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12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF WASHINGTON

14 UNITED STATES,)
15 Plaintiff,)
16 vs.)
17)
18 KARL F. THOMPSON, JR.,)
19 Defendant.)

NO. 09-0088-FVS

**United States’ Second Notice of Initial
Disclosures of Expert Witnesses &
Testimony**

20
21 Plaintiff, United States of America, by and through James A. McDevitt, United
22 States Attorney for the Eastern District of Washington, and Timothy M. Durkin,
23 Assistant United States Attorney for the Eastern District of Washington, and Victor
24 Boutros, Trial Attorney, U.S. Department of Justice (Washington D.C.), submits the
25 following supplement to its initial notification pursuant to Fed.R.Crim.P. 16(a)(1)(G)
26 of its intent to call one or more witnesses at the time who may asked to provide expert

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1 testimony in their areas/fields of expertise in order to aid and assist the jury in
2 understanding the evidence in the case.

3 **I. RULE 16(a) Expert Disclosures**

4 The United States identifies the following witnesses who, due to their training,
5 education and/or experience, may be called at the time of trial and may be allowed to
6 provide expert opinion evidence to aid and assist the jury in its understanding of the
7 various medical concepts and/or issues involved in this case:

8 **1. Melissa Allman (formerly Leffler), ARNP, Community Health**
9 **Association of Spokane.**

10 Ms. Allman, ARNP, is a fact witness who also has expert medical training and
11 experience in the mental health field. Mental Health Nurse Practitioner Allman
12 provided a mental health assessment and treatment to Mr. Zehm shortly before the
13 March 18, 2006, in-custody death incident involving Defendant Thompson. Ms.
14 Allman may be called at trial to dispel Defendant's and his counsel's claim that Otto
15 Zehm "clearly understood" Officer Thompson's alleged two "quick" verbal
16 commands, provided immediate, defiant verbal answers in response to Defendant's
17 commands, and was "verbally" and "physically" aggressive toward Officer Thompson

18 In the event the Court allows the Defense admission of evidence related to Mr.
19 Zehm's alleged post-initial use of force "excited delirium" (while restrained) episode,
20 the United States anticipates that, in addition to factual testimony, this designated
21 expert may be asked to provide the following expert testimonials:

- 22
- At the time of her February 13, 2006, examination, Otto Zehm was cognitively
23 delayed and was slow in responding verbally;
 - Otto Zehm suffered from schizophrenia and, by patient history, was first
24 diagnosed in approximately 1990;
- 25

- 1 • Otto Zehm reported cutting back on his Zyprexa medication;
- 2 • Otto Zehm completed high school through the assistance of special education
- 3 classes;
- 4 • Otto Zehm was employed as a janitor and worked for the same employer the
- 5 past five (5) years;
- 6 • Otto Zehm appeared to be suffering from a cognitive impairment (i.e., cognitive
- 7 delay) in addition to a history of schizophrenia symptoms;
- 8 • Otto Zehm had difficulty maintaining conversation with Nurse Practitioner
- 9 Allman during the course of her exam;
- 10 • Otto Zehm avoided eye contact with Nurse Practitioner Allman during the
- 11 course of her exam;
- 12 • Otto Zehm's mental thought processes were "slow" and he had difficulty
- 13 concentrating and responding to questions;
- 14 • Otto Zehm was depressed, withdrawn and reported spending time alone,
- 15 isolated;
- 16 • Mr. Zehm was not verbally aggressive; he was not physically aggressive; he
- 17 avoided eye contact; his cognitive processes were delayed; he had difficulty
- 18 with conversations; and his verbal responses were slow;

19 These opinions are based on Nurse Practitioner Allman's education, training and
20 experience in the mental health field, her examination and care of Mr. Zehm, Mr.
21 Zehm's mental health records at Community Health Association of Spokane
22 (CHAS), and Spokane Mental Health Records. All of these records and Ms.
23 Allman's CV have been provided to Defendant. The United States and/or Ms.
24 Allman, who is a combined fact-expert witness, reserve the right to supplement
25 and/or modify these disclosures as this case, the United States' on-going

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1 investigation, and discovery continues.

2 **2. Dr. Richard Lambert, Pulmonary Specialist, Spokane,**
3 **Washington.**

4 Dr. Lambert is a board certified physician specializing in Internal Medicine
5 and Pulmonology and has been practicing medicine in Spokane for the past twenty-
6 three years. Dr. Lambert provided critical care to Otto Zehm the night of March 18,
7 2006, and subsequently at Deaconess Medical Center.

8 His initial involvement in the case was a result of being contacted and
9 requested for consultation by Dr. Scott Edminster. Dr. Lambert recalled that there
10 was a lengthy resuscitation effort (i.e., approximately two (2) hours) by Dr.
11 Edminster and his ER trauma team that was ultimately successful in sustaining a
12 heartbeat. Based on conversations with Dr. Edminster and the noteworthy presence
13 of local law enforcement, it was Dr. Lambert's impression that there were legal
14 considerations to the Spokane Police Department extending from the involved
15 altercation, which likely influenced the duration of resuscitation efforts.

16 Dr. Lambert may testify as a fact witness on what he observed and to the
17 treatment and care that he provided Mr. Zehm. Dr. Lambert's medical reports and
18 the FBI 302 report of interview have been previously provided to Defendant's
19 counsel.

20 The United States does not anticipate calling Dr. Lambert to provide any expert
21 opinions beyond his objective, factual, medical findings. Therefore, no further Rule
22 16 expert disclosure is required. In the mean time, the United States has produced to
23 Defendant all medical records, written reports, notes, and Jencks statements in its
24 possession. A CV has been requested and will be provided. The United States
25 reserves the right to change its designation and to provide further expert opinion
26

1 disclosures in the event the Court allows certain defense proffered “excited delirium”
2 evidence at trial.

3
4 **3. Dr. Mark Terry, Radiologist, Spokane, Washington.**

5 Dr. Terry is a licensed radiologist physician in the State of Washington. He
6 was working for the Deaconess Medical Center in its Radiology Department on
7 March 18, 2006. Dr. Terry’s opinions and the basis and/or reasons for those opinions
8 are reflected in Mr. Zehm’s medical records and radiology studies that have been in
9 Defendant’s and his counsel’s possession for more than three (3) years. *See also Ct.*
10 *Rec. # 58 (October 2, 2009)*. As previously indicated, the United States anticipates
11 that if Dr. Terry is called to testify that his testimony will be consistent with his
12 detailed medical reports and/or any FBI 302 report summarizing any interview. The
13 United States has produced a CV.

14 The United States anticipates Dr. Terry providing in addition to his factual
15 testimony, one or more of the following expert testimonials:

- 16 • CT scans on March 18 and March 19, 2006, revealed diffuse edema (swelling)
17 of both cerebral hemispheres, likely resulting in transtentorial herniation.

18 A detailed medical record reflecting Dr. Terry’s medical findings, diagnosis and
19 treatment has been previously provided to Defendant. *See Otto Zehm’s Hospital*
20 *Records*. These records have been in the Defendant’s co-counsel’s possession since
21 April of 2006 and Mr. Oreskovich’s possession since early fall, 2009. Dr. Terry’s
22 opinions are based on his education, training and experience, and his review of Mr.
23 Zehm’s medical records and radiographic studies that are referenced in his written
24 reports. As indicated, all of these records and Dr. Terry’s CV have been provided to
25 Defendant.

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1 The United States and/or Dr. Terry, who is a combined fact-expert witness,
2 reserve the right to supplement and/or modify these disclosures as this case, the
3 United States' on-going investigation, and discovery continues.

4
5 **4. Dr. Scott Edminster, M.D.**

6 Dr. Edminster is the Director of the City of Spokane Fire Department's
7 Medical Department and is certified in emergency medicine. Dr. Edminster may
8 testify as both a fact and expert witness as provided under the rules of evidence. Dr.
9 Edminster's CV has been previously provided and/or been made available to
10 Defendant. It is anticipated that Dr. Edminster will testify consistent with the reports
11 he generated following acute emergency room care provided to Mr. Zehm on the
12 night of March 18, 2006, and in a manner consistent with statements-opinions that he
13 provided during FBI interviews. It is anticipated that Dr. Edminster may testify to
14 one or more of the following expert testimonials at trial:

- 15 • Multiple law enforcement personnel assisted in the ambulatory transport of
16 Mr. Zehm to the ER;
- 17 • Mr. Zehm was in an extreme state of cardiac-pulmonary arrest upon arrival,
18 and ER medical personnel administered a lengthy effort of resuscitation that
19 ultimately resulted in the return of a pulse;
- 20 • During the course of providing medical care and in getting a history provided
21 by SPD, SFD, and AMR personnel at the hospital, Dr. Edminster learned of
22 and observed multiple contusions consistent with baton strikes to Mr. Zehm's
23 body;
- 24 • A series of CT scans were ordered by Dr. Edminster, including one of Mr.
25 Zehm's head and neck, following the history of baton strikes being deployed
26 and the ER physician's observation of an injury to Mr. Zehm's upper right
27 forehead, which caused the ER physician concern that Mr. Zehm sustained

1 blunt force trauma to his head;

2 These opinions are based upon Dr. Edminster's education, training and experience,
3 and his examination and care of Mr. Zehm, and Mr. Zehm's medical records from
4 Deaconess Medical Center, which have in Defendant's co-counsel's possession since
5 approximately April 2006 and in Mr. Oreskovich's possession since early fall 2009.

6 The United States and/or Dr. Edminster, a combined fact-expert witness,
7 reserve the right to supplement and/or modify these disclosures as this case, the
8 United States' ongoing investigation, and the discovery disclosures in this case
9 progresses.

10 **5. Dr. Timothy Bax, M.D., Trauma Surgeon, Sacred Heart Doctor's**
11 **Bldg., Spokane, WA.**

12 Dr. Robert Bax is a Trauma and Thoracic Surgeon who provided critical care
13 and treatment to Otto Zehm on the evening of March 18, 2006, and following. Dr.
14 Bax's CV has been disclosed to Defendant. Dr. Bax may testify both as a fact and
15 an expert witness, and may provide testimony and opinions that are consistent with
16 his medical report (s) of the acute medical care that he provided to Mr. Zehm on
17 March 18, 2006, and/or consistent with statements and/or opinions provided to the
18 FBI during its investigation.

19 Dr. Bax may also testify to one or more of the following expert testimonials at
20 the time of trial:

- 21
- 22 • During the late evening hours of March 18, 2006, Mr. Zehm underwent a
23 lengthy resuscitation effort in the emergency room that was directed by Dr.
24 Edminster and other attending ER personnel;
 - 25 • A CT scan of Mr. Zehm's head reflected mild cerebral edema with no
26 evidence of internal (i.e., within the brain) bleeding or internal trauma. The

1 lack of intracranial evidence of a traumatic (death related) brain injury does
2 not, however, equate to Mr. Zehm not having been struck in the head with a
3 baton and/or or sustaining a serious concussive brain injury;

- 4 • Dr. Bax may testify that certain CT findings as well as forensic pathological
5 findings on Mr. Zehm are consistent with blunt force (baton) trauma to Mr.
6 Zehm's head;
- 7 • Dr. Bax may also opine that blunt force trauma to Mr. Zehm's head would
8 have likely resulted in a concussion and/or brain injury, even though such an
9 injury would not have been detectable by CT scan as there would not
10 necessarily be bleeding under the skull into the brain from a concussive-insult
11 injury.

12 Dr. Bax's opinions are based on his education, training and experience, his
13 examination of Otto Zehm, his review of diagnostic studies performed on Mr. Zehm,
14 and his and the Deaconess Medical Center records and reports, all of which have
15 been previously provided to Defendant and his various counsel.

16 The United States and/or Dr. Bax reserve the right to supplement and/or
17 modify these opinions as more information in this case becomes available through
18 the United States continuing investigation and/or when Defendant actually provides
19 discovery disclosures.

20 **6. Dr. Sally Aiken, M.D., Forensic Pathologist, Spokane County
21 Medical Examiner's Office, Spokane, Washington.**

22 Dr. Aiken is a certified forensic pathologist and has been the Spokane Medical
23 Examiner and/or Chief Medical Examiner for approximately the last ten years. She
24 has performed more than six (6) thousand autopsies and is qualified to render
25 opinions in the area of cause of death, contributing causes of death, and injury
26 causation. A copy of her CV reflecting and her class rank has been previous

Summary of Anticipated Opinions.

It is anticipated that Dr. Aiken will testify in a manner consistent with her autopsy findings and reports of May 22, 2006, and August 24, 2006, as well as opinions provided to the FBI during its investigation, and any sworn testimony or statements, and/or other County Medical Examiner records and reports. The United States anticipates that Dr. Aiken will opine that Mr. Zehm sustained blunt force trauma to his head during the early evening of March 18, 2006. Using reasonable medical certainty, on a more probable than not basis, and based on her forensic examination and other materials provided to her by the Spokane Police Department as well as the United States Department of Justice, it is anticipated that Dr. Aiken may testify, but is not limited to one or more of the following expert opinions concerning forensic pathology and injury causation:

- There is forensic pathological evidence of a baton strike above Mr. Zehm's right eye, on the forehead and a tram track injury that matches the straight baton that is reported to have been used by Officer Thompson on the night of the incident;
- The tram track marks above Mr. Zehm's right eye - forehead are consistent with other tram track mark injuries that were pathologically and forensically indentified in other areas of Mr. Zehm's body (i.e., baton strikes to torso and extremities);
- There is forensic pathological evidence of a second blunt force trauma to the top of Mr. Zehm's head. Forensic evidence of the injury located almost directly on the top of Mr. Zehm's head is confirmed by the presence of a hematoma beneath his scalp on the subgaleal cap. Given the hematoma involved and the location of the injury, the trauma was more likely caused by a baton strike to that location versus Mr. Zehm striking a counter, falling to the ground, or the pulling of his hair;
- There is forensic pathological evidence of a third blunt force trauma injury to

1 Mr. Zehm's head, located slightly above his left ear. The subgaleal
2 hemorrhage in this location covers a three-inch area beneath Mr. Zehm's
3 scalp. This injury is also consistent with blunt force trauma and could have
4 been caused by a glancing baton blow to that location;

- 5 • It is Dr. Aiken's opinion that the blunt force trauma and insult to Mr. Zehm's
6 head is considered a serious medical injury. However, it was her opinion and
7 remains her expert opinion that these serious blunt force impacts to Mr.
8 Zehm's head did not cause nor contribute to the etiology of Mr. Zehm's death,
9 which Dr. Aiken still attributes to hypoxic encephalopathy resulting from
10 cardiopulmonary arrest while restrained for a prolonged period of time by
11 SPD personnel in a total appendage, prone restraint, for a reported episode of
12 excited or agitated delirium;
- 13 • It is Dr. Aiken's further opinion that Mr. Zehm's death was not likely to occur
14 without being physically detained by law enforcement and subsequently
15 placed by law enforcement in a prolonged, prone total appendage restraint
16 position, and therefore, for Medical Examiner death classification, Mr.
17 Zehm's death is deemed a homicide under Washington law.
- 18 • Dr. Aiken will also testify that blunt force traumatic injuries sustained by Mr.
19 Zehm are forensically temporally related in time and location to law
20 enforcement's March 18, 2006, reported use of force on Mr. Zehm, and at
21 least one head-baton injury is consistent with other identified baton related
22 pattern injuries that were forensically confirmed to be present on Mr. Zehm's
23 body at autopsy.
- 24 • That the traumatic injuries to Mr. Zehm's head are consistent with blunt force
25 trauma (i.e., a wood baton strike), and notwithstanding the belief of law
26 enforcement personnel's and/or lay persons, who are not trained in and/or
27 educated in the area of medicine, forensic pathology, and/or injury causation,
that all blunt force trauma to the head (i.e., baton strikes, among other blunt
instrument) will cause lacerations and significant external bleeding. This is in
error because not all blunt force trauma (i.e., a baton strike) will result in
lacerations and/or significant external and/or internal bleeding. Among other
considerations relevant to this case is that Mr. Zehm had significantly thick
and lengthy hair, which provided additional protection to his head and scalp,

1 and helped mitigate the risk of laceration and significant external bleeding;

- 2
- 3 • Dr. Aiken will testify that any preliminary discussions that she would have
 - 4 had relative to cause and origin of injury during the course of her initial
 - 5 autopsy examination would have just been preliminary and subject to further
 - 6 review and finalization as reflected in her final autopsy reports.

7 Dr. Aiken's autopsy reports are already in Defendant's possession and are

8 incorporated herein as Exhibit #57. Dr. Aiken's Curriculum Vitae is incorporated

9 herein as Exhibit #58. Dr. Aiken reserves the right to change, modify, and/or

10 supplement her opinions as this case and new information becomes available and as

11 this case and discovery progresses.

12 **7. Dr. Harry L. Smith, PhD, M.D., Biodynamic Research Corporation,
San Antonio, Texas.**

13 Dr. Harry Smith is an expert in the area of mechanics of injury and injury

14 causation. Dr. Smith has a Ph.D. in Nuclear Engineering from Texas A & M

15 University and an M.D. from the University of Texas (Health Science Center at San

16 Antonio). Dr. Smith is board certified in Radiology and Nuclear Medicine, and

17 maintains an active emergency room (trauma) medical practice.

18 Dr. Smith is also a nationally recognized injury causation expert and has been

19 qualified as an expert in courtrooms across the United States. Notably, he provided

20 injury causation testimony in the seminal police misconduct civil rights case of *U.S.*

21 *v. Koon (SDCA)*, which is more commonly known as the "Rodney King" civil rights

22 excessive force case in which certain LAPD officers were acquitted in state court of

23 underlying state assault charges, but were later prosecuted by the United States

24 Department of Justice (FBI, Crim. Civ. Rts. Div., and US Attorney's Office) and

25

26

1 convicted of certain federal civil rights violations in Federal District Court. *See*
2 *Koon v. United States*, 518 U.S. 81, 100, 116 S.Ct. 2035, 135 L.Ed.2d 392 (1996).

3 Dr. Smith is also a retired Lt. Col. with the United States Army Reserve. He
4 has been recognized and qualified as an expert in the area of biomechanics of trauma
5 and injury causation. It is anticipated that Dr. Smith will provide opinions based on
6 his independent and objective forensic review of the medical, pathological and other
7 objective evidence developed in the case.

8 Dr. Smith's opinions may include, but may not necessarily be limited to the
9 following expert testimonials which will be based on a reasonable degree of medical
10 and engineering certainty:

- 11 • There are four (4) identifiable blunt force impacts to Mr. Zehm's calvarium
12 (upper skull) that are consistent with baton strikes.

13 The Spokane Medical Examiner's autopsy report and photographs identify
14 focal impacts to the top and top left of Mr. Zehm's calvarium (e.g., skull), as
15 well as a focal impact to the right supra orbital aspect of Zehm's frontal bone.

16 There is objective medical confirmation of the injury to the top left calvarial
17 injury by CT scan as well as additional impact in the form of localized scalp
18 soft tissue swelling of the right temporal area.

- 19 • The impacts to Mr. Zehm's calvarium initiated a cascade of brain insults
20 which were synergistic (i.e., repetitive insults that together resulted in greater
21 overall head injury than each impact in isolation). These impacts constitute
22 serious medical injuries.
- 23 • There is also objective medical evidence confirming at least one (1) impact to
24 the right side of Mr. Zehm's neck.

25 Computerized tomography reveals significant swelling of right neck without
26 evidence of medical intervention at this level. Therefore, there is objective
27 medical evidence of blunt force trauma to Mr. Zehm's right neck.

- 1
- 2 • The impacts found on Mr. Zehm’s head were delivered by Officer Karl Thompson’s baton.
- 3

4 The basis for this opinion is that the on-scene video reflects multiple vertical
5 baton strikes by Officer Thompson to Mr. Zehm. Dr. Aiken identified Officer
6 Thompson’s baton as the instrument matching the morphology of the injury to
7 the frontal skull bone above the right eyebrow of Mr. Zehm. Percipient
8 witnesses on-scene described Officer Thompson as having targeted overhand,
9 vertical baton strikes at Mr. Zehm’s head, neck, and upper torso.

10 Notably, the night of the March 18, 2006, incident, on-scene paramedics
11 documented getting patient-event history from on-scene responding SPD
12 patrol personnel for the purpose of providing emergency trauma and medical
13 care. This paramedic report, drafted the night of the incident, provides the
14 following:

15 **“CAUSE OF INJURY OR ILLNESS: . . . *pt [Zehm] was tasered twice and hit in the upper torso, neck and head by a night stick per SPD.* Pt was then hand cuffed prone on the ground and then stopped breathing and went into full arrest.”**

- 16 • The potential argument that the other impacts to Mr. Zehm’s calvarium were
17 created from falling objects or from bumping a “counter” suffers from
18 multiple shortcomings, including but not limited to the mechanical dynamics
19 of Mr. Zehm falling on the top of the head is not within the scope of the
20 reported altercation, with or without a takedown.

21 Further still, there is no physical description or evidence provided by any on-
22 scene law enforcement officer, including Officer Thompson, indicating that
23 Mr. Zehm hit a shelf or fell on top of his head. Further, there is no physical
24 evidence reflected in either the on-scene video or provided by any percipient
25 witnesses to support such a contention.

26 Dr. Smith’s opinions are based on a medical and engineering analysis of the incident
27 using information available to date, including Dr. Smith’s own inspection of the

1 police baton involved in the incident. Dr. Harry Smith's CV, along with his formal
2 written reports and the materials that he has reviewed and considered has been
3 previously disclosed to the Defendant.

4 Dr. Smith reserves the right to supplement and/or modify his expert witness
5 testimonials should further material information be developed as this case and
6 discovery progresses.

7 **8. Dr. Randy Otterholt, DDS, Spokane, Washington.**

8 Dr. Otterholt is a fact witness who also has expert medical training and
9 experience in dentistry and mental health. Dr. Otterholt was Otto Zehm's dentist and
10 met with him shortly before Mr. Zehm's March 18, 2006, excessive use of force and
11 in-custody death incident involving Defendant Thompson. Dr. Otterholt may be
12 called at trial to dispel Defendant's and his counsel's claim that Otto Zehm "clearly
13 understood" Officer Thompson's alleged two "quick" verbal commands, provided
14 immediate, defiant verbal answers in response to Defendant's commands, and was
15 "verbally" and "physically" aggressive toward Officer Thompson

16 In that regard, the United States anticipates that, in addition to factual
17 testimony, this designated fact-expert witness may be asked to provide the following
18 expert testimonials:

- 19
- 20 • At the time that Otto Zehm appeared at his office on March 14, 2010, without a
21 scheduled appointment, Mr. Zehm was cognitively delayed and slow in
22 responding verbally to questions;
 - 23 • Otto Zehm suffered from schizophrenia and appeared to be off of his meds, but
24 was not verbally or physically aggressive;
 - 25 • Otto Zehm appeared to be suffering from a cognitive impairment (i.e., cognitive
26 delay) and slow mental processing;

- 1 • Otto Zehm had difficulty maintaining a rational conversation;
- 2 • Otto Zehm avoided eye contact with Dr. Otterholt and his staff;
- 3 • Otto Zehm’s mental thought processes were “slow” and he had difficulty
- 4 concentrating and responding to questions;
- 5 • Mr. Zehm was not verbally aggressive; he was not physically aggressive; he
- 6 avoided eye contact; his cognitive processes were delayed; he had difficulty
- 7 with conversations; and his verbal responses were slow;
- 8 • Dr. Otterholt has reviewed the Zip Trip store security video and has opined that
- 9 the Officer did not provide Otto Zehm sufficient time to react to his rapid
- 10 advance and baton deployment, and/or any verbal commands the Officer claims
- 11 he gave to Zehm (i.e., the Officer delivered his first baton strike within seconds
- 12 of engaging Zehm).

13 These opinions are based on Dr. Otterholt’s education, training and experience, and
14 his interaction with Mr. Zehm just days before Officer Thompson’s forcible
15 detention of Mr. Zehm on a “suspicious circumstance” complaint. Dr. Otterholt’s
16 qualifications, records and other materials have been provided to Defendant. The
17 United States and/or Dr. Otterholt, who is a combined fact-expert witness, reserve
18 the right to supplement and/or modify these disclosures as this case, the United
19 States on-going investigation, and discovery progresses.

20 **Combination Fact & Expert Witnesses.**

21 The United States may call one or more of Mr. Zehm’s treating health care
22 providers to provide factual testimony relative to their exams, findings, care and/or
23 treatment of Mr. Zehm.

24 It is anticipated that these combination fact-expert witnesses will testify in a
25 manner consistent with the medical reports that they prepared and/or consistent with
26

1 statements and/or provided to the FBI during the course of interviews by one or
2 more of the subject health care professionals and providers.

3 **II. Conclusion**

4 The United States reserves the right to supplement its disclosures of expert
5 witnesses as more information becomes available as this case, the United States'
6 investigation, and discovery progresses. The United States further reserves the right,
7 as with all of its expert disclosures, to identify such other and further expert
8 witnesses that it may call at trial in response to and/or in rebuttal to any conflicting
9 opinions and/or testimony provided by one or more defense witnesses.

10 RESPECTFULLY SUBMITTED this 26th day of March 2010.

11 JAMES A. MCDEVITT
12 United States Attorney (EDWA)

13 *s/ Tim M. Durkin*
14 TIMOTHY M. DURKIN
15 Assistant U.S. Attorney
16 Attorneys for Plaintiff United States
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Certificate of ECF and/or Mailing

I hereby certify that on the date of the electronic filing of the foregoing pleading with the Clerk of the Court using the CM/ECF System, that the CM/ECF System will send notification to the following CM/ECF participants:

Carl Oreskovich, Esq.

And to the following non CM/ECF participants: N/A

s/ Timothy M. Durkin
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