

In Re Employee Trial IBEW Discipline Case No. 3870-22 (Darren
Drew)

February 7, 2023

1 MTA - LONG ISLAND RAIL ROAD
-----X

2

3 IBEW Discipline Case No. 3870-22

4

5 EMPLOYEE: DAREN DREW

6 -----X

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9 300 Old Country Road
10 Mineola, New York 11501

11 February 7, 2023
12 9:00 a.m.

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February 7, 2023

1 A P P E A R A N C E S :

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3 MTA LONG ISLAND RAIL ROAD

4 300 Old Country Road

5 Mineola, New York 11501

6 BY: SETH MAGGIORE, Hearing Officer,
7 MANAGER-TRIAL OFFICE, LONG ISLAND RAIL
ROAD, LABOR RELATIONS DEPARTMENT

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11 ALSO PRESENT:

12 DAREN DREW, EMPLOYEE

13 RICARDO SANCHEZ, GENERAL CHAIRMAN FOR THE
14 ORGANIZATION, IBEW

15 MICHAEL COLOMBO, FINANCIAL SECRETARY FOR THE
16 ORGANIZATION, IBEW

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17 MOHAMMED MUJTABA, CARRIER WITNESS

18 FREDY HO, ORGANIZATION WITNESS

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1 MR. MAGGIORE: Good morning.
2 Today is February 7, 2023. The time
3 is approximately 10:12 a.m.

4 This trial is being held at Long
5 Island Railroad Medical Facility
6 located at 300 Old Country Road,
7 Mineola, New York.

8 My name is Seth Maggiore, and
9 I'm manager of the trial office. I'll
10 be serving as the trial officer.

11 Present at this time is the
12 charged employee, Daren Drew, along
13 with his representative Mr. Ricardo
14 Sanchez with the IBEW. Also present
15 in the room is Michael Colombo,
16 Financial Secretary for the IBEW. And
17 Elbia Brumit from LH Reporting.

18 Mr. Drew, you are being afforded
19 this trial in connection with charges
20 outlined in the Notice of Trial. That
21 has been marked as Carrier Exhibit 1.

22 Do you waive the reading of the
23 Notice of Trial?

24 MR. DREW: Yes.

25 MR. MAGGIORE: Mr. Sanchez, does

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1 your organization waive the reading of
2 the Notice of Trial?

3 MR. SANCHEZ: Yes.

4 MR. MAGGIORE: After this trial
5 was put in recess on November 16,
6 2022, a trial continuation notice was
7 sent to Mr. Drew via certified and
8 first class mail to 219-53 Ryan Road,
9 Laurelton, New York 11413. A copy was
10 also sent to the organization.

11 There's a one-page document
12 bearing certified mail numbers
13 70220410000344311491. It is dated
14 November 29, 2022.

15 Now handing copies to Mr. Drew
16 and Mr. Sanchez for their review.

17 Mr. Drew, did you receive a copy
18 of this trial continuation notice?

19 MR. DREW: Yes.

20 MR. MAGGIORE: Mr. Sanchez, did
21 the organization receive a copy of the
22 trial continuation notice?

23 MR. SANCHEZ: Yes.

24 MR. MAGGIORE: If there are no
25 objections, I will mark this trial

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1 continuation notice as Carrier Exhibit
2 11.

3 Any objections?

4 MR. SANCHEZ: None.

5 MR. MAGGIORE: Mr. Drew, any
6 objections?

7 MR. DREW: None.

8 (Trial Continuation Notice was
9 marked as Carrier Exhibit 11 for
10 identification, as of this date.)

11 MR. MAGGIORE: Next, I have the
12 USPS tracking history, bearing the same
13 certified number as Carrier
14 Exhibit 11. I'll show this to
15 Mr. Drew, Mr. Sanchez for their
16 verification that the certified
17 numbers match.

18 MR. DREW: Yes.

19 MR. MAGGIORE: If there are no
20 objections, I'll mark and enter this
21 as Carrier Exhibit 11A.

22 Any objections?

23 MR. SANCHEZ: None.

24 MR. MAGGIORE: Mr. Drew, any
25 objections?

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1 MR. DREW: None.

2 (Certified Mail Receipt was
3 marked as Carrier Exhibit 11A for
4 identification, as of this date.)

5 MR. MAGGIORE: Next, I have the
6 USPS tracking history bearing the same
7 certified number as Carrier Exhibit 11
8 and 11A.

9 I'm showing copies -- excuse me
10 one moment.

11 Did I identify the previous
12 exhibit as tracking history or
13 certified mail receipt?

14 MR. DREW: I think you said
15 tracking.

16 MR. MAGGIORE: I said tracking?
17 I meant certified mail receipt. My
18 apologies. 11A is the certified mail
19 receipt.

20 So next, I have the USPS
21 tracking bearing the same certified
22 mail numbers as Carrier Exhibit 11 and
23 11A.

24 I'm showing copies to Mr. Drew,
25 Mr. Sanchez for their verification

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7

1 that the certified numbers match.

2 If there are no objections, I'll
3 mark this as Carrier Exhibit 11B.

4 Any objections?

5 MR. SANCHEZ: None.

6 MR. DREW: None.

7 MR. MAGGIORE: Also note for the
8 record, Carrier Exhibit 11B is a
9 two-page document.

10 (USPS Tracking was marked as
11 Carrier Exhibit 11B for
12 identification, as of this date.)

13 MR. MAGGIORE: Additionally, I
14 note for the record that the first
15 class mailing of Carrier Exhibit 11
16 was not returned to the Carrier as
17 undelivered.

18 Next, I have a second trial
19 continuation notice which was sent to
20 Mr. Drew via certified and first class
21 mail to 219-53 Ryan Road, Laurelton,
22 New York 11413. A copy of which was
23 also sent to the organization.

24 It's one-page document bearing
25 certified mail number

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1 70220410000344303830. It is dated
2 January 11, 2023.

3 I'm now handing copies to
4 Mr. Drew, Mr. Sanchez for their
5 review.

6 Mr. Drew, did you receive a copy
7 of this trial continuation notice?

8 MR. DREW: Yes.

9 MR. MAGGIORE: Mr. Sanchez, did
10 the organization receive a copy of
11 this trial continuation notice?

12 MR. SANCHEZ: Yes.

13 MR. MAGGIORE: If there are no
14 objections, I will mark and enter this
15 as Carrier Exhibit 12.

16 Any objections?

17 MR. SANCHEZ: None.

18 MR. DREW: No.

19 (Trial Continuation Notice was
20 marked as Carrier Exhibit 12 for
21 identification, as of this date.)

22 MR. MAGGIORE: Next, I have the
23 certified mail receipt bearing the
24 same certified mail number as Carrier
25 Exhibit 12.

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1 I'll show this to Mr. Drew,
2 Mr. Sanchez for their verification
3 that the certified numbers match.

4 If there are no objections, I'll
5 mark and enter this as Carrier
6 Exhibit 12A.

7 MR. SANCHEZ: No objections.

8 MR. DREW: No objections.

9 (Certified Mail Receipt was
10 marked as Carrier Exhibit 12A for
11 identification, as of this date.)

12 MR. MAGGIORE: Next, I have the
13 USPS tracking history bearing the same
14 certified numbers as 12 and 12A.

15 I'm showing copies to Mr. Drew
16 and Mr. Sanchez for their verification
17 that the certified numbers match.

18 If there are no objections, I
19 will mark and enter this as Carrier
20 Exhibit 12B.

21 Any objections?

22 MR. DREW: No objections.

23 MR. COLOMBO: The numbers don't
24 match.

25 MR. SANCHEZ: Oh yeah, this one

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10

1 doesn't.

2 MR. MAGGIORE: Tracking numbers
3 don't match?

4 MR. SANCHEZ: Yeah. This one --
5 this one should be 4430, the last
6 four. 3830. This is 40 -- this is
7 000 -- it starts 7022 is right,
8 04100410. Then it should be 000003,
9 and then it should be 4430. And it's
10 three -- it's like that, this one too.

11 MR. MAGGIORE: We are going to
12 take -- the time is approximately
13 10:20 a.m. We are going to take a
14 brief recess so we can get the correct
15 tracking information for this
16 document.

17 (At this time, a recess was
18 taken.)

19 MR. MAGGIORE: The time is
20 10:23 a.m. We are back on the record.

21 I'm providing the USPS tracking
22 history with the full certified
23 mailing number to Mr. Drew and Sanchez
24 for their review now.

25 If there are no objections, I'll

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11

1 mark and enter this as Carrier
2 Exhibit 12B.

3 MR. SANCHEZ: No objections.

4 MR. DREW: No objections.

5 (USPS Tracking History was
6 marked as Carrier Exhibit 12B for
7 identification, as of this date.)

8 MR. MAGGIORE: I note for the
9 record that it is a two-page document.
10 Also, I'd like to note for the record
11 that the first class mailing was not
12 returned to the Carrier as
13 undelivered.

14 Mr. Drew, would you please
15 identify yourself for the record with
16 your full name and IBM number.

17 MR. DREW: My name is Daren
18 Drew. IBM number is 50112.

19 MR. MAGGIORE: Before
20 continuing, I will remind you of your
21 rights for this trial.

22 You're entitled to be
23 represented by a duly accredited union
24 representative subject to the terms
25 and conditions of your applicable

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1 agreement without cost to the Carrier.

2 Do you understand that right?

3 MR. DREW: Yes.

4 MR. MAGGIORE: Who would you
5 like to represent you?

6 MR. DREW: Mr. Ricardo Sanchez.

7 MR. MAGGIORE: You also have the
8 right to summon any relevant person or
9 produce any relevant evidence that
10 will enable you to defend yourself
11 against the charges placed against you
12 at no cost to the Carrier.

13 Do you understand that right?

14 MR. DREW: Yes.

15 MR. MAGGIORE: You are also
16 entitled to cross-examine any
17 witnesses, examine any evidence that
18 may be produced by the Carrier or have
19 your representative do so on your
20 behalf.

21 Do you understand that right?

22 MR. DREW: Yes.

23 MR. MAGGIORE: Mr. Drew, are you
24 ready to continue with the trial
25 today?

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1 MR. DREW: Yes.

2 MR. MAGGIORE: Mr. Sanchez, is
3 the organization ready to continue
4 with the trial today?

5 MR. SANCHEZ: Yes.

6 MR. MAGGIORE: The time is
7 approximately 10:25 a.m., and we are
8 going to take a brief recess in order
9 to bring in the Carrier's third
10 witness.

11 (At this time, a recess was
12 taken.)

13 ** WITNESS MOHAMMAD MUJTABA **

14 MR. MAGGIORE: The time is
15 approximately 10:42 a.m., and we are
16 back on the record.

17 We've been joined by the
18 Carrier's third witness, who is
19 appearing virtually via Microsoft
20 Teams.

21 Can you please identify yourself
22 for the record with your full name and
23 employee ID number.

24 THE WITNESS: Yeah. My first
25 name is Mohammad, last name Mujtaba.

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1 M-U-J-T-A-B-A. And my employee ID is
2 1215669.

3 MR. MAGGIORE: What is your
4 current position with the Long Island
5 Railroad?

6 THE WITNESS: I currently work
7 as assistant medical director.

8 MR. MAGGIORE: What are some of
9 your duties and responsibilities at
10 your current position?

11 THE WITNESS: Basically, I do
12 day-to-day clinical work, seeing
13 employees. And plus also work as a
14 medical review officer, MRO. Which
15 means I got to do the drug results.
16 And anything positive, call the
17 applicant and verify the results.

18 MR. MAGGIORE: How many years
19 have you been in your current
20 position?

21 THE WITNESS: As a physician or
22 as assistant medical director?

23 MR. MAGGIORE: Assistant medical
24 director.

25 THE WITNESS: About two and a

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1 half years.

2 MR. MAGGIORE: How many years
3 have you been a physician?

4 THE WITNESS: Two and a half
5 years.

6 MR. MAGGIORE: As a physician?

7 THE WITNESS: As a physician,
8 almost ten years.

9 MR. MAGGIORE: Ten years.

10 THE WITNESS: With MTA.

11 MR. MAGGIORE: You've been
12 called as a Carrier witness in regards
13 to the charges facing Daren Drew,
14 which have been marked as Carrier
15 Exhibit 1.

16 I e-mailed you this document. I
17 just ask that you take a moment to
18 review the charges now.

19 THE WITNESS: Yup.

20 MR. MAGGIORE: You have them?
21 Okay. Please take a moment to review
22 them.

23 MR. DREW: Yup.

24 MR. MAGGIORE: Mr. Drew, Mr.
25 Sanchez, do you waive the reading of

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1 the charges?

2 MR. SANCHEZ: Yes.

3 MR. DREW: Yes.

4 MR. MAGGIORE: Dr. Mujtaba, are
5 you familiar with Mr. Drew?

6 THE WITNESS: Yeah. I spoke to
7 him.

8 MR. MAGGIORE: Does he report to
9 you?

10 THE WITNESS: Does he report to
11 me, no.

12 MR. MAGGIORE: Are you involved
13 in his supervision?

14 THE WITNESS: No.

15 MR. MAGGIORE: Okay. Can you
16 explain how you are familiar with him.

17 THE WITNESS: Yeah. Basically,
18 MRO received his return-to-duty test
19 results, drug test results from the
20 lab. Which it was positive for the
21 substance. And I had to call him to
22 verify the results. That's how I'm
23 familiar with him.

24 MR. MAGGIORE: I also e-mailed
25 you a document that's been marked as

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1 Carrier Exhibit 10.

2 Are you familiar with that
3 document?

4 THE WITNESS: The CCF form,
5 right?

6 MR. MAGGIORE: Yes. It's
7 Carrier Exhibit 10.

8 THE WITNESS: Right.

9 MR. MAGGIORE: Can you explain
10 what this document is?

11 THE WITNESS: Yeah. It's
12 called -- CCF chain of physical form.
13 So whenever the employee applicant
14 came from drug testing, they have to
15 identify -- the technician and
16 identify themselves and what the
17 process is, and describe their
18 information on the form before they
19 can proceed with the drug test.

20 MR. MAGGIORE: Did you fill out
21 any portion --

22 THE WITNESS: I'm sorry.

23 MR. MAGGIORE: I'm sorry.

24 Continue.

25 THE WITNESS: So basically, show

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18

1 us what kind of drug test is done.
2 Employee number, including signature,
3 the date they came in, signature of
4 the technician performed the test.
5 Stuff like that.

6 MR. MAGGIORE: Did you fill out
7 any portion of this document?

8 THE WITNESS: Yeah. I fill out
9 the bottom portion, section six. And
10 assessment is needed, basically come
11 back positive, after the call the
12 employee applicant and whatever the
13 determination is, I have to write it
14 down and sign and date.

15 MR. MAGGIORE: Okay. The
16 portion section six discusses the
17 results of the test for the primary
18 specimen.

19 Can you please explain the
20 testing process for the primary
21 specimen.

22 THE WITNESS: The primary
23 specimen in terms of labs or here?

24 MR. MAGGIORE: In terms of when
25 the primary specimen is tested.

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1 THE WITNESS: Yes. So once it's
2 collected, it was sent to a lab
3 outside and then they analyze it with
4 the immunoassay. Which is initial
5 test, which is cheaper, faster.

6 And then if something came back
7 positive on the immunoassay, then they
8 have to confirm with GC/MS.

9 Basically, gas chromatography/mass
10 spectrometry. Which is the gold
11 standard for the confirmation of the
12 initial positive test.

13 MR. MAGGIORE: Okay. One
14 moment, Dr. Mujtaba.

15 What were the results of the
16 primary specimen test?

17 THE WITNESS: We usually can't
18 confirm results. So I'm assuming
19 positive for marijuana. So they
20 proceeded with the GC/MS to confirm
21 that. And once it's confirmed, then
22 they report it to us what drug it's
23 positive for.

24 MR. MAGGIORE: Are there any
25 documents to support your findings

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20

1 regarding the primary specimen?

2 THE WITNESS: We have the lab
3 report. I give a copy to you. It's
4 dated with all the information. It's
5 from Quest Diagnostics.

6 MR. MAGGIORE: So it's Quest
7 Diagnostics form, report date was --
8 it's signed at the bottom as June 13,
9 2022; is that correct?

10 THE WITNESS: That's when we
11 received that, right.

12 MR. MAGGIORE: I'm going to
13 provide a copy to Mr. Drew and
14 Mr. Sanchez and I will mark this as
15 Carrier Exhibit 13.

16 (Quest Diagnostics Report was
17 marked as Carrier Exhibit 13 for
18 identification, as of this date.)

19 MR. MAGGIORE: I note for the
20 record it's a one-page document.

21 Dr. Mujtaba, where did you get
22 that document from?

23 THE WITNESS: This is sent to us
24 directly from the lab.

25 MR. MAGGIORE: Okay. And can

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21

1 you confirm when you received it?

2 THE WITNESS: I'm sorry?

3 MR. MAGGIORE: When did you
4 receive the document?

5 THE WITNESS: I got it on
6 June 13th. That's when I called
7 Mr. Drew.

8 MR. MAGGIORE: Okay. Can you
9 identify where in this report the
10 results of Mr. Drew's tests are
11 indicated?

12 THE WITNESS: The middle
13 portion, with the urine substance
14 abuse panel --

15 MR. MAGGIORE: Dr. Mujtaba, can
16 you please slow down for the court
17 reporter.

18 THE WITNESS: I'm sorry.

19 If you look at the middle of the
20 page, it shows urine substance abuse
21 panel, if you go down the list, next
22 to marijuana, metabolite says
23 positive. And then if you go further
24 down, it gives the amount it was
25 detected.

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1 MR. MAGGIORE: Did you notify
2 Mr. Drew of these results?

3 THE WITNESS: Yes.

4 MR. MAGGIORE: How did you
5 notify Mr. Drew?

6 THE WITNESS: Basically, I
7 called him on that day and interviewed
8 him. And I also write my note on that
9 day, so you should have a copy of that
10 note. It's called Medical Review
11 Officer During Contact Verification
12 Sheet.

13 MR. MAGGIORE: Did you provide
14 copies of that?

15 THE WITNESS: Yeah. You should
16 have it.

17 MR. MAGGIORE: It's a two-page
18 document, correct?

19 THE WITNESS: Yes, sir, it is.
20 Double-sided, single-page.

21 MR. MAGGIORE: I'm going to
22 provide copies to Mr. Drew and
23 Mr. Sanchez. And I will mark this as
24 Carrier Exhibit 14.

25 (Medical Review Officer During

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1 Contact Verification Sheet was
2 marked as Carrier Exhibit 14 for
3 identification, as of this date.)

4 MR. MAGGIORE: Dr. Mujtaba, were
5 any other tests performed on the urine
6 specimen provided by Daren Drew on
7 June 7, 2022?

8 THE WITNESS: No. Basically, he
9 was doing the drug test, and we sent
10 it out to the lab.

11 MR. MAGGIORE: Okay. But were
12 any other tests requested after the
13 positive from the primary specimen?

14 THE WITNESS: Are you talking
15 about from Mr. Drew, yeah. The
16 employee had the option to request
17 split sample. So what we do when they
18 come in for drug test, we take one
19 specimen of urine and divide it into
20 two different bottles. Bottle A,
21 which is the primary specimen, 30 CC.

22 And bottle B, which is about 15
23 CC. Which is kept at the lab in case
24 the applicant requests split sample to
25 be tested at different lab, we can

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24

1 send that sample to different lab to
2 be -- get it confirmed, basically. Or
3 refuted.

4 MR. MAGGIORE: And did Mr. Drew
5 request a split sample?

6 THE WITNESS: Yeah, he did.

7 MR. MAGGIORE: Can you
8 explain --

9 THE WITNESS: You should have a
10 copy of that, also.

11 MR. MAGGIORE: Before we get to
12 that, I'd just like to ask you to
13 explain the testing process for the
14 split sample specimen.

15 THE WITNESS: For the split
16 sample, basically the other lab, they
17 test -- the confirmatory test,
18 basically GC/MS. And they look for
19 the presence of the metabolite or the
20 drug. They'll check for the --

21 It's basically by the DOT also.
22 Not a required test for -- only for
23 the qualitative result.

24 So tested for the presence of
25 the metabolite.

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1 MR. MAGGIORE: So what were the
2 results of the split sample specimen?

3 THE WITNESS: It was reconfirmed
4 as per the lab and the scientist. You
5 should have copy of both. I gave
6 already.

7 MR. MAGGIORE: Okay. You are
8 referring to the document that's
9 titled Forensic Drug Testing Custody
10 Control Form and has a stamp of
11 Labcorp, 69 1st Avenue, Raritan
12 Avenue, New Jersey on it; is that the
13 document?

14 THE WITNESS: Right, that one.
15 And there should be at the bottom,
16 says specimen -- specimen report also,
17 Labcorp.

18 MR. MAGGIORE: There's another
19 document -- document with Labcorp on
20 the upper left-hand corner?

21 THE WITNESS: Right.

22 MR. MAGGIORE: And that's the
23 document that says, "Split Sample
24 Specimen Report"?

25 THE WITNESS: Right. So that's

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1 the report. And that one is the
2 scientist copy, the scientist who
3 confirmed the test on this form.

4 MR. MAGGIORE: I will provide
5 copies of these to Mr. Sanchez and
6 Mr. Drew. Just for ease of reference,
7 I'm going to mark the custody control
8 form as Carrier Exhibit 15. And the
9 split sample report as Carrier
10 Exhibit 16.

11 (Custody Control Form was
12 marked as Carrier Exhibit 15 for
13 identification, as of this date.)

14 (Split Sample Report was marked
15 as Carrier Exhibit 16 for
16 identification, as of this date.)

17 MR. DREW: You said 15 and 16?

18 MR. MAGGIORE: Correct. Both
19 documents are one page.

20 So did you speak with Mr. Drew
21 after you received the copy of the
22 split sample specimen? I'm sorry.
23 The results of the split sample
24 specimen?

25 THE WITNESS: Yeah. We notified

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27

1 the employee and notified the LIRR and
2 HR, all the relevant --

3 MR. MAGGIORE: Is that
4 documented anywhere, that you had a
5 conversation with Mr. Drew after the
6 split sample specimen?

7 THE WITNESS: It should be in
8 my -- the medical record -- the
9 electronic medical record. We use it.

10 MR. MAGGIORE: Is there any -- I
11 mean, you submitted a Medical Review
12 Officer Verification Sheet.

13 Is there any notes --

14 THE WITNESS: There should be at
15 the bottom. You should look at the
16 bottom, see the date, addendum?

17 MR. MAGGIORE: Okay.

18 THE WITNESS: That's the day I
19 spoke to Mr. Drew, notified him and
20 then, you know, make a final
21 determination.

22 MR. MAGGIORE: Okay.
23 Dr. Mujtaba, the Medical Review
24 Officer Verification Sheet, which has
25 been marked as Carrier Exhibit 14,

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1 contain a note which says, in part,
2 "Addendum 6/15/22, received employee
3 e-mail, re employee's listed
4 medications. None of these
5 medications would have caused the
6 confirmed positive test for
7 marijuana."

8 It also states, "Final
9 determination verified positive."

10 Can you please explain how you
11 came to that conclusion.

12 THE WITNESS: Basically, I spoke
13 to Mr. Drew initially, that he was
14 on -- on treatment for his medical
15 condition. I checked with the doctor,
16 make sure he didn't miss any
17 medication ordered by a doctor.

18 So few days later, he sent me
19 the e-mail with all the medication
20 names on it, and none of them would
21 have caused the medication positive
22 for marijuana.

23 And then I waited -- then he
24 requested the split sample, which
25 received the -- on June 22nd and

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1 basically confirmed. And that's
2 what -- that's how my final
3 determination that it was positive for
4 marijuana. So that's why the addendum
5 on 15 and then on 6/22.

6 MR. MAGGIORE: Dr. Mujtaba, you
7 previously stated that the GC/MS test
8 is considered the gold standard for
9 drug testing.

10 Do you have any documentation to
11 support that opinion?

12 THE WITNESS: Yeah. I have few
13 articles I provided. You should have
14 them in the stack of paper.

15 MR. MAGGIORE: Okay.

16 THE WITNESS: And it's detailed
17 explanation of both immunoassay and
18 the GC/MS, is considered the gold
19 standard for confirmation. And
20 there's also a copy of the MRO review,
21 MRO handbook. It should be there
22 also.

23 MR. MAGGIORE: All right. I
24 have three documents. One is titled
25 "Urine Drug Screening Practical Guide

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1 for Clinicians."

2 Can you please identify where in
3 this document it states that the GC/MS
4 test is the gold standard.

5 THE WITNESS: Which article do
6 you have?

7 MR. MAGGIORE: Urine Drug
8 Screening Practical Guide for
9 Clinicians is the title.

10 THE WITNESS: Yeah. So if you
11 read the first page, you discover what
12 the tabs of the test they use to
13 evaluate the drug specimen.

14 And then if you look at the
15 second page, first paragraph on the
16 top, it states "Gas
17 chromatography/mass spectrometry is
18 considered the criterion standard for
19 drug function testing." It is the
20 most accurate, sensitive, rapid method
21 test by the industry.

22 MR. MAGGIORE: Just to confirm
23 for the record, gas
24 chromatography/mass spectrometry, that
25 is the long version of GC/MS testing,

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1 correct?

2 THE WITNESS: Exactly. The
3 short form is GC/MS.

4 MR. MAGGIORE: I'm going to
5 provide copies of these articles to
6 Mr. Drew and Mr. Sanchez for their
7 review.

8 And I will mark and enter this
9 document as Carrier Exhibit 17. It is
10 an 11-page document.

11 (Urine Drug Screening Practical
12 Guide for Clinicians was marked as
13 Carrier Exhibit 17 for
14 identification, as of this date.)

15 MR. MAGGIORE: The next article
16 is entitled "Practical Guide to Urine
17 Drug Monitoring."

18 MR. SANCHEZ: I'm just going
19 to -- I'm sorry. This would be
20 Carrier's --

21 MR. MAGGIORE: That's 17.

22 MR. SANCHEZ: Can you tell me
23 exactly which page or what portion
24 or -- the Carrier is going to put in
25 for an exhibit? Because this is

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1 methods of testing -- all 11 pages?

2 MR. MAGGIORE: Dr. Mujtaba, you
3 referred to page two, correct, the
4 part you read?

5 THE WITNESS: Right. The GC/MS
6 is considered the gold standard,
7 basically standard test for the return
8 function process. So the paragraph on
9 the left-hand --

10 MR. MAGGIORE: Yeah, he read
11 that into the record.

12 MR. SANCHEZ: Okay.

13 MR. MAGGIORE: All right. The
14 next article I have is entitled
15 Practical Guide to Urine Drug
16 Monitoring.

17 Can you please explain or cite
18 which portion of this article also
19 describes GC/MS testing as the gold
20 standard?

21 THE WITNESS: Yeah. If you look
22 at the page -- on the back of page
23 second, it says chromatography. And
24 on the third paragraph, it says gas
25 chromatography/mass spectrometry has

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1 remained the standard test for
2 confirmative testing.

3 MR. MAGGIORE: Okay. Are there
4 any other parts of that page that are
5 relevant?

6 THE WITNESS: Yeah. I mean, it
7 describes that it can detect -- it's a
8 very specific test to detect the drugs
9 and the metabolites.

10 And if you look at the -- the
11 page -- second page, the first part of
12 the second page. This one.

13 MR. MAGGIORE: Okay.

14 THE WITNESS: There's
15 immunoassay. There's possibility of
16 false-positive with immunoassay but
17 not with the gas chromatography,
18 because the immunoassay is not that
19 specific.

20 That's how they get the
21 impression, when they get tested, it
22 could be false-positive. But it's
23 not really -- you have to confirm with
24 the gas chromatography.

25 MR. MAGGIORE: I'm going to

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1 provide a copy of this article to
2 Mr. Sanchez and Mr. Drew. It's a
3 seven-page article and I will enter it
4 as Carrier Exhibit 18.

5 (Article was marked as Carrier
6 Exhibit 18 for identification, as
7 of this date.)

8 MR. MAGGIORE: There's another
9 document here. Appears to be a cover
10 of a book. It's entitled "10th
11 Edition, Medical Review Officer
12 Handbook."

13 Can you please cite the portion
14 of this document that is relevant to
15 the trial and the charges facing
16 Mr. Drew.

17 THE WITNESS: Right. If you
18 look at the very last page, it says,
19 "Confirmation Methods." And it says,
20 "GC/MS. All specimens identified as
21 positive on the initial immunoassay
22 test must be confirmed" -- if you look
23 at the very last page right here,
24 Confirmation Methods.

25 MR. MAGGIORE: Yeah. And I'll

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35

1 provide a copy to Mr. Drew and
2 Mr. Sanchez so they can also review.

3 THE WITNESS: Basically, GC/MS
4 if you look at the first paragraph, it
5 says, "All specimens identified as
6 positive on the initial immunoassay
7 test must be confirmed using gas
8 chromatography/mass spectrometry
9 techniques."

10 MR. SANCHEZ: Where are we
11 looking? Last page?

12 MR. MAGGIORE: This portion
13 right here, where it says,
14 "Confirmation Methods."

15 Okay. Is there any other
16 portions of this that you would like
17 to cite and reference in this case?

18 THE WITNESS: Across the page on
19 the last one, last portion where they
20 list all the drugs.

21 MR. MAGGIORE: Can you raise the
22 document up so we can see a little
23 more.

24 Okay. The last page. Gotcha.

25 THE WITNESS: All right?

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1 MR. MAGGIORE: Yup.

2 THE WITNESS: It says potential
3 agent that could cause some
4 immunoassays to give a positive
5 reading, false-positive. On the
6 immunoassay, not on the GC/MS. Just
7 would like to clarify that.

8 MR. MAGGIORE: Okay. So the
9 false-positive would only occur in an
10 immunoassay, not a GC/MS?

11 THE WITNESS: Right.

12 MR. MAGGIORE: Okay. I'm going
13 to enter this as Carrier Exhibit 19.
14 It's a six-page document.

15 (10th Edition, Medical Review
16 Officer Handbook was marked as
17 Carrier Exhibit 19 for
18 identification, as of this date.)

19 MR. MAGGIORE: Okay. I have no
20 further questions for Dr. Mujtaba.

21 Mr. Sanchez, Mr. Drew, would you
22 like to take a recess to review the
23 evidence before questioning?

24 MR. SANCHEZ: Yes.

25 MR. MAGGIORE: The time is

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1 11:06 a.m., and we are going to take a
2 brief recess.

3 (At this time, a recess was
4 taken.)

5 MR. MAGGIORE: The time is
6 approximately 12:11 p.m., and we are
7 back on the record.

8 Mr. Sanchez, do you have any
9 questions for Dr. Mujtaba?

10 MR. SANCHEZ: Yes, I do.

11 MR. MAGGIORE: Okay. Please
12 proceed.

13 MR. SANCHEZ: Can you hear me,
14 Dr. Mujtaba?

15 MR. MAGGIORE: You are muted.

16 MR. SANCHEZ: You are on mute.
17 I can't hear you.

18 THE WITNESS: How about now?

19 MR. SANCHEZ: Now I can hear
20 you.

21 Okay. Mr. Dr. Mujtaba, my name
22 is Ricardo Sanchez. I'm the
23 representative for Daren Drew. I have
24 a few questions.

25 When did you receive your

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1 license to become an MD?

2 THE WITNESS: MD, it was -- I
3 think it was '94.

4 MR. SANCHEZ: Are you licensed
5 to practice -- are you licensed to
6 practice what type of medicine in New
7 York?

8 THE WITNESS: Well, once you got
9 license, you can practice internal
10 medicine. Depends on --

11 MR. SANCHEZ: Can you repeat
12 that slower, please.

13 THE WITNESS: Once you got the
14 license, then depends on your -- on
15 your training. It could be internal
16 medicine, surgery, you know, whatever
17 you've been trained for.

18 MR. SANCHEZ: Are you board
19 certified or do you have any
20 specialized field of medicine?

21 THE WITNESS: I'm board
22 certified in occupational medicine.

23 MR. SANCHEZ: Can you describe
24 what that entails exactly.

25 THE WITNESS: Yeah. Occupation

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1 medicine basically deal with the, you
2 know, the worker, you know, issues,
3 the exposures. Basically, they work
4 in the companies, organizations.
5 Basically workers' illnesses. Stuff
6 like that.

7 MR. SANCHEZ: Okay. Are you an
8 employee at the Long Island Railroad
9 or the MTA?

10 THE WITNESS: MTA.
11 Headquarters.

12 MR. SANCHEZ: And how long have
13 you been an employee?

14 THE WITNESS: With MTA, about
15 ten years.

16 MR. SANCHEZ: What did you do
17 before you were an employee with the
18 MTA?

19 THE WITNESS: I work different
20 hospitals; like NYU, Mount Sinai, you
21 know, Kingsbrook, Brooklyn Hospital.
22 Different hospitals.

23 MR. SANCHEZ: I'm sorry. When
24 did you become -- get your license as
25 an MD? I didn't write that down.

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1 THE WITNESS: '94.

2 MR. SANCHEZ: '94.

3 THE WITNESS: 1994.

4 MR. SANCHEZ: And you've been an
5 employee here for ten years?

6 THE WITNESS: Ten years, sir.

7 MR. SANCHEZ: So let me see,
8 that would be '94 -- 2000 -- 2000 --
9 all right. What am I saying -- 2004,
10 right? So 2004 --

11 How long have you held those
12 prior positions, if you remember?

13 THE WITNESS: I'm sorry?

14 MR. SANCHEZ: The prior
15 positions that you just mentioned, NYU
16 Langone, do you have an approximate
17 time you spent at each?

18 THE WITNESS: Right. I mean,
19 NYU, I was -- I was being trained, I
20 was a resident there. And then, you
21 know, and then joined the different
22 hospitals.

23 My last position was Mount Sinai
24 in the -- in the World Trade Center
25 program. Taking care of the exposed

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1 employees or the -- you know, from the
2 World Trade Center, basically.

3 MR. SANCHEZ: So you just noted
4 that you were an MTA employee.

5 So as an MTA employee, are you
6 familiar with the drug and alcohol
7 policy of the Long Island Railroad?

8 THE WITNESS: Yeah. They sent
9 us a memo. I read a long time ago.
10 But it's like a -- like guidelines for
11 the alcohol and drug testing.

12 MR. SANCHEZ: Is part of your
13 responsibilities as the MRO to be
14 familiar with the policies?

15 THE WITNESS: Right. You have
16 general policies for it.

17 MR. SANCHEZ: But you are
18 familiar with the policies?

19 THE WITNESS: Exactly right.

20 MR. SANCHEZ: Okay. Your
21 current position is called the MRO,
22 correct?

23 THE WITNESS: My -- MD assistant
24 medical director. I'm also MRO,
25 medical review officer. Which is

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1 basically dealing with the drug
2 testing and then -- and -- and
3 preparing the drug test reports sent
4 to us by the labs.

5 MR. SANCHEZ: For the purposes
6 of the Carrier's MRO, that's you, you
7 are the medical review officer.

8 THE WITNESS: That's right.
9 Right. Right.

10 MR. SANCHEZ: Can you explain
11 exactly what your primary
12 responsibilities are.

13 THE WITNESS: Basically, you
14 know, you oversee the drug testing
15 program at the facility. And if any
16 question, they can ask me.

17 But my main job is to -- when
18 you get the -- any positive or
19 negative drug test, is to call the
20 applicant or the candidate or the
21 employee, and to verify and showing
22 them based on, you know, the
23 guidelines, you know, what could be
24 reason for being positive.

25 MR. SANCHEZ: In your

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1 possession, we just brought up, but
2 you should have what's been identified
3 as Union Exhibit 1.

4 THE WITNESS: Okay.

5 (MRO Requirements was marked as
6 Organization Exhibit 1 for
7 identification, as of this date.)

8 MR. SANCHEZ: Do you recognize
9 this document?

10 THE WITNESS: I mean, I got from
11 the -- I don't recognize it. But I
12 know where you got it from.

13 MR. SANCHEZ: Are you telling
14 me -- does it look familiar? It might
15 be in a different format, but isn't
16 that the requirements of an MRO? You
17 can take a -- take a moment. I want
18 you to be certain. You can take a
19 minute and look through it.

20 MR. MAGGIORE: This is
21 Organization Exhibit 1. It's a
22 five-page document.

23 THE WITNESS: Okay. I looked
24 over the highlighted ones.

25 MR. SANCHEZ: So you recognize

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1 that.

2 Can you go to -- I guess it's
3 page two, and it's 7.62. And can you
4 read the highlighted portion.

5 THE WITNESS: It says, "The
6 principal role of the MRO in Federal
7 urine testing is to determine if there
8 is a legitimate and verifiable medical
9 explanation for a donor's positive
10 test. In the case of a positive
11 laboratory result, the MRO may not
12 conduct an interview with the donor
13 until the original or a facsimile of
14 the Copy 2 of the CCF, or equivalent,
15 and the laboratory report are
16 available."

17 MR. SANCHEZ: Would you agree
18 with that statement?

19 THE WITNESS: Yeah. Yeah. I
20 mean, that's how you call after you
21 get the lab results and the CCF, you
22 know, or from the lab.

23 MR. SANCHEZ: But I mean,
24 basically, so your principal role in
25 Federal urine testing is to determine

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1 if there's a legitimate and verifiable
2 medical explanation for a donor's
3 positive test; that's correct?

4 THE WITNESS: Yes.

5 MR. SANCHEZ: Can you please
6 turn and read the rest of the
7 highlighted portions on the next page.
8 Just the highlighted portions.

9 THE WITNESS: The -- you mean
10 "The donor may be contacted by either
11 MRO or a staff member under the MRO's
12 direction"?

13 MR. SANCHEZ: No. On page two.
14 The highlighted portions should say
15 "The MRO must be the only one
16 conducting the interview."

17 Do you agree with that
18 statement?

19 THE WITNESS: "The MRO must be
20 the only one conducting interview, and
21 FRA expects the MRO to make every
22 reasonable attempt to complete the
23 interview."

24 MR. SANCHEZ: Yes. So you agree
25 with that statement?

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1 THE WITNESS: Yeah.

2 MR. SANCHEZ: With that
3 objective?

4 THE WITNESS: Yes.

5 MR. SANCHEZ: Did you read the
6 rest of the highlighted portions, just
7 the highlighted portions, as you go
8 down.

9 THE WITNESS: "The MRO should
10 document attempts to" --

11 (At this time, the witness
12 perused the aforementioned item.)

13 MR. SANCHEZ: I'm sorry. Can
14 you slow down? That's why I only just
15 highlighted the certain portions. You
16 don't have to read everything.

17 How about this --

18 THE WITNESS: -- out loud.

19 MR. SANCHEZ: Yeah, out loud
20 into the record.

21 How about if I read it into the
22 record, and I'll ask you if you agree
23 or disagree. That would probably be
24 easier?

25 THE WITNESS: Yeah. That would

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1 be better.

2 MR. SANCHEZ: I'm going to go to
3 the next page. It says, "There is no
4 doctor-patient relationship in an MRO
5 interview."

6 Do you agree that's correct?

7 THE WITNESS: That's correct.

8 MR. SANCHEZ: It says,
9 "Interviews may be face-to-face or by
10 telephone," correct?

11 THE WITNESS: Correct.

12 MR. SANCHEZ: On the next page,
13 it says, "There are acceptable medical
14 explanations for four of the drugs
15 tested by the FRA; marijuana, cocaine,
16 amphetamines and opiates. One drug,
17 PCP, does not have a medical
18 explanation. With one exception,
19 opiates. The burden of proof is on
20 the donor to provide a verifiable
21 medical explanation for the positive."
22 Agreed?

23 THE WITNESS: Right.

24 MR. SANCHEZ: Then we go down,
25 "Medical" --

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1 MR. MAGGIORE: Excuse me. I'm
2 sorry. I don't mean to interrupt.
3 What page is this?

4 MR. SANCHEZ: It's on page
5 three.

6 MR. MAGGIORE: Three. Thank
7 you.

8 MR. SANCHEZ: Actually, four.

9 MR. MAGGIORE: Four.

10 MR. SANCHEZ: My mistake. Page
11 four.

12 Then it says, "Medical
13 explanations offered by a donor must
14 be affirmed directly with the donor's
15 medical or dental practitioner,
16 pharmacist, et cetera. Donors can be
17 permitted by the MRO up to five days
18 to gather and present medical
19 information."

20 Is that correct?

21 THE WITNESS: Yup.

22 MR. SANCHEZ: And "Medical use
23 of marijuana under state law is not
24 acceptable medical explanations under
25 Federal testing programs and must be

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1 reported as a positive;" is that
2 correct?

3 THE WITNESS: That's correct.

4 MR. SANCHEZ: Now, I'm going to
5 go to the last page, "MRO downgrades."
6 And it says, "Laboratory positive
7 where the MRO has verified a
8 legitimate explanation, must be
9 reported to the Carrier identically as
10 if the donor's specimen had tested
11 negative originally. Under no
12 circumstances may a MRO downgrade a
13 laboratory positive based solely on
14 the donor's assurances of taking a
15 particular medication or undergoing a
16 particular medical or dental
17 procedure. Every claim must be
18 carefully verified and medical
19 explanations authenticated before a
20 downgrade can be permitted;" is that
21 correct?

22 THE WITNESS: That's correct.

23 MR. SANCHEZ: So my next
24 question, Dr. Mujtaba, is do you know
25 if Daren Drew falls under the federal

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1 requirements for drug testing?

2 THE WITNESS: I think it's
3 safety sensitive.

4 MR. SANCHEZ: I'm sorry. Is
5 there someone else in the room?

6 THE WITNESS: No. I have the
7 door open. One second.

8 Okay.

9 MR. SANCHEZ: My question is,
10 you said -- I asked you if Daren Drew
11 fell under federal FRA testing
12 requirements or guidelines.

13 THE WITNESS: I think depends on
14 his title. If in that title, if FRA
15 requirement, he'd fall under that.

16 MR. SANCHEZ: Are you familiar
17 if he falls under that title or that
18 requirement?

19 THE WITNESS: I'm not familiar.
20 You'd have to check his title in LIRR.

21 MR. SANCHEZ: A minute ago, you
22 said safety sensitive.

23 Now, is there a difference
24 between somebody who is safety
25 sensitive and somebody who falls under

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1 the federal requirements?

2 THE WITNESS: Again, it's -- the
3 company part is different. I could
4 check -- take a look at the LIRR
5 current policy which titles they fall
6 under the FRA.

7 MR. SANCHEZ: But you are the
8 MRO, and you are familiar with the
9 policies, correct?

10 THE WITNESS: Yeah. General.
11 But, you know, I can't remember
12 everything on the LIRR.

13 MR. SANCHEZ: That's fine. But
14 basically, are you aware of a
15 difference between somebody who's
16 covered under hours of service of
17 federal requirement and someone who is
18 not?

19 THE WITNESS: Again. I have to
20 look at job titles to know. I read
21 long time ago. It should be in the
22 LIRR policy.

23 MR. SANCHEZ: Okay. Well, I'll
24 help you. Mr. Drew is not -- he's an
25 exempt employee. He doesn't fall

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1 under hours of service.

2 Do you recall what type of
3 physical he would -- he took on the
4 day he took his urine analysis?

5 THE WITNESS: No. I didn't see
6 him on that day.

7 MR. SANCHEZ: So Union
8 Exhibit 1, everything I highlighted
9 and I read into the record, are those
10 optional or do you have an obligation
11 under MRO to follow those directives?

12 THE WITNESS: I don't know where
13 you got it from. But if it's from the
14 FRA, then, you know, these are the
15 direct guidelines for the MRO to
16 follow and be followed by.

17 MR. SANCHEZ: I want you to take
18 a minute and look at it because that's
19 where they came from. But I want you
20 to be certain. I don't want any --
21 any ambiguity.

22 And they should be identical to
23 the responsibilities of the MRO
24 because they come from the FRA
25 website. They may be in a different

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1 format. But they --

2 MR. MAGGIORE: One moment,
3 Mr. Sanchez. Where was this document
4 produced from?

5 MR. SANCHEZ: FRA website.

6 MR. MAGGIORE: What section of
7 the FRA or the CFR is this?

8 MR. SANCHEZ: Probably the one
9 that says medical reviewing officer's
10 obligations.

11 MR. MAGGIORE: There's no page
12 numbers or section numbers on the
13 documents, that's why I'm asking to
14 verify which section.

15 MR. SANCHEZ: Well --

16 MR. COLOMBO: 219 FRA compliance
17 manual.

18 MR. SANCHEZ: I'm sorry, Mike.
19 Could you repeat that.

20 MR. COLOMBO: 219 FRA Compliance
21 Manual.

22 MR. SANCHEZ: It comes from 219
23 CFR FRA Compliance Manual. That's
24 where this all comes from. It should
25 look familiar. It's identical. It

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1 might be in a different format, but
2 those are the requirements of a MRO.

3 My question to you, Dr. Mujtaba,
4 is are those directives optional or do
5 you have an obligation to follow these
6 procedures?

7 THE WITNESS: Obligation.

8 MR. SANCHEZ: So you have an
9 obligation.

10 THE WITNESS: Under the FRA and
11 DOT.

12 MR. SANCHEZ: I'm going to hand
13 you what's been identified as -- well,
14 you should have it in front of you,
15 actually. It's Carrier Exhibit 14.

16 It's a one-page document that's
17 two-sided. It's the Medical Review
18 Officer-Donor Contact Record
19 Verification Sheet.

20 THE WITNESS: Exhibit 4, one,
21 two, three --

22 MR. SANCHEZ: It's Carrier 14.

23 MR. MAGGIORE: It's the MRO
24 Verification Sheet.

25 THE WITNESS: I don't have that

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1 one. I have four, one, two -- four --
2 that's it.

3 MR. SANCHEZ: We are going to
4 take a minute --

5 MR. MAGGIORE: I'm going to show
6 him just to make sure we are
7 discussing the same document.

8 MR. SANCHEZ: I can show him.
9 This is Carrier 14. This is your
10 MRO --

11 THE WITNESS: I'm sorry. I'm
12 sorry.

13 MR. SANCHEZ: That's okay.

14 THE WITNESS: I was --

15 MR. SANCHEZ: It should be in
16 the upper, probably left-hand corner.
17 Says Carrier Exhibit 14.

18 THE WITNESS: Yeah. Yeah. One
19 second.

20 MR. SANCHEZ: Sure.

21 THE WITNESS: Yeah, I got it.
22 I'm sorry. Yeah.

23 MR. SANCHEZ: So when you look
24 at -- I guess the front of it where it
25 says Medical Review Officer-Donor

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1 Contact Record, and it says, "Donor
2 Name: Daren Drew."

3 THE WITNESS: Right.

4 MR. SANCHEZ: Below it, it says,
5 "Type of Test: Federal or
6 Non-Federal."

7 Can you tell me what the
8 difference between a Federal and
9 Non-Federal test is?

10 THE WITNESS: I think federal
11 falls under the FRA, DOT. Non-federal
12 is by the company policy.

13 MR. SANCHEZ: I'm sorry. Can
14 you say that again, just slower.

15 THE WITNESS: I said federal is
16 DOT, FRA. And non-federal would be
17 from the company itself.

18 MR. SANCHEZ: So but what does
19 that mean? Are you talking about the
20 authority to test the individual?

21 THE WITNESS: Correct.

22 MR. SANCHEZ: Okay. So when it
23 comes to the authority to test the
24 individual, and it's a federal test,
25 the individuals being tested are

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1 tested under federal authority; is
2 that correct?

3 THE WITNESS: Right. So in this
4 case, it's non-federal. It's done
5 under the company authority. Under
6 LIRR.

7 MR. SANCHEZ: There is a
8 distinction. One is federally
9 mandated and one is company policy?

10 THE WITNESS: Exactly right.

11 MR. SANCHEZ: Can you tell me if
12 there's a difference in the tests that
13 are conducted or samples that are
14 taken or the measurements used?

15 THE WITNESS: No, they're the
16 same measurements. The company have,
17 I think, more panels included in the
18 testing.

19 MR. SANCHEZ: Okay.

20 THE WITNESS: Rather than the
21 FRA. But it's basically the same
22 process.

23 MR. SANCHEZ: When you say more
24 panels, if you go further down, it
25 says, "Drug Screen Panel," you are

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1 saying -- if I'm correct, you are
2 saying if it was a federal test, it
3 would be a five-panel. And because
4 it's a company test, it's a ten-panel.

5 THE WITNESS: Right.

6 MR. SANCHEZ: The company tests
7 for more --

8 THE WITNESS: For more.

9 MR. SANCHEZ: That's the only
10 difference?

11 THE WITNESS: That's the only
12 difference. And then depends on
13 company policy, what the rules and
14 regulations are. You know.

15 MR. SANCHEZ: It depends on
16 company policy?

17 THE WITNESS: Right. Some can
18 include more than ten.

19 MR. SANCHEZ: So on the day in
20 question, after you received the
21 results that Mr. Drew's sample tested
22 positive, you called him?

23 THE WITNESS: Correct.

24 MR. SANCHEZ: And what did you
25 say exactly?

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1 THE WITNESS: So basically, I
2 asked him what the reason for being
3 positive. And it should be documented
4 if you look at the -- further down,
5 "Donor Interview."

6 You know, he -- he was out
7 because of the -- his medical issues.
8 He came back -- returned to duty,
9 work. And then I asked about his
10 current medications, what he's taking.

11 He gave me the list of the
12 medication and he denied taking --
13 basically, we had to ask about whether
14 he'd been taking any marijuana, any
15 substance that contains marijuana.
16 And he denied that.

17 MR. SANCHEZ: You directly asked
18 him if he had tried marijuana prior to
19 his physical?

20 THE WITNESS: Correct.

21 MR. SANCHEZ: He responded?

22 THE WITNESS: No marijuana or
23 marijuana-related products.

24 MR. SANCHEZ: Okay.

25 Dr. Mujtaba, I'd like you to take

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1 what's been identified as Union
2 Exhibit 2. It's 2, 2A, and 2B. It's
3 a three-page document. It starts with
4 "Dear Medical Department."

5 (Letter was marked as Union
6 Exhibit 2 for identification, as
7 of this date.)

8 THE WITNESS: Yeah.

9 MR. SANCHEZ: Can you take a
10 look at that, please.

11 Does it look familiar?

12 THE WITNESS: Yeah.

13 MR. SANCHEZ: Okay. So on Union
14 Exhibit 2, that's Mr. Drew's medical
15 list. Sent to medical on the 15th.

16 THE WITNESS: Right.

17 MR. SANCHEZ: Have you seen
18 this -- did you see this on the 15th
19 or is this the first time you are
20 seeing this?

21 THE WITNESS: I saw it.

22 MR. SANCHEZ: So you saw it on
23 the 15th?

24 THE WITNESS: Yeah.

25 MR. SANCHEZ: I'd like to go

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1 back to Union Exhibit 1, Doctor.

2 THE WITNESS: Right.

3 MR. SANCHEZ: And I'd like you
4 to read what's been highlighted as
5 number six. I believe it's on page
6 three.

7 THE WITNESS: Mm-hmm.

8 MR. SANCHEZ: Can you read the
9 highlighted portion?

10 THE WITNESS: Actually, can you
11 read for me?

12 MR. SANCHEZ: Okay. That's
13 probably better. I'll do it.

14 Number six says, "Medical
15 explanations offered by a donor must
16 be affirmed directly with the donor's
17 medical or dental practitioner,
18 pharmacist et, cetera. Donors can be
19 permitted by the MRO up to five days
20 to gather and present medical
21 information."

22 THE WITNESS: Correct.

23 MR. SANCHEZ: Okay. So I want
24 you to take a look at what's been
25 identified as Union Exhibit 2A and 2B.

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1 (Doctor's Note was marked as
2 Union Exhibit 2A for
3 identification, as of this date.)

4 (Doctor's Note was marked as
5 Union Exhibit 2B for
6 identification, as of this date.)

7 THE WITNESS: Mm-hmm.

8 MR. SANCHEZ: And can you tell
9 me what that is?

10 Well, have you seen these
11 documents prior to today?

12 THE WITNESS: I believe so. I
13 think it's HR. HR being filed.

14 MR. SANCHEZ: You have seen
15 both, sir?

16 THE WITNESS: I think I've seen
17 the list.

18 MR. SANCHEZ: There's two.

19 THE WITNESS: Right. The list,
20 and the note from his doctor. Right.

21 MR. SANCHEZ: How many doctors'
22 notes are there?

23 THE WITNESS: There are two
24 notes from the doctors.

25 MR. SANCHEZ: Did you contact or

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1 call the doctor? Either one?

2 THE WITNESS: No, I did not.

3 MR. SANCHEZ: So can you tell me
4 why, if -- I'll refer you back to
5 Union Exhibit 1. Number six.

6 "Medical explanations offered by
7 a donor must be affirmed directly with
8 the donor's medical or dental
9 practitioner."

10 You have testified that this is
11 an obligation. You just testified
12 that you have two letters, right? And
13 can you read the letters into the
14 record, please. And who they're from.
15 The highlighted portion.

16 THE WITNESS: Yeah. Daren
17 Drew -- "To Whom it May Concern, Daren
18 Drew was taking Ibuprofen due to
19 dysuria from him cancer treatment
20 which is listed as a drug that can
21 potentially cause false-positive drug
22 test for the marijuana."

23 MR. SANCHEZ: And what does it
24 say on the bottom of that, sir?

25 THE WITNESS: "Please give me --

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1 if you have any questions" -- right.

2 MR. SANCHEZ: So that was 2A.

3 Dr. Moses Tam, an oncologist at NY
4 Langone Health Medical Center here in
5 Mineola, literally around the block,
6 correct?

7 THE WITNESS: Right.

8 MR. SANCHEZ: And at the bottom
9 it says, "If you have any questions,
10 please feel free to call me."

11 THE WITNESS: Right.

12 MR. SANCHEZ: My question to
13 you, Doctor, is if you have an
14 obligation -- you call Daren Drew and
15 said, "You have a positive finding,"
16 and Daren Drew said he sent you his
17 medication. And his doctor, his
18 treating physician, said this
19 particular drug has been known to
20 cause false-positives.

21 My question to you is, why
22 didn't you follow up with the doctor?

23 THE WITNESS: Well, it wasn't
24 necessary. If you look at the other
25 articles, this type of --

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1 MR. SANCHEZ: Doctor --

2 MR. MAGGIORE: Excuse me --

3 MR. SANCHEZ: You are not
4 answering my question.

5 MR. MAGGIORE: Let him respond
6 before you say he's not answering your
7 question.

8 THE WITNESS: Ibuprofen, Advil,
9 all those things that can cause
10 false-positive, only on immunoassay,
11 not on GC confirm test. You know that
12 from the articles.

13 So it wasn't necessary. If he
14 had some substance like marijuana,
15 medical marijuana, then I would have
16 called the doctor's office.

17 MR. SANCHEZ: So my question to
18 you is, when it says necessary,
19 it's -- necessary is not in question
20 here. You have an obligation. You
21 have an obligation to call.

22 My question to you -- I didn't
23 read the literature, but it's
24 irrelevant. You have an obligation
25 that you testified to.

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1 So my question is, why didn't
2 you call?

3 THE WITNESS: Because he gonna
4 say same thing. It's an NSAID. NSAID
5 is not acceptable as a false-positive
6 from confirm test. It wasn't
7 necessary to call his doctor.

8 MR. SANCHEZ: Can you take a
9 look at what's been identified as
10 Union Exhibit 2B.

11 THE WITNESS: Okay.

12 MR. SANCHEZ: Can you read the
13 highlighted portion.

14 THE WITNESS: The same thing,
15 "Daren Drew was taking Ibuprofen due
16 to listeria from his cancer treatment
17 which -- which is listed as a drug
18 that can potentially cause
19 false-positive drug test for
20 marijuana." If you have any
21 questions, feel free to contact the
22 office.

23 MR. SANCHEZ: Is this the same
24 doctor or is this a different doctor?

25 THE WITNESS: It's a different

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1 doctor. Moses Tam.

2 MR. SANCHEZ: It's a different
3 doctor.

4 Same location, Mineola,
5 literally around the corner?

6 THE WITNESS: Right.

7 MR. SANCHEZ: So you have two
8 doctors' notes from two oncologists.
9 He tested positive, and you didn't
10 think it was necessary to call?

11 THE WITNESS: Exactly right.
12 Because if you look at the MRO,
13 articles got -- these things can cause
14 false-positive on immunoassay, but not
15 on a confirmed test. So it wasn't
16 necessary for me to call those
17 doctors.

18 MR. SANCHEZ: So it's optional?

19 THE WITNESS: Not optional.
20 It's not necessary to call the doctor
21 to confirm the same thing. Which
22 is --

23 MR. SANCHEZ: That's not my
24 question. Is it optional.

25 So you're telling me it's

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1 optional to call or not to call based
2 on your judgment?

3 THE WITNESS: Exactly. If he
4 were on some other drug that may
5 contain marijuana, then I would call
6 the doctor's office to confirm that.
7 But he's on Ibuprofen, which is known
8 to cause false-positive on
9 immunoassay, but not on GC/MS.

10 MR. SANCHEZ: Let me ask you --

11 THE WITNESS: So that's
12 important.

13 MR. SANCHEZ: So let me ask you
14 a question, Doctor --

15 THE WITNESS: -- misrepresenting
16 the findings because they don't know
17 about how the other testing is done.
18 You know.

19 MR. SANCHEZ: Well, that's an
20 opinion, Doctor. I think I would take
21 the opinion of two oncologists over
22 your --

23 THE WITNESS: It says very
24 clearly --

25 MR. SANCHEZ: Very clearly it

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1 states that --

2 MR. MAGGIORE: Let Dr. Mujtaba
3 answer.

4 THE WITNESS: My handbook says
5 very clearly potential false-positive
6 on immunoassay, but not on GC/MS. So
7 it wasn't necessary to call them.

8 MR. SANCHEZ: A minute ago, I
9 asked you under what authority
10 Mr. Drew's test was given under. And
11 you stated it was company policy.

12 THE WITNESS: Company policy.

13 MR. SANCHEZ: So if Mr. Drew had
14 been tested under federal policy,
15 would you have called his doctor to
16 verify?

17 THE WITNESS: Not really.
18 Because doctor is not giving me
19 correct information. They're
20 misrepresenting this drug test result.
21 Because NSAID cannot cause
22 false-positive under the confirmed
23 test. You know.

24 MR. SANCHEZ: So you are telling
25 me that the two doctors' notes from

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1 the oncologists are --

2 THE WITNESS: Yeah. They've got
3 to do process --

4 MR. SANCHEZ: They don't
5 understand --

6 THE WITNESS: Basically yeah.
7 Exactly. They don't relate how the
8 testing is done.

9 MR. SANCHEZ: Okay. Well, I
10 don't think it matters about the
11 testing. I think they were just
12 saying this particular drug has been
13 known to cause false-positives.
14 That's --

15 THE WITNESS: Again, that's on
16 immunoassay. But not on GC/MS, not on
17 confirmed testing. It's useless to
18 call.

19 MR. SANCHEZ: All right.
20 Doctor, I'd like to ask you to look at
21 what's been identified as Union
22 Exhibit 3 and 3A.

23 (Title 49 was marked as Union
24 Exhibit 3 for identification, as
25 of this date.)

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1 (Title 49 was marked as Union
2 Exhibit 3A for identification, as
3 of this date.)

4 THE WITNESS: Okay.

5 MR. SANCHEZ: Does it look
6 familiar? Are you familiar with this
7 document?

8 THE WITNESS: Isn't that on the
9 DOT website -- FRA?

10 MR. SANCHEZ: It's the Title 49.
11 It's from the Office of the Secretary
12 of Transportation. It says who is
13 qualified to be an MRO. These are the
14 guidelines.

15 Do they look familiar?

16 THE WITNESS: Right.

17 MR. SANCHEZ: These are the
18 guidelines that you fall under, sir,
19 as an MRO?

20 THE WITNESS: Correct, sir.

21 MR. SANCHEZ: If you want to
22 take a minute, you can look at it.
23 It's a two-page document.

24 THE WITNESS: No, that's fine.

25 MR. SANCHEZ: I guess I'll read

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1 it and I'll ask you if you agree or
2 disagree.

3 THE WITNESS: Okay.

4 MR. SANCHEZ: So when you go,
5 it's 40.121. It says, "Who is
6 qualified to act as an MRO?"

7 THE WITNESS: Right.

8 MR. SANCHEZ: That's Title 49,
9 Transportation. And it says,
10 "Credentials," it says, "You must be a
11 licensed physician."

12 You are, sir?

13 THE WITNESS: Right.

14 MR. SANCHEZ: Yes?

15 THE WITNESS: Yeah. Yes.

16 MR. SANCHEZ: It says, "B, Basic
17 Knowledge. You must be knowledgeable
18 in the following areas." It says,
19 "You must be knowledgeable about and
20 have clinical experience in controlled
21 substance abuse disorders, including
22 detailed knowledge of alternative
23 medical explanations for laboratory
24 confirmed drug test" --

25 THE WITNESS: Right.

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1 MR. SANCHEZ: It says, "You
2 must be knowledgeable about issues
3 relating to adulterated and
4 substituted specimens as well as the
5 possible medical causes of specimens
6 having an invalid result."

7 Correct?

8 THE WITNESS: Correct.

9 MR. SANCHEZ: Number three, it
10 says, "You must be knowledgeable about
11 this part of the DOT MRO Guidelines,
12 and DOT agency regulations applicable
13 to the employers for whom you evaluate
14 drug test -- and you must keep current
15 on any changes to these materials.
16 You must subscribe to the ODAPC
17 list-serve at," and there's an e-mail
18 address there.

19 So you -- you comply with these
20 requirements?

21 THE WITNESS: Yup. If they have
22 an issue, they can also e-mail me.

23 MR. SANCHEZ: Number three (sic)
24 says, "Qualification training. You
25 must receive qualification training

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1 meeting the requirements of this
2 paragraph (c). Qualification training
3 must provide instruction on the
4 following subjects: Collection
5 procedures for urine specimens."

6 THE WITNESS: Correct.

7 MR. SANCHEZ: Correct?

8 THE WITNESS: M-hmm.

9 MR. SANCHEZ: "Chain of custody,
10 reporting, and recordkeeping."

11 THE WITNESS: Correct.

12 MR. SANCHEZ: "Interpretation of
13 drug and validity tests results."

14 THE WITNESS: Correct.

15 MR. SANCHEZ: "The role and
16 responsibilities of the MRO in the DOT
17 drug testing program."

18 THE WITNESS: Mm-hmm.

19 MR. SANCHEZ: Yes?

20 THE WITNESS: Yes.

21 MR. SANCHEZ: Okay. "The
22 interaction with other participants in
23 the program." So SRP EOP.

24 "Provisions of this part and DOT
25 agency rules applying to employers for

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1 whom you review test results,
2 including changes and updates to this
3 part and DOT agency rules, guidance,
4 interpretations, and policies
5 affecting the performance of MRO
6 functions, as well as issues that MROs
7 confront in carrying out their duties
8 under this part and DOT agency rules."

9 Yes?

10 THE WITNESS: Yes.

11 MR. SANCHEZ: It says,
12 "Following your completion of
13 qualification training under paragraph
14 (c)(1) of this section, you must
15 satisfactorily complete an examination
16 administred by a
17 nationally-recognized MRO
18 certification board or subspecialty
19 board for medical practitioners" --

20 Have you done that, sir?

21 THE WITNESS: Yes.

22 MR. SANCHEZ: Yes. It says,
23 "You must meet the requirements of
24 paragraphs (a)(b), and (c) of this
25 section before you begin to perform

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1 MRO functions."

2 And you've met those?

3 THE WITNESS: Yeah.

4 MR. SANCHEZ: Yes?

5 THE WITNESS: Yes. Otherwise, I
6 won't be MRO.

7 MR. SANCHEZ: Well,

8 "Requalification training. During
9 each five-year period from the date on
10 which you satisfactorily completed the
11 examination under paragraph (c)(2) of
12 this section, you must complete
13 requalification training."

14 Correct?

15 THE WITNESS: Right.

16 MR. SANCHEZ: Have you had
17 requalification training?

18 THE WITNESS: No. I'm not due
19 yet.

20 MR. SANCHEZ: You are not due
21 yet?

22 THE WITNESS: Right.

23 MR. SANCHEZ: And following
24 completion, "Documentation. You must
25 maintain documentation showing that

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1 you currently meet all the
2 requirements of this section."

3 Do you have that paperwork? Or
4 can you produce that paperwork?

5 THE WITNESS: I mean, I don't
6 have it in my room. But I gave a copy
7 to -- Mr. Yodice (phonetic) should
8 have a copy of the certification.

9 MR. SANCHEZ: Okay. But you are
10 up to date, you satisfied all the
11 requirements?

12 THE WITNESS: Yeah. Yeah. I
13 submitted to the --

14 MR. SANCHEZ: So it would be
15 fair to say that you're knowledgeable
16 about the drugs that are tested for
17 during a return-to-work physical?

18 THE WITNESS: Yeah. If I'm not,
19 I can consult my handbook and look
20 there.

21 MR. SANCHEZ: Can you tell me,
22 is there a difference between
23 marijuana and marijuana metabolites?

24 THE WITNESS: Marijuana is just
25 a general name for the substance. And

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1 they have different metabolites. Like
2 THC, TSCA. They have so many
3 metabolites, the broken-down molecules
4 of the same medication or drug.

5 MR. SANCHEZ: So marijuana --
6 and correct me if I'm wrong.
7 Marijuana would be considered the
8 parent drug?

9 THE WITNESS: Yeah.

10 MR. SANCHEZ: And metabolite is
11 what happens after that's metabolized
12 in your system?

13 THE WITNESS: Exactly --

14 MR. SANCHEZ: Okay.

15 THE WITNESS: -- body and --

16 MR. SANCHEZ: Does a urinalysis
17 that shows positive for -- can a
18 urinalysis show positive for marijuana
19 or just marijuana metabolites?

20 THE WITNESS: Marijuana
21 metabolite.

22 MR. SANCHEZ: My question to you
23 is, does marijuana metabolites -- what
24 exactly is that? Is that what -- can
25 you be under the influence because of

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1 the detection of marijuana
2 metabolites?

3 THE WITNESS: Can you rephrase
4 it? I'm not sure what you are asking.

5 MR. SANCHEZ: I'll ask another
6 question.

7 With testing for marijuana, we
8 want to know if somebody is impaired.
9 So we give them a urinalysis test.
10 There's several tests.

11 Would you agree that a blood
12 test is probably the most accurate
13 test to give someone to see if they're
14 positive for marijuana?

15 THE WITNESS: You have a blood
16 test, would be, you know -- it's
17 metabolized by your liver, opposed to
18 blood and the urine. Right. We check
19 the blood level. But usually, they
20 don't know that. They check for urine
21 test in most places.

22 MR. SANCHEZ: No, I understand
23 that.

24 But the urine test only tests
25 for metabolites. I'm asking about

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1 marijuana.

2 There is a distinction, correct?

3 THE WITNESS: Right. I don't
4 think they check for marijuana. They
5 only check for metabolite in urine
6 test.

7 MR. SANCHEZ: Do metabolites --

8 THE WITNESS: Give me a second.
9 I have to turn my light on.

10 MR. SANCHEZ: Sure.

11 THE WITNESS: I'm sorry.

12 MR. SANCHEZ: So metabolites,
13 when these tests -- I guess it's
14 Carrier Exhibit 1, the actual test.

15 MR. MAGGIORE: That's the Notice
16 of trial. Carrier Exhibit 1.

17 MR. SANCHEZ: I'm sorry. It's
18 not Carrier Exhibit 1. Give me one
19 moment.

20 MR. COLOMBO: What are you
21 looking for?

22 MR. SANCHEZ: I'm looking for
23 the drug test. The results.

24 MR. COLOMBO: That would be
25 Carrier Exhibit 10.

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1 MR. SANCHEZ: Do you have a
2 copy of Carrier Exhibit 10 in front of
3 you --

4 MR. MAGGIORE: Excuse me. I'm
5 sorry. That's -- I don't think that's
6 Carrier Exhibit 10. One moment. I
7 just want to verify the number.

8 MR. SANCHEZ: Okay.

9 MR. MAGGIORE: That is the --
10 he's showing the Quest Diagnostics --

11 MR. SANCHEZ: Isn't that the
12 result of the test?

13 MR. DREW: That's 13, what he
14 was showing.

15 MR. SANCHEZ: My mistake.

16 MR. MAGGIORE: We are talking
17 about Carrier Exhibit 13.

18 MR. SANCHEZ: Carrier
19 Exhibit 13.

20 THE WITNESS: This one, right?

21 MR. SANCHEZ: Yes. So it says,
22 "Marijuana Metabolites, Positive."

23 THE WITNESS: Right.

24 MR. SANCHEZ: So does that
25 finding of a positive for metabolites

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1 indicate that the person could be
2 impaired or is impaired?

3 THE WITNESS: Depends on
4 physical examination. Not just based
5 on the lab. If you are taking
6 marijuana for a long time, then -- you
7 know, depends on the amount taken,
8 depends on duration. Could be
9 positive for many, many months.

10 MR. SANCHEZ: So marijuana,
11 right, after you -- you can ingest --
12 I'm going to back up.

13 Are you familiar with the recent
14 New York State law that says
15 marijuana, recreational marijuana is
16 legal?

17 THE WITNESS: Yeah, I know about
18 that. Yeah.

19 MR. SANCHEZ: So say someone
20 takes marijuana and indulges in
21 recreational marijuana and a week
22 later, takes a urinalysis test, would
23 metabolites show up?

24 THE WITNESS: Depends on how
25 much they're taking, for how long.

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1 MR. SANCHEZ: Okay. So I'll
2 shorten the window.

3 Somebody has -- partakes in
4 recreational marijuana and two days
5 later, takes a urinalysis, would
6 metabolites show up?

7 THE WITNESS: Yeah.

8 MR. SANCHEZ: Would that person
9 be impaired?

10 THE WITNESS: It depends on
11 examination. It depends on what the
12 clinician examines. If -- if the
13 person is impaired --

14 MR. SANCHEZ: I'm asking about a
15 physical -- so you are talking about
16 an observation.

17 So you can see if somebody is
18 impaired, correct?

19 THE WITNESS: Right. Exactly.

20 MR. SANCHEZ: So what I'm asking
21 is, so they show up and they don't
22 seem to be impaired, they take a
23 urinalysis and it comes up positive,
24 is that person impaired?

25 THE WITNESS: I wouldn't say

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1 impaired. But they'd test positive
2 for marijuana.

3 MR. SANCHEZ: They tested
4 positive for marijuana metabolites?

5 THE WITNESS: Right.

6 MR. SANCHEZ: Okay. So because
7 it stays in your body well after the
8 effects wear off, isn't that a side
9 effect of marijuana?

10 THE WITNESS: That's right.
11 That's the way it's metabolized by the
12 body. Some people, could be for long
13 time. Some people, a few days. It
14 depends on the -- again, duration,
15 amount taken.

16 MR. SANCHEZ: Isn't it true
17 that -- and that happens because it
18 attaches to your fat cells?

19 THE WITNESS: It's possibility,
20 right.

21 MR. SANCHEZ: It's a possibility
22 or is it a medical fact, it
23 attaches --

24 THE WITNESS: It's a fact.

25 MR. SANCHEZ: We all read --

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1 THE WITNESS: Again, it all
2 depends on how many you've taken.
3 Depends on the quantity, quality,
4 duration.

5 MR. SANCHEZ: Well, I'm saying
6 if -- so if somebody takes -- has
7 marijuana and two days later, takes a
8 test, comes up positive for
9 metabolites.

10 Would the readings be the same
11 on the initial -- on Carrier
12 Exhibit -- was it 13?

13 MR. DREW: 13.

14 MR. SANCHEZ: So it says 50 --
15 50 and 15, right?

16 THE WITNESS: Yeah. That's
17 the --

18 MR. SANCHEZ: Can you tell me
19 exactly how much -- does that matter?
20 So if somebody smokes a lot of
21 marijuana or somebody barely smokes
22 marijuana, would these numbers always
23 be the same?

24 THE WITNESS: I'm not sure. I
25 can't tell you that. They have cutoff

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1 point, as per DOT, 15 for initial test
2 and 15 for MS/GC (sic) test.

3 MR. SANCHEZ: Okay. But --

4 THE WITNESS: Either that, they
5 would come up as positive.

6 MR. SANCHEZ: But it's 50 --
7 this is the -- I'm sorry. What did
8 you say this was? The --

9 THE WITNESS: The initial is
10 immunoassay, the cutoff point 15,
11 positive.

12 MR. SANCHEZ: The cutoff point.
13 That was my question.

14 THE WITNESS: The cutoff point
15 for MS, to confirm that, is 15.
16 Anything higher than 15, it's
17 considered positive. It's DOT, not
18 our regulations.

19 MR. SANCHEZ: As the MRO, are
20 you qualified to identify troubled
21 employees or somebody who may be
22 impaired?

23 THE WITNESS: I mean, if the
24 foreman thinks somebody is impaired,
25 they can send for medical evaluation.

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1 Then, you know, we see them for
2 examination. You know, history.

3 MR. SANCHEZ: Did you receive
4 any trainings as an MRO to identify
5 employees who may be impaired?

6 THE WITNESS: Yeah. I mean,
7 they tell you the sign, symptoms of
8 that. Somebody has been taking
9 marijuana, drinking alcohol, whatever.

10 MR. SANCHEZ: So you are
11 familiar with the signs of somebody
12 who may be impaired?

13 THE WITNESS: Yeah.

14 MR. SANCHEZ: Have you ever had
15 somebody come into your office
16 impaired, or into medical impaired,
17 that you recall?

18 THE WITNESS: Not here. But the
19 other office, I've seen some people.

20 MR. SANCHEZ: Here on Long
21 Island Railroad, you've never had
22 anybody show up, to your knowledge,
23 impaired?

24 THE WITNESS: I don't recall.
25 No.

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1 MR. SANCHEZ: So, Doctor, if you
2 wanted to check for marijuana and not
3 metabolites, would you use a urine,
4 saliva, or blood test, in your
5 opinion, your professional medical
6 opinion?

7 THE WITNESS: I'm sorry. Can
8 you repeat it.

9 MR. SANCHEZ: If you want to
10 test for marijuana, not the
11 metabolites, marijuana, which test
12 would you use to get an accurate test
13 if an employee had marijuana in their
14 system? If you had -- would it be
15 blood --

16 THE WITNESS: We always check
17 for metabolites. As per the DOT, THC
18 metabolites. So I'm not sure --

19 MR. SANCHEZ: But you are
20 familiar with marijuana and the
21 testing. So if you were to test --
22 you know, there is a difference
23 between marijuana and the metabolites.

24 I'm asking you, if you just
25 wanted to test for marijuana, what

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1 test would you use, if you know?

2 THE WITNESS: I cannot answer
3 that. I mean, I was thinking maybe
4 saliva. But I'm not sure.

5 MR. SANCHEZ: So do you think
6 saliva -- you think saliva or urine
7 are more accurate than blood?

8 THE WITNESS: No. I'm saying
9 depends on marijuana. Maybe from the
10 smoking marijuana, they might receive
11 the marijuana -- I'm not sure. I'm
12 not familiar with that. I cannot
13 answer that. We only check for THC in
14 urine, basically.

15 MR. SANCHEZ: Okay. I have no
16 further questions at this time.

17 MR. MAGGIORE: Okay.

18 MR. SANCHEZ: No, you know what,
19 my mistake. I got excited. Almost.
20 Sorry, Doctor. One more.

21 THE WITNESS: Yeah. Go ahead.

22 MR. SANCHEZ: I'd like you to
23 take a look at what's been identified
24 as Union Exhibit 4.

25 (Cannabis Metabolites: What

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1 You Need To Know was marked as
2 Union Exhibit 4 for
3 identification, as of this date.)

4 MR. MAGGIORE: I note for the
5 record that it's a six-page document.

6 MR. SANCHEZ: I was going to
7 count for you. It's a six-page
8 document.

9 Do you have it, Doctor?

10 THE WITNESS: Yes.

11 MR. SANCHEZ: And it's "Cannabis
12 Metabolites: What You Need To Know."
13 So I'll read it, and you tell me if
14 you agree or disagree; is that fair?

15 THE WITNESS: I can read, yeah.

16 MR. SANCHEZ: If you prefer to
17 read it, it will probably be easier
18 for me.

19 THE WITNESS: Okay.

20 MR. SANCHEZ: Yes?

21 THE WITNESS: Go ahead. You can
22 read.

23 MR. SANCHEZ: It says, "In
24 recent years, cannabis consumption has
25 become legalized in more and more

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1 places. The rapidly changing laws and
2 regulations make cannabis consumption
3 an incredibly nuanced topic, and the
4 implications of legalization for
5 workplaces can become complex and
6 confusing. Comprised of many
7 components, cannabis has both
8 medicinal and recreational uses.

9 "Given the increasing
10 legalization of cannabis, coupled with
11 the fact that it remains one of the
12 most widely abused substances
13 globally, employers need to know some
14 of the basics about it. Understanding
15 how cannabis metabolizes in the body
16 is one important area of knowledge.

17 "Basic knowledge of cannabis
18 metabolites allows employers to make
19 informed decisions around accurate
20 drug testing methods and helps form
21 the foundation for policies.

22 "THC is known as the parent drug
23 of cannabis. It's the main substance
24 in the cannabis plant that drug
25 testing is looking to detect, albeit

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1 in an indirect way. Since half the
2 dose is already cleared from the body
3 within 30 minutes, the presence of THC
4 cannot be detected in urine. However,
5 once the euphoric effects of cannabis
6 wear off, metabolites remain in the
7 body. These are essentially chemical
8 remnants of the plant. The presence
9 of THC metabolites offers a reliable
10 indicator that a person has consumed
11 the parent drug.

12 "A metabolite forms when a
13 substance breaks down into the body.
14 Basically, it means that the parent
15 drug has been turned into something
16 else. Because THC metabolites remain
17 in the body much longer than THC
18 itself, drug tests for cannabis are
19 used to detect THC metabolites. Drug
20 testing kits could still be named with
21 the parent drug, even though they're
22 testing for metabolites."

23 Is that the test -- would that
24 be accurate for the test that's
25 conducted with Union Exhibit 13?

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1 THE WITNESS: I don't
2 understand, you say that. Basically,
3 THC is the metabolite in the
4 marijuana. I don't know why they're
5 saying THC is turned into metabolite.
6 They call it marijuana metabolite, not
7 THC metabolite.

8 MR. SANCHEZ: Okay. But --

9 THE WITNESS: And metabolite
10 doesn't make any sense. Because
11 marijuana is the parent drug, and THC
12 is metabolite. So there's no
13 metabolite for THC itself. I don't
14 know what they're talking about. I'm
15 not sure.

16 MR. SANCHEZ: This is totally
17 foreign to you, Doctor?

18 THE WITNESS: No. I'm saying
19 they're correct about that, THC
20 metabolite is in marijuana. But
21 I'm -- THC metabolite doesn't make any
22 sense. THC is a metabolite of
23 marijuana.

24 MR. SANCHEZ: Okay. I have no
25 further questions.

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1 MR. MAGGIORE: I just have one
2 question for you, Rick, regarding
3 Exhibit 4.

4 What is the source of
5 Organization Exhibit 4?

6 MR. SANCHEZ: I think we got
7 it -- we probably found it with -- let
8 me see -- can you give me, 17, 18, 19.
9 We probably got it -- it comes from --
10 it's on page one.

11 It's a drug and alcohol -- it's
12 a website. It's a website on THC.

13 MR. MAGGIORE: I'm just taking a
14 look at the document. I don't see an
15 author or any company that -- I mean,
16 I see something indicating "Sure Hire"
17 at the top left corner. But is
18 there -- who authored this article?

19 MR. SANCHEZ: I think we got it
20 the same place that Carrier funneled
21 all those articles they submitted into
22 evidence.

23 MR. MAGGIORE: You know where
24 you got yours, so where did it come
25 from? Did it come from the website?

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1 MR. SANCHEZ: It came from the
2 website, yes. If you want --

3 MR. MAGGIORE: So I'll note for
4 the record that there's no author and
5 is --

6 THE WITNESS: Yeah, there's
7 nothing there.

8 MR. SANCHEZ: Okay.

9 MR. MAGGIORE: Okay. I was just
10 wondering if there was one, and it
11 doesn't indicate it.

12 THE WITNESS: I'm not sure where
13 they came from. They -- the DOT web
14 page or something. There's nothing
15 there, so I'm not sure where it came
16 from.

17 MR. MAGGIORE: Dr. Mujtaba, I
18 just have a couple of more questions
19 for you.

20 So as Mr. Sanchez raised
21 discussing the federal testing panel
22 and the company testing panel, is
23 marijuana on both of those testing
24 panels as a prohibited substance?

25 THE WITNESS: Can you just

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1 repeat for me? I'm sorry.

2 MR. MAGGIORE: Is marijuana on
3 the testing panel for FRA --

4 THE WITNESS: Yeah. Yup, yup,
5 yup.

6 MR. MAGGIORE: -- and company?

7 THE WITNESS: Yup.

8 MR. MAGGIORE: Also, I just want
9 to confirm for the record, your
10 testimony that you said you did not
11 follow up with Mr. Drew's physicians,
12 which are noted as Carrier Exhibit 2A
13 and 2B, because you received the GC/MS
14 tests which confirmed the marijuana
15 positive, correct?

16 THE WITNESS: Correct.

17 MR. MAGGIORE: Okay. Is
18 urinalysis the standard -- industry
19 standard for testing for drugs?

20 THE WITNESS: Correct.

21 MR. MAGGIORE: Is marijuana
22 still a prohibited substance under
23 LIRR policy?

24 THE WITNESS: Yes.

25 MR. MAGGIORE: Is it still a

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1 prohibited substance under FRA
2 guidelines?

3 THE WITNESS: Yes. Yes.

4 MR. MAGGIORE: I would just like
5 to refer back for a moment to Carrier
6 Exhibit 1, which is the Notice of
7 Trial.

8 Do you have a copy of that?

9 THE WITNESS: Sorry. Give me
10 one second.

11 MR. MAGGIORE: Okay.

12 THE WITNESS: Okay.

13 MR. MAGGIORE: You got it?

14 THE WITNESS: I got it.

15 MR. MAGGIORE: I'm just going to
16 ask you -- yup, that's the trial
17 notice. Can you just please take a
18 quick review of it again.

19 THE WITNESS: Right.

20 MR. MAGGIORE: Have you read it?
21 Okay.

22 Does the trial notices state that
23 Mr. Drew was impaired or intoxicated
24 at the time of his exam?

25 THE WITNESS: It doesn't say

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1 anything about intoxication. No.

2 MR. MAGGIORE: So he's not being
3 charged with being impaired at the
4 time of his exam, correct?

5 THE WITNESS: Correct.

6 MR. MAGGIORE: Okay. I have no
7 further questions.

8 MR. SANCHEZ: I have a
9 follow-up. A few.

10 He's being charged with the
11 detection of prohibited substance.

12 Is marijuana a prohibited
13 substance in New York?

14 THE WITNESS: I think it's
15 legalized in New York State.

16 MR. SANCHEZ: You think it's
17 legalized in -- you are a doctor in
18 New York State that deals with
19 marijuana drug tests and you think
20 it's legalized in New York State?

21 THE WITNESS: Yes. It's
22 legalized in New York State.

23 MR. SANCHEZ: So it is.

24 So it's not a prohibited
25 substance in New York State?

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1 THE WITNESS: In New York State.
2 But company can make their own policy.

3 MR. SANCHEZ: That's fine.

4 And is Mr. Drew, he's a safety
5 sensitive employee now, does he fall
6 under the FRA guidelines?

7 THE WITNESS: Again, I have to
8 look at the LIRR -- they change the
9 titles which fall under the FRA. So
10 I'll take a look at it.

11 MR. SANCHEZ: A minute ago, you
12 testified in the affirmative, that he
13 was tested positive. Now I'm asking
14 you, if you -- so are you telling me.
15 Dr. Mujtaba, that you can't tell me
16 the difference between an FRA
17 requirement and a non-FRA requirement?
18 But you are an MRO, and you have --
19 you are certified. We went through
20 it. You testified that, yes.

21 THE WITNESS: Yeah. Of the --
22 of the -- I can refer to documents if
23 I need to. I cannot remember
24 everything.

25 MR. SANCHEZ: I mean, off the

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1 top of my head, I can tell you and I'm
2 not a doctor.

3 But my question is --

4 THE WITNESS: I'll look at the
5 job titles. And if he's there, then,
6 you know --

7 MR. SANCHEZ: I'll help you.
8 He's not under a covered service job.

9 Does he fall under DOT or FRA
10 regulations?

11 THE WITNESS: I'm sorry?

12 MR. SANCHEZ: Do you know what a
13 covered job is? It's an FRA -- FRA
14 term. A covered job is a job deemed
15 to fall under random testing, which is
16 what you provide.

17 So my question to you is, do you
18 know the difference between a covered
19 job and a non-covered job?

20 THE WITNESS: I think if the
21 random testing, could be FRA. Under
22 FRA.

23 MR. SANCHEZ: So you do not
24 know?

25 THE WITNESS: I do not know. I

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1 don't recall. I read it a while ago.
2 The LIRR guidelines.

3 MR. MAGGIORE: Dr. Mujtaba,
4 was --

5 MR. SANCHEZ: I'm not done
6 asking my questions.

7 MR. MAGGIORE: You have more
8 questions? You said you had a
9 follow-up. Okay. Continue.

10 MR. SANCHEZ: You know what, I'm
11 done.

12 So on the bottom of the charge
13 on page one where it says tested
14 positive for marijuana, would it be
15 more accurate to say tested positive
16 for marijuana metabolites?

17 THE WITNESS: Which one are you
18 talking about, which document?

19 MR. SANCHEZ: The same document
20 you were just referring to.

21 THE WITNESS: Yeah. Marijuana
22 metabolites.

23 MR. SANCHEZ: One final
24 question.

25 Does marijuana -- recreational

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1 marijuana is legal in New York; is
2 that correct, for adults 21? And it's
3 illegal, right, to be under the
4 influence or have it on the property;
5 is that correct?

6 THE WITNESS: That's correct.

7 MR. SANCHEZ: But that's the
8 Railroad policy, right?

9 THE WITNESS: Correct.

10 MR. SANCHEZ: So my question to
11 you is, does Railroad policy trump
12 state law?

13 THE WITNESS: I believe so. A
14 company can make their own policies.

15 MR. SANCHEZ: So I'll ask again.

16 So if the Railroad develops a
17 policy that's in conflict with the
18 law, New York State law --

19 THE WITNESS: Again, Mr.
20 Sanchez, I'm not a lawyer, so I cannot
21 answer fully.

22 But again, depends on the laws
23 and everything. The company has the
24 right to have their own policy, then
25 they can make their own policy.

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1 MR. SANCHEZ: Okay.

2 THE WITNESS: But it's not --
3 I'm just medical. I don't know
4 anything about law, law stuff.

5 MR. SANCHEZ: Okay.

6 THE WITNESS: That's for the
7 lawyers.

8 MR. SANCHEZ: I have no further
9 questions.

10 MR. MAGGIORE: Just one more
11 question. Referring back to the
12 Notice of Trial.

13 Under what authority was this
14 test taken?

15 THE WITNESS: I think it was
16 under the LIRR. Right. It was
17 non-federal.

18 MR. MAGGIORE: Why was Mr. Drew
19 tested on June 7, 2022?

20 THE WITNESS: You want me to
21 read on the piece of paper or --

22 MR. MAGGIORE: Just tell me what
23 the trial notice says, please.

24 THE WITNESS: So -- so company
25 policy, anybody out more than 30 days,

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1 they have to have a work drug testing
2 done.

3 MR. MAGGIORE: What does it say?
4 Can you just read the sentence states
5 "On June 7, 2022, he reported to Long
6 Island Railroad medical facility" --

7 THE WITNESS: Yes. Yes.
8 Somebody brought up the return-to-duty
9 drug test, yes.

10 MR. MAGGIORE: Is that an FRA
11 test or an LIRR test?

12 THE WITNESS: That's an LIRR
13 test.

14 MR. MAGGIORE: Thank you.

15 MR. SANCHEZ: Can you tell me
16 the difference between an LIRR and an
17 FRA test?

18 THE WITNESS: LIRR have their
19 own policy. They get to do more
20 substance tests or metabolites to be
21 tested, drugs in their panels. FRA
22 only checks for the five drugs,
23 basically.

24 MR. SANCHEZ: So it says, "The
25 detection of a prohibited substance

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1 resulting from any required
2 toxicological test."

3 Can you tell me, the required
4 toxicological test, what the
5 difference between a required
6 toxicological test under the FRA's
7 authority and company policy?

8 THE WITNESS: I mean, if I only
9 have five substances for
10 toxicological, and MTA -- FRA have ten
11 panels.

12 MR. SANCHEZ: I'll ask another
13 question. Maybe this will help.

14 Daren Drew is not covered
15 under -- the authority for his testing
16 was company policy.

17 THE WITNESS: Okay. Yeah.

18 MR. SANCHEZ: Right. So he
19 was -- because he was out for 30 days,
20 right?

21 THE WITNESS: Right.

22 MR. SANCHEZ: Is Daren Drew
23 subject to a random?

24 THE WITNESS: I'm not sure. I
25 have to look at, again, job titles

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1 and -- you know, I can't answer that.

2 MR. SANCHEZ: But it has nothing
3 to do with a job title if he's not
4 covered under FRA.

5 You should know this, Doctor,
6 you are the MRO. Right. The FRA
7 specifically tells you the parameters,
8 and you testified that you are
9 qualified.

10 So my question to you is, if he
11 doesn't fall under the authority of
12 the FRA, right, can he be tested under
13 company policy -- I'll help you with
14 that -- for a random -- for a random
15 test?

16 THE WITNESS: If the company
17 policy and the boss makes the decision
18 that this job required random testing,
19 then he has to be tested.

20 MR. SANCHEZ: You are not sure,
21 Doctor?

22 THE WITNESS: I don't like to
23 use random policy. I just go by the
24 manual.

25 MR. SANCHEZ: No, I know. But

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1 this is the manual, this is the
2 policy. You should know this. It's a
3 softball question, sir.

4 THE WITNESS: Let me turn my
5 light --

6 MR. SANCHEZ: I have no further
7 questions at this time.

8 MR. MAGGIORE: Okay.

9 MR. SANCHEZ: I have no further
10 questions, Doctor.

11 THE WITNESS: Okay.

12 MR. DREW: I'd just like to make
13 one statement for the record. When he
14 asked him about my -- the letters --

15 MR. MAGGIORE: Excuse me one
16 second. Is this a question for the
17 doctor?

18 MR. DREW: No. I want to just
19 make a correction of what you had
20 said when you asked the doctor --

21 MR. MAGGIORE: Excuse me. I'm
22 going to ask for your testimony later
23 and save it for me later. Please
24 address if you have any issues
25 regarding whatever I said or

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1 addressing the charges, please do at
2 that time.

3 If you have any questions for
4 Dr. Mujtaba, please ask him now.

5 MR. SANCHEZ: Okay. Thank you.

6 MR. MAGGIORE: All right.

7 Dr. Mujtaba, you are excused and
8 subject to recall, if needed. Please
9 do not discuss this matter with
10 anybody outside of trial while it is
11 still ongoing.

12 The time is approximately
13 1:07 p.m., and we are going to take a
14 brief recess in order to allow the
15 organization's witnesses to enter.

16 Thank you, Dr. Mujtaba.

17 (At this time, a recess was
18 taken.)

19 ** WITNESS FREDY HO **

20 MR. MAGGIORE: The time is
21 approximately 1:26 p.m., and we are
22 back on the record.

23 The Carrier does not have any
24 additional witnesses to call at this
25 time.

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1 Mr. Sanchez, Mr. Drew, do you
2 have any witness that you'd like to
3 provide testimony?

4 MR. SANCHEZ: Yes.

5 MR. DREW: Yes.

6 MR. SANCHEZ: Fredy Ho.

7 MR. MAGGIORE: Okay.

8 Mr. Ho, you've been called as
9 the Organization's first witness for
10 this trial. Before the Organization
11 begins with its questions, can you
12 please identify yourself with full
13 name and employee ID for the record.

14 THE WITNESS: My name is Fredy
15 Ho. F-R-E-D-Y, last name Ho, H-O.
16 I'm a physical therapist. My BSC
17 number is 1257644.

18 MR. MAGGIORE: What is your
19 current position with the Long Island
20 Railroad?

21 THE WITNESS: I'm a physical
22 therapist for the medical department.

23 MR. MAGGIORE: Are you a Long
24 Island Railroad employee or a --

25 THE WITNESS: I'm an MTA

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1 employee.

2 MR. MAGGIORE: How long have you
3 held your current position?

4 THE WITNESS: With the MTA, five
5 and a half years. But I've been
6 working with the railroad medical
7 department as a physical therapist for
8 30 years.

9 MR. SANCHEZ: Did you say 30?

10 THE WITNESS: Thirty years.

11 MR. MAGGIORE: Okay. Thank you.

12 Mr. Sanchez, you may begin to
13 question Mr. Ho.

14 MR. SANCHEZ: Thirty years. You
15 look good.

16 So, Mr. Ho, can you tell me what
17 training or school you received to
18 perform your current duties.

19 THE WITNESS: I went to Hunter
20 College, and I graduated with a
21 bachelor degree. And I'm currently a
22 licensed physical therapist for New
23 York State since 1989.

24 MR. SANCHEZ: Can you tell me,
25 what exactly are your duties when it

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1 comes to Long Island Railroad
2 employees returning to duty after
3 being out for more than 30 days?

4 THE WITNESS: My duty is to test
5 those people who been out more than
6 30 days. Usually, I don't see people
7 for that unless they have a
8 musculoskeletal injury. So if we see
9 them less than 30 days, is fine.

10 But if anybody out more than
11 60 days, with no musculoskeletal
12 injury, so I would do something called
13 a return-to-work more than 60 days
14 physical agility screening.

15 MR. SANCHEZ: I'm going to give
16 you what's been identified as Union
17 Exhibit 5.

18 THE WITNESS: Mm-hmm.

19 MR. MAGGIORE: This is being
20 entered into the record as
21 Organization Exhibit 5. It's a
22 one-page document.

23 (Physical Ability Screening
24 Test was marked as Organization
25 Exhibit 5 for identification, as

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1 of this date.)

2 MR. SANCHEZ: Now, can you --
3 Mr. Ho, can you tell me what Union
4 Exhibit 5 is? Are you familiar with
5 Union Exhibit 5?

6 THE WITNESS: Yes. This is a
7 physical ability screening test for
8 M of E electricians.

9 MR. SANCHEZ: Are you familiar
10 with Mr. Drew?

11 THE WITNESS: I recognize the
12 face. But I don't remember the event.

13 MR. SANCHEZ: He's an M of E
14 electrician that was out for
15 four months.

16 So he would have -- he would
17 have performed this physical agility
18 test?

19 THE WITNESS: Correct.

20 MR. SANCHEZ: And it would have
21 been administrated by you?

22 THE WITNESS: Correct.

23 MR. SANCHEZ: Do you have a
24 copy? Because at the end, right -- I
25 mean, so if Mr. Drew came and had this

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1 test done and you administered, would
2 there -- there's a date and a name.

3 Do you have a copy of Mr. Drew's
4 test?

5 THE WITNESS: Usually, once I
6 complete this, it's being filed in the
7 employee's chart.

8 MR. SANCHEZ: Okay.

9 THE WITNESS: And I will write
10 up a -- my summary report also will
11 printout and is being filed in the
12 employee's chart under the physical
13 therapy section.

14 MR. SANCHEZ: So that chart,
15 physical therapy section, is it here
16 in this building?

17 THE WITNESS: Yes.

18 MR. SANCHEZ: Do you have access
19 to it?

20 THE WITNESS: Yes.

21 MR. SANCHEZ: Could you get
22 Mr. Drew's copy so we can have --

23 THE WITNESS: I have to get the
24 chart from upstairs. We can call
25 the --

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1 MR. SANCHEZ: That's fine.

2 MR. MAGGIORE: All right.

3 MR. SANCHEZ: Because there's
4 notes. If you have the original.

5 THE WITNESS: Yeah. It should
6 be in the chart.

7 MR. SANCHEZ: Okay.

8 MR. MAGGIORE: So if the chart
9 is readily accessible --

10 THE WITNESS: I can go to my
11 computer and print out that
12 information.

13 MR. SANCHEZ: So you can print
14 out --

15 THE WITNESS: I can print out my
16 note.

17 MR. SANCHEZ: That's perfect.

18 THE WITNESS: You want that?

19 MR. SANCHEZ: Yes, please.

20 MR. MAGGIORE: All right. So
21 the time is 1:30 p.m. We're going to
22 take a brief recess for Mr. Ho to
23 retrieve the requested document.

24 (At this time, a recess was
25 taken.)

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1 MR. MAGGIORE: The time is
2 1:43 p.m., and we are back on the
3 record.

4 Mr. Sanchez, you requested a
5 document from Mr. Ho.

6 MR. SANCHEZ: Yes. And it has
7 been identified as Union Exhibit 5A.
8 And I have given it to Mr. Ho to --

9 MR. MAGGIORE: Organization 5A,
10 it's a one-page document.

11 MR. SANCHEZ: One-page document.

12 (Physical Agility Test was
13 marked as Union Exhibit 5A for
14 identification, as of this date.)

15 MR. SANCHEZ: So, Mr. Ho, you
16 administered -- you would have
17 administered this physical agility
18 test to Mr. Drew?

19 THE WITNESS: Yes.

20 MR. SANCHEZ: And you did on --
21 looks like it was --

22 THE WITNESS: June 7, 2022.

23 MR. SANCHEZ: Can you explain
24 exactly each part of the test, exactly
25 what you are looking for.

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1 THE WITNESS: Sure. Usually,
2 this note's completed after I complete
3 the physical agility screening test.
4 And in here, says it was on June 7,
5 2022. I finished the notes at
6 11:44 a.m. on that date.

7 So I put down patient's out of
8 work with a disability, sick due to
9 prostate cancer with treatment. And
10 is cleared for duty by his personal
11 medical doctor.

12 Physical agility screening test,
13 explained it. And agreed testing
14 between -- the employees agreed to
15 perform the test with me.

16 MR. SANCHEZ: So, Doctor, just
17 slow down.

18 When you say explained and
19 agreed, you are referring to Union
20 Exhibit 5 and the tasks that are
21 listed on the left-hand side?

22 THE WITNESS: Correct.

23 MR. SANCHEZ: Can you -- just
24 for the record, can you read the
25 specific task that you are looking

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1 for.

2 THE WITNESS: For the test, the
3 first one is to check the ability for
4 climbing and walking. So basically,
5 I'll ask the employees to climb up and
6 down on a simulated train platform,
7 about 62 inches height, three times.
8 And also --

9 MR. SANCHEZ: I'm sorry. Can
10 you tell me what you are looking for
11 when they do that.

12 THE WITNESS: Since he mainly --
13 he must need to climb trains. So this
14 height is the simulation of his
15 climbing ability to climb up and down
16 the train from the yard.

17 So I'm looking for his strength
18 and his balance in his upper arms and
19 lower arms strength to do so. And the
20 safety to climb trains.

21 And also, the second part would
22 be to walk on uneven surfaces three
23 times. Basically, is our track
24 simulation. The third rail is with
25 the balance of walking.

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1 Second part is lifting, using
2 two hands to lift and lower weight of
3 75 pounds in increments of ten pounds,
4 from 30 inches height from the table
5 to floor and back onto the table.

6 The third part is to check the
7 kneeling, the stooping, crouching and
8 reaching ability. So I use the nuts
9 and bolts test. Some nuts and bolts,
10 for him to squat down and unscrew it.
11 And then place it on the -- about
12 shoulder level. Approximately
13 five minutes to complete the task.

14 Also, the last one would be for
15 carrying. We'll ask the employees to
16 carry ten to 50 pounds in incremental
17 ten pounds about 50 feet over even
18 surfaces.

19 So once he complete it, I would
20 put down met, met, met, met. And I
21 will escort the employees back to
22 the -- upstairs to the front desk to
23 proceed to the medical part.

24 MR. SANCHEZ: At the bottom, it
25 says, "Vision, PF."

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1 Can you tell me what that stands
2 for?

3 THE WITNESS: That would be for
4 the nurse to complete or for the PA to
5 complete. It's not for my section.

6 MR. SANCHEZ: So once he's done
7 with the physical agility test, he
8 goes to the nurse?

9 THE WITNESS: I'll give it back
10 to the front desk. So they have their
11 own next protocol. It may be the
12 nurse, it may be the PA, it may be for
13 the doctor. I don't follow up what's
14 the sequence.

15 MR. SANCHEZ: So once he passes
16 this, he -- okay.

17 Did he pass?

18 THE WITNESS: According to my
19 note, yes, he passed all the tests.

20 MR. SANCHEZ: Was he
21 cooperative?

22 THE WITNESS: According to my
23 notes, I didn't document anything he's
24 not cooperative to me. So I'm
25 assuming he's cooperative.

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1 MR. SANCHEZ: Had he been
2 uncooperative or difficult, would you
3 have noted it?

4 THE WITNESS: Yes.

5 MR. SANCHEZ: So because it's
6 not in the notes, he was cooperative?

7 THE WITNESS: Yes.

8 MR. SANCHEZ: Are you trying to
9 detect employees who may be under the
10 influence or impaired?

11 THE WITNESS: No.

12 MR. SANCHEZ: No?

13 THE WITNESS: No.

14 MR. SANCHEZ: Have you ever had
15 an employee that's been impaired?
16 You've been here 30 years in the Long
17 Island Railroad?

18 THE WITNESS: Yes.

19 MR. SANCHEZ: Are you familiar
20 with their policies?

21 THE WITNESS: No.

22 MR. SANCHEZ: No policies?

23 THE WITNESS: No policies for my
24 department. So I don't detect
25 anything. I just look for the

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1 physical part of it.

2 MR. SANCHEZ: In your 30 years
3 here, have you ever come across
4 someone who is impaired while taking
5 the test?

6 THE WITNESS: From my
7 recollections, maybe with an alcohol
8 breath. And I will usually notify the
9 physician in charge of the date or the
10 physician's assistant, so they may
11 have to confirm there is -- it's okay
12 for me to continue the physical test.

13 MR. SANCHEZ: Has that ever
14 happened to you that you recall?

15 THE WITNESS: From my
16 recollection, probably one time that I
17 smelled something. So I will stop the
18 test and let medical department to
19 handle that first. And if everything
20 is fine, they will send their
21 employees back to me.

22 MR. SANCHEZ: Is that a policy
23 or requirements? So if you think
24 someone is under the influence, you
25 have to stop?

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1 THE WITNESS: It's not a policy.
2 It -- it may affect the performance of
3 the test. So usually, I ask for
4 medical assistance.

5 MR. SANCHEZ: Would you agree,
6 is that fair to say that this is a
7 fairly strenuous test?

8 THE WITNESS: No, it's not a
9 strenuous test.

10 MR. SANCHEZ: Oh, it's not?

11 THE WITNESS: Considering other
12 tests that I have given, this is
13 probably the moderate. Moderate.

14 MR. SANCHEZ: So do you think --
15 you know his condition, what he was
16 coming back for?

17 THE WITNESS: Correct.

18 MR. SANCHEZ: Would you have
19 noticed if he was having any
20 difficulties walking or crouching or
21 lifting? He had no difficulties?

22 THE WITNESS: Based on the notes
23 here, he showed no difficulty to
24 complete the test.

25 MR. SANCHEZ: So he showed up,

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1 and in your medical opinion, based on
2 your observation, he didn't seem to be
3 impaired, he was cooperative and
4 passed everything?

5 THE WITNESS: Correct.

6 MR. SANCHEZ: I have no further
7 questions.

8 MR. MAGGIORE: Okay.

9 Mr. Ho, I just have a couple of
10 follow-up questions for you.

11 THE WITNESS: Sure.

12 MR. MAGGIORE: I want to confirm
13 for the record, are you involved in
14 the drug testing process of employees
15 for the Railroad?

16 THE WITNESS: No.

17 MR. MAGGIORE: Do you have any
18 knowledge of the drug testing
19 procedure?

20 THE WITNESS: No.

21 MR. MAGGIORE: Did you have any
22 role or involvement with Mr. Drew's
23 June 7, 2022 drug test?

24 THE WITNESS: No.

25 MR. MAGGIORE: Okay. I just

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1 want to show you what's been marked as
2 Carrier's Exhibit 1, which is the
3 Notice of Trial. Can you please take
4 a moment to read it.

5 (At this time, the witness
6 perused the aforementioned item.)

7 THE WITNESS: Okay.

8 MR. MAGGIORE: And Mr. Drew,
9 Mr. Sanchez, do you waive the reading
10 of the charges?

11 MR. SANCHEZ: No. You can read
12 them into the record, please.

13 THE WITNESS: You want me to
14 read aloud, okay.

15 "Please arrange to be present at
16 the trial to be held at the Hillside
17 Maintenance Complex, Room 241, 2nd
18 floor of the Maintenance and Equipment
19 Administrator's Office on: Dated
20 June 23, 2022. Time 10:00 a.m. in
21 connections with the following
22 charges:

23 "Conduct unbecoming employees
24 violation of the corporate alcohol and
25 substance abuse policy. Section four,

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1 prohibits contact which stated in the
2 present parts. D, the detections of
3 prohibited substance resulting from a
4 required toxicological test is
5 violations of this policy.

6 "And that on June 7, 2022, you
7 reported to the Long Island medical
8 facility in Mineola, New York where
9 you submitted a urine specimen as part
10 of a return-to-duty drug test.

11 "On June 13, 2022, the
12 department was informed that you
13 tested positive for marijuana. You
14 may, if you so desire, be accompanied
15 by a duly accredited representative of
16 your organization to represent you
17 without expense to the company.

18 "You may produce witnesses on
19 your behalf without expense to the
20 company. You and/or your
21 representative may cross-examine
22 witnesses. You will be expected to be
23 present throughout the entire
24 proceeding."

25 MR. MAGGIORE: So, Mr. Ho, do

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1 the charges state that Mr. Drew was
2 intoxicated or impaired at the time of
3 his June 7, 2022 return-to-work exam?

4 THE WITNESS: Yes.

5 MR. MAGGIORE: At the time of
6 his exam?

7 THE WITNESS: Say it again? Can
8 you repeat --

9 MR. MAGGIORE: Do the charges
10 state that he was intoxicated at the
11 time of his exam?

12 THE WITNESS: No.

13 MR. MAGGIORE: Thank you.

14 Do you have any other questions,
15 Mr. Sanchez?

16 MR. SANCHEZ: Yes.

17 But I didn't ask you if you
18 thought he was im- -- I asked you if
19 you thought he was impaired; did you
20 observe him being impaired, correct?

21 THE WITNESS: He wasn't
22 impaired. Based on my notes.

23 MR. SANCHEZ: Based on your
24 notes.

25 Based on your observation?

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1 THE WITNESS: Based on my
2 observations.

3 MR. SANCHEZ: Thank you.

4 And you are not familiar with
5 Railroad policy, you just testified to
6 that?

7 THE WITNESS: No.

8 MR. MAGGIORE: Just to clarify
9 for the record, we're discussing the
10 drug and alcohol policy?

11 MR. SANCHEZ: Any policy.

12 THE WITNESS: No.

13 MR. MAGGIORE: Okay.

14 Do you have any further
15 questions?

16 MR. SANCHEZ: No.

17 MR. MAGGIORE: I don't have any
18 further questions either.

19 Mr. Ho, I just ask -- you are
20 excused subject to recall. I just ask
21 that you not discuss this matter with
22 anybody while the trial is still
23 ongoing.

24 The time is approximately
25 1:45 p.m., and we'll take a brief

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1 recess to allow the organization's
2 first witness to exit the room.

3 We are off the record.

4 (At this time, a discussion was
5 held off the record.)

6 MR. MAGGIORE: The time is
7 approximately 1:58 p.m., and we are
8 back on the record.

9 The Organization's first
10 witness, Fredy Ho, has left the room.
11 At this time, the organization does
12 not have any additional witnesses to
13 call.

14 However, the Organization has
15 requested that they have time to
16 review the documents and that they
17 recall witnesses that have already
18 appeared.

19 I am granting the Union's
20 request for an additional hearing
21 date, and I will send out notification
22 indicating the date and the time as
23 such.

24 So at this time, the trial is
25 now in recess and will continue on a

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mutually agreed upon date.

Thank you.

(TIME NOTED: 1:58 p.m.)

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C E R T I F I C A T E

STATE OF NEW YORK)

:SS

COUNTY OF NASSAU)

I, Elbia Brumit, a Notary Public within
and for the State of New York, do hereby certify:

I reported the proceedings in the
within-entitled matter, and that the within
transcript is a true record of such proceedings to
the best of my ability.

I further certify that I am not related
to any of the parties to this action by blood or
marriage; and that I am in no way interested in
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 15th day of February, 2023.


ELBIA BRUMIT