

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA - HAYWARD HALL OF JUSTICE

AMBROSE AGU, Individually and )  
as Successor-in-Interest to )  
the ESTATE OF TED AGU; and )  
EMILIA AGU, Individually, )

Plaintiffs, )

vs. )

Case No. RG14735588

THE REGENTS OF THE UNIVERSITY )  
OF CALIFORNIA, et al., )

Defendants. )

VIDEO DEPOSITION OF CASEY BATTEN, M.D.

1300 Clay Street, Suite 600

Oakland, California

Wednesday, November 5, 2014

Reported by: Carrie Hewerdine  
California CSR No. 4579  
Nevada CCR No. 820

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10 vs. ) Case No. RG14735588

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12 THE REGENTS OF THE UNIVERSITY )  
13 OF CALIFORNIA, et al., )  
14 )  
15 Defendants. )

16  
17 Video Deposition of CASEY BATTEN, M.D., taken  
18 on behalf of the Plaintiffs, at 1300 Clay Street,  
19 Suite 600, Oakland, California, beginning at 10:15 a.m.,  
20 on Wednesday, November 5, 2014, before Carrie Hewerdine,  
21 Certified Shorthand Reporter No. 4579.  
22  
23  
24  
25

2

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MATT MILLER, Videographer

3

1  
2 INDEX (Continued)

3 WITNESS INSTRUCTED NOT TO ANSWER QUESTIONS: PAGE/LINE

4 33/ 6  
5 \* Q Had you been told by the historian a set of  
6 circumstances that would envision and  
7 encapsulate everything we've talked about -  
8 that he struggled on Laps 6, 7, 8, 9, and it  
9 wasn't until after those laps he struggled  
10 through that he collapsed finally for the  
11 last time on the 10th lap up the hill, would  
12 that have altered your conclusion; yes or  
13 no?  
14

220/ 22

15 \* Q But if, in fact, it was a new exercise, had  
16 not been done before, and was extremely  
17 challenging, in the case of a sickle cell  
18 trait athlete, such an exercise should only  
19 be introduced in a gradual fashion; you  
20 would agree, wouldn't you?  
21  
22  
23  
24  
25

5



1 Oakland, California  
2 Wednesday, November 5, 2014, 9:16 a.m. - 1:48 p.m.

3  
4 THE VIDEOGRAPHER: Good morning.

5 THE WITNESS: Here begins the video-recorded  
6 deposition of Dr. Casey Batten, Media 1, Volume 1 in  
7 the matter of Ambrose Agu versus the Regents of the  
8 University of California, et al., in the  
9 Superior Court of the State of California, County of  
10 Alameda, Hayward Hall of Justice. The case number  
11 is RG14735588.

12 Today's date is Wednesday,  
13 November 5th, 2014. The time on the video monitor  
14 is 10:15 a.m.

15 The video operator is Matt Miller, and the  
16 court reporter is Carrie Hewerdine, here on behalf of  
17 Hahn & Bowersock Court Reporters.

18 Today's deposition is being taken on behalf  
19 of the Plaintiff, and is taking place at  
20 1300 Clay Street, Suite 600, in Oakland, California.

21 Will counsel and all present please  
22 introduce yourselves and state whom you represent for  
23 the record.

24 MR. YERRID: Steve Yerrid and Mike Murphy  
25 representing the Plaintiffs in this cause.

6

1 A Correct.

2 Q Any other states?

3 A No longer, no.

4 Q If you can give me a very brief background  
5 of your education --

6 A Mm-hmm.

7 Q -- and share with me the -- the experiences  
8 you had prior to becoming a doctor here at the  
9 University of California.

10 A Sure. I did my university at the  
11 University of Wisconsin, Madison, in kinesiology,  
12 exercise science.

13 Then I attended Medical College of Wisconsin  
14 in Milwaukee.

15 After that, I did a family medicine  
16 residency at the University of Tennessee College of  
17 Medicine, Chattanooga Unit.

18 Q Let me stop you there, Dr. Batten.

19 A Mm-hmm.

20 Q You said you had a specialty of exercise  
21 science?

22 A Exercise science was my major -- undergrad  
23 major.

24 Q Undergrad major?

25 A Yes.

8

1 MR. HOSKING: Jeff Hosking for the  
2 Defendants.

3 THE VIDEOGRAPHER: Will the court reporter  
4 please swear in the witness.

5 THE REPORTER: Raise your right hand,  
6 please.

7  
8 CASEY BATTEN, M.D.,  
9 called as a witness by and on behalf of the Plaintiffs,  
10 and having been first duly sworn by the Certified  
11 Shorthand Reporter, was examined and testified as  
12 follows:

13 THE WITNESS: I do.

14 THE VIDEOGRAPHER: Please proceed.

15  
16 EXAMINATION

17 BY MR. YERRID:

18 Q State your name for the record, please, sir.

19 A Casey Batten.

20 Q And what's your education?

21 A I have an M.D.

22 Q All right. And as a medical doctor, you're  
23 licensed in --

24 A State of California.

25 Q -- the State of California?

7

1 Q You premised most of your career objectives  
2 were becoming a sports medicine doctor?

3 A Not necessarily, but that's what I was  
4 interested in.

5 Q Okay.

6 A Yeah.

7 Q All right. Please continue.

8 A Yeah. I did my residency, like I said, at  
9 the University of Tennessee in family medicine --

10 Q Yes.

11 A -- the Chattanooga Unit.

12 Then I did my fellowship in sports medicine  
13 at the U.C. Berkeley, U.C. Davis sports medicine  
14 program.

15 And then, umm, after fellowship, 2007, I was  
16 working at the UCSF department of orthopaedics in the  
17 sports medicine division and an upper-extremity  
18 division. And then I was part-time at Berkeley as a  
19 assistant team physician.

20 Q I'm sorry?

21 A Assistant team physician.

22 Q How many -- very quickly --

23 A Yes.

24 Q What year -- or not the year -- what year is  
25 it you were the part-time team physician?

9

1 A Well, I really was kind of a -- as a fellow,  
 2 you're a team physician at Berkeley starting July  
 3 of 2006.  
 4 Q Okay. July of 2006?  
 5 A Yes.  
 6 Q And --  
 7 A It was a training year, but you still spent  
 8 a lot of time --  
 9 Q No. No. I understand. I understand.  
 10 A And then I finished in -- at the end of  
 11 July -- or end of June 2007.  
 12 Q Your fellowship?  
 13 A Yep.  
 14 Q Okay.  
 15 A And then I was sort of -- had split between  
 16 UCSF and Berkeley, and then -- then basically, about  
 17 2009, 2010, I was pretty much full-time Berkeley.  
 18 Q Okay.  
 19 A Yeah.  
 20 Q And you say "full-time."  
 21 Were you an assistant team physician?  
 22 A Yeah. I was an assistant team physician,  
 23 and I also did student health, urgent care, primary  
 24 care clinics, general medicine.  
 25 Q You ran the urgent care clinic?

10

1 A I was one of the doctors there. I was not  
 2 in charge of it.  
 3 Q What about the team? How many team  
 4 physicians were there, let's say, in 2014?  
 5 A Right -- right now? 2014?  
 6 Q Yes.  
 7 A There's myself, and then -- one, two,  
 8 three -- well, there's -- there's three that are  
 9 actually officially hired by the University, but we  
 10 have a large volunteer program. So we have, you know,  
 11 dozens of team -- you know, team physicians that --  
 12 Q That come from time to time?  
 13 A Right. But that are actually there at the  
 14 University, four -- four or five.  
 15 Q Do I understand there are three paid  
 16 positions currently for team physicians?  
 17 A Correct. Yes.  
 18 Q You occupy one of them?  
 19 A Yes.  
 20 Q What specialties occupy the other two?  
 21 A Family medicine, internal medicine.  
 22 Q Okay. And you are the orthopaedic --  
 23 A We're all fellowship-trained in sports  
 24 medicine. So we're double board certified.  
 25 Q Double --

11

1 A Except for one -- one of the associate team  
 2 physicians is not board certified in sports medicine.  
 3 Q Okay. All right. That's very helpful.  
 4 Thank you.  
 5 With regard to this fatality, do I  
 6 understand you were the primary sports medicine doctor  
 7 on the University of California team here at Berkeley?  
 8 A Yeah. I was the head team physician for the  
 9 football team for the University.  
 10 Q Okay. And unfortunately, on February 7th,  
 11 the day Mr. Agu died, you were not present?  
 12 A I was not.  
 13 Q Okay. Where were you?  
 14 A At home.  
 15 Q All right. Off -- off of the work schedule?  
 16 A Yeah. Yeah.  
 17 Q It was a regular day off?  
 18 A It was normally -- yeah. Normally, my days  
 19 start around 8:00.  
 20 Q You weren't sick or --  
 21 A No.  
 22 Q -- committed out to other --  
 23 A No.  
 24 BY THE REPORTER: You guys, please let each  
 25 other finish. You're talking all over each

12

1 other.  
 2 MR. YERRID: Sure.  
 3 BY MR. YERRID:  
 4 Q You just didn't happen to be working that  
 5 particular day?  
 6 A Correct.  
 7 Q Would it be a fair statement to say that  
 8 everything you've learned about what actually occurred  
 9 that day has been related to you by others? You have  
 10 no personal knowledge of what actually occurred?  
 11 A Yeah. I would say that's accurate.  
 12 Q Okay. And from everything that was related  
 13 to you, would those sources all be affiliated with the  
 14 University of California at Berkeley?  
 15 A Yes.  
 16 Q Okay. And to break that out -- parse that  
 17 out, were -- did you talk to players as well staff?  
 18 And when I say "staff," I'm talking about both the  
 19 medical staff, the training staff, the football  
 20 coaching staff -- that being one --  
 21 A Mm-hmm.  
 22 Q -- aspect -- and then the players.  
 23 Did you talk to both -- both segments of  
 24 that population I mentioned as soon as you could?  
 25 A Right away. But I didn't really talk to

13



1 players right away, but I did -- my first contact was  
2 with the athletic training, yes.

3 Q Okay. So at least -- insofar as -- because  
4 I know you participated in a press conference that  
5 day.

6 A Yes.

7 Q At least -- insofar as what you said at the  
8 press conference, were all those observations gleaned  
9 from your discussions with nonplayers but people  
10 affiliated with the University of California?

11 A Yes.

12 Q Okay. Okay. And your understanding the day  
13 Mr. Agu died was that he died very suddenly and  
14 without much distress?

15 MR. HOSKING: I'll --

16 MR. YERRID: Fair statement.

17 MR. HOSKING: -- object to the term  
18 "suddenly" as being vague.

19 MR. YERRID: Okay. That's fine.

20 Let me rephrase it.

21 I think that's a well-stated objection.

22 BY MR. YERRID:

23 Q Is it your understanding that he died in a  
24 very quick fashion; that is, within moments of  
25 suffering any distress at all?

14

1 died?

2 A Yeah. From what I heard, umm, basically,  
3 he, towards the end of one of the reps up the hill,  
4 took a knee. He -- the athletic trainers came to  
5 his --

6 Q Immediately?

7 A Yeah. Immediately.

8 He actually tried to keep going on his own.  
9 He was stopped from continuing.

10 Q By the trainers?

11 A By the trainers.

12 Q Okay.

13 A Because he wanted to continue.

14 Q Uh-huh.

15 A They asked if he had any -- anything -- you  
16 know, anything was bothering him. He denied that.  
17 They --

18 Q He verbally was able to talk?

19 A Correct.

20 Q Okay.

21 A Correct.

22 And he said he felt fine. He wanted to keep  
23 going. They stopped him. He was drinking water.

24 They were on a -- on a hill, and so they put  
25 him on a cart. And then by the time they --

16

1 A Within minutes, yes.

2 Q Give me a range.

3 A I --

4 Q And you can approximate.

5 A Yeah. Approximate -- an approximate, less  
6 than 10 minutes.

7 Q Less than 10 minutes? Okay.

8 And that was based upon what you were being  
9 told by the folks that were there?

10 A Yes.

11 Q Okay. And you did not in your observations  
12 of what could have happened -- in other words, a  
13 differential diagnosis, if you will -- you did not  
14 have any reason from what was told to you, to consider  
15 that this young man struggled for 20 to 30,  
16 40 minutes?

17 A That's not consistent with the story that I  
18 heard.

19 Q Okay.

20 A No.

21 Q And the story that you heard would be what?  
22 You heard your lawyer say, what, "immediate." I guess  
23 that would be -- use your own words.

24 What -- what is -- how would you self --  
25 tell me in a simplistic fashion how the young athlete

15

1 Q Let me stop there.

2 A Yeah.

3 Q I don't want to dis --

4 A Yeah.

5 BY MR. YERRID: Ma'am, sorry.

6 BY MR. YERRID:

7 Q I don't want to disrupt your flow.

8 A Mm-hmm.

9 Q But from the time that he took a knee --

10 A Mm-hmm.

11 Q -- that would be the onset of the first --

12 A Correct.

13 Q -- signal or -- let me finish my question or  
14 she's going to go crazy.

15 A Sure.

16 Q That would -- from the time he took a knee,  
17 that would be the first -- I'll call it "symptom" of  
18 distress?

19 A (Witness nods head)

20 Q Correct?

21 A Yeah. That would be my understanding.

22 Q Until the time he was placed on the cart,  
23 regardless of what he was attempting to verbally  
24 communicate --

25 A Mm-hmm.

17

1 Q -- how long a passage of time would that be?  
 2 A From the moment he took a knee until --  
 3 Q Yeah. Just for that brief period of time.  
 4 A I don't --  
 5 Q A minute or two?  
 6 A Yeah. It would be very brief.  
 7 Q Okay. And then your understanding was he  
 8 was placed in the cart?  
 9 A Yeah. On the back of a cart, a flatbed.  
 10 Q Okay. And transported --  
 11 A Towards -- towards the stadium, the medical  
 12 facilities.  
 13 Q All right.  
 14 MR. HOSKING: Let him get it all the way  
 15 out.  
 16 THE WITNESS: Okay. Sorry.  
 17 MR. YERRID: Just slow way down.  
 18 THE WITNESS: Okay.  
 19 BY MR. YERRID:  
 20 Q He was transported on the cart back towards  
 21 the stadium?  
 22 A (Witness nods head)  
 23 Q Okay. And what happened next after he was  
 24 placed on the cart and was transported towards the  
 25 stadium, as far as what you understood the story to

18

1 the information you've just been kind enough to convey  
 2 to me?  
 3 A Umm, athletic training staff.  
 4 Q Okay. "Staff" is kind of a generic term.  
 5 Who, in particular? Would that be  
 6 Robbie Jackson?  
 7 A Robbie Jackson, umm, Mike Jones, who is also  
 8 the other athletic trainer that was there.  
 9 Q Okay. Of the historian --  
 10 A Mm-hmm.  
 11 Q -- aspect, who was the primary historian?  
 12 Was it Mr. Jackson, or --  
 13 A Primary -- primarily, yes.  
 14 Q Okay. So Mr. Jackson told you this  
 15 account --  
 16 A Mm-hmm.  
 17 Q -- of what transpired?  
 18 A Mm-hmm.  
 19 Q And, Dr. Batten, based upon that account,  
 20 did you make certain judgments in terms of applying  
 21 your expertise and your background as to what the  
 22 possible etiology was of his ultimate death?  
 23 A Yeah. Sure. Yes.  
 24 Q Put simply: You thought it was a very  
 25 sudden onset of symptoms?

20

1 be?  
 2 A It's -- what I understood is when they got  
 3 towards the north tunnel of the stadium, he became  
 4 noncommunicative, was not talking. And, umm, at that  
 5 point, they, umm, alerted 9-1-1, and they took him off  
 6 the cart, started CPR while someone went and got the  
 7 AED, brought the AED back, attached the AED, continued  
 8 CPR and -- until the EMS got there.  
 9 Q And again, I'm trying to break it out.  
 10 A Mm-hmm.  
 11 Q It was within a couple of minutes at most  
 12 that he became nonresponsive; in other words, he was  
 13 placed on the cart.  
 14 A Mm-hmm.  
 15 Q During -- sometime during the transit, by  
 16 the time --  
 17 A Right.  
 18 Q -- he got to the stadium --  
 19 A Correct.  
 20 Q You've got to wait, Doctor.  
 21 A Right.  
 22 Q By the time he got to the stadium, he became  
 23 unresponsive?  
 24 A Correct.  
 25 Q Okay. And what was the primary source of

19

1 The knee, to the cart, was a matter of a  
 2 couple of minutes?  
 3 A (Witness nods head)  
 4 Q And from the cart to unresponsiveness and --  
 5 in essence, death, it was a matter of just a few more  
 6 minutes, correct?  
 7 A That would be approximate, yes.  
 8 Q That's totally inconsistent with the  
 9 scenario where an athlete would struggle for 20, 25,  
 10 30 minutes, intermittently collapse, struggle more,  
 11 collapse again, begin to -- to appear to look like  
 12 he's in slow motion.  
 13 That's inconsistent with that -- that  
 14 portrayal, isn't it?  
 15 MR. HOSKING: I'll just object that it lacks  
 16 foundation as a witness and calls for speculation as a  
 17 witness. He wasn't there.  
 18 MR. YERRID: Yes, sir.  
 19 MR. HOSKING: He can tell what you he knows.  
 20 MR. YERRID: Yes.  
 21 MR. HOSKING: You can answer.  
 22 MR. YERRID: Yes.  
 23 THE WITNESS: Oh, that would be very  
 24 inconsistent, yes.  
 25

21



1 BY MR. YERRID:

2 Q The first account, the historical account  
3 given to you by Mr. Jackson primarily, would be  
4 consistent with what type of diagnosis in terms of the  
5 death?

6 A It seemed to me it seemed most consistent  
7 with a cardiac issue.

8 Q I'm very aware of your slides, very aware of  
9 your recognition of the issue of sickle cell trait.

10 A Mm-hmm.

11 Q The potential and capability that condition  
12 has to blossom into a lethal threat.

13 A Mm-hmm.

14 Q You're aware of that, aren't you?

15 A Yes.

16 Q Would the latter -- that caused the  
17 objection -- the latter aspect -- in other words, what  
18 I conveyed to you an athlete that systematically  
19 struggles, not just in -- at the end of one hill  
20 event, but for -- I think there were 10 hill  
21 repetitions in this exercise.

22 Do you know -- are you aware of that?

23 A I believe so, yes.

24 Q An athlete that begins struggling on, let's  
25 say, the sixth attempt at going up the hill, continued

22

1 you. Your firm deserves it.

2 MR. HOSKING: Thank you. We'll reciprocate.

3 MR. YERRID: I know. I don't doubt that.

4 BY MR. YERRID:

5 Q Let me try it again. You heard the lawyer's  
6 objection, and lawyers do that.

7 A Mm-hmm.

8 MR. YERRID: Ma'am, I'm going to slow down a  
9 little bit.

10 BY MR. YERRID:

11 Q If the historical account you'd been given  
12 had differed so that you formulated an opinion it was  
13 a sickle death -- you understand what that  
14 symptomatology looks like?

15 A Yes.

16 Q Okay. What would that history look like if  
17 it had been told to you as a sickle death?

18 MR. HOSKING: Yeah. Same objection.

19 Again, I think that's an expert-type  
20 question.

21 MR. YERRID: Well --

22 MR. HOSKING: I suppose you can ask him what  
23 his -- I don't want to formulate your questions -- but  
24 I suppose you can ask him what his understanding of  
25 the mechanism for death is for those kinds of

24

1 to struggle on the seventh, the eighth, the ninth,  
2 that would be more consistent with something different  
3 than a heart -- heart etiology, wouldn't it?

4 MR. HOSKING: So I'll just object that it's  
5 an incomplete hypothetical.

6 I'm not comfortable with the doctor  
7 testifying as an expert.

8 MR. YERRID: Okay.

9 MR. HOSKING: He's here' as a percipient  
10 witness.

11 MR. YERRID: Okay.

12 MR. HOSKING: So I don't want him to ask  
13 [sic] that question, but any opinions that he  
14 formulated at the time, I suppose, will be fair game,  
15 but --

16 MR. YERRID: Okay. I'll -- let me -- I  
17 think the objection, again, is well taken, Counsel.

18 Let me try it again.

19 MR. HOSKING: I like this scenario where you  
20 sustain my objections.

21 MR. YERRID: Well, I just don't want to -- I  
22 don't want to waste a trip out here by being wrong and  
23 you being right and then having to do it again.

24 Let me try it again.

25 I -- I'm being cordial and respectful to

23

1 athletes, but --

2 MR. YERRID: I think he said the mechanism  
3 for an athlete -- for this athlete, the mechanism of  
4 death was some problem with his heart.

5 BY MR. YERRID:

6 Q Is that correct, Dr. Batten?

7 A That's what it appeared to be, given the  
8 story, yes.

9 Q Based upon the history you got?

10 A Yes.

11 Q What type of history would you have gotten  
12 if the death had been consistent with a sickle death?  
13 In this particular case, on this particular occasion,  
14 had Mr. Jackson told you X, this is what you would  
15 have concluded.

16 Do you understand the specificity of the  
17 question? Because I don't want to make you an expert,  
18 even though I think you are one.

19 MR. HOSKING: He certainly is qualified, but  
20 not designated, and we know the difference.

21 But he can answer the question.

22 I'll just object that it calls for  
23 speculation. It's an incomplete hypothetical and  
24 lacks foundation.

25

25

1 BY MR. YERRID:

2 Q Go ahead.

3 MR. HOSKING: In broad strokes, I think, is  
4 the question.

5 THE WITNESS: In broad strokes, yeah.

6 I mean, typically, the history with sickle  
7 cell -- with sickle cell deaths is they are usually  
8 forced to -- to, umm, continue with exertion past  
9 maximal level, usually urged on by coaches or other  
10 people, and they typically, umm -- yeah -- will show  
11 symptoms for usually longer than, you know, than on  
12 this day.

13 But if the story was they were showing  
14 issues of shortness of breath or weakness or  
15 collapsing multiple times, that would be more  
16 consistent with a sickle cell trait.

17 BY MR. YERRID:

18 Q How long -- you said on this day --

19 A Yes.

20 Q -- and we assumed it was a couple of  
21 minutes --

22 A Mm-hmm.

23 Q -- five minutes or less.

24 That's what your assumption was on this day,  
25 that he struggled for five minutes or less?

26

1 would that be a fair statement -- before intervention?

2 A Before he was stopped?

3 Q Yes.

4 A It would be -- yeah, probably less than --  
5 yes, sir, significantly less than that probably.

6 Q Okay. I mean, it can be significant --

7 A Yes.

8 Q -- but I don't to tie you down and say  
9 15 seconds.

10 A Right.

11 Q I'm trying to give you --

12 A Yes.

13 Q -- some leeway there. But two minutes is a  
14 very generous time period.

15 A Sure.

16 Q Right?

17 A Sure.

18 Q Okay. In the case of the sickle athlete,  
19 that would be something upwards of 15, 20 minutes  
20 you're talking about?

21 I'm trying to get a comparison, the range.

22 Do you understand what I'm asking?

23 A Yeah. Yeah. It would be longer, typically,  
24 yes.

25 Q Longer than two minutes?

28

1 MR. HOSKING: Yeah. That misstates the  
2 testimony.

3 BY MR. YERRID:

4 Q I'm sorry. I thought you said he went from  
5 a knee to the cart in two minutes.

6 Is that what you said?

7 THE WITNESS:

8 A No.

9 Q How long how long did it take? I thought I  
10 asked this --

11 A From the knee until he passed away, we said  
12 less than 10 minutes, but in terms of struggling,  
13 he -- the activity was stopped immediately when he  
14 took a knee.

15 Q So he didn't even struggle for two minutes?

16 A During the workout?

17 Q Right.

18 A No.

19 Q Okay. So that's what I think --

20 A Yeah.

21 Q That's where I think we have hit that  
22 pivotal point that --

23 A Yes.

24 Q -- there the athlete -- if struggling can be  
25 capsulized, he struggled less than two minutes --

27

1 A Yes.

2 Q Okay. Something along the lines of -- give  
3 me a minute estimation.

4 MR. HOSKING: I'll just reassert the same  
5 objections.

6 You're -- I think you're entitled to know  
7 his fund of knowledge on this, but I don't want him  
8 testifying as an expert.

9 So I'm just going to object that it is an  
10 incomplete hypothetical.

11 MR. YERRID: Okay.

12 MR. HOSKING: Calls for speculation.

13 MR. YERRID: Let me try it again, Counsel.  
14 Withdraw the question.

15 BY MR. YERRID:

16 Q If you'd been told by the historian,  
17 Mr. Jackson, that he struggled for X minutes, when  
18 would sickle death enter your mind?

19 A I don't --

20 Q Is --

21 A I don't know if a minute range is the -- the  
22 ultimate deciding factor.

23 Q If you'd been told he was struggling,  
24 collapsing, carrying on the exercise, collapsing,  
25 struggling for X number of minutes, when would sickle

29



1 have become a prominent feature of your differential  
2 diagnosis?

3 MR. HOSKING: Same objections.

4 BY MR. YERRID:

5 Q In this case,

6 How many minutes of struggling would it  
7 take?

8 MR. HOSKING: You know, I really -- I want  
9 to be cooperative, but that's an expert question, and  
10 I just can't see any way around it.

11 He's not here as an expert witness. He's  
12 certainly qualified.

13 If he formulated those opinions at the time,  
14 that's wide open for discovery. But to ask him to  
15 retrospectively formulate expert opinions on what  
16 would have happened under different scenarios, I mean,  
17 those are questions --

18 MR. YERRID: I think you can instruct him  
19 not to answer.

20 But at this point in time, I think the  
21 history that he's being given is -- is -- "inaccurate"  
22 would be a very mild term.

23 But he was given a history. He wasn't  
24 there. He had to give an opinion based upon the  
25 history. I'm going to ask him about his opinions.

30

1 an opportunity to take a full and complete depo.

2 MR. YERRID: Why don't you let me ask the  
3 questions, and if they're -- if they're improper, the  
4 judge will grant you your -- your -- see, the  
5 prejudice is we can't retake the deposition without  
6 coming to California and doing it.

7 So I would think you want to err on the side  
8 of caution because if you're wrong, then that's what's  
9 going to happen: I'll sit him down for another  
10 deposition. I'll ask him these questions if the judge  
11 allows it. I don't know if he will -- and it is a he.

12 You did get the complex division, right?

13 I think that those -- it's fair game.

14 You -- I'll try to make a better predicate.

15 BY MR. YERRID:

16 Q Dr. Batten, did you express certain  
17 conclusions as to why this gentleman died?

18 A (No audible response)

19 Q Yes, or no?

20 MR. HOSKING: Did he formulate opinions?

21 MR. YERRID: No.

22 BY MR. YERRID:

23 Q I said: Did you express certain conclusions  
24 as to why this gentleman died?

25 A To --

32

1 Had the history been different, I don't  
2 think that Dr. Batten would have given the same  
3 opinions.

4 So I think it's fully, umm, committed to the  
5 type of examination that will be allowed at trial, and  
6 I think I'm entitled to ask him.

7 But if you want to instruct him, that's  
8 fine.

9 MR. HOSKING: In California, I mean, you're  
10 not allowed to ask retrospective expert questions to a  
11 percipient witness, despite qualifications.

12 (Discussion off the record)

13 MR. YERRID: Well, I mean, I think I'm  
14 allowed to probe how he determined it to be a cardiac  
15 death. That's what I'm trying to do.

16 MR. HOSKING: Very good.

17 MR. YERRID: So if you change the -- the  
18 history, I think it would change his opinion of what  
19 the diagnosis, at least the potential differential  
20 diagnosis would be, and I think I'm allowed to probe  
21 that.

22 If you tell me I can't, then I won't. I'll  
23 just -- I'll seek relief because I think we're  
24 entitled to do that.

25 MR. HOSKING: Sure. And I want you to have

31

1 Q Yes or no?

2 A Oh, yes.

3 Q Okay. And what did you conclude?

4 A I felt that it was most consistent with a  
5 cardiac issue.

6 \* Q Had you been told by the historian a set of  
7 circumstances that would envision and encapsulate  
8 everything we've talked about -- that he struggled on  
9 Laps 6, 7, 8, 9, and it wasn't until after those laps he  
10 struggled through that he collapsed finally for the last  
11 time on the 10th lap up the hill, would that have  
12 altered your conclusion; yes or no?

13 MR. HOSKING: Well, he's now limited to yes  
14 or no.

15 It's an expert question, Steve. And again,  
16 I don't want to be difficult, but it is an expert  
17 question.

18 I'm going to ask him not to answer that  
19 question.

20 MR. YERRID: Okay.

21 (Witness instructed not to answer the question)

22 BY MR. YERRID:

23 Q Tell me everything about this incident that  
24 leads -- that led you to believe it was a cardiac  
25 death.

33

1 A Everything about the incident?  
2 Q Mm-hmm.  
3 A Uh, well, based on my knowledge from --  
4 from -- that was relayed to me by -- you know, I said  
5 primarily that it was from the athletic training  
6 staff -- but later from players and other people --

7 Q Yes.

8 A -- umm, that he did not show any -- any  
9 issues whatsoever until the moment he took a knee.

10 Q Okay.

11 A And it sounds like from the moment he took a  
12 knee, he was communicative. He did not have any sort  
13 of symptoms. Umm, he was talking.

14 And they put him on a cart; and within,  
15 again, minutes, he became unresponsive.

16 Q Yeah. I, umm -- I want to ask you: Do you  
17 have experience in sickle-- in sickle cell trait  
18 areas?

19 A In terms of?

20 Q Exposure to that?

21 A Yes.

22 Q Okay. You are aware that a characteristics  
23 of a collapse related to sickle cell is that the  
24 athlete can still talk?

25 A Absolutely.

34

1 Q Matt Cochran and Daniel who?

2 A Daniel Lasco, L-A-S-C-O.

3 Q It's not my intention to embarrass these two  
4 players --

5 A No. That's fine.

6 Q I wanted to ask them; and obviously, counsel  
7 will be noticed before we ever try to talk to them.

8 A That's fine.

9 Q I'm not going to ask for their social  
10 security numbers or anything -- you're not giving  
11 anybody up --

12 A No problem.

13 Q -- with regard to these two players.

14 It was a rope-oriented drill; are you aware  
15 of that?

16 A Yes.

17 Q Were they on the same team as Mr. Agu, do  
18 you know? Do you know what I'm talking about?

19 A Yeah. I believe Matt Cochran was, but not  
20 Dr. -- Daniel Lasco.

21 Q So one may have been on the rope -- I think  
22 there were 7 or 8, 9 teammates on the rope.

23 A There were several.

24 Q More than three, less than 10. Okay?

25 But you think Mr. Cochran was --

36

1 Q Okay.

2 A I'm aware of that.

3 Q And you're aware that athletes that collapse  
4 from heat stroke or cardiac causes frequently do not  
5 have the ability to talk?

6 (Sneeze)

7 A Cardiac, typically, yeah, heat stroke,  
8 depending.

9 Q So that would be something that would be  
10 consistent with a sickle episode and not consistent  
11 with a cardiac episode, wouldn't it, if he was  
12 talking?

13 A At the initial -- if --

14 Q Yes?

15 A If the initial -- it could potentially, yes.

16 Q And how many of the players did you say you  
17 talked to that confirmed that it was a sudden onset  
18 and very quick?

19 A How many? I've heard from two that were  
20 there.

21 Q Two?

22 A Two. One that was on his team.

23 Q Okay. Do you know -- do you know their  
24 names?

25 A Yes. Matt Cochran and Daniel Lasco.

35

1 A I believe so.

2 Q -- on that rope with Mr. Agu?

3 A Sorry.

4 MR. HOSKING: You need --

5 MR. YERRID: It's okay. Go ahead --

6 MR. HOSKING: You've got to let him get the  
7 question all the way out.

8 THE WITNESS: Sorry.

9 BY MR. YERRID:

10 Q And you think the other gentleman, Lasco,  
11 was not?

12 A I believe so.

13 Q Okay. By the way, whether they were on the  
14 rope team of Mr. Agu or not, those are the two  
15 athletes you talked to?

16 A Yes.

17 Q Okay. And you personally talked to them?

18 A Personally talked to them, yes.

19 Q And they personally told you that he did not  
20 struggle?

21 A Yes.

22 Q Except -- except for they -- when he took  
23 the knee?

24 A Correct.

25 Q I didn't mean to preclude your answer.

37



1 A Okay.  
2 Q What else -- what else -- what else led you  
3 to believe that this was a cardiac death?  
4 A At -- at the moment on that day, or after --  
5 now?  
6 Q You can take it -- well, take it two ways.  
7 How about that day?  
8 A That day was just the -- the entire clinical  
9 history, you know, again, not showing any significant  
10 issues until very rapidly -- with very rapid  
11 deterioration.  
12 And then later on, in the ER, you know, in a  
13 fair amount of these cases with rhabdo, there's no  
14 rhabdo. There's no electrolyte disturbance. And then  
15 ultimately, the coroner's report with the death of the  
16 hyper -- or the cause of death as heart stroke,  
17 cardiomyopathy.  
18 Q Did you ever talk to the coroner?  
19 A I did on the phone.  
20 Q When? After the report was issued?  
21 A After -- excuse me? After --  
22 Q After the report was issued, you were able  
23 to talk to him?  
24 A Umm, I believe I tried talking with him  
25 briefly before that.

38

1 Q Before he issued his report?  
2 A (Witness nods head)  
3 Q Why would you do that?  
4 A To give them clinical history.  
5 Q So you provided the clinical history that  
6 the medical examiner would have used to determine the  
7 cause of death?  
8 A No. Our medical records did.  
9 Q Okay. Well, if you provide them medal  
10 records, why would you need to talk to them?  
11 A We just sort of -- to be a resource.  
12 Q I'm -- I'm not following you. You said to  
13 provide him with a history.  
14 Did you verbally provide him with a history  
15 as well as the --  
16 A No. He did not -- he did not take my -- my,  
17 umm, phone call.  
18 Q You did not talk --  
19 A I talked with him briefly, but I didn't give  
20 him -- he didn't -- didn't give him significant  
21 history. They said they'll take care of it with  
22 medical records.  
23 Q So, in other words, you -- he -- he didn't  
24 want to discuss --  
25 A Yes. Exactly.

39

1 Q -- the matter what you?  
2 A Exactly.  
3 Q Okay.  
4 MR. HOSKING: You're going to make this lady  
5 really angry at you.  
6 THE WITNESS: Sorry. I'm sorry.  
7 MR. HOSKING: Just give him a beat --  
8 THE WITNESS: Okay.  
9 MR. HOSKING: -- when he's done, and then --  
10 THE WITNESS: Sorry.  
11 BY MR. YERRID:  
12 Q So your testimony is that you -- what was  
13 the doctor's name, the medical examiner? Do you  
14 remember?  
15 A Dr. Beaver, Dr. Beaver.  
16 Q Dr. Beaver?  
17 A (Witness nods head)  
18 Q Your testimony is that you talked to  
19 Dr. Beaver, but Dr. Beaver did not want to discuss the  
20 case with you.  
21 In terms of the merits, he was going to look  
22 at the medical records?  
23 A Correct.  
24 Q Okay. And you never suggested to him your  
25 opinions or your history or anything like that,

40

1 correct?  
2 A Umm, I don't recall that I had a  
3 conversation where we -- I think we did say something  
4 along the lines of it appeared to be, but it was -- I  
5 think it was -- it might have been after -- I really  
6 don't recall when I spoke with him.  
7 Q Okay. I'm not --  
8 A Whether it was before or after.  
9 Q I'm not trying to --  
10 A No, I'm --  
11 Q -- quarrel with you or confuse you.  
12 Let me try it another way.  
13 MR. YERRID: Ma'am, just stay with us  
14 because I don't think we're overtalking too much.  
15 So ...  
16 BY MR. YERRID:  
17 Q You may have discussed the cause of death  
18 after. I'm not -- I'm not going to ask you a memory  
19 test on that. I just want to be clear.  
20 Prior to getting the autopsy report, my  
21 understanding is you had no opportunity to discuss  
22 with Dr. Beaver, "Hey, I think it's this, I think it's  
23 that, and this is why."  
24 That may have occurred at some point in time  
25 after he gave his findings?

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1 A I do believe that came -- in the  
2 conversation, I came to offer, you know, the clinical  
3 details because the ER didn't have very much clinical  
4 details that they were given. There was just nothing.  
5 And we thought that would be helpful with the case.  
6 So when I called, I said, you know, "This is  
7 what happened" --  
8 Q What do you mean, "This is what happened"?  
9 What do you mean?  
10 A Well, I gave them the same story that I gave  
11 you.  
12 Q Tell me.  
13 A That I recall --  
14 Q What?  
15 A -- that he took a knee at the end of the --  
16 end of a workout.  
17 Q That he had no previous problems --  
18 A Right. Correct.  
19 Q -- during the workout?  
20 A Correct.  
21 Q Let me -- wait until -- you told Dr. Beaver  
22 on the phone this young man had had no previous  
23 problems prior to taking a knee, correct?  
24 A I don't know if I said he had no previous  
25 problems.

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1 called over there is to fax that over and give them  
2 information --  
3 Q Would that --  
4 A -- give --  
5 Q I'm sorry, Doctor.  
6 A Just to be a resource --  
7 Q Okay.  
8 A -- should they have any questions.  
9 Q And in terms of being a resource, the thing  
10 you wanted to fax over there was what?  
11 A The tracing from the automatic external  
12 defibrillator, the AED.  
13 Q And that would be the heart?  
14 A The heart tracing.  
15 Q Okay. And that would -- that would, you  
16 thought, be relevant to corroborating it was a heart  
17 issue that he died from?  
18 A Well, I thought it was important information  
19 for him to have.  
20 Q With regard to corroborating whether or not  
21 it was a cardiac event, or just in general  
22 information?  
23 A Just in general information.  
24 Q Okay.  
25 A Yeah.

44

1 Q During the workout?  
2 A Oh, yes.  
3 Q I'm not talking about --  
4 A Yes. Yes. Yes.  
5 Q -- a clinical history --  
6 A Yes.  
7 Q -- of the young man's health.  
8 He had no problems that day prior to taking  
9 a knee?  
10 A (Witness nods head)  
11 Q Correct?  
12 A Correct.  
13 Q And that within a couple of minutes, he  
14 suffered a death.  
15 And you thought it was something, or did you  
16 stop at that point? Did you get to that --  
17 A I said -- yeah. I said that, you know,  
18 based on what I had, it appears to be of a cardiac  
19 origin.  
20 To my memory, we also wanted to send him  
21 what was in my possess- -- in our possession from the  
22 police was the AED tracing that I wanted to send in  
23 that was part of the medical records because they  
24 closed that down.  
25 So actually, that was the main reason why I

43

1 Q Okay. I'm not being clear, and I'm -- maybe  
2 you were.  
3 Did you tell him you thought it was a heart  
4 issue that caused this young man's death -- on the  
5 telephone -- prior to him concluding, as a medical  
6 examiner, what the cause of death was?  
7 A I told him that he had -- I also called --  
8 we gave the sickle cell information to them. And,  
9 umm -- and said, you know, based on everything, it  
10 doesn't appear -- it appears -- I don't remember the  
11 exact words I said -- but this appears to be most  
12 consistent with a cardiac issue. I said I would not  
13 be surprised if there was an underlying cardiac issue.  
14 Q You said that to him?  
15 A Yes. Along those lines.  
16 Q Okay. What were you going to send to him,  
17 the --  
18 A The AED tracing.  
19 Q Did you do that?  
20 A I -- I believe I faxed it over to him, one  
21 of the -- the front -- front-office people.  
22 Q Are you sure?  
23 A I'm not 100 percent sure.  
24 Q Okay. Why wouldn't you have faxed it to  
25 him?

45



1 A I would have no reason not to.  
 2 Q Okay. Who do you report to, Doctor?  
 3 A Dr. Brad Buchman.  
 4 Q Who is that, please?  
 5 A He's the medical director for the health  
 6 services.  
 7 Q What is his background?  
 8 A He is family medicine and actually does have  
 9 a sports medicine certification as well.  
 10 Q He's one of the other doctors that has this  
 11 sports medicine board?  
 12 A No. He -- I don't count him as -- he's a --  
 13 he doesn't really see patients. He's an  
 14 administrator.  
 15 Q Okay.  
 16 A I mean, he sees patients from time to time,  
 17 but not ...  
 18 Q But primarily, he's an administrator?  
 19 A Yeah. Correct. He's the medical director  
 20 for the health services.  
 21 Q Is he the head of the sports medicine?  
 22 A I'm technically head -- well, it's kind  
 23 of -- there's different prongs of sports medicine.  
 24 But he's my supervisor. I'm the head team physician  
 25 for the University. He's my supervisor --

46

1 And when you're a carrier of sickle cell  
 2 trait, which affects the hemoglobin or oxygen-carrying  
 3 capacity, umm, and under certain circumstances, the  
 4 trait, it is proposed that when you have low oxygen  
 5 tension, they turn from a normal round red cell to a  
 6 half-moon or sickle cell, which can cause blockage  
 7 from microcirculation and block blood flow.  
 8 Q And the different-form cells can also cause  
 9 clotting and obstruction of blood flow?  
 10 A Correct.  
 11 Q Okay. With regard to the sickle cell trait  
 12 athlete, can those athletes excel at sports regardless  
 13 of the fact that they carry the trait?  
 14 A Absolutely, yes.  
 15 Q They can be Olympians?  
 16 A Yes.  
 17 Q Be professional football players?  
 18 A Yes.  
 19 Q And it's perfectly safe for sickle trait  
 20 athletes to play football if proper precautions are  
 21 taken, correct?  
 22 A I would agree.  
 23 Q Do you agree that the sickle cell trait  
 24 carrier can be in fatal danger if proper precautions  
 25 are not taken?

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1 Q Okay.  
 2 A -- ultimately.  
 3 Q All right. I wanted to go into this since  
 4 we've broached it a bit, and then I'll come back to  
 5 another area.  
 6 But what is the extent of your knowledge  
 7 with regard to sickle cell trait in general? Can you  
 8 share that with me?  
 9 MR. HOSKING: That's sort of broad.  
 10 THE WITNESS: Yeah.  
 11 MR. HOSKING: Do you want him to tell you  
 12 the symptoms, the signs?  
 13 MR. YERRID: No.  
 14 BY MR. YERRID:  
 15 Q I want you to tell me your knowledge of the  
 16 sickle cell trait condition that's found in certain  
 17 people in our population.  
 18 A In terms of knowledge, I mean, I would say I  
 19 have a good grasp of the general understanding of  
 20 sickle cell trait, what it is, and ...  
 21 Q Why don't you tell me what it is and what  
 22 your knowledge is.  
 23 A Sickle cell trait is the, umm, case where  
 24 you have one normal gene per beta globin and one  
 25 abnormal gene per beta globin.

47

1 MR. HOSKING: It's argumentative.  
 2 MR. YERRID: I'm sorry? What -- what's  
 3 argumentative?  
 4 Let me try it again.  
 5 BY MR. YERRID:  
 6 Q Do you agree that the sickle cell trait  
 7 athlete can be in danger if proper precautions are not  
 8 taken?  
 9 MR. HOSKING: It's -- you're not arguing,  
 10 but it's argumentative.  
 11 BY MR. YERRID:  
 12 Q You can answer.  
 13 MR. HOSKING: You can answer.  
 14 THE WITNESS: Oh, yes, potentially, yes.  
 15 BY MR. YERRID:  
 16 Q Okay. And those proper precautions are  
 17 what?  
 18 A Well --  
 19 Q I want to put it in the football world to  
 20 make it easier for you.  
 21 A Yeah. The proper precautions?  
 22 Q (Nods head)  
 23 A I would say, number one, the most important  
 24 one is to set their own pace and create an environment  
 25 where an athlete is allowed to set their own pace,

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1 umm, where they're not pushed beyond their means.  
 2 **Q** Let me -- let me stop you there.  
 3 **Mr. Agu was not allowed to set his own pace**  
 4 **in that rope drill, was he?**  
 5 **A** I believe so, yes.  
 6 **Q** You believe Mr. Agu could set his own pace  
 7 **in the rope drill?**  
 8 **Okay. What's the basis of that belief?**  
 9 **A** Because he could stop at any point he  
 10 wished.  
 11 **Q** How would he stop if the other teammates  
 12 were pulling on the rope?  
 13 **A** They were not attached to the rope. They  
 14 were just -- it was on their shoulder. He could have  
 15 just let go of the rope.  
 16 **Q** So he could have just let go?  
 17 **A** (Witness nods head)  
 18 **Q** All right. But if he didn't let go, he  
 19 wouldn't be setting his own pace, would he?  
 20 **MR. HOSKING:** May call for speculation.  
 21 **BY MR. YERRID:**  
 22 **Q** Well, you just mentioned that you had some  
 23 awareness.  
 24 **Did -- did you have an awareness of what**  
 25 **they were doing that day?**

50

1 **A** After the fact, yeah. I -- I am aware of  
 2 what they did. I did not know what they were doing  
 3 before then.  
 4 **Q** I want to be clear, Dr. Batten.  
 5 **A** Yes.  
 6 **Q** You believe that in that rope drill, the  
 7 athlete, the individual athlete such as Mr. Agu, could  
 8 have set his own pace?  
 9 **A** Yes.  
 10 **Q** Yes or no?  
 11 **A** Yes.  
 12 **Q** Okay. Okay. And how would he have done  
 13 that, by letting go of the rope?  
 14 **A** Yes.  
 15 **Q** And what if the other --  
 16 (Discussion off the record)  
 17 **BY MR. YERRID:**  
 18 **Q** Yeah. What are the other precautions? You  
 19 said "set his own pace."  
 20 **A** Set their own pace. Umm, there would be a  
 21 long list that we follow.  
 22 **Q** Well, go ahead and give me the list.  
 23 **A** Well, gradual conditioning coming from an  
 24 off-season to the in-season. He would not start with  
 25 the strenuous activity from day one. You gradually

51

1 condition.  
 2 Umm --  
 3 **Q** Let -- let me ask you: As we go through, do  
 4 you mind if I ask questions --  
 5 **A** No.  
 6 **Q** -- as we go through?  
 7 **A** No.  
 8 **Q** Is there any amount of conditioning that  
 9 addresses the sickle cell trait?  
 10 **A** I don't understand that question.  
 11 **MR. HOSKING:** It's vague.  
 12 **BY MR. YERRID:**  
 13 **Q** Does conditioning have anything to do with  
 14 sickle cell trait?  
 15 **MR. HOSKING:** It's vague.  
 16 **BY MR. YERRID:**  
 17 **Q** Yes or no?  
 18 **MR. HOSKING:** You're not limited to yes or  
 19 no, ever.  
 20 But it's a vague question.  
 21 **THE WITNESS:** Yeah. I don't understand the  
 22 question.  
 23 **MR. HOSKING:** Can you condition yourself out  
 24 of it; is that the question?  
 25

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1 **BY MR. YERRID:**  
 2 **Q** No. Does conditioning have anything to do  
 3 with what will happen to an athlete that has sickle  
 4 cell trait?  
 5 **MR. HOSKING:** Same objection.  
 6 **THE WITNESS:** It's still kind of --  
 7 **BY MR. YERRID:**  
 8 **Q** An athlete -- an athlete goes into an  
 9 exercise that requires maximum of exertion.  
 10 **A** Mm-hmm.  
 11 **Q** Does it matter how much conditioning that  
 12 athlete has gotten when he or she goes into that  
 13 maximum exertion?  
 14 **A** It is thought that if they are better  
 15 conditioned, they'd be at less of a risk --  
 16 **Q** Okay.  
 17 **A** -- but it's unclear. Yes.  
 18 **Q** But you think that the conditioning would  
 19 lessen the risk if they went into that maximum  
 20 exertion scenario?  
 21 **A** Potentially, yes.  
 22 **Q** What's the basis of that? I'm just curious.  
 23 **A** In terms of just being able to tolerate the  
 24 physical demands of -- of an exercise.  
 25 **Q** Okay.

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1 A You're in better condition.  
2 Q Okay. So with regard to how you apply your  
3 medical expertise to this football team, you believe  
4 that a sickle cell trait athlete that's more  
5 conditioned is better able to handle a maximum  
6 exertion exercise than a lesser-conditioned athlete  
7 with sickle cell trait?

8 MR. HOSKING: I think it misstates the  
9 testimony. It's overbroad.

10 BY MR. YERRID:

11 Q You can answer.

12 A Yeah. I don't know if anybody knows that  
13 answer, to be honest with --

14 Q I'm not asking anybody. I'm just asking  
15 you:

16 MR. HOSKING: Let him finish, please.

17 BY MR. YERRID:

18 Q Sure.

19 A Yeah. I don't know if that's necessarily  
20 true, but I think there's a -- my -- my point is that  
21 if they've done nothing for several weeks or are in a  
22 deconditioned state, that they'd be at a higher risk  
23 of having issues if they were asked to do a strenuous  
24 activity on Day 1.

25 Q Okay. By the way, do you think this rope

54

1 Q Okay. Did you consider that to be a highly  
2 exerting exercise?

3 MR. HOSKING: Same objections.

4 You can answer. I'm just asserting.

5 THE WITNESS: Yeah. I believe that's a  
6 strenuous exercise.

7 BY MR. YERRID:

8 Q Do you believe it would be appropriate to  
9 put a sickle cell trait athlete in that circumstance?

10 A I believe it was appropriate for him, yes.

11 Q You believe what?

12 A I believe it was appropriate, yes.

13 Q Let's go on with the -- let's go on with the  
14 precaution -- the other precautions.

15 Set own pace, gradual conditioning; what  
16 else?

17 A Umm, if they had a history of asthma or  
18 they're ill or they're sick, umm, you may want to  
19 modify their activity or make sure their asthma is  
20 under significant control.

21 Q Mr. Agu had a history of asthma, didn't he?

22 A It was vague. No real diagnosis of asthma.  
23 He said as a child, which is often hay fever, but he  
24 had not used medication forever, and he denied all  
25 symptoms.

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1 drill was a strenuous activity from everything you  
2 understand?

3 MR. HOSKING: That calls for speculation.  
4 Lacks foundation.

5 BY MR. YERRID:

6 Q I'm sorry. Didn't you tell me you went back  
7 and you learned about what went on that day?

8 A Yeah. I was told -- yeah --

9 Q Okay.

10 A -- I asked what they were doing.

11 Q Well, did you make certain determinations as  
12 to what went on that day as the team doctor?

13 A Yes.

14 Q Okay.

15 A Yes.

16 Q Did you determine that they were engaged in  
17 a rope drill?

18 A Yes.

19 Q Okay. Did you determine that they were  
20 going to be required to go up and down a hill, the  
21 parking lot?

22 A Yes. That's what I heard after -- after the  
23 fact.

24 Q Ten times?

25 A I believe it was ten, yes.

55

1 Q But -- but at least there was a suspicion of  
2 an asthma issue, wasn't --

3 A As a young child. That was the self-report.

4 Q Okay. So you didn't consider asthma in  
5 Mr. Agu to be in the same --

6 A No.

7 Q -- category?

8 Okay.

9 A No.

10 Q Okay. What else?

11 A Umm --

12 Q By the way, if Mr. Agu had a history of  
13 asthma, that would not have been a good exercise with  
14 sickle cell trait for him to have been doing, would  
15 it?

16 MR. HOSKING: Incomplete hypothetical.  
17 Calls for speculation. Lacks foundation.

18 BY MR. YERRID:

19 Q Did Mr. Agu self-report some exposure with a  
20 problem of asthma in his lifetime to you?

21 A (No audible response)

22 Q Yes or no?

23 A Yes. But what --

24 MR. HOSKING: It's asked and answered.

25 THE WITNESS: What's that?

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1 MR. HOSKING: I'm just objecting.  
 2 But understand that you're not ever limited  
 3 to "yes" or "no."  
 4 THE WITNESS: Okay.  
 5 MR. HOSKING: Answer as you think is  
 6 appropriate.  
 7 THE WITNESS: Yeah. He said as a child, he  
 8 had asthma but had not had issues with it nor had he  
 9 taken the medications for years.  
 10 BY MR. YERRID:  
 11 Q I understand you've qualified it.  
 12 A Yeah.  
 13 Q I'm just saying: Did he not report to you,  
 14 Dr. Batten, personally -- Mr. Agu, who is now  
 15 deceased -- didn't he personally tell you that he had  
 16 issues with asthma as a child?  
 17 MR. HOSKING: Asked and answered.  
 18 THE WITNESS: Yes. Yes. He reported  
 19 that --  
 20 BY MR. YERRID:  
 21 Q I'm --  
 22 A -- that he thought he had asthma as a child.  
 23 Q Okay.  
 24 A But it was never diagnosed.  
 25 Q I understand --

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1 I'm asking: Was that on the form?  
 2 A I don't recall.  
 3 MR. HOSKING: That wasn't -- that misstates  
 4 his testimony.  
 5 MR. YERRID: I'm sorry.  
 6 BY MR. YERRID:  
 7 Q Did you not say that?  
 8 A That was what I recalled from when I talked  
 9 to him, but I don't recall what's on the medical  
 10 report, if I heard that.  
 11 Q No, no. I appreciate that, Dr. Batten.  
 12 A Yes.  
 13 Q My question was -- you said I misstated the  
 14 testimony. I thought you testified that you had an  
 15 understanding based upon his relationship with you as  
 16 a physician --  
 17 A Yes.  
 18 Q -- that he reported he'd had asthma as a  
 19 child, but hadn't taken medicine since that time.  
 20 Is that --  
 21 A That's what I recall.  
 22 Q Okay.  
 23 A Yeah. I believe in the notes, I wrote "as  
 24 child," I think.  
 25 Q Isn't that what you testified to?

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1 A Yes. Yes.  
 2 Q -- the caveats.  
 3 A Yes.  
 4 Q I've got it.  
 5 A Yes.  
 6 Q But you sat down with him, and he said those  
 7 words to you, right?  
 8 A He checked -- he checked the box. I don't  
 9 know -- I don't recall what words he said.  
 10 Q What was the box?  
 11 A "History of asthma."  
 12 Q Okay. Where did you get the -- that he  
 13 didn't have any medication and all the rest of that?  
 14 A From the same physical, where he was not  
 15 taking any medications.  
 16 Q Is that on the form?  
 17 A Should be in his medical records.  
 18 Q That he hadn't taken medicine for a long  
 19 time, since he was a child; that's on the form?  
 20 A Umm, I'd have to review it.  
 21 But he was not -- he was not on asthma  
 22 medications when he came to us.  
 23 Q Well, I understand that. You just said,  
 24 "But he hadn't taken asthma medication since he was a  
 25 child."

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1 A Yes.  
 2 Q Okay. So did I misstate your testimony?  
 3 A I don't believe so.  
 4 Q Okay. Let's try it again.  
 5 MR. HOSKING: Am I overruled on that  
 6 objection?  
 7 BY MR. YERRID:  
 8 Q Did the asthma presence have any impact upon  
 9 your -- your determination, as you sit here under  
 10 oath, that was an appropriate exercise for sickle cell  
 11 trait athlete?  
 12 A I don't believe he had asthma. And even if  
 13 he did, it was controlled. I would say it's an  
 14 appropriate activity, yes.  
 15 Q So we can go past --  
 16 A Yes.  
 17 Q -- the asthma.  
 18 So we've got: Set your own pace.  
 19 What was the other one?  
 20 A Gradual progression.  
 21 Q Gradual -- gradual conditioning, I thought.  
 22 A Gradual --  
 23 Q Gradual progression of conditioning, right?  
 24 A (Witness nods head)  
 25 Q And the third one was: No asthma?

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1 A Well, if they were ill or if they had, you  
 2 know, any sort of infection, if they were sick.  
 3 At altitude, you would be more careful.  
 4 Q Okay. Anything else?  
 5 A And in terms of some of the -- if you look  
 6 at the guidelines, they talk about, umm, being excused  
 7 from timed -- you know, fitness tests that are timed.  
 8 Q Wasn't this rope drill timed?  
 9 A I don't believe it was timed. Well, I  
 10 don't -- I actually don't know.  
 11 Q Do you know whether it was a competitive  
 12 rope drill?  
 13 A I believe they were competing for points.  
 14 The teams were competing for points.  
 15 Q Are you aware that there was a punishment  
 16 protocol for those that finish last?  
 17 A No.  
 18 Q Would that change your opinion that it was a  
 19 competitive drill?  
 20 MR. HOSKING: Lacks foundation. Calls for  
 21 speculation. It's an incomplete hypothetical.  
 22 BY MR. YERRID:  
 23 Q You said you didn't know if there was a  
 24 punishment protocol.  
 25 I said, "All right. If you knew there was a

1 term?  
 2 A I don't know if I've heard the specific  
 3 term, but have people been asked to do drills if they  
 4 failed to attend class or something like that? I've  
 5 seen that, yes.  
 6 Q No. If they -- if they fail to prevail in  
 7 an exercise drill such as that rope hill climb --  
 8 A Mm-hmm.  
 9 Q -- are you aware that there were punishment  
 10 drills, that there were consequences?  
 11 A No.  
 12 Q You're not?  
 13 A No.  
 14 Q You're not aware of that?  
 15 A No.  
 16 Q You've never heard that term?  
 17 A I've never heard that term.  
 18 Q You would agree that punishment drills  
 19 should not be part of the strengthen-and-conditioning  
 20 program?  
 21 MR. HOSKING: Now, that's -- that's  
 22 argumentative. It's an incomplete hypothetical.  
 23 Calls for speculation.  
 24 He's told you he doesn't know what that is.  
 25

1 punishment protocol, would that change your  
 2 opinion" --  
 3 MR. HOSKING: Same objections.  
 4 BY MR. YERRID:  
 5 Q -- that it was not a timed, competitive  
 6 exercise?  
 7 MR. HOSKING: Same objections.  
 8 THE WITNESS: Oh, yeah. I can see people  
 9 becoming competitive if that was the case.  
 10 BY MR. YERRID:  
 11 Q Okay.  
 12 MR. YERRID: Oops. That's your stuff.  
 13 MR. MURPHY: Got it.  
 14 BY MR. YERRID:  
 15 Q Are you familiar with punishment drills,  
 16 since we've broached that subject?  
 17 A (No audible response)  
 18 Q As a football team physician, are you  
 19 familiar with punishment drills at the  
 20 University of California?  
 21 A Uh, I don't understand the question. In --  
 22 Q Are you familiar with the term "punishment  
 23 drills"?  
 24 A Yes.  
 25 Q Okay. How did you become familiar with that

1 BY MR. YERRID:  
 2 Q You don't know what a punishment drill is?  
 3 Is that what you told me? I didn't hear that if you  
 4 said --  
 5 A I've never heard of -- I've never heard of  
 6 it at the University of California. People -- if they  
 7 failed to -- if they lose some sort of competition or  
 8 whatever, they would be forced to do drills. I've not  
 9 heard of that.  
 10 Q Okay. At the University of California, you  
 11 have never heard the concept if you lose a particular  
 12 competition, you will suffer any kind of physical  
 13 punishment?  
 14 A No.  
 15 Q Okay. Okay. And would you agree that that  
 16 would be inappropriate; that would not be something  
 17 that you would allow if you were the team physician?  
 18 MR. HOSKING: Same objections.  
 19 THE WITNESS: I'm not sure I would not allow  
 20 it. It depends on what it is.  
 21 BY MR. YERRID:  
 22 Q If it's a drill designed to punish the  
 23 students athlete physically, is that something you  
 24 would allow?  
 25 MR. HOSKING: Same objections.

1 THE WITNESS: Am I allowed to answer that?

2 BY MR. YERRID:

3 Q Yes.

4 MR. HOSKING: Well, let me --

5 MR. YERRID: I'm sorry. Excuse me.

6 MR. HOSKING: But it's not -- yeah. It  
7 calls for speculation. He's not familiar with the  
8 term. He's not aware of it occurring. I think it's  
9 argumentative.

10 I don't know how you'd have a basis, but if  
11 you have any basis, then you can share what you know.

12 THE WITNESS: I don't know -- I -- I have no  
13 knowledge of that occurring, but if it was --  
14 within -- you know, if it was not putting anybody at  
15 risk, then I would have no issues with that.

16 It's a coaching issue.

17 BY MR. YERRID:

18 Q I'm sorry?

19 A It would be more of a coaching decision as  
20 long as -- if I was aware of something that I thought  
21 was medically inappropriate, yes, I would say no. But  
22 just the fact of punishing somebody for that doesn't  
23 necessarily make that a medical issue.

24 MR. YERRID: This, right here?

25 MR. MURPHY: Yeah.

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1 A Correct.

2 Q Okay. Did you ever have any discussions  
3 with Damon Harrington about the February 7th, 2014,  
4 session?

5 A (No audible response)

6 Q Ever?

7 A I don't recall any specific, umm, in  
8 terms -- of about -- in terms -- actually, I'm unclear  
9 about the design of the --

10 Q Yes.

11 A No. No discussion about the design of the  
12 workout.

13 Q Now, the more general question, any  
14 discussions with him about that session?

15 A Umm, I don't recall any specific, umm,  
16 anything specifically about the workout session  
17 itself. Just what happened that day.

18 Q All right.

19 A Yeah.

20 Q Have you ever had any discussions with  
21 Mr. Harrington regarding any of the winter  
22 conditioning session?

23 A No, I have not.

24 Q Have you ever discussed any of the workouts  
25 of the program with strength-and-conditioning coaches

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1 BY MR. YERRID:

2 Q Do you have regular interaction with the  
3 strengthen-and-conditioning staff at the  
4 University of California?

5 A I see them -- yeah. I see them on a daily  
6 basis.

7 Q On a daily basis?

8 A Mm-hmm.

9 Q Any involvement in designing or planning the  
10 conditioning sessions that the student athletes will  
11 participate in?

12 A No. I do not.

13 Q Any discussions with Damon Harrington -- you  
14 know him, don't you?

15 A Yes.

16 Q How do you know him?

17 A He's the head strength-and-conditioning  
18 coach for football.

19 Q How long have you known him?

20 A Since he started -- umm, I don't recall when  
21 he --

22 Q Whenever he started?

23 A -- started.

24 Q But he was prior to Mr. Agu's death,  
25 correct?

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1 or trainers?

2 A In terms of the design of the programs?

3 Q Yes.

4 A No, I have not.

5 Q In terms of the, umm -- umm, exertion  
6 required? Have you ever discussed that?

7 A No. I have not.

8 Q What about sickle cell trait athletes? Have  
9 they been included simply as the student athletes have  
10 been included, or has there been exception made for  
11 their treatment -- for their --

12 A Per --

13 Q -- conditioning?

14 A I'm sorry. What was the -- repeat the  
15 question.

16 Q You said you've not talked to the head  
17 strength coach, Mr. Harrington, correct?

18 A In terms of workout design specifically,  
19 yes.

20 Q That's what -- designing, planning, you said  
21 no, you had not, correct?

22 A I mean, I -- when we talk about sickle cell  
23 trait, we've talked about the steps that you would  
24 take. That is outlined by the NCAA.

25 Q We're going to get to that.

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1 A Yeah. Yeah. But I --  
2 Q So excepting -- excepting that, to your  
3 answer now --  
4 A Yeah.  
5 Q -- you have talked to him about how sickle  
6 cell trait athletes, in particular, should be treated?  
7 A In generalities, yes.  
8 Q Okay.  
9 A That there are guidelines --  
10 Q I'm sorry? Go ahead.  
11 A I'm sorry. Over the guidelines that are  
12 outlined by the NCAA.  
13 Q You specifically went through the guidelines  
14 as -- as mandated by the NCAA --  
15 A Yes.  
16 Q -- with Mr. Harrington?  
17 A Yes.  
18 Q No question in your mind, he understood what  
19 your purpose was?  
20 A I -- I wouldn't know.  
21 Q Did he fully appreciate everything you were  
22 telling him, that sickle cell trait athletes can be  
23 put in harm's way if proper procedure is not put in  
24 place?  
25 A I would --

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1 MR. HOSKING: Calls for speculation --  
2 MR. YERRID: No. No.  
3 MR. HOSKING: -- about another's state of  
4 mind.  
5 BY MR. YERRID:  
6 Q No. I'm not asking you to go into his mind.  
7 You're the team physician.  
8 You're trying to give information to your  
9 strength coach, correct?  
10 A Correct.  
11 Q Okay. You have a way of verifying if the  
12 recipient of the information has gleaned the  
13 information you've given them, don't you? In medical  
14 school and in your medical training, don't you have a  
15 way to verify that the person you're giving that  
16 information to understands and fully comprehends what  
17 you're telling them?  
18 A Whether they would verbalize their  
19 understanding or sign a piece of paper saying that  
20 they did?  
21 Q What I'm saying, Dr. Batten, is: You're  
22 absolutely trained to know that when you tell someone,  
23 you're trained to know whether or not they get it;  
24 whether they understand it, aren't you?  
25 A I don't know if you're necessarily trained

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1 to know, but that -- I believe I would understand if  
2 he did not understand that.  
3 Q Okay.  
4 A Yes.  
5 Q Is there anything that leads you to believe  
6 Mr. Harrington didn't fully comprehend everything you  
7 were telling him and understand the need for proper  
8 procedures with regard to sickle cell trait athletes?  
9 A I believe he understood, yes.  
10 Q Okay. When did those discussions occur?  
11 Prior to Mr. Agu's death?  
12 A Yes.  
13 Q Okay. You agree that the team physician is  
14 the one that's ultimately responsible for a student  
15 athlete's safe participation in team activities; would  
16 you agree with that?  
17 A Ultimately responsible --  
18 Q Yes.  
19 A -- in terms of -- in the general sense, yes.  
20 Q What about in the specific sense? Who is  
21 responsible other than you?  
22 A I -- I believe it's a -- it's a -- between  
23 the doctor and the patient. Right. So we can act on  
24 information they give us, and it's kind of a team  
25 effort.

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1 And ultimately, I would be responsible for  
2 that.  
3 Q Okay. I want to be clear. I'm jumping  
4 ahead, and I apologize.  
5 But you knew that Mr. Agu had sickle cell  
6 trait, didn't you?  
7 A Yes, I did.  
8 Q You knew well before he died that he had  
9 sickle cell trait, didn't you?  
10 A Yes.  
11 Q You personally met with him on at least two  
12 occasions and counseled him about sickle cell trait,  
13 family planning, what sickle cell trait could mean?  
14 A Yes, I did.  
15 Q Okay. And is there any doubt in your mind  
16 that he understood what you were saying?  
17 A I think he fully understood.  
18 Q Okay. And there was a third -- you saw him  
19 the first two years he played football and filled out  
20 the forms.  
21 You reviewed those before you got here  
22 today, didn't you?  
23 A I've reviewed his chart. Not every page,  
24 but almost.  
25 Q The third annual, I guess it was, visit, he

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1 made with another doctor -- I can't recall his name --  
 2 A (Witness nods head)  
 3 Q -- correct?  
 4 A I think he met with more than one other.  
 5 Dr. Jow.  
 6 Q Dr. Jow. He just wrote it.  
 7 Dr. Jow, right.  
 8 A Yes.  
 9 Q Then you met with Mr. Agu before he died,  
 10 one more time, in terms of going over his annual  
 11 physical.  
 12 That would be in 2013, right?  
 13 A (No audible response)  
 14 Q Do you want to look at it?  
 15 A Yeah. I don't --  
 16 Q Let's pull it out. It's not a memory test.  
 17 A Yeah. Yeah. I don't recall.  
 18 Q It's right here.  
 19 MR. HOSKING: I've got it.  
 20 MR. MURPHY: I've got a clean copy.  
 21 What number are you on?  
 22 MR. YERRID: It's 13. I think that's right.  
 23 Let me make sure it's the right one.  
 24 No, that's --  
 25 MR. MURPHY: That's Dr. Jow.

1 THE VIDEOGRAPHER: The time is 11:10 a.m.  
 2 We're off the record.  
 3 (Proceedings recessed from 11:10 a.m. until 11:11 a.m.)  
 4 THE VIDEOGRAPHER: We are back on the  
 5 record. The time is 11:11 a.m.  
 6 MR. YERRID: We can -- I can go to the  
 7 bathroom any time I want, but I just want to finish  
 8 this while I've got it in my head.  
 9 BY MR. YERRID:  
 10 Q Do you have that?  
 11 A 25?  
 12 MR. HOSKING: That is correct.  
 13 BY MR. YERRID:  
 14 Q Let's go through the first couple,  
 15 beforehand, as a predicate.  
 16 MR. YERRID: Instead of marking that as  
 17 Exhibit 1, I'm going to strike that exhibit because  
 18 it's not chronologically correct.  
 19 BY MR. YERRID:  
 20 Q You saw him two more -- two times before  
 21 that one?  
 22 A (No audible response)  
 23 Q Go look -- look at 010 -- 0105.  
 24 A (Witness complying)  
 25 Q Do you see that?

1 MR. YERRID: That's Dr. Jow. Sorry.  
 2 It must be 14.  
 3 MR. MURPHY: Do you want that one?  
 4 MR. YERRID: It is 14.  
 5 THE WITNESS: What was the month?  
 6 MR. YERRID: August 4th. I --  
 7 MR. MURPHY: August 4th -- it's Number 25 --  
 8 Number 24 and 25.  
 9 MR. YERRID: It's Bates-stamped UC 0025.  
 10 MR. HOSKING: Thank you.  
 11 MR. MURPHY: Here's a clean copy if you want  
 12 to mark it.  
 13 MR. YERRID: I'm going to mark this, ma'am,  
 14 as Exhibit 1.  
 15 (Deposition Exhibit No. 1 marked,  
 16 subsequently withdrawn)  
 17 BY MR. YERRID:  
 18 Q Do you see that, sir?  
 19 A Yes.  
 20 (Discussion off the record)  
 21 THE VIDEOGRAPHER: Do you want to go off the  
 22 record?  
 23 MR. YERRID: Yeah. I'd feel more -- we'll  
 24 get this cleaned up.  
 25 I have to go to the bathroom.

1 A Let me get it here.  
 2 Yes.  
 3 Q Okay. What is the date of that, Dr. Batten?  
 4 A The date of this one was on July 12th  
 5 of 2010.  
 6 Q 2010.  
 7 What does it say at the top? "Clinic  
 8 visit."  
 9 What word is that just before "Clinic  
 10 visit"? Right here. What does that say?  
 11 A "IA."  
 12 Q Oh, IA.  
 13 A Intercollegiate athletics.  
 14 Q That would be -- if you look down at the  
 15 M.D. -- and that would be Casey Batten.  
 16 That's you?  
 17 A Yeah. That's my signature. Yeah. Or  
 18 digital signature.  
 19 Q You have "Subjective."  
 20 Please read that.  
 21 A "History of presenting illness, positive  
 22 sickle cell trait. Football, ICA-related."  
 23 THE REPORTER: IC what?  
 24 THE WITNESS: I-C-A.  
 25 THE REPORTER: Thank you.



1 THE WITNESS: Sure.  
 2 BY MR. YERRID:  
 3 Q What does that mean?  
 4 A Intercollegiate athletic related.  
 5 Q Meaning he's a football player, and he's got  
 6 sickle cell trait, and he's tested positive?  
 7 A The ICA-related part has to do with our  
 8 financials; whether we pay for the visit or not.  
 9 Q I'm not really just focusing on that.  
 10 But by the time you get to that  
 11 "ICA-related," you can -- you can discern that he's a  
 12 football player who has tested positive for sickle  
 13 cell trait, and his name is Ted Agu, and he is a male?  
 14 A Yes.  
 15 Q And you're the attending physician?  
 16 A Yes.  
 17 Q Okay. And then you write -- after  
 18 "ICA-related" -- what?  
 19 A "Student athlete was aware of SS" -- was, I  
 20 believe, his sickle status -- "at the time."  
 21 That's not "SS" meaning -- in the medical  
 22 sense, it could mean, uh, sickle cell disease, but I  
 23 meant sickle status.  
 24 Q This may help you here. Keep reading.  
 25 A Umm, "but unaware of his status."

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1 Q All right. Then there is an open --  
 2 A "No complaints. He does have remote history  
 3 of asthma as a child" --  
 4 Q Slow down. Slow down.  
 5 "No complaints" meaning no complaints with  
 6 regard to the sickle cell, correct?  
 7 A Correct.  
 8 Q And then you go on and talk about the asthma  
 9 we discussed earlier.  
 10 A (Witness nods head)  
 11 Q What's does it say there?  
 12 A "Does have remote history of asthma as  
 13 child, but is not on medications and does not have  
 14 symptoms. No symptoms with exertion."  
 15 Q That's talking about present tense?  
 16 A Mm-hmm.  
 17 Q Okay. So that doesn't say he hasn't been on  
 18 medication since he was a child. It doesn't say he  
 19 hasn't had problems of asthma.  
 20 It simply gives you a history that as a  
 21 child, he had asthma, but he doesn't have asthma at  
 22 the time you're seeing him, correct?  
 23 A He --  
 24 Q So you discounted it consistent with what  
 25 you told us earlier?

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1 A Yes. The self-report of asthma. Yes.  
 2 Q In a child, some years back?  
 3 A (Witness nods head)  
 4 Q Right?  
 5 A Correct.  
 6 Q Can allergies lead to exercise-induced  
 7 asthma?  
 8 A "Exercise-induced asthma" is sort of a  
 9 misnomer.  
 10 Q What is that?  
 11 A It's -- probably a better term in exercise  
 12 would be "bronchospasm." No one really knows exactly  
 13 what causes it, but allergies can be a trigger for  
 14 bronchospasms. It can be a trigger for asthma.  
 15 Q Okay. What is the -- did Ted Agu have  
 16 allergies?  
 17 A Not to my knowledge.  
 18 Q All right. Let's -- let's go down.  
 19 Your assessment is what?  
 20 A "Sickle cell trait."  
 21 Q Okay. And what did you do with your patient  
 22 education?  
 23 A So at this point, Number 1 says: "I  
 24 discussed and provided educational handout on sickle  
 25 cell trait with genetic implication."

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1 Q Why'd you do that?  
 2 A Because this is what -- what I do standard  
 3 with anybody who tests positive for sickle cell trait.  
 4 Q That's also documented; in other words, when  
 5 you do something that significant, you document it.  
 6 You put it down, right?  
 7 A Yeah. Right. I documented that.  
 8 Q All right. And go ahead.  
 9 Number 2?  
 10 A Number 2, I said: "Discuss with student  
 11 athlete immediate cessation of activity if concerning  
 12 symptoms and alert athletic trainer, doctor, or  
 13 coach."  
 14 Q Okay.  
 15 A Number 3, I said: "Offer genetic  
 16 counseling. The student athlete declined."  
 17 Q That would mean if he wanted to have  
 18 children, what the effect would be?  
 19 A It would be a formal counseling session with  
 20 the family planner, genetic counselor --  
 21 Q Okay. And 4?  
 22 A It says: "He voices understanding of all  
 23 information and all questions answered."  
 24 Q That's kind of like -- you didn't write it  
 25 down, necessarily, but that's kind of like your --

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1 your confirmation -- your sign-off like you had with  
 2 Harrington.  
 3 When you tell someone something, you want to  
 4 make sure they understand it.  
 5 You -- you're not going to leave it until  
 6 it's satisfied -- until you're satisfied they  
 7 understand?  
 8 A Yeah. For --  
 9 Q "Yes"?

10 A Yeah. I might just say, "Do you understand  
 11 it? Do you have any questions on any of this?"  
 12 "No."  
 13 Q Okay. And the fifth one is?  
 14 A "Student athlete agreed that information can  
 15 be provided to football medical staff, coaches,  
 16 strength-and-conditioning staff."  
 17 MR. YERRID: We're going to mark that one,  
 18 105 and 106, as Plaintiff's Exhibit I.  
 19 (Deposition Exhibit No. 1 marked)  
 20 (Discussion off the record)  
 21 BY MR. YERRID:  
 22 Q Go to page -- Bates page 0030.  
 23 A 0030?  
 24 Q Yes.  
 25 A (Witness complying)

1 A I'm sorry? What was that?  
 2 Q You checked for that?  
 3 A For heart issues?  
 4 Q Yes.  
 5 A Yeah. We listen to their heart and then ask  
 6 the question.  
 7 Q You checked that the year before, too,  
 8 didn't you?  
 9 A Yes.  
 10 Q You found nothing that would prevent him  
 11 from --  
 12 A No.  
 13 Q -- from --  
 14 A No, I did not.  
 15 Q Suspected nothing?  
 16 A Suspected nothing.  
 17 Q He reported nothing?  
 18 A He reported nothing.  
 19 Q Okay. And he does report that he's got an  
 20 allergy --  
 21 A Mm-hmm.  
 22 Q -- issue, doesn't he?  
 23 A Mm-hmm. Dust --  
 24 Q Is that a --  
 25 A -- grass and trees.

1 Q Do you see that?  
 2 A Yes.  
 3 Q Would that be your next examination of  
 4 Ted Agu?  
 5 A I don't know if that was the next one, but  
 6 this is the next -- this is the next yearly, mandatory  
 7 physical for football.  
 8 Q I'm sorry. That's what I meant to say.  
 9 Your next annual, mandatory physical?  
 10 A Well, that one that I sat down with him was  
 11 not a mandatory physical, that last one we just talked  
 12 about.  
 13 Q What was it?  
 14 A That was just, umm, a visit related to his  
 15 positive sickle cell trait testing. That was not a  
 16 physical.  
 17 Q This is a more extensive visit?  
 18 A This is just the football returning physical  
 19 that we do on all football returners.  
 20 Q Each year, no matter what?  
 21 A Each year, no matter what.  
 22 Q Okay. And just make sure, no issue with  
 23 regard to any heart problems, right?  
 24 A Right. Nothing. Mm-hmm.  
 25 Q You checked for that, right?

1 If he -- if he had symptoms, it could be,  
 2 but there's no symptoms.  
 3 Q Where do you say that there's no symptoms?  
 4 I don't understand how you got that.  
 5 It says right here: "Do you have an  
 6 allergy?" And it says: Paren, "severe reaction. If  
 7 'yes,' please specify." And then he specified.  
 8 How do you think that's not a -- not -- not  
 9 a reaction?  
 10 "Allergic reaction" says: "Do you have an  
 11 allergy" -- paren, "severe reaction," close paren --  
 12 "to any medication, bees, insects, or food? If  
 13 'yes'" -- in other words, he's got a severe reaction.  
 14 A Mm-hmm.  
 15 Q He's answering.  
 16 Why do you think that that's not reporting a  
 17 severe allergic reaction?  
 18 A At this -- I mean, it was sort of -- at that  
 19 time, he was not -- to me, he was -- I mean, I guess  
 20 when he saw it, he was -- I guess I'm -- I don't know  
 21 if that's a severe reaction.  
 22 Q Well, in his opinion, he's writing it down.  
 23 He's answering "Yes."  
 24 A It says: "Do you have an allergy?"  
 25 But, you know, they can interpret that any



1 way: Dust, grass, or trees.  
2 Q But what -- Dr. Batten, I'm sure you want to  
3 be fair to everyone here.  
4 A Yes.  
5 Q But it says: "Do you have an allergy" --  
6 paren, "severe reaction" -- close paren, "to any  
7 medication, bees, insects, or food?" And, "If 'yes,'  
8 please specify." And then the young man specifies.  
9 A Mm-hmm. He wrote that, yes.  
10 Q Are you assuming that he took the question  
11 to mean something other than what it says?  
12 A No.  
13 Q Okay. Does that not indicate he's got  
14 severe allergic reactions to certain things?  
15 MR. HOSKING: Lacks foundation and misstates  
16 the record.  
17 BY MR. YERRID:  
18 Q Tell me what that indicates.  
19 A It would be that he -- he's self-reporting  
20 that. It doesn't mean it's diagnosed or he ever has  
21 been shown to have any significant issues with that.  
22 Q I understand that.  
23 A Yes.  
24 Q I'm going to put this up and let the jury  
25 determine whether this question is being unfair to

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1 you.  
2 Does this question, the way it's written,  
3 and the answer, the handwritten answer, indicate to  
4 you that Mr. Agu is letting the inquirer -- that would  
5 be the athletic department -- know that he has  
6 experienced severe reactions to dust -- and I can't  
7 read -- what do those other words say?  
8 A Looks to me, "grass and trees" on this  
9 replication.  
10 Q Does it not look like he's reporting that as  
11 a severe reaction?  
12 MR. HOSKING: The document speaks for  
13 itself. The witness has answered the question.  
14 THE WITNESS: (Witness nods head)  
15 BY MR. YERRID:  
16 Q Actually, the document was speaking to you  
17 because you're the physician making certain  
18 assessments here.  
19 How did you assess that, that answer to that  
20 question?  
21 A How do I assess?  
22 Q No. How did you assess that answer to that  
23 question?  
24 A Patients put these things down all the time.  
25 It doesn't mean they have a severe reaction.

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1 Q Okay.  
2 A It can be just self-report.  
3 Q So you think it's -- this is a, quote, what,  
4 self-report as opposed to an answer to the question?  
5 MR. HOSKING: That's argumentative. And it  
6 misstates his testimony.  
7 THE WITNESS: It's an answer to the  
8 question, but it's also a self-report. There's no ...  
9 BY MR. YERRID:  
10 Q Okay. So you think he meant something  
11 different?  
12 MR. HOSKING: That's argumentative, and it's  
13 asked and answered.  
14 THE WITNESS: No. I think he says he feels  
15 that he has allergies -- environmental allergies to  
16 dust, grass, and trees is what he's saying; that he  
17 believes that he has that.  
18 BY MR. YERRID:  
19 Q Is bronchospasm or exercise-induced asthma a  
20 potential danger for a sickle cell trait athlete?  
21 A It could be, yes.  
22 Q What about allergies?  
23 A If they're significant, could it be? It  
24 could.  
25 Q Is it more likely than not for a sickle cell

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1 trait athlete that allergies will be a problem?  
2 MR. HOSKING: Well, I mean, that is a cue  
3 that that's an expert question, and --  
4 MR. YERRID: I'm asking about Mr. Agu. Let  
5 me -- let me -- Counsel, we don't need to have a  
6 discussion. I'm not asking about expert question.  
7 He's got Mr. Agu in his office. He's  
8 examining Mr. Agu. He's a sickle cell trait athlete  
9 enrolled in the football program at the  
10 University of California. I'm asking him about  
11 Mr. Agu.  
12 He certainly is an expert because he's an  
13 expert in treating Mr. Agu. So I don't know how  
14 that -- that doesn't make any sense to me.  
15 He's an expert; and therefore, he's  
16 calling -- I'm calling for expert opinion. Of course  
17 I am. But he's a treating physician.  
18 MR. HOSKING: You're entitled to his fund of  
19 knowledge at the time he was treating his patient.  
20 You're not entitled to ask him  
21 retrospectively, as a matter of medical probability,  
22 if allergies are dangerous for sickle cell athletes in  
23 general, which was your question.  
24 MR. YERRID: That's fine.  
25

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1 BY MR. YERRID:  
 2 Q Did you not know at the time whether or not  
 3 allergies posed more of a danger to a sickle cell  
 4 trait athlete than you do now? Is there a difference  
 5 in your knowledge today than it was then?  
 6 A No. But --  
 7 Q Okay. Let me -- then let me ask you: With  
 8 that in mind, on that day when you saw Mr. Agu, did  
 9 allergies, as reported by Mr. Agu, pose a greater risk  
 10 because he was a sickle cell trait athlete than it  
 11 would to a nonsickle cell trait athlete?  
 12 A If he indeed had true allergies, it could;  
 13 but at that point, he was not -- he denied chest pain,  
 14 shortness of breath, dizziness, passing out.  
 15 Q Well, if he wasn't -- Dr. Batten, he wasn't  
 16 in dust or trees or grass at that time, was he? He  
 17 was in your office.  
 18 A Okay.  
 19 Q Right?  
 20 A Yes.  
 21 Q Okay. So he wouldn't be exposed to the  
 22 allergic materials that he reported, would he, in your  
 23 office?  
 24 MR. HOSKING: Lacks foundation. You've  
 25 mischaracterized the record.

1 Q Well, anything is possible.  
 2 A Yeah.  
 3 Q Is it more likely than not, if you take this  
 4 as a truism, this patient's history --  
 5 A Mm-hmm.  
 6 Q -- that this patient, because he's a sickle  
 7 cell trait patient --  
 8 A Mm-hmm.  
 9 Q -- is facing more of a risk than a nonsickle  
 10 cell trait patient?  
 11 MR. HOSKING: It's argumentative.  
 12 THE WITNESS: I'm not an expert on how much  
 13 allergies by self-report -- sorry -- would affect a  
 14 sickle cell status. I'm not --  
 15 BY MR. YERRID:  
 16 Q Okay.  
 17 A -- an expert on that.  
 18 Q So you just don't know?  
 19 A I don't.  
 20 MR. HOSKING: Misstates the -- misstates the  
 21 testimony.  
 22 THE WITNESS: I'm not an expert on that. I  
 23 believe -- I don't know if I can answer that  
 24 authoritatively.  
 25

1 BY MR. YERRID:  
 2 Q Would he?  
 3 A Would he be exposed to those allergens in my  
 4 office?  
 5 Q Yes.  
 6 A I suppose dust could be. But ...  
 7 Q Okay. And what was the second one? I'm  
 8 sorry. It says -- is that "grass"?  
 9 A Grass, it looks like -- is what it looks  
 10 likes to me.  
 11 Q Is it more likely that he would be exposed  
 12 to grass and trees, things such as that, maybe, out on  
 13 the football practice field as opposed to your office?  
 14 A It would be more likely.  
 15 Q Okay. And does that exposure create a  
 16 higher degree of risk to the athlete who has sickle  
 17 cell trait than it would to a nonsickle cell trait  
 18 athlete?  
 19 MR. HOSKING: It's been asked and answered.  
 20 Calls for speculation.  
 21 BY MR. YERRID:  
 22 Q You can answer it. Then I'm going to ask a  
 23 second question.  
 24 A It could, if it was severe enough, I  
 25 suppose.

1 BY MR. YERRID:  
 2 Q Well, you were the one who was going to  
 3 determine what kind of conditions this gentleman could  
 4 play football in, right?  
 5 A Yes.  
 6 Q The buck stops with you, right?  
 7 A Yes.  
 8 Q Okay. Are you saying it's -- this posed a  
 9 greater risk to this gentleman than it would have  
 10 posed had he not been a sickle cell trait athlete?  
 11 I'm not sure what your testimony is.  
 12 A It could --  
 13 Q What --  
 14 A -- if it was severe enough, yes. In theory,  
 15 it could. Anything that drops oxygen level could make  
 16 it more risky, yes.  
 17 Q Let's go down to the examination.  
 18 What do you have under "Examination"?  
 19 You have a "cardiovascular assessment"?  
 20 A Yes.  
 21 Q What does that mean?  
 22 A It's just check boxes. So he -- they  
 23 checked blood pressure. They listen to their heart,  
 24 check their pulses. Then you screen for  
 25 Marfan syndrome.



1 Q Why do you do those things?  
 2 A Why do we? It's --  
 3 Q Why do you do those things?  
 4 A General screening for cardiovascular issues.  
 5 Q This is, what, the third time he's been  
 6 screened for those issues?  
 7 A I believe so. I believe he came in 2009, I  
 8 think, his first year.  
 9 Q And never, despite your best efforts, were  
 10 you able to detect any problem whatsoever with his  
 11 heart, were you?  
 12 A No, never.  
 13 Q What does your handwriting say? Can you  
 14 read that for me?  
 15 A Underneath?  
 16 Q Yes.  
 17 A "Faint expiratory wheeze bilateral lungs."  
 18 Q What does that mean?  
 19 A He had some very, very minor wheezing in his  
 20 lungs.  
 21 Q What would cause that?  
 22 A It could be multiple things.  
 23 Q Tell me -- start at the top and tell me the  
 24 etiology.  
 25 A Most -- most often, it could be a cold, a

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1 virus.  
 2 Q What else?  
 3 A It could be allergies. It could be.  
 4 Q Well, he reported allergies several lines  
 5 before?  
 6 A Mm-hmm. It could be.  
 7 Q Or it could be a cold. It could be  
 8 allergies or a cold.  
 9 What else could it --  
 10 A I -- I believe he saw a person on  
 11 August 2nd, 2011, and I'd have to look at the chart  
 12 for that -- for that reason.  
 13 That's related to the history. So I'm  
 14 not -- I'm not the one that saw him. We'd have to  
 15 find that record.  
 16 Q What else after the -- after the wheezing in  
 17 the lungs?  
 18 A "Negative -- excellent air movement."  
 19 Q Okay.  
 20 A "Negative chest x-ray on 8/2/11."  
 21 Q What does that tell you, "Negative chest  
 22 x-ray"?  
 23 A They did a chest x-ray for his -- I -- we'd  
 24 have to go back to look at the record. From what I  
 25 recall, this is -- when I looked at it, it was a cold.

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1 Q Okay.  
 2 A He said his cough was improved.  
 3 Q Okay. What else on the right?  
 4 A I said: "Discuss with student athlete signs  
 5 and symptoms of sickle cell complication."  
 6 Q Why did you write that down?  
 7 A Because if he was -- if he was sick, that  
 8 was sort of one of the precautions you take if you're  
 9 sick. I would counsel him again.  
 10 Q If he wasn't sick, you wouldn't counsel him  
 11 again?  
 12 A If he was sick? I probably would not have  
 13 at that time, no.  
 14 Q So if he wasn't sick, you would not have  
 15 counseled him on sickle cell trait again on an annual  
 16 basis as kind of a stimulus to keep him fully aware of  
 17 it?  
 18 A I do it about every two years.  
 19 Q About every two years.  
 20 A Yes.  
 21 Q And this would not have been the year  
 22 because you had done it the year before?  
 23 A Yeah. I did it because of this situation  
 24 where he had --  
 25 Q No. I know.

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1 A -- he had a cold.  
 2 Q I understand.  
 3 And it wasn't biannual. This would be the  
 4 off year.  
 5 You had done it the year before?  
 6 A Yes.  
 7 Q What else does it say?  
 8 A "Alert coach, medical staff immediately" --  
 9 in caps -- "if concern arises."  
 10 Q Meaning if any sickle cell trait comes up?  
 11 A Yes. Any concerns.  
 12 Q Or any concerns?  
 13 A Yes.  
 14 Q What's the next one?  
 15 A "Maintain hydration."  
 16 Q Okay.  
 17 A And I need him to follow up with his dentist  
 18 because he just had braces two months ago.  
 19 Q Okay. And let's go to page 2.  
 20 That would be -- got that, the next page,  
 21 0031?  
 22 A 0031? Yes.  
 23 Q If you can look at the medical history.  
 24 A Mm-hmm.  
 25 Q Let's -- it's pretty specific with regard to

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1 the heart there, isn't it, Doctor?  
 2 A Mm-hmm. Mm-hmm.  
 3 Q Why don't you run through that for the jury?  
 4 A For the medical history?  
 5 Q Yes.  
 6 A It asks to check "whether you or family  
 7 member has had any of the following conditions: Heart  
 8 murrur, chest pains or heart palpitations with or  
 9 without exercise, expiratory or near expiratory,  
 10 passing out, high blood pressure, irregular heartbeat  
 11 or extra beats" --  
 12 Q Right.  
 13 A -- excessive or unexplained shortness of  
 14 breath or excessive fatigue with exercise; for  
 15 example, asthma" --  
 16 Q All right.  
 17 A -- "sudden death without warning before age  
 18 50, other history of heart problems."  
 19 Q Those are all checked "No," right?  
 20 A Yes.  
 21 Q And that would be totally consistent with  
 22 everything you diagnostically found on your  
 23 examination --  
 24 A Yes.  
 25 Q -- throughout the course of his enrollment

1 here at the University of California?  
 2 A Yes.  
 3 Q That he had no heart problems, and he never  
 4 reported any heart problems, and you found no heart  
 5 problems, right?  
 6 A Correct.  
 7 Q As a matter of fact, he also was a nonsmoker  
 8 and a nondrinker, right?  
 9 A I -- I don't know on alcohol consumption,  
 10 but he -- he wrote "No" on both.  
 11 Q I'm sorry.  
 12 A Yeah. I mean, based on the boxes he  
 13 checked, yeah.  
 14 It says: "In the past year, did you drink  
 15 alcohol?"  
 16 He said "No."  
 17 Q I realize people can be dishonest.  
 18 A Yes.  
 19 Q I know you can assume that any answer is  
 20 wrong, I've got that.  
 21 A Yeah.  
 22 Q But assuming the young man was telling the  
 23 truth -- let's just start with that assumption.  
 24 A Yeah.  
 25 Q It looks like he never had any heart

1 problems and didn't have any drinking consumption and  
 2 no tobacco consumption?  
 3 A That's correct.  
 4 Q Aren't those both indicators -- can put you  
 5 at a higher risk for heart problems -- Smoking and  
 6 drinking?  
 7 A Yes.  
 8 Q Okay. He -- those are two indicators he did  
 9 not have in addition to the history that he gave,  
 10 right?  
 11 A That's correct.  
 12 Q Okay. Now, let's turn to the second page,  
 13 which is now 0032, which continues, it looks like,  
 14 with regard to the heart.  
 15 Do you see where it goes down and says:  
 16 "Check whether you or family members have any of the  
 17 following conditions: Heart murrur; no. Chest pains  
 18 or heart palpitations with or without exercise; no.  
 19 Expiratory or near fainting, passing out; no. High  
 20 blood pressure; no. Irregular heartbeat or extra  
 21 beats" -- do you see that? "No."  
 22 A Yes.  
 23 Q -- "Excessive or unexplained shortness of  
 24 breath or excessive fatigue; no. Sudden death without  
 25 warning; no. Other history of heart problems; no."

1 What does -- what is the meaning of all  
 2 those nos to you as a clinician?  
 3 MR. HOSKING: It's vague.  
 4 BY MR. YERRID:  
 5 Q I'm sorry. Let me ask you that: Does it  
 6 have any meaning, those -- all those boxes that are  
 7 checked, or is it just without meaning?  
 8 MR. HOSKING: Same -- same objection.  
 9 MR. YERRID: I don't understand -- I don't  
 10 understand the objection, Counsel.  
 11 MR. HOSKING: Well --  
 12 MR. YERRID: I asked if it had meaning or if  
 13 it didn't have meaning.  
 14 MR. HOSKING: Yeah. Perhaps I should have  
 15 said it's overbroad. Surely, it has meaning.  
 16 What are you asking him?  
 17 THE WITNESS: Yeah. I don't understand the  
 18 question.  
 19 BY MR. YERRID:  
 20 Q What significance do those boxes checked  
 21 "no" have to you, if any?  
 22 A It means that he is denying any of those  
 23 symptoms or history.  
 24 Q What importance does that have --  
 25 A Umm --



1 Q -- if any?  
 2 A If any? Well, it's part of a -- a screening  
 3 process for cardiac --  
 4 Q Doesn't it mean that he has no family  
 5 history of heart problems?  
 6 To a simple person like me and, maybe, the  
 7 jury, does that not mean, Doctor, that he has no  
 8 family history of heart problems?  
 9 A Correct.  
 10 Q In addition to the individual lack of any  
 11 problems he reports, he's also telling you nothing in  
 12 his family history indicates --  
 13 A Right.  
 14 Q -- heart problems?  
 15 A This is actually the same page as this.  
 16 Okay? They --  
 17 Q But it --  
 18 A -- must have copied it wrong.  
 19 Q But it indicates nothing is wrong with  
 20 regard to his heart?  
 21 A By self --  
 22 Q Nothing in his family appears to be wrong  
 23 with any of their hearts by self-reporting?  
 24 A Yes.  
 25 Q Correct?

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1 A Right.  
 2 Q Well, not by self-reporting, but by  
 3 examination, you didn't find anything wrong either,  
 4 did you?  
 5 A On my examination, I did not find anything  
 6 wrong.  
 7 Q Okay.  
 8 MR. YERRID: Mark that as Exhibit 2.  
 9 Now we go to Number 3.  
 10 I'm sorry. This is taking a little longer.  
 11 MR. MURPHY: That was Numbers 30, 31,  
 12 and 32, Dr. Batten?  
 13 (Deposition Exhibit No. 2 marked)  
 14 BY MR. YERRID:  
 15 Q You're the team physician, right?  
 16 A That's correct.  
 17 Q Okay. What relationship does Dr. Holschen  
 18 have to you?  
 19 A She's an associate team physician.  
 20 Q She works under you?  
 21 A She's no longer here; but at that time, she  
 22 did.  
 23 Q I'm sorry. When she did the medical record  
 24 that was provided to us by your employer, did she work  
 25 for University of California?

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1 A Yes.  
 2 Q Did she work under your supervision?  
 3 A Not technically -- I was not technically her  
 4 supervisor.  
 5 Q Okay.  
 6 A But she's assistant team physician, yes.  
 7 Q Would you -- would you, during the course of  
 8 your professional duties, rely on her information, her  
 9 diagnoses, her examinations, et cetera, in performance  
 10 of your duties?  
 11 A Yes.  
 12 Q Okay. You found her to be reliable and  
 13 accurate?  
 14 A Yes.  
 15 Q Okay. Look at 0094.  
 16 A (Witness complying)  
 17 Q Okay?  
 18 A Mm-hmm.  
 19 Q You see where, under "Clinician notes:  
 20 "Patient reports a lot of sinus congestion over last  
 21 three weeks. Also notes cough starting around 12:00  
 22 noon and worse when outside, exercising."  
 23 You see that?  
 24 A Mm-hmm.  
 25 Q Does that have any significance to you in a

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1 sickle cell trait athlete that he's got a cough that's  
 2 worse when he's exercising?  
 3 A Yeah. It could.  
 4 Q What do you mean?  
 5 A I mean, if -- what do I mean?  
 6 Q What do you mean? You said "it could."  
 7 What do you mean?  
 8 A Yeah. If -- if I knew they were having  
 9 significant issues --  
 10 (Cell phone interruption)  
 11 THE REPORTER: I'm sorry? If I knew they  
 12 were having?  
 13 THE WITNESS: If I knew they were having  
 14 significant issues with an illness, it could  
 15 potentially change the management.  
 16 BY MR. YERRID:  
 17 Q Was he having any problems, Mr. Agu, with  
 18 coughing or with breathing the day he died?  
 19 A Not to my knowledge.  
 20 Q Okay. How would you know that?  
 21 A He never reported to me.  
 22 Q Was there a protocol that was set up for the  
 23 sickle cell trait athlete to ensure they didn't have  
 24 any problems that should cause them special treatment  
 25 on any particular day?

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1 A I don't understand that question.  
 2 Q Was there a protocol set up for sickle cell  
 3 trait athletes to ensure that if they had specific  
 4 problems, they would receive individual treatment  
 5 because of their condition of sickle cell trait before  
 6 their exercise regimen on any particular day?  
 7 A They would have to report, as they were  
 8 counseled.  
 9 Q Okay. Do you see this under her assessment?  
 10 A Mm-hmm.  
 11 Q It says "sinusitis."  
 12 Do you see that?  
 13 A Yes.  
 14 Q And it says what?  
 15 A "Most likely from seasonal allergies."  
 16 Q What does that mean? Doesn't that mean  
 17 that -- that the kid -- excuse me -- Mr. Agu continues  
 18 to have allergy problems every season?  
 19 A I don't know if that says he has it every  
 20 season.  
 21 Q I'm sorry.  
 22 Does that mean to a layperson like me, if  
 23 they read that, from a doctor's standpoint, that the  
 24 patient was suffering from seasonal allergies; that  
 25 is, when seasons would come and go, allergies would

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1 manifest themselves?  
 2 MR. HOSKING: Document speaks for itself.  
 3 Interpretation is --  
 4 BY MR. YERRID:  
 5 Q What does it mean, Doctor?  
 6 A Seasonal allergies, it could mean you have  
 7 environmental allergies, but those can change. It  
 8 doesn't mean you get them every season.  
 9 Q It doesn't say every season.  
 10 A Yes.  
 11 Q It just says "From seasonal allergies."  
 12 A Yeah. That's -- that's the medical term.  
 13 Q That means he had it then, right?  
 14 A That -- she said "Most likely."  
 15 Q Isn't that the standard, the medical  
 16 standard, more likely than not?  
 17 A (No audible response)  
 18 Q "Yes"?  
 19 A Yeah.  
 20 Q What date was he suffering seasonal  
 21 allergies from? What's the date of this?  
 22 A August 1st, 2011.  
 23 Q Okay. Is it likely that he was having some  
 24 type of allergy problem in August of 2011 according to  
 25 these -- that physician?

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1 A I'm sorry. What was the question again?  
 2 Q Isn't it likely he was having some kind of  
 3 allergy problems -- seasonal allergy problem at that  
 4 time frame?  
 5 A I mean, without seeing him -- like, again,  
 6 this could be viral, or it could be allergy. It's  
 7 hard -- I can't tell.  
 8 Q I know you can't tell --  
 9 A Yeah.  
 10 Q -- Doctor, but if you're reading and relying  
 11 on this medical record --  
 12 A Mm-hmm,  
 13 Q Does your colleague say, "Most likely from  
 14 seasonal allergens"?  
 15 A Mm-hmm.  
 16 Q Does that --  
 17 A Yes.  
 18 Q What does that mean to you?  
 19 MR. HOSKING: It's asked and answered.  
 20 Document speaks for itself.  
 21 BY MR. YERRID:  
 22 Q You just said you couldn't tell from the  
 23 document.  
 24 Is that your testimony: You can't tell what  
 25 this patient is suffering from, from this document?

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1 MR. HOSKING: That misstates the record.  
 2 Misstates his testimony.  
 3 THE WITNESS: I'm just saying, based on his  
 4 history, it could be one of several things.  
 5 But I'm saying, if they are saying, "Most  
 6 likely from seasonal allergies," he was treated  
 7 appropriately.  
 8 BY MR. YERRID:  
 9 Q What does this doctor think, from the  
 10 medical record?  
 11 A She --  
 12 MR. HOSKING: Calls for speculation.  
 13 THE WITNESS: She --  
 14 MR. YERRID: Does that call for speculation,  
 15 Doctor? Does that question call for speculation?  
 16 MR. HOSKING: I'll decide. Calls for  
 17 speculation, and the document speaks for itself.  
 18 MR. YERRID: No. Actually, Counsel, with  
 19 all respect, you won't decide what a medical record  
 20 does or doesn't do. That's not a legal objection.  
 21 BY MR. YERRID:  
 22 Q Does that medical record, with regard to my  
 23 question, call for speculation when I ask you the  
 24 question: Is this young man experiencing seasonal  
 25 allergies?

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1 A According to this physician, they say,  
2 "Mostly likely from seasonal allergies."  
3 Q Okay. Does that require you to speculate;  
4 yes or no?  
5 MR. HOSKING: You're not limited to yes or  
6 no.  
7 MR. YERRID: Well, you know, I think judges  
8 are going to be a little different on your --  
9 THE WITNESS: Based on that -- based on  
10 the --  
11 MR. YERRID: Just a minute.  
12 I really think that he is limited.  
13 If the answer can be put in a yes or no, he  
14 is limited to giving the answer and then giving an  
15 explanation, Counsel, unless the law has changed.  
16 The last time I looked in California, it's  
17 the same.  
18 MR. HOSKING: I don't think they're going to  
19 like you badgering the witness.  
20 MR. YERRID: I don't think I'm badgering the  
21 witness. I can't get a straight -- I can't -- I'm  
22 having very difficult times here, numerous times,  
23 getting a straight answer to a very straight question.  
24 BY MR. YERRID:  
25 Q Does that record indicate this young man --

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1 it's a very minor point. So I'm going to try it  
2 again.  
3 A Mm-hmm.  
4 Q Okay. Or we're going to be here a long  
5 time.  
6 Does that record indicate, more likely than  
7 not, that young Agu was suffering from seasonal  
8 allergies in August of 2011?  
9 A Yes. Based on that physician's diagnosis.  
10 MR. YERRID: Mark that as -- go ahead.  
11 I'm going to mark that as Exhibit 3. And  
12 I'm going to mark --  
13 MR. MURPHY: I have that. That's one  
14 document, and it's Bates --  
15 MR. YERRID: It's a cumulative -- it's a  
16 cumulative exhibit that has Bates stamps 0094, 0095,  
17 0052, 0053, and 0093.  
18 (Deposition Exhibit No. 3 marked)  
19 MR. YERRID: I think I'm correct on that, am  
20 I not?  
21 MR. MURPHY: Yes.  
22 BY MR. YERRID:  
23 Q Do you have that in front of you, the  
24 Bates-stamped, Dr. Batten?  
25 A Sorry. Which number?

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1 Q 0052, the same visit with Dr. Holschen?  
2 A Mm-hmm.  
3 Q What does that say under "Exam?" "Chest" --  
4 A "Cough times three weeks."  
5 Q No.  
6 What is that, "Exam" -- colon, then what's  
7 that mean?  
8 A "Chest" -- uh, "P-A and lateral." Two  
9 views.  
10 Q What is that done for?  
11 A Why was the chest x-ray done?  
12 Q Yes.  
13 A Because he said he had a cough for three  
14 weeks.  
15 Q But what did -- it is negative, right?  
16 A Correct.  
17 Q So does the x-ray show anything in terms of  
18 the etiology; why he's had a cough?  
19 A No.  
20 Q But yet it shows a history; he's had a cough  
21 for three weeks?  
22 A Yes.  
23 Q Okay. Go to 0093.  
24 A (Witness complying)  
25 Yes.

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1 Q See where it says: "No pulmonary nodules"?  
2 A Yes.  
3 Q And then what does it say?  
4 A "Or cardiomegaly or ab" --  
5 Q What is that?  
6 A Enlarged heart.  
7 Q "Or abnormalities noted"?  
8 A Mm-hmm.  
9 Q 8/2/11, correct?  
10 A Correct.  
11 Q That was the purpose -- purpose of that  
12 examination, was it not, to determine whether or not  
13 he had an enlarged heart?  
14 A No.  
15 Q Okay. What was the purpose?  
16 A Because of his cough for three weeks.  
17 Q Okay. What was the purpose of indicating  
18 "No pulmonary nodules or enlarged heart"?  
19 A That would be -- just be how she read it.  
20 But she stated back here: "Check x-ray --  
21 chest x-ray given, three weeks of cough."  
22 Q Right. I understand why she said -- did  
23 the -- did the study.  
24 But she's also noting the study revealed no  
25 enlarged heart, doesn't she?

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1 A Yes.  
 2 Q Okay.  
 3 A Based on her --  
 4 Q Do you have any reason to disagree with  
 5 that?  
 6 A No.  
 7 Q So according to that diagnostic study,  
 8 Mr. Agu, in May -- excuse me -- in August -- did I say  
 9 May?  
 10 A It's August. Yes.  
 11 Q In August -- August 2nd, 2011, did not have  
 12 an enlarged heart, did he?  
 13 A Based on this x-ray, no.  
 14 Q And based upon every exam you gave him up  
 15 until that time, you never saw any abnormality, did  
 16 you?  
 17 A I never had any abnormal cardiac exam, no.  
 18 Q So at this point in time, there is no  
 19 indication in any way, shape, or form from a medical  
 20 standpoint that this young man has a problem with his  
 21 heart, is there?  
 22 MR. HOSKING: It's argumentative.  
 23 THE WITNESS: Based on our exams and other  
 24 physician exams, no.  
 25

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1 BY MR. YERRID:  
 2 Q And based upon his three; based upon his  
 3 family history?  
 4 A (Witness nods head)  
 5 Q Correct?  
 6 A Correct.  
 7 Q Okay. Did you ever do anything to follow up  
 8 for further observation or testing of his allergies?  
 9 A I don't recall. I'd have to look through  
 10 the record.  
 11 Q Okay. Let's go to the next exhibit --  
 12 that's this one?  
 13 MR. MURPHY: Hold on.  
 14 BY MR. YERRID:  
 15 Q The next one is -- next annual is -- I think  
 16 it's an annual; is that right?  
 17 MR. YERRID: Is it this one?  
 18 MR. MURPHY: Yes.  
 19 BY MR. YERRID:  
 20 Q Is -- look at 029. You're the one that did  
 21 it, so you should be able to tell me.  
 22 Is that the next annual?  
 23 A Umm, we were at '11? And then 0029. 0029.  
 24 Uh, August 3rd?  
 25 Q It looks like it.

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1 A Yeah. It looks like it. That's the one  
 2 that we went over on the --  
 3 Q See the "DOB" down in the middle. It's a  
 4 little bit misleading for me.  
 5 See, it says: "May 8th, 1992"?  
 6 A Yeah.  
 7 Q Okay. But you look over, and it looks like  
 8 the date is correct?  
 9 A It's when he filled this -- this is the part  
 10 that they fill out -- that he filled this out on 8/3.  
 11 Q I understand.  
 12 A Yeah.  
 13 Q Again, on medical history -- we don't have  
 14 to go through it -- but the medical history indicates  
 15 zero problems with regard to the heart?  
 16 A Yes. Correct.  
 17 Q And that would be consistent with everything  
 18 we've talked about during the course of your  
 19 deposition, that there's been not a scintilla of an  
 20 issue with regard to him having a problem with the  
 21 heart?  
 22 A Yes.  
 23 Q And yet I'm correct -- jumping forward --  
 24 you either indicated or you thought you may have  
 25 indicated that Mr. Agu's death was caused by some type

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1 of cardiac event?  
 2 A I did indicate that.  
 3 Q And what was the basis of that?  
 4 MR. HOSKING: That's been asked and  
 5 answered. He has explained -- he went to that in  
 6 detail.  
 7 BY MR. YERRID:  
 8 Q Well --  
 9 A Based on the history --  
 10 Q That --  
 11 A -- of that day.  
 12 Q Okay. But not based on any history --  
 13 that's why I needed the clarity.  
 14 A Yes.  
 15 Q Not based on any history from a medical  
 16 standpoint because you said that earlier, but I  
 17 thought you were talking about the history given to  
 18 you by Mr. -- by the two trainers?  
 19 A The history -- correct. It was the history  
 20 from that day only.  
 21 Q Do you see what I'm saying?  
 22 I think that was your answer earlier. You  
 23 said "The history." And I want to be clear now. I'm  
 24 not trying to be repetitive.  
 25 You're now -- I'm now talking about the

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1 history we're walking through.  
2 There's been no history that you would have  
3 based a heart issue on that's found in these medical  
4 records, correct?

5 A Correct. I see what you're saying. No.  
6 Based on his medical history --

7 Q I had --

8 A -- no.

9 Q And I'm not -- I'm not second-guessing your  
10 interpretation of the history you were given. You can  
11 only operate with the history you're given. I'm  
12 saying you weren't there that day.

13 I thought we established that, right?

14 A Yes. Correct.

15 Q So any history you were given, whether it  
16 was right or wrong, is the history you relied on?

17 A That's accurate.

18 Q But this history, you participated in much  
19 of it, this medical history we're talking about now?

20 A Yes.

21 Q Okay.

22 A Yes.

23 Q And the history with regard to what we've  
24 gone through, and we're going to continue to go  
25 through, look at 0028.

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1 Q Okay. Was there any evidence of any  
2 abnormalities or irregularities?

3 A Nothing of concern.

4 Q I notice on that day, there's a different  
5 clinician's signature?

6 A Mm-hmm.

7 Q Who is that signature? Can you read it?

8 A Dr. Veronica Jow.

9 Q Dr. Veronica ...

10 A Jow, J-O-W.

11 Q The same one we talked about before?

12 A Mm-hmm.

13 Q Is this a new -- I thought she appeared on  
14 another --

15 A There's a Dr. Holschen.

16 Q Holschen. Sorry. Thank you.

17 And this doctor does not work for herself,  
18 correct? She also works for the  
19 University of California Berkeley?

20 A Those two physicians were in the same  
21 position.

22 Q Okay.

23 A She came on after Dr. Holschen.

24 Q Okay. I want to be clear. They're not  
25 independent doctors. They're all associated with

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1 A (Witness complying)

2 Mm-hmm.

3 Q What year is that? Is that the next year?

4 A August 4, 2012.

5 Q That's the next year?

6 A That -- looks like.

7 Q Okay. Again, no issue with regard to any  
8 heart problems, correct?

9 A Correct.

10 Q Okay. You did a full examination, correct?

11 A I did not do this exam.

12 Q I'm sorry. When I say "you," it is as head  
13 physician. I'm not talking about you here. I can see  
14 a different name. Another clinician did a full exam.

15 When I say "you," University of California  
16 medical team did a full exam?

17 A They did what they marked, yes.

18 Q Okay. Did a cardiovascular assessment, a  
19 complete one?

20 A Yes.

21 Q Would you assume -- not knowing anything  
22 else, would you assume it was competently done, that  
23 it was appropriately done, and done in a professional  
24 and diligent manner?

25 A Yes.

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1 the --

2 A Sorry.

3 Q They're not associated independently with  
4 anything else other than the entity we've been talking  
5 about here, the University of California at Berkeley?

6 A At this time, no.

7 Q Okay. She's a replacement for the prior  
8 doctor that left?

9 A Correct.

10 Q Okay. And she would have done the annual  
11 physical as opposed to you in this instance,  
12 in 2013 -- excuse me -- 2012. Sorry.

13 A Right. It's -- there's usually three or  
14 four physicians that are there, and whoever they walk  
15 in -- yeah.

16 Q I'm not questioning why you didn't do it.  
17 I'm just saying: This particular year, you weren't  
18 the one that did it.

19 A That's correct.

20 Q Okay. And I note this is that  
21 every-other-year landmark you mentioned, you know,  
22 that you try to make sure the athlete is fully  
23 counseled and apprised of his sickle cell trait  
24 condition --

25 A (Witness nods head)

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1 Q -- as a refresher and stimulus?  
 2 A (Witness nods head)  
 3 Q You didn't do the exam. But I notice  
 4 nothing was said in this, that I can see, about the  
 5 sickle cell trait.  
 6 Do you see anything?  
 7 A No, I do not.  
 8 Q Why not?  
 9 MR. HOSKING: That calls for speculation.  
 10 BY MR. YERRID:  
 11 Q I'm sorry.  
 12 A It's --  
 13 Q Why don't you see anything -- have you  
 14 looked at all the records, Dr. Batten?  
 15 A There's nothing on here; nor is our policy  
 16 that we do it every two years. There's no policy on  
 17 that.  
 18 Q I thought you said it was your policy.  
 19 A I say I try to.  
 20 Q Okay. Why do you do that?  
 21 A To be thorough.  
 22 Q Okay.  
 23 A But it's not part of a policy.  
 24 Q Well, don't you think any policy should be  
 25 thorough?

1 Q I thought you said it was thorough to do it  
 2 at least biannually?  
 3 A Yeah.  
 4 Q In your opinion, that was thorough?  
 5 A Yeah.  
 6 Q Okay. If you don't do it biannually, is  
 7 that something less than thorough? I don't understand  
 8 what you're saying.  
 9 A It might be less optimal, but it's not  
 10 necessarily anything that's required or -- you'd be  
 11 going above and beyond.  
 12 Q What does "less than optimal" mean in words  
 13 that I can understand, small words?  
 14 A It -- it -- it would be going above and  
 15 beyond anything that is the standard or what's  
 16 recommended.  
 17 Q Would you agree that going above and beyond  
 18 what the minimum standard is for a sickle cell trait  
 19 athlete is something that is desirable, in your  
 20 opinion as a team doctor for the  
 21 University of California Berkeley team?  
 22 MR. HOSKING: That's argumentative.  
 23 BY MR. YERRID:  
 24 Q You can answer.  
 25 A Is it desirable? I mean, it would be nice.

1 A Yeah. Policies should be thorough.  
 2 Q If the policy is to properly and timely  
 3 inform the athlete of what could be a deadly  
 4 condition --  
 5 A Mm-hmm.  
 6 Q -- if not properly dealt with --  
 7 A Mm-hmm.  
 8 Q -- do you think it's a prudent idea to  
 9 counsel the athlete at least every other year?  
 10 MR. HOSKING: That's argumentative.  
 11 BY MR. YERRID:  
 12 Q As the team doctor for the  
 13 University of California, I'm asking that question.  
 14 And if counsel wants to instruct you, we'll  
 15 let the judge decide.  
 16 That's what I'm asking. You can answer or  
 17 not answer. It's up to your lawyer.  
 18 MR. HOSKING: I haven't instructed.  
 19 BY MR. YERRID:  
 20 Q Then answer.  
 21 A I mean, I believe I sat down the first time  
 22 with him, and he had a full understanding, umm, when  
 23 we originally did that.  
 24 And, you know, I don't -- it's not -- I  
 25 guess, what's your question specifically?

1 Yeah. I mean, it's --  
 2 Q Okay.  
 3 MR. MURPHY: Do you want to mark that?  
 4 MR. YERRID: Yeah. But I mark that --  
 5 THE WITNESS: It's -- it's needed.  
 6 Necessary -- it's not necessary.  
 7 BY MR. YERRID:  
 8 Q It's not necessary to continue to advise the  
 9 athlete once they've been advised? Is that what your  
 10 testimony is?  
 11 MR. HOSKING: That misstates his testimony.  
 12 BY MR. YERRID:  
 13 Q Let me try it again, Doctor.  
 14 Do you think it's necessary to tell an  
 15 athlete, a student athlete, more than once, that has  
 16 sickle cell trait, what to look for, how to stay  
 17 vigilant? Do you think that's required more than one  
 18 time in a college career?  
 19 A I think it would be reasonable, but it is  
 20 not the standard.  
 21 Q I didn't ask you if it was the standard.  
 22 A Yeah. I think it would be reasonable.  
 23 Q Okay. Do you think one time is sufficient,  
 24 in your opinion as the team doctor?  
 25 A I think it could -- should be, yes.



1 Q Do you think one time should be sufficient?  
 2 A (No audible response)  
 3 Q Okay.  
 4 (Deposition Exhibit No. 4 marked)  
 5 BY MR. YERRID:  
 6 Q Go to the next one. I believe it's -- it  
 7 looks like -- is that August? It can't be August.  
 8 MR. MURPHY: 24th.  
 9 MR. YERRID: What's the date?  
 10 MR. MURPHY: 24th.  
 11 MR. YERRID: No. That date, what is it?  
 12 MR. MURPHY: August 6 of '13.  
 13 MR. YERRID: August 4th.  
 14 BY MR. YERRID:  
 15 Q Is that August 4, '13?  
 16 Look at 0024. Can you see that?  
 17 A (Witness complying)  
 18 Q You'll be able to read it better than me.  
 19 A Looks like it.  
 20 Q What does it look like? Does it look like  
 21 August 4th?  
 22 A It looks like August 4, '13.  
 23 Q Let's call it that. If it's something  
 24 different, we can correct it.  
 25 Again, medical history is totally within the

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1 norms with regard to any heart issues, correct?  
 2 A Correct.  
 3 Q Is this your examination?  
 4 A That's my examination, yes.  
 5 Q So this is your clinician's signature  
 6 on 0025, correct?  
 7 A That's correct.  
 8 Q Okay. And family history, again, is  
 9 consistent with the family history given you  
 10 repeatedly in the past, correct?  
 11 A That's correct.  
 12 Q No heart problems?  
 13 A I noted nothing new.  
 14 Q In fact, you did your own cardiovascular  
 15 assessment, didn't you?  
 16 A I reasked those questions for everybody.  
 17 Q I'm talking about the cardiovascular  
 18 assessment --  
 19 A Oh --  
 20 Q -- under the "Examination/Clinician notes."  
 21 You were the actual doctor who did the  
 22 cardiovascular assessment on Mr. Agu in  
 23 August of 2013, correct?  
 24 A Yes. That's correct.  
 25 Q You found absolutely nothing wrong?

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5 A That's correct.  
 6 Q Now, after all these historical developments  
 7 in terms of the negative history for heart problems  
 8 coupled with the negative examinations and the  
 9 self-reporting, is it more likely than not at this  
 10 point, that he does not have a heart problem?  
 11 MR. HOSKING: I'm sorry? Did you ask him if  
 12 he formulated that opinion then, or are you asking him  
 13 as he sits here now?  
 14 MR. YERRID: I'm not asking -- I'm sorry.  
 15 I'll try it again.  
 16 BY MR. YERRID:  
 17 Q You see the date there? I thought we went  
 18 through the date. You see August 4th?  
 19 A Yes.  
 20 Q You understand I'm referencing this page  
 21 right here, right?  
 22 A Yes.  
 23 Q Is there any question about my -- my  
 24 inquiry?  
 25 I ask you: On this date, at that point in  
 time, was there any doubt in your mind that he had an  
 absolutely healthy heart? Any doubt in your mind;  
 yes or no?  
 Or if you can't answer yes or no, I guess

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1 you don't have to.  
 2 A Yeah. There's -- there's nothing absolute  
 3 with -- with this -- with cardiac screening. So based  
 4 on my exam, there's nothing to lead me to believe  
 5 there's anything wrong. But that doesn't mean  
 6 there's -- I mean, did I have doubt? No. But  
 7 there's -- it's not absolute.  
 8 Q No, Doctor, I understand that.  
 9 A Yeah.  
 10 Q Anything is possible.  
 11 A Yes.  
 12 Q Even juries -- really, they get that.  
 13 A Yeah.  
 14 Q I promise you.  
 15 I'm asking you within a reasonable degree of  
 16 medical probability: Did you have any reason to  
 17 believe, based upon either your examination, the  
 18 examinations of your fellow physicians, the history  
 19 not only of Mr. Agu, but of his family, in the tests  
 20 that were run, did you have any reason to believe that  
 21 his heart was not a normal, perfectly functioning  
 22 heart?  
 23 A At this point, based on my exam, no.  
 24 Q In fact, you wrote under your  
 25 "Examination/Clinician notes" zero with a line through

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1 it -- back in my math days, I thought that was called  
2 the "null set."  
3 That means "less than nothing," correct?  
4 A This is just a shorthand for "no."  
5 Q Okay. In medicine, it means "no," right?  
6 A Correct.  
7 Q No issues, correct?  
8 A Correct.  
9 Q Okay.  
10 A "No active issues" is what we usually mean  
11 by that.  
12 Q Is that what you meant that day?  
13 A Yeah. No active issues, like this --  
14 basically, this is just clearing them to return for --  
15 for activities for that camp.  
16 Q You would agree with me, would you not, that  
17 he still had an active issue with regard to sickle  
18 cell trait?  
19 A Yes. I would agree with that.  
20 Q Yet you didn't counsel him for that, did  
21 you?  
22 A At that date, I did not.  
23 MR. MURPHY: Do you want that marked?  
24 MR. YERRID: Yes. Mark that as the next  
25 exhibit.

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1 What number is up there, Number 5?  
2 (Deposition Exhibit No. 5 marked)  
3 BY MR. YERRID:  
4 Q The last couple of questions, and we'll take  
5 a break.  
6 How many times has was Mr. Agu tested for  
7 sickle cell trait?  
8 A Uh, he would have been tested -- because I  
9 believe he was born in California -- he would have  
10 been tested at birth.  
11 Q That was in the '90s they started that,  
12 right?  
13 A February 21st, 1990, I believe.  
14 And then, umm, he did a -- he was tested  
15 once -- well, he had to go back to get -- for  
16 confirmatory electrophoresis because they didn't get  
17 enough blood -- but there were two blood tests: One  
18 is the screening; one is the confirmatory.  
19 Q Right. I think --  
20 A Yeah. Yeah.  
21 Q I think we're talking about semantics here.  
22 A Yeah. Yeah.  
23 Q I think he was tested, technically, twice.  
24 In the testing process, that would verify  
25 the test was positive?

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1 A Yeah, correct. Yes.  
2 Q Okay?  
3 A Yeah. Yeah.  
4 Q There weren't two separate occasions, but  
5 you test -- to make sure there's no false positive,  
6 you double-test?  
7 A Yeah. The first test is a solubility which  
8 can be a false positive.  
9 Q Yeah. But -- but there was no doubt in the  
10 University of California, Berkeley, and in the  
11 football program that this was a sickle cell trait  
12 athlete, correct?  
13 A No doubt.  
14 Q Okay. And you would agree that special  
15 precautions needed to be taken because of his  
16 condition of sickle cell trait? Would you agree he  
17 with that, generally?  
18 A Uh, can you be more specific?  
19 Q No. I really can't.  
20 A I would believe that we should follow the  
21 guidelines laid out by the NCAA.  
22 Q Well, would -- would that be -- that be --  
23 that be something you would expect; at least, the  
24 following of the guidelines laid out by the NCAA?  
25 A Yes. Yes.

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1 Q Okay. Is -- is a failure to follow those  
2 guidelines unacceptable in your opinion as a team  
3 physician?  
4 MR. HOSKING: It's argumentative.  
5 You can ask it -- you can answer it as you  
6 understand --  
7 THE WITNESS: Anything that puts a student  
8 athlete at risk would be inappropriate, in my opinion,  
9 yes.  
10 BY MR. YERRID:  
11 Q Do you want to keep going, or take a break?  
12 THE VIDEOGRAPHER: We have to change tapes  
13 pretty quick.  
14 MR. YERRID: How much? About five more  
15 minutes?  
16 Do you want to go five more minutes?  
17 THE WITNESS: I'm okay.  
18 BY MR. YERRID:  
19 Q It's not an endurance test.  
20 Do you want to --  
21 A No. I'm okay.  
22 Q Yeah. Umm, prior to the day he died, to  
23 your knowledge as the team physician, had Ted Agu ever  
24 had any experience or any difficulty in not being able  
25 to complete a drill or a conditioning exercise?

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1 A Not to my knowledge.  
 2 Q Okay. You would -- would you agree that if  
 3 a sickle cell trait athlete shows signs of fatigue and  
 4 continued pattern of difficulty, such as the one you  
 5 weren't given --  
 6 A Mm-hmm.  
 7 Q -- but the 20 or 30 minutes of difficulties,  
 8 collapsing, et cetera, there should be an assumption  
 9 made that athlete sickling?  
 10 A I would think you'd be -- you would treat  
 11 them as such, yeah, I suppose, to be safe. Yeah. You  
 12 could assume that.  
 13 Q Okay. And you would agree early recognition  
 14 of the sickling athlete is critical?  
 15 A I think it's the most critical.  
 16 Q Okay. And as a follow-up to that, you said  
 17 you got the history primarily from Mr. Jackson?  
 18 A I --  
 19 Q And it -- I'm sorry.  
 20 A No. No. You finish your question.  
 21 Q I'm not trying to put words in your mouth.  
 22 A No. No. I --  
 23 Q I thought that's what you said.  
 24 A Yeah. Primarily, on that day, I did.  
 25 Q I'm only talking about that day.

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1 Q What did you think they were doing?  
 2 After having all those conversations now,  
 3 what do you think that they were doing?  
 4 A Just like we described earlier. I mean,  
 5 they were holding a rope in teams of -- I think they  
 6 said up to 10 people was my recollection -- and they  
 7 were going up -- up a hill then -- then coming down,  
 8 and they were doing 10 reps of that.  
 9 Q This "hill" was that an asphalt parking lot  
 10 outside the stadium?  
 11 A Just outside the north end of the stadium.  
 12 Q As a team physician, had you ever heard of  
 13 an exercise occurring like that before?  
 14 A Uh, since I've been at Cal? Yeah. I've  
 15 heard of other similar-type activities or running that  
 16 hill -- or a hill nearby. Yeah.  
 17 Q On that -- you've heard of people running  
 18 that parking lot hill?  
 19 A I believe that hill, and then also there's a  
 20 hill right outside the tunnel that they used to run.  
 21 Q Okay. Okay. And they ran that before  
 22 Mr. Agu died?  
 23 A I do not know. I don't recall.  
 24 Q They've run it after Mr. Agu died, that  
 25 drill?

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1 A Yes.  
 2 Q And there was a second person you mentioned.  
 3 I believe you said there was another man?  
 4 A Oh, oh, Mike Jones, the athletic trainer who  
 5 was there as well.  
 6 Q Was he assistant athlete trainer?  
 7 A He's -- he's a graduate assistant or an  
 8 intern --  
 9 Q Okay. Graduate. I'm sorry.  
 10 A Yeah. Yeah.  
 11 Q So he may not be a certified trainer, but --  
 12 but he would have been a person also present at the  
 13 actual exercise?  
 14 A He was a certified athletic trainer, and he  
 15 was present, yes.  
 16 Q Someone that actually had eyes on?  
 17 A Yes.  
 18 Q Okay. Did you ever sit down and discuss  
 19 with him the type of drill that was going on that day?  
 20 A Later on, not that --  
 21 Q Okay.  
 22 A I mean, I got the specifics of what they  
 23 were doing --  
 24 Q Or --  
 25 A -- in generalities.

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1 A That specific drill?  
 2 Q Yes.  
 3 A I don't believe so, but I've never asked.  
 4 Q Well, if they didn't run it before and they  
 5 haven't run it after, when did they -- when did they  
 6 run it?  
 7 A I don't know -- I said I don't know if  
 8 they'd run it before. I'm not saying no. I don't  
 9 know if they ran that before.  
 10 Q My question was simple. I'm sorry. We got  
 11 off track.  
 12 A Yeah.  
 13 Q Are you saying they've done exercise on that  
 14 parking lot hill prior to this instance where Mr. Agu  
 15 lost his life? Is that your understanding? They've  
 16 done it before?  
 17 A Oh, those specific people? No. I was going  
 18 back way before even Ted was even on campus. There  
 19 was another hill that was nearby.  
 20 In my experience at Cal, they have run other  
 21 hills, but this particular team, I don't know.  
 22 Ted -- did Ted ever run that hill before?  
 23 I don't know.  
 24 Q No. That's not what I'm asking.  
 25 A Yes.

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1 Q To your knowledge, did the -- did the  
 2 supervisory people at Cal ever take student athletes  
 3 out on that parking lot hill and have them run that  
 4 drill before?  
 5 A Not to my knowledge. I don't know.  
 6 Q Okay. And let's go back and tie this up  
 7 because we're running out of tape.  
 8 A Yes.  
 9 Q You said observation was the key, most  
 10 critical part of the component in a sickle cell trait  
 11 athlete, looking and observing?  
 12 A Well, mostly, it would be the student  
 13 athlete to stop if they're -- would be the most  
 14 critical.  
 15 Q In terms of the -- I'm not really talking  
 16 about the student athlete --  
 17 A Mm-hmm.  
 18 Q -- what he or she may do.  
 19 I'm talking about the care keepers of the  
 20 student athlete. That would include you and the  
 21 trainers.  
 22 A Yes.  
 23 Q As the care keeper --  
 24 A Mm-hmm.  
 25 Q -- safeguarding their welfare, is it

1 critical to be in the right position so you can  
 2 observe a known sickle cell trait athlete as they  
 3 engage in a particular exercise?  
 4 A I think it would be critical to watch  
 5 everybody because whether they have sickle or not,  
 6 anybody could have a problem. So they should be able  
 7 to keep an eye on somebody.  
 8 Q Okay. Isn't it even more important with the  
 9 sickling athlete where intervention could mean life or  
 10 death?  
 11 In other words, I understand you say it's  
 12 important to watch all athletes.  
 13 A Sure.  
 14 Q You're a doctor.  
 15 A Yeah.  
 16 Q You think every patient is important.  
 17 A Yes. Right.  
 18 Q You think every student athlete is  
 19 important. I'm not questioning that. You'd watch  
 20 everyone.  
 21 But I'm saying: Doesn't the sickle cell  
 22 trait athlete get even a little bit more extra  
 23 attention in a -- in an exercise that's causing  
 24 significant exertion?  
 25 MR. HOSKING: It's vague.

1 THE WITNESS: I don't know if it would be  
 2 more. I think they should be watched just like  
 3 everybody else.  
 4 BY MR. YERRID:  
 5 Q Okay.  
 6 A It could happen to anybody else.  
 7 Q All right. And why is that important? And  
 8 I'm talking about, in particular, a sickle cell trait  
 9 athlete. Why is it important to watch them?  
 10 A Why is what --  
 11 Q Why is it important to watch them? As they  
 12 exert, why is it important?  
 13 A If -- if they were to exhibit anything that  
 14 would concern you, umm, you would want to stop their  
 15 activity immediately.  
 16 Q Now is when I'm going to call upon your  
 17 expertise as the team physician.  
 18 A Yes.  
 19 Q What are you looking for when you're  
 20 observing that sickle cell trait athlete? I know  
 21 you're looking for other athletes in distress.  
 22 A Uh-huh.  
 23 Q But you, in particular -- I've seen your  
 24 slides.  
 25 A Yes.

1 Q I've seen what you've educated people on.  
 2 But you -- just in terms -- simplistic terms  
 3 like -- what are you looking for, a trained eye like  
 4 yours?  
 5 A You would look for someone who would be --  
 6 you know, the body posture. Right? If they were all  
 7 of a sudden going slower, if they're slumping over, if  
 8 they're breathing heavier than those around him, given  
 9 the same, you know, off -- uh, conditioning. You  
 10 know, those can be the only ones you could really  
 11 visibly see.  
 12 Q Would collapsing be another telltale sign?  
 13 In other words, if an athlete is slumped over, going  
 14 at a slow pace and falling to his hands and knees,  
 15 then getting up slowly, would that be another  
 16 component of what you're looking for?  
 17 A Yes.  
 18 Q Okay. And if that is observed, how long  
 19 would you observe that before you would intervene as a  
 20 medical doctor?  
 21 A If I saw them collapse?  
 22 MR. HOSKING: It's an incomplete  
 23 hypothetical. Lacks foundation.  
 24 THE WITNESS: Yeah.  
 25



1 BY MR. YERRID:  
2 Q You were just -- I'm sorry.  
3 You were just talking about symptoms you  
4 were looking for, correct?  
5 A Yes.  
6 Q Okay. What symptoms were you talking about?  
7 Slowing, difficulty --  
8 A In general, yeah. Slowing, difficulty  
9 breathing.  
10 Q Then I asked you: How long would you allow  
11 that observation to go on before you intervened? That  
12 was my question. I'm not -- and I'm sorry --  
13 A If someone collapsed, and you saw --  
14 Q No. No. If someone was having difficulty.  
15 Let's don't -- forget the collapse. Let's use your  
16 symptoms.  
17 A Again, it's difficult for me to answer  
18 because it's -- kind of a --  
19 Q About how long?  
20 A I don't believe there's any time limit. If  
21 there's anything that ever concerned -- that I thought  
22 looked concerning, that I thought was potentially from  
23 sickle or anything else, I would stop their activity  
24 immediately.  
25 Q Would you let it go on for minutes?

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1 A No, if it was concerning to me.  
2 Q Okay.  
3 A If it looked out-of-the ordinary.  
4 Q Okay. If you saw an athlete collapse, would  
5 that be of concern to you?  
6 MR. HOSKING: Same objection. Lacks  
7 foundation, and it's an hypothetical question.  
8 MR. YERRID: Believe me when I tell you,  
9 you're going to get plenty of foundation on that. I  
10 promise you.  
11 I'm asking the question with the assumption  
12 you're going to get plenty of foundation this athlete  
13 collapsed.  
14 MR. HOSKING: Thanks, Steve.  
15 But for purposes of this question --  
16 MR. YERRID: Right.  
17 MR. HOSKING: -- we don't have it. So I'll  
18 make the objection.  
19 MR. YERRID: No. No. I got it.  
20 BY MR. YERRID:  
21 Q But you said collapsing would be -- have you  
22 ever seen a sickling athlete?  
23 A Collapse?  
24 Q No.  
25 Have you ever seen an athlete sickling?

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1 A No. I have not.  
2 Q Okay. Have you ever read about them?  
3 A Yes.  
4 Q Okay. What have you read about the  
5 symptoms?  
6 A Just what we've gone over, umm --  
7 Q But you didn't -- but you didn't use the  
8 word "collapse." I did.  
9 I want to know if you've -- if you've read  
10 that athletes that are sickling sometimes collapse?  
11 A Yes.  
12 Q Okay. That's not something I made up,  
13 right?  
14 A No.  
15 Q Okay. They go slow motion. They have  
16 difficulty that's observable. They intermittently  
17 collapse. They have difficulty with breathing.  
18 Yet they can still talk, right?  
19 A Correct.  
20 Q Okay. What else are the symptoms, as you've  
21 read, of a --  
22 A Cramping, muscle pain, could be nausea,  
23 vomiting, blood in the urine.  
24 Q Tell me -- tell me what the -- what the --  
25 you said "a slowing."

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1 What would that look like? Would that be  
2 kind of someone falling back or looking like they were  
3 in slow motion compared to the other athletes, the  
4 nonaffected athletes? What do you mean?  
5 A If they're unable -- I think if they were  
6 unable to complete what they were doing or keep up  
7 with everybody else --  
8 Q Would they fall back? In other words, you  
9 would notice them falling back from the other athletes  
10 that were exerting at a normal pace?  
11 A You may.  
12 Q No. I don't mean what I would.  
13 With a trained eye, would that be something  
14 you'd be looking for: That type of movement, a  
15 slowing movement, a falling --  
16 A Maybe overall a picture of them.  
17 Q Okay. Okay. Did Mr. Jackson ever tell you  
18 he had seen a sickling athlete in his life?  
19 A Yes.  
20 Q Okay. Did he tell you he knew exactly what  
21 one looked like?  
22 A He never used those words.  
23 Q What did he say?  
24 A I mean, he never -- I just knew of the  
25 previous case with him in his experience.

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1 Q Did he tell about it?  
2 A Not in -- to some degree.  
3 Q What did he tell you?  
4 A I really don't recall what -- when we hired  
5 him, umm, I really don't recall.  
6 Q Let me get this straight.  
7 Who hired him?  
8 A Who hired the athletic department --  
9 Q You said, "When we hired him."  
10 A The department -- the athletic department,  
11 which -- I actually do not work for the athletic  
12 department.  
13 Q Okay. Do you know -- he told you that when  
14 the athletic department hired him, he related to them  
15 that he'd been involved in a sickling death?  
16 A Did I know?  
17 Q Is that what you're telling me?  
18 A No. I don't know. I was not part -- I  
19 don't -- I don't hire athletic trainers.  
20 Q No. You said, "When we hired him."  
21 A After the fact. When he came here and we  
22 talked about -- part of the on-boarding is educational  
23 sickle cell training.  
24 And we talked, and he was well versed it in.  
25 So we went over the NCAA guidelines. He was well

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1 versed, and he said he was involved.  
2 Q That's what I'm asking you.  
3 A Yes.  
4 Q You talked him -- to him personally, right?  
5 A After he was hired, yes.  
6 Q Okay. And I'm not suggesting you had  
7 anything to do with the hiring decision, Dr. Batten.  
8 I'm really not here to suggest that.  
9 I am here to ask you, though, what  
10 Mr. Jackson told you his experience was with sickling.  
11 What did he tell you?  
12 A Umm, that there was a player at  
13 Central Florida, umm, that died, to the best of my  
14 recollection, because he was pushed by coaching staff,  
15 umm, and --  
16 Q And that Mr. Jackson didn't know he had  
17 sickle cell trait?  
18 A I believe he did tell me that; that he did  
19 not know.  
20 Q Okay.  
21 A Yep. I believe he did tell me that.  
22 Q Did he describe the movements the player  
23 that ultimately died from the sickling, that he was --  
24 it looked like he was going in slow motion and he was  
25 falling to the back, and on the wind sprints, he was

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1 last behind linemen and things such as that? Did he  
2 tell you those things?

3 A No. He did not go into detail of what the  
4 clinical picture --

5 Q Okay.

6 MR. MURPHY: He's got to go off.

7 MR. YERRID: That's fine.

8 Thank you very much. We're going to take a  
9 break and replace the tape.

10 THE VIDEOGRAPHER: This marks the end of  
11 Media Number 1 in the deposition of Dr. Casey Batten.

12 We're going off the record. The time is

13 12:13 p.m.

14 (Proceedings recessed from 12:13 p.m. until 12:37 p.m.)

15 THE VIDEOGRAPHER: We are back on the record  
16 at 12:37 p.m.

17 This marks the beginning of Media Number 2  
18 in the deposition of Dr. Casey Batten.

19 Please proceed.

20 BY MR. YERRID:

21 Q Dr. Batten, I wanted to make sure that we  
22 proceed in certain conclusions that I've reached.

23 Who is the head of sports medicine -- who  
24 was the head of sports medicine -- excuse me -- at the  
25 time Mr. Agu passed?

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1 A I was the head team physician for the  
2 University.

3 Q Okay. I thought we had established that,  
4 but I want to be clear.

5 A Yes.

6 Q And there was in place a sickle cell trait  
7 policy at the University that applied to those  
8 athletes enrolled as student athletes playing football  
9 for the team?

10 A It's not a written policy, but we have -- we  
11 followed the NCAA guidelines --

12 Q Fine.

13 A -- as written. So that would be the written  
14 policy.

15 Q Okay. Well, let me show you what I'm going  
16 to mark as Exhibit 6.

17 A Mm-hmm.

18 Q These appear to be color reproductions of  
19 slides.

20 A Mm-hmm. I think I have these here.

21 Q If you have them, I'd prefer to -- you look  
22 at yours.

23 A They're in black and white, but does it  
24 matter?

25 Q If it doesn't matter to you --

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1 A No.  
2 MR. MURPHY: The only thing about the  
3 black-and-white one is the red -- things that were in  
4 red didn't come out.  
5 THE WITNESS: Oh, okay. I --  
6 MR. YERRID: How about -- how about this?  
7 I'll do my best to follow in black and  
8 white, then I'll --  
9 MR. MURPHY: I have an extra one.  
10 MR. YERRID: Okay.  
11 (Discussion off the record)  
12 (Deposition Exhibit No. 6 marked)  
13 BY MR. YERRID:  
14 Q Use the color, and we'll -- I have the  
15 exhibit.  
16 A Okay.  
17 Q You say you follow the NCAA guidelines,  
18 Dr. Batten, at University of California, Berkeley?  
19 A Yes.  
20 Q You also follow NATA?  
21 A Yes, which is largely what the NCAA draws  
22 upon.  
23 Q I understand.  
24 But both of the those would applicable to  
25 your program?

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1 A Yes.  
2 Q When I say "you," not meaning personally. I  
3 mean the University of California.  
4 A Yes.  
5 Q Do you see that document? It's not been  
6 Bates-stamped --  
7 A Mm-hmm.  
8 Q -- I believe, on mine, but it looks like on  
9 the one that I just got handed, it's 0337.  
10 Do you see that Bates stamp? It's in white.  
11 It should be on the front in that first captioned  
12 picture.  
13 A This is the number?  
14 Q Yes. Yes.  
15 That's what we call "Bates-stamped."  
16 A Oh, okay. Sorry.  
17 Q It's just different than the others, and I  
18 apologize: It's misleading.  
19 But it should be 0337 through 48, if I'm not  
20 mistaken.  
21 Do you see that?  
22 Do you have them all?  
23 A Uh, yes, I do.  
24 Q That appears to be -- at least, in some  
25 format -- a written policy -- or, I guess, a highlight

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1 of written policies.  
2 Is that something that you use for  
3 educational purposes and training purposes at the  
4 University?  
5 A This is something I only did -- this is --  
6 we actually instituted screening for football a year  
7 before the NCAA did.  
8 Q What year would that be?  
9 A 2009, when they -- we did this.  
10 Q You did it on a voluntary basis --  
11 A (Witness nods head)  
12 Q -- before it became mandated?  
13 A Right.  
14 Q And in any event, it -- it -- I don't want  
15 to belittle the point -- for whatever reason, the  
16 proper screening was done of Ted Agu, and there was a  
17 positive blood test.  
18 And there's no issue with regard to him  
19 being a sickle cell trait athlete at all relevant  
20 times of this case, right?  
21 A I'm unclear -- what was it that you're  
22 saying?  
23 Q Ted Agu was a known sickle cell trait  
24 athlete who tested positive regardless of whether the  
25 policies to test were mandatory or volunteer?

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1 A Yes. Correct.  
2 Q I just didn't want to -- your University  
3 began testing a year before it was required.  
4 A For football.  
5 We didn't require it, but we offered it.  
6 Q Right. But it's not required in all  
7 football programs?  
8 A Yes. You can still waive out of it.  
9 Q I understand.  
10 A Yeah.  
11 Q It doesn't matter.  
12 The University of California has not waived  
13 out of it, right?  
14 A No. An individual athlete can waive out of  
15 it.  
16 Q I understand.  
17 Let's get -- let's turn to  
18 Plaintiff's Exhibit 6.  
19 The origin of that looks like it was some  
20 type of presentation in August of 2009?  
21 A Mm-hmm.  
22 Q What was the presentation?  
23 A I -- I wrote this for the  
24 strength-and-conditioning staff in 2009.  
25 Q For the strength-and-conditioning staff?

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1 A Mm-hmm.  
 2 Q Is there any reason why Mr. Harrington would  
 3 not have been privy to that information at the time he  
 4 came aboard as the strength coach for UCB?  
 5 A (No audible response)  
 6 Q That same information --  
 7 A Yes. He would have the same information,  
 8 yes.  
 9 Q Okay.  
 10 A I give them annually.  
 11 Q You would have been happy -- in fact, you  
 12 did convey to the strength coach and other members of  
 13 the staff and the coaching crew what was contained  
 14 with regard to sickle cell trait athletes; what was  
 15 known, the precautions, et cetera?  
 16 A Yes, exactly.  
 17 Q Okay. And we've already gone over this, but  
 18 it -- the introduction is -- please read it very  
 19 quickly.  
 20 A "Sickle cell trait is a known risk factor  
 21 for sudden death during athletic participation" --  
 22 MR. HOSKING: Slow, slow, slow.  
 23 THE WITNESS: Oh.  
 24 MR. HOSKING: For the court reporter.  
 25 MR. YERRID: She can actually look at

1 A In terms of percentage, yes.  
 2 Q Okay. And you -- you mentioned -- and I  
 3 think, Doctor -- I appreciate it.  
 4 You mentioned there's mandatory testing in  
 5 California for all newborns after February 21, 1990,  
 6 correct?  
 7 A That's correct.  
 8 Q Okay. Regardless, we've -- we've gone over,  
 9 I think, at least twice, maybe three times, that  
 10 Ms. Agu was tested, and the test was a definitive  
 11 positive.  
 12 And everyone -- at least from a medical  
 13 standpoint and your staffing standpoint -- knew that  
 14 he was a sickle cell trait athlete?  
 15 A Yes. They were all aware.  
 16 Q Okay. Now, we talked about this, and it  
 17 does fit with your cardiac suspicion -- and again, I  
 18 want to premise this.  
 19 A Mm-hmm.  
 20 Q I want to make sure the jury -- and in  
 21 fairness to you -- your feeling about the cardiac  
 22 origin of his problem was directly attributable to  
 23 what you were told happened that day.  
 24 You were not there, right?  
 25 A That's correct.

1 that --  
 2 THE WITNESS: "Recently, the NCAA has  
 3 recommended that institutions test student athletes  
 4 for sickle cell trait in attempts to decrease the  
 5 incidence of exercise-associated deaths. We must all  
 6 understand what sickle cell trait is and what we can  
 7 do to minimize any related adverse events."  
 8 BY MR. YERRID:  
 9 Q Now, going to the next page, which is 0339,  
 10 do you see the word "exertion"? It talks about the  
 11 mechanics of normal red blood cells transforming into  
 12 sickle cells. But you see, they've got "exertion,"  
 13 not only in bold, but in big red letters.  
 14 Do you see that?  
 15 A Mm-hmm.  
 16 Q Exertion is the key, and that's why sickle  
 17 cell athletes are treated very carefully under  
 18 exercise scenarios, correct?  
 19 A Anything that would lower oxygen. So it's  
 20 not just exertion, but it is part of it, yes.  
 21 Q Well, it's primarily --  
 22 A Primarily, yes.  
 23 Q And while anyone can have it, on your next  
 24 slide, it primarily affects African-Americans to a  
 25 large extent in terms of percentage?

1 Q Okay. Had you been told a different  
 2 history, you may well have given a different opinion  
 3 as to -- in terms of concluding how he died -- or why  
 4 he died?  
 5 MR. HOSKING: Calls for speculation.  
 6 THE WITNESS: If -- if I was given different  
 7 information, I could change my opinion.  
 8 BY MR. YERRID:  
 9 Q Right. In other words, the gentleman was  
 10 under water for one minute, another gentleman was  
 11 under water, actually, for 30 minutes, may have an  
 12 impact on whether the gentleman drowned or whether the  
 13 gentleman had a heart attack.  
 14 I'm just saying: History is very important  
 15 to this type of diagnosis, correct?  
 16 A I would agree. It's an important part of  
 17 it.  
 18 Q Okay. And from the history that you  
 19 understood, it was two minutes or less of distress:  
 20 Of knee, to stretcher, and then within another couple  
 21 minutes, death?  
 22 A The whole -- yeah. The whole thing from the  
 23 moment of taking a knee to death -- or when he became  
 24 unresponsive --  
 25 Q Couple minutes?



1 A Less than 10 minutes is the best I can give.  
 2 Q Well, that would include going down the  
 3 hill, transporting, becoming unresponsive, and then  
 4 actually being pronounced dead?  
 5 A From the moment that the athletic training  
 6 staff attended Ted to the moment he -- he went  
 7 unresponsive, all of that was probably less than  
 8 10 minutes.  
 9 Q Okay. Less than. All right.  
 10 A 10 minutes.  
 11 Q You would agree, and I gave you the opinion,  
 12 but I want to be clear.  
 13 If it -- if the time frame given to you was:  
 14 Oh, no. He struggled -- and I use your definition of  
 15 "struggle" --  
 16 A Right.  
 17 Q -- lagged behind, seemed to go in slow  
 18 motion, had difficulty, you know, went from first to  
 19 last, could not keep up the pace of the other  
 20 athletes. And I'm taking out "collapsed" because --  
 21 A Yes.  
 22 Q -- I don't want to get into the defense  
 23 lawyer's mind and have him object again.  
 24 That is something if I told you occurred,  
 25 and it was 10 minutes, 10 to 15 minutes, 15 to

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1 20 minutes, that makes it more likely there may be  
 2 some other etiology of this death?  
 3 MR. HOSKING: I'll still object.  
 4 That's an incomplete hypothetical, and it  
 5 calls for speculation.  
 6 THE WITNESS: I mean, that, in and of  
 7 itself, doesn't necessarily scream "sickle." It would  
 8 be, again, in terms of the whole clinical picture and  
 9 what you're seeing and what things --  
 10 Q I totally understand that, but I'm --  
 11 A Yeah.  
 12 Q -- saying: The greater the time period that  
 13 elapses from the onset of the struggling or the  
 14 difficulty until the demise of the student athlete,  
 15 the more likely sickling is a diagnosis as opposed to  
 16 cardiovascular?  
 17 MR. HOSKING: Same --  
 18 BY MR. YERRID:  
 19 Q Does that make sense?  
 20 MR. HOSKING: Same objection.  
 21 THE WITNESS: Yeah. That --  
 22 BY MR. YERRID:  
 23 Q Is that true, generally?  
 24 A Okay. Generally.  
 25 Q Generally, when someone is having a

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1 cardiovascular issue, there's a pretty quick shutdown?  
 2 A Typically.  
 3 Q Okay. I'm talking about, you know, a minute  
 4 or two, much like the history you were given.  
 5 Within two minutes, he was on the stretcher,  
 6 and within another few minutes, he was dead.  
 7 A (Witness nods head)  
 8 Q I mean, that's -- that's consistent with a  
 9 cardiovascular incident?  
 10 A Yes.  
 11 Q Okay. The struggling, the periodic  
 12 collapsing over a period of 10, 15 minutes or a little  
 13 longer, that's more consistent with a sickling  
 14 athlete?  
 15 A Correct.  
 16 Q I'm not saying it was a sickling athlete in  
 17 this case, but that -- that type of history is  
 18 something that would be more consistent with a  
 19 sickling athlete; is that right?  
 20 MR. HOSKING: Same objections.  
 21 THE WITNESS: It would be more consistent.  
 22 But as I understand, you know, most athletes --  
 23 BY MR. YERRID:  
 24 Q Go ahead.  
 25 A Most athletes with sickling, if they're

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1 allowed to set their other pace, and they -- and  
 2 they're not pushed, they will stop on their own.  
 3 Q I -- I totally respect -- I'm not trying --  
 4 I'm not at all dealing with the ultimate conclusion of  
 5 what happens.  
 6 A Right.  
 7 Q The ultimate final occurrence.  
 8 But I'm just saying: The longer the  
 9 progression of symptoms, the longer in duration, the  
 10 more consistent they are -- that meet your  
 11 components -- struggling, normal motion to slow  
 12 motion -- at least sickling becomes more of a  
 13 probability in your differential diagnosis?  
 14 A Yes.  
 15 MR. HOSKING: Same objections.  
 16 BY MR. YERRID:  
 17 Q Yes?  
 18 A It would move higher up on the list. Yes.  
 19 Q All right. And in going to that, I -- to  
 20 that issue, it's very important that while you haven't  
 21 observed sickling -- have you observed it even on a  
 22 video?  
 23 A (No audible response)  
 24 Q Have you ever seen a person die on a video,  
 25 sickling to death?

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1 A By sickling? No, I've not seen that --  
2 Q Okay.  
3 A -- but I've seen, you know, in training, in  
4 medical school --  
5 Q Animations?  
6 A We deal with children with sickle cell  
7 disease. I've seen clinical -- I've seen plenty of  
8 people in crisis, yeah. But not an athlete.  
9 Q I'm not suggesting that that -- that is a  
10 shortcoming on your part. That's a --  
11 A Yeah.  
12 Q -- a real answer, and I appreciate it.  
13 Given that limitation, what is the extent of  
14 your knowledge; in other words, the training and  
15 education you've had with regard to sickling?  
16 A Sickling? Umm, it's -- it would be --  
17 Q You can give me a general --  
18 A Yeah. It's part of -- it's part of your --  
19 you know, anybody who is fellowship-trained in sports  
20 medicine would have, you know, general knowledge,  
21 whether you picked that up at a conference or reading  
22 articles on your own or the -- the information  
23 provided by the NCAA.  
24 Q As a matter of fact, you made it a point to  
25 not only get the information, you expanded on the

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1 information and tried to act as a conduit to give that  
2 information to those that should be charged with that  
3 knowledge at your University, right?  
4 A Yeah. That was my -- I was trying --  
5 Q That was your intent?  
6 A Yeah. Before the NCAA.  
7 Q Okay. Then you feel, then, maybe competent  
8 to answer this question: What is the treatment  
9 protocol for a sickle cell trait athlete who is seen  
10 struggling during a conditioning session? List all  
11 the things you're supposed to do.  
12 A The treatment protocol? If the athlete --  
13 well, the way the strength-and-conditioning staff  
14 is -- the training staff is instructed, if they see  
15 anything that is concerning whatsoever, they're  
16 immediately, umm, instructed to stop the activity.  
17 Q To -- to stop the activity, to stop the  
18 athlete?  
19 A Stop the athlete. Stop the athletic --  
20 right. Not the whole activity -- the athlete's  
21 participation within that activity.  
22 Q You may have misstated there. I just want  
23 to be clear.  
24 To stop what, sir?  
25 A The student athlete from participating in

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1 that activity.  
2 Q Okay. In other words, if an activity is  
3 going on, an athlete seems to be struggling --  
4 certainly an athlete that has a known sickle cell  
5 trait -- the understanding is immediate intervention,  
6 stopping the athlete from further activity?  
7 A (Witness nods head)  
8 That's correct.  
9 Q Okay.  
10 A The first step would be removing from  
11 activity.  
12 Q Please continue, sir.  
13 A At that point, if possible, you'd want to  
14 take vital signs if you have a blood pressure cuff,  
15 umm, or, you know, if you're closer to a medical  
16 facility, to take vital signs and then assess their  
17 mental status.  
18 Q Let me stop you there.  
19 A Yeah.  
20 Q In this case, intervention and -- I want to  
21 go back -- just a second. I've got it here.  
22 I think in your press conference -- in the  
23 press conference, you -- you were quoted as saying:  
24 "Towards the end of the workout, the medical staff  
25 noticed that he" -- meaning Mr. Agu, "was having some

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1 difficulty completing the workout. And as a  
2 precaution, his activity was immediately stopped."  
3 That would mean as soon as he took a knee,  
4 he was stopped from participating further, in  
5 practical application of what we talked about today?  
6 A It's my understanding: He took a knee. The  
7 athletic trainers went up. He was trying to continue  
8 on his own --  
9 Q Okay.  
10 A -- and the players were trying to help him  
11 that the trainers stopped that, and they, umm, you  
12 know, assessed him for medical.  
13 Q I'm not talking about the graduate --  
14 A Yeah.  
15 Q -- trainee.  
16 But the -- but the head trainer would be  
17 Mr. Jackson?  
18 A Yes.  
19 Q Okay. And according to what he told you, he  
20 immediately intervened when the gentleman, Mr. Agu,  
21 took a knee?  
22 A Yes.  
23 Q Okay.  
24 A Yeah.  
25 Q And as far as what he told you, prior to

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1 that point, Mr. Agu had not had any difficulties in  
2 continuing with the exercise or participating in  
3 that -- in the hill drill?

4 A That's correct.

5 Q Okay. And he specifically told you that,  
6 right?

7 A Yes.

8 Q Did he tell you where he was located as he  
9 observed these teams going up and down the hill ten  
10 times?

11 A He said he was somewhere in between, in the  
12 middle.

13 Q Middle of the hill?

14 A Yes.

15 Q So he could see both the bottom and the top?

16 A That's correct.

17 Q That's what he told you, right?

18 A Yes.

19 Q Okay. And that would be important. As we  
20 talked about earlier, observation posts by the  
21 observer are very important?

22 A Agree.

23 Q Okay. Then what would be done? Pull the  
24 athlete -- well, take the vital signs, if appropriate.

25 In this case, what would -- what would

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1 And then you would monitor very closely for  
2 any decline. So looking for mental status changes,  
3 changes in vital signs, if you had them.

4 Q Which he had. Between the stretcher ride --  
5 sorry -- the cart ride -- between the time he was put  
6 on the stretcher and downhill -- by the time he got to  
7 the down part of the hill, he became unresponsive.  
8 You've talked about that.

9 A That's accurate.

10 Q Go ahead.

11 A And then, at that point, if someone was  
12 shown to be obtunded or decreased in mental status or  
13 any sort of decline that was out of the ordinary,  
14 then -- then you would activate EMS, attach an AED,  
15 and then -- depending where you're at, of course,  
16 what's available to you, what services -- oxygen and  
17 IV fluids, if possible.

18 Q Okay. Do you think -- as a medical doctor  
19 in charge of this team's welfare, do you think it was  
20 important that the appropriate equipment be there in  
21 the case of need by a student athlete like Mr. Agu?

22 MR. HOSKING: That's vague.

23 THE WITNESS: I think it needs to be  
24 accessible. But I don't -- I don't know if it  
25 necessarily needs to be there at all times with every

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1 Mr. Jackson be charged to do?

2 A Well, if you can, you would want to get a  
3 blood pressure and pulse.

4 I know he tried to take his pulse, and Ted  
5 hid his hand away, didn't want to be attended to. He  
6 tried to take his pulse.

7 Q Who told you that? Mr. Jackson?

8 A Yes. That's correct.

9 Q Told you that Mr. Agu pushed his hand away?

10 A Yes. He said he was fine and --

11 (Coughing)

12 THE WITNESS: -- wanted to keep going.

13 BY MR. YERRID:

14 Q Okay. And in this case, the historian is  
15 Mr. Jackson, correct?

16 A That's correct.

17 Q And then what's the next portion of the  
18 protocol?

19 A Then -- and again, this would all sort of be  
20 simultaneous. And then, depending on the  
21 environment -- so if they were hot, dehydrated, you'd  
22 want to cool the athlete; if needed, hydrate the  
23 athlete. In this case, they gave him water. He was  
24 drinking water.

25 Umm, and that would be the next step.

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1 person.

2 BY MR. YERRID:

3 Q Okay. Well, when you say "accessible," you  
4 mean in the -- in the general vicinity of the where  
5 the exercise is taking place?

6 A Within minutes, yeah.

7 Q Well, do you know why this exercise was  
8 taking place outside of the normal area where the team  
9 practiced, on a hill in the parking lot?

10 MR. HOSKING: Lacks foundation about the  
11 "normal area," but --

12 BY MR. YERRID:

13 Q I'm sorry. Where was the normal area the  
14 team practiced?

15 A Football practice, or conditioning?

16 Q Conditioning.

17 A Umm, typically, either within the training  
18 facility or in the stadium.

19 Q Okay.

20 A But they had been known in the past to do it  
21 out in that -- those lots. Before Ted.

22 Q Actually -- actually, you mentioned that,  
23 and you said it wasn't that lot. It was another lot  
24 that they may have used. You've already --

25 A Yeah. Before Ted. Yeah. Our football

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1 team, since I've been there, has used outside  
2 facilities. Before, they have run over hills out  
3 behind the stadiums like all teams do. All teams can  
4 be all over campus.

5 Q Okay. Well, I don't know -- and you can  
6 help me with this -- but I don't know if your  
7 experience includes teams practicing, running up and  
8 down a hill ten times that's a parking lot, an asphalt  
9 parking lot.

10 Is that what -- the hill you're talking  
11 about? Is that the hill we're talking about? Was  
12 that the asphalt parking lot?

13 A That they -- they had done this day? Yes.  
14 The asphalt parking lot right outside the north  
15 tunnel.

16 Q Is that, do you think, within the proximity  
17 of where you would have life-saving devices like  
18 oxygen equipment, et cetera?

19 A Well, you would have emergency equipment  
20 within -- within minutes, yes. That was within the  
21 proximity.

22 Q And you think it would be okay to not have  
23 oxygen equipment there on the hill?

24 A I believe it would be okay.

25 Q Why?

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1 trainer in the field -- wherever the field is -- when  
2 a sickle -- sickle cell athlete is -- is being  
3 exerted?

4 A It is available within proximity. It was  
5 available.

6 Q Isn't the time of administration critical in  
7 a sickling athlete -- the time of administration of  
8 oxygen in a sickling athlete, isn't it critical?

9 A I don't know how critical it is.

10 Q Okay. Where one minute or two minutes would  
11 make a tremendous difference in the potential outcome?

12 A I don't know --

13 MR. HOSKING: It's argumentative, and it  
14 calls for speculation. It's incomplete hypothetical.

15 BY MR. YERRID:

16 Q No. But if you don't know, you can just  
17 say, "I don't know."

18 A I don't know. At sea level, I do not think  
19 oxygen -- I'm not sure oxygen within a minute or  
20 two -- I don't know if anybody could say that's  
21 critical.

22 Q Okay.

23 A I don't know.

24 Q Okay. You -- you don't know --

25 A No.

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1 A Because it's within close proximity.

2 And really, oxygen is -- is -- it's not a  
3 recommendation. It's -- it would not necessarily be  
4 something you have with every person -- or an athletic  
5 trainer. Just like an AED, you have it within  
6 minutes.

7 Q Okay. Let me get this straight.

8 A Yeah.

9 Q I just want to be clear.

10 A Yes.

11 Q This isn't my first sickle case.

12 But you're saying oxygen is not a  
13 recommended protocol for a sickling athlete?

14 A If they were -- if they run into issue --  
15 if -- if available -- like in NATA guidelines, if the  
16 oxygen is available, you'd want to use that.

17 But I consider oxygen and IV fluid as sort  
18 of that next level of care an athletic trainer  
19 wouldn't necessarily be responsible for.

20 Q Oh, no. I don't think an athletic trainer  
21 actually could even administer an IV, could they?

22 A Unless they were trained by the EMT or  
23 something like that, no.

24 Q But the oxygen administration is -- why  
25 wouldn't -- why wouldn't oxygen be available to the

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1 Q -- right?

2 A I do not know.

3 Q Do you know if oxygen administration is  
4 recommended by the folks that do know about treating  
5 the sickling athlete?

6 A Yes. But it's not recommended to have  
7 oxygen with athletes at all times. It's not for that  
8 altitude.

9 Q Okay. Okay. You see on 344, when we talked  
10 about -- cannot be -- I mentioned that the athlete  
11 cannot be conditioned out of the trait, earlier.

12 What does it say there, that first line?

13 A "Athletes cannot be conditioned out of the  
14 trait."

15 Q And it looks like you've made "cannot" in  
16 big bold and red-lined?

17 A (Witness nods head)

18 Q Red color -- I'm sorry.

19 That's a fact, isn't it? Athletes cannot be  
20 conditioned out of the trait?

21 A That is correct.

22 Q If they've got the trait, they're going to  
23 have the trait?

24 A Correct.

25 Q Regardless of how well they're conditioned?

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1 A Correct.  
 2 Q Okay. And if you go to 345, that's what you  
 3 were just talking about: Hydration, monitoring the  
 4 athlete, the altitude issue.  
 5 A (Witness nods head)  
 6 Q The -- the condition, as best you can, even  
 7 though, you know, you can't condition the athlete out  
 8 of the trait, those are all the things you've covered  
 9 and been kind enough to share with us today, right?  
 10 A Yes.  
 11 Q Okay. Turn to that next page -- and I don't  
 12 have a number on that, unfortunately.  
 13 A Yeah. I see it's missing, but it's  
 14 between --  
 15 Q That's okay.  
 16 I think -- I think it should be 346.  
 17 A Ycp.  
 18 Q Okay. But you know which page we -- we're  
 19 both on the same page.  
 20 That's talking about "if any symptoms or  
 21 signs, immediately cease all activity," right?  
 22 A Yes.  
 23 Q Now, I asked you before if you knew exactly  
 24 what the drill was, and you said you did; that you  
 25 learned about what the drill was both that day and

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1 Q Okay. All right. And I want to be sure --  
 2 I want to be sure that type of up and down, with --  
 3 you obviously were familiar with it because you know  
 4 about the athlete resting -- getting some --  
 5 A Mm-hmm.  
 6 Q -- strike that -- being less exerted on the  
 7 way down as a form of some reprieve, but you talked  
 8 about how an athlete would go up and down.  
 9 So you're very familiar with it, the  
 10 activity?  
 11 A Yes. Yes, I am.  
 12 Q Okay.  
 13 A Mm-hmm.  
 14 Q How much time do you think -- you would  
 15 estimate it would take an athlete, at a normal pace,  
 16 going up and down one time, the hill -- if you  
 17 traverse up and down -- just your best estimate?  
 18 A Could you define, like, a "normal pace"?  
 19 Like --  
 20 Q Normal athlete on the rope drill.  
 21 I mean, what are we talking about?  
 22 A I asked that question, and they said  
 23 probably less than a minute up and then --  
 24 Q What?  
 25 A They said less than a minute was what I was

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1 certainly the days that followed?  
 2 A That's correct.  
 3 Q Okay. You're aware that it was a continuous  
 4 drill where the participant student athletes would  
 5 have to go in succession ten times up this hill and  
 6 back?  
 7 A Yes.  
 8 Q Okay. Without stopping, without rest?  
 9 A Well, the rest was built in on the downhill  
 10 portion of it. That's my understanding.  
 11 Q Well, it may be restful to a doctor watching  
 12 it, but the athletes were never allowed to stop. They  
 13 were going up to the top of the hill, back down to the  
 14 bottom of the hill, then back up the hill.  
 15 And you're saying they were resting as they  
 16 were coming down the hill?  
 17 A There was less than -- it was less than  
 18 the -- the exertion going up.  
 19 But in terms of was there an actual break  
 20 where they did nothing, no, not to my knowledge?  
 21 Q It was continue -- what --  
 22 A Yes.  
 23 Q -- we'd call in sports -- we've done some  
 24 sports -- but "continuous activity"?  
 25 A Yes.

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1 given to go about 70 -- if I'm correct, about --  
 2 70 meters or yards up, and then coming down -- got to  
 3 be a total estimate -- I would say around a minute,  
 4 two minutes.  
 5 Q That would be each trip, round trip?  
 6 A So maybe three, four minutes each trip.  
 7 Q Okay. Times ten?  
 8 A Yeah.  
 9 Q Nonstop?  
 10 A I believe the whole workout, I think, was an  
 11 hour. Yeah.  
 12 Q I'm not talking about the whole workout.  
 13 That hill drill --  
 14 A Which would be six minutes for the whole  
 15 trip.  
 16 Q That hill drill, nonstop, let's use the  
 17 lower estimate.  
 18 A Yes.  
 19 Q Four minutes. Would be 40 minutes of  
 20 continuous exertion? Yes?  
 21 A Yes.  
 22 Q Do you think that that -- strike that.  
 23 Were you consulted about that before that  
 24 drill was put into place for these athletes?  
 25 A No, I was not.

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1 Q Were you aware that that student athlete  
 2 that had been diagnosed to have sickle cell trait was  
 3 going to be part of that exercise before it happened?  
 4 A No one ever made it specific -- this is part  
 5 of the their normal training.  
 6 Q Giving -- I'm sorry.  
 7 A I mean, I didn't know specifically they were  
 8 going to be doing that workout, no.  
 9 Q Given respect to HIPAA and not encumbering  
 10 you with the difficulty of the question otherwise --  
 11 don't disclose any names -- but were there other  
 12 sickle cell trait athletes involved in that exercise  
 13 session?  
 14 A Yes.  
 15 Q How many?  
 16 A There were two others --  
 17 Q Okay.  
 18 A -- known at that time.  
 19 Q Did you know that they -- those athletes  
 20 were going to be subjected to that exercise before it  
 21 occurred?  
 22 A No.  
 23 Q Do you think, given the nature of the  
 24 exertion, the length of the exertion, and the known  
 25 complications that can happen to sickle cell trait

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1 athletes, that you should have been consulted before  
 2 they engaged in that effort?  
 3 MR. HOSKING: I'll object that it's  
 4 compound.  
 5 I assume you're talking about his state of  
 6 mind at the time and not currently. True?  
 7 MR. YERRID: I'm not sure.  
 8 Can you read back the question? I don't  
 9 think I was talking about state of the mind.  
 10 (Record read back by the Court Reporter)  
 11 THE WITNESS: No. I think it was within  
 12 guidelines.  
 13 BY MR. YERRID:  
 14 Q Do you think that exercise was appropriate?  
 15 A I thought it was reasonable, yes.  
 16 Q Had it been observed -- now that you've been  
 17 kind enough to demonstrate that you know the -- the  
 18 specifics of the exercise -- had it been observed that  
 19 Mr. Agu -- and I'm talking specifically about  
 20 Mr. Agu -- was having difficulty on Lap 6, I say  
 21 "Lap 6" meaning Hill Traverse 6 --  
 22 A Okay.  
 23 Q -- out of 10.  
 24 Do you think it would be appropriate to wait  
 25 until Traverse No. 9 or 10 to pull him from the

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1 exercise?  
 2 MR. HOSKING: Sorry. Once again, I don't  
 3 want to interfere, but you say "Do you think."  
 4 MR. YERRID: Yes.  
 5 MR. HOSKING: I get the feeling you're  
 6 asking him what he thinks right now.  
 7 MR. YERRID: No. No. No. No. I'm sorry.  
 8 If he was there that day, as the team  
 9 doctor -- and I know he wasn't -- and I thought you  
 10 might object it was an unfair question because you  
 11 weren't there and -- and nobody has established that  
 12 he had difficulty on Hill No. 6 traverse yet.  
 13 But assuming that it happened -- pick any  
 14 one. I'm just picking 6. If he had difficulty on 6,  
 15 of the type you've described, you know, the slow  
 16 motion, the distress, et cetera, do you think it would  
 17 have been appropriate to wait however many minutes it  
 18 took to get to -- however many hill traverses it would  
 19 have taken to get to Hill Traverse No. 9?  
 20 THE WITNESS: I think if I was there --  
 21 MR. HOSKING: I'll object. It's an  
 22 incomplete hypothetical, calls for speculation, and  
 23 it's an expert-type question.  
 24 BY MR. YERRID:  
 25 Q Go ahead. You're the team doctor.

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1 A If I was there and I saw something that  
 2 concerned me, I would stop the activity immediately.  
 3 Q Right then on -- on --  
 4 A If it was something that was concerning that  
 5 I saw, given the whole picture, I would stop the  
 6 activity.  
 7 Q Traverse No. 6?  
 8 A At any point.  
 9 Q If it was Traverse No. 7, you'd stop it  
 10 during ??  
 11 A If it was something that concerned me, yes.  
 12 Q Well, if the athlete demonstrated the  
 13 symptoms that you were kind enough to describe, that  
 14 would have been justification for you to stop that  
 15 athlete participation right then, wouldn't it?  
 16 MR. HOSKING: Same objections.  
 17 BY MR. YERRID:  
 18 Q If you had observed what you said was a  
 19 sickling athlete's symptoms, would that have been  
 20 enough justification to stop?  
 21 A If it was kind of the whole constellation  
 22 and just the overall clinical picture --  
 23 Q Yes.  
 24 A -- because some of the stuff, you can't  
 25 observe.

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1 I mean, it's sort of a general sense. If it  
2 was concerning me, yes, I would have stopped that.  
3 Q Okay. Well, of course, to stop it, you'd  
4 have to observe it.  
5 A Right.  
6 Q And if you weren't observing it, no way  
7 you'd know it, right?  
8 A Exactly.  
9 Q So you, as the doctor who wasn't there that  
10 day, would have no way of knowing what went on, would  
11 you?  
12 A I was not there to observe. I just -- based  
13 on the history that I was given after the fact from  
14 the -- from the athletic training staff and then some  
15 of the students.  
16 Q Like you've told me at least ten times in  
17 this deposition, you have to rely on the history  
18 that's given to you?  
19 A That's correct.  
20 Q Okay. I think we've talked about the  
21 punishment drills. I won't touch upon it again, but  
22 you said you'd not heard the term "punishment drills"?  
23 A I've not heard that specifically used, no.  
24 Q Should a conditioning program be designed  
25 from a physician's -- team physician's standpoint to

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1 build toughness?  
2 A I don't think that medical has a rule book  
3 on toughness.  
4 Q Do you think it's dangerous to have  
5 conditioning sessions built to -- to build toughness?  
6 I'm using that word as defined.  
7 MR. HOSKING: Yeah. I'll just object that  
8 it's, umm --  
9 MR. YERRID: If you don't know what  
10 "toughness" means, you don't have to answer.  
11 MR. HOSKING: It's vague.  
12 But again, you're asking him expert  
13 questions. If he had an opinion about it then, fine.  
14 But if you're asking him as he sits here  
15 today as an expert, no.  
16 BY MR. YERRID:  
17 Q I'm sorry. As a team physician, aren't  
18 you -- don't you have a role in deciding whether or  
19 not conditioning sessions and drills and the  
20 activities of student athletes are acceptable or not  
21 acceptable from a medical standpoint?  
22 A Yes. If I saw something that was  
23 unacceptable, I would have a say in it, but I'm not  
24 included in the design of strength-and-conditioning  
25 programs --

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1 Q Why not?  
2 A -- in general.  
3 Q Why not?  
4 A That's not -- just not the system that we  
5 have.  
6 Q Why aren't you included in the design with  
7 regard -- or -- or -- and supervision of the programs  
8 that involve sickle cell trait athletes?  
9 A Let me -- let me clarify.  
10 Q Okay.  
11 A If someone as a specific -- if there is an  
12 injury or medical issue, on an individual basis --  
13 Q Right.  
14 A -- we have conversations with  
15 strength-and-conditioning on an individual basis --  
16 Q Okay.  
17 A -- but overall design for the team, I'm not  
18 consulted on.  
19 Q Okay. I'm not so worried about -- although  
20 I didn't want to sound cavalier -- I'm not so worried  
21 about the team at this point as I am about the sickle  
22 cell trait athletes.  
23 What role did you have, if any, in the  
24 design of the protocols, the programs, the exercise  
25 regimens for the sickle cell trait athletes?

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1 They've now been identified. They've been  
2 singled out.  
3 What have you done as the team doctor to  
4 coordinate efforts to ensure their welfare and safety?  
5 A So I educate yearly the  
6 strength-and-conditioning staff and the coaching staff  
7 of all sports.  
8 Q Right.  
9 A And especially those that are sports that  
10 have no sickle cell trait. We go over the NCAA  
11 guidelines and issues reviewed in those guidelines.  
12 And the biggest thing that I hit home,  
13 again -- because no one should ever have a problem  
14 with trait if they speak up when they have symptoms  
15 and they're not pushed beyond limits and they stop  
16 their activity -- and make sure that that environment  
17 is fostered by the coaching staff, it's not punitive,  
18 they're not pushed, and that they stop.  
19 That's kind of my big thing, and I'm  
20 confident that -- that all coaches in sports on campus  
21 get that message.  
22 Q Critical to that is the carrying out of what  
23 you've counseled, correct? The practical application  
24 of what you've told folks to do, they have to do it.  
25 You depend on them to do what you're asking them to

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1 do.  
2 A Correct.  
3 Q Okay. And that would include the strength  
4 coach, Mr. Harrington, correct? No doubt you've had  
5 specific discussions about sickle cell trait  
6 athletes -- in particular, Mr. Agu -- with  
7 Coach Harrington.  
8 A That's correct.  
9 Q Okay. Who would have designed those  
10 programs such as that hill drill? Who would have been  
11 involved in that circle?  
12 If you don't have particular knowledge, who  
13 would you have expected to design it, since you said  
14 you weren't included?  
15 A Yeah. I do not know. I -- I believe it's  
16 the strengthening-and-conditioning coaches only.  
17 Q Okay. Okay. And despite whatever education  
18 and training you've given to others, you would agree  
19 that if that advice and education and protocol is not  
20 followed, bad things can happen to sickle cell  
21 athletes?  
22 MR. HOSKING: It's argumentative.  
23 THE WITNESS: I would agree if you don't  
24 follow those and they're not allowed to set their own  
25 pace and they're pushed, bad things can happen.

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1 BY MR. YERRID:  
2 Q You expect bad things to happen if you allow  
3 that to occur?  
4 A Yes.  
5 Q I asked you before if Mr. Agu had ever had  
6 any problems with any of the activities he had  
7 underwent in the several years he played football at  
8 the University of California. You said not to your  
9 knowledge.  
10 If a sickle cell trait athlete -- in  
11 particular, Ted Agu -- who was -- he was in very good  
12 shape, wasn't he?  
13 A I -- for his --  
14 Q As far as you know?  
15 A For his position, he was in good shape, yes.  
16 Q I mean, you examined him. He was one of the  
17 more in-shape athletes.  
18 A Towards the end of his career, yes.  
19 Q Well, we're talking about the end -- toward  
20 the end of his career?  
21 A Yes. Yes. Yes.  
22 Q All right. As far as you know, he rarely  
23 had problems in the practice arena, correct?  
24 A As far as I know, yes.  
25 Q Okay. Okay. If an athlete like Ted Agu

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1 begins to struggle, do you assume, as a medical  
2 doctor, that he's sickling, knowing that he has a  
3 sickle cell trait?  
4 MR. HOSKING: It's been asked and answered.  
5 THE WITNESS: I think you would act as if  
6 it's a possibility, yes.  
7 BY MR. YERRID:  
8 Q A possibility or a -- that's --  
9 A You would.  
10 Q -- the assumption you go under, and you take  
11 those precautions?  
12 A If I was concerned and I saw someone that  
13 had sickle, I would -- that would be high up on my  
14 list, but it wouldn't be the only thing I would be  
15 concerned about.  
16 Q I'm not suggesting --  
17 A Yes.  
18 Q -- it would be the only thing, but --  
19 A Yeah.  
20 Q -- it would be right at the top?  
21 A It would be up there, yes, absolutely.  
22 Q We've already gone through the protocol.  
23 A Yes.  
24 Q So I won't go through that.  
25 A Yes.

188

1 Q Is sickling -- from what I've gleaned -- and  
2 I don't to put words in your mouth, Dr. Batten -- but  
3 from what I've gleaned, sickling is more of a gradual,  
4 uh, onset than, say, a cardio issue?  
5 Is that what we've -- what I've gleaned.  
6 A Yeah. It's interesting. Like I say,  
7 they're discovering more and more that no one really  
8 knows why people die of sickle cell trait, but  
9 reportedly, it's -- it is typically much longer, yeah.  
10 It's not --  
11 Q Minutes as opposed to seconds?  
12 A Sometimes hours to days even.  
13 Q Point well taken, but I'm just saying one is  
14 almost instantaneous, one is over a gradual --  
15 graduated period of time, from minutes to hours, and  
16 you just said "to days."  
17 A In general.  
18 Q I'm only talking generalities.  
19 A Yeah. Yeah.  
20 Q How long was it -- in particular, in this  
21 case, what's your understanding as of -- of -- strike  
22 that. I'm so sorry.  
23 How long -- how much time expired between  
24 the time Mr. Agu took a knee and the time he died?  
25 MR. HOSKING: It's been asked and answered.

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1 MR. YERRID: It may have been, Counsel. I  
2 apologize for this.

3 MR. HOSKING: Not necessary.

4 THE WITNESS: I've asked, and they said less  
5 than 10 minutes. That's the best estimate I could  
6 give you.

7 BY MR. YERRID:

8 Q Okay. Do you know how long it takes for a  
9 sickling athlete to get to a point where death is  
10 imminent? In other words, you said it was a gradual  
11 process. How long down the time line do we go before  
12 death is an inescapable conclusion?

13 A I don't think anybody knows that. I don't  
14 think there's a specific time.

15 Q Is there a known time of opportunity to act?

16 A Not that I -- not to my knowledge. I mean,  
17 as soon as possible, but I don't know of a specific  
18 window of opportunity that if you don't act within  
19 X amount of time, that death is imminent.

20 Q Well, unlike the heart etiology, with the  
21 sickling, you would agree that chances of survival are  
22 much better if you take a proper precaution and  
23 interrupt the sickling?

24 MR. HOSKING: Calls for speculation.  
25 Incomplete hypothetical.

190

1 also an athlete's heart, which is a normal adaptation.  
2 So it could mean both, depending; but in general,  
3 people -- lay would -- enlarged heart and hypertrophic  
4 cardiomyopathy, in their minds, probably not.

5 Q Okay. When you say an "athlete's heart,"  
6 that might be consistent -- would mean enlarged,  
7 meaning it would be muscular?

8 A It's enlarged, but it's not pathologic.

9 There's no -- it's a normal adaptation to training.

10 Q Okay. So an athlete's heart can be enlarged  
11 because of the normal progression of good conditioning  
12 and constant exercise?

13 A Correct.

14 Q And not a congenital issue where they are  
15 born with an enlarged heart, but they're a  
16 stenographer?

17 A They're actually not often born with it.  
18 They just have the gene for it.

19 Q Okay. Sorry.

20 With HCM and cardiac arrest, is it typical  
21 that a person that has that onset, that etiology,  
22 would struggle for minutes, or would that be more of  
23 an instantaneous demise?

24 MR. HOSKING: It lacks foundation. It's an  
25 incomplete hypothetical. It calls for speculation.

192

1 THE WITNESS: Yeah. The sooner you would, I  
2 would say it's reasonable to believe that it would be  
3 more successful. You'd have a better outcome.

4 BY MR. YERRID:

5 Q Okay. And just a couple other questions on  
6 that point: "HCM," what does that mean?

7 A Hypertrophic cardiomyopathy.

8 Q Which means -- I understand what that --  
9 what HCM stands for.

10 What does it mean? What -- what occurs?  
11 What is the process? If you were talking to a  
12 layperson: "Oh, they died, HCM" --

13 A HCM. It's an -- a genetic condition. There  
14 are many variables of that that affect the heart  
15 muscle. And it -- ultimately, the -- typically, it  
16 disrupts the conduction system of the heart and causes  
17 arrhythmia.

18 Q Do some people in the world call that an  
19 "enlarged heart"; athletes have an enlarged heart?

20 A Yes. Some people will say that.

21 Q A layperson?

22 A Yes.

23 Q Are we talking about the same animal? HCM  
24 is a medical term --

25 A Some people say an enlarged heart, too, is

191

1 BY MR. YERRID:

2 Q If you don't know, it's fine.

3 A Yeah.

4 Q It might be a bad question.

5 A Repeat it again. I'm sorry.

6 Q Yeah. I'm just saying: Athletes with HCM  
7 or cardiac arrest, do they normally struggle for many  
8 minutes, say, 10, 15 minutes, or is it more  
9 time-centered, like, you know, 1 to 2 or 3 minutes?

10 A It's not necessarily the -- the typical  
11 scenario where they struggle for many minutes with  
12 HCM. No, it's not typical.

13 Q What would be typical?

14 A Typical --

15 Q 1 or 2 or 3 minutes?

16 A Yeah. Exactly. I mean, you could --

17 Q Okay.

18 A It's possible you could go into an abnormal  
19 rhythm, go back to a normal rhythm, and then  
20 decompensate back into another abnormal rhythm. It's  
21 possible, which would account for some -- some period  
22 that's not instantaneous.

23 Q And there is always exceptions and those  
24 types of things?

25 A Yes.

193

1 Q But in most instances, there typically is no  
 2 breathing in a matter of a few seconds, and then,  
 3 what, v-fib, that sort of thing?  
 4 MR. HOSKING: Same objection.  
 5 THE WITNESS: I don't know about seconds;  
 6 but, yeah, it's fairly rapid.  
 7 BY MR. YERRID:  
 8 Q Did I say "seconds"? I'm sorry. Hundred --  
 9 A 60.  
 10 Q 60 to 120 seconds, something like that?  
 11 A Somewhere in that ballpark.  
 12 Q Let me see if I can skip all this.  
 13 Yeah. I never asked you -- I don't think I  
 14 did. If I did, you can correct me.  
 15 Did I ask you how that positive sickle cell  
 16 trait test would have been disseminated? In other  
 17 words, who would have gotten it?  
 18 A You did not ask me.  
 19 Q Okay. Can you refresh me to that?  
 20 A Yeah. So if it's --  
 21 Q I think I read somewhere, in some document,  
 22 where it's supposed to be disseminated.  
 23 A In the medical record -- the medical record.  
 24 So when someone's positive, I go straight to  
 25 the strength-and-conditioning coach and the coaches --

194

1 Q That would be Coach Herrington?  
 2 A Coach Harrington.  
 3 -- and alert them. So when he came on,  
 4 because of the -- the educational session, we would  
 5 typically hold in August -- and I can't remember when  
 6 he started, but if it's -- if I know someone is  
 7 responsible for them, I don't wait until the education  
 8 session. I go to them immediately when they come on  
 9 and say, "These are the three -- you know, these are  
 10 people on your team that have that." And we go over  
 11 the guidelines.  
 12 Q You go the extra mile --  
 13 A Personally.  
 14 Q -- to make sure that that's done --  
 15 A Yes.  
 16 Q -- regardless of what the -- the calendar  
 17 schedule says?  
 18 A Exactly.  
 19 Q Okay.  
 20 A Right. And then --  
 21 Q Why do you do that, Dr. Batten?  
 22 MR. HOSKING: If you want to finish with  
 23 your answer, you can go ahead and finish --  
 24 THE WITNESS: Oh, I'd just say I do that  
 25 just because you don't want -- if any activity is

195

1 under their watch -- of course, anything can happen at  
 2 any time, and I want them to have that information as  
 3 soon as possible.  
 4 BY MR. YERRID:  
 5 Q You want to convey that information because  
 6 it's critical information. You want it done without  
 7 regard to any calendar event.  
 8 You want to do it as soon as possible?  
 9 A Correct.  
 10 Q I'm sorry. Did I interrupt? I didn't mean  
 11 to.  
 12 A It's okay.  
 13 Q I probably did.  
 14 A Okay.  
 15 Q All right. I apologize. I didn't mean do  
 16 that.  
 17 So you would have told Mr. --  
 18 Coach Harrington about Ted Agu's sickle cell trait,  
 19 correct?  
 20 A Correct.  
 21 Q Okay. Would there have been anyone else in  
 22 that line of communication, or would he have  
 23 disseminated that information, then, to whoever he  
 24 felt appropriate?  
 25 A I would have asked him to educate his staff

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1 at that initial meeting, but then the whole staff is  
 2 still educated on the yearly basis.  
 3 Q Okay.  
 4 A Strength-and-conditioning and coaches.  
 5 Q Tell me: Did you ever tell Mr. Jackson that  
 6 Ted Agu had sickle cell trait?  
 7 A Yes.  
 8 Q You specifically have a recollection of  
 9 that?  
 10 A Yes. And they have access to a written --  
 11 we have a list of all people that's maintained.  
 12 Q So there's no doubt that Dr. Batten told  
 13 Mr. Jackson, "This athlete has sickle cell trait"?  
 14 A No doubt.  
 15 Q Okay. Is it Cal's policy, as the team  
 16 doctor, for everyone at the workout to know that a  
 17 particular athlete has sickle cell trait, like  
 18 Ted Agu?  
 19 A Can you define "everybody"?  
 20 Q Not the other players, necessarily.  
 21 Everybody in charge in a supervisory position: A  
 22 position coach, a strength coach, line coach, D-line  
 23 or O-line, whatever.  
 24 A I --  
 25 Q I just don't know how far. I'm not trying

197



1 to be --  
2 A Yeah. The strength-and-conditioning coaches  
3 because, to my knowledge --

4 Q That's --  
5 A -- no one has ever had an issue with  
6 conditioning. But all coaches outside this training  
7 condition on a calendar basis would know that. Like,  
8 every year, they get that. But -- yeah. Everybody  
9 who supervised that workout would know, yes.

10 Q Okay. Well --  
11 A His position coach would know. I believe I  
12 talked to the position coaches.

13 Q Mr. Agu's position coach?

14 A Yes.

15 Q Tell me about the interns. You know, we  
16 have always had an issue. You said -- what did you  
17 say, the intern -- what --

18 A If --  
19 Q -- was an intern -- who was it that was  
20 with -- let me finish because she can't take it  
21 down -- was with Mr. Jackson? I forgot -- I'm sorry.  
22 I forgot his name.

23 A Mike Jones.

24 Q Mike Jones.  
25 That's a hard name to forget, isn't it?

198

1 Mr. Jones, what was his role, again?

2 A They are graduate assistants. So people --  
3 they intern a graduate assistant. It's kind of --  
4 they use the name -- the reason why they don't use  
5 "intern," it sounds like they're not certified, but  
6 they're fully certified athletic trainers.

7 Q Was he told by you, or was that something  
8 that Mr. Jackson would have conveyed to him, the  
9 sickle cell trait --

10 A It would have been conveyed by the athletic  
11 trainer.

12 Q In other words, you don't recall sitting  
13 down with Mr. Jones. You would have sat down with  
14 Mr. Jackson.

15 And then what --

16 A I don't recall. But, you know, I rely on  
17 the heads of those departments, and I just disseminate  
18 that information to --

19 Q Any rule, Dr. Batten, about the school  
20 telling the parents?

21 A No, absolutely not.

22 Q Okay. And so that might be a problem if  
23 they were adults under HIPAA conveying that  
24 information without the appropriate waivers, but  
25 there's no policy about parents' involvement?

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1 A No. There is no policy.

2 Q Either for or against, there's simply no  
3 policy?

4 A There's no policy.

5 Q Okay. You would agree, having knowledge of  
6 an athlete's status, especially one having sickle cell  
7 trait, is a preventative measure?

8 A Yes.

9 Q Okay. You would also agree that fast and  
10 early intervention is a key to a preventative measure?

11 A I believe that's -- that's true, yes.

12 Q We talked about that.

13 A Yes.

14 Q In terms of likelihood of success, you --  
15 you're aware that sickle -- sickling athletes, if  
16 properly addressed, can recover and totally recuperate  
17 within a matter of minutes?

18 A Exactly.

19 Q How often do you train or educate the  
20 people, the staff folks at Cal?

21 A For, umm, all sports, including football, I  
22 just -- yearly.

23 Q Yearly for all sports?

24 A All sports. They might be in different  
25 venues; but for football, in particular, each year.

200

1 around the start of camp.

2 Q August?

3 A Yeah. August.

4 Q Okay.

5 A End of July, early August. I attend a staff  
6 meeting, and we go over, you know, our policies. And  
7 they're all made aware of who is positive, and they  
8 sign a form that says they were there.

9 (Discussion off the record)

10 MR. YERRID: I'm sorry. I want to -- give  
11 me Exhibits 8 and 9, clean ones, Bates-stamped 062 and  
12 0105.

13 BY MR. YERRID:

14 Q We've talked around it, Dr. Batten, but I  
15 don't think I put into evidence the test results.

16 A Okay.

17 Q I'm going to do that now.

18 A Okay.

19 Q I don't recollect that they were a part of  
20 anything we put in thus far.

21 MR. MURPHY: I've got Bates Number 62  
22 and 107.

23 MR. YERRID: Right. I'll put these in as a  
24 cumulative exhibit.

25 What number is this, ma'am?

201

1 THE REPORTER: 7.  
 2 THE WITNESS: 107, you said?  
 3 BY MR. YERRID:  
 4 Q Yes, sir. If you could look at 062 --  
 5 A 062 says --  
 6 Q -- 0107.  
 7 A -- "Solubility test."  
 8 Q Excuse me?  
 9 A 62 is the sickle cell solubility, the  
 10 screening test.  
 11 Q Right.  
 12 A Then 107 ...  
 13 Q Would be the following, follow-up, right?  
 14 A Let me get to it.  
 15 Q I think that's the electro --  
 16 A That's just my note. It's not the actual.  
 17 Q Look at this. It's your note.  
 18 What does that note mean?  
 19 A Oh, yeah. Because I had to call -- send it  
 20 back to the lab because they didn't take enough blood.  
 21 They had to send him back for the electrophoresis --  
 22 for the actual test result.  
 23 Q Go ahead and find that if you can.  
 24 A Yeah. Because this is not -- we switched  
 25 medical record systems. So things aren't in

202

1 chronological order.  
 2 Let's see what -- sickle cell.  
 3 Right here.  
 4 Q Can you pull it -- what Bates stamp is it?  
 5 We'll pull it out.  
 6 A UC 0060.  
 7 Q I'm going to have to use yours. You're  
 8 going to have to pull it out.  
 9 A Oh, wait a minute. Let me -- hold on. I  
 10 can do that.  
 11 No. That's not --  
 12 MR. HOSKING: Hang on.  
 13 MR. YERRID: I don't want to give your  
 14 lawyer's stuff away.  
 15 THE WITNESS: Here it is.  
 16 MR. HOSKING: Yeah.  
 17 MR. YERRID: Do you mind if we take that?  
 18 We'll get it back to you out of here because I want  
 19 to -- what I want to do is put -- Counsel, I want to  
 20 put these three in.  
 21 MR. HOSKING: Yeah.  
 22 BY MR. YERRID:  
 23 Q He did mention -- you may recall,  
 24 Dr. Batten, you mentioned there wasn't enough blood.  
 25 A Yeah. They did the screening -- the way I

203

1 had the lab do it is they automatically, if it's  
 2 positive, send it for the electrophoresis. But they  
 3 didn't take enough blood. So I sent him back for  
 4 the --  
 5 Q That's why I want to have all three  
 6 paginations included because it's consistent with your  
 7 testimony.  
 8 A That's fine.  
 9 Q This is not consistent. It looks like it's  
 10 incomplete. They didn't have enough blood. So I want  
 11 to get page 3 --  
 12 MR. HOSKING: That's it right here.  
 13 MR. YERRID: If you can pull it out, Doctor.  
 14 Yeah, I don't need it. I would prefer if  
 15 you pull it out, and we'll give you yours back.  
 16 And we need to mark it as a composite  
 17 exhibit.  
 18 MR. HOSKING: That's fine.  
 19 MR. YERRID: We'll give it back to you.  
 20 We don't have that page for whatever reason.  
 21 MR. HOSKING: Okay.  
 22 I thought this was your binder.  
 23 THE WITNESS: It isn't ours.  
 24 MR. YERRID: It's ours? Good. Then keep --  
 25 let me have it.

204

1 THE WITNESS: I don't think that is ours.  
 2 Ours is the white label.  
 3 MR. HOSKING: That's ours. This is ours.  
 4 This is a copy of what was provided to you guys. I  
 5 want to make sure you have it.  
 6 MR. MURPHY: I'm sure we have it. I just  
 7 don't have it in --  
 8 MR. YERRID: I don't mean that you didn't,  
 9 Counsel. Please -- I didn't mean to -- I don't mean  
 10 you haven't provided it to us. We don't have it with  
 11 us, and I apologize.  
 12 MR. HOSKING: Yeah. It's what I do.  
 13 MR. YERRID: We're going to mark this as  
 14 Composite Exhibit No. 8 --  
 15 THE REPORTER: 7.  
 16 MR. YERRID: ?? Three pages.  
 17 BY MR. YERRID:  
 18 Q Doctor, take a look at that. Make sure that  
 19 that gives the complete story with regard to the  
 20 positive blood test for Ted Agu.  
 21 A 062 shows the initial screening, and that  
 22 was -- the report date was 6/29/2010.  
 23 That same day, this was a message sent --  
 24 Q I'm sorry?  
 25 A -- by medical -- by the lab. So they

205



1 contacted him, and then on the 20 -- July 2nd is the  
2 report date, not the draw date, but the report date  
3 for the --

4 Q Okay.

5 A -- electrophoresis.

6 Q Okay.

7 A Yeah.

8 Q If you don't mind handing it to the court  
9 reporter, thank you.

10 (Deposition Exhibit No. 7 marked)

11 BY MR. YERRID:

12 Q We're getting to the conclusion.

13 Let me ask you a few other questions, sir,  
14 about the drill, and I'm talking about the hill drill  
15 that we've discussed at length today.

16 Were you ever told that Ted Agu had fallen  
17 two, possibly three, and as many as four times during  
18 that drill before there was intervention?

19 A No, I was not.

20 Q Would that have made a difference to you had  
21 you been told that?

22 MR. HOSKING: Object. Same thing, it's --

23 BY MR. YERRID:

24 Q In your conclusion --

25 MR. HOSKING: Calls for --

206

1 have students that help out -- you know, water and --  
2 they're not really responsible for medical care.  
3 They're just there to kind of help out.

4 Q Well, when it says "multiple members of the  
5 medical staff," I need to know who were you referring  
6 to.

7 Mr. Jackson?

8 A Yeah.

9 Q Mr. Jones?

10 A Yes.

11 The athletic trainer, certified athletic  
12 trainers.

13 Q Mr. Jackson, Mr. Jones?

14 A Yes.

15 Q All right.

16 A And there might have been another certified  
17 there, and I don't recall now. But I know he --

18 Q I need you to think for a second because we  
19 don't know of any other certified trainers --

20 A Yeah. The only two that I know of were  
21 those two.

22 Q And we -- at least, based upon our  
23 information, we do not believe any doctors were  
24 present; is that accurate?

25 A That is accurate.

208

1 BY MR. YERRID:

2 Q -- about what might have caused his  
3 problems?

4 MR. HOSKING: Calls for speculation. It's  
5 an incomplete hypothetical.

6 THE WITNESS: It could change.

7 BY MR. YERRID:

8 Q Okay. You said multiple members of the  
9 medical staff were present.

10 Who were you referring to that day when the  
11 press conference occurred the date of his death? Who  
12 were multiple members of the medical staff that were  
13 present at this hill workout?

14 A There were -- I know there was Mike Jones,  
15 the certified -- well, Robbie Jackson, certified as  
16 the head trainer.

17 Q Other than --

18 A Mike Jones.

19 Q Other than --

20 A There were some student sports medicine  
21 interns that were also there.

22 Q Say that again.

23 A Sports medicine interns.

24 Q Who was there?

25 A I don't know the names, but they're -- we

207

1 Q Were the doctors available -- team doctors  
2 available should they be needed the day of the hill --

3 A (No audible response)

4 Q The day of the hill drill, were the team  
5 doctors available?

6 A Can you describe, like, "available" in terms  
7 of --

8 Q Could they come if they were needed?

9 A If I was summoned, yes, I could come.

10 Q How long would it have taken you to get  
11 there?

12 A Twenty-five minutes.

13 Q Okay. Were there any doctors closer that  
14 were on call; in other words, any doctors that were  
15 available to Mr. Jackson should he need medical  
16 intervention?

17 A Umm, at that time of day, the urgent care  
18 was closed. So no, there were not. It would just be  
19 me.

20 Q Okay. And I'm not faulting you.

21 A Yeah.

22 Q You were off that day, and there's no issue  
23 that you were not -- you were not called, correct?

24 A I was called after he was sent to the  
25 ambulance.

209

1 Q You were called after the fact?  
 2 A Yes.  
 3 Q But as a practical matter, you weren't  
 4 called and weren't able to get there or delayed in  
 5 getting there. That was not part of this --  
 6 A No.  
 7 Q -- this case --  
 8 A No.  
 9 Q -- at least as we've understood it?  
 10 A No. That's accurate.  
 11 Q What day of the week was this?  
 12 The urgent care had closed?  
 13 A They open at 8:00.  
 14 Q What day of the week was it: Monday,  
 15 Tuesday?  
 16 A I don't remember.  
 17 February 7th, was it a Friday?  
 18 Q It was a Friday?  
 19 A Yeah.  
 20 Q And it would have been after the urgent care  
 21 closed?  
 22 A Urgent care is not opened yet. This is  
 23 early in the morning.  
 24 Q Excuse me. Right. This is six-something in  
 25 the morning.

210

1 A Right.  
 2 Q I'm sorry. Not after they close.  
 3 This was six-something in the morning.  
 4 So the urgent care had yet to open at 8:00?  
 5 A That's correct.  
 6 Q There were no doctors available within  
 7 20 minutes or so, and no doctors were present at the  
 8 session?  
 9 A There was no doctor present. And the only  
 10 doctor, me, would be instructed to call, would not  
 11 be -- you know, the athletic doctor wouldn't be there.  
 12 Q Who would have picked that time for that  
 13 drill and designated that particular type of drill and  
 14 the nature of that drill?  
 15 A I don't know the answer. I -- I --  
 16 strength-and-conditioning coaches, to my knowledge.  
 17 Q In the normal course of affairs, that would  
 18 be -- who you would have expected to do that  
 19 scheduling and that design of the drill is  
 20 Coach Harrington?  
 21 A Yes. Yeah. Given the other restrictions,  
 22 classes, et cetera.  
 23 (Discussion off the record)  
 24 BY MR. YERRID:  
 25 Q Is there any emergency action plan to

211

1 respond to things such as a sickle cell trait  
 2 collapse?  
 3 A There's an emergency action plan that's on  
 4 file, and that's posted, umm, that we go over every  
 5 year that talks about what to do in the event of any  
 6 sort of emergency.  
 7 Q Okay.  
 8 A Which is -- sickle cell would fall under.  
 9 Q Okay. And Mr. Jackson would have known  
 10 about that?  
 11 A Yes.  
 12 Q And that plan should have included, should  
 13 it not, the presence or planned access to a physician  
 14 for prompt medical evaluation of the situation?  
 15 A It's more -- the emergency action plan we  
 16 have on file is for, umm, more or less, EMS access,  
 17 kind of the logistics of extricating someone who is in  
 18 a difficulty.  
 19 MR. YERRID: I think I'm done. Let me just  
 20 check.  
 21 (Proceedings paused briefly)  
 22 BY MR. YERRID:  
 23 Q Do you know who hired Damon Harrington? Who  
 24 would have been responsible for hiring him?  
 25 A I don't know specifically.

212

1 Q Do you know who would have been responsible  
 2 for hiring Mr. Jackson?  
 3 A Typically, the athletics department and the  
 4 athletic trainer.  
 5 Q The head athletic trainer, or the athletic  
 6 director?  
 7 A No. It would be the -- no. The athletic  
 8 director would not.  
 9 Q It would be the head --  
 10 A Athletic trainer or -- yeah -- who, in this  
 11 case, is also one of the administrators.  
 12 Q Okay. I think we've highlighted it, but in  
 13 sickle cell trait, early recognition is critical,  
 14 right?  
 15 A Yes.  
 16 Q Prompt treatment is critical, right?  
 17 A Yes.  
 18 Q If you have two athletes, one with sickle  
 19 cell trait and one without, would you intervene sooner  
 20 to a sickle cell trait athlete if the absolutes -- if  
 21 the athletes are showing identical signs of fatigue?  
 22 A I --  
 23 Q You have two athletes --  
 24 A Identical? I mean, again, if it looked  
 25 concerning and out of the ordinary, given the

213



circumstances --  
Q But they're identical. You've got two athletes -- I know it will only be a scientific experiment and an intellectual exercise.  
A Yeah.  
Q You've got two athletes -- one with trait, one without -- showing identical symptoms that are concerning.  
Which one would you go to first?  
MR. HOSKING: Incomplete hypothetical.  
Calls for speculation.  
THE WITNESS: I would go to the sickle cell trait athlete.  
BY MR. YERRID:  
Q Why?  
A Because of the trait. But it may not be a good decision because someone else could have something more dangerous, and that could not be sickle. So it's totally -- again, very hypothetical.  
Q Okay. Did you conduct any written interviews of anybody after the death?  
A Written interview?  
Q Yes. Did you -- do you any interviews and reduce them to writing?  
A (No audible response)

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Q Does that make sense, the question?  
A No. I don't --  
Q Let me try it again. That was a terrible question.  
After Mr. Agu died, did you talk to some folks about what happened, why it happened, and try to find out the details?  
A Oh, yes. Yes.  
Q Okay.  
A Yes.  
Q Did you reduce any of those attempts or interviews to writing?  
A No.  
Q Does that make sense to you?  
A Yeah. Did I write anything down?  
Q Notes -- I'm not talking about any formal --  
A I think the only thing that I -- I don't know if I wrote it down, but Robbie and I, after one of the -- I can't remember if it was one of the team meetings that we wrote it down -- I don't remember, but I think we had one document after a team meeting that we kind of went over.  
Q Bullet points?  
A Yeah. Bullet points.  
Q It was produced to us?

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A Yeah.  
Q And it looked like it had --  
A Yeah. It was bullet points, but it wasn't contemporaneous.  
Q You mentioned you talked to two players, and you gave us their names, and I appreciate it.  
You also now have told us you sat down with Mr. Jackson and went over bullet points, and that was reduced to writing. I think it's been produced.  
It's about a page?  
A Yeah. Yeah.  
Q It didn't sound like a narrative or an interview.  
It looked like just a page of bullet points?  
A Yeah. It was.  
Q How did that come about? You and him discussed what should be done and a checklist of what things were done?  
A I think we were just asked to -- I think we were just asked to summarize what was documented in those meetings with the team.  
Q Okay.  
A Yeah.  
Q Anybody else that you talked to? You mentioned Mr. Jackson and the two players.

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A Umm --  
Q Did you talk to Mr. Harrington about this?  
A I did, but not -- you know, we didn't have, like, a big -- we talked -- I didn't have a huge sit-down with it, but after the fact, obviously, we sat down, and he was --  
Q Did you ask him how in the world this could happen?  
A I didn't necessarily use those terms. No, I just asked him what happened.  
Q Did you ask him how something like this could have happened?  
A Not with those specific words.  
Q Okay. What did you -- what -- what was the purpose of sitting down with him?  
A I don't know that I ever really had a big sit-down with him after the fact. It was -- I really don't recall any conversation -- specifics of any conversation I had with him.  
But, you know, I asked the nature of the workout and, you know, the history that was given to me. I didn't see anything that they did that was inappropriate.  
Q Did you think that that -- were you led to believe that that drill, that hill drill had been done

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1 before?  
 2 A I asked after the fact, and the answer, from  
 3 what I remember, is that I think they've run that hill  
 4 before, but not with the rope, was my understanding.  
 5 Q I know it's your understanding.  
 6 A Yes.  
 7 Q My question --  
 8 A Yeah.  
 9 Q Not whether you observed --  
 10 A Yes.  
 11 Q Not whether you endorsed it.  
 12 I'm just asking: You were informed that  
 13 there was nothing out of the ordinary about this  
 14 drill, that they had done it before.  
 15 Is that what was told to you, Dr. Batten?  
 16 A I was never told that was specific -- that  
 17 that type of activity, that level of exertion, akin to  
 18 other things they had done -- it would be commensurate  
 19 with stuff they've done at the time before. Yes.  
 20 Q And that they had done things on hills  
 21 outside the stadium before and that it was not out of  
 22 the norm?  
 23 A Yes. They've done things harder than this.  
 24 Yeah.  
 25 Q And you were assured that that was the case,

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1 correct?  
 2 A Yes. I mean -- yeah.  
 3 Q And you, again, being Dr. Batten, M.D.,  
 4 relied on what you were told?  
 5 A Yes.  
 6 Q To your knowledge, did Ted Agu ever have any  
 7 problems completing any conditioning workout the  
 8 entire time he was at the University of California?  
 9 MR. HOSKING: Asked and answered.  
 10 THE WITNESS: Not to my knowledge.  
 11 BY MR. YERRID:  
 12 Q Would you agree that workouts that are  
 13 commenced too soon or are too intense would be  
 14 dangerous for sickle cell trait athletes?  
 15 MR. HOSKING: Vague and argumentative.  
 16 THE WITNESS: Yeah. I mean, too -- it is  
 17 sort of a vague question.  
 18 BY MR. YERRID:  
 19 Q It is vague.  
 20 A Yeah, I --  
 21 Q I can't give you specifics.  
 22 A Yeah. Too intense is -- it's more than just  
 23 the intensity. It's given the whole situation: Are  
 24 they hydrated; are they sick; is it hot out; is it at  
 25 altitude?

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1 Q Do they have asthma? Do they have  
 2 allergies?  
 3 A It's everything.  
 4 Q Okay.  
 5 A So ...  
 6 Q But above all, it's the welfare of the  
 7 sickle cell trait athlete that has to be considered as  
 8 a priority.  
 9 You'd agree what that?  
 10 A I agree with that, yes.  
 11 Q And that's what you try to do in your  
 12 professional responsibilities?  
 13 A Yeah. I would hope so. Yeah.  
 14 Q That was a softball.  
 15 With regard to new exercises -- and I  
 16 understand you were told this wasn't a new exercise.  
 17 A Mm-hmm.  
 18 Q It had been done before. In fact, more  
 19 arduous exercises have been done. I understand that's  
 20 what you were told.  
 21 A Mm-hmm.  
 22 \* Q But if, in fact, it was a new exercise, had  
 23 not been done before, and was extremely challenging, in  
 24 the case of a sickle cell trait athlete, such an  
 25 exercise should only be introduced in a gradual fashion;

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1 you would agree, wouldn't you?  
 2 MR. HOSKING: Hypothetical. It's compound,  
 3 it's incomplete, and it's an expert question.  
 4 I'll ask him not to answer the question.  
 5 (Witness instructed not to answer the question)  
 6 BY MR. YERRID:  
 7 Q Okay. Now I think I'm done if I can just  
 8 finish one last area. All right?  
 9 A All right.  
 10 Q Don't ever trust a lawyer that says that.  
 11 I must ask you, sir, without invading your  
 12 personal space, what's your relationship with  
 13 Damon Harrington?  
 14 A Professional.  
 15 Q Okay. You're not personal friends?  
 16 A No.  
 17 Q You don't socialize?  
 18 A I do not. No.  
 19 Q Okay. How many times have you met with him  
 20 since Mr. Agu's death to talk about this?  
 21 Guesstimate.  
 22 A We never had any formal -- just kind of  
 23 casual.  
 24 Q Five, ten?  
 25 A Three, four, maybe.

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1 Q Okay.  
2 A Off the top of my head.  
3 Q Okay.  
4 A And more of it was me just kind of -- you  
5 know, he felt pretty bad -- sort of reassuring him and  
6 making sure that he has support.  
7 Q I think you've answered this. If you did, I  
8 apologize.  
9 Did you meet with him when he arrived in the  
10 summer of 2013, Coach Harrington? I think you said  
11 you did.  
12 A Yes. I did.  
13 Q That also would include the express purpose  
14 of educating him, which you've already described; am I  
15 right?  
16 A Yes. And the others.  
17 Q I didn't mean to leave them out, but I think  
18 you mentioned that you, without regard to the  
19 calendar, you made a point to meet with him --  
20 A Yes.  
21 Q -- about the sickle cell trait athlete?  
22 A Yes.  
23 Q Athletes -- excuse me.  
24 Did you meet with him regarding the 2014  
25 winter conditioning program at any point?

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1 A No.  
2 Q Not a specific --  
3 A No.  
4 Q You never went through the schedule or  
5 discussed the program, the goals, or the specific  
6 workouts, correct?  
7 A Correct.  
8 Q The AED strip, did you look at that strip,  
9 sir?  
10 A Yes, I did.  
11 Q That's the one that you, I believe,  
12 suggested to us --  
13 A Yeah. I was going to call --  
14 Q -- you were trying to -- you weren't sure  
15 whether you faxed it to Dr. --  
16 A It was just to the coroner's office.  
17 Q -- Dr. Beaver?  
18 A Yeah. His office.  
19 Q You're not sure whether you faxed it or not,  
20 but that's what you intended to do at some point,  
21 right?  
22 A (No audible response)  
23 MR. YERRID: Do you have the strip?  
24 We're going to mark that strip as a -- our  
25 last exhibit, Number 8.

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1 (Deposition Exhibit No. 8 marked)  
2 MR. MURPHY: For the record, it's  
3 Bates Number 609 through 636.  
4 BY MR. YERRID:  
5 Q Are you familiar with how to read these  
6 strips?  
7 Obviously, you are.  
8 A To some degree, yes, but I would not -- I'm  
9 not a cardiologist.  
10 Q I understand.  
11 The day -- the -- with an HCM cardiac death,  
12 doesn't the AED typically say to shock? Typically?  
13 MR. HOSKING: It's an incomplete  
14 hypothetical. Calls for speculation. Lacks  
15 foundation.  
16 THE WITNESS: It depends what the rhythm is.  
17 Depends on the time.  
18 BY MR. YERRID:  
19 Q What about with Mr. Agu? I'm trying to be  
20 specific.  
21 MR. HOSKING: Same objections.  
22 THE WITNESS: It did not call the shock.  
23 The AED did not ask for a shock to be given.  
24 BY MR. YERRID:  
25 Q Is that -- is that something that you think

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1 would be typical if a person was having an HCM, a  
2 death?  
3 MR. HOSKING: Same objections.  
4 THE WITNESS: No. It's not necessarily  
5 typical or atypical. It's possible it would be --  
6 it's possible that it would be not shockable.  
7 BY MR. YERRID:  
8 Q I understand it's possible.  
9 But is it more likely or less likely when an  
10 ACM [sic] death is occurring that the machine says  
11 "Shock"?  
12 MR. HOSKING: Same objections.  
13 THE WITNESS: I -- I don't know if I  
14 would --  
15 BY MR. YERRID:  
16 Q You don't know?  
17 A A specific percentage of time, no.  
18 Q Okay. Does the AED strip in this case of  
19 Mr. Agu show a normal beat?  
20 A No. It does not.  
21 Q Does it show a v-fib?  
22 A In my opinion, no, it does not show a v-fib.  
23 Q Okay. And if I told you Mr. Agu struggled  
24 for 10 to 15 minutes, collapsed at least two, possibly  
25 three, maybe even four times, that would be totally

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1 inconsistent with what you were told, wouldn't it?  
 2 A Could you repeat that again? Sorry.  
 3 Q If I told you that Mr. Agu struggled for 10,  
 4 15 minutes at least, looked like he was in slow  
 5 motion, collapsed at least twice, probably three  
 6 times, maybe even as many as four on several laps in  
 7 succession, that would be totally inconsistent and  
 8 contradictory to what you were told?  
 9 A Yes. It would be totally inconsistent.  
 10 Q But if you assumed that to be true, your  
 11 opinions may well be impacted, correct, Dr. Batten?  
 12 MR. HOSKING: I'll assert the same  
 13 objections, and --  
 14 MR. YERRID: I'll withdraw it.  
 15 That's all we've got.  
 16 MR. HOSKING: Thanks.  
 17 MR. YERRID: Anything else?  
 18 MR. MURPHY: No.  
 19 MR. YERRID: Thanks for your time. Sorry.  
 20 THE WITNESS: No problem.  
 21 MR. MURPHY: Thank you.  
 22 THE WITNESS: My pleasure.  
 23 MR. YERRID: I know we had to travel out  
 24 here. Usually, I'm a little sharper and not quite so  
 25 repetitive.

1  
 2  
 3 \*\*\*  
 4  
 5 I do solemnly declare under penalty of  
 6 Perjury, under the laws of the State of California,  
 7 that the foregoing is my deposition under oath; that  
 8 these are the questions asked of me and my answers  
 9 thereto; that I have read same and have made the  
 10 necessary corrections, additions, or changes to my  
 11 answers that I deem necessary.  
 12 In witness thereof, I hereby subscribe my  
 13 name this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_  
 14  
 15  
 16  
 17  
 18  
 19 \_\_\_\_\_  
 20 Witness Signature  
 21  
 22  
 23  
 24  
 25

1 Thanks, Counsel. I appreciate it.  
 2 THE WITNESS: I have a one-and-a-half-year  
 3 old.  
 4 MR. YERRID: I needed the latitude.  
 5 THE REPORTER: We need to go off the record.  
 6 THE VIDEOGRAPHER: This is the end of  
 7 Media Number 2, Volume 1 of the deposition of  
 8 Dr. Casey Batten.  
 9 The original media will be retained by  
 10 Hahn and Bowersock Court Reporters.  
 11 We're going off the record. The time on the  
 12 monitor is 1:46 p.m.  
 13 (Discussion off the record)  
 14 THE REPORTER: Mr. Murphy, copy?  
 15 MR. MURPHY: Yes.  
 16 THE REPORTER: Mr. Hosking, do you want a  
 17 copy?  
 18 MR. HOSKING: Yes. Full-sized and a pdf  
 19 e-mailed to me, please. I'll give you my card.  
 20 THE REPORTER: Thank you.  
 21 (Proceedings concluded at 1:48 p.m.)  
 22  
 23  
 24  
 25

1 CERTIFICATION  
 2 OF  
 3 CERTIFIED SHORTHAND REPORTER  
 4  
 5 I, the undersigned, a Certified Shorthand  
 6 Reporter of the State of California do hereby certify:  
 7 That the foregoing proceedings were taken  
 8 before me at the time and place herein set forth;  
 9 That any witnesses in the foregoing proceedings, prior  
 10 to testifying, were placed under oath; that a verbatim  
 11 record of the proceedings was made by me using machine  
 12 shorthand which was thereafter transcribed under my  
 13 direction; further, that the foregoing is an accurate  
 14 transcription thereof.  
 15 I further certify that I am neither  
 16 financially interested in the action nor a relative or  
 17 employee of any attorney of any of the parties.  
 18 IN WITNESS WHEREOF, I have this date  
 19 subscribed my name Carrie Hewerdine  
 20 Carrie Hewerdine  
 21  
 22 Dated: November 14, 2014  
 23 Certificate Number: 4579  
 24  
 25





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