

AAJ/PEOPIL

Medical Negligence and Birth Trauma Seminar

Florence, Italy

September 5, 2023

Opening Statements in Medical Negligence Cases

Kenneth M. Sigelman, J.D., M.D.
Kenneth M. Sigelman & Associates
1901 First Avenue, 2nd Floor
San Diego, CA 92101
(619) 238-3813
ken@sigelmanassociates.com

OPENING STATEMENT OBJECTIVES

1. Preview the Evidence
2. Own the Medicine
3. Anchor Key Liability and Damages Themes
4. Establish Credibility

OPENING STATEMENT SEQUENCE *

- I. Opening Sound Byte
(defendant's primary rule/violation)

- II. Story of What the Defendant Did

* Largely Adopted from Jury Psychologist David Ball, Ph.D.

OPENING STATEMENT SEQUENCE *

III. PowerPoint

- A. Why We Are Suing The Defendant
 - 1. Supporting Evidence
 - a. Video Deposition Testimony
 - b. Medical Records
- B. Negligence Expert(s)' Bio Slide(s)
- C. Summary of Negligence Expert(s)' Testimony
- D. Glossary of Medical Terms
- E. Debunk Negligence Defenses

OPENING STATEMENT SEQUENCE *

- III. PowerPoint (continued)
 - F. Causation Flow Diagram
 - G. Causation Expert(s)' Bio Slide(s)
 - H. Summary of Causation Expert(s)' Testimony
 - 1. Video
 - 2. Demonstrative Evidence
 - 3. Medical Records
 - 4. Imaging
 - I. Debunk Causation Defenses

OPENING STATEMENT SEQUENCE *

III. PowerPoint (continued)

- J. Introduction to Damages– Pre- vs. Post- injury
- K. Elements of Recoverable Damages
- L. Damages Expert(s)' Bio Slide(s)
- M. Summary of Damages Expert(s)' Testimony
- N. Non-Economic Damages (Human Harms)
 - a. Supporting evidence
- P. Debunk Damages Defenses
- Q. The Ask

**STEPHANIE McCARLEY
v.
ANESTHESIA SERVICES MEDICAL GROUP, INC. and EDGAR
CANADA, M.D.**

Stephanie McCarley, then 18 years old, suffered a hypoxic brain injury as a result of prolonged hypotension/hypoperfusion while under general anesthesia during an upper endoscopy. Dr. Canada was the anesthesiologist during the procedure. Anesthesia Services Medical Group, Inc. was his employer.

Challenges:

1. Dr. Canada was well-trained, articulate, and a Past President of the San Diego Society of Anesthesiologists, the San Diego County Medical Society, and the California Society of Anesthesiologists.
2. Stephanie appeared outwardly normal following her injury.
3. Stephanie's verbal IQ after her injury was 118.
4. Stephanie graduated from high school with honors three months post-injury.
5. Three post-injury brain MRI's were read as normal.
6. Stephanie's behavioral abnormalities that appeared immediately post-injury resolved and/or lessened significantly over time.
7. The most compelling evidence that Stephanie had suffered a brain injury was disinhibition of portions of the associative visual cortex in the occipital lobe, as demonstrated on PET Brain CT which effectively turned her into an art savant.

Opening Sound Byte

When someone needs anesthesia to undergo a surgical procedure, patient safety requires the anesthesiologist to carefully monitor and support the patient's blood pressure. If the patient's blood pressure gets too low for too long, vital organs such as the brain will not receive adequate blood flow, and brain tissue will die.

If an anesthesiologist negligently fails to properly support a patient's blood pressure and causes a brain injury, the anesthesiologist is responsible for the harm.

Stephanie McCarley v.
Anesthesia Service Medical Group, Inc.

JUDGE EDDIE C. STURGEON, DEPT. C-67

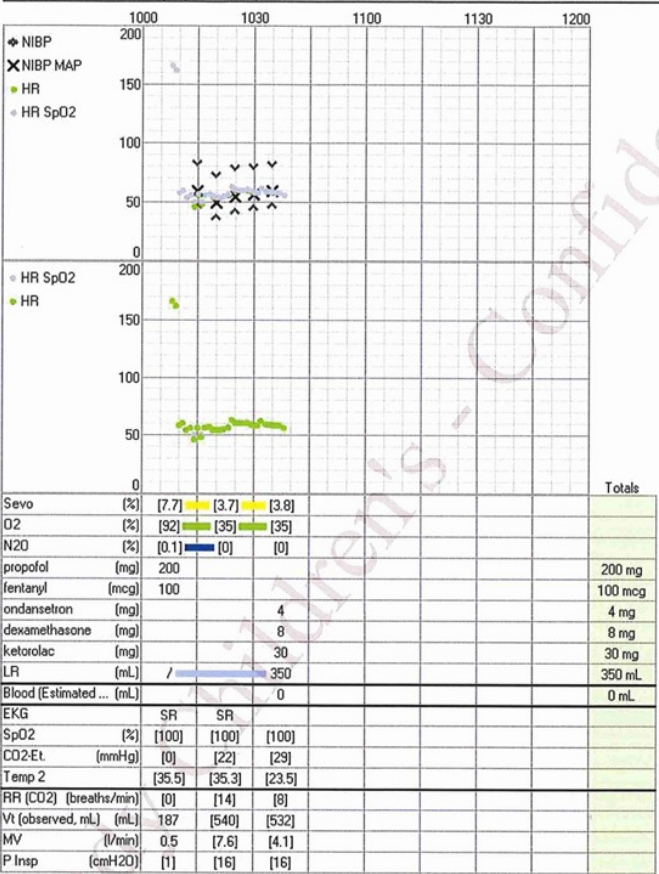
JANUARY 18, 2018

PLAINTIFF'S OPENING STATEMENT

RADY CHILDREN'S HOSPITAL
3020 Children's Way
San Diego, CA 92123
INPATIENT LMR w/SOCI

MCCARLEY, STEPHANIE SUE
MRN: H0384020
DOB: 9/23/1994, Sex: F
Adm: 3/21/2013, D/C: 3/21/2013

Intraprocedure Grid/Graph (continued)



Staff

Name
Edgar Canada, MD

Role
ANESTH

Responsible times on 03/21/13

Begin
1008

End
1044

Events

Date	Time	Event
03/21/13	1008	Anesthesia Start
	1008	Start Data Collection

Printed on 7/23/2014 9:47 AM

Page 144

WHY WE'RE SUING THE DEFENDANTS...



Dr. Canada negligently failed to maintain Stephanie McCarley's blood pressure at a safe level during the 3/21/13 endoscopy procedure. He testified that he would be concerned about blood flow to vital organs if the mean arterial pressure was more than 20% below the baseline. During and immediately after the endoscopy procedure, Ms. McCarley's mean arterial pressure remained between 28 and 40% below the baseline for at least 41 consecutive minutes, without any attempted correction by Dr. Canada. Dr. Canada's failure to take action to correct Ms. McCarley's unsafe low blood pressure violated the standard of care for an anesthesiologist.

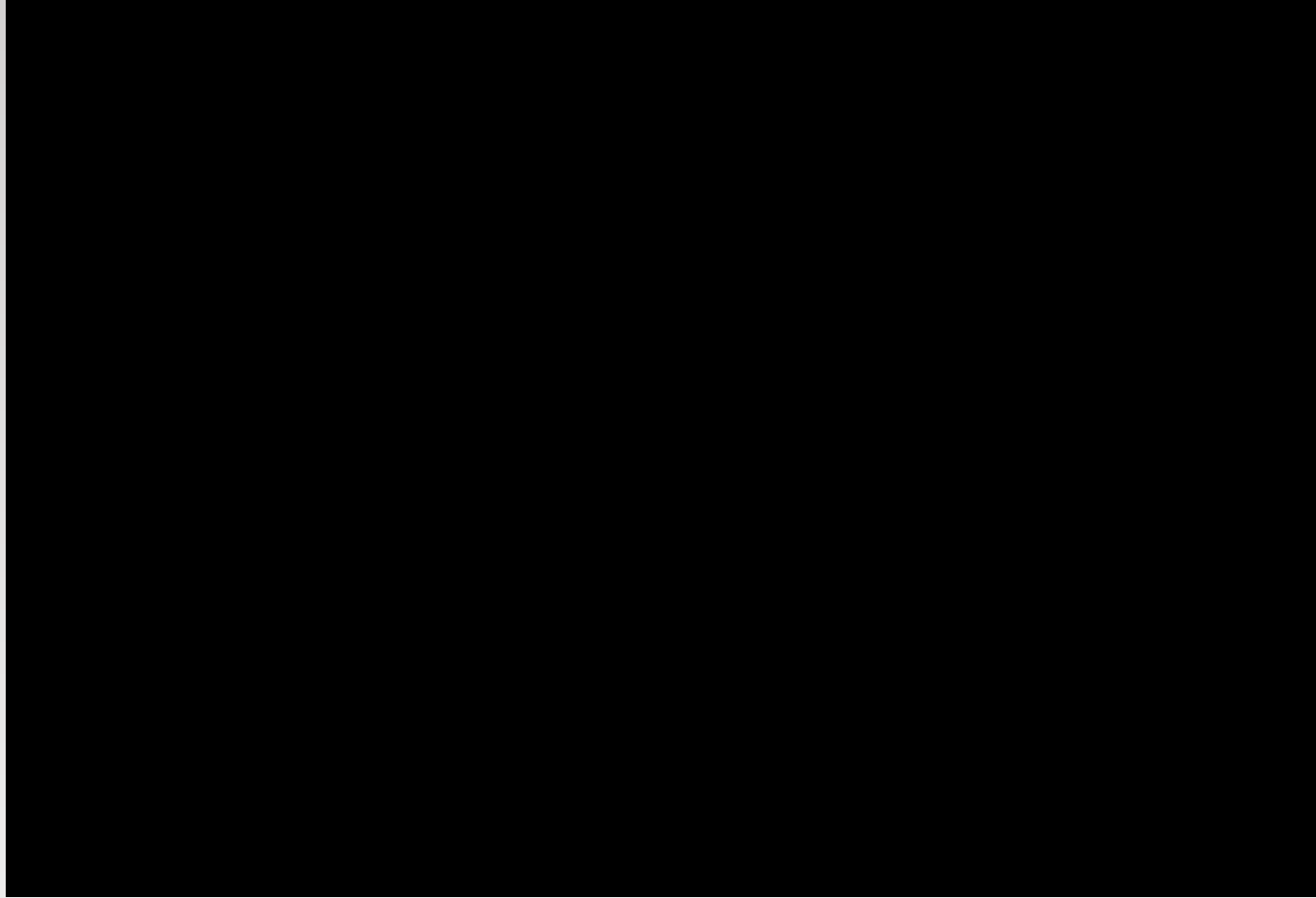


Anesthesia Service Medical Group, Inc. is legally responsible for the negligence of its employee, Dr. Canada.

HOW TO CALCULATE MEAN ARTERIAL PRESSURE (MAP)

$$\text{MAP} = \frac{\text{Systolic blood pressure} + (2 \times \text{diastolic blood pressure})}{3}$$

$$\text{SAFE MAP} = \text{Baseline MAP} - \leq 20\%$$



STEPHANIE McCARLEY'S BLOOD PRESSURES 3/21/13

<u>TIME</u>	<u>BP</u>	<u>MAP</u>	<u>% BELOW BASELINE MAP</u>	<u>LOCATION</u>
0937	100/72	81.3	---	Pre-op
1015	83/46	58.3	28.3	OR
1020	73/36	48.3	40.6	OR
1025	79/41	53.7	34	OR
1030	80/44	56	31.1	OR
1035	82/46	58	28.7	OR
1044	75/44	54.3	33.2	PACU
1056	88/42	57.3	29.5	PACU
1110	122/66	84.7	---	PACU

WILLIAM C. WILSON, M.D.

- ▶ - Anesthesiologist with 25 years of experience in the operating room
- ▶ - Board Certified by the American Board of Anesthesiology with Special Qualifications in Critical Care Medicine
- ▶ - Clinical Professor of Anesthesiology & Perioperative Care, Surgery and Medicine at University of California, Irvine Medical Center
- ▶ - Chief Medical Officer of UC Irvine Health



DR. WILSON'S TESTIMONY

Dr. Canada violated the standard of care by failing to adequately support Stephanie McCarley's blood pressure during the endoscopy, and when Ms. McCarley arrived in the PACU. As soon as he noted unsafe low blood pressure while Ms. McCarley was under general anesthesia, Dr. Canada was required to decrease the dose of anesthetic. If that failed to adequately raise the blood pressure, the standard of care required him to give IV fluids and/or medications until the blood pressure remained in a safe range. Based on the baseline MAP of 81, Ms. McCarley's blood pressure needed to be maintained at 65 (20% less than baseline) or higher.

Stephanie McCarley suffered a hypoxic brain injury because Dr. Canada's negligent failure to support Ms. McCarley's blood pressure for an extended period of time resulted in inadequate blood flow to her brain.

McCARLEY V. ASMG MEDICAL TERMS

Anoxia	Absence of oxygen in body tissues
Associative Visual Cortex	Area in the back of the brain involved in visual interpretation
Brain PET CT Scan	Imaging test of the brain that uses a radioactive substance called a tracer and can pinpoint the anatomic location of abnormal metabolic activity within the brain
Broca's Area	Region in the frontal lobe of the dominant hemisphere (usually the left) of the brain with functions linked to speech production
Central Auditory Processing Disorder	A neurological disorder in which a person has difficulty properly interpreting sounds received by the ears, particularly speech, which can result in difficulties with attention, speech production, and reading
Dysautonomia	Disorder of autonomic nervous system function which may effect the functioning of the heart, bladder, intestines, sweat glands, pupils, and/or blood vessels

McCARLEY V. ASMG MEDICAL TERMS CONT.

End Tidal CO2	The level (partial pressure) of carbon dioxide released at the end of expiration
Endoscopy	Medical procedure that enables the examiner to examine the esophagus, stomach, and first part of the small bowel using a flexible fiberoptic tube called an endoscope
Endotracheal Intubation	Medical procedure in which a tube is placed into the windpipe (trachea) through the mouth
Life Care Plan	A dynamic document based upon published standards of practice, comprehensive assessment, data analysis and research, which provides an organized, concise plan for current and future needs with associated costs for people who have long-term care needs
Fentanyl	Synthetic opioid narcotic analgesic used as a pain medication and/or together with other medications for anesthesia

MECHANISM OF STEPHANIE McCARLEY'S BRAIN INJURY

General anesthesia during 3/21/13 endoscopy



Unsafe blood pressure throughout procedure and after



No blood pressure correction



Not enough blood flow (perfusion) to brain



Permanent, life-altering brain injury

MICHAEL A. LOBATZ, M.D.

- ▶ - Stephanie McCarley's treating neurologist since June 2013
- ▶ - Neurologist in private practice in San Diego since 1981
- ▶ - Board Certified by the American Board of Psychiatry and Neurology
- ▶ - Medical Director of the Brain Injury Program at Scripps Memorial Hospital, Encinitas, since 1998



DR. LOBATZ'S TESTIMONY

Stephanie McCarley suffered a brain injury because she didn't receive enough oxygen during the endoscopy. The lack of oxygen was due to how low her blood pressure dropped during the procedure, and how long it remained at that level. The low level of cerebral perfusion caused brain cells to die.

Ms. McCarley's brain injury is permanent. Although she has improved in some respects, she will never work or be fully independent.





RADY CHILDREN'S HOSPITAL
3020 Children's Way
San Diego, CA 92123
INPATIENT LMR w/SOCI

MCCARLEY,STEPHANIE SUE
MRN: H0384020
DOB: 9/23/1994, Sex: F
Adm:3/21/2013, D/C:3/21/2013

Progress Notes
did not have
RCHSD and
she is descr
than 24 hou

RADY CHILDREN'S HOSPITAL
3020 Children's Way
San Diego, CA 92123
INPATIENT LMR w/SOCI

MCCARLEY,STEPHANIE SUE
MRN: H0384020
DOB: 9/23/1994, Sex: F
Adm:3/21/2013, D/C:3/21/2013

ASA 2

Plan - Patient wil

Electronically S
Attestation Info
Staff Name
Edgar Canada
Attestation
Attestation

Informed Conse
The anesthesia r
The possibility of

All Meds and A
propofol (DIPRI

Ordered On:
Dose (Rema
Route: -
Admin Instru

Administr
03/21/13

fentanyl 50 mcg

Ordered On:
Dose (Rema
Route: -
Admin Instru

Administr
03/21/13

lactated ringers

Ordered On:
Dose (Rema
Route: -
Admin Instru

Administr
03/21/13
03/21/13

ondansetron (ZC

Ordered On:
Dose (Rema
Route: -
Admin Instru

for nausea a
Ondansetron
Administr
03/21/13

Printed on 7/2

Progress Notes

Progress Notes signed by Edgar Canada, MD at 03/22/13 1605

Author:	Edgar Canada, MD	Service:	(none)	Author Type:	Anesthesiologist
Filed:	03/22/13 1605	Note Time:	03/22/13 1552		

This will serve as documentation of two conversations I had with the mother of Stephanie McCarley. The first conversation took place at about 1300 today. The mother was concerned that on return to school today the patient began to act "loopy" and she was going to the school to pick her up to take home. I told her, that given the short nature of her anesthetic, that it is doubtful that this is an anesthetic side-effect.

The second conversation related to the same matter took place at about 1430 today. This is after the mother picked up the patient from school. She describe the patient as happy, giddy, and loopy which is unusual for her. She said that she was oriented to place, person, time, and surroundings but continued to express concern that she was not "normal." I advised her to see a physician and if she

Progress Notes (continued)

did not have a physician that could see her today she should come to the Emergency Department at RCHSD and/or be seen in an urgent care center or other ER, I further advised her that the behavior she is describing in my opinion does not appear to be related to her anesthetic which transpired more than 24 hours earlier.

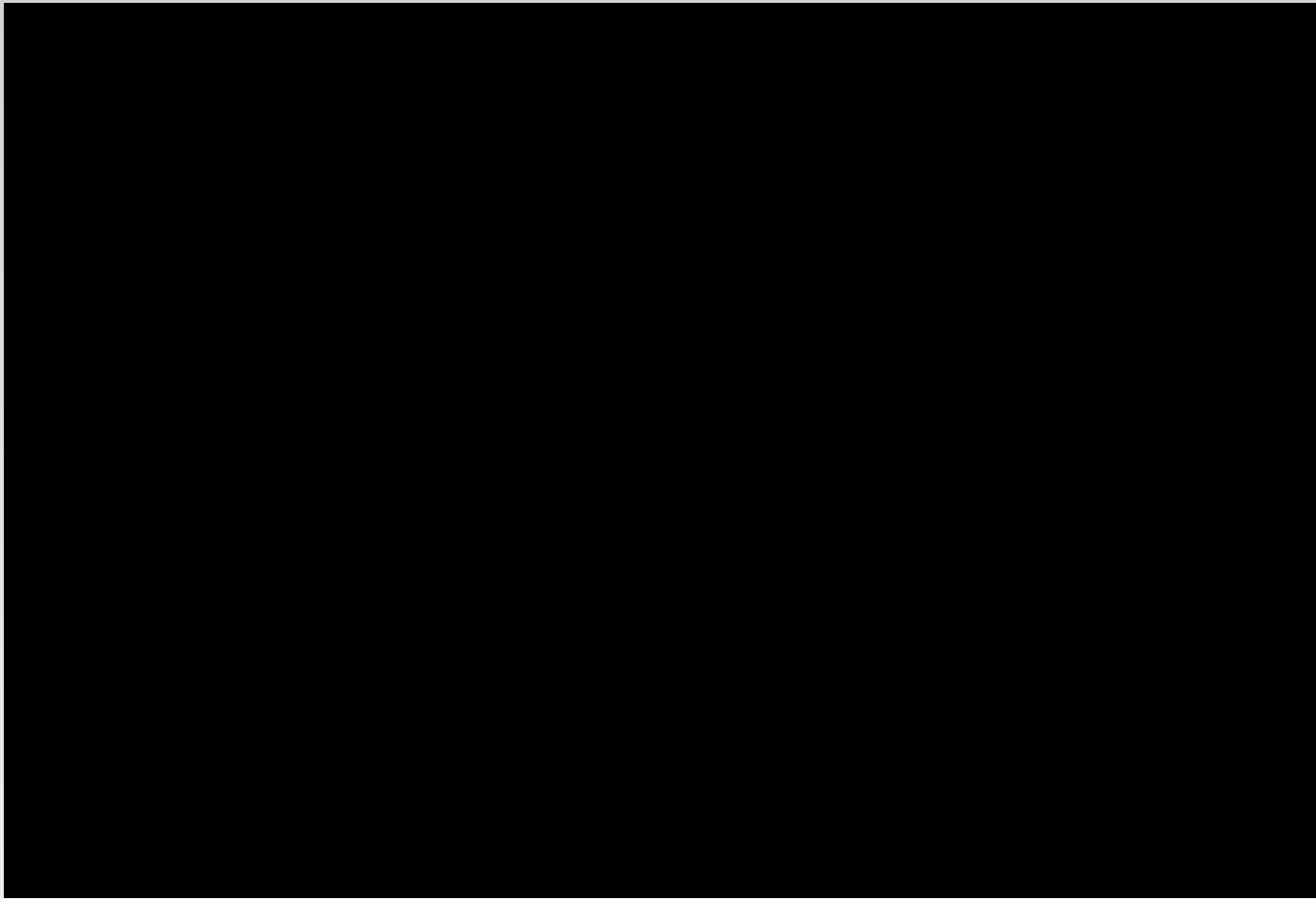
Electronically Signed by Edgar Canada, MD on 3/22/2013 4:05 PM

The second con
mother picked up the patient from school. She describe the patient as happy, giddy, and loopy which
is unusual for her. She said that she was oriented to place, person, time, and surroundings but
continued to express concern that she was not "normal." I advised her to see a physician and if she

Printed on 7/23/2014 9:47 AM

Page 146

RadyB 146



RADY CHILDREN'S HOSPITAL
3020 Children's Way
San Diego, CA 92123
INPATIENT LMR w/SOCI

MCCARLEY,STEPHANIE SUE
MRN: H0384020
DOB: 9/23/1994, Sex: F
Adm:3/26/2013, D/C:3/29/2013

Consult Notes (continued)

HEENT: NCAT, PERRL 4-->3mm, EOMI, posterior OP clear without exudates, MMM
Neck: Supple
CV: RRR, no murmur
Resp: CTA bilaterally
Abd: Soft, NT, ND
Ext: WWP, no peripheral edema
Skin: Warm and dry, no rashes
Neuro: CN II-XII intact, strength 5/5 throughout, SILT throughout, normal tone, no clonus, patellar reflexes 2+
b/l, finger-to-nose intact, rapid alternating movements intact, heel-to-shin intact, gait steady. Speech is mildly
slow and pt is noted to smile inappropriately at times. Her eyebrows are persistently elevated and her eyes are
wide, as with a chrd

Labs

Admission on 03/26/2013

Component

- TSH
- Free T4
- BUN
- Creatinine
- Total CK

BAL negative on 3/26/2013

UDS negative on 3/26/2013

Assessment: Stephanie Sue McCarley is an 18 yo female h/o PCOS, GERD, and paraesophageal hernia who underwent anesthesia for EGD on 3/21, and noted to have persistent mental status changes since her procedure. Specifically, she has been persistently giggly and giddy, with unusual facial expressions. She feels her mentation is slowed, though is noted to be alert, oriented, and responding appropriately during my exam. Neuro exam is unremarkable. Urine drug screen and BAL are negative. Toxicology was consulted regarding possible contribution of anesthetic agents to pt's presentation.

A MEDLINE search has revealed no similar cases of excessive giddiness or personality/mood changes after sedation/anesthesia. Corticosteroids are well-known to have psychiatric/mood/cognitive effects, including psychosis and mania, though these effects tend to occur in chronic use and are dose-dependent. The pt received only a single dose of dexamethasone, thus this would be an unlikely cause of her sx's. Diprivan (Propofol) has been associated with delayed-onset of seizures, usually within the first 2-4 days, though seizures lasted as long as 18 days in one case report. This is a rare phenomenon, and pt has not exhibited any overt seizure activity. An EEG is currently pending. Acute nitrous oxide intoxication results in excessive laughing, giddiness, and euphoria, though I could find no reports in the literature of these symptoms persisting for any significant duration as with this pt. All of the medications she received during anesthesia should have been metabolized many days ago at this point, and given the pt's normal renal and liver function, it would be extraordinarily unusual for her to be persistently intoxicated from these agents.

Other etiologies to consider include hypoxic brain injury, primary neurologic condition (i.e. seizures, structural brain abnormality), infectious etiologies, and unmasking of underlying primary psychiatric disorder.

Recommendations:

1. Please obtain a **comprehensive** drug screen to assess for any other exposures, medications, illicit substances.
2. Agree with further evaluation with EEG, MRI brain, neurology, and psychiatry consults.

Printed on 7/23/2014 9:47 AM

Page 313

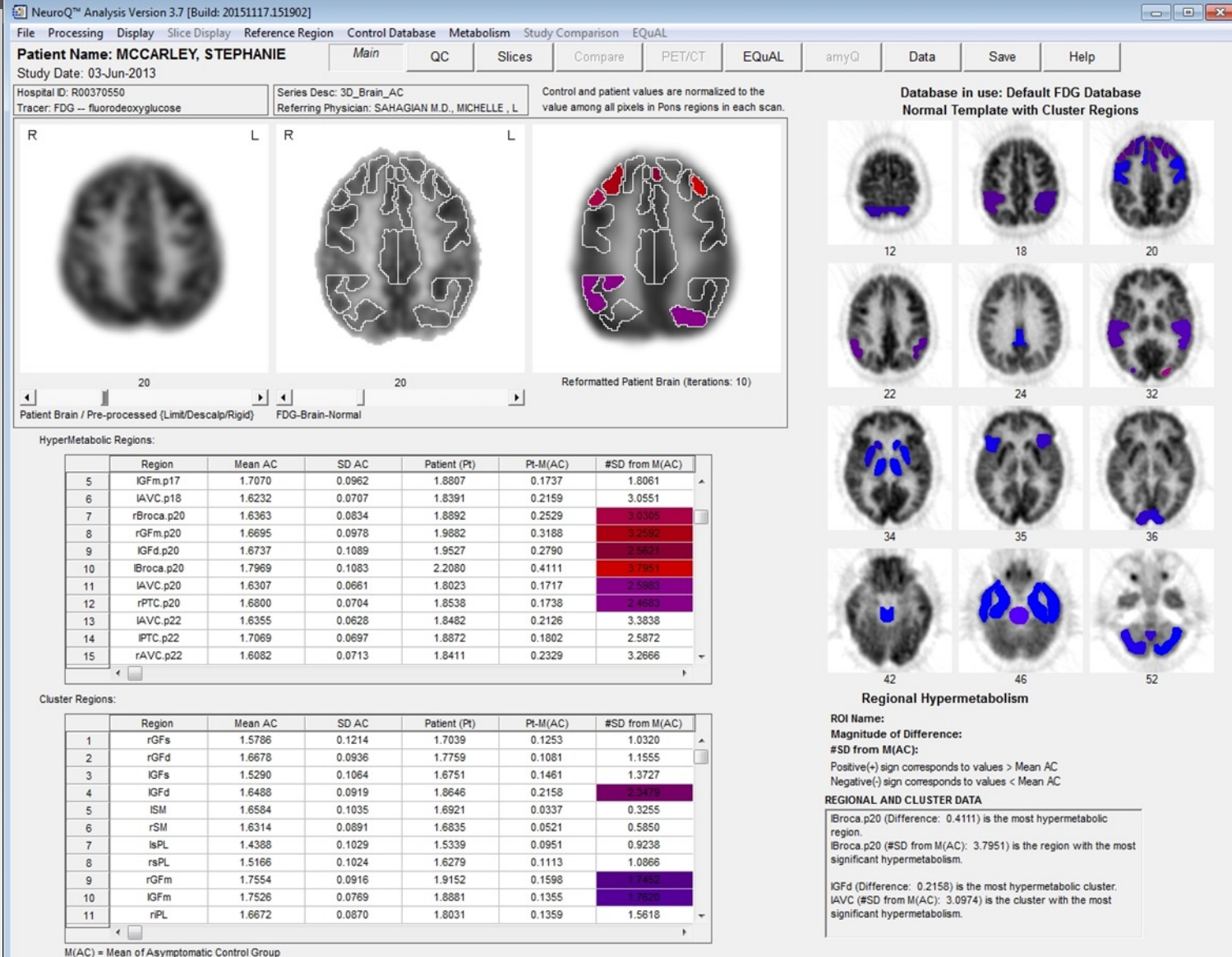
DANIEL H. SILVERMAN, M.D., PH.D.

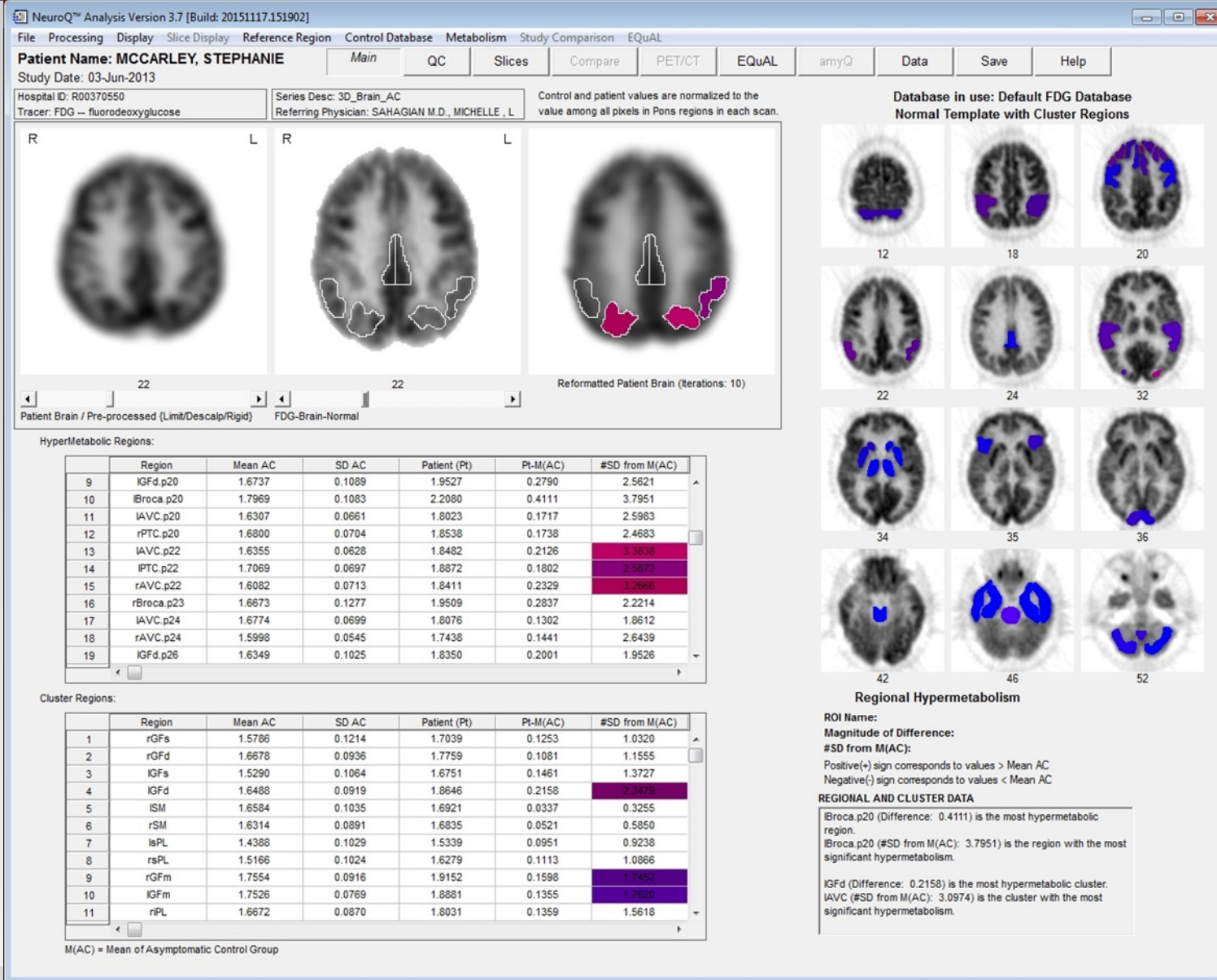
- ▶ - Head of the Neuronuclear Imaging Section at UCLA Medical Center and Professor, Division of Nuclear Medicine, Department of Molecular and Medical Pharmacology at UCLA
- ▶ - Board Certified by the American Board of Nuclear Medicine and American Board of Internal Medicine
- ▶ - Nuclear Medicine Physician, specializing in the interpretation of PET scans at all UCLA facilities since 1996
- ▶ - Co-inventor of underlying algorithms for NeuroQ software licensed by Syntermed from UCLA for PET scan interpretation

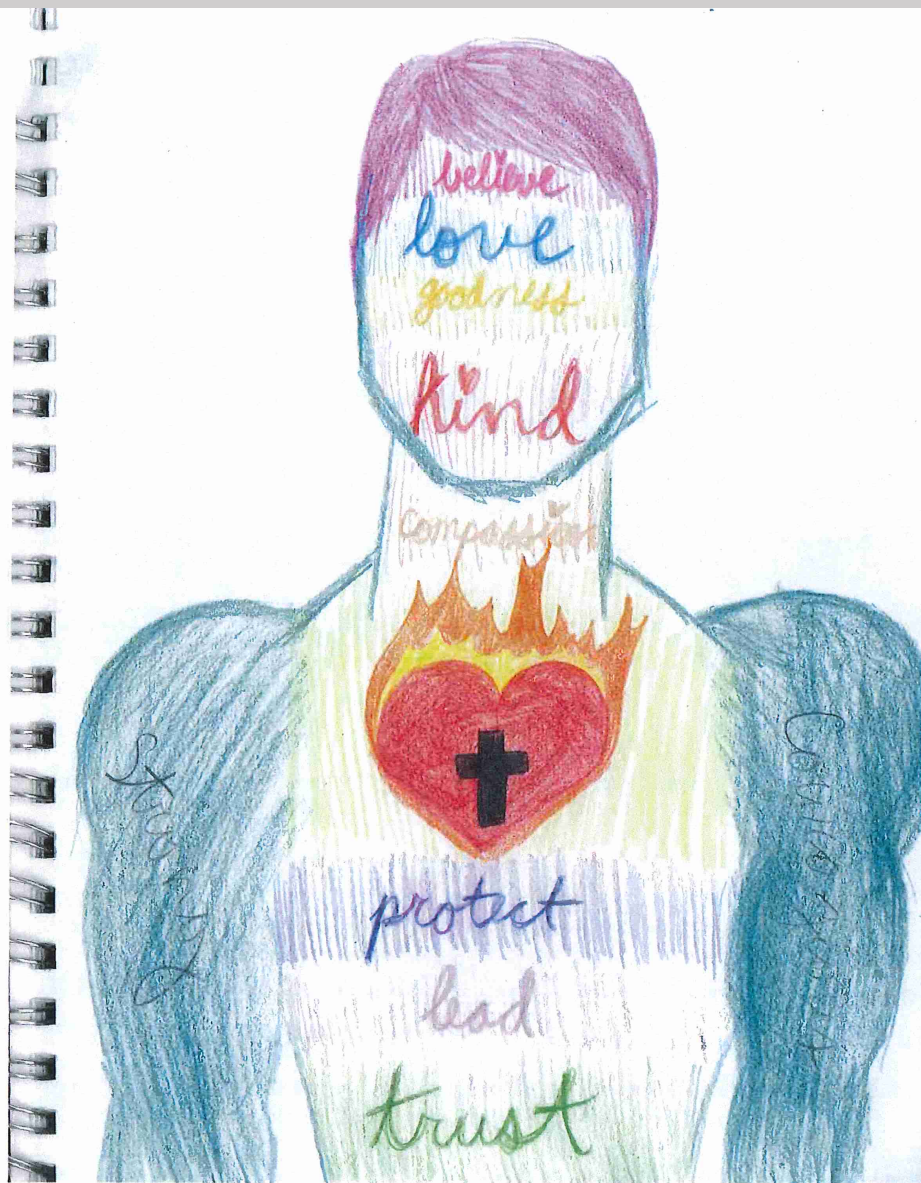


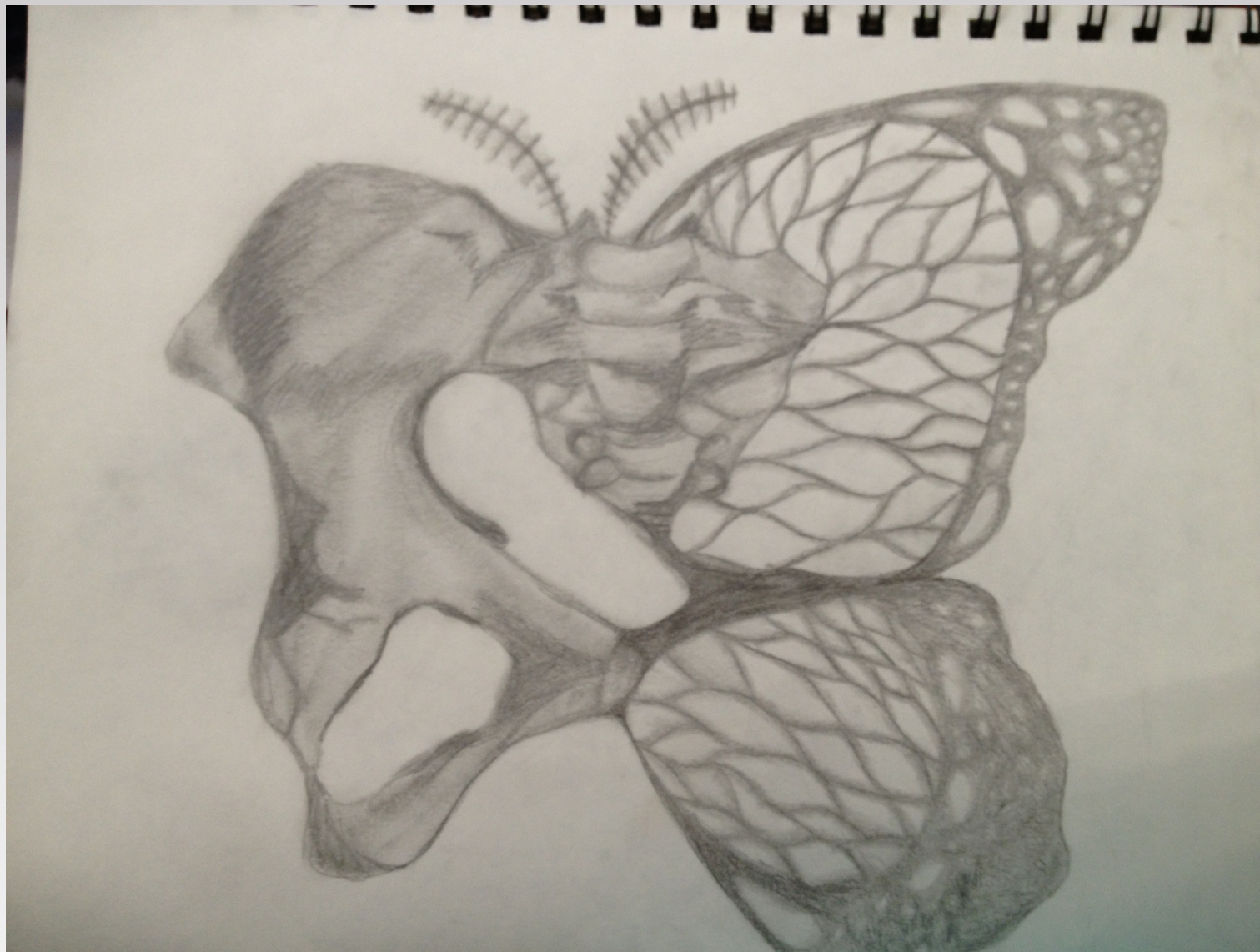
DR. SILVERMAN'S TESTIMONY

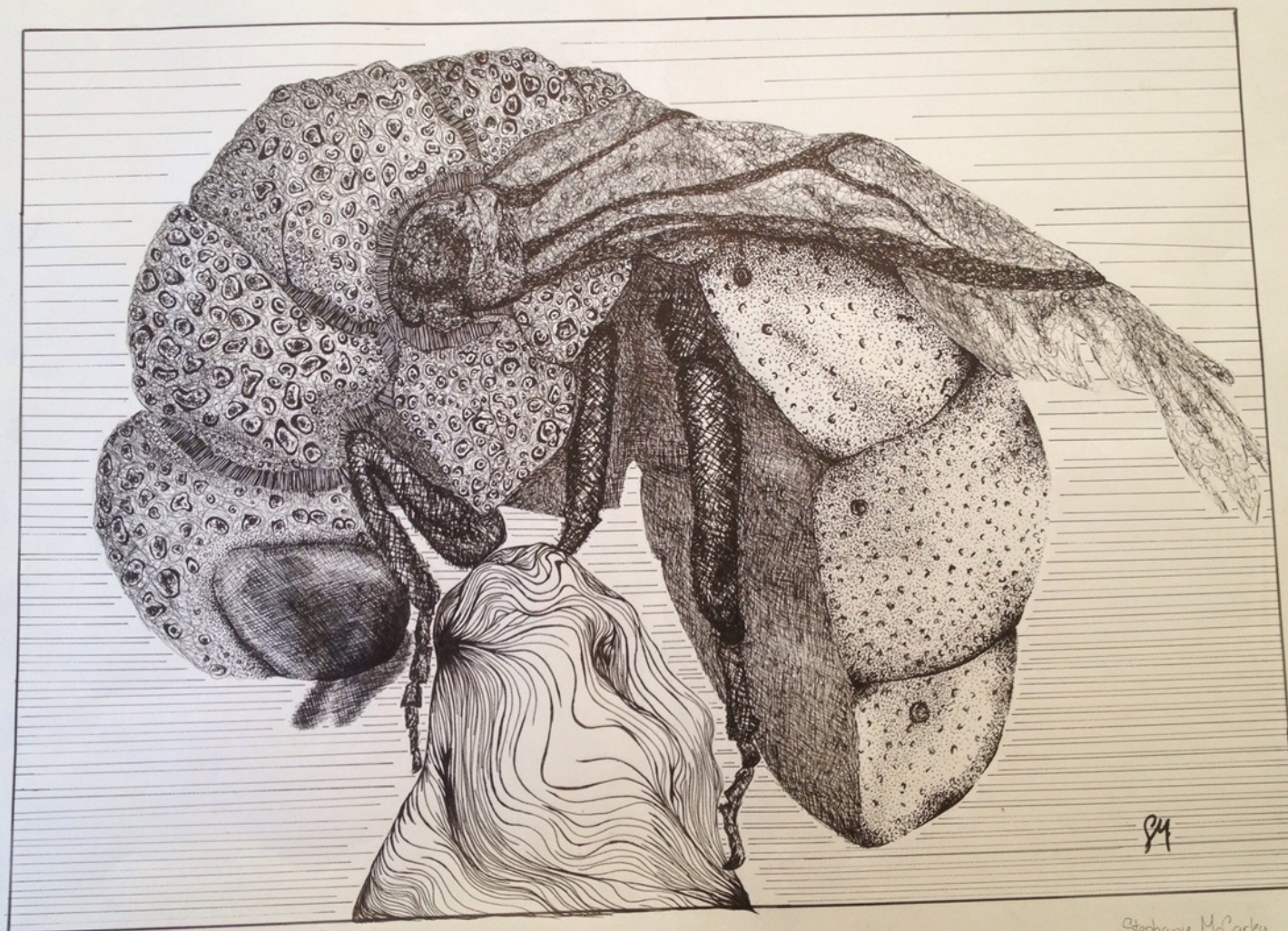
Stephanie McCarley's PET Brain CT scan performed on 6/3/13. Most significantly, there is extreme hypermetabolism (increased brain activity) in two areas of the brain. The hypermetabolism in one area of the brain (frontal lobe) corresponds to Ms. McCarley's giddiness that began immediately after she woke up from the anesthesia that she was given during the endoscopy. The hypermetabolism in the secondary (associative visual cortex) corresponds with the radical change in Ms. McCarley's artistic preoccupation and ability that was first expressed two days after the endoscopy. The PET Brain CT scan abnormalities represent injury to the brain due to lack of perfusion during the endoscopy.











Stephanie McCarley

NANCY MARKEL, PH.D.

- ▶ - Clinical neuropsychologist practicing in San Diego since 1982
- ▶ - Earned her Ph.D. in Professional Psychology with a Clinical Specialty in 1982
- ▶ - Private practice dedicated to children and adults who have suffered brain injuries



DR. MARKEL'S TESTIMONY

Stephanie McCarley has objective evidence of a brain injury. Extensive neuropsychological testing demonstrates significant cognitive deficits, particularly in the area of mental processing and working memory. As a result of Ms. McCarley's brain injury, she functions at a very low level compared to what she was like before her injury. Ms. McCarley will never be fully independent.

CALVIN A. COLARUSSO, M.D.

- ▶ - Private practice of adult and child psychiatry since 1973
- ▶ - Board Certified by the American Board of Psychiatry and Neurology and the American Board of Child Psychiatry
- ▶ - Served as Director of the Child Psychiatry Residency and Training Program at UCSD for twenty years
- ▶ - Author of six professional books and more than fifty peer-reviewed articles on adult and child psychiatry



DR. COLARUSSO'S TESTIMONY

Stephanie McCarley's changes in behavior and deterioration of functioning after her endoscopy were the result of a brain injury, not the unmasking of a psychiatric disorder. Stephanie McCarley does not have a "somatoform disorder." She is not malingering or exaggerating her symptoms.

Stephanie's brain injury limits many aspects of her life, and prevents her from being independent.

STEPHANIE McCARLEY PRE-BRAIN INJURY...

