

EXHIBIT 5

**TO THE DECLARATION OF BRIAN J. NISBET
IN SUPPORT OF DEFENDANTS' MOTION
TO EXCLUDE THE EXPERT TESTIMONY
OF STEPHEN K. KUNIN, BLAKE ENGLISH
AND JIM YOUSSEF**

1 Highly confidential - Attorneys' Eyes Only
2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF CALIFORNIA

4 SAN DIEGO DIVISION

5 * * * * *

6 NUVASIVE, INC., a Delaware
7 corporation,

8 Plaintiff,

9 vs.

Case No.

3:18-cv-00347-CAB-MDD

10 ALPHATEC HOLDINGS, INC., a
11 Delaware corporation and
12 ALPHATEC SPINE, INC., a
13 California corporation,

14 Defendants.

15 VIDEOTAPED DEPOSITION OF

16 JIM A. YOUSSEF, M.D.

17 Durango, Colorado

18 January 10, 2020

19 9:15 a.m.

20
21
22
23 Reported by: Heidi K. Konsten, RPR, CCR
24 Nevada CCR No. 845 - NCRA RPR No. 816435
25 JOB NO. 596170

1 have any tissue creep or if you have any issue
2 where a nerve slips underneath one of the
3 retractor blades, you don't want to inadvertently
4 injure that nerve.

5 **Q The stimulated dilator doesn't provide**
6 **you that information?**

7 A It provides a neurography mapping of
8 the -- of the lumbar plexus.

9 **Q Do you always use an EMG wand?**

10 A Always.

11 **Q Do you always -- you also testified**
12 **about inserting a shim.**

13 **Do you always use a shim in XLIF?**

14 A A majority of cases I use a shim.

15 **Q And in what circumstances do you not?**

16 A It's variable. It's based on the
17 patient's pathology. Doing a large deformity case
18 and the disk space is severely collapsed and has a
19 concavity to it, I -- I sometimes can't get a shim
20 in.

21 There's a variety of different
22 pathologies where I would probably avoid using a
23 shim for fear that it might cause bleeding in the
24 bone or injure the bone.

25 **Q What type of -- what type of data do you**

1 **Dr. Youssef, neuromonitoring for use in**
2 **spine surgery was known before 2003; correct?**

3 A Correct.

4 Q And I think earlier in the testimony,
5 you were -- you had a question for me about why I
6 was using 2004. So I'm just going to ask you the
7 same questions regarding 2003, since you pointed
8 that out.

9 **Lateral trans-psoas surgery to approach**
10 **the lumbar spine was known before 2003; correct?**

11 A Correct.

12 Q And stimulated dilators for use in spine
13 surgery were known before 2003; correct?

14 MS. DEVINE: Objection. Asked and
15 answered.

16 THE WITNESS: Correct. In fact,
17 NuVasive had them.

18 BY MS. WICKRAMASEKERA:

19 Q **Publicly available?**

20 A I don't know.

21 Q **Was that for the INS-1?**

22 A I don't recall.

23 MS. WICKRAMASEKERA: Does everyone mind
24 if I take a quick break? Because I've got to use
25 the restroom.