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2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF QUEENS

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,

Plaintiff,

7

-against-

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, M.D.,

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HOSPITAL,

, M.D.,

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, M.D.,

, M.D., P.C.,

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Defendants.

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13

Lake Success, New York

14

January 26, 2007

2:25 p.m.

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EXAMINATION BEFORE TRIAL

18

of , M.D., one of the

19

Defendants herein, held at the above-noted

20

time and place before Ann Dee Becker, a

21

Notary Public of the State of New York,

22

pursuant to Notice, the Provisions of the

23

CPLR pertaining thereto, and stipulations

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between counsel.

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2 APPEARANCES:

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4

THE LAW FIRM OF GERALD M. OGINSKI,
LLC

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Attorneys for Plaintiff

25 Great Neck Road

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Great Neck, New York 11021

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BY: GERALD M. OGINSKI, ESQ.

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, ESQS.

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Attorneys for Defendants Peter

R. , M.D. and Western

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BY: , ESQ.

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16 Attorneys for Defendant
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17 , New York 11783
18 BY: , ESQ.
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22 Lake Success, New York 11042
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2 LAW OFFICES OF ,
PLLC
3 Attorneys for Defendants
4 , M.D. and
, M.D., P.C.
5 Mineola, New York 11501
6 BY: , ESQ.
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2 STIPULATIONS
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4 IT IS HEREBY STIPULATED, by and
5 between the attorneys for the respective
6 parties hereto, that:
7 All rights provided by the C.P.L.R.,
8 including the right to object to any
9 question, except as to form, or to move to
10 strike any testimony at this examination
11 is reserved; and in addition, the failure
12 to object to any question or to move to

13 strike any testimony at this examination
14 shall not be a bar or waiver to make such
15 motion at, and is reserved to, the trial
16 of this action.

17 This deposition may be sworn to by the
18 witness being examined before a Notary
19 Public other than the Notary Public before
20 whom this examination was begun, but the
21 failure to do so or to return the original
22 of this deposition to counsel, shall not
23 be deemed a waiver of the rights provided
24 by Rule 3116, C.P.L.R., and shall be
25 controlled thereby.

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2 The filing of the original of this
3 deposition is waived.

4

IT IS FURTHER STIPULATED, a copy of
5 this examination shall be furnished to the
6 attorney for the witness being examined
7 without charge.

8

9 PART 221 UNIFORM RULES FOR THE CONDUCT
10 OF DEPOSITIONS

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12 221.1 Objections at Depositions

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14 (a) Objections in general. No
15 objections shall be made at a deposition
16 except those which, pursuant to
17 subdivision (b), (c) or (d) of Rule 3115
18 of the Civil Practice Law and Rules, would
19 be waived if not interposed, and except in
20 compliance with subdivision (e) of such
21 rule. All objections made at a deposition
22 shall be noted by the officer before whom
23 the deposition is taken, and the answer
24 shall be given and the deposition shall
25 proceed subject to the objections and to

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2 the right of a person to apply for
3 appropriate relief pursuant to Article 31
4 of the CPLR.

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(b) Speaking objections restricted.
6 Every objection raised during a deposition
7 shall be stated succinctly and framed so
8 as not to suggest an answer to the
9 deponent, and at the request of the
10 questioning attorney, shall include a
11 clear statement as to any defect in form
12 or other basis of error or irregularity.
13 Except to the extent permitted by CPLR
14 Rule 3115 or by this rule, during the
15 course of the examination persons in
16 attendance shall not make statements or
17 comments that interfere with the

18 questioning.

19

20 221.2 Refusal to answer when objection is
21 made.

22 A deponent shall answer all questions
23 at a deposition, except (i) to preserve a
24 privilege of right of confidentiality,
25 (ii) to enforce a limitation set forth in

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2 an order of court, or (iii) when the
3 question is plainly improper and would, if
4 answered, cause significant prejudice to
5 any person. An attorney shall not direct
6 a deponent not to answer except as
7 provided in CPLR Rule 3115 or this
8 subdivision. Any refusal to answer,
9 direction not to answer, shall be
10 accompanied by a succinct and clear
11 statement of the bar therefor. If the
12 deponent does not answer the question, the
13 examining party shall have the right to
14 complete the remainder of the deposition.

15

16 221.2 Communication with the deponent

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18 An attorney shall not interrupt the
19 deposition for the purpose of
20 communicating with the deponent unless all
21 parties consent or the communication is
22 for the purpose of determining whether the
23 question should not be answered on grounds
24 set forth in section 221.2 of these rules
25 and, in such event, the reason for

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2 communication shall be stated for the
3 record succinctly and clearly.

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8 the Witness herein, having first been duly
9 sworn by the Notary Public, was examined
10 and testified as follows:

11 EXAMINATION BY

12 MR. OGINSKI:

13 Q. What is your name?

14 A. .

15 Q. What is your office address?

16 A. Road,

17 , New York 11801.

18 Q. Good afternoon, doctor.

19 A. Good afternoon.

20 Q. Do you have an independent

21 memory of ?

22 A. In part.

23 Q. In preparation for today, did
24 you have an opportunity to review her
25 chart from Hospital?

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2 A. I reviewed my notes from the
3 medical record.

4 Q. Other than what's contained
5 within your notes, do you have any other
6 notes separate and apart from the hospital
7 record?

8 A. No.

9 Q. Did you ever see
10 outside of Hospital?

11 A. No.

12 Q. On October 8, 2003, when Anne
13 presented to the emergency room at
14 Hospital, did you see
15 her in the emergency room?

16 A. Not in the emergency room.

17 Q. At what point did you first see
18 ?

19 A. On October 8, 2003.

20 Q. Feel free to turn to the
21 original hospital chart.

22 MR. OGINSKI: Please mark the
23 original hospital chart as Plaintiff's
24 Exhibit 1.

25 [The original hospital chart was
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2 hereby marked as Plaintiff's Exhibit 1
3 for identification, as of this date.]

4 Q. Doctor, all of my questions are
5 going to relate to the time period that
6 was at
7 Hospital in October of 2003 unless I
8 indicate otherwise.

9 At that time, what was your
10 affiliation with
11 Hospital?

12 A. I was on staff with the
13 orthopedic surgery department.

14 Q. How long had you been on staff
15 there?

16 A. I believe since 1996 or '97.

17 Q. Did you maintain a private
18 office for the practice of medicine
19 outside the hospital at that time?

20 A. Yes.

21 Q. How many hours a week would you
22 say you worked as a staff physician at
23 Hospital?

24 A. I was not a staff physician.

25 Q. You said you were on staff.

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2 A. I was not part of the faculty at
3 the hospital. I had voluntary privileges
4 on staff at Hospital.

5 Q. Just to clarify, your
6 affiliation was as an attending physician
7 in the department of orthopedics?

8 A. That's correct.

9 Q. At any time in October of 2003,
10 were you employed by
11 Hospital?

12 A. No.

13 MR. : Objection to form.

14 Q. Did you maintain an office for
15 the practice of medicine at
16 Hospital?

17 A. No.

18 Q. How many offices for the
19 practice of medicine did you have at that
20 time?

21 A. One.

22 Q. Was that the address that you
23 gave us today?

24 A. Correct.

25 Q. Did you have any partners at

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2 that time?

3 A. No.

4 Q. What was the name of your
5 office?

6 A. , MD.

7 Q. If you needed to have coverage
8 for a particular day or weekend if you
9 were unavailable, what was the arrangement
10 that you customarily made in October of
11 2003?

12 A. With a fellow colleague
13 orthopedic surgeon.

14 Q. To your knowledge, were there
15 physician assistants at
16 Hospital?

17 A. Yes.

18 Q. Were there occasions when you
19 would ask the physician assistant to
20 either make rounds for you or to see a
21 patient of yours who was in the hospital?

22 A. It was not -- I didn't ask the
23 physician assistant to do that. Their role
24 included rounds of seeing patients.

25 Q. Do you know Dr. ?

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2 A. Yes.

3 Q. How do you know him?

4 A. As an orthopedic colleague at
5 Hospital.

6 Q. Do you know how it was that you

7 came to be assigned to care for Ms. ?
8 A. I believe Dr. notified me
9 that the family requested his services.

10 Q. Let me be clear.
11 On October 8 when Ms.
12 first presented to the emergency room, do
13 you know how it was that you came to care
14 for her at that time?

15 A. Yes.

16 Q. How?

17 A. I was on call.

18 Q. How often would you take call
19 for patients coming into the emergency
20 room?

21 A. Approximately two times per
22 month.

23 Q. You said you did see Ms.
24 on October 8, 2003?

25 A. Yes.

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2 Q. Did you examine her on October
3 8?

4 A. Yes.

5 Q. As a result of your examination,
6 did you make notes or entries in the chart
7 concerning your findings?

8 MS. : On the 8th?

9 MR. OGINSKI: Yes.

10 A. No.

11 Q. Is there a reason as you sit
12 here now that you can tell me why you did
13 not make any notes or entries for your
14 examination on the 8th?

15 A. My signature confirmed the
16 examination that was performed.

17 Q. You were present with the
18 individual who did perform the
19 examination?

20 A. No.

21 Q. Can you turn please to the
22 examination that you are referring to on
23 October 8?

24 A. (Witness complying).

25 Q. You are referring to a history

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2 and physical examination?

3 A. Correct.

4 Q. Can you tell me based upon that
5 note that you are looking at in the
6 hospital chart who performed that
7 examination?

8 A. Ms. and Dr.

9 .

10 Q. It says ?

11 A. I believe so.

12 Q. Who is Ms. ?
13 A. A physician assistant.
14 Q. Do you know her last name?
15 A. I believe that is the last name.
16 Q. Do you know the first name?
17 A. No.
18 Q. Had you ever worked with that
19 physician assistant before?
20 A. I may have.
21 Q. As you sit here now, do you
22 recall if you ever worked with that
23 physician assistant?
24 A. I don't recall.
25 MS. : Don't guess.

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2 Q. Did the hospital have a policy
3 that you were aware of that required that
4 any time you perform a physical
5 examination you make entries in the chart
6 concerning your examination and the time
7 of the exam and what your findings were?
8 MS. : Do you mean a
9 general policy?
10 MR. OGINSKI: Yes.
11 A. I'm aware of their policy.
12 Q. What was your understanding of
13 that policy?
14 A. The policy is that your
15 signature concurs with the chart entry
16 that was made.
17 Q. Under what instances or
18 circumstances did it require your own note
19 other than a counter signature?
20 A. The discretion of the physician
21 at the time, if there was any additional
22 information to be added.
23 Q. When you went to examine Ms.
24 on October 8, was anyone present in
25 the room with her?

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2 A. I don't recall.
3 Q. Any family member, any nurse?
4 A. I don't know.
5 Q. Do you recall the conversation
6 that you had with her separate and apart
7 from what may be contained in the hospital
8 record?
9 A. I don't recall the conversation
10 that occurred.
11 Q. Do you recall what it was or why
12 she was in the emergency room?
13 A. Yes.
14 Q. Tell me what it is that you
15 recall about that.
16 A. The complaint of shooting pain

17 traveling down into the right leg with
18 weakness in the right leg.

19 Q. For how long had those
20 complaints existed before she arrived at
21 the emergency room?

22 A. (No response).

23 Q. If at any time you are referring
24 to the hospital record, if you can
25 indicate that you are referring to it.

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2 A. According to the record, one day
3 prior.

4 Q. Again, you are looking at the
5 history sheet?

6 A. Yes.

7 Q. When you examined Ms. , had
8 you already reviewed the note that appears
9 in the history or had you done that after
10 examining her?

11 A. I don't recall the sequence.

12 Q. Was it your impression that the
13 information contained within the history
14 and physical was accurate?

15 MS. : Objection to form.

16 A. I concurred with the history and
17 physical examination.

18 Q. What exactly did your
19 examination consist of when you saw Ms.
20 on October 8?

21 A. It included an examination of
22 the lower extremity.

23 Q. If you can go ahead, I was
24 asking you to be specific.

25 A. It was a lower extremity as well

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2 as a neurological examination.

3 Q. Can you be specific as to how
4 you conducted the lower extremity exam?

5 A. Range of motion testing as well
6 as asking the patient to perform lifts and
7 motor testing.

8 Q. The lifts would be consistent
9 with performing a straight leg raising
10 test?

11 A. Correct.

12 Q. Were there any other tests that
13 you performed that you recall as you sit
14 here now during that initial examination?

15 A. During that initial examination,
16 there was a straight leg raising test
17 performed and essentially that's what I
18 recall.

19 Q. Did the physician assistant
20 perform a straight leg raising test?

21 A. According to the record, it is

22 entered that a straight leg raise was
23 performed.

24 Q. What were the results of that?

25 A. Positive at 30 degrees.

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2 Q. On which leg?

3 A. On the right leg.

4 Q. If you can just point me to
5 where you have the 30 degree notation,
6 where the physician assistant notes 30
7 degrees.

8 A. 30 degrees on the section that
9 states extremities.

10 Q. If you can read that entire two
11 lines, please.

12 A. Unable to SLR right lower
13 extremity. Left lower extremity strength
14 five over five, sensation intact, B/LUE.

15 Q. What do those represent?

16 A. Bilateral upper extremity and
17 lower extremity, and positive straight leg
18 raise at 30 degrees.

19 Q. Is there any indication that Ms.
20 had complained of pain in her hip,
21 either right or left hip?

22 A. No.

23 Q. It was the physician assistant's
24 impression that she had sciatica and low
25 back pain?

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2 A. Correct.

3 Q. You concurred with that?

4 A. Correct.

5 Q. When was it that you saw Ms.
6 on 10/8?

7 A. On October 8, '03.

8 Q. At what time?

9 A. I don't recall.

10 Q. Is there anything in any note to
11 indicate what time you saw her?

12 A. I don't believe so.

13 Q. What is sciatica, doctor?

14 A. Sciatica represents irritation
15 of the nerves that contribute to the
16 sciatic nerve.

17 Q. Had you spoken with this
18 physician assistant before performing this
19 examination on Ms. ?

20 MS. : Do you mean in
21 general?

22 MR. OGINSKI: I'll rephrase it.

23 Q. At any time from the time you
24 were notified Ms. was being admitted
25 to your service, did you ever speak to

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2 this physician assistant about -- it's a
3 woman, correct?
4 A. I don't recall who notified me
5 of the --
6 Q. Is this physician assistant
7 a man or a woman?
8 A. I don't know.
9 Q. Did you ever speak to this
10 physician assistant either before, during
11 or after your examination on October 8?
12 A. I don't recall if it was this
13 individual that I spoke with.
14 Q. The plan of treatment was
15 generated by the physician assistant
16 that's listed on the second page; is that
17 correct?
18 A. Can you repeat the question?
19 Q. The plan of treatment has a
20 number of things listed on the physical
21 examination sheet.
22 Do you see that on the bottom?
23 A. Yes.
24 Q. Did the physician assistant
25 consult with you before determining a plan
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2 of treatment?
3 A. I was consulted about the plan
4 of treatment.
5 Q. My question was, was the plan of
6 treatment formulated by the physician
7 assistant before they spoke to you?
8 MS. : Objection to form.
9 You can answer.
10 A. The plan of treatment was my
11 formulation.
12 Q. Was it your intention to obtain
13 MRIs of particular areas of her body in
14 relation to her complaints?
15 A. Yes.
16 Q. What specific areas of the body
17 did you intend to have evaluated by MRI?
18 A. The lumbar spine.
19 Q. Was there any indication at that
20 time or anything to warrant getting an MRI
21 of her hip?
22 MS. : Objection to form.
23 A. Not at that time.
24 Q. At any time while you were
25 caring for Ms. in October of 2003,
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2 did you consider getting an MRI of her
3 hips?
4 A. Not at that time.
5 Q. Did you learn after Dr.

6 took over the care of Ms. that it
7 was felt that the problems she was
8 complaining of were related to hip
9 pathology and not low back pathology?

10 A. I'm not aware of her subsequent
11 treatment with Dr. .

12 Q. Did you have any ongoing
13 conversations once Dr. took over
14 the care of Ms. on her ongoing
15 progress?

16 A. No.

17 Q. Did you ever speak to any family
18 member on October 14 or 15 when Dr.
19 took over her care concerning her
20 progress?

21 A. No.

22 Q. Do you know Dr. ?

23 A. No.

24 Q. Did you ever speak to any
25 orthopedist after Ms. was discharged

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2 from Hospital?

3 A. No.

4 Q. Did you ever learn from any
5 physician at Hospital
6 that Ms. was ultimately diagnosed
7 with an infection of her hip?

8 A. No.

9 Q. Did you formulate any opinion as
10 to the cause of Ms. ' sciatica after
11 you examined her?

12 A. Yes.

13 Q. What was your opinion?

14 A. That she had lumbar spinal
15 stenosis with nerve compression.

16 Q. How did you make that conclusion
17 or come to that conclusion?

18 A. Upon review of the MRI films of
19 the lumbar spine as well as discussion of
20 the MRI of the lumbar spine films with the
21 radiologist.

22 Q. Those MRI films of the lumbar
23 spine were done on October 8; is that
24 correct?

25 A. I'm looking in the record. I

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2 don't have a date of the lumbar MRI.

3 Q. I see that there are X-rays of
4 the lumbar spine done on October 8 and
5 there is an MRI of the lumbar spine
6 without contrast dated October 8 as well.

7 A. Okay.

8 Q. Did you review the films
9 yourself?

10 A. Yes.

11 Q. Did you review those films with
12 or in the presence of a radiologist?

13 A. Both.

14 Q. Do you recall your conversation
15 with the radiologist at the time as to the
16 findings that you were looking at and
17 anything the radiologist may have said to
18 you?

19 A. No, I don't recall the
20 conversation.

21 Q. Based upon your review of the
22 films and your examination, what was your
23 plan of treatment?

24 A. The plan of treatment was for
25 treatment of the spinal stenosis and

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2 lumbar radiculopathy.

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Q. How did you plan on doing that?

4

A. The plan of treatment was for
5 pain management, evaluation and
6 consultation as well as steroids.

7

Q. What is lumbar radiculopathy?

8

A. Lumbar radiculopathy represents
9 a condition starting from the lower back
10 with pain traveling down along the neural
11 dermatomes of the lower extremity which
12 starts in one point and ends in a
13 different body part.

14 Q. Did you learn from Ms.
15 that she had been under the care of
16 another physician for treatment of her
17 spinal stenosis prior to arriving at
18 Hospital?

19 A. I don't recall.

20 Q. To your knowledge, had she been
21 treated by any physician in the past for
22 this spinal stenosis condition or this
23 sciatica as you described it?

24 A. I'm not aware.

25 Q. Was there any trauma that

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2 brought on this episode bringing her to
3 the emergency room?

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A. Yes.

5

Q. What was that?

6

A. That she was raking leaves.

7

Q. Did she tell you that she had
8 had anything else, any other activity that
9 triggered this pain that she was
10 complaining of?

11 A. I'm not aware.

12 Q. Had she been taking any
13 medications for the pain that she
14 experienced prior to arriving in the
15 hospital?

16 A. None.
17 Q. What was the purpose of
18 recommending or requesting steroids?

19 A. To diminish inflammation.

20 Q. Did you have any expectation at
21 that first visit as to how long it would
22 take before the steroids had some effect
23 or an effect on the pain that she was
24 having?

25 A. It can vary in terms of

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2 presentation from minimal improvement to
3 significant improvement over several
4 weeks.

5 Q. When you examined Ms. , did
6 you see her in the emergency room or had
7 she already been moved to the floor?

8 A. I believe it was on the floor.

9 Q. When the physician assistant
10 conducted the examination that you
11 described on October 8, was it done in the
12 emergency room or also on the floor?

13 A. I'm not aware.

14 Q. When you examined Ms. on
15 October 8, did you ask her to try and walk
16 to observe her gait or her ability to
17 walk?

18 A. She had difficulty ambulating.

19 Q. How do you know that?

20 A. It's stated in the record.

21 Q. Which record?

22 A. On October 8.

23 Q. This is the physician
24 assistant's note?

25 A. The physician assistant and my

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2 note.

3 Q. When you say your note, doctor,
4 it's not a note in your handwriting; is
5 that correct?

6 A. That's correct.

7 Q. Which part of the note are you
8 referring to?

9 A. The history sheet.

10 Q. Specifically, can you point out
11 where?

12 A. In the middle of the page,
13 patient states unable to ambulate since
14 onset of pain.

15 Q. My question is whether or not
16 you asked her to walk so that you could
17 observe anything about her gait at the
18 time of your own examination.

19 A. I evaluated her gait.

20 Q. How did you do that?

21 A. When she was with the physical
22 therapist.

23 Q. On October 8?

24 A. No.

25 Q. I'm only asking on October 8

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2 right now.

3 A. I don't recall if I asked her to
4 walk on that date.

5 Q. Did you see Ms. the
6 following day, on October 9?

7 A. I may have.

8 Q. Is there anything in the
9 hospital record to suggest that you saw
10 and examined her on October 9?

11 A. No.

12 Q. If there is nothing in the
13 hospital record to indicate or confirm
14 that you saw her on the 9th, would that
15 suggest to you that you did not, in fact,
16 see her on the 9th?

17 A. As I said, I may have seen her
18 but I don't recall.

19 Q. If you, in fact, did see her on
20 the 9th, would it be correct to assume
21 that you would have examined her?

22 A. Yes.

23 Q. If you had examined her, would
24 it be expected that if another orthopedist
25 or another orthopedic physician assistant

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2 had made an entry in the chart, that you
3 would have made an entry concerning your
4 observations and your impressions?

5 A. Yes.

6 MS. : Objection to form.

7 Q. The absence of any note by you
8 or a physician assistant on October 9
9 suggests what to you, if anything?

10 A. That a note was not entered.

11 Q. Does it also indicate or would
12 it also confirm that you had not seen her
13 on October 9?

14 A. No, not necessarily.

15 Q. On the dates that you would come
16 to the hospital to visit with the patient,
17 did you make a note in any private office
18 notes or chart to indicate that you saw a
19 patient for billing purposes?

20 A. No.

21 Q. How would you know what date or
22 dates you actually saw a patient if there
23 is no entry in the patient's chart?

24 MS. : Objection to form.

25 You can answer.

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2 A. From the record.

3 Q. The fact that there is no entry
4 on October 9, could that also indicate
5 that you did not see the patient on that
6 day?

7 A. It may.

8 Q. If a patient of yours was in the
9 hospital, did you customarily see them on
10 each and every day that they were there?

11 A. My custom and practice, yes.

12 Q. If you were unable to see a
13 patient on a particular day, would you
14 typically arrange coverage for someone
15 else to see the patient?

16 A. Yes.

17 Q. Is there anything in this
18 patient's hospital record to indicate that
19 someone else on October 9 on your behalf
20 saw her?

21 A. Not stated.

22 Q. Meaning what?

23 A. There is no record stated.

24 Q. That there is no other physician
25 who saw the patient on October 9 on your

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2 behalf; is that correct?

3 A. Correct.

4 Q. Did you see the patient on
5 October 10?

6 A. Yes.

7 Q. Did you write a note based upon
8 your examination?

9 A. That day?

10 Q. Yes.

11 A. Yes.

12 Q. Does your note appear underneath
13 the physician assistant's note?

14 A. Yes.

15 Q. In addition, did you countersign
16 the physician assistant's note that
17 appears on October 10?

18 A. Yes.

19 Q. Do you know when it was that you
20 counter signed the physician assistant's
21 note?

22 A. Approximately 10 o'clock in the
23 morning.

24 Q. On that day, on October 10?

25 A. Yes.

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2 Q. How do you know that?

3 A. I have another note under

4 October 10, '03 at 10 o'clock.

5 Q. Is there a particular reason as
6 to why you wrote your own note on the same
7 day?

8 A. Yes.

9 Q. Why?

10 A. To provide the additional
11 information.

12 Q. What I would like you to do,
13 doctor, is read your entire note into the
14 record and if there are any abbreviations,
15 tell me what they represent.

16 A. October 10, '03, orthopedics,
17 complains of low back pain traveling into
18 right groin and right leg, motor exam was
19 weakness on the right at four over five
20 strength especially of the ankle
21 dorsiflexion and plantar flexion, left
22 motor strength was five over five, which
23 is normal, positive straight leg raise on
24 the right at 10 degrees, positive straight
25 leg raise on the left at 60 degrees, MRI

0036

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2 lumbar spine at L4-L5 and L3-L4 left-sided
3 disc herniation and lateral recessed
4 stenosis on right.

5 Impression, sciatica
6 radiculitis, plan PCA narcotic analgesic,
7 consider traction, steroid taper dose of
8 Decadron, epidural steroid evaluation by
9 pain management.

10 Q. What was different about the
11 physician assistant's note and your note
12 that you felt needed to be added to the
13 record?

14 A. The result of the MRI.

15 Q. The straight leg raising
16 evaluation that you performed, was that
17 substantially different than what you had
18 observed on October 8?

19 MS. : Objection to form,
20 substantially different.

21 A. It was similar.

22 Q. The degrees of movement on
23 October 8, you mentioned that straight leg
24 raising was positive at 30 degrees and on
25 the exam on October 10, you noted on the

0037

1

2 right positive result at ten degrees.

3 Do you see that?

4 A. Correct.

5 Q. Is the difference of any
6 significance to you?

7 A. The angulation at which the
8 straight leg raise was calibrated was at a
9 lower angle.

10 Q. What, if anything, did that
11 indicate to you?

12 A. Essentially that there was
13 sciatica.

14 Q. Does that mean that the patient
15 experienced pain at 10 degrees elevation?

16 A. Correct.

17 Q. Did that indicate also that her
18 complaints were getting worse, stayed the
19 same or were getting better?

20 A. That the condition was
21 approximately the same.

22 Q. As of October 10, had the pain
23 medication that she had been given for the
24 last day-and-a-half or two days been
25 effective in relieving the complaints she

0038

1
2 had originally made?

3 In other words, was the pain
4 relief working?

5 A. I don't recall.

6 Q. Based upon your notes, does it
7 indicate whether her complaints were
8 getting better, stayed the same or were
9 worse?

10 A. The complaints were the same.

11 Q. What would traction do for Ms.
12 based upon her complaints and your
13 observations?

14 A. Traction is to alleviate neural
15 compression on the lumbar spine.

16 Q. What was the purpose of tapering
17 the steroids at that point?

18 A. Steroids are to reduce the
19 inflammation of the sciatica and
20 radiculopathy.

21 Q. You had mentioned tapered doses,
22 am I correct, to lower the dosages?

23 A. Yes.

24 Q. Why would you want to lower the
25 dosage at that early stage?

0039

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2 A. It was not lowered. It was a
3 tapered dose that was recommended.

4 Q. Had you learned from Ms.
5 on October 10 whether she had ever had
6 this type of condition before or had ever
7 been hospitalized for this condition?

8 A. I don't recall.

9 Q. Had you learned whether she had
10 ever been treated for any type of sciatica
11 in the past as of October 10?

12 A. I don't know.

13 Q. Did you have any conversations
14 with any family member on October 10?

15 A. I don't recall.
16 Q. Did you ever have a conversation
17 with Ms. ' daughter or her son-in-law
18 at any time while you were caring for her?
19 A. I don't recall.
20 Q. The physician assistant who
21 wrote the note directly above yours, can
22 you identify who that individual is?
23 A. I don't know.
24 Q. What time was your note done?
25 A. At 10 o'clock.

0040

1
2 Q. A.m.?
3 A. A.m.
4 Q. Did you see Ms. on the
5 11th?
6 A. I don't believe so.
7 Q. Is there any particular reason
8 why you did not see her on the 11th?
9 A. I don't recall.
10 Q. Did anyone on your behalf see
11 her on the 11th or at your request?
12 A. No.
13 Q. Did you have any telephone
14 conversations with anyone at
15 Hospital about Ms. on
16 either October 9 or October 11? There is
17 no note in the chart from you.
18 A. Yes.
19 Q. Is that something you remember
20 specifically?
21 A. Yes.
22 Q. With whom did you speak about
23 Ms. ?
24 Let's start first on the 9th.
25 A. I don't recall which date that I

0041

1
2 spoke with the doctor.
3 Q. What doctor are you referring
4 to?
5 A. The pain management doctor.
6 Q. That would be after pain
7 management had consulted on her?
8 A. Correct.
9 Q. Tell me what you remember about
10 that conversation.
11 A. Upon review of the MRI findings,
12 I discussed the findings of the MRI spine
13 and confirmed with him his clinical review
14 and formulated a plan.
15 Q. Do you remember who that
16 individual was?
17 A. I believe it was Dr. .
18 Q. Do you remember when that was
19 you had that conversation?

20 A. No.
21 Q. You specifically remember being
22 out of the hospital at the time that you
23 had that conversation?
24 A. No, I don't recall where it was.
25 Q. Do you recall what Dr. said

0042

1
2 to you?
3 A. That he was in agreement with
4 the review of the MRI of the lower back
5 which confirmed the spinal stenosis which
6 he confirmed with my reading as well as
7 the radiologist's reading.

8 Q. Did you have any conversation
9 with any nurse or any other physician on
10 either October 9 or October 11 concerning
11 Ms. ' progress or her complaints on
12 those days?

13 A. I spoke with Dr. .

14 Q. Other than what you've told me
15 about your conversation with Dr. , did
16 you have any other conversation with
17 anybody else about Ms. specifically
18 on the 9th or the 11th?

19 A. Not that I recall.

20 Q. Just to be clear, am I correct
21 you don't know specifically what date it
22 was that you had the conversation with Dr.

23

24 A. Correct.

25 Q. Did you see Ms. on October

0043

1
2 12?

3 A. Yes.

4 Q. Is there a note that you wrote?
5 In other words, did you write a
6 particular note on the 12th?

7 A. No.

8 Q. Whose note is it that's written
9 on the 12th that you are referring to?

10 A. Dr. .

11 Q. Who is Dr. ?

12 A. An orthopedic doctor.

13 Q. How is it that Dr. came
14 to see Ms. on that date?

15 A. I don't know.

16 Q. Was Dr. affiliated with
17 you?

18 A. No.

19 Q. Was Dr. a resident, an
20 attending or something else?

21 A. A resident.

22 Q. In Dr. 's note it said,
23 discussion with Dr. about the Foley
24 issue.

25 Do you see that?

0044

1

2 A. Yes.

3 Q. Do you recall having such a
4 conversation on October 12 with Dr.

5 ?

6 A. I may have.

7 Q. I'm just asking whether you
8 recall anything about that conversation
9 now.

10 A. No.

11 Q. Was it customary that the
12 orthopedic residents would make rounds and
13 see and examine patients on your service?

14 A. Yes.

15 Q. Would they do so on a regular
16 basis?

17 A. Yes.

18 Q. In your review of this patient's
19 chart, did you see more than one
20 resident's note other than Dr. from
21 the orthopedic service during the time
22 that you were caring for Ms. ?

23 A. There were other individuals
24 involved in her care.

25 Q. I'm asking about orthopedic

0045

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2 residents.

3 A. No.

4 Q. Underneath Dr. 's note is
5 an addendum.

6 Do you know who authored or
7 wrote that note?

8 A. No.

9 Q. Can you tell whether that is a
10 nurse's note or a physician's note?

11 A. I cannot tell.

12 Q. Are you able to read what's
13 written in the addendum?

14 A. Yes.

15 Q. Can you read that, please?

16 MS. : Is that necessary?

17 MR. OGINSKI: He didn't know who
18 wrote it.

19 MR. : It's his patient.

20 MR. OGINSKI: I want to know what
21 it says.

22 MS. : I don't want him to
23 misread a term.

24 MR. OGINSKI: He can tell me if
25 he can't read it.

0046

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2 A. It states addendum, complained
3 of pain in right leg, medicated with

4 Percocet with good results, positive pedal
5 pulse of right leg, foot warm, positive
6 sensation, positive capillary refill.

7 Q. There appears to be some
8 signature after that.

9 A. Yes.

10 Q. From Dr. 's note, what was
11 the issue she was experiencing with her
12 urinary condition?

13 A. A urinary retention.

14 Q. Had you formed an opinion after
15 talking with Dr. as to what the
16 problem was as to why she was experiencing
17 that condition?

18 A. I don't recall the conversation.

19 Q. The fact that there was a
20 thousand ccs of urine after she was
21 catheterized, what, if anything, did that
22 signify to you?

23 A. That can represent different
24 variables including poor motility of the
25 bladder to conditions related to the

0047

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2 spinal stenosis and hypoactivity of the
3 bladder resulting in urinary retention.

4 Q. I'm going to go back for a
5 moment to your original examination of Ms.
6 on October 8.

7 When you told me that you had
8 done a neurological exam, other than the
9 straight leg raising test that you
10 performed, was there any other
11 neurological component or aspect of the
12 exam that you did?

13 A. A motor and sensory exam.

14 Q. As of October 12, was her motor
15 or sensory examination any different than
16 what you had observed on October 8?

17 A. On October 12, '03, her motor
18 and sensory examination was unchanged from
19 her previous evaluation.

20 Q. Can you tell me based upon your
21 counter signature on October 12 when it
22 was that you actually counter signed that
23 note?

24 A. October 12, '03.

25 Q. How do you know that?

0048

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2 A. The patient was evaluated.

3 Q. By whom?

4 A. I evaluated the patient.

5 Q. Is there again any reason why
6 your own note of your own examination does
7 not appear on this date?

8 A. No.

9 Q. Was anyone present in the room
10 when you examined Ms. on the 12th?

11 A. I don't recall.

12 Q. Was Dr. present with you
13 when you examined her?

14 A. I don't believe so.

15 Q. Did you see Ms. on October
16 13?

17 A. Yes.

18 Q. Did you write your own note for
19 the 13th of October?

20 A. No.

21 Q. Who is it who wrote the note on
22 October 13 that you are referring to?

23 A. Mr. .

24 Q. Is he a physician assistant?

25 A. Yes.

0049

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2 Q. What were Mr. 's
3 examination findings on that day?

4 A. Similar to the previous exams.

5 Q. Were there any changes in Ms.
6 ' complaints?

7 A. The complaints remained the same
8 of low back pain extending into the right
9 lower extremity.

10 Q. Had you determined what was
11 causing her inability to have range of
12 motion?

13 In other words, was it a result
14 of pain, was it because of something else
15 that she was unable to do it?

16 In other words, what was
17 restricting her from getting up and
18 walking around?

19 A. The lumbar radiculopathy.

20 Q. Had you formed any opinion as to
21 whether the plan of treatment was working
22 or reducing the complaints and the
23 problems she was experiencing as of the
24 13th?

25 A. The plan was to continue with

0050

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2 the pain control and physical therapy and
3 for treatment with pain management.

4 Q. Had you formed any opinion as to
5 whether or not the pain control was
6 working?

7 MS. : On the 13th.

8 A. It's not stated.

9 Q. Other than what's contained in
10 the physician assistant's note, do you
11 have any memory as to whether or not the
12 pain medication that she was receiving was
13 providing the pain relief that you were

14 hoping or expecting her to have from it?
15 A. Yes, at times there was a relief
16 with pain medications.

17 Q. Was she able to ambulate during
18 the time that you were caring for her?

19 A. Yes.

20 Q. You are referring to the
21 physical therapy attempts?

22 A. Correct.

23 Q. Other than the physical therapy
24 attempts, when she was on the floor in her
25 room, to your knowledge, did you give her

0051

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2 any indication that she could get up and
3 ambulate if possible?

4 A. Yes.

5 Q. Did those orders or
6 recommendations appear anywhere in the
7 hospital chart to say that she has
8 ambulation privileges or she can get up
9 and walk around as necessary?

10 A. Physical therapy was
11 recommended.

12 Q. Other than physical therapy, is
13 there any other notation that you made in
14 the chart that indicates that she could
15 get up and walk around and she had no
16 restrictions on movement?

17 A. The physical therapy implied
18 that she was permitted weight bearing.

19 Q. Did Ms. have bathroom
20 privileges?

21 A. Yes.

22 Q. Do you know how she would get to
23 and from the bathroom?

24 A. I did not ask her.

25 Q. Did you give any specific

0052

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2 instructions or orders to any of the
3 nurses that she required assistance to get
4 to and from the bathroom?

5 A. I don't recall.

6 Q. If you felt that there were some
7 restrictions that she needed to have in
8 place, would you have made an order in the
9 chart somewhere indicating that she was to
10 have assistance, for example, to go to and
11 from the bathroom?

12 A. Yes.

13 Q. If she had other restrictions
14 that would prevent her from walking
15 freely, would you have possibly requested
16 that she have her bedrails up when she was
17 in bed to prevent her from falling?

18 MS. : Objection.

19 A. I don't recall about the
20 bedrails.
21 Q. If you felt that she was at risk
22 herself because of her inability to walk,
23 would you have ordered the bedrails be
24 placed in an up position when she remained
25 in bed?

0053

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2 MS. : Objection to form.
3 A. I didn't make any comment about
4 the bedrails.
5 Q. I'm asking if you felt that she
6 was at risk of falling based upon her
7 inability to walk, would you have ordered
8 that bedrails be placed in an up position?
9 A. This is a hypothetical
10 question?
11 Q. Yes.
12 A. The scenario was not present. I
13 didn't make a judgment about the bedrails.
14 Q. When you examined Ms. on
15 October 13, did you do another straight
16 leg raising test on her that day?
17 A. It's not documented.
18 Q. What does that tell you, that it
19 was done, it wasn't done or something
20 else?
21 A. It may have been performed but
22 not documented.
23 Q. By whom?
24 A. It's not in the October 13, '03
25 note.

0054

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2 Q. My question is, when you
3 examined the patient, since your
4 examination findings were not recorded, I
5 am only asking whether you performed a
6 straight leg raising on that date.
7 A. I examined the patient on
8 October 13, 2003.
9 Q. Did you do a straight leg
10 raising test?
11 A. I may have.
12 Q. Do you know for sure whether you
13 did or you didn't as you sit here now?
14 A. No, I don't know.
15 Q. If you had performed it, do you
16 recall the results of the straight leg
17 raising test?
18 MS. : Objection to form.
19 A. I don't recall.
20 Q. Did you attempt to mobilize or
21 move Ms. ' hip in any fashion on
22 October 13?
23 A. It's not stated.

24 Q. Doctor, you are again referring
25 to the physician assistant's examination.

0055

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2 I'm asking about your own examination.

3 A. A motor examination was
4 performed of her right lower extremity.

5 Q. I'm asking specifically about
6 whether you manipulated or were able to
7 move her hip as part of your examination.

8 A. The straight leg raising
9 incorporated the range of motion of her
10 hip.

11 Q. That would incorporate it only
12 in a fashion going up and down; is that
13 correct?

14 A. That's correct.

15 Q. Did you attempt to manipulate or
16 evaluate the range of motion of her hip in
17 any other direction?

18 MS. : On the 13th?

19 MR. OGINSKI: Yes.

20 A. I don't recall.

21 Q. At any time beginning with
22 October 8, October 10 and October 12, did
23 you attempt to manipulate or check Ms.

24 ' range of motion of her hip in any
25 direction other than with a straight leg

0056

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2 raising test?

3 A. The range of motion of the hip
4 was incorporated in the straight leg raise
5 test.

6 Q. We've established that the only
7 evaluation was in the direction going up
8 and down.

9 Did you evaluate her from side
10 to side or outward or inward or any other
11 direction other than up and down?

12 A. It was performed in flexion and
13 extension.

14 Q. When did you do that?

15 A. On her evaluations.

16 Q. On the initial visit?

17 A. Yes.

18 Q. What was her range of motion on
19 the initial visit?

20 A. 60 degrees of flexion.

21 Q. That would be in which
22 direction?

23 Explain to me what the flexion
24 represents.

25 A. Elevation forward.

0057

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2 Q. Other than the elevation, we are

3 talking about the up and down
4 observations, did you attempt to evaluate
5 her ability to move her limbs in any other
6 direction?

7 A. Flexion and extension.

8 Q. Tell me what that represents.

9 A. Upward forward motion and
10 extension as well as observation during
11 physical therapy.

12 Q. How would you describe it if you
13 wanted to evaluate range of motion in the
14 hip?

15 What other directions are you
16 able to observe when doing a full exam?

17 A. Abduction and adduction.

18 Q. Are there any other directions
19 that you can go in doing range of motion
20 of the hip other than what you just told
21 me?

22 MS. : In general?

23 MR. OGINSKI: In general.

24 A. Rotation.

25 Q. At any time from the 8th up

0058

1
2 until the 13th of October, did you make
3 any observations about her adduction or
4 abduction or rotation of either of her
5 hips?

6 A. No.

7 Q. Is there any particular reason
8 why you did not make an evaluation of
9 those particular areas of her hip, the
10 adduction or abduction or rotation?

11 A. Yes.

12 Q. What was that?

13 A. In essence because she was
14 complaining of a neurological weakness in
15 her right ankle plantar flexion and
16 dorsiflexion in the lower leg with motor
17 weakness involving the lower extremity as
18 well as an abnormal sensory examination as
19 well as complaints of lower back pain.

20 Q. Had she complained of any hip
21 problem as of the 13th?

22 A. The complaints were of lower
23 back pain radiating into the right groin
24 and right leg.

25 Q. Did you see Ms. on the

0059

1
2 14th of October?

3 A. Yes.

4 Q. You wrote your own note that
5 day; is that correct?

6 A. Yes.

7 Q. That's timed at what time?

8 A. 8 o'clock.
9 Q. A.m.?
10 A. Yes.
11 Q. Can you read your note, please?
12 A. October 14, '03, orthopedics,
13 complains of right leg pain, motor of the
14 right lower extremity is four plus over
15 five, left is five over five, sensory
16 normal both legs, continue Decadron taper,
17 arrange epidural steroid injection,
18 Duragesic patch and physical therapy.
19 Q. As of the 14th, as of the time
20 that you wrote the note, had she had any
21 physical therapy up to that point?
22 A. Yes.
23 Q. When did she first start to
24 receive the physical therapy?
25 A. On October 9, '03.

0060

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2 Q. What was it that you observed or
3 recommended that physical therapy do for
4 her?
5 A. Ambulation training.
6 Q. Was she making any progress as
7 of the 14th?
8 A. There was limited tolerance for
9 activity with physical therapy.
10 Q. Based upon that limited
11 tolerance, did you restrict the exercises
12 or regimen of therapy that she was
13 receiving?
14 A. Yes.
15 Q. In what fashion?
16 A. For her to do physical therapy
17 as tolerated.
18 Q. Did you request a neurologist
19 evaluate Ms. ?
20 Did you request a neuro consult?
21 A. Not at that time.
22 Q. At any time?
23 A. No.
24 Q. Did you request the urologist to
25 provide a consultation for her to evaluate

0061

1
2 the urological issues she was
3 experiencing?
4 A. No.
5 Q. Did you ever order blood work to
6 be done for Ms. ?
7 A. Yes.
8 Q. As part of that blood work, did
9 you ever request a sedimentation rate be
10 done?
11 A. I don't believe so.
12 Q. What is a sedimentation rate?

13 A. It's a coagulation of the blood.

14 Q. As part of the blood work that
15 you had ordered, did you learn whether her
16 white blood count was within normal
17 limits?

18 A. Yes.

19 Q. What was your impression and
20 understanding as to whether it was or was
21 not?

22 A. It was mildly elevated.

23 Q. What, if anything, did that
24 signify to you?

25 A. Mild elevation can represent a

0062

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2 baseline for different individuals.

3 Having a status post procedure can cause
4 elevation, status post surgery, status
5 post trauma events, radicular symptoms,
6 infections can cause an elevation in the
7 white count.

8 Q. We know that Ms. did not
9 have any surgical procedures prior to her
10 arrival.

11 To what, if anything, did you
12 account this slightly elevated white blood
13 count?

14 MS. : Objection to form.

15 A. The white count was elevated but
16 subsequently diminished upon her
17 subsequent evaluation.

18 Q. Did you make any opinion or did
19 you have any impression as to what was the
20 cause of her originally elevated white
21 blood count?

22 A. That it was consistent with the
23 lumbar radiculopathy.

24 Q. Did you form any opinion at any
25 time while you were caring for Ms.

0063

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2 as to whether she had evidence of
3 arthritis anywhere in her low back?

4 A. Yes.

5 Q. What are you referring to,
6 doctor?

7 A. The X-ray.

8 Q. Of which date?

9 A. October 9, '03.

10 Q. This is the X-ray of what part
11 of her anatomy?

12 A. The lumbar spine.

13 Q. Did the radiologist interpret
14 whether or not there is arthritis present?

15 A. There is.

16 Q. Did you review those films that
17 you are referring to?

18 A. Yes.
19 Q. Did you confirm evidence of
20 arthritis?
21 A. Yes.
22 Q. Where specifically was the
23 arthritis noted?
24 A. Lumbar spinal stenosis.
25 Q. Where?

0064

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2 A. In my report of October 10, '03.
3 Q. I'm sorry, I meant where within
4 her body, which level?
5 A. L3-L4 and L4-L5.
6 Q. Is lumbar stenosis the same as
7 saying that the patient has arthritis?
8 A. It's consistent with it.
9 Q. In what way, if you can explain?
10 A. Spinal stenosis can be secondary
11 to lumbar degenerative arthritis.
12 Q. Can it also account for
13 conditions separate and apart from
14 arthritis?
15 A. Yes.
16 Q. How do you distinguish between
17 the two, as to whether or not it's solely
18 arthritis or part of a degenerative
19 condition or something else?
20 MS. : In general?
21 MR. OGINSKI: Yes.
22 A. By reviewing the MRI films.
23 Q. Based upon your review of the
24 MRI films, are you able to determine with
25 a reasonable degree of medical probability

0065

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2 as to whether that was a degenerative
3 condition or an acute condition or
4 something else?
5 A. She had degenerative spinal
6 stenosis.
7 Q. My question relates specifically
8 to whether or not she had arthritis
9 separate and apart from the spinal
10 stenosis that you told me about.
11 A. Yes, she had degenerative
12 arthritis of her lower back.
13 Q. Were you able to tell from a
14 review of the films as to how long the
15 condition existed?
16 A. No.
17 Q. In your experience, doctor, is
18 this type of condition asymptomatic?
19 A. In certain cases it may be.
20 Q. Did you learn from Ms.
21 that she was previously asymptomatic
22 before arriving at

23 Hospital in October of 2003?
24 A. She was complaining of one day
25 pain of right lower extremity, shooting
0066

1
2 pains.

3 Q. I'm talking about when she
4 experienced that pain that led her to the
5 hospital, were you aware that she was
6 previously asymptomatic?

7 MS. : Objection to form.

8 A. I don't know how long she was
9 asymptomatic. The pain complaints occurred
10 one day prior.

11 Q. Did you ask her at any time when
12 you saw her either initially or afterwards
13 as to whether or not she had experienced
14 any similar type pain before October of
15 2003?

16 A. I don't recall.

17 Q. Is there anything in your notes
18 which would indicate that you had asked
19 her or had gotten some type of response
20 about whether or not she had pain relating
21 to her low back?

22 A. No.

23 Q. What was the purpose of ordering
24 the epidural steroids?

25 A. To treat the lumbar spinal
0067

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2 stenosis and the concomitant lumbar
3 radiculopathy that was causing her
4 abnormal sensation and motor weakness in
5 the lower leg.

6 Q. Who was going to be giving the
7 epidural steroid injections?

8 A. Dr. from pain management
9 evaluated her to see whether he agreed
10 that epidural steroid injections were
11 indicated.

12 Q. Am I correct that he agreed that
13 they were needed?

14 A. Yes.

15 Q. Did you administer them?

16 A. No.

17 Q. Did you see Ms. again
18 after October 14?

19 A. No.

20 Q. Explain to me why you did not
21 continue to see her after October 14.

22 A. Dr. started to treat her.

23 Q. Can you explain to me how his
24 involvement came about and yours ended?

25 A. He notified me that the family
0068

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2 requested his services.
3 Q. Did he say why?
4 A. I believe he knew a family
5 member or treated someone in the past.
6 Q. Had you consulted with Dr.
7 about Ms. at any time before
8 October 14?
9 A. No.
10 Q. Had you had a discussion with
11 any family members about their desire to
12 go to another physician?
13 A. No.
14 Q. What, if anything, did you tell
15 Dr. about Ms. ?
16 A. I told him the findings of the
17 MRI of the lower back, of her complaints
18 that she was experiencing and essentially
19 the treatment that she had received at
20 that point and he said that he would take
21 over the treatment of her care.
22 Q. Did you say anything in sum and
23 substance that Ms. ' case was a
24 complex or difficult case?
25 A. I stated to him the progress

0069

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2 that she was making or lack of and that
3 she would need additional treatment.
4 MR. : Move to strike.
5 That's not the question.
6 Q. Did you tell Dr. in
7 substance that this was a difficult case?
8 MS. : Did he specifically
9 use the word difficult?
10 MR. OGINSKI: If not that
11 specific word, either a difficult, a
12 complex or a hard case or something to
13 that effect.
14 A. I did not say the words
15 difficult case.
16 Q. Do you recall what it was that
17 you may have had said to him or you did
18 say?
19 A. I don't recall the word that was
20 stated. I stated to him the findings of
21 the lower back MRI, the patient's
22 complaints and persistent complaints at
23 that time.
24 Q. After the last examination that
25 you performed on the 14th, did Ms.

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2 ever complain to you about her hips?
3 A. No.
4 Q. On the 14th, did you examine
5 whether she had any issues with her
6 abduction, adduction or rotation of her

7 hips?
8 A. No.
9 Q. Did you observe her walking or
10 getting up and moving about on the 14th?
11 A. No.
12 Q. There is also a physician
13 assistant note timed at 9 o'clock on
14 October 14.
15 Can you determine who authored
16 that note?
17 A. I believe it states Pacerelli.
18 Q. Had you spoken with that
19 physician assistant at any time on the
20 14th?
21 A. No.
22 Q. Had you formed any opinion as to
23 whether she was making progress as of the
24 14th when you last saw her?
25 A. Her symptoms continued

0071

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2 especially in the right lower leg and she
3 responded to some pain medications and was
4 still complaining of lower extremity pain
5 on the right lower leg.
6 Q. Had you determined why she was
7 still experiencing the problems that you
8 described in light of the treatment that
9 was being administered to her?
10 A. Essentially that she still had
11 the symptoms of a lumbar radiculopathy.
12 Q. Did you considered any other
13 possible cause for her complaints other
14 than the ones you were treating her for as
15 of the 14th?
16 A. Her symptoms and complaints were
17 consistent with a sciatica and lumbar
18 radiculopathy.
19 Q. My question was, did you
20 consider any other causes or medical
21 conditions which she might be experiencing
22 other than the ones that you were treating
23 her for?
24 A. Consideration for other
25 diagnoses upon completion of her treatment

0072

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2 recommendations which she didn't undergo
3 at that time.
4 Q. Maybe my question wasn't clear.
5 When Ms. first came into
6 the hospital on October 8, you've told me
7 that there was an impression or a
8 diagnosis of sciatica and lumbar
9 radiculopathy based upon your evaluation
10 of the films and clinical examination.
11 Are you familiar with the term

12 known as differential diagnosis?

13 A. Yes.

14 Q. Tell me what your understanding
15 of that term is.

16 A. Differential diagnosis
17 represents a variety of different
18 diagnoses that almost correlate with the
19 patient's clinical symptoms.

20 Q. In addition to the sciatica and
21 the lumber radiculopathy that you've told
22 me about, were there any other medical
23 causes or conditions that would account
24 for the patient's complaints?

25 A. Yes.

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2 Q. What were they?

3 A. Neurological abnormality of the
4 lower extremity, foraminal stenosis, disc
5 herniations, sciatica nerve irritation,
6 sciatic nerve contusion.

7 MR. : Please read back the
8 last answer.

9 [Whereupon, the requested
10 portion was read back by the
11 reporter.]

12 Q. As of October 14, had you
13 determined whether there were any other
14 possible causes or explanations for Ms.
15 ' complaints other than the sciatica
16 and the lumbar radiculopathy that you were
17 treating her for?

18 A. No.

19 Q. At any time while you were
20 caring for her from October 8 to October
21 14, did you ever consider the possibility
22 that she had an infection in her hip?

23 A. No.

24 Q. Was there ever any discussion
25 with the radiologist on October 8 when you

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2 reviewed the films with that doctor about
3 aspirating any portion of her body to
4 evaluate any fluid that may have been
5 observed?

6 A. No, it was not indicated.

7 Q. Did you ever form any opinion as
8 to whether Ms. was experiencing or
9 had a stress fracture anywhere on her leg
10 or her hip?

11 A. Please repeat the question.

12 MR. OGINSKI: I'll rephrase it.

13 Q. Did you determine that Ms.
14 had a stress fracture?

15 A. There was no evidence of any
16 fracture.

17 Q. At what time?
18 A. Upon her evaluations.
19 Q. After you were no longer caring
20 for Ms. when Dr. came in to
21 take over her care, did you still receive
22 copies of any of the films that were done
23 on her from October 15 to the time that
24 she was last seen in the hospital?
25 A. No.

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2 Q. Was it customary, would you
3 receive copies of MRI reports or X-ray
4 reports that would be sent to you at your
5 private office for patients that were
6 under your service?
7 A. No.
8 Q. I asked you about any films. I
9 didn't ask you any about any film reports
10 in my prior question.
11 Did you receive any copies of
12 any film reports, either X-rays or MRI
13 reports, for patients who were on your
14 service?

15 MS. : At his office?

16 MR. OGINSKI: Yes.

17 A. Not at the office.
18 Q. Did you receive anything that
19 would be contained in the hospital or
20 hospital mailbox that you would be able to
21 pick up and be available for you?

22 A. It would be placed in the
23 medical record.

24 Q. Other than an X-ray or MRI
25 report being put into the medical record,

0076

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2 would you also be sent a copy for you to
3 receive somewhere in the hospital?

4 A. No.

5 Q. Did you have the ability in 2003
6 to go online and use a computer to
7 evaluate any records for any patients that
8 you had that were admitted to the hospital
9 where you could observe it either from
10 outside the hospital or somewhere within
11 the hospital?

12 A. Not in 2003.

13 Q. At any time after October 14,
14 did you come to learn that Ms. had
15 an MRI done of her hips on October 15?

16 A. No.

17 Q. Did you ever receive a copy of
18 the MRI report dated October 15 concerning
19 the hips?

20 A. No.

21 Q. Did you ever have any further

22 conversations with Dr. about Ms.
23 after he told you that he would be
24 taking over her care?
25 A. No.

0077

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2 Q. Are you board certified in
3 orthopedics?
4 A. Yes.
5 Q. When were you board certified?
6 A. .
7 Q. Have you been recertified?
8 A. Yes.
9 Q. When?
10 A. 2006.
11 Q. Are you licensed to practice
12 medicine in the State of New York?
13 A. Yes.
14 Q. When were you licensed?
15 A. 1990 -- 1989.
16 Q. Has your license ever been
17 suspended?
18 A. No.
19 Q. Has your license ever been
20 revoked?
21 A. No.
22 Q. Are you licensed to practice in
23 any other state besides New York?
24 A. No.
25 Q. Are you board certified in any

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2 other field of medicine?
3 A. No.
4 Q. Where did you go to medical
5 school, doctor?
6 A. .
7
8 Q. When did you graduate?
9 A. .
10 Q. After that, where did you do
11 your training?
12 A. At Medical Center.
13 Q. In ?
14 A. In
15
16
17 Q. At , how many years
18 did you train there?
19 A. One year.
20 Q. In what area?
21 A. General surgery.
22 Q. After that, you went to
23 ?
24 A. Yes.
25 Q. For how long?

0079

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2 A. Four years.
3 Q. Was that in orthopedics?
4 A. Yes.
5 Q. What did you do at
6 General?
7 A. A fellowship in spinal surgery.
8 Q. For how long?
9 A. One year.
10 Q. Did you complete that program?
11 A. Yes.
12 Q. You said you were in ,
13 ?
14 A. Yes.
15 Q. For how long?
16 A. Four months.
17 Q. What did you do there?
18 A. Orthopedic trauma surgery.
19 Q. Was that to achieve a
20 certificate or simply a program that you
21 attended?
22 What did you do?
23 A. Completed a fellowship .
24 Q. This was a four month
25 fellowship?

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2 A. Yes.
3 Q. After that, what did you do?
4 A. An orthopedic surgical practice.
5 Q. Did you open up your office
6 where you currently have it?
7 A. Yes.
8 Q. In October of 2003, were you
9 affiliated with any other hospitals
10 besides Hospital?
11 A. Yes.
12 Q. Which ones?
13 A. Medical
14 Center.
15 Q. Your affiliation with
16 Hospital as an attending, have
17 your privileges ever been suspended?
18 A. No.
19 Q. Were they ever revoked?
20 A. No.
21 Q. Same question as it relates to
22 .
23 A. Correct.
24 Q. Have you ever published any
25 articles in any peer review journals?

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2 A. Yes.
3 Q. How many?
4 A. Approximately four or five.
5 Q. Do any of those articles have

6 anything to do with treatment of patients
7 with spinal stenosis?

8 A. Indirectly, yes.

9 Q. Do you recall the names of any
10 of those articles that relate to or
11 indirectly relate to spinal stenosis?

12 A. A Review of Spine Fractures and
13 Dislocations.

14 Q. Do you recall when you published
15 that and where?

16 A. It was in a review in 1993.

17 Q. Do you have an updated CV?

18 A. Yes.

19 MR. OGINSKI: I would ask that
20 you provide one to your attorney and I
21 would ask for a copy.

22 Q. Have you ever testified before?

23 A. Yes.

24 Q. Have you testified as an expert
25 physician in a malpractice case?

0082

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2 A. No.

3 Q. Have you testified as a
4 defendant where you have been sued?

5 A. Yes.

6 Q. Approximately how many times?

7 A. Once.

8 Q. Have you ever testified in court
9 separate and apart from the deposition
10 that we are doing now?

11 MS. : In any manner
12 whatsoever?

13 MR. OGINSKI: Yes.

14 A. Yes.

15 Q. How many times?

16 A. In one year approximately six to
17 eight times per year.

18 Q. Can you give me a general idea
19 of what types of cases those involve?

20 A. General orthopedic cases.

21 Q. Are they generally personal
22 injury cases?

23 A. It can be personal injury or
24 disability cases.

25 Q. Do you have your billing records

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2 with you for your treatment of Ms. ?

3 A. No.

4 Q. Do you still keep those, are
5 they still available?

6 A. They may be.

7 Q. Where would you find those
8 billing records?

9 A. In storage.

10 Q. Would that be something that you

11 would keep as part of your office records?

12 A. They would be in storage
13 possibly.

14 Q. You would go back to your office
15 and somebody in your office would submit a
16 bill for treatment that you had rendered?

17 A. Correct.

18 Q. Did you ever have a conversation
19 with a Dr. , a neurologist, about Ms.
20 ?

21 A. No.

22 Q. Do you know a person named John
23 Rodriguez related to Ms. ?

24 A. No.

25 Q. Or Ms. ' daughter named

0084

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2 Pamela?

3 A. No.

4 Q. Did you write any type of
5 discharge summary for Ms. at any
6 time?

7 A. Not that I recall.

8 Q. Did you review Dr. 's
9 notes or office records in preparation for
10 today?

11 A. No.

12 Q. Do you recall having any
13 discussion with any of Ms. ' family
14 members on October 14 about their desire
15 to transfer her care to another physician?

16 A. Yes.

17 Q. Tell me about that.

18 A. There was no discussion.

19 Q. Thank you, doctor.

20 A. Thank you.

21 EXAMINATION BY

22 MR. :

23 Q. My name is and I

24 represent Dr. .

25 Did ever indicate to

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2 you that she was dissatisfied with the
3 treatment that you had been providing?

4 A. No.

5 Q. Did Ms. ever indicate to
6 you that she was upset that you had not
7 seen her on a particular occasion?

8 A. No.

9 MR. : I have no further
10 questions.

11 [Continued on the next page to
12 allow for signature line and jurat.]

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2 EXAMINATION BY
3 MR. :
4 Q. My name is and I
5 represent Dr. . I'll be real
6 quick.
7 Did you ever discuss this case
8 with Dr. ?
9 A. No.
10 MR. : Nothing further.
11 MR. : I have no questions.
12 MS. : No questions.
13 [Whereupon, the examination of
14 the witness was concluded at 3:50
15 p.m.]
16

17
18 _____
19 Subscribed and sworn to
20 before me this ____ day
of _____, 2007.

Notary Public

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0087

I N D E X		
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REQUESTS

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CERTIFICATION

STATE OF NEW YORK)
 : SS.:
COUNTY OF NASSAU)

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I, ANN DEE BECKER, a Notary Public for
and within the State of New York, do
hereby certify:

That the witness(es) whose testimony
as herein set forth, was duly sworn by me;
and that the within transcript is a true
record of the testimony given by said
witness(es).

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 6th day of February,
2007.

22
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ANN DEE BECKER
* * *

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ERRATA SHEET
PAGE LINE NUMBER CORRECTION
REASON FOR

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(Signature of the Witness)