

**DE-IDENTIFIED DEPOSITION OF A PODIATRIST IN  
A CASE INVOLVING A  
FAILURE TO TIMELY DIAGNOSE AND TREAT A BONE  
INFECTION LEADING TO DEATH CASE**

0311

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF BRONX  
3 - - - - -x  
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5  
6 Plaintiffs,  
7 -against-  
8  
9 Defendants.  
10 - - - - -x  
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14 10:05 A.M.  
15  
16 CONTINUED EXAMINATION BEFORE TRIAL of  
17 , the Defendant, in the  
18 above-entitled action, held at the above  
19 time and place, taken before ,  
20 a Notary Public of the State of New York,  
21 pursuant to order and stipulations between  
22 Counsel.  
23  
24 \* \* \*  
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1 APPEARANCES:  
2  
3 LAW OFFICES OF GERALD M. OGINSKI, ESQ.  
4 Attorneys for Plaintiffs  
5 25 Great Neck  
6 Great Neck, New York 11021  
7  
8 BY: GERALD M. OGINSKI, ESQ.  
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1  
2 with regard to missing the last three  
3 visits?

4 A No.

5 Q You also noted that you received  
6 a call from the visiting nurse that  
7 patient was found without a dressing to  
8 her foot many times. Did you indicate in  
9 your note what the name of the visiting  
10 nurse was?

11 A No.

12 Q Was this a message that you  
13 received or did you actually speak to the  
14 visiting nurse?

15 A I spoke to the visiting nurse.

16 Q And was this the same visiting  
17 nurse that you had spoken to on previous  
18 occasions?

19 A Not sure.

20 Q And what impact, if any, did  
21 this knowledge or information have that  
22 the patient was --

23 MR. OGINSKI: Withdrawn.

24 Q Your note reflects that the  
25 visiting nurse told you that the patient

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2 was walking without a dressing to her foot  
3 many times and walking throughout the  
4 house with cat hair floating around the  
5 house. What impact, if any, did this have  
6 to your treatment or management plan?

7 A Well, this would show that  
8 is non-compliant and that is in  
9 greater risk for infections and further  
10 complications to wound.

11 Q And how did that effect or  
12 change your treatment plan of this  
13 patient, if, at all?

14 A Well, it reminded me to  
15 reenforce her that her foot is being  
16 compromised at home if she's not covering  
17 the wound.

18 Q Did you measure the size of this  
19 chronic ulcer that you recorded on this  
20 note?

21 A No.

22 Q Do you have a memory as to the  
23 size of this chronic ulcer?

24 A I don't recall.

25 Q When you saw the patient in your

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1  
2 examination, there was some mild  
3 serosanguinous drainage, correct?

4 A That is correct.

5 Q And that was coming from the  
6 chronic ulcer that you've identified in

7 the note or somewhere else?  
8 A No, it is from the chronic  
9 ulcer.  
10 Q And when you write positive  
11 wound dehiscence, left foot, what specific  
12 area are you referring to?  
13 A The first MPJ.  
14 Q And that was the same area that  
15 we've been talking about throughout the  
16 course of this patient's treatment?  
17 A That is correct.  
18 Q And the edema and mild erythema  
19 that you've identified, is that different  
20 than what you observed in the last visit  
21 before September 20th, ?  
22 A No different.  
23 Q Why did you take x-rays on this  
24 visit?  
25 A I don't recall the reasoning.

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2 Q You noted that there were two  
3 x-rays, I believe --  
4 MR. OGINSKI: I'm sorry, I'm  
5 going to withdraw that.  
6 Q Your note doesn't indicate how  
7 many x-rays were taken, correct?  
8 A That is correct.  
9 Q And the x-rays you are looking  
10 at now, and I believe there are two  
11 different views?  
12 A That's correct.  
13 Q For the September 20th visit,  
14 correct?  
15 A That is correct.  
16 Q And you wrote erosive change to  
17 first metatarsal head of the left foot.  
18 What was the significance of that finding  
19 to you in light of the patient's other  
20 findings that you observed on exam?  
21 MR. : I'm going to let  
22 him answer. I'm going to note that  
23 you asked all of these questions the  
24 last time. I'm going to allow this.  
25 At some point you are going to have to

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1  
2 move on. You gave almost the  
3 identical question the last time.  
4 Q Doctor, your assessment was  
5 wound dehiscence and mild cellulitis. In  
6 your opinion did this patient have an  
7 infection?  
8 : I'm going to  
9 object, asked and answered. You gave  
10 the exact question and the answer was  
11 did not believe had a bone infection.  
12 Identical verbatim.

13 MR. OGINSKI: Different  
14 question. I'm not asking about a bone  
15 infection. I want to know whether he  
16 had an opinion as to whether she had  
17 an infection.

18 : Any infection?

19 THE WITNESS: Yes.

20 : I withdraw the  
21 objection.

22 Q Where was the infection?

23 A To the left foot.

24 Q Are you able to be more

25 specific?

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2 A To the soft tissue of the left  
3 foot.

4 Q You had told me last time that  
5 you chose not to sit for the oral boards  
6 for podiatry because you did not feel it  
7 was necessary based on the types of cases  
8 that you treat on a regular basis?

9 MR. OGINSKI: Let me rephrase  
10 that.

11 Q You told me during the last  
12 deposition that you did not feel it  
13 necessary to sit for the oral boards  
14 because in order to take those boards you  
15 would have to perform surgical procedures  
16 that you do not customarily perform; is  
17 that correct?

18 : Just note my  
19 objection to improper foundation and  
20 misstatement of portions of the  
21 testimony. But over objection you can  
22 give a reason.

23 A I didn't say it's not necessary  
24 to take the oral examination.

25 Q That wasn't my question, Doctor.

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2 I'll ask it a different way. What are the  
3 primary types of cases that you treat on a  
4 regular basis?

5 A What kind of cases?

6 Q Doctor, I'm going to direct your  
7 attention to page 53 of your deposition  
8 that you gave on June 2nd, ,line  
9 five. "Question. 'And what is the reason  
10 that you have not yet taken the oral  
11 examination to obtain your board  
12 certification?'" "Answer. 'The policy to  
13 obtain multiple boards in unique type of  
14 surgery is needed and I don't feel it's  
15 necessary for me to experiment different  
16 types of procedure just to qualify for  
17 sitting for the oral examination.'" Did I  
18 ask you that question and did you give

19 that answer?  
20 : Objection. That is  
21 argumentative. Just ask the next  
22 question. It's in the record.

23 MR. OGINSKI: Okay.  
24 Q What types of procedures were  
25 you referring to when you say it's not

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2 necessary for me to experiment with  
3 different types of procedure to qualify  
4 for the oral examination?  
5 A Different types of bunionectomy.  
6 Q Such as?  
7 A Closing base wedge osteotomies,  
8 open base wedge osteotomy. Fusion of the  
9 metatarsal and tarsal regions. Shaft type  
10 procedures.

11 Q In podiatry school or in your  
12 residency did you perform those types of  
13 procedures?

14 A I did perform different types  
15 starting my residency, yes.

16 Q And the types that you've  
17 described now --

18 MR. OGINSKI: Withdrawn.

19 Q The types that you just  
20 mentioned to me, had you performed any of  
21 those procedures during your residency?

22 A I did perform some of them,  
23 those procedures during my residency.

24 Q And in order to qualify for your  
25 oral examinations, am I correct that you

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2 have to perform a certain number of  
3 different procedures in order to qualify?

4 A After residency?

5 Q Yes.

6 A That is correct.

7 Q You told me in the last  
8 deposition that -- referring to the  
9 patient's hospital admission at  
10 of in July of , that on the last  
11 two days, July 16th and July 17th, you did  
12 not see the patient. Was there an  
13 attending podiatrist that you asked to see  
14 the patient on any of those two days?

15 A I don't recall that.

16 : Just let the record  
17 reflect that the question was asked  
18 and answered and he referred to a  
19 podiatrist, I believe, .

20 THE WITNESS: was a  
21 resident.

22 MR. OGINSKI: Right.

23 Q My question is, did any  
24 attending podiatrist see the patient on

25 July 16th or July 17th?

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2 A I don't recall.

3 Q You told me that on July 17th  
4 you did not see the patient because she  
5 was going to be discharged that day. And  
6 the last note that you have for the  
7 patient appears to be on July 15th. My  
8 question to you is on the date when you  
9 would not be present did you specifically  
10 make arrangements with another attending  
11 podiatrist to see your patients?

12 A No.

13 Q Doctor, you also told me that as  
14 of June 10th, you had felt that  
15 had a wound infection and you  
16 wanted her to be admitted to the hospital  
17 for IV antibiotics and hardware removal.  
18 And you also mentioned to me that the  
19 residents at Our  
20 Center could not tell the difference  
21 between tendons and bone and that they are  
22 not qualified to treat wounds. My  
23 question to you is, knowing that  
24 information, why then did you send her to  
25 for

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2 admission as opposed to any other  
3 hospital?

4 A Could you repeat that question?

5 MR. OGINSKI: Could I have it  
6 read back?

7

8 [The requested portion of the  
9 record was read.]

10

11 MR. OGINSKI: Stop.

12 : Withdraw it?

13 MR. OGINSKI: I withdraw it.

14 Q Doctor, in the prior deposition  
15 you told me that as of July 10<sup>th</sup>, you  
16 had felt that had a wound  
17 infection and you wanted her to be  
18 admitted to the hospital for IV  
19 antibiotics and hardware removal. You  
20 also told me that the medical residents at  
21 could not  
22 tell the difference between tendons and  
23 bone and that they are not qualified to  
24 treat wounds. Knowing that information,  
25 tell me why you sent her to

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2 as opposed to any other  
3 hospital?

4 : Note my objection.

5 Over objection you can answer the  
6 question.  
7 A Well, I had privileges at  
8 . I wanted to  
9 continue my direct care with the patient.  
10 And, um, I do have faith with the podiatry  
11 residents at the hospital.

12 Q What about the medical  
13 residents?

14 A Well, I have no control over the  
15 medical residents at .

16 Q Did you have faith in the  
17 medical residents there?

18 A Faith in treating the patient  
19 medically.

20 : Note my objection  
21 to form.

22 Q The last time you saw  
23 in Medical  
24 Center during her July admission was on  
25 July 15th. You also mentioned to me last

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2 time that a CBC and a sedimentation rate  
3 was ordered on July 16th, but cancelled  
4 for some unknown reason. How did you know  
5 whether infection was  
6 resolved or resolving if the CBC or  
7 sedimentation rate had not been done or  
8 recorded anywhere in the hospital during  
9 her admission?

10 A Clinically she was responding  
11 well to the treatment.

12 Q Did you specifically order a CBC  
13 or sed rate at any time while this patient  
14 was admitted to during  
15 the July hospital admission?

16 THE WITNESS: Can I see the  
17 notes on the hospital?

18 : (Handing.)

19 A I do not specifically recall  
20 asking for those particular labs.

21 Q Is there anything in the  
22 hospital record to confirm that you  
23 ordered a CBC or sedimentation rate?

24 : Take a look at the  
25 orders page.

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2 A I do not see anything showing  
3 that I've ordered those particular labs.

4 Q Who is a Dr. ,  
5 ?

6 A I believe it's a medical  
7 resident.

8 Q Going back, Doctor, to the  
9 September 20th, office note. Did you  
10 make any observations that there was any

11 necrotic tissue on this visit?  
12 A You said September 24th?  
13 Q September 20th.  
14 : September 20th.  
15 A No, I did not.  
16 Q And why did you prescribe  
17 Vicodin for pain management?  
18 A You asking why Vicodin  
19 particular?  
20 : Or what the purpose  
21 of Vicodin is?

22 MR. OGINSKI: No.  
23 Q You mentioned that Vicodin for  
24 pain management was prescribed. What  
25 complaints, if any, did the patient have  
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1 that required pain management?  
2  
3 A Her symptoms of pain might not  
4 have been written in the notes but she  
5 must have complained of it.  
6 Q Did you form any opinion in  
7 September of that this patient was  
8 drug seeking?

9 A I did have an opinion.  
10 Q What was your opinion as of  
11 September 20th, ?

12 A That her pain was legitimate.  
13 Q And was her pain localized to  
14 any particular area of her left foot?  
15 A The pain was stemming from the  
16 surgical site of the left foot.

17 Q Did you form any opinion in  
18 September of as to the cause of the  
19 patient's continued complaints of pain?

20 A My opinion that the pain could  
21 still be stemming from both an infectious  
22 process as well as a postoperative  
23 process.

24 Q And how would you be able to  
25 distinguish between the two, if, at all?

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2 A I don't believe you can.  
3 Q Would you -- Did you expect that  
4 the use of the antibiotic --

5 MR. OGINSKI: Withdrawn.  
6 Q If this was an infectious  
7 process --

8 MR. OGINSKI: I'm sorry.  
9 Withdrawn.

10 Q If the pain was a result of an  
11 infectious process and now you treat the  
12 infection with antibiotics, would you  
13 expect the pain to dissipate?  
14 : Is the basis of  
15 your question if assuming for the sake  
16 of argument all of the pain is from

17 infection and not from postoperative?

18 MR. OGINSKI: Yes.

19 : Okay.

20 A Yes.

21 Q When the patient returned to  
22 your office on October 11th, did she  
23 have complaints of pain?

24 A Again, I did not state it in my  
25 note.

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2 Q Now, as of September 20th you  
3 wanted the patient to follow up in two  
4 weeks. And you note in your October 11th  
5 note that she missed her last two visits  
6 due to a transportation problem. With  
7 regard to the timing, Doctor, two weeks  
8 from September 20th, this would be  
9 approximately about a week beyond the two  
10 weeks you had asked her to follow up?

11 A That's correct.

12 Q Okay. Now, again, as I had  
13 asked previously, as a result of that  
14 additional one week delay in returning to  
15 your office did this patient exhibit any  
16 problems as a result of that one week  
17 delay in returning to your office?

18 A I do not know if a week delay  
19 would exhibit a problem. If she had a  
20 problem, it would definitely mask it from  
21 because of the delay.

22 Q You mentioned in the subjective  
23 part of your note that the patient was  
24 informed that her wound culture was  
25 positive for bacteria, correct?

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2 A That's correct.

3 Q And that she presents to the  
4 office with moderate improvement of pain  
5 and swelling to the left foot and denies  
6 any drainage and any new complaints. And  
7 finished her antibiotic one week ago. On  
8 your examination you still observed  
9 drainage, correct? Mild serosanguinous  
10 drainage?

11 A That is correct.

12 Q Can you explain how the dressing  
13 in the left foot can be clear and dry if  
14 there is drainage?

15 A Well, you can have a necrotic  
16 cap or necrotic tissue that is preventing  
17 further drainage so the dressing itself  
18 could be dry.

19 Q But yet on the visit before on  
20 September 20th you indicated that the  
21 dressing in the left foot was clear and  
22 dry, yet there was also mild

23 serosanguinous drainage, but no  
24 observation of any necrotic tissue. Can  
25 you explain that?

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2 A It doesn't necessarily mean that  
3 there was no necrotic tissue. Plus a  
4 dressing could have just been changed that  
5 day which would also give a dry appearance  
6 to the dressing.

7 : Excuse me one  
8 second. Okay. Sorry.

9 Q Do you have any memory as you  
10 sit here now as to when those dressings  
11 had been changed either on September 20th  
12 or October 11th?

13 A No.

14 Q You mention on October 11th that  
15 there is wound dehiscence with -- again  
16 with edema and mild erythema. Had this  
17 changed at all since the last visit of  
18 September 20th?

19 A I don't recall.

20 Q Is there anything in the note to  
21 indicate that there was a change in what  
22 you observed regarding the edema and the  
23 erythema?

24 A Well, the remaining part of the  
25 note is showing that the wound is

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2 improving.

3 Q I understand that. I'm going to  
4 ask you about the granulation, but I'm  
5 asking specifically about the edema and  
6 the erythema that you observed?

7 A Well, in my subjective part of  
8 the notes it does show that the pain and  
9 swelling is improving.

10 Q You also note in your  
11 observation that surrounding the ulcer is  
12 numerous amounts of necrotic tissue,  
13 correct?

14 A That's correct.

15 Q What caused -- In this patient's  
16 case, what caused her --

17 MR. OGINSKI: Withdrawn.

18 Q This is a new finding in  
19 comparison to the September 20th visit,  
20 correct?

21 A I couldn't know if it's a new  
22 finding. It might be the first time I put  
23 in my notes.

24 Q Well, on September 20th,  
25 you made no observation that there was

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2 necrotic tissue anywhere in the wound,

3 correct?

4 A I did not note it in my notes  
5 but that there was necrotic tissue.

6 Q And as you sit here now you  
7 don't have any specific memory as to  
8 whether there was or was not any necrotic  
9 tissue that you observed on  
10 September 20th, correct?

11 A On September 20th from my plan I  
12 did state that I did debride some necrotic  
13 tissue.

14 Q My apologies. Did you ever  
15 discuss with how necrosis of  
16 tissue can be prevented?

17 A I don't recall.

18 Q Can necrotic tissue be  
19 prevented?

20 A Yes.

21 Q How?

22 A Uh, removing an infectious  
23 process or an inflammatory process.  
24 Tissue -- There would be no reason for  
25 tissue to become necrotic.

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2 Q You are talking about surgical  
3 debridement?

4 A No.

5 Q How would you remove necrotic  
6 tissue or -- I'm sorry. How would you  
7 remove an infectious process if it was not  
8 with debridement?

9 A Now you are asking two different  
10 questions. If you have necrotic tissue  
11 you have to remove that. And if you have  
12 an infectious process, you can treat an  
13 infection without debridement.

14 Q And if the --

15 MR. OGINSKI: Withdrawn.

16 Q If the infection is not treated  
17 appropriately, can that still lead to  
18 necrosis?

19 A Yes.

20 Q What happens if necrotic tissue  
21 is left untreated or not removed?

22 A It could become another source  
23 of infection.

24 Q Do you have any memory of  
25 's response when you spoke to

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2 her about the need to keep her wound clean  
3 and the importance of showing up for her  
4 scheduled appointments? Do you have any  
5 memories as to what she replied to you?

6 A No.

7 Q Let's turn, please, to the next  
8 visit. November 1, . You wrote

9 missed another three visits. Seen, last  
10 being seen on September 20th, .  
11 Correct, that is what you have written?

12 A That is correct.

13 Q But we know that that's not  
14 entirely accurate, correct? Because the  
15 last visit that you have noted was October  
16 11th, ?

17 A Well, on October 11th, I  
18 stated that she missed two visits due to  
19 transportation problems. Now on  
20 November 11th we are stating --

21 Q November what? November 1st?

22 A November 1, , I am stating  
23 that she missed a total of three visits  
24 since September 20th. That would just  
25 mean one more visit that she missed.

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2 Q I'm reading your words, missed  
3 another three visits. Seen, last being  
4 seen on September 20th, When, in  
5 fact, that was not her last visit before  
6 November 1, , correct, her last visit  
7 was October 11th? I'm just talking about  
8 the dates as to when she was last seen  
9 before November 1st?

10 A But I believe what the note is  
11 implying is that she has missed three  
12 visits since. There have been three  
13 missing visits since September 20th, .

14 Q You also mention in the  
15 subjective part, you say she relates most  
16 pain stemming from a lesion of the heel.  
17 Is this a new complaint?

18 A I believe that was the same  
19 lesion that was her initial pain or  
20 initial visit back in April of .

21 Q Beyond that first complaint in  
22 the beginning of your treatment of her,  
23 throughout the time you're treating her  
24 for the chronic ulcer that you've told me  
25 about, this complaint of pain from the

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2 lesion of the heel is now separate from  
3 the complaint regarding the ulcer,  
4 correct?

5 A That is correct.

6 Q Did you form an opinion as to  
7 why she developed pain in that area?

8 A Yes. It's the same -- same  
9 lesion that she had since April .

10 Q Had you treated that lesion?

11 A We did a biopsy of that lesion.

12 Q That is not treatment, that is a  
13 diagnostic test?

14 A That's correct.

15 Q Had you treated that lesion at  
16 all?

17 A Well, we tried to excise the  
18 lesion.

19 Q Did you form any opinion on  
20 November 1st as to whether the patient's  
21 edema and erythema had improved since her  
22 last visit of October 11th?

23 A I would believe it has continued  
24 to improve.

25 Q And do you have that noted  
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2 anywhere in your note?

3 A Again, from her subjective  
4 findings that her wound have been  
5 improving.

6 Q Was it your opinion that as of  
7 November 1, the patient still had an  
8 infection?

9 A I believe she has a resolving  
10 infection.

11 Q Did you order any blood work at  
12 that time on November 1st?

13 A I do not -- I don't know.

14 Q Did you observe her walk when  
15 you saw her in your office on  
16 November 1st?

17 A Don't know. I don't know.

18 Q Is there anything in your note  
19 to indicate that you observed her walking  
20 or her gait?

21 A No.

22 Q Did you ask Ms. --  
23 MR. OGINSKI: Withdrawn.

24 Q Did you record any conversation  
25 about how this heel pain was effecting her  
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2 ability to get around, if, at all?

3 A I don't know.

4 Q Did you record anything about  
5 your conversation with the patient  
6 regarding her ability to walk or ambulate?

7 A No.

8 Q Let's turn, please, to your next  
9 note. December 20th, . Again, the  
10 patient missed several visits since  
11 patient went to , correct?

12 A That's correct.

13 Q You write still complains of  
14 pain to foot except wound have been  
15 improving. Did you indicate where her  
16 pain was?

17 MR. OGINSKI: Let me rephrase  
18 that.

19 Q Which pain are you referring to,  
20 the heel, to the ulcer or someplace else?

21 A This is probably to the ulcer.  
22 Q What makes you believe that?  
23 A That's still our main complaint,  
24 our main problem here.  
25 Q Had you formed an opinion as to

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2 whether the patient still had an infection  
3 as of December 20th?

4 A Yes.  
5 Q What was your impression or  
6 opinion?

7 A That she still continues to have  
8 an infection.

9 Q Did you have an opinion as to  
10 the pain she had was related to the  
11 infectious process as opposed to any  
12 postsurgical changes?

13 A I believe at this point it is  
14 mostly infectious process that's causing  
15 her pain.

16 Q Now, in your examination of the  
17 patient you observed that there was no  
18 drainage at this time, correct? In the  
19 first line?

20 A I said no serosanguinous  
21 drainage.

22 Q Was there any drainage that you  
23 observed? Sorry.

24 A Yes, there was apparently  
25 drainage.

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2 Q This crust that formed over the  
3 wound, is that known as eschar,  
4 E-S-C-H-A-R?

5 A That's correct.

6 Q What is eschar?

7 A Dry form of some sort of  
8 drainage.

9 Q And do you remove that in order  
10 to promote wound healing?

11 A I removed that to see what is  
12 underneath the wound.

13 Q What did you observe?

14 A I observed an abscess.

15 Q And what exactly did you see in  
16 order to conclude that the patient had an  
17 abscess?

18 A A pocket of fluid.

19 Q And was the fluid discolored?

20 A I didn't mention that.

21 Q When you write that there was  
22 purulent drainage from the wound, do you  
23 imply that there is some type of  
24 discolored fluid or infectious fluid?

25 A Yes.

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2 Q The fluctuance that you mention  
3 in your examination, that is that  
4 collection of fluid that forms a pocket?

5 A That is correct.

6 Q Did you observe -- When you say  
7 that you observed --

8 MR. OGINSKI: Withdrawn. Sorry.

9 Q It was your assessment that the  
10 patient had abscess of left foot with  
11 localized cellulitis. Does your note  
12 indicate specifically where she had the  
13 localized cellulitis? Was it at the ulcer  
14 site? Was it in some other part of the  
15 foot?

16 A That was meant that it was  
17 around the ulcer site.

18 Q Did you send off the fluid for  
19 culture?

20 A Yes.

21 Q And on this visit you prescribed  
22 an antibiotic, correct, Cipro?

23 A That is correct.

24 Q And how does the Cipro differ  
25 from the Augmentin that you prescribed in  
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2 the past?

3 A Well, this is, I believe, once a  
4 day.

5 Q In terms of efficacy and which  
6 is a better antibiotic, are you able to  
7 tell me the difference between  
8 Ciprofloxacin and Augmentin?

9 : Just objection to  
10 form. Precludes the possibility that  
11 it's just different as opposed to  
12 better, but I'll let him answer the  
13 question.

14 Q Why did you prescribe Cipro as  
15 opposed to any other antibiotic on this  
16 visit?

17 A I believe it was a little bit  
18 easier for her to be compliant with and I  
19 probably had some samples already in the  
20 office.

21 Q Is there any medical difference  
22 between using Cipro to treat this  
23 cellulitis as opposed to Augmentin?

24 : Objection to form.

25 I don't understand the question. It's  
0346

1

2 a different drug.

3 Q Is Cipro a better medication to  
4 treat this cellulitis than to treat this  
5 patient with Augmentin?

6 A I don't know the answer to that.

7 Q Let's turn please to your next  
8 visit, December 27th, . You write  
9 patient presents with infected ulcer to  
10 left foot. Is this --

11 MR. OGINSKI: Withdrawn.

12 Q You also note that she had taken  
13 all of her antibiotic last week despite  
14 the fact that she had been given three  
15 weeks of the medication; is that correct?

16 A That is correct.

17 Q And what did you learn from  
18 about why she had used up all  
19 of her Cipro?

20 A That she cannot follow  
21 instructions.

22 Q And what did you learn from her  
23 as to how often she was taking the  
24 medication?

25 A Say again? I didn't --

0347

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2 Q You prescribed for her,  
3 according to your note, a three-week  
4 supply of Cipro, correct?

5 A That is correct.

6 Q And if it is taken once a day it  
7 should last her for those three weeks?

8 A That is correct.

9 Q And if the patient, for example,  
10 if she takes multiple pills on a given day  
11 she will use up that supply quicker than  
12 she should; is that correct?

13 A That is correct.

14 Q You gave her another  
15 prescription for Cipro, correct?

16 A Yes.

17 Q Did you learn from  
18 how it was that she used up her entire  
19 supply of Cipro within a one week period?

20 A I do not recall.

21 Q In your examination of the  
22 patient you found necrotic tissue over the  
23 wound at the first MPJ; is that correct?

24 A That is correct.

25 Q And again you observed

0348

1

2 fluctuance?

3 A That is correct.

4 Q Is it your opinion that this  
5 patient had an active infection?

6 A Yes.

7 Q By the way, Doctor, if  
8 had taken multiple doses of  
9 Cipro, how would that have effected her  
10 ability to treat this ongoing infection?

11 A It depends on what day she took  
12 them all. If she took it all in one day

13 then the remaining days she has no  
14 coverage.

15 MR. OGINSKI: I hope not, but.

16 Q Let's assume that just for the  
17 purposes of my question if she had taken,  
18 for example, two or three pills per day  
19 for the course of a week, and assuming she  
20 had taken that amount of pills each day  
21 for that entire week, what, if any, effect  
22 would that have on her ability to  
23 effectively treat this infection?

24 A So we're assuming that she has  
25 taken Cipro every day of the week?

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2 Q Yes, but in multiple dozes.

3 A It wouldn't change the  
4 treatment.

5 Q Would it change the effect that  
6 the medication would have on her  
7 infection?

8 A No.

9 : If she took it all  
10 in one week? If she took it all in  
11 one week instead of over the three  
12 weeks as prescribed?

13 MR. OGINSKI: Yes.

14 : Would that effect  
15 the efficacy, the efficiency of Cipro  
16 if it is taken all together in one  
17 week?

18 THE WITNESS: I don't think the  
19 infection would have been taken care  
20 of in just one week.

21 Q In your observations, in the  
22 objective section, you write no ascending  
23 cellulitis or edema, discolored tissue  
24 surrounding ulcer. Can just explain to me  
25 what you meant by the last part of that

0350

1

2 sentence, did you observe discolored  
3 tissue or are you continuing your sentence  
4 saying that there was no discolored  
5 tissue?

6 A No, that there is discolored  
7 tissue surrounding it.

8 Q Are you able to tell me as you  
9 sit here now or can you describe that  
10 discolored tissue?

11 A I was probably describing the  
12 necrotic tissue.

13 Q What does necrotic tissue look  
14 like?

15 A It is a dark, dead looking  
16 tissue.

17 Q And your plan was to remove and  
18 debride the ulcer of her left foot,

19 correct?  
20 A Yes.  
21 Q And that was to remove the  
22 necrotic tissue?  
23 A That is correct.  
24 Q And in addition to that did you  
25 also remove any of the fluid that is also

0351

1  
2 present?  
3 A That is correct.  
4 Q Did you suspect on September --  
5 on December 27th that this infection  
6 involved the patient's bone?  
7 A No.  
8 Q Did you draw bloods on December  
9 27th?  
10 A No.  
11 Q Did you take x-rays on September  
12 27th?

13 : December.  
14 Q December 27th?  
15 MR. OGINSKI: Thank you.  
16 A I order an x-ray the week prior  
17 on December 20th, .

18 Q And how many views did you take  
19 on September 20th -- December 20th?  
20 A I took two views.  
21 Q Which two views were they?  
22 A DP, dorsoplantar, view and a  
23 lateral view.

24 Q Did you see any erosive changes  
25 under the first MPJ in either of those two

0352

1  
2 views?  
3 A It was the same change that was  
4 described previously.

5 : Referring to the  
6 September 20th x-ray?

7 THE WITNESS: That is correct.  
8 Q And if you compare those two  
9 x-rays from September 20th to the December  
10 20th, do you notice any change between the  
11 two in terms of the erosive nature?

12 A No.  
13 Q Was it your opinion that there  
14 was no bony involvement with regard to the  
15 infection based upon those two x-rays of  
16 December 20th?

17 A That is correct.  
18 Q Let's go please to the January  
19 10, visit. By the way, Doctor, did  
20 this patient ever call you at your office  
21 in between visits?

22 A I don't recall.  
23 Q If she had called you and you  
24 were out of the office, would you have

25 made a note in the patient's chart

0353

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2 indicating that you had a conversation  
3 with her after hours?

4 A No.

5 Q If she called you during office  
6 hours would you typically be able to --  
7 assuming you were in Dr. 's office,  
8 would you be able to obtain her chart and  
9 make a note of her conversation in the  
10 chart?

11 A I was in the office?

12 Q Yes.

13 A Yes.

14 Q Let's go please to your January  
15 10th, note. You write that she still  
16 has a chronic ulcer to her left foot and  
17 continues to have pain to the left foot.  
18 Where was this pain? Was it heel pain,  
19 ulcer pain, both or just one?

20 A Ulcer pain.

21 Q You write patient missed last  
22 visit since she was admitted to the ER for  
23 severe leg pain. Did you see her or  
24 examine her in whatever emergency room she  
25 went to?

0354

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2 A No.

3 Q Did you learn from her when she  
4 had been admitted to the emergency room  
5 before January 10th?

6 A Could you repeat that?

7 Q Sure. When you are talking to  
8 her on January 10th and she tells you she  
9 was in the emergency room, did you find  
10 out from her when she had been there?

11 A I don't recall.

12 Q Does your note reflect when she  
13 had been to an emergency room?

14 A No.

15 Q Does it indicate what emergency  
16 room she had been to?

17 A No.

18 Q You continue your note saying  
19 she was diagnosed with muscle cramps and  
20 sent home with muscle relaxers. Was the  
21 severe leg pain that you noted that  
22 brought her to the emergency room, was  
23 that for her left leg or some other leg  
24 or --

25 MR. OGINSKI: I'll rephrase

0355

1

2 that.

3 : The middle leg.

4 Q The severe leg pain that you

5 mentioned that brought her to an emergency  
6 room visit, was that for her left leg?

7 A I'm not sure.

8 Q Did this patient still have an  
9 active infection in her left foot on  
10 January 10th, ?

11 A Yes.

12 Q Did you have an opinion on this  
13 visit as to whether the medication that  
14 you had prescribed for her, the Cipro,  
15 whether it was working?

16 A No.

17 Q No, you had no opinion or, no,  
18 it was not working?

19 A Oh, I thought you asked if there  
20 was anything in my notes stating if it was  
21 working.

22 Q Did you have an opinion as to  
23 whether the antibiotic was working or was  
24 effective?

25 A Yes.

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2 Q What was your opinion?

3 A That it is slowly working.

4 Q In your objective assessment of  
5 this patient you noted that there was mild  
6 surrounding erythema localized to the  
7 ulcer, correct?

8 A That is correct.

9 Q There is also necrotic tissue  
10 over the wound, correct?

11 A That is correct.

12 Q And this is new necrotic tissue,  
13 correct, since you had debrided the tissue  
14 you observed on the last visit?

15 A That is correct.

16 Q And did you have an opinion as  
17 to why this patient kept developing  
18 necrotic tissue?

19 A Yes.

20 Q What was your opinion?

21 A Chronic drainage.

22 Q Did you probe the patient's  
23 wound?

24 A Not sure.

25 Q Is there anything in your note

0357

1

2 to indicate that you probed the patient's  
3 wound?

4 A No.

5 Q The fluctuance that you  
6 observed --

7 MR. OGINSKI: Withdrawn.

8 Q Did you see actual fluid type  
9 and color?

10 A Not stated in my notes.

11 Q When you performed the drainage  
12 would you have expected to see the fluid  
13 when you cleaned her out?

14 A Yes.

15 Q The Lidocaine gel, that was a  
16 topical anesthetic?

17 A Yes.

18 Q And the Ultram, what is that?

19 A It is also an analgesic.

20 Q How does that compare to Tylenol  
21 number three, is it stronger, same?

22 A It's about the same.

23 Q You also wanted the patient to  
24 go to to the

25 Department of Infectious Disease for

0358

1

2 evaluation with a Dr. .

3 Tell me why.

4 A To get a second opinion.

5 Q Of what?

6 A Of the wound.

7 Q What did you think was going on  
8 with the patient's wound at this point in  
9 time?

10 A I believed the wound was trying  
11 to get better. But the patient's  
12 compliancy was probably causing it to be  
13 either delayed or worsened.

14 Q Other than the missed visits was  
15 there any suggestion as of January to  
16 indicate that the patient was walking  
17 around without a dressing?

18 A Well, the phone calls from the  
19 visiting nurse.

20 Q Is there anything in your note  
21 of January 10th to indicate that you  
22 received a call from the visiting nurse  
23 about non-compliance?

24 A On that specific day?

25 Q Yes.

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1

2 A No.

3 Q On December 27th did you receive  
4 a call from the visiting nurse at any  
5 prior time indicating non-compliance from  
6 the prior visit?

7 A No.

8 Q In fact, Doctor, your notes  
9 don't reflect any conversation with any  
10 visiting nurse except for the visit of  
11 September 20th, I believe?

12 A That is correct.

13 Q Okay. Is it -- I just want to  
14 be clear. Are you saying that you had  
15 additional conversations with a visiting  
16 nurse after September 20th that are not

17 recorded?

18 A I don't recall.

19 Q Is there anything in your note  
20 of January 10th to suggest -- other than  
21 her missed visit to suggest that she was  
22 non-compliant as of this date?

23 A Well, the way she took her  
24 medication.

25 Q Well, you've already indicated  
0360

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2 about that episode a few visits back.

3 Actually, the last visit. But did you  
4 make a notation on January 10th that she  
5 was now non-compliant with taking her  
6 antibiotics?

7 A Well, you asked me if there are  
8 examples and I am saying on December 27th  
9 showed an example of why -- where she can  
10 become non-compliant.

11 Q I apologize. I'm saying  
12 specifically on December 10th was there  
13 anything in your note to indicate that the  
14 patient was non-compliant?

15 : You said

16 December 10th.

17 MR. OGINSKI: I'm sorry.

18 : You are jumping  
19 around with dates.

20 MR. OGINSKI: No. I'm sorry. I  
21 can't get these dates straight.

22 Q On January 10th, is there  
23 anything in your note to indicate that the  
24 patient was non-compliant with her  
25 medications?

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2 A In my note, no.

3 Q As of the time that  
4 left your office on January 10th, did you  
5 have a definite appointment for her to see  
6 Dr. at ?

7 A No.

8 Q At some point after January 10th  
9 did you obtain a definite date for the  
10 patient to see Dr. ?

11 A No.

12 MR. OGINSKI: Off the record.

13

14 [Discussion held off the  
15 record.]

16

17 Q Did you see in the  
18 office after January 10th, ?

19 A No.

20 Q Was there any reason as to why  
21 you did not obtain a second opinion or an  
22 infectious disease consult as of

23 December 27th, the visit before  
24 January 10th?  
25 A I didn't think it was necessary  
0362

1  
2 at the time.

3 Q And what had changed between  
4 those two visits that now you felt it was  
5 needed to get a second opinion?

6 A Just the longevity of the wound.

7 Q Did request another  
8 opinion from another doctor on  
9 January 10th?

10 A No.

11 Q Was there any sutures in her  
12 wound as of January 10th, ?

13 A Not that I know of.

14 Q How did you learn that  
15 was admitted to

16 Medical Center in January of ?

17 A I must have sent her there.

18 Q And why did you send her to the  
19 hospital in January of ?

20 A Well, I believe I was frustrated  
21 in the fact that she never got scheduled  
22 with Dr. . And since the  
23 wound was not getting any better, I  
24 decided to admit her to the hospital.

25 Q Whose obligation was it to

0363

1  
2 obtain that appointment with Dr. ?

3 : Note my objection.

4 MR. OGINSKI: Withdrawn.

5 Q Did you tell that  
6 you would get her a date to see  
7 Dr. ?

8 A No.

9 Q Did you tell her that she should  
10 call Dr. to schedule an  
11 appointment?

12 A I believe we tried both. I  
13 tried to get her an appointment while she  
14 was in the office. And since I was  
15 unsuccessful, I asked her to try to make  
16 the appointment.

17 Q And at some point after  
18 January 10th did you speak to her on the  
19 telephone?

20 A I believe so.

21 Q And when did you speak to her?

22 A I don't recall.

23 Q Before admitting the patient --

24 MR. OGINSKI: Withdrawn.

25 Q Before was admitted

0364

1  
2 to Medical Center later

3 in January, did you see her in the office  
4 and then direct her to go to the hospital?

5 A No.

6 Q Tell me how this admission came  
7 about.

8 A Again, I probably spoke to her  
9 on the phone. And realized that she did  
10 not have an appointment with Dr.  
11 and her wound was not getting any better,  
12 decided to admit her to the hospital.

13 Q Now, you've told me in the past,  
14 you told me at your first deposition that  
15 the patient needs to go through the  
16 emergency room and be admitted by the  
17 medicine service and then you get called  
18 as a consult to treat your patient,  
19 correct?

20 A Well, that is one of the ways.

21 Q Are there other ways?

22 A Direct admission.

23 Q Where you directly admit the  
24 patient?

25 A No, I would have the patient

0365

1  
2 directly admitted to a medical service.

3 Q In this case what did you do?

4 A We sent her to the emergency  
5 room at .

6 Q Why did you send her to the  
7 emergency room as opposed to admitting her  
8 directly or something else? In other  
9 words, why did you send her to the  
10 emergency room as opposed to direct  
11 admission?

12 A Um, I don't know.

13 Q And what date was it that you  
14 sent her in?

15 A Looks like January 17th.

16 Q Am I correct that during this  
17 hospital admission you performed surgery  
18 to the patient's left foot?

19 A That is correct.

20 Q And following the surgery or --  
21 MR. OGINSKI: Withdrawn.

22 Q And during the course of surgery  
23 you submitted certain surgical specimens  
24 to pathology for evaluation, correct?

25 A That is correct.

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1  
2 Q And the pathology department  
3 evaluated the specimens and then generated  
4 a report about their findings, correct?

5 A That is correct.

6 Q Can you turn, please, to the  
7 pathology report. Doctor, I'm showing you  
8 a copy of the surgical pathology report

9 with a date, it says accession date  
10 January 21st, , procedure date  
11 January 20th and date of report says  
12 January 27th, . The findings indicate  
13 that there is acute and chronic  
14 osteomyelitis. Do you see that?

15 A Yes.

16 Q Do you dispute the pathology  
17 findings that are recorded here?

18 A No.

19 : Note my objection  
20 to form.

21 Q How long do you believe that the  
22 chronic osteomyelitis existed in the  
23 patient before January 20th, ?

24 A I don't know.

25 Q Do you have an opinion as you

0367

1  
2 sit here now as to how long the patient's  
3 chronic osteomyelitis existed as of  
4 January 20th, ?

5 : I think he just  
6 said he didn't know. Was it a  
7 different question?

8 You want to read back the  
9 answer.

10 MR. OGINSKI: No, that's okay.

11 Q Before the pathology diagnosis  
12 did you ever diagnose this patient as  
13 having chronic osteomyelitis?

14 A No.

15 Q Do you have an opinion with a  
16 reasonable degree of medical probability  
17 as to whether you appropriately treated  
18 the patient's chronic infection?

19 : Note my objection  
20 to form. It's podiatric probability.  
21 But with that he can answer it.

22 A Yes.

23 Q What is your opinion?

24 A I treated her appropriately.

25 Q If you had diagnosed that the

0368

1  
2 patient had a chronic osteomyelitis, how  
3 would you have treated her?

4 : Objection.

5 Speculative. Can you give a time  
6 frame also?

7 Q At any point in time during the  
8 course of your treatment from April 2004  
9 up until the patient died in January of  
10 if you had recognized and diagnosed  
11 the patient with chronic osteomyelitis how  
12 would you have treated this patient?

13 : I have to object

14 because the treatment may be different

15 in April as to January because the  
16 time frame would be different.

17 Q Doctor, you told me at our  
18 initial deposition the different ways you  
19 would treat osteomyelitis. Can you tell  
20 me if you had recognized chronic  
21 osteomyelitis at any time from October  
22 up until January , how you would  
23 have treated her chronic osteomyelitis?  
24 : Over objection to  
25 form, if you are able to answer,

0369

1

2 answer the question. Doctor, you can  
3 answer.

4 A Again, that there is -- there  
5 are variables involved when treating  
6 osteomyelitis and in each different  
7 variable there is different treatment  
8 plan.

9 Q What is the standard, if you can  
10 tell me if there is one, for treatment of  
11 chronic osteomyelitis?

12 : I'm just going to  
13 object. Because it could be  
14 multifactorial. It could be a lot of  
15 different circumstances and also you  
16 had asked him the first day what the  
17 treatments are for chronic osteo, so  
18 if you could rephrase that question.  
19 If you want me to find that prior  
20 testimony, I will.

21 Q Once chronic osteomyelitis is  
22 diagnosed, Doctor, you then had an  
23 obligation to then treat it?

24 A Yes.

25 Q And one of the primary ways to

0370

1

2 treat chronic osteomyelitis is with IV  
3 antibiotics, correct?

4 A That is one form of treatment.

5 Q Another way is with surgical  
6 excision?

7 A That is correct.

8 Q And besides those two primary  
9 ways, are there any other ways to treat  
10 chronic osteomyelitis?

11 A Sure. Long-term oral  
12 antibiotic.

13 Q Any others?

14 A Not that I am aware of.

15 Q And in terms of treating acute  
16 osteomyelitis, other than the use of IV  
17 antibiotics or excision, is there any  
18 other way that you treat acute  
19 osteomyelitis?

20 : Again, I'm going to

21 object. He has already answered those  
22 exact questions at day one of the  
23 deposition. If you are trying to  
24 trick him again.

25 MR. OGINSKI: No tricks.

0371

1

2 : Why don't you just  
3 move on to --

4 MR. OGINSKI: I just didn't  
5 remember.

6 : Okay.

7 Q Doctor, do you believe that in  
8 treating that you ordered all  
9 necessary tests to help you diagnose and  
10 treat her condition in a timely manner?

11 A Yes.

12 Q Do you believe that  
13 contributed to her own injuries?

14 A What type of injuries?

15 Q The progress of the infection  
16 ultimately leading to her death.

17 :Just objection.

18 Asked and answered. He told you the  
19 various ways that her own conduct had  
20 contributed. If you can rephrase it  
21 to say anything else other than what  
22 he had already testified to.

23 MR. OGINSKI: Fair enough.

24 Q Other than what you already told  
25 me, do you believe that the patient

0372

1

2 contributed to causing the infection and  
3 her ultimate death?

4 A No.

5 Q Did you speak to the medical  
6 examiner following the patient's death?

7 A No.

8 Q Did you come to any conclusion  
9 as to the patient's cause of death?

10 A No.

11 Q Do you believe that this patient  
12 died from an infection that began in her  
13 foot and then spread throughout her body?

14 A No.

15 Q Do you have an opinion with a  
16 reasonable degree of medical or podiatric  
17 probability as to the cause of this  
18 patient's death?

19 A I do not have an opinion.

20 Q Do you have an opinion as to  
21 whether her death was contributed to by  
22 the infection she had in her left foot?

23 A I don't know.

24 Q To what, if anything, do you  
25 attribute this patient's death?

0373

1  
2 : Just objection. He  
3 said he had no opinion on the cause of  
4 death.

5 Q Did you have any discussions  
6 with anybody from  
7 Medical Center regarding the cause of this  
8 patient's death?

9 A No.

10 Q How did you learn that this  
11 patient's died?

12 A I received a phone call from my  
13 podiatry resident that my patient had  
14 expired.

15 Q What, if anything, did you say  
16 in response?

17 A I don't recall.

18 Q Were you present for any  
19 discussion at Medical  
20 Center discussing this patient's care and  
21 treatment following her death?

22 A No.

23 Q Did you ever learn from any  
24 doctor at whether this  
25 patient's care and treatment was discussed

0374

1  
2 following her death, and I don't mean  
3 informally, I mean at some formal meeting  
4 such as mortality and morbidity?

5 A I don't.

6 Q Or formal teaching rounds?

7 A I'm not aware of it.

8 Q Do you have an opinion -- Do you  
9 have an opinion, Doctor, with a reasonable  
10 degree of podiatric probability as to  
11 whether earlier diagnosis and treatment of  
12 the patient's acute and chronic  
13 osteomyelitis would have altered this  
14 patient's ultimate outcome?

15 A I don't know.

16 Q Why don't you know?

17 : Objection. That's  
18 argumentative.

19 Q At page 242 of your deposition  
20 you said -- Line 18.

21 : Okay. Shoot. Go  
22 ahead.

23 Q You said when we took out the  
24 screw, again referring to the July 14th  
25 surgery, when we took out the screw, the

0375

1  
2 bone seemed to be viable. There was no  
3 signs of any infection in the bone. How  
4 can you tell intraoperatively whether  
5 there is infection in the bone?

6 A The consistency of the bone, the

7 appearance.  
8 Q And how would that be different  
9 from what normal bone looked like?  
10 A Well, that is normal bone.  
11 : He is saying you  
12 found normal bone.  
13 Q I'm saying if you observed  
14 infection, how would it be different?  
15 A It would definitely have a  
16 different color. It would be softer.  
17 Q Can you have an on-going  
18 infection in bone and yet not be able to  
19 see signs of an infection?  
20 A Not sure.  
21 Q And is there a difference  
22 between recognizing chronic or acute  
23 osteomyelitis by observing the bone  
24 intraoperatively? In other words,  
25 visually do you see a difference?

0376

1  
2 A I don't know.  
3 Q At page 301 you had mentioned  
4 that you --  
5 : Which line?  
6 Q Eleven. I asked -- I was asking  
7 you about the probing on that page.  
8 MR. OGINSKI: Withdrawn.  
9 Q On page 301 you talk at line six  
10 that if you probe deep into the wound you  
11 can tell certain things. What instruments  
12 do you use to probe the wound?  
13 A Using a sterile cotton tip.  
14 Q Go back with me, please, for a  
15 moment to your December 27th office visit.  
16 You observed tenderness on palpation and  
17 fluctuance. Was there any particular  
18 reason as to why you did not admit the  
19 patient to the hospital on December 27th?  
20 A I didn't think it was necessary.  
21 Q Let's talk about -- I'm done  
22 with the notes, Doctor. Let's turn back  
23 to the January admission to  
Specifically looking at the  
25 history and physical. Can you tell who

0377

1  
2 wrote this history and physical?  
3 A It's a hard name to pronounce,  
4 Dr. .  
5 : Spell it for her.  
6 THE WITNESS:  
7 .  
8 Q Do you know that, Doctor?  
9 A No.  
10 Q To your knowledge is that  
11 individual a medical resident?  
12 A I believe it's a medical

13 resident.  
14 Q And the attending also signed  
15 the note?  
16 A That is correct.  
17 Q And can you read, , do you  
18 know his last name?  
19 A .  
20 Q Do you know him?  
21 A Yes.  
22 Q He is also a medical attending?  
23 A Yes.  
24 Q Specifically, on the second to  
25 last page of the note when discussing the  
0378

1  
2 left leg, it describes left foot ulcer and  
3 then it gives dimensions three centimeter  
4 by five centimeter above the first to  
5 second toe. Do you see that? You passed  
6 it. Right there in the middle of the  
7 page.  
8 A Okay.  
9 Q The three centimeter by five  
10 centimeter, does that accurately describe  
11 the size of the ulcer as of January 17th,  
12 ?  
13 A Again, this is done by medical  
14 resident.  
15 Q I'm only asking whether it  
16 accurately describes the size of the  
17 ulcer?  
18 A I don't believe so.  
19 Q What was your opinion of the  
20 size of the ulcer? And, again, you are  
21 looking through the hospital notes,  
22 correct?  
23 A That is correct. I believe the  
24 size might have been two by two  
25 centimeter.  
0379

1  
2 Q What are you looking at to tell  
3 me that, Doctor?  
4 A The vascular surgeon consult.  
5 Q What date is that?  
6 A January 20th, .  
7 Q What is the size according to  
8 that vascular consult note?  
9 A Two by two centimeter.  
10 Q And did you ever record the size  
11 in any of your notes in this hospital  
12 admission?  
13 A Not that I am aware of.  
14 Q This resident on history and  
15 physical observed -- this doctor noted  
16 that there was decreased range of motion  
17 and decreased sensation and cold to the  
18 touch, correct?

19 A That is correct.  
20 Q Are these findings different or  
21 new findings in comparison to the last  
22 visit that you had with this patient?  
23 A I got to pull that chart up.  
24 You are talking about the hospital visit?  
25 Q No. From the time that you last

0380

1  
2 saw the patient on January 10th.  
3 : In the office?  
4 Q In the office. Did the patient  
5 have any decreased range of motion?  
6 A I didn't mention it in my notes.  
7 Q Did you examine the patient's  
8 range of motion?  
9 A Probably did.  
10 Q How do you know that?  
11 A Because those are common  
12 physical examinations that are done in the  
13 office.

14 Q And is it possible that you did  
15 not do the range of motion especially when  
16 treating primarily the wound?

17 A For that specific day?

18 Q Yes.

19 A I guess it's possible.

20 Q In fact, did you make --

21 MR. OGINSKI: Withdrawn.

22 Q Let's turn, please, to the  
23 admission note, PGY-2 admission note for  
24 January 17th. Three quarters of the way  
25 down, this resident writes pain is sharp,

0381

1  
2 ten out of ten. You see that?

3 A Okay.

4 Q Yes. Pain is sharp, ten out of  
5 ten. Do you have --

6 : What is the  
7 question?

8 MR. OGINSKI: I'm formulating  
9 it.

10 : I'm sorry.

11 Q Do you have an opinion as to  
12 whether the patient's complaints of pain  
13 were genuine?

14 A I don't have any reason to  
15 object to that.

16 Q Did you form any opinion as to  
17 why the patient was experiencing such  
18 severe pain?

19 A Infection.

20 Q Can you turn please to the  
21 January 17th, 2:14 p.m., podiatry co-admit  
22 note. Is this written by the attending  
23 Dr. ?

24 : Dr. is the

25 resident, he testified.

0382

1

2 MR. OGINSKI: I'm sorry.

3 Q This is written by Dr. ,

4 correct?

5 A That is correct.

6 Q I'm going to ask you to read

7 Dr. 's note as best as you can.

8 : If there is

9 something you can't make out, don't

10 guess. Just tell us you can't make it

11 out.

12 A Fifty-four year old female from

13 home with past medical history significant

14 of hypertension.

15 Q For hypertension?

16 A For hypertension. Presents with  
17 complaining of severe left foot pain.

18 Patient relates having bunionectomy done

19 July . Patient relates she had been

20 taking care of her grandchildren at home.

21 Starting one day after the surgery.

22 Example. Grand kids jumping to her laps.

23 Patient yelling them to stop running, et

24 cetera. Patient also states she fell down

25 twice at home in October, November and

0383

1

2 hurt her foot.

3 Q Let me stop you for a moment,

4 Doctor. That information, did you ever

5 learn any of that information?

6 MR. OGINSKI: I'm going to

7 rephrase that.

8 Q The information that you just

9 read to me about the grandchildren running

10 around and her falling. Did you ever

11 record any similar information in any of

12 your office notes?

13 A No.

14 Q Continue, please.

15 A Patient presently complaining of

16 painful left foot radiate to leg slash

17 thigh and hip. More pronounced when

18 walking. She presents with a cane.

19 Patient's private -- I can't read that.

20 Q Podiatrist?

21 : Podiatrist.

22 A Podiatrist is Dr. who

23 referred her to hospital.

24 Q Referred her for?

25 A Referred her for hospital

0384

1

2 admission under Dr. , medical

3 attending. Both doctors aware of the

4 patient.

5 Q If you can just jump down to the  
6 physical exam, please.

7 A Positive ulcer, dorsal medial  
8 aspect of left foot. Negative drainage.  
9 Negative edema. Negative erythema.  
10 Positive stable, positive dry, positive  
11 dark hyperpigmentation around effected  
12 area. Positive tenderness on palpation  
13 with guarded range of motion. Temp cold  
14 to touch.

15 Q If you can turn, please, to the  
16 next page under assessment and plan. Does  
17 that say osteomyelitis left foot?

18 A That is correct.

19 Q And towards the bottom, I'm  
20 skipping now, it says Dr. , podiatry  
21 consult informed, correct?

22 A That is correct.

23 Q Did you have a conversation with  
24 Dr. at that time?

25 A I don't recall.

0385

1  
2 Q Did you see the patient on  
3 January 17th at ?

4 A No.

5 Q Let's turn, please, to the  
6 January 18th note, podiatry note. Patient  
7 was seen by Dr. , . Is that  
8 individual a resident or an attending?

9 A Resident.

10 Q Did you see the patient with  
11 Dr. ?

12 A I don't recall.

13 Q You have a note there, correct,  
14 under Dr. ?

15 A Yes.

16 Q Can you read your note, please,  
17 of January 18th?

18 A Full consult in chart. Please  
19 obtain x-ray and MRI of left foot.

20 Q Hold on, Doctor. The date that  
21 is recorded there says January 18th, ?

22 A Well --

23 Q Am I correct that that is an  
24 inaccurate date, it should be ?

25 A Should be .

0386

1  
2 Q Go ahead. Read your note.

3 A Full consult in chart, please  
4 obtain x-ray and MRI of left foot. Will  
5 schedule debridement of left foot  
6 Thursday.

7 Q Why did you order an MRI?

8 A To see if there was any bone  
9 involvement.

10 Q What made you believe that there

11 was bony involvement?  
12 A It is ordered as a planning  
13 process, a plan if we do need to take a  
14 culture or not.  
15 Q And how would that -- Could you  
16 explain what you mean? In other words,  
17 why order an MRI as part of your plan,  
18 what was the knowing?  
19 A Well, to diagnose if there was  
20 bone involvement.  
21 Q And why would the MRI assist you  
22 in coming to any conclusion as to whether  
23 there was any bone involvement?  
24 A If there was involvement in the  
25 bone, we will know the extent of the

0387

1 involvement.  
2  
3 Q And is there any particular  
4 reason as to why an MRI had not been  
5 ordered as of the last visit the patient  
6 saw you in January, January 10th in the  
7 office at the time that you wanted her to  
8 see the infectious disease specialist?  
9 A I didn't think it was necessary  
10 at the time.  
11 Q And what changed now during this  
12 admission that you felt the patient needed  
13 to have the MRI?  
14 A Well, we are planning to take  
15 her to the OR.  
16 Q And how would that --  
17 MR. OGINSKI: Withdraw.  
18 Q Did you ever tell any doctor or  
19 nurse that you felt that the patient's  
20 complaints of pain were not credible or  
21 exaggerated?  
22 A I don't recall.  
23 Q Can you turn, please, to your  
24 note?  
25 : The 1-18 note?

0388

1  
2 MR. OGINSKI: No, he read that  
3 1-18 note.  
4 : Okay.  
5 Q Did you have a consult note on  
6 January 18th?  
7 A Yes.  
8 Q Can you turn to that, please.  
9 A Okay.  
10 Q Can you read that, please?  
11 A A 54-year old black female with  
12 history of hypertension was admitted for  
13 cellulitis and possible OM in the left  
14 foot.  
15 Q That is osteomyelitis?  
16 A That is correct. Patient still

17 has severe pain with palpation. Physical  
18 examination. No dressing to left foot.  
19 Positive swelling and discoloration to the  
20 medial aspect of the first MPJ of the left  
21 foot. Positive fluctuance and purulent  
22 drainage. Non-palpable pedal pulses. DP  
23 PT zero over four.

24 Q The fact that there was no  
25 palpable pedal pulse, what, if anything,

0389

1

2 did that suggest to you?

3 A She might have some vascular  
4 disease.

5 Q You had told me in the initial  
6 deposition that you felt that this patient  
7 had no vascular compromise. How do you  
8 explain this observation now?

9 A The infection has gotten worse.

10 Q Do you believe that the  
11 infection caused vascular compromise?

12 A I believe if there was enough  
13 edema that could obliterate the sensation  
14 of a pulse.

15 Q In any of the office visits  
16 where you saw did you ever  
17 observe her having a decreased pulse or  
18 nonpalpable pulse in her left foot?

19 A I don't believe so.

20 Q What made you believe that this  
21 patient had osteomyelitis?

22 A We were trying to rule that out.

23 Q Continue, please, with the labs.  
24 MR. OGINSKI: Withdrawn.

25 Q In the labs that you recorded on

0390

1

2 your consult note?

3 A Yes.

4 Q Is there a CBC recorded?

5 A Yes.

6 Q What is that?

7 A White count of 12. Hemoglobin  
8 of 11.5. Hematocrit, 37.3. And platelets  
9 of 251.

10 Q Are these normal or abnormal  
11 findings?

12 A The white count is abnormal.

13 Q Is there a sedimentation rate?

14 A Not on my note.

15 Q Do you record a shift as a  
16 result of any type of infection?

17 A It's not related in my notes.

18 Q Continue please with your  
19 assessment and plan.

20 A Abscess, left foot, rule out  
21 osteomyelitis. I & D of abscess at  
22 bedside and apply sterile dressing.

23 Recommend x-ray left foot and MRI left  
24 foot. Repeat CBC with diff and ESR.

25 Q That's differential?

0391

1

2 A Yes.

3 Q Is ESR is a sedimentation rate?

4 A That's correct. Will schedule  
5 for debridement of left foot Thursday.

6 Q This debridement is that  
7 different than the debridement you did at  
8 bedside?

9 A That is correct.

10 Q You are talking now about a  
11 surgical debridement in an operating room  
12 under sterile conditions?

13 A That is correct.

14 Q What is it about the patient's  
15 condition that you felt warranted that  
16 type of surgical procedure that could not  
17 be done at bedside?

18 A A much deeper debridement where  
19 the patient would need anesthesia.

20 Q Was receiving  
21 intravenous antibiotics at this point?

22 A She should be.

23 Q Did you learn that she was  
24 unable to go through initially with the  
25 MRI because of the extreme pain to her

0392

1

2 left foot?

3 A That information was related to  
4 me.

5 Q And how did you learn that  
6 information?

7 A I believe the resident might  
8 have called me.

9 Q And what, if anything, was done  
10 in order to accomplish the patient getting  
11 the MRI? Was she sedated? Was she given  
12 some type of medication to relieve the  
13 pain so that she could have the MRI or  
14 something else?

15 A Well, since she was unable to do  
16 the MRI initially they cancelled the MRI.  
17 And we would have to reschedule that.

18 Q And at some point after that did  
19 she have the MRI?

20 A No.

21 Q Look down, please, at the  
22 January 19th, 2:37 p.m., PGY-2 note.

23 A Okay.

24 Q Toward the bottom third of the  
25 page it says MRI done today, result

0393

1

2 pending. Do you see that?

3 A No. It says MRI and then it  
4 says ABI PVR done today.  
5 Q What's that?  
6 A That is the vascular test.  
7 Q That doesn't refer to the MRI?  
8 A Above it states that it was  
9 unable to be done.  
10 Q That was earlier in the day. Do  
11 you know if the MRI was actually done?  
12 A I don't believe it was ever  
13 done.  
14 Q Let's turn, please, to your  
15 January 19th note. Again, I would like  
16 you to read it in your entirety, slowly,  
17 so she can get it down.  
18 A Patient continues to have severe  
19 pain to her left foot. Patient was unable  
20 to complete her MRI today. Secondary to  
21 pain. Denies any fever, chills or nausea.  
22 Physical examination. No dressing to left  
23 foot. Patient removed the dressing.  
24 Q Let me stop you. Doctor, tell  
25 me about that.

0394

1  
2 A Tell you what?  
3 Q Why did she remove the dressing?  
4 A I don't remember.  
5 Q Was it because of the extreme  
6 pain she was experiencing?  
7 A I don't recall.  
8 Q Did she tell you that she was  
9 unable to put anything on her foot or have  
10 anything touch her foot?  
11 A I don't recall.  
12 Q Go ahead, please.  
13 A Positive purulent drainage from  
14 medial aspect first MPJ of left foot with  
15 necrotic cap. Positive swelling and  
16 erythema to left foot. Non-palpable pedal  
17 pulses. X-rays pending. ABI PVR  
18 incomplete. Abnormal PVRs.  
19 Q What does that mean?  
20 A It means we have abnormal wave  
21 forms.  
22 Q What does that suggest to you?  
23 A That there could be some  
24 possible blockage.  
25 Q Go ahead.

0395

1  
2 A Abscess left foot.  
3 Q This is your assessment and plan  
4 now?  
5 A That is correct.  
6 Q Go ahead.  
7 A Will continue with I & D of left  
8 foot tomorrow and perform bone biopsy. If

9 biopsy is positive, patient may need  
10 further surgical -- surgery. Vascular  
11 consult, Dr. .

12 Q Why did you feel a bone biopsy  
13 would be necessary?

14 A Because the MRI was not done.

15 Q And the bone biopsy would tell  
16 you definitively whether or not there was  
17 an infection in the bone?

18 A That is correct.

19 Q Let's go to the January 20th,  
20 5:00 p.m. post-op note, handwritten  
21 post-op note by Dr. . Who assisted you  
22 during this procedure?

23 A Well, I had three residents.

24 Q One was Dr. ?

25 A That is correct.

0396

1

2 Q The other is Dr. ?

3 A That is correct.

4 Q Who is the other one?

5 A Dr. .

6 Q Spell it.

7 A .

8 Q And can you explain why there  
9 were three residents assisting you during  
10 this procedure?

11 A It's a teaching hospital.

12 Q And what were those residents  
13 doing?

14 A Assisting.  
15 : Okay. You need a  
16 break?

17 THE WITNESS: Yes.

18

19 [Whereupon, a short recess was  
20 taken.]

21

22 Q Can you turn, please, Doctor, to  
23 the January 24th, nursing note timed  
24 at about 10:00 p.m.. This one  
25 here (indicating).

0397

1

2 : I think it's the  
3 last one on that day.

4 A This one up here (indicating)?

5 Q Yes.

6 A Okay.

7 Q Toward the end of that 10:00  
8 p.m. note does that say oxygen or  
9 OxyContin or something else?

10 : If you can read it.

11 So something was held, O-X-Y.

12 A I think it's OxyContin.

13 Q Do you know why OxyContin was  
14 held?

15 A I don't know.  
16 Q Were you involved with the code,  
17 resuscitative efforts for this patient?  
18 A No.  
19 Q Did any medical attending ever  
20 discuss with you the reason why this  
21 patient died?  
22 A No.  
23 Q Was an autopsy performed?  
24 : The only thing I'm  
25 going to object to -- If he learned it  
0398

1  
2 from anyone else other than his  
3 attorney.  
4 Q Did you learn from anybody at  
5 the hospital including the patient's  
6 family members whether an autopsy had been  
7 performed?  
8 A No.  
9 Q Let's turn, please, to your  
10 January 25th, 8:30 a.m. note. I'm sorry.  
11 That's not your note. It's Dr. ?  
12 A That is correct.  
13 Q Can you read that note, please?  
14 A Patient was seen yesterday  
15 morning. Alert, awake, oriented times  
16 three. Labs was checked around 11:30  
17 a.m.. It was noted that the H and H was  
18 low.  
19 Q That is hemoglobin and  
20 hematocrit?  
21 A That is correct. 7.1 over 22.3.  
22 Dr. and Dr. spoke to podiatry  
23 attending Dr. .  
24 Q Let me stop you for a second,  
25 Doctor. This is timed at 8:30 a.m.. This  
0399

1  
2 is a post death note, meaning the patient  
3 already died at the time this was written?  
4 A That is correct.  
5 Q Go ahead, please.  
6 A Dr. recommendation was to  
7 repeat lab and to evaluate patient for  
8 acute anemia.  
9 Q Did you have any opinion as to  
10 the cause for the patient's acute anemia?  
11 A No.  
12 Q Did you have a differential  
13 diagnosis as to why the patient was  
14 acutely anemic?  
15 A No.  
16 Q Go ahead, please.  
17 A Both podiatry residents spoke to  
18 the medical, I can't read his name, looks  
19 like , ,  
20 about lab results and our attending

21 recommendation. Medical resident  
22 understood and would do those  
23 recommendations. During afternoon sign  
24 outs the podiatry resident spoke to the  
25 medical resident around 4:15, 4:30 p.m.

0400

1  
2 at -- I don't know that word.  
3 Q At that point?  
4 A At that point awaiting for  
5 guaiac result pending. Blood was redrawn  
6 around 4:15 p.m. by PCA. Podiatry also  
7 recommend at the time for a possible GI  
8 consult for the acute anemia. Results of  
9 the labs came back around 7:55 p.m.. Dr.  
10 spoke to medical resident on call,  
11 Dr. -- I can't pronounce that guy's name.

12 Q something?

13 : . ,

14 I think.

15 MR. OGINSKI: Okay.

16 A About critical patient. He was  
17 aware of patient and would transfer two  
18 units packed red blood cells. Orders  
19 written at 8:30 p.m.. Spoke to  
20 Dr. -- again. Same resident. At  
21 10:00 p.m. about patient. Confirmed his  
22 order for two units PRBC and signed out to  
23 night float.

24 Q You read about critical patient.  
25 Was it your opinion that this patient was

0401

1  
2 in critical condition?

3 A No.

4 Q Go ahead, please.

5 A Dr. was on call last  
6 night.

7 Q Wait. Dr. is writing  
8 this, so he is --

9 A Yes.

10 Q So he is writing in the third  
11 person?

12 A That is correct. Was on call  
13 last night and was -- looks like never  
14 informed of any new news about the  
15 patient. During today's morning rounds  
16 podiatry --

17 Q Team?

18 A Team found out by nursing staff  
19 that the patient coded and passed away.  
20 Dr. was informed immediately after.  
21 No. Immediately of the situation and  
22 proceeded to speak to -- something --  
23 medical attending.

24 Q Medical attending. Do you have  
25 any recollection of speaking to the

0402

1  
2 medical attending about this patient's  
3 death?

4 A I did not speak to the medical  
5 attending.

6 Q You did not or you have no  
7 memory of speaking?

8 A I did not.

9 Q I'm sorry. I wasn't clear. Did  
10 you speak to the medical attending  
11 following the patient's death?

12 A No.

13 Q Let's turn, please, to your  
14 operative report dated January 20th, the  
15 typed report, the second page. In the  
16 second full paragraph, Doctor, you write  
17 the ulcer was then debrided of the  
18 fibrotic and necrotic tissues. The  
19 incision was then deepened to bone and the  
20 bone was noted to be hard. Now, you told  
21 me earlier that if bone has infection it  
22 tends to be a different color and is  
23 generally softer, correct?

24 A That's correct.

25 Q How then do you explain the

0403

1  
2 findings that you observed in this  
3 operative note with the pathology findings  
4 to indicate that the patient had chronic  
5 and acute osteomyelitis?

6 A Well, chronic osteo you do have  
7 an infection, but the body starts -- it  
8 surrounds the infected tissue and then at  
9 that point you could have new formation of  
10 bone cells surrounding that infectious  
11 process, so you could have hard bone  
12 surrounding trying to encapsulate the  
13 infection.

14 Q Isn't new bone generally softer  
15 than older bone?

16 A That would be very new bone,  
17 yes. The more matured bone will become  
18 harder.

19 Q You also observed -- A bone cyst  
20 was noted on the medial aspect of the  
21 first metatarsal head, as well as the  
22 lateral aspect. What did that represent,  
23 if anything, an infectious process, a spur  
24 or something else?

25 A That could have been the area

0404

1  
2 where we removed the screw.

3 Q You continue by saying the  
4 lateral aspect bone cyst was scraped with  
5 a curette. It was noted to be solid. At  
6 this point no deep abscesses were found

7 and no sinus tracking was found. There  
8 was no puss intraoperatively. In light of  
9 these findings, how then do you correlate  
10 the pathology findings that reflect the  
11 patient had chronic and acute  
12 osteomyelitis?

13 A Well, the pathology report is  
14 just showing what was seen on the bone  
15 itself. We didn't see any puss or other  
16 soft tissue involvement.

17 Q Was it your opinion, Doctor,  
18 that the treatment that you rendered to  
19 the patient during this hospital admission  
20 was medically appropriate or podiatrically  
21 appropriate?

22 A Yes.

23 Q And is there anything that in  
24 your opinion if done differently would  
25 have altered this patient's ultimate

0405

1  
2 outcome?

3 : You mean obviously  
4 from the podiatric standpoint. He  
5 can't comment on medical doctor.

6 MR. OGINSKI: Correct. Only  
7 from a podiatric standpoint.

8 A No.

9 Q Did you ever speak to any of the  
10 patient's relatives after she died?

11 A I believe I paid my respects at  
12 the funeral.

13 Q Other than that did you ever  
14 actually speak to her son or her daughter?

15 A No.

16 Q After she died?

17 A No.

18 Q Did you ever have a conversation  
19 with about why his had  
20 died?

21 A No.

22 Q Now, going to your CV. Am I  
23 correct that you went to College of  
24 for one year?

25 A That is correct.

0406

1  
2 Q And then you did your remaining  
3 three years of college at ?

4 A That is correct.

5 Q And you received your degree  
6 from or from College?

7 A My bachelor's?

8 Q Yes.

9 A .

10 Q Did you ever tell a visiting  
11 nurse that you felt that had  
12 some type of substance abuse or was

13 abusing some type of substance?  
14 A I don't recall.  
15 Q Do you know a visiting nurse  
16 named , ?  
17 A No.  
18 Q Or a --  
19 A No.  
20 Q Or a ?  
21 A No.  
22 Q Did you ever see any photographs  
23 taken by any visiting nurses during any of  
24 their visits to the patient?  
25 A No.

0407

1  
2 Q I'm going to read to you a note  
3 written by a visiting nurse dated August  
4 30th, . And I'll read the note in its  
5 entirety. Digital photos of left foot  
6 wound obtained for telehealth consult.  
7 Diagnosis, hypertension, debridement,  
8 removal of hardware. Pulses palpable.  
9 Complains of pain. History of substance  
10 abuse according to MD. Do you have any  
11 memory of telling any visiting nurse that  
12 this patient had some substance abuse  
13 problem?  
14 : Objection. He's  
15 not an MD, so it's not referring to  
16 him.  
17 MR. OGINSKI: I understand that.  
18 I'm just asking.  
19 A No.  
20 : And if I'm not  
21 mistaken some other doctor had ordered  
22 the VNS orders.  
23 Q Did you ever form an opinion as  
24 to whether this patient had a substance  
25 abuse problem?

0408

1  
2 A No.  
3 Q Do you know Dr. ?  
4 A Not personally.  
5 Q Is Dr. a podiatrist?  
6 A No.  
7 Q He's an internist?  
8 A I believe so.  
9 Q Did you ever have any contact or  
10 discussions with him about this patient?  
11 A No.  
12 Q Did you ever recommend that the  
13 patient be sent to an emergency room or go  
14 to an emergency room and she refused?  
15 A No.  
16 Q The conversation that you told  
17 me about with the visiting nurse on the  
18 September 20th visit that she was walking

19 around, there was cat hair around --  
20 MR. OGINSKI: Withdrawn.  
21 Q Did ever tell you  
22 that the reason why she did not keep the  
23 dressing on her foot was because her foot  
24 felt better without the dressing?  
25 A I don't recall.

0409

1  
2 Q I'm going to show you --  
3 MR. OGINSKI: Let's mark this  
4 Plaintiff's One and Two.  
5  
6 [The photographs were hereby  
7 marked as Plaintiff's Exhibits One &  
8 Two for identification, as of this  
9 date.]

10

11 Q Doctor, I'm showing you two  
12 photographs which were marked as  
13 Plaintiff's One and Two for  
14 identification. These come from the  
15 Visiting Nurse Services and the dates of  
16 these photographs are August 25.  
17 They may be copies of the same picture.  
18 : Counselor, if you  
19 could provide me with a color copy of  
20 these because the copy VNS provided,  
21 it was just black and white. If you  
22 could get me a copy of that, I would  
23 appreciate it.

24 MR. OGINSKI: Sure.

25 Q Looking at these photographs,

0410

1  
2 Doctor, do they accurately represent and  
3 portray the condition of 's left  
4 foot as of August 25, ?

5 A Yes.

6 Q Can you observe erythema or  
7 edema in that photograph, either one of  
8 those photographs?

9 A I can't tell from this  
10 photograph.

11 Q Is there evidence of necrosis in  
12 the photograph?

13 A No.

14 Q The discoloration or the  
15 darkened skin that appears directly beyond  
16 the borders of the wound, what is that?

17 A Chronic inflammatory.

18 Q The coloration of the patient's  
19 second and third toes which appear to be  
20 of similar color as the area surrounding  
21 the chronic ulcer, can you explain why her  
22 toes were colored in that fashion at that  
23 time?

24 A Those are the surgical sites

25 that were -- that was done also in the  
0411

1  
2 initial surgery. I don't remember the  
3 day.

4 Q It was back in April?

5 A That is correct.

6 Q And in your opinion, Doctor, is  
7 the coloration that appears on the second  
8 and third toes of the left foot, is that  
9 normal?

10 A That is chronic inflammation of  
11 the tissue. But she healed completely to  
12 the second and third toe.

13 Q The ulcer that is observable in  
14 this photograph, what can you tell me  
15 about its characteristics?

16 A Well, it shows that it has a  
17 granular base. Small areas of probable  
18 fibrotic tissue on the distal aspect. Um,  
19 it doesn't look too deep. It looks  
20 superficial. And the wound edges are --  
21 does look viable.

22 Q Does or does not?

23 A Does look viable.

24 Q Were there any photographs taken  
25 during the patient's January 17th

0412

1  
2 admission to ?

3 A Not that I know of.

4 Q Did you ever take photographs of  
5 the patient's foot while she was treated  
6 in your office?

7 A No.

8 Q Were any photographs taken of  
9 the patient during her July admission to  
10 ?

11 A Not that I am aware of.

12 Q Did you ever tell anyone from  
13 Visiting Nurses that you authorized and  
14 okayed the patient's discharge from having  
15 a nurse come on a regular basis?

16 A Um, I don't recall doing that.

17 Q Do you have any memory of your  
18 interaction with the patient at  
19 after the January 20th surgery?

20 A January 20th?

21 Q Yes.

22 A The surgery was done. Okay. At  
23 the hospital?

24 Q Yes, at the hospital.

25 A No.

0413

1  
2 Q Did you see at any  
3 time after January 20th and before she  
4 died on January 25th? In other words,

5 Doctor, you read to me your notes. I  
6 think all of your notes. So my question  
7 is, did you see her after January 20th at  
8 any time during the next five days?

9 A I don't believe so.  
10 : Well, he had read  
11 you the 1-24- note that he saw her  
12 on that date. Actually, I'm not sure  
13 he read that note.

14 MR. OGINSKI: No, he didn't.  
15 : My apologies.

16 A Yes, I did see her.  
17 : 1-24-.

18 Q Let's read that note, please.

19 A Okay. Patient is status post  
20 debridement of left foot.

21 Q Hold on one second.

22 A Patient is status post  
23 debridement of left foot times four days  
24 and continues to have severe pain to left  
25 lower extremity. Also complaining of

0414

1 tiredness. Physical examination.  
2 Dressing, left foot, clean, dry, intact,  
3 without drainage. Wound edge ischemic, no  
4 drainage. Antibiotic beads intact. Left  
5 lower extremity cool to touch. Compared  
6 to contralateral limb. Non-palpable pedal  
7 pulses. Wound culture sensitivity  
8 preliminary non-lactose fermenters.  
9 Assessment and plan. Status post  
10 debridement left foot. Peripheral  
11 vascular disease left lower extremity.

12 Q Let me stop you, Doctor. What  
13 led you to believe that she had peripheral  
14 vascular disease?

15 A There was -- The limb was cool  
16 to touch and there was no pedal pulses.

17 Q And was this as a result of  
18 edema or something else?

19 A Was not a result of edema.

20 Q What was the reason?

21 A Ischemia, vascular disease.

22 Q And what was the reason for the  
23 ischemia?

24 A That I am not sure of.

0415

1  
2 Q Go ahead, please.

3 A Rule out anemia. Vascular  
4 follo p appreciated. Agree with possible  
5 revascularization of lower extremity and  
6 MRA.

7 Q And that is what?

8 A That's a magnetic resonance  
9 angiogram.

10 Q What would that help show?

11 A It would show us if there is any  
12 blockage of the vessels.

13 Q Go ahead.

14 A Antibiotic beads may need to be  
15 removed prior to MRA. Repeat CBC with  
16 diff. And check anemia status. Patient  
17 may need blood transfusion. Follow up ID  
18 consult, DC PO antibiotics Ancef, one gram  
19 IV Q eight hours.

20 Q Was she still receiving IV  
21 antibiotics at that time?

22 A I think they might have switched  
23 her over to oral.

24 Q I'm sorry. Doctor, why was the  
25 antibiotic beads removed?

0416

1

2 A We usually line the beads with  
3 monofilament wire and if she's going to  
4 have an MRA we don't want any metal.

5 Q Did you see at any  
6 time after the surgery of January 20th  
7 until you saw her again on January 24th?

8 A No.

9 Q Is there a reason why you did  
10 not see her during that period of time?

11 A There is no reason.

12 Q Did you have any -- Did you  
13 specifically have any other podiatry  
14 attending see and evaluate this patient  
15 between that time from January 20th to  
16 January 24th?

17 A No attending.

18 Q Were you in contact with the  
19 medical residents or the podiatry  
20 residents during that period of time?

21 A With the podiatry resident.

22 Q Do you have any other notes for  
23 January 24th?

24 A No.

25 Q The pathology findings that we

0417

1

2 talked about earlier, the report is  
3 generated on January 27th after the  
4 patient had died. Did you have a  
5 discussion with the pathologist at any  
6 time after January 20th but before the  
7 patient died to learn the findings?

8 A No.

9 Q During your surgical procedure  
10 on January 20th did you send off specimen  
11 for frozen section so you can get an  
12 immediate evaluation of the specimen while  
13 you were still in the operating room?

14 A No.

15 Q After the patient died did you  
16 learn from a pathologist or another doctor

17 at that this patient had  
18 acute and chronic osteomyelitis?

19 A No.

20 Q Did you ever receive a copy of  
21 the pathology report?

22 A No.

23 Q Was it customary that when you  
24 do surgery and you send specimens off to  
25 pathology that not only does the hospital

0418

1

2 send you a copy of the operative report  
3 but also the pathology findings?

4 A Yes.

5 Q And do you have any reason to  
6 know why you did not receive the pathology  
7 findings?

8 A This is not my office.

9 Q I'm only asking if you know.

10 A I don't know.

11 Q Did you ever have a discussion  
12 with Dr. about this patient and  
13 what happened to her?

14 A I'm not sure.

15 Q Did you ever consult with  
16 Dr. about this patient's care and  
17 treatment while you were working in his  
18 office?

19 A I'm not sure.

20 Q Did Dr. provide you with  
21 any medical advice about how to manage  
22 this patient?

23 A I'm not sure.

24 Q Did you have any discussion with  
25 any podiatrist about the management of

0419

1

2 this patient prior to her hospital  
3 admission on January 17th, ?

4 A I don't recall.

5 Q On the days that you did see the  
6 patient in the hospital during her  
7 January 17th admission, did you have any  
8 conversations with any of her family  
9 members?

10 A No.

11 Q Did you learn from any of the  
12 podiatry residents whether they had had  
13 any conversations with any family members?

14 A No.

15 Q Did you ever speak to  
16 Dr. about this patient at  
17 any time?

18 A No.

19 Q Have you provided any type of  
20 written statement to  
21 regarding this  
22 particular patient?

23 A No.  
24 Q Have you been asked to provide  
25 any sworn testimony about this particular  
0420

1  
2 patient to anyone from the  
3 or the ?

4 A No.  
5 MR. OGINSKI: Thank you, Doctor.

6  
7 [TIME NOTED: 12:23 P.M.]  
8  
9

10  
11  
12  
13 Subscribed and sworn to  
14 before me this \_\_\_\_\_  
15 day of \_\_\_\_\_,  
.

\_\_\_\_\_  
Notary Public

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
0421

I N D E X

WITNESS	EXAMINATION BY	PAGE
	Gerald Oginski	314

E X H I B I T S

PLAINTIFF'S	DESCRIPTION	PAGE
Exhibits 1 & 2	Photographs	409

INSERTIONS  
Page Line

NONE

REQUESTS  
Page Line  
NONE

21  
22  
23  
24  
25  
0422

1  
2 CERTIFICATION

3  
4 I, , a Notary  
5 Public for and within the State of New  
6 York, do hereby certify:

7 That the witness whose  
8 testimony as herein set forth, was duly  
9 sworn by me; and that the within  
10 transcript is a true record of the  
11 testimony given by said witness.

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

17 IN WITNESS WHEREOF, I have  
18 hereunto set my hand this day of August,

19  
20  
21

\_\_\_\_\_

22  
23 \* \* \*  
24  
25

0423

1 ERRATA SHEET FOR TRANSCRIPT

RE:

2 DATE TAKEN: August 25,

3 PAGE LINE NUMBER CORRECTION REASON FOR

PAGE	LINE NUMBER	CORRECTION	REASON FOR
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17  
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\_\_\_\_\_  
(Signature of the Witness)

19  
20  
21  
22  
23  
24

Subscribed and sworn to  
before me this \_\_\_\_\_  
day of \_\_\_\_\_, .

