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SEP 06 2013

4TH DISTRICT  
STATE OF UTAH  
UTAH COUNTY

TIMOTHY L. TAYLOR, No. 8001  
Utah County Attorney  
CHAD E. GRUNANDER, No. 9968  
Deputy Utah County Attorney  
100 East Center Street, Suite 2100  
Provo, Utah 84606  
Telephone: (801) 851-8026

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IN THE FOURTH DISTRICT COURT OF UTAH COUNTY  
STATE OF UTAH

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STATE OF UTAH,

Plaintiff,

vs.

MARTIN JOSEPH MACNEILL,

Defendant.

MOTION IN LIMINE (Re: Dr. Judy  
Melinek's comments and opinion on the  
reliability of witnesses and Dr. Matthew C.  
Lee's opinion on whether the victim was  
murdered)

Case No. 121402323

Judge Derek P. Pullan

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COMES NOW the State, by and through Deputy Utah County Attorney Chad E. Grunander, and pursuant to Rules 702, 704, and 608 of the Utah Rules of Evidence (URE) and applicable case law, moves the Court to prohibit defense witness Dr. Judy Melinek from commenting at trial on the credibility of witnesses in this case. The State further moves the Court to prohibit defense witness Dr. Matthew C. Lee from offering an opinion on whether the victim was murdered.

**STATEMENT OF FACTS**

1. The Defendant provided the State with Notice of Intent to Call Expert Witnesses on

August 27, 2013. Attached to the Notice was a copy of defense witnesses Dr. Judy Melinek's and Dr. Matthew C. Lee's reports prepared in anticipation of their testimony in this case and a copy of their curricula vitae (*see* exhibits A, B, C and D).

2. On pages three (3) and four (4) of Dr. Melinek's report, she referred to several of the State's witnesses and then provided a brief description of their statements and anticipated testimony at trial. She then recited indicia or facts she believes proves their unreliability and finished with a final opinion that the witnesses "cannot be considered reliable."
3. On page fifty-two (52) of Dr. Lee's report, he stated that in the case of Michele MacNeill's death "human intervention, i.e. murder, as the causative, or initiating factor is implicitly impossible."<sup>1</sup>

### **ARGUMENT**

Rule 702 of the URE states, in part, "[A] witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue." The question of whether a witness qualifies as an expert lies in the discretion of the court, *State v. Locke*, 688 P.2d 464 (Utah 1984), and trial courts have been directed to approach expert testimony with rational skepticism. *Gunn Hill Dairy Props., LLC v. L.A. Dep't of Water & Power*, 269 P.3d 980 (Utah

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<sup>1</sup> Murder is a legal term under Utah Code Ann. § 76-5-203, and it requires a legal fact-finder to decide if certain elements have been proven beyond a reasonable doubt to determine whether a murder has occurred.

Ct. App. 2012). And while a license is not dispositive of whether a witness qualifies as an expert in a given area, *State ex rel. G.Y. v. State*, 962 P.2d 78 (Utah Ct. App. 1988), the rule requires a witness to have knowledge, training or education in the area. *Robb v. Anderton*, 863 P.2d 1322 (Utah Ct. App. 1993).

Rule 704 of the URE states, “[a]n opinion is not objectionable just because it embraces an ultimate issue.” However, there are clear limitations on witnesses, including experts, commenting on and offering opinions about the credibility of witnesses and offering legal conclusions. For example, in *State v. Lairby*, 699 P.2d 1187, 1199 (Utah 1984), the defense wanted to offer expert testimony on the credibility or lack thereof of two witnesses. While the court left open the possibility the expert may have been able to testify about a mental aberration touching on the witnesses’ capacity for untruthfulness or delusional testimony, it stated, “(the expert) could not have offered any views on the testimony actually given.” *Id.*

Additionally, it is well-settled law that “the credibility of any and all witnesses is for the jury.” *Smith v. Industrial Comm’n et al.*, 140 P.2d 314, 332 (Utah 1943); see also *State v. Kallas et al.*, 94 P.2d 414, 425 (Utah 1939); *State v. Hatcher*, 495 P.2d 1259, 1261 (Utah 1972); *State v. Morgan*, 74 P. 526, 529 (Utah 1903) (instructing the jury “[y]ou are the sole judges of the facts, of the credibility of the witnesses, and of the weight of the evidence, and in determining the credibility of the witnesses and the weight of the testimony”). Further, it is also clear that “allowing the witness to tell the jury what result to reach (is) not permitted, nor is the rule

intended to allow a witness to give legal conclusions.” *State v. Tenney*, 913 P.2d 750 (Utah Ct. App.), cert. denied, 923 P.2d 693 (Utah 1996), quoting *Davidson v. Prince*, 813 P.2d 1225, 1231 (Utah Ct. App. 1991), additional citations omitted. Finally, Rule 608 of the URE limits the extent to which a witness’ credibility can be attacked by other witnesses to “testimony about the witness’s reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character.”

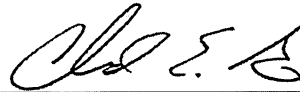
Here, Dr. Melinek’s curriculum vitae is void of demonstrating knowledge, training and/or education and other expertise in the field, if it even exists, in determining whether someone is telling the truth or otherwise credible. More importantly, it is well-settled law that it would be improper for the doctor to comment on the credibility of the testimony of other witnesses at trial. The credibility and weight to be given to the State’s witnesses (or any witness at trial) is exclusively for the jury and it would be error to allow this witness to tell the jury what should or should not be believed in terms of their testimony. Finally, the doctor is not in a position to opine about these witnesses and their reputations for untruthfulness.

Dr. Lee’s curriculum vitae is void of demonstrating knowledge, training and/or education or other expertise in the law, and he is not an attorney or judge. Accordingly, he does not possess specialized knowledge to qualify him to offer an opinion on whether Michele MacNeill was murdered. Moreover, and most dispositive of the issue, whether the victim was murdered calls for a legal conclusion and is therefore an ultimate opinion for the jury to decide.

### CONCLUSION

For these reasons, the Court should prohibit Dr. Judy Melinek from commenting at trial on the credibility of witnesses in this case, and further prohibit Dr. Matthew C. Lee from offering an opinion about whether Michele was the victim of murder.

RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of September, 2013.



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CHAD E. GRUNANDER  
Deputy Utah County Attorney

**EXHIBIT A**  
**(Dr. Melinek's Report)**

system at the time of death are not in high enough levels to suspect an intentional overdose (either suicide or homicide) and the medications are subject to post-mortem redistribution (PMR), meaning that the levels at autopsy may be spuriously elevated compared to what was circulating at the time of death. PMR is more severely pronounced in central (heart blood) specimens. Mrs. MacNeill was taking the medications for several days and was not found dead in bed, as she likely would have if she had died from the combined respiratory effects of the drugs, as in an accidental overdose. It appears based on the scene and witness information that she had a sudden cardiac arrest (arrhythmia) or loss of consciousness that caused her to end up in the water. There is insufficient inflammation or myocyte (heart cell) damage in the microscopic sections of her heart to diagnose myocarditis. Interstitial fibrosis (scarring) in her heart muscle could have caused a sudden cardiac arrhythmia, and a sudden cardiac arrhythmia could be the source of loss of consciousness, but it is not the only possible source. Sudden cardiac arrhythmias have been known to occur without any identifiable anatomic cause. Blood loss and incapacitation with prolonged bed rest and hypoglycemia following her recent plastic surgery are more pressing concerns, as are the fatty change noted in her liver, due to her weight or to recent anesthetic exposure. Post-surgical straining to have a bowel movement can cause increased intra-abdominal pressure (a Valsalva maneuver) and this can also potentiate a sudden arrhythmia. It may explain why Michele was found without pants or underwear. The absence of water in the microscopic lung sections may be a consequence of obstruction of the upper airways only and/or clearance of the airway during her resuscitation. Either way, the watery fluid coming from her nose and mouth described by witnesses and medical personnel are supportive of drowning as the proximate cause of death.

With regards to the manner of death, the anecdotes about Mr. MacNeill may raise suspicions that Michele MacNeill was murdered by her husband, but they do not amount to sufficient evidence that a homicide occurred. Based on the clinical and post-mortem toxicology performed, there is insufficient evidence that Mr. MacNeill intentionally over-medicated his wife or injected her with potassium or any other substance. Potassium in a fresh-water drowning can be elevated due to hemolysis when potassium is released from popping red blood cells. It can also be elevated due to the post-mortem interval. There aren't multiple planes of blunt force trauma or scene disarray to support the theory of a homicidal drowning. Most importantly, there *are* sufficient post-mortem findings of natural disease and drowning to support a completely accidental scenario within reasonable medical certainty. The manner of death is best classified as an accident. In my opinion, calling Michele MacNeill's death "undetermined" gives credence and support to a lot of speculation and innuendo and does not do justice to the case, or give closure to Mrs. MacNeill's family. The inmate interviews appear to implicate Mr. MacNeill in his wife's death in numerous ways, including introduction of drugs via a rectal route (Knowles), overmedication alone (Walraven, Barrera), and over medication with drowning (Buchanan). It appears that many of the inmates had access to information about Mr. MacNeill's case from media reports (e.g. Nancy Grace and People magazine); one appears to have a personal bias against MacNeill because of his religious beliefs, among other things (Poirier); and a few expect that reporting on MacNeill will directly benefit them (Barrera, Buchanan). In

my opinion, the jailhouse informants cannot be considered reliable in this case for these reasons.

The pertinent facts of the case that lead me to this conclusion are:

1. The autopsy report for Michele MacNeill from the Office of Medical Examiner written by Dr. Maureen J. Frikke noted that Michele MacNeil had several significant findings at autopsy. These included cardiovascular disease with left ventricular hypertrophy and interstitial fibrosis, atherosclerosis of the right coronary artery ostium, and fatty metamorphosis of the liver. The pathologist noted dehiscence/non-union of the skin margins status post plastic surgery, and post-surgical analgesics (oxycodone and promethazine) "at the upper end of the therapeutic range." The report also noted constipation secondary to medications and relative immobilization. Dr. Frikke determined that the cause of death was cardiovascular disease from hypertension and myocarditis. The lung weights were 690 and 670 grams and the liver was 2480 grams and yellow-brown.
2. Review of the autopsy photos demonstrates sutured surgical incisions at the upper eyelids, under the chin, surrounding the ears and at the temporal scalp. A 1.5 cm abraded defect at the right forehead at the hairline has no suture material and appears to be an open incision with surrounding abrasion from blunt trauma. Yellow and purple discoloration surrounding these incisions are consistent with post-surgical changes. Red bruising on the back left hand and at the left shin, associated with an intra-osseous catheter, are consistent with injury from resuscitation efforts. Reflection of the scalp reveals subgaleal hemorrhage, extending to the vertex, but no subjacent fracture.
3. The associated Medical Examiner Synopsis and Description of Incident document that on 4/11/07 at about 1148 Michelle MacNeill was found by her husband in the bathroom of her home. There was water in the tub and Michele was wearing a pajama top. It is not noted whether she was found face up or face down. In the investigator's Supplemental Report there are allegations made by the decedent's daughters that Martin MacNeill overmedicated Michele.
4. Records from Scott Thompson, Facial Plastic Surgery, indicate that Michele had a facelift and blepharoplasty on 4/3/2007 without complications. On the pre-op physical her medical history of hypertension was noted. The procedure took 9 hours (from 7:30 am to 16:30 pm) and during the procedure temporal incisions were made at the hairline on both sides of the face, at the eyelids, around the ears and at the chin ("submental area"). A forehead drain was placed, and was removed the day after surgery. She was given the following prescriptions: Keflex 500 mg; Pennergan 25 mg; Valium 5 mg; Percocet; Ambien 10 mg; Erythromycin ophthalmic ointment; Medrol dose pack. She was examined again on 4/4/07 (post-operative day 1) at the hospital and again on 4/8/07 and 4/10/07. On 4/10/07 she expressed concern about swelling and bruising, but these were dismissed. According to a note from 4/12/07 the doctor spoke to the decedent's husband and daughter several hours after the incident and they were both unaware of any symptoms or difficulties that the patient was experiencing that morning. She was down to 1-2 Percocet a day and ambulating and was otherwise asymptomatic other than some mild nausea that was reported by the husband.



**EXHIBIT B**  
**(Dr. Melinek's CV)**

**Judy Melinek, M.D.**  
**PathologyExpert, Inc.**  
**3739 Balboa Street #102**  
**San Francisco, Ca 94121**  
**Phone: (415) 850-7056**  
**drjudymelinek@pathologyexpert.com**

## **EXPERIENCE**

### **PathologyExpert Inc., San Francisco**

2004 – Present

Independent legal consultant. Contract with Alameda County Coroner's Office. Consulted and testified in criminal and civil cases in Alaska, Arizona, California, Florida, Illinois, Louisiana, Maryland, Mississippi, New Mexico, New York, Oregon, Pennsylvania, Texas and Washington State. Qualified as an expert on forensic pathology, neuropathology and wound interpretation over 100 times in civil and criminal courts.

### **Office of the Chief Medical Examiner, San Francisco**

July 2004 – April 2013

Assistant Medical Examiner. Assistant Clinical Professor - UCSF Medical Center. Teaching award 2007-2008. Trained UCSF pathology residents, Medical Examiner Investigators, Forensic Autopsy Technicians.

### **Santa Clara County Office of Medical Examiner-Coroner**

July 2003 – July 2004

Assistant Medical Examiner – Coroner. Adjunct Clinical Instructor, Stanford University Medical Center. Senior forensic pathologist directing a staff of 17 for ten months following resignation of the Chief Medical Examiner. Revised death certification, identification and evidence protocols. Child death review team.

### **Office of Chief Medical Examiner, City of New York**

July 2001 – June 2003

Clinical Instructor in Forensic Medicine, New York University. Forensic Neuropathology Fellowship. Examined remains from World Trade Center (9/01-8/02) and American Airlines Flight 587 crash (11/01).

### **Department of Pathology, UCLA**

July 1993-June 1994; July 1997 – June 2001

Pathology Post Sophomore Fellowship; Pathology Residency and Chief Resident.

### **Beth Israel-Deaconess Medical Center, Boston, MA**

July 1996 – Dec 1996

Department of General Surgery - Internship. Primary surgeon in 61 operations.

## **EDUCATION**

### **Harvard University: Cambridge, MA**

1987 – 1991

B.A. in Biology *magna cum laude*, June 1991. John Harvard Scholarship, 1989-90. Harvard College Scholarship, 1988-89. Elizabeth Cary Agassiz Certificate of Merit, 1987-88.

### **UCLA School of Medicine: Los Angeles, CA**

1991 – 1996

M.D. with honors, May 1996. Dean's Scholar for outstanding thesis, Edith and Carl Lasky Memorial Award for research achievement, Viola G. Hyde Scholarship for excellence in surgery.

### **Armed Forces Institute of Pathology: Bethesda, MD**

2001, 2003

Basic Forensic Pathology Course, 2001; Dr. Kenneth M. Earle Memorial Neuropathology Course, 2003

### **Imaging Forensics: San Francisco, CA**

June 2010

Digital Forensics Photography Class with George Reis; San Francisco Police Department Training

## **RESEARCH**

### **Brigham and Women's Hospital, Boston**

Summer 1988, January 1990 – May 1991

Center for Neurological Diseases – Undergraduate Biology thesis, "Protein Kinase C Activity Correlates with Memory T-Cell Function" presented at FASEB conference in Atlanta, GA in April, 1991.

### **Department of Neurology, UCLA**

Summer 1992

With Jean Merrill, Ph.D. and Nobel laureate Louis J. Ignarro, Ph.D., researched NO synthesis in Multiple Sclerosis.

## **RESEARCH**

### **Department of Transplantation, UCLA**

Dec 1993-March 1996, Nov 1998 – 2001

Liver Transplant Program – Pathology consultant for research investigating rejection, ischemia-reperfusion injury and Hepatitis C recurrence. Assisted in over 100 liver harvests and transplants.

## **OTHER EXPERIENCE**

### **Peer Reviewer**

Academic Forensic Pathology	December 2012 – Present
The American Journal of Forensic Medicine and Pathology	October 2009 – Present
CDCP Sponsored NAME Toxicology Panel for Opiate Deaths	January 2012 – Present
Electrical Muscular Disruption Device (EMDD) Literature Review Panel – NIJ	2007-2011
Journal of Forensic and Legal Medicine – Elsevier Press	October 2007

### **Professional Lectures and Presentations**

"Advanced Criminal Law: Forensic Pathology," San Francisco Law School, Alliant University	Feb. 2, 2013
"Science & the Law: Forensic Pathology," UC Hastings College of the Law	11/14/2012; 2/14/2013
"Introduction to Pre-Health Professions" Recurrent guest lecturer, Science-235	2007 – 2011
San Francisco State University.	
"Death Certification" Recurrent guest lecturer, UCSF Resident Orientation	2010 – 2011
AACC Outstanding Speaker Award: "Pairing Clinical and Post-Mortem Toxicology	Sept. 27, 2011
Findings for Interpretative Purposes: The Medical Examiner's Perspective" and Panel Discussion	
SOFT/TIAFT – San Francisco, CA	
"A Facilitated or Unavoidable Fall from a Roof - An Unusual In-Custody Death"	Aug. 12, 2011
National Association of Medical Examiners – Alaska	
"In-Custody Deaths: An Introduction to the Role of the Medical Examiner"	Nov. 28, 2007
Sudden Death, Excited Delirium & In-Custody Death Conference – Las Vegas, NV	
"Vertebral Artery Dissection Complicating Occipital Injection of Heparin for Treatment of	Oct. 17, 2007
Thoracic Outlet Syndrome" National Association of Medical Examiners – Savannah, GA	

### **Consulting & Media**

Workstew Podcast: Interview with Forensic pathologist Dr. Judy Melinek	May 2013
& Writer T.J. Mitchell: <a href="http://www.workstewpodcast.com/?p=1142">http://www.workstewpodcast.com/?p=1142</a>	
Mythbusters, Discovery Channel, "Bite the Bullet" episode	April, 2013
Dr. Phil, "Deadly New accusations: A Murder Mystery?"	September 21, 2012
Dr. Drew, "Attorney on mansion death: 'Time to Re-Open This.'"	August 13, 2012
Life, Love & Health : Radio Interviews with Christopher Springmann	2/10/12; 11/9/12; 1/18/13
Forensic pathology consultant, National Organization of Parents of Murdered Children, Inc., Cincinnati OH	2009 - Present
(pro-bono).	
Forensic pathology consultant, Northern California Innocence Project, Golden Gate University School of	
Law, San Francisco & Minnesota Innocence Project (pro-bono).	Present
Medical device testing for cancer research: FeRx Corporation, San Diego, CA	1999-2000
Script and on-set consultant in forensic pathology for NBC television program E.R.	2000
Consultant in forensic pathology for UCLA Mock Trial Team Pre-Law Society.	2000

## **ACTIVITIES AND MEMBERSHIPS**

Member, National Association of Medical Examiners (NAME)	2000-Present
CDCP Sponsored NAME Toxicology Panel for Opiate Deaths	January 2012-Present
Medical Examiner Independence Ad Hoc Committee, Chair	2011-Present
Death Certification Improvement Ad Hoc Committee	2009- 2010
Membership Ad Hoc Committee	2006-2007
Associate Member, American Academy of Forensic Sciences (AAFS)	2000-Present
Member, California Society of Pathologists	2006-2007
Member, College of American Pathologists	1998-2002
Member, American Society of Clinical Pathologists (ASCP)	1998-2002
Member at Large (AMA Alternate Delegate), ASCP Resident Physician's Section	1999-2000
Board of Directors Resident Representative, Los Angeles Society of Pathologists	1998-2000

## **ACTIVITIES AND MEMBERSHIPS (Continued)**

Student Representative, AMA Advisory Panel on Women Physician Issues	1994-1996
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## **PROFESSIONAL LICENSES**

American Board of Pathology:	Board Certified in Anatomic & Clinical Pathology	August, 2001
	Board Certified in Forensic Pathology	November, 2002
New York State: Physician, License Number: 220265-1		Issued: 1/30/01
State of California: Physician and Surgeon, License Number: A65951		Issued: 7/3/98

## **PUBLICATIONS**

1. Working Stiff: The Making of a Medical Examiner. Judy Melinek & T.J. Mitchell. Scribner Books, New York, Summer 2014
2. The Ethics of Being a Retained Expert Witness. Melinek J. *Academic Forensic Pathology* 2013 (in press)
3. Forensic Considerations in Bariatric Surgery Patients. Melinek, J. and Lemos, N.P. *Academic Forensic Pathology* 2013, 3(1): 13-21
4. Medical Examiner's Independence is Vital for the Health of the American Legal System. Luzi SA, Melinek J, Oliver WR. *Academic Forensic Pathology* 2013, 3(1): 84-92
5. NAME Position Paper: Medical Examiner, Coroner, and Forensic Pathologist Independence. Melinek J, Thomas LC, Oliver WR, Schmunk GA, Weedn VW. *Academic Forensic Pathology* 2013, 3(1): 93-98
6. Recommendations for the Investigation, Diagnosis, and Certification of Deaths Related to Opioid Drugs. *Academic Forensic Pathology* 2013, 3(1): 62-76
7. NAME Position Paper: Recommendations for the Investigation, Diagnosis, and Certification of Deaths Related to Opioid Drugs. *Academic Forensic Pathology* 2013, 3(1): 77-83
8. Vertebral Artery Dissection Complicating Occipital Injection of Heparin for Treatment of Thoracic Outlet Syndrome. Melinek J, Hart AP. *Am J Forensic Med Pathol.* 2012 Mar;33(1):76-9
9. New Records of Carrion Feeding Insects Collected on Human Remains. Honda J, Melinek J, Happy C.
10. *Pan-Pacific Entomologist* 2008, 84(1):29-32
11. Medical Illustrations for Chapter 19, Forensic Neuropathology, Armbrustmacher, V. and Hirsch, C. Spitz
12. & Fisher's *Medicolegal Investigation of Death*. 4th Edition. Editor: Werner U. Spitz. Charles C. Thomas,
13. Springfield, Illinois, 2006. *Figures 1-6, 13, 66 and 67*; credit on page 1072.
14. Anthropological and Radiographic Comparison of Vertebrae for Identification of Decomposed Human
15. Remains. Mundorff AZ, Vidoli G, Melinek J. *Journal of Forensic Sciences*, 2006 Sep;51(5):1002-1004.
16. Postmortem Suture Analysis of Anastomotic Suture Line Disruption Following Carotid Endarterectomy.
17. Melinek J, Lento P, Moalli J. *Journal of Forensic Sciences* 2004 Sep;49(5):1077-81.
18. Santa Clara County Police Chief's Association Child Abuse Protocol for Santa Clara County Law Enforcement. Update 2004 May.
19. Death Following Gastric Bypass Surgery For Morbid Obesity. Melinek J, Livingston EH, Cortina G, Fishbein MC. *Archives of Pathology & Laboratory Medicine.* 2002 Sept 126:1091-1095

## **PUBLICATIONS (Continued)**

20. Inhalational Anthrax: Gross Autopsy Findings. Gill J and Melinek J. *Archives of Pathology & Laboratory Medicine*. 2002 Aug. 126:993-994
21. Bucillamine, a Thiol Antioxidant, Prevents Transplantation-Associated Reperfusion Injury. Amersi F, Nelson SYK, Shen XD, Kato H, Melinek J, Kupiec-Weglinski JW, Horwitz LD, Busuttil RW, and Horwitz MA. *Proceedings of the National Academy of Sciences* 2002 June 99:8915-8920.
22. Heme oxygenase-1 gene therapy: a novel immunomodulatory approach in liver allograft recipients? Ke B, Shen XD, Melinek J, Gao F, Ritter T, Volk HD, Busuttil RW, Kupiec-Weglinski JW. *Transplantation Proceedings*. 2001 Feb-Mar 33(1-2):581-2
23. Amelioration of hepatic ischemia/reperfusion injury with intercellular adhesion molecule-1 antisense oligodeoxynucleotides. Ghobrial R, Amersi F, Stecker K, Kato H, Melinek J, Singer J, Mhoyan A, Busuttil RW, Kupiec-Weglinski JW, Stepkowski SM. *Transplantation Proceedings*. 2001 Feb-Mar 33(1-2):538
24. A novel iron chelator in combination with a P-selectin antagonist prevents ischemia/reperfusion injury in a rat liver model. Amersi F, Dulkanchainun T, Nelson SK, Farmer DG, Kato H, Zaky J, Melinek J, Shaw GD, Kupiec-Weglinski JW, Horwitz LD, Horwitz MA, Busuttil RW. *Transplantation*. 2001 Jan 15; 71(1):112-8
25. Upregulation of Heme Oxygenase-1 Protects Genetically Fat Zucker Rats from Ischemia/Reperfusion Injury. Amersi F, Buelow R, Kato H, Ke B, Coito AJ, Zhao D, Zaky J, Melinek J, Lassman CR, Kolls JK, Alam J, Ritter T, Volk HD, Farmer DG, Ghobrial RM, Busuttil RW and Kupiec-Weglinski JW. *Journal of Clinical Investigation* December 1, 1999 104(11):1631-1639
26. The New ASCP Comprehensive Review Course for Anatomic and Clinical Pathology. Melinek J. *RPS News* Winter 1999 13(4): 2-3
27. Significance of Early Aminotransferase Elevation after Liver Transplantation. Rosen HR, Martin P, Goss J, Donovan J, Melinek J, Rudich S, Imagawa DK, Kinkhabwala M, Seu P, Busuttil RW. *Transplantation* January 15, 1998 65(1):68-72
28. Randomized Controlled Trial to Evaluate Flush and Reperfusion Techniques in Liver Transplantation. Millis JM, Melinek J, Csete M, Imagawa DK, Olthoff KM, Neelakanta G, Braunfeld M, Sofer M, Chan S, Pregler J, Yersiz H, Tamura K, Shackleton CR, Shaked A, Jurim O, Busuttil RW. *Transplantation* February 15, 1997 63(3):397-403
29. Lack of Correlation between the Magnitude of Preservation Injury and the Incidence of Acute Rejection, Need for OKT3 or Conversion to FK506 in Cyclosporine Treated Primary Liver Allograft Recipients. Shackleton CR, Melinek J, Martin P, Millis JM, Olthoff KM, Imagawa DK, Jurim O, Shaked A, McDiarmid SV, Goldstein LI, Busuttil RW. *Transplantation* September 27, 1995 60(6):554-558
30. Living-Donor Liver Transplantation at UCLA. Jurim O, Shackleton CR, McDiarmid SV, Martin P, Shaked A, Millis JM, Imagawa DK, Olthoff KM, Maxfield A, Pakrasi AL, Melinek J, Ament M, Vargas J, Goldstein LI, Busuttil RW. *The American Journal of Surgery* May 1995 169:529-532
31. Microglial Cell Cytotoxicity of Oligodendrocytes Is Mediated through Nitric Oxide. Merrill JE, Ignarro LJ, Sherman MP, Melinek J, Lane TE. *The Journal of Immunology* August 15, 1993 151: 2132-2141
32. Increased Protein Kinase C Activity in Human Memory T Cells. Höllsberg P, Melinek J, Benjamin D, Hafler DA. *Cellular Immunology* June 1993 149(1):170-179

**EXHIBIT C**  
**(Dr. Lee's Report)**

and illness on the morning of Mrs. MacNeill's death as noted by Dr. Frikke in her notes; and cerebral edema.

The assertion that hemodilution is the cause for the interim changes in Mrs. MacNeill's blood testing results is not reasonable, nor theoretically possible. Though assuming it did occur, it would mean the lab results reported as high would have actually been even higher, because the result reported would be the diluted result. Therefore, the high creatinine level that is reported as high in Mrs. MacNeill's case would be even higher if hemodilution occurred (creatinine is considered stable in death); the Eosinophil levels that are reported as high in Mrs. MacNeill's case would be even higher; the lymphocytes that were significantly elevated on April 11, 2007, would be even higher; the elevated liver enzymes of AST and ALT would be higher, her bilirubin would have been higher, the latter of which would indicate further evolved IHA Hepatitis, than is apparent.

Accordingly, while Mrs. MacNeill's IHA hepatitis had not yet progressed to the point that it caused her death, it is my opinion to a reasonable degree of medical certainty that the IHA hepatitis together with the other medications that Mrs. MacNeill was taking caused her to suffer a sudden and terminal cardiac arrhythmia (an exacerbation of her already present cardiac arrhythmia).

## **XVII. Summary**

Prior to undergoing the extended duration plastic surgery procedure on April 3<sup>rd</sup>, 2007, Mrs. MacNeill demonstrated severe chronically elevated blood pressure, with pathological changes to her heart and manifestation of cardiac arrhythmias. As well prior

to undergoing surgery, Mrs. MacNeill also demonstrated acute tubular injury to her kidneys. She was subsequently started on the combination medication lisinopril-hydrochlorothiazide, and ACE Inhibitor-diuretic combination. Where upon initiation of this combination medication there can be an acute worsening of kidney function, expected disruption in electrolyte homeostasis, in particular potassium, as well as low blood pressure and volume depletion secondary to the diuretic effect. All of which increase the risk of developing or exacerbation of incapacitating cardiac arrhythmias and/or sudden cardiac death.

While these changes that occurred from the initiation of the medication alone could have been sufficient to tip the balance from occasional transient arrhythmia to fatal arrhythmia, Mrs. MacNeill also developed liver dysfunction, via a mechanism which NOT unexpectedly also caused hemolytic anemia. Both of these factors also played a large and very significant role in her increased susceptibility, and ultimate inevitability for the development of a fatal cardiac arrhythmia.

Due to the overall constellation of signs, requirement for temporal evolution, intertwining and overlapping complexity of pathological co-morbidities, Mrs. MacNeill presented to the American Fork Emergency Room on April 11<sup>th</sup>, 2007, human intervention, i.e. murder, as the causative, or initiating factor is implicitly impossible.

The absence of skin changes that would be expected in a body exposed to water for a prolonged duration; the absence of markedly reduced core body temperature as would be expected in a body with prolonged exposure to water; the retained capacity on the cellular level to carry out gas exchange in the lungs; and the metabolically energy dependent cellular uptake of glucose and potassium from the circulation, lead to the



conclusion that the time interval between Mrs. MacNeill succumbing to an incapacitating and/or fatal cardiac arrhythmia and being found is very short, a magnitude of minutes.

All my opinions in this report are more probable than not, and beyond a reasonable degree of medical certainty.

I reserve the right to make changes to this report as new information becomes available, and/or additional medical records are provided to me.

Respectfully,



Digitally signed by Matthew C. Lee, MD,  
RPh, MS  
DN: cn=Matthew C. Lee, MD, RPh, MS,  
o=MLEE Physicians, LLC, ou,  
email=matthew@MLEEPhysicians.com,  
c=US  
Date: 2013.08.14 22:50:53 -0400

Matthew C. Lee, MD, RPh, MS

# **EXHIBIT D**

**(Dr. Lee's CV)**

## CURRICULUM VITAE



### MATTHEW C. LEE, MD, RPh, MS

PHYSICIAN, PHARMACIST, PHARMACOLOGIST & TOXICOLOGIST

5700 Old Richmond Avenue

Suite A-5

Richmond, VA 23226

Contact: 804.358.1492 Fax: 804.358.1491

eMail: [mlee@eLEETePhysicians.com](mailto:mlee@eLEETePhysicians.com)

## I. EMPLOYMENT



**Physician. eLEETe Physicians, LLC, Primary Care Practice.** Primary care physician (PCP). Primary Care medical practice, diagnose and treat general medical conditions of adult patients 18 years old and over.



**Pharmacist. Parallon Solutions.** Provide patient care activities to ensure safe and effective drug therapy. Accurately enter orders in the computer and timely manner. Screen for drug interactions, allergies, or duplications, appropriate diagnosis, renal and liver function prior to order entry. Investigate and report adverse drug events and medication incidents. Review and interpret all physician orders received using patient profiles. Monitor for incompatibilities, concentration and rate of intravenous drugs. Assess orders for age specific appropriateness from neonatal through geriatric. Dissemination of drug information.



**Medical Examiner for the Central District of the Office of the Chief Medical Examiner for the jurisdictions of Chesterfield, Hanover and Henrico counties and Richmond city.** Appointed by the Chief Medical Examiner for a three year term, until September 30, 2014.



**Veterans Evaluation Services Provider.** Perform Forensic Legal Examinations of U.S. Military Veterans evaluating and assessing the extent of functional limitations or impairment related to a claimed condition.



**Physician. Apple Mobile Medical.** Occupational Health Physician at Teva Pharmaceuticals. Perform annual Employee Health Surveillance and pulmonary assessments on employees required to wear respirators. One to two weeks per year.

## II. WORK HISTORY:



Physician. United States Department of Defense, Military Entrance Processing Station (MEPS), Fort Lee Virginia. Physician, perform physicals on new military recruits to determine medical qualification as required for entrance into any branch of the U.S. Military as defined by the protocols established the U.S. Department of Defense.



Physician. Apple Mobile Medical Occupational Health. Perform Personal Health Assessments on Pre- and Post- deployment soldiers in the United States National Guard.



Physician. Locum Tenens in Occupational Health and Family Practice for Jackson and Coker.

Zelda West Johnson, MD and Associates Family Practice- Physician in Family Practice.

Pharmacist, Walnut Hill Pharmacy, Petersburg, VA

Pharmacist; Poplar Springs Hospital; Petersburg, VA.

Pharmacist for Wal-Mart pharmacy, as needed throughout Virginia

Pharmacy Manager; Wal-Mart Pharmacy; Tarboro, NC.

Lab Technician; Medical College of Virginia, Department of Pharmacology; Richmond, VA.

Pharmacist; Prince George Pharmacy; Prince George, VA.

## III. EDUCATION AND TRAINING



Undergraduate - Barton College (previously Atlantic Christian College). September 1988 – May 1990.



Undergraduate - Virginia Commonwealth University, **Bachelor's of Science in Chemistry**. August 1992.



Professional - Medical College of Virginia, School of Pharmacy, **Bachelor's of Science in Pharmacy (B.Pharm)**. May 1995.



Graduate - Virginia Commonwealth University Department of Pharmacology/Toxicology. **Master's of Science in Pharmacology and Toxicology.** September 1997 – August 1999.

**Thesis: The Role of several kinases in mice tolerant to delta-9 Tetrahydrocannabinol.**



Doctoral - Virginia Commonwealth University School of Medicine, **Doctor of Medicine (M.D.).** May 2004.



Post-Doctoral - Internship in Internal Medicine, Virginia Commonwealth University Medical Center. July 2004 – June 2005.

#### IV. CERTIFICATIONS AND LICENSURE



Musculoskeletal Exam and Treatment Techniques, American College of Occupational and Environmental Medicine.



Medical Review Officer, Certified by American College of Occupational and Environmental Medicine.



Commonwealth of Virginia, license to practice medicine and surgery, since 2005



Commonwealth of Virginia, license to practice pharmacy, since 1995

#### V. APPOINTMENTS



**Medical Examiner** for the Central District of the Office of the Chief Medical Examiner for the jurisdictions of Chesterfield, Hanover and Henrico counties and Richmond city. Appointed by the Chief Medical Examiner for a three year term, until September 30, 2014.



**National Association of Boards of Pharmacy Licensure Exam (NABPLEX)** question writer.



National Academy of Sciences, Science & Entertainment Exchange Consultant.



CBS *Criminal Minds*.



*Journal of Clinical Pharmacology* Peer Review Board.



*DynaMed* Editorial Team Reviewer.  
<http://www.ebscohost.com/dynamed>.

## VI. PUBLICATIONS AND RESEARCH PRESENTATIONS

Two Cases of Alleged Dilaudid® Overdose: Sometimes it is, sometimes it is not. Matthew C. Lee, MD, RPh, MS. June 2013.  
[www.HGExperts.com](http://www.HGExperts.com), [www.ExpertPages.com](http://www.ExpertPages.com)



*DynaMed* Editorial Team. Lee, M (Reviewer). Neuroleptic Malignant Syndrome. Last updated 2012 05 01. Available from *DynaMed*:  
<http://www.ebscohost.com/dynamed>.



*DynaMed* Editorial Team. Lee, M (Reviewer). Paralytic Shellfish Poisoning. Last updated 2012 06 21. Available from *DynaMed*:  
<http://www.ebscohost.com/dynamed>.



*DynaMed* Editorial Team. Lee, M (Reviewer). Anti-Cholinergic Poisoning. Last updated 2012 11 27. Available from *DynaMed*:  
<http://www.ebscohost.com/dynamed>.

Assessment of Marijuana Intoxication. Matthew C. Lee, MD, RPh, MS. October 4<sup>th</sup>, 2010. [www.HGExperts.com](http://www.HGExperts.com), and [www.ExpertPages.com](http://www.ExpertPages.com).



Quantum Free Will. Matthew Lee. *New Scientist*. September 1<sup>st</sup>-7<sup>th</sup>, 2007; 195(2619):25.  
<http://www.newscientist.com/article/mg19526195.100-quantum-free-will.html>



The Role of Several Kinases in Mice Tolerant to Delta-9 Tetrahydrocannabinol. M. Lee, D. Stevens, S. Welch. *Journal of Pharmacology and Experimental Therapeutics*. 2003 May; 305(2):593-9. <http://jpet.aspetjournals.org/content/305/2/593.full.pdf+html>

The Effects of Blocking Several Kinases in Mice Tolerant to  $\Delta^9$ -THC. Matthew C. Lee, David L. Stevens and Sandra P. Welch. Virginia Academy of Sciences May 1999.



Reversing  $\Delta^9$ -THC Antinociceptive Tolerance by Inhibiting the Phosphorylation of the CB1 Receptor. Matthew C. Lee, David L. Stevens and Sandra P. Welch. FASEB, 1999.



The Role of Several Kinases in Mice Tolerant to  $\Delta^9$ -THC. Matthew C. Lee, David L. Stevens and Sandra P. Welch. International Cannabinoid Research Society, 1999.

## VII. HONORS AND AWARDS



Distinguished Service Award. Virginia Commonwealth University.



University Leadership Award. Virginia Commonwealth University.



Local Association President's Award. Virginia Pharmacist's Association.



Professionalism Award. American Pharmaceutical Association/McNeil Consumer Products.



ALLEN & HANBURY'S  
The traditional representative of the  
Classical Tradition

Allen and Hanbury's Pride in Pharmacy Scholarship Award.

## VIII. VOLUNTEER ACTIVITIES

Physician Volunteer, Fan Free Clinic, Richmond, VA.

Foundations of Clinical Medicine Assistant Instructor.

Professionalism Workshop Group Leader.

Virginia Pharmacist's Association Board of Directors.

Speaker's Bureau for the Pitt County (North Carolina) AIDS Service Organization (PICASO).

## **IX. PROFESSIONAL MEMBERSHIP**



American College of Clinical Pharmacology



American College of and Occupational and Environmental Medicine



American Medical Association



American Pharmacists Association



Medical Society of Virginia



American Society of Pharmacy Law

Richmond Academy of Medicine




### CERTIFICATE OF DELIVERY

I hereby certify that on the 14th day of September 2013, I caused to be mailed and faxed a true and correct copy of the foregoing to the following:

Randall K. Spencer  
FILLMORE, SPENCER LLC  
Attorneys for Defendant  
3301 North University Ave.  
Provo, Utah 84604  
Fax: (801) 426-8208

Susanne Gustin  
WELL FARGO CENTER  
299 South Main Street, Suite 1300  
Salt Lake City, UT 84111  
Fax: (801) 536-3300

  
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Legal Secretary