

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

2 IN AND FOR THE COUNTY OF PIMA

3

4 ESMERALDA O. TRIPP, by and )  
through her Conservator, )  
5 ROBERT B. FLEMING, )

6 Plaintiff, )

) CASE NO. C20144811

7 vs. )

8 THE ARIZONA BOARD OF REGENTS; )  
UNIVERSITY OF ARIZONA, COLLEGE )  
9 OF MEDICINE; et al., )

10 Defendants )

11 \_\_\_\_\_ )  
BEFORE THE HONORABLE GUS )  
12 ARAGON )

13

OFFICIAL COURT REPORTER'S TRANSCRIPT OF PROCEEDINGS

14

JURY TRIAL DAY TWO

OPENING STATEMENT OF MR. BRIAN SNYDER

15

OCTOBER 11, 2017

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TUCSON, ARIZONA

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ORDERED BY: By Christopher Smith, Esq.

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24 REPORTED BY: Maria Lourdes Geare

Official Court Reporter, RPR,

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Certified #50555

**A P P E A R A N C E S :**

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I N D E X

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OPENING STATEMENT

By Mr. Snyder

**EXHIBITS**

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None

## P R O C E E D I N G S

OPENING STATEMENT

OPENING STATEMENT.

MR. SNYDER: Good morning.

May it please the Court, Your Honor, defense counsel, members of the jury.

On September 13th, 2013, Esmeralda Tripp walked into the emergency room with a common, treatable condition. When she was moved out of the emergency room later that morning, she had profound brain damage.

What happened that night in the ER to cause that brain damage? What decisions did the doctor, only two months out of medical school, and her supervising doctor make that night to cause Esmeralda to be unable to walk, talk or communicate in any meaningful way?

We'll see that to answer these questions we'll need to focus on one of the medications that the doctor gave her that night. And that medication is called Profilnine.

Profilnine was developed by pharmaceutical companies to hemophiliacs, people who can't stop bleeding once they start. And Esmeralda was not a hemophiliac. So why was she injected with the Profilnine?

We'll see that she was injected on what's

1 called an off-label use, meaning a use that's not  
2 approved by the Federal Government, the FDA, but it is  
3 approved by hospitals under very strict guidelines.

4           Five months before Esmeralda came into the  
5 ER that night, UMC Hospital doctors wrote, adopted and  
6 published a guideline for the use of -- off-label use of  
7 Profilnine on patients like Esmeralda. And it details  
8 when it's okay to use that medication for those  
9 patients.

10           I can't show you the actual exhibit yet  
11 because we're not allowed to show you exhibits until the  
12 witnesses talk about them. But in Plaintiffs'  
13 Exhibit 1, and you'll see it throughout this entire  
14 trial, it's the cornerstone of this case. Specifically,  
15 the hospital's own guidelines at the very top says that  
16 Profilnine can only be used off label under these  
17 criterial uses:

18           When the patient has serious or  
19 life-threatening bleeding due to Coumadin, which is the  
20 blood thinner we talked about yesterday, or if the  
21 patient requires emergency surgery. Those are the only  
22 two times that the guideline allows Profilnine to be  
23 used.

24           But when Esmeralda came into the hospital  
25 that night she had no serious or life-threatening injury

1 and she was never scheduled for emergency surgery. And  
2 the doctor still injected her with Profilnine.

3           As you may know, there are very few drugs in  
4 hospitals that actually have their own guidelines for  
5 use. So why did Profilnine have its guideline? Well,  
6 we'll see that Profilnine is enormously risky. In fact,  
7 inside every single package of Profilnine, the  
8 manufacturer has a warning for the medication. And it  
9 says that patients who are given Profilnine are at  
10 greater risk of developing what's called thrombosis or  
11 dangerous blood clots. That's the risk of Profilnine,  
12 that's why it's so risky.

13           And it's so risky that the hospital, UMC  
14 Hospital's own pharmacist, whose job it is to safeguard  
15 Profilnine, he describes Profilnine as a high-risk  
16 medication, that's the hospital's own pharmacist.

17           So in April of 2013, UMC Hospital writes,  
18 approves and adopts the guideline. And, again, this is  
19 just Section 1; there are about five or six other  
20 sections. And it says, Profilnine can be used off label  
21 only under these situations, serious or life-threatening  
22 bleeding or patient requires emergency surgery.

23           So why do they limit it to only those two  
24 criteria? Why the limitation? Well, we'll see that  
25 under criteria number one, serious or life-threatening

1 bleeding, in that situation, the patient, because of her  
2 blood levels, which we'll talk about in a little bit,  
3 will bleed. And if the patient bleeds, it can become  
4 very serious, theoretically. And if it is serious, the  
5 patient can bleed out and die.

6           So under those situations where the  
7 patient's life is in danger, Profilnine can be injected,  
8 it can quickly thicken the blood and it can save the  
9 person's life. That's criteria number one. Number two  
10 is the patient requires emergency surgery.

11           Well, why is that a criteria? Similar to  
12 number one, the patient's life might be in danger, and  
13 if they require emergency surgery, the doctors can give  
14 Profilnine to quickly thicken the blood so that the  
15 doctors can cut into the patient but not risk the  
16 patient to bleed uncontrollably, like a hemophiliac.

17           In those situations, the known risks of  
18 Profilnine are outweighed by the benefit, saving the  
19 person's life, just like a hemophiliac. But there's  
20 patients like Esmeralda Tripp, who are not hemophiliacs,  
21 who do not have any serious or life-threatening bleeding  
22 or who do not require emergency surgery, the benefits  
23 are heavily outweighed by the risks. And that's what  
24 the evidence will show.

25           What happens if Profilnine is given, tragedy



1 can occur. And let me explain that. Our heart is  
2 constantly bleeding, constantly pumping blood throughout  
3 our entire body, so that we can live. But when a  
4 patient is injected with Profilnine, the medication can  
5 cause the patient to clot. And if those clots form in  
6 the body, they'll go to wherever the blood goes, the  
7 clots. And if one or more of those clots goes to the  
8 heart, the heart can either stop bleeding or it can  
9 restrict blood flow so significantly that the patient  
10 can have a heart attack. And we'll see that that's  
11 exactly what happened to Esmeralda Tripp that morning.

12           Because of Profilnine's enormous risks, the  
13 pharmacy at the hospital, they post the guideline, they  
14 literally post it on the bulletin board at the pharmacy  
15 because that's how important it is. They want to make  
16 sure that every pharmacist knows that if Profilnine ever  
17 gets ordered, there's a guideline for it.

18           So on September 13, 2013, when Esmeralda  
19 walks into the hospital, the hospital guideline has been  
20 in effect for five months, and she comes to the ER that  
21 day because the medication she's taken, Coumadin, has  
22 made her blood levels go too high. And, again, we'll  
23 talk about that in a few minutes. But it is not a  
24 medical emergency.

25           We'll hear that a high blood level or INR,

1 is what it's called, is commonly and safely treated  
2 every single day in hospitals throughout this country.

3 And, in fact, we'll see that Esmeralda,  
4 herself, had been treated for this very condition many,  
5 many times before. She would go to the hospital and  
6 they would treat her for it and she would go home.

7 On this day she walks into the UMC Hospital  
8 and she is treated by Dr. Olga Gokova, the resident who  
9 was a doctor in training and at the hospital. She's  
10 been out of medical school for about two months at this  
11 time.

12 And Esmeralda tells Dr. Gokova about her  
13 high blood level. And she also mentions that she has  
14 some flank pain, some pain in her back and in her side.  
15 And so Dr. Gokova orders what's called a CT scan of the  
16 brain to make sure there's no bleeding of the brain and  
17 of her abdomen to make sure there's no appendicitis  
18 that's causing that pain.

19 Dr. Gokova knows at that time that Esmeralda  
20 is not having any serious or life-threatening bleeding.  
21 The CT scan comes back and it shows that Esmeralda might  
22 have appendicitis, the radiologist isn't sure. He says  
23 it's suggestive of appendicitis.

24 So Dr. Gokova orders a surgical consult  
25 because surgeons are the ones who will actually diagnose

1 her condition and they are also the ones who will  
2 determine if surgery is needed and when surgery will be  
3 done, that's all the surgeon's job.

4           But despite those facts, we'll hear that  
5 Drs. Gokova and Alter ordered and injected Profilnine  
6 into Esmeralda Tripp before the surgeons even finished  
7 their assessments of the patient.

8           The medication is administered just before  
9 1:00 a.m. on September 14, 2013, and after it's fully  
10 injected, the surgical team finishes their assessment.  
11 And they determine that Esmeralda does not need any  
12 surgery at all, none. But it's too late. The  
13 Profilnine has already been injected into Esmeralda.

14           It's just going to take a second here to  
15 redo this part. Technology is our best friend and our  
16 worse enemy. So I apologize.

17           Dr. Gokova has the nurses inject Profilnine  
18 before the surgeons even finish their assessment of the  
19 patient. And only two hours later, just two hours,  
20 Esmeralda suffers a heart attack. Her blood pressure  
21 drops, her heart rate drops and she suffers permanent  
22 brain damage, and she's been in that condition ever  
23 since.

24           And one more thing, Esmeralda never had  
25 appendicitis, she never needed any surgery. She never

1 had any serious or life-threatening bleeding. Whatever  
2 pain she had in her flank resolved on its own. She  
3 didn't need anything for it.

4           What we'll see throughout this trial, and it  
5 will be clear and it will be convincing that Esmeralda  
6 Tripp's permanent and life-changing injuries were  
7 completely preventable if the doctors that night had  
8 simply exercised basic patient safety rules and if they  
9 had only followed the hospital's own guidelines, which  
10 is the cornerstone of this case.

11           This is the time for opening statements.  
12 Unfortunately, this is not T.V. or the movies. Opening  
13 statements are not five or ten minutes long, and the  
14 case isn't over after opening statements are done. They  
15 are very significant, although we try to make them as  
16 short as we can, but we have to tell you what the  
17 evidence is going to show throughout the trial.

18           I encourage you to take notes during both  
19 sides of opening statements. You have a pad and pencil  
20 in front of you in your book. And the reason it's  
21 important for you to take notes is to compare what the  
22 attorneys say during opening statements to what we  
23 actually prove throughout the trial. And hold us  
24 accountable, if we don't prove it, hold us accountable.

25           Arizona is one of the few states that allows

1 jurors to actually ask questions during a trial. So I  
2 also encourage you to write down any questions that you  
3 may have and submit them to the bailiff on their form.  
4 And we'll answer them if we can.

5 I assure you it will happen throughout the  
6 trial that we may think we're asking a very clear  
7 question of an expert or of a witness and it is not  
8 clear at all and a question makes no sense. So if that  
9 happens, please write down the question and let us know.

10 At the end of the trial, I am convinced that  
11 you will look at the evidence and you will know that the  
12 doctors were negligent and that their conduct was a  
13 cause of Esmeralda Tripp's permanent and life-changing  
14 injuries.

15 I was introduced to you very briefly  
16 yesterday, unfortunately I probably had my back to many  
17 of you, and yesterday seems like an eternity ago. So  
18 let me introduce myself again.

19 My name is Brian Snyder, along with my  
20 co-counsels, David Wenner and Kevin Keenan. We're proud  
21 to represent Esmeralda Tripp in this very important  
22 case. So while we're talking about the parties, let's  
23 get some context of what we're going to be dealing with  
24 in this case.

25 The plaintiff is Esmeralda Tripp. In

1 September of 2013 she was 42 years old. Because she's  
2 now completely incapacitated to what happened to her,  
3 she can't communicate in any meaningful way, she can't  
4 speak, she's not going to be in court at all. She has  
5 -- well, the courts have given her what's called a  
6 conservator. And he'll actually be the very first  
7 witness who will be testifying today. His name is  
8 Robert Fleming, he's an attorney, and he's going to tell  
9 us what he does for Esmeralda and why he's needed and  
10 what his role is on a daily or monthly basis.

11 Esmeralda is a mother, a wife and a  
12 grandmother. Her family is her life or was her life.  
13 Prior to being injected with Profilnine, Esmeralda was  
14 not able to work, she had what the government calls a  
15 learning disability. So she is disabled, but it's  
16 really more of a learning disabled, her IQ was about 60.  
17 She was a vulnerable adult, she was a disabled person.  
18 But she did everything else.

19 She has a driver's license, she could drive,  
20 she raised a family, she volunteered in the community,  
21 she was an active person, but she was disabled.

22 You'll hear testimony from the people that  
23 know Esmeralda best, her family. They can't be in the  
24 courtroom today because they are witnesses. As soon as  
25 they testify, they will be here in the courtroom, but

1 they're not allowed to be in here until after that, they  
2 were here yesterday and I think they were introduced to  
3 you. And you'll hear about how much Esmeralda loved her  
4 family and how much they love her.

5 As I mentioned, Dr. Olga Gokova had only  
6 been treating patients for about eight weeks when she  
7 treated Esmeralda Tripp that night. She'd been in  
8 medical school in the West Indies, and she graduated and  
9 came to Tucson and starts her training as a doctor.

10 She had never used Profilnine on a patient  
11 before Esmeralda Tripp, never, not once. Esmeralda was  
12 the first person to receive it.

13 Hopefully this technology will cooperate at  
14 some point.

15 The other doctor who was treating Esmeralda  
16 that night is Dr. Todd Alter. He's what's called the  
17 attending physician, he's the supervising doctor. And  
18 he's the attending because he has more experience. So  
19 he was charged for supervising who is what's called the  
20 resident, Dr. Olga Gokova, to make sure she's getting  
21 the adequate supervising that she needs.

22 Like Dr. Gokova, while Dr. Alter has more  
23 experience, he too had never used Profilnine on any  
24 patient before Esmeralda Tripp, not once, not once.

25 At the time they were treating Esmeralda,

1 Drs. Gokova and Alter were employees of the University  
2 Hospital, which at the time was known as the State of  
3 Arizona, so the State of Arizona is the defendant in  
4 this case, along with some others. And you'll  
5 undoubtedly hear a lot about UMC Hospital throughout  
6 this trial.

7                   We all know that's a major teaching hospital  
8 here in town, that's why Dr. Gokova was there in the  
9 first place, it's a level one trauma center. You also  
10 all know, I think it was mentioned in voir dire  
11 yesterday in jury selection, that a few years ago it was  
12 bought out by a private corporation. But those are the  
13 players in this story.

14                   Before we can get into what actually  
15 happened that night, we need to talk about what  
16 emergency room doctors are expected to do when a patient  
17 like Esmeralda comes into the ER. What are the rules?

18                   In lawyer speak, we call it the standard of  
19 care. It's what a reasonable and prudent doctor should  
20 do under those circumstances. But it's the rules, what  
21 rules apply to doctors.

22                   A hospital and a doctor is just like every  
23 other business, have rules that they have to follow in  
24 order to protect the patient's safety because the  
25 patient's safety here should always be the top priority



1 for doctors at the hospital.

2 In this case, we have a written rule, a  
3 written guideline. And that's the hospital's guideline,  
4 Plaintiffs Exhibit 1. And, again, you will see it with  
5 almost every single witness in this case, that's how  
6 important it is.

7 It will be clear and it will be convincing  
8 at the end of this trial that the hospital's guideline  
9 embodies the standard of care. It tells us what the  
10 rules are and how to treat a patient like Esmeralda when  
11 she comes into the hospital with a high blood level.  
12 It's the strongest evidence of the standard of care.  
13 The hospital wrote it and the hospital adopted it, and  
14 the pharmacy pinned it on their bulletin board.

15 Now, the defendants may feel differently and  
16 they may tell you it's not the standard of care, it's a  
17 suggestion. They may feel differently. Their doctors  
18 didn't comply with the guidelines, that's what the  
19 evidence is going to show. But above all else, Dr.  
20 Gokova, herself, admits that the guidelines, the  
21 hospital's guidelines, that criteria is essentially what  
22 the standard of care is. And she'll tell us that on the  
23 witness stand.

24 Like many of us, Esmeralda had medical  
25 conditions prior to coming into the hospital that night.

1           And this is distracting for me because I see  
2 the lights, but I hope it's not too distracting for you.

3           But I'm sure the defendants will spend a  
4 significant amount of time talking about her prior  
5 medical condition, so I'm not going to waste too much  
6 time talking about it, but I do want to talk about it  
7 too.

8           Esmeralda had a seizure condition, she was  
9 on medication for it. It's unclear how she developed  
10 the condition. There's conflicting reports from  
11 Esmeralda about that, skiing accident, car accident, we  
12 don't really know. But she was on medication, which  
13 helped because she had a lot of seizures, but the  
14 medication helped.

15           Because Esmeralda is intellectually  
16 disabled, she didn't always stick to taking her  
17 anti-seizure medication. And when that would happen,  
18 she would just go to the hospital and they would give  
19 her the medication. And that was it.

20           There were a couple of times that she would  
21 fall and hit her head but never had any serious trauma,  
22 she never had any bleed of the brain or anything like  
23 that.

24           This medical condition that Esmeralda Tripp  
25 had was called A-Fib or atrial fibrillation, and all

1 that means is that her heart rhythm, how it beats,  
2 wasn't the same as what most of ours are in this  
3 courtroom.

4           A-Fib can be dangerous because the  
5 off-rhythm can cause a person to develop dangerous blood  
6 clots. And so because of that, her doctors put her on a  
7 medication called Coumadin. We'll hear a lot about  
8 that, and it's mentioned that Coumadin thins out blood  
9 so that you don't get blood clots. That's the whole  
10 point.

11           It is very commonly used throughout the  
12 country, but when it's used, the patients have to come  
13 in about once a month to get their blood levels checked,  
14 the INR. All it's testing is how much Coumadin is  
15 actually in the blood at one specific time, that's all  
16 it tells us.

17           The appropriate range for a patient on  
18 Coumadin is to have their blood level between 2.0 or  
19 3.0, that's the ideal range. And the reason for the  
20 ideal range is if the blood level is too high, if it's  
21 over 3, there's a theoretical risk that the person can  
22 start bleeding spontaneously. And we'll hear a lot  
23 about that. And if the level is below 2, there's a risk  
24 that the person can develop dangerous blood clots, but  
25 it's not just if it's below 2, it's if it quickly drops

1 from let's say a 10 down to 2 or a 10 down to 1.5,  
2 whatever it might be, that's the real risk.

3           And you'll hear that Esmeralda, like most  
4 people, had difficulty keeping her blood level in that 3  
5 range. I believe that the statistics is about 60  
6 percent of people that are on Coumadin have a hard time  
7 keeping that range. Whether they follow every doctor's  
8 orders or not, it's difficult to do.

9           But a high blood level is a very common  
10 condition. It's treated at hospitals every day  
11 throughout the country, safely and successfully. It is  
12 not a medical emergency.

13           And over the years when Esmeralda's blood  
14 level would get too high, she would go to the ER just  
15 like her primary care doctor told her to do and they  
16 would lower her blood levels, they would reverse them.  
17 She went to the hospital for that about 17 times over a  
18 seven-year period and every time she'd get treated.

19           So what did those ER doctors do for  
20 Esmeralda when she would come in to the ER for this very  
21 condition that she came in with on September 13th? How  
22 did they safely treat her every single time?

23           Well, there are a couple of options. The  
24 first thing they would do is they would withhold  
25 Coumadin, they would just tell her stop taking Coumadin

1 and that helps the blood level come back down because  
2 you don't have the blood thinner in your system and it  
3 will come down to a safe range between four and nine and  
4 the patient can be sent home. You don't have to get it  
5 down to the 2 or 3 because it could be dangerous to do  
6 it. So between 4 and 9 and the patient can go home.

7           The second option is they would give her  
8 Vitamin K. Vitamine K is a natural vitamin. It's found  
9 in leafy vegetables, asparagus, broccoli, cucumber, it's  
10 in all of our diet, V8 Juice.

11           Vitamin K has a lot of benefits, but one of  
12 the interesting ones is it will actually help elevate a  
13 person's blood level, but what's more important than  
14 that, it actually helps it keep that level. It's a very  
15 -- really important vitamin, a really great vitamin.

16           It has a lot of benefits. It really has no  
17 risks at all. The only real risk is that some people  
18 are allergic to Vitamin K, if you inject it, you may  
19 have it and Esmeralda happened to be one of those  
20 people. But if that happens, all the doctors have to do  
21 is give the person the Vitamin K through a tablet and  
22 they just eat it, like a vitamin. And you'll see that  
23 not only is it absolutely unheard of for someone to be  
24 allergic to oral Vitamin K, it's just as safe as Vitamin  
25 K is, to inject it, it's equally as safe.

1           The third option that doctors do is they  
2 give what's called fresh frozen plasma or FFP. It's a  
3 natural blood product that hospitals keep frozen in a  
4 little yellow baggy at the hospital for this exact  
5 purpose, to lower a person's blood level. And this is  
6 what fresh frozen plasma actually looks like.

7           It is a slower option to use because it has  
8 to be thawed out, it's frozen. But what they'll do is  
9 doctors just put it in a warm bath of water and it takes  
10 about 30 minutes, give or take, to thaw it out. And  
11 they also have to cross match the blood type, to make  
12 sure the person is getting the right blood types, and  
13 that can take 10 minutes, 15 minutes. But they can do  
14 all that at the same time. And then fresh frozen plasma  
15 can get slowly infused into the person's body through  
16 the IV over a period of time.

17           And while it's slower than some other  
18 option, time isn't really important because this is not  
19 a medical emergency. So it's a safe way to lower the  
20 blood level. There are some risks, it's a blood  
21 product, you can get an infection, but that's usually  
22 taken care of by monitoring. And it can also cause a  
23 fluid overload, when there's too much fluid, and that's  
24 really unheard of in a patient like Esmeralda.

25           So every time she came into the hospital for

1 a high blood level, she was treated with one of these  
2 three options, every single time. And these are the  
3 most common ways to treat a high blood level.

4 The fourth option, which is the last resort,  
5 is Profilnine. It's only to be used in very specific  
6 life-threatening situations, that's when it's used.

7 Profilnine is one of a group called PCC's.  
8 It's one brand of an umbrella group called PCC's and  
9 they all do pretty much the same thing.

10 The benefits of Profilnine is that it's very  
11 quick to prepare and very quick to work, which you would  
12 hope it would be when it's given in an emergency,  
13 life-threatening situation, that's why it's good. But  
14 unlike Vitamin K, which has no risks, and unlike fresh  
15 frozen plasma, where the risks could pretty much be  
16 avoided, not always but pretty much can be, Profilnine's  
17 risk can't be easily avoided because it's not a natural  
18 product. It's actually 10,000 people's blood product  
19 manufactured in a pharmaceutical lab somewhere and then  
20 they ship it out.

21 So what risks does it cause? Well, it can  
22 cause blood levels to drop too low, leading to dangerous  
23 blood clots, which can lead to a heart attack. Or it  
24 can, as I mentioned, drop the blood levels too fast,  
25 which can lead to blood clots and a heart attack.

1           How likely is it that those risks will  
2 actually occur? What we'll hear, what the evidence will  
3 show, that based on the literature, the medical  
4 scientific literature, the risks of Profilnine causing a  
5 dangerous blood clot is up to 9 to 10 percent, every  
6 time it's given, up to 9 to 10 percent. Some studies  
7 are lower, some are at the high range, some are right in  
8 the middle, but it's up to 9 to 10 percent.

9           But that's not really the most important  
10 fact because what matters is how risky it is compared to  
11 the alternatives. And what we'll see is that Profilnine  
12 is 60 percent more likely to cause a dangerous blood  
13 clot than fresh frozen plasma, 60 percent. And compared  
14 to Vitamin K, which has no risks, that number goes  
15 through the roof. That's what the medical literature  
16 says. And that's what our pharmacy expert says, who  
17 will be our first expert to testify today, will tell us.

18           So what treatment did Esmeralda Tripp get  
19 every single time she went to the ER, 17 times? Well,  
20 she would go in, she would see the doctors and they  
21 would assess her blood level, and if it was too high,  
22 even higher than it was on the 13th -- sometimes she's  
23 actively bleeding from her gums or her nose -- they  
24 would withhold the Coumadin. And when that got her  
25 blood levels down, whether it was a day or two days,



1 sometimes, you know, three days, they've gotten her to a  
2 safe range and they discharge her home. Or sometimes  
3 they would give her Vitamin K, they watched her blood  
4 levels, they watched them go down, down, down.  
5 Sometimes they'd have to give her some more Vitamin K to  
6 help, but when it got down to a safe range, she would go  
7 home. And sometimes she would get fresh plasma and  
8 Vitamine K, and when her blood levels would come down,  
9 they would send her home.

10 In these prior hospital visits, again,  
11 sometimes her blood levels were even higher than they  
12 were on this day, and these were the ways the doctors  
13 treated her, and every single time the blood levels came  
14 down to a safer range, and every single time she went  
15 home to her family, every time.

16 On September 13, 2013, Esmeralda gets a  
17 phone call from her primary care doctor and he tells her  
18 that her blood levels that he had drawn a couple of days  
19 before, were very high, 13.6, not as high as it's been  
20 at other times, but still very high. And he tells her,  
21 you need to go to the hospital to get your blood level  
22 reversed, go to the ER tonight.

23 So she does, she follows his instructions.  
24 And she gets to the ER around 8:10 at night. And she  
25 tells the doctors and the staff why she's there, she has

1 this high blood level. She first mentions that she had  
2 had some bleeding and that her blood levels have to be  
3 reversed and that she had back flank pain.

4 Dr. Gokova is the ER doctor who sees her.  
5 They do another blood test to see where her blood level  
6 is at that time. And all the hospital can tell us is  
7 that it's over 10, unlike the outside lab that can tell  
8 us how high it was, we don't know from the hospital, it  
9 could be 10.1, it could be 13, it could be 6, we don't  
10 know and it really doesn't matter because what the  
11 experts will tell us is that it takes the same amount of  
12 treatment to get the blood levels down into a safe  
13 range, it's doesn't really matter.

14 As of this time Esmeralda's vital signs are  
15 completely normal, other than she has a slightly  
16 elevated heart rate called mild tachycardia. And  
17 doctor, I believe it's Dr. Alter, will come up and say  
18 that he just assumes that that was because of the pain  
19 that she was having because that could make your heart  
20 rate go a little faster.

21 Very importantly, at this time, Dr. Gokova  
22 finds that Esmeralda has no active bleeding, none, none.  
23 And between 9:30 and 10:00 that morning -- or that  
24 night, I'm sorry, the doctors do what's called an EKG or  
25 a heart test. An EKG shows a normal heart rhythm, she's

1 not at risk at this point and her heart is completely  
2 fine. There are no problems with her heart rate as of  
3 9:00 to 10:00 at night.

4 Esmeralda tells Dr. Gokova that she has been  
5 to the University Hospital, she's been to Kino Hospital  
6 and she's been to other hospitals for this very  
7 condition in the past, she tells them that. And all  
8 those records are available to Dr. Gokova. They're  
9 what's called Electronic Medical Records, EMR. All she  
10 has to do is type in her username and password and she  
11 has access to all those records. It's not 15,000 pages  
12 of records that the doctor has to sit through one by  
13 one. It's a computer, they're attached and you click on  
14 labs and you can see what the blood level was and then  
15 you click on the orders and you can see what was done  
16 for her.

17 Dr. Gokova would be able to see exactly how  
18 more experienced doctors treated this very condition on  
19 prior occasions. And it's important for all patients,  
20 but it's really important for patients like Esmeralda,  
21 who are learning disabled, can't communicate  
22 effectively.

23 Dr. Gokova, herself, calls Esmeralda a poor  
24 historian. She's not able to talk about medical  
25 conditions very well, so this is a good way to see what

1 doctors are saying, what doctors are doing. But what  
2 the evidence will show is that Dr. Gokova couldn't  
3 remember her password to get into the electronic records  
4 that night. She couldn't remember it. So she couldn't  
5 look at those records when she was first assessing  
6 Esmeralda.

7                   Esmeralda tells her about that flank pain.  
8 And it may not be the classic signs of appendicitis, but  
9 it's concerning enough, so Dr. Gokova orders a CT scan  
10 of the head to rule out any bleeding of the brain from  
11 the high blood level. She also orders a CT of the  
12 abdomen to make sure there's no appendicitis.

13                   Both studies come back showing no bleeding  
14 at all, none. But the abdomen CT, as I mentioned  
15 before, comes back suggestive of appendicitis. So Dr.  
16 Gokova does the right thing. She orders a surgical  
17 consult because surgeons are the ones who will diagnose  
18 on the appendicitis, and surgeons are the ones who  
19 determine if surgery is necessary and when it will be  
20 done. It's outside the scope of practice of an ER  
21 doctor.

22                   Before the surgeons get to Esmeralda's  
23 bedside, Dr. Gokova, again, meets with Esmeralda, this  
24 time with her supervising doctor, Dr. Alter, they are  
25 both at her bedside. And Dr. Gokova tells Esmeralda

1 that she needs to have her blood levels lowered, and she  
2 recommends Profilnine, the high-risk medication. And  
3 Esmeralda tells her, never had Profilnine before. Every  
4 time I come to the hospital, they give me Vitamin K,  
5 they give me fresh frozen plasma or they just tell me to  
6 stop taking my Coumadin. That's what she tells Dr.  
7 Gokova. And according to Dr. Gokova, at this point, Dr.  
8 Alter pulls up those prior medical records on the  
9 computer. Great. The records are there at the doctors'  
10 fingertips. They can see the recipe to how to treat  
11 this patient for this exact problem, what's worked every  
12 single time, how Esmeralda was treated and went home to  
13 her family every time.

14           And Dr. Gokova knows that the records are  
15 pulled up on the computer, so what does she do? Well,  
16 she tells us at her deposition she never looked at them.  
17 She never looks at the records. And what about her  
18 supervisor, Dr. Alter? He tells us he doesn't even  
19 remember accessing the records that night.

20           The evidence will show that the doctors had  
21 the recipe to treat this patient safely and they didn't  
22 look at the records. You'll see what they say here at  
23 trial, but that's what the evidence will show.

24           Instead, Dr. Gokova, instead of taking two  
25 minutes to look at those records, she decides to rely on

1 her two months of experience, and she suggests  
2 Profilnine does wonders. And, again, she makes that  
3 recommendation, despite the fact she's never given this  
4 to a patient, not once. And Dr. Alter, he amazingly  
5 agrees with the recommendation, he agrees with it.

6 THE COURT: Counsel, come on up.

7 (Bench conference.)

8 THE COURT: When you say the evidence will  
9 show, just now, you interjected, he amazingly agreed,  
10 that's argumentative, that's not appropriate. So I  
11 don't want either one of you to make that kind of  
12 comment, my opinion about the evidence or something that  
13 was amazing or some other adjective that you have  
14 suggested opinion.

15 MR. SNYDER: I apologize, Your Honor. I  
16 cannot say it's clear and convincing?

17 THE COURT: You can say that because that's  
18 the standard of proof, but when you say he amazingly  
19 agreed, that's your opinion.

20 MR. SNYDER: I apologize.

21 THE COURT: Okay.

22 (Bench conference over.)

23 THE COURT: Thank you, counsel.

24 So, Dr. Alter agrees with the recommendation to give  
25 Profilnine, and he agrees with it despite the fact he's

1 never given it either. Esmeralda will be the very first  
2 patient in either of these doctors' careers to get this  
3 medication.

4 And neither doctor tells Esmeralda that there's a  
5 hospital guideline for the use of Profilnine in this  
6 very situation. And that her situation, her condition,  
7 does not allow it to be given under those conditions,  
8 they don't tell her that. Instead they suggest it as  
9 the appropriate medication to be given.

10 And Esmeralda, without knowing anything different,  
11 listens to her doctors, she relies on her doctors and  
12 she consents.

13 So why do they give Profilnine to her that night? Dr.  
14 Gokova will tell us that she ordered Profilnine that  
15 night for a couple of reasons. One is that Esmeralda  
16 might have had internal bleeding. She thinks this  
17 because a few days earlier Esmeralda had a nosebleed and  
18 it stopped on its own after an hour-and-a-half to  
19 two hours, but she was concerned that that might mean  
20 she's got bleeding somewhere inside her body.

21 And she also when she went to the bathroom had some  
22 blood on the toilet seat, but that resolved as well.

23 She thought that might be a sign of internal bleeding.  
24 But remember the hospital's own guideline, it's serious  
25 or life-threatening, and Dr. Gokova admits that

1 Esmeralda did not have serious or life-threatening  
2 bleeding.

3 So the second reason that Dr. Gokova gives us is that  
4 Esmeralda might start bleeding at some point later that  
5 night. She's got a high blood level, bleeding is a  
6 risk, maybe she'll start bleeding later, but, again, the  
7 guideline is serious or life-threatening, it's not the  
8 risk of bleeding.

9 So what the evidence will show are the reasons 1 and 2  
10 are not enough. So Dr. Gokova gives us a third reason  
11 and she tells us she gave Profilnine that night because  
12 Esmeralda might go in to emergency surgery for her  
13 appendix. Well, emergency surgery is one of the  
14 guidelines.

15 So was Esmeralda going in for emergency surgery? Well,  
16 at this point in time, the surgeons haven't even  
17 assessed the patient yet. They're the ones who will  
18 decide and they haven't even looked at this patient yet.  
19 But Dr. Gokova orders it anyway.

20 And shortly after that, Dr. Alter goes home for the  
21 night, his shift is over, and a new attending physician  
22 comes on. When the hospital's pharmacist, Dr. Hoyt Yee,  
23 gets the order of Profilnine, he knows about the  
24 guideline, so he calls Dr. Gokova and he wants to find  
25 out two things. One, he wants to adjust the dosage a



1 little bit, which is not a big deal, but he also wants  
2 to know why it's being given because he knows about the  
3 guideline. Dr. Gokova says those two words, emergency  
4 surgery. So Dr. Yee thinks the hospital guideline is  
5 being complied with and so he fills the order for  
6 Profilnine.

7 At about 12:38 a.m. the surgeons arrive at Esmeralda's  
8 bedside, but remember the medication has already been  
9 ordered, but there's still time, it hasn't been given  
10 yet, it can still just not be given. And the surgeons  
11 are available to Dr. Gokova to discuss her patient, to  
12 talk about what her care plan is going to be and what  
13 she needs, what's going to happen to her. But Dr.  
14 Gokova chooses not to speak with them. Instead she  
15 sends her nurse to go talk with the surgeons because Dr.  
16 Gokova has other patients she needs to see. And the  
17 nurse comes back and reports to her that the surgeons  
18 are still at the bedside assessing Esmeralda.

19 At this point, before Profilnine has been injected,  
20 Esmeralda Tripp's vital signs are completely normal,  
21 she's not having any problems. Between 12:47 and 12:57  
22 a.m. the Profilnine is injected. And the evidence will  
23 show that the very people, the surgeons who will  
24 determine whether surgery is going to happen still have  
25 not completed their assessment yet.

1 I need to mention this because it will likely come up in  
2 defendants' opening and throughout the trial. We have  
3 no evidence at all that the surgeons knew Profilnine was  
4 being given. They were presumably in the room when it  
5 was being injected, but they have no evidence that they  
6 knew Profilnine was being used. All we have is the  
7 doctor's note, the surgeon's note. And, again, I can't  
8 show you the actual note yet, but what it says is that  
9 they will continue to reverse the coagulopathy, the high  
10 blood level with Vitamin, K fresh frozen plasma and  
11 Coumadin. We have no evidence that the surgeons knew  
12 Profilnine was being used, none.

13 Shortly after the Profilnine is injected, Dr. Gokova  
14 goes home for the night, her shift is over. And she  
15 leaves without documenting her care in the medical  
16 records, she has handwritten notes, which she brings  
17 home with her, but she doesn't write anything in the  
18 actual hospital charts for the other doctors and nurses  
19 to know. And she tells us the reason she did that was  
20 because she was so tired at the end of her shift,  
21 nine-hour shift, that she didn't have the energy to  
22 write her notes. She didn't have a lot of patients that  
23 night, but she was too tired. So she takes the notes  
24 home with her. And she leaves and a new trainee, a new  
25 resident takes over.

1 Dr. Gokova tells us that as of the time she left the  
2 hospital that night, she had no idea of what the  
3 surgical team had concluded on her patient. She didn't  
4 know because they hadn't finished their assessment. The  
5 Profilnine was already injected.

6 And after she leaves, the surgical team finishes their  
7 assessment and they determine that Esmeralda did not  
8 have appendicitis, she doesn't need any surgery.

9 The Profilnine does exactly what it's supposed to do,  
10 and in the next 20 minutes or so, it very quickly lowers  
11 her blood level. And the lab shows 2.1 after being over  
12 10, 2.1. But only two hours after it was injected  
13 Esmeralda's condition starts to change.

14 She screams out in pain, only two hours later, she  
15 screams out in pain that her abdomen, her belly is  
16 hurting, and her vital signs start to crash, her blood  
17 pressure drops, her heart rate drops and code is called.

18 And the code team is made up of doctors and nurses, they  
19 rush to the bedside and they start to immediately assess  
20 the patient. And at the very beginning they conclude  
21 that Esmeralda had a heart attack, that's their first  
22 thought.

23 They try to stabilize her and they're giving her  
24 medications, and they're still assessing her and they do  
25 another EKG, that same heart test that somebody did

1 earlier, when it was completely normal before. And now  
2 when they do the heart test, her EKG shows coronary  
3 artery blockage, the arteries in the heart are blocked  
4 and they suspect a heart attack.

5 About 15 minutes later -- I'm sorry, about three minutes  
6 later, they confirm that she had a heart attack. And  
7 about 15 minutes after that, Esmeralda goes into atrial  
8 fibrillation, that's a dangerous heart level that she  
9 did not have earlier that night.

10 So the doctors -- you've all seen it on T.V., they take  
11 those pads and say, clear, and they shock the patient.

12 They try to shock her into a better rhythm, a normal  
13 rhythm. And they do that.

14 The code team gives Esmeralda medication to try to jump  
15 start her heart, to jump start her body and try to keep  
16 her alive. And they also determine that her problems  
17 are most likely due to blood clots. And they know this  
18 because they give her a medication called TPA, which is  
19 a clot-busting medication.

20 So when is TPA used? It's only given if the blockage is  
21 caused by blood clots, that's it. If the blockage is  
22 caused by anything else, whether it's plaque or some  
23 sclerosis might be determined, you don't give TPA  
24 because TPA won't do anything. It's only to bust up  
25 blood clots.

1 So they give her the TPA, and just as you would hope  
2 that would happen, her vital signs start to normalize.  
3 Her blood pressure starts to normalize. Her oxygen  
4 saturations starts to normalize. The TPA worked, it  
5 busted out the clots.

6 But the problem is that Esmeralda is unresponsive. And  
7 imaging studies done a couple of days later confirm a  
8 brain damage. Three days later, on September 17, 2013,  
9 three days after Dr. Gokova treats Esmeralda, she  
10 documents her care in the patient's chart.

11 Although we'll hear from Dr. Gokova, who says, at this  
12 time, when she writes her note in the chart, she had  
13 found out what happened to Esmeralda, she talked to  
14 other doctors and possibly nurses, and she looked at  
15 those prior medical records, the records that weren't  
16 looked at before Profilnine was given. And she said she  
17 looked at them because Esmeralda was a poor historian  
18 and she wanted to make sure her history was accurate.

19 But her note that was written three days later had  
20 information that was not available that night.

21 Esmeralda spends the next seven weeks in the hospital.  
22 She never regains consciousness, she's always in that  
23 minimally conscious state, and she's still in that stage  
24 today.

25 When she's discharged from the hospital on November 5th,

1 the doctor that discharges her, the one that took care  
2 of her for those seven weeks, writes a note that she had  
3 a myocardial infraction, which means she had a heart  
4 attack, and that she had stroke with cerebral ischemia,  
5 which means her blood and oxygen is cut off of her  
6 brain. She's wheeled back to the hospital and one of  
7 the clinical terms is that she's in a vegetative state,  
8 unresponsive.

9 Her family brings her home where they bathe her and they  
10 feed her and they make sure her airway is clear. And  
11 they do have help from a home healthcare team, about  
12 four hours a day, five days a week, but the rest of the  
13 time they're left on their own to care for her.

14 As of this week, we are about -- we're just a few weeks  
15 shy from the four-year anniversary when Esmeralda left  
16 the hospital. She's still alive, she's still in that  
17 unresponsive state. And you'll see photos of what she  
18 looked like before and what she looks like now.

19 And that's Esmeralda's story. And that's why we're here  
20 in this courtroom. You'll see that Esmeralda will be in  
21 an unresponsive state for the rest of her life because  
22 the doctors in charge of her care that night violated  
23 the hospital's guidelines and violated the patient's  
24 care.

25 As the plaintiffs in this case, we have the burden of

1 proving that the doctors were negligent, that they  
2 violated the rules. And the burden is what's called  
3 clear and convincing. We heard about it very briefly  
4 yesterday and some this morning. It's not beyond a  
5 reasonable doubt like in a criminal case. It just means  
6 highly probable, that's all it means.

7 And you'll receive an instruction at the end of the case  
8 reiterating that. But what we'll see is that it's not  
9 really a difficult burden to meet in this case because  
10 we have the guidelines, we have the written standard of  
11 care and the doctors' guidelines.

12 Our standard of care expert, Dr. Talan, is from UCLA.  
13 He's a very experienced, very well-credentialed doctor,  
14 and he's going to talk to us about the rules of the  
15 emergency doctors. He has authored over 120 articles,  
16 book chapters, et cetera, some on the very issues of  
17 this case. And these aren't just typical books or  
18 articles. These are scientific medical articles that  
19 other doctors around the country reviewed and approved.  
20 It's called the pre-review process. And then they get  
21 put in these journals that other doctors from other  
22 countries read about.

23 And what he'll tell us is that giving Profilnine to  
24 Esmeralda Tripp that night violated the rules.

25 Emergency surgery was on schedule and appendix surgery

1 is not an emergency surgery, and that's really  
2 important.

3 What he'll tell us is that sometimes appendix surgery is  
4 done in a couple of hours, six hours, 12 hours, even  
5 24 hours. And Esmeralda had no serious or  
6 life-threatening bleeding.

7 He'll also tell us this is not a judgment call, it's not  
8 that the doctors can just decide if the guidelines say  
9 so. It's not a judgment call.

10 And the defendants will not show us any article, any  
11 guidelines, any protocol, nothing that says Profilnine  
12 can be given in this type of situation. All we have is  
13 the hospital guidelines and the other literature.

14 Dr. Talan will also tell us about these prior medical  
15 records and how the rules require Drs. Gokova and  
16 Alter, once they pull up those records, to look at them  
17 to help guide their treatment of their patient. And  
18 when they didn't do that, they violated the standard of  
19 care and they're negligent.

20 The next question we have to answer is was their  
21 negligence a cause of Esmeralda -- and, again, the  
22 burden of proof is the same burden. We have several  
23 experts to talk about the causation, I'm not going to go  
24 through them all, but the first one we'll hear from  
25 today is the pharmacist, Dr. Witt from Utah, the



1 University of Utah, and he'll tell us that Profilnine is  
2 a very high-risk medication and he'll explain why. And  
3 he'll also talk about the guideline and why the  
4 guidelines are in place.

5 And then we have a hematology expert, a blood expert,  
6 Dr. Schwab, and he'll tell us that Profilnine is known  
7 to cause dangerous blood clots. That's why it's called  
8 a high-risk medication. And that's what happened to  
9 Esmeralda, is what Dr. Schwab will tell us.

10 Yet, what we'll see is that Esmeralda's injuries were  
11 caused by oxygen being cut off to the brain level, and  
12 when oxygen didn't get to the brain, she suffered a  
13 brain injury.

14 And defendants' experts agree with the fact that oxygen  
15 to the brain was cut off, causing the brain injury.

16 They disagree on the cause of why that happened, but  
17 there's agreement on that it did happen.

18 So why was the oxygen cut off? Well, what we'll hear is  
19 that then the commonly first signs and symptoms of a  
20 heart attack are crushing chest pain and pain numbness  
21 down the arm. But in women, that's not what the common  
22 first signs and symptoms are. You can have pain  
23 throughout the body, including the abdomen.

24 Esmeralda's first sign of a heart attack is when she  
25 yelled out with that belly pain in the ER and the

1 doctors gave her some pain medication for it and that  
2 did not work. That was her first sign of a heart attack  
3 before her body functions crashed.

4 So did Profilnine cause the blood clots and the heart  
5 attack? Well, remember, Esmeralda had been to the  
6 hospital about 17 times before for this very condition,  
7 and every time she was treated with those three options,  
8 Coumadin, Vitamin K, fresh frozen plasma, and every time  
9 she went home to her family, no blood clots, no heart  
10 attack, no brain damage. But this time when she went in  
11 to the hospital, she sees Drs. Gokova and Alter. They  
12 check for bleeding, they don't find any.

13 And I just want to quickly mention that the CT of the  
14 abdomen that showed no blood is not the best test to  
15 show bleeding, we agree with that, but that's all that  
16 we have. There are other tests that can be done but Dr.  
17 Gokova didn't order any.

18 So all we have is the CT of the abdomen and we have no  
19 bleeding of the brain or the abdomen. And they order  
20 the surgical consult, but the surgical consult wasn't  
21 done. It didn't show no appendicitis, no surgery:  
22 Profilnine was given and Esmeralda developed permanent  
23 brain damage. The only difference between the 17 times  
24 before and this time is Profilnine.

25 And by the way, our experts aren't the only ones that

1 think that. One of the doctors on the code team that  
2 night, who was one of the doctors who treated her that  
3 night also thought that. And we'll see in the records  
4 that they thought Profilnine might have been the cause  
5 also that night.

6 As the plaintiffs, we go first in opening statements.

7 And I know this is going a little long and it's kind of  
8 hot in here and I'll try to go through this quickly.

9 But I don't get to hear what Mr. Smith is going to say  
10 and then respond to it. So we do know what his experts  
11 are going to say because we talked to all of them under  
12 oath.

13 When I'm done, Mr. Smith is going to come up here and  
14 tell you what the hospital's side of the story is. And,  
15 again, I encourage everyone to take notes, just like I  
16 asked you to do for me. And then we'll compare those  
17 notes during the trial.

18 Any time it's said that I didn't tell you the whole  
19 story or you didn't assess something, please write it  
20 down. I can't be up here and tell you every single  
21 fact, neither can Mr. Smith or we'll be up here for  
22 five hours each. So we can only tell you the road map  
23 of the vehicle.

24 I mentioned earlier that Esmeralda had several medical  
25 conditions. And what the defendants are going to argue

1 is that her medical conditions and the fact that she  
2 allegedly didn't comply with her doctors' orders was a  
3 cause of what happened to her. They're blaming  
4 Esmeralda for her injuries.

5 And they have the burden of proof on that claim, as the  
6 Judge instructed you this morning. They have to prove  
7 that Esmeralda's conduct was the cause of her injuries.  
8 And what we'll see is there will be no evidence that  
9 anything Esmeralda did or didn't do caused her injuries.

10 And the argument is, well, she had to go to the hospital  
11 that night because she didn't take care of her blood  
12 levels, but defendants' own expert will tell us that  
13 that is not necessarily true. People who do take care  
14 of their blood levels and do follow doctors' orders  
15 still have to go to the hospital for Coumadin.

16 We'll also hear a lot about the medical conditions that  
17 she had prior. And she wasn't always accurate in  
18 talking about her medical history. Again, she was  
19 learning disabled, she's a vulnerable person.

20 And it may be obvious that -- and I need to point that  
21 out again, the doctor never looked at her medical  
22 records that night. So anything that Esmeralda said in  
23 the past that's untrue or misleading, Drs. Gokova and  
24 Alter didn't even know about her treatment.

25 The one thing I want to mention about her medical

1 condition is that Esmeralda had no prior heart attack,  
2 none. There are mentions in the record that she had a  
3 heart attack when she was 29 and one record says that  
4 she was 36, but those come from Esmeralda. We're not  
5 saying anyone else added something, that is what she  
6 said, but it's not true. And we know it's not true  
7 because we have the medical records, and her heart was  
8 perfect, there were no problems. She never had a heart  
9 attack prior to Profilnine being injected.

10 Second defense is that the defendants disagree with our  
11 theory about what happened, what our experts will tell  
12 you what happened to a high degree of probability. They  
13 don't think the Profilnine caused it.

14 What they'll tell us is that maybe Esmeralda had a  
15 Dilaudid, that was the pain medication and that can  
16 cause her blood pressure to drop, maybe she had a heart  
17 attack from that. She had been given Dilaudid many  
18 times in the past and never had a heart attack.

19 So it will be up to you to decide what caused her heart  
20 attack. Was it that she coincidentally had one in the  
21 ER that night from her pain, pain meds or something  
22 else, or that for the first time in her life, or did the  
23 Profilnine cause the heart attack? A medication that's  
24 known to do it. Which one was it?

25 Third argument, and I'll just go through this quickly,

1 is that the defendants will say that Profilnine is not  
2 actually more dangerous than fresh frozen plasma. And  
3 the reason they say that is because there's one article  
4 that talks about PCC's, not Profilnine, but PCC's. And  
5 they say the risks are the same. And Dr. Witt, the  
6 pharmacist, will talk to us about that, explain why  
7 they're not the same.

8 And one of Dr. Witt's articles does say that the risk of  
9 Profilnine is very high, it's from one to seven, a  
10 .7 percent chance. And he'll explain why that study  
11 reached that conclusion.

12 We'll also hear that her blood level dropped to 2.1,  
13 never went below 2, so she wouldn't have clots. He'll  
14 also mention, we'll hear that it matters how fast it  
15 drops and that's why Profilnine can cause the clots.

16 And the very last defense I want to mention is that the  
17 defense experts will tell us that if he had blood clots,  
18 how come we don't see any blood clots on the imaging  
19 studies? They did study her lungs and there were no  
20 blood clots of the lungs. But they never did a study of  
21 the heart, they never did one. And that's where our  
22 experts say the clot was, they don't have any imaging  
23 studies of the heart.

24 But the defense will also tell us that if there were  
25 clots, there would be some remnant of clots because even

1 though the TPA picks it up, there's still something left  
2 behind and we don't have that.

3 But what we'll hear is that there's no literature to  
4 support that and that whether the blood clot has a  
5 remnant or not is just completely irrelevant, which  
6 brings us up to the very last part of this, the damages.  
7 We have to talk about the damages.

8 Esmeralda's life was forever changed in September of  
9 2013. She was not in danger that night until they gave  
10 her Profilnine. Prior to the Profilnine, she was a  
11 happy person who's always smiling. And she had her  
12 problems, she had her negative points, like we all do,  
13 and no one is hiding that.

14 You'll hear from her family the kind of person she was  
15 and how she loved her family so much and she did  
16 everything for them. Since that day, she's been in this  
17 unresponsive state, she cannot communicate. Living for  
18 her is lying in a bed, with a tracheotomy around her  
19 neck, and she has to be cleaned and cared for on a daily  
20 basis.

21 We'll hear about how she's been deprived from her  
22 enjoyment of life, and she has no pain or suffering,  
23 she'll never be able to tell her kids she loves them and  
24 she'll never be able to hear them tell her they love  
25 her.

1 There's a disagreement among the parties about how long  
2 Esmeralda will live. What we'll hear is that based on  
3 the most recent literature, she will live for 10 to  
4 11 years from the date of the incident. She's currently  
5 in her 40's. Defendants' experts determined that.  
6 Her health is doing pretty well right now. She's still  
7 alive, she's never had another heart attack or blood  
8 clot. And those are injuries that are not easy to put a  
9 price tag on, they're not easy to fix.

10 We as lawyers deal with this unfortunately on a daily  
11 basis. So at the end of this trial we'll stand before  
12 you and tell you what we feel is fair and reasonable to  
13 compensate Esmeralda. It will be up to you.

14 The other part that is easy to put a price tag on is her  
15 special damages, what is the cost to take care of her  
16 for the rest of her life.

17 We have what's called a life care plan, or a nurse that  
18 goes through all of her records and says this is what  
19 this type of person needs from us, everything from  
20 medical supplies to hospital visits to adult diapers,  
21 everything. And she gives a cost for all of that.

22 And then we have an economist from the U of A, who will  
23 tell us what that number actually is, in terms of a  
24 dollar amount, once she applies that mathematical  
25 formula.



1 And what we'll hear is that Esmeralda has special  
2 damages from the date of the report until the day she's  
3 expected to pass away. It's \$5.1 million. That's what  
4 her the life span will pay. That's what it will cost to  
5 take care of her. She's getting some care now, but it's  
6 minimal. That's what it will take to take care of her,  
7 \$5.1 million. And there will be a lot of discussion  
8 about health insurance, paying for it or not. And  
9 you'll hear why in today's world you can't really count  
10 on --

11 MR. SMITH: Your Honor, this is getting into  
12 argument.

13 THE COURT: I think that's true.

14 MR. SNYDER: I'm at the end, Your Honor, but  
15 I'll move on.

16 THE COURT: Move on.

17 MR. SNYDER: And that's the condition to the  
18 prior damages, the losses.

19 This is a very important case, not just for  
20 Esmeralda Tripp, but for this entire community. And I  
21 know you'll listen very closely to the evidence. And I  
22 know you'll take your jobs very seriously. I realize  
23 you didn't have a choice in being here, but it is your  
24 civic duty. And that's why we stand for you every time  
25 you come into the room or leave because you're

1 important. And I know you'll take your responsibilities  
2 seriously and listen to the evidence and decide this  
3 case based on the evidence.

4           At the end of this trial we'll stand before  
5 you and we'll ask you to find in plaintiffs' favor, that  
6 the evidence proved to a high degree of probability that  
7 the doctors were negligent and that they were the cause  
8 of Esmeralda's permanent injuries. And we'll ask you to  
9 award damages, money, because that's all we have of  
10 those items that I just discussed.

11           On behalf of everyone on this side of the  
12 courtroom, including court staff and the defendants, we  
13 thank you for your time and your dedication. I know  
14 you've all sacrificed a lot to be here, and we truly  
15 appreciate it.

16           Thank you.

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1 STATE OF ARIZONA )  
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I, MARIA LOURDES GEARE, Certified Reporter #50555,

9 Official Court Reporter for the Superior Court, in and

10 for the County of Pima, do hereby certify that I took

11 the shorthand notes in the foregoing matter; that the

12 same was transcribed under my direction; that the

13 preceding pages of typewritten matter are a true,

14 accurate and complete transcript of all the matters

15 adduced, to the best of my skill and ability.

16

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19 MARIA LOURDES GEARE, Certified Reporter

CR-505555,

20 Official Court Reporter,

21 Pima County Superior Court

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25 DATED: October 26, 2017

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I N V O I C E

TO: Mr. Christopher Smith, Esq.  
 RE: Transcript for C20144811, Jury Trial Day 2  
 Opening Statement of Mr. Snyder  
 DATE OF  
 INVOICE: October 26, 2017

CASE: SERRANO V THE AZ BOARD OF REGENTS

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