IN THE \_\_\_\_\_ DISTRICT COURT OF [COUNTY]

STATE OF UTAH

STATE OF UTAH, :

-vs-

Plaintiff, :

:

STATE’S INTERROGATORIES AND REQUESTS FOR ADMISSION FOR DEFENSE WITNESS DR. JANICE OPHOVEN

[DEFENDANT], : Case No.

Defendant. : Judge

The State of Utah, through [ADA], Deputy Salt Lake County District Attorney, proposes to submit the following Interrogatories and Requests for Admission to be answered by Defendant’s expert witness Dr. Janice Ophoven if the Court approves the State’s Motion to conduct this discovery. If the discovery is approved, answers should be provided to the State no later than [DATE], which is two weeks prior to the commencement of the trial.

INTERROGATORIES

1. Since 2003, specify the number of times you have testified in any type of court hearing after being subpoenaed by a criminal prosecuting attorney in a criminal case or child protection attorney representing a government social service agency in a juvenile or family court child welfare proceeding where the issues related to injuries suffered by a child?
   1. For each such case, specify the jurisdiction where the testimony was given, the type of case, the prosecutor or government child protection attorney involved, and a basic description of your testimony.
   2. Since 2003, how many times have you testified in any type of court hearing after being subpoenaed by a criminal defense attorney in a criminal case or by a parents’ attorney in a juvenile or family court child welfare proceeding, where the issues involved injuries suffered by a child? For purposes of this particular answer, a number of cases will suffice.
2. Since 2003, how many times have you provided a training course or presentation for criminal prosecutors, law enforcement investigators, child protective services investigators and/or child protection attorneys on any topic relating to child abuse or the cause and timing of injuries to young children?
3. Since 2003, how many times have you provided a training course or presentation for criminal defense attorneys representing individuals accused of child abuse or parents’ attorneys representing those accused of abuse of a child in juvenile or family court?
   1. For each such presentation, indicate the sponsor of the training conference, the title of the training conference, the audience attending, and the general topic(s) of your training presentation(s).
4. Throughout your career as a pathologist, specify the jobs you’ve performed where you acted as a forensic pathologist in a medical examiner or coroner’s office conducting the initial autopsy of a child under the age of 5 years to determine cause and manner of that child’s death.
   1. Specify in your answer whether you were employed full-time for the medical examiner or coroner’s office, or whether you were employed part-time there or on contract to be called in for conducting autopsies and for each such job indicate the time that you were so employed and provide the contact information for that office.
   2. For all such cases where you conducted the initial forensic autopsy on a child under age 5, how many of those involved issues relating to the cause of head injuries and whether the manner of death was homicide, accident or disease?
   3. Throughout your career and in the cases you’ve identified, how many times did your autopsy and death investigation determine the child’s death was caused by head injuries inflicted by some other person?
   4. How many such original, forensic autopsies as described above have you performed since 2003? For which medical examiner’s or coroner’s offices?
   5. In those cases since 2003, how many times did you determine the head injuries were inflicted upon the child by another person?
   6. For each case identified in subparagraph 4(e), briefly describe the injuries the child sustained and what led you to opine the child’s injuries had been caused by another person.
5. In your curriculum vita and in prior court testimony, you have stated that you performed hundreds of child autopsies throughout your career, possibly over a thousand. How many of those child autopsies you have performed in your career have been when you were employed as a hospital or children’s hospital pathologist?
   1. In that subset of cases, was there any potential that the child had passed away as a result of child abuse or inflicted injuries of any kind? If there was, wouldn’t that child’s autopsy have been done by a medical examiner or coroner?
   2. In that subset of cases, were most of the autopsies related to children who had died while hospitalized with previously known conditions for which they were being treated in the hospital?
   3. Would it be accurate to state that you have not performed hundreds or possibly a thousand children’s autopsies were you were doing the initial forensic autopsy of the child for a medical examiner’s or coroner’s office and where child abuse was a possible cause of the child’s death? If not, please specify the places where you were working when you conducted those hundreds of initial, forensic autopsies of children and during which time frame?
   4. Throughout your career as a pathologist, how many times have you determined that a child’s fatal injuries were inflicted by another person? How many of those involved inflicted head injuries? Approximately when was the last time you were acting as the initial forensic autopsist that you determined the child’s head injuries were inflicted by another person?
6. Your report in this case indicates you “maintain a consulting practice in pediatric forensic pathology.”
   1. What is the nature of your consulting practice? How long have you been providing consultations? To whom do you provide such consultations?
   2. In your consulting practice, do you perform initial forensic autopsies on young children? If so, how often?
   3. In your consulting practice, do you perform secondary autopsies on young children for the purpose of expressing opinions about the cause and manner of death? If so, how often?
   4. In your consulting practice, is the great majority of your time dedicated to reviewing medical records sent to you by criminal defense attorneys or parents’ attorneys in juvenile court cases, preparing reports in such situations, and providing testimony as requested?
   5. What is a “pediatric forensic pathologist”? Is there a standard definition or set of qualifications within the field of forensic pathology that identifies a person as a “pediatric forensic pathologist”? If so, please attach those qualifications to your answer.
   6. Is there a Board Certification available for the subspecialty of “Pediatric Forensic Pathology” within the field of pathology? If so, have you passed the boards for that certification?
   7. Who decides whether someone is qualified as a “pediatric forensic pathologist”?
7. Since 2003, what percentage of your overall income and the overall income of your private consulting practice has been derived from your work as a consulting expert witness in criminal cases or juvenile court proceedings?
   1. Do you charge for reviewing records? Is the charge an hourly rate, or a flat amount? What is the amount that you charge in each case? If the amount varies, please indicate the average amount per case you charge for records review.
   2. Do you charge separately for providing a report of your opinions in each case? Is that charge based on an hourly rate or a flat amount for each case? What is the amount you charge in each case? If the amount varies, please indicate the average amount you charge per case for providing a report of your opinions.
   3. Do you charge separately for preparation and testifying in court hearings? If so, what is the rate/amount that you charge in each case? If the amount varies, please indicate the average amount you received for preparation and testimony in each case.
   4. In your private pathology practice, what other pathology services do you or those associated with you provide other than “consulting”?
   5. In addition to the private pathology practice, do you have any other current employment as a forensic pathologist? If so, please describe.
8. Please describe all specific training you have received in the field of pediatric ophthalmology or pediatric ophthalmic pathology.
   1. As to ocular injuries suffered by X.T. in this case, did you personally contact and discuss those findings with the Pediatric Ophthalmologists involved?
   2. Are the opinions you express in your report related to X.T.’s ocular injuries based upon your own training and experience, upon consultation with others, or something else?
   3. [OTHER CASE SPECIFIC QUESTIONS]
9. In your report, you express the opinion that microscopic findings as to the dura “raise the possibility of head injury prior to the day of his collapse”. In another section of the report, you state that the CT scans show variable density extra-axial fluid which “raises the possibility of differing ages.” Specify what findings you are referring to and whether that is based upon your own examination of microscopic slides from X.T.’s autopsy, your own examination of the CT scans, your interpretation of the findings of [PHYSICIAN] or something else.
   1. As to your statement concerning possible older head injury, did you consult with Pediatric Neurosurgeon concerning what he found when he performed neurosurgery on the baby and observed active bleeding within X.T.’s head?
   2. Is it your opinion that X.T. suffered an older head injury previous to the time of his hospitalization, or is your opinion limited to the “possibility” you mention in your report?
   3. Do you intend to offer opinions about “rebleed” of a prior intracranial blood collection at the trial of this case?
   4. If so, clearly explain what opinion you intend to offer and the basis of that opinion.
10. You have testified in previous cases that infants and toddlers sometimes suffer inflicted head injuries caused by another person. Since 2003, how many times have you been asked to consult in a case and explained to the criminal defense attorney or parents’ attorney seeking your help that you couldn’t help them because you were of the opinion the child’s injuries were caused by another person?
    1. As to those cases, summarize the facts of the case that led you to believe it was actually a case of inflicted injury.
    2. Of the cases you identified, how many involved fatal head injuries and children under the age of 2 years?
    3. When was the last time you reviewed a case and came to that conclusion?
    4. In a case where there are severe and ultimately fatal head injuries, ocular damage, bruises, and fractures of differing ages, does the collection of all those injuries make it more or less likely the fatal head injuries were inflicted by another person?
11. Since the beginning of 2013, please provide a list of the cases where you have provided courtroom testimony as an expert witness on the cause of injuries to a young child having been subpoenaed by a criminal defense attorney or a parents’ attorney. For each such case, please list the following:
    1. The approximate date of the hearing, the jurisdiction/county where the testimony was offered, the prosecuting agency or child protection agency involved in the hearing, a brief description of the injuries to the child (without naming the child) and a brief summary of your testimony in the hearing.
    2. Please specify which of the cases since 2013 involved your testimony in court hearings where you testified specifically for the purpose of challenging the scientific basis of the diagnoses of shaken baby syndrome, abusive head trauma, shaken impact syndrome, or inflicted childhood head injuries.
12. Since the beginning of 2013, please list cases not included in the answer to question 14 in which you reviewed records, provided a report, summary of your review and opinions, prepared an affidavit or official declaration of your opinions, or provided informal consultation and discussions with a criminal defense attorney or parents’ attorney on cases involving childhood injuries, but where you did not provide any in-court testimony at a hearing.
    1. For this answer, please list the jurisdiction, the age of the child (without naming the child) and brief description of the child’s injuries, a brief description of your opinions expressed either in a report, affidavit or declaration or in informal discussions with a defense or parents’ attorney (without naming the attorney).
13. Since the beginning of 2013, in how many cases has an Innocence Project Lawyer or other staff member approached you and requested that you become involved in supporting Innocence Project challenged to prior convictions for child abuse or child homicide?
    1. For those cases where you provided assistance in that setting, please list what jurisdiction, whether you prepared a report, declaration or affidavit of your opinions, whether you testified in a courtroom hearing and if so, in what court jurisdiction the hearing was conducted.
14. Since the beginning of 2013, please list all the cases in which child injuries were involved and you were subpoenaed by a criminal prosecuting attorney or government child protection attorney to testify as an expert for the prosecution or the government, whether you actually provided testimony or were just subpoenaed but never called as a witness.
15. Specify whether the report you prepared dated July 26, 2016 contains all the opinions that you have formed in the case of X.T. or expect to testify about in the upcoming trial in November of 2016. If there are additional opinions you have formed or expect to offer in testimony, please set those out including the underlying scientific basis for those opinions in your answer to this question.

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REQUESTS FOR ADMISSION

1. Admit that the opinions you state in your report are based on your assumptions of what prosecution experts are saying or have testified in a preliminary hearing, but that you have not personally spoken with any of those experts to discuss the case of X.T.
2. Admit that your involvement in this case has been solely as a consulting forensic pathologist retained by defense attorneys [NAMES] on behalf of their client, [DEFENDANT].
3. Admit the information you have been provided came from the defense attorneys and/or their staff members and that you have not independently conducted additional investigation of your own, or obtained additional records relating to X.T.
4. Admit that the opinions and discussions contained in your report relating to this case are based on your review of the records provided to you and any other materials specifically provided.
5. Admit that X.T.’s fractures in different areas of the body and in different stages of healing are “suspicious for abuse” and at least should be considered in terms of the “unifying diagnosis” that relates to all of the baby’s injuries.
6. Admit that you have testified in prior cases that inflicted head injuries can’t be diagnosed as being caused by some other person (child abuse) without fractures, bruises, or other accompanying signs of abuse seen in the victim.
7. Admit that in this case, X.T. has a collection of severe and fatal head injuries, ocular injuries, and older and healing fractures in different stages of healing, along with several bruises that are “suspicious for abuse”.
8. Admit that the mainstream medical literature relating to the cause of childhood eye injuries differentiates between the significance of various patterns of retinal hemorrhages and indicates that the findings are more suspicious for inflicted injury when particular patterns of retinal hemorrhages are also found in conjunction with optic nerve hemorrhages and along with severe head injuries.
9. Admit that X.T.’s death was caused not just by subdural bleeding over the covering of his brain, but by global damage to his brain which could not be repaired through neurosurgery.
10. Admit that you are not disagreeing with any of [PATHOLOGIST’S] autopsy findings as to X.T., but your opinions are based on the proper interpretation of the significance of those findings?
11. Admit that conducting an initial forensic autopsy of a young child, when the decisions that must be made involve both cause and manner of the person’s death, involves more than just considering individual injuries identified since the forensic pathologist must also consider the history offered to explain the injuries (if any), the investigative facts relating to statements by caregivers and others who observed the child’s condition, and any other relevant information developed by investigators.
12. Admit that a forensic pathologist in conducting an initial forensic autopsy should not consider each injury as though it occurred in isolation, but must attempt to explain all the injuries suffered by the child as a collective whole, expressing opinions based upon a “unifying diagnosis”, if such is possible.
13. Admit that all of X.T.’s injuries discovered during his hospitalization on [DATE] as well as the further injuries found during the forensic death investigation process could have been inflicted by some other person or persons.
14. Admit that each case presents different challenges in terms of the forensic interpretation of the significance of a collection of childhood injuries.
15. Admit that not all subdural or subarachnoid blood collections have the same cause.
16. Admit that not all retinal hemorrhages and other injuries to the eye have the same cause.
17. Admit that not all brain injuries have the same cause.
18. Admit that the ethical responsibility of all physicians who offer expert witness testimony is to bear neutral witness to what the underlying science supports, to educate the trier of fact so they can use their own judgment to decide the facts of a case, to acknowledge if the expert’s opinions are different from mainstream medical opinion, to tell the whole truth about the expert’s qualifications, and to refrain from taking sides in any legal case.
19. Admit that although some in the medical profession may disagree with or criticize a particular diagnosis, that disagreement or criticism does not alone invalidate the medical diagnosis.

Respectfully submitted this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_.

Deputy District Attorney

CERTIFICATE OF EFILING

I hereby certify that a true and correct copy of the foregoing State’s Interrogatories and Request for Admissions for Defense Witness Dr. Janice Ophoven was efiled this \_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_ and by efiling delivered to [DEFENSE], attorneys for Defendant.