

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

1 **IN RE: DAVID B. WIENS**) **DOCKET NOS. 16 12581 & 16 12582**
2)
3 **CLAIM NO. X-596364**) **PROPOSED DECISION AND ORDER**
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5 **Tom M. Kalenius, Industrial Appeals Judge** —David B. Wiens was born on May 25, 1976.

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7 Mr. Wiens completed the 10th grade. Mr. Wiens was 5 feet 9 inches tall and weighed about
8 150 pounds. Mr. Wiens injured his neck, shoulder and low back while building a log home. He was
9 rolling a log with a peavey on February 20, 2001. The peavey was a long wooden shafted implement
10 with a metal point and a hinged hook near the end. Mr. Wiens lost consciousness when the handle
11 broke and he fell.
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14 Mr. Wiens was treated conservatively for the accepted cervical and lumbar strains. The
15 industrial injury was a proximate cause of an adjustment disorder with anxiety, adjustment disorder
16 with mixed anxiety and depressed mood and three bladder dysfunction disorders: neurogenic
17 bladder, cauda equine disorder and detrusor sphincter dyssynergia. The bladder conditions resulted
18 in urinary incontinence and the need to use the bathroom every 20 minutes.
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21 The mental health and bladder conditions did not resolve before the claim was closed on
22 March 2, 2016. The preponderance of the evidence was persuasive that Mr. Wiens was a temporarily
23 and totally disabled worker from December 11, 2015, to March 2, 2016, and a totally and permanently
24 disabled worker as of March 2, 2016.
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27 The Department orders dated March 2, 2016, and March 3, 2016, were incorrect and are
28 **REVERSED AND REMANDED** to the Department with directions to pay time loss compensation
29 from December 11, 2015, to March 2, 2016, and permanent and total disability benefits as of March 2,
30 2016.
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33 **DISCUSSION**
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35 Mr. Wiens found reading comprehension difficult. Dr. Moisan, a vocational consultant with a
36 doctorate in education, reviewed the academic skills testing performed in December 2010. Mr. Wiens'
37 reading comprehension skills were low because he could not understand written materials. Instead,
38 Mr. Wiens learned skills, if at all, through observing, rather than reading and comprehending written
39 instructions.
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42 Mr. Wiens operated a chain saw with either hand before the industrial injury. Mr. Wiens hiked,
43 mowed the lawn, repaired and operated equipment before the industrial injury. Mr. Wiens testified his
44 anxiety preexisted the injury but the injury increased the difficulties.
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1 Mr. Wiens denied cervical, lumbosacral, arm, leg, or shoulder symptoms, or treatment before
2 the industrial injury.
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4 After the industrial injury, Mr. Wiens testified that his arm went numb, pain spread to his
5 shoulder and neck and he could not feel his hand grip when operating a chain saw. Mr. Wiens'
6 urination symptoms onset right after the industrial injury and within a couple of months, he noticed
7 dribbling. Mr. Wiens testified that urination worsened over time, despite a partial improvement in flow
8 due to Flomax. Mr. Wiens testified that the bladder function was not controlled as he must urinate up
9 to 20 times throughout the day.
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11 Mr. Wiens quit on July 11, 2002. Mr. Wiens hesitated filing a worker's compensation claim
12 because his employer was his family business. The family discouraged the filing of a claim.
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14 Between 2005 and 2009, Mr. Wiens worked part time at sub-sedentary levels of exertion as a
15 landscaping supervisor. Mr. Wiens testified that he unsuccessfully attempted to mow lawns.
16 Mr. Wiens worked from two to four hours per day, took breaks every 20 minutes to urinate and every
17 15 minutes to change positions.
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19 Mr. Wiens acknowledged a motor vehicle accident in January 2011. He was a passenger and
20 the impact was to the driver's side. Mr. Wiens acknowledged that his neck and back pain flared.
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22 Tiffany Wiens, the claimant's spouse, has known Mr. Wiens since 2001. Mrs. Wiens testified
23 the anxiety, pain in the low back, neck and upper back and urinary limitations progressively worsened
24 after the industrial injury.
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26 Kirk Harris, M.D., a family practice physician, took over the treatment of Mr. Wiens from
27 Mr. Paul Allen, a physician's assistant. Mr. Allen had treated Mr. Wiens in the same clinic since
28 August 10, 2012. Dr. Harris first examined Mr. Wiens on September 28, 2015, and treated him about
29 20 times through October 2016.
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31 Dr. Harris prescribed Mr. Wiens' anti-depressant, urinary and muscle relaxing medications.
32 Dr. Harris testified that muscle relaxing medications were used to relax his bladder and relieve back
33 spasm and pain but must be alternated so their effectiveness was interrupted and did not resolve the
34 conditions. Dr. Harris deferred to Dr. Brown, a treating urologist, to specify the restrictions and agreed
35 that the need to use the bathroom every 20 minutes would be intrusive.
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37 Dr. Brown, a urologist, treated Mr. Wiens' bladder symptoms for six years. In April 2012,
38 Dr. Brown installed the pressure transducers in the rectum and bladder and electromyography
39 sensors near the sphincter. Dr. Brown explained that a computer filled up the bladder with sterile
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1 water and measured the pressure inside the bladder and rectum. The pressure levels were
2 graphically depicted and the flow dynamics were objectively measured.¹
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4 Dr. Brown testified that the study yielded three objective findings.² First, the pressure flow
5 study measured the flow as very slow and obstructed. Second, the cystometrogram, a nerve study
6 of the bladder, revealed the bladder would not expand without increasing pressure. Third, the
7 electromyogram demonstrated that the sphincter was closed when voiding.
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10 Dr. Brown testified that the neurogenic bladder dysfunction was proximately caused by a
11 defect in any level of the spine, and the cervical level was the most common location.³ Dr. Brown
12 testified that the bladder conditions did not resolve but persisted as demonstrated by the objective
13 findings in April 2012 that continued through March 2, 2016.
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16 Dr. John Wendt, a neurologist, Dr. Duane Hopp, an orthopedic surgeon, and Dr. Marc Lowe,
17 a urologist, examined Mr. Wiens a single time on July 16, 2015. Drs. Wendt and Hopp diagnosed
18 cervical and lumbar strains with symptom magnification. Dr. Hopp found decreased sensation in the
19 left arm and leg but, like Dr. Wendt, found no nerve root compression that affected either upper or
20 lower extremity. Drs. Wendt and Hopp concluded the strains were fixed and not in need of further
21 medical treatment.
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25 Dr. Gritzka, an orthopedic surgeon, examined Mr. Wiens a single time on July 12, 2016.
26 Dr. Gritzka reviewed the reports of diagnostic studies.
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28 The cervical MRI performed on May 22, 2009, was compared to an MRI of April 11, 2016. Disc
29 protrusions were noted encroaching the foramen in both studies. In 2009, the stenosis caused by
30 bulging discs was mild. Dr. Lowe acknowledged the 2010 cervical MRI depicted disc protrusion in
31 the canal at C7-T1 with encroachment on the foramina.⁴ The 2016 MRI depicted disc protrusions and
32 the stenosis, that had worsened from moderate to severe.⁵
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36 The lumbar diagnostic studies revealed spinal stenosis at the L5-S1 level in June 2011.
37 Stenosis had not previously been reported on the MRI in 2009 that only showed early degenerative
38 disc disease and a minimal 4-5 mm disk protrusion at L5-S1. The facet arthrosis was most
39 pronounced at L4-5.
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44 ¹ Brown Dep. at 8.

45 ² Brown Dep. at 10.

46 ³ Brown Dep. at 12.

47 ⁴ Lowe Dep. at 33-37.

1 An electrodiagnostic study revealed evidence of a mild acute C6 and possibly
2 C5 radiculopathy with chronic radicular findings involving C6 and C8. Dr. Gritzka testified the bladder
3 diagnoses by Dr. Brown correlated with the increased disk protrusion at L5-S1 and the increased
4 lumbar and cervical stenosis.
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7 Dr. Gritzka testified Mr. Wiens was prevented from standing, squatting, bending or walking on
8 unstable surfaces by the restrictions proximately caused by the industrial injury. These restrictions
9 limited Mr. Wiens to sedentary level of exertions with an inability to tolerate sitting. Mr. Wiens must
10 be able to sit and stand at will and for no more than one hour at a time in any one position. Climbing
11 ladders and stairs must be avoided as well as lifting or carrying over 15 pounds.
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14 Mr. Linnenkohl, a physical therapist, conducted a functional capacities evaluation of Mr. Wiens
15 in 2016. Mr. Linnenkohl compared the results with the prior evaluations. Mr. Linnenkohl testified that
16 the evaluations all agreed that Mr. Wiens was limited to no more than ½ hour of sitting, standing or
17 walking and working for no more than four hours in an eight-hour day. The lifting and carrying
18 restrictions were less than 15 pounds.
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22 Dr. Hopp reviewed the functional capacity evaluation performed in 2010 that limited Mr. Wiens
23 to sedentary level of work. Dr. Hopp testified that there was no objective criteria and that Mr. Wiens
24 would be able to dupe three separate evaluators exactly the same in each of the three evaluations.⁶
25 Dr. Hopp estimated Mr. Wiens could sit, walk and stand for eight hours without interruption at each
26 posture and lift and carry 100 pounds for an entire eight hours without interruption.
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30 Dr. Harris found Mr. Wiens had difficulty with simple ambulation, did not tolerate long durations
31 of standing, sitting, walking or standing and must alternate those positions. Dr. Harris related the
32 restrictions to the industrial injury. Dr. Harris testified the lifting demands prevented Mr. Wiens from
33 returning to work at his job of injury as of December 11, 2015, on a full time, continuous basis.⁷
34 Dr. Harris testified that Mr. Wiens could work full time at "maybe a web-based job he could do from
35 home" but required that the position allow Mr. Wiens to work at his own pace and allow him to quit
36 working at will.⁸
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40 Dr. Brown testified that Mr. Wiens cannot tolerate working as a log home laborer or as a
41 landscape laborer due to the restrictions imposed by the bladder conditions.⁹
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45 ⁶ Hopp Dep. at 35-37.

46 ⁷ Harris Dep. at 15.

47 ⁸ Harris Dep. at 16.

⁹ Brown Dep. at 26.

1 Mr. Linnenkohl testified that Mr. Wiens could not perform activities continuously and so only
2 qualified for part-time work demanding three to four hours in an eight-hour day.
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4 DT North, a vocational consultant retained by the Department, performed a forensic vocational
5 evaluation of Mr. Wiens in August 2015. Mr. North issued a report on December 9, 2015. Mr. North
6 understood that Mr. Wiens had a 10th grade education but did not acknowledge his learning disability:
7 reading at a 5th grade level.¹⁰ Mr. North testified that Mr. Wiens was totally disabled but that the
8 industrial injury was not a proximate cause of his disability, based on the medical evidence of
9 Drs. Hopp, Wendt and Lowe.
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11 Joseph A. Moisan, a vocational consultant and doctor of education, interviewed Mr. Wiens in
12 2013 and reviewed the medical and vocational records. Mr. Moisan concluded that Mr. Wiens' age,
13 education, experience and physical restrictions precluded obtaining reasonably continuous gainful
14 employment in his relevant labor market.
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19 DECISION

20 The Order on Agreement of Parties dated September 23, 2009, reopened the claim due to
21 worsening between November 20, 2002, and January 8, 2009, as shown by objective medical
22 findings. Exhibit 3. The claimant agreed that he must prove objective worsening between January
23 2009 and March 2, 2016.¹¹ The increased lumbar and cervical stenosis and disc protrusions were
24 objective findings of worsening between the terminal dates.
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28 Dr. Gritzka relied on psychological evaluations that concluded Mr. Wiens' adjustment disorder
29 worsened. Dr. Brown testified the bladder conditions worsened, as revealed by the worsened cervical
30 stenosis at C5-C7, stenosis in the lumbosacral spine and the herniated disc at L5.¹² Dr. Hopp testified
31 the electrodiagnostic nerve conduction studies were mostly normal beginning in 2009. Dr. Hopp
32 agreed that the October 2009 EMG was abnormal and that an objective worsening occurred in
33 2009.¹³ The preponderance of the evidence was persuasive of worsening in conditions proximately
34 caused by the industrial injury between January 2009 and March 2, 2016.
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39 Dr. Gritzka testified the bladder condition imposed a limitation on continuous activities because
40 Mr. Wiens must urinate frequently. Drs. Brown and Lowe, urologists, agreed that Mr. Wiens bladder
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44 ¹⁰ North Dep. at 43.

45 ¹¹ 10/31/16 Tr. at 47-49; Claimant's Memorandum In Response To Inquiries From The Industrial Appeals Judge; *Dinnis v.*
46 *Department of Labor & Indus.*, 67 Wn.2d 654 (1965)

47 ¹² Brown Dep. at 6.

¹³ Hopp Dep. at 32.

1 function required urination every 20 minutes and caused dribbling that persisted through March 2,
2 2016.
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4 Drs. Wendt, Hopp and Lowe testified that there was no objective evidence of any abnormality
5 related to the industrial injury and found no restrictions proximately caused by the industrial injury.¹⁴
6 Dr. Hopp did not consider bladder or mental health abnormalities when opining on Mr. Wiens' ability
7 to work. Dr. Lowe agreed that the Department's acceptance of responsibility for the bladder and
8 mental health conditions assumed a proximate causal relationship to the industrial injury and were
9 final.¹⁵ Drs. Wendt, Hopp and Lowe's opinions on causation were unpersuasive in light of the final
10 Department orders accepting responsibility for neurogenic bladder and detrusor sphincter
11 dyssynergia conditions. The diagnosed condition of cauda equina syndrome was accepted by the
12 Department as proximately caused by the claimant's industrial injury of February 20, 2001.¹⁶ The
13 effective date of the acceptance of the condition by the Department was July 13, 2011.
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15 The preponderance of the evidence was persuasive that the industrial injury was a proximate
16 cause of the following restrictions. Mr. Wiens could not perform activities continuously and so only
17 qualified for part-time work demanding three to four hours in an eight-hour day. Mr. Wiens was able
18 to lift 5 or 10 pounds from floor to waist, 15 pounds from waist to shoulder level and 10 pounds from
19 shoulder to overhead. Mr. Wiens could carry 15 pounds for 50 feet and push or pull no more than
20 10 pounds. Mr. Wiens could not sit for more than 15 minutes at a time and then must change position.
21 Mr. Wiens could not walk for more than ½ hour at a time. Mr. Wiens must urinate every 20 minutes
22 during an eight-hour work day. These restrictions limited Mr. Wiens to sedentary level of exertions
23 with an inability to tolerate sitting. Mr. Wiens must be able to sit and stand at will and at no time for
24 more than one hour at a time in any one position. Climbing ladders and stairs must be avoided as
25 well as lifting or carrying over 15 pounds.
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27 Mr. North's conclusion that Mr. Wiens was able to work in any job without limitation was
28 unpersuasive.¹⁷ Mr. Moisan's vocational opinion rested on knowledge of all material facts and was
29 persuasive.
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31 In Docket No. 16 12581, the claimant, David B. Wiens, filed an appeal with the Board of
32 Industrial Insurance Appeals on March 11, 2016. The claimant appeals a Department order dated
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45 ¹⁴ Hopp Dep. at 33-34, Lowe Dep. at 9, Wendt Dep. at 22.

46 ¹⁵ Lowe Dep. at 40.

47 ¹⁶ Stipulation dated March 7, 2017

¹⁷ North Dep. at 26.

1 March 2, 2016. In this order, the Department affirmed an order dated December 14, 2015, that closed
2 the claim. This order is incorrect, and is reversed and remanded with directions to determine
3 Mr. Wiens was a permanently and totally disabled worker as of March 2, 2016.
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5 In Docket No. 16 12582, the claimant, David B. Wiens, filed an appeal with the Board of
6 Industrial Insurance Appeals on March 11, 2016. The claimant appeals a Department order dated
7 March 3, 2016. In this order, the Department affirmed an order dated December 11, 2015. The order
8 was incorrect and is reversed and remanded with directions to pay Mr. Wiens time loss compensation
9 from December 11, 2015, to March 2, 2016.
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11 FINDINGS OF FACT

- 12 1. On May 26, 2016, an industrial appeals judge certified that the parties
13 agreed to include the Jurisdictional History in the Board record solely for
14 jurisdictional purposes.
- 15 2. Mr. Wiens sustained an industrial injury on February 20, 2001, when he
16 fell when the peavy snapped while he was tugging on the handle, causing
17 him to lose consciousness and proximately causing cervical and lumbar
18 strains, adjustment disorder with mixed anxiety and depressed mood,
19 adjustment disorder with anxiety and three bladder dysfunction disorders:
20 neurogenic bladder, cauda equine disorder and detrusor sphincter
21 dyssynergia
- 22 3. The conditions, proximately caused by the industrial injury worsened
23 between January 8, 2009, and March 2, 2016.
- 24 4. As of March 2, 2016, Mr. Wiens' conditions, proximately caused by the
25 industrial injury were fixed and stable.
- 26 5. Mr. Wiens was born on May 25, 1976, completed the 10th grade, and had
27 a singular work history as a full-time log cabin builder and part-time
28 landscape supervisor. Mr. Wiens could not perform activities continuously
29 and so only qualified for part-time work demanding three to four hours in
30 an eight-hour day. Mr. Wiens was able to lift 5 or 10 pounds from floor to
31 waist, 15 pounds from waist to shoulder level and 10 pounds from
32 shoulder to overhead. Mr. Wiens could carry 15 pounds for 50 feet and
33 push or pull no more than 10 pounds. Mr. Wiens could not sit for more
34 than 15 minutes at a time and then must change position. Mr. Wiens could
35 not walk for more than ½ hour at a time. Mr. Wiens must urinate every
36 20 minutes during an eight-hour work day. These restrictions limited
37 Mr. Wiens to sedentary level of exertions with an inability to tolerate
38 sitting. Mr. Wiens must be able to sit and stand at will and at no time for
39 more than one hour at a time in any one position. Climbing ladders and
40 stairs must be avoided. No lifting or carrying over 15 pounds. These
41 limitations were proximately caused by the industrial injury. Mr. Wiens
42 lacked the academic skills to learn through written instructions.
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6. Mr. Wiens was unable to perform and obtain gainful employment on a reasonably continuous basis from December 11, 2015, to March 2, 2016.
 7. Mr. Wiens was unable to perform and obtain gainful employment on a reasonably continuous basis as of March 2, 2016.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter in these appeals.
2. Mr. Wiens was a permanently totally disabled worker within the meaning of RCW 51.08.160, as of date of March 2, 2016.
3. Mr. Wiens was a temporarily totally disabled worker within the meaning of RCW 51.32.090 from December 11, 2015, to March 2, 2016.
4. The Department order dated March 2, 2016, is incorrect and is reversed. The matter is remanded with directions to determine Mr. Wiens was a permanently and totally disabled worker as of March 2, 2016.
5. The Department order dated March 3, 2016, is incorrect and is reversed. The matter is remanded with directions to determine Mr. Wiens was a temporarily and totally disabled worker from December 11, 2015, to March 2, 2016.

23 Dated: March 24, 2017

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Tom M. Kalenius
Tom M. Kalenius
Industrial Appeals Judge
Board of Industrial Insurance Appeals

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3 **Addendum to Proposed Decision And Order**
4 **In re David B. Wiens**
5 **Docket Nos. 16 12581 & 16 12582**
6 **Claim No. X-596364**

7 **Appearances**

8 Claimant, David B. Wiens, by Williams Wyckoff & Ostrander, PLLC, per Douglas P. Wyckoff
9 Employer, Wiens Log Homes, Inc., None
10 Department of Labor and Industries, by Office of the Attorney General, per Linda S. King

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12 **Hearing Testimony Considered**

13 Claimant Witnesses

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16 1. Tiffany Wiens
17 2. David Wiens

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19 **Perpetuation Deposition Testimony Considered**

20 The following depositions are published in accordance with WAC 263-12-117 with all objections
21 overruled and all motions denied except as indicated below.

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23 Claimant Witnesses

- 24 1. Daniel M. Brown, taken on September 12, 2016. The objections at pages 14 and 20 are
25 sustained.
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27 2. William Linnenkohl, taken on October 5, 2016
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29 3. Joseph A. Moisan, taken on October 28, 2016. The objection at page 21 is sustained.
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31 4. W. Kirk Harris, M.D., taken on October 31, 2016.
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33 5. Thomas Gritzka, taken on November 14, 2016

34 Department Witnesses

- 35 1. DT North taken on December 1, 2016. The Correction and Signature Certificate
36 executed on December 12, 2016 was first filed on February 22, 2017.
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38 2. Duane Hopp, M.D., taken on December 2, 2016. The objections are sustained at
39 pages 18-19, 24 and 33.
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41 3. John Wendt, M.D., taken on December 6, 2016.
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43 4. Marc Lowe, M.D., taken on December 13, 2016.
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