

# **EXHIBIT 15**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

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VIETNAM VETERANS OF )  
AMERICA, et al., )  
Plaintiffs, )  
vs. ) No. CV 09-0037-CW  
CENTRAL INTELLIGENCE )  
AGENCY, et al., ) Volume I  
Defendants. )  
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Videotaped deposition of MICHAEL E. KILPATRICK,  
M.D., taken at 2000 Pennsylvania Avenue Northwest,  
Washington, DC, commencing at 9:30 a.m.,  
Wednesday, July 6, 2011, before Nancy J. Martin,  
California CSR No. 9504, RPR.

PAGES 1 - 257

1 recall seeing was oral or intramuscular. I don't  
2 recall seeing intraspinal. I did not look at all the  
3 ones in the database itself.

4 Q. Okay. And with respect to the -- well, with 15:23:26  
5 respect to the regulation duty to warn that we were  
6 talking about, we got as far as about the middle of  
7 Paragraph H on "Duty to warn." Let's pick up with the  
8 language there on Page 5 of Exhibit 311.

9 The next sentence says, "The duty to warn  
10 exists even after the individual volunteer has  
11 completed his or her participation in research." What  
12 has been done by the Army to implement that duty to  
13 warn when volunteers are -- have completed their  
14 participation?

15 MR. GARDNER: Objection. Beyond the scope of the  
16 Rule 30(b)(6) deposition. Objection.  
17 Mischaracterizes the document.

18 THE WITNESS: As I said before, I talked with  
19 Dr. Brosch, and there are four instances where they  
20 have followed up people who were injured or had  
21 untoward medical events during human research, and  
22 that's been subsequent to 1990 and probably more in  
23 the 2000 range. So the process is there for that.  
24 I'm not sure that they have had any other than those  
25 four events.

1 BY MR. ERSPAMER:

2 Q. What process did you understand is in place? 15:24:59

3 A. That they have the list of the people, what  
4 their research involvement was and the date and time  
5 and this sort of thing, address, and a way to try to  
6 notify the people as far as a permanent address. The  
7 Army has now gone to an E-mail address that the  
8 individual can keep even after leaving the military as  
9 another way to try to stay in touch.

10 But that said, this does not apply to  
11 chem-bio research, which, from what she's saying, is  
12 that there's no chem-bio research that's undergoing at  
13 this point.

14 Q. So as I understand your testimony, with 15:25:45  
15 respect to chem-bio research and the regulation that's  
16 been marked as Exhibit 311, there is no ongoing system  
17 with respect to the duty to warn that relates to  
18 chem-bio exposures, whether incurred before 1990 or  
19 after 1990?

20 MR. GARDNER: Objection. Compound. And  
21 objection, mischaracterizes Dr. Kilpatrick's testimony  
22 slightly.

23 THE WITNESS: There's nothing in place for  
24 testing chem-bio or other testing done prior to 1990.  
25 Subsequent to 1990 there is a process in place for

1 maintaining the informed consent, maintaining the  
2 patient information, information about the test, all  
3 of the criteria that we saw in the data elements.

4 BY MR. ERSPAMER:

5 Q. But none of those items in place after 1990 15:26:45  
6 relate to chem-bio exposures; correct?

7 A. Correct.

8 Q. And there's no system in place for obtaining 15:26:56  
9 information about current medical problems that might  
10 be experienced by anyone that was in the chem-bio test  
11 program; correct?

12 MR. GARDNER: Objection. Mischaracterizes the  
13 testimony.

14 BY MR. ERSPAMER:

15 Q. Before 1990 or after. 15:27:12

16 MR. GARDNER: Objection. Mischaracterizes the  
17 testimony.

18 THE WITNESS: The only program in place is what  
19 DoD and VA put together for, essentially, the three  
20 test areas as we've talked about, the SHAD/112, the  
21 Mustard-Lewisite, the chem-bio, and the names that  
22 have been provided to VA and the information on a  
23 website, on the Force Health Protection website that  
24 talks about those studies.

25 BY MR. ERSPAMER:

1 I, NANCY J. MARTIN, CSR No. 9504, do hereby  
2 certify:

3 That the foregoing deposition testimony of  
4 MICHAEL E. KILPATRICK, M.D. was taken before me at the  
5 time and place therein set forth, at which time the  
6 witness, in accordance with CCP Section 2094, was  
7 placed under oath and was sworn by me to tell the  
8 truth, the whole truth, and nothing but the truth;

9 That the testimony of the witness and all  
10 objections made by counsel at the time of the  
11 examination were recorded stenographically by me, and  
12 were thereafter transcribed under my direction and  
13 supervision, and that the foregoing pages contain a  
14 full, true and accurate record of all proceedings and  
15 testimony to the best of my skill and ability.

16 I further certify that I am neither counsel for  
17 any party to said action, nor am I related to any  
18 party to said action, nor am I in any way interested  
19 in the outcome thereof.

20 IN WITNESS WHEREOF, I have subscribed my name  
21 this 11th day of July, 2011.

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Nancy J. Martin, CSR No. 9504