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1 together at PPLA?

2 A We did.

3 Q Okay. And for how long did you work together
4 at PPLA?

11:53:30 5 A Dr. Nucatola was a resident at USC, which is
6 across the street from our downtown facility, Bixby
7 facility, and then she was a fellow in the
8 reproductive fellowship program. So she worked with
9 us then. And then she continued as an independent
11:53:45 10 contractor for us while she was simultaneously the
11 medical director for Planned Parenthood in Santa
12 Barbara. So our relationship continued.

13 Q And would you consider her a friend?

14 A I would.

11:53:58 15 Q When -- who made the decision -- was there
16 a -- when fetal tissue began at Planned Parenthood
17 Los Angeles, was -- how did that occur?

18 MS. BOMSE: Objection. Vague. Calls for a
19 narrative.

11:54:35 20 THE WITNESS: I was approached by
21 representatives of Novogenix. I had been involved,
22 as we discussed, in tissue programs before. In the
23 past, when I had been approached by tissue
24 procurement programs, I was told that the board at
11:55:00 25 PPLA would not be receptive to this.

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1 When Novogenix approached me, I thought it's
2 time to educate to the board about what the good
3 things are that can come from tissue donation
4 programs.

11:55:12 5 So Novogenix presented a proposal, and we
6 invited them to come in with a PowerPoint
7 presentation to share with the staff, because if the
8 staff who is obtaining consent are engaged in the
9 process and informed in the process, they will be
11:55:29 10 better able to answer patient questions.

11 I cannot remember, but I also think that we
12 presented this at a board meeting, but I can't be
13 sure.

14 After that, we got permission from the
11:55:46 15 administration at PPLA to proceed with this program.
16 We had the contract looked at by the legal team. I
17 obtained a waiver from PPFA to start this program,
18 and that's how we started.

19 BY MR. BREEN:

11:56:01 20 Q So let's see. So when -- when -- so you've
21 testified Novogenix approached you; is that correct?

22 A To the best of my knowledge, yes.

23 Q Why did Novogenix approach you, in
24 particular, if you know?

11:56:22 25 MS. BOMSE: I was going to say it calls for

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1 speculation, but...

2 THE WITNESS: I think I recall that at that
3 time they were associated with UCLA and that several
4 of our providers were also associated with UCLA, and
5 it's possible that one of our providers sent them my
6 direction. But I can't remember the details.

7 BY MR. BREEN:

8 Q And then was there a contract with Novogenix?

9 A There was.

10 Q And who negotiated the contract from the PPLA
11 side?

12 MS. BOMSE: Objection. Lacks foundation.

13 BY MR. BREEN:

14 Q Was there a contract negotiation?

15 A Yes.

16 Q And then was an individual at PPLA a part of
17 the contract negotiation?

18 A Yes.

19 Q And who or whom were the individuals at PPLA
20 who were part of the contract negotiations?

21 A I represented PPLA and discussed with the
22 Novogenix team how their process was going to work,
23 indemnification, who would be at the clinic and
24 other details of the contract.

25 I took that negotiation to our management

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1 team, and they signed off on it.

2 Novogenix took that contract to their -- I

3 think they had a board of directors, and they signed

4 off on it.

11:57:46 5 We involved the -- the board, as I mentioned,

6 and the person who signed off on contracts in our

7 department then signed off on it, and then we

8 started the process.

9 Q Was Novogenix a not-for-profit or a

11:58:01 10 for-profit?

11 A I believe it was a for-profit.

12 Q And then you had mentioned -- I believe you

13 said other tissue procurement organizations had

14 approached you prior to the Novogenix approach.

11:58:18 15 Do you remember how many tissue procurement

16 agencies had approached you before Novogenix?

17 A Two or three perhaps in the time that I was

18 at LA, and then maybe one or two when I was at Yale.

19 Not a lot. Not an awful lot.

11:58:35 20 Q Sure. So other than the Yale New Haven

21 tissue procurement and the PPLA tissue procurement,

22 have you personally participated in any other tissue

23 procurement -- projects may be the right word?

24 MS. BOMSE: Program?

25 ///

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1 BY MR. BREEN:

2 Q Programs?

3 A I don't think so.

4 Q Okay. Once the Novogenix program -- so the

11:59:09 5 Novogenix contract, you negotiated. Then did --

6 when did that -- when did the actual tissue

7 procurement begin with Novogenix?

8 A I think it was sometime in 2011, maybe.

9 Q Okay. And then was it continuing when you

11:59:33 10 left PPLA?

11 A It was.

12 MR. BREEN: Okay. What I want to do is, I'd

13 like to put the contract with Novogenix in front of

14 you, if that's okay. And we've marked it as --

11:59:49 15 premarked it as Exhibit 2502.

16 (Defendants' Exhibit 2502 was marked.)

17 MS. BOMSE: So at this point, I'm going to

18 ask that this portion of the deposition be

19 designated attorneys' eyes only.

12:00:06 20 MS. SHORT: Can I just ask for a

21 clarification about what you mean when you say "this

22 portion." When will we know that that portion is

23 over?

24 MS. BOMSE: I'm happy to state that if I --

12:00:14 25 if I remember to do so and at a point where I feel

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1 like we're not talking about anything that's
2 inappropriate for attorneys' eyes only.

3 MS. SHORT: Okay. That's fine. I just --
4 you did it at another deposition. I thought -- I
12:00:22 5 didn't know when it would end.

6 MS. BOMSE: Ideally, I think to say it stops,
7 and I welcome you asking me.

8 MS. SHORT: Okay.

9 BY MR. BREEN:

10 Q And I'll just ask first if you recognize --
11 do you recognize this document?

12 A Yes.

13 Q Okay. And what is it?

14 A This is the specimen donation agreement
15 between PPLA and Novogenix.

16 Q Okay. I did want to just loop back.
17 When we -- you had said there was a waiver.

18 Do you recall who at Planned Parenthood --
19 did -- you said you applied for a waiver with
12:01:14 20 Planned Parenthood Federation of America.

21 To whom did PPLA make that application?

22 A I cannot now remember. It was someone -- who
23 did we apply to for waivers? I really can't
24 remember.

12:01:31 25 Q Okay. Do you remember which department?

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1 A That's what I was just trying to think of.

2 Q Sure, sure.

3 MS. BOMSE: Counsel, before you ask another
4 question, can I just ask what this Bates number is
12:01:42 5 and what -- the parties that produced this document
6 because it's not ours.

7 MR. BREEN: I believe this was from
8 Novogenix, I think.

9 MS. BOMSE: Okay.

10 12:01:50 MR. BREEN: Yeah. It says CLM.

11 MS. BOMSE: Is that what CLM means?

12 MR. BREEN: I did not manage that part of the
13 production.

14 MS. BOMSE: Fair enough.

15 12:02:05 BY MR. BREEN:

16 Q Okay. And so you're looking at the
17 department or division within PPFA that waivers
18 would have been applied from?

19 A Correct.

20 12:02:14 Q Do you recall -- did you have any
21 interaction -- did you have any interactions as part
22 of the waiver application with PPFA staff?

23 MS. BOMSE: Objection. Vague.

24 THE WITNESS: Are you asking about this one?

25 ///

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1 BY MR. BREEN:

2 Q Right, about the -- when you were looking
3 for -- when you sought the waiver from PPFA -- why
4 don't we ask more basically.

12:02:39 5 How did you make application for waiver from
6 PPFA?

7 A There was a form to fill out and some of -- I
8 mean, I have applied for a number of waivers through
9 the years, and some of them are relatively pro forma
10 and they say yes, you can do it. Others -- I have
11 never had one rejected, but there are other
12 affiliates who I know applied for something that was
13 outside the bounds of what PPFA was comfortable
14 with, so they were rejected with discussion. This
15 one, I don't really -- stop. Okay.

16 MS. BOMSE: He asked you, how did you get the
17 waiver.

18 BY MR. BREEN:

19 Q I'm asking how did you make that application
12:03:18 20 for the waiver?

21 A I made it on the waiver application form.

22 Q Okay. And then was there a discussion about
23 the waiver application from PPFA?

24 A Possibly, but I cannot remember.

12:03:40 25 Q Do you remember who -- did you discuss the

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1 waiver with anyone at PPFA?

2 MS. BOMSE: Objection. Asked and answered.

3 THE WITNESS: Possibly, but I don't remember.

4 BY MR. BREEN:

12:03:54 5 Q Okay. And do you recall who -- who awarded
6 the waiver, what individual at PPFA maybe would have
7 made the decision on the waiver?

8 A No.

9 Q You had said Novogenix made a presentation to
12:04:15 10 PPLA.

11 Did they -- did they come in and do the
12 presentation once, or did they do it on a more
13 regular basis?

14 A As I recall, they did it once to the staff
12:04:27 15 and once to the board.

16 Q But -- and then did they leave a copy of the
17 presentation for -- for PPLA staff?

18 A Yes.

19 Q And then would -- would staff or board --
12:04:40 20 well, would staff who had not seen the presentation
21 be provided the copy of the presentation?

22 MS. BOMSE: Objection. Lacks foundation.

23 If you know.

24 THE WITNESS: I suspect the answer is no
12:04:53 25 because the existing staff would have taught the

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1 incoming staff without the aid of the presentation.

2 BY MR. BREEN:

12:05:15 3 Q Okay. And so was there -- when new staff
4 would start -- well, when new staff would start, was
5 there some instruction on the -- the Novogenix fetal
6 tissue procurement program?

7 A Yes.

8 Q Okay. And what was the nature of that
9 instruction?

12:05:24 10 A Most of the incoming -- we call them RHAs,
11 research health associates, had instruction in a
12 wide variety of what their responsibilities were. I
13 cannot -- I do not believe that they received
14 written information like this about Novogenix. I
12:05:42 15 believe that the person who was teaching them about
16 the clinical responsibilities would have said on
17 days that we're doing abortion, we're involved in
18 tissue donation. Here is what the consent form is
19 for the patient. Here is why we want to do it. And
12:05:55 20 it was verbal rather than anything written.

21 Q Okay. And -- all right. So let's go back to
22 the contract, then.

23 [REDACTED]

[REDACTED]

12:06:28 [REDACTED]

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[REDACTED]

Is that -- is that an accurate statement based on your experience with the PPLA fetal tissue procurement program?

MS. BOMSE: Objection. Vague.
Do you mean is that what happened?

MR. BREEN: Yes.

BY MR. BREEN:

Q Is that what happened?

A Well, I would say in general, that's what happened. But, I mean, the -- they provided us with the sterile container, but their tech would put stuff in it. I mean, it's a little --

Q And would the -- and we discussed previously about how the tissue was transferred.

How was the tissue -- so when the provider completes the procedure, what is the tissue placed in? What container is the tissue placed in at that point?

A When the provider completes the procedure, it's either contained within the barrel of the IPAS or it's contained within a small sock that's on the jar, and then one of the assistants takes that

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12:08:02 1 tissue and brings it into the -- or through the wall
2 or around and into the examination room.

3 The provider or designee will wash the
4 tissue, and then the provider will look at the
5 tissue. If the tissue looks complete, then the
6 provider will say to the Novogenix representative,
7 I'm satisfied the tissue is complete, and she would
8 take that and put it in their container.

12:08:21 9 Q And at that point in the process, does the
10 provider do anything else besides confirm that the
11 tissue is complete prior to allowing the Novogenix
12 representative to take the tissue?

13 MS. BOMSE: Objection. Vague. Calls for
14 speculation.

12:08:35 15 BY MR. BREEN:

16 Q Why don't we be very, very precise in our --
17 during the Novogenix fetal tissue procurement at
18 PPLA, after the provider has confirmed that the --
19 the specimen is complete, does the provider do
12:08:55 20 anything else before the Novogenix technician takes
21 the specimen?

22 MS. BOMSE: Same objections.

23 THE WITNESS: No.

24 BY MR. BREEN:

12:09:08 25 Q And just so that I'm clear: Does the

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1 provider sign anything relating to the performance
2 of the abortion in that circumstance?

12:09:28 3 A In terms of documenting the abortion, we have
4 an electronic medical record. So the provider would
5 put all the details of that. And I think -- I'm not
6 sure, but I think there was also a check box to say
7 tissue donated.

8 Is that what you were asking?

9 Q That is what I'm asking.

12:09:43 10 And so do you recall any -- and actually,
11 just if you'll help me. When a provider is looking
12 at -- was looking at the electronic health system at
13 PPLA, how would the provider enter information into
14 that electronic health record?

12:09:58 15 A The EHR was developed by surgeons; therefore,
16 it was check mark.

17 Q Just a check mark?

18 A Yes.

12:10:10 19 Q Okay. And in your recollection, there may
20 have been a check mark that said that fetal tissue
21 was donated?

22 A I'm 80 percent sure there was a check box
23 saying fetal tissue was donated.

12:10:24 24 Q And then in connection with the electronic
25 health record, would there have been any further

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1 representations about the abortion procedure made
2 when fetal tissue had been donated?

3 MS. BOMSE: Objection. Vague.

4 THE WITNESS: I really am not sure what
5 you're asking. The documentation of the procedure
6 is separate from the check box saying tissue was
7 donated. So there was never any change in that.

8 BY MR. BREEN:

9 Q All right. And was there a -- was there a
10 documentation -- was there a documentation that a
11 provider who had participated in an -- strike that.

12 So after providing an abortion on a patient
13 who was donating fetal tissue, did the provider
14 certify that -- that the provider had not changed
15 the procedure in order to procure fetal tissue?

16 A I do not believe so.

17 Q Okay. Just so that I'm clear: Did --
18 after -- for a provider who performed an abortion on
19 a patient who was donating fetal tissue at PPLA
20 during the Novogenix program, did the provider
21 certify that no substantive alteration in the timing
22 of terminating the pregnancy or the method used was
23 made for the purpose of obtaining the blood or
24 tissue?

25 MS. BOMSE: Counsel, if you're asking -- it

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1 looks like you're asking her a question and reading
2 from a document, so I think -- I'd appreciate it if
3 you pointed her to whatever you're reading.

12:12:28 4 MR. BREEN: And we're going to get to that
5 document later. I think it's consistent.

6 THE WITNESS: Well --

7 MS. BOMSE: I think --

8 MR. BREEN: You can object.

12:12:37 9 MS. BOMSE: I do object because you're
10 looking at a document and you're not telling her
11 what you're looking at.

12 THE WITNESS: There was no change in the
13 procedure because all the patients are having an
14 abortion. There was no change in the method that
15 the provider had chosen. There may have been
16 changes in the technique. I think you're asking me
17 if there was a space on the chart where that was
18 documented, and it's possible, but I really don't
19 remember.

12:13:06 20 BY MR. BREEN:

21 Q Thank you.

22 And then we'll go back to the contract, which
23 is where we started. Yes.

12:13:19 24 So under 3B -- let's go to 3B there on that
25 first page.

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[REDACTED]

8

THE REPORTER: A little slower, please.

9

BY MR. BREEN:

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Q

[REDACTED]

17

A That entails identifying patients that are

18

possibly within a specified gestational range,

19

although right now, I cannot recall whether that's

20

the case or not. It might identify patients who are

21

under 18, because you'll see that minors were

22

excluded from at least this initial contact.

23

And, I mean, I'm really not remembering but,

24

for instance, if they only wanted to have eight

25

weeks plus, we might not ask six-weekers or seven,

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1 that kind of thing.

2 And once patients were identified as

3 potential donors, then the staff would ask them if

4 they were interested in tissue donation.

12:14:56 5 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12:15:12 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12:15:31 [REDACTED]

16 Q And who would -- I guess I'll ask more

17 basically.

18 How would the informed consent be obtained?

19 A There would be a discussion with the patient

12:15:40 20 about many aspects of the abortion procedure. The

21 reproductive health associate would sit down with

22 the patient and say, "Do you know why you're here

23 today? Do you have any questions? What kind of

24 birth control do you plan to use when you leave? Do

12:15:57 25 you have someone to drive you home? Do you want to

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1 have local anesthesia or conscious sedation? Let me
2 explain the difference to you." They would ask the
3 whole process of informed consent for the abortion
4 procedure, and at the end, they would say, "We're
12:16:13 5 involved in a tissue donation program. Here is what
6 that means. Do you want to participate?"
7 If they said yes, they would sign the consent
8 form.

9 Q You mentioned the RHAs, the reproductive
12:16:27 10 health associates.

11 What training did they receive in -- if any,
12 in obtaining informed consents?

13 A The affiliate had an ongoing training program
14 for the reproductive health assistants, and I don't
12:16:48 15 know how long it was, but there was a small didactic
16 portion followed by weeks-long supervision portion,
17 that sort of training, and informed consent
18 obtaining was part of that.

19 Q In terms of the timing of obtaining the
12:17:00 20 consent for the abortion versus the obtaining of the
21 consent for the fetal tissue donation, when in the
22 process was each of those consents obtained?

23 MS. BOMSE: Objection. The witness has
24 already testified to this.

12:17:17 25 THE WITNESS: The abortion consent came