IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: CELEXA AND LEXAPRO MARKETING AND SALES PRACTICES LITIGATION	MDL NO. 2067 Master Docket No. 09-MD-2067-(NMG)
PAINTERS AND ALLIED TRADES DISTRICT COUNCIL 82 HEALTH CARE FUND, A THIRD-PARTY HEALTHCARE PAYOR FUND, on behalf of itself and all others similarly situated, Plaintiffs, v. FOREST PHARMACEUTICALS, INC. and FOREST LABORATORIES, INC., Defendants.	Case No. 13-CV-13113 (NMG)
IN RE: CELEXA AND LEXAPRO MARKETING AND SALES PRACTICES LITIGATION DELANA S. KIOSSOVSKI and RENEE RAMIREZ, on behalf of themselves and all others similarly situated, Plaintiffs, v. FOREST PHARMACEUTICALS, INC. and FOREST LABORATORIES, INC., Defendants.	MDL NO. 2067 Master Docket No. 09-MD-2067-(NMG) Judge Nathaniel M Gorton Case No. 14-CV-13848 (NMG)

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NOVEMBER 4, 2016

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CHARLES FLICKER, Ph.D.

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Videotaped sworn deposition of CHARLES FLICKER, Ph.D., held at The Wilshire Grand Hotel, 350 Pleasant Valley Way, West Orange, New Jersey, commencing at 7:48 a.m., before Margaret M. Reihl, a Registered Professional Reporter, Certified Court Reporter, Certified Realtime Reporter, and Notary Public.

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Also Present:
Bob Jorissen, Videotape Technician

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I N D E X

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THE VIDEOGRAPHER: We are going on the record at 7:48 a.m. on Friday, November 4th, 2016. Please note that recording will continue with any objection to going off the record. My name is Bob Jorissen, your certified legal videographer associated with Golkow. This deposition is being held at the Wilshire Grand Hotel located at 350 Pleasant Avenue Way, West Orange, New Jersey. The caption of this case is re: Celexa and Lexapro marketing and sales practice litigation, Kiossovski and Ramirez on behalf of themselves and all others similarly situated versus Forest Pharmaceuticals, Inc., et al. in the United States District Court for the District of Massachusetts.

The name of the witness is Charles Flicker. Appearances will be noted on the stenographic record. At this time our court reporter, Peg Reihl, of Golkow will swear in the witness and we can proceed.

Go ahead, Peg.

... CHARLES FLICKER, Ph.D., having been duly sworn as a witness, was examined and testified as follows ...

BY MR. BAUM:

Q. Good morning, Dr. Flicker.

Can you please state and spell your full name for the record.

A. C-h-a-r-l-e-s F-l-i-c-k-e-r, Charles Flicker.

Q. Do you have a middle name?

A. Edward, E-d-w-a-r-d.

Q. What is your current address?

A. 1155 North Courtney Avenue, Merritt Island, Florida 32953.

Q. What are you doing up here?

A. It's where my daughter lives.

Q. Okay. Mine lives up here too.

You're represented by counsel today?

A. Yes.

Q. How did you come about having counsel here today?

A. They contacted me by telephone.

Q. Is your attorney -- are your attorneys paid by Forest?

A. Not sure.

Q. You don't know who's paying them?

A. I'd say that's a reasonable conjecture.

Q. You're not paying them yourself?
A. No.
Q. You've been deposed before, right?
A. Yes.
Q. How many times?
A. I think twice.
Q. One was in connection with securities litigation; is that correct?
A. Securities? I don't know if it was securities.
Q. What do you think the depos -- the depositions that you already underwent were about?
A. There was a -- it was a Department of Justice investigation.
Q. Regarding Celexa or Lexapro?
A. It must have been Celexa. I'm not sure.
Q. Do you know what the -- what they were trying to find out about?
A. I believe there were a number of issues, but I was asked about Celexa marketing.
Q. Do you recall what you said?
A. Not really. I mean fragments.
Q. Did you get a copy of the transcript of those depositions?

A. No.
Q. So there were two depositions?
A. Perhaps one.
Q. One deposition?
A. Perhaps one, perhaps two.
Q. One with a court reporter?
A. It was definitely a court reporter at one.
Q. Okay. And the other was maybe being interviewed by a couple of US attorneys?
A. Yeah, I don't really remember.
Q. Do you remember when they were?
A. About ten years ago.
Q. Well, you understand that you're under oath today, correct?
A. Mm-hmm.
Q. That's the same oath as if you were sitting in a courtroom in the witness stand in front of the jury and a judge.
Do you understand that?
A. Yes.
Q. Okay. So we have a court reporter here, and her job is to take down each question and each answer and get every word we say, and so it's important

for us to try to make a clean record for her and so that your answers need to be oral. Shaking your head or saying uh-huh or uh-uh are hard for her to transcribe.

Did you get that?

A. I'll try not to mumble.

Q. Good, and I'll try not to as well. It's also important that if possible only one of us talk at a time. So I sometimes ask long questions, and at the very end stick a word on the end and it makes the difference of what the question means and changes what your answer might be, and it also gives your attorneys an opportunity to object.

When they object, it means that they are making a comment or a query or a placeholder so that they can talk to the judge and say my question wasn't any good and may want to strike the answer, but unless they tell you not to answer, even if they object, you should go ahead and answer.

Does that make sense?

A. Yes.

Q. At the end of the deposition, after it's done the court reporter will make a transcription of it, and you'll have an opportunity to take a look at it

and make corrections. If you do make corrections, if this gets presented at trial or you appear at trial, I'll be able to comment on the fact that you made corrections. So try to give your best answers if you can today, okay?

A. Okay.

Q. Are there any medical reasons for your not being able to give your best testimony today?

A. No.

Q. Okay. Are you under any medications that would interfere with your memory or being able to give your best answers?

A. No.

Q. Have you had any contact with Forest attorneys about today's deposition?

A. Yes.

Q. What contact did you have?

A. I met with them yesterday.

Q. For how long?

A. A couple of hours.

Q. You understand that you're here today in connection with lawsuits involving the drugs Celexa and Lexapro?

A. I understood Celexa, I guess Lexapro

also.

Q. Okay. And Celexa is the brand name of citalopram?

A. Yes.

Q. And Lexapro is the brand name for escitalopram?

A. Yes.

Q. And do you understand that they're both SSRIs?

A. Yes.

Q. Are you familiar with any of the allegations in the complaint that's the subject of this litigation?

MR. ROBERTS: I just want to object and say to the extent that we had any conversations yesterday, you're not to discuss that, that's privileged, but anything -- any independent recollection that you have of the allegations, you can answer.

THE WITNESS: Then the answer would be no.

BY MR. BAUM:

Q. You didn't read the complaint?

A. No.

Q. And so your only understanding what the allegations are based on information that your lawyers discussed with you yesterday?

A. Yes.

Q. Did you have any contact with Forest lawyers before yesterday?

A. Ten years ago.

Q. But since then you've not had any meetings with them?

A. No.

Q. No telephone calls?

A. No. Well, they called regarding this case.

Q. To set up the --

A. Yes.

Q. The place and date, okay.

Are you aware that there have been legal actions concerning Forest's off-label marketing of Celexa to children and adolescents?

MR. ROBERTS: Objection. You can answer, to the extent you have any independent knowledge.

THE WITNESS: Could you repeat the question.

BY MR. BAUM:

Q. Yeah, are you aware that there have been legal actions against Forest for off-label marketing of Celexa to children and adolescents?

MR. ROBERTS: Objection.

THE WITNESS: That's what I thought the DOJ thing included.

BY MR. BAUM:

Q. I think you're right about that.

And according to your 2007 deposition, you testified that you were interviewed by the Department of Justice lawyers regarding the off-label promotion of Celexa in the pediatric population, right?

A. I think we're agreed on that, yeah.

Q. Do you recall if the attorneys were Jim Arnold and Greg Shapiro?

A. For the Department of Justice?

Q. Yes.

A. No.

Q. You don't recall their names?

A. No.

Q. And are you aware that Forest pled guilty to misbranding in that case?

A. No.

Q. Have you followed any of the outcomes of that litigation, seen it in the press, anything like that?

A. Yes.

Q. What was your understanding of what happened?

A. I don't remember. Forest paid a fine is my recollection.

Q. Do you know what the fine was for?

A. I don't remember what the fine was for. It didn't seem to me that it had anything to do with the marketing of even citalopram, as I recollect, but I don't really remember.

Q. Okay. Well, I'm going to show you some documents, and that might, you know, refresh your recollection.

Now, are you aware that Forest employees such as William Heydorn and James Jin have been deposed in this present case?

A. No.

Q. Have you had any contact with any Forest employees over the last ten years?

A. Yes.

Q. Who have you had contact with?

A. I spoke to Anjana Bose not that long ago.

Q. When was that?

A. Several years ago, actually.

Q. Have you spoken to any Forest employees about this particular deposition?

A. No.

Q. Are you aware that Karen Wagner has been named as a co-conspirator in this case?

A. No.

Q. Have you had any communications with any of the vendors for Forest, that were working with Forest at the time you were there?

A. No.

Q. Natasha Mitchner?

A. No.

Q. Mary Prescott?

A. No.

Q. Christina Goetjen?

A. No.

Q. Do you recall those people?

A. I recall Mary Prescott.

Q. Did you review any documents in preparation for your deposition today?

A. I looked at some documents, yeah.
Q. And what documents did you look at?
MR. ROBERTS: Objection. To the extent that you can answer any documents that reflects -- reflected your --
MR. BAUM: Refreshed.
MR. ROBERTS: -- refreshed your recollection that we sort of talked about yesterday, so to the extent that you remember any documents that specifically refreshed your recollection, you can answer.
So if there's any documents that we showed you that refreshed your recollection, you can answer.
THE WITNESS: What was the question again?
BY MR. BAUM:
Q. Did you review any documents in preparation for your deposition?
A. Yes.
Q. And what documents did you review?
MR. ROBERTS: To the extent they refreshed your recollection, you can answer.
THE WITNESS: That refreshed my

recollection or that I had seen before or?

MR. ROBERTS: Refreshed your recollection.

THE WITNESS: What does that mean?

MR. ROBERTS: That you saw.

THE WITNESS: When I saw them I remembered them or when I --

BY MR. BAUM:

Q. Saw them they reminded you of things related to this action --

MR. ROBERTS: Yes.

BY MR. BAUM:

Q. -- and related to things that you experienced back when you were working for Forest?

A. Well, they included the citalopram child and adolescent depression protocol and the related study report and a variety of communications related to the drug packaging error.

Q. These were e-mails or memos?

A. E-mails, fax, memos, yeah.

Q. Some of them had your name on them?

A. Yes.

Q. Some from Dr. Tiseo?

A. Tiseo, yes.

Q. Tracey Varner?

A. Tracey? I don't know.

Q. Now, we have a transcript of your 2007 deposition. Have you reviewed that recently?

A. No.

Q. Did you ever look at it?

A. I don't think so.

Q. Based on your recollection of what happened, to the limited extent you do recall, do you have any feeling that you need to change any of the answers you gave in the 2007 deposition?

A. I told the truth then.

MR. BAUM: Okay. Let's mark as Exhibit 1 the notice for the deposition.

(Document marked for identification as Flicker Deposition Exhibit No. 1.)

BY MR. BAUM:

Q. And I'm just going to just show this to you. So this is the notice that you're appearing under.

Do you recall receiving a subpoena?

A. Yes.

Q. And so you're under subpoena to appear for a deposition, and you've appeared and I appreciate

that.

How did you come to be involved in the Celexa pediatric trials?

A. I was working --

MR. ROBERTS: Objection.

You may answer.

BY MR. BAUM:

Q. You're going to have to get used to that. He's going to say that a lot, and unless he says don't answer that question, just pretend he didn't say anything.

A. All right.

Q. You want me to start again?

A. How did I get involved?

Q. Yes.

A. I was working at Forest Laboratories, and the project was under my purview.

Q. This is around 1999 or so?

MR. ROBERTS: Objection.

THE WITNESS: I don't recall. Based on the documents I saw yesterday, I know it was probably around 1999.

BY MR. BAUM:

Q. And one of the Celexa pediatric trials

was CIT-MD-18?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And you had some responsibilities in the medical department for Forest?

MR. ROBERTS: Objection.

THE WITNESS: It was the -- yeah, I don't know if it's called medical or clinical research. It was the medical area.

BY MR. BAUM:

Q. Did you participate in the process of gaining regulatory approval of Celexa?

A. Yes.

Q. In your 2007 deposition you said that you were a medical director of CNS research.

Does that ring a bell?

A. Medical director? Yeah. Well, at one point I was senior director. At one point I was the executive director. I don't know if I was ever medical director, but it might have been my title.

Q. Okay. You were director of something in the CNS department?

A. Yes. Well, no, it wasn't the CNS

department. It was the clinical research department.

Q. Okay. Were you involved in the application of the FDA to gain an indication for the pediatric use of Celexa in major depression?

A. I was surprised -- I believe so. There was definitely a filing.

Q. What were you surprised about?

A. Well, I was --

MS. KIEHN: Hold on, just to the extent that you're about to reveal communications you've had with us, you shouldn't testify about those.

MR. ROBERTS: Any conversation we had yesterday, anything about that, you can't talk about.

BY MR. BAUM:

Q. But to your own recollection?

A. Can you repeat the question.

Q. Yes. Were you involved in the application to the FDA to gain an indication for the pediatric use of Celexa in major depression?

A. Yeah, I believe I was.

Q. And what were you surprised about?

MS. KIEHN: Objection. He's not going

to answer that question.

MR. BAUM: You're directing him to not answer that question?

MS. KIEHN: It would require revealing privileged information.

MR. BAUM: How do you know that?

MS. KIEHN: Because I know what he's going to say.

BY MR. BAUM:

Q. All right. Do you have any independent recollection of why you were surprised about something?

A. No.

Q. So your only basis of surprise was something that your attorneys told you?

A. Yes.

Q. Was it something that the attorneys were surprised about or something that you, yourself were surprised about?

MR. ROBERTS: Objection.

THE WITNESS: I was surprised.

BY MR. BAUM:

Q. Okay. Well, we'll circle back around to that later at some point, maybe something that I show you will refresh your recollection.

Were you also involved in the application to the FDA to obtain the pediatric -- to extend the pediatric exclusivity -- let me say it again -- to obtain a pediatric exclusivity extension for Celexa in the US?

MR. ROBERTS: Objection.

THE WITNESS: Isn't that the same thing?

BY MR. BAUM:

Q. One is to get an indication to market the drug for prescription to children, the other is to extend the patent in general.

A. In my mind, the two are intermixed.

Q. Okay. But you recall working on something to get the patent extended for Celexa?

A. Yes.

Q. Okay. And that had something to do with a couple pediatric trials?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And those two trials were MD-18 and 94404, Lundbeck 94404?

MR. ROBERTS: Objection.

THE WITNESS: No. Forest didn't

undertake 94404.

BY MR. BAUM:

Q. Lundbeck did, correct?

A. Yeah.

Q. But the Lundbeck 94404 trial was submitted as part of the package to get the exclusivity extension?

MR. ROBERTS: Objection.

THE WITNESS: I'm a little confused about the distinction in my recollection about a distinction -- in my recollection about a distinction between the exclusivity filing, the patent extension filing and the application for the indication.

So what was your question again?

BY MR. BAUM:

Q. I guess what I was trying to get across is -- find out is that you were involved with the process of having those applications submitted to the FDA and that 94404 and Celexa MD-18 were part of that process?

MR. ROBERTS: Objection.

THE WITNESS: Yeah, I don't know that 94404 was the part -- my recollection is that

the exclusivity entailed the company conducting a study. 94404 had already been run, so I basically -- as my recollection was -- is that 18 was conducted for the purpose of exclusivity, but I don't -- so I don't know what part of the package 94404 was.

BY MR. BAUM:

Q. Do you recall working on the study report generated for 94404?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Okay. Now, when you worked at Forest, how did you convey written communications to and from Forest personnel and non-Forest contractors?

MR. ROBERTS: Objection.

THE WITNESS: How did I communicate with non-Forest contractors?

BY MR. BAUM:

Q. How did you communicate in writing with Forest employees and non-Forest employees that were like contractors to Forest?

MR. ROBERTS: Objection.

THE WITNESS: So Forest employees, how

did I communicate in writing to Forest employees?

BY MR. BAUM:

Q. Right.

MR. ROBERTS: Objection.

THE WITNESS: Well, I mean, there were e-mails. Usually like I didn't write my own e-mails. I would draft an e-mail and give it to my secretary.

BY MR. BAUM:

Q. And then she'd send it?

MR. ROBERTS: Objection.

THE WITNESS: Yeah.

BY MR. BAUM:

Q. What was your secretary's name?

A. Clara Iorio.

Q. How do you spell Iorio?

A. As it sounds, I-o-r-i-o, I-o-r-i-o.

Q. And would the e-mails go out under your name or under her name?

A. Under my name.

Q. One of the things that we noticed -- we asked for all of the e-mails that you sent or received. There weren't very many.

I was wondering if you could explain why there aren't very many.

MR. ROBERTS: Objection.

THE WITNESS: I don't know that there weren't very many. It seemed like there were many to me, but I suppose that my practice of not writing them myself might have limited the volume.

BY MR. BAUM:

Q. You would do something in handwriting, deliver it to your secretary, and she would transcribe it into an e-mail?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. Would you also do things written on a hard copy of a document and have the hard copy circulated?

MR. ROBERTS: Objection.

THE WITNESS: Circulated, probably not, but I mean, if there were a draft of a document, I would put notes on it in handwriting and give it back to the author.

BY MR. BAUM:

Q. Would you hand deliver it to the author?
A. No.
Q. How would you get it to the author?
A. Put it in my outbox, I guess.
Q. So that's kind of what I was asking is how did it get from like your desk when you were -- see, I'm writing on this, just like you probably wrote on documents, right?
A. I always use pencil.
Q. Yeah, I use pencil a lot too. See, right there.

So you would handwrite in pencil on a document and then either give it to your secretary or put it in an outbox for it to be delivered to the person you wanted it to go to?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. Is that right?
A. Yes, that was not uncommon.
Q. Okay. And then you received e-mails and read those, correct?

MR. ROBERTS: Objection.

THE WITNESS: Often.

BY MR. BAUM:

Q. Did you ever just respond back by e-mail?

MR. ROBERTS: Objection.

THE WITNESS: Rarely.

BY MR. BAUM:

Q. Why was that?

A. Stylistic choice. I thought it was more efficient to have my secretary as a buffer.

Q. And Clara was a good buffer?

A. I would often correct what she had generated, so it wasn't 100% accurate.

Q. Was she your secretary the entire time you worked there?

A. No.

Q. Did you have another secretary?

A. Did I have another secretary?

Q. Yeah.

A. Yes.

Q. Who was that?

A. Joan Singh.

Q. How do you spell that?

A. J-o-a-n S-i-n-g-h.

Q. What time period did Joan Singh work for you?

A. The latter part of my years.
Q. And was it the same drill, you would handwrite things and hand them to her, and she'd transcribe them into e-mails?
MR. ROBERTS: Objection.
THE WITNESS: Yeah.
BY MR. BAUM:
Q. And then she would send the e-mails out under your name, but not her name; is that correct?
MR. ROBERTS: Objection.
THE WITNESS: Right.
BY MR. BAUM:
Q. If I wanted to find -- would it be possible that some of the e-mails that were sent out for you might have actually gone out under their names?
MR. ROBERTS: Objection.
THE WITNESS: No.
BY MR. BAUM:
Q. Do you recall communicating with vendors or contractors like medical communication companies that worked with Forest?
MR. ROBERTS: Objection.
THE WITNESS: That would usually be in meetings.

BY MR. BAUM:

Q. In in-person meetings?

A. Yeah.

Q. Did you ever have e-mail contact with people like Mary Prescott or PharmaNet?

MR. ROBERTS: Objection.

THE WITNESS: PharmaNet I'm not sure I recall, but I'm sure at some point there were -- there was an e-mail communication that I would have received -- well, an e-mail? Yeah, I might have gotten e-mails from Mary Prescott. I mean --

BY MR. BAUM:

Q. Natasha Mitchner?

A. I remember the name, but I don't recall communicating with Natasha Mitchner.

Q. How would you get writings to and from people like Mary Prescott or Natasha Mitchner or Christina Goetjen?

MR. ROBERTS: Objection.

THE WITNESS: Writings about what?

BY MR. BAUM:

Q. Any of the marketing issues that -- writings, like posters, CMEs, drafts of the manuscript

for CIT-MD-18?

MR. ROBERTS: Objection.

THE WITNESS: Yeah, well, I -- I mean, if there was a draft of some manuscript, I might -- but, I mean, I wouldn't usually communicate with -- I don't recall communicating that much directly with Mary Prescott. A manuscript or -- would probably be in the medical writing department.

BY MR. BAUM:

Q. Would you communicate through somebody with them?

MR. ROBERTS: Objection.

THE WITNESS: I don't know. What I recall is, you know, being in various meetings with Mary Prescott, but not really a lot of written communication. I mean, I imagine there was some.

BY MR. BAUM:

Q. So that would have been through e-mails or the U.S. Mail or Fed Ex?

MR. ROBERTS: Objection, requires speculation.

THE WITNESS: I'm sure I received some

items by mail from Mary Prescott.

BY MR. BAUM:

Q. Do you recall when you actually stopped working at Forest?

A. I think it was 2002.

Q. Which part of 2002, like the latter part?

A. I would say the latter part.

Q. November, December?

A. I would be guessing.

Q. Do you have a general recollection of like approximately when?

A. No.

Q. So it would not have been as early as August?

A. It could have been.

Q. Do you recall what the last project was you worked on?

A. The memantine NDA was going in.

Q. Do you recall what the last project on Celexa or Lexapro was that you worked on?

A. No.

Q. Why did you leave?

A. Partly because they were moving.

Q. What else?
A. I was going to have a kid, and I wanted to spend some time with her.
Q. When you left Forest, did you go work someplace else?
A. No.
Q. You have not worked since then?
A. I've worked as a consultant.
Q. Who did you work as a consultant for?
A. Most recently Actelion.
Q. What sort of consulting work did you do?
A. That was a licensing candidate review.
Q. When you -- so since the time you left Forest and the present day, you've just done consulting work?
A. Yes.
Q. For how many companies do you think?
A. Maybe five.
Q. Which companies are those?
A. Pfizer, Alkermes.
Q. When you say you did consulting, is that -- are there like -- can you describe what type of projects you did?
A. It was mostly medical writing type work.

Q. On pharmaceuticals?
A. Yes.
Q. When you left Forest, did you sign any Confidentiality Agreement that prevents you from discussing in this deposition the work that you did while at Forest?
A. I don't remember.
Q. Are you subject to any agreement or requirement not to say anything negative about Forest or your work at Forest?
A. No.
Q. If you were to say anything disparaging or negative about Forest today in this deposition, would you be subject to any penalty from Forest?
A. No.
Q. Do you have any allegiance to Forest that would prevent you from telling the truth today?
MR. ROBERTS: Objection.
THE WITNESS: No.
BY MR. BAUM:
Q. So you mentioned that -- well, when did you first become aware that the Department of Justice was conducting an investigation of Forest in connection with off-label marketing of Celexa or Lexapro?

MR. ROBERTS: Objection.

THE WITNESS: I don't remember.

BY MR. BAUM:

Q. Do you remember approximately? Was it a year or two after you left Forest?

MR. ROBERTS: Objection.

THE WITNESS: No, I don't remember. It might have been before I left Forest.

BY MR. BAUM:

Q. Oh, you might have been contacted by the DOJ before you left Forest?

MR. ROBERTS: Objection.

THE WITNESS: I don't know. I don't remember. Well, I'm not talking about when I was contacted, when I became aware that there was a case.

BY MR. BAUM:

Q. There's a distinction. All right.

So let's -- how did you become aware of an investigation by the DOJ of Forest regarding Celexa or Lexapro?

MR. ROBERTS: Objection.

THE WITNESS: I think I was aware that some individuals had been subpoenaed.

BY MR. BAUM:

Q. And that was before you got subpoenaed?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. Who got subpoenaed before you?

A. I thought that some of the executives.

Q. Which executives?

MR. ROBERTS: Objection.

THE WITNESS: I'm not sure.

BY MR. BAUM:

Q. Ivan Gergel?

A. Possibly Howard Solomon.

Q. Howard Solomon. I was going to go there next.

Lawrence Olanoff?

A. Possibly.

Q. Anybody else?

A. No.

Q. Julie Kilbane?

A. I wasn't aware any subpoena that she got. I wasn't aware that she testified.

Q. Amy Rubin?

A. No.

Q. So you became aware that other people got subpoenaed. Do you know what they were subpoenaed about?

MR. ROBERTS: Objection.

THE WITNESS: I was aware that there was a Department of Justice investigation.

BY MR. BAUM:

Q. And did you have any discussions with any of the people who were subpoenaed about that investigation?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. You didn't talk to Lawrence Olanoff or Ivan Gergel or Howard Solomon about the investigation?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. You weren't worried about it?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. And is it your recollection that those subpoenas occurred while you still worked for Forest?

A. I'm not sure.

Q. When you were interviewed by the Department of Justice lawyers, were you still working at Forest?

A. I don't think so.

Q. Are you aware that Forest pled guilty and agreed to pay $313 million as a result of the investigation of Forest?

MR. ROBERTS: Objection.

THE WITNESS: No.

(Document marked for identification as Flicker Deposition Exhibit No. 2.)

BY MR. BAUM:

Q. I'm going to hand you what we're marking as Exhibit 2, which is the plea agreement between Forest and --

MR. BAUM: Oh, that's his.

MS. KIEHN: Sorry.

BY MR. BAUM:

Q. Have you seen that before?

A. No.

Q. This is a plea agreement dated September 15, 2010. It's from the Department of Justice to Mary Jo White, Christopher Tahbaz, Andrew

Ceresney, Kristin Kiehn at Debevoise Plimpton.

Do you see that?

A. Okay. Yes, I see that.

Q. Do you recognize those names?

A. I recognize Kristin's name. I recognize Debevoise.

Q. Those are the people representing you today, right?

MR. ROBERTS: Objection.

THE WITNESS: Well, Debevoise is, yes.

BY MR. BAUM:

Q. Do you recall working with Andrew Ceresney back then?

A. No.

Q. You didn't have any contact with him?

A. Might have.

Q. Were Forest attorneys present when you were interviewed by the Department of Justice?

A. I think so.

Q. Who was there?

A. I don't think it was Debevoise. I think it was another firm.

Q. So none of these people, Mary Jo White or Andrew Ceresney or Christopher Tahbaz or Kristin

were there?

MR. ROBERTS: Objection.

THE WITNESS: They might have been, but I don't recall.

BY MR. BAUM:

Q. Were you represented by somebody at that -- at that meeting?

A. Yes.

Q. Who represented you?

A. A different firm, I believe.

Q. Was it a firm hired by Forest?

A. I think so.

Q. It wasn't someone you paid?

A. No.

Q. Did you sign any agreements with the Department of Justice in exchange for your testimony?

A. I don't remember.

Q. Did you have any agreements for immunity?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Do you recall having a queen for a day immunity?

A. No.
Q. You don't recall that phrase?
MR. ROBERTS: Objection.
THE WITNESS: I do recall the phrase.
BY MR. BAUM:
Q. You mentioned it in your last deposition.
MR. ROBERTS: Objection.
BY MR. BAUM:
Q. It doesn't ring a bell?
A. No.
Q. Okay. So are you aware that Forest pled guilty to charges of illegal off-label promotion?
MR. ROBERTS: Objection.
THE WITNESS: No.
BY MR. BAUM:
Q. Let's go to Page 8 of this document, and if you go to the last paragraph there on that page. I'm just going to read that into the record. "Forest expressly and unequivocally further admits that it committed the offenses charged in the Information and is in fact guilty of those offenses. Forest agrees that it will not make any statements inconsistent with its explicit admission of guilt to these offenses."

Do you see that?

A. Yes, I do.

Q. Then if you go further up the page under the heading "8. Cooperation," the first sentence there says, "Forest shall cooperate completely and truthfully in any trial or other proceeding arising out of any ongoing civil, criminal or administrative investigation of its current and former officers, agents, employees, and customers in connection with the matters described in the Information."

Do you see that?

A. Yeah.

Q. Have you been shown this before?

A. No.

Q. Do you think it applies to you?

MR. ROBERTS: Objection.

THE WITNESS: What applies to me?

BY MR. BAUM:

Q. The obligation to be truthful in any proceeding in connection with.

MR. ROBERTS: Objection.

THE WITNESS: Are you referring to this proceeding?

BY MR. BAUM:

Q. Yes.
A. I was sworn in.
Q. Okay. You think it applies to Forest, for sure, right?
MR. ROBERTS: Objection.
THE WITNESS: Forest shall cooperate completely and truthfully in any trial or other proceeding arising out of any -- sorry. What are you asking me?
BY MR. BAUM:
Q. Do you think this applies to Forest?
MR. ROBERTS: Objection.
THE WITNESS: This certainly applies to Forest. This whole document apparently applies to Forest.
MR. BAUM: Let's move on to Exhibit 3. You can set that down.
(Document marked for identification as Flicker Deposition Exhibit No. 3.)
BY MR. BAUM:
Q. This is the Information which was referenced in what we just looked at, which is sort of a summary of the allegations that the government had against Forest.

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. And have you seen that before?

A. I don't know.

Q. You didn't see it yesterday?

MR. ROBERTS: Objection, to the extent you have -- to the extent that it refreshes your recollection, you may answer.

THE WITNESS: To the extent what refreshes my recollection?

MS. KIEHN: Go ahead and answer.

MR. ROBERTS: Just answer the question.

MS. KIEHN: Do you remember seeing it?

THE WITNESS: Did I see this yesterday? I don't think so, no.

BY MR. BAUM:

Q. So I'm going to turn to Pages 21 and 22, and at Paragraph 59 it says -- you found it there?

A. Yeah.

Q. From the outset, Forest Pharmaceuticals was well aware that the FDA had not approved Celexa for treatment of any conditions other than adult depression. Moreover, in or about April 2002, Forest Labs, in an attempt to obtain, inter alia, a pediatric

indication for Celexa, submitted data to the FDA from two double-blinded, placebo-controlled studies involving the use of Celexa in children. One of these studies (hereafter referred to as the "Forest study"), which has been sponsored -- which had been sponsored by Forest Labs, had been conducted in the United States. The Forest study had positive results, that is, the study indicated that Celexa was more effective than placebo in treating pediatric patients suffering from depression. The other study (hereinafter referred to as the "European study"), had been conducted in Europe and sponsored by the Danish company that developed and owned the rights to Celexa. The European study had negative results, that is, the study did not show Celexa to be any more effective than placebo in treating pediatric depression. On or about September 23rd, 2002, the FDA denied Forest Labs' request for a pediatric indication for Celexa, stating in part that the European study "is a clearly negative study that provides no support for the efficacy of citalopram in pediatric patients with [major depressive disorder]."

Did I read that correctly?

A. That's what I see here.

Q. Okay. So the Forest study that's referenced there involving the use of Celexa in children referred to in this Information was the CIT-MD-18, right?

MR. ROBERTS: Objection.

THE WITNESS: I would assume so.

BY MR. BAUM:

Q. Did you convey to any government lawyers or investigators that CIT-MD-18 was a positive trial?

A. I don't know.

Q. You don't recall talking to them about it?

A. Yeah, that was definitely a subject of discussion.

Q. What was discussed?

A. I don't know.

Q. Well, you just said it was a subject of discussion?

A. Yeah.

Q. So what was talked about?

A. I don't know. There were questions about the study.

Q. What kind of questions?

A. I don't really remember the drift.

Q. Was there a drift that one of the trials was positive and one of the trials was negative?

MR. ROBERTS: Objection.

THE WITNESS: I don't recall that being particularly the subject of discussion.

BY MR. BAUM:

Q. What was the subject of discussion?

A. I'm not sure. I'd have to look at the transcript and maybe I would remember.

Q. Do you recall a discussion that there were publications regarding -- regarding Celexa's use in children without disclosing Lundbeck's 94404 having failed?

MR. ROBERTS: Objection.

THE WITNESS: I don't recall that being the subject of a discussion with -- with the Department of Justice?

BY MR. BAUM:

Q. Yes.

A. I don't recall that being part of the discussion. It may well have been.

Q. Okay. So let's go to Page 23, Paragraph 61.

MR. ROBERTS: Flip the page.

BY MR. BAUM:

Q. Well, before we do that, this Paragraph 59 that we just read, do you recall any of that occurring during the time frame that you were there?

MR. ROBERTS: Objection.

THE WITNESS: Do I recall what occurring?

BY MR. BAUM:

Q. That Forest Labs around April 2002 attempted to obtain a pediatric indication for Celexa for use in children?

A. I'm surprised at that date, but that seems quite possible.

Q. And you recall that the European study, the Lundbeck study had a negative result?

A. Study 94404?

Q. Yes.

A. I wouldn't call it negative.

Q. What would you call it?

A. I would call it a failed study.

Q. Do you recall that 94404 was a failed study?

A. Yes.

Q. So now let's go on to Paragraph 61 on

Page 23, "Beginning in 1998 and continuing thereafter through at least September 2002, Forest Pharmaceuticals promoted Celexa for use in treating children and adolescents suffering from depression, even though Celexa was not FDA-approved for pediatric use. Forest Pharmaceuticals' off-label promotion consisted of various sales techniques including: (1) directing Forest Pharmaceuticals sales representatives who promoted Celexa to make sales calls to physicians who treated children and adolescents; (2) promoting Celexa by various Forest Pharmaceuticals sales representatives for use in children and adolescents; (3) hiring outside speakers to talk to pediatricians, child psychiatrists, and other medical practitioners who specialized in treating children and adolescents about the benefits of prescribing Celexa to that patient population; and (4) publicizing and circulating the positive results of the double-blind, placebo-controlled Forest study on the use of Celexa in adolescents while, at the same time, failing to discuss the negative results of the second double-blind, placebo-controlled European study on the use of Celexa in adolescents."

Did I read that correctly?

A. Yes.

Q. Referring to Number 1, that subparagraph Number 1, directing pharmaceuticals, do you see that?

A. The one in parentheses.

Q. Yes. Were you aware that Forest directed its sales reps -- representatives who promoted Celexa to make sales calls to physicians who treated children and adolescents?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Referring to 2, were you aware that Forest -- while you worked there, were you aware that Forest sales reps promoted Celexa for use in children and adolescents?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Did you ever become aware of it?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. As far as you know, that never happened?

MR. ROBERTS: Objection.

THE WITNESS: Promoting Celexa for use

in children and adolescents, I have a recollection of some sales reps getting in trouble in Florida for attending some event, but that might have been in the course of these proceedings.

BY MR. BAUM:

Q. What did they do that caused them to be in trouble?

A. I thought they gave out T-shirts or something.

Q. And you're not aware that Forest sales representatives went to pediatric physicians to suggest prescribing Celexa to children?

MR. ROBERTS: Objection.

THE WITNESS: I wouldn't be surprised if some of the physicians they went to were pediatric -- had pediatric patients.

BY MR. BAUM:

Q. Did you understand that sales reps going to pediatric physicians or physicians and recommending the use of Celexa for children was an off-label use?

MR. ROBERTS: Objection.

THE WITNESS: Could you repeat that question.

BY MR. BAUM:

Q. Was it your understanding that sales reps going to physicians and recommending the use of Celexa in children would have been an off-label promotion?

MR. ROBERTS: Objection.

THE WITNESS: I do understand that if the drug was not approved for the indication and a sales representative went to a pediatric clinician and recommended its use, then that would be an off-label promotion.

BY MR. BAUM:

Q. And you were aware that was illegal?

MR. ROBERTS: Objection. Not a lawyer.

THE WITNESS: I am aware that to do such a thing is illegal.

BY MR. BAUM:

Q. Were you aware at the time?

A. I don't think I was particularly thinking about that issue at the time.

Q. Okay. Did it ever come to your attention through the marketing department, like through John MacPhee or through Nefertiti Greene or your work with Mary Prescott that there was a plan to

have some form of promotion done of the MD-18 results to physicians?

MR. ROBERTS: Objection.

THE WITNESS: A promotion?

BY MR. BAUM:

Q. Yes.

A. No.

Q. Conveying the results of MD-18 to physicians?

MR. ROBERTS: Objection.

THE WITNESS: Well, we were seeking the indication.

BY MR. BAUM:

Q. And you were making posters?

MR. ROBERTS: Objection.

THE WITNESS: Well, seeking indication is not the same as making posters. Were there any posters; is that what you're asking?

BY MR. BAUM:

Q. Yes. Before there was even an indication request, were there posters made?

A. I don't know the exact timing, but there definitely -- definitely posters were made presenting the results of the 18 study.

Q. And that was the purpose of those posters?

MR. ROBERTS: Objection.

THE WITNESS: Scientific communication.

BY MR. BAUM:

Q. They were conveyed to physicians?

MR. ROBERTS: Objection.

THE WITNESS: Whoever, whatever scientists or clinicians would be attending the meetings.

BY MR. BAUM:

Q. Like the ACNP?

A. Yes.

Q. Was the ACNP considered an authoritative group of physicians and scientists?

MR. ROBERTS: Objection.

THE WITNESS: Authoritative? I don't know if you call it authoritative.

BY MR. BAUM:

Q. What would you call it?

MR. ROBERTS: Objection.

THE WITNESS: Prominent maybe.

BY MR. BAUM:

Q. Influential?

MR. ROBERTS: Objection.

THE WITNESS: I'd say prominent. I'd say if they're prominent, it's likely that they're influential.

BY MR. BAUM:

Q. Looking at Number 3 on that Paragraph 61 says, were you aware that Forest hired outside speakers to talk to pediatricians, child psychiatrists and other medical practitioners who specialized in treating children and adolescents about the benefits of prescribing Celexa to that patient population?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Did you work with any outside speakers who did do that?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. Like Karen Wagner?

A. I worked with Karen Wagner.

Q. Were you aware that she was giving talks to physicians and recommending the use of Celexa?

MR. ROBERTS: Objection.

THE WITNESS: I believe she was the -- I

remember she had a poster.

BY MR. BAUM:

Q. Do you recall that she actually did like speeches and presentations to physicians at CME type -- continuing medical education type seminars?

MR. ROBERTS: Objection. No foundation.

THE WITNESS: That sounds possible.

BY MR. BAUM:

Q. Did you ever help prepare her for any of those?

MR. ROBERTS: Objection.

THE WITNESS: I was in communication with her. Did I prepare speeches for her?

BY MR. BAUM:

Q. Yeah, like PowerPoint presentations --

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. -- for her to lecture on at CMEs?

A. I don't recall.

Q. Or dinners?

MR. ROBERTS: Objection.

THE WITNESS: Yeah, I don't recall.

BY MR. BAUM:

Q. Do you recall what you were working with

her on?

A. Well, she was an investigator in the 18 study, and, well, some of this material I learned yesterday.

MR. ROBERTS: So you can't talk about it. If you have any independent recollection of the question, you can talk about it. If it's something you learned through communication with Kristin and I.

MR. WISNER: Unless, of course, it refreshed your recollection yesterday when you saw it.

THE WITNESS: Yeah, I didn't independently recollect.

BY MR. BAUM:

Q. Okay. And then on Number 4 it says were you aware that Forest publicized and circulated the positive results of a double-blind, placebo-controlled Forest study on the use of Celexa in adolescents while at the same time failed to discuss the negative results of the second double-blind, placebo-controlled European study on the use of Celexa in adolescents?

MR. ROBERTS: Objection.

THE WITNESS: I'm aware that Forest

published the results of the 18 study.

BY MR. BAUM:

Q. And are you aware that they failed to convey information regarding the European study?

MR. ROBERTS: Objection.

THE WITNESS: Well, Lundbeck published -- I believe Lundbeck published the other study.

BY MR. BAUM:

Q. But Forest had the results, correct?

MR. ROBERTS: Objection.

THE WITNESS: They had access to the results, yes.

BY MR. BAUM:

Q. You had access to the results, right?

MR. ROBERTS: Objection.

THE WITNESS: 94404?

BY MR. BAUM:

Q. Yeah.

A. In some form I would have had access to the results.

Q. Did you have any concerns about the negative results of study 94404?

MR. ROBERTS: Objection.

THE WITNESS: Well, as I said, it's a failed study.

BY MR. BAUM:

Q. Did you have any concerns about its being a failed study?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. What were your concerns?

MR. ROBERTS: Objection.

THE WITNESS: The concern was that it wouldn't provide adequate support for the -- for the indication.

BY MR. BAUM:

Q. What about adequate support for the exclusivity extension?

MR. ROBERTS: Objection.

THE WITNESS: My recollection of the exclusivity filing is that the submission -- that the conduct -- it was the conduct of the study by a company, regardless of the results, was sufficient for the exclusivity.

BY MR. BAUM:

Q. You recall it being necessary that the

results were interpretable?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Do you consider a failed study interpretable?

MR. ROBERTS: Objection.

THE WITNESS: I'd say that's a pretty fuzzy semantic question.

BY MR. BAUM:

Q. Well, I was wondering if maybe you were concerned or anyone at Forest was concerned about whether the 94404 results were interpretable sufficiently to support the exclusivity submission?

MR. ROBERTS: Objection, calls for speculation.

THE WITNESS: Yeah, I mean, I can't -- it's pretty difficult to put a -- to clearly define what interpretable means.

BY MR. BAUM:

Q. Was there any concern that because of the outcome of 94404, Forest would not be able to get the pediatric exclusivity extension for Celexa?

MR. ROBERTS: Objection.

THE WITNESS: As I said, I didn't -- based on my current recollection, I didn't think that it had much to do with it.

BY MR. BAUM:

Q. All they had to do was have a trial conducted, it didn't matter what the outcome was?

MR. ROBERTS: Objection.

THE WITNESS: I think they needed to conduct the study in the US, but I could be wrong.

BY MR. BAUM:

Q. And you don't recall whether 94404 was part of the application for the exclusivity extension?

MR. ROBERTS: Objection.

THE WITNESS: I don't specifically recall. I would assume that all relevant data were submitted.

BY MR. BAUM:

Q. And 94404's results would have been relevant data?

MR. ROBERTS: Objection.

THE WITNESS: Relevant, yes.

BY MR. BAUM:

Q. Did anyone at Forest ever instruct you

to conceal the Lundbeck 94404 study results?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Did you have any concerns about any of the adverse event outcomes in the 94404 study?

MR. ROBERTS: Objection.

THE WITNESS: The adverse event rates were higher in the 94404 study than the 18 study.

BY MR. BAUM:

Q. Do you recall any particular adverse events that were higher?

A. No.

Q. Suicidality?

MR. ROBERTS: Objection.

THE WITNESS: I vaguely recollect that, in general, there was a suicidality issue.

BY MR. BAUM:

Q. With respect to 94404 or with pediatric use of SSRIs in general?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. Or both?

MR. ROBERTS: Objection.

THE WITNESS: There was an FDA concern about it.

BY MR. BAUM:

Q. Did you have a concern about it?

MR. ROBERTS: Objection.

THE WITNESS: Did I have a concern about what?

BY MR. BAUM:

Q. The adverse event of suicidality related to pediatric use of an SSRI like Celexa or Lexapro?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. Do you recall -- well, skip that.

Let's go to Page 26, take a look at Paragraph 67. Here it says, At various times and in New England, certain Forest Pharmaceuticals Regional Directors and Division Managers provided their sales representatives with copies of posters and journal articles on studies of Celexa for use in children and adolescents and directed the sales representatives to read the studies and use them as sales aids in their details to physicians. Various Forest Pharmaceutical

Division Managers also directed sales representatives to show off labels -- sorry -- to show off-label studies to physicians, but not leave copies of those studies with the physicians so as to avoid detection that would get the sales representative and Forest Pharmaceuticals in trouble.

Do you see that?

A. Yes.

Q. Do you recall any physicians being -- well, do you recall any of this activity occurring?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Did you ever hear about any of that activity occurring?

MR. ROBERTS: Objection.

THE WITNESS: I knew that a physician could request a copy of a study or a study report.

BY MR. BAUM:

Q. Were you aware or did you hear that sales reps were actually trained to deliver pediatric submissions like posters and things of that to physicians in order to encourage them to prescribe

Celexa to children?

MR. ROBERTS: Objection.

THE WITNESS: No, I wasn't aware of that, but it seems possible that those materials could have been made available.

BY MR. BAUM:

Q. With or without the physician asking for them?

MR. ROBERTS: Objection.

THE WITNESS: I thought the procedure was that a physician needed to request such articles.

BY MR. BAUM:

Q. And if they didn't, it would have been improper, right?

MR. ROBERTS: Objection, calls for speculation.

THE WITNESS: Can you repeat the question.

BY MR. BAUM:

Q. If the physician didn't ask for the materials, giving it to them would have been improper, correct?

MR. ROBERTS: Objection.

THE WITNESS: I think it would be improper to provide material regarding an off-label use if not requested for a sales rep.

BY MR. BAUM:

Q. Okay. And were you aware that any of that activity was occurring at Forest while you were there?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. So you were not aware that Forest sales reps used data from CIT-MD-18 in posters for off-label promotion of Celexa for use in children and adolescents?

MR. ROBERTS: Objection. No foundation.

THE WITNESS: No.

BY MR. BAUM:

Q. Were you aware that any of the posters you actually participated in creating were used by sales reps for physicians?

MR. ROBERTS: Objection.

THE WITNESS: I'm sure they had access to that material.

BY MR. BAUM:

Q. Why are you sure that they had access to that material?
A. I believe it was given to them or at least made available to them.
Q. For what purpose?
A. Education.
Q. In order to get physicians to prescribe Celexa for children?
MR. ROBERTS: Objection.
THE WITNESS: I wouldn't know.
BY MR. BAUM:
Q. Were you aware that Forest ordered reprints of journal articles and posters to be presented by sales reps?
MR. ROBERTS: Objection. No foundation.
THE WITNESS: No. I believe sales reps had access to that material.
BY MR. BAUM:
Q. You don't know whether or not they were given copies of it?
MR. ROBERTS: Objection.
THE WITNESS: No.
BY MR. BAUM:
Q. Do you believe they were?

MR. ROBERTS: Objection, calls for speculation.

THE WITNESS: I believe it was part of their training.

BY MR. BAUM:

Q. Look at that subheading B under Paragraph 67 on Page 26. Do you see that? "Forest Pharmaceuticals' Use of Outside Speakers to Promote Celexa for Use in Children and Adolescents."

Do you see that?

A. Yes.

Q. Did you participate with any outside speakers to promote Celexa for use in children and adolescents?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. You didn't do that with Karen Wagner?

MR. ROBERTS: Objection.

THE WITNESS: Did I give a talk?

BY MR. BAUM:

Q. No. Did you assist her to give speeches to promote Celexa for use in children and adolescents?

MR. ROBERTS: Objection.

THE WITNESS: No.
BY MR. BAUM:
Q. Did you assist her with any posters or PowerPoint presentations for her to give to physicians --
MR. ROBERTS: Objection.
BY MR. BAUM:
Q. -- regarding CIT-MD-18?
A. I think I discussed material and results from 18 with her.
Q. For what purpose?
A. Well, again, this is partly based on material I was given yesterday.
MR. ROBERTS: Then don't answer.
BY MR. BAUM:
Q. Would it refresh your recollection of what you actually did do?
A. Well, I know Karen Wagner did a poster presentation, I recollect that independently, and I probably helped her with that.
Q. And that poster presentation was to whom?
A. Well, you mentioned ACNP, so I guess ACNP.

MR. ROBERTS: Michael, when are you thinking about a break?

MR. BAUM: In a little bit, but not quite yet.

MS. KIEHN: We've been going over an hour.

MR. ROBERTS: Are you okay, or do you want to take a break?

THE WITNESS: I'm good.

MR. BAUM: We're trying to keep the breaks to a minimum, I think, right?

MS. KIEHN: Yeah.

MR. ROBERTS: I just want to make sure he's okay.

BY MR. BAUM:

Q. Yeah. By the way, if you ever need to take a break, you know, just to get a drink of water or go to the bathroom, please let us know, and if you're in the middle of a question, though, I want you to answer the question before you take the break. And just let us know -- we're trying to get a full seven hours of testimony in today, so I know you have something you're scheduled to go do later, so we're trying to cram in as much as we can with as few breaks

as possible, but it's not a torture event, more or less.

MS. KIEHN: Matter of opinion.

THE WITNESS: It's a matter of opinion.

MR. BAUM: Yeah.

MS. KIEHN: Let's take a break in a few minutes.

MR. BAUM: I'm almost done with this section, I just wanted to wrap it up.

MR. ROBERTS: Okay.

BY MR. BAUM:

(Document marked for identification as Flicker Deposition Exhibit No. 4.)

BY MR. BAUM:

Q. I'm going to hand you what we're marking as Exhibit 4 which is the United States complaint intervention against Forest Labs.

Have you seen that before?

A. Not that I recollect.

Q. At the bottom of this page it says, "Over the course of more than half a decade, Forest illegally marketed two related antidepressant drugs, Celexa and Lexapro, for off-label use in pediatric patients when both drugs had been approved only for

adult use."

Do you see that?

A. Yes.

Q. Were you aware of Forest illegally marketing for off-label use of Celexa in the pediatric population?

MR. ROBERTS: Objection.

THE WITNESS: I was aware of those T-shirts.

BY MR. BAUM:

Q. And what was on the T-shirts?

A. I don't know.

Q. Something to do with pediatric use of Celexa or Lexapro?

MR. ROBERTS: Objection.

THE WITNESS: It was just -- it was a pediatric event.

BY MR. BAUM:

Q. And at that event they were suggesting the use of Celexa or Lexapro for kids?

MR. ROBERTS: Objection.

THE WITNESS: They were giving out T-shirts or something, and it must have said Celexa on it.

BY MR. BAUM:

Q. Okay. Let's take a look at Page 17, Paragraph 60. It says, "Forest paid a medical writing firm to ghost-write an academic article on the Wagner study, and Forest arranged to have the article published in the June 2004 issue of The American Journal of Psychiatry, with Dr. Wagner listed as the lead author. The article did not mention that the only other double-blind, placebo-controlled trial on pediatric use of Celexa had shown no efficacy and had an incidence of suicide attempts and suicidal ideation among those taking Celexa that was almost three times higher than in the group taking the placebo."

Did I read that correctly?

A. Yes.

Q. This article mentioned here is referring to the published report of CIT-MD-18 with Dr. Wagner as an author?

MR. ROBERTS: Objection.

THE WITNESS: Is that a question?

BY MR. BAUM:

Q. Yes.

A. What's the question? Is that the --

Q. Is this paragraph referring to the

article in which Dr. Wagner was the lead author regarding CIT-MD-18's results?

MR. ROBERTS: Objection.

THE WITNESS: I assume so.

BY MR. BAUM:

Q. Do you know why Dr. Wagner was viewed as a principal investigator?

MR. ROBERTS: Objection.

THE WITNESS: I wasn't aware that she was the principal investigator.

BY MR. BAUM:

Q. Did you think she wasn't?

A. No.

Q. What was her relationship to the CIT-MD-18 project?

A. She was an investigator on it.

Q. Was she an author?

A. Yeah, well, I mean, I knew she did the poster. I didn't know she was first author on the -- on this article.

Q. Do you recall Natasha Mitchner being involved --

A. No.

Q. -- with writing the first draft of the

manuscript for CIT-MD-18?

MR. ROBERTS: Objection.

THE WITNESS: I don't know who Natasha Mitchner is.

BY MR. BAUM:

Q. Do you recall that there was a medical writing company that Forest worked with to get the manuscript drafted?

MR. ROBERTS: Objection, lack of foundation.

THE WITNESS: No.

BY MR. BAUM:

Q. Who do you think wrote it?

MR. ROBERTS: Objection, calls for speculation.

THE WITNESS: I think it was a collaborative effort.

BY MR. BAUM:

Q. Did it involve a medical writing company that was hired by Forest?

A. Not that I knew of. I would think they would be more involved in production, but sometimes they were used to facilitate.

Q. What do you mean by that?

A. You know, if there was -- if there were a bunch of authors on the study, the manuscript has to be circulated and comments have to be incorporated, and there's also other -- a lot of logistics with a submission and so forth.

Q. You don't recall the medical writing company actually drafting the manuscript?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. You never saw a draft of a manuscript that was prepared by Natasha Mitchner and Mary Prescott?

MR. ROBERTS: Objection.

THE WITNESS: Oh, I don't know that. If I was around, it would be very likely that I commented on the manuscript.

BY MR. BAUM:

Q. Do you recall that a manuscript was generated by companies that Mary Prescott or Natasha Mitchner worked for?

MR. ROBERTS: Objection.

THE WITNESS: I don't recall Natasha Mitchner. Did she work for Mary?

BY MR. BAUM:

Q. Yeah.

A. That's possible.

Q. Okay. Do you recall that you provided information to Mary Prescott or an outside writing agency for drafting the manuscript?

MR. ROBERTS: Objection.

THE WITNESS: If it was drafted by an outside agency, then they would have to get it from Forest.

BY MR. BAUM:

Q. Did you help provide that information to them?

MR. ROBERTS: Objection.

THE WITNESS: Oh, not that I recall.

BY MR. BAUM:

Q. Do you know whether or not the published article and the June 2004 issue of American Journal of Psychiatry mentioned the 94404 results?

MR. ROBERTS: Objection.

THE WITNESS: Based on what I see here you mean?

BY MR. BAUM:

Q. At the time did you recall whether or

not it mentioned 94404?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Are you aware now that it did not?

MS. KIEHN: Objection.

MR. ROBERTS: Objection.

THE WITNESS: If this allegation is correct, then it did not.

BY MR. BAUM:

Q. Okay. Would you agree that it's scientifically unsound to promote positive results and conceal negative results of testing on a drug?

MR. ROBERTS: Objection, not an expert.

THE WITNESS: Is it scientifically -- scientifically unsound?

BY MR. BAUM:

Q. Yes.

A. My first thought wouldn't be that scientific was primary issue but --

Q. What would you call it?

A. What are you suggesting, to promote positive results, or do what with positive results, communicate positive results?

Q. To promote positive results and conceal negative results of clinical trials.

MR. ROBERTS: Objection.

THE WITNESS: I'd say it's undesirable.

BY MR. BAUM:

Q. Do you have any regrets of being part of any of this illegal activity of Forest?

MR. ROBERTS: Objection, calls for speculation.

MS. KIEHN: Lack of foundation.

THE WITNESS: What illegal activity did I participate in?

BY MR. BAUM:

Q. You worked at Forest.

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. We just went through the Information and this complaint and --

A. This complaint is just an allegation from I don't know where.

Q. So the Information, the exhibit before, is not just an allegation. Forest pled guilty to it and pled guilty to having conducted activities --

MR. ROBERTS: Objection.

MS. KIEHN: Objection.

MR. ROBERTS: Mischaracterizes the documents.

MS. KIEHN: Completely mischaracterizing the documents, misleading.

MR. WISNER: Kristin, Kristin.

MS. KIEHN: Brent, Brent, Brent.

MR. WISNER: He's defending the deposition, you're not.

MS. KIEHN: Fine.

MR. WISNER: So you have no right to object. Only one witness deposes, that's it. You're not sick. You don't get to object. Josh can handle himself.

MS. KIEHN: Calm down.

BY MR. BAUM:

Q. And so they're just objecting and disagreeing with it. They can't stop you from answering that question.

A. Yeah, but what paragraph, what?

MR. ROBERTS: I am objecting to it, but you can answer, to the extent that you remember what the question is.

THE WITNESS: Are we going back to the

DOJ?

BY MR. BAUM:

Q. This is the Information. This is the plea agreement.

MR. ROBERTS: Let the record reflect what the exhibits are.

BY MR. BAUM:

Q. Exhibit 3 is the Information, and Exhibit 2 is the plea agreement, and in Exhibit 2 they've pled guilty to the Informations contained in the Information?

MR. ROBERTS: Objection to the extent that it mischaracterizes the document.

BY MR. BAUM:

Q. So what I'm asking you is do you regret having been involved with any of the activity that's described in these documents?

MR. ROBERTS: Objection.

THE WITNESS: I regret anything I did that got me here today.

BY MR. BAUM:

Q. Well, that's a slightly different answer to a slightly different question, and I'd like the answer to my question.

MR. ROBERTS: And I object to his question, but you can answer.

THE WITNESS: Yeah, well, I mean, I'm a little confused by your question because, I mean, actually, my recollection was that when the Department of Justice case was settled, I didn't think Celexa was even mentioned, or at least it was very secondary. Isn't that true?

BY MR. BAUM:

Q. Well, if you look here at what I just showed you, Celexa was involved, wasn't it?

MR. ROBERTS: Objection.

THE WITNESS: Yes, it was involved in the allegations, but then when it was settled, I didn't -- I thought it was about other drugs, wasn't it?

BY MR. BAUM:

Q. No, there are other drugs as well, but they're also Celexa and Lexapro.

MS. KIEHN: You're not testifying, Michael.

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. So the documents I just showed you

involve Celexa and Lexapro, didn't they?

MR. ROBERTS: Objection, to the extent that it mischaracterizes the document. If you want to take your time and go through the document, you can take your time and go through the document. You don't have to accept his characterization of the document.

BY MR. BAUM:

Q. Take a look at the bottom of Page 8.

MR. ROBERTS: Are we going back to 2?

BY MR. BAUM:

Q. In Exhibit 2. Do you see that?

MR. ROBERTS: See what? What are we --

BY MR. BAUM:

Q. The bottom of --

A. "Forest expressly and unequivocally further admits that it committed the offenses charged in the Information." So this is the Information?

Q. Yes. I showed you paragraphs in the Information that related to Celexa and the off-label promotion of Celexa.

MR. ROBERTS: Objection to your characterization of it.

BY MR. BAUM:

Q. If you take a look at Paragraphs 61 and 59.

A. So your question is, do I regret any --

MR. ROBERTS: You don't have to ask him his question. He can ask his own questions.

MR. BAUM: You're going to have to stop guiding him.

MR. ROBERTS: He's not asking you the questions. You get to ask the questions.

MR. BAUM: You do not get to guide him.

MR. ROBERTS: I'm not guiding him.

MR. BAUM: You have to stop guiding him.

MR. ROBERTS: I'm not guiding him.

MR. BAUM: Yes, you are.

MR. ROBERTS: I'm trying to get him to the right place.

MR. BAUM: I already had him at that.

MR. ROBERTS: Okay. Well, I'm getting to the right place now. What page are we on?

MR. BAUM: We're at Paragraphs 59 and 61?

MR. ROBERTS: Okay, perfect. What's the question?

BY MR. BAUM:

Q. Do you see Paragraphs 59 and 61, do you recall our having read those into the record?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. Do you see those?

A. I'm looking at 61.

Q. Okay. You see that those relate to Celexa and Lexapro?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And do you see that Forest in the Information has pled guilty to the activities described here in the information?

MR. ROBERTS: Objection. He's not a lawyer.

THE WITNESS: Assuming that these two are linked, then I guess there was a guilty plea.

BY MR. BAUM:

Q. All right. Do you regret having been involved with any of the activity that's described in the Information and that to which Forest pled guilty?

MR. ROBERTS: Objection, calls for

speculation.

THE WITNESS: I don't think I was involved in the activity of these things.

BY MR. BAUM:

Q. Well, you worked on MD-18, correct?

MR. ROBERTS: Objection.

THE WITNESS: But I didn't direct Forest Pharmaceuticals sales reps to promote Celexa. I didn't promote Celexa. I didn't hire outside speakers. I didn't publicize and circulate positive results.

BY MR. BAUM:

Q. Your employer did, though, right?

A. Well, no, I did --

MR. ROBERTS: Objection.

THE WITNESS: I did help to -- I don't regret helping to publish 18. No, I don't regret it.

BY MR. BAUM:

Q. Okay.

MR. ROBERTS: Are we ready for a break?

MR. BAUM: Yeah.

THE VIDEOGRAPHER: We will be going off the record at 9:16 a.m. This marks the end of

Media 1.

(Brief recess.)

THE VIDEOGRAPHER: We are back on the record at 9:29 a.m. This marks the beginning of Media 2. Go ahead, counselor.

MR. BAUM: We're going to move on to Exhibit 5.

(Document marked for identification as Flicker Deposition Exhibit No. 5.)

BY MR. BAUM:

Q. Which is an e-mail from Karoline Als at Lundbeck to Ivan Gergel at Forest dated July 16, 2001.

Have you seen that document before?

MR. ROBERTS: You can answer to the extent that it refreshed your recollection.

THE WITNESS: No, I don't recognize this document.

BY MR. BAUM:

Q. You see that it's addressed to you up at the top there?

A. Yes.

Q. It's -- the subject is "94404: Headline results."

Do you see that, right at the subject

line?

A. Yeah.

Q. Then the importance is high, do you see that further down?

A. Mm-hmm.

Q. And it says, Dear Ivan Gergel, 94404 citalopram versus placebo in the treatment of adolescent depression have been unblinded and unfortunately with a negative result. It was not possible to detect a significant difference between the two treatment groups.

Do you see that?

A. Yes.

Q. Do you recall having received this document?

A. No.

Q. Do you recall having being informed that the 94404 results were negative?

A. No.

Q. Does this document refresh your recollection at all that during this time frame you were advised that the outcome of 94404 was negative?

A. Yes, I mean, that's new information.

Q. You never knew at the time that 94404

was negative?

MR. ROBERTS: Objection.

THE WITNESS: I thought 94404 was older than this. I didn't think -- I didn't think I learned in 2001 that 94404 had failed results.

BY MR. BAUM:

Q. You think you learned that earlier?

A. Yeah.

Q. When do you think you learned it?

A. I don't know. I thought it had been -- I had the impression it had been completed a lot earlier than this.

Q. Do you have any reason to dispute what is stated in this e-mail?

A. No.

Q. Do you have any reason to dispute that you received it?

A. Well --

MR. ROBERTS: Objection.

THE WITNESS: Dispute anything that it says in this e-mail? I haven't read the entire e-mail. I mean, I believe that this was -- is an actual e-mail that was sent.

BY MR. BAUM:

Q. It was produced in the ordinary course of business of Forest?

A. Yes.

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. That was yes?

A. Yes.

Q. Okay. Do you recall that it was of high importance for Forest employees to learn that a contemporaneous study on Celexa treatment for adolescent depression in Europe was unfortunately a negative result?

MR. ROBERTS: Objection.

THE WITNESS: The results of the 94404 study were of strong interest to Forest.

BY MR. BAUM:

Q. Was there a plan orchestrated around this time between Forest and Lundbeck to make sure that the positive results from CIT-MD-18 were published before the negative results of 94404?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. You don't recall that?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Ever?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Do you recall any urgency on behalf of Forest to get the so-called positive data published regarding CIT-MD-18?

MR. ROBERTS: Objection.

THE WITNESS: That sounds familiar.

BY MR. BAUM:

Q. Were you personally involved with delaying publication of the study 94404 until after the results of CIT-MD-18 were published?

MR. ROBERTS: Objection.

THE WITNESS: No.

MR. BAUM: Okay. We're going to move on to Exhibit 6, it's MDL-FORP0018834.

(Document marked for identification as Flicker Deposition Exhibit No. 6.)

BY MR. BAUM:

Q. This is an e-mail chain between you,

Bill Heydorn, Karoline Als between November 14 and 20 of 2001 regarding 94404, second draft.

You see your name there on the to line?

A. Yeah.

Q. Do you have any doubt -- reason to doubt that you received this e-mail chain?

A. No.

Q. Was this produced in the ordinary course of Forest business?

MR. ROBERTS: Objection.

THE WITNESS: Say again.

BY MR. BAUM:

Q. Was this e-mail part of the ordinary course of Forest business?

MR. ROBERTS: Objection.

THE WITNESS: I assume so.

BY MR. BAUM:

Q. You see at the bottom of this page that Karoline Als of Lundbeck writes to you on November 14, 2001 and asks you to review the second draft of the report for -- study report for 94404? It says, "Dear Charles, by today you will receive the second draft report of 94404. Your review should focus on the following aspects."

You see that? Here, let me point it to you. It's there.

A. You want me to read this whole thing?

Q. No. I'm actually just asking you do you recall having worked on the second draft of the study report for 94404?

A. No.

Q. You don't recall ever having worked on 94404 study report?

MR. ROBERTS: Objection.

THE WITNESS: I could speculate, yeah.

BY MR. BAUM:

Q. Do you have any reason to doubt that you were sent the results of 94404 and a second draft of the 94404 study report for you to review?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Do you have any reason to dispute any of the information that's discussed in this e-mail chain?

MR. ROBERTS: Objection.

THE WITNESS: I'd have to read it.

BY MR. BAUM:

Q. Well, the part that I'm interested in,

in particular, is that you were sent a second draft of the report for 94404 and you were asked to review aspects of it.

Do you have any doubt that you received the second draft?

A. I have only a small amount of doubt.

Q. And what is that?

A. Maybe I didn't. Since I don't have any specific recollection of getting it, then it's hard for me to confirm that.

Q. Did you -- do you recall receiving e-mails from Karoline Als at Lundbeck regarding 94404?

MR. ROBERTS: Objection.

THE WITNESS: Only because I'm looking at this, I do recollect the name Karoline Als, and I do associate her certainly with Lundbeck and possibly as a person who collected comments on that -- on that study report.

BY MR. BAUM:

Q. The next e-mail up, it says, "Dear Charles, by now you should be able to access the draft."

Do you see that? Just a little bit higher up in the middle of the page.

A. Yeah.

Q. And then the next one up has an e-mail from you to -- from Joan Singh, I guess that was on behalf of Charles Flicker; that was your secretary, correct?

A. Yes.

Q. And it's to Bill Heydorn and cc'd to Paul Tiseo, Jane Wu and Julie Kilbane.

Do you see that?

A. Yes.

Q. And then you ask who is the contact person on this.

Do you see that?

A. Uh-huh.

Q. And then the next one up shows Bill Heydorn to you saying, "I can coordinate return of comments on 94404."

Do you see all that?

A. Yes.

Q. Does any of that refresh your recollection that you were involved with making some modifications and comments to the study report for 94404?

MR. ROBERTS: Objection.

THE WITNESS: It doesn't refresh my recollection.

BY MR. BAUM:

Q. Do you have any reason to doubt that you were involved with making comments and changes to the study report for 94404?

MR. ROBERTS: Objection.

THE WITNESS: No.

MR. BAUM: Okay. Let's go to the next exhibit.

(Document marked for identification as Flicker Deposition Exhibit No. 7.)

BY MR. BAUM:

Q. Marked as Exhibit 7, MDL-FORP0011 -- no 19228. And this is some handwritten comments on 94404 study report, CF with an arrow to W. Heydorn.

Do you recognize that handwriting?

A. It looks like my handwriting.

Q. And CF, that would be you?

A. Yes.

Q. To Bill Heydorn?

A. Yes.

Q. And it's comments on 94404 study report?

A. Yes.

Q. Okay. So was this produced by you while you were working at Forest?
A. It must have been.
Q. Something you would have done in the ordinary course of your work at Forest?
MR. ROBERTS: Objection.
THE WITNESS: I don't know how ordinary, but it would be part of the job.
BY MR. BAUM:
Q. Okay. And do you see here that you were making comments on the 94404 study report?
A. Yes.
Q. And you had some detailed comments here, correct?
MR. ROBERTS: Objection.
THE WITNESS: Yes.
BY MR. BAUM:
Q. And you sent those comments to Bill Heydorn, right?
MR. ROBERTS: Objection.
THE WITNESS: That would appear to be the case.
BY MR. BAUM:
Q. Do you know how they ended up getting to

Bill Heydorn? Was it via e-mail or did you hand them to him?

MR. ROBERTS: Objection.

THE WITNESS: I would assume -- I don't know really.

BY MR. BAUM:

Q. And these comments here are your suggested changes to the study report of 94404?

MR. ROBERTS: Objection.

THE WITNESS: These are comments on the study report. I don't know if they're changes or clarifications.

BY MR. BAUM:

Q. Well, under "Discussion" it says "delete statement regarding faster metabolism."

Do you see that?

A. Yes.

Q. And it says "delete reference 25."

Do you see that?

A. Yes.

Q. So are those recommendations of suggested changes to the study report for 94404?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. So you were participating in making comments and changes to the study report for 94404, correct?

MR. ROBERTS: Objection.

THE WITNESS: Certainly comments. I don't know to what extent the comments or turned into changes.

BY MR. BAUM:

Q. But you suggested changes, correct?

A. Yes.

MR. BAUM: Okay. Let's go to Exhibit 8.

(Document marked for identification as Flicker Deposition Exhibit No. 8.)

BY MR. BAUM:

Q. This is an e-mail chain between Ivan Gergel, Bill Heydorn, I don't know how you pronounce this, Dorte or is it Dorte?

MS. KIEHN: Dorte.

BY MR. BAUM:

Q. Dorte Thudium and another unidentified Lundbeck employee by the name probably Anders, Agpe@Lundbeck.com dated March 2nd through March 8, 2002 regarding 94404 report comments.

Do you know who Dorte Thudium is?

A. I recall that there was a Lundbeck employee by that name.

Q. And if you look part way down the page, you'll see that Bill Heydorn sent to Dorte Thudium and cc'd to you an e-mail that he forwarded to Dorte Thudium.

Do you see that? Your name is right there.

A. To Dorte.

Q. Just above Dear Dorte, do you see your name?

A. Yeah.

Q. Okay. So who is Dorte Thudium?

A. She was an employee or at least representative of Lundbeck.

Q. Okay. Did you have any contact with her?

A. Not that I recall.

Q. Only through these e-mail chains?

A. Not that I recall.

Q. Do you have any reason to doubt that you were involved with and received or sent e-mails related to this e-mail chain?

MR. ROBERTS: Objection.

THE WITNESS: I think -- I think I must have gotten this e-mail from Bill.

BY MR. BAUM:

Q. Do you think it was produced in the ordinary course of Forest business?

MR. ROBERTS: Objection.

THE WITNESS: Basically.

BY MR. BAUM:

Q. All right. So in the top e-mail it says, "Anders, I am forwarding a memo relating to the report on your pediatric study which was sent to your team yesterday by Charlie Flicker and Bill Heydorn."

Do you see that?

A. Yes.

Q. "As you are aware, this is an extremely important report for Celexa as it is one of the two clinical efficacy reports that we will be submitting to satisfy our 6 month exclusivity requirement."

Do you see that?

A. Yes.

Q. Does that refresh your recollection at all that both studies were involved with getting the six-month exclusivity?

MR. ROBERTS: Objection.

THE WITNESS: Well, no, it doesn't refresh my recollection. As I stated, I had the impression that we only needed to do one study, so I was confused on that.

BY MR. BAUM:

Q. Do you have any reason to doubt what Mr. Gergel -- Dr. Gergel is saying here?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. "We believe that the changes to the report detailed in the attached memo are very important and may have significant bearing on the acceptability of the report as 'interpretable' by the FDA."

Do you see that?

A. Yes.

Q. Do you recall there being some concern about 94404's results being interpretable?

MR. ROBERTS: Objection.

THE WITNESS: I don't know if interpretable would be the word I would use.

BY MR. BAUM:

Q. Well, you see here that Dr. Gergel did?

A. Yes.

Q. Do you know that interpretable was a technical word that had something to do with whether or not the study was useful for getting the exclusivity extension?

MR. ROBERTS: Objection.

THE WITNESS: You know, my recollection is refreshed that that was the criterion for the exclusivity, that apparently it was two studies, not one and that the two studies needed to be interpretable.

BY MR. BAUM:

Q. And that Dr. Gergel is saying here that changes need to be made in order for the study to be viewed as interpretable.

Do you see that?

MR. ROBERTS: Objection.

THE WITNESS: Well, he thinks they have significant bearing.

BY MR. BAUM:

Q. And he thought that your suggestions would have a significant bearing, correct?

MR. ROBERTS: Objection.

THE WITNESS: He does say that the

source of the input was from Flicker and Heydorn, yeah.

BY MR. BAUM:

Q. And then he says, "I should be very grateful for your support in ensuring that the changes are made."

Do you see that?

A. Yes.

Q. Do you know who Anders is or was?

A. Anders was a senior executive or a senior employee at Lundbeck.

Q. Do you know whether your changes were, in fact, implemented?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Do you agree that the changes you recommended might have -- you and the Forest team recommended would have had a significant bearing on the study 94404 results being interpretable?

MR. ROBERTS: Objection, calls for speculation.

THE WITNESS: Could you repeat that.

BY MR. BAUM:

Q. Do you agree that the changes recommended by you and the Forest team would have a significant bearing on the study 94404 results being interpretable?

MR. ROBERTS: Objection.

THE WITNESS: Again, interpretable is so vague, I can't really answer that.

BY MR. BAUM:

Q. Well, do you recall being involved in making sure that the 94404 results were interpretable?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Does this indicate that you were involved with making sure that the 94404 results were interpretable?

MR. ROBERTS: Objection.

THE WITNESS: This suggests to me that -- and based on the other sheet of the comments that I provided, suggests to me that I was involved in an effort to improve the quality of the 94404 report.

BY MR. BAUM:

Q. And to make it interpretable?

MR. ROBERTS: Objection.
THE WITNESS: It would appear that Ivan at least was concerned about the interpretability issue.
BY MR. BAUM:
Q. And that your suggested changes would affect the interpretability, correct?
MR. ROBERTS: Objection.
THE WITNESS: That's what he thought.
BY MR. BAUM:
Q. Did you think that too?
MR. ROBERTS: Objection.
THE WITNESS: I don't know.
BY MR. BAUM:
Q. You don't recall?
A. I recall that 94404's design had problems.
Q. That might have interfered with its being interpretable?
MR. ROBERTS: Objection.
THE WITNESS: That could have undermined the validity of the study.
BY MR. BAUM:
Q. Okay. If you look at a couple pages in

to this e-mail chain, there's an attachment. Do you recall having reviewed any material like this when you were working at Forest related to 94404?

MR. ROBERTS: Objection, and the attachment you're saying starts at 19160; is that what you're think --

MR. BAUM: Yes.

THE WITNESS: No.

BY MR. BAUM:

Q. From these last three documents we just went over, is it clear to you now that you knew of the results from 94404 by at least July of 2001?

MR. ROBERTS: Objection.

THE WITNESS: How do you know that?

BY MR. BAUM:

Q. Well, the first one I showed you was dated July 2001. If you go back to Exhibit, I think, 6.

A. Okay.

Q. No, no, it's actually 5, sorry. Go back to 5.

Each of these cover a time period between July 16, 2001 and March 8, 2002. Do you see at the top of Exhibit 5 it says July 16, 2001.

A. Yes.
Q. And this is when word conveyed that the results were negative, and then the next ones coming up --
MR. ROBERTS: Objection.
BY MR. BAUM:
Q. -- were drafts of the study report for 94404.
Do you see that, Exhibit 6?
A. Yeah.
Q. All right. So what I wanted to find -- ask you is is that based on these documents, by this time frame between July 16, 2001 and March 8, 2002, you were aware of the results of 94404, correct?
MR. ROBERTS: Objection.
THE WITNESS: As I said, my recollection is that I thought that 944 had been completed far earlier, but in seeing these doc -- I don't doubt the authenticity of these documents.
BY MR. BAUM:
Q. Okay. Did you convey the results of 94404 to Dr. Wagner?
MR. ROBERTS: Objection.
THE WITNESS: I don't know.

BY MR. BAUM:

Q. Did you convey the results of 94404 to Mary Prescott?

MR. ROBERTS: Objection.

THE WITNESS: I don't know.

BY MR. BAUM:

Q. Did you withhold them for any reason?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Was there any -- would there have been any reason for you to have not conveyed those to them?

MR. ROBERTS: Objection, calls for speculation.

THE WITNESS: Was there a reason for me to not tell Mary Prescott about 94404?

BY MR. BAUM:

Q. Right.

A. If she asked me about it?

Q. Well, you were communicating to her about the results of studies, CIT-MD-18, on an adolescent and child population. Do you think it would have been important to convey to her also the results of 94404?

MR. ROBERTS: Objection, mischaracterizes testimony.

THE WITNESS: Yeah, I don't think that would be the type of conversation I would have with Mary Prescott.

BY MR. BAUM:

Q. What type of conversation would you have with Mary Prescott?

MR. ROBERTS: Objection, calls for speculation.

THE WITNESS: You know, if her company were generating slides, then I would get them data.

BY MR. BAUM:

Q. So included in that data, would you not want to include both positive and the negative data?

MR. ROBERTS: Objection, calls for speculation.

THE WITNESS: You know, I did not make any determinations about what general projects Mary Prescott worked on.

BY MR. BAUM:

Q. What about Dr. Wagner?

MR. ROBERTS: Objection.

THE WITNESS: Dr. Wagner is a nice lady.
BY MR. BAUM:
Q. Did you convey the negative results of 94404 to Dr. Wagner?
MR. ROBERTS: Objection.
THE WITNESS: I don't know.
BY MR. BAUM:
Q. What's a study protocol?
A. What is a study protocol?
Q. Yeah.
A. It's a document that details how a study should be -- how a particular study is to be conducted.
Q. Is it necessary for the conduct of a clinical trial?
A. For a study -- certainly for a study conducted under the auspices of the FDA to be submitted to the agency.
Q. Why is it necessary for the conduct of a clinical trial?
MR. ROBERTS: Objection.
THE WITNESS: That's a little deep, but can you repeat the question? Why is a study protocol necessary?
MR. BAUM: Right.

MR. ROBERTS: Objection.

THE WITNESS: I'd say that it's designed to ensure consistent conduct of the study and -- consistent documented conduct of the study.

BY MR. BAUM:

Q. Was Forest expected to follow the study protocol for study CIT-MD-18?

MR. ROBERTS: Objection.

THE WITNESS: Well, usually it's the investigators who are supposed to follow the study protocol. The study protocol is given to the investigators, and they follow the study protocol.

BY MR. BAUM:

Q. And what did Forest have to do with seeing to it that the protocol was followed?

MR. ROBERTS: Objection, just like to state the witness is not an expert.

THE WITNESS: The monitors monitored the study to ensure that -- there are study monitors who visit the site and ensure that it's being conducted in accordance with the protocol.

BY MR. BAUM:

Q. Did you have anything to do with making sure that the study protocol for Study 18 was followed?

MR. ROBERTS: Objection.

THE WITNESS: Well, not that I specifically recollect.

BY MR. BAUM:

Q. Do you recall having been involved with drafting the protocol for CIT-MD-18?

A. Based on documents I saw yesterday.

Q. I'm going to hand you what we're marking as Exhibit 9.

(Document marked for identification as Flicker Deposition Exhibit No. 9.)

BY MR. BAUM:

Q. Which is some of the protocol for MD-18. If you flip over to the -- it's dated September 1, 1999.

Do you see that, right there?

A. Okay.

MR. ROBERTS: And let the record reflect that it's part of a larger production that's dated April 2nd, 2002. It's an excerpt from that.

BY MR. BAUM:

Q. Yeah, this is an excerpt from the study report itself that was dated April 8, 2002. This is the protocol for CIT-MD-18, correct?

A. I don't dispute that.

Q. Okay. So let's go to the next page. It says, "Final Protocol Authorization Sign-off Sheet."

Do you see that?

A. Yes.

Q. And it was submitted by Paul Tiseo.

Do you see that?

A. Yes.

Q. He was the associate medical director-CNS, medical monitor.

Do you see that?

A. Yes.

Q. Then the next one underneath that says authorized by Charles Flicker, that was you, correct?

A. Yes.

Q. And it said you were senior medical director-CNS.

Do you see that?

A. Yes.

Q. Does that refresh your recollection you

were a senior medical director of the CNS department at some point in Forest?

A. No, I told you that already.

Q. I thought you disputed that you were in the CNS section?

A. Oh, no, it wasn't a CNS department.

Q. What does this mean senior medical director-CNS?

A. I was in Ivan's department, clinical research, and CNS -- that was my title, but CNS wasn't -- was it a separate depart -- I don't even know.

Q. All right. It doesn't matter.

A. I believe clinical research was a department and CNS was a division within that department.

Q. Okay. So you were maybe a senior medical director within the CNS division?

MR. ROBERTS: Objection.

THE WITNESS: I would have been senior medical director of the CNS group or division within the clinical research department.

Q. Okay. And you see Lawrence Olanoff there?

A. I see his name and signature, yeah.
Q. Do you recall his being involved with MD-18?
A. Well, no, I mean -- no, I don't directly remember his involvement.
Q. Do you have any reason to dispute that he was involved, based on his having signed off on the protocol sheet?
A. No.
Q. And Ivan Gergel, do you recall his being involved with MD-18?
A. Again, not directly, but having seen that last memo, I mean, yeah, sure, he was.
Q. And Dr. Lakatos, is that right, Edward Lakatos, do you recall him?
A. I recall him.
Q. Do you know what his job was?
A. He was head -- head of the stats group.
Q. Okay. And Keith Rotenberg, do you recall working with him on MD-18?
A. On MD-18, no, but I remember he was head of regulatory.
Q. Okay. You had some interaction with regulatory affairs?

A. Yes.
Q. What was your involvement?
A. Whatever they had to do for our studies in terms of filings to the FDA or communications.
Q. Part of your job was to make sure there was accurate and truthful information conveyed to the FDA?
MR. ROBERTS: Objection.
THE WITNESS: I don't know that it was in a written job description, but I would say yes.
BY MR. BAUM:
Q. If the protocol weren't followed, would that invalidate the results of the study, or could it invalidate the results of the study?
MR. ROBERTS: Objection.
THE WITNESS: If the protocol is not followed, could it invalidate the results of the study? Yes, it possibly could.
BY MR. BAUM:
Q. And the placebo effect and observer bias require an experiment to use a double-blind protocol and a control group, correct?
MR. ROBERTS: Objection.

THE WITNESS: Why are you saying you need a double-blind control group?

BY MR. BAUM:

Q. To avoid placebo effect, rule out placebo effect and observer bias?

MR. ROBERTS: Objection.

THE WITNESS: I mean, yes, you're saying to the extent that you need to demonstrate, that you wish to demonstrate the drug effect is above and beyond the placebo effect, yes.

BY MR. BAUM:

Q. Was the protocol for Study 18 double-blind procedure?

A. Was the protocol --

Q. Yes.

A. -- was the design of the study? It was a double-blind study, yes.

Q. Do you know who was responsible for the overall conduct of study MD-18?

MR. ROBERTS: Objection.

THE WITNESS: Well, Paul Tiseo was the lead clinician.

BY MR. BAUM:

Q. What was his role with respect to

CIT-MD-18 before he left Forest?

A. Well, I now see that he had a primary role in generating the protocol, and what about documents I've seen yesterday? He was obviously involved in the -- in the oversight of the running of the study.

MR. BAUM: Let's go to the next exhibit, Exhibit 10.

(Document marked for identification as Flicker Deposition Exhibit No. 10.)

BY MR. BAUM:

Q. Which is an e-mail with an attachment from Irene Stockman dated April 10, 2002 and was sent to Robert Ashworth, Im Abramowitz and Marcelo Gutierrez and it's cc'd to you and Bill Heydorn.

Do you see that?

A. Yes.

Q. And it says, "Find attached the final sign-off copy of citalopram pediatric study 18. The sign-off sheet will be circulated to Harborshide shortly; please sign and return to me shortly."

Do you see that?

A. Yes.

Q. Do you recall signing off on the study

report for MD-18?

A. No.

Q. Do you have any reason to doubt that you did sign off on it?

MR. ROBERTS: Objection.

THE WITNESS: Very little.

BY MR. BAUM:

Q. Does -- do you recall that CIT-MD-18 was a multisite clinical trial?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And was each site expected to follow the study protocol?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. When you signed off on the protocol, were you affirming the accuracy of its contents?

MR. ROBERTS: Objection.

THE WITNESS: What do you mean by "accuracy"? Oh, you mean the study report, you mean the study report?

BY MR. BAUM:

Q. Well, there's the protocol and then the study report. Let's back up.

When you signed off on the study report, did you -- were you affirming the accuracy of its contents?

MR. ROBERTS: Objection, lacks foundation.

THE WITNESS: Yeah.

BY MR. BAUM:

Q. Do you recall drafting any portions of the protocol?

THE WITNESS: Objection. I'm losing track of this refreshing recollection reflecting.

MR. ROBERTS: If there's any documents that you saw yesterday. So if you saw this document yesterday and it refreshed your recollection, you can answer a question.

THE WITNESS: I could answer it according to my refreshed recollection?

MR. ROBERTS: According to your refreshed recollection, yes, but if it's something that Kristin and I talked to you about, that's different, then you can't answer.

THE WITNESS: Oh, okay. Yeah, I saw documents yesterday that refresh my recollection that I did work on the protocol -- protocol?

BY MR. BAUM:

Q. Protocol and the study report, correct?

A. Both.

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. And do you recall what your input was to the protocol?

A. No.

Q. Let's go back to Exhibit 9 just for a minute.

MR. ROBERTS: The protocol?

MR. BAUM: Yeah.

BY MR. BAUM:

Q. If you go to the synopsis, which is like the third page in, see under evaluation?

MR. ROBERTS: You mean Page 1.

BY MR. BAUM:

Q. Yes, Page 1 of protocol, which is Page 313 of the study report, and it's about the third page in, it's under Synopsis.

Do you see that?

A. Mm-hmm.

Q. And then under Synopsis there's evaluations.

Do you see that?

A. Yes.

Q. And it says there's a diagnosis for kiddie schedule for affective disorders and schizophrenia - present and lifetime.

Do you see that?

A. Yes.

Q. Was that like a diagnosis was required to have a major depression disorder for a child in order to be in this trial?

MR. ROBERTS: Objection.

THE WITNESS: I have to look at the -- I mean, there was a study in depressed children. What the exact diagnosis required? I believe it was major depressive disorder.

BY MR. BAUM:

Q. Yeah, if you look up at the objective on that same page, right up here, "The objective of this study is to evaluate the safety and efficacy of citalopram in children and adolescent outpatients (7-11

and 12-17 years of age, respectively), diagnosed with major depressive disorder."

Do you see that?

A. Yes.

Q. All right. So does that refresh your recollection that this was addressing children with -- and adolescents with major depressive disorder?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. Okay. And that the primary efficacy measure was going to be the Children's Depression Rating Scale - Revised.

Do you see that?

A. Yes.

Q. And that there were some secondary efficacy measures, the Clinical Global Impression (CGI) - Severity and Improvement subscales.

Do you see that?

A. Yes.

Q. And the K-SADS-P (depression module).

Do you see that?

A. Mm-hmm.

Q. And the Children's Global Assessment

Scale (CGAS).

Do you see that?

A. Yes.

Q. Were those all secondary efficacy measures for CIT-MD-18?

A. That appears to be the case.

Q. Did you have any involvement with choosing which ones were going to be used?

A. Yes.

Q. What was your involvement?

A. It was a very -- it was a very active area, and there were a lot of considerations that went into selecting the efficacy measures. I don't recall exactly, but there were the optimal efficacy measure -- as I recollect, the optimal measure to use in these studies had not been established. I think the CDRS was relatively new, but it was -- it appeared to be emerging as the optimal measure to use in such trials.

Q. What was the purpose of having secondary outcome measures?

A. Part of it was historical. Certainly in the case of the K-SADS, which had been -- the K-SADS and I believe also the CGAS had been -- I think they might have been -- very likely were used in the

Lundbeck trial, maybe as the primaries. So since the CDRS was relatively new, my impression is, as best I recollect is that the K-SADS and the CGAS, even though they were being -- had been deemed as to be less useful measures, might have been kept in there for the sake of continuity.

Q. Were the primary and secondary efficacy evaluations the protocol specified outcome measures by which the study drug citalopram was determined to be successful or unsuccessful compared with placebo?

MR. ROBERTS: Objection.

THE WITNESS: What are you asking?

BY MR. BAUM:

Q. Were these primary and secondary efficacy evaluations the protocol specified outcome measures by which the study drug citalopram was determined to be successful or unsuccessful compared with placebo in CIT-MD-18?

MR. ROBERTS: Objection.

THE WITNESS: I would say yes.

BY MR. BAUM:

Q. Can you explain how efficacy of the study drug versus placebo is demonstrated by an outcome measure?

A. How is efficacy demonstrated relative to placebo?

Q. Yes.

MR. ROBERTS: Objection. Are you asking generally or specific to the study?

MR. BAUM: Okay. You're going to have to stop coaching. I asked my question, and he's thinking about answering.

MR. ROBERTS: I'm just trying to get a clear record.

MR. WISNER: He didn't express any confusion.

THE WITNESS: Could you repeat the question.

BY MR. BAUM:

Q. Can you explain how efficacy of a study drug versus placebo is demonstrated by an outcome measure?

MR. ROBERTS: Objection.

THE WITNESS: Usually, basically, an outcome assessment is made at baseline and at the end of the study and to look -- and the change from baseline in the active group is compared to the change from baseline in the

placebo group.

BY MR. BAUM:

Q. And what determines whether or not it was successfully demonstrated?

MR. ROBERTS: Objection.

THE WITNESS: Whether the difference was successfully demonstrated is based on statistical analysis.

BY MR. BAUM:

Q. And the statistical analysis involves whether or not the difference is statistically significant?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And that involves a P-value?

MR. ROBERTS: Objection.

THE WITNESS: Ultimately, yes.

BY MR. BAUM:

Q. And is there a prespecified P-value that was arrived at with respect to MD-18?

MR. ROBERTS: Objection.

THE WITNESS: Not that I know of, but that seems likely.

BY MR. BAUM:

Q. Do you recall what the P-value normally was used for determining significance?

MR. ROBERTS: Objection.

THE WITNESS: Well, classically, the nominal P-value is .05.

BY MR. BAUM:

Q. And needs to -- the difference needs to be less than .05?

MR. ROBERTS: Objection.

THE WITNESS: Sometimes less than, sometimes less than or equal.

BY MR. BAUM:

Q. Okay. If you take a look at Page 318 under subheading "6. Study Design and Duration," it says here, "A total of 160 patients will be randomized to double-blind treatment."

Do you see that at the bottom -- the last sentence under the first paragraph under subheading 6?

A. Yes.

Q. Was 160 the number needed to power the study?

MR. ROBERTS: Objection.

THE WITNESS: It's likely that a power analysis was conducted.

BY MR. BAUM:

Q. Do you think that the 160 was the number they arrived at?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. In order to get a statistical significant number or outcome --

A. I would have to assume.

Q. Okay. Do you recall whether MD-18 was powered to detect differences in the efficacy of citalopram between children and adolescents?

MR. ROBERTS: Objection.

THE WITNESS: No, I assume so.

BY MR. BAUM:

Q. Do you recall whether it was powered to detect the efficacy of citalopram with children alone or with children and adolescents as a group?

MR. ROBERTS: Objection.

THE WITNESS: I don't know.

BY MR. BAUM:

Q. What is the difference between a primary and a secondary efficacy measure?

A. I think there could be a lot of differences depending upon the context. I would say the primary efficacy measure is the one designated as the -- as the measure that would be used to determine whether the outcome of the study was positive. The secondary efficacy measures provide supportive information.

Q. Let's take a look at Page 326 under Study Drug, Paragraph "9.1 Study Medication."

Do you see that?

A. Yes.

Q. It says citalopram (20 mg) and placebo medication will be supplied by Forest Laboratories as film-coated, white tablets of identical appearance. For the single-blind lead-in period, patients will be supplied with placebo tablets only. For the double-blind treatment period, identically appearing tablets will contain either 20 mg of citalopram or placebo. Medication will be supplied in bottles containing either 10 tablets for the lead -- for the lead-in and for the -- excuse me. Medication will be supplied in bottles containing either 10 tablets for the lead-in and the first four weeks of double-blind treatment or 40 tablets for remaining four weeks of the

treatment period.

Did I read that correctly?

A. Yes.

Q. Was this the protocol specified procedure followed -- to be followed for CIT-MD-18?

MR. ROBERTS: Objection.

THE WITNESS: Apparently.

BY MR. BAUM:

Q. Was it followed?

MR. ROBERTS: Objection.

THE WITNESS: I believe so.

BY MR. BAUM:

Q. Let's take a look at Page 328 under "9.7 Unblinding Procedures."

Do you see that?

A. Yes.

Q. What does it mean for a study to be unblinded?

MR. ROBERTS: Objection.

THE WITNESS: A study is unblinded at the end, when the code is broken and the treatment groups that the patients belong to are identified.

BY MR. BAUM:

Q. What does it mean for a patient to be unblinded?

MR. ROBERTS: Objection.

THE WITNESS: That's pretty difficult to say. I can give an example. If a patient were -- if a patient were receiving -- were told that they were receiving active medication or a patient were told that they were receiving placebo medication, then that patient would be unblinded.

BY MR. BAUM:

Q. What about with respect to the investigators, if they were told what the patients were getting, would they be unblinded?

MR. ROBERTS: Objection.

THE WITNESS: If the investigator knew that what treatment the patient, an individual patient was receiving, then I think it would be appropriate to say that the investigator had been unblinded.

BY MR. BAUM:

Q. Would you agree that a clinical trial is blinded if the participants are unaware on whether they are in the experimental or control arm of the study?

MR. ROBERTS: Objection.

THE WITNESS: That is part and parcel, that's part of unblinding of a study.

BY MR. BAUM:

Q. And then blinding would also be extended to the investigator so that the patient observations are less likely to be biased by their awareness of the treatment the patient is receiving, correct?

MR. ROBERTS: Objection.

THE WITNESS: The investigator should not know what treatment the patient is receiving. That's part of the blinding.

BY MR. BAUM:

Q. So would you agree that if a study does not follow the unblinding procedures, as specified in the study protocol, then the study cannot be considered a randomized, placebo-controlled trial?

MR. ROBERTS: Objection, mischaracterizes testimony.

THE WITNESS: Could you read that again.

BY MR. BAUM:

Q. Would you agree that if a study does not follow the unblinding procedures, as specified in the study protocol, then the study could not be considered

a randomized, placebo-controlled trial?

MR. ROBERTS: Objection, mischaracterizes testimony.

THE WITNESS: No, it would still be a randomized, placebo-controlled trial. It might undermine the validity of the study.

BY MR. BAUM:

Q. If you include data from patients who were unblinded in an analysis of efficacy in a clinical trial, does that not corrupt the integrity of the clinical trial results?

MR. ROBERTS: Objection, calls for speculation.

THE WITNESS: Inclusion of an unblinded patient?

BY MR. BAUM:

Q. Right.

A. Could undermine the validity of the study results.

Q. And that would corrupt the integrity of the clinical trial results?

MR. ROBERTS: Objection.

THE WITNESS: I'd say that was a pretty strong statement.

BY MR. BAUM:

Q. Is it true or not?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. It doesn't corrupt it?

MR. ROBERTS: Objection.

THE WITNESS: It undermines the validity.

BY MR. BAUM:

Q. Okay. So going down in that subsection, there's some italicized words it says, "Any patient for whom the blind has been broken will immediately be discontinued from the study and no further efficacy evaluations will be performed."

Do you see that?

A. Uh-huh.

Q. And that was the protocol unblinding procedure, correct?

MR. ROBERTS: Objection, mischaracterizes the document.

THE WITNESS: Yeah, it's a little confusing. I mean, the language has been ambiguous because the paragraph above describes

a particular situation, and it's not clear whether it's referring -- whether the subsequent statement is referring exclusively to that particular situation or to any kind of unblinding.

BY MR. BAUM:

Q. Do you think that any kind of unblinding would invalidate the results if those results were included in the efficacy analyses?

MR. ROBERTS: Objection.

THE WITNESS: It could undermine the validity of the results.

BY MR. BAUM:

Q. So it's important to know whether or not you've got some unblinded patients or investigators, correct?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. So if something were to happen that would cause the blind to be broken for any reason, Forest Laboratories would have to have been notified immediately, correct?

MR. ROBERTS: Objection, calls for

speculation.

THE WITNESS: Well, that's what the protocol says, and that would be appropriate.

BY MR. BAUM:

Q. And you think it would be appropriate for any patient for whom the blind has been broken to be immediately discontinued from the study and no further efficacy evaluations performed on them?

MR. ROBERTS: Objection, mischaracterizes the document.

THE WITNESS: As I said, I mean, that's what the -- that's what the protocol reads.

BY MR. BAUM:

Q. Okay. If a patient were unblinded during the course of a clinical trial, would you consider that to be a minor or a major protocol violation?

MR. ROBERTS: Objection, calls for speculation.

THE WITNESS: If one patient were unblinded or -- I mean, is it a protocol violation?

BY MR. BAUM:

Q. Yes.

A. Yes, it's a protocol violation.
Q. If there was enough patients unblinded to affect the P-value, would that be a major or a minor protocol violation?
MR. ROBERTS: Objection, calls for speculation.
THE WITNESS: Can you repeat the question.
BY MR. BAUM:
Q. If there were enough patients unblinded to affect whether or not the P-value was significant or insignificant, would that be a major or a minor protocol violation?
MR. ROBERTS: Objection, calls for speculation.
THE WITNESS: Yeah, I don't know that -- it sounds as if you're making a direct connection between the P-value and the unblinding. I don't know if I can answer that.
BY MR. BAUM:
Q. Well, if there are enough patients unblinded to affect the P-value, would that be a major or a minor protocol violation?
MR. ROBERTS: Objection, calls for

speculation.

THE WITNESS: Well, how do you know if the unblinding of the patient affects the P-value?

BY MR. BAUM:

Q. I'm asking you to answer my question. Can you answer my question?

A. Okay. What's the question?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. If there were enough patients unblinded to affect the P-value, would that be a major or a minor protocol violation?

MR. ROBERTS: Objection, calls for speculation.

THE WITNESS: The unblinding -- the unblinding of a patient is a protocol violation. Now, whether the -- in terms of the number of patients who are unblinded and how that relates to the magnitude of the protocol violation, I can't really answer that.

BY MR. BAUM:

Q. If it affected the P-value?

A. If all the patients in the study--

MR. ROBERTS: Objection.
THE WITNESS: -- were unblinded, it would not be a double-blind study.
BY MR. BAUM:
Q. Okay. Would the patient --
A. Or it would be an invalid double-blind study.
Q. Okay. Were any of the patients in study MD-18 unblinded?
MR. ROBERTS: Objection.
THE WITNESS: Well, based on material I saw yesterday?
BY MR. BAUM:
Q. Yes.
A. I saw material yesterday indicating that there was potentially unblinding information.
Q. Do you recall addressing CIT-MD-18 patients being unblinded at the time you were working at Forest?
MR. ROBERTS: Objection.
THE WITNESS: No.
BY MR. BAUM:
Q. You have no recollection of it?
MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. So you don't have any recollection of any of the documents you were involved with authoring regarding that?

MR. ROBERTS: Objection.

THE WITNESS: Based on documents I saw yesterday?

BY MR. BAUM:

Q. Well, did those documents refresh your recollection that you were involved with dealing with the unblinding problem --

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. -- with CIT-MD-18 patients?

A. I didn't recall that there was an unblinding issue with MD-18.

Q. Did reviewing documents refresh your recollection there was one?

MR. ROBERTS: Objection.

THE WITNESS: I don't know. They were -- they weren't inconsistent with my recollection, but they didn't -- none of those -- there was -- it was new to me. I

mean, it was believable with the documents I saw, but did I recall the incident? No.

BY MR. BAUM:

Q. Okay. Do you recall that Forest Laboratories was notified of any unblinding in CIT-MD-18?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Do you have any reason to doubt that Forest was notified that there was some unblindings that occurred with respect to some of the patients in the CIT-MD-18?

MR. ROBERTS: Objection, lacks foundation.

THE WITNESS: There was a problem with the packaging.

BY MR. BAUM:

Q. When did you find out about it?

MR. ROBERTS: Objection.

THE WITNESS: Yesterday.

BY MR. BAUM:

Q. That's the first time you found out about it?

MR. ROBERTS: Objection.

THE WITNESS: I would have to speculate to tell you when I first found out about it.

BY MR. BAUM:

Q. Approximately when did you first find out about it?

MR. ROBERTS: Objection, calls for speculation.

THE WITNESS: As I said, I don't recall ever finding out about it. I've seen documents that indicate that I did.

BY MR. BAUM:

Q. All right. Let's go to Page 331. Under heading "12.7 Sample Size Considerations."

Do you see that?

A. No. Okay.

Q. And there it says, "The primary efficacy variable is the change from baseline in CDRS-R score at Week 8."

Do you see that?

A. Yes.

Q. Is that -- and we discussed that a few minutes ago, correct?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. The CDRS is the primary efficacy variable?

A. Yes.

Q. And that it's the measure at the end at Week 8, correct?

MR. ROBERTS: Objection.

THE WITNESS: Did we discuss that previously?

BY MR. BAUM:

Q. Well, you mentioned that it was -- that -- yes, we did discuss that previously.

Do you recall discussing that?

MR. ROBERTS: Objection.

THE WITNESS: We talked about the change from baseline. I don't recall talking about Week 8.

BY MR. BAUM:

Q. So Week 8 is the endpoint, correct?

MR. ROBERTS: Objection.

THE WITNESS: Week 8 is the last visit of the study.

BY MR. BAUM:

Q. So "the primary efficacy variable is the

change from baseline CDRS-R score at Week 8," correct?

MR. ROBERTS: Objection.

THE WITNESS: According to the protocol, according to this part of the protocol.

BY MR. BAUM:

Q. Okay. Is there something else you refer to that would make it be a different point of the study?

A. Just that it's -- that when they say at Week 8, it's -- there are different -- the analyses -- there are different types of analyses.

Q. But they would not be the primary outcome measure, correct?

MR. ROBERTS: Objection.

THE WITNESS: Based on what I saw yesterday, the primary outcome measure was the last observation carried forward analysis, so that's not necessarily at Week 8.

BY MR. BAUM:

Q. So some of the results might have been from patients who dropped out of the study prior to Week 8?

A. Yes.

Q. And their scores would be carried

forward to Week 8?

A. Yes.

Q. And compiled with the other patients' results that completed the trial at Week 8, correct?

A. Yes.

Q. And the primary efficacy measure would be the results of all of the patients, including the LOCF patients at Week 8, correct?

MR. ROBERTS: Objection.

THE WITNESS: If you're talking about an LOCF analysis.

BY MR. BAUM:

Q. Okay. So let's go back to the prior page under Section 12.5.1, just flip it back to Page 18. It says "Primary Efficacy Parameters."

Do you see that?

A. Yes.

Q. And it says, "Change from baseline CDRS-R score at Week 8 will be used as the primary efficacy parameter."

Do you see that?

A. Yes.

Q. And the it says, "descriptive statistics will be calculated by visit."

Is that what you were referring to?

A. No. Regarding last observation carried forward?

Q. Regarding statistics for prior -- for visits prior to Week 8.

MR. ROBERTS: Objection.

THE WITNESS: No, that's not what I was referring to.

BY MR. BAUM:

Q. Oh, okay. All right. So but what I was referring to is that the measure of the primary efficacy parameter was the change from baseline on CDRS between the change from baseline to Week 8, correct?

MR. ROBERTS: Objection.

THE WITNESS: That's what it says here.

BY MR. BAUM:

Q. Do you disagree with that?

MR. ROBERTS: Objection.

THE WITNESS: Well, as I said, based on what I saw yesterday, it would appear to be at last observation carried forward analysis, which is not every -- you know, it's a shorthand, I would say. I would describe this as a shorthand for what I -- what apparently

was the primary efficacy analysis.

BY MR. BAUM:

Q. If you look up to the paragraph just above under Efficacy Analyses, it says, primary analyses will be performed using the Last Observation Carried Forward approach. In these analyses, the last observed value before the missing value will be carried forward to impute the missing value?

A. Yeah.

Q. You see that?

A. Yeah.

Q. And then, "If the missing value occurs at Week 1, the baseline value will be carried forward to Week 1 provided at least one subsequent post baseline assessment is available."

Do you see that?

A. Yes.

Q. And then the next line says, the observed cases approach will be used for supportive analyses, where only observed values will be used for analyses.

Do you see that?

A. Yes.

Q. So that's going to be -- the observed

cases will be the group of patients who actually finish the study, and it would be an analysis of their results at Week 8 when they finish the study, correct?

MR. ROBERTS: Objection.

THE WITNESS: Or at least when they appeared at Week 8, yes.

BY MR. BAUM:

Q. And the last observation carried forward analysis would include both the observed cases results at Week 8 and the patients' results that occurred prior to that carried forward to Week 8 for an analysis at Week 8, correct?

MR. ROBERTS: Objection.

THE WITNESS: Yes, that would be my understanding of the LOCF approach.

BY MR. BAUM:

Q. Okay. So turning back to section 12.7 on Page 19 it says here, "The primary efficacy variable is the change from baseline in CDRS-R score at Week 8."

Do you see that?

A. Yes.

Q. Do you agree with that?

MR. ROBERTS: Objection.

THE WITNESS: My understanding of the

protocol is that it's that variable using the LOCF analysis, yes.

BY MR. BAUM:

Q. Okay. And then "Assuming an effect size (treatment group difference relative to pooled standard deviation) of 0.5, a sample size of 80 patients in each treatment group will provide at least 85% power at an alpha level of 0.05 (two-sided)."

Do you see that?

A. Yes.

Q. Do you know what that means?

MR. ROBERTS: Objection.

THE WITNESS: I don't have a clear understanding of power analyses.

BY MR. BAUM:

Q. Do you have a general concept of what that means?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. Does it mean that it needed 160 patients essentially to power the study to arrive at .05 two-sided P-value?

MR. ROBERTS: Objection.

THE WITNESS: Yeah, I mean, my

understanding of how power analyses results get presented is that this would mean that, assuming that there is a significant difference between the treatment groups, the analyses expects that there would be an 85% chance that that difference would be demonstrated at the .05 level.

BY MR. BAUM:

Q. With 160 patients?

MR. ROBERTS: Objection.

THE WITNESS: Given that end, yeah.

BY MR. BAUM:

Q. Is that correct?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. So as long as MD-18 had 160 patients' results in the equations, that was enough to power statistically significant results?

MR. ROBERTS: Objection.

THE WITNESS: 160 patients were -- was what was deemed needed to meet this level of power.

BY MR. BAUM:

Q. And you didn't need more than 160 to

power the study for statistical significant purposes, right?

MR. ROBERTS: Objection, calls for speculation.

THE WITNESS: Yeah, I don't think -- you know, I don't think the power analyses are that firm. I don't know to what extent 85% is the level that's -- that's accepted.

BY MR. BAUM:

Q. Well, here the protocol is specifying 160 patients, correct?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And per this section of the protocol, Week 8 was the endpoint for efficacy, correct?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And measurements at Weeks 1, 2, 4 or 6 would not be considered efficacy endpoints for study MD-18, right?

MR. ROBERTS: Objection.

THE WITNESS: Endpoints is a word that's

used pretty loosely.

BY MR. BAUM:

Q. What was the endpoint week for Study 18?

MR. ROBERTS: Objection.

THE WITNESS: Endpoint week was Week 8.

BY MR. BAUM:

Q. Okay. And it would be inconsistent with the protocol to suggest that positive results at weeks earlier than Week 8 indicated a positive trial outcome for MD-18, right?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. So you could measure the outcome differently than what the protocol says?

MR. ROBERTS: Objection, mischaracterizes testimony.

THE WITNESS: Excuse me, no. You need to abide by the protocol to measure your outcome.

BY MR. BAUM:

Q. So attempting to measure the outcome by results at Weeks 1, 2, 4 or 6 would be inconsistent with the protocol, correct?

MR. ROBERTS: Objection.

THE WITNESS: Not at all. I mean, if you've got an effect at week 1, that's great.

BY MR. BAUM:

Q. All right. Well, is that the prespecified endpoint?

MR. ROBERTS: Objection.

THE WITNESS: Primary endpoint.

BY MR. BAUM:

Q. Yeah, the primary endpoint?

A. No, those --

MR. ROBERTS: Objection.

THE WITNESS: Those visits are not primary.

BY MR. BAUM:

Q. Okay. That's what I'm trying to get at is that the outcome of the trial is measured by the primary endpoint, correct?

MR. ROBERTS: Objection.

THE WITNESS: The trial has a primary endpoint.

BY MR. BAUM:

Q. And the outcome of whether it's positive or negative is determined by the primary efficacy

measure, correct?

MR. ROBERTS: Objection.

THE WITNESS: Nominally.

BY MR. BAUM:

Q. What do you mean by "nominally"?

A. I think in the assessment of the study, all the results are considered.

Q. So you look at all of the results?

A. Yeah.

Q. But the primary result is one that determines whether or not the FDA will accept it as a positive or a negative outcome, correct?

MR. ROBERTS: Objection, lack of foundation.

THE WITNESS: You know, I can't offhand think of specific examples, but I don't know that their thinking is quite that rigid.

BY MR. BAUM:

Q. So it doesn't matter what the primary efficacy outcome was; is that what you're saying?

MR. ROBERTS: Objection, mischaracterizes his testimony.

BY MR. BAUM:

Q. You can go pick whatever outcome you

like?

A. No. The primary efficacy variable is important.

Q. Why is it important?

A. Because that's the predesignated main basis for reaching conclusions regarding the treatment effect.

Q. And for MD-18 that was at Week 8, correct?

MR. ROBERTS: Objection.

THE WITNESS: That was at Week 8 with last observation carried forward, yes.

BY MR. BAUM:

Q. Thank you. Omitting the Week 8 result while highlighting positive results from earlier weeks would be inconsistent with the protocol and misleading, wouldn't it?

MR. ROBERTS: Objection, lacks foundation.

THE WITNESS: Omitting Week 8 from the study?

BY MR. BAUM:

Q. Omitting the Week 8 result while highlighting positive results from the earlier weeks

would be inconsistent with the protocol and misleading, right?

MR. ROBERTS: Objection, lacks foundation, calls for speculation.

THE WITNESS: Yeah, I'm not clear at all what you're saying.

BY MR. BAUM:

Q. Well, if you highlighted the results that occurred at Weeks 1, 2, 4 and 6, without mentioning what happened at Week 8, you would be discussing results that were different than what the protocol called for as the primary endpoint for MD-18?

MR. ROBERTS: I renew my objection.

THE WITNESS: So now you're talking about the study report?

BY MR. BAUM:

Q. Study report, the manuscript, posters, anything that's discussing and focusing on the Weeks 1, 2, 4 and 6 as if they're indicative of whether the trial is positive or not would be inconsistent with the protocol saying that Week 8 is the point of where you make that determination, correct?

MR. ROBERTS: Objection, lacks foundation, calls for speculation.

THE WITNESS: Well, are you saying the study report did not provide Week 8 results?

BY MR. BAUM:

Q. I'm not saying that.

I'm saying that if a writing were to focus on the 1, 2 -- Weeks 1, 2, 4 and 6 results without stating what the Week 8 results, that would be misleading with respect to what the endpoint was of Week 8?

MR. ROBERTS: Objection, calls for speculation.

THE WITNESS: I would say it would be important to also provide the Week 8 results.

MR. BAUM: Okay. We have a tape thing we need to do?

THE VIDEOGRAPHER: We have another ten minutes.

MR. BAUM: Oh, okay.

MR. ROBERTS: You want to keep going for another ten minutes.

MR. BAUM: Yeah.

MR. ROBERTS: Are you good to go for another ten minutes?

THE WITNESS: Yeah.

BY MR. BAUM:

Q. Let's go to Page 329, Section "12.2 Patient Populations."

Do you see that?

A. Yes.

Q. And 12.2.1 is "Randomized population, the randomized population will consist of all patients randomized into this study."

Do you see that?

A. Yes.

Q. So that's a protocol defined randomization population, correct?

MR. ROBERTS: Objection.

THE WITNESS: Excuse me?

BY MR. BAUM:

Q. It's a protocol defined definition for the randomized population for MD-18, correct?

MR. ROBERTS: Objection.

THE WITNESS: That appears to be the case, yeah.

BY MR. BAUM:

Q. And then the next one down says "12.2.2 Safety population, the safety population will consist of all randomized patients who receive at least one

dose of double-blind study medication."

Do you see that?

A. Yes.

Q. And next one down, 12.2.3, Intent-to-Treat population, the intent-to-treat population (ITT) -- the intent-to-treat (ITT) population will consist of all patients in the safety population who complete at least one post-baseline efficacy evaluation of the primary efficacy variable.

Do you see that?

A. Yes.

Q. That's the intent-to-treat population, right?

MR. ROBERTS: Objection.

THE WITNESS: That's the intent-to-treat population as defined here in the protocol, yeah.

BY MR. BAUM:

Q. Okay. And does the intent-to-treat population apply to a randomized blinded population for MD-18?

A. Yeah.

Q. And if the patients were unblinded at baseline before the first evaluation at Week 1, they

weren't valid members of the intent-to-treat population?

MR. ROBERTS: Objection, calls for speculation.

THE WITNESS: Wait. If they did not receive a post-baseline efficacy assessment?

BY MR. BAUM:

Q. If they were unblinded at baseline before the first evaluation at Week 1, they weren't valid members of the intent-to-treat population, were they?

MR. ROBERTS: Objection.

THE WITNESS: Well, this doesn't say anything about blinding.

BY MR. BAUM:

Q. Okay. I'm asking you if patients were unblinded at baseline before their first evaluation, would they be considered valid members of the intent-to-treat population?

MR. ROBERTS: Objection, calls for speculation.

THE WITNESS: If they were unblinded, then their -- then their validity -- I would say they're definitely members of the ITT

population. Their validity would be open to question.

BY MR. BAUM:

Q. What do you mean by that?

A. Because they had a protocol violation.

Q. So the scientifically appropriate thing to do would be to exclude patients unblinded at baseline from the efficacy outcome measure, right?

MR. ROBERTS: Objection. He's not an expert. Calls for speculation.

THE WITNESS: Patient unblinded at baseline.

BY MR. BAUM:

Q. Should not be included in efficacy measures for a double-blind, placebo-controlled trial?

MR. ROBERTS: Objection, calls for speculation.

THE WITNESS: If -- I would say that if you have patients who are unblinded, then it would be -- you would probably do analyses of both groups.

BY MR. BAUM:

Q. And the analyses of both groups ought to be conveyed to physicians and scientists who are

evaluating the merits of a drug like Celexa?

MR. ROBERTS: Objection, calls for speculation.

THE WITNESS: I'd say if -- can you repeat the question?

BY MR. BAUM:

Q. That you said that you should do both evaluations, correct?

MR. ROBERTS: Objection.

THE WITNESS: I'd say that would be one solution.

BY MR. BAUM:

Q. The fact that you did both evaluations that you had an unblinding problem should be conveyed to physicians?

MR. ROBERTS: Objection, assumes facts not in evidence.

THE WITNESS: Well, you got a study and there's an unblinding problem, that's what your --

BY MR. BAUM:

Q. Correct.

A. And so now the study is completed and analyses are conducted, what are you asking me?

Q. Referring back to the answer you gave me a minute ago where you said that you thought -- I suggested that they should -- that the unblinded patients at baseline ought not to be included in an efficacy evaluation.

Do you remember that?

MR. ROBERTS: Objection, mischaracterizes testimony. You can answer.

THE WITNESS: That's what you said.

BY MR. BAUM:

Q. Yeah, do you recall my having asked you that?

MR. ROBERTS: Objection.

THE WITNESS: Yeah.

BY MR. BAUM:

Q. And you responded that -- I suggested they should not be included at all, and you said, well, maybe what we ought to do is have an analysis done with the unblinded patients in and an analysis with the unblinded patients out.

Do you recall that?

A. Yeah.

MR. ROBERTS: Objection, mischaracterizes testimony.

BY MR. BAUM:

Q. And what I then was asking is so both analyses ought to be conveyed to physicians and academics evaluating the merits of a study like that, correct?

MR. ROBERTS: Objection, calls for speculation.

THE WITNESS: It would be hard for me to speculate on that.

BY MR. BAUM:

Q. Well, the conveying to physicians and academics only the result with the unblinded patients included would be misleading, wouldn't it?

MR. ROBERTS: Objection, calls for speculation.

THE WITNESS: Not necessarily.

BY MR. BAUM:

Q. So it would be okay to do that?

MR. ROBERTS: Objection, calls for speculation, mischaracterizes testimony.

THE WITNESS: I mean, you're talking about a pretty complex speculative situation. You're talking about communications in some unknown forum. I mean, it's pretty hard for me

to respond to what you're asking. And you're talking about very detailed information about a study.

BY MR. BAUM:

Q. Do you think it would be important for physicians and academics who are receiving a manuscript or a poster or a PowerPoint presentation regarding CIT-MD-18 for them to know that there were patients who had unblinding information at baseline?

MR. ROBERTS: Objection, calls for speculation, lacks foundation.

THE WITNESS: Could you repeat the question?

MR. BAUM: Can you read the question back to him.

(The court reporter read back the record as requested.)

THE WITNESS: I would say based on the documents that I received -- that I looked at yesterday, no.

BY MR. BAUM:

Q. No need to convey that information to academics, physicians or parents who are considering having their child take a drug?

MR. ROBERTS: Objection, calls for speculation.

THE WITNESS: I think that to include -- include in communications to physician some information regarding every protocol violation in the study would be impractical.

BY MR. BAUM:

Q. What about when it determines or affects whether or not the P-value is significant or not?

MR. ROBERTS: Objection, calls for speculation, lacks foundation.

THE WITNESS: Can you repeat the question.

BY MR. BAUM:

Q. What if the violation results in the P-value change going from insignificant to significant, depending on whether you included the unblinded patients?

MR. ROBERTS: Objection, calls for speculation, lacks foundation.

THE WITNESS: Again, it would depend upon the overall extent of information.

BY MR. BAUM:

Q. By your standards it would be okay to

omit that information?

MR. ROBERTS: Objection, mischaracterizes witness' testimony.

THE WITNESS: I mean, you're talking about a speculative situation with a lot of vague -- I mean, every study has many protocol violations. There's no study that's done without protocol violations. Those can't be communicated in a top line presentation of a study results.

MR. BAUM: We're going to come right back to that, but we have to change the tape.

MR. ROBERTS: Do you want to take a little break?

THE VIDEOGRAPHER: We'll be going off the record at 10:55 a.m. This marks the end of Media 2.

(Brief recess.)

THE VIDEOGRAPHER: We are back on the record at 11:01 a.m. This marks the beginning of Media 3.

Go ahead, counselor.

BY MR. BAUM:

Q. All right. So can you explain to the

jury what a study report is?

A. A study report is a writeup of the results of a study.

Q. Supposed to be presented to the FDA for evaluating clinical trial's results?

MR. ROBERTS: Objection.

THE WITNESS: Study reports get submitted to the FDA and the FDA evaluates them, yes.

BY MR. BAUM:

Q. They should be accurate?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. Do you know who created the study report for MD-18?

A. No.

Q. Did you participate in creation of the study report for MD-18?

A. I've seen documents that indicate I did.

Q. Did you edit the study report for MD-18?

A. Did I?

Q. Edit the study report for MD-18?

A. Edit?

Q. Yes.
A. Yeah, I provided comments.
Q. So I think I've already handed you Exhibit 10, can you pull that up again.
And Exhibit 10 has this e-mail that was sent to you on April 10th of 2002, and it has "find attached the final, sign-off copy of citalopram pediatric study 18."
Do you see that?
A. Yes.
Q. Were you among the individuals who signed off for the accuracy of study MD-18?
MR. ROBERTS: Objection.
BY MR. BAUM:
Q. Study report?
A. Signed off for the accuracy? I don't know if I'd would put it that way.
Q. How would you put it?
A. Well, if I signed the study report, then I approved it.
Q. Did you review the tables for the primary efficacy outcome data?
A. I have no recollection of doing so.
Q. Do you know whether or not you did?

A. Do I know whether or not I did? I must have.

Q. Was the CIT-MD-18 study report submitted to the FDA?

A. Yes.

Q. Did you decide which tables would be the main -- would be in the main text of the study report and which would be in the appendix?

MR. ROBERTS: Objection.

THE WITNESS: I don't know.

BY MR. BAUM:

Q. Do you know who did?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Do you know whose responsibility it was?

A. No.

Q. Did you review the appendices for Study 18's study report?

A. I don't know.

MR. BAUM: Let's go to Exhibit 11.

(Document marked for identification as Flicker Deposition Exhibit No. 11.)

MR. WISNER: Can we go off the record.

THE VIDEOGRAPHER: We will be going off the record at 11:05 a.m. This marks the end of Media 3.

(Pause.)

THE VIDEOGRAPHER: We are going back on the record at 11:08 a.m. This marks the beginning of Media 4.

Go ahead, counselor.

BY MR. BAUM:

Q. Okay. So I've handed you what we've marked as Exhibit 11. Yes, no?

MR. ROBERTS: I don't think so.

MR. BAUM: Oh, here it is.

MR. ROBERTS: Now we have.

BY MR. BAUM:

Q. Which is the study report for MD-18, and if you look at the middle of the page it says "Report Date: April 8, 2002."

Do you see that?

A. Yes.

MR. ROBERTS: Let the record reflect that it's excerpted pages from the study report.

BY MR. BAUM:

Q. And since this document is actually 2,135 pages long, only certain parts have been selected here as the exhibit.

Have you seen sections of the protocol -- I mean of the study report for MD-18 before?

A. I'm sure I have.

Q. Have you seen it in the last few days to refresh your recollection?

A. Yes.

Q. Okay. So I want to take you through specific sections of it.

Do you see that the initiation date on the cover page here says January 31, 2000.

Do you see that?

A. Mm-hmm.

Q. What is that date?

MR. ROBERTS: Just so we have on the record, what's the difference between Exhibits 10 and 11 that are both study reports?

MR. BAUM: They're the same.

MR. ROBERTS: Okay. Just different excerpts?

MR. BAUM: Well, yeah, and one had an

e-mail attached to it. It was about the sign-off sheet issue.

MR. ROBERTS: Okay.

MR. BAUM: All right. So this one is focused in on the study report itself?

MR. ROBERTS: Okay.

BY MR. BAUM:

Q. So what is the initiation date, January 31, 2000; what is that?

A. Probably first patient entered the study. I don't know what the different definition is of that, but basically first patient entered the study, I believe.

Q. So prior to that, there was a protocol and there was efficacy measures were determined and how the pills are going to be delivered and what the lead-in period -- how long it's going to be and what patient is going to take during the lead-in period and what tests are going to be done per the protocol, that's all set up. And then at some point around January 31, 2000, the patient shows up and does what's in the protocol?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. Is that generally correct?
A. That would be very close to my overall understanding of what the initiation date means.
Q. Okay. And then the completion date is 10 April 2001.
Do you see that?
A. Yes.
Q. What is that?
A. That would approximately be the last day that a patient completed the study.
Q. Okay. And relative to MD-18 with respect to statistical significance, a P-value its used to determine the presence or absence of statistical significance, correct?
MR. ROBERTS: Objection.
THE WITNESS: A P-value is derived from the statistical analysis, yes.
BY MR. BAUM:
Q. And the P-value of less than .05 is the threshold for statistical significance, correct?
MR. ROBERTS: Objection.
THE WITNESS: P of .05, that's the usual nominal level for statistical significance.
BY MR. BAUM:

Q. Let's go to Page 69 under "Efficacy Evaluations" and go to the second paragraph under 10.1.

Do you see that?

A. Mm-hmm.

MR. ROBERTS: It's the one that starts "At Week 8."

BY MR. BAUM:

Q. Yeah. So it says "At Week 8, the LOCF analysis comparing the mean change from baseline and CDRS-R in the citalopram and placebo groups demonstrated a statistically significant treatment effect in favor of citalopram (p=0.038; see Panel 11)."

Do you see that?

A. Yes.

Q. So according to this, the CDRS-R was a positive for efficacy, correct?

A. If by positive for efficacy you mean demonstrated a statistically significant treatment effect, yes.

Q. Because it had a P-value of less than .05, correct?

MR. ROBERTS: Objection.

THE WITNESS: A P of .038.

BY MR. BAUM:

Q. And that's less than .05, correct?
A. Yes.
Q. And then if you go further down the page -- I want to go actually over to Page 70 and under panel -- in Panel 11, at the top there, do you see that the P-value on the right is .038.
Do you see that?
A. Yes.
Q. And that's the change from baseline to Week 8 in the CDRS-R rating scale, correct?
MR. ROBERTS: Objection.
THE WITNESS: Yes.
BY MR. BAUM:
Q. And if you go further down this page to the paragraph that starts "Appendix."
Do you see that?
A. Yes.
Q. And it says, "Appendix Table 6 presents the results from the LOCF analysis for the change from baseline to Week 8 excluding data from 9 patients for whom the study blind was potentially compromised (see Section 5.3.4)."
Do you see that?
A. Yes.

Q. Did you write that sentence?
A. I don't know.
MR. ROBERTS: Objection.
BY MR. BAUM:
Q. Let's go to Page 244.
MS. KIEHN: I didn't hear the answer.
THE WITNESS: I don't know.
BY MR. BAUM:
Q. Do you have any reason to doubt that you might have written it?
A. I don't doubt that I might have written it.
MR. ROBERTS: Objection.
BY MR. BAUM:
Q. Well, we'll come up on that, so let's go to Page 244 of this exhibit.
MR. ROBERTS: It's towards the back, almost all the way in the back.
BY MR. BAUM:
Q. And this is Appendix Table 6, do you see that at the top?
A. Mm-hmm, yes.
Q. And it says, "Change from Baseline CDRS-R after 8 weeks, ITT Sub-population - LOCF."

Do you see that?

A. Yes.

Q. And then in a footnote at the bottom, it says, "Note: Patients (105, 113, 114, 505, 506, 507, 509, 513, 514) with drug dispensing error are excluded."

Do you see that?

A. Yes.

Q. Did you draft that line?

A. I don't know.

Q. Do you think you might have?

MR. ROBERTS: Objection.

THE WITNESS: It's possible that I did.

BY MR. BAUM:

Q. So these were the nine patients in CIT-MD-18 who were subject to a dispensing error, correct?

MR. ROBERTS: Objection.

THE WITNESS: I don't know that. I learned yesterday that there were nine such patients.

BY MR. BAUM:

Q. Okay. And this table is saying there's an analysis being done with those patients excluded,

correct?

A. That's my understanding.

Q. And if you look over to the next page.

MR. ROBERTS: Page 946?

MR. BAUM: Yes.

BY MR. BAUM:

Q. And if you look at the -- over on the right, see that P-value of .052?

A. Yes.

Q. That's above .050, correct? That was on both of them, sorry.

It's also on Page 244? Both of these have that.

MR. ROBERTS: The two pages are exactly the same?

MR. BAUM: Yeah, yeah, they are the same. I don't know what -- I don't know how that happened. All right, so sorry about that.

BY MR. BAUM:

Q. So referring back to Page 244, just to be clear, and relative to the -- this table that has, according to the note, the patients subject to the dispensing error excluded, the Week 8 result for the change from baseline of CDRS after 8 weeks had a

P-value of .052, correct?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And that's greater than .050, correct?

A. .052 is greater than .050.

Q. And that's not a statistically significant outcome, is it?

MR. ROBERTS: Objection.

THE WITNESS: It depends upon what criterion is being used.

BY MR. BAUM:

Q. If the criterion prespecified in the study report was .050, less than .050 determines statistical significance, a result of .052 was not statistically significant, correct?

MR. ROBERTS: Objection, calls for speculation.

THE WITNESS: A P-value of .052 given a specified nominal level of significance less than .050 would not meet that criterion.

BY MR. BAUM:

Q. So it was negative, not in favor of Celexa's efficacy, correct?

MR. ROBERTS: Objection, mischaracterizes testimony.

THE WITNESS: I wouldn't call that negative, no.

BY MR. BAUM:

Q. It's non-statistically significant P-value, correct?

MR. ROBERTS: Objection.

THE WITNESS: It fails to meet the criterion of statistical significance.

BY MR. BAUM:

Q. So by excluding these nine patients, the P-value went from a statistically significant .038 to a statistically insignificant .052, right?

MR. ROBERTS: Objection, mischaracterizes the document.

THE WITNESS: Yeah, I don't think the statistically insignificant is a word that I would use.

BY MR. BAUM:

Q. What would you use?

A. I would say based on the data we're looking at it, the P-value seems to have gone from .038 to .052.

Q. And that crossed the .050 requirement for statistical significance for CIT-MD-18, correct?

MR. ROBERTS: Objection.

THE WITNESS: The .038 was below the criterion for statistical significance, and the .052 was slightly above.

BY MR. BAUM:

Q. Right. So by excluding the nine patients, the P-value went from being below the .050 criterion to being above the .050 criterion, correct?

MR. ROBERTS: Objection.

THE WITNESS: Yeah.

BY MR. BAUM:

Q. And that would be the difference between the CIT-MD-18 being considered a positive or a negative trial under its primary efficacy measure, correct?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. So the primary efficacy measure with these nine patients excluded was statistically significant; is that what you're saying?

MR. ROBERTS: Objection, mischaracterizes testimony.

THE WITNESS: No.
BY MR. BAUM:
Q. So it was not statistically significant?
MR. ROBERTS: Objection, mischaracterizes testimony.
THE WITNESS: Can you repeat the question.
BY MR. BAUM:
Q. The primary outcome measure for CIT-MD-18 with the nine patients excluded was not statistically significant?
MR. ROBERTS: Objection.
THE WITNESS: The analysis with the nine patients excluded appears to not be above the criterion of .05.
BY MR. BAUM:
Q. So that would be the difference between its being positive or negative under the primary efficacy measure, correct?
MR. ROBERTS: Objection.
THE WITNESS: Between what being positive or negative?
BY MR. BAUM:
Q. Including or excluding those nine

patients.

MR. ROBERTS: Objection.

THE WITNESS: Can you repeat the question?

BY MR. BAUM:

Q. By excluding the nine patients who are subject to the dispensing error, the P-value went from .038 to .052, correct?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And that's crossing the barrier of the .050 barrier between what would be considered a positive result and a negative result per the protocol for the primary efficacy measure, correct?

MR. ROBERTS: Objection.

THE WITNESS: I didn't see that in the protocol. The protocol specified a statistical significance level of .05.

BY MR. BAUM:

Q. That's correct. So if the protocol specified .050 as the criterion for determining statistical significance and a positive result for the primary efficacy measure, going from .038 to .052

crossed that line from being positive outcome to negative outcome, correct?

MR. ROBERTS: Objection, mischaracterizes testimony, asked and answered.

THE WITNESS: I would regard that as a pretty vague and incomplete assessment of the study results.

BY MR. BAUM:

Q. So .052 was statistically significant; is that what you're saying?

MR. ROBERTS: Objection, mischaracterizes statement, asked and answered.

THE WITNESS: .052 is above the criteria for statistical significance.

BY MR. BAUM:

Q. So it was not statistically significant?

MR. ROBERTS: Objection, asked and answered.

THE WITNESS: It's above the criterion for statistical significance.

MR. BAUM: I want my question answered, and you have to quit guiding him.

MR. ROBERTS: I haven't been --

MR. BAUM: You are guiding him.

MR. ROBERTS: I'm giving the --

MR. BAUM: You need to knock it off.

MR. ROBERTS: -- reason for my objection.

MR. BAUM: Just knock it off.

MR. ROBERTS: That is totally allowed under the rules. You're not getting the answer that you want. No reason to raise your voice.

MR. BAUM: I want my --

MR. WISNER: Respectfully, he has not answered the question.

MR. BAUM: I want my --

MR. ROBERTS: Respectfully, if Kristin can't talk, you can't talk.

MR. BAUM: I want my question answered so --

MR. ROBERTS: He has answered your question twice now.

MR. BAUM: No, he's changed the question and answered a different question.

MR. ROBERTS: You just don't like your answer.

MR. BAUM: Okay. I'm going to be adding extra time for your interfering. Every time --

MR. ROBERTS: I talked like two minutes.
MR. BAUM: Yes, for every interference, I am going to be adding time.
MR. ROBERTS: You're wasting time.
MR. BAUM: You are wasting time.
MR. ROBERTS: Okay.
BY MR. BAUM:
Q. So what I want is an answer to my question.
MR. ROBERTS: For a third time.
MR. BAUM: Read the question.
(The court reporter read back the record as requested.)
MR. ROBERTS: Objection.
THE WITNESS: That's not enough information for me to --
BY MR. BAUM:
Q. The .052 was not a statistically significant P-value, correct?
MR. ROBERTS: Objection.
THE WITNESS: .052 is the above the criterion for statistical significance.
BY MR. BAUM:
Q. So you're answering a different question

to what I'm asking you.

I want to know is .052 a not statistically significant P-value?

MR. ROBERTS: Objection, asked and answered, calls for speculation.

THE WITNESS: I can't really answer that question.

BY MR. BAUM:

Q. Why not?

MR. ROBERTS: Objection.

THE WITNESS: Because I think the language is of questionable validity.

BY MR. BAUM:

Q. So the P-value determination, per the protocol, is whether it's above or below .050, correct?

MR. ROBERTS: Objection.

THE WITNESS: That was the -- actually, I don't even know that. Is that in the protocol? In the power analysis it mentions .05.

MR. BAUM: Okay. We're going to take a break.

THE VIDEOGRAPHER: We will be going off the record at 11:25 a.m. This marks the end of

Media 4.

(Pause.)

THE VIDEOGRAPHER: We are back on the record at 11:27 a.m. This marks the beginning of Media 5.

Go ahead, counsel.

BY MR. BAUM:

Q. So we're going back to Exhibit 9, which is the protocol. Take a look at Page 330.

MR. ROBERTS: Hold on, let me get there.

BY MR. BAUM:

Q. Under Section 12.5 Efficacy Analysis -- Efficacy Analyses.

A. Yes.

Q. Okay. It says, "All efficacy analyses will be based on the ITT population, i.e., patients who took at least one dose of study medication and had at least one post-baseline efficacy assessment of CDRS-R score. All tests will be two-sided with 5% significance level for main effects."

Do you see that?

A. Yes.

Q. Does that indicate to you that the P-value needs to be above -- I mean below .05 for it to

be significant?

MR. ROBERTS: Objection.

THE WITNESS: This indicates to me that it would be less than or equal to .05.

BY MR. BAUM:

Q. Okay. So a P-value of .038 would be less than the 5% significance level, correct?

MR. ROBERTS: Objection, asked and answered.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And .052 would be above the significance level for the specified outcome, correct?

MR. ROBERTS: Objection, asked and answered.

THE WITNESS: Yes.

BY MR. BAUM:

Q. So .052 would be a nonsignificant P-value, correct?

MR. ROBERTS: Objection, mischaracterizes testimony, asked and answered.

THE WITNESS: That's not what I would say.

BY MR. BAUM:

Q. What would you say?
A. I would say that it fails to achieve statistical significance, the statistical significance criterion of .05.
Q. And that's the difference between whether or not CIT-MD-18 was a positive study or a negative study, correct?
MR. ROBERTS: Objection.
THE WITNESS: No.
BY MR. BAUM:
Q. Why not?
A. The overall positive or non-positive assessment of the study is based upon the overall assessment of the results from the study.
Q. So if all of the secondary outcome measures were negative and the observed cases was negative and the primary outcome measure is .05 -- P-value is .052, it would be not a positive trial, correct?
MR. ROBERTS: Objection, requires speculation.
THE WITNESS: I mean, my understanding of the interactions with the FDA is that they are not so narrow minded. The results from a

clinical trial need to be evaluated in the context of the study and in their overall picture of the results obtained and --

BY MR. BAUM:

Q. So a .0 --

MS. KIEHN: Let him finish his answer.

BY MR. BAUM:

Q. You have more to say?

A. No, that's good.

Q. So a P-value of .052 or a P-value above .05 would not have a bearing on whether or not a study was considered positive or negative?

MR. ROBERTS: Objection, asked and answered, mischaracterizes the witness' testimony.

THE WITNESS: The P-value criterion is a important tool in the assessment of the study's outcome.

BY MR. BAUM:

Q. And a P-value of above .050 would indicate that it was a statistically insignificant result and not positive for the drug, correct?

MR. ROBERTS: Objection, asked and answered.

THE WITNESS: I wouldn't say that.

BY MR. BAUM:

Q. So it's your testimony that a P-value above .050 suggests that the trial is positive for a drug; is that what you're saying?

MR. ROBERTS: Objection, mischaracterizes testimony, asked and answered.

THE WITNESS: I wouldn't say that.

MR. ROBERTS: Now you can go.

THE WITNESS: I wouldn't say that, no.

MR. BAUM: Okay.

MR. ROBERTS: Are we done with 9, or are we still on Exhibit 9?

MR. WISNER: Why don't you just wait until he asks the next question.

MR. ROBERTS: If Kristin can't talk, you can't talk.

MR. BAUM: You're just adding time.

MR. ROBERTS: So are you.

BY MR. BAUM:

Q. Okay. So the difference between a P-value of .038 with the nine patients included and the .052 P-value with the patients subject to the dispensing error not included would be a substantial

difference, correct?

MR. ROBERTS: Objection, calls for speculation.

THE WITNESS: Incorrect.

BY MR. BAUM:

Q. Why?

A. It's a trivial difference, .014.

Q. And so the fact that it crosses the .05 barrier is insignificant to you?

MR. ROBERTS: Objection, mischaracterizes the witness' testimony.

THE WITNESS: No.

BY MR. BAUM:

Q. It is significant?

MR. ROBERTS: Objection.

THE WITNESS: It has an impact upon how the results are interpreted.

BY MR. BAUM:

Q. So it's a substantial difference?

A. No.

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. So if it has an impact, but it's -- never mind.

This -- I'm going to refer you back to this Appendix Table 6.

MR. ROBERTS: Is that Exhibit 10?

MR. BAUM: Yes.

MR. WISNER: No, it's Exhibit 11.

MR. BAUM: It's Exhibit 11, sorry.

MR. ROBERTS: Okay, thank you.

BY MR. BAUM:

Q. You see that the subpopulation is 166 patients. It's 81 in the placebo group and 85 in the citalopram group?

A. Okay.

Q. That's actually a difference of eight between the 174 that are included in the table used for the study reports Panels 11 and 12.

Do you know why there was only a difference of eight instead of nine?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. The 166 patients that were on this table are greater than the 160 patients needed to power CIT-MD-18, right?

MR. ROBERTS: Objection.

THE WITNESS: The study protocol called for 160 patients.

BY MR. BAUM:

Q. And this is 166, so it's greater than that, correct?

A. 166 is greater than 160.

Q. Okay. So let's go back to Page 70 of the study report, and under Panel 12, it says, Appendix Table 6 presents the results from the LOCF analysis for the change from baseline to Week 8 excluding data from the 9 patients for whom the study blind was potentially compromised (see Section 5.3.4). The results from the Week 8 LOCF analysis comparing the mean change from baseline in CDRS-R in the citalopram and placebo groups was not substantially affected by the exclusion of those patients. The LSM difference decreased from .46 to .43 and the P-value increased from .038 to .052.

Do you see that?

A. Yes.

Q. Do you know who drafted that language?

A. I think I saw it yesterday.

Q. And who drafted that language?

MR. ROBERTS: Objection.

THE WITNESS: I think I did.

BY MR. BAUM:

Q. And here it says that "9 patients for whom the study blind was potentially compromised."

Do you see that?

A. Yes.

Q. Do you recall there being discussions at Forest about how to characterize the dispensing error that occurred during the conduct of study MD-18?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Are you aware that the discussions did occur including you regarding how to characterize the dispensing error?

MR. ROBERTS: Objection.

THE WITNESS: How to characterize? I mean, I saw documents regarding the dispensing error.

BY MR. BAUM:

Q. Well, do you think it's an accurate characterization of CIT-MD-18 to say that the study blind was potentially compromised?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. You don't think it was actually compromised?

A. For certain patients.

Q. Do you think -- you don't think it was actually compromised for those certain patients?

MR. ROBERTS: Objection.

THE WITNESS: Well, I don't know, but I think it seems to me -- well, I'm speculating. What's the question again?

BY MR. BAUM:

Q. You don't think that the blind was unmistakenly violated for these nine patients?

A. No.

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. You don't think that the blind was compromised for these nine patients?

MR. ROBERTS: Objection. He testified he doesn't recall the dispensing error.

THE WITNESS: I think it was potentially compromised. Seems to me perfectly possible that none of those nine patients had any hint whatsoever of what their treatment group was.

BY MR. BAUM:

Q. But the investigators knew, right?

MR. ROBERTS: Objection, mischaracterizes testimony. No foundation.

THE WITNESS: I don't know.

BY MR. BAUM:

Q. Were the investigators informed what patients had received the dispensing error tablets?

MR. ROBERTS: Objection, lacks foundation.

THE WITNESS: I did see a document that communicated to the investigators that there was a dispensing error.

BY MR. BAUM:

Q. So they would have known which patients received the dispensing error tablets, correct?

MR. ROBERTS: Objection, mischaracterizes testimony.

THE WITNESS: That would require speculation. The investigators would have to take further steps.

BY MR. BAUM:

Q. Forest took steps to inform the investigators which patients received the dispensing

error tablets, correct?

MR. ROBERTS: Objection, mischaracterizes the witness' testimony, requires speculation.

THE WITNESS: What's the question?

BY MR. BAUM:

Q. Forest communicated to the investigators which patients had received dispensing error tablets, correct?

MR. ROBERTS: Objection.

THE WITNESS: That I don't know. I mean, any -- they identified which supplies. Based on what I saw, they identified which supplies were incorrectly packaged.

BY MR. BAUM:

Q. Did they also identify which patients were provided the incorrect tablets?

MR. ROBERTS: Objection.

THE WITNESS: I don't know.

BY MR. BAUM:

Q. I just wanted to admonish you that I want you to tell me the truth. I don't want you to tell me things based on what he's objecting. I want you to tell me what you recall.

MR. ROBERTS: Objection. He is telling the truth.

BY MR. BAUM:

Q. And I want you to be able to tell me what you actually know, not what you are tipped off by the objections, but by what you actually recall.

MR. ROBERTS: That's what your --

MS. KIEHN: He testified he doesn't --

MR. ROBERTS: The witness is testifying --

MS. KIEHN: -- recall the unblinding.

MR. ROBERTS: He testified he doesn't recall the unblinding. The witness knows he's under oath, and the witness is telling the truth.

THE WITNESS: I don't actually recall anything with the unblinding that you're talking about. I'm basing anything I say based upon documents I saw yesterday.

BY MR. BAUM:

Q. Okay. So do you know who the target audience was for the CIT-MD-18 study report?

MR. ROBERTS: Objection.

THE WITNESS: FDA.

BY MR. BAUM:

Q. Did the FDA decide whether to approve Forest's request for a Lexapro pediatric major depressive disorder indication partially on the basis of the study report for CIT-MD-18?

MR. ROBERTS: Objection.

THE WITNESS: CIT-MD-18 was filed in support of the Lexapro -- of the Lexapro child and adolescent depression indication.

BY MR. BAUM:

Q. If they accepted this characterization of the P-value shift from .038 to .052 not being substantial, they would have been misled, right?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Had an impact on the validity of the outcome, correct?

MR. ROBERTS: Objection.

THE WITNESS: What had an impact on the validity?

BY MR. BAUM:

Q. The shift from P-value of .038 to .052.

MR. ROBERTS: Objection.

THE WITNESS: Does that shift have an impact upon the validity of the outcome of the study?

MR. BAUM: Yes.

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Why not?

A. It's trivial.

Q. So it's trivial because the difference between .038 and .052 is .014; is that what you're saying?

MR. ROBERTS: Objection.

THE WITNESS: I'd say that's part of the reason.

BY MR. BAUM:

Q. And so it didn't matter whether it crossed the .050 barrier, correct?

MR. ROBERTS: Objection.

THE WITNESS: I would say that needs to be taken into consideration.

BY MR. BAUM:

Q. So it's a factor to take into consideration?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And it is an important factor, isn't it?

MR. ROBERTS: Objection.

THE WITNESS: It's a factor.

BY MR. BAUM:

Q. Let's go to Page 100, which is Table 3.1.

So if you look at Table 3.1 it says the Primary Efficacy, Change from Baseline in CDRS-R, do you see that, after 8 Weeks.

A. Yes.

Q. If you add the patients up there, you'll see that there's 85 placebo and 89 citalopram patients, correct?

A. Yes.

Q. And that added up to 174, correct?

A. I agree.

Q. So this table included the patients who had the dispensing error, right?

MR. ROBERTS: Objection.

THE WITNESS: I would assume so.

BY MR. BAUM:

Q. Do you know why this table was included as a primary efficacy outcome and not Appendix Table 6?

MR. ROBERTS: Objection.

THE WITNESS: Because this is the ITT population.

BY MR. BAUM:

Q. All right. So there was a validity problem with some of those patients, though, correct?

MR. ROBERTS: Objection.

THE WITNESS: The validity of those patients, those patients' blind was potentially compromised, yes.

BY MR. BAUM:

Q. So why not just exclude those?

MR. ROBERTS: Objection.

THE WITNESS: Well, that was the purpose of the other table.

BY MR. BAUM:

Q. Well, the purpose could also be that that other table could have been the primary efficacy outcome, and this could have -- this Table 3.1 could have been in Appendix 6 as additional information, correct?

MR. ROBERTS: Objection.

THE WITNESS: Well, the protocol specifies an ITT population, so excluding the patients, excluding those patients would not have been consistent with the analysis, the population group defined in the protocol, or you would have had to amend the protocol.

BY MR. BAUM:

Q. Do amendments get done to correct mistakes?

MR. ROBERTS: Objection.

THE WITNESS: It's possible to amend a protocol, yes.

BY MR. BAUM:

Q. To correct mistakes, correct?

MR. ROBERTS: Objection.

THE WITNESS: For any reason, to add an efficacy measure or something.

BY MR. BAUM:

Q. And do you think it should have been noted that the primary efficacy measure included these eight patients wherever this primary efficacy measure was disseminated?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Because it's not substantial --

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. -- per you?

A. What's not substantial?

Q. To include eight patients whose outcomes were questionably valid?

MR. ROBERTS: Objection.

THE WITNESS: I would agree that the difference in the results was not substantial, yes.

BY MR. BAUM:

Q. Okay. So that's kind of answering a different question than what I asked. Shouldn't there be an asterisk of some form on Table 3.1 to indicate that it includes patients whose outcomes may have not been valid because they were unblinded at baseline?

MR. ROBERTS: Objection, calls for speculation.

THE WITNESS: Yeah, well, that's -- I don't know.

BY MR. BAUM:

Q. That would have been a more valid

presentation, wouldn't it?

MR. ROBERTS: Objection.

THE WITNESS: The presence of a potential -- potentially unblinding protocol violation should be -- should be presented in the study report. That it should be presented in this table seems pretty -- I don't know.

BY MR. BAUM:

Q. Well, you wouldn't know by looking at this?

MR. ROBERTS: Hold on. He wasn't -- were you done with your answer?

THE WITNESS: I said enough, I'd say. No, I was saying that it should be attached to this table? Not necessarily.

BY MR. BAUM:

Q. But it could be, right?

MR. ROBERTS: Objection.

THE WITNESS: I would think it would be -- I would think it would be more important to attach it to the table where you're excluding the patients. This is a comprehensive table, the entire ITT population.

BY MR. BAUM:

Q. Yeah, but by looking at this, you don't know whether or not there's unblinded patients included, do you?

MR. ROBERTS: Objection.

THE WITNESS: This is the entire ITT population.

BY MR. BAUM:

Q. Yeah. So you don't know whether or not the unblinded patients are included by looking at this table, do you?

MR. ROBERTS: Objection.

THE WITNESS: By looking at this table, do I -- well, I guess I do based on the numbers. Me, yes.

BY MR. BAUM:

Q. Okay. So in the MD-18 publication in the American Journal of Psychiatry where it reports this information from Table 3.1, is there any way of telling that eight or nine of those patients had been subject to a dispensing error?

MR. ROBERTS: Objection.

THE WITNESS: I don't know. I haven't seen that paper.

BY MR. BAUM:

Q. You've never seen it?

MR. ROBERTS: Objection.

A. I don't know.

BY MR. BAUM:

Q. You weren't shown it yesterday?

MR. ROBERTS: Objection.

MS. KIEHN: Don't answer.

MR. BAUM: You're instructing him not to answer whether or not he saw the MD-18 manuscript published in the American Journal of Psychiatry?

MS. KIEHN: Yesterday, yes.

MR. BAUM: Really?

MS. KIEHN: Mm-hmm, unless it refreshed his recollection about something.

MR. ROBERTS: If it refreshed your recollection about a particular thing, you could answer, unless, no.

THE WITNESS: What's the question?

BY MR. BAUM:

Q. In the MD-18 manuscript published in the American Journal of Psychiatry, which reported the data from Table 3.1 as the primary efficacy measure, you weren't able to tell whether or not there were eight or

nine unblinded patients included in that data, correct?

MR. ROBERTS: Objection.

THE WITNESS: Oh, no, I don't know that. How do I know that?

BY MR. BAUM:

Q. By looking at the manuscript, did it have any reference to those eight or nine patients being excluded?

MS. KIEHN: Show him the document.

THE WITNESS: I don't know.

BY MR. BAUM:

Q. Okay. Do you think Table 3.1 is a valid representation of the intent-to-treat analysis, even though it included patients who had been subject to a dispensing error at baseline?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. They were unblinded at baseline before their first evaluation, why should they be included in the patient population at that point?

MR. ROBERTS: Objection, testifying.

THE WITNESS: I don't know that the patients can be identified as unblinded. I'd

say the blind was potentially compromised. The validity of the blind for those patients was open to question.

BY MR. BAUM:

Q. For both the patients and the investigators, correct?

MR. ROBERTS: Objection.

THE WITNESS: At some point the investigators received potentially unblinding information.

BY MR. BAUM:

Q. All right. So from your perspective, it's scientifically appropriate to count patients who have been exposed to unblinding information prior to their first evaluation at Week 1, even though that exposure occurred at baseline prior to the evaluation?

MR. ROBERTS: Objection.

THE WITNESS: No, I don't think patients should be exposed to unblinding information.

BY MR. BAUM:

Q. It compromises the validity of the outcome?

MR. ROBERTS: Objection.

THE WITNESS: It can potentially

undermine the validity.

BY MR. BAUM:

Q. Let's go to Page 63, Section "7.0 Changes in the Conduct of the Study and Planned Analyses."

In the last paragraph there it says, "Nine patients (Patients 105, 113, 114, 505, 506, 507, 509, 513 and 514) were mistakenly dispensed 1 week of medication with potentially unblinding information (tablets had an incorrect color coating)."

Do you see that?

A. Do I see that, yes.

Q. Did you write that?

A. I don't know.

Q. "Therefore, in addition to the analysis specified in Section 6.4.1 for the primary efficacy parameter, a post-hoc analysis was performed on an ITT subpopulation that excluded these 9 patients."

Do you see that?

A. Yes.

Q. Do you recall the origin of the language "potentially unblinding information"?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. The post-hoc analysis referred to in this paragraph was Table 6 in the appendix, correct?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. It's at Page 244, if you want to take a look at it.

A. Here?

Q. Yeah.

A. The same one we were just looking at?

Q. We were just looking at Table 3.1, but I'm asking you to take a look at Appendix Table 6, which is at 244, page 244. Appendix Table 6 is the one that had the patients excluded.

A. ITT subpopulation, okay.

Q. Okay. So is that Appendix Table 6 the post-hoc analysis that is referred to here on Page 63?

MR. ROBERTS: Objection.

THE WITNESS: I'm not sure. As you pointed out, I guess the numbers are off, but I assume so.

BY MR. BAUM:

Q. Do you think that Table 6 actually represented a more correct efficacy analysis for the

valid intent-to-treat population?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Do you consider it more valid than the Table 3.1 with the unblinded patients included?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. You don't consider it more valid?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. You consider them equally valid?

MR. ROBERTS: Objection.

THE WITNESS: I think this should be examined.

BY MR. BAUM:

Q. By whom?

A. By anyone reviewing this study.

Q. By this you're referring to Appendix Table 6, correct?

A. Yes.

Q. Let's go to Page 83 of the study report

under "Validity."

You see that?

A. Yes.

Q. It says, "The study was designed to provide a valid, prospectively randomized, double-blind comparison of the treatment effects of citalopram and placebo."

Do you see that?

A. Yes.

Q. And it says, "A medication packaging error partially compromised the study blind for 9 of the 174 patients. Post-hoc analysis excluding these patients supported the results from the intent-to-treat analysis. It is concluded that the study results are valid and interpretable."

Did I read that correctly?

A. Yes.

Q. So the line the post-hoc analysis excluding these patients supported the results from the intent-to-treat analysis is actually not true, right?

MR. ROBERTS: Objection.

THE WITNESS: It's actually not true, right? How am I supposed to answer that question?

BY MR. BAUM:

Q. Okay. So it's not accurate for this line to say "post-hoc analysis excluding these patients supported the results from the intent-to-treat analysis"?

MR. ROBERTS: Objection.

THE WITNESS: That Table 6 was supportive, the results were supportive of the conclusion that study was showing treatment effect.

BY MR. BAUM:

Q. A statistically significant treatment effect?

MR. ROBERTS: Objection.

THE WITNESS: No. It failed to achieve the nominal .05 criterion of statistical significance.

BY MR. BAUM:

Q. So that to some degree contradicts the assertion that the study results were statistically significant, correct?

MR. ROBERTS: Objection.

THE WITNESS: I'd say it's supportive. It might undermine the robustness.

BY MR. BAUM:

Q. And undermine robustness is something that ought to have been conveyed to physicians and academics evaluating the merits of Study 18, correct?

MR. ROBERTS: Objection.

THE WITNESS: It's -- I'd stay it's a matter of how much information is to be conveyed.

BY MR. BAUM:

Q. It's an important piece of information?

MR. ROBERTS: Objection.

THE WITNESS: Important? To the extent that everything in the study report is important, yes.

BY MR. BAUM:

Q. Well, the .052 P-value was a negative result, not a positive one, correct?

MR. ROBERTS: Objection.

THE WITNESS: You know, negative is in my vocabulary not a legitimate description of the finding.

BY MR. BAUM:

Q. It was not a positive one, correct?

MR. ROBERTS: Objection.

THE WITNESS: It failed to achieve statistical significance based on the criterion of .05.

BY MR. BAUM:

Q. Is that why the results were put in Appendix 6, were relegated to appendix and were not reported as the primary outcome results?

MR. ROBERTS: Objection.

THE WITNESS: The placement of the table, are you suggesting that the placement -- what are you suggesting?

BY MR. BAUM:

Q. Well, Appendix Table 6 was placed in the appendix because it had a P-value that was above .050 and was not supportive of a positive outcome?

MR. ROBERTS: Objection.

THE WITNESS: It looks to me that Appendix 6, that it was placed in the appendix because it was a subpopulation analysis. Aren't all the tables in the appendix?

MR. BAUM: No. Table 3.1 is in the body of the report.

MR. ROBERTS: Objection, it's a statement.

BY MR. BAUM:

Q. Appendix Table 6 was relegated to not being the primary outcome result because it had a P-value above .050, correct?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Was there some concern about the reporting it as a primary outcome measure because of its P-value?

MR. ROBERTS: Objection.

THE WITNESS: Not that I know of.

BY MR. BAUM:

Q. Same here in Page 83, that post-hoc analysis excluding these patients supported the results from the intent-to-treat analysis; that was misleading, wasn't it?

MR. ROBERTS: Objection.

THE WITNESS: I think that's accurate.

BY MR. BAUM:

Q. It's accurate to say that the post-hoc analysis excluding these patients supported the results from the intent-to-treat analysis?

A. Yes.

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. Because a P-value of .052 supports the positive outcome for the trial, correct?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. Is that what you're are saying?

A. Because the difference between the two analyses in outcome were minimal in magnitude.

Q. But the one was statistically significant and the other wasn't, correct?

MR. ROBERTS: Objection.

THE WITNESS: One -- the secondary analyses did not meet the criterion on the .05 -- less than .05 criterion for statistical significance.

BY MR. BAUM:

Q. So when it did not meet the criterion for statistical significance, it failed to support the positive outcome asserted by Table 3.1, correct?

MR. ROBERTS: Objection, asked and answered multiple times.

THE WITNESS: It's supportive in terms of the mean effect that was observed.

BY MR. BAUM:

Q. But not supportive with respect to the P-value, correct?

MR. ROBERTS: Objection.

THE WITNESS: It's not identical in terms of the P-value. If one focuses exclusively on the .05 level as a yes or no criterion, then it's not -- then obviously it's not the same.

BY MR. BAUM:

Q. And so it's not supportive?

MR. ROBERTS: Objection, asked and answered, requires speculation.

THE WITNESS: To my mind, it's clearly supportive because it's the difference is numerically trivial.

BY MR. BAUM:

Q. Does including these eight unblinded patients affect whether or not the trial was interpretable?

MR. ROBERTS: Objection.

THE WITNESS: Well, interpretable, as we previously discussed, is an ill-defined term.

BY MR. BAUM:

Q. Well, it was in -- right here it says, it is concluded that the study results are valid and interpretable. That's in the report that you approved and may have even written this line.

A. Mm-hmm.

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. Does having eight unblinded patients included in the primary efficacy measure affect the validity or interpretability of the study?

MR. ROBERTS: Objection, asked and answered.

THE WITNESS: I'd say it's relevant.

BY MR. BAUM:

Q. In what way?

A. In that their potential unblinding needs to be considered.

MR. BAUM: We're going to take a short break.

THE VIDEOGRAPHER: We will be going off the record at 12:07 p.m. This marks the end of Media 5.

(Brief recess.)

THE VIDEOGRAPHER: We are back on the

record at 12:17 p.m. This marks the beginning of Media 6.

Go ahead, counselor.

BY MR. BAUM:

Q. Okay. We're going to start going over some of the secondary outcome measures for MD-18.

Do you recall that the secondary outcome measures were each negative for MD-18?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Do you dispute whether or not they were negative?

MR. ROBERTS: Objection.

THE WITNESS: Excuse me?

BY MR. BAUM:

Q. Do you dispute whether or not they were negative, or you just don't recall it?

MR. ROBERTS: Objection.

THE WITNESS: I don't recall.

BY MR. BAUM:

Q. I thought you were going to say more.

A. I don't recall the secondary efficacy outcome measure results.

Q. Let's go to Page 101, Table 3.2. This is the statistical table reflecting the secondary endpoint of "CGI Improvement after 8 weeks," correct?

A. Yes.

Q. And this chart is dated October 30th, 2001. Do you see that, up at the top right?

A. Yes.

Q. And the P-value listed for the difference between Celexa and placebo at Week 8 is .257, correct?

A. Yeah.

Q. And that's not statistically significant, is it?

MR. ROBERTS: Objection.

THE WITNESS: It's above the criteria for statistically significant difference.

BY MR. BAUM:

Q. So that's not statistically significant, is it?

MR. ROBERTS: Objection.

THE WITNESS: It fails to achieve statistical significance.

BY MR. BAUM:

Q. Yeah, that means it's not statistically

significant, correct?

MR. ROBERTS: Objection.

THE WITNESS: I would not call it insignificant or not statistically significant. I would say it fails to achieve the criterion.

BY MR. BAUM:

Q. Okay. So the secondary endpoint of CGI improvement was negative for efficacy, correct?

MR. ROBERTS: Objection.

THE WITNESS: No. I mean, you're talking about one analysis and the ITT population using the last observation carried forward.

BY MR. BAUM:

Q. It's not a positive outcome?

MR. ROBERTS: Objection.

THE WITNESS: What is not a positive outcome?

BY MR. BAUM:

Q. .257.

MR. ROBERTS: Objection.

THE WITNESS: The difference between the placebo and citalopram groups in the ITT population using the last observation carried

forward analysis of the CGI Improvement Scale at the end of Week 8 fails to achieve the criteria of .05 statistically significant level.

BY MR. BAUM:

Q. Let's go to the next page 102, which is Table 3.3, and this is the secondary efficacy measure for "Change from Baseline in CGI Severity after 8 weeks."

Do you see that?

A. Yes.

Q. And do you see the P-value over on the right there is .266?

A. Yes.

Q. And that's not statistically significant either, is it?

MR. ROBERTS: Objection.

THE WITNESS: The P-value .266 does not meet the criterion for statistical significance of .05.

BY MR. BAUM:

Q. So the secondary endpoint of CGI severity was not positive for efficacy, was it?

MR. ROBERTS: Objection.

THE WITNESS: In the analysis at Week 8 of the ITT population using last observation carried forward approach, the P-value for the difference between the placebo and citalopram groups failed to achieve a statistically significant level of .05.

BY MR. BAUM:

Q. Let's go to the next table, Table 3.4 on Page 103, and you see this is the secondary outcome for the CGAS secondary efficacy measure.

Do you see that?

A. Yes.

Q. And the P-value there is .309.

Do you see that?

A. Yes, I do.

Q. And that's not statistically significant, correct?

MR. ROBERTS: Objection.

THE WITNESS: I would say that the difference between the citalopram and placebo treatment groups in the ITT population using the last observation carried forward approach at Week 8 on the CGAS scale fails to achieve the criterion of .05 in this analysis.

BY MR. BAUM:

Q. Okay. And let's go over to the next page for the secondary efficacy measure of "Change from Baseline in K-SADS-P Depression Module after 8 weeks."

Do you see that?

A. Yes.

Q. And the P-value for that one is .105?

A. Yes.

Q. And that's not statistically significant, is it?

MR. ROBERTS: Objection.

THE WITNESS: I would say that the analysis of the K-SADS-P depression module in the ITT population using the last observation carried forward approach at Week 8 does not achieve in its treatment effect comparing citalopram versus placebo the statistically significant level of .05.

BY MR. BAUM:

Q. And that was true for all of the secondary outcomes, correct?

MR. ROBERTS: Objection.

THE WITNESS: That seemed to be the case for the ones that we just looked at.

BY MR. BAUM:

Q. Okay. Let's take a look at Page 72 under "Efficacy Conclusions," the second paragraph, it says, significant differences -- let me wait for you to get there. So it says in the second paragraph under Efficacy Conclusions, Section 10.5.

Do you see that? It's significant differences, second paragraph.

A. Is it the wrong page?

MR. ROBERTS: Yeah, that's the page. Michael is right here.

THE WITNESS: Okay.

BY MR. BAUM:

Q. So it says significant differences, P less than 0.05, indicative of greater improvement in citalopram patients than placebo patients were also observed on the CGI-I, CGI-S and CGAS.

Do you see that?

A. Yes.

Q. That's contradictory to what we just read as the eight-week outcomes for those secondary outcome measures; isn't it?

MR. ROBERTS: Objection.

THE WITNESS: A significant difference

less than .05 was not found on these measures in the Week 8 analysis of these variables comparing to the citalopram treatment groups in the ITT population using the last observation carried forward approach at Week 8.

BY MR. BAUM:

Q. Did you write this sentence?

MR. ROBERTS: Objection.

THE WITNESS: I don't know.

BY MR. BAUM:

Q. This sentence suggests that the differences between Celexa and placebo for the secondary endpoints of CGI-I, CGI-S and CGAS were statistically significant, doesn't it?

MR. ROBERTS: Objection, mischaracterizes the document.

THE WITNESS: Excuse me. Can you repeat it?

BY MR. BAUM:

Q. This sentence suggests that the differences between Celexa and placebo for the secondary endpoints were statistically significant, doesn't it?

MR. ROBERTS: Renew my objection.

THE WITNESS: This indicates to me that significant differences on the secondary treatment variables, secondary assessment variable were observed in the study, yes.

BY MR. BAUM:

Q. That's contradicted by what we just looked at in the tables we just went over, Tables 3.2 to 3.5 for the Week 8 P-values, correct?

MR. ROBERTS: Objection.

THE WITNESS: Yes. In those particular analyses that we looked at, the significance of it was not below .05.

BY MR. BAUM:

Q. So this sentence, as phrased, is misleading because it suggests the secondary endpoints were positive when they were actually negative, right?

MR. ROBERTS: Objection.

THE WITNESS: My assumption is that this sentence reflects other analyses that were conducted that did show significant differences.

BY MR. BAUM:

Q. It doesn't reflect that at Week 8 it was negative, though, does it?

MR. ROBERTS: Objection.

THE WITNESS: This sentence clearly is not referring to that Week 8 endpoint LOCF ITT analysis that we looked at.

BY MR. BAUM:

Q. So it's misleading if it's suggested that the greater improvement was statistically significant?

MR. ROBERTS: Objection.

THE WITNESS: If this sentence were to suggest that the Week 8 endpoint, LOCF ITT analysis using last observation carried forward at Week 8 for these variables, if this -- then that would be misleading, if it said that.

BY MR. BAUM:

Q. Okay. So let's go to Page 69. Under Section 10.1, the second paragraph from the bottom starting with "analyses."

A. Yes.

Q. It says, "Analyses using the OC approach likewise demonstrated significantly greater improvement in the citalopram group compared to the placebo group, with significant citalopram-placebo differences (p0.05) observed at Weeks 1, 4 and 6 (Table 4.1B)."

Do you see that?

A. Yes.

Q. And that OC stands for the observed cases analysis, correct?

A. Yes.

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. And that's the people who actually finished the trial, correct?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. It's not the people who actually completed through eight weeks?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. What is it?

A. Observed cases is patients who were actually assessed.

Q. From Weeks 1 through Weeks 8, right?

MR. ROBERTS: Objection.

THE WITNESS: No. My understanding of the observed case analysis is that an observed

case analysis at Week 1 is every patient who had a Week 1 assessment, and case analysis Week 4 is every patient who had a Week 4 assessment.

BY MR. BAUM:

Q. So the observed cases analysis at Week 8 would be the people who finished -- actually finished the trial?

MR. ROBERTS: Objection.

THE WITNESS: Who actually had an assessment at Week 8, whether or not they finished the trial.

BY MR. BAUM:

Q. So there were some patients that maybe dropped off at Week 2 or Week 3 or Week 4 for whom they had scores and evaluations prior to their dropping out, and their scores were carried forward to Week 8, correct?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. Those were the last observation carried forward?

THE WITNESS: For the LOCF, yes.

BY MR. BAUM:

Q. Right. And these patients, observed

cases are people who actually made it through all eight analyses, correct?

MR. ROBERTS: Objection.

THE WITNESS: No, that's not my understanding of the observed cases. Observed cases at Week 4 is any patient who was there Week 4.

BY MR. BAUM:

Q. Yeah, and so at Week 8, it would be any patient who was there at Week 8, correct?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. So they would be the people who actually finished getting through to Week 8, correct?

MR. ROBERTS: Objection.

THE WITNESS: Who -- to my mind it would be people who appeared for an assessment at Week 8, yes, or were assessed at Week 8.

BY MR. BAUM:

Q. Okay. So here it suggests that there were statistically significant outcomes at Weeks 1, 4 and 6, correct?

MR. ROBERTS: Objection.

THE WITNESS: For OC on whatever.

BY MR. BAUM:

Q. For the observed cases?

A. Okay.

Q. Right there, that paragraph. "With significant citalopram-placebo differences (p0.05) observed at Weeks 1, 4 and 6."

Do you see that?

A. Yes.

Q. Does it reference Week 8?

A. No, nor Week 2.

Q. So let's take a look at Page 110, which is Table 4.1B, and if you go over to the next page -- well, first off, Table 4.1B is the Change from Baseline by Visit for CDS -- CDRS-R ITT population - Observed Cases.

Do you see that?

A. Yes.

Q. So this is the table that represents the outcomes discussed back here at what we were just reading about observed cases, correct?

MR. ROBERTS: Objection.

THE WITNESS: I believe so.

BY MR. BAUM:

Q. And if you go to the next page to see what the Week 8 outcome is, you see the P-value there 0.167, correct?

A. Yes.

Q. That's not statistically significant, is it?

MR. ROBERTS: Objection.

THE WITNESS: That fails to achieve the .05 criterion of statistical significance.

BY MR. BAUM:

Q. And that's different than what was said back here in the study report at Page 69, where it said there was a significant difference, correct?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. You're at Page 69?

A. Yes.

Q. So there's no mention of the negative result at Week 8 for the observed cases analysis, is there?

MR. ROBERTS: Objection.

THE WITNESS: This paragraph does not -- does not refer to the results at Week 2 or Week

8.

BY MR. BAUM:

Q. So the Week 2 had a P-value of .6; that's above .05 as well, right?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And this is a bit misleading with respect to the endpoint for observed cases, isn't it?

MR. ROBERTS: Objection.

THE WITNESS: Endpoint is a word that's not so often used with observed cases. Observed cases is whoever is there. I mean, endpoint kind of links in, in my mind, with LOCF analyses.

BY MR. BAUM:

Q. So you don't think it's misleading to have omitted that the Week 8 was negative?

MR. ROBERTS: Objection.

THE WITNESS: No, I do not.

MR. BAUM: Let's go to the next document, Exhibit 12.

MR. ROBERTS: Are we done with 11 or should I keep it?

MR. BAUM: We're going to come back to it.

(Document marked for identification as Flicker Deposition Exhibit No. 12.)

BY MR. BAUM:

Q. This is MDL-FOREM0009717, and this is an e-mail string dated August 10 to August 13 between Bill Heydorn, Christina Goetjen, Mary Prescott and says "RE: stop the presses."

Do you see that?

A. Yes.

Q. We've already -- do you recall who Christina Goetjen is?

A. She worked at Lundbeck.

Q. At Lundbeck?

A. No?

Q. No, I think she was -- you don't --

A. I'm doing my best.

Q. Yeah, okay, I know. That's fine.

If you come down a little further on the page, you'll see Christina Goetjen, product manager, Celexa.

Do you see that?

A. Yes.

Q. Do you recall her actually working for someone like Forest?

MR. ROBERTS: Objection.

THE WITNESS: No, I'm sorry. I assumed possibly just based on her name, but the name did sound familiar, so I assumed she was a Lundbeck personnel, because I certainly don't remember her as a Forest personnel.

BY MR. BAUM:

Q. Do you recall encountering someone named Christina Goetjen while you were working at Forest?

A. No, I definitely don't recall that.

Q. And you see Mary Prescott there?

A. Cc'd or something.

Q. Yeah, she's -- and one of the e-mails a little further down from Christina Goetjen to Mary Prescott, Bill Heydorn.

A. Yes.

Q. Do you recall who Mary Prescott is?

A. Yes.

Q. Who is she?

A. She headed a medical communications agency.

Q. That was contracted by Forest --

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. -- to do work on MD-18?

A. I can't say I particularly remember her working on MD-18, but, certainly, she -- certainly, she worked on Celexa.

Q. Okay. So if you go over to the second page of this, and we're going to follow the e-mail string from the back forward, so the first one is sent Friday, August 10, 2001 to Bill Heydorn, Mary Bunker -- Mark Bunker, sorry, Jeff Lawrence and Christina Goetjen, a CC to Natasha Mitchner, and the subject is stop the presses, and it says here, Charlie Flicker just faxed to me some data from the citalopram pediatric efficacy study. While I can't tell if this is intent to treat or observed cases, citalopram is significantly different from placebo, P less than .05, at all time points on the CDRS-R, the primary efficacy measure.

Do you see that?

A. Yes.

Q. So according to Ms. Prescott, you sent some data to her on the efficacy of citalopram's CIT-MD-18, right?

MR. ROBERTS: Objection.
THE WITNESS: That's what she's stating here.
BY MR. BAUM:
Q. And then she writes to Bill Heydorn to stop the presses because she believes that there's positive data to promote from CIT-MD-18, right?
MR. ROBERTS: Objection.
THE WITNESS: Yeah, I don't know what she's referring to.
BY MR. BAUM:
Q. You recall that she was involved with helping get marketing done for Forest?
MR. ROBERTS: Objection.
THE WITNESS: She was -- she was hired by marketing, I believe.
BY MR. BAUM:
Q. Does the claim that citalopram is significantly different from placebo, P less than .05, at all time points in the CDRS-R, the primary efficacy measure, depend on whether or not the unblinded patients are included in the analysis?
MR. ROBERTS: Objection.
THE WITNESS: I'm not sure what she's

referring to here.

BY MR. BAUM:

Q. Does the date August 10, 2001 ring a bell for when the -- these tables were run for the primary efficacy analyses for CIT-MD-18?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. You recall that we just went through the study report and that with the unblinded patients included, you had a P-value of .038 and with them excluded it was .052, correct?

MR. ROBERTS: Objection.

THE WITNESS: There were some patients for whom the blind was potentially compromised.

BY MR. BAUM:

Q. And with them included, the P-value was .038 on the CDRS-R, and with them excluded the P-value was .052, correct?

MR. ROBERTS: Objection.

THE WITNESS: For the LOCF analysis at Week 8, that appears to be the case.

BY MR. BAUM:

Q. So the comment that she received

statistically significant data from point -- from placebo with a P-value less than .05 indicates that she received the .038 numbers, not the .052 numbers, correct?

MR. ROBERTS: Objection.

THE WITNESS: Well, I don't know what she received. I mean, we saw a table in the observed cases analysis where it was not significant at Week 2 and she's talking about significant at --

BY MR. BAUM:

Q. There's only one statistically significant number in all of these outcome measures. The secondaries were all greater than .05. The Table 6 with the patients excluded was greater than .05. The only one -- all the secondaries were greater than .05. The only one that's below .05 is that .038 with the patients exposed to the dispensing error included, correct?

MR. ROBERTS: Objection. You're testifying and you're mischaracterizing the testimony and the document.

THE WITNESS: No.

BY MR. BAUM:

Q. I'm not correct? There was another -- there was another statistically significant outcome measure?

MR. ROBERTS: Objection.

THE WITNESS: There was -- we just saw an significant difference at Week 1 on the observed case analysis of the CDRS.

BY MR. BAUM:

Q. So at Week 8 there were no other -- there were no positive outcomes greater than -- at Week 8 for the secondary outcomes, observed cases and CDRS-R were all greater than .05, correct?

MR. ROBERTS: Objection.

THE WITNESS: At Week 8, what analysis?

BY MR. BAUM:

Q. Week 8, secondary outcomes, observed cases and CDRS-R with the dispensing error patients excluded were all greater than .05 P-values, correct?

MR. ROBERTS: Objection.

THE WITNESS: Well, we only looked -- we've only looked at tables with the LOCF analysis for the -- for secondary efficacy variables, and those LOCF analyses at Week 8 did not achieve the .05 level of statistical

significance.

BY MR. BAUM:

Q. And the only result that was less than .05 in any of these tables we've looked at was the one result that included the patients subject to the dispensing error with the .038 P-value, correct?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. At Week 8?

MR. ROBERTS: Objection.

THE WITNESS: At Week 8 in the LOCF analysis, the CDRS was .038, yes.

BY MR. BAUM:

Q. With the unblinded patients included?

MR. ROBERTS: Objection.

THE WITNESS: In the ITT population.

BY MR. BAUM:

Q. That included the nine patients who were exposed to the dispensing error, correct?

MR. ROBERTS: Objection, asked and answered.

THE WITNESS: Yes.

BY MR. BAUM:

Q. So let's go to Exhibit 13 -- we're going to eat food.

MR. ROBERTS: Break for food, okay.

THE VIDEOGRAPHER: We will be going off the record at 12:43 p.m. This marks the end of Media 6.

(Luncheon recess.)

(Document marked for identification as Flicker Deposition Exhibit No. 13.)

THE VIDEOGRAPHER: We are back on the record at 1:05 p.m. This marks the beginning of Media 7.

Go ahead, Counselor.

BY MR. BAUM:

Q. Okay. I'm going to hand you what we're marking as Exhibit 13, which is MDL-FORP0018664. This is a memorandum from Bill Heydorn to you, James Jin, Julie Kilbane, Paul Tiseo, Jane Wu dated October 17, 2001 regarding review of first draft of CIT-MD-18 study report.

You have to go into the third page to see that e-mail. It's right here, there.

MR. ROBERTS: The memo you mean?

MR. BAUM: Yeah, the memo.

BY MR. BAUM:

Q. And it says to Charlie Flicker, do you see that?

A. Yes.

Q. And it's from Bill Heydorn, and it says, "Attached for your review is the first draft of the CIT-MD-18 study report."

Do you see that?

A. Yes.

Q. Do you recall receiving a draft of the CIT-MD-18 study report?

A. No.

Q. Do you have any reason to doubt that you received this memorandum --

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. -- with the study report draft?

A. Well, the study report appears to have my handwriting on it, so if these were associated.

Q. Does this appear to you that these were produced in the ordinary course of Forest business?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. All right. So there's some handwriting on the memo itself at 11/27/01.

Do you see that?

A. Yes.

Q. Is that your handwriting?

A. Might be.

Q. And then if you go over to the attachment, you see some strikings out, like there's a strike out of flexible dose study, pediatric depression.

Is that your handwriting?

A. I think it is, yes.

Q. And if you flip through here, you'll see there's some handwriting throughout.

Does that appear to be your handwriting?

MR. ROBERTS: Objection.

THE WITNESS: Those look like my scribbles.

BY MR. BAUM:

Q. So does it appear to you that you edited this draft of CIT-MD-18 study report?

A. Provided comments, yes.

Q. Well, it looks like there's some things being stricken out and some replacement language being

suggested, correct?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. So if you go to Page 8 of -- all right.

So at Page 8, at the second to the last paragraph, there's some lines striking through the second to the last paragraph.

Do you see that?

A. Yes.

Q. And the paragraph that's being stricken out has as the second sentence, it says, "If the blind was broken for any reason, Forest Laboratories was to be notified immediately. Any patient for whom the blind had been broken was to be immediately discontinued from the study and no further efficacy evaluations were to be performed."

Do you see that?

A. Yes.

Q. That's more or less consistent with the unblinding procedure from the protocol, correct?

MR. ROBERTS: Objection.

THE WITNESS: I'm not sure about that.

As we said, it's somewhat -- it's somewhat

ambiguous.

BY MR. BAUM:

Q. Well, take a look at Exhibit 9. It's Page 328.

MR. ROBERTS: What page?

MR. BAUM: 328.

MR. ROBERTS: Thank you.

BY MR. BAUM:

Q. And it -- in the Unblinding Procedures in the italicized portions it says, "If the blind is broken for any reason, Forest Laboratories must be notified immediately. Any patient for whom the blind has been broken will immediately be discontinued from the study and no further efficacy evaluations will be performed."

Do you see that?

A. Yes.

Q. And that's more or less what it says right here in this paragraph, correct?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And it looks like you struck that out.

Do you see that?

A. Yes.

Q. And then put in its place, there's -- to be put in its place is some handwriting, because of a drug packaging error, 9 patients assigned to citalopram treatment at study -- at blank study centers were initially dispensed 20-milligram citalopram -- 20-milligram citalopram tablets that were distinguishable in color from the placebo tablets. And then you crossed out in that they were pink in color rather than white. All study medication shipments including potentially unblinding information were replaced in full.

Do you see that?

A. Yes.

Q. Did you write that language?

A. I think so.

Q. Do you know why you struck that language in that paragraph that it had the quote from the protocol --

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. -- in the unblinding section?

A. No.

Q. Okay. If you go to Exhibit 11, Page 44

of the study report, and you look at section 5 -- Exhibit 11?

MR. ROBERTS: Oh, Exhibit 11.

THE WITNESS: Yeah.

MR. ROBERTS: Oh, Exhibit 11. This is Exhibit 11. Do you have Exhibit 11?

MR. BAUM: I have it, I'm going to give it to him. Here you go. Here's the --

MR. ROBERTS: You said Page 44.

MR. BAUM: Yeah, Page 44, section on Blinding.

MR. ROBERTS: It's counted -- there's two of them. It's doubled, I think. Right? Just making sure I'm not going crazy.

MR. WISNER: There's two Page 44s.

MR. BAUM: Just the way it got copied.

MR. ROBERTS: Okay.

BY MR. BAUM:

Q. So if you look at the bottom paragraph on that page, you'll see the language "because of a drug packaging error."

Do you see that?

A. Yes.

Q. And if you look over at what your

handwriting is, I think you'll see that they're pretty much the same, correct?

MR. ROBERTS: Objection.

THE WITNESS: Certainly similarities.

BY MR. BAUM:

Q. And the paragraph or the sentence regarding the protocol violation is not included, correct?

MR. ROBERTS: Objection.

THE WITNESS: What paragraph?

BY MR. BAUM:

Q. And this sentence here, it starts with, "if the blind was broken for any reason."

A. Right.

Q. That doesn't appear in this section now, correct?

A. You mean that starts off with "the tear-off panel"?

Q. Right.

MR. ROBERTS: Let the record reflect that we're talking about Exhibit 13.

MR. BAUM: Yeah.

BY MR. BAUM:

Q. The third paragraph under "5.3.4

Blinding" of Page 8 of Exhibit 13 starts with "the tear-off panel" and it ends with "medication," and that whole paragraph is stricken, correct?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And it does not appear in the Section 5.3.4 of the final protocol -- of the final study report, correct?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. Okay. So your handwritten striking of the protocols on blinding language recommended in this draft resulted in its elimination from the final study report, right?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. Okay. Do you know where this language but otherwise blinded that's in the study report came from?

MR. ROBERTS: Objection.

THE WITNESS: Where?

BY MR. BAUM:

Q. At Page 44, in that bottom paragraph, it says?

MR. ROBERTS: On Exhibit 11?

BY MR. BAUM:

Q. On Exhibit 11 it says "although otherwise blinded," do you see that?

A. Yes.

Q. Do you know what that language came from?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. It's not in your hand -- it's not part of your handwritten changes. That's why we were asking.

A. No, I don't.

Q. Okay. Let's go to Page 17 of Exhibit 13. At the bottom it has "Secondary Statistical Objectives, the secondary statistical objectives of this study were."

Do you see that?

A. Yes.

Q. And then going over to the next page,

"1. To further compare the efficacy of citalopram to placebo in children and adolescents with MDD using," and then it's crossed out, "the change from baseline to Week 8 in."

Do you see that?

A. Yes.

Q. Did you strike that out?

MR. ROBERTS: Objection.

THE WITNESS: This looks like my handwriting.

BY MR. BAUM:

Q. Okay. And then below it shows -- it lists off the various secondary outcome measures, and then it's CGI score at Week 8 is struck out at Week 8.

Do you see that?

MR. ROBERTS: Objection.

THE WITNESS: Where are we looking? I don't see that. Oh, down here?

BY MR. BAUM:

Q. Right here, right there.

A. Oh, yes.

Q. You see CGI-I?

A. Yes.

Q. -- score at Week 8 has "at Week 8"

stricken off?

A. Yes.

Q. If you look at Exhibit 11, Page 54?

MR. ROBERTS: Which is the next page over. That's Exhibit 13. Exhibit 11 is this one, so just turn the page over.

BY MR. BAUM:

Q. You see under the Secondary Statistical Objectives, it's pretty much the same as what you did with your handwriting, with the Week 8s eliminated.

Do you see that?

MR. ROBERTS: Objection.

THE WITNESS: Yes, they look similar.

BY MR. BAUM:

Q. So each of your edits on that section, appeared in that section, do you know why you crossed out the Week 8 in those two spots?

MR. ROBERTS: Objection.

THE WITNESS: I could speculate.

BY MR. BAUM:

Q. Well, what is your impression of why you did that?

MR. ROBERTS: Objection.

THE WITNESS: This is a list of the

outcome measures. It doesn't specify any time points, so it wouldn't be appropriate to specify a time point for that variable in particular.

BY MR. BAUM:

Q. That wasn't part of the plan to de-emphasize the Week 8 negative outcomes in favor of the positive outcomes for the prior weeks?

MR. ROBERTS: Objection.

THE WITNESS: It appears to me it was done for consistency.

BY MR. BAUM:

Q. If you look at the protocol, which is Exhibit 9 at Page 17.

MR. ROBERTS: Exhibit 9. That's Exhibit 11. I think this is Exhibit nine. Yeah, this is Exhibit 9. What page did you say again?

BY MR. BAUM:

Q. At the Paragraph 12.1.2 and it's Page 329.

MR. ROBERTS: 329.

MR. BAUM: The big number up at the time is 329.

MR. ROBERTS: Talking about 1.2, okay.

BY MR. BAUM:

Q. Yeah, "Secondary Objectives." It says, "To further compare the efficacy of citalopram to placebo in depressed children and adolescents patients. The endpoints for the secondary objectives are the CGI-Improvement score and change from baseline in CGI-Severity score, K-SADS-P (depression module) and CGAS score at Week 8."

Do you see that?

A. Yes.

Q. So at Week 8 is the endpoint for the secondary outcomes, correct?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. Are you thinking, or did you think you answered?

A. Well, it's somewhat different because here it says -- I mean, in comparing the rest of the study report, it says CGI-I score at Week 8 as opposed to here it's CGS at the end. So it's -- just in terms of the consistency with the study report, it's -- that's different. Yeah, but I do see that.

Q. You do see that the endpoint for the secondary outcomes was Week 8, per the protocol,

correct?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. Okay. And then you struck that language in the study report?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. Draft that you handwrote your changes into, correct?

A. No.

Q. Well, over here, see you struck out the Week 8 part, right?

MR. ROBERTS: Objection.

THE WITNESS: No, that's what I was just saying is that the study report is quite different. The study report, as I see it, is simply listing the variables and not specifying any time point.

BY MR. BAUM:

Q. Right.

A. Except for the CGI-I, which makes sense, because the CGI-I is you're not measuring change from baseline.

Q. What?

A. See, these -- CGI-I there's no baseline.

Q. Okay. But what we're trying -- what I'm trying to point out to you is that in this draft, which is Exhibit 13, it essentially mirrors the typewritten portion, essentially mirrors the language that's in the secondary objectives. It says "to further compare the efficacy."

Do you see that?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. And so are you saying that because the CGI-I is not a Week 8 analysis -- change from baseline in Week 8, that's why you struck that out?

MR. ROBERTS: Objection.

THE WITNESS: Yes. They're different.

BY MR. BAUM:

Q. You don't think that was to enable discussion of the prior weeks instead of Week 8, which is not mentioned here?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. Right?

MR. ROBERTS: Objection.

THE WITNESS: The prior weeks are going to be examined no matter what.

BY MR. BAUM:

Q. What's the endpoint, Week 8 or Week 1?

MR. ROBERTS: Objection.

THE WITNESS: In this paragraph of the protocol Week 8 is identified as an endpoint.

BY MR. BAUM:

Q. Okay. Let's take Page 26 of Exhibit 13 and under Section "7.0 Changes in the Conduct of the Study and Planned Analyses."

Do you see that?

MR. ROBERTS: So Page 26, yeah, right there.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And there's some of your handwritten revisions to that section regarding the conduct of the study with planned analyses, and it says there in the original wording, nine patients (105, 113, 114, 505, 507, 506, 509, 513 and 514) accidentally received 1 week of unblinded study drug treatment (tablets had the incorrect color coating).

Do you see that?

A. Yes.

Q. So there it said they received one week of unblinded study drug treatment, not potentially unblinded or potentially -- potentially caused bias, right? It said that they received one week of unblinded study treatment, right?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And then your handwriting inserted "medication with potentially unblinding information," correct?

MR. ROBERTS: Objection.

THE WITNESS: Yes, that's my handwriting.

BY MR. BAUM:

Q. Did you do that handwriting to under-emphasize the fact that the patients received unblinded study drug treatment?

MR. ROBERTS: Objection.

THE WITNESS: It would require some speculation on my part, but I put that in, I would believe, to provide more accurate information.

BY MR. BAUM:

Q. You thought it was more accurate to say potentially unblinding instead of unblinded?

A. Yes.

Q. You think you were the one that introduced the language potentially unblinded -- potentially unblinding information?

MR. ROBERTS: Objection.

THE WITNESS: Well, I wrote this, I wrote this phrase.

MR. BAUM: Let's go to Exhibit 14.

MR. ROBERTS: Should we keep all these?

MR. BAUM: Keep them all handy.

MR. ROBERTS: Why don't you turn them all to the front so we can see.

(Document marked for identification as Flicker Deposition Exhibit No. 14.)

BY MR. BAUM:

Q. So Exhibit 14 is MDL-FORP0175697, it's an e-mail from Paul Tiseo to Joan Barton, Charlie Flicker, Ivan Gergel, Lawrence Olanoff and others dated March 2, 2000, re: CIT-18.

Do you recall receiving this e-mail and the attached fax?

A. No.
Q. Have you seen this before?
MR. ROBERTS: Objection.
THE WITNESS: Yes.
BY MR. BAUM:
Q. You saw it yesterday?
A. Yes.
Q. Do you have any reason to believe that you did not receive it at the time?
MR. ROBERTS: Objection.
THE WITNESS: I don't know that I received it on March 2nd but --
BY MR. BAUM:
Q. Do you think you might have --
A. -- I imagine I got it.
Q. Okay. And do you agree that this document was produced in the ordinary course of business at Forest?
MR. ROBERTS: Objection.
THE WITNESS: I don't know how ordinary. I'd say in the course of business.
BY MR. BAUM:
Q. Okay. And then it says, Dear all, for your information, a copy of the fax that went out to

all CIT-MD-18 Pediatric Investigational Sites this morning is attached. All sites have been -- also been contacted by telephone and given verbal instructions on how to proceed with both drug shipment as well as their patients who have been screened and/or randomized.

Do you see that?

A. Yes.

Q. So Dr. Tiseo is saying that this attachment that is attached to this e-mail was sent out to all of the CIT-MD-18 sites, right?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And they each received telephone calls regarding it, correct?

MR. ROBERTS: Objection.

THE WITNESS: That's what this says.

BY MR. BAUM:

Q. Do you know who would have received the fax at the sites?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Okay. Let's go to the next page, and it

says, "Fax Transmission Cover Sheet" with like four asterisks Urgent, bolded in big print "Urgent Message" and then four asterisks, re: CIT-MD-18 Citalopram Pediatric Depression Study.

Have you seen this fax before?

A. Yes.

Q. And when did you see that?

A. Yesterday.

Q. Okay. Here it says, "It has come to our attention that an error was made during the packaging of the clinical supplies for the above-noted study. A number of bottles of 'active' medication were mistakenly packed with the pink-colored commercial Celexa tablets instead of instead the standard white citalopram tablets used for blinded clinical studies. As a result, dispensing these tablets would automatically unblind the study. This medication needs to be replaced with the appropriate white tablets immediately to maintain the study blind."

Did I read that correctly?

A. Yes.

Q. So the pink-colored commercial tablets got dispensed to CIT-MD-18 patients, correct?

MR. ROBERTS: Objection.

THE WITNESS: According to this, there were pink tablets given to some patients.

BY MR. BAUM:

Q. And --

A. Well, I mean, we know that based on other information.

Q. And per the MD-18 protocol, all the pills dispensed in CIT-MD-18 were supposed to be white, correct?

MR. ROBERTS: Objection.

THE WITNESS: I'd have to go back to the protocol to verify that, but that sounds correct.

BY MR. BAUM:

Q. We read that into the record earlier, but so do you have any reason to dispute that they ought to have been white, correct?

MR. ROBERTS: Objection.

THE WITNESS: No, I don't. No, I don't dispute that.

BY MR. BAUM:

Q. Okay. So the fact that some of them were not white was protocol violation, correct?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. So here, according to Dr. Tiseo, the study was automatically unblinded for the patients subject to dispensing error, correct?

MR. ROBERTS: Objection.

THE WITNESS: He writes "automatically unblind the study."

BY MR. BAUM:

Q. "As a result, dispensing these tablets would automatically unblind the study." So if the patients were dispensed those pink tablets, they would be automatically unblinded, correct?

MR. ROBERTS: Objection.

THE WITNESS: That's what he writes here.

BY MR. BAUM:

Q. Okay. So do you know why those unblinded patients weren't excluded from the study at that point?

MR. ROBERTS: Objection.

THE WITNESS: First of all, we don't know that the patients were unblinded. We know that there was information that could impact

the blinding of the study that was conveyed to the site.

BY MR. BAUM:

Q. Well, upon -- as of March 2nd, 2002, upon receiving this fax, the investigators were advised that the pink-colored tablets were Celexa, correct?

MR. ROBERTS: Objection.

THE WITNESS: That's how I would interpret this fax, yes.

BY MR. BAUM:

Q. So that would indicate that the investigators knew what those patients were getting, correct?

MR. ROBERTS: Objection.

THE WITNESS: Well, no, it doesn't completely indicate that. The patients -- the investigator would also have to know what color tablets the patient received.

BY MR. BAUM:

Q. The patients that received the pink commercial Celexa would have been exposed to the investigators who gave them those tablets, and they would know that they were receiving Celexa at that point, correct?

MR. ROBERTS: Objection.

THE WITNESS: I don't recall too many investigators who would hand patients tablets.

BY MR. BAUM:

Q. All right. So the investigators that were notified of this had to do something with respect to the pink tablets that had been given to their patients to hand out?

A. Yes.

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. So at that point they knew which of their patients had been assigned to receive Celexa because they had been assigned to receive Celexa pink tablets, correct?

MR. ROBERTS: Objection.

THE WITNESS: No, that wouldn't be my understanding.

BY MR. BAUM:

Q. So when they returned the pink tablets, they wouldn't know that their patient that had those tablets was assigned Celexa?

MR. ROBERTS: Objection.

THE WITNESS: Under -- if an

investigator were to look at a return -- look at returned medication and he saw that the tablets were pink in the -- within this time frame, then I would think the investigator would be able to draw the conclusion that the patient was on active drug.

BY MR. BAUM:

Q. And why bother to replace these tablets if it weren't an issue that would unblind the study?

MR. ROBERTS: Objection.

THE WITNESS: Well, the protocol specifies that the color coating of the tablets should be blinded, should be the same, identical in the placebo and treatment groups.

BY MR. BAUM:

Q. Was it your understanding that all nine of these patients received pink-colored commercial tablets?

MR. ROBERTS: Objection.

THE WITNESS: Well, was it my understanding? I mean, I have no understanding what my understanding is, but if you're referring to that, what I wrote in the study report, I would say there's evidence of that.

BY MR. BAUM:

Q. Okay. That's actually what the report says at Page 63, Section 7.0 in Exhibit 11. It says -- it lists Patients 105 through 514 and says that the nine patients were mistakenly dispensed one week of medication with potential unblinding information, tablets had incorrect color coating.

A. That's different though.

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. Oh, how is it different?

MR. ROBERTS: Objection.

THE WITNESS: Well, it seems that I'd made the mistake of saying that nine patients got pink tablets.

BY MR. BAUM:

Q. Yeah.

A. My current understanding is that that is not correct.

Q. Oh, so you think this study report is incorrect when you wrote it at the time?

MR. ROBERTS: Objection.

THE WITNESS: I think I made a mistake, yeah.

BY MR. BAUM:

Q. What do you think actually happened?

MR. ROBERTS: Objection.

THE WITNESS: My current impression is that the placebo patients received white tablets.

BY MR. BAUM:

Q. And the citalopram patients received pink tablets?

MR. ROBERTS: Objection.

THE WITNESS: For those nine, yes.

BY MR. BAUM:

Q. And so in either case, the investigators would know which patients were either on citalopram or on placebo among those nine patients, correct?

MR. ROBERTS: Objection, mischaracterizes the document and mischaracterizes his testimony.

THE WITNESS: If the investigator --

MR. ROBERTS: And requires speculation.

THE WITNESS: -- read the fax and they reviewed the patient's medication bottles, then they would be able to draw a conclusion regarding the assigned treatment group.

BY MR. BAUM:

Q. That would be an unblinding, correct?

MR. ROBERTS: Objection.

THE WITNESS: That would affect the -- that would affect the investigator's blinding.

BY MR. BAUM:

Q. Okay. Do you recall that you testified in your 2007 deposition that as the medical director, that your primary mandate in the CNS research was overseeing the process of registering CNS compounds gaining regulatory approval.

Does that ring a bell?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Do you think that was what your primary mandate was?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. Do you believe that in your role as a medical director of the clinical research department at Forest that you had an obligation to be truthful with the FDA in all communications about CIT-MD-18?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And do you believe that Forest had an obligation to be truthful with the FDA in all communications about CIT-MD-18?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

MR. BAUM: Can you give me Exhibit 16. We're going to skip 15 and we're going to come back to it.

MR. ROBERTS: Okay.

(Document marked for identification as Flicker Deposition Exhibit No. 16.)

BY MR. BAUM:

Q. Okay. So handing over what we've marked as 16, and this is an e-mail MDL-FOREM0030386 from Dr. Tiseo to Lawrence Olanoff, Dr. Gergel, Amy Rubin, Anjana Bose as well as Tracey Varner, Julie Kilbane and you dated March 8, 2000, regarding letter to FDA for CIT-18.

Do you see that your name is on the CC there?

A. Yes.

Q. Do you have any reason to believe that you were not -- that you did not receive this e-mail?

MR. ROBERTS: Objection.

THE WITNESS: Yeah, there were quite a few e-mails I didn't -- received, yeah, I'm sure I received it.

BY MR. BAUM:

Q. And does it appear this document was produced in the ordinary course of Forest business?

MR. ROBERTS: Objection.

THE WITNESS: Essentially.

BY MR. BAUM:

Q. And this March 8 date is a few days after Dr. Tiseo sent the memorandum and fax to the clinical trial investigators informing them of the dispensing error, correct?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. That was March 2nd, six days later.

Do you see that?

A. Yes.

Q. And have you seen this document before?

MR. ROBERTS: Objection.

THE WITNESS: I might have seen this

yesterday.

BY MR. BAUM:

Q. Okay. So in the e-mail on the cover of the attachment, it says attached -- "Dear all, attached please find the letter that Charlie and I put together for the purpose of informing the FDA of our packaging mishap in the citalopram pediatric study."

Do you see that?

A. Yes.

Q. Do you recall putting together a letter with Dr. Tiseo to be delivered to the FDA?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Was it part of your duties to do something like that?

MR. ROBERTS: Objection.

THE WITNESS: It wouldn't be out of line.

BY MR. BAUM:

Q. Then attached is a letter to the FDA in draft, correct?

A. Yes.

Q. And in the first paragraph here it says

that there was a clinical supplies package willing error for CIT-MD-18.

Do you see that?

A. Yes.

Q. And it's for eight randomized patients at two investigational sites?

A. Yes.

Q. And in the second paragraph it says, "For reporting purposes, the primary efficacy analysis will exclude the eight potentially unblinded patients, with a secondary analysis including them also to be conducted," correct?

A. Yes.

Q. Would you agree that excluding the unblinded or potentially unblinded patients from the primary efficacy analysis was the scientifically appropriate thing to do?

MR. ROBERTS: Objection.

THE WITNESS: Not necessarily.

BY MR. BAUM:

Q. This is not what was actually done in the final study report, though, correct?

MR. ROBERTS: Objection.

THE WITNESS: Both analyses -- well, no,

I guess it was nine, right? But both analyses were conducted.

BY MR. BAUM:

Q. Yeah, but one was -- doesn't ask primary efficacy analysis and that here the primary efficacy analysis was the one that excluded the eight potentially unblinded patients, correct?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And the one that included them was going to be a secondary analysis?

MR. ROBERTS: Objection.

THE WITNESS: In this proposal, yes.

MR. BAUM: Okay. Let's go to the next document. Mark it as Exhibit 17.

(Document marked for identification as Flicker Deposition Exhibit No. 17.)

BY MR. BAUM:

Q. And if you look at the top, it says letter to FDA - draft, March 8, 2000, which is right the same day as the prior e-mail.

Do you recall that? Prior exhibit was dated March 8 as well.

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. And then there's some handwriting at the top. Is that your handwriting?

A. That looks like my handwriting.

Q. Okay. So have you seen this document before?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Okay. Does it appear to have been something you did while you were working at Forest in the ordinary course of Forest business?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. If you look at the typed portion of the paragraph, you see the paragraph starts by saying, "The purpose of this letter is to inform the agency that an error was made during the packaging of the clinical supplies for the above-noted study."

Do you see that?

A. Yes.

Q. And then "Two of our investigational

sites called in to report that some of their patients were receiving white tablets and others were receiving pink tablets."

Do you see that?

A. Yes.

Q. And then "These reports were passed onto Forest Clinical Packaging where it was discovered that a number of bottles of 'active' medication were mistakenly packed with the pink-colored commercial Celexa tablets instead of the standard white citalopram tablets used for blinded clinical trials."

Do you see that?

A. Yes.

Q. So based on this letter, it appears the dispensing error was discovered after two clinical investigators called Forest inquiring about why some of their patients were receiving white tablets and others were receiving pink ones, right?

MR. ROBERTS: Objection.

THE WITNESS: That's how it looked to me.

BY MR. BAUM:

Q. And they were supposed to all be receiving white tablets, right?

MR. ROBERTS: Objection.

THE WITNESS: I think we concluded that.

BY MR. BAUM:

Q. So the letter continues, "On March 2nd, all sites were notified of this error by telephone and by fax."

Do you see that?

A. Yes.

Q. And that's consistent with what we read earlier, right?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And in the March 2nd letter Dr. Tiseo said that dispensing of the pink tablets would automatically unblind the study, correct?

MR. ROBERTS: Objection.

THE WITNESS: His fax?

BY MR. BAUM:

Q. Yeah.

A. That's what it says.

Q. Returning to Exhibit 17, if you look at the bottom of the page, it says -- no.

MR. ROBERTS: This is 17. We're still

on 17.

BY MR. BAUM:

Q. "As only 8 of 160 patients had been randomized at the time this error was discovered, the impact upon the integrity of the study is suggested to be minimal."

Do you see that?

A. Yes.

Q. At this time it was supposed that pulling these eight out would not affect anything, so it was okay to not include them in the primary analysis, correct?

MR. ROBERTS: Objection.

THE WITNESS: I'm not sure what you mean.

BY MR. BAUM:

Q. It says, "As only 8 of 160 patients had been randomized at the time this error was discovered, the impact upon the integrity of the study is suggested to be minimal." So that it's suggested we're not going to count them and only eight -- and only eight of them were not going to be counted, so it's not going to be a big deal because you've got 160 patients anyway?

MR. ROBERTS: Objection.

THE WITNESS: Was this letter even sent?
BY MR. BAUM:
Q. Well, that's what we're going to find out.
MR. ROBERTS: Objection.
THE WITNESS: So this is just one person's opinion what they drafted here.
BY MR. BAUM:
Q. Well, this is, I think, a draft that you and Dr. Tiseo worked on together.
MR. ROBERTS: Objection. You're testifying.
BY MR. BAUM:
Q. All right. So at the next to last paragraph it's -- there would be -- it says, there's going to be a full set of 160 patients -- no. Let me just backtrack.
Let me go up to the handwriting. It says -- first it says reconsider no letter.
What did you mean by that?
MR. ROBERTS: Objection.
THE WITNESS: I don't know.
BY MR. BAUM:
Q. Were you suggesting that they just hide

from it the FDA?

MR. ROBERTS: Objection.

THE WITNESS: I don't know what reconsider no error -- no letter.

BY MR. BAUM:

Q. Okay. Then next it says, "Due to a packaging error, 8 randomized patients at 3 investigational sites had access to potentially unblinding information."

Do you see that?

A. Are you talking about my handwriting?

Q. Yeah, your handwriting.

A. Potential -- yes.

Q. And then by adding potentially, you were toning down Dr. Tiseo's automatically unblinded language, right?

MR. ROBERTS: Objection.

THE WITNESS: Well, I don't know who wrote this draft.

BY MR. BAUM:

Q. Okay. So let's go on to the next thing. "Drug has been repackaged and a full complement of 160 additional patients will be enrolled under standard double-blind conditions."

Do you see that?

A. Yes.

Q. And that's your handwriting, right?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And were you suggesting that a full set of 160 patients would be enrolled under standard double-blind conditions, right?

MR. ROBERTS: Objection.

THE WITNESS: Well, that's what it says.

BY MR. BAUM:

Q. And by implication, you were suggesting that the nine patients subject to the dispensing error were not standardly double-blinded, correct?

MR. ROBERTS: Objection.

THE WITNESS: It doesn't directly suggest that.

BY MR. BAUM:

Q. But it does by implication, doesn't it?

MR. ROBERTS: Objection.

THE WITNESS: I think it does suggest that.

BY MR. BAUM:

Q. And then next you say, "For reporting purposes, the primary efficacy analysis will exclude the potentially unblinded patients, and a secondary analysis including them will also be conducted."

Do you see that?

A. Yes.

Q. And so you were suggesting that the primary efficacy measure would exclude the patients exposed to the dispensing error, correct?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. That was your handwriting?

MR. ROBERTS: Objection.

THE WITNESS: That's my handwriting.

BY MR. BAUM:

Q. You thought that was a good idea at the time, right?

MR. ROBERTS: Objection.

THE WITNESS: That was a proposed solution.

BY MR. BAUM:

Q. Go to the next exhibit, 18 -- oh, in Exhibit 17 where it says, "Two of our investigational

sites called in to report that some of their patients were receiving white tablets and others were receiving pink tablets," do you see that?

A. Yes.

Q. Those investigators were unblinded, right?

MR. ROBERTS: Objection.

THE WITNESS: Well, it doesn't specify investigators, someone at the site.

BY MR. BAUM:

Q. So someone at the site in dealing with the pills and the patients was unblinded, correct?

MR. ROBERTS: Objection, mischaracterizes the document.

THE WITNESS: They were potentially unblinded. They would have had to associate the...

MR. BAUM: Let's go to Exhibit 18.

MR. ROBERTS: Hold on. Are you finished?

THE WITNESS: Yeah.

(Document marked for identification as Flicker Deposition Exhibit No. 18.)

BY MR. BAUM:

Q. They got the memo, though, from Dr. Tiseo, correct?

MR. ROBERTS: Objection.

THE WITNESS: How would I know?

BY MR. BAUM:

Q. Let's take a look at 18. This is MDL-FOREM0030384, and it's an e-mail response to Dr. Tiseo's e-mail from Amy Rubin, and when I say response to Dr. Tiseo's memo, he sent a memo out requesting suggestions to the revisions to the letter to go to the FDA. Then Amy Rubin sends to Lawrence Olanoff, Ivan Gergel Anjana Bose, Paul Tiseo, Tracey Varner, Julie Kilbane and you this proposed draft of the letter to the FDA.

Do you see that?

A. Yes.

Q. And it's dated March 9th, 2000.

Do you see that? Yes?

A. I'm looking.

Q. It's right up at the top, up here.

A. Oh, yeah, yeah.

Q. You see that?

A. Yes.

Q. Okay. And that's a day after Dr. Tiseo

asked for some comments?

A. Okay.

Q. And Amy Rubin, do you know what her job was?

A. No.

Q. You don't know whether or not she was in regulatory affairs?

MR. ROBERTS: Objection.

THE WITNESS: Based on this, she -- well, I assume she was in regulatory.

BY MR. BAUM:

Q. Okay. So in this e-mail Ms. Rubin states, "I have taken the liberty of editing your letter as follows: Please make any other changes you feel are necessary."

Do you see that?

A. Yes.

Q. And then below she appears to have made some edits or cut and pasted a version of the draft that you and Dr. Tiseo had worked on.

Do you see that?

MR. ROBERTS: Objection.

THE WITNESS: That seems to be a reasonable scenario.

BY MR. BAUM:

Q. Now, she changed the line from that you or Dr. Tiseo or in your handwriting you said 8 randomized patients at 2 investigational sites were dispensed medications that could have potentially unblinded the study, and that now it's been changed by Amy Rubin to say medication was dispensed to eight randomized patients in a fashion that had the potential to cause patient bias.

Do you see that?

A. Yes.

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. And that phrase, "potential to cause patient bias" is different from what Dr. Tiseo had in mind when he said that it was mistakenly unblinded, correct?

MR. ROBERTS: Objection.

THE WITNESS: I don't see where Dr. Tiseo said that.

BY MR. BAUM:

Q. Right here, he says, "As a result, dispensing these tablets would automatically unblind the study."

A. So he didn't say mistakenly unblinded. He said if they were dispensed. So what's the question?

Q. Her phrasing is different than this language, correct?

MR. ROBERTS: Objection.

THE WITNESS: Those two are differently different, yes.

BY MR. BAUM:

Q. And it's different from saying that they were potentially unblinded, correct?

MR. ROBERTS: Objection.

THE WITNESS: What's different from potentially unblinded?

BY MR. BAUM:

Q. Potential to cause patient bias.

A. That is different.

Q. And that's different from saying that the integrity of the blind was unmistakenly violated, correct?

MR. ROBERTS: Objection.

THE WITNESS: It's definitely different from saying the integrity of the blind was what?

BY MR. BAUM:

Q. Unmistakenly violated.

A. Mistakenly or unmistakenly.

Q. Unmistakenly, okay.

MR. ROBERTS: Objection.

MR. BAUM: Let's go to Exhibit 19.

(Document marked for identification as Flicker Deposition Exhibit No. 19.)

BY MR. BAUM:

Q. This is an e-mail dated -- an e-mail chain going from March 8 to March 14 between Paul Tiseo, Amy Rubin and you, and if you look at the e-mail -- look at the e-mail string, you will see that the things that are below are what we just went through the e-mail from March 8 from Paul Tiseo asking for comments and then attached to that is Amy's -- Amy Rubin's e-mail with her revisions, and then you are commenting on top of that.

Do you see that?

A. It looks that way.

Q. It says, although the patient -- sorry. Although "potential to cause bias" is a masterful stroke of euphemism, I would be a little more up front about the fact that the integrity of the blind was

unmistakenly violated.

Do you see that?

A. Yes.

Q. Have you seen this before?

MR. ROBERTS: Objection.

THE WITNESS: I saw this yesterday.

BY MR. BAUM:

Q. Okay. And do you have any reason to believe you didn't write that?

MR. ROBERTS: Objection.

THE WITNESS: I probably wrote this.

BY MR. BAUM:

Q. And this was produced in the ordinary course of Forest business, correct?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And so you were directly involved in resolving the dispensing error problem, correct?

MR. ROBERTS: Objection.

THE WITNESS: It would appear that I was involved in preparing this communication to the FDA regarding the problem.

BY MR. BAUM:

Q. Okay. And according to you, using the phrase potential to cause patient bias in a letter to the FDA was a masterful stroke of euphemism, correct?

MR. ROBERTS: Objection.

THE WITNESS: I think I wrote that.

BY MR. BAUM:

Q. And according to you, use of the phrase potential to cause bias was not being up front with the FDA, right?

MR. ROBERTS: Objection.

THE WITNESS: Yes, I felt that it was not a straightforward enough description.

BY MR. BAUM:

Q. And according to you, Forest should have just been up front about the fact that the integrity of the blind was unmistakenly violated, correct?

MR. ROBERTS: Objection.

THE WITNESS: I think it was necessary -- I felt that it was necessary -- it appears that I felt it was necessary to communicate to the agency that there had been -- that protocol violations had occurred that affected the blind of the study.

MR. BAUM: Can you repeat the question.

(The court reporter read back the record as requested.)

MR. ROBERTS: I renew my objections, if we're asking it to him again.

BY MR. BAUM:

Q. I think you answered a slightly different question, which I appreciate you're trying to articulate, but I just want a direct answer to that question.

A. Can you repeat the question.

(The court reporter read back the record as requested.)

MR. ROBERTS: Objection.

THE WITNESS: I certainly felt that Forest should be up front about that there had been a protocol violation -- that had been protocol violations that affected the integrity of the blind.

BY MR. BAUM:

Q. Now, you're aware that the language regarding potential to cause bias actually ended up in the study report, and your language about unmistakenly violated did not end up in there, correct?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. You think your language made it into the report?

MR. ROBERTS: Objection.

THE WITNESS: I don't know what was in the report. The report or the letter?

BY MR. BAUM:

Q. Oh, sorry. The letter. Sorry.

We'll get to that.

Do you know whether or not ultimately the phrase potential to cause bias is what ended up in the letter that Forest sent to the FDA?

MR. ROBERTS: Objection.

THE WITNESS: No, I do not.

MR. BAUM: Let's go to Exhibit 19.

MR. ROBERTS: Twenty.

MR. BAUM: Oh, 20, sorry.

(Document marked for identification as Flicker Deposition Exhibit No. 20.)

BY MR. BAUM:

Q. This is FOREM0030382, and it's from Amy Rubin to you, Charlie Flicker, and CC'd to Paul Tiseo. It's dated March 15th, which is the day after your

e-mail to her dated March 14th and the subject is the letter to the FDA for CIT-18.

Do you see that?

A. Yeah.

Q. Do you think it was Amy Rubin's job to create masterful euphemisms in letters to the FDA?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. And do you think she used the phrase potential to cause patient bias because she considered it her job to protect marketing and medical by using masterful euphemisms?

MR. ROBERTS: Objection.

THE WITNESS: I think she was softening the language.

BY MR. BAUM:

Q. That made it misleading, correct?

MR. ROBERTS: Objection.

THE WITNESS: No, I don't think it's misleading. I think potential to cause bias is accurate, but at least when I wrote my comment, I thought the statement should be a more straightforward statement that the impact was

upon the study blind should have been included.
BY MR. BAUM:
Q. Okay. So have you seen this e-mail before that's Exhibit 20?
MR. ROBERTS: Objection.
THE WITNESS: Twenty?
BY MR. BAUM:
Q. It's the one you've got in your hand there?
A. Yes.
Q. When did you see it?
A. Yesterday.
Q. Okay. And you see it's addressed to you.
Does this appear to have been produced in the ordinary course of Forest business?
MR. ROBERTS: Objection.
THE WITNESS: Yes.
BY MR. BAUM:
Q. And Ms. Rubin responds to your e-mail from the day before, "Thanks for the compliment. Part of my job is to create 'masterful' euphemisms to protect medical and marketing."
Do you see that?

A. Yes.

Q. Were you bothered that Ms. Rubin had appeared to ignore your concern that the language she suggested was not being up front with the FDA?

MR. ROBERTS: Objection.

THE WITNESS: Well, obviously, I don't remember this interaction. It looks to me as if she was joking.

BY MR. BAUM:

Q. In your opinion, do you think it was appropriate for Ms. Rubin to be creating masterful euphemisms to protect medical and marketing in her communications with the FDA?

MR. ROBERTS: Objection.

THE WITNESS: Do I think it was appropriate for her to create a euphemism?

BY MR. BAUM:

Q. Masterful euphemisms to protect medical and marketing in her communications with the FDA.

MR. ROBERTS: Objection.

THE WITNESS: I don't think that was part of her job description.

BY MR. BAUM:

Q. She was essentially bragging about

misleading the FDA, wasn't she?

MR. ROBERTS: Objection.

THE WITNESS: I think she was joking.

BY MR. BAUM:

Q. So if the language actually ended up in the letter to the FDA, wasn't she actually performing the act of conveying something less up front to the FDA than you thought ought to have been conveyed?

MR. ROBERTS: Objection.

THE WITNESS: I would have to see the letter that actually went to the FDA.

BY MR. BAUM:

Q. All right. But she's joking about misleading the FDA, essentially, correct?

MR. ROBERTS: Objection, mischaracterizes the document, causes for speculation.

THE WITNESS: I think she's joking about her linguistic dexterity.

BY MR. BAUM:

Q. And that linguistic dexterity or wordsmithing was -- resulted in creating a masterful euphemism to protect medical and marketing --

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. -- in her communications with the FDA, correct?

A. Well, I think it's a joke, but I think the language could be described as euphemistic.

MR. BAUM: Okay. So let's take a look at Exhibit 21.

(Document marked for identification as Flicker Deposition Exhibit No. 21.)

BY MR. BAUM:

Q. Which is the letter that actually went to the FDA dated March 20th, 2000 addressed to Russell Katz from Forest, Tracey Varner, and manager of regulatory affairs for Forest.

Do you see that?

A. Yes.

Q. Have you seen this before?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. So let's take a look at this.

Do you recall that Ms. Varner was in the line of e-mails regarding the unblinding problem?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. ROBERTS:

Q. Let's take a look at Exhibit 14. Do you see it?

MR. ROBERTS: Do you have it? This is what it looks like.

THE WITNESS: Which one?

MR. BAUM: Fourteen.

MR. ROBERTS: Exhibit 14. Here, I see it, Exhibit 14.

BY MR. BAUM:

Q. So this is the e-mail cover letter with the urgent message memo that went out on March 2nd.

A. Okay.

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. And if you see on the addressee lines, you've got Tracey Varner and Amy Rubin.

Do you see that?

A. Yeah.

Q. Do you see them both?

A. Yeah.

Q. Okay. So here Tracey Varner is now informing the FDA essentially what happened as

reflected in this March 2nd, 2000 memo that went out to the investigator sites, correct?

MR. ROBERTS: Objection.

THE WITNESS: Excuse me?

BY MR. BAUM:

Q. This letter from Tracey Varner to the FDA dated March 20th, 2000 is informing the FDA about the dispensing error problem that was discussed in the March 2nd letter that went out to the investigator sites?

A. Yes.

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. So the first line says, "Dear Dr. Katz, we are taking this opportunity to notify the Division of a clinical supply packaging error for study CIT-MD-18 (site #2 - Dr. Busner and site #16 - Dr. Wagner). Due to this error, medication was dispensed to eight randomized patients in the fashion that had the potential to cause patient bias."

Did I read that correctly?

A. Yes.

Q. And that's Amy Rubin's language that made it into the letter that went to the FDA, correct?

MR. ROBERTS: Objection.

THE WITNESS: The potential to cause patient bias is the same phrase that was in Amy Rubin's e-mail.

BY MR. BAUM:

Q. And that's what you characterize as a masterful euphemism for the blind having been unmistakenly violated, correct?

MR. ROBERTS: Objection.

THE WITNESS: I made a statement that it was a masterful euphemism, yeah.

BY MR. BAUM:

Q. For what you said was the blind had unmistakenly been violated, correct?

MR. ROBERTS: Objection.

THE WITNESS: I have to look at it.

BY MR. BAUM:

Q. Find it?

A. Yeah. Well, there are two separate statements. One is that it's a euphemism. The other is that there was a violation of the study blind.

Q. And when you wrote that e-mail, you were attempting to be accurate at the time, correct?

MR. ROBERTS: Objection.

THE WITNESS: I was always attempting to be accurate.

BY MR. BAUM:

Q. Okay. All right. So next it says, "A full complement of 160 patients will be enrolled under standard double-blind conditions."

Do you see that?

A. Yes.

Q. And that's the line that you wrote, handwrote in the draft that you edited, correct?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. Right here.

A. Yes, that's -- that's my handwriting.

Q. So by implication, again, what you conveyed to the FDA was that these eight patients subject to the dispensing error were not standardly double-blinded, right?

MR. ROBERTS: Objection.

THE WITNESS: Well, it's not really exactly what I wrote.

BY MR. BAUM:

Q. What did you write?

A. And a full complement of 160 additional

patients will be enrolled.

Q. So were you thinking that there would be a new group of patients that would be enrolled that would not be subject to the dispensing error?

A. I don't know what I was thinking, but I don't think that's what I was thinking.

Q. What did that line mean?

MR. ROBERTS: Objection.

THE WITNESS: That there would be -- I'd have to speculate.

BY MR. BAUM:

Q. Well, you were the author.

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. That was your handwriting; that was your thoughts.

MR. ROBERTS: Objection.

THE WITNESS: It was my thoughts 20 years ago, but -- and if you want me to speculate, I can speculate on --

BY MR. BAUM:

Q. I wouldn't call it speculation when I'm talking to the guy who actually wrote it, but you give me your best impression of what you thought you meant.

MR. ROBERTS: Objection, mischaracterizing the witness' statement.

THE WITNESS: What's the question again?

BY MR. BAUM:

Q. What did you think you meant by that line?

MR. ROBERTS: Objection.

THE WITNESS: That there would be at least 160 more patients enrolled in the study.

BY MR. BAUM:

Q. And they would not have the problem of a dispensing error, correct?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. Okay. So next it says, in this letter to the FDA, "For reporting purposes, the primary efficacy analysis will exclude the eight potentially unblinded patients, with a secondary analysis including them also to be conducted."

Do you see that?

A. Yes.

Q. So that, again, is what actually went to the FDA saying that the primary efficacy analysis would

exclude the patients exposed to the dispensing error, correct?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And that's not what was done, correct?

MR. ROBERTS: Objection.

THE WITNESS: That's correct.

BY MR. BAUM:

Q. Do you know why there was a change?

A. I would have to speculate.

Q. Okay. So, ultimately, what Forest promised the FDA was going to do, it didn't do, correct?

MR. ROBERTS: Objection, you're testifying.

THE WITNESS: They conducted both of the analyses.

BY MR. BAUM:

Q. All right. But which one was designated as the primary analysis?

MR. ROBERTS: Objection.

THE WITNESS: The analysis of the ITT population was the primary analysis.

BY MR. BAUM:

Q. And what it says here is that they were going to have the analysis with the eight unblinded patients, potentially unblinded patients excluded, correct?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. That was a more scientifically appropriate thing to do, wasn't it?

MR. ROBERTS: Objection.

THE WITNESS: I would characterize it is a proposed solution to the unblinding problem.

MR. BAUM: Okay. Let's go to Exhibit 22.

(Document marked for identification as Flicker Deposition Exhibit No. 22.)

BY MR. BAUM:

Q. So Exhibit 22 is MDL-FORP0168046. It's an e-mail from Joan Barton to you, Paul Tiseo, Joan Howard Jane Wu and Carlos Cobles dated December 6, 2000 regarding CIT-MD-18 study drug.

Do you see that?

A. Yes.

Q. Does it appear to have been produced in the ordinary course of business?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. Do you have any reason to believe that you didn't receive it?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Okay. So here it says, "Attached is a table showing which patients were randomized when the problem was discovered that the study drug was unblinded. A total of 6 adolescents and 3 children had already been randomized. Please let me know if this will alter the total number of child or adolescent patients to be randomized for this trial."

Did I read that correctly?

A. Yes.

Q. So you had recommended that another 160 patients be brought in to create a trial that didn't have any patients exposed to the dispensing error, correct?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. That's what you wrote in your handwriting, right?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. What did you write?

A. I wrote that 160 more patients would be enrolled.

Q. Okay. Maybe I misunderstood. That's what I thought I was saying.

So and here Ms. Barton says, the study drug was unblinded, not potentially unblinded, correct?

MR. ROBERTS: Objection.

THE WITNESS: It says "study drug was unblinded."

BY MR. BAUM:

Q. It doesn't say potentially unblinded or potential to cause bias?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. It says they were unblinded, right?

A. Well, the study drug was not blinded.

Q. This says the study drug was unblinded, correct?

MR. ROBERTS: Objection.

THE WITNESS: Right. That's not the same as the study being unblinded or the patients being unblinded.

BY MR. BAUM:

Q. Okay. So let's -- but this --

A. The study drug was not -- it would be more accurate to say the study drug was not blind.

Q. So that would be a protocol violation, though, right?

MR. ROBERTS: Objection.

THE WITNESS: I would regard that as a protocol violation.

(Document marked for identification as Flicker Deposition Exhibit No. 23.)

BY MR. BAUM:

Q. We're going to go to the next exhibit, Exhibit 23. This is dated January 5th, 2001. It's a Forest Labs inter-office memorandum from James Jin, draft statistical analysis plan, and it's addressed to Ed Lakatos, Jane Wu, Wendy Ma, Shanshan Wang and Julie Kilbane.

MR. ROBERTS: They're on the CC line.
BY MR. BAUM:
Q. On the CC line. And then if you -- well, do you recall being involved in any of the citalopram clinical trial meetings?
MR. ROBERTS: Objection.
THE WITNESS: I must have been. These particular meetings? Oh, the citalopram clinical team?
BY MR. BAUM:
Q. There were multiple clinical team meetings.
Do you recall having like weekly meetings?
A. I don't know.
Q. Did you attend any of them?
MR. ROBERTS: Objection.
THE WITNESS: I don't know.
BY MR. BAUM:
Q. Okay. Here -- do you know who James Jin was?
A. Vaguely.
Q. Do you recall he was a biostatistician on the MD-18?

A. Yeah.
Q. Do you recall corresponding with him about getting drafts of the tables done?
MR. ROBERTS: Objection.
THE WITNESS: No.
BY MR. BAUM:
Q. Have you seen documents going back and forth between you regarding drafts of the efficacy tables?
MR. ROBERTS: Objection.
THE WITNESS: No.
BY MR. BAUM:
Q. All right. So here he's saying, "attached for your review is draft statistical analysis plan," and please return your comments, and there were nine patients who were randomized at the beginning of the study but not blinded.
Do you see that?
A. Yes, I see that.
Q. So right there he's saying they were not blinded, correct?
MR. ROBERTS: Objection.
THE WITNESS: That's what it says.
MR. BAUM: Let's go to the next exhibit.

(Document marked for identification as Flicker Deposition Exhibit No. 24.)

BY MR. BAUM:

Q. This is Exhibit 24, and this is an inter-office memorandum from James Jim to Paul Tiseo, Charles Flicker and Ivan Gergel dated January 5th, 2001, MDL-FORP0175632.

Do you see that?

MR. ROBERTS: No, that's not. Can you read the MDL again? I think we're looking at different things, but maybe we're not. What's your number again? Is it 49936?

MR. WISNER: We're looking at the same thing, it's just the script is --

MR. BAUM: I've got 49936. Did I read something off wrong?

MR. ROBERTS: You didn't read 49936, I don't think, did you?

MR. WISNER: Go off the record.

MR. BAUM: No, here, I got it, Exhibit 24 you have is FORP0049936; is that correct?

MR. ROBERTS: Yes.

BY MR. BAUM:

Q. And this is a memorandum from Dr. Jin to

you, Paul Tiseo, Scott McDonald, Ed Lakatos and Jane Wu dated July 10, 2001, correct?

A. Yes.

Q. And it has a test run 3 tables: CIT-MD-18.

Do you recall this document?

A. No.

Q. Have you seen this document before?

MS. KIEHN: He just says he doesn't recall it.

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Was this document produced in the ordinary course of Forest business?

MR. ROBERTS: Objection.

THE WITNESS: Looks that way.

BY MR. BAUM:

Q. Do you have any reason to believe that you didn't receive it?

MR. ROBERTS: Objection. He doesn't recall it.

THE WITNESS: No.

BY MR. BAUM:

Q. So the subject of this memo that you sent was test run 3 tables.

What does that mean?

MR. ROBERTS: Objection.

THE WITNESS: Where does it say that?

BY MR. BAUM:

Q. It's in the subject line, test run 3 tables CIT-MD-18.

A. What does that mean?

Q. Yeah.

A. I don't know.

Q. Do you recall a run being done of the tables for MD-18 to see if the program worked?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Okay. Do you see the handwriting below?

A. Yes.

Q. Is your handwriting?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And it has this instructions, it looks like, to James Jin; is that correct?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. And among those instructions is please provide draft appendix tables and plots: 1 primary efficacy analysis - ITT subpopulation, asterisk, asterisk, patients with drug dispensing error excluded.

Do you see that?

A. Yes.

Q. That's your handwriting, and that's what you were instructing at the time?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

(Document marked for identification as Flicker Deposition Exhibit No. 25.)

BY MR. BAUM:

Q. We're just going to go to the next exhibit, 25, which is MDL-FOREM0010201 from Jane Wu to James Jin and Qiong Wang, and it says, "We need to generate Tables 4.1A and 4.1B for ITT population, excluding the 9 patients who were unblinded at the beginning of the study. Can you please tell Qiong who they are and try to get the results before 9:30, Friday morning?" This was sent at 12:30 a.m. on August 10th.

Do you see that?

A. Yes.

Q. And then below there's an e-mail from Jane Wu to Paul Tiseo and you regarding CIT-MD-18. It says, Paul, Charlie, we will meet with you to talk about the results of CIT-18 in R&D conference room at 9:30 to 10:30 on August 10th.

Do you recall attending that meeting?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Do you recall that August 10th is the date, according to Mary Prescott, you sent her positive results for CIT-MD-18, from that earlier e-mail?

MR. ROBERTS: Objection.

THE WITNESS: No.

BY MR. BAUM:

Q. Was it a coincidence they're the same dates?

MR. ROBERTS: Objection.

MS. KIEHN: He just said he doesn't remember being the same date.

THE WITNESS: No.

BY MR. BAUM:

Q. So does this appear to be produced in the ordinary course of business?

MR. ROBERTS: Objection.

THE WITNESS: This memo?

BY MR. BAUM:

Q. Yeah, this e-mail here, this e-mail string.

A. Yeah.

Q. Do you have any reason to doubt you received the e-mail that was addressed to you?

MR. ROBERTS: Objection. He doesn't remember.

THE WITNESS: No.

BY MR. BAUM:

Q. Okay. So at this point, per this e-mail, the analysis excluding the unblinded patients was appearing as Tables 4.1A and 4.1B and not in the appendix, right?

MR. ROBERTS: Objection. He's talking about Exhibit 25 in here.

THE WITNESS: No, but he's saying -- no, this is a request to --

MR. ROBERTS: You can ask him to clarify if you don't understand.

THE WITNESS: Let me just look at this.

BY MR. BAUM:

Q. Well, that document is going to be a little confusing to you because that was a --

A. No, that's not confusing at all.

MS. KIEHN: Give him time to look at the documents.

BY MR. BAUM:

Q. All right, go ahead.

A. No. My understanding of this document is that Jane Wu is telling James Jin to do a reanalysis in which the eight patients are excluded, but Table 4.1A is an ITT analysis. It's right in here.

Q. Yeah.

A. So this is a subpopulation analysis.

Q. Okay. So here let me just move on to another subject. I got your answer there.

You're saying that this is -- the reanalysis may not have ended up as a 4.1A or 4.4B; is that correct?

MR. ROBERTS: Objection.

THE WITNESS: No, that's not what I'm saying. I'm saying the ITT analysis in this analysis plan is 4.1A.

BY MR. BAUM:

Q. Okay. Now, next she says that that analysis was being done "excluding the 9 patients who were unblinded at the beginning of the study."

Do you see that?

A. Yes.

Q. And she's saying who were unblinded, not potentially unblinded or with the potential to cause patient bias. This is saying that excluding the nine patients who were unblinded at the beginning of the study, correct?

MR. ROBERTS: Objection.

THE WITNESS: That is the language that she used.

MR. BAUM: Okay, let's go to the next exhibit.

(Document marked for identification as Flicker Deposition Exhibit No. 26.)

BY MR. BAUM:

Q. Exhibit 26, MDL-FORP0049697. This is an undated document from your custodial file, and these are efficacy tables for CIT-MD-18, and if you flip a couple pages in to one, two, three -- the fourth page in, you'll see some handwriting up at the top of Table

4.1A.

MR. ROBERTS: Are you talking the one that ends in 703.

THE WITNESS: Oh, yeah, it ends in Bates Number 703. Thanks.

MR. ROBERTS: So the Bates numbers are in the bottom right corner. It should say 703 at the bottom of it.

MR. WISNER: 4.1A.

MR. ROBERTS: Right there. So this is what he's talking about.

THE WITNESS: Okay.

BY MR. BAUM:

Q. You see the handwriting in the upper right?

A. Yes.

Q. It says "excluded 9 patients."

A. Yes.

Q. That's your handwriting, isn't it?

A. No.

Q. That's not your handwriting?

A. No.

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. Okay. So it's dated August 10, 2001. You see the table date there?

A. Yes.

Q. Does this appear to have been produced in the ordinary course of Forest business?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

BY MR. BAUM:

Q. If you look at the -- if you look across the top, the total N numbers were 85 and 89 for the participants in the trial. That ended up to 174.

Do you see that?

A. Yes.

Q. That number is the number with the unblinded patients included, and if you take them out, you end up with a number of 166, correct?

MR. ROBERTS: Objection.

THE WITNESS: Okay.

BY MR. BAUM:

Q. And if you look down at the N numbers in the body of this table, you'll see that the N for the total placebo patients is 81, and the N for the total citalopram patients is 85.

Do you see that?

A. Where are you looking, in the actual tables?

Q. Right there, this N.

A. Yeah, yeah.

Q. And if you go here, that's 81.

A. Right.

Q. And then over here, it's 85. And throughout each of these weeks it's 81 and 85.

A. Got you.

Q. And that adds up to 166, correct?

A. Yes.

Q. So that's the number of patients when you exclude the nine patients who were subject to the dispensing error, correct?

MR. ROBERTS: Objection.

THE WITNESS: Yes, it's consistent with the comment.

BY MR. BAUM:

Q. And if you go over to the next page, you'll see that at Week 8 there's a P-value of .052, correct? Right there, yes?

A. Yes.

Q. And so that's -- this is the table that ended up becoming essentially Appendix 6 in the study

report, correct?

A. Yes.

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. And it was not made 3.1, which was the primary efficacy outcome, correct?

MR. ROBERTS: Objection.

THE WITNESS: Excuse me?

BY MR. BAUM:

Q. This table was not used as the primary outcome measure; it was placed in the appendix of the study report, correct?

MR. ROBERTS: Objection.

THE WITNESS: Yes.

MR. BAUM: So now we can take a break.

THE VIDEOGRAPHER: We will be going off the record at 2:32 p.m. This marks the end of Media 7.

(Brief recess.)

THE VIDEOGRAPHER: We will be going back on the record at 2:43 p.m. This marks the beginning of Media 8.

Go ahead, Counsel.

BY MR. BAUM:

Q. So there was a meeting that was being held on August 10 in one of the earlier e-mails.
Do you recall that?
A. No.
Q. All right. So that --
A. Oh, do I recall the e-mail that we looked at?
Q. Yeah, yeah.
A. Yes.
Q. That there was a meeting that was being held the morning of August 10 --
A. Yes.
Q. -- and that needed to get a run done with the unblinded patients excluded for that meeting.
A. Yes.
Q. Do you recall that?
MR. ROBERTS: Objection.
BY MR. BAUM:
Q. And then this is a run that's dated August 10 for that. Do you --
MR. ROBERTS: Objection.
BY MR. BAUM:
Q. -- see that?
A. Well, yes, I know what you mean.

Q. And so do you -- was it at that moment when you first learned that the -- with the excluded dispensing error patients, the P-value was greater than .050?

MR. ROBERTS: Objection.

THE WITNESS: I'm assuming that this meeting held on August 10th was held, it would appear that that would be the first time that those -- that that analysis was available.

BY MR. BAUM:

Q. Is that the reason why the analysis excluding the patients was not used as the primary efficacy measure?

MR. ROBERTS: Objection.

THE WITNESS: That requires speculation on my part.

BY MR. BAUM:

Q. Well, you and Amy Rubin and Tracey Varner essentially promised the FDA that the primary efficacy measure would exclude those patients, correct?

MR. ROBERTS: Objection.

THE WITNESS: We -- there was a proposal to the FDA that a primary efficacy analysis would be done in which those patients were

excluded. I don't know what the response to the agency was.

BY MR. BAUM:

Q. Okay.

A. Response of the agency was.

Q. And it wasn't a proposal. It said we will not include them, correct?

MR. ROBERTS: Objection.

THE WITNESS: I'm not exactly sure, but it was -- but there is a description of a primary efficacy analysis excluding the eight patients.

BY MR. BAUM:

Q. Okay. And that says, for reporting purposes, the primary efficacy analysis will exclude the eight potentially unblinded patients.

Do you see that?

A. Yes.

Q. It doesn't propose that, it says it will not be included, correct?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. They will not be included, correct?

MR. ROBERTS: Objection.

THE WITNESS: Still a proposal.

BY MR. BAUM:

Q. It doesn't say may, it says will, doesn't it?

MR. ROBERTS: Objection.

THE WITNESS: Yes, it does say will.

MR. BAUM: Let's go to the next exhibit.

(Document marked for identification as Flicker Deposition Exhibit No. 27.)

BY MR. BAUM:

Q. This is Exhibit 27, which is MDL-FORP0050230, and it's to Paul Tiseo and Charlie Flicker from James Jin and Jane Wu, final draft tables, CIT-MD-18 dated August 10, 2001, which is the same date that we've been dealing with, correct?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. In these last two or three e-mails, the August 10, see there's a date of August 10?

A. August 10th, yes, August 10th.

Q. Okay. And then in the upper right there's handwriting 9/13/01.

Do you see that?

A. Yes.

Q. And does that appear to be your handwriting?
A. Yes.
Q. And then there's a circle around Charlie Flicker with an arrow going down to James Jin.
Do you see that?
A. Yes.
Q. Did you do that?
MR. ROBERTS: Objection.
THE WITNESS: That looks like my handwriting.
BY MR. BAUM:
Q. Does this appear to be a document produced in the ordinary course of Forest business?
MR. ROBERTS: Objection.
THE WITNESS: Yes.
BY MR. BAUM:
Q. And do you have any doubt that you received this document and sent something back to James Jin?
MR. ROBERTS: Objection.
THE WITNESS: It seems likely.
BY MR. BAUM:
Q. And if you look at the next page, you

see your handwriting again on the next page?

A. Yeah.

Q. And that up in the upper right, there's a 7/17/01 date.

Do you see that?

A. Yeah.

Q. So it appears that your interchanging some drafts back and forth with James Jin with some suggestions of things to do, and one of the things suggested in July 17th was to provide an analysis with the subpopulation with these patients with the drug dispensing error excluded, then here's James Jin saying that he's returning to you a final analysis.

Do you see that?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. It's actually probably from James Jin and Jane Wu, and she's saying please let James know or it says please let James know, so it's probably actually written by Jane Wu in conjunction with James Jin.

Do you see that?

MR. ROBERTS: Objection.

THE WITNESS: Yeah, I mean, these are

two separate memos at different times but...

BY MR. BAUM:

Q. Okay. So in this third paragraph here of the memo it says, "However, for the ITT population minus" --

MR. ROBERTS: First page. Hold on.

He's on the second page.

BY MR. BAUM:

Q. It says, However, for the ITT population minus the nine patients for which the treatment was unblinded at the beginning of the study, there were statistically significant treatment-by-age interaction with the CDRS-R, CGI-I, K-SADS-P.

Do you see that?

A. Yes.

Q. So it looks like Jin and Wu were complying with your request to have a run done with the nine patients excluded, correct?

MR. ROBERTS: Objection.

THE WITNESS: Didn't we already see that?

BY MR. BAUM:

Q. Well, I'm just reading to you what this line says; is that correct?

MR. ROBERTS: Objection.

THE WITNESS: Well, this looks like a different set of table. This is obviously a much -- I mean, I'm assuming that these -- if this is associated with this, this is obviously a much larger set of tables.

BY MR. BAUM:

Q. Yeah. Okay. What I'm trying to get at is this is saying that they did a run with the nine patients excluded, per this cover e-mail, correct?

MR. ROBERTS: Objection.

THE WITNESS: Well, this is a full set of tables. The run with the guys excluded was that little memo.

BY MR. BAUM:

Q. Okay. The one we just looked at before that said excluded nine patients, correct?

MR. ROBERTS: Objection.

THE WITNESS: Yeah.

BY MR. BAUM:

Q. Here it says, "However, for the ITT population minus the nine patients for which the treatment was unblinded at the beginning of the study."

Do you see that?

A. Yes.

Q. And it says "was unblinded" as opposed to potentially unblinded, correct?

MR. ROBERTS: Objection.

THE WITNESS: That's the language they use, yes.

BY MR. BAUM:

Q. And that was Jane Wu and James Jin, correct?

A. Yes.

MR. BAUM: We're going to go to Exhibit 28.

(Document marked for identification as Flicker Deposition Exhibit No. 28.)

BY MR. BAUM:

Q. Okay. This is Exhibit 28, MDL-FOREM0002742. It's an e-mail from Bill Heydorn to Evelyn Kopke dated 10/24/2001, notes from the conference call October 4 with attachment notes from conference call with PharmaNet, October 4, 2001.

Do you see that?

A. Yes.

Q. Okay. And then if you look at the e-mail down below, it has you as one of the recipients

on the CC.

Do you see that?

A. Yes.

Q. And then if you look on the attachment it has as attendees for a conference call with PharmaNet dated October 4, 2001. Forest is Charles Flicker, Bill Heydorn, James Jin and Jane Wu, and Evelyn Kopke and Gundi LaBadie for PharmaNet.

Do you see that?

A. Yes.

Q. Does it appear that you were involved with a telephone conference with PharmaNet on October 24, 2001?

MR. ROBERTS: Objection. You mean October 4th?

BY MR. BAUM:

Q. October 4, sorry, October 4, 2001.

MR. ROBERTS: Objection.

THE WITNESS: Yeah, it looks that way.

BY MR. BAUM:

Q. And does this appear to have been produced in the ordinary course of Forest business?

MR. ROBERTS: Objection.

THE WITNESS: Yeah.

BY MR. BAUM:

Q. Do you have any doubt that you participated in or sent or received any of the correspondence attached to this e-mail?

MR. ROBERTS: Objection.

THE WITNESS: A little bit.

BY MR. BAUM:

Q. What's that?

A. I don't know. I could have walked out on a meeting. I could have never gotten it. It doesn't look very familiar.

Q. Okay. So let's take a look at some of the things that are itemized on the points that Bill Heydorn sent to you and Natasha Mitchner and James Jin and Jane Wu.

It says at Paragraph 9, "For secondary efficacy measures, no significant difference at the week 8 LOCF analysis. There are some significant findings early on in treatment. Forest looking at individual patient listings to see if there are any clues as to why week 8 findings were not positive. For now, emphasize the positive findings at earlier time points for the secondary efficacy variables."

Do you see that?

A. Yes.
Q. Do you see here that they're saying that the Week 8 findings were not positive for the secondary endpoints?
MR. ROBERTS: Objection.
THE WITNESS: It says no significant difference.
BY MR. BAUM:
Q. It says as to why the Week 8 findings were not positive, correct? This is Bill Heydorn --
A. "As to why week 8 findings were not positive," yes.
Q. Okay. So it's characterizing the secondary outcome measures as not being positive, correct?
MR. ROBERTS: Objection.
THE WITNESS: It says the Week eight LOCF shows no significant difference on secondary efficacy measures.
BY MR. BAUM:
Q. And it also refers to them as not being positive, correct?
MR. ROBERTS: Objection.
THE WITNESS: Yes, he says here not

positive.

BY MR. BAUM:

Q. Okay. And so here there is a plan of emphasizing the positive findings at earlier time points and for the secondary efficacy variables, correct?

MR. ROBERTS: Objection.

THE WITNESS: It says, "emphasize the positive findings at earlier time points."

BY MR. BAUM:

Q. That's a little misleading, isn't it?

MR. ROBERTS: Objection.

THE WITNESS: I'd say it's putting a best foot forward.

BY MR. BAUM:

Q. And not emphasizing the failure at Week 8, correct?

MR. ROBERTS: Objection.

THE WITNESS: There's no -- there's no indication that those differences would be concealed. It's saying that the emphasis will be placed on where there was significant differences.

BY MR. BAUM:

Q. That's what ended up happening in the study report, right?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. Yes?

A. I have no idea.

Q. You don't recall what we just went over today showing you that that's what --

A. Oh, the study report?

Q. Yes.

MR. ROBERTS: Objection.

THE WITNESS: I thought we were talking about --

BY MR. BAUM:

Q. That plan was --

A. Is this a publication?

Q. This is the -- this Exhibit 28 are notes for -- points of note in study report for CIT-MD-18.

A. Oh, this refers to the study report?

Q. Yes. And so this --

A. I thought it was a publication.

Q. No. This is what was notes from a meeting that resulted in a draft of the study report that -- and there were plans here to refer to these

secondary endpoints, emphasize the positive findings at earlier time points for the secondary efficacy variables.

That's what was done in the study report, correct?

MR. ROBERTS: Objection.

THE WITNESS: In the efficacy writeup, the focus was on where there was a positive effect.

BY MR. BAUM:

Q. And omission of the Week 8 negative effect, correct?

MR. ROBERTS: Objection.

THE WITNESS: That was available in the tables, but the writeup does emphasize where there were significant differences.

BY MR. BAUM:

Q. Okay. So next in Paragraph 11 says, "dosing error - some citalopram tables were not blinded."

Do you see that? Paragraph 11?

A. Yes.

Q. And "the 9 patients who received unblinded medication were included in the main

analyses; a secondary post-hoc analysis of the ITT subpopulation was done. Refer to these analyses briefly in methods and results and reference the reader to the appendix table."

Do you see that?

A. Yes.

Q. That's what actually happened in the study report, correct?

MR. ROBERTS: Objection.

THE WITNESS: It's certainly -- they're certainly referred to, and it did look as if the relevant analyses were in the appendix.

BY MR. BAUM:

Q. And that's different than what Forest told they were going to do with the primary efficacy analysis relative to the nine patients who received unblinded medication, correct?

MR. ROBERTS: Objection, asked and answered.

THE WITNESS: Could you repeat that?

BY MR. BAUM:

Q. Paragraph 11 saying that the post-hoc analysis of the ITT subpopulations with the nine patients being excluded being placed in the appendix is

different than what Forest told the FDA it was going to do when it excluded the nine patients and said that they were going to have that analysis be the primary efficacy analysis; this is different than that, isn't it?

A. Forest --

MR. ROBERTS: Objection, mischaracterizes the document, asked and answered.

THE WITNESS: Yeah, Forest proposed to the FDA to conduct the analysis of -- with the patients excluded as the primary.

BY MR. BAUM:

Q. And this paragraph is saying doing something different, correct?

MR. ROBERTS: Objection.

THE WITNESS: This paragraph is not in agreement with that.

BY MR. BAUM:

Q. Okay. And also here it says "9 patients who received unblinded," not potentially unblinded, correct?

MR. ROBERTS: Objection.

THE WITNESS: The language here is

unblinded.

BY MR. BAUM:

Q. And then it says, "dosing error - some citalopram tables were not blinded."

Do you see that? It doesn't say potentially unblinded, it says were not blinded, correct?

MR. ROBERTS: Objection.

THE WITNESS: Well, I don't know what an unblinded table is.

BY MR. BAUM:

Q. Well, here it's directly saying they were not blinded, which is more consistent with your saying that the blind was unmistakenly violated, correct?

MR. ROBERTS: Objection, mischaracterizes the witness' testimony, mischaracterizes the document.

THE WITNESS: What?

BY MR. BAUM:

Q. You said that you thought that the blind had been unmistakenly violated, correct?

MR. ROBERTS: Objection, mischaracterizes the witness' testimony.

THE WITNESS: I said that the integrity of the blind -- that there was a violation of the integrity of the blind.

BY MR. BAUM:

Q. Is this language here more consistent with what ended up in the study report?

MR. ROBERTS: Objection.

MR. BAUM: Never mind. Strike that.

MS. KIEHN: So it's 2:59.

MR. ROBERTS: It's 2:59.

BY MR. BAUM:

Q. Take a look at Paragraph 7. It says, "Note that study was not powered to look at differences within two subgroups (children and adolescents). The sample size was calculated based on the anticipated effect size for the primary efficacy variable."

Do you see that?

A. Yes.

Q. Do you recall now that the MD-18 was not powered to look at the subgroup separately?

MR. ROBERTS: Objection.

BY MR. BAUM:

Q. It was powered to look at them together?

A. No.

Q. Does this indicate that, though?

MR. ROBERTS: Objection.

THE WITNESS: That's -- yeah, that's what this suggests.

MR. BAUM: Okay.

MS. KIEHN: We're going to ask a couple questions in the event we don't reconvene so that we have it on the record.

MR. WISNER: Sorry, in the event we don't reconvene, is that a possibility?

MR. ROBERTS: Well, why don't we stay on record --

MS. KIEHN: Anything is a possibility.

MR. ROBERTS: -- ask the questions and then we can talk about this off record, all right?

MR. BAUM: All right. Go ahead.

BY MR. ROBERTS:

Q. Okay. Dr. Flicker, do you have an understanding as to why the primary efficacy analysis included the nine patients?

A. Do I have an understanding, excuse me?

Q. As to why the primary efficacy analysis did include the nine patients?

A. I believe so. I mean, it is -- it's not -- it's somewhat speculative, but I believe so.

Q. Okay. Do you recall what that is?

A. What I think it was is that the statistical group insisted upon using the study's ITT population.

Q. Okay, thank you.

You gave testimony earlier that suggested that both Table 3.1 and Appendix Table 6 should be examined, quote, by anyone receiving this study.

Who were you referring to when you referenced, quote, anyone reviewing the study?

A. For regulatory reviewers should examine the entire -- all the details.

Q. The FDA concluded that MD-18 met the threshold for statistical significance on the primary outcome measure, correct?

A. Yes.

Q. And the FDA had both tables, both 3.1 and Table 6, correct?

A. Yes.

Q. Does presenting the primary efficacy endpoint of 0.3 -- of .038 in a poster or publication

and omitting mention of the post-hoc secondary analysis of the intent-to-treat subpopulation result in a misleading portrayal of the study results?

A. No. Post-hoc secondary analysis was supportive, overwhelming body of evidence in the study clearly is indicative of a treatment effect.

Q. Because the result of the post-hoc secondary analysis is supportive of the result of the primary efficacy parameter, correct?

A. Yes.

Q. The difference is, quote, trivial, as you put it, correct?

A. I regard the difference as trivial, yes.

MR. BAUM: I just --

MS. KIEHN: Hold on. No, not until we turn it back over.

MR. BAUM: I'm objecting. You are leading this guy.

MR. ROBERTS: Okay. Your objection is noted.

MS. KIEHN: You're the master of leading.

BY MR. ROBERTS:

Q. The results of the post-hoc secondary

analysis do not undermine the results of the primary efficacy parameter; is that fair?

MR. BAUM: Objection, leading.

THE WITNESS: Yes.

BY MR. ROBERTS:

Q. Now, I would like to direct you back to Exhibit 14. If you remember, this is Exhibit 14. We lost it a couple times ago, but now it is found.

I turn you to the top of Page 2 of the fax. So it says "Return of medication" is where I'm directing you to. It says, "please return all patient kits," correct?

A. Yes.

Q. So the sites did not know which bottles contained pink pills, they were instructed to return all of the patient kits, correct?

A. Yes, they would have returned all the medication they had.

Q. Okay. So now I'm going to direct you to Exhibit 21. This is the FDA letter dated March 20th. You can try and find it within your pile, I actually think it's right over there, Exhibit 21.

Does this letter inform the FDA that there had been a deviation in the protocol procedure,

it affected the integrity of the blind?

A. Yes.

Q. Because it specifically says that they, quote, excluded the eight potentially unblinded patients, right?

MR. BAUM: Objection, leading.

BY MR. ROBERTS:

Q. You can answer.

A. Yes, it does refer to eight patients, eight potentially unblinded patients.

MR. ROBERTS: Thank you, Doctor, that's all.

BY MR. BAUM:

Q. Do you have to leave now?

A. Yeah.

MR. BAUM: Okay. So we're going to reserve our right to get the rest of our minutes and follow up and finish our deposition.

MR. ROBERTS: Let's go off the record.

MS. KIEHN: We understand your position. We'll take it under advisement.

THE VIDEOGRAPHER: This marks the end of Media 8 and also the conclusion of today's

questioning of Charles Flicker. Media of today's deposition will be transferred to the custody of Golkow. We are going off the record at 3:05 p.m. on Friday, November 4th, 2016.

(Witness excused.)

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C E R T I F I C A T I O N

I, MARGARET M. REIHL, a Registered Professional Reporter, Certified Realtime Reporter, Certified Shorthand Reporter, Certified LiveNote Reporter and Notary Public, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Margaret M. Reihl, RPR, CRR, CLR
CSR #XI01497 Notary Public

In Re: Celexa and Lexapro Marketing and Sales Practices Litigation, MDL No. 2067, No. 09-MD-2067 (NMG)

Errata Sheet to the Deposition of Charles Flicker, Ph.D.
Deposition Date: November 4, 2016

Page	Line(s)	Now Reads	Suggested Reading	Reason
10	7	It was definitely	There was definitely	Stenographic error
23	5	I was surprised -- I believe so.	I don't know -- I was surprised -- I believe so.	Stenographic error
31	9-10	Q. And Clara was a good buffer? A. I would often correct what she had	Q. And Clara was a good buffer? MR. ROBERTS: Objection A. I would often correct what she had	Stenographic error
59	15	Yeah, like PowerPoint presentations	Or, yeah, like PowerPoint presentations	Stenographic error
79	12-13	prepared by Natasha Mitchner and Mary Prescott?	prepared by Natasha Mitchner or Mary Prescott?	Stenographic error
111	12	ask you is is that based	ask you is that based	Stenographic error
122	21	please sign and return to me shortly."	please sign and return to me."	Stenographic error
126	16	look at the -- I	look at the protocol -- I	Stenographic error
130	10	clean record.	clean record, that's all.	Stenographic error
182	23	"Change from Baseline	"Change from Baseline in	Stenographic error
209	8-10	Q. Let's go to Page 100, which is Table 3.1. So if you look at Table 3.1 it says the	Q. Let's go to Page 100, which is Table 3.1. Ms. KIEHN: Is someone on the phone? Q: I was just turning off my phone. So if you look at Table 3.1	Stenographic error

CLARA WAS MY SECRETARY AT PFIZER! CF

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Page	Line(s)	Now Reads	Suggested Reading	Reason
			it says the	
214	13	do I -- well,	do I know -- well,	Stenographic error
238	24	Weeks 1, 4 and 6	Weeks 1, 4, and 6	Stenographic error
239	20	actually assessed.	actually assessed at the time.	Stenographic error
241	19	Week 8, yes, or were assessed	Week 8, yes, were assessed	Stenographic error
244	3	A P-value of .6;	A P-value of .06;	Attorney error
252	13	the CDRS was .038, yes.	the CDRS-R was .038, yes.	Stenographic error
265	24	Talking about 1.2, okay.	Talking about 12.1.2, okay.	Stenographic error
277	4	March 2nd, 2002,	March 2nd, 2000,	Attorney error
305	22	This is FOREM0030382	This is MDL-FOREM0030382	Stenographic error
309	16	causes for	calls for	Stenographic error
324	21	24 you have is FORP0049936;	24 you have is MDL-FORP0049936;	Stenographic error

I, the undersigned, declare under penalty of perjury that I have read the deposition transcript; that I have made any corrections, additions, or deletions that I was desirous of making in the errata sheet above; and that the deposition transcript is otherwise a true and correct transcript of my testimony contained therein.

(Signature) 12/14/16 (Date)

Subscribed and sworn before me this

14th day of December, 2016

JOSH HOOVER NOTARY PUBLIC STATE OF FLORIDA My Comm. Expires April 5, 2019 No. FF 217269

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