**DE-IDENTIFIED DEPOSITION OF AN ORTHOPEDIST IN A NY MEDICAL MALPRACTICE CASE**

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 2   SUPREME COURT OF THE STATE OF NEW YORK
 3   COUNTY OF QUEENS
 4   Index No.
 5   - - - - - - - - - - - - - - - - - - - - -x
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 7                           Plaintiff,
 8               -against-
 9

10


11
                             Defendants.
12
     - - - - - - - - - - - - - - - - - - - - -x
13                             June 21, 20
                               1:30 p.m.
14
15
16      EXAMINATION BEFORE TRIAL of
17                taken by
18   Plaintiff, pursuant to Order, held at the
19   offices of              , L.L.P.,
20                 ,                   ,
21   before                  , a Notary Public
22   of the State of New York.
23
24                       *     *     *
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 2   A p p e a r a n c e s :
 3
 4   THE LAW OFFICE OF GERALD M. OGINSKI, LLC
 5      25 Great Neck Road, suite 4
 6      Great Neck, New York 11021
 7           Attorneys for Plaintiff
 8
 9                 LLP
10
11
12           Attorneys for Defendant
13                                     , M.D.
14   BY:                      ESQ.
15
16                              ESQS.
17
18
19            Attorneys for Defendant
20
21   BY:                   , ESQ.
22
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24                       *     *     *
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 2 STIPULATIONS
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 4 IT IS HEREBY STIPULATED AND AGREED BY
 5 and between counsel for the respective
 6 parties hereto that:
 7 All rights provided by the C.P.L.R.,
 8 and Part 221 of the Uniform Rules for the
 9 Conduct of Depositions, including the
10 right to object to any question, except
11 as to form, or to move to strike any
12 testimony at this examination, are
13 reserved; and, in addition, the failure
14 to object to any question or to move to
15 strike any testimony at this examination
16 shall not be a bar or waiver to make such
17 motion at, and is reserved for, the trial
18 of this action.
19 This deposition may be sworn to by
20 the witness being examined before a
21 Notary Public other than the Notary
22 Public before whom the examination was
23 begun, but the failure to do so or to
24 return the original of this examination
25 to counsel, shall not be deemed a waiver
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 2 of the rights provided by Rules 3116,
 3 C.P.L.R., and shall be controlled
 4 thereby.
 5 The filing of the original of this is
 6 waived.
 7 IT IS FURTHER STIPULATED, a copy of
 8 this examination shall be furnished to
 9 the attorney for the witness being
10 examined without charge.
11
12 * * *
13 (Plaintiff's Exhibit 1 was
14 marked for identification, as of this
15 date.)
16
17 ,
18 having been first duly sworn by a Notary
19 Public of the State of New York, upon
20 being examined, testified as follows:
21 EXAMINATION BY
22 MR. OGINSKI:
23 Q Please state your name for the
24 record.
25 A , M.D.
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 2 Q Please state your address for
 3 the record.
 4 A

5
6 Q Good afternoon, Doctor.
7 A Good afternoon.
8 Q On January 11, 20 , you
9 performed surgery on Ms. , correct?
10 A Yes.
11 Q You performed a unicompartmental
12 knee replacement?
13 A Yes.
14 Q While in the recovery room, did
15 you order x-rays be taken of her knee?
16 A Yes.
17 Q What?
18 A You always take x-rays after you
19 do a knee replacement to see where the
20 components are.
21 Q Before January 11, 20 , when
22 you performed this type of surgery, would
23 there ever be an occasion where you would
24 perform x-rays intraoperatively?
25 A Not usually with the knee
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2 replacement.
3 Q How do you know during surgery
4 whether the components that you are
5 inserting are correctly positioned?
6 A You are looking pretty much
7 right at them.
8 Q And what is purpose, then, of
9 taking x-rays following the surgery?
10 A Well, you need to see the
11 alignment of the femur and the tibia and
12 to make sure everything -- you can't see
13 everything, especially with a
14 unicompartmental knee replacement, the
15 incision is very small and you can't see
16 behind the knee. So you need x-rays to
17 confirm.
18 Q Is there any benefit to taking
19 x-rays intraoperatively at the conclusion
20 of the procedure, rather than waiting for
21 the patient in recovery?
22 A You mean, with the wound open?
23 Q Yes.
24 A Well, that would expose her to
25 more chance of infection, which you worry
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2 about with knee replacement or any joint
3 replacement. You can certainly do it with
4 the knee closed, but I don't think that's
5 going to offer you any more benefit. Then
6 the x-ray you are going to get in the
7 operate room isn't usually as good either.
8 Q Why? Is it because it's a
9 portable x-ray?
10 A Well, because everything is in

11   the way there.  You are in the operating
12   room, not in the recovery room where you
13   can move the patient around properly.
14       Q     In terms of addressing the
15   comment you made about the possibility of
16   infection if you leave a patient open
17   longer, how long does it usually take to
18   get an x-ray?
19       A     It's bringing this machine in
20   that's been out in the hallway and all
21   those sort of things.  It increases the
22   risk of infection.
23       Q     When Mrs.      had her
24   postoperative x-rays in the recovery room,
25   do you recall which views it was that were
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 2   taken?
 3       A     AP and lateral.
 4       Q     And did you read and interpret
 5   those films?
 6       A     I did.
 7       Q     At         , Doctor, where those
 8   films were taken, do those films come up
 9   or the x-ray images come up on a computer
10   screen, or do you actually have to have
11   the actual films?
12       A     No.  They come up on the
13   computer screen.
14       Q     And you are able to visualize
15   that from any computer station at the
16   hospital?
17       A     Well, certainly most of them.
18       Q     And am I correct that over the
19   course of your career, you have had many
20   occasions to read and interpret x-rays?
21       A     Yes.
22       Q     And you just told me that you
23   did, in fact, read and interpret Mrs.
24       's immediate postoperative x-rays?
25       A     Yes.
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 2       Q     What were your findings, Doctor?
 3       A     My findings were that the x-ray
 4   wasn't a good x-ray, and I was worried
 5   that the tibial component wasn't properly
 6   placed.
 7       Q     And can you explain to me why it
 8   wasn't a particularly good x-ray?
 9       A     Well, because when you want a
10   good lateral, you like to see the tibia
11   flat and here you could see one plateau
12   and the other plateau and because an x-ray
13   is only two-dimensional, it's not
14   three-dimensional, so I didn't know which
15   plateau I was really looking at with the
16   tibial component.

17 Q Were there other tests that you
18 could perform separate and apart from the
19 x-ray, such as an MRI, a CAT scan or other
20 diagnostic test that would assist you in
21 evaluating that particular issue?
22 A Well, first of all, an MRI is
23 out of the question, because of the metal
24 components. A CT scan also probably
25 wouldn't have been of very much benefit,
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2 again, because of the scatter from the
3 metal. The best thing is an x-ray, and so
4 we ordered new x-rays that were done more
5 with the -- more properly aligned and the
6 tibial component looked more level with
7 the tibial plateau.
8 Q When were those new x-rays done?
9 A I'm not sure exactly whether
10 they were done within a few hours or the
11 next morning in the x-ray department,
12 where you could get good x-rays.
13 Q Do you recall having a
14 conversation with Mrs. while she
15 still remained in the recovery room about
16 your reading an interpretation of the
17 x-rays?
18 A Yes.
19 Q Tell me what it is you remember
20 about that conversation.
21 A I recall that I told her I did
22 not like what I saw in the x-ray, that I
23 thought the tibial component might not be
24 properly placed, and that we might have to
25 go back and replace it.
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2 Q And what, if anything, did she
3 say in response?
4 A I don't know what she said at
5 that particular time. I know within her
6 hospital stay, either her daughter or she
7 said, well, if had has to be done, let's
8 do it now or soon or something to that
9 effect.
10 Q Did you agree with a comment
11 like that?
12 A If it had to be done, I would
13 certainly agree that it should be done
14 sooner rather than later, if it still
15 remained displaced.
16 Q Intraoperatively, am I correct
17 that you use cement to hold certain
18 components in place?
19 A Yes.
20 Q How long does it take for that
21 comment to cure and harden?
22 A About -- well, the whole process

23   takes about eighteen minutes.
24       Q     And once it's cured and
25   hardened, do you expect those components
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 2   to move at all?
 3       A     No.
 4       Q     If you had made a decision while
 5   she was still in recovery a component was
 6   not in the correct position, what is the
 7   next step that you would have done?
 8       A     The next step, I would have put
 9   it back.
10       Q     What is the risk of leaving the
11   patient with a component that is not in
12   the correct position?
13       A     Well, there's not a huge risk as
14   far as life or limb is concerned, but if
15   the components aren't properly positioned
16   or flat with the tibia, then it could lead
17   to a less satisfactory result.
18       Q     And what types of symptoms would
19   you expect to see in a patient who does
20   not have, as you just described, a less
21   than satisfactory result, where there may
22   be a malposition?
23       A     Well, in her, I thought the
24   component was loss, not necessarily
25   malpositioned.  And you would find
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 2   instability, you would find clicking, you
 3   would find popping, because the component
 4   would be flopping around in there.
 5       Q     Would the patient exhibit any
 6   type of complaints based upon a loose
 7   component?
 8       A     Not at that particular time.  I
 9   mean, the patient just had an operation,
10   there's a lot of pain.
11       Q     Fair enough.  At some point down
12   the road, after the pain medication has
13   worn off and they discharged her, at some
14   point afterwards?
15       A     Once the acute surgical -- most
16   people after knee replacement have pain
17   for at least three months.  So yes,
18   loosening of a component will be and can
19   be painful.
20       Q     In the course of your career,
21   have you seen instances where a component
22   was, in fact, loose --
23       A     Yes.
24       Q     -- after insertion?
25             And what do you do to fix that?
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 2       A     You revise it.

3 Q How? You have to re-operate?
4 A Yes.
5 Q And when you revise it, do you
6 remove the hardware, or do you try and
7 affix it with something else?
8 A I have to remove the loose
9 component and start over again.
10 Q When you do a revision, do you
11 need to use new hardware and new implant
12 material, or do you use the same ones that
13 were in the patient?
14 A I think in most cases, you would
15 use new implant material.
16 Q Did you make a note in the
17 patient's chart after you had read and
18 interpreted the January 11, 20 immediate
19 postoperative x-rays?
20 A Did I? No.
21 Q Can you explain to me why?
22 A Well, there is a note from the
23 resident the next morning that suggested
24 that we might have to reoperate. And, you
25 know, I don't write -- until I'm sure of
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2 something, I am not going to write a note
3 saying bad x-ray, looks funny, get new --
4 I mean, I don't see any purpose to write a
5 note like that.
6 Q When this next set of x-rays
7 were taken on January 12th, according to
8 the hospital record and the x-rays
9 themselves, did you read and interpret
10 those personally?
11 A Yes.
12 Q And what was your opinion about
13 those x-rays?
14 A The tibial component looked
15 perfectly flush with the tibial plateau,
16 and did not appear to be loose at that
17 time.
18 Q Was there something done
19 differently with the January 12th x-ray
20 that made it a better film than the
21 January 11th x-rays?
22 A Yes. It was taken in the x-ray
23 department, where they can do a better
24 job, rather than taking portables.
25 Q And based upon your review and
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2 interpretation of the January 12th films,
3 did you make a note in the chart about
4 your interpretation and findings?
5 A I did not make a note, but we
6 discussed it with the team and no further
7 surgery was indicated at this time.
8 Q And can you just explain to me

9   why you did not make a note about your
10   reading and interpreting the January 12th
11   films?
12       A     Well, I don't usually put notes
13   in the chart about my interpretation of
14   x-ray films.  The radiologists usually do
15   that.
16       Q      How would another physician
17   looking at the patient's chart know that
18   you had read and interpreted the patient's
19   films from either the 11th or the 12th of
20   January?
21               MR.      :  I'm going to
22       object.
23               MR.         :  When you say
24       "another physician," you mean?
25               MR. OGINSKI:  In the
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2       hospital, who is caring for the
3       patient.
4               MR.         :  An orthopaedic
5       surgeon?
6               MR. OGINSKI:  I will rephrase
7       the question.
8       Q     Am I correct, Doctor, that you
9   have orthopaedic residents that rotate
10   through your hospital?
11       A     Yes.
12       Q     And they do different rotations
13   at various times?
14       A     Yes.
15       Q     And in addition, do you have
16   attending physicians that work with you in
17   seeing and treating patients?
18       A     Yes.
19       Q     And in your own practice, do you
20   have either partners or associates that
21   are attendings who also care for your
22   patients when you are away or not
23   available?
24       A     Yes.
25       Q     In this particular case, were
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2   you the only attending physician in your
3   practice that saw and cared for Mrs.     ?
4       A     To the best of my knowledge,
5   yes.
6       Q     If a resident were to look at a
7   patient's chart, again, an orthopaedic
8   resident, that may not have been present
9   for any conversation you had on rounds or
10   elsewhere, how would that particular
11   individual know that you had read and
12   interpreted the films for January 11th or
13   even January 12th?
14               MR.      :  I'm going to

15 object.
16 A Because we all make rounds
17 together.
18 Q I'm saying if someone was not
19 present.
20 MR. : I'm going to
21 object.
22 MR. : It's okay.
23 A If they are not present, they
24 have to call me or call one of the
25 residents that was present. I mean, it's
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2 not like it's 3 miles away.
3 Q In your review of the patient's
4 chart before coming here today, did you
5 see any mention in the resident's note for
6 January 12th about the reading and
7 interpretation of the x-rays done on
8 either the 11th or the 12th?
9 MR. : I'm going to
10 object again.
11 MR. : For the
12 record, I don't have an original
13 hospital chart here today, but for the
14 purposes of the deposition, we will
15 use my copy, if that's okay.
16 Doctor, take a look at the
17 January 12th notes so that you can
18 answer Mr. Oginski's question.
19 A The resident wrote them the
20 morning of the 12th. "No acute events.
21 Question need for re-operation."
22 Q Let me stop you for a second,
23 Doctor. You are reading now from what
24 would be the progress notes, continuation
25 sheet for January 12th.
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2 A (Indicating.)
3 Q Okay.
4 A Everything is normal. And then
5 the last thing says: "Question OR today."
6 Q My question, Doctor, is a little
7 more basic, and I'm sorry if I wasn't
8 clear. Is there anything in the
9 January 12th orthopaedic resident note to
10 say that anyone had looked at the x-ray
11 films?
12 A No.
13 MR. : I'm going to
14 object to that.
15 Q Can you turn, please, to the
16 January 11th orthopaedic resident note.
17 A Do we have that?
18 Q If you don't, I will give you my
19 copy.
20 MR. : Which one?

21              MR. OGINSKI:  January 11th.
22        A     Okay.
23        Q     And by the way, can you tell
24   from the writing on this note which
25   orthopaedic resident it was that wrote the
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2   note?
3        A     No.
4        Q     Do you have a memory as to who
5   was caring for Mrs.      on the 11th or
6   the 12th?
7        A     No.
8        Q     Can you read the first two lines
9   of that note, please?
10       A     I can read --
11              MR.        :  To the best of
12       your ability, given that you didn't
13       write it, Doctor.  So if you can't
14       read something, you will tell us.
15              MR.      :  Please note my
16       continuing objection.
17       A     He is objecting --
18              MR.        :  That's okay.
19       Over objection, you can read the note.
20       A     It says -- I can't read exactly,
21   but there is something about "OR again
22   tomorrow for a revision of unicondylar
23   knee replacement."
24       Q     Just so the record is complete
25   Doctor, am I correct that the first five
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2   words, what appear to be the first five
3   words are --
4               MR.        :  Well, don't do
5        that.  I'm going to object.  He can't
6        read it, so --
7               MR. OGINSKI:  Okay.
8        Q     Can you go down, please, toward
9   the bottom-third of the page, where it
10  says "XR."  Does that represent x-ray?
11              MR.      :  I'm going to
12       object again.
13       A     Yes.
14       Q     Can you tell me what that says,
15  those two lines there?
16       A     It says:  "Implant in place.
17  Question retro --" or I can't --
18              MR.        :  Don't guess.
19       A     Something about "tibial
20  prosthesis."
21       Q     Can you tell from this note,
22  Doctor, who, if anyone, read and
23  interpreted the January 11, '06 x-ray?
24              MR.      :  Other than
25       himself, because he has already said
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2 himself?
3 MR. OGINSKI: Just based on
4 his note.
5 MR. : I'm going to
6 object again.
7 Q Anyone else?
8 A No.
9 Q Under "Assessment and Plan,"
10 what is written under number 1?
11 A "OR to --" I guess -- "tomorrow,
12 for revision."
13 Q Do you recall having any
14 discussion with the orthopaedic residents
15 that the patient, Mrs. , was going to
16 be returned to the operating room to have
17 a repair or a revision of her knee
18 surgery?
19 A Do I recall?
20 Q Yes.
21 A No.
22 Q Do you know of any reason why
23 this particular resident would indicate in
24 the note that the patient would be
25 returned to the operating room?

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2 MR. : I'm going to
3 object.
4 A Do I know?
5 Q Yes.
6 A I don't know, but I can suppose.
7 MR. : No.
8 Q I don't want you to guess,
9 Doctor.
10 After you had reviewed the
11 January 12th x-ray films, did you have a
12 conversation with Mrs. about your
13 review?
14 A I don't know -- sometime
15 afterward, I did. I don't know which day
16 or at what time, but I think it was very
17 close to the 12th.
18 Q And based upon your
19 interpretation of the films, do you
20 recall, as you sit here, now, what you
21 told her about whether she would or would
22 not need any further surgery to correct
23 what you had thought earlier might be the
24 need for a revision?
25 A I don't exactly, obviously,

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2 recall, but the explanation that I gave
3 her and her daughter was that the new
4 x-rays showed the components to be
5 satisfactorily placed and that I did not
6 see a need for emergency surgery and that

7 we should try to see what happens with
8 physical therapy and see if it does okay.
9 Now, prior to surgery, I told
10 her that doing unicompartmental knee
11 replacements might not work at all because
12 the arthritis in the other compartments
13 might be more than what could be helped
14 with the unicompartmental knee
15 replacement.
16 Q And how would that affect the
17 insertion of the unicompartmental
18 hardware?
19 A It doesn't affect the insertion,
20 particularly, but it certainly affects the
21 end result.
22 Q How?
23 A People who have painful
24 arthritis that involves the other joints
25 also have the pain from the arthritis in

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2 the other part of the joint.
3 Q Now, postoperatively, when Mrs.
4 followed you in the office, when she
5 came back for follow-up visits, she was
6 complaining of pain in a particular part
7 of her knee, do you recall that?
8 A Yes. She was complaining in a
9 different part than preoperatively,
10 according to my notes.
11 Q We are going to go through your
12 notes in a little while, but do you
13 remember what, if anything, you attribute
14 that new location of pain to, if anything?
15 A I thought she was having
16 patellofemoral pain.
17 Q And why would she be having that
18 type of pain postoperatively?
19 A Because that part of the knee
20 was not replaced with a unicompartmental
21 knee replacement.
22 Q Was it your opinion, Doctor,
23 that the pain she was experiencing was
24 related to arthritis in the other
25 compartments?

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2 A I certainly thought that was a
3 good part of it.
4 Q If Mrs. had the hardware or
5 the implant device that you put in her
6 knee had been incorrectly positioned into
7 an area that it should not be, could that
8 cause pain?
9 A If it were markedly out of
10 place, I suppose it could cause pain, yes.
11 Q Did you ever make any
12 determination on any of the office visits,

13 either clinically or looking at x-rays,
14 that the positioning of the hardware that
15 you inserted was not in the correct
16 position?
17 A I didn't think that the position
18 of the components were what were causing
19 her pain as much as the other parts of her
20 knee.
21 Q And again, you are referring to
22 the arthritis?
23 A The arthritis, the
24 patellofemoral pain and that the operation
25 hadn't worked and she would be better with
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2 a knee replacement, total knee
3 replacement.
4 Q When you initially discussed
5 with Mrs. the various options
6 available to her for her condition in her
7 left knee, was one of the options doing a
8 total knee replacement?
9 A Yes.
10 Q And other than the total knee
11 and the unicompartmental insertion, what
12 other options were available to her to
13 treat her condition?
14 A Therapy or injections of various
15 materials.
16 Q Are you talking more like
17 steroids or --
18 A Well, steroids is one, but the
19 newer materials, Synvisc, which give
20 temporary relief sometimes.
21 Q Were you aware that she had
22 previously been to another orthopaedist
23 who had tried certain conservative
24 efforts?
25 A She had even had an arthroscopy
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2 before.
3 Q And what was your opinion as to
4 the type of surgery she required?
5 A I thought she was a fairly good
6 candidate for unicompartmental knee
7 replacement.
8 Q Had there been no complications
9 associated with the insertion of that
10 device, how long would you expect that
11 hardware to remain in the patient?
12 A You know, that's very variable.
13 A lot of the surgeons have stopped doing
14 this operation because of the
15 unsatisfactory results. There are reports
16 that some of them -- or even many of them
17 are revised within the first year, and
18 there are reports that they last twelve,

19   fifteen years.  But these are theories
20   done by single surgeons, and no one seems
21   to be able to reproduce the results.
22        Q     In your experience, Doctor, what
23   has been your experience with this type of
24   device and the length of time in which
25   this lasts?
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 2        A     Well, this one is the first one
 3   that's needed to be revised this soon.
 4        Q     And typically, based upon your
 5   experience using this device, how long
 6   would you say this hardware and this
 7   particular device tends to last?
 8        A     I can't answer that question
 9   with any accuracy.
10        Q     Can you give me a range?
11        A     It's hard to say, because I
12   don't have -- haven't tabulated the
13   results.
14        Q     Is there any literature that you
15   are aware of that has studied and looked
16   at the length of time this hardware, on
17   average, has been able to stay in a
18   patient assuming no other complications?
19        A     There are a lot of other
20   articles, as I said, by single surgeons.
21   Some have had revisions in less than a
22   year and some think it lasts eight to
23   twelve years.
24        Q     Did you tell Mrs.     , before
25   the surgery was done, again, when you were
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 2   discussing with her her options, how long
 3   she could expect this device to last?
 4        A     I think the discussion was that
 5   it would have to be revised at some time
 6   in the future because all of them seem to
 7   have to be revised and that it may last
 8   maybe up to eight to twelve years.
 9        Q     And when doing a total knee
10   replacement, when you discussed that
11   option with Mrs.     , did you give her
12   any opinion as to how long a total knee
13   replacement would last assuming no
14   complications?
15        A     Well, I don't know exactly.
16   What I am doing is telling you what I
17   would tell most patients.  At her young
18   age, there would have to be some sort of
19   revision, and a total knee replacement as
20   well at least to replace the plastic
21   component, the gliding surface and whether
22   that lasted in her twelve, fifteen,
23   eighteen years, there are some that last
24   that long, but either one, should she live

25   to a normal life expectancy, would need
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 2   some sort of revision.
 3       Q     From a recuperation standpoint,
 4   is there any difference between a
 5   unicompartmental procedure and a total
 6   knee replacement procedure?
 7       A     I have not seen it particularly,
 8   no.
 9       Q     Are your instructions,
10   postoperative instructions the same for
11   either procedure?
12       A     Yes.
13       Q     And the healing period or length
14   of time that you expect to see improvement
15   for either procedure, are they generally
16   the same?
17       A     As a matter -- there are, there
18   are some people with total knees that are
19   much better within three to four weeks and
20   there are some people with uni's that
21   don't get better for four to six months.
22   It's a very variable, patient-dependant
23   thing.
24       Q     Going back to Mrs.     's
25   hospitalization, at any point while she
0033
 1
 2   was a patient at          from
 3   January 11th to, I believe, January 18th,
 4   did you ever have a conversation with her
 5   about whether you thought that the
 6   components that were in her knee would
 7   move or had moved at that point?
 8       A     I'm sure we had many
 9   conversations about whether they had or
10   hadn't moved, that I thought they had, but
11   the x-ray on the 12th, which was a good
12   x-ray, seemed to indicate they haven't.
13       Q     I'm talking about afterwards.
14       A     We had the same conversation, I
15   believe, almost daily.  I don't -- you
16   know.  Sorry, I can't recall exactly.
17       Q     Did you write a note at any time
18   while Mrs.      was a patient in the
19   hospital?
20       A     I don't see any in my
21   handwriting.
22       Q     Did you see Mrs.      every day?
23       A     I would see the patients on a
24   daily basis during the week with the
25   residents.  We would all make rounds
0034
 1
 2   together.
 3       Q     And when you would see her,
 4   would you typically examine her?

5 A I would look at her leg, make
6 sure she didn't have a phlebitis, it
7 wasn't inflamed. The residents would
8 round with me.
9 Q I would assume you talked with
10 her also?
11 A Yes. More talking than
12 examining.
13 Q And at some point after you had
14 seen Mrs. , would you customarily make
15 a note of your examination and your
16 findings?
17 A No. The residents would do
18 that.
19 Q Is there any particular reason
20 why you, yourself, did not make any notes?
21 A The reason is I don't see the
22 reason to write the same thing twice. I
23 mean, we would discuss it and they would
24 transcribe it.
25 Q Can you turn, please, to the



1
2 January 14th orthopaedic resident note.
3 It says: "Ortho II."
4 Do you see that?
5 A Yes.
6 Q Can you tell from this note who
7 wrote the note?
8 A No.
9 Q Do you recognize the signature?
10 A No.
11 Q Under "Assessment/Plan," can you
12 read what number 3 says?
13 A I can't read the first word.
14 The second word says "home today or
15 tomorrow."
16 Q And going up one line for number
17 2, can you tell me what those initials
18 mean, "WBAT"?
19 A "Weightbearing as tolerated."
20 Q And do you know or recall why
21 Mrs. was not released either that day
22 or the following day, but instead was
23 released four days later?
24 A It looks to me like she
25 developed some cardiac problems. "Denies



1
2 dizziness and shortness of breath, but she
3 does complain of diaphoresis," and I think
4 it says -- I don't know. Do you want me
5 to continue?
6 Q No. That's okay, Doctor.
7 Let me go back, Doctor, to the
8 original surgery and your initial thoughts
9 while the patient was in the recovery
10 room. When doing a procedure, after you

11   have completed a procedure, but before
12   closing the patient, if you took an x-ray
13   at that point, intraoperatively, and found
14   that there was an incorrect positioning,
15   am I correct that you would simply reopen
16   the patient at that point and do the
17   repair?
18       A     Yes.  If -- I mean, if there was
19   something obviously wrong in the x-ray.
20       Q     Did you speak to any of the
21   radiologists who reviewed either the
22   January 11th or the January 12th x-rays at
23   any time during Mrs.     's hospital stay?
24       A     I don't recall.
25       Q     I would like you to turn,
0037
 1
 2   please, to the x-ray reports, which are
 3   contained within the hospital record.
 4   Specifically page 47 of 91.
 5       A     (Complying.)
 6       Q     Doctor, if you go back even one
 7   page more, to page 46 of 91.
 8       A     (Complying.)
 9       Q     At the very bottom of the page,
10   in black, it says "x-rays knee portable
11   January 11, 20  ," and it's timed at
12   16:40.
13       A     Okay.
14       Q     Now, if you turn the page,
15   Doctor --
16       A     We are on 47 now?
17       Q     Yes.  We now have the
18   radiologist's interpretation.  Is there
19   anything in the interpretation that
20   describes the positioning of the hardware?
21       A     No.
22       Q     Now, turn back, please, to page
23   46 of 91.
24       A     (Complying.)
25       Q     And now we look at the x-rays
0038
 1
 2   taken the following day on January 12,
 3   20   at 18:00 hours, which is the same, I
 4   believe, as 6:00 p.m.?
 5       A     Well, that's -- yes.  No -- I
 6   don't understand what -- oh, okay.  All
 7   right.  I get it.  I'm just trying to
 8   figure out --
 9             MR.         :  Why this one
10       is before that one.
11             MR.      :  It's just the way
12       it prints out I think.
13       A     Okay.
14       Q     Is there anything in this
15   particular x-ray report which discusses
16   the positioning of the hardware?

17       A     No.
18       Q     According to this report, it
19   indicates that the films were taken at
20   6:00 p.m. the following day, when you had
21   requested that additional films be taken
22   when the patient was in the recovery room
23   on January 11th.  Was there any urgency or
24   need to do the films on any kind of
25   expedited basis?



1
2       A     I wanted them done in the
3   radiology department.  Not another
4   portable.  I wanted them done properly.
5   She was already in the recovery room with
6   dressing was on, wound was closed, the
7   anesthesia was -- so I didn't -- I didn't
8   think it made a huge difference, because
9   I -- obviously, when you do the operation,
10   before you close it, you look at the
11   components.  And we looked at them.  They
12   looked very good.  So I was surprised to
13   look at the x-ray and think that maybe it
14   wasn't right.  I thought it was the x-ray,
15   not the components.
16       Q     And based upon the possibility
17   that she would be returned back to the
18   operating room, did you keep her NPO?
19       A     We did the next day, yes, until
20   we got the appropriate films, looked at
21   them, decided that it wasn't necessary.
22       Q     And then you put her back on her
23   regular diet, when she was able to
24   tolerate?
25       A     Yes.



1
2       Q     I would like you to turn,
3   please, to page 45 of 91.
4       A     (Complying.)
5       Q     These are the next set of x-rays
6   that were taken on January 17, 20  .  Do
7   you see that?
8       A     Yes.
9       Q     Is there any comment by the
10   radiologist in this report that discusses
11   the placement of the hardware?
12       A     Just that it's there.
13       Q     Did you, personally, read and
14   interpret these January 17th notes?
15       A     Yes.
16       Q     Tell me what your thoughts were
17   when you read those films.
18       A     My thoughts, again, were that
19   the components were satisfactorily placed.
20   There was no evidence that it had come
21   loose and was floating around.
22       Q     When Mrs.      followed up in

23   your office, there were occasions when you
24   had x-rays requested or ordered them for
25   her, correct?
0041
 1
 2       A     Yes.
 3       Q     And there is a radiology report
 4   dated April 4, 20  , on page 43.
 5             By the way, Doctor, is your
 6   office located within the hospital?
 7       A     Yes.
 8       Q     And if you wanted a patient to
 9   have an x-ray, did they typically have the
10   x-rays taken in the hospital?
11       A     Yes.
12       Q     Looking at this particular
13   report, the radiologist compared the
14   January 12th films with the January 17th
15   films and the ones done on April 4th,
16   correct?
17       A     Yes.
18       Q     And the radiologist made a
19   notation, and I'm going to read it:  "The
20   hemiarthroplasty of the medial compartment
21   is re-demonstrated and appears stable in
22   position on the lateral projections.
23   However, a frontal projection needs to be
24   provided in order to comment on the
25   relative position of the prosthesis."
0042
 1
 2             Do you see that?
 3       A     Yes.
 4       Q     What does that mean to you?
 5               MR.      :  I'm going to
 6       object.
 7       A     What does it mean?  It means
 8   that they wanted an AP x-ray.
 9       Q     And is there any reason, to your
10   knowledge, that an AP x-ray was not done?
11       A     No.
12       Q     When you would ask Mrs.      to
13   get x-rays, did you tell her specifically
14   or give her a note saying what x-rays you
15   wanted done?
16       A     Do I give them a note.  I think
17   the AP x-ray did get done.  I don't know
18   if the radiologist saw it.  The problem
19   that we are discussing here was seen
20   always on the lateral x-ray, not on the AP
21   x-ray to begin with.
22       Q     Let's take a look, Doctor, at
23   the April 4th x-rays, just to make sure we
24   know exactly what was done.
25       A     (Complying.)
0043
 1
 2               MR.      :  Just so it's

3 clear for the record, Counsel for the
4 hospital has provided original films
5 from the hospital for the purposes of
6 the deposition at the request of
7 Plaintiff's Counsel.
8 Q How many films do you have,
9 Doctor, for that April 4th?
10 A Two.
11 MR. : Hold on. He
12 wants to know how many in total from
13 April 4th. I think there are more.
14 A Well, there are at least AP and
15 lateral.
16 MR. : Let's just be
17 clear now. How many x-rays do we have
18 that are marked April 4th of the knee?
19 THE WITNESS: This one.
20 MR. : That's three.
21 THE WITNESS: There's another
22 one, the same one. It's a copy of the
23 same one.
24 MR. : That's four.
25 THE WITNESS: There is
0044
1
2 another one.
3 MR. : Let's see how
4 many we have, and then we
5 differentiate what they are.
6 MR. OGINSKI: I have six.
7 MR. : There are three
8 and three.
9 THE WITNESS: Here's another
10 one.
11 MR. : That's six.
12 Q Doctor, upon your review of the
13 AP film that was taken on April 4th, did
14 you form any opinion as to whether there
15 was any problem with the placement of the
16 hardware?
17 A On the AP film?
18 Q Yes.
19 MR. : Can we
20 establish that there is an AP film for
21 4/4? Did we establish that?
22 MR. OGINSKI: He said that
23 there was.
24 MR. : Do you have
25 that?
0045
1
2 THE WITNESS: It's right
3 here.
4 MR. : Good. Okay.
5 MR. : Can we establish
6 how many AP films there are?
7 THE WITNESS: There is really
8 only one AP film.

9 MR. : For April 4th.
10 MR. : And there is a
11 copy of it.
12 THE WITNESS: Yes.
13 MR. : No. He means
14 are there two of them? Are there two
15 of the same?
16 THE WITNESS: No. The rest
17 of them are -- this is a patellar
18 view. This is posterior/anterior, not
19 an AP view. This is -- I don't know
20 what kind of view this is, but it's
21 not a true AP.
22 MR. : So there is
23 one?
24 THE WITNESS: There is one
25 really AP, which is this.



1
2 Q And based upon your review of
3 the AP film from April 4, 20 , Doctor,
4 what is your opinion about the placement
5 of the hardware at that point?
6 A It looks good.
7 Q You had mentioned earlier that
8 you had wanted to see the patient start
9 physical therapy and see how she did after
10 the surgery, correct?
11 A Yes.
12 Q Am I correct that if the
13 hardware is either loose or not positioned
14 correctly, that physical therapy won't
15 correct that condition?
16 A Well, certainly, physical
17 therapy is not going to correct loosening.
18 I suppose you could figure a proper way
19 that physical therapy might re-position
20 the components, but that would be unusual.
21 Q Let's take a look, please, at
22 your office notes.
23 A (Complying.)
24 Q Before I get to that, I just
25 want to ask a few quick questions.



1
2 Doctor, take a look at the anesthesia
3 record for the January 11th surgery. On
4 the top right area, in the notes that I
5 have highlighted, it says "total knee
6 replacement."
7 Is that correct?
8 A No.
9 Q And under "Perioperative
10 Services Department," which again looks
11 like an anesthesia record, on number 6, it
12 says "operation," it says, "left total
13 knee replacement."
14 That's not correct, is it?

15       A     No.
16                  :  Off the
17       record.
18               [Discussion held off the
19       record.]
20       Q     Can you tell me, Doctor, which
21   piece of the implant actually gets
22   cemented?
23       A     Both.
24       Q     Give me the material or what
25   device gets attached to which device and
0048
 1
 2   cemented together.
 3       A     Okay.  The tibia gets cemented,
 4   the metal part of the tibia gets cemented
 5   to the tibia and the metal part of the
 6   femur gets cemented to the femur and then
 7   the plastic gliding part gets slipped into
 8   the metal tray.
 9       Q     In the year before January of
10   20  , can you estimate for me the number
11   of unicompartmental surgical procedures
12   you have performed?
13       A     Probably about ten.
14       Q     How about in the year before
15   that?
16       A     I don't know, I think maybe five
17   or seven.
18       Q     In the course of your career,
19   how many would you say you have done,
20   unicompartmental procedures?
21               MR.         :  Up through the
22       time of this patient's procedure.
23               MR. OGINSKI:  Correct.
24               MR.         :  Not after.
25       A     Well, between twenty and
0049
 1
 2   twenty-five.
 3       Q     And in the year before this
 4   procedure, can you tell me how many total
 5   knee replacements you had done, well?
 6               MR.         :  All right.
 7       Over objection, go ahead.  It's okay.
 8       A     Fifty or more.
 9       Q     Do you know Dr.                ?
10       A     Yes.
11       Q     How do you know him?
12       A     He was a fellow at our
13   institution.
14       Q     Did you ever speak to Dr.
15           about Mrs.      t any time after
16   January 18, 20  ?
17       A     No.
18       Q     Did you ever learn from Mrs.
19        or anyone in her family that she had
20   gone to Dr.         for additional care

21   after leaving your care in April of 20  ?
22       A     No.
23       Q     Did you ever learn from Mrs.
24        or anyone else besides your attorney
25   that she had corrective surgery to her
0050
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 2   knee after April 20  ?
 3       A     All I knew is she was going to
 4   have.
 5       Q     Am I correct that in April of
 6   20  , a decision was made between you and
 7   her that she would now undergo a total
 8   knee replacement?
 9       A     Yes.
10       Q     Tell me what led to that
11   decision.
12       A     Persistent pain and disability.
13   The x-rays which showed significant --
14   showed arthritis of the patellofemoral
15   joint.  Some arthritis at the lateral
16   compartment.  And her failure to do well
17   with the unicompartmental knee
18   replacement.
19       Q     Before surgery, did you know
20   that she had arthritis in the
21   patellofemoral joint?
22       A     Well, we knew she had some.  I
23   did not think that was what was bothering
24   her.
25       Q     Did she tell you how the pain
0051
 1
 2   disabled her?
 3       A     She said that her knee gave out
 4   a lot and there was a lot of swelling
 5   and --
 6       Q     And just to be clear, Doctor,
 7   you are looking at your office record?
 8       A     Yes, I am.
 9       Q     That is from her initial visit
10   with you?
11       A     Yes.  She said she was unable to
12   walk upstairs foot over foot.  She
13   couldn't get up from a chair without
14   difficulty.  She couldn't tie her shoes.
15   She couldn't cut her toenails on the left
16   side.
17       Q     And you had mentioned a moment
18   ago that one of the things that led to the
19   decision to have a total knee replacement
20   was that there was a problem with the
21   lateral compartment; is that correct?
22       A     The main -- okay.  The main
23   reason for me to recommend total knee
24   replacement was the fact that she had
25   persistent disabling-type pain and
0052

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2 couldn't go back to work. The pain she
3 had complained to me of mostly was
4 patellofemoral pain. She told me that the
5 preoperative discomfort had improved, but
6 now she was having a different pain. And
7 I felt that now even though in the
8 beginning I thought she was a good
9 candidate for the unilateral or
10 unicompartmental knee replacement, that
11 that didn't turn out to be true.
12 Q When she was complaining of pain
13 in the patellofemoral joint, where was the
14 pain; was it in the back of the knee, top
15 of the knee or somewhere else?
16 A When I saw her, for instance, on
17 March 24th, she complained of pain on the
18 outside of the knee posteriorly and pain
19 in the area of the kneecap in the front of
20 the knee.
21 Q And tell me how doing a total
22 knee replacement would alleviate those
23 particular symptoms?
24 A Because then you replace the
25 lateral compartment and the patellofemoral



1
2 joint. You replace them all.
3 Q Was it your opinion that those
4 problems that she was experiencing was
5 primarily a result of the arthritis?
6 A Yes.
7 Q Is that also known as
8 osteoarthritis?
9 A In her case, yes.
10 Q Is there a particular
11 distinction between osteoarthritis and
12 arthritis, itself?
13 A Well, there are different types
14 of arthritis. There is a difference
15 between osteoarthritis, rheumatoid
16 arthritis, inflammatory arthritis,
17 traumatic arthritis.
18 Q And is your opinion that she had
19 the osteoarthritis in that particular --
20 A She has osteoarthritis.
21 Q And in your opinion, Doctor, is
22 that a degenerative condition?
23 A Yes.
24 Q Not something brought about, in
25 her case, by any trauma?



1
2 A Well, I can't say trauma didn't
3 aggravate her condition, but she had no
4 history of fractures, which you would
5 expect to cause posttraumatic arthritis.
6 Q Did you ever tell Mrs. that

7 she had a bone spur in the back of her
8 knee?
9 A I don't know if I said something
10 like that. It's possible.
11 Q Was there evidence that she had
12 a bone spur at the back of her knee?
13 A She has bone spurs on the side
14 of her knee, I know. And she has bone
15 spurs on her patella. Whether or not I
16 said back of the knee or -- yes, she has
17 bone spurs.
18 Q Tell me, what is a bone spur?
19 A Well, something you see on an
20 x-ray that's calcified, but it's usually
21 caused by minor incidents of trauma,
22 ligaments calcify or sometimes when you
23 have an arthritic joint that has a little
24 bit of instability, the body tries to make
25 more of a joint surface to take some of



1
2 the weightbearing forces.
3 Q And what is the significance in
4 a patient having a bone spur like you
5 observed in Mrs. ?
6 A That means that they have some
7 arthritis.
8 Q Is there any functional defect
9 or disability as a result of the bone
10 spur?
11 A Well, they can if they are in
12 the way, or the fact that they are there
13 may mean that the joint itself is
14 degenerating.
15 Q Did you form any opinion about
16 whether the bone spurs that you just told
17 me about had any functional disability for
18 her knee?
19 A I think that they were
20 indicative that the other parts of her
21 knee were degenerated enough that total
22 knee replacement was indicated when I saw
23 her in April.
24 Q But other than coming to that
25 conclusion, did you feel that the bone



1
2 spur, itself, causes a functional problem
3 with the use of her knee?
4 A That's a very difficult question
5 to answer. The bone spurs weren't in the
6 gliding part, but on the side and they
7 could irritate ligaments and synovium and
8 cause discomfort and swelling.
9 Q When you do a procedure like a
10 total knee replacement, you remove those
11 bone spurs as well, correct?
12 A Yes.

13 Q Can bone spurs cause pain?
14 A Yes.
15 Q How?
16 A By irritating the tissue around
17 it.
18 Q Do you recall ever telling Mrs.
19 , again, not in these exact words, but
20 after looking at the x-rays that one or
21 more of the pieces involved with her
22 hardware moved into position after the
23 procedure?
24 Let me rephrase the question.
25 You have already told me that your
0057
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2 evaluation of the x-rays showed that
3 everything looked good on January 12th.
4 A Yes.
5 Q Did you ever tell her in sum and
6 substance the pieces that are in your knee
7 have moved and now you don't knee the
8 further surgery?
9 A I would doubt that I would have
10 said that, because if I thought that they
11 had moved, the reason I got the x-ray was
12 to show that they weren't in the bad
13 position that I thought they might have
14 been with the recovery room x-ray.
15 Q When you examined Mrs. in
16 your office postoperatively for follow up,
17 did you ever make any clinical
18 determination that any of the hardware was
19 loose?
20 A The hardware was never
21 significantly loose, and perhaps maybe at
22 the end there may have been some evidence,
23 but at that time I thought she had needed
24 knee replacement for lots of reasons.
25 Q Tell me what you meant by you
0058
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2 didn't feel it was "significantly loose."
3 A There was no gross movement. It
4 was adequately positioned. It wasn't
5 flopped up or anything like that.
6 Q Did you observe any instability?
7 A No.
8 Q Did you observe any clicking or
9 noises emanating from the hardware,
10 itself?
11 A No.
12 Q Did she have good range of
13 motion?
14 A She had pretty good range of
15 motion, yes, the last time I saw her.
16 Q That was on the April 4th visit?
17 A Yes. She had fairly good range
18 of motion on the March 14th visit. I

19   didn't exactly record the motion on the
20   April 4th visit.
21       Q     Do you recall as you sit here
22   now that she had good range of motion?
23       A     I can only go by the March
24   visit.
25       Q     If components of the hardware
0059
 1
 2   are loose, would you expect that the
 3   patient's range of motion will be
 4   restricted?
 5       A     Well, if they are really loose,
 6   they have pain, which will restrict the
 7   motion.  If the -- I mean, there were some
 8   total knees that never cemented, so we
 9   knew that the components were loose, and
10   some of them did quite well.
11       Q     When you had the conversation
12   with Mrs.      about the decision to do a
13   total knee replacement, do you recall that
14   conversation as you sit here now?
15       A     Not in any detail.
16       Q     Is there anything in your notes
17   that would refresh your memory about the
18   details of that particular conversation?
19       A     No.
20       Q     Did you ever tell Mrs.     ,
21   again, in sum and substance, that even
22   with a total knee replacement, her knee
23   will never be a hundred percent?
24       A     Yes.
25       Q     Tell me why that is.
0060
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 2       A     Never are.
 3       Q     Why?
 4       A     It's artificial.
 5       Q     And the fact that it's
 6   artificial, what is it about that
 7   artificial knee that doesn't make it
 8   100 percent?
 9       A     You don't have any nerves in it.
10       Q     What does that mean functionally
11   on a day-to-day realistic basis?
12       A     People after knee replacement do
13   remarkable well, they do much better, but
14   as far as knowing exactly where their knee
15   is in space or things that you would know
16   if you were to try to go out with a total
17   knee or run around first base or
18   something, you wouldn't exactly feel
19   right.
20       Q     Do people who have these
21   procedures, either the unicompartmental
22   procedure or the total knee, are they able
23   to participate in sports?
24       A     Allegedly, the once with

25   unicompartmental knee replacements are
0061
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 2   more able to participate in sports than
 3   the total knee, but I have patients that
 4   play, you know, doubles tennis and things
 5   like that.  But nobody goes back to
 6   something like running around third base.
 7   That would just tear it up.
 8       Q     Let's go to your first follow-up
 9   visit with Mrs.      .  That was on
10   January 31st, 20  , correct?
11       A     Yes.
12       Q     Doctor, in your office, was it
13   customary that after you examined a
14   patient, you made notes of your findings
15   and your examination?
16       A     Yes.
17       Q     And after you did that, or at
18   some point after, you dictated your notes
19   and sent the letter off to one of her
20   doctors?
21               MR.         :  Well --
22       A     Yes.
23               MR.         :  Every time?
24       A     If I didn't do it, it was
25   because they didn't give it to me.  That
0062
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 2   was the standard I tried to do.
 3       Q     Typically, if you sign a
 4   particular transcribed notation, does that
 5   mean that you read the dictation, and you
 6   felt it was accurate?
 7       A     That's that I dictated it, and
 8   there may be some misspellings or
 9   something.
10       Q     Aside from typographical errors,
11   the substance would be accurate?
12       A     Hopefully, yes.
13       Q     Did Mrs.      have any
14   complaints of pain on January 31st visit?
15       A     Sure.
16       Q     Where was she complaining of
17   pain?
18       A     In the knee.
19       Q     Can you be any more specific as
20   to the location of the pain in the knee?
21       A     No.
22       Q     And to what, if anything, did
23   you attribute those complaints to at that
24   point?
25       A     She was three weeks after knee
0063
 1
 2   replacement surgery.  To be expected.
 3       Q     Now, she had mentioned that she
 4   had run out of Vicodin?

5 A Yes.
6 Q And you re-prescribed her the
7 Vicodin, correct?
8 A Yes.
9 Q That was for pain?
10 A Yes.
11 Q And do you recall that she had
12 also been on Vicodin before your surgery
13 as well?
14 A Yes.
15 Q The fact that she was still
16 taking the Vicodin, that was not a
17 significant finding on your part, correct?
18 A Correct.
19 Q She also made note that she was
20 using a cane in her right hand, correct?
21 A Yes.
22 Q And is that something that you
23 recommended she use following the
24 procedure?
25 A Yes.
0064
1
2 Q Why?
3 A Because, again, she had had a
4 knee replacement. Very, very few people
5 at this point in time can be walking
6 around normally.
7 Q And she also had, you observed,
8 2+ swelling?
9 A Yes.
10 Q Where was that?
11 A In the knee.
12 Q Was that customary and something
13 to be expected following surgery two weeks
14 out?
15 A Yes.
16 Q What is Diclofenac?
17 A It's the generic name for
18 Voltaren. It's an anti-inflammatory.
19 Q And am I correct that you
20 prescribed physical therapy for Mrs. ?
21 A Yes.
22 Q And there is a note from the
23 physical therapist, Doctor, dated February
24 15, 2006. At the top, the assessment, it
25 says: "Presents with gait abnormality."
0065
1
2 Do you see that?
3 A Yes. Well, that's after the
4 other part. "Patient status post left
5 unicompartmental knee replacement.
6 Presents with gait abnormality."
7 Q Is that something you would
8 expect to see postoperatively at this
9 point?
10 A Yes.

11 Q The decreased range of motion
12 that is also noted in the left knee,
13 here --
14 A Yes.
15 Q -- is that also expected
16 postoperatively?
17 A Yes.
18 Q And the decreased strength in
19 the left knee, is that common?
20 A Yes.
21 Q It also says, let me just read
22 it: "Decreased strength left knee and
23 left hip."
24 Is it common to see a left hip
25 being involved?
0066
1
2 A Well, it depends on how it is
3 tested. It often can cause pain, if your
4 testing strength of the hip puts stress on
5 the knee.
6 Q Did you have any conversations
7 with the physical therapist at any time
8 while you were caring for Mrs. ?
9 A I don't recall.
10 Q If you had spoken to the
11 physical therapist, would you have made a
12 note in your chart about your
13 conversation?
14 A No. Not unless there was some
15 specific unusual event.
16 Q Let's turn, please, to the next
17 follow-up visit in your office. That was
18 the March 24, 20 visit?
19 A 14th.
20 MR. : The 14th.
21 There is a letter of March 24th.
22 Q On that visit, she complained of
23 persistent posterolateral and
24 retropatellar pain, correct?
25 A Yes.
0067
1
2 Q And where exactly is the
3 posterolateral position?
4 A On the outside part of the knee.
5 Not the replaced part.
6 Q Was that something that she had
7 had preoperatively, or is this a new
8 complaint?
9 A Well, this wasn't her main
10 complaint preoperatively. Her main
11 complaint was pain on the inside of the
12 knee.
13 Q But preoperatively, did you ever
14 make any notation or finding that she had
15 pain on the outside of the knee,
16 specifically in the area that you have

17   noted here?
18       A     No.  Most of her pain, as I
19   said, was on the inside of the knee.
20       Q     And the retropatellar pain, that
21   would be behind the knee or underneath the
22   knee?
23       A     Underneath the kneecap.
24       Q     Had she made any complaints of
25   pain similar to that --
0068
1
2       A     No.
3       Q     -- preoperatively?
4       A     No.  Most of her pain, as I say,
5   was on the in -- the medial compartment.
6       Q     Just so we are clear, am I
7   correct that these are basically new
8   complaints of pain?
9       A     To me, they were newer
10   complaints of pain that really weren't
11   bothering her enough to complain about
12   preoperatively.
13       Q     In your note, Doctor, your
14   handwritten note or in your typed note to
15   Dr.          , dated March 24th, did you
16   ever indicate a particular reason as to
17   why you felt she was experiencing these
18   new complaints of pain?
19       A     When I talk about retropatellar
20   pain and posterior lateral pain, I am
21   indicating there is something in the other
22   two compartments causing pain.
23       Q     Did you ever indicate in your
24   transcribed letter to Dr.           the
25   cause for that posterolateral and
0069
1
2   retropatellar pain?
3       A     I never said what the cause was.
4       Q     Mrs.      was still using a
5   cane, correct, to get around?
6       A     Yes.
7       Q     And her extension was lacked
8   10 degrees with motion?
9       A     Yes.
10       Q     What did that mean to you, if
11   anything?
12       A     She couldn't get it quite fully
13   extended.
14       Q     Was there any significance to
15   that finding?
16       A     That's not terrible uncommon
17   following knee replacement at this point
18   in time.  It's painful to go through the
19   therapy, and I thought she needed more
20   therapy.
21       Q     And that is why you recommended
22   the physical therapy be increased?

23 A Yes.
24 Q What is Elavil?
25 A It's a -- well, when it first
0070
1
2 came out, it was an antidepressant, but it
3 doesn't do much for antidepressing.
4 Q What do you use it for?
5 A I use it for pain and sleeping.
6 Q Why did you prescribe it for
7 Mrs. on that visit?
8 A Because she was having trouble
9 sleeping, and I thought it might help with
10 her discomfort.
11 Q Was she still taking the Vicodin
12 on a regular basis?
13 A It says that she was.
14 Q And the same with the
15 Diclofenac?
16 A Yes.
17 Q Did Mrs. indicate to you
18 that the medications, either the Vicodin
19 or the Diclofenac, were having any
20 profound effect in either resolving or
21 relieving her symptoms?
22 A Well, I'm sure the Vicodin did
23 help. I don't know if the Diclofenac was
24 doing a good job as well as the Vicodin,
25 obviously.
0071
1
2 Q Doctor, your attorney has given
3 me two message notes, copies that came
4 from your office chart. Specifically
5 looking at the top one, do you see that
6 there is a message, I believe it's
7 addressed to you, about a phone call from
8 the physical therapist?
9 A Yes.
10 Q Did you ever speak to the
11 physical therapist on that date or shortly
12 after about that call?
13 A I can't answer that question.
14 Q The information that is
15 contained in that note dated March 14th,
16 do you know who took that information
17 down?
18 A One of my secretaries.
19 Q It has a comment there saying
20 that the patient is noncompliant, do you
21 see that?
22 A Yes.
23 Q In your opinion, Doctor, during
24 the course of time that you treated Mrs.
25 , did you ever feel that the patient
0072
1
2 was not compliant?

3 MR. : Well,
4 "noncompliant," you mean in any way?
5 MR. OGINSKI: In any respect.
6 A Well, I can only -- I didn't go
7 to therapy with her and I don't --
8 Q I understand.
9 A So all I can say is that the
10 therapist thought that she was
11 noncompliant.
12 Q Based upon your interactions
13 with Mrs. , at any time you saw her,
14 examined her, talked to her, did you ever
15 form an opinion that you felt that she was
16 noncompliant?
17 A She came to my appointments all
18 the time, and so that's what I can say.
19 Q So you found no reason, just
20 based on your interaction with her, that
21 she was noncompliant?
22 A She was never noncompliant with
23 me.
24 Q Let's turn to the last office
25 visit, that is the April 4th visit.
0073
1
2 A (Complying.)
3 Q What was your custom and
4 practice, Doctor, as to how frequently
5 follow-up x-rays would be taken of
6 patients who had unicompartmental knee
7 procedures?
8 A If they are asymptomatic, I
9 wouldn't take them quite frequently. If
10 they still complained of pain, things like
11 that, then I would take them more
12 frequently.
13 Q Based upon Mrs. 's
14 complaints of pain that you observed on
15 March 14, 20 , you noted that you will
16 reevaluate her in one month and x-rays
17 will be taken at that point?
18 A Yes.
19 Q Was there any particular reason
20 why you did not recommend or suggest that
21 x-rays be done as of the March 14th visit?
22 A At that time -- you know, her
23 postoperative course wasn't so abnormal.
24 If you take 100 patients with knee
25 replacements, at two months, they are
0074
1
2 all -- very few of them are ready to
3 dance. They all have some pain and some
4 discomfort. Unless they are really very,
5 should I say, compulsive with their home
6 exercise program -- they are still going
7 to have some lack of motion and some
8 discomfort when you stress them.

9 Q Let's turn, please, to the last
10 follow-up visit.
11 A (Complying.)
12 Q She had made complaints to you
13 of activity, especially stairs?
14 A Yes.
15 Q And did you determine from her
16 where this pain was coming from?
17 A Well, again, it's the
18 retropatellar pain, which is aggravated
19 especially with stairs.
20 Q Were there any new complaints of
21 pain that she had made on this April 4th
22 visit?
23 A Not that I have recorded.
24 Q And you made a note that you
25 reviewed the x-rays and the components

1
2 were in proper position?
3 A I felt that they were fairly
4 satisfactory, yes. I didn't think they
5 were causing her pain, let me put it that
6 way.
7 Q And you also felt that there was
8 no loosening of the components?
9 A I think that there was
10 significant loosening.
11 Q And, again, I know you mentioned
12 the word "significant" before. Did you
13 find that there was any loosening?
14 A There may be a little -- little
15 lucency around the cement.
16 Q What does that indicate to you?
17 A That would indicate there could
18 be some loosening, there could be some
19 blood between the cement and the bone.
20 Q And did you feel at any point
21 that this lucency that you observed which
22 could be either the blood or the loosening
23 of the bone might be a cause of her
24 ongoing complaints?
25 A At that time I felt that the

1
2 cause of her ongoing complaints was the
3 arthritis in the other part of her knee.
4 That is the major problem.
5 Q Did you form any opinion
6 clinically as to whether there was
7 loosening or a problem with the hardware
8 on the April 4th visit?
9 A My opinion of the April 4th
10 visit is that she needed to have a total
11 knee replacement, and my feeling was the
12 main indications for that were the
13 degenerative changes in the other
14 compartments of her knee.

15 Q But clinically, were you able to
16 determine if there was any loosening of
17 the hardware?
18 A Clinically, you really can't
19 determine that.
20 Q Did you learn from anyone, other
21 than your attorney, that Mrs.
22 gone to another orthopaedist on
23 April 13th, a week after she had seen you?
24 A What I do know is that -- I do
25 know that she went to see another
0077
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2 orthopaedic surgeon. I did not know who
3 it was.
4 Q Did you have a conversation with
5 her about the fact that she had cancelled
6 your recommended procedure for total knee
7 replacement?
8 A Yes.
9 Q And do you recall when that
10 conversation took place?
11 A Shortly after she cancelled it,
12 whenever that was.
13 Q And tell me what it was she said
14 as to why she was cancelling the
15 procedure.
16 A She said she was going to
17 another orthopaedist.
18 Q Did she say why?
19 A I don't recall if she said why,
20 but I figured out why.
21 Q Why?
22 A Well, she wanted another
23 opinion, and she obviously felt
24 dissatisfied or whatever.
25 Q Did you ever ask her who the
0078
1
2 other orthopaedist was that she had been
3 to?
4 A No, but I had told her I hope
5 everything goes well.
6 Q Is there a requirement at
7 that if you see and examine a
8 patient, you are required to make a note
9 in the chart about your exam?
10 MR. : I'm going to
11 object.
12 Q Guideline, rules, policy,
13 regulations, that you are aware of?
14 MR. : I'm going to
15 object.
16 A That I have to make a note?
17 Q In other words, if you do an
18 examination of a patient, that you are
19 required to make a notation in the
20 patient's chart that you did an exam, and

21   to list what your findings were?
22              MR.      :  Just note my
23       objection.
24       A     I don't believe that there is a
25   requirement that I have to write a note
0079
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 2   unless -- the requirement is more federal
 3   regulation if I bill for a visit --
 4              MR.      :  Move to strike
 5       those portions that are not
 6       responsive.
 7       Q     My question is limited only to
 8   rules, regulations and policies that were
 9   in place at your hospital in January of
10   20  .
11              MR.         Please note my
12       continuing objection.  It's not his
13       hospital, but go ahead, we know what
14       you mean.
15              THE WITNESS:  What am I
16       supposed to do here?
17       Q     I will rephrase the question.
18             In January 20  , Doctor, am I
19   correct that you were the Vice Chairman of
20               ?
21       A     Yes.
22       Q     And that you were also the Chief
23   of the Orthopaedic Service at
24          ?
25       A     Yes.
0080
 1
 2       Q     And I believe you had one or two
 3   other titles; is that right?
 4       A     Okay.
 5       Q     In any event, from time to time,
 6   were there certain policies and rules and
 7   regulations that were drafted for the
 8   Department of Orthopaedics?
 9              MR.      :  I'm going to
10       object.
11       A     No.
12       Q     Are you aware --
13       A     I mean, are there any rules?
14   Yes, there are rules.  But were there
15   rules for me to write a note?
16       Q     No.  No.
17       A     There are rules, yes.
18              MR.         :  Just answer
19       the specific question.
20       Q     What is the purpose of those
21   rules and regulations that that particular
22   hospital formulates and promulgates?
23              MR.      :  Objection.
24              MR.         :  Even I will
25       object to that one.  You want to know
0081

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2 whether he is aware of a rule and
3 regulation that an attending such as
4 himself has to write a note? I think
5 he's answered that, but you can get
6 that answer again.
7 Doctor, is there a
8 regulation, a rule, at the hospital at
9 that time when you treated this
10 patient that you, as the attending
11 orthopaedic surgeon, when you examined
12 the patient, had to author a note?
13 MR. : Note my
14 objection.
15 MR. : Pretty
16 well-phrased question, though.
17 A To my knowledge, no.
18 Q In your April 10th letter to Dr.
19 , discussing the April 4th visit,
20 you said that there were various options
21 that were discussed with Ms. . Other
22 than having her undergo the total knee
23 replacement, what other options were
24 available to her at that point?
25 A Well, if you went in there and
0082
1
2 found some other problem that could be
3 revision of the unilateral knee
4 replacement, you could continue with
5 physical therapy, you could do Cortizone
6 injections. I mean, those are other
7 options you could have done.
8 Q Did you feel that any of those
9 other conservative options would have any
10 effect on Mrs. 's condition?
11 A Well, I think if we had injected
12 it with Cortizone, she may have had some
13 temporary relief, but she was not so
14 anxious to have the final solution and get
15 better.
16 Q On the visits that she came to
17 you for follow up, did she come alone or
18 was she with a family member?
19 A You know, I don't recall. I
20 think some of them she was alone, but I
21 don't recall.
22 Q Do you recall having any
23 conversations with any family member,
24 whether it be a daughter or anybody else?
25 A Certainly postoperatively, we
0083
1
2 had some conversations.
3 Q Not in the hospital. I'm
4 talking about in your office.
5 A I can't recall.
6 Q Doctor, I am going to show you a

 7   January 16th orthopaedic resident note
 8   timed at 9:20 a.m. (Handing.)
 9       A     (Reviewing note.)
10       Q     Do you see that the resident
11   wrote -- it says left "TKA."
12       A     I see it.
13       Q     What does that stand for?
14       A     Total knee arthroplasty.
15       Q     That is incorrect; am I right?
16       A     Yes.
17             MR.      :  I am going to
18       object.
19       Q     As of the last visit, did you
20   make any observation as to whether she was
21   still walking with an antalgic gait?
22             MR.         :  Just repeat
23       that, I didn't hear it.
24             THE WITNESS:  He wanted to
25       know from when I saw her the last time
0084
 1
 2       she had an antalgic gait.
 3       A     I didn't note it that she did.
 4       Q     Would you have expected to make
 5   a note of it if you observed it?
 6             MR.         :  I object to
 7       the form of it.
 8             You can answer it.
 9       A     On the last visit when she still
10   had all the things that she had and I
11   examined her, I didn't think that was a
12   very -- if it was there -- significantly
13   important.  I would imagine she still had
14   a limp simply because I recommended she
15   have a knee replacement.
16       Q     Typically when you would come in
17   and see the patient, did you ask her to
18   walk or did you observe her walking in?
19       A     I would watch them walking out
20   more than I would watch them walking in.
21       Q     Was there affusion or swelling
22   that you observed on the last visit?
23       A     I can't answer that.  I didn't
24   note it in my chart.
25       Q     The fact that there was no
0085
 1
 2   notation about any swelling in the chart,
 3   could that mean one of two things:  Either
 4   there was one, or there was and you simply
 5   didn't document it?
 6       A     It could mean either one.
 7       Q     The last set of x-rays that were
 8   done that we talked about earlier, the
 9   April 4th x-rays, did you form any opinion
10   as to whether there was any malalignment
11   of the components or the hardware?
12       A     The alignment of the knee was

13   quite satisfactory.
14       Q     Were there any components that
15   were sitting in the popliteal place, in
16   your opinion, that should not have been
17   there, based upon your review of the
18   April 4th x-ray?
19       A     Well, the tibial component may
20   have been somewhat posterior, but that
21   depends on how the rotation of the knee
22   is, you can place the tibial component if
23   you rotate the knee one way to look like
24   it's inside the knee and rotate it the
25   other way to look outside.
0086
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 2       Q     And did you feel that that was a
 3   significant finding?
 4       A     I thought the significant
 5   finding on those x-rays were the spurs and
 6   the other arthritis that I saw in the
 7   other two compartments and that, I felt,
 8   was what the major cause of her pain was.
 9       Q     Doctor, if, in fact, the
10   positioning of her unicompartmental
11   hardware was not in the correct place,
12   would it be a departure not to go back in
13   and fixed it and repair it?
14       A     If it were markedly, markedly
15   displaced and not on the tibia and, you
16   know, floating around, that would be a
17   departure.  If it's flat on the tibia and
18   within reasonable -- along with good
19   alignment and everything, no.
20       Q     Are you licensed to practice
21   medicine in the State of New York?
22       A     Yes.
23       Q     How long have you been licensed?
24       A     19  .
25       Q     Has your license ever been
0087
 1
 2   revoked?
 3       A     Thank God, no.
 4       Q     Has it ever been suspended?
 5       A     No.
 6       Q     You are board certified in
 7   Orthopaedics?
 8       A     Yes.
 9       Q     When were you first board
10   certified?
11       A     '  .
12       Q     And have you had to get
13   recertified over time?
14       A     No.
15       Q     You are grandfathered in?
16       A     Yes.
17       Q     Did you pass your boards the
18   first time?

19 MR. : Objection.
20 But go ahead.
21 A Yes.
22 Q Did you ever read Mrs. 's
23 hospital records from about any
24 postoperative care that she had?
25 A No.

0088

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2 Q In preparation for today, did
3 you review any textbooks or literature?
4 A No.
5 Q In order to treat Mrs. , did
6 you rely on any guidelines or any
7 algorithms in treating her, or deciding
8 what to do for her?
9 A Algorithms?
10 Q Written documented algorithms.
11 A No.
12 Q Are you affiliated with any
13 other hospitals other than ?
14 A No.
15 Q Other than
16 , are you affiliated with any
17 other hospitals?
18 A No.
19 Q How long have you held the
20 position of of Orthopaedics?
21 A You know, it seems like just
22 yesterday. It was probably five years,
23 six years ago. I don't know.
24 Q Has that title or position
25 changed since January of ' up until now?

0089

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2 Are you ? Are you something else?
3 A No, I am nothing else, if that's
4 the question.
5 Q Have you ever testified before?
6 A Yes.
7 Q Have you testified as a
8 defendant before?
9 A Yes.
10 Q Approximately, how many times?
11 MR. : I'm going to
12 object to that. That's irrelevant.
13 It's irrelevant.
14 MR. OGINSKI: It's not a
15 proper objection. I am entitled to
16 know his history and background.
17 Q Just give me an idea. I'm done.
18 A Three or four times, I don't
19 remember.
20 Q Have you ever testified as an
21 expert on behalf of a plaintiff or
22 defendant in a malpractice case?
23 A Yes.
24 Q How many times, approximately?

25 A Less than ten.
0090
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2 Q How many for plaintiff, how many
3 for defendant?
4 MR. : I will object.
5 But you can answer.
6 A You know, the bad thing is
7 probably -- it's probably pretty equal.
8 You know, I don't do it very often.
9 Q And do you recall when was the
10 last time you testified as an expert?
11 A Yes. I think it was February of
12 this year.
13 Q And do you recall what county?
14 A I think it was --
15 or , but I'm pretty sure it was
16 .
17 Q I know I don't have your CV
18 here, Doctor. Can you tell my
19 approximately how many publications you
20 have?
21 MR. : I am going to
22 provide you with the CV. I don't
23 know, is it really necessary to ask
24 him how many? It's on his CV. I have
25 seen his CV. You will have his CV.
0091
1
2 Q Am I correct that you have
3 published not just articles in peer review
4 journals, but also portions of textbooks?
5 A Yes.
6 Q Do any of the articles that you
7 have published relate to the insertion in
8 the unicompartmental procedure that was
9 done in this case?
10 A No.
11 Q Have you given any lectures to
12 national bodies of orthopaedists about the
13 procedure that was done in this case,
14 unicompartmental knee replacement?
15
16 [Continued on the next page to
17 allow for signature line and jurat.]
18
19
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21
22
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24
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0092
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2 A No.
3 MR. OGINSKI: Thank you.
4 THE WITNESS: Your welcome.

5 MR. : I have no
6 questions.
7 MR. : Thank you.
8
9
10 [TIME NOTED: 2:58 p.m.]
11
12 ____________________________
13
14
15
________________________
16 Subscribed and sworn to
before me this _________
17 day of ________________,
20 .
18
_______________________
19 Notary Public
20
21
22
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0093
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2 E X H I B I T S
3 PLAINTIFF'S

| EXHIBIT | DESCRIPTION | PAGE |
|---|---|---|
| 1 | Plaintiff's chart | 4 |

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2 CERTIFICATION
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4 I, , a

5 Notary Public, do here hereby certify that
6 the foregoing witness,
7 , was duly sworn on the date
8 indicated, and that the foregoing is a
9 true and accurate transcription of my
10 stenographic notes.
11 I further certify that I am
12 not employed by nor related to any parties
13 to this action.
14
15
16 _______________________
17
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* * *
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21
22
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25
0095
1 ERRATA SHEET
REPORTING, LLC
2
3

4
5 NAME OF CASE:
DATE OF DEPOSITION: June 21, 20
6 NAME OF DEPONENT:
7 PAGE LINE (S) CHANGE REASON
8 ___/ _____/ ___________________/______________________
9 ___/ _____/ ___________________/______________________
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20 ___/ _____/ ___________________/______________________
21
22 ___________________________

23
SUBSCRIBED AND SWORN TO BEFORE ME
24 THIS _____ DAY OF __________, 20__.
25 ______________________ _____________________
(NOTARY PUBLIC) MY COMMISSION EXPIRES: