

1 DE-IDENTIFIED PRE-TRIAL TESTIMONY
OF PSYCHIATRIST IN FALL FROM EMERGENCY ROOM BED

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

3 -----X

4 ,

5 Plaintiff,

6 - against -

7

8 Defendant.

9 -----X

10

11 11:20 A.M.

12

13 EXAMINATION BEFORE TRIAL of the

14 , a

15 Defendant herein, by M.D., taken

16 by the Plaintiff, held at the offices of the

17

18 , at

19 11:20 A.M., before Alice Karambelas, a Notary

20 Public for and within the State of New York.

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

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THE LAW OFFICE OF GERALD M. OGINSKI, LLC
Attorneys for Plaintiff
25 Great Neck Road - Suite 4
Great Neck, New York 11201
BY: GERALD M. OGINSKI, ESQ.

Defendant

BY:
FILE #:

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STIPULATIONS

IT IS HEREBY STIPULATED, by and
between the attorneys for the respective parties
hereto, that:

8 All rights provided by the C.P.L.R.,
9 and Part 221 of the Uniform Rules for the Conduct
10 of Depositions, including the right to object to
11 any question, except as to the form, or to move
12 to strike any testimony at this examination is
13 reserved; and in addition, the failure to object
14 to any question or to move to strike any
15 testimony at this examination shall not be a bar
16 or waiver to make such motion at, and is reserved
17 to the trial of this action.

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

1
2 The filing of the original of this
3 deposition is waived.

4 IT IS FURTHER STIPULATED, a copy of
5 this examination shall be furnished to the
6 attorney for the witness being examined without
7 charge.

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9 * * *
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11

17 A. Yes.

18 Q. Have you ever worked in the
19 emergency room?

20 A. Very rarely. When emergency room
21 didn't have enough coverage, then they asked us
22 to cover several hours, so time to time, all PD
23 psychiatrists are being pulled to cover emergency
24 room.

25 Q. I should be more specific. I am

6

1
2 talking about the psychiatric emergency room?

3 A. Psychiatric emergency room.

4 Q. Currently, what is
5 DSM diagnosis?

6 A. Axis I, bipolar II disorder, and the
7 second diagnosis under axis I, panic disorder,
8 agoraphobia.

9 Q. What is agoraphobia?

10 A. Fear of open place, crowd, and public
11 transportation.

12 Q. Are there any other current diagnoses
13 for ?

14 A. Axis II bipolar disorder, axis II
15 borderline personality disorder.

16 : I just want to say
17 that the doctor has not reviewed his chart, his
18 outpatient chart of the patient. He is just
19 doing this by memory.

20 MR. OGINSKI: Sure.

21 A. Axis III, she has hypotension and post
22 status of shoulder fracture, right side.

23 Q. I want to take your attention back to
24 , the time of the incident
25 involving and her fall in the

7

1
2 psychiatric emergency room.

3 Did you see or evaluate
4 in the emergency room on the day she was
5 brought in on ?

6 A. No.

7 Q. Did anyone from Hospital
8 contact you to talk to you about the events that
9 had happened to on ,
10 this is before she got admitted as an inpatient?

11 A. From emergency room, yes.

12 Q. Tell me who spoke to you.

13 A. I remember - her last name
14 is , she called me to
15 inquire domestic violence.

16 Q. What is your understanding as to what
17 this individual is; is this person a nurse, a
18 doctor or something else?

19 A. She is a nurse. She is director of the
20 psychiatric nursing in Hospital.

21 Q. What were the circumstances that caused
22 her to call you?

23 A. She found out that had blue
24 and black marks, and she suspected that she must
25 have had some episode of domestic violence.

1

2 Q. What did she ask you, what did she talk
3 to you about, and what did you say to her?

4 A. She asked me whether I know any episode
5 of domestic violence in the past, so I told her
6 no. I suspected, but she always said no.

7 Q. And did you have any further
8 conversation with on that day?

9 A. That was it.

10 Q. Did you learn from that
11 had been brought in that day by
12 ambulance?

13 A. Yes.

14 Q. Did you learn why she had been brought
15 in?

16 A. Right. She --

17 : He is just asking you
18 did you learn that?

19 Q. I will ask you more questions another
20 way.

21 A. Yes. She told me that she was brought
22 in.

23 Q. Did anybody else from
24 Hospital ever contact you on the day that she was
25 brought into the psychiatric emergency room other

1

2 than ?

3 A. Only .

4 Q. I am going to jump ahead a day or two.

5 Once was admitted

6 as an inpatient, did you see and treat her at

7 Hospital?

8 A. No.

9 Q. Did you visit her from time to time?

10 A. No. I did on the day of discharge.

11 Q. When you saw her on the day of
12 discharge, under what capacity was that? Was it
13 a social visit, was it as a treating physician,
14 or something else?

15 A. Her treating psychiatrist, ,
16 asked me to come over and see whether she has
17 baseline of her daily function. I went up
18 there. I spoke with her. I evaluated her. Then
19 I spoke to .

20 Q. What was your opinion after evaluating
21 her on the day of discharge as to how she was
22 functioning?

23 A. Yes, she was very oriented to time,
24 place, person, situations, and she was not
25 suicidal or homicidal, and she said that she

10

1

2 fell. She has pain in her right shoulder, and
3 she stayed angry at her daughter, but she will
4 take her medicine.

5 : I think what Mr.

6 Oginski asked is, did you have any opinion about
7 whether she had or had not returned to baseline?

8 A. Yes, she returned back to her
9 baseline. She was very articulated.

10 Q. Had you spoken to her treating doctor
11 at Hospital during this hospital
12 admission on a daily basis to see how she was
13 progressing?

14 A. No, because she was admitted Thursday
15 night. Friday, she was busy with all
16 consultations, blood work and everything, and
17 then Saturday, Sunday, I was not working.
18 Monday, they called me for evaluation for
19 baseline.

20 Q. When was the first time that you
21 learned that she had fallen from the stretcher
22 while in the Hospital psychiatric
23 emergency room?

24 A. Well, said that she --
25 oh, that was -- I don't remember exactly, but

11

1
2 when I went up there to see her, she had arm
3 slings, and then she said she fell.

4 Q. I am focusing right now on the day that
5 she was brought into the psychiatric emergency
6 room. This is now , and I know you
7 told me about your call with .

8 A. Yes.

9 Q. Did tell you that there was

10 an episode where the patient had fallen from the
11 stretcher?

12 A. No. No. She said that she found the
13 blue and black marks on her arms, and she
14 suspected domestic violence, so whether I have
15 any memory about that. That was it.

16 Q. You told me a moment earlier that Ms.
17 had said that the patient had fallen.
18 Did she tell you where she had
19 fallen?

20 A. I don't remember.

21 Q. Do you remember what time you spoke to
22 Ms. ?

23 A. Sometime afternoon, around maybe 4:00,
24 3:00.

25 Q. After that phone call, did you learn

12

1
2 from any hospital personnel, doctor, nurse or
3 anyone else that had fallen later in the
4 evening on March th at the hospital?

5 A. No, I did not.

6 Q. What was the name of
7 treating inpatient psychiatric?

8 A. Dr. .

9 Q. Did you learn from Dr. that while
10 had been in the emergency room on
11 , she had fallen?

12 A. I don't remember.

13 Q. When you came to see on the
14 day of discharge from Hospital, did

15 you review her entire medical chart for that
16 admission?

17 A. No, the record was inpatient. I did
18 not.

19 Q. When you evaluated her either before
20 your evaluation or shortly after, did you review
21 her chart for that admission?

22 A. No.

23 Q. Did you ever review her emergency room
24 record for that admission?

25 A. That day?

13

1
2 Q. No, either that day or some other
3 time?

4 : Like for this
5 deposition.

6 MR. OGINSKI: Okay. I will clarify
7 it.

8 A. Then, I didn't.

9 Q. I am only talking right now about then,
10 at that time?

11 A. Okay, no.

12 Q. Did tell you that she had
13 fallen when she was in the emergency room?

14 A. At PIP, when I went up there, "what
15 happened?" She said that she fell.

16 : Doctor, did you say
17 PIP?

18 THE WITNESS: Yes, Psychiatric

19 Inpatient Unit.

20 Q. Did you learn from anyone else except

21 , anyone but that she had

22 fractured her humerus?

23 A. That I learned from her.

24 Q. Besides obtaining information from

25 on the day of discharge, did you learn

14

1

2 from any doctor that she had fractured her

3 humerus?

4 A. No.

5 Q. Do you know a Dr. ?

6 A. Yes.

7 Q. Who is Dr. ?

8 A. She is one of staff psychiatrists who

9 is covering emergency room.

10 Q. Did you ever speak to Dr. about

11 from the time that Ms.

12 first spoke to you until the time that you

13 evaluated as an inpatient on the day of

14 discharge?

15 A. No.

16 Q. Did you ever speak to Dr. at any

17 time from March of up until now about

18 ?

19 A. No.

20 Q. Do you know Dr. ?

21 A. Yes.

22 Q. Who is he?

23 A. He is now staff psychiatrist, head

24 doctor of psychiatric emergency room.

25 Q. Did you ever speak to Dr. about

15

1

2 his care and treatment of Frazier in the

3 emergency room on March 16th?

4 A. No.

5 Q. Do you know a nurse named

6 ?

7 A. No, I don't -- I may know her face, but

8 I don't know her name.

9 Q. Do you know a name ?

10 A. I don't know. I may know her face.

11 Q. Did you ever speak to any nurses other

12 than about

13 treatment in the emergency room on ,

14

15 A. No.

16 Q. Did you ever speak to any of the

17 ambulance personnel who brought in on

18

19 A. No.

20 Q. Or any of the police that may have

21 accompanied her?

22 A. No.

23 Q. Did you learn that when was

24 brought into the emergency room, that she had had

25 handcuffs put behind her back; that's how she was

1

2 transported?

3 A. What I heard from her, they treated her
4 like that.

5 Q. Okay. Did you learn from anybody at
6 the hospital, in the ambulance on the way from
7 her home to the hospital that they took her blood
8 pressure?

9 A. Not that I know of.

10 Q. Did you learn that her blood pressure
11 was obtained in the emergency room when she was
12 brought in?

13 A. No, I didn't know.

14 Q. When blood pressure is taken, Doctor,
15 what part of the anatomy is the blood pressure
16 cuff put on?

17 A. Usually either right arm, upper arm or
18 left upper arm.

19 Q. What is this part of the anatomy
20 called? Anatomically, is that the humerus, is
21 that something else? You tell me.

22 A. Humerus.

23 Q. Okay. Did you learn from that
24 when her blood pressure was taken in the
25 ambulance, that she had no complaints about the

1

2 blood pressure being taken? Did she say anything
3 to you about that?

8 Q. I am only asking about the form, if you
9 are familiar with it? Are you familiar with a
10 form known as a Fall Risk Evaluation?

11 A. No.

12 Q. After _____ was discharged from
13 _____ Hospital during this particular
14 admission starting on _____, did she
15 continue to come to you for outpatient care?

16 A. Yes.

17 Q. Over the years, Doctor, have you been
18 providing her or prescribing medication for her?

19 A. Right.

20 Q. What are some of the medications that
21 you prescribed for her?

22 A. Prozac.

23 _____ : From discharge to
24 now?

25 MR. OGINSKI: If he recalls, sure.

19

1
2 _____ : Okay. So, from
3 to now.

4 A. Prozac, 20 milligrams.

5 Q. I don't need the dosage, Doctor.

6 A. Prozac and Valium and Ambien.

7 Q. Has she been taking these medications
8 for a long period of time?

9 A. Long period of time. Recently, she
10 couldn't sleep, so instead of Ambien, I began to
11 give her Seroquel starting 100 milligrams. Now
12 she is taking 400 milligrams, 100 in the morning,

13 100 in the afternoon, and 200 at bedtime. No
14 more Ambien. I am glad about that. She is
15 taking still Valium, unfortunately.

16 Q. What is the purpose of the Prozac?

17 A. Prozac is for two things, one for
18 depression, the other thing is obsessive
19 compulsive symptoms.

20 Q. Why was she taking Valium?

21 A. She has anxiety. Something happened to
22 her. Something happened to her.

23 Q. What was the purpose of giving her
24 Ambien?

25 A. Ambien is for sleep.

20

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2 Q. And what is the purpose of the
3 Seroquel?

4 A. Seroquel is two things, helping her to
5 sleep and mood changes as well.

6 Q. Does she, from time to time, complain
7 about pain in the shoulder which had been
8 fractured?

9 A. After she fell?

10 Q. Yes.

11 A. Yes.

12 Q. Do you prescribe any pain medication
13 for that particular complaint?

14 A. After she fell, I think twice
15 Fioricet.

16 Q. I'm sorry?

17 A. Fioricet.

18 You said twice, you
19 prescribed that.

20 THE WITNESS: I think so.

21 A. She really asking painkiller, and I
22 said no. You have pain management, and she asked
23 several times, and I gave her a few pills a
24 couple of times.

25 Q. Am I correct that you referred her to

21

1
2 pain management?

3 A. Pain management.

4 Q. As far as you know, they are taking
5 care of her pain control?

6 A. Yes.

7 Q. Did you ever learn from anyone at the
8 Hospital that when was
9 brought into the hospital on that she
10 was given 10 milligrams of Zyprexa?

11 A. I didn't know that day, but I reviewed
12 the chart, yes.

13 Q. What is Zyprexa?

14 A. Major tranquilizer for sedation.

15 Q. In your review of the chart, did you
16 ever see any evaluation by Dr. Lvov who had
17 ordered or prescribed the Zyprexa?

18 A. Not other note, only order by her 10
19 milligrams.

20 Q. Did you see in the emergency room
21 record, Doctor, at 5:00 p.m., the patient

22 was noted to be disoriented?

23 A. Yes, I saw.

24 Q. That she was also unable to process
25 instructions?

22

1

2 A. Right.

3 Q. And was unable to urinate?

4 A. Right.

5 Q. And had climbed out of bed?

6 A. Right.

7 Q. Was there anything in the notes that
8 you read indicating that fall precautions were in
9 place based upon these observations?

10 A. I see both sides the side rails were
11 up.

12 Q. Can you show me, Doctor, what in the
13 notes led you to conclude that the side rails
14 were up at that 5:00 p.m. note?

15 A. I see, okay.

16 : Do you want him to go
17 through here?

18 MR. OGINSKI: The emergency room
19 record, sure.

20 A. Nurse's note.

21 : Do you want to just
22 have him look at that?

23 MR. OGINSKI: Sure.

24 (A DISCUSSION WAS HELD OFF THE RECORD.)

25 A. This is , 7:15 p.m..

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2 Q. I am only asking now about the 5:00
3 p.m.?
4 : Do you see anything
5 here which tells you the side rails were up?
6 THE WITNESS: No. No. "Patient is
7 unable to process instruction."
8 Q. Now, Doctor, the 7:15 nurse's note, did
9 you learn that the patient had climbed, according
10 to the note, the patient had climbed off the end
11 of the stretcher?
12 A. Right.
13 Q. And fell and hit her head?
14 A. Right. "M.D. informed."
15 : Wait for a question.
16 Q. And it indicates in parenthesis that
17 side rails were up; correct?
18 A. Right.
19 Q. Are you able to form any conclusion
20 based upon the note at 5:00 p.m. that there is no
21 observation about the side rails being up
22 compared to the 7:15 note that the side rails
23 were up?
24 A. No. I cannot, but I think it's --
25 Q. I don't want you to guess, Doctor.

6 that was diagnosed with a distal
7 fracture of her humerus?

8 A. Yes. Surgical neck fracture, it's
9 upper part.

10 Q. Is that different than the distal
11 humerus?

12 A. Distal humerus is near the elbow.
13 Proximal would be upper part near to shoulder
14 joint.

15 Q. Now, can you please find where in the
16 emergency room record you saw that the fracture
17 was in the proximal part of the humerus?

18 : He is looking, but he
19 really didn't review the ER records for anything
20 other than his notes, so let's just see. You
21 want him to look in the ER notes.

22 MR. OGINSKI: Yes.

23 : If you have them and
24 you want him to look at your copy, feel free to
25 show him. He has just basically looked for his

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2 notes for orders or mentions of his
3 consultations. This is an orthopedic consult on
4 .

5 Tell Mr. Oginski what you are
6 looking at. Just tell him. You don't have to
7 show him. We are looking at a document which
8 says, "Record of Consultation, Request from
9 Psychiatry to Orthopedics." I can't tell if this
10 is when she is an in or outpatient. I feel it's

11 when she is on the floor already.

12 MR. OGINSKI: Dated .

13 : It says, " ,

14 patient seen in psych ward."

15 A. It showed that fracture of right

16 humerus head, upper part.

17 Q. Okay. Now, did you learn from anybody

18 that there was a question as to whether

19 fractured her humerus at home instead of when she

20 fell in the emergency room?

21 : Anybody meaning

22 medical people?

23 MR. OGINSKI: Yes.

24 Q. Did any doctor or nurse ever tell you

25 that?

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2 A. No, nobody did.

3 Q. Did you learn from anyone in the

4 emergency room that there was a question as to

5 whether there might have been domestic violence

6 that was attributable to the fractured humerus?

7 A. I saw the note of Dr. . She

8 confessed that there was physical -- her

9 ex-husband.

10 Q. Did you learn that the following day,

11 she denied any such physical violence?

12 A. Right. From then on, she denied all

13 the way.

14 Q. Do you have any conclusions or opinions

15 based upon those conflicting statements?

16 A. I suspect that she might have some
17 domestic violence, but she denied it, but people
18 already found the blue and black marks before she
19 fell in the emergency room.

20 Q. Separate and apart from something
21 acute, you mean, something chronic that something
22 that happened in the past?

23 A. Upon she coming to emergency room on
24 , the nurse found out that the blue and
25 black marks, and that's why she called me that

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1
2 there was any domestic violence.

3 Q. In your review of the patient's
4 emergency room record, did you see whether this
5 was a body check done before she fell at 7:15?

6 A. Yes, I think. Before 7:15, that's I
7 think 7:30; not before 7:15.

8 Q. This is only after?

9 A. After.

10 Q. When told you that she
11 observed black and blue marks, did she tell you
12 was this before or after she fell?

13 A. Before. Before. Because I left the
14 office 5:00. She called me before that between
15 3:00 and 4:00.

16 Q. Where did she observe these black and
17 blue marks?

18 A. I think she saw that her upper arm,
19 shoulder and the wrist.

20 Q. Was this just of the right arm and hand
21 or both arms and hands?

22 A. I think both arms and hands.

23 Q. What is one-to-one constant
24 observation?

25 A. That's person who is very suicidal or

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2 homicidal or dangerous to environment, breaking
3 chairs, windows. That situations when we
4 suspected that, we order --

5 : What is it? Mr.
6 Oginski wants to know what does it mean to order
7 them?

8 A. One person, either nurse or nurse's
9 aide sitting, you know, in front of a patient.

10 Q. Now, did you learn that after
11 fell, she was placed on one-to-one observation?

12 A. Right, I heard.

13 Q. Am I correct that at that time, she was
14 not suicidal or homicidal?

15 A. No.

16 Q. Do you know why she was placed on
17 one-to-one observation after she fell?

18 A. I think her judgment was poor. She
19 told me that she wanted to go to the bathroom.
20 She couldn't urinate, but another note, according
21 to a nurse, she wanted to go home. She felt that
22 she was not belonging to psychiatry ward or
23 emergency room. She wanted to go home. That's

24 why, she just ran over.

25 : The question to you

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2 was, do you know why from looking at the records,
3 why she was on one-to-one on the floor on the
4 unit?

5 A. Oh, yes. Then I guess that she had
6 poor judgment. Even though she was not suicidal,
7 she could be harmful to her.

8 : Doctor, you said you
9 guessed that's why. Do you know why? Can you
10 tell why from the record why she was put on
11 one-to-one?

12 A. Yes, because she was dangerous to
13 herself. She fell.

14 Q. Did you form any opinion, Doctor, as to
15 whether the Zyprexa contributed to her
16 disorientation?

17 A. I don't think so, because upon she was
18 coming into the emergency room, according to
19 nurse's note, she was combative and kicking. She
20 was very aggressive. That's why the Zyprexa calm
21 her down.

22 Q. In addition to the calming effects, do
23 you have any opinion as to whether the Zyprexa
24 caused any disorientation for her when she was
25 calmed down?

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2 A. Unlikely.

3 Q. Do you have any opinion as to what
4 would have caused her disorientation hours after
5 she had been given the Zyprexa at 2:00? This is
6 now five hours later or three hours later after
7 the Zyprexa had been administered.

8 A. I don't know.

9 Q. Are you familiar with the requirements
10 as to when patients are to be placed in some type
11 of restraint?

12 A. Restraint?

13 Q. Yes, either posey restraint or
14 something else?

15 A. Well, I am working outpatient. We
16 don't do that. We don't practice that, and
17 during the staff meetings, they were talking
18 about that, so --

19 Q. Are you familiar with what a posey
20 restraint is or a posey vest?

21 A. No, I am not.

22 Q. Did you learn from reviewing 's
23 records that after her arrival to the emergency
24 room, that there was no psychiatric attending
25 that evaluated her until approximately 9:50

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2 p.m.?

3 A. According to the order, she was given

4 -- ordered Zyprexa injections 2:00 p.m..

5 Q. Right.

6 A. So, that was written by Dr. order
7 that.

8 : Was there any written
9 evidence that there was an assessment by an
10 attending before Dr. at almost 10:00 that
11 night?

12 THE WITNESS: No.

13 Q. Did you ever see any site nurse's notes
14 indicating that vital signs were taken at any
15 time between 2:00 and 6:30 p.m.?

16 A. I saw, yes, vital signs.

17 Q. I am only talking about from the time
18 period between 2:00 and 6:30?

19 : Do you remember seeing
20 them? If you have them, he will look at them,
21 but, otherwise, he is going to have to flip
22 through every page.

23 Q. Now, on , did someone from
24 Hospital contact you to talk to you
25 about treatment?

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2 A. No.

3 Q. Let me show you, Doctor. It looks like
4 there is a note from , R.N., ,
5 at 1:00 p.m. - take a look at that note,
6 please - indicating that she had a conversation
7 with you about treatment?

8 A. Oh, yes, that.

9 Q. Is that the conversation that you were
10 referring to?

11 A. Yes.

12 Q. Okay. So, according to this note, it
13 indicates that it took place on , the
14 day after she was admitted; correct?

15 A. Yes.

16 Q. Okay. Now, there is an indication in
17 Nurse 's note that had been buying
18 Valium on the street, and that you felt it was
19 safer to have it prescribed to her?

20 A. Yes.

21 Q. While you were caring for in
22 March of , had you come to any conclusions
23 that she was taking any medication other than
24 what you had prescribed to her?

25 A. She never abused Valium.

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1
2 : That's not the
3 question.

4 Other than what you were giving her,
5 did you come to the conclusion she was taking
6 other stuff other than what you gave her?

7 A. No. She was clear about that.

8 Q. As far as you were concerned, was
9 a compliant patient?

10 A. Yes.

11 Q. Did you ever have any conversations
12 with - I don't know whether you want

13 to call him husband, ex-husband, -
14 in March of after she had been admitted to
15 the hospital?

16 A. I think that was the very next day, she
17 was -- he was full of anger, screaming, yelling
18 in the corridor, "I am going to sue you if you
19 don't do right things for my wife." He was
20 angry.

21 : To you?

22 THE WITNESS: To me and all the
23 staff. Everybody could hear that he came. I
24 don't know why he was there that particular time,
25 but he was screaming, yelling, threatening.

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2 Q. Other than observing and listening to
3 him in the corridor, did you ever have any
4 conversation with him about

5 A. After he was discharged?

6 Q. After he was or she was?

7 A. After she was discharged, recently,
8 that we talked about her ex-husband, even though
9 they are living together and officially they are
10 divorced, ex-husband was Vietnam Veteran and I
11 was Vietnam Veteran one year, and ever since he
12 knew that fact, he began to respect me more, and
13 then he became very kind to me that I had
14 handshake one time recently maybe two, three
15 months ago.

16 Q. Based upon your treatment of
17 all of these years, did you learn that she had a

18 significant history of sex abuse over the course
19 of her lifetime?

20 A. Yes.

21 Q. And that she also had multiple suicide
22 attempts?

23 A. Yes, between her ages of 14 to 18.

24 Q. You are treating her for her
25 significant anxiety?

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2 A. Right.

3 Q. Are you also aware of her significant
4 history of Methadone use?

5 A. Yes, she was.

6 Q. In your opinion, Doctor, has
7 been clean for many years?

8 A. Yes. She is really determined.

9 Q. Did tell you when she believes
10 her arm was fractured?

11 A. Yes.

12 Q. What did she tell you?

13 A. She told me that -- how did that
14 happen? She said she wanted to go to bathroom;
15 not that she wanted to go home. In the chart,
16 she wanted to go home. To me, she said I wanted
17 to go to the bathroom, that's why. She told me
18 that the side rail was not up, so I thought that
19 happened, but under the chart, side rail was up.

20 Q. But you saw, Doctor, that the side
21 rails were only put up after she fell, or at

22 least according to the note, it indicates bed
23 rails were up in the note after she fell?
24 A. 7:15 and not the 5:00 p.m., right.
25 Q. Did you form any opinion based upon

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1
2 your review of the patient's records talking to
3 as to how she suffered the fractured
4 humerus?
5 A. I think both. She might fall at home
6 and maybe black mark there, some pain, but not
7 bad enough to tell everybody that I have a pain
8 and I am suffering from excruciating pain, no.
9 After she came, she was full of anger because of
10 rejection from her daughter. She was displacing
11 her anger to other people. She was kicking and
12 screaming. Then she was subsided by Zyprexa, and
13 then she must have felt better and she wanted to
14 go home. She just, you know, without calling,
15 she is supposed to call a nurse that I want to go
16 home or something. She just acted like that out
17 of poor judgment.
18 Q. If she is disoriented and unable to
19 process instructions, how do you think she might
20 have been able to know to call for the nurse to
21 go to the bathroom?
22 A. Everybody in the emergency room, if
23 they need to go to the bathroom, they call the
24 nurse.
25 Q. That's for somebody who is cognizant

1
2 and aware, but I'm asking if somebody doesn't
3 have their wits about them or is not truly
4 understanding what is going on?

5 A. I think that she was not all that bad
6 according to Dr. evaluations before.
7 She was well oriented to time, person, place.
8 The time was the problem. Place -- I'm sorry, I
9 have to correct. Person, place and situations,
10 she was well aware of that, but the date, she did
11 not know date. So, that was after --

12 : Can I just interrupt
13 just for a moment?

14 Doctor, you are aware and you told
15 me that Dr. note is timed at almost
16 10:00 at night?

17 THE WITNESS: Yes, 9:50.

18 : And that's the first
19 time that there is a note in there indicating
20 that he has evaluated her?

21 THE WITNESS: Right.

22 Q. We know from the record that the
23 patient fell at around 7:15 p.m., so his
24 evaluation is hours after?

25 A. After.

2 Q. So, my question is, that at 5:00, for
3 example, when she is noted to be disoriented,
4 unable to process instructions, how would you
5 expect a patient like that to know to call for
6 assistance to go to the bathroom?

7 A. I don't know.

8 Q. Did you learn from that her
9 orthopedist, the doctor who was looking at her
10 fracture recommended that she have surgery to
11 correct the fracture?

12 A. Right.

13 Q. Did you learn from that she
14 refused to have corrective surgery?

15 A. Right.

16 Just say yes, you
17 learned.

18 A. Yes.

19 Q. Tell me what told you as to
20 why she would not go ahead and have corrective
21 surgery.

22 A. Yes. I asked her why she refused. She
23 said that in the past history, a long time ago,
24 she had minor surgery under general anesthesia.
25 She didn't say what kind of surgery she had, but

1
2 in the recovery room, some doctor, one doctor was
3 touching her private area, so she found her out,
4 what are you doing, and then he walked away.
5 Ever since then, she said that I am not going to
6 have any surgery under general anesthesia or any

7 surgery, period.

8 Q. Did you learn from anybody, including

9 , that the fracture that she had in her

10 humerus healed in a mal position?

11 You have to answer verbally.

12 A. She had communicated fractures must

13 need surgical correction.

14 Q. What is your understanding of what will

15 happen to her and her arm if she does not have

16 corrective surgery?

17 : Knowing that he is not

18 an orthopedist.

19 MR. OGINSKI: Correct.

20 : Never has been.

21 MR. OGINSKI: Correct.

22 A. She is going to lose her right arm

23 function.

24 Q. Since March of up until the

25 present time, has made ongoing

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2 complaints to you about her right arm?

3 A. Yes.

4 Q. Does she tell you or has she told you

5 how it has affected her daily life?

6 A. Yes.

7 Q. Tell me how.

8 A. She said she couldn't dress herself.

9 She couldn't take a bath. She cannot write

10 anything. Everything has to do with her left

11 hand, and she said that her ex-husband is helping
12 her greatly with every day living.

13 Q. When she gives you this information, do
14 you have an opinion as to whether the information
15 she is giving to you is credible, is believable?

16 A. Yes, I did believe her.

17 Q. When she refused, when she told you
18 that she would not have surgery, do you have an
19 opinion as to whether her fears are justified?

20 : Over objection, he can
21 answer.

22 Q. Knowing her history, knowing her past,
23 do you have an opinion with a reasonable degree
24 of medical probability as to whether her fears
25 are justified?

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2 A. I thought that her judgment was
3 impaired in that particular area, and then from
4 then on, I spoke to her, "listen, you have the
5 rest of your life. You are only 58, many years
6 to come, and you are going to have continuous
7 pain every day, day in and day out. That is not
8 life." Recently, believe it or not, she agreed
9 to have surgery, and she -- I understand that she
10 saw at least one orthopedic surgeon and they
11 don't want to touch it because this is far too
12 late. She has osteoporosis and, you know, she
13 fell.

14 Q. You, in fact, have recommended that she
15 have the corrective surgery; correct?

16 A. Yes. So, I recommended her to check it
17 out, second opinion in the Hospital For Special
18 Surgery.

19 Q. To your knowledge, did she go for that
20 opinion?

21 A. She said she will, but I don't think
22 she did yet.

23 Q. Are you aware of what pain medication
24 she is taking now?

25 A. Yes. Oxycontin.

43

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2 Q. Can Oxycontin be addictive?

3 A. Yes.

4 Q. Has she ever expressed to you her fear
5 of becoming addicted to painkillers?

6 A. Yes, she did.

7 Q. Other than the patient's records that
8 you have in front of you, did you review any
9 other records before coming here today?

10 A. The first time when I saw her, that
11 evaluation.

12 Q. Initial evaluation, going back many,
13 many years?

14 A. Many years, right.

15 Q. You told me she had fallen at home;
16 correct, before ?

17 A. According to chart, yes.

18 Q. Did you ever learn from that
19 she might have fallen before coming to the

20 hospital?
21 A. No.
22 Q. Did you ever have any conversations
23 with about possibly having fallen at
24 home that day or the day before or a few days
25 earlier?

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2 A. No. A few days earlier, she called me
3 and --
4 : That's the answer.

5 Q. What did you discuss with her?
6 A. She said that she was very upset
7 because this daughter, all of a sudden, changed
8 her attitude, and she's not going to talk to her
9 anymore, so she was really desperate.

10 Q. On the day that you discharged
11 from Hospital, at any time after
12 that, did you review any other records from her
13 admission?

14 : Objection to his
15 discharging because I don't think he discharged
16 her.

17 Q. On the day that she was to be
18 discharged when you were called in to evaluate
19 her --

20 A. No, I didn't because --
21 : That's the answer.
22 You didn't, okay.

23 Q. Do you know a , an
24 orthopedist?

25 A. No, I don't.

45

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2 Q. Have you ever treated son,
3 , in a professional capacity?

4 : Please don't answer
5 that. That's a big HIPAA problem. Until is
6 going to sign something for the doctor, I don't
7 want him answering that question.

8 Q. When would come to see and
9 talk to you, would she come with her son on some
10 occasions?

11 A. Yes.

12 Q. Would her son be in the room when you
13 would talk to her?

14 A. Some occasions, yes.

15 Q. Did give you any information about
16 his mother and the events that had occurred in
17 the emergency room on

18 A. No.

19 Q. Did give you any information
20 during any one of those visits where he is in the
21 room with about anything that occurred
22 in the days leading up to the
23 admission, about anything involving her falling
24 at home?

25 A. No, he never said about that, no.

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2 Q. Okay. Did you ever have any
3 conversation with at Hospital
4 about his mother?

5 : You mean when she was
6 in the unit?

7 Q. Yes.

8 A. Oh, no.

9 Q. On the day that you examined ,
10 the day she is to be discharged, did you ever
11 speak to any hospital staff about what had
12 occurred to her in the emergency room?

13 A. No.

14 Q. Doctor, I want to show you a note.
15 It's a Social Services note. It says, "
16 " timed at 12:10 p.m.. I ask you to take a
17 look at that, specifically focusing on the last
18 four lines, please.

19 Do you see in that note, Doctor,
20 according to the patient, let me just read that -
21 I'm sorry, it says, "as per patient, she has
22 history of falling and her black and blues are
23 result of falling. Patient strongly refused
24 domestic violence history."

25 Do you see that?

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2 A. Yes.

3 Q. The note that had
4 written, I believe, was at 1:00 p.m..

5

:

6

MR. OGINSKI: . Thank

7

you.

8

Q. Yes. When you told me about what you

9

overheard husband or former husband

10

yelling and screaming about, did you ever learn

11

from him what he was referring to about doing

12

right by his wife?

13

A. Well, I didn't ask him. I didn't know

14

why he was so upset then.

15

: Okay.

16

Q. Did you ever see any incident report

17

that was prepared by a doctor or nurse as a

18

result of fall?

19

A. No, never.

20

Q. Were you ever asked to contribute to

21

any incident report regarding fall on

22

?

23

A. No, I never did.

24

Q. Were you ever present for any meeting

25

by anyone at the hospital regarding the event

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2

concerning fall?

3

A. No.

4

Q. You are Board certified; correct?

5

A. Yes.

6

Q. In psychiatry?

7

A. Yes.

8

Q. And your attorney has provided me with

9 a copy of your CV.

10 Is this accurate, to the best of
11 your knowledge, Doctor?

12 A. Yes.

13 Q. Is Hospital the only
14 hospital that you are affiliated with currently?

15 A. Yes.

16 Q. Do you have any publications that you
17 have participated in?

18 A. No.

19 Q. Have you authored any textbooks?

20 A. No.

21 Q. Have you authored any peer review
22 articles or journals?

23 A. No.

24 Q. Have you given any lectures to any
25 national groups of psychiatrists in the United

49

1
2 States?

3 A. No.

4 Q. Have you ever testified before?

5 A. Yes.

6 Q. How many times?

7 A. Once.

8 Q. In what capacity or under what
9 circumstance have you testified before?

10 A. It was another deposition some years
11 ago for my patient.

12 Q. Were you giving testimony as a fact
13 witness or were you one of the people who were

14 accused of doing something?

15 A. No, I was accused that --

16 Q. How long ago was that?

17 A. That was 20 something years ago.

18 : The doctor might not

19 know what you mean by "fact witness."

20 Was your name in the lawsuit or were

21 you being deposed as someone who had treated the

22 patient?

23 THE WITNESS: Yes, my name was on the

24 paper.

25 : Okay. Do you mind if

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2 I ask him a question?

3 MR. OGINSKI: Go ahead.

4 EXAMINATION BY

5 :

6 Q. Doctor, I just have one or two

7 questions for you.

8 Can a patient like

9 psychiatric condition affect their

10 perception of pain?

11 MR. OGINSKI: Objection.

12 Q. You can answer, Doctor.

13 A. I would say so, yes.

14 Q. In terms of how she broke

15 her shoulder, is it fair to say that you don't

16 know as you are sitting here today how she broke

17 her shoulder?

18 A. Yes.
19 Q. It could have happened in the hospital
20 when she fell?
21 A. Yes.
22 Q. And it could have happened at home; is
23 that right?
24 A. Right.
25 Q. You don't know; is that fair?

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2 A. That's fair. I don't know.
3 Q. Is it your impression from treating
4 up until today that her
5 ex-husband is still involved in her life?
6 A. Yes, very much.
7 : I have nothing
8 further.
9 FURTHER EXAMINATION BY
10 MR. OGINSKI:
11 Q. Doctor, you mentioned that her
12 perception of pain might be impaired.
13 : Or affected. That her
14 psychiatric condition may affect her perception
15 of pain.
16 Q. To your knowledge, had taken
17 any medications on before being
18 brought into the emergency room that would
19 contribute to her altered sensorium?
20 In other words, do you know if she
21 had been taking any medications that day that
22 would account for her altered mental status?

23 A. I don't think so. She was taking
24 regular medicines.
25 Q. As far as you knew, those did not

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1
2 impair her ability to perceive and understand
3 things around her?

4 A. Yes, that doesn't interfere with her
5 cognitive function.

6 MR. OGINSKI: Thank you, Doctor.

7
8 (TIME NOTED: 12:30 P.M.)

9
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11 -----

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14 Subscribed and sworn
15 to before me this
16 day of , .

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22 NOTARY PUBLIC

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C E R T I F I C A T E

STATE OF NEW YORK
COUNTY OF NEW YORK

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

That the witness whose examination is
hereinbefore set forth was duly sworn and that
such an examination is a true record of the
testimony given by such a witness.

I further certify that I am not related
to any of these parties to this action by blood
or marriage, and that I am not in any way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this

ALICE KARAMBELAS