Swartz, Conrad 2021-04-01

Designation List Report

Swartz, Conrad	**2021-04-01**

Plaintiff Affirmatives	00:40:34
TOTAL RUN TIME	**00:40:34**

DESIGNATION	SOURCE	DURATION	ID
52:19 - 52:20	**Swartz, Conrad 2021-04-01**	00:00:07	SWAR_PR.1
	52:19 Q. Doctor, do you believe warnings are important?		
	52:20 A. Sometimes.		
53:06 - 53:11	**Swartz, Conrad 2021-04-01**	00:00:26	SWAR_PR.5
	53:06 Q. Is one of the purposes of warnings to inform users		
	53:07 concerning the risks that may be associated with the device?		
	53:08 A. Sometimes.		
	53:09 Q. And do you believe it's important for a manufacturer		
	53:10 to issue warnings concerning risks associated with its		
	53:11 device?		
53:14 - 53:16	**Swartz, Conrad 2021-04-01**	00:00:13	SWAR_PR.6
	53:14 A. If the recipient does not already know the content of		
	53:15 the warnings, then it's important. If the recipient already		
	53:16 knows, then the warnings are not doing anything.		
55:09 - 55:19	**Swartz, Conrad 2021-04-01**	00:00:44	SWAR_PR.7
	55:09 Q. I don't think it is. I mean, if you believe that all		
	55:10 physicians already know about the risks associated with the		
	55:11 use of Somatics' ECT device, then why is it in late 2018		
	55:12 Somatics updated its warnings and provided a whole list of		
	55:13 new risks, leading with burns, headaches, cognitive		
	55:14 impairment, brain injury, brain damage? Why did you update		
	55:15 those lists if you feel that everybody already knew them?		
	55:16 MR. POOLE: Objection. Misstates his prior		
	55:17 testimony that all physicians knew that. But you can go		
	55:18 ahead and answer the question, Dr. Swartz.		
	55:19 A. We are hoping and trying to avoid litigation.		
56:02 - 56:05	**Swartz, Conrad 2021-04-01**	00:00:15	SWAR_PR.8
	56:02 Q. And that's the only reason Somatics decided to		
	56:03 update its warnings concerning brain injury, cognitive		
	56:04 issues and so forth in late 2018?		
	56:05 A. Yes.		
56:20 - 57:02	**Swartz, Conrad 2021-04-01**	00:00:34	SWAR_PR.9
	56:20 Q. Was there anything prohibiting you or preventing you		
	56:21 from providing the warnings that you now provide concerning		
	56:22 permanent memory loss and cognition issues, to have provided		
	56:23 those back in 2001?		
	56:24 A. It seemed to serve no purpose.		
	56:25 Q. But there was nothing preventing you from doing that,		
	57:01 correct, Doctor?		

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	57:02 A. Nothing preventing that I know of.		
57:03 - 57:05	**Swartz, Conrad 2021-04-01**	00:00:18	SWAR_PR.10
	57:03 Q. What is the expense to Somatics for issuing enhanced 57:04 warnings if you chose to issue enhanced warnings? 57:05 A. It's not a substantial expense, whatever it is.		
80:08 - 80:18	**Swartz, Conrad 2021-04-01**	00:00:30	SWAR_PR.11
	80:08 Q. And the patient information pamphlet, I believe you 80:09 testified Dr. Abrams drafted that? 80:10 A. No, we drafted that together. 80:11 Q. Okay. 80:12 A. I'd say it's pretty much 50/50. 80:13 Q. All right. And has it been edited or revised since 80:14 the 2002 version, Doctor? 80:15 A. 2002 is the latest. 80:16 Q. Okay. Do you still distribute that to hospitals? 80:17 A. No, it was -- the last distribution I think was in 80:18 2018.		
99:19 - 102:09	**Swartz, Conrad 2021-04-01**	00:04:00	SWAR_PR.12
	99:19 Doctor, can you see this document 99:20 that I've popped up? 99:21 A. Oh, yes. 99:22 Q. All right. I believe we are at Exhibit 6. Can you 99:23 identify Exhibit 6 for the record, Doctor? 99:24 A. This is one of the series of e-mails between Richard 99:25 Abrams and me in 2006 concerning adding an additional 100:01 warning statement to the Thymatron System IV manual. 100:02 Q. And it wasn't a warning as much as it was a 100:03 disclaimer, correct? 100:04 A. No, it was a warning. It was entitled "Disclaimer." 100:05 Q. Okay. In your email -- this is your email that we're 100:06 looking at, correct? 100:07 A. Yes. 100:08 Q. And Dick is -- I assume you're referencing Dr. 100:09 Abrams? 100:10 A. Yes. 100:11 Q. Okay. So in this email -- 100:12 First of all, can you just read the 100:13 highlighted section on there? 100:14 A. "The goals of the warning statement we need to make 100:15 are to prevent lawsuits and not alienate psychiatrists. All		

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100:16 warnings that are written are stated in the form that this
100:17 product can or may cause XXX. We should conform to this" --
100:18 there's some words underneath this video strip that I can't
100:19 see.
100:20 Q. Can you see it now?
100:21 A. No, the video strip shows faces of people --
100:22 Q. Right.
100:23 A. -- participating in this conversation.
100:24 Q. I understand. Are you able to move the strip on your
100:25 end, Doctor, to be able to --
101:01 A. Well, that didn't work. Oh, there I go. Now it's
101:02 just you. Okay.
101:03 -- "we can conform to that cigarette companies
101:04 cannot use a statement such as 'Nothing in this
101:05 advertisement should be regarded as a statement that
101:06 cigarettes do not cause cancer.' This is not a warning."
101:07 Q. Okay. So you actually in your own words stated that
101:08 the disclaimer is not a warning?
101:09 A. This was a confidential conversation between Richard
101:10 and me in which I was attempting to achieve a better
101:11 understanding by discussing things with him. I was not
101:12 writing things for publication. I was not writing final
101:13 opinions. I was discussing things and well understood that
101:14 everything I wrote was tentative and could be in error.
101:15 Q. And, nonetheless, contemporaneous with the time that
101:16 you decided to issue the disclaimer, you were of the opinion
101:17 that the disclaimer was not an adequate warning and that
101:18 indeed you wrote, quote, "This is not a warning," correct?
101:19 A. Well, the disclaimer as it was written, as it
101:20 appeared, was a warning.
101:21 Q. But you wrote contemporaneous to that time period
101:22 that you were looking at the disclaimer you were of the
101:23 opinion that it is not a warning?
101:24 A. I was wrong.
101:25 Q. Okay. And how about with your statement there where
102:01 you believe that the goals of warning statements are to
102:02 prevent lawsuits and to not alienate psychiatrists? Do you
102:03 still hold that opinion, Doctor?
102:04 A. That's an incomplete statement, but it's true as far
102:05 as it goes.
102:06 Q. Okay. What do you mean by "not alienate

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	102:07 psychiatrists"? What did you mean by that, Doctor?		
	102:08 A. I don't want them to feel that -- negative emotions		
	102:09 towards Somatics.		
103:09 - 105:01	**Swartz, Conrad 2021-04-01**	00:02:42	SWAR_PR.15
	103:09 Q. Doctor, you are a psychiatrist yourself, correct?		
	103:10 A. Yes.		
	103:11 Q. And you prescribe psychiatric medications or you have		
	103:12 prescribed psychiatric medications to patients, correct?		
	103:13 A. Yes.		
	103:14 Q. And yet you also with your expertise felt the need to		
	103:15 consult the label of certain drugs that you were going to be		
	103:16 prescribing to your patients, correct?		
	103:17 A. But not all drugs.		
	103:18 Q. Now, what if every single manufacturer, what if every		
	103:19 single drug manufacturer had the same opinions as Somatics,		
	103:20 as Dr. Swartz does, that, "Hey, doctors are experts. We		
	103:21 don't need to warn doctors about the risks of these		
	103:22 medications. These good men and women went to medical		
	103:23 school. So let's all of us not issue any warnings about our		
	103:24 products because doctors are experts. We don't want to		
	103:25 alienate them. We don't want to annoy them"? Is that the		
	104:01 type of world that we should be living in, Doctor?		
	104:02 A. That is -- that is a question that is really		
	104:03 misleading and wrong. If you want an analogous question,		
	104:04 the --		
	104:05 Q. No, I want you to answer my question.		
	104:06 A. The drug company makers might say "We refer you to		
	104:07 the APA Task Force report on the use of antidepressants,"		
	104:08 for example.		
	104:09 Q. They don't. They don't.		
	104:10 A. They don't say that.		
	104:11 Q. They actually provide warnings. What shocks me about		
	104:12 this case, Doctor, I do nothing in my life except		
	104:13 pharmaceutical and products liability litigation. I have		
	104:14 never seen a company take such a cavalier approach and		
	104:15 nonchalant approach to warnings. You've admitted your label		
	104:16 from 2002, one that was given to Sharp, had no warnings		
	104:17 whatsoever. And your explanation for that is you don't want		
	104:18 to alienate psychiatrists by giving warnings?		
	104:19 A. It's an attitude of humility. We are being humble to		

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	104:20 our users. We are not directing them what to do. We are 104:21 recognizing their expertise, and we are deferring to the 104:22 greater experts of the American Psychiatric Association. We 104:23 do not aim or wish to compete or upstage the American 104:24 Psychiatric Association because we do not claim to have 104:25 higher or better knowledge than the APA ECT Task Force. We 105:01 defer to them.		
106:19 - 107:04	**Swartz, Conrad 2021-04-01**	00:00:42	SWAR_PR.16
	106:19 Q. (By Mr. Esfandiari) Going back to Exhibit 6, Doctor, 106:20 where you say the goal of warnings is, one, to prevent 106:21 lawsuits, at the time had there been any lawsuits against 106:22 Somatics related to ECT? 106:23 A. No. 106:24 Q. No? At the time had there been any lawsuits against 106:25 any ECT manufacturer? 107:01 A. I had heard of lawsuits against MECTA. 107:02 Q. And what was the nature of those lawsuits, Doctor? 107:03 A. They were -- I believe I answered this in the 107:04 previous deposition.		
107:05 - 108:07	**Swartz, Conrad 2021-04-01**	00:02:12	SWAR_PR.17
	107:05 Q. I mean, what were they, Doctor? I don't recall that. 107:06 I'm curious. 107:07 A. What I had heard from Richard Abrams was that the 107:08 lawsuits were claiming a duty to warn about things that have 107:09 never been proven to occur from ECT in studies of patients 107:10 who have received ECT. Such things as brain damage. 107:11 Q. You were aware as of 2006 at least that people had 107:12 complained about brain damage associated with ECT and had 107:13 indeed filed lawsuits against your competitor? 107:14 A. I had heard of it. I didn't know. What I heard was 107:15 in the range of rumor. 107:16 Q. Okay. Did you -- or, when I say "you," did Somatics 107:17 take any steps to investigate the veracity of these rumors 107:18 and so forth? 107:19 A. No, but we also didn't know what steps we could take. 107:20 We did not, for example, want to call up MECTA and ask them 107:21 about their lawsuits because -- 107:22 Q. Did you maybe -- I apologize. I interrupted you, 107:23 Doctor. Please continue. 107:24 A. Because we did not expect that such an inquiry would		

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	107:25 go well. 108:01 Q. Did you, by any chance, retain any lawyers or maybe 108:02 attempt on your own to look at the docket from that 108:03 litigation to find out what the allegations were and so 108:04 forth? 108:05 A. I did not. 108:06 Q. Okay. Did Somatics? 108:07 A. I believe Richard Abrams did.		
112:07 - 112:19	**Swartz, Conrad 2021-04-01**	00:00:42	SWAR_PR.18
	112:07 Q. (By Mr. Esfandiari) Doctor, can you see this 112:08 document? 112:09 A. Yes. 112:10 Q. Okay. We're going to mark this the next exhibit in 112:11 line, which I believe is Exhibit 7, and it's titled 112:12 "Regulatory Update to Thymatron System IV Instruction 112:13 Manual." Do you see this, Doctor? 112:14 A. Yes. 112:15 Q. And I will represent to you, Doctor, that our office 112:16 pulled this off of your website. Do you recognize this 112:17 document, Doctor? 112:18 A. It looks like it's something that Somatics published 112:19 on the website.		
113:07 - 113:19	**Swartz, Conrad 2021-04-01**	00:00:46	SWAR_PR.19
	113:07 Q. Do you recall when you put this information on the 113:08 website, this document we're looking at, Exhibit 7? So I 113:09 have the date at 10-19-18, October 19th, 2018. Do you have 113:10 any idea when it went on the website? 113:11 A. I expect it went on in 2018. 113:12 Q. Okay. All right. And you agree with me that this 113:13 does provide warnings and certain adverse events that are 113:14 associated with ECT and the Thymatron device, correct? 113:15 A. Yes. 113:16 Q. All right. And including you've put in here now 113:17 cognition and memory impairment, as well as brain damage; is 113:18 that correct? 113:19 A. Yes.		
115:10 - 115:23	**Swartz, Conrad 2021-04-01**	00:00:45	SWAR_PR.20
	115:10 Q. (By Mr. Esfandiari) All right. Doctor, we were 115:11 looking at Exhibit 7, which was the regulatory update you 115:12 had put up on your website some time in 2018. Do you recall		

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	115:13 that, Doctor?		
	115:14 A. Yeah.		
	115:15 Q. Okay. So you agree with me that in this regulatory		
	115:16 update on your website you now provide a number of warnings		
	115:17 associated with ECT and the Thymatron machine, correct,		
	115:18 Doctor?		
	115:19 A. Yeah.		
	115:20 Q. All right. But is your claim that all of these		
	115:21 warnings that are identified in Exhibit 7, that they're not		
	115:22 really risks and you're just adding all of this in order to		
	115:23 avoid litigation?		
116:01 - 117:10	**Swartz, Conrad 2021-04-01**	00:02:34	SWAR_PR.21
	116:01 A. These are risks already known to the physicians, and		
	116:02 warning of them is merely redundant because they already		
	116:03 knew it.		
	116:04 Q. (By Mr. Esfandiari) And is that also true with		
	116:05 respect to the reference to brain damage that we saw		
	116:06 previously?		
	116:07 A. Well, in the -- the full truth of that is we are		
	116:08 warning of something that doesn't -- that is not known or		
	116:09 proven to occur.		
	116:10 Q. All right. And I understand that is -- that is your		
	116:11 opinion and Somatics' opinion, correct?		
	116:12 A. Yes.		
	116:13 Q. All right. With respect to the other side effects		
	116:14 that are listed here on page three of seven, page three of		
	116:15 Exhibit 7, in addition to brain damage do all of the other		
	116:16 side effects also encompass that universe of things that you		
	116:17 just don't believe exist or happened?		
	116:18 A. Some of them are true. Most of them have been		
	116:19 reported to occur.		
	116:20 Q. All right. So on this -- you see this paragraph on		
	116:21 page three?		
	116:22 A. Yes.		
	116:23 Q. Which ones are you saying occur and which ones are		
	116:24 not true risks?		
	116:25 A. Would you please stop moving it around?		
	117:01 Q. Sure. Let me know when you want me to move it.		
	117:02 A. Move it up. Oh, I see. The most common -- the most		
	117:03 common reported effects occur -- the mortality estimate is		

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	117:04 reasonable. The cognition and memory impairment are 117:05 temporary except for spotty retrograde amnesia, which is 117:06 sometimes permanent. The brain damage is not true. Not 117:07 proven to occur, put it that way. General motor 117:08 dysfunction. I don't honestly understand that and can't 117:09 comment on it. 117:10 (Pause to review document)		
117:11 - 117:18	**Swartz, Conrad 2021-04-01**	00:00:39	SWAR_PR.22
	117:11 A. I'm not aware of homicidality. I'm not aware of data 117:12 supporting that. I'm not aware of substance abuse as a 117:13 consequence of ECT. And so I'm going to throw those in with 117:14 the brain damage. And that's it. 117:15 Q. Okay. But everything else you believe is something 117:16 that could potentially arise as a result of ECT and the 117:17 Thymatron device? 117:18 A. Yes.		
119:03 - 120:17	**Swartz, Conrad 2021-04-01**	00:02:29	SWAR_PR.23
	119:03 Q. (By Mr. Esfandiari) And yet none 119:04 of those risks appeared in any of the labels that existed 119:05 prior to 2012, correct? 119:06 MR. POOLE: Clarification, Bijan. When you 119:07 use the term "label," are you talking about any written 119:08 materials associated with the distribution of the Thymatron? 119:09 MR. ESFANDIARI: I'm talking about the 119:10 manuals. 119:11 A. They were included from 2006 on. No, from 2003 on by 119:12 reference to the APA Task Force report and inclusion of 119:13 everything in it. 119:14 Q. (By Mr. Esfandiari) My answer -- my question is, 119:15 were these adverse events specifically identified in any 119:16 manuals that existed that Somatics distributed prior to 119:17 2018? 119:18 A. They were mentioned in the manuals beginning in 2006 119:19 by inclusion of the APA Task Force report. 119:20 Q. Doctor, did you verbatim list out what is included in 119:21 the APA Task Force report in the manuals prior -- at that 119:22 time? 119:23 A. We did not copy what was put in the manuals in our 119:24 manual. We did not copy what was put in the task force into 119:25 our manual.		

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	120:01 Q. All right. 120:02 A. Let's say that we're incorporating it by reference. 120:03 Q. And how many pages is the APA manual, Doctor? 120:04 A. Not counting the index, it's 331 pages. 120:05 Q. Okay. Doctor, let me ask you a question. Do you 120:06 remember how you testified that you had some questions about 120:07 a specific psychiatric drug, and you consulted the PDR to 120:08 find out what the risks are associated with that drug? Do 120:09 you remember that? 120:10 A. Yes. 120:11 Q. Okay. Now, imagine you consulted the PDR, and the 120:12 PDR tells you to go read a 300-paged book in order to find 120:13 out what the risks are. Do you feel you've been -- is that 120:14 fair to you as a physician for the PDR to simply recite to a 120:15 300-paged book, or do you want to basically just look at the 120:16 PDR, look at the risks section of the label and find out 120:17 what is included there?		
120:20 - 121:03	**Swartz, Conrad 2021-04-01**	00:00:36	SWAR_PR.24
	120:20 A. If I went to the PDR to look for an entry for 120:21 "scalpel" I would hope there would be no discussion of the 120:22 possibility of adverse effects from every possible surgery 120:23 that can be done with a scalpel. 120:24 Q. (By Mr. Esfandiari) And your testimony, so I can go 120:25 tell the jury, that Dr. Swartz believes that that ECT device 121:01 that administers electricity up to a hundred joules into 121:02 human brains is the equivalent of essentially a scalpel or 121:03 basically a surgical knife?		
121:05 - 121:06	**Swartz, Conrad 2021-04-01**	00:00:02	SWAR_PR.25
	121:05 Q. (By Mr. Esfandiari) You're equating those two 121:06 devices?		
121:09 - 121:12	**Swartz, Conrad 2021-04-01**	00:00:13	SWAR_PR.26
	121:09 A. It's an analogy. It's not an equivalence. There's a 121:10 big difference. 121:11 Q. (By Mr. Esfandiari) And is Prozac the equivalent of 121:12 a scalpel, Doctor?		
121:14 - 121:19	**Swartz, Conrad 2021-04-01**	00:00:27	SWAR_PR.27
	121:14 A. It's an agent. It's not equivalent, no. We're 121:15 talking about analogies, not equivalences.		

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	121:16 Q. (By Mr. Esfandiari) And I'm saying is it more 121:17 appropriate to refer to ECT and its risks to other dangerous 121:18 pharmaceutical agents and other pharmaceutical therapies as 121:19 opposed to simply a scalpel?		
121:22 - 121:22	**Swartz, Conrad 2021-04-01**	00:00:03	SWAR_PR.28
	121:22 A. I don't understand the question anymore.		
137:12 - 137:15	**Swartz, Conrad 2021-04-01**	00:00:15	SWAR_PR.29
	137:12 Q. And is it your testimony or understanding that it is 137:13 the electricity that is being conducted by the ECT machine 137:14 that causes the memory loss issues? 137:15 A. No, I discussed this in my previous deposition.		
138:02 - 138:05	**Swartz, Conrad 2021-04-01**	00:00:13	SWAR_PR.30
	138:02 Q. (By Mr. Esfandiari) But I'm asking, so you had to 138:03 update the Risk Analysis Report to take into account memory 138:04 loss. And my question for you is, how is electricity 138:05 related or ECT related to memory loss?		
138:19 - 139:13	**Swartz, Conrad 2021-04-01**	00:02:10	SWAR_PR.31
	138:19 A. The Thymatron is designed to avoid excessive delivery 138:20 of electricity. Therein is the risk of burns from one 138:21 perspective. Excessive electricity can induce excessive 138:22 seizure, which then can produce greater memory loss. The 138:23 electricity itself does not produce side effects or benefit 138:24 outside of accidental incidental burns in terms of side 138:25 effects. All the benefit comes from the seizure induced by 139:01 the electricity, and, likewise, for any cognitive side 139:02 effects. 139:03 I'll add that non-electrical convulsive 139:04 therapy has the same risk of memory loss. 139:05 Q. (By Mr. Esfandiari) But currently what are the 139:06 non-electrical convulsive therapies in effect? 139:07 A. I don't know that anyone is using them, but there 139:08 were fluorofil inhalant and Metrazole intravenous medication 139:09 at one time. 139:10 Q. All right. And -- 139:11 A. I think it's also fair to say that people with 139:12 epilepsy who have grand mal seizures suffer memory problems 139:13 as a result of the seizures.		
145:14 - 145:24	**Swartz, Conrad 2021-04-01**	00:00:26	SWAR_PR.32
	145:14 Q. ECT treatment is administered with anesthesia; is		

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	145:15 that correct, Doctor?		
	145:16 A. Yes.		
	145:17 Q. Okay. Have you ever administered it without		
	145:18 anesthesia?		
	145:19 A. Never.		
	145:20 Q. Are you aware that that had occurred in the past?		
	145:21 A. Yes.		
	145:22 Q. Okay. If ECT is not administered with anesthesia, on		
	145:23 a scale of one to 10 what is the pain level that patient		
	145:24 would be experiencing?		
147:13 - 150:06	**Swartz, Conrad 2021-04-01**	00:04:32	SWAR_PR.33
	147:13 A. I have no experience with unmodified ECT.		
	147:14 Q. But you agree with me that would be very painful?		
	147:15 A. I disagree utterly.		
	147:16 Q. You do?		
	147:17 A. Yes. It shows -- I am shocked at you with this		
	147:18 question. But, anyway, the electricity itself is painless.		
	147:19 It's an immediate anesthetic. It knocks people into		
	147:20 unconscious -- unconsciousness without feeling anything. It		
	147:21 has been used in modern days with selective patients as the		
	147:22 anesthesia for ECT in something called the petit mal		
	147:23 approach.		
	147:24 I have not heard of the Thymatron being used		
	147:25 with the petit mal approach. But in this approach a very		
	148:01 small electrical dose is used to render the patient		
	148:02 unconscious, and then the muscle paralytic agent is used to		
	148:03 paralyze the muscles as usual, and then the convulsive		
	148:04 electrical stimulation is given.		
	148:05 Q. If there was no anesthesia given, your testimony is		
	148:06 that somebody who received a dosage of ECT electricity it		
	148:07 would not be a painful experience for them?		
	148:08 A. Right. But it is possible to give a large enough		
	148:09 dose -- well, if you were to give ECT without the		
	148:10 Succinylcholine, the muscle paralytic agent, now that would		
	148:11 be painful.		
	148:12 Q. Okay.		
	148:13 A. But if you paralyze the muscles with the		
	148:14 Succinylcholine, then when they awake their muscles would		
	148:15 not have been in a state of severe contraction that would		
	148:16 cause sprains and so forth.		

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148:17 Q. And that's what I'm asking. So if the person had not
148:18 received any muscle relaxers, any anesthesia, you would
148:19 agree with me that it is a very painful experience?
148:20 A. Well, I haven't had it myself. People with grand mal
148:21 epilepsy experience it. And I have to defer to what they
148:22 say. They -- I think they become immediately unconscious,
148:23 and generally when they awake they remember nothing.
148:24 Q. All right. Doctor, I'm going to draw your attention
148:25 to what we're going to mark as Exhibit 14. I think we're at
149:01 14 now to your deposition. Are you able to see this
149:02 document, Doctor?
149:03 A. Yes.
149:04 Q. Okay. And this appears to be an email exchange
149:05 between you and Dr. Abrams and Mr. Pavel, correct?
149:06 A. Yes.
149:07 Q. And this appears where a nurse had complained that he
149:08 or she may have received some shock during the
149:09 administration of the ECT. Do you have any recollection of
149:10 this adverse event being reported to you?
149:11 A. Yes.
149:12 Q. Okay. And here is an e-mail dated August 25, 2018,
149:13 that you wrote to, I assume, Mr. Abrams -- Dr. Abrams and
149:14 Mr. Pavel. Can you read the highlighted paragraph, Doctor?
149:15 A. "The sensation described does not correspond to the
149:16 Thymatron treatment current. If the nurse felt the actual
149:17 treatment current, he would have experienced not merely a
149:18 sensation of shock but something deeply painful."
149:19 Q. Okay.
149:20 A. This is because -- I wrote this because he was not
149:21 rendered unconscious.
149:22 Q. And that was my question. If the person is not
149:23 unconscious and is receiving ECT without any muscle relaxers
149:24 and without benefit, that you would agree that it's a deeply
149:25 painful experience, correct?
150:01 A. No, I don't. The -- obviously if it were an actual
150:02 treatment current, and it went through his head, then he
150:03 would be unconscious. If it was the actual treatment
150:04 current, and it didn't go through his head, just, say, his
150:05 arms, his hand, then that would be deeply painful. There's
150:06 a big difference here.

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150:07 - 151:09	**Swartz, Conrad 2021-04-01**	00:01:53	SWAR_PR.34

150:07 Q. Well, if it's not painful then why do you administer
150:08 muscle relaxers and anesthesia?
150:09 A. The muscle relaxer's given for several reasons. Most
150:10 importantly, to allow hyperoxygenation throughout the
150:11 procedure to prevent hypoxia. It's also used to prevent
150:12 muscle sprains afterwards.
150:13 Q. And anesthesia?
150:14 A. Why is the anesthesia given?
150:15 Q. Yeah, if it's not painful?
150:16 A. The anesthesia is given so you're not aware of the
150:17 Succinylcholine. Because Succinylcholine causes paralysis,
150:18 and people who experience the paralysis from Succinylcholine
150:19 can't breathe on their own, and this is an unpleasant
150:20 feeling that leads people to feel uncomfortable.
150:21 Q. Can you define that term for me, please, in layman's
150:22 terms? Succinyl --
150:23 A. Succinylcholine. That's a medication. S-U-C-C-I-A
150:24 -- S-U-C-C-I-N-Y-L-C-H-O-L-I-N-E.
150:25 Q. And that's the medication used for what?
151:01 A. For muscle relaxant or muscle paralysis to allow
151:02 oxygen to be given. It is a commonly used medication in all
151:03 -- in surgeries.
151:04 Q. Okay. So your testimony is that the anesthesia is
151:05 not given because of the electrical current that's being run
151:06 through the person's brain but because of certain discomfort
151:07 that may be associated with the muscle relaxer that is given
151:08 with the procedure?
151:09 A. Yes.

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158:01 Q. moving on to Exhibit 19,
158:02 Doctor, this is probably -- do you see Exhibit 19, Doctor?
158:03 A. Yes.
158:04 Q. What is Exhibit 19?
158:05 A. That looks like the back page of the eight-paged
158:06 catalog or it could be the back page of a two-paged flyer.
158:07 Q. All right. And do you have any -- you know, this
158:08 statement right here where it says "Thymatron System IV, the
158:09 most advanced ECT device technically and operationally with
158:10 demonstrated superior safety and clinical effectiveness," do

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	158:11 you see that, Doctor?		
	158:12 A. Yeah.		
	158:13 Q. All right. What is -- what's the basis for this		
	158:14 representation, Doctor?		
	158:15 A. The safety is superior to the previous Thymatron DGx		
	158:16 because it has internal monitoring and testing. The		
	158:17 effectiveness -- well, -- well, "demonstrated superior		
	158:18 clinical effectiveness." Hmm. Well, they were the core		
	158:19 studies showing -- no, let's see. "Clinical effectiveness"?		
	158:20 Oh, okay.		
	158:21 So we have the study of Chanapatana, Awarak		
	158:22 Chanapatana, showing that the Thymatron had a lower seizure		
	158:23 threshold than the MECTA device. So with a lower seizure		
	158:24 threshold you can use lower electrical stimuli, and so that		
	158:25 -- using lower electrical stimuli is the basis for saying --		
	159:01 is a basis for saying superior safety and clinical		
	159:02 effectiveness in -- in inducing an electrical seizure.		
	159:03 Q. Why -- why is it beneficial to have a lower		
	159:04 electrical stimuli?		
	159:05 A. I discussed that in the previous deposition.		
	159:06 Q. Well, just briefly explain to me.		
159:08 - 159:19	**Swartz, Conrad 2021-04-01**	00:00:54	SWAR_PR.36
	159:08 A. Greater efficiency.		
	159:09 Q. (By Mr. Esfandiari) What does that mean? I mean, is		
	159:10 there a safety component associated with having lower		
	159:11 electrical stimuli?		
	159:12 A. Less chance of burns.		
	159:13 Q. Anything else?		
	159:14 A. Generally also, yes, higher electrical stimuli have		
	159:15 been shown to produce more temporary cognitive side effects.		
	159:16 So using lower electrical stimuli, more efficient stimuli		
	159:17 should be safer. It's -- as I explained in the previous		
	159:18 deposition, it's the reason that brief pulse is safer than		
	159:19 sine wave ECT.		
160:04 - 161:25	**Swartz, Conrad 2021-04-01**	00:02:50	SWAR_PR.37
	160:04 Q. (By Mr. Esfandiari) So it's true that		
	160:05 Somatics has never conducted any clinical trial regarding		
	160:06 the Thymatron ECT devices, correct?		
	160:07 A. Correct.		
	160:08 Q. All right. So there are no clinical trials performed		

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160:09 by Somatics to support the representations made here in
160:10 Exhibit 19, correct?
160:11 A. Correct.
160:12 Q. Okay. Now, moving on to Exhibit 20, Doctor, do you
160:13 see Exhibit 20, Doctor?
160:14 A. I see a Thymatron.
160:15 Q. Yeah. And this is Bates number -- and I'm starting
160:16 to have the same problem you did, Doctor. The faces start
160:17 covering the document. This I believe we took from your
160:18 website. Well, why don't you authenticate this document for
160:19 us, Doctor? What does this document appear to be?
160:20 A. This appears to be the eight-paged catalog which is
160:21 downloadable from the website.
160:22 Q. Okay. Perfect. I want to draw your attention to the
160:23 very last page of this document. Are you there? Do you see
160:24 this highlighted section, Doctor?
160:25 A. This looks identical to what you previously showed
161:01 me.
161:02 Q. Okay. So read this sentence. Do you see it?
161:03 "Thymatron, the most advanced ECT device technically and
161:04 operationally," correct?
161:05 A. So it is a little different, yes.
161:06 Q. Yes, yes. And so going to Exhibit 19, it looks like
161:07 for Exhibit 20 the new operation -- the new manual -- or,
161:08 the new brochure you eliminated the reference to "superior
161:09 safety and clinical effectiveness." Is that correct?
161:10 A. Yes.
161:11 Q. Do you know why that occurred?
161:12 A. Because the statement about effectiveness is not
161:13 necessary.
161:14 Q. How about safety? Is that also not necessary?
161:15 A. It's not necessary.
161:16 Q. And why is it not necessary?
161:17 A. Because the previous words are sufficient.
161:18 Q. Do you know who made the decision to remove the
161:19 references to "superior safety and clinical effectiveness"
161:20 from your marketing brochure?
161:21 A. Richard Abrams and me.
161:22 Q. And why -- and other than what you just testified to,
161:23 was there any other reason as to why these representations
161:24 were removed?