

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

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

4 Plaintiff, Index No.

5 -against-
6

7
8 Defendants.
9 -----

10
11 November 2, 20
12 10:56 a.m.

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14
15 Deposition of , M.D., taken by Plaintiff,
16
17 pursuant to Court Order, held at the offices of

18
19
20
21 , before
22
23 a Certified Shorthand Reporter and Notary
24
25 Public within and for the State of New York.

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1 A P P E A R A N C E S :
2 LAW OFFICE OF GERALD M. OGINSKI LLC
3 Attorneys for Plaintiff
4 25 Great Neck Road
5 Suite 4
6 Great Neck, New York 11021
7 By: GERALD M. OGINSKI, ESQ.

8 Attorneys for Defendant

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11 By: ESQ.

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16 Attorneys for Defendant
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22 By: , ESQ.

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1 IT IS HEREBY STIPULATED BY AND AMONG the
2 attorneys for the respective parties hereto,
3 that: All rights provided by the C.P.L.R. and
4 Part 221 of the Uniform Rules for the Conduct of
5 Depositions, including the right to object to any
6 question, except as to form, or to move to strike
7 any testimony at this examination is reserved;
8 and in addition, the failure to object to any
9 question or to move to strike any testimony at
10 this examination shall not be a bar or waiver to
11 make such motion at, and is reserved to, the
12 trial of this action.

13 This deposition may be sworn to by the witness
14 being examined before a Notary Public other than
15 the Notary Public before whom this examination
16 was begun, but the failure to do so or to return
17 the original of this deposition to counsel, shall
18 not be deemed a waiver of the rights provided by
19 Rule 3116 of the C.P.L.R. and shall be controlled
20 thereby. The filing of the original of this
21 deposition is waived.

22 IT IS FURTHER STIPULATED, a copy of this
23 examination shall be furnished to the attorney
24
25 for the witness being examined without charge.

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, M.D., having an office
address of

, having been first duly sworn by
 , a Notary Public for the State of New York,
was examined and testified as follows:

(Plaintiff's Exhibit 1, Hospital
chart, was so marked for identification.)

EXAMINATION BY MR. OGINSKI:

Q. Doctor, did you participate in
's surgery in January 20 ?

MR. : I'll object to form.
But you can answer.

A. Clarify the question.

Q. Were you present in the operating
room at the time she underwent surgery?

A. I was present.

Q. What was your function in the
operating room?

A. I was assisting.

Q. As an assistant what did you do?

A. I assisted in the case. I retracted,
observed.

Q. Were you an orthopedic resident at
the time?

2 A. Intern.
3 Q. First year?
4 A. First year.
5 Q. You were doing your residency at,
6 where?
7 A. Hospital.
8 Q. Currently you are in your second
9 year?
10 A. I'm in my third year.
11 Q. How many more years do you have to go
12 to finish?
13 A. Two more years.
14 Q. Did you have a conversation with
15 immediately after surgery, either
16 in recovery or while she was still in the
17 operating room?
18 A. I checked on her after surgery.
19 Q. Did you talk to her?
20 A. Yes, I did.
21 Q. Do you recall your conversation, what
22 you said to her, what she said to you?
23 A. I don't recall the conversation.
24 Q. Did you ever have -- withdrawn. Were
25 you present at the time that x-rays were taken
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2 immediately post-op?
3 A. I was not present.
4 Q. Did you know x-rays were going to be
5 taken after the surgery was completed?
6 A. Yes.
7 Q. For what purpose would x-rays be
8 taken immediately after surgery?
9 MR. : Objection.
10 MR. : Objection.
11 Q. I'll rephrase it. Do you have an
12 understanding or knowledge as you sit here now as
13 to why x-rays were taken immediately post-op?
14 MR. : Just note my
15 objection.
16 A. You will have to clarify that.
17 Q. Which part would you like me to
18 clarify?
19 MR. : You can't --
20 MR. OGINSKI: I just want to know --
21 MR. : Just rephrase, please.
22 Q. Do you know why x-rays were taken?
23 A. Yes.
24 Q. Why?
25 A. To check on the components.
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2 Q. What is it about the components that
3 needed to be checked?
4 MR. : I'm objecting. Did you
5 order the x-rays?
6 THE WITNESS: I ordered the x-rays.
7 MR. : Okay.

8 Q. Why did you order the x-rays?
9 A. As a standard after this procedure.
10 Q. Why?
11 MR. : I'm going to object
12 again. When you say you ordered them, did
13 somebody tell you to order them?
14 THE WITNESS: Dr. .
15 Q. Did he tell you why he wanted the
16 x-rays?
17 A. He wanted to check on the components.
18 Q. Was he more specific as to what
19 exactly it was he was looking for, if anything?
20 MR. : Object to form.
21 But go ahead.
22 A. No.
23 Q. When you say check on the components,
24 was there some question that the components were
25 not where they should have been?

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2 MR. : Objection to form.
3 MR. : Objection.
4 Q. Did anybody tell you that those
5 components might be out of place?
6 A. No.
7 Q. Did you have an opinion on your own
8 as to whether the components were in the correct
9 position?
10 MR. : Objection to form.
11 MR. : Objection.
12 MR. OGINSKI: What is the objection?
13 MR. : To the form of the
14 question.
15 Q. Do you have an opinion -- at the time
16 the surgery was done did you form an opinion with
17 a reasonable degree of medical probability as to
18 the position or placement of the components used
19 in the surgery?
20 MR. : Objection. He didn't
21 participate in that part of the surgery.
22 MR. : Objection. He is a
23 resident.
24 MR. OGINSKI: I know.
25 Q. I want to know if you had an opinion.

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2 MR. OGINSKI: What he saw. I'll ask
3 him if he heard anything.
4 MR. : Did you have an opinion
5 about that?
6 THE WITNESS: No.
7 Q. Were you present for any conversation
8 with Dr. and the patient regarding the
9 placement of the hardware after the surgery?
10 A. Was I present?
11 Q. Yes.
12 A. No.
13 Q. Did you ever learn from Dr.

14 that he questioned the placement of the hardware
15 after looking at the x-rays that were taken
16 post-operatively?

17 MR. : At any time you want you
18 can refer to the chart. Can you see the
19 chart? The chart is marked as Plaintiff's
20 1 with today's date, so if you want to
21 refer to the chart or any notes, feel
22 free.

23 A. Can you repeat the question.

24 MR. OGINSKI: Can I have it read
25 back.

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2 (Record read)

3 A. Yes.

4 Q. Tell me about that conversation.

5 A. I don't recall the specifics.

6 Q. Tell me -- withdrawn. Did you learn
7 that information from Dr. ?

8 A. Yes.

9 Q. What specific information did you
10 learn from him about the placement of the
11 hardware?

12 MR. : I'm going to object to
13 form. Other than what he's already told
14 you.

15 A. It's in the chart.

16 Q. Is there anything other than what is
17 in the chart from your memory that you recall as
18 you sit here now?

19 MR. : Other than what he
20 already told you?

21 MR. OGINSKI: Yes.

22 MR. : Anything else that you
23 remember.

24 A. I don't recall.

25 Q. Do you remember this patient?

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2 A. I remember this patient.

3 Q. Do you remember what she looks like?

4 A. You have to be more specific.

5 Q. Could you describe her,
6 characteristics, physical characteristics as you
7 sit here now?

8 A. Not exactly, no.

9 Q. Did you ever have any conversations
10 with any of her family members?

11 A. No.

12 Q. At any time you saw or treated

13 Ms. , did you ever see any of --

14 (Telephone interruption)

15 Q. Sorry about that.

16 MR. OGINSKI: What was I asking?

17 (Record read)

18 Q. Her family members?

19 A. No.

20 Q. Turn, please, to your note of January
21 11, 20 . By the way, Doctor, did you review the
22 post-operative films taken immediately after
23 surgery?

24 A. What do you mean by review?

25 Q. Did you look at them?

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2 A. I looked at them.

3 Q. Did you form an opinion about what
4 you saw?

5 MR. : I'll object to form.

6 You can answer.

7 MR. : Objection.

8 A. No.

9 Q. Were you present when any other
10 doctor was looking and reviewing the films?

11 A. No.

12 Q. Did you ever read the radiology
13 report regarding those films?

14 A. No.

15 Q. I'd like you to read your note in its
16 entirety, and if there are any abbreviations just
17 tell me what they represent.

18 MR. : Just if you could, is
19 this the one we are looking at
20 (indicating)?

21 MR. : Yes, so it is clear, the
22 1/11 note at this point.

23 A. "Patient comfortable."

24 Q. That is the January 11, 20 ?

25 MR. : Yes.

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2 Start from the beginning.

3 A. "January 11, 20 , oroth, patient
4 comfortable, on the floor, to OR again for
5 revision of unicondylar knee."

6 Q. Does that say to OR tomorrow?

7 A. Tomorrow.

8 Q. Keep going.

9 MR. : To OR again tomorrow
10 for --

11 MR. : Revision of --

12 Q. Do it again, Doctor.

13 A. "Patient comfortable, on the floor,
14 to OR again tomorrow for revision of unicondylar.
15 Inside and out, EPCA out, fully 850, Davol 250,
16 140-80, 80, 98 degrees Fahrenheit."

17 Q. Doctor, toward the right of the page,
18 what is this notation?

19 A. Post-op day zero.

20 Q. What is under that?

21 A. Ancef.

22 Q. Antibiotic?

23 A. Yes.

24 Q. Go ahead.

25 A. "NAD," no apparent distress. "Left

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2 knee in extension brace. Wound clean, dry and
3 intact." CDI. "DAVOL in place."

4 Q. What is Davol?

5 A. That is the drain.

6 Q. Go ahead.

7 A. 5-5TA.

8 Q. What is that?

9 A. "Tidialis anterior/gastrocsoleus,
10 extensor hallicis longus. Normal sensation to
11 light touch, L4 through S1. Left" --

12 Q. You don't have to read the labs. Go
13 down to the x-ray.

14 A. "X-ray, on implant in place
15 questionable posterior position of tibial
16 portion. Assessment and plan" --

17 Q. Let me stop you, the x-ray, was that
18 based upon your own reading of the film or
19 somebody else?

20 MR. : Objection.

21 Q. Where did you get the information
22 that there was a questionable posterior position
23 tibial --

24 A. Portion.

25 Q. Position -- portion. Thank you.

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2 A. Dr. .

3 Q. What did he say about that?

4 MR. : Other than what he just
5 told you?

6 MR. OGINSKI: Uh-huh.

7 MR. : Did he say anything else?

8 THE WITNESS: He didn't say anything
9 else.

10 MR. : Off the record.

11 (Discussion off the record)

12 Q. Go ahead with your assessment plan.

13 A. "Assessment and plan, post-op day
14 zero, status post left knee uni-compartmental
15 arthroplasty. Number one. OR tomorrow for
16 revision. 2, NPO at midnight. 3, epidural PCA.
17 4, Foley. 5, discontinue Lovenox."

18 Q. What was your understanding as to why
19 the patient was to be taken to the operating room
20 the following day?

21 MR. : I'll object again.

22 A. Based on Dr. 's assessment
23 of the x-rays.

24 Q. What was it about that that the
25 patient was going to go back for further surgery?

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2 MR. : Objection.

3 A. Exactly what is on the note.

4 Q. Did Dr. specifically give
5 you that information about his interpretation of

6 the x-ray?
7 A. He gave me the information.
8 Q. Did you ask him any questions?
9 A. I don't recall.
10 Q. Did you ask him what it was about the
11 positioning that he questioned?
12 A. I don't recall.
13 Q. Did he tell you specifically what
14 part of the hardware he felt was not in position?
15 MR. : Objection.
16 MR. : I'm objecting. He said
17 he doesn't recall.
18 A. I don't recall.
19 Q. Did you have a conversation with the
20 patient about that, that she would be taken to
21 the OR the following day?
22 A. Yes.
23 Q. Tell me what you told her.
24 A. I told her that we are making an NPO
25 because we might take her back to the OR the next
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2 day.
3 Q. What did she ask you, if anything?
4 A. I don't recall.
5 Q. Were you present for any conversation
6 that Dr. had with the patient about
7 possibly taking her back to the operating room
8 the next day?
9 A. I wasn't there.
10 MR. : Just answer the question.
11 Q. Did you learn from anyone whether Dr.
12 had a conversation with the patient
13 about taking her back to the operating room the
14 following day?
15 A. Yes.
16 Q. Who did you learn it from?
17 A. Sorry?
18 Q. Who did you learn the information
19 from?
20 A. I don't recall.
21 Q. When did you learn the information?
22 A. Sometime that night.
23 Q. Did Dr. suggest to you that
24 the films were not of good quality that were
25 taken immediately post-operatively?
0018
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2 MR. : I'm going to object to
3 form.
4 MR. : Objection.
5 A. I don't recall.
6 Q. The films that were taken, were they
7 done by portable x-ray?
8 MR. : Which films?
9 MR. : Which films?
10 A. Which films?
11 Q. The ones immediately after surgery.

12 A. Yes.
13 Q. When you reviewed the films did you
14 have any question about the quality of the films?
15 MR. : Objection.
16 MR. : Object to form. He
17 already told you that he had no opinion.
18 A. I have no opinion.
19 Q. Did you learn that someone wanted
20 additional films to confirm the position of the
21 hardware?
22 MR. : I object to this kind of
23 a compound question. If you want to break
24 it down.
25 Q. Did anyone tell you that they wanted

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2 another set of films because they --
3 A. Yes.
4 Q. Thank you. Who told you?
5 A. Dr. .
6 Q. Why did he want another set of films?
7 A. To look at the components better.
8 Q. Did he say what was wrong with the
9 first set of films?
10 MR. : I'm going to object to
11 the form.
12 A. I don't recall.
13 Q. Where did he tell you this, was it in
14 the operating room, recovery, somewhere else?
15 A. I don't recall.
16 Q. Did he tell you when he wanted the
17 additional films done?
18 A. I don't recall.
19 Q. Was there anything in your note to
20 suggest that additional films were asked for or
21 requested talking about your January 11 note,
22 Doctor?
23 A. No.
24 Q. On any -- withdrawn. You reviewed
25 the patient's chart today or at some point before

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2 today in preparation for today, correct?
3 A. Yes.
4 Q. Did you review any other records
5 regarding this particular patient?
6 A. No.
7 Q. During any of the records that you
8 looked at in preparation for today did you see
9 any notation anywhere by you indicating that Dr.
10 wanted additional films immediately
11 after looking at the other films?
12 MR. : Just objection.
13 Q. I'll rephrase it. Did you make a
14 notation anywhere in the chart indicating Dr.
15 wanted another set of films?
16 A. No.
17 Q. Did you make a notation anywhere in

18 the chart regarding the quality of the films that
19 were taken initially after surgery?

20 MR. : I'm going to object to
21 form. He already told you that there is
22 something written about the films after
23 surgery.

24 MR. OGINSKI: Talking specifically
25 about the quality of the films.

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2 MR. : I'm going to object to
3 form.

4 A. No.

5 Q. When -- what specifically did Dr.
6 tell you as to why he wanted another
7 set of films?

8 MR. : Objection. Jerry, I
9 think he answered that already.

10 MR. : Yes.

11 MR. : He wanted to confirm
12 the position of the components.

13 Q. Did he tell you specifically what he
14 did not like about the first set of films?

15 MR. : Well, objection.

16 MR. : That was definitely asked
17 and answered. You covered this.

18 MR. OGINSKI: Off the record.

19 (Discussion off the record)

20 Q. Did Dr. specifically tell
21 you what it was about the first set of x-rays
22 other than the placement, that --

23 MR. : That's the problem.
24 Objection.

25 MR. OGINSKI: Okay.

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2 Q. Did Dr. tell you
3 specifically why he wanted another set of x-rays?

4 MR. : Objection.

5 But go ahead. Is there anything else
6 that you remember?

7 A. I don't recall.

8 Q. At the time that he told you he
9 wanted another set of x-rays, what was the
10 procedure for getting another set -- withdrawn.
11 Did he tell you that he wanted x-rays done in the
12 radiology department as opposed to a portable
13 unit?

14 A. I don't recall specifically.

15 Q. Do you have any notations about where
16 the next set of x-rays were to be done?

17 A. Clarify --

18 Q. Anything in the record that said
19 where the x-rays were to be done?

20 A. No.

21 Q. Did you order another set of x-rays?

22 A. I ordered another set of x-rays.

23 Q. Where were those x-rays done?

24 A. Down in the radiology suite.
25 Q. Did you review those x-rays?
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2 MR. : When?
3 MR. OGINSKI: At any time. After
4 they were done.
5 MR. : Okay.
6 MR. : I object to the form as
7 to review.
8 But go ahead.
9 Q. Did you look at them?
10 A. I looked at them.
11 Q. When did you look at them?
12 A. After they were done.
13 Q. When?
14 A. I don't recall.
15 Q. When were the x-rays taken?
16 A. Which ones?
17 Q. Let's establish, Doctor --
18 MR. : Jerry, slow down.
19 Q. After surgery -- withdrawn. The
20 surgery was done January 11, 20 , correct?
21 A. Correct.
22 Q. We have established that immediately
23 after the surgery, portable x-rays were taken,
24 correct?
25 A. Correct.
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2 Q. That is on January 11. When was the
3 next set of x-rays done?
4 MR. : You can refer to the
5 chart.
6 A. January 12.
7 Q. Did you review, did you look at those
8 films?
9 MR. : Asked and answered.
10 But go ahead.
11 A. You looked at the films.
12 Q. What did you see when you looked at
13 them?
14 MR. : I object.
15 MR. OGINSKI: I'm asking him his
16 opinion.
17 MR. : Did you have an opinion
18 about those films?
19 THE WITNESS: I had no opinion.
20 Q. Why did you look at those films?
21 MR. : Off the record.
22 (Discussion off the record)
23 Q. What is the purpose of looking at
24 it --
25 MR. : Learning.
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2 MR. : Exactly.
3 (Pause)

4 Q. Doctor, when you looked at it, was
5 anyone with you at the time?
6 A. I don't recall.
7 Q. Did you make any notes in the chart
8 about looking at the x-ray?
9 A. No.
10 Q. Do you have a memory as you sit here
11 now of reviewing and looking at that January 12
12 x-ray?
13 MR. : Objection to form.
14 A. I remember looking at the x-ray.
15 Q. And can you tell me what it was that
16 you saw when you looked at the x-ray?
17 MR. : Object.
18 A. I don't recall.
19 Q. Did you learn -- withdrawn. Did you
20 show the x-rays to Dr. ?
21 MR. : I'm going to object.
22 A. Can you rephrase that.
23 Q. What is it about the question that is
24 giving you a problem?
25 MR. : He wants to know did you
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2 actually physically show the x-rays to Dr.
3 , that is what he wants to know.
4 A. I did not physically.
5 Q. Were you present when Dr.
6 looked at the x-rays of January 12?
7 A. No.
8 Q. Did you learn from Dr. or
9 anybody else what those January 12 x-rays showed?
10 MR. : Well, that is two
11 different questions.
12 Q. Did you learn from Dr. what
13 those January 12 x-rays showed?
14 A. Yes.
15 Q. What did you learn?
16 A. That they were acceptable.
17 Q. In what way?
18 A. I don't recall.
19 Q. Did you have any -- when did you
20 learn that information?
21 A. January 12.
22 Q. How is it that you know that as you
23 sit here now?
24 MR. : Know what, that they
25 were acceptable?
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2 MR. OGINSKI: Yes.
3 MR. : Based upon your notes
4 or -- you can refer to the chart if you
5 want.
6 A. Through my recollections and also my
7 note on the 13th says she was getting Lovenox
8 again, which means she is not going for surgery.
9 Q. Read your January 12 note, please.

10 A. "January 12, 20 , ortho, no acute
11 events overnight, questionable need for
12 reoperation."
13 Q. Let me stop you. What time did you
14 write this note?
15 A. I don't recall.
16 Q. Customarily do you make rounds in the
17 morning, afternoon?
18 A. In the morning.
19 Q. At the time that you make rounds, did
20 you do it on your own or with other residents or
21 with attendings, what did you do?
22 A. I don't recall.
23 Q. Did you see the patient on January 12
24 with Dr. ?
25 A. I don't recall.

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2 Q. What was the custom and practice back
3 in January of 20 as to who would accompany you,
4 if anyone, when you made rounds?
5 A. Dr. sees his patients.
6 Q. My question is when you would make
7 rounds, who, if anyone, would accompany you?
8 A. Usually the senior resident.
9 Q. Go ahead, please.
10 A. "Post-op day one, no
11 anti-coagulation, Ancef, afebrile, vital signs
12 stable, tachycardia, no apparent distress. Left
13 leg clean, dry and intact. Hemovac not
14 recorded."
15 Q. What does that mean?
16 A. The nurses hadn't recorded the
17 hemovac yet.
18 Q. As to whether there was any drainage?
19 A. Yes.
20 Q. Go ahead.
21 A. Foley not reported. Assessment and
22 plan --
23 MR. : Hold it, one line I
24 don't think you said, "Underneath left
25 leg."

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2 A. "Hemovac in place."
3 MR. : Thanks.
4 A. "Assessment and plan, post-op day
5 one, left knee replacement, 1, Ancef, 2, NPO, 3,
6 questionable OR today."
7 Q. I'm going to show you, you probably
8 have the x-ray report, just for expediency
9 (handing), the January 12 x-ray report has a time
10 that appears to be 1800, do you see that
11 (indicating)?
12 MR. : Just so it is clear for
13 the record, counsel is using what looks
14 like a copy of the Webcis printout.
15 Q. There is an 1800 next to the time.

16 Does that represent the time the x-ray was taken
17 or the time that it was reported, if you know?
18 MR. : If you know.
19 Don't guess.
20 A. I don't know.
21 Q. Is it fair to say, Doctor, that the
22 repeat x-ray that Dr. wanted had not
23 yet been done at the time that you saw and
24 examined the patient on January 12, 20 ?
25 MR. : I'm going to object to

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2 form.
3 MR. : Yes.
4 A. You have to clarify that.
5 Q. You've told me that Dr.
6 wanted another set of x-rays?
7 A. Correct.
8 Q. You also told me that x-rays were
9 done on January 12 in the radiology department,
10 correct?
11 A. Yes.
12 Q. At the time that you saw the patient
13 on January 12, were the x-rays already done?
14 MR. : Are you saying -- how
15 many times did he see the patient. He
16 might have seen her more than one. Are
17 you saying when he made this note?
18 Q. Yes, when you made the note.
19 MR. : Okay.
20 A. No.
21 Q. The x-rays had not yet been done?
22 A. Possibly.
23 MR. : If you are not sure --
24 nobody wants you to guess.
25 A. I'm not sure.

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2 Q. At the time you wrote your note, were
3 you under the impression that there had been no
4 decision made as to whether or not the patient
5 would be taken to the operating room later that
6 day?
7 A. Can you repeat that.
8 Q. You've indicated questionable need
9 for reoperation. Correct?
10 A. Yes.
11 Q. Is it fair then to say that at that
12 moment that you were writing that note, there was
13 still the possibility that the patient would be
14 taken back to the operating room?
15 A. Yes.
16 Q. When did you learn that the patient
17 would not be taken back to the operating room?
18 MR. : Other than what he
19 already told you.
20 MR. OGINSKI: I don't want you to
21 repeat yourself.

22 MR. : That's okay. Go ahead.
23 A. During January 12 at some point.
24 Q. Did Dr. tell you what it
25 was about the films that caused him to change his
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2 mind about bringing the patient back to the
3 operating room?
4 MR. : Objection.
5 MR. : Objection.
6 Q. What did Dr. tell you about
7 his review of the January 12 films?
8 MR. : If anything. Did he ever
9 tell you anything about them, other --
10 MR. : I'm going to object
11 because he already said that they were
12 acceptable but --
13 MR. : Okay. Other than what
14 you've already told us.
15 MR. : Just repeating --
16 A. That they were acceptable.
17 Q. Did you ask him any questions, sir?
18 A. I don't recall.
19 Q. Did Dr. explain further
20 what he meant by they were acceptable?
21 A. He did not.
22 Q. Was anyone else with you at the time
23 that you obtained this information from Dr.
24 ?
25 A. I don't recall.

0033
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2 Q. Did you make a note in your chart, in
3 your notations, about that conversation with Dr.
4 ?
5 A. No.
6 Q. Did you make a notation in your notes
7 for this patient about Dr. 's --
8 withdrawn.
9 MR. OGINSKI: Off the record.
10 (Discussion off the record)
11 Q. When you made your note on January
12 13, were you under the impression that the
13 patient was not going to be taken back to the
14 operating room?
15 A. Yes.
16 Q. Go back with me for a moment, Doctor,
17 to the January 11 note. You examined the patient
18 before writing the note, correct?
19 A. Yes.
20 Q. Where was the patient at the time
21 that you examined her?
22 A. She was on the floor.
23 Q. Did she make any complaints to you?
24 A. No.
25 Q. If she had made a complaint would you

0034
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2 have made a note in the chart about it?
3 A. Yes.
4 Q. On January 12, did the patient make
5 any complaints to you?
6 A. I don't recall.
7 Q. Again if she had, would you have made
8 a notation in the chart?
9 A. If at that time she was complaining,
10 I would write a note.
11 Q. What do you mean?
12 A. The notes there. Anything I hear
13 from the patient I write.
14 Q. Do you typically -- withdrawn. In
15 January 20 when you would go in to a patient
16 would you typically ask them if they had any
17 problems or complaints?
18 A. Yes.
19 Q. On January 13 did the patient make
20 any complaints?
21 A. I don't recall.
22 Q. Is there anything in your note to
23 indicate that the patient had a complaint?
24 A. It says here patient without
25 complaints.

0035

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2 Q. Can you read your January 13 note,
3 please?
4 A. "January 13, 20 , post-op day number
5 two" --
6 MR. : Wait, Ortho.
7 A. "Lovenox. Patient without
8 complaints, no acute events overnight. Dressing
9 discontinued this a.m. 100.9" --
10 Q. You don't have to read that. Go down
11 to the next line.
12 A. "No apparent distress. Wound, clean,
13 dry and intact."
14 Q. HV is --
15 A. Hemovac. "50 cc's. Wound clean dry
16 and intact. Staples in place. 5 out of 5
17 tidialis anterior, gastrocsoleus and extensor
18 hallicis longus. Less than three seconds cap
19 refill."
20 Q. Is that a formal finding?
21 MR. : I object to form.
22 A. Yes.
23 Q. Go ahead, Doctor.
24 A. "Assessment and plan, post-op day
25 number two, status post left unicondylar knee

0036

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2 number 1."
3 Q. Knee replacement?
4 A. "Left unicondylar knee replacement.
5 1, physical therapy, weight-bearing as tolerated.
6 Number 2, drain output. Number 3, Lovenox."
7 Q. In your review of the patient's

8 records did you see any progress notes written by
9 Dr. ?
10 A. No.
11 Q. Do you know Dr. ,
12 radiologist?
13 A. No.
14 Q. Did you ever have any conversations
15 with Dr. regarding the x-rays taken on
16 January 12?
17 A. No.
18 Q. Who is ?
19 A. He was a former orthopedic resident.
20 Q. What year -- in January of 20 , what
21 year was he?
22 A. He was a PGY 5.
23 Q. Do you have any knowledge as to where
24 he currently works?
25 A. No.

0037

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2 MR. : Do you?
3 Q. Did Dr. discuss with you
4 the treatment options for this patient in the
5 event that the hardware was not in correctly?
6 MR. : Objection.
7 MR. : Objection.
8 MR. : At what point in time?
9 Q. At any time, January 11, January 12,
10 either of those two dates?
11 MR. : There may have been
12 other --
13 Q. I'm sorry.
14 A. I don't recall.
15 Q. When Dr. suggested that the
16 patient might be reoperated on January 11, did he
17 tell you what type of reoperation might be
18 necessary to perform?
19 MR. : Objection to the form.
20 A. I don't recall.
21 Q. Did he tell you that the hardware
22 that was in would have to be removed and a total
23 knee replacement would have to be performed?
24 MR. : He just said he doesn't
25 recall.

0038

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2 But go ahead.
3 A. I don't recall.
4 Q. Did Dr. ask you to do any
5 medical research on the issue of hardware
6 insertion for this particular type of condition
7 that the patient had?
8 MR. : Objection. I mean --
9 off the record.
10 (Discussion off the record)
11 A. I don't recall.
12 Q. Had you done any research before this
13 procedure regarding unicompartmental knee

14 replacement?
15 MR. : Objection.
16 A. Can you rephrase that.
17 Q. Before this procedure -- withdrawn.
18 In preparation for the procedure did you do any
19 research?
20 A. Yes.
21 Q. What research did you do?
22 A. I don't recall.
23 Q. Did you look at textbooks in
24 preparation for the procedure?
25 MR. : He just said he doesn't

0039

1
2 recall.
3 A. I don't recall.
4 MR. : Note my -- just note
5 my objection to this line of questioning.
6 I'm not going to object to each one.
7 A. I don't recall.
8 MR. : Just the area.
9 Q. Did someone ask you to do research?
10 A. I don't recall.
11 Q. Did you review any journal articles?
12 MR. : Objection.
13 Q. About this type of surgery?
14 A. I don't recall.
15 MR. : I have a continuing
16 objection as well.
17 Q. What was Dr. ' role during this
18 surgery?
19 MR. : If you know. No guesses.
20 A. He was assisting Dr. .
21 Q. Who dictated the operative report?
22 MR. : If you know. No guesses.
23 A. I don't know.
24 Q. Do you have any knowledge as to why
25 your name does not appear in the operating team

0040

1
2 in the dictated operative report?
3 A. No.
4 MR. : Hold on. I was
5 talking. I'm sorry.
6 MR. : He asked if he had any
7 knowledge of why his name isn't in the
8 operating report.
9 MR. : Okay.
10 Q. Are you aware that your name does
11 appear in the anesthesia record as being a
12 participant in the surgery?
13 A. No.
14 MR. : Off the record.
15 (Discussion off the record)
16 Q. Did you -- withdrawn. Can you turn,
17 please, to the January 14, 20 note.
18 MR. : 6:23 a.m.?
19 MR. OGINSKI: Yes.

20 Q. Is that your note?
21 A. No.
22 Q. Whose note is that?
23 A. Dr. .
24 Q. He was a second year?
25 A. Yes.

0041
1
2 Q. What is Dr. 's first name?
3 A. .
4 Q. Is Dr. still there?
5 A. Yes.
6 Q. Can you turn to January 16, 20 it
7 should be but it looks like a 5. Is that your
8 note, Doctor?
9 A. Can you repeat that.
10 MR. : The 9:20 a.m. note from
11 January 16.
12 Q. Is that your note?
13 A. No.
14 Q. Do you know who wrote that note?
15 A. Dr. .
16 Q. What was his -- what year was he?
17 A. PGY 3.
18 Q. Do you know his first name?
19 A. .
20 Q. Under Dr. 's assessment and
21 plan it says "Post-Op day number 5, status post
22 left TKA." What does that mean to you?
23 MR. : Object. Do you have an
24 understanding of what that means?
25 A. You will have to -- that is not my

0042
1
2 note.
3 Q. What is TKA?
4 A. Total knee arthroplasty.
5 Q. Your understanding is that this
6 patient did not have a total knee arthroplasty,
7 correct?
8 A. Yes.
9 Q. Go down to January 17, at the bottom
10 of the page, is that your note?
11 A. Yes.
12 Q. Is that an '06 or do you have written
13 there '05?
14 MR. : It is January.
15 Q. Just asking what is written there.
16 MR. : Is it ' ?
17 THE WITNESS: .
18 Q. Okay. Can you read your note?
19 A. "Ortho progress note, 1/17/. No
20 complaints overnight. No acute issues. Denies
21 subacute nursing facility placement."
22 Q. What does that mean?
23 A. Exactly what it says.
24 Q. Tell me what it means.
25 A. Exactly what it says.

0043

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2 Q. Explain, Doctor, if you can.

3 A. She didn't want to go to a sub-acute
4 nursing facility.

5 Q. Did she say why?

6 A. I don't recall.

7 Q. Was there any reason why you were
8 recommending or suggesting that she go to such
9 facility?

10 MR. : Objection.

11 MR. : That's assuming, but
12 objection. Were you the one that made
13 that recommendation?

14 THE WITNESS: No.

15 Q. Who did?

16 MR. : If you know. No guesses.

17 A. I don't know.

18 Q. Go ahead.

19 A. "Lovenox, Keflex, post-op day number
20 six, all vital signs stable, afebrile, no
21 apparent distress, left knee staples in place,
22 mild arrhythmia around incision site but no
23 fluctuance. 5 out of 5 tidialis anterior,
24 gastrocsoleus, extensor hallicis longus. Normal
25 sensation light touch, left knee and left L4

0044

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2 through S1. Less than two seconds cap refill.
3 Assessment and plan, post-op day number six,
4 status post left unicondylar knee replacement
5 number 1, physical therapy, weight-bearing as
6 tolerated. 2, Keflex for UTI, follow-up
7 cultures. Number 3, subacute nursing facility
8 placement. Number 4, x-ray AP back slash lateral
9 left knee. Number 5, continue Lovenox."

10 Q. When were x-rays ordered?

11 MR. : Did you order them?

12 THE WITNESS: I ordered them.

13 A. She was healed well enough that she
14 would get x-rays in the post-operative visit, she
15 was there so we just got them in-house.

16 Q. Are you saying that it is normal
17 because she is there for a longer period of time?

18 MR. : Objection.

19 Q. What did you mean she was there so
20 you would get them in-house?

21 A. She was there five days, six days
22 after surgery so we just got x-rays.

23 Q. Why?

24 MR. : Other than what he
25 already told you.

0045

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2 MR. OGINSKI: He didn't tell me why.

3 MR. : She would have been
4 post-op that long and she wouldn't have
5 been around so she would have been an

6 outpatient.
7 Q. Why do you need to take x-rays at
8 that point in time?
9 A. It would --
10 MR. : Do you have anything to
11 add to it?
12 THE WITNESS: No.
13 Q. Any reason to take x-rays at that
14 point?
15 MR. : I object.
16 A. No.
17 Q. Then why were x-rays taken?
18 MR. : Other than what he told
19 you.
20 MR. OGINSKI: You don't take x-rays
21 just for the hell of it just because the
22 patient is there five or six days later.
23 MR. : Don't get into that. Do
24 you have anything to add to that?
25 MR. : Also you didn't
0046
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2 establish that it is his decision to order
3 x-rays.
4 MR. OGINSKI: I'm not asking if it is
5 his decision. Why were x-rays taken?
6 MR. : Objection.
7 MR. : Was that your decision?
8 A. Not my decision.
9 Q. Whose decision was it?
10 MR. : Okay.
11 A. I don't recall.
12 Q. Somebody told you to order x-rays?
13 A. Yes.
14 Q. Who?
15 A. I don't recall.
16 Q. Does it say in the order who?
17 A. Order?
18 Q. Yes.
19 MR. : He is the one that
20 authors the order.
21 MR. OGINSKI: I know that.
22 Q. Does it say anywhere in your note or
23 in your order who told you to order the x-rays?
24 A. I don't recall.
25 Q. Did you read the x-rays after they
0047
1
2 were taken?
3 A. Can you rephrase that?
4 Q. What is it about my question
5 specifically that you -- I want to know
6 specifically, it is a plain and simple question.
7 Did you read them?
8 MR. : I object to the form.
9 A. Can you rephrase that?
10 Q. The x-rays were taken on January 17,
11 correct?

12 A. Yes.
13 Q. As part of your duties as a first
14 year orthopedic resident intern, did you look at
15 those x-rays?
16 MR. : As part of his duties
17 as --
18 Q. Caring for this patient, as part of
19 your obligation, were you required to look at the
20 x-rays that you had ordered?
21 A. Yes.
22 Q. When did you look at them?
23 A. I don't recall.
24 Q. Do you have any notes in your chart
25 to indicate when they were looked at by you?

0048

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2 MR. : Take your time and go
3 through it.
4 (Pause)
5 A. No.
6 Q. Do you have any notation anywhere to
7 confirm your statement that you did look at those
8 films?
9 A. No.
10 Q. Did you look at them in the radiology
11 department?
12 A. I don't recall.
13 Q. Did you have the ability to look at
14 them on a computer at a remote location within
15 the hospital?
16 A. Yes.
17 Q. When you looked at them did you form
18 an opinion as to what it was that you saw?
19 MR. : Objection.
20 MR. : I'm going to object too.
21 A. No.
22 Q. Why did you look at the films?
23 MR. : You already asked him.
24 Q. What was the purpose, Doctor, of
25 looking at the patient's x-ray films that you had

0049

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2 ordered?
3 MR. : I object to form.
4 Other than what you told him.
5 A. To make sure they were done, that Dr.
6 interpreted them.
7 Q. Were you present when he interpreted
8 them?
9 A. I don't recall.
10 Q. Did you make a notation about Dr.
11 's interpretation of the films?
12 A. No.
13 Q. Did you learn from Mr. that
14 he looked at the films?
15 A. Can you repeat that.
16 Q. Did you learn at any time from Dr.
17 that he looked at the January 17 x-ray

18 films?
19 A. Yes.
20 Q. What did you learn?
21 A. I don't recall.
22 Q. When did you learn that Dr.
23 had looked at the films?
24 A. I don't recall.
25 Q. Do you have any notation in your
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2 chart or did you see any notation anywhere in the
3 chart about Dr. having reviewed the
4 films and given his impression as to what he saw?
5 MR. : You can go through it
6 again if you need to. He said before that
7 he made no notes. I don't know if you are
8 referring to progress notes. But that's
9 fine.
10 Did you see anything?
11 THE WITNESS: No.
12 MR. : Okay.
13 Q. Did you learn from Dr. --
14 withdrawn. What information did you learn from
15 Dr. about his interpretation of the
16 films?
17 MR.: I thought that was
18 asked and answered.
19 MR.: I mean --
20 A. Can you rephrase that.
21 MR. : If he doesn't remember --
22 Q. Were the x-rays normal, were they
23 abnormal, was there anything unusual?
24 MR. : I object to that.
25 MR. : Objection.
005
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2 MR. OGINSKI: I'm asking about the
3 x-rays.
4 Q. The January 17, 20 x-rays that you
5 had ordered?
6 A. I don't recall.
7 Q. Did you read the radiologist's report
8 of the x-rays at some point after they were
9 taken?
10 A. I don't recall.
11 Q. At any time while -- withdrawn. At
12 any time after January 12, 20, up until the
13 time the patient was discharged, did you ever
14 have a conversation with Dr. or were
15 you present during a conversation with Dr.
16 in which a suggestion was made to take
17 the patient back to the operating room to
18 reposition the hardware?
19 MR. : I'm going to object to
20 form since that is two questions.
21 MR. OGINSKI: I'll rephrase it. I'll
22 separate it.
23 Q. Did you ever have a conversation with

24 Dr. after January 12 up until the time
25 the patient was discharged about whether this

0052

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2 patient needed to be reoperated on to correct the
3 positioning of the hardware?

4 A. No.

5 Q. Were you present for any conversation
6 with Dr. and anyone else after January
7 12 but before the patient was discharged
8 regarding positioning the hardware and taking the
9 patient back to the operating room?

10 A. No.

11 Q. Did you ever have any conversation
12 with Dr. Aviles about the possibility that the
13 patient would go back to the operating room after
14 January 12?

15 A. I don't recall.

16 Q. Are you licensed to practice medicine
17 in the State of New York?

18 A. I have a license.

19 Q. Are you licensed in New York?

20 A. Yes.

21 Q. When were you licensed?

22 A. I don't remember the exact date.

23 Q. What year?

24 A. 20.

25 Q. Are you board certified in any field

0053

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2 of medicine?

3 A. No.

4 Q. Have you published anything in the
5 field of orthopedics?

6 A. Yes.

7 Q. How many things have you published?

8 A. I don't recall.

9 Q. More than five?

10 A. Yes.

11 Q. More than ten?

12 A. I don't recall.

13 Q. Do you have a resume, a CV or
14 something that would refresh your memory?

15 A. Yes.

16 Q. Give a copy to your attorney, please.

17 MR. : Take it under advisement.

18 Q. Do any of your publications involve
19 treatment of unicondylar knee replacement?

20 A. No.

21 Q. Where did you go to medical school,
22 Doctor?

23 A. .

24 Q. When did you graduate?

25 A. 20.

0054

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2 Q. Where did you go to college?

3 A. .

4 Q. When did you graduate?
5 A. .
6 Q. Did you go directly to medical school
7 after college?
8 A. I did not.
9 Q. What did you do in between?
10 A. I was in graduate school.
11 Q. Where?
12 A. .
13 Q. Doing what?
14 A. Ph.D. program.
15 Q. In what?
16 A. Biology.
17 Q. Did you complete that program?
18 A. I did not.
19 Q. How many years did you do there?
20 A. Two.
21 Q. After two years, what, if anything,
22 did do you?
23 A. Excuse me?
24 Q. What did you do after two years at
25 ?
0055
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2 A. I went to medical school.
3 Q. After completing your medical school
4 at you began your orthopedic residency
5 at ?
6 A. Yes.
7 Q. How many more years do you have?
8 A. Two and a half.
9 Q. Has your license to practice medicine
10 ever been suspended?
11 A. No.
12 Q. Has it ever been revoked?
13 A. No.
14 Q. Have you ever testified before?
15 A. No.
16 Q. After the patient left the hospital,
17 after this admission, did you ever have any
18 contact with her again?
19 A. No.
20 Q. Did you ever learn from Dr.
21 what, if anything, happened as far as the
22 patient's treatment following her discharge from
23 the hospital?
24 A. No.
25 Q. Do you know a Dr. ?
0056
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2 A. No.
3 Q. Did you ever have any conversation
4 with a Dr. regarding the January 11,
5 20 x-rays?
6 A. No.
7 Q. Or with regard to the January 12,
8 20 x-rays?
9 A. No.

10 Q. Had you ever participated in this
11 particular type of procedure before January 11,
12 20?

13 MR.: Just clarify the
14 procedure.

15 Q. Had you ever participated in a
16 unicompartmental knee replacement before January
17 11, 20?

18 A. No.

19 Q. Besides yourself, Dr. and Dr.
20 , were there any other physicians
21 present in the operating room?

22 MR. : You mean orthopedic
23 surgeons?

24 MR. OGINSKI: Thank you.

25 Q. Any orthopedists besides the three of

0057

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2 you?

3 A. I don't recall.

4 MR. OGINSKI: Thank you.

5 MR. : No questions.

6 (Time noted: 11:54 a.m.)

7

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9 Subscribed and sworn to
10 before me this _____ day of _____, 20.

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C E R T I F I C A T I O N

I, , a Certified
Shorthand Reporter and Notary Public, within and
for the State of New York, do hereby certify:

That I reported the proceedings in
the within entitled matter, and that the within
transcript is a true record of such proceedings.

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

IN WITNESS WHEREOF, I have hereunto

22	_____	_____	_____	_____
23	_____	_____	_____	_____
24	_____	_____	_____	_____
25	_____	_____	_____	_____