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STATE OF MINNESOTA DISTRICT COURT  
 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT  
 Case Type: Other Civil  
 Court File No.: 62-CV-20-5691

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State of Minnesota, by Jan Malcolm,  
 Commissioner of Health,  
 in her official capacity,  
 Plaintiff,  
 Southwest School of Dance LLC,  
 d/b/a Havens Garden,  
 Defendant.

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Volume II Video Deposition of  
 RICHARD DANILA  
 Thursday, April 8, 2021  
 1:07 p.m.

Reporter:  
 Myrina A. Kleinschmidt, RMR, CRR, CRC

COPY

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1 C O N T E N T S  
 2  
 3 EXAMINATION:  
 4 By Mr. Diehl - Page 269  
 5  
 6 E X H I B I T S  
 7  
 8 EXHIBIT/DESCRIPTION PAGE  
 9  
 10 Exhibit 1, previously Declaration of Richard 288  
 11 marked Danila  
 12 Exhibit 5, previously June-July Restaurant 295  
 13 marked Outbreak Summary  
 14 Exhibit 17 email correspondence 277  
 15  
 16  
 17  
 18 \* \* \* \*  
 19  
 20  
 21  
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 23  
 24  
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1 APPEARANCES:  
 2 FOR THE PLAINTIFF:  
 3 Kaitrin C. Vohs and Megan J. McKenzie  
 4 Assistant Attorneys General  
 5 445 Minnesota Street, Suite 1400  
 6 St. Paul, MN 55101-2131  
 7 kaitrin.vohs@ag.state.mn.us  
 8 megan.mckenzie@ag.state.mn.us  
 9  
 10 FOR THE DEFENDANT:  
 11 Samuel W. Diehl and Ryan D. Wilson, Attorneys at Law  
 12 CROSSCASTLE, P.A.  
 13 333 Washington Avenue N., Suite 300-9078  
 14 Minneapolis, MN 55401  
 15 sam.diehl@crosscastle.com  
 16 ryan.wilson@crosscastle.com  
 17  
 18 Nathan M. Hansen, Attorney at Law  
 19 2440 North Charles Street, Suite 242  
 20 North St. Paul, MN 55109  
 21 nathan@hansenlawoffice.com  
 22  
 23 ALSO PRESENT: Larvita McFarquhar  
 24 Laura Munsil Videographer & Trial  
 25 Technician

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1 VIDEO DEPOSITION, held remotely, and  
 2 pursuant to Notice of Taking Deposition, before Myrina A.  
 3 Kleinschmidt, Registered Merit Reporter, Certified  
 4 Realtime Reporter, and Remote Notary Public.  
 5 WHEREUPON, the following proceedings were  
 6 duly had:  
 7 THE VIDEOGRAPHER: We are now on the record.  
 8 My name is Laura Munsil. I'm a videographer with Twin  
 9 West Reporting, LLC. Today's date is April 8, 2021, and  
 10 the time is 1:07 p.m. Central Time.  
 11 This deposition is being held remotely in the  
 12 matter of the State of Minnesota, by Jan Malcolm,  
 13 Commissioner of Health, in her official capacity, versus  
 14 the Southwest School of Dance LLC. All parties to this  
 15 deposition are appearing remotely and have agreed to the  
 16 witness being sworn in remotely. The deponent today is  
 17 Richard Danila.  
 18 Will counsel please identify themselves for  
 19 the record, after which our court reporter, Myrina  
 20 Kleinschmidt, will administer the oath.  
 21 MR. DIEHL: Sam Diehl on behalf of defendant,  
 22 Southwest School of Dance, doing business as Havens  
 23 Garden. Ryan Wilson, one of my co-counsel, and Nathan  
 24 Hansen is on as counsel -- or as the other counsel for  
 25 defendant.



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1 MS. VOHS: Kaitrin Vohs, assistant attorney  
 2 general, here with Megan McKenzie, assistant attorney  
 3 general, on behalf of the Department of Health. And I'm  
 4 here with Richard Danila.  
 5 (The oath was administered by the  
 6 court stenographer.)  
 7 WITNESS RESPONSE: I do.  
 8 COURT STENOGRAPHER: Thank you.  
 9 MS. VOHS: Before we get started, could we  
 10 confirm how much time is left?  
 11 COURT STENOGRAPHER: Yes. Laura has that  
 12 number.  
 13 THE VIDEOGRAPHER: Yes.  
 14 We have been on the record in the first  
 15 deposition for 5 hours and 51 minutes.  
 16 MS. VOHS: And just so the parties are aware,  
 17 we are not stipulating to go beyond seven hours.  
 18 MR. DIEHL: I didn't -- I guess we haven't  
 19 made that request, so we'll deal with it if it comes up.  
 20 And let's hope we don't -- let's hope we don't have  
 21 another 24 objections without citing any basis.  
 22 That really slowed us down last time and  
 23 wasn't helpful. So we'll move as fast as we can. We'll  
 24 try to get done as fast as we can, and we'll obviously  
 25 abide by the rules to get the discovery we need.

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1 RICHARD DANILA,  
 2 a witness in the above-entitled proceedings,  
 3 after having been first duly sworn,  
 4 testified under oath as follows:  
 5 EXAMINATION, continued:  
 6 BY MR. DIEHL:  
 7 Q Dr. Danila, thank you for coming back. Obviously we need  
 8 to keep going and finish up the deposition today. I'm not  
 9 going to give the same instructions, but obviously the  
 10 same instructions will apply with respect to your answers  
 11 and verbally -- answering verbally and all other the  
 12 issues we discussed. So do you recall those instructions,  
 13 Dr. Danila?  
 14 A Yes.  
 15 Q All right. Thank you.  
 16 Dr. Danila, we talked a bit about this last  
 17 time, and I guess I would ask that, you know -- since it  
 18 was a week ago, I'm not going to recall every answer that  
 19 was before, so indulge me just a bit on asked and  
 20 answered. But I do want to ask different questions that I  
 21 know I did not ask.  
 22 So with respect to decisions made regarding  
 23 executive order 20-96, 20-99 -- let me just step back.  
 24 I'm going to ask you a number of questions  
 25 regarding restrictions on restaurants and other activities

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1 and businesses in the -- in October, November, December  
 2 2020. So that's the context. When I say that, do you  
 3 understand generally what I'm referring to?  
 4 A Yes.  
 5 Q Okay. And let me know if you don't. And if there's a  
 6 way -- well, I don't know if there's a way to not have the  
 7 mask on for this. It's a bit -- it's a bit muffled, and  
 8 it's obviously harder to see the witness. If that's  
 9 possible, we did that last time and it seemed to work  
 10 okay.  
 11 A I'll try to speak up better. I'm sorry.  
 12 Q Have you been vaccinated, Dr. Danila?  
 13 A Yes.  
 14 Q For COVID-19, obviously, is what I'm asking about.  
 15 A Yes.  
 16 Q If there's a series of vaccinations, have you received the  
 17 entire series that would be associated with it?  
 18 A I received the Johnson & Johnson, so I had one dose, yes.  
 19 Q Okay. And --  
 20 MS. VOHS: I'm going to object -- object to  
 21 this as outside the scope.  
 22 MR. DIEHL: Okay. And we're having that -- I  
 23 think it's fixed now, because you're on mute again,  
 24 Counsel, but we were having an echo issue there.  
 25 BY MR. DIEHL:

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1 Q So, Dr. Danila, is there a risk that you would spread  
 2 COVID to Ms. Vohs making necessitating a mask in the  
 3 deposition?  
 4 A Yes.  
 5 Q Have you had COVID before you were vaccinated?  
 6 MS. VOHS: Objection. Oops. Sorry. I  
 7 muted.  
 8 I'm going to direct Dr. Danila not to answer  
 9 that. That's personal information. Pardon me.  
 10 BY MR. DIEHL:  
 11 Q Dr. Danila, you seem okay today health-wise. I'm not  
 12 asking for any -- you know, anything personal, but in  
 13 general are you in decent health today?  
 14 A Yes.  
 15 Q So is it -- do you consider it confidential information to  
 16 say whether or not you have contracted COVID at some  
 17 earlier date?  
 18 A Yes, that's confidential.  
 19 Q And so do you think that that opinion is shared by others  
 20 in Minnesota?  
 21 A Yeah. I think personal health information is that. It's  
 22 personal. I don't see what's not personal about personal  
 23 health information.  
 24 Q And that might be a factor in whether or not individuals  
 25 are willing to participate in contact tracing or discuss

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1 their personal health issues with the Department of  
 2 Health?  
 3 MS. VOHS: Objection.  
 4 A I don't understand your question.  
 5 BY MR. DIEHL:  
 6 Q Well, the last time you recall we talked about --  
 7 MR. DIEHL: And, Counsel, again, we need to  
 8 not have objections that are just -- have no basis and are  
 9 improper.  
 10 So let's just -- let's keep this moving.  
 11 BY MR. DIEHL:  
 12 Q So Counsel -- or excuse me. Dr. Danila, do you recall  
 13 that in our previous portion of the deposition we talked  
 14 about whether individuals were willing to share  
 15 information with the Department of Health or participate  
 16 in contact tracing?  
 17 A I think so. In general, we talked about that, yes.  
 18 Q And so do you think that a concern about privacy and a  
 19 concern about sharing personal health information with  
 20 anyone outside of their family perhaps is a concern for  
 21 some Minnesotans?  
 22 A Yes. When we -- when we talk to people who are reported  
 23 to have COVID, some people don't want to share personal  
 24 health information with us, that's true.  
 25 Q Would you believe after your vaccination, whether or not

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1 you had COVID earlier, you are still at risk of  
 2 transmitting COVID-19 to Ms. Vohs?  
 3 A Yes.  
 4 MR. DIEHL: And we're getting echo again, but  
 5 we can keep going, I think.  
 6 BY MR. DIEHL:  
 7 Q So -- and is that part of the issue of the 125 or so  
 8 estimated people that have contracted COVID more than  
 9 once?  
 10 A No, not necessarily. We don't know whether or not the  
 11 vaccination actually prevents someone from actually  
 12 getting infected and transmitting it to others. It's  
 13 certainly well documented the vaccines prevent against  
 14 disease -- prevent against serious disease, prevent  
 15 against death, but we don't yet have the data to know  
 16 whether or not a vaccinated person can become infected and  
 17 infectious and transmit to others. We just don't have  
 18 that information yet.  
 19 Q How would that be determined?  
 20 A Well, there are ongoing studies right now to look at that.  
 21 Q But not by the Department of Health in Minnesota?  
 22 A No. Not by Minnesota, no.  
 23 Q Again, if I say, "Department of Health," just understand  
 24 that I mean the Minnesota Department of Health. And if  
 25 I'm talking about, you know, Wyoming and say, "the

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1 Department of Health," you can ask to clarify, but I doubt  
 2 I'll do that.  
 3 Okay. So back to the fall and winter of  
 4 2020. There were a number of decisions made in October  
 5 and into December -- through December related by Governor  
 6 Walz or by someone in his administration. Do you  
 7 generally understand what I mean by that?  
 8 A Yes.  
 9 Q Okay. So asking about those decisions, do you know how  
 10 decisions were made with respect to restaurants, sports or  
 11 other gyms, other activities that were restricted at  
 12 certain times and certain ways? Do you know how those  
 13 decisions were made?  
 14 A Well, again, going back to what I said last time, the  
 15 decision was made by the governor's office. The  
 16 Department of Health, you know, other than our  
 17 commissioner consulting with the governor, is not part of  
 18 making those decisions. Certainly not at anybody below  
 19 our commissioner was not involved in making those  
 20 decisions.  
 21 Q And do you know how Commissioner Malcolm interacted with  
 22 the governor's office in regard to any such decisions?  
 23 A No, I do not.  
 24 Q So I guess I just want to know what you understand about  
 25 that process other than what you've already said. Do you

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1 know if there were meetings involving Commissioner Malcolm  
 2 and anyone from the governor's office and the governor?  
 3 A I don't know. I wouldn't know.  
 4 Q Do you know if any other agency leaders or commissioners  
 5 were involved in decisions made ultimately by the  
 6 governor's office or the governor?  
 7 MS. VOHS: Objection. Form.  
 8 BY MR. DIEHL:  
 9 Q So just again --  
 10 A Again --  
 11 Q Let me --  
 12 A -- I don't know what --  
 13 Q She objected, and I want to -- and I want to just clarify  
 14 the question. I'm not trying to be rude. I just want to  
 15 make it clear.  
 16 So I will tell you when I stop asking  
 17 questions about decisions made in October, November,  
 18 December 2020, but I'm still asking those series of  
 19 questions. So if I talk about decisions, those are the  
 20 decisions I'm talking about. Is that clear enough?  
 21 A (Moves head up and down.)  
 22 Q Yes?  
 23 A To me it is, yes.  
 24 Q Okay. So with respect to anyone other than Commissioner  
 25 Malcolm -- who I understand is the only person at the



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1 Department of Health involved in that decision making.  
 2 Correct?  
 3 A Again, I only made the assumption it's only Commissioner  
 4 Malcolm. And whether it involves her deputy commissioner,  
 5 I don't know. I just don't know who meets with the  
 6 governor when and how and -- I'm not part of that.  
 7 Q Who is the deputy commissioner?  
 8 A Margaret Kelly.  
 9 Q And then other than -- so outside the Department of  
 10 Health, to your knowledge, do you know of any other  
 11 agencies that were involved in decisions related to  
 12 restrictions in the fall and winter of 2020 related to  
 13 COVID?  
 14 A Again, that's the governor's office. I don't know who's  
 15 involved in the governor's office.  
 16 Q So, for example, the Department of Labor and Industry, do  
 17 you know if anyone from the Department of Labor and  
 18 Industry was involved in decision making or advising the  
 19 governor?  
 20 A Again, that's the governor's office. I don't know who the  
 21 governor involved.  
 22 Q Do you know who Nate Long is, I believe, in the office of  
 23 the governor?  
 24 A No. Never heard that name before.  
 25 Q Do you know who Jessi Held -- H-e-l-d and one "i" at the

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1 end of Jessi. Do you know who Jessi Held is?  
 2 A No. I never heard that name before.  
 3 Q If there was a meetings of principals on October 29th,  
 4 2020, do you know who principals would be?  
 5 A I don't know what that refers to. No, I don't know.  
 6 MR. DIEHL: Okay. Let's mark as Exhibit 17  
 7 D29.  
 8 (Deposition Exhibit Number 17 marked for  
 9 identification by the court stenographer.)  
 10 BY MR. DIEHL:  
 11 Q And you see Exhibit 17 is a short email exchange that  
 12 you're not on, Dr. Danila. Do you see that?  
 13 A Yes.  
 14 Q And the names that I referenced are on this email  
 15 exchange?  
 16 A Yes.  
 17 Q And you weren't on this, so I'm not asking you for your  
 18 personal knowledge about this, but do you know what the --  
 19 if we look at the -- there's an attachment that is  
 20 attached there. It's the second page. Actually, open up  
 21 the first page where it says, "Attachments." It looks  
 22 like the attachment is a PowerPoint presentation titled  
 23 "Dial back data for January 10.29.20" or -- yeah.  
 24 January -- excuse me. I read it wrong. "Jan 10.29.20."  
 25 Do you see that? A blue -- it's in blue.

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1 A Yep.  
 2 Q So have you ever heard the word "dial back"?  
 3 A Yes.  
 4 Q What was -- what is that?  
 5 A Well, I think that's just a general term --  
 6 Q Excuse me. Let me ask -- let me ask a better question.  
 7 Sorry. In terms of dial back in October/November 2020,  
 8 have you heard that term?  
 9 A Well, I heard it throughout -- you know, throughout --  
 10 maybe for the last year about measures the governor takes  
 11 in terms of, you know, mitigation measures for the  
 12 pandemic.  
 13 Q Okay. And --  
 14 A I don't recall when I first heard it, but I'm sure it  
 15 would sometime also include -- would also include October  
 16 and November as well.  
 17 Q Okay. So if you had no other context other than someone  
 18 at the Department of Health used the term "dial back data"  
 19 in October or November of 2020, what would you assume that  
 20 meant?  
 21 A Well, I assume it meant, you know, a whole panoply of data  
 22 regarding the COVID pandemic in Minnesota, you know, that  
 23 would help set decisions on what measures should be in  
 24 place for preventing COVID through executive orders or  
 25 whatever, including, you know, other public messaging and

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1 so forth.  
 2 Q And you're aware that executive order 20-99 went into  
 3 effect on November 20th. Does that sound right to you?  
 4 A To be honest, I can't recall the exact numbers of  
 5 executive orders and dates. So I wouldn't dispute it, but  
 6 I don't really remember for sure.  
 7 Q And so let's just assume that that executive order,  
 8 2020-99, went into effect in November 20th. Do you know  
 9 of an executive order that would have been referred to as  
 10 "dial back" if there's any other executive order that  
 11 occurred between January 10th and -- excuse me. Where it  
 12 says, "Jan" there -- let me ask you a different question  
 13 first. Where it says, "Jan" there, if you look at the  
 14 context of this email, do you believe that refers to  
 15 January or Jan Malcolm, the sender of the email?  
 16 A Jan 10.29.20 I presume refers to October 29th, 2020.  
 17 "Dial back data for Jan," it's probably -- yeah. It  
 18 probably means Jan Malcolm, I would guess.  
 19 Q Yeah. Since she sent the email.  
 20 A Yeah.  
 21 Q And then if we look at -- I'm just going to tell you that  
 22 executive order 20-96 was signed on November 10th. Does  
 23 that sound right to you?  
 24 A Again, I can't recall the dates or the numbers of the  
 25 executive orders, you know, except probably as much as any



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1 citizen would know by reading the newspaper. I just can't  
 2 recall them.

3 Q Because you were not involved in the development of or  
 4 recommendations related to executive order 20-96 or  
 5 executive order 20-99, correct?

6 A That is correct.

7 Q So -- but do you recall any other measures that were to be  
 8 considered a dial back after October 29th, 2020, and  
 9 before -- or other than those two executive orders, 20-99  
 10 and 20-96 -- let me ask a better question.

11 Between October 29th and November 20th, do  
 12 you know of any measures that would have been considered a  
 13 dial back other than November -- excuse me, other than  
 14 executive order 20-96 or 20-99?

15 A I don't know what the dial back measures were for those  
 16 dates or for those executive orders. I don't know what  
 17 they were.

18 Q Do you know of any dial back measures, other than  
 19 executive orders, in that time period between the end of  
 20 October or late October and November -- and Thanksgiving  
 21 of last year?

22 A I don't know. But I wouldn't be necessarily in a  
 23 position -- no, I don't know.

24 Q The Department of Health has issued --  
 25 MR. DIEHL: We can probably not zoom in on

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1 Exhibit 17 anymore. Just keep it up, though.

2 BY MR. DIEHL:

3 Q But throughout 2020, you're aware that the Department of  
 4 Health has issued guidance; is that fair?

5 A Yes.

6 Q And who at the Department of Health develops the guidance  
 7 measures -- or, excuse me, guidance publications? Let me  
 8 start that over.

9 The Department of Health has published  
 10 written guidance, correct?

11 A Yes. You have to be more specific about what you mean by  
 12 "guidance," though.

13 Q So at different times in 2020, the Department of Health  
 14 has published a number of documents on Stay Safe MN. Are  
 15 you aware of that?

16 A Yes.

17 Q And so some of those are called guidelines or guidance,  
 18 and those are written documents that are published on Stay  
 19 Safe MN's website, and they are documents created by or  
 20 produced by the Department of Health. Are you aware of  
 21 that?

22 A Yes. There may be other -- not all of them may be  
 23 produced by the Department of Health, but many of them  
 24 are, yes.

25 Q So if there's something -- if the governor's order refers

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1 to MDH guidelines or guidance, that would refer to a  
 2 published document that is published either on the  
 3 Department of Health's website or Stay Safe MN, correct?

4 A Yes.

5 Q And so -- and I'm talking -- just to be clear, I'm talking  
 6 about -- let's just say -- use 2020, so March 1st, 2020,  
 7 through the end of the year. Were you involved in  
 8 developing any of the written guidance that was published  
 9 by the Department of Health in 2020 related to COVID?

10 A No, I don't think I was involved in developing any. I  
 11 might have at times been asked to sort of just look at a  
 12 document or, you know, a recommendation or guidelines, you  
 13 know, just to be one of many that would look at it and,  
 14 you know, edit or offer suggestions for improvement or,  
 15 you know, that sort of thing. I don't think I was  
 16 directly involved in developing any of them, no.

17 Q Were you involved in any guidance published by other  
 18 agencies of the State of Minnesota related to COVID?

19 A No, I don't think so.

20 Q And so with respect to, for example, any guidance --  
 21 published guidance related to restaurants or dining out,  
 22 were you involved in any guidance related to those topics?

23 A No.

24 Q Do you know who would have been involved in publishing  
 25 guidance, say, for -- are you aware generally that there

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1 was guidance published for the general public about eating  
 2 out in 2020 related to COVID?

3 A Guidance for the general public in eating out in 2020?  
 4 Outside of the executive orders, I can't recall any  
 5 guidance for the general public. Well, maybe some general  
 6 things, but --

7 Q Let me ask you a different question, then, since -- I just  
 8 want to find something that you were both aware of. So --  
 9 and again, I didn't -- I don't have an exhibit for you on  
 10 that. So with respect to guidance related to the  
 11 restaurant industry, you're aware that there was guidance  
 12 published by a state agency in Minnesota in 2020 related  
 13 to the restaurant industry, correct?

14 A Yes.

15 Q And what agency would have been the final author or main  
 16 author of that document if it was related to worker  
 17 safety, for example, at the -- for workers at restaurants?

18 A Well, again, the governor's office develops the executive  
 19 orders, and then there -- you know, there are a team of  
 20 people on a -- a safety team, for example, that might, you  
 21 know, put the measures into a written document or guidance  
 22 that would be helpful, say, to a restaurant owner or to a  
 23 restaurant worker.

24 And that's a -- you know, that's a team of,  
 25 you know, interagency -- multiple state agency





1 professionals that would help -- you know, help put the  
2 executive order into, you know, more clear English and,  
3 you know -- and specific steps and guidelines and actions  
4 that can be taken.

5 Q So with respect to guidance, not executive orders but any  
6 published guidance by a -- published by a state agency  
7 related to COVID with respect to restaurant industry  
8 guidance, do you know which agencies of the State of  
9 Minnesota would have been involved in that guidance, kind  
10 of depending on the topic?

11 A I don't know all of the agencies, no.

12 Q Do you know if the Department of Health would have been  
13 involved in every type of guidance related to COVID, even  
14 if it was published by another agency as the primary  
15 author?

16 A I don't know for sure. I would think probably not every  
17 guidance would include any health department person.

18 Q So who would know that, do you know?

19 A Well, you'd have to be specific about -- you know, about  
20 the guidance. Let's say it's about, you know, schools.  
21 Obviously the Department of Education is taking the lead  
22 on that. It would undoubtedly include someone from the  
23 Department of Health.

24 There may be something -- guidance that the  
25 Department of Education put out that did not include a

1 health department person, depending on what the specific  
2 topic was. So it's going to be -- vary tremendously by  
3 the -- you know, the audience for that guidance and the  
4 topic.

5 Q So you said, "undoubtedly," I guess, but what agency  
6 guidance are you aware of or do you believe exists that  
7 the Department of Health would not have been involved even  
8 though it involved COVID?

9 A I can't -- I don't -- I'm not aware of it specifically.  
10 I'm just saying there might be, though -- some, though. I  
11 don't know of all the guidance -- I don't know all the  
12 guidance that the State has put out, so I don't know.

13 Q So when you say, "undoubtedly" with respect to school  
14 guidance related to COVID, you mean highly likely but not  
15 certain, correct?

16 A Yes.

17 Q So this may be the same as your answers on the executive  
18 order, but --

19 A Could I just give an example? I mean, I imagine --

20 Q Yeah. Sure.

21 A -- the Department of Education --

22 Q Sure.

23 A Well, I just imagine the Department of Education has put  
24 out guidance on, say -- oh, you know, "Well, we can't give  
25 this in-person annual test for students, but you can do it

1 this way." So that's obviously something that, you  
2 know -- it's because of the pandemic but not necessarily  
3 health related.

4 So I'm sure the Department of Education must  
5 have put out guidance, you know, about testing standards  
6 or educational standards, but, you know -- and that's not  
7 obviously directly related to health or prevention  
8 methods. So I'm sure the Department of Education must  
9 have put out something like that, guidance to schools.

10 Q But you're not certain --

11 A Well, I won't say I'm certain. I'm just -- I'm thinking  
12 the Department of Education must have changed some  
13 standards for testing. And since I have teacher friends,  
14 you know, that -- things have changed, obviously, in  
15 education, and that wouldn't necessarily involve -- a  
16 health department person involved in that.

17 Q When the Department of Health has published guidance --  
18 and again, we're not talking -- I'm not talking about an  
19 executive order published or signed by the governor. I'm  
20 talking about written guidance issued by the Department of  
21 Health in 2020 related to COVID.

22 Do you understand that guidance to be binding  
23 or to be recommendations? And we can parse that if that's  
24 helpful, but do you understand Department of Health  
25 guidance to be binding on the public of Minnesota or

1 certain members of the public of Minnesota or do you  
2 understand it to be recommendations?

3 A If the guidance is specifically referring to the executive  
4 order, then it's binding. If it's general guidance,  
5 general information, then it would be general advice,  
6 general recommendation.

7 Q And you're aware of guidance that was issued by the  
8 Department of Health that differed in some way from the  
9 governor's executive order, correct?

10 A I'm not aware of any, no.

11 Q Well, there was -- there's been -- are you aware that  
12 there's been executive orders that say that the public or  
13 certain members of the public must follow guidance issued  
14 by the Department of Health, but then the executive order  
15 does not mandate what that guidance must say? Are you  
16 aware of that?

17 A No, I'm not aware of that.

18 Q Has there been any guidance issued by the Department of  
19 Health that -- of which you're aware that you thought was  
20 the wrong idea or was a bad idea?

21 A Guidance issued by the Department of Health?

22 Q Yes.

23 A No.

24 Q In 2020. Let's just use in 2020.

25 A No.

1 Q Has there been any executive order that you thought was  
2 the wrong decision by the governor?

3 A Well, I don't know of all the decisions made by the  
4 governor, but based on the science, which I am a  
5 scientist, I'd say no.

6 Q Are you aware of any executive order that you believe the  
7 restrictions should have gone further to prevent the  
8 spread of COVID?

9 A To be honest, that's kind of outside of my scope of  
10 expertise, and I don't think I have enough expertise or  
11 opinion to look at all of the executive orders and compare  
12 it to, you know, what might have been done or could have  
13 been done.

14 Q And are you aware of any executive order that either  
15 because it was too restrictive or not restrictive enough  
16 was inconsistent with data developed by your team or teams  
17 at the Department of Health?

18 A In general, no.

19 Q Now, you stated in Exhibit --

20 MR. DIEHL: Let's -- I want to come back to  
21 Exhibit 17. But if we could go to Exhibit 1.

22 (Deposition Exhibit Number 1 previously  
23 marked for identification by the court stenographer.)

24 BY MR. DIEHL:

25 Q In Exhibit 1, you talk about indoor and outdoor dining,

1 correct?

2 A Yes.

3 Q And I'm looking for the paragraph. I lost my place.  
4 Where in here does it talk about both indoor and outdoor  
5 dining?

6 A I know in number 9 on page 4.

7 Q Yeah. Indoor events and entertainment. Anywhere else --  
8 and then at the end it says gyms, youth sport events,  
9 venues providing indoor and outdoor events or  
10 entertainment there. And the -- where do you talk about  
11 indoor and outdoor dining with respect to restaurants?  
12 Sorry. Let's -- go to paragraph 7. Excuse me.

13 So if you look at the second sentence of  
14 paragraph 7 of Exhibit 1, do you see it says, "The public  
15 health" --

16 A Yes.

17 Q -- "and safety will be at significant risk if  
18 bars/restaurants and venues providing indoor and outdoor  
19 events or entertainment are permitted to remain open." Do  
20 you see that?

21 A Yes.

22 Q And I didn't finish the sentence, but that's the part I  
23 want to ask you about. Are you aware that in December  
24 Governor Walz allowed outdoor dining to occur? Do you  
25 recall that?

1 A Again, I can't recall specifically the dates or times or  
2 the specific order.

3 Q I'm not asking for any specifics. I'm asking about the  
4 month of December. Are you aware that in the month of  
5 December Governor Walz allowed outdoor dining in  
6 Minnesota?

7 A No. I can't recall that. I don't remember.

8 Q Well, assuming that's true, did you agree with that  
9 decision if I would say that it's within a week of  
10 December 11, 2020, the date of Exhibit 1?

11 A If you're saying the governor's executive orders allowed  
12 outdoor dining in December, I guess it would have to get  
13 to the specifics of that outdoor dining. What does that  
14 mean? I do recall discussions about, "Well, outdoor  
15 dining," you know -- some restaurants put up these sort of  
16 like igloos. And really it wasn't outdoor. It happens to  
17 be kind of a temporary structure outdoors, but it's really  
18 an indoor venue. So it's the specifics of what we mean by  
19 "outdoor."

20 Q Let's just assume we have no walls, but people are eating  
21 in -- in -- outdoors at a restaurant, on, say, a sidewalk.  
22 There may be one wall near them but only one wall. Did  
23 you agree with the decision to allow that dining in  
24 December, assuming it occurred?

25 A Well, as I stated elsewhere, you know, eating and drinking

1 in a bar, whether it's indoors or outdoors, is going to  
2 pose a risk because people have to pull their masks down.  
3 They tend to pull their masks down. They may not stay  
4 socially distanced. So even outdoors there is a risk. So  
5 probably lower risk than indoors, but there is a risk.

6 Q Well, how do you -- how do you figure out if it's a good  
7 or bad idea? Where is the threshold?

8 MS. VOHS: Objection. Outside the scope.

9 A I don't know what you mean where is the threshold. Indoor  
10 or outdoor or...

11 BY MR. DIEHL:

12 Q I'm talking about -- so in your -- in paragraph 7 of  
13 Exhibit 1, you don't -- there's no caveats about, "Well,  
14 outdoor could be okay under certain circumstances"; is  
15 that fair?

16 A Correct.

17 Q So I guess if the governor allowed it, was he wrong to do  
18 that in December 2020?

19 A I don't know. You know, again, there's a spectrum of  
20 risk -- higher risk indoor and outdoor. Risk remains  
21 outdoors if there's not social distancing, if there's not  
22 masking.

23 Q So based -- I knew you weren't involved in the decision  
24 here or any of these decisions in the executive order, but  
25 based on the data available to your teams in contact

1 tracing in Minnesota in December or November of 2020, how  
2 would you determine whether to allow indoor and outdoor  
3 dining or whether to allow only outdoor dining or  
4 something else?

5 A Well, we clearly had a large number of outbreaks  
6 associated with outdoor events, whether it was an  
7 established restaurant or bar that had outdoor, you know,  
8 patio seating or -- we certainly had a large number of  
9 outbreaks just in, say, person's private graduation  
10 parties, you know, other birthday parties that were  
11 outdoors, barbecues, you know, clearly, that we could show  
12 that there was transmission that occurred.

13 Q Do you know what percent of transmission the Department of  
14 Health alleges is -- related to restaurants was related to  
15 outdoor dining versus indoor dining?

16 A I don't have that information at my fingertips, no.

17 Q Were -- not at your fingertips, but do you know that the  
18 information exists?

19 A Ultimately we could look and determine -- you know, of  
20 course, sometimes people -- there may be an outbreak that  
21 we associated with a specific bar or restaurant, for  
22 example, but, you know, it may be that people are both  
23 indoors and outdoors, not just exclusively outdoors. So  
24 it may be difficult. Although I do believe we probably  
25 did -- we did have at least some outbreaks that were

1 associated with people that only -- or at least told us  
2 they were only outdoors.

3 Q But you don't know whether there is a specific -- or  
4 specific data somewhere at the Department of Health that  
5 shows or delineates the risk related to indoor dining  
6 versus outdoor dining?

7 A We wouldn't have that -- we couldn't specifically put on  
8 a -- put a -- calculate a risk for that. Again, you have  
9 to look at the general information about COVID and the  
10 general information about transmission to know that the  
11 risk indoors would be greater than outdoors. Indoors  
12 were, you know -- whether it might be -- outdoors you're  
13 going to have more ventilation, obviously, wind, air,  
14 larger volume of air than indoors. Indoors you might be  
15 more crowded than outdoors.

16 It depends on the event, of course, too. You  
17 could have a very crowded outdoor patio event that, you  
18 know, may change the formula and what the risk is. And  
19 then, of course, masking may differ indoors or outdoors.  
20 Social distancing may differ.

21 Q May I interrupt you? Because I want to ask a different  
22 question. I wanted to keep this going. And I apologize.  
23 I just want to make sure we use our time effectively.

24 And that wasn't really my question. My  
25 question is, I guess, do you know, other than general

1 assumptions or general research regarding COVID generally,  
2 does the Department of Health know whether indoor dining  
3 carries a significantly lower risk than outdoor dining or  
4 vice versa based on its own data collection?

5 MS. VOHS: Objection. Outside the scope.

6 A I think our own data would suggest the risk would be  
7 greater indoors than outdoors.

8 BY MR. DIEHL:

9 Q But how do you know that? Do you know how the data is  
10 collected related to indoor versus outdoor dining?

11 A Well, we ask people, you know, where they were in the  
12 period of time when they might have been infected. And if  
13 we identify a specific restaurant we might ask details  
14 about that, and someone might say that they were only  
15 outdoors on the patio. They never went indoors or -- you  
16 know. Or we might know just the makeup of that  
17 restaurant, that that restaurant only offers indoor  
18 dining.

19 Q Do you know if in some regular and consistent way, the  
20 Department of Health asked those questions to create a set  
21 of data related to indoor versus outdoor dining?

22 MS. VOHS: Objection. Outside the scope.

23 A Well, yes. We have standardized data collection for  
24 exposures.

25 BY MR. DIEHL:

1 Q All right. Well, let's go to Exhibit -- well, let me just  
2 clarify. With respect to exposures, you have that data,  
3 but with respect to exposures indoors versus exposures  
4 outdoors?

5 A Well, again, we would know from the name of the restaurant  
6 whether it's offering outdoor, indoor, what the person  
7 tells us when we have a conversation with that person.

8 MR. DIEHL: Let's look at Exhibit 5.  
9 (Deposition Exhibit Number 5 previously  
10 marked for identification by the court stenographer.)

11 BY MR. DIEHL:

12 Q So we talked about Exhibit 5 in the last portion of the  
13 deposition. And so based on the establishments listed in  
14 the chart on the first page of Exhibit 5 -- or the first  
15 chart on Exhibit 5, how do we know whether these were  
16 indoor or outdoor dining?

17 A Well, you can look at the name of the restaurant, and  
18 certainly you could look up whether or not they offered  
19 outdoor dining or whether or not the person told us they  
20 offer outdoor dining, you know. I personally know --

21 Q I'm not saying whether --

22 A -- a couple of these places. I know --

23 Q Hold on one --

24 A -- they don't offer outdoor dining, so --

25 Q My question is, how would -- does the Department of Health



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1 systemize -- systematize that data collection related to  
 2 indoor and outdoor dining?  
 3 A No, I don't think we systemize it. But we could -- we  
 4 could delve into the data deeply --  
 5 Q I'm not asking whether you could do something different.  
 6 I'm asking what you do do. So with respect to any of  
 7 these establishments, do you know if in the Department of  
 8 Health's routine data collection there is a way to look up  
 9 in the Department of Health's collected data whether these  
 10 restaurants involve entirely or primarily outdoor or  
 11 entirely or primarily indoor dining?  
 12 A I think we could do that, yes.  
 13 Q Well, how do you know -- how do you know that?  
 14 A I think we could look up this -- well, for example, we  
 15 could look at The Loop in downtown Minneapolis where we  
 16 had 59 total cases and 23 only and look up the details of  
 17 that.  
 18 Q There is a misunderstanding. So I know that one could  
 19 research or go to the restaurant. One could look at a  
 20 website. My question is, at the time this exhibit was  
 21 created, Exhibit 5, updated July 28th, 2020, do you know  
 22 if the Department of Health was collecting data regarding  
 23 indoor versus outdoor dining in some sort of systematized  
 24 way?  
 25 A Yes, we were collecting information about that.

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1 Q How?  
 2 A By interviewing the person and finding out where they  
 3 were. And if they identified a restaurant, we might get  
 4 more details about that time they were at that restaurant.  
 5 Q My question wasn't whether you might. My question was,  
 6 for each of these establishments is there a systematized  
 7 way that you ask at this time, July 2020 -- that the  
 8 Department of Health asked and then inputted data related  
 9 to indoor versus outdoor dining regarding these  
 10 establishments?  
 11 MS. VOHS: Objection. Asked and answered.  
 12 BY MR. DIEHL:  
 13 Q Go ahead.  
 14 A I'm not really clear what your point is. Again, we would  
 15 collect information about the restaurant the person was  
 16 at. Did we ask specifically were you indoors or outdoors?  
 17 I can't recall. I don't know what the uniform was --  
 18 Q Okay. You don't -- you don't know?  
 19 A -- but we would have the -- we would have that  
 20 information.  
 21 Q How would you have it, then, and how do you know that?  
 22 A Because the person might say to us, "Oh" --  
 23 Q They might do a lot of things. The question is, did you  
 24 do that at that time? Did your contact tracing  
 25 investigate --

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1 A We had a -- yes. We would have a conversation with that  
 2 person.  
 3 Q Dr. Danila, I need to ask the question. I'm going to ask  
 4 it again so it's clear. So at this time, July 2020, did  
 5 the Department of Health, in a systematized way, collect  
 6 data regarding whether a restaurant or establishment  
 7 listed -- such as those listed on first page of Exhibit 5,  
 8 had primarily indoor dining versus primarily outdoor  
 9 dining?  
 10 A Yes.  
 11 MS. VOHS: Objection. Asked and answered.  
 12 BY MR. DIEHL:  
 13 Q So how do you do that? And don't -- I don't want to talk  
 14 about whether it could have. I want to -- do you know of  
 15 how that data was collected, if it was?  
 16 A We collected the data through interviewing the case and  
 17 asking about where they are.  
 18 Q And then if they told you -- if they told the contact  
 19 tracing investigator, "I was eating outdoors," was that  
 20 inputted into a database?  
 21 A Yes.  
 22 Q And so the Department of Health could easily look up these  
 23 establishments listed on the first page of Exhibit 5 and  
 24 find out whether the dining was indoors or outdoors?  
 25 A Yes.

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1 Q And so we already talked about this. The risks indoors  
 2 and the risks outdoors could be substantially different;  
 3 is that fair?  
 4 A Yes.  
 5 Q And again, I'm talking about with respect to the spread of  
 6 COVID. Did you understand that?  
 7 A Yes.  
 8 Q So as I look through this document, I don't see any  
 9 summary of the risks or establishments that were indoors  
 10 versus outdoors. Are you aware that these reports such --  
 11 reports such as this Exhibit 5 included a summary of  
 12 indoor versus outdoor dining?  
 13 A I'd have to look at the report. I can't recall.  
 14 Q Well, if I do a word search, which I would be able to do,  
 15 I don't see the word "outdoor" in this document. Does  
 16 that sound possible to you?  
 17 A Okay. Possible.  
 18 Q So if you look at the -- and I would do the word "indoor,"  
 19 there is a reference to indoor. So on the second page, at  
 20 the top, the second sentence on that page says, "Among  
 21 these cases, the earliest specimen collection date was  
 22 June 20th, 2020, the same day that indoor dining was  
 23 allowed to begin in any capacity." Do you see that?  
 24 A Yes.  
 25 Q And I think that's the only reference to indoor and



1 outdoor dining. So let's just assume that it's a  
 2 hypothetical or actual, depending on what the document  
 3 says. Wouldn't you need to follow up on these restaurants  
 4 or follow up with respect to outbreak investigations to  
 5 determine whether cases that were outdoors might have been  
 6 simply people that had COVID from some other source and  
 7 reported they ate at a restaurant but were not indoors?  
 8 **Would that matter?**

9 MS. VOHS: Objection. Outside the scope.  
 10 And form.

11 A Well, I'm not sure what your question is, if you're asking  
 12 would it matter whether an indoor restaurant --

13 BY MR. DIEHL:

14 **Q Let me ask a different question if you didn't understand.**  
 15 **So the question is, how would you determine whether any**  
 16 **restrictions related to restaurants generally were**  
 17 **effective or not or were necessary or not after they were**  
 18 **implemented?**

19 MS. VOHS: Objection. Outside the scope.

20 A Well, as we discussed last time and what's in my written  
 21 deposition, the information about transmission of  
 22 SARS-CoV-2 in bars and restaurants --

23 BY MR. DIEHL:

24 **Q That's not my question. My question is a different**  
 25 **question. My question is, with respect to a specific**

1 **restriction implemented at any time in 2020 by Governor**  
 2 **Walz, what was the process by which the Department of**  
 3 **Health would evaluate whether that restriction was**  
 4 **necessary, effective after it was put into effect?**

5 A Well, specific for bars and restaurants, we would look at  
 6 the number of cases after -- after -- you know, with a  
 7 little lag period after they went into effect, how many  
 8 cases, how many clusters, how many outbreaks we had  
 9 associated with bars and restaurants.

10 **Q Well, I mean, it's easy to determine that if restaurants**  
 11 **are closed there's not going to be any restaurants using**  
 12 **the definition supplied by the Department of Health,**  
 13 **correct? Yes?**

14 A If restaurants or bars are closed, then naturally we  
 15 shouldn't be seeing cases associated with bars and  
 16 restaurants, correct.

17 **Q Right. So with respect to restrictions on bars and**  
 18 **restaurants at any time -- well, let's just ask a more**  
 19 **specific question. With respect to any definitions of**  
 20 **outbreak applied, did the Department of Health do anything**  
 21 **to determine whether that definition should change and was**  
 22 **actually showing cases related to restaurants or was**  
 23 **simply reporting sort of background COVID because lots of**  
 24 **people go to restaurants?**

25 MS. VOHS: Objection. Outside the scope.

1 A Well, we have -- we looked at our cases--actually, it's on  
 2 this report--of people that mention they were -- you know,  
 3 that they were at a bar or restaurant and the time when  
 4 they likely acquired their infection.

5 And then if a threshold was met, we would  
 6 determine that would be an outbreak, and we would either  
 7 have environmental health, state or locals, go out to  
 8 inspect the restaurant or we would then also record that  
 9 as an outbreak, again recognizing that the outbreaks are  
 10 just a tip of the iceberg since, you know, there are more  
 11 people that were likely infected at that place that never  
 12 got tested. Or if they got tested, we never interviewed  
 13 or, if we interviewed them, they might not have named that  
 14 restaurant. So --

15 BY MR. DIEHL:

16 **Q Let me ask a question about that.**

17 A -- again, it's just the tip of the iceberg.

18 **Q Okay. So with respect to this tip of the iceberg theory,**  
 19 **the tip of the iceberg would be true to any transmission**  
 20 **of COVID, correct?**

21 A That tip of the iceberg might apply to other settings as  
 22 well, correct.

23 **Q In what setting where someone contracted COVID is the**  
 24 **Department of Health certain that that -- the identified**  
 25 **transmission in that setting is all of the COVID cases in**

1 **that setting?**

2 MS. VOHS: Objection. Outside the scope.  
 3 And form.

4 A Well, of course, no one is ever harmed since -- certain  
 5 since the virus is invisible. But, you know, if we have  
 6 a -- say, a family gathering and we have a complete  
 7 listing of everybody at that gathering, like a wedding,  
 8 for example, and we had an outbreak associated at that  
 9 wedding, you know, and that was the only thing that people  
 10 had in common -- you know, they're coming from different  
 11 places, different friends and family, and the only thing  
 12 they really had in common was attendance at that wedding  
 13 and we were able to get ahold of everybody at that  
 14 wedding, it's fairly certain that the cases that we  
 15 identified associated with that wedding caught it at that  
 16 wedding.

17 It's possible that someone didn't report  
 18 different exposures somewhere else during that same time  
 19 period and got it elsewhere, but it's very likely, you  
 20 know, the outbreak associated with that wedding everybody  
 21 that we -- you know, we established was associated with  
 22 that wedding acquired it at that wedding.

23 BY MR. DIEHL:

24 **Q All right. So with respect to restrictions on restaurants**  
 25 **at any time in 2020, after the restriction was changed,**

1 how did the Department of Health evaluate the effect of a  
 2 change in restriction?  
 3 MS. VOHS: Objection. Outside the scope.  
 4 A I'm not sure which restriction change you're talking  
 5 about. But again, we were -- we hadn't changed the way we  
 6 were collecting information about our cases.  
 7 BY MR. DIEHL:  
 8 Q So how did you determine if your data collection was a  
 9 hundred percent accurate or whether there was fundamental  
 10 biases or problems with it?  
 11 A Well, as stated before we -- of course, we rely on people  
 12 to actually answer their phone and --  
 13 Q Let me -- let me --  
 14 A -- want to be interviewed with us and provide --  
 15 Q That's not the question.  
 16 A -- the truthful answer.  
 17 Q I need you to stop, Dr. Danila. Your counsel will have an  
 18 opportunity to ask questions at some point, but you're not  
 19 answering the question I asked. And your counsel's going  
 20 to -- is trying to keep track of the time, and I'm trying  
 21 to be respectful of all of our time. So I'm not trying to  
 22 interrupt you to be rude. And your counsel can clarify if  
 23 there's something important that needs to be said that  
 24 hasn't been said.  
 25 What I'm trying to say is, was there a

1 nature of the interaction in a retail setting is markedly  
 2 different than these other settings. People are masked.  
 3 People are socially distanced when they wait in line.  
 4 They're socially distanced when they go to the cashier.  
 5 You might pass someone in an aisle in a grocery store or  
 6 in hardware store, but it's a markedly different risk. So  
 7 we don't specifically ask about every store the person  
 8 might have been in and record it.  
 9 BY MR. DIEHL:  
 10 Q So let me ask you this: You're applying assumptions  
 11 regarding retail. Now, whether they're informed or not is  
 12 a different question, so -- but what were you just talking  
 13 about with respect to retail? Those are assumptions,  
 14 correct?  
 15 A No, they're not assumptions. They're --  
 16 Q Okay.  
 17 A Clearly, everybody knows and -- it's an observation. You  
 18 wear a mask. You go in the store. You maintain distance.  
 19 You're not -- not like a bar or restaurant where you're  
 20 sitting for an hour, drinking, eating --  
 21 Q I don't need to repeat it.  
 22 A -- removing your mask. You're --  
 23 Q I just want to ask a specific question. So you're  
 24 saying --  
 25 A So it's not a -- it's not an assumption. I don't know why

1 systematized way, other than data collection that was in  
 2 place throughout 2020, that the Department of Health  
 3 evaluated restrictions in place or the need for a change  
 4 or, after a change occurred, whether the change -- the  
 5 restriction -- previous restriction was effective?  
 6 A I'm trying to answer. The way I understand your question  
 7 was, we collected data. I don't understand.  
 8 Q So other than the data collection that was -- collecting  
 9 data regarding cases and outbreaks, other than that data  
 10 collection, did the department ever go back and do a  
 11 systematized study of "Here's how we're collecting data.  
 12 Are we doing it right or doing it wrong?"  
 13 A Constantly look at the way we collect data to make sure --  
 14 we have quality improvement to make sure we're collecting  
 15 data in the best way possible.  
 16 Q Has the Department of Health ever requested data regarding  
 17 retail -- consumers in retail who contracted COVID?  
 18 MS. VOHS: Objection. Outside the scope.  
 19 A So I think I mentioned last time, we do collect  
 20 information about where people might have been and, if  
 21 they offer that they were in a retail setting, we would  
 22 record that. We don't specifically ask that, because  
 23 obviously grocery stores are open, hardware stores are  
 24 open.  
 25 And as I mentioned last time, you know, the

1 you say it's an assumption.  
 2 Q Okay. Well, I'm asking a question. It's yes-or-no  
 3 question. And you've answered it, and so we need to not  
 4 launch back into reciting a previous recitation. So we've  
 5 heard that, and we've got a record of that, so we need to  
 6 keep this thing moving.  
 7 So what is observation bias?  
 8 A Well, there's an epidemiological concept, observation  
 9 bias. Say a doctor might see a patient and, having just  
 10 read a specific scientific paper, may then, you know, be  
 11 observing -- may be diagnosing something that's not truly  
 12 present. So it's a bias.  
 13 Q So -- and it could be based on if one collects data  
 14 regarding certain activities but doesn't collect data on  
 15 other activities. That could create an observation bias,  
 16 correct?  
 17 MS. VOHS: Objection. Outside the scope.  
 18 This is expert testimony.  
 19 A I'd have to think about that before I answer it.  
 20 BY MR. DIEHL:  
 21 Q You don't know that answer based on 35 years with the  
 22 Department of Health and supervising its contact tracing  
 23 and data collection?  
 24 A Well, let me understand your question again. Your  
 25 question was could you record something -- say that again.

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1 State your question.

2 Q **Could there be an observation bias based on data that is**

3 **collected based on data -- excuse me. Let me start over.**

4 **Could there be an observation bias based on**

5 **data collected regarding certain activities and not**

6 **collecting data regarding other activities, yes or no?**

7 MS. VOHS: Objected again.

8 A You know, I wouldn't call that observation bias. It just

9 might be incomplete data collection.

10 BY MR. DIEHL:

11 Q **Okay. So could incomplete data collection create an**

12 **observation bias?**

13 A It would create bias, yes.

14 Q **And what has the Department of Health done to make sure**

15 **that it isn't drawing the wrong conclusion based on only**

16 **collecting certain types of data?**

17 MS. VOHS: Objection. Outside the scope.

18 A With respect to COVID-19, over time we changed our

19 interview. For example, I mentioned last time early on --

20 of course, very early on in the pandemic, we were focusing

21 on international travel or travel outside of the United

22 States. As more and more COVID existed, you know, we

23 would change our questions and our queries.

24 BY MR. DIEHL:

25 Q **So with respect to data that's never been collected, such**

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1 **as specific questions regarding retail shopping or going**

2 **to a gas station, for example, what has the Department of**

3 **Health done to determine whether it has drawn the wrong**

4 **conclusions based on not collecting that data?**

5 MS. VOHS: Objection. Outside the scope.

6 A As I said, it's not true that we've never collected. We

7 would ask -- we would have that information. But again,

8 the risk is markedly different. One would not expect

9 there to be a risk, for example, in a gas station if

10 you're masked and socially distanced.

11 BY MR. DIEHL:

12 Q **And -- but the Department of Health has not tested that**

13 **assumption, correct?**

14 A It's not an assumption. I mean, this is the standard data

15 collection probably by all 50 state health departments and

16 many, many local health departments across the country.

17 Q **Probably or do you know that or are you just guessing?**

18 A I would say that's true. I don't have every questionnaire

19 of every health department in front of me, but I would say

20 that's -- it's true.

21 Q **So under oath today, you believe that no Department of**

22 **Health or its equivalent in any of the 50 states collects**

23 **data regarding retail shopping?**

24 MS. VOHS: Objection. Misstates testimony.

25 A That misstates my testimony. I'm not aware of any

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1 outbreak reported anywhere in the United States, in the

2 medical literature or any conference call I've been on

3 that has established an outbreak related to, say, a

4 grocery store or a hardware store, customers.

5 BY MR. DIEHL:

6 Q **Okay. But do you know -- that wasn't my question. My**

7 **question is, do you know if all states are collecting data**

8 **to determine that issue?**

9 A I don't know for certain, no.

10 Q **So you're making an assumption, correct?**

11 A Yes. I would assume that, yes.

12 Q **Okay. Assumptions aren't always right, are they?**

13 A (No response.)

14 Q **That seems like a pretty easy question to me. All right.**

15 A Oh, I thought that was -- I thought that was rhetorical.

16 Yes, you're correct.

17 MR. DIEHL: Okay. So back to Exhibit 17.

18 BY MR. DIEHL:

19 Q **Let's just -- looking at the first page of Exhibit 17 when**

20 **it's up here, this is the email from Jan Malcolm to Nate**

21 **Long "(GOV)" and "Held, Jessi (GOV)." Do you understand**

22 **"GOV" to mean "governor's office"?**

23 A That's probably governor's office, yes.

24 Q **Okay. So with respect to an October 29th meeting with**

25 **principals -- and we're going to talk about the PowerPoint**

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1 **that's attached.**

2 MR. DIEHL: Well, go to the first page of the

3 PowerPoint.

4 BY MR. DIEHL:

5 Q **So MDH recommendations dated October 29th, 2020, do you**

6 **see that?**

7 A Yes.

8 Q **So do you know -- other than data collected by you or**

9 **those under you in the -- at the Department of Health, do**

10 **you know how data was collected to determine any emergency**

11 **recommendations by the Department of Health in October**

12 **2020?**

13 A Well, it would be data collected by the Department of

14 Health, not necessarily under me but, you know, other

15 people as well.

16 Q **So with respect to page -- I want to go to page 4 of the**

17 **PowerPoint, PowerPoint page 4, which is -- has a Bates**

18 **stamp that was added by my office, MDH-DP000715. Do you**

19 **see that page?**

20 A Yes.

21 Q **So this is information regarding outbreaks from June to**

22 **October 2020. Does that seem correct?**

23 A (Reviewing.) I don't see the date on there.

24 Q **Well, if you look at the column --**

25 A Oh, I'm sorry. June -- yes. Okay. I see it now. June



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1 to October 2020, yes.

2 Q Okay. And so then there's a "Total Number of Outbreaks"

3 and a "Total Number of Cases" columns. Do you see that?

4 A Yes.

5 Q And this specifically would be data that came from contact

6 tracing or teams under your supervision, correct?

7 A Not necessarily under my supervision but teams that are in

8 the health department. Again, these teams are basically

9 independent.

10 Q Well, with respect to the different settings there, do you

11 know the number of cases in Minnesota in -- in late

12 October 2020?

13 A I don't recall. I'd have to -- I'd have to look it up. I

14 don't know.

15 Q So it was hundreds of thousands, correct?

16 A I mean, cumulative at that point or just for the month of

17 October?

18 Q Cumulatively.

19 A Sure.

20 Q So if we go to page 2 -- go back two pages. And I don't

21 want to -- I don't want you to add this up, but it looks

22 like there's a number of different bars between June and

23 October that are -- many of which are above 4,000 cases

24 per bar. So whatever this adds up to in terms of cases,

25 that would be the number of cases during the period of

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1 June, July, and August, September, October 2020, correct?

2 A Yes.

3 Q And so the total number of cases from each of these

4 outbreak settings listed on page 4 of Exhibit 17 is 2,417.

5 Do you see that?

6 A Yes.

7 Q Well -- so that is approximately the number of one of

8 these bars during June and July -- or, excuse me, during

9 June of 2020. Does that seem correct to you?

10 A Can you put that other figure back, then?

11 Yes. Okay. Yes. Yes.

12 Q Okay. So 2,400 or so is a small fraction of the total

13 number of cases in June through October 2020; is that

14 fair?

15 A Yes.

16 Q Yeah. So that one bar in October is over 12,000 cases,

17 correct?

18 A Yes.

19 Q So if we're talking about -- let's say it's 100,000 or

20 200,000 total cases. I don't know what this adds up to.

21 But why is the governor's office and Commissioner Malcolm

22 focused on 2,400 cases when that's less than -- that's

23 just a tiny fraction of the total cases?

24 MS. VOHS: Objection. Outside the scope.

25 A Again, I don't know. I'm not part of the decision-making

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1 process at the governor's office. But as I said many,

2 many times, the outbreaks are just the tip of the iceberg.

3 There are many more cases associated with those specific

4 listed venues and out -- and settings that we don't know

5 about.

6 BY MR. DIEHL:

7 Q Other than general assumptions or general information

8 related to masks or types of settings or breathing, do you

9 have specific data, other than the data shown here, that

10 demonstrates the danger of these settings listed?

11 A Yes. There's general knowledge about how COVID is spread

12 and why it might be spread in, say, a bar or restaurant or

13 some of those other settings listed on the other --

14 Q Yeah. So I don't want you to repeat that. Other than

15 that general understanding, is there specific information

16 regarding why these allegedly risky settings are -- have

17 such a minimal number of cases associated with them?

18 MS. VOHS: Objection. Outside the scope.

19 A I don't want -- I don't want to have to repeat myself, but

20 again --

21 BY MR. DIEHL:

22 Q Yeah. And I said not to. So what I'm asking about is

23 specific --

24 A Right. So I'm sorry.

25 Q -- data collected -- specific data collected by the

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1 Department of Health. Other than your general

2 assumptions, how is this number such a tiny fraction of

3 cases, 2,417 cases?

4 MS. VOHS: Objection. Outside the scope.

5 And form.

6 A If you're asking why is it such a low proportionate, it

7 represents the tip of the iceberg. That's the only way I

8 can answer the question.

9 BY MR. DIEHL:

10 Q Okay. So you don't have anything -- other than to say --

11 then repeat sort of general understandings of those cases,

12 you don't have any specific data to point to that

13 demonstrates that your assumptions are correct, fair?

14 A I challenge the word "assumptions," but yes. Correct.

15 Q You're -- okay. So if restaurants are dangerous and a

16 waiter is always in a restaurant while patrons are there

17 during their shift, why does restaurant outbreaks not

18 include employee outbreaks?

19 MS. VOHS: Objection. Outside the scope.

20 This is expert testimony.

21 A We do indicate when we have an outbreak among staff as

22 opposed to patrons.

23 BY MR. DIEHL:

24 Q Right. But it's not collected --

25 A We do separate staff from patrons.





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1 Q They're separated. Do you know why?  
 2 MS. VOHS: Objection.  
 3 A Well, it's a -- it's a workplace setting as well as a  
 4 place where people eat, so it's a way to include it as  
 5 part of workplaces.  
 6 BY MR. DIEHL:  
 7 Q So workers don't create risk to patrons. Is that why?  
 8 MS. VOHS: Objection.  
 9 A No. It's just -- no. We're including -- we're including  
 10 it under -- as a workplace. The staff that work at a  
 11 restaurant would be -- that's their workplace. So we have  
 12 the data. We separate out patrons from staff.  
 13 BY MR. DIEHL:  
 14 Q Okay. But you don't include the data related to workers  
 15 if they are not patrons identified, correct? Excuse me.  
 16 Let me ask a better question.  
 17 With respect to restaurant outbreaks as  
 18 opposed to workplace outbreaks, restaurant outbreaks do  
 19 not -- restaurant outbreaks do not include workplace  
 20 outbreaks unless there are patrons involved in the  
 21 outbreak, correct?  
 22 A I don't think that's true. I think we have included  
 23 restaurant outbreaks where only staff were involved,  
 24 particularly earlier on in the pandemic.  
 25 Q Okay. And then at some point there was a shift to say,

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1 "We will not include employee-only outbreaks in restaurant  
 2 outbreaks"?  
 3 A Yeah. I think we just separated them out and included  
 4 them in the workplace outbreaks, right.  
 5 Q Do you know why that decision was made?  
 6 A I don't -- I don't recall why.  
 7 Q Do you know who made the decision?  
 8 A I don't recall.  
 9 Q Do you know who was involved in making the decision?  
 10 A Well, we have a workplace team. It might have been the  
 11 workplace team, but I don't recall.  
 12 Q But you don't know that that workplace team you're  
 13 referring to was involved in the decision to count  
 14 workplace employee outbreaks among restaurant outbreaks?  
 15 A Again, I can't recall.  
 16 Q Do you assume that the tip of the iceberg is  
 17 representative of the rest of the iceberg?  
 18 A No -- well, no -- well, depending on who you're asking.  
 19 The tip of the -- the restaurant/bar-associated outbreaks,  
 20 for example, are the tip of the iceberg for  
 21 restaurant/bar-associated infections.  
 22 Q That wasn't my question, I guess. So use restaurant --  
 23 your words, tip of the iceberg related to restaurants. Do  
 24 you assume that the rest of the iceberg is similar to the  
 25 restaurant data that you've collected related to

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1 restaurant outbreaks?  
 2 A Well, I'm not sure what you're defining as the iceberg.  
 3 Obviously the iceberg for all COVID cases includes, for  
 4 example, nursing home residents that would never go out to  
 5 a restaurant or bar.  
 6 Q Okay.  
 7 A So no.  
 8 Q I'm trying to use your words in the context of  
 9 restaurants. Okay? Yes or no, you use the word -- the  
 10 phrase "tip of the iceberg" in relation to outbreaks in  
 11 restaurants, correct?  
 12 A Yes.  
 13 Q And so with respect to your use of that term regarding  
 14 restaurant outbreaks, do you believe that the rest of the  
 15 iceberg is similar to the tip that is shown in MDH data?  
 16 A The rest of the restaurant/bar iceberg is representative  
 17 of the tip, yes.  
 18 Q I asked that backwards, I think. So do you assume that  
 19 the tip of the iceberg in that context of restaurants is  
 20 representative of the rest -- representative of the rest  
 21 of the iceberg?  
 22 A Rest of the bar/restaurant iceberg, yes.  
 23 Q And so --  
 24 MS. VOHS: Mr. Diehl, I believe we're at  
 25 seven hours. Do you have a final question?

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1 MR. DIEHL: Well, seven hours isn't the  
 2 limit, Counsel, and I have lots of extra questions. So we  
 3 can take a break now, if this is a good time for a break,  
 4 but I'm not out of time, and there is not a clear time  
 5 limit. But if we have to, we'll move for more time.  
 6 MS. VOHS: I believe we're done. I think  
 7 we're at the seven hours.  
 8 MR. DIEHL: Let's -- let me just check one  
 9 issue here real quick.  
 10 Counsel, I have more questions, so I'm  
 11 going to -- I guess if I have to -- if you're going to  
 12 walk out, I will move for additional time. We don't -- we  
 13 need more time. Are you willing to provide the witness  
 14 for more -- for additional time than seven hours?  
 15 MS. VOHS: No, we are not.  
 16 MR. DIEHL: And with respect to the reporter,  
 17 what time do you have on the video?  
 18 THE VIDEOGRAPHER: We are at 1 hour and 11  
 19 minutes right now in addition to the 5, 51 from the last  
 20 deposition. Do you want to go off the record?  
 21 MR. DIEHL: Not right now. I guess I need to  
 22 know whether -- well, let's go off record for a moment.  
 23 THE VIDEOGRAPHER: Okay. Off the video  
 24 record at 2:18 p.m.  
 25 (A recess was taken from 2:18 p.m.)



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1 until 2:20 p.m.)  
 2 THE VIDEOGRAPHER: Going back on the record.  
 3 All right. One moment. We are back on the  
 4 video record at 2:20 p.m.  
 5 BY MR. DIEHL:  
 6 **Q Dr. Danila, are you aware of any downsides or negative**  
 7 **aspects of using masks or wearing masks in any context?**  
 8 A In certain athletics, there could be a chance of somebody  
 9 grabbing a mask and choking, so masks are not recommended  
 10 for like wrestling, for example, obviously swimming where  
 11 the water would, you know, affect the mask. So there  
 12 could be some downsides in certain athletic sporting  
 13 events.  
 14 **Q To clarify, was that based on data collected by any of**  
 15 **your team and the Department of Health?**  
 16 A No. That's general recommendations in the American  
 17 Academy of Pediatrics regarding athletics, in adolescents  
 18 and children.  
 19 **Q But you weren't involved in those decisions or any**  
 20 **recommendations regarding from the AAP?**  
 21 A No.  
 22 **Q So an additional question related to Mindy Hexum and data**  
 23 **she is collecting. Have you been involved in any data**  
 24 **collection related to data practice requests involving**  
 25 **youth sports in the fall of 2020?**

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1 A No, I'm not. I was not part of youth sports, so no.  
 2 **Q So you have no knowledge related to youth sports and**  
 3 **restrictions of youth sports in the fall of 2020?**  
 4 MS. VOHS: Counsel, I think that was the two  
 5 questions.  
 6 A Again, to clarify. I was not part of the youth sports  
 7 team. There's a whole team that deals with youth sports.  
 8 BY MR. DIEHL:  
 9 **Q So you wouldn't have knowledge about those issues or you**  
 10 **have no documents related to youth sports?**  
 11 MS. VOHS: Objection. Asked and answered. I  
 12 think we're done.  
 13 BY MR. DIEHL:  
 14 **Q Dr. Danila, you can answer.**  
 15 A Well, I would say I have general knowledge from the  
 16 medical scientific literature on sports.  
 17 **Q But not a single document?**  
 18 A These are just published articles. I don't have any  
 19 documents otherwise, no.  
 20 **Q And you weren't -- you don't have knowledge of how**  
 21 **decisions were made regarding youth sports restrictions?**  
 22 MS. VOHS: Objection. Asked and answered.  
 23 We've asked the two questions. I'm going to  
 24 stop it here.  
 25 MR. DIEHL: So, Counsel, you're indicating

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1 that you and the witness are going to leave the deposition  
 2 regardless of the fact that we're not done?  
 3 MS. VOHS: I think we are done. We agreed to  
 4 two extra questions. We're at the time limit, and we're  
 5 not stipulating to go beyond that.  
 6 MR. DIEHL: Well, I was very clear that I was  
 7 not done, and two additional questions did not come close  
 8 to answering the questions that are necessary to obtain  
 9 discovery in this case from Mr. Danila, correct, off the  
 10 record?  
 11 MS. VOHS: You can bring a motion to the  
 12 judge if that's what you'd like to do, but we're not  
 13 stipulating to extra time. We gave two extra questions,  
 14 and we're done today.  
 15 MR. DIEHL: I just want to be clear that  
 16 you're not alleging that I said something off the record  
 17 that waived any additional questions. I just said that if  
 18 you would only give me two questions, I would ask two  
 19 questions and -- but then I had additional questions that  
 20 I believe were necessary. Is that a fair characterization  
 21 of our conversation?  
 22 MS. VOHS: Correct. But we're not going  
 23 beyond the seven hours.  
 24 MR. DIEHL: Okay. And so even though we have  
 25 significant additional questions to ask and a number of

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1 exhibits to cover with Dr. Danila, the Department of  
 2 Health is not willing to allow the deposition to continue  
 3 for any period of time beyond what we have covered today?  
 4 MS. VOHS: We're not agreeing to go beyond  
 5 the seven hours.  
 6 MR. DIEHL: And regardless of the 24 and  
 7 additional objections today that you made that simply were  
 8 objecting to apparently not wanting him to answer the  
 9 question but had no actual basis for the objection?  
 10 MS. VOHS: This is a fact witness deposition.  
 11 We objected when we thought fit to stay within those  
 12 bounds, and we're now at seven hours, and it's done.  
 13 MR. DIEHL: Are you aware that an objection  
 14 without citing a basis is not a proper objection?  
 15 MS. VOHS: What's the point in talking about  
 16 this now? We're not agreeing to the seven hours.  
 17 MR. DIEHL: We wasted substantial time on  
 18 numerous unfounded objections, and so regardless of that  
 19 you're not willing to continue the deposition at all?  
 20 You're off -- you're muted.  
 21 MS. VOHS: Oh, excuse me. Yep. We're done  
 22 at the seven hours.  
 23 MR. DIEHL: So I would just stipulate -- or  
 24 I'll state for the record that we have had difficulty with  
 25 getting the witness to answer questions. He's repeated



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1 speeches, and we've had difficulty getting him to answer  
 2 questions. We've had numerous objections from Counsel  
 3 that are improper, and we believe this is a serious  
 4 concern and -- but I cannot obviously physically hold  
 5 Dr. Danila there.

6 MS. VOHS: I would object to that  
 7 characterization and be done with it.

8 Thank you.

9 THE VIDEOGRAPHER: Okay. Going off the  
 10 record at 2:25 p.m.

11  
 12  
 13 (Time noted: 2:25 p.m., April 8, 2021.)

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 15 \* \* \* \* \*

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1 CERTIFICATE

2

3 I, Myrina A. Kleinschmidt, Registered Merit  
 Reporter, and Remote Notary Public, hereby certify that I  
 4 reported the deposition as noted on the first page, and  
 that the witness was by me first sworn to tell the whole  
 5 truth;

6 That the testimony was held remotely via  
 video conference and was transcribed by me into its final  
 7 form. This transcript is a true record of the testimony  
 of the witness to the best of my ability, taking into  
 8 account technology glitches that may have occurred in  
 connection with the video conference proceedings;

9 In the event of perceived interference and  
 audio glitches during the video conference proceedings, I  
 10 did interrupt to clarify to the best of my ability;

11 I further certify that I am not a relative or  
 employee or attorney or counsel of any of the parties or a  
 12 relative or employee of such attorney or counsel;

13 That I am not financially interested in the  
 action and have no contract with the parties, attorneys,  
 14 or persons with an interest in the action that affects or  
 has a substantial tendency to affect my impartiality;

15

16 That the right to read and sign the  
 deposition by the witness was reserved;

17 WITNESS MY HAND AND SEAL this 11th day of  
 April 2021.

18  
 19  
 20  
 21 \_\_\_\_\_  
 Myrina A. Kleinschmidt  
 Registered Merit Reporter  
 Certified Realtime Reporter

22  
 23  
 24  
 25

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1 ERRATA SHEET

2 Case Caption: State of Minnesota, by Jan Malcolm,  
 Commissioner of Health, in her official capacity v.  
 3 Southwest School of Dance LLC, d/b/a Havens Garden  
 I, Richard Danila, have read the entire transcript of my  
 4 deposition, Volume II, taken in this pending matter, or  
 the same has been read to me. I request that the  
 5 following changes be entered into the record for the  
 reasons indicated. I have dated and signed my name to  
 6 this Errata Sheet.

7 Page/Line	Correction or Change	Reason
8		
9		
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19		
20	Date	Signature of Witness
21	Ms. Vohs:	
22	1. Please have the deponent review this transcript and make any changes on this sheet.	
23	2. Return the original executed sheet to Mr. Diehl, Attorney at Law, within 30 days.	
24	3. e-mail a copy to our court reporting office: erratas@myrina.com.	
25		



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