

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

CASE NO. 9:25-CV-80526-DMM

GOOD SAMARITAN MEDICAL  
CENTER, INC., et al.,

*Plaintiffs,*

v.

THE LEAPFROG GROUP,

*Defendant.*

**NOTICE OF FILING**

Defendant, The Leapfrog Group (“Leapfrog”), by and through its undersigned counsel, hereby files its Notice of Filing regarding the Deposition Transcript of Matt Austin for Leapfrog’s filed Deposition Designations of Matt Austin at ECF No. 173.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 28, 2026, a true and correct copy of the foregoing was served on all counsel or parties of record via the ECF filing system.

By: /s/ Jura C. Zibas  
JURA C. ZIBAS

# TRANSCRIPT

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The in-person, video-recorded deposition of Matthew Austin, taken pursuant to Federal Rule of Civil Procedure 45 and Southern District of Florida Local Rule 26.1, at the offices of Zuckerman Spaeder, LLP, 100 E. Pratt Street, Suite 2440, Baltimore, Maryland 21202, by Plaintiffs in the above-referenced action, beginning at 9:09 a.m. The deposition was taken before Marlene Kerr, a Certified Shorthand Reporter, Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter, Federal Certified Realtime Reporter, Notary Public.

Job No. 7616361

| <div>1 APPEARANCES:</div> <div>2 Attorneys Representing Plaintiffs:</div> <div>3 GIBSON, DUNN &amp; CRUTCHER, LLP</div> <div>4 BY: LEE R. CRAIN, ESQUIRE</div> <div>5 BY: IASON TOGIAS, ESQUIRE</div> <div>6 200 Park Avenue</div> <div>7 New York, New York 10166-0193</div> <div>8 212.351.2454</div> <div>9 lcrain@gibsondunn.com</div> <div>10 itogias@gibsondunn.com</div> <div>11</div> <div>12 Attorney Representing Deponent Dr. Matthew Austin and</div> <div>13 The Armstrong Institute:</div> <div>14 ZUCKERMAN SPAEDER</div> <div>15 BY: SARA LAWSON, ESQUIRE</div> <div>16 100 EAST PRATT STREET, SUITE 2440</div> <div>17 BALTIMORE, MARYLAND 21202</div> <div>18 410.949.1181</div> <div>19 slawson@zuckerman.com</div> <div>20</div> <div>21</div> <div>Page 2</div> | <div>1 INDEX OF EXAMINATION</div> <div>2 WITNESS: MATTHEW AUSTIN</div> <div>3 Good Samaritan, et al., The Leapfrog Group</div> <div>4 Thursday, September 25, 2025</div> <div>5</div> <table><tr><th>EXAMINATION</th><th>PAGE</th></tr><tr><td>6 By Mr. Crain</td><td>11</td></tr><tr><td>7 By Ms. Wood</td><td>362</td></tr><tr><td>8 By Mr. Crain</td><td>397</td></tr><tr><td>9</td><td></td></tr><tr><td>10</td><td></td></tr><tr><td>11 Certificate of Reporter</td><td>417</td></tr><tr><td>12 Certificate of Deponent</td><td>418</td></tr><tr><td>13 Errata</td><td>419</td></tr><tr><td>14</td><td></td></tr><tr><td>15</td><td></td></tr><tr><td>16</td><td></td></tr><tr><td>17</td><td></td></tr><tr><td>18</td><td></td></tr><tr><td>19</td><td></td></tr><tr><td>20</td><td></td></tr><tr><td>21</td><td></td></tr></table> <div>Page 4</div>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | EXAMINATION    | PAGE        | 6 By Mr. Crain | 11          | 7 By Ms. Wood         | 362 | 8 By Mr. Crain | 397                                         | 9  |   | 10 |  | 11 Certificate of Reporter | 417                    | 12 Certificate of Deponent | 418 | 13 Errata           | 419 | 14           |                                                        | 15 |    | 16 |  | 17           |                                  | 18 |    | 19 |  | 20        |                                                              | 21 |    |  |  |    |  |  |           |                                                                           |    |    |  |  |    |  |  |           |                                                                     |    |    |  |  |    |  |  |           |                                                                     |     |    |  |  |    |  |  |
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| <div>1 APPEARANCES (continued):</div> <div>2 Attorneys Representing Defendant:</div> <div>3 WILSON ELSE</div> <div>4 BY: COURTNEY L. WOOD, ESQUIRE</div> <div>5 161 North Clark Street, Suite 4500</div> <div>6 Chicago, Illinois 60601</div> <div>7 312.821.6139</div> <div>8 courtney.wood@wilsonelser.com</div> <div>9</div> <div>10 ALSO PRESENT:</div> <div>11 CURTIS ROGINSKI - Videographer</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>Page 3</div>                                                                                                                                                                                                               | <div>1 INDEX OF EXHIBITS</div> <div>2 WITNESS: MATTHEW AUSTIN</div> <div>3 Good Samaritan, et al., The Leapfrog Group</div> <div>4 Thursday, September 25, 2025</div> <table><tr><th>EXHIBIT NUMBER</th><th>DESCRIPTION</th><th>PAGE</th></tr><tr><td>6 Exhibit 1</td><td>Email from Ms. Binder</td><td>20</td></tr><tr><td>7 Exhibit 2</td><td>from Mr. Austin to Ms. Danforth dated May 1</td><td>23</td></tr><tr><td>8</td><td></td><td></td></tr><tr><td>Exhibit 3</td><td>Document that outlines</td><td>29</td></tr><tr><td>9</td><td>Grading methodology</td><td></td></tr><tr><td>10 Exhibit 4</td><td>Email from Mr. Austin to Ms. Danforth, cc'ing Ms. Wood</td><td>30</td></tr><tr><td>11</td><td></td><td></td></tr><tr><td>12 Exhibit 5</td><td>Matthew Austin Linked In Profile</td><td>35</td></tr><tr><td>13</td><td></td><td></td></tr><tr><td>Exhibit 6</td><td>Contract b/w Johns Hopkins University and The Leapfrog Group</td><td>42</td></tr><tr><td>14</td><td></td><td></td></tr><tr><td>15</td><td></td><td></td></tr><tr><td>Exhibit 7</td><td>Document from the Leapfrog Safety Grade website, hospitalsafetygrades.org</td><td>71</td></tr><tr><td>16</td><td></td><td></td></tr><tr><td>17</td><td></td><td></td></tr><tr><td>Exhibit 8</td><td>Printout of a webpage from Leapfrog's Hospital Safety Grade website</td><td>78</td></tr><tr><td>18</td><td></td><td></td></tr><tr><td>19</td><td></td><td></td></tr><tr><td>Exhibit 9</td><td>Hospitalsafetygrades.org website page of Frequently asked questions</td><td>102</td></tr><tr><td>20</td><td></td><td></td></tr><tr><td>21</td><td></td><td></td></tr></table> <div>Page 5</div> | EXHIBIT NUMBER | DESCRIPTION | PAGE           | 6 Exhibit 1 | Email from Ms. Binder | 20  | 7 Exhibit 2    | from Mr. Austin to Ms. Danforth dated May 1 | 23 | 8 |    |  | Exhibit 3                  | Document that outlines | 29                         | 9   | Grading methodology |     | 10 Exhibit 4 | Email from Mr. Austin to Ms. Danforth, cc'ing Ms. Wood | 30 | 11 |    |  | 12 Exhibit 5 | Matthew Austin Linked In Profile | 35 | 13 |    |  | Exhibit 6 | Contract b/w Johns Hopkins University and The Leapfrog Group | 42 | 14 |  |  | 15 |  |  | Exhibit 7 | Document from the Leapfrog Safety Grade website, hospitalsafetygrades.org | 71 | 16 |  |  | 17 |  |  | Exhibit 8 | Printout of a webpage from Leapfrog's Hospital Safety Grade website | 78 | 18 |  |  | 19 |  |  | Exhibit 9 | Hospitalsafetygrades.org website page of Frequently asked questions | 102 | 20 |  |  | 21 |  |  |
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| 6 Exhibit 1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Email from Ms. Binder                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 20             |             |                |             |                       |     |                |                                             |    |   |    |  |                            |                        |                            |     |                     |     |              |                                                        |    |    |    |  |              |                                  |    |    |    |  |           |                                                              |    |    |  |  |    |  |  |           |                                                                           |    |    |  |  |    |  |  |           |                                                                     |    |    |  |  |    |  |  |           |                                                                     |     |    |  |  |    |  |  |
| 7 Exhibit 2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | from Mr. Austin to Ms. Danforth dated May 1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 23             |             |                |             |                       |     |                |                                             |    |   |    |  |                            |                        |                            |     |                     |     |              |                                                        |    |    |    |  |              |                                  |    |    |    |  |           |                                                              |    |    |  |  |    |  |  |           |                                                                           |    |    |  |  |    |  |  |           |                                                                     |    |    |  |  |    |  |  |           |                                                                     |     |    |  |  |    |  |  |
| 8                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                |             |                |             |                       |     |                |                                             |    |   |    |  |                            |                        |                            |     |                     |     |              |                                                        |    |    |    |  |              |                                  |    |    |    |  |           |                                                              |    |    |  |  |    |  |  |           |                                                                           |    |    |  |  |    |  |  |           |                                                                     |    |    |  |  |    |  |  |           |                                                                     |     |    |  |  |    |  |  |
| Exhibit 3                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Document that outlines                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 29             |             |                |             |                       |     |                |                                             |    |   |    |  |                            |                        |                            |     |                     |     |              |                                                        |    |    |    |  |              |                                  |    |    |    |  |           |                                                              |    |    |  |  |    |  |  |           |                                                                           |    |    |  |  |    |  |  |           |                                                                     |    |    |  |  |    |  |  |           |                                                                     |     |    |  |  |    |  |  |
| 9                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Grading methodology                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                |             |                |             |                       |     |                |                                             |    |   |    |  |                            |                        |                            |     |                     |     |              |                                                        |    |    |    |  |              |                                  |    |    |    |  |           |                                                              |    |    |  |  |    |  |  |           |                                                                           |    |    |  |  |    |  |  |           |                                                                     |    |    |  |  |    |  |  |           |                                                                     |     |    |  |  |    |  |  |
| 10 Exhibit 4                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Email from Mr. Austin to Ms. Danforth, cc'ing Ms. Wood                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 30             |             |                |             |                       |     |                |                                             |    |   |    |  |                            |                        |                            |     |                     |     |              |                                                        |    |    |    |  |              |                                  |    |    |    |  |           |                                                              |    |    |  |  |    |  |  |           |                                                                           |    |    |  |  |    |  |  |           |                                                                     |    |    |  |  |    |  |  |           |                                                                     |     |    |  |  |    |  |  |
| 11                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                |             |                |             |                       |     |                |                                             |    |   |    |  |                            |                        |                            |     |                     |     |              |                                                        |    |    |    |  |              |                                  |    |    |    |  |           |                                                              |    |    |  |  |    |  |  |           |                                                                           |    |    |  |  |    |  |  |           |                                                                     |    |    |  |  |    |  |  |           |                                                                     |     |    |  |  |    |  |  |
| 12 Exhibit 5                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Matthew Austin Linked In Profile                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 35             |             |                |             |                       |     |                |                                             |    |   |    |  |                            |                        |                            |     |                     |     |              |                                                        |    |    |    |  |              |                                  |    |    |    |  |           |                                                              |    |    |  |  |    |  |  |           |                                                                           |    |    |  |  |    |  |  |           |                                                                     |    |    |  |  |    |  |  |           |                                                                     |     |    |  |  |    |  |  |
| 13                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                |             |                |             |                       |     |                |                                             |    |   |    |  |                            |                        |                            |     |                     |     |              |                                                        |    |    |    |  |              |                                  |    |    |    |  |           |                                                              |    |    |  |  |    |  |  |           |                                                                           |    |    |  |  |    |  |  |           |                                                                     |    |    |  |  |    |  |  |           |                                                                     |     |    |  |  |    |  |  |
| Exhibit 6                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Contract b/w Johns Hopkins University and The Leapfrog Group                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 42             |             |                |             |                       |     |                |                                             |    |   |    |  |                            |                        |                            |     |                     |     |              |                                                        |    |    |    |  |              |                                  |    |    |    |  |           |                                                              |    |    |  |  |    |  |  |           |                                                                           |    |    |  |  |    |  |  |           |                                                                     |    |    |  |  |    |  |  |           |                                                                     |     |    |  |  |    |  |  |
| 14                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                |             |                |             |                       |     |                |                                             |    |   |    |  |                            |                        |                            |     |                     |     |              |                                                        |    |    |    |  |              |                                  |    |    |    |  |           |                                                              |    |    |  |  |    |  |  |           |                                                                           |    |    |  |  |    |  |  |           |                                                                     |    |    |  |  |    |  |  |           |                                                                     |     |    |  |  |    |  |  |
| 15                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                |             |                |             |                       |     |                |                                             |    |   |    |  |                            |                        |                            |     |                     |     |              |                                                        |    |    |    |  |              |                                  |    |    |    |  |           |                                                              |    |    |  |  |    |  |  |           |                                                                           |    |    |  |  |    |  |  |           |                                                                     |    |    |  |  |    |  |  |           |                                                                     |     |    |  |  |    |  |  |
| Exhibit 7                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Document from the Leapfrog Safety Grade website, hospitalsafetygrades.org                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 71             |             |                |             |                       |     |                |                                             |    |   |    |  |                            |                        |                            |     |                     |     |              |                                                        |    |    |    |  |              |                                  |    |    |    |  |           |                                                              |    |    |  |  |    |  |  |           |                                                                           |    |    |  |  |    |  |  |           |                                                                     |    |    |  |  |    |  |  |           |                                                                     |     |    |  |  |    |  |  |
| 16                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                |             |                |             |                       |     |                |                                             |    |   |    |  |                            |                        |                            |     |                     |     |              |                                                        |    |    |    |  |              |                                  |    |    |    |  |           |                                                              |    |    |  |  |    |  |  |           |                                                                           |    |    |  |  |    |  |  |           |                                                                     |    |    |  |  |    |  |  |           |                                                                     |     |    |  |  |    |  |  |
| 17                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                |             |                |             |                       |     |                |                                             |    |   |    |  |                            |                        |                            |     |                     |     |              |                                                        |    |    |    |  |              |                                  |    |    |    |  |           |                                                              |    |    |  |  |    |  |  |           |                                                                           |    |    |  |  |    |  |  |           |                                                                     |    |    |  |  |    |  |  |           |                                                                     |     |    |  |  |    |  |  |
| Exhibit 8                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Printout of a webpage from Leapfrog's Hospital Safety Grade website                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 78             |             |                |             |                       |     |                |                                             |    |   |    |  |                            |                        |                            |     |                     |     |              |                                                        |    |    |    |  |              |                                  |    |    |    |  |           |                                                              |    |    |  |  |    |  |  |           |                                                                           |    |    |  |  |    |  |  |           |                                                                     |    |    |  |  |    |  |  |           |                                                                     |     |    |  |  |    |  |  |
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| 19                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                |             |                |             |                       |     |                |                                             |    |   |    |  |                            |                        |                            |     |                     |     |              |                                                        |    |    |    |  |              |                                  |    |    |    |  |           |                                                              |    |    |  |  |    |  |  |           |                                                                           |    |    |  |  |    |  |  |           |                                                                     |    |    |  |  |    |  |  |           |                                                                     |     |    |  |  |    |  |  |
| Exhibit 9                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Hospitalsafetygrades.org website page of Frequently asked questions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 102            |             |                |             |                       |     |                |                                             |    |   |    |  |                            |                        |                            |     |                     |     |              |                                                        |    |    |    |  |              |                                  |    |    |    |  |           |                                                              |    |    |  |  |    |  |  |           |                                                                           |    |    |  |  |    |  |  |           |                                                                     |    |    |  |  |    |  |  |           |                                                                     |     |    |  |  |    |  |  |
| 20                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                |             |                |             |                       |     |                |                                             |    |   |    |  |                            |                        |                            |     |                     |     |              |                                                        |    |    |    |  |              |                                  |    |    |    |  |           |                                                              |    |    |  |  |    |  |  |           |                                                                           |    |    |  |  |    |  |  |           |                                                                     |    |    |  |  |    |  |  |           |                                                                     |     |    |  |  |    |  |  |
| 21                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                |             |                |             |                       |     |                |                                             |    |   |    |  |                            |                        |                            |     |                     |     |              |                                                        |    |    |    |  |              |                                  |    |    |    |  |           |                                                              |    |    |  |  |    |  |  |           |                                                                           |    |    |  |  |    |  |  |           |                                                                     |    |    |  |  |    |  |  |           |                                                                     |     |    |  |  |    |  |  |

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| 18 | Exhibit 25 Final updates to Leapfrog Hospital Safety Grade Methodology for Fall 2024                    | 283    |  |
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| 20 | Exhibit 26 2013 prepublished ahead of Print publication from the Journal of Patient Safety              | 286    |  |
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| 11 | Re: Lives Saved, Lives Lost                                                                             |        |  |
| 12 | Exhibit 30 Article by Deena Kelly Costa                                                                 | 330    |  |
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| 16 | Exhibit 32 Email dated June 5, 2019 from Mr. Derk to Mr. Austin                                         | 356    |  |
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| 1  | PROCEEDINGS                                                                                             |        |  |
| 2  | THE VIDEOGRAPHER: Good morning.                                                                         |        |  |
| 3  | We are going on the record at 9:09 a.m., on                                                             |        |  |
| 4  | September 25th, 2025. This is media unit one of the                                                     |        |  |
| 5  | video-recorded deposition of Dr. Matthew Austin taken in                                                |        |  |
| 6  | the matter of Good Samaritan Medical Center, Inc., et                                                   |        |  |
| 7  | al., v. The Leapfrog Group, the United States District                                                  |        |  |
| 8  | Court for the Southern District of Florida, West Palm                                                   |        |  |
| 9  | Beach Division; Case No. 9:25-CV-08526 [sic.] -DMM.                                                     |        |  |
| 10 | My name is Curtis Roginski, representing                                                                |        |  |
| 11 | Veritext. I'm the videographer. The court reporter is                                                   |        |  |
| 12 | Marlene Kerr, also with Veritext.                                                                       |        |  |
| 13 | Will counsel please identify yourselves and                                                             |        |  |
| 14 | state whom you represent.                                                                               |        |  |
| 15 | MS. LAWSON: Sara Lawson from Zuckerman Spaeder                                                          |        |  |
| 16 | on behalf of the witness, Dr. Matthew Austin, and the                                                   |        |  |
| 17 | Armstrong Institute.                                                                                    |        |  |
| 18 | MR. CRAIN: Lee Crain from Gibson Dunn &                                                                 |        |  |
| 19 | Crutcher for Plaintiffs.                                                                                |        |  |
| 20 | MS. WOOD: Courtney Wood, Wilson Elser, on                                                               |        |  |
| 21 | behalf of the Defendant, The Leapfrog Group.                                                            |        |  |
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| <p>1 MR. TOGIAS: Iason Togias on behalf of</p> <p>2 Plaintiffs with Gibson Dunn &amp; Crutcher.</p> <p>3 THE VIDEOGRAPHER: Thank you.</p> <p>4 Would the court reporter please swear in</p> <p>5 the witness.</p> <p>6 THE COURT REPORTER: Sure.</p> <p>7 Would you please raise your right hand to</p> <p>8 be sworn.</p> <p>9 (Witness complied.)</p> <p>10 THE COURT REPORTER: Do you promise and declare</p> <p>11 under penalty of perjury the testimony you are about to</p> <p>12 give will be the truth, the whole truth, and nothing but</p> <p>13 the truth?</p> <p>14 THE WITNESS: Yes.</p> <p>15 THE COURT REPORTER: Thank you.</p> <p>16 (Witness sworn.)</p> <p>17 MR. CRAIN: I'm sorry. Could we pause for a</p> <p>18 second?</p> <p>19 THE COURT REPORTER: Sure.</p> <p>20 MR. CRAIN: Do we have the realtime?</p> <p>21 THE COURT REPORTER: You should.</p> <p style="text-align: right;">Page 10</p> | <p>1 for the record.</p> <p>2 A. Yeah, my full legal name is John Matthew</p> <p>3 Austin, but I go by Matt Austin.</p> <p>4 Q. And have you gone by any other names besides</p> <p>5 those two?</p> <p>6 A. No, I have not.</p> <p>7 Q. Okay.</p> <p>8 Have you ever been deposed before?</p> <p>9 A. I have not.</p> <p>10 Q. Okay.</p> <p>11 I want to go through just some ground rules</p> <p>12 at the start so we're on the same page. A couple of key</p> <p>13 rules. You understand the court reporter is taking down</p> <p>14 what you and I say to create a written transcript?</p> <p>15 A. Uh-huh.</p> <p>16 Q. And you understand this deposition is being</p> <p>17 video-recorded?</p> <p>18 A. Yes, I do.</p> <p>19 Q. Because of Marlene and to help her out, we want</p> <p>20 to make sure that we're taking time between the</p> <p>21 questions and answers. So I'll do my best to let you</p> <p style="text-align: right;">Page 12</p> |
| <p>1 MR. CRAIN: Oh, okay. We've got it there.</p> <p>2 THE COURT REPORTER: Okay.</p> <p>3 MR. TOGIAS: Is it on, though?</p> <p>4 THE COURT REPORTER: It's up and running.</p> <p>5 MR. CRAIN: Actually, can we go off for a</p> <p>6 second? I'm sorry.</p> <p>7 (Discussion held off the record regarding</p> <p>8 the realtime feed.)</p> <p>9 THE VIDEOGRAPHER: Off the record. The time is</p> <p>10 9:10 a.m.</p> <p>11 (Brief pause.)</p> <p>12 THE VIDEOGRAPHER: This marks the beginning of</p> <p>13 media unit number two. We're going back on the record.</p> <p>14 The time is 9:12 a.m.</p> <p>15 EXAMINATION</p> <p>16 BY MR. CRAIN:</p> <p>17 Q. Good morning, Dr. Austin.</p> <p>18 A. Good morning.</p> <p>19 Q. My name is Lee Crain. I am counsel for</p> <p>20 Plaintiffs in this action.</p> <p>21 Could you please just state your full name</p> <p style="text-align: right;">Page 11</p>        | <p>1 finish, and you do your best to let me finish. Fair</p> <p>2 enough?</p> <p>3 A. Sounds good. I'll do my best.</p> <p>4 Q. It's a little unnatural, but we'll get through</p> <p>5 it.</p> <p>6 Answers need to be audible, so no shaking</p> <p>7 heads or nodding, that sort of thing. Fair enough?</p> <p>8 A. Fair enough.</p> <p>9 Q. You understand you're under oath today as if</p> <p>10 you were testifying in court?</p> <p>11 A. Yes.</p> <p>12 Q. Are you under any medications that would impair</p> <p>13 your ability to testify truthfully today?</p> <p>14 A. No.</p> <p>15 Q. Is there any other reason you can't give</p> <p>16 truthful testimony today?</p> <p>17 A. No.</p> <p>18 Q. Okay.</p> <p>19 Occasionally, it will happen where I will</p> <p>20 ask a bad question. Don't hesitate to ask if you have</p> <p>21 questions, if you want me to restate the question, or if</p> <p style="text-align: right;">Page 13</p>      |

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| <p>1 you're confused. If you don't, I'm going to assume you<br/> 2 understand the question, but feel free to clarify any<br/> 3 time. Fair enough?<br/> 4 A. Fair enough.<br/> 5 Q. And then the last -- two last things. From<br/> 6 time to time, your attorney or Ms. Wood may object.<br/> 7 Unless they're instructing you not to answer, we're<br/> 8 going to ask you to answer the question. Clear enough?<br/> 9 A. That's clear enough.<br/> 10 Q. And then the last thing is we can take a break<br/> 11 any time, any time you need, any time anybody else<br/> 12 needs. The only thing we ask is not while a question is<br/> 13 pending. So we'll go through the question and answer<br/> 14 and then we can take a break, if that makes sense?<br/> 15 A. Yeah, that makes sense.<br/> 16 Q. Great.<br/> 17 Okay. So I want to just start right at the<br/> 18 top. Did you prepare for this deposition?<br/> 19 A. I did.<br/> 20 Q. Can you tell me what you did to prepare for the<br/> 21 deposition?</p> <p style="text-align: right;">Page 14</p>                                                             | <p>1 BY MR. CRAIN:<br/> 2 Q. Yes. And none of my questions are getting at<br/> 3 that. So I do not want the substance of your<br/> 4 communications with counsel. Fair enough?<br/> 5 A. Fair enough.<br/> 6 MR. TOGIAS: And just to flag, this is -- the<br/> 7 Zoom link, I don't see a live feed.<br/> 8 MR. CRAIN: We'll do it after.<br/> 9 BY MR. CRAIN:<br/> 10 Q. So how long did you meet with counsel --<br/> 11 yesterday, you said?<br/> 12 A. Yesterday, correct.<br/> 13 Q. And how long was that meeting?<br/> 14 A. It was approximately three hours.<br/> 15 Q. Was anybody else in attendance besides<br/> 16 Ms. Lawson -- did I get that right? I'm sorry -- and a<br/> 17 paralegal?<br/> 18 A. That was it.<br/> 19 Q. Okay. And you reviewed documents during that<br/> 20 session?<br/> 21 A. We reviewed some documents.</p> <p style="text-align: right;">Page 16</p>                                                                               |
| <p>1 A. I met with my attorney and a paralegal<br/> 2 yesterday and also reviewed some documents that they had<br/> 3 sent me.<br/> 4 Q. Did you only meet with counsel one time?<br/> 5 A. To prepare for the deposition, yes.<br/> 6 Q. Did you meet with counsel other times regarding<br/> 7 this case?<br/> 8 A. We did have an early sort of exploratory call<br/> 9 shortly after Sara was named as my counsel.<br/> 10 Q. Okay.<br/> 11 MS. LAWSON: And I'm just going to object, just<br/> 12 interpose an objection just to make sure that Dr. Austin<br/> 13 understands that you can answer with respect to sort of<br/> 14 basic details, the who, what, where, when, why, and how<br/> 15 of our discussions, but those discussions are protected<br/> 16 by the attorney-client privilege. So I would just ask<br/> 17 and instruct you not to reveal the substance of any<br/> 18 discussions that you've had with me or any other of your<br/> 19 counsel from Zuckerman Spaeder, like my partner Marty<br/> 20 Himeles as well. So just to make that clear.<br/> 21</p> <p style="text-align: right;">Page 15</p> | <p>1 Q. Okay. Did you review documents outside of that<br/> 2 session with your counsel to prepare today?<br/> 3 A. No.<br/> 4 Q. Okay. Did you watch any videos?<br/> 5 A. No.<br/> 6 Q. Did you listen to any audio recordings?<br/> 7 A. No.<br/> 8 Q. Okay. Did you review any other -- any<br/> 9 transcripts from depositions in this case?<br/> 10 A. No.<br/> 11 Q. Did you review any transcripts of anything<br/> 12 else?<br/> 13 A. No.<br/> 14 Q. Let's see. Who have you talked to about this<br/> 15 deposition besides counsel?<br/> 16 A. So I've talked to my boss, Allen Kachalia, to<br/> 17 let him know that I was being deposed. I spoke to<br/> 18 Jordan Derk who at the time of -- or at least at the<br/> 19 start of the period was working with me on The Leapfrog<br/> 20 Group contract; and with Preeti Joshi, who currently is<br/> 21 working with me on the Leapfrog contract, my partner at</p> <p style="text-align: right;">Page 17</p> |

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| <p>1 home, and my father who is an attorney.</p> <p>2 Q. And just going down the line, what did you tell</p> <p>3 Mr. Kachalia about the deposition?</p> <p>4 A. I had let him know that there was a lawsuit and</p> <p>5 that I was being deposed for testimony.</p> <p>6 Q. And what did you talk to Mr. Derk about?</p> <p>7 A. I let Mr. Derk know that he was going to be</p> <p>8 receiving a subpoena for documents. We talked a little</p> <p>9 bit about the lawsuit, as well as some other related</p> <p>10 items.</p> <p>11 Q. Did you talk about the methodology, the</p> <p>12 Leapfrog Hospital Safety Grade methodology with him?</p> <p>13 A. We didn't talk about that in detail.</p> <p>14 Q. And what did you talk about with Ms. Joshi?</p> <p>15 A. I let her know that there was going to be a</p> <p>16 lawsuit and that she should come to me with any</p> <p>17 questions or concerns that she had about that. And then</p> <p>18 when she received notice that she needed to supply</p> <p>19 documents, we talked about what she needed to supply and</p> <p>20 how that would go.</p> <p>21 Q. Okay. And she's a current employee at</p> <p style="text-align: right;">Page 18</p> | <p>1 Q. Okay.</p> <p>2 And then did you also speak with counsel at</p> <p>3 Wilson Elser, Ms. Wood's firm?</p> <p>4 A. We had a brief conversation the day that I was</p> <p>5 notified that I was going to be receiving a subpoena.</p> <p>6 Q. Okay. And have you exchanged emails with</p> <p>7 Wilson Elser?</p> <p>8 A. I have not beyond the counsel at Johns Hopkins</p> <p>9 requested Courtney and Kim's names and emails, and so I</p> <p>10 supplied them with those.</p> <p>11 Q. Okay.</p> <p>12 Now, I want to just start with an exhibit</p> <p>13 just to mark it. This will be Exhibit 1.</p> <p>14 (Exhibit No. 1 was marked for</p> <p>15 identification as of 9/25/2025.)</p> <p>16 BY MR. CRAIN:</p> <p>17 Q. Dr. Austin, do you recognize this document?</p> <p>18 A. I do.</p> <p>19 Q. And it was produced, if you see the bottom</p> <p>20 right, by the Armstrong Institute?</p> <p>21 A. Correct.</p> <p style="text-align: right;">Page 20</p>                                                                                                                      |
| <p>1 Armstrong?</p> <p>2 A. Correct.</p> <p>3 Q. Okay.</p> <p>4 And then with regard to your partner and</p> <p>5 your father, did you talk about the substance of this</p> <p>6 case at all?</p> <p>7 A. I talked about what I was aware of based on the</p> <p>8 public press releases that both organizations had put</p> <p>9 out.</p> <p>10 Q. And what did you say? Just can you give us a</p> <p>11 general sense?</p> <p>12 A. Yeah. My general sense is it felt like there</p> <p>13 was a lot of factual errors in the press release in</p> <p>14 terms of what tenant was claiming, that those things</p> <p>15 were just factually wrong.</p> <p>16 Q. I guess we'll come back to that.</p> <p>17 And then a couple of other questions. Did</p> <p>18 you talk to anybody at Leapfrog about this case?</p> <p>19 A. Not -- so Leapfrog did give me a heads-up that</p> <p>20 I was going to be receiving a subpoena. So that was the</p> <p>21 sort of extent of the conversation.</p> <p style="text-align: right;">Page 19</p>                                                                                                                                                                    | <p>1 Q. And it's an email from Ms. Binder to a number</p> <p>2 of folks, including yourself. Do you see that?</p> <p>3 A. Yes, I do.</p> <p>4 Q. And Ms. Binder told you, if you look towards</p> <p>5 the bottom, she asked everybody in the email not to</p> <p>6 email or talk about the case in writing. Do you see</p> <p>7 that?</p> <p>8 A. Can you point me to where that says that?</p> <p>9 Q. Yes. So it says, number two: "Do not</p> <p>10 communicate in writing about this matter, such as on</p> <p>11 slack or email or texting."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Did you adhere to that guidance?</p> <p>15 A. So outside of sort of the need to communicate</p> <p>16 with, say, my boss or with counsel, I did follow that.</p> <p>17 Q. Okay.</p> <p>18 And then she asks -- she says, number</p> <p>19 one -- do you see that right above? -- "Please refer all</p> <p>20 questions or concerns, whether you have them personally</p> <p>21 or you hear them from external sources, to me, Missy,</p> <p style="text-align: right;">Page 21</p> |

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| <p>1 Lauren, or Karen. Do not put them in writing. Call us<br/>2 or come by my office."<br/>3 Do you see that?<br/>4 A. I do.<br/>5 Q. Did you call any of those folks listed in<br/>6 bullet one?<br/>7 A. I did not.<br/>8 Q. Okay.<br/>9 And then did you come by her office?<br/>10 A. I did not.<br/>11 Q. Okay.<br/>12 Now, did -- I want to talk just for a<br/>13 second about the safety grade expert panel. Do you know<br/>14 what I mean when I say that?<br/>15 A. Yes.<br/>16 Q. I assume you spent a decent bit of time with<br/>17 that group.<br/>18 A. Correct.<br/>19 Q. Did you discuss the lawsuit with the expert,<br/>20 the safety grade expert panel?<br/>21 A. So we did have a meeting with the expert panel</p> <p style="text-align: right;">Page 22</p>                                                                                                                                                                                                                                                                         | <p>1 Q. And it's another, if you look at the bottom<br/>2 right, another Armstrong-produced document?<br/>3 A. Correct.<br/>4 Q. And the email at the top, which you'll see as<br/>5 we go through that usually the first email is the last<br/>6 one in the way it's printed out, but you'll see it's<br/>7 from you to Ms. Danforth. Do you see that?<br/>8 A. Yes.<br/>9 Q. And if you go to the next page, there's an<br/>10 email -- actually, it starts on the bottom of page 1<br/>11 from you. Do you see that, that May 1?<br/>12 A. Correct.<br/>13 Q. And then it's an email from you, it looks like,<br/>14 to the Hospital Safety Grade Expert Panelists. Do you<br/>15 see that?<br/>16 A. Correct.<br/>17 Q. And just to get a sense, take a second if you<br/>18 haven't read it. I just want to know was anything<br/>19 discussed on the expert panel that goes beyond what was<br/>20 said in this email?<br/>21 (Witness peruses document.)</p> <p style="text-align: right;">Page 24</p> |
| <p>1 already scheduled, and at that meeting, the decision was<br/>2 to share with the expert panel that a lawsuit had been<br/>3 filed.<br/>4 Q. And what was discussed at the meeting? Like,<br/>5 can you give a little more of a play-by-play?<br/>6 A. I don't know if I can give a play-by-play<br/>7 without specific notes in front of me. I don't even<br/>8 remember who shared with the panel that the lawsuit had<br/>9 been filed. I don't know if that was Ms. Binder,<br/>10 Ms. Danforth, if it was counsel for Leapfrog. I really<br/>11 don't remember who shared that information with them.<br/>12 And it was more just to let them know since they had<br/>13 been involved in the safety grade.<br/>14 Q. Okay.<br/>15 I'm going to mark another exhibit. This is<br/>16 Exhibit 2, another Armstrong document.<br/>17 (Exhibit No. 2 was marked for<br/>18 identification as of 9/25/2025.)<br/>19 BY MR. CRAIN:<br/>20 Q. So Dr. Austin, do you recognize this document?<br/>21 A. I do.</p> <p style="text-align: right;">Page 23</p> | <p>1 THE WITNESS: I don't remember it being much<br/>2 discussion beyond what's in the email.<br/>3 BY MR. CRAIN:<br/>4 Q. Does the email accurately depict what was<br/>5 discussed?<br/>6 A. Yes.<br/>7 Q. Okay.<br/>8 And if you go up in the email, there's an<br/>9 email response from Ms. Danforth to you on May 1 at<br/>10 12:35, p.m. Do you see that?<br/>11 A. Yes.<br/>12 Q. And she says, "Thanks, Matt. I've added Leah<br/>13 Binder and Thomas Duff from Wilson Elser for the first<br/>14 agenda item." Do you see that?<br/>15 A. Correct.<br/>16 Q. Does that refresh your recollection as to<br/>17 whether Ms. Binder was there or whether she spoke at the<br/>18 meeting?<br/>19 A. I know that Ms. Binder was there, and I know<br/>20 counsel was there, but I can't remember exactly who<br/>21 actually led the conversation.</p> <p style="text-align: right;">Page 25</p>                                                                                                       |

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| <p>1 Q. Okay.</p> <p>2 Do you typically lead the conversations in</p> <p>3 those meetings?</p> <p>4 A. We have a formal agenda, and we have sometimes</p> <p>5 different individuals leading different agenda items</p> <p>6 depending on the item. But I would say I'm one of the</p> <p>7 primary folks for doing that.</p> <p>8 Q. Okay.</p> <p>9 And then just going to the top email, this</p> <p>10 is an email from you to Ms. Danforth later that day. Do</p> <p>11 you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And it looks -- you say -- it's three lines</p> <p>14 down -- "I quickly pulled the breakdown of Spring 2025</p> <p>15 grades by survey submission status. Will work on adding</p> <p>16 in percentages." Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Percentages. I just -- I assume that refers to</p> <p>19 the percentages that these numbers reflect?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. And why did you pull these stats?</p> <p style="text-align: right;">Page 26</p>                                                                                                                                                   | <p>1 THE WITNESS: I would need to see it to</p> <p>2 confirm.</p> <p>3 BY MR. CRAIN:</p> <p>4 Q. Okay. Yeah, let me -- what did you mean when</p> <p>5 you said the methodology document?</p> <p>6 A. Leapfrog makes available a public document that</p> <p>7 explains the Hospital Safety Grade methodology.</p> <p>8 Q. We'll grab additional documents.</p> <p>9 And then on Step 1, you said survey cycle.</p> <p>10 How long is that?</p> <p>11 A. So if the hospital had completed a survey --</p> <p>12 this is where I'm doing this from memory. So this is</p> <p>13 where --</p> <p>14 Q. It's not a memory test.</p> <p>15 A. -- I want to be -- I believe what we've changed</p> <p>16 it to is if the hospital had completed a survey in the</p> <p>17 prior survey cycle, so if you're looking at 2025, if</p> <p>18 they completed a 2024 survey, we'll use the 2024 survey</p> <p>19 results.</p> <p>20 Q. Okay.</p> <p>21 So each cycle, just so I understand, is</p> <p style="text-align: right;">Page 28</p> |
| <p>1 A. To have ready for the expert panel an</p> <p>2 understanding of how hospital grades break down by the</p> <p>3 imputation status that Leapfrog uses or did use in the</p> <p>4 Spring 2025 grades.</p> <p>5 Q. And just so we're on the same page, can you</p> <p>6 tell me in your words what's Step 1, what's Step 2?</p> <p>7 A. Yeah. So Step 1 is that if the hospital has</p> <p>8 completed a recent Leapfrog Hospital Survey, which I</p> <p>9 believe is currently defined as within the last survey</p> <p>10 cycle, that that historical information is used for the</p> <p>11 hospital.</p> <p>12 Step 2 is if the hospital does not have a</p> <p>13 recent survey on record, there is an imputation</p> <p>14 methodology that is laid out in the methodology document</p> <p>15 that explains how those scores will be imputed.</p> <p>16 Q. And just to be clear, the methodology document,</p> <p>17 is it the one that's linked on the website that's about</p> <p>18 28, 29 pages?</p> <p>19 A. I would need to --</p> <p>20 MS. LAWSON: Object to form but go ahead. Go</p> <p>21 ahead.</p> <p style="text-align: right;">Page 27</p> | <p>1 once a year?</p> <p>2 A. The survey itself is a once-a-year cycle.</p> <p>3 Q. And the grades are issued twice a year?</p> <p>4 A. Correct.</p> <p>5 Q. I think we have that document for you just to</p> <p>6 make sure we're on the same page.</p> <p>7 MR. CRAIN: So we'll mark this as Exhibit 3.</p> <p>8 I'm taking good notes today.</p> <p>9 (Exhibit No. 3 was marked for</p> <p>10 identification as of 9/25/2025.)</p> <p>11 BY MR. CRAIN:</p> <p>12 Q. You'll see there are other exhibit markings --</p> <p>13 oh, sorry.</p> <p>14 You'll see there are other deposition</p> <p>15 stickers on here, but is Exhibit 3 of your deposition</p> <p>16 the document you're referring to?</p> <p>17 A. Yes.</p> <p>18 Q. Okay.</p> <p>19 Is there another document you're aware of</p> <p>20 that outlines the methodology besides this?</p> <p>21 A. There is a second document that explains how</p> <p style="text-align: right;">Page 29</p>                                                                    |

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| <p>1 numerical scores are converted into letter grades.</p> <p>2 Q. What's the name of that document?</p> <p>3 A. I don't know the official name of it. It is</p> <p>4 publicly available on Leapfrog's Hospital Safety Grade</p> <p>5 website.</p> <p>6 Q. Got it.</p> <p>7 Does that document includes also the</p> <p>8 imputation methodology?</p> <p>9 A. It does not.</p> <p>10 Q. Okay.</p> <p>11 All right. Keep on going.</p> <p>12 MR. CRAIN: And then just for completeness, can</p> <p>13 we do 64. And then I'm going to mark this Exhibit 4.</p> <p>14 (Exhibit No. 4 was marked for</p> <p>15 identification as of 9/25/2025.)</p> <p>16 BY MR. CRAIN:</p> <p>17 Q. This is another email produced by the Armstrong</p> <p>18 Institute. Do you see that on the bottom right?</p> <p>19 A. Uh-huh.</p> <p>20 Q. And it's -- the top one is from you to</p> <p>21 Ms. Danforth, cc'ing our friend Ms. Wood across the</p> <p style="text-align: right;">Page 30</p> | <p>1 A. We talked about the subpoena coming.</p> <p>2 Q. Okay.</p> <p>3 And did you have conversations, either</p> <p>4 phone or Zoom or in person, with Ms. Wood and Ms. Blair?</p> <p>5 A. On the 25th of July, I had a call scheduled</p> <p>6 with The Leapfrog Group to discuss regular work. That</p> <p>7 was the day that the subpoenas were issued for Jordan</p> <p>8 and myself. So as I remember, Courtney and Kim joined</p> <p>9 that call to talk about the subpoenas and that we should</p> <p>10 contact Johns Hopkins University to let them know we</p> <p>11 were receiving subpoenas, and also that we shouldn't be</p> <p>12 chatting with our colleagues at The Leapfrog Group about</p> <p>13 the lawsuit.</p> <p>14 Q. Conventional wisdom.</p> <p>15 A. Yeah. But that we could talk about regular</p> <p>16 business.</p> <p>17 Q. Okay.</p> <p>18 One other question before we shift gears.</p> <p>19 You came today with a folio.</p> <p>20 A. Uh-huh.</p> <p>21 Q. What's in that folio?</p> <p style="text-align: right;">Page 32</p> |
| <p>1 table. Is that correct?</p> <p>2 A. Correct.</p> <p>3 Q. And you say, "Missy, thanks so much for putting</p> <p>4 me in touch with Courtney and Kim. I just spoke with</p> <p>5 Jordan about the lawsuit. I've copied Jordan on the</p> <p>6 email chain so he has Courtney and Kim's contact</p> <p>7 information."</p> <p>8 Do you see that email?</p> <p>9 A. Yeah, I do.</p> <p>10 Q. Do this reflect what we discussed earlier, the</p> <p>11 discussions you had with Mr. Derk and with Wilson Elser?</p> <p>12 A. Correct.</p> <p>13 Q. Any other discussions beyond those talked about</p> <p>14 in this email?</p> <p>15 MS. LAWSON: Object to form.</p> <p>16 BY MR. CRAIN:</p> <p>17 Q. Yeah, let me fix it.</p> <p>18 About the case?</p> <p>19 A. I had had a -- yeah, I had had a conversation</p> <p>20 with Jordan earlier that day.</p> <p>21 Q. Okay.</p> <p style="text-align: right;">Page 31</p>                                                        | <p>1 A. It's actually the subpoenas.</p> <p>2 Q. Okay.</p> <p>3 A. And my pad of paper and a pen.</p> <p>4 Q. Okay. I have to ask.</p> <p>5 And when you say "the subpoenas," you mean</p> <p>6 the document and the deposition subpoenas that led to us</p> <p>7 being here today?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. Anything else?</p> <p>10 A. No.</p> <p>11 Q. Okay.</p> <p>12 I want to shift gears and just talk a</p> <p>13 little more about your history and your education.</p> <p>14 A. Uh-huh.</p> <p>15 Q. So you went to the University of Michigan for</p> <p>16 undergraduate?</p> <p>17 A. Correct.</p> <p>18 Q. Go blue!</p> <p>19 And you graduated in 1995?</p> <p>20 A. Correct.</p> <p>21 Q. You later went to the University of Wisconsin,</p> <p style="text-align: right;">Page 33</p>                                                                                                                                                                                                                                                 |

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| <p>1 Madison, right?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. And you graduated with a Masters of</p> <p>4 Science in Industrial Systems Engineering?</p> <p>5 A. Correct.</p> <p>6 Q. And then you went on to do your Ph.D.?</p> <p>7 A. Correct.</p> <p>8 Q. And just in a brief nugget, what is your Ph.D.</p> <p>9 in?</p> <p>10 A. My Ph.D. is in Industrial and Systems</p> <p>11 Engineering with a focus on Healthcare Systems.</p> <p>12 Q. When did you start getting interested in</p> <p>13 healthcare?</p> <p>14 A. 2005.</p> <p>15 Q. Okay. And that was during -- that was at</p> <p>16 Wisconsin, Madison?</p> <p>17 A. Prior to Wisconsin, Madison.</p> <p>18 Q. Got it.</p> <p>19 What were you doing then?</p> <p>20 A. I actually was working for Continental</p> <p>21 Airlines.</p> <p style="text-align: right;">Page 34</p>                                                                                                   | <p>1 BY MR. CRAIN:</p> <p>2 Q. Dr. Austin, what I've handed you is what --</p> <p>3 well, tell me what I've handed you.</p> <p>4 A. This is what appears to be my LinkedIn profile.</p> <p>5 Q. Does it look generally accurate to you?</p> <p>6 A. It does.</p> <p>7 Q. Great.</p> <p>8 And just going back, because it's not a</p> <p>9 memory test, so I figured I'd ground you on the dates,</p> <p>10 it says you were a director of Leapfrog Hospital Survey</p> <p>11 from January 2008 to May 2012. Do you see that?</p> <p>12 A. Correct.</p> <p>13 Q. Is that -- is that generally right?</p> <p>14 A. That is -- I actually was employed by the</p> <p>15 Center for Health Systems Research and Analysis. So my</p> <p>16 employer was --</p> <p>17 Q. Got it.</p> <p>18 A. -- actually CHSRA.</p> <p>19 Q. Okay. The one right below?</p> <p>20</p> <p>21</p> <p style="text-align: right;">Page 36</p>              |
| <p>1 Q. Interesting. How did that convert into a</p> <p>2 healthcare interest?</p> <p>3 A. I was interested in transitioning out of the</p> <p>4 airline industry, and healthcare felt like a prime</p> <p>5 opportunity for that.</p> <p>6 Q. Okay.</p> <p>7 And then you earned your Ph.D. I think in</p> <p>8 2011. Is that right?</p> <p>9 A. Correct. Yeah.</p> <p>10 Q. And then between I think 2008 and 2012, you</p> <p>11 were a director for The Leapfrog Group. Is that right?</p> <p>12 A. That was my title --</p> <p>13 Q. Okay.</p> <p>14 A. -- that Leapfrog gave me, but I was not</p> <p>15 employed by The Leapfrog Group.</p> <p>16 Q. Okay.</p> <p>17 Let's, just to ground us, I'm going to give</p> <p>18 you everybody's favorite. LinkedIn.</p> <p>19 MR. CRAIN: This will be Exhibit 5.</p> <p>20 (Exhibit No. 5 was marked for</p> <p>21 identification as of 9/25/2025.)</p> <p style="text-align: right;">Page 35</p> | <p>1 (Whereupon, the court reporter seeks</p> <p>2 clarification, which colloquy will not be</p> <p>3 captured on the written record.)</p> <p>4 BY MR. CRAIN:</p> <p>5 Q. So you said you were employed by CHSRA during</p> <p>6 that period?</p> <p>7 A. Correct.</p> <p>8 Q. Okay.</p> <p>9 And you said a moment ago you weren't</p> <p>10 employed by Leapfrog then. Have you ever been employed</p> <p>11 by Leapfrog?</p> <p>12 A. No.</p> <p>13 Q. Okay.</p> <p>14 Can you tell us the nature of your title as</p> <p>15 director?</p> <p>16 A. So in my role as a researcher at the Center for</p> <p>17 Health Systems Research and Analysis, I was on a</p> <p>18 contract with a PI who had a contract -- PI, principal</p> <p>19 investigator -- with The Leapfrog Group, and I was</p> <p>20 helping support that work.</p> <p>21 Leapfrog wanted me to have the title</p> <p style="text-align: right;">Page 37</p> |

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| <p>1 director of Leapfrog Hospital Survey, but that was not<br/> 2 my official work title. My official work title at<br/> 3 University of Wisconsin was researcher.<br/> 4 Q. Was the relationship you had between CHSRA and<br/> 5 Leapfrog a contractual relationship?<br/> 6 A. Yes.<br/> 7 Q. Got it. So Leapfrog had a contract with CHSRA?<br/> 8 A. Correct.<br/> 9 Q. And who was the PI at the time?<br/> 10 A. Barb Rudolph.<br/> 11 Q. Okay. And who is she?<br/> 12 A. She -- Dr. Barb Rudolph, she has a Ph.D. in<br/> 13 social work. She was a senior scientist at the Center<br/> 14 for Health Systems Research and Analysis.<br/> 15 Q. And what was her role at Leapfrog?<br/> 16 A. She helped support them with their measurement<br/> 17 and public reporting activities.<br/> 18 Q. Was she on the Leapfrog board?<br/> 19 A. She was not.<br/> 20 Q. Okay.<br/> 21 And who was the -- I can't recall if it's</p> <p style="text-align: right;">Page 38</p>    | <p>1 algorithms. Really everything related to putting out a<br/> 2 survey around quality and safety of hospitals.<br/> 3 Q. And at that time, did Leapfrog assign hospital<br/> 4 safety grades?<br/> 5 A. No.<br/> 6 Q. Approximately, when did that start?<br/> 7 A. That started in the Spring of 2012.<br/> 8 Q. Okay. We'll come to that a little bit more.<br/> 9 Just to round out, after you left<br/> 10 Wisconsin, where did you go?<br/> 11 A. I came here to Baltimore and to Johns Hopkins<br/> 12 University.<br/> 13 Q. And you've been here for about 12 years. Is<br/> 14 that right?<br/> 15 A. Correct.<br/> 16 Q. And during that whole time, have you worked<br/> 17 with The Leapfrog Group continuously?<br/> 18 A. Technically, my contract with The Leapfrog<br/> 19 Group didn't start until I think July of 2012, and I had<br/> 20 arrived here in May.<br/> 21 Q. Got it.</p> <p style="text-align: right;">Page 40</p>                                                                               |
| <p>1 president or CEO, but who was the leader of Leapfrog at<br/> 2 the time?<br/> 3 A. So Suzanne Delbanco was the CEO at that time.<br/> 4 Q. Okay.<br/> 5 And when did Ms. Binder take that role?<br/> 6 A. I believe it was early 2008.<br/> 7 Q. Okay. So approximately at the start of your<br/> 8 time working with Leapfrog. Is that right?<br/> 9 A. So I actually started working with The Leapfrog<br/> 10 Group in March of 2007 as part of a student research<br/> 11 assistantship.<br/> 12 Q. Okay. Got it.<br/> 13 So Ms. Binder came in towards the first<br/> 14 year or two of your time?<br/> 15 A. Correct.<br/> 16 Q. Okay.<br/> 17 What were your responsibilities either as a<br/> 18 director or researcher at the time?<br/> 19 A. Yeah. So I was responsible for developing<br/> 20 survey questions, analyses of data, working with experts<br/> 21 on developing measures, measure specifications, scoring</p> <p style="text-align: right;">Page 39</p> | <p>1 A. So just to clarify that.<br/> 2 Q. So from July 2012 to the present?<br/> 3 A. Correct.<br/> 4 Q. I want to shift gears and just talk about your<br/> 5 relationship and Armstrong's relationship with Leapfrog.<br/> 6 A. Uh-huh.<br/> 7 Q. So you said before, I think, there's a<br/> 8 contractual relationship between Armstrong and Leapfrog.<br/> 9 Is that right?<br/> 10 A. Correct.<br/> 11 Q. Tell me generally about how that works.<br/> 12 A. Yeah. So I serve as the principal investigator<br/> 13 on the contract for a portion of my time. So as a<br/> 14 research faculty member, I need to cover my effort with<br/> 15 grants and contracts, and so Leapfrog is part of that<br/> 16 coverage for the work I do.<br/> 17 Q. And forgive me. I just don't know. Generally,<br/> 18 what is a principal investigator?<br/> 19 A. The lead, the lead on a grant or contract.<br/> 20 Q. Got it. Okay.<br/> 21 And you said it covers a certain portion of</p> <p style="text-align: right;">Page 41</p> |

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| <p>1 your time. Approximately, what time percentage is that?</p> <p>2 A. It has ranged between 40 and 70.</p> <p>3 Q. Forty and seventy. Okay. Forty and</p> <p>4 seventy percent of your time?</p> <p>5 A. Correct.</p> <p>6 Q. And Leapfrog also covers funding for you,</p> <p>7 correct?</p> <p>8 A. That is the funding that I'm speaking of.</p> <p>9 Q. Got it.</p> <p>10 And does that come to you in the form of</p> <p>11 compensation?</p> <p>12 A. That money is paid to Johns Hopkins University</p> <p>13 --</p> <p>14 Q. Okay.</p> <p>15 A. -- who pays me a salary.</p> <p>16 Q. Got it.</p> <p>17 Let's look at a couple of documents.</p> <p>18 MR. CRAIN: Maybe start with -- let's start</p> <p>19 with 4. I'm going to mark this Exhibit 6.</p> <p>20 (Exhibit No. 6 was marked for</p> <p>21 identification as of 9/25/2025.)</p> <p style="text-align: right;">Page 42</p>                                                    | <p>1 A. Correct.</p> <p>2 Q. And then if we can keep going to page -- I'm</p> <p>3 going to refer to these numbers as Bates numbers. Do</p> <p>4 you know what I mean when I say that? And I can tell</p> <p>5 you if not.</p> <p>6 A. Page number?</p> <p>7 Q. Bates numbers.</p> <p>8 A. No, I don't know what that is.</p> <p>9 Q. So Bates numbers are these Armstrong numbers on</p> <p>10 the bottom right.</p> <p>11 A. Oh, okay. Okay.</p> <p>12 Q. They're just a stamp that folks give when they</p> <p>13 produced. And for some reason, there are two of them on</p> <p>14 these pages, but I'm going to look at the top little</p> <p>15 one, which is the page number.</p> <p>16 So if you could go to Armstrong ending in</p> <p>17 Bates 006, which also happens to be page 6 of the</p> <p>18 contract.</p> <p>19 A. Uh-huh.</p> <p>20 Q. And do you see there first at the top it's</p> <p>21 signed by Erica Mobley and Thomas F. Burns? Do you see</p> <p style="text-align: right;">Page 44</p> |
| <p>1 BY MR. CRAIN:</p> <p>2 Q. So Dr. Austin, do you recognize this document?</p> <p>3 A. I do.</p> <p>4 Q. And it's another Armstrong-produced document,</p> <p>5 right?</p> <p>6 A. Correct.</p> <p>7 Q. What is it?</p> <p>8 A. This is the contract between Johns Hopkins</p> <p>9 University and The Leapfrog Group.</p> <p>10 Q. And this is a 2018 version. Do you see that?</p> <p>11 A. Correct.</p> <p>12 Q. And if you look at Fees and Payment, it's</p> <p>13 number 4A on the first page. Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And it says: "Contractor shall be paid a fee</p> <p>16 not to exceed \$143,898." Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Does this reflect the funding that you were</p> <p>19 talking about, the payment to Armstrong?</p> <p>20 A. The payment goes to Johns Hopkins University.</p> <p>21 Q. Got it. Not specifically to Armstrong?</p> <p style="text-align: right;">Page 43</p> | <p>1 that?</p> <p>2 A. Yes.</p> <p>3 Q. And Erica Mobley, who is she?</p> <p>4 A. She was at the time the director of operations</p> <p>5 for The Leapfrog Group.</p> <p>6 Q. She's since moved on?</p> <p>7 A. Correct.</p> <p>8 Q. Okay.</p> <p>9 And then there's a budget further down,</p> <p>10 down there. Do you see that?</p> <p>11 A. Uh-huh.</p> <p>12 Q. And it sort of delineates faculty, analysts,</p> <p>13 and a few other things. Do you see it says faculty</p> <p>14 \$59,799?</p> <p>15 A. Correct.</p> <p>16 Q. And that says: "40 percent of J. Matt Austin's</p> <p>17 time." Do you see that?</p> <p>18 A. Uh-huh.</p> <p>19 Q. And that refers to you, correct?</p> <p>20 A. Correct.</p> <p>21 Q. And does that reflect an amount that's</p> <p style="text-align: right;">Page 45</p>                                                                                                                                                                                                    |

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| <p>1 earmarked to you ultimately at the end of the day, or<br/> 2 how does that work?<br/> 3 A. That is an amount that the university will bill<br/> 4 Leapfrog Group for my efforts on the project.<br/> 5 Q. Okay. So the university bills Leapfrog for<br/> 6 your time, correct?<br/> 7 A. Correct.<br/> 8 Q. Is it hourly or just a flat fee?<br/> 9 A. I don't know for sure.<br/> 10 Q. Got it. Okay.<br/> 11 And does your compensation rise with this<br/> 12 -- or rise -- let me strike that. Bad question. That's<br/> 13 the first of many bad questions today.<br/> 14 If Leapfrog didn't pay this money, would<br/> 15 that affect your compensation?<br/> 16 A. Can you clarify that?<br/> 17 Q. Yeah.<br/> 18 I'm trying to understand -- so this, you<br/> 19 said, doesn't get paid to you directly, correct?<br/> 20 A. Correct.<br/> 21 Q. It gets paid to the university, right?</p> <p style="text-align: right;">Page 46</p> | <p>1 Q. Yeah, how many --<br/> 2 A. So it's not --<br/> 3 Q. Can you ballpark how many do you have in a<br/> 4 year?<br/> 5 A. Most contracts or grants last multiple years.<br/> 6 In my 12 years at Hopkins, I've probably had 10 to 11<br/> 7 different grants and contracts.<br/> 8 Q. Okay. All toll. And that includes Leapfrog as<br/> 9 one of those 10?<br/> 10 A. Correct.<br/> 11 Q. Okay. And the reason I clarify is there are<br/> 12 multiple contracts, right?<br/> 13 A. Yeah, right.<br/> 14 Q. Yeah.<br/> 15 Okay. And then what -- so I understand<br/> 16 this number is not directly paid to you. Can you give a<br/> 17 ballpark of what percentage that number is of your total<br/> 18 compensation?<br/> 19 A. The 40 percent.<br/> 20 Q. So this \$59,799 is 40 percent of your salary in<br/> 21 that year, correct?</p> <p style="text-align: right;">Page 48</p> |
| <p>1 A. Correct.<br/> 2 Q. And the university gives you a salary, right?<br/> 3 A. Correct.<br/> 4 Q. What is the relationship between your salary<br/> 5 and grants generally? Let's start with that.<br/> 6 A. So as a faculty member, I'm on a three-year<br/> 7 contract, and that contract is at risk for nonrenewal if<br/> 8 I'm not covering a portion of myself in terms of grants<br/> 9 and contracts.<br/> 10 Q. Got it. Okay.<br/> 11 A. So there would be long-term impact to -- if<br/> 12 Leapfrog didn't pay the money to the university, but the<br/> 13 short-term is that there isn't an impact. I still<br/> 14 receive my salary.<br/> 15 Q. Got it. Okay.<br/> 16 So it affects your future contract with the<br/> 17 university, if any, right?<br/> 18 A. Correct.<br/> 19 Q. Okay.<br/> 20 A. As one of many grants and contracts that I've<br/> 21 had.</p> <p style="text-align: right;">Page 47</p>                     | <p>1 A. Correct. And then direct costs are added in<br/> 2 overhead as well.<br/> 3 Q. Yeah. And those are things like -- like what?<br/> 4 A. That includes fringe rights, so coverage of<br/> 5 health benefits --<br/> 6 Q. Got it.<br/> 7 A. -- and that stuff and --<br/> 8 Q. Got it.<br/> 9 A. -- then the university tacks on a percentage.<br/> 10 Q. Commission.<br/> 11 A. Yeah.<br/> 12 MS. LAWSON: Objection.<br/> 13 MR. CRAIN: Fair enough.<br/> 14 BY MR. CRAIN:<br/> 15 Q. Okay. So I just want to go through a couple of<br/> 16 these. Over -- do you have a general sense of over<br/> 17 time -- so this is a 2018 contract, correct? Has the<br/> 18 grant amount changed during -- you know, in the<br/> 19 preceding -- in the last six years?<br/> 20 A. Can you clarify when you say the grant has<br/> 21 changed?</p> <p style="text-align: right;">Page 49</p>    |

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| <p>1 Q. Yeah.</p> <p>2 So I'm trying to get a sense of where the</p> <p>3 numbers have gone. So there's the total number we saw</p> <p>4 on the first page that's paid to Johns Hopkins.</p> <p>5 A. Uh-huh.</p> <p>6 Q. Has that generally gone up year over year?</p> <p>7 A. There has been some fluctuation.</p> <p>8 Q. Okay.</p> <p>9 A. I'm trying to -- so there have been times where</p> <p>10 Leapfrog has requested additional researchers at Hopkins</p> <p>11 be included in the work, and so just by pure numbers,</p> <p>12 the value, the dollar value of the contract has gone up</p> <p>13 for that.</p> <p>14 Q. Okay.</p> <p>15 A. My salary has changed over time. So it has</p> <p>16 increased based on just sort of salary changes, and</p> <p>17 there's been some fluctuation in efforts.</p> <p>18 Q. So when your salary has changed, the number</p> <p>19 sort of earmarked to you as a percentage of your salary</p> <p>20 goes up, correct?</p> <p>21 MS. LAWSON: Object to form, but you can</p> <p style="text-align: right;">Page 50</p> | <p>1 I'll say plus or minus, that you performed in your role</p> <p>2 for Leapfrog?</p> <p>3 A. Yes.</p> <p>4 Q. Okay.</p> <p>5 And I want to focus on particularly page</p> <p>6 little Bates 9. Do you see that?</p> <p>7 A. Uh-huh.</p> <p>8 Q. And there's -- about halfway down the page, it</p> <p>9 says: "Manage the hospital safety score expert panel</p> <p>10 process." Do you see that?</p> <p>11 A. Uh-huh.</p> <p>12 Q. And it says -- I think it's bullet A -- "Have</p> <p>13 periodic communications with client-approved national</p> <p>14 expert panel either via teleconferences and/or written</p> <p>15 communication, to solicit guidance on: One, which</p> <p>16 performance measures should be considered for inclusion</p> <p>17 in future versions of the safety score composite; and,</p> <p>18 two, suggested adjustments for weighting individual</p> <p>19 measures within the composite. The polling of panel</p> <p>20 members of these topics will involve the use of</p> <p>21 structured communication techniques; e.g., the Delphi</p> <p style="text-align: right;">Page 52</p> |
| <p>1 answer.</p> <p>2 THE WITNESS: Yeah, I mean, right. Leapfrog is</p> <p>3 paying for a portion of my effort, of my total effort,</p> <p>4 right. So if my salary goes up, they're paying more for</p> <p>5 the portion of the effort that they're paying for.</p> <p>6 BY MR. CRAIN:</p> <p>7 Q. And when you say a portion of your effort, just</p> <p>8 so it's clear, that means like your time on the job?</p> <p>9 A. Correct.</p> <p>10 Q. Let's take a look just before we move off this.</p> <p>11 I want to look at Exhibit A, which is page little number</p> <p>12 7.</p> <p>13 A. Uh-huh.</p> <p>14 Q. And this -- it says scope of work. Do you see</p> <p>15 that?</p> <p>16 A. Yes.</p> <p>17 Q. And are you familiar generally with -- it's a</p> <p>18 couple -- it's a few pages. Are you familiar with the</p> <p>19 scope?</p> <p>20 A. Yes, I am.</p> <p>21 Q. Does this accurately depict the scope of work,</p> <p style="text-align: right;">Page 51</p>                                                                                         | <p>1 method."</p> <p>2 Do you see that paragraph?</p> <p>3 A. Uh-huh.</p> <p>4 Q. Does this reflect your work with the Hospital</p> <p>5 Safety Grade expert panel?</p> <p>6 A. It does generally reflect that work.</p> <p>7 Q. What -- are there any meaningful differences</p> <p>8 between this language and what you actually do?</p> <p>9 A. We've moved away recently from doing formal</p> <p>10 polling of panel members.</p> <p>11 Q. Okay. Does that -- is that what the Delphi</p> <p>12 method refers to?</p> <p>13 A. Yeah, that would be a --</p> <p>14 Q. What is the Delphi method?</p> <p>15 A. The Delphi method is a -- an approach to gain</p> <p>16 and understand consensus where you basically go through</p> <p>17 different rounds of voting where based on the first</p> <p>18 round, you sort of narrow down to a smaller subset and</p> <p>19 work towards where there's consensus.</p> <p>20 Q. And is that -- I see it in here, but is that</p> <p>21 how it actually worked at the expert -- at the safety</p> <p style="text-align: right;">Page 53</p>                                 |

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| <p>1 grade expert panel?</p> <p>2 A. In earlier meetings of the safety grade expert</p> <p>3 panel, 2011, 2012, 2013, we did put a little more of a</p> <p>4 focus on having a formal process for that.</p> <p>5 Q. Okay.</p> <p>6 And I think you said that you -- I don't</p> <p>7 have the realtime, so I don't remember exactly what you</p> <p>8 said, but you said in recent years, you've sort of</p> <p>9 gotten rid of the polling feature. Is that what you</p> <p>10 testified to?</p> <p>11 A. Correct.</p> <p>12 Q. And approximately, when did that dissipate?</p> <p>13 A. Probably 2014, 2015.</p> <p>14 Q. Okay. So a little while ago?</p> <p>15 A. Yeah.</p> <p>16 Q. Yeah, okay.</p> <p>17 And then B says -- if you go back to the</p> <p>18 document, it says: "Work with the national expert panel</p> <p>19 to gain consensus on the direction of future versions of</p> <p>20 the safety score composite and/or understand and</p> <p>21 document the differences among panel members on their</p> <p style="text-align: right;">Page 54</p> | <p>1 A. 2011 through 2014.</p> <p>2 Q. Okay.</p> <p>3 So is it fair to say in the early days when</p> <p>4 the safety grade was being created, the Board was more</p> <p>5 active?</p> <p>6 A. Yes, that would be a fair statement.</p> <p>7 Q. And over the years, the Board has been less</p> <p>8 involved with respect to changes to the safety grade</p> <p>9 methodology?</p> <p>10 A. I have become less involved in communicating</p> <p>11 with Leapfrog's board. So I can't speak to what</p> <p>12 Ms. Binder or Ms. Danforth have been communicating to</p> <p>13 the Board but --</p> <p>14 Q. Got it. Okay.</p> <p>15 So let me ask it this way then. This</p> <p>16 document says one of your services -- if you look at the</p> <p>17 top, it says: "Contractor will provide client with the</p> <p>18 following services: Understand the direction set by the</p> <p>19 client's Board of Directors on the hospital safety</p> <p>20 score."</p> <p>21 Do you feel since those early days that</p> <p style="text-align: right;">Page 56</p> |
| <p>1 future visions."</p> <p>2 Do you see that as well?</p> <p>3 A. Yes.</p> <p>4 Q. Accurate depiction of what you've done for</p> <p>5 Leapfrog over the years?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 And then C: "Understand the direction set</p> <p>9 by client's Board of Directors on the hospital safety</p> <p>10 score and keep the national expert panel conceptually</p> <p>11 aligned with the board's direction."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Is that -- so the first question is, is that an</p> <p>15 accurate statement of what you've done for Leapfrog, you</p> <p>16 know, since, let's say, 2018 to the present?</p> <p>17 A. Yes. My one caveat is I think the Board of</p> <p>18 Directors has been less hands-on with the safety grade</p> <p>19 as they were early on.</p> <p>20 Q. Okay. And when you say "early on," what time</p> <p>21 period are we talking about?</p> <p style="text-align: right;">Page 55</p>                                                                                    | <p>1 you've had a sense of the direction set by the Board of</p> <p>2 Directors?</p> <p>3 A. I have not received any feedback that the</p> <p>4 direction we're going is conflicting with what the Board</p> <p>5 would want to do.</p> <p>6 Q. Okay.</p> <p>7 And have you received feedback that it's</p> <p>8 consistent with what the Board would want to do?</p> <p>9 A. As mentioned, I don't have as much</p> <p>10 communication with the Board members. So Leapfrog staff</p> <p>11 is sort of the filter for that. So I have not heard any</p> <p>12 feedback that it's one way or another.</p> <p>13 Q. Okay. So your understanding comes from</p> <p>14 Leapfrog staff?</p> <p>15 A. Correct.</p> <p>16 Q. And it's your understanding of what the</p> <p>17 organization wants, as opposed to the Board?</p> <p>18 MS. LAWSON: Object to form.</p> <p>19 BY MR. CRAIN:</p> <p>20 Q. Well, what is your understanding? I'm trying</p> <p>21 to get a sense of do you have an understanding of what</p> <p style="text-align: right;">Page 57</p>  |

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| <p>1 the Board wants, or do you have an understanding of what<br/>2 Leapfrog staff want?<br/>3 A. My direction that I've been given has been from<br/>4 Leapfrog staff.<br/>5 Q. Okay.<br/>6 A. I don't know if that represents their own<br/>7 thoughts or it represents their own thoughts and the<br/>8 Board. I can't speak to that piece.<br/>9 Q. And when you say "staff," who are we talking<br/>10 about?<br/>11 A. Leah Binder, the CEO, and Missy Danforth, the<br/>12 senior vice president of healthcare ratings.<br/>13 Q. Are those folks your primary contacts for<br/>14 Leapfrog?<br/>15 A. Yes.<br/>16 Q. Are there others as well that you interact<br/>17 with?<br/>18 A. A couple of Missy Danforth's direct reports, so<br/>19 Katie Burgraff Stewart and Jean-Luc Tilly. I have quite<br/>20 a bit of contact with them as well.<br/>21 Q. And Ms. Campione?</p> <p style="text-align: right;">Page 58</p>   | <p>1 A. Probably Katie --<br/>2 Q. Okay.<br/>3 A. -- Stewart.<br/>4 Q. Stewart, yeah.<br/>5 Okay. Let's just keep going. Okay. You<br/>6 can set that -- or wait, actually. Sorry. There's one<br/>7 other thing I want to take a look at.<br/>8 If you go to page 7, just one page back --<br/>9 A. Uh-huh.<br/>10 Q. -- and there's a list of services called manage<br/>11 the research base. Do you see that?<br/>12 A. Yes.<br/>13 Q. Can you just say generally what that entails?<br/>14 A. Yeah. So this item is related to the Leapfrog<br/>15 annual hospital survey, and it's just sort of being<br/>16 aware of where -- what performance measures have been<br/>17 recently endorsed, which are sort of out there in<br/>18 national programs, doing literature reviews on topics.<br/>19 So basically, ensuring that the measures that Leapfrog<br/>20 is using in its Leapfrog Hospital Survey are valid,<br/>21 reliable, evidence-based measures.</p> <p style="text-align: right;">Page 60</p> |
| <p>1 A. Yes, and Alex as well.<br/>2 Q. And what's Ms. Campione's role?<br/>3 A. She -- I don't know her exact title, but she's<br/>4 the one that supports the Hospital Safety Grade program<br/>5 from Leapfrog's side in terms of the analytics and all<br/>6 that goes with that.<br/>7 Q. And does she work with you closely in that<br/>8 regard?<br/>9 A. Yeah.<br/>10 Q. And Mr. Tilly, what's his role?<br/>11 A. Jean-Luc Tilly has a couple of areas of the<br/>12 Leapfrog Hospital Survey that he champions and leads, as<br/>13 well the ambulatory surgery center survey.<br/>14 Q. Okay.<br/>15 And then Ms. Stewart, what's her role?<br/>16 A. Once again, she has certain areas of the<br/>17 Leapfrog Hospital Survey that she champions.<br/>18 Q. Okay.<br/>19 Who do you interact with most at Leapfrog?<br/>20 A. Missy Danforth.<br/>21 Q. Who is the second?</p> <p style="text-align: right;">Page 59</p> | <p>1 Q. Got it.<br/>2 So stepping back a little bit, Leapfrog has<br/>3 its hospital survey and its safety grades, right?<br/>4 A. Correct.<br/>5 Q. Are those the primary, like, sides of the<br/>6 house, so to speak?<br/>7 A. Those are their two primary reporting<br/>8 initiatives, but there is the Leapfrog Ambulatory<br/>9 Surgery Center Survey as well.<br/>10 Q. Are you involved in any capacity in all three?<br/>11 A. I am in all three.<br/>12 Q. You are what? Sorry.<br/>13 A. I am involved in all three.<br/>14 Q. Okay. I thought you said I am an author. I<br/>15 was going to say an author of what? But I guess I'll<br/>16 ask that question. Do you author any of the hospital<br/>17 survey? Do you draft any of it?<br/>18 A. I do draft some of the survey questions,<br/>19 measure specifications, end notes, FAQs.<br/>20 Q. A lot of work.<br/>21 A. It is a lot of work, yeah.</p> <p style="text-align: right;">Page 61</p>                                               |

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| <p>1 Q. Do you review each iteration of the hospital<br/>2 survey?</p> <p>3 A. I do.</p> <p>4 Q. Top to bottom?</p> <p>5 A. Not top to bottom.</p> <p>6 Q. Okay. I would think that would take some time.</p> <p>7 A. Yeah.</p> <p>8 Q. Yeah.</p> <p>9 The survey is about 350 pages. Am I right?</p> <p>10 A. Correct.</p> <p>11 Q. Okay.</p> <p>12 And then with respect to the safety grade,<br/>13 can you just explain your role?</p> <p>14 A. Yeah. So the role has been to provide Leapfrog<br/>15 with guidance and recommendations on the methodology,<br/>16 and that includes what measures should be included in<br/>17 the safety grade, how we might assign relative weights<br/>18 to each of those measures.</p> <p>19 Are you asking about currently or sort of<br/>20 historically through the last 11 years?</p> <p>21 Q. Fair question. I guess I'll start with has it</p> <p style="text-align: right;">Page 62</p>                                                                                                                                                         | <p>1 diminished over the years?</p> <p>2 A. Not for strategic guidance, no.</p> <p>3 Q. So what is diminished as compared to strategic<br/>4 guidance?</p> <p>5 A. So as an example, in the early years of the<br/>6 Hospital Safety Grade, I actually would be the one to<br/>7 put together a histogram of the hospital safety scores<br/>8 from the prior round, the current round, and we would<br/>9 discuss that as a group in terms of what changes we were<br/>10 seeing. That is now something that Alex would do.</p> <p>11 So there's sort of an analytic piece that<br/>12 has moved more internal to Leapfrog --</p> <p>13 Q. Got it. Okay.</p> <p>14 A. -- but not the strategic guidance part.</p> <p>15 Q. And just what does strategic guidance mean?</p> <p>16 A. Yeah. Strategic guidance is thinking about<br/>17 what measures do we currently have in the composite<br/>18 score, what are the changes that are happening like<br/>19 within national programs, CMS, like measures that might<br/>20 be retired, what are new measures that are out there,<br/>21 what are gaps that we would like to try to fill, and are</p> <p style="text-align: right;">Page 64</p> |
| <p>1 changed meaningfully in the past 11 years?</p> <p>2 A. I would assess that my role has actually<br/>3 diminished as Alex, Leapfrog, has gained more sort of<br/>4 independence in what they're doing.</p> <p>5 Q. Got it.</p> <p>6 So let me ask you about that. The contract<br/>7 in here says that you're being retained to provide<br/>8 strategic -- let me just find the right word. What does<br/>9 it say? Strategic counseling I think. Is that the --<br/>10 do you recall that language?</p> <p>11 A. I don't recall that language. The language I<br/>12 typically use is to say strategic guidance.</p> <p>13 Q. Guidance. That's it. Yeah, it's on page 7<br/>14 under background, second paragraph, last sentence. You<br/>15 see it says --</p> <p>16 A. Uh-huh.</p> <p>17 Q. -- you were retained to provide client, meaning<br/>18 Leapfrog, with strategic guidance. Do you see that?</p> <p>19 A. Uh-huh.</p> <p>20 Q. So to your point of Leapfrog gaining more<br/>21 independence, has the need for strategic guidance</p> <p style="text-align: right;">Page 63</p> | <p>1 there measures out there that we could use for that.</p> <p>2 So it's trying to sort of think about<br/>3 what's the right combination of measures to have in a<br/>4 composite score of patient safety and then to also help<br/>5 them think about how we might relatively weight those<br/>6 against each other.</p> <p>7 Q. So fair to say it's like more holistic as<br/>8 opposed to something more granular that Ms. Campione<br/>9 might do?</p> <p>10 A. Correct.</p> <p>11 Q. Okay.</p> <p>12 I'm not going to put every contract in<br/>13 front of you. You see me flipping.</p> <p>14 Let me ask a question about just grants<br/>15 before we move on.</p> <p>16 A. Uh-huh.</p> <p>17 Q. So you said, for instance -- so we see in the<br/>18 contracts the percentage has changed over time as well,<br/>19 that the grant towards your salary goes to. Do you<br/>20 recall that?</p> <p>21 A. Correct.</p> <p style="text-align: right;">Page 65</p>                                                                                                                                                                                                                     |

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| <p>1 Q. Okay.</p> <p>2 So we saw in 2018 the number allocated to</p> <p>3 you was 40 percent, right? Of the remaining 60 percent,</p> <p>4 does that come from other grants?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. And how many grants fill that 60,</p> <p>7 ballpark?</p> <p>8 A. Two or three depending on the size of them.</p> <p>9 Q. Okay. And are any of them as significant in</p> <p>10 proportion as Leapfrog?</p> <p>11 Let me -- let me -- that's a sort of</p> <p>12 unwieldy question. Let me fix that. I saw you</p> <p>13 thinking. So I'll build it a little more clearly.</p> <p>14 So in 2018, the amount allocated to your</p> <p>15 salary was 40 percent. Is that right?</p> <p>16 A. Correct.</p> <p>17 Q. Okay.</p> <p>18 You said of the remaining 60 percent, there</p> <p>19 were two or three other grants that filled that,</p> <p>20 essentially, right?</p> <p>21 A. Correct.</p> <p style="text-align: right;">Page 66</p>                | <p>1 MR. CRAIN: Yeah.</p> <p>2 MS. LAWSON: -- because I think he testified</p> <p>3 earlier that he's had like nine or ten other grants.</p> <p>4 MR. CRAIN: Yeah, I hear you.</p> <p>5 MS. LAWSON: Yeah.</p> <p>6 BY MR. CRAIN:</p> <p>7 Q. So in a given year, let's say between 2018 and</p> <p>8 2025, the other grants that are not Leapfrog, if you</p> <p>9 can, approximately what percentage of your compensation</p> <p>10 do they -- are they?</p> <p>11 A. It varies from year to year. I'm more trying</p> <p>12 to just think about what's on my CV and what those</p> <p>13 efforts are. They might total up to another 50 percent.</p> <p>14 Q. Total. Okay. Got it. Okay, so --</p> <p>15 A. So a typical breakdown might be one that's 20,</p> <p>16 one that's 20, and one that's 10.</p> <p>17 Q. Okay. Got it. Okay. And I didn't mean it to</p> <p>18 be a memory test.</p> <p>19 A. No, no, no, no, no. I'm trying to answer</p> <p>20 truthfully, but I don't really remember.</p> <p>21 Q. Just your best estimate.</p> <p style="text-align: right;">Page 68</p> |
| <p>1 Q. Are any of those two to three grants also</p> <p>2 40 percent?</p> <p>3 MS. LAWSON: And are you asking just specific</p> <p>4 to 2018?</p> <p>5 BY MR. CRAIN:</p> <p>6 Q. Specific to 2018, yeah, if you recall.</p> <p>7 A. I don't recall, but I could find that out.</p> <p>8 Q. Okay.</p> <p>9 A. I just don't remember offhand.</p> <p>10 Q. Generally, you know, to the extent you know, do</p> <p>11 you -- have you had other grants that were the same</p> <p>12 significance in size as Leapfrog over the years?</p> <p>13 A. This would be the most significant --</p> <p>14 Q. Okay.</p> <p>15 A. -- ongoing contract.</p> <p>16 Q. Okay. Got it.</p> <p>17 And the other two or three grants, as a</p> <p>18 percentage of your compensation, can you ballpark</p> <p>19 generally what they are?</p> <p>20 MS. LAWSON: Object -- objection to form. And</p> <p>21 maybe if you can clarify over time --</p> <p style="text-align: right;">Page 67</p> | <p>1 A. My best estimate, yeah.</p> <p>2 Q. Okay.</p> <p>3 MS. LAWSON: And if you're not sure, it's okay</p> <p>4 to tell him that you're not sure because he wants to</p> <p>5 know --</p> <p>6 MR. CRAIN: Yeah.</p> <p>7 MS. LAWSON: -- what you know.</p> <p>8 THE WITNESS: Okay.</p> <p>9 MR. CRAIN: I'm not asking you to guess.</p> <p>10 THE WITNESS: Okay. Okay.</p> <p>11 MS. LAWSON: Yes, he's not asking you to guess.</p> <p>12 THE WITNESS: Okay.</p> <p>13 MR. CRAIN: But your best estimate --</p> <p>14 THE WITNESS: Okay.</p> <p>15 MR. CRAIN: -- approximation as the expert of</p> <p>16 you.</p> <p>17 THE WITNESS: Right. Okay.</p> <p>18 BY MR. CRAIN:</p> <p>19 Q. So let's shift gears a little bit. Are you</p> <p>20 doing okay on time?</p> <p>21 A. Yeah.</p> <p style="text-align: right;">Page 69</p>                                                                                                                                                                                                                                                        |

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| <p>1 Q. Okay, good. I mean break.</p> <p>2 A. Yeah.</p> <p>3 Q. Okay.</p> <p>4 So I want to talk a little bit more about</p> <p>5 the safety grade and what it does and what's it's</p> <p>6 purpose. So --</p> <p>7 MS. LAWSON: Actually, if we're going to</p> <p>8 totally switch gears --</p> <p>9 MR. CRAIN: Yeah. You want to --</p> <p>10 MS. LAWSON: -- do you mind if we take a --</p> <p>11 MR. CRAIN: Yeah, yeah. No, now is fine.</p> <p>12 MS. LAWSON: A break? Yeah.</p> <p>13 MR. CRAIN: Yeah. Good.</p> <p>14 THE VIDEOGRAPHER: This marks the end of media</p> <p>15 unit number two. We're going off the record. The time</p> <p>16 is 10:05 a.m.</p> <p>17 THE COURT REPORTER: This gives us a chance to</p> <p>18 get the realtime going, too.</p> <p>19 MR. CRAIN: Oh, yeah.</p> <p>20</p> <p>21</p> <p style="text-align: right;">Page 70</p>                                                                                                                             | <p>1 A. Once in a great while.</p> <p>2 Q. Okay.</p> <p>3 So I'm just going to -- I sort of want to</p> <p>4 walk through what the safety grade is and focus on some</p> <p>5 of the language in this document if we can. And I -- so</p> <p>6 starting with paragraph -- the first paragraph, you see</p> <p>7 there's a sentence "the purpose" -- do you see that --</p> <p>8 A. Uh-huh.</p> <p>9 Q. -- at the bottom?</p> <p>10 A. Uh-huh.</p> <p>11 Q. "The purpose of the Leapfrog Hospital Safety</p> <p>12 Grade is to bring this information to light in a way</p> <p>13 that's easy for you, the consumer, to use."</p> <p>14 I realize it says "this information," so I</p> <p>15 probably need to go back. So I'll start at the top.</p> <p>16 "One of the most significant problems with</p> <p>17 today's healthcare system is the failure to make safety</p> <p>18 and quality information available to the public. But</p> <p>19 the public deserves this information so they can make</p> <p>20 informed choices about where to receive care.</p> <p>21 "The purpose of the Leapfrog Hospital</p> <p style="text-align: right;">Page 72</p> |
| <p>1 (Whereupon a short break was had, after</p> <p>2 which the proceedings continued as</p> <p>3 follows:)</p> <p>4 (Exhibit No. 7 was marked for</p> <p>5 identification as of 9/25/2025.)</p> <p>6 THE VIDEOGRAPHER: This marks the beginning of</p> <p>7 media unit number three. We're going back on the</p> <p>8 record. The time is 10:22 a.m.</p> <p>9 BY MR. CRAIN:</p> <p>10 Q. Welcome back, Dr. Austin.</p> <p>11 A. Thank you.</p> <p>12 Q. It's like a commercial break on TV.</p> <p>13 So I've given you what's been marked as</p> <p>14 Exhibit 7. Do you recognize this document?</p> <p>15 A. I do not.</p> <p>16 Q. Okay. So I'll represent to you this is from</p> <p>17 the Leapfrog Safety Grade website,</p> <p>18 hospitalsafetygrades.org. Is that familiar to your?</p> <p>19 A. I'm familiar with that website.</p> <p>20 Q. Do you know -- like, are you -- do you look at</p> <p>21 the website periodically or no?</p> <p style="text-align: right;">Page 71</p> | <p>1 Safety Grade is to bring this information to light in a</p> <p>2 way that's easy for you, the consumer, to use."</p> <p>3 Do you see that?</p> <p>4 A. Yep, I do.</p> <p>5 Q. Do you agree with that paragraph?</p> <p>6 MS. LAWSON: So I'll just object to form.</p> <p>7 And just I want to clarify. I think</p> <p>8 Dr. Austin, you testified you had not seen this before.</p> <p>9 THE WITNESS: Correct.</p> <p>10 I would generally agree. I would maybe</p> <p>11 reframe the first sentence slightly differently.</p> <p>12 BY MR. CRAIN:</p> <p>13 Q. How so?</p> <p>14 A. I might say that one of the significant</p> <p>15 problems of today's healthcare system is how to best</p> <p>16 share safety and quality information with the public.</p> <p>17 Q. Okay.</p> <p>18 A. I think information is available. I think</p> <p>19 we've struggled to help people connect to that.</p> <p>20 Q. So the difference being the failure language?</p> <p>21 A. Yeah. I wouldn't say failure to make.</p> <p style="text-align: right;">Page 73</p>                                                                                            |

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| <p>1 Q. Okay.</p> <p>2 And then do you agree that the purpose of</p> <p>3 the Leapfrog Hospital Safety Grade is to bring this</p> <p>4 information to light in a way that it's easy for you,</p> <p>5 the consumer, to use?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 And then is it right that -- if you go down</p> <p>9 to the second page -- "Our letter grade scoring system</p> <p>10 allows consumers to quickly assess the safety of their</p> <p>11 local hospital and choose the safest hospital to seek</p> <p>12 care." Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Do you agree with that statement?</p> <p>15 A. Yes.</p> <p>16 Q. And then it says: "As consumers use the</p> <p>17 Leapfrog Hospital Safety Grade more and more, we hope</p> <p>18 more hospitals will be compelled to be open about their</p> <p>19 safety and quality and participate in meaningful public</p> <p>20 reporting."</p> <p>21 Do you see that as well?</p> <p style="text-align: right;">Page 74</p>               | <p>1 Q. Okay. How often do they ask you to review the</p> <p>2 website?</p> <p>3 MS. LAWSON: Object to form.</p> <p>4 BY MR. CRAIN:</p> <p>5 Q. Generally, just over, you know, the last six</p> <p>6 years.</p> <p>7 A. Not very often. I mean, I don't know</p> <p>8 everything that's on their website. You know, so I</p> <p>9 don't know what the full scope is, so I can't speak</p> <p>10 to --</p> <p>11 Q. No, I hear you. Just so we're on the same</p> <p>12 page, I'm talking about hospitalsafetygrades.org.</p> <p>13 A. Right.</p> <p>14 Q. Are you familiar generally with that website?</p> <p>15 A. Right. Yeah, yeah, yeah, yeah. Right.</p> <p>16 Q. And Leapfrog -- I forget the other one but the</p> <p>17 Leapfrog.org website.</p> <p>18 A. Uh-huh, right.</p> <p>19 Q. And one of them refers typically to the survey,</p> <p>20 right?</p> <p>21 A. Uh-huh.</p> <p style="text-align: right;">Page 76</p>                                                                                                                                                                                                                               |
| <p>1 A. I do.</p> <p>2 Q. And do you agree with that sentiment?</p> <p>3 A. I don't know what the evidence or research</p> <p>4 supporting the first clause is. I wouldn't necessarily</p> <p>5 be able to speak to that part, about whether consumers</p> <p>6 are using the safety grade more and more, but I would</p> <p>7 agree with the last part.</p> <p>8 Q. The last part being we hope more hospitals will</p> <p>9 be compelled to be open about their safety and quality</p> <p>10 and participate in meaningful public reporting?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 And just to be clear, do you have any role</p> <p>14 in the creation, drafting, revision of Leapfrog's</p> <p>15 websites?</p> <p>16 A. If I'm asked to review something, I will review</p> <p>17 it --</p> <p>18 Q. Okay.</p> <p>19 A. -- and provide back comments and feedback. But</p> <p>20 they don't ask me to review every single thing on their</p> <p>21 website.</p> <p style="text-align: right;">Page 75</p> | <p>1 Q. And the other one is about the safety grades,</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. And do you have any specific recollection</p> <p>5 sitting here today of any particular page on either of</p> <p>6 those two websites you were asked to opine on?</p> <p>7 A. I don't remember exactly. I'm sure through</p> <p>8 12 years there has been something that I have reviewed,</p> <p>9 but I couldn't speak to what that is and if it's still</p> <p>10 up or if it's been taken down.</p> <p>11 Q. Just asking for your memory today.</p> <p>12 A. Yeah, yeah. I don't. I don't know.</p> <p>13 Q. And just to fine-tune it a little bit, do you</p> <p>14 have any specific recollection of opining on any part of</p> <p>15 the website regarding the imputation methodology?</p> <p>16 A. Can you be more specific with what exactly</p> <p>17 you're referencing there?</p> <p>18 Q. Yeah. So are you aware of any part of</p> <p>19 Leapfrog's website that articulates its imputation</p> <p>20 methodology on the safety grades for nonparticipating</p> <p>21 hospitals in the survey?</p> <p style="text-align: right;">Page 77</p> |

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| <p>1 A. I know there's some information in a prior<br/>2 exhibit that we discussed that talks about the<br/>3 imputation. I don't know if there's something on a<br/>4 webpage itself. I just don't know what is actually --<br/>5 what all the pages are and what's on them.<br/>6 Q. Okay. Just to my question, do you have any<br/>7 specific memory --<br/>8 A. No, I don't have any specific memory.<br/>9 Q. Let me just finish the question so it's clear.<br/>10 Do you have any specific memory of being<br/>11 asked the opine or otherwise opining on any portion of<br/>12 Leapfrog's website regarding the imputation methodology?<br/>13 A. I don't remember being asked to do that.<br/>14 Q. Okay.<br/>15 MR. CRAIN: Let's go to 67. I'll mark another<br/>16 document. This will be Exhibit 8.<br/>17 (Exhibit No. 8 was marked for<br/>18 identification as of 9/25/2025.)<br/>19 BY MR. CRAIN:<br/>20 Q. Dr. Austin, do you recognize this document?<br/>21 A. I recognize that this is a printout of a</p> <p style="text-align: right;">Page 78</p>                    | <p>1 A. Yes.<br/>2 Q. Is that a correct articulation of what the<br/>3 Leapfrog Hospital Safety Grade uses?<br/>4 A. That represents a summary of what has been the<br/>5 formation of the Hospital Safety Grade in sort of its<br/>6 entirety.<br/>7 Q. Okay, fair enough. So let me ask you it this<br/>8 way. Is that correct for the methodology as it exists<br/>9 today?<br/>10 A. Yes, minus that currently the safety grade I do<br/>11 not believe is using information from other supplemental<br/>12 data sources.<br/>13 Q. Okay. What is the safety grade currently using<br/>14 as a data source?<br/>15 A. We're using data from the Centers for Medicare<br/>16 &amp; Medicaid Services and from the Leapfrog Hospital<br/>17 Survey.<br/>18 Q. Okay. So today there's no other supplemental<br/>19 data sources being used with the grade, correct?<br/>20 A. That is my recollection from the current<br/>21 methodology.</p> <p style="text-align: right;">Page 80</p> |
| <p>1 webpage from Leapfrog's Hospital Safety Grade website.<br/>2 Q. Do you have any reason to think that it's not<br/>3 an accurate depiction of the website?<br/>4 A. No, I have no reason to think so.<br/>5 Q. Are you familiar generally with the "About the<br/>6 Grade" website?<br/>7 A. I'm familiar with that webpage, yes.<br/>8 Q. I want to ask you a couple of questions about<br/>9 the language on this page, just to your understanding.<br/>10 Did you -- do you recall having any role in drafting<br/>11 this page?<br/>12 A. It is possible but I don't remember exactly<br/>13 today.<br/>14 Q. So page 1 -- and I apologize. There's no page<br/>15 numbers on it but the first page and the second<br/>16 paragraph, it says: "The Leapfrog Hospital Safety Grade<br/>17 uses up to 30 national performance measures from the<br/>18 Centers for Medicare &amp; Medicaid Services, CMS, the<br/>19 Leapfrog Hospital Survey, and information from other<br/>20 sources of supplemental data."<br/>21 Do you see that?</p> <p style="text-align: right;">Page 79</p> | <p>1 Q. And when did that change? Approximately.<br/>2 MS. LAWSON: So it really is a memory test.<br/>3 THE WITNESS: It is a memory test.<br/>4 BY MR. CRAIN:<br/>5 Q. If he has a memory.<br/>6 A. I don't know the year.<br/>7 Q. Okay. Let me refresh your recollection a<br/>8 little bit.<br/>9 A. Okay.<br/>10 Q. So in 2024, am I right that the imputation<br/>11 methodology changed?<br/>12 A. That is my recollection, yes.<br/>13 Q. And then prior to that, there was a different<br/>14 imputation methodology, right?<br/>15 A. Correct. We've actually used four or five<br/>16 different imputation methodologies over the 11, 12 years<br/>17 of the Hospital Safety Grade.<br/>18 Q. Okay.<br/>19 Can you, at a high level, I'm not asking<br/>20 for a memory test, just generally trace what you recall<br/>21 of those four or five different models?</p> <p style="text-align: right;">Page 81</p>                                                                 |

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| <p>1 A. Yeah, yeah, yeah.</p> <p>2 So when we met with the expert panel early</p> <p>3 on to talk about the idea of the Hospital Safety Grade,</p> <p>4 one of the identified issues was that we were likely to</p> <p>5 encounter missing data, and how did we want to address</p> <p>6 the issue of missing data.</p> <p>7 The expert panel laid out five different</p> <p>8 ideas of sort of generally-accepted approaches of how</p> <p>9 that has been addressed.</p> <p>10 The -- if I can remember the five --</p> <p>11 Q. I can show you a document.</p> <p>12 A. Okay.</p> <p>13 And so we started initially with if we</p> <p>14 didn't have data for a hospital for our measure, we</p> <p>15 ignored that measure and put greater weight on the</p> <p>16 measures for which we did have data. That evolved into</p> <p>17 using supplementary data sources, specifically the</p> <p>18 American Hospital Association survey was one of the key</p> <p>19 data sources for that.</p> <p>20 That evolved into calculating or assigning</p> <p>21 the mean performance for hospitals based on cohorts, so</p> <p style="text-align: right;">Page 82</p> | <p>1 Q. And AHA is American Hospital Association?</p> <p>2 A. Correct.</p> <p>3 Q. I always mess that up. That's my aha moment.</p> <p>4 I've been playing with that one.</p> <p>5 MS. LAWSON: You delivered it well.</p> <p>6 MR. CRAIN: Thank you. I'm going to use that</p> <p>7 one at trial.</p> <p>8 BY MR. CRAIN:</p> <p>9 Q. So other forms of supplemental data, is there</p> <p>10 any -- because CMS is not supplemental data, right?</p> <p>11 Because it's covered on this page otherwise, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Are there any other supplemental data that you</p> <p>14 can recall Leapfrog using in the Hospital Safety Grade</p> <p>15 scoring at any time?</p> <p>16 A. Yes. So the American Hospital Association did</p> <p>17 a separate survey around health information technology,</p> <p>18 and we did use that to inform the scores for</p> <p>19 computerized prescriber order entry. And that's one</p> <p>20 that comes to my mind. There's none others that</p> <p>21 immediately come to my mind, but that's not to say there</p> <p style="text-align: right;">Page 84</p> |
| <p>1 sort of the national mean based on the cohort that the</p> <p>2 hospital fell into, and that has since evolved into</p> <p>3 assigning the hospitals a lower performance score.</p> <p>4 Q. That's the current methodology?</p> <p>5 A. That's the current methodology.</p> <p>6 Q. And when you say "lower performance score,"</p> <p>7 that's limited achievement?</p> <p>8 A. That is correct, how Leapfrog has</p> <p>9 operationalized that.</p> <p>10 Q. And in the current model, am I right that there</p> <p>11 are two steps, right? The first step is the historical,</p> <p>12 as you said earlier?</p> <p>13 A. Correct.</p> <p>14 Q. The second step is the limited achievement that</p> <p>15 you were referring to, correct?</p> <p>16 A. Correct.</p> <p>17 Q. Okay.</p> <p>18 So going back to the document, when we talk</p> <p>19 about supplemental data sources, generally, am I right</p> <p>20 that the AHA data was a supplemental data source?</p> <p>21 A. Correct.</p> <p style="text-align: right;">Page 83</p>                                                                                                                  | <p>1 weren't others.</p> <p>2 Q. Okay.</p> <p>3 A. I just don't recall.</p> <p>4 Q. Yeah, okay. So that's helpful.</p> <p>5 I want to keep going down this document.</p> <p>6 If you go to the bottom of that paragraph: "The</p> <p>7 Leapfrog Hospital Safety Grade methodology has been peer</p> <p>8 reviewed and published in the Journal of Patient</p> <p>9 Safety."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Now, does the Journal of Patient Safety --</p> <p>13 there's a hyperlink there. Do you see that?</p> <p>14 A. Uh-huh.</p> <p>15 Q. And I don't have the document with me, but I'll</p> <p>16 represent to you it goes to what I think is a 2014</p> <p>17 article.</p> <p>18 A. Correct.</p> <p>19 Q. Does that article, the peer review that this</p> <p>20 sentence is talking about to your knowledge?</p> <p>21 A. Yes.</p> <p style="text-align: right;">Page 85</p>                                                                                                                                                                                                                 |

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| <p>1 Q. And what does peer review mean, generally?</p> <p>2 A. Peer reviewed, in at least the medical world,</p> <p>3 which is really the only world I know, so that's all I</p> <p>4 can speak to, when you submit to a journal, they</p> <p>5 actually identify two to three external individuals to</p> <p>6 actually read the manuscript, provide feedback, provide</p> <p>7 recommendations of how to improve it. Those go back to</p> <p>8 the editor of the journal, and the editor makes the</p> <p>9 decision of what to share back with the authors in terms</p> <p>10 of requested updates or revisions.</p> <p>11 The peer reviewers could decide -- could</p> <p>12 recommend that the article be rejected, right. They</p> <p>13 don't feel like it's a high enough quality. And so it's</p> <p>14 a process to sort of have some external review of the</p> <p>15 work.</p> <p>16 Q. And the 2014 article was peer reviewed?</p> <p>17 A. Correct.</p> <p>18 Q. Do you recall generally by whom?</p> <p>19 A. I don't -- as an author, you're unaware of who</p> <p>20 the peer reviewers are.</p> <p>21 Q. Oh, interesting.</p> <p style="text-align: right;">Page 86</p> | <p>1 place at the time for the Hospital Safety Grade.</p> <p>2 Q. In 2014, correct?</p> <p>3 A. 2014, although -- it got published in 2014. We</p> <p>4 wrote it in 2013, so this is probably an earlier</p> <p>5 version.</p> <p>6 Q. So do you think it's fair to say that the</p> <p>7 current methodology has been peer reviewed?</p> <p>8 A. I think it's fair to say that the general</p> <p>9 approach remains consistent from 2013, 2014. The</p> <p>10 individual measures that are included in the safety</p> <p>11 grade has evolved over time.</p> <p>12 Q. And just to be clear, though, to my question,</p> <p>13 is it a fair statement to say the Leapfrog Hospital</p> <p>14 Safety Grade methodology has been peer reviewed and</p> <p>15 published in the Journal of Patient Safety in 2025?</p> <p>16 A. I could argue that it does not say the current</p> <p>17 Leapfrog Hospital Safety Grade methodology. It just</p> <p>18 says that the methodology has been peer reviewed.</p> <p>19 Q. If this is on the public consumer-facing</p> <p>20 website today, do you think the consumer would</p> <p>21 understand, looking at this, that this is referring to a</p> <p style="text-align: right;">Page 88</p> |
| <p>1 A. There's a movement recently toward moving --</p> <p>2 making that transparent, but that has not necessarily</p> <p>3 been the practice.</p> <p>4 Q. Got it. Okay.</p> <p>5 Do you remember any feedback they gave on</p> <p>6 the article?</p> <p>7 A. You're really testing my memory here.</p> <p>8 Q. If you don't, that's okay.</p> <p>9 A. Yeah, I don't. That was 10 years ago, 11 years</p> <p>10 ago. I don't remember. I'm sure there was feedback</p> <p>11 from -- almost every article has some degree of</p> <p>12 feedback, but I don't remember what the feedback was or</p> <p>13 to the degree.</p> <p>14 Q. And I don't at all mean to stretch your memory.</p> <p>15 If you don't remember --</p> <p>16 A. Right. I don't.</p> <p>17 Q. -- that's a perfectly fine answer, yeah, but I</p> <p>18 have to ask.</p> <p>19 So now going back, this article, it</p> <p>20 analyzes an older methodology, right?</p> <p>21 A. Correct. It was the methodology that was in</p> <p style="text-align: right;">Page 87</p>                                                                                                                                             | <p>1 2014 methodology, not a 2025 methodology?</p> <p>2 MS. LAWSON: Object to form. Go ahead.</p> <p>3 BY MR. CRAIN:</p> <p>4 Q. You can answer.</p> <p>5 MS. LAWSON: You can answer.</p> <p>6 THE WITNESS: I don't know what a consumer</p> <p>7 would think or not think. Like, I haven't studied that.</p> <p>8 BY MR. CRAIN:</p> <p>9 Q. When you first -- this was the first time you</p> <p>10 recall reading this sentence in a while, at least,</p> <p>11 right?</p> <p>12 A. The sentence meaning the one about the patient</p> <p>13 safety?</p> <p>14 Q. No, the one I read back to you. The Leapfrog</p> <p>15 Hospital Safety Grade methodology has been peer reviewed</p> <p>16 and published in the Journal of Patient Safety.</p> <p>17 A. Uh-huh.</p> <p>18 Q. You knew what that referred to, right?</p> <p>19 A. Yes, I did.</p> <p>20 Q. Did you think to yourself that's the same for</p> <p>21 2025 as it was for 2014?</p> <p style="text-align: right;">Page 89</p>                                                                                                                                                                                                                                           |

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| <p>1 MS. LAWSON: Object to form, but you can<br/>2 answer.<br/>3 THE WITNESS: As I mentioned, I think the<br/>4 general format of what we're doing with a composite<br/>5 score made up of 25 measures that are weighted in two<br/>6 domains remains consistent and solid throughout that<br/>7 time frame.<br/>8 Measures, for whatever -- I mean, measures<br/>9 are going to come and go, right. CMS makes decisions<br/>10 about retiring certain measures. They've added new<br/>11 measures. So the safety grade does continue to evolve,<br/>12 and I would say appropriately, right, like to sort of<br/>13 keep up with the latest information and evidence.<br/>14 BY MR. CRAIN:<br/>15 Q. Has the imputation methodology or the<br/>16 imputation model been peer reviewed?<br/>17 A. That has not.<br/>18 Q. Okay.<br/>19 Okay. Let's keep going. I want to go to<br/>20 -- let's see. Here we go. It's -- and I apologize.<br/>21 There's no page number. If you go to the document, it's<br/>Page 90</p> | <p>1 the methodology, so I don't -- I can't speak to --<br/>2 Q. Fair enough.<br/>3 A. -- how it got implemented.<br/>4 Q. Yeah, let me fix the question.<br/>5 Based on your knowledge of how the<br/>6 methodology works, not whether it's been implemented<br/>7 faithfully or not, but purely based on your<br/>8 understanding of the methodology, is that an accurate<br/>9 explanation or articulation of the methodology?<br/>10 A. Yes.<br/>11 Q. Okay.<br/>12 A. That is what we have set as minimum data<br/>13 thresholds.<br/>14 Q. So I want to talk about some process measures.<br/>15 BCMA, are you familiar with that term?<br/>16 A. Uh-huh.<br/>17 Q. What is BCMA?<br/>18 A. Barcode medication administration.<br/>19 Q. And what is CPOE?<br/>20 A. Computerized physician order entry.<br/>21 Q. And you're familiar with hand hygiene?<br/>Page 92</p>                                                                                                                                           |
| <p>1 the first, second, third, fourth, fifth page to the<br/>2 paragraph starting "A hospital."<br/>3 A. Uh-huh.<br/>4 Q. Do you see that?<br/>5 A. Yep.<br/>6 Q. "A hospital must have enough safety data<br/>7 available for our experts to issue them a letter grade.<br/>8 Hospitals missing more than six process measures, more<br/>9 than five outcome measures, or PSI90 are not graded.<br/>10 All hospitals are encouraged to voluntarily report<br/>11 additional safety data through the Leapfrog Hospital<br/>12 Survey, but they are not required to do so to receive a<br/>13 safety grade."<br/>14 Do you see that language?<br/>15 A. I do.<br/>16 Q. So let's start with process measures. Do you<br/>17 see it says hospitals missing more than six process<br/>18 measures...are not graded?<br/>19 A. Uh-huh.<br/>20 Q. Is that an accurate statement?<br/>21 A. As far as I know. I'm not the one implementing<br/>Page 91</p>                                                                    | <p>1 A. Correct.<br/>2 Q. As a measure, not generally.<br/>3 And are you familiar with IC -- IPS?<br/>4 A. Yes, ICU physician staffing.<br/>5 Q. And those I'm going to generally talk about now<br/>6 as we move forward as the four imputed measures.<br/>7 A. Uh-huh.<br/>8 Q. Do you understand what I'm talking about?<br/>9 A. Uh-huh. Yes, I do.<br/>10 Q. When a hospital does not report to Leapfrog's<br/>11 survey, does Leapfrog have any data about the hospital's<br/>12 performance on any of those four measures?<br/>13 A. In the imputation method for Step 1, if a<br/>14 hospital submitted a survey in the prior year, there may<br/>15 be data on one or more of those four measures.<br/>16 Q. Fair enough. What about for Step 2?<br/>17 A. For Step 2, there wouldn't be recent data,<br/>18 right. So there wouldn't be either a survey that was<br/>19 submitted the prior year or a survey submitted this<br/>20 year.<br/>21 Q. Yeah. So if a hospital has never reported to<br/>Page 93</p> |

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| <p>1 Leapfrog's survey, is it fair to say that Leapfrog has<br/>2 no data on the actual performance of that hospital on<br/>3 those four imputed measures?<br/>4 A. We do not have any data that's been reported<br/>5 through the survey, correct.<br/>6 Q. So why is that not missing data?<br/>7 A. Some I guess it could be one's definition of<br/>8 missing. Those missing data thresholds were really<br/>9 intended to not assign grades to small hospitals that<br/>10 may not have enough data from CMS. So, as an example,<br/>11 there are smaller hospitals that may not have had enough<br/>12 central lines inserted during the reporting period to<br/>13 actually have a central line associated blood stream<br/>14 infection rate.<br/>15 And so the intent of those missing data<br/>16 thresholds was really to make sure we weren't assigning<br/>17 grades to hospitals for which we had unreliable<br/>18 information. It was not necessarily intended to allow<br/>19 hospitals not to report.<br/>20 Q. So is missing data really supposed to be absent<br/>21 data? Like, you mentioned folks that don't have enough<br/>Page 94</p> | <p>1 gave Delray a limited achievement for hand hygiene,<br/>2 right?<br/>3 A. That would be my understanding of how that<br/>4 would get applied.<br/>5 Q. And but -- so there's -- to your point a minute<br/>6 ago, which I've now lost but I will find, you said<br/>7 missing data would refer to a measure for which we don't<br/>8 have a value. Isn't it right that Leapfrog has no value<br/>9 for hand hygiene for Delray?<br/>10 A. That would be correct.<br/>11 Q. Okay.<br/>12 So this paragraph is not correct, right,<br/>13 the one we looked at on the document?<br/>14 A. I think the distinction I would make is whether<br/>15 an imputed score is considered missing or if it's<br/>16 considered a value.<br/>17 Q. You're going to have to say more about that<br/>18 one. What do you mean by that?<br/>19 A. Right. So Leapfrog imputed a score for Delray<br/>20 for hand hygiene of 15 points out of 100.<br/>21 Q. Yes.<br/>Page 96</p>                                                                                                                                                                            |
| <p>1 central lines.<br/>2 A. Missing data would refer to a measure for which<br/>3 we don't have a value.<br/>4 Q. And so just to put it concretely, when you say<br/>5 "we don't have a value," who do you mean?<br/>6 A. Meaning The Leapfrog Group doesn't have a<br/>7 value.<br/>8 Q. So how is that different -- so one of my<br/>9 clients is Delray Medical Center in Florida, right. And<br/>10 we always use Delray as the example. I don't know why,<br/>11 but Delray is the example. We can pick any of them.<br/>12 Leapfrog gave Delray a limited achievement<br/>13 for hand hygiene. Are you generally aware of that?<br/>14 A. I have not reviewed Delray's results but I --<br/>15 Q. But you understand, as the plaintiff in this<br/>16 case, it's a nonparticipating hospital, right?<br/>17 A. Yes, that's my understanding.<br/>18 Q. And it's -- one of the core elements of the<br/>19 case is the Step 2 methodology, right, for imputation?<br/>20 A. Correct.<br/>21 Q. So based on that, you understand that Leapfrog<br/>Page 95</p>                                                                                             | <p>1 A. So to me it sort of comes down to is that -- we<br/>2 have a score for Delray for that measure. So it's not<br/>3 missing.<br/>4 Q. And how did Leapfrog pick that score?<br/>5 A. Leapfrog -- so the reason Leapfrog chose<br/>6 limited achievement is that has always been the bottom<br/>7 performance category and it -- basically, given the lack<br/>8 of information that we have about the hospital's<br/>9 performance in hand hygiene, it felt like that was the<br/>10 appropriate score to give, given the absence of<br/>11 information that would tell us something otherwise, that<br/>12 they were performing on a higher level.<br/>13 Q. So is the assumption that Delray is performing<br/>14 at the lowest level for hand wipe -- hand hygiene?<br/>15 A. Given the lack of other information from them,<br/>16 that is our assumption.<br/>17 Q. One of the things that hand hygiene evaluates<br/>18 is whether a hospital has a handwashing policy, right?<br/>19 Let me strike that.<br/>20 One of the things that the survey asks<br/>21 about handwashing is about handwashing training. Are<br/>Page 97</p> |

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| <p>1 you aware --</p> <p>2 A. Correct. Yes.</p> <p>3 Q. Do you have any knowledge of any hospital that</p> <p>4 does not train doctors and nurses on hand hygiene?</p> <p>5 MS. LAWSON: Object to form. You can answer.</p> <p>6 BY MR. CRAIN:</p> <p>7 Q. Your knowledge.</p> <p>8 A. There are -- to be clear, what's asked in this</p> <p>9 survey isn't just about training. It's the way that the</p> <p>10 training is done, who is trained, and that was not</p> <p>11 necessarily universally done across all hospitals. So</p> <p>12 it extends just beyond training employees.</p> <p>13 Q. Okay. Fair enough.</p> <p>14 So coming back to this document again, so</p> <p>15 the four imputed measures, do you agree that they are</p> <p>16 process measures?</p> <p>17 A. They are considered either process or</p> <p>18 structural measures.</p> <p>19 Q. But in terms of -- I understand that Leapfrog</p> <p>20 puts its measures into two buckets, process or</p> <p>21 structural or outcome. Is that right?</p> <p style="text-align: right;">Page 98</p> | <p>1 grade, correct?</p> <p>2 A. Those are not imputed, correct.</p> <p>3 Q. Those are not imputed. They're just discarded,</p> <p>4 right?</p> <p>5 A. They are ignored, and their relative weights</p> <p>6 are assigned proportionately to the others.</p> <p>7 Q. Redistributed, right?</p> <p>8 A. Redistributed.</p> <p>9 Q. Yeah. I don't mean to put words in your mouth,</p> <p>10 but I think it's the word I've seen.</p> <p>11 So then those are process and structural</p> <p>12 measures, too, right?</p> <p>13 A. Correct.</p> <p>14 Q. So that's seven, right?</p> <p>15 A. Correct.</p> <p>16 Q. Okay.</p> <p>17 And just to be clear, this document doesn't</p> <p>18 say -- this is the Leapfrog website. I'm looking at it</p> <p>19 again. Hospitals missing more than six process measures</p> <p>20 are not graded. That's what it says. It doesn't say</p> <p>21 hospitals -- strike that.</p> <p style="text-align: right;">Page 100</p> |
| <p>1 A. Correct.</p> <p>2 Q. They all fit the process or structural, right?</p> <p>3 A. Correct.</p> <p>4 Q. There are also three others, three other</p> <p>5 process measures that when a nonreporting hospital is</p> <p>6 graded are left out of the scoring methodology, right?</p> <p>7 A. Can you clarify that?</p> <p>8 Q. Yeah.</p> <p>9 Are you familiar with safe practice one?</p> <p>10 A. Yes.</p> <p>11 Q. And can you remind me what it is? If you</p> <p>12 don't, I can pull it out.</p> <p>13 A. Yeah, it's like leadership.</p> <p>14 Q. Yeah. And are you familiar with safe practice</p> <p>15 two?</p> <p>16 A. Yes, which is culture measurement.</p> <p>17 Q. And are you familiar with total nursing care</p> <p>18 per patient hour?</p> <p>19 A. Yes.</p> <p>20 Q. Those are the three measures that -- for</p> <p>21 nonparticipating hospitals that do not go into the</p> <p style="text-align: right;">Page 99</p>                                                                                                                           | <p>1 We just walked through Leapfrog does not</p> <p>2 have data for seven process measures, right?</p> <p>3 MS. LAWSON: Object to form. You can answer.</p> <p>4 THE WITNESS: Okay.</p> <p>5 BY MR. CRAIN:</p> <p>6 Q. If you're confused, I can rephrase. Let me</p> <p>7 build it up.</p> <p>8 So we talked about the four imputed</p> <p>9 measures, right?</p> <p>10 A. Correct.</p> <p>11 Q. We talked about the three what I'll call</p> <p>12 discarded measures, correct? Do you understand what I'm</p> <p>13 saying when I say that?</p> <p>14 A. Yeah, I know the three you're referring to.</p> <p>15 Q. And they're all process or structural measures,</p> <p>16 right?</p> <p>17 A. Correct.</p> <p>18 Q. And there are seven of them?</p> <p>19 A. Correct.</p> <p>20 Q. And yet this document tells consumers that</p> <p>21 hospitals missing more than six process measures are not</p> <p style="text-align: right;">Page 101</p>            |

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| <p>1 graded. Do you see that?</p> <p>2 A. That is what the document says.</p> <p>3 Q. And can you tell me again why that's accurate?</p> <p>4 A. For me, it comes back to the question of is it</p> <p>5 an imputed score, a score, or is it missing. And I</p> <p>6 would argue it's a score. So for those four imputed</p> <p>7 measures, those hospitals have scores. They aren't</p> <p>8 missing data.</p> <p>9 Q. Aren't missing data even though Leapfrog has no</p> <p>10 data for those scores?</p> <p>11 A. Even though Leapfrog does not have any</p> <p>12 information that was reported by the hospital through</p> <p>13 the Leapfrog Hospital Survey.</p> <p>14 Q. Okay.</p> <p>15 Okay. All right. Let's keep going. I</p> <p>16 want to also talk about -- let's see if it's on this</p> <p>17 page.</p> <p>18 MR. CRAIN: Can we go to tab 65. This will be</p> <p>19 Exhibit 9.</p> <p>20 (Exhibit No. 9 was marked for</p> <p>21 identification as of 9/25/2025.)</p> <p style="text-align: right;">Page 102</p> | <p>1 And I want to talk through a few things on</p> <p>2 this document. First I want to start with there is a</p> <p>3 "why." "Why should people" -- yeah. "Why should people</p> <p>4 worry about a hospital's patient safety. Aren't all</p> <p>5 hospitals the same?"</p> <p>6 Do you see that on page 2?</p> <p>7 A. Yes.</p> <p>8 Q. And if you go down to about midway down the</p> <p>9 paragraph, it says "and all." Do you see that?</p> <p>10 A. Uh-huh.</p> <p>11 Q. And it says: "And all hospitals are not the</p> <p>12 same. Some hospitals are much safer than others. Johns</p> <p>13 Hopkins Medicine researchers estimate that patients are</p> <p>14 twice as likely to die of a preventable problem at a</p> <p>15 "C," "D," or "F" hospital than an "A" hospital, and over</p> <p>16 50,000 lives would be saved if all hospitals performed</p> <p>17 the way "A" hospitals did."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And I know you didn't write this, but do you</p> <p>21 have any reason to think you are not the Johns Hopkins</p> <p style="text-align: right;">Page 104</p>                                                            |
| <p>1 BY MR. CRAIN:</p> <p>2 Q. So Dr. Austin, I've been giving you a document.</p> <p>3 This one has, fortunately, a URL at the bottom. Do you</p> <p>4 see that?</p> <p>5 A. Uh-huh.</p> <p>6 Q. And has page numbers, fortunately, too.</p> <p>7 Do you recognize this document?</p> <p>8 A. I do not.</p> <p>9 Q. Okay. Do you have a general sense just from</p> <p>10 looking at it what it purports to be at least?</p> <p>11 A. Yeah, I do.</p> <p>12 Q. Okay.</p> <p>13 So I'll represent to you -- and you can see</p> <p>14 on the URL at the bottom we pulled this off of</p> <p>15 hospitalsafetygrades.org, which we talked about earlier</p> <p>16 that's one of Leapfrog's websites, right?</p> <p>17 A. Uh-huh.</p> <p>18 Q. And this is a frequently asked questions page.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Okay.</p> <p style="text-align: right;">Page 103</p>                                                                                                                          | <p>1 researcher?</p> <p>2 A. No, that is me.</p> <p>3 Q. And do you have any reason to think that's not</p> <p>4 referring to your white paper?</p> <p>5 A. I have no reason to believe that it does not</p> <p>6 refer to the white paper.</p> <p>7 Q. And tell me, just so we're on the same page,</p> <p>8 what is the white paper to which this is referring?</p> <p>9 A. The white paper that -- so we, in 2016, did a</p> <p>10 white paper that was referred to as "lives lost, lives</p> <p>11 saved." And in 2019, we did an update to that. So I</p> <p>12 don't know -- I believe this is referring to the 2019</p> <p>13 updated white paper.</p> <p>14 Q. And the 2019 updated white paper did not</p> <p>15 analyze "A," "B," "C," "D," and "F" hospitals under the</p> <p>16 current methodology, right?</p> <p>17 A. No. They were -- that was done through -- I</p> <p>18 would have to go back and look at the document but</p> <p>19 probably based on like the Fall 2018 safety grades. I</p> <p>20 don't -- yeah. I think we put it out in 2019, but I</p> <p>21 think it may have been Fall of 2018 that we actually</p> <p style="text-align: right;">Page 105</p> |

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| <p>1 used.</p> <p>2 Q. And have you published any estimates of that</p> <p>3 patients are twice as likely to die of a preventable</p> <p>4 problem at a "C," "D," or "F" hospital than an "A"</p> <p>5 hospital based on the 2025 methodology?</p> <p>6 A. No, we have not.</p> <p>7 Q. Do you have any understanding as to whether</p> <p>8 that is correct today, or you just don't know?</p> <p>9 A. We have done some early analysis around this</p> <p>10 based on 2025, and these statements would remain true.</p> <p>11 Q. Okay. Based on that early analysis?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. And when did you conduct that analysis?</p> <p>14 A. We started that back in March, April, somewhere</p> <p>15 in that time frame.</p> <p>16 Q. Okay. And so even though this is referencing</p> <p>17 the 2019 white paper and the prior methodology, you're</p> <p>18 saying based on the current imputed methodology the</p> <p>19 twice as likely to die language is still correct?</p> <p>20 A. Yes, I would stand by that.</p> <p>21 Q. You would stand by it or you do?</p> <p style="text-align: right;">Page 106</p> | <p>1 Q. Okay. Do you have any sense of when you're</p> <p>2 going to publish that?</p> <p>3 A. I don't have a sense of it.</p> <p>4 Q. How far into the drafting are you?</p> <p>5 A. I don't know how to estimate that. I mean,</p> <p>6 it's actually updating the 2019 white paper. So I've</p> <p>7 gone through at this point and made notes on which</p> <p>8 values need to be updated, where we need to update</p> <p>9 tables, but all that work would still need to be done.</p> <p>10 Q. And is your analysis, would you say, an apples</p> <p>11 to apples analysis between what you're doing today and</p> <p>12 what was done in 2019?</p> <p>13 A. It mirrors the spirit of what we did in 2019 in</p> <p>14 that the measures themselves have changed between 2019</p> <p>15 and now, but the approach of how we've estimated lives</p> <p>16 lost and lives saved has remained consistent.</p> <p>17 Q. And can you explain generally what that</p> <p>18 approach is?</p> <p>19 A. Yes. So what we've done is we have -- to</p> <p>20 estimate the lives lost for looking at "A" hospital as</p> <p>21 an aggregate, "B" hospital as an aggregate, "C" an</p> <p style="text-align: right;">Page 108</p>                                                    |
| <p>1 A. I do.</p> <p>2 Q. Okay.</p> <p>3 And how did that analysis transpire?</p> <p>4 A. Transpire? Can you clarify?</p> <p>5 Q. How did it come to -- how did you -- why did</p> <p>6 you conduct that analysis?</p> <p>7 A. Yeah. So The Leapfrog Group asked that we look</p> <p>8 at doing an update from the 2019 in 2025. So it was an</p> <p>9 effort to follow through on that request and to provide</p> <p>10 an updated analysis of where we're at.</p> <p>11 Q. And have those analyses been released publicly</p> <p>12 yet?</p> <p>13 A. No.</p> <p>14 Q. Okay, and why is that?</p> <p>15 A. We -- you would have to ask The Leapfrog Group</p> <p>16 on their decision and timing on that.</p> <p>17 Q. Okay.</p> <p>18 And you've not -- have you drafted a new</p> <p>19 white paper?</p> <p>20 A. I have started working on drafting a new white</p> <p>21 paper. I have not finished that.</p> <p style="text-align: right;">Page 107</p>                                                                                                                                                                                | <p>1 aggregate, and "D" and "F" hospitals an aggregate, we</p> <p>2 look at the mean incidence rates of each of the patient</p> <p>3 safety events that are included in the Hospital Safety</p> <p>4 Grade. And from the literature, we've identified an</p> <p>5 attributable mortality rate to each of those events.</p> <p>6 So as an example, for central line</p> <p>7 associated blood stream infections, one in every seven</p> <p>8 patients who acquires one in the hospital passes away</p> <p>9 from that. So if you are in a hospital that has a</p> <p>10 higher rate of those, your risk of dying from one of</p> <p>11 those increases.</p> <p>12 And so we apply that against the admissions</p> <p>13 that are in each of those buckets, so "A" hospitals,</p> <p>14 "Bs", "Cs", "Ds", and "Fs" to estimate the number of</p> <p>15 lives lost due to the preventable medical mistakes that</p> <p>16 are included in the Hospital Safety Grade.</p> <p>17 And we estimate. Let me put that word out</p> <p>18 there very clearly. It's an estimate of the number of</p> <p>19 lives that are lost.</p> <p>20 Q. And why do you emphasize estimate?</p> <p>21 A. Because we're -- for example, one assumption</p> <p style="text-align: right;">Page 109</p> |

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| <p>1 that we have to make is the attributable mortality rate,<br/> 2 right. We're using that same rate in all four buckets,<br/> 3 "As," "Bs," "Cs," "Ds," and "Fs." The reality is we<br/> 4 might actually see that "A" hospitals have a lower<br/> 5 mortality rate when a patient develops a CLABSI than,<br/> 6 say, like a "D" and "F." But we're assuming that that<br/> 7 mortality rate is similar across all hospitals.</p> <p>8 Q. Got it. Okay. Okay, we'll come back to that a<br/> 9 little bit more.</p> <p>10 Okay. So then I want to go back to this<br/> 11 FAQ just before we go into other topics.</p> <p>12 A. Sure.</p> <p>13 Q. I want to talk about -- let's see. I lost the<br/> 14 question. Oh, here it is, page 3. It says: "Does a<br/> 15 hospital get a better safety grade if it reports to the<br/> 16 Leapfrog Hospital Survey?" Do you see that?</p> <p>17 A. Uh-huh.</p> <p>18 Q. And it says: "The Hospital Safety Grade<br/> 19 reflects how well a hospital does on safety, not whether<br/> 20 they complete the Leapfrog Hospital Survey." Do you see<br/> 21 that?</p> <p style="text-align: right;">Page 110</p>                    | <p>1 Q. Have you conducted any analysis to assess<br/> 2 whether hospitals that do not participate in the<br/> 3 Leapfrog survey are actually less safe than hospitals<br/> 4 that do?</p> <p>5 A. Not that I can think of.</p> <p>6 Q. Okay.</p> <p>7 MR. CRAIN: I'm going to shift gears.<br/> 8 Everybody good on time? I'm going to switch topics.<br/> 9 You good?</p> <p>10 BY MR. CRAIN:</p> <p>11 Q. So I want to talk about the development of the<br/> 12 imputation models. So I'm going to focus you on the<br/> 13 2024 period. Is that fair enough?</p> <p>14 A. Yep.</p> <p>15 Q. Okay.</p> <p>16 So in April 2024, the expert panel met to<br/> 17 discuss, among other things, imputation model. Do you<br/> 18 recall that meeting?</p> <p>19 A. That sounds correct. I know we had a meeting<br/> 20 with them, and I think that was the timing of when we<br/> 21 talked about that topic.</p> <p style="text-align: right;">Page 112</p>                                |
| <p>1 A. Uh-huh.</p> <p>2 Q. And just one question on this line. Do you<br/> 3 believe, as, you know, familiar as you were with the<br/> 4 methodology, is that accurate with respect to<br/> 5 nonparticipating hospitals?</p> <p>6 A. There are nonparticipating hospitals that have<br/> 7 received "As," "Bs," "Cs," "Ds," and "Fs."</p> <p>8 Q. And do you think that is -- the Hospital Safety<br/> 9 Grade reflects how well a hospital does on safety, not<br/> 10 whether they complete the hospital survey. Do you agree<br/> 11 with that statement?</p> <p>12 A. I do agree with that statement. I think<br/> 13 transparency is an important component of safety.</p> <p>14 Q. Okay. Why do you say that?</p> <p>15 A. Yeah. So hospitals that are choosing to share<br/> 16 their data through the Leapfrog Hospital Survey are<br/> 17 making that information transparent, and I think that<br/> 18 does tie to a safety culture of one where we want to<br/> 19 make information publicly available, hold ourselves<br/> 20 accountable. So I do think there is a link between<br/> 21 transparency and safety.</p> <p style="text-align: right;">Page 111</p> | <p>1 Q. Yeah. And I'll get you a document.</p> <p>2 MR. CRAIN: Can we get 32A, just to ground the<br/> 3 discussion. This will be Exhibit 10.</p> <p>4 (Exhibit No. 10 was marked for<br/> 5 identification as of 9/25/2025.)</p> <p>6 BY MR. CRAIN:</p> <p>7 Q. Dr. Austin, do you recognize this document?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And this is an email thread leading up<br/> 10 to before and after I think the April 12th, 2024, expert<br/> 11 panel meeting. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And I want to just start at the -- where<br/> 14 is the attachment?</p> <p>15 MR. CRAIN: Do we have the slide deck? 32 I<br/> 16 need also. Sorry. We have them separately.</p> <p>17 So let's look at the deck, which was<br/> 18 attached to this email, but I think it's separate.<br/> 19 This will be Exhibit 11.</p> <p>20 (Exhibit No. 11 was marked for<br/> 21 identification as of 9/25/2025.)</p> <p style="text-align: right;">Page 113</p> |

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| <p>1 BY MR. CRAIN:</p> <p>2 Q. Okay. So now this is the deck. Do you see</p> <p>3 that, Dr. Austin?</p> <p>4 A. I do, yeah.</p> <p>5 Q. Okay. And it's attached to a Zoom invite -- or</p> <p>6 to a meeting invite you sent on -- at some point but for</p> <p>7 a meeting at April 12th at 4 to 5 p.m. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 And this was for the safety grade expert</p> <p>11 panel's meeting for I think that year, right?</p> <p>12 A. I believe that was the only meeting we held</p> <p>13 with them in 2024.</p> <p>14 Q. Okay.</p> <p>15 And so going to the deck, I'm just going to</p> <p>16 walk through it with you. And if you go to slide two,</p> <p>17 which is Bates ending 437364 -- do you see that?</p> <p>18 A. Uh-huh.</p> <p>19 Q. And you lay out three topics, right?</p> <p>20 A. Uh-huh.</p> <p>21 Q. The first topic is update on swearing DHA</p> <p style="text-align: right;">Page 114</p> | <p>1 A. I believe I actually am the one who probably</p> <p>2 drafted this.</p> <p>3 Q. Yeah. So if you look at the prior exhibit --</p> <p>4 A. Uh-huh.</p> <p>5 Q. -- this is Exhibit 10.</p> <p>6 A. Uh-huh.</p> <p>7 Q. On page 74782, do you see that?</p> <p>8 A. 782, yes.</p> <p>9 Q. And there's an email at the bottom from you to</p> <p>10 Ms. Campione, Ms. Danforth, and Ms. Joshi. Do you see</p> <p>11 that?</p> <p>12 A. Yes.</p> <p>13 Q. And it goes to the next page. And you say,</p> <p>14 "Attached is an updated version of the slides. Alex,</p> <p>15 these are looking good. I added in a slide at the start</p> <p>16 of the imputation section that outlines the problems we</p> <p>17 are trying to solve." Do you see that?</p> <p>18 A. Yep.</p> <p>19 Q. Does that refresh your recollection as to</p> <p>20 whether you drafted --</p> <p>21 A. Yep --</p> <p style="text-align: right;">Page 116</p>                                                                         |
| <p>1 military treatment facilities.</p> <p>2 (Whereupon, the court reporter seeks</p> <p>3 clarification, which colloquy will not be</p> <p>4 captured on the written record.)</p> <p>5 BY MR. CRAIN:</p> <p>6 Q. The second is feedback on reevaluating</p> <p>7 imputation model, and the third is feedback on two</p> <p>8 possible new outcome measures.</p> <p>9 Do you see that?</p> <p>10 A. Yes, I do.</p> <p>11 Q. Okay.</p> <p>12 And I want to focus on the middle one. So</p> <p>13 if we can skip to what is page 7366 [sic].</p> <p>14 A. Uh-huh.</p> <p>15 Q. Now, do you see this slide is entitled "Problem</p> <p>16 that We are Working to Solve?"</p> <p>17 A. Uh-huh.</p> <p>18 Q. And I want to just go back to the prior</p> <p>19 exhibit. Well, I'll ask before we go there. Do you</p> <p>20 recall who drafted this slide? If you don't, I can</p> <p>21 refresh you.</p> <p style="text-align: right;">Page 115</p>                     | <p>1 Q. -- this slide?</p> <p>2 A. -- it does.</p> <p>3 Q. Okay.</p> <p>4 Just remember to let me finish before --</p> <p>5 A. I'm sorry.</p> <p>6 Q. -- and vice versa, just for Marlene.</p> <p>7 So going back to the slide, why did you</p> <p>8 draft this slide?</p> <p>9 A. I thought it was helpful to remind the expert</p> <p>10 panel of what are some of the challenges we are facing</p> <p>11 with the current Hospital Safety Grade methodology and</p> <p>12 why we might want to consider moving in a different</p> <p>13 direction for imputation.</p> <p>14 Q. Okay. And the challenges you're talking about</p> <p>15 are the two bottom bullets, right?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. And so the first one is imputed scores</p> <p>18 have crept up, making imputation a more favorable choice</p> <p>19 for lots of hospitals and has de incentivized true</p> <p>20 transparency of performance, right?</p> <p>21 A. Correct.</p> <p style="text-align: right;">Page 117</p> |

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| <p>1 Q. Now, when you say imputation scores have crept<br/>2 up, what's that based on?</p> <p>3 A. So the imputation methodology at the time was<br/>4 that it involved -- there was still the historic element<br/>5 of Step 1.</p> <p>6 Q. And I'll help you. I don't mean to interrupt,<br/>7 but there's a slide that lays it out if it's helpful to<br/>8 you.</p> <p>9 A. Okay.</p> <p>10 Q. It's 7369.</p> <p>11 A. Uh-huh.</p> <p>12 Q. Do you see that?</p> <p>13 A. Yep, I do.</p> <p>14 Q. Okay. Just in case it's helpful. But go on.</p> <p>15 A. So the Step 1 was assigning the most recent<br/>16 scores from the four past rounds of the safety grade,<br/>17 and then Step 2 was actually looking at two different<br/>18 mean performances. And what we had seen was a trend<br/>19 with those scores were creeping up, which incentivized<br/>20 hospitals to not report to the survey and, instead, to<br/>21 take the imputed score.</p> <p style="text-align: right;">Page 118</p> | <p>1 A. Correct.</p> <p>2 Q. But not necessarily empirical evidence of<br/>3 nonparticipating hospitals making the decision not to<br/>4 participate because the scores were going up?</p> <p>5 A. I don't remember any evidence in that way.</p> <p>6 Q. Okay.</p> <p>7 Then the second -- just going back to slide<br/>8 I think it's five, which is 7367 on the Bates number,<br/>9 you see -- so the first bullet we just talked about is<br/>10 primarily a problem with Step 2 in this old methodology.<br/>11 Is that right?</p> <p>12 A. Correct.</p> <p>13 Q. And the second bullet is about Step 1, right?</p> <p>14 A. Correct.</p> <p>15 Q. And it says: "Hospitals are using Step 1<br/>16 imputation, using their individual hospital's historical<br/>17 data as a reason to not report on the current year<br/>18 survey." Right?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. So tell me a little bit about that<br/>21 issue.</p> <p style="text-align: right;">Page 120</p>                                                                                                                                          |
| <p>1 Q. And how did you know it was driving that<br/>2 incentive, that was the reason they were not reporting?</p> <p>3 A. That feedback was clear from hospitals. They<br/>4 had verbally shared that with Leapfrog.</p> <p>5 Q. With you?</p> <p>6 A. Not with me, with Leapfrog.</p> <p>7 Q. Did you talk to any hospital that shared that<br/>8 with you personally?</p> <p>9 A. No.</p> <p>10 Q. Okay.</p> <p>11 And who did they share it with at Leapfrog?</p> <p>12 A. From what I remember, Missy Danforth.</p> <p>13 Q. Any sense of how many hospitals?</p> <p>14 A. I don't have a sense of that.</p> <p>15 Q. And do you have any other basis of knowledge to<br/>16 support that statement besides what you said about<br/>17 Ms. Danforth?</p> <p>18 A. We have -- we numerically had been tracking the<br/>19 mean score. So we did have empirical evidence of that<br/>20 going up.</p> <p>21 Q. Empirical evidence of scores going up?</p> <p style="text-align: right;">Page 119</p>   | <p>1 A. Yeah. Leapfrog had seen patterns where<br/>2 hospitals were choosing to report one year, not report<br/>3 the next year, report the next year as a way to sort of<br/>4 keep their scores sort of used in the Hospital Safety<br/>5 Grade without having to report to the survey every year.</p> <p>6 Q. And what was your understanding of why those<br/>7 hospitals weren't reporting every year?</p> <p>8 A. I can't speak to why the hospitals were<br/>9 choosing not to report.</p> <p>10 Q. You have no understanding?</p> <p>11 A. I have theories but I don't -- I haven't had<br/>12 conversations with hospitals specifically about their<br/>13 decision not to report.</p> <p>14 Q. So same thing with respect to Step 1 -- 2 that<br/>15 we just talked about, right? You said you --</p> <p>16 MS. LAWSON: Object to form.</p> <p>17 BY MR. CRAIN:</p> <p>18 Q. Yeah, let me fix it.</p> <p>19 So you said I have theories but I haven't<br/>20 had conversations with hospitals specifically about<br/>21 their decision not to report. That goes for either</p> <p style="text-align: right;">Page 121</p> |

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| <p>1 decision not to report about Step 1 or Step 2, right?</p> <p>2 A. That is for me personally I never had</p> <p>3 conversations with hospitals about that.</p> <p>4 Q. And did you ever have conversations with</p> <p>5 Ms. Danforth about the hospitals that are deciding not</p> <p>6 to report in the Step 1 context?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Tell me about those conversations.</p> <p>9 A. So that was a similar point of feedback, that</p> <p>10 she had had conversations with hospitals who had</p> <p>11 indicated -- Leapfrog also has regional leaders, which</p> <p>12 you may be familiar with. I think the regional leaders</p> <p>13 were also hearing from hospitals that, oh, yeah, we're</p> <p>14 not going to report this year because our scores still</p> <p>15 get used in the Hospital Safety Grade.</p> <p>16 So there had been sort of a current of</p> <p>17 we're choosing to bypass transparency.</p> <p>18 Q. And was that in relation to the burden of</p> <p>19 completing the survey?</p> <p>20 A. That's what I can't speak to.</p> <p>21 Q. So you have no knowledge about the why?</p> <p style="text-align: right;">Page 122</p> | <p>1 A. I have had conversations with hospitals --</p> <p>2 well, I guess I have had conversations with hospitals</p> <p>3 about their decision to pause reporting.</p> <p>4 Q. Okay. How many conversations, approximately?</p> <p>5 A. Five to ten through ten years.</p> <p>6 Q. Okay.</p> <p>7 And have you had conversations with</p> <p>8 hospitals about this imputation methodology at all at</p> <p>9 any time?</p> <p>10 MS. LAWSON: Well, I just want to object to</p> <p>11 form.</p> <p>12 Just to clarify, the imputation -- this</p> <p>13 imputation methodology, are you asking about the current</p> <p>14 2024?</p> <p>15 MR. CRAIN: Yes.</p> <p>16 MS. LAWSON: Yes. So just to clarify that.</p> <p>17 THE WITNESS: I do not believe I've had any</p> <p>18 conversations with hospitals about that.</p> <p>19 BY MR. CRAIN:</p> <p>20 Q. Okay.</p> <p>21 So your knowledge today about hospitals'</p> <p style="text-align: right;">Page 124</p> |
| <p>1 A. I don't have any firsthand knowledge of the</p> <p>2 why.</p> <p>3 Q. Do you have any secondhand knowledge about the</p> <p>4 why?</p> <p>5 A. My secondhand knowledge would be burden would</p> <p>6 be a consideration.</p> <p>7 Q. Okay. And when you say "burden would be a</p> <p>8 consideration," what do you mean by that?</p> <p>9 A. So what I hear from hospitals generally, not</p> <p>10 specific to this, is that at times, they feel like they</p> <p>11 need to prioritize other quality improvement efforts and</p> <p>12 may make a decision on where those priorities exist from</p> <p>13 year to year.</p> <p>14 Q. And when you say what you hear from hospitals,</p> <p>15 that's not firsthand, right?</p> <p>16 A. That has been firsthand, yes.</p> <p>17 Q. So you do talk to hospitals?</p> <p>18 A. I do talk to hospitals, not specifically about</p> <p>19 whether they are reporting every year or every other</p> <p>20 year.</p> <p>21 Q. Okay.</p> <p style="text-align: right;">Page 123</p>                                                                                                                                               | <p>1 decision-making with respect to reporting onto the</p> <p>2 survey primarily comes from Ms. Danforth?</p> <p>3 A. That would be a fair statement.</p> <p>4 Q. Okay.</p> <p>5 Okay. So going back to the deck, there's a</p> <p>6 number of tables, and I want to go to slide -- it's the</p> <p>7 slide with your proposal. Oh, here we go. Slide 13,</p> <p>8 which is 7375.</p> <p>9 A. Uh-huh.</p> <p>10 Q. And this is the proposed future imputation</p> <p>11 methodology. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. This is not the methodology that</p> <p>14 Leapfrog ultimately adopted, right?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. Was this the methodology discussed at</p> <p>17 the meeting?</p> <p>18 A. Yes. This is what we put forward to the expert</p> <p>19 panel.</p> <p>20 Q. Okay. And you received feedback about this</p> <p>21 proposal?</p> <p style="text-align: right;">Page 125</p>                              |

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| <p>1 A. Correct.</p> <p>2 Q. Right.</p> <p>3 Okay. And just generally, can you explain</p> <p>4 what the proposal was?</p> <p>5 A. The proposal was that we would basically move</p> <p>6 to a single form of imputation which would be the --</p> <p>7 that we would use Step 2b imputation for all hospitals.</p> <p>8 Q. And you would -- to your point, a single form</p> <p>9 of imputation, that's the retire Step 1 bullet?</p> <p>10 A. Correct. We would retire Step 1, and we would</p> <p>11 move all hospitals to Step 2b.</p> <p>12 Q. Okay. And which is 2b?</p> <p>13 A. 2b, as it's described here, is that hospitals</p> <p>14 would be assigned to cohorts and then the means of</p> <p>15 scores from the first year of reporting would be used to</p> <p>16 calculate the means.</p> <p>17 Q. Okay.</p> <p>18 A. And then the hospital would be assigned that</p> <p>19 mean.</p> <p>20 Q. Got it. Okay.</p> <p>21 And then I just want to go -- so that was</p> <p style="text-align: right;">Page 126</p>                       | <p>1 A. I don't know whether that is -- yeah, correct.</p> <p>2 Q. Okay.</p> <p>3 So I want to talk a little bit about the</p> <p>4 meeting itself. Do you recall whether other expert</p> <p>5 panelists proposed alternative imputation methodologies?</p> <p>6 A. I really don't remember the details of that</p> <p>7 call.</p> <p>8 Q. Okay.</p> <p>9 Do you remember who was on it?</p> <p>10 A. We have meeting notes of -- from that meeting,</p> <p>11 but I don't recall who exactly was on that call.</p> <p>12 Q. Okay.</p> <p>13 So I want to go to tab 33. This is a</p> <p>14 document I don't think you've seen before, so I'll just</p> <p>15 preface that so you know.</p> <p>16 A. Okay.</p> <p>17 MR. CRAIN: And this will be Exhibit 12.</p> <p>18 (Exhibit No. 12 was marked for</p> <p>19 identification as of 9/25/2025.)</p> <p>20 BY MR. CRAIN:</p> <p>21 Q. It's huge. I'll walk you through it. So are</p> <p style="text-align: right;">Page 128</p> |
| <p>1 the proposal you put out, correct?</p> <p>2 A. Correct.</p> <p>3 Q. And it was not the one that was adopted?</p> <p>4 A. Correct.</p> <p>5 Q. And we'll get to the why, but before we do</p> <p>6 that, if you could go one slide back, slide 12.</p> <p>7 A. Uh-huh.</p> <p>8 Q. You see it says: "A slight dip in survey</p> <p>9 participation occurred this past year as hospitals opted</p> <p>10 to use past survey results in Step 1 imputation." Do</p> <p>11 you see that?</p> <p>12 A. Correct.</p> <p>13 Q. So what is that based on? How did you know</p> <p>14 that the slight dip was caused by hospitals using past</p> <p>15 survey results in Step 1 imputation?</p> <p>16 A. That is probably more just a -- based on</p> <p>17 conversations that Ms. Danforth had had with hospitals.</p> <p>18 I don't know if that's -- if we have anything</p> <p>19 empirically to back up that statement.</p> <p>20 Q. Okay. So you don't know whether that's</p> <p>21 accurate or not?</p> <p style="text-align: right;">Page 127</p> | <p>1 we good?</p> <p>2 A. We're good.</p> <p>3 Q. Okay.</p> <p>4 So if you look back at exhibit -- the</p> <p>5 exhibit with the email, which I think is Exhibit 10.</p> <p>6 A. Uh-huh.</p> <p>7 Q. Okay?</p> <p>8 Do you see at the top there'd an email from</p> <p>9 Ms. Campione to you?</p> <p>10 A. Uh-huh.</p> <p>11 Q. And it says, "Here is the link to the recording</p> <p>12 if you need it for notes. Please let me know if you</p> <p>13 have any issues with it."</p> <p>14 A. Uh-huh.</p> <p>15 Q. And it gives a URL and password, right?</p> <p>16 A. Uh-huh.</p> <p>17 Q. So the expert panel meeting was recorded?</p> <p>18 A. Correct.</p> <p>19 Q. Was that typically how it was done?</p> <p>20 A. Yes.</p> <p>21 Q. Okay.</p> <p style="text-align: right;">Page 129</p>                                                                                                                                                                                |

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| <p>1 And do you recall watching the video of the</p> <p>2 recording at any point?</p> <p>3 A. I did not.</p> <p>4 Q. Okay. Do you recall reviewing a Zoom</p> <p>5 transcript at any point?</p> <p>6 A. I do not.</p> <p>7 Q. Okay.</p> <p>8 So I will represent to you this, what you</p> <p>9 have in front of you, is a certified transcript of that</p> <p>10 recording --</p> <p>11 A. Okay.</p> <p>12 Q. -- just for discussion purposes. And so I want</p> <p>13 to just walk through a couple of things with you. So --</p> <p>14 and I know you haven't seen this before, so I'll walk</p> <p>15 you through it.</p> <p>16 So if you go to the back of the document,</p> <p>17 there's an index. Do you see that?</p> <p>18 A. Uh-huh -- yes.</p> <p>19 Q. Sorry. Yes?</p> <p>20 A. Yes.</p> <p>21 Q. Okay.</p> <p style="text-align: right;">Page 130</p>                                                                                                                                                                                                            | <p>1 scores to nonparticipating hospitals?</p> <p>2 A. I don't remember what was exactly said. I</p> <p>3 would not be surprised if the Hospital Safety Grade</p> <p>4 expert panelists weren't familiar with the term "limited</p> <p>5 achievement."</p> <p>6 Q. Sorry. Say that again. I think that was a</p> <p>7 double negative.</p> <p>8 A. I would not be surprised if the Hospital Safety</p> <p>9 Grade expert panelists were not familiar with the term</p> <p>10 limited achievement.</p> <p>11 Q. Got it. Okay.</p> <p>12 Is there another term they might use?</p> <p>13 A. They might have used lowest performance score.</p> <p>14 Q. Okay. What about zero?</p> <p>15 A. It's possible that zero could have been</p> <p>16 mentioned.</p> <p>17 Q. Okay.</p> <p>18 So I want to go to zero, too, in the index,</p> <p>19 just to close that loop.</p> <p>20 MS. WOOD: And Lee, I do just want to object to</p> <p>21 form. I've never seen this document before either. Has</p> <p style="text-align: right;">Page 132</p> |
| <p>1 So the index, I want to just focus on a few</p> <p>2 things. If you go to page 9 and you go to "L," do you</p> <p>3 see the word "limited" appear on the index?</p> <p>4 A. I do not.</p> <p>5 Q. And I want to go to the word A -- excuse me, to</p> <p>6 the portion of the index for "A." Do you see the word</p> <p>7 "achievement"?</p> <p>8 A. I see achieving but not achievement.</p> <p>9 Q. Okay. And where is achieving? There it is.</p> <p>10 Do you want to -- let's flip to 36.3. So page 36, line</p> <p>11 3. Tell me when you're there.</p> <p>12 A. I am there.</p> <p>13 Q. And it says: "But achieving consensus is</p> <p>14 difficult." Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. So that doesn't refer to limited achievement,</p> <p>17 right?</p> <p>18 A. It does not use that phrase.</p> <p>19 Q. So based on this index, and to the best of your</p> <p>20 recollection, did anybody at any time during the meeting</p> <p>21 raise the idea that you could impute limited achievement</p> <p style="text-align: right;">Page 131</p> | <p>1 this been produced in discovery?</p> <p>2 MR. CRAIN: It is being produced today.</p> <p>3 MS. WOOD: Okay. And when was it -- was it</p> <p>4 prepared on September 11th?</p> <p>5 MR. CRAIN: I do not know the date, but we can</p> <p>6 talk off the record. So your objection is noted.</p> <p>7 BY MR. CRAIN:</p> <p>8 Q. So do you see zero, Dr. Austin, in the index?</p> <p>9 A. Uh-huh.</p> <p>10 Q. Okay.</p> <p>11 If you go to 40, it said -- in the index,</p> <p>12 it said line 7, 7 to 11. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And I just want you to look at this page from,</p> <p>15 say, line 6 to 11. Does this reflect anybody proposing</p> <p>16 to impose a zero score for nonparticipating hospitals?</p> <p>17 A. No, it doesn't.</p> <p>18 Q. Okay.</p> <p>19 Okay. So is it accurate to say that no one</p> <p>20 suggested, based on the index, based on your memory,</p> <p>21 that imposing a zero score for nonparticipating</p> <p style="text-align: right;">Page 133</p>                 |

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| <p>1 hospitals?</p> <p>2 MS. LAWSON: Object to form.</p> <p>3 THE WITNESS: I honestly don't remember the</p> <p>4 conversation.</p> <p>5 BY MR. CRAIN:</p> <p>6 Q. Okay.</p> <p>7 A. I will clarify that what has been assigned is</p> <p>8 not zero to hospitals.</p> <p>9 Q. I understand.</p> <p>10 So do you remember any other proposal made</p> <p>11 during the expert panel meeting besides the one that you</p> <p>12 proposed in the slides that we looked at?</p> <p>13 A. I don't remember.</p> <p>14 Q. Okay.</p> <p>15 So I'll take you to one other that is in</p> <p>16 here. Do you recall -- who is Dr. Pronovost, Peter</p> <p>17 Pronovost?</p> <p>18 A. He is one of the Hospital Safety Grade expert</p> <p>19 panelists.</p> <p>20 Q. Okay. And you worked with him previously at</p> <p>21 Armstrong, right?</p> <p style="text-align: right;">Page 134</p> | <p>1 lowest quartile?</p> <p>2 A. I would need to go back further up in the</p> <p>3 document --</p> <p>4 Q. If you want to take a look and --</p> <p>5 A. -- to understand what the context was --</p> <p>6 Q. Yeah, why don't you go back to page --</p> <p>7 A. -- because I don't know what the discussion was</p> <p>8 at that point.</p> <p>9 Q. Go back to page 24 and start with</p> <p>10 Dr. Srinivasan.</p> <p>11 Who is Dr. Srinivasan?</p> <p>12 A. He's at the Centers for Disease Control and</p> <p>13 Prevention.</p> <p>14 Q. Okay. And take a second.</p> <p>15 (Witness peruses document.)</p> <p>16 THE WITNESS: So I've read it. And can you</p> <p>17 repeat your question?</p> <p>18 BY MR. CRAIN:</p> <p>19 Q. Yeah. I wanted to know if you have an</p> <p>20 understanding of what Dr. Pronovost was referring to</p> <p>21 when he's talking about the bottom quartile. And I</p> <p style="text-align: right;">Page 136</p>                         |
| <p>1 A. Correct.</p> <p>2 Q. Okay.</p> <p>3 Now, he proposes -- if you go to pages --</p> <p>4 if you go to page 25 --</p> <p>5 A. Uh-huh.</p> <p>6 Q. -- oh, wait. Sorry. Page 26.</p> <p>7 A. Uh-huh.</p> <p>8 Q. And you see at line 18 it says Peter Pronovost</p> <p>9 and colon?</p> <p>10 A. Uh-huh.</p> <p>11 Q. And he says, "Peter Pronovost: Missy, though,</p> <p>12 to Arjun's point, I wonder in our model do we include</p> <p>13 that if they're in the lowest quartile, that they stay</p> <p>14 in that? You know what I mean? At least to reduce the</p> <p>15 gaming."</p> <p>16 Do you recall him saying that?</p> <p>17 A. That's what it says here.</p> <p>18 Q. Yeah. Do you have any independent --</p> <p>19 A. I don't remember.</p> <p>20 Q. Okay.</p> <p>21 Do you know generally what that means, the</p> <p style="text-align: right;">Page 135</p>  | <p>1 think Dr. Srinivasan talks about the bottom quartile,</p> <p>2 too. And I will also preface, if you don't remember, I</p> <p>3 can show you an email subsequently about the bottom</p> <p>4 quartile, but I wanted to know if you have an</p> <p>5 independent recollection.</p> <p>6 A. I don't have a recollection of that.</p> <p>7 Q. Okay. That's fine. It's not a memory test.</p> <p>8 Again, we'll get to another document. I'm just going</p> <p>9 through this.</p> <p>10 I want to look at one other quick thing in</p> <p>11 the index. If you go to "W," do you see the word</p> <p>12 "willing"?</p> <p>13 A. I do.</p> <p>14 Q. Let's see. Where is it?</p> <p>15 A. Oh, no. I don't see it.</p> <p>16 Q. Yeah, I didn't see it.</p> <p>17 Just to confirm, do you see the word</p> <p>18 "willing" in the index?</p> <p>19 A. I do not.</p> <p>20 Q. Okay.</p> <p>21 Do you know what the phrase "willing to</p> <p style="text-align: right;">Page 137</p> |

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| <p>1 report" means?</p> <p>2 A. That is the term that Leapfrog used prior to</p> <p>3 limited achievement.</p> <p>4 Q. Okay. So that was the lowest performing score,</p> <p>5 right?</p> <p>6 A. That was the phrase that was used for that in</p> <p>7 the past.</p> <p>8 Q. Okay. Do you recall when it was retired?</p> <p>9 A. I could estimate 2018, 2019, somewhere around</p> <p>10 there.</p> <p>11 Q. And just -- I'm representing to you that the</p> <p>12 index is from a certified court reporter. Based on this</p> <p>13 index, the phrase "willing to report" or even just the</p> <p>14 word "willing" was not discussed at this meeting,</p> <p>15 correct?</p> <p>16 A. I do not see the word "willing" in the index.</p> <p>17 Q. Okay.</p> <p>18 And you have no independent recollection of</p> <p>19 a discussion of the phrase "willing to report" at the</p> <p>20 meeting, right?</p> <p>21 A. I do not.</p> <p style="text-align: right;">Page 138</p> | <p>1 A. And I recognize the email.</p> <p>2 Q. Yeah. Okay. So you have no reason to think</p> <p>3 this wasn't sent and received?</p> <p>4 A. Correct. Yes.</p> <p>5 Q. Okay.</p> <p>6 And you'll note in the bottom it's an</p> <p>7 Armstrong-produced document, right?</p> <p>8 A. Correct.</p> <p>9 Q. So it's an email originally from the 16th from</p> <p>10 Preeti Joshi. And remind us, who is she again?</p> <p>11 A. Preeti is an analyst that works for me.</p> <p>12 Q. Okay. And she works on the Leapfrog account?</p> <p>13 A. Correct.</p> <p>14 Q. Okay.</p> <p>15 And she says first in that email, "Matt,</p> <p>16 please review the attached Leapfrog Hospital Safety</p> <p>17 Grade HSG" -- is that Hospital Safety Grade?</p> <p>18 A. Uh-huh. Correct.</p> <p>19 Q. -- "expert panel meeting notes, and let me know</p> <p>20 your suggestions."</p> <p>21 Then she follows up, right?</p> <p style="text-align: right;">Page 140</p>                                                                                 |
| <p>1 Q. Okay.</p> <p>2 Okay. I'm going to set this aside, and</p> <p>3 we'll come back to it, so don't lose it.</p> <p>4 (Whereupon, a discussion was held between</p> <p>5 counsel regarding lunch schedule, which</p> <p>6 portion was not included in the written</p> <p>7 record.)</p> <p>8 BY MR. CRAIN:</p> <p>9 Q. Okay. So let's keep going.</p> <p>10 So you mentioned there were minutes after</p> <p>11 the meeting, right?</p> <p>12 A. Correct.</p> <p>13 Q. I want to start with tab 33A, which will be</p> <p>14 Exhibit 13.</p> <p>15 (Exhibit No. 13 was marked for</p> <p>16 identification as of 9/25/2025.)</p> <p>17 BY MR. CRAIN:</p> <p>18 Q. So Dr. Austin, do you recognize this document?</p> <p>19 A. I recognize the meeting notes that are behind</p> <p>20 it.</p> <p>21 Q. Behind it. Okay.</p> <p style="text-align: right;">Page 139</p>                                                                                                          | <p>1 A. Correct.</p> <p>2 Q. And she says -- it looks like it's a few hours</p> <p>3 later that same day, April 16th -- "Matt, please</p> <p>4 disregard the attachment of previous email and consider</p> <p>5 the attached document for review. I accidentally attached</p> <p>6 a different file with previous email."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 And then going on to the notes, this is,</p> <p>11 fair to say, her draft of the notes, right?</p> <p>12 A. Correct.</p> <p>13 Q. Okay.</p> <p>14 And then just stepping back, does every</p> <p>15 expert panel, safety grade expert panel have meeting</p> <p>16 notes like these?</p> <p>17 A. Yes. Could there be one or two for which we</p> <p>18 just somehow didn't do them? Possibly. But the intent</p> <p>19 is, yes, to have meeting notes like this.</p> <p>20 Q. And is this the normal process where the person</p> <p>21 who is reporting to you starts the first draft and you</p> <p style="text-align: right;">Page 141</p> |

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| <p>1 revise?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. And do you generally try to be accurate</p> <p>4 with the meeting minutes?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. What do you look for when you revise?</p> <p>7 A. I look for accuracy. I try to highlight</p> <p>8 broader themes. So as an example, often when the</p> <p>9 analyst first starts working with me, the notes will be</p> <p>10 incredibly, like, detailed. Sara said this. Bob said</p> <p>11 this, right. So I try to sort of move it up a level,</p> <p>12 right, and I try to be clear with sort of action items</p> <p>13 of what we need to do next and to be clear with decision</p> <p>14 points.</p> <p>15 Q. Okay. And you still try to be faithful to the</p> <p>16 discussion, right?</p> <p>17 A. Correct.</p> <p>18 Q. Okay.</p> <p>19 So I'm going to set this one aside, and I</p> <p>20 want to go to your version of the notes. Let's see.</p> <p>21 Oh, wait. Come back. Sorry. Sorry. Let's start with</p> <p style="text-align: right;">Page 142</p> | <p>1 Q. I've been trying to understand it, too, so I</p> <p>2 get it.</p> <p>3 Does this seem like a fair articulation of</p> <p>4 what he was saying in the call?</p> <p>5 A. If it's in the notes, I would say it's probably</p> <p>6 a fair articulation, but I don't remember that myself.</p> <p>7 Q. Okay.</p> <p>8 Now, just to be clear, looking at this,</p> <p>9 there is no indication -- and you can read the bullets.</p> <p>10 They're pretty short -- that anyone was proposing giving</p> <p>11 hospitals a zero or limited achievement or willing to</p> <p>12 report, right?</p> <p>13 A. Can you repeat your question, please?</p> <p>14 Q. Yeah.</p> <p>15 Is there any indication in these notes that</p> <p>16 someone raised the idea during the meeting of giving</p> <p>17 nonparticipating hospitals a zero or limited achievement</p> <p>18 or willing to report for the imputed measures?</p> <p>19 MS. LAWSON: Object to form, but you can</p> <p>20 answer.</p> <p>21 THE WITNESS: It doesn't necessarily explicitly</p> <p style="text-align: right;">Page 144</p> |
| <p>1 this. I'm all out of order.</p> <p>2 Okay. So if we go down to Preeti's version</p> <p>3 of the notes, do you see number two?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Proposed changes to the imputation model,</p> <p>6 right?</p> <p>7 A. Uh-huh.</p> <p>8 Q. And if you go, it looks like one, two, three</p> <p>9 bullets down, it says "Peter asked."</p> <p>10 A. Uh-huh.</p> <p>11 Q. "Peter asked whether Leapfrog has a way to keep</p> <p>12 the low-performing hospitals in the lowest quartile</p> <p>13 using this Step 2 imputation model." Do you see that?</p> <p>14 A. Uh-huh.</p> <p>15 Q. Okay. Was that what we looked at in the</p> <p>16 transcript a little while ago?</p> <p>17 A. I don't know because I actually didn't fully</p> <p>18 follow what Peter was trying to ask there.</p> <p>19 Q. Okay. Got it.</p> <p>20 A. To be really, really honest, I -- it didn't</p> <p>21 make much sense to me.</p> <p style="text-align: right;">Page 143</p>                                                              | <p>1 say that in these notes.</p> <p>2 BY MR. CRAIN:</p> <p>3 Q. Okay.</p> <p>4 You say "explicitly." Do you have a reason</p> <p>5 to believe those topics were discussed?</p> <p>6 A. There was concerns about -- that Arjun raised</p> <p>7 about a hospital that was performing very poorly and</p> <p>8 that they would actually get an imputed score, so a</p> <p>9 better score than what they would actually be -- so to</p> <p>10 me that seems to be raising the question of whether the</p> <p>11 current imputation model was rewarding poor performing</p> <p>12 hospitals.</p> <p>13 So, I mean, there could be an</p> <p>14 interpretation of that.</p> <p>15 Q. So you said the question was raised. My</p> <p>16 question is was the answer provided, proposed answer?</p> <p>17 A. I don't remember.</p> <p>18 Q. Okay.</p> <p>19 And do you see anything on this page from</p> <p>20 what you read a few minutes ago from the transcript to</p> <p>21 suggest that those solutions were proposed that I just</p> <p style="text-align: right;">Page 145</p>                    |

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| <p>1 mentioned?</p> <p>2 A. I don't see anything here that would indicate</p> <p>3 that the actual solution that we landed on is what was</p> <p>4 explicitly proposed by the expert panel.</p> <p>5 Q. Okay. Let me ask you this question. Who</p> <p>6 proposed the solution that you landed on?</p> <p>7 A. I don't recall with certainty.</p> <p>8 Q. Okay. Do you think it was Leapfrog, or do you</p> <p>9 think it was the expert panel?</p> <p>10 A. I'm guessing it was Leapfrog that proposed that</p> <p>11 solution based on the concerns that the expert panel was</p> <p>12 raising.</p> <p>13 Q. Got it.</p> <p>14 So to your framing before, the question was</p> <p>15 raised and Leapfrog was supplying an answer?</p> <p>16 A. Is your question during this call?</p> <p>17 Q. During this period. April 2024 --</p> <p>18 A. I don't remember with certainty how the</p> <p>19 solution that is currently in use was developed.</p> <p>20 Q. Okay.</p> <p>21 I want to also take a look a couple bullets</p> <p style="text-align: right;">Page 146</p> | <p>1 document and what's your understanding of this sentence,</p> <p>2 and I'll try to find a line.</p> <p>3 A. It's unclear to me what "them" is referring to</p> <p>4 in this sentence. Like, I don't have the context to</p> <p>5 remember what "them" is. To me, I was suggesting that,</p> <p>6 perhaps, we needed to look at difference in performance</p> <p>7 between -- yeah, I don't have a great sense just from --</p> <p>8 Q. I can take you where the -- if you go back to</p> <p>9 the transcript, page 27 is where you talk about bias.</p> <p>10 MS. LAWSON: And you might want to just start</p> <p>11 from the page preceding, which is the page we reviewed</p> <p>12 previously, and just keep going on the discussion. I</p> <p>13 think that might help.</p> <p>14 (Witness peruses document.)</p> <p>15 THE WITNESS: The context from the transcript</p> <p>16 is such that we were talking about safety net hospitals</p> <p>17 and some sort of concerns about bias in measurement for</p> <p>18 those safety net hospitals.</p> <p>19 BY MR. CRAIN:</p> <p>20 Q. Only for them?</p> <p>21 A. That is the context that Kathy McDonald had</p> <p style="text-align: right;">Page 148</p>                                               |
| <p>1 down. It says, "Matt mentioned." Do you see that?</p> <p>2 A. Uh-huh.</p> <p>3 Q. And Matt, I take it, is you?</p> <p>4 A. Correct.</p> <p>5 Q. "Matt mentioned it is important to see whether</p> <p>6 there is an actual difference in hospitals' performance</p> <p>7 and whether there is some sort of bias in the</p> <p>8 measurement against them. He said to minimize the</p> <p>9 second, and if there are differences in hospitals'</p> <p>10 performance, we can address the structural issues to fix</p> <p>11 them."</p> <p>12 Do you see that?</p> <p>13 A. I do.</p> <p>14 Q. So taking that one by one, what does the first</p> <p>15 sentence mean?</p> <p>16 MS. LAWSON: Might it be helpful for him to</p> <p>17 just review the transcript of what he said?</p> <p>18 MR. CRAIN: Yeah. I'm pulling that out now.</p> <p>19 THE WITNESS: That would be helpful.</p> <p>20 BY MR. CRAIN:</p> <p>21 Q. But you know what, let's start with this</p> <p style="text-align: right;">Page 147</p>                                                        | <p>1 brought up was the safety net hospitals.</p> <p>2 Q. Fair enough. I get that she says that from</p> <p>3 lines 3 to 11 on page 27, but you follow up, and you</p> <p>4 say, "I think where I struggle is what is a true --</p> <p>5 well, where is there a true difference in performance,</p> <p>6 right, and where is there some sort of bias in the</p> <p>7 measurement against them. Right?" And then Kathy says,</p> <p>8 "Right." And then you say, "And I think we want to</p> <p>9 minimize the second."</p> <p>10 And so I guess the question I have out of</p> <p>11 that is what does bias mean in that context?</p> <p>12 A. Bias would refer to that there is some sort</p> <p>13 of -- that there is some sort of structural -- I'm</p> <p>14 trying to think of the right words for this. That there</p> <p>15 is some sort of structural sort of -- there's something</p> <p>16 structural about safety net hospitals that disadvantages</p> <p>17 them.</p> <p>18 Q. So you're talking about bias about the</p> <p>19 hospitals or bias about the scoring methodology?</p> <p>20 A. The bias in the hospitals. And I say that</p> <p>21 because I think on the next page I talk about that</p> <p style="text-align: right;">Page 149</p> |

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| <p>1 marginalized communities tend to receive care at less</p> <p>2 safe hospitals. So I think the concern is that there is</p> <p>3 a bias against safety net hospitals in terms of quality</p> <p>4 and safety.</p> <p>5 Q. So this doesn't refer to bias in the survey --</p> <p>6 in the scoring methodology -- excuse me -- against</p> <p>7 safety net hospitals?</p> <p>8 A. I believe what this is referring to is actually</p> <p>9 the bias in the challenges that safety net hospitals</p> <p>10 face to prioritize quality and safety of care.</p> <p>11 Q. And how does that factor into the imputation</p> <p>12 methodology?</p> <p>13 A. So safety -- well, to be clear, safety net,</p> <p>14 there is no formal definition of that. If they are a</p> <p>15 critical access hospital, they don't receive a Hospital</p> <p>16 Safety Grade.</p> <p>17 Q. What is a critical access hospital?</p> <p>18 A. Critical access hospital, there is about 1,400</p> <p>19 of them in the United States. They're small hospitals</p> <p>20 that have 25 beds or less --</p> <p>21 Q. Got it.</p> <p style="text-align: right;">Page 150</p>                           | <p>1 looking at some of the safety net hospitals and just</p> <p>2 making sure that they were going to be treated fairly.</p> <p>3 Q. Okay. And is that -- is a difference in the</p> <p>4 safety net hospitals, as compared to non-safety net</p> <p>5 hospitals, their capacity to complete the survey?</p> <p>6 A. I couldn't speak to that.</p> <p>7 Q. Do they have fewer resources than non-safety</p> <p>8 net hospitals?</p> <p>9 A. They typically are more resource constrained</p> <p>10 hospitals than larger hospitals -- or not larger</p> <p>11 hospitals, than hospitals that are better funded.</p> <p>12 Q. So did you understand Kathy to be saying that</p> <p>13 she wanted to recognize the burden that they were</p> <p>14 experiencing as compared to non-safety net hospitals?</p> <p>15 A. I don't know if that was what she was implying</p> <p>16 there.</p> <p>17 Q. Okay.</p> <p>18 So and then going back to your point about</p> <p>19 bias, how would the imputation methodology -- strike</p> <p>20 that. Sorry.</p> <p>21 Going back to your point about bias, how</p> <p style="text-align: right;">Page 152</p> |
| <p>1 A. -- that are generally in rural areas and for</p> <p>2 which the funding from the government is different,</p> <p>3 basically to keep their doors open, and they are</p> <p>4 generally in small, rural communities.</p> <p>5 Q. And so I get there is no definition of safety</p> <p>6 net hospital. What's your general understanding of what</p> <p>7 that means?</p> <p>8 A. One definition that I commonly use is it's</p> <p>9 hospitals that care for greater proportions of patients</p> <p>10 who have Medicaid as their primary insurance.</p> <p>11 Q. Got it. And they can be for-profit or</p> <p>12 nonprofit hospitals?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. And so what type of -- so how does the</p> <p>15 safety -- how does the imputation -- like, how does that</p> <p>16 fact -- let me state the question in a real way rather</p> <p>17 than stuttering way.</p> <p>18 How does the safety net bias that you're</p> <p>19 talking about here relate to the imputation methodology</p> <p>20 that was the topic of the agenda here?</p> <p>21 A. I believe what Kathy is looking at is -- was</p> <p style="text-align: right;">Page 151</p> | <p>1 could the imputation methodology take that into account?</p> <p>2 A. Which imputation methodology are we discussing?</p> <p>3 Q. Any one, whether -- well, how could any</p> <p>4 imputation methodology take into account the bias that</p> <p>5 you're identifying here apparently as to safety net</p> <p>6 hospitals?</p> <p>7 A. Well, there's the concern that -- I mean, one</p> <p>8 potential bias is that if other safety net hospitals are</p> <p>9 performing less well and you choose to not complete the</p> <p>10 survey, you're going to maybe get assigned the same</p> <p>11 value as your average safety net hospital. So that</p> <p>12 would be one way that a safety net hospital might face a</p> <p>13 bias.</p> <p>14 Q. Okay. But you need the definition of what</p> <p>15 qualifies as a safety net hospital, right?</p> <p>16 A. Correct. And Leapfrog has its own definition</p> <p>17 that it uses for that.</p> <p>18 Q. Is it different from yours?</p> <p>19 A. I don't know.</p> <p>20 Q. Okay. You have no knowledge of what that</p> <p>21 definition is?</p> <p style="text-align: right;">Page 153</p>   |

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| <p>1 A. I couldn't say with exact certainty what their<br/>2 definition is.</p> <p>3 Q. Do you know in what context they have that<br/>4 definition?</p> <p>5 A. They have it in some of their data files<br/>6 because a lot of their data licensees like to be able to<br/>7 drill down on that type of detail, but I don't know what<br/>8 -- how they get that source or what they are using for<br/>9 them.</p> <p>10 Q. Okay. Okay.</p> <p>11 So going back to the notes, which I believe<br/>12 is Exhibit 13, I want to go back to the bullet. Preeti<br/>13 said, "Matt mentioned it is important to see whether<br/>14 there is an actual difference in hospitals' performance<br/>15 and whether there is some sort of bias in the measures<br/>16 against them. He said to minimize the second, and if<br/>17 there are differences in hospitals' performance, we can<br/>18 address the structural issues to fix them."</p> <p>19 Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. Now, she doesn't mention safety net hospitals</p> <p style="text-align: right;">Page 154</p> | <p>1 before we broke. Do you recall that?</p> <p>2 A. Yes.</p> <p>3 Q. I want to go back in time just a little bit.</p> <p>4 The April 12th meeting, if you recall correctly from the<br/>5 notes we saw, was between 4 and 5 o'clock.</p> <p>6 A. Correct.</p> <p>7 Q. And if you keep the notes out, if you look at<br/>8 the portion where it says the attendees, do you see<br/>9 that?</p> <p>10 A. Yes.</p> <p>11 Q. Dr. Romano is not on that list, right?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. And do you recall that -- whether you<br/>14 met with Dr. Romano earlier that day with regard to the<br/>15 safety grade expert panel?</p> <p>16 A. I can't say with certainty.</p> <p>17 Q. Okay.</p> <p>18 A. But I believe we met with him at some point<br/>19 around that meeting.</p> <p>20 Q. Okay. And that was -- do you recall who<br/>21 attended that meeting?</p> <p style="text-align: right;">Page 156</p>                                                                                                 |
| <p>1 there, right?</p> <p>2 A. She does not.</p> <p>3 Q. Okay. So -- okay. I'll leave it there.</p> <p>4 MR. CRAIN: I think maybe we'll take a break<br/>5 now. Do you want to do the lunch break now?</p> <p>6 MS. LAWSON: We're off the record.</p> <p>7 THE VIDEOGRAPHER: This marks the end of media<br/>8 unit number three. We're going off the record. The<br/>9 time is 11:49 a.m.</p> <p>10 (Whereupon a lunch break was had, after<br/>11 which the proceedings continued as<br/>12 follows:)</p> <p>13 THE VIDEOGRAPHER: This marks the beginning of<br/>14 media unit number four. We're back on the record. The<br/>15 time is 12:56 p.m.</p> <p>16 BY MR. CRAIN:</p> <p>17 Q. Okay. Welcome back.</p> <p>18 A. Thank you.</p> <p>19 Q. I hope you had a nice lunch.</p> <p>20 A. Yeah. Thank you.</p> <p>21 Q. So we were talking about the April 12th meeting</p> <p style="text-align: right;">Page 155</p>                                                                                                                                                                  | <p>1 A. I don't recall with certainty. I could<br/>2 estimate who I think would be there, but I can't say<br/>3 with certainty.</p> <p>4 Q. That's okay. That's okay.</p> <p>5 And before we go to -- I'll refresh you<br/>6 with a document, but before we go there, who is<br/>7 Dr. Patrick Romano?</p> <p>8 A. So Dr. Patrick Romano is one of the Hospital<br/>9 Safety Grade expert panelists.</p> <p>10 Q. And what's his background?</p> <p>11 A. He is a physician and health services<br/>12 researcher at the University of California, Davis.</p> <p>13 Q. And fair to say he's an expert in something?</p> <p>14 A. He is.</p> <p>15 MS. LAWSON: Object to form but go ahead.</p> <p>16 THE WITNESS: Yeah. He would be perceived as<br/>17 being an expert in quality measurements in healthcare.</p> <p>18 BY MR. CRAIN:</p> <p>19 Q. And have you worked with him for a long time?</p> <p>20 A. Yes, I have.</p> <p>21 Q. Did you work with him in the early days when</p> <p style="text-align: right;">Page 157</p> |

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| <p>1 the safety grade was being developed?</p> <p>2 A. Yes.</p> <p>3 Q. And was he involved in the development of the</p> <p>4 first imputation model around 2020, 2021?</p> <p>5 A. We worked with Dr. Romano in thinking through</p> <p>6 different options for the imputation.</p> <p>7 Q. Okay. And do you know how long Dr. Romano has</p> <p>8 been involved in any capacity with Leapfrog?</p> <p>9 THE COURT REPORTER: I'm sorry. We just lost</p> <p>10 connection.</p> <p>11 MR. CRAIN: Should we go off?</p> <p>12 THE COURT REPORTER: Could we?</p> <p>13 MR. CRAIN: Can we go off the record.</p> <p>14 THE COURT REPORTER: Just one quick second.</p> <p>15 THE VIDEOGRAPHER: This marks the end of media</p> <p>16 unit number four. We're going off the record. The time</p> <p>17 is 12:58 p.m.</p> <p>18 (Whereupon, the proceedings paused due to</p> <p>19 technical difficulty, after which the</p> <p>20 proceedings continued as follows:)</p> <p>21 THE VIDEOGRAPHER: This marks the beginning of</p> <p style="text-align: right;">Page 158</p> | <p>1 glitch, so I'll make sure we get it, how long has</p> <p>2 Dr. Romano been involved with Leapfrog?</p> <p>3 A. Since 2011.</p> <p>4 Q. Okay. So he came on after you joined or after</p> <p>5 you got involved with Leapfrog, let's say?</p> <p>6 A. He was part of the Hospital Safety Grade expert</p> <p>7 panel that was formed in 2011.</p> <p>8 Q. When the safety grade was originally being</p> <p>9 developed?</p> <p>10 A. Correct.</p> <p>11 Q. Okay.</p> <p>12 MR. CRAIN: Okay. So I'm going to mark as</p> <p>13 Exhibit 14...</p> <p>14 (Exhibit No. 14 was marked for</p> <p>15 identification as of 9/25/2025.)</p> <p>16 BY MR. CRAIN:</p> <p>17 Q. Dr. Austin, do you see this is an</p> <p>18 Armstrong-produced document?</p> <p>19 A. Yes.</p> <p>20 Q. And it's an email from you to you. Do you see</p> <p>21 that?</p> <p style="text-align: right;">Page 160</p> |
| <p>1 media unit number five. We're going back on the record.</p> <p>2 The time is 1 o'clock p.m.</p> <p>3 BY MR. CRAIN:</p> <p>4 Q. Great. Okay. We're back after a technical</p> <p>5 glitch, and I'm going to ask the question that we</p> <p>6 started before.</p> <p>7 So was Dr. Romano involved in the</p> <p>8 development of the first imputation model around</p> <p>9 2020/21?</p> <p>10 A. He was. To clarify, that wasn't -- it depends</p> <p>11 on your definition of what is an imputation model. We</p> <p>12 had had other imputation approaches prior to '20 to '21.</p> <p>13 Q. Fair enough.</p> <p>14 Was he involved in the development of that</p> <p>15 model in --</p> <p>16 A. Yes. He helped provide input and guidance.</p> <p>17 Q. Okay.</p> <p>18 MS. LAWSON: And just make sure that Mr. Crain</p> <p>19 has finished his question, yes.</p> <p>20 BY MR. CRAIN:</p> <p>21 Q. And I think I had asked during the technical</p> <p style="text-align: right;">Page 159</p>                                                                | <p>1 A. Correct.</p> <p>2 Q. Does this reflect notes that you took on</p> <p>3 April 12th, 2024?</p> <p>4 A. It reflects --</p> <p>5 Q. I'll direct you to the subject matter, the</p> <p>6 subject of the email.</p> <p>7 A. Yes. It was my notes from the Hospital Safety</p> <p>8 Grade expert panel meeting.</p> <p>9 Q. And do you have a practice of sending yourself</p> <p>10 notes over email?</p> <p>11 A. I do.</p> <p>12 Q. Okay. So this is a true and accurate, to the</p> <p>13 best of your knowledge, copy of your notes from that</p> <p>14 day?</p> <p>15 A. Yes.</p> <p>16 Q. Okay.</p> <p>17 And on the top, it says: "Patrick</p> <p>18 recommend keep Step 1." Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Does that refresh your recollection of whether</p> <p>21 you had a meeting with Dr. Romano on April 12th?</p> <p style="text-align: right;">Page 161</p> |

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| <p>1 A. As I mentioned, I know we met with Dr. Romano</p> <p>2 around that time because he was unable to make the</p> <p>3 primary call, but I don't remember the exact timing of</p> <p>4 when that was.</p> <p>5 Q. Okay.</p> <p>6 Do you -- is it correct that these bullets</p> <p>7 one, two, and three below, "Patrick recommend keep Step</p> <p>8 1," reflect your notes from the discussion with</p> <p>9 Dr. Romano?</p> <p>10 A. That would be likely to be true, yes.</p> <p>11 Q. Okay. You don't have a specific memory, but</p> <p>12 that's what the document --</p> <p>13 A. Correct.</p> <p>14 Q. -- indicates?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Again, just let's try not to talk over</p> <p>17 each other.</p> <p>18 Okay. And then the remainder of this</p> <p>19 email, just going down, do those reflect your notes from</p> <p>20 the subsequent expert safety grade panel meeting later</p> <p>21 that day?</p> <p style="text-align: right;">Page 162</p> | <p>1 the last page to orient. Good? Are you there?</p> <p>2 A. Can you repeat that, please?</p> <p>3 Q. Sorry.</p> <p>4 Can you go to page 8331, the second to the</p> <p>5 last page.</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 And there's an email from Ms. Campione to,</p> <p>9 among others, you at 12:17 p.m.?</p> <p>10 A. Yes.</p> <p>11 Q. And the subject is imputation changes. Do you</p> <p>12 see that?</p> <p>13 A. Yes.</p> <p>14 Q. So Ms. Campione writes to you and others, "Hi</p> <p>15 all, please find the table we discussed below. I also</p> <p>16 included the underlying issues. Please feel free to</p> <p>17 edit the response to this email." Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 Do you have a recollection of her sending</p> <p>21 this email?</p> <p style="text-align: right;">Page 164</p>                                                                                                                                                                                                         |
| <p>1 A. Yes.</p> <p>2 Q. Okay.</p> <p>3 That's all we need to talk about with this</p> <p>4 document. You can set it aside.</p> <p>5 MR. CRAIN: Now, I want to go to another</p> <p>6 document. This will be 15, tab 34.</p> <p>7 (Exhibit No. 15 was marked for</p> <p>8 identification as of 9/25/2025.)</p> <p>9 BY MR. CRAIN:</p> <p>10 Q. And you will see on the bottom this was a</p> <p>11 deposition exhibit from Ms. Campione as well. Do you</p> <p>12 see that blue sticker?</p> <p>13 A. Yes.</p> <p>14 Q. Okay.</p> <p>15 So the top email is from you to</p> <p>16 Ms. Campione, Ms. Danforth, and Ms. Joshi. Do you see</p> <p>17 that?</p> <p>18 A. Yes.</p> <p>19 Q. And I want to just go through -- if we could</p> <p>20 start at the bottom, which is the first email, this will</p> <p>21 be page -- if you could go to page 8331, the second to</p> <p style="text-align: right;">Page 163</p>                                                                    | <p>1 A. I do remember seeing that table at the bottom</p> <p>2 of the email, but I didn't remember the context of the</p> <p>3 email.</p> <p>4 Q. Do you remember seeing it from back then? Do</p> <p>5 you remember from seeing it more recently?</p> <p>6 A. I -- in showing this to me today, I very</p> <p>7 distinctly remember her sending an email with this</p> <p>8 table.</p> <p>9 Q. Okay. Do you remember -- and you said you</p> <p>10 don't remember the context. Do you remember anything</p> <p>11 about why she sent it?</p> <p>12 A. I would guess, based on what's here, it was to</p> <p>13 sort of further refine a potential direction that we</p> <p>14 would go for the imputation models.</p> <p>15 Q. And this was about 10 days after the expert</p> <p>16 panel meeting, right?</p> <p>17 A. Correct.</p> <p>18 Q. Okay.</p> <p>19 So I want to just go through this chart a</p> <p>20 little bit just to make sure we're on the same page.</p> <p>21 Are you looking at the chart on 8332?</p> <p style="text-align: right;">Page 165</p> |

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| <p>1 A. Uh-huh.</p> <p>2 Q. Okay. So "no change" is the left-most column.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And that's -- is it right that's basically the</p> <p>6 model you had, right, at the time?</p> <p>7 A. Correct.</p> <p>8 Q. "Small change" says: "Shorten imputation to</p> <p>9 past two rounds for Step 1." Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Is that what you ultimately did, or is it</p> <p>12 "moderate change" that Leapfrog ultimately imposed?</p> <p>13 A. Are you asking about recent survey</p> <p>14 participants?</p> <p>15 Q. I'm asking -- yeah, I'm asking about Step 1 for</p> <p>16 recent survey participants. I'll walk you through it.</p> <p>17 I'll build it a little more clearly.</p> <p>18 Under "small change" for Step 1, it says:</p> <p>19 Shorten imputation to two past rounds. Do you see that?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Does that reflect, to the best of your</p> <p style="text-align: right;">Page 166</p>                                                                                                                                                  | <p>1 every year, is that a more apt understanding of what the</p> <p>2 Step 1 is?</p> <p>3 A. I would frame it as hospitals that have not</p> <p>4 submitted the most recent hospital survey.</p> <p>5 Q. Got it. But for which there exists a</p> <p>6 historical survey response?</p> <p>7 A. Correct.</p> <p>8 Q. Okay.</p> <p>9 So on the top in Step 1, small change, you</p> <p>10 go back to the two past rounds of the survey, right?</p> <p>11 A. That is what's being proposed under small</p> <p>12 change.</p> <p>13 Q. Then moderate change is you shorten imputation</p> <p>14 to one past round, right?</p> <p>15 A. Correct.</p> <p>16 Q. And is that what you testified earlier -- is</p> <p>17 that what ultimately Leapfrog did for Step 1?</p> <p>18 A. I would have to defer to the methodology --</p> <p>19 Q. Okay.</p> <p>20 A. -- document on how that gets phrased or framed.</p> <p>21 Q. Okay.</p> <p style="text-align: right;">Page 168</p>                                                  |
| <p>1 understanding, an imputation of a historical score in</p> <p>2 the past two rounds of the hospital survey?</p> <p>3 A. Can you repeat that again, please?</p> <p>4 Q. Yeah.</p> <p>5 To the best of your understanding, does</p> <p>6 this column, does this "small change" box in Step 1</p> <p>7 reflect that you would propose to impute the historical</p> <p>8 score for a nonparticipating hospital for the past two</p> <p>9 rounds of the hospital survey? Am I reading that right?</p> <p>10 A. That is not exactly my understanding.</p> <p>11 Q. Okay. Can you give me your understanding?</p> <p>12 A. Yeah. My understanding is what's being</p> <p>13 proposed is for hospitals that have recently completed</p> <p>14 the survey, how far of a lookback would we do to see if</p> <p>15 there was a recent survey.</p> <p>16 Q. Got it. And was that different from what I</p> <p>17 said because I said nonparticipating hospitals?</p> <p>18 A. Correct.</p> <p>19 Q. Yeah, okay. Let me fix that. That's a fair</p> <p>20 point.</p> <p>21 For hospitals that are not participating</p> <p style="text-align: right;">Page 167</p> | <p>1 What do you think is the difference?</p> <p>2 A. Difference from what?</p> <p>3 Q. What's your hesitation as to why this is not</p> <p>4 the same thing as you understand Leapfrog is doing today</p> <p>5 for Step 1?</p> <p>6 A. I guess I'm a little unclear on what moderate</p> <p>7 change would actually be. So that's where I'm now sort</p> <p>8 of second-guessing like, well, did we implement moderate</p> <p>9 or did we implement small change?</p> <p>10 Q. Okay.</p> <p>11 A. My understanding, putting the words aside, is</p> <p>12 that what we moved to was the ability for a hospital --</p> <p>13 we would look back and see if a hospital submitted a</p> <p>14 survey last year --</p> <p>15 Q. Got it.</p> <p>16 A. -- and if we did, we would use that.</p> <p>17 Q. Okay.</p> <p>18 A. But we wouldn't go any further back than that.</p> <p>19 Q. Okay.</p> <p>20 A. So I don't know how that translates into these</p> <p>21 exact words.</p> <p style="text-align: right;">Page 169</p> |

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| <p>1 Q. Okay.</p> <p>2 I mean, I would read one past round to be</p> <p>3 last year, but I don't know if that's right. You're not</p> <p>4 sure about that either?</p> <p>5 A. I'm not sure about that either.</p> <p>6 Q. Okay.</p> <p>7 Okay. And then "drastic change" is</p> <p>8 eliminate Step 1. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And that you did not do, right?</p> <p>11 A. Correct.</p> <p>12 Q. But that was the proposal at the April 12th</p> <p>13 meeting, to retire Step 1?</p> <p>14 MS. LAWSON: Object to form.</p> <p>15 THE WITNESS: The proposal that we introduced</p> <p>16 at the Hospital Safety Grade expert panel meeting was to</p> <p>17 eliminate Step 1.</p> <p>18 BY MR. CRAIN:</p> <p>19 Q. Yeah. Okay.</p> <p>20 Now, in Step 2, if you could just go -- I</p> <p>21 don't know if you feel more comfortable walking me</p> <p style="text-align: right;">Page 170</p>                                                                                                                                     | <p>1 deviations below the mean." Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Now, we saw in the transcript that we looked at</p> <p>4 in the notes the discussion of the lowest quartile. Is</p> <p>5 this what that's referring to, to the best of your</p> <p>6 understanding?</p> <p>7 MS. LAWSON: Object to form.</p> <p>8 THE WITNESS: I would need to re-review the</p> <p>9 transcript to refresh myself on what exactly the</p> <p>10 conversation was about lowest quartile.</p> <p>11 BY MR. CRAIN:</p> <p>12 Q. Okay. I'm trying to think should we do that.</p> <p>13 Would you like to do that? I'm happy to take you back</p> <p>14 to it unless you have an understanding.</p> <p>15 A. I don't have -- I mean, I saw in the</p> <p>16 transcript there was conversation about lowest quartile.</p> <p>17 Q. Yeah.</p> <p>18 A. And there's, obviously, conversation here about</p> <p>19 bottom quartile. I don't know if those two</p> <p>20 conversations are the same thing. That's what I don't</p> <p>21 know.</p> <p style="text-align: right;">Page 172</p> |
| <p>1 through it, or I could walk you through it, but Step 2,</p> <p>2 the no change, it says: "Impute with the mean of first</p> <p>3 time scores for their cohort." Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And is that a no change, or is that sort of an</p> <p>6 adaptation? I had understood the Step 2 to be the mean</p> <p>7 of first time versus the mean of the cohort generally,</p> <p>8 right?</p> <p>9 A. At the time, the nonsurvey -- so Step 2 was --</p> <p>10 yes, it was the lower of the mean of either first time</p> <p>11 respondents or the mean of the cohort.</p> <p>12 Q. Yeah, okay. So slightly different from what</p> <p>13 the no change says here, right?</p> <p>14 A. Correct.</p> <p>15 Q. Okay.</p> <p>16 And that small change -- there's a no</p> <p>17 change, which is interesting. Do you see that?</p> <p>18 A. Correct.</p> <p>19 Q. Okay.</p> <p>20 And then moderate change says: "Assign</p> <p>21 hospitals to the bottom quartile or several standard</p> <p style="text-align: right;">Page 171</p> | <p>1 Q. Okay. So you don't have an independent</p> <p>2 recollection of whether this column comes from the</p> <p>3 discussion of the expert panel meeting or not?</p> <p>4 A. Correct. I do not have an independent</p> <p>5 recollection.</p> <p>6 Q. Okay.</p> <p>7 And then on the last one, the drastic</p> <p>8 change, it says: "Impute with limited achievement</p> <p>9 scores," right?</p> <p>10 A. Correct.</p> <p>11 Q. Okay.</p> <p>12 And, again, we looked at the index, and</p> <p>13 there was no discussion of limited achievement, right,</p> <p>14 at least based --</p> <p>15 MS. LAWSON: Object to form.</p> <p>16 BY MR. CRAIN:</p> <p>17 Q. At least based on the index?</p> <p>18 MS. LAWSON: Object to form.</p> <p>19 THE WITNESS: Correct. There was no use of</p> <p>20 that explicit term.</p> <p>21 BY MR. CRAIN:</p> <p style="text-align: right;">Page 173</p>                                                                                                                                                                                      |

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| <p>1 Q. Yeah.</p> <p>2 And there was no use of the term</p> <p>3 willingness, as in willingness to report, right?</p> <p>4 MS. LAWSON: Object to form.</p> <p>5 THE WITNESS: Correct.</p> <p>6 BY MR. CRAIN:</p> <p>7 Q. Okay.</p> <p>8 And in the index at least, when we looked</p> <p>9 at the word "zero," there was no discussion of anybody</p> <p>10 proposing that nonparticipating hospitals should get</p> <p>11 zero in Step 2, right?</p> <p>12 MS. LAWSON: Object to form. Go ahead.</p> <p>13 THE WITNESS: Correct.</p> <p>14 BY MR. CRAIN:</p> <p>15 Q. Okay.</p> <p>16 So let's go up a little bit on this box.</p> <p>17 And you respond, do you see that, 12:27 p.m.?</p> <p>18 A. I --</p> <p>19 Q. I can give you a page number if you need it.</p> <p>20 A. I do -- yep.</p> <p>21 Q. Got it?</p> <p style="text-align: right;">Page 174</p>                                                                                                                                                                                                                                                                                                                   | <p>1 information to the Leapfrog Hospital Survey about their</p> <p>2 staffing, we were coming to the conclusion that they</p> <p>3 didn't meet the staffing model that Leapfrog requires.</p> <p>4 Q. Got it.</p> <p>5 So you made the assumption based on the</p> <p>6 existence of an ICU that they were performing at a level</p> <p>7 of limited achievement?</p> <p>8 A. To clarify, I'm not sure we were making an</p> <p>9 assumption. We were -- we had a lack of information</p> <p>10 about their staffing models. That would be the</p> <p>11 equivalent of assigning limited achievement.</p> <p>12 Q. Got it.</p> <p>13 And is that, to your knowledge,</p> <p>14 communicated anywhere on the Leapfrog website to</p> <p>15 consumers?</p> <p>16 A. I don't know.</p> <p>17 Q. Okay.</p> <p>18 Is that communicated in the methodology</p> <p>19 document, that that's why Leapfrog assigns limited</p> <p>20 achievement for IPS for nonparticipating hospitals?</p> <p>21 A. I don't know for certainty.</p> <p style="text-align: right;">Page 176</p> |
| <p>1 A. Yep. I do, yes.</p> <p>2 Q. And you said, "Alex, this looks great. I'm</p> <p>3 wondering do we, one, want to reflect that we're</p> <p>4 already" -- doing -- "using" -- sorry -- "drastic change</p> <p>5 for Step 2 for IPS? And, two, do we want to use a</p> <p>6 different term for drastic change, like large change?"</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. So just breaking that down, number one, can you</p> <p>10 tell me what you understood yourself to mean when you</p> <p>11 said: Do we want to reflect that we're already using</p> <p>12 drastic change for Step 2 for IPS?</p> <p>13 A. So as I remember it, we had already moved</p> <p>14 imputation for IPS to be limited achievement.</p> <p>15 Q. And when did that come about?</p> <p>16 A. I don't remember exactly.</p> <p>17 Q. Okay. And do you remember the basis?</p> <p>18 A. The basis is we actually had information from</p> <p>19 CMS, Centers for Medicare and Medicaid Services, that</p> <p>20 could tell us whether a hospital operated an ICU. And</p> <p>21 if they operated an ICU, and they had not submitted</p> <p style="text-align: right;">Page 175</p> | <p>1 Q. Okay. Do you want to take a look?</p> <p>2 A. I can.</p> <p>3 Q. I'm happy to take you there. That's Exhibit 3.</p> <p>4 A. That sounds correct.</p> <p>5 Q. I wrote them down today.</p> <p>6 A. If my memory serves me right.</p> <p>7 Q. Do you have it, Dr. Austin?</p> <p>8 A. I do.</p> <p>9 Q. And if you go to page 10, it talks about the</p> <p>10 IPS model -- or the measure.</p> <p>11 MS. LAWSON: This is for Spring 2025?</p> <p>12 MR. CRAIN: Correct.</p> <p>13 BY MR. CRAIN:</p> <p>14 Q. The IPS, as you testified a minute ago, I</p> <p>15 think, did not change, right, the imputation</p> <p>16 methodology?</p> <p>17 A. That was my comment back to Alex.</p> <p>18 Q. Okay. Yeah.</p> <p>19 But to the best of your recollection today,</p> <p>20 between 2024 and 2025, Step 2 for IPS was always limited</p> <p>21 achievement, right?</p> <p style="text-align: right;">Page 177</p>                                                                                                                                                |

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| <p>1 A. Correct.</p> <p>2 Q. Okay.</p> <p>3 So are you on page 10?</p> <p>4 A. I am.</p> <p>5 Q. Okay. So just take a look and read the IPS</p> <p>6 block.</p> <p>7 A. Yep. I have, yes.</p> <p>8 Q. And does it provide any explanation, the</p> <p>9 explanation you just gave for why hospitals receive</p> <p>10 limited achievement if they don't participate in the</p> <p>11 survey?</p> <p>12 A. You would need to follow the last line that</p> <p>13 says if a hospital didn't submit a survey, you need to</p> <p>14 look at using secondary data sources.</p> <p>15 Q. Okay. Let's go to that page. That's page 15?</p> <p>16 Take a look. And it's on 15 and 16?</p> <p>17 A. Yes.</p> <p>18 Q. Yeah. Is there an explanation there?</p> <p>19 A. On page 16 there is.</p> <p>20 Q. Let's see. Where is it?</p> <p>21 A. Note about IPS: Only hospitals that operate an</p> <p style="text-align: right;">Page 178</p>                                                                                                                                                                            | <p>1 hospital is assigned a point value that is equivalent to</p> <p>2 receiving limited achievement for this measure on the</p> <p>3 Leapfrog Hospital Survey.</p> <p>4 Q. And so what you testified a minute ago, though,</p> <p>5 was that the -- tell me if I'm misunderstanding -- that</p> <p>6 the assumption is if a hospital has an ICU and is not</p> <p>7 reporting, it's not meeting Leapfrog's standards, right?</p> <p>8 A. We have assigned a score to hospitals. If we</p> <p>9 know they operate an ICU based on the CMS cost report,</p> <p>10 and they don't report to the Leapfrog Hospital Survey,</p> <p>11 we are assigning them a score of limited achievement.</p> <p>12 Q. Yes, but that was not directly responsive to my</p> <p>13 question which was -- and I'll go back just to make sure</p> <p>14 I say it the right way.</p> <p>15 What you said a minute ago was that the</p> <p>16 assumption is that if a hospital has an ICU, and they</p> <p>17 are not reporting, that they are not meeting Leapfrog's</p> <p>18 standards, right? That's what you said.</p> <p>19 A. Correct. And then I corrected myself and did</p> <p>20 not use the word "assumption." That was a poor choice</p> <p>21 of word there.</p> <p style="text-align: right;">Page 180</p> |
| <p>1 adult or pediatric medical and/or surgical or neuro ICU</p> <p>2 are eligible for Step 2 imputation of the IPS measure.</p> <p>3 A hospital's ICU designation is determined from the</p> <p>4 number of beds reported on Worksheet 5-3 Part 1 of the</p> <p>5 hospital's most recent CMS cost report. If your</p> <p>6 hospital does not operate an ICU but shares a CMS</p> <p>7 certification number, please contact the help desk.</p> <p>8 Q. Sorry. I see that on page 15. You see it on</p> <p>9 16?</p> <p>10 A. I see it on 16.</p> <p>11 MS. LAWSON: I also see it on 16.</p> <p>12 THE WITNESS: Under Step 2.</p> <p>13 BY MR. CRAIN:</p> <p>14 Q. Step 2. Okay.</p> <p>15 And your testimony is that language</p> <p>16 communicates that if a hospital has an ICU and doesn't</p> <p>17 participate, it automatically gets limited achievement?</p> <p>18 A. That is the first sentence under Step 2.</p> <p>19 Q. Okay.</p> <p>20 A. If the hospital does not have historical data</p> <p>21 from the last two rounds of the safety grade, the</p> <p style="text-align: right;">Page 179</p> | <p>1 Q. Okay. That's what I'm trying to understand.</p> <p>2 A. Correct.</p> <p>3 Q. Okay.</p> <p>4 So maybe you tell me in your words then,</p> <p>5 because now I'm a little confused by the change, why</p> <p>6 does a hospital get assigned limited achievement if it</p> <p>7 has an ICU and does not participate?</p> <p>8 A. They receive a score of limited achievement</p> <p>9 because we know they have an ICU, and we don't have any</p> <p>10 information that would tell us whether or not they are</p> <p>11 meeting the staffing models that Leapfrog asks hospitals</p> <p>12 to have in the ICU.</p> <p>13 Q. So why not impose some achievement and not</p> <p>14 limited achievement?</p> <p>15 A. Because the way Leapfrog's standards are set in</p> <p>16 the survey is there are clear criteria of what needs to</p> <p>17 be met for some achievement, considerable achievement,</p> <p>18 and achieved the standard. And if you don't meet the</p> <p>19 criteria for some achievement, you're in the limited</p> <p>20 achievement bucket.</p> <p>21 Q. But, again, you don't know either way whether a</p> <p style="text-align: right;">Page 181</p>                                                                                                                |

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| <p>1 given hospital is meeting some versus limited or -- I<br/> 2 forgot -- the top one, right?<br/> 3 A. Correct.<br/> 4 Q. Okay.<br/> 5 Okay. So let's go back to this document.<br/> 6 So that covers IPS Step 2.<br/> 7 The second part says, "Do we want to use a<br/> 8 different term for drastic change like large change?"<br/> 9 Why did you not like the phrase "drastic change"?<br/> 10 MS. LAWSON: Object to form.<br/> 11 BY MR. CRAIN:<br/> 12 Q. Did you not like the word "drastic change"?<br/> 13 A. I did not like the word "drastic change."<br/> 14 Q. With that now established, why did you not like<br/> 15 the phrase "drastic change"?<br/> 16 A. I'm trying to think. It felt -- it felt<br/> 17 sensational.<br/> 18 Q. Okay. What do you mean by sensational?<br/> 19 A. I personally think of the word "drastic" as<br/> 20 having sort of a sensational connotation, right. It's<br/> 21 extreme.</p> <p style="text-align: right;">Page 182</p> | <p>1 chart is revised on page 8330?<br/> 2 A. Yes.<br/> 3 Q. And that, as best I can tell, is just changing<br/> 4 to reflect the limited achievement, you know, for IPS,<br/> 5 right?<br/> 6 MS. LAWSON: And Dr. Austin, you can read --<br/> 7 feel free to read through the whole email chain if you<br/> 8 need that to refresh your recollection.<br/> 9 (Witness peruses document.)<br/> 10 THE WITNESS: Can you repeat your question,<br/> 11 please?<br/> 12 BY MR. CRAIN:<br/> 13 Q. Yeah. I'm just looking at 8330, and it looks<br/> 14 like the change on the chart is just as you noted<br/> 15 before, that IPS was already doing the impute limited<br/> 16 achievement.<br/> 17 A. Correct.<br/> 18 Q. So there's no change there, right?<br/> 19 A. That is the only change from the prior chart.<br/> 20 Q. Yeah. Sorry. There's no change to IPS under<br/> 21 this chart?</p> <p style="text-align: right;">Page 184</p> |
| <p>1 Q. Got it. Dramatic?<br/> 2 A. Dramatic. That would be a better word.<br/> 3 Q. We work with words for a living.<br/> 4 MS. LAWSON: I struggled not to interpose my<br/> 5 own.<br/> 6 BY MR. CRAIN:<br/> 7 Q. So did you feel dramatic was inaccurate or it<br/> 8 was a problem with the messaging and how it might be<br/> 9 received?<br/> 10 A. My concern was the messaging and how it would<br/> 11 be received.<br/> 12 Q. Okay.<br/> 13 MR. CRAIN: Oh, I'm sorry. Iason tells me I<br/> 14 said dramatic. No, I meant dramatic.<br/> 15 MR. TOGIAS: Oh, you meant it?<br/> 16 MR. CRAIN: Yeah.<br/> 17 MR. TOGIAS: Okay. Sorry.<br/> 18 MR. CRAIN: I meant dramatic.<br/> 19 BY MR. CRAIN:<br/> 20 Q. Let's see. Okay. So let's keep going up. Let<br/> 21 me see if there's anything else here. So you see the</p> <p style="text-align: right;">Page 183</p>                                                                                                      | <p>1 A. Correct.<br/> 2 Q. Yeah.<br/> 3 Okay. Let's set this aside. Keep it at<br/> 4 the ready.<br/> 5 MR. CRAIN: Can I get 36. I'll mark this as<br/> 6 Exhibit 16.<br/> 7 (Exhibit No. 16 was marked for<br/> 8 identification as of 9/25/2025.)<br/> 9 BY MR. CRAIN:<br/> 10 Q. So Dr. Austin, do you recognize this document?<br/> 11 A. Yes. It's an email between myself and Leapfrog<br/> 12 staff.<br/> 13 Q. You get the hang of it now, these documents.<br/> 14 And you see on the bottom right it's an<br/> 15 Armstrong-produced document, right?<br/> 16 A. Correct.<br/> 17 Q. Okay. I want to start -- just go to the bottom<br/> 18 again to the first email in the chain, and if you need a<br/> 19 minute, take it. Whenever you're ready.<br/> 20 (Witness peruses document.)<br/> 21 THE WITNESS: Yes.</p> <p style="text-align: right;">Page 185</p>                                                                   |

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| <p>1 BY MR. CRAIN:</p> <p>2 Q. Okay.</p> <p>3 So the first email on the bottom is from</p> <p>4 Ms. Campione, and it's to Ms. Danforth, you, and</p> <p>5 Ms. Joshi. Do you see that at 5:41 p.m.?</p> <p>6 A. Yes.</p> <p>7 Q. And the subject is Step 2 imputation scores.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And she says, "Hi all. I have some bad/good</p> <p>11 news. The Step 2 scores aren't what we would like.</p> <p>12 Turns out the hospitals that do the survey perform very</p> <p>13 well. The BCMA scores below will likely drop with the</p> <p>14 methodology changes, though."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Do you have any understanding today of what she</p> <p>18 meant by the Step 2 scores aren't what we would like?</p> <p>19 MS. LAWSON: Object to form. Go ahead.</p> <p>20 (Witness peruses documents.)</p> <p>21 THE WITNESS: Where I'm hesitating is my sense</p> <p style="text-align: right;">Page 186</p>                | <p>1 (Whereupon, the court reporter seeks</p> <p>2 clarification, which colloquy will not be</p> <p>3 captured on the written record.)</p> <p>4 BY MR. CRAIN:</p> <p>5 Q. Let's go up. You respond. Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And you say, "Alex, would it be easy to look at</p> <p>8 the same for first time reporters? We may have to</p> <p>9 consider the option of just assigning the score for</p> <p>10 limited achievement, which is actually consistent with</p> <p>11 how we are approaching IPS."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Okay.</p> <p>15 Does this refresh your recollection as to</p> <p>16 what she was running and why she was doing this?</p> <p>17 A. Not really.</p> <p>18 Q. Okay. It doesn't have to. That's okay.</p> <p>19 A. Okay.</p> <p>20 Q. Okay. So she responds it looks like five</p> <p>21 minutes later. She says, "Not too difficult. I would</p> <p style="text-align: right;">Page 188</p>                                                                    |
| <p>1 is she was looking at a subset of hospitals, and I don't</p> <p>2 remember what that subset of hospitals was.</p> <p>3 BY MR. CRAIN:</p> <p>4 Q. Okay.</p> <p>5 Do you remember the purpose of her running</p> <p>6 that subset?</p> <p>7 A. My recollection is it's somehow connected back</p> <p>8 to conversations with the expert panel about imputation</p> <p>9 and one of the scenarios that maybe someone suggested we</p> <p>10 look at, but I couldn't explicitly say which scenario</p> <p>11 that was.</p> <p>12 Q. So we talked a little bit about quartile,</p> <p>13 right? Do you remember that discussion?</p> <p>14 A. Uh-huh.</p> <p>15 Q. If you look at the chart right below her text,</p> <p>16 do you see it says Mean of Bottom Quartile?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And it says the CPOE, hand hygiene, and</p> <p>19 BCMA scores. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And I'll work you up the email now.</p> <p style="text-align: right;">Page 187</p> | <p>1 predict they're just slightly lower." And then you</p> <p>2 respond at the top, "Thanks. Then maybe not worth the</p> <p>3 effort."</p> <p>4 Do you see all of that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay.</p> <p>7 Do you have any recollection today about</p> <p>8 why you would say it's not worth the effort?</p> <p>9 A. What I interpreted from Alex's statement was</p> <p>10 that the results wouldn't be much different than what</p> <p>11 she had originally produced.</p> <p>12 Q. And the -- go ahead. Sorry.</p> <p>13 A. So it didn't seem worth the analytical effort</p> <p>14 to update it for something that wasn't meaningful</p> <p>15 different -- meaningfully different in terms of Leapfrog</p> <p>16 deciding how it wanted to move forward.</p> <p>17 Q. And meaningfully different in this case meaning</p> <p>18 lower, right?</p> <p>19 A. Correct. She indicated that they would be</p> <p>20 slightly lower.</p> <p>21 Q. And you all wanted the numbers to be lower,</p> <p style="text-align: right;">Page 189</p> |

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| <p>1 right?</p> <p>2 MS. LAWSON: Object to form.</p> <p>3 BY MR. CRAIN:</p> <p>4 Q. You can answer.</p> <p>5 A. There were concerns that the mean scores that</p> <p>6 we had been using for imputation had been going up</p> <p>7 considerably which created a disincentive for hospitals</p> <p>8 to actually complete the survey.</p> <p>9 Q. Yes. We saw that in the safety grade meeting,</p> <p>10 right, that there were concerns that imputation scores</p> <p>11 were creeping up?</p> <p>12 A. That was one of the noted -- yeah.</p> <p>13 Q. Right. On the slide that you drafted.</p> <p>14 A. Correct.</p> <p>15 Q. That was one of the bullets, right?</p> <p>16 A. Correct.</p> <p>17 Q. And in response to that, we saw that</p> <p>18 Dr. Pronovost suggested a quartile approach, right?</p> <p>19 MS. LAWSON: Object to form.</p> <p>20 THE WITNESS: Once again, I -- in reading the</p> <p>21 transcript, it wasn't super clear what Peter was exactly</p> <p style="text-align: right;">Page 190</p> | <p>1 9:11 p.m. This is on page 2128. Do you see it?</p> <p>2 A. Uh-huh.</p> <p>3 Q. She said, "This is sort of what I was afraid of</p> <p>4 but somehow more stark seeing the actual numbers. I do</p> <p>5 think that we need to at least go wider" -- which I</p> <p>6 understand to mean consider -- "going to limited</p> <p>7 achievement." Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 Do you understand what she is saying in</p> <p>11 this email?</p> <p>12 A. My understanding is she was indicating that the</p> <p>13 numbers aligned with what she thought might be the case</p> <p>14 and was recommending that we need to consider going to</p> <p>15 limited achievement.</p> <p>16 Q. Okay.</p> <p>17 So just to build this out a little bit, at</p> <p>18 this time, under the methodology that was governing, the</p> <p>19 imputation under Step 2 was a straight mean, not a</p> <p>20 lowest quartile mean but a straight mean, right? Do you</p> <p>21 understand what I mean?</p> <p style="text-align: right;">Page 192</p>                                                                                                                                          |
| <p>1 discussing or suggesting.</p> <p>2 BY MR. CRAIN:</p> <p>3 Q. Let me phrase it a little bit differently that</p> <p>4 I hope will be easier.</p> <p>5 At the expert panel meeting, in the</p> <p>6 transcript we saw him say the word "quartile." Fair?</p> <p>7 A. Fair.</p> <p>8 Q. Okay.</p> <p>9 And then 10 days later -- let me just</p> <p>10 double check. More than 10 days later we have</p> <p>11 Ms. Campione sending around a chart that lays out, among</p> <p>12 other things, the mean of bottom quartile. Do you see</p> <p>13 that? That's on the last page.</p> <p>14 A. Yes.</p> <p>15 Q. Okay.</p> <p>16 But the numbers are too high there, right?</p> <p>17 MS. LAWSON: Object to form.</p> <p>18 THE WITNESS: I don't know how to respond to</p> <p>19 that. I mean, all of the data are here.</p> <p>20 BY MR. CRAIN:</p> <p>21 Q. So let's go to Ms. Danforth's email of</p> <p style="text-align: right;">Page 191</p>                                                                      | <p>1 A. It was a -- there were two values that were</p> <p>2 calculated for each hospital. There was the overall</p> <p>3 mean and I believe that of -- the first time reporters</p> <p>4 in the hospital got the lower of those two values.</p> <p>5 Q. And the concern was those means were too high,</p> <p>6 right?</p> <p>7 A. The concern was that those means</p> <p>8 disincentivized hospitals to report into the survey.</p> <p>9 Q. Yes. Okay. Because they were too high, right?</p> <p>10 A. Because they would give hospitals a lot of</p> <p>11 credit when they wouldn't have to necessarily</p> <p>12 demonstrate anything for that.</p> <p>13 Q. Okay.</p> <p>14 And you say when they wouldn't have to</p> <p>15 demonstrate anything for that, but do you have any</p> <p>16 empirical knowledge of whether that credit, so to speak,</p> <p>17 would have been due as a matter of performance?</p> <p>18 A. We don't have any empirical evidence on what a</p> <p>19 hospital's performance would be when they don't report</p> <p>20 because we don't actually have those data.</p> <p>21 Q. On the measures for which you don't have data,</p> <p style="text-align: right;">Page 193</p> |

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| <p>1 right? What I mean is you have other data, like CMS</p> <p>2 data for those hospitals?</p> <p>3 A. Correct.</p> <p>4 Q. That's all I meant.</p> <p>5 So then Ms. Campione runs a different mean,</p> <p>6 right? The mean in this email is not the mean that you</p> <p>7 all had been imputing as a part of Step 2 in the prior</p> <p>8 methodology. Is that right?</p> <p>9 A. My understanding is the very bottom table --</p> <p>10 Q. Uh-huh.</p> <p>11 A. -- where it says current Step 2 means for</p> <p>12 reference are what the means had been that we were using</p> <p>13 at the time.</p> <p>14 Q. Okay.</p> <p>15 And so but the mean in the top part where</p> <p>16 it says the Mean of Bottom Quartile, am I understanding</p> <p>17 right that that's taking the bottom quartile of</p> <p>18 hospitals and calculating the mean of those hospitals?</p> <p>19 A. That's what I don't know was what sample of</p> <p>20 hospitals she was using for that calculation. I don't</p> <p>21 know if it was all hospitals or if it was a subset of</p> <p style="text-align: right;">Page 194</p> | <p>1 A. Yes.</p> <p>2 Q. And this is an email thread between you and</p> <p>3 Ms. Joshi, right?</p> <p>4 A. Yes.</p> <p>5 Q. And this, if you look at the bottom two emails</p> <p>6 on the first page, that's the emails we saw at a prior</p> <p>7 exhibit where she's sending you her draft of the notes,</p> <p>8 right?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And you say -- this is on May 14th. Do</p> <p>11 you see that date?</p> <p>12 A. Yes.</p> <p>13 Q. So it's a few days after the email we just</p> <p>14 looked at, which was dated April 22nd. Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. So this is after you've gone through the</p> <p>17 analysis of the bottom quartile mean. It's after you've</p> <p>18 gone through that email thread we just saw, right?</p> <p>19 A. Yes.</p> <p>20 Q. Okay.</p> <p>21 In between that period of April 12th and</p> <p style="text-align: right;">Page 196</p>                                         |
| <p>1 hospitals.</p> <p>2 Q. Okay.</p> <p>3 So how would it work to calculate the mean</p> <p>4 of bottom quartile for all hospitals?</p> <p>5 A. I would take the full dataset of hospitals for</p> <p>6 which we have data, identify the bottom 25 percent, and</p> <p>7 calculate the mean of that sample.</p> <p>8 Q. Okay. And do you have any reason to think</p> <p>9 that's not what she did?</p> <p>10 A. I don't have any reason to think it's not what</p> <p>11 she did, but I also don't know that is what she did.</p> <p>12 Q. Okay. Okay.</p> <p>13 Okay. So we can set that aside.</p> <p>14 MR. CRAIN: Okay. Let's go to tab 38. This</p> <p>15 will be Exhibit 17.</p> <p>16 (Exhibit No. 17 was marked for</p> <p>17 identification as of 9/25/2025.)</p> <p>18 BY MR. CRAIN:</p> <p>19 Q. Okay. Dr. Austin, you have Exhibit 17, and you</p> <p>20 see on the bottom it's an Armstrong document ending</p> <p>21 16473?</p> <p style="text-align: right;">Page 195</p>                                                                                                                            | <p>1 now May 14th, do you recall any other discussions you</p> <p>2 had with members of the expert panel about the</p> <p>3 imputation model?</p> <p>4 A. I don't remember.</p> <p>5 Q. Okay. You don't -- just to be clear, you don't</p> <p>6 remember either way?</p> <p>7 A. I don't remember either way.</p> <p>8 Q. Okay.</p> <p>9 So I want to go to the Word document here</p> <p>10 of the attachment. And do you see -- is it -- these are</p> <p>11 your revisions to the notes, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And I want to walk through a few of these. You</p> <p>14 start by at the top adding Tim Vogus to the attendees?</p> <p>15 A. Yes.</p> <p>16 Q. Any idea how you remembered he was there a</p> <p>17 month later?</p> <p>18 A. To be clear, I sent the edits back to Preeti a</p> <p>19 month later.</p> <p>20 Q. That's what the email suggests. If you look --</p> <p>21 look on page 1.</p> <p style="text-align: right;">Page 197</p> |

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| <p>1 A. But that doesn't mean I made the edits a month<br/>2 later.<br/>3 Q. Oh, so I'll represent to you that the metadata<br/>4 shows that these are your changes.<br/>5 A. Okay.<br/>6 Q. I'm trying to see if there is a comment, too.<br/>7 No. But I'll represent to you that the attachment shows<br/>8 that you -- like you inserted the track changes.<br/>9 Do you have any reason to think you didn't?<br/>10 A. No. I'm wondering about the timing of when I<br/>11 made the edits.<br/>12 Q. Got it. Okay. That I don't know as well. So<br/>13 you're saying you could have made these edits earlier?<br/>14 A. Correct.<br/>15 Q. Got it. Okay.<br/>16 Do you recall, to do these edits, did you<br/>17 watch the video of the meeting?<br/>18 A. No.<br/>19 Q. Okay. So you were going from memory, you<br/>20 think?<br/>21 A. Yes, and my own notes.</p> <p style="text-align: right;">Page 198</p>                                                                                                                           | <p>1 A. Yes.<br/>2 Q. And I won't read them because we've been<br/>3 through them, but just looking yourself at Step 1 and<br/>4 Step 2, consistent with the slide deck that we saw?<br/>5 A. Yes.<br/>6 Q. And then you say, "Leapfrog's proposal was to<br/>7 retire Step 1 of the model and use only Step 2,<br/>8 assigning hospitals the mean score for their cohort."<br/>9 Do you see that?<br/>10 A. Yes.<br/>11 Q. And then I want to skip down a bullet that you<br/>12 delete. Do you see that?<br/>13 A. Yes.<br/>14 Q. And it says, "Missy gave an example of Stewart<br/>15 Health System and said that Leapfrog's purpose by<br/>16 implementing the Step 2 imputation model is not to<br/>17 penalize hospitals or to motivate them to submit a<br/>18 survey, but they don't want to report hospitals with the<br/>19 highest scores when hospitals are not submitting the<br/>20 hospital survey."<br/>21 Do you recall why you deleted that bullet?</p> <p style="text-align: right;">Page 200</p>                   |
| <p>1 Q. And your own notes. And your own notes, would<br/>2 they have been different from the email we saw earlier<br/>3 where you sent it to and from yourself?<br/>4 A. No. That was the extent.<br/>5 Q. So I'm going to skip bullet one, which is on<br/>6 the military treatment facilities again, and I want to<br/>7 focus on your edits to bullet two. Do you see those?<br/>8 A. Yes.<br/>9 Q. Okay. And you say, "Matt provided the expert<br/>10 panel with a quick overview of the current imputation<br/>11 model approaches Leapfrog has been using and some of the<br/>12 challenges those approaches have created for issuing<br/>13 accurate grades." Do you see that?<br/>14 A. Yes.<br/>15 Q. Okay. And to the best of your recollection,<br/>16 that is an accurate statement of what occurred at the<br/>17 meeting, right?<br/>18 A. Yes.<br/>19 Q. Okay.<br/>20 Then you say, "The current imputation model<br/>21 has two steps when data are missing." Do you see that?</p> <p style="text-align: right;">Page 199</p> | <p>1 A. I believe I deleted that bullet because it felt<br/>2 like a little too micro of a note to include in a<br/>3 meeting summary.<br/>4 Q. Got it. So it was not an edit for substance?<br/>5 A. Can you define that?<br/>6 Q. Yeah. Fair enough.<br/>7 Did you delete it because you disagreed<br/>8 that anything -- with anything in that bullet?<br/>9 A. No, that was not my reason for deleting it.<br/>10 Q. Okay.<br/>11 Then let's keep going. So you then go --<br/>12 there's a bullet we looked at before. "Matt mentioned<br/>13 it's important to see whether there is an actual<br/>14 difference in hospitals' performance and whether there<br/>15 is some sort of bias in the measurement against them.<br/>16 He said to minimize the second, and if there are<br/>17 differences in hospitals' performance, we can address<br/>18 the structural issues to fix them."<br/>19 Do you see that?<br/>20 A. Yes.<br/>21 Q. And you deleted that one as well, right?</p> <p style="text-align: right;">Page 201</p> |

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| <p>1 A. Yes.</p> <p>2 Q. And similar, not to be so granular in the</p> <p>3 meetings?</p> <p>4 A. Yes.</p> <p>5 Q. And then you added a bullet and you say, "The</p> <p>6 experts' panel were in support of having hospitals share</p> <p>7 their current performance, so liked the idea of imputing</p> <p>8 the equivalent of willing to report to hospitals that do</p> <p>9 not submit a survey."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Now, you recall looking at the index of the</p> <p>13 transcript, right?</p> <p>14 A. Yes.</p> <p>15 Q. And we saw the phrase "willing" did not appear</p> <p>16 at least in the index, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Where did this line come from?</p> <p>19 A. So as mentioned, I'm not sure the expert panel</p> <p>20 would have necessarily used the term "willing to report"</p> <p>21 in their conversation. I would need to go back to the</p> <p style="text-align: right;">Page 202</p>                                                                         | <p>1 Q. Okay.</p> <p>2 And then just to go back, do you remember</p> <p>3 the chart we looked at, the drastic change chart?</p> <p>4 A. Yes.</p> <p>5 Q. You want to look at it again just so we're</p> <p>6 not -- and that is exhibit --</p> <p>7 A. Fifteen.</p> <p>8 Q. Fifteen. Let's look at 15. And we can go to</p> <p>9 the last page, 18332. Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Okay.</p> <p>12 And is it your testimony that the bottom</p> <p>13 right box is the same as this willing to report?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And the bottom right box says impute</p> <p>16 with limited achievement scores, right?</p> <p>17 A. Yes.</p> <p>18 Q. So your testimony is that at the meeting at</p> <p>19 least somebody discussed the notion of imputing limited</p> <p>20 achievement scores, maybe not by that word, and that</p> <p>21 others agreed, right?</p> <p style="text-align: right;">Page 204</p>    |
| <p>1 transcript, but my guess is that there was communication</p> <p>2 about putting them in the lowest performance category.</p> <p>3 Q. Okay. So the phrase you would be looking for</p> <p>4 is lowest performance category?</p> <p>5 A. Or some context of that.</p> <p>6 Q. Okay. And presumably you would want to review</p> <p>7 the whole thing before committing one way or another?</p> <p>8 A. Correct.</p> <p>9 Q. Fair enough.</p> <p>10 Okay. So to the best of your</p> <p>11 recollection -- so strike that.</p> <p>12 When creating the notes, you would have</p> <p>13 wanted to be accurate, right?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. And so just looking at these notes and</p> <p>16 your edits, your best understanding of these edits is</p> <p>17 that at some point somebody discussed the concept of</p> <p>18 giving them the willing to report grade, right?</p> <p>19 A. Correct.</p> <p>20 Q. Okay.</p> <p>21 A. And that others agreed with that point of view.</p> <p style="text-align: right;">Page 203</p> | <p>1 MS. LAWSON: Object to form.</p> <p>2 THE WITNESS: From my notes here, it indicates</p> <p>3 that the expert panel supported the idea of assigning</p> <p>4 the bottom performance category.</p> <p>5 BY MR. CRAIN:</p> <p>6 Q. Okay. And do you recall -- strike that.</p> <p>7 Okay. You can set that aside.</p> <p>8 MR. CRAIN: Let's go to tab 43. This is going</p> <p>9 to be Exhibit 18.</p> <p>10 (Exhibit No. 18 was marked for</p> <p>11 identification as of 9/25/2025.)</p> <p>12 BY MR. CRAIN:</p> <p>13 Q. All right. This is an email. The top one is</p> <p>14 from Ms. Binder to Ms. Campione, cc'ing you and</p> <p>15 Ms. Danforth. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And do you recognize this document?</p> <p>18 MS. LAWSON: You can take a minute to read</p> <p>19 through it all.</p> <p>20 THE WITNESS: The email or the --</p> <p>21 BY MR. CRAIN:</p> <p style="text-align: right;">Page 205</p> |

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| <p>1 Q. Let's start with the email. Do you recognize</p> <p>2 the email?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. You recall it today?</p> <p>5 A. Can you clarify that?</p> <p>6 Q. Yeah. Do you recall receiving it?</p> <p>7 A. I do recall Alex putting together a document</p> <p>8 with the proposed changes to the methodology that would</p> <p>9 go out for public comment.</p> <p>10 Q. And is that the document, at least in edited</p> <p>11 form, on page 9813?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And do you recall did any members of the</p> <p>14 expert panel review and revise the document?</p> <p>15 A. I don't remember explicitly if we shared this</p> <p>16 document with them.</p> <p>17 Q. Yeah. Okay. I mean -- I'll move on from that.</p> <p>18 I'll move on from that.</p> <p>19 So the attachment, do you see it says</p> <p>20 Request for Public Comment?</p> <p>21 A. Yes.</p> <p style="text-align: right;">Page 206</p> | <p>1 But go down to the third line. The</p> <p>2 original text said: "The panel recognized that the</p> <p>3 current imputation method, which is used to fill in</p> <p>4 missing data among hospitals that did not complete the</p> <p>5 most recent Leapfrog survey, have influenced hospital</p> <p>6 survey participation and may no longer be valid."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. She changed it to: "The panel advised</p> <p>10 that Leapfrog modify the current imputation method,</p> <p>11 which is used to fill in missing data among hospitals</p> <p>12 that did not complete the most recent Leapfrog survey."</p> <p>13 Is that consistent with your recollection</p> <p>14 of who was advising? Did the panel actually advise</p> <p>15 Leapfrog to change the methodology?</p> <p>16 MS. LAWSON: Object to form but go ahead.</p> <p>17 THE WITNESS: The Leapfrog Group has full</p> <p>18 decision-making authority around its ratings and rating</p> <p>19 systems and methodologies. So myself and all of the</p> <p>20 expert panels are acting in an advisory capacity to</p> <p>21 Leapfrog for that.</p> <p style="text-align: right;">Page 208</p> |
| <p>1 Q. Do you recall reviewing the document?</p> <p>2 A. I don't recall.</p> <p>3 Q. Okay. Just your best answer. That's all we</p> <p>4 ask.</p> <p>5 So I want to go -- I'll represent to you on</p> <p>6 page 9814 these are Ms. Binder's tracked change edits to</p> <p>7 the documents, and I want to just note a few things that</p> <p>8 she tweaked. So if you go to the second -- tell me when</p> <p>9 you're ready. No worries.</p> <p>10 MS. LAWSON: The font is so small.</p> <p>11 MR. CRAIN: Yeah, it is small. Sorry about</p> <p>12 that.</p> <p>13 BY MR. CRAIN:</p> <p>14 Q. Are you good, Dr. Austin?</p> <p>15 A. Yes.</p> <p>16 Q. Okay.</p> <p>17 So if you go to the second paragraph, to</p> <p>18 ensure, do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. And I apologize. It's in black and white, too,</p> <p>21 which makes it harder.</p> <p style="text-align: right;">Page 207</p>                                      | <p>1 BY MR. CRAIN:</p> <p>2 Q. Okay.</p> <p>3 So is this accurate, this change?</p> <p>4 A. Yeah, that change would be accurate.</p> <p>5 Q. Okay.</p> <p>6 And then if we go down, I want you to look</p> <p>7 at -- can you read what she cut in the next paragraph?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. "Note that Step 1 imputation will be</p> <p>10 temporarily paused" -- oh, sorry. That's not the one I</p> <p>11 wanted.</p> <p>12 Go back up, excuse me, to the prior</p> <p>13 paragraph. She cut a sentence: "The collective</p> <p>14 recommendation was for Leapfrog to modify its current</p> <p>15 imputation approach to encourage survey participation</p> <p>16 and to improve user's confidence in the data that are</p> <p>17 used to calculate scores."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Was that accurate?</p> <p>21 MS. LAWSON: Just to be clear, you're asking</p> <p style="text-align: right;">Page 209</p>                                                                                                                                                                                                                                        |

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| <p>1 was the sentence that she struck, that the collective</p> <p>2 recommendation, was that sentence accurate?</p> <p>3 MR. CRAIN: Correct. Not the strike. I don't</p> <p>4 want to know if the strike was accurate. I want to know</p> <p>5 if the sentence as written was accurate.</p> <p>6 THE WITNESS: Okay.</p> <p>7 (Witness peruses document.)</p> <p>8 THE WITNESS: Yes.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <p>1 sounds like nobody participates in the survey and our on</p> <p>2 TEP questions our validity. Did you have that same</p> <p>3 reaction reading it?</p> <p>4 A. That wasn't my own read of that sentence.</p> <p>5 Q. What was your read of the sentence?</p> <p>6 A. That we wanted to improve confidence in the</p> <p>7 data that we were using and the score.</p> <p>8 Q. And to encourage participation?</p> <p>9 A. That would be a byproduct of that change.</p> <p>10 Q. How would that be a byproduct?</p> <p>11 A. If we're no longer imputing the mean scores, it</p> <p>12 might encourage some hospitals, specifically those that</p> <p>13 are performing better than the mean, to actually come in</p> <p>14 and share their performance. I take that back. They</p> <p>15 would have been already incentivized to do that.</p> <p>16 It would incentivize hospitals that didn't</p> <p>17 report and were below the mean to come in and report.</p> <p>18 Q. Because the new score would be lower than their</p> <p>19 performance?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. And the new score would not necessarily</p> |
| <p>9 BY MR. CRAIN:</p> <p>10 Q. Okay.</p> <p>11 Now, I want to go to her email. And what</p> <p>12 she says is -- are you at the top?</p> <p>13 A. Yes.</p> <p>14 Q. The second paragraph: "I don't think we need</p> <p>15 the sentence about influencing survey participation and</p> <p>16 giving people confidence in validity. It sounds</p> <p>17 defensive, like nobody participates in the survey and</p> <p>18 our own TEP questions our validity. Actually, this</p> <p>19 change affects a minority of hospitals and optimizes the</p> <p>20 grade's already strong validity. Anyway, it's not</p> <p>21 necessary to get into the why. It's enough that the</p> <p style="text-align: right;">Page 210</p>                                                                                                                                                                       | <p>Page 212</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p>1 expert panel advised us to do the imputation in a</p> <p>2 different way and not treat older, better data in an</p> <p>3 equivalent way to new data."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay.</p> <p>7 And then did you agree that it sounded</p> <p>8 defensive -- that's my first question -- the changes</p> <p>9 that she cut?</p> <p>10 MS. LAWSON: Object to form.</p> <p>11 I think, just to clarify, do you agree that</p> <p>12 the sentence she cut sounded defensive?</p> <p>13 MR. CRAIN: Correct.</p> <p>14 (Witness peruses document).</p> <p>15 THE WITNESS: That wouldn't be the word I would</p> <p>16 use to describe that sentence.</p> <p>17 BY MR. CRAIN:</p> <p>18 Q. What word would you use?</p> <p>19 A. Explanatory.</p> <p>20 Q. Okay.</p> <p>21 And do you agree -- I mean, she says it</p> <p style="text-align: right;">Page 211</p> | <p>1 reflect their actual performance?</p> <p>2 A. It's undetermined whether it would reflect</p> <p>3 their performance or not.</p> <p>4 Q. Because you don't know either way?</p> <p>5 A. Because we don't know, exactly, where each</p> <p>6 hospital is at.</p> <p>7 Q. Yes. Okay.</p> <p>8 And then I want to go back to her email.</p> <p>9 And she says, "I think when we respond to the public</p> <p>10 comments, we can be more pointed and specific about the</p> <p>11 survey and imputation reasoning, if necessary. The</p> <p>12 comments will give us a good gauge on the extent to</p> <p>13 which we need to reveal all our reasoning and whether</p> <p>14 the expert panelists will truly stand up for it when</p> <p>15 push comes to shove."</p> <p>16 Do you see that paragraph?</p> <p>17 A. Yes.</p> <p>18 Q. What's your understanding of what she meant</p> <p>19 here?</p> <p>20 A. That the -- putting out the proposed changes</p> <p>21 wasn't the time to share all of the logic which led to</p> <p style="text-align: right;">Page 213</p>                                                                 |

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| <p>1 the decision to propose this, that that could come out</p> <p>2 during the responses to the comments.</p> <p>3 Q. And do you have any understanding by what she</p> <p>4 means of whether the expert panelists will truly stand</p> <p>5 up for it when push comes to shove?</p> <p>6 A. I believe she meant that there could be some</p> <p>7 pushback from hospitals about this proposed change and</p> <p>8 would the expert panel stand with Leapfrog in this -- in</p> <p>9 moving forward in this direction.</p> <p>10 Q. Had the expert panel ever not stood with</p> <p>11 Leapfrog in a change to the methodology?</p> <p>12 A. No.</p> <p>13 Q. Okay. So any understanding as to why this</p> <p>14 might be different?</p> <p>15 A. This change was the most direct in confronting</p> <p>16 hospitals about their lack of participation in the</p> <p>17 survey.</p> <p>18 Q. What do you mean by direct?</p> <p>19 A. In the past, all the imputation models, from</p> <p>20 ignoring the measure to using secondary data sources to</p> <p>21 calculating, assigning you the national mean didn't</p> <p style="text-align: right;">Page 214</p>                                        | <p>1 transparent but didn't meet the standards that Leapfrog</p> <p>2 had set.</p> <p>3 So we don't have -- can you repeat your</p> <p>4 question again, please?</p> <p>5 Q. Sure. Sure.</p> <p>6 I said -- you said -- so you talked about</p> <p>7 one goal was the confidence of the data, right, and what</p> <p>8 I asked was how does it improve the confidence of the</p> <p>9 data to automatically assign nonparticipating hospitals</p> <p>10 limited achievement on the four imputed metrics?</p> <p>11 A. So when we were calculating the national mean</p> <p>12 for hospitals, we don't necessarily have any information</p> <p>13 that that hospital is an average performer in that area.</p> <p>14 We are assuming they are average, and in a normal</p> <p>15 distribution, half of hospitals are below the average.</p> <p>16 So because we don't know anything about the</p> <p>17 hospital and their performance in that way, in some ways</p> <p>18 this idea of willing to report actually better reflects</p> <p>19 what we do know.</p> <p>20 Q. Better -- okay.</p> <p>21 So I want to go and look at -- let's get</p> <p style="text-align: right;">Page 216</p> |
| <p>1 necessarily direct -- confront a hospital to say you're</p> <p>2 not submitting data and that's a problem with us.</p> <p>3 We gave them sort of a pass. We found</p> <p>4 another way to give them a score. So this was the most</p> <p>5 direct confrontation on that.</p> <p>6 Q. Was that the goal of the change?</p> <p>7 A. I think the goal was multifold.</p> <p>8 Q. Okay.</p> <p>9 A. I think one, as mentioned, was to improve the</p> <p>10 confidence of the data in terms of what data we were</p> <p>11 using to calculate the scores. A secondary goal was to</p> <p>12 increase or incentivize survey participation.</p> <p>13 Q. Okay.</p> <p>14 And then the confidence of the data, how</p> <p>15 does it improve the confidence of the data to</p> <p>16 automatically assign nonparticipating hospitals limited</p> <p>17 achievement on the four imputed measures?</p> <p>18 A. In the framework of the idea being that if we</p> <p>19 don't have any information about your hospital -- so the</p> <p>20 historical use of willing to report, the idea was that</p> <p>21 was to acknowledge hospitals who were willing to be</p> <p style="text-align: right;">Page 215</p> | <p>1 concrete with this.</p> <p>2 MR. CRAIN: So this is Exhibit 19.</p> <p>3 (Exhibit No. 19 was marked for</p> <p>4 identification as of 9/25/2025.)</p> <p>5 BY MR. CRAIN:</p> <p>6 Q. So Dr. Austin, do you recognize this page, at</p> <p>7 least generally?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. This is the Delray Medical Center</p> <p>10 Hospital Safety Grade page, right?</p> <p>11 A. Yes.</p> <p>12 Q. Have you ever seen Delray in particular?</p> <p>13 A. No.</p> <p>14 Q. Okay. But you know generally the format of how</p> <p>15 these pages work, right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. So it's not necessarily the best because</p> <p>18 it's a paper, and you can see it on a website instead,</p> <p>19 but you get the gist, right?</p> <p>20 A. Yes.</p> <p>21 Q. So I want to go down the page. You see at the</p> <p style="text-align: right;">Page 217</p>                                                                                                                                                                                                                                                                                                |

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| <p>1 top it says big "F," right, for Delray?</p> <p>2 A. Yes.</p> <p>3 Q. Okay.</p> <p>4 And I want to go to page 2. And so this is</p> <p>5 specifically on the handwashing measure, right?</p> <p>6 A. Yes.</p> <p>7 Q. And if you go just back to page 1, and it's a</p> <p>8 little hard to tell because -- but if you line up the</p> <p>9 handwashing at the top of page 2 with the gas gauge, do</p> <p>10 you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And there's a red gas gauge above handwashing,</p> <p>13 right? And then it says: The hospital's score is 15,</p> <p>14 right?</p> <p>15 A. Yes.</p> <p>16 Q. And it says: Worst hospital's score is 15,</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. And then it says: What safer hospitals do.</p> <p>20 And before I go into that, I just want to</p> <p>21 clarify again. Did you have any role in editing this</p> <p style="text-align: right;">Page 218</p>                                                                                                                       | <p>1 meeting Leapfrog's standard for hand hygiene, and,</p> <p>2 therefore, in the absence of information, we're going to</p> <p>3 assign the equivalent of willing to report, which is now</p> <p>4 limited achievement.</p> <p>5 Q. Even though they're not willing to report,</p> <p>6 right? Correct?</p> <p>7 A. Correct.</p> <p>8 Q. Yeah.</p> <p>9 So how does a consumer looking at this</p> <p>10 page, though, feel confidence that the grade is</p> <p>11 accurate?</p> <p>12 A. I haven't studied how consumers review and</p> <p>13 interpret this information, so I don't know if I can</p> <p>14 speak to how they would interpret this.</p> <p>15 Q. You buy things, right?</p> <p>16 A. I do.</p> <p>17 Q. And do you look at consumer reports, other</p> <p>18 ratings types for products?</p> <p>19 A. Yes.</p> <p>20 Q. Do you trust that the rating is accurate that</p> <p>21 those reports provide?</p> <p style="text-align: right;">Page 220</p>                                                                                             |
| <p>1 website, not specific to Delray but the safety grade</p> <p>2 pages, generally?</p> <p>3 A. I did review and help edit the descriptions</p> <p>4 that are -- the handwashing and what safer hospitals do.</p> <p>5 Q. Okay. So you're familiar with this language?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 And it says: "What safer hospitals do.</p> <p>9 Hospitals provide training and implement policies to</p> <p>10 make sure all hospital staff cleans their hands before</p> <p>11 touching a patient." Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 Now, you said a goal of the new</p> <p>15 methodology, the first goal was -- let me just go back</p> <p>16 to what it was. It's confidence in the data, right?</p> <p>17 A. Correct.</p> <p>18 Q. How does putting Delray at a 15 for handwashing</p> <p>19 give confidence in the data?</p> <p>20 A. Once again, we don't have any information from</p> <p>21 Delray Medical Center about how they are doing toward</p> <p style="text-align: right;">Page 219</p> | <p>1 MS. LAWSON: Object to form. Go ahead.</p> <p>2 THE WITNESS: I think it depends on the source.</p> <p>3 BY MR. CRAIN:</p> <p>4 Q. Fair enough. Give me one that you trust.</p> <p>5 A. I can't think of one offhand, but I'd be more</p> <p>6 inclined to trust something that was an individual</p> <p>7 reviewing products against similar products.</p> <p>8 Q. Okay. I'm not sure I understood that, but can</p> <p>9 you clarify? Sorry.</p> <p>10 A. Yeah. Meaning like if I wanted to buy a new</p> <p>11 coffee maker --</p> <p>12 Q. Yeah.</p> <p>13 A. -- I would be more inclined to trust someone</p> <p>14 who has reviewed coffee maker A against B, C, and D --</p> <p>15 Q. Okay. Got it.</p> <p>16 A. -- than someone just chiming in about coffee</p> <p>17 maker A and what their experience was.</p> <p>18 Q. Okay. That's -- okay. We can work with that</p> <p>19 one.</p> <p>20 So my question is if you have coffee maker</p> <p>21 -- in your first analogy, right, coffee maker A, B, C,</p> <p style="text-align: right;">Page 221</p> |

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| <p>1 and D, he's reviewing them all. If you find out that<br/> 2 for a subset of the coffee makers he's giving you<br/> 3 information about the quality of the product without<br/> 4 actually having reviewed it, does that instill<br/> 5 confidence in you or no?<br/> 6 A. It might give me pause.<br/> 7 Q. And how is that different from what we see<br/> 8 here?<br/> 9 A. Can you clarify that question?<br/> 10 Q. Yeah. So you said it might give you pause if<br/> 11 for certain of the coffee makers the ultimate rating<br/> 12 included measures for which the reviewer didn't have any<br/> 13 information, right? How is that different from<br/> 14 handwashing for Delray?<br/> 15 A. So I think what's notable is that the score has<br/> 16 an asterisk, which explains, I believe, how that score<br/> 17 was arrived at.<br/> 18 Q. So we'll come to the asterisk in a second. I'm<br/> 19 trying to get a sense of you said one of the goals of<br/> 20 the new model was to instill confidence in the data.<br/> 21 And you said another goal was to encourage</p> <p style="text-align: right;">Page 222</p> | <p>1 A. That's what we're representing here is that we<br/> 2 have no information. That's what the asterisk is<br/> 3 telling you is we have no information.<br/> 4 Q. Okay. So the asterisk, you're saying -- so<br/> 5 does the asterisk undermine the score?<br/> 6 A. No. The asterisk is saying the hospital<br/> 7 declined to report their performance, so the score<br/> 8 reflects the lack of information available.<br/> 9 Q. So then how can the consumer feel confident<br/> 10 that the ultimate grade is accurate?<br/> 11 A. So Leapfrog is fully transparent with the<br/> 12 information it presents. A patient can review each of<br/> 13 the measures, decides what's important to them, what's<br/> 14 not important to them, and make decisions based on that<br/> 15 and other pieces of information that they may look for<br/> 16 and acquire.<br/> 17 Q. So I take the talking point. Do -- when you<br/> 18 say they're fully transparent, is that referring to the<br/> 19 methodology document that we looked at as Exhibit 3?<br/> 20 A. That is the methodology document. That is how<br/> 21 each of the individual scores on each of the individual</p> <p style="text-align: right;">Page 224</p> |
| <p>1 participation, right? How does it instill confidence in<br/> 2 data to represent that a hospital got the lowest score<br/> 3 on hand hygiene when you have no information about their<br/> 4 performance otherwise? Doesn't that undermine<br/> 5 confidence in the data?<br/> 6 MS. LAWSON: Object to form.<br/> 7 MR. CRAIN: Two questions.<br/> 8 MS. LAWSON: Two questions.<br/> 9 BY MR. CRAIN:<br/> 10 Q. You can pick either one or I can restart,<br/> 11 either or.<br/> 12 A. Can you restart?<br/> 13 Q. Sure. So -- that's a fair ask.<br/> 14 So I want to understand how does it instill<br/> 15 confidence in data to represent that a hospital got the<br/> 16 lowest score in hand hygiene where this page says<br/> 17 hospitals that are safer provide training and implement<br/> 18 policies to make sure all hospital staff cleans their<br/> 19 hands before touching a patient. How does it instill<br/> 20 confidence in data to give a hospital the lowest score<br/> 21 on that metric with no information?</p> <p style="text-align: right;">Page 223</p>                                              | <p>1 measures make up the composite.<br/> 2 Q. So let's take a different hospital. Delray,<br/> 3 you understand, got Step 2 imputation, right?<br/> 4 A. Yes.<br/> 5 Q. If I showed you a hospital for Step 1<br/> 6 imputation, is the website any different?<br/> 7 A. I don't know the answer to that.<br/> 8 Q. Okay. I will represent to you it's the same<br/> 9 asterisk. How does a consumer know whether a<br/> 10 nonparticipating hospital got Step 1 or Step 2<br/> 11 imputation?<br/> 12 A. I don't know enough about what those different<br/> 13 scenarios are on the website, so I can't.<br/> 14 Q. Do you have any reason to believe that Leapfrog<br/> 15 actually communicates to the consumer that Wood hospital<br/> 16 or Austin hospital got Step 1, as opposed to Crain<br/> 17 hospital Step 2?<br/> 18 MS. LAWSON: Object to form. Go ahead.<br/> 19 THE WITNESS: To answer that, I would need to<br/> 20 see an example of a hospital that had Step 1 imputation.<br/> 21 BY MR. CRAIN:</p> <p style="text-align: right;">Page 225</p>                                                                                                                                                                |

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| <p>1 Q. Okay. But you have no reason today to think<br/>2 that there is any difference in the presentation?<br/>3 A. I don't know whether there is or is not.<br/>4 Q. Okay.<br/>5 Where on the page in front of you does it<br/>6 say how the score was assigned?<br/>7 A. Can you clarify that question?<br/>8 Q. Yes.<br/>9 So you pointed to the asterisk on this<br/>10 package, right, and it says a score was assigned, right?<br/>11 A. Correct.<br/>12 Q. And you said you had a role in at least<br/>13 reviewing that asterisk, right?<br/>14 A. I don't know that that's true or not true.<br/>15 Q. Okay. You said you had a role in reviewing<br/>16 something on this page.<br/>17 A. I reviewed the descriptions underneath<br/>18 handwashing and what safer hospitals do.<br/>19 Q. Got it. But you don't recall whether you<br/>20 reviewed the asterisk?<br/>21 A. Correct.</p> <p style="text-align: right;">Page 226</p> | <p>1 Q. Is that what you're saying?<br/>2 A. I don't know how people read and interpret<br/>3 things.<br/>4 Q. Okay.<br/>5 Do you think this is a clear explication of<br/>6 how the score was assigned?<br/>7 A. I think it puts in words what Leapfrog did. It<br/>8 puts Step 2 into words.<br/>9 Q. How does it put Step 2 into words?<br/>10 A. There was a lack of information available --<br/>11 Q. Uh-huh.<br/>12 A. -- so a score was assigned to reflect the lack<br/>13 of information.<br/>14 Q. But a score could be assigned in any way,<br/>15 right? How would a consumer know that it was assigned<br/>16 with an automatic limited achievement?<br/>17 MS. LAWSON: Object to form.<br/>18 THE WITNESS: From the text that's there and<br/>19 the asterisk, I'm not sure they would know how that was<br/>20 assigned.<br/>21 BY MR. CRAIN:</p> <p style="text-align: right;">Page 228</p>                                     |
| <p>1 Q. Okay.<br/>2 So it says a score was assigned, right?<br/>3 Where does it say how the score was assigned?<br/>4 A. Can you clarify the "how"?<br/>5 Q. Sure. I'll give you an example. This was --<br/>6 let's say a hospital is assigned a score through Step 1.<br/>7 Where would it say that on this page?<br/>8 A. I don't know where Leapfrog chose to put that.<br/>9 Q. Okay.<br/>10 Where does it say that Delray received a<br/>11 score under Step 2?<br/>12 A. That's what the asterisk is noting is that it<br/>13 was -- they declined to report their performance, so a<br/>14 score was assigned to reflect the lack of information<br/>15 available.<br/>16 Q. So you're saying that somebody reading that<br/>17 will understand that the assignment of the score was<br/>18 under Step 2?<br/>19 MS. LAWSON: Object to form.<br/>20<br/>21 BY MR. CRAIN:</p> <p style="text-align: right;">Page 227</p>                | <p>1 Q. Okay. Thank you.<br/>2 And are you aware of any other page on<br/>3 Leapfrog's website where that's explained besides<br/>4 Exhibit 3, the methodology document?<br/>5 A. I don't know if it is or not.<br/>6 Q. Okay.<br/>7 MR. CRAIN: Okay. Let's -- let's see. How<br/>8 long have we been going? About an hour. Are you good<br/>9 to keep going, or do you want a break?<br/>10 THE WITNESS: Yep. I'm good.<br/>11 MS. LAWSON: I was going to say can we take a<br/>12 quick break?<br/>13 MR. CRAIN: Yeah, that's fine. It's been about<br/>14 an hour. It's not an endurance test.<br/>15 THE VIDEOGRAPHER: This marks the end of media<br/>16 unit number five. We're off the record. The time is<br/>17 2:13 p.m.<br/>18 (Whereupon a short break was had, after<br/>19 which the proceedings continued as<br/>20 follows:)<br/>21 THE VIDEOGRAPHER: This marks the beginning of</p> <p style="text-align: right;">Page 229</p> |

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| <p>1 media unit number six. We're going back on record. The</p> <p>2 time is 2:38 p.m.</p> <p>3 BY MR. CRAIN:</p> <p>4 Q. So Dr. Austin, we were talking about the</p> <p>5 website, and I think that's what you have in your hand.</p> <p>6 You can put that aside for now. We're going to go back</p> <p>7 to what we were talking about before we went down the</p> <p>8 website rabbit hole.</p> <p>9 You recall we were looking at Ms. Binder's</p> <p>10 edits to the -- the public comment document. Do you</p> <p>11 recall that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 I just want to show you another email.</p> <p>15 MR. CRAIN: This will be Exhibit 20.</p> <p>16 (Exhibit No. 20 was marked for</p> <p>17 identification as of 9/25/2025.)</p> <p>18 BY MR. CRAIN:</p> <p>19 Q. All right. Dr. Austin, you see the document,</p> <p>20 the email at the top is from you?</p> <p>21 A. Yes.</p> <p style="text-align: right;">Page 230</p>                                                                                                 | <p>1 Q. And Patrick refers to Dr. Romano?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. Both of whom have been involved with</p> <p>4 Leapfrog for many years, right?</p> <p>5 A. Correct.</p> <p>6 Q. And you respond at 4:25. Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And you say, "My only note is the "why" has</p> <p>9 been edited out the explanation. So you don't really</p> <p>10 explain why this change is being done. But it reads</p> <p>11 fine. No concerns." Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. So you noted that the "why" was edited out,</p> <p>14 right?</p> <p>15 A. Yes.</p> <p>16 Q. Would you have preferred to keep it in?</p> <p>17 A. Prefer is, perhaps, a strong term. The</p> <p>18 communication is coming from The Leapfrog Group, so they</p> <p>19 get the final call on what it says. I thought it was --</p> <p>20 it would be stronger to sort of explain why we were</p> <p>21 doing this.</p> <p style="text-align: right;">Page 232</p> |
| <p>1 Q. Okay. Do you recognize this email thread?</p> <p>2 A. Yeah. It's a continuation of the prior one.</p> <p>3 Q. Yeah, the one -- the prior one being where</p> <p>4 Ms. Binder gave her comments, right?</p> <p>5 A. Correct.</p> <p>6 Q. And do you see Ms. Danforth forwards you</p> <p>7 Ms. Binder's email that we were looking at before, and</p> <p>8 she says, "Hi, Matt. Since she mostly updated the parts</p> <p>9 Peter and Patrick helped with, you can take a look and</p> <p>10 let us know if you have any concerns? We'd love to get</p> <p>11 this out Monday or Tuesday next week."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. First of all, does this refresh your</p> <p>15 recollection as to whether Peter and Patrick helped with</p> <p>16 this document?</p> <p>17 A. Yeah. I will take it at its value or face</p> <p>18 value. That's what it says, so that's what they had</p> <p>19 done.</p> <p>20 Q. And Peter refers to Dr. Pronovost?</p> <p>21 A. Correct.</p> <p style="text-align: right;">Page 231</p> | <p>1 Q. So you thought -- okay. Got it.</p> <p>2 And why did you think it would be stronger</p> <p>3 to explain why you were doing it?</p> <p>4 A. I think generally people like a context to why</p> <p>5 something is being done.</p> <p>6 Q. Would it have been more transparent to explain</p> <p>7 the reasoning?</p> <p>8 A. I don't know if transparent is the word I would</p> <p>9 use for that. It would have been more complete.</p> <p>10 Q. Okay.</p> <p>11 Okay. You can set that one aside.</p> <p>12 Let's see. So just going back to the</p> <p>13 comment document, right, that we saw. You're aware that</p> <p>14 it was issued to the public, right?</p> <p>15 A. Yes.</p> <p>16 Q. And you're aware that the public commented on</p> <p>17 the proposal, right?</p> <p>18 A. Yes.</p> <p>19 Q. Did you have any role in reviewing the</p> <p>20 comments?</p> <p>21 A. I don't remember.</p> <p style="text-align: right;">Page 233</p>                                |

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| <p>1 Q. Okay. Do you remember anything about the<br/>2 comments generally?<br/>3 A. I don't.<br/>4 Q. Okay. Let's take a look at some and just see<br/>5 if it jogs your memory.<br/>6 MR. CRAIN: Iason, can you give me 45.<br/>7 This will be Exhibit 21.<br/>8 (Exhibit No. 21 was marked for<br/>9 identification as of 9/25/2025.)<br/>10 BY MR. CRAIN:<br/>11 Q. Okay. Exhibit 21. So take a look at this<br/>12 document, Dr. Austin. Do you recognize it at all?<br/>13 A. I do not.<br/>14 Q. Okay. I'm just going to read -- this is an<br/>15 email from the Leapfrog help desk to Ms. Campione. I'm<br/>16 just going to read -- do you see down the page it says<br/>17 Becky Wenthold?<br/>18 A. Yes.<br/>19 Q. And she said, "I was [sic.] disappointed with<br/>20 the 2024 proposed changes. These changes will penalize<br/>21 hospitals that do not submit a Leapfrog survey. The<br/>Page 234</p>                                                                                                                        | <p>1 produced something and said I had reviewed it, it's<br/>2 probably true, but I don't remember reviewing the<br/>3 comments.<br/>4 Q. Okay. It's possible but you just don't have a<br/>5 recollection?<br/>6 A. Correct.<br/>7 Q. Okay.<br/>8 And fair to say you disagree with what I<br/>9 read, with her comment, or no?<br/>10 MS. LAWSON: Object to form but go ahead.<br/>11 BY MR. CRAIN:<br/>12 Q. I can rephrase if it's helpful.<br/>13 A. Could you rephrase?<br/>14 Q. Yeah.<br/>15 Is there any portion of what I read to you<br/>16 from her comment that you agree with?<br/>17 A. Of the sentences you've read or the ones that<br/>18 go beyond that?<br/>19 Q. Will your answer change?<br/>20 A. It will.<br/>21 Q. Okay. Start with the sentences I've read.<br/>Page 236</p>                                                                                                                                                                                                                                                        |
| <p>1 public will not understand nor dig into the methodology<br/>2 of these grades, and hospitals will be falsely<br/>3 represented with a lower grade because they choose not<br/>4 to complete a survey. The survey is extremely time<br/>5 intensive and, in a time when hospitals are barely<br/>6 breaking even financially, they do not have the<br/>7 resources to commit to this survey."<br/>8 Do you see that?<br/>9 A. Yes.<br/>10 Q. You don't recall comments to this effect?<br/>11 A. I do not remember reviewing Ms. Wenthold's<br/>12 comments.<br/>13 Q. Do you recall any other comments?<br/>14 A. I don't remember reviewing the comments.<br/>15 Q. Do you recall comments in favor of the change?<br/>16 A. I don't remember seeing the comments that came<br/>17 in from the public comment period.<br/>18 Q. Okay. So just to close the loop, you have no<br/>19 memory either way?<br/>20 A. I have no memory of seeing them, but I see a<br/>21 lot of information and a lot of -- so if someone<br/>Page 235</p> | <p>1 A. The sentences you have read, obviously, the<br/>2 first sentence is her own opinion of what she sort of<br/>3 sees the situation as. I don't disagree that the<br/>4 changes will penalize hospitals that don't submit a<br/>5 Leapfrog survey.<br/>6 Q. Okay.<br/>7 A. Her statement about the public won't understand<br/>8 or dig into the methodology of these grades, I'm not<br/>9 sure her nor I really know that to be the truth.<br/>10 Q. Okay.<br/>11 A. Hospitals will be falsely represented with a<br/>12 lower grade I don't think is necessarily a truthful<br/>13 statement.<br/>14 Q. Is it possible because you don't know the<br/>15 actual performance of nonrepresenting hospitals --<br/>16 nonparticipating hospitals, excuse me?<br/>17 A. Correct. So if she said possibly represented<br/>18 with a lower grade.<br/>19 Q. So let me ask it this way. Is it possible that<br/>20 at least some hospitals will be falsely represented with<br/>21 a lower grade than they otherwise would achieve based on<br/>Page 237</p> |

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| <p>1 performance?</p> <p>2 A. Right. So imputation by definition is trying</p> <p>3 to estimate performance, and there is almost, by</p> <p>4 definition, going to be some error, and that error may</p> <p>5 be in the measured entity's favorite. It may be in the</p> <p>6 measured entity's unfavor or disfavor.</p> <p>7 But, I mean, it's imputation, right. So we</p> <p>8 don't know the answer. So, therefore, we're trying to</p> <p>9 estimate or guess an answer. So by definition,</p> <p>10 imputation is going to have an error associated with it.</p> <p>11 So when we were imputing higher scores with</p> <p>12 a means for many hospitals, there was an error</p> <p>13 associated with that as well.</p> <p>14 Q. So it's your testimony that imputation is an</p> <p>15 estimation of actual performance?</p> <p>16 A. Correct.</p> <p>17 Q. And is that true with regard to the automatic</p> <p>18 assignment of limited achievement?</p> <p>19 A. If we're imputing a score like we were doing</p> <p>20 with limited achievement, there is the possibility for</p> <p>21 error.</p> <p style="text-align: right;">Page 238</p> | <p>1 A. Correct.</p> <p>2 Q. So you are saying that's an estimation of their</p> <p>3 actual performance on handwashing?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And that, again, is based on no data to</p> <p>6 support it, right?</p> <p>7 A. That is based on a lack of data.</p> <p>8 Q. Yes. Okay. But it's an estimate, right?</p> <p>9 A. It's an estimate.</p> <p>10 Q. Okay.</p> <p>11 Okay. Let's go back to the comment.</p> <p>12 A. Okay. This extremely time intensive, once</p> <p>13 again, extremely is a relative term, so I don't know how</p> <p>14 Ms. Wenthold would define extremely.</p> <p>15 Q. How would you characterize the burden?</p> <p>16 A. What I hear from hospitals or I've heard from</p> <p>17 hospitals is that it takes about 40-person hours to</p> <p>18 complete it the first time but that in future years, as</p> <p>19 hospitals refine their internal processes for reporting,</p> <p>20 that that burden decreases.</p> <p>21 Q. Okay. And which hospitals have you heard that</p> <p style="text-align: right;">Page 240</p>                        |
| <p>1 Q. So my question is a little bit different. So</p> <p>2 let's break it down a little bit.</p> <p>3 A. Okay.</p> <p>4 Q. In the prior model for imputation, prior to</p> <p>5 2024, let's go prior to 2021, you used American Hospital</p> <p>6 Association data -- we had our aha moment -- to impute a</p> <p>7 score for the hospitals, right?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And was that an estimation based on the</p> <p>10 AHA data?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 Then when you get to 2024, you impute</p> <p>14 limited achievement, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Is that an estimation of performance or no?</p> <p>17 A. That is an estimation of performance.</p> <p>18 Q. Okay.</p> <p>19 So going back to the website we looked at,</p> <p>20 again for Delray you impute limited achievement on</p> <p>21 handwashing, right?</p> <p style="text-align: right;">Page 239</p>                                                                                                                                                                                                               | <p>1 from?</p> <p>2 A. I've heard that from Johns Hopkins Hospital</p> <p>3 when I queried them on that question. I've heard that</p> <p>4 from other hospitals that I couldn't necessarily name,</p> <p>5 but that's just from poor memory.</p> <p>6 Q. Fair enough.</p> <p>7 Ballpark, how many did you ask?</p> <p>8 A. I've maybe have heard that from three or four.</p> <p>9 Q. Okay.</p> <p>10 So going back to the comment.</p> <p>11 A. Yeah. So what I would -- she is correct that</p> <p>12 there is no option for the submission for a survey for a</p> <p>13 health system; that Leapfrog's policy, since its</p> <p>14 inception, has been for each individual brick and mortar</p> <p>15 hospital to complete its own survey.</p> <p>16 And her statement about excellent outcomes</p> <p>17 will no longer be able to receive an A is actually</p> <p>18 incorrect because there were two hospitals that actually</p> <p>19 did get an A that did not complete a survey.</p> <p>20 Q. Nationwide, right?</p> <p>21 A. Nationwide.</p> <p style="text-align: right;">Page 241</p> |

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| <p>1 Q. And that was on that first email we looked at<br/>2 where you were pulling information --<br/>3 A. Yes.<br/>4 Q. -- for the lawsuit, right?<br/>5 A. Yes.<br/>6 Q. Just to make sure, I think that was Exhibit 1.<br/>7 Okay. That's helpful.<br/>8 MR. CRAIN: Okay. Let's go to tab 47. This<br/>9 will be Exhibit 22.<br/>10 (Exhibit No. 22 was marked for<br/>11 identification as of 9/25/2025.)<br/>12 BY MR. CRAIN:<br/>13 Q. I'm sorry. This one is very small.<br/>14 Dr. Austin, this is another comment, which<br/>15 I think was submitted through what I believe is<br/>16 Leapfrog's Zendesk platform. Do you see that?<br/>17 A. Yes.<br/>18 Q. My guess is -- have you not -- have you seen<br/>19 this document before?<br/>20 A. No, I haven't.<br/>21 Q. Okay. So I want to just take you to the<br/>Page 242</p>                                                                                                                                                                                                    | <p>1 Q. To your understanding.<br/>2 MS. LAWSON: I mean to your understanding.<br/>3 BY MR. CRAIN:<br/>4 Q. It's always to your understanding.<br/>5 A. Right.<br/>6 So the impetus for the Hospital Safety<br/>7 Grade -- let me take us back a little bit in time.<br/>8 So since 2001, Leapfrog has been doing a<br/>9 voluntary survey of hospitals around quality and safety<br/>10 practices. It has collected those data and made those<br/>11 publicly available. One of the concerns for that model<br/>12 is Leapfrog was collecting a lot of different data<br/>13 points and reporting those out as individual data<br/>14 points.<br/>15 And what we know from conversations with<br/>16 consumers and patients is that they strongly prefer<br/>17 composite scores, star ratings, letter grades, that they<br/>18 find that much more digestible.<br/>19 Q. Easier to understand?<br/>20 A. Easier to understand.<br/>21 In addition to wanting to move towards a<br/>Page 244</p>                                                                                                                                                          |
| <p>1 bottom, and I think that's the comment. Do you see it's<br/>2 from it looks like Alana Noble?<br/>3 A. Yes.<br/>4 Q. And she says, "We strongly disagree with the<br/>5 proposed Fall 2024 Step 2 imputation. If Leapfrog is<br/>6 going to implement this change, they need to offer<br/>7 hospitals an option to opt out of being graded rather<br/>8 than penalize a hospital for not submitting the resource<br/>9 intensive survey. The survey is very resource intensive<br/>10 outside of existing regulatory, quality operations and<br/>11 quality improvement efforts. Hospitals that do not have<br/>12 the resources to do the survey annually should not be so<br/>13 adversely punished, especially in the post-COVID era<br/>14 when resources are increasingly hard to come by and<br/>15 retain."<br/>16 And my question to you is: Why can't<br/>17 Leapfrog give hospitals an option to opt out of being<br/>18 graded?<br/>19 MS. LAWSON: Object to form.<br/>20 You can answer.<br/>21 BY MR. CRAIN:<br/>Page 243</p> | <p>1 letter grade, Leapfrog also wanted to -- the model that<br/>2 Leapfrog was working from was the restaurant ratings in<br/>3 like New York City, Los Angeles, right, where the health<br/>4 department comes in. They do an assessment of the<br/>5 restaurant, and the hospital has to post a letter grade<br/>6 in their window with an A, a B, or a C.<br/>7 And one of Leapfrog's board members<br/>8 supposedly thought, oh, wouldn't it be great if we could<br/>9 ask hospitals to do the same thing around the idea of<br/>10 patient safety.<br/>11 The concern with making it voluntary is<br/>12 that it is a relative score, right. So the methodology<br/>13 is such that hospitals are being compared to the<br/>14 national mean, the standard deviation of the national<br/>15 sample. And so it would be difficult to issue grades if<br/>16 we were pulling from a selected subset of hospitals.<br/>17 Q. Is that still true today where 80 percent of<br/>18 inpatient beds are I think represented on the Leapfrog<br/>19 survey?<br/>20 A. So I see that as a little bit of a chicken and<br/>21 egg situation.<br/>Page 245</p> |

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| <p>1 Q. Okay. Tell me why.</p> <p>2 A. That if Leapfrog made it voluntary, one</p> <p>3 potential consequence of that would be fewer hospitals</p> <p>4 would report to the survey, and, therefore, you would</p> <p>5 lose that 80 percent capture that is currently there.</p> <p>6 Q. Is it fair to characterize that as a slippery</p> <p>7 slope problem?</p> <p>8 A. I don't know how to characterize a slippery</p> <p>9 slope.</p> <p>10 Q. Okay.</p> <p>11 I guess what I mean by that is you're</p> <p>12 suggesting that if you make it voluntary, the number</p> <p>13 20 percent of inpatient beds that were not responding</p> <p>14 would increase, right?</p> <p>15 A. That could be a potential consequence.</p> <p>16 Q. Okay.</p> <p>17 So to encourage greater participation, it</p> <p>18 cannot be voluntary. Is that right? Take your time.</p> <p>19 A. So one of the challenges Leapfrog was trying to</p> <p>20 address with the Hospital Safety Grade was that there</p> <p>21 had been a plateauing of hospital participation in the</p> <p style="text-align: right;">Page 246</p> | <p>1 Q. Yeah.</p> <p>2 A. Or not rephrase but repeat the question.</p> <p>3 Q. Oh, repeat? Yeah, repeat I can do because I</p> <p>4 have the realtime.</p> <p>5 We've talked a lot about how there are</p> <p>6 errors with any imputation methodology, correct?</p> <p>7 A. Correct.</p> <p>8 Q. Isn't the most accurate way to get safety</p> <p>9 information out there to not impute?</p> <p>10 A. Are we discussing the scores, or are we</p> <p>11 discussing the grades?</p> <p>12 Q. Let's do both. Start with the score.</p> <p>13 A. So for the score, I think that would have a</p> <p>14 little more of an influence -- let me say that again.</p> <p>15 The decision to impute a score would impact the overall</p> <p>16 score.</p> <p>17 Q. The overall grade?</p> <p>18 A. The overall -- so just to clarify, when we</p> <p>19 calculate the grade, what we're actually calculating is</p> <p>20 a score, a numerical score. So each hospital has a</p> <p>21 numerical score that's calculated. Those numerical</p> <p style="text-align: right;">Page 248</p> |
| <p>1 survey.</p> <p>2 Q. Okay.</p> <p>3 A. And, therefore, we only had quality and safety</p> <p>4 information for a -- not a small, a fraction of the</p> <p>5 hospitals in the United States. And so by making it</p> <p>6 nonvoluntary was an opportunity to have safety</p> <p>7 information out there about as many hospitals in the</p> <p>8 U.S. as possible.</p> <p>9 And so if you make it voluntary, you sort</p> <p>10 of defeat that goal of trying to have safety information</p> <p>11 for as many as possible.</p> <p>12 Q. Has that goal overtaken any goal to report</p> <p>13 accurately on safety?</p> <p>14 A. No.</p> <p>15 Q. Okay. And why is that? Because -- strike</p> <p>16 that.</p> <p>17 We've talked a lot about how there are</p> <p>18 errors, right, with any imputation methodology. Isn't</p> <p>19 the most accurate way to get safety information out</p> <p>20 there to not impute?</p> <p>21 A. Can you rephrase the question?</p> <p style="text-align: right;">Page 247</p>                                                                                           | <p>1 scores then get converted into letter grades.</p> <p>2 Q. Yes. Got it.</p> <p>3 A. So the letter grade, by definition, is a range</p> <p>4 of scores, right. So it's less sensitive to the</p> <p>5 decision to impute one measure or not to impute a</p> <p>6 measure.</p> <p>7 If we're talking about the actual numerical</p> <p>8 score, the accuracy would be improved without</p> <p>9 imputation.</p> <p>10 Q. Okay.</p> <p>11 So is it right that Leapfrog has</p> <p>12 prioritized as a goal increasing participation as</p> <p>13 compared to the accuracy of the score?</p> <p>14 A. So when you say participation, what are you</p> <p>15 referring to?</p> <p>16 Q. Participation in the survey. Let me rephrase</p> <p>17 it so it's clear.</p> <p>18 Is it fair to say that Leapfrog has</p> <p>19 prioritized encouraging greater participation in the</p> <p>20 survey as compared to greater accuracy in the scoring of</p> <p>21 a safety grade?</p> <p style="text-align: right;">Page 249</p>                                                         |

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| <p>1 A. I don't see it as an absolute tradeoff in that<br/>2 way.<br/>3 Q. Okay. Is it -- why is that?<br/>4 A. Because I think you can work towards both<br/>5 goals. I don't think you necessarily have to completely<br/>6 have one goal be worked towards at the detriment of the<br/>7 other goal.<br/>8 Q. You don't think that's what's happening with<br/>9 imputation?<br/>10 A. So to be clear, the decision to impute scores<br/>11 is primarily driven by the desire to have more accuracy<br/>12 in what we are issuing as a score grade. A potential<br/>13 benefit of that is that hospitals may choose to come in<br/>14 and report to the survey.<br/>15 So that's why I don't see them as<br/>16 necessarily diametrically opposed goals.<br/>17 Q. Is the most accurate way to score excluding<br/>18 imputation altogether?<br/>19 A. Yes. As previously stated, you would have a<br/>20 more accurate score without imputation.<br/>21 Q. Okay.</p> <p style="text-align: right;">Page 250</p> | <p>1 Leapfrog feel it can't allow an opt out?<br/>2 A. This is my own speculation because I have not<br/>3 discussed with Leapfrog this scenario. One might be<br/>4 concerned that if you allow hospitals to opt out, most<br/>5 of them will, and now what is your rating program if you<br/>6 don't have many participates.<br/>7 Q. And it's also -- what is your rating program,<br/>8 meaning the grade, the survey, or both?<br/>9 A. Potentially both.<br/>10 Q. And going back to the restaurant analogy. You<br/>11 mentioned the L.A. restaurant grades. Do you think<br/>12 that's a fair analogy to what Leapfrog is able to do?<br/>13 MS. LAWSON: Object to form.<br/>14 BY MR. CRAIN:<br/>15 Q. To your knowledge.<br/>16 A. So Leapfrog can't require hospitals to post a<br/>17 letter grade in their window.<br/>18 Q. It also, unlike a regulatory agency, can't<br/>19 compel participation, right? As a legal matter, right?<br/>20 A. I will defer to lawyers on that.<br/>21 Q. Fair enough. Okay.</p> <p style="text-align: right;">Page 252</p> |
| <p>1 And so going -- I don't know if I got an<br/>2 answer to this question, though, but let me just be<br/>3 really clear. So this comment says if Leapfrog is going<br/>4 to implement this change, they need to offer hospitals<br/>5 an option to opt out, right?<br/>6 First, I guess stepping back, do you recall<br/>7 any discussion of an opt out internally to either the<br/>8 expert panel or Leapfrog?<br/>9 A. No. That's never been the conversation.<br/>10 Q. Okay. And why can an opt out not be provided?<br/>11 A. If -- is your question is it possible for<br/>12 Leapfrog to implement an opt out?<br/>13 Q. Well, so --<br/>14 A. Or --<br/>15 Q. Yeah, fair question.<br/>16 So there's the question of whether it's<br/>17 physically possible. I assume it's physically possible<br/>18 to implement an opt out, right?<br/>19 A. Yes.<br/>20 Q. Yeah.<br/>21 Why does -- to your knowledge, why does</p> <p style="text-align: right;">Page 251</p>                                     | <p>1 Let me ask --<br/>2 A. Leapfrog, what it's doing is it's using<br/>3 publicly available data to make an assessment of a<br/>4 hospital's patient safety performance.<br/>5 Q. And it's also using the lack of data, right, to<br/>6 make an assessment of performance?<br/>7 A. That's using what data are available.<br/>8 Q. Yeah.<br/>9 A. And in some situations, that is data that's not<br/>10 available.<br/>11 Q. Yeah. Okay.<br/>12 Okay. You can set that one aside.<br/>13 I want to talk a little bit about the<br/>14 imputed measures themselves so -- and we talked about<br/>15 earlier in the day, it feels like hours ago, BCMA, CPOE,<br/>16 IPS, and hand hygiene, right?<br/>17 A. Correct.<br/>18 Q. So I've been trying to understand why are those<br/>19 the four that are imputed as compared to the three what<br/>20 I called earlier in the day discarded measures. You may<br/>21 feel free to call them something else, but why are those</p> <p style="text-align: right;">Page 253</p>                                              |

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| <p>1 different?</p> <p>2 A. It is somewhat a function of historical</p> <p>3 artifact and when the measure was introduced to the</p> <p>4 Leapfrog Hospital Survey. So within those three</p> <p>5 measures, we put the two safe practices into one bucket</p> <p>6 and hand hygiene in the other bucket.</p> <p>7 Q. Okay.</p> <p>8 A. The safe practices I put in the sort of</p> <p>9 historical artifact bucket in that when the decision was</p> <p>10 to move towards secondary data sources, like the aha,</p> <p>11 AHA hospital survey --</p> <p>12 Q. That's my favorite.</p> <p>13 A. There wasn't any data within that AHA survey</p> <p>14 that matched up with those safe practices. Like, there</p> <p>15 was nothing about leadership. There was nothing about</p> <p>16 culture measurement.</p> <p>17 So at that time, the decision was, okay,</p> <p>18 we're going to continue to hold those in the</p> <p>19 we're-just-going-to-ignore-the-measure-if-you-don't-have</p> <p>20 -it bucket, which was the original imputation.</p> <p>21 That historical sort of artifact has just</p> <p style="text-align: right;">Page 254</p> | <p>1 Q. And it's one of your notes to yourself. Do you</p> <p>2 see that?</p> <p>3 A. Yes.</p> <p>4 Q. And it says: "Notes for today's call with</p> <p>5 Dr. Romano." [sic] Right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 April 12th, coincidentally, 2019. Do you</p> <p>9 see that? I say coincidentally because the expert panel</p> <p>10 meeting was also April 12th.</p> <p>11 A. Okay.</p> <p>12 MS. LAWSON: Of 2024.</p> <p>13 MR. CRAIN: Yeah, of 2024. Sorry. It was my</p> <p>14 own aha moment.</p> <p>15 BY MR. CRAIN:</p> <p>16 Q. So going down, you say, "Patrick, to guide</p> <p>17 today's call, I put together some quick notes." Do you</p> <p>18 see that?</p> <p>19 A. Yes.</p> <p>20 Q. And I can't tell if you sent this to him or</p> <p>21 they were just talking points. Any sense?</p> <p style="text-align: right;">Page 256</p>                                                                         |
| <p>1 sort of rolled forward.</p> <p>2 Q. Okay. Fair to say it was grandfathered in?</p> <p>3 A. Yeah. It's a historical artifact of where we</p> <p>4 started and where we're at.</p> <p>5 The nursing workforce --</p> <p>6 Q. Yep.</p> <p>7 A. -- was just recently introduced to the Leapfrog</p> <p>8 Hospital Survey, and the collective wisdom was perhaps</p> <p>9 we don't have enough experience in data with that to</p> <p>10 impute scores.</p> <p>11 Q. So very helpful on the three.</p> <p>12 I want to ask you also about the four, why</p> <p>13 they are imputed, and I have a document that I think</p> <p>14 might help us in what I've been trying to figure out.</p> <p>15 MR. CRAIN: So this will be Exhibit 23.</p> <p>16 (Exhibit No. 23 was marked for</p> <p>17 identification as of 9/25/2025.)</p> <p>18 BY MR. CRAIN:</p> <p>19 Q. So this is another Armstrong-produced document.</p> <p>20 You see that on the bottom, right?</p> <p>21 A. Yes.</p> <p style="text-align: right;">Page 255</p>                                                                                                                         | <p>1 A. They were notes for myself, I believe, for the</p> <p>2 conversation with Dr. Romano.</p> <p>3 Q. And do you remember this conversation? Feel</p> <p>4 free to take a second to read through it if it's</p> <p>5 helpful.</p> <p>6 (Witness peruses document.)</p> <p>7 THE WITNESS: Okay.</p> <p>8 BY MR. CRAIN:</p> <p>9 Q. Do you remember the context of this discussion?</p> <p>10 A. I don't with certainty but based on the --</p> <p>11 Q. Context clues?</p> <p>12 A. -- context clues, it would be to talk about</p> <p>13 maybe changing the imputation approach --</p> <p>14 Q. And --</p> <p>15 A. -- and missing data thresholds.</p> <p>16 Q. Okay.</p> <p>17 And you see it mentions AHA responses sort</p> <p>18 of towards the bottom third of the page?</p> <p>19 A. AHA responses?</p> <p>20 Q. There's a bullet that says exceptions are BCMA.</p> <p>21 A. Yes.</p> <p style="text-align: right;">Page 257</p> |

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| <p>1 Q. Okay.</p> <p>2 And just stepping back for a second, do you</p> <p>3 recall a time where Leapfrog no longer had access to the</p> <p>4 AHA data?</p> <p>5 A. There was a point where AHA revoked Leapfrog's</p> <p>6 license to use the data.</p> <p>7 Q. Do you know why they did that?</p> <p>8 A. My understanding is they had gotten -- strike</p> <p>9 that.</p> <p>10 I don't know why AHA revoked the license.</p> <p>11 Q. When you said "my understanding," did you have</p> <p>12 something that you heard about it?</p> <p>13 A. I had heard that, you know, they were getting</p> <p>14 complaints from their member hospitals about how those</p> <p>15 data were being used by Leapfrog.</p> <p>16 Q. Got it.</p> <p>17 And complaints with respect to the</p> <p>18 imputation into the methodology?</p> <p>19 A. Complaints on two fronts. One was how the data</p> <p>20 were being translated into scores for Leapfrog. Also,</p> <p>21 some of the hospitals' data were pretty old, and they</p> <p style="text-align: right;">Page 258</p> | <p>1 Do you know where she got it?</p> <p>2 A. I don't know.</p> <p>3 Q. Okay.</p> <p>4 Anything else you remember about why AHA</p> <p>5 stopped licensing?</p> <p>6 A. That's all I'm aware of.</p> <p>7 Q. Okay.</p> <p>8 So I want to look specifically at -- you</p> <p>9 see in this document imputing data?</p> <p>10 A. Yes.</p> <p>11 Q. If you go down to the third bullet -- well,</p> <p>12 let's go to the second bullet first for context. It</p> <p>13 says: "Current Approach: Exclude the measure and</p> <p>14 recalculate the weights for the affected hospitals using</p> <p>15 only those measures for which data are available."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And can you sort of translate what that means?</p> <p>19 A. Yeah. So the earliest approach of imputation</p> <p>20 that we followed was to -- if a hospital was missing a</p> <p>21 measure, we ignored that measure and we redistributed</p> <p style="text-align: right;">Page 260</p>                                                                                              |
| <p>1 felt like it was outdated and there really wasn't a</p> <p>2 mechanism for them to update it. And there were sort of</p> <p>3 logistical challenges, and my understanding is I think</p> <p>4 AHA was like, we're out.</p> <p>5 Q. We're out of this business?</p> <p>6 A. Right -- what's that?</p> <p>7 Q. We're out of this business?</p> <p>8 A. We're out of this business.</p> <p>9 Q. And when you say old, so I know like CMS data</p> <p>10 has a lag, right? Yes?</p> <p>11 A. Some of it does, yes.</p> <p>12 Q. Was the AHA data a bigger lag than CMS?</p> <p>13 A. I don't know the exact lag period for the AHA</p> <p>14 survey.</p> <p>15 Q. And what you had heard about why the AHA did</p> <p>16 not want to license anymore, do you recall who that came</p> <p>17 from?</p> <p>18 A. The information that I heard from?</p> <p>19 Q. Yeah, that you just shared with us about --</p> <p>20 A. From Missy Danforth.</p> <p>21 Q. Got it. Okay. So Ms. Danforth told you that.</p> <p style="text-align: right;">Page 259</p>                | <p>1 the weights to other measures for which they did have</p> <p>2 data.</p> <p>3 Q. Okay.</p> <p>4 And then there's a -- the next bullet says</p> <p>5 exceptions, right?</p> <p>6 A. Correct.</p> <p>7 Q. And it says: "Exceptions are BCMA, CPOE, and</p> <p>8 IPS, in which case we have created crosswalks between</p> <p>9 the AHA responses and Leapfrog performance categories."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. What does the crosswalk mean?</p> <p>13 A. The crosswalk was we looked at -- for hospitals</p> <p>14 that reported to both the AHA survey and to the Leapfrog</p> <p>15 Hospital Survey, we were able to compare their responses</p> <p>16 on both and understand in an aggregate way what the</p> <p>17 relationship was between a hospital's responses to the</p> <p>18 AHA survey and how they were performing on the Leapfrog</p> <p>19 Hospital Survey standards.</p> <p>20 Q. So just to rearticulate, is it fair to say that</p> <p>21 you had identified that the AHA data was a reasonable</p> <p style="text-align: right;">Page 261</p> |

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| <p>1 enough proxy for the BCMA, CPOE, and IPS scores for<br/>2 Leapfrog?<br/>3 A. In our review and discussions of the AHA<br/>4 survey, we felt like it represented a reasonable<br/>5 approximation of the same quality -- or the same safety<br/>6 standards.<br/>7 Q. And is that the original reason why those three<br/>8 became imputed measures, as opposed to discarded<br/>9 measures?<br/>10 A. Yes.<br/>11 Q. Okay.<br/>12 After Leapfrog lost the AHA data, do you<br/>13 recall any time at which other crosswalks were<br/>14 considered?<br/>15 A. We explored other potential secondary data<br/>16 sources. I can specifically remember having lots of<br/>17 calls with HIMMS, H-I-M-M-S, which is a technology<br/>18 consortium, to see if we could get relevant data related<br/>19 to computerized physician order entry. And as we<br/>20 reviewed their data, we didn't feel confident in that it<br/>21 was getting us the same thing that we needed.</p> <p style="text-align: right;">Page 262</p> | <p>1 historical fact of Leapfrog having those crosswalks to<br/>2 the AHA data, that those three are imputed as opposed to<br/>3 other measures that are discarded that you're aware of?<br/>4 A. I could argue that there is, perhaps, some<br/>5 clinical, additional clinical relevance to those. I<br/>6 mean, they do get higher weights in the safety grade.<br/>7 They have been shown to be more effective as it relates<br/>8 to safety and improving safety. So that's what I would<br/>9 speak to.<br/>10 Q. So my question is a little different, though.<br/>11 You are, I think, providing a reason for why those are<br/>12 valuable measures, right?<br/>13 A. Correct.<br/>14 Q. And, in fact, I could show you websites. I'll<br/>15 just represent to you that sometimes Leapfrog puts out<br/>16 information that says those are among the most important<br/>17 measures. It sounds like you might agree with that?<br/>18 A. Correct.<br/>19 Q. Yeah. And they're significantly weighted,<br/>20 right?<br/>21 A. They have higher weights than some other</p> <p style="text-align: right;">Page 264</p> |
| <p>1 So we explored other options, just nothing<br/>2 met.<br/>3 Q. Okay.<br/>4 So is it fair to say that those three<br/>5 measures were essentially grandfathered in from the<br/>6 period in which Leapfrog was using AHA as the crosswalks<br/>7 to the Leapfrog scores?<br/>8 A. We had been imputing scores for those measures<br/>9 using the AHA datasets. That would be true.<br/>10 Q. And it was grandfathered into the next<br/>11 instantiation of the imputation methodology?<br/>12 A. I would need to have better notes on what was<br/>13 the next phase of the imputation methodology --<br/>14 Q. Okay.<br/>15 A. -- to remember what came next after that.<br/>16 Q. Fair enough. Fair enough.<br/>17 So subsequently -- like, the current<br/>18 methodology still imputes on these three measures,<br/>19 right?<br/>20 A. Correct.<br/>21 Q. Is there any particular reason, except for the</p> <p style="text-align: right;">Page 263</p>                                                              | <p>1 measures.<br/>2 Q. I think the four imputed measures are<br/>3 approximately a quarter to 30 percent of the grade. Are<br/>4 you aware of that?<br/>5 A. I couldn't agree or disagree with that.<br/>6 Q. I mean, it's in the methodology document.<br/>7 A. Right.<br/>8 Q. We can set it aside. I'm not trying to, you<br/>9 know, test you on it. It's all right.<br/>10 So you're giving me reasons for why they<br/>11 are important measures, correct? I want to know the --<br/>12 whether there's an empirical reason or an evidence-based<br/>13 reason for continuing imputation of them outside of the<br/>14 crosswalks that we see in this email.<br/>15 MS. LAWSON: Do you understand the question?<br/>16 Are you clear on what the question is?<br/>17 THE WITNESS: I think I am.<br/>18 MS. LAWSON: Okay. I think he's asking is<br/>19 there a historical -- like, other than the historical<br/>20 experience --<br/>21 MR. CRAIN: I think I'd asked just for no</p> <p style="text-align: right;">Page 265</p>                                                                                         |

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| <p>1 speaking objections or coaching.</p> <p>2 MS. LAWSON: Yeah, but I just want to make sure</p> <p>3 that he's clear because we're covering this a second</p> <p>4 time. We've asked it a -- you know, and I understand.</p> <p>5 So I understand what your question is, and I just want</p> <p>6 to make sure he understands so he can answer what you're</p> <p>7 asking.</p> <p>8 BY MR. CRAIN:</p> <p>9 Q. Let me ask it again because I want to make sure</p> <p>10 the record is clear.</p> <p>11 So I said: You're giving me reasons for</p> <p>12 why they are important measures, correct?</p> <p>13 A. Correct.</p> <p>14 Q. And I want to know whether there is an</p> <p>15 empirical reason or some evidence-based reason for</p> <p>16 continuing to impute these three measures in this email</p> <p>17 outside of the crosswalks that Leapfrog had identified</p> <p>18 between the AHA responses and Leapfrog performance</p> <p>19 categories.</p> <p>20 A. So the reason it would be important to keep</p> <p>21 those measures in and to be imputed is because they have</p> <p style="text-align: right;">Page 266</p>                            | <p>1 Q. Yeah. Glad to.</p> <p>2 The automatic assignment of limited</p> <p>3 achievement for the four imputed measures for a</p> <p>4 nonparticipating hospital is not grounded in any actual</p> <p>5 evidence about a nonparticipating hospital's performance</p> <p>6 today, correct?</p> <p>7 A. Back to the earlier point, we know the hospital</p> <p>8 is not being transparent about their safety performance</p> <p>9 and that safety is an important component of a culture</p> <p>10 of safety.</p> <p>11 Q. Okay. So I'll go down the line. An automatic</p> <p>12 assignment of limited achievement for BCMA is not</p> <p>13 grounded in any actual facts about a hospital's</p> <p>14 performance on BCMA, right?</p> <p>15 A. An imputed score is based on an assumption.</p> <p>16 Q. Okay. And not actual facts on the ground about</p> <p>17 performance, right?</p> <p>18 A. Correct.</p> <p>19 Q. Okay.</p> <p>20 A. And that's true of all imputation.</p> <p>21 Q. It wasn't necessarily true when you had the</p> <p style="text-align: right;">Page 268</p>                                                   |
| <p>1 a significant impact to patient safety. So to create a</p> <p>2 composite score that doesn't include those measures</p> <p>3 would be missing some very key components.</p> <p>4 Q. For Step 2, where you're automatically</p> <p>5 assigning limited achievement, doesn't that rationale</p> <p>6 cut the other way?</p> <p>7 A. I would disagree. We're actually imputing a</p> <p>8 score for those because those measures are important.</p> <p>9 Q. So I take it that those measures are important.</p> <p>10 Set that aside for a second.</p> <p>11 We've talked about the limited achievement,</p> <p>12 right, the automatic assignment is not grounded in any</p> <p>13 actual evidence about a given hospital's performance,</p> <p>14 right, today?</p> <p>15 A. The imputation is -- has an error component to</p> <p>16 it by definition.</p> <p>17 Q. Yes. So just -- I want you to answer my</p> <p>18 question yes or no. The automatic assignment is not</p> <p>19 grounded in any actual evidence about a given hospital's</p> <p>20 performance today, correct?</p> <p>21 A. Can you repeat that?</p> <p style="text-align: right;">Page 267</p> | <p>1 crosswalks, right?</p> <p>2 A. That's not completely true.</p> <p>3 Q. Okay. Explain it for me.</p> <p>4 A. Because when we had the crosswalks, we were</p> <p>5 looking at large numbers of hospitals. So we might have</p> <p>6 had 500 hospitals that reported to both the Leapfrog</p> <p>7 Hospital Survey and the AHA survey. What we looked at</p> <p>8 was what was basically the average performance.</p> <p>9 If a hospital answered this in the AHA</p> <p>10 survey, how did they, on average, perform on the</p> <p>11 Leapfrog Hospital Survey? Some of the hospitals</p> <p>12 performed better. Some performed worse. So there is a</p> <p>13 degree of error there in imputation.</p> <p>14 Q. But you had some sort of analysis to build that</p> <p>15 out, right?</p> <p>16 A. We had some secondary data sources to help us</p> <p>17 inform those imputed scores.</p> <p>18 Q. And today, for the methodology, there is no</p> <p>19 secondary data source to help you inform the imputed</p> <p>20 assignment of limited achievement?</p> <p>21 A. Correct.</p> <p style="text-align: right;">Page 269</p> |

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| <p>1 Q. Okay.</p> <p>2 So is it fair to say that the reason these</p> <p>3 three remain as imputed measures is largely, as you said</p> <p>4 for the other ones, a historical artifact or no?</p> <p>5 A. I think it's a combination of historical</p> <p>6 artifact and their importance to the broad concept of</p> <p>7 patient safety.</p> <p>8 Q. Got it. Okay. So they're significant, so</p> <p>9 Leapfrog didn't want to lose them, and also they had</p> <p>10 been imputing based on other secondary data sources.</p> <p>11 That combination is why they are still imputed measures</p> <p>12 today. Is that fair?</p> <p>13 A. Fair.</p> <p>14 Q. Okay.</p> <p>15 Why hand hygiene, which is not represented</p> <p>16 here? Can you give me the history of that one?</p> <p>17 A. So hand hygiene was introduced to the Leapfrog</p> <p>18 Hospital Survey after -- well, don't quote me on this.</p> <p>19 I believe after the AHA had pulled their data license.</p> <p>20 Q. Okay. Got it.</p> <p>21 Okay. So you had no opportunity to create</p> <p style="text-align: right;">Page 270</p> | <p>1 (Exhibit No. 24 was marked for</p> <p>2 identification as of 9/25/2025.)</p> <p>3 BY MR. CRAIN:</p> <p>4 Q. This is an Armstrong-produced document. Do you</p> <p>5 see that on the bottom right?</p> <p>6 A. Yes.</p> <p>7 Q. And the top email is from you to a group of</p> <p>8 folks at Leapfrog, I think, and Preeti Joshi. Do you</p> <p>9 see that? And maybe a couple others.</p> <p>10 A. Yes.</p> <p>11 Q. And there's an attachment. It says: Leapfrog</p> <p>12 Hand Hygiene Report Analysis June 3, 2024. Do you see</p> <p>13 that?</p> <p>14 A. Yes.</p> <p>15 Q. And you write to the group, "As a follow-up</p> <p>16 from our meeting a few weeks ago, attached are the</p> <p>17 requested analyses for the hand hygiene report. I think</p> <p>18 the analyses are pretty self-explanatory, but we are</p> <p>19 happy to have a call to review if that would be</p> <p>20 helpful."</p> <p>21 Do you see that?</p> <p style="text-align: right;">Page 272</p> |
| <p>1 the crosswalk, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Okay.</p> <p>4 I want to show a document. So talking</p> <p>5 about hand hygiene, again, is it your testimony today</p> <p>6 that the limited achievement automatic assignment of</p> <p>7 hand hygiene for nonparticipating hospitals in Step 2 --</p> <p>8 stay with me -- is an accurate reflection of a</p> <p>9 hospital's hand hygiene performance, an accurate</p> <p>10 estimation?</p> <p>11 A. My testimony is that it's an imputed score for</p> <p>12 that hospital's performance on hand hygiene.</p> <p>13 Q. And is it an accurate estimation of their</p> <p>14 performance on the ground?</p> <p>15 A. Imputation, by definition, has error.</p> <p>16 Q. Okay. So for certain hospitals it may be</p> <p>17 inaccurate?</p> <p>18 A. Correct.</p> <p>19 Q. Okay.</p> <p>20 So I want to look at --</p> <p>21 MR. CRAIN: This will be Exhibit 24.</p> <p style="text-align: right;">Page 271</p>                                                                                                                               | <p>1 A. Yes.</p> <p>2 Q. And then you go in I guess starting with --</p> <p>3 first question: Did you draft -- I'm looking at page</p> <p>4 5116. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Did you draft what looks like it's titled</p> <p>7 Leapfrog Hand Hygiene Analysis for Landslide Report?</p> <p>8 A. Preeti Joshi did this.</p> <p>9 Q. Okay. Did you review it?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And what was the purpose of this</p> <p>12 document?</p> <p>13 A. Leapfrog was interested in putting out a</p> <p>14 national report on its hand hygiene standard and where</p> <p>15 hospitals had -- how they've improved over time on the</p> <p>16 standard.</p> <p>17 Q. Okay.</p> <p>18 And so you go, it looks like to me, you go</p> <p>19 question by question through the Leapfrog survey. Is</p> <p>20 that right?</p> <p>21 A. We looked at it both at the individual question</p> <p style="text-align: right;">Page 273</p>                           |

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| <p>1 level -- yes. In this first part, it's looking at each<br/> 2 individual question.<br/> 3 Q. Okay. And fair to say for some questions there<br/> 4 is pretty -- you know, there's change between 2020 and<br/> 5 2023, and for others there's less change. Is that<br/> 6 right? I can be more concrete.<br/> 7 MS. LAWSON: I was going to object to form<br/> 8 there.<br/> 9 MR. CRAIN: Fair enough. I'll take it back.<br/> 10 BY MR. CRAIN:<br/> 11 Q. So question number one is provision of hand<br/> 12 hygiene training. Do you see that?<br/> 13 A. Yes.<br/> 14 Q. And in 2020, it looks like 92.8 percent --<br/> 15 well, tell me what the percentage reflects.<br/> 16 A. Yeah, that represents the percentage of<br/> 17 hospitals -- yeah, the denominator is the number of<br/> 18 hospitals that submitted responses to the hand hygiene<br/> 19 section of the Leapfrog survey. So the numerator would<br/> 20 be those that answered yes, that they meet Leapfrog's<br/> 21 requirements for that question.</p> <p style="text-align: right;">Page 274</p> | <p>1 hand hygiene questions. Is that fair to say or no?<br/> 2 A. So Leapfrog actually has fairly high standards,<br/> 3 and so for a hospital to meet a domain, they actually<br/> 4 have to answer "yes" to all of the questions in that<br/> 5 domain.<br/> 6 So, for example, in domain training and<br/> 7 education, only 85.7 percent answered yes to question<br/> 8 two in 2023. So at most, 85.7 percent of hospitals meet<br/> 9 that domain, and it's probably something less than that,<br/> 10 right.<br/> 11 So looking at individual questions may not<br/> 12 be the most accurate indicator of how hospitals are<br/> 13 doing on each of the domains as Leapfrog has defined<br/> 14 them.<br/> 15 Q. Okay. So in each of these four domains, you're<br/> 16 saying only the lowest denominator respondent are those<br/> 17 that passed the domain?<br/> 18 A. The lowest percentage within a domain would be<br/> 19 the absolute ceiling of the percentage of hospitals that<br/> 20 can meet that domain.<br/> 21 Q. Got it. Okay.</p> <p style="text-align: right;">Page 276</p> |
| <p>1 Q. So 92.8 percent of hospitals in 2020 responding<br/> 2 to the survey met question one. Is that right?<br/> 3 A. Yes.<br/> 4 Q. Okay.<br/> 5 And that increases to 96.8 percent in 2021,<br/> 6 96.8 percent in 2022, and 97.9 percent in 2023. Do you<br/> 7 see that?<br/> 8 A. Yes.<br/> 9 Q. Okay.<br/> 10 And I guess the question that I have on any<br/> 11 of these, really, is: Is it your assumption that a<br/> 12 hospital that is not participating in the survey will<br/> 13 perform worse than these numbers as compared to the<br/> 14 participating hospitals?<br/> 15 A. Can you say that one more time, please?<br/> 16 Q. Yeah. So I'm trying to get at -- let's back up<br/> 17 a little bit.<br/> 18 So I'm trying to understand why Leapfrog<br/> 19 imputes for hand hygiene, right. And my question is it<br/> 20 seems like, at least based on this analysis, that most<br/> 21 hospitals, at least that report, do fairly well on the</p> <p style="text-align: right;">Page 275</p>                                                            | <p>1 So for domain one, the most -- the highest<br/> 2 number of hospitals that would have met that domain are<br/> 3 85.7 percent of responding hospitals in 2023, correct?<br/> 4 A. Correct.<br/> 5 Q. Okay.<br/> 6 And do you have any basis to suggest that<br/> 7 nonperforming hospitals would be so much worse in<br/> 8 performance than 85.7 percent?<br/> 9 A. We don't have any information to know how they<br/> 10 would perform.<br/> 11 Q. So why is it fair to those hospitals to give<br/> 12 them the lowest score when the gross majority of<br/> 13 hospitals, at least in this domain, pass?<br/> 14 MS. LAWSON: Object to form. Go ahead.<br/> 15 THE WITNESS: So there are 15 percent of<br/> 16 hospitals, at least, that are not meeting the domain,<br/> 17 right. So how would we know if hospitals that don't<br/> 18 report are part of that 15 percent or part of the<br/> 19 85 percent?<br/> 20<br/> 21 BY MR. CRAIN:</p> <p style="text-align: right;">Page 277</p>                                                                                                    |

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| <p>1 Q. You don't know either way, right?</p> <p>2 A. We don't know either way.</p> <p>3 Q. Okay. But you assume that the hospitals in</p> <p>4 that domain that are not reporting are necessarily part</p> <p>5 of the 15 percent, right?</p> <p>6 A. We don't have any information about those</p> <p>7 hospitals, so we are imputing a score.</p> <p>8 Q. You're imputing a score that estimates that</p> <p>9 their performance is failing, essentially?</p> <p>10 A. That they are in the bottom performance</p> <p>11 category.</p> <p>12 Q. Okay.</p> <p>13 And then if you go to domain two, this is</p> <p>14 infrastructure, do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And this is things like hand sanitizers?</p> <p>17 A. Correct.</p> <p>18 Q. Okay.</p> <p>19 Forgive the question, but have you ever</p> <p>20 been to a hospital for care?</p> <p>21 A. Yes.</p> <p style="text-align: right;">Page 278</p>                                                                                                                                    | <p>1 A. -- in 2023 --</p> <p>2 Q. In 2023, correct.</p> <p>3 A. -- would be the absolute ceiling.</p> <p>4 Q. Yes.</p> <p>5 Do you have any sense for what the number</p> <p>6 actually is for the number of hospitals that passed this</p> <p>7 domain?</p> <p>8 A. I don't know offhand.</p> <p>9 Q. Okay. Fair to say it's likely quite high</p> <p>10 because of these numbers?</p> <p>11 MS. LAWSON: Object to form but go ahead.</p> <p>12 THE WITNESS: Yeah, I mean, I could -- you</p> <p>13 know, you could assume that all of these were</p> <p>14 independent, and if you multiply them together, you</p> <p>15 would come up with an answer that's somewhere in the</p> <p>16 63 percent, which is probably the floor. So it's</p> <p>17 somewhere between 63 and 90.5.</p> <p>18 BY MR. CRAIN:</p> <p>19 Q. Okay.</p> <p>20 So but, again, for hospitals that don't</p> <p>21 participate, for this domain, effectively, they get the</p> <p style="text-align: right;">Page 280</p>                                                                                                                                   |
| <p>1 Q. Do you recall any room that you were in without</p> <p>2 a sanitizer?</p> <p>3 MS. LAWSON: Object to form.</p> <p>4 THE WITNESS: So the Leapfrog survey questions</p> <p>5 about hand sanitizers are fairly specific about the</p> <p>6 location of them, whether they produce the correct</p> <p>7 amount of alcohol-based hand gel, and whether or not the</p> <p>8 hospital does audits to know if they actually have hand</p> <p>9 gel in them. Because I think we've all experienced</p> <p>10 going up to one and nothing comes out.</p> <p>11 BY MR. CRAIN:</p> <p>12 Q. Not fun.</p> <p>13 A. So there is more than just about do you have</p> <p>14 hand sanitizer dispensers. There's a lot more to that</p> <p>15 standard.</p> <p>16 Q. Fair enough.</p> <p>17 So taking your bottom number, if you look</p> <p>18 at domain two, this would imply that 90.5 percent, at a</p> <p>19 maximum, passed this domain, right?</p> <p>20 A. Ninety-one -- 90.5 --</p> <p>21 Q. Ninety point five, right.</p> <p style="text-align: right;">Page 279</p> | <p>1 lowest possible score, right?</p> <p>2 A. So to be clear, the hand hygiene standard has</p> <p>3 five domains. For a hospital to be in achieved the</p> <p>4 standard, they need to -- if they're only collecting 100</p> <p>5 hand hygiene observations a month, they need to meet all</p> <p>6 five domains, which means they're saying "yes" to every</p> <p>7 single question.</p> <p>8 Q. Okay.</p> <p>9 A. Seventy-four percent of hospitals in 2023</p> <p>10 achieved the standard, so 26 percent did not.</p> <p>11 Q. Yep. Okay. And that achieved the standard is</p> <p>12 the highest, right?</p> <p>13 A. Correct.</p> <p>14 Q. Then how do you quantify the next three down?</p> <p>15 A. We have a scoring algorithm that's available</p> <p>16 online that details that. I couldn't recite what that</p> <p>17 is, but the idea is basically if you meet a subset of</p> <p>18 the domains, you get one category; if you meet fewer</p> <p>19 domains, you get a lower category.</p> <p>20 Q. Okay.</p> <p>21 A. It's sort of assessed at the domain level but</p> <p style="text-align: right;">Page 281</p> |

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| <p>1 then it rolls up into an overall score.</p> <p>2 Q. Okay. No, fair enough.</p> <p>3 So I guess then my question is why is hand</p> <p>4 hygiene one of the imputed measures and not one of the</p> <p>5 discarded measures?</p> <p>6 A. Because its clinical relevance to patient</p> <p>7 safety is paramount.</p> <p>8 Q. Okay.</p> <p>9 So, again, it's the same point. When we</p> <p>10 talked about the other three, there were two reasons.</p> <p>11 The first was the historical what I call grandfathering</p> <p>12 in combined with the significance, right?</p> <p>13 A. Correct.</p> <p>14 Q. For this one, there's no historical, but it's</p> <p>15 just, you're saying, it's so important, Leapfrog feels</p> <p>16 it has to impute?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. Okay. Let's leave it at that.</p> <p>19 A. Okay.</p> <p>20 MR. CRAIN: All right. I think we've been</p> <p>21 going about an hour. Do you mind if we take a break?</p> <p style="text-align: right;">Page 282</p> | <p>1 A. Yes.</p> <p>2 Q. Okay. And the subject is: Final updates to</p> <p>3 Leapfrog Hospital Safety Grade methodology for Fall of</p> <p>4 2024. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And generally, can you tell me what this email</p> <p>7 is?</p> <p>8 A. This email is an email to the expert panel with</p> <p>9 the attachment of the final updates to the safety grade</p> <p>10 methodology for Fall of 2024.</p> <p>11 Q. Okay. And you say, "Based on the expert</p> <p>12 panel's thoughtful input and guidance, Leapfrog has</p> <p>13 decided to move forward with updates to imputation</p> <p>14 methodology used in the Hospital Safety Grade, effective</p> <p>15 Fall '24." Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Fall of 2024. Sorry. I think I said</p> <p>18 that wrong. Do you see that as well?</p> <p>19 A. Yes.</p> <p>20 Q. Okay.</p> <p>21 Now, just for the record, I want to be</p> <p style="text-align: right;">Page 284</p>                                                                                                                                       |
| <p>1 MS. LAWSON: That's fine.</p> <p>2 MR. CRAIN: Okay. Courtney, are you good?</p> <p>3 MS. WOOD: Uh-huh.</p> <p>4 THE VIDEOGRAPHER: This marks the end of media</p> <p>5 unit number six. We're going off the record. The time</p> <p>6 is 3:26 p.m.</p> <p>7 (Whereupon a short break was had, after</p> <p>8 which the proceedings continued as</p> <p>9 follows.)</p> <p>10 (Exhibit No. 25 was marked for</p> <p>11 identification as of 9/25/2025.)</p> <p>12 THE VIDEOGRAPHER: This marks the beginning of</p> <p>13 media unit number seven. We're going back on the</p> <p>14 record. The time is 3:43 p.m.</p> <p>15 BY MR. CRAIN:</p> <p>16 Q. Thank you, Dr. Austin.</p> <p>17 So I've handed you what has been marked as</p> <p>18 Exhibit 25. Do you see that document?</p> <p>19 A. Yes.</p> <p>20 Q. And this is an email from you to what I think</p> <p>21 is the safety grade expert panel. Do you see that?</p> <p style="text-align: right;">Page 283</p>                                        | <p>1 clear. Did Leapfrog decide to adopt this methodology,</p> <p>2 or did the expert panel decide to adopt it?</p> <p>3 A. Leapfrog makes all the decisions about their</p> <p>4 ratings and ratings programs. The work of the expert</p> <p>5 panel, expert panels, myself, is all in a recommendation</p> <p>6 advisory capacity.</p> <p>7 Q. Okay. And are you aware of any document in</p> <p>8 which the expert panel weighed in on this final proposal</p> <p>9 as a group?</p> <p>10 A. Not that I am aware of. Not that I'm aware of.</p> <p>11 Q. Okay.</p> <p>12 Do you know sitting today whether the</p> <p>13 entire expert panel approved of this path forward?</p> <p>14 A. We did not query the expert panel about whether</p> <p>15 they approved this or not.</p> <p>16 Q. Okay. Is it your view that they did approve</p> <p>17 it?</p> <p>18 A. It is -- from my point of view, we heard their</p> <p>19 input and guidance. Leapfrog made a decision of how it</p> <p>20 wanted to move forward, and we communicated that to the</p> <p>21 expert panel.</p> <p style="text-align: right;">Page 285</p> |

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| <p>1 Q. Okay.</p> <p>2 Okay. All right. You can set that aside.</p> <p>3 MR. CRAIN: Okay. I want to move on to another</p> <p>4 topic. Tab 15, please. This will be Exhibit 26.</p> <p>5 (Exhibit No. 26 was marked for</p> <p>6 identification as of 9/25/2025.)</p> <p>7 BY MR. CRAIN:</p> <p>8 Q. All right. So Dr. Austin, you have in front --</p> <p>9 well, what do you have in front of you?</p> <p>10 A. I have in front of me our 2013 prepublished</p> <p>11 ahead of print publication from the Journal of Patient</p> <p>12 Safety.</p> <p>13 Q. And we talked about this document a little bit</p> <p>14 earlier today, right?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. This is the document that was peer</p> <p>17 reviewed that analyzed the methodology at least as it</p> <p>18 stood back in 2023, right?</p> <p>19 A. This was the methodology in 2012, early 2013.</p> <p>20 Q. Okay. And you are the lead author on this</p> <p>21 paper, correct?</p> <p style="text-align: right;">Page 286</p> | <p>1 Q. Okay. And it says, the next sentence --</p> <p>2 A. And we do some analyses of early rounds of the</p> <p>3 grades to demonstrate what that looks like.</p> <p>4 Q. Some early rounds of the grades to</p> <p>5 demonstrate -- say more about what you mean.</p> <p>6 A. Yeah. So let me look in the -- so we had done</p> <p>7 some data analysis using composite safety scores for</p> <p>8 2,652 general acute care hospitals, and we calculated</p> <p>9 safety scores for those.</p> <p>10 Q. Okay.</p> <p>11 A. And we show that in figure one.</p> <p>12 And then in tables two and three, we did</p> <p>13 some analysis to look at how those safety scores varied</p> <p>14 by different hospital characteristics, as well as by</p> <p>15 state in the United States.</p> <p>16 Q. Okay. And this is the document that we saw</p> <p>17 that was linked to Leapfrog's website, right?</p> <p>18 A. Correct.</p> <p>19 Q. Okay.</p> <p>20 I want to go to page 4, and I think it's</p> <p>21 Bates number 668.</p> <p style="text-align: right;">Page 288</p> |
| <p>1 A. Correct.</p> <p>2 Q. As well as it looks like other folks on the</p> <p>3 expert panel, safety grade expert panel?</p> <p>4 A. Correct.</p> <p>5 Q. And I see, for instance, Dr. Romano is here,</p> <p>6 right?</p> <p>7 A. Correct.</p> <p>8 Q. Okay.</p> <p>9 I want to ask you a few questions about</p> <p>10 this. I'm going to go to -- starting at the top, do you</p> <p>11 see the little -- on the left side at the top it says</p> <p>12 "Methods."</p> <p>13 A. Yes.</p> <p>14 Q. And it says: "The Leapfrog Group sought advice</p> <p>15 [sic.] from a panel of national patient safety experts</p> <p>16 to develop a composite score." Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Does that describe generally what this paper is</p> <p>19 about?</p> <p>20 A. The paper describes how -- the process Leapfrog</p> <p>21 used to develop a composite score.</p> <p style="text-align: right;">Page 287</p>                                                                                | <p>1 A. Yes.</p> <p>2 Q. And there's a section, Dealing with Missing</p> <p>3 Data. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And it says: "Although the expert panel</p> <p>6 selected nationally reported measures, some data were</p> <p>7 missing for hospitals that did not report to The</p> <p>8 Leapfrog Group, and other data were missing because</p> <p>9 hospitals did not meet CMS's minimum sample requirements</p> <p>10 to publicly report their results."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. So this is the section that's, for lack of a</p> <p>14 better word, dealing with missing data, right?</p> <p>15 A. Correct.</p> <p>16 Q. Okay.</p> <p>17 So the next paragraph lays out, what it</p> <p>18 looks like, five possible approaches for assessing</p> <p>19 hospital performance when data were missing. Do you see</p> <p>20 that?</p> <p>21 A. Yes.</p> <p style="text-align: right;">Page 289</p>                                                                                                                      |

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| <p>1 Q. Okay. And I'm going to not march through, but</p> <p>2 it looks like number four is: "Give the hospital zero</p> <p>3 credit for the measure." Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And that's not -- Leapfrog has never done zero,</p> <p>6 right?</p> <p>7 A. Correct.</p> <p>8 Q. They've done limited achievement, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. And limited achievement, just to be</p> <p>11 clear, is the lowest measure, which can range anywhere</p> <p>12 from 5 to 25 depending on the measure, right?</p> <p>13 A. Correct.</p> <p>14 Q. Okay.</p> <p>15 And then number five says: "Exclude the</p> <p>16 measure and recalibrate the weights for the affected</p> <p>17 hospitals using only those measures for which data are</p> <p>18 available." Right?</p> <p>19 A. Correct.</p> <p>20 Q. Now, the -- if you look at -- further down</p> <p>21 there's a paragraph that says "After." Do you see that?</p> <p style="text-align: right;">Page 290</p>                                  | <p>1 So then the paragraph keeps going. The</p> <p>2 next sentence is -- let's see. It's on the top of page</p> <p>3 4 on the right side. "In this way." Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. "In this way, we avoided making questionable</p> <p>6 assumptions about the performance of hospitals with</p> <p>7 missing data, and we also maintain variation of the</p> <p>8 final calculated scores by not imputing identical values</p> <p>9 for all missing observations."</p> <p>10 Do you see that language?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 So at least as of 2013, Leapfrog -- this</p> <p>14 group of authors peer reviewed, came to the conclusion</p> <p>15 that excluding the measure was the way to avoid making</p> <p>16 questionable assumptions about the performance for</p> <p>17 hospitals. Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. That changed, right?</p> <p>20 A. That has evolved.</p> <p>21 Q. Okay. Is it your view that Leapfrog is making</p> <p style="text-align: right;">Page 292</p>                                                                                                                                                   |
| <p>1 A. Yes.</p> <p>2 Q. Okay. And it says: "After conducting</p> <p>3 sensitivity analyses using each of the above approaches,</p> <p>4 the panel recommended approach number five to address</p> <p>5 missing data, excluding the measure for a hospital and</p> <p>6 recalibrating the weights for those measures for which</p> <p>7 performance data were available, for most measures."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And was that generally the approach that</p> <p>11 Leapfrog took in the ensuing years?</p> <p>12 A. That was the approach Leapfrog used initially</p> <p>13 with the hospital safety grades.</p> <p>14 Q. Okay.</p> <p>15 A. As previously mentioned, Leapfrog has evolved</p> <p>16 its imputation approaches, working through actually at</p> <p>17 least four out of the five here.</p> <p>18 Q. Fair enough, yeah. So it's been a moving</p> <p>19 target.</p> <p>20 A. It's been evolving.</p> <p>21 Q. Evolving. Fair enough.</p> <p style="text-align: right;">Page 291</p> | <p>1 questionable assumptions today about the performance of</p> <p>2 hospitals?</p> <p>3 A. I don't believe that to be true.</p> <p>4 Q. Okay. What's changed between this analysis and</p> <p>5 today?</p> <p>6 A. So what has changed is that the -- that we've</p> <p>7 actually evolved through different imputation</p> <p>8 approaches. So we started with number five, right.</p> <p>9 Then we moved to number two, imputing based on other</p> <p>10 available data. Then we moved to number one, which is</p> <p>11 imputing performance at the national mean or median,</p> <p>12 although we did that by cohorts. And then we eventually</p> <p>13 landed here now at number three, which is imputing a</p> <p>14 score above or below the median or mean.</p> <p>15 So all of these are valid imputation</p> <p>16 approaches. I think the choice of an imputation</p> <p>17 approach needs to be in the context of sort of time,</p> <p>18 place, situation.</p> <p>19 So in 2012, when Leapfrog rolled out these</p> <p>20 hospital safety grades, hospitals did not know these</p> <p>21 were coming. So that needed to be sort of the context</p> <p style="text-align: right;">Page 293</p> |

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| <p>1 in which an imputation decision was made.</p> <p>2 If we fast-forward to 2024, now we've been</p> <p>3 issuing safety grades for 25 rounds. Hospitals are very</p> <p>4 aware of the grades. They're very aware of the measures</p> <p>5 that go into the survey, and so you might have your</p> <p>6 imputation approach evolve with that.</p> <p>7 Q. So the assumptions change?</p> <p>8 A. I don't know if assumptions have changed, but</p> <p>9 the context has changed.</p> <p>10 Q. So let me -- so first going back, you said</p> <p>11 number three, impute a score above or below the median</p> <p>12 or mean; e.g., minus one standard deviation. Do you see</p> <p>13 that?</p> <p>14 A. Yes.</p> <p>15 Q. That's not what Leapfrog does today, right?</p> <p>16 A. It is imputing a score below the mean.</p> <p>17 Q. Below the mean, fair, but not by one standard</p> <p>18 deviation, right?</p> <p>19 A. That was just an example of how that could be</p> <p>20 operationalized.</p> <p>21 Q. The measure of limited achievement is more than</p> <p style="text-align: right;">Page 294</p>                 | <p>1 A. From my point of view, it feels like the</p> <p>2 context and times have changed, and so I would say, yes,</p> <p>3 that would feel like a more fair decision to make.</p> <p>4 Q. More fair. Okay.</p> <p>5 Is it more or less fair than limited</p> <p>6 achievement?</p> <p>7 A. It's probably less fair to assign zero than</p> <p>8 limited achievement. With limited achievement,</p> <p>9 hospitals are getting some credit. They're not getting</p> <p>10 zero credits.</p> <p>11 Q. No one gets zero, right?</p> <p>12 A. No one gets zero.</p> <p>13 Q. Okay. Zero is not an available score, correct?</p> <p>14 A. Correct.</p> <p>15 Q. Okay.</p> <p>16 Then so the questionable assumption, just</p> <p>17 to make sure I understand it, is about the startup of</p> <p>18 the safety grade, as opposed to assumptions about</p> <p>19 performance generally?</p> <p>20 A. It's assumptions about the rollout of the</p> <p>21 imputation and whether or not it was fair to assign a</p> <p style="text-align: right;">Page 296</p>                                                                                                                                                  |
| <p>1 one standard deviation below, right?</p> <p>2 A. I have not looked at a distribution of scores</p> <p>3 to be able to answer that.</p> <p>4 Q. Do you have an estimate as to what -- how much</p> <p>5 lower than the standard deviation below -- one standard</p> <p>6 deviation below the mean it is?</p> <p>7 A. I don't know what that would be.</p> <p>8 Q. Okay.</p> <p>9 Okay. So going back, do you recall what</p> <p>10 the questionable assumption the authors were worried</p> <p>11 about in this paper was?</p> <p>12 A. So I think the biggest concern was around</p> <p>13 option number four, which would be to give the hospitals</p> <p>14 zero credit for not reporting to Leapfrog.</p> <p>15 Q. Why is that the biggest concern?</p> <p>16 A. That was a concern in that hospitals didn't</p> <p>17 know that this was coming, that we weren't really being</p> <p>18 fair to hospitals to just assign zero right from the</p> <p>19 get-go for not reporting.</p> <p>20 Q. Is it more fair to assign -- would it be more</p> <p>21 fair to assign zero now?</p> <p style="text-align: right;">Page 295</p> | <p>1 score that penalized hospitals when they didn't know</p> <p>2 that the safety grades were coming.</p> <p>3 Q. Do you know if that language is in this paper?</p> <p>4 A. I'm not sure that that -- I would have to</p> <p>5 reread it.</p> <p>6 Q. I mean, if you want to take a second and read</p> <p>7 this section, which I think is the only section dealing</p> <p>8 with this and just goes to the next page, I'm curious</p> <p>9 does it articulate that as the questionable assumption</p> <p>10 in here.</p> <p>11 A. So in the -- that paragraph at the top of page</p> <p>12 4, in the second paragraph it says: Finally, the third</p> <p>13 and fourth approaches were rejected to avoid creating a</p> <p>14 structural bias in favor of Leapfrog reporting</p> <p>15 hospitals.</p> <p>16 So as I mentioned, there was a concern</p> <p>17 about doing that right from the get-go.</p> <p>18 Q. But that doesn't say get-go, though. It's</p> <p>19 talking about reporting versus nonreporting, right?</p> <p>20 A. It was at that -- the article was written at a</p> <p>21 point in time with experience only up until that point</p> <p style="text-align: right;">Page 297</p> |

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| <p>1 of time, and that was our experience up 'til that point.</p> <p>2 Q. Is there any structural bias today in favor of</p> <p>3 reporting hospitals?</p> <p>4 A. There are hospitals that report to the Leapfrog</p> <p>5 Hospital Survey that score limited achievement. So a</p> <p>6 score of limited achievement is not just for hospitals</p> <p>7 that don't report. There are some hospitals that report</p> <p>8 that receive that score as well.</p> <p>9 Q. What does structural bias mean?</p> <p>10 A. I guess in that context I would think of it as</p> <p>11 some sort of bias in how we assign scores based on</p> <p>12 whether they report or don't report to Leapfrog.</p> <p>13 Q. And so based on that definition, you're still</p> <p>14 maintaining there's no structural bias in favor of</p> <p>15 reporting hospitals?</p> <p>16 A. Based on what we just discussed, I would say</p> <p>17 there is a structural bias against nonreporting</p> <p>18 Leapfrog -- nonreporting hospitals.</p> <p>19 Q. Okay. There is a structural bias?</p> <p>20 A. There is a structural bias.</p> <p>21 Q. Okay. That makes sense. Okay.</p> <p style="text-align: right;">Page 298</p> | <p>1 Q. Got it.</p> <p>2 So the methodology doesn't take any</p> <p>3 measures to address that structural bias?</p> <p>4 A. Correct.</p> <p>5 Q. Okay.</p> <p>6 Okay. And then the other -- if you keep</p> <p>7 going on that paragraph, it says: "By scoring hospitals</p> <p>8 on" -- tell me when you're ready.</p> <p>9 "By scoring hospitals on the available</p> <p>10 data, the composite scores were based on what was known</p> <p>11 about the hospital's performance, with no penalties for</p> <p>12 missing data."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Now, that also is different for today,</p> <p>16 right?</p> <p>17 A. That is different than today.</p> <p>18 Q. Okay.</p> <p>19 And at this time, scoring hospitals based</p> <p>20 on what was known about the hospital's performance was</p> <p>21 something this group of authors deemed advisable, right?</p> <p style="text-align: right;">Page 300</p>                                                                                                                                                                                                                              |
| <p>1 And that's one of the reasons this group of</p> <p>2 authors, which included yourself and many of the safety</p> <p>3 grade expert panelists, like Dr. Romano, rejected this,</p> <p>4 it looks like, the third and four approaches, right?</p> <p>5 A. At that point in time.</p> <p>6 Q. Okay. And your position is the structural bias</p> <p>7 has changed?</p> <p>8 A. It's not that it has changed. It is more</p> <p>9 apparent and can be addressed, right. So in the early</p> <p>10 days of the safety grade, hospitals didn't even know</p> <p>11 these grades were coming. A lot of them had never</p> <p>12 completed the Leapfrog Hospital Survey.</p> <p>13 Fast-forward 12 years, we're in a different</p> <p>14 place where hospitals are very aware of the safety</p> <p>15 grades. They're very aware of the survey, and so the</p> <p>16 context has changed.</p> <p>17 Q. So just to be clear, when you say addressed,</p> <p>18 that's not addressing within the methodology. That's an</p> <p>19 addressing in the context of hospitals could decide to</p> <p>20 report?</p> <p>21 A. Correct.</p> <p style="text-align: right;">Page 299</p>                             | <p>1 A. So to be clear, what we're representing is the</p> <p>2 Hospital Safety Grade methodology. Not all authors were</p> <p>3 part of the expert panel. And just to remind you, all</p> <p>4 of the decisions about the methodology are ultimately</p> <p>5 Leapfrog's to make.</p> <p>6 Q. Yes.</p> <p>7 A. So what we're writing up is the implications of</p> <p>8 that decision. So when you asked about whether authors</p> <p>9 agreed, to me it's not an agreement or disagreement.</p> <p>10 It's were we stating what the facts were at that time.</p> <p>11 Q. Okay. No, that's fair. So I got it. So</p> <p>12 you're saying it's an empirical observation?</p> <p>13 A. Correct.</p> <p>14 Q. So the observation is by scoring hospitals on</p> <p>15 the available data, the composite scores were based on</p> <p>16 what was known about the hospital's performance with no</p> <p>17 penalties for missing data. You're saying, just to make</p> <p>18 sure I understand, you're not making a judgment about</p> <p>19 whether that's good or bad. You're saying it's what's</p> <p>20 being done?</p> <p>21 A. Correct.</p> <p style="text-align: right;">Page 301</p> |

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| <p>1 Q. Okay. Got it.</p> <p>2 Now, this is the paper that Leapfrog touts</p> <p>3 as having peer reviewed its methodology, right?</p> <p>4 A. Correct.</p> <p>5 Q. But there are multiple components, at least in</p> <p>6 this paragraph that we've seen, that don't apply</p> <p>7 anymore, right?</p> <p>8 A. There are -- can you repeat the question?</p> <p>9 Q. So we've walked through this paragraph about</p> <p>10 different observations, the questionable assumptions,</p> <p>11 the structural bias, and then the penalties for missing</p> <p>12 data, all of which you said are not what Leapfrog does</p> <p>13 today. They're not reflective of the methodology</p> <p>14 Leapfrog uses today, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Is it fair to say that this paper is a peer</p> <p>17 reviewed assessment of the methodology today?</p> <p>18 A. I'm going to be a little careful because I</p> <p>19 don't know if Leapfrog's website says that it's a peer</p> <p>20 reviewed of today, right. It's a peer reviewed of their</p> <p>21 methodology, right.</p> <p style="text-align: right;">Page 302</p>                                                                                                                                                                                                 | <p>1 measure.</p> <p>2 Q. So we talked about, maybe an hour ago, that the</p> <p>3 imputed measures are significant, right?</p> <p>4 A. I don't know if that's what we discussed.</p> <p>5 Q. Okay. You talked about how they're</p> <p>6 clinically -- they matter, right?</p> <p>7 A. Correct. They're important elements of patient</p> <p>8 safety.</p> <p>9 Q. Yes.</p> <p>10 A. Yes.</p> <p>11 Q. And they weight quite heavily, right?</p> <p>12 A. They make up somewhere between 20 and</p> <p>13 30 percent.</p> <p>14 Q. Yes, as we talked about.</p> <p>15 A. Yeah.</p> <p>16 Q. Is it -- so 30 percent, 20 to 30 percent of the</p> <p>17 methodology is derived from an imputation model that</p> <p>18 this paper did not comment on, correct?</p> <p>19 MS. LAWSON: Object to form. Go ahead.</p> <p>20 THE WITNESS: As listed under the imputation</p> <p>21 methods, one of them is exactly what we're doing today.</p> <p style="text-align: right;">Page 304</p>                                    |
| <p>1 So I'll go back to the previous point that</p> <p>2 I think the overall structure of the composite score,</p> <p>3 that it's based on two domains of measures, the data</p> <p>4 sources, we're going to do relative weights, has</p> <p>5 remained consistent and constant through time.</p> <p>6 Have some of the individual decisions about</p> <p>7 imputation -- obviously, some of that has evolved and</p> <p>8 changed. So I don't know how to say whether or not it's</p> <p>9 a fair representation of Leapfrog's methodology or not.</p> <p>10 Q. Do you agree, yes or no, that Leapfrog's</p> <p>11 current methodology has been peer reviewed?</p> <p>12 A. Are you speaking of the Fall 2024 methodology?</p> <p>13 Q. The one that's operative today.</p> <p>14 A. I think it sort of depends on your definition</p> <p>15 of what we mean by methodology. And I don't mean to get</p> <p>16 into semantics, but I would still come back to like the</p> <p>17 general structure of all of this is still the same.</p> <p>18 Some of the nuance differences are different, but that</p> <p>19 happens continuously throughout the last 12 years.</p> <p>20 So I don't know how you would write a new</p> <p>21 paper every time we change one measure or re-weight one</p> <p style="text-align: right;">Page 303</p> | <p>1 BY MR. CRAIN:</p> <p>2 Q. Which one? Three?</p> <p>3 A. Number three.</p> <p>4 Q. Okay. Impute a score below the mean, correct?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. I guess this doesn't say how much far</p> <p>7 below, right?</p> <p>8 A. Correct.</p> <p>9 Q. Because if the means that we saw earlier from</p> <p>10 Ms. Campione's emails were in the 70s, 80s, and 90s, and</p> <p>11 the imputation is 15, was that the type of difference</p> <p>12 below the mean that you were contemplating when you</p> <p>13 wrote this piece?</p> <p>14 A. I think there was room for -- there was room</p> <p>15 for decisions to be made around number three and what</p> <p>16 sort of score above or below the mean or median. The</p> <p>17 minus one standard deviation was just an example.</p> <p>18 Obviously, number four is a more extreme example of</p> <p>19 zero. So there's a range of options in between those</p> <p>20 two.</p> <p>21 Q. Okay.</p> <p style="text-align: right;">Page 305</p> |

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| <p>1 So then I guess going back to my question,</p> <p>2 we've talked about the imputation methodologies being 20</p> <p>3 or 30 percent, being significant. Is it fair to say</p> <p>4 that the current methodology has been peer reviewed</p> <p>5 given that that substantial portion of it was never</p> <p>6 reviewed?</p> <p>7 A. I don't know how to answer that. I feel like</p> <p>8 it is fair to say that because the primary structure of</p> <p>9 the methodology has remained the same. Now, others</p> <p>10 could have a different assessment of that. Some could</p> <p>11 say, oh, wow, the imputation approaches make this</p> <p>12 nonrepresentative. I guess that's just a disagreement</p> <p>13 in how maybe we see the world.</p> <p>14 Q. Okay. Fair enough.</p> <p>15 So let me ask this question. The</p> <p>16 imputation model, has that been peer reviewed?</p> <p>17 A. No.</p> <p>18 Q. Okay.</p> <p>19 Okay. You can set that aside.</p> <p>20 MR. CRAIN: Let's go to tab 21. This will be</p> <p>21 Exhibit 27.</p> <p style="text-align: right;">Page 306</p> | <p>1 is a big, bold "Unintentional consequences of how we</p> <p>2 currently treat missing data"? Do you see that header</p> <p>3 on page -- it's the first page?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And I want to go to page 2. And do you</p> <p>6 see the bullet number two?</p> <p>7 A. Yes.</p> <p>8 Q. It says: "Imputation of the score when we have</p> <p>9 missing data."</p> <p>10 A. Yes.</p> <p>11 Q. And it says: "Matt mentioned that expert panel</p> <p>12 discussed this in the past and did not feel it supported</p> <p>13 the goal of the safety grade." Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. So I want to break this down a little bit.</p> <p>16 Now, do you recall making this statement at</p> <p>17 an expert panel meeting? I recognize it's a while ago.</p> <p>18 A. I don't remember --</p> <p>19 Q. Okay.</p> <p>20 A. -- that conversation.</p> <p>21 Q. Is it accurate, to the best of your knowledge</p> <p style="text-align: right;">Page 308</p>                                                                        |
| <p>1 (Exhibit No. 27 was marked for</p> <p>2 identification as of 9/25/2025.)</p> <p>3 BY MR. CRAIN:</p> <p>4 Q. Okay. So this is another, you see at the</p> <p>5 bottom, Armstrong-produced document?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recognize this one?</p> <p>8 A. Yes. Well, it's been a while.</p> <p>9 Q. What does it look like?</p> <p>10 A. It says it's the meeting agenda. What it</p> <p>11 actually represents is notes from the meeting.</p> <p>12 Q. Maybe somebody built out the notes within the</p> <p>13 agenda?</p> <p>14 A. Correct.</p> <p>15 Q. Okay.</p> <p>16 A. And we just forgot to change the title.</p> <p>17 Q. Any reason to think this isn't a true and</p> <p>18 accurate depiction?</p> <p>19 A. No.</p> <p>20 Q. So I just have a couple of questions. If you</p> <p>21 go to -- where is it again -- page 76, do you see theirs</p> <p style="text-align: right;">Page 307</p>                                                                                                                                                                         | <p>1 today, that, looking at the top bullet, imputation of</p> <p>2 the score when you have missing data is something the</p> <p>3 expert panel discussed in the past?</p> <p>4 A. So, yes, we have discussed imputation with</p> <p>5 them.</p> <p>6 Q. Okay. Just to build out the --</p> <p>7 A. Right. Yes, that's fine.</p> <p>8 Q. Just to get on the same page.</p> <p>9 A. Yes.</p> <p>10 Q. And now it says: Did not feel it supported the</p> <p>11 goal of the safety grade.</p> <p>12 A. I don't know what that refers to.</p> <p>13 Q. Okay.</p> <p>14 A. I will take ownership that the note-taking here</p> <p>15 may not have been all that accurate, because I don't</p> <p>16 even know what that refers to because I don't think they</p> <p>17 -- they have never indicated that imputing scores</p> <p>18 doesn't support the goal of the safety grade.</p> <p>19 Q. Okay.</p> <p>20 A. So I'm thinking that there might have been some</p> <p>21 nuance to that that wasn't captured in the notes.</p> <p style="text-align: right;">Page 309</p> |

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| <p>1 Q. What could the goal have been referring to?</p> <p>2 A. I don't know for sure.</p> <p>3 Q. Okay.</p> <p>4 So if you go to the next bullet, do you see</p> <p>5 how -- "Imputing scores for individual measures, like</p> <p>6 safe practices, would incentivize them to report on the</p> <p>7 survey." Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. First of all, does that reflect that the safety</p> <p>10 grade expert panel considered imputing for safe</p> <p>11 practices?</p> <p>12 A. That was something that was, I guess, discussed</p> <p>13 at that meeting.</p> <p>14 Q. And as we talked about before, was decided</p> <p>15 against, right?</p> <p>16 A. Leapfrog has never imputed scores for --</p> <p>17 Q. Safe practices?</p> <p>18 A. -- safe practices.</p> <p>19 Q. One or two?</p> <p>20 A. One or two.</p> <p>21 Q. Now, imputing -- it says: "Imputing scores for</p> <p style="text-align: right;">Page 310</p>                                       | <p>1 Q. And goal -- we talked about goals.</p> <p>2 So you have no recollection or</p> <p>3 understanding as to why imputation, at least at this</p> <p>4 time, would be deemed not supportive of the goal of the</p> <p>5 safety grade, at least the two goals that we've talked</p> <p>6 about?</p> <p>7 A. Yeah. I do not understand how that note ties</p> <p>8 to everything else I know and understand.</p> <p>9 Q. Okay. So you just don't remember, or it just</p> <p>10 doesn't make sense anymore?</p> <p>11 A. I don't remember what that was intending to --</p> <p>12 Q. To say?</p> <p>13 A. To say.</p> <p>14 Q. Okay. I have to ask.</p> <p>15 Okay. Let me just see. Yeah. Okay. You</p> <p>16 can set that aside.</p> <p>17 MR. CRAIN: And then just one more historical</p> <p>18 document. Can we do tab 30. This is Exhibit 28.</p> <p>19 (Exhibit No. 28 was marked for</p> <p>20 identification as of 9/25/2025.)</p> <p>21</p> <p style="text-align: right;">Page 312</p> |
| <p>1 individual measures would incentivize them to report on</p> <p>2 the survey." Is that different from the goal reflective</p> <p>3 in bullet one?</p> <p>4 A. That I don't know how those connect.</p> <p>5 Q. We've talked a little bit today about what the</p> <p>6 goals of the safety grade are. I think we've talked</p> <p>7 about information, right, as one goal, getting</p> <p>8 information out there, correct?</p> <p>9 A. Correct.</p> <p>10 Q. We've talked about accuracy as another goal,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. Are there any other goals that you can think</p> <p>14 of, of the safety grade, that we haven't -- besides</p> <p>15 those two?</p> <p>16 A. None come to -- immediately come to mind.</p> <p>17 Q. Okay.</p> <p>18 So looking at this bullet, you noted</p> <p>19 earlier today you endeavor to be accurate in these</p> <p>20 notes, right?</p> <p>21 A. That is our goal.</p> <p style="text-align: right;">Page 311</p> | <p>1 BY MR. CRAIN:</p> <p>2 Q. Dr. Austin, you have in front of you an email</p> <p>3 thread between you, Ms. Danforth, Mr. Card, and Emma</p> <p>4 Domico. Do you see that?</p> <p>5 A. Correct.</p> <p>6 Q. Who is Emma Domico?</p> <p>7 A. Emma was the research analyst who was working</p> <p>8 for me at the time on the Leapfrog contract.</p> <p>9 Q. What Ms. Joshi does now?</p> <p>10 A. Correct. She was in between Jordan and Preeti.</p> <p>11 Q. Got it.</p> <p>12 And who is Mr. Card?</p> <p>13 A. Mr. Card worked for The Leapfrog Group and was</p> <p>14 the analyst who was supporting the Hospital Safety</p> <p>15 Grade. So he preceded Alex.</p> <p>16 Q. Got it.</p> <p>17 So I want to just look -- so it's a little</p> <p>18 bit of a confusing email, but I'm going to walk you</p> <p>19 through at least how I think I read it. So go to the</p> <p>20 bottom, which is the first one.</p> <p>21 A. Yes.</p> <p style="text-align: right;">Page 313</p>           |

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| <p>1 Q. And it's from you and it's dated August 25th,</p> <p>2 2021, right?</p> <p>3 A. Yes.</p> <p>4 Q. And just for context, is this around the time</p> <p>5 where AHA was rescinding the license?</p> <p>6 A. I don't know -- I don't know the timing of the</p> <p>7 AHA license.</p> <p>8 Q. Okay. Do you remember generally what was</p> <p>9 happening in 2021?</p> <p>10 A. I don't other than COVID was.</p> <p>11 Q. Fair enough. We all remember that one.</p> <p>12 A. Yeah, but I don't remember what -- I don't</p> <p>13 remember the timing of the AHA data because that was all</p> <p>14 between Leapfrog and --</p> <p>15 Q. Got it. Okay.</p> <p>16 So I will at least represent to you that</p> <p>17 this was -- well, we'll go through the document.</p> <p>18 A. Okay.</p> <p>19 Q. So you write -- you say, "Missy, Andrew: Next</p> <p>20 Friday is the HSG" -- Hospital Safety Grade. Yes? Is</p> <p>21 that right?</p> <p style="text-align: right;">Page 314</p>                                           | <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Now, we'll come back to this, but I just want</p> <p>4 to explain to you what the gray is. So if you go one</p> <p>5 up, the prior page, you see Ms. Danforth writes: "See</p> <p>6 below"?</p> <p>7 A. Yes.</p> <p>8 Q. Okay.</p> <p>9 So the gray, is it correct to say, those</p> <p>10 are her comments interlined with your agenda?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 So on number two, she says in response to</p> <p>14 your agenda point, she says, "Yes, and the idea to</p> <p>15 impute for all missing, including safe practices and HH.</p> <p>16 I will send a follow-up to the email that Andrew sent."</p> <p>17 So can you tell me generally what are you</p> <p>18 proposing as an agenda item, and what did you</p> <p>19 understanding her response was?</p> <p>20 A. So what we were proposing as an agenda item was</p> <p>21 to discuss with the expert panel our imputation methods</p> <p style="text-align: right;">Page 316</p> |
| <p>1 A. Yes.</p> <p>2 Q. Okay.</p> <p>3 A. Correct.</p> <p>4 Q. -- "expert panel call. As Emma and I were</p> <p>5 walking through agenda items, we would benefit from your</p> <p>6 input/expertise." Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And I want to focus on number two and start</p> <p>9 with the bold. Do you see there's two pieces of text.</p> <p>10 There's a bold and a sort of grayed one on each line?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So let's start with the bold. You say,</p> <p>13 number two: "How to score hospitals missing</p> <p>14 process/structural measures. Are we looking for</p> <p>15 suggestions on imputation methods?" Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And then if you go to four, it says:</p> <p>18 "Penalizing hospitals if they don't report. Is this</p> <p>19 part of agenda item number two? And is Leapfrog really</p> <p>20 open to this idea? If not, I don't want to keep asking</p> <p>21 their opinions."</p> <p style="text-align: right;">Page 315</p> | <p>1 for process and structural measures.</p> <p>2 Q. Okay.</p> <p>3 A. And Missy suggested back the idea that maybe we</p> <p>4 impute for all missing, including safe practices and</p> <p>5 hand hygiene.</p> <p>6 Q. Okay.</p> <p>7 And then if you go to four, you say -- you</p> <p>8 have a separate agenda item, right?</p> <p>9 A. Correct.</p> <p>10 Q. And it says: "Penalizing hospitals if they</p> <p>11 don't report. Is this part of agenda item number two?</p> <p>12 And is Leapfrog really open to this idea?" You all caps</p> <p>13 "really." Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. So why were you all capping really?</p> <p>16 A. So back to attachment 27, back to Old Town</p> <p>17 Alexandria, the Hilton, that was actually a point where</p> <p>18 the expert panel actually brought up the idea of moving</p> <p>19 towards an imputation approach where -- to penalize</p> <p>20 hospitals --</p> <p>21 Q. Okay.</p> <p style="text-align: right;">Page 317</p>                  |

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| <p>1 A. -- if they didn't complete the Leapfrog<br/>2 Hospital Survey.<br/>3 So even though it got implemented in 2024,<br/>4 as far back as 2017 conversations were happening about<br/>5 whether or not this was the direction to go into.<br/>6 Q. Okay.<br/>7 A. So in 2021, it was like, is Leapfrog open to<br/>8 this? Are they not open to this? I don't want to keep<br/>9 asking the expert panel over and over again about this<br/>10 if Leapfrog is not open to moving in this direction.<br/>11 Q. Okay.<br/>12 A. So that was the intent of that.<br/>13 Q. And by this direction, you mean a penalty?<br/>14 A. It could be a penalty. It could be an<br/>15 imputation below the mean or median. It could take many<br/>16 different forms, and I don't think a specific proposal<br/>17 had been floated at that point.<br/>18 Q. Okay.<br/>19 And then -- so look at her response. She<br/>20 says: "Remove. This is really covered in number two."<br/>21 Do you see that?</p> <p style="text-align: right;">Page 318</p>                                                                                                                                         | <p>1 transparent. So that was one idea of how that could be<br/>2 manifested. This could be other ways of manifesting it.<br/>3 Q. Yeah. No, I get that. I'm just trying to<br/>4 understand. So the agenda item number two is how to<br/>5 score hospitals missing process and structural measures.<br/>6 Do you see that?<br/>7 A. Correct.<br/>8 Q. And the question of penalizing hospitals is<br/>9 bound up in that discussion as well, correct?<br/>10 A. I think what Missy was saying is she didn't see<br/>11 that as being a unique part of the agenda, that that<br/>12 would be -- could be incorporated into number two.<br/>13 Q. Well, she said covered in number two, right?<br/>14 A. Correct.<br/>15 Q. And you agree with her?<br/>16 A. I would agree that that, as we've discussed,<br/>17 that that is an option for imputation.<br/>18 Q. And is it fair to say over the years when this<br/>19 topic has come up, the notion of penalizing hospitals<br/>20 has been covered by the topic in number two?<br/>21 A. It's been brought up in that space, yeah.</p> <p style="text-align: right;">Page 320</p> |
| <p>1 A. Correct.<br/>2 Q. Okay. And it sounds like you agree with that?<br/>3 A. Well, I agree that that decision is part of<br/>4 imputation, right. So as we go back to the five<br/>5 imputation methods, number three was one of the possible<br/>6 options, right. So that is part of the imputation<br/>7 discussion is do we impute that a hospital is an average<br/>8 performer? Do we impute that they're a better<br/>9 performer? Right? Like, those are all decisions around<br/>10 imputation.<br/>11 Q. So and when you say "those," you mean the<br/>12 decision of whether to penalize a hospital is part of<br/>13 the analysis of how to impute or whether to impute?<br/>14 A. So there were a couple of approaches that could<br/>15 be taken, right. So if we go back to number 27, Old<br/>16 Town Alexandria, one suggestion from the expert panel<br/>17 was, well, would we want to assign some sort of explicit<br/>18 negative penalty.<br/>19 So we wouldn't necessarily work that into<br/>20 the imputation of individual scores, but we would take<br/>21 so much off of the final score for not being</p> <p style="text-align: right;">Page 319</p> | <p>1 Q. Okay. Okay.<br/>2 Let me take another look. I think that may<br/>3 be it for this email. Yeah, we can set this one aside.<br/>4 So I'm going to shift gears again. We're<br/>5 getting there.<br/>6 A. How many gears are there on this car?<br/>7 Q. I've got a lot of gears. I've got a lot of<br/>8 gears. We're getting close to the end gear. I've only<br/>9 got so much time.<br/>10 I want to talk about the 2019 white paper.<br/>11 A. Okay.<br/>12 Q. Okay? Oh, you seem excited for it.<br/>13 A. I love it.<br/>14 Q. Okay.<br/>15 MR. CRAIN: So I want to start with -- let's go<br/>16 to tab 58. And this is Exhibit 29.<br/>17 (Exhibit No. 29 was marked for<br/>18 identification as of 9/25/2025.)<br/>19 BY MR. CRAIN:<br/>20 Q. So, Dr. Austin, you see this is an email from<br/>21 you to Ms. Campione, Ms. Danforth, and Ms. Bailey from</p> <p style="text-align: right;">Page 321</p>                                                                                                                                                                                                             |

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| <p>1 2025.<br/> 2 A. Yes. So this is not in reference to the<br/> 3 2019 --<br/> 4 Q. Yes.<br/> 5 A. -- report.<br/> 6 Q. It's the lives saved, lives lost, right?<br/> 7 A. Correct.<br/> 8 Q. Okay. This was the update you were talking<br/> 9 about, right?<br/> 10 A. This is the update that we've worked on but<br/> 11 have not published.<br/> 12 Q. Okay. I want to walk through this one, if I<br/> 13 can.<br/> 14 A. Okay.<br/> 15 Q. Okay. So maybe I was a little unfair. I'm<br/> 16 starting with 2025 and then I want to lead into the<br/> 17 white paper --<br/> 18 A. Okay.<br/> 19 Q. -- but I want to talk about your numbers here.<br/> 20 A. Okay.<br/> 21 Q. Okay?</p> <p style="text-align: right;">Page 322</p>                                                                                                                                                                                                                                                                                                                                                                                                          | <p>1 analysis done on the 2016 white paper, and the 2019<br/> 2 reflects the update?<br/> 3 A. Correct.<br/> 4 Q. Okay. And 2025 reflects, at least in draft<br/> 5 form, what the current numbers would be?<br/> 6 A. They represent, if we were to maintain the same<br/> 7 methodology we used in 2019, what the numbers would look<br/> 8 like in 2025.<br/> 9 Q. Okay. Can you -- and I'm happy to give you<br/> 10 documents if it's helpful, but can you generally<br/> 11 describe what that methodology is?<br/> 12 A. Yep.<br/> 13 Q. And if you need a document, we can get you that<br/> 14 document.<br/> 15 A. No, no. I can.<br/> 16 So what we do is for each grade, "A", "B",<br/> 17 "C", and we lump "D" and "Fs" together --<br/> 18 Q. Why is that?<br/> 19 A. Primarily due to small sample sizes of "F"<br/> 20 hospitals.<br/> 21 Q. Got it.</p> <p style="text-align: right;">Page 324</p>                                                                                                                                                                                                                        |
| <p>1 So let's go to page -- so I want to look<br/> 2 at -- you see Ms. Campione's email on the bottom? It's<br/> 3 from her to you, and there's a table on page 0900. Do<br/> 4 you see that?<br/> 5 A. Yes.<br/> 6 Q. Okay. Now, this table -- tell me what this<br/> 7 table is.<br/> 8 A. So what this table represents is for three<br/> 9 points in time, 2016, 2019, and 2025, we have estimated<br/> 10 the number of lives lost due to preventable medical<br/> 11 mistakes that are captured through the Leapfrog Hospital<br/> 12 Safety Grade measures.<br/> 13 We also have estimated the number of lives<br/> 14 that could be saved if "B," "C," "D," and "F" hospitals<br/> 15 all performed as well as "A" hospitals. So we've<br/> 16 estimated that at three different points in time.<br/> 17 We also have done relative comparisons<br/> 18 between "B" and "A" hospitals, "C" and "A", "D" and "A"<br/> 19 and "F", and then we break the numbers down.<br/> 20 Q. So the chart that we're looking at here on page<br/> 21 0900, is it correct that the 2016 column reflects the</p> <p style="text-align: right;">Page 323</p> | <p>1 A. We're looking at less than 20 or 25.<br/> 2 Q. Okay.<br/> 3 A. For each of the outcome measures that are<br/> 4 included in the Hospital Safety Grade, we calculate a<br/> 5 mean incidence rate for each cohort of hospitals. So<br/> 6 "A" hospitals, how do they do on foreign objects<br/> 7 retained? "B" hospitals, how do they do on foreign<br/> 8 objects retained?<br/> 9 So we have basically an estimated incidence<br/> 10 rate of these events by hospitals.<br/> 11 Q. And just to translate that, estimated incidence<br/> 12 rate means how many times this thing happened?<br/> 13 A. Correct.<br/> 14 So we display it as a percentage, right?<br/> 15 You can think of like, oh, 1.2 percent of patients<br/> 16 develop a central line associated blood stream infection<br/> 17 in an "A" hospital. Some of those measures, outcome<br/> 18 measures are applicable just to patients who have had<br/> 19 surgery. Some are just applicable to patients who have<br/> 20 been in the intensive care unit.<br/> 21 And so we discount the total patients based</p> <p style="text-align: right;">Page 325</p> |

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| <p>1 on who those -- who those measures apply to.</p> <p>2 Q. Yep.</p> <p>3 A. Then in terms of estimating the lives lost,</p> <p>4 from the literature, we've identified the attributable</p> <p>5 mortality rate to that event happening to a patient in a</p> <p>6 hospital and their -- yeah, attributable mortality rate.</p> <p>7 So as previously discussed, like for</p> <p>8 central line associated blood stream infections, one out</p> <p>9 of every seven patients who develop C infection in the</p> <p>10 hospital will die.</p> <p>11 And we're using that same attributable</p> <p>12 mortality rate for all categories of hospitals. So that</p> <p>13 is one of our limitations. We may have variation in</p> <p>14 that "A" hospitals could actually have a lower mortality</p> <p>15 rate than "D" and "F" hospitals, but we're making the</p> <p>16 assumption of that mortality rate.</p> <p>17 And so that is -- and then in addition to</p> <p>18 the outcome measures, we're also using ICU physician</p> <p>19 staffing because there is strong evidence linking</p> <p>20 improvements in intensivists managing and comanaging</p> <p>21 patients in the ICU and reduced mortality hospital-wide.</p> <p style="text-align: right;">Page 326</p> | <p>1 no intensivist and high intensivist staffing.</p> <p>2 And so we actually go back to seventh or</p> <p>3 eighth grade math, and we have the slope of a line. And</p> <p>4 this is where hospitals are now at, and, therefore, if</p> <p>5 we calculate the slope, it would be this point on the</p> <p>6 line.</p> <p>7 Q. Oh, boy. You're testing my math skills.</p> <p>8 A. I test my own as well.</p> <p>9 And so basically, hospitals that are fully</p> <p>10 implemented we think have -- we estimate that they have</p> <p>11 achieved the full impact of that.</p> <p>12 Q. Okay.</p> <p>13 A. And if hospitals are somewhere along that</p> <p>14 continuum, they've achieved a portion of that impact.</p> <p>15 Q. Okay.</p> <p>16 So the mortality rating for ICU physician</p> <p>17 staffing, am I right that it is based on a 2004 article</p> <p>18 by Dr. Pronovost?</p> <p>19 A. It's definitely by an article by Dr. Pronovost.</p> <p>20 I couldn't speak to the year.</p> <p>21 Q. Okay. Can we grab it?</p> <p style="text-align: right;">Page 328</p> |
| <p>1 Q. Okay.</p> <p>2 A. Well, both in the ICU and hospital-wide. And</p> <p>3 so that's the one process and structural method that we</p> <p>4 use as part of the analysis.</p> <p>5 Q. So looking at this chart again, just as a</p> <p>6 grounding mechanism, it looks like to me that there are</p> <p>7 19 outcome measures and 1 process measure. Is that</p> <p>8 right? That's what I'm seeing, the 19 and the 1.</p> <p>9 A. Correct.</p> <p>10 Q. Okay. And the one is, as you said, ICU</p> <p>11 physician staffing, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. And so basically you're taking the</p> <p>14 incidence times the mortality and outputting the amount</p> <p>15 of estimated deaths?</p> <p>16 A. We are for the outcome measures.</p> <p>17 Q. Okay.</p> <p>18 A. What we're doing for ICU physician staffing is</p> <p>19 we're going back to the historical literature that</p> <p>20 established the standard to say that there is a</p> <p>21 30 percent reduction in hospital-wide mortality between</p> <p style="text-align: right;">Page 327</p>                                                                                                                                                                                 | <p>1 A. I don't disagree with you that it was 2004.</p> <p>2 Q. You don't know for sure?</p> <p>3 A. I don't know for sure.</p> <p>4 Q. I'll represent to you it's 2004. We may as</p> <p>5 well pull it out. We have it if you want to take a</p> <p>6 look.</p> <p>7 A. Okay.</p> <p>8 Q. My question is have you looked at the research</p> <p>9 that's come sense to test that estimate?</p> <p>10 A. So Leah Binder at The Leapfrog Group has asked</p> <p>11 us to look at that. We have not found anything recently</p> <p>12 that would be a better way for us to estimate that</p> <p>13 value.</p> <p>14 Q. Okay.</p> <p>15 So I guess, one, have you heard of --</p> <p>16 there's an article by -- do you know who Deena Kelly</p> <p>17 Costa is?</p> <p>18 A. I do not.</p> <p>19 Q. Okay. I guess I'll just mark it to see if</p> <p>20 you've seen this article before.</p> <p>21 MR. CRAIN: Let's mark it as Exhibit 30.</p> <p style="text-align: right;">Page 329</p>                                                                                           |

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| <p>1 (Exhibit No. 30 was marked for<br/>2 identification as of 9/25/2025.)<br/>3 BY MR. CRAIN:<br/>4 Q. Does this article look familiar to you at all?<br/>5 A. I'm not familiar with it.<br/>6 Q. Okay.<br/>7 So the title is: The Association Between<br/>8 Daytime Intensivist Physician Staffing and Mortality in<br/>9 the Context of Other ICU Organizational Practices: A<br/>10 Multicenter Cohort Study.<br/>11 Do you see that?<br/>12 A. Yes.<br/>13 Q. Do any of the authors -- are they familiar to<br/>14 you, Dr. Wallace, Dr. Kahn, and Dr. Costa?<br/>15 A. I do not know any of them.<br/>16 Q. Okay.<br/>17 Do you know the journal here?<br/>18 A. I am familiar with critical care medicine, yes.<br/>19 Q. Reputable journal?<br/>20 A. As far as I know.<br/>21 Q. Okay.</p> <p style="text-align: right;">Page 330</p>                                                                                                                                                                                                | <p>1 individually to assess whether there is a relationship<br/>2 or not a relationship, right. I think if we think about<br/>3 -- through humankind, there's lots of studies that have<br/>4 been done. One will show red wine is good for the<br/>5 heart. The next one will show, oh, no, you should stay<br/>6 away from alcohol, right. And over time we sort of<br/>7 build a body of literature.<br/>8 What an additional -- one of the strengths<br/>9 of the Pronovost article, if I'm remembering it<br/>10 correctly, is it was actually a meta analysis. So it<br/>11 actually looked at 15 to 20 different studies and<br/>12 synthesized those results.<br/>13 So it's not to say that every study is<br/>14 going to show a relationship, but one study doesn't<br/>15 necessarily negate a wider body of literature.<br/>16 BY MR. CRAIN:<br/>17 Q. Okay.<br/>18 This is dated 2015. Do you see that?<br/>19 A. Correct.<br/>20 Q. And you've not seen this article, right?<br/>21 A. I have not seen this.</p> <p style="text-align: right;">Page 332</p> |
| <p>1 Now, I want to go down to Measurements and<br/>2 Main Results, and there's a sentence just at the end<br/>3 which seems to sort of give the bottom line starting<br/>4 with "there." Do you see that?<br/>5 A. Yes.<br/>6 Q. "There was no association between daytime<br/>7 intensivist physician staffing and in-hospital<br/>8 mortality. After adjusting for interprofessional rounds<br/>9 and protocols for mechanical ventilation, the effect of<br/>10 daytime intensivist physician staffing remained<br/>11 nonsignificant."<br/>12 Do you see that?<br/>13 A. Yes.<br/>14 Q. I know you haven't read this article, but at<br/>15 least based on the first page -- and feel free if you<br/>16 want to flip through -- does this undermine the<br/>17 assumptions that the white paper makes with respect to<br/>18 IPS and mortality?<br/>19 MS. LAWSON: Object to form.<br/>20 THE WITNESS: So I think in research there<br/>21 is -- I don't think one can look at one study</p> <p style="text-align: right;">Page 331</p> | <p>1 Q. Okay. Is it something that you think you<br/>2 should review in the next iteration or no?<br/>3 A. I would be happy to review it and see what we<br/>4 come to in terms of a conclusion.<br/>5 Q. Okay. Okay.<br/>6 So I want to go back to -- I want to just<br/>7 go back to the chart again.<br/>8 A. Yeah. Okay.<br/>9 MS. LAWSON: Is that Exhibit 29?<br/>10 MR. CRAIN: Yeah, 29, the email and the invite.<br/>11 BY MR. CRAIN:<br/>12 Q. Now, I want to just look at the differences in<br/>13 mortality, right. So when you look at -- just take --<br/>14 starting with "D" and "F," right, at the bottom. Do you<br/>15 see that?<br/>16 A. Yes.<br/>17 Q. It says, focusing primarily -- focusing on the<br/>18 outcome measures. It says 1.46 in 2019. Do you see<br/>19 that?<br/>20 A. For "D" and "F," correct.<br/>21 Q. Correct.</p> <p style="text-align: right;">Page 333</p>                                                                                                                                                                   |

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| <p>1 And is that, just to make sure I understand</p> <p>2 the numbers, is 1.46, that's 1.46 deaths?</p> <p>3 A. Correct.</p> <p>4 Q. Okay.</p> <p>5 And then if you go down to "C," it's 1.40,</p> <p>6 right?</p> <p>7 A. Correct.</p> <p>8 Q. To "B," it's 1.31, right?</p> <p>9 A. Correct.</p> <p>10 Q. And 1.22 for "A." Do you see that?</p> <p>11 A. Correct.</p> <p>12 Q. Is the difference just for outcome measures</p> <p>13 between 1.22 for an "A" and 1.46 statistically</p> <p>14 significant in your view?</p> <p>15 A. I would need to do a statistical test to</p> <p>16 determine whether that there is a statistical difference</p> <p>17 there.</p> <p>18 Q. Okay. It's not twice, right? There are not</p> <p>19 two times as many deaths between -- in that comparison,</p> <p>20 right?</p> <p>21 A. Not in just comparing the outcome measures.</p> <p style="text-align: right;">Page 334</p>                                                                                                                                                                                                                  | <p>1 twice, both in the outcome measures and the ICU</p> <p>2 physician staffing.</p> <p>3 So the methodological decision was to cut</p> <p>4 the outcome measures in half. So we take each value and</p> <p>5 divide by two so that we aren't double counting between</p> <p>6 the two.</p> <p>7 Q. And what was that based on? That's the</p> <p>8 50 percent number?</p> <p>9 A. Yeah, the 50 percent. That was just an</p> <p>10 educated guess.</p> <p>11 Q. Okay. Is it based on a study or is it based on</p> <p>12 --</p> <p>13 A. No. It was just sort of a collective wisdom of</p> <p>14 people.</p> <p>15 Q. The authors or other people?</p> <p>16 A. Other people as well.</p> <p>17 Q. Who were the other people?</p> <p>18 A. So the initial work for this actually came out</p> <p>19 of some work that The Leapfrog Group had done, Leah</p> <p>20 Binder, with another consultant.</p> <p>21 Q. Okay. Who is that?</p> <p style="text-align: right;">Page 336</p>                                  |
| <p>1 Q. Just comparing the outcome measures.</p> <p>2 A. Correct.</p> <p>3 Q. With respect to the ICU physician staffing,</p> <p>4 fair to say the difference is more substantial, right?</p> <p>5 A. Correct.</p> <p>6 Q. Is the -- would you agree that the analysis</p> <p>7 places -- like the number of deaths in the analysis is</p> <p>8 significantly weighted to the ICU physician staffing</p> <p>9 metric?</p> <p>10 A. Yes. Although, there is a methodological</p> <p>11 clarification that I should make because this will help</p> <p>12 explain it to some degree. We actually take the number</p> <p>13 of outcome measures, or we take the lives lost in the</p> <p>14 outcome measures and actually divide that by two.</p> <p>15 Q. Okay.</p> <p>16 A. And the reason we do that is because we</p> <p>17 recognize that there are some deaths that are probably</p> <p>18 occurring in the ICU that are a result of not good care,</p> <p>19 right.</p> <p>20 So you may have developed a central line</p> <p>21 blood stream infection. We didn't want to count that</p> <p style="text-align: right;">Page 335</p> | <p>1 A. I don't remember his name.</p> <p>2 Q. Okay.</p> <p>3 A. I can sort of picture him, but I don't remember</p> <p>4 the name. And so it was out of that that the decision</p> <p>5 was made to multiply it by 50 percent.</p> <p>6 Q. Okay.</p> <p>7 So if we look at the bottom, you're saying</p> <p>8 that "D" and "F," the actual number is closer to 3 than</p> <p>9 1.46?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. Got it.</p> <p>12 Okay. So then that's still I guess -- my</p> <p>13 question still remains. The biggest difference, at</p> <p>14 least it appears to me, between a "D" and "F" hospital</p> <p>15 and an "A" hospital is the physician staffing mortality.</p> <p>16 Is that right?</p> <p>17 A. That is -- from what we're able to quantify in</p> <p>18 terms of harm, that is where the biggest differences</p> <p>19 are.</p> <p>20 Q. Okay. And the mortality rating for that is</p> <p>21 based on the Pronovost article, right?</p> <p style="text-align: right;">Page 337</p> |

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| <p>1 A. Correct.</p> <p>2 Q. Okay.</p> <p>3 And then so let's go to another document.</p> <p>4 I want to look primarily -- let's look at the chart,</p> <p>5 actually, on the right side, so the 2025 metric.</p> <p>6 A. Okay.</p> <p>7 Q. Now, in all -- this is the first time, at least</p> <p>8 for IPS and I think everywhere else, there's a slash.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. What does the slash reflect?</p> <p>12 A. The slash is reflecting if we -- the value to</p> <p>13 the right of the slash would be if we were to remove the</p> <p>14 imputed scores for IPS.</p> <p>15 Q. Yeah. And say more about that. You mean</p> <p>16 remove the mortality for nonparticipating hospitals?</p> <p>17 A. No. We would remove -- if a hospital had an</p> <p>18 IPS score that was imputed, we would remove that from</p> <p>19 the calculation.</p> <p>20 Q. Okay. And that's the right side?</p> <p>21 A. That is the right side.</p> <p style="text-align: right;">Page 338</p>                                                                                   | <p>1 pretty different.</p> <p>2 BY MR. CRAIN:</p> <p>3 Q. Fair enough.</p> <p>4 If you go to "D" and "F," the difference is</p> <p>5 7.98 on the left and 3.89 on the right. Do you see</p> <p>6 that?</p> <p>7 A. Correct.</p> <p>8 Q. And if you go to "C," 4.92 and 2.52, right?</p> <p>9 A. Correct.</p> <p>10 Q. Now, the differences get smaller. So "B," it's</p> <p>11 2.12 and 2.01, right?</p> <p>12 A. Correct.</p> <p>13 Q. And then "A," it's 1.53 versus 1.5, right?</p> <p>14 A. Correct.</p> <p>15 Q. And if I recall correctly, there were only two</p> <p>16 hospitals that got an "A" with imputed scores, right?</p> <p>17 A. Correct.</p> <p>18 Q. So that -- did that explain why that's so close</p> <p>19 together? Correct?</p> <p>20 A. I would need to go back and look at the math,</p> <p>21 but your statement about that there's two hospitals is</p> <p style="text-align: right;">Page 340</p>                                                                  |
| <p>1 Q. So the left side reflects -- tell me if this is</p> <p>2 wrong. I'm just trying to understand. The left side of</p> <p>3 the slash reflects the hospitals that are participating</p> <p>4 with IPS scores based on their actual performance data,</p> <p>5 and the right side includes nonparticipating hospitals</p> <p>6 with the limited achievement assignment?</p> <p>7 A. So the left-hand side would be the scores for</p> <p>8 all hospitals that received a safety grade, including</p> <p>9 those that were imputed.</p> <p>10 Q. Okay.</p> <p>11 A. The right-hand side would be just hospitals</p> <p>12 that had a score reported through the Leapfrog Hospital</p> <p>13 Survey.</p> <p>14 Q. And that's the 80 percent of inpatient beds</p> <p>15 we've been talking about?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. Got it.</p> <p>18 So the numbers are pretty different, right,</p> <p>19 at least in certain categories?</p> <p>20 MS. LAWSON: Object to form. Go ahead.</p> <p>21 THE WITNESS: I don't know how you would define</p> <p style="text-align: right;">Page 339</p> | <p>1 correct.</p> <p>2 Q. Yeah. Okay.</p> <p>3 Do you have a theory as to why the numbers</p> <p>4 are so different left and right, at least for "D" and</p> <p>5 "F" and "C"?</p> <p>6 A. The difference between the two values is the</p> <p>7 inclusion or exclusion of the imputed values.</p> <p>8 Q. Is the number on the left or the right more</p> <p>9 likely an accurate estimate?</p> <p>10 MS. LAWSON: Object to form.</p> <p>11 BY MR. CRAIN:</p> <p>12 Q. Let me step back. You're trying to estimate</p> <p>13 mortality of "A," "B," "C," "D," and "F" hospitals,</p> <p>14 right?</p> <p>15 A. Correct.</p> <p>16 Q. You want to be accurate in the estimate as best</p> <p>17 you can?</p> <p>18 A. Yes, recognizing it's an estimate.</p> <p>19 Q. Yes. So I'm going to posit that 4.92 versus</p> <p>20 2.52 for the "C" hospitals, pretty different number of</p> <p>21 deaths. Is that fair to say or you disagree? I mean,</p> <p style="text-align: right;">Page 341</p> |

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| <p>1 it's almost double, right, on the left side.</p> <p>2 A. That last part is true. It is almost double.</p> <p>3 Q. So we'll just go with numerical. It's almost</p> <p>4 double.</p> <p>5 What is a more accurate estimate of the</p> <p>6 mortality of "C" hospitals as a result of ICU physician</p> <p>7 staffing? Is it 4.92 or is it 2.52?</p> <p>8 A. I will say both are incorrect.</p> <p>9 Q. Okay. I'm eager to hear why.</p> <p>10 A. Well, one includes imputed values, which, by</p> <p>11 definition, are not exact values.</p> <p>12 Q. Okay.</p> <p>13 A. The other one is excluding hospitals that we</p> <p>14 don't have any data for. So there is some lives lost</p> <p>15 attached to them. So both of them are actually -- both</p> <p>16 of them are estimates in two different scenarios.</p> <p>17 Q. You said a moment ago both of them are</p> <p>18 incorrect.</p> <p>19 A. Okay. Both of them are incorrect.</p> <p>20 Q. Okay.</p> <p>21 A. It's an estimate, so unless you hit it right on</p> <p style="text-align: right;">Page 342</p> | <p>1 can read it all, but the tenor seems to be there's a</p> <p>2 discussion about whether you include the imputed scores</p> <p>3 in the mortality or not, right?</p> <p>4 MS. LAWSON: Take a minute and read the email.</p> <p>5 MR. CRAIN: Yeah, take a second.</p> <p>6 (Witness peruses document.)</p> <p>7 THE WITNESS: So, yeah, this is -- the tenor is</p> <p>8 about the table that we just went through.</p> <p>9 BY MR. CRAIN:</p> <p>10 Q. Whether to include the imputed scores or not,</p> <p>11 right?</p> <p>12 A. Correct.</p> <p>13 Q. Okay.</p> <p>14 And you at the end say, "I would vote for</p> <p>15 keeping the imputed IPS scores in place. My guess is</p> <p>16 the averages with the imputed scores are closer to the</p> <p>17 truth than averages excluding the imputed scores."</p> <p>18 Right?</p> <p>19 A. Correct.</p> <p>20 Q. So what's that based on?</p> <p>21 A. Well, I think I used the word "guess," so I</p> <p style="text-align: right;">Page 344</p>                                                                                                                                            |
| <p>1 the dot, an estimate is going to be incorrect.</p> <p>2 Q. Which one is more incorrect?</p> <p>3 A. I don't know how to judge that.</p> <p>4 Q. Okay. So you don't know one way or another?</p> <p>5 A. I don't know one way or another.</p> <p>6 Q. Okay.</p> <p>7 MR. CRAIN: So I want to take a look at a few</p> <p>8 documents here. Give me one second. Oh, no wonder I</p> <p>9 can't find it. It's actually in this document. Iason</p> <p>10 knows them better than I do.</p> <p>11 THE WITNESS: Which one?</p> <p>12 BY MR. CRAIN:</p> <p>13 Q. So this is Exhibit 30, what we were just</p> <p>14 looking at -- oh, sorry, 29 I mean was the chart.</p> <p>15 MS. LAWSON: 29.</p> <p>16 MR. CRAIN: Yeah, Exhibit 29 with the chart.</p> <p>17 BY MR. CRAIN:</p> <p>18 Q. Okay. And this is from you to Ms. Campione,</p> <p>19 Ms. Danforth, and Ms. Bailey, right?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. So you send an email, and the tenor -- I</p> <p style="text-align: right;">Page 343</p>                                                          | <p>1 will qualify that. I guess it's somewhat informed by</p> <p>2 that, you know, hospitals that choose not to disclose</p> <p>3 likely may not be meeting Leapfrog's standards. Because</p> <p>4 if they were meeting them, they would be more likely to</p> <p>5 disclose them. So it was probably with that assumption.</p> <p>6 Q. So that -- so okay. But it's multiple levels</p> <p>7 of assumptions, right? I can build it out to see what I</p> <p>8 mean.</p> <p>9 So assumption one is that hospitals that</p> <p>10 are not reporting are not meeting Leapfrog's standards,</p> <p>11 right?</p> <p>12 A. That is the assumption I just stated.</p> <p>13 Q. And assumption two is that the failure to meet</p> <p>14 Leapfrog's standards yields a higher mortality rate?</p> <p>15 A. Correct, based on the literature.</p> <p>16 Q. Okay. So it's an assumption, but you're saying</p> <p>17 it's backed by literature?</p> <p>18 A. Correct.</p> <p>19 Q. And, again, meaning the Pronovost article?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. So your guess is based on those two</p> <p style="text-align: right;">Page 345</p> |

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| <p>1 assumptions?</p> <p>2 A. Correct.</p> <p>3 Q. Okay.</p> <p>4 Do you have any understanding of where</p> <p>5 Leapfrog is landing on this question, whether to include</p> <p>6 the imputed or nonimputed?</p> <p>7 A. I do not know.</p> <p>8 Q. And just going back to the chart, I want to</p> <p>9 just look at the numbers. Just go right to the top.</p> <p>10 You see lives lost, lives saved? Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And it's -- the numbers, again, you</p> <p>13 know, are -- so I'll be factual about it. Lives lost,</p> <p>14 if you exclude the imputed hospitals, it's about 30,000</p> <p>15 fewer, right?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. And if you exclude the imputed values,</p> <p>18 it's also about 30,000 fewer on lives saved, right?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. And so your view is that it is -- your</p> <p>21 best guess is that those 30,000 are -- bear some</p> <p style="text-align: right;">Page 346</p>                                                                                                                                                       | <p>1 MR. CRAIN: Yeah, I think that's right.</p> <p>2 BY MR. CRAIN:</p> <p>3 Q. Page 2 and it's under the second -- we talked</p> <p>4 about -- remember this question? "Why should people</p> <p>5 worry about a hospital's patient safety?" Do you</p> <p>6 remember that?</p> <p>7 A. Yes.</p> <p>8 Q. And if you go to the end of that paragraph:</p> <p>9 "All hospitals are not the same. Some hospitals are</p> <p>10 much safer than others. John Hopkins Medicine</p> <p>11 researchers estimate that patients are twice as likely</p> <p>12 to die of a preventable problem at a "C," "D," or "F"</p> <p>13 hospital than an "A" hospital, and over 50,000 lives</p> <p>14 would be saved if all hospitals performed the way "A"</p> <p>15 hospitals did."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Now, first of all, the 50,000 lives,</p> <p>19 based on this chart, going back to Exhibit 29, refers to</p> <p>20 2019, right?</p> <p>21 A. Correct.</p> <p style="text-align: right;">Page 348</p> |
| <p>1 relation -- have some accuracy to them -- strike that.</p> <p>2 That was a bad question. I know you were going to</p> <p>3 object. And it was fair.</p> <p>4 So let me ask another question then.</p> <p>5 You said the numbers bear out the twice as</p> <p>6 likely mortality point. Do you remember earlier in the</p> <p>7 day we talked about Leapfrog says on its website that</p> <p>8 Johns Hopkins researchers say you're two times likely to</p> <p>9 die if you go to a "D" or an "F" hospital, as opposed to</p> <p>10 an "A"?</p> <p>11 A. I remember that conversation, but I don't</p> <p>12 remember in what context.</p> <p>13 Q. We were looking at the website, which we can</p> <p>14 look at if someone will tell me the exhibit number, and</p> <p>15 we talked about -- so maybe we can get that document out</p> <p>16 just to ground us. I think it's exhibit --</p> <p>17 MR. TOGIAS: It was tab 65.</p> <p>18 MR. CRAIN: Sixty-five. So that's Exhibit 9.</p> <p>19 MR. TOGIAS: Frequently asked questions.</p> <p>20 MR. CRAIN: Yeah.</p> <p>21 MS. LAWSON: It's on page 2.</p> <p style="text-align: right;">Page 347</p> | <p>1 Q. Okay.</p> <p>2 Your 2025 numbers, I understand, are in</p> <p>3 draft form, but it would either be 49,000 or 20,000</p> <p>4 depending on the imputed scores, right?</p> <p>5 A. Correct.</p> <p>6 Q. Okay.</p> <p>7 Now, this Johns Hopkins Medicine</p> <p>8 researchers estimate that patients are twice as likely</p> <p>9 to die of a preventable problem at a "C," "D," or "F"</p> <p>10 hospital than an "A" hospital, do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Now, that -- is that based on the 2019 numbers?</p> <p>13 A. Yes.</p> <p>14 Q. Okay.</p> <p>15 Now, you had said that that was also true</p> <p>16 as for 2025, albeit in draft form. Do you recall that</p> <p>17 testimony?</p> <p>18 A. I think I mentioned that we were seeing</p> <p>19 probably similar trends.</p> <p>20 Q. Okay. Is that reflected here? Can you explain</p> <p>21 to me just on this chart how that works?</p> <p style="text-align: right;">Page 349</p>                                                                |

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| <p>1 A. Yeah. So I think Leapfrog took a little<br/>2 liberty with the "twice," but if you take the 87 and the<br/>3 91.8 --<br/>4 Q. Where are you on that?<br/>5 A. Sorry. 2019.<br/>6 Q. Yep. Yep. I see that.<br/>7 A. Those are close to 100 percent, or one could<br/>8 make the argument, so that would be twice as likely --<br/>9 Q. From 2019?<br/>10 A. From 2019.<br/>11 Q. Okay.<br/>12 And what about today?<br/>13 A. And then today the numbers are actually higher.<br/>14 I was just sort of hedging a little bit about what that<br/>15 would be because they range anywhere between<br/>16 46.6 percent and 353.6.<br/>17 Q. Okay. So that's -- it's different whether you<br/>18 include the imputed or not, right?<br/>19 A. Correct.<br/>20 Now, as I look at this further, what I<br/>21 think I would argue is that the number of lives saved</p> <p style="text-align: right;">Page 350</p>                                                                                                          | <p>1 A. It's fewer lives lost. So we've seen<br/>2 improvements. We've gone from 161,000 lives lost due to<br/>3 medical error to 134,000.<br/>4 Q. It's fewer lives lost than 2019 but more lives<br/>5 lost than without the imputed values?<br/>6 A. Correct.<br/>7 Q. Okay.<br/>8 And then you're saying -- so how does that<br/>9 equate now to the twice as likely to die for "C," "D,"<br/>10 and "F"? Can you walk me through that?<br/>11 A. Yeah, yeah. So that's what I was -- if you<br/>12 look at the --<br/>13 Q. The percent.<br/>14 A. -- 2019 column --<br/>15 Q. Yes, that I'm clear on.<br/>16 A. The "C" versus "A", "D" and "F" versus "A,"<br/>17 those are somewhere in the 100 percent range. Like I<br/>18 said, I think Leapfrog took a little liberty there.<br/>19 Q. Yeah.<br/>20 But 2025?<br/>21 A. For 2025, if we exclude -- if we include the</p> <p style="text-align: right;">Page 352</p>                                                                                                                      |
| <p>1 when we take out the imputed scores, the 20,252, is such<br/>2 a significant drop-off. I don't know if that's --<br/>3 that's where I had caution about why I thought that<br/>4 seemed questionable to exclude the imputed scores.<br/>5 Same with the 105. To be more clear, the<br/>6 105 is quite a drop, and I don't think we've seen that<br/>7 level of improvement in patient safety in the country,<br/>8 and so I think that would oversell our efforts in<br/>9 patient safety.<br/>10 Q. Is this an annual number?<br/>11 A. That would be an annual number.<br/>12 Q. Okay.<br/>13 A. Correct.<br/>14 Q. So you're saying it would surprise you if it<br/>15 was only 105,000 patients dying, as opposed to 161,000?<br/>16 A. Correct.<br/>17 Q. Okay. Got it. Okay.<br/>18 A. So the 134 on the face felt like more of a<br/>19 reasonable level of improvement that we would have seen.<br/>20 Q. Because it's fewer lives -- it's more lives<br/>21 lost?</p> <p style="text-align: right;">Page 351</p> | <p>1 imputed scores, it's actually 133 to 353,000. We would<br/>2 have to do some sort of blended average of those since<br/>3 it says "C," "D," and "F."<br/>4 Q. Yeah. And if you don't include it, it's 46 to<br/>5 204?<br/>6 A. Correct.<br/>7 Q. Okay. And as you said, blended average because<br/>8 there are -- I think there are more "C" hospitals --<br/>9 A. There's a lot more "C" hospitals, right.<br/>10 Q. Okay. Got it.<br/>11 So maybe you just don't know today, but do<br/>12 you have an estimate today as to whether it's really<br/>13 accurate that you're twice as likely to die if you go to<br/>14 a "C," "D," or "F" hospital as compared to an "A"<br/>15 hospital?<br/>16 A. Well, given my statement in the email about<br/>17 Leapfrog, that I feel like the numbers with the imputed<br/>18 scores are more reflective of the actual reality, that<br/>19 would be something greater than twice. It would be<br/>20 probably two and a half times.<br/>21 Q. So --</p> <p style="text-align: right;">Page 353</p> |

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| <p>1 A. So what we're seeing nationally is bigger gaps<br/>2 between "A" hospitals and hospitals at the back of the<br/>3 pack.<br/>4 Q. And what's driving that in your view?<br/>5 A. I believe it's -- I think hospitals have --<br/>6 some hospitals have chosen to really invest time,<br/>7 resources, energy, have created more of a learning<br/>8 health system. I think they have just prioritized<br/>9 safety in ways that other hospitals have chosen not to.<br/>10 Q. And when you say those hospitals, you're<br/>11 talking about the ones that report or the ones that<br/>12 don't report?<br/>13 A. A combination.<br/>14 Q. Okay.<br/>15 Okay. And then I'm going to show you one<br/>16 more document.<br/>17 So if you actually keep that exhibit in<br/>18 front of you, 29, do you see there's a document -- go to<br/>19 the first page.<br/>20 A. Of 29?<br/>21 Q. Of 29, yeah.</p> <p style="text-align: right;">Page 354</p> | <p>1 version, yeah, 2025 version.<br/>2 Q. And are you the author of this document?<br/>3 A. Myself and the analyst together.<br/>4 Q. Okay. Got it.<br/>5 Okay. And this is a true and correct copy<br/>6 of the Excel Spreadsheet we're talking about?<br/>7 A. As far as from what I can see, yes.<br/>8 Q. Yeah. And the two pages, right?<br/>9 A. Yeah.<br/>10 Q. Okay.<br/>11 MR. CRAIN: Okay. Can we take five? Go off.<br/>12 THE VIDEOGRAPHER: This marks the end of media<br/>13 unit number seven. We're going off the record. The<br/>14 time is 4:55 p.m.<br/>15 (Whereupon a short break was had, after<br/>16 which the proceedings continued as<br/>17 follows:)<br/>18 (Exhibit No. 32 was marked for<br/>19 identification as of 9/25/2025.)<br/>20 THE VIDEOGRAPHER: This marks the beginning of<br/>21 media unit number eight. We're going back on the</p> <p style="text-align: right;">Page 356</p> |
| <p>1 A. Okay.<br/>2 Q. The email that we've been talking about with<br/>3 the chart.<br/>4 A. Yeah.<br/>5 Q. Do you see there's an attachment that says<br/>6 Lives Lost, Lives Saved Calculator 250515?<br/>7 A. Yeah.<br/>8 Q. Okay.<br/>9 MR. CRAIN: So I just want to mark this as<br/>10 Exhibit 31.<br/>11 (Exhibit No. 31 was marked for<br/>12 identification as of 9/25/2025.)<br/>13 BY MR. CRAIN:<br/>14 Q. So this is an Excel Spreadsheet. Do you see<br/>15 the document?<br/>16 A. Yes, I do.<br/>17 Q. Do you know what this document is?<br/>18 A. Yeah. It's the excel file we use to calculate<br/>19 the lives lost and lives saved.<br/>20 Q. And is that the one attached to this email?<br/>21 A. This is the 2025 -- actually, this is the '25</p> <p style="text-align: right;">Page 355</p>                                                                                                                                     | <p>1 record. The time is 5:07 p.m.<br/>2 BY MR. CRAIN:<br/>3 Q. All right. Thank you, Dr. Austin. We're in<br/>4 the home stretch.<br/>5 I've given you what's been marked as<br/>6 Exhibit 32. Do you see it's an Armstrong-produced<br/>7 Document, 14327?<br/>8 A. Yes.<br/>9 Q. Okay. And it's an email from Mr. Derk to you.<br/>10 Do you see that?<br/>11 A. Yes.<br/>12 Q. And it's dated June 5th, 2019?<br/>13 A. Yes.<br/>14 Q. And it says, Subject: Lives Saved<br/>15 Presentation. Do you see that?<br/>16 A. Correct.<br/>17 Q. And there's an attachment. Can you read that<br/>18 attachment into the record?<br/>19 A. Lives lost, Leapfrog partners 02190610.pptx<br/>20 [sic.]<br/>21 Q. And the rest of the document, is that the pptx</p> <p style="text-align: right;">Page 357</p>                                                                                                                 |

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| <p>1 you just mentioned?</p> <p>2 A. In reviewing it, I believe that is the case,</p> <p>3 but there's nothing on here indicating the file name</p> <p>4 so --</p> <p>5 Q. Fair enough.</p> <p>6 If you look at the title, it says: Lives</p> <p>7 Lost, Lives Saved: The Comparative Analysis.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And it's dated June 10th, 2019?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 So to the best of your understanding, this</p> <p>14 is the PowerPoint attached to the email?</p> <p>15 A. Yes.</p> <p>16 Q. And I'll also note Armstrong produced it</p> <p>17 sequentially from 14327 and forward.</p> <p>18 A. Yeah. The only thing that strikes me as a bit</p> <p>19 odd is how the presentation is dated June 10th, 2019,</p> <p>20 but he sent the email on June 5th, 2019.</p> <p>21 Q. Could it have been a draft?</p> <p style="text-align: right;">Page 358</p>                                                                           | <p>1 and accurate depiction of the email and the attachment?</p> <p>2 A. No, there's no reason to believe that.</p> <p>3 Q. Okay.</p> <p>4 Do you remember anything about this</p> <p>5 presentation at all?</p> <p>6 A. I don't other than I think we were trying to</p> <p>7 summarize the lives lost, lives saved analysis.</p> <p>8 Q. Okay. So just flipping through, that's what</p> <p>9 this PowerPoint does, it summarizes the methodology?</p> <p>10 A. Yes.</p> <p>11 Q. Okay.</p> <p>12 And then I think you can set that one</p> <p>13 aside.</p> <p>14 And then just a question going back to the</p> <p>15 2019 white paper. Was the 2019 white paper peer</p> <p>16 reviewed?</p> <p>17 A. It was not peer reviewed.</p> <p>18 Q. Was the 2016 white paper peer reviewed?</p> <p>19 A. The 2016 paper was reviewed by a couple of my</p> <p>20 colleagues.</p> <p>21 Q. Is that peer reviewed in the way that we talked</p> <p style="text-align: right;">Page 360</p>                                   |
| <p>1 A. That's a possibility.</p> <p>2 Q. Like for a future presentation?</p> <p>3 A. Yeah. That makes sense.</p> <p>4 Q. So flip through the PowerPoint and just -- you</p> <p>5 know, does it look like a true and accurate depiction of</p> <p>6 the PowerPoint presentation that either you or he</p> <p>7 prepared?</p> <p>8 A. Are you asking me to verify whether each slide</p> <p>9 is accurate?</p> <p>10 Q. No, no. Fair enough. Let me start over.</p> <p>11 Do you recognize this PowerPoint</p> <p>12 presentation?</p> <p>13 A. I don't remember this PowerPoint presentation.</p> <p>14 Q. Okay. Do you recall giving a presentation in</p> <p>15 2019 on the lives lost, lives saved?</p> <p>16 A. I don't remember that --</p> <p>17 Q. Okay.</p> <p>18 A. -- but that's not to say I didn't do it.</p> <p>19 Q. Okay.</p> <p>20 Any reason to think this is not -- you</p> <p>21 know, again, produced by Armstrong -- this is not a true</p> <p style="text-align: right;">Page 359</p> | <p>1 about earlier?</p> <p>2 A. Peer reviewed in terms of journal articles is</p> <p>3 usually the editors selecting who is going to review</p> <p>4 your paper. This was me asking two colleagues who I</p> <p>5 knew and trusted to look through it and provide input</p> <p>6 and comments.</p> <p>7 Q. So not peer reviewed in the academic sense?</p> <p>8 A. Correct.</p> <p>9 Q. Okay.</p> <p>10 And 2019 was not peer reviewed in any</p> <p>11 sense?</p> <p>12 A. Correct, in the sense that it was an update</p> <p>13 from 2016. So all we had done was update numbers.</p> <p>14 Q. Is it right that Ms. Binder edited the white</p> <p>15 paper in 2019?</p> <p>16 A. It is possible that Ms. Binder provided some</p> <p>17 edits to the white paper.</p> <p>18 Q. Okay.</p> <p>19 MR. CRAIN: With that, I will, pursuant to the</p> <p>20 agreement of the parties, for division of time, pass the</p> <p>21 witness and reserve the balance for recross.</p> <p style="text-align: right;">Page 361</p> |

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| <p>1 MS. WOOD: You want to go off the record while<br/>2 I get mic'd up?<br/>3 MR. CRAIN: It's up to you. I'm happy to go<br/>4 off. Yeah, that's fine. Let's go off.<br/>5 THE VIDEOGRAPHER: This marks the end of media<br/>6 unit number eight. We're going off the record. The<br/>7 time is 5:11 p.m.<br/>8 (Whereupon a short break was had, after<br/>9 which the proceedings continued as<br/>10 follows:)<br/>11 THE VIDEOGRAPHER: This marks the beginning of<br/>12 unit number nine. We're going back on the record. The<br/>13 time is 5:13 p.m.<br/>14 EXAMINATION<br/>15 BY MS. WOOD:<br/>16 Q. Dr. Austin, my name is Courtney Wood. I<br/>17 represent the defendant, The Leapfrog Group, in this<br/>18 matter.<br/>19 I know you testified earlier that we had<br/>20 met before previously when the subpoena came in. It's<br/>21 good to see you again.</p> <p style="text-align: right;">Page 362</p>      | <p>1 Q. My apologies because I'm not going to know what<br/>2 page it's on but --<br/>3 A. That's fine. I actually know. It is actually<br/>4 on page 6 and 7; 10, correct.<br/>5 Q. Okay. Perfect.<br/>6 And then is it fair to me -- for me to say<br/>7 that those 10 outcome measures all come from CMS data?<br/>8 A. For the five healthcare-associated infections,<br/>9 the primary data source is the Leapfrog Hospital Survey,<br/>10 and a secondary data source is the Centers for Medicare<br/>11 &amp; Medicaid Services.<br/>12 Q. Correct.<br/>13 And then for the process and structural<br/>14 measures, there are 12 of those. Is that correct?<br/>15 A. Correct.<br/>16 Q. Okay.<br/>17 And then are you aware that of those --<br/>18 well, let's strike that.<br/>19 So the 12 structural and process measures<br/>20 come from survey data. Is that correct?<br/>21 A. The seven of them, the Leapfrog Hospital Survey</p> <p style="text-align: right;">Page 364</p>                        |
| <p>1 A. Good to see you as well.<br/>2 Q. I don't have much to ask you today. However, I<br/>3 have enjoyed listening to all of your testimony today,<br/>4 and we appreciate you being here, so I just want to<br/>5 thank you for that.<br/>6 But to start, are you familiar with the<br/>7 hospital grade calculator?<br/>8 A. Yes, I am.<br/>9 Q. Okay. And so is it fair to me -- fair for me<br/>10 to say that there are 10 outcome measures that are<br/>11 included on that grade calculator?<br/>12 A. I couldn't speak to the current version of the<br/>13 calculator. I have not seen it.<br/>14 Q. Okay. But to your knowledge, are there 10<br/>15 outcome measures that are used in the methodology<br/>16 currently?<br/>17 A. Can I refer to the --<br/>18 Q. Sure. Yeah.<br/>19 A. Okay.<br/>20 Q. Was that Exhibit 3?<br/>21 A. I think it's Exhibit 3, yeah.</p> <p style="text-align: right;">Page 363</p> | <p>1 is the primary data source. For 5 out of the 12, the<br/>2 Centers for Medicare &amp; Medicaid Services is the primary<br/>3 data source.<br/>4 Q. Right. And then we call those HCAHPS.<br/>5 A. Correct.<br/>6 (Whereupon, the court reporter seeks<br/>7 clarification, which colloquy will not be<br/>8 captured on the written record.)<br/>9 BY MS. WOOD:<br/>10 Q. Okay. And so to your knowledge, if a hospital<br/>11 does not respond to the Leapfrog survey, then it does<br/>12 not receive a score for the safe practices 1, safe<br/>13 practices 2, and then the nursing care hours per patient<br/>14 day. We were talking about that earlier. Is that still<br/>15 correct?<br/>16 A. Correct.<br/>17 Q. Okay.<br/>18 And so then to your knowledge, when a<br/>19 nonreporting hospital does not respond to the hospital<br/>20 survey, then those weights are redistributed to the<br/>21 other nine measures in that process and structural?</p> <p style="text-align: right;">Page 365</p> |

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| <p>1 A. Correct.</p> <p>2 Q. Okay.</p> <p>3 MR. CRAIN: I'm just going to object to form.</p> <p>4 BY MS. WOOD:</p> <p>5 Q. Okay. And then of those nine measures, we had</p> <p>6 just indicated that five of those are the HCAHPS and</p> <p>7 then the other four are the imputed measures that we</p> <p>8 were talking about earlier. Is that correct?</p> <p>9 A. So of the 12, process and structural measures,</p> <p>10 5 of them come from HCAHPS, which is a patient</p> <p>11 experience survey that goes to patients. The other</p> <p>12 seven, the Leapfrog Hospital Survey is the primary data</p> <p>13 source.</p> <p>14 As previously discussed, four of those are</p> <p>15 imputed if the hospital doesn't respond to the survey</p> <p>16 and three are not imputed.</p> <p>17 Q. Right. Okay.</p> <p>18 So what I'm trying to get at is when the</p> <p>19 hospital doesn't respond -- so those three that we were</p> <p>20 talking about, the safe practice 1, the safe practice 2,</p> <p>21 and then the nursing, we take those out and then the</p> <p style="text-align: right;">Page 366</p> | <p>1 scores now play a bigger role in going into the Hospital</p> <p>2 Safety Grade. Is that correct?</p> <p>3 MS. LAWSON: Object to form.</p> <p>4 MR. CRAIN: Objection.</p> <p>5 MS. LAWSON: You can still answer.</p> <p>6 THE WITNESS: If the hospital does not have</p> <p>7 data for those three measures, safe practice 1, safe</p> <p>8 practice 2, nursing workforce, or nursing hours per</p> <p>9 patient day, more weight is put on the remaining nine</p> <p>10 measures and that would include the five HCAHPS</p> <p>11 measures.</p> <p>12 BY MS. WOOD:</p> <p>13 Q. Right.</p> <p>14 So is it fair to say then that if a</p> <p>15 hospital had poor HCAHPS scores, then those would be</p> <p>16 weighed heavier and could have a greater impact on the</p> <p>17 Hospital Safety Grade?</p> <p>18 MR. CRAIN: Objection to form.</p> <p>19 THE WITNESS: So independent of the hospital's</p> <p>20 performance, more weight would be put on those nine</p> <p>21 measures. So I guess I'm just clarifying that whether</p> <p style="text-align: right;">Page 368</p>                                                                                         |
| <p>1 weights are redistributed on those other nine, which are</p> <p>2 the five HCAHPS and then the four imputed measures. Is</p> <p>3 that correct?</p> <p>4 MR. CRAIN: Objection to form. I just want to</p> <p>5 lodge a standing objection to the leading, and then I</p> <p>6 won't interrupt. But is it okay to stipulate to that?</p> <p>7 MS. WOOD: Sure.</p> <p>8 BY MS. WOOD:</p> <p>9 Q. Is that your understanding?</p> <p>10 A. Yes.</p> <p>11 Q. Okay.</p> <p>12 And would you agree with me when I say --</p> <p>13 if I made the assertion that if a hospital performed</p> <p>14 poorly on their HCAHPS scores, then those measures now</p> <p>15 are getting greater impact on the overall grade?</p> <p>16 MS. LAWSON: Object to form.</p> <p>17 BY MS. WOOD:</p> <p>18 Q. Yeah, let me rephrase it.</p> <p>19 So since the weights are now a little bit</p> <p>20 heavier on those HCAHPS scores and the four imputed</p> <p>21 scores, it would be arguable that those five HCAHPS</p> <p style="text-align: right;">Page 367</p>                                                                    | <p>1 they're a good performer or poor performer, more weight</p> <p>2 is going to be put on those.</p> <p>3 BY MS. WOOD:</p> <p>4 Q. Understood. And I would agree with that.</p> <p>5 And do you have any opinion on how</p> <p>6 significant that impact can be, whether, you know, say</p> <p>7 if you're a great hospital and you have great HCAHPS</p> <p>8 scores, and say you have bad -- and then you get the</p> <p>9 imputed score because you're a nonresponding hospital,</p> <p>10 do you have any opinion on what that impact might look</p> <p>11 like on the Hospital Safety Grade?</p> <p>12 MR. CRAIN: Object to form.</p> <p>13 MS. LAWSON: Object to form.</p> <p>14 THE WITNESS: So the -- I mean, one could test</p> <p>15 out different scenarios of that question, right. So one</p> <p>16 could -- the hospital may do really well on certain</p> <p>17 measures, may not do well on others. There's not</p> <p>18 necessarily universal, like, just because you're doing</p> <p>19 well on one HCAHPS, that you're doing well on all</p> <p>20 HCAHPS.</p> <p>21 So one could sort of empirically test</p> <p style="text-align: right;">Page 369</p> |

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| <p>1 different what-if scenarios, but I don't know if there's</p> <p>2 a universal answer to your question.</p> <p>3 BY MS. WOOD:</p> <p>4 Q. Okay.</p> <p>5 And so would it be true that if a hospital</p> <p>6 was performing well on those five HCAHPS scores and then</p> <p>7 still got those low imputed scores, that maybe those</p> <p>8 five HCAHPS scores would actually -- let me rephrase</p> <p>9 that.</p> <p>10 So if the five HCAHPS scores were really</p> <p>11 great scores and then you got those four imputed scores,</p> <p>12 would it be fair to say that maybe those four imputed</p> <p>13 scores wouldn't really have an impact then on the</p> <p>14 overall Hospital Safety Grade?</p> <p>15 MR. CRAIN: Objection to form.</p> <p>16 THE WITNESS: There would be a potential</p> <p>17 scenario where if the hospital does well on the HCAHPS</p> <p>18 scores and does well on the outcome measures, that they</p> <p>19 could have a pretty good safety score and safety grade.</p> <p>20 BY MS. WOOD:</p> <p>21 Q. Okay. And then would that be applicable as</p> <p style="text-align: right;">Page 370</p>                                                            | <p>1 we needed to translate those into some sort of numerical</p> <p>2 value.</p> <p>3 And so we've used different approaches</p> <p>4 through the years and for different measures for how to</p> <p>5 assign those values. If we use hand hygiene as an</p> <p>6 example, the assigned values are 100, 75, 50, and 25.</p> <p>7 It was basically to give hospitals some numerical credit</p> <p>8 for being in a performance category.</p> <p>9 Q. And is it true that those numerical values on</p> <p>10 the performance is used for both reporting and</p> <p>11 nonreporting hospitals?</p> <p>12 A. So the imputed values for those four measures</p> <p>13 match what hospitals who report and get limited</p> <p>14 achievement receive.</p> <p>15 Q. Okay.</p> <p>16 And do you ever recall speaking with</p> <p>17 anybody, whether it's the expert panel or anybody at</p> <p>18 Leapfrog, about considering imputing a zero for any of</p> <p>19 those four measures rather than doing the limited</p> <p>20 achievement, the considerable achievement?</p> <p>21 A. I don't remember any explicit discussion about</p> <p style="text-align: right;">Page 372</p> |
| <p>1 well if there were poor scores for the HCAHPS?</p> <p>2 A. Once again, it's -- the measures are not looked</p> <p>3 at simply in isolation, right, because I think one would</p> <p>4 also need to look at the outcome measures. So just --</p> <p>5 it needs to be a slightly more holistic view of</p> <p>6 performance.</p> <p>7 Q. Okay.</p> <p>8 And then we were talking about earlier how</p> <p>9 there is never a zero that is imputed for any of those</p> <p>10 four measures. Is that correct?</p> <p>11 A. To the best of my recollection, that is</p> <p>12 correct.</p> <p>13 Q. Okay. And do you know why that is?</p> <p>14 A. So we -- for the Leapfrog Hospital Survey</p> <p>15 measures, we did have to come up with a way to assign a</p> <p>16 numerical value to the performance categories, right.</p> <p>17 So in the Leapfrog Hospital Survey, for those four</p> <p>18 imputed measures hospitals get reported out as achieved</p> <p>19 the standard, considerable achievement, some</p> <p>20 achievement, and limited achievement. But for purposes</p> <p>21 of incorporating those into the Hospital Safety Grade,</p> <p style="text-align: right;">Page 371</p> | <p>1 zero; although, it's not to say that that hasn't come up</p> <p>2 as a potential option.</p> <p>3 Q. Okay.</p> <p>4 And I want to look at Exhibit 27 again, and</p> <p>5 this is the -- I think you had said earlier that these</p> <p>6 were actually your notes from this expert panel meeting.</p> <p>7 Was that right?</p> <p>8 A. These were a set of notes.</p> <p>9 Q. Okay. Because it just had said agenda at the</p> <p>10 top, but then I think you had said that these were notes</p> <p>11 following --</p> <p>12 A. These are notes. I don't -- your question was</p> <p>13 are these my notes. I don't know if they were my notes</p> <p>14 or if these were notes prepared by someone else.</p> <p>15 Q. Oh, okay. That's fair. But these would have</p> <p>16 been notes following that meeting on this day?</p> <p>17 A. Correct.</p> <p>18 Q. And then if we can flip to that second page and</p> <p>19 number three, and it's the last bullet point under</p> <p>20 number three. It says: "The panel wondered what the</p> <p>21 distributions would look like if Leapfrog assigned a</p> <p style="text-align: right;">Page 373</p>                  |

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| <p>1 score of zero or lowest score possible for the missing</p> <p>2 elements. Matt and Jordan will look into this following</p> <p>3 the meeting."</p> <p>4 Does that refresh your recollection in any</p> <p>5 way on whether you or Jordan looked into that?</p> <p>6 A. I don't remember what scenarios we actually ran</p> <p>7 as a result of that meeting. It's possible that we -- I</p> <p>8 don't remember. We could have just ran the lowest</p> <p>9 possible scores. I don't know if we ran zero. I would</p> <p>10 have to be refreshed on that.</p> <p>11 Q. Yeah. That's okay.</p> <p>12 And then do you remember anything else</p> <p>13 regarding -- any other discussions during this meeting</p> <p>14 about imputing zeros for those imputed measures?</p> <p>15 A. Other than what's in the notes --</p> <p>16 Q. Okay.</p> <p>17 A. -- that the panel discussed that as a potential</p> <p>18 scenario.</p> <p>19 Q. Okay.</p> <p>20 And then even after seeing this bullet</p> <p>21 point, you don't recall speaking to anybody else on the</p> <p style="text-align: right;">Page 374</p> | <p>1 BY MS. WOOD:</p> <p>2 Q. Okay. And so then we were -- I was going to</p> <p>3 use the handwashing as an example as well. So it's your</p> <p>4 understanding that 15 is the imputed score for limited</p> <p>5 achievement for handwashing?</p> <p>6 A. Let me refer to Exhibit No. 3.</p> <p>7 Q. Sure. No problem.</p> <p>8 A. So slide 16 hand hygiene. Was that your --</p> <p>9 Q. Yep.</p> <p>10 A. Fifteen is the --</p> <p>11 Q. Limited?</p> <p>12 A. -- yep, limited achievement.</p> <p>13 Q. Perfect. Thank you.</p> <p>14 And then we were looking at Exhibit 3 again</p> <p>15 for that, page 16. Hand hygiene, limited achievement,</p> <p>16 the corresponding measure score is 15.</p> <p>17 And so I think what you had just testified,</p> <p>18 that that is both for nonreporting and reporting</p> <p>19 hospitals, correct?</p> <p>20 A. That is the score that's assigned to</p> <p>21 nonreporting hospitals as well as reporting hospitals</p> <p style="text-align: right;">Page 376</p>                  |
| <p>1 expert panel about this?</p> <p>2 A. I don't remember.</p> <p>3 Q. Do you recall if you ever spoke with Arjun</p> <p>4 about this?</p> <p>5 MR. CRAIN: Objection to form.</p> <p>6 THE WITNESS: I don't remember if I spoke to</p> <p>7 Arjun in particular about this topic.</p> <p>8 BY MS. WOOD:</p> <p>9 Q. Okay.</p> <p>10 And usually, after following expert panel</p> <p>11 meetings, do you ever reach out to some of the panelists</p> <p>12 to discuss bullet points like this independently?</p> <p>13 A. Yeah, we do.</p> <p>14 Q. Okay. So it wouldn't be weird if you had</p> <p>15 spoken with Arjun, but you just don't recall today?</p> <p>16 That's something that you might do?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. In addition to other panel members as</p> <p>19 well. Arjun is just an example.</p> <p>20 A. Correct.</p> <p>21 MR. CRAIN: Objection to form.</p> <p style="text-align: right;">Page 375</p>                                                                                                                                                                     | <p>1 who failed to meet the some achievement criteria.</p> <p>2 Q. Right.</p> <p>3 And so would you agree with me that</p> <p>4 nonreporting hospitals are actually still receiving a</p> <p>5 benefit by reviewing a score -- receiving a score that</p> <p>6 is based on responding hospitals?</p> <p>7 MS. LAWSON: Object to form.</p> <p>8 MR. CRAIN: Object to form.</p> <p>9 THE WITNESS: They are receiving a score -- can</p> <p>10 you maybe explain more about when you say benefit?</p> <p>11 BY MS. WOOD:</p> <p>12 Q. Sure.</p> <p>13 So if I'm a reporting hospital and I meet</p> <p>14 the criteria for limited achievement, I get a 15</p> <p>15 imputed. Is that correct?</p> <p>16 A. Repeat that one more time.</p> <p>17 Q. Sure.</p> <p>18 So a hospital that responds to the survey</p> <p>19 and they are filling out the hand hygiene portion of the</p> <p>20 survey and based on the criteria they receive a 15 and</p> <p>21 they get the limited achievement?</p> <p style="text-align: right;">Page 377</p> |

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| <p>1 A. If the hospital doesn't meet the criteria for a<br/>2 higher performance category --<br/>3 Q. Correct.<br/>4 A. -- they will get limited achievement.<br/>5 Q. Right.<br/>6 But then for the nonresponding hospitals,<br/>7 we don't necessarily know what their hand hygiene<br/>8 policies may be -- or I think earlier we were talking<br/>9 about the hand sanitizer. You had mentioned that there<br/>10 were several different criteria, correct?<br/>11 A. Correct.<br/>12 Q. And so would you say to me -- or would you<br/>13 agree with me when I say that assigning a nonresponding<br/>14 hospital the same score for limited achievement as a<br/>15 responding hospital is giving the nonresponding hospital<br/>16 a benefit?<br/>17 MR. CRAIN: Objection to form.<br/>18 MS. LAWSON: Object to form also.<br/>19 THE WITNESS: I think that's a little bit in<br/>20 the eye of the beholder. Is it better than zero? Yes.<br/>21 Is it as good as 50? No.</p> <p style="text-align: right;">Page 378</p>           | <p>1 quickly, and I will have you -- I'm sorry. I'll wait<br/>2 until you're there. And then it's like this webpage.<br/>3 Yes.<br/>4 Okay. And can you flip to the second page<br/>5 that we were talking about earlier. And then you see<br/>6 the asterisk next to the number 15, and it says "This<br/>7 Hospital's Score"?<br/>8 A. Yes.<br/>9 Q. And you would agree with me that that's the<br/>10 limited achievement score for handwashing, correct?<br/>11 A. That 15 is the same value that's assigned, yes,<br/>12 to hospitals that receive limited achievement.<br/>13 Q. Okay.<br/>14 And then right next to it on the right<br/>15 there it says "handwashing." So this would indicate<br/>16 that this hospital, Delray Medical Center, received a 15<br/>17 on the handwashing measure?<br/>18 A. Yes.<br/>19 Q. Okay.<br/>20 And then I know earlier we were talking<br/>21 about the asterisk next to the number 15 indicates to</p> <p style="text-align: right;">Page 380</p> |
| <p>1 BY MS. WOOD:<br/>2 Q. Right.<br/>3 A. So I don't know how to really answer that.<br/>4 Q. Okay. So I guess I can ask it another way.<br/>5 So if Leapfrog is not imputing a zero,<br/>6 rather, they're imputing the 15, is Leapfrog making an<br/>7 assumption that the hospitals who are not reporting are<br/>8 actually performing to some extent rather than not<br/>9 performing at all?<br/>10 MR. CRAIN: Objection to form.<br/>11 THE WITNESS: So Leapfrog in that situation is<br/>12 giving nonreporting hospitals an equivalent score to<br/>13 hospitals that have not met the criteria for some<br/>14 achievement, and that can be a range, right. That can<br/>15 be from a hospital that barely missed some achievement<br/>16 to a hospital who has done nothing.<br/>17 So there is a range of hospitals that are<br/>18 getting the limited achievement based on responding.<br/>19 BY MS. WOOD:<br/>20 Q. Understood.<br/>21 And now I want to look at Exhibit 19</p> <p style="text-align: right;">Page 379</p> | <p>1 the reader to go down to the end of the webpage there to<br/>2 that disclosure.<br/>3 A. Yes.<br/>4 Q. Okay. And that disclosure says: "The hospital<br/>5 declined to report their performance on this measure, so<br/>6 a score was assigned to reflect the lack of information<br/>7 available." Is that right?<br/>8 A. Yes.<br/>9 Q. Okay.<br/>10 And I think earlier we were talking about<br/>11 the "how," and I believe the question that you were<br/>12 asked was does this webpage show how the score was<br/>13 assigned. Do you recall being asked that question?<br/>14 A. Yes.<br/>15 Q. Okay. And would you agree with me that when it<br/>16 says, so a score was assigned to reflect the lack of<br/>17 information available, that that does indicate the how<br/>18 here?<br/>19 MR. CRAIN: Objection to form.<br/>20 THE WITNESS: So I personally would agree with<br/>21 that. I think the opposing counsel saw that</p> <p style="text-align: right;">Page 381</p>     |

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| <p>1 differently.</p> <p>2 BY MS. WOOD:</p> <p>3 Q. That's fair. I would agree with you on that</p> <p>4 one.</p> <p>5 So let's take it one step further. So if</p> <p>6 we go back up to where the asterisk is linked to under</p> <p>7 the hospital safety score 15 asterisk, and then do you</p> <p>8 see right below that it says best hospital's score 100?</p> <p>9 A. Yes.</p> <p>10 Q. And then right below that it says average</p> <p>11 hospital's score 74.40?</p> <p>12 A. Yes.</p> <p>13 Q. And then right below that it says worst</p> <p>14 hospital's score 15?</p> <p>15 A. Yes.</p> <p>16 Q. Okay.</p> <p>17 And so would you agree with me now, looking</p> <p>18 at it from this perspective, considering those four</p> <p>19 hospital scores in conjunction with the asterisk and the</p> <p>20 disclosure at the bottom, that that shows how the scores</p> <p>21 are assigned for this handwashing measure?</p> <p style="text-align: right;">Page 382</p>                                                                                                  | <p>1 that matches at the bottom the worst hospital's score</p> <p>2 15? It just doesn't include the asterisk?</p> <p>3 A. Correct.</p> <p>4 Q. Okay.</p> <p>5 And I think earlier you may have testified</p> <p>6 about whether or not the imputation model and the</p> <p>7 current methodology penalizes hospitals. Do you</p> <p>8 remember testifying about that?</p> <p>9 A. We had a lot of conversation about imputation</p> <p>10 today, so I would need to be refreshed on what --</p> <p>11 Q. Sure.</p> <p>12 A. Yeah, more detail might be needed there.</p> <p>13 Q. Sure.</p> <p>14 In your view, when Leapfrog was considering</p> <p>15 the Fall 2024 methodology change, was the intent or the</p> <p>16 purpose to change this imputation model to penalize</p> <p>17 hospitals?</p> <p>18 A. The goal was not to assess a penalty. The</p> <p>19 goals were to improve the accuracy of the data and to</p> <p>20 incentivize -- as a sub goal, incentivize survey</p> <p>21 participation.</p> <p style="text-align: right;">Page 384</p> |
| <p>1 MS. LAWSON: Object to form.</p> <p>2 MR. CRAIN: Object to form.</p> <p>3 THE WITNESS: I personally don't think that the</p> <p>4 display of the other three scores, the best hospital</p> <p>5 average and worst, helps nor hurts the explanation of</p> <p>6 how that 15 was assigned.</p> <p>7 BY MS. WOOD:</p> <p>8 Q. Okay. But do you think it makes it easier for</p> <p>9 the reader of this webpage to look and see that if 15 is</p> <p>10 this hospital's score and 15 is the worst hospital's</p> <p>11 score, they can come to the conclusion that this</p> <p>12 hospital is being assigned the worst hospital's score?</p> <p>13 MS. LAWSON: Object to form.</p> <p>14 MR. CRAIN: Objection to form.</p> <p>15 THE WITNESS: I don't want to speculate what</p> <p>16 people who come to the website, how they understand the</p> <p>17 material.</p> <p>18 BY MS. WOOD:</p> <p>19 Q. That's fair.</p> <p>20 But you would agree with me that at the</p> <p>21 top, when it says this hospital's score 15 asterisk,</p> <p style="text-align: right;">Page 383</p> | <p>1 Q. Okay.</p> <p>2 And then would it be fair to say that,</p> <p>3 rather, the result then of the Fall 2024 methodology</p> <p>4 change may be that hospitals feel penalized by receiving</p> <p>5 those limited achievement scores?</p> <p>6 MS. LAWSON: Object to form.</p> <p>7 MR. CRAIN: Object to form.</p> <p>8 THE WITNESS: I can't speak to how hospitals</p> <p>9 feel.</p> <p>10 BY MS. WOOD:</p> <p>11 Q. Okay.</p> <p>12 I think you said earlier that the</p> <p>13 penalization is a byproduct of the imputation score. Do</p> <p>14 you remember? And I'm not trying to mischaracterize</p> <p>15 your testimony in any way. I just remember you</p> <p>16 referencing it as being a byproduct.</p> <p>17 A. Yeah, there may be a feeling of, yes, a</p> <p>18 penalty.</p> <p>19 Q. Okay. But that wasn't the intent or the</p> <p>20 purpose of Leapfrog, to your knowledge?</p> <p>21 A. That was not the stated intent.</p> <p style="text-align: right;">Page 385</p>                                                               |

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| <p>1 Q. Okay.</p> <p>2 Do you believe that hospitals should report</p> <p>3 to the Leapfrog Hospital Survey?</p> <p>4 A. I do.</p> <p>5 Q. And why do you believe that?</p> <p>6 A. Because I am a strong believer in transparency.</p> <p>7 I think in transparency we create a better healthcare</p> <p>8 system where we understand where our successes are,</p> <p>9 where our failures are, and that those who are using the</p> <p>10 healthcare system and those who are paying for the</p> <p>11 healthcare system know how it's operated.</p> <p>12 Q. And I know you have testified earlier that</p> <p>13 sometimes you speak with hospitals in various</p> <p>14 capacities. Have you ever heard any hospitals refer to</p> <p>15 the Leapfrog Hospital Survey as kind of a benchmark or</p> <p>16 an outline to improve their patient safety?</p> <p>17 A. I -- can you repeat the question?</p> <p>18 Q. Sure. Yeah.</p> <p>19 I just know earlier you had testified that</p> <p>20 sometimes you speak to hospitals in different</p> <p>21 capacities. So the question I'm about to ask you, I'm</p> <p style="text-align: right;">Page 386</p>                                             | <p>1 over that one.</p> <p>2 BY MS. WOOD:</p> <p>3 Q. Based on all your experience and working with</p> <p>4 Leapfrog, it's been over a decade, almost two decades,</p> <p>5 would you say that you understand what Leapfrog's</p> <p>6 mission is?</p> <p>7 A. Yes.</p> <p>8 Q. And can you explain that to me in your own</p> <p>9 words?</p> <p>10 A. To me, it would be to drive improvements in the</p> <p>11 quality of our healthcare system primarily using</p> <p>12 transparency as the mechanism to do that.</p> <p>13 Q. And do you believe that that's always been</p> <p>14 Leapfrog's mission?</p> <p>15 A. Yes.</p> <p>16 Q. And do you believe that continues to be</p> <p>17 Leapfrog's mission today?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 And so in your experience as a researcher</p> <p>21 and as a principal faculty member at the Armstrong</p> <p style="text-align: right;">Page 388</p>                                                                                                                                                                                                                                            |
| <p>1 not insinuating that you have heard this before. I'm</p> <p>2 asking if anybody at a hospital has discussed this with</p> <p>3 you before.</p> <p>4 But have any of the hospitals told you</p> <p>5 that -- sorry. Now I'm forgetting my own question --</p> <p>6 oh, that the Leapfrog Hospital Survey helps them put in</p> <p>7 benchmarks and outline how they can improve on patient</p> <p>8 safety measures?</p> <p>9 A. So for purposes of the Leapfrog Hospital</p> <p>10 Survey, I have had at least one conversation with a</p> <p>11 hospital who does see the survey as an opportunity for</p> <p>12 benchmarking their performance relative to others.</p> <p>13 Q. And do you believe that to be true?</p> <p>14 A. I believe it is a source of information for</p> <p>15 hospitals on a very broad quality improvement journey.</p> <p>16 Q. And based on your experience in working with</p> <p>17 Leapfrog, would you understand that you -- or would you</p> <p>18 testify to me that you understand the mission of</p> <p>19 Leapfrog?</p> <p>20 MR. CRAIN: Objection to form.</p> <p>21 MS. WOOD: Yeah, I can fix that. I tripped</p> <p style="text-align: right;">Page 387</p> | <p>1 Institute for patient safety and quality, do you believe</p> <p>2 that Leapfrog's Hospital Safety Grade provides a benefit</p> <p>3 to consumers?</p> <p>4 A. I think sharing information in summary form is</p> <p>5 what patients and consumers are seeking. So whether</p> <p>6 that be a star rating, a letter grade, the research is</p> <p>7 clear that that is what they find helpful for their</p> <p>8 decision-making.</p> <p>9 Q. Okay.</p> <p>10 And have you done any research on whether</p> <p>11 or not the patients benefit from those star ratings or</p> <p>12 the Hospital Safety Grade?</p> <p>13 A. No, I have not done any research on that.</p> <p>14 Q. Have you read any research or peer reviewed</p> <p>15 articles on that?</p> <p>16 A. I have read some research on consumers' use of</p> <p>17 publicly available quality and safety information. I</p> <p>18 can't say it's the most recent. There may be more</p> <p>19 recent information out there.</p> <p>20 Q. And do you believe that consumers would lose</p> <p>21 any sort of benefit if hospitals were not graded through</p> <p style="text-align: right;">Page 389</p> |

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| <p>1 the Hospital Safety Grade?</p> <p>2 MR. CRAIN: Objection to form.</p> <p>3 THE WITNESS: Can you repeat the question one</p> <p>4 time?</p> <p>5 BY MS. WOOD:</p> <p>6 Q. Sure.</p> <p>7 If Leapfrog stopped grading hospitals, do</p> <p>8 you think that that would have any negative impact on</p> <p>9 consumers?</p> <p>10 A. So the greatest benefit that's been noted for</p> <p>11 public reporting of quality and safety information has</p> <p>12 actually been the hospital's use of that information to</p> <p>13 drive improvements within their own healthcare system.</p> <p>14 -- hospital or healthcare system.</p> <p>15 I don't want to be the bottom performer,</p> <p>16 right, so I'm going to do what I need to do to get out</p> <p>17 of the bottom. So in a sense, that improvement in</p> <p>18 quality and safety has universal benefit, right.</p> <p>19 Every patient that comes to that hospital</p> <p>20 has some benefit of the hospital working to improve</p> <p>21 their quality and safety.</p> <p style="text-align: right;">Page 390</p>                        | <p>1 care.</p> <p>2 BY MS. WOOD:</p> <p>3 Q. And are you aware of any other rating systems</p> <p>4 that are comparable to Leapfrog?</p> <p>5 MR. CRAIN: Objection to form.</p> <p>6 THE WITNESS: Can you define comparable?</p> <p>7 BY MS. WOOD:</p> <p>8 Q. Sure.</p> <p>9 Do you believe think -- do you believe that</p> <p>10 Leapfrog has any direct competitors?</p> <p>11 A. There's no other entity I know that's putting</p> <p>12 out a composite, composite and noncomposite</p> <p>13 information -- well, let me start again.</p> <p>14 I'm not aware of any other entity that's</p> <p>15 putting out a composite score around the specific area</p> <p>16 of patient safety. There are other entities, like the</p> <p>17 Centers for Medicare &amp; Medicaid Services that do publish</p> <p>18 information about the quality and safety of care,</p> <p>19 similar to what Leapfrog does.</p> <p>20 Q. And do you have any knowledge about the CMS</p> <p>21 star ratings?</p> <p style="text-align: right;">Page 392</p>                      |
| <p>1 Q. And would you say that the Hospital Safety</p> <p>2 Grade also creates some competition between the</p> <p>3 hospitals?</p> <p>4 A. I don't know enough about that.</p> <p>5 Q. Okay. I just wasn't sure if that's what you</p> <p>6 were getting at. So that's okay.</p> <p>7 And so then is it fair to say that if</p> <p>8 Leapfrog stopped grading hospitals and now patients did</p> <p>9 not have access to information on patient safety and</p> <p>10 these measures, that could potentially harm patients?</p> <p>11 A. I don't know about what the implications of</p> <p>12 that would be.</p> <p>13 Q. Okay.</p> <p>14 Do you think that when patients have the</p> <p>15 most accurate and transparent data when making their</p> <p>16 informed decisions on where to treat, that that makes</p> <p>17 them safer and protects them?</p> <p>18 MS. LAWSON: Object to form.</p> <p>19 MR. CRAIN: Object to form.</p> <p>20 THE WITNESS: I believe that having information</p> <p>21 is helpful in making a decision to where to receive</p> <p style="text-align: right;">Page 391</p> | <p>1 A. I do.</p> <p>2 Q. And what is your knowledge with regard to the</p> <p>3 CMS star ratings?</p> <p>4 MR. CRAIN: Object to form.</p> <p>5 BY MS. WOOD:</p> <p>6 Q. I guess we can start with do you have</p> <p>7 experience with working with CMS in regard to those CMS</p> <p>8 star ratings?</p> <p>9 A. I do. I served on their technical expert</p> <p>10 panel.</p> <p>11 Q. Okay. Can you explain to me a little bit what</p> <p>12 that was like?</p> <p>13 A. Yeah. So that is a -- this is actually written</p> <p>14 into federal legislation that CMS needs to publish a</p> <p>15 star rating for hospitals. It is considered to be a</p> <p>16 summary of all of the information that is shared on</p> <p>17 their care compare website.</p> <p>18 So early on in the technical expert panel</p> <p>19 meetings, I would say, well, what are we actually trying</p> <p>20 to measure? And the contractor was like, well, we're</p> <p>21 supposed to summarize all the information. I'm like,</p> <p style="text-align: right;">Page 393</p> |

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| <p>1 well, what's the underlying construct? We're just<br/> 2 supposed to summarize the information.<br/> 3 So it's not clear exactly what CMS is<br/> 4 measuring, but it is intended to be a summary of<br/> 5 information. And so what they do is they take the<br/> 6 measures that are publicly reported and have put those<br/> 7 into domains, and different domains get different<br/> 8 weights. They use Z-scores. It's all -- it's very<br/> 9 similar to how Leapfrog has gone about calculating<br/> 10 scores but just with a different set of measures and a<br/> 11 different set of constructs.<br/> 12 Q. To your knowledge, does CMS have any patient<br/> 13 safety measures that go into that star rating system?<br/> 14 A. They do.<br/> 15 Q. Okay.<br/> 16 And I know Leapfrog on their website<br/> 17 usually says, when looking at the Hospital Safety Grade,<br/> 18 consider other options or look to other sources. Does<br/> 19 that sound familiar to you?<br/> 20 MS. LAWSON: Object to form.<br/> 21 MR. CRAIN: Object to form.</p> <p style="text-align: right;">Page 394</p> | <p>1 MR. CRAIN: Object to form.<br/> 2 THE WITNESS: So I can speak to my experience<br/> 3 with Johns Hopkins Medicine. The Board of Directors for<br/> 4 Johns Hopkins Medicine, as well as senior leaders,<br/> 5 have -- are very, very interested in the hospital safety<br/> 6 grades. And when they see that the safety grades are<br/> 7 dropping, there is usually a call for what's going to be<br/> 8 done to get us back to an "A" or to a "B."<br/> 9 So I think it's been a way to engage health<br/> 10 system leaders, Board of Directors, around the issue of<br/> 11 patient safety. That's just my experience with Johns<br/> 12 Hopkins Medicine.<br/> 13 BY MS. WOOD:<br/> 14 Q. Yeah.<br/> 15 And then does Johns Hopkins Medicine also<br/> 16 discuss their star ratings?<br/> 17 A. I believe so.<br/> 18 MS. WOOD: I think that's all that I have for<br/> 19 you.<br/> 20 THE WITNESS: Thank you.<br/> 21 MR. CRAIN: I have a little recross.</p> <p style="text-align: right;">Page 396</p> |
| <p>1 THE WITNESS: I don't know what's said on the<br/> 2 website so...<br/> 3 BY MS. WOOD:<br/> 4 Q. Okay. Have you ever heard people at Leapfrog<br/> 5 discuss that patients should not only consider the<br/> 6 Hospital Safety Grade when choosing where to seek care?<br/> 7 A. Yes.<br/> 8 Q. Okay. And would you say that other -- strike<br/> 9 that.<br/> 10 Another source that patients could look at<br/> 11 is CMS star ratings. Is that correct?<br/> 12 MR. CRAIN: Object to form.<br/> 13 THE WITNESS: That is another publicly<br/> 14 available rating of hospitals.<br/> 15 BY MS. WOOD:<br/> 16 Q. And do you have any knowledge on how, I guess,<br/> 17 popular those star ratings are? You know, in your line<br/> 18 of business or speaking with hospitals, do you tend to<br/> 19 see that people rely on them or talked about relying on<br/> 20 them?<br/> 21 MS. LAWSON: Object to form.</p> <p style="text-align: right;">Page 395</p>                                                                                                                                              | <p>1 FURTHER EXAMINATION<br/> 2 BY MR. CRAIN:<br/> 3 Q. So just a few questions, Dr. Austin.<br/> 4 At one point counsel was asking you<br/> 5 questions about whether the Leapfrog survey was a<br/> 6 benchmark. Do you recall that line of questions?<br/> 7 A. Correct.<br/> 8 Q. And you said something like hospitals don't<br/> 9 want to be the bottom performers. Do you recall<br/> 10 testifying something to that effect?<br/> 11 A. Correct.<br/> 12 Q. Why don't hospitals want to be a bottom<br/> 13 performer?<br/> 14 A. What I hear is that, specifically when you're<br/> 15 dealing with physicians, they generally are individuals<br/> 16 who have excelled throughout their lifetime in terms of<br/> 17 academics and don't want to be perceived as being at the<br/> 18 bottom.<br/> 19 Q. So to put it concretely, doctors working at a<br/> 20 hospital don't want to work for an "F." Is that fair to<br/> 21 say?</p> <p style="text-align: right;">Page 397</p>                         |

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| <p>1 A. I can't speak for doctors working at "F"</p> <p>2 hospitals.</p> <p>3 Q. But the ones, the doctors you were just talking</p> <p>4 about --</p> <p>5 A. Yeah, they would -- yes. They would not want</p> <p>6 to work at an "F" hospital.</p> <p>7 Q. And fair to say that an "F" can damage a</p> <p>8 hospital's reputation?</p> <p>9 MS. LAWSON: Object to form.</p> <p>10 THE WITNESS: I don't know -- well, what</p> <p>11 reputation are you referring to?</p> <p>12 BY MR. CRAIN:</p> <p>13 Q. Fair enough.</p> <p>14 So hospitals -- in your experience, do</p> <p>15 hospitals have reputation in their communities, just</p> <p>16 reputations for quality of care, for safety, that sort</p> <p>17 of thing?</p> <p>18 A. I think there are perceptions within</p> <p>19 communities around which hospitals have higher quality</p> <p>20 care than others.</p> <p>21 Q. Can an "F" hospital -- can an "F" grade from</p> <p style="text-align: right;">Page 398</p>                                  | <p>1 counsel went back to look at the Delray website again,</p> <p>2 right. And you testified something to the effect of the</p> <p>3 asterisk at the bottom of the page explains the how a</p> <p>4 grade is assigned, right?</p> <p>5 So I don't have a piece of paper for you,</p> <p>6 but I'm going to do something a little avant-garde and</p> <p>7 show you a website.</p> <p>8 So I want to just direct you -- and just so</p> <p>9 counsel can see, it's another Hospital Safety Grade</p> <p>10 website. Do you see that?</p> <p>11 So this is a hospitalsafetygrade.org</p> <p>12 website. Can you see it okay?</p> <p>13 A. I can.</p> <p>14 Q. And do you see it says Pikeville Medical</p> <p>15 Center? Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And Pikeville is in Pikeville, Kentucky. Do</p> <p>18 you know anything about Pikeville, Kentucky?</p> <p>19 A. I do not.</p> <p>20 Q. Okay.</p> <p>21 What's the grade it gets?</p> <p style="text-align: right;">Page 400</p> |
| <p>1 Leapfrog influence that perception?</p> <p>2 A. I don't know.</p> <p>3 Q. You have no opinion one way or another?</p> <p>4 A. You didn't ask my opinion. You asked what I</p> <p>5 knew.</p> <p>6 Q. Okay. Fair enough. Fair enough.</p> <p>7 Do you have an opinion?</p> <p>8 You're getting good at this.</p> <p>9 A. I don't know how much -- if reputation is --</p> <p>10 well, let me start over.</p> <p>11 I don't know how -- I don't know the</p> <p>12 literature well enough to know how hospitals form</p> <p>13 reputations in their communities.</p> <p>14 Q. Okay.</p> <p>15 A. Obviously, a component of that is consumers and</p> <p>16 patients directly. There is media. There's a lot of</p> <p>17 different influences, and I don't know how each of those</p> <p>18 is tying into the Hospital Safety Grade and influencing</p> <p>19 the reputation.</p> <p>20 Q. Okay. Fair enough. I get it.</p> <p>21 Okay. We talked -- you went back --</p> <p style="text-align: right;">Page 399</p> | <p>1 A. They received a "D" in the Spring 2025 Hospital</p> <p>2 Safety Grade.</p> <p>3 Q. Okay.</p> <p>4 So I want to go down and just look at safe</p> <p>5 medication administration. Do you see that's toggled</p> <p>6 there?</p> <p>7 A. Yes.</p> <p>8 Q. And that is the BCMA?</p> <p>9 A. Correct.</p> <p>10 Q. Okay.</p> <p>11 So now, do you see what their score is?</p> <p>12 A. It's a 25.</p> <p>13 Q. Okay. And what's the worst score?</p> <p>14 A. Twenty-five.</p> <p>15 Q. Okay. And it has the little asterisk, right?</p> <p>16 A. Correct.</p> <p>17 Q. Now, read the asterisk for me. Can you read it</p> <p>18 into the record?</p> <p>19 A. The hospital declined to report their</p> <p>20 performance on this measure, so a score was assigned to</p> <p>21 reflect the lack of information available.</p> <p style="text-align: right;">Page 401</p>                                                                                                                        |

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| <p>1 Q. Do you have any idea how the score was imputed?</p> <p>2 A. Are you asking me do I know that, or do I know</p> <p>3 that from what I'm reading there?</p> <p>4 Q. From the information you have gathered from</p> <p>5 this website or otherwise -- but you don't know</p> <p>6 Pikeville, so I assume it's from this website -- how was</p> <p>7 Pikeville's limited achievement score assigned?</p> <p>8 A. I, Matt Austin, know that it was assigned based</p> <p>9 on them not reporting to the survey, and they get</p> <p>10 assigned a score based on that nonsubmission.</p> <p>11 Q. So that's why it was assigned, right? It was</p> <p>12 assigned because they didn't report, right?</p> <p>13 A. Uh-huh.</p> <p>14 Q. The question of how it was assigned I see as</p> <p>15 conceptually different. Does that seem fair to you or</p> <p>16 no?</p> <p>17 A. I guess I see them as linked and maybe one in</p> <p>18 the same. That's where I'm struggling to distinguish.</p> <p>19 Q. So let me -- I can make it more concrete.</p> <p>20 The imputation methodology as it applies</p> <p>21 today has two steps, right?</p> <p style="text-align: right;">Page 402</p> | <p>1 whether Pikeville got limited achievement through Step 1</p> <p>2 or Step 2, correct?</p> <p>3 A. I don't know that.</p> <p>4 Q. Now, you -- sorry. Just to be clear. Correct?</p> <p>5 A. Correct. I do not know whether they were</p> <p>6 assigned a Step 1 or Step 2.</p> <p>7 Q. Now, is it fair to say Step 1 is a little more</p> <p>8 accurate because it relies at least on the prior year's</p> <p>9 survey that Pikeville or another hospital might submit?</p> <p>10 A. The underlying assumption is that a hospital's</p> <p>11 specific information from a recent time period would be</p> <p>12 a better indicator of current performance than just a</p> <p>13 general imputed score.</p> <p>14 Q. So Step 1 can be a better, I think you said,</p> <p>15 better indicator of current performance, right?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. And yet you have no idea whether</p> <p>18 Pikeville is Step 1 or Step 2, right?</p> <p>19 A. Not from what's shown here.</p> <p>20 Q. Which, again -- can you state for the record</p> <p>21 what is being shown here?</p> <p style="text-align: right;">Page 404</p> |
| <p>1 A. Correct.</p> <p>2 Q. Right? There is Step 1, historical, and Step</p> <p>3 2, limited achievement, right?</p> <p>4 A. Correct.</p> <p>5 Q. Do you have any idea how Pikeville -- which</p> <p>6 step was applied to Pikeville?</p> <p>7 A. I know from the Hospital Safety Grade</p> <p>8 methodology that declining to report on the measure is</p> <p>9 what resulted in them getting a score assigned.</p> <p>10 Q. But I'm asking a different question. I'll just</p> <p>11 do it more directly. Did Pikeville get assigned limited</p> <p>12 achievement through Step 1 or Step 2?</p> <p>13 A. I don't know from what this is telling me</p> <p>14 whether --</p> <p>15 Q. And yet, to be clear, you testified earlier</p> <p>16 that this asterisk explained how the score was assigned,</p> <p>17 right?</p> <p>18 A. I testified that the why and how to me were</p> <p>19 sort of one in the same.</p> <p>20 Q. Okay. So then just setting the semantics</p> <p>21 aside, just looking at this asterisk, you have no idea</p> <p style="text-align: right;">Page 403</p>                                                                                                      | <p>1 A. What's being shown here is the hospital's score</p> <p>2 with an asterisk, which says the hospital declined to</p> <p>3 report their performance on this measure, so a score was</p> <p>4 assigned to reflect the lack of information available.</p> <p>5 So that could be either Step 1 or Step 2.</p> <p>6 Q. Great. Okay.</p> <p>7 So we'll set Pikeville aside, our dear</p> <p>8 friends in Kentucky.</p> <p>9 A couple other questions. So counsel</p> <p>10 raised the question of whether the limited achievement</p> <p>11 score was a benefit, right? Do you recall that line?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Is it your testimony that assigning</p> <p>14 limited achievement automatically in Step 2 is a</p> <p>15 benefit?</p> <p>16 A. I did not testify to that.</p> <p>17 Q. I just want to understand if it is your</p> <p>18 testimony.</p> <p>19 A. That is my testimony, that it is not</p> <p>20 necessarily a benefit.</p> <p>21 Q. Can it be a benefit ever?</p> <p style="text-align: right;">Page 405</p>                                                                                             |

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| <p>1 A. For some hospitals it could be a benefit.</p> <p>2 Q. Now, why is that, though?</p> <p>3 A. If the alternative was to assign zero,</p> <p>4 assigning a 15 is better than a zero. But if we</p> <p>5 assign -- if the decision was to assign 50, assigning 15</p> <p>6 would be a negative. So I don't know if there's a</p> <p>7 universal way of answering that question.</p> <p>8 Q. Fair enough. So let me just lay it out this</p> <p>9 way. If a hospital participated in the survey and</p> <p>10 failed on every hand hygiene question, what score did</p> <p>11 they get?</p> <p>12 A. They would receive limited achievement.</p> <p>13 Q. They wouldn't achieve zero, right?</p> <p>14 A. They would be scored as limited achievement.</p> <p>15 Q. So what is the benefit vis-à-vis the</p> <p>16 nonparticipating hospital and the hospital that scores</p> <p>17 zero down the line? Is there a benefit? Let's start</p> <p>18 with that.</p> <p>19 A. Can you repeat that again?</p> <p>20 Q. Yeah.</p> <p>21 Counsel was suggesting there's a benefit</p> <p style="text-align: right;">Page 406</p> | <p>1 honestly can't remember if it was this meeting or a</p> <p>2 different meeting.</p> <p>3 Q. I guess what I'll say is do you remember,</p> <p>4 actually have a memory of what was said, or you just</p> <p>5 have no reason to doubt the notes?</p> <p>6 A. I have -- I do remember at this in-person</p> <p>7 meeting, I do remember the conversation about whether an</p> <p>8 explicit penalty should be something that's on the table</p> <p>9 or if Leapfrog should consider assigning an explicit</p> <p>10 penalty.</p> <p>11 Q. Okay.</p> <p>12 A. I do remember that, but I don't remember</p> <p>13 whether it was this meeting or another meeting. But</p> <p>14 when I look at these notes, this seems to corroborate</p> <p>15 that it was this meeting.</p> <p>16 Q. Okay. Fair enough.</p> <p>17 And then I want you to just tell me</p> <p>18 everything you remember about the discussion about the</p> <p>19 penalty you're referring to just so it's clear.</p> <p>20 A. So what I remember, which may be different than</p> <p>21 what's in the notes, is specifically Dr. Andrew Bindman,</p> <p style="text-align: right;">Page 408</p> |
| <p>1 that Leapfrog gives limited achievement versus zero.</p> <p>2 But just to be clear, no hospital gets zero, right?</p> <p>3 A. In the current scoring methodology, no hospital</p> <p>4 gets zero.</p> <p>5 Q. Even if the hospital failed every one of the</p> <p>6 questions we looked at for hand hygiene, they would get</p> <p>7 I think it's 15, right?</p> <p>8 A. Correct.</p> <p>9 Q. Okay.</p> <p>10 A couple other lines. So we talked about</p> <p>11 the Alexandria, Virginia notes. Do you remember that</p> <p>12 document?</p> <p>13 A. Yes.</p> <p>14 Q. I think that was Exhibit --</p> <p>15 A. Twenty-seven.</p> <p>16 Q. -- 27. And you said at one point other than</p> <p>17 the notes, I don't remember anything. I just want the</p> <p>18 record to be clear. Do you remember the meeting, or are</p> <p>19 you just looking at the notes?</p> <p>20 A. I remember having an in-person meeting with the</p> <p>21 expert panel. I can picture a conference room. I</p> <p style="text-align: right;">Page 407</p>                                                                              | <p>1 who at the time was the head of -- the director of the</p> <p>2 Agency for Healthcare Research and Quality, which is the</p> <p>3 federal agency that oversees quality and safety work.</p> <p>4 From what I remember, Andy is -- broached the subject</p> <p>5 of, well, hospitals should just be reporting to the</p> <p>6 survey. Shouldn't we just like assign some sort of</p> <p>7 penalty for them if they aren't reporting? That will</p> <p>8 get them to report.</p> <p>9 Q. Fair enough. Okay.</p> <p>10 A. So that's what I remember.</p> <p>11 Q. Yep.</p> <p>12 A. Because I sort of remember where I was sitting,</p> <p>13 where he was sitting.</p> <p>14 Q. Okay. And anything else you remember about</p> <p>15 that --</p> <p>16 A. No. That's what I remember.</p> <p>17 Q. Okay.</p> <p>18 A couple of last questions. HCAHPS. So</p> <p>19 you talked a little bit with counsel about HCAHPS,</p> <p>20 right?</p> <p>21 A. Correct.</p> <p style="text-align: right;">Page 409</p>                                                                                                                                                    |

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| <p>1 Q. What does HCAHPS measure?</p> <p>2 A. HCAHPS measures the patient experience of their</p> <p>3 inpatient hospital stay.</p> <p>4 Q. Okay. So if a hospital is loud, is that</p> <p>5 reflected in HCAHPS?</p> <p>6 A. So there are different domains within the</p> <p>7 HCAHPS survey. One is quietness of the hospital</p> <p>8 environment.</p> <p>9 Q. Okay. Can you give us a sense of the others?</p> <p>10 A. Yeah. So the five that are included in the</p> <p>11 Hospital Safety Grade include physician communication,</p> <p>12 nurse communication, communication about medicines.</p> <p>13 Q. Not a memory test.</p> <p>14 A. The other -- the five that we've included are</p> <p>15 all related to communication --</p> <p>16 Q. Okay.</p> <p>17 A. -- and sort of the importance of communication</p> <p>18 as it relates to patient safety.</p> <p>19 Q. And there are other HCAHPS domains that are not</p> <p>20 included?</p> <p>21 A. Correct.</p> <p style="text-align: right;">Page 410</p> | <p>1 measures --</p> <p>2 Q. Yes.</p> <p>3 A. Yes, in each domain.</p> <p>4 Q. So I want to just -- a quick question for you.</p> <p>5 Does Leapfrog -- for nonparticipating hospitals that are</p> <p>6 imputed, does Leapfrog impute secondary data to assign a</p> <p>7 score?</p> <p>8 A. Is -- can you repeat that?</p> <p>9 Q. Yeah, let me break it down. So let's go back</p> <p>10 to the AHA days, right. So back then when Leapfrog was</p> <p>11 using the American Hospital Association data, it was</p> <p>12 using the AHA data as a secondary source that it was</p> <p>13 imputing into the safety grade score. Is that fair or</p> <p>14 no?</p> <p>15 A. Correct. So the AHA data was the data that was</p> <p>16 being used to impute a score.</p> <p>17 Q. Okay. Because the imputation model is not</p> <p>18 secondary data itself. It's a method of imputing</p> <p>19 secondary data, right?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. To impute, one needs secondary data,</p> <p style="text-align: right;">Page 412</p> |
| <p>1 Q. Okay.</p> <p>2 And HCAHPS, as you said, relates primarily</p> <p>3 to patient satisfaction?</p> <p>4 A. Patient experience.</p> <p>5 Q. Experience. I'm sorry.</p> <p>6 A. Yes, which is considered a different construct</p> <p>7 than patient satisfaction.</p> <p>8 Q. Got it. And is it a different construct from</p> <p>9 safety?</p> <p>10 A. There are -- there is probably some conceptual</p> <p>11 overlap between safety and patient experience.</p> <p>12 Q. Okay.</p> <p>13 A. There's probably some overlap between patient</p> <p>14 experience and patient satisfaction, to be fair.</p> <p>15 Q. So like a Venn diagram?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. Got it.</p> <p>18 I think the last sequence, I want to go</p> <p>19 back to Exhibit 3, the methodology document that you</p> <p>20 were asked about. Do you recall that?</p> <p>21 A. I remember being asked about the number of</p> <p style="text-align: right;">Page 411</p>                                                 | <p>1 right?</p> <p>2 A. No.</p> <p>3 Q. No. Okay. Tell me why.</p> <p>4 A. So as outlined in the famous email where we</p> <p>5 list the five different imputation options, one of them</p> <p>6 is using secondary data to arrive at some sort of</p> <p>7 estimate of the hospital's performance.</p> <p>8 Q. Got it.</p> <p>9 A. But one could just assign zero. One could</p> <p>10 assign some value above or below the mean, right. So</p> <p>11 one does not necessarily require secondary data to</p> <p>12 impute a score.</p> <p>13 Q. Okay. But if one is imputing secondary data,</p> <p>14 there needs to be a secondary data source, in theory,</p> <p>15 right?</p> <p>16 A. Correct.</p> <p>17 Q. Okay.</p> <p>18 So I want to go to page 5 of the</p> <p>19 methodology document, Exhibit 3. You see it's the</p> <p>20 measures you were talking about before?</p> <p>21 A. Yes.</p> <p style="text-align: right;">Page 413</p>                                                                                                  |

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| <p>1 Q. And do you see the top three at least are three</p> <p>2 of the imputed measures, right?</p> <p>3 A. Which page are you on?</p> <p>4 Q. I'm looking at five.</p> <p>5 A. Okay.</p> <p>6 MS. LAWSON: Is it four of the slide, or is it</p> <p>7 five of the slide?</p> <p>8 BY MR. CRAIN:</p> <p>9 Q. Oh, I'm sorry. It's the one -- I may be --</p> <p>10 page 4. You're right. Page 4.</p> <p>11 A. Okay.</p> <p>12 Q. Okay. I'm pulling if off my electronic</p> <p>13 version.</p> <p>14 So my question is do you see where it says</p> <p>15 Computerized Physician Order Entry right there?</p> <p>16 A. Yes.</p> <p>17 Q. And Primary Data Source is the 2024 Leapfrog</p> <p>18 Hospital Survey, right?</p> <p>19 A. Right.</p> <p>20 Q. That's accurate, correct?</p> <p>21 A. Correct.</p> <p style="text-align: right;">Page 414</p>                                                                     | <p>1 You good?</p> <p>2 You're free to go unless Sara wants to go.</p> <p>3 MS. LAWSON: We can go off the record.</p> <p>4 MR. CRAIN: Off the record.</p> <p>5 THE VIDEOGRAPHER: This concludes the</p> <p>6 deposition of Dr. Matthew Austin. This ends media unit</p> <p>7 number nine. We're off the record. The time is</p> <p>8 6:06 p.m.</p> <p>9 THE COURT REPORTER: Ms. Lawson, will you be</p> <p>10 handling signature for the witness, or are you waiving</p> <p>11 signature?</p> <p>12 MS. LAWSON: We'll read and sign.</p> <p>13 She'll prepare a transcript of it so that</p> <p>14 you can review your testimony and note any corrections.</p> <p>15 THE COURT REPORTER: Ms. Wood, do you need a</p> <p>16 rough draft as well?</p> <p>17 MS. WOOD: Yes, if I can get a rough as soon as</p> <p>18 possible.</p> <p>19 (The deposition adjourned at 6:06 P.M.)</p> <p>20</p> <p>21</p> <p style="text-align: right;">Page 416</p>                                                            |
| <p>1 Q. Secondary data source says the imputation model</p> <p>2 applied, right?</p> <p>3 A. Correct.</p> <p>4 Q. For any hospital under Step 2, there isn't a</p> <p>5 secondary data, right?</p> <p>6 A. In the -- are you asking about the current?</p> <p>7 Q. Yes.</p> <p>8 A. In the current methodology, there is not</p> <p>9 secondary data, correct.</p> <p>10 Q. Under Step 2?</p> <p>11 A. Under Step 2.</p> <p>12 Q. Is there under Step 1, or would you not call</p> <p>13 the historical secondary data?</p> <p>14 A. I wouldn't call that secondary data.</p> <p>15 Q. Okay.</p> <p>16 So fair to say for CPOE, BCMA, IPS, and</p> <p>17 hand hygiene there is no secondary data?</p> <p>18 A. We are currently not using secondary data as</p> <p>19 part of the imputation models.</p> <p>20 Q. Okay.</p> <p>21 MR. CRAIN: Okay. Nothing further from me.</p> <p style="text-align: right;">Page 415</p> | <p>1 I, Marlene Kerr, a Notary Public of the</p> <p>2 District of Columbia, do hereby certify that the</p> <p>3 within-named witness personally appeared before me at</p> <p>4 the time and place herein set out, and after having been</p> <p>5 duly sworn by me, according to law, was examined by</p> <p>6 counsel.</p> <p>7 I further certify that the examination was</p> <p>8 recorded stenographically by me, and this transcript is</p> <p>9 a true record of the proceedings.</p> <p>10 I further certify that I am not of counsel</p> <p>11 to any of the parties, nor in any way interested in the</p> <p>12 outcome of this action.</p> <p>13 As witness my hand this 29th day of</p> <p>14 September, 2025.</p> <p>15</p> <p>16 <br/>Marlene Kerr<br/>Notary Public</p> <p>17</p> <p>18</p> <p>19 My Commission Expires:</p> <p>20 July 28, 2026.</p> <p>21</p> <p style="text-align: right;">Page 417</p> |

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| <p>1 CERTIFICATE OF DEPONENT</p> <p>2</p> <p>3 I hereby certify that I have read and</p> <p>4 examined the foregoing transcript, and the same is a</p> <p>5 true and accurate record of the testimony given by me.</p> <p>6</p> <p>7 Any additions or corrections that I feel</p> <p>8 are necessary will be made on the Errata Sheet.</p> <p>9</p> <p>10 _____</p> <p>11 Matthew Austin</p> <p>12 _____</p> <p>13 Date</p> <p>14</p> <p>15 (If needed, make additional copies of the Errata Sheet</p> <p>16 on the next page or use a blank piece of paper.)</p> <p>17</p> <p>18 Job Number: 7616361</p> <p>19</p> <p>20</p> <p>21</p> <p style="text-align: right;">Page 418</p> | <p>1</p> <p>2 September 29, 2025</p> <p>3 Good Samaritan Medical Center Inc, Et Al. v. The Leapfrog Group</p> <p>4 DEPOSITION OF: Dr. Matthew Austin (# 7616361)</p> <p>5 The above-referenced witness transcript is</p> <p>6 available for read and sign.</p> <p>7 Within the applicable timeframe, the witness</p> <p>8 should read the testimony to verify its accuracy. If</p> <p>9 there are any changes, the witness should note those</p> <p>10 on the attached Errata Sheet.</p> <p>11 The witness should sign and notarize the</p> <p>12 attached Errata pages and return to Veritext at</p> <p>13 errata-tx@veritext.com.</p> <p>14 According to applicable rules or agreements, if</p> <p>15 the witness fails to do so within the time allotted,</p> <p>16 a certified copy of the transcript may be used as if</p> <p>17 signed.</p> <p>18 Yours,</p> <p>19 Veritext Legal Solutions</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 420</p> |
| <p>1 ERRATA SHEET</p> <p>2 WITNESS: MATTHEW AUSTIN</p> <p>3 Good Samaritan Medical, et al., vs. The Leapfrog Group</p> <p>4 Thursday, September 25, 2025</p> <p>5 PAGE/LINE SHOULD READ REASON FOR CHANGE</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 JOB NUMBER: 7616361</p> <p style="text-align: right;">Page 419</p>                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

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[different - district]

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**[divide - draft]**

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[draft - eliminate]

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[elser - estimate]

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[grounding - healthcare]

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[incentivize - information]

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[median - methodology]

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**[methodology - moment]**

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[never - number]

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**[oh - okay]**

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[okay - own]

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**[ownership - paper]**

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[paper - payment]

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[performing - polling]

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[poor - printout]

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[prior - providing]

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[provision - question]

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[question - realtime]

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[realtime - record]

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[sense - significance]

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[significant - sort]

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[start - structural]

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[structural - sure]

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**[sure - take]**

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**[take - test]**

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**[test - thinking]**

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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