

****DE-IDENTIFIED DEPOSITION OF A SURGEON IN A TESTICULAR TORSION CASE
WHERE THE PATIENT LOST HIS TESTICLE****

1

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF

3 ----- X

4 , as m/n/g of , JR.

and , individually,

5

Plaintiffs,

6

-against-

7

8 M.D., "JOHN" , M.D., (the first name
being fictitious), "JOHN" , M.D. (the

9 first name being fictitious), "JOHN"

, M.D., (the first name being

10 fictitious), and ,

, M.D.,

11

Defendants.

12

----- X

13

14

15

February 1,

16

11:22 a.m.

17

18

19 EXAMINATION BEFORE TRIAL of the

20 Defendant, , M.D.

21

22

TOMMER COMPUTER TRANSCRIPTS

23 court reporters

192 Lexington Avenue, 8th floor

24 10016

(212) 684-2448

25 Ref:

2

1

2

A P P E A R A N C E S :

3

4

, ESQS.

5 Attorneys for the Plaintiffs

150 Great Neck Boulevard, Suite 304

6 Great Neck, New York 11021

7 BY: GERALD M. OGINSKI, ESQ.

8

9 , LLP

Attorneys for the Defendants

10

11

BY: , ESQ.

12

13

14

15 * * *

16

17

18

19

20

21

22

23

24

25

3

1

2 STIPULATIONS

3 It is hereby stipulated and agreed

4 by and between counsel for the respective

5 parties hereto that all rights provided by the

6 C.P.L.R., including the right to object to
7 all questions except as to form, or to move to
8 strike any testimony at this examination, are
9 reserved, and, in addition, the failure to
10 object to any question or to move to strike
11 any testimony at this examination shall not
12 be a bar or a waiver to doing so at, and is
13 reserved for, the trial of this action;

14 It is further stipulated and agreed by
15 and between counsel for the respective parties
16 hereto that this examination may be sworn to
17 by the witness being examined before a Notary
18 Public other than the Notary Public before
19 whom this examination was begun, but the
20 failure to do so, or to return the original
21 of this examination to counsel, shall not be
22 deemed a waiver of the rights provided by
23 Rules 3116 and 3117 of the C.P.L.R., and shall
24 be controlled thereby;

25 It is further stipulated and agreed by and

4

1 between counsel for the respective parties
2 hereto that this examination may be utilized
3 for all purposes as provided by the C.P.L.R.;

4 It is further stipulated and agreed by
5 and between counsel for the respective parties
6 hereto that the filing and certification of
7 the original of this examination shall be and
8 the same hereby are waived;

9 It is further stipulated and agreed by
10 and between counsel for the respective parties
11 hereto that a copy of the within examination
12 shall be furnished to counsel representing the
13 witness testifying without charge.

14

15

16 ** ** *

17

18

19

14 Q. State your address for the

15 record, please.

16 A.

17 .

18 Q. Good morning, Doctor.

19 Doctor, who is Dr. ?

20 A. Emergency room physician.

21 Q. Does he still work at

22 ?

23 A. No.

24 Q. Do you know where he currently

25 works?

6

1 , M.D.

2 A. No idea.

3 Q. Do you know when he last worked

4 at ?

5 A. No idea.

6 Q. Where do you currently work?

7 A. .

8 Q. What is your title at that

9 hospital?

10 A. House surgeon.

11 Q. How long have you held that title

12 of house surgeon?

13 A. Past 13 years.

14 Q. Other than ,

15 are you affiliated or associated with any

16 other hospitals?

17 A. No, sir.

18 Q. As a house surgeon, does that

19 mean you're on staff at the hospital?

20 A. Employed by the hospital.

21 Q. How many days a week do you

22 currently work at the hospital?

23 A. Five days.

24 Q. Five consecutive days?

25 A. Yes, sir.

21 Q. Yes.

22 A. That is

23 College of Science. The name of the town is

24 University.

25 Q. After completing your medical

8

1 , M.D.

2 school, what did you do as far as your medical

3 training?

4 A. I did two years of residency in

5 India before coming to the USA.

6 Q. What fields of medicine, if any?

7 A. Surgery and medicine.

8 Q. I'm sorry, you said two or three?

9 A. ' , three years.

10 Q. What hospital was that?

11 A. One was Hospital, in

12 . Same school. Then Hospital

13 in .

14 Q. After completing your three years

15 of surgery residency, what did you do as far
16 as your medical career?

17 A. When I came to States.

18 Q. When was that?

19 A. ' of June.

20 Q. When you arrived here, what did
21 you do to further your medical training or can
22 you remember?

23 A. I had to pass the CFMG.

24 Q. Did you do that on the first
25 time?

9

1 , M.D.

2 A. Second.

3 Q. Then what did you do?

4 A. I worked at the General

5 Hospital in .

6 Q. What area, what field of

7 medicine?

8 A. That was surgical assistance.

9 Q. How long did you do that?

10 A. Two years.

11 Q. What did you do after that?

12 A. First year surgical residency.

13 Q. After your one-year surgical

14 residency in , what did you do then?

15 A. I did my first year of surgical

16 residency in , New York.

17 Q. What year was that?

18 A. ' to ' .

19 Medical Center.

20 Q. What did you do after that?

21 A. Next two years in

22 .

23 Q. What field?

24 A. General surgery.

25 Q. After that?

10

1 , M.D.

2 A. Next two years in ,

3 .

4 Q. What field?

5 A. General surgery.

6 Q. What exactly were you doing

7 during those three years at the in

8 ?

9 A. That was the fourth year and

10 fifth year of my chief residency in general

11 surgery.

12 Q. Am I correct that the chief

13 residency is considered the last year of your

14 surgical residency?

15 A. Correct.

16 Q. What year did you complete your

17 surgery residency?

18 A. ' .

19 Q. What did you do after that,

20 Doctor?

21 A. Practice in , .

22 Q. What capacity?

23 A. General surgery practice.

24 Q. Did you have a private practice,

25 hospital-based practice or something else?

11

1 , M.D.

2 A. Private.

3 Q. Were you by yourself or with a

4 group of others?

5 A. I was by myself.

6 Q. For how long?

7 A. Probably ' .

8 Q. I'm sorry?

9 A. ' , ' .

10 Q. From ' to ' or ' ?

11 A. Yes.

12 Q. Did you have a subspecialty

13 within your field of surgery that you focused

14 on?

15 A. No.

16 Q. Did you participate or have any

17 training in any fellowships?

18 A. No.

19 Q. What did you do after or

20 ?

21 A. I practiced in ,

22 , for two years.

23 Q. In what area or what field?

24 A. General surgery.

25 Q. Was this again in private

12

1 , M.D.

2 practice?

3 A. Correct.

4 Q. What did you do after that?

5 A. New York.

6 Q. What year?

7 A. Must be ' , ' .

8 Q. What did you do in New York and

9 where?

10 A. I worked at 's

11 Hospital.

12 Q. What did you do there?

13 A. Emergency physician in general

14 surgery.

15 Q. Say that again?

16 A. There are two physicians. One

17 physician called medicine, one physician

18 called surgery in emergency room.

19 Q. What were you considered?

20 A. Surgical emergency room.

21 Q. How long did you do that?

22 A. Two years.

23 Q. After that?

24 A. I'm in , .

25 Q. Since that time?

13

1 , M.D.

2 A. Yes.

3 Q. Are you currently licensed to
4 practice medicine in the State of New York?

5 A. Yes.

6 Q. Do you have any other licenses
7 that are currently valid to practice medicine
8 in any other state?

9 A. State of .

10 Q. Are you board certified in any
11 field of medicine?

12 A. Emergency medicine.

13 Q. When did you become board
14 certified in emergency room medicine?

15 A. In ' .

16 Q. Are you board certified in any
17 other field of medicine?

18 A. No, sir.

19 Q. Have you ever taken your general

20 surgery board?

21 A. Yes.

22 MS. : Objection.

23 Q. When did you take your general

24 surgery board?

25 MS. : Objection.

14

1 , M.D.

2 MR. OGINSKI: What's the basis?

3 MS. : He said he is not

4 board certified.

5 MR. OGINSKI: I know. I'm

6 entitled to know whether or not he's ever

7 taken the board. If he has, how many times

8 he's taken them. I'm entitled to know. It's

9 his background.

10 MS. : Mark it for a

11 ruling.

12 MR. OGINSKI: You're not letting

13 him answer?

14 MS. : Correct.

15 MR. OGINSKI: Why?

16 MS. : It's irrelevant.

17 MR. OGINSKI: No, it's not.

18 MS. : He said he is not

19 board certified.

20 MR. OGINSKI: I'm entitled to

21 find out.

22 + MS. : Mark it for a

23 ruling.

24 Q. Did you take your written board

25 examination for the surgery board?

15

1 , M.D.

2 MS. : Objection.

3 Q. The board certification for

4 emergency room medicine, how many times did
5 you take those board exams?

6 MS. : Objection.

7 Q. Did you pass the board
8 examinations on the first time?

9 MS. : Objection.

10 MR. OGINSKI: You want to get a
11 ruling on this?

12 MS. : Why don't we
13 finish the deposition and we'll call with
14 everything we've marked.

15 MR. OGINSKI: No, I'm entitled to
16 it. It's background. It's his qualifications
17 and his credentials.

18 MS. : Right.

19 You asked him if he was board
20 certified. He answered.

21 MR. OGINSKI: I'm not limited by
22 that. I'm entitled to find out.

23 MS. : I objected and you
24 marked it for a ruling. Now you can submit
25 papers on it.

16

1 , M.D.

2 MR. OGINSKI: Relevancy is not a
3 proper objection. You cannot direct the
4 witness not to answer.

5 MS. : So you can prepare
6 your motion papers.

7 MR. OGINSKI: No, I'll do it now.
8 Let's go call the clerk.

9 MS. : I'm not calling
10 the court now.

11 MR. OGINSKI: Fine, I am.

12 MS. : Off the record.

13 (Informal discussion held off the
14 record)

15 MR. OGINSKI: I just want to note
16 for the record, I just had an off-the-record
17 conversation with Judge 's law

18 secretary. My adversary did not wish to
19 participate in any ruling with the court and
20 was not present for my discussion.

21 The court advised me by way of
22 the law secretary a reminder to remind counsel
23 that all objections as to relevancy are
24 reserved at the time of trial and they cannot
25 direct the witness not to answer questions and

17

1 , M.D.

2 that these objections will be addressed on
3 paper and that the only objections that are
4 proper ones relate to palpably improper
5 questions and privileges, otherwise counsel
6 cannot direct the witness not to answer.

7 In that light I'm going to go
8 forward.

9 MS. : For the record, in
10 no way did defense counsel indicate that we

11 did not wish to participate in any issues

12 regarding an objected question.

13 I made it perfectly clear that

14 the question could be marked for a ruling. We

15 could handle it on paper.

16 The question was palpably

17 improper. The doctor already testified that

18 he is not board certified in surgery and how

19 many times he has or hasn't taken the exam is

20 not a proper question.

21 MR. OGINSKI: It's proper as to

22 his credentials and qualifications.

23 MS. : Well, address it

24 on the papers.

25 Q. Doctor, at any time did you make

18

1 , M.D.

2 application to take the written surgical board

3 examinations?

4 MS. : What's the

5 question?

6 THE WITNESS: Same question.

7 MR. OGINSKI: Different question.

8 I want to know whether he applied to sit for

9 the written surgical board.

10 MS. : Did you ever apply

11 to take the exam?

12 THE WITNESS: We apply after

13 residency first time.

14 Q. Did you do that?

15 A. Right.

16 Q. Did you take the written surgical

17 boards?

18 A. The exam is in two parts.

19 Q. Did you take the first, the

20 written board examinations?

21 A. Yes.

22 Q. Did you pass the written board

23 examinations?

24 MS. : Objection. That

25 was asked and answered.

19

1 , M.D.

2 MR. OGINSKI: I'm entitled to

3 know whether -- which part of the two boards

4 he may or may not have passed. I don't know.

5 It's a credential issue.

6 MS. : I understand what

7 you are saying. The credentials are he is not

8 board certified in surgery. You've

9 established that already, so let's move on.

10 MR. OGINSKI: Right.

11 Q. Can you tell me how many times

12 you sat for the written examination?

13 THE WITNESS: Same question.

14 MS. : Objection.

15 MR. OGINSKI: Are you directing

16 him not to answer?

17 MS. : I'm telling you to

18 move on.

19 MR. OGINSKI: I want to know.

20 MS. : You can mark it

21 for a ruling and that's it.

22 Q. When was the last time that you
23 took the examination for your surgery board?

24 MS. : Objection.

25 Q. Have you ever taken your oral

20

1 , M.D.

2 examinations for the surgery boards?

3 MS. : Have you ever

4 taken the oral part?

5 THE WITNESS: No.

6 Q. Are you board certified in any
7 other field of medicine currently besides
8 emergency room medicine?

9 MS. : That was asked and

10 answered. He said no.

11 Q. Has your license to practice

12 medicine in the State of New York ever been

13 suspended or revoked?

14 A. No.

15 Q. Do you have an independent memory

16 of this child , Junior?

17 A. No.

18 Q. Did you review 's

19 records from Hospital of ?

20 MS. : Did you review

21 this prior?

22 THE WITNESS: Yes, this I did.

23 Q. Do you have any records of your

24 own relating to this child's care and

25 treatment other than what was shown to you

1 , M.D.

2 either today or in relation to this case?

3 A. This is what I see here.

4 MS. : Do you have any

5 written records aside from what is contained

6 in this chart?

7 THE WITNESS: No.

8 Q. Were any other documents shown to

9 you other than this chart in relation to this

10 case?

11 A. No.

12 Q. Do you know a Dr. from

13 Hospital in New York City?

14 MS. : It's .

15 Read it back.

16 MR. OGINSKI: Withdrawn.

17 Q. Do you know a doctor by the name

18 of , first name , last name

19 , ?

20 A. First name I don't remember.

21 There's some ENT surgeon. Dr. , he's an

22 ENT surgeon.

23 Q. Do you know a Dr. who's a
24 pediatric emergency room physician?

25 A. No, sir.

22

1 , M.D.

2 Q. Did you examine on
3 January 24, ?

4 A. Yes.

5 Q. All of my questions relating to
6 this child's care will be related to the time
7 period of January of .

8 During that time did
9 Hospital of have a program where
10 surgical residents rotated through that
11 hospital?

12 A. No.

13 Q. Were there residents who rotated
14 through the emergency room?

15 A. No.

16 Q. Did the hospital have any
17 residents that participated in any rotations
18 at the hospital that you were aware of during
19 that time?

20 A. No.

21 Q. Were there days or evenings when
22 you were designated to be on call at the
23 hospital back in January of ?

24 MS. : When you say "On
25 call," do you mean not at the hospital but on

23

1 , M.D.

2 call or --

3 Off the record.

4 (Informal discussion held off the
5 record)

6 MR. OGINSKI: I'll rephrase it.

7 Q. In addition to the days that you
8 worked at the hospital, did you also take
9 calls?

10 A. No.

11 Q. Were there times when you worked
12 nights?

13 MS. : In January of

14 .

15 A. Yes.

16 Q. How is it that you came to be
17 involved with the care of ,
18 Junior?

19 A. Because I was the house surgeon
20 that night.

21 Q. How was it that you were
22 contacted or spoken to or received some
23 communication that you were needed in regards
24 to Mr. ?

25 A. I was called to see the patient

1 , M.D.

2 on surgical consult.

3 Q. Who called you?

4 A. The clerk paged me.

5 Q. The clerk?

6 A. The physician tells the desk

7 clerk and the desk clerk paged me.

8 Q. Were you within the hospital at

9 the time you received the call to see

10 ?

11 A. I had to be always be in the

12 hospital. You can't leave the hospital.

13 Q. In January of , did you

14 consider yourself to a general surgeon?

15 A. What do you mean by "do you

16 consider?" I am a general surgeon.

17 Q. Okay, thank you.

18 MS. : Were you in

19 January of ?

20 THE WITNESS: Yes.

21 Q. Who was the anesthesiologist who
22 examined on January 24th?

23 A. I don't remember the name.

24 Q. In your review of this chart, did
25 you come across or did you see any note by any

25

1 , M.D.

2 anesthesiologist who examined ?

3 A. I did not see the note.

4 Q. Did you make a reference in one
5 of your notes to an anesthesiologist who did
6 examine and see on January 24th?

7 A. Yes.

8 Q. Right now you are referring to a
9 note that you wrote; am I correct?

10 A. Correct.

11 Q. What is the date of that note?

12 A. The date is 1/24.

13 Q. ?

14 A. .

15 Q. Does your note reflect who was
16 the individual who was the anesthesiologist
17 who saw that early morning?

18 A. No, it does not.

19 Q. Does your note indicate who the
20 anesthesiologist on call was who either saw
21 or his care was discussed with him?

22 A. No, I don't know the name and
23 it's not mentioned here.

24 Q. In January of , did
25 have an emergency

26

1 , M.D.

2 room?

3 A. Yes.

4 Q. In addition to a house surgeon such

5 as yourself, what other types of physicians

6 staffed that emergency room?

7 A. The medicine house doctor.

8 Q. Before you came to examine

9 on January 24, , did you have any

10 conversations with a Dr. about

11 ?

12 MS. : Prior to seeing

13 the patient.

14 A. Yes. I said, "I have an

15 emergency, a child with a testicular torsion.

16 I'd like you to come and see the patient."

17 Q. In January of , Doctor, did

18 your hospital have pediatricians on staff?

19 A. No.

20 Q. Were there any pediatricians on

21 call that were available to you or to other

22 physicians in the hospital if needed?

23 A. We don't have pediatric services.

24 Q. In addition to yourself as house

25 surgeon, were there other surgeons available

1 , M.D.

2 if you needed them to come in and assist you
3 in surgery?

4 MS. : Objection.

5 I don't think he can testify as
6 to whether or not they are available.

7 If you want to ask him if at any
8 given time if other surgeons are on call.

9 MR. OGINSKI: No, that's not my
10 question.

11 MS. : How can he know
12 where they are?

13 MR. OGINSKI: I'm not asking if
14 he knows where they are.

15 MS. : What are you
16 asking him?

17 Q. If you need assistance in the
18 operating room, are there other surgeons that

19 are available that you can pick up the phone

20 and call?

21 A. Yes, attending surgeon on call in

22 different specialty whom we assist in surgery.

23 Q. Again, in January of , did

24 your hospital have pediatric surgeons that

25 were affiliated or associated with the

28

1 , M.D.

2 hospital?

3 MS. : Ever?

4 MR. OGINSKI: I'm only saying

5 January .

6 MS. : No.

7 I mean just for clarification,

8 are you asking now if they had pediatrics

9 surgeons on call or if any pediatric surgeon

10 worked in the hospital in January of

11 because I'm not sure what you're asking him

12 now.

13 First you were asking about who's

14 on call and who's not.

15 MR. OGINSKI: No, this was not

16 about on call.

17 MS. : So did pediatric

18 surgeons ever work in the hospital in January

19 of ?

20 Q. As far --

21 MS. : Do you know?

22 THE WITNESS: No.

23 Q. As far as you know, were

24 pediatric surgeons on staff?

25 A. No.

29

1 , M.D.

2 MS. : Do you know?

3 Q. You don't know or there were

4 none?

5 A. No.

6 Q. Were there any pediatric surgeons

7 on staff?

8 A. Not to my knowledge.

9 Q. Thank you.

10 Were there any genitourinary

11 surgeons on staff at the hospital in January

12 of ?

13 A. Yes.

14 Q. In your experience, Doctor, have

15 you ever operated on a child?

16 A. Repeat the question. I did not

17 understand the question.

18 Q. Have you ever performed surgery

19 on a child?

20 A. I assisted in general surgery.

21 Not particular in a child.

22 Q. Can you explain what you mean?

23 A. I assisted in general surgery

24 which comes from the emergency room.

25 MS. : Off the record.

30

1 , M.D.

2 (Informal discussion held off the
3 record)

4 Q. In January of , were you
5 considered an attending physician?

6 A. I'm a house surgeon.

7 Q. Right.

8 Are you familiar with the phrase
9 "attending physician"?

10 A. Attending physician is who's on
11 call.

12 Q. Were there times in January of
13 where you were an attending physician?

14 MS. : Off the record.

15 (Informal discussion held off the
16 record)

17 Q. In your career as a surgeon have

18 you ever operated on a child?

19 A. Yes.

20 Q. In your capacity as a house

21 surgeon at Hospital of ,

22 have you ever had occasion to operate as the

23 primary physician, as a primary surgeon on a

24 child?

25 A. No.

31

1 , M.D.

2 Q. Have there been occasions when

3 you have operated as the assistant or the

4 secondary surgeon in a case involving a child?

5 A. Old time.

6 Q. What do you mean by "old time"?

7 A. Years back.

8 Q. In your experience, Doctor,

9 before January of , had you ever performed

10 surgery to evaluate testicular torsion?

11 A. I have assisted.

12 Q. When was the last time before

13 January of that you had assisted in that

14 type of procedure?

15 A. I don't remember.

16 Q. Approximately.

17 A. Maybe few months.

18 Q. Was that on a child or an adult?

19 A. It was around 18, 19 year old

20 male.

21 Q. Do you personally feel qualified

22 to operate on a testicular torsion?

23 A. I'm a house surgeon who's

24 employed to evaluate.

25 Q. Based upon your credentials and

32

1 , M.D.

2 your qualifications and your training, do you,

3 yourself, feel qualified to perform surgery in
4 a procedure known as a "testicular torsion "?

5 MS. : Why don't you ask
6 him if he feels that he's qualified to act as
7 the assistant surgeon.

8 I think the only issue we're
9 having here is the performing surgery and
10 assisting surgery because his position is an
11 assistant surgeon. He's the house surgeon.
12 He is not doing surgery as the primary surgeon
13 on his own.

14 That's the only issue here
15 because he's listening to the question
16 literally. I want us to make sure it's clear
17 what his position is.

18 MR. OGINSKI: Okay, I got it.

19 A. I evaluate the patient and call
20 the particular surgeon on call in different
21 specialty.

22 MS. : Listen to the
23 question.

24 Q. Do you feel qualified to assist
25 in surgery of a testicular torsion case of a

33

1 , M.D.

2 child?

3 A. Yes.

4 Q. Do you feel qualified to be the
5 primary physician involving an exploration of
6 a testicular torsion of a child?

7 MS. : Objection.

8 That's not what his position is.

9 MR. OGINSKI: I know it's not his
10 position.

11 I'm asking based upon his
12 credentials whether he feels he's qualified to
13 do the primary surgery.

14 MS. : I don't mean to be
15 obstructive. I don't know what that question
16 has to do with anything. Whether or not he

17 feels he's qualified to take another position
18 in the hospital. I don't know what that has
19 to do with anything.

20 MR. OGINSKI: Okay.

21 Q. Did require surgery
22 at the time you examined him?

23 A. Yes.

24 Q. Why?

25 A. Because he has a torsion of the

34

1 , M.D.

2 testes.

3 Q. Can you explain to me what
4 torsion of the testes is?

5 A. Twisting of the cord.

6 Q. That would be the spermatic cord?

7 A. Spermatic cord.

8 Q. How did you determine that he had

9 a torsion of the testes?

10 A. From the histories and physical
11 examination.

12 Q. What was it about your physical
13 examination that led you to conclude that this
14 child had a torsion of the testes?

15 A. Can I go back to my notes?

16 MS. : Sure.

17 Q. Tell you what, Doctor, before we
18 answer that question, why don't I have you
19 read your note in its entirety and if there
20 are abbreviations I'd like you just to explain
21 fully what that abbreviation represents.

22 A. Which one?

23 MS. : This one. Read
24 this note. Just referring to the Progress
25 Notes, it says " Hospital of

2 ." At the top of the page there's an
3 addressograph stamp on the right. It's dated
4 1/24/ and it says, "Progress Notes."

5 Q. Go ahead, Doctor, starting with
6 "date and time."

7 A. "1/24/ , I saw the child" --

8 Q. I'm sorry, what time is that?

9 A. 2:30 a.m. "I saw the child at
10 2:30 a.m. I was called. I examined the
11 patient, wrote history and physical in five
12 minutes and started pre-op work-up.
13 Anesthesia on call came and saw the patient.
14 Asked the child is under 12. He wants to
15 transfer the patient and Dr. was
16 called to see if anesthesia cannot be given
17 then he can't operate. Any way, Dr.
18 was informed and says -- he say transfer the
19 patient. Immediate transfer process was
20 initiated. The child has stated pain and
21 swelling since 8:30 p.m. as per mother. The
22 mother was explained that at approximately six

23 hour has passed so the survival of the left
24 testes is already jeopardized which can be
25 evaluated on exploration. So possibility of

36

1 , M.D.

2 left testes loss was explained to the mother
3 and also the need for the right orchiopexy was
4 explained to the mother. Patient's vital sign
5 was stable. Awaiting ambulance to transfer
6 hospital in next 15 to 30 minutes. Signed
7 ."

8 Q. Is that your number that's under
9 that?

10 A. "7082."

11 Q. What time did you time the note
12 at the end?

13 A. 3 a.m.

14 Q. Doctor, you told me what
15 testicular torsion was. What happened if

16 testicular torsion is not treated, what

17 happened to the testicle?

18 A. Testicle dies.

19 Q. Why?

20 A. Because of the compromise of the

21 circulation.

22 Q. Is there any time emergency

23 associated with treating a testicular torsion?

24 A. Since the beginning of the pain,

25 four to six hour, the testes is already dead.

37

1 , M.D.

2 Q. Could you explain what you mean

3 by that?

4 A. That means since the beginning of

5 the pain when the child complained and after

6 the four to six hour time when the testes has

7 lost its blood supply because of the twisting

8 and testes is no more viable.

9 Q. Where do you get that information
10 about that time frame?

11 MS. : Objection.

12 The problem that I have with the
13 question is that that could be just his
14 knowledge.

15 MR. OGINSKI: That's what I want
16 to know. I just want to know what basis he
17 has to have that particular time frame. Is it
18 common knowledge? Is it something else or
19 whatever it may be.

20 MS. : I understand what
21 you're asking except it's hard to determine
22 where your knowledge comes from.

23 MR. OGINSKI: He can tell me
24 that. It could be textbook. It could be
25 literature.

1 , M.D.

2 A. My training and my experience.

3 Q. In January of , were you

4 personally aware of any medical literature

5 addressing a time frame of something different

6 or other than the four to six hours and where

7 the testicle no longer is viable in a

8 testicular torsion?

9 A. No.

10 Q. At the time that you examined

11 this child, did you form an opinion as to

12 whether or not the testicle was still viable?

13 A. Yes.

14 Q. What was your opinion?

15 A. The testes is no more viable.

16 Q. Why do you say that?

17 A. Because mother said 8:30 started

18 pain. I saw the person at 2:30. So almost

19 five hours has passed.

20 MS. : Six.

21 THE WITNESS: Six hours.

22 Q. Did you recommend or request that

23 a sonogram be performed?

24 A. Not necessary.

25 Q. Why?

39

1 , M.D.

2 A. Waste of time.

3 Q. Why?

4 A. Because it's clinical diagnosis.

5 Q. What was the clinical diagnosis?

6 A. Torsion of the testes.

7 Q. Would a sonogram have assisted

8 you in determining whether there was blood

9 flow to the testicle?

10 A. It is loss of time against the

11 persons already past the five hours.

12 Q. Is there still a chance during

13 that four-to-six-hour window of time that you

14 discussed where the testicle if operated on

15 within that time frame can still be saved?

16 MS. : Objection.

17 The only thing that's been

18 established so far is that six hours had

19 passed. So to ask him if there is a chance

20 from the four to six hours is a hypothetical

21 question. I mean it was 2:30. It's six

22 hours.

23 Off the record.

24 (Witness and attorney exit room)

25 Q. Did you discuss your findings

40

1 , M.D.

2 with Dr. ?

3 A. Yes.

4 Q. When did you have a conversation

5 with Dr. ?

6 A. Within the time I examined the

7 patient I told him.

8 Q. What time frame was that?

9 A. Within the next five to ten

10 minutes after I saw.

11 Q. 2:30, 3:00 or when?

12 A. See, 2:30 I saw the patient. So

13 next ten minutes. Maybe I talk to him right

14 away.

15 Q. What did you tell Dr. ?

16 A. The person needs surgery.

17 Q. Why did you feel the patient

18 needed surgery at that time?

19 A. Because the testes was dead.

20 Q. What would the surgery

21 accomplish?

22 A. Removal of the testes and to save

23 the other testes.

24 Q. Was there a chance that if the

25 surgery were not performed within a certain

1 , M.D.

2 time frame that the other remain testes could

3 become affected?

4 A. Correct.

5 Q. How could that occur?

6 MS. : Read it back.

7 (Record read)

8 MS. : That's too broad

9 a question.

10 MR. OGINSKI: He's explained why

11 he's removing the one that's affected and

12 anticipating and preventing damage to the

13 remaining testicle.

14 MS. : What is your

15 question now? How does one testicle affect

16 the other?

17 MR. OGINSKI: Yes.

18 A. Because when we operate we take

19 the consent for the fixing of the other

20 testes, also orchiopexy.

21 Q. At the time that you examined
22 , had you formed a definite opinion that
23 his testes no longer had viability or was
24 there still some doubt that he might have
25 viability?

42

1 , M.D.

2 MS. : I have to object.

3 MR. OGINSKI: I'll rephrase the
4 question.

5 Q. At the time that you examined
6 and decided that he needed surgery, did
7 you have any impression in your mind as to
8 whether this testicle was still viable?

9 MS. : Objection to form.

10 It's "did you have any impression
11 in your mind."

12 If you want to ask him if he was
13 100 percent certain that it was not.

14 MR. OGINSKI: Okay.

15 MS. : Or something like

16 that.

17 MR. OGINSKI: Fine.

18 Thank you.

19 Q. At the time that you examined

20 , was it your opinion with 100 percent

21 certainty that this child's testicle was no

22 longer viable?

23 MS. : Can you answer

24 that?

25 A. It's four to six hour time, in

43

1 , M.D.

2 all possibility the testes was dead.

3 Q. I'm not asking what possibility.

4 I'm asking did you have 100 percent certainty

5 that the testicle was dead at that time?

6 MS. : Doctor, let me
7 explain. I think we're making ---

8 Q. Can I have an answer?

9 A. What is 100 percent in surgery?

10 Q. That's all I'm asking. If there
11 was or wasn't.

12 MS. : If you can't
13 answer 100 percent, then don't.

14 Q. Can you tell me whether --

15 MS. : Can you say 100
16 percent?

17 THE WITNESS: 100 percent? I
18 cannot say 100 percent. I can say 99.9
19 percent.

20 MS. : That's not the
21 question.

22 Q. At the time that you examined
23 , was there still the possibility that
24 his testicle was viable?

25 A. No.

1 , M.D.

2 Q. Why?

3 A. Because the crucial time has
4 lapsed since the beginning of the pain and the
5 physical finding of the pains, swelling,
6 redness, twisting of the cord, knotting of the
7 cord all point to the finding of the dead
8 testes.

9 Q. At any time after you examined
10 and spoke to anyone at
11 Hospital of , did anyone ever suggest to
12 you that the time frame in which the testicle
13 is no longer viable was not four to six hours?

14 A. Who's anyone?

15 Q. Any doctor, nurse or hospital
16 personnel.

17 MS. : Give him time
18 frame.

19 MR. OGINSKI: Yes.

20 MS. : Doctor, listen to
21 the question. Did anyone specifically tell
22 you a different time frame after you saw the
23 patient, did you have that conversation with
24 anyone?

25 THE WITNESS: No.

45

1 , M.D.

2 Q. Have you seen any medical
3 literature that suggested that the time frame
4 which a testicle is no longer viable is in the
5 range of seven to eight hours?

6 A. No.

7 Q. Have you seen any literature in
8 any medical textbooks to suggest that the time
9 frame, the length of time in which a testicle
10 is no longer viable after the onset of pain is
11 in the range of seven to eight hours?

12 MS. : Objection.

13 MR. OGINSKI: It's the same
14 question.

15 MS. : I don't see how
16 it's different from the last one.

17 MR. OGINSKI: I asked medical
18 literature first. Then I asked about
19 textbooks.

20 MS. : It's the same,
21 textbooks or medical literature.

22 MR. OGINSKI: No, it's not.

23 MS. : I'm objecting to
24 that.

25 I've been fairly lenient on what

46

1 , M.D.

2 I'm allowing him to answer. I'm not really
3 sure what the point is. He told you already
4 about what the time frame was. He told you

5 what his opinion of this patient was.

6 Q. I want you to assume a
7 hypothetical for the next question.

8 MS. : No.

9 MR. ORGINSKI: I'm entitled to
10 ask his opinion.

11 MS. : About a
12 hypothetical? No.

13 MR. OGINSKI: He's a defendant in
14 this case.

15 MS. : He is not here to
16 give you expert opinion about hypothetical
17 situations.

18 MR. OGINSKI: I'm going to phrase
19 the question as follows.

20 Q. At the time that you saw ,
21 am I correct that approximately six hours had
22 lapsed from the onset of his testicular pain
23 according to the mother?

24 A. Correct.

25 Q. If, in fact, the time limit in

47

1 , M.D.

2 which a testicle is viable is eight hours,

3 would you agree that assuming that fact,

4 assuming that to be correct, that the

5 conclusion that you reached at the end of your

6 examination solely based on time frame would

7 not be an accurate assessment of the viability

8 of his testicle?

9 MS. : Objection.

10 MR. OGINSKI: What's the basis

11 for your objection?

12 MS. : Form, Carvallo. I

13 mean and it's a hypothetical. It's palpably

14 improper, that question.

15 MR. OGINSKI: I totally disagree.

16 + MS. : Mark it. It's a

17 Carvallo objection and a form objection as

18 well.

19 MR. OGINSKI: No, your Carvallo
20 objection is improper because Carvallo relates
21 to his rendering an opinion as to treatments
22 of others unrelated to his treatment.

23 This is a team approach. A team
24 effort. And I am asking this doctor's opinion
25 about his evaluation of this child at the time

48

1 , M.D.
2 and my question is -- the question relates
3 solely to that. If his understanding of the
4 time of viability was different than what he
5 believed it to be, would his assessment of the
6 time he made it be different than it actually
7 was.

8 I'm not asking for him to comment
9 on anybody else's opinions or treatment that
10 was rendered by anybody else other than his
11 own.

12 MS. : By answering that

13 question he is.

14 MR. OGINSKI: No, and as a

15 defendant in this case I am permitted to ask

16 him not only hypothetical questions but also

17 opinion questions as to his own treatment.

18 MS. : That question

19 calls for expert opinion about other

20 defendants' care and treatment in this case.

21 MR. OGINSKI: Absolutely not.

22 MS. : I understand

23 you're asking him about his care and his team

24 but that very question affects every single

25 thing that transpired at of

49

1 , M.D.

2 as well.

3 MR. OGINSKI: He's the one making

4 the surgical decision.

5 MS. : He's the one who

6 saw the patient as a surgical consult at

7 of . So ask him about that. Not

8 about what happened at of

9 .

10 MR. OGINSKI: I didn't. I asked

11 him about this.

12 MS. : You asked him, in

13 effect, of . It's a

14 Carvalo question.

15 MR. OGINSKI: No.

16 + MS. : Mark it for a

17 ruling then.

18 Q. Am I correct, Doctor, that if it

19 had been your understanding that eight hours

20 was the limit of viability for the testicle to

21 survive that you would not have come to the

22 conclusion, as you did, that this testicle was

23 no longer viable at the time that you examined

24 this child?

25 MS. : Objection to form.

50

1 , M.D.

2 Q. You told me before that the
3 reason you concluded that this testicle was no
4 longer viable was because more than six hours
5 had elapsed; am I correct?

6 MS. : That wasn't the
7 end of it because of his physical findings,
8 history taken and a host of other things.

9 Q. Am I correct that was one part of
10 it?

11 A. Correct.

12 Q. What was it on your physical
13 examination that led you to conclude that the
14 testicle was not viable?

15 A. May I look at my notes?

16 Q. Yes.

17 A. The swelling.

18 Q. Can you just point to me what
19 you're referring to, Doctor? Is that your
20 history and physical note?

21 A. Correct.

22 Q. What is the date and time of that
23 note, please?

24 A. 2:35 a.m.

25 MS. : It's 1/24/.

51

1 , M.D.

2 Q. What section of the page are you
3 referring to, please?

4 A. This one.

5 Q. That would be the last page of
6 the history and physical?

7 A. Correct.

8 Q. Can you tell me what you wrote,
9 Doctor?

10 A. "Left scrotum acute pain and

11 swelling and bluish discoloration."

12 Q. What did the finding of bluish
13 discoloration suggest to you, if anything?

14 A. Color changes.

15 Q. What would cause the color
16 changes?

17 A. The process which has taken
18 place.

19 Q. Which is what?

20 A. Twisting of the cord.

21 Q. From your history of this patient
22 and his mother, was there an atraumatic
23 torsion or something else?

24 A. Atraumatic.

25 Q. Continue please with your note?

52

1 , M.D.

2 A. "Left higher than the right."

3 Q. What does this signify to you?

4 A. Normally left testes is lower
5 than the right but higher, because of the
6 twisting the testes is pulled upward.

7 Q. What is the medical significance
8 of that, if any, to you?

9 A. Twisting torsion.

10 Q. Go ahead.

11 A. "Cord could not be felt. Cord
12 knotted."

13 Q. When you said "Cord could not be
14 felt," again what was the significance of that
15 finding?

16 A. Because cord was knotted like a
17 lump.

18 Q. Oh, knotted, you said?

19 A. Yes.

20 Q. Okay, continue.

21 A. So cannot be felt, the cord.

22 Q. Continue with your note.

23 A. "Acute torsion of the left
24 testes."

25 Q. What do you have in parenthesis?

53

1 , M.D.

2 A. "Approximately five hour

3 duration."

4 Q. That would be from the onset

5 until the time that you're examining the

6 patient, correct?

7 A. Correct.

8 Q. Go ahead, Doctor.

9 A. "Needs exploration and orchiopexy

10 right testes."

11 Q. What is an orchiopexy?

12 A. Fixing of the testes to the

13 scrotum.

14 Q. That would be the currently

15 unaffected testicle, correct?

16 A. Correct.

17 Q. The purpose of that would be to

18 protect that testicle, correct?

19 A. Correct.

20 Q. The exploration that you

21 described would be for what purpose?

22 A. To remove the left testes.

23 Q. There is a surgical or medical

24 term used by physicians such as yourself to

25 remove the testes, correct?

54

1 , M.D.

2 A. Orchiectomy.

3 Q. You did not indicate in your note

4 that you recommended or suggested an

5 orchiectomy, correct?

6 A. I explain to mother.

7 Q. I'm asking you about your history

8 and physical note.

9 MS. : Did you write that

10 word?

11 THE WITNESS: Not in this note.

12 MS. : That's fine.

13 Q. In your Progress Note can you
14 show me where in your note you noted that this
15 child required an orchiectomy?

16 MS. : That's not what he
17 just said.

18 You want to ask him if he did
19 write it in his note?

20 MR. OGINSKI: It's the same
21 question.

22 THE WITNESS: It's not the same
23 question.

24 Q. Did you put in your Progress Note
25 timed at 2:30 a.m. at the beginning and time

2 at 3 a.m. at the concluding part of it that

3 this child required an orchiectomy?

4 A. I'll read my note.

5 Q. Wait, Doctor, I'm just asking

6 you. You read your note. I'm merely --

7 A. I'll read the same thing.

8 Whatever I wrote I read to you. That's my

9 answer.

10 Q. Let me ask it again.

11 MS. : If you want to ask

12 him if the word orchiectomy is in the note ask

13 him that but if he's interpreting his note to

14 mean that then that's his answer.

15 Q. You've already written in your

16 note that you explained to the mother?

17 A. Right.

18 Q. That there is a possibility of

19 loss of the testicle, correct? Am I correct

20 with that?

21 MS. : He wrote, "so

22 possibility of left testes also was

23 explained."

24 MR. ORGINSKI: To the mother,

25 correct?

56

1 , M.D.

2 MS. : Correct.

3 Q. Am I right, Doctor?

4 MR. OGINSKI: Don't testify.

5 MS. : I'm reading his

6 note. He already read onto the record.

7 Q. You told Mrs. that there

8 was -- and I'm using your word -- possibility

9 of left testes lost, correct?

10 THE WITNESS: Where is the

11 possibility?

12 MS. : Here.

13 MR. OGINSKI: Here.

14 A. Possibility of testes lost.

15 MS. : Yes.

16 Q. You did not tell Mrs. that
17 it was your opinion that this child's testicle
18 was not viable, correct?

19 A. I did in this above line, if you
20 read correctly, the mother was explained that
21 approximately six hour has passed so the
22 survival of the left testes is already
23 jeopardized. What does that mean?

24 Q. You tell me what it means.

25 MS. : Doctor, let me

57

1 , M.D.

2 talk to you.

3 MR. OGINSKI: There's a pending
4 question.

5 MS. : He doesn't have to
6 tell you what jeopardize means.

7 MR. OGINSKI: I want to know what

8 it means.

9 MS. : I think the
10 witness is getting the feeling that you're
11 being a little bit argumentative which is not
12 exactly what's happening here. I don't think
13 you're trying to attack him in any manner.

14 MR. OGINSKI: I'm not.

15 MS. : There's a
16 misunderstanding. I want to explain what's
17 happening. It's perfectly legitimate.

18 Off the record.

19 (Informal discussion held off the
20 record)

21 MR. OGINSKI: Read it back.

22 (Record read)

23 Q. Doctor, you said that the
24 testicle is already jeopardized. What did you
25 mean by that?

1 , M.D.

2 A. The testes is dead.

3 Q. Is there any reason why you did

4 not write that in your note?

5 A. Jeopardize means vascular

6 compromise. Jeopardize. It's dead.

7 Q. At the time you wrote that note,

8 could jeopardize mean that there's still a

9 chance it could be viable?

10 A. Only exploration can tell you.

11 My opinion was that it needed surgery right

12 away.

13 Q. To determine whether or not the

14 testicle was viable, correct?

15 A. No, he needed surgery.

16 Q. My question is did he need

17 surgery to evaluate the viability of the

18 testicle or something else?

19 A. To remove the dead testes also.

20 It needs surgery, right.

21 Q. Did you tell Mrs. that his

22 testicle was dead at the time that you spoke
23 to her?

24 MS. : I think we've gone
25 through this twice now, what he told her.

59

1 , M.D.

2 MR. OGINSKI: No, we have his
3 note but I'm asking --

4 MS. : You mean aside
5 from what's written in the note what did he
6 tell her?

7 MR. ORGINSKI: I'll withdraw the
8 question.

9 MS. : Okay.

10 Q. Do you have an independent memory
11 of your discussion with Mrs. of what you
12 said to her, what she said to you?

13 A. Yeah, possibility loss of testes

14 was explained to the mother.

15 MS. : No, he is asking

16 you in your mind aside from this note do you

17 have an independent recollection of talking to

18 her? Do you remember speaking to her?

19 THE WITNESS: I talked to her but

20 I don't remember. I can guess.

21 MR. OGINSKI: I don't want you to

22 guess.

23 MS. : I don't want you

24 to guess.

25 Q. You wrote in your note, Doctor,

60

1 , M.D.

2 that there was a possibility of loss of the

3 left testicle. Am I correct that is different

4 from an absolute loss of the left testicle?

5 MS. : He didn't testify

6 there's an absolute loss.

7 MR. OGINSKI: I want to know from
8 him whether there's a difference.

9 MS. : I have to object
10 to the question.

11 MR. OGINSKI: What's the basis?

12 MS. : You have not
13 established that he ever -- it was his opinion
14 that there was an absolute loss.

15 He has testified on a number of
16 occasions that he felt the testicle was not
17 viable and recommended surgery. One, for
18 exploratory surgery; two, to remove the
19 testicle if need be. That has been made clear
20 umpteen times today.

21 MR. OGINSKI: He said the
22 testicle.

23 MS. : He said he can't
24 determine 100 percent. That it was his
25 judgment based on his findings and the history

1 , M.D.

2 and his evaluation that the testicle wasn't
3 viable is what he said and he could not say
4 100 percent.

5 Q. You told me earlier it was your
6 opinion that at the time of your examination
7 you felt the testicle was dead, correct?

8 A. Correct.

9 Q. In your note you wrote that "I
10 explained to Mrs. not that the testicle
11 was dead but only that there was a possibility
12 that the left testicle was dead," correct?

13 A. Correct.

14 Q. In your opinion, Doctor, is there
15 a distinction?

16 A. Distinction of what?

17 Q. Between the possibility of the
18 testicle being dead and what you said to me
19 before, that the testicle was dead?

20 MS. : Didn't he just
21 testify that you would have to do surgery to
22 know. I thought that's what he just said.

23 MR. OGINSKI: We have two
24 different statements. I would like the doctor
25 to clarify.

62

1 , M.D.

2 A. My evaluation was the testicle
3 was dead. So the mother was explained the
4 possibility of left testes on exploration. So
5 exploration was required no matter what.

6 Q. Am I correct, Doctor, according
7 to your own history and physical which you
8 performed at 2:35 a.m. that you felt
9 approximately five hours had passed from onset
10 of pain. Assuming that number to be accurate
11 as you wrote it at that time, would you agree

12 that was still within the window of
13 opportunity in which his testes could still be
14 viable?

15 A. He's passed that time, four to
16 six hour. Five, I don't know where I got five
17 because I saw the patient -- 8:30 pain starts.
18 My note is 3. So I don't know where I got
19 five. But it's written this.

20 Q. Would you agree, Doctor, at the
21 time you wrote the note and examined the
22 patient you were in the best position at that
23 time to have that information at your
24 fingertip and not many years later where we
25 are now?

63

1 , M.D.

2 MS. : Objection.

3 That's argumentative.

4 Q. Regardless of where you got the

5 information from?

6 MS. : Could this be a

7 mistake?

8 THE WITNESS: That's what I'm

9 telling.

10 Q. It could also be accurate,

11 correct?

12 MS. : Objection.

13 MR. OGINSKI: You asked the

14 question.

15 MS. : Objection.

16 MR. OGINSKI: No.

17 MS. : Now we're creating

18 an argument where there is no need to be. I

19 really don't know why you're doing this. I've

20 been more than lenient letting you to ask

21 questions that have nothing to do with this

22 case.

23 MR. OGINSKI: No, that's wrong.

24 There are specific claims made against this

25 doctor and against others at this hospital.

1 , M.D.

2 So I'm entitled.

3 MS. : I'm not really
4 sure what exactly it is then because you're
5 asking the surgeon whether or not the patient
6 needed surgery and he said yes. What happened
7 after that was not his responsibility. So I'm
8 not really sure what this is all about. I'm
9 really not. We've gone way beyond the scope
10 of what this deposition should be.

11 MR. OGINSKI: I disagree. This
12 is his note. This is his action and his
13 observation.

14 MS. : That's fine.
15 We've gone through the note. He read both
16 notes.

17 Q. You wrote in your history and
18 physical approximately -- you wrote acute in

19 your summary of -- meaning "acute torsion left
20 testes (approximately five hours duration.")
21 Wherever you got that information
22 from, would you agree that -- and assuming
23 that number is correct -- that that is still
24 within the window of viability that you have
25 told me about, the four to six hours in which

65

1 , M.D.

2 the testicle still remains viable?

3 A. This five is a mistake.

4 Q. Why?

5 A. Because I reviewed my note. I

6 saw person -- mother said 8:30 pain started.

7 I saw the patient at 2:30. Then counting the

8 time, this five -- I should have written five

9 plus or whatever. This should say

10 approximately.

11 MS. : Off the record.

12 (Informal discussion held off the
13 record)

14 Q. At any time after you examined
15 this child at 3 a.m., did you ever make an
16 addendum or an additional note to this chart
17 indicating that your note on the physical
18 history and physical portion where you wrote
19 approximately five-hour duration was
20 inaccurate?

21 A. No.

22 Q. I'd like to go back to your
23 Progress Note, Doctor.

24 Who called anesthesia to come and
25 evaluate this child?

66

1 , M.D.

2 A. I called anesthesia.

3 Q. As part of your pre-op work-up,

4 did you request various laboratory tests to be
5 performed in preparation for surgery?

6 A. We don't need much work-up. CBC
7 they do it right away the patient comes in.

8 Q. After you examined the child, did
9 you write orders for this child?

10 A. Correct.

11 Q. As part of your orders, you wrote
12 that the child was to be NPO, correct?

13 A. Correct.

14 Q. That was in anticipation of
15 surgery, correct?

16 A. Correct.

17 Q. The child was also supposed to
18 have a CBC?

19 A. Correct.

20 Q. He was also going to have an SMA
21 18?

22 A. Correct.

23 Q. That's all blood work, right?

24 A. Yes.

25 Q. You also wanted to have a

67

1 , M.D.

2 urinalysis performed?

3 A. Right.

4 Q. You also wanted to have a consent

5 form signed, correct?

6 A. Correct.

7 Q. That would be a surgical consent

8 form?

9 A. Correct.

10 Q. Was a surgical consent form

11 signed?

12 A. I don't remember.

13 Q. I want you to turn, please, to

14 the Emergency Department Note. This note,

15 which at the top is a triage note, timed at

16 2:12 a.m. Does your handwriting appear

17 anywhere on this page?

18 A. No.

19 Q. Let me direct your attention to
20 the middle of the page, Doctor, where the word
21 "treatment" appears. Underneath that it says
22 "Surgical consult 2:30 a.m.," correct?

23 A. Correct.

24 Q. Underneath that it says, "left
25 something sonogram." Do you see that? Can

68

1 , M.D.

2 you read that out?

3 A. Yes, "Left testicle sonogram."

4 Q. Who requested a sonogram, if you
5 can tell?

6 MS. : If anyone.

7 A. The emergency room physician.

8 Q. Did the hospital have sonogram
9 equipment available to perform a sonogram at

10 that time?

11 A. Yes.

12 Q. Is there anything in this record

13 to indicate whether a sonogram was or was not

14 performed?

15 A. I did not order it.

16 MS. : He is asking if

17 there's anything in the chart which

18 demonstrates that a sonogram was done.

19 THE WITNESS: No.

20 Q. Does this notation on the

21 emergency room sheet suggest to you that a

22 sonogram was ordered?

23 A. That was his opinion.

24 Q. When you say "his," who do you

25 mean?

69

1 , M.D.

2 A. Emergency room physician.

3 Q. That a sonogram was ordered?

4 MS. : No, no.

5 MR. OGINSKI: I'll withdraw the
6 question.

7 Q. Can you tell whether a sonogram
8 was ordered based upon that notation?

9 MS. : Can you tell from
10 this note whether this was actually ordered?

11 THE WITNESS: You're to ask him.

12 MS. : Just listen to the
13 question, Doctor. Can you tell from this note
14 whether or not this was ordered?

15 THE WITNESS: It seems like he
16 might have ordered it. I don't know.

17 MS. : You don't know?

18 THE WITNESS: How could I say?

19 MS. : I don't want you
20 to guess. Just answer as best as you can.

21 THE WITNESS: I don't know.

22 MS. : Okay.

23 THE WITNESS: If he has order I

24 don't know, right.

25 MS. : If you don't know,

70

1 , M.D.

2 you don't know. It's okay.

3 Q. At the time that you examined the

4 child, was Dr. present with you

5 during your examination?

6 A. I don't remember.

7 Q. Can you turn, please, to the

8 nurse's note. I'm showing you a note that

9 appears to be a nursing note timed at 3 a.m.

10 on January 24, . I ask you to look five

11 lines down from the top where it starts --

12 MS. : "Patient seen by

13 doctor."

14 Q. "Patient seen by Dr. ."

15 MS. : "House surgeon

16 ."

17 Q. "House surgeon and
18 anesthesiologist." Does that refresh your
19 recollection as to whether you saw the child
20 at the same time or together with those other
21 individuals that are reflected in this note?

22 A. I don't know.

23 Q. Go down towards the middle of the
24 page, Doctor.

25 A. Okay.

71

1 , M.D.

2 Q. Where it says, "Dr. at
3 bedside explaining to parents about surgical
4 procedure. Patient NPO. Mother verbalized
5 understanding."

6 Do you have a specific memory of
7 explaining to the parents the surgical
8 procedure that was going to be performed on

9 their child?

10 MS. : Listen to the

11 question.

12 A. Specific memory of -- specific

13 memory? At present I can say that looking to

14 my note --

15 Q. Not your note, Doctor --

16 MS. : Listen to the

17 question.

18 Q. Do you remember now as we sit

19 here today?

20 MS. : Specifically what

21 you discussed.

22 Q. What you said to them and what

23 they said to you.

24 A. No.

25 Q. Did you tell Mrs. that her

2 son needed surgery?

3 A. Yes.

4 Q. Did you tell Mrs. why her

5 son was to be transferred to of

6 New York City?

7 MS. : Listen to the

8 question.

9 A. Because the procedure required,

10 the facility not available at our hospital.

11 Q. What facility was it that was not

12 available at your hospital?

13 A. Pediatric.

14 Q. Explain what you mean, please?

15 A. Anesthesia say he cannot give

16 anesthesia. The surgeon cannot operate.

17 Q. Did you speak to the

18 anesthesiologist who said they could not give

19 anesthesia?

20 MS. : Did you personally

21 speak to him.

22 A. Yes, he told me he could not give

23 anesthesia.

24 Q. Did he say why?

25 A. Because it's pediatric patient.

73

1 , M.D.

2 Q. Did he say what is it about the
3 pediatric patient that would prevent him from
4 giving anesthesia?

5 MS. : Did he say
6 specifically to you why?

7 A. No, he didn't say. He says,
8 "He's a child. I cannot give anesthesia."

9 Q. Did you find that to be unusual?

10 MS. : Objection.

11 Q. As far as you knew back in
12 January of were the anesthesiologists
13 employed by , to your
14 knowledge, qualified to give anesthesia?

15 MS. : Objection.

16 He is not an anesthesiologist.

17 He can't give an opinion as to an
18 anesthesiologist's qualifications, aside from
19 my Carvallo objection.

20 Q. Were there ever occasions in your
21 experience at Hospital of
22 where children were operated on at your
23 hospital?

24 MS. : That was asked and
25 answered.

74

1 , M.D.

2 MR. OGINSKI: No, I asked whether
3 he operated on.

4 My question is now were there
5 ever times when children in general were
6 operated on, received surgical treatment at
7 your hospital.

8 MS. : Well, he operated
9 on a child, then the child was operated on.
10 So let's not play on words here.

11 MR. OGINSKI: I don't mean to.
12 I'm merely asking him.

13 MS. : That was asked and
14 answered. Then if he operated on a child,
15 then the child was operated on.

16 Q. What else did this
17 anesthesiologist tell you?

18 A. That's it. "He's child. I
19 cannot give anesthesia."

20 Q. Were you present when this
21 anesthesiologist examined the child?

22 A. I don't remember.

23 Q. Did any anesthesiologist, to your
24 knowledge, examine this child?

25 A. Yes.

1 , M.D.

2 Q. How many anesthesiologists

3 examined the child?

4 A. Only one on call. The same guy.

5 Q. Do you know who was on call that

6 night?

7 A. I don't remember the name.

8 MS. : Let him finish the

9 question before you answer.

10 Q. If you needed to find out who

11 that individual was, how could you go about

12 doing that?

13 A. Rephrase the question.

14 Q. Sure.

15 If you're at the hospital,

16 whether it's a day, a week, a month later, you

17 say, "I want to find out who was on call with

18 me that night," how could you go about finding

19 out who was on call that night?

20 MS. : Objection.

21 If you want to ask me to find out

22 who was on call that night, that I can do.

23 MR. OGINSKI: No.

24 MS. : But you're asking

25 him. If you want to ask him if he's ever done

76

1 , M.D.

2 that or if he's done that for this night, then

3 I don't have a problem.

4 MR. OGINSKI: No.

5 MS. : But to ask him how

6 he would do something that has nothing to do

7 with this case is improper.

8 MR. OGINSKI: It has everything

9 to do with this case.

10 MS. : Ask him if he ever

11 did that.

12 MR. OGINSKI: Wait.

13 This physician has never been

14 identified. There's no note in this chart by
15 him. There's no examination by this
16 individual. He's never been identified by you
17 or anyone from the hospital.

18 MS. : Correct.

19 MR. OGINSKI: I'm probing now. I
20 want to know what steps he could make to
21 ascertain that. Would you go to the
22 Anesthesia Department? Would you go to some
23 logbook? Would you go to a nurse?

24 MS. : In his knowledge?

25 MS. : In his knowledge.

77

1 , M.D.

2 MR. OGINSKI: Yes.

3 MS. : Ask him if he does

4 that, if he customarily finds out.

5 MR. OGINSKI: No.

6 MS. : Then I'm not
7 allowing him to guess how to do something that
8 he's never done.

9 MR. OGINSKI: I don't know --

10 Q. If you want to know who this
11 person was, is there a way for you to find out
12 that information?

13 MS. : Do you know?

14 A. No, I don't know.

15 Q. Do you know whether the
16 Anesthesia Department maintains a list or a
17 record of those physicians who were on call on
18 any given day?

19 MS. : Do you know what
20 the Anesthesiology Department does?

21 A. I don't know.

22 Q. In your own department in
23 surgery, does the Surgery Department keep
24 lists of those physicians who are on call at
25 the hospital any given day?

78

1 , M.D.

2 A. Yes.

3 MS. : Off the record.

4 (Informal discussion held off the

5 record)

6 Q. Did you ask the anesthesiologist

7 what was it about the fact that this child was

8 under 12 that prevented him from giving this

9 child anesthesia?

10 A. No. He said he's a child. He

11 cannot give anesthesia. That's it.

12 Q. And?

13 A. He cannot give anesthesia,

14 surgeon cannot operate.

15 Q. Did you ask him why?

16 MS. : He just said no.

17 Q. Did you make any other inquiries

18 as to this doctor's ability or inability to

19 give anesthesia to this child?

20 A. It's beyond my capacity. I asked
21 him to give anesthesia. He said no. So I
22 call surgeon, say anesthesia cannot be given.
23 So he said, "I can't operate."

24 Q. The surgeon in this case, is that
25 doctor --

79

1 , M.D.

2 A. , urologist.

3 Q. Did this anesthesiologist say to
4 you in words or substance that he can only
5 give anesthesia to someone above a certain
6 age?

7 A. He say I cannot give this
8 anesthesia to the child. Period.

9 Q. Did he say what exactly it was
10 about the fact that he was a child that did
11 not permit him to give anesthesia?

12 A. You're asking me the same thing.

13 He say he cannot give anesthesia.

14 MS. : Just listen to the

15 question.

16 Q. Was this conversation in person

17 or by telephone?

18 MS. : Do you remember?

19 A. I don't remember.

20 Q. Where were you when this

21 conversation took place?

22 A. I don't know. Must be emergency

23 room because I never left emergency room.

24 Q. Were there any other

25 anesthesiologists at the hospital in the early

80

1 , M.D.

2 morning hours of January 24th other than the

3 individual you referred to in your 2:30 a.m.

4 note?

5 A. No.

6 Q. Other than this individual, were
7 there other anesthesiologists that you could
8 call or consult with to see if they could
9 administer anesthesia to this child?

10 A. No.

11 Q. Who is Dr. ?

12 A. Urologist.

13 Q. Why did you call Dr. ?

14 A. He's one attending surgeon on
15 call that night.

16 Q. What information did you tell Dr.
17 about when you called
18 him?

19 A. This child needs surgery.

20 Q. What did he say?

21 A. He said --

22 MS. : I want to clarify
23 that he's already indicated that Dr.
24 was called. He said if anesthesia cannot be
25 given, then he can't operate.

81

1 , M.D.

2 MR. OGINSKI: Okay, I got that.

3 MS. : That's already

4 been established.

5 MR. OGINSKI: That's in the note.

6 Q. Did you tell Dr. what

7 the anesthesiologist had told you?

8 A. He said he cannot give

9 anesthesia.

10 Q. Did Dr. say anything

11 else other than what's contained within your

12 note?

13 A. No. He said, "He can't give

14 anesthesia, I can't operate."

15 Q. Did he ask why this

16 anesthesiologist could not give anesthesia to

17 a child?

18 A. No.

19 Q. Who is Dr. ?

20 A. Chief of surgery.

21 Q. Why did you call Dr. ?

22 A. To inform him that there is a

23 patient with testicular torsion which needs

24 immediate surgery and the anesthesiologist

25 cannot give anesthesia so we are transferring

82

1 , M.D.

2 this patient.

3 Q. Was Dr. in the hospital

4 at the time that you spoke to him?

5 A. No.

6 Q. Did you contact him by phone?

7 A. Correct.

8 Q. Did Dr. ask why this

9 anesthesiologist cannot give anesthesia to

10 this child?

11 A. No.

12 Q. Did anyone at the hospital ever
13 ask why this anesthesiologist could not give
14 anesthesia to this child?

15 MS. : Did anyone ever
16 ask you?

17 MR. OGINSKI: No.

18 Q. Did anyone ever ask that you knew
19 about, did anyone ever ask why can't this
20 anesthesiologist give anesthesia to a child?

21 A. No.

22 Q. Can you describe to me what that
23 anesthesiologist looked like?

24 A. I don't remember.

25 Q. How many anesthesiologists were

83

1 , M.D.

2 working at the hospital in January of , if

3 you know?

4 A. Plenty. I don't know the number.

5 Yes, because it's a private service.

6 Q. I just asked if you knew.

7 MS. : Doctor, just let

8 him finish his question and just answer the

9 question. We don't need to volunteer any

10 additional information. Just answer the

11 question.

12 Q. Did you inquire of this

13 anesthesiologist as to his qualifications for

14 administering anesthesia?

15 A. No.

16 Q. Did you ever learn at any time

17 after this child left the care of your

18 hospital what that anesthesiologist's

19 qualifications were?

20 A. No.

21 Q. Have you ever worked with that

22 anesthesiologist at any time since January 24,

23 ?

24 A. I don't remember.

25 Q. Is this anesthesiologist still

84

1 , M.D.

2 working at Hospital of ?

3 A. At present?

4 Q. At present.

5 A. No.

6 Q. Beyond that --

7 A. I don't know. The whole service

8 has changed.

9 MS. : I think now we're

10 asking him to guess because he already

11 established that he really doesn't remember

12 who it is.

13 MR. OGINSKI: It doesn't sound

14 like he's guessing.

15 MS. : Do you know for

16 certain if the anesthesiologist is still there

17 or not?

18 THE WITNESS: I don't know

19 because the whole department is changed

20 totally.

21 MS. : Okay, that's fine.

22 Q. You wrote in your note,

23 "immediate transfer process was initiated."

24 What exactly was done and what do

25 you mean by that?

85

1 , M.D.

2 A. That means calling for the

3 ambulance.

4 Q. Who called?

5 A. Calling for Hospital.

6 Q. Who called?

7 A. The nurse did.

8 Q. Did you speak to anyone at

9 Hospital of during this

10 process of making arrangements to transfer
11 this child?

12 A. Transfer process done by the --

13 MS. : Just listen to the
14 question. It's a yes or no question. Did you
15 speak to anyone at of ?

16 THE WITNESS: No.

17 Q. Whose decision was it to transfer
18 this child to of as
19 opposed to any other hospital?

20 MS. : Was it your
21 decision?

22 MR. OGINSKI: No, that's not what
23 I asked. No, that's not my question.

24 THE WITNESS: That's not my
25 decision.

2 MR. OGINSKI: That's not my
3 question.

4 MS. : I have no problem
5 you asking that after you ask him if he did.

6 MR. OGINSKI: That's not my
7 question. I asked who made the decision to
8 transfer this patient to Hospital
9 of as opposed to any other hospital.

10 A. The emergency room physician.

11 Q. That would be Dr. ?

12 A. Correct.

13 MS. : Do you know.

14 THE WITNESS: I don't make
15 decision.

16 MS. : I don't want you
17 to guess.

18 Q. Did you have any conversation
19 with Dr. as to where this child
20 would be transferred to?

21 A. No.

22 Q. As you sit here now, do you know

23 why this child was transferred to,
24 Hospital of as opposed to any other
25 hospital?

87

1 , M.D.

2 A. I don't know.

3 Q. As of January 24, , to your
4 knowledge, were there other hospitals that
5 were in closer proximity to
6 Hospital of than where the child was
7 ultimately transferred to of
8 ?

9 A. I don't know because I don't take
10 process of transfer.

11 Q. I understand that.
12 I'm just asking your general
13 knowledge at that time.

14 MS. : As to geography?
15 Objection.

16 MR. OGINSKI: As to his knowledge

17 of the surrounding area.

18 MS. : Objection.

19 MR. OGINSKI: That's a proper

20 question.

21 MS. : Falsely improper.

22 MR. OGINSKI: No.

23 MS. : What his geography

24 knowledge is? Come on.

25 MR. OGINSKI: No, it has to do

88

1 , M.D.

2 with --

3 MS. : He just said he

4 doesn't decide where the patient goes. What

5 his knowledge with locations of different

6 hospitals is absolutely irrelevant.

7 Can we focus on what this case is

8 about?

9 MR. OGINSKI: We are. That's
10 what I've been doing this whole time.

11 MS. : It really
12 certainly seems like you're asking this
13 witness questions that you should be asking
14 somebody else. If that person hasn't been
15 located, it's not this doctor's fault.

16 MR. OGINSKI: I'm not placing any
17 blame for him on that.

18 MS. : Well, then I don't
19 know why you're asking him a litany of
20 questions that have nothing to do with him or
21 what his geography knowledge is.

22 MR. OGINSKI: Because --

23 MS. : He just said he
24 doesn't determine what hospital the patient
25 gets transferred to. What other location

1 , M.D.

2 hospital are mean nothing as far as this
3 witness is concerned.

4 MR. OGINSKI: Can I go on?

5 MS. : Ask relevant
6 questions to this witness.

7 MR. OGINSKI: They are all.

8 Q. Other than the anesthesiologist
9 being unable to administer anesthesia to this
10 child, was there anything from a surgical
11 standpoint that prevented you from operating
12 on this child?

13 A. Come on.

14 MR. OGINSKI: Read it back.

15 (Record read)

16 A. No.

17 Q. If there had been no problem with
18 anesthesia, the child was going to go to the
19 operating room, how quickly would you have
20 been able to get this child into the operating

21 room?

22 MS. : Objection to that.

23 Is totally speculative.

24 MR. OGINSKI: No, it has to do

25 with --

90

1 , M.D.

2 MS. : It didn't happen.

3 That didn't happen. So we're not going to

4 estimate how long it would have taken when

5 that didn't happen.

6 The patient was transferred. The

7 anesthesiologist said that he was unable to

8 give anesthesia. The patient was transferred.

9 So now let's not guess what would have

10 happened if something different had transpired

11 that wasn't transpired. Let's not hypothesize

12 now. It's not if anything. It's not what

13 happened. Anesthesia said he couldn't.

14 MR. OGINSKI: Okay, you want me
15 to state it for the record there is a claim in
16 this case that there was a time delay. I'm
17 entitled to probe and find out how long it
18 would have taken this child to get to the
19 operating room at this hospital had there been
20 no problem giving him anesthesia and that goes
21 to the issue of delay and because you may
22 bring in someone from the hospital later on to
23 say, "Oh, no, if he had gotten anesthesia
24 there wouldn't have been a problem." I don't
25 know. I'm entitled to ask it. I'm entitled

91

1 , M.D.

2 to probe.

3 MS. : Off the record.

4 (Informal discussion held off the

5 record)

6 Q. From the time that you concluded
7 that this child required surgery, assuming no
8 obstacles --

9 MS. : I don't have a
10 problem with what you're trying to get at.

11 MR. OGINSKI: I'll rephrase.

12 MS. : I'm having a
13 problem with this particular patient and
14 hypothetical situations.

15 Ask him generally in January of
16 if someone comes to the emergency room
17 how long does it take to get to the operating
18 room. I don't have a problem with that.

19 MR. OGINSKI: I can't. It has to
20 be specific, related to this day because I
21 have to know about the OR -- I have to know
22 about the OR schedule. I have to know about
23 if there's an emergency OR schedule.

24 MS. : So ask him
25 generally any patient on that day.

1 , M.D.

2 But with this particular patient
3 I have a problem because it's not what
4 happened with this patient. The patient
5 didn't go for surgery.

6 Q. Do you have a memory as you sit
7 here now of what the operating room schedule
8 was in the early morning hours of January
9 24th? Were there cases ongoing, were there no
10 cases going on at the time or something else?

11 A. At the night at this time usually
12 there is no surgery, emergency surgery.

13 Q. Generally, if you determined that
14 a patient needed surgery in the hour
15 approximately 2:30, 3 a.m. and there were no
16 cases going on at that time, how long would it
17 take to get that patient from the emergency
18 room to the operating room?

19 A. There's no time for patient to

20 take to OR but the time estimate is arrival of
21 the surgeon who is on call, Dr. and
22 the nurses prepare for OR, that depends on
23 them.

24 Q. If this child were going to have
25 surgery, who would you have called in to

93

1 , M.D.

2 either perform the surgery or assist with the
3 surgery?

4 A. That already discussed on --
5 stated so many times. Dr. , the
6 urologist.

7 Q. Am I correct it would have been
8 Dr. , the urologist to perform this
9 surgery?

10 A. Correct.

11 Q. Would you have assisted him?

12 A. Correct.

13 Q. Would there be any other
14 physicians that would have assisted during a
15 procedure?

16 A. No.

17 Q. During this procedure --

18 MR. OGINSKI: I'm not talking
19 about anesthesiologist.

20 MS. : That's assuming a
21 lot.

22 MS. : Off the record.

23 (Informal discussion held off the
24 record)

25 Q. Did you tell Mrs. that a

94

1 , M.D.

2 sonogram was going to be performed before her

3 son was transferred to Hospital in

4 ?

5 A. I don't remember.

6 Q. Did you tell Mrs. that her

7 son would get better care at

8 Hospital of as your hospital was not

9 properly equipped?

10 A. How can I?

11 Q. I'm only asking whether you --

12 A. I don't know where patient was

13 going.

14 MS. : No.

15 MR. OGINSKI: I'll rephrase the

16 question.

17 MS. : Doctor, listen to

18 the question. Just answer the question. It

19 was a yes or no question.

20 Q. Did you tell Mrs. in words

21 or substance that her son would get better

22 care at Hospital --

23 THE WITNESS: See, he's putting

24 Hospital.

25 MS. : Just listen to the

1 , M.D.

2 question.

3 Q. Did you tell Mrs. in words

4 or substance that her son would get better

5 care at Hospital of

6 because your hospital was not properly

7 equipped?

8 A. I --

9 MS. : It's a yes or no

10 question.

11 A. No.

12 Q. When you discussed the fact

13 that --

14 A. Because --

15 MS. : No, you answered

16 the question.

17 Q. When you discussed the fact that

18 her son would be transferred to another

19 hospital --

20 A. Yes.

21 Q. -- at that time did you know what

22 hospital he would be transferred to?

23 A. No.

24 Q. Did you tell Mrs. during

25 that conversation that her son would get

96

1 , M.D.

2 better care elsewhere because your hospital

3 was not properly equipped to deal with his

4 condition?

5 A. Correct.

6 MS. : Listen to the

7 question. Listen to the question.

8 Q. Did you tell Mrs. --

9 MS. : I don't think he

10 understood the last question. Please read

11 back the last question.

12 (Record read)

13 A. Better care means service not
14 available will be available somewhere else.

15 MS. : He said they did
16 not have service available, whether or not
17 that's properly equipped or service is
18 available is the same thing.

19 MR. OGINSKI: He can explain in
20 the second answer that question was premised
21 on Mrs. ' testimony.

22 MS. : I want to clarify.

23 MR. OGINSKI: He did that in the
24 next answer.

25 MS. : Do you understand

97

1 , M.D.

2 exactly the question?

3 THE WITNESS: I say anesthesia

4 not available. That's how service cannot be
5 given. Very simply. Surgery cannot be done.

6 MS. : That's fine.

7 Q. Did you have an opinion at the
8 time that the child was going to be
9 transferred as to how long it would take to be
10 transferred to any other hospital?

11 A. Immediate transfer.

12 Q. Did you have an opinion as to how
13 long it would take for him to actually arrive
14 at another hospital?

15 MS. : Did you formulate
16 an opinion in your head at that time?

17 A. No.

18 Q. Did the fact that it would take
19 additional time have any impact on your
20 medical or surgical opinions as to whether
21 this testicle could still be viable?

22 MS. : Read it back.

23 (Record read)

24 MS. : Objection to that
25 based on Carvallo.

98

1 , M.D.

2 MR. OGINSKI: I'm asking whether
3 he formed an opinion.

4 MS. : Yes, as to whether
5 or not what the anesthesiologist did would
6 have affected. That's not a proper question.

7 MR. OGINSKI: No?

8 MS. : He said the
9 patient should have surgery. The
10 anesthesiologist didn't give anesthesia. The
11 patient was transferred. So now you're asking
12 him what the anesthesiologist did as
13 improper --

14 MR. OGINSKI: No.

15 MS. : -- is what you're
16 asking.

17 MR. OGINSKI: That's not at all

18 what I'm asking.

19 MS. : That's what it

20 sounds like to me.

21 MR. OGINSKI: No.

22 Q. Do you have an opinion as you sit

23 here today with a reasonable degree of medical

24 probability as to whether if surgery had been

25 performed within a short period of time after

99

1 , M.D.

2 you evaluated this child and surgery had been

3 performed at your hospital whether this

4 testicle could have been saved?

5 A. My judgment clinical and opinion

6 is that the testes was practically dead on the

7 clinical findings.

8 Q. In January of , did you know

9 where Dr. lived, yes or no?

10 A. No.

11 Q. Did you know how long it would
12 have taken him to come in to the hospital?

13 A. No.

14 Q. In the past have you had to call
15 in Dr. to come in and perform surgery
16 in the instances where he was not physically
17 present in the hospital?

18 A. How can I remember two and a half
19 years back?

20 MS. : Do you know?

21 THE WITNESS: No.

22 Q. Is Dr. a specialist in
23 the field of urology?

24 A. Yes.

25 Q. Do you know whether he has a

100

1 , M.D.

2 subspecialty in pediatric urology?

3 A. I don't know.

4 Q. Did your hospital in January
5 have any pediatric surgeons that were
6 available for you to consult with or come in
7 to perform surgery?

8 MS. : That was asked and
9 answered.

10 MR. OGINSKI: No, I didn't ask
11 about pediatric surgeon.

12 MS. : Precisely you did.

13 MR. OGINSKI: I did?

14 MS. : You asked that
15 particular question. He said no.

16 MR. OGINSKI: I asked pediatric
17 in general.

18 MS. : And pediatric
19 surgeon he said no.

20 Q. Were you aware at the time that
21 this child was going to be transferred to
22 another hospital that this child would need to
23 be reevaluated at the next hospital all over

24 again before any decision would be made on

25 whether or not to operate?

101

1 , M.D.

2 MS. : Read it back.

3 (Record read)

4 MS. : Do you understand

5 that question? You're asking him the

6 practices of .

7 A. You're assuming -- guess what

8 other people.

9 Q. No, Doctor. I don't want you to

10 guess. I don't want you to assume. Only if

11 you know.

12 MS. : Do you know what

13 the practice was at of ?

14 THE WITNESS: No.

15 MR. OGINSKI: That wasn't my

16 question.

17 MS. : Okay.

18 Q. I only want to know about your
19 personal knowledge as it existed back in
20 January of . Did you know that when you
21 transferred a patient to another hospital for
22 whatever reason that before another hospital
23 would make the decision to operate that person
24 or child has to be reevaluated again once that
25 person reaches the next hospital? Were you

102

1 , M.D.

2 personally aware of that?

3 MS. : Object to form.

4 MR. OGINSKI: Okay.

5 Q. Did you have any personal
6 knowledge as to the procedures that other
7 hospitals utilized before making a decision to
8 take a patient to the operating room upon

9 transferring the patient from another

10 hospital?

11 A. I don't know.

12 Q. Were there instances where

13 patients were transferred from other hospitals

14 to your hospital that you were familiar with

15 the transfer arrangements?

16 A. I never accepted transfer so I am

17 not familiar with this.

18 Q. In January of , again, I'm

19 only asking about your personal knowledge,

20 would you expect that a patient who is

21 transferred to another hospital that the

22 seeing physician would automatically take the

23 patient to the operating room without

24 conducting his or her own examination?

25 MS. : Would he expect?

2 MR. OGINSKI: Yes, his
3 expectation and his knowledge.

4 MS. : This is too vague.

5 THE WITNESS: This is a
6 ridiculous question.

7 MR. OGINSKI: It's not.

8 MS. : I'm objecting to
9 the question.

10 MR. OGINSKI: The question is
11 important.

12 MS. : The reason why he
13 didn't call for the transfer. So if you want
14 to ask the person who responsible for the
15 transfer what they expected from the transfer
16 I don't have an issue with that.

17 But you're asking the surgeon who
18 recommended surgery who didn't call for the
19 transfer what the person who called for the
20 transfer expected to come of the transfer.

21 I mean that's not why he's here.

22 Q. Did you expect that this child

23 would be operated on immediately at the time
24 of his transfer to whatever hospital he was
25 going to?

104

1 , M.D.

2 MS. : Objection.

3 Q. What was your expectation upon
4 this child being transferred to another
5 hospital?

6 MS. : Can you answer
7 that.

8 A. That he will be explored for
9 removal of dead testes. What else?

10 Q. Before being examined?

11 A. Yes.

12 MS. : Objection.

13 Objection.

14 Q. Did you ever learn on that day

15 where this child was going to be transferred

16 to?

17 MS. : Before he was

18 transferred?

19 MR. OGINSKI: Yes.

20 A. No.

21 Q. After the child left your

22 hospital, did you ever learn that day where he

23 was transferred to?

24 A. Yes. When I went to the

25 emergency room I said, "Where was the child

105

1 , M.D.

2 sent." They said .

3 Q. Of ?

4 A. Yes.

5 Q. Was that the extent of the

6 conversation?

7 A. Yes, that's it.

8 Q. Was there any time frame that you
9 were aware of that necessitated treatment of
10 the unaffected testicle, in this case the
11 right testicle, before that testicle became
12 affected?

13 A. No.

14 Q. Was there any time urgency
15 associated with the transfer of this child
16 from your hospital to another hospital for
17 treatment?

18 MS. : Read it back.

19 (Record read)

20 MS. : The problem I have
21 is the word "urgency." He said that he
22 called for immediate exploration.

23 MR. OGINSKI: Okay. I'll
24 rephrase it.

25 Q. When you said you called for

1 , M.D.

2 immediate exploration, why did this child need
3 an immediate exploration?

4 A. To remove the dead testes and fix
5 up the right opposite testes.

6 MS. : We've gone through
7 this.

8 THE WITNESS: He's going around
9 for the last 15 minutes.

10 Q. If this child did not receive the
11 immediate surgery as you described, how soon
12 after did you expect the other testicle to
13 become affected?

14 A. I answered that question. I
15 don't know. Just two minutes back.

16 Q. Did you ever read the hospital
17 records for this child from
18 Hospital of ?

19 A. No.

20 Q. Did you ever speak to a doctor by

21 the name of Dr. who operated on this

22 child?

23 A. No.

24 Q. Did you ever speak to anyone at

25 Hospital of regarding

107

1 , M.D.

2 the care and treatment that they rendered to

3 this child?

4 A. No.

5 Q. Did you ever learn from anyone at

6 your hospital what the operating room schedule

7 was like at the time that this child was

8 transferred from your hospital?

9 MS. : Operating room

10 schedule at his hospital was?

11 MR. OGINSKI: No, I'll rephrase.

12 Q. When you spoke to someone in the

13 emergency room they told you the child was

14 transferred to in . Did
15 you ever learn from that person or anyone else
16 what the OR schedule in was like?

17 A. No.

18 Q. Was there any sign in the
19 emergency room on January 24, alerting
20 patients that children could not be given
21 anesthesia?

22 MS. : Do you know?

23 A. Rephrase the question.

24 Q. On January 24, , was there
25 any sign in the emergency room that alerted

108

1 , M.D.
2 patients that in the event a child needed
3 anesthesia they could not receive it there and
4 instead they would have to be sent out to
5 another hospital?

6 MS. : Do you know if

7 there was a sign that said that?

8 A. Sign means what?

9 Q. Was there anything posted for the

10 benefit of the patient that comes in to the

11 emergency room of Hospital of

12 on January 24, that in the event

13 their child needed surgery that anesthesia

14 could not be provided and their child would

15 then be transferred to another facility?

16 MS. : I have to object

17 because we haven't established that they can't

18 give anesthesia to a child -- they can't give

19 anesthesia to a pediatric patient. That was

20 never established.

21 MR. OGINSKI: The doctor told me

22 earlier that --

23 MS. : He called an

24 anesthesiologist. The anesthesiologist said

25 he couldn't give anesthesia to a child.

109

1 , M.D.

2 MR. OGINSKI: Right.

3 MS. : Right.

4 MR. OGINSKI: So that tells me
5 since he was the only anesthesiologist on call

6 --

7 MS. : On that night.

8 MR. OGINSKI: Right, on that
9 night, that any child coming in to the
10 emergency room would have to be transferred
11 elsewhere.

12 MS. : That has not been
13 established.

14 MR. OGINSKI: Okay, let me
15 establish it then.

16 MS. : Ask him if there's
17 any sign about anesthetizing a child. I have
18 no problem with that.

19 Q. As far as you know, was there any

20 sign posted anywhere in the emergency room
21 that children who needed surgery would be
22 unable to receive surgery because an
23 anesthesiologist could not give anesthesia to
24 children? Was there anything like that?
25 MS. : Was there anything

110

1 , M.D.

2 like that.

3 A. Written on the board? "Sign"

4 means written on the board.

5 Q. Was there any sign posted

6 anywhere?

7 MS. : In the emergency

8 room.

9 Q. In the emergency room saying, "We

10 can't give anesthesia to children"?

11 MS. : Is there any sign

12 that said that hanging on the wall.

13 A. No.

14 Q. As far as you know, were any of
15 the people in the emergency room triage area
16 advised to tell patients who had children who
17 required surgery at your hospital in the early
18 morning hours of January of that the
19 hospital was not equipped to provide
20 anesthesia to children?

21 MS. : You can ask him if
22 any of them ever told him that they were
23 advised of that but he can't know if they were
24 advised.

25 MR. OGINSKI: Well, that would

111

1 , M.D.

2 probably be the only way he would know.

3 MS. : Right.

4 MR. OGINSKI: If he knows.

5 MS. : Do you know?

6 A. I don't know.

7 Q. Was your hospital equipped back

8 in January of to accept ambulances and

9 patients who arrived by ambulance?

10 A. Come again.

11 Q. Sure.

12 In January of you told me

13 that your hospital had an emergency room,

14 correct?

15 A. Yes.

16 Q. Am I correct that there were

17 patients who arrived by walking in the front

18 door, correct?

19 A. Correct.

20 Q. Or the emergency room door.

21 There were also patients who arrived by

22 ambulance?

23 A. Yes.

24 Q. Do you know whether the ambulance

25 personnel were told that if they were bringing

112

1 , M.D.

2 a child to the hospital who needed surgery,
3 that they should take the patient elsewhere
4 because anesthesia cannot be provided to
5 children?

6 A. I don't know.

7 Q. Was this the first time while
8 were you working at this hospital that
9 anesthesia could not be provided to a child
10 that needed surgery?

11 MS. : Wait a second.

12 Read it back.

13 (Record read)

14 MS. : That he's aware

15 of?

16 MR. OGINSKI: Yes.

17 A. Previously the patient was
18 transferred too.

19 Q. How many occasions?

20 A. I don't remember. Two years

21 back.

22 Q. I'm talking more than two years.

23 MS. : No, he was saying

24 it was two years back. This happened two

25 years back.

113

1 , M.D.

2 Q. You are saying other than

3 you are saying there was another child

4 that also had to be transferred?

5 A. Not child.

6 Q. I'll rephrase the question.

7 A. Pediatric patient was transferred

8 in other circumstances as the service was not

9 available.

10 Q. Can you be clear what you mean by

11 "the service was not available," what service?

12 A. Same thing, anesthesia. The
13 anesthesiologist cannot give anesthesia to the
14 child.

15 Q. In that instance whether it was
16 the same anesthesiologist as in this case?

17 MS. : Objection.

18 MR. OGINSKI: Read it back.

19 (Record read)

20 Q. Other than in ' case
21 and this other pediatric case that you told me
22 about, were there any other instances that you
23 know of where a child had to be transferred to
24 another facility because anesthesia could not
25 be given?

114

1 , M.D.

2 A. I don't remember.

3 Q. Is there any notice posted again

4 in the emergency room advising patients that
5 the anesthesiologists who are working at the
6 hospital are not qualified or capable to give
7 anesthesia to children?

8 MS. : I have to object
9 to that question.

10 Q. In January of , were there
11 any --

12 MS. : The problem I'm
13 having is if they are qualified or capable.

14 Do you want to say if there's any
15 sign with respect to giving anesthesia to
16 pediatric patients, I have no problem with
17 this.

18 MR. OGINSKI: Okay.

19 Q. Were there any signs posted in
20 the emergency room --

21 A. No.

22 Q. -- relating to the inability of
23 the anesthesiologist to administer anesthesia
24 to children?

25 MS. : That's the problem

115

1 , M.D.

2 I'm having, the "inability of the

3 anesthesiologist."

4 If you want to say was there any

5 notice posted that he's aware of in January of

6 with respect to giving anesthesia to a

7 pediatric patient, I have no problem with

8 that.

9 It's the "inability of the

10 anesthesiologist." You're assuming every

11 anesthesiologist in the hospital is unable to

12 give any child anesthesia at any time.

13 MR. OGINSKI: That's the

14 assumption I've been led to believe.

15 MS. : Well, no. That's

16 the assumption that you've taken. Not the

17 assumption that I've taken.

18 I have no problem if you ask if

19 there's a sign with respect to anesthesia. I

20 think you already asked him that. He either

21 said no or he didn't know.

22 Q. Did you observe the

23 anesthesiologist examine this patient?

24 A. I don't remember.

25 Q. Was it customary that if a

116

1 , M.D.

2 physician at your hospital examined a patient,

3 did they make an entry of their findings in

4 the patient's chart?

5 MS. : Objection.

6 He can't testify as to the custom

7 of every other physician in the hospital.

8 MR. OGINSKI: Fine.

9 I'll ask it this way.

10 Q. In January did your hospital
11 have any rules or regulations that required a
12 physician who examined a patient to make
13 entries in the patient's chart regarding their
14 examination?

15 MS. : Objection.

16 MR. OGINSKI: What's the
17 objection?

18 MS. : Ask him the rules
19 and regulation with respect to him. Not with
20 respect to every physician in the hospital.

21 Every department has separate
22 rules and regulations.

23 MR. OGINSKI: I don't know that.

24 MS. : We all know.

25 MR. OGINSKI: I don't know that.

2 MS. : By Counsel, rules
3 and regulations are not the same for every
4 single person in the hospital.

5 MR. OGINSKI: I'm still waiting
6 for those rules and regulations.

7 MS. : Okay.

8 MR. OGINSKI: It's now been years
9 since we've been asking for them. I've gotten
10 no response at all on them.

11 MS. : Okay.

12 MR. OGINSKI: Am I going to get
13 them?

14 MS. : I'll try and give
15 you everything you've requested. I'm not
16 giving you the rules and regulations for every
17 single department of the entire hospital.

18 MR. OGINSKI: I want rules and
19 regulations or record keeping or record
20 entries in the chart by the anesthesiologist.

21 Q. Doctor, do you know as you sit
22 here now whether there was a requirement by
23 the hospital that anesthesiologist makes

24 entries in the chart whenever they examine a
25 patient?

118

1 , M.D.

2 A. Same question.

3 MS. : Do you know.

4 A. I don't know.

5 Q. At the time that you first became

6 an employee of this hospital, were you

7 provided with rules and regulations relating

8 to your duties and responsibilities?

9 A. Yes, orientation.

10 Q. That packet of information, is

11 that something that you still have?

12 MS. : Do you still

13 maintain the written materials given to you

14 when you first started?

15 THE WITNESS: No.

16 MS. : 13 years ago?

17 THE WITNESS: No.

18 Q. Were you ever provided updated
19 information regarding your duties and
20 responsibility relating to this hospital?

21 A. Yes, when you have meetings they
22 update it.

23 MS. : Okay, let's take a
24 break.

25 (Recess)

119

1 , M.D.

2 Q. Doctor, going back to your
3 credentials and qualifications, can you tell
4 me when you first took the written exam to
5 your surgery board, what year?

6 A. Approximately '77 -- no, wait --
7 must be ' .

8 Q. Can you tell me when you last
9 took the written exam for your surgery board?

10 MS. : Objection.

11 MR. OGINSKI: Directing him not
12 to answer?

13 MS. : Correct.

14 + MR. OGINSKI: Mark it for a
15 ruling.

16 MS. : I'm not directing
17 him not to answer. I'm objecting to the
18 question. I think actually it was asked
19 before and objected to before.

20 Q. Doctor, is it your opinion with a
21 reasonable degree of medical probability that
22 even if you had been able to operate on this
23 child when and at the time that you wanted to
24 that this testicle would not have been viable
25 at the time of surgery?

1 , M.D.

2 A. Yes.

3 MS. : That was asked and

4 answered already.

5 Q. I'd like you to turn, please, to

6 the Emergency Department Note again.

7 Before you were called to see the

8 patient, was it your understanding that the

9 emergency room physician had already examined

10 the patient?

11 A. Correct.

12 Q. Does this particular note reflect

13 that emergency room physician's findings?

14 A. Yes.

15 Q. Does the findings reflected in

16 the diagnosis towards the bottom of the page.

17 Do you see that?

18 A. Yes.

19 Q. Does that say, "left testicular

20 torsion"?

21 A. Correct.

22 Q. Is that Dr. 's note, if

23 you know?

24 MS. : Do you know?

25 MR. OGINSKI: I'll withdraw the

121

1 , M.D.

2 question.

3 Q. I direct your attention to the

4 top right side of the page where it says,

5 "exam by," it has the name. Does that say

6 ""?

7 A. Right.

8 MS. : It appears to be.

9 Q. Based on this note, again, what

10 appears to be Dr. 's note, is there

11 any opinion by Dr. as to whether or

12 not this testicle is viable at the time of his

13 exam?

14 MS. : Does Dr.

15 specifically note whether or not the testicle
16 is viable?

17 MR. OGINSKI: Yes.

18 A. Let me go through the note.

19 MS. : Is there something
20 in particular you're referring to?

21 MR. OGINSKI: No.

22 MS. : Okay.

23 A. It only says his impression is
24 left testicular torsion.

25 Q. At the bottom left of that same

122

1 , M.D.

2 note it's originally checked off that this
3 patient was going to be admitted, correct?

4 A. I cannot make it out. I don't
5 know.

6 MS. : Are you asking

7 him?

8 Q. There's an X in the section where
9 it says, "admit," correct? Next to it there's
10 a doctor's name that's written in there that
11 is then crossed out, correct?

12 MS. : He's just asking
13 if there's an X there.

14 A. Something's there which I don't
15 know.

16 Q. Above that it's check marked;
17 that says, "transferred to"?

18 A. "."

19 Q. It says, ""?

20 A. Correct.

21 Q. The name " " appears next to
22 that, correct?

23 MS. : Yes, by counsel.

24 MR. OGINSKI: Okay.

25 Q. Did Dr. discuss with

1 , M.D.

2 you his opinion when he told you that he
3 needed a surgical consult as to whether this
4 child's testicle was viable at the time that
5 he examined the child?

6 A. No, I don't remember.

7 Q. No, you don't remember or no, he
8 did not?

9 A. No, I don't remember.

10 Q. Doctor, going back to your note,
11 please, timed at 2:30 a.m., where you wrote
12 "And as child is under 12, he wants to
13 transfer the patient," did the fact of the
14 child's age affect -- that he was under 12
15 have any determination on the
16 anesthesiologist's ability whether or not to
17 give anesthesia?

18 MS. : Objection.

19 Q. Did the anesthesiologist who saw
20 this child tell you that because he was under

21 12 as opposed to any other age he could not

22 give anesthesia?

23 MS. : Did the

24 anesthesiologist specifically say 12 to you?

25 A. Yes, pediatric patient, he said.

124

1 , M.D.

2 MS. : Listen to the

3 question.

4 Q. Did he specifically say to you

5 that he could not give anesthesia to anyone

6 under the age of 12?

7 A. I don't remember but I wrote, so

8 that must be true.

9 Q. Thank you.

10 MR. OGINSKI: Thank you.

11 (Time noted: 1:52 p.m.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

125

1

2

3 A C K N O W L E D G E M E N T

4

5 STATE OF NEW YORK)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

I N D E X

EXAMINATION BY	PAGE
MR. OGINSKI	5

E X H I B I T S

PLF'S FOR ID DESCRIPTION	PAGE
1 Manila folder containing hospital records	5

RULINGS
14-22
47-16
49-16
119-14

20

21

22

23

24

25

127

1

2 C E R T I F I C A T E

3 I, , hereby certify that

4 the Examination Before Trial of

5 , M.D. was held before me on February 1,

6 ;

7 That said witness was duly sworn before

8 the commencement of the testimony;

9 The within testimony was stenographically

10 recorded by myself and is a true and accurate

11 record of the Examination Before Trial of said

12 witness;

13 That the parties herein were represented

14 by counsel as stated herein;

15 That I am not connected by blood or

16 marriage with any of the parties. I am not

17 interested directly or indirectly in the

18 matter in controversy, nor am I in the employ

19 of any of the counsel.

20 IN WITNESS WHEREOF, I have hereunto set my

21 hand this 1st day of February, .

22

23 _____

24

25