THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATE OF AMERICA,

Plaintiff, **Case No. 2:18-cr-20800**

v. **Hon. Stephen J. Murphy III**

D-4. DR. DAVID LEWIS,

Defendant.

DEFENDANT DR. DAVID LEWIS'S MOTION TO EXCLUDE THE TESTIMONY OF DR. NEEL MEHTA

COMES NOW Defendant, DR. DAVID LEWIS, by and through his undersigned counsel, and respectfully requests that this Honorable Court exclude the testimony of Dr. Neel Mehta for the following reasons:

1. On October 31, 2020, Dr. Mehta issued a report titled "Expert Report for the Case United States of America Versus Bothra, et. al. (Pain Center)."

2. Dr. Mehta's report fails to comply with Rule 702 and 703 of the Federal Rules of Evidence and should be excluded.

3. A trial judge must determine at the outset, whether the expert is proposing to testify to **1)** scientific knowledge that **2)** will assist the trier of fact to understand or determine a fact in issue. This entails a preliminary assessment of whether the reasoning or methodology underlying the testimony is sufficiently valid

and of whether that reasoning or methodology properly can be applied to the facts at issue. *Daubert v. Merrell Dow Pharmaceitucals, Inc.*, 509 U.S. 597, 589 (1993).

4. "The task for the district court in deciding whether an expert's opinion is reliable is not to determine whether it is correct, but rather to determine whether its rests upon a reliable foundation, as opposed to, say, unsupported speculation." *In Re Scrap Metal Antitrust Litig.*, 527 F.3d 517, 529 (6th Cir. 2008).

5. Dr. Mehta's proposed testimony is inadmissible for three (3) reasons:

   a. The expert relies on a medical malpractice standard to determine culpability. Such a standard mis-applies the law and is not helpful for the jury.

   b. Dr. Mehta seeks to offer an improper opinion regarding the "intent" of Defendants.

   c. The expert offered an opinion as to the medical necessity of care after reviewing only a fraction of the patient medical records.

6. Defendant Lewis respectfully request that this Court exclude the testimony of Dr. Mehta or, in the alternative, afford a *Daubert* hearing so that Dr. Mehta's opinions may be tested prior to being heard by the jury. Moreover, Defendant requests that the Government provide copies of all correspondence and files transmitted to the Government's expert prior to any hearing.

WHEREFORE, for the reasons stated herein and in the attached Brief in Support, Defendant, DR. DAVID LEWIS, by and through his undersigned counsel, respectfully request that this Honorable Court GRANT this instant motion and exclude the testimony of Dr. Neel Mehta.

Respectfully Submitted,
CHAPMAN LAW GROUP

Dated: March 5, 2021

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BRIEF IN SUPPORT OF DR. DAVID LEWIS'S MOTION TO EXCLUDE THE TESTIMONY OF DR. NEEL MEHTA

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BACKGROUND

The Government indicted Dr. David Lewis and five (5) other physician Defendants on December 4, 2018. Defendant Lewis was indicted in the following counts:

- Count 1: Healthcare Fraud Conspiracy, 18 U.S.C. § 1349.
- Count 30: Healthcare Fraud and Aiding and Abetting 18 U.S.C. § 1347 for treatment of patient V.L. on October 27, 2017.
- Count 31: Healthcare Fraud and Aiding and Abetting 18 U.S.C. § 1347 for treatment of patient V.L. on March 26, 2018.
- Count 43: Conspiracy to Distribute and Possess with Intent to Distribute Controlled Substances.
- Count 53: Unlawful Distribution of Controlled Substances for treatment of patient A.P. on June 26, 2018.

Defendant Lewis filed his first demand for discovery in September 2019 and, at that time, the Government declined to produce any patient records, expert report, and any summary exhibits to be used at trial along with underlying data. ECF No. 216, PgID 1458. The Government declined to produce that data. On April 23, 2020, Defendant Lewis filed a motion seeking identification of the Government's expert, disclosure of its report, and disclosure of all the patient files the Government intends to offer in its case in chief. ECF No. 216, PgID 1458. In its response, the Government

informed this Court that it "is in compliance with its *Brady* obligations" and would provide a summary of any expert testimony in sufficient time for Defendant to "meaningfully prepare their defense." ECF No. 229, PgID 1546-50. The Court relied on the Government's representation in denying Defendant Lewis's Motion to Compel Production, stating, "it appears that the Government has done all it has been required to do, and there is no showing that it has not." ECF No. 232, PgID 1578-79.

Six (6) months after making that representation and a little over a month before trial was scheduled to begin, the Government has produced one-hundred-thirty-four (134) patient records, and a few weeks later it produced the Government's expert report. Exhibit A: Government Discovery Letter. While the Government's expert report [Exhibit B] indicates that the expert reviewed "patient charts," it does not state which charts. The one-hundred-thirty-four (134) records produced by the Government contain 2.45 Gigabytes of data culled from over twenty-eight-thousand (28,000) patient records. The records produced and reviewed by the Government's expert are incomplete because they lack data located in the electronic medical record system and clinic paper charting system.[1] Thus, six (6) months after informing this Court that it would provide an expert report in time for Defendant to meaningly

[1] Notably, the chart for patient V.L. whose treatment is made at issue in Counts 30 and 31 of the indictment is completely absent from the Government's data that it claims was extracted from Practice Fusion.

prepare for trial, it produced a thirty-three (33) page expert report and one-hundred-thirty-four (134) incomplete patient charts. The Government indicted Defendant on December 4, 2018, and after nearly twenty-four (24) months of trial preparation, it has finally produced its expert report and one-hundred-thirty-four (134) incomplete patient records relied on by its expert.

Defendant challenges the Government's expert report for three (3) main reasons:

1. The expert relies on a medical malpractice standard to determine culpability. Such a standard mis-applies the law and is not helpful for the jury.
2. Dr. Mehta seeks to improperly testify as to Defendant's intent.
3. The expert report was based upon a review of incomplete medical records and is therefore unreliable.

I. DR. NEEL MEHTA'S REPORT INCORRECTLY APPLIES A MALPRACTICE STANDARD WHICH IS NOT HELPFUL TO THE TRIER OF FACT IN DETERMINING IF DEFENDANT ENGAGED IN THE PRACTICE OF MEDICINE

A. Dr. Mehta Incorrectly Applies a Medical Malpractice Standard to a Violation of 21 U.S.C. § 841(a)(1) and His Testimony Should Be Excluded

In cases alleging a violation of 21 U.S.C. § 841(a) against a physician, expert testimony that the defendant wrote the prescription at issue without a legitimate medical purpose and outside the scope of usual professional practice is required, unless there is evidence of

> plainly improper prescribing practices that a lay juror could recognize as illegitimate.

United States v. Word, 806 F.2d 658 (6th Cir. 1986).

Fed. R. Evid. 702 requires that the expert's scientific, technical, or other specialized knowledge aid the trier of fact. There is nothing helpful about testimony that applies the wrong standard. "Indeed, this court should exercise a gatekeeper function to protect unhelpful and confusing testimony from tainting the jury." *Kumho Tire Co. v. Carmichael*, 119 S. Ct. 1167 (1999).

An expert may not offer opinion testimony that is tantamount to instructing the jury on the law. Although an expert opinion may embrace an ultimate issue to be decided by the trier of fact, the embraced issue must be a factual one. *Berry v. City of Detroit*, 25 F.3d 1342, 1353 (6th Cir. 1994). "The problem with testimony containing a legal conclusion is in conveying the witness' unexpressed, and perhaps erroneous, legal standards to the jury. This invades the providence of the court to determine the applicable law and to instruction the jury as to that law." *Torres v. City of Oakland, et. al.*, 758 F.2d 147, 150 (6th Cir. 1985). Dr. Mehta, in his report, provides a false legal conclusion which he bases his assumptions on. Therefore, his testimony must be excluded.

In his report, Dr. Mehta's report provides the standard applied during his review:

> References in this report to activity or conduct being outside the course of professional medical practice or outside the standard of care is activity or conduct that does not comport with any accepted standard of medical care in the United States. If the activity or conduct at issue involves issuance of a prescription "outside the course of professional medical practice" or "outside the standard of care" or "not in good faith" it means that the prescription was issued without any legitimate medical reason or would not have been issued by a doctor acting in accordance **with the standards of practice generally accepted in the United States**.

Dr. Mehta's theory conflates the standard and criminalizes conduct "outside the standard of care" in determining that any such conduct lacks "good faith." He essentially turns three (3) elements into one (1) – all are satisfied by conduct that falls below "standards of practice generally accepted in the United States." His theory is incorrect, against the weight of precedent, and would mislead a jury into conviction of Defendant Lewis for violation of a civil standard.

In order to properly evaluate the incorrectness of Dr. Mehta's standard, we must first assess the proper relationship between the civil and criminal standards of liability for a physician who has prescribed drugs. The distribution charges against Defendant Lewis involve violations of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 846 (conspiracy to distribute). In relevant part, 21 U.S.C. § 841(a)(1) provides that "except as authorized by law it shall be unlawful for any person to knowingly or intentionally . . . distribute . . . a controlled substance." Generally, in order to convict under 21 U.S.C. § 841(a)(1), the prosecution is obliged to prove "that the defendant (1) knowingly or intentionally distributed the controlled substance alleged in the

indictment, and (2) at the time of such distribution the defendant knew that the substance distributed was a controlled substance under the law." *United States v. Tran Trong Cuong*, 18 F.3d 1132, 1137 (4th Cir. 1994). An enhanced analysis applies, however, to persons who are properly registered with the DEA. Pursuant to 21 U.S.C. § 822, such persons including doctors are authorized to distribute controlled substances to the extent authorized by their registrations. The seminal decision explaining the liability of such registered distributors is *United States v. Moore. United States v. Moore*, 423 U.S. 122, 124 (1975). In *Moore*, the court determined that criminal liability attaches to a prescriber when he or she uses their prescription pad as a way to engage in illegitimate drug trafficking. *Id*. at 345. In the words of the *Moore* court, such conduct "exceeds the bounds of professional practice." *Id.*

In the only other case where the Supreme Court addressed the standard under 21 U.S.C. § 841, it determined that the Controlled Substance Act ("CSA") and prior case law "amply support the conclusion that Congress regulates medical practice insofar as it bars doctors from using their prescription-writing powers **as a means to engage in illicit drug dealing and trafficking as conventionally understood**. **Beyond this, however, the [Controlled Substance Act] manifests no intent to regulate the practice of medicine generally**." *Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) (emphasis added).

The standard set forth by the Supreme Court in *United States v. Moore*, is of course much different than the standard articulated by Dr. Mehta. Further, Dr. Mehta's standard seeks criminal culpability for "malpractice." Dr. Mehta asserts that a prescription must be based on treatment that is "generally accepted" for a prescription to be lawful. Justice Potter Steward, during oral argument in *Moore*, correctly pointed out that subjecting physicians to prosecution based on "professional disagreements" rests on dubious grounds when the Government bases the legitimacy of a prescription on whether or not the practice is "generally accepted." *United States v. Moore*, 423 U.S. 122 (1975); oral argument found at *United States v. Moore*, Oyez, https://www.oyez.org/cases/1975/74-759 (last visited Feb 11, 2021). The Supreme Court in *Moore* was clear that criminal liability only attaches to a prescription if the defendant's conduct "exceed[s] the bounds of professional practice," meaning, that the conduct was not the practice of medicine at all. In fact, the Supreme Court in *Moore* specifically disavows the position that a practice must be "generally accepted" to be lawful, stating, "Congress understandably was concerned that the drug laws not impede legitimate research and that physicians be allowed reasonable discretion in treating patients and testing new theories." *Id.*

While Dr. Mehta argues that the CSA bars doctors from practicing in a manner "not generally accepted," the Supreme Court is clear that the CSA's criminal liability

attaches where a doctor has ceased practicing medicine at all. *See United States v. Feingold,* 454 F.3d 1001, 1009 (9th Cir. 2006). The Ninth Circuit in *United States v. Feingold* answered this exact question. In *Feingold*, the court certified the question of whether it is permissible to compare a defendant's conduct to an applicable standard of care. The court previously cautioned against instructions that compare a medical professional's conduct to a standard of care in *United States v. Hayes,* 794 F.3d. 1348, 1352 (9th Cir. 1986) and *United States v. Boettjer,* 569 F.2d 1078, 1082 (9th Cir. 1978). The court also described 21 U.S.C. § 841(a) as prohibiting the significantly greater offense [than malpractice] of acting as a drug pusher. *Moore, supra*, 423 U.S. at 138. The *Feingold* court ultimately held that the *Moore* court criminalized not malpractice, or even intentional malpractice, but rather on the fact that [a doctor's] actions completely betrayed any semblance of legitimate medical treatment. *Id.* at 1010. The court cautioned against the standard used by the Government's "expert" Dr. Mehta, stating, "[w]e emphasize, however, that a district court may mislead a jury if its instructions referring to an applicable standard of care suggest that a breach of that standard alone is sufficient to sustain a criminal conviction." *Id.*

Dr. Mehta intends to instruct the jury on an improper legal standard and draw legal conclusions from that improper standard. His testimony will be confusing to the trier of fact, unduly prejudicial, and not probative of any material fact at issue.

II. DR. MEHTA SEEKS TO IMPERMISSIBLY TESTIFY TO DEFENDANT'S INTENT

Fed. R. Evid. 704 permits an expert to testify to the ultimate issue to be decided by the trier of fact. However, Fed. R. Evid. 704(a) prohibits "the expert from stating an opinion or inference about whether the defendant did nor did not have the mental state or condition constituting an element of the crime charged or of a defense thereto." Fed. R. Evid. 704(b). Good faith is an absolute defense to the charge of unlawful distribution: "If a physician dispenses a drug 'in good faith' in the course of medically treating a patient, then the doctor has dispensed the drug for a legitimate medical purpose in the usual course of accepted medical practice." *United States v. Volkman*, 736 F.3d 1013, 1021 (6th Cir. 2014). In opining that Defendant's prescriptions lack "good faith" and were written "outside the course of professional medical practice," Dr. Mehta endeavors to offer the jury a conclusion about Defendant's mental state.

Again, Dr. Mehta's recitation of his standard in his report is as follows:

> References in this report to activity or conduct being outside the course of professional medical practice or outside the standard of care is activity or conduct that does not comport with any accepted standard of medical care in the United States. If the activity or conduct at issue involves issuance of a prescription "outside the course of professional medical practice" or "outside the standard of care" or "not in good faith" it means that the prescription was issued without any legitimate medical reason or would not have been issued by a doctor acting in accordance with the standards of practice generally accepted in the United States.

Even under the most liberal interpretation of this standard, Dr. Mehta intends to testify that conduct not in accordance with the standards of practice generally accepted in the United States is "not in good faith" and is, therefore, unlawful.

The Sixth Circuit in *United States v. Godofsky* explains the "good faith" standard clearly:

> [Good faith] is more or less *objective* good faith: whether a reasonable doctor under the circumstances could have believed, albeit mistakenly, that he had acted within the scope of ordinary professional medical practice for a legitimate medical purpose. That is, as applied here, even if the jury finds that Godofsky did prescribe oxycodone outside of ordinary professional medical practice and without a legitimate medical purpose, if he did so with a reasonable belief (i.e., in good faith) that he was acting within the scope of ordinary professional medical practice or for a legitimate medical purpose, then he did not do so knowingly or intentionally.

United States v. Godofsky, 943 F.3d 1011, 1026 (6th Cir. 2019).

Dr. Mehta cannot possibly provide testimony regarding Defendant Lewis's objective "good faith" without delving into Defendant's mind. It is certainly very bizarre that Dr. Mehta criticizes Defendant's patient care and endeavors to testify regarding the contents of his mind without having ever seen Defendant's patients or speaking with Defendant. Nonetheless, Dr. Mehta's proposed testimony is in clear conflict with Fed. R. Evid. 704(b) and should be excluded.

III. DR. MEHTA DOES NOT BASE HIS OPINION ON A MEDICAL STANDARD

According to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579; 113 S. Ct. 2786; 125 L. Ed. 2d 469 (1993), a district court's task in assessing evidence proffered under Rule 702 is to determine whether the evidence "both rests on a reliable foundation and is relevant to the task at hand." *Id.* at 597. The district court must consider "whether the reasoning or methodology underlying the testimony is scientifically valid." *Id.* at 592-93.

Daubert attempts to strike a balance between a liberal admissibility standard for relevant evidence on the one hand and the need to exclude misleading "junk science" on the other. *See Amorgianos v. Nat'l R.R. Passenger Corp.*, 303 F.3d 256, 267 (2d Cir. 2002). There is no "definitive checklist or test" for striking this balance, but the Supreme Court in *Daubert* set forth a number of factors that typically "bear on the inquiry." 509 U.S. at 593. These include whether the theory or technique in question [***7] "can be (and has been) tested," whether it "has been subjected to peer review and publication," whether it has a "known or potential rate of error," [**11] and finally, whether the theory or technique enjoys general acceptance in the relevant scientific community. *Id.* at 594.

The Rule 702 inquiry is "a flexible one," and "[t]he focus . . . must be solely on principles and methodology, not on the conclusions they generate." *Id*. at 594-95. An expert who presents testimony must "employ[] in the courtroom the same level

of intellectual rigor that characterizes the practice of an expert in the relevant field." *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152; 119 S. Ct. 1167; 143 L. Ed. 2d 238 (1999). *See also Best v. Lowe's Home Ctrs., Inc.*, 563 F.3d 171, 177 (6th Cir. 2009). Dr. Mehta does not apply such an intellectual rigor and instead has offered a report full of his own inaccurate legal standards based on application of practice guidelines developed by himself and not subject to peer review.

Nothing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the ipse dixit of the expert. *General Elec. Co. v. Joiner,* 522 U.S. 136, 146 (1997). Dr. Mehta, in his report, abandons the use of any objective criteria for analyzing prescribing and instead opines on what he believes is appropriate.[2] Such testimony, without support from objective standards adopted in the medical community, subjects Defendant to judgment for Dr. Mehta's own personal standard – an approach specifically rejected in *General Elec. Co. v. Joiner.*

Dr. Mehta instead wishes to use his own standard derived from his "primary medical education," "ten years of experience," "observation of charting and medical practices of other physicians," and "knowledge of institutional standards." Allowing Dr. Mehta to regurgitate his own personal standard or the internal standard in the

[2] Dr. Mehta does make mention in his report of several standards but fails to appropriately cite to those standards in the report.

hospitals and clinics he previously worked at as the standard applied in this case is not only prejudicial to Defendant, but dangerous for the health care community as a whole. Objective standards exist to guide a physician's conduct, and Dr. Mehta's personal opinions are irrelevant to the matter at hand.

Dr. Mehta fails to articulate a standard for "legitimate" practice and fails to tie his opinions to violations of specific standards applicable to physicians in the field of interventional anesthesiology, and as such his testimony should be excluded under Fed. R. Evid. 702.

IV. DR. MEHTA DID NOT REVIEW COMPLETE CHARTS OF THE PATIENTS AT ISSUE

The Federal Rules of Evidence require a trial judge to ensure that expert testimony admitted is not only relevant but reliable and is likely to promote an accurate finding. *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2317 (2016); *see Madej v. Maiden*, 951 F.3d 364, 369 (6th Cir. 2020). Again, an expert who presents testimony must "employ[] in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field." *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152; 119 S. Ct. 1167; 143 L. Ed. 2d 238 (1999). *See also Best v. Lowe's Home Ctrs., Inc.*, 563 F.3d 171, 177 (6th Cir. 2009). A trial judge must determine at the outset, whether the expert is proposing to testify to **1)** scientific knowledge that **2)** will assist the trier of fact to understand or determine a fact at issue. This entails a preliminary assessment of whether the

reasoning or methodology underlying the testimony is sufficiently valid and of whether that reasoning or methodology properly can be applied to the facts at issue. *Daubert v. Merrell Dow Pharmaceitucals, Inc.*, 509 U.S. 597, 589 (1993). The task for the district court in deciding whether an expert's opinion is reliable is not to determine whether it is correct, but rather to determine whether its rests upon a reliable foundation, as opposed to, say, unsupported speculation. *In Re Scrap Metal Antitrust Litig.*, 527 F.3d 517, 529 (6th Cir. 2008). "The trial court's gatekeeping function requires more than simply taking the expert's word for it. [A court being] presented with only the experts' qualifications, their conclusions and their assurances of reliability [is not enough under *Daubert*]." *Thomas v. City of Chattanooga*, 398 F.3d 426, 432 (6th Cir. 2005).

Rule 702 also specifically provides that an expert opinion must be based on "sufficient facts or data." Fed. R. Evid. 702. An expert's opinion that is not based off sufficient data and instead is based on speculation is not admissible, because "the courtroom is not the place for scientific guesswork, even of the inspired sort." *Tamraz v. Lincoln Elec. Co.*, 620 F.3d 665, 670-672 (6th Cir. 2010). Dr. Mehta does not use the intellectual rigor required by *Kumho* and fails to satisfy the standard under Fed. R. Evid. 702 **because he failed to review the entire record of each patient**. While some experts may base their findings from a partial review of medical records, where the gravamen of his finding and testimony is that the Defendant failed

to document, Dr. Mehta's failure to review complete records is fatal to his opinion under the *Daubert* standard.

On October 15, 2020, the Government wrote to all counsel in this matter and stated the following:

> I have been contacted by defense counsel regarding the production of patient charts. Different defendants have requested patient charts at different times, have paid the third party contractor for copies of those charts, and those requested charts have all been produced. We have also produced to you the Practice Fusion EMR records, in the format in which we received them from the vendor. The ehThomas [sic] EMR records remain on a server at HHS, and because we cannot grant you access to that building, SA Brian Tolan previously loaded that data onto Kiteworks for you to download. In an effort to ensure that you have copies of the patient charts that the government has pulled from the files obtained during execution of the search warrant at the Pain Center, you will be receiving a disc with patient charts via FedEx for delivery tomorrow. The password to access these files is Pain_2018$.

Later that same day on October 15, 2020, the Government produced one-hundred-thirty-four (134) patient "files" for one-hundred-thirty-four (134) different patients treated at TPC. While the Government's discovery letter does not explicitly say so, counsel understands this late production of over one-hundred-thirty-four (134) patient records contained a production of the charts reviewed by Dr. Mehta. Defendant's counsel has reviewed the charts thoroughly with Defendant and the defense has learned that the charts produced by the Government are not complete. The charts produced by the Government and ostensibly reviewed by Dr. Mehta do

not include treatment notes that were input into two (2) electronic health record platforms, eThomas and Practice Fusion.

Dr. Mehta's fundamental criticism of Defendant's care is that the documentation provided to him does not provide a medical necessity for the prescriptions issued and claims billed to Medicare. Report, p. 11. Dr. Mehta's report is replete with allegations that Defendant failed to document a legitimate medical purpose for prescriptions and injections:

- "The billing for these visits therefore, are not justifiable as medically necessary physician office visit/services requires [sic] documentation of an appropriate exam and assessment indicating why the service is medically necessary." Report, p. 11.
- "There is no assessment of why procedure [sic] is necessary."
- "The notes reviewed do not support medical necessity and therefore claims submitted to Medicare were not reasonably and medically necessary services." Report, p. 11.
- "The notes lacking documentation of assessment and based on patient interviews show the procedures failed to meet legitimate claims to Medicare…" Report, p. 12.[3]

[3] Interestingly, Dr. Mehta pads his report with statements like "based on review of the information provided to me…" which suggests that Dr. Mehta is aware that he did not receive complete records.

Assuming that the one-hundred-thirty-four (134) patient files produced on October 15, 2020, are the files that Dr. Mehta has reviewed, Dr. Mehta's report is based on a review of only a small portion of records and fails to include a review of a substantial amount of clinic chart notes, Practice Fusion and eThomas data. This point bears additional explanation. TPC, like most practices, previously used paper charts to document treatment but wished to avail itself of "Meaningful Use" which is a program created by the Government to enforce a transition to electronic medical charting. The practice switched to Practice Fusion, an electronic medical record platform. On May 14, 2020, the Government served on defense counsel spreadsheets of Practice Fusion data. According to the Government, Practice Fusion would only export data on a series of spreadsheets. The spreadsheets produced by Practice Fusion are essentially hundreds of thousands of lines of data that do not resemble a medical record in any fashion. *See* Exhibit C: FullExport_Legal.xlsx.

The data set produced by the Government on May 14, 2020, containing Practice Fusion data has the following attributes:

- 51.4 Gigabytes in size.
- 119,575 individual files.
- Files and spreadsheets are not organized by patient but rather by hash value.

- Medical records that were uploaded to Practice Fusion were not exported in any organized fashion and instead are labeled with a series of random numbers and letters. (*e.g.*, 00bb45ce-3678-4c6d-94a2-f8d85c35b1fe-Registration.)

A copy of one of the dozens of spreadsheets are provided to the Court on a separate USB so that the Court can see how unmanageable this data is [Exhibit C]. Also screenshots of the data are also provided and attached to this motion. *See* Exhibit C.1: Screen Shots of Practice Fusion Data.

Dr. Mehta simply could not have parsed through this data set comprised of 51.4 Gigabytes of data (not images, but raw data and .pdf files) containing one-hundred-nineteen-thousand-five-hundred-seventy-five (119,575) individual files in a way that would have informed his opinion of the treatment of the patients he reviewed. Therefore, we are left to believe that either **1)** the Government culled this data and produced it to Dr. Mehta in a way that he was capable of receiving and reviewing, or **2)** Dr. Mehta did not review the data at all and his opinion is based off of an incomplete review of medical records. If the first option is true, the Government has failed to provide the defense a copy of the basis of its expert's opinion in violation of Fed. R. Evid. 16(E)(ii) and (F)(iii). If the second option is true, Dr. Mehta's opinion is based off only a small fraction of the medical records available in this case and therefore should be excluded.

To make matters worse, the Practice Fusion chart notes are the clinic notes that depict the medical necessity of the prescriptions and injections provided by the Defendants and are crucial to a medical necessity determination.

CONCLUSION

WHEREFORE, Defendant DR. DAVID LEWIS, by and through his undersigned counsel, respectfully request that this Honorable Court GRANT this instant motion and exclude the testimony of Dr. Neel Mehta.

Respectfully Submitted,
CHAPMAN LAW GROUP

Dated: March 5, 2021

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PROOF OF SERVICE

I hereby certify that on March 5, 2021, I presented the foregoing paper to the Clerk of the Court for filing and uploading to the ECF system, which will send notification of such filing to the attorneys of record listed herein and I hereby certify that I have mailed by US Postal Service the document to any involved non-participants.

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