

****DE-IDENTIFIED DEPOSITION OF THE CHIEF OF SURGERY IN A CASE OF FAILURE TO RECOGNIZE AND TREAT TESTICULAR TORSION RESULTING IN DEATH OF A TESTICLE****

1

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

3 -----X

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

4 and , individually,

5 Plaintiffs,

6 -against-

7 , ,
8 M.D., "JOHN" , M.D., (the first name
9 being fictitious), "JOHN" , M.D., (the
10 first name being fictitious), "JOHN"
11 M.D., (the first name being fictitious), and
12 , M.D.,

10

Defendants.

11 -----X

12

13

14 May 20,
15 10:32 a.m.

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17 EXAMINATION BEFORE TRIAL OF

18 , M.D., s/h/a "JOHN" , M.D., a
19 Defendant herein, taken by the Plaintiffs,
20 pursuant to Order.

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APPEARANCES :

ESQS.
Attorneys for Plaintiffs
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Flushing, New York 11358

BY: GERALD OGINSKI, ESQ.

, L.L.P.
9 Attorneys for Defendants

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11 BY: , ESQ.

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2 IT IS HEREBY STIPULATED AND AGREED by and
3 between counsel for the respective parties hereto
4 that all rights provided by the CPLR, including
5 the right to object to any question, except as to
6 the form, or to move to strike any testimony at
7 this examination, are reserved; and, in addition,
8 the failure to object to any question or to move
9 to strike testimony at this examination shall not
10 be a bar or waiver to make such a motion at, and
11 is reserved for, the trial of this action.

12 IT IS FURTHER STIPULATED AND AGREED that this
13 examination may be signed and sworn to by the
14 witness being examined, before a Notary Public
15 other than the Notary Public before whom this
16 examination was begun, but the failure to do so,
17 or to return the original of this examination to
18 counsel, shall not be deemed a waiver of rights
19 provided by Rules 3116 and 3117 of the CPLR and
20 shall be controlled thereby.

21 IT IS FURTHER STIPULATED AND AGREED that the
22 filing of the original of this examination is
23 hereby waived.

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, having been

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duly sworn by a Notary Public

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within and for the State of New

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York, stated his business

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address as ,

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, was examined and

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testified under oath as

10

follows:

11 EXAMINATION BY

12 MR. OGINSKI:

13

Q Good morning, Doctor.

14

A Good morning.

15

Q You currently work here at

16 Hospital of ?

17 A Yes.

18 Q What is your position here
19 currently?

20 A I'm director of surgery, chief
21 of surgery actually.

22 Q How long have you held that
23 position?

24 A Since .

25 Q Are you board certified in any

5

1

2 field of medicine?

3 A Yes.

4 Q What field?

5 A Board certified in general

6 surgery and quality assurance.

7 Q Are you licensed to practice

8 medicine in the State of New York?

9 A Yes.

10 Q Are you licensed in any other

11 state?

12 A No.

13 Q In the year , did this

14 hospital -- when I say "this hospital," since

15 we're here at the deposition at your

16 hospital, Hospital of , did

17 surgeons perform operations on children in

18 the year ?

19 A No.

20 Q Were there ever occasions where

21 surgeons at your hospital performed surgery

22 on children?

23 A If there was a life-threatening

24 situation and a patient could not be

25 transferred, then, you know, of course they

1

2 had to perform surgery, whatever was
3 necessary.

4 Q What is the minimum age in
5 which a child cannot be operated on at this
6 hospital?

7 A As I recall, it was eighteen
8 years old, below eighteen.

9 Q Is that a policy or is that
10 something else?

11 A I heard about it. I didn't
12 read the policy, but everybody talked about
13 it. Life-threatening, that's the only way --
14 the only time, you know, the patient can be
15 operated on.

16 MR. : Doctor, he's
17 asking if it's something written or
18 was that just something that was
19 practiced.

20 A I heard about it. I didn't

21 read it.

22 Q During the length of time that
23 you have been chief of surgery here at this
24 hospital, ,
25 have you personally operated on children?

7

1

2 A One I remember distinctly, one
3 case.

4 MR. : It's a
5 yes-or-no question, Doctor. You
6 don't --

7 A Yes.

8 Q How long ago was that,
9 approximately?

10 A About fifteen, twenty years
11 ago.

12 Q Do you know a Dr. ?

13 A We have about ten s.

14 Q Do you know a Dr. ,

15 , ?

16 A Yes.

17 Q Who is he?

18 A He's a house surgeon employed

19 by the hospital.

20 Q What is the definition of a

21 house surgeon?

22 A The house surgeon is an

23 employee of the hospital in the surgical

24 department who is to scrub in the operating

25 room on occasion there is an operation, to

8

1

2 preop and postop monitorization of patients

3 on the floor and start IVs, all these kinds

4 of things.

5 Q You currently perform surgery?

6 A No, not anymore.

7 Q When did you last perform

8 surgery?

9 A Probably a year, year and a

10 half ago.

11 Q In the nighttime are there

12 surgeons that are on call for the hospital?

13 MR. : Just note my

14 objection to the form "in the

15 nighttime."

16 MR. OGINSKI: Sure.

17 MR. : Essentially in

18 light of the fact this is really the

19 morning.

20 MR. OGINSKI: I'll rephrase the

21 question.

22 Q During normal business hours,

23 am I correct there are surgeons in the

24 hospital that are available to perform

25 various operations?

1

2

MR. : Just objection

3

to "normal business hours." To the

4

extent he understands, he can answer.

5

I don't know if there is such a thing

6

in the hospital.

7

A Yes.

8

Q In the evening and early

9

morning hours, what surgeons are available

10

generally if someone needs surgery?

11

A Depends on the specialty.

12

Q Is there a house surgeon that

13

is always available within the hospital on

14

any given night or evening?

15

A Yes.

16

MR. : Talking

17

January ?

18 MR. OGINSKI: I'm talking
19 generally in that area, January ,
20 yes.

21 MR. : I understand
22 generally. What we do today and what
23 we did in and may be three
24 different things.

25 Q Relating to January of , am

10

1
2 I correct that there would be a house surgeon
3 who would be available in the hospital in the
4 evening and in the early morning hours?

5 A Yes.

6 Q If that particular individual
7 needed to call in other physicians, whether
8 surgeons -- they had that capability back in
9 January of , correct?

10 A Yes.

11 Q All of my questions from here
12 on in are going to relate to that time frame,
13 January of .

14 The surgeons that were
15 available to operate, do you personally know
16 whether they were able to or qualified to
17 operate on children?

18 A I do not know personally if he
19 operated on children.

20 MR. : Okay.

21 Q In January of , who was the
22 anesthesia chairman, if there was one?

23 MR. : Just note my
24 objection. I think we need to lay a
25 foundation for that.

2 Q Did the hospital in January of
3 have an anesthesia department?

4 A Yes.

5 Q Was there a chairman for that
6 department?

7 A Yes.

8 Q Who was that?

9 A Dr..

10 Q Can you spell that?

11 A -- I think ,
12 something like that.

13 Q Does Dr. work at this
14 hospital?

15 A No, sir.

16 Q Do you know where he works?

17 A No.

18 Q Do you know when he last worked
19 here?

20 A I don't remember when the new
21 group from came in, so that's the
22 date when he left, when the new group came

23 in.

24 Q The anesthesia department, was

25 that set up as a particular group or

12

1

2 something else, if you know?

3 A Excuse me?

4 Q Withdrawn.

5 The anesthesia department that

6 was here at the hospital, did that have a

7 separate name or separate group name, if you

8 know?

9 A Not as far as I know.

10 Q Have you ever heard of the name

11 ?

12 A I don't recall that.

13 Q Was Dr. part of any

14 particular anesthesia group?

15 A He was the chief of this group.

16 Q In addition to the house
17 surgeon being available in the night or early
18 morning hours, would there also be
19 anesthesiologists who also had the same
20 similar responsibilities to be available if
21 needed?

22 A Yes.

23 MR. : Over my
24 objection.

25 Q Do you know who kept and

13

1
2 maintained logs of the various physicians who
3 would be available on any given night or
4 evening?

5 MR. : The
6 anesthesiologists?

7 MR. OGINSKI: Yes.

8 A I assume it was the chief of
9 anesthesia.

10 MR. : Don't assume.

11 If you don't know, say so.

12 Q Was your department responsible
13 for keeping track of what anesthesiologists
14 were on call on any given evening?

15 A No.

16 Q In January of , was
17 equipped to handle
18 surgery on children ages ten, eleven or
19 twelve?

20 MR. : Well, he's
21 already testified in life-threatening
22 situations and if they can't be
23 transferred.

24 MR. OGINSKI: I understand.
25 I'm asking if the hospital itself was

1

2 equipped physically with actual
3 equipment.

4 A I really don't know. I'm not
5 sure about that.

6 Q Do you know a Dr. ?

7 A No.

8 Q Do you know a Dr. ?

9 A Yes.

10 Q Who is Dr. ?

11 A A urologist.

12 Q Did you receive a telephone
13 call in the middle of the night on January
14 24, relating to ?

15 A I don't remember the date, but
16 I remember the hour, 2:30 in the morning,
17 yes.

18 Q Can you tell me who it was who
19 called you?

20 A Dr. .

21 Q Why was it that you were

22 called?

23 A I don't know if it was because

24 I was chief of surgery or if he wanted to

25 have my opinion, I have no idea. He just

15

1

2 called me.

3 Q Dr. was the house surgeon

4 that you mentioned?

5 A Yes.

6 Q As the chief of surgery in

7 January of , from time to time did you

8 receive calls from physicians at the hospital

9 to ask your advice or to get opinions from

10 you?

11 A Occasionally.

12 Q When Dr. called you, you
13 said it was 2:30 in the morning?

14 A Yes.

15 Q Can you tell me what it was he
16 said to you?

17 A There is a child in the
18 emergency room, eleven years old, with a
19 testicular torsion. The emergency department
20 notified the anesthesia department and the
21 anesthesia department said that they cannot
22 give anesthesia to children. I don't
23 remember the age he mentioned. Probably he
24 didn't mention it. I said, "Did you call the
25 urologist, the one on call?" I said, "Who's

16

1
2 the urologist?" He said, "It's
3 Dr. ." I said, "Was Dr.

4 notified about this child in the emergency
5 room?" He said, "Yes, he was notified. He
6 said he couldn't come because the anesthesia
7 department could not take care of the
8 patient." This is what he said.

9 Q What questions did you ask
10 Dr. ?

11 A I asked, you know, is the kid
12 in a lot of pain. He said, "Yes, he's in
13 pain." I said, "If the anesthesia department
14 cannot come, if Dr. , the urologist,
15 cannot come, probably you should consider the
16 possibility of transferring this patient to
17 ." Since there is a policy -- not
18 a policy. There is an arrangement between
19 and to transfer all the
20 pediatric cases which cannot be done in this
21 hospital.

22 Q Is that a written arrangement
23 that you're aware of?

24 A I know there is an arrangement,

25 but -- most likely there is a written

17

1

2 arrangement, but I cannot -- I never saw it

3 but it's well known throughout the hospital.

4 That's what I can tell you. I said, "As long

5 as this thing is done quickly." It was 2:30.

6 I don't know how long the conversation

7 lasted, probably five minutes. He said,

8 "I'll do my best." I found out that at 2:40

9 the arrangements were made for the transfer.

10 Q Can you --

11 A The patient arrived at 2:12. I

12 asked when did he come to the emergency room.

13 Dr. called me at 2:30 and the

14 arrangements for the transfer were made at

15 2:40. That's the last I heard about the

16 patient.

17 Q Can you just explain what you
18 meant when you said "as long as this is done
19 quickly"? What did you mean by that?

20 A Because the child was
21 uncomfortable and I thought the sooner they
22 helped him the better it was.

23 Q Did Dr. indicate to you
24 how much time had lapsed from the initial
25 onset of pain until the child had arrived in

18

1
2 the hospital?

3 A He mentioned that the mother
4 told him 8:00 in the evening.

5 Q That was the onset of pain?

6 A That's what he told me.

7 Q In January of , did you
8 have an opinion with a reasonable degree of

9 medical probability as to the length of time
10 or the range of time that a child could go
11 without treatment to the testicle before
12 having some compromise to the testicle?

13 A First of all, I -- you know,
14 this was not my patient.

15 Q I understand.

16 A No. No. And I didn't examine
17 the patient.

18 MR. : Yes or no? Do
19 you have an opinion, yes or no.

20 A You know, I didn't -- if I had
21 made the diagnosis, yes.

22 MR. : Doctor, okay.

23 Q I'll rephrase the question.

24 A Do you want to know in general?

25 Q Yes.

1

2 MR. : I'm going to

3 object.

4 MR. OGINSKI: Ill rephrase the

5 question.

6 A I can show you the textbook,

7 that's my opinion.

8 MR. : Doctor, don't

9 do that.

10 Q Doctor, when Dr. called

11 you in the early morning hours of January

12 24th, were you aware that the earlier this

13 child received treatment to the testicle the

14 greater likelihood there would be that the

15 testicle could be saved?

16 MR. : I'm going to

17 object.

18 Q Was it your opinion that this

19 child needed to be treated immediately?

20 MR. : Objection.

21 Q Did you tell Dr. whether

22 there was any time urgency associated with
23 getting the child either transferred or
24 treated?

25 A No.

20

1

2 MR. : Other than
3 what he's already said about quickly.

4 MR. OGINSKI: Of course.

5 Q Did Dr. indicate to you
6 his opinion as to how long it would take to
7 transfer the child to ?

8 A No.

9 Q Did you have any idea at that
10 time as to how long it would take to transfer
11 the child to ?

12 A No.

13 Q Were there other hospitals that

14 were in closer proximity to this hospital,
15 , that were
16 also affiliated with that could
17 also have provided the same type of services?

18 MR. : That you're
19 aware of.

20 A I really don't know. Sometimes
21 they call and, of course,
22 they have a tendency to say --

23 MR. : Doctor --

24 A But the policy -- the
25 arrangements are with the main hospital of

21

1
2 and the pediatric department
3 there.

4 Q As far as you know, as the
5 chief of surgery, Hospital is

6 affiliated with Hospital,

7 correct?

8 A Yes.

9 Q Am I correct that there is also

10 another hospital in close proximity to

11 known as

12 Hospital, just in terms of being close

13 by?

14 A Well, I know it exist --

15 MR. : I'm going to

16 object to "close by." It's a relative

17 term. Are you saying that is

18 affiliated with ?

19 MR. OGINSKI: No.

20 Q Are you aware if General

21 Hospital is also affiliated with ?

22 A I found out later for other

23 reasons, but I didn't know at that time.

24 MR. : Doctor, all

25 these questions are related to January

1

2

.

3

A I didn't know then.

4

Q Are there any other hospitals

5

in the area that you were aware of

6

that were affiliated with

7

Hospital?

8

A No, sir.

9

Q Besides at that time?

10

A What?

11

Q I'll rephrase the question.

12

Besides Hospital, were

13

there any other hospitals in the borough of

14

that you knew about in January of

15

that were also affiliated with ?

16

A No.

17

Q Did you learn from Dr.

18

who the anesthesiologist was who said they

19

could not provide anesthesia to this child?

20 A No.

21 Q Did you ask him who it was?

22 A No.

23 Q Did you ask Dr. why this

24 anesthesiologist could not provide anesthesia

25 to this child?

23

1

2 A He told me. I didn't ask him.

3 He told me because of the age they would not

4 take care of the patient.

5 Q Did you learn what was it about

6 the child's age that would have prevented the

7 anesthesiologist from providing anesthesia?

8 A The age itself.

9 Q What is it about his age that

10 would not have allowed the anesthesiologist

11 to provide anesthesia?

12 MR. : Doctor, he's
13 asking if you were told why this
14 anesthesiologist wouldn't perform
15 anesthesia.

16 A No.

17 MR. : Why
18 specifically that anesthesiologist --

19 A No.

20 Q Is that something you would
21 find to be unusual for an anesthesiologist?

22 MR. : Objection.

23 Q Did you consider it to be
24 unusual when Dr. told you that the
25 anesthesiologist could not provide anesthesia

3 A No.

4 Q Why?

5 A Because apparently he said it's
6 a rule they have in the department. I assume
7 they had a rule in the department that they
8 could not care for a patient below a certain
9 age, children.

10 Q Do you know if there are any
11 signs or notices posted in the emergency
12 department indicating to patients that
13 anesthesia cannot be administered to children
14 under a certain age?

15 MR. : In January

16 .

17 A No.

18 Q Do you know whether any
19 ambulance personnel are told not to bring
20 children to this hospital, to
21 Hospital of , because anesthesia cannot
22 be administered to children below a certain
23 age?

24 A No.

25 Q Did you ever speak to a

25

1

2 physician named Dr. at in

3 ?

4 A No.

5 Q Did you learn from Dr. 's

6 conversation whether the anesthesiologist

7 actually examined this child before coming to

8 his conclusion that he could not provide

9 anesthesia?

10 A No.

11 Q Did you review 's

12 file or his chart?

13 MR. : When?

14 Q Today or any time before today.

15 MR. : Well, before

16 the lawsuit was started or after the

17 lawsuit was started?

18 MR. OGINSKI: Any time.

19 A Only after you sent me the love
20 letter.

21 Q You're referring to the
22 litigation, correct?

23 A Excuse me?

24 Q You're referring to this
25 lawsuit?

26

1

2 A Right.

3 Q At any time, whenever it was
4 that you reviewed the records for this child,
5 did you ever see in those records any note
6 concerning an examination made by the
7 anesthesiologist who claims he could not
8 perform anesthesia?

9 A No.

10 Q Was it a custom and practice in
11 in January of
12 that if a physician comes to examine a
13 patient that they make a note of that in the
14 patient's chart?

15 MR. : I'm going to
16 object as to what the custom and
17 practice was other than his.

18 Q In the department of surgery,
19 was it customary and was it a practice that
20 if a physician examined a patient that the
21 physician made a note in the patient's chart?

22 MR. : I'm going to
23 object because you're asking custom
24 and practice and I think that's an
25 individual thing. If you want to

1

2 know --

3 MR. OGINSKI: I want to know if

4 it's a hospital policy.

5 MR. : That's a

6 separate question. I'll allow him to

7 answer that question.

8 A Yes.

9 Q Was there?

10 A Yes.

11 Q There was a policy?

12 A Well, policy, for a policy you
13 mean something which is written down. You
14 hear it every day. You recommend to the
15 doctors when they examine the patient they
16 should write a note about the patient.

17 MR. : He's asking if
18 there's a written policy, Doctor, in
19 January of for the department of
20 surgery.

21 A I don't recall that.

22 Q Regardless of whether there was
23 a written one, was it customary for
24 physicians in your department at
25 Hospital of to make notes about a

28

1
2 particular examination when they see a
3 patient?

4 MR. : I'm going to
5 object to the custom and practice of
6 other surgeons. I'll allow him to
7 testify as to his custom and practice.

8 MR. OGINSKI: Since he's the
9 chief of surgery, I assume he enforces
10 regulations or rules --

11 MR. : But this is a
12 custom and practice. Custom and
13 practice is individual. Everyone has

14 their own custom and practice. If
15 it's a policy in the department, which
16 he's already answered the question,
17 that's something else. As to what one
18 surgeon's custom and practice is
19 versus another, I'm not going to let
20 him testify as to that.

21 Q Were there any rules and
22 regulations that were in effect that you
23 enforced that required physicians to make
24 notes in patients' charts when they examine a
25 patient?

29

1

2 A We recommend that at meetings.

3 Q Why?

4 A Because that's the right thing

5 to do.

6 Q Why is it important to make
7 entries in the chart after an examination is
8 conducted?

9 A Because then you have a
10 documentation of the status of the patient at
11 the time when the patient was examined. The
12 situation may change later on or get better,
13 get worse. At least we have a definition of
14 the situation -- of the physical findings at
15 the time the patient was examined.

16 Q From the time that you were
17 working at in
18 up until the present time as the chief
19 of surgery, have you from time to time been
20 exposed to or learned about other policies in
21 other departments concerning their record
22 keeping policies as to whether physicians
23 should make or do make notes after an
24 examination?

25 A No.

1

2

MR. : I'll object to

3

form but he answered already.

4

Q Was there a policy that you

5

were aware of in the department of anesthesia

6

in January of whereby an

7

anesthesiologist who examines a child would

8

be required to make an entry in the patient's

9

chart about their examination and their

10

findings?

11

A No.

12

Q To your knowledge, did the

13

department of anesthesia have written rules

14

and regulations?

15

MR. : Do you know?

16

A I don't know.

17

Q Do you know for how long

18

Dr. was the chairman of the

19

anesthesia department?

20 A About ten years, probably, more
21 or less. I'm not sure.

22 MR. : Don't guess.

23 Only if you know.

24 Off the record.

25 (A discussion was held off the

31

1

2 record.)

3 Q Would you agree that it would

4 be customary not just for the surgeons in

5 your department but for any physician,

6 whether it's anesthesia or anybody else, that

7 if they come to examine the child it would be

8 good medical practice to make an entry in the

9 chart to reflect the fact that they were

10 there and what their findings were?

11 MR. : Objection.

12 Don't answer.

13 MR. OGINSKI: What's the

14 objection?

15 MR. : You're asking

16 about what good practice for other

17 doctors who treated in this case --

18 what they did and didn't do. I'm not

19 going --

20 MR. OGINSKI: I'm asking as

21 chief of surgery in this hospital,

22 ,

23 whether it's good practice to make

24 notes in a patient's chart.

25 MR. : He's already

1

2 said he recommends to the department

3 of surgery that they make notes.

4 Other than that, I'm not going to

5 allow him to --

6 Q From time to time during the

7 tenure you were here at the hospital, have

8 you ever had occasion to make recommendations

9 to other departments regarding their record

10 keeping policies?

11 A I've also been chairman of the

12 medical board and occasionally, you know, an

13 item like this comes up for good practice

14 and, of course, you recommend as a general

15 rule for the hospital, but I don't recall the

16 exact time or the exact statement, the exact

17 policy and so forth in generic, in general.

18 Q Have you ever practiced at any

19 other hospital before working at

20 Hospital of ?

21 A Contemporaneously the Hospital

22 at and but not before I came

23 to this hospital.

24 Q Are you aware that in other

25 hospitals, in fact in all hospitals in the

33

1

2 State of New York, it is good medical

3 practice to make notes in the patient's chart

4 after an examination of a patient?

5 MR. : Objection.

6 Q Just as a general matter.

7 MR. : Objection.

8 MR. OGINSKI: Are you going to

9 allow --

10 MR. : No, I'm not.

11 MR. OGINSKI: You can't direct

12 him not to answer.

13 MR. : I can.

14 MR. OGINSKI: You can't.

15 MR. : Gerry, that's

16 an inappropriate question. I'm

17 advising him not to answer. Mark it
18 for a ruling, I don't care. Let's
19 move on.

20 Q Would you agree, Doctor, that
21 failing to make a note after examining a
22 patient would be a departure from good
23 practice?

24 MR. : Objection. I
25 advise him not to answer.

34

1
2 MR. OGINSKI: What's the basis
3 for the objection?

4 MR. : Same
5 objection.

6 MR. OGINSKI: I don't know what
7 the objection is.

8 MR. : Can I hear the

9 question again?

10 (The record is read back by the

11 reporter.)

12 MR. : He did not

13 treat this patient. He's not going to

14 render an opinion based upon what

15 other doctors did or did not do.

16 You're asking about a departure and

17 you're basing it on the fact that he

18 testified there's no note by the

19 anesthesia department. He's not going

20 to testify to that.

21 MR. OGINSKI: I'm asking in

22 general as a general proposition.

23 We've already established I know what

24 his practice is for his department.

25 I'm asking as a general question as

1
2 the chief of surgery. You can't get
3 higher than that in the department of
4 surgery here so the buck stops here
5 and I'm asking him if it's a departure
6 from good practice not to make an
7 entry in a patient's chart if you've
8 seen a patient and examined them.

9 MR. : Again, my
10 objection is that it's still
11 addressing care rendered by others.
12 Whether general or specific, it goes
13 to the care or the acts or omissions
14 of other physicians in this case.

15 MR. OGINSKI: But I'm still
16 entitled to an answer.

17 MR. : I'm advising
18 my client not to answer.

19 MR. OGINSKI: You want to call
20 The Court on this? I don't
21 understand.

22 MR. : We can.

23 MR. OGINSKI: Fine. We'll call

24 the court afterwards.

25 Q Is there anything in your

36

1

2 review of this patient's chart that reflects

3 that any anesthesiologist actually examined

4 this child?

5 A No.

6 Q Is there anything in this chart

7 that would indicate the precise reason why

8 this particular anesthesiologist was unable

9 to provide anesthesia to this eleven-year-old

10 child?

11 A No.

12 Q To your knowledge, in January

13 of , were there anesthesiologists at

14 that were
15 qualified to administer anesthesia to
16 children?

17 A I don't know.

18 Q Did this child's weight have
19 any affect upon the decision to provide
20 anesthesia?

21 MR. : Objection.

22 MR. OGINSKI: Withdrawn.

23 Q Did Dr. advise you during
24 that phone call to you at 2:30 in the morning
25 whether the child's weight, which was 85

37

1
2 pounds, had any affect on the
3 anesthesiologist's ability to provide
4 anesthesia?

5 A He never mentioned that.

6 Q Do you personally know whether
7 the anesthesiologist who apparently claimed
8 they could not provide anesthesia was aware
9 of the ramifications of this child not
10 undergoing surgery at Hospital of
11 and then having to wait to be
12 transferred to another hospital for surgery?
13 Are you personally aware?

14 MR. : Note my
15 objection to form. You can answer
16 over my objection.

17 A I don't know.

18 Q In the course of your career,
19 have you operated on patients who have had
20 testicular torsion?

21 A No.

22 Q Are you aware of any surgeon in
23 this hospital who has experience with
24 operating on patients with testicular
25 torsions?

1

2 A I don't know.

3 Q Do you keep any statistics for
4 types of surgery that are performed at this
5 hospital in terms of the number of
6 procedures, the types of procedures, things
7 along those lines?

8 A Yes.

9 Q Over the last five years, can
10 you tell me how many testicular torsion cases
11 have been operated on here at
12 Hospital of ?

13 MR. : I'm going to
14 object. If you want to know up to
15 January of , I'll allow it. If
16 you want go five years back from that,
17 I have no problem.

18 MR. OGINSKI: Okay.

19 Q From January and five
20 years back up to , can you tell me how
21 many testicular torsion cases were performed
22 here at ?

23 A None that I recall.

24 Q If a particular testicular
25 torsion case had been performed, is that

39

1
2 something you would recall?

3 A I never heard about it, so I
4 can't say if I recall.

5 Q In your opinion, is a
6 testicular torsion a life-threatening
7 condition?

8 A No.

9 MR. : Can we go off
10 the record?

11 (A discussion was held off the
12 record.)

13 Q Did Dr. inform you at the
14 time that he had called you that he had
15 already worked up the child to be operated
16 on?

17 A No.

18 Q Did you ever learn from your
19 review of this record that the child had
20 started to be worked up for the purposes of
21 having surgery at Hospital of
22 , this hospital?

23 A No.

24 Q Were you aware from Dr.
25 that this child was to be admitted for the

3 A No. I already told you. That

4 question you asked me.

5 Q Are you aware of any

6 circumstances under which an anesthesiologist

7 would not be able to administer anesthesia to

8 an eleven-year-old boy weighing 85 pounds?

9 A No.

10 Q Do you have any publications to

11 your name in any peer review journal or any

12 textbooks?

13 A No.

14 Q Are you affiliated with any

15 other hospitals at the present time?

16 MR. : Currently?

17 MR. OGINSKI: Yes.

18 A Yes.

19 Q Which ones?

20 A Not now.

21 Q Now I'm asking.

22 A Not now. I was with

23 and .

24 MR. : Today though,

25 Doctor, you're only affiliated with

41

1

2 ?

3 THE WITNESS: Yes.

4 Q In the year , what

5 hospitals were you affiliated with?

6 A Only this hospital.

7 Q Has your license to practice

8 medicine ever been suspended or revoked?

9 MR. : Note my

10 objection.

11 A No.

12 Q Did you have any conversations

13 with any other physician at this hospital

14 about on January 24, ?

15 A No.

16 Q Did you ever learn from any
17 doctor at in what had
18 happened to this child?

19 A Yes.

20 MR. : Doctor, he's
21 asking from of .
22 Did you ever learn from a doctor
23 there?

24 A Yes.

25 Q When did you learn?

42

1
2 A I don't recall when but I know
3 I asked Dr. , who was the associate
4 chief of surgery there, if he knew about this
5 case.

6 MR. : Off the
7 record.

8 Q Was this by telephone that you

9 spoke to Dr. ?

10 A Yes.

11 Q Was that a call you made to

12 him?

13 A Yes.

14 Q What was the reason for --

15 A After your love letter.

16 Q I see, okay.

17 A Okay.

18 Q Can you tell me what it was

19 that you said to Dr. and what

20 Dr. said to you?

21 A The morning after the transfer

22 I stopped by the emergency room and I asked

23 the nurse, "Did you hear anything about this

24 kid who was here last night?" I didn't even

25 remember the name. She said, "Everything is

1
2 fine." So I didn't bother anymore to ask any
3 questions until later when, you know, I
4 received those notes and then I called
5 Dr. Kirstein. I said, "By the way, I heard
6 that everything was fine with this kid. What
7 did really happen?" Then he gave me the
8 information that the child had been admitted
9 by a pediatrician and operated and they had
10 to perform an orchiectomy and orchiopexy on
11 the other testicle.

12 Q Did you ever learn any
13 additional information from Dr.
14 about the child?

15 A No.

16 Q Did Dr. ever indicate
17 to you what he thought about the timing of
18 when the child received treatment concerning
19 the need for surgery?

20 A No.

21 Q Did he ever ask you any

22 questions as to why the child was not
23 operated on here at this hospital?

24 A No.

25 Q Did Dr. during his phone

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1

2 call with you at 2:30 in the morning tell you
3 that he had questioned the anesthesiologist
4 as to why that person could not provide
5 anesthesia?

6 A No.

7 Q Did you conduct any
8 investigation on your own other than
9 inquiring as you just mentioned as to who
10 this particular anesthesiologist was and why
11 he could not perform or provide anesthesia?

12 A No.

13 Q Are there any particular

14 records that are kept in this hospital,
15 of , that would allow you to
16 determine what anesthesiologist was on call
17 in the early morning hours of January 24,
18 ?

19 A Well, I know the anesthesia
20 department has their own schedule and
21 probably the anesthesia department at that
22 time had their own schedule too because they
23 had to know who was on call which night.

24 Q If you wanted to find out who
25 was on call on a particular night, how could

45

1
2 you do it?

3 A If I was interested in that, I
4 would -- I think I would call the chairman of
5 anesthesia and try to find out.

6 Q Do you know what records they
7 keep regarding who's on call on any given
8 night?

9 A No. Besides the schedule.

10 Q Do you know for how long those
11 schedules are kept?

12 A No.

13 Q How long do you keep the
14 surgery schedules, the on-call surgery
15 schedules?

16 A I don't know.

17 Q Who is responsible for keeping
18 your own schedules? When I say "your own,"
19 the department of surgery.

20 A Are you talking about the
21 attendings now or residents?

22 Q Residents.

23 A The residents -- we have a
24 coordinator that's part of us who makes the
25 schedule for the house surgeons and for the

1
2 attendings. There's a doctor in the
3 emergency room, I forgot her name, this is a
4 new group, she makes the schedule for the
5 attendings. In general surgery I can tell
6 you they have five or six surgeons. I don't
7 know how many urologists and neurologists.
8 In other words, in each specialty, you know,
9 has a certain number of physicians who are on
10 the roster.

11 Q Are there urologists who
12 performed surgery at Hospital of
13 in January of ?

14 A Yes.

15 Q Do those physicians fall under
16 your supervision in terms of the department
17 of surgery?

18 A No.

19 Q They are in a separate

20 department?

21 A Yes.

22 Q As the chief of surgery, do you

23 have any control over what they do or any

24 supervisory position or anything even though

25 they're in another department?

47

1

2 A No.

3 Q In January of , did the

4 department of anesthesia have residents that

5 rotated through their department?

6 A Not that I recall.

7 Q Since January 24, when you

8 had your conversation with Dr. in the

9 middle of the night, have you ever spoken to

10 Dr. again about this particular child?

11 A No.

12 Q After the lawsuit was started,

13 did you have any conversations with

14 Dr. ?

15 A No.

16 Q Did you ever review any of the

17 transcripts for any of the people who were

18 questioned in this case before today?

19 A Are you talking about the notes

20 from the nurses and --

21 MR. : No. He's

22 asking you about the deposition

23 transcripts. Have you looked at any

24 of the deposition transcripts that

25 have been taken in this case?

48

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2 THE WITNESS: No.

3 Q In January of , in the
4 event one anesthesiologist was unable to
5 perform anesthesia or provide anesthesia,
6 were there other anesthesiologists that were
7 available who could take over or provide
8 assistance?

9 MR. : Over my
10 objection. If you know, Doctor.

11 A Well, you know, you could have
12 two cases the same night or an emergency on
13 top of another emergency and then of course
14 there would be a second anesthetist called in
15 from the group. There was a group.

16 Q Did you ask Dr. if
17 another anesthesiologist could be brought in
18 to provide anesthesia to this child?

19 A No.

20 Q When Dr. told you that
21 this was a testicular torsion case involving
22 a child, did you have in your own mind any
23 opinion as to the length of time this child

24 would have before he had a problem with the
25 testicle?

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2 A My opinion?

3 Q Yes, your own opinion.

4 MR. : Again, I'm

5 going to object. You're asking him

6 for an opinion of a patient he hasn't

7 evaluated based solely on a telephone

8 conversation?

9 A He may not even have had

10 torsion. Only if I examined the patient

11 would I be sure.

12 Q I'm only asking based upon the

13 information provided to you.

14 Did you form any opinion based

15 upon that information as to how much time

16 this child actually had before he suffered

17 damage to his testicle?

18 A Not besides what I know from

19 the Textbook of Surgery. Four hours is the

20 time limit, around four hours the testicle

21 can become nonviable. That's Schwartz, the

22 Textbook of Surgery.

23 Q That was my next question,

24 thank you.

25 A Yes.

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2 Q Just to follow up that line of

3 questioning, Doctor, that textbook you

4 referred to, do you know what year textbook

5 that was?

6 A Keeps renewing it. It's

7 updated.

8 Q As far as you --

9 A It's like a Bible for the
10 surgeons.

11 Q As far as you knew, that time
12 limit you mentioned, that stayed the same
13 with each successive publication?

14 A Yes.

15 Q Am I correct that you would
16 consider that to be a standard textbook that
17 you use in the department of surgery?

18 A Yes.

19 Q You would consider that to be
20 authoritative, correct?

21 A Yes.

22 Q At the time that Dr.
23 spoke to you, did he tell you that he had
24 already notified Dr. that anesthesia
25 could not be given to this child?

1

2 A Not him. He told me that the
3 emergency room doctor had called the
4 anesthesia and they called . He
5 didn't tell me if he spoke to him. He didn't
6 tell me.

7 Q What was the specific reason
8 for Dr. contacting you, if you know?

9 MR. : I believe this
10 was asked and answered.

11 Q Did Dr. need your okay or
12 authorization in order to transfer the child
13 to another hospital?

14 A No.

15 Q Do you know why this child was
16 not transferred to another hospital in closer
17 proximity to ?

18 A No.

19 Q Are there hospitals in the
20 vicinity of

21 that have pediatric departments where
22 physicians can perform surgery on pediatric
23 patients, to your knowledge?

24 MR. : In January of

25 ?

52

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2 MR. OGINSKI: Yes.

3 MR. : That you know

4 of.

5 A Probably .

6 Q Did you ever have any

7 conversations with Mrs. , the child's

8 mother?

9 A No. I don't know her.

10 Q Did you ever have any

11 conversations with the surgeon who operated

12 on the child at ,

13 Dr. ?

14 A No.

15 Q Were you ever told when the
16 child was actually transferred out of
17 Hospital of ?

18 MR. : The time?

19 MR. OGINSKI: Yes.

20 MR. : Were you ever
21 told the exact time he was
22 transferred?

23 A No. I reviewed the record
24 after I was notified of this thing.

25 Q What does the record reflect as

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1

2 to when he was transferred out of here?

3 A The transfer was initiated, as

4 I said, at 2:40 and by -- it was initiated at

5 2:40, ten minutes after I spoke with
6 Dr. , and I don't recall, it may have
7 taken an hour probably by the time the
8 patient was transferred at 3:30, something
9 like this.

10 MR. : Doctor, do you
11 know? Don't guess.

12 THE WITNESS: No.

13 MR. : You don't
14 know, okay.

15 Q Do you know when it was the
16 child arrived at of ?

17 A No.

18 Q Did Dr. tell you on the
19 telephone that it was his opinion that the
20 child's testicle was already dead?

21 A No.

22 Q Did Dr. tell you that it
23 was his opinion that the child needed surgery
24 because he felt that the testicle was already
25 dead?

1

2 A No.

3 Q Would it have surprised you to

4 learn during your conversation with Dr.

5 that blood work had already been sent off in

6 preparation for surgery?

7 A He didn't say anything about

8 that.

9 Q Had you learned of that, in

10 other words, had he informed you of that,

11 would that have surprised you at that time?

12 A No.

13 Q Do you know what the number of

14 anesthesiologists that were working at

15 in January of

16 was?

17 A Numbers? Dr..

18 MR. : Do you know

19 how many others there were.

20 A Excuse me?

21 Q Do you know how many?

22 A I believe three or four.

23 Q Before January 24, , was

24 there ever a situation that you were aware of

25 where a child had to be transferred out of

55

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2 because anesthesia could

3 not be administered?

4 A No.

5 MR. OGINSKI: Thank you. I

6 have no further questions.

7 (Time noted: 11:10 a.m.)

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ACKNOWLEDGMENT

STATE OF NEW YORK)

:

COUNTY OF)

I, _____, M.D., hereby

certify that I have read the transcript of my
testimony taken under oath in my deposition of May
20, ; that the transcript is a true, complete
and correct record of my testimony, 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 _____,

Notary Public, State of New York

23

24

25

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4 , M.D.

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2 STATE OF NEW YORK)

)

3 COUNTY OF)

4

5 I, , a Shorthand Reporter

6 and Notary Public within and for the State of New
7 York, do hereby certify:

8 That _____, M.D., the witness
9 whose examination is hereinbefore set forth, was
10 duly sworn by me and that this transcript of such
11 examination is a true record of the testimony
12 given by such witness.

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

17 IN WITNESS WHEREOF, I have hereunto set my
18 hand this 4th day of June, .

19

20

21 _____

22

23

24

25