

STATE OF RHODE ISLAND

PROVIDENCE, Sc.

SUPERIOR COURT

RICHARD SOUTHWELL, et al.)	
)	
VS.)	NO: PC-2021-05915
)	
DANIEL J. MCKEE, et al.)	

HEARD BEFORE THE HONORABLE
MR. JUSTICE JEFFREY LANPHEAR

Volume 5

OCTOBER 13, 2021

APPEARANCES:

GREGORY PICCIRILLI, ESQUIRE
FOR THE PLAINTIFFS

MICHAEL FIELD, ESQUIRE
CHRISANNE WYRZYKOWSKI, ESQUIRE
MORGAN GOULET, ESQUIRE
FOR THE DEFENDANTS

Andrea Iacobellis, CSR
Certified Shorthand Reporter

I N D E XWITNESSES

D I R E C T

C R O S S

DR. JAMES MCDONALD

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I, Andrea Iacobellis, CSR, hereby
certify that the succeeding pages, 1 through 77
inclusive, are a true and accurate transcript
of my stenographic notes.

ANDREA IACOBELLIS, CSR
Court Reporter

(Afternoon Session)

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THE CLERK: The matter of **PC-2021-05915**,
Richard Southwell vs. Daniel McKee. Defense counsel has
premarked Exhibits N through U for identification.

**(Defendants' Exhibits N-U were marked for
identification.)**

THE CLERK: Counsel, would you please identify
yourselves for the record, please.

MR. PICCIRILLI: Gregory Piccirilli for the
Plaintiffs.

MS. WYRZYKOWSKI: Crisanne Wyrzykowski for the
Defendants.

MR. FIELD: Michael Field for the Defendants.

MR. GOULET: Morgan Goulet for the Defendants.

THE COURT: Thank you. Okay. So Dr. McDonald
I believe was on the stand last time finishing up his
direct.

MS. WYRZYKOWSKI: Correct.

THE COURT: So we'll return to that.

MS. WYRZYKOWSKI: Yes, Your Honor.

THE CLERK: Having been previously sworn in you
are still you under oath. If you could please state your
name again for the record, please.

THE WITNESS: I am Dr. James McDonald.

THE CLERK: Thank you.

13:42:34 1 THE COURT: Ready when you are.

13:42:42 2 MS. WYRZYKOWSKI: Thank you, your Honor.

13:42:44 3 **CONTINUED DIRECT EXAMINATION BY MS. WYRZYKOWSKI**

13:42:44 4 Q Good afternoon, Doctor. Doctor, when you were here
13:42:50 5 testifying last week, we had left off on discussing
13:42:56 6 Plaintiffs' Exhibit 4, Executive Order 2186. So I'm
13:43:00 7 going to go back to that Executive Order. In fact, we
13:43:04 8 should ask Melissa to have it first. Plaintiffs' 4 and
13:43:08 9 5, please.

13:43:10 10 THE CLERK: Plaintiffs' 4 and 5?

13:43:11 11 MS. WYRZYKOWSKI: Yes, please.

13:43:14 12 THE CLERK: All right.

13:43:26 13 (Exhibits given to witness)

13:43:31 14 Q Doctor, just to confirm you have in front of you what has
13:43:35 15 been marked as -- entered into evidence as Plaintiffs'
13:43:37 16 Exhibit 4 and Plaintiffs' Exhibit 5, which is Executive
13:43:41 17 Order 2187 and Executive Order 2186; is that accurate?

13:43:45 18 A Yes.

13:43:45 19 Q So I'm focussing your attention now back to Executive
13:43:52 20 Order 2186, which is in full as Plaintiffs' Exhibit 4,
13:43:55 21 which is where we left off? Do you have it?

13:43:59 22 A I have it right now.

13:44:01 23 Q Okay. Thank you, Doctor. When you last testified we had
13:44:05 24 left off with you testifying something to the affect of
13:44:08 25 that you knew that the current school year 2021 to 2022

13:44:13 1 would be different. Do you recall that testimony?

13:44:15 2 A Yes.

13:44:15 3 Q Could you please explain why you knew that the 2021 and
13:44:20 4 2022 school year would be different?

13:44:24 5 A So the Delta variant was the dominant strain in Rhode
13:44:29 6 Island as of July 4th, so that was the difference.
13:44:32 7 Another big difference was we really wanted to get
13:44:36 8 children back in school, all of them, and so we knew that
13:44:40 9 would require them being 6 feet of each other.

13:44:43 10 We also know that a lot of people were vaccinated,
13:44:47 11 no one I can recall was vaccinated. Some of the kids 12
13:44:51 12 and older were vaccinated, about 53 percent, but none of
13:44:53 13 the kids under 12 were vaccinated.

13:44:56 14 These were some of the differences that were there.
13:44:59 15 The biggest difference though was the rise of the Delta
13:45:02 16 variant, which went from almost none before July 4th to
13:45:06 17 becoming the dominant strain within three weeks.

13:45:09 18 Q And, Doctor, those facts that you just listed, 53 percent
13:45:14 19 of the K-12 population over 12 had been vaccinated. You
13:45:18 20 knew that the Delta variant had become dominant and
13:45:21 21 desiring to get kids back in school. Were these factors
13:45:24 22 in advising the Governor with respect to Executive Order
13:45:27 23 2186, Plaintiffs' 4?

13:45:29 24 A Yes.

13:45:29 25 Q Looking at Plaintiffs Exhibit 4, can you please go to

13:45:35 1 Page 3. Doctor, directing your attention to Exhibit 4,
13:45:57 2 Page 3. Can you please read the second paragraph aloud.

13:46:00 3 A It says, "Whereas Rhode Island Department of Health
13:46:03 4 modeling team of statisticians and public health
13:46:07 5 professionals reports that based on its statistical
13:46:10 6 analysis, without continued and improved mitigation
13:46:15 7 measures, the Delta variant may cause an increase in the
13:46:18 8 rate of deaths by the end of September 2021."

13:46:22 9 Q Doctor, I'd like to break down this paragraph. What does
13:46:25 10 the phrase modeling team and statisticians and public
13:46:28 11 health professionals mean?

13:46:30 12 A It refers to people who work with us at the Rhode Island
13:46:33 13 Department of Health, or people who are trained in
13:46:35 14 epidemiology, trained statistics who do run predicted
13:46:41 15 models, based on information they had, what they think is
13:46:44 16 going to happen.

13:46:45 17 Other sources, based on how many cases they think
13:46:49 18 they're going to have in the future. How many
13:46:50 19 hospitalizations they think we're going to have. How
13:46:53 20 many deaths we're going to have, so we can do appropriate
13:46:56 21 planning based on that.

13:46:57 22 Q And do you reply upon the information that is provided by
13:46:59 23 the modeling statisticians when formulating your opinion?

13:47:02 24 A Yes, it's some of the information I rely on.

13:47:05 25 Q Doctor, you talked about the modeling statisticians

13:47:08 1 creating an actual model, and the purpose of that model
13:47:13 2 is what?

13:47:13 3 A Well, it's so we can predict to some degree, how many
13:47:18 4 people we expect to have cases. In other words,
13:47:23 5 infected with COVID-19. How many people they think are
13:47:25 6 gonna end up in the hospital so we can plan how the
13:47:29 7 hospitals are going to do all of this and whether or not
13:47:31 8 we need to open our alternate hospital sites.

13:47:34 9 We also want to plan how many deaths we're going to
13:47:37 10 have. It's things like that that we factor in.

13:47:40 11 We also factor in known cases. How many people are
13:47:44 12 vaccinated. How many people are infected to date. But
13:47:46 13 there's other variables that are used as well.

13:47:48 14 Q And, Doctor, that paragraph that you read aloud, the
13:47:51 15 Executive Order, contains the language, continued and
13:47:54 16 improved mitigation strategy. Do you see that?

13:47:56 17 A I do.

13:47:57 18 Q And what were the continued and improved mitigation
13:48:02 19 measures that were referenced in that Executive Order, if
13:48:06 20 you know?

13:48:06 21 A Well, so this refers to strategies like masking in
13:48:10 22 schools, recommending masking for everyone else,
13:48:14 23 particularly in indoor settings. It also refers to other
13:48:17 24 mitigation measures we did like more deployment of
13:48:23 25 monoclonal antibody treatment, which is an intravenous

13:48:25 1 infusion that people use to treat for Covid.

13:48:28 2 It also refers to other mitigation strategies we had
13:48:31 3 like alerting the public and businesses about the
13:48:33 4 increase in cases so people can make some decisions to
13:48:37 5 decrease the spread.

13:48:38 6 Q And that's a source of information that the general
13:48:40 7 public can use that contains this statistical models that
13:48:43 8 you're referencing?

13:48:44 9 A Well, everything that I referred to, almost everything is
13:48:46 10 on our Covid data dashboard on the Department of Health
13:48:50 11 website. We've got a Covid data website. I call it the
13:48:55 12 Covid data dashboard, but the majority of that
13:48:57 13 information is publically available on our Covid data
13:48:59 14 website.

13:49:00 15 Q Doctor, I'm going to talk to you now about the data
13:49:03 16 dashboard. Doctor, I'm giving you an exhibit that has
13:49:20 17 been premarked as Exhibit N.

13:49:26 18 Doctor, you were just referencing the data
13:49:40 19 dashboard. Could you please identify the document that
13:49:44 20 you have before you, which has been marked as Exhibit N
13:49:47 21 for identification?

13:49:47 22 A Yes. So Exhibit N is the June 30, 2021, Rhode Island
13:49:53 23 COVID-19 Response Data Dashboard, and its excerpts of
13:49:58 24 some relevant pages from it. It looks to be about 6 or 7
13:50:02 25 pages of that report. There's 22 pages in the entire

13:50:04 1 report. This looks like about 6 or 7 pages.

13:50:08 2 Q And, Doctor, you previously testified that this is some
13:50:11 3 of the information that you at the Rhode Island
13:50:13 4 Department of Health utilizes in helping to formulate
13:50:15 5 your opinions with respect to the COVID-19 pandemic?

13:50:18 6 A Yes, that's correct. This is the summary of the
13:50:20 7 information we use.

13:50:22 8 MS. WYRZYKOWSKI: Your Honor, I ask that
13:50:23 9 Exhibit N be moved in full, and I have a series of other
13:50:26 10 exhibits that go with that.

13:50:28 11 MR. PICCIRILLI: No objection.

13:50:30 12 THE COURT: N is full.

13:50:30 13 **(DEFENDANTS' EXHIBIT N WAS MARKED FULL)**

13:50:31 14 MS. WYRZYKOWSKI: And, your Honor, we also have
13:50:33 15 Exhibit O, P and Q, which is the excerpts from the data
13:50:39 16 dashboard, which the Doctor will be testifying about
13:50:42 17 next. They have all been premarked.

13:51:00 18 A I'm giving you what has been premarked as Exhibits Q and
13:51:52 19 P.

13:51:59 20 MS. WYRZYKOWSKI: This is a copy for the Court.
13:52:11 21 Another copy for the Court, this is O.

13:52:29 22 Q Okay. Just to review what is before you, Doctor, and
13:52:32 23 I've given a copy to the Court as well as opposing
13:52:35 24 counsel. You have before you Exhibit N, which has
13:52:38 25 already been entered as full. You also have before you

13:52:40 1 Exhibit O, which has the July 7, 2021 date on it.

13:52:46 2 Exhibit P, which is August 5, 2021. And then, finally,

13:52:51 3 Exhibit Q, which starts with the date September 1st,

13:52:54 4 2021. Do you have all of those, Doctor?

13:53:03 5 A I do.

13:53:04 6 Q Doctor, you've already identified Exhibit N as being

13:53:12 7 excerpts from the June 30, 2021 dashboard. Can you

13:53:17 8 please now look at Exhibit O?

13:53:22 9 A Yes.

13:53:22 10 Q Doctor, Exhibit O has a series of tabs. Can you please

13:53:29 11 identify what those tabs are for the Court?

13:53:31 12 A There's one tab that says July 14th. There's another tab

13:53:36 13 that says July 21st, and there's another tab that says

13:53:40 14 July 28th.

13:53:41 15 Q And, Doctor, looking at these three tabs, can you please

13:53:44 16 identify for the Court what these materials are?

13:53:46 17 A So the first one is July 7, Page 1 of our Covid data

13:53:53 18 dashboard, and July 14th that tab refers to Page 1 of the

13:53:58 19 July 14th Covid data dashboard.

13:54:02 20 When I look at the tab for July 21st, it refers to

13:54:07 21 the top page of the July 21, 2021 Covid data dashboard,

13:54:15 22 and then the tab marked July 28th refers to the top sheet

13:54:22 23 of the July 28th Covid data dashboard.

13:54:25 24 Q And behind each of the tabs that you just referenced,

13:54:29 25 Doctor, the 7, 14, 21 and 28, there are additional

13:54:32 1 documents that follow it. Are those documents the same
13:54:35 2 documents that were referenced in the June dashboard?

13:54:37 3 A Yes, they are.

13:54:42 4 MS. WYRZYKOWSKI: Your Honor, I ask that that
13:54:43 5 exhibit be moved in full.

13:54:45 6 MR. PICCIRILLI: I have no objection. Can I
13:54:48 7 just for a point of clarification, so we had L1-13, are
13:54:54 8 those being removed as exhibits?

13:54:56 9 MS. WYRZYKOWSKI: So L1 has already been
13:54:58 10 entered in full. But with respect to L8 and L9, they
13:55:01 11 have not been entered into full. And, your Honor, what
13:55:01 12 we did the office, we pulled the key pages from all of
13:55:06 13 L1 and broke them down into months.

13:55:08 14 So you have June, July, August and September instead
13:55:12 15 of carrying in 22 pages per date, it just has usually 4
13:55:16 16 or 5, 6 pages per date, the same material.

13:55:21 17 MR. PICCIRILLI: Okay. Just to be clear, so
13:55:21 18 other than L1, L2-13 are not --

13:55:25 19 MS. WYRZYKOWSKI: They are not in full at this
13:55:26 20 time, and I don't intend putting them in full.

13:55:28 21 MR. PICCIRILLI: Because it's this?

13:55:30 22 MS. WYRZYKOWSKI: Because it's this.

13:55:30 23 MR. PICCIRILLI: No objection.

13:55:31 24 MS. WYRZYKOWSKI: And, Greg, with that said, is
13:55:32 25 there an objection with P or Q? Do you want me to go

13:55:32 1 through them all?

13:55:34 2 MR. PICCIRILLI: No objection to P and Q.

13:55:36 3 THE COURT: P and Q are all full.

13:55:39 4 THE CLERK: Defendant's P and Q are full.

13:55:45 5 **(DEFENDANTS' EXHIBITS P AND Q WERE MARKED FULL)**

13:55:45 6 Q Doctor, now we'll focus our attention on the data
13:55:48 7 dashboard before you, which you have testified are
13:55:50 8 excerpts from the various months. All the exhibits are
13:55:53 9 entered into full. The months before you are June, July
13:55:56 10 August and September.

13:56:01 11 You testified that in formulating your opinion with
13:56:04 12 respect to masking in the K-12 setting you relied on the
13:56:07 13 data dashboard. I now want to talk about the pages at
13:56:09 14 issue. We're not going to go through every set of pages
13:56:12 15 because they are substantially the same throughout but I
13:56:16 16 want to break it down as to why the information is
13:56:18 17 relevant for you in your position as a public health
13:56:20 18 official.

13:56:21 19 So first, Doctor, looking at the front of the page
13:56:28 20 of Exhibit N, if you will. And, again, front page is the
13:56:33 21 same except with different databases on the page. In
13:56:39 22 your position, I'm sorry, you have it, Doctor?

13:56:42 23 A I have the front page of Exhibit A.

13:56:44 24 Q Doctor, in your position at the Rhode Island Department
13:56:48 25 of Health, the director of the Covid unit, can you please

13:56:51 1 explain why Page 1 of Exhibit N is relevant in helping to
13:56:55 2 formulate your opinion as a medical director at the Rhode
13:56:58 3 Island Department of Health with respect to masking?

13:57:00 4 A Yes.

13:57:00 5 Q Go ahead. Please explain.

13:57:02 6 A So it's an overview of cases. If you look at the upper
13:57:08 7 left hand corner, it was only ten new positive cases on
13:57:13 8 that day that reported. Other things that are important
13:57:18 9 is June 29 only two people were admitted to a hospital.
13:57:23 10 We only had 19 people in the hospital with Covid, only
13:57:27 11 three in the intensive unit, only four on a ventilator.

13:57:32 12 In the little table below that says, Estimated
13:57:35 13 Prevalence of Infection, one of the things you see is the
13:57:40 14 CDC for new transmissions in blue and it says 9.9. So we
13:57:44 15 were at low transmission. That was important because
13:57:48 16 that's where we wanted to be. We had achieved our goal
13:57:52 17 of low transmission.

13:57:54 18 Other information on here is about vaccine rates.
13:57:58 19 What was a seven day average doses per day? What's the
13:58:03 20 percent of Rhode Islanders, at least the first dose?
13:58:06 21 What's the percent of the fully vaccinated? And we have
13:58:09 22 some testing data.

13:58:12 23 Then we have some projected community immunity. In
13:58:15 24 the bottom it just talks about how we're doing with the
13:58:18 25 case investigation and contact tracing. These are the

13:58:22 1 things we look at on this page.

13:58:24 2 Q Doctor, I want to direct your attention to the next page,
13:58:29 3 we'll still on Exhibit N, but again substantially the
13:58:33 4 same. This page is entitled hospitalizations. Can you
13:58:38 5 please explain how the information on this page of
13:58:42 6 hospitalization helped to shape the Rhode Island
13:58:44 7 Department of Health's opinion, excuse me, your opinion
13:58:47 8 with respect to masking in K-12 settings?

13:58:50 9 A So if you look at the top left-hand corner it says,
13:58:54 10 current Covid hospital occupancy, no surge capacity. I
13:58:59 11 see there's 7.1 percent Covid hospitalization, which is a
13:59:04 12 very low number. And it goes on to just say, you know,
13:59:07 13 what is the intensive care unit? It's only 10 percent.

13:59:10 14 So these are very low numbers. The little table
13:59:13 15 below is a picture of the entire pandemic when it comes
13:59:19 16 to certain parameters of people in the hospital, it
13:59:22 17 includes new cases, and below that is the historical
13:59:26 18 Covid hospital occupancy, and then what the projected
13:59:29 19 hospital occupancy will be, those courses of the future.

13:59:32 20 The chart below that talks about current overall
13:59:36 21 hospital occupancy. It says 81 percent is total, you
13:59:40 22 know, percent utilized. And it really just gets into
13:59:43 23 what type of percentages in the ICU, in June 29th it was
13:59:46 24 62.6 percent.

13:59:49 25 And then the graph below just shows similar

13:59:53 1 information in just a different picture format. So this
13:59:57 2 is really just an overview of what's going on in the
13:59:57 3 hospital.

13:59:59 4 Q And, Doctor, with respect to the language, current
14:00:03 5 overall hospital occupancy, is that solely based in the
14:00:06 6 state?

14:00:06 7 A Yes, this is based on what's available in Rhode Island.

14:00:10 8 Q So it's only for Rhode Island hospitals?

14:00:12 9 A That's right.

14:00:13 10 Q Doctor, going to the next page entitled, Hospital Beds
14:00:17 11 and PPE?

14:00:22 12 A Yes.

14:00:22 13 Q Can you please explain how this document helps to shape
14:00:27 14 your opinion, as a medical professional at the Rhode
14:00:30 15 Island Department of Health, with respect to masking in a
14:00:32 16 K-12 setting?

14:00:33 17 A So this page has the national Emergency Department
14:00:37 18 Overcrowding Scale. It's a score, and it includes
14:00:42 19 different elements that I've already covered in testimony
14:00:45 20 so I won't read it again.

14:00:47 21 Q Thank you, Doctor.

14:00:48 22 A But this score really speaks to what is the seven day
14:00:52 23 average. So if you look at the column to the far right
14:00:56 24 you see each hospital has a score and a color code
14:01:01 25 connected to it. When the score is 181 to 200, that's

14:01:07 1 concerning because that means that a particular hospital
14:01:11 2 emergency department and hospital is dangerously
14:01:14 3 overcrowded.

14:01:15 4 On this particular day only one hospital, the Miriam
14:01:20 5 was considered dangerously overcrowded, whereas the other
14:01:25 6 hospitals were in different stages. Some were considered
14:01:29 7 simply overcrowded and some were severely overcrowded.
14:01:32 8 Only one hospital was actually considered just busy and
14:01:37 9 that was Women and Infants Hospital.

14:01:40 10 The little chart below that talks about personal
14:01:44 11 protective equipment, days on hand available in the
14:01:48 12 warehouse, just shows how we're doing in acquiring and
14:01:53 13 maintaining personal protective equipment for the
14:01:56 14 hospitals and other healthcare settings who need
14:01:58 15 supplies, if we need this. That's generally doing pretty
14:02:00 16 well for the last several months.

14:02:02 17 Q Doctor, turning to the next page. Doctor, can you read
14:02:15 18 the page, the title aloud, please. I don't want to say
14:02:18 19 it wrong, your Honor.

14:02:18 20 A Yes. So this page is entitled Monoclonal Antibody
14:02:22 21 Treatment.

14:02:23 22 Q Can you please explain how this information helps to
14:02:27 23 shape your opinion on masking in K-12 settings?

14:02:31 24 A So this is the current treatment that's authorized by The
14:02:37 25 Food and Drug Administration offering emergency

14:02:40 1 authorization for people who have COVID-19, at least we
14:02:46 2 can say for certain eligible patients.

14:02:48 3 In this column you see how many doses we have
14:02:53 4 administered since January 17, 2021, which is 2,480. In
14:02:58 5 the previous weeks there was less than five doses
14:03:01 6 administered, and what I do is look at the trends over
14:03:07 7 time to see if we're treating enough people, and then
14:03:10 8 below it says, you know, what age group of people are
14:03:14 9 getting the monoclonal antibodies, and then what was the
14:03:18 10 eligible reason.

14:03:19 11 So the chart on the bottom says they have more than
14:03:23 12 one reason or they might have been older than 65 or
14:03:26 13 there's some other indication or simply just underlying
14:03:29 14 conditions.

14:03:30 15 Finally, the emergency authorization granted by the
14:03:33 16 Food and Drug Administration was, it wasn't intended to
14:03:36 17 be used as an intravenous infusion for everybody that has
14:03:40 18 COVID-19, but it was meant to be used for those who were
14:03:45 19 higher risk.

14:03:47 20 Part of this what's important is you want to keep
14:03:50 21 people out of the hospital. So we knew if we could
14:03:52 22 increase monoclonal antibody treatments, we would be more
14:03:55 23 likely to keep people out of the hospital, at least for
14:03:59 24 reasons due to Covid. So that's how we used it.

14:04:02 25 When you look at the far left, it says cumulative

14:04:05 1 doses by drug type since January 17. You see three
14:04:08 2 drugs that are mentioned. There're bamlanivimab, then
14:04:12 3 there's a second called banlanivimab and etesevimab and
14:04:17 4 then there's another one called casirivimab and
14:04:21 5 imdevimab. So these are three different mono --

14:04:24 6 THE COURT: Can I point out for the
14:04:26 7 stenographer, they're written on Exhibit N, the third
14:04:30 8 page. So she may be able to pick up the spelling. It's
14:04:34 9 pretty hard to figure out.

14:04:36 10 THE WITNESS: It is hard to figure out. These
14:04:38 11 are three different monoclonal antibodies. Two of them
14:04:42 12 are made by Lily, the other one is made by Regeneron. So
14:04:46 13 we just keep track of how many doses are used by each
14:04:49 14 manufacturer.

14:04:50 15 The part of why that's important is the top one,
14:04:56 16 bamlanivimab, was shown not to have significant activity
14:04:59 17 against the Delta variant. So we directed healthcare
14:05:03 18 providers around to stop using that alone and just to use
14:05:06 19 the combination product or the other two substances. So
14:05:10 20 that one wasn't used after Delta became dominant in Rhode
14:05:16 21 Island.

14:05:16 22 Q Thank you, Doctor. Going to the second to last page, on
14:05:22 23 the June 30th subset Exhibit N, entitled, Cases By Age
14:05:26 24 Group. Can you please explain how the information
14:05:31 25 provided on this sheet helped to shape your opinion as a

14:05:34 1 public health official in the State of Rhode Island with
14:05:37 2 respect to masking in a K-12 setting?

14:05:40 3 A So this page, which is cases by age group. It just shows
14:05:45 4 for the week, in this case June 20 through June 26, the
14:05:48 5 age group on the left-hand column, and then cases per
14:05:53 6 100,000 per week in the right-hand column.

14:05:55 7 You see for example in people age 19 through 24,
14:05:59 8 there were 27 cases, 100,00 per week. Whereas you look
14:06:04 9 at ages 5 to 9, there was only 13 cases per 100,000 per
14:06:09 10 week.

14:06:09 11 So you get an idea of that week in particular, what
14:06:13 12 was the prevalence? In other words, how many cases are
14:06:16 13 we seeing? What I'm looking for with this is is there
14:06:20 14 one particular age group where there's more cases, then I
14:06:25 15 would expect to see, and I'm always particularly looking
14:06:28 16 for, is it in vaccinated age groups or unvaccinated age
14:06:33 17 groups?

14:06:35 18 In this particular week I really didn't see much
14:06:39 19 prevalence in younger kids, 0 to 9. It wasn't that
14:06:43 20 common. But when you see, it's a little bit higher in
14:06:47 21 the other kids in the older population, but still it's
14:06:50 22 pretty low during this time. Again, this is the end of
14:06:53 23 June.

14:06:54 24 When you look at the bottom chart it just shows
14:06:57 25 share of cases by age group per week. There's really

14:07:01 1 three charts here that just show the data, kind of
14:07:04 2 similar ways. The chart on top, which has cases per
14:07:09 3 100,000 by age group. It takes us from February and
14:07:12 4 brings us all the way through to June.

14:07:15 5 This time we have how the trend is going with cases
14:07:18 6 by various ages, and you just look at the overall trend
14:07:21 7 to see what's going down in every age group. By the end
14:07:25 8 of June it's really every age group is seeing a very
14:07:29 9 significant decrease. And it's most notable if you
14:07:32 10 compare it back to February for example, you know, you
14:07:35 11 just see, wow, the 19 and 24 age groups had 545 cases per
14:07:41 12 100,00 per week, you know, that's a lot of cases. But
14:07:43 13 you see it now it's 27 cases per 100,000 per week.

14:07:47 14 So this is nice because you can kind of see how
14:07:51 15 we're trending with all the different age groups. What I
14:07:51 16 look for too in trends is is there an age group that's
14:07:55 17 breaking out, having more cases? Because I might be able
14:07:58 18 to do something differently to address that age group.

14:08:00 19 Q And, Doctor, I'm just going to go to the last sheet,
14:08:07 20 which is entitled K-12 in School Age Trends. Can you
14:08:12 21 please explain how this piece from the data dashboard
14:08:18 22 helps you, the Rhode Island Department of Health,
14:08:20 23 formulate an opinion with respect to masking in the
14:08:23 24 K-12 setting?

14:08:24 25 A Yes. So this is a chart that shows up the cases that are

14:08:27 1 in age groups of kindergartners through 12th grade and
14:08:32 2 looks for trends. In the upper right-hand corner there's
14:08:36 3 a little box that says K-12 cases, most recent per week,
14:08:40 4 public and private schools. You see there's only 14 new
14:08:44 5 student cases. Nine of those cases were people who were
14:08:47 6 in-person or in a hybrid style learning environment.
14:08:51 7 Three of those students who were remote. And two, we're
14:08:54 8 still pending data on that.

14:08:57 9 When you look at the chart on top this talks about
14:09:00 10 student cases, and it goes back to September of 2020 and
14:09:04 11 brings us all the way through to the end of June and you
14:09:07 12 can see how many cases are in, based on where the student
14:09:11 13 is and what their setting is.

14:09:13 14 The chart below is about the staff at a school, so
14:09:18 15 this just means not just the teachers but everyone else
14:09:21 16 that works at the school. And you see where the cases
14:09:24 17 are already in school, variants, the likely infectious
14:09:29 18 period, in other words, two days before.

14:09:31 19 Then there's another group who looks at in school
14:09:34 20 during a likely exposure period, 14 days before, and then
14:09:38 21 were they remote? In other words, were they not in
14:09:42 22 school?

14:09:43 23 So when you look at data like this what we're trying
14:09:46 24 to sort of discern is not only how many cases are in this
14:09:49 25 age group but where they're getting their cases from to

14:09:54 1 some degree. Although we did that from case
14:09:57 2 investigation and contact tracing. A little bit of this
14:10:00 3 too reflects like where are the people working in the
14:10:03 4 cases. One of them you just see on the top chart, when
14:10:06 5 you look here, the orange bubble just refers to people
14:10:10 6 going remote and not in school. And you see there's a
14:10:12 7 lot of cases in the orange group. That just refers to
14:10:16 8 the community transmission.

14:10:18 9 Now just because someone is in the blue group that
14:10:20 10 they're in school during the infectious period doesn't
14:10:22 11 mean they got Covid in school. In fact that's really not
14:10:26 12 the case. But still community transmission is what
14:10:29 13 drives transmissions in schools. In other words, kids
14:10:32 14 tend to get Covid when they're outside the community as
14:10:35 15 opposed to in schools. So that's some of the data we
14:10:38 16 keep track of what's going on in the schools.

14:10:40 17 Q Thank you, Doctor. Looking at the data dashboard excerpt
14:10:46 18 that you have in front of you, in front of you actually,
14:10:50 19 Exhibit N. Is it fair to say, and I don't want to put
14:10:55 20 words in your mouth, but the trend is in the right
14:10:56 21 direction prior to June 30, 2021 data dashboard?

14:10:59 22 A Oh yeah, we were going pretty well. The only thing I
14:11:03 23 was a little concerned about in June was we still saw a
14:11:06 24 little bit of emergency department overcrowding, but it
14:11:10 25 was manageable at this point.

14:11:12 1 So that was the only thing that I took note of
14:11:15 2 around that time. Otherwise, things were heading in the
14:11:17 3 right direction.

14:11:18 4 Q Okay, Doctor. I want you to put Exhibit N aside and if
14:11:23 5 you could just put it down because we'll have to go back
14:11:26 6 to it. I now want you to look at Exhibit O, which has
14:11:30 7 been marked in full, which covers the month of July.
14:11:33 8 Okay. Doctor, I want to direct your attention, again,
14:11:35 9 there are three tabs. I want to direct your attention to
14:11:38 10 the tab that's marked 7/28. Do you have it, Doctor?

14:11:58 11 A I do.

14:11:58 12 Q Doctor, I want to direct your attention to the last page
14:12:02 13 of the Exhibit, which is entitled cases by age group. Do
14:12:05 14 you see that?

14:12:06 15 A Yes.

14:12:10 16 Q And I want to direct your attention to the top graph of
14:12:15 17 the chart. I'm sorry, not the correct term. Could you
14:12:18 18 please explain, looking at the top chart, what is the
14:12:22 19 status of COVID-19 cases in July of 2021?

14:12:28 20 A So when you look at this information here, we get a
14:12:34 21 flavor for the increase in cases. In other words, if you
14:12:37 22 look at the chart, the lined chart on the top which goes
14:12:40 23 from February all through until July, you see the cases
14:12:44 24 were initially pretty high. For example, I mentioned
14:12:47 25 that 19 through 24 group earlier having 547 cases per

14:12:53 1 100,000 per week back on February 28th, but you really
14:12:57 2 see a drop down to a very small number come around the
14:13:01 3 4th of July. But then you see all the age groups
14:13:04 4 increasing July 11 and July 18. So what you really see
14:13:08 5 is the cases were going well but now we're heading in the
14:13:11 6 wrong direction. When you look at the box inlay it shows
14:13:15 7 the number of cases.

14:13:16 8 When I looked at the previous exhibit we're talking
14:13:19 9 about cases like 13, 15 or 25 per 100,000 per week.

14:13:23 10 Q And, Doctor, just to clarify, we're talking, comparing it
14:13:26 11 to Exhibit N?

14:13:26 12 A Yes, comparing it to Exhibit N. Now we look at the cases
14:13:30 13 by age group we're seeing, you know in the 25 to 29
14:13:33 14 group, there's 90 per 100,00 per week, and you see the
14:13:38 15 low, the 5 to 9 year olds at 56 cases per 100,000 a week.

14:13:41 16 What you really see is in every age group cases are
14:13:45 17 going up over time. That's something we see. The chart
14:13:49 18 below shows a share of cases by age group per week. It's
14:13:54 19 the same data presented just in a bar chart. It's really
14:13:58 20 the preference of who likes to look at charts, but this
14:14:02 21 just shows cases are increasing.

14:14:03 22 Q Doctor, based upon your training, education and
14:14:05 23 experience in your current role in the field of public
14:14:10 24 health, in your current role in the COVID-19 unit, can
14:14:15 25 you please offer an opinion to a reasonable degree of

14:14:18 1 medical certainty as to why cases were increasing in July
14:14:21 2 based upon this chart?

14:14:22 3 A Yes. We knew from the Rhode Island state health lab that
14:14:26 4 we were seeing Delta variants in the state. Its been
14:14:30 5 reported nationally as well. And what I mean what's
14:14:34 6 being reported is we do whole genomic sequencing in our
14:14:38 7 state health lab and a recommended sample of specimens.

14:14:41 8 What that means is if someone had a PCR test and we
14:14:45 9 had the specimen in our lab, we can actually sequence the
14:14:49 10 genome of the virus and identify whether it's the
14:14:52 11 original strain or a different type, like a variant.

14:14:55 12 What we start seeing after July 4th was, it was the
14:14:59 13 Delta variant. It was concerning to us because we still
14:15:04 14 knew we had a very large population of people in Rhode
14:15:07 15 Island, who either didn't have a vaccine or weren't
14:15:10 16 infected. In other words, we had a large population of
14:15:11 17 people in the state, over 300,000 who were susceptible at
14:15:11 18 that time.

14:15:15 19 So it was concerning because we saw we were heading
14:15:18 20 in the wrong direction. We clearly weren't done with the
14:15:21 21 pandemic.

14:15:21 22 Q Now, Doctor, I want to skip ahead to Exhibit P, which
14:15:28 23 has been marked in full at this point. And, again, there
14:15:33 24 are multiple caps on the side. Doctor, I want to direct
14:15:37 25 your attention to 8/18 tab, do you see that?

14:15:39 1 A I have located the August 18th tab.

14:15:41 2 Q And, Doctor, I want to direct your attention to the page
14:15:45 3 entitled, Cases By Age Group.

14:15:51 4 A I have the page, Cases By Age Group of August 18.

14:15:55 5 Q And, Doctor, can you please identify for the record what
14:16:00 6 time period is covered by the top chart or graph?

14:16:04 7 A So this is August 1st to August 7.

14:16:10 8 Q Where?

14:16:11 9 A And it talks about cases per 100,000 per week.

14:16:17 10 Q Doctor, hold on for one second. I was on the 8/18 tab,
14:16:20 11 which tab are you on?

14:16:22 12 A August 18th.

14:16:24 13 Q On the tab entitled -- I think Greg and I are on the same
14:16:30 14 page here. Cases by Age Group?

14:16:32 15 A Yes, I'm right there.

14:16:34 16 Q Okay. I see where you're getting the information from.
14:16:38 17 Okay. Go on, Doctor.

14:16:41 18 A So it illustrates the number of cases per 100,000 per
14:16:46 19 week, and it does it in multiple formats. What you see
14:16:51 20 is there's a line graph which goes from May, you get
14:16:56 21 there in June 27, when things are pretty low, July 4.
14:17:00 22 And then you can see the case numbers trending up for all
14:17:04 23 the age groups, and you really see that on August 1st.

14:17:07 24 When you look over here in the box chart, it shows
14:17:11 25 the rate of cases per 100,000 per week, and by way of

14:17:17 1 example the 25 to 29 year olds were now at 206 cases per
14:17:23 2 100,000 per week.

14:17:25 3 When you look at the 5 to 9 years old, we're at 147
14:17:30 4 cases per 100,000 per week. This is all very important
14:17:33 5 because the Center for Disease Control and Prevention
14:17:37 6 has different definitions of your level of community
14:17:41 7 transmission, based on the number of cases you have
14:17:44 8 100,000 per week.

14:17:45 9 On the June 30th one I referenced we're at 9.9 cases
14:17:50 10 per 100,000. It was the only week we were at low
14:17:53 11 prevalence. You see now though that we're well over a
14:17:58 12 100 cases per 100,000 per week in every age group. So
14:18:03 13 we're in what's called high prevalence. In other words,
14:18:06 14 high transmission as opposed to other types of
14:18:09 15 transmissions which are moderate or substantial.

14:18:12 16 So it's very concerning at this point because now
14:18:15 17 you see from we were doing pretty well on July 4th, we're
14:18:22 18 consistently heading in the wrong direction in every age
14:18:24 19 group.

14:18:24 20 Q Doctor, I now want to direct your attention to the 8/9,
14:18:33 21 tab of Exhibit P, and I specifically want to direct your
14:18:40 22 attention to the third page entitled, Hospital Beds and
14:18:42 23 PPE?

14:18:51 24 A Yes, I have the page.

14:18:52 25 Q Doctor, you just testified a few moments ago that Covid

14:18:56 1 cases were starting to increase as indicated by the chart
14:19:00 2 for August 18. At the same time the Covid cases were
14:19:03 3 increasing, I want to direct your attention now to the
14:19:05 4 hospital beds and PPE status in the State of Rhode
14:19:09 5 Island.

14:19:13 6 And, Doctor, this information was updated, obviously
14:19:20 7 to the dashboard. Can you please explain, looking at the
14:19:23 8 chart in front of you, knowing the cases are increasing,
14:19:27 9 how many hospitals in Rhode Island have NEDOC levels of
14:19:32 10 dangerously overcrowded?

14:19:33 11 A Yes. So there's ten acute care hospitals listed on the
14:19:38 12 report. So that's all we have in Rhode Island. But four
14:19:42 13 of the hospital are dangerously overcrowded. And there's
14:19:46 14 the Miriam, Kent, you see that for Roger Williams and you
14:19:52 15 see it for Westerly Hospital.

14:19:53 16 Q And how many hospitals, Doctor, had the NEDOC score of
14:20:01 17 severely overcrowd?

14:20:02 18 A So when you look at that number, which is a number
14:20:05 19 between 141 and 180, you see that there's three hospitals
14:20:10 20 have fallen to that category of severely overcrowded.
14:20:14 21 It's Rhode Island Hospital and it also includes, Fatima,
14:20:18 22 and it also includes South County Hospital.

14:20:21 23 Q Doctor, knowing at this point in time, going back
14:20:29 24 obviously to the time frame of this chart, that seven
14:20:32 25 hospitals in Rhode Island are severely overcrowded or

14:20:37 1 dangerously overcrowded and Covid cases are increasing,
14:20:39 2 as we saw from the prior exhibit. Can you offer an
14:20:44 3 opinion to a reasonable degree of medical certainty, as
14:20:47 4 to what this information, as a whole, meant to you as a
14:20:50 5 public official?

14:20:51 6 A Yes. What I saw was --

14:20:53 7 Q Hold on, Doctor. Can you offer that opinion?

14:20:55 8 A Yes.

14:20:55 9 Q Doctor, what is that opinion?

14:20:56 10 A So what I saw was we knew at this point the Delta variant
14:21:01 11 was dominant. We knew really every case was Delta at
14:21:06 12 this point. What I also knew was that our hospitals were
14:21:10 13 very overcrowded and dangerously overcrowded, so it's
14:21:13 14 very concerning, not because it just may not be able to
14:21:16 15 take care of Covid patients but you may not be able to
14:21:19 16 take care of anyone. And this becomes a problem not just
14:21:22 17 for hospital capacity, for the well-being of the
14:21:25 18 patients, but not the least of which is the well-being of
14:21:27 19 the hospital staff as well.

14:21:28 20 So this is very concerning information to me. It
14:21:32 21 made us really concerned and that's part of what prompted
14:21:35 22 us to urge the government about a new state of emergency.
14:21:39 23 Q Which goes into a new state of emergency was entered into
14:21:43 24 on August 19th, which has already been marked as a full
14:21:48 25 Exhibit.

14:21:49 1 And this information that is before you, was this
14:21:52 2 used to help advise the Governor, with respect to
14:21:56 3 hospitals are dangerously overcrowded or severely
14:21:59 4 overcrowd and Covid increase in cases.

14:22:02 5 A Yes.

14:22:03 6 Q And, Doctor, as a practical matter, and I apologize if
14:22:10 7 you said this already. What does it mean to a Rhode
14:22:14 8 Island citizen if a mobile hospital is severely
14:22:17 9 overcrowded or dangerously overcrowded?

14:22:19 10 A Well, it means they might be waiting a long time for care
14:22:24 11 but also may mean they may not get care. But really what
14:22:29 12 the worse part of it is if a hospital is dangerously
14:22:32 13 overcrowded, they're on diversion. What diversion means
14:22:36 14 is if someone had a big enough problem and they need to
14:22:40 15 be in an ambulance, an ambulance has to call the hospital
14:22:42 16 ahead of time and let them know they're coming.

14:22:45 17 But if a hospital is on diversion, that means the
14:22:50 18 ambulance has to go to a different hospital. So the
14:22:52 19 ambulance may not be going to the nearest hospital. It
14:22:55 20 maybe going to the only hospital that will accept the
14:22:57 21 patient. Hospitals that are on diversion, it creates a
14:23:02 22 threat for everybody who needs ambulance services.

14:23:04 23 When you have multiple hospitals on diversion, it
14:23:07 24 really jumps up the entire system because now you have
14:23:10 25 this precious resource, an ambulance, driving the patient

14:23:14 1 farther than they need to, so it ties up that resource,
14:23:18 2 but then the patient might be getting care at a hospital
14:23:20 3 that wasn't appropriate for them.

14:23:22 4 Q Thank you, Doctor. Now, Doctor, we specifically focussed
14:23:26 5 on several tabs when we just, prior to your last round of
14:23:31 6 testimony. With that said, Exhibit N, all the tabs
14:23:37 7 there's only one. Exhibit O, all the tabs and Exhibit P,
14:23:41 8 all of the tabs, was all of that information used by you
14:23:45 9 in your role as the Director of the COVID-19 unit in
14:23:48 10 helping you to advise the Governor?

14:23:50 11 A Yes.

14:23:50 12 Q Doctor, we're going back now, we're going back now to the
14:23:57 13 Executive Order. Do you still have that in front of
14:24:01 14 you?

14:24:09 15 A I have the Executive Order.

14:24:11 16 Q Doctor, I want to direct your attention, please, to
14:24:14 17 Exhibit 4, Page 3, third paragraph. Can you please read
14:24:18 18 this aloud?

14:24:19 19 A "Whereas this increase in prevalence of the Delta variant
14:24:22 20 poses a significant and eminent risk to Rhode Islanders
14:24:26 21 of increased symptomatic disease, hospitalization and
14:24:29 22 death."

14:24:30 23 Q Doctor, what information did you utilize in advising the
14:24:36 24 Governor to help formulate the statement of increase in
14:24:41 25 symptomatic disease, hospitalization and death?

14:24:42 1 A Well, a lot of the data in the Covid data dashboard that
14:24:45 2 we just talked about was data that we used. I also used
14:24:49 3 the knowledge I had from being in the pandemic from the
14:24:52 4 very beginning. I also use the knowledge I have that
14:24:55 5 there's still a large percentage of Rhode Island who are
14:24:58 6 susceptible, either have or haven't had the vaccine or
14:25:00 7 hadn't been infected.

14:25:01 8 Q And, Doctor, based upon your training, education and
14:25:04 9 experience, do you have an opinion to a reasonable degree
14:25:06 10 of medical certainty, as to why there was an eminent risk
14:25:09 11 to Rhode Islanders at this time?

14:25:11 12 A Yes.

14:25:11 13 Q And, Doctor, what is that opinion?

14:25:13 14 A Well, we had so much Delta variants, and it was rapidly
14:25:17 15 contagious and spreading from one person to the other.
14:25:21 16 We have a large population of people that weren't immune
14:25:24 17 by either vaccination or infection.

14:25:26 18 We also had an overwhelmed hospital system and when
14:25:30 19 you put all of that together, I call that an eminent risk
14:25:33 20 to Rhode Islanders, and that's my conclusion there.

14:25:36 21 Q Doctor, why is it an eminent risk to Rhode Islanders?

14:25:39 22 A Because people are susceptible to get the disease and the
14:25:43 23 disease has a mortality rate. The disease causes
14:25:47 24 morbidity where they may end up in the hospital.

14:25:48 25 And since the hospital system is overwhelmed, people

14:25:51 1 may not be able to get the care they need at our
14:25:55 2 emergency departments or hospitals. That's why.

14:25:58 3 Q Okay. Doctor, I'm going to take, well, I'm not. I'm
14:26:01 4 going to ask the sheriff to take back all of the Exhibits
14:26:05 5 in front of you except for Exhibit Q.

14:26:08 6 And I'm also going to approach Melissa and ask if I
14:26:13 7 can have Exhibit H, which is the Rhode Island Department
14:26:17 8 of Health regulation that was done in September.

14:27:02 9 Doctor, you have before you Exhibit H. You do not
14:27:06 10 because I didn't give it to you. Sorry.

14:27:20 11 Okay, Doctor, we just spent the last portion of your
14:27:23 12 testimony talking about the information that you used to
14:27:25 13 help advise the Governor, with respect to two executive
14:27:28 14 orders issued on August 19, 2021.

14:27:35 15 I now want to direct your attention to the Rhode
14:27:37 16 Island Department of Health regulation that was issued on
14:27:40 17 September 23, 2021, which is premarked, excuse me, which
14:27:47 18 is entered in full as Exhibit H. Do you have that?

14:27:49 19 A I have it.

14:27:50 20 Q You should also have before you Exhibit Q. Do you have
14:27:54 21 that?

14:27:54 22 A I have that too.

14:27:56 23 Q And, Doctor, just to clarify for the Court, Exhibit Q has
14:28:00 24 a series of tabs. Can you please identify the tabs that
14:28:02 25 are on Exhibit Q?

14:28:04 1 A There's a tab for September 2, September 9, September 16,
14:28:12 2 September 21, September 23 and September 30.

14:28:17 3 Q Thank you, Doctor. Focusing now with respect to the
14:28:27 4 Department of Health regulation that was issued on
14:28:30 5 September 23, 2001 (sic). Were you involved in creating
14:28:42 6 this regulation, Exhibit H?

14:28:44 7 A Yes.

14:28:45 8 Q What was your role in creating Exhibit H?

14:28:49 9 A I'm the medical director, so I did medical guidance.

14:28:52 10 Q And providing medical guidance with respect to Exhibit H,
14:29:01 11 did you continue to rely on the data dashboard that we
14:29:05 12 had previously discussed?

14:29:06 13 A Yes, this was some of the information that we relied on.

14:29:09 14 Q Looking at the data dashboard --

14:29:15 15 MS. WYRZYKOWSKI: And Melissa, I'm sorry. I
14:29:17 16 made a mistake. I need August back.

14:29:45 17 Q Doctor, looking at Exhibit P, which is the data dashboard
14:29:49 18 excerpts from August. I want to draw your attention to
14:29:53 19 August 26th. And, Doctor, would you agree with me that
14:29:59 20 August 26th is after the declaration that was issued by
14:30:03 21 the Governor?

14:30:03 22 A Yes.

14:30:08 23 Q I want to draw your attention with respect to the August
14:30:11 24 26th information in Exhibit P. I want to draw your
14:30:14 25 attention to the page entitled, Hospital Beds and PPE.

14:30:20 1 Should be the third page of that section.

14:30:21 2 A I have the page.

14:30:24 3 Q Thank you, Doctor. Doctor, the information that is
14:30:30 4 before you, what is the applicable date with respect to
14:30:35 5 this chart?

14:30:36 6 A So it said hospital date, hospital bed was updated August
14:30:41 7 22nd. The NEDOC score is updated August 24. The PPE
14:30:46 8 data was updated August 26.

14:30:48 9 Q So at this point in time we are less than a week after
14:30:51 10 the Executive Order; correct?

14:30:53 11 A Yes.

14:30:53 12 Q Looking at the NEDC level in this Exhibit, can you please
14:30:57 13 explain to the Court the status of Rhode Island hospitals
14:31:01 14 on or about August 24, 2021?

14:31:05 15 A So when you look at the numbers between 180 and 200, six
14:31:11 16 of the ten acute care hospitals are dangerously
14:31:14 17 overcrowded. You see that two of the hospitals are
14:31:17 18 severely overcrowd. There's only one hospital that is
14:31:21 19 considered extremely busy, but not overcrowded, that
14:31:25 20 appears to be Newport. And then Women and Infants was
14:31:28 21 just considered not busy.

14:31:30 22 Q So correct me if I'm wrong, does that mean that eight
14:31:41 23 Rhode Island hospitals were either labeled with a NEDOC
14:31:45 24 score of severely overcrowded or dangerously overcrowded?

14:31:48 25 A Yes. Eight out of ten hospitals were either severely

14:31:51 1 overcrowded or dangerously overcrowded.

14:31:52 2 Q Now, Doctor, I'm going to direct your attention to the
14:31:54 3 last page of this Exhibit, it has the -- entitled, Cases
14:31:59 4 By Age Group. Do you see that, Doctor?

14:32:07 5 A Yes, I have it.

14:32:08 6 Q So at this point in time, knowing that eight of our
14:32:13 7 hospitals in Rhode Island are severely overcrowded or
14:32:15 8 dangerously overcrowded, what is the status of COVID-19
14:32:19 9 cases by age group according to this chart?

14:32:22 10 A Well, we're still in high prevalence, according to the
14:32:25 11 center for Disease Control Standard For Community
14:32:28 12 Transmission. What you really see is the age groups,
14:32:32 13 which are represented in here, are still largely
14:32:35 14 increasing. The 30 to 39 years old group for example now
14:32:39 15 has 262 cases per 100,000 per week, and the lowest number
14:32:45 16 of 10 to 14 year olds at 208 cases per 100,000 per week.

14:32:51 17 When you look at the trend over time though, when
14:32:53 18 you go back to July 4th when things were really quite
14:32:57 19 good, you actually see as you move to the right, it just
14:33:00 20 keeps getting higher and higher. So we're clearly still
14:33:04 21 heading in the wrong direction.

14:33:05 22 Q Now, Doctor, at this point in time we have eight
14:33:08 23 hospitals that are severely overcrowded or dangerously
14:33:11 24 overcrowded. We have a high prevalence of transmission
14:33:15 25 in the State of Rhode Island. Do you know whether or not

14:33:17 1 schools are open on August 25th?

14:33:20 2 A I don't know for sure. I don't think they were open but
14:33:24 3 I can't say 100 percent sure.

14:33:26 4 Q So you think the schools were open on August 25th, it
14:33:30 5 would have been the beginning of the school year?

14:33:32 6 MR. PICCIRILLI: Objection. That's
14:33:33 7 speculative. Just for the record, it's pretty clear
14:33:36 8 schools didn't open until after Labor Day this year. I
14:33:39 9 think it was September 8th.

14:33:39 10 THE COURT: I'm not sure about when they opened
14:33:41 11 but the objection is sustained.

14:33:43 12 Q Doctor, now we're going to fast forward to September 2nd,
14:33:47 13 Exhibit Q.

14:33:59 14 A Okay. I've got the Exhibit.

14:34:00 15 Q This Exhibit has six tabs. I would like to direct your
14:34:08 16 attention to the 9/16 tab. And specifically with respect
14:34:21 17 to the 9/16 tab, I want to direct your attention to the
14:34:25 18 hospital details page. Are you there, Doctor?

14:34:35 19 A I am.

14:34:35 20 Q Doctor, can you please explain, looking at the sheet that
14:34:43 21 is in front of you of the hospital details, how many
14:34:46 22 hospitals in Rhode Island are at a severely overcrowded
14:34:50 23 or dangerously overcrowded level on or about September 16
14:34:54 24 of 2021?

14:34:56 25 A So seven hospitals are dangerously overcrowded and one

14:35:03 1 hospital is overcrowded. The other two are either not
14:35:10 2 busy or just extremely busy.

14:35:13 3 Q All right, Doctor, now drawing your attention to the
14:35:21 4 page, same date, for the page entitled, Cases By Age
14:35:25 5 Group. Looking at the chart that's in front of you, can
14:35:41 6 you please explain what status of cases by age group on
14:35:47 7 or about September 5th?

14:35:49 8 A So when you see for the week of September 5 through
14:35:53 9 September 11 is we're still in high transmission,
14:35:56 10 according to the Center for Disease Control Prevention.
14:36:00 11 But the age group of cases have shifted. In the 5 to 9
14:36:05 12 year old group we're not 303 cases per 100,000 per week.

14:36:09 13 When you go down to the lowest prevalence of the
14:36:13 14 15 to 18 year olds, we're at 224 cases per 100,000 per
14:36:17 15 week. When you look to the chart to the right, the
14:36:20 16 overall trend is overall cases are generally increasing.
14:36:24 17 There's one age group where cases seem to be going down,
14:36:28 18 but all the other ones are either the same or going up,
14:36:31 19 heading in the wrong direction.

14:36:32 20 Q And, Doctor, based upon your training, education and
14:36:35 21 experience, and your role at the Rhode Island Department
14:36:37 22 of Health, can you offer an opinion to a reasonable
14:36:40 23 degree of medical certainty what the information means
14:36:45 24 when you are looking at cases by age group and hospital
14:36:51 25 details?

14:36:52 1 A So it was clear that the hospital system was overwhelmed.
14:36:56 2 It's also clear that the cases we have for Delta are
14:37:00 3 increasing, Delta Covid that is. And so what you see is
14:37:03 4 the pandemic is getting worse in Rhode Island and the
14:37:06 5 health care system is really buckling at the seams and
14:37:10 6 are they going to handle the capacity.

14:37:12 7 So it's a very dangerous time in the State. That is
14:37:17 8 when we are actively exploring opening up the alternate
14:37:19 9 hospital site in Cranston, and trying to recruit staff to
14:37:22 10 operate that staff and site and get that working.

14:37:25 11 Q Doctor, I only focussed on two data dashboards, with
14:37:31 12 respect to the September 23 regulation passed by the
14:37:33 13 Rhode Island Department of Health as Exhibit H. Did you
14:37:37 14 use all of the data dashboard to help shape your opinion
14:37:41 15 on why the Rhode Island Department of Health issued a
14:37:46 16 regulation regarding mask mandates in the K-12 setting?

14:37:50 17 A We used all the dashboard. We used other information
14:37:52 18 too.

14:37:54 19 Q Doctor, I want to talk about the other information that
14:37:57 20 you used. If we could take those Exhibits away from him,
14:38:01 21 please. Thank you.

14:38:28 22 A Do you want Exhibit H?

14:38:31 23 Q Yeah, I would, please.

14:38:40 24 MR. WYRZYKOWSKI: Melissa, can I please have
14:38:42 25 Exhibit B. This is not in full by the way.

14:38:48 1 MR. PICCIRILLI: B as in boy?

14:38:50 2 MS. WYRZYKOWSKI: B as in boy. Melissa, just
14:39:07 3 I'm also going to need R, S and T.

14:39:29 4 Q MS. WYRZYKOWSKI: Okay, Doctor, you testified that in
14:40:30 5 your role at Rhode Island Department of Health you relied
14:40:34 6 on the data dashboard. You also testified that you
14:40:36 7 relied on other material to help formulate your opinion.
14:40:39 8 And in front of you is a document that has been marked as
14:40:42 9 Exhibit B. It is entitled Science Brief. Do you see
14:40:46 10 that, Doctor?

14:40:47 11 A Yes.

14:40:47 12 Q And can you -- the title is Science Brief, Community Use
14:40:57 13 of Cloth Masks to Control the Spread of SARS-CoV-2?

14:41:02 14 A Yes, that is correct.

14:41:03 15 Q You have previously testified that you relied on this
14:41:05 16 document in helping to formulate your opinion with
14:41:09 17 respect to masking. Do you remember that testimony?

14:41:10 18 A Yes, I do.

14:41:11 19 Q Doctor, can you please provide some testimony with
14:41:15 20 respect to, first, what's a Science Brief?

14:41:17 21 A So it's a review article published by the Center for
14:41:22 22 Disease Control and Prevention, and what we have here is
14:41:24 23 they looked at 65 different articles published in
14:41:28 24 scientific journals, and they formulated their position
14:41:33 25 from the Center for Disease Control and Prevention on

14:41:36 1 what their recommendation is and their evidence of what
14:41:40 2 community use of cloth masks would be able to control the
14:41:44 3 spread of SARS-CoV-2.

14:41:45 4 Q Doctor, how did you get this document, the Science Brief?

14:41:49 5 A It's available to anyone in the public via the Internet.

14:41:54 6 I happen to be on the CDC mailing list, so these things
14:41:58 7 are simply e-mailed to me.

14:42:00 8 Q Doctor, why is the Science Brief relevant to you in your
14:42:03 9 current position?

14:42:03 10 A Well, as a Medical Director it's convenient for me to
14:42:09 11 know what the position is for the Center for Disease
14:42:12 12 Control and Prevention, but also I can't read every
14:42:13 13 single article out there. But the fact that they've
14:42:17 14 actually reviewed every one and put the case together as
14:42:21 15 it were, it's very helpful to me. Then I can read it
14:42:24 16 quickly and makeup my own mind whether or not I agree
14:42:26 17 with their findings or recommendations or not.

14:42:28 18 Q And, Doctor, you previously testified that you relied on
14:42:32 19 this information provided in this document?

14:42:33 20 A Yes. I found the document to be very informative and
14:42:38 21 persuasive.

14:42:39 22 MS. WYRZYKOWSKI: Your Honor, I ask that this
14:42:41 23 Exhibit be moved in full.

14:42:42 24 THE COURT: Without objection, B is full.

14:42:45 25 **(DEFENDANTS' EXHIBIT B WAS MARKED FULL)**

14:42:45 1 Q Okay, Doctor, looking at Exhibit B, the Science Brief,
14:42:49 2 community use of cloth mask. Specifically, what
14:42:52 3 information in this CDC produced literature was relevant
14:42:56 4 to you in helping to formulate your opinion regarding the
14:42:59 5 use of masks in K-12 settings?

14:43:01 6 A So what the CDC does is breakdown the role of masks, and
14:43:06 7 they quote studies to that, but they talk about how
14:43:09 8 effective is source control? Source control means that
14:43:12 9 when I wear a mask you are protected from me
14:43:17 10 unintentionally spreading Covid.

14:43:18 11 So they reference several articles under source
14:43:21 12 control, how masks actually block viruses being expelled
14:43:26 13 from us. That's part of what I found persuasive.

14:43:29 14 The next section talks about what's called
14:43:31 15 filtration for wearer protection. In other words, one of
14:43:36 16 the things that they were able to do is find research and
14:43:40 17 scientific articles that show that when you wear masks,
14:43:43 18 not only does it provide source control, but it gives a
14:43:47 19 measure of protection to the person who wears it. So,
14:43:50 20 therefore, I'm protected from people around me who might
14:43:53 21 be unintentionally spreading the SARS-CoV-2 virus.

14:43:57 22 Then they go into whether, a rather lengthy section,
14:44:00 23 where they looked at human studies. They looked at real
14:44:04 24 world effectiveness of community masking, and they have
14:44:08 25 given through observational and through the amount of the

14:44:11 1 studies, but as they go through all these studies they
14:44:14 2 actually site this, quite a few studies to show that
14:44:17 3 these masks are effective.

14:44:18 4 But then they give another section where they looked
14:44:21 5 at several articles to see whether there's adverse health
14:44:23 6 affects of mask wearing. And these studies they quoted
14:44:26 7 look at different populations of people. One population
14:44:29 8 of people they looked at was children under two and
14:44:32 9 children who were older, up to 12 years of age, and they
14:44:35 10 found there weren't problems with getting oxygen or
14:44:38 11 exchanging carbon dioxide.

14:44:41 12 They also looked at populations of healthcare
14:44:43 13 workers. They looked at populations of adults who have
14:44:45 14 chronic obstructive pulmonary disease. And what we're
14:44:50 15 able to show is that they really weren't seeing problems
14:44:52 16 with people wearing masks. In other words, they weren't
14:44:56 17 seeing adverse health effects of people wearing masks.

14:44:58 18 So they formed their conclusion, which is that
14:45:02 19 adopting the universal masking can help avert the spread
14:45:07 20 of COVID-19 and some of the consequences that happen from
14:45:07 21 that.

14:45:10 22 So I found it a very persuasive document. I thought
14:45:13 23 it was very informative, well-referenced and
14:45:16 24 well-researched and I thought it was very helpful.

14:45:18 25 Q You covered a lot there. So let's just try to back track

14:45:24 1 for a second. In referencing the Science Brief of cloth
14:45:27 2 masking, you mentioned the term source control. Do you
14:45:29 3 recall that?

14:45:30 4 A I do.

14:45:30 5 Q Can you please explain what source control means and how
14:45:37 6 source control is effective. First, let's start with
14:45:41 7 what does source control mean?

14:45:42 8 A The source control refers to me or you. All of us are
14:45:46 9 potential sources, since the virus, SARS-CoV-2, spread
14:45:52 10 through people whether they know it or not. If you
14:45:55 11 spread asymptotically, in other words, people who don't
14:45:58 12 have any symptoms, they feel just fine, could be
14:45:58 13 spreading.

14:46:03 14 One of the main reasons we wear a mask is for source
14:46:06 15 control. In other words, when I'm exhaling, my
14:46:08 16 respiratory droplets are being trapped by the mask and
14:46:12 17 aren't going out in the word to people who are right next
14:46:15 18 to me.

14:46:16 19 So that's what source control is. So when I wear a
14:46:18 20 mask, like I'm wearing right now, is to protect the
14:46:22 21 others who might be in close proximity to me.

14:46:23 22 Q Doctor, you also mentioned the term filtration; is that
14:46:26 23 accurate?

14:46:26 24 A I did.

14:46:27 25 Q And could you please explain what filtration is?

14:46:30 1 A So there's a section here entitled Filtration, for wearer
14:46:34 2 protection. There's a recognition that when people where
14:46:38 3 a mask, not only is it effective at preventing our own
14:46:43 4 respiratory droplets, enviro particles from coming out of
14:46:47 5 ourselves, but it protects us from enviro particles
14:46:49 6 coming through the mask. So that's a filtration affect.

14:46:53 7 So in other words, when I'm out walking in public,
14:46:56 8 if I happen to be in close proximity to another
14:46:59 9 individual and they weren't wearing a mask, I would still
14:47:03 10 have a measure of protection, and that's what filtration
14:47:06 11 protection refers to.

14:47:07 12 So in other words, this mask serves multiple
14:47:10 13 purposes. It protect others from myself but also
14:47:15 14 protects me from other people as well.

14:47:17 15 Q Doctor, with respect to the filtration aspect of how
14:47:20 16 masking helps to protect the public, you had indicated
14:47:25 17 that it prevented particles from getting into your mask.
14:47:28 18 Do you recall that?

14:47:28 19 A I do.

14:47:29 20 Q Do you have an opinion to a reasonable degree of medical
14:47:32 21 certainty, based upon your training, education and
14:47:34 22 experience, as to whether or not the filtration process
14:47:38 23 prevents oxygen from getting into your mask?

14:47:40 24 A I have an opinion about that.

14:47:42 25 Q Doctor, what is your opinion with respect to that?

14:47:44 1 A These masks don't prevent oxygen from getting into your
14:47:48 2 body?

14:47:48 3 Q Doctor, how do you know that?

14:47:50 4 A Well, its actually been studied, and if you go into the
14:47:55 5 other parts of the paper, it talks about the adverse
14:47:59 6 health affects.

14:47:59 7 But one of the things we also know is just my own
14:48:03 8 training and experience for the practice of medicine.
14:48:07 9 Surgeons have been using masks in operating rooms since
14:48:10 10 1910. They've been widely available for over 100 years
14:48:13 11 ago, so we know that surgeons use these things to operate
14:48:16 12 on people for very lengthy periods of time. We've been
14:48:19 13 using these in healthcare for over a century.

14:48:22 14 So, not only do we trust the literature that cited
14:48:25 15 these adverse health effects of mask wearing, I also
14:48:29 16 trust my own experience, and just the knowledge of my own
14:48:32 17 profession that we've been using these in common every
14:48:34 18 day practice.

14:48:36 19 THE COURT: But have you used them in every day
14:48:38 20 practice for a period of six or seven hours straight?

14:48:41 21 THE WITNESS: So people do use these in every
14:48:43 22 day practice, surgeons in particular have prolonged
14:48:46 23 operations and they do wear them for long periods of
14:48:49 24 time. Some of the studies looked at people wearing these
14:48:52 25 for long periods of time as well.

14:48:54 1 THE COURT: So are these studies, because I
14:48:56 2 didn't find any in the ones that you're looking at.

14:48:58 3 THE WITNESS: So I have to break down into each
14:49:00 4 individual study, but they go into various lengths of
14:49:03 5 time when they were based in various ages of people here.

14:49:07 6 THE COURT: I was looking at the chart on the
14:49:09 7 bottom, the hairdressers, for example, I thought they
14:49:12 8 said they were wearing them 15 minutes each. I didn't
14:49:15 9 see any of the children but perhaps I'm wrong. If you
14:49:18 10 want to point me in the right --

14:49:19 11 THE WITNESS: Well, the one is Theodore
14:49:22 12 Roosevelt, that's another one where they were wearing
14:49:22 13 them for long periods of time.

14:49:24 14 And these studies in particular are actually showing
14:49:26 15 their effectiveness. In other words, if you look at the
14:49:29 16 paragraph above, where it says, Adverse Health Effects of
14:49:32 17 Mask Wearing, that's where I would look. There's no
14:49:36 18 chart for that. I read the studies there.

14:49:39 19 But I guess I just rely back on common sense. We've
14:49:42 20 been wearing these for over a century. We do them for a
14:49:47 21 long period of time.

14:49:47 22 THE COURT: But where it talks about no
14:49:49 23 adverse, no change in oxygen. It begins that sentence by
14:49:53 24 saying: Studies of healthy hospital workers, older adults
14:49:59 25 and adults with COPD reported no change in oxygen or

14:50:04 1 carbon dioxide. Those weren't really concerned with the
14:50:07 2 masking order, right?

14:50:09 3 THE WITNESS: Well, these are groups that were
14:50:12 4 studied and they're studied for a long period of time.
14:50:15 5 Although I looked at every one of the studies, I don't
14:50:17 6 remember exactly how long they were studied for. But it
14:50:19 7 was for a prolonged duration of time and they're
14:50:22 8 published in the peer-reviewed journals, so I think they
14:50:26 9 have scientific and medical weight.

14:50:27 10 THE COURT: Okay. Thank you.

14:50:28 11 Q Doctor, based upon the questioning that just happened, I
14:50:33 12 want to direct your attention to Exhibit T, we're just
14:50:39 13 going to skip ahead based upon the Judge's questions. T
14:50:43 14 as in Thomas.

14:50:43 15 MR. PICCIRILLI: Do you have a copy?

14:50:43 16 MS. WYRZYKOWSKI: Well, you did but it's not
14:50:43 17 marked.

14:50:49 18 THE COURT: I'm sorry, Counsel, can I take a
14:50:51 19 break now so we can add some light in here.

14:50:51 20 MS. WYRZYKOWSKI: Sure. Of course, your Honor.

14:50:54 21 THE COURT: We'll be back in a few minutes.

14:50:54 22 THE SHERIFF: All rise.

14:51:32 23 **(Break taken)** .

14:51:32 24 (Back on the record) .

15:07:27 25 THE CLERK: I'd like to remind the witness that

15:07:29 1 having been previously sworn in you are still under oath.

15:07:32 2 THE WITNESS: Thank you.

15:07:32 3 MS. WYRZYKOWSKI: Is it at all possible to have
15:07:32 4 the last question read back?

15:07:32 5 THE COURT: Sure.

15:07:32 6 (Record read)

15:08:33 7 Q Doctor, you have before you what has been premarked as
15:08:36 8 Defendants' Exhibit T. Do you see that?

15:08:38 9 A I do.

15:08:41 10 MS. WYRZYKOWSKI: Melissa, does the Judge have
15:08:42 11 a copy?

15:08:44 12 THE CLERK: No.

15:08:44 13 (Documents given to the Clerk)

15:08:46 14 THE CLERK: Thank you.

15:08:47 15 Q MS. WYRZYKOWSKI: So we had just talked about masking,
15:08:58 16 source control. I'm directing your attention to
15:09:02 17 Exhibit T, entitled "Assessment of Respiratory Function
15:09:06 18 in Young Children Wearing a Face Mask During the Covid-19
15:09:09 19 Pandemic." Is that what's before you, Doctor?

15:09:11 20 A Yes.

15:09:11 21 Q And, Doctor, I believe this article published on March 2,
15:09:17 22 2021?

15:09:17 23 A Yes.

15:09:18 24 Q Doctor, was this document, you had testified earlier that
15:09:21 25 you used the data dashboard and various articles to help

15:09:26 1 formulate your opinions with respect to the executive
15:09:29 2 order and the Rhode Island Department of Health's
15:09:31 3 regulation. Was this document one of the documents that
15:09:33 4 was utilized?

15:09:34 5 A This document was referenced in the CDC Science Brief,
15:09:39 6 and so it's one of the references in the section on
15:09:41 7 adverse health effects in children that the CDC used.

15:09:45 8 Q And when you talk about CDC Science Brief, Doctor, are
15:09:48 9 you talking about Exhibit B that we were just testifying
15:09:51 10 about?

15:09:51 11 A Yes, I'm talking about Exhibit B.

15:09:53 12 Q So, Doctor, looking at Exhibit T -- first I ask, do you
15:09:56 13 recognize Exhibit T?

15:09:58 14 A I do.

15:09:59 15 Q How do you recognize it, Doctor?

15:10:00 16 A It's an article that I read.

15:10:02 17 Q And, Doctor, did you read this article in the ordinary
15:10:05 18 course of your business at the Rhode Island Department of
15:10:07 19 Health?

15:10:07 20 A I did.

15:10:08 21 MS. WYRZYKOWSKI: Your Honor, I ask that
15:10:09 22 Exhibit T be moved in full.

15:10:12 23 MR. PICCIRILLI: No objection if he relied on
15:10:16 24 it.

15:10:16 25 THE COURT: T is full.

15:10:18 1 THE CLERK: Exhibit T is full. I'm sorry,
15:10:21 2 Defendants' T full.

15:10:22 3 **(DEFENDANTS' EXHIBIT T WAS MARKED FULL)**

15:10:22 4 Q All right, your Honor. Excuse me, all right
15:10:26 5 Dr. McDonald, you had indicated that Exhibit T was
15:10:30 6 referenced in Exhibit B; is that accurate?

15:10:32 7 A Yes.

15:10:33 8 Q Looking solely now at Exhibit T: Assessing the
15:10:38 9 Respiratory Function in Infants and Young Children. Can
15:10:41 10 you please explain what information in Exhibit T you
15:10:45 11 relied upon in helping to formulate your opinion with
15:10:48 12 respect to the executive order and the Rhode Island
15:10:50 13 Department of Health regulation?

15:10:52 14 A So it's an article published in the Journal for the
15:10:55 15 American Medical Association, and so what the office is
15:11:00 16 trying to answer is, the question they had was face masks
15:11:04 17 had been recommended, but they wanted to see if there's
15:11:07 18 any adverse affect on children, where there's a problem
15:11:10 19 with them inhaling oxygen or any respiratory distress,
15:11:15 20 that was the big question.

15:11:16 21 So they looked at 47 infants and young children and
15:11:21 22 they had them wear a surgical mask for half an hour, and
15:11:25 23 they noticed there weren't any adverse effects. So they
15:11:29 24 concluded that the use of surgical masks among children
15:11:33 25 would be an effective strategy, especially when schools

15:11:39 1 were opening.

15:11:40 2 So it's a decent study. They looked at some
15:11:43 3 children under the age of two and kids up to the age of
15:11:46 4 12, and they looked at data from May through June of
15:11:49 5 2020.

15:11:50 6 Q Doctor, you had just testified that face masks were
15:11:53 7 recommend. Who are you referencing when you say that
15:11:56 8 face masks were recommended for children?

15:11:58 9 A They were recommended by the Center for Disease Control
15:12:01 10 and Prevention, and also by the American Academy of
15:12:04 11 Pediatrics.

15:12:05 12 Q If you know, as you stand here today, does the Center for
15:12:09 13 Disease Control and the American Academy of Pediatrics
15:12:12 14 recommend mask wearing in the K-12 setting?

15:12:14 15 A Yes, they still recommend that.

15:12:15 16 Q Doctor, based upon your training, education and
15:12:22 17 experience, and your role as a public health official,
15:12:26 18 can you offer an opinion to a reasonable degree of
15:12:28 19 medical certainty as to whether or not mask wearing
15:12:33 20 effects children and adult differently or the same?

15:12:37 21 A I can offer an opinion.

15:12:39 22 Q Doctor, what is that opinion?

15:12:40 23 A I see no reason why they would be different in adults and
15:12:44 24 children.

15:12:45 25 Q Doctor, what information do you use to formulate that

15:12:47 1 opinion?

15:12:48 2 A Well, I base it on a lot of information and documents,
15:12:53 3 the CDC Science Brief, but also the studies that they
15:12:54 4 referenced. In particular, the adverse health effects.
15:12:58 5 I actually went into the Science Brief, and there's a
15:12:59 6 section entitled, Adverse Health Effects. So I actually
15:13:04 7 read every study that they referenced.

15:13:07 8 I don't usually read every study in that NPR article
15:13:11 9 but I did in this one because I wanted to see where they
15:13:15 10 were drawing the conclusions from.

15:13:17 11 So it actually references 57 through 63, and they
15:13:23 12 look at these studies, they look at different groups of
15:13:27 13 people. They look at children. They look at people with
15:13:29 14 lung disease, look at people who normally have healthy
15:13:33 15 lung lungs, healthcare workers. They look at people who
15:13:36 16 are exercising, and they didn't see a change in anyone.

15:13:39 17 So I think their conclusion has merit and I found it
15:13:43 18 persuasive.

15:13:43 19 Q Doctor, just to clarify for the record, you had
15:13:46 20 referenced 57 to 63 in the section entitled, Adverse
15:13:50 21 Health Effects of Mask Wearing. Is that from Exhibit B?

15:13:53 22 A Yes.

15:13:54 23 Q Thank you, Doctor. Doctor, based upon your training,
15:13:57 24 education and experience, and your role as a public
15:14:00 25 health official, can you offer an opinion to a degree of

15:14:06 1 medical certainty as to whether or not the observational
15:14:13 2 studies that have been done with adults concerning
15:14:17 3 masking, would have a different effect with children in
15:14:20 4 masking?

15:14:20 5 A I can offer an opinion.

15:14:22 6 Q Doctor, what is that opinion?

15:14:24 7 A I don't think there would be a difference.

15:14:25 8 Q Doctor, why do you say there wouldn't be difference?

15:14:29 9 A When you look at all the studies in particular, they
15:14:31 10 looked at children and adults, and they're different
15:14:34 11 authors with the same question.

15:14:35 12 So when you look at eight different studies, looking
15:14:38 13 at different populations, and they all find it
15:14:41 14 independently that there aren't adverse effects, I find
15:14:45 15 that persuasive.

15:14:46 16 Q Thank you, Doctor. I'm now going to go to Exhibit R,
15:15:00 17 which is another Science Brief.

15:15:05 18 MS. WYRZYKOWSKI: I'm just trying to find a
15:15:07 19 copy for the Court. Melissa, this is for the Court.

15:15:47 20 (Document given to the Court)

15:15:47 21 Q Doctor, I'm handing you what has been premarked as
15:16:01 22 Defendants' Exhibit R, a Science Brief: Transmission of
15:16:05 23 SARS-CoV-2 in K-12 Schools and Early Care and Education
15:16:11 24 Programs. Do you see that, Doctor?

15:16:12 25 A I do.

15:16:12 1 Q Doctor, what is this document?

15:16:14 2 A It's a review article published by the Center For Disease
15:16:17 3 Control and Prevention.

15:16:18 4 Q And, Doctor, do you recognize this document?

15:16:20 5 A I do.

15:16:21 6 Q How do you recognize this document?

15:16:23 7 A It's a document that I used as part of formulating my
15:16:26 8 decision and opinions regarding whether masks would be a
15:16:29 9 good idea for kids in school.

15:16:31 10 Q Thank you, Doctor. And when you say forming your opinion
15:16:34 11 as to whether mask would be good in school, are you
15:16:37 12 referencing the executive orders and the Rhode Island
15:16:39 13 Department of Health regulation?

15:16:40 14 A I am.

15:16:41 15 MR. WYRZYKOWSKI: Your Honor, I ask that
15:16:42 16 Exhibit R be moved in full.

15:16:44 17 MR. PICCIRILLI: No objection.

15:16:45 18 THE COURT: R is full.

15:16:46 19 **(DEFENDANTS' EXHIBIT R WAS MARKED FULL)**

15:16:46 20 Q Doctor, looking at Exhibit R, can you please tell us what
15:16:50 21 date this article was published?

15:16:51 22 A It's published in it's updated version July 9, 2021.

15:16:55 23 Q And, Doctor, specifically, what information in the CDC
15:17:02 24 produced literature that is before you in Exhibit R, was
15:17:05 25 relevant in helping you formulate your opinion regarding

15:17:07 1 the use of masks in the K-12 setting for both the
15:17:11 2 executive order and for the RI Department of Health
15:17:13 3 Regulation?

15:17:14 4 A So this is a review article. They looked at 98 different
15:17:18 5 studies. You know one of the things that we see really
15:17:20 6 upfront with this is everyone recognized that kids do
15:17:24 7 better in school; physically, emotionally and
15:17:28 8 educationally, and they cite some studies to say that not
15:17:32 9 only do kids do better in school but if younger children,
15:17:36 10 0 to 4, are in early childhood education programs it
15:17:40 11 effects the ability of parents to work, have child care
15:17:43 12 issues.

15:17:44 13 So it was the right thing for people that I wanted
15:17:47 14 to learn about and they referenced several studies. When
15:17:51 15 you look about the rest of this it talks about how the
15:17:55 16 disease is spread, the infection about schools and
15:17:58 17 SARS-CoV-2 transmission. So a lot of studies are
15:18:02 18 referenced. They just talk about children do get
15:18:06 19 SARS-CoV-2 and Covid and there is measures in place to
15:18:10 20 prevent the spread. Children require this generally from
15:18:13 21 the community. And then we have a layered prevention
15:18:16 22 approach in schools. You really minimize the spread of
15:18:20 23 the virus in the schools.

15:18:22 24 There was another section that talked about, there's
15:18:24 25 not just students in school there's staff and teachers,

15:18:29 1 and it's important to understand that there's studies
15:18:32 2 that look at transmission in that regard as well, and
15:18:34 3 that was a layered prevention approach to minimize
15:18:37 4 transmission from the students to the teachers and the
15:18:41 5 teachers to the staff to the students.

15:18:45 6 When you really get right down to it, what they
15:18:47 7 concluded was it's really a layered prevention approach,
15:18:51 8 and they talked about getting to what were their
15:18:55 9 recommendations towards the end. And they list all the
15:18:58 10 different strategies they would recommend, which is one
15:19:01 11 you should vaccinate everybody when they're eligible.
15:19:04 12 But they recognize as long as people age 12 and older can
15:19:08 13 be vaccinated, they recommended consistent correct use of
15:19:11 14 mask. They recommend physical distancing, doing
15:19:13 15 screening tests in schools, make sure we work on
15:19:17 16 ventilations and other recommendations as well.

15:19:19 17 So the conclusion is you really can minimize the
15:19:23 18 spread of SARS in schools, in these early childhood
15:19:27 19 education settings if you take this layered approach at
15:19:31 20 prevention.

15:19:31 21 Q And, Doctor, the layered approach to prevention is with
15:19:34 22 respect to COVID-19; correct?

15:19:36 23 A That's correct.

15:19:37 24 Q And the factors that make up a layered approach to
15:19:41 25 prevention are what?

15:19:42 1 A Well, they list them as -- there's several different
15:19:48 2 strategies listed. One is making sure those who are
15:19:50 3 eligible for vaccination get vaccinated, and the second
15:19:53 4 one is consistent and correct use of masks. The third
15:19:55 5 one is physical distancing, screening and testing. In
15:19:59 6 other words, screening and testing, make sure the
15:20:01 7 ventilation works well, handwashing and respiratory
15:20:06 8 etiquette, make sure people stay home when they're sick,
15:20:09 9 contact tracing, isolation and quarantine and routine
15:20:13 10 cleaning of your building.

15:20:14 11 Q Thank you, Doctor. Doctor, I don't know which exhibits
15:20:17 12 are before you now, but whatever you have can we get
15:20:20 13 back, please, so we can give them to Melissa.

15:20:28 14 THE CLERK: Did you need to review it at all?

15:20:31 15 MS. WYRZYKOWSKI: Not at this moment, no.

15:21:03 16 Q Doctor, you have been handed what has been premarked as
15:21:07 17 Defendants' Exhibit S. Doctor, what is this that you've
15:21:14 18 been handed?

15:21:15 19 A So this is the publication from the Center for Disease
15:21:17 20 Control and Prevention. It's the Morbidity and Mortality
15:21:21 21 Weekly Report. It's titled Outbreak SARS-CoV-2
15:21:26 22 Infection, Including COVID-19 breakthrough Infections,
15:21:30 23 Associated With Large Public Gatherings - Barnstable
15:21:34 24 County Massachusetts, July 2021.

15:21:37 25 Q Doctor, do you recognize this document?

15:21:39 1 A I do.

15:21:39 2 Q Doctor, how do you recognize this document?

15:21:42 3 A I read it.

15:21:45 4 MS. WYRZYKOWSKI: Your Honor, I ask that this
15:21:46 5 exhibit be moved in full.

15:21:47 6 MR. PICCIRILLI: At this point, your Honor, I'm
15:21:50 7 trying not to interrupt the proceedings too much to move
15:21:54 8 along here but I have to object. I don't know what the
15:21:56 9 relevance is. This was a study of the outbreak in
15:22:00 10 Provincetown amongst adults, mostly homosexual men, who
15:22:06 11 have both been vaccinated, and apparently there was an
15:22:09 12 outbreak of Covid, even though they were vaccinated.
15:22:11 13 What possible relevance does that have with masking kids
15:22:14 14 in schools in Rhode Island?

15:22:15 15 MS. WYRZYKOWSKI: That's exactly the relevance,
15:22:16 16 your Honor. If vaccinated people can still spread it,
15:22:18 17 having people who are unvaccinated in the masks helps
15:22:23 18 prevent that spread. That's the whole point of these
15:22:26 19 proceedings is what steps are necessary to help protect
15:22:29 20 the children.

15:22:29 21 And if you're vaccinated and you can spread it, then
15:22:32 22 we need to have masks on for children so that the
15:22:36 23 unvaccinated children, those under 12, can't spread it.

15:22:36 24 And it also effects the children's age group, from
15:22:39 25 12 to 18, 53 percent who are vaccinated but can still

15:22:43 1 spread the disease in academic settings causing community
15:22:45 2 spread.

15:22:45 3 THE COURT: Before putting the article in as a
15:22:47 4 full Exhibit and having his conclusion already in full
15:22:54 5 evidence, why don't we build any expert opinion through
15:22:58 6 testimony first, and then put the Exhibit in full at the
15:23:01 7 end of testimony.

15:23:03 8 MS. WYRZYKOWSKI: Your Honor, I'm sorry, but
15:23:04 9 the ambulance, police car, I did not hear that.

15:23:06 10 THE COURT: The Court reserves on making it
15:23:08 11 full. Why don't you just build his testimony and then we
15:23:11 12 can go back to whether it should be full.

15:23:12 13 Q Doctor, with respect to Exhibit S, can you please
15:23:18 14 explain. Doctor, putting Exhibit S down, please.
15:23:22 15 Doctor?

15:23:22 16 A I have it.

15:23:23 17 Q I know. You can't look at it right now. It's not in
15:23:26 18 full.

15:23:26 19 A I can't look at it.

15:23:27 20 Q Please put it down. Thank you. Doctor, with respect to
15:23:30 21 the Exhibit S, regarding the outbreak of COVID-19 in
15:23:34 22 Barnstable County, can you please tell us why that
15:23:40 23 information was relevant to you in your position as a
15:23:43 24 public health official?

15:23:44 25 A Yes. So it was -- this actually made the news.

15:23:52 1 MR. PICCIRILLI: He answered the question. Now
15:23:54 2 he's going beyond the question.

15:23:56 3 THE COURT: Yes is his answer.

15:23:58 4 Q Doctor, if you could explain?

15:24:00 5 A This made the news. It was a big story. It was after
15:24:04 6 this article came out and got published that the director
15:24:07 7 for the Center of Disease Control and Prevention made a
15:24:10 8 change in recommendation, which is that even fully
15:24:13 9 vaccinated people should be wearing masks.

15:24:18 10 It was kind a dramatic study because in Barnstable
15:24:22 11 County, they actually had almost no cases of Covid right
15:24:25 12 before July 3rd. So there were very low prevalence, I
15:24:30 13 think it was maybe three cases the week before. They
15:24:32 14 actually saw this escalate quite a bit though, I believe
15:24:36 15 there were 469 cases over a two week period. And if I
15:24:39 16 recall correctly about 79 percent were in fully
15:24:43 17 vaccinated people. And I think five people, if I recall,
15:24:46 18 were admitted to the hospital. Four of them are fully
15:24:49 19 vaccinated.

15:24:50 20 So this was a study that got everyone's attention
15:24:53 21 and that's why it made the national news.

15:24:54 22 Q Doctor, with respect to this study, regarding the mostly
15:24:58 23 vaccinated population in Massachusetts, can you offer an
15:25:02 24 opinion to a reasonable degree of medical certainty,
15:25:05 25 based upon your training, education and experience, as to

15:25:07 1 why the information in this article, Exhibit S, is
15:25:11 2 relevant to a masking mandate in a K-12 setting? Can you
15:25:15 3 offer an opinion with respect to that?

15:25:16 4 A Yes.

15:25:16 5 Q What is that opinion, Doctor?

15:25:18 6 A So prior to this study the recommendation was that fully
15:25:27 7 vaccinated people did not need to wear a mask indoors.
15:25:31 8 After this study and because of this study, where
15:25:36 9 vaccinated people were at these large indoor gatherings
15:25:38 10 and outdoor gatherings, and so many got infected.

15:25:41 11 Since the Center of Disease Control and Prevention
15:25:43 12 made a change, based on this study that fully vaccinated
15:25:46 13 people to wearing a mask indoors, it was a very telling
15:25:50 14 study, because we know that some of the students who go
15:25:53 15 to school, age 12 to 18, 53 percent of them are
15:25:58 16 vaccinated. Yet having them wear a mask still is in line
15:26:03 17 with the CDC recommendation.

15:26:06 18 Q Doctor, does the study as a whole provide information as
15:26:15 19 to whether or not a vaccinated individuals can still
15:26:20 20 spread COVID-19?

15:26:21 21 A Yes.

15:26:22 22 Q Can you please explain what the conclusion is with
15:26:28 23 respect to whether or not a vaccinated person can still
15:26:31 24 spread COVID-19.

15:26:33 25 MR. PICCIRILLI: I think that is -- I'll have

15:26:35 1 to object. Its been asked and answered.

15:26:38 2 MS. WYRZYKOWSKI: Okay.

15:26:45 3 THE COURT: That's overruled. You can answer.

15:26:48 4 THE WITNESS: Yes, vaccinated people can spread
15:26:51 5 COVID-19. It was something they looked at in the study.

15:26:53 6 One of the things they pointed out was the cycle

15:26:56 7 thresholds for people who are vaccinated and had

15:26:59 8 COVID-19. People who are unvaccinated with COVID-19,

15:27:02 9 their cycle threshold numbers weren't different.

15:27:04 10 Q Doctor, how does the study specifically connect though
15:27:08 11 with a masking mandate in the K-12 setting?

15:27:11 12 A So one of the thresholds that we had to consider was
15:27:14 13 should we let students who are fully vaccinated not wear
15:27:18 14 masks in school? That was the question we needed to
15:27:22 15 answer.

15:27:23 16 But when you look at this study it's hard to make
15:27:26 17 that recommendation, because in this situation what you
15:27:30 18 see is vaccinated people who are unmasked are spreading
15:27:33 19 COVID-19. So, therefore, it made sense that fully
15:27:37 20 vaccinated students should still wear face masks because
15:27:40 21 we don't have heard immunity yet.

15:27:44 22 MS. WYRZYKOWSKI: Your Honor, I ask that
15:27:45 23 Exhibit S be moved in full now.

15:27:48 24 MR. PICCIRILLI: Judge, I'm confused. We went
15:27:50 25 through so much testimony about why it's important to get

15:27:53 1 people vaccinated and because kids are not vaccinated
15:27:56 2 they present a greater risk and that's why we're masking.

15:28:00 3 Now they're saying vaccinations don't matter for the
15:28:03 4 spreading of Covid, so are we just throwing out all the
15:28:08 5 prior testimony from this expert that the reason you are
15:28:13 6 masking kids in school is because they're unvaccinated.
15:28:18 7 He just contradicted his own -- all of his prior
15:28:22 8 testimony. So pick a lane. Are we going to introduce
15:28:27 9 tests and throw everything else out or keep everything
15:28:31 10 else out and throw away masks? I don't understand.

15:28:32 11 MS. WYRZYKOWSKI: Your Honor, COVID-19 --

15:28:33 12 THE COURT: It's a world in which Dr. McDonald
15:28:35 13 and the Governor have lived in for a few years, it has
15:28:38 14 changed often, and here what it is this Exhibit S shows a
15:28:43 15 change in the way the CDC is going to treat masking. The
15:28:47 16 Doctor just testified that the relevance is the masking
15:28:54 17 protocol changed by the CDC as a result of this.

15:28:58 18 He also showed how it influenced him in coming to
15:29:03 19 conclusions concerning masking. All of which are subject
15:29:08 20 to cross-examination. I'm not saying it's logical or
15:29:12 21 appropriate, I'm just saying it's relevant. So therefore
15:29:15 22 Exhibit S is relevant and S is full, subject to
15:29:19 23 cross-examination.

15:29:20 24 MR. PICCIRILLI: Thank you, your Honor.

15:29:24 25 MS. WYRZYKOWSKI: Doctor, I just want to give

15:29:27 1 Exhibit S back to Melissa.

15:29:27 2 **(DEFENDANTS' EXHIBIT S WAS MARKED FULL)**

15:29:35 3 Q Doctor, prior to this study that was done with respect to
15:29:39 4 Exhibit S, did you have an opinion to a reasonable degree
15:29:42 5 of medical certainty, as to whether or not a vaccinated
15:29:45 6 individual should be wearing a mask to help prevent the
15:29:49 7 spread of COVID-19?

15:29:50 8 A Yes.

15:29:50 9 Q What was that opinion prior to the study?

15:29:53 10 A That fully vaccinated people did not need to wear a mask.

15:29:57 11 Q Then the study came out, Exhibit S, and when the study
15:30:01 12 came out of Exhibit S, what was learned from that study
15:30:05 13 with respect to vaccinated people and wearing masks?

15:30:08 14 A What was clear is we're not at heard immunity, not by a
15:30:14 15 long shot, and what you see is when you put in mask
15:30:18 16 studies, 79 percent of the people who were infected were
15:30:21 17 vaccinated. Well, that's clearly not enough to have
15:30:24 18 heard immunity.

15:30:24 19 What you saw was when you put these folks in large
15:30:27 20 indoor gatherings and large outdoor gatherings, they
15:30:31 21 still spread the virus from one person to the other. And
15:30:34 22 keep in mind, they largely did better because they're
15:30:39 23 vaccinated, they have better health outcomes. Yet what
15:30:41 24 it demonstrates though is that the Delta virus is very
15:30:44 25 contagious, very easy for someone to get infected, and

15:30:47 1 very easy for even a fully vaccinated individual to
15:30:51 2 spread from themselves to someone else who can be
15:30:55 3 unvaccinated or fully vaccinated.

15:30:56 4 Q So, Doctor, can you offer an opinion to a reasonable
15:30:59 5 degree of medical certainty, based upon your training,
15:31:02 6 education and experience, as to what the point of getting
15:31:06 7 the vaccine is if you can still spread the disease while
15:31:09 8 fully vaccinated?

15:31:10 9 A Yes.

15:31:10 10 Q What is that opinion, Doctor?

15:31:12 11 A So a vaccine --

15:31:13 12 MR. PICCIRILLI: Objection. Your Honor, I'm
15:31:14 13 going to object. I mean we're not here on whether or not
15:31:17 14 there should be a vaccine mandate, I mean that's a case
15:31:20 15 for another day and another time that affects healthcare
15:31:24 16 workers. We're here about masking. So whether or not he
15:31:27 17 has an opinion about whether vaccines work or how well
15:31:29 18 that is is really irrelevant I think to this case.

15:31:31 19 MS. WYRZYKOWSKI: Your Honor, if I may, it's
15:31:32 20 complete relevant because what we're looking at here is a
15:31:36 21 new version of the disease of Delta. Initially the CDC
15:31:39 22 and the APA and the Doctor was under the opinion that,
15:31:41 23 hey, once we get vaccinated we're going to be okay now.
15:31:43 24 But now when Delta came it changed the landscape. So
15:31:46 25 that is why getting vaccinated and wearing a mask is key,

15:31:49 1 and you also have 53 percent of the school age
15:31:51 2 population, 12 and older, being vaccinated. So it goes
15:31:54 3 to why someone who was vaccinated in that age group,
15:31:57 4 still must wear a mask in an academic settings, which is
15:32:00 5 the exact point of this hearing. If I can offer a case
15:32:10 6 of proof, your Honor. The Doctor would testify --

15:32:12 7 THE COURT: Well, I'm going to take what you
15:32:15 8 gave me as an offer of proof, but you can continue.

15:32:19 9 MS. WYRZYKOWSKI: Dr. McDonald will testify,
15:32:21 10 your Honor, that the vaccine helps prevent people from
15:32:24 11 getting really, really sick. It's similar to the flu
15:32:27 12 vaccine. You can still get the flu but you're not going
15:32:30 13 to get it as badly. It's a similar concept.

15:32:32 14 So that's why vaccine and masking go together in an
15:32:35 15 academic setting, which is why we're here.

15:32:43 16 MR. PICCIRILLI: Your Honor, I thought the
15:32:43 17 question was whether he had an opinion as to whether or
15:32:47 18 not -- why is it still a good idea to get the vaccine?
15:32:52 19 Well, okay, so you don't get sick.

15:32:52 20 THE COURT: Well, actually, I'd like the
15:32:52 21 question read back.

15:32:52 22 (Record read)

15:33:36 23 THE COURT: And the objection is sustained.

15:33:39 24 Q Doctor, you testified earlier that approximately 53
15:33:44 25 percent of the K-12, those over the age of 12 in the K-12

15:33:49 1 setting, are fully vaccinated?

15:33:50 2 A Yes.

15:33:51 3 Q Doctor, based upon your training, education and
15:33:55 4 experience, can you offer an opinion to a reasonable
15:33:57 5 degree of medical certainty, as to whether or not
15:34:00 6 students in a K-12 setting over the age of 12 who are
15:34:04 7 vaccinated can still spread COVID-19?

15:34:07 8 A Yes.

15:34:07 9 Q What is that opinion, Doctor?

15:34:09 10 A They can still spread COVID-19.

15:34:11 11 Q Doctor, how do you know that children in a K-12 setting
15:34:15 12 over the age of 12 who are vaccinated, can still spread
15:34:18 13 COVID-19?

15:34:19 14 A Because the vaccine is really good at protecting people
15:34:23 15 from dying and ending up in the hospital. It's also very
15:34:26 16 good at preventing from getting the disease, but it's not
15:34:29 17 100 percent, no vaccine is, and we know that when people
15:34:33 18 get infected with SARS-CoV-2 they're contagious and they
15:34:38 19 can spread it from one person to the other.

15:34:40 20 So therefore we know that students who are fully
15:34:42 21 vaccinated could spread from themselves to someone else.

15:34:45 22 MR. PICCIRILLI: I'm going to move to strike.

15:34:47 23 The answer was why he thinks vaccines are good, which was
15:34:52 24 just objected to and sustained. The question was whether
15:34:59 25 children who are vaccinated in schools can still spread

15:35:03 1 Covid. His answer doesn't match up with the question.
15:35:06 2 He tried to answer the previous question about why
15:35:10 3 vaccines are a good idea. The simple question was can
15:35:14 4 children ages 12 through 17 or 18 in school, who are
15:35:18 5 vaccinated, still spread Covid? Simple yes or no answer
15:35:22 6 to that.

15:35:24 7 MR. WYRZYKOWSKI: And I believe there was a
15:35:30 8 follow-up question to that.

15:35:31 9 THE COURT: There was, he did answer a bit and
15:35:36 10 he went on, but the answer stands. The motion to strike
15:35:39 11 is denied.

15:35:40 12 Q Dr. McDonald, we talked at length about masking,
15:35:45 13 preventative measures, how masks work. I'd like to
15:35:52 14 direct your attention now to an allegation in the
15:35:54 15 complaint. Are you aware -- have you reviewed the
15:36:02 16 complaint in this case?

15:36:03 17 A I did.

15:36:03 18 Q One of the issue in this case, and Plaintiffs' counsel
15:36:09 19 will correct me if I'm wrong, is whether or not parents
15:36:13 20 can make their own decision as to whether or not their
15:36:16 21 children should be masked when going into an academic
15:36:19 22 setting. Doe that sound familiar to you?

15:36:21 23 A Yes.

15:36:22 24 Q Based upon your training, education and experience, can
15:36:26 25 you offer an opinion to a reasonable degree of medical

15:36:30 1 certainty as to whether or not all children in a K-12
15:36:37 2 setting, regardless of vaccination status, should be
15:36:41 3 masked or not?

15:36:42 4 A Yes.

15:36:43 5 Q Doctor, what is that opinion?

15:36:45 6 A That all students should be wearing a mask in K-12
15:36:49 7 settings.

15:36:50 8 Q Doctor, can you please explain the basis for your opinion
15:36:54 9 that all children should be wearing a mask in a K-12
15:36:57 10 setting?

15:36:58 11 MR. PICCIRILLI: Objection, your Honor. I
15:37:00 12 think he's explained that many, many times over the last
15:37:04 13 few days of his testimony. Do we have to go through it
15:37:06 14 again?

15:37:07 15 MS. WYRZYKOWSKI: Your Honor, he did not
15:37:08 16 explain the fact that many of the parents want to be able
15:37:11 17 to make a decision as to whether or not children can wear
15:37:13 18 masks. The issue stems from the fact that masks really
15:37:16 19 protect the public at large not just the wearer.

15:37:19 20 MR. PICCIRILLI: That was --

15:37:20 21 THE COURT: He's already testified to that.
15:37:23 22 You're correct. I thought you were getting into the
15:37:25 23 parents now.

15:37:26 24 MS. WYRZYKOWSKI: Then I did, your Honor. I
15:37:27 25 apologize.

15:37:28 1 THE COURT: Thank you.

15:37:45 2 MS. WYRZYKOWSKI: Your Honor, I just need one
15:37:46 3 moment.

15:37:46 4 THE COURT: Yes.

15:37:46 5 (Pause taken).

15:38:38 6 MS. WYRZYKOWSKI: Okay. Melissa, could I
15:38:40 7 please have Exhibit 10. Melissa, let me just get them
15:38:53 8 all from you at once. Your Honor, can I just have a
15:39:06 9 moment, please, I'm missing note pads causing some
15:39:10 10 issues.

15:39:12 11 (Pause taken)

15:39:35 12 MS. WYRZYKOWSKI: Melissa, 8, 10, 15, 23 and
15:39:39 13 25.

15:39:42 14 THE CLERK: 8, 10, 15, 23, 25?

15:39:52 15 MS. WYRZYKOWSKI: Yes.

15:40:13 16 Q MS. WYRZYKOWSKI: Okay, Doctor, you have --

15:40:34 17 THE COURT: Could you try to open the window?
15:40:38 18 See if we can we try to open the window a little bit.

15:41:11 19 (Pause taken)

15:41:11 20 Q Doctor, I'd like to draw your attention to Plaintiffs'
15:41:17 21 Exhibit 8. Do you have that, Doctor?

15:41:20 22 A I do.

15:41:21 23 Q It's entitled, Delta Wave, Rhode Island Daily Pediatric
15:41:25 24 Hospitalization?

15:41:25 25 A Yes.

15:41:26 1 Q Doctor, this exhibit was introduced during Plaintiffs'
15:41:31 2 Direct Examination of Dr. Bostom. Do you recognize it?

15:41:34 3 A I do.

15:41:35 4 Q Can you please, looking at the exhibit, can you please
15:41:40 5 state when the dates begin and end.

15:41:44 6 A It starts on August 1st, 2021 and it ends on October 4,
15:41:52 7 2021.

15:41:52 8 Q Doctor, looking at that Exhibit, can you please identify
15:41:57 9 how many hospitalizations there were of pediatric
15:42:01 10 patients prior to the administration of the Executive
15:42:04 11 Order?

15:42:04 12 A Yes, I can.

15:42:05 13 Q And how many is that, Doctor?

15:42:07 14 A If I could have a moment to count.

15:42:09 15 Q Yes, I apologize.

15:42:11 16 A So including up to August 19th, there's 19.

15:42:22 17 Q And, Doctor, how active is August 19th? How many
15:42:26 18 admissions were there?

15:42:27 19 A There was 48.

15:42:43 20 Q Doctor, looking at this exhibit, knowing there were 19
15:42:47 21 admissions before the August 19th Executive Order and 48
15:42:50 22 admissions after the Executive Order, what, if anything,
15:42:54 23 does Plaintiffs' Exhibit 8 tell you?

15:42:56 24 A It's talking about the number of children who are
15:43:00 25 admitted to the hospital.

15:43:02 1 MR. PICCIRILLI: Objection, your Honor. I want
15:43:03 2 to be clear, I'm sorry, I didn't hear the question.
15:43:07 3 These are not new admissions, these are existing
15:43:10 4 admissions. So I don't know, I don't want the witness to
15:43:15 5 be misinterpreting what he should already know as the
15:43:18 6 Health Director. These are the daily census. How many
15:43:23 7 patients are actually in the hospital on a given day? So
15:43:27 8 they're not 19 cases prior to August 19th and 48 cases
15:43:31 9 after. That's not what this document represents and the
15:43:34 10 witness should know this.

15:43:36 11 Q And, Doctor, looking at the Exhibit now --

15:43:38 12 THE COURT: It's a good question for cross but
15:43:41 13 go ahead.

15:43:41 14 Q Doctor, looking at the Exhibit now and understanding what
15:43:44 15 Plaintiffs' counsel just said, can you please clarify as
15:43:48 16 to how many patients were in the hospital prior to the
15:43:52 17 Executive Order?

15:43:53 18 A You know, it's his Exhibit. I mean I don't think it's
15:43:56 19 labeled very well, but it looks like its average
15:44:00 20 pediatric Covid-19 hospitalizations. So he's saying
15:44:02 21 there's generally 1, 2 or 3 or 4 cases in the hospital
15:44:05 22 per day.

15:44:06 23 Q And does that number increase, Doctor, after the
15:44:09 24 Executive Order?

15:44:10 25 A Yes.

15:44:10 1 Q Doctor, I want to fast forward now to Plaintiffs'
15:44:14 2 Exhibit 10. You should have that in front of you.

15:44:18 3 A I do.

15:44:18 4 Q Actually, Doctor, let's fast forward to Plaintiffs'
15:44:29 5 Exhibit 23. You should also have that in front of you.

15:44:33 6 MR. PICCIRILLI: 23?

15:44:36 7 MS. WYRZYKOWSKI: 23, yes.

15:44:37 8 Q Doctor, do you have Plaintiffs' Exhibit 23 in front of
15:44:47 9 you?

15:44:47 10 A I do

15:44:47 11 Q Doctor, looking at Plaintiffs' Exhibit 23, on the left
15:44:50 12 hand column, can you please identify the hyperlink that
15:44:54 13 is listed there?

15:44:55 14 A It says it's from slickdeals.net.

15:44:58 15 Q Doctor, as a medical professional, are you familiar with
15:45:00 16 the website, slickdeals.net?

15:45:03 17 A No.

15:45:03 18 Q Doctor, as a medical professional, do you currently
15:45:06 19 receive your medical literature from a website entitled
15:45:09 20 slickdeals.net?

15:45:11 21 A No.

15:45:11 22 Q Doctor, as a medical professional with the Rhode Island
15:45:20 23 Department of Health, have you ever received medical
15:45:23 24 literature from a website entitled slickdeals.net?

15:45:26 25 A No.

15:45:38 1 MS. WYRZYKOWSKI: Your Honor, we still have
15:45:40 2 some housekeeping measures. We have Dr. McDonald's
15:45:44 3 resume that we need to introduce, I believe plaintiffs'
15:45:47 4 counsel has already agreed to that.

15:45:49 5 Outside of that, the State would like an opportunity
15:45:52 6 to just kind of pause and make sure we have all the
15:45:55 7 exhibits entered into evidence, and I believe all the
15:45:58 8 questions have been covered but I would like a moment to
15:46:01 9 confer with my co-counsel. So would it be possible to
15:46:07 10 just wait to get Dr. MacDonald's affidavit, which is
15:46:08 11 being walked -- excuse me, resume which is being walked
15:46:08 12 over and use that time to confer with co-counsel?

15:46:13 13 THE COURT: Sure. We're obviously going to
15:46:16 14 need another for Dr. McDonald to be --

15:46:19 15 MS. WYRZYKOWSKI: Unfortunately, yes.

15:46:20 16 THE COURT: Are you near the end of your
15:46:22 17 testimony?

15:46:22 18 MS. WYRZYKOWSKI: I am, your Honor.

15:46:23 19 THE COURT: Okay. We can break now for the day
15:46:25 20 and set another time?

15:46:27 21 MR. PICCIRILLI: And, your Honor, just so the
15:46:29 22 record is clear, if we can introduce that Exhibit,
15:46:33 23 Dr. McDonald's CV, obviously, no objection. I don't know
15:46:39 24 if you have to do it on the record, or whenever we get it
15:46:43 25 that's sufficient. I say it now.

15:46:46 1 MS. WYRZYKOWSKI: And I appreciate that. I
15:46:48 2 still want to make an opportunity to make sure the
15:46:51 3 exhibits are done and an opportunity to confer with
15:46:51 4 co-counsel.

15:46:52 5 THE COURT: Of course, no problem. Can we
15:46:54 6 break now for the day?

15:46:55 7 MS. WYRZYKOWSKI: Thank you, your Honor, yes.

15:46:57 8 THE COURT: We'll break now for the day and
15:46:59 9 Dr. McDonald stays on direct. You're excused for the
15:47:02 10 day. Thank you.

15:47:03 11 MS. WYRZYKOWSKI: Thank you. Oh, I'm sorry, do
15:47:05 12 we have a time for tomorrow?

15:47:07 13 MR. PICCIRILLI: Are we on for tomorrow?

15:47:09 14 THE COURT: Why don't we talk. So why don't we
15:47:15 15 conference this now.

15:47:16 16 THE SHERIFF: All rise.

15:47:16 17 **A-D-J-O-U-R-N-E-D**

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