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COMMITTEE ON OVERSIGHT AND
GOVERNMENT REFORM,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: DAVID BLACK

Tuesday, September 25, 2007

Washington, D.C.

The interview in the above matter was held at B-373

Rayburn House Office Building commencing at 10:06 a.m.

Appearances:

For COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM:
BRIAN COHEN, SENIOR INVESTIGATOR AND POLICY ADVISOR
SAM BUFFONE, STAFF ASSISTANT
SARAH DESPRES, SENIOR HEALTH COUNSEL
JENNIFER SAFAVIAN, MINORITY CHIEF COUNSEL
BENJAMIN CHANCE, MINORITY CLERK

For THE WITNESS:

KEVIN S. MCGUINNESS, ESQ.
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400 North Capitol Street, NW.
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Present for majority: Brian A. Cohen, Sam Buffone, Sarah Despres.

Present for minority: Jennifer Safavian and Benjamin Chance.

Present for witness, David Black, Ph.D., Kevin S. McGuinness.

Mr. Cohen. This is an interview of Dr. David black conducted by the House Committee on Oversight and Government Reform. This interview is part of the committee's investigation into the use of performance enhancing drugs in professional wrestling. Dr. Black, could you please state your full name for the record.

Mr. Black. David Lee Black.

Mr. Cohen. My name is Brian Cohen and I'm a member of the majority staff. Dr. Black, you're represented by counsel. Can your counsel state his full name for the record, as well?

Mr. McGuinness. Kevin S. McGuinness.

Mr. Cohen. Let's have the other people in the room identify themselves as well.

Ms. Despres. Sarah Despres with the majority.

Mr. Buffone. Sam Buffone, majority staff.

Mr. Chance. Benjamin Chance, Republican staff.

Ms. Safavian. Jennifer Safavian, Republican staff.

Mr. Cohen. Before beginning with the questioning, I'd like to go over some standard instructions and explanations regarding the interview. The reporter will be taking down everything you say and we'll make a written record of the interview. Please give verbal, audible answers because the

reporter cannot record nods or gestures. I'm going to ask you questions on a particular subject matter.

When I finish my questions on a specific matter, I'll ask my colleagues if they have additional questions. We'll make every effort not to take up any more of your time than we need to collect the information we need for the investigation. If you need a break at any time, just let us know and we can step out and take a couple of minutes to rest and relax. This is not a deposition. So you'll not be placed under oath. You're required by law however, to answer questions from Congress truthfully. Is there any reason you're unable to provide truthful answers in today's interview?

Mr. Black. No.

Mr. Cohen. I'll be asking you questions about several specific documents during today's interview. I'll ask that as we ask those questions, we'll also put those documents into the official transcript record. Do you have any questions before we begin?

Mr. Black. No.

EXAMINATION

BY MR. COHEN:

Q Okay. All right. I'll start with a set of questions just based on your professional background. Can you please describe your educational background?

A Well, I'll start with my undergraduate I guess. I earned my undergraduate at Loyola in Baltimore, just up the road. My doctorate degree was earned at the University of Maryland in the school of medicine. It is a Ph.D. in legal medicine, specifically in the area of forensic toxicology. I -- well, that's the endpoint of my education, the Ph.D.

Q What year was your Ph.D.?

A 1983 or '84. It's been a while.

Q And what is your current area of expertise?

A Forensic toxicology.

Q And can you provide us a brief description of your current academic or private sector activities?

A Well, my activities are multiple, so I'll try to be thorough. I am chairman, president and director of Aegis Sciences Corporation. Aegis Sciences Corporation was a program at Vanderbilt University. It was a program that I directed at Vanderbilt. I was recruited to Vanderbilt in 1986 to direct a program set up for testing athletes for performance enhancing drugs. Vanderbilt had had a steroid scandal and part of their reaction to that was to set up a doping program for testing athletes for performance enhancing drugs.

Also, Roy Kramer was the athletic director at Vanderbilt, and Roy Kramer became the driving force for establishing the NCAA drug testing program. I was on campus

for four years. While I was there, I also worked with the transplant program at Vanderbilt with Dr. Bill Frist. Bill and I worked together quite a bit. And I worked with the transplant program setting up testing services clinically. I also set up clinical testing for overdose toxicology, as well as for rehabilitation toxicology.

In 1990, the school decided that forensics was not a part of its mission, that its mission was clinical. So they discontinued the funding for my program. I had a choice of leaving Nashville and didn't like that choice. I wanted to stay in the Nashville area, so I took the program off campus. And it started off as Aegis Analytical Laboratories, but today it is known as Aegis Sciences Corporation. While I was at Vanderbilt, I had a relationship with a number of other entities, the National Football League, Pete Rosell, the commissioner of the NFL, asked me to set up the anabolic steroid testing program for the NFL, which I did while I was there. That began my involvement in the professional sport area.

At the same time, NASCAR had a difficult situation with a drug-related issue, and I became a consultant to them for their program administration for substance abuse. And that relationship continues until this day. Aegis Sciences Corporation is a forensic laboratory only. We are a Federally certified laboratory. We're Federally certified

under the SAMHSA program. We have been continuously certified since 1991. We are probably the senior certified laboratory at this point. There are about 45, I believe, certified laboratories. So we do employee workplace drug testing. We also do postmortem work. We provide services to coroners and medical examiners.

My doctorate degree was earned at the medical examiners office in Baltimore. My doctorate degree was actually in the postmortem world. And I actually never figured to have a career in a situation where people could threaten to sue me and complain about the test results.

So we do a fair amount of postmortem work. We do crime scene evidence analysis. We provide driving under the influence of drugs analysis. We do testing for prisons, patrol and probation programs. We actually -- as part of the Homeland Security Act, we test food products coming into the United States such as tilapia fish to make sure that -- they use anabolic steroids to grow fish. And we make sure the fish are free of anabolic steroids before they are brought into the States.

So Aegis has about 3,000 clients, among which are Nissan Motor Corporation of America, Bridgestone/Firestone, Penn State, University of Florida. We have 80 universities we work with.

Q I notice you -- at those universities, is it

anti-doping?

A Oh, yes. The school testing, the college testing is doping. We provide a service to the colleges and universities for their programs that are separate from the NCAA. They're actually much more intense testing than the NCAA. We typically test 150 to 200 percent of the student athlete population, where as the NCAA usually only tests about 12 to 14 players on the football roster once a year. So if they've got 100 players on the football roster, they'll usually test them all at least one and a half, two times a year. So our services are -- anti-doping or drug free sports is what we call it.

For about 80 universities -- I work with NASCAR, WWE, Major League Baseball Players Association. Other -- we do the work for the Cherokee Nation. They have their own law enforcement. We do their crime scene evidence analysis. We do their postmortem toxicology. We assist them in their investigations of crime and death. I'm trying to think of other places.

Certainly Dr. Robert, who is my colleague, one of the other Ph.D.s at Aegis, he and I both have functioned as expert witnesses on many doping cases that are USADA or WADA related. I've been involved in doping cases going back to Ben Johnson. I worked with the Canadian Mounted Police on the Ben Johnson case on the issue of doping in the '88 Seoul

Olympic games. I was an expert witness for Butch Reynolds whose case went up to the U.S. Supreme Court twice. I testified for Butch about six times, I guess it was. And I've been involved in many other doping cases over the years as has Dr. Tim Robert. So our services also involve representing athletes in cases where, based upon our review of the information, it looks like there has been a problem in sample identification, the actual analytical work on the sample or a misinterpretation of the findings.

Q Outside much your administration of the WWE policy, do you have any additional contact with WWE or to wrestlers?

A Well, I interact directly with the wrestlers principally in the suspension part. But they do contact me proactively asking about supplements, can I take this supplement or can I take this other product. They are getting better about contacting me before they take even a prescription from a physician. For instance, I recently had a talent -- they're referred to as talent in our vernacular. I recently had one of the talent contact me, who had seen a doctor for one hour, the talent is in her mid 30s. And in one hour, the doctor diagnosed this individual as attention deficit order, hyperactivity disorder in one hour and wanted to put this individual methylphenidate or Ritalin.

I told the talent no and I told her to find a better doctor. But they're getting more proactive about contacting

me before they take the advice of a doctor. Because as we've now discovered, there are just too many doctors out there that are drug dealers.

Q And Aegis is a privately held company?

A It is.

Q Can you give me a ballpark of your annual revenue?

A This year we'll do about [REDACTED] worth of revenue.

Mr. Cohen. Okay. Anybody else have any questions?

BY MR. COHEN:

Q All right. We'll move on to your relationship with WWE and the development of the WWE policy. When did you first become involved with WWE or its predecessor, the WWF?

A I'd say around 1991 or 1992. I really don't know which year specifically, but about that time frame.

Q Okay. Were you involved in the formation of the original WWF 1991 drug testing policy?

A No. Then I only provided a drug testing service. My laboratory was used as the provider of testing.

Q Okay.

Mr. Cohen. I believe we're going to give out a copy. This is a copy of a 1991 proposal to WWE from Aegis labs.

Mr. McGuinness. Is this from the packet that was --

Mr. Cohen. Yes.

Mr. Black. Oh, gosh. I forgot about all this. I

haven't seen this recently.

Mr. Cohen. Take a few minutes and look through it.

Mr. Black. Okay. Oh, God, this is old stuff.

Ms. Despres. We'll mark this as Exhibit 1.

[Black Exhibit No. 1
was marked for identification.]

Mr. Black. I did not administer ~~the~~ program. We did provide apparently quite a bit of information about how the testing would occur, but I did not administer the program.

BY MR. COHEN:

Q Okay. I know it is a long time ago and I wouldn't -- I think anybody's memory would probably slip a little bit.

A Mine slipped a lot.

Q Do you remember if you -- if the original contact with regards to this policy -- or did you contact WWE or did WWE come to you and --

A I recall very specifically, it was Linda McMahon who called me because I actually met Linda McMahon before I ever met Vince McMahon. And I do recall that.

Q I see. Okay. All right. And to the extent you remember, was this original proposal to WWE, was it accepted as the WWE testing policy at the time?

A Well, again, I didn't -- this was a -- I think this is -- well, I can really sit back and read this, I guess. I

think it is more like the how the program would work. With regard to the policy itself -- now, this time around I did work with Jerry McDevitt, who is outside counsel who actually developed the language of the policy. But I don't recall ever sitting down with anyone at that time. This is a proposal for service, for providing the testing service. I don't recall actually sitting down with any counsel at that time and developing a policy as I did this more recent time.

Q Okay.

A And that's what I would refer to as the policy. This is more like a proposal to provide the testing service.

Q Okay. You're involved with the testing program from 1991 until 1996 when the program ceased, correct?

A Oh, for this program ceasing and then the new program --

Q No. Between '91 and '96 -- the beginning of 1991 they implemented the program and in 1996 they stopped testing. What was your involvement with WWE in that period between 1991 and '96?

A Again, we were providing the service for testing. So there were others who administered the program and we'd get called from time to time that they'd have a reasonable suspicion situation where they needed testing to occur. But there was no ongoing -- there was a period of time where

there was really no ongoing active random testing program in place. So we were a resource they used from time to time. And frankly, I'd have to talk to others. I don't think we had a contract per se. They would call and send us a request for collecting a sample. We would collect a sample we'd test ultimately and we'd bill them. But I don't know that we had an ongoing contract.

Q That was from 1991 to 1996 or from '96 onwards?

A What was the terms of this agreement? I'd have to go back and look. But what I'm saying is I just don't think we had -- we didn't sit down every year and renegotiate an agreement. So they'd contact us as needed to provide a service, but I don't recall an ongoing year-to-year contract per se, where we would agree in advance what the pricing would be and how much testing would be done.

Mr. McGuiness. Do you have documents otherwise? We have a memory --

Mr. Cohen. No. We're just trying to figure out -- we're trying to -- for us to understand how the initial policy was administered.

Mr. Black. I would say that there was certainly an extended period of what I would call a very quiet time with this program, where there was not much activity except on a reasonable suspicion basis.

EXAMINATION

BY MS. DESPRES:

Q Just so I'm clear. When you say this program, you're talking about the program outlined in this 1991 document?

A Yeah. There was a period of, I don't know, maybe 2 or 3 years, maybe 4 years where we did quite a bit of testing. We did a lot of steroid ratio analysis in the urine. We were doing all sorts of calculations for the administrator of the program who was Dr. Mauro Di Pasquale out of Canada. And Mauro was the one who was administering the program. And he wanted a lot of the steroid compounds in the urine to be ratioed. Not just the T/E, but others.

So there was a lot of ratioing that went on for that analysis. But that program under Mauro's direction, 2, 3 or 4 years. I don't know. It was -- but then there was pretty intense testing, more like what we're doing now where we're doing very regular random testing.

BY MR. COHEN:

Q That was -- the documents we have indicated that that lasted from -- the intense period of testing was from 1991 approximately until October 25, 1996.

A Okay.

Q And on October 25, 1996, Vince McMahon issued a memo suspending WWE's drug testing due to the success of the program. I'll give you a chance to look at that. We'll

call that Exhibit 2.

[Black Exhibit No. 2

was marked for identification.]

Mr. Black. I don't recall ever seeing this document.

BY MR. COHEN:

Q That was my next question, were you involved, in any way, in the 1996 decision to end the testing program?

A No, I actually didn't know about it. Well, I guess what it did, it slipped into the reasonable suspicion phase.

Mr. McGuinness. Can I just ask Dave one question?

Mr. Cohen. Sure.

Mr. McGuinness. Just based upon -- there seems to be two different things. Could we stop typing just for a second so we can get back to his answer?

Mr. Cohen. Sure.

[Discussion off the record.]

BY MR. COHEN:

Q So, again, you were not involved in the 1996 decision to end testing at the time?

A No.

Q All right. Can I ask you your opinion as a specialist in drug testing and given what you know now about the WWE. Do you believe it was the correct decision to suspend the policy that was in place from '91 through '96?

A Well, I guess -- I don't think it was actually

suspended because we continued to do some reasonable suspicion testing. You know, I'm reading the document. But I do know there are programs that do only reasonable suspicion testing, not everybody does random. It is usually a decision made by a company. I don't know if it is my position to say whether that is right or wrong. All I can do is take the policy they desire and apply it. But I don't know how to answer that. If it is a broader question about wrestling or about drug use in the sport as a whole, then maybe I can answer that question.

Q Well, I guess from 1991 through 1996, WWE was doing random testing as well as reasonable cost testing. That's the period when you remember there was a fairly intense testing. In 1996, WWE stopped the random testing and began only doing reasonable cause testing. Their rationale was the program had been so successful it was no longer necessary. In your professional opinion, given what you have observed over the last year and a half of testing, WWE and its wrestlers and your professional opinion as someone who does a large amount of anti doping work for other -- for universities in other areas, do you believe it was a mistake to eliminate the random testing in 1996?

A Well, I guess as a toxicologist, and somebody who really believes that testing can be effective and can continue to be effective, I would always advocate you should

continue the program, even if your percentage of positives is low. And, you know, that is pretty much true everywhere, that the percentage of positives on steroid testing and most programs is going to be under 1 percent, but they still keep testing for sport. But employee drug testing, I've had corporations that have discontinued their programs for even less thought-out reasons, just because they couldn't hire people and needed a warm body, they stopped testing.

So, you know, it would be my attitude that continuing the testing would be a good thought, it would be a good practice.

Q In 1996, after the testing -- after the random testing programs was eliminated through 2005, WWE had reasonable cause testing in place. My understanding what you have told us during that period you conducted the reasonable cause testing?

A Yes.

Q Did you have any other additional relationship with WWE during that time period?

A Not that I recall, no.

Q All right. Any other questions on the --

Mr. McGuiness. You also don't know anyone else was doing it, you just know you weren't.

Mr. Black. Correct.

Mr. Cohen. Any other questions on the relationship

prior to 2005?

BY MR. COHEN:

Q Now, moving onto the current testing policy. Can you briefly describe your role and responsibility with regard to the current WWE testing policy?

A I'm the program administrator for the WWE wellness program and in that role, my responsibilities are to ensure that the policy that was put in place in February of 2006 is applied appropriately and that individuals who violate that policy are treated appropriately. As the administrator of the program, I also have to ensure that the frequency of testing that we have designed into the program does, in fact, occur.

Since it is -- since its inception, there has been an invitation out to the talent to contact me so that any questions about medication or any questions about supplement use can be discussed in advance of their decision to use. So that they understand -- and if they have any questions about the policy to contact me.

Q How is that information provided to the talent? Is it -- are there -- are there a standard set of materials that is provided to the talent? Is it --

A Case by case basis, you know there are so many supplement products out on the marketplace and so many different products available, we can't really catalog what

is good and what is not.

Q The information that they should come to you or should come to you if they have question, how is that provided?

A They can go through talent relations to reach me. I think at this point in time, they must all have my cell phone number as well as my office number.

Q Is there an active effort to get them that cell phone number?

A Oh, yes, absolutely.

Q How does that process work?

A You'd have to talk to them. I haven't directed this piece of paper be handed out to every talent.

Q Okay. When did WWE first contact you about the policy or did you first contact them?

A I was contacted again by Linda McMahon and my recollection is I was contacted in November of 2005. Because we met in December of 2005 to discuss creating a new policy.

Q And can you describe the nature of those communications in November and December of '05?

A I had a -- well, I had the telephone call from Linda, so that was just verbal. I got on a plane, went to Stamford, Connecticut and met with Linda and Vince. My recollection is there were about five or six other people in

the room. Jerry McDevitt was there. And we discussed about putting together a program. I don't even recall from December 2005, I don't think we showed up with anything specific as a proposal, I don't think we did. But maybe we did. I wouldn't have put it together.

But the work on the policy really was subsequent to that meeting between Jerry McDevitt and myself and Ed Kaufman, side counsel. So really, the work on the policy took place by e-mail as well as by telephone call in terms of wording and the content of the policy.

Q Do you remember what you describe as the goal of the program when you met in December in 2005 when you had discussions with Jerry McDevitt.

A The goal of the program was to deal effectively with the issue of any drug use among the population of talent that were employed by the WWE.

Q Okay. What I'm going to do is walk through, just list each part of the policy. As I list each part?

Mr. Buffone. Do you want to introduce the policy?

Mr. Cohen. Yeah, why don't we do that. We'll put it in as Exhibit 3.

[Black Exhibit No. 3

was marked for identification.]

Ms. Safavian. Can I ask two questions before we get into the details of the policy?

EXAMINATION

BY MS. SAFAVIAN:

Q In November and December of 2005, when Linda McMahon contacted you, did she give you any reason as to why they wanted you to initiate this testing again?

A The death of Eddie Guerrero.

Q That is what caused it? She told you that was the reason behind it?

A I know that is what caused it all of this to occur, was the death of Eddie Guerrero, whether it was part of that conversation or subsequent conversation, I can't tell you.

Q About how much of your time would you estimate goes into being the program administrator for this policy?

A Right now? It used to be a better job. Right now, I am putting in a lot of hours on the WWE program. I really -- gosh. I would say since Chris Benoit's death, it has probably taken about a third of my time or more.

Q And prior to his death?

A Maybe half a day a week to a day a week.

Q Okay.

A But now it's taking, I guess, a couple much days a week at least.

Mr. McGuiness. You were talking about his personal time as opposed to the company?

Ms. Safavian. Yes, correct.

Mr. Black. I should say my time now is program related. A lot of my time has been dealing with the correctional inquiry and dealing with an audit committee from the board of directors from the WWE and from fending off newspapers and --

BY MS. SAFAVIAN:

Q Right, I mean putting that aside, I mean, you as the administrator of the policy and the work that goes into that.

A Right, but I would say prior to the tragedy of Chris, it was probably about a half a day a week on average, some weeks more, dependent upon whether or not I'm trying to contact talent to suspend them and how much back and forth there is on that or follow-up on prescription information, et cetera.

Ms. Despres. Can I do two questions?

BY MS. DESPRES:

Q The first is -- you said the goal of the wellness program was to deal with the drug problems among the talent. Why did WWE feel that it had to deal with the drug problem among the talent was the concern. What was the underlying concern about the use of drugs?

A Well, I think the -- the way I've been phrasing it, and I really thought going into this I'd have two years to really get traction on this issue, is we've been in the

business of trying to change culture and biochemistry, which is not an easy thing to accomplish. And at the very beginning knew this was going to be a significant issue. I think everyone suspects -- I don't know how much people really know -- but everyone suspects, that there is a fair amount of drug use in professional wrestling.

So knowing what was about to be asked of the program, I figured at least a couple of years to really begin to gain traction on dealing with the talent, on trying to change attitudes, change culture, figure out some solutions to their challenges of their profession and get a better program -- get a better lifestyle in place for these individuals.

So my perspective on it, the goal was to change biochemistry and to change culture. I think -- I don't want to speak for the WWE, certainly what was asked of me is Linda McMahon said to me, Dave, I don't want you accepting any excuses, I don't want anybody getting away with anything, I don't want them to just give you some weak excuse for why they have to use a drug and let them walk on it.

Linda pulled me aside and told me very sternly she expected this program to be a very well enforced program or a policy. So I took it from the first day or from the very beginning of the program that this was intended not just to

punish, but to change people in terms of attitude and their biochemistry.

BY MR. COHEN:

Q Do you feel you've been successful so far?

A I think -- well, again, I have 1 or 2 years to gain traction. I think we are being successful. The talent are much more proactive about contacting me. I see a lot of levels of cooperation. I see a lot of levels of resistance. I was at the WWE events last week in Nashville, in Atlanta. I got harassed pretty badly. I'm known as evil Dr. Black. I'm not necessarily well thought of by all the talent.

Q There are guys that aren't mad at you either?

A Well, inside counsel was worried I was going to get tossed into the ring and thrown around with a body slam or two. I had other talent walk up to me and thank me for what is going on. They thanked me for what is being done, and I had some very good, sincere comments made by talent about what they think is happening.

I do think we're making progress. We're not there yet. I'm sure before this interview is out, we'll talk about some of the things we're doing to improve the wellness program. But I do think we're gaining ground.

Mr. McGuiness. Can we spend a little time, because I think your question was a little critical to us and let me start it and then please jump in. But the nature of the

program which I thought was one of the things you were getting at, it is not performance enhancing testing per se. That this is much more like a drug testing -- I mean, an employee testing program you might find at a company.

Mr. Black. From the very beginning this was not competitive sports testing. This was not a situation where the outcome is not known. It is referred to as a dance in the ring. I will say, without a doubt, these people are very athletic and they're quite remarkable if you were to see the event up close about how they control themselves and their emotions in a situation where they're hitting each other where there is body contact.

But this is not competitive sport testing. This is a workplace drug test, but a very expanded workplace drug test. I'll tell you the other thing that -- after many years of being involved in competitive sport testing and workplace drug testing, I was caught by surprise in this program early on with infinity longevity, the rejuvenation centers, the wellness programs. I had absolutely no knowledge that these places were out there that are just drug mills, and they're handing out anabolic steroids and human growth hormones like candy and you could have gone online and done it. Within 10 days, you have could have in your hand as much human growth hormone and testosterone as you wish to have. For \$1,800, you can get a little box, and

you can get all you need. I had no knowledge that these centers were operating as they are.

Mr. McGuiness. We've documented this Jennifer and, of course, as to the purpose of his request.

Ms. Safavian. I didn't say anything.

Mr. Black. But I ran into Infinity Longevity, gosh, almost right away with the talent. And Dr. Brandywine and the folks down there and it smelled bad from the very beginning, although we had licensed doctors that were prescribing medication, and that's where the policy was problematic in the beginning. We said in the policy just like all workplace programs, if you've got a doctor and you've got a prescription, we'll probably accept your positive test result. We didn't anticipate. I've never been in an environment before where steroids were being prescribed for medicine. There are very little medical applications of anabolic steroids.

BY MS. DESPRES:

Q Just to follow up on, you're analogizing this to a workplace program. But when I think of workplace programs and obviously you're the expert and maybe I'm naive, I think of programs to determine whether or not people are using drugs that may impair their ability to do their jobs. So it seems like most workplaces probably wouldn't test for steroids, for example, because --

A Well, they do. We have workplaces that do test for steroids. We've had fire departments, police departments. You have anabolic steroid use, unfortunately, on law enforcement and first responders. So there are issues there. But you're right, mostly you're testing in workplace for very limited number of drugs and really for nonmedical use of prescription medication or illicit drugs. But there are very expanded programs. We do workplace drug testing for doctors, nurses, pharmacists, who have access to a wide variety of drugs and therefore we have very expanded profiles. But this is a wellness program. The intention here is to deal with better health.

Q That's what I was getting at. The program seems to be slightly different than at least by its name than workplace drug testing program. It is called a wellness program which suggests that one concern is the health of the wrestlers.

A Absolutely. No, absolutely. And the intention too was not just to suspend and punish. The intention -- much like the NFL, when I was in the National Football League program for steroid testing, we tested for 2 years without punishment. What we did was for 2 years, we tested every player in the NFL that showed up to training camp, everybody who tested positive would get a letter saying stop using, stop using. Then it was the third year that we tested that

I ended up suspending 13 players in the NFL for their steroid use. The intention was never to just suspend or have people lose their livelihood or embarrass them publicly. The intention was to change behavior. That's what the intention of this program, although we do have a three-strike policy. If you test positive for the third time, you're out, you'll be terminated.

So it has teeth in it, but the intention is to get the wrestlers, the talent to engage in a healthier lifestyle and discontinue this use of drugs in a nonmedical way. And it is our opinion, Dr. Tracy Ray and myself, there is no medical justification in this population for the use of anabolic steroids or human growth hormone. They're just not allowed. There is no good medical reason for them.

Now, we have agreed that testosterone can be legitimate replacement therapy. That is standard mainstream medicine and we have a population of individuals who have used anabolic steroids, they've harmed their endocrine system and we have a couple of people right now who have therapeutic use exemptions for the use of testosterone until we put in place a better program with an endocrinologist to track these individuals with better blood work and better follow-up.

But they've been given what I'd call a provisional TUE until we get the endocrinologist in place to a better

assessment and a better workup.

Q I'm sure we'll get to the issue of the TUE a little later. Another quick follow-up. You mentioned that you said, in response to Jennifer's question, that you spent a lot of time dealing with congressional requests but also the audit committee of the WWE board? Are they preparing a report on the drug testing program?

A I think that goes to the board of directors of the WWE. I think they're doing their own investigation. Yeah. I don't think that's supposed to move on to you all. I don't know.

Q Okay.

BY MR. COHEN:

Q I think it makes sense, I'm going to walk through the different parts of the program and as I do, if you can describe your role in the development of each part of the policy, and the extent to which you made recommendations that were or were not accepted as part of that policy.

A All right.

Q The first part is the list of prohibited substances.

A Uh-huh.

Q Can you describe your role in the development of that list?

A This was discussed with Jerry McDevitt, he and I together went over the list, created the list, determining

which compounds would be added into these different groupings.

Q Okay. Were the recommendations you made, including substances that were not accepted by Jerry McDevitt?

A I would say the only issue on the initial policy that I advocated for inclusion which was left off was marijuana, and that has now been added. I think that was the only -- let me look through the list very quickly and see if I can get any -- nothing comes to mind at the moment that there were other recommendations that were left off.

Q Okay. The second part is the procedures for testing for selecting the random selection of participants, the procedures for collecting samples and transporting samples.

A Oh, that we definitely would have provided.

Q That was all you?

A Yeah.

Q Again, were there any recommendations made by you that were not accepted by --

A Not that I recall.

Q Jerry McDevitt? And were there any additional suggestions by Jerry McDevitt that were incorporated into the final policy?

A Not that I recall. I think the only two issues that really --

Mr. McGuiness. There is a -- the committee has been

provided a series, if I understand, a series of documents back and forth and so on. So I hope we have a chance -- Dr. Black can go back and look and double-check. He is trying to do this off memory.

Mr. Cohen. That's fine.

Mr. Black. The two things that stand out in my mind that were debated is the terminology of nonmedical use. I didn't -- it has become standard in the DOT world and the workplace world to use the term nonmedical use of prescription medication, and of course, the nonmedical use of prescription medication has become a bigger issue than illicit drug use.

I think there was, in fact, I know there was debate about the term "nonmedical use." And then there was the debate about the marijuana. I felt pretty strongly it should be in and there were others who felt it shouldn't. So it didn't go in.

BY MR. COHEN:

Q The third part of the policy I'm interested in is the definition of a positive test; the inclusion of initial baseline tests and the procedures for positive tests. How was that -- how was that set of provisions developed? Was that a recommendation from you or from Jerry McDevitt?

A I think that came from me as well. Although I think Jerry understood that concept too, how the NFL put its

program in place, how other programs have put their programs in place. You conduct an initial blanket test for everyone who is covered by the program, and then you put them on notice that you know what they're using and you advise them to discontinue their use.

So I'm sure that was a readily agreed upon point -- we'd do an initial blanket test and advise everyone that tested positive that if they test positive in the future, they would have to have a doctor and a prescription for their use of that drug or any drug.

Q With the initial baseline tests, when you informed the athletes, the talent, how was that -- how were they informed of a positive on the initial baseline test?

A They all received a letter, either negative or positive.

Q And that letter was sent directly from Aegis to --

A Yes, from the Aegis program administrator to --

Q So it was not -- was WWE also informed?

A Yes, they were advised.

Q They were advised by --

A I think we advise them in summary format. I don't think they received a copy of every letter. I don't think they did. They might have. Again, I don't recall that. But I know we put the data in a summary format.

Q So you provided them a written summary of the

initial baseline testing?

A Uh-huh.

Q Next step -- next part of policy is therapeutic use exemption process. Was that -- again, can you walk through the development of that process? Was it based upon initial recommendations by you or Dr. Jerry McDevitt?

A It was based upon my knowledge of the therapeutic use exemption in the sporting world, and even though we're dealing with a workplace drug test, the therapeutic use exemption has become a terminology used in sport, but, you know, we have this program that is in between workplace and in between sports, so there are elements of both that have been brought together to create this unique program. And the therapeutic use exemption would be something to be considered certainly expected that there was steroid use and there were people with harmed inner consistents.

Q Okay. And again, did -- were the recommendations you made that were not accepted by Mr. McDevitt or were there additional relations on top of from Jerry McDevitt on top of what you had proposed that were included in the final version in your memory to the extent you remember?

A I don't remember at this moment. My memory could be changed by a document, but I don't recall at the moment that there were -- again, I think the big issues of discussion were the terminology nonmedical use and the marijuana issue.

And beyond that, I think it was pretty much some wordsmithing on some of the sections.

Q In the final area of the policy it says penalties for positive tests. Again, were those initial recommendations from you or from Jerry McDevitt?

A I think that part of the program -- I think it was in the first draft that Jerry had. I think it was there and I don't recall modifying it. But I think he had it as a part of the first draft that he developed.

Q Okay. Those proposals initially came from him and were accepted by you without any changes?

A Correct.

Q Okay. Good. The policy has three addenda which we will hand out as exhibits 4, 5 and 6.

[Black Exhibits Nos. 4, 5, and 6
were marked for identification.]

Ms. Safavian. So, Brian, the first amendment dated June 13th is Exhibit 4.

Mr. Cohen. Yep, June 13 is Exhibit 4. August 21st, '06 is Exhibit 5.

Ms. Despres. And May 16th is Exhibit 6.

BY MR. COHEN:

Q All right, the February 27, 2006 addendum is related to the use of muscle relaxers and sleep aids. The addenda dated August 21, 2006 is related to penalties for positive

tests. And the addenda dated May 16, 2007 is also related to penalties for positive tests. Were you involved in developing any of these addenda?

A I was certainly involved in the first one, June 13th because the issue arose in learning more about the talent and what was going on. These became drugs of concern. The issue on -- let's see the -- excuse me -- the August 21st, this I was not involved with. This had to deal with -- originally we were going to try to coordinate the positive test results with the performances. So that if someone -- if somebody tested positive, we're going to have to write them out of the script.

Mr. McGuinness. Are you all -- are you familiar with how the events occur?

Mr. Cohen. Yes.

Mr. McGuinness. Okay. I'm sorry. I didn't know if everyone is up to speed.

Mr. Black. As I understood it, the difficulty became they were selling tickets to folks who were expecting to see certain talent perform. So it was becoming problematic. When you look at the number of people suspended and the impact of the testing program, the intention was not to decimate lives or the business, and it was becoming difficult to deal with the talent who were being suspended. So one response to it was -- instead of 30 days off and loss

of pay, you lose the pay but you still have to perform. So I was not a participant. That was a decision on the company to have that policy.

BY MR. COHEN:

Q Were you aware of that decision when --

A I was aware of their angst and concern and the fact that they preadvertised who was going to be there. They felt they had a duty and obligation to have that talent there. But I did not contribute to that policy. I was made aware it of it.

Q You were made aware of it?

A I was made aware, yes. We're no longer doing that.

Q That policy, to your knowledge, has been eliminated?

A Yes. Now will not perform.

Q As of when?

A As of -- gosh, I'd say about 2 months ago. But we did have the instance where in one day I suspended 11 people for human growth hormone purchases and there are some tapings committed. So some of these people taped, even though they were suspended they had to. Too many people were being suspended to not do that. They will no longer be allowed to perform while they're suspended.

BY MS. DESPRES:

Q Did you participate in the change of policy?

A Absolutely.

Q What was the basis for changing the policy?

A Well, I think the basis is that they should be sitting on the sidelines if they're suspended for 30 days or 60 days. They should not be performing.

BY MR. COHEN:

Q Did you agree with the -- was that a conclusion that you had reached -- let me rephrase that. Did you agree with the August 31, 2006 decision to allow wrestlers to appear after a positive test?

A As the administrator of the policy, I have certain limitations on where I can go with -- where my beliefs take me. But I would say that I'm unaccustomed to programs that suspend and you're not suspended. So I would say I was not enthusiastic about it. But I understood the need as expressed at that time for that behavior or for that action.

Q Okay. Were other outside experts consulted during the development of the policy?

A Well, we had Jerry and myself. I think we both have a lot of experience in the field and in the area. But by outside, you mean unrelated to Aegis or WWE and I really don't know if they consulted with any other individuals.

Q And you personally did not?

A Shucks, I consult with people all the time and they do influence my thinking.

Q On a formal basis?

A I'm up in Montreal at a water laboratory all the time and every time I go up there, we end up talking and sometimes that influences my thinking as well. So I didn't specifically consult with anybody on the policy, I should say that.

Q All right. We've got one more -- another exhibit. This is a December 23, 2005 e-mail from Dr. Black to Jerry McDevitt which we will call Exhibit 7. This e-mail says that -- and I quote, "policy should be based on safety and/or health. The courts up through the Federal courts have been supportive of programs with the intent to ensure safety and protect health."

A Yes.

Q What did they mean by this?

A For workplace programs that are based upon -- you know, there are some States have actually passed laws prohibiting random drug testing programs. There's an actual pro drug use lobby out there. But the courts have been very supportive of programs that base their policies and the application of their programs on the safety and health of the individuals being tested, and that is what was meant. It is based upon my experience in the workplace drug testing environment.

Q Was the policy developed with the goal of limiting WWE liability to prosecution?

A No, no. That's not what I meant by that. Well, unless a talent wants to -- right now, I've got one talent wanting to sue me. Certainly the issue is whether they'll go out and hire some high-priced attorney and bring them in and try to argue the policy or the program. But in that context, yes, you want to make sure the wording of the policy -- I've helped Nissan, Bridgestone, I've helped organizations for years develop their policies and part of the thinking, as always, making sure the program will withstand legal challenge. So certainly it is inherent in all of the thinkings to make sure it is worded appropriately.

Q Okay. To whom do you report at WWE?

A I interact with Ed Kaufman and inside counsel.

Q And how often -- you described your -- the memos, the summary of results you provided for the initial baseline testing. How often and in what ways do you currently -- have you reported and do you currently report to WWE, and in what ways could you report verbally by a memorandum or other reports?

A Mostly Ed and I speak. It is mostly by phone conversation. In April, I did have a meeting with -- in Stamford, Connecticut, with Vince and some of the staff, and we did have a summary report for the first year of the program. But we don't -- we provide information as

requested, additional information as requested.

Q Okay. To the extent you remember, can you describe some of the other materials you've provided to WWE?

A Gosh, I guess in what context? You're talking about --

Q The reason I ask this question is because we had requested from WWE that they provide us with a set of documents regarding their internal discussions regarding the steroid policy or their discussions with outside organizations. And I want to -- to the extent I can validate that we've received all the information from them, I'd like to do so.

A I just -- you know, other than e-mails going back and forth and the documents -- the information provided in a summary format and Ed gets copies of suspension letters by e-mail. But in terms of background information or other documentation, I just don't know. I don't think we supplied them with any books or scientific articles or any of that sort of thing, which sometimes clients ask for.

Q Okay. So to confirm, there are three items that you have mentioned, you've mentioned the summary report of the baseline testing, you've mentioned the summary report for the first year of the program, that would be calendar year 2006?

A Well, we've been doing it on an anniversary year.

So -- although, I think the report in April actually went through, like, the end of March. I think it may have been for slightly more than a year.

Q So there is the summary of baseline testing, there was the March report on the one year and then there is suspension letters that are sent via e-mail?

A Now, we've certainly generated a lot of information over the past several months that has gone on to the WWE and that has gone on to Jerry McDevitt and gone on to the audit committee.

Q What is the nature of that information?

A Well, again, I think it is summary reports of how much testing we've done. But usually that is compiled and sent -- Ed Kaufman deals a lot with my staff directly as well in terms of interaction of requesting information. So there could be information provided that didn't pass through my hands or my e-mail.

Q Okay. What might be helpful for us is -- I don't want to create a lot of new work for you. If you could perhaps consult with your staff and provide us with a summary of --

Mr. McGuiness. Is there something -- is there any -- is there something you're looking for? Is there a type of information you're looking for?

Mr. Cohen. No. All I want to do -- this is -- again,

this is not an issue directed at Dr. Black.

Mr. McGuinness. No, I was trying to say you don't want logistical e-mails about who is going to what. I just want to know to give him some direction.

Mr. Cohen. I think information that was sent to Aegis from WWE indicating the extent to which the program -- describing the program's operations and potential concerns with the programs and the program findings.

Mr. Black. I think there is going to be a limited amount of information. There is supposed to be a fire wall to some extent between the WWE and this program. But obviously, you know, it is working with the WWE but the intention was to limit Vince's influence on the program. So.

BY MR. COHEN:

Q And you were -- what lead you to that conclusion? Is that what you were told by Linda McMahon?

A That's what Vince said in front of the talent when we first introduced the program. Dr. Black is the administrator, that's why I am known as evil Dr. Black. That's why I got my tag right up front, and I'm really the point of concern for them. And that Vince, for the most part, would not be directly involved in who is tested, when they're tested, how often they are tested. There would be this separation of power so to speak.

Q And has that firewall worked to the extent you know. Has there been any involvement from Vince McMahon that --

A It -- Vince is a pretty persuasive gentleman and we've had a couple of pointed conversations.

Q Can you describe those conversations?

A To a large extent, I'd like to keep it private, only to say that he listened, and he did not try to interfere with anybody -- he tried to -- the only discussion that I would say of any great substance that occurred was on the issue of the doctors and the prescriptions for the individuals, and whether or not talent would be initially suspended or whether we would find some middle ground where they'd get a warning letter, and that was the middle ground we found, is that they were given a warning letter before they were suspended, if they had a doctor and a prescription, but it was bogus medical reason.

Q And was it his view that they should not have been suspended in those cases?

A In those cases, he argued that they had a doctor, they had a prescription, they didn't know any better, they had a doc, they had a prescription. So why are you, Dr. Black, going to suspend them? And hence, the reason they have the doctor and the prescription is because it is bogus. But the middle ground we found was I would send them a letter, I would tell them that the medical explanation was

unacceptable and that if they continued to use the drug, they'd be suspended.

Mr. McGuinness. Now, that has changed.

Mr. Black. And then we eventually removed even that. Now we go direct to suspension.

Mr. Buffone. Was he arguing they shouldn't be suspended that time or was he arguing that whenever they have a doctor and prescription, it should be accepted?

Mr. Black. When you read the policy it says -- what we did not anticipate was almost from the very first suspension, finding doctors who are prescribing anabolic steroids. I've been in this business for over 20 years, I have never found a doctor prescribing anabolic steroids. When I talk about anabolic steroids, I do not include testosterone, which is an androgen. There is a distinction to be made.

So it was a point of conflict early on in the program as to, you know, if they've got a doc, they've got a prescription, how can you suspend them? Vince, the reason they've got the prescription is not valid. The medical diagnosis is bogus. You don't inject people in the knee for joint pain. Rheumatologists don't use anabolic steroids for joint pain. You don't find rheumatologists doing that. But the middle ground we found for a period of time, for about 4 or 5 months, maybe less, maybe about 3 months until Dr. Ray

came on board, is that I would send them a letter saying your medical justification for this use is unacceptable. If you continue to use, you will be suspended.

So we had an interesting conversation to get to that point. But we got to that point and it seemed to be a fair point after all, although we did remove it. We issued a certain number of warnings and then we went directly to suspensions after Dr. Ray joined, and there was an issue that I was a Ph.D. and not an M.D. So they wanted an M.D. talking to an M.D., and disagreeing with an M.D., even though I think I can smell a problem when there is a problem. So that is how we resolved that issue as well.

BY MR. COHEN:

Q Have you ever had conversations with Mr. McMahon regarding test results for an individual --

A No.

Q -- wrestler?

A No, only in the context of that initial discussion on two suspensions where it was a policy issue and not the individuals, but beyond that, no.

Q Okay. Can you describe your contractual relationship with WWE?

A You'd probably have to talk to my marketing director about that. We bill them for the testing, we bill them for the administration of the program. If I'm asked to go to

Stanford, there is a professional fee for that day's visit as well as the travel expense. But I don't know the detail of all the billings.

Q And approximately how much -- do you know approximately how much you're paid for your services by WWE?

A I think annualized for probably billing them for a total of [REDACTED]. That's for collectors, that's for everything.

Mr. Cohen. Okay. Any other questions on this? This general area?

Ms. Safavian. Yeah, real quick.

BY MS. SAFAVIAN:

Q Do you know whether or not it has been, say, a fourth amendment?

A Yes, there has.

Q Regarding what you said 2 months ago, they got rid of the working while suspended, is that what the --

A No, no, no. I don't know that we've had an amendment that retracts that earlier amendment. But we had a new amendment where we're adding -- here is another example. I didn't realize these people would be quite as knowledgeable as they are like athletes are. We're adding the anti estrogens, we're adding the blocking agents, the steroid manipulators.

This program has morphed. It is transitioning from an

expanded employee drug test or workplace test into far more of a doping program. I still -- a lot of the drugs in doping analysis are time-of-event drugs that competitors try to use to gain an advantage. Those are not a concern to us. The outcome is known here. So there a lot of drugs on the list we'll never even be concerned about. But had not anticipated again it has these guys would be quite as sophisticated as what they are.

The wellness centers, these Internet, when you buy the product, when I bought this product off the Internet, they sell you the human growth hormone, they sell you the anabolic steroid, they sell you the blockers at the same time. It is a kit. You get the whole kit in the mail.

So once I saw that, I realized there is a more sophisticated aspect to this than would have been fully appreciated. So we have a new amendment where we're adding marijuana, and we're adding the anti estrogens and we're adding these blocking agents. Although there is language in the original policy about blocking the masking agents but are really just expanding the scope of that.

BY MS. DESPRES:

Q Would the anti estrogens have been included under the old policy, or prior to this fourth amendment would -- could you have suspended someone for use of anti estrogens as well?

A Well, we weren't looking for them. We weren't paying attention to them, I must confess. We didn't have knowledge -- I don't think we had -- I've seen the DEA list, I've seen so many documents now, I'm kind of getting a little blurred on which, now that I've seen some of these DEA documents they were purchasing, so they must have been using. But we did not have them included in the original proposal in the program. That is something to monitor.

BY MR. BUFFONE:

Q Going back to that conversation with Mr. McMahon, you said that he wanted to accept the prescriptions and you convinced him not to. And you convinced him to get to the point where you issued warnings and said you need to get off these medications?

A Yeah, that was the middle ground we achieved, is that they'd receive a letter saying that yes, you have a doctor; yes, you do have a prescription, but you disagree with the diagnosis and the use of the medication. So discontinue use.

Q And what was it that convinced him?

A In the conversation?

Q Yeah.

A Oh, gosh. Well, let's see I was on vacation with my family and spent 2 days on the phone and what did we say? We had a lot of conversation. And basically it boiled down

to the fact that I think I convinced him that I appreciated him defending the talent and putting on his talent's hat to defend them, but at the same time, the reason for the prescription was clearly nonmedical, and the policy states that nonmedical use of drugs is prohibited, and I went into great length to explain to him that sports medicine physicians do not use anabolic steroids for treatment of pain and injury. Rheumatologists don't use these drugs for treatment of joint pain or injury or any form of rheumatology that -- treatment that I'm aware of.

So I think he was finally convinced and understood that the talent had used the doctor to get to the drug. But he believed in fairness to the talent, the policy said what it said and they abided by the policy.

BY MS. SAFAVIAN:

Q You mentioned a couple of times that you kind of did your own, like, investigation where you went on line and were able to order different steroids?

A Yeah, I took a magazine out of the pocket of Southwest Airlines. You can do it, too.

Q When did you do this?

A About 3 months ago, 4 months ago.

Q And was that -- did you do it more for your -- in your capacity as the policy administrator for the wellness program or --

A As a forensic scientist who wanted to know what the hell is going on out there. Right now I've got two products in my laboratory that we're testing. We get products sent to us all the time. We get our curiosity piqued by these products that are being made by 46 or 48 labs. I don't know if they're labs. But 48 places they busted are probably just a part of the overall problem.

But I get products sent to me by organizations, by athletes to test. And I've got one product in house right now that is being sold to the Hollywood crowd through a star. In fact, it is called Star Caps. And it has got a controlled diuretic in the product, not on the labelling. You can't sell it over the counter, you should have a prescription for this.

I have another product sent to me that is very interesting. It is made up of 1,4-Butanediol. Now 1,4-Butanediol is a date rape drug, but it has also been used for body building and converts in the body to GHB. GHB is also in this product. And GHB is another thing that we're not including in our policy, but it has been used as a bodybuilding product. But none of this is included in our testing right now, and I have a doc somewhere out in Arizona that is manufacturing this for people.

But I also found out in that inquiry that our own Food and Drug Administration has approved GHB as medicine. I

don't know what insanity goes beyond that, but it is an orphan drug allegedly, and it is being prescribed by some doctor out of New York right now to athletes, and it is supposed to be an orphan drug. You're not supposed to get this drug unless you've got some rare narcolepsy-related condition.

But our own FDA has approved this drug as medicine. I talked to three or four doctors and I asked them, can you tell me if GHB is only illegal, you can't get this legally? But the FDA has approved it as a drug. Who convinced them this could be a drug is beyond me, it is infuriating. I don't want to get started here, I'll get on my soapbox and start preaching to the choir.

BY MS. DESPRES:

Q The product that you purchased over the Internet, did that come to you from within the United States or --

A No, it came from the United States. Oh, no, it is fulfilled in an Internet pharmacy here in the States.

Mr. McGuinness. Would you like us to write something up on what he did to explain the purpose -- unlike our usual conversation, I wasn't going into defense mode on this one. I was simply saying do you want us to tell you what he did and what happened, so you'd have the information.

Ms. Safavian. Sure. A while ago we had GAO do a study for us where they went on line and ordered steroids. Most

of those came from other countries outside of the United States. So that's why we're interested in what it was that you found.

Mr. Black. But it is beyond that, you know, if you're going to study this thing, go down to the local GNC store. Tell them you got to take a drug test. Let them unlock the cabinet that holds the products that are sold to beat the drug test. I've done this in Michigan, Florida, Tennessee, Texas. Go to a GNC store. There is a whole industry out there of people who are confounding this testing process. And it is complicated by the fact that we then have our own FDA that doesn't necessarily participate in this process.

I don't know who you report this information to. Years ago, we found a product called Seedy Sweeties that had marijuana in it being sold to children as a nutritional snack. I contacted the FDA, the FDA asked me, Dr. Black, why are you worried about this? What is your concern about this? Marijuana a controlled substance, it is being sold to children as a snack treat. Why are you worried about this? Contacted the DEA. They finally busted the place over in Oregon that was making this program.

But you have nowhere to go -- I'm a forensic scientist, I think I know the system, but I don't know where to go with this information. I don't know how to track down this doc in Arizona that's selling the GHB, I don't know how to deal

with this doctor up in New York that's apparently violating the Orphan Drug Act on GHB. I don't know where to report Star Caps.

Ms. Despres. Any information you'd like to share with us, we're happy to accept it and follow up with FDA or DEA.

Mr. Black. It would be nice to have a conduit to someone. We have put supplement companies out of business by our work and we have driven them off the market. But that has happened because of other complaints and other legal action outside of the regulatory process.

Mr. McGuinness. We're getting a little off track. I think the point is that one thing this committee could take a look at is just what is the mechanism? Is there a mechanism you could do for reporting this sort of information?

Ms. Despres. Well, why don't we --

Mr. McGuinness. We would be happy to share with you.

Ms. Despres. Why don't we follow up on what you found and we can follow up with the appropriate agencies.

BY MS. SAFAVIAN:

Q Dr. Black, there was not any talent, individuals at WWE who mentioned to you or you heard was actually purchasing --

A No.

Q -- these type of drugs on the Internet?

A No, it is a practice that is going on. I keep reading these articles in these in flight magazines and from other sources, and it is certainly the WWE and my introduction to wellness centers and rejuvenation centers and longevity claims that has piqued my curiosity about how can they do this. You know, human growth hormone under the FDA, as I understand it, only has three medical applications and you're prohibited from a doctor using it off label. So how in the world can they use this? But if you go to the Federal Web site on anti aging, they actually talk about the use of human growth hormone as an anti aging compound and yet, the FDA says you can't use it for that.

Mr. McGuiness. I think one of the questions that -- let me go back to your other question. One area, one way of looking at this because of the problems with testing and so on, is who's is buying it, who is buying the drug, not -- I'm not talking about individuals. What companies are buying the drug? What entities are buying the drug is one way of monitoring the sale. Unless they're for the three prescribed -- you know, the people buying the drug can't be drawing much quantity if you're using the drug as it's supposed to be used, as you're talking about children, pituitary gland, and there is a third.

Mr. Black. There is AIDS, there is a rare pituitary condition in adults and there is dwarfism. I don't know

that we have a couple million dwarfs running around this country in need of human growth hormone. Just like the anabolic steroids, they're overproduced. I was on a national consensus conference in 1990 where we put recommendations to the father of President Bush, none of which were followed up on, but one of them that came out of this national consensus conference, Don Kaplan was on it, there were alleged experts from all over the country, one was stop producing this stuff. Fit the production to the medical need. I'd love to have you all help us with this. I'd love to invite you to help us with this, because it is overproduced and the stuff that is overproduced ends up on the street, ends up in the gyms and ends up being abused. I'm getting on my soapbox. I apologize.

BY MS. SAFAVIAN:

Q Going back to Exhibit 7, which was your e-mail of December 23rd, paragraph number 3, the third sentence. Do you see that? You say "due to the PR purpose of this program (in part). What did you mean about that? Can you explain that to us?

A No. 3?

Q Yes.

A Well, I think -- you know, too many people think marijuana is a soft drug, isn't very harmful, and what I was trying to do was persuade them to put both marijuana and

alcohol into the random program, not just restricted to the reasonable suspicion testing.

Q But were you doing that more for the PR --

A Oh, no. I sincerely believe it. For them, I think they'd be subject to criticism if it is not included. Certainly I think for them it is a PR issue. For me it is a science issue, it is a health issue. I think for them it would also be a PR issue if it is not included.

Q Did you have conversations with anybody at WWE regarding when you're preparing the policy regarding the PR aspect of it and what will look good and what won't look good?

A No. That probably is one of the few places I would -- the talent working through a suspension I understood their public relations problems, they've sold tickets that are supposed to be there. But I didn't participate in that conversation. But the issue with the alcohol and the marijuana I felt yes, it would be bad publicity, but also marijuana a drug culture drug, and we're trying to deal with it as a change in culture and I don't know how you do that successfully if you don't address the marijuana issue along with everything else.

Mr. Cohen. Anything else?

BY MR. COHEN:

Q Next set of questions is going to be on the testing

procedures. Can you walk us through the testing process itself, how are wrestlers selected for testing and what events are they tested?

A That is the collection process, yeah. The events themselves are randomized, and then who is collected at the event is a randomization process. We actually do random collection programs for many organizations. We have a computer program, you put either names or numbers into the program. It generates the list. You tell it what percentage, and it will pull out names. The program was set up so that on average, all talent would be tested at least -- would be tested four times a year. On average, now we've changed that to a guaranteed minimum, so the average will climb. But the intent -- so we randomized the events. There are about 110 events a year. So the event, not every event gets a collection. So the events are randomized and then who at that collection event going to be collected is --

Mr. McGuiness. Not everyone is at every event?

Mr. Black. Not everyone is at every event. We get a roster of who is going to be at the locations. So there is one individual at the arena that will know that our collectors are coming. Now, we subcontract to a company that has certified forensic collectors and the collectors arrive at the arena. There is one individual that knows

that they're coming because they have to gain access to the arena through security. Once they're inside, they will then notify talent as they need to provide a urine sample.

Once a talent is notified, the collector monitors or stays with that talent until they provide their urine sample. We follow DOT guidelines, we allow 3 hours. We've -- so that is the practice, is we have a 3-hour allowance for them to provide a urine sample and the collector monitors that individual until they can provide the urine sample.

Q So if you're testing multiple wrestlers at an event, you have multiple collectors there to --

A We have multiple collectors. Of course, we notified it as a collectors available to collect all of it. So they don't know when we arrive who is going to be tested or collected.

Q But at that point, then, the collector walks up to the wrestler and says your number is up and that individual collector follows that wrestler around and if they can provide a sample right then --

A They're usually taken over to the area where the collection will occur, they'll stay with them. Now if they have to go to tape or something, they'll stay with them to monitor them. But they are typically taken into the immediate area. They have to secure a bathroom in the

facility to collect the sample.

Mr. McGuinness. Having gone -- having listened to your questions on this hearing before, we did ask -- you've had one instance where someone couldn't provide a sample.

Mr. Black. Well, we had one or two individuals who did two things. One is he tried to substitute a sample and that was an unsuccessful effort. But the collector still said you're going to stay here for 3 hours and provide your own sample. So they took the sample they were trying to substitute. And then at the end of 3 hours, they didn't provide their urine sample and that person was suspended. But that's the only instance we've had of anybody that went out to 3 hours.

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Q So -- but what could happen is that the wrestlers will know once the first few people are told their number is up, as it were, that the testers are here?

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Q Does that give the wrestlers who -- they don't know for sure that they are up that day, but they do have this opportunity as they're waiting for other collectors. Does that give them an opportunity to engage in some kind of nefarious test beating?

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So I think the only thing they can do during that period of time to try to interfere with the process is take some of these products that you get at GNC and load up. What they do there is they try to get a lot of water in and don't show through urine. So they've got vitamin B complex in them, they've got creatine in them. Because a lot of labs test by creatine and determine if a sample is diluted. We don't. We only do specific gravity.

We use our DOT Federally certified specific gravity method. So we check each sample to see if it is diluted. But I think that's about all they can do, separate from voiding their bladder, catheterize. Allegedly that happened when we were running the NFL program. That story has circulated for years, that that can be done. But I don't know if that is true.

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(Recess from 11:40 a.m. to 11:45 a.m.)

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Mr. McGuiness. There are all sorts of rules about what you can demand and ask an employee to give and what you can't. With an independent contractor, it is a contractual relationship.

Mr. Cohen. Although my understanding is that WWE, of course, can control what is in and not in the contract.

Mr. McGuiness. Right. I'm saying -- in other words, it is very hard to demand an employee, especially in a union to give you all of the prescription information. Whereas if you're an independent contractor, you can write it into the contract. That is why they're able to get the

prescriptions.

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A Well, we have the ability to get information that, say, supports competitive sports programs. We get this prescription information and even prior to suspending the 11 people for human growth hormone a couple of weeks ago, I have had two other talent who had been pushed out of the WWE who had human growth hormone prescriptions. So we've actually dealt pretty effectively with human growth hormone as an organization through prescription information. Of course we got the DEA data which was very helpful. But we had already dealt with two individuals with human growth hormone prescriptions.

Q Not to get -- but just to follow-up on that issue of the contractual relationship as compared to the employer/employee relationship, are you aware of any limits from your standpoint as a drug testing program administrator on what you can require or ask of one of these independent contractors?

A I'm not aware of any limits. They sign an agreement

saying they'll provide this information. We have their release that we provide them to the doctor to provide all of their medical information. So I'm not aware that we have any limitations.

Q Could you actually require that there be follow up with a particular doctor or particular kind of doctor?

A Well, the plan with the endocrinologist moving forward as -- once we get an endocrinologist in place -- I think the way I would like to see the program organized with the endocrinologist is the same endocrinologist will deal with the evaluation and with the follow-up and actually create a patient/doctor relationship. I would prefer not to have to work with endocrinologists all around the country, using different labs, getting different blood work, data. So I'm hopeful -- I think we can. And my understanding from Jerry McDevitt is we can. We can demand that they go to this doctor for treatment.

Q Okay. So you can demand that they go to even a particular endocrinologist in order to get the prescriptions for the testosterone, for example?

A Yes. And to get the follow-up blood work showing that they're not abusing the replacement therapy, et cetera and do other evaluations.

Q That is helpful. That clears up a lot.

Q (By Mr. Cohen.) Is it your understanding that --

you had said this earlier, that the way you treat a T/E ratio between 4 and 10 is the same way as WADA treats such a test result. Is that your understanding that --

A They do two things, one of which I would argue is invalid. But they do two things. One is they go back and try to collect T/E ratio data from other labs. There is a lot of variance between the WADA ` >collect the sample.

Mr. McGuinness. Having gone -- having listened to your questions on this hearing before, we did ask -- you've had one instance where someone couldn't provide a sample.

Mr. Black. Well, we had one or two individuals who did two things. One is he tried to substitute a sample and that was an unsuccessful effort. But the collector still said you're going to stay here for 3 hours and provide your own sample. So they took the sample they were trying to substitute. And then at the end of 3 hours, they didn't provide their urine sample and that person was suspended. But that's the only instance we've had of anybody that went out to 3 hours.

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Q And John is?

A I think his title is director of talent relations.

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Q Is he at all events?

A Uh-huh. He has an assistant. These people are on the road all the time. I'm pretty sure it is John we always interact with. I may be wrong. He does have an assistant whose name escapes me, but he does have an assistant we could contact.

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Mr. McGuinness. Questions we would never thought would have --

Mr. Cohen. Exactly.

Mr. McGuinness. I'm sorry.

Mr. Black. But we also test if they are minor league so to speak. They have the group up in Louisville whose name escapes me. But there is, like --

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A Well, we have the ability to get information that, say, supports competitive sports programs. We get this prescription information and even prior to suspending the 11 people for human growth hormone a couple of weeks ago, I have had two other talent who had been pushed out of the WWE who had human growth hormone prescriptions. So we've

actually dealt pretty effectively with human growth hormone as an organization through prescription information. Of course, we got the DEA data which was very helpful. But we had already dealt with two individuals with human growth hormone prescriptions.

Q Not to get -- but just to follow-up on that issue of the contractual relationship as compared to the employer/employee relationship, are you aware of any limits from your standpoint as a drug testing program administrator on what you can require or ask of one of these independent contractors?

A I'm not aware of any limits. They sign an agreement saying they'll provide this information. We have their release that we provide them to the doctor to provide all of their medical information. So I'm not aware that we have any limitations.

Q Could you actually require that there be follow up with a particular doctor or particular kind of doctor?

A Well, the plan with the endocrinologist moving forward as -- once we get an endocrinologist in place -- I think the way I would like to see the program organized with the endocrinologist is the same endocrinologist will deal with the evaluation and with the follow-up and actually create a patient/doctor relationship. I would prefer not to have to work with endocrinologists all around the country,

using different labs, getting different blood work, data. So I'm hopeful -- I think we can. And my understanding from Jerry McDevitt is we can. We can demand that they go to this doctor for treatment.

Q Okay. So you can demand that they go to even a particular endocrinologist in order to get the prescriptions for the testosterone, for example?

A Yes. And to get the follow-up blood work showing that they're not abusing the replacement therapy, et cetera and do other evaluations.

Q That is helpful. That clears up a lot.

BY MR. COHEN:

Q Is it your understanding that -- you had said this earlier, that the way you treat a T/E ratio between 4 and 10 is the same way as WADA treats such a test result. Is that your understanding that --

A They do two things, one of which I would argue is invalid. But they do two things. One is they go back and try to collect T/E ratio data from other labs. There is a lot of variance between the WADA labs in terms of their T/E testing and all of their testing. But it has been in their policy that you can do retrospective or prospective studies or both. So, yes, it has been a standard practice to go forward and collect samples going out over a number of months. Now, some of the labs do have a carbon isotope

ratio analysis capability, So they lean on that more heavily than they do on the prospective studies. They just go to carbon isotope ratio testing.

Q Have you considered moving to a CIR test?

A If they can build a good machine I think we'd look at it. But when I was down at the Rio de Janeiro laboratory witnessing a -- they had a machine there for a year they were trying to get up. The machines are cantankerous. They are very difficult to operate and again not all the WADA laboratories have them. Some do. A couple of them do.

Q Have you considered outsourcing some of your test results to --

A Well, I'd love to have Christian Ayotte up in Montreal who I think has a great WADA laboratory -- I don't think she could accept samples outside of the agencies she provides a service to. I don't think it is an option. I think they are prohibited from doing that kind of work. In fact, I do a lot of contaminated supplement work because they can't really do that kind of work under their charter or designation as a WADA lab.

Q Okay. Does the policy cap the level of epitestosterone that is allowed in a sample?

A There is an advisory from WADA that looks at anything being suspicious of epitestosterone above 200 nanograms per mill. We haven't had any cases like that.

Q Is there a policy -- I mean, do you -- epitestosterone I know is, I believe, listed under the prohibited substances?

A Yes, it is. Only in that it would try to maintain a, quote, normal T/E ratio if it is used in combination with testosterone. By itself, it is not androgenic anabolic steroid.

Q Right. So again, is there -- to the extent a wrestler tests -- has an epitestosterone level of 400 -- is it decigrams per liter?

A Nanograms per liter.

Q Would that be considered a positive test under the WWE policy?

A If it were greater than 200 I would define it as a positive. It wouldn't have to go as high as 400.

Q So anything greater than 200 is considered a positive for epitestosterone?

A Yes. That would be application of the program. It is not built into the policy. Epitestosterone is prohibited under the policy. And that would be physiologically abnormal. I would probably have the individual recommended to be evaluated for any possibility of tumors or any sort of health-related issue. It is not -- you know, epitestosterone is not measured clinically. So I frankly don't know if it is a factor in any disease state. So we

might be concerned about whether or not this individual might have some possible tumor related to their endocrine system or -- but more likely than not, the first thing that would happen is they'd be suspended and then the evaluation would occur. I haven't encountered that event yet.

Q So you haven't had an elevated epi --

A No.

Q Okay. The 1996 policy, the policy that was in place until 1996 until Mr. McMahon eliminated it, that defined a positive T/E ratio as anything above 6 to 1?

A Yes.

Q Do you know the reason for the change from 6 to 1 up to 10 to 1 as the definite positive test?

A No. It was still the same practice then. I guess it just wasn't written into the language. There has been grey area between 6 to 1 and 10 to 1 for a long period of time. 6 to 1 has been the historical set point under the IOC program, but there was follow-up -- we just put into the new program 10 to 1 is a definite positive. We just wrote it in. But it has been something that has been known and considered a true positive without question for quite a period of time for many years.

So there really was no change. The true -- you know, a positive follow-up under the WWE program is just like you'd have under WADA, it is a 4 to 1. It is just between 4 to 1

and 10 to 1 we have a rare. But if you have a T/E above 10 to 1, there is not going to be any follow up. You go right to suspension.

Q And this -- the increase -- the gray area, the 6 to 10 gray area, that was the case that you mentioned, the athlete you discussed. What year was that?

A Well, I had him flown in to be evaluated.

Mr. McGuiness. The name has been published. It is in articles.

Mr. Black. Oh, gosh. It is in articles. It was in the '90s, I just can't recall if it was early -- probably earlier than the '90s.

Mr. McGuiness. It probably would have been --

Mr. Black. Well -- excuse me. Well, I know it must have been --

BY MR. COHEN:

Q You don't have to give an exact, just give me a ballpark.

A Well, I'm just trying to think who the other school, because I had the NCAA related, I'm trying to think of the schools I was working with.

Mr. McGuiness. He's talking about the Olympic athlete. Are you talking about the Olympic athlete?

Mr. Cohen. I'm not sure.

BY MR. COHEN:

Q At what point did we really become aware of the grey area between 6 and 10?

A I'm pretty sure it was the early '90s. Because the other thing that happened around the same time frame was the Ben Johnson second test up in Montreal with Christian as the lab director. And Ben's second accusation of use has never made sense and it brought up the issue of the possibility of bacteria generating or creating testosterone. Because around the same time, there was a recognition that there are bacteria that can actually take other steroids in a urine sample and convert them into testosterone.

So then they began to do the free testosterone as well as the other testosterone test. I think that all kind of occurred around the same time and that second test on Ben was in the early '90s. It was around '92. So this would have been around '92, '93 I think for this Olympic athlete.

Mr. Cohen. Any other questions on the T/E ratio?

BY MR. COHEN:

Q We're going to talk about HGH testing next. There have, as you know, been numerous reports of wrestlers and other athletes taking human growth hormone.

A Yes.

DCMN SECKMAN.

Q Am I correct that the WWE policy bans the use of

HGH?

A Yes, it does.

Q And am I correct that under the current WWE policy, only urine is tested, correct?

A Yes.

Q And is there a urine test for HGH?

A Well, There is certainly a clinical test for HGH. The issue is, is there a forensic test that can distinguish between synthetic HGH use and the normal HGH that is present in the body and the answer to that question is, no. But that is true of blood or urine; there is no test.

Q There is no blood test?

A There is no blood test. Let's be clear on this. Donna Catlin is spending money today as you and I are talking trying to develop a test. I know there are a few people walking around saying that there is a test. No athlete to my knowledge in the world has been sanctioned for HGH use based upon a test.

Mr. McGuinness. There is also no commercially available blood test.

Mr. Black. The other thing is, you need two tests; you need two different -- to define a positive for forensic purposes, you really need two tests, based upon two different technologies to discount the possibility of a false positive. And that is why it is common practice in

the sciences that we employ in forensic sciences to employ several different methods of analysis to identify what drug may be present. So if we make the accusation, we've got sufficient proof that there has been use. But to my knowledge -- and I'm always willing to be educated. But I'm not aware of any athlete anywhere in the world who has been tested by a test for HGH where they were found to be positive and where they were sanctioned and penalized.

BY MS. DESPRES:

Q But are you aware of athletes being tested by test for HGH?

A Yes, there is a test -- I understand there is about -- you know, a lot of this is kept hidden within the WADA system. But I'm aware that there are about 600 tests that have been conducted on blood using a kit that allegedly can identify HGH use. Now, that testing has been going on since -- since 2004, since the Athens Olympics game. In the world in which I live -- and I was a consultant of Abbott diagnostics -- the largest producer of diagnostic kits. And I help them as a consultant get their FDA approval for cocaine and for amphetamines and for assays that they sell commercially for testing.

Now, 600 tests in the world of documenting that you have a test is nothing. That doesn't even begin to touch the issue. If you're going to develop a test that is going

to distinguish between natural human growth hormone and synthetic human growth hormone, you're going to have thousands and thousands and thousands of tests to even begin to say that you maybe have a test that can be applied, maybe. Right now, my laboratory today, we're doing a thousand tests on an FDA approved kit for Ritalin, for methylphenidate. We're doing a thousand tests just to prove that the FDA is right when they said this kit works. So I keep hearing this. I read it in the press. I keep hearing this. I'm not aware that there is a human growth hormone test.

Don Catlin just the other day, who retired from the UCLA lab, he has money that has been given to him by sport to -- he quoted -- he was quoted in the paper the other day, it is a couple of years away as a viable possibility.

BY MR. COHEN:

Q That was a urine test or a blood test that he was quoted on?

A A urine test.

Q Have you considered any other actions to deter the use of HGH, such as saving a select group of samples from some of the rest --

A I have suspended more people for HGH use than in the entire world of doping control. Currently 13. That is beyond what anybody else in the world has done.

Q Those are all based on law enforcement --

A No, I had two by prescription -- two by prescription, another by law enforcement. But maybe what we ought to do with the program -- and I'm just thinking of it as we're speaking -- maybe -- I've got the authority. I could go and get the prescription history from every talent for every doctor that they've seen, but it would be an enormous task. But are you suggesting archiving frozen samples?

Q I understand that is what WADA does. Have you considered doing that with --

A We do freeze samples at a minus 20 degrees centigrade for a year currently, but we're not talking about low molecular weight compounds as we are with anabolic steroids or amphetamines or narcotics. We're talking about proteins, polypeptides that deform over time. Even if you're frozen at the minus 20 degree centigrade -- you know, they try to do -- the Paris laboratory tried to do this on the Armstrong sample. They tried to pull out a sample from years ago and do an EPO test.

And I think it would be educational to read Christian Ayotte's comments out of Montreal that -- I don't know that you can do that with polypeptides and with these protein structured compounds. They're different than the low molecular weight compounds that we know are more stable at a

minus 20 degree centigrade. But even at a minus 20 centigrade, which is pretty cold, you still have oxidation and reduction occurring. There is still degradation going on in that sample. So I know there is this effort to archive samples, to come back years from now with a test so you can go back. But that is in sport where they want to take back -- they're going to take back gold medals. They are going to take back money. They're going to go back and take their name right off the books. They're not even going to put an asterisk by it. They are going to take them right off the books as having won the event. I don't think that is the nature of this program. I don't know what good it will do us to look back -- 3 years back and say, gee, this person was using human growth hormone then. I don't know that that is going to help us.

BY MS. DESPRES:

Q Actually, let me just follow up. In principle, you could develop for -- you could develop penalties for past use as well. I mean, if you found out -- if in 2 years, there is a test that is developed and wrestlers knew that their samples were being -- were being stored in case a test is developed, it could actually deter use now because you could set up penalties that could get them after the fact; right?

A Well, perhaps it might. I don't know that it would.

I don't have any evidence that it would. I think WADA is doing it and yet -- I'm on -- every day I get e-mails talking about who has been suspended for this or for that. People still use. I don't know if that would deter or not. I mean, that is an intellectual argument that I don't know if there is any documentation that says that that is the effect it would have on somebody's behavior today. Again, this program -- you know, if somebody used today -- and let's say we had a test 3 years from now, but 3 years from now, they are not using, the program has been successful, everybody is clean, nobody is using, I've achieved 100 percent success; why do I want to push them for what they did 3 years ago? I don't understand that.

Q I think the purpose --

BY MR. COHEN:

Q I think that the --

Mr. McGuinness. It is that you would deter as to --

Mr. Black. I hear that side of the argument. I don't know if that would. I just don't know if it would. I get people who apply for jobs to work at Aegis Sciences Corporation. We're a drug testing laboratory. And we test them positive for cocaine. People walk in going to work at a drug testing laboratory using drugs. And athletes and the people involved -- we are dealing with are high risk takers. They are after a lot of money. They're after a lot of

glory. I don't know if it would do that. I think they'd just try to craft some other way around the process. I just -- it is an interesting thought, and I will give it serious consideration. Of course, there is cost to storing all these samples as well.

BY MS. DESPRES:

Q Right. But you're already storing them, correct?

A For one year. I'm not storing them beyond that.

Q Right, right.

Mr. Cohen. Anything else on HGH?

BY MR. COHEN:

Q Masking agents. You had mentioned that there is going to be -- that you have put in place an addenda that would now cover testing for masking abilities.

A Yes.

Q That implies that you had not been testing for them up until now?

A No. We had been testing for the diuretics. But I'm talking about the newer things that people are using, like the Propecia and other things that people are using to interfere with the testing process. So we are expanding the list of what we test for. But we have included diuretics as masking agents.

Q Okay. Could you get us a list, a more detailed -- can you give us a few examples of -- Propecia is one. What

is --

A It would be the WADA list. I'd have to pull it for you.

Q If you could follow up on that for us.

A It would be the same as you would find on the WADA list, but I can pull the same list for you.

Q Just to make sure. You had mentioned one wrestler who you caught attempting to switch a urine sample?

A Yes.

Q Have you caught others attempting to avoid or evade or mask testing results?

A We have had a couple of instances of attempted bribery.

Q What happened in those cases?

A They did not succeed. I didn't take action because that would require putting the collector in the business of having to testify or having -- if I suspend somebody on that basis, I think it is more problematic to try to deal with it. It was discussed with them. In one instance, the talent claimed that he was just joking, but I told him I did not accept it as joking, and if it did occur a second time, he would be suspended, and I would take the risk. But it is an issue of putting the collector into a difficult position.

Q Does it concern you that there has been -- you obviously know about bribery attempts that were unsuccessful

that were reported to you by collectors. Does it concern you that there were maybe cases that weren't reported to you, that the bribe was successful?

A I can't discount that as a possibility. But I will tell you these collectors have been, I think -- well, you'd have to be there and try to collect the urine on these people to know that they've got a lot of gumption. And I trust them. And they're all background checked. They are all drug tested themselves. They all have -- you know, we know them. I don't think it has happened. I don't believe it has happened.

Mr. Cohen. Anything else on masking agents?

BY MR. COHEN:

Q Let's move onto the testing results that you provided to us. And first I'd like to ask about the initial baseline testing results that you provided. First, can you provide us the rationale for the initial baseline testing of athletes? Why not begin a program and give them -- you know, give them advance warning of some kind and essentially tell them in a month or 3 months or 6 months, We're going to start testing, and if you're positive, you're going to be penalized?

A Well, one thing was to try to get an understanding of the breadth and depth of the problem we are being confronted with. But I guess it goes back to other -- Pete

Rosell -- when I spoke to Pete Rosell, then commissioner of the NFL, the program's intent was not to punish. It is not a gotcha program. That is not what it has been about. It is a wellness program. It is to get people to stop doing what they're doing.

So it goes back to the original premise of the NFL program and other programs I've worked with where you want to find out what is the extent of your problem and put people on notice that you're serious about it, you can find out what they're doing and send them a letter and tell them so. But the intention of this program is -- you know, WADA is a quasi-police organization. They find people. They suspend people, and those people walk away. And they don't care whether they have employment. They don't care whether they have illnesses. They're just gone. And a lot of people lose big money, and they lose their livelihood. That is not what this program is about. It is not intended to harm the individuals, embarrass the individuals. It is intended to get them to stop the abuse. So the rationale for the baseline test was to take a look at what the depth and breadth of the problem is, put everyone on notice that they've been identified as using drugs, that it will not be acceptable in the future unless you have -- well, at that time we said you had a doctor and a prescription.

Q Your initial testing showed that approximately 75

out of 186 wrestlers tested -- 40 percent of wrestlers tested positive for one banned drug?

A For drugs that were on the prohibited list, yes. Some of those were steroids. Some were narcotics. A couple were --

Q Did you find the results surprising?

A Yes, I did. I did. They were actually lower than I had figured.

Q Lower?

A Yes, I had feared worse. I actually -- I know this sounds crazy. I actually was relieved that the problem wasn't bigger. So I felt -- it is still a challenge, a big challenge. But, no, I thought there would be more positives. I actually thought there would be more narcotic positives. Also because these people are injured, they are candidates for narcotic use and perhaps abuse. So I thought that there would be more narcotics. The anabolic steroids -- certainly in proportion to any other program in the world, this was startling and outrageous and you can pick your term you'd care to use. But I actually thought it was better than what I feared. Not to say that it isn't ugly. It is an ugly picture without a doubt.

Q And from the way those tests were used, I know they were called a baseline test. But to the extent that you detected -- let's say you detected nandrolone in that

initial baseline test, was that nandrolone level then considered the baseline for all future tests?

A Oh, yes, yes.

Q So if --

A That was a true baseline with the case of nandrolone.

Q I'm sorry. So let's say a wrestler tested positive for nandrolone or let's say -- let's say stanozolol.

A Nandrolone is easier.

Q All right. The wrestler tests positive for nandrolone, tests positive in the next test, and then, under the random testing, the nandrolone is at that exact same level. Is the second test considered a positive?

A If it were at the same level or if it went up, it would be considered a positive. They were sent a letter saying -- yeah, we have got this problem with the doctor and the prescribing, which we definitely have problems with the nandrolone.

Mr. McGuiness. Can we answer the question once with -- assuming there was no doctor prescription issue.

Mr. Cohen. All right.

Mr. Black. If they don't have a doctor prescription, and they were sent a letter saying, Discontinue your use, and they don't; yes, that would be a positive, yes.

BY MR. COHEN:

Q It doesn't grandfather in -- you're not grandfathering in future use of whatever they were using when they took the initial baseline test?

A Absolutely not. No, no, no, no.

Mr. McGuinness. If they stopped, you still might get the nandrolone --

Mr. Black. The reason why nandrolone is of interest, it is taken as an oral based injectable, and it is in the body for a long period of time. But there are three metabolites we look at. And you can tell by either the presence or the concentration of those metabolites that you're getting further out in time from the last use.

BY MS. DESPRES:

Q But could you tell if someone had just reduced their dose or if they had actually stopped? I mean, could it be that their nandrolone levels were lower the second positive test, but that was only because they cut their dosage in half?

A That is an interesting hypothesis. But they would have to titer themselves, and they would have to really know their concentrations and really -- you know, they are going to be followed. We're going to look at the results, and they should decline -- the 19-norandrosterone, 19-noretiocholanolone -- excuse me -- 19-norandrosterone, 19-noretiocholanolone and 19-norepiandrosterone. The third

metabolite -- if they continue to inject, we should continue to see three metabolites. The third metabolite, which is the minor metabolite, falls off after about 2 weeks. So let's say we test them and we see three metabolites; we come back a month later and collect them again, and we still see three metabolites. They used again. We shouldn't see that third metabolite on the follow-up test.

BY MS. DESPRES:

Q So you could distinguish between someone who has just reduced their dose and someone who has stopped using?

A We should be able to distinguish between whether it is declining or whether they're continuing to use by the -- by -- it is the pattern of metabolites, as well as the amounts. Now, as we track nandrolone out of the body long term, we really only quantify and focus on the primary metabolite, the 19-norandrosterone. But the presence of the other two metabolites can provide you information on how recently they used. So there is a way to interpret that data. Now, you know, I can't dismiss theoretically almost anything. But at some point in time, obviously they're going to have nandrolone out of their system.

Now, at one time we used to say nandrolone would only persist for about a year. I would say 9 months because I had a case out of Vanderbilt of about 9 months. And Bob Boyd, who is directing the USCO -- Bob Boyd would say 13 or

14 months. But I've had a case -- and I think Christian and I had some agreement with this. We had a case out to 2 years. But it was somebody who had an unusual abuse pattern. It was quite unique. But I would expect anyone in this program to drop off pretty quickly and probably not to have the primary metabolite detected after a year. So, you know, there's a point at which we're not going to tolerate the presence of a nandrolone metabolite. So if somebody continues to put it in their body, it's just going to extend out how long it's going to be in their body. And at some point, we're going to say, no, this is not residual; this is new use.

BY MR. COHEN:

Q Were the baseline tests random tests?

A No, we would call the baseline test a blanket test. However, that terminology is confusing, because what we did -- you know, there were X number of talent under contract the day the program went in place, but as new talent were brought in, they would all have a baseline test done also. We are now re-wording that to be actually a pre-hire or pre-contract test.

Q So in that first round, how did you test? Did you inform the wrestlers, Well, you're going to have your baseline test on X day at X hour? How --

A Gosh, It's funny that I would remember the NFL

better than I would remember that, but I think we just showed up.

No, no, no, we gave them notice. We gave them notice about the policy. It was announced. They signed off on it, that they understood it. So they did have notice. They had, I think, 30 days. I think there was 30 days notice.

Q Is it fair to say given that they had 30 days notice that there probably were more than 75 wrestlers who were using --

A Could have been.

Q Who -- and that some number of that group stopped using in time so that they did not test positive on the test?

A Sure. That's possible. That's possible. Of course, that was the intent.

Q I'm going to digress a little bit, and I apologize for doing so. You've mentioned -- talked about the intent of the program several times, one of wellness and that this is not a test that performance enhancement is not an issue here because it is, of course, rigged?

A It is not rigged; it is entertainment.

Q Exactly, it is entertainment; it is a story line. I guess -- we've heard from several -- a number of people we've spoken to have used the exact same phrase. They described Vince McMahon's, obsession with the male body,

unquote. And they've described a universe within wrestling, under which in order to -- in order to make it, in order to be on the list of wrestler who are going to get their push, you have to look a certain way. So from our perspective, the performance -- the concern about performance enhancement is not performance in the ring, but it is performance in looking, in appearance. In that context, does that give you any pause about whether you've got the appropriate -- whether the program is appropriately lined as a wellness or safety program versus a performance enhancement program?

A Well, I could only -- I can only go by what I heard Vince say to all of the talent, and we actually met here first in Washington, D.C. at whatever the arena event here. And when Vince announced the program to the talent and what I heard him say is: You don't need to use these drugs. We'll slow down the dance in the ring. We'll slow down how we perform. You don't have to use these drugs to be in the ring. We can compensate for it, and the crowds will still come.

Q When was this?

A That was when -- I traveled over here to be here because I was presented to the talent as the program administrator, gave them all my telephone number, verbally and -- or telephone numbers. But what I heard Vince tell them is: You don't have to use the drugs. I don't want you

to use these drugs. This program is intended to make you stop using these drugs.

Q Again, this is at the beginning of the program?

A Absolutely.

Q 2005 or early 2006?

A No. This would have been perhaps February of 2006.

Q Okay.

A And I flew over here, they were here in town and -- but I can only go by what Linda told me, what Vince has told me, what they want me to do in this program and what Vince told the talent. Now, I'm sure there were cynics in the crowd that may have thought that he wasn't sincere on it, but I listened to him tell them: We can slow down the event.

Q And are you, on a personal level, are you a fan of professional wrestling? Do you watch? And have you seen any indication that things have changed?

A Well, again, I've had talent come to me and tell me what we're doing is a good thing. I'm not -- usually when I'm talking to these folks, I don't know whether I know their real name or their stage name. I have to look them up on the we on the Internet site to know who I'm talking to. I would not classify myself as a fan. I will say, having for the first time just sat at ringside last week, I really admire what they accomplish in there. It is amazing what

they do in the ring, and you really need to see it up close to appreciate it.

But I don't watch it on TV and never took my children to it. I guess I grew up in a time in which there was wrestling down in Detroit where I grew up, and I do remember some wrestlers at the time, but it was never, quote, a sport that I followed.

Q Okay.

BY MR. BUFFONE:

Q Following up on that. Have you heard any reports of wrestlers getting smaller or people needing to work out more or things that you'd see if there was steroid use and there was not steroid use?

A You know, that is a very interesting question. A part of the reason why I was with the WWE last week is we're bringing on a psychologist. And when I was at Vandi, I had a case brought to me that this man was put in the Vanderbilt adult treatment program. His name was David, coincidentally. He was about 5 foot 8, Had a 56 inch chest, arms you couldn't put your hand around them. And David was terrorizing the family, the mother, the wife, the child.

So the grandmother saw me on TV, came to me, Can you help my son, the grandson? I talked to him. Got him into treatment at Vanderbilt. We were one of the first ones to identify reverse anorexia. And what with this is guy is a

part of the deal was that he could still go to the gym to work out. One of the side effects of anabolic steroid use is water retention. When you stop using them, you shed water. He had lost about 5 pounds in about 3 days, and I was going in each day to see how he was doing.

He said, Doc, I can't go to the gym and work out. I said, Well, why can't you go to the gym? He said, I'm puny. Now, this is a guy who had lost 5 pounds off of about 250 pounds. I could not tell anything. Other people -- we coined it -- we defined it as reverse anorexia nervosa, other doctors call it megarexia. There may be in this population a propensity of individuals who have this need to be bigger because they view themselves as being small. So your question is -- I don't know that -- you know, I'm not -- you know, we're not physically measuring them and weighing them and seeing that this phenomena has yet occurred, but I'm concerned it is a part of the cultural issue we're dealing with or a part of the psychological issue that we're dealing with. Because the people who are drawn to this certainly have created this body structure for some purpose, for some need. So there may be within this population a number of individuals who might fit that diagnosis. It is a very good question.

BY MR. COHEN:

Q All right. Moving onto the results of the tests.

The documents you provided to the committee showed that there were 30 positives in 2006 and 11 positives in 2007. That there were --

A That was thru whatever date that was, yeah.

Q I'll call that Exhibit 9.

[Black Exhibit No. 9

Was marked for identification.]

BY MR. COHEN:

Q In 2006, you indicated there were 15 suspensions, 12 warnings and 3 TUEs that were given?

A Uh-huh.

Q And in 2007, you indicated there were 11 positives -- 11 positives, 4 suspensions, 1 warning and 3 TUEs?

A Uh-huh.

Q Again, you indicated that the warnings were used in cases where wrestlers had a prescription but in your view it was not from a legitimate medical doctor?

A Correct. Or warnings have also been given for ephedrine or pseudoephedrine use. Again, this is in competition. The way to approach that.

Mr. McGuiness. Can we stop? It wasn't because we doubted whether it was a legitimate medical doctor, whether it was a legitimate prescription. We just -- you're on record, and we don't want to be saying we were questioning

the legitimacy of the physician involved.

Mr. Black. Oh, oh.

Mr. McGuinness. He may be a licensed legitimate doctor but be acting improperly.

Mr. Cohen. Okay. Fair enough.

Mr. Black. Okay. Okay. Yes, I would have disagreed with that physician's diagnosis in the prescribing of the medication. But I also have -- some of these were ephedrine related cases as well where, on the first time of their using ephedrine or pseudoephedrine, it is a real -- they are over-the-counter products that are not labelled; they are not formulated appropriately. So on a first time for ephedrine or pseudoephedrine, they've been discussed what the risks are with hypothermia, with heart palpitations, et cetera, et cetera. Discontinue your use. If you use again, there will be a suspension.

BY MS. DESPRES:

Q All over the counter pseudoephedrine use can be basis for suspension?

A Yeah, we banned all -- we have -- it is a high threshold. So they have to be using it beyond what would be recommended --

Q So if you're just taking Sudafed, you're okay?

A As long as you use it as directed on the package.

Q As directed object the package, right.

A But the problem is people get Sudafed from various sources. I had one NFL player getting it from three different sources; he didn't know it. He was buying these little pick-me-ups at gas stations, and he had a supplement, and then he had something in his prescription with it. He was getting it from three sources.

Q And then is ephedrine an automatic suspension?

A No, that would be a first-time offense caution. You know, when ephedrine went illegal, quote, people filled up garages. You can still go out and buy this stuff.

Q Right.

A It is still available. It is not gone yet, and it will never be gone because it can still be available through prescribed medication. But it is out of the supplements, but that doesn't mean the supplements aren't still out there.

Q Right. Okay.

A And I guess if somebody selling stuff out of the garage, you got to strap on a pistol and start becoming a law enforcement official there is a limit as to what can be done.

BY MR. COHEN:

Q You described a fairly heated or contentious conversation between you and Mr. McMahon?

A I call them animated.

Q Animated. Fair enough. Animated conversations between you and Vince McMahon regarding questions about whether a wrestler should receive a warning or suspension. Now, under the current policy, who makes the determination as to whether a wrestler receives warning or a suspension?

A I do. But there are no warnings any longer under that old practice.

Q When did you cease giving warnings?

A When Dr. Tracy Ray became involved in the program, and then he -- instead of a Ph.D. talking with the doctor, we had an M.D. to an M.D. And Dr. Tracy Ray talks to the doctor, and if he disagrees with the purpose for the prescription, then he reports to me. I can accept it or not. I think in every instance I've accepted his recommendations. I can't imagine -- he and I are both in agreement; there are no legitimate medical reasons for the use of anabolic steroids or human growth hormone that we'd encounter in this program.

Q And are -- so when was -- when did Dr. Ray begin?

A I think around September or October of last year, of 2006.

Q There was one -- your data shows one warning that was given in 2007.

A Yes, the -- well, you know, there are always the unintended consequences. During the time in which warnings

were being given, a number of the talent were proactive. And they would contact me and say, Well, doc, what is going to happen if I test positive? And so under the current practice, if you've got a doctor and you've got -- because, you know, they're talking among themselves -- so if you've got a doctor and you've got a prescription and if I disagree with your doctor about the diagnosis and the use of the drug; the first time that happens, you'll get a letter telling you to discontinue use, I'm disagreeing with your doctor. Well, I had one of those flip into the next year. I had told the guy that is what happened. So I lived up to my word, I said that is how the program is be applied; yes, the rules have changed, but he was still understanding that is the way the program is. So I held that.

Q All right. Overall, looking at the random testing results, they show that was about 200 wrestlers tested, you had 41 positive results.

A Uh-huh.

Q What is your view on this? Is this an acceptable number?

A Well, I need to -- which 41 -- are those all the positives?

Q These are all the 41 positives?

A Some of those will be explained legitimately as a narcotic prescription. So I'd have to tease out to get down

to the level where we are still dealing with unacceptable use. But, you know, in the general population, you know, if we were just to test the general population, you should see 18 percent to 20 percent of the population are using drugs on a given daily basis. So, you know, I'm going to accept --

Q Using banned drugs?

A Pardon me?

Q Using banned drugs?

A Well, we've got drugs on the list that are legitimate prescription medications.

Mr. McGuinness. Used legitimately.

Mr. Black. If it is defined as nonmedical use, sure that is of concern. If that is 41 true positives there for all nonmedical use.

BY MR. COHEN:

Q You gave six TUEs?

A Yeah, we only have two currently active TUEs.

Q That brings us down to 35.

A But, no, the numbers are going down. We are seeing improvement in the program.

Q Okay.

A So, I'm still concerned. We started in a high place. I think we're gaining ground and leverage and traction, and we're getting better with it. But I'd

certainly like to have a program where, in terms of suspensions or true violations of the policy, that ultimately that would become a rare event. But we're always going to have narcotics and benzodiazepines and barbiturates that are going to be prescribed by physicians for legitimate medical needs.

Mr. Cohen. Anyone else have any questions on this topic?

Mr. Chance. Just one.

BY MR. CHANCE:

Q The animated conversations you had with Mr. McMahon, did they take place before or after he made his declaration to the wrestlers?

A That was after. He made his comment to the talent at the very beginning of the program. And our discussion about the -- my disagreement with physician diagnosis, that occurred in July of last year, 2006, because I was on vacation down in Florida.

BY MR. COHEN:

Q All right. If a wrestler has a positive test, who do you inform at WWE?

A The information goes to Ed Kaufman, and then Ed will have to speak to the scriptwriters and -- well, I'm sure he speaks to Vince because Vince is the one that writes the -- directs the scripts and all. But our contact for who is

going to be suspended is Ed Kaufman. He is notified who is about to be suspended.

Q Okay. And you inform him in writing?

A Yes, he is informed in writing, and I have to get suspension dates.

Q Similarly, if a wrestler receives a medical use exemption, is anyone at WWE informed of that?

A They know we have therapeutic use exemption, but I don't think they know who has the therapeutic use exemptions.

Q They are not informed --

A No, excuse me -- they'd get the copy of the letter -- yes, Ed would see a copy of that letter that goes to the talent that says, you've been provided with therapeutic use exemption.

Q Okay. Have you ever had a case where you reported that a wrestler was positive and should be suspended, and he or she was not suspended to your knowledge?

A Where the WWE said, no?

Q Yeah.

A No. No. I don't -- gosh, that would be a remarkable event. I think I would remember that.

Q Given that the WWE policy allows wrestlers to appear in events, even if they are, quote, suspended, do you have a way of verifying whether wrestlers are in fact being

penalized for positive tests?

A Well, that practice has been discontinued, but, no, I don't physically -- I mean, we could to a follow-up on the talent for testing during suspension. We know they are at their home, or they advise us that they're going on a trip. We know that they're not on the roster. So we do know that they're not participating. But that, again, is only a recent change, again, that they'll not perform while they're on suspension. I mean, yeah, for the --

Mr. McGuinness. During the period of time in which they could.

Mr. Black. Yeah, then they might have either -- it depends, I guess, whether they were written into the script or not. They might have been sitting on the side line anyway.

BY MR. COHEN:

Q So you'd have no way of verifying whether in fact wrestlers were penalized?

A No, because, again, they would have performed up until recently -- now, you know, the 11 just suspended, I know they're suspended -- well, a couple have exited. But I know they're on suspension. I do know that.

Q Okay.

Mr. Cohen. Anyone else on this?

BY MR. CHANCE:

Q Is there kind of -- like almost a double jeopardy way of testing, say, if you were to get caught with an illegal prescription and then subsequently get -- at the time test positive for that, are they two separate incidences, or is that considered one?

A Two incidents, that is the way I interpret the policy, and that is why we had one of the talent leave on the HGH issue. He would have had his third strike, and he left ahead of being -- having the door opened for him.

Mr. Chance. Thank you.

BY MR. COHEN:

Q Can -- the medical necessity review process, the TUE exemption, under what circumstances are TUEs granted, the?

A The only TUEs that we've been granting, and again, this is not strictly the longer version of the TUE. The TUE is really a testosterone replacement acceptance program. For the narcotics and drugs where they have a doctor and they have a prescription, and the doctor is not with a wellness clinic or a longevity clinic or a rejuvenation center and appears to be a real doctor, we accept that just like you would for any workplace drug testing program. The only TUE --

Mr. McGuiness. I may interrupt. Do you want to explain that? You're getting raised eyebrows on this. Do you want to explain that some of these are for injury?

BY MR. COHEN:

Q Here is what we -- let me -- there are six TUEs that are listed on what you gave us, and Dr, Ray yesterday walked us through those six, but he also indicated that there were other -- that he does not, with regard to narcotics and nonsteroids, he is not involved in that -- in the TUE process. So it would probably make sense if you would walk us through that?

A We administer that program, as we would for workplace drug programs just like medical review officers do for DOT. You contact the donor, the person who has tested positive, and you ask them, Why did you have this drug in you? And they'll say, I'm being treated by doctor so and so. So you get the information from the donor as to who the doctor is and what is your prescription. And then you contact the doctor. And the doctor will verify that they've seen the patient; they've prescribed a narcotic for acute injury. And the donor also provides a copy of the prescription so that we know it is a current prescription. We don't want a prescription that is more than 6 months old. We don't want to look at last year's prescription information. But it is run just as a medical review officer who for airline pilots, for truckers, for -- what you do is contact the doctor. You contact -- well, you contact the donor originally; find out why they have the drug on board,

who the prescribing doctor is, verify the prescription. If all of that is okay, you accept it.

Q And those were not included -- that is -- those are TUEs that are given in addition to the six listed here?

A Those are not considered, quote, TUEs. Those are -- somebody should only be on those medications acutely, for an acute injury in an event or whatever. I've not encountered the problem yet, but if we do encounter individuals who require narcotic administration chronically, they're going to have to see a pain management physician. I don't want them getting chronic narcotics from a general practitioner or from an internist. They need to see a pain management physician, someone specializing in the chronic administration of narcotics, and that might ultimately become a TUE situation if they're going to take a chronically.

But for acute need -- this is after the fact, the TUEs at WADA are given prior to be an event because somebody is trying to bring themselves back up to normal. But after the fact, they've already been injured. They've seen a doc. They've got prescription. We're using this part of the program just like you would in any workplace drug testing program. The TUEs you see there are all --

BY MS. DESPRES:

Q Let me follow up on the narcotics. I mean, if you

had a situation -- I can only imagine these people must be in constant pain. I'd be surprised if they aren't using this stuff chronically given what they go through in an evening?

A Actually, the narcotics, the use is lower than I expected.

Q Well, that's interesting. But if you encountered a situation where -- you know, and I defer to you as to whether they need to see a pain management specialist or an internist can prescribe these things for long-term use. But if you saw a wrestler who had multiple prescriptions from multiple doctors for --

A Well, I've suspended people for that.

Q You would suspend them for that?

A People have been suspended for narcotic use, for amphetamine use, where they didn't have a prescription. People have been suspended for more than steroids in the WWE.

Q So just so I'm clear with regards to the pain meds, you -- even if you have a prescription, you can be suspended for use of pain medication if the prescription seems inappropriate, for example, you have four different prescriptions from four different doctors?

A We haven't encountered any situation where it would appear that the prescribing of the narcotic would be

inappropriate. But we have had people suspended for using narcotics without a prescription.

Q Without a prescription.

A Or having a prescription, but it was, like, from 9 months ago. That is unacceptable. They've got to be seen by a doctor acutely and being prescribed this medication on an acute need basis.

Q Can you envision a scenario in which you would not -- where you would suspect someone for narcotic use even if they did have prescriptions for the narcotics, that there was an inappropriate prescribing for the pain medications?

A I haven't had the case or situation yet. We do a lot of pain management testing at Aegis, testing patients of pain management doctors. And we have ranges of drug concentrations normalized to a specific gravity of 1.0200, and we have an expectation of what even high therapeutic doses of these drugs should be from that patient population testing.

We also have another population of ambulatory narcotic abusers that are in the prison, probation, parole setting. So we actually have databases -- if we have somebody at the upper end of those concentrations, that would be a flag to do follow up. Now, would that automatically result in a suspension? I don't know. Because there are so many pharmaco-kinetic considerations for how a drug gets into

urine, it could be a tough call. It is possible. I can't discount it as a possibility. I might say what we would do is more follow-up testing. We would follow that person very carefully to make sure if it is an acute need situation, I want to know how much they've been prescribed, what the term of use is, and we'll test them a week after their last dose, and we'll make sure they're not using. But we have had suspensions with narcotics.

Q But only without a prescription?

A Only without -- well, we had one that had an old prescription that was unacceptable. It was not accepted.

BY MR. BUFFONE:

Q So you can tell if people are using pain medications over and above their prescription?

A In urine, it is very hard to do that. Urine is usually a matrix where you can only tell if someone has used. You can't necessarily tell how much or when. We can, you know, within very broad limits, we can do some defining. You can do some interpreting for marijuana use, for nandrolone use.

Q There have been two press reports of wrestlers using over 100 pain pills a day. Would you be able to tell that?

A Which drug? Do you know? When somebody says 100 pain pills a day, was it a 1 milligram dose of Darvocet? I don't know what they're using. I would have to know what

they're using, but certainly 100 pills of a pain medication like OxyContin, yes, that should be off the chart. The Hydrocodone products, the acetaminophen is going to kill your liver. So you're not going to do that for very long.

BY MR. COHEN:

Q I think it makes sense, can you get us the universe of positives that was not included in the summary you gave us, which are -- from my understanding, narcotics for which the wrestler had a legitimate prescription?

A You want to know positives that did not result in consequence, that were accepted.

Q Suspension, warning or TUE?

A Okay. You want -- okay. I know what you want.

Q Basically, the universe of positives that is not included in the summary --

A Our understanding after talking to Dr. Ray yesterday is that there have been six cases where TUEs have been granted in each case because of low testosterone.

A Yes.

Q So --

A Well, there were limited clinical records indicating low concentrations of testosterone in the blood.

Q Do you require that Dr. Ray inquire into the medical diagnosis responsible for the low testosterone levels before granting a TUE?

A Well, we're not doing that currently. I think that is something that we'll do once we get an endocrinologist on board. I hate to say it, but, you know, the assumption at the moment would be that these have been anabolic steroid users who have harmed their ability to produce testosterone. So going into this whole thing a priori, you expect to have a population of individuals that have low blood testosterone as a consequence of prior steroid use. And, of course, whether it is disease related or prior steroid use, if they're deficient in testosterone, the medical need is still going to be there.

So, having the causation, I think it is important in terms of health ultimately for us to perhaps know more about their health condition. Is there some other causative reason? But I would say, you know, if I were a betting man, I would put money down on the table and say, if we have low testosterone in the blood compartment, it is because of prior anabolic steroid use.

Q I'm a layperson. So I apologize for my -- if my understanding is wrong here. From what I've been told in many cases, when you have a user of steroids, who they -- their use of exogenous steroids retards the body's ability to produce it's own natural testosterone, but when that athlete stops taking those drugs, the body in many cases recovers its ability to produce its own natural

testosterone. By giving these athletes, wrestlers, TUEs to allow them to continue the use of exogenous testosterone, are you preventing the body from healing itself, or are you essentially keeping them locked into a --

A A drug dependency?

Q Yeah.

A Certainly that could be argued. Nobody to my knowledge knows how long it takes for the body to recover that, and I don't think anyone knows how much steroid use harms the endocrine system how much and then how much that -- how much time is required.

We do know that if an individual has a lower testosterone or no testosterone or reduced testosterone or below normal, they're going to have a difficulty functioning, getting about. They're going to be very fatigued. So, you know, that argument, I think, is probably a fair argument. However, we are dealing with people who have a job, and they need to continue to perform. And we don't know if it will take 3 months, 6 months or a year for their endocrine system to recover.

And honestly, I don't know that there is good data out there that says whether or not some people can be harmed to the point of never producing testosterone again. So what we have is we have a short-term situation where we have an individual with low testosterone, and at the moment,

provisionally, we're allowing these TUEs to exist, and I believe we only have two active currently that have been provided this.

And this does begin to get outside of my area of expertise or just my knowledge base from being in this 20 years. That is why we're bringing on board an endocrinologist to better assess this. And it may ultimately be -- I will tell you, we have flip-flopped back and forth on this issue in the last 2 months. At one point in time, we were never going to allow a TUE, and we said, no, we have people employed; we don't want them to crash. It is a wellness program; we're going to medically do what is medically appropriate to get them through this. Hopefully, eventually, maybe the day will come where we don't have anybody in the system that requires this.

But we do currently have talent who need this medical provision. And I will tell you, testosterone replacement therapy is mainstream medicine in the United States. There are hundreds of thousands of males who are receiving testosterone replacement therapy. This is not radical. This is not outside of mainstream medicine. What is the cause for all of those people being treated? Were some of them anabolic steroid users, and now they're getting testosterone replacement therapy? Yeah, I'm sure, out in the general population, they are there. I don't know if we

deny medicine to someone who has harmed themselves. The corollary I give to this is a diabetic. If somebody overeats they and puts themselves into a diabetic state, and now they need insulin, are we going to deny them insulin because they abused themselves to the point of needing insulin?

BY MS. DESPRES:

Q I guess the question is, and it is a medical question -- I mean, in the case of the diabetic, you know, there are stories where diabetics can reverse their insulin dependency by losing weight. But it is not -- it is not the taking the insulin that causes the dependency. So the issue, and, again, I understand the argument about these are people who need to function and have a job, but I guess the question -- the outstanding medical question -- and maybe we don't have an answer, is that the testosterone, the continued testosterone use may actually be impeding the treatment instead of being the treatment; that the treatment could actually be reducing the testosterone intake so that the body can actually start producing it itself. So I'm not quite sure that the diabetes analogy is quite equivalent.

A Quite equivalent. Yeah, well, perhaps not.

But, you know, we do have a population of individuals who have harmed themselves. I don't know that there is a science out there that says absolutely 100 percent of the

people will restore their natural production. I just don't know that that database exists. I don't know there is any database that actually correlates to this population of individuals. But we've judged it to date to be the best thing to do to assist these individuals during the implementation of this program and policy, and trying to change the culture and trying to change the biochemistry.

We may end up at some point in time where testosterone therapy is not allowed. But at the moment, we have people who we don't believe can function. I will tell you there is another population of individuals in the WWE right now who are trying to go it without the testosterone or without -- yeah, they've stopped the steroids. Where we do the analysis, we don't see any testosterone, other epitestosterone in their urine, and they're trying to go it the hard way.

But I had one of them catch me last Monday night. He said, Doc, I tried to do it, I tried to do it, but I couldn't do it. You are testing me today. He already had a sample taken. So I'm going to test positive; I've got a doctor, and I've got a prescription, and I just can't function without testosterone. And he has tried it, and he can't do it. So, okay, now I'm going to be confronted. You know, Tracy will have to look at the records, look at the doctor records; did he have low blood testosterone. If he

has tried it and he couldn't do it, does he get unemployed for 3 months, 6 months or a year trying to get his testosterone to come back, or do we treat him with testosterone replacement therapy?

This question will be better answered when we get an endocrinologist on board. Again, from both Tracy and I, we know enough I think to do what we've done so far. We've given basically provisional TUEs, but I think this will have to be a part of the program for a period of time. I don't see any way around it, or we're going to terminate people who will lose their jobs and that's -- you know, I guess you can say, well, they caused the problem themselves, but the effort is to try to change their behavior, and they're working with us, and we're getting an honest effort from many people.

BY MR. COHEN:

Q What do you say to the fairness question? You know, one athlete tests positive for testosterone, and you tell him, well, you can't use it? Your buddy here can because he has used -- been using -- he has been injecting himself with testosterone so long that he has apparently -- he is essentially grandfathered in?

A Well, we will not hire anyone in the future that has a need for testosterone. I will tell you, we're cutting them off at the front door: No additional talent will be

hired that need testosterone replacement therapy. That's why I saying we're in a transition phase.

Q That is a written policy?

A That is the application of the policy. We've not gone to the extent -- you know, the policy already says it is prohibited. All we're going to do is we are going to apply the policy for the future: Anybody that we now hire in to the WWE will have to have a precontract test, not a post-contract test, and if they don't have testosterone and epitestosterone, and if they don't have testosterone in the blood compartment that's normal, they're not going to be hired.

BY MS. DESPRES:

Q So no TUEs for incoming talent?

A Correct. And that issue has been back and forth. I'm told and I have pressed them on this issue -- you know, I apply the policy. I don't make it. But I'm -- the decision is, we will not hire folks in the future that will require testosterone replacement.

Q Has that policy been implemented or -- has that started already with new --

A I have the first person in testing right now that is being considered.

Q Okay.

A So there is one in process. I should have results

in a day or two I guess.

BY MR. COHEN:

Q Can you talk about your expectations of Dr. Ray when he conducts a review? What kind of workup do you require? Do you require that he examine the wrestler? Do you require that he conducts a review of the peer reviewed medical literature? What are your expectations of him when he conducts a TUE assessment?

A Number one, I do not expect him to examine the wrestler. This program works as many programs do where individuals will have their own physicians, they will be treated by their own physicians. And to a large extent, physicians will grant other doctors their judgment and their opinion on the health of their patient. There is a great diversity of how doctors go about treating their patients, although there are certainly standards of care. But there is a fair amount of variance within those standards. I expect Dr. Ray to gather all appropriate doctors' records and laboratory related blood workup and whatever -- and again, this all tends to be focused on the testosterone now. But what Tracy has done previously is looking at the use of an nandrolone or stanozolol or other steroids for other medical conditions where we disagreed completely with the doctor's explanation. We also agreed with some of the testosterones that were presented to us where they needed

testosterone replacement therapy. We said you don't have the blood work, you don't have the doctor's notes. So I will say that, you know, Tracy has done everything I would expect him to do. And I think it is putting a doctor in a difficult position to have to call another physician, discuss in detail and perhaps even leading to disagreement with regard to diagnosis and treatment. So Tracy is doing everything I would have expected him to do. He is -- he has experience that is pertinent to this field. So I trust his judgment.

Q Okay.

A And I never did expect him to see and evaluate directly the talent. That was never a part of the expectation.

Q Okay. When Dr. Ray -- if Dr. Ray is presented with an underlying diagnosis for an individual's low testosterone level, is your expectation that the wrestler in question will be treated for the underlying diagnosis? Do you take efforts -- do you take steps to phase out the TUE, to ensure that that wrestler gets treated? Or do you essentially say it doesn't matter, treated, not treated, you can keep using this testosterone?

A It is a wellness program that is evolving. So currently I would say what we're doing is rather crude. It is -- we're giving a TUE based upon some limited

information. Again, when we have an endocrinologist involved in the process, my ideal program will have that talent actually fly to Nashville, see the doctor, be evaluated. I'm talking -- you know, I hesitate to tell you who -- I had an endocrinologist before, but all of this scared him off. I'd like to get this endocrinologist on board and not have to go through the search again. And I think I found the right folks to do it. I hesitate to give out names. But I want this endocrinologist and their department to actually physically evaluate the individuals and really do -- you know, we're not asking for pretestosterone steroid binding globulins. We're not doing a lot of the other blood workup that we could do and should do. And there needs to be more to this program.

Mr. McGuiness. But if you get a TUE, how they're monitored is different.

Mr. Black. You shift the blood testing with a TUE. And it has been understood by -- each talent has been provided this TUE. They've all been told we're giving you permission to use testosterone currently. But in the future, there will be a protocol you'll have to comply with as it is developed by the endocrinologist. You'll probably have to be tested by blood at least four times a year, if not more frequently, you'll have to have a medical evaluation probably a couple of times a year and have a

physical workup. But I have to leave the detail to the doctor who really knows how to do that. I'm just telling these guys now, you're getting this currently but be prepared that there is going to be a lot more expected of you in the way of cooperation if you're going to continue to be allowed to use this testosterone.

BY MS. DESPRES:

Q And this endocrinologist, is this something that, you know, best case scenario you imagine having up and running in the next month, or is it a year out? What is the time frame?

A No, no, no. I hope within the next 30 days. I would like to have these guys in -- if I tell you it is national and you know Vanderbilt is there, you will probably know who I'm talking about. Just don't call them up and tell them I told you so.

Mr. Cohen. You give us too much credit.

Mr. Black. Well, I hope to have them in town in October to be evaluated. Currently, we only have two. I suspect we've got a lot of people going it alone trying not to use the drugs or trying not to use testosterone. I suspect there may be more. Now, how many more? I don't know if I really want to hypothesize on that.

BY MS. DESPRES:

Q If you could just keep us apprised as to how that

part of the program is developing. We don't want to interfere and cause it to slow down. But we would be curious to know when that happens and how that is working out.

A Well, I'd like to reassure you all that this is not just a drug testing program. We have a cardiologist that does workups on these individuals. If someone tests positive for cocaine or amphetamine, in addition to being suspended, before they can come back to participation, they have to get a cardiac workup. They need a cardiovascular assessment, and that is a policy and practice I employ in other areas as well. We're bringing in a psychologist who is going to be working with the talent to deal with what may be some difficult issues in terms of changing this culture. So I'll say, when the program first went in place, it was a drug testing program. Where it is really evolving to is a true broad wellness program.

BY MR. COHEN:

Q This is bringing us into a subject that is starting to get a little bit far afield. As we have conducted our interviews and spoken to wrestlers and learned about what is going on, one of the subjects that continues to come up is concussions. Is that an area where the wellness program is going to go?

A I think all sports are going to have to look at that

more seriously. You know, there is actually a helmet that has been developed that has sensors and telemetry in it. I was at the meeting when that was first introduced to trainers and all. It would have been interesting to see the reaction of all these trainers and all the liability associated with that. People were scared to death of it. But it is a great device for football. It is being used currently I think in 12 colleges this year to evaluate. But, yet, already they've taken -- I'm told they're taking the chair hitting out of the scripts, to get that off the table and to no longer do the chair hitting. You know, some of this is so obvious after the fact. But, you know, I'm not so sure I bought it entirely to the brain disease issue, especially with Chris Benoit. You know, I don't know what demons took control of his soul and caused him to do what he did. I spoke with Chris three or four times. And he was always positive; he always wanted to comply with the program. But this concussion issue is interesting, but I just don't know how you're going to correlate behavior subsequently to a given concussion or a series of concussions.

BY MS. DESPRES:

Q That may be. But do you anticipate making concussion part of the wellness policy where you do scans --

A We do evaluations, yes, absolutely.

Q Were you including ringside evaluations?

A There is a doctor now ringside. You know there is a doctor that travels with them. There is an acute-care physician there now. We've talked and I've seen this in several other sports areas. What I'm talking to them about is actually trying to set up a trailer that goes along with them to these events. You'd probably have to have a couple since they are major events that is really outfitted with more equipment to really -- you know, football enjoys going to football stadiums to play and they always have all the hardware they need and they have all the equipment they need and they can do a lot of assessments right on -- right within the stadium. But the WWE goes to these convention centers and places where they don't have those facilities. So what we're talking about, and I think I'm getting pretty positive response from this is a trailer that would be outfitted to travel with them that would really have more diagnostic equipment and acute care equipment to assist them.

BY MS. DESPRES:

Q And what about giving the doctor ringside the authority to take someone out if they seem to have suffered a brain injury like they do in football or they're supposed to do in football?

A Yeah, like they're supposed to do in football.

Actually, I have the former head athletic trainer from the Cleveland Browns on my staff, and we have discussed this issue. And he told me just as recently as 2 days ago when I brought this up, why -- who is making the decision to take that player out? And he said, Dave, I'm going to tell you, nobody is going to want to be able to make that decision. We did have -- I think Seattle prohibited a player from playing opening day from a concussion, which was a rare event. Whether or not we would lead to that -- it is certainly something that should be considered, absolutely. That is a good thought. It is something we should consider. You've got to remember, though, this is orchestrated. You know, certainly -- I think the chair hitting over the head is probably one of the biggest problems they've had. But they do a lot of bouncing on the -- you know, I was asking the other day about cushioning that more, but you've got to get the sound right. It is what attracts the crowd. So we do need to look at that. I don't know if Dr. Rios -- I don't know what his thoughts are on -- but he does go in and does look at the talent in the ring while they're still in the ring sometimes to assess them. So we do have a doctor there present at every event.

Mr. Cohen. Take a 5-minute break?

[Discussion off the record.]

BY MR. COHEN:

Q This is going back to the earlier question we had asked, if Vince McMahon was tested and your answer was no, that he is not talent. Our understanding from taking a look at the SEC filings and he --

Mr. McGuinness. Wait a minute. Wait a minute. To Dr. Black's understanding he is not tested and he is not tested by Dr. Black's company. Whether or not he is tested, Dr. Black has no idea.

Mr. Cohen. Duly noted.

BY MR. COHEN:

Q We took a look at the SEC files and McMahon wears two hats. He is, of course, the president and owns the company. He also has a separate contract as talent, which we can put that in the record. This would be Exhibit 10.

[Black Exhibit No. 10

Was marked for identification.]

BY MR. COHEN:

Q Given the existence of the event contract, should he be included among the talent that is tested by the -- by your program?

Mr. McGuinness. This is a good question for Jerry to answer. This is a contractual question.

Mr. Black. Yeah, I don't know if this mirrors or mimics all the other contracts by all the other talent. I'm uncomfortable I would say in trying to answer that question.

Mr. McGuinness. This is out of your --

BY MR. COHEN:

Q Uncomfortable with the arrangement or uncomfortable with the --

A I don't know that I know enough to answer that question. I don't know if this contract is as the other contracts are and is defined under the program --

Mr. McGuinness. This is something for a lawyer to explain.

BY MR. COHEN:

Q Okay. And your understanding -- the provisions of the agreement itself -- of the wellness policy itself, that calls for all talent to be tested? What is the exact language with regard to the --

A I'd have to go back.

Mr. McGuinness. Is it a --

Mr. Black. It was given to us actually.

Mr. McGuinness. Didn't you hand out one earlier?

Mr. Black. Here it is. Let's see.

Mr. McGuinness. Is this a provision you found?

Mr. Chance. It is 15.

Mr. McGuinness. That would seem to be the operative --

BY MR. COHEN:

Q All right. Is it your understanding --

Mr. Cohen. Actually, Sarah, why don't you talk through

that.

BY MS. DESPRES:

Q If we could go back to the Vince McMahon contract. I know you haven't seen it before.

A No, I have not.

Q I just want to know if this language is familiar to you. On Page 11, Section 10.2: Talent represents, warrants and agrees that talent is in sound mental and physical condition. Do you see that section?

A Yeah, 10.2.

Q And that talent is free from the influence of illegal drugs or controlled substances which can threaten talent's well-being and pose a risk of injury to talent or others. To ensure compliance with this warranty, talent shall abide by company's drug policy for talent, as well as any and all amendments, additions or modifications to the company's drug policy implemented during the term of this agreement and consents to the sampling and testing of his urine in accordance with such policy. In addition, talent agrees to submit annually to a complete physical examination by a physician either selected or approved by company. Company's current drug policy which talent acknowledges here with receiving is annexed hereto and incorporated by reference and made a part hereof. Is that language familiar to you as the language that other talent -- WWE talent

contracts?

A I haven't seen their contracts. I don't know the language in their contracts.

Q Okay.

A I've never been to that side of the business.

Q Okay.

BY MR. COHEN:

Q Does it surprise you given what we've just read? I'll ask you again. You can choose not to answer if you don't want to. Does it surprise you at all that Mr. McMahon has not been included in the drug policy?

A Well, I --

Mr. McGuinness. There is --

Mr. Black. I may have to take -- and say that it may be totally my mistake in not viewing him -- I didn't know he was under contract.

Mr. McGuinness. You weren't aware of the contract. You hadn't read the entire contract. If there are other contracts, if there is any other stipulation or agreement, we just don't know.

BY MR. COHEN:

Q You're provided the list of talent by WWE?

A Yes, we are.

Q Can you get back to us and let us know if Mr. McMahon was on that list of talent or not?

A I can, I guess. Sure. I think -- it is --

Q It is a straight-up factual question.

Mr. McGuiness. No, no. I just want to be very careful about not exchanging names. I know there has been a big effort to avoid doing that. And I just -- but I think there is a way to word that question to get your answer.

BY MS. DESPRES:

Q Well, could you provide us with a list of talent that you're provided -- that -- WWE provides you with a list of talent. Could you provide that list to us?

A That I think I would have a problem with. In terms of -- well, we're not associating test results with --

Q We don't need any results.

Mr. McGuiness. But is the purpose here to determine whether or not Vince McMahon is on the list, or is the purpose here to identify all of the independent contractors?

Ms. Despres. The purpose is to identify all of the independent contractors on the list to be tested.

Mr. Cohen. I think the purpose is different than that. I think the purpose is to identify the scope of the policy in a general sense without regard to --

Mr. McGuiness. Can I ask a favor?

Mr. Cohen. Yes.

Mr. McGuiness. Would you, as you did before, send us a question?

Ms. Despres. Do you mean a letter?

Mr. McGuinness. Brian has sent a question or two. I just think that this is obviously one where it is going to theoretically impinge -- other lawyers will want to be involved in how to answer this, and it would be easier if we were working off a written answer.

Ms. Despres. Sure. Okay.

Mr. McGuinness. I don't want to be --

Mr. Cohen. That's fine. We'll get you a written question.

BY MR. COHEN:

Q Back to the TUE exemptions and the -- the policy that was in effect until 1996. The WWE policy required that prescriptions be declared in advance of positive tests -- I'm sorry -- in advance of the drug test. If a wrestler had a prescription, they had to announce before they were tested that they had this particular prescription.

A I didn't administer that program at that time. So if that was a practice by the former administrator, I wasn't aware of that. We don't typically do that for forensic testing.

Q Current policy allows the prescriptions to be produced after the fact?

A Yes.

Q This is a change from the 1996 policy. It is

different than the approach used by WADA and USADA, which requires that TUEs be granted in advance. Why do you not require that prescriptions be produced in advance?

A It has been a practice in workplace testing not to do that because people don't know -- they may reveal confidential health related information. They may be on antibiotics. They may be on antipsychotic medication. They may be taking medication that we don't need to know about it. Again, this was established as a workplace type drug testing program. And the practice in workplace testing is to learn about it after the fact. People do not provide their prescription information in advance.

Q Do you think that it would reduce the opportunities for abuse of the TUE exemption process if prescriptions were required to be reported in advance?

A Ask that again.

Q Would it reduce the opportunities for abuse of the TUE process if prescriptions were required to be reported in advance?

A I don't know that the TUE process is being abused. We only have two currently active. Would it -- I guess maybe I don't understand how that might happen. I hope I'm not just being dull or tired. I don't know how that would -- how -- from abusing the --

BY MR. BUFFONE:

Q You stated you suspended two wrestlers due to prescription of HGH. How did you obtain those prescriptions?

A Through the prescription information.

Q Which was provided --

A As a consequence of positive tests for other reasons. I found out about the human growth hormone as a part of the data that came to me.

Q So does the fact that you received two positive responses as a corollary to a positive test, you received two drugs that are prohibited by the policy, lead you to believe that you should receive more prescriptions of what wrestlers are taking?

A It hasn't caused me to conclude that, no. I will tell you that my fear is people are going to go underground with -- currently they've been pretty candid with providing information because they were working with a doctor. Now that they understand that even working with a doctor isn't going to help them, I don't know that they'd necessarily make me aware of in advance that they're using a prohibited drug. I will say that talent are calling me in advance of receiving medication from physicians to see if it will be okay. So we almost have an informal ask-in-advance TUE program at work. But it is not currently by design. It is working that way.

BY MR. COHEN:

Q There was -- you mentioned several times the 11 wrestlers that you suspended for HGH use. That was in -- those 11 wrestlers were Chavo Guerrero, John Hennigan, Ken Anderson, Shoichi Funaki, Brian Adams, Charles Haas, Edward Hatu, Adam Copeland, Sylvain Grenier and Chris Benoit. Without giving the specific names among those 11, can you tell us if any of the wrestlers in that group were tested under the policy?

A Well, they must have been. The testing occurs again at the time with the expectation that they would be tested an average of four times. So provided they have been talent with the WWE during the term of the program, they certainly should have been. I don't have an exact memory of each of them having been tested, but I would imagine they should have.

Q Okay.

RPTS DEAN

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BY MR. COHEN:

Q Again, without naming any of the specific names, as a group, or any of that group, did any of them test positive, to your knowledge, for any substance?

A Yes.

Q They did.

Can you tell us how many?

A I wouldn't be able to tell you that; I'd have to look at the records.

Q You said the full group; was it all 11?

A Oh.

Mr. McGuiness. We are getting real close here.

Mr. Cohen. Fair enough.

Mr. McGuiness. Because if you are making general --

Mr. Black. I think you are focusing in too far.

BY MR. COHEN:

Q Fair enough.

I am going to -- in some sense, I think were you lucky there in that these were -- there were probably more cases among those 11 that were not caught by the drug testing policy but were brought to light through law enforcement actions.

A Um-hum.

Q Does it concern you that there may be --

Mr. McGuiness. When you say lucky, are you referring to all of the proscribed prohibited substances or HGH?

Mr. Cohen. I --

Mr. McGuiness. In other words, are you saying that the testing -- I don't know what the assumption behind the question is. Are you assuming that the testing program is flawed, or is it an HGH-related question?

Mr. Cohen. I am trying to determine if the testing program is flawed.

BY

Q (By Mr. Cohen.) My understanding of the press reports is that there was more than HGH involved. There was, I know, other drugs as well; nandrolone sticks in my mind at least as one.

Does it concern you -- you can take this either way, whether it is an HGH question or a question directed at the program -- does it concern you, given the only way we found out about a certain number -- some of these athletes may have tested positive; there are no doubt a number of them that did not -- that were brought to life through the law enforcement process, not the testing process? Does it concern you that there may be other users that are not being caught by the testing process and are not being caught by law enforcement?

A Well, the reason why we test so frequently is because we know that, on any given day, you are not going to catch everyone. Its a common experience in drug testing for pharmacokinetic reasons and for various reasons that you may have a negative test where you might have thought you would have had a positive test.

Certainly if we were to listen to the comments made in the press about the extent of steroid use in sports, and then we look at the less than the 1 percent positivity rate that NFL has or any of these programs have, there must be an enormous amount of drug use going amiss. Whereas, although we are alarmed by it, we have 40 percent, 30 percent positivity rate.

So either the drug testing is flawed everywhere, the projections of use are overstated, the truth is it is usually somewhere in between, but I do -- the testing has caught a lot of people. And we have dealt with a lot of issues, and we have suspended a lot of people, but no drug testing program is going to catch every drug using individual, and that is played out every day by everybody's testing programs.

Q Very quickly, can you walk us through your relationship with Dr. Fairbank and the interaction between the two of you with the cardiac testing program and the drug testing program?

A He and I have really only really met, we have not really interacted much at all currently. That will change, since we have adopted this practice of cardiovascular substance for any stimulant use, but he and I have really not interacted. We have met one time.

Q Do you think it would be helpful for him to the extent that you are identifying drug users, you are identifying athletes with health problems that require TUEs. Would it be helpful for him to as he conducts his cardiac assessments to know what is going on on your side of the policy?

A Yeah, that has been a difficult issue to deal with. I think that is what we will evolve to. But the premise of the program has always been that we will hold a limited number of people knowledgeable of positive results, and that is just a common practice. And again, some sports programs announce to the world what they have found. Workplace programs don't do that. The WWE is somewhere in between those two worlds. And as this evolves into more of a wellness program, I am sure that will evolve; that will be a part of that evolution.

Q Moving forward to WWE, are they going to now announce names of suspended wrestlers?

A That's what I am told.

Mr. McGuiness. But you don't know.

Mr. Black. Okay, I am told.

Mr. McGuinness. But you don't know.

Mr. Black. I don't know.

BY MS. DESPRES:

Q Do you know that if they do move to that, would the announcement come from you or would the announcements --

A They would not come from me.

Q You know definitively they would not come from you, the announcement?

A I know definitively they would not come from me.

Mr. McGuinness. I don't know of any of the sports leagues where it comes from the administrator, it is just almost always the league not that --

Ms. Despres. Right.

BY MR. COHEN:

Q Wrestlers said -- described to us doctors as marks, I am not talking about Internet prescription wellness clinics, but doctors, presumably legitimate doctors, that are such big fans of wrestling and the wrestlers, that the wrestlers can count on them to do their bidding or write them prescriptions for whatever drug they want to back up their stories. Have you ever heard this term? Have you come across any doctors that you would describe this way?

A I know there are such -- well, I don't know about specifically for wrestling, I think goes across all sports,

but doctors are great facilitators in substance abuse. You have to extend that into some additional definition that they are fans of a particular player or sport, certainly that has another dimension of the same problem. I haven't heard that particular terminology, but the underground steroid handbook which used to circulate, has always directed people who choose to use these drugs to find the doctors who will buy into their stories of need or pump them, facilitate their substance abuse.

Q On a -- I'm just going to ask you flat out, on a personal level, do you believe that wrestlers are using drugs and beating the tests? Oh, yes. We are always a step beyond. That's the condition of our profession, they will always be a step ahead of us.

Mr. McGuinness. Do you want to clarify whether you think that is all or some; is there a percentage?

Mr. Black. Those who choose to cheat, who are better informed and advised on how to cheat. It is the game within the game. It has been a part of the game as long as I have been involved in the sport, but those who choose to cheat find new drugs to use or new ways to use a medicinal agent that has just been brought out of the pharmacopeia, so we are always one step behind.

BY MR. COHEN:

Q Have you ever been told by wrestlers about their

concern about expectations that they look a certain way, that they need to have a certain build and a certain bulk in order to be successful as wrestlers, or have they told you about pressures from Mr. McMahon or others at WWE to look a certain way?

A No. The talent have been very candid with me, but no one has ever mentioned that.

BY MR. CHANCE:

Q Going back to catching users, you were talking about catching some of these guys who abuse, some of the wrestlers, we gave you a list of names in the Sports Illustrated article.

A Um-hum.

Q There is another talent of Randy Orton who had been suspended in 2006, for not having -- he tested positive without a prescription, and he was mentioned in this article as well, and subsequently went to headline to Pay-Per-View events, but in the past month. I just wonder if that kind of -- I know the policy would be suspended for 60 days; correct? Does that undermine your efforts when you see this happening, when you see a guy who has been in an article last week and then headlines these events?

A If this was under the practice of suspension but still perform?

Q Um-hum.

A Oh, sure I would agree that that's not good.

Q In addition, some of these guys have been on a bunch of television shows, you clean them up, and they seem to know everything in the wellness policy. And then, subsequently, they get named in this ring, do you feel that undermines your efforts as well in addition?

A Well, it is the story of sport, that people will represent that they are clean; they are not using. They get caught in one way or another doing something that they shouldn't. It is always a problem with trying to have a sports person as a spokesperson for something.

But sure, I think that's difficult also that if someone is representing that they are playing clean or that they are clean and not using and just revealed it's to the contrary, sure that undermines the effort, but that's played itself out in so many ways over the last 30 years I have been in this profession. I don't think I can recount them all.

BY MS. DESPRES:

Q One last question about wellness of the talent generally. We have talked to some former wrestlers who describe a particularly grueling schedule, and you've discussed it as well. I mean, these guys are on the road -- and women -- are on the road all the time. As administrator of a policy that's supposed to promote the health of the talent, do you have concerns about the schedule and the

impact that that could have on their health?

A Yes, yes. The fatigue issue, sleeping disorders, absolutely. There are parts of the profession that are parts of the profession. Now can we change how the profession functions? If we are in the business of trying to change culture, then perhaps that's something that will have to be changed, but yes, talent have shared with me the scheduling, the travel. I don't do near the travel they do, and I get pretty tired by my travel. I can't imagine doing quite what they do, so it is an issue that has to be addressed.

Q And what about the issue of performing while injured?

A I am not sure -- no one shared that with me. No one has told me that they are being forced to perform while injured; I have not heard that said.

Ms. Despres. Okay.

BY MR. COHEN:

Q Do you have the view of wrestlers as role models? Do you have the sense that young kids, teenagers are watching and paying attention and developing a certain set of expectations from what they see in these wrestlers?

A I don't know that I can speak for how everybody is looking at this. I think it is hard for me to imagine personally, but folks don't see it for the theater that it

is. I have to say, there are people out there that may believe it, but these are like cartoon characters that have come to life or comic book characters that have come to life. I don't know. The term role model is used so frequently, I don't know that we can expand it into my opinions on that terminology. But I --

Q Let me rephrase it. To the extent that, one difference I see between WWE and a standard workplace, you talk a lot about the workplace policy is that there's millions of kids who watch wrestling every week, and they see these larger-than-life cartoon figures and want to be like them.

Does that type of -- is the fact that these wrestlers have that type of influence, does this give you cause to think that maybe the workplace model is not the, perhaps, not the appropriate model of a drug testing program to use here?

A Well, as I indicated earlier, we are moving from what really began as an expanded workplace modeled more to a sports type model. But I know, when my two grandsons saw Spider Man, they were crawling all over the living room; they went up the drapes and on top of tables. It is entertainment. It is an entertainment industry. Now if we start talking about entertainment, I would hold a lot of opinions about entertainment and what's good or bad for this

kid or that.

I don't know. I think there are a lot of influences in our children's lives, and I don't know that any one particular influence predominates. I can't take out of the equation that perhaps some child does, but --

Q One last question, and we will be done. How do you maintain your independence from WWE, and do you struggle to maintain your role as an independent program administrator?

A I believe on more than one occasion that having served in the Marine Corps and having spent 13 months in Vietnam being shot at has been really background experience for this additional experience in my life.

I have been challenged by the wrestlers physically and verbally. I am not a favorite son by any measure. I have argued probably with just about everybody in the organization at one point or another in some way, maybe argument is too strong of a term.

But I think in maintaining the distance, I am a very disciplined guy. People call me Dr. Black and White. I like to play within the lines and rules. I don't have a problem with suspending people. I don't like doing it. But if they have got to be suspended, they have got to be suspended. And if they are going to be terminated, they have to be terminated. They need to play within the rules. So, so far, I don't think I have had any problem maintaining

an independent attitude on this. I will say that I administer the policy. If the WWE says that they want to announce names publicly, they can do that. I cannot stop that from happening.

Mr. Cohen. I'm done.

Mr. Chance. I have one final question.

BY MR. CHANCE:

Q In hindsight, in your opinion, would you say stopping the program in 1996, the drug testing program, was a good idea, seeing where we are today?

A Was it a good idea to stop the program? Well, I didn't participate in that discussion. You know, I don't know, I always have a hard time trying to go down a road not traveled. Again, as somebody who applies this science on living individuals every day, I believe drug testing is a good way to hold people accountable. And you know, we did continue testing under reasonable suspicion on an as-needed basis. I believe random testing is a good way to approach it. So approach dealing with the issue of substance abuse in any given population. So I would say I would have advocated for the continuance of the program had I participated in that conversation.

Mr. Cohen. All right, we're done.

Ms. Safavian. Thank you.

Ms. Despres. Thank you very much.

Mr. Black. You are welcome. Thank you.

[Whereupon, at 1:36 p.m., the interview was concluded.]

Certificate of Deponent/Interviewee

I have read the foregoing ____ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

Witness Name