, I just
 17 spoke to, but again I would speak to the staff
 18 verbally. If they're doing fine, I would just
 19 let them know they're doing fine, but, no, I
 20 didn't actually have one written for Les.
 21 CHAYTOR, Q.C.:
 22 Q. So the performance evaluations, though, were
 23 added on to your "to do" list for the year
 24 here?
 25 MR. DYER:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. Again, though, no mention of quality assurance
 4 or developing a quality assurance program?
 5 MR. DYER:
 6 A. I think we were trying to start one, but we
 7 didn't -it wasn't written into the goals and
 8 objectives, no.
 9 CHAYTOR, Q.C.:
 10 Q. So again it was overlooked in this year as
 11 well?
 12 MR. DYER:
 13 A. I think so.
 14 CHAYTOR, Q.C.:
 15 Q. If we could have, please, 2324. I really just
 16 wanted to bring this up because I wasn't
 17 really sure what this document was and thought
 18 perhaps you could explain it to us.
 19 MR. DYER:
 20 A. In 2005, I was -- we were interested in a --
 21 there's a new type of -- it's not that it's a
 22 new type of technology for processing or
 23 tissue processing. For some time now labs
 24 were actually doing what they would call
 25 microwave processing, and this is a much

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1 quicker way to process tissue. So it was
 2 interesting, but it's not something we ever
 3 pursued. In 2005 -- I believe in 2004, we
 4 heard about Sakura. That's a big company with
 5 histology.
 6 CHAYTOR, Q.C.:
 7 Q. Yes.
 8 MR. DYER:
 9 A. Or pathology, and they had - they had a new
 10 piece of equipment called the Tissue Xpress,
 11 and it was something that I was really
 12 interested in and would like to try. The
 13 purpose of it is -- right now you can biopsies
 14 and they go on a processor around six in the
 15 evening and it comes off five in the morning.
 16 So this type of technology could process one
 17 block in, I believe, 63 minutes. So you could
 18 look at same day turnaround times for a lot of
 19 things very important. So what this is, this
 20 is just a flow chart to give ideas of how to
 21 use the system.
 22 CHAYTOR, Q.C.:
 23 Q. Okay. So, for example, it says, "type of
 24 tissue, breast, recommended preprocessing
 25 time, 30 to 60 minutes".

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1 MR. DYER:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. So was this this Sakura, was this --
 5 MR. DYER:
 6 A. Yes. So what happened was back -- when was the
 7 date on that one? So back in June of '04, I
 8 approached the company about this type of
 9 technology and they -so I included everyone in
 10 the -- I spoke with physicians especially the
 11 leadership. I think Dr. Parai, Dr. Cook, Dr.
 12 Robb, some of the senior techs, and Dr.
 13 Pushpanathan, she was pediatrics. Dr. Barron,
 14 she was neuropathology. Dr. Cook is there,
 15 yes. I asked this company to come in and give
 16 a presentation on what this type of equipment
 17 could do. That's my invite.
 18 CHAYTOR, Q.C.:
 19 Q. This is what you're trying to organize in your
 20 e-mail here?
 21 MR. DYER:
 22 A. Yes, that's what I'm trying to organize, to
 23 get everyone together so a presentation could
 24 be given and a QA time.
 25 CHAYTOR, Q.C.:

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1 Q. And then --
 2 MR. DYER:
 3 A. So what had happened was they came in, gave a
 4 presentation, and we discussed it and what
 5 happened then is in October, they came in
 6 again and gave a full day presentation and I
 7 invited all pathologists, all residents, all
 8 technologists, to see again what it was all
 9 about and what we could do about it, and I
 10 think a decision was made to bring it in for
 11 trial. I believe in '05, January, February,
 12 and March, and probably even later, maybe
 13 April, I, myself, spent three/four months
 14 checking the system out to see what it could
 15 do for us.
 16 CHAYTOR, Q.C.:
 17 Q. Okay, and that's probably what these then --
 18 these pages are about, is it?
 19 MR. DYER:
 20 A. Yes, I processed approximately 1,000 blocks on
 21 the technology and as I would process them,
 22 what I did was I would have forms and provide
 23 slides into the reporting rooms at St. Clare's
 24 and at Health Science and ask for
 25 pathologists' input. This is some of what I

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1 found, some of their documentation of what
 2 they thought of the system.
 3 CHAYTOR, Q.C.:
 4 Q. So you're -- for example, here you're writing
 5 to all pathologists and saying there's a box
 6 of slides with tissue processed and Xpress
 7 processed section to be reviewed. So you're
 8 giving them the slides to review?
 9 MR. DYER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. And "take a few, and a worksheet is available
 13 for comments", and then they would fill out
 14 their comments?
 15 MR. DYER:
 16 A. Right. So what I did was I would -- for
 17 example, I would -- some of the pathologists
 18 would give me tissue from their grossing and I
 19 would process it on the regular processor and
 20 process it on the Xpress, and I would leave --
 21 I can't quite remember, but I would take the
 22 regular processed tissue and probably put it
 23 on the top of the slide and put the Xpress on
 24 the bottom of the slide so they're both on the
 25 slide. So like a parallel run on one slide.

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1 CHAYTOR, Q.C.:
 2 Q. So they could compare?
 3 MR. DYER:
 4 A. And they can draw comparisons.
 5 CHAYTOR, Q.C.:
 6 Q. And on the bottom, for example, page four, we
 7 have, "The slides are great. I really can't
 8 tell which is which", and the signature.
 9 MR. DYER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. Is that one of the pathologists?
 13 MR. DYER:
 14 A. That's one of our pathologists.
 15 CHAYTOR, Q.C.:
 16 Q. Okay, so what happened, though? This tissue
 17 processor, was it ultimately purchased?
 18 MR. DYER:
 19 A. It was purchased. What happened was when we
 20 went through all of this, from pathologist's
 21 response, I spoke with Dr. Parai about it and
 22 I think we had, like, a 70/80 percent
 23 correlation that things were looking good, and
 24 this was just after our first attempts. So a
 25 decision was to purchase. The intent -- our

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<p>1 true intent would be to move all biopsies onto 2 the Xpress, but we would still maintain our 3 regular processors for everything else. 4 CHAYTOR, Q.C.: 5 Q. Okay, but you say that it's never been 6 utilized? Even though it was purchased, it 7 hasn't been utilized? 8 MR. DYER: 9 A. Again what happened was it was just a horrible 10 year, 2005, and we started - we started, I 11 believe it was in probably May, early may we 12 started doing some biopsies, and then I think 13 we were -- I believe still in June we may be 14 doing some of the biopsies, but then this 15 whole ER/PR struck and I think just the 16 confidence -- I'm not sure if our confidence 17 was shaken, but this whole new technology, I 18 think the decision was just not to use right 19 now. 20 CHAYTOR, Q.C.: 21 Q. And it's still not in use? 22 MR. DYER: 23 A. And it's still not in use. 24 CHAYTOR, Q.C.: 25 Q. Is this the piece of equipment that Trish</p>	<p>1 CHAYTOR, Q.C.: 2 Q. And again that would be additional work? 3 MR. DYER: 4 A. That would have been a big job. 5 CHAYTOR, Q.C.: 6 Q. Did you realize that when you purchased or 7 acquired the equipment? 8 MR. DYER: 9 A. Oh, yes. 10 CHAYTOR, Q.C.: 11 Q. You realized you'd have to go through that? 12 MR. DYER: 13 A. Yes. 14 CHAYTOR, Q.C.: 15 Q. If we could have, please, P-1922. 16 MR. DYER: 17 A. Just one more thing. 18 CHAYTOR, Q.C.: 19 Q. Sure, sorry, is there something else on that? 20 MR. DYER: 21 A. Just to show what we did is when you look at 22 this, most things are H & E, but if you go to 23 the bottom of even this list, you will see 24 that we were even in trials, L26, CD21, Cyclin 25 D1, Vimentin, so we did even run -- or I did,</p>
<p>Page 62</p> <p>1 Wegrynowski raised a concern about if it's to 2 be brought into use, be careful because the 3 alcohol base versus what your controls may 4 have been done on, is this the piece of 5 equipment? 6 MR. DYER: 7 A. Yes, this is it. 8 CHAYTOR, Q.C.: 9 Q. So that you -- so you couldn't run this with - 10 - your controls would not have been put 11 through the same process if your controls are 12 already in existence and put through the other 13 tissue processor? 14 MR. DYER: 15 A. Yes, we would have to set up a second system. 16 So what we would do is we would take tissue 17 and run it through the Xpress, and that would 18 now become our controls, and then it would be 19 those types of controls that we would use on 20 the Ventana System. 21 CHAYTOR, Q.C.: 22 Q. You would have to make a whole new batch of 23 controls to be able to utilize the system. 24 MR. DYER: 25 A. Yes, oh, yes.</p>	<p>Page 64</p> <p>1 I ran antibodies on the Ventana System from 2 the actual Xpress. 3 CHAYTOR, Q.C.: 4 Q. Okay. 5 MR. DYER: 6 A. The big difference with the Xpress versus the 7 old system -- well, multiple differences. The 8 big one, of course, is you remove xylene from 9 the process, and xylene tends to darken 10 tissue. So, like, a gall bladder is green. 11 When we put it on the actual regular tissue 12 processor, it'll come out black, but when you 13 put it on the Xpress, it came out green. So 14 it was also different. That's why I think at 15 the beginning talking about cellular structure 16 -- 17 CHAYTOR, Q.C.: 18 Q. Yes. 19 MR. DYER: 20 A. Because there was a difference in appearance 21 for cellular structure. 22 CHAYTOR, Q.C.: 23 Q. And did you run any ER/PR on the -- 24 MR. DYER: 25 A. No, we weren't -- there was no true plans in</p>

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1 the future or in the near future to put breast
 2 on this machine.
 3 CHAYTOR, Q.C.:
 4 Q. So that was never the intention to use it for
 5 breast tissue?
 6 MR. DYER:
 7 A. In 2006, they introduced new solutions into
 8 the Xpress that were tested for breast tissue.
 9 So I know now breast tissue can be used on it.
 10 CHAYTOR, Q.C.:
 11 Q. It can be used?
 12 MR. DYER:
 13 A. It can, yes.
 14 CHAYTOR, Q.C.:
 15 Q. But at the point in time it was acquired, it
 16 wasn't --
 17 MR. DYER:
 18 A. We weren't --
 19 CHAYTOR, Q.C.:
 20 Q. Suitable for that?
 21 MR. DYER:
 22 A. Bone, bloody tissues, challenging tissues we
 23 weren't going to put on this machine right
 24 away.
 25 CHAYTOR, Q.C.:

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1 Q. And what's the intent now on a go forward
 2 basis, will this machine be used and will it
 3 be used for breast tissue?
 4 MR. DYER:
 5 A. If I have my way, I would prefer that we just
 6 use it for all biopsies, so our biopsy
 7 turnaround times can be improved.
 8 CHAYTOR, Q.C.:
 9 Q. Okay, and is there currently any plan then --
 10 that's your intent, but is there any plan?
 11 MR. DYER:
 12 A. Right now there is no plan.
 13 CHAYTOR, Q.C.:
 14 Q. So no plan to bring it on line at all, or for
 15 what it will be used?
 16 MR. DYER:
 17 A. There's no plan to bring it on right now.
 18 Hopefully, I think -- my plan is in the future
 19 to bring it on line, but again that will be a
 20 higher up decision.
 21 CHAYTOR, Q.C.:
 22 Q. And it could be used for breast biopsies, but
 23 it would not be used for breast tissue?
 24 MR. DYER:
 25 A. Correct.

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1 CHAYTOR, Q.C.:
 2 Q. If we could go then, please, to 1922, and
 3 these are notes of a meeting, laboratory
 4 medicine program. You're not in attendance.
 5 It's Dr. Cook, Dr. Williams, and Mr. Gulliver,
 6 October 22nd, 2004, but your name comes up.
 7 I'll just find the reference here. Under the
 8 Tissue Audit Committee, #9 on page two of the
 9 exhibit, "Terry discussed with Barry Dyer to
 10 update pathology requisition that requires
 11 clinical history and relevant diagnosis before
 12 specimens are processed". What do you recall
 13 that being about?
 14 MR. DYER:
 15 A. The tissue -- many requisitions that came to
 16 the lab would have either no clinical history
 17 or not relevant clinical history. For
 18 example, if the specimen was a vas deferens,
 19 then the clinical history is vas deferens, and
 20 I believe the pathologist wasn't getting
 21 enough information to use at that time towards
 22 the process they would go through for
 23 diagnosing.
 24 CHAYTOR, Q.C.:
 25 Q. So you were going to actually update the

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1 pathology requisition form?
 2 MR. DYER:
 3 A. Yes, the plan was we created a new
 4 requisition, or we were in the process of
 5 creating a new requisition, I believe, and
 6 that requisition would have a statement in
 7 red, and I can't remember exactly what it
 8 said, but something to the effect of if we
 9 don't get clinical or relevant clinical
 10 history, then the specimen will not be
 11 processed.
 12 CHAYTOR, Q.C.:
 13 Q. Okay. And if we could look then at P-2326,
 14 please. This is a meeting, the same group of
 15 people, Dr. Cook, Dr. Williams, and Mr.
 16 Gulliver, on February 25th, 2005. So about
 17 four months later, and again #9 on page two,
 18 "Terry informed that Barry Dyer is currently
 19 working on an updated version of the pathology
 20 requisition. Barry is seeking input from
 21 pathologists before we send the requisition to
 22 printing. Dr. Cook indicated that he has
 23 asked Dr. Ejeckam to perform more tissue
 24 audits". So four months later it appears that
 25 you're still working on the updated version of

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1 the requisition and at that point you're
 2 seeking input from pathologists. Was there
 3 some delay in trying to get this done?
 4 MR. DYER:
 5 A. Correct.
 6 THE COMMISSIONER:
 7 Q. But your current description of what's
 8 happening even in 2004 says to me that really
 9 not much has changed in terms of the way
 10 you're using the technology.
 11 MR. DYER:
 12 A. Well, in 2004, by now we were consolidated as
 13 one group. So, at least all the systems -
 14 THE COMMISSIONER:
 15 Q. The current ones.
 16 MR. DYER:
 17 A. Pardon?
 18 THE COMMISSIONER:
 19 Q. The current ones.
 20 MR. DYER:
 21 A. All the current ones were the same. So, now
 22 it was just a matter of finding out the
 23 variations of how people were entering
 24 information. We would just search in through
 25 that one system. So, that made life a little

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1 bit easier.
 2 THE COMMISSIONER:
 3 Q. And let's fast forward to 2008, have you, in
 4 the intervening period of time between 2004
 5 and 2008 done anything different in terms of
 6 your tracking of results of tests done within
 7 your laboratories?
 8 MR. DYER:
 9 A. All data sections are now identical in the
 10 system. And where information is entered is
 11 very specific. So, for example, if people are
 12 doing addendum, they have to go into an
 13 addendum to do it. They don't go into a final
 14 report and add a addendum to the final report.
 15 So, now it's much easier to identify
 16 information. And for certain things like
 17 breast, we actually have a standardized text.
 18 So, all I need to do is into the canned
 19 text, find the standardized text and say
 20 "find" and it will find every one of them.
 21 So, yes, it's definitely getting better.
 22 THE COMMISSIONER:
 23 Q. So, it's much improved.
 24 MR. DYER:
 25 A. Much improved in that sense, yes.

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1 THE COMMISSIONER:
 2 Q. Okay. Thank you.
 3 CHAYTOR, Q.C.:
 4 Q. Okay. Thank you, Commissioner. After then at
 5 the time that the ER/PR issue came to the
 6 forefront in May of 2005, was there any
 7 attempt then to continue on with the quality
 8 assurance committee that had been fledging or
 9 was there a new committee set up? What
 10 happened?
 11 MR. DYER:
 12 A. I think the committee was just disbanded.
 13 CHAYTOR, Q.C.:
 14 Q. Was disbanded.
 15 MR. DYER:
 16 A. My life took a complete different turn and a
 17 complete different focus as to what was going
 18 on with the ER/PR and that's where all my
 19 energies went.
 20 CHAYTOR, Q.C.:
 21 Q. So, was there any attempt to get another
 22 quality assurance committee together?
 23 MR. DYER:
 24 A. Not at that time, no.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. And does that ever come back on to the
 2 radar, so to speak?
 3 MR. DYER:
 4 A. So, this is now May of '05, I believe by the
 5 end of '05, early '06, we started talking
 6 about it again.
 7 CHAYTOR, Q.C.:
 8 Q. And was there a committee struck then at that
 9 point in time?
 10 MR. DYER:
 11 A. A committee was struck, but we really needed
 12 money to hire someone to help out. I
 13 absolutely had no time and we needed technical
 14 staff on that committee. So, I think through
 15 Bev Carter--I'm not sure if she actually spoke
 16 to, I think she may have spoke to Dr. Williams
 17 and through her and I think with Mr. Gulliver,
 18 money was set aside to hire a technologist and
 19 to put a total quality management group
 20 together for pathology.
 21 CHAYTOR, Q.C.:
 22 Q. And who was hired in that role?
 23 MR. DYER:
 24 A. In '05, this is now after Trish was in. When
 25 Trish was in back in September, we talked

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1 about this, about SOPs and things like that.
 2 And her recommendation was that a senior
 3 technologist who's involved with laboratory,
 4 pathology lab, would be an ideal candidate,
 5 would be a good person to write SOPs. And so
 6 I used that as advice when this committee came
 7 together and I hired one of our most senior
 8 techs, Catherine Parnell.
 9 CHAYTOR, Q.C.:
 10 Q. Okay. And so Catherine Parnell was then put
 11 on the new committee?
 12 MR. DYER:
 13 A. She would be co-chair I believe of the new
 14 total quality management group for pathology.
 15 CHAYTOR, Q.C.:
 16 Q. Okay. And how did that go? What happened
 17 after that?
 18 MR. DYER:
 19 A. Well, Dr. Carter chaired it.
 20 CHAYTOR, Q.C.:
 21 Q. So, Dr. Carter would be co-chair with Ms.
 22 Parnell?
 23 MR. DYER:
 24 A. Co-chair, yes, I'm sorry, Dr. Carter co-
 25 chaired, but she was, I don't know if it was a

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1 position, but I think she was given some type
 2 of status. I'm not sure if it was director of
 3 quality assurance or something to this -
 4 CHAYTOR, Q.C.:
 5 Q. Quality manager.
 6 MR. DYER:
 7 A. Quality manager, something like that she may
 8 have been given. And I was asked to be on it
 9 and I think Mr. Gulliver, although he's
 10 further up. I didn't see the purpose of Mr.
 11 Gulliver being there. It was more for the
 12 pathology lab itself. And I believe we also
 13 seconded technical support. So, Dr. Williams
 14 gave us money for six months for a full-time
 15 secretary to get things up and running. So,
 16 what I think we decided to do was again, we
 17 knew it was going to be a learning process; it
 18 was going to be slow. So, what we decided to
 19 do was take that six months worth of capital
 20 and make it part time over a year, so that we
 21 would have technical support or clerical
 22 support for three, three and a half hours a
 23 day for a whole year to give us time to get
 24 things typed and like that. So, that's what
 25 we did there. And then we started, the

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1 committee started.
 2 Oh, I'm sorry, there was also quality
 3 initiatives who -
 4 CHAYTOR, Q.C.:
 5 Q. And who from quality initiative was on your -
 6 MR. DYER:
 7 A. Janet Laidley and she would be the experience
 8 from the quality side to help us with what we
 9 needed to do.
 10 CHAYTOR, Q.C.:
 11 Q. Okay. So, you had one pathologist, Dr.
 12 Carter.
 13 MR. DYER:
 14 A. Oh, and I think Dr. Denic, like I think the
 15 site chief or clinical chief was there also.
 16 I can't remember everyone.
 17 CHAYTOR, Q.C.:
 18 Q. And then yourself and Ms. Parnell, Ms.
 19 Laidley.
 20 MR. DYER:
 21 A. Yes, so five or six started off.
 22 CHAYTOR, Q.C.:
 23 Q. And clerical support as well.
 24 MR. DYER:
 25 A. And clerical support also. I think the

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1 program was Ms. Parnell took over the position
 2 in April or May of '06 and by now it was
 3 summer and there was no clerical support.
 4 There was nobody to get. Summers are really
 5 bad. And so I think we actually lucked into
 6 someone in August or September.
 7 CHAYTOR, Q.C.:
 8 Q. And the importance of having a clerical person
 9 is--one of the main objectives of the
 10 committee is to create the SOPs, the standard
 11 operating procedures.
 12 MR. DYER:
 13 A. To do all the, no, to do all the typing for
 14 us.
 15 CHAYTOR, Q.C.:
 16 Q. The typing of what?
 17 MR. DYER:
 18 A. Well, typing as the program started. We would
 19 start this one percent concordance again, we
 20 would do the frozen section again--the whole
 21 concept would be to set up an entire quality,
 22 total quality management that would consist of
 23 clinical indicators for the clinical side and
 24 indicators for the technical side. Our goal
 25 would be to start the process and it was a

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1 learning process of references and writing
 2 SOPs. And then, of course, the biggest part
 3 would be to monitor all the practices
 4 associated with these policies and procedures
 5 that we would write.
 6 CHAYTOR, Q.C.:
 7 Q. Okay. And so how did that committee go?
 8 MR. DYER:
 9 A. That committee was, I think, a productive
 10 committee. It was well, I'll be honest, again
 11 there was differences of opinion. This time
 12 more so again with Dr. Carter. When we
 13 started having the meetings, it was made
 14 pretty clear that this committee wasn't going
 15 to write SOPs. And my intent or my
 16 interpretation as well as others at the
 17 committee level liked QI and, of course, Ms.
 18 Parnell was--you know, we need to write SOPs.
 19 Before we can monitor anything we need to
 20 write a policy, official policy, an official
 21 policy, an official SOP to monitor, but Ms.
 22 Carter felt that this committee was a quality
 23 management committee for monitoring only and
 24 that they would not write SOPs.
 25 CHAYTOR, Q.C.:

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1 Q. So, Dr. Carter wasn't in agreement with
 2 getting the policies and procedures in place
 3 before the actual monitoring could take place?
 4 MR. DYER:
 5 A. Correct.
 6 CHAYTOR, Q.C.:
 7 Q. Okay, and so how did that turn out? What
 8 happened? Whose view of the world prevailed?
 9 MR. DYER:
 10 A. Well, we never ever approved a terms of
 11 reference mainly because, you know, I think--I
 12 believe most of -
 13 CHAYTOR, Q.C.:
 14 Q. I'm sorry, your terms of reference for the
 15 committee?
 16 MR. DYER:
 17 A. The terms of reference, yeah, for this
 18 committee was never -
 19 CHAYTOR, Q.C.:
 20 Q. So there was never even agreement on what the
 21 committee's mandate would be?
 22 MR. DYER:
 23 A. Well, we--I think officially, no, although
 24 what we did is we still persevered and we
 25 continue to--we still set up all of the frozen

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1 section report discordance, the one percent.
 2 We started doing all of that anyway with Dr.
 3 Carter because she was reviewing a lot of it.
 4 It was excellent. So, that maintained, but
 5 the SOPs weren't getting written. By now we
 6 were a new organization and new goals and
 7 objectives had been written for the program.
 8 And one of the first priority goals and
 9 objectives for laboratory medicine was to
 10 write and standardize all protocols in
 11 laboratory medicine program.
 12 CHAYTOR, Q.C.:
 13 Q. Okay. So, that became key in your goals and
 14 objectives.
 15 MR. DYER:
 16 A. Well, that was the key for the entire
 17 laboratory.
 18 CHAYTOR, Q.C.:
 19 Q. For the entire program.
 20 MR. DYER:
 21 A. So, I visited Carbonear and Clarendville and
 22 got any documentation that they had and
 23 brought it back to this committee so that--I
 24 wanted to let them know that they were
 25 involved as part of the input too and so that

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1 we could pursue the writing of these official
 2 policies and procedures. It never happened.
 3 CHAYTOR, Q.C.:
 4 Q. And why not?
 5 MR. DYER:
 6 A. Ms. Carter was -
 7 CHAYTOR, Q.C.:
 8 Q. Dr. Carter you mean.
 9 MR. DYER:
 10 A. Dr. Carter, I'm sorry, was not in agreement.
 11 CHAYTOR, Q.C.:
 12 Q. Okay. So, what happened in terms of the
 13 committee itself? Did Dr. Carter continue on
 14 then with the committee?
 15 MR. DYER:
 16 A. Oh yes, yes, the committee continued on and we
 17 continued on.
 18 CHAYTOR, Q.C.:
 19 Q. Okay. And at some point in time did Lynn Wade
 20 join your committee? Was she there?
 21 MR. DYER:
 22 A. Yes, in 200--when did that happen? Was that
 23 2007? In 2007 a new position was created for
 24 a quality manager. And Ms. Lynn Wade got that
 25 position and I believe some time during that

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1 summer, I believe she came or she was invited
 2 to our meeting, to one of the meetings.
 3 CHAYTOR, Q.C.:
 4 Q. Now, I just want to be clear. So, Ms.
 5 Parnell, what was her role and how did that
 6 differ from Ms. Wade's role?
 7 MR. DYER:
 8 A. Oh, well Ms. Parnell or Catherine, what she
 9 did was she was the technical person. She was
 10 the technical pathology staff on that
 11 committee. So, what she would do was she
 12 would actually do a lot. She would pull the
 13 reports for frozen sections. She had a lot of
 14 experience in pathology. So, she would pull
 15 all those reports and read them for
 16 correlation. She would exactly what the
 17 committee was asking her to do. She would do
 18 the one percent searches.
 19 CHAYTOR, Q.C.:
 20 Q. So, she was actually hired for the committee.
 21 She was -
 22 MR. DYER:
 23 A. She was hired, yes, we actually were given a
 24 new position.
 25 CHAYTOR, Q.C.:

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1 Q. Yes, okay.
 2 MR. DYER:
 3 A. So, she actually did all that and at the same
 4 time, I asked her to write policies and
 5 procedures.
 6 CHAYTOR, Q.C.:
 7 Q. Okay. And Ms. Wade's position, what was her
 8 position?
 9 MR. DYER:
 10 A. Ms. Wade is actually quality manager with the
 11 VP. So, she's the manager of quality for
 12 laboratory medicine. So, she would almost
 13 oversee all quality in the laboratory
 14 medicine.
 15 CHAYTOR, Q.C.:
 16 Q. Okay. And did she, at some point--my question
 17 was, did she, at some point, join your
 18 committee or attend your meetings?
 19 MR. DYER:
 20 A. I believe she was invited to one of our
 21 meetings some time in the summer of '07. It
 22 might have been August, August stands out. I
 23 think it might have been August and yes, she
 24 attended that meeting.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. And what happened?
 2 MR. DYER:
 3 A. There was a debate over what the committee
 4 should be doing.
 5 CHAYTOR, Q.C.:
 6 Q. So, at that point in time there was still this
 7 debate as to the mandate of the committee.
 8 MR. DYER:
 9 A. More so I think around SOPs, that actual part
 10 of it.
 11 CHAYTOR, Q.C.:
 12 Q. And the SOPs seem to have been the issue from
 13 the beginning with the committee.
 14 MR. DYER:
 15 A. That was my interpretation. Other than
 16 monitoring, we have to--I mean, logically you
 17 would write a policy, write the procedure and
 18 then monitor it. That's the logical steps, I
 19 would think anyway.
 20 CHAYTOR, Q.C.:
 21 Q. And what happened in the meeting in August
 22 2007 which Ms. Wade attended?
 23 MR. DYER:
 24 A. There was a discussion back and forth mostly
 25 with Ms. Wade and Dr. Carter over what would

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1 the mandate of the committee should be or what
 2 part of the mandate of the committee should
 3 be. And I remember that Dr. Carter excused
 4 herself from the meeting and by the time we
 5 got out of the meeting, the rumour was already
 6 out that she had resigned from the committee.
 7 CHAYTOR, Q.C.:
 8 Q. Okay. So, this issue regarding the creation
 9 of the SOPs got to the point where Dr. Carter
 10 resigned from the committee. Her view of
 11 where that fit into the mandate of the
 12 committee was such that -
 13 MR. DYER:
 14 A. Again, you can talk to her about it, but I
 15 believe that was my interpretation, yes.
 16 CHAYTOR, Q.C.:
 17 Q. Okay. And did she ever come back to the
 18 committee?
 19 MR. DYER:
 20 A. Not that I know of, no.
 21 CHAYTOR, Q.C.:
 22 Q. So, who took over along with Ms. Parnell to
 23 chair the committee?
 24 MR. DYER:
 25 A. Dr. Lynn Morris-Larkin is site chief over at

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1 Health Science and she is now a co-chair of
 2 that committee.
 3 CHAYTOR, Q.C.:
 4 Q. Okay. And that's the current situation.
 5 MR. DYER:
 6 A. That is the current situation.
 7 CHAYTOR, Q.C.:
 8 Q. And are you still on the committee?
 9 MR. DYER:
 10 A. I am on the committee, but I haven't attended
 11 a meeting myself in probably nine or ten
 12 months.
 13 CHAYTOR, Q.C.:
 14 Q. Okay. Otherwise the composition of the
 15 committee is the same?
 16 MR. DYER:
 17 A. Actually, I think more pathologists had been,
 18 more physicians had been added to the
 19 committee. I believe the site chiefs are now
 20 also part of it. So, Lynn Morris-Larkin was a
 21 site chief and Dr. Cook was also invited. And
 22 now that we're actually getting more staff,
 23 our team leader when it comes to the grossing
 24 surgical suites and the morgue, she is now on
 25 the committee. And we also have a

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1 representative from the IHC on the committee
 2 and in the future I'm hoping to get a senior
 3 tech for the technical lab and they would also
 4 be on the committee.
 5 CHAYTOR, Q.C.:
 6 Q. And who is your representative from the IHC?
 7 MR. DYER:
 8 A. Right now it would be--we just hired a new
 9 PhD, Ms. Jane Gambert (sic.).
 10 CHAYTOR, Q.C.:
 11 Q. I'm sorry, what's her last name?
 12 MR. DYER:
 13 A. Jane Gambert.
 14 CHAYTOR, Q.C.:
 15 Q. Gambert?
 16 MR. DYER:
 17 A. Yes. E-G, yes. Gamberg.
 18 CHAYTOR, Q.C.:
 19 Q. Gamberg?
 20 MR. DYER:
 21 A. Gamberg, yes.
 22 CHAYTOR, Q.C.:
 23 Q. Thank you.
 24 MR. DYER:
 25 A. Prior to Ms. Gamberg, one of our new hirers,

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1 Bev Rowe, she was one of the new hirers for
 2 IHC and she was actually on that committee.
 3 She was also on that committee last year, that
 4 was another who was on that I didn't think of
 5 at the time. So, we have a wide variety from
 6 in house.
 7 CHAYTOR, Q.C.:
 8 Q. If we would have, please, P-2157? And I won't
 9 take you through this exhibit at this point in
 10 time anyhow, in any detail, but this is the
 11 policies and procedure manual dated 2008.
 12 MR. DYER:
 13 A. Yes.
 14 CHAYTOR, Q.C.:
 15 Q. Just take a moment because it's a fairly large
 16 exhibit. Mr. Dyer, is this manual the product
 17 then of the quality assurance committee?
 18 MR. DYER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. So, ultimately, the committee continued with
 22 policies and procedures.
 23 MR. DYER:
 24 A. Yes. Even when this committee was struck in
 25 2006, I will persevered and attempted to have

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1 policies and procedures written.
 2 CHAYTOR, Q.C.:
 3 Q. Okay. And again, coming out of Trish
 4 Wegrynowski's review in 2005, September 2005,
 5 that was one of her key recommendations.
 6 MR. DYER:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. Now most of these policies and procedures,
 10 there's still a number in draft, but most of
 11 them, if we look through and I've taken
 12 another witness through a number of them,
 13 they're not signed off until this year, 2008.
 14 MR. DYER:
 15 A. Again, we were writing them, but again, it was
 16 very challenging with our total quality
 17 management group. And a lot of the work, I'll
 18 be honest, a huge majority of the work
 19 actually took place, I would say, after
 20 September of '07 when Ms. Wade came on board.
 21 CHAYTOR, Q.C.:
 22 Q. Okay. So, while it's the work of the
 23 committee, Ms. Wade was instrumental in
 24 getting a lot of this work done and completed.
 25 MR. DYER:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. Okay. And this one that I've brought up on
 4 the screen here at page 13, it's called "the
 5 tissues for gross examination only" and the
 6 author is indicated to be Dr. Carter.
 7 MR. DYER:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. And it was approved January 17th, 2008. So, I
 11 take it while Dr. Carter may have left the
 12 committee, she still assisted the committee in
 13 getting, or assisted in getting these done.
 14 MR. DYER:
 15 A. I think, I don't know, that's a good one.
 16 You'll have to ask her. I think your
 17 question--she's never been back on the
 18 committee, but again, when we look at writing
 19 of policies and procedures, what we normally
 20 do is we go to the people who actually do the
 21 job. Now, "tissue for gross examination
 22 only", this is one that we worked on over a
 23 year and a half ago through the, I think it
 24 was the Maung report, I'm not sure.
 25 CHAYTOR, Q.C.:

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1 Q. Yes.
 2 MR. DYER:
 3 A. So, that's where this came from.
 4 CHAYTOR, Q.C.:
 5 Q. So, that one may have been in the works is
 6 what you're saying.
 7 MR. DYER:
 8 A. Yes, yes.
 9 CHAYTOR, Q.C.:
 10 Q. Okay. And now that these policies and
 11 procedures are in place, whose responsibility
 12 is it to ensure that they are, in fact, being
 13 followed?
 14 MR. DYER:
 15 A. We have a monitoring process in place and each
 16 month we pick certain, where we feel that
 17 deficiencies may be occurring, the committee
 18 will pick what we call certain indicators and
 19 then they will ask for information for that
 20 month about that type of indicator and then
 21 it's reviewed and an outcome or a report is
 22 written and submitted to the actual group.
 23 And from there we would determine if, if
 24 something is not being done, then action is
 25 taken.

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1 CHAYTOR, Q.C.:
 2 Q. So, it's still the work of the quality
 3 assurance committee?
 4 MR. DYER:
 5 A. Yes, that's their purpose. Monitoring is the
 6 big one.
 7 CHAYTOR, Q.C.:
 8 Q. And I understand how the committee would work
 9 in terms of the clinical indicators that we
 10 talked about and how in terms of some of the
 11 more mundane, day-to-day that has to happen
 12 with procedures, how does the committee
 13 monitor that?
 14 MR. DYER:
 15 A. Well, I'll give you a good example because
 16 it's one that was identified. And that would
 17 be maintenance, as a mundane procedure. So,
 18 what would happen is the group would identify--
 19 and we're still learning, still growing--so,
 20 what we decided or what we have been doing,
 21 but now we've talked since, is we would make a
 22 six month plan. So, we know that maintenance
 23 was an issue. So, what would happen is--
 24 what's this? Say, it's January, so in
 25 January, there's a new personnel in that

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1 position, Ms. Bev Rowe. She would actually
 2 call the lead person in immunohistochemistry,
 3 for example, which would be Jane and she would
 4 say, I want a copy of your daily, monthly,
 5 weekly, quarterly maintenances for the month
 6 of January. And then that would all come back
 7 to her and she would actually write a report
 8 to see if everything was being done, to see if
 9 everything is being monitored. And then that
 10 report would be brought to the committee and
 11 if everything is being monitored, our outcome
 12 would be, everything is being monitored. If
 13 it's not, then it would be given to me because
 14 maintenance is under my realm and I would meet
 15 with the staff and determine why it's not
 16 being done and what my corrective action was.
 17 And then that would be filed as a corrective
 18 action. So, this is being done now for
 19 everything.
 20 CHAYTOR, Q.C.:
 21 Q. And there's actually corrective action,
 22 there's policy regarding corrective actions.
 23 Does that committee then review and corrective
 24 actions that come forward?
 25 MR. DYER:

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1 A. Yes, they do.
 2 CHAYTOR, Q.C.:
 3 Q. As part of the mandate of the committee.
 4 MR. DYER:
 5 A. Yes, it's a huge mandate, it's a full-time
 6 job.
 7 CHAYTOR, Q.C.:
 8 Q. And currently Ms. Wade is still in her
 9 position -
 10 MR. DYER:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. - overall review of quality for the whole
 14 laboratory.
 15 MR. DYER:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. Which includes the pathology laboratory.
 19 MR. DYER:
 20 A. Yes.
 21 CHAYTOR, Q.C.:
 22 Q. Ms. Gamberg, the PhD, what's her role? What's
 23 her job description?
 24 MR. DYER:
 25 A. We have a director of immunohistochemistry,

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1 Dr. Ford Elms, and she's like his designate.
 2 So, she will be there to help Dr. Elms and
 3 help the techs move towards our goals and
 4 objectives of--she's involved directly with
 5 QA. So, she will ensure that the QA is being
 6 done all the time. And she will write reports
 7 on it. She will ensure proficiency testing is
 8 being done. And when the results come back,
 9 she actually will put them in charts for us.
 10 So, it's quite easy for us to identify where
 11 there's deficiencies. And overall leadership,
 12 she will provide an overall direction to the
 13 laboratory.
 14 CHAYTOR, Q.C.:
 15 Q. So, she's just for the IHC portion in the lab?
 16 MR. DYER:
 17 A. Only IHC, yes.
 18 CHAYTOR, Q.C.:
 19 Q. Okay. And she's a PhD in what?
 20 MR. DYER:
 21 A. PhD, I believe in--I think she wrote her PhD
 22 in immunology.
 23 CHAYTOR, Q.C.:
 24 Q. Okay. And had she actually had any practical
 25 experience working in a lab?

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1 MR. DYER:
 2 A. Based on her interview, she's actually a
 3 medical laboratory technologist and she's had
 4 extensive experience in accreditation and ISO
 5 9000, a lot of experience, based on our
 6 interview and her CV.
 7 CHAYTOR, Q.C.:
 8 Q. And when did she take up her position?
 9 MR. DYER:
 10 A. I believe it was May of this year, April or
 11 May, it was some time this year.
 12 CHAYTOR, Q.C.:
 13 Q. So, her main focus is on the quality assurance
 14 piece?
 15 MR. DYER:
 16 A. Well, yes.
 17 CHAYTOR, Q.C.:
 18 Q. And she works closely with Dr. Elms as
 19 director of IHC.
 20 MR. DYER:
 21 A. And the technologists.
 22 CHAYTOR, Q.C.:
 23 Q. And the technologists. So, would she, in
 24 working closely with the technologists, would
 25 she be able to have hands on trouble shooting

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1 role if -
 2 MR. DYER:
 3 A. Certainly.
 4 CHAYTOR, Q.C.:
 5 Q. Yes? She's able to do that?
 6 MR. DYER:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. And that's part of what she does?
 10 MR. DYER:
 11 A. Yes. I think one of her big goals also will
 12 be--she has been identified as our lead for
 13 interpretation of controls. And has she been
 14 training the technologists in that regard?
 15 MR. DYER:
 16 A. No, she's being trained also because this is
 17 all new to her in that sense.
 18 CHAYTOR, Q.C.:
 19 Q. So, she's being trained -
 20 MR. DYER:
 21 A. Also.
 22 CHAYTOR, Q.C.:
 23 Q. - to read external controls?
 24 MR. DYER:
 25 A. Yes.

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1 CHAYTOR, Q.C.:

2 Q. Okay. And who is training her?

3 MR. DYER:

4 A. Dr. Ford Elms, right now. I think their plan

5 also is to send her away. We're going to send

6 her away also for some training.

7 CHAYTOR, Q.C.:

8 Q. Okay. And training in what?

9 MR. DYER:

10 A. Training in IHC in general and reading

11 controls.

12 CHAYTOR, Q.C.:

13 Q. And had she had any training in IHC before?

14 MR. DYER:

15 A. Yes, she was involved with antibody/antigen

16 reactions in her previous job.

17 CHAYTOR, Q.C.:

18 Q. Okay then, perhaps we'll turn to the actual

19 issue. When and how did you first hear about

20 the ER/PR issue?

21 MR. DYER:

22 A. I believe I received a phone call from Dr.

23 Cook inviting me to a meeting that day.

24 CHAYTOR, Q.C.:

25 Q. And what were you told by Dr. Cook in your

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1 phone call?

2 MR. DYER:

3 A. I believe all I was told is there's a meeting

4 upstairs at a certain time and he wants me to

5 attend.

6 CHAYTOR, Q.C.:

7 Q. And when did you receive that phone call?

8 What date?

9 MR. DYER:

10 A. May 17th, I think it was the same day as the

11 meeting.

12 CHAYTOR, Q.C.:

13 Q. May 17th, 2005.

14 MR. DYER:

15 A. Yes.

16 CHAYTOR, Q.C.:

17 Q. Okay. And so he invited you to attend a

18 meeting?

19 MR. DYER:

20 A. Yes.

21 CHAYTOR, Q.C.:

22 Q. Who else attended the meeting?

23 MR. DYER:

24 A. Bev Carter, Don Cook, Joy McCarthy and Kara

25 Laing.

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1 CHAYTOR, Q.C.:

2 Q. Okay, so all physicians.

3 MR. DYER:

4 A. Yes.

5 CHAYTOR, Q.C.:

6 Q. Two oncologists; Dr. Laing and Dr. McCarthy.

7 MR. DYER:

8 A. Yes.

9 CHAYTOR, Q.C.:

10 Q. And two pathologists; Dr. Cook and Dr. Carter.

11 MR. DYER:

12 A. Yes.

13 CHAYTOR, Q.C.:

14 Q. And yourself.

15 MR. DYER:

16 A. Yes.

17 CHAYTOR, Q.C.:

18 Q. Where did this meeting take place?

19 MR. DYER:

20 A. I can't remember. I think it was at Health

21 Science, but I really don't remember.

22 CHAYTOR, Q.C.:

23 Q. Okay. Well, tell us then what happened in the

24 meeting? What do you recall?

25 MR. DYER:

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1 A. Well, we came in and sat down and there was

2 four of us there at the time. Dr. Laing

3 wasn't there, I don't think, at the initial

4 part of the meeting. And who--I think it was

5 Dr. McCarthy started talking about this

6 patient--am I allowed to say her name?

7 CHAYTOR, Q.C.:

8 Q. Yes, you may.

9 MR. DYER:

10 A. Peggy Deane. And she was saying, you know,

11 she was just telling me or telling us a story

12 of this young lady who has breast cancer and

13 she was dying. And they sent--I think when

14 she got to that point, I think then Kara Laing

15 walked in and Kara Laing continued with the

16 story about how they sent her--I think they

17 sent her chart away for--well, I think she was

18 a negative/negative, I think they said. She

19 was a negative result for ER/PR and they sent

20 her chart away. And four words came back from

21 the person they sent it and the four words

22 were "ER should be positive". So, they said--

23 they had a different result from what they did

24 back in, I believe it was May of '02.

25 CHAYTOR, Q.C.:

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1 Q. So, she had originally had her test back in
 2 2002.
 3 MR. DYER:
 4 A. I think that was the date, I'm not quite sure.
 5 CHAYTOR, Q.C.:
 6 Q. And her chart was sent away to another
 7 oncologist.
 8 MR. DYER:
 9 A. It was sent away somewhere in the United
 10 States for a review.
 11 CHAYTOR, Q.C.:
 12 Q. Okay. And that oncologist came back or that -
 13 MR. DYER:
 14 A. She said--her exact words, four words came
 15 back, "ER should be positive".
 16 CHAYTOR, Q.C.:
 17 Q. Okay. And who was telling you this part of
 18 the story?
 19 MR. DYER:
 20 A. Dr. Laing.
 21 CHAYTOR, Q.C.:
 22 Q. Okay. And this is the first time you've heard
 23 about this, is it?
 24 MR. DYER:
 25 A. First time every.

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1 CHAYTOR, Q.C.:
 2 Q. Okay. And what happened after the person in
 3 the United States indicate the ER should be
 4 positive, what else? Continue on with the
 5 story as it was told to you.
 6 MR. DYER:
 7 A. So, then they said they felt there was an
 8 issue with our ER/PR back in 2002.
 9 CHAYTOR, Q.C.:
 10 Q. Had they had the ER test repeated at this
 11 point?
 12 MR. DYER:
 13 A. I don't recall them telling me that it was
 14 retested, but I would assume it was, if
 15 they're saying it was positive, but I don't
 16 recall it. I don't know myself, if it was
 17 actually retested at that time.
 18 CHAYTOR, Q.C.:
 19 Q. So, they indicated to you that she was indeed
 20 ER positive.
 21 MR. DYER:
 22 A. She was ER positive, yes.
 23 CHAYTOR, Q.C.:
 24 Q. Okay. And what happened after that? So,
 25 you're told the story of Peggy Deane and what

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1 happened?
 2 MR. DYER:
 3 A. And then we proceeded to discuss what should
 4 be done. Like, they started talking about
 5 what should be do about cases from '02. Then
 6 we discussed a few patients that came up, that
 7 they wanted reviewed. I believe then we
 8 discussed--again, I did pretty no talking in
 9 this. This was just all set at me, this
 10 stuff. Then, I think it was outline to me
 11 about going back and starting to do a major
 12 review and then I think we discussed more
 13 patients after that.
 14 CHAYTOR, Q.C.:
 15 Q. So, was anybody chairing the meeting as such?
 16 MR. DYER:
 17 A. I don't think so. I think it was -
 18 CHAYTOR, Q.C.:
 19 Q. And who was doing most of the talking?
 20 MR. DYER:
 21 A. I believe Joy McCarthy and Bev Carter.
 22 CHAYTOR, Q.C.:
 23 Q. And why--you said they wanted more patients
 24 reviewed in 2002. Why 2002?
 25 MR. DYER:

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1 A. I guess it was that's where--I think it was--
 2 again, I can't really even be sure if it was
 3 2002, 2003, but I think it was back to the
 4 time when this lady was first tested?
 5 CHAYTOR, Q.C.:
 6 Q. Okay. Was there any indication that the
 7 oncologists or any of the physicians in the
 8 room had any reason to think there was a
 9 problem in 2002?
 10 MR. DYER:
 11 A. Not that I know of, only that I think it just
 12 linked back to the fact that this is when the
 13 patient was tested originally. I think that
 14 was my interpretation at the time.
 15 CHAYTOR, Q.C.:
 16 Q. So they had this one patient who had had a
 17 conversion?
 18 MR. DYER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. And there wasn't any indication there was
 22 anyone else that they were aware of?
 23 MR. DYER:
 24 A. That actually converted?
 25 CHAYTOR, Q.C.:

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1 Q. Yes, that they were aware of by May 17th?

2 MR. DYER:

3 A. No, I think we discussed like six or seven

4 patients that day.

5 CHAYTOR, Q.C.:

6 Q. That they wanted to have reviewed or -

7 MR. DYER:

8 A. I think, yes, they wanted--I'm not sure if

9 they wanted them reviewed immediately or

10 wanted them sent out or they were already

11 reviewed. I can't really remember what we--

12 but I know there was at least another six or

13 seven discussed.

14 CHAYTOR, Q.C.:

15 Q. Okay, and what was the tone of this meeting?

16 MR. DYER:

17 A. I was in a very defensive mode at the time.

18 CHAYTOR, Q.C.:

19 Q. You were?

20 MR. DYER:

21 A. Oh yes.

22 CHAYTOR, Q.C.:

23 Q. And why is that?

24 MR. DYER:

25 A. When they actually explained about the--when

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1 they actually told me about the story about

2 Mrs. Deane, one of the oncologists actually

3 blamed me for the problem.

4 CHAYTOR, Q.C.:

5 Q. And what do you mean? What did she say to you?

6 MR. DYER:

7 A. She pointed her finger at me and said "this is

8 your fault" and it was very upsetting.

9 CHAYTOR, Q.C.:

10 Q. Okay, so that was--that's okay, take your

11 time. So that's after having been told this

12 story. Would you like to have a break?

13 MR. DYER:

14 A. Please.

15 CHAYTOR, Q.C.:

16 Q. Okay, could we take a break?

17 THE COMMISSIONER:

18 Q. We'll take the morning break.

19 (RECESS)

20 THE COMMISSIONER:

21 Q. Please be seated. Ms. Chaytor?

22 CHAYTOR, Q.C.:

23 Q. Thank you, Commissioner. Registrar, if we

24 could have, please, P-2147? Mr. Dyer, I

25 believe these are your notes of the May 17th

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1 meeting that we were discussing.

2 MR. DYER:

3 A. Yes.

4 CHAYTOR, Q.C.:

5 Q. And you've written here on the top the people

6 who attended.

7 MR. DYER:

8 A. Yes.

9 CHAYTOR, Q.C.:

10 Q. Joy McCarthy, Dr. Cook, Dr. Carter and Dr.

11 Laing, okay, and could you just tell us what

12 does the next line say?

13 MR. DYER:

14 A. It was brought up that we had a negative ER/PR

15 issue.

16 CHAYTOR, Q.C.:

17 Q. Okay, so negative ER/PR issue, and then Peggy

18 Deane?

19 MR. DYER:

20 A. Peggy Deane.

21 CHAYTOR, Q.C.:

22 Q. Sent out for second opinion?

23 MR. DYER:

24 A. Yes.

25 CHAYTOR, Q.C.:

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1 Q. And what does this say?

2 MR. DYER:

3 A. It says "came back" and underneath it, it says

4 "ER should be positive."

5 CHAYTOR, Q.C.:

6 Q. Okay, and that was -

7 MR. DYER:

8 A. That looks like "done in 2002."

9 CHAYTOR, Q.C.:

10 Q. Done in 2002, and then what does this say

11 here?

12 MR. DYER:

13 A. That's where I drew my line to say point a

14 finger at me, "this is your fault."

15 CHAYTOR, Q.C.:

16 Q. Okay, and then you drew the line from Dr.

17 McCarthy. Is that who said that to you?

18 MR. DYER:

19 A. Yes, it is.

20 CHAYTOR, Q.C.:

21 Q. Okay, and then it says "May 2002"

22 MR. DYER:

23 A. So May 2002 was the--I think was the time line

24 that was brought up and then discussion was

25 around delaying ER/PRs.

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1 CHAYTOR, Q.C.:
 2 Q. Delaying all ER/PRs is it?
 3 MR. DYER:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. That's delaying, is it?
 7 MR. DYER:
 8 A. That's delay.
 9 CHAYTOR, Q.C.:
 10 Q. Okay, and what did you understand that to
 11 mean?
 12 MR. DYER:
 13 A. I think there was discussion at the meeting
 14 from Dr. Carter about putting a hold on ER/PR.
 15 CHAYTOR, Q.C.:
 16 Q. At that point in time?
 17 MR. DYER:
 18 A. At that point in time.
 19 CHAYTOR, Q.C.:
 20 Q. Okay, and was there any significance, May
 21 2002, what did you understand that date to be?
 22 MR. DYER:
 23 A. Again, I think I just linked it back to the
 24 patient, Peggy Deane, and again, I'm not--I
 25 never did check to see if that's when she was

Page 110

1 actually done. It's just that that's what I
 2 wrote down. I'll be honest, I hardly remember
 3 what I was writing down, so -
 4 CHAYTOR, Q.C.:
 5 Q. At that point in time?
 6 MR. DYER:
 7 A. At that point, yes.
 8 CHAYTOR, Q.C.:
 9 Q. Okay, and why is that?
 10 MR. DYER:
 11 A. Oh, no, I was just upset.
 12 CHAYTOR, Q.C.:
 13 Q. You were just upset then, okay, all right. So
 14 anything after that in the meeting is a little
 15 bit blurry for you?
 16 MR. DYER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, and so the May 2002, that's not what--
 20 the delaying all ER/PR doesn't relate back to
 21 that date?
 22 MR. DYER:
 23 A. No, no, May 2002, I think was the issue, and
 24 then the next statements that came out was
 25 delay all ER/PRs.

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1 CHAYTOR, Q.C.:
 2 Q. Okay, and "DAKO system from 1996 to 2003, all
 3 negatives must be repeated, ER/PR controls."
 4 Is that what's written there?
 5 MR. DYER:
 6 A. That's what's written.
 7 CHAYTOR, Q.C.:
 8 Q. Okay. Sorry, go ahead?
 9 MR. DYER:
 10 A. My interpretation, again now, I'm having--
 11 struggling to remember, but I believe what was
 12 said was they wanted me--I guess they wanted
 13 me or the plan would be was to all ER/PRs done
 14 on the DAKO from 1996 to 2003, they wanted to
 15 identify all negatives to be repeated.
 16 CHAYTOR, Q.C.:
 17 Q. And repeat them, okay.
 18 MR. DYER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. And then we've redacted--you'll see that
 22 there's names that we've taken out here.
 23 MR. DYER:
 24 A. So those were patients that were negative and
 25 I think that--I'm not sure if they wanted to

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1 send them away for a second opinion or they
 2 were going to send them away. I'm not sure
 3 what it was, but it was the same statement
 4 each time.
 5 CHAYTOR, Q.C.:
 6 Q. And all, that's for all three of those?
 7 MR. DYER:
 8 A. There's three patients there.
 9 CHAYTOR, Q.C.:
 10 Q. And then this says "60 percent positive, 40
 11 percent negative." What's that referencing,
 12 do you recall?
 13 MR. DYER:
 14 A. I believe that was a comment by Dr. McCarthy
 15 about positivity negativity rates. I think
 16 that's where it came from. There was a 60
 17 percent--I'm not sure if she was saying it was
 18 in literature that there should be a 60
 19 percent positivity rate and 40--I'm not sure,
 20 but for some reason, I wrote it down.
 21 CHAYTOR, Q.C.:
 22 Q. And you believe it related to positivity
 23 rates?
 24 MR. DYER:
 25 A. Positivity rates for ER/PR, yes.

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1 CHAYTOR, Q.C.:

2 Q. Did you have any indication that those were

3 positivity rates for your laboratory?

4 MR. DYER:

5 A. No.

6 CHAYTOR, Q.C.:

7 Q. Okay, so you're not sure if that was the

8 literature she was referring to or where she

9 was getting these numbers?

10 MR. DYER:

11 A. The literature stands out for some reason, but

12 I can't be quite sure.

13 CHAYTOR, Q.C.:

14 Q. Okay, and "June 2003 back six months at a

15 time"?

16 MR. DYER:

17 A. At a time.

18 CHAYTOR, Q.C.:

19 Q. Is that what that's saying?

20 MR. DYER:

21 A. I know my writing is not great.

22 CHAYTOR, Q.C.:

23 Q. No, that's fine. We've seen worse actually.

24 MR. DYER:

25 A. Again, I wrote that down for some reason. I

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1 think if we go back--can you just go to the

2 beginning again?

3 CHAYTOR, Q.C.:

4 Q. Yes, sure, absolutely.

5 MR. DYER:

6 A. What did I have written here? 2003, yes. So

7 I think they wanted--I think Dr. Carter wanted

8 me to start or wanted us to start on June of

9 2003 and go back.

10 CHAYTOR, Q.C.:

11 Q. Okay.

12 MR. DYER:

13 A. I don't know why she picked that date, but

14 that was the date. For some reason, that's

15 what I got wrote there.

16 CHAYTOR, Q.C.:

17 Q. You don't recall what discussion was around

18 that as to why June 2003?

19 MR. DYER:

20 A. No, it was just that was the date that was

21 actually said, so that's the date I wrote

22 down.

23 CHAYTOR, Q.C.:

24 Q. And why would you be going back six months at

25 a time? What was the rationale for doing it

Page 115

1 that way?

2 MR. DYER:

3 A. I guess it would just be easier to do, instead

4 of trying to do a massive search, let's just

5 go back group by group or time by time.

6 CHAYTOR, Q.C.:

7 Q. In six-month increments.

8 MR. DYER:

9 A. Six-month intervals, yes.

10 CHAYTOR, Q.C.:

11 Q. Okay, and then perhaps, what does this say?

12 MR. DYER:

13 A. "Negative metastatic request ASAP." So I

14 guess what I understood was once we started

15 going back, any diagnosis of metastatic cancer

16 that were negative should be checked

17 immediately.

18 CHAYTOR, Q.C.:

19 Q. Okay. So anybody who had metastatic disease

20 would be given priority?

21 MR. DYER:

22 A. Yes.

23 CHAYTOR, Q.C.:

24 Q. In terms of rechecks?

25 MR. DYER:

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1 A. Yes.

2 CHAYTOR, Q.C.:

3 Q. Okay, and did that actually happen? When you

4 did start to pull cases, were metastatic

5 disease given priority?

6 MR. DYER:

7 A. I didn't start doing any of this actually.

8 CHAYTOR, Q.C.:

9 Q. None of this?

10 MR. DYER:

11 A. None of this.

12 CHAYTOR, Q.C.:

13 Q. So the plan does change?

14 MR. DYER:

15 A. Yes, I think so.

16 CHAYTOR, Q.C.:

17 Q. Okay, and we will talk to you about that. The

18 June 2003 reference, was there any indication

19 at all as to why 2003?

20 MR. DYER:

21 A. You know, I don't think so. I don't know why

22 June of '03 was selected, but that's the date

23 that was stated at the meeting and that's the

24 date that I wrote down. I really can't

25 remember. I struggle to remember the meeting

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1 as it is, but I really can't remember why she
 2 wanted--why we were going up to '03 when this
 3 was in '05, but for some reason, June '03 was
 4 the date I wrote down.
 5 CHAYTOR, Q.C.:
 6 Q. Okay, and again, up here, you had May 2002
 7 written down, understanding that was the time
 8 of the original test of Ms. Deane?
 9 MR. DYER:
 10 A. Yes, I believe that's--that was my
 11 interpretation of when Peggy Deane was
 12 actually originally tested.
 13 CHAYTOR, Q.C.:
 14 Q. But then in terms of doing the review, and
 15 this is the oncologist asking for this?
 16 MR. DYER:
 17 A. No, I think this is Bev Carter.
 18 CHAYTOR, Q.C.:
 19 Q. This is Dr. Carter?
 20 MR. DYER:
 21 A. I'm not sure if it's Dr. Carter or the
 22 oncologists. I think it was Dr. Carter.
 23 CHAYTOR, Q.C.:
 24 Q. Was there any indication that they were aware
 25 of any problems in 2003? Is there any

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1 indication that any review had already taken
 2 place and there was some indication of a
 3 problem?
 4 MR. DYER:
 5 A. If it did, they didn't tell me it was going
 6 on. I didn't know.
 7 CHAYTOR, Q.C.:
 8 Q. And have you since heard anything along those
 9 lines?
 10 MR. DYER:
 11 A. No, I don't think so, not to -
 12 CHAYTOR, Q.C.:
 13 Q. Was there any discussion about Dr. Ejeckam's
 14 intervention in 2003?
 15 MR. DYER:
 16 A. I really can't remember if--I don't think that
 17 was discussed, but again, I can't remember.
 18 Maybe they could fill you in better.
 19 CHAYTOR, Q.C.:
 20 Q. Okay, and then, so then we have two more
 21 patients here, I guess.
 22 MR. DYER:
 23 A. Two more patients were discussed, yes.
 24 CHAYTOR, Q.C.:
 25 Q. And they were negative?

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1 MR. DYER:
 2 A. Who were negative. So I assume all these
 3 patients were already reviewed because they
 4 were negative.
 5 CHAYTOR, Q.C.:
 6 Q. And they were to be sent away for a second
 7 opinion?
 8 MR. DYER:
 9 A. Yeah, sent away for second opinions.
 10 CHAYTOR, Q.C.:
 11 Q. Okay, and then what does this say?
 12 MR. DYER:
 13 A. This, I think then what they talked about was
 14 they wanted to identify patients name, MCP,
 15 surgical number, and I said positive result,
 16 but I think what they wanted to know was what
 17 was the result.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, and then same as above for the last
 20 patient?
 21 MR. DYER:
 22 A. And then same as above, this was again another
 23 patient.
 24 CHAYTOR, Q.C.:
 25 Q. And who was identifying the patients in the

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1 meeting?
 2 MR. DYER:
 3 A. I believe they were coming from the
 4 oncologists.
 5 CHAYTOR, Q.C.:
 6 Q. Is there anything else then that you recall
 7 about the meeting?
 8 MR. DYER:
 9 A. When this meeting first started, I thought it
 10 was extremely strange that--personally, like
 11 I'm never invited to meetings by Dr. Cook, and
 12 when this meeting started, I found it
 13 extremely abnormal that me, as a front line
 14 manager, was invited to this meeting. Like
 15 there was no site chief from Health Science.
 16 Dr. Ejeckam wasn't there. Terry Gulliver
 17 wasn't there. It was just me, and I didn't
 18 understand. For something that seemed so
 19 important, I was invited. I don't--I didn't
 20 know why. I never asked, but after the
 21 meeting, I went down and explained to Terry
 22 what was going on and that's what I was saying
 23 to him, like I don't know why no one else,
 24 none of these other physicians were there. I
 25 don't know why, but they weren't.

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1 CHAYTOR, Q.C.:

2 Q. Okay, and so then after the meeting, you went

3 down and spoke to Mr. Gulliver?

4 MR. DYER:

5 A. Yes, and explained to him that, you know,

6 apparently we have a serious issue with some

7 of our testing of ER/PRs and, you know, what

8 were we going to do about it.

9 CHAYTOR, Q.C.:

10 Q. And did you tell him what had transpired in

11 the meeting?

12 MR. DYER:

13 A. Oh definitely, yes.

14 CHAYTOR, Q.C.:

15 Q. And in the meeting, and I realize this part is

16 difficult for you to talk about, but when that

17 happened and Dr. McCarthy said that to you,

18 you have Dr. Carter and Dr. Cook as the

19 clinical chief -

20 MR. DYER:

21 A. Absolutely no support. They didn't say a

22 word.

23 CHAYTOR, Q.C.:

24 Q. Okay. So no support for you on that?

25 MR. DYER:

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1 A. None whatsoever. They never said a word.

2 CHAYTOR, Q.C.:

3 Q. Even though they're part of your lab team?

4 MR. DYER:

5 A. Even though they were part of the lab team.

6 CHAYTOR, Q.C.:

7 Q. Okay, and did you relay that to Mr. Gulliver,

8 what had happened?

9 MR. DYER:

10 A. Definitely, oh, yes.

11 CHAYTOR, Q.C.:

12 Q. Yes, and did Mr. Gulliver have any idea that

13 this was happening?

14 MR. DYER:

15 A. No. I was probably the first person to tell

16 him about it.

17 CHAYTOR, Q.C.:

18 Q. And he hadn't heard of any problems or any

19 indication that there had been a problem?

20 MR. DYER:

21 A. No, and neither did I.

22 CHAYTOR, Q.C.:

23 Q. So by the end of the meeting, what was the

24 plan? Were you asked to do anything?

25 MR. DYER:

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1 A. No, I think Dr. Cook and Dr. Carter just took

2 over and they handled everything, and that's

3 pretty well what happened.

4 CHAYTOR, Q.C.:

5 Q. Okay, and when you told it to Mr. Gulliver,

6 what did he indicate should be the next course

7 of action from your point of view?

8 MR. DYER:

9 A. I don't know if we actually really got into

10 what would happen. I think just Don Cook took

11 the--Dr. Cook and Dr. Carter just took the

12 lead role and they were doing everything. I

13 mean, I wasn't--I don't even--I was hardly

14 even involved. I don't even know what was

15 going on, based on things that they were

16 doing. I didn't know.

17 CHAYTOR, Q.C.:

18 Q. And the site chief at the Health Science at

19 the time would have been who?

20 MR. DYER:

21 A. This is in '05?

22 CHAYTOR, Q.C.:

23 Q. Yes.

24 MR. DYER:

25 A. I believe it was Sushil Parai, I'm not sure.

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1 CHAYTOR, Q.C.:

2 Q. And did you have any discussions then with Dr.

3 Parai?

4 MR. DYER:

5 A. No. I would assume Dr. Cook would have spoke

6 to him and Dr. Ejeckam.

7 CHAYTOR, Q.C.:

8 Q. Would it have been Dr. Fontaine by 2005?

9 MR. DYER:

10 A. I'm not sure when he came on. It could have

11 been.

12 CHAYTOR, Q.C.:

13 Q. But I take it you didn't take it up with

14 whoever who the site chief was?

15 MR. DYER:

16 A. I didn't take it up with any of the

17 physicians. I would have naturally assumed

18 Dr. Cook would have taken it up with them.

19 CHAYTOR, Q.C.:

20 Q. Okay, and why wouldn't you do that? Why

21 wouldn't you speak to the site chief?

22 MR. DYER:

23 A. I don't know if I never thought of it or I was

24 just too upset, and it just never occurred to

25 me.

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1 CHAYTOR, Q.C.:

2 Q. And how about afterwards though, in the days

3 following?

4 MR. DYER:

5 A. No, I did not.

6 CHAYTOR, Q.C.:

7 Q. And how about Dr. Ejeckam, did you approach

8 Dr. Ejeckam?

9 MR. DYER:

10 A. I don't think I did.

11 CHAYTOR, Q.C.:

12 Q. Do you know whether or not anybody went to Dr.

13 Ejeckam?

14 MR. DYER:

15 A. I don't think anybody did.

16 CHAYTOR, Q.C.:

17 Q. And did you understand, at that point in time,

18 that Dr. Ejeckam was the point person for IHC?

19 MR. DYER:

20 A. Definitely, yes.

21 CHAYTOR, Q.C.:

22 Q. Okay, and so you were surprised that he wasn't

23 included in the meeting?

24 MR. DYER:

25 A. Yes.

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1 CHAYTOR, Q.C.:

2 Q. Okay, and you were also surprised that the

3 site chief wouldn't have been there?

4 MR. DYER:

5 A. Yes.

6 CHAYTOR, Q.C.:

7 Q. And that you would be there without Dr.

8 Gulliver--or sorry, Mr. Gulliver?

9 MR. DYER:

10 A. Well, yes, like I'm a front line manager and

11 this seemed to be--from what I got written

12 here, this was a very urgent thing, and I was

13 the one who was asked.

14 CHAYTOR, Q.C.:

15 Q. And I take it unusual for you to be called

16 into a meeting in any event, with just

17 physicians?

18 MR. DYER:

19 A. Never.

20 CHAYTOR, Q.C.:

21 Q. Never. If we could have then--is there

22 anything else then around that meeting, Mr.

23 Dyer, or have we covered that?

24 MR. DYER:

25 A. I think we've covered what I remember.

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1 CHAYTOR, Q.C.:

2 Q. Okay, and obviously Mrs. Deane was referenced

3 at the meeting because her name is in your

4 notes?

5 MR. DYER:

6 A. Yes, she was.

7 CHAYTOR, Q.C.:

8 Q. Okay, and did you know who Mrs. Deane was?

9 MR. DYER:

10 A. Did I know -

11 CHAYTOR, Q.C.:

12 Q. Personally, did you know who she was?

13 MR. DYER:

14 A. Yes, I knew--I worked with her husband at the

15 Janeway.

16 CHAYTOR, Q.C.:

17 Q. Yes, okay, and are you sure that, in terms of

18 what you were told regarding these other

19 patients that up to this point in time, they

20 only knew of the one conversion and that being

21 Mrs. Deane?

22 MR. DYER:

23 A. I think that was--I think that was my

24 understanding. Again, I believe these

25 patients that were identified here were to be

Page 128

1 checked.

2 CHAYTOR, Q.C.:

3 Q. Were to be checked?

4 MR. DYER:

5 A. I think that's what I understood.

6 CHAYTOR, Q.C.:

7 Q. Okay, and the basis upon why they were chosen

8 to be the ones to be checked, did they

9 indicate that?

10 MR. DYER:

11 A. Again, they may have talked about these

12 patients being the same or being around the

13 same as the type of situation as Peggy Deane

14 was, I'm not sure. We must have discussed

15 something, but I can't--I really can't

16 remember what it was.

17 CHAYTOR, Q.C.:

18 Q. So whether or not it was the same time frame

19 as her test or whether it was the same -

20 MR. DYER:

21 A. I don't know.

22 CHAYTOR, Q.C.:

23 Q. - type of cancer, you don't recall?

24 MR. DYER:

25 A. I don't know. There's no numbers, they were

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1 all names, so I wouldn't be able to tell you
 2 what years.
 3 THE COMMISSIONER:
 4 Q. What was the date of this meeting again?
 5 MR. DYER:
 6 A. This meeting, I think -
 7 CHAYTOR, Q.C.:
 8 Q. May 17th.
 9 MR. DYER:
 10 A. - May 17th, 2005.
 11 THE COMMISSIONER:
 12 Q. Thank you.
 13 CHAYTOR, Q.C.:
 14 Q. Okay, and if we could have then, please, P-
 15 0067? And this is a letter, Mr. Dyer, marked
 16 confidential dated May 24th, 2005. It's
 17 written to Dr. Robert Williams as the--he's
 18 indicated to be the Acting CEO and Vice
 19 President of Medical Services, and it's
 20 written by Dr. Cook, and you probably haven't
 21 seen this letter before.
 22 MR. DYER:
 23 A. Maybe just a week ago or something.
 24 CHAYTOR, Q.C.:
 25 Q. Yes, okay, and it refers however to the May

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1 11th or May 17th, sorry, meeting. So I just
 2 wanted to bring that to your attention. On
 3 May 17th meeting, "May 17th, 2005, a meeting
 4 was held which included myself, Dr. Carter,
 5 our resource person for breast pathology, Mr.
 6 Barry Dyer, divisional manager for anatomical
 7 pathology, and Doctors Joy McCarthy and Kara
 8 Laing, medical oncologists." So that would be
 9 the same meeting that we've just referred to,
 10 I take it?
 11 MR. DYER:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. He says "during that meeting, I brought forth
 15 a second patient originally reported as ER/PR
 16 negative in 2002, but now strongly positive
 17 for breast receptors on retesting." So you'll
 18 see in the first paragraph, which I didn't
 19 bother taking you through, but there's
 20 reference here to the first patient, "ER/PR
 21 reported negative in a patient with
 22 infiltrating lobular carcinoma in 2002 and
 23 when retested in May 2005, reported as
 24 strongly positive." So then in the second
 25 paragraph, Dr. Cook is indicating that at the

Page 131

1 meeting, he brought forth a second patient who
 2 had been retested and was now strongly
 3 positive.
 4 Do you recall that, that there was in
 5 fact discussion around a second patient?
 6 MR. DYER:
 7 A. I don't recall it. I would have--I probably
 8 would have wrote it down.
 9 CHAYTOR, Q.C.:
 10 Q. If that had happened?
 11 MR. DYER:
 12 A. Because I was writing down patients as we were
 13 going through, including Peggy Deane. So I
 14 don't remember a second patient being
 15 discussed.
 16 CHAYTOR, Q.C.:
 17 Q. Okay. "Much of this discussion at this
 18 meeting centred on the impact of estrogen
 19 receptors on breast cancer treatment. It is
 20 estimated that approximately 50 to 85 percent
 21 of all breast cancers, particularly
 22 infiltrating ductal and lobular carcinomas,
 23 exhibit estrogen receptors and that such
 24 tumours are commonly found in post-menopausal
 25 women." Do you recall that being discussed at

Page 132

1 the meeting?
 2 MR. DYER:
 3 A. No. It may have been, but I don't remember
 4 it.
 5 CHAYTOR, Q.C.:
 6 Q. And "a high percentage of tumour with estrogen
 7 receptors may regress after hormone
 8 manipulation whereas only a small number,
 9 approximately five percent, of those that are
 10 negative respond. The highest response rates
 11 are in patients with tumours exhibiting both
 12 ER and PR receptors, and breast cancer
 13 patients with high level hormone receptors
 14 have a slightly better prognosis than those
 15 without receptors." Do you recall was any of
 16 that discussed in the meeting?
 17 MR. DYER:
 18 A. Again it's difficult to remember.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. Then Dr. Cook at the end of his letter
 21 makes recommendations for immunoperoxidase
 22 testing and he's looking for the immediate
 23 establishment of an external proficiency
 24 testing and monitoring program, the
 25 establishment of a separate immunoperoxidase

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1 service with at least three technologists
 2 solely dedicated to immunoperoxidase testing
 3 with separate testing facilities and training
 4 of immunoperoxidase technologists in a major
 5 immuno referral lab that has a well
 6 established quality control and
 7 troubleshooting program, and appropriate CME
 8 funding for those immuno technologists, and
 9 those he says are his preliminary
 10 recommendations, will no doubt require
 11 additional manpower and funding levels than
 12 currently exist. So this is a week after your
 13 meeting. This is May 24th that Dr. Cook is
 14 writing this. Were any of measures discussed
 15 with you in the intervening week?
 16 MR. DYER:
 17 A. No.
 18 CHAYTOR, Q.C.:
 19 Q. And the idea of establishing a separate
 20 immunoperoxidase service with at least three
 21 technologists solely dedicated to the testing
 22 with separate testing facilities, was that not
 23 already implemented as of the end of 2003 and
 24 into January, 2004?
 25 MR. DYER:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. So what change would Dr. Cook be looking for
 4 here?
 5 MR. DYER:
 6 A. I don't know what change he would be looking
 7 for. We had -- the only issue was grossing
 8 and we had people trained by then. In late
 9 '03/'04 it was Catherine, and then to assist
 10 Catherine in '04/'05, we trained in another
 11 technologist, and in '05/'06 we trained in
 12 another technologist. So we had backup for
 13 the actual grossing done at that time. They
 14 were dedicated down in that lab.
 15 CHAYTOR, Q.C.:
 16 Q. As of the end of 2003 and the beginning of
 17 2004?
 18 MR. DYER:
 19 A. Well, again around 2004, they were about 90
 20 percent, but then later on in '04 we trained
 21 someone else and they were solely down there,
 22 and they were solely dedicated to immuno IHC,
 23 and at the same time they also -- I mean, they
 24 moved down there in '03 in December. They had
 25 a separate facility.

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1 CHAYTOR, Q.C.:
 2 Q. So 90 percent of their time was dedicated, in
 3 any event, by then to IHC?
 4 MR. DYER:
 5 A. Yes.
 6 CHAYTOR, Q.C.:
 7 Q. And that hadn't changed throughout '04 up to
 8 this point in time in '05?
 9 MR. DYER:
 10 A. No.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, and so then after this issue arose in
 13 the spring of 2005, was there any further
 14 change in that regard in terms of the
 15 dedication of the staff or their physical
 16 situation in terms of location within the
 17 laboratory?
 18 MR. DYER:
 19 A. No, I don't think -- no.
 20 CHAYTOR, Q.C.:
 21 Q. And from your point of view, there was no need
 22 to have such a change, it had already
 23 happened?
 24 MR. DYER:
 25 A. Yes. Well, again this wasn't discussed with

Page 136

1 me, but that was what was happening at the
 2 time.
 3 CHAYTOR, Q.C.:
 4 Q. Yes, okay, and the idea of the training of
 5 immunoperoxidase technologists in a major
 6 immuno referral lab with well established
 7 quality control and troubleshooting program
 8 and appropriate CME funding for the
 9 technologists, was that brought up with you at
 10 the time?
 11 MR. DYER:
 12 A. No.
 13 CHAYTOR, Q.C.:
 14 Q. And when do you first become aware that Dr.
 15 Cook -- or that there has been any
 16 recommendation along those lines in terms of
 17 the training of the technologists?
 18 MR. DYER:
 19 A. I think it was -- I think I became aware of it
 20 after the reports came back from the two
 21 external reviews.
 22 CHAYTOR, Q.C.:
 23 Q. So in the fall?
 24 MR. DYER:
 25 A. In the fall.

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1 CHAYTOR, Q.C.:

2 Q. Trish Wegrynowski's report, I believe, came

3 back November, 2005.

4 MR. DYER:

5 A. Yes, so I think in November/December, it was

6 discussed then about sending two techs away.

7 CHAYTOR, Q.C.:

8 Q. Okay, and if there were to be training of the

9 technologists, would that be your

10 responsibility as their manager?

11 MR. DYER:

12 A. It depends on what they mean by training.

13 CHAYTOR, Q.C.:

14 Q. In terms of arranging it and --

15 MR. DYER:

16 A. Again if it's troubleshooting, and that they

17 were already all trained for troubleshooting

18 on the Ventana System. If that's the kind of

19 training -- I would have certainly took -- if

20 I was asked, I would have certainly taken it

21 on and retrained them on the Ventana System,

22 but I believe that they were all operating the

23 system pretty proficiently.

24 CHAYTOR, Q.C.:

25 Q. Okay.

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1 MR. DYER:

2 A. If it comes to well established quality

3 control, I would imagine -- I think he may

4 mean -- I think his interpretation -- again I

5 shouldn't get into what his interpretation

6 would be, the reading of external controls,

7 and that training would have to be by a

8 clinical person.

9 CHAYTOR, Q.C.:

10 Q. But if your technologists are to seek further

11 education or training, would that normally go

12 through you as their manager?

13 MR. DYER:

14 A. Yes.

15 CHAYTOR, Q.C.:

16 Q. So you would expect to have been advised that

17 they were looking to have further training or

18 education?

19 MR. DYER:

20 A. Yes.

21 CHAYTOR, Q.C.:

22 Q. For people who report to you.

23 MR. DYER:

24 A. Yes, they would come to me. I didn't have a

25 budget myself, but there was a small budget

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1 for the entire program, and then I would go

2 and advocate on their behalf to the director

3 if there was money available.

4 CHAYTOR, Q.C.:

5 Q. And the first time that came to your knowledge

6 that there would be -- or that there was a

7 recommendation for further training was after

8 Ms. Wegrynowski and Dr. Banerjee had visited?

9 MR. DYER:

10 A. Yes, I think that's when it first was brought

11 to my attention.

12 CHAYTOR, Q.C.:

13 Q. So I take it between May and November, 2005,

14 there was no additional training given to the

15 technologists?

16 MR. DYER:

17 A. I think -- what happened was I think the

18 Ventana, Carole came in to review the system

19 at the request of Dr. Williams.

20 CHAYTOR, Q.C.:

21 Q. Yes.

22 MR. DYER:

23 A. And I think she -- I think she just went

24 through it with him to see -- I don't think

25 she actually gave additional training, but I

Page 140

1 believe she went through just to see how they

2 were doing on troubleshooting of the equipment

3 itself.

4 CHAYTOR, Q.C.:

5 Q. Yes, that's in the beginning of August, 2005.

6 MR. DYER:

7 A. Yes, but I don't think -- I don't think that

8 was for training. I think that was just to

9 assess the system and see what they knew.

10 CHAYTOR, Q.C.:

11 Q. And I believe actually in September, 2005, I

12 think it's Mr. Green who did attend further --

13 did attend a seminar in September, 2005?

14 MR. DYER:

15 A. Yes, good point, yes. I forgot about that,

16 yes.

17 CHAYTOR, Q.C.:

18 Q. Now that I think about it.

19 MR. DYER:

20 A. Yes, that happened. Yes, I think that came up

21 in August about going to the NSH.

22 CHAYTOR, Q.C.:

23 Q. And did you link that at all to anything

24 arising out of the ER/PR issue?

25 MR. DYER:

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1 A. Yes, I'm sorry, that's a logical link, yes.
 2 CHAYTOR, Q.C.:
 3 Q. So August of 2005, you became aware of that?
 4 MR. DYER:
 5 A. Yes, it was late August. I think it was only,
 6 like, within two weeks a decision was - that
 7 came up.
 8 CHAYTOR, Q.C.:
 9 Q. Okay, and was that done on Mr. Green's
 10 initiation or who recommended that he go for
 11 that training or for that seminar?
 12 MR. DYER:
 13 A. I think -- I'm not sure if it came from Mr.
 14 Gulliver or if it was higher up. I'm not sure
 15 how NSH came into our -- how we identified NSH
 16 as a international organization to go for
 17 training or go for education.
 18 CHAYTOR, Q.C.:
 19 Q. Okay. So after the May 17th, 2005, meeting,
 20 you're not aware of this correspondence that's
 21 sent, and when do you next have any contact on
 22 the issue?
 23 MR. DYER:
 24 A. I'm not sure if in June -- I'm not sure if I
 25 was -- I can't remember if I was asked to

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1 print a bunch of ER/PR reports. I can't
 2 remember if I -- for some reason, it stands
 3 out, but other than that, I was involved with
 4 nothing to do with ER/PR.
 5 CHAYTOR, Q.C.:
 6 Q. Were you invited to any further meetings in
 7 that first month or so?
 8 MR. DYER:
 9 A. I don't recall any. No, I don't think so.
 10 CHAYTOR, Q.C.:
 11 Q. If we could have, please, P-0492. This is a
 12 memo that goes out from Dr. Cook, as clinical
 13 chief, June 14th, 2005, and it's sent to all
 14 laboratory directors across the province, and
 15 he writes to them re; estrogen and
 16 progesterone receptors, "We are aware of a
 17 number of negative estrogen and progesterone
 18 receptors that have converted on repeat
 19 testing with our new Ventana benchmark
 20 immunoperoxidase testing". So now this is
 21 almost a month after you were at the first
 22 meeting. Had anyone informed you in the
 23 meantime that a number of the patients had now
 24 been retested and there were further
 25 conversions?

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1 MR. DYER:
 2 A. No.
 3 CHAYTOR, Q.C.:
 4 Q. "This new Ventana system is fully automated
 5 and is much more sensitive than the
 6 immunoperoxidase technique under the previous
 7 DAKO method". What about that idea, Mr. Dyer,
 8 did anyone discuss that with you that perhaps
 9 this is because the Ventana is more sensitive?
 10 MR. DYER:
 11 A. I don't know if anyone actually discussed it
 12 with me. It's -- I don't think the Ventana
 13 system was more sensitive.
 14 CHAYTOR, Q.C.:
 15 Q. You weren't of that opinion?
 16 MR. DYER:
 17 A. No, I don't think it was.
 18 CHAYTOR, Q.C.:
 19 Q. And from a technical point of view, was your
 20 opinion sought by anyone on that?
 21 MR. DYER:
 22 A. I don't think so.
 23 CHAYTOR, Q.C.:
 24 Q. You were pretty well versed in the Ventana
 25 system?

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1 MR. DYER:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. And had had training yourself personally on
 5 it?
 6 MR. DYER:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. Did anyone come to you and ask you if this
 10 could be because the Ventana was more
 11 sensitive?
 12 MR. DYER:
 13 A. I don't think so, not that I can recall. I'm
 14 not sure if Terry might have talked to me
 15 about it. I'm not sure.
 16 CHAYTOR, Q.C.:
 17 Q. "Most of these false negatives have occurred
 18 during the year 2002. Presently we're in the
 19 process of retesting all negative ER and PRs
 20 for that particular year. I'm requesting that
 21 you forward all negative ER and PR cases for
 22 the year 2002 to Mr. Barry Dyer at the General
 23 Hospital site", and he asked them to submit
 24 the reports, the original ER and PR slides,
 25 including controls, as well as H & E slides

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1 and paraffin blocks of the tumour. "We will
 2 repeat all ER/PR receptors with the Ventana
 3 system and forward the results", and he's
 4 going to keep them updated and any concerns
 5 they can contact himself or Dr. Carter. So at
 6 this point in time, June 14th, the middle of
 7 June, had you been approached to receive the
 8 information that would be coming in from the
 9 other regions?
 10 MR. DYER:
 11 A. I must have been.
 12 CHAYTOR, Q.C.:
 13 Q. And what did you understand you were supposed
 14 to do with the material when you received it?
 15 MR. DYER:
 16 A. I think the reason why I'm struggling to
 17 remember is at the end of June I went on
 18 vacation, so I don't -- I don't recall -- I
 19 don't know if any of these 2002s actually got
 20 to me.
 21 CHAYTOR, Q.C.:
 22 Q. Okay.
 23 MR. DYER:
 24 A. I left the last week of June and went on
 25 vacation and I didn't come back until the

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1 middle of July.
 2 CHAYTOR, Q.C.:
 3 Q. Okay.
 4 MR. DYER:
 5 A. So --
 6 CHAYTOR, Q.C.:
 7 Q. And I don't think you were copied on this
 8 memo.
 9 MR. DYER:
 10 A. No.
 11 CHAYTOR, Q.C.:
 12 Q. But were you aware the memo went out?
 13 MR. DYER:
 14 A. Pardon?
 15 CHAYTOR, Q.C.:
 16 Q. Were you aware this memo went out and this was
 17 the plan?
 18 MR. DYER:
 19 A. I guess Dr. Cook must have informed me that
 20 they were going to get 2002s repeated and send
 21 everything to me. I can't really remember it.
 22 Again I --
 23 CHAYTOR, Q.C.:
 24 Q. And then you went on vacation the end of June?
 25 MR. DYER:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. And how long were you gone?
 4 MR. DYER:
 5 A. I went until - that was my first vacation. I
 6 went until July 25th.
 7 CHAYTOR, Q.C.:
 8 Q. Okay. So you were gone for --
 9 MR. DYER:
 10 A. I was gone three or four weeks. We went out
 11 of the province.
 12 CHAYTOR, Q.C.:
 13 Q. For a greater portion of July.
 14 MR. DYER:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. If we could have, please, P-1983. I think
 18 there's at least one that --
 19 MR. DYER:
 20 A. One got in to me.
 21 CHAYTOR, Q.C.:
 22 Q. One that complied and sent along theirs, and
 23 this is June 29th, 2005 letter to yourself and
 24 it's from Central Health, Dr. Dalton.
 25 MR. DYER:

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1 A. Can I see the beginning of that again?
 2 CHAYTOR, Q.C.:
 3 Q. The date is June 29th, 2005.
 4 MR. DYER:
 5 A. Dr. Barry Dyer, okay.
 6 CHAYTOR, Q.C.:
 7 Q. Dr. Barry Dyer. Okay, you didn't want us to
 8 miss that one.
 9 MR. DYER:
 10 A. Sorry.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, there you go, you need to have a laugh
 13 along the way, eh.
 14 MR. DYER:
 15 A. This came in and --
 16 CHAYTOR, Q.C.:
 17 Q. This came June 29th, 2005, and it looks like
 18 it was faxed. So would you have been there
 19 and received this or had you already left for
 20 vacation?
 21 MR. DYER:
 22 A. 6395, yeah, I think that was the director's
 23 fax number. So that probably came in to
 24 actual lab office, I would imagine.
 25 CHAYTOR, Q.C.:

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1 Q. Mr. Coffey is very keen. This is actually --
 2 the date here is later, so this is faxed
 3 somewhere else, it appears, at a later date.
 4 So whether or not this was faxed in to you, I
 5 can't really tell from this.
 6 MR. DYER:
 7 A. See it doesn't -- none of that is my writing.
 8 It doesn't even look --
 9 CHAYTOR, Q.C.:
 10 Q. So it doesn't appear -- you don't recall
 11 receiving this?
 12 MR. DYER:
 13 A. No.
 14 CHAYTOR, Q.C.:
 15 Q. And none of the writing on this is actually
 16 yours?
 17 MR. DYER:
 18 A. No.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. In terms of any other -- for the 2002
 21 batch, because we understand that it does --
 22 eventually there is a memo to send much
 23 greater than the 2002 samples. So in terms of
 24 the original request to send 2002, you don't
 25 recall ever having received any information on

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1 the 2002s alone?
 2 MR. DYER:
 3 A. I don't think so. It doesn't sound familiar
 4 to me.
 5 CHAYTOR, Q.C.:
 6 Q. Okay. If we could have, please, P-0501. See
 7 there is worse writing than yours, but he's
 8 been kind enough to type it for us. This is a
 9 meeting, July 12th, 2005, and you're not in
 10 attendance. It's Dr. Cook, Ms. Predham, Mr.
 11 Gulliver, and Dr. Williams, and these are
 12 notes of Dr. Williams.
 13 MR. DYER:
 14 A. Okay.
 15 CHAYTOR, Q.C.:
 16 Q. And he mentions, however, in here there was a
 17 system of positive controls. October, 2003,
 18 the laboratory medicine program visited
 19 Ventana system at Montreal Jewish General.
 20 January, 2004, Ventana system purchased. We
 21 have pulled all the cases in September, 2001,
 22 to review findings and retest. Was there any
 23 discussion -- do you know why there was a
 24 focus on cases in September, 2001?
 25 MR. DYER:

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1 A. No, I was on vacation at the time.
 2 CHAYTOR, Q.C.:
 3 Q. Yes.
 4 MR. DYER:
 5 A. But again I don't know, unless it relates back
 6 to '96 to 2003.
 7 CHAYTOR, Q.C.:
 8 Q. And then there was an issue of erratic
 9 staining in early 2003 and testing pulled for
 10 six weeks, titration times and staining times
 11 were adjusted, tests sent out for six weeks to
 12 other labs, and we know that in 2003, of
 13 course, Dr. Ejeckam did his adjustments. Your
 14 understanding at the time was that the only
 15 adjustment made by Dr. Ejeckam was the
 16 dilution of the antibody?
 17 MR. DYER:
 18 A. Yes, the titration.
 19 CHAYTOR, Q.C.:
 20 Q. And no adjustment to staining times at that
 21 time?
 22 MR. DYER:
 23 A. Not that I -- again I wouldn't really know
 24 where I wasn't performing the procedure, but I
 25 don't -- not that I know of. It doesn't stand

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1 out.
 2 CHAYTOR, Q.C.:
 3 Q. Was there any other -- anything else that
 4 happened in 2003, in early 2003, anything
 5 besides what -- we know Dr. Ejeckam was April,
 6 2003. Was there any other period of time
 7 because this also says that the tests were
 8 sent out for six weeks to other labs. Do you
 9 recall this?
 10 MR. DYER:
 11 A. I don't think that happened.
 12 CHAYTOR, Q.C.:
 13 Q. That never happened?
 14 MR. DYER:
 15 A. Not that I'm aware of. We just held -- we
 16 held them, we held the requests while we
 17 performed the titrations or the tweaking of
 18 the system.
 19 CHAYTOR, Q.C.:
 20 Q. And so the only -- the only interruption that
 21 you were aware of in 2003 to the testing was
 22 Dr. Ejeckam's time period?
 23 MR. DYER:
 24 A. Yes.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. There's a number of decisions that came
 2 out of that meeting and one was to, "Test all
 3 samples of living patients, what are our
 4 positive rates for infiltrating lobular and
 5 ductal cancer, look at our rate of positivity
 6 by year, and check out procedure versus DAKO
 7 standards". So in terms of checking out the
 8 procedure versus DAKO standards, were you ever
 9 approached when you came back from vacation,
 10 and what would that be, what would the
 11 procedure be, what could that be referring to?
 12 MR. DYER:
 13 A. I don't know, I wasn't -- I don't think I was
 14 ever asked to do something like that when I
 15 got back.
 16 CHAYTOR, Q.C.:
 17 Q. You were never asked to do that?
 18 MR. DYER:
 19 A. No.
 20 CHAYTOR, Q.C.:
 21 Q. Was the DAKO machine still in the possession
 22 of Eastern Health in May of 2005?
 23 MR. DYER:
 24 A. No, I don't think so.
 25 CHAYTOR, Q.C.:

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1 Q. Where did the machine go and when did it leave
 2 Eastern Health or the Health Care Corporation?
 3 MR. DYER:
 4 A. I wouldn't -- I don't know the actual time or
 5 anything like that, but I just know that the
 6 machine went. We were -- what we did is we
 7 had it stored down in the back of the
 8 immunohistochemistry lab and as we expanded
 9 the lab, we just moved it out.
 10 CHAYTOR, Q.C.:
 11 Q. And do you know where it went?
 12 MR. DYER:
 13 A. No, I don't know where it went.
 14 CHAYTOR, Q.C.:
 15 Q. Were you involved in that? Were you involved
 16 in its disposal or -
 17 MR. DYER:
 18 A. I don't think so.
 19 CHAYTOR, Q.C.:
 20 Q. Who would have been?
 21 MR. DYER:
 22 A. You could talk to Mr. Gulliver and see if he
 23 can tell you.
 24 CHAYTOR, Q.C.:
 25 Q. Okay, so whatever this is referring to "check

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1 out procedure versus DAKO standards" you
 2 weren't asked to do that and you don't know
 3 what that's referring to?
 4 MR. DYER:
 5 A. No.
 6 CHAYTOR, Q.C.:
 7 Q. If we could have P-0515 please? And this is
 8 Dr. Williams' notes again and it's a meeting,
 9 July 21st, 2005, so you're still on vacation?
 10 MR. DYER:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. And again then, this refers to "Dr. Carter
 14 feels there was a problem in 2002" and I
 15 realize that you weren't around at the point
 16 in time this meeting is taking place, but was
 17 that ever brought to your attention that
 18 anybody thought there was a problem with the
 19 specific year?
 20 MR. DYER:
 21 A. Specifically, no, only at our May 17th meeting
 22 that they talked about 2002 in relation to
 23 Mrs. Deane.
 24 CHAYTOR, Q.C.:
 25 Q. Just in reference to the one case.

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1 MR. DYER:
 2 A. I think so.
 3 CHAYTOR, Q.C.:
 4 Q. And "some runs on retrospect were not normal",
 5 was that ever brought to your attention that
 6 some runs were not normal?
 7 MR. DYER:
 8 A. No.
 9 CHAYTOR, Q.C.:
 10 Q. Or what that could mean?
 11 MR. DYER:
 12 A. Does that mean that they were actually
 13 retesting some patients and the results
 14 changed?
 15 CHAYTOR, Q.C.:
 16 Q. I don't know. "Some runs on retrospect were
 17 not normal", could it mean that controls
 18 weren't working or was anything in terms of a
 19 run on retrospect turning out not to be
 20 normal, was that ever brought to your
 21 attention or discussed with you?
 22 MR. DYER:
 23 A. Oh, I understand, so maybe they reviewed some
 24 of the previous slides and ID'd things in the
 25 slides. No, nothing was ever brought to my

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1 attention on it.
 2 CHAYTOR, Q.C.:
 3 Q. And were you ever asked as to how that could
 4 be from a technical point of view, how it
 5 could be that runs were not normal?
 6 MR. DYER:
 7 A. No.
 8 CHAYTOR, Q.C.:
 9 Q. And then we have "inconsistency from one batch
 10 to another", was that brought to your
 11 attention?
 12 MR. DYER:
 13 A. No, not at the time, no, I don't think so.
 14 CHAYTOR, Q.C.:
 15 Q. And then "current Ventana tests picking up too
 16 much", was that brought to your attention upon
 17 coming back from vacation?
 18 MR. DYER:
 19 A. No, I don't think so.
 20 CHAYTOR, Q.C.:
 21 Q. And again, it says, "techs may need to be
 22 retrained in immunoperoxidase and need to
 23 control access to the room." We talked about
 24 the retraining you weren't aware of that in
 25 this timeframe, but what about needing

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1 controlled access to the room?
 2 MR. DYER:
 3 A. I don't understand, I mean, they had a room,
 4 they had their own lab at the back of the main
 5 lab, so I don't understand about controlled
 6 access.
 7 CHAYTOR, Q.C.:
 8 Q. And so that, as a concern, was not brought to
 9 your attention?
 10 MR. DYER:
 11 A. No.
 12 CHAYTOR, Q.C.:
 13 Q. And was there any change in terms of the
 14 access to the room in the aftermath of the
 15 issue arising in 2005?
 16 MR. DYER:
 17 A. Not at that time.
 18 CHAYTOR, Q.C.:
 19 Q. And has there been since?
 20 MR. DYER:
 21 A. I think, well one of the recommendations from
 22 Trish was down in the back room of the lab was
 23 fairly big, we had the immunohistochemistry
 24 and we had special stains and it was set up in
 25 a shape of an "L", so we had all of our immuno

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1 equipment here and we had all of our special
 2 stains here, and what Trish suggested was take
 3 the special stains, could we move it like
 4 three or four feet away so that you wouldn't
 5 pump into a machine when we were trying to
 6 work with another.
 7 CHAYTOR, Q.C.:
 8 Q. So there was a bit of a traffic issue there, I
 9 guess.
 10 MR. DYER:
 11 A. Yes, so maybe that's what she meant.
 12 CHAYTOR, Q.C.:
 13 Q. Okay.
 14 MR. DYER:
 15 A. Good point, but it didn't change at that time.
 16 CHAYTOR, Q.C.:
 17 Q. And I skipped over, actually the first bullet
 18 refers to the sentinel case, "review old
 19 slides, program would not always run a
 20 control", was that brought to your attention
 21 that somebody was suggesting that a control
 22 would not always be run?
 23 MR. DYER:
 24 A. Not at the time, no.
 25 CHAYTOR, Q.C.:

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1 Q. And do you believe that to be the case?
 2 MR. DYER:
 3 A. No.
 4 CHAYTOR, Q.C.:
 5 Q. Have you ever seen any evidence that controls
 6 were not run?
 7 MR. DYER:
 8 A. No, not for ER/PR.
 9 CHAYTOR, Q.C.:
 10 Q. Not for ER/PR?
 11 MR. DYER:
 12 A. Not for ER/PR.
 13 CHAYTOR, Q.C.:
 14 Q. And in terms of at this point in time the
 15 training of techs in immunohistochemistry, if
 16 that had been brought to your attention, would
 17 you have agreed with that, that the techs
 18 needed further training?
 19 MR. DYER:
 20 A. Again, when it comes to the training, I think
 21 that training would be around the actual
 22 interpretation of controls.
 23 CHAYTOR, Q.C.:
 24 Q. So other than the actual interpretation of
 25 controls and they're still undergoing, I

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1 understand, training for that.
 2 MR. DYER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. Other than that, you didn't believe that the
 6 techs' level of training or education was
 7 deficient in any manner?
 8 MR. DYER:
 9 A. If the techs were going to start learning, if
 10 the agreement was that the techs would
 11 actually start reading, interpreting the
 12 controls themselves, they would then require
 13 more training, yes.
 14 CHAYTOR, Q.C.:
 15 Q. Yes, with respect to the external controls?
 16 MR. DYER:
 17 A. No, they would require more training in terms
 18 of the interactions of how, you know, how
 19 these types of antibodies would interact with
 20 the nuclei verses the cytoplasm, verses a
 21 membrane, things like this. They would need
 22 more academic training.
 23 CHAYTOR, Q.C.:
 24 Q. In terms of their actual training or education
 25 level in running the tests themselves, did you

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1 think that they needed any further training in
 2 that regard?
 3 MR. DYER:
 4 A. No. This was a fully automated system and the
 5 way you would run a protocol for ER is the way
 6 you would run a protocol for LCA or, you know,
 7 CD3, the protocols are all the same. Like the
 8 process was all the same when it came to all
 9 the antibodies.
 10 CHAYTOR, Q.C.:
 11 Q. And what about their knowledge level in terms
 12 of the importance of quality control, did you
 13 see any room for improvement along those
 14 lines?
 15 MR. DYER:
 16 A. Quality control in terms of -
 17 CHAYTOR, Q.C.:
 18 Q. Quality control or quality assurance issues in
 19 terms of, I mean, obviously we'll look at Ms.
 20 Wegrynowski's report in a minute, but in terms
 21 of did you have any concerns that perhaps they
 22 needed to have further training or further
 23 education along those lines?
 24 MR. DYER:
 25 A. Not when it came to, again, maybe I'm just not

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1 understanding the question, but again when it
 2 came to actually running this type of work on
 3 a fully automated system, you know, I thought
 4 they were doing a very good job.
 5 CHAYTOR, Q.C.:
 6 Q. And has your opinion changed in that regard in
 7 any respect?
 8 MR. DYER:
 9 A. Well the difference right now is that they've
 10 had training in terms of how they react, let
 11 me explain it, they had training or they had
 12 done academic for how the antibody and antigen
 13 reactions occur and what immunohistochemistry
 14 is all about and that will be a great benefit
 15 to teach them how to troubleshoot for when
 16 they're interpreting the controls.
 17 CHAYTOR, Q.C.:
 18 Q. And so to have had that knowledge base earlier
 19 -
 20 MR. DYER:
 21 A. Oh no, that would have been a benefit, no
 22 doubt, yes, that would have been a benefit to
 23 them too, yes.
 24 CHAYTOR, Q.C.:
 25 Q. If we could have then, please, P-0524? And I

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1 believe you're back from holidays at this
 2 point, July 25th, 2005?
 3 MR. DYER:
 4 A. May have been my first day back.
 5 CHAYTOR, Q.C.:
 6 Q. Your first day back, okay, and these are, we
 7 understand, Dr. Cook's notes and he says that
 8 he's spoken to you, "spoke to Barry Dyer.
 9 Barry admits documentation is bad." Do you
 10 recall having this conversation with Dr. Cook?
 11 MR. DYER:
 12 A. I may have said that, yes, I may have said
 13 that.
 14 CHAYTOR, Q.C.:
 15 Q. Okay, and what documentation is it that wasn't
 16 so good?
 17 MR. DYER:
 18 A. In our lab, we didn't document very--we
 19 documented very little. We'd be performing
 20 protocols and procedures, but we didn't write
 21 down every single thing we did, so for
 22 example, and I'll relate to
 23 immunohistochemistry, when one of the
 24 immunohistochemistry techs was making up a
 25 buffered solution, they would buffer the

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1 solution but we didn't record what that
 2 solution was. So documentation like that, I
 3 guess, is bad, but we were performing the
 4 protocols, we just weren't documenting them.
 5 CHAYTOR, Q.C.:
 6 Q. And was there anything else? Any other
 7 examples of where the documentation was less
 8 than where it should -
 9 MR. DYER:
 10 A. For most part, you know, they would--just like
 11 at the Janeway, when you come in and you're
 12 going to cut, the first thing you do is you
 13 would test your--you would put a thermometer
 14 in your water bath to get it up to the
 15 appropriate temperature and then once it's at
 16 the appropriate temperature, you would start
 17 working, it didn't actually get recorded.
 18 Same thing with our ovens or our incubators,
 19 you know, we knew they were set at 37 and
 20 there was a thermometer in there, so you would
 21 check it, but we never actually documented it.
 22 CHAYTOR, Q.C.:
 23 Q. And your documentation is your proof that in
 24 fact it did happen in the first place.
 25 MR. DYER:

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1 A. Yes, yes.
 2 CHAYTOR, Q.C.:
 3 Q. And I think at least in the nursing
 4 profession, there's a bit of an adage that if
 5 it's not charted, it didn't happen.
 6 MR. DYER:
 7 A. I know.
 8 CHAYTOR, Q.C.:
 9 Q. And is that also true of laboratory
 10 technology?
 11 MR. DYER:
 12 A. No, we always didn't document, but our
 13 protocol, we always followed the protocol and
 14 again, I know, especially in pathology, we ran
 15 a control with everything and it was always
 16 interpreted by a physician, so we used that as
 17 one of our major checks.
 18 CHAYTOR, Q.C.:
 19 Q. And his, he refers to here, I believe he says
 20 "numerous documents may have been destroyed
 21 during the lab flood in November, 2004." So
 22 you were advising, it appears, Dr. Cook of
 23 that. What documents were destroyed during
 24 the flood.
 25 MR. DYER:

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1 A. We had--we did do some documentation when it
 2 came to grossing and worksheet, we did a lot
 3 of worksheets for grossing and we did
 4 worksheets for embedding and we did
 5 worksheets, well we had a lot of requisitions
 6 which were used as worksheets when we actually
 7 did work in immuno or on special stains, so we
 8 did have some documentation as to how we would
 9 attract specimens, and all the drawers in the
 10 main lab, that's where they were all stored
 11 and it was like a war zone, that flood, and it
 12 pretty well destroyed our lab and so
 13 everything that was in it, like documents, all
 14 this stuff just got chucked.
 15 CHAYTOR, Q.C.:
 16 Q. In terms of the IHC lab, did the IHC lab or
 17 the portion of the lab sustain any damage as a
 18 result of the flood?
 19 MR. DYER:
 20 A. This was in?
 21 CHAYTOR, Q.C.:
 22 Q. November, 2004.
 23 MR. DYER:
 24 A. No, I don't think so. I think that was in the
 25 back of the lab then, yes.

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1 CHAYTOR, Q.C.:
 2 Q. Do you recall whether or not the equipment had
 3 to be cleaned or maintained or anything done
 4 to the equipment following the flood?
 5 MR. DYER:
 6 A. That part of the room wasn't touched.
 7 CHAYTOR, Q.C.:
 8 Q. Wasn't touched.
 9 MR. DYER:
 10 A. Wasn't touched, no.
 11 CHAYTOR, Q.C.:
 12 Q. So any documentation for the IHC lab was not
 13 affected by the flood?
 14 MR. DYER:
 15 A. Well it depends on where it was stored because
 16 the back of the lab where IHC used to be,
 17 there was still a lot of things there and
 18 those drawers were all full also.
 19 CHAYTOR, Q.C.:
 20 Q. So documentation for the IHC portion of the
 21 lab may not have been in that portion of the
 22 lab?
 23 MR. DYER:
 24 A. No, in terms of worksheets and things like
 25 that?

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1 CHAYTOR, Q.C.:

2 Q. Yes.

3 MR. DYER:

4 A. No, you run out of space, so we would just

5 pile, that's what the back was, so we would

6 just put them in those drawers for storage.

7 CHAYTOR, Q.C.:

8 Q. And what about the specification sheets?

9 MR. DYER:

10 A. No, I think the specification sheets were all

11 down at the back.

12 CHAYTOR, Q.C.:

13 Q. And so those were all protected and still

14 exist?

15 MR. DYER:

16 A. Yes.

17 CHAYTOR, Q.C.:

18 Q. And I think this says, "Also advised him to

19 order ASCP, check path, is it, for -

20 MR. DYER:

21 A. Check path for immunoperoxidase stains.

22 CHAYTOR, Q.C.:

23 Q. And what's that?

24 MR. DYER:

25 A. ASCP is a proficiency testing group and I

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1 guess he was recommending there to go through

2 ASCP check path is what it was called.

3 CHAYTOR, Q.C.:

4 Q. So this was to initiate external proficiency

5 testing?

6 MR. DYER:

7 A. Yes.

8 CHAYTOR, Q.C.:

9 Q. And Mr. Dyer, why didn't the IHC have external

10 proficiency testing prior to this?

11 MR. DYER:

12 A. It didn't when I got there and we maintained

13 the same practice we were doing.

14 CHAYTOR, Q.C.:

15 Q. And do I understand other portions of the lab

16 would have had such proficiency testing?

17 MR. DYER:

18 A. You mean laboratory medicine?

19 CHAYTOR, Q.C.:

20 Q. Yes.

21 MR. DYER:

22 A. I believe they did, yes.

23 CHAYTOR, Q.C.:

24 Q. And was there any at all for the pathology

25 lab?

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1 MR. DYER:

2 A. For the physicians there was.

3 CHAYTOR, Q.C.:

4 Q. But nothing at all from, for the technical

5 side of things.

6 MR. DYER:

7 A. No.

8 CHAYTOR, Q.C.:

9 Q. And so that was the situation when you arrived

10 into your position in March, 2002 -

11 MR. DYER:

12 A. Yes.

13 CHAYTOR, Q.C.:

14 Q. And there was no change, this is up to now

15 July, 2005 and it still haven't been brought

16 in -

17 MR. DYER:

18 A. Proficiency testing, no.

19 CHAYTOR, Q.C.:

20 Q. And can you explain why that would be?

21 MR. DYER:

22 A. No, I can't. I think we discussed proficiency

23 testing in one of the meeting in '04 to

24 review, for proficiency testing, to review all

25 the labs and I know, I'm pretty sure I

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1 discussed it with Dr. Cook as to who he thinks

2 we should use as a proficiency testing group.

3 Everything that comes out of the technical lab

4 is again, reviewed by pathologists, so at that

5 time I would have viewed it as that would have

6 been a clinical decision.

7 CHAYTOR, Q.C.:

8 Q. So you saw that as being in the domain of the

9 clinical chief, as opposed to you, as the

10 manager?

11 MR. DYER:

12 A. Yes.

13 CHAYTOR, Q.C.:

14 Q. And that's -

15 THE COMMISSIONER:

16 Q. I'm sorry, I didn't understand that, are you

17 saying that the decision to do proficiency

18 testing wasn't yours?

19 MR. DYER:

20 A. No, again, pathology is not like any other

21 lab, every single thing that's performed in

22 pathology lab goes to a physician for

23 interpretation; therefore, it was my

24 understanding if we wanted clinical--if we

25 wanted proficiency testing, it would be the

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1 clinical chief to decide which one he would
 2 want us to enroll in. So we discussed it in
 3 '04, at one of our meetings and I know I
 4 discussed it with him and he said he would get
 5 back to me. I'm not sure if he said he would
 6 talk to Dr. Ejeckam first, but he said he
 7 would get back to me about it. But we never--
 8 I think then we had the strike and I think it
 9 just never came up again.

10 THE COMMISSIONER:
 11 Q. So it's a question of, what I'm trying to
 12 figure out is if it's Dr. Cook's decision in
 13 your view as to what group to use or whether
 14 it's Dr. Cook's decision in your view as to
 15 whether or not you have proficiency testing in
 16 the first place.

17 MR. DYER:
 18 A. Correct, the latter, it would be -

19 THE COMMISSIONER:
 20 Q. The latter?

21 MR. DYER:
 22 A. Yes.

23 CHAYTOR, Q.C.:
 24 Q. So Dr. Cook's decision, it would be his
 25 decision as to whether you initiate external

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1 proficiency in any event, and also as to which
 2 group to utilize?

3 MR. DYER:
 4 A. Yes.

5 CHAYTOR, Q.C.:
 6 Q. It's all within the clinical chief's -

7 MR. DYER:
 8 A. That was my interpretation and that's
 9 eventually what happened.

10 CHAYTOR, Q.C.:
 11 Q. And did you, as manager of the lab, though,
 12 have any concern about that, that -

13 MR. DYER:
 14 A. Why would I have concern, it was--again,
 15 everything that was coming out of the lab was
 16 being read by a clinical group, so -

17 CHAYTOR, Q.C.:
 18 Q. So you didn't think to go push for that
 19 because you figured if it was that important,
 20 then the clinical chief would initiate it?

21 MR. DYER:
 22 A. Yes, I considered our pathologists to be our
 23 proficiency testing to a serious degree also,
 24 because like I said, everything that comes out
 25 of our lab is interpreted by a physician.

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1 CHAYTOR, Q.C.:
 2 Q. Did you have that in the Janeway, in your days
 3 at the Janeway, was there external proficiency
 4 testing?

5 MR. DYER:
 6 A. No, there was not. Everything that came out
 7 of the lab was interpreted by a physician.

8 CHAYTOR, Q.C.:
 9 Q. And you say that pathologists were going
 10 through an external proficiency--what were
 11 they involved in?

12 MR. DYER:
 13 A. They were, I think check path, I think is what
 14 they called it, College of American
 15 Pathologists, check path I think was going on
 16 over at St. Clare's and I think it was ASCP
 17 was going on at the Health Science.

18 CHAYTOR, Q.C.:
 19 Q. And did any of that, did they have that for
 20 IHC testing?

21 MR. DYER:
 22 A. No, I think it was just for their own purpose.

23 CHAYTOR, Q.C.:
 24 Q. So there was nothing for IHC or nothing to
 25 check the work coming out of IHC.

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1 MR. DYER:
 2 A. No.

3 CHAYTOR, Q.C.:
 4 Q. If we could have, please, I don't think there
 5 is anything else on this, "Ventana around
 6 December 2003, operational April 04, '03, the
 7 four months evaluation and training period,
 8 techs were sent for company training in
 9 Arizona during this time." Okay, so that's
 10 you telling him, I guess, what happened with
 11 respect to bringing on the Ventana?

12 MR. DYER:
 13 A. Yes.

14 CHAYTOR, Q.C.:
 15 Q. And if we could have, please, P-1934? And
 16 these again are notes of Dr. Cook and it's
 17 about four days later, Friday, July 29th,
 18 2005, "Drs. Cook and Carter spoke to Barry
 19 Dyer to put a hold on all ER and PR testing.
 20 Dr. Carter made inquiries with Mr. Dyer as to
 21 the validation process. Dr. Carter felt that
 22 he may not have adequate documentation and
 23 that the validation process may be flawed."
 24 Do you recall that conversation with Dr.
 25 Carter regarding the validation of, and I take

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1 it it means the Ventana system?
 2 MR. DYER:
 3 A. I can't remember us ever having a discussion
 4 about it, was this a face to face or--I don't
 5 know.
 6 CHAYTOR, Q.C.:
 7 Q. It doesn't indicate, it just says that they
 8 spoke with you and that--well do you recall
 9 them speaking with you and advising you to put
 10 a hold on ER/PR testing on a go-forward basis,
 11 current testing?
 12 MR. DYER:
 13 A. No, I don't remember us discussing that on the
 14 29th.
 15 CHAYTOR, Q.C.:
 16 Q. Or any time around then, this is being
 17 recorded July 29th.
 18 MR. DYER:
 19 A. Well he sent me a memo to put a hold on it.
 20 CHAYTOR, Q.C.:
 21 Q. After that.
 22 MR. DYER:
 23 A. I remember the memo, but I don't remember
 24 having this meeting.
 25 CHAYTOR, Q.C.:

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1 Q. So you received his memo, but you have no
 2 recollection of, prior to receiving the memo
 3 having any discussion with Dr. Cook and/or Dr.
 4 Carter about discontinuing the testing?
 5 MR. DYER:
 6 A. No.
 7 CHAYTOR, Q.C.:
 8 Q. And can you shed any light on what may be
 9 referenced here about Dr. Carter having spoken
 10 to you regarding the validation process for
 11 the Ventana and her drawing the conclusion
 12 that the process may have been flawed?
 13 MR. DYER:
 14 A. No, I can't.
 15 CHAYTOR, Q.C.:
 16 Q. And it looks like Mr. Gulliver is out of town
 17 at this point in time. So this is not ringing
 18 any bells for you. What do you think about
 19 that, in terms of the validation process of
 20 the Ventana, do you have any reason to be
 21 concerned that it may not have been adequate
 22 or may have been flawed in some way?
 23 MR. DYER:
 24 A. Every single slide that was, like what we
 25 always do, every single slide on the Ventana

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1 system during the process was interpreted by a
 2 pathologist.
 3 CHAYTOR, Q.C.:
 4 Q. So is there anything that's come to your
 5 attention since which may cause you any
 6 concern about the validation process for the
 7 Ventana?
 8 MR. DYER:
 9 A. Based on Ms. Wegrynowski's report, it's better
 10 to have one person read all the slides, I
 11 think that's what she suggested. I don't
 12 think she put that in the report, but I think
 13 we might have talked about that in terms of
 14 having a director of immunohistochemistry, but
 15 we didn't do that during the validation, we
 16 had--whatever pathologists were available, we
 17 asked them to interpret slides.
 18 CHAYTOR, Q.C.:
 19 Q. So other than that, having the one pathologist
 20 review the slides during the validation
 21 process, that's the only thing that's been
 22 brought to your attention that could have been
 23 improved?
 24 MR. DYER:
 25 A. That was probably improved, I mean, we ran--I

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1 mean, we now have an actual written protocol
 2 for validation and we pretty well did the same
 3 thing as what we're doing in that protocol.
 4 CHAYTOR, Q.C.:
 5 Q. And Mr. Dyer, I take it the Ventana machine,
 6 in any event, continued on in August and
 7 beyond for everything else besides ER/PR?
 8 MR. DYER:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. So if there were any concerns about the
 12 validation process, were you asked to go back
 13 and revalidate anything?
 14 MR. DYER:
 15 A. At that time?
 16 CHAYTOR, Q.C.:
 17 Q. Yes, in August of 2005?
 18 MR. DYER:
 19 A. I think in August of 2005, I was shown a
 20 letter recently, I didn't see it and I think
 21 Dr. Carter was going to revalidate the ER/PR
 22 in '05, I know that came up.
 23 CHAYTOR, Q.C.:
 24 Q. And we know that Carole came in from Ventana
 25 in the early part of '05, August '05, sorry,

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1 but in terms of going back and validating any
 2 of the other stains -
 3 MR. DYER:
 4 A. No, and all of the other stains were validated
 5 the same way as the ER/PR was.
 6 CHAYTOR, Q.C.:
 7 Q. Okay, so then going into August of 2005, did
 8 you have any further involvement or what
 9 happened next?
 10 MR. DYER:
 11 A. In '05?
 12 CHAYTOR, Q.C.:
 13 Q. Yes.
 14 MR. DYER:
 15 A. Yes, early on, very early on in '05, I now
 16 became involved with the ER/PR issue. I was
 17 invited to a meeting, there was a meeting, I
 18 think was August 1st and at that meeting there
 19 was a lot of individuals at that meeting and
 20 this whole issue was discussed at that
 21 meeting.
 22 CHAYTOR, Q.C.:
 23 Q. Okay, and who do you recall attending the
 24 August 1st meeting?
 25 MR. DYER:

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1 A. Mr. Gulliver, myself, Mr. Williams, George
 2 Tilley.
 3 CHAYTOR, Q.C.:
 4 Q. Dr. Williams?
 5 MR. DYER:
 6 A. Dr. Williams, sorry, yes, Mr. Tilley, Alan
 7 Kwan.
 8 CHAYTOR, Q.C.:
 9 Q. Dr. Kwan.
 10 MR. DYER:
 11 A. Dr. Kwan, sorry, I think Heather Predham might
 12 have been there. I believe Dr. McCarthy
 13 sounds familiar, Dr. Cook, Dr. Carter. There
 14 were people there I didn't know, I'm not sure
 15 if Mr. Boone was there.
 16 CHAYTOR, Q.C.:
 17 Q. Mr.?
 18 MR. DYER:
 19 A. Mr. Boone, Dan Boone, for some reason it
 20 stands out, but I don't know, I think
 21 communications was there.
 22 CHAYTOR, Q.C.:
 23 Q. Okay, and who from communications?
 24 MR. DYER:
 25 A. Oh my God, I think Ms. Bonnell, again, I'm

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1 only guessing now.
 2 CHAYTOR, Q.C.:
 3 Q. Susan Bonnell?
 4 MR. DYER:
 5 A. Yes, because it's a long time and I didn't
 6 know Susan at the time, so I'm just trying to
 7 relate it to her now. So for sure that many
 8 were there.
 9 CHAYTOR, Q.C.:
 10 Q. So we had oncologists, pathologists, lab
 11 management, Dr. Williams, VP Medical.
 12 MR. DYER:
 13 A. Yes.
 14 CHAYTOR, Q.C.:
 15 Q. Mr. Tilley, the CEO.
 16 MR. DYER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. And somebody from communications, probably
 20 Susan Bonnell?
 21 MR. DYER:
 22 A. Yes, and surgeons, Dr. Kwan, I know he was
 23 there.
 24 CHAYTOR, Q.C.:
 25 Q. And maybe lawyer, Dan Boone?

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1 MR. DYER:
 2 A. Yes, not sure. Again, I didn't know Dan, and
 3 so I wasn't sure if he was there or not.
 4 CHAYTOR, Q.C.:
 5 Q. So it was quite a group of people though?
 6 MR. DYER:
 7 A. There was, yes.
 8 CHAYTOR, Q.C.:
 9 Q. And where did that meeting take place?
 10 MR. DYER:
 11 A. I think it was in our new--I don't know the
 12 name of the room, but it was over in the new
 13 administration area.
 14 CHAYTOR, Q.C.:
 15 Q. I'm sorry?
 16 MR. DYER:
 17 A. It was over in our new administration area in
 18 Health Science, a board room there.
 19 CHAYTOR, Q.C.:
 20 Q. On the General site, on the Health Science
 21 site?
 22 MR. DYER:
 23 A. Uh-hm.
 24 CHAYTOR, Q.C.:
 25 Q. Okay, and what happened in that meeting? I

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1 take it the purpose of the meeting was to
 2 discuss the ER/PR issue?
 3 MR. DYER:
 4 A. I think so, yes.
 5 CHAYTOR, Q.C.:
 6 Q. And what do you recall about what was
 7 discussed and what happened in the meeting?
 8 MR. DYER:
 9 A. Oh my God, I hardly can remember the meeting,
 10 it was just a lot of discussion about ER/PR in
 11 general, from what I could remember.
 12 CHAYTOR, Q.C.:
 13 Q. And who was chairing the meeting?
 14 MR. DYER:
 15 A. I don't know for sure who was actually
 16 chairing the meeting, I imagine Mr. Tilley.
 17 CHAYTOR, Q.C.:
 18 Q. Was there anyone in particular doing most of
 19 the talking?
 20 MR. DYER:
 21 A. No, you know, Dr. Carter was speaking, Dr.
 22 Kwan and Dr. McCarthy. No, I think a lot of
 23 people were speaking at the meeting, as I look
 24 at them, I think a lot of people were having
 25 input.

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1 CHAYTOR, Q.C.:
 2 Q. And what was the tone of this meeting?
 3 MR. DYER:
 4 A. The tone of the meeting was pretty good. I
 5 think it was a reasonable meeting.
 6 CHAYTOR, Q.C.:
 7 Q. Okay, and was there anything that happened in
 8 the meeting to cause the tone to change?
 9 MR. DYER:
 10 A. Oh yes, Dr. Carter was, I think a little
 11 upset.
 12 CHAYTOR, Q.C.:
 13 Q. And what was Dr. Carter upset about?
 14 MR. DYER:
 15 A. I think she was, I'm not sure what led to the
 16 actual, her getting upset, but yes, she stood
 17 up and pointed fingers right at Mr. Gulliver
 18 and myself and started making accusations
 19 about "your lab is making mistakes, your lab
 20 is not running negative controls, your lab is
 21 using Ventana which is too expensive", she was
 22 making statements like that and she was
 23 standing up and pointing right at Terry at the
 24 time.
 25 CHAYTOR, Q.C.:

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1 Q. And what was Mr. Gulliver's response?
 2 MR. DYER:
 3 A. I think the only thing I remember him saying
 4 is Dr. Carter, all this stuff you're saying,
 5 you know was going on and you're only telling
 6 me this now? Like I remember him saying this
 7 statement right back.
 8 CHAYTOR, Q.C.:
 9 Q. And what was her response to that?
 10 MR. DYER:
 11 A. I don't remember, it was getting a little--I
 12 don't remember.
 13 CHAYTOR, Q.C.:
 14 Q. So did you take it from her comments that she
 15 was aware that there were issues in the lab
 16 prior to the spring of 2005?
 17 MR. DYER:
 18 A. That's the impression that I was getting, that
 19 she was actually making these types of
 20 accusations, yes, and she made another
 21 accusation too, that's a good point, about not
 22 seeing a positive result come out of the lab
 23 in five or six months, or something like this.
 24 CHAYTOR, Q.C.:
 25 Q. Meaning the current, the past five or six

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1 months?
 2 MR. DYER:
 3 A. I think so.
 4 CHAYTOR, Q.C.:
 5 Q. The most immediate.
 6 MR. DYER:
 7 A. Or something to that effect or at one point or
 8 at some point, she made a comment that, you
 9 know, in the six month period, not one
 10 positive result came out of the lab, something
 11 like that, I'm not really sure, but she made a
 12 statement to that effect.
 13 CHAYTOR, Q.C.:
 14 Q. So Dr. Carter was making accusations directed
 15 towards you and Mr. Gulliver as the technical
 16 -
 17 MR. DYER:
 18 A. I think more so Mr. Gulliver, but I was
 19 sitting there at the time.
 20 CHAYTOR, Q.C.:
 21 Q. And you were the technical side of the lab.
 22 MR. DYER:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. And she's part of the same Laboratory Medicine

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1 Program?
 2 MR. DYER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. And Dr. Cook is sitting there as the clinical
 6 chief?
 7 MR. DYER:
 8 A. Wasn't saying a word.
 9 CHAYTOR, Q.C.:
 10 Q. He didn't say anything?
 11 MR. DYER:
 12 A. No, didn't say a word at the time.
 13 CHAYTOR, Q.C.:
 14 Q. Didn't intervene. Were there other
 15 accusations happening or any other groups
 16 making accusations against other individuals
 17 in the room?
 18 MR. DYER:
 19 A. It's hard to say. Again I can't really
 20 remember.
 21 CHAYTOR, Q.C.:
 22 Q. Do -- sorry.
 23 MR. DYER:
 24 A. I can't really remember what was being said.
 25 I know that stuff because that was personally

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1 directed towards me, so that's why I really
 2 remember that.
 3 CHAYTOR, Q.C.:
 4 Q. And do you recall whether or not the
 5 oncologists made any accusations against the
 6 pathologists in the room?
 7 MR. DYER:
 8 A. I don't know. Again it's hard to say what was
 9 actually said. It's hard to speculate.
 10 CHAYTOR, Q.C.:
 11 Q. I don't want you to speculate, but if you have
 12 any recollection on that.
 13 MR. DYER:
 14 A. I think there was another statement made that
 15 - but again I'm not sure, but I think a
 16 statement was made by Dr. McCarthy about from
 17 now on she was going to send all of her
 18 breasts to Dr. Carter.
 19 CHAYTOR, Q.C.:
 20 Q. And Dr. Carter being the breast pathologist?
 21 MR. DYER:
 22 A. Yes, that was -- that was said.
 23 CHAYTOR, Q.C.:
 24 Q. You said Dr. Cook didn't say anything to
 25 defend the laboratory or the program?

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1 MR. DYER:
 2 A. In no way, shape, or form.
 3 CHAYTOR, Q.C.:
 4 Q. Did anyone step in to try and diffuse the
 5 situation?
 6 MR. DYER:
 7 A. Yes, Mr. Tilley did.
 8 CHAYTOR, Q.C.:
 9 Q. And what did Mr. Tilley say or do?
 10 MR. DYER:
 11 A. I don't remember what he actually said, but he
 12 certainly calmed down what was going on at the
 13 time.
 14 CHAYTOR, Q.C.:
 15 Q. Okay. So did Mr. Tilley then manage to get
 16 the meeting back on track and did --
 17 MR. DYER:
 18 A. Yes, he did.
 19 CHAYTOR, Q.C.:
 20 Q. And so what ultimately then after everything
 21 is calmed down, what is the outcome of the
 22 meeting and what was the plan on a go forward
 23 basis?
 24 MR. DYER:
 25 A. I don't know if a plan was made at the time,

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1 not that I know of. I think Mr. Tilley calmed
 2 down the meeting and we were dispersed, so I
 3 assume -- I don't know if -- I assume they
 4 would have gotten together at the end, the
 5 higher ups, and made a decision to what we
 6 would do, but I don't think any decisions were
 7 made at that point.
 8 CHAYTOR, Q.C.:
 9 Q. And the purpose in bringing this group
 10 together, this group of experts in your
 11 various fields together, what did you
 12 understand the purpose of the meeting was?
 13 MR. DYER:
 14 A. I think just to discuss the ER/PR in general,
 15 and I think to try and -- I don't know if it
 16 was to identify what they thought was -- no,
 17 we didn't actually identify what they thought
 18 was wrong. I guess it was just to discuss it
 19 at that level.
 20 CHAYTOR, Q.C.:
 21 Q. How long did this meeting last?
 22 MR. DYER:
 23 A. Oh, I don't know.
 24 CHAYTOR, Q.C.:
 25 Q. At the end of the meeting as it was wrapping

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1 up, did Mr. Tilley have any parting words?
 2 MR. DYER:
 3 A. I'm not sure what he actually said.
 4 CHAYTOR, Q.C.:
 5 Q. Do you recall --
 6 MR. DYER:
 7 A. I don't think he had any parting words to the
 8 actual group.
 9 CHAYTOR, Q.C.:
 10 Q. Do you recall him saying anything as he was
 11 going out the door?
 12 MR. DYER:
 13 A. Yes, I think he may have -- again I was
 14 sitting next to him, but I don't think he --
 15 the statements he said, I don't think were
 16 meant for the group.
 17 CHAYTOR, Q.C.:
 18 Q. What did he say to you?
 19 MR. DYER:
 20 A. He didn't say to me, just what he said.
 21 Around about -- I think there was a comment
 22 made something to the effect if we didn't have
 23 the expertise to deal with this issue, should
 24 we have been doing ER/PR at all or something
 25 to that effect. I'm not quite sure, but --

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1 CHAYTOR, Q.C.:
 2 Q. And was this a rhetorical question or was
 3 there a response to the question?
 4 MR. DYER:
 5 A. No, I think it was just a rhetorical question.
 6 CHAYTOR, Q.C.:
 7 Q. And is there anything else about that meeting
 8 that you recall?
 9 MR. DYER:
 10 A. As Dr. Carter exited the meeting, she also
 11 made a statement "too many chiefs and not
 12 enough indians".
 13 CHAYTOR, Q.C.:
 14 Q. I'm sorry?
 15 MR. DYER:
 16 A. "Too many chiefs and not enough indians".
 17 CHAYTOR, Q.C.:
 18 Q. Okay.
 19 MR. DYER:
 20 A. Indicating there's too many people in charge,
 21 and not enough -- I took it to be too many
 22 people in charge and not enough people doing
 23 the work.
 24 CHAYTOR, Q.C.:
 25 Q. And did you agree with her?

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1 MR. DYER:
 2 A. I think again it was just a parting statement
 3 as she was walking out the door.
 4 CHAYTOR, Q.C.:
 5 Q. Do you agree with her at that point in time?
 6 MR. DYER:
 7 A. Again -- at that point in time, yes, I think I
 8 did.
 9 CHAYTOR, Q.C.:
 10 Q. Other than Dr. Carter giving you some
 11 indication that she may have suspected there
 12 was something wrong or something gone wrong in
 13 the laboratory for a period of time, did
 14 anyone else say that they had any suspicions
 15 or suspected something had been wrong over the
 16 years with the test?
 17 MR. DYER:
 18 A. No, I don't think so.
 19 CHAYTOR, Q.C.:
 20 Q. Did any of the oncologists say anything about
 21 the tests or have any suspicions as to what
 22 they were seeing in the results of the tests?
 23 MR. DYER:
 24 A. No, I don't think so, not at that meeting.
 25 CHAYTOR, Q.C.:

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1 Q. Was there any suggestion that oncologists had
 2 requested repeats of tests and pathologists
 3 had refused to do repeats?
 4 MR. DYER:
 5 A. Yes, something -- I think something to that
 6 account was made.
 7 CHAYTOR, Q.C.:
 8 Q. Okay, and --
 9 MR. DYER:
 10 A. Some kind of statement like that was made at
 11 the meeting, yes.
 12 CHAYTOR, Q.C.:
 13 Q. And who was saying that?
 14 MR. DYER:
 15 A. I think it was coming from one of the
 16 oncologists, but again I -- I don't think it
 17 was said at that meeting. I think that was
 18 said at our May 17th meeting, actually.
 19 Everything is -- I think that was actually
 20 said at our May 17th meeting.
 21 CHAYTOR, Q.C.:
 22 Q. Okay.
 23 MR. DYER:
 24 A. I think it was just a general comment that,
 25 you know, we would request - the actual

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1 statement, I believe, was said was we would
 2 request a repeat and the comment would come
 3 back that it's already done, something to that
 4 effect.
 5 CHAYTOR, Q.C.:
 6 Q. So that over time that oncologists had been
 7 asking to have tests repeated for whatever
 8 reason, and I guess we can explore that with
 9 the oncologists, but that pathologists had
 10 refused to repeat the test?
 11 MR. DYER:
 12 A. That was my interpretation to it, something
 13 like that, yes.
 14 CHAYTOR, Q.C.:
 15 Q. And the way, though --
 16 COMMISSIONER:
 17 Q. Mr. Dyer, you said --
 18 MR. DYER:
 19 A. I hate speculating.
 20 COMMISSIONER:
 21 Q. Your recollection was that somebody might say
 22 we had asked for a retest and were told it was
 23 already done.
 24 MR. DYER:
 25 A. Yes, I think that was what was said.

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1 COMMISSIONER:
 2 Q. Which is a little different than we won't do a
 3 retest?
 4 MR. DYER:
 5 A. Right, yes, it was more like -- yes.
 6 CHAYTOR, Q.C.:
 7 Q. So did you understand from that anybody was
 8 saying that they had asked for a test to be
 9 repeated and they had refused to do the
 10 repeat?
 11 MR. DYER:
 12 A. I don't know if they actually refused to do
 13 it, but the comment back was they said they
 14 were told the test was already done.
 15 CHAYTOR, Q.C.:
 16 Q. The test was already done?
 17 MR. DYER:
 18 A. Yes, that's how it was said to me -- that's
 19 how it was said at that meeting.
 20 CHAYTOR, Q.C.:
 21 Q. That the test was already done as opposed to
 22 the retest?
 23 MR. DYER:
 24 A. Right.
 25 CHAYTOR, Q.C.:

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1 Q. Right. So the impression being or the intent
 2 of the statement being that they had requested
 3 repeats and the repeats had not taken place?
 4 MR. DYER:
 5 A. That was my interpretation, yes.
 6 CHAYTOR, Q.C.:
 7 Q. Do you recall anything else then out of either
 8 the May 17th meeting or the August 1st
 9 meeting?
 10 MR. DYER:
 11 A. No, I don't think so.
 12 CHAYTOR, Q.C.:
 13 Q. And ultimately obviously the decision gets
 14 made to retest a fairly broad period of time?
 15 MR. DYER:
 16 A. I think the decision was made prior to that.
 17 CHAYTOR, Q.C.:
 18 Q. Prior to the August 1 meeting?
 19 MR. DYER:
 20 A. Yes, I think it was made -- see I wasn't here
 21 in July, but I think they made that decision
 22 in mid July.
 23 CHAYTOR, Q.C.:
 24 Q. And the decision --
 25 MR. DYER:

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1 A. Based on that letter you showed me -- the
 2 notes you showed me recently.
 3 CHAYTOR, Q.C.:
 4 Q. And that was to happen -- I believe at that
 5 point it was going to be in-house on the
 6 Ventana?
 7 MR. DYER:
 8 A. No, I think that was the plan to start sending
 9 them away. If we can go back --
 10 CHAYTOR, Q.C.:
 11 Q. Okay.
 12 MR. DYER:
 13 A. I think --
 14 CHAYTOR, Q.C.:
 15 Q. Okay, I think if we look at then, please, P-
 16 0492. That's the June 14th memo.
 17 MR. DYER:
 18 A. Try Dr. Williams' notes.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. So there might be something in Dr.
 21 Williams' notes?
 22 MR. DYER:
 23 A. Yes, I think that's where I just read that the
 24 test was to -- they were going to retest all
 25 the specimens.

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1 CHAYTOR, Q.C.:

2 Q. Okay, and your understanding was that it was

3 to retest them outside. By late July the

4 decision was made that they would retest and

5 send them to Mount Sinai?

6 MR. DYER:

7 A. When I came back -- when I came back in July

8 from vacation, I believe Mr. Gulliver informed

9 me that all cases were going to be retested

10 outside.

11 CHAYTOR, Q.C.:

12 Q. So the decision had been made while you were

13 on vacation?

14 MR. DYER:

15 A. Yes, I think so.

16 CHAYTOR, Q.C.:

17 Q. And what did you -- did you agree with the

18 decision at the time?

19 MR. DYER:

20 A. Well, I -- yes and no. What I felt should

21 happen first was that all the slides should be

22 reread. You know, working in pathology,

23 that's the first thing you would do is reread

24 your slides to determine -- to try and find

25 out where if something went wrong, where did

Page 202

1 it go wrong.

2 CHAYTOR, Q.C.:

3 Q. So reread the original ER/PR slides?

4 MR. DYER:

5 A. Yes, that's -- like, that's the first thing we

6 do in pathology for anything. If something

7 goes wrong, you look at the slide to try and

8 determine where it went wrong, so I would

9 think that would be the first logical step to

10 do.

11 CHAYTOR, Q.C.:

12 Q. So you understood there was going to be

13 retesting of the blocks?

14 MR. DYER:

15 A. yes.

16 CHAYTOR, Q.C.:

17 Q. But that there was to be no rereading of the

18 original slides?

19 MR. DYER:

20 A. Correct.

21 CHAYTOR, Q.C.:

22 Q. And did you raise that, did you suggest, well,

23 why don't we start with looking at the slides?

24 MR. DYER:

25 A. Yes, I did.

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1 CHAYTOR, Q.C.:

2 Q. And who did you raise that with?

3 MR. DYER:

4 A. I believe I spoke to Dr. Cook about it.

5 CHAYTOR, Q.C.:

6 Q. Okay, and what was Dr. Cook's response to your

7 suggestion?

8 MR. DYER:

9 A. I believe his answer was everything is being

10 sent out for retesting. That was it.

11 CHAYTOR, Q.C.:

12 Q. Everything is being sent out, so including the

13 original slides?

14 MR. DYER:

15 A. No, I mean, every block will be sent out to be

16 retested.

17 CHAYTOR, Q.C.:

18 Q. But in terms of the idea of looking at the

19 slides, did he --

20 MR. DYER:

21 A. No.

22 CHAYTOR, Q.C.:

23 Q. And did he indicate that that was otherwise

24 being done by Dr. Carter or anyone else?

25 MR. DYER:

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1 A. No.

2 CHAYTOR, Q.C.:

3 Q. So after the meeting on August 1st, what

4 happened then following that meeting? Was

5 there any follow up to that meeting?

6 MR. DYER:

7 A. What happened after that meeting was I was

8 asked by Mr. Gulliver to compile a list of

9 ER/PR patients that were actually tested for a

10 specific period of time, to search them out,

11 print off the reports, and to do a grid of

12 positive and negatives.

13 CHAYTOR, Q.C.:

14 Q. And why were you being asked to do that, and

15 what period of time did you understand you

16 were to search?

17 MR. DYER:

18 A. I can't remember exactly what the dates were,

19 but I think it came out of the August 1st -- I

20 think it came out of the meeting from -- from

21 that meeting from that day, from the few hours

22 beforehand.

23 CHAYTOR, Q.C.:

24 Q. And what was it out of that meeting, was it

25 any particular comment out of that meeting

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1 that caused Mr. Gulliver to ask you to do
 2 this?
 3 MR. DYER:
 4 A. Again I think Mr. Gulliver was instructed from
 5 higher up also to do this, but I think it was
 6 the statement by Dr. Carter about no positive
 7 cases coming out of the lab in a five or six
 8 month period.
 9 MR. DYER:
 10 A. Okay, and who -- who higher up instructed Mr.
 11 Gulliver to undertake this review?
 12 MR. DYER:
 13 A. I was informed that it was Dr. Williams.
 14 CHAYTOR, Q.C.:
 15 Q. So Dr. Williams asked Mr. Gulliver, and Mr.
 16 Gulliver asked you?
 17 MR. DYER:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. And you were to pull whatever the time period
 21 was to see whether or not there were positives
 22 in that time period?
 23 MR. DYER:
 24 A. Yes.
 25 CHAYTOR, Q.C.:

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1 Q. What was the purpose of doing that?
 2 MR. DYER:
 3 A. I guess -- I assume, I don't know, to confirm
 4 the statement that was made.
 5 CHAYTOR, Q.C.:
 6 Q. And what was the outcome of that endeavour?
 7 MR. DYER:
 8 A. Well, we worked through the night to do it. We
 9 did the grid and I just handed it off to Mr.
 10 Gulliver.
 11 CHAYTOR, Q.C.:
 12 Q. Did you, in fact, find positives in the time
 13 period?
 14 MR. DYER:
 15 A. Yes, I believe so.
 16 CHAYTOR, Q.C.:
 17 Q. And were there many?
 18 MR. DYER:
 19 A. I can't tell you -- I can't remember.
 20 CHAYTOR, Q.C.:
 21 Q. But were you left with any concern in what you
 22 found?
 23 MR. DYER:
 24 A. Again I wasn't really paying attention to the
 25 reports themselves. I was just saying if this

Page 207

1 was a positive or a negative and that's all I
 2 did.
 3 CHAYTOR, Q.C.:
 4 Q. And this was, though, a fairly heated comment
 5 made by Dr. Carter in the meeting.
 6 MR. DYER:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. And directed against the technical side of the
 10 lab?
 11 MR. DYER:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. But it didn't catch your attention as to
 15 whether or not her statement was proven
 16 correct or not? You found positives, so I
 17 guess --
 18 MR. DYER:
 19 A. I did find positives, yes.
 20 CHAYTOR, Q.C.:
 21 Q. But whether it was one or two, you don't know?
 22 MR. DYER:
 23 A. Oh, no, it was -- it was definitely more than
 24 that.
 25 CHAYTOR, Q.C.:

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1 Q. It was more than that?
 2 MR. DYER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. All right. So then you passed that
 6 information, I take it, back to Mr. Gulliver?
 7 MR. DYER:
 8 A. Yes, well, two of us did it together,
 9 actually.
 10 CHAYTOR, Q.C.:
 11 Q. And did it -- I'm sorry.
 12 MR. DYER:
 13 A. Two of us actually did it.
 14 CHAYTOR, Q.C.:
 15 Q. Two of you did it together.
 16 MR. DYER:
 17 A. I'm sorry, he asked me to help him, so two of
 18 us did it together.
 19 CHAYTOR, Q.C.:
 20 Q. And was there anything else then that came out
 21 of that exercise? Was there anything else?
 22 You passed the information in.
 23 MR. DYER:
 24 A. And that was it, I went back to work.
 25 CHAYTOR, Q.C.:

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1 Q. And did you ever hear anything else about
 2 that?
 3 MR. DYER:
 4 A. All I -- the next day when I came to work, I
 5 was -- I'm not sure when it was, I think it
 6 might have been sometime in the morning, I was
 7 instructed by Mr. Gulliver that him and I will
 8 now have to deal with the ER/PR retesting
 9 process. Up to then, I was not involved. Up
 10 to August 2nd, I was not involved with any of
 11 the retesting.
 12 CHAYTOR, Q.C.:
 13 Q. Okay.
 14 MR. DYER:
 15 A. But now I was instructed that I will be
 16 involved.
 17 CHAYTOR, Q.C.:
 18 Q. And what happened, why on August 2nd were you
 19 and Mr. Gulliver now having to be involved?
 20 MR. DYER:
 21 A. Mr. Gulliver told me that Dr. Carter resigned
 22 from the position of doing that. So I believe
 23 in the middle of July when it was decided to
 24 retest everything, Dr. Carter and Dr. Cook was
 25 going to do it, and now August 2nd, Dr. Carter

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1 wrote a letter saying that she's not going to
 2 do it.
 3 CHAYTOR, Q.C.:
 4 Q. And were you made aware of her letter at the
 5 time?
 6 MR. DYER:
 7 A. No, I don't think so. I didn't see the letter
 8 at that time, no.
 9 CHAYTOR, Q.C.:
 10 Q. If we could look at P-0079, please. Were you
 11 told her reasons for withdrawing from the
 12 retesting process?
 13 MR. DYER:
 14 A. At that time, no, I don't think so.
 15 CHAYTOR, Q.C.:
 16 Q. All you knew was that now you and Mr. Gulliver
 17 had to take it on?
 18 MR. DYER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. And this is her letter, August 2nd, 2005,
 22 written to Dr. Cook, signed by her, copied to
 23 Dr. Williams, VP Medical, "Regretfully, I
 24 inform you that I wish to withdraw from my
 25 organizational role in the investigation of

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1 the problems with ER/PR testing at the Health
 2 Care Corporation, St. John's, from 1997 to
 3 2004, and the planning of solutions to the
 4 current issues discovered with the Ventana
 5 automated system. The meeting with Mr. George
 6 Tilley on August 1, 2005, showed, in my
 7 opinion, that Mr. Terry Gulliver and Mr. Barry
 8 Dyer do not have a good understanding of the
 9 limitations of automated immunohistochemistry,
 10 rigorous clinical and technical validation of
 11 antibodies against ER and PR, and
 12 establishment of reliable and reproducible
 13 means of providing ER/PR results to our
 14 patients using the substantial published peer
 15 reviewed and accepted scientific literature on
 16 the development of and continuous monitoring
 17 of immunohistochemical testing protocol". I'll
 18 just stop there for a moment, Mr. Dyer. The
 19 letter wasn't brought to your attention. What
 20 about the concerns about your level of
 21 understanding. Was that ever brought to your
 22 attention?
 23 MR. DYER:
 24 A. No.
 25 CHAYTOR, Q.C.:

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1 Q. And were those things discussed in the meeting
 2 of August 1st?
 3 MR. DYER:
 4 A. I don't think so. No, I don't think so.
 5 CHAYTOR, Q.C.:
 6 Q. Was there any issue raised about clinical and
 7 technical validation of antibodies? Was
 8 anything along those lines raised?
 9 MR. DYER:
 10 A. I don't think it was. I don't remember it
 11 being raised at the meeting. Again, you know,
 12 when we went through the validation, we did
 13 what we did with all antibodies, the way it
 14 was done on the DAKO system and we just
 15 transferred the same methodology right over to
 16 the Ventana system and we ran the same
 17 controls and physicians were involved with all
 18 the interpretation.
 19 CHAYTOR, Q.C.:
 20 Q. So Dr. Carter's withdrawal from this exercise
 21 and it having anything to do with you, that
 22 wasn't brought to your attention? You weren't
 23 aware of that?
 24 MR. DYER:
 25 A. From this point of view?

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1 CHAYTOR, Q.C.:

2 Q. Yes.

3 MR. DYER:

4 A. No.

5 CHAYTOR, Q.C.:

6 Q. And she goes on to say, "it also became clear

7 to me during that meeting that the current

8 administrative structure within Eastern Health

9 and within the laboratory allows decisions

10 regarding the development of a reliable and

11 reproducible system for assessing hormone

12 receptor status to remain in the hands of

13 paraprofessional staff within the laboratory."

14 And how about that concern?

15 MR. DYER:

16 A. I believe I'm no paraprofessional. That's

17 ridiculous.

18 CHAYTOR, Q.C.:

19 Q. I'm sorry?

20 MR. DYER:

21 A. I said that's ridiculous, paraprofessional.

22 No, I've had--I've been in the lab over 20

23 years working with physicians of all types,

24 and technologists, even cleaners, and I don't

25 think anyone who knew me would ever classify

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1 me as a paraprofessional.

2 CHAYTOR, Q.C.:

3 Q. Okay, and in terms of this issue and the level

4 of decision making being made at yours or Mr.

5 Gulliver's level, was that raised in the

6 August 1st meeting, her discontent with the

7 administrative structure?

8 MR. DYER:

9 A. No. It doesn't sound familiar to me.

10 CHAYTOR, Q.C.:

11 Q. And she does go on to say that she's "happy to

12 provide my professional opinion as a

13 fellowship trained breast pathologist and

14 chair of the Quality Control Committee

15 whenever it is sought" and she'll do that on

16 an advisory capacity, and she says that "it is

17 the responsibility of the laboratory director,

18 Mr. Terry Gulliver, in the current

19 administrative organization of Eastern Health

20 to provide a high quality service and document

21 the performance of same." And she's "happy to

22 continue to provide her professional

23 colleagues with advice," and she "regrets not

24 being able to participate fully in the

25 process," but she's uncomfortable placing her

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1 professional licensure in the forefront of the

2 operation.

3 So the concerns raised in particular

4 regarding yourself and Mr. Gulliver in this

5 letter, those weren't brought up in the August

6 1st meeting you're saying?

7 MR. DYER:

8 A. I don't think so.

9 CHAYTOR, Q.C.:

10 Q. And not brought to your attention in the

11 aftermath of Dr. Carter withdrawing?

12 MR. DYER:

13 A. Not that I can remember.

14 CHAYTOR, Q.C.:

15 Q. And do you think that's something you would

16 remember?

17 MR. DYER:

18 A. I think that's something--hopefully it is

19 something I'd remember.

20 CHAYTOR, Q.C.:

21 Q. Did you hear directly from Dr. Carter at all

22 around this time?

23 MR. DYER:

24 A. Yes, I did.

25 CHAYTOR, Q.C.:

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1 Q. Okay, and what did Dr. Carter tell you or what

2 happened?

3 MR. DYER:

4 A. Well, we didn't actually speak. She left me--

5 what happened was, this day, I believe, it was

6 August 2nd. When Mr. Gulliver, you know, Mr.

7 Gulliver informed me, called me over to the

8 office and informed me that I was going to be

9 doing--we were going to be involved with this

10 ER/PR retesting, I remember saying, "well, you

11 know, I have to go over and at least clean out

12 my phone messages."

13 CHAYTOR, Q.C.:

14 Q. I'm sorry.

15 MR. DYER:

16 A. I had to go over and clean out my phone

17 messages.

18 CHAYTOR, Q.C.:

19 Q. Yes.

20 MR. DYER:

21 A. And there were two messages there from Dr.

22 Carter.

23 CHAYTOR, Q.C.:

24 Q. And what were her messages about?

25 MR. DYER:

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1 A. Her messages were about--I think the first
 2 one, she tried to explain some of her actions
 3 in the actual August 1st meeting, and but from
 4 there then, she moved on to--I guess, in a
 5 way, she was accusing me of trying to
 6 discredit her.
 7 CHAYTOR, Q.C.:
 8 Q. Okay, and how is it that she perceived you
 9 were trying to discredit her?
 10 MR. DYER:
 11 A. Just by what she said in the letters.
 12 CHAYTOR, Q.C.:
 13 Q. I'm sorry, what she said -
 14 MR. DYER:
 15 A. Just by what she said in the voice message.
 16 CHAYTOR, Q.C.:
 17 Q. Okay.
 18 MR. DYER:
 19 A. Do you have a copy?
 20 CHAYTOR, Q.C.:
 21 Q. Yes, we do.
 22 MR. DYER:
 23 A. Okay.
 24 CHAYTOR, Q.C.:
 25 Q. Actually, it's P-2361, I believe. Okay, and

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1 these are--it's indicated to have been
 2 transcribed November 16th, 2007.
 3 MR. DYER:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. And voice messages left on Barry Dyer's
 7 message manager, August of 2005, by Dr. Bev
 8 Carter.
 9 MR. DYER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. Mr. Dyer, how is it that this then gets
 13 transcribed November of 2007?
 14 MR. DYER:
 15 A. Because I've never had it transcribed before
 16 until I--November 16th, I think at that time I
 17 had it transcribed.
 18 CHAYTOR, Q.C.:
 19 Q. And so up until November 16th, 2007, did you
 20 have the original tapes?
 21 MR. DYER:
 22 A. Well, it's still on my message manager right
 23 now, as we speak.
 24 CHAYTOR, Q.C.:
 25 Q. Oh, okay, so it's never been erased?

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1 MR. DYER:
 2 A. It's never been erased.
 3 CHAYTOR, Q.C.:
 4 Q. Okay, and then who transcribed it for you?
 5 MR. DYER:
 6 A. Mr. Gulliver's secretary.
 7 CHAYTOR, Q.C.:
 8 Q. Okay. So these are two messages and the first
 9 one is "Hi, this is Bev. I understand that
 10 instead of identifying and finding the cases
 11 and blocks on the greater than 200 women who
 12 are identified as negative, you and Terry are
 13 running around and trying to prove that things
 14 that I said were wrong. In the original 58
 15 cases that were retested, there may have been
 16 some weak positives. In that case, there are
 17 several people that are around one percent or
 18 whatever, but there were other issues with
 19 them and I think the thing that came out of
 20 that was that our Ventana system certainly was
 21 quite different than what we were having on
 22 our original DAKO. Concerns about the Ventana
 23 system arose. The 11 cases that we sent up to
 24 Mount Sinai which show cases that were
 25 negative by the original pathologists were

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1 positive on Ventana and then were negative up
 2 in Mount Sinai, and this is most especially
 3 true for the progesterone and less true for
 4 the estrogen, both of which, in that meeting,
 5 were decided were important. And as for the
 6 cases that were identified between June 29th
 7 and November 1st"--so was that the time frame
 8 that she said there were no positives?
 9 MR. DYER:
 10 A. That must have been it.
 11 CHAYTOR, Q.C.:
 12 Q. Okay --"that was not a statement of fact.
 13 That was a statement that was made during the
 14 meeting to explain to people that it is not
 15 only a technical issue, but also a fault of
 16 pathologists and a fault of oncologists that
 17 in certain period of time, which I couldn't
 18 remember, virtually every case that went out
 19 had a negative result and nobody noticed it.
 20 I think you and Terry are wasting a lot of
 21 patients' time. The patients who are negative
 22 need to be identified and they need to be
 23 retested as quickly as possible. If you do
 24 find what you feel are errors in the work that
 25 I've done so far, I would appreciate knowing

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1 about them. Thank you."
 2 So I take it she's referring to the
 3 exercise that went on in trying to determine
 4 if there had been any positives in that time
 5 period?
 6 MR. DYER:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. Okay, so and that's what she's referring to
 10 when she says that you're running around
 11 trying to provide things she said were wrong?
 12 MR. DYER:
 13 A. Yes, and -
 14 CHAYTOR, Q.C.:
 15 Q. Okay, so she's offering an explanation as to
 16 what she said and why she said it?
 17 MR. DYER:
 18 A. Yes, and there was no malicious intent on my
 19 side. All I was doing is I was just doing
 20 what I was told to do.
 21 CHAYTOR, Q.C.:
 22 Q. And that direction had come from -
 23 MR. DYER:
 24 A. Mr. Gulliver.
 25 CHAYTOR, Q.C.:

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1 Q. - to your knowledge, from -
 2 MR. DYER:
 3 A. From Mr. Gulliver.
 4 CHAYTOR, Q.C.:
 5 Q. And beyond that, from Dr. Williams?
 6 MR. DYER:
 7 A. Yes, and also the fact of, you know, instead
 8 of running around, identifying and finding
 9 cases, up to that point, I was not even
 10 involved with identifying cases.
 11 CHAYTOR, Q.C.:
 12 Q. You hadn't even been asked to do that at that
 13 point?
 14 MR. DYER:
 15 A. No, I had not been.
 16 CHAYTOR, Q.C.:
 17 Q. Okay, and that's what you were then asked on
 18 August 2nd to start doing?
 19 MR. DYER:
 20 A. On August 2nd, yes.
 21 CHAYTOR, Q.C.:
 22 Q. Pulling the cases.
 23 MR. DYER:
 24 A. That would have been the first time I was
 25 asked to get involved.

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1 CHAYTOR, Q.C.:
 2 Q. Okay. She indicates here, her message
 3 indicates that "concerns about the Ventana
 4 arose. There were 11 cases sent up to Mount
 5 Sinai which showed cases that were negative by
 6 the original pathologist and then were
 7 positive on Ventana, and were negative up in
 8 Mount Sinai." So was that brought to your
 9 attention at the time?
 10 MR. DYER:
 11 A. That's the first time I've heard of it.
 12 CHAYTOR, Q.C.:
 13 Q. Okay, and are you aware of that since, that 11
 14 cases were sent to Mount Sinai and the Ventana
 15 seemed to have created false positives?
 16 MR. DYER:
 17 A. I am aware of it. The question is, again, and
 18 I would--like I would always ask, you know,
 19 was it actually a false positive or was it an
 20 interpretation error. I now know or I've
 21 learned since all this started that the
 22 Ventana--and again, it's not an exact science
 23 in that sense, so you will get the odd case
 24 where you may get over staining and--because
 25 this was brought to my attention just recently

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1 and if you read--I think the literature says
 2 if you get a--ER and PR is a nuclear stain and
 3 if you get a cytoplasmic stain and you deem--
 4 that's deemed to be negative, and it should be
 5 repeated, and so my question would be, and my
 6 question was at the time, were those cases
 7 reread to see if there was cytoplasmic
 8 staining? And an answer never came back to me
 9 about it. So I don't know if it's a true
 10 false positive or not.
 11 CHAYTOR, Q.C.:
 12 Q. But this is where, it was regarding those 11
 13 cases that the issue of the Ventana
 14 sensitivity came up. Is that right?
 15 MR. DYER:
 16 A. Yes, I think that's the first time that it
 17 actually was brought to my attention was in
 18 that.
 19 CHAYTOR, Q.C.:
 20 Q. And shortly after this, the representative
 21 from Ventana is asked to come in?
 22 MR. DYER:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. And she says that "this is most especially

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1 true for the progesterone and less true for
 2 the estrogen, both of which, in that meeting,
 3 were decided were important." So in the
 4 August 1st meeting, was it decided to
 5 concentrate on both the progesterone and the
 6 estrogen?
 7 MR. DYER:
 8 A. I can't remember if that was actually
 9 discussed.
 10 CHAYTOR, Q.C.:
 11 Q. When you were asked to then do your work on
 12 August 2nd, were you asked to look at
 13 progesterone at all or were you only asked to
 14 look at ER?
 15 MR. DYER:
 16 A. Both were important, but the focus was on ER.
 17 CHAYTOR, Q.C.:
 18 Q. And in pulling and identifying cases, were you
 19 looking for ER negatives or PR or both?
 20 MR. DYER:
 21 A. Well, I think generally we were watching for
 22 both, but the total purpose was ER negatives
 23 and that would be clinical cutoffs, not the
 24 technical.
 25 CHAYTOR, Q.C.:

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1 Q. And then so she's saying that in trying to say
 2 there was virtually no--for a lengthy period
 3 of time, there were virtually no positives,
 4 she's trying to say that that should have been
 5 something picked up by others as well, by
 6 pathologists and oncologists?
 7 MR. DYER:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. Was there anything happening, to your
 11 knowledge, was anyone keeping track of any
 12 trends?
 13 MR. DYER:
 14 A. No, not in the pathology department, as far as
 15 I know.
 16 CHAYTOR, Q.C.:
 17 Q. Okay, and whether or not oncologists were
 18 doing that, you don't know?
 19 MR. DYER:
 20 A. I wouldn't--I don't know.
 21 CHAYTOR, Q.C.:
 22 Q. Her second message then, "and the other thing
 23 is, I'm sure that Don told you," and I take it
 24 she means Dr. Cook.
 25 MR. DYER:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. "that I withdrew from the project after that
 4 meeting on Monday due to what I felt was
 5 incorrect handling of the validation and just
 6 lack of cooperation between pathologists and
 7 administrative technical staff here. So I
 8 won't be involved any more. You guys are the
 9 ones that are going to be identifying the true
 10 negatives, so you don't really need to
 11 discredit me. You should put your effort into
 12 that. Bye." So in terms of her reason for
 13 withdrawing and feeling that there had been
 14 incorrect handling of the validation and the
 15 lack of cooperation between the two arms of
 16 the laboratory medicine program, upon hearing
 17 that, did you do anything? Did you phone her
 18 back? Did you discuss it with Dr. Cook, with
 19 Mr. Gulliver? What did you do with that
 20 information?
 21 MR. DYER:
 22 A. At that point?
 23 CHAYTOR, Q.C.:
 24 Q. Yes.
 25 MR. DYER:

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1 A. No, I didn't discuss it with anyone. I just--
 2 I think what happened was we just got all of
 3 the copies of everything. Immediately we
 4 started with--I think Mr. Gulliver ran the
 5 searches in July and had them all delivered
 6 over to Dr. Carter. So I think the next thing
 7 I did was I made arrangements to get all those
 8 searches, all those--because there was boxes
 9 of patient reports--back over to the Health
 10 Science so we could start the process
 11 immediately.
 12 CHAYTOR, Q.C.:
 13 Q. And in terms of picking up the phone and
 14 calling her back and saying "we weren't out to
 15 discredit you. That's not what this was
 16 about, and here's why we're doing it" or
 17 trying to explain or make any amends for what
 18 she perceived to be happening, that didn't
 19 happen?
 20 MR. DYER:
 21 A. I didn't think of it at the time.
 22 CHAYTOR, Q.C.:
 23 Q. You didn't do that?
 24 MR. DYER:
 25 A. No, I did not do that.

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1 CHAYTOR, Q.C.:

2 Q. Okay, and did you share these messages with

3 anyone else?

4 MR. DYER:

5 A. Mr. Gulliver, just to let him know.

6 CHAYTOR, Q.C.:

7 Q. Just to Mr. Gulliver?

8 MR. DYER:

9 A. Yes, just Mr. Gulliver.

10 CHAYTOR, Q.C.:

11 Q. If we could have, please, P-0542? And I

12 guess, if we could just go back for a minute

13 though, before we leave that, back to 2361?

14 Did you agree with her statement that there's

15 a lack of cooperation between pathologists and

16 administrative technical staff? Did you

17 perceive -

18 MR. DYER:

19 A. No, again, I don't know where it's coming

20 from. Like there wasn't a lack of cooperation

21 between technical and pathologists. I really

22 don't think there was. I mean, everyone got

23 along on a first-name basis and I think it was

24 going pretty good.

25 CHAYTOR, Q.C.:

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1 Q. Okay. So at this point in time, by August

2 2005, you felt that the laboratory medicine

3 program was working pretty well in a--pretty

4 well as a team?

5 MR. DYER:

6 A. Yes, a pretty cohesive group, yes.

7 CHAYTOR, Q.C.:

8 Q. Okay, and it was a cohesive group?

9 MR. DYER:

10 A. This is again in '05.

11 CHAYTOR, Q.C.:

12 Q. Yes.

13 MR. DYER:

14 A. There was turmoil in the lab because I believe

15 we were right in the--also, again, it's just--

16 you know, it's overwhelming. There were just

17 so many things on the go, because we were--you

18 know, we were trying with--we brought in the

19 XT. We did our consolidation. This whole

20 issue came up and so it was just so many

21 things happening at one time. It was very

22 overwhelming.

23 CHAYTOR, Q.C.:

24 Q. Okay, so it was a hectic time, I take it?

25 MR. DYER:

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1 A. Very, very -

2 CHAYTOR, Q.C.:

3 Q. But in terms of it -

4 MR. DYER:

5 A. - very hectic, very hectic, and of course -

6 CHAYTOR, Q.C.:

7 Q. But in terms of any tension between the two

8 arms of the lab, the clinical and the

9 technical -

10 MR. DYER:

11 A. I didn't--I really didn't think there was

12 issues in terms of the technical and the

13 clinical side.

14 CHAYTOR, Q.C.:

15 Q. Okay, and any issues that we talked about

16 yesterday early on that you and Dr. Cook had

17 had, particularly around the consolidation

18 issue -

19 MR. DYER:

20 A. Oh yes.

21 CHAYTOR, Q.C.:

22 Q. - those had been resolved?

23 MR. DYER:

24 A. Well, that was a higher up level. What I

25 mean, when I say technical, I mean like with

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1 the techs.

2 CHAYTOR, Q.C.:

3 Q. With the techs.

4 MR. DYER:

5 A. The day-to-day operations dealing with

6 pathologists.

7 CHAYTOR, Q.C.:

8 Q. Okay.

9 MR. DYER:

10 A. I mean, pathologists could come in at any time

11 and talk to them and I had a very good

12 relationship with pretty well all the

13 pathologists. There was a couple of issues

14 and one was the consolidation. But at this

15 point, consolidation was already done.

16 CHAYTOR, Q.C.:

17 Q. And so had any technologist ever come to you

18 and complained about any treatment they had

19 received from pathologists?

20 MR. DYER:

21 A. No, not at this time, I don't think.

22 CHAYTOR, Q.C.:

23 Q. Okay, not up to this point in time?

24 MR. DYER:

25 A. No, I don't think so.

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1 CHAYTOR, Q.C.:

2 Q. So your perception of--you weren't aware of

3 any particular lack of cooperation or tension

4 between the two groups?

5 MR. DYER:

6 A. No, I don't think so.

7 CHAYTOR, Q.C.:

8 Q. Okay, and P-0542, please? And this is August

9 2nd then, the same date as Dr. Carter's letter

10 of withdrawal, and this goes out to all

11 pathologists, as well as yourself and Mr.

12 Gulliver, and I take it it's all pathologists

13 within Eastern Health?

14 MR. DYER:

15 A. Yes.

16 CHAYTOR, Q.C.:

17 Q. And it indicates "Dr. Gershon Ejeckam is

18 currently our resource person for

19 immunohistochemistry. All inquiries regarding

20 immunohistochemistry should be referred to Dr.

21 Ejeckam and in the event he's not available,

22 then it should go to the site chief who is Dr.

23 Fontaine." This is August 2nd again, 2005.

24 Was Dr. Ejeckam not the resource person for

25 immunohistochemistry prior to August 2nd?

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1 MR. DYER:

2 A. He was the resource person since--well, I

3 think in '03, I think is when it was

4 announced, I'm not sure, probably in '03, but

5 I think even in late '02, if the techs had any

6 issues, they would--you know, he was--he

7 seemed to have an interest in immuno and

8 that's who they would go to. So I mean, he

9 was doing this. He was always doing this.

10 CHAYTOR, Q.C.:

11 Q. So when you received this memo, did you find

12 it rather peculiar?

13 MR. DYER:

14 A. Yes, because he was always doing that, and I

15 don't know what he said, but I think--you

16 know, I think he was even under--he was of the

17 understanding, because he always did it, and

18 that's who the techs always went to.

19 CHAYTOR, Q.C.:

20 Q. And that was your understanding and the techs

21 understanding in any event?

22 MR. DYER:

23 A. Yes.

24 CHAYTOR, Q.C.:

25 Q. That he was the person to go to?

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1 MR. DYER:

2 A. Yes.

3 CHAYTOR, Q.C.:

4 Q. So this is not any change in what was

5 happening in any event?

6 MR. DYER:

7 A. Not that I know of, no.

8 CHAYTOR, Q.C.:

9 Q. And had you heard any complaints from the

10 technologist that people were coming--that

11 numerous pathologists were coming at them

12 instead of going through Dr. Ejeckam? Was

13 there any complaint such as that?

14 MR. DYER:

15 A. Oh yes, that was still happening.

16 CHAYTOR, Q.C.:

17 Q. That was still happening?

18 MR. DYER:

19 A. Yes.

20 CHAYTOR, Q.C.:

21 Q. So, was this perhaps being done to address

22 that.

23 MR. DYER:

24 A. To try and streamline that.

25 CHAYTOR, Q.C.:

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1 Q. To try and streamline the communication.

2 MR. DYER:

3 A. It still--yes, probably so, but it still

4 happened even after this.

5 CHAYTOR, Q.C.:

6 Q. Okay. So, it's still no change in practice?

7 MR. DYER:

8 A. Well, it's gotten better with Dr. Elms -

9 CHAYTOR, Q.C.:

10 Q. Now.

11 MR. DYER:

12 A. - more permanently there, yes. But I believe

13 at the time, no, I believe even in '06 it was

14 still happening. And again, I know it's

15 overwhelming for the techs, but that was the

16 relationship, like, pathologists felt if they

17 ever had an issue, they would just go right in

18 and that's what they did.

19 CHAYTOR, Q.C.:

20 Q. Okay. So, by this point in time you are now

21 onto having to identify the patients for

22 retesting. And perhaps you could tell us how

23 you went about that and first of all, did

24 anyone assist you in that?

25 MR. DYER:

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1 A. When I got back and this day arrived, that's
 2 when I knew, I think, I'm not sure if Terry
 3 told me a couple of days before, you know,
 4 like, what was going on in terms of, you know,
 5 because I wasn't around, in terms of Dr.
 6 Carter taking on this whole project. And he
 7 had already had all the searches done for '97
 8 up to, I guess, 2004, 2005, I'm not sure. So,
 9 all that stuff was already sent over to Dr.
 10 Carter and it was also in our system. Like,
 11 when you run searches, they're all given a
 12 reference number so you can go back. So, I
 13 think what I did was I went over to St.
 14 Clare's and--I'm not sure if I went over or if
 15 I called over and had one of the techs over
 16 there send all the information back, so we
 17 would start the process of reading and start
 18 the process.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. So, what was it that Terry Gulliver had
 21 already found?
 22 MR. DYER:
 23 A. He ran searches for all ER/PR protocols or
 24 procedures performed on patients.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. So, he'd already gone into MediTech.
 2 MR. DYER:
 3 A. And had this done.
 4 CHAYTOR, Q.C.:
 5 Q. And identified anyone who had had an ER/PR
 6 test within the time period 1997 to when?
 7 MR. DYER:
 8 A. To, I believe, whatever the date was, was it
 9 2004, April, something like that.
 10 CHAYTOR, Q.C.:
 11 Q. And he already physically had printed off the
 12 pathology reports.
 13 MR. DYER:
 14 A. He had all the reports already printed off.
 15 Yes, I think he did it in July for Dr.
 16 Ejeckam, I mean, Dr. Carter, sorry.
 17 CHAYTOR, Q.C.:
 18 Q. Okay. So you asked that all that information
 19 be sent back.
 20 MR. DYER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. So, did you yourself go in at all into the
 24 computer and try to identify anyone?
 25 MR. DYER:

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1 A. Well, in our system there's multiple ways of
 2 doing searches. So, there's a patient search
 3 and then there's a statistical search. So,
 4 where all the searches were already done, what
 5 I did is I just took parameters and I actually
 6 went in and did statistical searches. So,
 7 statistical searches, all it gives you is
 8 facts. It don't tell you patients or anything
 9 like this, it just gives you stats.
 10 CHAYTOR, Q.C.:
 11 Q. And sorry, what kind of stats would you be
 12 looking for?
 13 MR. DYER:
 14 A. We'd be looking for numbers, for example, if
 15 Mr. Gulliver had, in 1997, 237 patients as an
 16 example, well then, when I would write the
 17 statistical parameters, my goal was to have
 18 those numbers say 237, that would be our goal.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. So, you were cross-referencing.
 21 MR. DYER:
 22 A. So, it wasn't a patient cross-reference, it
 23 was an actual test or test of the cross-
 24 reference, yes.
 25 CHAYTOR, Q.C.:

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1 Q. And so then when you got all the pathology
 2 reports back, what was your job? You got them
 3 back from St. Clare's, what did you then have
 4 to do? About how many would there have been,
 5 by the way?
 6 MR. DYER:
 7 A. Pardon?
 8 CHAYTOR, Q.C.:
 9 Q. About how many were there? How many reports?
 10 MR. DYER:
 11 A. Oh, it was quite a few. It must have been
 12 thousands.
 13 CHAYTOR, Q.C.:
 14 Q. Close to 3000, I guess.
 15 MR. DYER:
 16 A. It was a lot of reports.
 17 CHAYTOR, Q.C.:
 18 Q. Okay. So, what did you then do?
 19 MR. DYER:
 20 A. So, our first step was, I guess, we formulate
 21 a plan. And again, Dr. Carter, where she had-
 22 -so, we were still communicating actually,
 23 yes--Dr. Carter had developed spreadsheets for
 24 when she was actually setting this up herself.
 25 So, what I did was I got the spreadsheet from

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1 Dr. Carter and that's what we used as a
 2 template to do this and you may have a copy of
 3 that spreadsheet.
 4 CHAYTOR, Q.C.:
 5 Q. Okay. And we do at P-2370, please.
 6 MR. DYER:
 7 A. So then what we started to do was, the first
 8 thing was all the reports were printed by
 9 year. So, that made it easy for year. So,
 10 then we started taking the year. So, I think
 11 Mr. Gulliver would take a year, I would take a
 12 year. And the first thing we did is we
 13 separate in house versus out-of-town patients,
 14 that's the first thing we did.
 15 CHAYTOR, Q.C.:
 16 Q. And why did you do that?
 17 MR. DYER:
 18 A. Because we were only--when it came to reports,
 19 anything that was out of town didn't have a
 20 report, that was just a reference number
 21 linked to the patient for that ER/PR protocol
 22 or that ER/PR procedure. There was no report
 23 or anything of this nature. It was just
 24 documentation. So, we were doing all of our
 25 own. And I think maybe at the time I might

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1 have been under the impression that everybody
 2 was going to eventually send theirs in. So,
 3 we separated, I believe, so year was done and
 4 then we separated in town, out of town. Then
 5 we separated--I think the next criterium was
 6 what kind of specimen we had to look for.
 7 So, I can't remember specifically what we
 8 had to look for, but it was breast for sure.
 9 So, we would start eliminating protocols or
 10 patients that had ER/PR done, but were not on
 11 breast.
 12 CHAYTOR, Q.C.:
 13 Q. Okay. So, you eliminated--there's ER/PR
 14 testing done on other tissue specimens.
 15 MR. DYER:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. But you were told to only concentrate on
 19 breast.
 20 MR. DYER:
 21 A. Yes, because the gradings for ER/PR was only
 22 used for cancer in breasts.
 23 CHAYTOR, Q.C.:
 24 Q. And who instructed you to do that?
 25 MR. DYER:

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1 A. I think it came from Dr. Cook.
 2 CHAYTOR, Q.C.:
 3 Q. Dr. Cook?
 4 MR. DYER:
 5 A. Yes.
 6 CHAYTOR, Q.C.:
 7 Q. So, the purpose for the ER/PR tests on the
 8 other patients, non-breast patients, was that
 9 explained to you?
 10 MR. DYER:
 11 A. Yes, what I understand that concept--for
 12 example, if you had a brain tumour and it--
 13 again, this is more clinical, but I can give
 14 you my interpretation. If you have a brain
 15 tumour and it's exhibiting characteristics of
 16 a cancer from the breast, then physicians will
 17 order an ER/PR to see if it will come up
 18 positive and if it did, it would have helped
 19 them in determining if that tumour came from a
 20 breast.
 21 CHAYTOR, Q.C.:
 22 Q. The origin of the tumour.
 23 MR. DYER:
 24 A. Right, yes, thank you, origin of the tumour,
 25 exactly.

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1 CHAYTOR, Q.C.:
 2 Q. And so in concentrating then only on breast
 3 and that being the direction given to you by
 4 Dr. Cook, were you asked to concentrate only
 5 on primary or were you also asked to look at
 6 metastases?
 7 MR. DYER:
 8 A. I think at the time, I think we pulled
 9 everything is what we did at first, I think we
 10 pulled everything.
 11 CHAYTOR, Q.C.:
 12 Q. And did you eventually then cull it further?
 13 MR. DYER:
 14 A. Us, ourselves? I don't think we did. I think
 15 those decisions got made by Dr. Cook after the
 16 fact.
 17 CHAYTOR, Q.C.:
 18 Q. And are you aware of whether or not if it was
 19 culled further and whether or not there was
 20 concentration on, for example, just primary
 21 breast -
 22 MR. DYER:
 23 A. I wouldn't be able to tell you.
 24 CHAYTOR, Q.C.:
 25 Q. Don't know, all right, so you did it by year,

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1 in town, out of town, and then according to
 2 just the breast patients.
 3 MR. DYER:
 4 A. Yeah, according to tissue. Then the next
 5 thing we started was, then we started to--we
 6 read the reports and we started identifying
 7 them based on percentages of positivity and
 8 negativity of the ER/PR itself.
 9 CHAYTOR, Q.C.:
 10 Q. Just the ER or ER and PR?
 11 MR. DYER:
 12 A. Well ER was identified as being most
 13 important, but we did both.
 14 CHAYTOR, Q.C.:
 15 Q. And who told you ER was the most important?
 16 MR. DYER:
 17 A. I think I--I don't know if I was actually told
 18 that or that was just an understanding.
 19 CHAYTOR, Q.C.:
 20 Q. So what would it mean from your point of view,
 21 though, if you were going to look at both,
 22 what difference if it's ER, ER being most
 23 important, what did you -
 24 MR. DYER:
 25 A. I think ER was clinically more significant.

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1 CHAYTOR, Q.C.:
 2 Q. Clinically more significant.
 3 MR. DYER:
 4 A. Yeah, I think that came up at one of the
 5 meetings.
 6 CHAYTOR, Q.C.:
 7 Q. But for your purposes, you didn't give
 8 preference to ER or PR, you looked for all ER
 9 negatives or PR negatives?
 10 MR. DYER:
 11 A. Yes, that's the next thing I did.
 12 CHAYTOR, Q.C.:
 13 Q. So you included in what went into the piles to
 14 be passed on for retesting, you included all
 15 PR negatives, as well as ER negatives.
 16 MR. DYER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. And the definition of negative was what?
 20 MR. DYER:
 21 A. So the definition of negative, we were sent--I
 22 think I got a memo from Dr. Cook, I'm just
 23 trying to remember it all, so then came the
 24 definition of a negative and again, you know,
 25 there's two definitions of negatives, the lab

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1 has their own definition, you know, you're
 2 either negative or positive, but we were
 3 instructed to go after the clinical
 4 definition.
 5 CHAYTOR, Q.C.:
 6 Q. Okay. And that was provided to you by Dr.
 7 Cook?
 8 MR. DYER:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. So in terms of when we've seen reference to
 12 the cut offs at any given time, 30 percent and
 13 then down to 10 percent, that was information
 14 given by Dr. Cook?
 15 MR. DYER:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. And you and Mr. Gulliver followed that?
 19 MR. DYER:
 20 A. Yes.
 21 CHAYTOR, Q.C.:
 22 Q. And so for example, I believe the cut off for
 23 the 30 percent, anything after, is it January
 24 1, 2001?
 25 MR. DYER:

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1 A. Yes, so December 31st, 2000 I believe was the
 2 cut off for 30 percent.
 3 CHAYTOR, Q.C.:
 4 Q. For 30 percent.
 5 MR. DYER:
 6 A. And then January 1st, 2001 was the 10 percent.
 7 CHAYTOR, Q.C.:
 8 Q. The 10 percent.
 9 MR. DYER:
 10 A. Yes, that was the clinical cut offs, I think
 11 we were told.
 12 CHAYTOR, Q.C.:
 13 Q. So in those early months, say of January,
 14 February of 2002, if you came across a patient
 15 who was ER 20 percent, would she or he have
 16 been included?
 17 MR. DYER:
 18 A. In January of -
 19 CHAYTOR, Q.C.:
 20 Q. In January, 2002.
 21 MR. DYER:
 22 A. No.
 23 CHAYTOR, Q.C.:
 24 Q. January, 2001, sorry.
 25 MR. DYER:

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1 A. On January 2001?
 2 CHAYTOR, Q.C.:
 3 Q. Yes.
 4 MR. DYER:
 5 A. No, they would not have been included, that
 6 was a positive result based on the definition.
 7 CHAYTOR, Q.C.:
 8 Q. Okay, so if there were any oncologists whose
 9 clinical definition hadn't changed at that
 10 point in time and were still using 30 percent,
 11 it could be that the 20 percent patient would
 12 have been missed, in terms of retesting?
 13 MR. DYER:
 14 A. Again, I only -
 15 CHAYTOR, Q.C.:
 16 Q. You did what you were told, I understand that.
 17 MR. DYER:
 18 A. Exactly, yes.
 19 CHAYTOR, Q.C.:
 20 Q. But you struck strictly to what was given to
 21 you?
 22 MR. DYER:
 23 A. We did.
 24 THE COMMISSIONER:
 25 Q. Ms. Chaytor, it's getting close to 1:00, so

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1 we'll break when you can find a convenient
 2 spot.
 3 CHAYTOR, Q.C.:
 4 Q. Okay, thank you. So then your definition was
 5 given to you and you then weeded through them,
 6 according to the definition of positivity.
 7 MR. DYER:
 8 A. Positive and negative, yes.
 9 CHAYTOR, Q.C.:
 10 Q. And was there any further criteria that you
 11 used?
 12 MR. DYER:
 13 A. No, that was our main criteria at the time.
 14 CHAYTOR, Q.C.:
 15 Q. So that was it, okay. Okay, well perhaps
 16 we'll break there and when we come back, I'll
 17 ask you about any difficulties you may have
 18 encountered along the way in trying to go
 19 through that process.
 20 MR. DYER:
 21 A. Sure.
 22 CHAYTOR, Q.C.:
 23 Q. Thank you, Commissioner.
 24 THE COMMISSIONER:
 25 Q. 2:15.

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1 (ADJOURNED FOR LUNCH)
 2 THE COMMISSIONER:
 3 Q. Please be seated. Yes, Ms. Chaytor.
 4 CHAYTOR, Q.C.:
 5 Q. Thank you, Commissioner. Good afternoon, Mr.
 6 Dyer.
 7 MR. DYER:
 8 A. Good afternoon, Ms. Chaytor.
 9 CHAYTOR, Q.C.:
 10 Q. Commissioner, we have a new exhibit please
 11 that I would ask to have entered, it's P-2358.
 12 THE COMMISSIONER:
 13 Q. 2358 entered.
 14 EXHIBIT ENTERED AND MARKED P-2358
 15 CHAYTOR, Q.C.:
 16 Q. And for anybody following, this document
 17 actually was already entered as P-0531, but
 18 this is a much clearer copy of the document.
 19 THE COMMISSIONER:
 20 Q. Is there a C exhibit as well?
 21 CHAYTOR, Q.C.:
 22 Q. Thank you.
 23 THE COMMISSIONER:
 24 Q. Ms. Chaytor, is there a new C exhibit as well?
 25 CHAYTOR, Q.C.:

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1 Q. A new C exhibit as well.
 2 THE COMMISSIONER:
 3 Q. The Registrar has advised me there should be a
 4 new C one as well.
 5 CHAYTOR, Q.C.:
 6 Q. Thank you, yes, there is, C-0184.
 7 EXHIBIT ENTERED AND MARKED C-0184.
 8 THE COMMISSIONER:
 9 Q. Entered.
 10 CHAYTOR, Q.C.:
 11 Q. Thank you. And perhaps we'll begin then,
 12 Registrar, with P-2358. Mr. Dyer, do you
 13 recognize this document?
 14 MR. DYER:
 15 A. I must have seen it, I think so, yes.
 16 CHAYTOR, Q.C.:
 17 Q. Would this be, you were telling us earlier
 18 today that there was a period of, a six-month
 19 period following the August 1st, 2005 meeting
 20 and the comments being made that there were no
 21 positives in a certain time period.
 22 MR. DYER:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. Is this the information you compiled?

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1 MR. DYER:
 2 A. I think this would be it.
 3 CHAYTOR, Q.C.:
 4 Q. Okay, so you've indicated here it goes from
 5 2002, January through June and negatives, I
 6 take it that's weak positive?
 7 MR. DYER:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. And positive and then totals?
 11 MR. DYER:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. And weak positive is defined as 30 percent or
 15 less.
 16 MR. DYER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. And it does not include liver skin and brain
 20 tissues, so I take it it just included
 21 breasts.
 22 MR. DYER:
 23 A. I think we just chased down breast, yes.
 24 CHAYTOR, Q.C.:
 25 Q. It's based on breast. And so this was what

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1 you came up with to show, in fact, that there
 2 had been some positives in the time period
 3 that Dr. Carter had referred to?
 4 MR. DYER:
 5 A. I believe so, I didn't actually make the
 6 chart, but I did see this. I think the chart
 7 was made by Mr. Gulliver.
 8 CHAYTOR, Q.C.:
 9 Q. So in January, out of a total of 15, there
 10 would have been, January 2002, 11 either
 11 weakly positive or positive, 3 out of 7 -
 12 MR. DYER:
 13 A. Yes.
 14 CHAYTOR, Q.C.:
 15 Q. - in February, 8 out of 15, March; April, 16
 16 out of 19?
 17 MR. DYER:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. And then 18 out of 22 and 9 out of 14?
 21 MR. DYER:
 22 A. Yes, that is correct.
 23 CHAYTOR, Q.C.:
 24 Q. And then this went on for the rest of the year
 25 as well.

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1 MR. DYER:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. And so that's the information that you
 5 compiled at the time?
 6 MR. DYER:
 7 A. That is correct.
 8 THE COMMISSIONER:
 9 Q. Do I take it then that this is the information
 10 which you believed Dr. Williams sought from
 11 Mr. Gulliver as a result of that information
 12 given by Dr. Carter in the meeting.
 13 MR. DYER:
 14 A. Yes.
 15 THE COMMISSIONER:
 16 Q. Okay, thank you.
 17 CHAYTOR, Q.C.:
 18 Q. And I believe when we left off, Mr. Dyer, you
 19 were explaining how you went about looking
 20 through the pathology reports to identify
 21 which patients should be then sent on to Mount
 22 Sinai, or at least from your point of view,
 23 sent over to Dr. Cook and then a determination
 24 made as to who would be sent on for retesting
 25 to Mount Sinai?

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1 MR. DYER:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. And you had indicated, we were talking about
 5 the cut off points, I believe when we left
 6 off, in looking through pathology reports, did
 7 you come across cases where the pathologist
 8 simply said positive and negative and didn't
 9 give any percentages?
 10 MR. DYER:
 11 A. Yes, I believe we did.
 12 CHAYTOR, Q.C.:
 13 Q. And how were those cases handled?
 14 MR. DYER:
 15 A. I think initially, I think we kept them out, I
 16 think we kept them separate and I believe they
 17 might have been discussed with Dr. Cook. So
 18 we didn't actually eliminate them if they
 19 actually had the word "positive" in them right
 20 away.
 21 CHAYTOR, Q.C.:
 22 Q. So you put them to one side and then discussed
 23 it with Dr. Cook?
 24 MR. DYER:
 25 A. Yes.

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1 CHAYTOR, Q.C.:

2 Q. And do you know ultimately how they were dealt

3 with, so if it just said "positive" do you

4 know how that was handled?

5 MR. DYER:

6 A. If they were actually sent? I wouldn't be

7 able to tell you if they were actually sent.

8 Some may have been and some may not have been.

9 CHAYTOR, Q.C.:

10 Q. And do you know who made that determination?

11 MR. DYER:

12 A. If they should be sent?

13 CHAYTOR, Q.C.:

14 Q. Yes.

15 MR. DYER:

16 A. Again, that would have been made by Dr. Cook

17 at the time, he was the one who was reviewing

18 all the slides.

19 CHAYTOR, Q.C.:

20 Q. So I take it any that just said "negative"

21 automatically went into your pile to be

22 forwarded on.

23 MR. DYER:

24 A. Yes.

25 CHAYTOR, Q.C.:

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1 Q. But any that just said "positive" you set to

2 one side.

3 MR. DYER:

4 A. I think we did set them to one side.

5 CHAYTOR, Q.C.:

6 Q. And you then had Dr. Cook review them?

7 MR. DYER:

8 A. Yes, I think once we get through some of our

9 documentation, I think we may come across some

10 of those, I'm not sure.

11 CHAYTOR, Q.C.:

12 Q. So in terms of then the criteria that you

13 used, I take it that's everything now that

14 we've covered.

15 MR. DYER:

16 A. Yes, I think that's all we used is what we

17 talked about earlier.

18 CHAYTOR, Q.C.:

19 Q. So what difficulties then did you run into or

20 did you encounter difficulties in trying to

21 identify patients?

22 MR. DYER:

23 A. Well I think, again, the way Mr. Gulliver ran

24 the searches, was he ran them based on a

25 protocol that was ordered. Again, so

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1 everything that was ordered, ever time an

2 ER/PR was ordered, we would be able to

3 identify it. So that was the main variable or

4 that seemed to be the most consistent way to

5 go about it, anyone who had a test done, of

6 course, at the time--I don't know if we

7 actually discussed it, but at the time if--the

8 system is only as good as the information

9 that's entered, so if the test wasn't ordered,

10 at that time we didn't think--I don't think we

11 thought about it, but if it wasn't ordered, we

12 wouldn't have found it. So what we did was we

13 went ahead and he did the searches, we read

14 everything over and then we started, the next

15 step actually was we started pulling slides

16 first and based on the cases we had. So based

17 on all of the current information in the

18 current Health Science system, we call it the

19 "H" system, that's where the searches were

20 done out of. So I think in 2000 or 2001 is

21 when all the systems were consolidated, so the

22 initial searches that were ran would pick up

23 all current information, but then there was

24 the other systems where information wasn't

25 picked up, I'm sorry, where we would have to

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1 go to different areas. So what happened was

2 we went back to the old Health Sciences

3 systems, called main lab, again, this is just

4 terms, it's not actual systems, but as we

5 upgrade, they may change the name of the

6 system.

7 CHAYTOR, Q.C.:

8 Q. Again, is this--you're now trying to identify

9 -

10 MR. DYER:

11 A. So we're still in the process for now.

12 CHAYTOR, Q.C.:

13 Q. - further reports.

14 MR. DYER:

15 A. Yeah, we're still in the process, so I think

16 what Mr. Gulliver did is he went back to the

17 main lab in '97, '98 and '99, because that was

18 the way it was, and he ran ER and PR orders

19 for every single patient in the system.

20 CHAYTOR, Q.C.:

21 Q. So in terms of like putting in key words, he

22 put in ER and PR were the key words.

23 MR. DYER:

24 A. ER and PR, yes. And so what happened was St.

25 Clare's and the Grace weren't on that system,

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1 the main lab system, but the connection we
 2 could make is every single specimen that was
 3 ordered from any lab in Newfoundland would
 4 have a reference number from our system, so
 5 what we would do is we would try to chase down
 6 that reference number for '97, '98, and '99
 7 for St. Clare's and the Grace. Does that make
 8 sense?
 9 CHAYTOR, Q.C.:
 10 Q. Okay.
 11 MR. DYER:
 12 A. So it was just like the way we would separate
 13 in town verses out-of-town, so it's just that
 14 even though these were not out-of-town, they
 15 were still out-of-town based on how this
 16 system was utilized before an actual
 17 consolidation of information management.
 18 CHAYTOR, Q.C.:
 19 Q. Okay.
 20 THE COMMISSIONER:
 21 Q. Wait now, I want to make sure I understand
 22 this.
 23 MR. DYER:
 24 A. Okay.
 25 THE COMMISSIONER:

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1 Q. So for those years where there is no combined
 2 database, you used your own database because
 3 while there would not be in that database the
 4 results of the tests, there would be the
 5 record of the fact that the test was done for
 6 another hospital.
 7 MR. DYER:
 8 A. Correct.
 9 THE COMMISSIONER:
 10 Q. And then you used that to trace it to the
 11 other place?
 12 MR. DYER:
 13 A. Yes.
 14 THE COMMISSIONER:
 15 Q. Okay.
 16 MR. DYER:
 17 A. So then we had to print off all those reports
 18 and they all had reference numbers, but inside
 19 the actual internal comments was the record of
 20 what the specimen, the actual specimen number
 21 was from the original site. So then we would
 22 take those specimen numbers, go into the
 23 original site and start hunting down those
 24 cases and printing off those reports.
 25 CHAYTOR, Q.C.:

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1 Q. And again, what was your search criteria for
 2 there?
 3 MR. DYER:
 4 A. There was no search criteria, the search
 5 criteria was done initially for ER/PR based on
 6 tests that were ordered. So, now we had a
 7 list of--we had a full list of patients from
 8 '97, '98 and '99 that originated from the
 9 Grace, so then we had to print out one of
 10 these detailed reports because internal
 11 comments don't print on a regular report, so
 12 it was a much longer report we would have to
 13 print out and we would read that report. I'm
 14 sorry, first we identified the numbers, then
 15 we would print out the actual Health Science
 16 report, internal, find the original specimen
 17 numbers from those patients, then go into that
 18 system using those numbers and identify the
 19 patient to print that report, that was the
 20 next thing we had to do. So once that was
 21 printed, then again we would go through the
 22 separation process of positivity, negativity
 23 and that's the process we'd continue to do to
 24 try and identify everyone in St. John's. Once
 25 that was done, we started then writing up the

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1 spreadsheets. After the spreadsheets--keep
 2 going?
 3 CHAYTOR, Q.C.:
 4 Q. Yes, well just in terms of, in looking at and
 5 just putting in ER/PR, did that in and of
 6 itself present any kind of challenge?
 7 MR. DYER:
 8 A. Yes, it did. What we came across was back in
 9 '97 and I believe '98, there was no test
 10 specifically called ER or PR, it was called
 11 peroxidase other.
 12 CHAYTOR, Q.C.:
 13 Q. Peroxidase?
 14 MR. DYER:
 15 A. Other, that's what they called it, PO. It was
 16 just a stain done by peroxidase,
 17 immunoperoxidase, that's how it was set up, so
 18 what we had to do was we had to go in and
 19 actually print out everything with peroxidase
 20 on it to hunt down what we could find and
 21 that's what we did.
 22 CHAYTOR, Q.C.:
 23 Q. And at what stage in the process did you
 24 realize that you -
 25 MR. DYER:

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1 A. Oh, pretty quick into it.
 2 CHAYTOR, Q.C.:
 3 Q. Okay, that you weren't going to pick up ER or
 4 PRs for 1997 or 1998 because it wasn't called
 5 that at the time.
 6 MR. DYER:
 7 A. For sure in '97 it wasn't called that, but I
 8 think in '98, in '98 is when we started the
 9 standardization of the computer systems as a
 10 Health Care Corporation because, as I was
 11 saying earlier, Terry led that way and I think
 12 we may have made changes then to start getting
 13 more, making it more easy.
 14 CHAYTOR, Q.C.:
 15 Q. Okay, and beyond 1997 and 1998, did you also
 16 then use the terms peroxidase other or
 17 peroxidase to do your searching?
 18 MR. DYER:
 19 A. Beyond that?
 20 CHAYTOR, Q.C.:
 21 Q. Yes.
 22 MR. DYER:
 23 A. I think up to 1998 maybe, but I think early in
 24 1998 we actually--I don't think anything came
 25 up or very little because we were now into the

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1 ER/PR.
 2 CHAYTOR, Q.C.:
 3 Q. And could it be, though, that it would depend
 4 on what any given pathologist would have
 5 entered into the system, if they used the term
 6 "peroxidase" as opposed to "ER/PR"?
 7 MR. DYER:
 8 A. No, it was always done by technologists. It
 9 was at order entry screen and pathologists
 10 didn't have access to order entry.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, so then from '99 onwards, it should have
 13 always been either ER/PR?
 14 MR. DYER:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. All right, sorry, yes, continue on then.
 18 MR. DYER:
 19 A. So then we started with the process of writing
 20 up the worksheets, as we looked at earlier.
 21 Again, that worksheet I think was developed by
 22 Dr. Carter and we used it, it was a good
 23 worksheet. So what we did then was we started
 24 to write everything up and once we started
 25 getting a list written up, then I started the

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1 process of hunting down the slides.
 2 CHAYTOR, Q.C.:
 3 Q. Okay.
 4 MR. DYER:
 5 A. And as we found so many slides, what we would
 6 do is I would put them up in a file with the
 7 actual reports and submit them to Dr. Cook for
 8 examination.
 9 CHAYTOR, Q.C.:
 10 Q. And the slides that you were looking for,
 11 would it have been all the H&E slides on every
 12 patient?
 13 MR. DYER:
 14 A. Good question. No, what we did was we
 15 actually pulled just the ER/PR and H&E from
 16 that, like the ER/PR was done on Block B, then
 17 we would actually pull just the ER/PR and the
 18 H&E on Block B.
 19 CHAYTOR, Q.C.:
 20 Q. And if we could look then at 2370, I believe
 21 we had this up before, these are the
 22 spreadsheets. So you used Dr. Carter's--this
 23 was her spreadsheet she created?
 24 MR. DYER:
 25 A. Yes.

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1 CHAYTOR, Q.C.:
 2 Q. So we have the year, the patient's name, of
 3 course, has been redacted, surgical number,
 4 hospital origin, MCP, tumour type, tumour
 5 grade, block number, original report, controls
 6 on original receptor, repeat receptor ER/PR,
 7 date of test and report pathologist and
 8 comments. What then would you have filled in
 9 on this? This is for the year, we understand
 10 1997?
 11 MR. DYER:
 12 A. Whatever information that was on the report
 13 that I could identify to fill in here, I would
 14 fill it in.
 15 CHAYTOR, Q.C.:
 16 Q. So you would have put in the name?
 17 MR. DYER:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. The surgical number?
 21 MR. DYER:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. The hospital, the MCP number.
 25 MR. DYER:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. Would you have included it--is this your
 4 writing or Mr. Gulliver's, the tumour type?
 5 MR. DYER:
 6 A. This one might be Terry's or Mr. Gulliver's,
 7 but if it was intermediate or if it was
 8 written because a lot of the reports had
 9 tumour summaries, so if tumour type was
 10 written in tumour summary, you would take it
 11 if it was there.
 12 CHAYTOR, Q.C.:
 13 Q. And the block number meaning the block that
 14 the original report or original test was
 15 carried out on?
 16 MR. DYER:
 17 A. If it was identified. What we found was as
 18 we--a lot of times the blocks were not
 19 identified for ER/PR testing. Therefore we
 20 would actually have to read, go through the
 21 entire case until we found the one that was
 22 identified for ER/PR.
 23 CHAYTOR, Q.C.:
 24 Q. Okay. So where we see blanks left here, you
 25 weren't able to identify which block had been

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1 used for -
 2 MR. DYER:
 3 A. It wasn't on the report.
 4 CHAYTOR, Q.C.:
 5 Q. Okay. So for the original test?
 6 MR. DYER:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. And then ER/PR, what does it mean those
 10 dashes?
 11 MR. DYER:
 12 A. Oh, that means negative.
 13 CHAYTOR, Q.C.:
 14 Q. Okay.
 15 MR. DYER:
 16 A. So ER was negative on the original report. PR
 17 was negative on the original report.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, and controls with plus signs, what does
 20 that mean?
 21 MR. DYER:
 22 A. What that means is that the physician who read
 23 that report actually commented on if the
 24 external control was positive or negative.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. So this would mean that you found
 2 somewhere in the report that the--in all of
 3 those cases that the pathologist had indicated
 4 the external control was working?
 5 MR. DYER:
 6 A. Yes.
 7 CHAYTOR, Q.C.:
 8 Q. Okay, and then there's nothing filled in, of
 9 course, for the repeat because it was to be
 10 sent to Mount Sinai for that?
 11 MR. DYER:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. Okay, and were you involved then when the
 15 results came back in collecting that
 16 information, the results of the repeats?
 17 MR. DYER:
 18 A. No.
 19 CHAYTOR, Q.C.:
 20 Q. And the date of test, and for example, what's
 21 that first date that we have there?
 22 MR. DYER:
 23 A. It looks like 10/12, so I would imagine it's
 24 the 10th day, 12th month.
 25 CHAYTOR, Q.C.:

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1 Q. Okay, in '97 obviously?
 2 MR. DYER:
 3 A. In 1997, yeah.
 4 CHAYTOR, Q.C.:
 5 Q. Okay. So your date would be up top and your
 6 month on the bottom?
 7 MR. DYER:
 8 A. Yes, I think that was--I don't think we
 9 considered the date of test actual critical,
 10 but I think Terry put in the date of the
 11 tests.
 12 CHAYTOR, Q.C.:
 13 Q. Okay, and then nothing filled in on the
 14 reporting pathologist, why is that?
 15 MR. DYER:
 16 A. Again, I think that's the report--again, that
 17 was something that Dr. Carter had, but we
 18 printed every single report so we didn't
 19 identify--oh, I'm sorry, that's reporting
 20 pathologist? No, at the time, I wasn't--we
 21 weren't asked to identify a physician, so we
 22 didn't.
 23 CHAYTOR, Q.C.:
 24 Q. Were you asked not to identify physicians?
 25 MR. DYER:

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1 A. No, I don't think we were ever asked to
 2 identify one, so we didn't identify one.
 3 CHAYTOR, Q.C.:
 4 Q. So you were asked to fill in everything else
 5 except the pathologist?
 6 MR. DYER:
 7 A. No, when we got these, I think we made--I
 8 think in discussion with Dr. Cook, I think
 9 what was most important was the name--the
 10 things that would be pertinent immediately, so
 11 we could find this information and reporting
 12 pathologist wasn't considered important at the
 13 time.
 14 CHAYTOR, Q.C.:
 15 Q. Okay, and comments and in some places here, we
 16 see plus internal control?
 17 MR. DYER:
 18 A. Yes, so what that meant was if a physician
 19 actually commented on the internal controls
 20 and whether they were positive or negative.
 21 CHAYTOR, Q.C.:
 22 Q. And so this is, you think, Mr. Gulliver's
 23 handwriting?
 24 MR. DYER:
 25 A. I think it is, positive internal, positive

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1 internal.
 2 CHAYTOR, Q.C.:
 3 Q. And it looks like there was a post-it note put
 4 over this particular page and X equals out of
 5 town, is that right?
 6 MR. DYER:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. Okay, and -
 10 MR. DYER:
 11 A. Line with D means deceased.
 12 CHAYTOR, Q.C.:
 13 Q. Okay, and so did you do that? Did you try and
 14 cull out any deceased patients?
 15 MR. DYER:
 16 A. I don't think it was a decision immediately,
 17 but I do believe at some point we were given
 18 some kind of deceased list and to--and not to
 19 send them right away. If we already didn't
 20 hunt them down, don't hunt them down. I think
 21 the primary focus was on the living.
 22 CHAYTOR, Q.C.:
 23 Q. Okay. So you were given a list at some point.
 24 Who would have given you that list?
 25 MR. DYER:

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1 A. I'm not sure where it came from. It might
 2 have been QI, I'm not sure.
 3 CHAYTOR, Q.C.:
 4 Q. Would it be Heather Predham?
 5 MR. DYER:
 6 A. Yeah, that's what I'm thinking, QI.
 7 CHAYTOR, Q.C.:
 8 Q. And so then you would cross reference, I take
 9 it? If you found a particular report, you
 10 would check to see first if it were on the
 11 deceased list, and if so, then you put it to
 12 one side. Is that right?
 13 MR. DYER:
 14 A. That was after the fact. Like where we have
 15 already started the process, and we weren't
 16 informed about the deceased at the time, I
 17 believe some deceased got sent, because
 18 whatever we had pulled, we were sending.
 19 CHAYTOR, Q.C.:
 20 Q. Okay, and do you know how far along you were
 21 in the process before you started trying not
 22 to send the deceased samples?
 23 MR. DYER:
 24 A. No, I'm not sure how far we were along.
 25 CHAYTOR, Q.C.:

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1 Q. And do you know if there was any further
 2 culling, for example, for whether or not
 3 patients were already being treated by
 4 Tamoxifen or a similar drug?
 5 MR. DYER:
 6 A. If there was, I wasn't involved.
 7 CHAYTOR, Q.C.:
 8 Q. Okay, and had you heard whether or not there
 9 was? Whether or not there had been any
 10 culling for patients who were already being
 11 treated?
 12 MR. DYER:
 13 A. I'm sorry, again, I can't -
 14 CHAYTOR, Q.C.:
 15 Q. Can you not hear?
 16 MR. DYER:
 17 A. Yeah, I think I'm--I'm trying to read what is
 18 here.
 19 CHAYTOR, Q.C.:
 20 Q. The fan is making a bit of noise, is it? Did
 21 you--do you know whether or not anybody
 22 further culled the people that you were
 23 identifying on the basis of they were already
 24 being treated?
 25 MR. DYER:

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1 A. I think something like that was going on, but
 2 I wasn't--I don't know. I wasn't involved.
 3 CHAYTOR, Q.C.:
 4 Q. Okay. So if that happened, that happened
 5 after you had done your work and submitted it
 6 to Dr. Cook?
 7 MR. DYER:
 8 A. Okay, yeah, I think so.
 9 CHAYTOR, Q.C.:
 10 Q. Okay, and the date of test that's recorded
 11 here, what would that mean "date of test"? Is
 12 that the date that the run actually took
 13 place? Is it the date the technologist signed
 14 the requisition? Is it the date that the
 15 pathologist signed off? What is this date?
 16 MR. DYER:
 17 A. I think, I believe it's the date that the case
 18 was actually signed out.
 19 CHAYTOR, Q.C.:
 20 Q. Signed out by whom?
 21 MR. DYER:
 22 A. By the physician.
 23 CHAYTOR, Q.C.:
 24 Q. By the physician?
 25 MR. DYER:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. So if we look at a pathology report and we see
 4 the date that it's entered in the system,
 5 that's the date that you would have chosen on
 6 a -
 7 MR. DYER:
 8 A. The date that--no, the date that I believe the
 9 physician actually signed this result out.
 10 CHAYTOR, Q.C.:
 11 Q. The date that it's signed out?
 12 MR. DYER:
 13 A. Yes, I think that's what that date would be.
 14 CHAYTOR, Q.C.:
 15 Q. Okay, and perhaps what we'll do, I'll bring up
 16 a couple of pathology reports in a minute and
 17 you can -
 18 MR. DYER:
 19 A. And we can try them and see -
 20 CHAYTOR, Q.C.:
 21 Q. - you can show me what -
 22 MR. DYER:
 23 A. I don't think--when I did it, I don't think I
 24 actually--the date of the test wasn't--I
 25 didn't deem it to be that important to me, so

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1 I didn't actually write down the date of the
 2 test for very many of them.
 3 CHAYTOR, Q.C.:
 4 Q. So you didn't fill this in, for the most part?
 5 MR. DYER:
 6 A. No, no.
 7 CHAYTOR, Q.C.:
 8 Q. Okay, and it says here "race equals clinical
 9 guidelines." What does that mean?
 10 MR. DYER:
 11 A. You'll have to ask Mr. Gulliver.
 12 CHAYTOR, Q.C.:
 13 Q. That's his note, is it?
 14 MR. DYER:
 15 A. Yes, these are all his notes.
 16 CHAYTOR, Q.C.:
 17 Q. Okay, and again, zero equals something tissue?
 18 MR. DYER:
 19 A. Insufficient tissue probably.
 20 CHAYTOR, Q.C.:
 21 Q. Insufficient tissue, okay, and a check mark,
 22 checked with lab list sent.
 23 MR. DYER:
 24 A. Yes, it was sent.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. So checked--sorry, check mark means
 2 checked with lab list sent. What was the lab
 3 list?
 4 MR. DYER:
 5 A. You'll have to ask Mr. Gulliver.
 6 CHAYTOR, Q.C.:
 7 Q. Okay. So I take it you weren't provided--were
 8 you provided anything in the way of a list
 9 that you could check off the ones that you had
 10 located? Like was there any cross-referencing
 11 between lists?
 12 MR. DYER:
 13 A. Our only cross-referencing was this with the
 14 actual report.
 15 CHAYTOR, Q.C.:
 16 Q. Yes, okay, and then at some point, you had a
 17 list of deceased patients?
 18 MR. DYER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. And again, on the top left here, I think X is
 22 out of town and "rechecked May 1st, 2007" and
 23 I was going to bring that up because that
 24 appears at the beginning of every--the front
 25 page of every year, "rechecked May 1st, 2007,"

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1 do you know what that refers to?
 2 MR. DYER:
 3 A. I'm not sure. I think we just went back and
 4 rechecked everything that we were doing.
 5 There were some patients missed and this may
 6 be a point of where we said we went back and
 7 rechecked every single thing.
 8 CHAYTOR, Q.C.:
 9 Q. And is this Mr. Gulliver's handwriting again?
 10 MR. DYER:
 11 A. It looks like it, yes.
 12 CHAYTOR, Q.C.:
 13 Q. And so you and Mr. Gulliver went back in the
 14 beginning of May?
 15 MR. DYER:
 16 A. We probably did.
 17 CHAYTOR, Q.C.:
 18 Q. 2007, and checked?
 19 MR. DYER:
 20 A. Yes.
 21 CHAYTOR, Q.C.:
 22 Q. And so you rechecked your own list against
 23 what at that time?
 24 MR. DYER:
 25 A. Against, I think--I think we had--I'm not sure

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1 we had a couple of patients who were missed
 2 and we were going back to see if they were on
 3 the original list, or we were going back to
 4 see if the results were done. I know it would
 5 be--in May '07. June, July, August, no, I
 6 don't think it has anything to do with the
 7 results. It must be where we were just going
 8 back to double check to see if everything--so
 9 we had all the--we still had a copy of all the
 10 reports, so we may have just went back and
 11 double checked everything.
 12 CHAYTOR, Q.C.:
 13 Q. So it had been brought to your attention
 14 around May of 2007 that some patients had been
 15 missed, and you're going back through your
 16 list to what, see if those patients actually
 17 were on your original list?
 18 MR. DYER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. Is that what you were doing?
 22 MR. DYER:
 23 A. Yes, that's what we were doing.
 24 CHAYTOR, Q.C.:
 25 Q. Okay, and over here, what's all this?

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1 MR. DYER:
 2 A. Again, that would be Mr. Gulliver's writing.
 3 CHAYTOR, Q.C.:
 4 Q. And it looks like 136 total.
 5 MR. DYER:
 6 A. Okay.
 7 CHAYTOR, Q.C.:
 8 Q. Plus one added or 135 -
 9 MR. DYER:
 10 A. Plus one added, maybe 135 and then one was
 11 added for 136.
 12 CHAYTOR, Q.C.:
 13 Q. 37 negative.
 14 MR. DYER:
 15 A. 23 were Health Science, one deceased. 19 weak
 16 positives, ten from the Health Science. 80
 17 positive, 32 to be retested.
 18 CHAYTOR, Q.C.:
 19 Q. So were you keeping track as you were going
 20 through, your number -
 21 MR. DYER:
 22 A. I believe we were.
 23 CHAYTOR, Q.C.:
 24 Q. So you're keeping track of your total number
 25 of tests, how many were negatives, how many

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1 were positive?
 2 MR. DYER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. And how many had to be sent for retests?
 6 MR. DYER:
 7 A. I think so.
 8 CHAYTOR, Q.C.:
 9 Q. Okay, and it says here 37 negative, 23 of them
 10 were from the Health Science and one was
 11 deceased.
 12 MR. DYER:
 13 A. Correct.
 14 CHAYTOR, Q.C.:
 15 Q. And then there's also some weak positives.
 16 Why would only 32 be sent for retest?
 17 MR. DYER:
 18 A. Well, 23, I guess, plus ten is 33 minus one
 19 deceased, 32.
 20 CHAYTOR, Q.C.:
 21 Q. Okay, say again?
 22 MR. DYER:
 23 A. Well, 23 -
 24 CHAYTOR, Q.C.:
 25 Q. Oh, so that's counting up the Health Sciences

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1 people?
 2 MR. DYER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. Okay, and where would the other people, to
 6 make up the 37, have come from. Would they be
 7 St. Clare's and the Grace?
 8 MR. DYER:
 9 A. I think in '97, they were probably all across
 10 the province. I believe Dr. Khalifa was
 11 reading all of the ER/PRs for the province.
 12 CHAYTOR, Q.C.:
 13 Q. Okay, but on your sheet here, is this just St.
 14 John's cases?
 15 MR. DYER:
 16 A. No.
 17 CHAYTOR, Q.C.:
 18 Q. This is everyone.
 19 MR. DYER:
 20 A. In 1997, where everything was read here -
 21 CHAYTOR, Q.C.:
 22 Q. Right, okay.
 23 MR. DYER:
 24 A. Then the search was for everything, because we
 25 would have had the blocks and slides, so we

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1 would have the report on all those patients.
 2 CHAYTOR, Q.C.:
 3 Q. Okay, and in doing that, and you made
 4 separate--you made separate piles for the out-
 5 of-town patients, but those were being read,
 6 as you say, by Dr. Khalifa at the time?
 7 MR. DYER:
 8 A. As far as I know. Again, I wasn't here, but
 9 as far as I know.
 10 CHAYTOR, Q.C.:
 11 Q. Would they have been then separated out in a
 12 different pile, or would you have sent those
 13 on as though they were your cases?
 14 MR. DYER:
 15 A. No, we took the responsibility for the '97s.
 16 CHAYTOR, Q.C.:
 17 Q. Okay.
 18 MR. DYER:
 19 A. That's if they belonged to the Health Science.
 20 CHAYTOR, Q.C.:
 21 Q. So this note here, 32 retests, that's Mr.
 22 Gulliver for some reason just keeping track of
 23 the Health Sciences' cases?
 24 MR. DYER:
 25 A. Yes, and that was a number, I think, we knew

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1 that we actually definitely had on site, we
 2 could go hunt down.
 3 CHAYTOR, Q.C.:
 4 Q. Okay. So your blocks for those other cases
 5 that you were doing, even though you were
 6 reading them, the blocks would have been sent
 7 back to the other regions?
 8 MR. DYER:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. Okay, and then this is again for 1997, and I
 12 take it all of this is--this is still Mr.
 13 Gulliver's handwriting, is it?
 14 MR. DYER:
 15 A. I think so.
 16 CHAYTOR, Q.C.:
 17 Q. Okay, and the one that's crossed off here, is
 18 that because of -
 19 MR. DYER:
 20 A. That would have been the D, that's a deceased.
 21 CHAYTOR, Q.C.:
 22 Q. Deceased?
 23 MR. DYER:
 24 A. Yes.
 25 CHAYTOR, Q.C.:

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1 Q. And you have 1997 weak positive, what were you
 2 calling a weak positive?
 3 MR. DYER:
 4 A. I think we were deeming--just for our own
 5 purposes, we were deeming weak positives as a
 6 specimen that was technically positive.
 7 CHAYTOR, Q.C.:
 8 Q. And what was your cutoff? You have that here
 9 a couple of times.
 10 MR. DYER:
 11 A. We didn't have a cutoff for weak positives.
 12 If they were less than 30, then they went for
 13 retesting.
 14 CHAYTOR, Q.C.:
 15 Q. Okay, so these are negatives, so these were
 16 either identified as being negative or giving
 17 a percentage less than 30?
 18 MR. DYER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. And then these weak positives?
 22 MR. DYER:
 23 A. Yes, like you can see five and five on number
 24 two, or ten and 40 and 50, five and positive.
 25 So they had a positivity result, but they were

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1 still clinically negative.
 2 CHAYTOR, Q.C.:
 3 Q. Why would a--we've got 90 PR be considered a
 4 weak positive?
 5 MR. DYER:
 6 A. Again, the primary--no, the primary focus--oh,
 7 no, why would we call that a weak positive?
 8 Because one of the stains came up positive.
 9 CHAYTOR, Q.C.:
 10 Q. So you also defined weak positive based on if
 11 one of either ER or PR was negative?
 12 MR. DYER:
 13 A. Yes, if there was positivity on the slide.
 14 CHAYTOR, Q.C.:
 15 Q. On only one?
 16 MR. DYER:
 17 A. Or in the report.
 18 CHAYTOR, Q.C.:
 19 Q. On only one?
 20 MR. DYER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. And so for example, here we have ER ten and PR
 24 40 to 50.
 25 MR. DYER:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. And that's put in your weak positive category?
 4 MR. DYER:
 5 A. Yes, because the ER itself was less than 30 at
 6 the time.
 7 CHAYTOR, Q.C.:
 8 Q. So I take it you looked at--you relied
 9 primarily on your ER score, not on your PR
 10 score?
 11 MR. DYER:
 12 A. Yeah, ER was the primary, was the primary
 13 issue or primary concern.
 14 CHAYTOR, Q.C.:
 15 Q. Okay. So regardless of what the PR was -
 16 MR. DYER:
 17 A. We always chased after the ER first, yes.
 18 CHAYTOR, Q.C.:
 19 Q. And again, what was the significance to
 20 calling these weak positive? Why--I didn't
 21 understand that you were going to batch
 22 anything by weak positive or it was either
 23 negative or positive.
 24 MR. DYER:
 25 A. I'm sorry, initially it was a negative or

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1 positive. Just so we'd know what patients we
 2 were working with, but I think you should talk
 3 to Mr. Gulliver, but I believe just to see
 4 what kind of positivity was in the lab at the
 5 time.
 6 THE COMMISSIONER:
 7 Q. In determining weak positive, did I hear you
 8 to say that weak positive was one that showed
 9 some positivity but was less than the cutoff?
 10 MR. DYER:
 11 A. The clinical cutoff.
 12 THE COMMISSIONER:
 13 Q. Yes.
 14 MR. DYER:
 15 A. Yes, because I think the lab viewed it as
 16 technically speaking, if there was a positive
 17 result, it was positive.
 18 THE COMMISSIONER:
 19 Q. Okay.
 20 MR. DYER:
 21 A. And I think that -
 22 THE COMMISSIONER:
 23 Q. And in the time frame where that was 30
 24 percent, a weak positive could be one percent
 25 or 29 percent?

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1 MR. DYER:
 2 A. Yes.
 3 THE COMMISSIONER:
 4 Q. Or in the times when it was ten percent, a
 5 weak positive could be one percent or nine
 6 percent?
 7 MR. DYER:
 8 A. Correct.
 9 THE COMMISSIONER:
 10 Q. Okay, and what happened to those weak
 11 positives?
 12 MR. DYER:
 13 A. All these? If they were less than 30 or less
 14 than ten, based on the time line, they were
 15 all sent for retesting.
 16 THE COMMISSIONER:
 17 Q. Okay. So that when it came to retesting -
 18 MR. DYER:
 19 A. The retesting was based on clinical.
 20 THE COMMISSIONER:
 21 Q. - it was based on clinical, so your
 22 characterization of them as weak positive or
 23 otherwise had nothing to do with what happened
 24 to them thereafter?
 25 MR. DYER:

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1 A. Nothing.
 2 CHAYTOR, Q.C.:
 3 Q. And so I'm just thinking, and particularly in
 4 a situation where time is of the essence, and
 5 you've been given instructions by Dr. Cook as
 6 to what he wanted done and the cutoffs to be
 7 used, what was the point in going through the
 8 exercise and further classifying them as weak
 9 positives or negatives?
 10 MR. DYER:
 11 A. I think it was just another step as we were
 12 going through. The only significance that I
 13 would see is that technically, I guess there
 14 was a debate at the time over positivity and
 15 clinical cutoffs.
 16 CHAYTOR, Q.C.:
 17 Q. And what was that debate about?
 18 MR. DYER:
 19 A. No, I just think, you know, they--I guess what
 20 they said is we had a high negative rate in
 21 the lab and technically speaking, we disagree,
 22 because we had a lot of positive cases, but
 23 clinically were called negative. So in the
 24 lab itself, the lab views a positive test as a
 25 positive test.

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1 CHAYTOR, Q.C.:
 2 Q. So this was going back to the whole issue
 3 about what were your positivity rates in the
 4 lab, so not so much identifying -
 5 MR. DYER:
 6 A. Something to that--I guess something to that
 7 degree, yes.
 8 CHAYTOR, Q.C.:
 9 Q. Not identifying the patients, but trying to
 10 come up with your own data, in terms of what
 11 your positivity rates were?
 12 MR. DYER:
 13 A. Yes, I think so.
 14 CHAYTOR, Q.C.:
 15 Q. This wasn't so much about -
 16 MR. DYER:
 17 A. I think it was more so probably that, yes.
 18 CHAYTOR, Q.C.:
 19 Q. Not so much about the patients?
 20 MR. DYER:
 21 A. No, it's not about the patients.
 22 CHAYTOR, Q.C.:
 23 Q. And to your knowledge, if somebody was
 24 identified as being, regardless of what you or
 25 Mr. Gulliver may have characterized them as

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1 being, if they were ER negative or PR
 2 negative, they were sent?
 3 MR. DYER:
 4 A. Well, we pulled the cases and submitted them
 5 to Dr. Cook, yes.
 6 CHAYTOR, Q.C.:
 7 Q. And gave them to Dr. Cook?
 8 MR. DYER:
 9 A. Yes, to be sent, yes.
 10 CHAYTOR, Q.C.:
 11 Q. Okay, and these are still 1997. Is any of
 12 this your handwriting or is this still Mr.
 13 Gulliver?
 14 MR. DYER:
 15 A. I think -- I think that's Dr. Cook's.
 16 CHAYTOR, Q.C.:
 17 Q. I know this is Dr. Cook's.
 18 MR. DYER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. We're familiar with his now, but the other,
 22 that would have been filled in at a later
 23 date, obviously.
 24 MR. DYER:
 25 A. Yes.

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1 CHAYTOR, Q.C.:
 2 Q. Because Mount Sinai' results are recorded.
 3 MR. DYER:
 4 A. It's not my writing.
 5 CHAYTOR, Q.C.:
 6 Q. The rest of it is Mr. Gulliver's, I take it.
 7 Okay. If we could have then, please, 2371,
 8 and these are the -- this is the spreadsheets
 9 for 1998 and again we see "Rechecked May 1st,
 10 2007", and that's the same explanation, I take
 11 it, 1998 negatives, and then we see some more
 12 markings over here and again this is Mr.
 13 Gulliver, is it, keeping track?
 14 MR. DYER:
 15 A. I think so, yes.
 16 CHAYTOR, Q.C.:
 17 Q. Okay, and is this again all Mr. Gulliver's
 18 writing?
 19 MR. DYER:
 20 A. It's hard to say. Those negatives look
 21 something like mine.
 22 CHAYTOR, Q.C.:
 23 Q. Yes, it's hard to differentiate dashes, I
 24 guess, isn't it?
 25 MR. DYER:

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1 A. It is.
 2 CHAYTOR, Q.C.:
 3 Q. But you probably could tell from the date of
 4 test, it's certainly filled in on all of
 5 those.
 6 MR. DYER:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. And you've indicated it wasn't your practice
 10 to necessarily do that?
 11 MR. DYER:
 12 A. It wasn't mine. Now Terry may have went back
 13 and filled them in after the fact if a
 14 question arose. That's my writing there.
 15 CHAYTOR, Q.C.:
 16 Q. That's your writing?
 17 MR. DYER:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. Okay, and the dates of tests are not filled
 21 in, and these are all just indicated to be --
 22 I guess your dash is just negative again, is
 23 it?
 24 MR. DYER:
 25 A. Yes.

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1 CHAYTOR, Q.C.:
 2 Q. And here these are called weak positive. So
 3 that's, I take it, the last page of the
 4 negatives, and then this is 1998 weak
 5 positives?
 6 MR. DYER:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. And again the PRs are 50 to 60 for the first
 10 patient, 30 or 80, I'm not sure what that is,
 11 80 to 90.
 12 MR. DYER:
 13 A. 90. It looks like 50.
 14 CHAYTOR, Q.C.:
 15 Q. Okay.
 16 MR. DYER:
 17 A. And you see -- half way down you'll see, like,
 18 there's a weak positive, weak positive.
 19 CHAYTOR, Q.C.:
 20 Q. Yes.
 21 MR. DYER:
 22 A. So again I don't know if there was a
 23 definition for a weak positive by a physician
 24 at the time, but when it was written like that
 25 we just took it.

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1 CHAYTOR, Q.C.:
 2 Q. So what you found on the pathology report for
 3 this particular patient was the words, "weak
 4 positive"?
 5 MR. DYER:
 6 A. Yes.
 7 CHAYTOR, Q.C.:
 8 Q. With no numbers?
 9 MR. DYER:
 10 A. If there was numbers, the numbers were wrote
 11 down.
 12 CHAYTOR, Q.C.:
 13 Q. Okay, and again the next patient is similar, I
 14 take it, it's negative for the EG and weak
 15 positive?
 16 MR. DYER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. And what's this, is this a number?
 20 MR. DYER:
 21 A. It looks like 45.
 22 CHAYTOR, Q.C.:
 23 Q. Okay, and what's this, SP, is it, or --
 24 MR. DYER:
 25 A. That's an SP. I don't know what that one is.

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1 CHAYTOR, Q.C.:
 2 Q. And this is weak positive, is it, 15?
 3 MR. DYER:
 4 A. That's what it looks like.
 5 CHAYTOR, Q.C.:
 6 Q. And would that be strong positive?
 7 MR. DYER:
 8 A. Oh, that's a good point, it may be strong
 9 positive. Whatever they have written down,
 10 that's how we try to put it onto the sheets.
 11 CHAYTOR, Q.C.:
 12 Q. Do you know what his says in this particular
 13 page?
 14 MR. DYER:
 15 A. That says -- that looks like it's greater than
 16 30.
 17 CHAYTOR, Q.C.:
 18 Q. Greater than 30, okay. I thought it said 730.
 19 MR. DYER:
 20 A. Oh! Sorry.
 21 CHAYTOR, Q.C.:
 22 Q. Greater than 30, all right, and then here
 23 we're seeing more of -- there's percentages
 24 written in?
 25 MR. DYER:

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1 A. Yes, I think again half way down that looks
 2 like 30 percent, but we still took it -- you
 3 just passed it, there's a 30 and a 70.
 4 CHAYTOR, Q.C.:
 5 Q. Yes, there's a 30 in the first one?
 6 MR. DYER:
 7 A. Yes, there's a 30, but still it went on to be
 8 sent.
 9 CHAYTOR, Q.C.:
 10 Q. So even if it were 30, right on 30, you would
 11 send it off?
 12 MR. DYER:
 13 A. Well, again the case was pulled for Dr. Cook.
 14 CHAYTOR, Q.C.:
 15 Q. To make the determination?
 16 MR. DYER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. And again this one, 25 to 30, and 50. If we
 20 just look at page eight here for a minute,
 21 controls on the original, on this whole page
 22 there's only four where it's indicated. So
 23 again that means that on the report, on four
 24 of those patients the pathologist referred to
 25 having read the external control and it had

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1 worked?
 2 MR. DYER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. And on the rest of those, there was no such
 6 reference on the pathology reports?
 7 MR. DYER:
 8 A. Correct.
 9 CHAYTOR, Q.C.:
 10 Q. And over here it says, "Sent 1G".
 11 MR. DYER:
 12 A. So what happened is once we started
 13 identifying all the patients or all the
 14 slides, what I did was all of the actual four
 15 sheets that we created, we photocopied and we
 16 started using them as a reference to what we
 17 sent.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, so the block numbers over here were the
 20 original blocks that the ER/PR tests were run
 21 on?
 22 MR. DYER:
 23 A. Uh-hm.
 24 CHAYTOR, Q.C.:
 25 Q. And then over here you started recording which

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1 block actually ended up being sent?
 2 MR. DYER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. Okay, and so, for example -- well, most of
 6 those appear to be that the original block was
 7 sent?
 8 MR. DYER:
 9 A. They are.
 10 CHAYTOR, Q.C.:
 11 Q. They're all consistent with what the original
 12 test was done?
 13 MR. DYER:
 14 A. That's good correlation.
 15 CHAYTOR, Q.C.:
 16 Q. I think that's it for 1998. If we could have
 17 then, please, 2372, and this is 1999 and again
 18 it looks like it's rechecked, May of 2007, and
 19 keeping track of numbers over here. Was this
 20 being done as you're actually identifying the
 21 patients or is this something that was done
 22 later?
 23 MR. DYER:
 24 A. No, I think -- I think once we had the sheets
 25 wrote up for a year, I think it was done right

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1 then and there.
 2 CHAYTOR, Q.C.:
 3 Q. Okay.
 4 MR. DYER:
 5 A. Mr. Gulliver can probably definitely tell you.
 6 CHAYTOR, Q.C.:
 7 Q. And here it appears weak positive. At this
 8 point in time it's indicated to be greater
 9 than 10 percent ER.
 10 MR. DYER:
 11 A. That's what he has written there.
 12 CHAYTOR, Q.C.:
 13 Q. And is that what -- as of 1999. I thought the
 14 cut off changed in 2001?
 15 MR. DYER:
 16 A. Oh, it did, the cut off was still at 30
 17 percent.
 18 CHAYTOR, Q.C.:
 19 Q. There's a few additional people here again.
 20 These are deceased people. So by this point,
 21 you certainly to have had --
 22 MR. DYER:
 23 A. We now have the --
 24 CHAYTOR, Q.C.:
 25 Q. You have the list?

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1 MR. DYER:
 2 A. Yes, we now have a list.
 3 CHAYTOR, Q.C.:
 4 Q. I just want to go back to a page here. On
 5 this one, it looks like occasional positive,
 6 is that right?
 7 MR. DYER:
 8 A. That's my writing. If that's what it said,
 9 that's what I wrote.
 10 CHAYTOR, Q.C.:
 11 Q. OCC is occasional?
 12 MR. DYER:
 13 A. OCC is occasional.
 14 CHAYTOR, Q.C.:
 15 Q. Okay. I guess what I'm not seeing a whole lot
 16 of, at least so far, and I'm not seeing a lot
 17 which just say "positive". So any that you
 18 found -- remember I asked you, well, what if
 19 you found ones that just said positive, what
 20 did you do with them. I'm not seeing them so
 21 far anyhow on this spreadsheet. So do you
 22 know did they ever make the spreadsheet, the
 23 ones which just said "positive".
 24 MR. DYER:
 25 A. I thought -- I'm pretty sure -- I can't say

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1 for sure if they made the spreadsheet, but I
 2 know we pulled them for -- I know we pulled
 3 them for review.
 4 CHAYTOR, Q.C.:
 5 Q. You certainly have weak positive identified.
 6 MR. DYER:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. And occasional positive again.
 10 MR. DYER:
 11 A. Again that's just a photocopy for --
 12 CHAYTOR, Q.C.:
 13 Q. This is the photocopy.
 14 MR. DYER:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. Okay, and then if we can have for the next
 18 year, please, 2000 is 2373. The first few
 19 pages are yours and then it's Dr. Cook's
 20 photocopy, I think. All of those appear to be
 21 just dashes.
 22 MR. DYER:
 23 A. They're all just negatives, yes.
 24 CHAYTOR, Q.C.:
 25 Q. And then occasional reference to a control.

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1 So it appears to be for the most part that
 2 there wasn't -- there didn't appear to be a
 3 tendency for pathologists to record whether
 4 they had seen an external control or deemed it
 5 to be positive. It wasn't recorded.
 6 MR. DYER:
 7 A. It wasn't recorded.
 8 CHAYTOR, Q.C.:
 9 Q. For the most part. These are just then copies
 10 of -- this is Dr. Cook's copy of the same
 11 documents?
 12 MR. DYER:
 13 A. I think so, yes.
 14 CHAYTOR, Q.C.:
 15 Q. If we could have then, please, 2374, and these
 16 are for 2001. This says, "DCIS not sent", is
 17 that correct?
 18 MR. DYER:
 19 A. That's what it says.
 20 CHAYTOR, Q.C.:
 21 Q. Did you call any out on the basis that they
 22 were DCIS?
 23 MR. DYER:
 24 A. I don't think so. That's not my writing. I
 25 don't know who would have wrote that.

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1 CHAYTOR, Q.C.:
 2 Q. That wasn't one of the criteria given to you,
 3 I take it?
 4 MR. DYER:
 5 A. No.
 6 CHAYTOR, Q.C.:
 7 Q. So if that happened, it happened after it was
 8 passed on to Dr. Cook?
 9 MR. DYER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. I notice on these, there aren't many blocks
 13 recorded. By 2001, it's very infrequent that
 14 we see a block recorded. Why is that?
 15 MR. DYER:
 16 A. Again that's a clinical issue.
 17 CHAYTOR, Q.C.:
 18 Q. I'm sorry?
 19 MR. DYER:
 20 A. That's a clinical issue.
 21 CHAYTOR, Q.C.:
 22 Q. So if it was there, if it existed on the
 23 report and the block was identified --
 24 MR. DYER:
 25 A. We would write it down because it would be

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1 easier to identify.
 2 CHAYTOR, Q.C.:
 3 Q. Okay. So when we see Dr. Cook's copy -- for
 4 example, if we look at page one and we have
 5 one, two, three cases where the block is
 6 identified, and then we go to Dr. Cook's copy
 7 and the blocks being entered here, are you --
 8 he's identifying blocks. So would that mean
 9 the blocks that ultimately got sent?
 10 MR. DYER:
 11 A. I would imagine that's what it means.
 12 CHAYTOR, Q.C.:
 13 Q. Okay. If we could have 2375, please. This is
 14 now for the year 2002, and again there's very
 15 infrequent recording of the blocks, and very
 16 infrequent recording of external controls. At
 17 this point in time too, it appears that all of
 18 what's -- certainly the first few pages,
 19 they're just dashes meaning, I take it, that
 20 they were recorded as negative?
 21 MR. DYER:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. All negatives. Are you able to read what does
 25 this say? The block number I got, but what

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1 does this say? Is it "absent"?
 2 MR. DYER:
 3 A. No. It looks like "aberrant"
 4 CHAYTOR, Q.C.:
 5 Q. Aberrant?
 6 MR. DYER:
 7 A. That's what it looks like to me, but I can't
 8 tell you.
 9 CHAYTOR, Q.C.:
 10 Q. And that's in the PR column?
 11 MR. DYER:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. Do you have any idea what that would mean?
 15 MR. DYER:
 16 A. No, it's -- that's my writing -- I mean,
 17 that's my writing for this report, but that's
 18 not my writing down there on the bottom. It's
 19 not mine.
 20 CHAYTOR, Q.C.:
 21 Q. This is not your writing?
 22 MR. DYER:
 23 A. No, not that right there.
 24 CHAYTOR, Q.C.:
 25 Q. So whatever got filled in for this particular

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1 patient here, this is not your writing?
 2 MR. DYER:
 3 A. No.
 4 CHAYTOR, Q.C.:
 5 Q. But the rest of the page is?
 6 MR. DYER:
 7 A. All of those are. Actually, the last two
 8 patients aren't mine.
 9 CHAYTOR, Q.C.:
 10 Q. Those last two are different writing, yes.
 11 MR. DYER:
 12 A. It doesn't look like my writing.
 13 CHAYTOR, Q.C.:
 14 Q. So somebody added on a couple of patients?
 15 MR. DYER:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. After -- perhaps after you submitted the
 19 report?
 20 MR. DYER:
 21 A. After the initial search.
 22 CHAYTOR, Q.C.:
 23 Q. And these are Dr. Cook's copies?
 24 MR. DYER:
 25 A. I think what was happening at the time -- I'm

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1 not sure, but I believe, like, I think
 2 oncologists were also putting in requests for
 3 patients to be done.
 4 CHAYTOR, Q.C.:
 5 Q. Okay.
 6 MR. DYER:
 7 A. I guess to get done quicker, so I think they
 8 may have been added to the list.
 9 CHAYTOR, Q.C.:
 10 Q. I believe if we can read over here, it says,
 11 "Added on July 8th, '07".
 12 MR. DYER:
 13 A. "Deceased".
 14 CHAYTOR, Q.C.:
 15 Q. And the person is deceased.
 16 MR. DYER:
 17 A. They were deceased.
 18 CHAYTOR, Q.C.:
 19 Q. They were both added on quite some time
 20 afterwards.
 21 MR. DYER:
 22 A. I think it was in '07 when we started to send
 23 off deceased.
 24 CHAYTOR, Q.C.:
 25 Q. For the deceased patients.

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1 MR. DYER:
 2 A. I'm not sure, '06/'07.
 3 CHAYTOR, Q.C.:
 4 Q. Okay. If we could have then, please, 2376,
 5 and these again are you -- this is your
 6 spreadsheet now for 2003, and under the
 7 controls we see the word "seen" written in, is
 8 it?
 9 MR. DYER:
 10 A. The "seen", that's my writing, "seen".
 11 CHAYTOR, Q.C.:
 12 Q. And what's the next?
 13 MR. DYER:
 14 A. "Verified".
 15 CHAYTOR, Q.C.:
 16 Q. Verified.
 17 MR. DYER:
 18 A. Seen, positive, checked, ex -- excluded, I
 19 guess, or -- no, I don't know why "ex" is
 20 there.
 21 CHAYTOR, Q.C.:
 22 Q. And -- so you don't know what that is?
 23 MR. DYER:
 24 A. No.
 25 CHAYTOR, Q.C.:

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1 Q. But this again would be the wording that was
 2 used, I take it, by the pathologists on their
 3 reports?
 4 MR. DYER:
 5 A. That's the exact words that were on the
 6 report.
 7 CHAYTOR, Q.C.:
 8 Q. And the "ex", you're not sure if that said
 9 excluded or not?
 10 MR. DYER:
 11 A. Correct.
 12 CHAYTOR, Q.C.:
 13 Q. Or maybe it was "exist"?
 14 MR. DYER:
 15 A. Exist? Could be, I'm not sure what "ex" was.
 16 CHAYTOR, Q.C.:
 17 Q. And are you able to read what this says over
 18 here, is that your handwriting?
 19 MR. DYER:
 20 A. I think it says, "Ventana 80 and 60".
 21 CHAYTOR, Q.C.:
 22 Q. And do you know what that refers to?
 23 MR. DYER:
 24 A. I would imagine the ER/PR results for
 25 retesting.

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1 CHAYTOR, Q.C.:
 2 Q. Okay. Now the Ventana wasn't used in 2003?
 3 MR. DYER:
 4 A. No.
 5 CHAYTOR, Q.C.:
 6 Q. So was this person -- does that mean this
 7 person was retested on the Ventana before it
 8 was sent to Mount Sinai?
 9 MR. DYER:
 10 A. I believe, yes, and I think I might have just
 11 made that comment while I read the report.
 12 CHAYTOR, Q.C.:
 13 Q. And did you make a note on your spreadsheets
 14 for anybody who had been retested on Ventana
 15 prior to being sent to Mount Sinai?
 16 MR. DYER:
 17 A. I don't think it was a common practice unless-
 18 -I guess, like that must have stood out, so I
 19 wrote it there.
 20 CHAYTOR, Q.C.:
 21 Q. And so how would you know that? How would
 22 know--you're only looking at the pathology
 23 reports. So, where would get this
 24 information?
 25 MR. DYER:

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1 A. It would have to be that pathology report.
 2 CHAYTOR, Q.C.:
 3 Q. So, it would have been reported in the
 4 pathology report.
 5 MR. DYER:
 6 A. That would be the only way I would know.
 7 CHAYTOR, Q.C.:
 8 Q. Okay. So, when you're looking at the
 9 pathology reports, you would look at any ER or
 10 PR tests done for that patient?
 11 MR. DYER:
 12 A. What I did was--that's a good question. I
 13 think, I'm not sure if that's what we did. I
 14 think for this situation the Ventana, that
 15 result was there. So, that's the result that
 16 I--I wrote that down as a comment.
 17 CHAYTOR, Q.C.:
 18 Q. So, this patient obviously then had at least
 19 two ER/PR tests.
 20 MR. DYER:
 21 A. Yes, but the original report was
 22 negative/negative.
 23 CHAYTOR, Q.C.:
 24 Q. Original was negative.
 25 MR. DYER:

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1 A. So, it went on the list to go.
 2 CHAYTOR, Q.C.:
 3 Q. And then the Ventana--so, it went on the list
 4 to go because the original was negative.
 5 MR. DYER:
 6 A. Yes.
 7 CHAYTOR, Q.C.:
 8 Q. Regardless of what any retests -
 9 MR. DYER:
 10 A. As far as I understand, I don't think we held
 11 any back because of the Ventana system.
 12 CHAYTOR, Q.C.:
 13 Q. Okay. So, when you came across any reports
 14 where there was more than one ER/PR test, if
 15 the original was negative, that person was
 16 sent to Mount Sinai or at least sent on to Dr.
 17 Cook to make the determination.
 18 MR. DYER:
 19 A. Yes. I don't think we used the Ventana as a
 20 benchmark if it was repeated, and now it was
 21 positive on Ventana, I don't think we did it.
 22 Again, I can't truly tell you, it was so long
 23 ago.
 24 CHAYTOR, Q.C.:
 25 Q. And what if it had been repeated on other than

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1 the Ventana?
 2 MR. DYER:
 3 A. I think, again I'm only speculating, but if
 4 that was repeated on the DAKO system, maybe at
 5 some other time in 2003 and it was positive,
 6 then it probably didn't go because that means
 7 the last actual report was a positive result.
 8 But I would imagine anything from the Ventana
 9 system, that was just a new system, so I would
 10 imagine, we made the comment, but it still was
 11 written down to go.
 12 CHAYTOR, Q.C.:
 13 Q. So, in going through the pathology reports,
 14 you came across patients who had been retested
 15 on the DAKO system.
 16 MR. DYER:
 17 A. No, on the Ventana system.
 18 CHAYTOR, Q.C.:
 19 Q. Ventana.
 20 MR. DYER:
 21 A. Had been retested, obviously that patient was
 22 retested at some point.
 23 CHAYTOR, Q.C.:
 24 Q. And you said though however that if you came
 25 across somebody who was retested in 2003 on

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1 the DAKO system -
 2 MR. DYER:
 3 A. Then that would have been the final report
 4 that went out. So, we would have assumed, I
 5 guess that the patient--if the patient was
 6 positive, then that the patient was treated
 7 that way.
 8 CHAYTOR, Q.C.:
 9 Q. Okay. So, in going through the pathology
 10 reports, my question was, did you come across
 11 people who were, had more than one ER/PR test?
 12 Their ER/PR test had been repeated back in the
 13 DAKO days.
 14 MR. DYER:
 15 A. We must have because I now know that there
 16 were repeats done. So, we must have come
 17 across it.
 18 CHAYTOR, Q.C.:
 19 Q. Okay. And how do you now know that?
 20 MR. DYER:
 21 A. How do I know it now?
 22 CHAYTOR, Q.C.:
 23 Q. Yes.
 24 MR. DYER:
 25 A. Well, I think over the past year or so, I've

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1 learned it.
 2 CHAYTOR, Q.C.:
 3 Q. And how did you learn that?
 4 MR. DYER:
 5 A. When I got involved with the Inquiry. Again,
 6 there were comments, I know that in Bev's
 7 letter also there were comments of changed
 8 results, but that was again on the Ventana
 9 system. So, I don't think that would have
 10 struck a chord here.
 11 THE COMMISSIONER:
 12 Q. Mr. Dyer, tell me again so that I'm clear. If
 13 you had a result on the DAKO system which was
 14 negative and then that for some reason that
 15 person's test had been repeated, would you use
 16 the first of the tests on DAKO or the repeat
 17 test to determine whether or not it would be
 18 sent off?
 19 MR. DYER:
 20 A. I think we'd use the repeat--I think if it was
 21 on DAKO, I think we used the repeat test.
 22 THE COMMISSIONER:
 23 Q. The one on the Ventana, assuming it was that
 24 far along.
 25 MR. DYER:

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1 A. If it was the repeat on the Ventana, no, I
 2 don't think we used that. I think -
 3 THE COMMISSIONER:
 4 Q. So, if it was a repeat on the DAKO -
 5 MR. DYER:
 6 A. I believe we actually, yeah, if it was a
 7 repeat and it was positive, it didn't go. But
 8 I think with the Ventana, that's why I made
 9 that comment there.
 10 THE COMMISSIONER:
 11 Q. Okay, but if it was a repeat on Ventana, it
 12 would go at any event.
 13 MR. DYER:
 14 A. Yes, I think that's what we did.
 15 THE COMMISSIONER:
 16 Q. Okay.
 17 CHAYTOR, Q.C.:
 18 Q. And what was the rationale for that?
 19 MR. DYER:
 20 A. For the Ventana?
 21 CHAYTOR, Q.C.:
 22 Q. Why would you send the repeats, the ones that
 23 were repeated on Ventana, but not the ones
 24 that were repeated on DAKO?
 25 MR. DYER:

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1 A. I think because of the issue of the validation
 2 from Dr. Carter back around that time or
 3 probably in August.
 4 CHAYTOR, Q.C.:
 5 Q. Because Dr. Carter had raised an issue to say
 6 is the Ventana too sensitive.
 7 MR. DYER:
 8 A. Yes, yes.
 9 CHAYTOR, Q.C.:
 10 Q. But the whole issue in terms of what brought
 11 this about was a retest of Peggy Deane on the
 12 Ventana system which showed positivity.
 13 MR. DYER:
 14 A. Yes, that's correct.
 15 CHAYTOR, Q.C.:
 16 Q. So, that test, I take it, wasn't being
 17 questioned, that retest on the Ventana.
 18 MR. DYER:
 19 A. It wasn't questioned to me, no.
 20 CHAYTOR, Q.C.:
 21 Q. Okay. And I just want to go back to what you
 22 said a few minutes ago, about it came to your
 23 attention in the past year through the Inquiry
 24 process that there were repeats back in 2002
 25 and 2003. Other than Peggy Deane, which

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1 cases, without naming patients, perhaps you
 2 could tell me -
 3 MR. DYER:
 4 A. Oh God, I wouldn't know. I never read, I had
 5 no reason to ever read patient reports.
 6 CHAYTOR, Q.C.:
 7 Q. How many? Do you have any idea -
 8 MR. DYER:
 9 A. No, I don't have any idea.
 10 CHAYTOR, Q.C.:
 11 Q. And who brought to your attention that other
 12 than Peggy Deane, there were repeats carried
 13 out on the DAKO system?
 14 MR. DYER:
 15 A. No, it wasn't something that we or I
 16 identified. What it was, was this is the
 17 first time I actually read patient reports was
 18 in August of '05.
 19 CHAYTOR, Q.C.:
 20 Q. Right, in '05.
 21 MR. DYER:
 22 A. And this when I, you know--if we seen a
 23 repeat, again, if we seen a repeat, I think
 24 what we did was, if the original was negative
 25 and the secondary one was positive from that

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1 system, we kept it, we didn't send it. Now, I
 2 can't say we didn't sent it. I don't know if
 3 we actually brought it to Dr. Cook's
 4 attention, but if it was a negative and
 5 negative, it was sent. So, the first time I
 6 was involved, actually seen patient reports,
 7 was at this time.
 8 CHAYTOR, Q.C.:
 9 Q. Yes. So, in 2005 it would have come to your
 10 attention in looking through or pouring
 11 through those hundreds of pathology reports,
 12 it would have come to your attention then that
 13 there were more than one ER/PR result recorded
 14 on certain patients' charts.
 15 MR. DYER:
 16 A. Yeah, I guess so, it's logical, I guess, where
 17 I was reading all the reports.
 18 CHAYTOR, Q.C.:
 19 Q. But at that time it didn't occur to you, well,
 20 this is not just Mrs. Deane; here's Mrs. X or
 21 here's Mr. Y, it didn't occur to you at that
 22 point?
 23 MR. DYER:
 24 A. No, honestly it didn't.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. And so what in the past year was
 2 brought to your attention?
 3 MR. DYER:
 4 A. More so, now that--because I think, is it,
 5 NLCHI got involved?
 6 CHAYTOR, Q.C.:
 7 Q. Yes.
 8 MR. DYER:
 9 A. And I worked with them as we was going through
 10 reports.
 11 CHAYTOR, Q.C.:
 12 Q. And NLCHI identified that there were people
 13 who had more than one ER/PR test?
 14 MR. DYER:
 15 A. No, I think we both did because we sat down--I
 16 sat down with Reza and we just went through
 17 report by report as he was creating his
 18 database.
 19 CHAYTOR, Q.C.:
 20 Q. And is there a record of that, how many
 21 patients?
 22 MR. DYER:
 23 A. Oh, I doubt. I don't think so.
 24 CHAYTOR, Q.C.:
 25 Q. But it was subject of discussion between

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1 yourself and Reza that there are a number of
 2 patients who had more than one ER or PR
 3 recorded.
 4 MR. DYER:
 5 A. I think we might have made a comment on it,
 6 that's about it, but it wasn't anything that
 7 stood out or anything like that. I think it
 8 was just a comment as we read through the
 9 reports.
 10 CHAYTOR, Q.C.:
 11 Q. Okay. And Reza didn't do any analysis on
 12 that. There's no -
 13 MR. DYER:
 14 A. I have no idea.
 15 CHAYTOR, Q.C.:
 16 Q. That you've been told.
 17 MR. DYER:
 18 A. I don't know, I wouldn't know.
 19 CHAYTOR, Q.C.:
 20 Q. But it was certainly brought to his attention
 21 and you and he discussed it.
 22 MR. DYER:
 23 A. Again, we didn't discuss anything really in
 24 detail, just made the comment, look, this
 25 patient was repeated, probably said something

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1 like that, but that was it.
 2 CHAYTOR, Q.C.:
 3 Q. And not only were they repeated, was there any
 4 note made of the fact that they had different
 5 results?
 6 MR. DYER:
 7 A. I don't believe there was.
 8 CHAYTOR, Q.C.:
 9 Q. And that wouldn't have caught your attention?
 10 MR. DYER:
 11 A. It may have caught my attention, but we were
 12 going through this whole process of retesting
 13 and--I mean, the whole process of retesting
 14 was over. It wouldn't have, I don't think it
 15 would have caught my interest at that time.
 16 CHAYTOR, Q.C.:
 17 Q. And do you have any knowledge as to whether or
 18 not it was any particular time period that
 19 most of these repeats seemed to have occurred?
 20 MR. DYER:
 21 A. No, this was just patient by patient.
 22 CHAYTOR, Q.C.:
 23 Q. I'm just going to leave this for a minute. If
 24 we can have C-0184 please. And this is--
 25 obviously the patient's name is redacted--this

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1 is a pathology report, May 17th, 2002. I'm
 2 sorry it's the discharge date. It's May 16th,
 3 2002 is the received date.
 4 THE COMMISSIONER:
 5 Q. May 16th 2002 is the what?
 6 CHAYTOR, Q.C.:
 7 Q. The day of the surgery, it appears, the
 8 received date, surgical receive date.
 9 MR. DYER:
 10 A. Yes.
 11 THE COMMISSIONER:
 12 Q. Meaning the date that the lab received it?
 13 MR. DYER:
 14 A. Received the specimen.
 15 CHAYTOR, Q.C.:
 16 Q. If we come down to page three of this report
 17 and it's one of Dr. Morris-Larkin's reports,
 18 we have an addendum number one entered July
 19 10, 2002, I understand that date to be. Is
 20 that correct?
 21 MR. DYER:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. Less than 10 percent of the cells show
 25 positivity for estrogen receptors. This

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1 correlates with the negative estrogen receptor
 2 result. And then the next page, approximately
 3 25 percent of the cells are positive for
 4 progesterone receptors. And the signature on
 5 file then is July 10th, '02. And my question
 6 earlier about the sign off date--so, this
 7 would be the date you understand was used on
 8 your spreadsheets, is that right?
 9 MR. DYER:
 10 A. I think so.
 11 CHAYTOR, Q.C.:
 12 Q. Okay. So, we have less than 10 percent ER,
 13 approximately 25 percent PR. Addendum 2, July
 14 22nd, 2002, so 12 days later, "due to the
 15 unavailability of a control, the ER and PR
 16 were repeated. A difference is seen in the
 17 results as follows. Approximately 30 percent
 18 of the cells are positive for estrogen
 19 receptors, best considered a positive ER
 20 results. Fifty percent are positive for PR
 21 receptors". So, Mr. Dyer, this particular
 22 patient, would you have included her in what
 23 you referred on to Dr. Cook for retesting?
 24 MR. DYER:
 25 A. No.

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1 CHAYTOR, Q.C.:
 2 Q. Why not?
 3 MR. DYER:
 4 A. Because she was positive.
 5 CHAYTOR, Q.C.:
 6 Q. Because she was positive on her test 12 days
 7 later.
 8 MR. DYER:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. Both of those would have taken place on the
 12 DAKO machine?
 13 MR. DYER:
 14 A. Yes.
 15 CHAYTOR, Q.C.:
 16 Q. If we could look at C-0175, please? Thank
 17 you.
 18 THE COMMISSIONER:
 19 Q. Before we leave that one, "stated reason for
 20 the second test, due to the unavailability of
 21 a control", is that standard speak for
 22 something?
 23 MR. DYER:
 24 A. Not that I know of.
 25 THE COMMISSIONER:

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1 Q. All right.
 2 MR. DYER:
 3 A. The best thing is to talk to the physicians.
 4 THE COMMISSIONER:
 5 Q. Thank you. I'm sorry, you interrupted, you
 6 were going on to a different -
 7 CHAYTOR, Q.C.:
 8 Q. That's okay. Page two of this exhibit, C-0175
 9 and the addendum one, and this one, I believe,
 10 I would have brought to your attention
 11 yesterday, Mr. Dyer. This is entered May 6th,
 12 2003 when compared to controls, the specimen
 13 is negative for HER2/neu, ER and PR. And then
 14 on May 9th, 2003, the ER and PR were repeated
 15 due to quality assurance issues. The repeated
 16 stain showed the following and then ER is
 17 positive in 80 percent and PR is positive in
 18 10 percent and it says this replaces the
 19 previous report. So, would this patient have
 20 been sent on to Dr. Cook to be included in
 21 those sent to Mount Sinai?
 22 MR. DYER:
 23 A. No, the patient was positive.
 24 CHAYTOR, Q.C.:
 25 Q. And the patient is positive on the second test

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1 repeated shortly after the first.
 2 MR. DYER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. And so why wasn't that left to the clinical
 6 judgment of the physicians as to whether or
 7 not this person is positive or not, if it's
 8 equivocal at all?
 9 MR. DYER:
 10 A. Pardon?
 11 CHAYTOR, Q.C.:
 12 Q. If it's equivocal at all, why wouldn't -
 13 MR. DYER:
 14 A. I guess the final report went out as positive,
 15 the addendum two.
 16 CHAYTOR, Q.C.:
 17 Q. And if we could have please C-0174? And I
 18 believe I brought this one to your attention
 19 yesterday as well. Page four of the exhibit
 20 and this is Dr. Elms' case and the first
 21 addendum, sorry the second addendum here,
 22 "immunohistochemical staining for progesterone
 23 receptors is positive in approximately 15
 24 percent and immunohistochemical staining for
 25 estrogen receptors is negative" and then at

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1 the request of Dr. Zaidi, it's repeated and
 2 the ER is 10 to 15 and the progesterone is 75.
 3 So, would that person have been sent to Mount
 4 Sinai for retesting or sent on to Dr. Cook?
 5 MR. DYER:
 6 A. I'm not sure if that one would have went.
 7 Again, we were in constant contact with Dr.
 8 Cook at the time, so I'm sure we discussed
 9 some patients prior to filling them out or
 10 writing them up.
 11 CHAYTOR, Q.C.:
 12 Q. Okay. And if we could go back then, please,
 13 to 2375, and page nine please. It's probably
 14 difficult to see here, but if we come down, I
 15 think it's the third one from the bottom.
 16 MR. DYER:
 17 A. 5321?
 18 CHAYTOR, Q.C.:
 19 Q. 5231.
 20 MR. DYER:
 21 A. Okay, so I may have talked about the case with
 22 Dr. Cook at the time.
 23 CHAYTOR, Q.C.:
 24 Q. Ten to fifteen -
 25 MR. DYER:

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1 A. Ten to fifteen percent because really ten to
 2 fifteen percent is a positive at that time,
 3 but maybe where it was weak staining, I may
 4 have decided to talk to him about it.
 5 CHAYTOR, Q.C.:
 6 Q. So, this particular patient was included on
 7 your spreadsheet and sent on to Dr. Cook.
 8 MR. DYER:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. Okay. And if she's 10 to 15 percent positive
 12 why was she included?
 13 MR. DYER:
 14 A. Again, I guess faint staining and 10 to 15
 15 percent, I may have contacted Dr. Cook about
 16 that patient and asked for advice.
 17 CHAYTOR, Q.C.:
 18 Q. And if we could have, please C-0099. This is
 19 Ms. Purcell's record and she had a test done
 20 in July of 1999, immunohistochemical hormone
 21 receptor analysis, a repeat and HER2/neu
 22 analysis with appropriate positive controls
 23 for estrogen receptors were weakly positive,
 24 described as weakly positive. Approximately
 25 50 percent of invasive tumour progesterone

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1 receptors weakly to moderate positive. Ten to
 2 fifteen percent of invasive tumour. And the
 3 one above is the original test. We see here
 4 estrogen receptors positive, faint, five
 5 percent of cells estrogen receptors negative
 6 and then it says this is a supplementary
 7 report. Would she have been included, Mrs.
 8 Purcell -
 9 MR. DYER:
 10 A. Again, I think for challenging cases like
 11 that, like I said, I was always in contact
 12 with Dr. Cook about those types of cases.
 13 CHAYTOR, Q.C.:
 14 Q. So, you would have referred that on to Dr.
 15 Cook to make the determination.
 16 MR. DYER:
 17 A. I think we would talk about it and then he
 18 would decide if I should send him the report
 19 or not.
 20 CHAYTOR, Q.C.:
 21 Q. Okay. And if we could go back then, please,
 22 to 2376? And again though, Mr. Dyer, when you
 23 were looking at, back in 2005, August of 2005,
 24 when you were looking through the reports, at
 25 that point in time, in terms of seeing

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1 reports or repeats, things written such as due
 2 to quality assurance or due to lack of
 3 availability of a control, those types of
 4 things didn't jump out at you or cause you
 5 pause?
 6 MR. DYER:
 7 A. Again, I can't really tell you, can't
 8 remember. All I know is, is at the time we
 9 were extremely busy. We were doing this all
 10 hours in the night just to get it done,
 11 pressure was always there and I can't remember
 12 if it actually caused me to pause.
 13 CHAYTOR, Q.C.:
 14 Q. And in terms of the number of repeats that you
 15 were seeing, it didn't cause you any concern
 16 as to what may have been happening?
 17 MR. DYER:
 18 A. At the time, I wasn't even focused on that.
 19 We were just focused on trying to get these
 20 patients out.
 21 CHAYTOR, Q.C.:
 22 Q. And what about now in looking back at it?
 23 MR. DYER:
 24 A. I admit there were quite a few repeats.
 25 CHAYTOR, Q.C.:

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1 Q. Yes.
 2 MR. DYER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. Okay. And this is back to 2003 and I don't
 6 think--somebody can tell me if I finish this,
 7 but I don't think I did. And it doesn't
 8 appear to be anything Mr. Dyer, unless you see
 9 something, it doesn't appear to be anything
 10 out of the ordinary in terms of comments
 11 recorded, percentages recorded. I can't
 12 really read this one. I don't know if you
 13 can.
 14 MR. DYER:
 15 A. That's a 10 to 20 it looks like.
 16 CHAYTOR, Q.C.:
 17 Q. Ten to twenty.
 18 MR. DYER:
 19 A. And again it's in '03, it would have been
 20 considered positive, but again, it must be
 21 another case we discussed.
 22 CHAYTOR, Q.C.:
 23 Q. And then those are Dr. Cook's notes. If we
 24 could have then 2377.
 25 THE COMMISSIONER:

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1 Q. Ms. Chaytor, wherever you can find a spot,
 2 we'll take the afternoon break.
 3 CHAYTOR, Q.C.:
 4 Q. Thank you. And this is then the same thing,
 5 the spreadsheet this time for 2004.
 6 MR. DYER:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. And this done from January to March and why is
 10 that?
 11 MR. DYER:
 12 A. I think at the end of March is when we--this
 13 was still DAKO system.
 14 CHAYTOR, Q.C.:
 15 Q. And so at this point in time, these are the
 16 only--from January to March of 2004, we have
 17 nine cases?
 18 MR. DYER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. And then it looks like there's Dr. Cook's
 22 sheet.
 23 MR. DYER:
 24 A. There's a couple of add ons. It may have been
 25 phone calls he was getting at the time.

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1 CHAYTOR, Q.C.:
 2 Q. Okay.
 3 THE COMMISSIONER:
 4 Q. I'm sorry, I didn't catch that.
 5 MR. DYER:
 6 A. It may have been phone calls that he was
 7 getting at the time. You see, he has 11:49
 8 there and is up in the above. So, he was
 9 getting phone calls too, I think, at the same
 10 time and he would add as things came to him.
 11 CHAYTOR, Q.C.:
 12 Q. So, he's added these one.
 13 MR. DYER:
 14 A. Yes.
 15 CHAYTOR, Q.C.:
 16 Q. But what about--has he also taken things off?
 17 What about -
 18 MR. DYER:
 19 A. Well, there's nine there.
 20 CHAYTOR, Q.C.:
 21 Q. We've got one, two, three, four, five, six
 22 here.
 23 MR. DYER:
 24 A. That's a good point.
 25 CHAYTOR, Q.C.:

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1 Q. And these one, two, three.
 2 MR. DYER:
 3 A. That's the original.
 4 CHAYTOR, Q.C.:
 5 Q. Because you would have given him this, I take
 6 it.
 7 MR. DYER:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. And that's what this should be.
 11 MR. DYER:
 12 A. Yes, it is, it's different.
 13 CHAYTOR, Q.C.:
 14 Q. It's different.
 15 MR. DYER:
 16 A. And that's still my writing there too.
 17 CHAYTOR, Q.C.:
 18 Q. And that's still your writing.
 19 MR. DYER:
 20 A. It is.
 21 CHAYTOR, Q.C.:
 22 Q. So, you can't explain that?
 23 MR. DYER:
 24 A. No, I can't.
 25 THE COMMISSIONER:

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1 Q. Some of the numbers are the same.
 2 MR. DYER:
 3 A. The numbers are the same.
 4 THE COMMISSIONER:
 5 Q. The change in the writing, go down to 11:49,
 6 it's the same numbers.
 7 CHAYTOR, Q.C.:
 8 Q. So, these are taken out in your writing, but
 9 they're right here in his writing.
 10 MR. DYER:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. And then there's a couple of more added On.
 14 THE COMMISSIONER:
 15 Q. Yes.
 16 MR. DYER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, and if we have 2378, please, and then
 20 this continues on July 1 -- sorry, April 1 to
 21 July 30th. Is that '05?
 22 MR. DYER:
 23 A. Yes, that's what it looks like.
 24 CHAYTOR, Q.C.:
 25 Q. So I take it, that's April 1, 2004, though?

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1 MR. DYER:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. Would that be right?
 5 MR. DYER:
 6 A. Yes.
 7 CHAYTOR, Q.C.:
 8 Q. To July 30th, 2005?
 9 MR. DYER:
 10 A. No, 2004 -- 2005 is written up there, so I
 11 guess this is April 1 when the Ventana started
 12 right up to our last date of July 30th of '05.
 13 CHAYTOR, Q.C.:
 14 Q. Because the last -- the last ones we looked at
 15 were -- I think we may have skipped a couple
 16 of pages. There was another section, April,
 17 2004. Perhaps we could go back to 2359.
 18 COMMISSIONER:
 19 Q. 2359.
 20 CHAYTOR, Q.C.:
 21 Q. Yes, 2359, I believe. This is April, 2004
 22 through March, 2005. That's right, because
 23 the sheet I showed you before that was January
 24 to March '04.
 25 MR. DYER:

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1 A. Okay.
 2 CHAYTOR, Q.C.:
 3 Q. Right, so we skipped this one. So this would
 4 take us up to March of 2005, and nothing out
 5 of the ordinary there, okay. Now we can go
 6 back, please. Then the last of those sheets,
 7 your spreadsheets, would be 2378, and this is
 8 then from April 1st, 2005, you believe --
 9 MR. DYER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. To July 30th, 2005. Are you able to tell what
 13 this says here, these two patients?
 14 MR. DYER:
 15 A. "Results pending".
 16 CHAYTOR, Q.C.:
 17 Q. So this would be being done at a time when, I
 18 guess, these reports -- these had not even yet
 19 been reported?
 20 MR. DYER:
 21 A. Correct, and I think Mount Sinai -- they were
 22 probably just automatically sent to Mount
 23 Sinai.
 24 CHAYTOR, Q.C.:
 25 Q. Are you able to tell us what this says here?

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1 MR. DYER:
 2 A. It looks like 100 percent.
 3 CHAYTOR, Q.C.:
 4 Q. 100 percent?
 5 MR. DYER:
 6 A. Yes.
 7 CHAYTOR, Q.C.:
 8 Q. And why would they be sent -- why would that
 9 be included?
 10 MR. DYER:
 11 A. I think at the time we were asked to do a list
 12 of all patients done on the Ventana, positive
 13 and negative.
 14 CHAYTOR, Q.C.:
 15 Q. Okay, so the ones that went in this time
 16 period, April to July of 2005 --
 17 MR. DYER:
 18 A. Looked like positivity, all plus.
 19 CHAYTOR, Q.C.:
 20 Q. Okay.
 21 MR. DYER:
 22 A. All greater than -- all greater than --
 23 CHAYTOR, Q.C.:
 24 Q. And they were all sent for retesting at Mount
 25 Sinai?

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1 MR. DYER:
 2 A. I don't think -- I can't remember. I don't
 3 think we sent the positive ones after from the
 4 Ventana system.
 5 CHAYTOR, Q.C.:
 6 Q. So you were asked to record or include all of
 7 Ventana's tests?
 8 MR. DYER:
 9 A. I think --
 10 CHAYTOR, Q.C.:
 11 Q. From 2004?
 12 MR. DYER:
 13 A. Yes, I think first they just wanted the
 14 negatives, but I believe the intent at the end
 15 was to have all the Ventana retested, but I
 16 don't know if the positives got retested after
 17 or not.
 18 CHAYTOR, Q.C.:
 19 Q. So you included on your sheet -- because when
 20 I look at these, these are all positives.
 21 MR. DYER:
 22 A. Right, so there's probably two groups; one is
 23 all positives and one is the negatives.
 24 CHAYTOR, Q.C.:
 25 Q. Okay, and to your knowledge, only the

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1 negatives ended up being sent?
 2 MR. DYER:
 3 A. I believe so.
 4 CHAYTOR, Q.C.:
 5 Q. Okay. Do you know why that was? Why were
 6 they looking for the positives from the
 7 Ventana?
 8 MR. DYER:
 9 A. Again I assume it went back to the query of
 10 validation.
 11 CHAYTOR, Q.C.:
 12 Q. Thank you, Commissioner.
 13 COMMISSIONER:
 14 Q. All right, we'll take the afternoon break.
 15 (BREAK)
 16 COMMISSIONER:
 17 Q. Ms. Chaytor.
 18 CHAYTOR, Q.C.:
 19 Q. Thank you. If we could have, please, P-2129,
 20 and this is an e-mail from Mr. Gulliver to
 21 Reza, July 24th, 2007. The subject is ER/PR
 22 clinical cut off point, and he writes, "As per
 23 your request, here's a summary of the
 24 guidelines/process used from July, 2005
 25 onwards to select patients for possible retest

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1 at Mount Sinai. Barry Dyer and myself
 2 compiled by year every ER/PR test performed at
 3 the pathology lab", and you've told us about
 4 that, how you sorted them according to year?
 5 MR. DYER:
 6 A. Yes.
 7 CHAYTOR, Q.C.:
 8 Q. "We reviewed each pathologist's report and
 9 created a manual spreadsheet for each year
 10 using the following criteria as decided by the
 11 oncologist from 1997 to 2000, every patient
 12 that was negative/negative or zero
 13 percent/zero percent, to be logged on a
 14 spreadsheet, and all patients with staining 30
 15 percent and less to also be logged". So that's
 16 the cut off at 30 percent.
 17 MR. DYER:
 18 A. Okay.
 19 CHAYTOR, Q.C.:
 20 Q. Okay, to the end of 2000, is that right, and
 21 then from 2001 to 2005, "Every patient that
 22 was negative/negative or zero/zero, and all
 23 patients with staining 10 percent or less were
 24 logged".
 25 MR. DYER:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. "These were the clinical cut off points
 4 provided by the oncologist. Once Barry and I
 5 finished the spreadsheets, we then reviewed
 6 with Dr. Cook to identify the patients that
 7 needed to then have their pathology blocks
 8 retrieved and sent to Mount Sinai for
 9 retesting. Dr. Cook chose Mount Sinai", and it
 10 goes on from there about that, but did you
 11 then with your spreadsheets in hand, sit down
 12 and actually review all of them with Dr. Cook?
 13 MR. DYER:
 14 A. No, I didn't review all of them with Dr. Cook.
 15 CHAYTOR, Q.C.:
 16 Q. Okay, and so do you understand then that Terry
 17 did that, once you finished it, you reviewed
 18 with Dr. Cook to identify the patients that
 19 need to then have their blocks retrieved, or
 20 was it just you gave him your --
 21 MR. DYER:
 22 A. No, it was at different times. It all
 23 depended on how busy I was and how busy he
 24 was. There were times when I did sit down
 25 with Dr. Cook to help facilitate the process,

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1 and there was times when I believe he may have
 2 done it on his own.
 3 CHAYTOR, Q.C.:
 4 Q. So I take it Dr. Cook -- you gave your
 5 spreadsheets to Dr. Cook. Sometimes you sat
 6 down with him, sometimes Terry may have.
 7 MR. DYER:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. But in any event, you gave him your
 11 spreadsheets and he came back and told you
 12 which of the patients he wanted to have the
 13 blocks pulled on, is that right?
 14 MR. DYER:
 15 A. Yes. We also included the reports.
 16 CHAYTOR, Q.C.:
 17 Q. And the reports.
 18 MR. DYER:
 19 A. So that if he had a question, he could
 20 actually read the report.
 21 CHAYTOR, Q.C.:
 22 Q. For himself.
 23 MR. DYER:
 24 A. Yes.
 25 CHAYTOR, Q.C.:

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1 Q. Fourthly, "Any patient with staining that was
 2 close to the cut off point were then taken by
 3 Dr. Cook to the oncologist to review patient
 4 to determine if the patient had already
 5 received hormone therapy. This was done pretty
 6 well a couple of times per week for several
 7 months until all patients were reviewed and
 8 then sent for retesting". Did you know that
 9 was happening?
 10 MR. DYER:
 11 A. Again I might have heard of something, but it
 12 doesn't sound familiar. I think -- again I
 13 think Terry might have mentioned that there
 14 was some kind of process in place, but I
 15 wasn't involved with it, so I don't know.
 16 CHAYTOR, Q.C.:
 17 Q. And anyone on your spreadsheet, if they were
 18 close to the cut off point, did you include
 19 them or not?
 20 MR. DYER:
 21 A. Any patient who was close to the cut off
 22 point?
 23 CHAYTOR, Q.C.:
 24 Q. Yes.
 25 MR. DYER:

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1 A. From the report?
 2 CHAYTOR, Q.C.:
 3 Q. Yes.
 4 MR. DYER:
 5 A. Yes, I think we did, yes.
 6 CHAYTOR, Q.C.:
 7 Q. So I had understood your cut off point was
 8 pretty well, that's it, it's the cut off
 9 point.
 10 MR. DYER:
 11 A. Thirty percent.
 12 CHAYTOR, Q.C.:
 13 Q. Thirty percent, right. So if it was 30
 14 percent, the person was still included?
 15 MR. DYER:
 16 A. Yes, and I think we've seen some examples
 17 where the patient might have been considered
 18 positive, but where it was, I guess, ambiguous
 19 with the faint positivity that, I think, you
 20 know, I might have asked Dr. Cook what would
 21 he want done with this case.
 22 CHAYTOR, Q.C.:
 23 Q. And if some were 40 percent, though, they
 24 wouldn't have been included?
 25 MR. DYER:

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1 A. No.
 2 CHAYTOR, Q.C.:
 3 Q. Or someone after 2001 that was 20 percent,
 4 they weren't included?
 5 MR. DYER:
 6 A. Not normally, no. Again not unless there was
 7 something funny or something different in the
 8 actual report that warranted I felt I should
 9 talk to Dr. Cook about.
 10 CHAYTOR, Q.C.:
 11 Q. "And after this review, Dr. Cook and the
 12 oncologist, Barry and I then cross-referenced
 13 the retesting spreadsheets with the deceased
 14 list given by Heather Predham and removed them
 15 from the retesting", and you've told us that
 16 happened some time later into your process?
 17 MR. DYER:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. "It was decided that we needed to retest the
 21 living patients first".
 22 MR. DYER:
 23 A. That's what I was told.
 24 CHAYTOR, Q.C.:
 25 Q. Okay, and number six, "We now had a final list

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1 of retest for the St. John's patients. From
 2 this, the lab technologists retrieved the
 3 original blocks and slides for each patient.
 4 These were reviewed by the pathologist to
 5 ensure that the original testing blocks was
 6 acceptable for retesting. There were cases
 7 where it was determined to send a different
 8 block from the patient as there may have been
 9 very little or no tissue left in the original
 10 or a better block was available". What do you
 11 recall about that, the actual retrieving of
 12 the blocks and the slides?
 13 MR. DYER:
 14 A. It was a huge project. What I had done was I
 15 was spending a lot of nights working at this
 16 and it was late into the night, and weekends,
 17 so I enlisted some help. I believe -- there
 18 was two people I preferred. Mary Butler to
 19 help just identify slides or blocks because
 20 Mary was around for -- Mary is an experienced
 21 person at Health Science and she could just go
 22 and put her hand on where everything was, and
 23 I think I might have asked Robin. He was
 24 working over at St. Clare's, and he was the
 25 one who used -- he was hired to retrieve

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1 blocks and slides at the request of
 2 pathologists. That was one of his duties. So
 3 -- and the blocks and the slides and that,
 4 because they're filed in different areas with
 5 storage issues, so what we did was -- first
 6 again, like I said, we started identifying
 7 slides, but we were only identifying the
 8 patient's ER/PR and H & E, but I think we came
 9 across some issues of when the pathologist was
 10 -- Dr. Cook was actually looking under the
 11 slide. So then we restarted. I don't think we
 12 had too many. We might have only had like 40
 13 or 50 patients done, and then we went back and
 14 started pulling the entire case.
 15 CHAYTOR, Q.C.:
 16 Q. Okay, so at first you just gave Dr. Cook the H
 17 & E?
 18 MR. DYER:
 19 A. ER/PR.
 20 CHAYTOR, Q.C.:
 21 Q. ER/PR slides?
 22 MR. DYER:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. And you're saying when Dr. Cook was looking at

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1 those slides under the microscope, some issues
 2 were identified. What were those issues?
 3 MR. DYER:
 4 A. I think one of the issues there was little
 5 tissue left.
 6 CHAYTOR, Q.C.:
 7 Q. Yes, that's one of the things mentioned.
 8 MR. DYER:
 9 A. Yes, and I think that other issues were the
 10 type of tissue that was actually selected.
 11 CHAYTOR, Q.C.:
 12 Q. And that was breast tissue, wasn't it?
 13 MR. DYER:
 14 A. Pardon?
 15 CHAYTOR, Q.C.:
 16 Q. Wasn't it breast tissue?
 17 MR. DYER:
 18 A. Yes, I think it was breast tissue, but I think
 19 early on -- he came across a lymph node that
 20 was actually tested.
 21 CHAYTOR, Q.C.:
 22 Q. So an ER/PR test had been done on the lymph
 23 node as opposed to the breast tissue?
 24 MR. DYER:
 25 A. I think so. I think we came across one of

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1 those issues.
 2 CHAYTOR, Q.C.:
 3 Q. And were there any other issues?
 4 MR. DYER:
 5 A. I believe at the time, I'm not quite sure, but
 6 I believe he was also looking for specimens
 7 with internal controls.
 8 CHAYTOR, Q.C.:
 9 Q. And he was finding samples looking at the
 10 slides that did not have internal controls?
 11 MR. DYER:
 12 A. That lacked internal controls, yes.
 13 CHAYTOR, Q.C.:
 14 Q. Okay. Was he also finding where the internal
 15 controls hadn't worked?
 16 MR. DYER:
 17 A. I don't know if he actually said that to me,
 18 but -
 19 CHAYTOR, Q.C.:
 20 Q. Do you recall him saying -
 21 MR. DYER:
 22 A. But I do recall internal controls coming up
 23 and I think it led it to the fact that there
 24 were--this block didn't have an internal
 25 control.

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1 CHAYTOR, Q.C.:

2 Q. Okay. So I take it then -

3 MR. DYER:

4 A. Or the slide, I'm sorry.

5 CHAYTOR, Q.C.:

6 Q. - the slides. So I take it then, in those

7 cases, those were deemed not to be appropriate

8 blocks to send to Mount Sinai for retesting?

9 MR. DYER:

10 A. I believe that's what happened, yes.

11 CHAYTOR, Q.C.:

12 Q. And then other blocks had to be chosen?

13 MR. DYER:

14 A. Yes, so instead of doing everything in

15 duplicate, I think I decided that we would

16 just pull the entire case every time from here

17 on in, so that we won't have to go back and do

18 it again and drag out more time.

19 CHAYTOR, Q.C.:

20 Q. Okay. So from then on, once Dr. Cook

21 identified that there were problems with the

22 originals slides that had been used or the

23 blocks didn't seem to be appropriate, then

24 more--the whole case got pulled for each

25 patient and then he looked at that and

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1 determined an appropriate block from all of

2 the slides? Is that correct?

3 MR. DYER:

4 A. Yes.

5 CHAYTOR, Q.C.:

6 Q. Okay. Were there any other concerns that he

7 raised or issues that he raised which caused

8 you to have to go back and pull the entire

9 case for all the patients?

10 MR. DYER:

11 A. I believe he made a few comments about

12 fixation also.

13 CHAYTOR, Q.C.:

14 Q. Okay.

15 MR. DYER:

16 A. He did.

17 CHAYTOR, Q.C.:

18 Q. Okay. So sorry, continue on then, and tell us

19 about, it was a time consuming process you

20 said to pull all -

21 MR. DYER:

22 A. Oh, very much so, a lot of time, a lot of

23 effort. What happened next was I believe we

24 enlisted--I think, I'm not sure if--I can't

25 say we, but I think Dr. Cook enlisted Dr.

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1 Fontaine to help out because the process was

2 really slow. We weren't sending anything out

3 without it being reviewed and I mean, you were

4 talking a lot of slides. So I think at some

5 point, Dr. Fontaine was asked to help out, and

6 so while Dr. Cook was reading over at St.

7 Clare's, Dr. Fontaine was reading over at

8 Health Science.

9 CHAYTOR, Q.C.:

10 Q. Okay. So they were both trying to get through

11 it -

12 MR. DYER:

13 A. They were both, I don't think -

14 CHAYTOR, Q.C.:

15 Q. - with both them reading.

16 MR. DYER:

17 A. I don't think Dr. Fontaine read too many, but

18 he might have done a year or two. So for

19 example, so if we--if Health Science slides,

20 if we found--we pulled Health Science slides

21 at Health Science. Then Dr. Fontaine was

22 there. We had the spreadsheet. He'd sit down

23 with him, and I actually sat down with him for

24 some of them too, and he would just say yes,

25 no, yes, no, and he'd say no and then he would

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1 look at--go through a case and if he found

2 something, he would say "send this one" or

3 "send this one," and I just wrote them down or

4 he wrote them down, gave it back to me, and

5 once that was completed, then we had to start

6 the process of actually searching for the

7 blocks. That was the next issue.

8 CHAYTOR, Q.C.:

9 Q. Okay, and how did that go, the search for the

10 blocks?

11 MR. DYER:

12 A. That was again another tedious--that was

13 another long process.

14 CHAYTOR, Q.C.:

15 Q. And why would that be? Why would it be

16 difficult to find the blocks that belonged to

17 the patients?

18 MR. DYER:

19 A. We didn't have a very good--we didn't have any

20 storage. So I think the blocks may be stored

21 in like five or six different locations. So

22 like the Grace was stored over in--in one area

23 over by the Grace. At St. Clare's, blocks may

24 be on the fourth floor. They may be down in

25 the basement.

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1 CHAYTOR, Q.C.:

2 Q. It is 2005, so there's nothing stored at the

3 Grace.

4 MR. DYER:

5 A. Oh yes, stored at that time -

6 CHAYTOR, Q.C.:

7 Q. I hope.

8 MR. DYER:

9 A. No, at that time, I think they were stored

10 over in the old garage. They still have that

11 garage there.

12 CHAYTOR, Q.C.:

13 Q. At the Grace?

14 MR. DYER:

15 A. Yes, there's still--there's one there, and so

16 that's where they were keeping some of their

17 blocks. It's a locked facility.

18 CHAYTOR, Q.C.:

19 Q. Okay.

20 MR. DYER:

21 A. So we would have to go there. We would have

22 to go down at the Miller Centre, I believe we

23 had things stored, multiple areas all over St.

24 Clare's, as space was found, and of course, at

25 the Health Science also.

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1 CHAYTOR, Q.C.:

2 Q. Okay, and so just the sheer location--was

3 there a record kept of where various things

4 were?

5 MR. DYER:

6 A. Yes, there was.

7 CHAYTOR, Q.C.:

8 Q. Okay. So you were able to go in--for example,

9 could you go in electronically and you're

10 looking for a particular patient's case and

11 know where that person's tissue was stored?

12 MR. DYER:

13 A. Yeah, Robin is a very--has excellent

14 organization and he actually had a list of

15 where everything was and when things were

16 pulled, he had a list of when he actually

17 removed blocks, whenever he moved slides. So

18 he had that on the Meditec.

19 CHAYTOR, Q.C.:

20 Q. Okay. So was there an electronic record then

21 by year, so that you would cross-reference by

22 when the person's test was actually carried

23 out or was it done by patient name? How could

24 you check it?

25 MR. DYER:

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1 A. How did we check it?

2 CHAYTOR, Q.C.:

3 Q. Yes. Like how would you know?

4 MR. DYER:

5 A. Well, he had it all organized by surgical

6 number.

7 CHAYTOR, Q.C.:

8 Q. Okay, this is Dr. Robb?

9 MR. DYER:

10 A. No, not Dr. Robb. Robin is his name.

11 CHAYTOR, Q.C.:

12 Q. Robin, oh, I'm sorry.

13 MR. DYER:

14 A. So for example, he could tell me--he could

15 print off on the third floor, here's--these

16 are the years and these are the surgical

17 numbers that are up there. So then we would

18 say well, between this and this are these

19 cases. This is where we go to hunt them down.

20 CHAYTOR, Q.C.:

21 Q. Okay. And at the end of doing all that, were

22 there still times that you weren't able to

23 locate the block you were looking for?

24 MR. DYER:

25 A. Yes.

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1 CHAYTOR, Q.C.:

2 Q. And how often did that happen?

3 MR. DYER:

4 A. It didn't happen very often, but just the fact

5 that it happened, you know, again would cause

6 us to stall because once we couldn't identify

7 a block, then we would end up having to pull

8 the entire case of blocks because we didn't--I

9 didn't want to go back again and have to hunt

10 them down again. So if we struggled to find

11 that individual block, we would take the

12 entire case. If it was 50 blocks, we would bag

13 it, label it and bring it back to a central

14 location at St. Clare's and talk to Dr. Cook

15 and say "this block is unavailable. Can you

16 review for another one?" and he would go

17 through the case again and say "this is an

18 appropriate slide." So then we had it right

19 there in front of us, just to pick out.

20 CHAYTOR, Q.C.:

21 Q. Okay, and so from time to time, that happened

22 too, that the blocks were missing?

23 MR. DYER:

24 A. Yes, were unavailable.

25 CHAYTOR, Q.C.:

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1 Q. And were the blocks ever located? Was there
 2 anything done in terms of trying to track down
 3 the blocks afterwards?
 4 MR. DYER:
 5 A. I think--that's a good question. I think some
 6 were tracked down, but I don't think we made
 7 it a point of going and trying to find all
 8 these at the time. We were still just wrapped
 9 up in this whole frenzy of trying to get
 10 everything done.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, and in terms of where the blocks could
 13 be, other than something being misfiled, could
 14 blocks have gone anywhere else?
 15 MR. DYER:
 16 A. Blocks could have gone for research. They may
 17 be in another pathologist's office. There's,
 18 I guess, multiple areas, or the block may have
 19 been exhausted, but no comment made.
 20 CHAYTOR, Q.C.:
 21 Q. Okay. So then after then, you've pulled all
 22 the entire case for each patients and blocks
 23 are identified, how did it go from there? Did
 24 you have any other issues arise?
 25 MR. DYER:

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1 A. No, I think that was--that's where we stopped
 2 at the moment. So once all that was done, the
 3 next thing we did was to--we photocopied all
 4 the original reports because that was a
 5 request from Mount Sinai. So I got a contact
 6 from Mount Sinai as to who to send them to,
 7 and what we did then is we started to bag them
 8 up.
 9 CHAYTOR, Q.C.:
 10 Q. Okay, and send the--what did you send then to
 11 Mount Sinai?
 12 MR. DYER:
 13 A. So what went to Mount Sinai was the original
 14 report and the block requested for ER/PR
 15 testing.
 16 CHAYTOR, Q.C.:
 17 Q. Okay, and was there any other documentation
 18 sent, any spreadsheets, anything like that
 19 sent to them?
 20 MR. DYER:
 21 A. Yes, good point. We actually sent what--our
 22 original sheets that we had wrote up. They
 23 went too as a copy of what was in the bag.
 24 CHAYTOR, Q.C.:
 25 Q. So the spreadsheets that we just took some

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1 time to look at before the break?
 2 MR. DYER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. Those were sent to Mount Sinai?
 6 MR. DYER:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. Okay. In pulling the entire case for a
 10 patient, did you also pull control slides?
 11 MR. DYER:
 12 A. If they were available, yes. If they were
 13 filed with that case, yes, we did.
 14 CHAYTOR, Q.C.:
 15 Q. And did you find or encounter any difficulties
 16 in trying to identify which control slides
 17 went with which case?
 18 MR. DYER:
 19 A. Yes, most controls were just labelled with the
 20 actual date that they were run.
 21 CHAYTOR, Q.C.:
 22 Q. Okay, and so then what did you have to do?
 23 MR. DYER:
 24 A. We just kept them with the case that they were
 25 found with, that they were filed with.

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1 CHAYTOR, Q.C.:
 2 Q. So you didn't try to then match that up with
 3 other patients to say this is the control for
 4 these other four or five patients?
 5 MR. DYER:
 6 A. Not at the time, no. Some of the controls did
 7 have--you know, like you would have the
 8 control with the date on it, and sometimes if
 9 there was three patients run with that
 10 control, the number was actually written on
 11 it. But that wasn't a standard practice, I
 12 don't think. They were just -
 13 CHAYTOR, Q.C.:
 14 Q. So you didn't have that happen too often, I
 15 take it?
 16 MR. DYER:
 17 A. No, I think most of that was physicians who
 18 actually read the control wrote the number on
 19 it, what they've done.
 20 CHAYTOR, Q.C.:
 21 Q. Okay, and there was no centralized filing
 22 system or centralized list kept to match
 23 things up so that you would know which
 24 controls were run for which patients? There
 25 was nothing like that?

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1 MR. DYER:
 2 A. Not at the time, there wasn't.
 3 CHAYTOR, Q.C.:
 4 Q. And so you would--so did you send the control
 5 slides then to Mount Sinai?
 6 MR. DYER:
 7 A. No, I don't think we did, just the block
 8 itself for retesting.
 9 CHAYTOR, Q.C.:
 10 Q. Okay, and so I take it that you didn't go
 11 through the exercise of trying to determine if
 12 there in fact had been a control slide to
 13 match up with each patient?
 14 MR. DYER:
 15 A. I don't think we did, no.
 16 CHAYTOR, Q.C.:
 17 Q. Has anyone ever done that, do you know?
 18 MR. DYER:
 19 A. Have we done that since?
 20 CHAYTOR, Q.C.:
 21 Q. Yes.
 22 MR. DYER:
 23 A. No, I don't think we actually sat down and
 24 physically tried to do it.
 25 CHAYTOR, Q.C.:

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1 Q. Okay, and in coming across control slides, did
 2 you find any that were not dated at all?
 3 MR. DYER:
 4 A. Yes, there were. We did come across the odd
 5 one that wasn't dated. It just said ER or PR
 6 control.
 7 CHAYTOR, Q.C.:
 8 Q. I'm sorry, so just ER/PR control written on it
 9 without a date?
 10 MR. DYER:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. Okay, and so those could be matched to the
 14 person whose slides they were filed with, but
 15 they wouldn't --you wouldn't be able to match
 16 them up with anyone else because no--I guess
 17 you could look at the date that that person's
 18 report was signed out, but if that was
 19 different or if there had been more than one
 20 batch run in that particular week, you
 21 wouldn't be able to identify what other
 22 patients may have belonged to an undated
 23 control slide?
 24 MR. DYER:
 25 A. I think you're correct.

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1 CHAYTOR, Q.C.:
 2 Q. Yes, okay, and what about the patient slides,
 3 are the dates actually--the date of the run
 4 actually recorded on the patient slide?
 5 MR. DYER:
 6 A. The date of?
 7 CHAYTOR, Q.C.:
 8 Q. Of the run, of when it actually--when the run
 9 took place?
 10 MR. DYER:
 11 A. For ER/PR?
 12 CHAYTOR, Q.C.:
 13 Q. Yes.
 14 MR. DYER:
 15 A. Not back then, no.
 16 CHAYTOR, Q.C.:
 17 Q. No, okay. Now, Mr. Dyer, and I appreciate
 18 you've described in some length the efforts
 19 that you went through in trying to identify
 20 all these patients and assemble the material
 21 to be sent to Mount Sinai, and of course,
 22 we've heard about patients who, in fact, were
 23 overlooked in the first endeavour to identify
 24 patients and send their material off. What,
 25 to your knowledge, were some of the reasons

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1 why some patients--why those patients were
 2 overlooked initially?
 3 MR. DYER:
 4 A. Some of the patients never had an ER/PR
 5 actually ordered in the system.
 6 CHAYTOR, Q.C.:
 7 Q. What does that mean?
 8 MR. DYER:
 9 A. That means the standard protocol, I guess, is
 10 every time we do anything, any protocol on a
 11 patient, in our order entry call path
 12 procedures, we actually order that test, so
 13 that it's linked to the patient, and we came
 14 across cases where an ER/PR may have been done
 15 but never ordered.
 16 CHAYTOR, Q.C.:
 17 Q. But wouldn't it show on their pathology
 18 reports that you reviewed?
 19 MR. DYER:
 20 A. But what would happen--what happened was those
 21 patients never got identified because the ER
 22 and PR was not actually ordered on those
 23 cases.
 24 CHAYTOR, Q.C.:
 25 Q. Okay, I see, so you were able to identify

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1 which pathology reports to pull by identifying
 2 who had the test ordered in the first place?
 3 MR. DYER:
 4 A. Correct.
 5 CHAYTOR, Q.C.:
 6 Q. So there were some patients who never had it
 7 recorded in the system that they ever had an
 8 ER/PR ordered?
 9 MR. DYER:
 10 A. Correct.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, and so how did that come to your
 13 attention? How did those patients come to
 14 your attention?
 15 MR. DYER:
 16 A. How did it come to our -
 17 CHAYTOR, Q.C.:
 18 Q. Yes, the fact that that had been an oversight.
 19 MR. DYER:
 20 A. I don't know, I guess I might have gotten a
 21 phone call one day or an e-mail from Don
 22 saying that this is--we got a phone call on
 23 this patient that was missed. I don't know
 24 who would have identified it.
 25 CHAYTOR, Q.C.:

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1 Q. And do you know when, what time period then
 2 that would have been and for you to go back
 3 then and look for others who may have been
 4 overlooked?
 5 MR. DYER:
 6 A. No, I don't know what the time period would
 7 have been. I can't--it's just so much going
 8 on.
 9 CHAYTOR, Q.C.:
 10 Q. Yes. So this is your work, in terms of
 11 sending everything off, would have been
 12 concluded--well, how long did it take? You
 13 started in August, 2005, the initial sending
 14 everything off, how long did that take?
 15 MR. DYER:
 16 A. Initially? I'd say it took probably a couple
 17 of months, but I was involved with all of it,
 18 like I was involved for months and months
 19 because while we were trying to get this done,
 20 start the--the out-of-town started coming in,
 21 so I was still just in that mode of trying to,
 22 as things came in, get them out, things came
 23 in, get them out.
 24 CHAYTOR, Q.C.:
 25 Q. So was it while you were still trying to get

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1 things out to Mount Sinai that it came to your
 2 attention that these other patients may have
 3 been overlooked or was it -
 4 MR. DYER:
 5 A. I don't think it happened that--I don't think
 6 it was that early.
 7 CHAYTOR, Q.C.:
 8 Q. Okay, so it was further along?
 9 MR. DYER:
 10 A. It was further along.
 11 CHAYTOR, Q.C.:
 12 Q. Was it around the time that the results
 13 started to come back from Mount Sinai?
 14 MR. DYER:
 15 A. No, it might have been--again, I'm not sure,
 16 it might have been later than that also.
 17 CHAYTOR, Q.C.:
 18 Q. Okay, so how did you then have to go about
 19 identifying those patients?
 20 MR. DYER:
 21 A. How did we identify those patients?
 22 CHAYTOR, Q.C.:
 23 Q. Yes, how would you get those out of the
 24 system?
 25 MR. DYER:

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1 A. I don't think we actually made another attempt
 2 to go back and do more searches at that time.
 3 I don't recall going back and doing more
 4 searches, myself.
 5 CHAYTOR, Q.C.:
 6 Q. So if there were other patients who did not
 7 originally have an ER or PR ordered, they
 8 could still not have been retested?
 9 MR. DYER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. They could still be not identified today?
 13 MR. DYER:
 14 A. Again, that's a--I guess so, I think Terry
 15 would be the one to answer, I'm not sure if he
 16 actually did something about it. I didn't--I
 17 wasn't involved in terms of I didn't do
 18 anything in terms of doing any searches for
 19 those patients.
 20 CHAYTOR, Q.C.:
 21 Q. So the only ones that you knew about where the
 22 ones that either had been identified through,
 23 either self identification or identified
 24 through some other route.
 25 MR. DYER:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. And there was no search then. Could there be
 4 a search? Like, what would you have to do to
 5 find out, could you not search all pathology
 6 records for ER/PR? Couldn't that happen?
 7 MR. DYER:
 8 A. Yes, but I think they had to go and do a
 9 standard search, a canned text style and see
 10 if it would come up also.
 11 CHAYTOR, Q.C.:
 12 Q. And if that happened, you weren't involved in
 13 it?
 14 MR. DYER:
 15 A. No, I was not involved.
 16 CHAYTOR, Q.C.:
 17 Q. And you don't know of anyone else -
 18 MR. DYER:
 19 A. If another one was done, no, I wouldn't be
 20 able to tell you.
 21 CHAYTOR, Q.C.:
 22 Q. Okay, do you know of any other reason why
 23 people were overlooked?
 24 MR. DYER:
 25 A. I think people were overlooked, I think we

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1 found cases, oh God, I don't know how to
 2 explain it now because that was a different
 3 one. No, I don't know how that one worked. I
 4 think we came across cases that, I don't know
 5 if they were actually overlooked, but we found
 6 cases where patients had ER/PRs ordered and
 7 the testing was done, but no report was ever
 8 made. We came across cases -
 9 CHAYTOR, Q.C.:
 10 Q. And how would that have been discovered?
 11 MR. DYER:
 12 A. I think we might have pulled--I think the
 13 patient might have come up through the actual
 14 order entry, but there was no--when we read
 15 the report, there was no results.
 16 CHAYTOR, Q.C.:
 17 Q. So there would have been a test ordered, but
 18 nothing in the system saying that the tests
 19 had ever been carried out, nor reported?
 20 MR. DYER:
 21 A. Right. And I think we came across -
 22 THE COMMISSIONER:
 23 Q. There were none reported or just not reported?
 24 MR. DYER:
 25 A. I think we found ER/PR slides, but I don't

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1 think there was an actual, a report in the--
 2 there wasn't a result in the report.
 3 CHAYTOR, Q.C.:
 4 Q. So it was carried out, you found the slides?
 5 MR. DYER:
 6 A. Yes, we came across slides, I believe, but we
 7 didn't come across an actual result in the
 8 system.
 9 CHAYTOR, Q.C.:
 10 Q. And no report.
 11 MR. DYER:
 12 A. Yes.
 13 THE COMMISSIONER:
 14 Q. So you don't know whether a pathologist read
 15 it and no report was given or whether it did
 16 not get to pathologists?
 17 MR. DYER:
 18 A. Yes, correct.
 19 THE COMMISSIONER:
 20 Q. Okay.
 21 CHAYTOR, Q.C.:
 22 Q. And so what happened with those patients?
 23 MR. DYER:
 24 A. I think we took them and just sent them--I'm
 25 not sure if we actually had them retested here

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1 first or if we just sent them, I can't say for
 2 sure.
 3 CHAYTOR, Q.C.:
 4 Q. Would their charts have been pulled to see if
 5 there was anything in their clinical chart to
 6 indicate that something had been communicated,
 7 for example, to their oncologist -
 8 MR. DYER:
 9 A. Again, I wasn't involved with any of that
 10 stuff, that would have been more for Don Cook
 11 or Dr. Cook's role.
 12 CHAYTOR, Q.C.:
 13 Q. So that information would have been passed on
 14 to Dr. Cook.
 15 MR. DYER:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. And how he dealt with it, you don't know?
 19 MR. DYER:
 20 A. I don't know.
 21 CHAYTOR, Q.C.:
 22 Q. Was there an issue regarding patients out of
 23 Labrador City?
 24 MR. DYER:
 25 A. Yes, I think we missed two patients from

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1 Labrador City and again, all about the frenzy
 2 at the time, yes, we found two patients from
 3 Labrador City that we missed, but when we
 4 went--I think, I'm not sure how we were
 5 identified or how we were contacted about one
 6 of these patients. Oh, I know how it was,
 7 yes, it was through NLCHI.
 8 CHAYTOR, Q.C.:
 9 Q. So this is further along.
 10 MR. DYER:
 11 A. This is now in '07.
 12 CHAYTOR, Q.C.:
 13 Q. In 2007 before they are identified.
 14 MR. DYER:
 15 A. Yes, and I think what happened was our mindset
 16 at the time was anyone out of town was handled
 17 by out of town; anyone in town, was handled by
 18 us and Lab City was actually being, I viewed
 19 Lab City as out of town because at the time
 20 they were out of town, but in 1997, we were
 21 actually doing their work. So they were
 22 actually on our original list, but nothing was
 23 sent on it.
 24 CHAYTOR, Q.C.:
 25 Q. Now in that time period, you say they were

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1 actually, you were doing their work.
 2 MR. DYER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. In that time period, Dr. Khalifa would have
 6 been doing the reading for or we understand he
 7 was doing the reading for all of the ER/PRs.
 8 MR. DYER:
 9 A. Okay, I'm sorry, maybe it wasn't '97. I think
 10 I'm trying to explain this, at that time all
 11 specimens from Lab City were sent to Health
 12 Science for grossing, cutting, staining and
 13 diagnosis.
 14 CHAYTOR, Q.C.:
 15 Q. So all of their lab work was being done -
 16 MR. DYER:
 17 A. Was being done at the Health Science.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, and so when you and Mr. Gulliver went
 20 through your piles of reports, you had
 21 indicated you separated them out by year and
 22 you separated them out by in-town, out-of-town
 23 piles.
 24 MR. DYER:
 25 A. Yes.

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1 CHAYTOR, Q.C.:
 2 Q. Somewhere along the way the Labrador City got
 3 put into the out-of-town files.
 4 MR. DYER:
 5 A. That's what happened.
 6 CHAYTOR, Q.C.:
 7 Q. And you're thinking those would be sent in
 8 from the other regions -
 9 MR. DYER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. And unbeknownst to you or it didn't catch your
 13 attention at the time that no, Labrador City's
 14 pathology work in that particular timeframe -
 15 MR. DYER:
 16 A. Was being done by Health Science.
 17 CHAYTOR, Q.C.:
 18 Q. Was being done in St. John's.
 19 MR. DYER:
 20 A. Yes, and I honestly -
 21 THE COMMISSIONER:
 22 Q. Did somebody put the specimen in a container
 23 and actually ship the container to St. John's,
 24 instead of going to St. Anthony?
 25 MR. DYER:

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1 A. Every Thursday they would get a box of
 2 specimens in containers of formalin flown in
 3 from Lab City.
 4 THE COMMISSIONER:
 5 Q. Every Thursday?
 6 MR. DYER:
 7 A. I think so, pretty well, and it was done for
 8 years.
 9 CHAYTOR, Q.C.:
 10 Q. Do you know what time period?
 11 MR. DYER:
 12 A. Well it was ongoing while I was working, while
 13 I was manager, it was ongoing.
 14 CHAYTOR, Q.C.:
 15 Q. When you took over in March, 2002, Labrador
 16 City's work was still coming to St. John's?
 17 MR. DYER:
 18 A. It was, yes, it was just a mistake, I just
 19 missed them. But what I did was, at the time
 20 I was at, again, all about workload and it was
 21 referral work that was coming in. I was
 22 trying to convince St. Anthony to take the
 23 work and at some point, they actually got--Dr.
 24 Dankwa, I think, is now doing all that work.
 25 CHAYTOR, Q.C.:

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1 Q. And when did that start happening?
 2 MR. DYER:
 3 A. A couple of years ago, a couple of years ago.
 4 CHAYTOR, Q.C.:
 5 Q. So since the ER/PR issue arose in 2005?
 6 MR. DYER:
 7 A. I think so, I think it was happening then.
 8 I'm not sure of the exact date.
 9 CHAYTOR, Q.C.:
 10 Q. So up to that point in time, the breast tissue
 11 was being sent to St. Clare's?
 12 MR. DYER:
 13 A. No, all tissue was being sent to the Health
 14 Science.
 15 CHAYTOR, Q.C.:
 16 Q. To the Health Sciences, sorry, yes, I meant to
 17 say Health Sciences. And there was no one to
 18 do any kind of processing of the specimen in
 19 Labrador City before it was shipped?
 20 MR. DYER:
 21 A. Not that I know of, no, these were all
 22 formalin fixed tissues in formalin that would
 23 come down once a week, that would be shipped
 24 down once a week or flown down.
 25 THE COMMISSIONER:

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1 Q. So are we to assume that surgery was done one
 2 day in Lab City during the week or whole for
 3 the week.
 4 MR. DYER:
 5 A. My interpretation would be probably all during
 6 the week.
 7 CHAYTOR, Q.C.:
 8 Q. And you would receive the samples once a week?
 9 MR. DYER:
 10 A. I think once a week we would receive the
 11 samples, because Fridays stand out, Fridays
 12 was the day we were doing all this referred
 13 work, yes.
 14 CHAYTOR, Q.C.:
 15 Q. And the specimens, I take it, there's no one
 16 in Lab City to do any kind of grossing, so the
 17 samples aren't coming already breadloafed?
 18 MR. DYER:
 19 A. Not that I know of, no.
 20 CHAYTOR, Q.C.:
 21 Q. Or could they be?
 22 MR. DYER:
 23 A. There were no pathologists in Labrador, I
 24 don't think.
 25 CHAYTOR, Q.C.:

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1 Q. No pathologists there, nobody to do that work.
 2 MR. DYER:
 3 A. No, I still don't think there are any
 4 pathologists in Labrador.
 5 CHAYTOR, Q.C.:
 6 Q. And would they come with any kind of
 7 indication as to how long the specimen was in
 8 formalin?
 9 MR. DYER:
 10 A. Not that I'm aware of.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, so the Labrador City patients were
 13 originally overlooked because they got put
 14 into the out-of-town pile.
 15 MR. DYER:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. Just wondering about that out-of-town pile
 19 that you ended up with, you were receiving
 20 then the list in from the--and the samples in
 21 from the other regions.
 22 MR. DYER:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. Did you do any then cross-referencing of what

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1 you received from the other regions to your
 2 out-of-town pile?
 3 MR. DYER:
 4 A. Upon request I did, I didn't take it upon
 5 myself to do cross-referencing, no.
 6 CHAYTOR, Q.C.:
 7 Q. Okay. Did you keep a record of what you sent
 8 to Mount Sinai?
 9 MR. DYER:
 10 A. What do you mean like?
 11 CHAYTOR, Q.C.:
 12 Q. Did you keep a record of what was sent and the
 13 dates that it was sent, so for -
 14 MR. DYER:
 15 A. Not a complete record, no.
 16 CHAYTOR, Q.C.:
 17 Q. Well what kind of record did you keep?
 18 MR. DYER:
 19 A. I thought what I would do is i would hand off
 20 the requisitions to one of our stenos to enter
 21 in the information when they had time to go in
 22 and document when these cases were sent.
 23 CHAYTOR, Q.C.:
 24 Q. So if patient "A" was sent to Mount Sinai,
 25 would you ever know that that patient had been

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1 sent?

2 MR. DYER:

3 A. Would I know?

4 CHAYTOR, Q.C.:

5 Q. Yes, would you know?

6 MR. DYER:

7 A. Yes, well we had a manual record of things

8 that we sent, yes.

9 CHAYTOR, Q.C.:

10 Q. And would you know what date it had been sent?

11 MR. DYER:

12 A. Exact dates? I didn't write down the exact

13 dates, I can only track them back based on the

14 waybills.

15 CHAYTOR, Q.C.:

16 Q. Was it--so you'd have to go back and cross-

17 reference on the waybills?

18 MR. DYER:

19 A. Yes.

20 CHAYTOR, Q.C.:

21 Q. Was there any record kept on the patient's

22 file or patient's chart?

23 MR. DYER:

24 A. The patient's actual chart?

25 CHAYTOR, Q.C.:

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1 Q. Yes.

2 MR. DYER:

3 A. I wouldn't know.

4 CHAYTOR, Q.C.:

5 Q. So nobody went into Meditec and recorded that

6 on -

7 MR. DYER:

8 A. Yes, as they had time, as Judy had time, she

9 would do that.

10 CHAYTOR, Q.C.:

11 Q. So that would be done after the fact?

12 MR. DYER:

13 A. After the fact, yes.

14 CHAYTOR, Q.C.:

15 Q. That this patient sample had now been sent off

16 to Mount Sinai.

17 MR. DYER:

18 A. Yes, again, the idea was just to get it out.

19 Every day we would get calls, how are we

20 doing, where are we with it, just get it out

21 was the--as fast as we could.

22 CHAYTOR, Q.C.:

23 Q. Yes, and I understand that, I'm just thinking

24 though in terms of where you are with respect

25 to any given patient, if somebody had phoned

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1 to inquire that there was an urgent situation,

2 for example, for any given patient, what

3 record would you have to be able to refer to

4 to say that patient has been sent and here's

5 the date that he or she was sent?

6 MR. DYER:

7 A. I could actually go back and track it using

8 the waybills.

9 CHAYTOR, Q.C.:

10 Q. Through the waybills.

11 MR. DYER:

12 A. I could do that, yes.

13 CHAYTOR, Q.C.:

14 Q. If we could have, please, P-0591? And this is

15 an e-mail from Dr. Cook to Maria Mendes and

16 it's difficult to see the date, but I believe

17 it's September 7th, 2005.

18 MR. DYER:

19 A. Okay.

20 CHAYTOR, Q.C.:

21 Q. "Hi Maria, the spreadsheets look good, there

22 are a number of names that are not on the list

23 which I presume are still in the un-opened

24 envelopes. As mentioned, the retro cases

25 would originate from the St. Clare's site.

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1 These will be cases from May, 1997 to August

2 9th, 2005. More of those retros will come

3 once we have received them from other

4 hospitals across the province. We will also

5 be sending more retro cases from the years

6 1997 and 1998 from the St. Clare's site, as

7 these are taking longer to collect. You can

8 proceed with the cutting"--and he goes on from

9 there. My question is what was--and retro

10 cases, we understand he's talking about the

11 retrospective cases, as opposed to current

12 cases--what was it about the cases from 1997

13 to 1998 from St. Clare's site that took longer

14 for them to be collected?

15 MR. DYER:

16 A. This is the first time I've seen this memo.

17 No more than any others.

18 CHAYTOR, Q.C.:

19 Q. So, you weren't aware of any particular issue

20 in collecting those -

21 MR. DYER:

22 A. No, all those cases were at St. Clare's site.

23 I think the backup--I perceived the backup as

24 we would be waiting on Dr. Cook to actually

25 get the slides reviewed. That's what was

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1 slowing up down in terms of getting things
 2 out.
 3 CHAYTOR, Q.C.:
 4 Q. Okay. But the actual collection of the
 5 material, you didn't run into any particular
 6 difficulty in 1997, 1998 for St. Clare's?
 7 MR. DYER:
 8 A. No, the only difference, again, like I
 9 explained earlier, the cases from 1997 had a
 10 second reference number that went to Health
 11 Science for reading, but in terms of hunting
 12 them down, no, it was the same as everything
 13 else. We had already had the reports and
 14 everything identified prior to searching, so I
 15 don't know why he has that.
 16 CHAYTOR, Q.C.:
 17 Q. Okay. And collecting then the material for
 18 the other regions, did you run into any
 19 particular difficulties with that aspect of
 20 your work?
 21 MR. DYER:
 22 A. Yes, I believe I did have some issues. The
 23 best ones that came in were from Dr. Paul
 24 Neil. He actually had spreadsheets of each
 25 individual thing he sent to me. So, it made

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1 things quite simple to do and when you
 2 reference to cross-referencing, I think that
 3 Dr. Neil actually asked me to do some cross
 4 referencing for him which I did.
 5 CHAYTOR, Q.C.:
 6 Q. Okay. And cross-referencing with what?
 7 MR. DYER:
 8 A. With what he sent me versus our, the -
 9 CHAYTOR, Q.C.:
 10 Q. Your records of the out-of-town cases.
 11 MR. DYER:
 12 A. Yes, he was the only person, I believe, who
 13 asked me to cross-reference, I think, and I
 14 believe I might have done it for him. Oh my,
 15 trying to remember. I think--there were
 16 instances where slides might have come in
 17 without blocks or blocks might have come in
 18 without reports, things like this. So, more
 19 housekeeping. And so, I mean, I couldn't move
 20 forward until the rest of the information
 21 would come into me.
 22 CHAYTOR, Q.C.:
 23 Q. And when you would receive information, I
 24 appreciate Dr. Neil would send you a paper
 25 record and a spreadsheet, for those that

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1 didn't do that, did you then keep a record of
 2 what you were being provided?
 3 MR. DYER:
 4 A. I think everyone sent me a paper record. It's
 5 just that his was very detailed.
 6 CHAYTOR, Q.C.:
 7 Q. Okay. So, everybody would send a letter along
 8 with what they were sending.
 9 MR. DYER:
 10 A. Right and say, I have this and these are the
 11 numbers and things like this.
 12 CHAYTOR, Q.C.:
 13 Q. And did you then keep a record for the other
 14 hospitals as to what you were sending on to
 15 Mount Sinai for them?
 16 MR. DYER:
 17 A. No, I did not.
 18 CHAYTOR, Q.C.:
 19 Q. And why not? Why wasn't a record of that
 20 kept?
 21 MR. DYER:
 22 A. All I did was put them all into the
 23 spreadsheets and sent them and let them go.
 24 CHAYTOR, Q.C.:
 25 Q. So, you included them in or you created

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1 another spreadsheet similar to the ones we
 2 looked at for St. John's hospitals.
 3 MR. DYER:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. And you created a similar spreadsheet for them
 7 and sent that to Mount Sinai along with the
 8 blocks that were provided.
 9 MR. DYER:
 10 A. I think initially--it stands out for some
 11 reason, but I think that, I'm not quite sure,
 12 if Dr. Cook looked at some of these slides
 13 initially, but I think if actually, we just
 14 started the process as they came in, we just
 15 sent them out.
 16 CHAYTOR, Q.C.:
 17 Q. Okay. So, originally the same process that
 18 you had in St. John's for Dr. Cook reviewing
 19 to see if they were suitable to send, you were
 20 doing that, but then it got to the point where
 21 you just sent them on, regardless of what was
 22 sent in.
 23 MR. DYER:
 24 A. I think so, I think for a day or so, I think
 25 some of those cases were looked at, it just

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1 stands out to me, but it was quickly decided,
 2 I believe, that just as they come in, send
 3 them out. So we just did an actual record and
 4 sent them.
 5 CHAYTOR, Q.C.:
 6 Q. So while St. John's may have had somewhat of a
 7 filter through Dr. Cook as to sending
 8 appropriate blocks to Mount Sinai, other
 9 regions, whether or not a pathologist out
 10 there actually took the time to review the
 11 slides before sending on, you don't know?
 12 MR. DYER:
 13 A. I wouldn't, no, I wouldn't -
 14 CHAYTOR, Q.C.:
 15 Q. And it wasn't done in St. John's for the other
 16 regions, it wasn't done by Dr. Cook after
 17 those first couple of days?
 18 MR. DYER:
 19 A. I don't think so. I think we were just
 20 sending them off as they came through.
 21 CHAYTOR, Q.C.:
 22 Q. And some patients, we understand were sent as
 23 consults and pulled out of the queue for the
 24 retrospective study.
 25 MR. DYER:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. Would you have been involved then in that or
 4 did that happen directly at the treating
 5 physician level?
 6 MR. DYER:
 7 A. I wasn't involved with pulling--I think I knew
 8 what was going on, but I wasn't actually
 9 involved with--I think it was all channelled
 10 through Dr. Carter and I think she would just
 11 ask Robin to pull a case for her and she would
 12 pick another block to send, just so it would
 13 get done quicker.
 14 CHAYTOR, Q.C.:
 15 Q. And when you pulled the original cases, the
 16 slides and the blocks, and after Dr. Cook
 17 determined what he needed to send on for Mount
 18 Sinai, what happened to the rest of the
 19 material, was that filed back or was it kept
 20 somewhere?
 21 MR. DYER:
 22 A. Until this inquiry is over, I didn't want to
 23 file anything back, so it's all -- it's all
 24 stored. All the blocks are stored at St.
 25 Clare's, and all the slides are stored in my

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1 office.
 2 CHAYTOR, Q.C.:
 3 Q. And the inquiry didn't come up until 2007. So
 4 from 2005 or when your work of sending things
 5 off finished until 2007, was it all still
 6 kept?
 7 MR. DYER:
 8 A. It was all --
 9 CHAYTOR, Q.C.:
 10 Q. It's never been put back?
 11 MR. DYER:
 12 A. It's never been put back.
 13 CHAYTOR, Q.C.:
 14 Q. Okay. And until the inquiry, as you say, is
 15 over, you're keeping it?
 16 MR. DYER:
 17 A. I didn't want anyone to touch any of those
 18 cases, any of those blocks from any of those
 19 cases.
 20 CHAYTOR, Q.C.:
 21 Q. And I take it, it's in a locked facility?
 22 MR. DYER:
 23 A. It's in the old -- what we call the old
 24 microbiology lab.
 25 CHAYTOR, Q.C.:

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1 Q. Have you ever done any kind of review of the
 2 slides that are there or the blocks or the
 3 material that's there? Have you ever gone
 4 back and reviewed anything?
 5 MR. DYER:
 6 A. You mean in terms of --
 7 CHAYTOR, Q.C.:
 8 Q. In terms of your inventory of what you have?
 9 MR. DYER:
 10 A. Yes, I believe we did that in 2007.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, and what was the purpose for doing that?
 13 MR. DYER:
 14 A. It was -- it was related to Dr. Boone -- not
 15 Dr. Boone, Dan Boone.
 16 CHAYTOR, Q.C.:
 17 Q. So that's related to the litigation?
 18 MR. DYER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. Okay, all right, and in doing that review,
 22 were you able -- was any material or slides
 23 missing?
 24 MR. DYER:
 25 A. Yes.

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1 CHAYTOR, Q.C.:
 2 Q. And missing from what you had originally
 3 located?
 4 MR. DYER:
 5 A. Yes.
 6 CHAYTOR, Q.C.:
 7 Q. And were you able to determine why that would
 8 be?
 9 MR. DYER:
 10 A. Well, I think -- we tracked down slides and
 11 found them in pathologist's offices.
 12 CHAYTOR, Q.C.:
 13 Q. So pathologists had taken slides?
 14 MR. DYER:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. And do you know what their purpose was in
 18 having removed slides?
 19 MR. DYER:
 20 A. No.
 21 CHAYTOR, Q.C.:
 22 Q. And have all the -- have all the -- has your
 23 inventory now been -- have your supplies all
 24 back?
 25 MR. DYER:

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1 A. I was given permission to go through all their
 2 offices and I did, and -- to hunt down for any
 3 slides that were removed.
 4 CHAYTOR, Q.C.:
 5 Q. Okay, and you've now located everything that
 6 was missing, I take it?
 7 MR. DYER:
 8 A. Not everything. I think we might be missing
 9 one percent, but I think about 99 percent is
 10 there.
 11 CHAYTOR, Q.C.:
 12 Q. And is this part of what Mary Butler was
 13 assisting you in in doing the inventory on the
 14 slides?
 15 MR. DYER:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. Okay. Mr. Dyer, in the work that you did in
 19 trying to get the material together, reviewing
 20 the reports, getting the slides, the blocks,
 21 and getting together what had to go to Mount
 22 Sinai, and then also coordinating that through
 23 you for the other regions and you've spoken a
 24 bit about the fact that you worked long
 25 evenings and a lot of overtime, I take it, in

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1 trying to coordinate the effort, how much
 2 extra work time did it actually involve for
 3 you?
 4 MR. DYER:
 5 A. It was definitely in the hundreds and hundreds
 6 of hours.
 7 CHAYTOR, Q.C.:
 8 Q. And how long did that go on for?
 9 MR. DYER:
 10 A. How long did --
 11 CHAYTOR, Q.C.:
 12 Q. Yes, how long were those extra hours, those
 13 hundreds of hours spread out over? Was that a
 14 year of your life, two months of your life,
 15 like, how long in your life --
 16 MR. DYER:
 17 A. Oh, at least two years.
 18 CHAYTOR, Q.C.:
 19 Q. At least for two years.
 20 MR. DYER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. Okay. Did you ever ask for help?
 24 MR. DYER:
 25 A. I don't know if I actually asked for help in

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1 terms of was help available. I don't know if I
 2 actually really asked for help. I'm sure it
 3 came up from time to time. When this all
 4 started in '05, there was no help. From a
 5 laboratory point of view, it was summer, and I
 6 believe our whole -- what do we call it, our
 7 whole supply of techs were already all
 8 working. There just wasn't any help.
 9 CHAYTOR, Q.C.:
 10 Q. And was assistance ever offered then to you?
 11 Without having to go ask for it, did anyone
 12 ever offer you any assistance?
 13 MR. DYER:
 14 A. That's a good question. Again I don't -- I
 15 think between myself and Terry, I think -- I
 16 think what we did was I enlisted Mary on
 17 evenings and weekends when she could and I
 18 enlisted Robin on evenings and weekends, but
 19 that was it, and still at the same time I
 20 still had to do all my regular duties, and in
 21 January it was even more overwhelming because
 22 now we got into negotiating and trying to get
 23 Dynacare up and running. So we had to do a
 24 whole change of our work flow in the
 25 laboratory in pathology, and that just was

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1 even more work, and it just kept growing and
 2 growing.
 3 CHAYTOR, Q.C.:
 4 Q. And before I leave then those efforts, is
 5 there anything else about the coordination for
 6 the out of town regions, is there any other
 7 discussions or anything else about that that
 8 sticks out in your mind?
 9 MR. DYER:
 10 A. No, only outside the housekeeping of things
 11 that didn't come in that they said came in, I
 12 would just phone them or e-mail them and ask
 13 for the specifics, and then as they came in,
 14 we packed it up and sent it out.
 15 CHAYTOR, Q.C.:
 16 Q. If we could look at P-2241, please, and this
 17 is a letter from Dr. Neil, October 6th, 2005,
 18 and these are, "As per your request, please
 19 enclose the ER/PR negative cases for the year
 20 2002, and I've included a list of patients,
 21 some of which I've kept slides for reasons
 22 outlined on the sheet, obvious ER", I think he
 23 means, "positive, but I have included the
 24 report if you need to review it. I would be
 25 able to send slides later if needed, but based

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1 on the history that I've seen, they do not
 2 need repeats. If you determine otherwise,
 3 please let me know and I will forward asap",
 4 and there are a number of similar letters from
 5 Dr. Neil to you in October of 2005 sending
 6 along each year. So that's the type of thing
 7 that Dr. Neil sent on to you?
 8 MR. DYER:
 9 A. Yes, and then he would send me a detailed
 10 spreadsheet and I think we still have all of
 11 that stuff.
 12 CHAYTOR, Q.C.:
 13 Q. And when he indicates, "If you determine
 14 otherwise, please let me know and I will
 15 forward", he had made the determination --
 16 MR. DYER:
 17 A. That what he sent would be acceptable.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, all right, so if you need anything else
 20 is what he was suggesting?
 21 MR. DYER:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. Okay, all right, and there are a number of
 25 those other letters where he sends along his

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1 information to you. If we could have P-2254,
 2 please. This is October 18th, 2005, and it's
 3 from Dr. Neil to Ken Jenkins, "As per our
 4 discussion, I spoke with Barry Dyer. He is
 5 indeed gathering an extensive amount of data
 6 on all cases from each region and will be
 7 producing results on spreadsheets for each
 8 region, as I thought he would. As of now the
 9 information is on paper, but when complete all
 10 will be computerized. On the second point of
 11 our discussion, and one that really concerns
 12 me, Barry can also send us another list of
 13 patients that had immunohistochemical tests
 14 ordered from Western that he can cross-
 15 reference. He thinks that the list should be
 16 all inclusive. It looks like we've done all
 17 we can do", I believe it is. So I take it
 18 this second list that he's referring to here,
 19 that's the list that you compiled when you did
 20 your out of town bundle, is that what that is?
 21 MR. DYER:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. And did you, in fact, do that, did you send
 25 that list?

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1 MR. DYER:
 2 A. I can't remember if I sent it to him or not.
 3 That's a good question.
 4 CHAYTOR, Q.C.:
 5 Q. What he's referring to here, he says that you
 6 were gathering data on all cases from each
 7 region and you were going to be producing
 8 results in spreadsheets for each region?
 9 MR. DYER:
 10 A. That's what we did.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, and that's what you did?
 13 MR. DYER:
 14 A. Yes, each region, we had a spreadsheet for
 15 each -- we did the exact same things we did in
 16 St. John's.
 17 CHAYTOR, Q.C.:
 18 Q. And so that's -- and that was then sent out to
 19 the regions?
 20 MR. DYER:
 21 A. Did I send that spreadsheet back to the
 22 region?
 23 CHAYTOR, Q.C.:
 24 Q. Yes.
 25 MR. DYER:

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1 A. No, not unless they requested it.
 2 CHAYTOR, Q.C.:
 3 Q. Okay. "The information is on paper, but when
 4 complete, all will be computerized". So
 5 eventually the spreadsheets were computerized,
 6 were they?
 7 MR. DYER:
 8 A. No, that wasn't my intent, no. I don't know
 9 if he understood there. What would be
 10 computerized would be the final results from
 11 Mount Sinai retesting.
 12 CHAYTOR, Q.C.:
 13 Q. And were those sent out to each of the regions
 14 for their cases?
 15 MR. DYER:
 16 A. The results?
 17 CHAYTOR, Q.C.:
 18 Q. Yes.
 19 MR. DYER:
 20 A. All that was handled by Dr. Cook.
 21 CHAYTOR, Q.C.:
 22 Q. Okay. If we could have P-2201, please, and
 23 this is an e-mail from yourself to Drs.
 24 Dankwa, Baker, Anwar, Gallagher, Dalton, and
 25 Neil. So to the pathologists in the other

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1 regions, re; ER/PR retesting, "Please forward
 2 to me a complete list of all patient specimens
 3 that have been sent in for ER/PR retesting.
 4 The purpose of this is to cross reference to
 5 ensure that all specimens shipped have been
 6 received by our laboratory. Thanking you in
 7 advance", and that's December 2nd, 2005. Why
 8 was it necessary for you to ask them to then
 9 send complete lists of all specimens?
 10 MR. DYER:
 11 A. I think -- again I think at the time -- I
 12 believe I was getting again housekeeping,
 13 like, inconsistencies between -- blocks were
 14 coming. I know at one point I got reports
 15 with no blocks or slides, so I sent out e-
 16 mails or I talked to the people -- I talked to
 17 the areas where we were having issues, and
 18 then I think as things -- I think in December
 19 then, we must have discussed it, and I must
 20 have decided that, you know, let's get
 21 everyone to send in a complete list again to
 22 make sure what they say they sent us we
 23 actually have received.
 24 CHAYTOR, Q.C.:
 25 Q. But when you received their information,

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1 whether it came in letters from most of the
 2 regions or spreadsheet from Dr. Neil, you were
 3 putting that yourself into a spreadsheet?
 4 MR. DYER:
 5 A. Yes.
 6 CHAYTOR, Q.C.:
 7 Q. And what you're saying is what you were
 8 receiving -- is it what you were receiving
 9 back from Mount Sinai?
 10 MR. DYER:
 11 A. No, oh, no, this is -- again this is just I
 12 wanted to do a double check from all the
 13 specimens that were sent in from St. John's to
 14 me that I in turn sent out to Mount Sinai.
 15 CHAYTOR, Q.C.:
 16 Q. Okay.
 17 MR. DYER:
 18 A. So I wanted to make sure that I didn't miss
 19 anything.
 20 CHAYTOR, Q.C.:
 21 Q. Okay, and you're saying the purpose is to
 22 cross reference to ensure all specimens
 23 shipped have been received by our laboratory.
 24 MR. DYER:
 25 A. Right.

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1 CHAYTOR, Q.C.:
 2 Q. So specimens shipped --
 3 MR. DYER:
 4 A. So everything that they shipped to me --
 5 CHAYTOR, Q.C.:
 6 Q. Had been, in fact, received?
 7 MR. DYER:
 8 A. I wanted to make sure that I had everything
 9 that they believed that they sent to me.
 10 CHAYTOR, Q.C.:
 11 Q. That they believed they sent.
 12 MR. DYER:
 13 A. So it was just like a big cross-reference of
 14 everything they actually sent to me.
 15 CHAYTOR, Q.C.:
 16 Q. But you weren't finding that you were -- you
 17 weren't finding that what they said on the
 18 letter they were sending was different from
 19 what you were actually receiving?
 20 MR. DYER:
 21 A. No, it was just it was incomplete, I think,
 22 was my issue more than anything else.
 23 CHAYTOR, Q.C.:
 24 Q. And, I guess, that's what --
 25 MR. DYER:

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1 A. Like, again I might have received a block, but
 2 no report, or I might have received a slide
 3 and a report, but no block. So it was
 4 inconsistent.
 5 CHAYTOR, Q.C.:
 6 Q. So you were just asking, though, for a list of
 7 all patient specimens.
 8 MR. DYER:
 9 A. That they had known that they have sent to me,
 10 and I will cross-reference against all my
 11 spreadsheets.
 12 CHAYTOR, Q.C.:
 13 Q. And if we could have, please, P-0545. I just
 14 jumped ahead in time there a bit because I
 15 wanted to complete the picture of what you had
 16 done with the other regions. This is another
 17 of Dr. Williams notes.
 18 MR. DYER:
 19 A. Okay.
 20 CHAYTOR, Q.C.:
 21 Q. And this is August 3rd, 2005, and notes on
 22 ER/PR issues, "Met with Dr. Don Cook and Ms.
 23 Heather Predham, times two. QI follow up and
 24 interviews were held with techs involved in
 25 the immunohistochemistry in the a.m. Heather

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1 Predham gave me a debriefing on the issue and
 2 the lack of communication between techs and
 3 pathologists". I'm just wondering, Mr. Dyer,
 4 you indicated today that you thought that
 5 there was good communication between the techs
 6 and pathologists. Were you aware that Ms.
 7 Predham had interviewed the techs and that
 8 this was raised as an issue with Dr. Williams?
 9 MR. DYER:
 10 A. I think so.
 11 CHAYTOR, Q.C.:
 12 Q. You were aware of this?
 13 MR. DYER:
 14 A. Yes.
 15 CHAYTOR, Q.C.:
 16 Q. In August of 2005?
 17 MR. DYER:
 18 A. I just got back from holidays, and I think --
 19 again I'm not sure, but I think where it came
 20 from was the lab was in chaos for the whole
 21 month of July with all the ER/PR and what was
 22 being done, and I think for the immuno lab
 23 pathologists were going in and out of the lab
 24 all the time, I guess, making demands, I want
 25 this, I want this retest, I want this, I want

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1 this, and I think it was just really very
 2 overwhelming for the staff, and, of course, I
 3 wasn't here when it was happening. So I
 4 believe that's what that was about.
 5 CHAYTOR, Q.C.:
 6 Q. Okay.
 7 MR. DYER:
 8 A. It was a -- times were just starting to get
 9 difficult.
 10 CHAYTOR, Q.C.:
 11 Q. So this, in your view, is in the aftermath of
 12 the ER/PR issue arising that there's lack of
 13 communication between techs and pathologists?
 14 MR. DYER:
 15 A. I think during that time, yes.
 16 CHAYTOR, Q.C.:
 17 Q. As opposed to anything that was predating?
 18 MR. DYER:
 19 A. Yes, I believe -- again, like, I didn't
 20 realize it at the time, but the retesting was
 21 going on, and I guess they would come in and
 22 just, you know, demand that this needs to be
 23 done now, stop what you're doing, and there
 24 was no one there for them to go to to get
 25 help, get support.

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1 CHAYTOR, Q.C.:
 2 Q. And did the techs even know that the retesting
 3 was happening?
 4 MR. DYER:
 5 A. Well, back in -- before I went on vacation, I
 6 spoke with the techs about what was happening.
 7 I informed the techs, I think it was some time
 8 in June, and I let them know that I'd been
 9 informed that there was this index case and
 10 that there may be an issue with the testing
 11 back some years. So I know I had a meeting --
 12 again I think -- who was there? I think it
 13 might have been Ken and Mary who was there at
 14 the time, and I think I did it maybe -- I
 15 think it was a bit of a rush because I was on
 16 my way out, but I wanted just to let them know
 17 that something was happening.
 18 CHAYTOR, Q.C.:
 19 Q. So Les may not have been there?
 20 MR. DYER:
 21 A. And I think during the month of July, I think
 22 it must have exploded, in terms of a lot of
 23 requests were coming in for repeats.
 24 CHAYTOR, Q.C.:
 25 Q. And Les may not have been in attendance at the

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1 meeting at all?

2 MR. DYER:

3 A. I'm not sure if Les was there at that time.

4 It might have been a coffee break. It could

5 have been a lunch break when I actually did

6 it. It wasn't an official meeting or anything

7 like that. I was just going down to let them

8 know what was happening.

9 CHAYTOR, Q.C.:

10 Q. Okay, and then you went on vacation?

11 MR. DYER:

12 A. And then I went on vacation.

13 CHAYTOR, Q.C.:

14 Q. And any issue in terms of what happened after

15 that and how informed they were kept? When

16 you came back from vacation, did you have any

17 other meetings with them?

18 MR. DYER:

19 A. I kept them informed.

20 CHAYTOR, Q.C.:

21 Q. You kept them informed?

22 MR. DYER:

23 A. I did. That's my style. That's what I would

24 do. I wouldn't keep anything like that from

25 the staff.

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1 CHAYTOR, Q.C.:

2 Q. Okay, and what would you have been able to

3 tell them?

4 MR. DYER:

5 A. What would I be able to tell them?

6 CHAYTOR, Q.C.:

7 Q. Yes.

8 MR. DYER:

9 A. At that time, in August?

10 CHAYTOR, Q.C.:

11 Q. Yes.

12 MR. DYER:

13 A. Well by now, I think I was informed that we

14 were going to do this major retest and I'm

15 sure I explained to them that this is the

16 process we're going to go through from work

17 that was done on the DAKO and everything was

18 going to be retested.

19 CHAYTOR, Q.C.:

20 Q. And did you have a formal meeting with them

21 and make sure they were all there and -

22 MR. DYER:

23 A. I don't know if it was a formal meeting.

24 CHAYTOR, Q.C.:

25 Q. So how would you have communicated that to

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1 them?

2 MR. DYER:

3 A. I would have spoke--oh no, I don't think it

4 was a formal meeting. My style, I would just

5 go down and tell him. Who was there, I would

6 tell them what was going on.

7 CHAYTOR, Q.C.:

8 Q. So walk in to where they were working and tell

9 them there?

10 MR. DYER:

11 A. Yes, and tell them what was going on, yes.

12 CHAYTOR, Q.C.:

13 Q. So no setting aside a particular time to sit

14 down and any questions they may have, nothing

15 like that?

16 MR. DYER:

17 A. When I got hired in 2002, starting off, we did

18 have formal meetings, but with the workload

19 and things of this nature, we never had time.

20 So we would--I would have informal meetings

21 with the staff, you know, maybe 10-12 times a

22 year, and I would just sit right in the middle

23 of the lab. The staff would stop and sit

24 around and we would talk and discuss things

25 and any issues they'd have, I would write down

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1 and take back to work on.

2 CHAYTOR, Q.C.:

3 Q. And then did you endeavour to have periodic

4 updates with them or set times when you could

5 give them an update as to what you knew and

6 what was happening?

7 MR. DYER:

8 A. As I found out new things, I definitely kept

9 them informed, because again, that's--I would--

10 -that's the way I am. I would never keep

11 anything from the staff.

12 CHAYTOR, Q.C.:

13 Q. And this goes on to say then that -

14 MR. DYER:

15 A. And discuss any--again, I think there were so

16 many people coming in at one time, I think,

17 and I think that's what it was.

18 CHAYTOR, Q.C.:

19 Q. Okay, and the need for the techs to have a

20 pathologist who they can go to for advice and

21 communication?

22 MR. DYER:

23 A. Yes.

24 CHAYTOR, Q.C.:

25 Q. And what was done about that? Wasn't Dr.

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1 Ejeckam supposed to be the person?
 2 MR. DYER:
 3 A. He was. He was, but I don't even know if he--
 4 I don't even think he knew what was going on
 5 at the time. I didn't inform any pathologists
 6 what was going on, so I don't even think he
 7 knew what was going on. I don't even--
 8 actually, I think -
 9 CHAYTOR, Q.C.:
 10 Q. He may have been away at this time?
 11 MR. DYER:
 12 A. He might have been away at the same time that
 13 I was. So I don't think there was any one
 14 there.
 15 CHAYTOR, Q.C.:
 16 Q. Okay, if we could look then, please, at P-
 17 0559? So any sentiment or complaint by the
 18 technologist that they didn't feel that they
 19 were well informed on what was happening at
 20 the time, you're saying that you told them
 21 back in June that there was something afoot?
 22 MR. DYER:
 23 A. I did. I'm pretty sure I spoke to them in
 24 June.
 25 CHAYTOR, Q.C.:

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1 Q. Or at least two of them?
 2 MR. DYER:
 3 A. At least two of them, before I went on
 4 holidays.
 5 CHAYTOR, Q.C.:
 6 Q. And that you kept them updated on a regular
 7 basis?
 8 MR. DYER:
 9 A. I would, yes.
 10 CHAYTOR, Q.C.:
 11 Q. And this is the memo that went out to the
 12 three technologists, as well as yourself and
 13 Mr. Gulliver, from Dr. Cook on August 8th,
 14 2005 indicating there'd be a hold on the
 15 reporting of all ERS and PRs by pathologists.
 16 Technologists have given evidence here at the
 17 Commission that they interpreted this to mean
 18 that they would still continue on with their
 19 job and process slides. Any ER/PR tests being
 20 ordered, they would continue on with their
 21 work. Were you aware of that?
 22 MR. DYER:
 23 A. Again, times were so turbulent. If I read
 24 that e-mail, if I read that back then, I would
 25 have certainly said yes, they would continue

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1 to do what they were doing.
 2 CHAYTOR, Q.C.:
 3 Q. Okay. So do you know, did you receive this
 4 memo?
 5 MR. DYER:
 6 A. I must have received it. I think I did.
 7 CHAYTOR, Q.C.:
 8 Q. And if you received it, I take it you would
 9 have read it?
 10 MR. DYER:
 11 A. I would have read it, yes.
 12 CHAYTOR, Q.C.:
 13 Q. Given that it's about this whole issue.
 14 MR. DYER:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. So you would have interpreted it the same way
 18 and that -
 19 MR. DYER:
 20 A. For sure.
 21 CHAYTOR, Q.C.:
 22 Q. Did any of them come to you and ask you any
 23 questions about this?
 24 MR. DYER:
 25 A. I can't remember. I don't think so. I can't

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1 remember if anyone did.
 2 CHAYTOR, Q.C.:
 3 Q. Okay. But the fact that they did continue to
 4 do the ER/PR tests on the same work that was
 5 being sent to Mount Sinai to do, were you
 6 aware that that was actually happening?
 7 MR. DYER:
 8 A. Based on this memo, I would have assumed back
 9 then, yes, that this was happening.
 10 CHAYTOR, Q.C.:
 11 Q. You would have assumed that was happening?
 12 MR. DYER:
 13 A. Yes.
 14 CHAYTOR, Q.C.:
 15 Q. Okay, and did you ever have any -
 16 MR. DYER:
 17 A. I can't remember if I actually spoke to the
 18 techs about this specific memo. I can't
 19 remember.
 20 CHAYTOR, Q.C.:
 21 Q. And those slides that they produced through
 22 that process, where are those slides?
 23 MR. DYER:
 24 A. Where are they right now?
 25 CHAYTOR, Q.C.:

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1 Q. Yes.
 2 MR. DYER:
 3 A. I believe they're in the immunohistochemistry
 4 lab.
 5 CHAYTOR, Q.C.:
 6 Q. Okay. They're still there?
 7 MR. DYER:
 8 A. And they're still there.
 9 CHAYTOR, Q.C.:
 10 Q. Okay. If we could have, please, P-0568?
 11 THE COMMISSIONER:
 12 Q. Ms. Chaytor, we can break whenever you can
 13 find the right spot.
 14 CHAYTOR, Q.C.:
 15 Q. Thank you. Just another one of Dr. Williams'
 16 notes. This one is August 12th, 2005, and the
 17 first bullet indicates that he spoke with you,
 18 "all blocks should be pulled by Sunday and the
 19 pathologists can review on Monday to assess
 20 which blocks have tumour samples to send to
 21 Mount Sinai. Dr. Cook and Dr. Fontaine will
 22 process" and you've indicated Dr. Fontaine's
 23 involvement before.
 24 MR. DYER:
 25 A. Yeah, I think that's a typo. That probably

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1 should say all slides, not all blocks.
 2 CHAYTOR, Q.C.:
 3 Q. All slides?
 4 MR. DYER:
 5 A. Yes, because I don't think we were reviewing
 6 slides yet at that point, so we would have to
 7 pull slides for them to review.
 8 CHAYTOR, Q.C.:
 9 Q. Okay. So it should be all slides would be
 10 pulled?
 11 MR. DYER:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. Not all blocks, okay.
 15 MR. DYER:
 16 A. So pathologists can actually review them.
 17 They wouldn't review the block. It would have
 18 to be the slide.
 19 CHAYTOR, Q.C.:
 20 Q. And would you have ongoing regular
 21 communication with Dr. Williams as to what was
 22 happening in this time frame?
 23 MR. DYER:
 24 A. We did get to know each other. I know we did
 25 speak on many occasions.

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1 CHAYTOR, Q.C.:
 2 Q. About this issue?
 3 MR. DYER:
 4 A. About--yes.
 5 CHAYTOR, Q.C.:
 6 Q. And so it wouldn't then--I take it prior to
 7 this issue arising, it would be unusual for
 8 you to get direct contact from VP Medical?
 9 MR. DYER:
 10 A. I don't think ever, yes.
 11 CHAYTOR, Q.C.:
 12 Q. Ever, okay, and at this point in time, you and
 13 Dr. Williams got to know each other, as you
 14 say?
 15 MR. DYER:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. Okay, and so it wouldn't be unusual for him
 19 then to pick up the phone and contact you
 20 directly?
 21 MR. DYER:
 22 A. No issue.
 23 CHAYTOR, Q.C.:
 24 Q. And ask you what was happening?
 25 MR. DYER:

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1 A. He'd ask me questions, I think, yes.
 2 CHAYTOR, Q.C.:
 3 Q. And if we could have, please, P-2327? And
 4 this is September 5th 2005 and it's an e-mail
 5 from yourself to Ms. Predham. "Hi, Heather.
 6 I am attending the NSH next week and Bryan is
 7 lecturing. I will talk to him about some of
 8 our issues." And who is the Bryan that you're
 9 referring to here?
 10 MR. DYER:
 11 A. His name is Bryan Hewlett.
 12 CHAYTOR, Q.C.:
 13 Q. Okay, and the NSH being the National Society
 14 of Histochemistry? Is that right?
 15 MR. DYER:
 16 A. Histotechnology.
 17 CHAYTOR, Q.C.:
 18 Q. Histotechnology?
 19 MR. DYER:
 20 A. Yes.
 21 CHAYTOR, Q.C.:
 22 Q. And is this the same conference that Mr. Green
 23 attended?
 24 MR. DYER:
 25 A. Yes.

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1 CHAYTOR, Q.C.:

2 Q. Okay. So you and Mr. Green attended this?

3 MR. DYER:

4 A. Yes.

5 CHAYTOR, Q.C.:

6 Q. And Bryan Hewlett was to be lecturing at that

7 conference?

8 MR. DYER:

9 A. Yes.

10 CHAYTOR, Q.C.:

11 Q. And did you actually speak to Mr. Hewlett?

12 MR. DYER:

13 A. Yes.

14 CHAYTOR, Q.C.:

15 Q. Okay, and perhaps you could tell us then about

16 that?

17 MR. DYER:

18 A. I think I never got to any of his lectures.

19 We were very late, again, I think I said

20 earlier today, it was only like a week or two

21 with notice, and I believe that we--I think I

22 caught hold of him one day and I believe we

23 talked about fixation. I think that was our

24 biggest--I think that was our issue that we

25 actually talked about.

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1 CHAYTOR, Q.C.:

2 Q. That you spoke to Mr. Hewlett about?

3 MR. DYER:

4 A. Yes, and so he took--and because that was one

5 of the things that he lectured on.

6 CHAYTOR, Q.C.:

7 Q. And why fixation? On September 5th, why would

8 -

9 MR. DYER:

10 A. I don't know, but fixation is his--is one of

11 the big things he discusses, and that's what--

12 I think that's what we probably talked about

13 was actual fixation.

14 CHAYTOR, Q.C.:

15 Q. Had it been brought to your attention by

16 September 5th that there had been an issue

17 with fixation?

18 MR. DYER:

19 A. No, I don't think so.

20 CHAYTOR, Q.C.:

21 Q. So that's just a coincidence?

22 MR. DYER:

23 A. Yeah. Well, no, wait now. No, and we might

24 have--it might have come up with Dr. Cook.

25 CHAYTOR, Q.C.:

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1 Q. With Dr. Cook in his review?

2 MR. DYER:

3 A. I think with some of his comments in his

4 review. I think that's what -

5 CHAYTOR, Q.C.:

6 Q. He had mentioned internal controls and

7 fixation to you?

8 MR. DYER:

9 A. Yes.

10 CHAYTOR, Q.C.:

11 Q. In looking at the slides?

12 MR. DYER:

13 A. Yes.

14 CHAYTOR, Q.C.:

15 Q. So you brought fixation up with Mr. Hewlett?

16 MR. DYER:

17 A. Yes, just to see, you know, I explained to him

18 we were purchasing--I think we just talked in

19 general about pathology specimens and fixation

20 and I took him through what we were doing and

21 he just--you know, he took--and he took me

22 through the fix--I understood fixation, I

23 think, but just to hear it from a different

24 person would have been a good thing.

25 CHAYTOR, Q.C.:

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1 Q. Okay, and was there any new knowledge that you

2 gleaned from either your discussion with him

3 or through his presentation or lecture?

4 MR. DYER:

5 A. I didn't get to get to that lecture, because

6 again, it was already booked.

7 CHAYTOR, Q.C.:

8 Q. Oh, okay.

9 MR. DYER:

10 A. So no, this was just I came across him. This

11 is where he had a booth also, and so that's

12 where I hunted him down.

13 CHAYTOR, Q.C.:

14 Q. Okay, and so was there anything then that you

15 brought back to St. John's after you

16 discussion with him in terms of any tips or

17 anything that he was able to give you?

18 MR. DYER:

19 A. The biggest tip he gave me was--I remember,

20 was he was an advocate for 24 hours fixation.

21 CHAYTOR, Q.C.:

22 Q. 24 hour?

23 MR. DYER:

24 A. Yes.

25 CHAYTOR, Q.C.:

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<p>1 Q. Okay, and you explained to Mr. Hewlett what 2 was happening in St. John's? 3 MR. DYER: 4 A. I think I did. 5 CHAYTOR, Q.C.: 6 Q. Okay. 7 MR. DYER: 8 A. I mean, not on a big scale or anything like 9 that. 10 CHAYTOR, Q.C.: 11 Q. And was he surprised to hear what was 12 happening? 13 MR. DYER: 14 A. I can't remember his actual expressions. 15 CHAYTOR, Q.C.: 16 Q. Did you tell him that you were actually in the 17 middle of going through a whole retesting 18 process? 19 MR. DYER: 20 A. I think I did. 21 CHAYTOR, Q.C.: 22 Q. And had he heard of such a thing anywhere 23 else? 24 MR. DYER: 25 A. If he did, I don't think he said it to me.</p>	<p>1 Q. And was that new information for you? 2 MR. DYER: 3 A. Yes, I think that would have been new 4 information for me. 5 CHAYTOR, Q.C.: 6 Q. Is there anything else then about your 7 discussion with Mr. Hewlett? 8 MR. DYER: 9 A. That's what actually stands out. 10 CHAYTOR, Q.C.: 11 Q. That's it? 12 MR. DYER: 13 A. Yes. 14 CHAYTOR, Q.C.: 15 Q. And of course, it's Mr. Hewlett who ends up in 16 St. John's in December 2007 for a QMPLS 17 review, I understand? 18 MR. DYER: 19 A. Yes. 20 CHAYTOR, Q.C.: 21 Q. Okay. This is a good place, please, 22 Commissioner. 23 THE COMMISSIONER: 24 Q. All right then. We'll meet at 9:30 in the 25 morning. Thank you.</p>
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<p>1 CHAYTOR, Q.C.: 2 Q. Okay, and his view on 24-hour fixation, was 3 that a minimum, 24 hours? 4 MR. DYER: 5 A. He felt that a minimum should be 24 hours. 6 CHAYTOR, Q.C.: 7 Q. A minimum? 8 MR. DYER: 9 A. Yes. 10 CHAYTOR, Q.C.: 11 Q. Yes, and could be up to how long? 12 MR. DYER: 13 A. I believe the standard he said might have been 14 24 to 48 hours. 15 CHAYTOR, Q.C.: 16 Q. Okay. 17 MR. DYER: 18 A. He took me through the explanation of fixation 19 versus penetration and penetration happens-- 20 penetration of the formalin occurs about one 21 millimetre per hour, but it talks up to 24 22 hours for the actual fixation to occur, the 23 actual molecular bonds to occur, for the 24 tissue to fix. 25 CHAYTOR, Q.C.:</p>	<p>1 CHAYTOR, Q.C.: 2 Q. Thank you. 3 (UPON CONCLUSION AT 5:00 P.M.)</p>

CERTIFICATE

1
2 I, Judy Moss, hereby certify that the foregoing is
3 a true and correct transcript in the matter of the
4 Commission of Inquiry on Hormone Receptor Testing,
5 heard on the 22nd day of July, A.D., 2008 before
6 the Honourable Justice Margaret A. Cameron,
7 Commissioner, at the Commission of Inquiry, St.
8 John's, Newfoundland and Labrador and was
9 transcribed by me to the best of my ability by
10 means of a sound apparatus.
11 Dated at St. John's, Newfoundland and Labrador
12 this 22nd day of July, A.D., 2008
13 Judy Moss

Inquiry on Hormone Receptor Testing

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