

ILLINOIS INDEPENDENT TAX TRIBUNAL
CHICAGO, ILLINOIS

INTEGRATED MEDICAL SYSTEMS, INC.,)		
Petitioner,)	
)	Case No. 15-TT-247
v.)	
)	
ILLINOIS DEPARTMENT OF REVENUE,)	Chief Judge James M. Conway
Respondent.)	

MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

NOW COMES the Petitioner, INTEGRATED MEDICAL SYSTEMS, INC., by and through its attorneys, John J. Pembroke & Associates, and for its Memorandum of Law in Support of its Motion for Summary Judgment, states as follows:

Summary judgment must be granted in favor of Plaintiff Integrated Medical Systems, Inc. ("IMS") and against the ILLINOIS DEPARTMENT OF REVENUE (the "Department") because the Notices of Tax Liability ("NTL") issued by the Department assessed an unreasonable amount of high-rate Retailers' Occupation Tax ("ROT") for products that should be considered medical appliances. The Department's conclusions were based on nothing more than internet searches conducted by a medically untrained auditor, and they contradicted the positions taken by the Department during a prior audit. Because the manner in which it reached its conclusions was arbitrary and capricious, the Department is entitled to no deference in its interpretation of the term "medical appliance" as used in the Retailers' Occupation Tax Act ("ROTA"). This

appeal must therefore be decided by a *de novo* review of the evidence submitted in the record.

IMS has put forth expert testimony establishing that its products should be considered medical appliances, and the Department has failed to rebut IMS' evidence by submitting expert testimony of its own. Without expert testimony supporting the Department's position, summary judgment must be granted in favor of IMS and against the Department without further delay.

APPLICABLE LAW

This controversy requires the Court to determine the meaning of the term "medical appliance" contained in Section 2-10 of the ROTA . *See* 35 ILCS 120/2-10. (See Stipulation Exhibit "C"). The applicable regulations are set forth in 86 Ill. Admin. Code 130.310 (from January 1, 2009 through August 19, 2010) and, later, 86 Ill. Admin. Code 130.311 (effective on August 19, 2010) (See Stipulation Exhibits "D" and "E," respectively). Under both regulations, the standard set forth in determining whether an item qualifies as a medical appliance is whether the item directly substitutes for a malfunctioning part of the human body. (See Stipulation at ¶¶ 34 and 35).

When faced with a question of statutory interpretation, a court's primary goal is to give effect to the intention of the legislature. *Exelon Corp. v. Department of Revenue*, 234 Ill.2d 266, 274 (2009). Such an analysis begins with the language of the statute. Where the statutory language is clear and unambiguous, the court must give it effect without resort to other tools of interpretation. *Id.* at 275.

Tax laws must be strictly construed. *Van's Material Co. v. Dep't of Revenue*, 131 Ill.2d 196, 202, 545 N.E.2d 695, 698 (1989). The Illinois Supreme Court has long held that “[t]axing statutes are to be strictly construed. Their language is not to be extended or enlarged by implication, beyond its clear import. In cases of doubt they are construed most strongly against the government and in favor of the taxpayer.” *Id.* (emphasis added); *In re County Treasurer & Ex Officio County Collector*, 2017 IL App (4th) 170003, ¶44. Doubt arises when a statute is ambiguous, which occurs if its language is susceptible to more than one equally reasonable interpretation. *Id.*

Administrative regulations have the force and effect of law and must be construed under the standards governing the construction of statutes. *Union Electric Co. v. Department of Revenue*, 136 Ill.2d 385, 391, 556 N.E.2d 236, 239 (1990). Like statutes, administrative regulations enjoy a presumption of validity. *Medcat Leasing Co. v. Whitley*, 253 Ill. App. 3d 801, 803, 625 N.E.2d 424, 425 (4th Dist. 1993). Although courts may give substantial weight and deference to a reasonable construction of an ambiguous statute by the department charged with its enforcement, such interpretations are not binding upon the courts. *Id.*

ARGUMENT

The term “medical appliance,” as used in Section 2-10 of the ROTA, is ambiguous, and the Department’s interpretation of that term in the course of its audit of IMS was arbitrary and capricious. The Department is therefore entitled to no deference in its interpretation of the term “medical appliance,” and its decision to impose a high rate of tax upon the medical products sold by IMS must be reversed.

The Department, without any prior notice to IMS whatsoever, arbitrarily reversed its previous position regarding what items it considered to be medical appliances without even consulting a medical expert or other medical authority for guidance. Because that term is ambiguous and clearly outside the ken of an ordinary layperson, expert testimony is required to determine what it means for a product to substitute for part of the human body. The Department has not met its burden of putting forth sufficient expert testimony to justify its interpretation, and its decision must be overturned and summary judgment granted in favor of IMS.

I. THE TERM “MEDICAL APPLIANCE” AS USED IN THE RETAILERS’ OCCUPATION TAX ACT IS AMBIGUOUS.

This appeal turns on the interpretation of the term “medical appliance” as used in Section 2-10 of the ROTA. Although there were two difference administrative regulations in place during the course of the audits at issue, the parties agree that the question before this Tribunal is whether five (5) specific categories of items sold by IMS substitute for a malfunctioning part of the human body such that they should be considered “medical appliances” under the ROTA.

The legislature did not define “medical appliance” when it drafted the ROTA but rather left it to the Department to promulgate its own definition. Courts in Illinois have struggled with interpreting the meaning of the Department’s definition of “medical appliance” through the years. Unfortunately, the decisions handed down have only added to the confusion surrounding the term rather than providing clarification.

In 1989, the Illinois Supreme Court decided the case of *Geary v. Dominick's Finer Foods, Inc.*, 129 Ill.2d 389, 544 N.E.2d 344 (1989). There, the Court was asked to decide whether tampons and sanitary napkins should be considered “medical appliances” under the Chicago Sales Tax Ordinance (which was “virtually identical” to the ROTA). *Id.* at 392-93; 410. The Supreme Court found that tampons and sanitary napkins serve “an absorbent function similar to that of cotton and band aids” and should be defined as medical appliances. *Id.*

In *Travenol Laboratories, Inc. v. Johnson*, 195 Ill.App.3d 532 (1st Dist. 1990), the First District considered whether the sale by the plaintiff of a component of a kidney hemodialysis machine to a health care professional was exempt as a “medical appliance” under the ROTA. The Department conceded that the component was a medical appliance. Thus, the only issue before the court was the validity of the Department’s 1985 regulation disqualifying medical appliances used by health care professionals from the reduced rate of tax, and the First District found that the legislature plainly provided that all “medical appliances ... for human use” qualify for the exemption. *Id.* at 535-36.

A few years later, the Fourth District held that a CT scanner was not a medical appliance. *Medcat Leasing Co. v. Whitley*, 253 Ill. App. 3d 801, 804, 625 N.E.2d 424, 426 (4th Dist. 1993). In *Medcat*, the trial court found the Department’s 1985 regulation defining “medical appliance” invalid to the extent it distinguished between appliances correcting any functioning part of the body and those assisting in the treatment and diagnosis of medical conditions, as this was a distinction not made by the legislature. *Id.*

On appeal, the Fourth District reversed. It found the term “medical appliance” to be ambiguous, but the Department’s interpretation thereof reasonable. *Id.* at 804. It explained that the term “medical appliance,” as it appeared in the Act, was “among a group of other items focusing on consumer use,” and that the definition promulgated by the Department paralleled the nature of those items. *Id.* at 804. The Court further noted that “[t]he decision to free all equipment used in medical testing is a legislative responsibility.” *Id.* Thus, under *Medcat*, unless the testing equipment was “used by an individual to test his or her own medical condition,” as set forth in the Department’s 1985 regulation, it did not qualify for exemption. *Id.*

There is one case from outside Illinois that deserves mentioning. In *Maxwell Med., Inc. v. Chumley*, 2010 WL 4024890 (Tenn. Ct. App. Oct. 12, 2010), a Tennessee Court found that a glucometer sold by the taxpayer, which did not perform the function of the pancreas did not perform a function of the human body, did not qualify for Tennessee’s sales and use tax exemption for “prosthetics.” *Id.* at 1. The Court there relied upon the expert deposition testimony contained in the record which demonstrated that, although it clearly measures the level of glucose in a patient's blood, the device did not perform any functions of the human body. *Id.* at 3.

Based on all of the foregoing, there can be no doubt that the term “medical appliance” as used in Section 2-10 of the ROTA is ambiguous. However, unlike in *Medcat*, the Department’s interpretation here is far from reasonable – it was arbitrary and capricious, and in fact contradicted the position taken by the Department only four years earlier. The Department is not entitled to the deference that it previously received

from other courts, and this Tribunal must consider the evidence in the record *de novo* to determine the merits of IMS' appeal. Upon careful consideration it must conclude that the items sold by IMS are medical appliances to be taxed at the low rate.

II. THE DEPARTMENT'S INTERPRETATION OF "MEDICAL APPLIANCE" DURING ITS AUDIT WAS ARBITRARY AND CAPRICIOUS.

Unlike in *Medcat*, where the Fourth District was able to defer to the Department's interpretation of "medical appliance" in finding that testing equipment used in medical testing was not exempt, the Department's conclusions regarding the five categories of items in question here were demonstrably unreasonable, arbitrary and capricious.

Before the audit at issue was conducted, the Department had performed a prior audit of IMS in July, 2008. (See Stipulation Exhibit "B" at p. 3) (hereinafter "prior audit"). During the prior audit, the Department determined that 79% of the items sold by IMS qualified for the low-rate as medical appliances, and 21% of the items sold were taxed at the high rate. (See Stipulation at ¶ 17). Contrarily, during the audit at issue, the Department determined that only 8% of IMS' products were medical appliances, thus qualifying for the low-rate, while 92% of items were taxed at the high rate. Not only does this reinforce IMS' argument that the term "medical appliance" is ambiguous, but it proves that the manner in which the Department determined what tax rates to impose was arbitrary and capricious.

IMS did not change the way it conducted business between the time of the prior audit and the at-issue audit. (See deposition transcript of Patrick DiOrio, attached hereto as Exhibit "C," at p. 65-70). Its business did not change nor did its customer

base. Nonetheless, at the conclusion of the audit at issue, the Department concluded that only 8% of the items sold by IMS qualified for the medical appliance exemption and that 92% of the items were to be taxed at the high rate. (See Exhibit "C" at p. 69).

Neither Lisa Fox nor Pat Hoyt, who also participated in the audit, is a medical doctor or nurse, and neither of them have any formal medical education or clinical experience. (See Stipulations at ¶¶ 20 and 21). In conducting this audit, Lisa Fox evaluated IMS' books and records, conducted internet searches and arrived at an assessment of 92% of items to be taxed at the high rate and 8% at the low rate. (See Stipulations at ¶ 18). The Department did not retain any medical doctor or nurse with whom to consult to determine whether the items sold by IMS rightfully should be considered medical appliances. (See Stipulations at ¶ 23).

The method used by Lisa Fox and Pat Hoyt in determining that 92% of IMS' products should be taxed at the high rate were egregiously arbitrary and capricious, especially given their knowledge that the Department had arrived at a vastly different conclusion only four (4) years earlier. (See deposition transcript of Lisa Fox, attached hereto as Exhibit "D," at pp. 73-77). For that reason, the Department's interpretation of the term "medical appliance" in the ROTA and as used in its regulations is entitled to no deference, and this Tribunal must arrive at an interpretation based on the evidence put before it in these proceedings.

III. ALL OF THE ITEMS AT ISSUE ARE MEDICAL APPLIANCES BECAUSE THEY DIRECTLY SUBSTITUTE FOR A PART OF THE HUMAN BODY.

The conclusion reached by the Department must be overturned and IMS' petition granted because all of the items that are at issue rightly qualify as medical appliances since they directly substitute for a malfunctioning part of the human body. As the Department is entitled to no deference in its interpretation, this Tribunal must weigh the evidence submitted in these proceedings to reach a conclusion. Expert testimony is required because determining whether any particular item "substitutes for a malfunctioning part of the human body" is a medical question which falls outside the ken of an ordinary layperson. The only expert witness who has been disclosed to testify at trial is John Segreti, M.D., who will testify on behalf of IMS that all of the items sold qualify as medical appliances. Since the Department is unable to put forth any expert testimony supporting its position, summary judgment must be entered in favor of IMS.

a. Expert Testimony is Required to Establish Whether an Item Substitutes for Part of the Human Body because the Answer is Outside the Ken of a Reasonable Lay Person.

Expert medical testimony is required to establish whether or not the products sold by IMS substitute for a malfunctioning part of the human body. If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. Ill. R. Evid. Rule 702. In cases involving medical questions, Illinois courts have consistently held that expert medical testimony is required.

In the medical malpractice context, expert medical testimony is required not only to establish the standard of care by which a physician or other clinician is to be judged, but it is also required to prove a breach of that standard of care unless such negligence is so grossly apparent or the treatment so common as to be within the everyday knowledge of a lawperson. *Purtill v. Hess*, 111 Ill. 2d 229, 242, 489 N.E.2d 867, 872 (1986); see also *Voykin v. Estate of DeBoer*, 192 Ill. 2d 49, 248 Ill. Dec. 277, 733 N.E.2d 1275 (2000) (expert testimony is normally necessary in a medical malpractice case because jurors are not skilled in the practice of medicine and would find it difficult without the help of medical evidence to determine any lack of necessary scientific skill on the part of the physician...)

In addition to standard of care, causation issues also require the introduction of medical expert testimony to maintain a medical negligence case because causation is beyond the common knowledge of laypersons. *Snelson v. Kamm*, 204 Ill.2d 1, 787 N.E.2d 796, 819 (2003); see also *Townsend v. University of Chicago Hospitals*, 318 Ill. App. 3d 406, 413, 741 N.E.2d 1055, 1060 (1st Dist. 2000) (proximate cause in a medical malpractice case must be established by expert testimony to a reasonable degree of medical certainty).

But it is not only within the context of medical negligence cases that medical expert testimony is required. In any case involving an injury to part of the human body, expert testimony may be required. For instance, in *Voykin*, the trial court allowed a motor vehicle defendant to introduce evidence of the plaintiff's prior lower back injury. *Voykin*, 192 Ill.2d at 52. The First District reversed, holding that expert medical

testimony was required to establish that the prior injury and present injury were causally related. *Id.*

The Illinois Supreme Court affirmed and, in so doing, abolished the so-called “same part of the body rule” that allowed litigants to introduce evidence of prior injuries if those injuries occurred to the same part of the body. In so doing, it reasoned:

“Without question, the human body is complex...In most cases, the connection between the parts of the body and past and current injuries is a subject that is beyond the ken of the average layperson. Because of this complexity, we do not believe that, in normal circumstances, a lay juror can effectively or accurately assess the relationship between a prior injury and a current injury without expert assistance.

Id. at 59.

Like determining whether two injuries are related to each other, medical testimony is required here to determine whether the medical products sold by IMS perform the function of a part of the human body.

In this matter, the parties have agreed that there are essentially five (5) categories of medical products that are in dispute: (1) IV Administration; (2) Eclipse Home Pump IV Catheter System; (3) ICU Products/Needleless Valves-Connectors; (4) IV Administration/Securement; and (5) IV Start Kits. (See Stipulation at ¶ 39). Dr. Segreti is of the opinion and will testify that all of these items and concluded that they all perform the function of a part of the human body. (See deposition transcript of Dr. Segreti, attached hereto as Exhibit “E;” see also Rule 213(f) disclosure of Dr. Segreti, attached as Exhibit 1 to his deposition transcript). Almost all of the products at issue deal with the intravenous delivery of a substance – be it medication or saline – to a

patient. Dr. Segreti explained in his report and at deposition that “[a]ll of those products, talking about the 15 products with the exception of the Foley Trays, may be considered extensions of the patient’s veins; as they’re required to access the vein for necessary medication. Those areas must be as sterile as possible in order to prevent potentially life-threatening infections.” (See Exhibit “E” at p. 38). He testified regarding each of the products in detail.

A. IV Administration Sets/IV Administration/Securement/ IV Start Kits

IV Administration Sets contain tube conduits to connecting venous catheters through which patients can receive (often through a gravity drip) intravenous substances such as medications, antibiotics, nutrition and saline. (See Stipulations at ¶40). IV Administration/Securement products are stabilization and securement devices strong enough to lock catheters, tubes and IV lines in place. (See Stipulations at ¶43). IV start kits create a sterile field for a healthcare professional to work with so that they can insert a catheter into a patient. (See Stipulations at ¶44).

Dr. Segreti testified that IV administration sets and related products are required to establish a connection to a venous catheter in order to administer IV antibiotics. (See Exhibit “E” at p. 46; see also Rule 213(f) disclosures, attached to transcript). He explained that IV antibiotics cannot be given without accessing the vein, and the body does not produce the antibiotics to fight off certain types of infections on its own, so you need a connection between the bag containing the antibiotics and the vein. (Exhibit “E” at pp. 47-48). He later explained that the human body is sometimes able to fight off infections without antibiotics, mostly when confronted with a viral infection. (Exhibit

“E” at pp. 92-93). There are some situations in which the human body is able to produce the necessary antibodies to fight off a bacterial infection, but when the human body is unable to make those antibodies, antibiotics become necessary. (Exhibit “E” at p. 93). IV start kits are required to safely access the vein and make sure that the area is clean and not covered in bacteria. (Exhibit “E” at p. 73).

Dr. Segreti also explained that antibiotics can sometimes be delivered to a patient orally, with a pill, rather than through an IV. (Exhibit “E” at p. 95). When antibiotics are delivered orally, the antibodies are absorbed through the patient’s gastrointestinal tract. (Exhibit “E” at p. 95). However, when a patient’s GI tract is malfunctioning, antibiotics must be delivered through an IV so that the antibiotics can be delivered into the patient’s bloodstream through his or her veins, and through the IV tubing. (Exhibit “E” at pp. 95-96).

Finally, Dr. Segreti testified that all of the products at issue in this dispute relate to the administration of IV antibiotics. (Exhibit “E” at p. 96). All of the products in dispute here are necessary to address the human body’s malfunctioning immune system. (Exhibit “E” at pp. 96-97). The antibiotics fulfill the function of the antibodies that are naturally produced by the human body by killing off infection, and the IV tubing serves the function of a patient’s vein. (Exhibit “E” at p. 97).

B. Eclipse Home Pump IV Catheter System

Eclipse Home Pump IV Catheter Systems are elastomeric devices (looks like an empty balloon) which are filled with a liquid substance, such as medications, antibiotics, nutrition and saline, which are connected with IV tubing and the substance

is then delivered over a certain time frame to the patient. (See Stipulations at ¶ 41). When antibodies within the human body are able to fight off an infection, they are carried to the site of the infection by the human body's circulatory system. (See Exhibit "E" at p. 97). These pumps perform the function of a patient's heart by circulating antibiotics and fluids through a patient's bloodstream. (Exhibit "E" at p. 97).

C. ICU Products/Needleless Valves-Connectors

ICU products/needleless valves and connectors are made by a company named "ICU" and are a variety of products sold by IMS for use in a sterile environment. (See Stipulations at ¶42). Another feature of the human body for which IMS' products substitute is the sterile environment within the body. Nowhere else in nature does a sterile environment naturally occur than within the human body. (Exhibit "E" at p. 98). All of the sterile products sold by IMS are designed to replicate the sterile environment within the human body. (Exhibit "E" at p. 99). Dr. Segreti explained that any connection with the bloodstream needs to be sterile. (Exhibit "E" at pp. 99). In order to replicate that sterile environment as well as the patient's circulatory system, sterilized products are required. (Exhibit "E" at p. 99).

b. The Only Expert Testimony in this Case is that of John Segreti, M.D., who Establishes that all of the Items Sold by IMS are Medical Appliances.

Summary judgment must be entered in IMS' favor because expert testimony is required to determine whether each of the above categories of products substitutes for a part of the human body and Dr. Segreti is the only qualified expert who will be

testifying at this trial. The Department has waived the opportunity to disclose an expert and discovery is now closed. (See Order of April 8, 2019, attached hereto as Exhibit "F").

Dr. Segreti is an infectious disease specialist on staff at Rush University Medical Center. (Exhibit "E" at p. 91; see also Dr. Segreti's *curriculum vitae*, attached to Exhibit "E"). The role of an infectious disease physician is to diagnose and manage patients who have infectious that are potentially treatable. (Exhibit "E" at p. 92). He obtained his medical degree from Rush Medical College and thereafter completed a residency and fellowship in the area of Infectious Disease. (Exhibit "E" at p. 91).

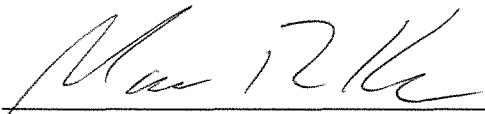
CONCLUSION

Because determining whether an item "substitutes for a malfunctioning part of the human body" is a question that is outside the ken of an ordinary layperson, expert testimony is required in these proceedings in order for this Tribunal to determine whether the items in question constitute medical appliances. The only expert testimony that will be put before this Tribunal at trial is that of John Segreti, M.D., who has established that all of the items at issue substitute for a malfunctioning part of the human body. Summary judgment must therefore be entered in favor of IMS.

WHEREFORE for the foregoing reasons Petitioner INTEGRATED MEDICAL SYSTEMS, INC. prays that this Honorable Tribunal enter an order granting summary judgment in its favor and against the Respondent, ILLINOIS DEPARTMENT OF REVENUE on all counts of the Petition pursuant to 735 ILCS 5/2-1005, and granting any and all other and further relief that this Honorable Tribunal deems just and appropriate.

Respectfully submitted,

INTEGRATED MEDICAL SYSTEMS, INC.

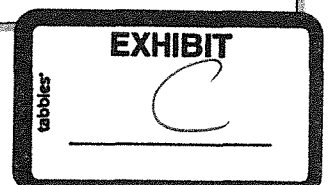
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IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL

INTEGRATED MEDICAL)	
SYSTEMS, INC.,)	
)	
Petitioner,)	
)	
vs.)	No. 15-TT-247
)	
CONSTANCE BEARD, in her)	
official capacity as)	
DIRECTOR OF THE ILLINOIS)	
DEPARTMENT OF REVENUE, and)	
the ILLINOIS DEPARTMENT)	
OF REVENUE,)	
)	
Respondents.)	

The discovery deposition of PATRICK J. DiORIO, taken under oath on the 20th day of June 2018 at Suite 700, 100 West Randolph Street, Chicago, Illinois, pursuant to the Rules of the Supreme Court of Illinois and the Code of Civil Procedure, before JoAnn Krolicki, a certified shorthand reporter in and for the State of Illinois, pursuant to notice.



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21
22
23 **SULLIVAN REPORTING COMPANY**
24 **BY: JO ANN KROICKI, CSR**
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1 (Witness sworn.)
2 **WHEREUPON,**
3 **PATRICK J. DIORIO,**
4 called as a witness herein, having been first duly
5 sworn, was examined and testified as follows:
6 **EXAMINATION**
7 **BY**
8 **MR. SCHRIFTMAN:**
9 **Q. Thank you so much for coming in today,**
10 **Mr. DiOrio. There's a few ground rules.**
11 **A. Mm-hmm.**
12 **Q. If you don't understand a question, simply**
13 **ask me to rephrase. I want to make sure -- I know**
14 **that we're the department, and obviously, there are**
15 **disagreements, but I want to be sure -- my purpose is**
16 **to get an accurate representation of what you have to**
17 **say.**
18 **A. Okay.**
19 **Q. So if I ask a question that you don't**
20 **understand in any way, please ask me to clarify it,**
21 **and I would be more than happy to do so.**
22 **A. Okay.**
23 **Q. If you answer no or yes to a question,**
24 **please say so verbally. So don't say, mm-hmm and**

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1 **I N D E X**
2
3 **PAGE**
4 **WITNESS:**
5 **PATRICK J. DIORIO**
6 **Examination by:**
7 **Mr. Schriftman** **4**
8
9
10 **EXHIBITS**
11 **PAGE**
12 **DiOrio Deposition Exhibit Number 1** **18**
13 **DiOrio Deposition Exhibit Number 2** **19**
14 **DiOrio Deposition Exhibit Number 3** **32**
15 **DiOrio Deposition Exhibit Number 4** **55**
16 **DiOrio Deposition Exhibit Number 5** **71**
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18 **DiOrio Deposition Exhibit Number 7** **79**
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1 un-uhn. I do that, too, and I have to remind myself
2 not to do that, because on the record, it won't come
3 up clearly.
4 Another thing is, because she's
5 taking down the record and it's difficult when you
6 have two people talking at once, I'm going to try to
7 get a whole question out. Obviously, your counsel
8 may object -- we'll talk about that in a second, but
9 we try the best we can to not overlap each other,
10 because it's harder for her to take down in the
11 deposition transcript.
12 If you need to take a break, just let
13 me know. We hope it won't be very long. I know we
14 have this scheduled until 4:00 o'clock. We hope it's
15 not going to go that long. If you need to take a
16 break, let me know.
17 There should be limited objections,
18 but it's possible that your counsel may instruct you
19 not to answer or he may object. Typically,
20 objections wouldn't have instructions not to answer
21 except for attorney-client privilege or things of
22 that nature. But obviously, if he does have an
23 objection, form of the question, whatever the
24 objection may be, he should be able to put that in

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1 the record.

2 Does all that make sense?

3 A. I understand everything you said.

4 Q. Okay. Great.

5 For the record, will you please state

6 and spell your name?

7 A. Patrick J. DiOrio, P-a-t-r-i-c-k, J,

8 D-i-O-r-i-o.

9 Q. Some of the questions, especially in the

10 beginning, are just kind of generic background

11 questions that we ask typically in any deposition.

12 A. Mm-hmm.

13 Q. Have you ever been deposed before?

14 A. Yes.

15 Q. And what was the context of that?

16 A. A civil matter.

17 Q. Okay. And was that a civil matter filed by

18 you or filed by someone else?

19 A. One filed by our corporation; one filed

20 against us.

21 Q. Okay. And generally, can you tell me what

22 those matters dealt with?

23 A. A noncompete for a former employee, and the

24 other was collections of unpaid bills.

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1 Q. And which one was the one filed?

2 A. Collections of unpaid bills, we filed. Our

3 company filed.

4 Q. Okay. Have you or your company ever been

5 accused of a crime?

6 A. No.

7 Q. Okay. Have you taken any medications that

8 would impair your ability to testify completely and

9 truthfully today?

10 A. No.

11 Q. So starting with college, can you please

12 briefly describe your educational background?

13 A. I have a BA in Business from St. Xavier

14 College, four year degree.

15 Q. Any beyond college?

16 A. No, no.

17 Q. Do you have any certifications or

18 licensures?

19 A. No.

20 Q. And then from that same period of time,

21 let's say, college on, can you describe your work

22 history and related responsibilities?

23 A. So you want a complete work history of all

24 the jobs I did since college?

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1 Q. Well, no, not every job in the sense of if

2 you worked for a firm and you had different jobs in a

3 firm. But if you just very generally want to go over

4 since college the different jobs you have had, the

5 places you've worked?

6 A. Okay. So my first job out of the college,

7 I sold copiers for a company called Modern Business

8 Systems.

9 Q. Okay.

10 A. My second job out of college, I sold

11 surgical instrumentation for the Surgical Instrument

12 Division of Johnson and Johnson, a company called

13 Codman and Shurtleff.

14 Q. And what was the time period for which you

15 had that job?

16 A. I worked for Codman and Shurtleff from 1981

17 to 1984.

18 Q. And what did that job entail more

19 specifically?

20 A. Going into the operating room and selling

21 surgical instrumentation to surgeons, to

22 cardiovascular surgeons, neurosurgeons.

23 We were trained on the use of the

24 products, and we would go into surgery and show the

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1 physicians the new surgical instruments, retractors,

2 what-have-you, that we were selling.

3 Q. And then after that job?

4 A. After that job, I worked for a company

5 called IVAC, which was the IV Infusion Pump Division

6 of Eli Lilly selling IV infusion pumps to hospitals

7 in the Chicagoland area and central Illinois. I did

8 that for five years.

9 Q. So that would be what time period roughly?

10 A. So that would be from '84 to '89.

11 Q. And then after that?

12 A. From 1989 to 1991, I worked for a company

13 called Melcor selling noninvasive monitoring systems

14 to respiratory therapists and anesthesiologists.

15 Q. After that?

16 A. After that, I went back to work for a

17 division of Eli Lilly, a company called Advanced

18 Cardiovascular Systems selling angioplasty balloons,

19 guiding catheters into cath labs with interventional

20 cardiologists. I did that for two years.

21 Q. That would bring us to about what year?

22 A. '91.

23 Q. And then after that?

24 A. In 1991, I went into business with a couple

Page 9

1 of business associates, and I had a mail order home
2 care company.
3 Q. What was the name of that company?
4 A. It was called Omni Care Medical Products.
5 Q. And how long were you in that business?
6 A. I think we still have the corporation as
7 being -- I'm not really sure, to tell you the truth.
8 But we were effectively in that business for about
9 six years.
10 Q. What did that business entail?
11 A. We called on -- we were a home care company
12 providing supplies to IV infusion patients in
13 addition to respiratory patients, and we kind of
14 concentrated on patients who either had a chronic
15 disease where there was high cost long term, or
16 someone who was injured in an industrial accident, or
17 once again, in actuary work, you know, there's a
18 finite number of dollars devoted to that injury, and
19 try to look at the products that they used from a
20 medical standpoint and try to find them the same or
21 equal products that cost less money, thereby
22 stretching their dollars out further.
23 Q. You said that was for how many years?
24 A. About six.

Page 10

1 Q. You said the company might still exist?
2 A. Well, the corporate entity might still
3 exist, but we stopped soliciting for business
4 probably in 1995.
5 Q. So then after 1995, what was the next place
6 you worked at?
7 A. So actually, in '94, I started another
8 company. It was called Galen Medical Systems
9 (phonetic.) And we had that company for about two
10 years, and then we morphed it into what is now
11 Integrated Medical Systems.
12 Q. When did that become Integrated Medical
13 Systems?
14 A. I think it was probably '95, '96, right in
15 there we incorporated.
16 Q. So since 1995, 1996, in that general time
17 frame, Integrated Medical Systems has been a fully
18 functioning company? It's still ongoing?
19 A. Yes, yes.
20 Q. Have you had any other jobs you have worked
21 at or been a part of since that point?
22 A. Any other jobs?
23 Q. Any other -- I'm going for the sake of
24 saving probably what will amount to two minutes, I'll

Page 11

1 just call it IMS as Integrated Medical --
2 A. No, not really. Integrated Medical Systems
3 has been my full-time job for probably over 20 years.
4 Q. Okay. And it's still your full-time job
5 today?
6 A. It is.
7 Q. Thank you for your patience --
8 A. No worries.
9 Q. -- for walking me through that, a long
10 history.
11 So when you first started IMS, you
12 were an owner; correct?
13 A. Yes. I was an owner. I was a shareholder.
14 I'm the primary shareholder of the company.
15 Q. You're still an owner, to be clear?
16 A. I have 91 percent ownership in the company.
17 Q. Has that 91 percent stayed the same the
18 entire time?
19 A. It stayed the same for probably the last 17
20 years.
21 Q. So are you aware of the audited issue
22 that's the subject of this litigation?
23 A. I think I am, but you could refresh my
24 memory so that we know exactly what we're talking

Page 12

1 about.
2 Q. And I'm sure my followup questions -- to
3 the extent you have any questions or need
4 clarification, please let me know.
5 A. Mm-hmm.
6 Q. Generally, this is the audit that covers
7 the period of January 2009 to September of 2012
8 dealing with what we call the medical appliance
9 exemption.
10 A. Yes.
11 Q. Does that make sense to what you recall?
12 A. I don't recall necessarily the medical
13 appliance exemption. I think that what we were
14 talking about was a difference in a couple of things.
15 In the -- first of all, the tax rate at hand, and
16 also -- you know, I don't know any other exemption
17 that we're looking for. I'm not quite sure.
18 Q. And I want to understand what you know. So
19 to clarify, so I can understand what you understand,
20 what you recall, when you say, the tax rate, what is
21 your recollection as to what the issue was?
22 A. Well, I think that the majority of our
23 customers, I would say 90 percent or greater, have
24 reseller numbers where we cannot charge them tax.

Page 13

4 (Pages 10 to 13)

1 There are a handful of customers that have -- they're
2 taxable. So that is one of the issues at hand.
3 You know, we can't charge tax to
4 someone who has a reseller number, because they're
5 taking it and providing services to the customer.
6 But we have a handful of customers that we didn't
7 realize didn't have a reseller number on file, and
8 they were subject to sales tax of some kind.
9 So for us, we had changed software,
10 and when we went to the new software system, no one
11 realized that we didn't set the customers up
12 correctly in the system.
13 Q. When did the change of software take place?
14 A. You know --
15 Q. To the extent you can remember?
16 A. Yeah, I don't recall, to tell you the
17 truth.
18 Q. Was it --
19 A. It was prior to 2000 -- prior to 2009. We
20 went to a new version.
21 Q. I'm sorry. Was it prior to 2000 or 2009?
22 A. Prior to 2009.
23 Q. Okay. And so you went through that -- do
24 you remember why you went through that software

Page 14

1 conversion?
2 A. We were growing as a company, and the
3 software system that we were using we couldn't grow
4 with.
5 Q. Do you recall any role you may have had
6 with the audit when it was taking place?
7 A. You know, I can -- I wasn't directly
8 involved in the audit. In the first audit we had,
9 which was prior to -- the time frame we're talking
10 about right now that we are protesting is 2009
11 forward.
12 You know, I didn't get heavily
13 involved in the audit really, per se. The auditor
14 came in, and we had the Illinois Department of
15 Revenue come in with an audit previously. We kind of
16 know what they're looking for. They want files. We
17 provide them with files. We provide them with either
18 paper files or electronic files. So I didn't get
19 involved really. They came in and talked to other
20 people.
21 Q. Do you know what other people they talked
22 to?
23 A. They would have talked to primarily Laura
24 Sexton and/or Debbie Procacio, you know,

Page 15

1 peripherally.
2 Q. Okay. And we'll talk about Debra in a
3 second. But just generally, what was Laura Sexton's
4 role at the time?
5 A. She's, like, the Director of Operations.
6 So she has a number of tasks she's in charge of.
7 Q. And Debra Procacio?
8 A. She was our bookkeeper slash accountant.
9 She wasn't a CPA. She was really more of a
10 bookkeeper than anything else.
11 Q. And as of now, my understanding is
12 Miss Procacio no longer works for IMS?
13 A. She's been gone for some time.
14 Q. Was there any reason behind that or --
15 MR. HESS: Objection, relevance.
16 BY MR. SCHRIFTMAN:
17 Q. You can answer.
18 A. I can answer that question. She took a job
19 with somebody else.
20 Q. And Miss Sexton, she still works --
21 A. Yes.
22 Q. So speaking about this audit we're talking
23 about -- I understand there was a prior audit, but
24 speaking about the audit which covers the January '09

Page 16

1 through September of '12. I understand your position
2 is January '09 through some period, which is the
3 latest newest period. When did you first become
4 aware of that audit?
5 A. I think -- I'm not quite sure if they
6 sent -- they may have contacted our office and said
7 they were coming in on a certain day, week, month.
8 Q. When you say, they, you mean a member of
9 the Department of Revenue?
10 A. Yes. We got a letter from the state
11 basically saying they were coming in.
12 Q. And sometimes I may pause for a second and
13 look at my line of questioning --
14 A. That's fine.
15 Q. -- which is, hopefully, an effort to
16 short-circuit anything that you've already been kind
17 enough to answer.
18 A. Okay.
19 Q. And who else are the owners of IMS?
20 A. Daniel Izzo is a shareholder in the
21 corporation.
22 Q. Okay.
23 A. And Timothy Smith.
24 Q. Do you recall offhand what percentage they

Page 17

1 have?
2 A. I do recall.
3 Q. Would you be able to tell me what
4 percentage they have?
5 A. I can. Daniel Izzo has five percent
6 ownership in the corporation, and Timothy Smith has
7 four percent ownership.
8 Q. Because you have 91, I assumed there was
9 some derivation to come up with 100.
10 A. Mm-hmm.
11 Q. Just to close this loop, I want to present
12 what's marked as DiOrio Deposition Exhibit 1.
13 A. Okay.
14 (WHEREUPON, DiOrio Deposition
15 Exhibit Number 1
16 was marked for identification.)
17 BY MR. SCHRIFTMAN:
18 Q. I apologize these weren't marked
19 beforehand, but there's a potential we may not need
20 all of them.
21 So if you take a look at this, which
22 is a form EDA-8-A, is what's stated in the statement
23 correct to the best of your knowledge?
24 A. The spelling of the names is correct.

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1 There's no addresses, and since I don't know the
2 other parties' social security numbers, I would say
3 that they are correct.
4 Q. And just one more exhibit, a similar
5 document, DiOrio Deposition Exhibit 2, which is a
6 REG-3-C Business Information Update Form.
7 (WHEREUPON, DiOrio Deposition
8 Exhibit Number 2
9 was marked for identification.)
10 BY MR. SCHRIFTMAN:
11 Q. If you'll just take a moment to review this
12 form.
13 A. Okay. It appears to be correct.
14 Q. So to the best of your information, it
15 appears to be correct and accurate?
16 A. Yes.
17 Q. Do you currently own any other businesses
18 besides IMS, besides the one that you had mentioned
19 was the corporation?
20 A. I do not. Well, there may be other
21 corporate entities that are not currently in force.
22 So I would say, no.
23 Q. And I believe you answered this. I
24 apologize for being repetitive. So I'll ask it as a

Page 19

1 leading question.
2 You don't currently work anywhere
3 else besides IMS --
4 A. I don't.
5 Q. -- correct?
6 A. Unless you can show me otherwise that I do.
7 Q. Just clarifying.
8 A. I understand.
9 Q. A big part of what we're doing is
10 clarifying periods and information.
11 A. Mm-hmm.
12 Q. Were you involved in any other audit by IMS
13 either by the state or another state or federal
14 entity?
15 A. I was not involved. The state of Texas
16 came in and audited us some time ago. And they came.
17 We gave them paperwork. Actually, I don't even think
18 they ever came in. We sent them paperwork, and we
19 never heard back from them. So I can't really tell
20 you what happened there. I wasn't involved.
21 Q. When you say, the state of Texas, one thing
22 I want to understand a little bit. IMS, what states
23 do you sell to? Maybe it's easier to say the states
24 you don't?

Page 20

1 A. Alaska and Hawaii.
2 Q. Do you sell throughout the whole country?
3 A. We do.
4 Q. Excluding Alaska and Hawaii?
5 A. We might do business in Hawaii now, but
6 during the audit time frame, I don't believe we did
7 business in Hawaii or Alaska.
8 Q. We were talking about what you recall about
9 the audit, what the issue was generally.
10 A. Mm-hmm.
11 Q. Do you agree with the audit findings?
12 A. No.
13 Q. Can you explain why?
14 A. Well, I think that to the best of my
15 recollection, the issue was not that we owed tax. We
16 owed tax. The question was the rate of tax and the
17 taxability of certain items.
18 Q. So just to clarify, where you disagreed was
19 with the applicable rate that was applied for certain
20 items?
21 A. I would say to a degree, yes, that would be
22 correct. And the level of tax from the standpoint
23 of -- you know, I don't recall the exact specifics of
24 the audit at this point in time, but I believe that

Page 21

<p>1 the auditor came in and said, you owe us 2 120,000 dollars, and we looked at it, and the auditor 3 had everything at the high tax rate, everything. 4 And we looked at it and said, well, 5 per our last audit, 92 percent of what we sold was 6 low tax. The only thing that was high tax were 7 gloves and batteries. Now you're telling me 8 everything that we sold -- and it was really to three 9 customers. We're only talking about three or four 10 customers; okay? One primary customer. You're 11 saying everything we sold to these folks is now high 12 tax? 13 Q. Do you recall which customers? 14 A. They go by a couple of different names. 15 They have multiple entities. So I think it's Midwest 16 Infectious Disease, but they could be called 17 Heartland Home Care as well because we billed to a 18 couple of different entities. 19 Q. Again, just to close that loop to make sure 20 I'm clear, by your recollection, it wasn't an issue 21 of nontaxability versus taxability. It was rate of 22 tax for certain items? 23 A. Yes. 24 Q. Low rate versus high rate?</p> <p style="text-align: right;">Page 22</p>	<p>1 Q. So what were her qualifications that led to 2 her being hired? 3 A. She worked in an accounting department, 4 worked in an accounting capacity at several 5 companies. So we just looked for her to, you know, 6 help us out on the accounting side. 7 We had a software program that 8 basically did most of the accounting duties, and she 9 was just there to make sure that everything was 10 balancing and in order and that our tax filings were 11 done properly. 12 Q. So did she handle the tax filings? 13 A. You know, we had an outside accountant, 14 also, a CPA handling the tax filings, our state and 15 federal income tax. But she was supposed to make 16 sure we had all of our licensure and all of our taxes 17 being paid on a daily, weekly, monthly basis. 18 Q. So who was the outside company? 19 A. Patrick J. Folliard. 20 Q. Is that the name of an individual and a 21 business or just the name of an individual? 22 A. It's Patrick J. Folliard and Associates, 23 CPA, yes. 24 Q. Going back to Miss Procacio for a second --</p> <p style="text-align: right;">Page 24</p>
<p>1 A. Yes. 2 Q. So the 6.25 rate, the regular rate, versus 3 the 1 percent for certain medical equipment? 4 A. Yes, yes. 5 Q. So we talked about Debra Procacio. 6 A. Yes. 7 Q. Can you describe what her title was within 8 IMS when she was working there? 9 A. She was the Accounting Manager. 10 Q. And what period did she work there? 11 A. I couldn't tell you what period she worked 12 there. She worked for about a little over two years. 13 Q. And you mentioned this a little bit, but 14 just to again close that loop, do you recall how she 15 participated in the audit with any specificity? 16 A. I couldn't tell you. I don't recall how 17 she participated in the audit at all. 18 Q. You mentioned that she wasn't a CPA? 19 A. She was not. 20 Q. And she wasn't an enrolled agent either? 21 A. No. 22 Q. So were you involved in hiring 23 Miss Procacio? 24 A. I was.</p> <p style="text-align: right;">Page 23</p>	<p>1 A. Mm-hmm. 2 Q. -- so she was involved in making sure you 3 were in compliance more so than the actual returns? 4 I just want to make sure I understand. 5 A. Yeah. She was more or less making sure 6 that everything was kept in order on the accounting 7 side. 8 Q. And to the best of your knowledge -- and 9 again, I apologize if it's repeating. 10 To the best of your recollection, it 11 was Miss Procacio and Miss Sexton who were directly 12 involved with the auditor during the audit? 13 A. They were, yes. 14 Q. And you mentioned Patrick J. Folliard. 15 A. Mm-hmm. 16 Q. Was he responsible for filing the returns 17 during that period from '09 to 2012 to the best of 18 your knowledge? 19 A. Yes. You know, on the audit, I would think 20 that Laura Sexton was more heavily involved, because 21 she knew how to operate the computer system at a 22 higher level than Debbie Procacio did. 23 Q. Do you have any personal knowledge of who, 24 between the two of them, was more involved in</p> <p style="text-align: right;">Page 25</p>

7 (Pages 22 to 25)

1 communicating with the Department of Revenue?
2 A. I don't recall who was more involved.
3 Q. And since we're talking about that -- I'll
4 get to Miss Sexton in a second.
5 A. Mm-hmm.
6 Q. Do you recall any conversations you had
7 with either Miss Procacio or Miss Sexton regarding
8 the audit?
9 MR. HESS: At what time?
10 BY MR. SCHRIFTMAN:
11 Q. While the audit was taking place?
12 A. I have no recollection of the
13 conversations, because the conversations were
14 probably more, they're asking for this report,
15 they're asking for this report. Okay, give them the
16 reports they're asking for.
17 You know, I really wasn't -- you
18 know, we had nothing to hide, so give them anything
19 they wanted.
20 So really, no detailed conversation
21 that I can recall that speaks to me.
22 Q. Do you have any recollection of about how
23 many conversations you would have had during that
24 audit period? I know it's a general question.

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1 A. I have no recollection of any of that, to
2 tell you the truth.
3 Q. More than 20?
4 A. It could have been less than 20. I don't
5 recall any of the conversations.
6 We had been through the audit process
7 before with a previous auditor, so we had an idea of
8 what they were looking for. They come to you. They
9 ask you for certain reports. They want to pick
10 through certain invoices. Give the auditor whatever
11 he or she needs.
12 Q. Getting to Miss Sexton --
13 A. Mm-hmm.
14 Q. -- what was her position or title during
15 the audit period?
16 A. She was the Director of Operations.
17 Q. Is she still currently Director of
18 Operations?
19 A. She is.
20 Q. How long has she been Director of
21 Operations?
22 A. Since we started the operation.
23 Q. Going back to --
24 A. 25 years.

Page 27

1 Q. That's a long time.
2 A. She's employee number one.
3 Q. And were you involved in hiring Miss Sexton
4 as well?
5 A. I was.
6 Q. And what were her qualifications that led
7 her to be hired?
8 A. She had a college degree. What college she
9 graduated from I could not tell you. She had a high
10 level of computer skills, was highly organized. So
11 she was the first employee I hired when it was just
12 her and I.
13 Q. And so when the business first started, it
14 was just you and her working day to day in the
15 business?
16 A. Yes.
17 Q. I understand there are two other minority
18 owners.
19 A. They weren't even working at the company
20 yet.
21 Q. Okay. Do you know someone named Timothy
22 Smith?
23 A. Yes.
24 Q. Can you let me know who he is and how he

Page 28

1 was involved in IMS during the audit period?
2 A. He is a shareholder in the corporation. He
3 was in charge of a selling group that sold outside
4 the State of Illinois. He's based out of Texas. And
5 he was responsible for all -- for Texas and all the
6 states west going out to California and the
7 northwest. He's a shareholder of four percent in the
8 company.
9 Q. So it's the same Timothy Smith that was
10 listed as four percent?
11 A. Yes. And he was not involved in the audit
12 period, because he wasn't physically here.
13 Q. Did you have any conversations with him
14 about the audit during the audit, itself?
15 A. Nothing other than the fact that the
16 Illinois Department of Revenue was back in auditing
17 us.
18 Q. And we had mentioned Daniel Izzo.
19 A. Yes.
20 Q. Can you describe who he is and what his
21 role is with IMS?
22 A. Dan Izzo is a nurse, and he is our Director
23 of Clinical Support. He is involved in clinical
24 education and sales with our sales team.

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<p>1 Q. Did he ever have any participation in the 2 audit?</p> <p>3 A. He did not, other than he was informed 4 about it.</p> <p>5 Q. And how was he informed about it?</p> <p>6 A. Nothing other than the fact that the 7 Illinois Department of Revenue is back in auditing 8 our books.</p> <p>9 Q. Frankly, just so you understand, some of 10 these questions may seem redundant.</p> <p>11 A. Mm-hmm.</p> <p>12 Q. We're kind of going through our list just 13 to narrow things down.</p> <p>14 A. I understand.</p> <p>15 He also -- I think in our appeal he 16 was involved in discussing uses of certain products 17 from a clinical standpoint.</p> <p>18 Q. Do you know someone named Karen Burke?</p> <p>19 A. I do.</p> <p>20 Q. Can you please describe who she is and what 21 she did for IMS when the audit was taking place?</p> <p>22 A. I think that she was -- once again, during 23 this particular time frame, I don't know that she was 24 involved in this audit. In this audit time frame, I</p> <p style="text-align: right;">Page 30</p>	<p>1 A. I think she's been here three -- I think 2 she's been here maybe about three years, maybe a 3 little over.</p> <p>4 Q. So sometime in the 2015 time frame, give or 5 take?</p> <p>6 A. Right around there. I'm not exactly sure. 7 It could have been longer. Time flies. She could 8 have been here four or five years.</p> <p>9 But I do know that she has had 10 interaction with auditors from the State of Illinois. 11 She is a CPA.</p> <p>12 (WHEREUPON, DiOrio Deposition 13 Exhibit Number 3 14 was marked for identification.)</p> <p>15 BY MR. SCHRIFTMAN:</p> <p>16 Q. Okay. So let's go to what I have marked as 17 DiOrio Deposition Exhibit 3. It's a copy of the 18 petition filed in this case. If you want to take a 19 moment to review that?</p> <p>20 A. Okay.</p> <p>21 MR. HESS: Just a point of clarification, 22 there were other exhibits attached to the actual 23 petition. This is an abridged copy. I just want to 24 make that clear for the record.</p> <p style="text-align: right;">Page 32</p>
<p>1 do not believe that she was involved. I think she 2 came on after this audit with Debbie Procacio. I 3 think she took Debbie Procacio's place.</p> <p>4 So there may have been an ongoing 5 audit, but I'm not certain of the time frame we're 6 speaking of, because we had Debra Procacio for a 7 period of time, and then Karen Burke came on. She's 8 a CPA and she was involved.</p> <p>9 And she did interact with -- you 10 know, we have ongoing audits right now pretty much 11 contiguously. So I'm unsure if she was involved in 12 this original audit, or if she's involved in the 13 audit that's going on currently. So we're under 14 constant attack now from you folks.</p> <p>15 Q. To the best of your knowledge, when you 16 say, audits, is there is a current audit with the 17 Illinois Department of Revenue?</p> <p>18 A. There is right now, yes.</p> <p>19 Q. Are there any current other audits with any 20 other state or federal entities?</p> <p>21 A. None. Only the State of Illinois.</p> <p>22 Q. And when you had mentioned Miss Burke, she 23 took over, to the best of your recollection, from 24 Miss Procacio, do you recall around when that was?</p> <p style="text-align: right;">Page 31</p>	<p>1 MR. SCHRIFTMAN: How is it abridged?</p> <p>2 Because I would have no problem providing a full 3 petition.</p> <p>4 MR. HESS: No. The other exhibits that 5 were attached to the petition. It's about this 6 thick. I just want to put that on the record.</p> <p>7 MR. SCHRIFTMAN: Again, to clarify the 8 record, the actual petition, itself, without exhibits 9 is full.</p> <p>10 MR. HESS: Correct, correct.</p> <p>11 BY MR. SCHRIFTMAN:</p> <p>12 Q. Have you seen this petition before?</p> <p>13 A. I may have looked it over a few years ago.</p> <p>14 Q. Without discussing the discussions you may 15 have had with attorneys, did you provide any input 16 into the compilation of this?</p> <p>17 MR. HESS: I'd object to the question. I 18 don't know how he can answer that without talking 19 about input he gave to attorneys.</p> <p>20 So if you had input in some other 21 fashion other than talking to us, you can answer. 22 Otherwise, I'd object based on attorney-client 23 privilege.</p> <p>24 MR. SCHRIFTMAN: Okay.</p> <p style="text-align: right;">Page 33</p>

1 BY THE WITNESS:
2 A. You know, I don't understand the question.
3 Can you rephrase it?
4 MR. SCHRIFTMAN: Sure.
5 I'll try to keep your objection in
6 mind when I ask this.
7 MR. HESS: Sure.
8 BY MR. SCHRIFTMAN:
9 Q. Other than any communications you may have
10 had with attorneys, to the extent you can answer, did
11 you provide any input regarding the compilation of
12 this petition?
13 A. No.
14 Q. And with the same caveat, other than any
15 communications with attorneys, are you aware of
16 anyone else, not attorneys, at IMS who had any input
17 in the compilation of this petition?
18 A. Not that I can recall.
19 Q. Okay. So let's look at Page 9, which is
20 Count II, beginning of Page 9.
21 And I know that you had reviewed this
22 for a couple of minutes, not with a fine-toothed
23 comb.
24 Are you familiar with the 15 items

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1 for which the business is claiming the low tax rate
2 should apply?
3 A. Are the 15 items on the subsequent pages
4 after Page 9?
5 Q. Well, if you look at -- let me clarify
6 that. If you look at Paragraph 41 through 55, there
7 are 15 items listed.
8 A. Am I familiar with these products?
9 Q. Yes.
10 A. I am.
11 Q. Okay. Maybe the easiest way would be to go
12 through some of these individually.
13 A couple of questions. Looking at
14 those 15 items, have you personally sold any of these
15 items?
16 A. Have I personally sold any of these items?
17 Yes.
18 Q. Okay.
19 A. Yes. I have sold most of these items. Not
20 necessarily all of them.
21 Q. Okay. So maybe the easiest thing to do is,
22 while we go through them -- well, could you tell me
23 which of these 15 items you have sold personally?
24 A. Which of these 15 items? I would say if we

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1 went through these by number --
2 Q. Sure.
3 A. -- 41, 42, 43, 44, 45, 46, 47, 48, 49, 50,
4 52, 53, and 54, 55. So there's only a couple that I
5 haven't sold.
6 Q. By my count, only the Foley Tray, Catheter,
7 was not?
8 A. Right. Now, a customer may have purchased
9 it, but I never personally sold it to them.
10 Q. And when you say you have sold them, can
11 you clarify for me? And if I need to parse out the
12 question, I'm happy to do so.
13 In what time period would you have
14 sold those items? Because I know you have a very --
15 experience selling things even before IMS, so I want
16 to clarify.
17 A. So these items could have been sold in the
18 last 25 years that we were in existence. All of
19 these items are continuously used by clinicians and
20 patients. They're disposable, sterile.
21 Q. I'm trying to short-circuit the question
22 because I'm trying to make it efficient as well.
23 Are these all items you have sold
24 while you have been working at IMS?

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1 A. Yes.
2 Q. Is your familiarity with them in large part
3 due to selling them at IMS?
4 A. Yes.
5 Q. Have you administered any of these items?
6 A. I'm not a clinician. I'm not licensed to
7 administer anything. So, no, would be the answer.
8 Q. Have you seen any of these products
9 administered?
10 A. I have.
11 Q. And which ones?
12 A. Just about all of them.
13 Q. And you had mentioned your staff before.
14 To the best of your knowledge, who at IMS would have
15 been involved in administering any of these items at
16 any time?
17 A. So no one at IMS gets directly involved in
18 administering. We sell to the health care entities
19 who administer these items to the patients. These
20 are patient care items.
21 Q. Daniel Izzo, you said he's -- what was his
22 title?
23 A. He's Director of Clinical Support.
24 Q. He wouldn't have been involved in any way

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1 in administering any of these products?
2 A. No. So can you define for me what your
3 definition of administering is?
4 Q. I suppose my definition would be applying
5 the product toward a patient?
6 A. No. We educate the customer base. We do
7 not provide patient care. So we educate the
8 clinicians, the pharmacists, the techs on how the
9 products are used. We don't get materially involved
10 in any patient care.
11 Q. You mentioned, clinicians and techs. To
12 the best of your knowledge, the most you can, what
13 type of individuals or professionals would administer
14 these products?
15 MR. HESS: Objection, form, broad.
16 BY MR. SCHRIFTMAN:
17 Q. Answer it if you can.
18 A. Okay. So it depends on the product. So in
19 looking at Numbers 41 through 49, it would be nurses
20 that would be administering and maybe physicians.
21 50 can be done by a nurse, okay, at
22 the patient bedside. It would be done by a pharmacy
23 technician or a pharmacist within the pharmacy when
24 they're filling that device.

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1 A Foley tray, once again, that's a
2 nursing item that would be administered.
3 Once again, Huber Pros, IV Start
4 Kits, Port Access Sets, and sterile IV rings, which
5 is Number 55, that's all a nursing use product.
6 Q. Okay.
7 A. It can be used by physicians, but primarily
8 nurses under the guidance of a physician.
9 Q. Looking at Paragraph 46, which are Huber
10 needles?
11 A. Yes.
12 Q. As you're explaining, if I understand
13 correctly, these are items which are commonly used in
14 a medical setting. Would that be correct?
15 A. It depends on what you consider common. I
16 would say they're all used in the medical setting,
17 absolutely, but they're not necessarily common. Some
18 of these are highly specialized products.
19 A commonly-used medical product would
20 be a glove or a shoe cover or a gown. A lot of these
21 are not necessarily commonly. They're highly
22 specialized for specific therapies.
23 Q. Can you explain to me the different
24 components of a Huber needle?

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1 A. I can. What part of the Huber needle would
2 you like to talk about, the peripheral?
3 Q. I'd like to know the different parts. Are
4 you saying there's different types of Huber needles?
5 A. Well, there are different types of Huber
6 needles, but they all do the same thing. The Huber
7 needle is L-shaped. Okay? The needle is attached
8 here bonded to a piece of tubing. Okay? The tubing
9 is here.
10 The Huber needle basically gets
11 inserted into a Port-A-Cath, which is
12 subcutaneously -- basically, there's a procedure
13 that's done where that subcutaneous catheter is then
14 attached to the -- one of the main arteries. Okay?
15 And this is how chemotherapeutic drugs are delivered
16 to patients through Huber needles.
17 Q. Just for my clarification, if you look at
18 Paragraph 52, it's something called a Huber Pro
19 Safety Huber Set.
20 A. Okay. So that's a type of Huber needle.
21 So there are different types of Huber needles made by
22 different manufacturers.
23 Q. And again, this is just a question so I can
24 understand. So that's in a sense a subset of what's

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1 in 46 or --
2 A. Okay. So in health care, after the AIDs
3 crisis, there was a concern with needle sticks. So
4 the Huber Pro is a device that once it's pulled out
5 of the Port-A-Cath, the needle retracts. So that the
6 clinician does not get accidentally stuck by that
7 Huber needle.
8 Q. And I'm not going to ask each one of these,
9 but I'm going to ask for a few of them just for my
10 own knowledge.
11 A. Okay.
12 Q. Number 47, can you explain in laymen's term
13 how an IV Administration Set works? I know it may
14 seem basic, but just to make sure.
15 A. So an IV Administration Set is the conduit
16 by which patients receive either a lifesaving drug,
17 you know, antibiotics, autoimmune drugs. It's the
18 conduit that the drug that saves their life, reduces
19 their infection process, is delivered via.
20 Q. When you say, a conduit, I'm picturing an
21 IV bag with a drip and the line that goes into a PIC,
22 is that what you mean by a conduit?
23 A. Yes, yes.
24 Q. Okay. And how are IV Administration Sets

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1 packaged to the best of your knowledge?
2 A. I don't quite understand the question.
3 Q. So if I understand, you sell -- let's say
4 you sell an IV Administration Set to ABC Hospital?
5 A. Mm-hmm.
6 Q. How is that IV Administration Set packaged
7 when it's going from you or from your distributor to
8 ABC Hospital?
9 A. Well, we typically get it from the
10 manufacturer. And the manufacturer packages so many
11 of those IV Administration Sets per case anywhere
12 from 20 to 50 to 100. They are sterilized in a
13 sterile package from the manufacturer, in a clear
14 package with the directions for use inside of it,
15 which is then peeled out and dropped into a sterile
16 field.
17 So they're packaged sterilely. I
18 don't know any other way to describe it.
19 Q. And I would be surprised if anything that
20 was going to be inserted into the human body was not
21 sterile.
22 MR. HESS: You'd be surprised.
23 BY MR. SCHRIFTMAN:
24 Q. Well, we would hope; right? At least

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1 anything you would sell would not be sterile is the
2 point.
3 I guess my point being, as my
4 understanding is, you have an IV bag, you have a
5 line, you have a PIC, maybe other items. Of course,
6 now they have machines there set up, so depending on
7 what's being pumped, all that stuff.
8 A. The IV bag externally is not sterile. It's
9 sterilized internally, and the fluid is sterile, and
10 the fluid path to the patient is sterile.
11 Q. Now, I guess my question is, to the extent
12 you know, and if you don't, that's fine, what's
13 contained in an IV Administration Set package?
14 A. Every IV Administration Set is potentially
15 different depending on what kind of technology is
16 being used to deliver the drug. It can be delivered
17 via gravity. It can be delivered via a dial flow.
18 It can be delivered via an IV infusion device, and
19 there are hundreds of different types of IV infusion
20 devices.
21 So to tell you what's in the package
22 of an IV tubing set, you know, there's a drip
23 chamber. There's IV tubing. There's usually either
24 two or three needleless Y sites, and there's a male

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1 and a female adaptor at the distal end. There's a
2 spike at the top end which goes into a bag of some
3 sort.
4 But there can be hundreds, if not
5 thousands, of different variations of an IV infusion
6 set, itself, so I can't give you one that would cover
7 all of them.
8 Q. Nor do I want you to if that's not the
9 case. So does IMS sell hundreds and thousands, as
10 you say, of varieties --
11 A. Hundreds of different varieties of IV
12 infusion sets, yes.
13 Q. Let's look at Paragraph 49. This is ICU
14 products, sterile. Can you explain what these
15 products are?
16 A. ICU products are -- it's a particular
17 manufacturer.
18 Q. I guess my understanding is -- again, I'm
19 just trying to understand it.
20 A. Mm-hmm.
21 Q. ICU means Intensive Care Unit; correct?
22 Typically?
23 A. Well, it would mean Intensive Care Unit,
24 yes. It would mean Intensive Care Unit.

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1 I think that the ICU company makes a
2 number of different types of components that are
3 involved in IV therapy safety. Needle systems,
4 closed system connectors that are used in the
5 pharmacy as well as a number of different devices
6 that protect the clinician from inadvertently being
7 exposed to -- a lot of these drugs that save you can
8 harm you.
9 Q. When you say that, do you mean gloves, as
10 an example?
11 A. No, not gloves. So ICU makes IV infusion
12 sets with needleless systems on them. Once again,
13 they're big with safety, reduction of the use of
14 needles.
15 So the ICU products, they are all
16 sterile. They come in a number of different --
17 there's hundreds of different components that are
18 used for patient and clinician safety that are
19 incorporated into the IV infusion therapy system, if
20 you will.
21 Q. I think you said this, so I apologize if
22 I'm repeating. These could include needleless valve
23 connectors?
24 A. It could.

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1 Q. Am I to assume that just like the last
2 product we were discussing, the IV Administration
3 Sets, that the way these are packaged, there could be
4 hundreds of different variations as to how they're
5 packaged?
6 A. Yes, yes.
7 Q. And again, I'm trying to cut to the quick.
8 A. I understand.
9 Q. Now, looking at Number 50, can you explain
10 to me how an Eclipse Home Pump works?
11 A. I can.
12 Q. Would you please do so?
13 A. Sure. An Eclipse Home Pump is an
14 elastomeric device which looks like an empty balloon,
15 which is then filled with drug, and the drug is put
16 into the product. And instead of having a mechanical
17 device, because some people can't handle the
18 mechanical devices in their home, they put it in a
19 little ball and fill it with drug, and then it is
20 connected to an IV tubing, and the drug is then
21 delivered, whatever drug it may be, over a certain
22 time frame to the patient.
23 Q. When you say filled with drugs, you mean
24 some sort of liquid drug, I'm assuming?

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1 A. Yes, a liquid drug, a antibiotic, a
2 chemotherapeutic agent, a TPN. Anything can be put
3 into that modality. So it's basically a disposable
4 pump.
5 Q. Again to cut to the quick, are these
6 packaged in a wide variety of ways, to the best of
7 your knowledge?
8 A. Yeah, they're packaged by different sizes
9 and rate ranges. And then different materials are
10 used in the manufacture of the pumps, themselves,
11 depending on the drug that's being delivered, whether
12 it's TPN, whether it's a chemotherapeutic agent,
13 whether it's an antibiotic.
14 Because different drugs interact
15 differently with different plastic products. Some
16 leach. Some don't.
17 Q. Where is this pump usually located on the
18 body? Or can it be located in a variety of places?
19 A. Well, the pump is typically in a backpack
20 of some kind, a little fanny pack.
21 Q. Right. I understand it's not in the body,
22 but where does it enter through the body? Not the
23 pump itself, but the medicine, or as you said --
24 A. It can be a number of different --

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1 depending on the therapy, it can go in through a
2 peripheral line. It can go in through a peripherally
3 inserted central line, a PIC line. It can go in
4 through a central line. It can go through a
5 Port-A-Cath. Any one of those anywhere IV therapy
6 would be done.
7 Q. Lets look at Paragraph 53, which is the IV
8 Start Kits?
9 A. Yes.
10 Q. We're getting towards the end.
11 Can you explain -- I mean, we talked
12 about IV Administration Sets. These are IV Start
13 Kits. Can you explain to me what the different is?
14 What an IV Start Kit is?
15 A. An IV Start Kit is a sterile field. It's a
16 package that is opened up which creates a sterile
17 field for the clinician to work within so that they
18 can then put a catheter into a patient. Whether it's
19 a peripheral catheter, a peripherally inserted
20 central catheter, they have to create a sterile field
21 in which to work.
22 So they will create a sterile field
23 on a table, let's say, in front of them where they
24 take the components out that they are going to use to

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1 create the sterile field around the area they are
2 going to do a needle puncture.
3 Q. And like the other items, are they packaged
4 in a wide variety of ways?
5 A. Thousands of different ways.
6 Q. So can you describe, in your opinion, the
7 15 items we discussed, you believe they're medical
8 appliances?
9 MR. HESS: Objection to foundation, but
10 I'll let the witness answer.
11 BY THE WITNESS:
12 A. So when you say do I think they're medical
13 appliances, can you be more specific? Medical
14 appliances versus nonmedical appliances?
15 BY MR. SCHRIFTMAN:
16 Q. Let me take a step back, so there won't be
17 any foundation issue. There may be other objections,
18 but to the best of my understanding, we're dealing
19 with -- there's no dispute that it's medical
20 equipment. Would you agree with that?
21 A. There's no dispute.
22 Q. And there's no dispute that you sell or are
23 involved in distributing medical equipment to people,
24 whether it be the physicians, different medical

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<p>1 facilities, nursing homes, hospitals?</p> <p>2 A. There's no dispute.</p> <p>3 Q. There's no dispute that you provide a</p> <p>4 needed service?</p> <p>5 A. Yes.</p> <p>6 Q. Are you aware that under the department's</p> <p>7 statutes and regulations, there's something called a</p> <p>8 medical appliance?</p> <p>9 MR. HESS: I'm just going to object to</p> <p>10 relevance here, but go ahead.</p> <p>11 MR. SCHRIFTMAN: Well, it's the point of</p> <p>12 the entire audit.</p> <p>13 BY THE WITNESS:</p> <p>14 A. So I'm aware that the department has</p> <p>15 their -- you know, I don't know what they define as</p> <p>16 being a medical appliance and what is not a medical</p> <p>17 appliance. So, you know, I think that the -- you</p> <p>18 know, I think that we're not disputing that. These</p> <p>19 are medical appliances of some sort; right?</p> <p>20 We're disputing the taxability,</p> <p>21 whether it's a high tax medical appliance or whether</p> <p>22 it's a low tax medical appliance. I think that's</p> <p>23 where the dispute lies.</p> <p>24</p> <p style="text-align: right;">Page 50</p>	<p>1 an audit like this and you dispute whether something</p> <p>2 is high tax, low tax, or no tax.</p> <p>3 So I think that per our previous</p> <p>4 audit, I think we came to the conclusion that the</p> <p>5 majority of the products that we sold were low tax.</p> <p>6 And when we had this audit with regard to medical</p> <p>7 appliances, we were okay with, you know, 80-to-90</p> <p>8 percent of the products being low tax, and things</p> <p>9 like gloves or batteries that can have multiple uses</p> <p>10 that are nonsterile products -- a battery can be used</p> <p>11 in a radio; okay? It can be used in a CD player. We</p> <p>12 can see why the state would want not to consider that</p> <p>13 a medical device and want to pay high tax.</p> <p>14 All the rest of these products, we</p> <p>15 are under the mindset that these are medical</p> <p>16 devices, these are medical products, are used in</p> <p>17 health care and should be low tax. We're not</p> <p>18 questioning whether we should pay taxes or not.</p> <p>19 We're willing to pay tax. The question is what the</p> <p>20 rate of tax is.</p> <p>21 I don't know if that answered your</p> <p>22 question.</p> <p>23 Q. It does answer. What I was getting at</p> <p>24 wasn't your opinion, and I understand the objection.</p> <p style="text-align: right;">Page 52</p>
<p>1 BY MR. SCHRIFTMAN:</p> <p>2 Q. So are you of the opinion that anything</p> <p>3 that's used -- that anything you sell is a medical</p> <p>4 appliance?</p> <p>5 MR. HESS: I'm going to interject an</p> <p>6 objection. Again, it's calling for a legal</p> <p>7 conclusion. The witness here is a fact witness, not</p> <p>8 as a lawyer. So the job of determining the outcome</p> <p>9 of the appeal is up to the lawyers, but Mr. DiOrio is</p> <p>10 here as a fact witness. He can testify to facts.</p> <p>11 And any opinions on legal matters I think should it</p> <p>12 be considered as such.</p> <p>13 Go ahead.</p> <p>14 BY THE WITNESS:</p> <p>15 A. I don't really know how to answer the</p> <p>16 question, because, you know, I don't know what the</p> <p>17 state --</p> <p>18 BY MR. SCHRIFTMAN:</p> <p>19 Q. Mm-hmm.</p> <p>20 A. -- determines as being a medical appliance.</p> <p>21 Okay? The state doesn't send us anything that tells</p> <p>22 us what is considered what type of medical appliance.</p> <p>23 There's nowhere you can really go within the state to</p> <p>24 get that kind of determination until you go through</p> <p style="text-align: right;">Page 51</p>	<p>1 But, yes, it did answer my question, so thank you.</p> <p>2 A. Because it's really unclear to me what the</p> <p>3 state considers a medical appliance or what's not</p> <p>4 considered. There's a broad definition.</p> <p>5 Q. Sure. And I'm not asking -- the next</p> <p>6 question, I'm not asking a legal opinion, but I will</p> <p>7 just generally ask, and you can object if you want</p> <p>8 to.</p> <p>9 Have you looked at any of the</p> <p>10 statutes for regulations yourself? I'm not asking</p> <p>11 your opinion on it, but have you looked at any of the</p> <p>12 statutes for regulations dealing with what is and</p> <p>13 what is not a medical appliance?</p> <p>14 A. So, you know, I have not. And I'll tell</p> <p>15 you why. Because 99.9 percent of what we sell, with</p> <p>16 the exception of a handful of customers, we have</p> <p>17 reseller certificates on file where we don't charge</p> <p>18 anybody a tax outside of a handful of customers. So</p> <p>19 this has become the exception for us, really not the</p> <p>20 rule.</p> <p>21 99.9 percent of our customers out</p> <p>22 there have reseller numbers, and they're</p> <p>23 not-for-profit, so they're not paying tax anyway. So</p> <p>24 we're not in the business of -- we're not a retail</p> <p style="text-align: right;">Page 53</p>

<p>1 operation. We're a wholesale operation. So charging 2 tax and being familiar with all the tax laws is 3 something that's unfamiliar to us with the exception 4 of a handful of customers.</p> <p>5 Q. And you had mentioned before, and please 6 correct me if I'm paraphrasing incorrectly.</p> <p>7 A. Yes.</p> <p>8 Q. About 92 percent you had resale information 9 for, and the other 8 percent or so, you didn't?</p> <p>10 A. I think actually it's not even 8 percent. 11 It was five customers. We have 1200 or 1300 12 customers. There's four or five customers that we 13 didn't have resale numbers for.</p> <p>14 Q. And to the best of your knowledge, the 15 issues in this audit dealing with the low rate and 16 high rate, do they only pertain to those four or five 17 customers?</p> <p>18 A. That's all they pertain to, because 19 everyone else has a retail number on file. And those 20 customers have sent us certificates saying that 90 21 percent of what they buy from us they believe should 22 be low tax.</p> <p>23 Q. And so for those four or five customers, 24 however many there are, they're less than 80 percent,</p> <p style="text-align: right;">Page 54</p>	<p>1 regarding it. So if you look at the bottom of Page 2 2 of Exhibit 4, it says: "The taxpayer did not file 3 returns from January 1, 2009, to August 31, 2011." 4 Do you see that?</p> <p>5 A. Mm-hmm.</p> <p>6 Q. Was that a yes?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Thanks.</p> <p>9 Do you know why no ST-1 returns were 10 filed from January of '09 through August of 2011?</p> <p>11 A. I do not.</p> <p>12 Q. Do you recall any period in which IMS 13 started filing sales tax returns?</p> <p>14 A. I have no recollection of that.</p> <p>15 Q. Do you recall any decision made as to the 16 filing or not filing of sales tax returns?</p> <p>17 A. No, I do not.</p> <p>18 Q. And you discussed how IMS has been around 19 for, say, approximately 25 years or so?</p> <p>20 A. Mm-hmm.</p> <p>21 Q. Has the business of IMS changed in what you 22 have sold from before the audit period to during the 23 audit period?</p> <p>24 A. No.</p> <p style="text-align: right;">Page 56</p>
<p>1 four or five customers, are they also reselling?</p> <p>2 A. They are not. They have made the decision 3 not to get involved in the high tax-low tax game and 4 just pay high tax.</p> <p>5 Q. And that's what I want to clarify, because 6 there are issues with if they're reselling --</p> <p>7 A. They're not reselling.</p> <p>8 Q. -- certificates versus not?</p> <p>9 A. They're not reselling.</p> <p>10 (WHEREUPON, DiOrio Deposition 11 Exhibit Number 4 12 was marked for identification.)</p> <p>13 BY MR. SCHRIFTMAN:</p> <p>14 Q. Okay. All right. Let's go to another 15 document here. So this is the audit comments. I'm 16 going to mark it DiOrio Deposition Exhibit 4.</p> <p>17 Why don't you take a few minutes to 18 take a look at that while we mark these? And take as 19 much time as you need to read it, and then just let 20 me know, and I'll ask you a few questions then.</p> <p>21 A. Okay.</p> <p>22 Q. Have you reviewed the document?</p> <p>23 A. I reviewed it.</p> <p>24 Q. Okay. I just have a few questions</p> <p style="text-align: right;">Page 55</p>	<p>1 Q. Did IMS service equipment as well?</p> <p>2 A. We did.</p> <p>3 Q. Okay. So during the audit period, what 4 percentage, ballpark, would you say of the business 5 was in servicing equipment as opposed to selling 6 equipment?</p> <p>7 A. A very small percentage.</p> <p>8 Q. Less than 5 percent?</p> <p>9 A. I would say.</p> <p>10 Q. Now, we talked about this a few minutes 11 ago. I think you mentioned it. On Page 4, if you 12 look in the middle of that page, it says: "The prior 13 audit was reviewed to obtain high/low rate 14 percentages as follows: High rate, 21 percent. Low 15 rate, 79 percent."</p> <p>16 Is that on par with what you recall?</p> <p>17 A. It may be. I don't recall, though.</p> <p>18 Q. Do you recall that there was a lower amount 19 of high rate --</p> <p>20 A. Absolutely. Absolutely a lower amount of 21 high rate.</p> <p>22 Q. And if you look at the next line, it says: 23 "The original plan was to use the percentages 24 established during the prior audit. The taxpayer</p> <p style="text-align: right;">Page 57</p>

<p>1 didn't agree with the above method. The taxpayer was 2 not sure how the prior auditor had arrived at the 3 above-mentioned percentages." 4 Do you see that? 5 A. I do. 6 Q. Were you aware in any way of this refusal 7 by someone to use the prior audit methodology? 8 A. No. 9 MR. HESS: Objection to foundation. It's 10 assuming what's in the document is correct. 11 BY MR. SCHRIFTMAN: 12 Q. Do you have any knowledge as to -- 13 A. No, I have no knowledge. I have no 14 knowledge of us disagreeing with that, nor making a 15 plan moving forward. 16 Q. So to follow up on that, you have no 17 knowledge -- strike that. 18 MR. HESS: Just to clarify my objection, I 19 think earlier in the deposition Mr. DiOrio testified 20 it was his recollection that 90 percent or so of the 21 items audited in the prior audit were the lower rate 22 items and a small percentage were high rate. So 23 that's why I say that's assuming what's in the 24 document is correct.</p> <p style="text-align: right;">Page 58</p>	<p>1 really couldn't -- I don't really recall much of 2 anything of that -- 3 Q. Do you recall any removal of any amnesty 4 interest or penalty? 5 A. I don't recall any of that. 6 Q. Were you involved in that Informal 7 Conference Board proceeding in any way? 8 A. I was. I was there. And it happened 9 relatively quickly. We stated our case, our 10 attorneys talked, and we didn't receive a 11 determination at that meeting. You wait and they 12 send you a formal notification. 13 I don't really recall. Obviously, we 14 didn't get anywhere on the informal meeting because 15 we're here today. 16 MR. HESS: Can we take a five-minute break? 17 MR. SCHRIFTMAN: Absolutely. 18 (WHEREUPON, a recess was had 19 in the above matter.) 20 MR. SCHRIFTMAN: Back on the record? 21 MR. HESS: Yes. 22 BY MR. SCHRIFTMAN: 23 Q. I think the last question I have here with 24 this document, if you look on Page 9 where it says:</p> <p style="text-align: right;">Page 60</p>
<p>1 MR. SCHRIFTMAN: That's fine. The document 2 speaks for itself. If anything, I'm trying to parse 3 out that issue of you had a prior audit. 4 I don't think there's a disagreement 5 that there's a lot less high rate in the prior audit 6 than there is in this audit. Whether that be 90-10 7 or 79-21, that's not the point I'm trying to get at. 8 I'm just trying to get to the point 9 of that lower rate and any decision-making process, 10 which I believe you testified you were not aware of 11 as to not use that prior information. 12 BY THE WITNESS: 13 A. I think in the current audit period when 14 Lisa Fox got done with our audit, she came to us and 15 said, I believe it was over 80 percent was high tax 16 and less than 20 percent was low tax, and we were 17 shocked by that, in that there was no consistency on 18 the state part, that it was a complete reversal. 19 And we're not disputing paying the 20 tax. We're disputing the percentages. 21 BY MR. SCHRIFTMAN: 22 Q. Do you recall any procedure with the 23 Informal Conference Board in this case? 24 A. You know, that was several years ago, so I</p> <p style="text-align: right;">Page 59</p>	<p>1 "Un-Agreed Issues." 2 In that first paragraph, it's 3 actually a couple of sentences. It says: "The 4 taxpayer disagreed with the department on the 5 following issues: Taxpayer feels that all the items 6 that they sell are low rate because they are used for 7 medicinal purposes." 8 To the best of your knowledge, is 9 that a correct statement? 10 A. No. 11 Q. Why? 12 A. Because we never made that statement. I 13 never had a conversation with Lisa Fox about that. I 14 think we believed that a percentage of what we sold 15 was high tax. We just didn't agree with the 16 percentages she presented to us. 17 So it wasn't that they were all low 18 tax. I think we agreed with the previous audit 19 that -- whether it was 80-20 or 79-21, we agreed with 20 the methodology that was done in the previous audit. 21 And when she came to us and basically said, I believe 22 it was, everything was high tax. Nothing was low 23 tax. We didn't agree with that. 24 That's where we had the problem. We</p> <p style="text-align: right;">Page 61</p>

1 knew we had tax to pay. We didn't feel that
 2 everything was low tax. We felt that the percentages
 3 were skewed.
 4 Q. You had mentioned before that there were
 5 certain items like gloves, for example, or batteries
 6 which could be used for a multitude of different
 7 ways.
 8 A. We have no problem paying the high tax on
 9 those items where there's no -- if it's not a sterile
 10 glove. A sterile glove can only be used in sterile
 11 settings. Okay?
 12 But, of course, the nonsterile gloves
 13 and products that have multiple uses outside of the
 14 medical industry, sure, we were more than willing to
 15 pay high tax on that.
 16 But we believe that the audit -- and
 17 I don't know the percentages, what the percentages
 18 were in front of me. We did not say that we felt
 19 everything was low tax.
 20 Q. Just to clarify, if something is used in a
 21 medical facility, you believe it's subject to low
 22 tax?
 23 MR. HESS: Objection to form.
 24 Go ahead.

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1 BY THE WITNESS:
 2 A. Okay. So everything that's used in a
 3 medical facility isn't necessarily a medical device.
 4 So cleaning solutions that are used to clean walls,
 5 floors, toilets, those aren't medical devices. Those
 6 aren't subject to low tax.
 7 BY MR. SCHRIFTMAN:
 8 Q. Pursuant to your objection, I'll ask it
 9 this way.
 10 Do you believe that all items that
 11 can only be used in a medical facility are subject to
 12 a low rate of tax?
 13 A. Since I'm not an expert on that, I'm going
 14 to say that I don't know. I don't know.
 15 I just felt that given the precedent
 16 that was set with the previous audit, we felt that
 17 the percentages that Lisa Fox presented forth, and
 18 nothing had changed within our company, none of the
 19 products, none of the procedures, not anything we did
 20 in a three-year period, that the audit was
 21 diametrically different as to the percentage of high
 22 tax versus low tax items. There was a huge
 23 difference in the percentages.
 24 Q. And I know that you can attest to -- if we

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1 go back to the question I asked before we took a
 2 break, which had to do with the percentages from
 3 before, high rate 21 percent, low rate 79 percent,
 4 which is on Page 4, I'm not getting to the 21, 79
 5 percent versus 90-10, but it's different than what it
 6 is now?
 7 A. So it was -- the second audit was
 8 diametrically different than the first. So whether
 9 it was 79-21; okay? So 79-21, I think -- I don't
 10 know what the percentages were. Maybe you can
 11 tell me what the percentages were that Lisa said were
 12 high tax versus low tax. Do you have that
 13 percentage?
 14 Q. Well, it's actually in this document.
 15 A. Okay.
 16 Q. If you look on Page 5 on the second
 17 paragraph under low rate sales, it discusses: "Based
 18 on the above analysis between high and low rate
 19 sales, it was determined that 92 percent of the
 20 taxpayer's sales are high rate and 8 percent are low
 21 rate."
 22 A. You see how that's diametrically different
 23 than the previous audit where it was 79 percent low
 24 rate. She's saying 92 percent high rate, and nothing

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1 changed. The business didn't change at all. None of
 2 the products we sold changed. Everything stayed the
 3 same.
 4 Q. So the question I have -- because I
 5 understand this, and I know you're not attesting to
 6 the truthfulness of the document as a whole, but the
 7 questions I had asked previously about the original
 8 ones don't use the prior percentages versus the
 9 decision made. You don't have any recollection of
 10 that?
 11 A. There was no decision made to make any
 12 change, no.
 13 Q. So I think your testimony was that you
 14 weren't aware of any decision made to not use the
 15 prior percentage?
 16 A. I was not aware to make -- yeah, there
 17 was --
 18 Q. Are you surprised to learn that based on
 19 this document -- that there was a discussion
 20 according to this document?
 21 A. I'm not aware of any -- we made no changes
 22 in how we conducted business. So if we didn't pay
 23 the tax -- okay, we didn't pay the tax. I'm confused
 24 as to the construct of what you're talking to.

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1 What you're basically saying -- it
2 appears to me that you're saying that we made a
3 cognitive decision somewhere after the first audit
4 not to pay tax at all? No.
5 Q. No. What I'm asking is, it seems -- the
6 way I read this -- again, I'm not asking you to
7 attest to truthfulness, but the way I read this
8 document is that there was a prior percentage of high
9 and low rate?
10 A. Yes.
11 Q. There's a current percentage of high and
12 low rate?
13 A. Mm-hmm.
14 Q. There was a decision made with someone with
15 the taxpayer, according to this document, as opposed
16 to using the prior rates, to use the books and
17 records and make a determination. I'm not making a
18 judgment about the changing of the business or
19 whatnot.
20 And what I'm asking is -- because I
21 believe your testimony is you were unaware of any
22 decision to not use the prior rate but to look at
23 books and records for the period. Are you surprised
24 to learn that according to this document, a decision

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1 was made by IMS somewhere along the line to look at
2 the books and records, to basically do a new audit as
3 opposed to just using the percentages from the
4 previous audit?
5 MR. HESS: I think what he already
6 testified to was that decision never happened. The
7 disagreement was with the percentages, not with the
8 method. They wanted to use the method from the prior
9 audit and the percentages --
10 MR. SCHRIFTMAN: I believe his testimony
11 was --
12 BY THE WITNESS:
13 A. So the state never came to us and told us,
14 we're going to use the prior audit to do the current
15 audit. We referred to the prior audit.
16 The state came to us and said, 92
17 percent high tax. Okay? They came to us and said,
18 we've determined that 92 percent of this is high tax.
19 Only 8 percent is low tax.
20 And we were like, wait a minute, wait
21 a minute. The previous audit -- okay? The previous
22 audit said something different. Okay?
23 And Lisa Fox said that we don't care
24 about the previous audit. Every audit is its own

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1 entity.
2 And what I'm going to say to you is,
3 you're the state. You set the rules. Okay? And the
4 rules -- you know, the water is very muddy sometimes
5 on a lot of these products. So you tell us it's
6 21-79. We may or may not agree with that. It
7 doesn't matter. We didn't change any of the way
8 we did business in any of the audit periods as to who
9 we sold to, how we sold it. Everything stayed the
10 same.
11 So I think the problem we had was the
12 state never said to us, we're using this previous
13 audit. You'll find no documentation that was ever
14 presented to me that said they used the previous
15 audit to come to this conclusion.
16 They did their own audit and came
17 to us and said it was 92 percent, and we went back
18 and looked at documentation that we had and said, how
19 can you say it's 92 percent high tax in this audit
20 period when it was 79 percent low tax in the previous
21 audit period? There's no consistency there by the
22 state.
23 There's nothing that was done on our
24 part. Okay? And whether we would have said anything

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1 to the state -- which we didn't say, because we had
2 next to no interaction with anyone from the state
3 until after the fact when this was presented to us
4 with a 92 percent high tax. That's when we had a
5 problem, and we said, we're going to fight this.
6 So you can understand the problem we
7 had when our business didn't fundamentally change at
8 all. Okay? Our customer base didn't change. Okay?
9 But the state charged us 79 percent low tax, and now
10 you're telling me it's 92 percent high tax. There's
11 a 360-degree turn on the state's part.
12 We did nothing. So the state didn't
13 inform us that they were using any prior audit. We
14 were the ones who brought up the prior audit, and the
15 folks from the state, from your department, told us
16 that we don't care about the previous audit. Each
17 audit is its own entity.
18 And how can we say -- there's no
19 consistency on the state's part. How are we supposed
20 to know what's high tax and low tax when you tell us
21 it's 21 percent high tax in one audit, and now you're
22 going to tell me the same, exact product is now 92
23 percent, the same products? Nothing changed.
24 So you tell me what we're supposed to

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1 do. There was nothing planned on our part, and we
2 had no communication with them, because we didn't
3 know how it all worked until after the fact.
4 And does it matter what we say?
5 Obviously, it didn't matter, because she came back
6 in, you know, and said, oh, you know, your appeal
7 came in, and the state reduced how much was owed by,
8 like, 700 dollars. One product went from high tax to
9 low tax that we sold, like, 500 dollars worth.
10 And I'm thinking, out of the hundreds
11 of thousands of dollars, this one product, one item
12 was taken off when we appealed to the state. And I
13 was, like, this is crazy. So you tell me in one
14 audit that my taxes are 21 percent high tax, in one
15 audit. Okay? The only audit that was ever done.
16 Okay?
17 And in the second audit, you come
18 back after the audit is done, and this is when we
19 started the appeal, when you went to 92 percent high
20 tax from 21 percent high tax. So we shouldn't be
21 protesting? We shouldn't be appealing? That's why
22 we're sitting here.
23 We're not disputing the fact that we
24 owe you money. We're disputing the inconsistency on

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1 the state's part.
2 MR. HESS: Let him ask his next question.
3 You're good.
4 (WHEREUPON, DiOrio Deposition
5 Exhibit Number 5
6 was marked for identification.)
7 BY MR. SCHRIFTMAN:
8 Q. All right. I have a document here. I'll
9 mark this as DiOrio Dep Exhibit 5.
10 I'm only going to ask about several
11 data entries in there, so the extent you want to look
12 at that?
13 MR. HESS: No, that's fine.
14 BY MR. SCHRIFTMAN:
15 Q. So if you look at the 3-13-13 entry, which
16 begins at the bottom of the first page. If you look
17 at the last two words there -- excuse me.
18 If you look at the last two words of
19 the first line on the second page, in July 2011, they
20 were charging 6.25 percent medical supplies. Debra
21 said that they refunded the customer for the
22 additional tax. Do you see that?
23 A. Mm-hmm.
24 Q. To the best of your knowledge, did IMS

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1 refund customers additional tax?
2 A. I have no idea. I would think if it says
3 that we refunded the money, we refunded the money.
4 Q. Just to clarify, if you don't know
5 something, it's perfectly fine to say you don't know.
6 A. I don't know.
7 Q. Do you have any knowledge of IMS ever
8 charging the higher tax to any of its customers?
9 A. I have no knowledge of --
10 Q. I'm not saying specifically related to
11 this. Just generally in the existence of IMS?
12 A. Only after this audit period. I believe we
13 have one customer who wants to be charged the high
14 tax. Everyone else wants to be charged the low tax,
15 and they gave us letters on file that said that they
16 wanted to be charged low tax. Only one customer
17 wanted to be charged high tax.
18 Q. So just to close this loop, you have no
19 recollection regarding this issue?
20 A. No.
21 Q. So let's take a look at the entry for
22 6-19-14, a few more pages in. And that says: "I
23 received an email from Debra Procacio stating that
24 all items sold to IMS should be taxed at the low rate

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1 because they have medicinal purposes. I sent an
2 email back to Debra Procacio stating that the low
3 rate was for medicines and medical appliances."
4 Do you see that?
5 A. I see it.
6 Q. Do you have any recollection of discussing
7 this with Debra Procacio?
8 A. I do not.
9 Q. If we can look at the 6-30-14 entry, it
10 says: "On 6-30-14, the auditor (Patricia Hoyt, Lisa
11 Fox) and the audit supervisor, Denise Konicki, met
12 with Debra Procacio. Debra Procacio said that all
13 the items that were sold at IMS were for medicinal
14 purposes only and should be taxed at the low rate.
15 We explained and sent the taxpayer a general purpose
16 letter explaining that low rate is for medicine and
17 medical appliances. The taxpayer said the general
18 purpose letter is not a private letter ruling.
19 "The auditor gave the taxpayer the
20 regulation 130.311. Medical appliances must replace
21 a malfunctioning part of the body. The auditor asked
22 for a catalogue of items to see what IMS sold. The
23 taxpayer refused because she said the catalogue would
24 not represent the quantity of the items sold. The

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1 taxpayer said that IMS would be hiring a tax
2 attorney, Mr. Pembroke to represent them."
3 Do you see that?
4 A. I see it.
5 Q. Did you have any conversation, not
6 including with the attorney, previous to or at this
7 meeting regarding what Miss Procacio said?
8 A. No.
9 Q. Were you at this meeting?
10 A. No.
11 Q. Did you ever discuss this meeting with
12 anyone other than the attorney?
13 A. Since I don't know about this meeting, I
14 have no recollection of it.
15 Q. And that's my point. If it's no, it's no.
16 If you don't recall, you don't recall.
17 A. It's no. No.
18 Q. Okay. Let's look at the 8-13-14 entry.
19 That will be the last one we look at. Or maybe the
20 second to the last one.
21 So in this entry, it says, "Patricia
22 Hoyt, Denise Konicki, and I met with the taxpayer's
23 lawyer, John J. Pembroke, and Debra Procacio. We
24 explained the high and low percentages, and we gave

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1 them general information letters explaining medical
2 appliances.
3 "He disagreed with us and said that
4 he was going to ICB. He also asked us to tell us
5 what was the difference between the CAA sales and the
6 taxpayer's records (a report that Debra Procacio
7 printed on 8-13-14.)
8 "We let them know that farther
9 auditing might result in higher audit liability.
10 Mr. Pembroke said that he wanted the audit results to
11 be accurate and didn't care if it resulted in higher
12 audit liability."
13 Do you see that?
14 A. Mm-hmm.
15 Q. Were you at this meeting discussed here?
16 A. I was not.
17 Q. Were you aware of this meeting that was
18 discussed here?
19 A. I don't recall.
20 MR. SCHRIFTMAN: Can we take a two-minute
21 break?
22 (Brief pause.)
23 BY MR. SCHRIFTMAN:
24 Q. Okay. This is the last one here. So if we

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1 look at June 3, 2015, where it says: "I went to the
2 taxpayer's location to make adjustments suggested by
3 the Informal Conference Board. Mr. Patrick DiOrio
4 was very angry about the Action Decision of ICB. He
5 had just received a copy of the Action Decision from
6 his attorney that morning. He thinks that all
7 medical equipment should be low rate."
8 Do you see that portion there?
9 A. I see it.
10 Q. Is that accurate?
11 A. I think that it's inaccurate.
12 Q. Please describe how.
13 A. We never talked about percentages. What --
14 it appeared that Lisa was uninformed. Okay? And she
15 was like -- she had to go, like, into her computer.
16 You know, here we are we're sitting and waiting for
17 the -- she then says, oh, here it is. I just got it.
18 This is what it says.
19 I read it. So one item of all the
20 items we disputed, medical honey, it was decided that
21 medical honey, one item we sold out of the thousand
22 items we sold, was low tax.
23 Q. Can you explain what medical honey is?
24 A. Medical honey is sterile honey that's put

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1 into an open wound. It's for wound care. Okay.
2 There are a number of other products that do the
3 same thing that sterile honey -- that medical honey
4 does.
5 So I'm thinking, you only picked
6 medical honey, one item that we sold less than five
7 or seven hundred dollars worth of product in the
8 three years. And I was, like, I can't believe that
9 obscure item was allowed out of all the other items
10 that in my mind had more significance.
11 So we never said -- I never said to
12 Lisa that all items should be low. I asked her to
13 leave the office, because I felt that the audit
14 was -- our appeal was ridiculous, and I just -- I
15 couldn't have her in the office. It was just -- it
16 was kind of obscene.
17 We spent a lot of money, and we
18 presented a very good case, and medical honey, one
19 item that we sold next to nothing of, that I think --
20 what was the amount of -- the dollar amount? It's
21 not even there, but I think we sold either four or
22 five hundred dollars, maybe six hundred dollars worth
23 of product in three years times whatever the tax is.
24 It's nothing. And I just felt that the state wasn't

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<p>1 taking us seriously.</p> <p>2 Q. Do you recall any other meetings taking</p> <p>3 place besides what we have talked about during the</p> <p>4 audit between you and the Department of Revenue?</p> <p>5 A. Can you be more specific?</p> <p>6 Q. Sure. When the audit was taking place,</p> <p>7 which was from late 2012 to mid 2015 --</p> <p>8 A. Mm-hmm.</p> <p>9 Q. -- do you recall any other meetings other</p> <p>10 than the ones we've discussed today that you had</p> <p>11 between yourself and the members of the Department of</p> <p>12 Revenue?</p> <p>13 A. No, I had no meetings.</p> <p>14 MR. SCHRIFTMAN: Okay. We're getting to</p> <p>15 the end here. This is going to be DiOrio Deposition</p> <p>16 Exhibit 6.</p> <p>17 (WHEREUPON, DiOrio Deposition</p> <p>18 Exhibit Number 6</p> <p>19 was marked for identification.)</p> <p>20 BY MR. SCHRIFTMAN:</p> <p>21 Q. So if you can just take a quick look at</p> <p>22 these documents?</p> <p>23 A. I have looked at them all.</p> <p>24 Q. Do you recall seeing these documents at all</p> <p style="text-align: right;">Page 78</p>	<p>1 the best of your recollection?</p> <p>2 A. I don't know.</p> <p>3 Q. And the reason I ask, because it's clear</p> <p>4 there's not a written signature, but your name is</p> <p>5 typed there. So I was unclear if you had signed it</p> <p>6 or not, but if you don't know, that's fine.</p> <p>7 If you can look at the same on 2010</p> <p>8 to 2011, I'd ask the same question. Do you recall if</p> <p>9 you signed those are not?</p> <p>10 A. Since my signature is not on the document,</p> <p>11 I do not recall that I signed it. My signature is</p> <p>12 not on 2010 --</p> <p>13 Q. I can tell you now that the actual written</p> <p>14 signature is not on there. Signature of officer has</p> <p>15 your name typed.</p> <p>16 A. Right.</p> <p>17 Q. Do you have any knowledge as to why your</p> <p>18 name would be typed there, but there would not be a</p> <p>19 written signature?</p> <p>20 A. I don't know.</p> <p>21 Q. Do you recall any involvement in preparing</p> <p>22 these returns?</p> <p>23 A. No involvement.</p> <p>24 Q. So to clarify, you had no involvement, or</p> <p style="text-align: right;">Page 80</p>
<p>1 during your audit?</p> <p>2 A. I have never seen them before in my life.</p> <p>3 Q. So would it be safe to say you don't recall</p> <p>4 ever replying to these particular documents?</p> <p>5 A. No.</p> <p>6 (WHEREUPON, DiOrio Deposition</p> <p>7 Exhibit Number 7</p> <p>8 was marked for identification.)</p> <p>9 BY MR. SCHRIFTMAN:</p> <p>10 Q. Okay. Last exhibit, this is going to be</p> <p>11 marked as DiOrio Dep Exhibit 7.</p> <p>12 I'm not going to ask you -- these are</p> <p>13 the 2009 to 2011, 1120S state returns, and I'm not</p> <p>14 going to ask you obviously every detail about them.</p> <p>15 If you want to look at them before then, that's fine.</p> <p>16 I'm going to ask you some specific questions.</p> <p>17 Did you want more time to look</p> <p>18 through it?</p> <p>19 A. No.</p> <p>20 Q. So if we look at the first page where it</p> <p>21 says, signature of officer. It's signed here -- next</p> <p>22 to signature of officer, it says, Pat DiOrio?</p> <p>23 A. Mm-hmm.</p> <p>24 Q. Does that mean you signed this document to</p> <p style="text-align: right;">Page 79</p>	<p>1 you remember no involvement?</p> <p>2 A. I had no involvement.</p> <p>3 Q. Regarding sales tax returns, do you know</p> <p>4 when IMS began filing sales tax returns?</p> <p>5 A. I don't recall.</p> <p>6 MR. SCHRIFTMAN: We're going to take a</p> <p>7 two-minute break, and barring a couple of questions,</p> <p>8 we'll be done.</p> <p>9 (Brief pause.)</p> <p>10 MR. SCHRIFTMAN: So we have no further</p> <p>11 questions. So if you have anything?</p> <p>12 MR. HESS: I have no questions.</p> <p>13 You have the right if you wish to get</p> <p>14 a copy of the transcript and review it and then sign</p> <p>15 off on it to ensure that everything you said was</p> <p>16 taken down accurately. It's called reserving your</p> <p>17 signature.</p> <p>18 You can't change any answers.</p> <p>19 THE WITNESS: I understand.</p> <p>20 MR. HESS: You can only correct an answer</p> <p>21 that you think was taken down incorrectly.</p> <p>22 You can also waive signature where</p> <p>23 you trust that she did her job.</p> <p>24 THE WITNESS: I'd like to review it.</p> <p style="text-align: right;">Page 81</p>

1 **MR. HESS: Show signature reserved. I'll**
2 **give him the copy.**
3 **MR. SCHRIFTMAN: Okay. Provide us a copy**
4 **as well.**
5 **There's something called an errata**
6 **sheet if there's something like --**
7 **MR. HESS: Any errors in grammar --**
8 **MR. SCHRIFTMAN: Exactly.**
9 **THE WITNESS: I understand.**
10 **FURTHER DEPONENT SAITH NOT. . .**
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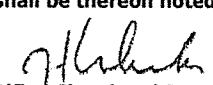
1 **STATE OF ILLINOIS)**
2 **) SS:**
3 **COUNTY OF COOK)**
4 **JoAnn Krolicki, being first duly sworn on**
5 **oath, says that she is a Certified Shorthand**
6 **Reporter, that she reported in shorthand the**
7 **testimony given at the taking of said deposition, and**
8 **that the foregoing is a true and correct transcript**
9 **of her shorthand notes so taken as aforesaid and**
10 **contains all the testimony given by PATRICK J. DIORIO**
11 **at said deposition.**
12
13 **And further, that she is not connected by**
14 **blood or marriage with any of the parties to this**
15 **action, nor is she a relative or employee or attorney**
16 **or counsel of any of the parties, or financially**
17 **interested directly or indirectly in the matter in**
18 **controversy.**
19
20 **That the preceding deposition shall be read**
21 **by said deponent, and any and all corrections which**
22 **the deponent desires to make shall be duly made by**
23 **the deponent on the enclosed errata sheet(s),**
24 **indicating page and line to be corrected, and that the**

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1 **IN THE ILLINOIS INDEPENDENT TAX TRIBUNAL**
2
3 **INTEGRATED MEDICAL)**
4 **SYSTEMS, INC.,)**
5 **)**
6 **Plaintiff,)**
7 **)**
8 **vs.) No. 15-TT-247**
9 **)**
10 **CONSTANCE BEARD, et al.,)**
11 **)**
12 **Defendants.)**
13 **This is to certify that I have read the**
14 **transcript of my deposition taken on the 20th day of**
15 **June 2018 in the foregoing cause, and that the**
16 **foregoing transcript accurately states the questions**
17 **asked and the answers given by me, with the changes**
18 **or corrections, if any, made on the Errata Sheet(s)**
19 **attached hereto.**
20
21 **PATRICK J. DIORIO**
22 **Subscribed and sworn to**
23 **before me this day**
24 **of 2018**

 Notary Public

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1 **explanation, if any, given by the deponent for said**
2 **corrections, shall be thereon noted.**
3
4 
5 **Certified Shorthand Reporter**
6 **No. 084-002215**
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1	ILLINOIS INDEPENDENT TAX TRIBUNAL	1	I N D E X
2	INTEGRATED MEDICAL SYSTEMS,)	2	WITNESS PAGE
3	Petitioner,)	3	LISA FOX
4	vs.)No. 15 TT 247	4	By Mr. Hess 4, 96
5	ILLINOIS DEPARTMENT OF REVENUE,)	5	By Mr. Schriftman 79, 97
6	Respondents.)	6	
7	The discovery deposition of LISA FOX, called	7	E X H I B I T S
8	for examination, taken pursuant to the provisions of the	8	Exhibit No. 1 4
9	Code of Civil Procedure and the Rules of the Supreme	9	Exhibit No. 2 4
10	Court of the State of Illinois pertaining to the taking	10	(Retained by attorney.)
11	of depositions for the purpose of discovery taken before	11	
12	STACEY JOHN, CSR No. 84-003560, a Notary Public within	12	
13	and for the County of Cook, State of Illinois, and a	13	
14	Certified Shorthand Reporter of said state, at 100 West	14	
15	Randolph, Chicago, Illinois, on the 23rd day of August,	15	
16	A.D., 2018 at 1:00 p.m.	16	
17		17	
18		18	
19		19	
20		20	
21		21	
22		22	
23		23	
24		24	
	1		3
1	APPEARANCES:	1	(WHEREUPON, Exhibit No. 1 and
2		2	Exhibit No. 2 were marked for
3	PEMBROKE & ASSOCIATES	3	identification.)
4	BY: MR. MATTHEW HESS	4	(witness sworn.)
5	422 North Northwest Highway, Suite 150	5	LISA FOX,
6	Chicago, Illinois 60068	6	Called as a witness herein, having been first duly sworn,
7	(847) 696-0060	7	was examined and testified as follows:
8	Representing the Petitioner;	8	EXAMINATION
9		9	BY MR. HESS:
10	ILLINOIS DEPARTMENT OF REVENUE	10	Q Good afternoon.
11	BY: MR. SETH J. SCHRIFTMAN, and	11	A Good afternoon.
12	MR. EVAN SCHANERBERGER	12	Q State your name and spell it for the
13	100 West Randolph, Suite 900	13	record, please.
14	Chicago, Illinois 60601	14	A My name is Lisa Fox, L-I-S-A, F-O-X.
15	(312) 814-3522	15	MR. HESS: Let the record reflect this is
16	Representing the Respondent.	16	discovery deposition of Lisa Fox, taken
17		17	pursuant to notice and all applicable rules.
18		18	BY MR. HESS:
19		19	Q Ms. Fox, I am Matthew Hess. I represent
20		20	Integrated Medical Systems, Incorporated, in an
21		21	appeal to the Illinois Tax Tribunal. I'll be taking
22		22	your deposition here today, okay?
23		23	A Yes.
24		24	Q A few ground rules for a deposition,
	2		4



<p>1 first, as you are doing, make sure all your answers</p> <p>2 to my questions are out loud, okay?</p> <p>3 A Yes.</p> <p>4 Q She can't take down shrugs of the shoulder</p> <p>5 or uh-huh or uhn-uhn, it doesn't look good on the</p> <p>6 transcript. So make sure, like you are doing,</p> <p>7 answer yes or no and in words.</p> <p>8 A Yes.</p> <p>9 Q If you need a break at any time, feel</p> <p>10 free. You are in charge here today, okay?</p> <p>11 A Yes.</p> <p>12 Q Let us know if you need a break to use the</p> <p>13 restroom, talk to your attorney, that's fine. Let</p> <p>14 me know, okay?</p> <p>15 A Yes.</p> <p>16 Q I ask that you answer any pending</p> <p>17 questions before we take a break, okay?</p> <p>18 A Yes.</p> <p>19 Q If you don't understand a question, can</p> <p>20 you let me know that?</p> <p>21 A Yes.</p> <p>22 Q If you answer a question, we're all going</p> <p>23 to assume you understood the question that was being</p> <p>24 asked, okay?</p> <p>5</p>	<p>1 A Yes.</p> <p>2 Q Has that case been resolved?</p> <p>3 A Yes.</p> <p>4 Q Is that the only time you have given ever</p> <p>5 given a deposition?</p> <p>6 A Yes.</p> <p>7 Q By whom are you employed?</p> <p>8 A Illinois Department of Revenue.</p> <p>9 Q How long have you been working for the</p> <p>10 Department?</p> <p>11 A July 2010.</p> <p>12 Q And if I say the Department, we'll</p> <p>13 understand that means the Illinois Department of</p> <p>14 Revenue?</p> <p>15 A Yes.</p> <p>16 Q Can you tell me about your educational</p> <p>17 background going back to either high school or</p> <p>18 college?</p> <p>19 A I graduated from college in 1992 with a</p> <p>20 bachelor of science in accounting.</p> <p>21 Q Where did you go to college?</p> <p>22 A DePaul University in Chicago.</p> <p>23 Q After obtaining your undergraduate degree,</p> <p>24 did you pursue any further formal education?</p> <p>7</p>
<p>1 A Yes.</p> <p>2 Q All right. Ms. Fox, have you ever given a</p> <p>3 deposition before?</p> <p>4 A Yes.</p> <p>5 Q On how many occasions?</p> <p>6 A Once.</p> <p>7 Q What was that case about?</p> <p>8 A Personal.</p> <p>9 Q A personal case injury or some other kind</p> <p>10 of case?</p> <p>11 A Just a car accident.</p> <p>12 Q When was that?</p> <p>13 A Maybe -- 2012 maybe.</p> <p>14 Q Were you a party to a lawsuit or were you</p> <p>15 a witness to a car accident?</p> <p>16 A I was in a car accident.</p> <p>17 Q So you were the person suing?</p> <p>18 A Yes.</p> <p>19 Q You were the plaintiff? You were the</p> <p>20 plaintiff in that case?</p> <p>21 A Yes.</p> <p>22 Q Do you remember the name of the defendant?</p> <p>23 A No.</p> <p>24 Q Was it filed here in Cook County?</p> <p>6</p>	<p>1 A Yes.</p> <p>2 Q Where at?</p> <p>3 A Keller Graduate School of Management.</p> <p>4 Q From what years?</p> <p>5 A I graduated in 2008.</p> <p>6 Q Did you graduate with some type of</p> <p>7 certificate or degree?</p> <p>8 A I got a master's of public administration.</p> <p>9 Q When did you begin your studies at Keller?</p> <p>10 A Maybe in 2006.</p> <p>11 Q So from 2006 until 2008 did you attend</p> <p>12 school at Keller full-time?</p> <p>13 A No, part-time.</p> <p>14 Q Part-time?</p> <p>15 A I am not sure about what year I started.</p> <p>16 That's an estimate, 2006.</p> <p>17 Q How many hours of coursework did you have</p> <p>18 to take in order to obtain your master's of public</p> <p>19 administration?</p> <p>20 A I don't remember how many hours.</p> <p>21 Q Is it considered a one-year degree, a</p> <p>22 two-year degree?</p> <p>23 A It's a master's.</p> <p>24 Q Or do you know?</p> <p>8</p>



<p>1 A I am not sure.</p> <p>2 Q Did you attend classes in person or</p> <p>3 through some on line type of course?</p> <p>4 A Both in person and on line.</p> <p>5 Q Approximately what percentage of the</p> <p>6 classes that you took were on line as opposed to in</p> <p>7 person?</p> <p>8 A Maybe 50 percent on line. It's an</p> <p>9 estimate.</p> <p>10 Q Okay. Between 1992 when you graduated</p> <p>11 college at DePaul and 2006, approximately 2006 when</p> <p>12 you began your coursework at Keller, what did you</p> <p>13 do?</p> <p>14 A I was a staff accountant at CNA Insurance</p> <p>15 Company.</p> <p>16 Q Did you begin working at CNA immediately</p> <p>17 upon graduation from DePaul?</p> <p>18 A No.</p> <p>19 Q What did you do before then?</p> <p>20 A I worked at other places. I worked at a</p> <p>21 nonprofit. I worked at Jane Adams Hull House</p> <p>22 Association.</p> <p>23 Q Say it again?</p> <p>24 A Jane Adams Hull House Association.</p> <p>9</p>	<p>1 care in general accounting work.</p> <p>2 Q When did you leave Chicago Commons?</p> <p>3 A Six months after -- no, a year after I</p> <p>4 started.</p> <p>5 Q Okay. So from '92 to '93 approximately?</p> <p>6 A Yes.</p> <p>7 Q Then when you left Chicago Commons, where</p> <p>8 did you go?</p> <p>9 A I went to, actually I went to Mell</p> <p>10 Accounting Services.</p> <p>11 Q Mellon?</p> <p>12 A M-E-L-L, Accounting Services.</p> <p>13 Q Is that in the city?</p> <p>14 A It's closed now. It was in Chicago.</p> <p>15 Q How long did you work there?</p> <p>16 A I worked there six months.</p> <p>17 Q As a staff accountant?</p> <p>18 A No. I was security input officer.</p> <p>19 Q What does that mean?</p> <p>20 A It's a finance position, and I took care</p> <p>21 of securities that had expired. So if you have a</p> <p>22 bond or a stock that lasts for a year, when it</p> <p>23 expired, I would call the administrator and ask if</p> <p>24 you want to roll it over or cash it out.</p> <p>11</p>
<p>1 Q Okay.</p> <p>2 A I worked at Sonnenschein, Nath and</p> <p>3 Rosenthal, a law firm. I also worked at Chicago</p> <p>4 Commons.</p> <p>5 Q What?</p> <p>6 A Commons, a nonprofit.</p> <p>7 Q When did you begin at CNA?</p> <p>8 A Approximately 2010.</p> <p>9 Q Okay.</p> <p>10 A No, no, approximately I started here in</p> <p>11 2010, so I must have started there in 2000.</p> <p>12 Q 2000?</p> <p>13 A Approximately 2000.</p> <p>14 Q So you worked at CNA for about 10 years?</p> <p>15 A Yes.</p> <p>16 Q As a staff accountant that whole time?</p> <p>17 A Yes.</p> <p>18 Q Upon graduating DePaul in 1992, what was</p> <p>19 your first job?</p> <p>20 A Chicago Commons.</p> <p>21 Q What did you do there?</p> <p>22 A I was a staff accountant.</p> <p>23 Q What did your duties entail?</p> <p>24 A I did the vouchers for Head Start and day</p> <p>10</p>	<p>1 Q Okay. You did that for six months?</p> <p>2 A Yes.</p> <p>3 Q Then what did you do?</p> <p>4 A Then I went to Jane Adams Hull House</p> <p>5 Association.</p> <p>6 Q That's a nonprofit?</p> <p>7 A Yes, it is.</p> <p>8 Q And what was your job duty?</p> <p>9 A Staff accountant.</p> <p>10 Q And what specifically did you do there?</p> <p>11 A I also did vouchers for nonprofit</p> <p>12 contracts like Head Start and day care.</p> <p>13 Q And then Sonnenschein?</p> <p>14 A Yes.</p> <p>15 Q When did you start at Sonnenschein?</p> <p>16 A Probably in 2000 --I don't know. I worked</p> <p>17 there for about two years. I don't know what year I</p> <p>18 started and what year I ended.</p> <p>19 Q You said you started at CNA in 2000, so</p> <p>20 you would have started at Sonnenschein two years</p> <p>21 before that?</p> <p>22 A Yes.</p> <p>23 Q From '98 to 2000?</p> <p>24 A Uh-huh.</p> <p>12</p>



<p>1 Q That means you were at Jane Adams from '94</p> <p>2 to '98?</p> <p>3 A Yes.</p> <p>4 Q Does that sound right?</p> <p>5 A Yes.</p> <p>6 Q And what was your job duty at</p> <p>7 Sonnenschein?</p> <p>8 A At Sonnenschein I was a staff accountant.</p> <p>9 Q And what did you do?</p> <p>10 A I did general ledger work, so monthly in</p> <p>11 closings, maintained a general ledger, also sent out</p> <p>12 a report of bills and entertainment reports and a</p> <p>13 time report for the attorneys. I also did a</p> <p>14 nonprofit return for the foundation that the</p> <p>15 attorneys had.</p> <p>16 Q Then you started at CNA where you worked</p> <p>17 for about 10 years?</p> <p>18 A Yes.</p> <p>19 Q Tell me about your job at CNA. What did</p> <p>20 you do?</p> <p>21 A The first eight years I did statutory</p> <p>22 reporting. I booked entries. I prepared financial</p> <p>23 statements. I answered a lot of -- looked at</p> <p>24 anomalies for the state reporting.</p> <p style="text-align: right;">13</p>	<p>1 Graduate School?</p> <p>2 A Yes.</p> <p>3 Q Is there any other coursework that you</p> <p>4 pursued or any other degrees that you pursued?</p> <p>5 A I also have a master's from Keller</p> <p>6 Graduate School. It's an MBA, so...</p> <p>7 Q The one in public administration?</p> <p>8 A No, a separate one, the MBA.</p> <p>9 Q When did you obtain that?</p> <p>10 A 2009.</p> <p>11 Q Immediately after the master's in public</p> <p>12 administration?</p> <p>13 A Yes.</p> <p>14 Q Wait for me to finish before you jump in.</p> <p>15 A Okay.</p> <p>16 Q You'll know where I am going. She can</p> <p>17 only take down one at time.</p> <p>18 A Uh-huh.</p> <p>19 Q Okay. So you obtained your master's in</p> <p>20 public administration in 2008 from Keller and MBA in</p> <p>21 2009 from Keller, correct?</p> <p>22 A Yes.</p> <p>23 Q Were those all of your degrees or do you</p> <p>24 have any more?</p> <p style="text-align: right;">15</p>
<p>1 Q What type of anomalies?</p> <p>2 A Like if we had any kind of problems or</p> <p>3 type of changes from one quarter to the next, we had</p> <p>4 to explain any big changes.</p> <p>5 Q You left CNA in 2010 to start working at</p> <p>6 the Department, is that correct?</p> <p>7 A Yes.</p> <p>8 Q Why did you leave CNA?</p> <p>9 A I was fired.</p> <p>10 Q Sorry to hear that. When you started here</p> <p>11 at the Department?</p> <p>12 A Uh-huh.</p> <p>13 Q What job were you hired to do?</p> <p>14 A Revenue auditor trainee.</p> <p>15 Q What does that mean?</p> <p>16 A I conducted field audits for sales tax.</p> <p>17 Q Is that the same position that you have</p> <p>18 today?</p> <p>19 A No. Well, it's the -- I am a revenue</p> <p>20 auditor 3 now.</p> <p>21 Q Okay.</p> <p>22 A So I do more complex audits.</p> <p>23 Q From the time you graduated DePaul in</p> <p>24 1992, you told me about your education at Keller</p> <p style="text-align: right;">14</p>	<p>1 A I don't have any more.</p> <p>2 Q No more degrees. Did you ever -- from</p> <p>3 1992 to the present ever pursue any medical</p> <p>4 education?</p> <p>5 A What do you mean?</p> <p>6 Q Did you take classes to pursue training in</p> <p>7 the field of medicine?</p> <p>8 A No. Well, I have a -- I had a license for</p> <p>9 nursing home, for nursing home administrator.</p> <p>10 Q So when did you obtain that license?</p> <p>11 A Probably in 2009.</p> <p>12 Q How is it you came to obtain the license</p> <p>13 as a nursing home administrator?</p> <p>14 A Well, because I got a master's in public</p> <p>15 administration. I could take the nursing home</p> <p>16 administrator's exam.</p> <p>17 Q You did that?</p> <p>18 A I did.</p> <p>19 Q Do you still hold that license today?</p> <p>20 A No.</p> <p>21 Q When did that lapse?</p> <p>22 A Probably two years later.</p> <p>23 Q What type of test did you have to take in</p> <p>24 order to obtain that license in nursing home</p> <p style="text-align: right;">16</p>



<p>1 administration?</p> <p>2 A I had to take a national exam and a state</p> <p>3 exam.</p> <p>4 Q What kind of questions did they ask you on</p> <p>5 the exams?</p> <p>6 A They asked about the staffing at the</p> <p>7 nursing home, and they asked about just various</p> <p>8 nursing home administrator -- so state laws.</p> <p>9 Q So is it fair to say that the materials</p> <p>10 you studied in preparing for those exams and in</p> <p>11 taking those exams were focused on the</p> <p>12 administrative aspect of the nursing home and not</p> <p>13 the provision of medical care or services that are</p> <p>14 provided at a nursing home?</p> <p>15 MR. SCHRIFTMAN: Objection to form. Go</p> <p>16 ahead.</p> <p>17 BY MR. HESS:</p> <p>18 Q Does it make sense?</p> <p>19 A Could you explain?</p> <p>20 Q Is it fair to say the materials you</p> <p>21 studied to pass the nursing home administrator exams</p> <p>22 were focused on administrative issues that nursing</p> <p>23 homes faced and not patient care issues?</p> <p>24 MR. SCHRIFTMAN: Same objection. You can</p> <p>17</p>	<p>1 A No.</p> <p>2 Q Did any of the materials you studied</p> <p>3 pertain to what types of medications were to be</p> <p>4 administered for what types of illnesses?</p> <p>5 A No.</p> <p>6 Q Did any of the materials that you studied</p> <p>7 to prepare for the nursing home administrator exam</p> <p>8 deal with medical devices that are used in the</p> <p>9 provision of patient care?</p> <p>10 A No.</p> <p>11 Q Did you ever at any point in your career</p> <p>12 from 1992 to today ever undertake to conduct any</p> <p>13 study regarding medical devices that are used for</p> <p>14 the provision of patient care?</p> <p>15 MR. SCHRIFTMAN: Objection, form. You can</p> <p>16 answer.</p> <p>17 THE WITNESS: Could you explain what you</p> <p>18 mean?</p> <p>19 BY MR. HESS:</p> <p>20 Q Have you ever studied medical devices?</p> <p>21 MR. SCHRIFTMAN: Objection, form. You can</p> <p>22 answer.</p> <p>23 THE WITNESS: Just in my work regulations.</p> <p>24</p> <p>19</p>
<p>1 answer.</p> <p>2 THE WITNESS: There was some questions</p> <p>3 about patient care.</p> <p>4 BY MR. HESS:</p> <p>5 Q Tell me about what kind of questions?</p> <p>6 A I don't remember.</p> <p>7 Q What kind of questions do you remember, if</p> <p>8 you know that they were focused on patient care?</p> <p>9 A Just the standards.</p> <p>10 Q What kind of standards?</p> <p>11 A What is good patient care in</p> <p>12 administration.</p> <p>13 Q Okay. I am not sure I understand.</p> <p>14 A The staffing, like how much staffing you</p> <p>15 have to have.</p> <p>16 Q So how many nurses per bed, things like</p> <p>17 that?</p> <p>18 A Exactly.</p> <p>19 Q Census data, how to staff the floors in</p> <p>20 order to ensure that all of the residents or</p> <p>21 patients receive the appropriate care?</p> <p>22 A Yes.</p> <p>23 Q Did any of the materials you studied</p> <p>24 pertain to making medical diagnoses for patients?</p> <p>18</p>	<p>1 BY MR. HESS:</p> <p>2 Q Okay. We'll get to that in a moment.</p> <p>3 Putting aside study that you have done on your own</p> <p>4 in connection with your job here at the Department,</p> <p>5 have you ever taken any classes regarding medical</p> <p>6 care or medical devices or the treatment of</p> <p>7 patients?</p> <p>8 A No.</p> <p>9 Q With respect to your work here at the</p> <p>10 Department, what kind of study have you done</p> <p>11 regarding medical devices that you just alluded to?</p> <p>12 A I mean just in -- if I am doing an audit,</p> <p>13 I look at the regulations.</p> <p>14 Q To determine what?</p> <p>15 A If something is taxable or not.</p> <p>16 Q We're talking about sales tax, correct?</p> <p>17 A Yes.</p> <p>18 Q When you say you look at the regulations,</p> <p>19 what regulations do you look at?</p> <p>20 A The sales tax regulations.</p> <p>21 Q Okay. That's how you refer to them?</p> <p>22 A Uh-huh.</p> <p>23 Q Okay. All right. Just asking.</p> <p>24 Have you ever taken any courses during</p> <p>20</p>



<p>1 your time here at the Department regarding medical 2 devices, medical care, patient care, anything like 3 that? 4 A No. 5 Q So anything you studied on the topic of 6 medical care or medical devices, that's been 7 education that you sought out on your own? 8 MR. SCHRIFTMAN: Objection, form. You can 9 answer. 10 THE WITNESS: In conducting an audit? 11 BY MR. HESS: 12 Q Sure, in doing your job? 13 A Yes. 14 Q Part of your job duty is to inform 15 yourself about what you're looking at during an 16 audit? 17 A Yes. 18 Q A little bit ago you said when you started 19 at the Department you were a revenue audit trainer? 20 A Trainee. 21 Q And now you are a revenue auditor 3? 22 A Yes. 23 Q How many levels between trainee -- 24 A Trainee, 1, 2, 3.</p> <p style="text-align: right;">21</p>	<p>1 Q Do you mentor other trainees at this time? 2 A No, I do not. I have not had a manager 3 yet. 4 Q When you were a trainee at the Department 5 learning how to do audits, have you ever had any 6 involvement with an audit before? 7 MR. SCHRIFTMAN: Objection, form, vague. 8 BY MR. HESS: 9 Q Before you began your employment here at 10 the Department as a revenue auditor, have you ever 11 had any involvement with any other audits in your 12 career? 13 A I worked with auditors. I worked with 14 auditors in my career. 15 Q In what capacity? 16 A When I was at the law firm, we had audits 17 and I gathered the information. 18 Q Were those sales tax audits or some other 19 type of audit? 20 A They were property audits. They were head 21 count audits. They were -- at CNA they were state 22 audits. 23 Q Were any of the audits -- were you the 24 point person that dealt with the auditor?</p> <p style="text-align: right;">23</p>
<p>1 Q How long were you a trainee? 2 A Approximately a year, about a year. 3 Q Tell me about your time as a trainee, what 4 did your training involve? 5 A I work with a mentor and I had some of my 6 own. 7 Q Sorry? 8 A Some of my own audits. 9 Q Okay. Who is your mentor? 10 A Jamaal Everett. 11 Q Does Jamaal still work here? 12 A Yes. 13 Q What is his job title? 14 A Revenue auditor 3. 15 Q Is 3 the highest? 16 A Yes. 17 Q You had some of your own audits you said? 18 A Yes. 19 Q What are the differences in job function 20 with a revenue auditor 1, 2, 3? 21 A The complexity of the audits. 22 Q So the basic job remains the same, it's 23 just the complexity of the case that changes? 24 A Yes.</p> <p style="text-align: right;">22</p>	<p>1 MR. SCHRIFTMAN: Objection to form. You 2 can answer. 3 THE WITNESS: I gathered the information. 4 I talked to them, but someone else was the 5 major point person. 6 BY MR. HESS: 7 Q Okay. 8 A Probably the controller, so I helped the 9 controller gather information and documents. 10 Q Very good. I may have asked you this a 11 moment ago and spaced out, were those state audits 12 or federal? 13 A They were state audits. 14 Q So somebody here from the Department of 15 Revenue? 16 A No, they would be New York. I mean I 17 guess it could have been, but I don't recall any -- 18 at CNA, at CNA we had some state auditors come, but 19 no one from the Department of Revenue I don't think. 20 Q When you began your employment here at the 21 Department, were you given any training materials to 22 help you learn how to do your job? 23 A Yes. 24 Q What type of materials?</p> <p style="text-align: right;">24</p>



<p>1 A We did a two-week training in Springfield</p> <p>2 regulations.</p> <p>3 Q What kind of materials were you given</p> <p>4 during that training? Was there an orientation</p> <p>5 manual, a binder they gave out, anything like that?</p> <p>6 A We had an orientation manual.</p> <p>7 Q Do you still have those?</p> <p>8 A Yes.</p> <p>9 Q Okay. I'll ask you to hold on to those.</p> <p>10 I'll make a request to obtain copies after the</p> <p>11 deposition, all right?</p> <p>12 A Okay.</p> <p>13 Q Were you given anything else to help you</p> <p>14 learn how to do your job when you began here at the</p> <p>15 Department?</p> <p>16 A Not that I recall.</p> <p>17 MR. SCHRIFTMAN: Off the record.</p> <p>18 (Whereupon, a short break was</p> <p>19 taken.)</p> <p>20 BY MR. HESS:</p> <p>21 Q How long in your training was it until you</p> <p>22 had your first audit to do by yourself?</p> <p>23 A Either six months or a year.</p> <p>24 Q Okay.</p> <p>25</p>	<p>1 marked it as Exhibit No. 1, the document you are</p> <p>2 referring to?</p> <p>3 A Yes.</p> <p>4 Q And then your comments has been marked as</p> <p>5 Exhibit No. 2, is that correct?</p> <p>6 A Yes.</p> <p>7 Q Are there any other documents you reviewed</p> <p>8 in preparation for your deposition?</p> <p>9 A I reviewed the audit, the numbers, the</p> <p>10 worksheets and the schedules.</p> <p>11 Q Anything else?</p> <p>12 A The regulations.</p> <p>13 Q What regulations specifically?</p> <p>14 A 130, 310 and 130, 311 and the general</p> <p>15 information letter.</p> <p>16 Q Is there anything else you reviewed in</p> <p>17 preparing for today?</p> <p>18 A Not that I recall.</p> <p>19 Q Before reviewing those materials, did you</p> <p>20 have any independent recollection of integrated</p> <p>21 medical or the audit you did there?</p> <p>22 A I have a current audit there with them</p> <p>23 now.</p> <p>24 Q Okay. What does that involve?</p> <p>27</p>
<p>1 A Approximately. It's an estimate.</p> <p>2 Q And then after your first year as a</p> <p>3 trainee, how long were you an auditor 1?</p> <p>4 A Approximately two years.</p> <p>5 Q And then same question for 2.</p> <p>6 A Probably two years.</p> <p>7 Q So that means you started at 2010. So you</p> <p>8 became auditor 3 around 2014?</p> <p>9 A No, 2015. The last year was delayed.</p> <p>10 Q Why is that?</p> <p>11 A Because the governor delayed it.</p> <p>12 Q Fair enough. You got something to say</p> <p>13 about that?</p> <p>14 A No, I don't.</p> <p>15 Q Well, we're here today regarding an audit</p> <p>16 you did with respect to my client, Integrated</p> <p>17 Medical Systems. Do you recall doing that audit?</p> <p>18 A Yes.</p> <p>19 Q Before you came here today, did you review</p> <p>20 any materials to prepare for your deposition?</p> <p>21 A I reviewed my comments.</p> <p>22 Q Your comments?</p> <p>23 A My comments and my EDAC 5.</p> <p>24 Q All right. Is your EDC-5 what I have</p> <p>26</p>	<p>1 A The same items that -- it's a new sales</p> <p>2 tax audit.</p> <p>3 Q When did it begin?</p> <p>4 A It's for the next audit cycle. I can't</p> <p>5 remember exactly what period.</p> <p>6 Q So have you been in contact with them</p> <p>7 regarding that audit yet?</p> <p>8 A Yes.</p> <p>9 Q When did you make your initial contact?</p> <p>10 A I am not sure. I don't know exactly what</p> <p>11 day.</p> <p>12 Q Okay. In the past weeks, months, how long</p> <p>13 ago?</p> <p>14 A Probably more than a year ago.</p> <p>15 Q Again, that audit is focused on the same</p> <p>16 sales tax issue that is at issue in this matter, is</p> <p>17 that --</p> <p>18 A Some of the same, yes.</p> <p>19 Q Who have you been in contact with</p> <p>20 regarding that audit?</p> <p>21 A The controller, Karen Burke, the owner,</p> <p>22 Pat Diorio, and also spoken to their attorney</p> <p>23 Mr. Pembroke, Attorney Pembroke. I can't remember</p> <p>24 his first name.</p> <p>28</p>



<p>1 Q John.</p> <p>2 A John.</p> <p>3 Q I am from his office, so you know.</p> <p>4 A Okay.</p> <p>5 Q Putting that issue aside with respect to</p> <p>6 the prior audit that you did that is at issue in our</p> <p>7 case here, what independent recollections did you</p> <p>8 have about doing that audit, if any? I am sure you</p> <p>9 have plenty, but we'll see what you remember, you</p> <p>10 remember going to the facility and meeting people</p> <p>11 generally, correct?</p> <p>12 MR. SCHRIFTMAN: Objection to form, you</p> <p>13 can answer.</p> <p>14 THE WITNESS: Yes.</p> <p>15 BY MR. HESS:</p> <p>16 Q How is it that you get assigned an audit</p> <p>17 to go do? How does it work?</p> <p>18 A The supervisor assigns.</p> <p>19 Q Who is the supervisor?</p> <p>20 A The supervisor now is Frank Kuzminski.</p> <p>21 Q K-A-M?</p> <p>22 A K-U-Z-M-I-N-S-K-I.</p> <p>23 Q He didn't used to play basketball at the</p> <p>24 University Wisconsin?</p> <p>29</p>	<p>1 of audits.</p> <p>2 Q So who decides?</p> <p>3 A Who decides?</p> <p>4 Q To do an audit on a particular company?</p> <p>5 A I am not sure what department assigns -- I</p> <p>6 mean puts them in the inventory.</p> <p>7 Q So some unknown department puts together</p> <p>8 this inventory of audits that need to be performed</p> <p>9 and Denise or somebody gets that inventory from that</p> <p>10 department and decides who should go do them?</p> <p>11 A Yes.</p> <p>12 Q You only do sales tax audits, is that</p> <p>13 correct?</p> <p>14 A Yes.</p> <p>15 Q When you are assigned an audit to go</p> <p>16 perform, what do you do? What is your first step?</p> <p>17 A I reviewed the company. I look at the sic</p> <p>18 code to see what type of company it is. I look at</p> <p>19 whether or not they have filed sales tax returns, so</p> <p>20 I look at their history, I look at their numbers,</p> <p>21 like their identification number, federal tax</p> <p>22 return, the pin number. I look at whether or not</p> <p>23 they have been audited before. And if they have, I</p> <p>24 would look to see if there's any comments or</p> <p>31</p>
<p>1 A No.</p> <p>2 Q In 2012 who was your supervisor?</p> <p>3 A Denise Konicki.</p> <p>4 Q Does she still work at the Department?</p> <p>5 A No.</p> <p>6 Q Do you know where she works?</p> <p>7 A No.</p> <p>8 Q When is the last time you spoke to Denise?</p> <p>9 A Maybe in a year or two.</p> <p>10 Q Is that when she left?</p> <p>11 A Yes.</p> <p>12 Q Do you know where she lives?</p> <p>13 A She lives in Palos Heights.</p> <p>14 Q Do you know if she retired?</p> <p>15 A Yes.</p> <p>16 Q Is she the person who assigned this audit</p> <p>17 to you? When I say this audit, I mean the audit</p> <p>18 that is at issue in our case?</p> <p>19 A Yes.</p> <p>20 Q Is she the one that assigned that to you?</p> <p>21 A Yes.</p> <p>22 Q Do you know how it is she decided that an</p> <p>23 audit should be performed for IMS?</p> <p>24 A She doesn't decide. There's an inventory</p> <p>30</p>	<p>1 information out there, and I look at any regulations</p> <p>2 that may apply to the audit.</p> <p>3 Q You do all this before you make initial</p> <p>4 contact with the company?</p> <p>5 A I look at the owner name, phone number.</p> <p>6 Q When you go back to look to see if there</p> <p>7 is a prior audit to see if there's comments, where</p> <p>8 do you look for that information?</p> <p>9 A Something called a CAF file.</p> <p>10 Q Okay. What does it stand for?</p> <p>11 A I am not sure.</p> <p>12 Q Is it a computer file or hard copy?</p> <p>13 A It's a computer file.</p> <p>14 Q How far back do the files on that CAF</p> <p>15 system go?</p> <p>16 A I am not sure because before they were not</p> <p>17 electric, they were hard copies.</p> <p>18 Q When did they switch over?</p> <p>19 A I am not sure.</p> <p>20 Q Is there anything you do to prepare</p> <p>21 yourself to perform an audit before making initial</p> <p>22 contact with the company that you haven't told me</p> <p>23 about?</p> <p>24 A Sometimes we do a site visit, just drive</p> <p>32</p>



<p>1 past.</p> <p>2 Q What's the purpose of that?</p> <p>3 A To see where it's located, get any</p> <p>4 information. I don't always do that though. I am</p> <p>5 not required -- I mean, depends on what type of</p> <p>6 business it is.</p> <p>7 Q Uh-huh. Anything else?</p> <p>8 A No.</p> <p>9 Q Then when you -- after you completed your</p> <p>10 preliminary work, you make first contact with the</p> <p>11 company, how is that done, is it a letter, a phone</p> <p>12 call?</p> <p>13 A We call them first and let them know that</p> <p>14 they have been chosen for a sales tax audit and we</p> <p>15 would like to come out. We'd like to set up an</p> <p>16 appointment.</p> <p>17 Q With respect to this audit with IMS, do</p> <p>18 you remember making that first phone call?</p> <p>19 A No.</p> <p>20 Q That first appointment that you set up,</p> <p>21 what generally takes place at that meeting?</p> <p>22 A First we send an initiation letter. We</p> <p>23 tell them what documents we like to see. So</p> <p>24 hopefully when we get there, they'll have some of</p> <p style="text-align: right;">33</p>	<p>1 was a prior audit, do you recall that?</p> <p>2 A Yes.</p> <p>3 Q Were you involved with that prior audit to</p> <p>4 your knowledge?</p> <p>5 A No.</p> <p>6 Q You were not?</p> <p>7 A No.</p> <p>8 Q Do you know who was?</p> <p>9 A The auditor's name was Jim Terpinas.</p> <p>10 Q Does Mr. Terpinas still work here?</p> <p>11 A No.</p> <p>12 Q Do you know when he left?</p> <p>13 A I don't remember when he left.</p> <p>14 Q Was he an auditor?</p> <p>15 A Yes, he was.</p> <p>16 Q Did he retire to your knowledge?</p> <p>17 A Yes.</p> <p>18 Q Do you know where he lived?</p> <p>19 A No.</p> <p>20 Q So in an audit like this, that we're</p> <p>21 talking about here today, when there is a prior</p> <p>22 sales tax audit, you would have been aware of that</p> <p>23 at the time of your first meeting, correct?</p> <p>24 A Yes.</p> <p style="text-align: right;">35</p>
<p>1 those documents available.</p> <p>2 Q So at the first meeting with a company,</p> <p>3 you look at those documents, you have a</p> <p>4 conversation?</p> <p>5 A First we talk about just what they do.</p> <p>6 Q Okay.</p> <p>7 A We want to make sure what they do is the</p> <p>8 same as the sic code.</p> <p>9 Q What is a sic code?</p> <p>10 A A sic code is a code that describes the</p> <p>11 business, like a standard identification code. I</p> <p>12 think that's what it stands for. So we just talk</p> <p>13 about what they're doing, what their -- talk about</p> <p>14 their business, what they sell, what services they</p> <p>15 provide, if they provide services.</p> <p>16 Q Uh-huh.</p> <p>17 A Make sure what is there is what they're</p> <p>18 actually doing, and talk about if it's a cash</p> <p>19 business, we have cash questions, just ask a lot of</p> <p>20 questions to understand the business first.</p> <p>21 Q Okay.</p> <p>22 A We ask if there's any changes, if they</p> <p>23 were audited before.</p> <p>24 Q Regarding IMS, my understanding is there</p> <p style="text-align: right;">34</p>	<p>1 Q Would you have reached out to Mr. Terpinas</p> <p>2 to discuss his findings before meeting with anybody</p> <p>3 from IMS?</p> <p>4 A We just reviewed the comments. I am not</p> <p>5 sure if he was still here when I started the audit.</p> <p>6 He may have already retired.</p> <p>7 Q Okay. So when you said you would have</p> <p>8 reread the comments, you mean an audit history</p> <p>9 worksheet like I am holding in my hand?</p> <p>10 A I don't know if he had one. It's whatever</p> <p>11 is in the file. I don't recall reading his.</p> <p>12 Q Okay. Do you recall reading anything</p> <p>13 about the prior audit at IMS before your first</p> <p>14 meeting with IMS with respect to this audit?</p> <p>15 A No. I don't know if I read it before I</p> <p>16 got there or after I got there or when I read it.</p> <p>17 Q Okay. But you do recall reading something</p> <p>18 about the prior audit?</p> <p>19 A Yes.</p> <p>20 Q What did you read?</p> <p>21 A Probably his comments, if he had comments.</p> <p>22 Q Okay.</p> <p>23 A He should have had comments, but I don't</p> <p>24 recall everything that I read.</p> <p style="text-align: right;">36</p>



<p>1 Q Okay.</p> <p>2 A Just that he probably had comments.</p> <p>3 Q If he had comments, they would be in this</p> <p>4 format?</p> <p>5 MR. SCHRIFTMAN: Objection, asked and</p> <p>6 answered.</p> <p>7 BY MR. HESS:</p> <p>8 Q I am pointing to Exhibit No. 1.</p> <p>9 A I don't know. Things change. Comments</p> <p>10 change.</p> <p>11 Q I am going to show you Exhibit No. 1. You</p> <p>12 can go ahead and hold on to that.</p> <p>13 That is audit history worksheet that I</p> <p>14 believe you prepared, is that correct?</p> <p>15 A I did, yes.</p> <p>16 Q So these comments that are reflected on</p> <p>17 this worksheet, is it fair to say those are all of</p> <p>18 your comments or is anybody allowed to go in and</p> <p>19 make an entry?</p> <p>20 A No. These are my comments.</p> <p>21 Q Okay. So each of the entries are written</p> <p>22 by you?</p> <p>23 A Yes.</p> <p>24 Q When you are doing an audit, are you</p> <p>37</p>	<p>1 A I don't recall anything before this date.</p> <p>2 Q Do you recall that first phone call with</p> <p>3 Debra Procacio?</p> <p>4 A No.</p> <p>5 Q As we sit here right now, are there any</p> <p>6 conversations that you had with Debra Procacio that</p> <p>7 you have an independent recollection of?</p> <p>8 A No. This is 2018, so I can't remember</p> <p>9 this far back.</p> <p>10 Q You are not expected to. I am not trying</p> <p>11 to give you a memory test here. I want to know if</p> <p>12 you have any independent memories of any</p> <p>13 conversations or if everything that you are going to</p> <p>14 talk about in this case is reflected in the</p> <p>15 document.</p> <p>16 A Could you rephrase the question?</p> <p>17 Q I didn't ask a question. I am saying I am</p> <p>18 not trying to test your memory. I wanted to know if</p> <p>19 you remembered any conversations that are not</p> <p>20 documented?</p> <p>21 A No.</p> <p>22 Q According to Exhibit No. 1, you arrived at</p> <p>23 the taxpayer's location January 3rd, 2013. That was</p> <p>24 the first time you went out there, is that correct?</p> <p>39</p>
<p>1 required to make an entry each and every time you</p> <p>2 visit the company?</p> <p>3 A Yes.</p> <p>4 Q Are you required to make an entry each and</p> <p>5 every time you make contact with the company?</p> <p>6 A Just when you go there.</p> <p>7 Q Just when you go there?</p> <p>8 A You could. It's your comments, so...</p> <p>9 Q So whatever you deem pertinent?</p> <p>10 A Yeah. I think it's when you go there.</p> <p>11 Q So looking at this document, feel free to</p> <p>12 take as much time to review, if I ask you asking and</p> <p>13 you are not comfortable, but it looks like the first</p> <p>14 contact that you made with IMS is November 5th,</p> <p>15 2012, is that correct?</p> <p>16 A Yes.</p> <p>17 MR. SCHRIFTMAN: I am sorry. Are you</p> <p>18 asking about her recollection or based on the</p> <p>19 document?</p> <p>20 MR. HESS: Both.</p> <p>21 BY MR. HESS:</p> <p>22 Q Do you have any recollection about</p> <p>23 contacting IMS other than what we reflected here in</p> <p>24 the document?</p> <p>38</p>	<p>1 A Yes.</p> <p>2 Q Do you know if you ever visited IMS before</p> <p>3 January 3rd, 2013?</p> <p>4 A I did not.</p> <p>5 Q Before November 5th of 2012, had you ever</p> <p>6 spoken with anybody at IMS?</p> <p>7 A No.</p> <p>8 Q Going down to the next entry, the 4th of</p> <p>9 January, you note that it seems the company was</p> <p>10 charging 6.25 percent to the Illinois customers in</p> <p>11 September of 2011 through December 2011, you are not</p> <p>12 sure why they started charging the high rate, you</p> <p>13 received the financial statements from Debra today.</p> <p>14 What financial statements did you receive,</p> <p>15 if you remember?</p> <p>16 A I can't remember.</p> <p>17 Q In a normal audit, what kind of financial</p> <p>18 statements would you request?</p> <p>19 A Property loss statements.</p> <p>20 Q For how long years?</p> <p>21 A For the years of the audit period.</p> <p>22 Q Okay. On March 11th there's a reference</p> <p>23 to Denise, is that Denise Konicki?</p> <p>24 A Yes, it is.</p> <p>40</p>



<p>1 Q Was it normal for an auditor and a 2 supervisor to go to a taxpayer's location together? 3 A Yeah. 4 Q How frequently does it occur? 5 A They can come as many times as they want. 6 Q And do you know why they would deem it 7 necessary to go to a taxpayer's location for an 8 audit? 9 A They just come and visit us. So for no 10 reason. 11 Q When you are doing an audit like you did 12 for IMS, typically how many times do you have to 13 visit the facility to do your work? 14 A Depends on how much records they have, and 15 it depends on if they give us everything. So it 16 could be -- depends on the size of the audit. It 17 could be any amount of time. 18 Q Here did they set up an office for you to 19 work in or a conference room or what was the set up 20 like? 21 A Sometimes I had a room upstairs. Most of 22 the time I had a room upstairs. 23 Q Okay. Like a conference room where they 24 had banker's boxes of documents and that kind of</p> <p style="text-align: right;">41</p>	<p>1 or resale certificates. 2 Q At any time or just in the beginning? 3 A We give them 30 days to get it and they, 4 you know, did not always give me everything, no. 5 Q Before you began working at the 6 Department, did you ever study tax at all anywhere? 7 A Can you explain your question? 8 Q Did you ever pursue any education 9 regarding the subject of taxes? 10 MR. SCHRIFTMAN: Objection to form. 11 BY MR. HESS: 12 Q Did you take any tax classes? 13 A Yes, I did. 14 Q In conjunction with your schooling at 15 Keller? 16 A No, at DePaul. 17 Q Did those deal with sales taxes? 18 A No. 19 Q Any other training you pursued on the 20 issue of taxes? 21 MR. SCHRIFTMAN: Objection to form, you 22 can answer. 23 MR. HESS: Before starting at the 24 Department?</p> <p style="text-align: right;">43</p>
<p>1 thing? 2 A Yes. 3 Q Did they provide you a computer? 4 A I bring my own computer. 5 Q At the Department, are there any 6 guidelines that dictate how detailed an auditor's 7 comments should be or is this just for your own 8 personal use? 9 A Anything that we're doing, we should 10 record, anything that is important to me, anything 11 that is important to the audit. 12 Q As you were beginning to work on this 13 audit in 2013, was IMS cooperating with your 14 requests to your recollection? 15 A No. 16 Q How so? 17 A I had to ask for -- there's a form called 18 an Information Document Request. I did about seven 19 of them, asked them for documents that I needed. 20 Q And did they respond to the requests? 21 A I got a few things but not everything that 22 I asked for, no. 23 Q What didn't you get? 24 A I did not get all the tax exempt letters</p> <p style="text-align: right;">42</p>	<p>1 THE WITNESS: No. 2 BY MR. HESS: 3 Q Fair to say all your training regarding 4 tax and sales tax issues you obtained during the 5 course of your employment here at the Department of 6 Revenue? 7 MR. SCHRIFTMAN: Objection, 8 mischaracterizes her prior testimony. You can 9 answer. 10 THE WITNESS: The sales tax? 11 BY MR. HESS: 12 Q Correct. 13 A Yes. 14 Q There's an entry on July the 9th, 2013, I 15 wanted to ask you about because I anticipate that 16 sticks out in your head. There's a note you were 17 put in the warehouse to work and there was no 18 air-conditioning. Do you remember that day? 19 A No. 20 Q How frequently were you asked to work in 21 the warehouse, if you remember? 22 A It looks like just that day. 23 Q Okay. Do you remember any conversations 24 you had -- you had with either Debra, with Pat</p> <p style="text-align: right;">44</p>



<p>1 Diorio or anybody else at IMS regarding why you were 2 asked to work in the warehouse that day? 3 A They didn't have any more room. They were 4 crowded. 5 Q You remember that conversation? 6 A She said, "we don't have any room." 7 Q Debra did? 8 A Yes. 9 Q Did you speak with Pat or anybody else 10 about that? 11 A No. 12 Q Was that conversation a tense conversation 13 or was she polite? 14 A She was very polite. 15 Q Were there any conversations you remember 16 having with Debra where there were disagreements or 17 things got heated at all? 18 A No. 19 Q She was pleasant to work with? 20 A Yes. 21 Q Same question for Mr. Diorio? 22 A Only at the end. 23 Q At the end? 24 A On June 3rd, 2015.</p>	<p>1 walk around but you never interacted with him? 2 A I think I met with him one other time when 3 Patricia Hoyt came on, which is probably August 7th, 4 2013. I think he met with us that day. 5 Q Why was that? 6 A To let him know Pat was taking over the 7 audit. 8 Q So from beginning August 7th, 2013 going 9 forward Pat was in charge of the audit? 10 A She was. 11 Q Pat Hoyt? 12 A Yeah, except for when it came out, it was 13 reassigned to me. So back in March 3rd, '15, it was 14 assigned back to me as the lead auditor. 15 Q On June 3rd, 2015 you mean? 16 A Yes. 17 Q So the audit comments beginning 18 August 7th, 2013 going forward up until June 3rd, 19 2015, those are Pat Hoyt's comments? 20 A No, these are mine. 21 Q Your comments? 22 A Yeah. 23 Q I thought you just said Pat was the one 24 taking over?</p>
45	47
<p>1 Q It says you had a conversation with Karen 2 Burke who you said is the new controller, and Pat 3 Diorio to make adjustments suggested by the Informal 4 Conference Board and that Mr. Diorio was very angry 5 about the action of the ICB, is that what you are 6 referring to? 7 A Yes. 8 Q Do you remember that conversation? 9 A Yes. 10 Q Tell me what you remember? 11 A He was angry, and he asked me to make the 12 adjustments and to leave, not to stay all day, 13 because I would typically go and stay all day. 14 Q Do you remember anything else he said to 15 you during that time? 16 A No. 17 Q Was he angry at you or at the decision? 18 A At the decision. 19 Q Did he take it out on you at all? 20 A No. 21 Q Was he generally good to work with? 22 A That's the only time I remember him 23 actually being with me. 24 Q All the other times you may have seen him</p>	<p>1 A I know but these are my comments. 2 MR. SCHRIFTMAN: Objection, she said lead 3 auditor. 4 BY MR. HESS: 5 Q So you are still involved in the audit? 6 A Yes. 7 Q Thank you. Why was Pat assigned as lead 8 auditor beginning on August 7th, 2013? 9 A Because Denise determined that this audit 10 was a complex audit. It had -- it should be 11 addressed by a senior auditor. 12 Q Pat was level 3 at that point? 13 A Yes. 14 Q What was your level? 15 A Level 2. 16 Q Is that how you guys are referred to as 17 level 1, 2, 3? 18 A Revenue auditor 1, 2 or 3. Three is a 19 senior auditor. 20 Q That is the normal? 21 A Right. 22 Q So beginning August 7th you were still 23 working on the audit but Pat was, too? 24 A Pat was the lead.</p>
46	48



<p>1 Q Okay.</p> <p>2 A I was just assisting.</p> <p>3 Q For each of the entries after August 7th,</p> <p>4 2013, would Pat always be with you when you went to</p> <p>5 IMS or would you be by yourself sometimes?</p> <p>6 A Sometimes I would be by myself. Well,</p> <p>7 yes.</p> <p>8 Q Are there normally more than one -- is</p> <p>9 there normally more than one auditor working on an</p> <p>10 audit?</p> <p>11 A Sometimes. We have a system.</p> <p>12 Q When one person is visiting the location,</p> <p>13 are there other tasks to be done the other auditor</p> <p>14 does either here or at another office or is all of</p> <p>15 the audit work done at the location?</p> <p>16 A It could be done anywhere. It can be done</p> <p>17 here at the office. Mostly it's at the taxpayers</p> <p>18 but it can be done here.</p> <p>19 Q Okay. You who is John Rowland?</p> <p>20 A Our computer assist auditor.</p> <p>21 Q What does that mean?</p> <p>22 A It means he helps us -- he does a sample,</p> <p>23 he comes up with a sample and he does -- uses a</p> <p>24 sample to do projections after we get the</p> <p style="text-align: right;">49</p>	<p>1 EDA-70 request. What is an EDA-70?</p> <p>2 A Information document request.</p> <p>3 Q Those are the requests you spoke about</p> <p>4 earlier, you sent seven of them?</p> <p>5 A Yes, six or seven.</p> <p>6 Q And the taxpayer gets 30 days to respond</p> <p>7 to each of those?</p> <p>8 A It's whatever time we put on there.</p> <p>9 Sometimes it's 15 days, sometimes it's 30 days.</p> <p>10 Q What are the repercussions if a taxpayer</p> <p>11 doesn't respond by the date you set?</p> <p>12 A We give them another one or we may do a</p> <p>13 demand letter.</p> <p>14 Q Okay. What if they don't respond to a</p> <p>15 demand letter?</p> <p>16 A We give them a subpoena maybe.</p> <p>17 Q So you are not going to stop until you get</p> <p>18 what you are looking for?</p> <p>19 A Is that a question?</p> <p>20 Q Is there anything you requested from IMS</p> <p>21 that you remember as you sit here today that you</p> <p>22 never got at any time?</p> <p>23 A Yes.</p> <p>24 Q What is that?</p> <p style="text-align: right;">51</p>
<p>1 exceptions. So he downloads the information from</p> <p>2 the taxpayer, their records and he runs reports for</p> <p>3 us, usually if it's a large corporation or a</p> <p>4 company.</p> <p>5 Q Okay. It says on August 19th you asked</p> <p>6 for monthly general ledgers and Debra gave you</p> <p>7 monthly sales tax reports that didn't match the</p> <p>8 general ledger. Do you remember that?</p> <p>9 A I don't remember it specifically, but I</p> <p>10 guess that happened, yes.</p> <p>11 Q Why would John Rowland be at the location</p> <p>12 for that?</p> <p>13 A Because he comes to the location and he</p> <p>14 probably gave me a report, and I am trying to tie her</p> <p>15 numbers to his report, so he helped me reconcile. I</p> <p>16 might ask him questions about it.</p> <p>17 Q Do you remember that particular report</p> <p>18 that he may have given you as you sit here today?</p> <p>19 A The numbers?</p> <p>20 Q What kind of reports he would give you?</p> <p>21 Do you remember what he gave you with respect to</p> <p>22 this audit?</p> <p>23 A No, not specifically.</p> <p>24 Q On 9/18/13 you write you sent out a third</p> <p style="text-align: right;">50</p>	<p>1 A We did not get a catalog of their items</p> <p>2 they sold.</p> <p>3 Q Why does that stick out in your mind?</p> <p>4 A Because we requested it and she denied --</p> <p>5 they did not give it to us.</p> <p>6 Q When you say she?</p> <p>7 A Debra or anyone at IMS did not give it to</p> <p>8 us.</p> <p>9 Q Why was it important to have a catalog?</p> <p>10 A We wanted to know what they sold and</p> <p>11 wanted a description of it, a picture of it. We</p> <p>12 wanted to know everything they sold.</p> <p>13 Q How does that impact the audit?</p> <p>14 A Well, to assess whether the tax should be</p> <p>15 high or low, we need to know the description, what</p> <p>16 the item was used for and just details of it.</p> <p>17 Q When you say whether an item should be</p> <p>18 taxed high or low, what do you mean?</p> <p>19 A The high rate or the low rate.</p> <p>20 Q What is the high rate?</p> <p>21 A It could be for them at that period of</p> <p>22 time it was between I think 9.75 and 9 percent, the</p> <p>23 total rate. So it's the local rate and then the</p> <p>24 state rate. So the state rate is 6.25 plus the</p> <p style="text-align: right;">52</p>



<p>1 local rate. That's the high rate. The lower rate</p> <p>2 is one percent plus the local rate, so it comes out</p> <p>3 to be 2.25 percent.</p> <p>4 Q What is your understanding as to what</p> <p>5 should be taxed at the high rate and what should be</p> <p>6 taxed at the low rate?</p> <p>7 MR. SCHRIFTMAN: Objection to form.</p> <p>8 BY MR. HESS:</p> <p>9 Q Do you understand the question?</p> <p>10 A No. What is your question?</p> <p>11 Q What is your understanding of what kind of</p> <p>12 items sold by IMS should be taxed at the higher rate</p> <p>13 and what should be taxed at the lower rate?</p> <p>14 A So the low rate items are drugs or</p> <p>15 medications and medical appliances.</p> <p>16 Q Anything else?</p> <p>17 A Needles for insulin.</p> <p>18 Q Anything else?</p> <p>19 A There may be more. Those are the things</p> <p>20 that I can remember right now.</p> <p>21 Q Okay. And then what all gets taxed at the</p> <p>22 high rate, everything else?</p> <p>23 A Yeah. Well, supplies, medical supplies.</p> <p>24 Q What is a medical appliance?</p> <p>53</p>	<p>1 your lungs.</p> <p>2 Q Do you know how it works?</p> <p>3 A It forces -- I have one, so it forces air</p> <p>4 into your lungs while you are asleep.</p> <p>5 Q Okay.</p> <p>6 A It stops you from breathing -- helps you</p> <p>7 to keep breathing and helps you to sleep better.</p> <p>8 Q Okay. How does it work? Do you wear a</p> <p>9 mask or how is the oxygen delivered?</p> <p>10 A You wear a mask.</p> <p>11 Q And then it pumps air into the mask, into</p> <p>12 your mouth and nose?</p> <p>13 A Yes.</p> <p>14 Q Are there tubes that go from the machine</p> <p>15 to the mask?</p> <p>16 A Yes.</p> <p>17 Q What are the tubes made out of?</p> <p>18 A Plastic. Well, it could be something</p> <p>19 else. Mine is plastic.</p> <p>20 Q How big is the machine?</p> <p>21 A They have various sizes.</p> <p>22 Q Do the machines come with the tubing and</p> <p>23 the mask already packaged with it or can you buy</p> <p>24 replacement tubes and tasks?</p> <p>55</p>
<p>1 A It's something that substitutes for the</p> <p>2 malfunctioning part of the body.</p> <p>3 Q Where is that defined?</p> <p>4 A In the regulations.</p> <p>5 Q You read those regulations before you came</p> <p>6 here today?</p> <p>7 A Yes.</p> <p>8 Q Can you give me an example of a medical</p> <p>9 appliance and how it substitutes for the</p> <p>10 malfunctioning part of the body?</p> <p>11 A Eye glasses are a medical appliance.</p> <p>12 Q Anything else you can think of?</p> <p>13 A A CPAP machine.</p> <p>14 Q How does that work?</p> <p>15 A It's for sleep apnea, some medical</p> <p>16 appliance.</p> <p>17 Q How does that substitute for a --</p> <p>18 A I am not sure. It's in the regulations.</p> <p>19 Q In the regulations?</p> <p>20 A Uh-huh.</p> <p>21 Q But you said you are not sure how that</p> <p>22 substitutes for a malfunctioning part of the body,</p> <p>23 is that right?</p> <p>24 A I think it cures sleep apnea. So maybe</p> <p>54</p>	<p>1 A You can buy replacement tubes or masks.</p> <p>2 Q They're sold separately?</p> <p>3 A Yes.</p> <p>4 Q A CPAP machine won't work if it doesn't</p> <p>5 have tubes or mask attached to it, fair to say?</p> <p>6 A Yes.</p> <p>7 Q What are some other examples of a medical</p> <p>8 appliance you can think of?</p> <p>9 A I can't think of anything right now.</p> <p>10 Q I am not here to test you. I am trying to</p> <p>11 see what you know. We have been dancing around it,</p> <p>12 the point of the appeal at issue in this case has to</p> <p>13 do with what we contend are medical appliances that</p> <p>14 were being sold by IMS that should have been taxed</p> <p>15 at the low rate and that are not, that's why we're</p> <p>16 focused on that issue.</p> <p>17 Before you had done this audit for IMS,</p> <p>18 have you dealt with that issue in prior audits?</p> <p>19 A No, I don't think so. I think that is my</p> <p>20 first one.</p> <p>21 Q If you turn to February 6th of 2014, it</p> <p>22 says you are at the taxpayer's location, you gave</p> <p>23 Debra the list of invoices that you need to review</p> <p>24 to test infusion pumps. She gave you a copy of the</p> <p>56</p>



<p>1 invoices. When you say test infusion pumps, what 2 does it mean?</p> <p>3 A To see if they were taxed.</p> <p>4 Q So you weren't trying to test how an 5 infusion pump works?</p> <p>6 A No.</p> <p>7 Q When you say test, you mean run some kind 8 of numbers?</p> <p>9 A Just to look at the invoices to see if 10 they were taxed at a high or low rate.</p> <p>11 Q On February 10th, 2014 you note that you 12 updated two spreadsheets and sent them to Pat Hoyt. 13 John said the information downloaded for expenses 14 only, contain purchase order information. And then 15 on the 14th you mailed the 60-day letter for resale 16 certificates and tax exempt letters by certified 17 letter to Debra. What is a 60-day letter? What 18 does that mean?</p> <p>19 A Letting her know she had 60 days to give 20 me all of her tax exempt letters.</p> <p>21 Q Is that what you referred to earlier as 22 the demand?</p> <p>23 A Demand letter.</p> <p>24 Q Okay. If Debra did not respond in 60</p> <p>57</p>	<p>1 Q So anything that happened in that 2 conversation that you are going to testify about is 3 just right there on the paper?</p> <p>4 A Yes.</p> <p>5 Q You don't have anything that sticks out?</p> <p>6 A No.</p> <p>7 Q On May 20, 2014, "Debra and Pat Diorio 8 request an extension until June 29th to submit 9 resale certificates. After speaking with Denise, an 10 extension was granted." Do you remember that 11 conversation or that issue?</p> <p>12 A No, I don't.</p> <p>13 Q Then it looks like you received the resale 14 certificates on June 2nd, is that correct?</p> <p>15 A Yes.</p> <p>16 Q On June 13th, 2014 you note that you 17 received an e-mail from Debra Procacio stating that, 18 "All items sold at IMS should be taxed at the low 19 rate because they have medicinal purposes. I sent 20 an e-mail back to Debra Procacio stating the low 21 rate was for medicines and medical appliances. 22 Debra asked to meet with Denise Konicki to discuss 23 the issues." You set up an appointment. 24 The first question, was Debra</p> <p>59</p>
<p>1 days, she was going to get a subpoena. Is that the 2 next step?</p> <p>3 A Yes.</p> <p>4 Q On March 6th, 2014 you, Pat and Denise 5 were at the taxpayer's location. It says you found 6 a prior audit high rate items were 21 percent of the 7 items sold and low rate were 79 percent of the items 8 sold. You discussed and Denise Konicki agreed that 9 we would use the same rate as found in the prior 10 audit. Do you see that?</p> <p>11 A Yes.</p> <p>12 Q Do you remember that conversation that you 13 had with Pat and Denise?</p> <p>14 A I remember that we talked about this.</p> <p>15 Q As you sit here today, you have a memory 16 of talking about that with them?</p> <p>17 A Not really. I mean, I know it happened, 18 because I wrote it, but I don't remember who said 19 what.</p> <p>20 Q Right. And I am not questioning that it 21 happened. I am trying to see if there's anything 22 else about that conversation that you remember that 23 is not written down?</p> <p>24 A No.</p> <p>58</p>	<p>1 communicating with you by e-mail very frequently 2 during the audit or was it unusual?</p> <p>3 A Sometimes she sent e-mails if I was not 4 there.</p> <p>5 Q Okay. Why would you document in your 6 audit comments this particular e-mail when I didn't 7 see very many notes about prior e-mails?</p> <p>8 MR. SCHRIFTMAN: Objection, form. You can 9 answer.</p> <p>10 THE WITNESS: Because what she said, 11 everything should be taxed at a low rate.</p> <p>12 BY MR. HESS:</p> <p>13 Q What was your initial reaction to that?</p> <p>14 A I was surprised she said that.</p> <p>15 Q Why were you surprised?</p> <p>16 A Because some of the items they sell, they 17 sell gloves that were high rate items.</p> <p>18 Q Uh-huh.</p> <p>19 A So...</p> <p>20 Q Okay.</p> <p>21 A There's some obvious high rate items they 22 sell.</p> <p>23 Q Do you still have your old e-mails from -- 24 during this time period?</p> <p>60</p>



<p>1 A Probably not.</p> <p>2 Q Would the Department have those?</p> <p>3 A I don't know.</p> <p>4 MR. SCHRIFTMAN: For the record,</p> <p>5 everything that is in the audit file we</p> <p>6 provided is supposed to contain all the</p> <p>7 information already. You can make a request,</p> <p>8 we can take another look, but I believe she did</p> <p>9 a second look already for those and didn't have</p> <p>10 any of the e-mails.</p> <p>11 MR. HESS: Okay.</p> <p>12 BY MR. HESS:</p> <p>13 Q The next entry is June 30th, and I won't</p> <p>14 ask about this but it says the auditor in</p> <p>15 parentheses (Patricia Hoyt) Lisa Fox and Denise</p> <p>16 Konicki met with Debra Procacio, did you make this</p> <p>17 note or did somebody else?</p> <p>18 A I believe I did.</p> <p>19 Q Throughout the document you have been</p> <p>20 referring to Pat Hoyt as Pat, not Patricia. So I</p> <p>21 was wondering why it's in a different font and why</p> <p>22 it's worded a little differently? Do other people</p> <p>23 have access to your audit comments?</p> <p>24 A No.</p> <p style="text-align: right;">61</p>	<p>1 Q I have to ask you these questions so I</p> <p>2 don't get surprised down the road that you have some</p> <p>3 memory. I am not trying to be difficult.</p> <p>4 That last entry on June 3rd, 2015, we</p> <p>5 talked about that conversation already, is that</p> <p>6 correct?</p> <p>7 A Yeah.</p> <p>8 Q Is there anything else about that last</p> <p>9 conversation where Mr. Diorio is angry about the</p> <p>10 action decision of the IBC, anything else you</p> <p>11 remember that we haven't talked about?</p> <p>12 A No.</p> <p>13 MR. SCHRIFTMAN: For clarification, you</p> <p>14 mean the second to last entry?</p> <p>15 MR. HESS: Yes, correct.</p> <p>16 BY MR. HESS:</p> <p>17 Q After going through your audit comments</p> <p>18 for this audit and talking about them with me, are</p> <p>19 there any other memories that you have regarding the</p> <p>20 audit that have jumped out in your mind that we</p> <p>21 haven't talked about?</p> <p>22 A The only thing is she said she refunded</p> <p>23 some taxpayers.</p> <p>24 Q She being Debra?</p> <p style="text-align: right;">63</p>
<p>1 Q Do you remember this meeting?</p> <p>2 A No. I mean, it doesn't stick out.</p> <p>3 Q Okay. You do note that the auditor asked</p> <p>4 for a catalog of items to see what IMS sold, which</p> <p>5 you talked about here today. They refused because</p> <p>6 they said it did not represent the quantity of the</p> <p>7 items sold. You don't remember that conversation at</p> <p>8 all beyond what is written here on the document?</p> <p>9 A What did you say?</p> <p>10 Q You don't remember that conversation, is</p> <p>11 that fair?</p> <p>12 MR. SCHRIFTMAN: Objection, form. Answer,</p> <p>13 if you are able to.</p> <p>14 BY MR. HESS:</p> <p>15 Q Other than what is written here on the</p> <p>16 document, is there anything else about that</p> <p>17 conversation that you remember?</p> <p>18 A No.</p> <p>19 Q The next entry is August 13th, 2014. It's</p> <p>20 a meeting with Pat, Denise, yourself and the lawyer,</p> <p>21 John Pembroke, and Debra Procacio, same question, do</p> <p>22 you remember anything about that meeting other than</p> <p>23 was is reflected on the document?</p> <p>24 A No.</p> <p style="text-align: right;">62</p>	<p>1 A They refunded some money.</p> <p>2 MR. SCHRIFTMAN: Off the record for one</p> <p>3 second.</p> <p>4 (whereupon, a short break was</p> <p>5 taken.)</p> <p>6 BY MR. HESS:</p> <p>7 Q Now, I am going to hand you what has been</p> <p>8 marked as Exhibit No. 2 for you to look at.</p> <p>9 A Okay.</p> <p>10 Q You said you reviewed that document before</p> <p>11 your deposition here today?</p> <p>12 A Yes.</p> <p>13 Q Is this a form document that are filled</p> <p>14 out in every audit that you do?</p> <p>15 A This is not a form document.</p> <p>16 Q So you start from the beginning every</p> <p>17 time?</p> <p>18 A Yes.</p> <p>19 Q A document like this titled Audit Comments</p> <p>20 filled out in every audit you do?</p> <p>21 A Yes.</p> <p>22 Q Does that go for all of the auditors here</p> <p>23 at the Department?</p> <p>24 A Yes.</p> <p style="text-align: right;">64</p>



<p>1 Q It's the Department policy to complete one 2 of these forms? 3 A Yes. 4 Q Is there something -- what is the name of 5 this form other than Audit Comments or is that the 6 name? 7 A Audit Narratives. 8 Q Narrative. 9 A It could be either one, comment or a 10 narrative. 11 Q Okay. What is a jeopardy assessment? 12 A It talks about if we think that the 13 taxpayer is going to leave or if they're going to 14 leave the state or may close. 15 Q Okay. What is Gentax, G-E-N-T-A-X, what 16 is that? 17 A The accounting system, the tax system we 18 keep information about companies, whether they pay 19 taxes, like the whole file. 20 Q Okay. Is that the same system that you 21 used here at the Department since you started? 22 A Yes. 23 Q Is it still in use today? 24 A Yes.</p>	<p>1 there's a discussion regarding high rate sales. 2 I'll read, "The taxpayer claimed tax collection on 3 the ST-1 (in months in which an ST-1 was filed), and 4 eliminated non-taxable sales, i.e., resale and 5 exempt organizations." What is an ST-1? 6 A The sales tax return. 7 Q John Rowland provided a sales by customer 8 summary report for the entire audit period, which 9 was given to the taxpayer to supply resale exemption 10 certificates. Do you recall seeing that report? 11 A Yes. 12 Q Do you recall reviewing it prior to today 13 in preparation for your deposition? 14 A Yes. 15 Q You did? 16 A Uh-huh. 17 Q Okay. Again, you note the prior audit was 18 reviewed to obtain high/low rate percentages and 19 noted the rates were -- the high rate was 21 percent 20 and the low rate was 79 percent right there in the 21 middle, do you see that? 22 A Yes. 23 Q And did you draft this report? 24 MR. SCHRIFTMAN: Objection, form. You can</p>
65	67
<p>1 Q The background portion on Page 2, you 2 noted that there's a prior audit through July 2008 3 completed by Jim Terpinas, the prior audit we 4 discussed earlier, correct? 5 A Yes. 6 Q The CAF was reviewed, does that indicate 7 that you were able to access Jim's notes or no? 8 A Yeah. 9 Q Yes? 10 A Yes. 11 Q Is the CAF, remind me what is that? 12 A I don't know what CAF stands for but it's 13 the audit file. 14 Q Would that include the information on 15 Gentax or would it consist of only the information 16 on the Gentax system? 17 A It's not the information on the Gentax. 18 It's his files, so it does not include Gentax. 19 Q So his actual notes he wrote and things 20 like that? 21 A Uh-huh. 22 Q Like an actual file you could hold? 23 A Or electronic file. 24 Q On Page 3 at the bottom of the page,</p>	<p>1 answer if you can. 2 THE WITNESS: Patricia and I together. 3 BY MR. HESS: 4 Q Do you recall which portions of the report 5 you drafted and which portions Patricia drafted? 6 A No. We sat and talked about it and I 7 wrote it. 8 Q You wrote it, but it was the product of 9 both of you in collaboration with one another? 10 A Yes. 11 Q You note, "The original plan was to use 12 the percentage established during the prior audit. 13 The taxpayer didn't agree with the above method. 14 The taxpayer was not sure how the prior auditor had 15 arrived at the above-mentioned percentages. The 16 taxpayer then supplied the auditor, "Summary, sales 17 history report," report list each item sold by 18 customer." I'll stop there. 19 Do you recall this discussion and this 20 process you underwent with the taxpayer? 21 A Yes. 22 Q Who was it that told you that they 23 disagreed with the method of using the prior audit, 24 if anybody?</p>
66	68



<p>1 A Pembroke.</p> <p>2 Q John Pembroke said that?</p> <p>3 A Yes.</p> <p>4 Q Do you know how you note the taxpayer was</p> <p>5 not sure how the prior auditor had arrived at the</p> <p>6 above percentages. Do you know how the prior</p> <p>7 auditor arrived at the percentages?</p> <p>8 A I do not. I don't know.</p> <p>9 Q Okay. Other than discussions with John</p> <p>10 Pembroke, do you remember any conversations with</p> <p>11 anybody at IMS regarding the decision whether to use</p> <p>12 or not use the percentages arrived at during the</p> <p>13 prior audit?</p> <p>14 A Could you ask me again?</p> <p>15 Q Did you talk about using the percentages</p> <p>16 from the prior audit with anybody at IMS other than</p> <p>17 John Pembroke, the attorney?</p> <p>18 A Maybe Debra.</p> <p>19 Q Do you remember any of those</p> <p>20 conversations?</p> <p>21 A Not in detail.</p> <p>22 Q I know in Exhibit 1 we talked about an</p> <p>23 e-mail you got from Debra about that issue?</p> <p>24 A She said that she thought everything</p> <p>69</p>	<p>1 Q Before you told me you never obtained a</p> <p>2 copy of a catalog?</p> <p>3 A We did not. We went on the internet and</p> <p>4 they have something on the internet for their</p> <p>5 customers.</p> <p>6 Q Uh-huh.</p> <p>7 A So we took a description and put it in,</p> <p>8 because you can put in a description without -- so</p> <p>9 we did not get the catalog. We looked on the</p> <p>10 internet ourselves and looked -- just Googled, but I</p> <p>11 did not get it. She did not give me her complete</p> <p>12 catalog.</p> <p>13 Q When it has a reference to a catalog, you</p> <p>14 are talking about the catalog on the IMS website?</p> <p>15 A It's on the IMS website, but we did it on</p> <p>16 our own computer. We didn't get access to any --</p> <p>17 Q Sure.</p> <p>18 A We were like customers.</p> <p>19 Q Information out there for the public?</p> <p>20 A Exactly.</p> <p>21 Q So the catalog referred to was not the</p> <p>22 paper catalog, it's something I can go on my phone</p> <p>23 and look up right now?</p> <p>24 A Yes.</p> <p>71</p>
<p>1 should be at the low rate.</p> <p>2 Q Yeah. Other than that e-mail and the</p> <p>3 discussion with John Pembroke about using the prior</p> <p>4 audit percentages, do you have any information from</p> <p>5 any source about IMSS' position on whether or not to</p> <p>6 use the percentages arrived at in the prior audit?</p> <p>7 MR. SCHRIFTMAN: Object to form. You can</p> <p>8 answer.</p> <p>9 BY MR. HESS:</p> <p>10 Q Do you understand the question?</p> <p>11 A What was the question?</p> <p>12 Q Other than talking to John Pembroke, like</p> <p>13 we talked about, and other than the e-mail from</p> <p>14 Debra, did you have any conversation with anybody</p> <p>15 else about not using the percentages from the prior</p> <p>16 audit?</p> <p>17 A I don't remember.</p> <p>18 Q This summary sales history report that the</p> <p>19 taxpayer supplied listed each item sold by the</p> <p>20 customer, you state that, quote, "We analyzed each</p> <p>21 item sold in detail by looking up the description of</p> <p>22 the item in either the taxpayer's product catalog or</p> <p>23 on the internet." Do you see that?</p> <p>24 A Yes.</p> <p>70</p>	<p>1 Q In addition to that, you did Google</p> <p>2 searches?</p> <p>3 A Yes.</p> <p>4 Q Regarding specific items?</p> <p>5 A We put the description she had on her</p> <p>6 report put it in, copied it and put it in.</p> <p>7 Q In the search box?</p> <p>8 A Yep.</p> <p>9 Q You hit search?</p> <p>10 A Yep.</p> <p>11 Q To see what comes up?</p> <p>12 A Yep.</p> <p>13 Q You took the description from --</p> <p>14 A From the sales report.</p> <p>15 Q -- summary sales report. To see what the</p> <p>16 product was?</p> <p>17 A Exactly.</p> <p>18 Q Okay.</p> <p>19 A The description, if you can get a picture.</p> <p>20 Q So when you would do that Google search,</p> <p>21 would an entry from the IMS website pop up as one of</p> <p>22 the results?</p> <p>23 A Sometimes, yes.</p> <p>24 Q If it didn't?</p> <p>72</p>



<p>1 A We used another website. We used Google.</p> <p>2 Q Okay. That is how you went about</p> <p>3 researching what these products were that IMS sold?</p> <p>4 A We also looked at our regulations.</p> <p>5 Q Okay.</p> <p>6 A To see if something specific came up.</p> <p>7 Q Is there any other kind of research that</p> <p>8 you did about products IMS claimed should be taxed</p> <p>9 at the low rate?</p> <p>10 A No.</p> <p>11 Q Moving on to Page 5 under low rate sales,</p> <p>12 the second paragraph says, "It was determined that</p> <p>13 92 percent of the taxpayer's sales are high rate and</p> <p>14 8 percent are low rate." Do you see that?</p> <p>15 A Yes.</p> <p>16 Q Was that determination made by you and</p> <p>17 Pat?</p> <p>18 A Yes.</p> <p>19 Q You arrived at that by the process by</p> <p>20 doing Google searches?</p> <p>21 A We used their --</p> <p>22 MR. SCHRIFTMAN: Objection to form.</p> <p>23 THE WITNESS: We used their schedule B,</p> <p>24 which is a list of their customers, and we went</p> <p style="text-align: right;">73</p>	<p>1 A The action decision.</p> <p>2 Q When the ICB makes an action decision, you</p> <p>3 get a copy of that or did you participate in that?</p> <p>4 How does that work?</p> <p>5 A I get a copy of it.</p> <p>6 Q Okay.</p> <p>7 A So does the taxpayer.</p> <p>8 Q Okay. Do you know how they determined</p> <p>9 that Medihoney should be taxed at a low rate?</p> <p>10 MR. SCHRIFTMAN: Objection, instruct her</p> <p>11 not to answer. That is confidential and so as</p> <p>12 far as the action decision itself, it's always</p> <p>13 part of the audit file, but the ICB is behind</p> <p>14 the decision. It's deemed confidential in the</p> <p>15 regulations.</p> <p>16 BY MR. HESS:</p> <p>17 Q So you don't know? I hope you don't know</p> <p>18 based on what he just said.</p> <p>19 How did you reconcile in your own mind the</p> <p>20 fact that you determined 92 percent of the products</p> <p>21 to be taxed at the high rate when Jim Terpinas a few</p> <p>22 years earlier determined only 21 percent of the</p> <p>23 profits should be taxed at the high rate?</p> <p>24 MR. SCHRIFTMAN: Objection,</p> <p style="text-align: right;">75</p>
<p>1 and we put -- if we thought the product was</p> <p>2 high and low by a customer, because she gave us</p> <p>3 a list by customer, and so we looked at the</p> <p>4 items, we determined if something was high and</p> <p>5 low based on the regulations.</p> <p>6 MR. HESS: Okay.</p> <p>7 THE WITNESS: The general information</p> <p>8 letter and a description she gave us.</p> <p>9 BY MR. HESS:</p> <p>10 Q Okay. So you determined if something</p> <p>11 was -- should be taxed at a high rate or low rate by</p> <p>12 looking at the report, seeing the descriptions of</p> <p>13 the products, researching that product on the</p> <p>14 internet, and then coming to your own conclusion as</p> <p>15 to whether or not it's a medical appliance?</p> <p>16 A Based on the regulations.</p> <p>17 Q Now, you made an adjustment for Medihoney</p> <p>18 right below that as recommended by the ICB?</p> <p>19 A Yes.</p> <p>20 Q What is Medihoney?</p> <p>21 A I am not sure. I think it may be a drug</p> <p>22 or medicine.</p> <p>23 Q When you say as recommend by the ICB, what</p> <p>24 does that mean?</p> <p style="text-align: right;">74</p>	<p>1 mischaracterizes testimony. You can answer if</p> <p>2 you can.</p> <p>3 THE WITNESS: What is the question?</p> <p>4 BY MR. HESS:</p> <p>5 Q How do you reconcile in your mind the fact</p> <p>6 that you and Pat Hoyt made a determination that</p> <p>7 92 percent of the taxpayers sales are high rate and</p> <p>8 8 percent are low rate, when during the prior audit</p> <p>9 period, Jim Terpinas and whoever was working with</p> <p>10 Jim, determined that only 21 percent of the taxpayer</p> <p>11 sales should be taxed at the high rate and 79 should</p> <p>12 be taxed at the low rate?</p> <p>13 MR. SCHRIFTMAN: Same objection.</p> <p>14 BY MR. HESS:</p> <p>15 Q How do you reconcile those two?</p> <p>16 A I don't know what Jim Terpinas looked at.</p> <p>17 Q He obviously made a determination that</p> <p>18 21 percent of sales should be high rate and 79 low</p> <p>19 rate, you were aware of that?</p> <p>20 A But I don't know how he came up with that.</p> <p>21 Q Right. So when you made your</p> <p>22 determination of 92 percent high rate and 8 percent</p> <p>23 low rate, did you stop and think, wait a minute,</p> <p>24 something here is not right?</p> <p style="text-align: right;">76</p>



<p>1 A No, I did not, because I know I looked at 2 my records, and I know what I looked at. 3 Q And we talked about everything you looked 4 at here today? 5 A Uh-huh. 6 Q So you didn't think that, God, this is way 7 different than what we taxed these folks the last 8 time, I wonder why? You didn't try to determine 9 what the differences were? 10 A No, because I didn't have what he had. So 11 I don't know what he looked at. I don't know what 12 he -- how he came up with his numbers, but I know 13 what we did. We looked at each product, we looked 14 at the description, we looked at the regulations. 15 Q Did you see why a taxpayer might think 16 that there's something wrong here when I am getting 17 vastly different recommendations or results from two 18 different auditors? 19 MR. SCHRIFTMAN: Objection. You can 20 answer if you can. 21 THE WITNESS: I can see that. 22 BY MR. HESS: 23 Q In preparing for your deposition, did you 24 look at the petition that was filed in this case at</p>	<p>1 EXAMINATION 2 BY MR. SCHRIFTMAN: 3 Q Thanks, Ms. Fox. I appreciate you 4 answering some questions I have in follow up from 5 the questions you were asked. 6 You were asked some questions regarding 7 your time here at the Department, and I believe you 8 said you worked here since 2010? 9 A Yes. 10 Q Do you know about how many audits you 11 conducted in that time? 12 A About 145. 13 Q How many do you currently have, if you 14 know, that are active? 15 A 14. 16 Q Have you had any other audits that have 17 dealt with this issue with medical appliances? 18 A Yes. 19 Q How many? 20 A Maybe two. 21 Q And how many of those audits, if any, were 22 agreed upon? 23 A Both of them. 24 Q When did these audits take place?</p>
77	79
<p>1 all? 2 A Yes. 3 Q In the petition, I won't mark it as an 4 exhibit, because I didn't make a copy, but this is a 5 copy of the Department's answer to the petition. It 6 just lists out certain products that are sold by the 7 IMS. Did you look at this portion of the petition 8 preparing for your deposition that lists needles, 9 syringes, bag container, blood transfer devices -- 10 MR. SCHRIFTMAN: Would you make it closer? 11 THE WITNESS: The question was what? 12 BY MR. HESS: 13 Q Did you look at that portion of the 14 petition that lists those certain items? 15 A Yes. 16 Q As you sit here today, do you know how any 17 of those items are used to deliver patient care? Do 18 you have a memory how those items are used? 19 A No. 20 MR. HESS: Those are all my questions. 21 Your counsel might have some questions. 22 MR. SCHRIFTMAN: I do. 23 24</p>	<p>1 A Within the last two years. 2 Q What was your level -- you were talking 3 about when you were auditor/trainee, auditor 1, 2, 4 3, what was your level at that time? 5 A Revenue auditor 3. 6 Q How long have you been the revenue auditor 7 3? 8 A Since I think either November, October, 9 November 2015. 10 Q You talked about how this audit, you were 11 a revenue auditor 2 when this audit took place, is 12 that correct? 13 A Yes. 14 Q You talked about Patricia Hoyt who is a 15 revenue auditor 3? 16 A Yes. 17 Q You mentioned something about complexities 18 involved with this audit. Do you recall what the 19 complexities were that got Ms. Hoyt involved in this 20 audit with you? 21 A Yes. They had leases. They had service 22 occupational tax. They had a period where they did 23 not do any sales tax returns, I think from 2008 to 24 2011, they didn't file any sales tax returns, so</p>
78	80



<p>1 they were non-filers, we call them. They were a</p> <p>2 large company, over 15 million, I think.</p> <p>3 Q Were you ever given an explanation why</p> <p>4 they didn't file tax returns as you mentioned?</p> <p>5 A They said the controller left who was --</p> <p>6 conducted the last audit, she left.</p> <p>7 Q Do you recall the name of that person?</p> <p>8 A No, I don't know the name of the person</p> <p>9 before Debra. So they had a period where they</p> <p>10 didn't have a controller.</p> <p>11 Q You mentioned leases, you mentioned</p> <p>12 service occupation tax, can you speak a little more,</p> <p>13 let's go through more of those in detail. What</p> <p>14 issues would be involved with leases that would make</p> <p>15 an issue like this complex?</p> <p>16 A Because they had conditional sales, which</p> <p>17 they were leases but actually conditional sales. So</p> <p>18 they lease the equipment out, but they were really</p> <p>19 sales. At the end they were sales. They also had</p> <p>20 rental equipment, people that rented things.</p> <p>21 Q With rental equipment, what kind of issues</p> <p>22 were involved with that determination for its audit?</p> <p>23 A I guess they were renting, but then they</p> <p>24 would sell the items after they rented them.</p> <p style="text-align: right;">81</p>	<p>1 THE WITNESS: No.</p> <p>2 BY MR. SCHRIFTMAN:</p> <p>3 Q You testified regarding the books and</p> <p>4 records you reviewed in this audit?</p> <p>5 A Yes.</p> <p>6 Q Did you review -- to make your</p> <p>7 determination as to what the high low rate</p> <p>8 percentages were, did you review all the books and</p> <p>9 records available to you?</p> <p>10 A Yes.</p> <p>11 MR. HESS: Objection, asked and answered.</p> <p>12 THE WITNESS: Yeah.</p> <p>13 BY MR. SCHRIFTMAN:</p> <p>14 Q You testified regarding that there was a</p> <p>15 prior rate determined, correct?</p> <p>16 A Yes.</p> <p>17 Q Was it always the plan when this audit was</p> <p>18 taking place, the one we're talking about, to use</p> <p>19 all the books and records to come up with the error</p> <p>20 rate?</p> <p>21 MR. HESS: Objection, form.</p> <p>22 BY MR. SCHRIFTMAN:</p> <p>23 Q Was it always the plan, let's take a step</p> <p>24 back. You and Patricia Hoyt were involved in</p> <p style="text-align: right;">83</p>
<p>1 Q Okay. And then you mentioned service</p> <p>2 occupation tax, what were the issues involved with</p> <p>3 that potentially?</p> <p>4 A They were dealing with repairs and with</p> <p>5 the service occupational tax when they do the</p> <p>6 repairs, the parts that they put into the machine,</p> <p>7 they old use tax on them or they can collect ROT on</p> <p>8 those parts.</p> <p>9 Q So all of those issues in addition to the</p> <p>10 issue we're talking about primarily today with what</p> <p>11 is medical appliance, those we're all present at</p> <p>12 that audit?</p> <p>13 A Yes.</p> <p>14 Q Now, I know you were testifying regarding</p> <p>15 the prior audit that was done. When I say the prior</p> <p>16 audit, the one done prior to the one at issue in</p> <p>17 this case?</p> <p>18 A Yes.</p> <p>19 Q And I know you testified that you didn't</p> <p>20 speak to that prior auditor?</p> <p>21 A I didn't.</p> <p>22 Q Notwithstanding, do you know what sort of</p> <p>23 methodology the prior auditor used?</p> <p>24 MR. HESS: Objection, asked and answered.</p> <p style="text-align: right;">82</p>	<p>1 conducting this audit?</p> <p>2 A Yes.</p> <p>3 Q Was it always the plan when this audit was</p> <p>4 being conducted to use all of the books and records</p> <p>5 at your disposal to come up with the error rates at</p> <p>6 issue?</p> <p>7 MR. HESS: Objection to form. I don't</p> <p>8 know what you mean all the books and records.</p> <p>9 MR. SCHRIFTMAN: All the books and records</p> <p>10 made available by the taxpayer, IMS in this</p> <p>11 case.</p> <p>12 THE WITNESS: We used the projections, the</p> <p>13 sample, the CA sample and use the books and</p> <p>14 records.</p> <p>15 BY MR. SCHRIFTMAN:</p> <p>16 Q Can you explain to me what the difference</p> <p>17 is between using a sample or projection, you said</p> <p>18 you would have done, or using all the books and</p> <p>19 records?</p> <p>20 A Well, the CA auditor, he comes up with a</p> <p>21 sample, so we were going to use his sample, but they</p> <p>22 told us they did not want us to use a sample, they</p> <p>23 wanted us to use all their sales so we would get it</p> <p>24 in detail.</p> <p style="text-align: right;">84</p>



<p>1 Q When you say they, who is they?</p> <p>2 A Debra and the owner, they wanted us to,</p> <p>3 and the attorney, wanted us to look at it in detail,</p> <p>4 so do not use a sample, do not use the prior audit,</p> <p>5 prior rates, look at everything, he wanted to see it</p> <p>6 in detail, so no sample. So we didn't use</p> <p>7 projections, we used detail.</p> <p>8 Q Thank you. Now, you had talked about the</p> <p>9 methods they use. Let me take a step back. Does</p> <p>10 the term best information and judgment mean anything</p> <p>11 to you?</p> <p>12 A Yes.</p> <p>13 Q What does it mean to you?</p> <p>14 A It means we used the best information to</p> <p>15 come up with results that we have.</p> <p>16 Q Okay. And how would you think that term</p> <p>17 applies to the audit we're talking about today?</p> <p>18 A I think we used the -- what we had to come</p> <p>19 up with our audit results.</p> <p>20 Q Now, when you conduct an audit, do you</p> <p>21 have contact with the supervisor?</p> <p>22 A Yes.</p> <p>23 Q Do you recall having contact with any</p> <p>24 supervisor in this audit?</p> <p>85</p>	<p>1 time we come up with numbers. So she reviewed it</p> <p>2 before then.</p> <p>3 Q Okay.</p> <p>4 A And then she reviews it usually again</p> <p>5 before we issue the 143. And before we turn it in,</p> <p>6 she reviews it again.</p> <p>7 Q And I appreciate you saying the numbers,</p> <p>8 and I think to Matt's benefit we don't know, for</p> <p>9 example, EDC-5, I know those are notes that are</p> <p>10 taken down chronologically. I know audit comments</p> <p>11 and narrative don't have a number, what they're</p> <p>12 called, so I am going to ask questions, you say the</p> <p>13 123, because it's for the benefit of the record to</p> <p>14 understand what that document is.</p> <p>15 A Okay.</p> <p>16 Q To your knowledge did a review take place</p> <p>17 in this audit?</p> <p>18 A Yes.</p> <p>19 Q To your knowledge did the supervisor</p> <p>20 believe the audit was done correctly?</p> <p>21 A Yes, she did.</p> <p>22 Q Now, we talked a lot about sales tax. Can</p> <p>23 you define for me what you believe sales tax is?</p> <p>24 A The retailers occupational tax is a tax on</p> <p>87</p>
<p>1 A with Denise Konicki? With Denise Konicki.</p> <p>2 Q Did you have any conversations with</p> <p>3 Ms. Konicki regarding the issue of what is or is not</p> <p>4 a medical appliance, if you recall?</p> <p>5 A We might have talked about. Yeah, we</p> <p>6 talked about it, if it was high or low. We relied</p> <p>7 on the regulation.</p> <p>8 Q Okay. Do you recall any specific</p> <p>9 conversations?</p> <p>10 A No.</p> <p>11 Q In general when you conduct an audit if</p> <p>12 you have a question about the applicability of a</p> <p>13 regulation, is that something you would talk to a</p> <p>14 supervisor about?</p> <p>15 A Yes.</p> <p>16 Q When an audit is being finalized, does an</p> <p>17 audit supervisor review that audit?</p> <p>18 A Yes, she does.</p> <p>19 Q Can you explain the process of that</p> <p>20 review?</p> <p>21 A Well, we talk about it before we even</p> <p>22 issued a 123.</p> <p>23 Q What is a 123?</p> <p>24 A The audit liability, so that is the first</p> <p>86</p>	<p>1 products that are sold in Illinois.</p> <p>2 Q Okay. Have you heard of the term use tax?</p> <p>3 A Use tax is for things that you use, you</p> <p>4 may not -- you buy them, you consume yourself. So</p> <p>5 it's the consumable supplies, things the taxpayer --</p> <p>6 like toilet paper or like paper, something you don't</p> <p>7 sell, it's something you use.</p> <p>8 Q Now, you spoke before about service</p> <p>9 occupation tax. What do you know about that?</p> <p>10 A Service occupational tax is when you</p> <p>11 provide a service or repair and you transfer</p> <p>12 something like an item to a person, that item may be</p> <p>13 taxed on the cost or the selling price.</p> <p>14 Q Now, you mentioned you have done about 145</p> <p>15 audits since you have been here?</p> <p>16 A Yes.</p> <p>17 Q Off the top of your head, do you remember</p> <p>18 what acts have been applicable in those audits?</p> <p>19 A No.</p> <p>20 Q Let me clarify, you mentioned retailers</p> <p>21 occupational tax?</p> <p>22 A Yes.</p> <p>23 Q You mentioned use tax?</p> <p>24 A Yes.</p> <p>88</p>




<p>1 Q You mentioned service occupation tax?</p> <p>2 A Yes.</p> <p>3 Q Are there any other acts that come to mind</p> <p>4 that you dealt with?</p> <p>5 A I don't understand the question.</p> <p>6 Q So you were talking about sales tax being</p> <p>7 retailers occupation tax?</p> <p>8 A Yes.</p> <p>9 Q Use tax?</p> <p>10 A Uh-huh.</p> <p>11 Q We talked about service occupation tax?</p> <p>12 A Uh-huh.</p> <p>13 Q In the audits you have conducted over the</p> <p>14 time you have been here, have there been, to your</p> <p>15 knowledge or recollection, if you don't remember,</p> <p>16 that's fine, but your recollection have there been</p> <p>17 other tax acts, statutes, laws that you have looked</p> <p>18 at?</p> <p>19 A I can't think of none right now, sorry.</p> <p>20 Q That's fine. Now, we talked about Exhibit</p> <p>21 1, this EDC-5. You had discussed how this is</p> <p>22 typically created during an audit?</p> <p>23 A Yes.</p> <p>24 Q To the best of your recollection were the</p> <p style="text-align: right;">89</p>	<p>1 A She's the controller.</p> <p>2 Q Did you have contact with anyone else at</p> <p>3 IMS, you spoke about -- I'll try to narrow it down,</p> <p>4 you spoke about Mr. Pembroke?</p> <p>5 A Uh-huh.</p> <p>6 Q He's not at IMS but...</p> <p>7 A Right.</p> <p>8 Q Who else at IMS did you have contact with?</p> <p>9 MR. HESS: Asked and answered. Go ahead.</p> <p>10 THE WITNESS: Pat Diorio.</p> <p>11 BY MR. SCHRIFTMAN:</p> <p>12 Q Diorio?</p> <p>13 A Diorio.</p> <p>14 Q Anyone else?</p> <p>15 A No.</p> <p>16 Q How often did you speak with Mr. Diorio</p> <p>17 during the audit?</p> <p>18 A Maybe twice.</p> <p>19 Q Did you ever speak with someone named</p> <p>20 Laura Sexton?</p> <p>21 A Not that I recall.</p> <p>22 Q Do you ever speak with someone Daniel</p> <p>23 Izzo?</p> <p>24 A No.</p> <p style="text-align: right;">91</p>
<p>1 entries in this audit created by you at or near the</p> <p>2 time in which the date corresponds?</p> <p>3 A Yes.</p> <p>4 Q There was a question looking at the page</p> <p>5 that contains the June 30th, 2014 entry, it looks</p> <p>6 like the second to last page about the different</p> <p>7 fonts?</p> <p>8 A Uh-huh.</p> <p>9 Q And I notice that the top entry contains</p> <p>10 different fonts. Would you say that is correct?</p> <p>11 A Yes.</p> <p>12 Q Is it accurate to say that these could</p> <p>13 contain different fonts and still be your notes?</p> <p>14 A Yes.</p> <p>15 Q And do you try and make the EDC-5 as</p> <p>16 accurate as possible?</p> <p>17 A I do.</p> <p>18 Q To the best of your ability?</p> <p>19 A Yes.</p> <p>20 Q Now, you talked about talking about Debra</p> <p>21 Procacio?</p> <p>22 A Uh-huh.</p> <p>23 Q To the best of your knowledge who is Debra</p> <p>24 Procacio?</p> <p style="text-align: right;">90</p>	<p>1 Q I know you were asked some questions</p> <p>2 regarding an entry dealing with being in a warehouse</p> <p>3 and it was 100 degrees. I'll try to find the entry</p> <p>4 so I am not paraphrasing. July 13th of '13 entry on</p> <p>5 Exhibit No. 1. You said you conducted about 145</p> <p>6 audits?</p> <p>7 A Yes.</p> <p>8 Q Are most of those field audits?</p> <p>9 A They are, all of them.</p> <p>10 Q Can you describe what the difference is</p> <p>11 between a field audit and non-field audit?</p> <p>12 A I guess the non-field audit was if the</p> <p>13 person brings the stuff here, because they will be</p> <p>14 conducted at headquarters.</p> <p>15 Q Okay. This was a field audit?</p> <p>16 A Yes.</p> <p>17 Q Was this audit conducted by you the same</p> <p>18 way you would have conducted any other audit?</p> <p>19 A Yes.</p> <p>20 Q Was there anyone at the taxpayers location</p> <p>21 with whom you didn't get along?</p> <p>22 A No.</p> <p>23 Q You talked about your bachelor's that you</p> <p>24 received in accounting and some of the master's</p> <p style="text-align: right;">92</p>



<p>1 degrees that you had?</p> <p>2 A Yes.</p> <p>3 Q Can you tell me when you had your</p> <p>4 bachelor's in accounting, do you recall what courses</p> <p>5 you took or examples of courses you took?</p> <p>6 A I took business law. I took federal</p> <p>7 taxation, individual and corporate. I took cost</p> <p>8 accounting. I took general accounting, management,</p> <p>9 humanities.</p> <p>10 Q Okay. And you graduated with that in</p> <p>11 1992?</p> <p>12 A Yeah.</p> <p>13 Q Now, we talked, there was some</p> <p>14 conversation about demand letters?</p> <p>15 A Uh-huh.</p> <p>16 Q Are those EDA 70s?</p> <p>17 A No. The EDA 70s, information document</p> <p>18 request.</p> <p>19 Q Excuse me, I misstated. Information</p> <p>20 document request, EDA 70. There were six to seven</p> <p>21 of them?</p> <p>22 A Uh-huh.</p> <p>23 Q And I am thinking of demand letters ED</p> <p>24 11A?</p> <p style="text-align: right;">93</p>	<p>1 poles, IVs, just medical supplies, general medical</p> <p>2 supplies.</p> <p>3 Q What do you mean when you say general</p> <p>4 medical supplies?</p> <p>5 A Things you could by retail, you could by</p> <p>6 them at Walgreens, things that you use up and throw</p> <p>7 away.</p> <p>8 Q Do you believe all medical equipment</p> <p>9 should qualify for the medical equipment exception?</p> <p>10 MR. HESS: Objection, form, foundation.</p> <p>11 THE WITNESS: No.</p> <p>12 BY MR. SCHRIFTMAN:</p> <p>13 Q Why not?</p> <p>14 MR. HESS: Same.</p> <p>15 THE WITNESS: Some things are just</p> <p>16 supplies. Some things are not -- they're not</p> <p>17 -- they're just supplies.</p> <p>18 BY MR. SCHRIFTMAN:</p> <p>19 Q Do you recall any conversations you had</p> <p>20 about refunds that were provided from IMS to</p> <p>21 taxpayers?</p> <p>22 A Debra said she refunded some high rate</p> <p>23 items. She refunded them to customers before we got</p> <p>24 there.</p> <p style="text-align: right;">95</p>
<p>1 A Yes.</p> <p>2 Q Then you mentioned subpoena?</p> <p>3 A Right.</p> <p>4 Q To your knowledge why wasn't a subpoena</p> <p>5 filed in this case?</p> <p>6 A Because she gave us the resale</p> <p>7 certificates, so we did the demand letter for the</p> <p>8 resales.</p> <p>9 Q Okay. Just to clarify, you had done you</p> <p>10 said six or seven, so we'll call it six or seven.</p> <p>11 To the best of your recollection, you had provided</p> <p>12 six to seven EDA 70s before the EDA 11A was</p> <p>13 provided?</p> <p>14 A Yes.</p> <p>15 Q Now, you were asked some questions about</p> <p>16 examples of low-rate items?</p> <p>17 A Uh-huh.</p> <p>18 Q Can you give me some examples, to the best</p> <p>19 of your ability, of what you consider to be high</p> <p>20 rate items that could be medical equipment?</p> <p>21 A High rate items are gloves, they're</p> <p>22 supplies. They're things that are not medicine, not</p> <p>23 drugs. They're non-sterile bandages or bandages.</p> <p>24 They are cotton balls. The regulation says IVs, the</p> <p style="text-align: right;">94</p>	<p>1 Q Do you recall any conversations you had</p> <p>2 with Ms. Procacio regarding that specifically?</p> <p>3 A We asked her about things, we got reports</p> <p>4 but I don't know what day.</p> <p>5 Q Do you recall what she may or may not have</p> <p>6 said to you?</p> <p>7 A She said she thought that everything was</p> <p>8 low rate and she gave back some customer refunds.</p> <p>9 Q Did you have an opinion about that?</p> <p>10 A I just asked her why but I didn't have an</p> <p>11 opinion.</p> <p>12 MR. SCHRIFTMAN: I am done.</p> <p>13 FURTHER EXAMINATION</p> <p>14 BY MR. HESS:</p> <p>15 Q How many supervisors work for the</p> <p>16 Department?</p> <p>17 A I am not sure.</p> <p>18 Q So there's Denise and approximately how</p> <p>19 many, if you know?</p> <p>20 A I am not sure.</p> <p>21 Q Regardless, every audit that is done here</p> <p>22 in the Department, every sales tax audit goes</p> <p>23 through the supervisor process that you just</p> <p>24 described, is that right?</p> <p style="text-align: right;">96</p>



<p>1 A Yes.</p> <p>2 Q And it won't be final until the supervisor</p> <p>3 signs off on it and agrees that the audit was</p> <p>4 properly done, right?</p> <p>5 A Yes.</p> <p>6 Q Okay. The same would be true for the</p> <p>7 prior audit that was done for IMS, correct?</p> <p>8 A I guess.</p> <p>9 Q That Jim Terpinas conducted?</p> <p>10 A Uh-huh.</p> <p>11 Q The supervisor would have signed off on</p> <p>12 that audit, too?</p> <p>13 A Yes.</p> <p>14 Q would have made a determination that audit</p> <p>15 was properly done, correct?</p> <p>16 A Yes.</p> <p>17 MR. HESS: That's all I have. Thank you.</p> <p>18 FURTHER EXAMINATION</p> <p>19 BY MR. SCHRIFTMAN:</p> <p>20 Q One quick question for clarification.</p> <p>21 Does Pat Hoyt work for the Department</p> <p>22 anymore?</p> <p>23 A No.</p> <p>24 Q Is she retired?</p> <p>97</p>	<p>1 STATE OF ILLINOIS)</p> <p>2) SS:</p> <p>3 COUNTY OF C O O K)</p> <p>4 I, STACEY JOHN, a Notary Public within and for</p> <p>5 the County of Cook, State of Illinois, and a Certified</p> <p>6 Shorthand Reporter of said State, do hereby certify:</p> <p>7 That previous to the commencement of the</p> <p>8 examination of the witness, the witness was duly sworn to</p> <p>9 testify the whole truth concerning the matters herein;</p> <p>10 That the foregoing deposition transcript was</p> <p>11 reported stenographically by me, was thereafter reduced</p> <p>12 to typewriting under my personal direction and</p> <p>13 constitutes a true record of the testimony given and the</p> <p>14 proceedings had;</p> <p>15 That the said deposition was taken before me at</p> <p>16 the time and place specified;</p> <p>17 That I am not a relative or employee or</p> <p>18 attorney or counsel, nor a relative or employee of such</p> <p>19 attorney or counsel for any of the parties hereto, nor</p> <p>20 interested directly or indirectly in the outcome of this</p> <p>21 action.</p> <p>22 IN WITNESS WHEREOF, I do hereunto set my</p> <p>23</p> <p>24</p> <p>99</p>
<p>1 A Yes.</p> <p>2 MR. SCHRIFTMAN: That's mostly for</p> <p>3 clarification. I am done.</p> <p>4 MR. HESS: Thank you, ma'am. I appreciate</p> <p>5 your time.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>98</p>	<p>1 hand and affix my seal of office at Chicago, Illinois</p> <p>2 this 9th day of November, 2018.</p> <p>3</p> <p>4 </p> <p>5</p> <p>6 Notary Public, Cook County, Illinois.</p> <p>7 C.S.R. Certificate No. 84-003560.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>100</p>

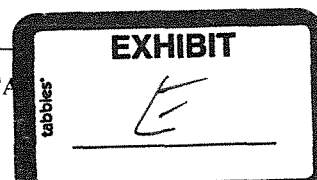


STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION

INTEGRATED MEDICAL SYSTEMS,)
)
 Petitioner,)
)
 vs.) No. 15 TT 247
)
ILLINOIS DEPARTMENT OF REVENUE,)
)
 Respondent.)

The DISCOVERY DEPOSITION of
JOHN SEGRETI, M.D., taken under oath on the 7th
day of February 2019, at 100 West
Randolph Street, Suite 7-900, Chicago, Illinois,
pursuant to the Rules of the Supreme Court of
Illinois and the Code of Civil Procedure, before
Carla L. Camiliere, License No. 084-003637, a
notary public in and for the County of Cook and
State of Illinois, pursuant to notice.



1 **APPEARANCES:**

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Appearing on behalf of the
respondent.

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I N D E X

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(Retained by Council)

C E R T I F I E D Q U E S T I O N S

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(None.)

1 (Witness sworn.)

2 JOHN SEGRETI, M.D.

3 called as a witness herein, having been first
4 duly sworn, was examined and testified as
5 follows:

6 EXAMINATION

7 BY

8 MR. SCHRIFTMAN:

9 Q Thank you.

10 Dr. Segreti, thanks so much for coming
11 in today. We'll try and do our best to make this go
12 as efficiently as possible.

13 Not surprisingly, there will be a
14 number of questions and they're a lot of items at
15 issue, but we'll try our best to run through it.

16 Just a few ground rules. If you don't
17 understand a question, simply ask me to rephrase the
18 question, I'd be glad to do so. I want to make sure
19 you understand what I'm saying.

20 I'm going to try and also speak
21 relatively clearly to the extent you can as well, so
22 the reporter can get down the information
23 efficiently.

24 And also, so there is no overlap

1 between the two of us, if I ask a question, if you
2 could please wait for me to finish the question and
3 then provide your answer that would be very helpful.

4 If you answer "yes" or "no" to a
5 question, please answer "yes" or "no" as opposed to
6 nodding your head. I've done that myself sometimes,
7 forgetting, and obviously, a nod of the head doesn't
8 come up in a deposition transcript.

9 If you need to take a break for any
10 reason, just let me know. I only ask that you answer
11 the question that's pending.

12 And this isn't a trial, so there
13 should be limited objections; however, if I ask
14 something and your counsel wants to object, I ask
15 that you answer unless he states you shouldn't answer
16 over his objections.

17 Does all that make sense to you?

18 A Yes.

19 Q Okay. Great. Would you please state and
20 spell your name for the record.

21 A Sure. My name is John Segreti,
22 S-e-g-r-e-t-i.

23 Q And have you ever been sued or filed a
24 lawsuit?

1 A I have been sued, yes.

2 Q Okay. Have you ever filed a lawsuit?

3 A 40 years ago, I filed a lawsuit.

4 Q Okay. And as far as -- so when you say
5 you have been sued was that one incident or more than
6 one incident?

7 A I'm sorry. I have been named five or six
8 times in medical malpractice suits.

9 Q Okay. And without getting into too much
10 detail regarding those, could you -- you said five or
11 six times? Do you remember which one it was, five or
12 six?

13 A I don't.

14 Q Okay. Do you know what the issues were in
15 those cases?

16 A The issues were primarily failure to
17 diagnosis or failure to treat.

18 Q Okay. And we'll go into your medical
19 background in a second. But when you say "failure to
20 diagnosis" or "failure to treat," in particular to
21 what? Because obviously, there's so many different
22 things in the field of medicine, I just want to
23 understand a little bit more what that is.

24 A In so far as they were infectious

1 diseases.

2 Q Okay. Any particular infectious diseases?

3 A No.

4 Q Have you ever been found guilty of a
5 crime?

6 A No.

7 Q Have you ever been accused of a crime?

8 A No.

9 Q Have you taken any medications that would
10 impair your ability to truthfully or fully answer any
11 question today?

12 A No.

13 Q Are you currently prescribed any such
14 medications?

15 A No.

16 Q Okay. Have you ever been deposed as an
17 expert before?

18 A Yes.

19 Q How often?

20 A In what time period?

21 Q Let's say, well, let's start broad and go
22 stronger -- go more narrow, in general, to the extent
23 in your lifetime?

24 A My lifetime, I've been deposed probably

1 about 300 times.

2 Q And this was all as an expert?

3 A Yes.

4 Q And then were those all in the field of
5 medicine?

6 A Yes.

7 Q And were they all in the field of
8 infectious diseases?

9 A Well, the -- my opinions were infectious
10 disease opinions. The case might be a faulty product
11 or fall or something that happened and someone got an
12 infection, so my testimony always had to do with
13 infectious diseases.

14 Q And I said I will try to narrow it down,
15 so I will ask a question that should hopefully narrow
16 this down. Have any of those depositions involved
17 cases where there was an issue of taxation at issue?

18 A No.

19 Q So another way to kind of hopefully narrow
20 down and limit the questioning, have you ever
21 rendered an opinion in a case involving taxation
22 before?

23 A No.

24 Q And this is going to be a similar line of

1 questioning:

2 Have you ever been called to testify
3 at a hearing before?

4 A Yeah.

5 Q Hearing or trial?

6 A Yes.

7 Q And were those under the same type of
8 circumstances that were just described in those 300
9 or so instances?

10 A Yes.

11 Q And were you qualified in those hearings
12 to be what we call a qualified expert?

13 A Yes.

14 Q And like I asked with the deposition
15 questions:

16 Have you ever given opinions in any of
17 those hearings regarding a taxation issue?

18 A No.

19 Q Are you aware of the case at issue which
20 involved an entity known as Integrated Medical
21 Systems, Inc., which I'm gonna call IMS here forward
22 to make it easier, and a tax assessment from the
23 Illinois Department of Revenue?

24 A Just from what Mr. Hess has explained to

1 me.

2 Q Okay. We'll get into that in a second.

3 Have you ever been involved as a witness in any other
4 matter with the Illinois Department of Revenue?

5 A No.

6 Q Are you currently being compensated to
7 render an opinion in this case.

8 A Yes.

9 Q And you had discussed 300 cases -- I
10 understand that's an estimate -- where you've been an
11 expert, were you compensated in those cases as well?

12 A Yes.

13 Q And how much are you being compensated to
14 render an opinion in this case?

15 A For this case?

16 Q Yes.

17 A \$400 an hour, I think I've submitted one
18 invoice. I can't remember how much it was for.

19 Q And again, this might be an estimate, but
20 how many hours would you say you've rendered so far?

21 A Not that many. Like I said, I think the
22 first one was maybe two-and-a-half or three hours and
23 since then I've put in maybe another hour.

24 Q Okay. So around four hours or so?

1 A Yeah.

2 Q Not including this deposition we are at
3 right now?

4 A Correct.

5 Q Okay. And before we go into the documents
6 which obviously you understand the report and other
7 things we are going to go into to, would you please
8 summarize what your opinion is in this case?

9 A Well, I was asked to opine on whether
10 these devices were medically necessary devices and my
11 review of the list of devices. These are all things
12 that are used in patients who are being treated with
13 outpatient antibiotic therapy.

14 Q Okay. And we will get into that in a
15 second.

16 And just to reflect because I saw you
17 open, you opened the report and I just want the
18 record to be clear.

19 A Okay.

20 Q Do you need to open the report to refresh
21 your recollection or did you know that before?

22 A What do you mean?

23 Q I had asked you a question about what your
24 opinion was, you opened your report, so, A, I wanted

1 that in the record just to make it clear, but I just
2 want to understand if you're looking at your report
3 to refresh your recollection or not.

4 A No.

5 Q I'm not trying to trick you with a
6 question. I just want to be clear if you're -- this
7 isn't a memory test.

8 A Right.

9 Q So it doesn't take away from the report.
10 I just want to understand if you're independently
11 saying it or looking at the report that you had
12 already put down?

13 A No, I was just anticipating your next line
14 of questioning.

15 Q Sure.

16 Okay. You'll have to pardon me. From
17 time to time I may take a couple seconds to try and
18 short circuit because given answers you have
19 provided, there're certain questions I may not need
20 to ask. So forgive me.

21 So it's safe to say, based on your
22 prior answers, that you have never rendered an
23 opinion relating to the taxability of medical
24 equipment aside from this case?

1 A That's correct.

2 Q Okay. Well, since you have the report
3 out, let's take a look at the Rule 213(f) disclosures
4 in this case which we would like marked as Segreti
5 Exhibit No. 1. Everyone should have copies as well.

6 Matt, would you like him to use our
7 copy or do you trust us --

8 MR. HESS: It doesn't matter to me. As
9 long as it's the full report.

10 MR. SCHRIFTMAN: The report is going to be
11 the full document, so...

12 (Whereupon, Segreti
13 Deposition Exhibit No. 1
14 was marked for
15 identification.)

16 MR. SCHRIFTMAN:

17 Q Have you seen these Rule 213(f)
18 disclosures before?

19 A Yes.

20 Q So you're fairly familiar with them?

21 A Yes.

22 Q Do you need time to review them now before
23 I ask questions?

24 A No.

1 Q When did you review this document before?

2 A A couple of weeks ago, Mr. Hess came to my
3 office and showed me the final 213s.

4 Q Okay. Had you been involved in drafting
5 the 213s in general?

6 A Just in drafting my report. And I think
7 that was used for the 213s. Obviously, I didn't
8 author a lot of the legal stuff, but the report is --
9 most of my report is here as part of the 213s.

10 Q Okay. So you said a few weeks ago you
11 provided your input on the final Rule 213 report or
12 disclosure?

13 A Correct.

14 Q Okay. And so as far as the document
15 itself as a whole -- I understand we will get to the
16 report that's attached in the last few pages -- was
17 that report the only report that you, yourself,
18 drafted?

19 A Yes.

20 Q Did you assist in drafting any other part
21 of the report?

22 A No.

23 Q Okay. If we can take a look at the second
24 and third pages here, the first, second and third

1 pages, they're the names Patrick DiOrio, Laura Sexton
2 and Daniel Izzo.

3 Do you see those names?

4 A Yes.

5 Q Do you know any of those individuals?

6 A I do not.

7 Q Have you ever spoken to any of these
8 individuals?

9 A No.

10 Q Have you ever spoken with anyone else who
11 works for IMS, to the best of your knowledge?

12 A No.

13 Q Outside of this case, do you have any type
14 of professional relationship with IMS or any of its
15 employees?

16 A I do not.

17 Q To the best of your knowledge, does any
18 entity you have worked for have any type of
19 professional relationship with IMS or any of its
20 employees?

21 A Not that I know of.

22 Q Again, to the best of your knowledge, has
23 any entity you have worked for purchased medical
24 equipment from IMS?

1 A You know, Rush is a big institution. I
2 don't know who they purchase from. I don't know. I
3 don't have any independent knowledge of that.

4 Q Okay. Have you ever purchased medical
5 equipment from IMS?

6 A I have not.

7 Q Do you know anyone who has purchased
8 medical equipment from IMS?

9 A Well.

10 Q And what I mean by that just to clarify --
11 do you have any specific knowledge? I'm not asking
12 you to guess. I'm asking if you have any knowledge
13 of anyone who purchased medical equipment from IMS?

14 A No specific knowledge, no.

15 Q Now, if you'd look at -- referring you to
16 the answer to No. 3 which is on the following page,
17 Page 4, but it's answer to No. 3 and your name is
18 listed there, if you see?

19 A Yes.

20 Q The answer under there. So I'm referring
21 to this answer, and you can look at it if you need
22 to. If you don't, let me know. But this answer
23 involves your opinion very similarly to almost
24 exactly to what's stated in your report; is that

1 correct?

2 A Yes.

3 Q And there is a reference here in that
4 first paragraph under that answer that says your
5 opinion will be based upon your review of certain
6 materials that were provided as well as upon your
7 education, training and experience.

8 Do you see that?

9 A Yes.

10 Q Okay. Can you tell me what materials you
11 reviewed in order to render an opinion in this
12 matter?

13 A I was given a list of the different things
14 here in question and -- I forget -- and just what
15 they -- they explained what they were. So they -- I
16 was supplied with a list of -- this is what the Huber
17 needle is. This is what a HuberPRO Safety set is and
18 so forth.

19 Q And when you say, just to clarify, "the
20 list," are you talking about the 15 items that are
21 listed?

22 A Correct.

23 Q Within that document?

24 A Correct.

1 Q Okay. And those are the 15 items at
2 issue, to the best of your knowledge, in this case?

3 A Correct.

4 Q Now the list itself where you say you were
5 provided with the list, do you know who provided you
6 with the list?

7 A Well, it was Mr. Hess' law firm.

8 Q And when you say that they told you what
9 the different items were, did you have an independent
10 knowledge before then of the items or did they tell
11 you? I'm trying to clarify what you were told versus
12 what you knew.

13 A Well, I knew what these were ahead of
14 time. I don't know what some of the specific sets
15 were because you know sometimes a HuberPRO Safety set
16 might be -- might contain things that are different
17 than what I'm used to seeing with a Huber needle, but
18 other than that, I was familiar with all of these
19 devices.

20 Q Okay. So there was that list you looked
21 at. What else did you look at to render your
22 opinion?

23 A Well, I did review the depositions that
24 are listed here of Patrick DiOrio, Daniel Izzo and

1 Lisa Fox, but they didn't really change my opinion.

2 Q Anything else you recall reviewing?

3 A No.

4 Q Did you --

5 A Oh, I was given the definition of what a
6 medical appliance is by the -- you know, the Illinois
7 Retailers Occupation Tax Act.

8 Q Have you ever seen that definition before?

9 A No.

10 Q And when you say you were given that
11 definition, who were you given the definition from?

12 A Mr. Hess' law firm.

13 Q And do you recall if that definition was
14 from the statute or from a regulation? And if you
15 don't, that's fine.

16 A I don't. I don't.

17 MR. HESS: We can get you a copy of it.

18 MR. SCHRIFTMAN: Of what you provided?

19 MR. HESS: Yeah.

20 MR. SCHRIFTMAN: Okay. And as long as we
21 are talking about that, the list itself that he
22 looked at?

23 MR. HESS: Off the record.

24

1 (Whereupon, there was an
2 off-the-record discussion.)

3 MR. SCHRIFTMAN:

4 Q Do you recall anything in particular from
5 the depositions of Mr. DiOrio, Mr. Izzo or Ms. Fox
6 that impacted your opinion in any way?

7 A I think I just said it didn't affect my
8 opinion.

9 Q Okay.

10 A As it says here, my opinions are
11 unchanged.

12 Q And I might come back to that in a second,
13 but let me keep going for the moment.

14 Now, if you look at the last sentence
15 of that first paragraph here, which is under answer
16 3, so you may have to go back depending where you are
17 in your document there. It says the report was based
18 upon your review of petitioners petition and all
19 accompanying attachments and other materials all of
20 which will be available for inspection at your
21 deposition.

22 And I know you discussed the list you
23 looked at. And for the record, my understanding is
24 that may be the petition. And we'd need to clarify

1 that. And we will ask questions about that down the
2 road.

3 We discussed the depositions.

4 Are there any other materials you
5 reviewed?

6 A No.

7 Q Okay.

8 MR. HESS: I just saw a typo in that
9 answer. I apologize for the record.

10 MR. SCHRIFTMAN: Do you know which ones?
11 If it pertains to different persons --

12 MR. HESS: I do know --

13 MR. SCHRIFTMAN: -- three people are
14 listed for having been involved in review and then
15 three different people are listed.

16 MR. HESS: No, I put "these include colon"
17 and then I forgot to list what's included. So
18 that's my fault.

19 MR. SCHRIFTMAN: No problem. Thank you
20 for clarifying that for the record.

21 BY MR. SCHRIFTMAN:

22 Q And just to clarify, I don't need this
23 marked as an exhibit, and I certainly don't intend
24 you to go through this word for word because it's a

1 large document, but this is the full petition with
2 all the exhibits attached. If you could just glance
3 and tell me if this is what you reviewed.

4 It does seem like a lot more than a
5 list to me, so I just want to clarify what you looked
6 at.

7 A Yeah, this does look like what I reviewed.

8 Q The full document with the exhibits
9 attached?

10 A Yes.

11 Q Okay.

12 MR. SCHANERBERGER: This is the same one
13 you provided when you were last here. I didn't
14 unclip it.

15 And for the record, Evan's saying this
16 is the full one, this is the full version of the
17 petition, so.

18 MR. HESS: Yeah, I assume so.

19 BY MR. SCHRIFTMAN:

20 Q Did the petition that you just looked at
21 in any way impact your decision as to the opinion you
22 rendered in this case?

23 A Say that again.

24 Q Sure.

1 Maybe I'll ask it a different way.

2 How, if in any way, did the petition
3 you just looked at impact the decision that you're
4 giving in this case -- excuse me -- not decision --
5 the opinions you're giving in this case?

6 A It didn't affect my opinion. It just, I
7 think, delineated the items that were in question,
8 and so having taken a look at that list, that's how I
9 got my opinion that these were medically necessary
10 items.

11 Q Okay. Did you ever review the deposition
12 transcript of Laura Sexton?

13 A That doesn't sound familiar.

14 Q Okay. Let's go to another spot within
15 this document marked as Exhibit 1. So after the
16 initial answers in the front, there is your
17 Curriculum Vitae which I will just call CV to save
18 some time.

19 Do you see that?

20 A Yes.

21 Q Is this CV complete and accurate, to the
22 best of your knowledge?

23 A No, I updated it last year. And I have to
24 update it this year.

1 Q That was going to be my next question.

2 A Other than that, it's complete and up to
3 date.

4 Q Is there anything that should be added so
5 we have something on the record that isn't shown
6 there?

7 A I don't think it's anything that's
8 relevant to this case, but I'm still with Rush. I'm
9 still at Stroger and at Rush Oak Park. And I no
10 longer chair the Antibiotic Subcommittee of PNT. I'm
11 still a member, but I don't chair that committee. I
12 still chair the Infection Control Committee. And
13 just a few abstracts and journal articles that need
14 to be added.

15 Q Okay. Thank you.

16 But with those, let's call them
17 "slight changes," would you say the CV is complete
18 and accurate, to the best of your knowledge?

19 A Yes.

20 Q So it would be safe to say you have a lot
21 of training and expertise in the field of medicine?

22 A Yes, specifically infectious diseases.

23 Q Has the field of infectious diseases been
24 the focus of your career?

1 A Yes.

2 Q Do you currently see patients?

3 A Yes.

4 Q So what does your typical practice entail
5 in the sense of the procedures that you're part of?

6 A Well, I don't do procedures, but
7 infectious disease is a primarily cognitive
8 subspecialty.

9 Q So if I may, diagnoses I suppose as
10 opposed to procedures, would that be correct, when
11 you say you don't do procedures?

12 A I don't do colonoscopies. I don't do
13 bronchoscopies. I don't do procedures.

14 MR. HESS: Surgeries.

15 THE WITNESS: Yeah.

16 MR. HESS: Correct?

17 THE WITNESS: I talk to patients. I
18 examine them. Look at their labs, figure out what
19 they might have, try to determine what they do have
20 and then determine how to treat them and outpatient
21 antibiotic therapy is a very common part of my
22 practice.

23 BY MR. SCHRIFTMAN:

24 Q Is that the primary part of your practice?

1 A Not the primary, but it's a big part of
2 it.

3 Q And your counselor mentioned surgeries.
4 Are you involved in surgeries as well?

5 A No.

6 Q Okay. So when you said surgeries, you
7 mean you don't do surgeries?

8 A I said I don't do procedures.

9 Q Right.

10 A Right.

11 Q Okay. And I know these are all terms of
12 art, so I'm just trying to clarify.

13 So can you give me some examples of
14 what types of diseases you diagnosis?

15 A Infective endocarditis, meningitis,
16 pneumonia, osteomyelitis, HIV, intraabdominal
17 infections, brain abscesses, you know, all
18 infections.

19 Q I'm going to try to make a broad question
20 somewhat less broad. Let's say in the last decade,
21 can you give some examples of medications you've
22 administered intravenously to patients?

23 A Sure.

24 Vancomycin. Ceftriaxone. Ertapenem.

1 Amphotericin. Meropenem.

2 Q And I don't speak Latin, but I know they
3 end in a lot of Ms, so are those antibiotics?

4 A Yes.

5 Q Okay. Can you tell me of any medications
6 you have used that are not antibiotics?

7 A Well, just the saline and heparin to flush
8 the lines that people go home with.

9 Q Auh-huh.

10 A So that they can keep the line open, so
11 that they can continue to use that intravenous
12 catheter.

13 Q And to shift for a moment, do you think
14 what IMS does helps medical professionals like you do
15 their jobs?

16 A Absolutely. You know, we need these
17 appliances otherwise people couldn't get antibiotics
18 at home or couldn't do it safely.

19 Q And there are going to be a number of
20 questions that sound similar, but they're slightly
21 different. To the best of your knowledge, do you
22 think IMS helps people in medical emergency
23 situations?

24 A I don't know about medical emergencies. I

1 don't deal with medical emergencies. I deal with
2 people that have been diagnosed and are in the
3 process of being treated and going home on outpatient
4 antibiotic therapy. So generally, outpatient
5 antibiotic therapy doesn't involve a lot of
6 emergencies.

7 Q So let me ask the same question in regard
8 to nonemergency situations. To the best of your
9 knowledge, do you think IMS helps people in
10 nonemergency medical situations?

11 A Yes.

12 Q And when you say -- just because I want to
13 clarify -- when you say nonemergency situations,
14 you're talking about not imminent life-threatening,
15 but just generally life sustaining or
16 life-threatening but over the course of time?

17 A (Nodding head up and down.)

18 Q I know you are nodding your head, so.

19 A No. I was waiting for you to finish. It
20 didn't sound like you had finished.

21 Q Yeah.

22 A You did finish the question?

23 Q Yes.

24 A Yes, then I agree.

1 Q I mean I half finished it because of the
2 nodding.

3 Do you believe that the taxability of
4 a medical appliance is related to how helpful that
5 product is for medical treatment?

6 A I have no opinion about that.

7 Q Do you believe the taxability of a medical
8 appliance is related to how the product works to
9 sustain lives?

10 A Again, I have no opinion. My opinion is
11 these are products -- these are appliances that are
12 necessary for safe outpatient antibiotic therapy.
13 That's my opinion.

14 Q Okay.

15 A I have no opinion about at what rate they
16 should be taxed.

17 Q So we discussed the cases you had been
18 involved with. So let's talk about your training a
19 little bit. And I'm trying to -- to some extent, I
20 can't be efficient because you have a very extensive
21 CV, so I'm not going to go through every single item
22 there and will just ask more general questions.

23 Going back to your training, have you
24 ever had any training in taxation?

1 A No.

2 Q Have you ever had any training in tax law?

3 A No.

4 Q Have you ever had any training in the

5 state taxation of medical appliances?

6 A No.

7 Q Have you ever had any training in the

8 state taxation of medications?

9 A No.

10 Q Have you ever had any training in the

11 state taxation of hygiene products?

12 A No.

13 Q And I see you graduated Summa Cum Laude

14 from Loyola. And it shows a Bachelor's of Science in

15 Biology?

16 A Correct.

17 Q Do you have any coursework in taxation

18 from Loyola?

19 A No.

20 Q And am I correct to assume at Rush Medical

21 College where you got the M.D. there was no taxation

22 training?

23 A That's correct.

24 Q And your CV obviously indicates a lot of

1 faculty appointments, do any of those involve any tax
2 training?

3 A No.

4 Q And the same question for committee
5 memberships you've had. So has there been anything
6 there that dealt with taxation issues at any time?

7 A No.

8 Q Now your CV lists a vast number of
9 publications under your Biography.

10 Do any of the publications contained
11 within your CV deal with tax issues of any kind?

12 A Nope.

13 Q Do you know if different Illinois tax
14 rates apply for different medications or medical
15 appliances?

16 A I have no idea.

17 Q Can you describe for me what a medical
18 appliance is for state taxation purposes.

19 A Well, that's why we are here.

20 Q Some of these questions might be obvious,
21 but I have to ask them. That's why we're here, so.

22 A Yeah. Well, I was told that a medical
23 appliance under Section 210 of the Illinois Retailers
24 Occupation Tax Act is used to directly substitute for

1 a malfunctioning part of the human body including
2 functions of the human body that are lost or
3 diminished because of congenital or other defects,
4 trauma, infection, tumors or disease.

5 Q Okay. And that's exactly what you were
6 shown, that exact language?

7 A Yes. Hopefully, I've copied it correctly.

8 Q Did you have any knowledge of that
9 language before you were shown that language?

10 A No.

11 Q Had you heard that language before you
12 were shown that language?

13 A Never.

14 Q Can you give me some examples of medical
15 appliances under Illinois law?

16 A Well, I think there were some examples of
17 that I saw like eyeglasses and hearing aides and
18 things like that.

19 Q Can you give me some examples of medical
20 equipment which would not be a medical appliance
21 under Illinois law?

22 A You'd have to show me all the appliances
23 then I would be able -- but I'd want to know
24 specifically about Illinois law. But I can tell you

1 what's used and what's not being used and why it's
2 being used.

3 Q But can you think of anything that under
4 the definition you just read -- and I understand it's
5 within the document, just for the record -- of what
6 is stated in your report under that definition, can
7 you think of anything that would be medical equipment
8 that would not fit that definition of a medical
9 appliance?

10 MR. HESS: That's kind of an overly broad
11 question, but.

12 THE WITNESS: And I can't think of
13 anything right now, no.

14 MR. SCHRIFTMAN: Well, it was an overly
15 broad answer, which I thought I was going to get,
16 so.

17 BY MR. SCHRIFTMAN:

18 Q Okay. Aside from Section 210 of the
19 Retailer Occupation Tax Act that we just discussed,
20 are you aware of any regulations that discuss this?

21 A I'm not.

22 Q Have you ever reviewed any of the laws or
23 regulations related to this?

24 A I have not.

1 MR. HESS: Beyond what he testified about
2 earlier?

3 MR. SCHRIFTMAN: Well, he was told if I
4 understand correctly that he got a statement, but
5 that doesn't tell me that reviewed the law or
6 regulation itself. That's why I'm asking the
7 question about that.

8 BY MR. SCHRIFTMAN:

9 Q So have you ever reviewed the actual
10 Retailers Occupation Tax Act?

11 A I have not.

12 Q Have you ever reviewed regulation 130.311?

13 A I have not.

14 Q Okay.

15 MR. HESS: Can we go off the record.

16 MR. SCHRIFTMAN: Sure.

17 (Whereupon, there was a
18 brief off-the-record
19 discussion.)

20 BY MR. SCHRIFTMAN:

21 Q Just for clarification when we were off
22 the record, Mr. Hess informed me that Dr. Segreti had
23 looked at the regulation. Which -- why don't we
24 specify, Matt, what regulation. I don't want to

1 paraphrase for you.

2 MR. HESS: 130.11, 86 Illinois

3 Administrative Code Section 130.11.

4 BY MR. SCHRIFTMAN:

5 Q Do you mean .311?

6 MR. HESS: Yes.

7 MR. SCHRIFTMAN: Okay.

8 MR. HESS: Thank you.

9 BY MR. SCHRIFTMAN:

10 Q And so with that understanding, did you
11 look at the prior version of the regulation?

12 A No.

13 Q And just to clarify because it seems that
14 through our off the record, on the record discussion
15 you had looked at 130.311, did you ever look at
16 Section 210 of the Retailers' Occupation Tax Act?

17 A I don't recall specifically looking at
18 that.

19 Q Okay. So you're not aware of any
20 regulation changes that occurred in regards to the
21 regulations we just discussed?

22 A Correct.

23 Q All right. So if we can go back to that
24 answer, No. 3, under Segreti Exhibit 1. And if you

1 look about halfway down that last paragraph. It
2 says, all the opinions you offer in this matter will
3 be based upon a reasonable degree of medical
4 certainty?

5 A Yes.

6 Q Is that statement correct?

7 A Yes.

8 Q Can you please describe what the term
9 "reasonable degree of medical certainty" means?

10 A As far as I know, it means more likely
11 than not.

12 Q Is that the standard you would apply in
13 your practice?

14 A Yeah -- my practice of medicine?

15 Q Yes.

16 A No, we don't use that terminology in the
17 practice of medicine, "to a reasonable degree of
18 medical certainty" is a legal term not a medical
19 term.

20 Q So what would be the equivalent in a
21 medical, if you were to say you were reasonably
22 certain about something, obviously, you're involved
23 in diagnosis and treatment of patients?

24 A Yes, probable, more likely than not.

1 Q So going back to that reasonable degree of
2 medical certainty, how have you applied that standard
3 to the current case?

4 MR. HESS: Objection; form.

5 THE WITNESS: I thought that was the
6 standard for litigation, was that it should be to a
7 reasonable degree of medical certainty and in my
8 opinion to a reasonable degree of medical certainty
9 these items are necessary for safe patient
10 antibiotic therapy.

11 BY MR. SCHRIFTMAN:

12 Q And when you said before "more likely than
13 not," is that the standard?

14 A The standard is not my standard. It's a
15 legal standard.

16 Q I understand. I'm just trying to
17 understand because it's in the --

18 A In my opinion, these are definitely
19 necessary.

20 Q Okay.

21 A But from a legal standpoint, it's more
22 likely than not.

23 In my opinion, 99 percent positive
24 that these are medically necessary.

1 Q Okay.

2 A But I don't write the laws.

3 Q I understand.

4 So if we look at that same paragraph
5 that's in reference to the report dated January 24th,
6 2017.

7 Do you see that?

8 A Yes.

9 Q Okay. And at the bottom of the next page,
10 you say -- and I'll wait for you to get there --
11 starting with the second sentence in the last
12 paragraph:

13 "All of those products,
14 talking about the 15 products
15 with the exception of the Foley
16 Trays, may be considered extensions
17 of the patient's veins; as they're
18 required to access the vein for
19 necessary medication. These areas
20 must be as sterile as possible in
21 order to prevent potentially
22 life-threatening infections."

23 Do you see that?

24 A Yes.

1 Q And yet further down those next two pages,
2 this document discusses the 15 medical products at
3 issue?

4 A Correct.

5 Q Now that we've gone through the answer to
6 question 3 in this exhibit, is it complete and
7 accurate to the best of your knowledge?

8 A Yes.

9 Q So let's go down to your report which is
10 located in the last three pages of this exhibit. And
11 just to clarify for the record, is this the
12 January 24th, 2017 report which you originally
13 provided for this matter?

14 A Correct.

15 Q And this is the same report which we just
16 referenced and answered, 3?

17 A Yes.

18 Q So I can avoid duplicating questions
19 between what is dated in Answer 3 and what is dated
20 here let me just ask you this: As far as your
21 opinions in regard to this matter, does this
22 January 24, 2017 report state the same information as
23 what is stated further up in the document, Answer 3,
24 to the disclosure?

1 A As far as I can tell, yes.

2 Q And is all that is stated in the
3 January 24, 2017 report complete and accurate, to the
4 best of your knowledge?

5 A Yes.

6 Q So you had mentioned antibiotics before.
7 In this report there is a reference to OPAT which is
8 short for outpatient antibiotic therapy; is that
9 correct?

10 A That's correct.

11 Q And your report also states that you're
12 familiar with the items required to treat patients on
13 OPAT?

14 A That's correct.

15 Q And then there is a list of the 15 items
16 in your report?

17 A Yes.

18 Q Is your opinion limited only to how the 15
19 listed medical items can be used in OPAT context?

20 A I don't understand the question.

21 Q Sure. What is stated in this report,
22 okay, is it limited only to how these items can be
23 used in an outpatient antibiotic therapy context?

24 A Correct.

1 Q Do you know how the 15 items listed in
2 this report can be used in a nonantibiotic context?

3 A Sure.

4 Q Please explain.

5 A They can be used for -- to draw blood, to
6 give other fluids other than antibiotics,
7 chemotherapy, biologicals, nutrients, they could be
8 used for lots of other things not just for antibiotic
9 therapy. But my opinion is limited to outpatient
10 antibiotic therapy because that's what I do.

11 Q Do you know if any of the 15 items listed
12 in this report could be used in an inpatient context?

13 A Yes.

14 Q Okay. Which ones?

15 A All of them. All of them are used in --
16 you know, we use a different pump than the Eclipse
17 Homepump, but we use a pump; otherwise, all of these
18 are used in the inpatient setting. We might have
19 different variations of it, but, you know -- yeah,
20 these are used in the inpatient setting as well.

21 Q What is your knowledge based on that they
22 could be used in an inpatient setting?

23 A Because I see inpatients and I take care
24 of antibiotics and I see what devices they have when

1 I round on patients who are in the hospital.

2 Q How often do you round on patients there
3 in the hospital?

4 A About 3 months out of the year, I do
5 inpatient. The other time I see outpatients and I
6 also do infection control, so about half my time is
7 clinical and half my time administrative.

8 Q Staying with outpatient, inpatient, what
9 percentage of your practice would you say involves
10 outpatient procedures versus inpatient procedures?

11 A Again, your term "procedure" --

12 Q Sure.

13 A -- to me means a surgical procedure. I
14 don't do any surgical procedures.

15 Q So same question. And thank you for
16 clarifying because I want the record to be clear.

17 What percentage of your practice
18 involves seeing and treating inpatients versus seeing
19 and treating outpatients?

20 A It's about 50/50.

21 Q Okay. And there is also a statement
22 there -- and I will find where it is exactly, so I
23 can refer you to it. So it's the second sentence of
24 the first paragraph on the second page of your actual

1 report.

2 A Okay.

3 Q And it says:

4 "All of these products
5 with the exception of the Foley
6 Trays may be considered extensions
7 of the patient's veins as they're
8 required to access the vein to
9 administer necessary medications."

10 Do you see that?

11 A Correct.

12 Q And this is similar to the statement you
13 made earlier in disclosure answer No. 3?

14 A Correct.

15 Q And in reading through this, which I have
16 done a number of times, I understand that many of the
17 items listed in the exhibit are used in relation to
18 accessing the body through a vein or other means; is
19 that correct?

20 A That's correct.

21 Q So can you please explain to me what you
22 mean by extensions of the patient's veins.

23 A Well, in order to treat the patient, we
24 have to access the veins and the only way to access

1 the veins is to put a needle into it.

2 Q And again, some of these may seem obvious
3 because I'm sure most of us understand what a needle
4 is, but for the record's sake, I just want to clarify
5 and make sure we build a record.

6 Have you ever heard the term "directly
7 substituting for a malfunctioning part of the human
8 body"?

9 A Say that again.

10 Q Have you ever heard the term "directly
11 substituting for a malfunctioning part of the human
12 body"?

13 A Yes.

14 Q Okay. Where have you heard that term
15 before?

16 A From the statute that we mentioned
17 earlier.

18 Q Could you explain to me in your own words
19 what that statement means to you.

20 A It means nothing to me medically.
21 Legally, I don't know what it means, but medically it
22 doesn't mean anything to me because sometimes we have
23 to have extensions of normally functioning body parts
24 like the veins. The veins might be normal, but you

1 can't give intravenous antibiotics without sticking a
2 needle into the vein. So it's a legal term that I
3 have no opinion about its accuracy at least nothing
4 to me medically.

5 MR. SCHRIFTMAN: Can we take a break for a
6 second?

7 MR. HESS: Sure.

8 (Whereupon, a recess was
9 taken.)

10 MR. SCHRIFTMAN: Thank you.

11 BY MR. SCHRIFTMAN:

12 Q So I'm going to ask you some questions
13 about the products at issue in this matter?

14 A Okay.

15 Q And some of them may seem very simple and
16 because there are only 15 products they're probably
17 going to end up being repetitive, so I apologize in
18 advance for that, but I'll try to get through them as
19 quickly as possible.

20 To the best of your knowledge, would
21 the 15 products at issue -- so the 15 products listed
22 in your report -- be solely used for someone in need
23 of medical treatment?

24 A As far as I know, yes.

1 Q And just to be clear for the record, and
2 hopefully curtail some questions, I'm going to refer
3 to people who benefit from the administration of the
4 15 items at issue as patients. So that's the patient
5 I'm talking about.

6 Does that make sense?

7 A Right.

8 Q So let's take a look at your report here.
9 So at the bottom of the second page of your actual
10 report on this document, you address intravenous
11 administration sets?

12 A Yes.

13 Q And your report states that IV
14 administration sets are required to establish a
15 connection to the venous catheter in order to
16 administer an intravenous antibiotic.

17 Do you see that?

18 A Correct.

19 Q Do you know what's contained within an IV
20 administration set?

21 A My understanding is that it contains the
22 tubing that's necessary to connect the needle to the
23 bag with the antibiotics.

24 Q Anything else, to your knowledge?

1 A But that's necessary, the tubing is
2 necessary. I don't know if there's anything else
3 there.

4 Q To the best of your knowledge, are there
5 various types of IV administration sets?

6 A Yes.

7 Q And it may be a large number but how many
8 different types of IV administration sets are there,
9 to the best of your knowledge?

10 A I have no idea.

11 Q Do you know what type of IV administration
12 sets IMS sold between 2009 and 2012?

13 A I do not.

14 Q Can you please explain to me how a
15 physician would you say use an IV administration set
16 in respect to treating a patient.

17 A To give an intravenous antibiotic you have
18 to connect the vein to the intravenous bag and that's
19 through the tubing that's in the intravenous
20 administration set.

21 Q And can you give some examples of the
22 various types of substances other than antibiotics
23 which we discussed which could be administered to a
24 patient by using an IV administration set?

1 A Anything that has to be given
2 intravenously whether it's nutrition, cancer
3 chemotherapy, biologicals, blood pressure medicines,
4 electrolytes.

5 Q Would that include saline as an example?

6 A Saline, yes.

7 Q When an IV administration set is sold is
8 there any way to know if it will be used in
9 connection with an antibiotic or not?

10 A I have no idea.

11 Q And when an IV administration set is sold
12 is there any way to know if it will be used in
13 connection with any particular substance?

14 A Not that I know of.

15 Q Do you know how all the IV administration
16 sets sold by IMS have been used?

17 A I do not.

18 Q Can you explain for me how an IV
19 administration set directly substitutes for a
20 malfunctioning part of the human body?

21 A Well, again, you can't give intravenous
22 antibiotics without accessing the vein and the body
23 doesn't produce an antibiotic on its own, so you have
24 to give it externally. And so you need a connection

1 between the bag with the antibiotics and the vein,
2 and so you need the tubing.

3 Q And just so you understand it, I will
4 restate this -- and I appreciate the answer, so thank
5 you -- that, because there's 15 items, we may have
6 some obvious things and some repetitive things, so
7 again, I apologize in advance for that.

8 So in your report, you address Eclipse
9 Homepumps.

10 Do you see that?

11 A Yes.

12 Q Okay. And that's on the last page of your
13 report?

14 A Correct.

15 Q And your report states that:

16 "Eclipse Homepumps are
17 required to safely administer
18 medications that need to be given
19 over a defined period of time."

20 Do you see that?

21 A Right.

22 Q Do you know what's contained within the
23 device known as an Eclipse Homepump?

24 A My understanding is that it's a pump like

1 we use in the hospital to give medications that need
2 to be given over a defined period of time.

3 Q Are there various types of Eclipse
4 Homepumps?

5 A I don't know. There are various types of
6 pumps, but I don't know whether there are different
7 types of Eclipse Homepumps.

8 Q Do you know what type of Eclipse Homepumps
9 IMS sold in 2009 to 2012?

10 A No.

11 Q Can you explain to me --

12 A I'm sure it's in the materials that you
13 gave me earlier, but I didn't memorize it.

14 Q Can you explain to me how a physician
15 would use an Eclipse Homepump in respect to treating
16 a patient?

17 A Well, again, if you have to give a
18 medication that has to be given over a defined period
19 of time, it's the safest way to give it. Because if
20 you give it too fast, the patient may have trouble.
21 If you give it too slowly, it may not be as
22 effective.

23 Q And what are the types of substances that
24 could be administered to a patient by using an

1 Eclipse Homepump?

2 A Well, again, just about anything that
3 needs to be given intravenously: Cancer
4 chemotherapy, nutrition, electrolytes. Like
5 potassium. You can't give potassium real quickly, it
6 could be dangerous, and so you need to give it fairly
7 slowly and you need to monitor how quickly it's going
8 in.

9 Q So is the distinction with Eclipse
10 Homepumps versus other types of surveying materials,
11 for lack of a better word, is the difference how
12 dangerous the medication is, it has to be given in a
13 time basis?

14 A Correct. Or it could be given for
15 medications that have to be given very frequently
16 that you might be able to make it more convenient for
17 the person to get the antibiotic at home.

18 Q Can you explain simply for me how an
19 Eclipse Homepump directly substitutes for a
20 malfunctioning part of the human body?

21 A Well, again, it's you have to -- if the
22 body doesn't have the equivalent of a Eclipse
23 Homepump because it measures how quickly the fluid
24 goes in, but it's necessary for some of the

1 medications.

2 Q Okay. So in your report, you address
3 sterile needles on the second page of your report?

4 A Yes.

5 Q I think it's the first item. And your
6 report states that:

7 "Sterile needles are required
8 to safely access the patients venous
9 catheter to infuse necessary
10 antibiotics. Without such antibiotics
11 the body's immune system cannot
12 adequately fight off the infectious
13 disease impairing its function."

14 Do you see that?

15 A Yes.

16 Q Are there various types of sterile
17 needles?

18 A Yes.

19 Q And again, you may not know the answer,
20 but how many types?

21 A There are dozens of different types of
22 sterile needles depending on the size, the length,
23 the manufacturer. There are dozens of different
24 types.

1 Q Do you know what types of sterile needles
2 IMS sold in 2009 and 2012?

3 A I'm sure it's in that report, but sitting
4 here now, no.

5 Q And for the record, when you say "the
6 report," do you mean the full petition?

7 A Correct.

8 Q And you're assuming that that information
9 is in there?

10 A Correct.

11 Q Can you explain to me how a physician
12 would use sterile needles in respect to treating a
13 patient.

14 A Yes, to access a vein or an IV site, to
15 infuse medications or to draw blood.

16 Q What are the various types of substances,
17 nonantibiotic substances, which could be administered
18 by using sterile needles?

19 A Again, any intravenous medication can be
20 given with a sterile needle.

21 Q When sterile needles are sold, is there
22 any way to know if they will be used in connection
23 with an antibiotic or not?

24 A No.

1 Q When sterile needles are sold, is there
2 any way to know if they will be used in connection
3 with a particular substance?

4 A No.

5 Q When sterile needles are sold, is there
6 any way to know they will be used for a particular
7 purpose?

8 A No.

9 Q Do you know how all the sterile needles
10 sold by IMS were used?

11 A No.

12 Q Can you explain for me how sterile needles
13 directly substitute for a malfunctioning part of the
14 human body?

15 A As I mentioned earlier, it's the same as
16 IV administration set to access the vein and give
17 antibiotics. And if you don't give the antibiotics,
18 the patient can die.

19 Q Okay. So the next one is for the sterile
20 syringes.

21 Do you see that?

22 A Sterile?

23 Q Syringes.

24 A Yes.

1 Q And your report states that:

2 "The sterile syringes are
3 required to flush the venous catheter
4 before and after the infusion of the
5 prescribed antibiotics to ensure that
6 the venous catheter remains patent."

7 Do you see that?

8 A Yes.

9 Q Are there various types of sterile
10 syringes?

11 A Yes.

12 Q Do you know how many types?

13 A Dozens, hundreds.

14 Q Do you know what type of sterile syringes
15 IMS sold?

16 A Sitting here now specifically, no.

17 Q Can sterile syringes be prefilled?

18 A Yes.

19 Q Can sterile syringes be not filled?

20 A Yes.

21 Q Do you know if IMS sold prefilled sterile
22 syringes?

23 A Sitting here now, no, I don't. I don't
24 recall.

1 Q Can you explain to me how a physician
2 would use sterile syringes in respect to treating a
3 patient?

4 A As it says there, to make sure that the --
5 there's no blood in the catheter that would cause
6 clotting, that would cause the IV catheter to clot
7 and malfunction and sometimes to give medication like
8 heparin or saline or an antibiotic. Sometimes we
9 give antibiotics through a syringe.

10 Q When sterile syringes are sold, is there
11 any way to know if they'll be used in connection with
12 an antibiotic or not?

13 A No. Not unless they're prefilled with an
14 antibiotic.

15 Q When sterile syringes are sold, is there
16 any way to know if they'll be used in connection with
17 a particular substance?

18 A Unless they're prefilled with that
19 substance, that's correct.

20 Q When sterile syringes are sold, is there
21 any way to know if they're going to be used for a
22 particular purpose?

23 A No.

24 Q Do you know how all of the sterile

1 syringes by IMS were used?

2 A No.

3 Q Can you explain to me how sterile syringes
4 directly substitute for a malfunctioning part of the
5 human body.

6 A Can I just plug in what I've answered for
7 the other ones.

8 Q Again, there are 15 items in the report,
9 so I apologize I have to go through each one.

10 A Again. It's to infuse the antibiotics
11 which are necessary to enhance the immune system that
12 isn't able to fight off the infection.

13 Q Some of these items are different than
14 syringes and needles, I understand. So maybe that
15 will wake us up when we get to those items.

16 In your report, you address Vacutainer
17 devices. Do you see that?

18 A Correct.

19 Q Your report states:

20 "The Vacutainer devices are
21 required to draw blood from the
22 patient in order to assure that the
23 antibiotic is working and not causing
24 a toxic reaction."

1 Do you see that?

2 A Yes.

3 Q Are there various types of Vacutainer
4 devices?

5 A Yes.

6 Q How many different types?

7 A Again, I don't know.

8 Q Do you know what type of Vacutainer
9 devices IMS sold?

10 A Sitting here today, no.

11 Q Can you explain to me how a physician
12 would use Vacutainer devices in respect to treating a
13 patient.

14 A Yes. To obtain blood from the patient, to
15 make sure that the antibiotic is working and that
16 you're not causing harm to the patient by harming
17 their kidneys or their liver or their bone marrow and
18 make sure that you have adequate levels of the
19 antibiotic when so necessary.

20 Q So what are the various types of
21 substances, other than antibiotics, which could be
22 administered using a Vacutainer device?

23 A Anything that's taking blood from the
24 patient to monitor the response of the patient.

1 Q So a Vacutainer device never administers
2 any sort of substances, it just takes?

3 A Correct.

4 Q Can you explain to me how a Vacutainer
5 device directly substitutes for a malfunctioning part
6 of the human body.

7 A Well, you have to get blood from the
8 patient and there's no other way to get blood from
9 the patient other than putting a needle into the vein
10 and using the vacuum tubes to get blood from the vein
11 to make sure that the antibiotics are working the way
12 they're supposed to.

13 And so again, because a body's immune
14 system isn't adequately fighting off the infectious
15 process.

16 Q And when a Vacutainer device is used, it
17 could find that the immune system is functioning
18 appropriately?

19 A It could. And it could help you decide
20 when to stop antibiotics.

21 Q So in your report, you also addressed
22 venous catheters?

23 A Yes.

24 Q And your report states that:

1 "Venous catheters are required
2 to allow access to the patient's
3 bloodstream in order to deliver the
4 necessary antibiotic. The human body
5 cannot absorb the required medication
6 orally. The administration of such
7 medication intravenously substitutes
8 for the body process that otherwise
9 would work with orally administered
10 medications. Delivery of the medication
11 directly into the patient's bloodstream,
12 enhances the body's ability to fight
13 off infection and restore its function."

14 Do you see that?

15 A Yes.

16 Q Are there various types of venous
17 catheters?

18 A Yes.

19 Q Do you know how many different types?

20 A Hundreds.

21 Q Do you know what types of venous catheters
22 IMS sold?

23 A No.

24 Q Can you explain to me how a physician

1 would use venous catheters with respect to treating a
2 patient.

3 A Place inside the vein of the patient, so
4 that you can give intravenous medications.

5 Q Only medications? Anything else beyond?

6 A Well, whatever intravenous -- well,
7 whatever intravenous material needs to be given,
8 whether it's nutrition, you know, you could have a
9 very general definition of medications or have a very
10 narrow definition of medications, but sometimes
11 people get it for nutrition. Sometimes people get it
12 for chemotherapy, for biologicals, for electrolytes,
13 for fluid, for saline, so you get it for a lot of
14 different reasons.

15 Q When venous catheters are sold, is there
16 any way to know if they will be used in connection
17 with an antibiotic or not?

18 A No.

19 Q When venous catheters are sold, is there
20 any way to know they will be used in connection with
21 any particular substance?

22 A No.

23 Q Can you explain for me how venous
24 catheters directly substitute for a malfunctioning

1 part of the human body.

2 A Yeah, if you have an antibiotic that's not
3 absorbed and you can't give it by mouth, then it's
4 substituting for the GI tract because you can give it
5 directly into the venous system.

6 Q Any other instances?

7 A Any?

8 Q Well, you said when someone needs to get
9 medication through this process and can't take it
10 orally. Are there any other instances?

11 A No. And may not be able to give it orally
12 because the drug is not absorbed or because the GI
13 tract isn't working or because, you know, there is no
14 other alternative.

15 Q And in your report, you address special
16 needles.

17 Do you see that?

18 A Correct.

19 Q In your report, it says:

20 "Special needles are needed
21 to access certain specialized
22 indwelling venous ports."

23 Do you see that?

24 A Yes.

1 Q Are there various types of special
2 needles?

3 A Yes.

4 Q How many different types?

5 A I don't know.

6 Q Do you know what types of special needles
7 IMS sold?

8 A No.

9 Q Can you explain to me how a physician
10 would use special needles with respect to treating a
11 patient.

12 A To access the venous system to give
13 intravenous medications and other products.

14 Q And what are the various types of
15 substances which could be administered by using
16 special needles?

17 A Anything that needs to be given
18 intravenously: electrolytes, nutrition, saline,
19 chemotherapy, lots of things.

20 Q Can you explain for me how special needles
21 directly substitute for a malfunctioning part of the
22 human body.

23 A Because you can't just rub an antibiotic
24 on someone. Some of these antibiotics have to be

1 given directly into a vein and you don't have a vein
2 that's directly accessible to the external surface.

3 Q When you say -- the answer was limited to
4 antibiotics. Antibiotics and other substances like
5 you just mentioned?

6 A Correct.

7 Q So you said electrolytes, saline, those
8 would be examples as well?

9 A Correct.

10 Q So in your report you addressed Huber
11 needles?

12 A Yes.

13 Q And your report states that:

14 Huber needles are a specific
15 type of special needle required
16 to assess certain specialized
17 indwelling venous ports for the
18 delivery of medications. Without
19 the use of such ports, the body's
20 skin can degrade and not permit
21 continued treatment necessary to
22 enable the body to function."

23 Do you see that?

24 A Yes.

1 Q I'm going to ask a different question,
2 just to ask a different question.

3 When you say "the body's skin would
4 degrade," I just want to understand what that means.
5 Because I read that and frankly, do you mean it would
6 scar over or I don't know what?

7 A Correct.

8 These are used to access implanted
9 venous ports that are under the skin. And so,
10 there's a little diaphragm that you put the needle
11 into it and kind of use in there, but it's a
12 subcutaneous port that can be there for months or
13 years. And again, it's directly attached to the
14 venous system usually through the internal jugular
15 vein.

16 Q Okay. Thank you for clarifying that.

17 Are there various types of Huber
18 needles?

19 A Well, there's different sizes of Huber
20 needles. But a Huber needle is a Huber needle. It's
21 a specific type of needle.

22 Q So when you say it's a specific type and I
23 understand there can be different sizes, different
24 patients, different sizes, different needs, are you

1 saying there is one type of Huber needle or are there
2 different types?

3 A My understanding is that these are needles
4 that are produced by Huber, so that access implanted
5 ports.

6 Q When you say Huber, is that one company
7 that produces these?

8 A I don't know. I don't know how it got its
9 name whether it's someone who invented it or
10 manufactured, I don't know.

11 Q Can you explain to me how a physician
12 would use Huber needles in respect to treating a
13 patient.

14 A It's like all the other things. Access
15 the venous system to make sure that people are
16 absorbing or are receiving the appropriate medication
17 whether it's an antibiotic or chemotherapy or
18 electrolytes or biologicals or nutrition.

19 Q When Huber needles are sold, is there any
20 way to know if they will be used in connection with
21 antibiotic or not?

22 A No.

23 Q When Huber needles are sold, is there any
24 way to know if they will be used in connection with

1 any particular substance?

2 A No.

3 Q When Huber needles are sold, is there any
4 way to know if they will be used for any particular
5 purpose.

6 A No, other than to access an intravenous
7 port. That's the only reason to -- that's their only
8 purpose.

9 Q Do you know how all the Huber needles sold
10 by IMS were used?

11 A No.

12 Q Can you explain for me how Huber needles
13 directly substitute for a malfunctioning part of the
14 human body.

15 A Again, it's to access the intravenous
16 system and to give medication directly into the
17 venous system, intravenous system.

18 Q So let's go to the last page. We are
19 getting to the last few of these.

20 A Okay.

21 Q So in your report, you address Chloraprep.

22 Do you see that?

23 A Yes.

24 Q And your report states that:

1 "ChloraPrep is recommended
2 as the disinfectant of choice to
3 prepare the skin prior to placing
4 intravenous catheter where it joins
5 the skin during changing of the venous
6 catheter directly. Failure to do
7 this can result in a bloodstream
8 infection that can kill the patient
9 and the condition of the body's skin
10 without the use of such a disinfectant,
11 can compromise the antibiotic being
12 administered."

13 Do you see that?

14 A Yes.

15 Q Are there various types of ChloraPrep?

16 A ChloraPrep is the name of a specific
17 product.

18 Q Do you know how much ChloraPrep IMS sold?

19 A No.

20 Q Do you know how the ChloraPrep that was
21 sold by IMS was eventually used?

22 A No.

23 Q Can you explain to me how ChloraPrep
24 directly substitutes for a malfunctioning part of the

1 human body.

2 A Yes. The skin cannot disinfect itself,
3 and so you need to disinfect the skin to prevent
4 infection and potentially kill the patient.

5 Q And in your report, you address Foley
6 Catheter Trays.

7 Do you see that?

8 A Yes.

9 Q In your report, it states that:

10 "Foley Catheter Trays are
11 used to safely place the catheter
12 into the bladder."

13 A Correct.

14 Q Are there various types of catheter trays?

15 A Yes.

16 Q Do you know how many different types?

17 A No.

18 Q Do you know what type of catheter trays
19 IMS sold?

20 A Again, I think in the petition, it's
21 probably spelled out, but I don't recall right now.

22 Q Can you explain to me how physicians use
23 catheter trays with respect to treating a patient.

24 A Would use it to put a catheter into the

1 bladder to decompress the bladder and to monitor how
2 much fluid was coming out.

3 Q In your report, you address HuberPRO
4 safety sets?

5 A Correct.

6 Q Do you see that?

7 And your report states:

8 "The HuberPRO safety sets
9 were used in indwelling venous
10 ports for liquid medications."

11 A Correct.

12 Q Are there various types of HuberPro safety
13 sets? I know you were talking about Huber needles
14 before, so.

15 A Yeah, I don't know.

16 Q Do you know how many different types there
17 is are?

18 A No.

19 Q Do you know what type of HuberPro safety
20 sets IMS sold?

21 A No.

22 Q Can you explain to me how a physician
23 would use a HuberPRO safety set in respect to
24 treating a patient.

1 A Well, it would be mainly the nurses that
2 would use it, but a physician would order it so that
3 the dressing could be changed safely.

4 Q Can you explain for me how HuberPro safety
5 sets directly substitute for a malfunctioning part of
6 the human body.

7 A Yes, it covers the skin because there is a
8 hole in the skin that would allow bacteria to get in,
9 so it covers the area, so that bacteria can't get in.

10 Q And in your report, you address IV start
11 kits?

12 A Yes.

13 Q Your report states:

14 "IV start kits are sterile
15 kits used to start a peripheral
16 venous catheter for the delivery
17 of medications."

18 A Correct.

19 Q Are there various types of IV start kits?

20 A I'm sure there are.

21 Q Do you know how many different types?

22 A No.

23 Q Do you know what type of IV start kits IMS
24 sold?

1 A Again, I would have to take a look at the
2 petition and I think it's listed there, but I don't
3 recall offhand.

4 Q Can you explain to me how a physician
5 would use IV start kits in respect to treating the
6 patient.

7 A Yes. It would be used to prepare the skin
8 to safely put in a peripheral venous catheter to
9 access the veins.

10 Q What are the types of substances which
11 could be administered by using the IV start kits?

12 A Any substance that has to be given
13 intravenously.

14 Q So same as above, basically?

15 A Yes.

16 Q When IV start kits are sold is there any
17 way to know if they will be used in connection with
18 an antibiotic or not?

19 A No.

20 Q When IV start kits are sold is there any
21 way to know if they will be used in connection with
22 any particular substance?

23 A No.

24 Q When IV starter kits are sold is there any

1 way to know if they will be used for a particular
2 purpose?

3 A No.

4 Q Do you know how all of the IV starter kits
5 sold by IMS were used?

6 You can tell we are getting close to
7 the end.

8 Can you explain for me how IV starter
9 kits directly substitute for a malfunctioning part of
10 the human body.

11 A Again, it's to safely access the vein and
12 the -- to make sure that the area is clean and not
13 covered with bacteria that you can inject when you
14 put in a needle.

15 Q So in your report, you address port access
16 sets. It's the second to last one.

17 A Yes.

18 Q And your report states that:

19 "Port access sets are sterile
20 trays with all the equipment needed
21 to safely access a patient's
22 indwelling venous port to deliver
23 medications."

24 A Correct.

1 Q Are there various types of port access
2 sets?

3 A Yes.

4 Q Do you know how many different types?

5 A No.

6 Q Do you know what type of port access set
7 IMS sold?

8 A I would have to look at the petition, no.

9 Q Could you explain to me how a physician
10 would use port access sets with respect to treating a
11 patient.

12 A Again, again, it would mainly be nurses
13 who would have to go in to either change the dressing
14 or to safely access the Huber needle and the catheter
15 to make sure that they get their intravenous
16 medication.

17 Q And what are the various types of
18 substances which could be administered using the port
19 access sites?

20 A Any substance that has to be given
21 intravenously: antibiotics, chemotherapy, nutrients,
22 electrolytes, saline, a long list of things.

23 Q Can you explain to me how port access sets
24 directly substitute for a malfunctioning part of the

1 body.

2 A Because you can't absorb these medications
3 through the skin and you have to give it directly
4 into a vein.

5 Q Okay. And the last one there is sterile
6 wings.

7 Do you see that?

8 A Yes.

9 Q Sterile IV wings?

10 A Yes.

11 Q And your report states that:

12 Sterile IV wings are a type
13 of sterile needle used to start
14 intravenous catheter or to access
15 an existing catheter in order to
16 safely administer medication."

17 Do you see that?

18 A Yes.

19 Q Are there various types of sterile IV
20 wings?

21 A Yes.

22 Q Do you know how many different types?

23 A No.

24 Q Do you know what types of sterile IV wings

1 IMS sold?

2 A No.

3 Q Can you explain to me how a physician
4 would use sterile IV wings in respect to treating a
5 patient.

6 A It would be the same as they would for an
7 intravenous catheter. It a type of needle that could
8 be -- can substitute for an intravenous catheter for
9 a short period of time.

10 Q And what are the various types of
11 substances which could be administered by using
12 sterile IV wings?

13 A Antibiotics, chemotherapy, saline,
14 nutrients, electrolytes among other things.

15 Q When sterile IV wings are sold, does
16 anyone know if they will be used in connection with
17 an antibiotic or not?

18 A No.

19 Q When sterile IV wings are sold, is there
20 any way to know if they will be used in connection
21 with any particular substance?

22 A No.

23 Q When sterile IV wings are sold, is there
24 any way to know if they will be used for a particular

1 purpose?

2 A No.

3 Q Do you know how all of the sterile IV
4 wings sold by IMS were used?

5 A No.

6 Q Can you explain for me how sterile IV
7 wings directly substitute for a malfunctioning part
8 of the human body.

9 A Same way that the various catheters,
10 because of substitutes for the venous system, because
11 the venous system isn't open to the environment and
12 you can't access the venous system without putting a
13 needle in it.

14 Q And without going through the same thing
15 for every single one --

16 A Right.

17 Q -- in your report, the 15 different items
18 starting on Page 1 and going to Page 2, so I will
19 refer you to those. Can you tell us for the record
20 going through them one by one -- it will be easier to
21 ask this way I think -- which ones of those items you
22 have personally used in your practice.

23 A Okay.

24 Q So if you want to start with sterile

1 needles and go all the way to the sterile butterfly
2 wings and just answer or I can go one by one if you
3 have a preference?

4 A Again, we don't use the Eclipse Homepump.
5 We use a different pump in the hospital. We use a
6 type of pump.

7 Everybody uses sterile needles.
8 Everybody uses sterile syringes, Vacutainers, venous
9 catheters. These are all used not necessarily by me
10 personally but people that I supervise, the nurses
11 that take care of my patients.

12 Q And I guess I just wanted to clarify what
13 you personally have used?

14 A Well, personally, I have used sterile
15 needles and sterile syringes and Chloraprep. But I
16 don't put in IVs. I don't access ports. But they're
17 done on my patients, so I know that they're being
18 done and I can see that.

19 Q And you have --

20 A Do I personally do it? No. I don't
21 personally start the IV.

22 Q Okay. Have you before in the past?

23 A Yes.

24 Q Okay. And when would that have been?

1 A When I was a resident.

2 Q So can you give me a timeframe? I can
3 look at the CV, but it would be helpful.

4 A Before 1983.

5 Q Okay.

6 A But people specialize to put these in now,
7 so physicians don't routinely put these in. There is
8 nursing staff or phlebotomists or other people that
9 will actually use these devices, but they're
10 medically necessary.

11 Q And?

12 A Whether or not I as a physician use them,
13 I don't think is relevant.

14 Q And have you -- you were talking about
15 Eclipse Homepumps, have you ever used those? I
16 understand you use different pumps?

17 A We use different pumps. I have not -- I
18 am not familiar with the Eclipse Homepump.

19 Q So let me ask you this, then I'll go onto
20 another document which I'm sure you'll be more than
21 happy to see.

22 Are there items used directly with a
23 patient's treatment that in your mind are medically
24 necessary, but don't substitute for a human body

1 part?

2 MR. HESS: Objection to form.

3 MR. SCHRIFTMAN: I can restate it if you
4 want me to.

5 BY MR. SCHRIFTMAN:

6 Q A few minutes ago you used the words
7 "medically necessary."

8 A Yes.

9 Q Do you believe the 15 items we've
10 discussed are medically necessary?

11 A Yes.

12 Q Okay. Do you know what a medical
13 appliances is in the sense of tax law what it says?

14 MR. HESS: Asked and answered.

15 THE WITNESS: Yeah.

16 MR. SCHRIFTMAN: Actually, I didn't ask it
17 in that way, but.

18 THE WITNESS: Well, I -- okay. I thought
19 you did. But it's, I think, I read what I have in
20 my report about what a medical appliances is under
21 Illinois sales tax law.

22 Again, to me, medically that doesn't
23 make any sense at all. It doesn't -- you know,
24 it's -- materials are medically necessary or they're

1 not medically necessary. I have no opinion about
2 the tax law part of it.

3 BY MR. SCHRIFTMAN:

4 Q Okay.

5 A You know, I have no opinion about that.

6 Q Well, I only ask because you gave me an
7 opinion obviously in this case that involves tax law.
8 I understand your own personal opinion as to --
9 that's what I'm trying to clarify?

10 A I'm not giving an opinion on tax law. I'm
11 giving an opinion on whether these devices are
12 medically necessary. I'm not a tax expert. I don't
13 pretend to be a tax expert, but these are medically
14 necessary.

15 Q The 15 items at issue?

16 A Yes.

17 Q All right. So for the record, Segreti
18 Exhibit 2 will be the petition, which for the record
19 will not have the exhibits attached, just the
20 petition itself.

21 So I understand this is the petition
22 that does not have the attached exhibit, so I will
23 state that for the record.

24 Have you seen the petition filed in

1 this matter before?

2 A I don't think so.

3 (Whereupon, Segreti
4 Deposition Exhibit No. 2
5 was marked for
6 identification.)

7 MR. HESS: I thought he did. I'm not
8 sure. We'll have to go back and double check.

9 MR. SCHRIFTMAN: Well, I want to go off on
10 his memory and knowledge, obviously. He can argue
11 down the line or whatever.

12 THE WITNESS: It might be part of what I
13 got, but I don't recall this.

14 BY MR. SCHRIFTMAN:

15 Q Okay. So just for the record, if there is
16 a list that's not this, that we don't have, we would
17 like a copy of that, too.

18 MR. HESS: Yes.

19 BY MR. SCHRIFTMAN:

20 Q So you say you don't recall seeing this
21 petition before?

22 A Correct.

23 Q So needless to say, assuming you have not
24 seen this petition before, I understand you're saying

1 don't recall seeing it, assuming that's correct, this
2 wouldn't have informed your opinion in this matter?

3 A Correct.

4 Q All right. So if you would then look
5 at -- since we'll go with the assumption that you're
6 somewhere between don't recall seeing it and have not
7 seen it -- if you could look at the items listed
8 between Paragraphs 41 and 55 in the petition, and
9 then let me know when you're done.

10 A Okay.

11 Q And just to clarify before I ask a few
12 questions about that because we had talked before
13 about if you still have in front of you, that
14 Exhibit 1, that states that the report you have is
15 based upon your review of Petitioner's Petition and
16 all accompanying attachments.

17 To the best of your knowledge, is that
18 statement correct?

19 A Yes. Again, I don't recall this,
20 specifically.

21 Q Okay.

22 A But I think it's consistent with what I
23 said in my deposition and in my report.

24 Q Okay. So looking at the 15 items, those

1 are the same 15 items in the petition that were
2 listed within your report, correct?

3 A Right.

4 Q Okay. We won't go through them all one by
5 one so no worries there.

6 A I was looking forward to that. This has a
7 better, more concise explanation.

8 Q Well, I wanted to ask a few questions
9 going back between the two, probably just more
10 clarification questions.

11 So if we look at Paragraph 43 here
12 which says, "Vacutainer blood transfer device,
13 sterile."

14 A Right.

15 Q The paragraph states:

16 "The device becomes part
17 of the body to fulfil the function
18 of delivering blood back to the
19 body because the body is not able
20 to perform this function by itself."

21 Do you see that?

22 A Yes.

23 Q And your report stated how these devices
24 are used to draw blood but not deliver blood and I

1 think you testified you draw blood but substances
2 don't go in.

3 A That's correct.

4 Q And I would just like you to clarify the
5 discrepancy between what's stated in Paragraph 43 of
6 the petition or what's in your report.

7 A My understanding of Vacutainer blood
8 transfer devices is to draw blood not to deliver
9 blood.

10 Q Or any other substances?

11 A Or any other substances.

12 Q Okay. And if we look at Paragraph 46,
13 which are the Huber needles?

14 A Yes.

15 Q The description discusses how Huber
16 needles are used for both blood withdrawal and the
17 infusion of medications and solutions, blood products
18 and image infusions.

19 A Correct.

20 Q It's sort of the opposite because your
21 report doesn't discuss Huber needles being used for
22 blood withdrawal, so again, just to clarify, are they
23 used for blood withdrawal?

24 A Yes, they are. And it's used just like

1 any other intravenous catheter, it can be used to
2 withdraw blood or to infuse substances or blood or
3 medications or anything else. That's true of all of
4 the intravenous catheters. You can use them to
5 withdraw blood as well as to infuse medications. So
6 that is something that I maybe should have clarified.

7 Q Well, you're doing it right now.

8 A Okay.

9 Q And referring to Paragraph 47, the
10 paragraph's entitled IV administration sets and
11 infusion related tubing, bandages and or devices to
12 hold tubing in place, clamps.

13 A Yes.

14 Q Do you believe that bandages and/or
15 devices to hold tubing in place directly substitute
16 for a malfunctioning part of the human body?

17 A Yes.

18 Q Could you please explain.

19 A Sure, because there is nothing to hold
20 them in place. The skin can't hold the IV in place
21 and if it's not held in place, they can become
22 dislodged, the patient can bleed, it can get
23 infected, you have to put another catheter in, so,
24 yeah, they definitely are necessary. We have a

1 malpractice not to hold the tubing in place.

2 Q Do you believe that clamps used in
3 relation to IV administration sets directly
4 substitute for a malfunctioning part of the human
5 body?

6 A Yes, for the same reasons I just
7 mentioned.

8 Q Now, referring you to Paragraph 49, and
9 the paragraph that's entitled ICU Provox (phonetic)
10 sterile.

11 Do you see that?

12 A Yes.

13 Q The description states:

14 "Sterilization is necessary
15 for avoidance of complications for
16 the body that may otherwise be
17 introduced when procedures are
18 performed."

19 A Yes.

20 Q Could you please explain what ICU Provox
21 are?

22 A I would have to look that up. I would
23 really have to see what that is.

24 MR. HESS: Is it from the ICU?

1 BY MR. SCHRIFTMAN:

2 Q Well, my understanding from a prior
3 deposition, is it may be a particular type of
4 manufacturer, but the reason I'm asking the question
5 is that the ICU Provox are listed in your report, but
6 there is not that little line or paragraph describing
7 what they are.

8 And so for the record what are we
9 looking at, Matt?

10 MR. HESS: Dan Izzo's deposition.

11 MR. SCHRIFTMAN: What page?

12 MR. HESS: Page 20.

13 THE WITNESS: It says, "there are multiple
14 accessories that are utilized in the delivery of
15 medication or nutrition for the patients." I don't
16 know specifically what they are.

17 BY MR. SCHRIFTMAN:

18 Q But, if we go back to your report, which
19 is on Exhibit 1, on the first page it lists ICU
20 sterile products?

21 A Correct.

22 Q But, as I said, you don't know what they
23 are?

24 A Correct.

1 Q Then I won't ask you questions about them.

2 A Right.

3 Q Are you aware that the Illinois Department
4 of Revenue filed what are known as discovery requests
5 on IMS?

6 A No.

7 Q So there was Interrogatory and there was
8 document requests.

9 Have you ever seen them before?

10 A No.

11 Q Did you provide any assistance in the
12 answers that were provided to the Department?

13 A Just writing the report.

14 Q And let's clarify that then because maybe
15 I can short circuit some questions.

16 As far as providing written
17 documentation to the Department to this litigation,
18 to the best of your knowledge, has the report been
19 the only thing that you've actually written?

20 A Yes.

21 Q And those are the three pages -- to
22 clarify.

23 A Yes.

24 Q Those are the three pages at the end of

1 Exhibit 1 which are the Rule 213(f) disclosures?

2 A That's correct.

3 (Whereupon, a recess was
4 taken.)

5 BY MR. SCHRIFTMAN:

6 Q Do you have any opinion about how much tax
7 IMS does owe for this matter?

8 A I don't.

9 MR. SCHRIFTMAN: That's it.

10 Matt, if you have anything.

11 EXAMINATION

12 BY

13 MR. HESS:

14 Q Yeah just real quick.

15 Going back, Doctor, briefly. Counsel
16 was just asking you about this item on the list of 15
17 items. The ICU sterile products that we didn't quite
18 know what they were referring to.

19 I want you to assume for a moment that
20 those ICU sterile products at ICU is just a brand or
21 company that makes products that are used in IV
22 therapy products.

23 Would your opinions about the other
24 types of IV therapy products that we've already

1 talked about be the same as for those ICU branded IV
2 therapy products that are sold by IMS.

3 A Yes.

4 Q Okay. Let's back up for a moment, Doctor,
5 and take a little bit bigger picture, view of what we
6 have been talking about here.

7 You're an Infectious Disease
8 specialist, correct?

9 A Correct.

10 Q Can you tell me what that means, what you
11 do.

12 A It means that I help to diagnose and
13 manage patients with proven or presumed infectious
14 diseases.

15 Q When you completed your medical school,
16 did you do a residency after that?

17 A I did.

18 Q And did you complete a fellowship after
19 that?

20 A Yes.

21 Q Was your fellowship in the field of
22 Infectious Disease?

23 A Yes.

24 Q How long did that last?

1 A It was a two year fellowship.

2 Q Two years. Where at?

3 A At where was then called Rush Presbyterian
4 St. Luke's Medical Center, now, Rush University
5 Medical Center.

6 Q In what situation does the patient require
7 treatment from an Infectious Disease doctor?

8 A If they have an infection that is
9 potentially treatable. Again, there are a variety of
10 different infections including heart valve
11 infections, pneumonia, meningitis, all sorts of
12 infections.

13 Q Are there infections that the human body
14 can fight off without the need for intervention from
15 a doctor?

16 A Yes.

17 Q Or from medication?

18 A Yes.

19 Q What types of infections are those?

20 A Mainly viral infections. You know,
21 rhinovirus, a lot of viruses the body can fight off
22 by itself without giving any other medication.

23 Q How does it do that?

24 A Well, it's its immune system that will

1 target the infection and kill the virus or kill the
2 cells that contain the virus.

3 Q With antibodies?

4 A Correct and compliment and, you know, the
5 immune system is very complicated.

6 Q And if a human body becomes infected with
7 a bacteria, is it able to fight it off without an
8 antibiotic?

9 A Sometimes. It depends on where the
10 infection is. If it's on the skin and you drain it,
11 you might not have to give an antibiotic, but if you
12 have bacteria in the bloodstream, the body can
13 sometimes fight it off by itself, but 50, 60, 70, 80
14 percent of people would die without an antibiotic.

15 Q In those situations when the body can
16 fight off bacterial infection in the bloodstream by
17 itself, how does it do that?

18 A Well, by making antibodies and cells that
19 will -- immune cells that will actually engulf the
20 bacteria and eat the bacteria and kill them.

21 Q So in situations when the body is unable
22 to make those antibodies necessary to kill off a
23 particular type of bacteria, that's when an
24 antibiotic becomes necessary?

1 A Well, even before then because you don't
2 know whether the body will be able to fight it off
3 and you don't want to take the chance that they're --
4 you know, especially with staph aureus that you might
5 have an 80, 85 percent mortality. You don't want to
6 take that chance and so you want to give antibiotics
7 to prevent or to decrease the number of people that
8 die. And it's not only bloodstream infections, but
9 also pneumonia, bacterial pneumonia, bacterial
10 osteomyelitis. The body sometimes can fight it off,
11 but most of the time it needs help.

12 Q When you diagnosis an infection, am I
13 correct, that you become aware of the existence of an
14 infection long before you become aware of what
15 particular type of infection is present; would that
16 be correct?

17 A Usually, that's correct.

18 Q And for that reason, often you start off
19 with a broad spectrum antibiotic like vancomycin and
20 then narrow it down once you get cultures back?

21 A Correct.

22 Q So even though a particular bacteria may
23 have been able to be defeated by the body without any
24 intervention at all, you don't want to take that

1 chance. The standard of care is you treat first as
2 well as you can?

3 A Depending on the infection, that's
4 correct.

5 Q Okay. Am I correct that there are some
6 situations when a bacterial infection can be
7 addressed with an oral antibiotic, with a pill?

8 A Yes, that's correct.

9 Q And in other situations, IV antibiotics
10 are required; is that correct?

11 A That's correct.

12 Q When are oral antibiotics called for as
13 opposed to IV?

14 A Well, you can use oral antibiotics if the
15 drug is absorbable from the GI tract and the organism
16 is susceptible to that organism and the GI tract is
17 working, then you can give an oral antibiotic.

18 Q So in situations when the GI tract is not
19 working, that would require IV administration; is
20 that true?

21 A That's correct.

22 Q What would cause a patient's GI tract not
23 to be working?

24 A Well, if they're hypotensive, if they're

1 having a lot of diarrhea, if they have what is called
2 malabsorption syndromes, but usually, it's because
3 the organism is resistant to everything except
4 something that can be given intravenously and there's
5 no oral substitute.

6 Q So the body's immune system is unable to
7 fight it off on its own?

8 A Correct and the antibiotic isn't absorbed
9 from the GI tract.

10 Q Okay. So in those situations, IV
11 administrations of antibiotics are required?

12 A Correct.

13 Q And all of the items that we have been
14 talking about here today, you have testified are used
15 in the administration of IV antibiotics; is that
16 right?

17 A That's correct.

18 Q There are other medical uses as well, but
19 in your experience primarily you have seen and
20 supervised the use of these materials in conjunction
21 with the administration of IV antibiotics?

22 A That's correct.

23 Q And in order to address the malfunctioning
24 immune system in the body, these items are necessary

1 to fight off infection and produce -- provide the
2 antibodies that are necessary to kill the bacteria?

3 A Well, it provides the antibiotics that
4 will kill the bacteria, not the antibodies.

5 Q They serve the same function as a body's
6 antibody would do?

7 A You could think of it that way, yes.

8 Q Okay. And then since we have already gone
9 through how the IV, the tubing serves like a vein for
10 an artery?

11 A Correct.

12 Q Where the antibodies in the body's
13 bloodstream carry the antibodies to the source of the
14 infection when an infection is able to be defeated
15 with the body's own immune system, correct?

16 A That's correct.

17 Q It's the body's circulatory system that
18 does that. So when that's not working or when that's
19 not able to serve as a carrier for the antibodies, IV
20 administration is required; is that fair?

21 A When oral antibiotics can't be given,
22 that's correct.

23 Q Okay. And that brings up another point.
24 Sometimes when a G-tube is necessary, some of these

1 products are used for the administration of
2 nutrition, correct?

3 A That's correct.

4 Q And that's when the body's digestive
5 system can't function properly?

6 A Correct.

7 Q One feature of the inside of a human body,
8 am I correct, is that it is or when not compromised
9 should be a sterile environment?

10 A For the most part, that's correct.

11 Q Nowhere else in nature does it occur that
12 there is a naturally occurring sterile environment
13 other than inside one's body, fair?

14 MR. SCHRIFTMAN: Objection to form.

15 MR. HESS: What's wrong with the form of
16 the question?

17 MR. SCHRIFTMAN: I mean, I'm not objecting
18 to the leading question, but that one seems so vague
19 that I don't know if I understand it.

20 BY MR. HESS:

21 Q Do you understand what I'm saying?

22 A Yes.

23 Q Would you agree?

24 A Yes.

1 Q Some of these products that we've talked
2 about today, for example, the ICU sterile products
3 kit, the IV -- let me get the list -- the sterile
4 needles, the sterile syringes, anything that is sold
5 in a sterilized fashion; am I correct that the
6 purpose of any such items would only be to replicate
7 the sterile environment of inside a human body?

8 A Correct. You don't want to introduce
9 bacteria into the -- into someone's bloodstream.
10 That's correct.

11 Q Okay. If I take a sterile syringe and I
12 go down to the red line station and I open it up and
13 I start using it, it kind of defeats the purpose of
14 having it sterilized, right?

15 A That's correct.

16 Q So you want to use these products in the
17 confines of a sterilized ICU environment or an
18 Operating Room environment to preserve the sterile
19 nature of what you're doing and to prevent further
20 harm from being occasioned by the patient?

21 A Well, again, if you have any sort of
22 connection to the bloodstream, it should be sterile.

23 Q We talked about the Eclipse Homepump
24 briefly and I know you don't -- you're not familiar

1 with that particular type of pump, but the pumps that
2 you're familiar with, in general, you're aware serve
3 the same function as a home pump and that's to
4 administer medication through an IV at a precise time
5 interval, correct?

6 A That's correct. That's correct.

7 Q Similar to what the heart does when it's
8 pumping blood through the bloodstream?

9 A Yeah, that's correct.

10 Q We talked about the Foley catheters
11 briefly. When is a Foley catheter necessary for a
12 patient?

13 A Well, it's necessary if there is an
14 obstruction and a person can't empty their bladder,
15 and so it's necessary to drain the bladder to prevent
16 the obstruction which could lead to infection, could
17 lead to kidney damage and sometimes it's used to more
18 accurately monitor how much fluid is needed for a
19 patient.

20 Q Sure.

21 But to get down to it, it serves as a
22 function of what the body is normally able to do on
23 its own by emptying the bladder?

24 A Correct.

1 MR. HESS: Those are all the questions I
2 have.

3 Thank you, Doctor.

4 MR. SCHRIFTMAN: I may just have a couple
5 of follow-ups from what Matt was asking.

6 FURTHER EXAMINATION

7 BY

8 MR. SCHRIFTMAN:

9 Q We talked about the body being a sterile
10 place. Obviously, when -- I'll use the word
11 procedures -- when procedures are occurring there are
12 certain items that are used, so I'll go through a few
13 of those and just ask your opinion on them.

14 Have you used gloves, sterile gloves
15 in patient procedures?

16 A Yes.

17 Q Do you believe that sterile gloves
18 directly substitute for a malfunctioning part of the
19 human body?

20 MR. HESS: Objection; relevance.

21 THE WITNESS: I think for certain
22 procedures they're medically necessary because you
23 don't want to introduce bacteria. I don't think
24 you'd want someone taking your spinal from your back

1 with gloves that weren't sterile. I don't think
2 you'd want someone's hands in your abdomen or your
3 peritoneal cavity or your heart if the gloves
4 weren't sterile.

5 So does that take the place of a
6 malfunctioning body part? I don't know. That seems
7 like a legal term -- that's legal terminology to me.
8 It just doesn't make any medical sense.

9

10 BY MR. SCHRIFTMAN:

11 Q So are you saying that it's medically
12 necessary?

13 A That's correct.

14 Q Okay. Now I'll ask the same question
15 regarding the cleaning products that were obviously
16 used to keep an environment sterile. Do you believe
17 that they substitute, directly substitute for a
18 malfunctioning part of the human body?

19 MR. HESS: Objection to form.

20 THE WITNESS: Cleaning products? I would
21 probably less so than a -- sterile gloves for
22 someone who's going to be putting their hands in
23 your heart, I think you'd want them to have sterile
24 gloves. For cleaning products maybe not as much.

1 BY MR. SCHRIFTMAN:

2 Q Now, Matt was asking some questions about
3 antibiotic usage.

4 A Yes.

5 Q I understand, obviously, with your report,
6 OPAT, as we discussed, your experiences, a lot of it
7 deals with antibiotic administration?

8 A Correct. It's all outpatient antibiotic
9 therapy. It's all antibiotics.

10 Q It's all you deal with are antibiotics?

11 A Correct.

12 Q So if someone has an infection, sometimes
13 antibiotics can help resolve the infection?

14 A Yes.

15 Q Would that be a correct statement?

16 A That's correct.

17 Q Well, hypothetical, so I don't want to ask
18 something that is generalized that I'm not going to
19 understand and you're not going to be able to answer.

20 Are there situations where an
21 antibiotic is prescribed to a patient wherein the
22 patient themselves would be able to recover without
23 the antibiotic?

24 A I don't think so. Maybe in retrospect,

1 but prospectively you're giving an antibiotic because
2 you think it's necessary.

3 In retrospect, maybe you gave them for
4 too long or, you know, but prospectively, you're
5 giving an antibiotic because you think it's going to
6 benefit the patient.

7 Q Well, absolutely.

8 And I'm not -- just to be clear, in
9 this entire deposition I'm not making the point that
10 anything that you're saying isn't required or
11 necessary.

12 The question I'm asking is -- maybe I
13 will ask a different way.

14 Do you have patients wherein if you
15 don't give them an antibiotic, they would still
16 recover from --

17 A Maybe.

18 Q Okay.

19 A But since we don't have crystal balls, we
20 can't tell who would or who wouldn't.

21 Q So sometimes they would and sometimes they
22 wouldn't, would be a fair statement?

23 A No, a fair statement is we don't know who
24 would recover without antibiotics and I wouldn't put

1 somebody's life at risk to say this patient's going
2 to recover without antibiotics or put their limb at
3 risk or put their heart valve at risk. So you have
4 to look at this prospectively and we give antibiotics
5 when we think they're necessary.

6 Q Okay. And can you tell me what you
7 believe the term "medically necessary" means.
8 Because you said "necessary," so just clarifying what
9 that term is.

10 A I think it's a standard of care type of
11 definition that what a reasonably trained physician
12 in the same situation would do that would be
13 medically necessary.

14 MR. SCHRIFTMAN: Okay. That's all we
15 have.

16 FURTHER EXAMINATION

17 BY

18 MR. HESS:

19 Q One more real quick, Doctor.

20 You testified earlier that the
21 opinions that you gave here today are based upon a
22 reasonable degree of medical certainty which you said
23 is more probably true than not.

24 A Correct.

1 Q Is it true?

2 Your opinions you gave here today and
3 spelled out in your report are also based upon your
4 knowledge and training as a medical professional?

5 A And my experience, correct.

6 MR. HESS: No further questions.

7 Do you want to review it?

8 THE WITNESS: Yeah, I might as well.

9 MR. SCHRIFTMAN: Etran.

10 MR. HESS: I'll take an etran.

11 FURTHER DEPONENT SAITH NOT . . .

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STATE OF ILLINOIS)
COUNTY OF COOK) SS:

3 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION

5 INTEGRATED MEDICAL SYSTEMS,)
6)
6 Petitioner,)
7)
7 vs.) No. 15 TT 247
8)
8 ILLINOIS DEPARTMENT OF REVENUE,))
9)
9 Respondent.)

10 This is to certify that I have read the
11 transcript of my deposition taken on the 7th day
12 of February 2019 in the foregoing cause, and that
13 the foregoing transcript accurately states the
14 questions asked and the answers given by me, with
15 the changes or corrections, if any, made on the
16 Errata Sheet(s) attached hereto.

19 JOHN SEGRETI, M.D.


20 Subscribed and sworn to

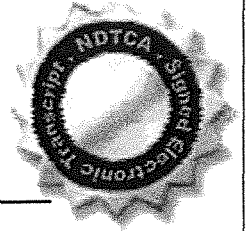
21 before me this _____ day

22 of _____ 2019.

Notary Public

1 if any, given by the deponent for said
2 corrections shall be thereon noted.

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6 February 27, 2019

7 JOHN J. PEMBROKE & ASSOCIATES
8 MR. MATTHEW R. HESS
9 422 North Northwest Highway, Suite 150
10 Park Ridge, Illinois 60068

11 Re: INTEGRATED MEDICAL SYSTEMS vs.
12 ILLINOIS DEPARTMENT OF REVENUE
13 No. 15 TT 247

14 Dear Mr. Hess:

15 Enclosed is your copy of the deposition of John
16 Segreti, M.D., which was taken on
17 February 7, 2019.

18 As signature was reserved, please have
19 Dr. Segreti review his transcript, making any
20 necessary corrections on the errata sheets. Then
21 sign the deponent's signature page and have the
22 signature notarized.

23 Please send the original errata sheets and signed
24 deponent's certificate to Mr. Schrifftman.

Also, please send one to Sullivan Reporting
Company, attention to Carla L. Camiliere, CSR.
Also, please remember to keep a copy for
yourself.

According to Illinois Supreme Court Rule 207(a),
signature must be obtained within 28 days or the
deposition may then be used fully as though
signed. Therefore, your prompt attention in this
matter is greatly appreciated.

Sincerely,

Carla L. Camiliere, CSR

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IN THE ILLINOIS INDEPENDENT
TAX TRIBUNAL

INTEGRATED MEDICAL
SYSTEMS INC

Petitioner,

v.

CONSTANCE BEARD, in her official capacity as
DIRECTOR OF THE ILLINOIS DEPARTMENT
OF REVENUE, and the
ILLINOIS DEPARTMENT OF REVENUE,

Respondent.

No. 15 TT 247

Chief Judge James M. Conway

RULE 213(F) DISCLOSURES

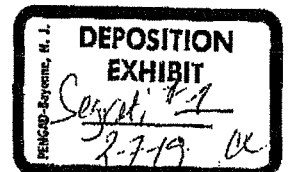
NOW COMES the Petitioner, INTEGRATED MEDICAL SYSTEMS, INC.
("Petitioner"), by and through its attorneys, John J. Pembroke & Associates, LLC, and pursuant
to Illinois Supreme Court Rule 213 discloses the following witnesses who will testify at the trial
or hearing of this matter:.

1. Identify all lay witnesses who will testify and the subjects on which each lay
witness will testify.

ANSWER:

Patrick DiOrio
Integrated Medical Systems, Inc.

This witness will testify regarding his education, training and work experience. He will
testify regarding the nature of Petitioner's business. He will testify regarding all conversations
he had with representatives of the Illinois Department of Revenue ("Department") before, during
and after the audit periods at issue in this case. He may offer opinions regarding the medical
items that are at issue in this case, and to the extent that he does his answer herein is incorporated



by reference into #2 below. He believes that all of the items at issue herein should be taxed at the low rate rather than the high rate. He will testify regarding prior interactions with the Department, including during a prior audit after which it was determined that nearly all of the items at issue in this case were taxed at the low rate. He will explain all of the bases for his belief that the items at issue in this appeal should similarly be taxed at the low rate, consistent with the Department's prior position. He will further testify to all matters set forth in his deposition.

Laura Sexton
Integrated Medical Systems, Inc.

This witness will testify regarding her education, training and work experience. She will testify regarding the nature of Petitioner's business. She will testify regarding all conversations she had with representatives of the Illinois Department of Revenue ("Department") before, during and after the audit periods at issue in this case. She may offer opinions regarding the medical items that are at issue in this case, and to the extent that she does her answer herein is incorporated by reference into #2 below. She believes that all of the items at issue herein should be taxed at the low rate rather than the high rate. She will testify regarding prior interactions with the Department, including during a prior audit after which it was determined that nearly all of the items at issue in this case were taxed at the low rate. She will explain all of the bases for her belief that the items at issue in this appeal should similarly be taxed at the low rate, consistent with the Department's prior position. She will further testify to all matters set forth in his depositions.

Daniel Izzo
Integrated Medical Systems, Inc.

This witness will testify regarding his education, training and work experience. He will testify regarding the nature of Petitioner's business. He will testify regarding all conversations

he had with representatives of the Illinois Department of Revenue ("Department") before, during and after the audit periods at issue in this case. He may offer opinions regarding the medical items that are at issue in this case, and to the extent that he does his answer herein is incorporated by reference into #2 below. He believes that all of the items at issue herein should be taxed at the low rate rather than the high rate. He will testify regarding prior interactions with the Department, including during a prior audit after which it was determined that nearly all of the items at issue in this case were taxed at the low rate. He will explain all of the bases for his belief that the items at issue in this appeal should similarly be taxed at the low rate, consistent with the Department's prior position. He will further testify to all matters set forth in his deposition.

Lisa Fox
Illinois Department of Revenue

This witness will be called as an adverse witness pursuant to 735 ILCS 5/2-1102, and for that reason Petitioner objects to the disclosure of her anticipated testimony based upon the work product privilege. Nonetheless, Petitioner anticipates that she will testify consistent with her deposition given in this matter.

Jim Terpinas
Illinois Department of Revenue

This witness will be called as an adverse witness pursuant to 735 ILCS 5/2-1102, and for that reason Petitioner objects to the disclosure of his anticipated testimony based upon the work product privilege. Nonetheless, Petitioner anticipates that he will testify consistent with his deposition, if one is taken in this matter.

Investigation continues.

2. Identify all independent expert witnesses who will testify, the subjects on which each will testify as well as the opinions expected to be elicited of each witness.

ANSWER: To the extent that any of the witnesses identified in response to #1 above are considered independent expert witnesses, their above disclosures are incorporated by reference in answer to #2 herein. Investigation continues.

3. Identify all controlled expert witnesses who will testify and provide the following:

-
- (i) the subject matter on which the witness will testify;
 - (ii) the conclusions and opinions of the witness and the bases therefor;
 - (iii) the qualifications of the witness; and
 - (iv) any reports prepared by the witness about the case.

ANSWER:

John Segreti, M.D.
Rush University Medical Center
600 South Paulina, Suite 143
Armour Academic Center
Chicago, IL 60612

John Segreti, M.D. is a board-certified physician practicing in the area of infectious disease. His *curriculum vitae* is attached hereto and is incorporated by reference as if fully set forth herein. Dr. Segreti has been retained to offer certain opinions in this matter. His opinions will be based upon his review of certain materials provided to him in this matter as well as upon his education, training and experience. All of the opinions he offers in this matter will be based upon a reasonable degree of medical certainty. Dr. Segreti authored a report dated January 24, 2017. That report was based upon his review of Petitioner's Petition (and all accompanying attachments) and other materials, all of which will be available for inspection at his deposition. These include:

Since drafting his initial report, Dr. Segreti has reviewed the deposition transcripts of Patrick DiOrio, Daniel Izzo and Lisa Fox. His opinions regarding the subjects at issue in this case remain unchanged, although they are supported by his review of those additional materials.

Dr. Segreti is familiar with all of the following items and will testify that each of them should be considered a "medical appliance" under Section 2-10 of the Illinois Retailers' Occupation Tax Act because they are all used to directly substitute for a malfunctioning part of the human body, including functions of the human body that are lost or diminished because of congenital or other defects, trauma, infection, tumors or disease:

- Sterile needles
- Sterile syringes, either empty or prefilled
- Vacutainer blood transfer devices
- Venous catheters
- Needles to access intravascular ports
- Huber needles
- Intravenous administration sets
- Chloraprep applicators
- ICU sterile products
- Eclipse home pump
- Foley catheter tray
- Huber Pro Safety set
- IV catheter starter kits
- Port access set
- Sterile "butterfly" wings

Dr. Segreti will explain how each of the above items substitutes for a malfunctioning part of the human body. All of those products (with the exception of the Foley trays) may be considered extensions of the patient's veins as they are required to access the vein to administer necessary medications. These areas must be as sterile as possible in order to prevent potentially life-threatening infections. The Foley tray may be considered an extension of a patient's urethra, as Foley catheters are placed through the urethra into the bladder in order to assure adequate

bladder emptying. If the bladder does not fully empty, patients will experience pain and will be at greater risk of acquiring a urinary tract infection.

Sterile needles are required to safely access the patient's venous catheter to infuse the necessary antibiotic. Sterile syringes are required to flush the venous catheter before and after the infusion of the prescribed antibiotic to assure that the venous catheter remains patent.

Vacutainer devices are required to draw blood from the patient in order to assure that the antibiotic is working and not causing a toxic reaction. Venous catheters are required to allow access to the patient's blood stream in order to deliver the necessary antibiotic. Special needles are needed to access certain specialized indwelling venous ports.

Huber needles are a specific type of special needle required to access certain specialized indwelling venous ports for the delivery of medications. Intravenous administration sets are required to establish a connection to the venous catheter in order to administer an intravenous antibiotic.

Chloraprep is recommended as the disinfectant of choice to prepare the skin prior to placing an intravenous catheter or to disinfect the skin during changing of the venous catheter dressing. Failure to do this can result in a blood stream infection that can kill the patient.

Eclipse Home pumps are required to safely administer medications that need to be given over a defined period of time. For example, vancomycin, an intravenous antibiotic, cannot be given faster than 1 gm/hour without the patient experiencing fever, chills and rash. Foley catheter trays are used to safely place a catheter into the bladder. Huber ProSafety Set is used to access indwelling venous ports for the delivery of medications. IV start kits are sterile kits used to start a peripheral venous catheter for the delivery of medications. Port Access Set is a sterile tray with all the equipment needed to safely access a patient's indwelling venous port to deliver

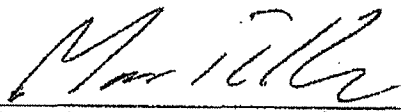
medications. Sterile IV wings are a type of sterile needle used to start an intravenous catheter or to access an existing catheter in order to safely administer medications.

Investigation continues.

Respectfully submitted,

INTEGRATED MEDICAL SYSTEMS, INC.

By:


One of its attorneys

John J. Pembroke
Matthew R. Hess
JOHN J. PEMBROKE & ASSOCIATES, LLC
422 North Northwest Highway
Suite 150
Park Ridge, Illinois 60068
847-696-0060
Attorney No. 58638

CURRICULUM VITAE

NAME: John Segreti, M.D.

BUSINESS ADDRESS: Section of Infectious Diseases
Department of Medicine
Rush University Medical Center
600 South Paulina,
Suite 143 Armour Academic Center
Chicago, IL 60612
(312) 942-5865

DATE OF BIRTH: August 5, 1954

CITIZENSHIP: U.S.A.

EDUCATION

1972 - 1976	Undergraduate Loyola University of Chicago Bachelor of Science in Biology
1976 - 1980	Rush Medical College Chicago, Illinois M.D. Degree
1980 - 1983	Residency - Internal Medicine Rush-Presbyterian-St. Luke's Medical Center Chicago, Illinois
1983 - 1984	Chief Resident - Internal Medicine Rush-Presbyterian-St. Luke's Medical Center Chicago, Illinois
1984 - 1986	Fellowship - Infectious Diseases Rush-Presbyterian-St. Luke's Medical Center Chicago, Illinois

HONORS/AWARDS:

1976	Graduated summa cum laude Loyola University of Chicago
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1983/1984	Pillsbury Fellow
1983	Department of Medicine Award Outstanding Medical Resident
1985/1986	The National Foundation for Infectious Disease Travel Grant
1996	Fellow, Infectious Disease Society of America
2003	Department of Internal Medicine Teaching and Service Award Rush-Presbyterian-St. Luke's Medical Center Chicago, Illinois
2012	Fellow, American College of Physicians

STAFF APPOINTMENTS:

1984 - 1986	Fellow - Section of Infectious Diseases Department of Medicine Rush-Presbyterian-St. Luke's Medical Center Chicago, Illinois
1983 - 1987	Adjunct Attending Department of Internal Medicine Rush-Presbyterian-St. Luke's Medical Center Chicago, Illinois
1986 - 1987	Consultant Chicago Department of Health
1986 - 1987	Medical Director Chicago's Comprehensive AIDS Prevention and Education Program
1986 - 2003	Consultant Department of Internal Medicine West Suburban Medical Center Oak Park, Illinois
1986 - 1991 1998 - 2002	Consultant Hinsdale Hospital Hinsdale, Illinois
1987 - 1998	Consultant

John Segreti, M.D.

3

Westlake Hospital
Melrose Park, Illinois

1987 - 2002

Assistant Attending
Department of Internal Medicine
Rush-Presbyterian-St. Luke's Medical Center
Chicago, Illinois

1990 - 1992

Consultant

1998 - 2002

Suburban Hospital
Hinsdale, Illinois

1990 - 1992

Consultant

1998 - 2002

LaGrange Community Hospital
LaGrange, Illinois

1991 - 1999

Attending
Vencor - Chicago
Northlake, Illinois

1998 - 2002

Consultant
St. Francis Hospital
Blue Island, Illinois

1998 - 2002

Consultant
Elmhurst Hospital
Elmhurst, Illinois

1998 - 2002

Consultant
Little Company of Mary Hospital
Evergreen Park, Illinois

2002 - Present

Senior Attending
Department of Internal Medicine
Rush University Medical Center
Chicago, Illinois

2004-Present

Voluntary Staff
John H. Stroger Jr. Hospital of Cook County
Chicago, Illinois

2014-Present

Attending
Rush Oak Park Hospital

FACULTY APPOINTMENTS:

1983 - 1987

Instructor - Rush Medical College

John Segreti, M.D.

4

Chicago, Illinois

1987 - 1994

Assistant Professor
Rush Medical College
Chicago, Illinois

1988 - 1999

Resource Faculty, Alternative Curriculum,
Rush Medical College
Chicago, Illinois

1994 - 2000

Associate Professor
Rush Medical College
Chicago, Illinois

2000 - Present

Professor
Rush Medical College
Chicago, Illinois

COMMITTEES:

1983

Search Committee for Chairman of
Internal Medicine
Rush Medical College
Chicago, Illinois

1983 - 1984

Medical Care Evaluation Committee
Rush-Presbyterian-St. Luke's Medical Center
Chicago, Illinois

1984 - 1986

Employee Health Services Committee
Rush-Presbyterian-St. Luke's Medical Center
Chicago, Illinois

1986 - 1988

Educational Resources Committee
Rush Medical College
Chicago, Illinois

1986 - 1987

Executive Committee Chicago's Comprehensive
AIDS Prevention and Education Program

1986 - 1995

City of Chicago Dept. of Health
Commissioner's AIDS Advisory Committee

1986 - 1987	City of Chicago AIDS Planning Committee
1988 - 2006	Chair, Antibiotics Subcommittee of Pharmacy and Therapeutics Committee Rush-Presbyterian-St. Luke's Medical Center
1988 - 1991	Chair, Midwest Home Support Services Professional Advisory Board
1991 - 1998	Chair, Infection Control Committee Vencor - Chicago Northlake, Illinois
<hr/>	
1991 - 1998	Chair, Pharmacy and Therapeutics Vencor - Chicago Northlake, Illinois
1992 - 1995	Committee on Senior Faculty Appointments and Promotions Rush Medical College Chicago, Illinois
1992 - 1998	Chartwell Midwest Medical Advisory Board Rush-Presbyterian-St. Luke's Medical Center Chicago, Illinois
1996 - 1999	Committee on Educational Appraisal Rush Medical College Chicago, Illinois
1996 - 1998	Medical Students Subcommittee of The LCME Self-Study Task Force Rush Medical College Chicago, Illinois
1997 - 1999	Medical Staff Executive Committee Rush-Presbyterian-St. Luke's Medical Center Chicago, Illinois
1998 - Present	Chair, Infection Prevention and Control Committee Rush University Medical Center Chicago, Illinois
2002 - Present	Process Improvement and Oversight Committee, Rush University Medical Center Chicago, Illinois

John Segreti, M.D.

6

2004 -- 2005	Chair, Patient Safety Oversight Committee Rush University Medical Center Chicago, Illinois
2006 - 2009	Chair, Pharmacy and Therapeutics Committee Rush University Medical Center Chicago, Illinois
2009 -- 2011	Member, Executive Committee of the Medical Staff Rush University Medical Center Chicago, Illinois
2009 -- Present	Chair, Antibiotics Subcommittee of Pharmacy and Therapeutics Committee Rush University Medical Center
2014-Present	Chair, Infection Control Committee Rush Oak Park Hospital

**PROFESSIONAL
SOCIETIES:**

1984 - Present	Member, American College of Physicians
1990 - Present	Infectious Diseases Society of America
1995 - Present	Society of Healthcare Epidemiologists of America

CERTIFICATION:

1983	Internal Medicine
1986	Infectious Diseases

LICENSURE:

1987	State of Illinois #036-063749
------	-------------------------------

MANUSCRIPT REVIEWS:

American Journal of Medicine
Journal of the American Medical Association
Annals of Internal Medicine
Clinical Infectious Diseases

Journal of Heart and Lung Transplantation
Critical Care Medicine
Mayo Clinic Proceedings
Scandinavian Journal of Infectious Diseases
Infectious Diseases in Clinical Practice
Antimicrobial Agents and Chemotherapy

EDITORIAL BOARDS:

1994 - 1998

Patient Care

1998 - 2001

Pharmacoeconomics: Infectious Diseases

BIBLIOGRAPHY

Peer Reviewed Journals

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4. Harris AA, Segreti J, and Levin S. Central nervous system infections in patients with the acquired immune deficiency syndrome (AIDS). Clinical Pharmacology 1985;8:201-10.
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Clinical Microbiology and Infectious Disease. Eur J Clin Microbiol Infect Dis (2005) 24: 405-410.

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THE GRADUATE COLLEGE



January 24, 2017

John J. Pembroke
John J. Pembroke & Associates
422 N. Northwest Highway
Suite 150
Park Ridge, IL 60068

Re: List of Disputed Items

Dear Mr. Pembroke:

I am a physician licensed to practice medicine in the state of Illinois. I am currently a Professor in the Department of Internal Medicine, Section of Infectious Diseases at Rush University Medical Center. I am board certified in Internal Medicine (1983) and Infectious Diseases (1986) and a fellow in the Infectious Disease Society of America and a fellow in the American College of Physicians. I have practiced as an attending infectious diseases physician since 1986 and have treated numerous patients that require outpatient antibiotic therapy (OPAT) and I am familiar with the items required to treat patients on OPAT.

My understanding is that "medical appliances" within the meaning of Illinois sales tax law is an item that is used to directly substitute for a malfunctioning part of the human body, including functions of the human body that are lost or diminished because of congenital or other defects, trauma, infection, tumors or disease. At your request, I have reviewed a list of items to determine if they are "medical appliances". These include:

- Sterile needles
- Sterile syringes, either empty or prefilled
- Vacutainer blood transfer devices
- Venous catheters
- Needles to access intravascular ports
- Huber needles
- Intravenous administration sets
- Chloraprep applicators
- ICU sterile products
- Eclipse home pump

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Katayoun Rezai, MD
Robert A. Weinstein, MD
Sharon Weibel, MD
Chad Zawitz, MD

- Foley catheter tray
- Huber Pro Safety set
- IV catheter starter kits
- Port access set
- Sterile "butterfly" wings

It is my professional opinion that all of these items are medical appliances that are required to assure the safety and efficacy of OPAT. All of these products (with the exception of the Foley trays) may be considered extensions of the patient's veins as they are required to access the vein to administer necessary medications. The human body as diseased by the condition to be treated will not adequately respond to the therapy without these appliances assisting the human body, and restoring the various systems to their normal functions that have been diminished by the disease being treated. These areas must be as sterile as possible in order to prevent potentially life-threatening infections, and further compromising the function of the body. The Foley tray may be considered an extension of a patient's urethra, as Foley catheters are placed through the urethra into the bladder in order to assure adequate bladder emptying. If the bladder does not fully empty, patients will experience pain and will be at greater risk of acquiring a urinary tract infection.

Sterile needles are required to safely access the patient's venous catheter to infuse the necessary antibiotic. Without such antibiotics, the body's immune system cannot adequately fight off the infectious disease impairing its functions.

Sterile syringes are required to flush the venous catheter before and after the infusion of the prescribed antibiotic to assure that the venous catheter remains patent.

Vacutainer devices are required to draw blood from the patient in order to assure that the antibiotic is working and not causing a toxic reaction.

Venous catheters are required to allow access to the patient's blood stream in order to deliver the necessary antibiotic. The human body cannot absorb the required medication orally. The administration of such medication intravenously substitutes for the body processes that otherwise work with orally administered medications. Delivery of the medication directly into the patient's blood stream enhances the body's ability to fight off infection and restore its functions.

Special needles are needed to access certain specialized indwelling venous ports.

Huber needles are a specific type of special needle required to access certain specialized indwelling venous ports for the delivery of medications. Without the use of such ports, the body's skin would degrade and not permit continued treatment necessary to enable the body to function.

Intravenous administration sets are required to establish a connection to the venous catheter in order to administer an intravenous antibiotic.

Chloraprep is recommended as the disinfectant of choice to prepare the skin prior to placing an intravenous catheter or to disinfect the skin during changing of the venous catheter dressing. Failure to do this can result in a blood stream infection that can kill the patient. And, the condition of the body's skin without the use of such a disinfectant can compromise the medical therapy being administered.

Eclipse Home pumps are required to safely administer medications that need to be given over a defined period of time. For example, vancomycin, an intravenous antibiotic, cannot be given faster than 1 gm/hour without the patient experiencing fever, chills and rash.

Foley catheter trays are used to safely place a catheter into the bladder.

Huber ProSafety Set is used to access indwelling venous ports for the delivery of medications.

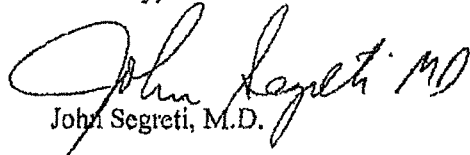
IV start kits are sterile kits used to start a peripheral venous catheter for the delivery of medications.

Port Access Set is a sterile tray with all the equipment needed to safely access a patient's indwelling venous port to deliver medications.

Sterile IV wings are a type of sterile needle used to start an intravenous catheter or to access an existing catheter in order to safely administer medications.

Please do not hesitate to call if you have any questions.

Sincerely,



John Segreti, M.D.

ILLINOIS INDEPENDENT
TAX TRIBUNAL

INTEGRATED MEDICAL)	
SYSTEMS INC,)	
Petitioner,)	
)	
v.)	15 TT 247
)	Chief Judge James M. Conway
ILLINOIS DEPARTMENT)	
OF REVENUE,)	
Respondent.)	

ORDER

The parties having appeared before the Tribunal today for a status conference, it is hereby ORDERED:

1. Discovery is closed; and
2. The next status conference will be held on April 30, 2019 at 1:30 p.m. by telephone.

s/ James Conway
JAMES M.CONWAY
Chief Administrative
Law Judge

Date: April 8, 2019

