SUPREME COURT OF THE STATE OF

COUNTY OF

---------- X

, as Administratrix of the Estate of ,

Plaintiff,

-against-

,

, , M.D., and , M.D.,

Defendants.

---------- X

,

March 24,
10:23 a.m.

EXAMINATION BEFORE TRIAL of the Defendant,

CENTER, by , M.D.

TOMMER REPORTING, INC.
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, 10016
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A P PE A R A N C E S:

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S T I P U L A T I O N S

It is hereby stipulated and agreed by and between counsel for the respective parties hereto that all rights provided by the

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

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

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

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2 , M. D.,

3 called as a witness, having been first

4 duly sworn, was examined and testified

5 as follows:

6 EXAMINATION BY

7 MR. OGINSKI:

8 Q State your name for the record,

9 please.

10 A , M.D.

11 Q State your address for the record,

12 please.

13 A

, , ,

.

Q Good morning, Doctor.

Did you examine Mr. on January 22, ?

A Is that the Tuesday?

Q That would be Tuesday.

A Yes.

MR. : Feel free at any time to look at the chart before you answer a question.

A Yes.

, M.D.

Q What time did you examine Mr. ?

A I can't tell you exactly. It's somewhere between 6 and 6:30.

Q What information are you looking at in the chart that tells you that your exam was done before that time?

MR. : Objection to form.

You may answer.

That may not be the only information.

Q What is it that you are looking at in the chart that's assisting you in coming to that answer?

A The note from my resident or the resident at the time which is written at 6:40 a.m.

Q What date is that?

A On the 22nd.

Q Is that Dr. 's note?

A Yes.

Q What is it about that note that reflects that you saw the patient, if there is something to that effect, around 6 or 6:30

, M.D.

p.m.?

MR. : Object to form of the question you can answer.

If you're basing your answer just on the chart, that's fine. But if it's based on other information as well, let him know.

A From the notes on the 22nd I have written an order in the afternoon that shows that I saw the patient at the time and I also have a recollection of seeing the patient.

Q Take a look at your order, please.

What's the date of that order, Doctor?

A January 22nd.

Q What time did you write that order?

A I can't tell you exactly but I

assume it was after I saw.

Q That order was picked up when?

A It says 10:30 p.m.

Q How was it that you came to come in to examine Mr. on January 22nd between 6 and 6:30 p.m.?

, M.D.

A Can you rephrase the question. I don't understand what you're asking.

Q Why did you examine him at that time and on that day?

A It is my usual practice in the afternoon or the evening to do a round and see all the patients on that particular day.

When I came back from the clinic, I was informed that Mr. had an episode and I went in to see him.

Q Who were you with, if anyone, when

you saw him?

A I don't recall being with anyone.

Q Was anyone in the room at the time that you saw him?

A Apart from Mr. I have no recollection of anyone else.

Q Do you have an independent memory as you sit here now of what he looked like?

A Yes.

Q Can you describe for me what he looked like?

A Mr. was sitting up in bed.

, M.D.

Q I'm sorry, let me rephrase the question.

Can you describe what his physical

characteristics were?

A I'm not sure I understand.

Q Hair color, weight, size, build?

A Mr. was a tall man, he was quite thin, pale to some extent but apart from that I'm not sure I can add anything more.

Q Color hair?

A I can't tell you exactly.

Q Skin color?

MR. : Other than pale.

A Pale.

Q Had you ever spoken to Mrs. his wife at any time before January 22nd?

A I have no recollection.

Q The episode you had mentioned a moment ago, who had informed you of an episode that had occurred to him?

A , the PA.

Q Do you recall what she said to you?

, M.D.

A Not exactly, no.

Q Do you recall in substance what it was that she had mentioned to you that caused you to go to his room?

A At approximately 5:00 he had had an episode which he described as fainting for a few seconds, being cold and clammy but recovering very quickly after that.

Q Did you, in fact, examine Mr. ?

A Yes.

Q What examination did you perform?

A I think I examined his legs, his abdomen, his vital signs and I also talked to him.

Q What were your findings?

A In the legs I found that there's

no finding to suggest DVT. His abdomen, no significant findings different from the morning and I think I examined his chest as well but again I didn't find anything abnormal.

Q Did you write a note about your examination and findings?

A No.

, M.D.

Q Why?

A I can't tell you exactly.

Q Was there any nurse in the room during the course of your examination?

A I don't recall a nurse being there, no.

Q Was it your custom at the end of each day you would make rounds before leaving house on days that you would not be on call?

A Can you define custom for me?

Q Did you go on a regular basis?

A Yes.

Q Had you seen Mr. before you had made rounds or was it done at the same time you had made rounds that evening?

MR. : Object to the form.

I don't understand what you're asking.

Q When you saw Mr. , was it specifically because of the comments made to you by or was it in the usual course of seeing the patients on your service?

A I saw Mr. first because of the comments made by .

, M.D.

Q First off, as a general matter when you examine a patient and have various

findings, is it customary for you to make a note in the patient's chart that you were present, made an exam, had certain findings?

A No.

Q Are you aware of any rule or regulation by the hospital that requires you as a physician to make an entry in the patient's chart about any examination you make?

A No.

Q Is there any reason as you sit here today as to why you recall not making an entry in the patient's chart after you had conducted your examination?

MR. : Note my objection as asked and answered. He didn't know he said that.

Q When you said you didn't know, you mean as you sit here now you don't know?

A Correct, I don't know why I didn't make the note in the chart.

Q How long did you spend during your examination of Mr. that evening on

, M.D.

January 22nd?

A I don't know how long I spent.

Q Was Mr. able to speak and converse with you?

A Absolutely.

Q Did he have any complaints at the time that he was conversing with you?

A No, to the contrary he said he felt quite well compared to what he felt like an hour ago. He was conversing quite well. He was not short of breath and had no complaints.

Q Did he experience or relate to you that he had any problems being cold or clammy?

A Not that I recall.

Q When you saw him, did he have any oxygen being administered to him?

A I have a vague memory that he was,

yes.

Q What method was he receiving oxygen, face mask, nasal cannula or some other means?

A I cannot remember.

Q Was he on a regular floor?

A He was on a normal floor, yes.

, M.D.

Q Is that different than an ICU setting?

A Yes.

Q How is it different?

A Patients in the ICU are normally very sick, very ill, often intubated, requiring active support.

Patients on the , patients that basically don't require that intensive

care involvement.

Q Did Mr. have any pulse oximeter monitor attached to him at the time that you saw him?

A I assume he did, yes.

Q I don't want you to guess, Doctor, and I don't want you to assume.

Do you have any recollection as you sit here now as to whether he had a pulse oximeter monitor attached to him in some fashion?

A At that specific time that I saw him?

Q Yes.

A I don't have a recollection of it.

, M.D.

Q Had told you what, if anything, she had done at the time she had

learned of what had gone on with Mr.
with his shortness of his breath, his fainting
and his being cold and clammy?
A Specifically, I can't remember.
Q Did you review Mr. 's
chart to see if any health care provider had
made any entries in his chart from the time of
his episode where he had his shortness of
breath and the other items you mentioned up
until the time that you saw him?
A I don't recall.
Q Is it customary that prior to you
seeing and evaluating a patient that you review
the patient's chart for anything that had
occurred that day?
MR. : Before or necessarily
after?
Q Before seeing the patient.
A No.
Q In January of , what was your
title or status at ?

A I was the urological oncology

, M.D.
fellow.
Q How many years is the fellowship?
A It can be either two or three
years.
Q What year were you in at that
time?
A I was in my first year.
Q What is an arterial blood gas,
Doctor?
A It is a measurement of various
parameters taken from an arterial blood sample.
Q Is an arterial blood gas useful to
you as a physician to evaluate a patient's
oxygen saturation level?
A In some cases.
Q Which cases?

A In cases where a saturation is abnormal and you want to know more specifically just how abnormal it is.

Q Is an arterial blood gas a better test to evaluate oxygen saturation than a pulse oximeter?

A Not necessarily.

Q When you went in to see

, M.D.

Mr. , as you said, 6 p.m. and 6:30 p.m. on January 22nd, did you know whether an arterial blood gas had been performed prior to your arrival?

A I don't recall.

Q At some point after you had examined Mr. before he had left the hospital, did you ever learn that an arterial blood gas had been performed in and around the

time he had made the complaints of the shortness of breath?

A I don't recall.

Q In preparation for today's deposition, did you review this patient's chart?

A Yes.

Q In reviewing this chart, did you come across the patient's blood work for January 22nd? Do you recall seeing it, Doctor?

A I don't recall seeing it.

Q Let me show you this quick reference, what appears to be -- tell me what that is, Doctor?

A These are the results of an

, M.D.

arterial blood gas.

Q Does that tell you that an arterial blood gas was obtained at 5 p.m. on

January 22nd?

A Yes.

Q I think it's recorded as 1700 military time?

A Correct.

Q Tell me what those values represent beginning with pH?

A The pH is the level of acidity.

Q In this case was it within normal limits?

A Yes.

Q Go ahead, please, continue with the rest of the values.

A PCO2 is 30.

Q What does that represent?

A It's slightly below normal.

Q Does that have any medical significance to you?

A In a setting by itself, no.

Q Continue, please.

A The PO2 is 67.

, M.D.

Q Is that within normal limits?

A It's slightly below normal.

Q Continue.

A The bicarbonate is 21.

Q How about that, is that normal?

A Very slightly below normal.

Q Continue.

A The O2 saturation is 94.

Q What does that represent to you?

A Slightly below normal.

Q Is the 94 percent is that measured leiodermically (phonetic) or in some other fashion?

A I don't understand the question.

Q What is the difference between an oxygen saturation of 94 percent and 95 percent if you can tell me?

A I can't tell you exactly.

Q Continue with the next value, please.

A FIO2 is 3 percent.

Q What does that represent?

A That number doesn't make any sense to me.

, M.D.

Q Continue, please.

A The temperature is 36.

Q Continue.

A The BP in millimeter of mercury is 784.

Q Is that within normal limits?

A I don't know. I've never looked at that figure. I don't believe it's useful.

Q As an overall question, Doctor,

for that arterial blood gas result, what is the significance of those results to you?

A The patient has slightly low PO2 level in saturation and a low PCO2.

Q What does that mean in terms of how well he's profusing oxygen?

A It means that at that time he's -- can you rephrase what you mean by profusing oxygen.

Q The results, when you say that they are slightly low, are they abnormal?

A Mildly, yes.

Q Based upon those laboratory results, what action would you take to address those laboratory results, if any?

, M.D.

A I would, number one, try and figure out why these are mildly abnormal.

Q Are you familiar with something known as an AA gradient?

A Yes.

Q What is that?

A It's the difference between the oxygen tension in the alveoli what -- compared to the arterial oxygen tension.

Q Is there any way for you to determine the AA gradient based upon these arterial blood gas results?

A No.

Q How do you evaluate or determine a patient's AA gradient?

A There's a formula where you can put these figures into.

However, with an FIO2 of three percent you need to know the oxygen concentrations, if he's having or haven't having oxygen at the time that the arterial blood gas is taken. Without that you cannot do the calculation.

Q Based upon those results and let's

, M.D.

assume that you wanted to determine the patient's AA gradient, would you have requested that another arterial blood gas be drawn?

A At 5:00?

Q Yes.

MR. : Read it back.

(Record read)

MR. : He wasn't there.

MR. OGINSKI: I understand.

Q If you had been present and learned of the arterial blood gas results at or about the time that the results came back shortly after 5:00, would you have requested another arterial blood gas if you wanted to determine the patient's AA gradient?

A No.

Q Why would you want to determine

the patient's AA gradient?

MR. : Object to form.

You can answer.

MR. OGINSKI: I'll ask it this way.

Q Under what circumstances would you evaluate or determine a patient's AA gradient?

, M.D.

A I would evaluate a patient's AA gradient if I was unable to interpret the values that I had in front of me and make a deduction from that.

Q Based upon those values in front of you would they be sufficient enough for you to formulate a treatment plan?

A No, because I don't know what oxygen concentration that blood gas is taken.

Q So what would you do in terms of

getting other blood results or blood work done to get that information?

A You mean if I was there at 5:00?

Q Yes.

MR. : Object to form.

You can answer.

This is getting speculative because he wasn't there.

MR. OGINSKI: I understand that.

A I would confirm it with an oxygen saturation monitor.

Q On the floor where Mr. was a patient, did each room have an oxygen saturation monitor?

, M.D.

A No.

Q If you wanted a patient to be monitored with such a monitor, would you have

to make a special request or write an order for that?

A Yes, I'd talk to the nurse and tell her I wanted him to be monitored.

Q Did Mr. have any roommates?

A No.

Q Do those arterial blood gas results reflect that any other arterial blood gas was obtained on January 22nd?

A According to this specific form, no.

Q Am I correct that the only other laboratory results that appears on that particular page is an arterial blood gas for January 23rd the following day?

A Correct.

Q That is timed at what?

A 12:35.

Q That's at or about the time that the code is in process?

, M.D.

A Correct.

Q Doctor, is it your recollection that you were present to examine Mr. between 6 and 6:30?

A On what day?

Q On the 22nd of January, that's the Tuesday.

A Around that time, yes.

Q Is there anything that you have seen within this entire chart which would assist you in confirming that you were present in or around that time in Mr. 's room?

A My order would confirm that I was there that afternoon or evening. It does not help confirm the exact time.

Q Are you familiar with a medication known as Fragmin?

A Yes.

Q Did you order Fragmin for this patient?

A What time are you talking?

Q At any time.

A Yes.

Q Turn, please, to the order sheet

, M.D.

for January 21st.

Before we get to that, Doctor, in the event one of the health care providers wanted to know what information you found during your examination on the 22nd of January and there was no note in the chart about any examination, how could they determine, other than asking you in person or on the telephone, how would they know that you were present and had the findings that you described?

A There are two ways. The most common way is I get paged and I answer and I tell them which is the way it's normally done in hospital or sometimes a nurse will write a note saying that I saw the patient.

Q In your review of the patient's chart, was there any Nurse's Note to indicate that you were present for an exam of the patient on January 22nd?

A None that I can see.

Q Let's go back to the January 21st Order Sheet.

MR. : January 22nd Order Sheet?

, M.D.

MR. OGINSKI: No, 21st.

Q At that time you called in an order and you spoke to Nurse ; is that

right?

A I called in an order. I'm not sure who I talked to.

Q According to the note it says, " ;" is that right?

A It looks like it, yes.

Q Why did you order Fragmin at that time?

A Because I was called by a gastroenterology fellow and told that the endoscopy for that morning had been canceled so as soon as I found that out I called the to restart the Fragmin.

Q Did you learn why the endoscopy was cancelled?

A I understand there were too many emergency procedures happening on that day.

Q Had you formulated a plan either on your own or with other physicians as to taking the patient off his Coumadin therapy in preparation for having an endoscopy?

, M.D.

A I wasn't involved in the patient's care when he was taken off the Coumadin therapy.

Q At what time did you first begin to participate in the patient's care?

A For this admission approximately 6 a.m. on the Monday morning.

Q That would be January 21st?

A 21st.

Q Had you learned that his Coumadin had been withheld and stopped over the weekend on Saturday and Sunday, that would be the 19th and the 20th?

A Yes.

Q Did you learn for what reason it had been stopped?

A Yes.

Q Were you also aware that it had been withheld on the 18th as well as on Friday?

A Yes.

Q Tell me why it was withheld for those three days?

A When the patient came in to the Emergency Room I believe his INR's were very

, M.D.

high and the Coumadin was withheld because of that and then he was due to have an endoscopy on the Monday morning and so it was continued to be withheld.

Q Are you saying that from the time he arrived at the hospital on the 16th until the 21st he did not receive any Coumadin?

A Correct.

Q To your knowledge, were his INR levels being checked on a daily or regular

basis?

A Yes.

Q What is the difference between Fragmin and Coumadin?

A They are completely different drugs, both anticoagulated by separate pathways.

Q What is the dosing for Fragmin?

A Can you be more specific?

Q Is it administered in 12-hour doses, one dose every 12 hours?

MR. : Object to form. You mean --

MR. OGINSKI: Generally.

, M.D.

Q Generally, when you administer Fragmin, is it given more than once a day, twice a day?

What is the time frame in which you administer Fragmin?

A That depends on what you're using it for.

Q In this case what was it used for?

A In this case for therapy.

Q You're aware the patient had a histories of a DVT?

A Yes.

Q Did that place him at risk for developing a further clot?

A Can you be more specific.

Q Was Fragmin a form of anticoagulation therapy?

A Yes.

Q If the patient did not have Fragmin and the patient did not receive any Coumadin, would he then be at significant risk for developing a clot?

A It depends on his level of anticoagulation at the time.

, M.D.

Q Were you aware that he had been on long term Coumadin therapy from the end of October up until his arrival at in January?

A Yes.

Q The telephone order that you called in on January 21st at 9 a.m., this was one dose?

A It appears that, yes.

Q There's another note later on that day, is that a note written by you?

A Which one?

Q The middle note, Doctor.

A Yes.

Q You write "Withhold Fragmin tonight and in a.m.," correct?

A Correct.

Q Why was that?

A Because the patient was rescheduled for Tuesday morning to have his endoscopy in consultation with the GI fellow. They wanted the same protocol for Monday evening, Tuesday morning.

Q Dr. was the attending for

, M.D.

this patient?

A Correct.

Q After you examined Mr. somewhere between 6 and 6:30 on January 22nd, did you contact Dr. to let him know about the events that had occurred to Mr. ?

A Between -- after the examination, 6 and 6:30, no.

Q At any time that evening or that night into the early morning hours had you

contacted Dr. to let him know about the events that had occurred to Mr. ?

A I do not have a clear recollection about when I told him.

Q Under what circumstances do you as the fellow call the attending to let them know about what's happening with the patient when the attending is no longer present in the hospital?

MR. : Object to form.

You can answer.

You're assuming there's a variable rule for every case, every patient he follows. I don't know if that's true or

, M.D.

could even be described.

MR. OGINSKI: I don't know.

That's why I'm asking.

MR. : I'll allow him to answer if he can.

A Can you repeat the question.

Q Sure.

Under what circumstances would you call the attending to let them know about what's happening with a particular patient?

MR. : Objection.

Extremely broad but you can answer it if you can.

A I find it difficult to answer that question.

Q Did you become aware in the evening of January 22nd that Mr. suffered a bilateral pulmonary embolism?

A Yes.

Q Was this a significant event for Mr. ?

A Can you define significant.

Q Was this an event that required treatment?

, M.D.

A He was being treated.

Q Did you contact Dr. to let him know that Mr. had suffered a bilateral pulmonary embolism?

MR. : Note my objection.

He already said he wasn't certain when he told him.

MR. OGINSKI: No, I'm asking specifically about calling him about the events about the PE.

A I did talk to Dr. about the PE. I do not have recollection about when I talked to him about it.

Q Do you have any notes to indicate when you spoke to him?

A No.

Q Is it more likely that you spoke to Dr. the following morning when he came back into the hospital?

A I can't answer that. I don't know.

Q Did you review Dr. 's deposition testimony?

A Yes.

, M.D.

Q In it did you see the section in which I asked him precisely the question that I asked you as to whether you had contacted him or he had spoken to you on the evening of January 22nd?

A Yes.

Q And it was his recollection that he did not speak to you in the evening of January 22nd but rather the following morning at the hospital. Do you recall that?

A In his deposition?

Q Yes.

MR. : Object to this line of questioning whether he agrees or disagrees.

You can ask him what he recalls. Not what somebody else recalls.

MR. OGINSKI: I know.

A I do not recall him saying that he didn't talk to me on that night.

I do recall he said we talked about it in the morning.

Q On January 23rd did you speak to Dr. about Mr. 's PE?

, M.D.

A Yes.

Q Did you tell Dr. about your examination that you had performed the evening

before on January 22nd?

A I don't recall the specifics of the conversation.

Q Did you tell Dr. what time you had seen Mr. ?

A Again, I can't remember the exact specifics of the conversation.

Q Did you tell Dr. what your findings were regarding your examination of Mr. from the evening before?

A I can't remember the specifics of the conversation.

Q Do you recall reading in Dr. 's deposition he had spoken to you the following morning?

A Yes.

Q But that there was no information he had about the conversation with you on the evening of January 22nd?

MR. : Note my objection to this line of questioning.

, M.D.

Are you cross examining him on somebody else's testimony?

MR. OGINSKI: The witness said he read it.

MR. : But he's here to testify about what he recalls.

MR. OGINSKI: Right.

MR. : Not about what he recalls about somebody else's deposition, but what he recalls about treatment, the actual treatment in question.

So let's stick to that.

Q Was Mr. 's pulmonary embolism something that you felt should have been conveyed to Dr. shortly after it had been diagnosed?

A Yes, I believe Dr. should know about it.

Q Why should he know about it?

A Because Mr. is his patient.

Q Is there anything within the record that you reviewed to suggest that any

, M.D. doctor or health care provider caring for Mr. contacted Dr. at any time in the evening of January 22nd after his bilateral pulmonary emboli had been diagnosed?

A No.

Q Before January of , had you ever had occasion to treat patients with pulmonary emboli?

A Yes.

Q Can you tell me approximately how many?

A I can't give you a set number on it.

Q Can you approximate, 5, 10, 15 or some other?

A I'd say more than 15.

Q More than 20?

A Probably.

Q Where did you go to medical school, Doctor?

A ,

, .

Q When did you graduate?

A .

, M.D.

Q After that what did you do as far

as your medical training?

A I entered the stream of training in general surgery.

Q Where?

A In .

Q What hospital?

A Hospital.

Q How long was that?

A That would have been from ' through ' or '.

Q Did you graduate their program there?

A No, I transferred out of general surgery into urology.

Q How many years was the surgery program there?

A It's four years.

Q Did you stay in the program continuously from ' through ' or ' ?

A Yes, it's actually a different system to what you have here. We have what you call basic training which is the first three to

five years. Then it's advanced training which

, M.D.

is four years which are accredited.

So I did the basic training and three years of the advanced training.

Q When you transferred to urology, where did you continue your training?

A The urology is a state-based training scheme. So we change hospitals every year.

Q How many years did you do that?

A I completed the urology training which is three years plus fellowship.

Q You completed that in ?

A Correct.

Q The fellowship was included within those three years?

A No, the fellowship is .

So I finished urology training and then they require you to do a fellowship as part of the training.

Q Currently you're in your third year or second?

A This is my second.

Q Are you board certified in any field of medicine?

, M.D.

A In the ?

Q Yes.

A No.

Q Do you have any board certification or something comparable in ?

A Yes.

Q What is that?

A Urology.

Q What is the title or certificate?

A FRACS, Fellow of the College of Surgeons (Urology.)

Q After completing your fellowship, do you have any plans to stay in the or will you go back or what do you intend for your training?

A I plan to go back to .

Q Do you have any publications to your name, Doctor?

A Yes.

Q How many?

A I can't tell you exactly.

Q Approximately.

A In the order of 15.

, M.D.

Q Do any of them deal with the treatment and prevention of pulmonary emboli?

A No.

Q Do they focus primarily on the field of urology?

A No.

Q What is the general field of topics that you have published?

A It's a wide variety. It includes vascular surgery, general surgery and urology.

Q Have any of those publications been published in any peer review journals in the ?

A Can you define what you mean by peer review journals in the ?

Q Do you have an understanding as to what a peer review journal is?

A Yes.

Q Tell me what it means to you?

A Peer review journal is a journal which accepts articles that are reviewed by presumed experts in the field of that article.

Q Have any of your publications been

submitted or been published by any peer review

, M.D.

journal?

A Yes.

Q How many?

A I'd say the majority of them.

MR. OGINSKI: Do you have a copy of the CV?

MR. : I don't.

Q Getting back to Mr. , shortly after you saw him on January 22nd, did you feel that it was necessary to obtain any consultations by any specialists in the field of pulmonology?

A This is on the 22nd?

Q This is still the Tuesday.

A No.

Q Did you feel his condition

warranted an evaluation or consult by vascular specialist?

A No.

Q Did his condition warrant an evaluation or consultation with hematologist?

A No.

Q Who ordered the CAT scan on January 22nd?

, M.D.

A I can't remember whether it was myself or whether it had already been ordered before I arrived.

Q At the hospital did you also have residents that cared for patients at any given time on the urology service?

A Yes.

Q Did any urology residents see and

examine this patient from 5 p.m., January 22nd until you got there in and around 6 or 6:30?

A You're asking about residents specifically?

Q Yes.

A No, not that I'm aware of.

Q Did you see any note written by the PA about the events that occurred at 5 p.m. on the 22nd?

A No.

Q Doctor, I'd like you to look at the CAT scan order which is dated January 22, . Can you tell me who wrote that order?

A This is not a CAT scan order. This is an order for contrast.

Q Would that be prior to the

, M.D.

ordering of the CAT scan?

A I can't tell you that.

Q In any event, the order for contrast, what time is that noted?

A The actual order has no note.

Q Has no time?

A There's a time written here. I don't know when that time is written.

Q Can you read what is written there?

A What exactly is it that you want me to read?

Q On the right side the date and time.

A It says, "January 22, ' , 8:27 p.m."

Q What does that notation indicate to you, if anything, concerning that particular contrast order?

MR. : Without guessing do you know.

A No, I can't say for sure.

Q Does this notation indicate at

what time the order was picked up?

, M.D.

A Not necessarily.

Q Again, I know you didn't write the order but what else could this notation refer to -- I don't want you to guess -- or the timing refer to?

A It could refer to the administration of contrast.

Q If you had requested that the patient have a CAT scan, would you write a note for that?

A Not necessarily.

Q Would it be a verbal order?

A For a CAT scan order?

Q Yes.

A No, there's a specific form to fill out.

Q Did you see that in your review of the chart?

A No, I haven't seen it in here.

Q Is there anything in the chart to tell you what time Mr. had his CAT scan?

A No, I can't tell what time he had it.

, M.D.

Q Let me ask you to turn to the Nurse's Note timed at 5 p.m. on January 22nd.

In the last line of this note it says, "Patient to go for CT scan."

Do you see that?

A Yes.

Q Does that indicate the order for the CT scan was requested at some point before you arrived to examine Mr. ?

A I don't think it necessarily says that, no.

Q What does it mean to you, Doctor?

A It means that someone had made a plan that the patient needed a CT scan.

Q How does that plan get carried out?

MR. : Object to form.

You can answer.

A Normally a PA or a fellow or some physician would write an order form for a CT scan that would go down to radiology.

Q Does that order form get put in the patient's chart at some point?

A I don't know.

Q How did you learn that Mr. had suffered his bilateral pulmonary emboli?

A I was paged by a resident or a fellow from radiology.

Q What information did that person tell you about Mr. ?

A I was told that Mr. had bilateral pulmonary emboli, had a pericardial effusion.

Q Did he tell you or give his impression as to the size of the pulmonary emboli that he observed?

A Not that I recall.

Q Did he indicate whether it was a large PE or massive, small or something else?

A As far as I can recall the size was not given to me.

Q As a result of that conversation, did you go to the Radiology Department to review personally the CAT scan films that he

had interpreted?

A No.

Q At any time that evening on

, M.D.

January 22nd, did you personally review the CAT scan film?

A No.

Q On January 23rd, did you review the CAT scan film?

A No.

Q What, if anything, did you do upon learning the information by the radiology fellow or radiology resident?

A I made a number of phone calls.

Q To who?

A One was to the nurse looking after

him on the floor and the other one was to the residents that was looking after the patients on that floor.

Q Who was that resident?

A I can't remember.

Q What was the purpose of calling the patient's nurse?

A One, I wanted to find out how Mr. was. Two, was to tell her of the diagnosis and the third was to inform her that if she was concerned that anything was abnormal to call me immediately.

, M.D.

Q Wouldn't that be a standing order with any nurse or with any patient that if there was something abnormal with the patient

they would contact you, the residents, the fellow or the attending?

MR. : Object to form.

You can answer.

A As far as I'm aware there is no standing order that that has to happen.

Q Is it common sense within a hospital setting if a nurse is concerned or worries about a patient's particular condition one of the first people they would call is the physician caring for the patient?

MR. : Objection. That's different from what he already said.

Q Do you know the name of the nurse you spoke to?

A No.

Q Was the nurse of any other impression that that's what you were supposed to do if she had a concern that -- to call you or the residents or the attending if she had any worries about the patient?

, M.D.

A I don't have any opinion on that.

Q Did you speak to the resident for the floor?

A Yes.

Q What time was this, Doctor?

A I can't tell you exactly. It was immediately after I was called by the radiology person.

Q Were you on call that evening?

A We're generally on call every evening on the week days.

Q Do you call in-house?

A No.

Q From where do you take calls?

A From my apartment.

Q Where in physical proximity is

that to the hospital or at that time?

A Approximately three or four blocks away.

Q Did you, in fact, speak to the resident?

A Yes.

Q Man or woman?

A I can't remember.

, M.D.

Q What did you say to the resident?

A I let the resident know that Mr. was on the floor, his diagnosis and if the nurse called him for any reason that he's to let me know. He or she. I can't remember.

Q Is there anything in the chart to

indicate whether any resident saw the patient in or about 7 p.m. up until the next morning at 7:30 -- I'm sorry, up until 6:40 a.m. on the 23rd?

A No.

Q What does that tell you as far as whether or not a resident saw the patient during that time period?

A I don't think I can make any deductions from that.

Q Can you conclude that a resident did not see Mr. from 7 p.m. on the 22nd until about 6:40 in the morning the next day?

A No, I can't conclude it based on the notes.

Q Why not?

, M.D.

A Because it is possible that a resident had seen Mr. and not written in the notes.

Q Is that customary for the hospital in which you work where residents saw the patient and they don't make entries in the patient's chart?

MR. : Object to form.

You can answer.

A Could you rephrase it.

Q How often does it happen that residents will see patients and not make entries in the chart?

MR. : Object to form.

You can answer.

A I can't answer that. I don't know.

Q If a resident on your service -- if you had learned that a resident had seen and

examined a patient and had not written a note, would you make any comment to that individual about the fact that there's no note in the chart?

A Depends on the circumstances.

, M.D.

Q Would you expect a note to be written every time a patient is seen and examined?

A Not necessarily.

Q Under what circumstances would you not expect to see a note written by a resident after doing an exam?

MR. : Object to form.

You can answer.

It's a very broad question.

A I find that difficult to answer.

Q You had mentioned to me a moment ago it would depend on the circumstances whether or not it would be appropriate to not have a note. What are those circumstances that you are describing?

MR. : Object to form.

You can answer.

A If I presume there are multiple circumstances, one that comes to mind is if a resident saw Mr. and found no abnormality and no cause for complaints or no need for a change in management, then he or she may not write a note.

, M.D.

Q Is it a requirement that you are

aware of, either hospital requirement or some other rule or regulation that states that a note has to be written for the patient every day they are in the hospital from a physician?

MR. : For any physician?

MR. OGINSKI: Any physician.

MR. : One note a day?

MR. OGINSKI: Yes.

A I don't know of a requirement.

Q Is it good practice to do that?

A Yes.

Q You had mentioned that you make rounds in the evening time, correct?

A Late afternoon, evening, yes.

Q On those occasions do you occasionally have the urology residents present with you?

A Sometimes, yes.

Q Do you also make rounds in the morning?

A Yes.

Q Is it good practice that when you

see the patients on rounds in the morning,

, M.D.

either you or the residents, if you examine a patient that you make a note of that and whatever findings are for the morning?

A It is good practice, yes.

Q Would the same be true for seeing patients later on in the evening?

A Not necessarily.

Q Getting back to Mr. on January 22nd on the floor he was on, how many patients were there to an individual particular nurse?

A I don't know.

Q Did you know what the customary number of patients were, if there was such a

thing, as to how many patients would be assigned to any given nurse at any given time?

A No.

Q Was there a nurse stationed in his room on a continuous basis on January 22nd?

A Not that I'm aware.

Q If you had wanted the patient to be monitored by a pulse oximeter and the unit was brought in to the patient's room, is there some central monitoring place on that floor

, M.D.

where a nurse who is not in the room would be able to see the patient's pulse oximeter saturation levels?

A Not that I'm aware of.

Q In other words, if you wanted to

find out the patient's saturation levels from the pulse oximeter you would need to be present within the room looking at the monitor?

A Yes.

Q Did that device print out any hard copy or any paper reflecting what the patient's oxygen saturation levels were?

A I don't know.

Q I may have asked you this. I'm sorry if I did. When you saw the patient on January 22nd between 6 and 6:30, did he already have a pulse oximeter monitor on at that time?

MR. : Asked and answered.

You went through this.

MR. OGINSKI: Sorry.

Q Did you order that the patient be put on a pulse oximeter monitor?

MR. : Note my objection. I think you've been through this.

, M.D.

MR. OGINSKI: I didn't ask him this.

A I ordered that he be monitored by a pulse oximeter, yes.

(Recess)

(Record read)

MR. OGINSKI: I'll withdraw the question and rephrase it.

Q Doctor, on January 22nd did you order that the patient be placed on a pulse oximeter?

A Yes.

Q Can you turn, please, to your January 22nd note and the order sheet. Can you read your order, please, from beginning?

A "CBC plus SMAC plus troponin in a.m., fluids IV normal saline 80 cc's per hour

wean O2 to keep O2 sats greater or equal to 96 percent."

Q Tell me what you mean by that?

A I meant that the oxygen could be decreased as long as the saturations stayed above or equal to 96 percent.

Q How often did you expect that the

, M.D.

patient's pulse oximeter would be checked?

A I'd expect it would have been checked at least on an hourly basis.

Q Who would you expect to monitor that O2 saturation level, would it be a nurse, a PA or someone else?

A A nurse.

Q When it would be monitored, would

you expect that the patient's pulse oximeter recording or oxygen saturation levels would be recorded in the patient's chart at the time they checked it?

A Not necessarily.

Q Are there any reasons that you know of as to why a nurse who's monitoring this particular device would not record such information if he or she observed it?

A I don't know of any reason why she wouldn't record it.

Q In January of , was there any policy that you are aware of as to how often or frequently nurses would take and obtain vital signs on a patient on the floor Mr. was on?

, M.D.

A That's a very broad question.

It depends on the patient's status.

Q Are there some patients whose vital signs are taken more frequently than others? Do you know how often Mr. 's vital signs were being taken on January 22nd?

A Not exactly, no.

Q Can you turn, please, to the Vital Sign Sheet for January 22nd.

Do you have that page, Doctor?

A Is this the one you're referring to?

Q Yes, that's the page.

At the top it says, "Vital signs chart." For January 22nd, the last column on the right, do you see that?

A Yes.

Q There are various entries and notations made there?

A Yes.

Q That particular column has six different hours noted at the top, 4, 8, 12, then again 4, 8, 12?

, M.D.

A Yes.

Q The first 4, 8, 12, am I correct, that would represent the morning hours?

A Yes.

Q The last 4, 8, 12 would represent the evening hours?

A Yes.

Q Can you tell me looking at that column how many times this patient's vital signs were obtained on January 22nd?

MR. : Object to the form.

You mean how many times it's

recorded?

MR. OGINSKI: Fair enough.

A It was recorded at least three times.

Q Do you have any reason to believe the patient's vital signs were obtained and not recorded on that date?

A Yes.

Q What is that reason?

A Well, the patient had an episode at 5:00 and I don't see it recorded here but I do know that he had vital signs taken.

, M.D.

Q That was by the nurse who came in to check on him, correct?

A Correct.

Q Other than that note which I believe is timed at 5 p.m., is there anything else to suggest to you that this patient's vital signs were obtained but not recorded?

MR. : Without guessing do you know.

A I don't know.

Q I need you to turn back, please, to the vital signs chart. Looking to two thirds of the way down there's a row it says, "pulse ox percentage."

Do you see that, Doctor?

A Yes.

Q There is a recording there of 98 percent under the column of 8 hour which I believe would be 8 in the morning; is that correct?

A Correct.

Q Is there any other pulse ox notation present at any time for the rest of this day?

, M.D.

A Not on this form, no.

Q Am I correct, that this 98 percent oxygen saturation levels would be prior to Mr. having his endoscopy procedure and before his pulmonary emboli?

A Yes, it seems to be that.

Q Turning the page, please, to the January 23rd vital signs chart in the row for that day where it says, "Pulse ox percentage," is anything recorded at all about the patient's pulse oxygen saturation levels?

A Not that I can see.

Q Is there anything anywhere that you observed in this patient's chart to reflect what the patient's pulse ox saturation levels

were at any time after you wrote your order that his pulse ox should be monitored?

A Yes, on the morning of the 23rd a note by Dr. .

Q That's timed at 6:40 a.m.?

A Yes.

Q She writes to saturation of 98 percent?

A Correct.

, M.D.

Q While the patient is receiving two liters of oxygen?

A Correct.

Q Look up where Dr. 's note is, there's a nursing note. The middle, it says, "Remain on O2, two liters nasal cannula

saturation 99 percent."

Do you see that?

A Correct, yes.

Q Do you know precisely when it was that this particular Nurse notes this oxygen saturation level?

A No.

Q Other than Dr. 's note timed at 6:40 a.m. indicating saturation level 98 percent, is there any other recorded note to show an hourly reading of the patient's oxygen saturation level?

A Not that I can see.

Q Did you get called by any doctor or nurse in the late evening of January 22nd about Mr. 's condition after you had written your order?

A Yes. Well, not about the

, M.D.

condition. The radiology person rang me.

Q I'm way past that now.

After you had spoken to the resident who written the orders you've already read to me, did you get called again by anyone from that at any time later that evening?

A No.

Q Did you get called by anyone caring for Mr. , now we're in the January 23rd day from 12 midnight up until 6:40 a.m. when Dr. saw the patient?

A No.

Q When you saw Mr. on January 22nd did you consider transferring him to the ICU at that time?

A I did consider it.

Q Tell me why you chose not to transfer him to the ICU?

A Because the patient was stable.

He was comfortable with no symptoms. He was being treated with anticoagulation. He was being monitored.

I did not feel ICU was going to add anything more to his management.

, M.D.

Q The fact that there's no hourly recording of the patient's pulse oximeter level, does that indicate to you that the patient was not monitored for that particular device on an hourly basis?

A No.

Q Is there anything to suggest to you that the patient was monitored hourly?

MR. : Anything in the chart?

Q For the pulse ox other than what

we've gone through.

MR. : I don't know what you're asking him.

MR. OGINSKI: Sure.

Q Was this patient's pulse ox monitored on an hourly basis on January 22nd?

A I can't be 100 percent sure of that.

Q Can you answer that with any degree of certainty?

A Not with certainty, no.

Q What is the treatment for a patient who has been diagnosed with a pulmonary embolism?

, M.D.

A Anticoagulation.

Q What form?

MR. : Objection to form.

You can answer.

A There are multiple ways to treat pulmonary embolism.

Q What are the various ways?

A Intravenous Heparin or low molecular weight Heparin or -- yes, in the acute form, those two.

Q Is one method preferable over the other for an acute event?

A No.

Q Under what circumstances would you administer IV Heparin to a patient who has been diagnosed acutely with a pulmonary embolism?

MR. : Objection to form.

You can answer.

A I don't understand what it is you're asking me.

Q Why would you administer IV Heparin instead of Fragmin? I'm sorry, is

Fragmin another way of discussing low molecular weight Heparin?

, M.D.

A Yes.

Q What are the differences in giving IV Heparin as opposed to Fragmin in a patient who's had an acute pulmonary embolism?

MR. : Objection to form.

You can answer if you can.

A There's a different method of administration. There's different complication profile.

Q What are those methods of administration for IV Heparin?

A IV Heparin is given intravenously.

Q What is the method by which you

give the Fragmin?

A Subcutaneously.

Q Is one faster acting than the other?

A I don't believe so.

Q Is there any clinical evidence of literature that you are aware of that Fragmin is as effective as IV Heparin in treating an acute pulmonary embolism?

A My understanding is Fragmin is the equivalence to IV Heparin for this treatment.

, M.D.

Q What is your understanding based upon, is that based upon a review of the literature or something else?

A It's based upon my years of

experience in teaching which is based on literature.

Q Is there anything that you recall as you sit here now as to what particular literature it is that suggests that Fragmin is the equivalence to IV Heparin when treating an acute pulmonary embolism?

A I can't name my specific literature if that's what you want.

Q Once you had been told that the patient had an acute pulmonary embolism, did you consider giving the patient IV Heparin?

A I did consider it, yes.

Q Did you administer IV Heparin?

A No.

Q Why?

A Because I felt Fragmin in this case was equivalent, if not better.

Q Is there any way that you are aware of monitoring the efficacy of Fragmin?

, M.D.

A The efficacy of Fragmin, it is not monitored routinely.

Q Can Heparin be monitored?

A Yes.

Q Is that by checking INR levels?

A No.

Q What do you check to evaluate the efficacy of Heparin?

A A PTT level.

Q Let's go back to January 21st, please, the Monday when you had ordered that the patient have one dose of Fragmin.

He did receive that one dose, correct?

A I believe he did, yes.

Q Was this one dose given at approximately 9 a.m. on January 21st sufficient

to anticoagulate the patient?

A The patient was already anticoagulated and this was on top of that.

Q So would it be sufficient to anticoagulate him?

A I believe so.

Q How then would you explain his

, M.D.

bilateral pulmonary embolism that he was diagnosed with the following day?

MR. : Object to form.

Rephrase that.

MR. OGINSKI: Okay.

Q How did Mr. suffer his bilateral pulmonary embolism in light of the fact that he had been anticoagulated with

Fragmin?

MR. : Object to form.

You can answer.

A I'm not sure I can explain that fully.

Q Did Dr. , to your knowledge, look at the patient's CAT scan at any time on January 23rd?

A I don't recall.

Q Had you seen Mr. on the morning of January 22nd, the Tuesday?

A In the morning, yes.

Q Did you examine Mr. on January 22nd in the morning?

A Yes.

Q Is that a note that you wrote?

, M.D.

A No.

Q Is that Dr. 's note?

A Yes.

Q What is it about that note that suggests that you were present?

A In the morning when I did my rounds Dr. joined me.

Q Is that something you recall as you sit here now?

A Yes.

Q Contained within her notes is that complete examination that you observed her to perform?

MR. : Object to form.

MR. OGINSKI: I'll withdraw the question.

Q Who examined the patient that morning, you or Dr. ?

A I did.

Q Did Dr. record the

observations and findings that you made?

A She recorded some of the findings and observations that I would have made.

Q Were there any that she left out

, M.D.

that you felt were significant, that should have been recorded but were not?

A Not that I can recall of my examination of that day.

Q Is a patient who has a history of a DVT at risk for developing a pulmonary embolism as a general question?

A It's possible.

Q Is a patient who is immobile who also has a history of a DVT at higher risk for

a pulmonary embolism than someone who is otherwise mobile?

A Not necessarily, so.

Q Does immobility have anything to do with increasing a patient's risk for developing a PE?

A For developing a PE, I don't know that.

Q Was there any reason as to why Mr. was not given any anticoagulation therapy immediately after he had been taken off his Coumadin?

MR. : Objection.

Now, you're talking what happened

, M.D.

days before you saw the patient so he is

not in a position to say.

Q When you came on service on the Monday, January 21st, did you have any conversations with any of the residents or any fellow who had been caring for Mr. in the prior few days?

A Yes.

Q Who did you speak to?

A I had a hand-over from Dr. who was looking after him before the weekend.

Q Continue.

A I had a hand-over from Dr. who looked after him on the weekend.

Q Dr. is a resident?

A Urology fellow.

Q Do you know what year at that time?

A Same as me.

Q Dr. , he or she?

A He.

Q Was he a resident?

A No, he's a fellow as well.

Q Did you learn from either of those

, M.D.

two physicians as to their thinking or their rationale as to why the patient was not given any anticoagulation therapy after removing him from Coumadin?

A I cannot recall what Dr. said. If Dr. who looked after him who came in with a high INR told me that he was removed from Coumadin because his INR was too high and he was due to have an endoscopy.

Q What was it about the endoscopy that would warrant the patient from being removed from Coumadin?

MR. : You're asking him what he recalls somebody told him since he

wouldn't be doing it?

MR. OGINSKI: Sure.

A No, I have no recollection of anyone telling me anything about the endoscopy and the Coumadin.

Q On Monday the 21st of January, did you learn from any of the GI physicians that they intended to obtain biopsies during the procedure?

A I do not recall any conversation

, M.D.

with the GI physicians about that.

Q Why did you write an order to hold Coumadin in the evening of January 21st and also in the morning of January 22nd?

A I didn't.

Q I'll rephrase the question.

On January 21st you wrote an order to "Withhold Fragmin tonight and in a.m.", correct?

MR. : Your previous question --

MR. OGINSKI: I realize that after.

Q Why was Fragmin going to be withheld for that time period?

A The next morning he was due to have an endoscopy and so in consultation with the GI fellow from that morning that was the plan.

Q What is it about the endoscopy that would require the patient to be removed from Fragmin for that period of time?

A The possibility of having a biopsy.

, M.D.

Q If you had learned prior to his endoscopy being performed that no biopsy was intended, would you still have withheld the Fragmin for that same time period?

MR. : Objection to form.

You can answer.

It's really not relevant here since it's not the facts of the case.

MR. OGINSKI: Well, it is in the sense that no biopsies were done.

So I phrased my question in such a way to ask him whether he still would have had the same plan if he had known about that.

MR. : Objection. It's speculation.

The plan was to do biopsies. It's

in 's note and until her procedure was done, you know, that was the fact.

So you're questioning him going back. It's not fair. It's speculation.

Q Would there be any reason to take the patient off Fragmin if he was going to have

, M.D.

an endoscopy without any biopsy?

MR. : Note my objection.

First of all, the recommendation was made by the GI Service.

MR. OGINSKI: I understand that.

MR. : So you're asking him to now secondguess the GI Service.

MR. OGINSKI: No, I'm asking his

own knowledge.

MR. : Well, you're asking him to speculate what might have happened under different circumstances.

MR. OGINSKI: No.

MR. : That's not the facts of this case.

MR. OGINSKI: For all I know the GI Service could have written the order to withhold the Fragmin but rather they consulted with him or he consulted with them and the order was written to withheld it.

MR. : Ask him if he consulted with them.

I'm not going to have him

, M.D.

speculate what might have happened. You have the facts in the chart.

MR. OGINSKI: He just told me he consulted with them.

Q Did you speak to the GI physicians with regard to whether or not to hold the Fragmin?

A Yes.

Q If they had told you, "Look, we're just going to do an endoscopy, we're not going to take any biopsies," would you still have gone along with the suggestion to hold the Fragmin?

MR. : Objection, it's speculative.

You can answer.

A I can't answer that.

Q Was taking him off the Fragmin designed to prevent him from bleeding during the course of the procedure?

A I think that was the idea, yes.

Q Is there anything that you are aware of associated with an endoscopy other than the biopsies that would cause a patient to

, M.D.

bleed, assuming no complications?

A Traumatic insertion of the endoscopy scope, yes.

Q Other than complications such as that, other than perforation, abrasions, tears or anything traumatic?

A In my limited knowledge of endoscopy, yes, nothing else that I'm aware of.

Q Did you communicate with Mrs. in the evening of January 22nd about the finding of the pulmonary embolism and

treatment plan that you had recommended?

A Do you mean after I was told by the radiology fellow?

Q Yes.

A No.

Q Are you licensed to practice medicine in the State of ?

A Do I have a permit?

Q No.

Are you licensed by the State of to practice medicine?

A Yes.

Q When were you licensed?

, M.D.

A I don't know the exact day.

Q What year?

A It was July .

Q Before that time were you practicing at the hospital under some arrangement where you could continue to so and treat patients under the supervision of an attending?

A No.

Q Has your license to practice medicine ever been suspended or revoked?

A No.

Q In were you familiar with any rules that were put out by the hospital regarding the use of Coumadin?

A No.

Q When you first came to work at , were you given any type of booklets or pamphlet that discussed the obligations of you as physician who was working there?

A In.

Q Were you given or told about rules

and regulations pertaining to certain types of

, M.D.

treatments of various patients?

A That's a very broad question. Can you narrow it down.

Q Did you ever become aware -- and again this is before January 21, -- of any written guidelines put out by the department which you worked in?

A Guidelines for treatment?

Q Yes.

A No.

Q Were there any guidelines that you were aware of -- when I say guidelines, I mean anything written, put out by the hospital for the benefit of its hospital staff, attendings,

residents, fellows, concerning the use and dosaging of Fragmin?

A No.

Q Was there any policy that you are aware of or rules or regulations regarding a physician, whether it be a resident, intern, fellow, or attending, about making notes in the chart after an examination?

A No.

Q Was there any requirement that you

, M.D.

are aware of about timing and dating any note that's made in the patient's chart?

A What do you mean by requirement?

Q Is there any written document that you are aware of put out by

that tells you as a doctor when you make an entry in the patient's chart you must date it and you must time it?

A Not that I know of.

Q Are you aware of any hospital policy, rule or regulation regarding how frequently vital signs are to be taken of patients on a regular floor?

A No.

Q Is there any policy, guideline, rule or regulation regarding how frequently patient's vital signs are to be taken in a patient who experienced an acute pulmonary embolism?

A No.

Q Is there any protocol that you know of that sets out when a patient is to be transferred to an Intensive Care Unit setting?

A Not that I'm aware of.

, M.D.

Q Why did you choose to give the patient Fragmin on January 21st as opposed to any day prior to that time?

MR. : Other than the fact that was the day he saw him for the first time?

MR. OGINSKI: I'll rephrase the question.

Q We know you ordered Fragmin in the morning of January 21st. Was there any reason that you are aware of as to why the other physicians caring for him did not give the patient Fragmin at any time earlier within days prior to the 21st?

A I have no opinion on that.

Q Why did you order Fragmin on that day?

A Because his endoscopy was cancelled that morning.

Q Was the Fragmin ordered to continue his anticoagulation therapy?

A Yes.

Q Why did he need the Fragmin if his INR levels were already high from his Coumadin

, M.D.

at that point?

A Because his INR levels were decreasing and supplemental anticoagulation with Fragmin in that scenario would not cause any harm as far as I was aware.

Q What was his INR level for the 21st of January?

A According to this report here it

is 1.47.

Q Is that within normal limits?

A No.

Q Is that low?

A No, that's high -- oh, I'm sorry, normal limits for what?

Q For this patient.

MR. : Object to the form.

I don't know what that means.

Q What does 1.47 level indicate to you?

A Indicates the patient is anticoagulating.

Q Is there some range that would be within normal limits?

MR. : Under what? For a

, M.D.

patient whose not being anticoagulated or a patient who is?

Q For a patient who's been off Coumadin for a number of days.

MR. : Object to the form of the question.

MR. OGINSKI: I'll withdraw the question.

Q What does this laboratory value tell you, Doctor, the 1.47 on January 21st?

A To me the patient is anticoagulated.

Q You had mentioned it was decreasing. What was it the day before?

A 1.6.

Q The day before that, that would be the 19th?

A 1.88.

Q How but the 18th, what was INR level then?

A 2.48.

Q Had Fragmin not been ordered on January 21st by you, do you have an opinion as to whether Mr. would still have been

, M.D. adequately anticoagulated?

MR. : Read it back.

(Record read)

A Probably.

Q Was there any particular reason as to why he received only one dose as opposed to another dose or why 5,000 units as opposed to some other amount?

MR. : That's a compound question.

MR. OGINSKI: Okay.

Q Why did Mr. receive only

5,000 units and not another amount?

A Because 5,000 units is the recommended dosage.

Q With what frequency is the dosage recommended?

A Are you talking about for prophylaxis or for therapy?

Q For reasons you administered it on January 21st.

A BID, twice a day.

Q Okay.

A With the assumption he is not

, M.D.

getting any other anticoagulation.

Q In this case as of January 21st he was not getting any other anticoagulation,

correct?

MR. : Objection.

He already said he was anticoagulated.

MR. OGINSKI: Right, but he stated that as long as he was not getting any other anticoagulation.

MR. : We're getting into this thing where your facts are still there. He's already said that.

Q Turn, please, to the next order sheet.

A Which date?

Q January 22nd.

You wrote an order regarding his diabetic diet?

A Yes.

Q That was picked up approximately 11 a.m.?

A It looks like it, yes.

Q What was the diabetic diet?

, M.D.

A I can't tell you exactly what it was.

Q Was Mr. able to eat by mouth?

A Yes.

Q Was he able to ambulate and go to the bathroom on his own?

A Yes.

Q Was he able to walk the hall if he needed to or wanted to?

A I can't remember specifically just how mobile he was.

Q Did he have bathroom privileges?

A Yes.

Q Going to the middle of the page

can you read your order, please?

A I have no order in the middle of the page.

Q Do you know what doctor wrote the order that appears in the middle of the page?

A That's , the PA.

Q Did you come to learn at any time after Mr. 's endoscopy that the GI physicians had felt he had some form of Candida

, M.D.

infection in his esophagus?

A Yes.

Q What is Candida, Doctor?

A A fungal infection.

Q Is that readily treatable with certain medications?

A I'm not a gastroenterologist. I cannot answer that.

Q In any event Diflucan was ordered to treat the Candida, correct?

A Yes.

Q Also, a dose of Fragmin was ordered, 5,000 units to be given subcutaneously, correct?

A Correct.

Q The order indicates that it was picked up what time, 3 p.m.?

A It says, "3 P." I presume it means 3 p.m.

Q We know the patient's endoscopy procedure ended some time on 12 noon somewhere on January 22nd, correct?

A Correct.

Q When a nurse writes in the order

, M.D.

sheet that a particular order was picked up, does that also tell you or suggest to you when the medication is actually administered?

A Not necessarily.

Q Is there anything that you are aware of or familiar with in this particular hospital record that records when it is a patient is actually given or administered a continuing medication?

A It's normally recorded in a separate nurse form.

Q Can you turn, please, to the Medication Administration Record?

A What day?

Q Well, it starts January 16th and then continues down all the way to January 23rd.

Do you see that?

A Yes.

Q Is there anything on this page besides the January 23rd note that reflects that Fragmin was administered and recorded on this chart?

A This chart is a standing

, M.D.

medication or continuous IV record and for a standing medication or continuous IV, there's only one record for Fragmin that I can see.

Q That would be for the January 23rd note?

A Correct.

Q Doctor, since we mentioned it, let me ask you about that. Next to the order it says, "BID," that would be twice a day,

correct?

A Correct.

Q Next to that there's a column that says, "Hour," that will be ten. What does that represent?

A I presume it's the hour that they plan to administer it.

Q If the medication is actually administered, is there an initial as to when within that time frame that particular medication is given?

A Normally the nurse will just initial a box.

Q Does that appear all the way to the right side under the 23 column -- I should

, M.D.

say the column where it has the date of the 23rd?

A Yes.

Q Does this indicate to you that the patient received a dose of Fragmin somewhere around 10:00?

A It indicates to me that the patient received a dose of Fragmin. I am not 100 percent sure of the time.

Q Is there any other Nurse's Note or any other record that tells you when Fragmin was administered to this patient?

A Yes.

Q What is that?

A The STAT and Single Orders PRN Medication Administration Record.

Q Looking at that record on January 21st there's a notation the patient got his Fragmin, what time was that?

A It says, "10 A."

Q 10 a.m.?

A I presume.

Q For the January 22nd date does it also indicate that Fragmin was administered?

, M.D.

A I can't make out the dates very well.

Yes, here, yes.

Q What time is noted as to when the patient received the second dose of Fragmin?

A It says, "6."

Q Does that tell you morning or evening?

A No, it doesn't.

Q Is there any way for you to determine from that document or any other document as to what time the patient received the Fragmin, whether it was a.m. or p.m.?

A There was an order written by Linda Rodano in the p.m.

So I presume this is after that.

Q That would be after he had had his acute episode of the shortness of breath, being cold and clammy and feeling faint; is that correct?

A wrote her order at 3 p.m. Exactly when this dose of Fragmin was given, I can't tell you about whether it was before or after his episode.

, M.D.

Q Did you mention it was who wrote that note for the 22nd of January?

A No, wrote an order in

the order form.

Q That was picked up at about 3 p.m., correct or 3 P as you mentioned?

A Let me check.

Correct.

Q From the time that an order is picked up, is there any requirement or policy as to how soon after the medication should be administered?

A I'm not aware of any.

Q After his endoscopy it was understood that the patient would be restarted on Coumadin therapy, correct?

A Not correct.

Q Was the plan of treatment for this patient regarding his anticoagulation therapy that after he finished his endoscopy he would be restarted on some form of anticoagulation?

A Correct.

Q Why?

, M.D.

A Because he needed to continue his therapy for DVT.

Q Was there a particular preference by you or any of the GI physicians as to how soon after the procedure was completed that the patient should go back on his anticoagulation therapy.

A As far as I'm aware there is no preference by the GI or by myself as to the exact timing.

Q Can you go back to the laboratory values for the INR's that we were looking at before.

Was there an INR obtained on January 22nd?

A Yes.

Q What was the value for that INR?

A 1.35.

Q What does that signify to you, if anything, Doctor?

A The patient is anticoagulating.

Q What time was that INR level obtained or recorded?

A 1710.

, M.D.

Q That would be 5:10 p.m.?

A Yes.

Q That would be around the time that his acute episode had been recognized or come to the attention of the hospital staff?

A I'm not sure whether that time represents when it was processed or the sample

was taken so I can't answer that.

Q We know from the 5 p.m. note from the Nurse's Note that bloods were drawn and an arterial blood gas was obtained as well as certain other laboratory tests were done, correct?

A Correct.

Q Let me show you the hematology laboratory results for January 22nd timed at 1710.

Do you see that?

A Yes.

Q Is there any medical significance to the results as you look at them today and if so can you tell me what they are?

A Of the hematology?

Q Yes.

, M.D.

A The white cell count is very markedly elevated. The significance of that is unclear.

The hemoglobin is 9.4 which is a little bit low. That is a long-standing thing with Mr. .

Nothing specific for the 22nd. Otherwise, I do not see anything unusual about this hematology.

Q Just to set up the time frame, Doctor, for the next question. We know at 5 p.m. the nurse made a note about what occurred to Mr. regarding his acute event with the shortness of breath and so on, correct?

A Correct.

Q We also know according to the note that certain blood work was done which we discussed his hematology and those results are recorded at 1710, correct?

A Correct.

Q As well as his INR level also noted at 1710 on January 22nd, correct?

A Correct.

Q If Mr. 's INR levels were

, M.D.

sufficient to anticoagulate him at 1710 tell me why another dose of Fragmin was ordered in light of the findings of his pulmonary embolism?

MR. : Object to form.

You can answer.

I think he already asked you and he previously answered. He said previously they put him on this anticoagulation after this procedure.

That's what they did.

Q Was the Fragmin that was ordered by at 3 p.m. in response to an acute event or simply the course of treatment that was expected to be done after the endoscopy?

A I believe it's the course of treatment.

Q When you examined the patient later that evening between 6 and 6:30 as you've told me, did you learn that Mr. did not get his Fragmin until 6 p.m. that day?

A I don't recall.

, M.D.

Q Did you ask any nurse as to when he had last had his Fragmin dose?

A My recollection of the event was that I was told he had his Fragmin. I do not recall the time he had it.

Q Would it have been significant to you for the purposes of further diagnosis and treatment to learn when he had last been given his dose of Fragmin?

A I don't believe so.

Q Would your plan of treatment had been changed had you learned he had not gotten his Fragmin until approximately 6 p.m. that evening on January 22nd?

A No.

Q What is the duration in which Fragmin is beneficial to a patient?

A It's quite vague. I'm not sure what you mean.

Q How long does the Fragmin last?

A After one dose?

Q Yes.

A I'm not quite clear but it's

25 certainly longer than 12 hours.

1 , M.D.

2 Q Do you know how much longer?

3 A No.

4 Q Okay.

5 A Actually, I retract that.

6 I presume it's more than 24 hours

7 because Fragmin can be given daily.

8 Q When you examined Mr. on

9 January 22nd in the evening, did you formulate

10 a differential diagnosis as to what he could be

11 suffering from?

12 A Yes.

13 Q What was your differential

14 diagnosis?

15 A Pulmonary embolism, myocardial

infarct. From recollection they are the two main ones. I don't know if I had any more.

Q What did you do to rule out the PE?

A A CT scan was ordered.

Q I believe you mentioned you didn't recall who actually ordered it?

A I don't know who physically wrote the form, no.

Q What did you do to rule out an MI?

, M.D.

A He had an EKG and cardiac enzymes.

Q Did you review the EKG when you saw him?

A I have no specific recollection of that event.

Q Did you learn at some point afters what the enzyme levels or results were?

A Yes, I was told they were normal.

Q Is this all within a day or so after they were drawn?

A No, this is soon after.

Q Is there any way for you to determine at what time Mr. had his CT scan?

A No, I cannot tell you exactly what time it was done.

Q The order that we discussed earlier about the contrast for the CT scan which was timed at 8:27, can you assume from that order that the CT had not yet been performed as of 8:27?

A I don't think you can assume that.

Q Going back for a moment to the

, M.D.
Medication Administration Record where it was noted that the second dose of Fragmin was given at 6 and you said you couldn't tell whether it was a.m. or p.m., am I correct that Mr. 's endoscopy was actually performed on the morning of January 22nd?

A Correct.

Q Would it, in fact, be contraindicated to have given him the Fragmin prior to his endoscopy procedure that morning?

A I don't think contraindication is the correct word.

Q What word would you use?

A I would say we withheld what we asked to withhold, the Fragmin for that morning.

Q So can you then assume that the

Fragmin was not given in the morning but rather it would be given in the evening?

MR. : You don't have to assume. It's in the chart.

MR. OGINSKI: Well, just a 6. He doesn't know whether it's a.m. or p.m. I'm just trying to rule out the

, M.D.

other possibilities.

A I'll assume it's in the p.m., yes.

Q Are you familiar with something known as venodyne boots?

A Yes.

Q What are they?

A They are pneumatic wrappings around the legs that sequentially compresses to

keep blood flow in the veins in the lower limbs going.

Q Under what circumstances do you order venodyne boots for a patient?

A In a patient who needs prophylaxes from DVT often in our situation in the Operating Room or postoperative.

Q Was this patient a candidate for venodyne boots pre-operatively?

A I can't answer that.

Q Did this patient have venodyne boots applied during his endoscopy procedure?

A I don't know. I wasn't there for the endoscopy.

Q Post-operatively when he was returned to his room, was the patient placed on

, M.D.

any venodyne boots?

A No, this patient did not need DVT prophylaxes. He already had a DVT so it would have been contraindicated.

Q Does the venodyne boots prevent the formation of clots from forming in the legs?

A In a patient that doesn't have a DVT, it can improve your -- it can improve the ability not to form them, correct.

Q Does it have any effect on a patient who already has had a past history of a DVT?

A As far as I'm aware it is contraindicated.

Q Why?

A Because if a patient has a clot in his legs theoretically it may cause the clot to dislodge.

Q Are you familiar with something known as a green field filter?

A Yes.

Q What is a green field filter?

A It is a metal like object which is

, M.D.

placed in the inferior vena cava.

Q At any time after you were advised by the radiology physician of Mr. 's pulmonary emboli, did you consider placing a green field filter or getting another physician to place a green field filter for Mr. ?

A I did consider it.

Q Did you opt to do that?

A No.

Q Why?

A Because in my medical judgment it

would not have served Mr. 's best interests.

Q Why?

A Because green field filters often -- well, in my experience and from what I've been taught, they don't work well. They have a risk of insertion and the patient was being anticoagulated and in my opinion didn't require this added risk.

Q What is the risk of insertion?

A I can't tell you specifically.

Q What type of physician places such

, M.D.

a green field filter?

A The interventional radiologist or a vascular surgeon.

Q Did you have any conversations with any interventional radiologists prior to your concluding the patient would not be receiving a green field filter?

A No.

Q Or any conversation with any vascular surgeon about the need or efficacy of placing a green field filter?

A No.

Q Did you discuss with the patient the option available to you to place a green field filter?

A No.

Q Did you discuss with Dr. prior to the morning of January 23rd the option of placing a green field filter?

A I don't recall.

Q Are green field filters still in use or were they still in use as of January ?

A Yes.

, M.D.

Q Did they serve a purpose of attempting to filter out or block further clots from traveling through the patient's vascular system?

MR. : Object to form.

Q What was the intended purpose of a green field filter?

A Theoretically a green field filter works by intercepting large clots in the vena cava and breaking them into smaller ones.

Q Does anticoagulation therapy prevent blood clots from forming?

A It can.

Q Are there circumstances where it does not?

A I can't answer that.

Q Let me direct your attention back to January 22nd note where she ordered the Fragmin.

Is there any reason that you know of as to why she did not order it BID?

MR. : Which day is this?

MR. OGINSKI: January 22nd.

A No.

, M.D.

MR. : Other than the fact it's after the procedure and he would have gotten one in the morning?

MR. OGINSKI: Which morning?

MR. : The morning of the procedure.

MR. OGINSKI: No, he wouldn't have gotten one the morning of the procedure.

MR. : Yes, that's the point.

MR. OGINSKI: No.

MR. : He didn't get it BID because in the morning he had a procedure.

A That is an afternoon dose.

Q How do you know that?

A Because his procedure was at 12 p.m.

Q Okay.

A And she's written 3 P there.

Q Do you know how long this Fragmin would have lasted; in other words, whether it would be for 12-hour period, 24-hour period or something else?

MR. : Asked and answered.

, M.D.

Q You had mentioned to me earlier that the recommended dosing for Fragmin was BID, right?

A For this particular instance, yes.

Q Yes, okay.

Is there any reason as you sit here now to know why this particular order was not for BID?

A No.

MR. : Other than the fact that's to cover half day only.

MR. OGINSKI: I don't know what it's to cover. That's why I asked the question. He said it could last 12 hours. It could last 24 hours.

Q On January 23rd there's a note in the chart indicating that the patient is to receive Fragmin twice a day, correct?

A Can you point out to where?

Q This was the Medication Administration Record, at the bottom it's written for BID, correct?

A Correct.

Q Do you know why it was written for

, M.D.

twice a day on the 23rd and why the patient did not receive Fragmin in the early morning hours of the 23rd?

A The dosage of Fragmin is 5,000, twice a day. Given the long activity of Fragmin in the body, I don't know that 6 a.m. or later by a few hours is any different.

MR. : In other words, there's a morning dose and an evening dose. He

expired before the evening dose.

Where are you going with this?

THE WITNESS: Correct.

Q Is two doses of Fragmin the morning and evening dose, does that provide better anticoagulation therapy than only one?

MR. : Object to form.

Over a period of time?

Q Over a period of two days.

MR. : Well, object to form.

Please rephrase.

Q What is the difference between a patient receiving one dose of Fragmin on one day and two doses of Fragmin on another day?

A That's difficult to answer because

, M.D.

I think you need to look at the timing.

MR. : Note my objection.

In addition, the other coagulation which the patient had, it's reflected in his INR.

So it's not a fair question.

Q Is there any way for you to know -- to achieve optimal efficacy with Fragmin?

A I believe it's rapid.

Q How rapidly?

A I can't give you any exact time.

Q Minutes, hours, longer, shorter? Can you give me an approximation?

MR. : Without guessing do you know other than rapid.

A No, I don't know anything more than rapid.

Q What do you by rapid?

A By rapid I mean equivalence to intravenous Heparin or better.

Q What is the optimal efficacy; in other words, how long does this take with IV

Heparin to achieve optimal efficacy?

A That's variable and depends on the

, M.D.

bolus dose. You give a body Heparin at continuous rates, you infuse the patient.

Q Does IV Heparin get to the patient quicker by the IV administration route than subcutaneously -- than with the Fragmin?

A I'm not aware of.

Q What is Warfarin?

A It's the same as Coumadin.

Q Did you see a note written by the GI physician, it's a procedure note dated January 22nd which says, "Watch Warfarin after the procedure"?

A "Watch Warfarin dosage with

antifungal agent."

Q What does that mean to you, Doctor?

A It means that there could be a possible interaction between the antifungal agent and the Coumadin.

Q Do you know why this individual felt that this patient was to receive Warfarin as opposed to any other type of anticoagulant?

MR. : Objection.

That's not what it says. He's not

, M.D.

going to speculate.

MR. OGINSKI: I'm asking if he knows. If he spoke to him.

MR. : Well, you're misscharacterizing what the note says in the first instance.

So object to the form.

Q Is there any contraindication between the use of Warfarin and the antifungal agent, the Diflucan?

A I'm not aware of it.

Q Did you have any conversation with Dr. at any time after the procedure was performed on January 22nd?

A No.

Q Did you ever speak with Dr. , the attending GI physician, about the procedure?

A No.

Q Were you aware that the patient's hiccuping had ceased with the use of Baclofen?

A The patient's hiccups had ceased for three days. Whether it was due to the Baclofen, it's difficult to determine.

, M.D.

Q Did you form an opinion while you were caring for Mr. whether his hiccuping was one of the reasons why he was unable to eat or eat large amounts?

A It was possibly one of the reasons, yes.

Q Once his hiccuping had stopped, did you notice any improvement in his appetite or his ability to eat?

A I don't recall a major improvement.

Q Was there any improvement?

A I don't know.

Q I'd like you to turn, please, to the January 23rd note that you wrote.

That is your note, Doctor?

A Correct.

Q It says, "Call to code at 12:40 p.m."?

A Yes.

Q Prior to that time, am I correct that you had seen and examined Mr. ?

A Yes.

Q You had mentioned that in the

, M.D.

middle of your note, "Patient was seen this a.m. by the team and Dr. ."

Who was the team?

A It was me and Dr. .

Q What time did you see Mr. that day?

A I can't tell you exactly but it was probably between 6 and 6:40.

Q Who examined the patient?

A I would have.

Q Did Dr. examine the patient?

A I wasn't there when Dr. examined the patient.

Q You wrote, "Patient was seen this a.m. by the team and Dr. ."

Does that mean Dr. was present or wasn't present at the time that you and Dr. were present?

A He wasn't present at the time that we examined him.

Q How did you know that Dr. saw the patient that morning?

A Because I talked to him.

Q Before or after your exam?

, M.D.

A He saw the patient after the exam. After myself and Dr. had seen the patient.

Q Was this before the code was called?

A Correct.

Q How long did your examination take?

A I can't tell you exactly.

Q Was anyone else present in the room besides you, Dr. and the patient?

A Not that I recall.

Q What examination did you perform?

Doctor, you're referring to a particular note timed at 6:40 a.m.; is that correct?

A Yes.

Q Is that Dr. 's note?

A Yes.

Q Is there any reason why you're referring to Dr. 's note?

A Yes, I examined and talked to the patient while Dr. takes down notes.

Q What is your recollection based

, M.D.

upon, Dr. 's note, as to what your examination consisted of?

A It consists of his pulse, examination of his abdomen. I remember examining his legs and an examination of his respiratory system.

Q I'm sorry, you mentioned you remember or is that based upon your review of the note?

A No, I remember.

Q Is there anything that Dr. did not include in the note which you feel should have been included?

A No.

Q Was it customary if a resident wrote a note in which you were present for the examination that you would countersign that note?

A No.

Q Was it customary that Dr. would countersign a resident's note?

A No.

Q What year resident was Dr. at the time?

, M.D.

MR. : Don't guess. If you

know.

A Four.

Q What year program is the Urology Department at ?

A She is not trainee.

Q Where is she from?

A I think it's .

Q Do you know how many years that program is?

A Six.

Q Does that include fellowship or not?

A No.

Q Did you convey your findings on the examination to Dr. ?

A I believe so.

Q Was that before or after he examined the patient?

A I don't recall.

Q Doctor, let me ask to you go back a moment to an entry you made in the patient's

chart and it appears underneath a nursing note dated January 20th/January 21st.

, M.D.

What is the date and time of your note?

A I haven't written a date and time.

Q Can you tell from the note that appears above it as to what date your note was written?

A I can assume that it was in the morning of the 21st of January.

Q Can you read what your plan was?

A It says, "Upper GI series. Then can have a normal diet."

Q Doctor, going back to your note, please, of January 23rd to the bottom few

lines down, "He had a sudden turn at 12:20 p.m. resulting in full cardiopulmonary arrest," correct?

A Correct.

Q How did you obtain the information that this occurred at 12:20 p.m.?

A I talked to the people running the code.

Q Take a look, please, at the nursing note which is also January 23, timed at 12:05 p.m. which states "Called to room by

, M.D.

patient complaining of feeling faint. RN arrived to room. Patient diaphoretic. Unable to get BP. Pulse present. PA called in to room. Patient had episode of

emesis. BP 90/60."

Can you read the rest of that?

A "Patient became unresponsive."

Q No, after the BP underneath that.

A I cannot make out what the first two letters are. It then says, "220" with a zero.

Q Do you know what that refers to?

MR. : If you know. Don't guess.

A No, I don't know.

Q Then it continues on saying, "Patient became unresponsive. Code called. See Code Sheet. Patient expired."

Does that indicate that the patient's turn of events as you noted started at 12:05 p.m. and not at 12:20?

A Not going there, I really don't know when it occurred.

Q Based upon this Nurse's Note.

, M.D.

A Based upon the Nurse's Note it appears that this could have happened at 12:05.

Q When you wrote in your note that at the time you examined Mr. "He was saturating well," what did you base that information upon?

A On the pulse oximetry that morning.

Q What was that at that time?

Again, you're referring to Dr. 's 6:40 a.m. note?

A Correct.

It was 98 percent.

Q If you or any other doctor had calculated the patient's AA gradient at any time after 5 p.m. on January 22nd on the Tuesday, would you have expected that

calculation to be noted somewhere in the chart?

A Not necessarily.

Q Did you ever learn from any doctor that the AA gradients had been calculated?

A Not that I recall.

Q Would the AA gradient have assisted you in terms of treatment or

, M.D.

diagnosis?

A No.

Q When the nurse wrote there was "Episode of emesis," is that another way of saying the patient threw up?

A Yes.

Q Can you turn, please, to Dr. 's 6:40 a.m. note for January 23rd.

Tos the bottom of her note Dr. wrote "Fragmin started yesterday."

Do you see that?

A Yes.

Q That would be an incorrect statement, correct? In other words, yesterday would then refer to January 22nd and that would be inaccurate?

MR. : Objection, asked and answered.

MR. OGINSKI: I'll rephrase the question.

MR. : It was started the day before.

MR. OGINSKI: No, started the 21st.

, M.D.

MR. : Correct.

Q Dr. wrote "Fragmin started yesterday." Her note is written on January 23rd. Would it be fair to say that is an inaccurate statement as to when the Fragmin was started?

A No, Fragmin was restarted again yesterday. Although it had been previously started earlier today and stopped.

Q When she writes "Fragmin started yesterday," what does that mean to you?

A It means that the Fragmin had been restarted yesterday.

Q How do you know it refers to restarting the Fragmin and not from when the patient was initially put on Fragmin?

A Because having looked after the patient I know when the Fragmin was started.

Q I'm not asking about you, Doctor. I'm asking Dr. . I'm specifically

referring to the statement she has in her January 23rd note.

Can you tell whether this statement refers to the restarting of Fragmin

, M.D.

or the initial starting of Fragmin?

A No, I can't tell from this note.

Q If another doctor who was not directly involved about the patient's care were reading Dr. 's note on January 23rd, do you think it would be fair to assume based on this statement "Fragmin started yesterday," that the Fragmin had only started initially as of January 22nd?

A No.

MR. : Note my objection.

He said before it was started.

MR. OGINSKI: I know.

MR. : It was given on Monday. It doesn't mean it was started on Monday.

You're quibbling really over semantics. I don't think it's fair with him and we're going nowhere with it.

There's no question about when it was given and what was given.

What's the point?

MR. OGINSKI: The point it has to do with Dr. 's understanding of

, M.D. the treatment that was already underway and whether or not she understood

Fragmin to have been administered on the 21st and whether anything was done about that.

MR. : It really doesn't, Jerry. She is standing there with him writing the note. We're quibbling over semantics over what do you call the dose given on the Monday.

MR. OGINSKI: Off the record.

(Informal discussion held off the record)

Q Were you told by any nurse or doctor on the evening of January 22nd as to whether there was any delay associated in obtaining the CAT scan?

A Note that I recall.

Q Who ordered the contrast material?

A I'm not sure.

Q If we assume for purposes of this question that the CT was actually obtained sometime after 8:27 p.m. based upon that order

sheet for contrast, if given that assumption,

, M.D.

is there any way for you to tell why there is almost a three-and-a-half-hour gap in time before performing the CT?

A Short of ringing up the person in charge of CT personally, I don't know of any other.

Q How do you diagnose a pulmonary embolism?

A Pulmonary embolism can be diagnosed clinically and confirmed with imaging study.

Q What are the clinical signs and symptoms that you would expect to see in a patient with a PE?

A Shortness of breath, tachycardia, occasionally chest pain.

Q What about diaphoresis, is that included within the symptoms that you would expect to see?

A Well, there are constellations of symptoms. Not all of them are here or there. They can be absence but diaphoresis is one that can be, yes.

Q What is the significance, if any,

, M.D.

of fainting or passing out?

MR. : In any patient?

MR. OGINSKI: In a patient who's suspected of a pulmonary embolism.

A Well, that's also one of the

possible symptoms, signs of a PE.

Q What is the actual mechanism that causes the patient to pass out in the event they are experiencing a PE?

A I'm not 100 percent sure of that.

Q Did you learn from any of the doctors caring for Mr. before January 21st that he was not thriving?

A Yes.

Q Did you form any opinion as of the time you first came to care for Mr. as to why he was not thriving?

A I do not recall any opinion that I formed.

Q Did you make note anywhere in the patient's chart, any opinion as to why you felt or believed the patient was not thriving?

A Not that I know of.

Q Did you also learn that the

, M.D.

patient had experienced a weight loss of approximately 40 to 50 pounds over the previous two and a half months?

A Yes.

MR. : I think it's 55 pounds.

MR. OGINSKI: I understand that but also Dr. indicated 40, 50 pounds but I'll rephrase it.

Q Did you learn he suffered some form of weight loss between 40, 55 pounds over a two-and-a-half-month period before coming to the hospital?

A Yes.

Q Did you account or contribute any particular condition as to why he had experienced that weight loss?

A I did not know why he had that

weight loss.

Q During any of your conversations with the GI physicians, did they tell you their opinions as to why he might be having this weight loss?

A Not that I recall.

Q Did you have any conversation with

, M.D.

the pathologist who performed the autopsy?

A No.

Q Did you learn from any physician after Mr. 's death that he had had a large saddle-shaped pulmonary embolus that was bilateral?

A Yes.

Q From whom did you learn that?

A I don't recall.

Q I'm going to ask to you look at a January 18th GI note and where I have highlighted in my section, Doctor, can you read those two lines?

A "Suggested plan to proceed upper endoscopy likely Monday, hold Coumadin."

Q I'm sorry, the line underneath that.

A I can't understand the first words but then it says, "INR less than two start LMH."

Q That would represent low molecular Heparin?

A Correct.

Q Can you interpret this particular

, M.D.

note as to what it means to you?

A The recommendation by that GI, I believe fellow, was that the Coumadin should be withheld and when the INR is below one to start.

Q Below two you mean?

A Excuse me?

Q Below two?

A Below two, to start low molecular weight Heparin.

Q The line directly underneath that, does that say, "EGD when INR is less than" what?

A "EGD when INR is less than one." It looks like space "three."

Q Turn to the ICU fellow note on January 23rd in the second full paragraph where it said, "Unfortunately chest compressions had been ongoing for about 20 minutes, ribs were palpably broken," do you see that?

A Yes.

Q "And duration of CPR," does it say, "ensures"?

A Yes.

, M.D.

Q "Presence of lung contusions," and there was further discussion as to whether or not to use thrombolytics during the code, correct?

A Correct.

Q Ultimately, the decision was made not to use it, right?

A Correct.

Q That was primarily because it was felt that he would continue to bleed into certain areas within his chest; is that correct?

A Correct.

The ICU fellow felt the patient would almost certainly bleed to death.

Q Can you go, please, to the January 21st GI note timed at 7:45. It starts out saying, "Stable through weekend. Hiccups ceased on Baclofen," correct?

A I don't know if that's "with" or "on."

Q Okay.

"Improved oral intake."

Then it's written "Did not receive

, M.D.

low molecular weight Heparin over weekend," correct?

A Correct.

Q Was there any indication that this patient was to receive the low molecular weight Heparin over the weekend?

A There was a recommendation before the weekend from the GI Service that low molecular weight Heparin be started when the INR dropped below two.

Q When was that recommendation made?

MR. : He just read the note.

MR. OGINSKI: Oh, okay. I forgot the date.

MR. : 18th.

MR. OGINSKI: Thank you.

Q On January 19th, Doctor, you told me that the INR was 1.88. Was Fragmin started at that time?

A Not that I am aware of.

Q Is there any reason that you are aware of as to why Fragmin was not started when the INR dropped below two on January 19th?

MR. : Without guessing do you

, M.D.

know.

A No.

Q Was low molecular weight Heparin given to the patient on January 20th when his INR level was reported as 1.6?

A Not that I am aware of.

Q Do you know as you sit here now as to why low molecular weight Heparin was not given since his INR level was less than two?

MR. : Without guessing do you know.

A No.

Q Do you have an opinion with a reasonable degree of medical probability as to whether if this patient had received Fragmin on

the 19th of January whether his outcome as far as having his acute PE on the 22nd would still have occurred?

First of all, do you have an opinion?

A Can you repeat the first part.

Q Sure.

Do you have an opinion with a reasonable degree of medical probability as to

, M.D.

whether this patient would still have had his acute pulmonary embolus on January 22nd had he been given Fragmin on January 19th?

A I do have an opinion, yes.

Q What is that opinion?

A That is unlikely it would have

changed the outcome.

Q Do you have an opinion as to whether Mr. would have suffered his acute bilateral pulmonary embolism on January 22nd if he had been given Fragmin on January 20th?

A Repeat that.

MR. : Same question.

Q Same question, different date.

A I don't think it would have made any difference.

Q Do you have an opinion as to whether Mr. 's outcome would have been different had he received a dose of Fragmin on the 19th and also on the 20th?

A I don't think it would have made a difference.

Q Why?

, M.D.

A Because the patient was anticoagulated during that time.

Q How then do you explain the fact that he suffered the acute PE if he was adequately anticoagulated?

MR. : Object to form.

Q Can you explain how the patient developed the bilateral pulmonary emboli on the 22nd in light of his anticoagulation therapy?

MR. : Object to form.

MR. OGINSKI: Can he answer? It's an open-ended question.

A I can only speculate.

Q Can you answer that question with a reasonable degree of medical probability?

A No.

Q We have spoken briefly before about the patient's appetite after his hiccups

had started and after the endoscopy he was going to be put back on a diabetic diet, correct?

A Correct.

Q Did you have any reason to believe that his appetite, his ability to eat would not

, M.D.

improve?

A That's a vague question.

Q I'll rephrase it.

Once his hiccups stopped, he increased his oral intake, did you have any reason to believe that he would continue to improve or increase his oral intake?

A I can't answer that for sure.

Q I'm not asking for certainty. I'm

asking with a reasonable degree of medical probability.

A Still can't answer that because I'm not sure.

Q That's okay.

Did you at any time before January 22nd evaluate this patient's life expectancy in light of his condition and his presenting complaints in the hospital?

A No.

Q Did you ever have any conversation with Dr. about this patient's life expectancy before he had been diagnosed with the pulmonary emboli?

A No.

, M.D.

Q Did you ever have any conversations with any physician at all before January 22nd about this patient's life expectancy?

A Not that I recall.

Q What was the chance of the patient's cancer recurring over a five-year period of time?

A I can't tell you that.

Q Is there any published literature that you are aware of as to the recurrence rate for the type of cancer that Mr. had?

A The question is quite vague.

I'm not sure whether you're asking me to be specific about Mr. or not.

Q Well, generally first.

Can you tell me what is the recurrence rate for patients with this type of cancer that he had?

A I can't give you a specific answer to that.

Q What was Mr. 's chance of

recurrence of the cancer that he had, the prostate cancer?

, M.D.

MR. : Object to form.

Q I'm sorry, the bladder cancer.

MR. : Object to form.

You can answer that.

A I don't know.

Q In the course of your fellowship, did you have occasion to treat patients who had been operated on for urological cancers?

A Yes.

Q In the course of your discussions from time to time, would you discuss with them the possibility that the cancer can recur?

A Yes.

Q Were there times when you would be able to quote to them certain percentages at which certain types of cancers might be expected to recur?

A I generally don't do that.

Q Would that fall within the realm of the attending's responsibility as opposed to the fellow or any other doctor?

A Not necessarily.

Q In any event, although you did not necessarily do that, were you familiar with the

, M.D.

recurrence rate of certain types of urological cancers?

A Reasonably.

Q What types of urological cancer did Mr. have that was treated in October of at ?

A Bladder cancer.

Q To your knowledge, what was the recurrence rate, if any, for that particular condition in the end of ?

A I can't answer that question because Mr. 's individual circumstances are very different from the average population.

Q Is there anything that you can go by that would suggest to you, whether literature, clinical experience or something else as to whether or not you would expect this patient to have a recurrence of his bladder cancer?

A It is possible that the patient could have a recurrence.

Q What is the likelihood of that possibility?

, M.D.

A I can't give you an accurate number on that.

Q Is there any approximation?

A Again, I couldn't tell you specifically with Mr. .

Q Was it your understanding that this patient's bladder cancer was totally removed at the time of surgery in October of ?

A It's very difficult to tell whether a patient's cancer is always 100 percent removed. You don't know what cancer is left behind.

Q Were you involved in this patient's treatment of his bladder cancer back in October of ?

A From memory I looked after him over a weekend but no, I wasn't specifically involved in his bladder cancer care.

Q In any event, did you learn from Dr. that he had obtained what he thought was all the cancer that was observed during the procedure?

A I don't know what Dr.

, M.D.

specifically told me.

Q Did you learn from the autopsy report that this patient did not die from bladder cancer?

A Yes.

Q What was your understanding as to his cause of death?

A He had a saddle embolus.

Q Can you characterize that saddle embolus, size, amount, nature of it?

A I can't tell you the size. The saddle embolus is a large embolus that blocks pulmonary arteries.

Q Did have you any reason that the Diflucan would not be effective in treating the Candida?

A I'm not a gastroenterologist. I have no opinion on it.

Q Is a bilateral pulmonary embolus a life-threatening event?

A In some cases.

Q Would you agree that a patient with an acute pulmonary embolus needs to be monitored closely?

, M.D.

A Depends on the degree.

Q Is it your opinion that Mr. was monitored closely after his pulmonary embolus had been diagnosed?

A I felt he was, yes.

Q Would you agree that patients who are in an ICU setting are more closely monitored than patients on a regular floor?

A For a patient in exactly the same condition as Mr. , ICU would monitor him probably the equivalence to what we did.

Q In the ICU the nurse-to-patient ratio is much less than on a regular floor, correct?

A Yes.

Q Would you agree that good medical practice in evaluating a patient's oxygen saturation levels after an acute PE event would be to monitor them at 15-minute intervals?

A I don't know if I would put that number on it.

Q What number would you put?

You mentioned earlier you felt it should be monitored hourly, correct?

, M.D.

A Yes, I expect it would be monitored hourly.

Q Thank you.

Is there any other or more frequent time frame in which a patient who had an acute PE that their oxygen saturation levels should be monitored?

A The oxygen saturation monitor has an alarm. If it drops, the alarm goes off and it can be heard well.

So I don't see any benefit in monitoring a patient physically more often in the absence of any deterioration of symptoms.

Q Where was Mr. 's room in relation to the nurses station on that floor?

A Would you like me to draw it?

MR. : No, you are not drawing anything.

Q In feet or distance or number of rooms away?

A Probably about 15 feet estimate.

Q The alarm that you mentioned, does that alarm sound differ from any other type of monitor alarm that's used in the hospital like

, M.D.

an electronic beeping sound, is that what

you're referring to?

A Correct.

Q If the patient's door is closed, how would you expect a nurse or anyone else to hear that electronic beeping if his oxygen saturation levels decreased to a certain point?

A The patient's door is not closed.

Q Can the door be closed?

A Physically it can be, yes.

Q Are there times when a patient might have visitors and the door would be closed?

A In theory it can happen but it's recommended against.

Q In your experience have you seen a patient's room with doors closed?

A Yes.

Q If the door is closed for whatever reason, how is a nurse going to hear the alarm being sounded if the oxygen saturation levels drops?

A In my experience the door is never closed with a patient alone.

, M.D.

Q Is there any way for a nurse to hear that alarm if a patient's door is closed?

A I can't answer that. I don't know.

Q What is the level at which the pulse oximeter device triggers its alarm when it drops below what number?

A You can set it.

Q Do you know what it was set for this patient?

A No.

Q Are you aware of whether Mr. 's pulse oximeter and his oxygen

saturation levels ever dropped sufficient enough to trigger that alarm?

A I was never made aware that it was -- that it did drop below.

Q If it had been triggered, would you have expected to receive a call from a nurse or someone at the hospital advising you that it had dropped to a certain level?

A My note requested that the oxygen saturation stay before 96 percent.

I would have expected if it

, M.D.

dropped below that that I would get a call.

Q Have you ever formed an opinion, again with a reasonable degree of medical probability, as to whether it was

Mr. 's first clot that killed him or whether it was the subsequent clot?

A Are you talking about the pulmonary embolus?

Q Yes.

A I believe it was the subsequent clot.

Q Why do you say that?

A Because Mr. was totally asymptomatic, oxygenating well, feeling very well with a diagnosis of the first pulmonary embolus and hence it is unlikely that that first pulmonary embolus was what caused those significant effects.

It is likely that the significant effect that led to his demise was caused by a second one because they were so significantly different.

Q In light of the anticoagulation therapy that Mr. was receiving after

, M.D.
the endoscopy procedure on the 22nd and the morning of the 23rd, how then do you explain a subsequent pulmonary embolism that ultimately caused his death?

MR. : Asked and answered. You asked this question like six different ways.

MR. OGINSKI: No. Now, I'm asking specifically about the second pulmonary embolism. I'm specifically relating to his death.

A I don't know the answer to that.

Q You have the INR levels in front of you, Doctor?

A Yes.

Q Was an INR obtained on January 23rd?

A Yes.

Q What was the patient's INR level and what time was that?

A 1.32 and it was at 7:10 in the morning.

Q Do you have an opinion as to whether the patient was adequately coagulated

, M.D.

as of that time?

A I cannot answer that.

Q Why can't you answer it?

A Because the patient had been receiving Fragmin and he has the effects of the Coumadin.

I do expect that he's adequately anticoagulated but I have no documentation of

that.

Q How long does it take Coumadin's effect to wear off so that it no longer provides adequate anticoagulation therapy?

A That depends on the initial level, the patient's diet, the patient's metabolism, multi, multi factors. It has to be individualized. There's no general answer.

Q Do you have an opinion with a reasonable degree of medical probability as to whether this patient's pulmonary embolism or emboli that ultimately killed him was preventable?

A I don't believe it was.

Q Why?

A Because the patient was

, M.D.

anticoagulated through the time that this occurred.

Q Do you have an opinion as to whether this patient's outcome would have been different had IV Heparin been administered immediately after his PE was diagnosed?

A I do not believe it would have been any different.

Q Would the outcome have been any different if the patient had received IV Heparin as soon as a pulmonary embolus was suspected?

A I don't believe it would have made any difference.

Q Doctor, you had mentioned that you're unaware as to whether the patient's hiccups resolved from the Baclofen, correct?

A Correct.

Q Let me show you Page 2 of Dr. 's Discharge Summary in the middle of

the page, second line says, "Hiccups resolved with Baclofen."

Do you see that?

A Yes.

, M.D.

Q Is that consistent with what you had told me earlier?

MR. : Objection to form.

I don't know what that means.

Q Is it your opinion that the Baclofen had no effect upon the patient's hiccups?

A I have no opinion on the effect of Baclofen at all.

Q Have you spoken with Dr. about this patient at any time after the

patient died?

A No.

Q Were you involved at all with a discussion about whether or not to perform an autopsy?

A Yes.

Q Who was present for that conversation?

A Dr. initially asked the family for an autopsy.

Q You were present for that conversation?

A No.

, M.D.

They said no. And then later on the same day I believe Mr. 's son

arrived. Then I had a discussion with the family and the son.

Q When you say the family, can you be specific?

A I remember Mrs. there and the son and I cannot recall who else was there.

Q What was discussed?

A I explained what I believed had happened.

Q What did you say?

A I told them that I thought it's most likely a pulmonary embolus but we couldn't tell for sure unless we had an autopsy. And at that time they agreed to do an autopsy.

Q Did you have any other conversations with the family after that time?

A No, not that I recall.

Q After the autopsy results had been reported, did you ever speak to any member of the family?

A Not that I recall.

, M.D.

Q Did you ever speak to Dr. at any time after the autopsy results had been reported?

A Not that I recall.

Not to Dr. regarding this case?

Q Correct.

A Yes, not that I recall.

Q Was Mr. 's case ever presented to the residents for teaching purposes during rounds?

A No.

Q Were you ever present during any conversation of this patient during any

Mortality or Morbidity Conferences?

A I don't have a clear recollection.

Q Are there occasions when you participate in Mortality and Morbidity Conferences?

A Yes.

Q On occasion when you participate, do you makes notes of what transpires either regarding your patients or other patients that are discussed?

, M.D.

A No.

Q Do you have any notes for this patient separate and apart from what's contained within this hospital record?

MR. : Medical notes?

MR. OGINSKI: Any notes.

Q I'm not talking about any conversations or anything you had with your attorney about any notes about this patient that do not appear within this record?

A Yes.

Q What notes?

A A note I wrote with regard to Quality Assurances.

Q When was that written?

A I don't remember the date.

Q What prompted you to write a note to Quality Assurances?

A I was asked to.

Q By whom?

A By the Deputy Chairman of the Department of Urology.

Q At what point in time were you asked to write a note?

, M.D.

A It was, I think, within a few months of this episode.

Q Did you keep a copy of that note?

A I may have on my computer.

Q Who did you give the note to?

A The Deputy Chairman.

MR. : Note my objection to this entire line of questioning.

The area of Quality Assurance is privileged under the Education Law and the Health Law.

MR. OGINSKI: Maybe but I need to find out a little bit more.

MR. : I'm registering my objection to your line of questioning.

MR. OGINSKI: Fine.

Q Who was the Deputy Chairman of the Department at that time?

A Dr. .

Q Did Dr. tell you why he wanted you to write a note in relation to this case?

A No.

Q Do you recall what it was he said

, M.D.

to you about this particular case that prompted you to write a note?

A From recollection he said, "Can you write a note, just explain what you think happened or rather can you write a note of the events that happened."

Q Did he tell you for what reason

the note was necessary?

A No.

Q Did he tell you for what purpose the note would be used?

A Quality Assurances.

Q Were you ever asked to discuss your note with any person at the hospital?

A No.

Q How long was your note?

A From memory about a page, page and a half, double spaced.

Q Other than providing that note to Dr. , did you provide it to anyone else at the hospital?

A No.

Q When you wrote that note, had you reviewed the patient's chart to refresh your

, M.D.

memory of the events?

A Yes.

Q When was that?

A When was what?

Q When had you reviewed the chart at some point after Mr. had died in preparation for writing the note to Dr. ?

A Well, I did it at the time of writing the note. As I mentioned, I don't remember the exact time as I wrote the note.

Q Did you provide a copy of that note to your attorney?

MR. : No, he didn't.

Q Did Dr. sit on any type of Quality Assurances Committee that you are aware of?

A No.

Q Did Dr. provide a similar note to Dr. or anyone else at the

hospital that you are aware of?

A I have no idea.

Q Was any other doctor,

Dr. or any other physician, caring for

, M.D.

this patient asked to provide a similar note about their recollection of the events that had occurred to Mr. ?

A I don't know.

Q Do you have a copy of that note with you today?

A No.

Q Other than keeping a copy on your hard drive on your computer, do you have a written printout of it that you have kept at home?

A No.

Q You still have the same computer that you had back then when you wrote your note, same hard drive?

A I can't even remember which computer I wrote it on.

Q Is there anything contained within that note that you wrote to Dr. that differs in any respect from what you have told me today in response to my questions?

A Not that I can recall.

Q At the time you wrote the note,

, M.D.

had you learned of the autopsy findings?

A I'm unsure.

Q Did you ever discuss the facts with Dr. , the fact that Dr. had asked to you write a note for Quality Assurances purposes?

A No.

Q Were you ever asked any questions whatsoever by anyone in response to the note you submitted?

A A part from my attorney?

Q No, I don't want to know about your attorney.

At the hospital at any time before this lawsuit was started, were you ever asked in response to your handing in the note, did anyone ever ask you, "Doctor, what do you mean by this, can you give us a clarification of this," anything like that?

A No.

Q Do you have any other notes regarding this patient?

A No.

25 Q Other than Dr. 's deposition

1 , M.D.
2 transcript and the patient's records, did you
3 review any other documents in preparation for
4 today?
5 A No.
6 Q Did you review any medical
7 literature or textbooks that address the issue
8 of treatment of pulmonary emboli in preparation
9 for today's deposition?
10 A No.
11 Q Was there any pathologic cause
12 diagnosed by any physician as to why this
13 patient was not thriving?
14 A Not that I'm aware of.
15 Q How long does it take to place a

green field filter?

A I don't know. I don't perform the procedures.

Q Were there physicians at that did perform that procedure?

A Yes.

Q Was there any need before this patient coded on January 23rd in your opinion for this patient to have a consult with a

, M.D.

vascular surgeon?

A No.

Q Was there any need in your opinion for this patient to have a pulmonology consult on January 23rd.

Was there any need in your opinion for this patient to have a hematology or pulmonology consult on January 23rd before he coded?

A No.

Q When you spoke to Dr. on the morning of January 23rd, did he ask you why no one had called him the evening before to let him know about the diagnosis of PE?

A Not that I can recall.

Q Did any residents call Dr. about the patient's diagnosis of a PE on January 22nd that you learned of on that night?

A Not that I'm aware of.

MR. OGINSKI: Thank you, Doctor.

I just ask for copy of his CV.

MR. : Take it under advisement.

MR. OGINSKI: I'm also going to

, M.D.
ask for copy of the note that he gave to Dr. .

MR. : That I will not provide.

MR. OGINSKI: We might have to ask the court to look at it en camera to see whether it's for specific purpose he claims it was given or for some other purpose.

I'm putting on the record I'm requesting it. I'll follow up with a letter.

MR. : I cannot provide that.

MR. OGINSKI: Because it's your claim that it resolves Quality and Assurance issues?

MR. : It's privileged.

As far as he knows it was made for Quality and Assurance purposes as part of a Mortality and Morbidity Conference, his own testimony.

MR. OGINSKI: It wasn't a Mortality and Morbidity. He said it was only for Quality and Assurance purposes.

, M.D.

That's all he was told.

MR. : That's privileged as far as I'm concerned. I'm not going to provide it.

MR. OGINSKI: We'll take that up later.

Thank you.

(Time noted: 2:10 p.m.)

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

STATE OF)

:Ss

COUNTY OF)

I, , M.D., hereby certify that I have read the transcript of my testimony taken under oath in my deposition of March 24, ; that the transcript is a true, complete and correct record of what was asked, answered and said during this deposition, and that the answers on the record as given by me are true and correct.

_____

, M.D.

Signed and subscribed to before me, this day of , .

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25 Notary Public

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2 I N D E X

3 EXAMINATION BY PAGE

4 MR. OGINSKI 5

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REQUESTS

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PAGE-LINE DESCRIPTION

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161-21 Dr. CV

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161-25 Dr. note given to

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

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4 I, , hereby certify that

the Examination Before Trial of ,
M.D. was held before me on March 24, ;

That said witness was duly sworn before the commencement of the testimony;

The within testimony was stenographically recorded by myself and is a true and accurate record of the Examination Before Trial of said witness;

That the parties herein were represented by counsel as stated herein;

That I am not connected by blood or marriage with any of the parties. I am not interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of March, .

_____

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