

0001

1

1

2

3

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

4

-----x

5

6

7

Plaintiff,

8

-against-

Index No.:

/06

9

10

Defendant.

11

-----x

12

13

100 Church Street

14

New York, New York

15

April 4, 2007

16

10:30 a.m.

17

18

EXAMINATION BEFORE TRIAL OF

19

, on behalf of the Defendant herein,
taken by the Plaintiff, held at the above-mentioned
time and place, pursuant to Order, before a Notary
Public of the State of New York.

20

21

22

23

24

25

0002

1

2

2

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

3

4

5

THE LAW OFFICE OF GERALD M. OGINSKI, LLC

6

Attorney for Plaintiff

7

25 Great Neck Road

8

Suite 4

9

Great Neck, New York 11021

10

BY: GERALD M. OGINSKI, ESQ.

11

12

, ESQ.

13

Attorneys for Defendant

14

100 Church Street

15

New York, New York 10007

16

BY: , ESQ.

17

18

19

20

21

22

18
19
20
21
22
23
24
25
0003

3

1

2

STIPULATIONS

3

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

4

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

5

6

7

8

9

10

11

12

13

14

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

15

16

17

18

19

20

21

22

The filing of the original of this deposition is waived.

23

24

25

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

0004

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

4

, having first been duly sworn by Jennifer Brennan, the Notary Public, was examined and testified as follows:

EXAMINATION BY

MR. OGINSKI:

Q Would you state your name for the record, please?

A

Q Would you state your address for the record, please?

A , New York 11206.

MR. OGINSKI: By counsel, you'll accept service for him?

MS. : As long as he continues to be employed by

. If he's no longer employed, we will provide a last known address to you.

MR. OGINSKI: Thank you.

Q Good morning, Doctor, where do you currently work?

24 A Hospital.
25 Q In what capacity?
0005
1 5
2 A Special fellow.
3 Q In what field?
4 A In the department of surgery and division
5 of orthopedics.
6 Q And how long have you been there as a
7 fellow?
8 A August of 1996.
9 Q When you say you are a special fellow,
10 what do you mean by that?
11 A It's just a title.
12 Q And can you describe that title for me,
13 please?
14 A It's a position called as a house
15 physician, where I assist in the management of
16 patients, helping the attendings in whatever they
17 want, under their guidance.
18 Q Are you considered a house officer?
19 A Yes.
20 Q Are you an attending physician?
21 A No.
22 Q As a fellow, are you still in training?
23 A I'm not in any training.
24 Q In August of 2005, what was your title at
25 Hospital?

0006
1 6
2 A Same, special fellow.
3 Q And describe for me what your job duties
4 entail as a special fellow?
5 A I examine patients and discuss the
6 management with the attending, whoever is
7 responsible, and follow their directions, help them
8 in performing surgery and assisting them to do the
9 surgery and follow-up on all patients in-house, so
10 that if there is any problem, I can take care and
11 convey to the attending what I have done and what
12 needs to be done. They give me further advice if
13 needed.
14 Q Do you perform these duties in both the
15 department of surgery and the department of
16 orthopedics?
17 A Mainly orthopedics.
18 Q Are you licensed to practice medicine in
19 the State of New York?
20 A Yes.
21 Q When were you licensed, approximately?
22 A I'm not one hundred percent, around '93,
23 '94.
24 Q Has your license to practice ever been
25 suspended?

0007
1 7
2 A No.
3 Q Has it ever been revoked?

4 A No.
5 Q Do you have a license to practice in any
6 other state?
7 A No.
8 Q Do you remember , the
9 gentleman involved in this case?
10 A The name rings, but I'm not one hundred
11 percent sure.
12 Q Do you recall treating Mr. in
13 August or September of 2005?
14 A I have to look into the chart.
15 Q Separate and apart from your review of
16 the chart, do you have any independent memory of
17 actually treating him?
18 A No, I don't have recall about him,
19 without looking at the chart.
20 Q All of my questions are going to relate
21 to the August 2005 time period, unless I indicate
22 otherwise.
23 Were there occasions when you would be
24 assigned to see and treat patients in the emergency
25 room at Hospital?

0008

1 8
2 A Yes.
3 Q In addition to seeing and treating
4 patients in the emergency room, did you also see and
5 treat patients in the orthopedic clinic?
6 A Yes.
7 Q What is angulation, in terms of a
8 fracture?
9 A Angulation is a deviation of the
10 fragments from an anatomical position.
11 Q From a what position?
12 A Anatomical position.
13 Q And what does the term rotation mean,
14 again in terms of a fracture?
15 A It's a misalignment of the two fragments
16 from the anatomical position.
17 Q When a patient came in with a fracture to
18 Hospital emergency room, was it customary
19 for a physician, such as yourself or another
20 physician in the emergency room, to obtain X-rays of
21 a patient's ulna and radius, if that was the area
22 they were complaining of?
23 A Unless they do the X-rays, you can never
24 say, so it is customary to do X-rays.
25 Q I should have said, is it the standard of

0009

1 9
2 care in order to rule out a fracture, to take an
3 X-ray of a patient's affected area of where they are
4 complaining of?
5 A Yes.
6 Q And in the course of your training,
7 Doctor, have you had occasion to review and read
8 X-rays?
9 A Yes.

10 Q In August of 2005, if an X-ray was taken
11 of a patient in the emergency room, was it customary
12 for you to read and evaluate and interpret that
13 patient's X-rays?

14 A Personally I do it, but it is done by the
15 radiologist.

16 Q Let me ask it a different way. The
17 radiologist reads and interprets films; correct?

18 A Yes.

19 Q Hospital employed radiologists
20 to read and interpret X-rays; correct?

21 A Yes.

22 Q And patients who were seen in the
23 emergency room, who had X-rays taken, those X-rays
24 were customarily interpreted by radiologists within a
25 certain time period; correct?

0010

1 10

2 A Yes.

3 Q In addition and separate and apart from
4 the radiologists evaluating a particular X-ray for a
5 potential fracture, you indicated that you would also
6 review the patient's X-rays; correct?

7 A Yes.

8 Q Were there times where you would consult
9 with the radiologist, to discuss and evaluate a
10 particular X-ray?

11 A If I need their help, I do.

12 Q And in the course of your training, have
13 you come to learn how to diagnose fractures, based
14 upon review and evaluation of X-rays?

15 A Yes.

16 Q Did you see in the
17 emergency room of Hospital on August 15,
18 2005?

19 A I have to look into the chart.

20 Q Please, go ahead.

21 A I did see him.

22 Q And how was it that you came to see him?

23 A The emergency room physician calls for a
24 consult to see the patient, so I go down and see the
25 patient and evaluate him.

0011

1 11

2 Q At the time you were called down to see
3 Mr. , had X-rays already been taken of his ulna
4 and radius?

5 A They are done already.

6 Q And as part of your examination of
7 Mr. , did you also review his X-rays on
8 August 15th?

9 A I did.

10 Q At the time that you examined Mr. ,
11 was anyone with you at the same time, whether a
12 resident, a fellow, attending or anybody else?

13 A I'm not sure.

14 Q After you completed your examination of
15 Mr. , did you have any discussion with any

16 attending about --

17 MS. : Have we
18 established that an examination was
19 done?

20 MR. OGINSKI: I'll get to
21 that. He wrote a note.

22 MS. : Let's
23 establish that.

24 MR. OGINSKI: Withdraw the
25 question.

0012

1 12

2 Let's mark the chart as
3 Plaintiff's Exhibit 1.

4 (At this time, the chart was
5 received and marked Plaintiff's
6 Exhibit 1, for identification, as of
7 this date.)

8 Q You're looking in the patient's chart,
9 which has been marked as Plaintiff's Exhibit 1, for
10 identification, and is that a note that you wrote?

11 A I wrote this note.

12 Q And did you write that note in the
13 ordinary course of doing your business after
14 conducting an examination of Mr. ?

15 A Customary is to write after everything is
16 done to the patient.

17 Q Now, before you actually examined or saw
18 Mr. , did you review any of the notes that
19 anyone else had written in the chart before you
20 arrived?

21 In other words, the ER notes; did you
22 read the triage notes, any nurse's notes or any other
23 physicians who made entries in the patient's chart?

24 A I don't remember.

25 Q Is it customary for you to do that, to

0013

1 13

2 review the patient's chart prior to seeing and
3 examining them?

4 A I always do that.

5 Q I'm sorry?

6 A I always do that. It's customary.

7 Q Do you know a Dr. ?

8 A Yes, I know him.

9 Q Who is Dr. ?

10 A He's one of the emergency room attending
11 physicians.

12 Q And in the top right portion of your
13 consultation note, it says "signature of attending,"
14 is that Dr. name that appears in that
15 space?

16 A Below the last, it looks like .

17 MS. : Do you know
18 that for sure?

19 THE WITNESS: I believe.

20 Q And as far as you know, he was the
21 emergency room attending at the time?

22 A From the chart, that's what I recall. I
23 think so.
24 Q Was he an orthopedic attending, if you
25 know?

0014

1 14
2 A He's not an orthopedic attending.
3 Q To your knowledge, is Dr. still
4 working at Hospital?
5 A I believe he's still working.
6 Q At Hospital?
7 A Yes.
8 Q And do you know when it is that
9 Dr. put his name to this consult report that
10 you are --

11 MS. : I'm going to
12 object.

13 MR. OGINSKI: What's the
14 objection?

15 MS. : This is
16 Dr. signature. This is
17 not his signature.

18 MR. OGINSKI: This is his
19 note.

20 MS. : I'm not going
21 to permit him to answer that. If
22 you want to depose Dr. ,
23 that's a different story. I'm not
24 going to permit him to answer.

25 MR. OGINSKI: I want to know

0015

1 15
2 who made the entry on his note. I
3 want to know when he made --

4 MS. : Do you want to
5 talk to him about his notes? As to
6 what anyone else wrote --

7 MR. OGINSKI: I disagree. I
8 can ask him anything about the
9 chart, which I will do that, but I
10 want to know when that signature
11 appeared on his consult note.

12 MS. : Do you know
13 that?

14 THE WITNESS: It's been so
15 long, I don't remember exactly.

16 Q Customarily, when does an attending make
17 an entry on a chart involving consultation?

18 A Before I wrote anything on the chart.

19 Q And do you know why that's done, why the
20 doctor's name appears before you write your note, as
21 opposed to after?

22 A (No response.)

23 Q In other words, is he the one requesting
24 the consult?

25 A He's the one requesting the consult.

0016

1

16

2 Q Did you have a conversation with
3 Dr. after you examined Mr. ?
4 A I can't recall.
5 Q Is there anything in your notes or
6 anything in the chart that you reviewed, that would
7 refresh your memory as to whether you did or did not
8 talk to Dr. about this patient's examination?
9 A Nothing in my note says about that.
10 Q At the bottom of your note, Doctor, can
11 you look please to see whether there is any notation
12 you made that indicates who you discussed this
13 examination with, if anyone, other than the patient?
14 A Right at the beginning of the note, which
15 I started writing, it says that I discussed with
16 Dr. .
17 Q Who is Dr. ?
18 A He's the orthopedic surgeon on call.
19 Q Did you reduce Mr. fracture?
20 A As per the note, yes.
21 Q And what is reduction, Doctor?
22 A Reduction is trying to get as near
23 anatomical position as possible of the fragments.
24 Q When a patient comes in with an ulna and
25 radius fracture and the diagnosis is made on X-ray,
0017

1 17
2 what are the treatment options that are generally
3 available to the patient who has such a fracture?
4 MS. : Are we talking
5 about this patient or general?
6 MR. OGINSKI: In general.
7 MS. : In general,
8 any ulna and radius fracture.
9 Q Combined ulna and radius fracture,
10 generally, what are the treatment options available?
11 A It depends on the condition of the
12 patient. We can go either closed or open reduction.
13 Q Describe for me what is an open
14 reduction, please?
15 A It's a surgical procedure where we make
16 incisions, put the bones together and put plates and
17 screws or whatever, hardware inside.
18 Q If the patient does need an open
19 reduction, are you the individual who performs such
20 surgery?
21 A I assist in doing the surgery to the
22 attending, whoever is on call.
23 Q Who makes the decision as to whether the
24 patient requires either closed reduction or open
25 reduction?

0018
1 18
2 A The attending on call.
3 Q In this particular case, did Dr.
4 come to see and examine this particular patient?
5 A I don't recall.
6 Q Is there anything in the notes that you
7 have reviewed in preparation for today, that would

8 suggest to you that Dr. came and saw and
9 examined Mr. , at any time before you made your
10 determination he would receive closed reduction?

11 A All I can say is I got in touch with
12 Dr. and discussed the case and followed his
13 instructions, gave the options to the patient and
14 that's it.

15 Q Maybe my question wasn't clear. Is there
16 anything in the notes that you have reviewed, to
17 suggest that Dr. saw and examined this
18 patient?

19 A No.

20 Q And at the time that you spoke to
21 Dr. about Mr. , had he seen or examined
22 Mr. ?

23 A By the time I examined and discussed with
24 him, no.

25 Q And to your knowledge, Doctor, after you

0019

1 19
2 spoke with Dr. , did you then perform your
3 closed reduction of the fracture?

4 A Yes.

5 Q And whose decision was it, in this
6 particular case, as to what treatment Mr.
7 would receive, closed reduction compared to open
8 reduction?

9 In other words, was this a decision that
10 you had made or was it a decision that Dr.
11 had made or somebody else?

12 A It's a discussion between me and
13 Dr. .

14 Q And at the time that you spoke to
15 Dr. , do you know whether he reviewed the
16 patient's X-rays?

17 A Did he review personally, I'm not hundred
18 percent -- I don't know about that. But whatever he
19 knew, is what I told him, exactly what I said.

20 Q And to your knowledge, Doctor, was
21 Dr. present, physically present within the
22 hospital at the time that you spoke to him about
23 Mr. ?

24 A No.

25 Q He was not or you do not know?

0020

1 20
2 A He's not in the hospital.

3 Q And was Dr. employed by
4 Hospital at that time?

5 A Yes.

6 Q What was it that you told Dr.
7 about Mr. ?

8 A I can't recall exact words.

9 Q What type of fracture did you tell him
10 that Mr. had?

11 A Both bone fractures of the forearm.

12 Q And in describing the fractures, this is
13 of the left arm; correct?

14 A Yes.
15 Q And by the way, which hand was dominant
16 on Mr. ?
17 A I don't remember.
18 Q As part of your history, do you
19 customarily ask a patient who comes in with hand or
20 arm trauma, which hand is dominant for them?
21 A Yes, we do ask them.
22 Q And in the course of your examination and
23 taking a history, did you record that information
24 anywhere on your note?
25 A I did not.

0021

1 21
2 Q Did you ask that particular information
3 of Mr. in this case?
4 A As a customary, I should have asked him,
5 but I can't recall.
6 Q And is there anything in your note which
7 would confirm or tell you otherwise, as to which hand
8 was dominant for him?
9 A I need to see other's notes.
10 Q In preparation for today, Doctor, did you
11 review Mr. chart that you have in front of
12 you?
13 A No.
14 Q Did you review any medical records in
15 preparation for today?
16 A No.
17 Q Is this the first time that you have seen
18 your consultation note since August 15, 2005?
19 A Yes.
20 Q Before starting this morning, had you
21 reviewed your own note?
22 A Yes.
23 Q Had you reviewed any other notes, either
24 in the clinic or anything else that you may have done
25 for Mr. ?

0022

1 22
2 A I seen one more note of mine, that I
3 reviewed that.
4 Q And when you evaluated Mr.
5 fracture, did you determine whether there was any
6 angulation associated with the fracture?
7 A (No response.)
8 Q Are you referring to your notes?
9 A I'm referring to my note.
10 Q Separate and apart from your note,
11 Doctor, do you have any memory as to whether there
12 was any angulation associated with this fracture,
13 before you reduced it?
14 A No.
15 Q Is there anything in your note which
16 would suggest that there was any angulation?
17 A It doesn't suggest.
18 Q Is there anything in your note which
19 would suggest that there was a rotational component

20 to the fracture?

21 A It doesn't.

22 Q When you reviewed the patient's X-rays,
23 did you make a comment in your consultation note as
24 to your opinion as to what those X-rays showed?

25 A I made a comment here, "X-ray, left

0023

1 23

2 forearm shows fracture, non-displaced at junction of
3 middle and distal third."

4 Q And how many films were you referring to?

5 A Customarily at least two films would be
6 done.

7 Q An AP film?

8 A AP and lateral film.

9 Q Do you identify which films it is that
10 you are referring to which best show the fracture or
11 are you just saying in general, that this is what
12 both of those films showed?

13 A That's what both of the films showed.

14 Q At the time that you reviewed the film,
15 Doctor, had the radiologist, to your knowledge,
16 already reviewed the films?

17 A I can't recall that.

18 Q Generally, in August of 2005, how long
19 did it take for a radiologist to review films that
20 were taken in the emergency room?

21 MS. : Objection.

22 You're asking him to answer a
23 question of the radiologist?

24 Q I'm asking based upon your experience of
25 working at Hospital for many years in the

0024

1 24

2 emergency room, how long did it take the radiologist
3 to read films taken in the emergency room?

4 A I cannot give you an answer for that. I
5 don't work in the emergency room.

6 Q You had indicated that you had treated
7 patients in the emergency room at Hospital;
8 correct?

9 A The consult. The emergency room
10 attending calls me for a consult. I go there. By
11 that time, it's already done.

12 Q What's already done?

13 A The X-rays are done. And if the
14 radiologist is there, that's fine. If not, they call
15 me for evaluation and to evaluate and then do. I
16 don't remember or recall what happened on this
17 patient.

18 Q Did you have a conversation with the
19 radiologist about these particular films?

20 A I don't recall.

21 Q If you had spoken with the radiologist,
22 would you have made a note of that in your chart?

23 A Yes.

24 Q And is there anything in your note to
25 indicate that you had a conversation with any

0025

1

25

2 radiologist?

3 A No. Sometimes we don't. If we don't
4 have any, what do you call, discrepancy in our
5 diagnosis, we don't note it.

6 Q Did Dr. come to see Mr. at
7 any time after you had reduced Mr. fracture,
8 while he was still in the emergency room?

9 A Still in the emergency room, I'm not -- I
10 don't think so. I can't say one hundred percent, but
11 I don't think so.

12 Q Doctor, where did you go to medical
13 school?

14 A In India.

15 Q Where?

16 A , Medical
17 College.

18 Q When did you graduate?

19 A 19 .

20 Q And after completing medical college in
21 India, what did you do, as far as your medical
22 training?

23 A I worked in a private institution back in
24 India until 1998. I'm sorry, 1988.

25 Q What was the name of that institution?

0026

1

26

2 A

3 Q What type of institution was that?

4 A They treat generally everyone, mainly
5 general surgery, urology, OB/GYN and trauma.

6 Q And after 1988, what did you do?

7 A Came over to the United States in 1988,
8 December and I joined in University as a
9 research assistant in clinical pharmacology.

10 Q For how long?

11 A Until 1990, June. And in July of 1990, I
12 joined in Hospital as a general surgery
13 resident until 19 .

14 Q You started in what year?

15 A '90.

16 Q General surgery program, that's typically
17 a five-year program?

18 A It's a five-year program.

19 Q And can you explain how it took you six
20 years to complete?

21 A General surgery is not something that
22 it's done in five years or four years or three years.
23 It depends upon the program and the directors, which
24 they may ask you to repeat the program again, the
25 same year again.

0027

1

27

2 Q Did that happen with you, where you
3 repeated a particular year again?

4 A I just -- I don't remember which year
5 they made me repeat or not because they never told

6 me. I just worked through and then --
7 Q Regardless of which year, is it your
8 recollection at some point during your training, your
9 residency training in general surgery, you were asked
10 to repeat a year?
11 A They never told me anything. I just
12 continued and I didn't even finish the program, let
13 me put it that way.
14 Q Is there a particular reason you didn't
15 finish the program?
16 A There were too many senior residents who
17 needs to finish up. And I was not sure when I'm
18 going to finish the program, so I just quit the
19 program.
20 Q And what did you do after 1996?
21 A I joined , under surgery
22 department in orthopedic division.
23 Q Have you ever done any orthopedic
24 residency?
25 A No.

0028

1 28
2 Q And when you joined , you joined,
3 as you said, as a special fellow?
4 A Yes.
5 Q The training you received at Harlem
6 Hospital, were you let go at the end of 1996 or was
7 it a decision you made to leave and go elsewhere?
8 A It was a decision I made to leave.
9 Q Are you board certified in any field of
10 medicine?
11 A No.
12 Q Are you board eligible in any field of
13 medicine?
14 A No.
15 Q Have you published any articles in any
16 peer review journals?
17 A Not in the United States.
18 Q Have you ever testified before?
19 A Yes.
20 Q Under what circumstances?
21 A Same like you.
22 Q How many times?
23 MS. : Objection.
24 MR. OGINSKI: It's a proper
25 question.

0029

1 29
2 MS. : Objection.
3 MR. OGINSKI: What is the
4 objection?
5 MS. : What's the
6 basis for the question?
7 MR. OGINSKI: I need to know
8 what his background is. I need to
9 know whether he ever testified as an
10 expert or a fact witness or as a
11 defendant.

12 MS. : He's not a
13 defendant in this case and he's
14 testifying.

15 MR. OGINSKI: He's a fact
16 witness and he's employed by the
17 defendant. So I'm just asking about
18 his background.

19 Q How many times, Doctor?

20 MS. : Objection.
21 I'm directing him not to answer the
22 question.

23 MR. OGINSKI: Counsel, you
24 can't direct any witness not to
25 answer any question. Under the new

0030

1 30

2 rules of the court, you are
3 prohibited from telling the witness
4 not to answer, unless it is
5 privileged. And absent any
6 privilege objection, he's required
7 to answer, with the proviso that you
8 still have your objection.

9 MS. : You can answer
10 over my objection. Do you know how
11 many times you testified before?

12 A Probably two or three times.

13 Q And have you ever testified as an expert
14 physician in any capacity, either in medical
15 malpractice, injury cases, workers' compensation or
16 anything else?

17 A Once.

18 Q And in what capacity were you testifying?

19 A As a physician who treated the patient.

20 Q Was that a malpractice case, an injury
21 case or something else, if you can tell me?

22 A Injury case.

23 Q And is that your entire experience of
24 testifying, Doctor?

25 A Yes.

0031

1 31

2 Q The two times you mentioned, was that
3 also questioning at a deposition or was that at
4 trial?

5 A Only once at a trial.

6 Q Do you recall what county it was that you
7 were testifying in at trial?

8 A Brooklyn.

9 Q Doctor, in your Hospital residency
10 training, you mentioned that there were other
11 physicians who needed to finish the program and you
12 were not given the opportunity to finish; is that
13 correct, or am I misstating that?

14 MS. : You are
15 misstating the statement.

16 MR. OGINSKI: I apologize.

17 Q Can you tell me the reason again why it

18 is that you did not finish the general surgery
19 residency training program?

20 MS. : I'm going to
21 object to that, asked and answered.
22 He answered the question before.

23 MR. OGINSKI: I don't recall
24 exactly what he said. I just want
25 to clarify.

0032

1 32

2 MS. : Have it read
3 back, but he answered the question
4 before.

5 Q As part of the reasons for not finishing
6 the program, did it have to do with any performance
7 ability or inability that you had during your
8 training?

9 A No.

10 Q How many physicians were in your year in
11 the residency?

12 A I didn't understand your question.

13 Q There are a certain number of surgery
14 residents in each given year, first-year,
15 second-year, third-year, fourth-year, how many were
16 in your year?

17 A I do not recall.

18 Q Were there any other physicians that were
19 in the training program with you, that did not
20 complete the program as you?

21 A There were, but I don't know who.

22 Q Do you know how many there were?

23 A I don't recall.

24 Q Now, when you joined Hospital,
25 did you receive any specialized orthopedic training

0033

1 33

2 at the hospital?

3 A First few months I received the
4 orthopedic training.

5 Q And that was by taking classes, by
6 following the orthopedic residents or the orthopedic
7 attendings or something else?

8 A Following the orthopedic attendings.

9 Q How many months did you receive that
10 training?

11 A I don't remember. And I still claim
12 myself as still in the learning processes.

13 Q Going back to Mr. , was it
14 customary, in other words, was it the standard of
15 care back in August at Hospital, that after
16 you performed a reduction, that you take X-rays of
17 the patient's affected body part to evaluate the
18 reduction?

19 A It is customary.

20 Q And why is that done?

21 A To check how much of angulation
22 correction was done, whether he needs further
23 management. I need to know how the bone fragments

24 aligned.

25 Q Under what circumstances in a patient, a

0034

1 34

2 general question, under what circumstances would you
3 recommend a patient who had an ulna and radius
4 fracture undergo an open reduction?

5 A It depends upon how I felt when I am
6 reducing the fracture and also the post-reduction
7 films.

8 Q Before you go ahead and manipulate and
9 attempt to reduce a fracture in a closed fashion, I'm
10 talking now about the decision as to whether or not
11 the patient is going to receive either closed
12 reduction or open reduction, what is it that will
13 allow you to make a decision about whether this
14 patient is going to receive an open reduction?

15 MS. : I'm going to
16 object to the question. He
17 testified before he doesn't make the
18 decision, it's made by the
19 attending.

20 Q You certainly make a recommendation;
21 correct, especially if you are the only orthopedic
22 individual examining the patient; am I correct?

23 A I don't make any recommendations. I talk
24 with the attending what I found in the X-rays and
25 what is the patient's condition.

0035

1 35

2 Q Are there times when the attending
3 physician, who is not present, asks you what do you
4 think, asks you for your opinion as to whether or not
5 you would recommend a closed reduction or open
6 reduction?

7 A Sometimes they do ask me, but I do tell
8 them what I felt.

9 Q And --

10 A But only after I do the closed reduction
11 procedure, before I say anything to the attending.

12 Q Doctor, is it good medical practice to do
13 a procedure before evaluating all of your options as
14 to whether the patient needs either closed or open
15 reduction?

16 MR. OGINSKI: I'll withdraw
17 the question.

18 Q Are there instances where the patient
19 will not be amenable to closed reduction?

20 A There will be.

21 Q And in those instances, there may be bone
22 fragments that you can clearly see on an X-ray, that
23 you can see that the patient needs an open reduction
24 to fix the fracture; correct?

25 A Yes.

0036

1 36

2 Q My question is, before you attempt the
3 closed reduction, how do you determine whether the

4 patient needs an open reduction, compared to a closed
5 reduction?

6 In other words, what is the distinction
7 that's going to tell you, you know what, I'm not
8 going to try closed reduction, the patient needs
9 surgery?

10 A As I told you, it depends on what I see
11 in the X-ray, as well as on the body, whether his
12 injuries -- other injuries.

13 Q Were you familiar with the medical
14 literature back in August 2005, as to the prognosis
15 of patients who underwent closed reduction for both
16 ulna and radius reduction?

17 MS. : Objection.

18 What medical literature?

19 MR. OGINSKI: Any medical
20 literature.

21 MS. : He's not
22 answering. You can call the judge.

23 MR. OGINSKI: You have to
24 state the basis.

25 MS. : I am directing

0037

1 37

2 him not to answer the question.

3 MR. OGINSKI: What is the
4 basis?

5 MS. : You are asking
6 him a question about any medical
7 literature in the entire world,
8 relating to what?

9 MR. OGINSKI: He's a
10 practicing physician in the
11 department of orthopedics at

12 .
13 MS. : If you want to
14 ask a specific question, ask a
15 specific question. If you want an
16 answer to that question, call the
17 judge.

18 MR. OGINSKI: I'm probing his
19 knowledge in his field of specialty
20 at the time he's treating this
21 patient. If he knows the
22 literature, fine; if he doesn't,
23 fine, and I'll move on, but I'm
24 entitled to know if he knows.

25 MS. : What

0038

1 38

2 literature are you talking about?

3 What are you referring to?

4 Q Doctor, are there times when you will
5 review medical literature to educate and teach you
6 about certain procedures?

7 A I do review.

8 Q And as part of your ongoing training, is
9 it customary for you to read peer reviewed medical

10 journals in your field of specialty?

11 A It is customary.

12 Q Why do you do that?

13 A To learn the new techniques, if anything
14 that I can apply on the patient.

15 Q And in addition to any medical literature
16 that may be out there for you to read, are there also
17 textbooks in your field of specialty, that you have
18 available to you, that you can refer to from time to
19 time?

20 A Yes, we do have.

21 Q And over the course of your career, have
22 you had the opportunity to review and look at and
23 read certain textbooks in your field of medicine?

24 A Whenever I have a problem, I refer to
25 them.

0039

1 39

2 Q And in August of 2005, what were the
3 textbooks that you would refer to, if needed, to
4 answer questions that you may have about treating a
5 particular orthopedic patient?

6 A I don't remember the titles of the
7 textbooks.

8 Q Were there orthopedic textbooks that you
9 had available to you at Hospital?

10 A Yes.

11 Q And are there certain textbooks that are
12 more, I don't know if I should say popular, but
13 certainly more of the standard, that a physician such
14 as yourself would refer to, as opposed to some other
15 type of reading material?

16 A I have no answer to that.

17 Q Are there certain textbooks, if a
18 resident was to ask you what is a good reference to
19 review about a particular orthopedic procedure, what
20 would you say to such a resident?

21 A I have no idea about that, for we don't
22 have any residents in the program.

23 Q If another orthopedic physician came to
24 you and asked you what's a good orthopedic textbook
25 to review --

0040

1 40

2 A I need to ask my attending.

3 Q And in the course of your training,
4 Doctor, in the course of working at Hospital
5 as a special fellow, what are some of the orthopedic
6 textbooks that you have used to assist you?

7 MS. : Objection,
8 asked and answered. He said before
9 that he doesn't remember the name of
10 the textbooks that he reviewed.

11 Q In evaluating and treating Mr. ,
12 did you refer to or review any textbooks?

13 A I don't recall.

14 Q Were you aware of any medical literature
15 in your field of medicine in orthopedics, that talks

16 about patients who had ulna and radius fractures and
17 whether or not they should have closed or open
18 reduction?

19 A There are a lot of literatures which show
20 that you can treat them both closed or open,
21 depending on the situations.

22 Q Are you familiar and can you cite for me
23 any particular specific literature, the title,
24 journal, volume?

25 A I don't remember.

0041

1 41

2 Q In preparation for today, Doctor, did you
3 review any medical literature before coming here?

4 A No.

5 Q Let's go please to your consult note of
6 August 15, 2005. I would like you to read your
7 entire note into the record. If there is an
8 abbreviation, please tell us what that abbreviation
9 is?

10 A "Thank you for the referral."

11 Q If you can please start where it says
12 "Question," at the top?

13 A I didn't write that.

14 Q Can you read that, please?

15 MS. : No, I'm not
16 going to have him read that. He
17 didn't write it.

18 Q Doctor, when you come in to examine a
19 patient and you see a consult request, you told me
20 it's your custom to review the patient's chart.

21 Certainly, would you agree it's customary
22 to review any notes on your consult note?

23 MS. : Did you review
24 this note?

25 MR. OGINSKI: It doesn't

0042

1 42

2 matter whether he did or didn't,
3 it's his note.

4 MS. : It's not his
5 note. This is his note.

6 MR. OGINSKI: I'm asking you
7 to read that and there should be no
8 objection because it's part of his
9 note.

10 MS. : You are making
11 it part of his note.

12 Q Here is the question, do you know who
13 wrote the question?

14 MS. : Doctor, did
15 you write this?

16 THE WITNESS: I didn't write
17 that.

18 Q Do you know who did?

19 MS. : Where does
20 your note start?

21 THE WITNESS: "Opinions,

8 an open reduction initially to fix his fractures?

9 A I cannot answer to that question
10 appropriately because I don't have the knowledge
11 about it.

12 Q I'll ask a different one. Doctor, who is
13 Dr. ?

14 A He's one of the other attendings.

15 Q Did you ever talk to Dr. about
16 Mr. ?

17 A I don't recall.

18 Q You saw Mr. in follow-up on August
19 19th; correct?

20 A Yes.

21 Q And that was in the hand clinic?

22 A In the orthopedic clinic.

23 Q And was there an attending physician
24 present in the clinic at the time that you would see
25 and examine patients?

0048

1 48

2 A Yes.

3 Q And was it customary for you to discuss
4 the patient's care with the attending, before the
5 patient was discharged out of your care for that day?

6 A Yes.

7 Q And in this particular case, did you have
8 a conversation with an attending physician about
9 Mr. ?

10 A I noted here that I discussed with

11 Dr. .

12 Q And did Dr. accompany you during
13 your examination of this patient?

14 A I don't recall.

15 Q Did Dr. review any X-rays that
16 had been taken of Mr. , from either the 15th,
17 four days earlier or on the 19th?

18 A I don't recall.

19 Q Is there anything in your note which
20 would suggest that Dr. did review and see the
21 X-rays from either the 15th or the 19th?

22 A Nothing on the note.

23 Q Is there a note by Dr. for
24 August 19th, indicating that he saw and examined this
25 patient?

0049

1 49

2 A I don't see a note.

3 Q And does your note indicate that you had
4 spoken to Dr. after you had completed your
5 examination of Mr. on August 19th?

6 A I did write that, discussed with

7 Dr. .

8 Q And that would be after you had done your
9 exam?

10 A Yes.

11 Q Was that while the patient is still
12 present or is that after the patient has left?

13 A While the patient is still there.

14 Q Going back for a moment, Doctor, to the
15 post-reduction film of August 15th, did you review
16 those films with a radiologist?

17 MS. : Objection,
18 asked and answered.

19 A I don't recall.

20 MS. : You asked him
21 that before.

22 MR. OGINSKI: I asked about
23 the pre-reduction films. I'm now
24 asking about the post-reduction
25 films.

0050

1 50

2 A I don't recall.

3 Q At any time after August 15th, did you
4 see and review the X-ray reports generated by the
5 radiologists who interpreted the films taken on
6 August 15th?

7 A I don't recall.

8 Q Let's take a look, please, at the
9 radiology reports for the August 15th X-rays.

10 Do you see the pre-reduction report? Do
11 you see the one I'm referring to, Doctor, that's the
12 original X-ray that was done pre-reduction?

13 A I looked at it.

14 Q And it's signed by the radiologist,
15 Dr. , on Monday, August 15th and timed at
16 14:58, do you see that?

17 A Yes.

18 Q It says, "There is a transverse fracture
19 of the distal shaft of the radius and distal shaft of
20 the ulna"; correct?

21 A Yes.

22 Q What does it mean when it says, "There is
23 a transverse fracture"?

24 A Transverse fracture is something
25 transverse, across both cortexes, almost at the same

0051

1 51

2 level.

3 Q And it says, "with angulation," what does
4 that mean?

5 A There is some angulation. They didn't
6 mention what angle of angulation is.

7 Q It also says, "There is posterior and
8 medial displacement of the distal fragment of the
9 ulna."

10 A Yes.

11 Q What does that mean?

12 A That means there was no contact between
13 the two fragments.

14 I mean, I can't make exact thing, any
15 displacement, it could even be still a contact is
16 there, but there is no continuation, you can see a
17 break.

18 Q I'm just asking you to interpret the
19 radiologist's report.

20 A That's what I'm saying, by interpreting
21 the radiologist's report, I cannot say whether it's a
22 complete displacement or only part of it is
23 displaced.

24 Q And the radiologist continues on by
25 saying, "or the angulation is more prominent than at

0052

1 52
2 the level of the radius."

3 What does that mean?

4 A Two bones are involved; one is more
5 angulated than the other. That's all I can tell you.

6 Q And if you can turn, please, to the
7 post-reduction film, also taken the same day.

8 This X-ray was done when the cast has
9 already been applied to his arm; correct?

10 A Yes.

11 Q It says that, "There is satisfactory
12 alignment and no gross displacement"?

13 A Yes.

14 Q Now, on August 19th when Mr.
15 returned to the orthopedic clinic, X-rays were taken;
16 correct?

17 A Yes.

18 Q And this was done with the cast still on?

19 A Still on.

20 Q And the X-ray report generated by
21 Dr. , same day, August 19th, indicates, "A
22 transverse fractures of the mid distal diaphyses of
23 the ulna and radius are still seen."

24 What does that mean?

25 A They can see the fracture line.

0053

1 53

2 Q Diaphyses, what is that?

3 A Diaphyses is the shaft of the bone.

4 Q Was Mr. cast removed on
5 August 19th?

6 A No.

7 Q And did you advise him when his cast
8 would need to be removed and changed?

9 A I don't recall what the exact words I
10 told him.

11 Q Is there anything in your note as to when
12 he was to return to the orthopedic clinic?

13 A He was to return in one week.

14 Q For what purpose?

15 A For repeat X-ray.

16 Q What is the purpose of taking serial
17 X-rays over time?

18 A Callus formation is needed before we can
19 say anything. Until then, the fragments can move
20 around. And we want to make sure there is no
21 movement in the fragments.

22 Q And is there any particular reason as to
23 why this patient did not receive an open reduction to
24 fix those fractured fragments initially?

25 MS. : Objection,

0054

1

54

2

asked and answered. He said he
discussed surgery with the patient;
he chose to be treated
conservatively.

3

4

5

6

Q Is there any reason you did not recommend
an open reduction initially on the first visit, on
August 15th?

7

8

9

MS. : Objection,

10

asked and answered. He said that he
recommended surgery and the patient
chose to be treated conservatively.

11

12

13

Q Was it your opinion that this patient
needed surgery to fix the fractures on August 15th?

14

15

16

A That has been discussed with the
attending on call and made the decision.

17

18

Q That wasn't my question. Was it your
opinion that this patient needed open reduction,
internal fixation on August 15th?

19

20

A Might need.

21

22

Q Was there a particular reason as to why
open reduction was not recommended for him initially,
instead of attempting closed reduction first?

23

24

A The customary practice throughout the
country, no patient will be given -- I mean, operated

0055

1

55

right away when he comes to the emergency room. They
will be put in a splint or a cast and then taken to
the operating room at a later date, later time.

2

3

4

5

Q He had --

6

A Unless he has an opened wound.

7

Q And when you saw him on August 19th, was
it your opinion at that time, that he required an
open reduction, internal fixation?

8

9

A He might need.

10

11

Q I'm not asking about whether he might
need.

12

13

As of the 19th, four days after you first
saw him, was it your opinion that he required an open
reduction to fix his fracture in his left ulna and
radius?

14

15

16

A My opinion, the fragments didn't move, so
I gave the option back to him.

17

18

19

Q To do what?

20

A To the patient, whether he needs an open
reduction or wants to continue with the cast.

21

22

Q Why would you allow the patient to make
the choice at that point?

23

24

How is the patient supposed to have this
specialized training that you have, in order to make

25

0056

1

56

an informed decision?

2

3

A This is a fracture. When the fragments
did not move, he can have either option. It's not
necessary to operate on every fracture that you see.

4

5

6 Q How long a time period do you have to
7 make that decision, as to whether the patient needs
8 open reduction or whether they can stay closed?
9 In other words, when is it that you say,
10 okay, the patient no longer has the ability to have
11 an open reduction because the fracture is now healed
12 or something to that effect?
13 A We had to follow-up with the X-rays and
14 see.
15 Q How long?
16 A Up to two weeks.
17 Q And if there is some displacement of
18 those fracture fragments within those two weeks, then
19 you would recommend that the patient have an open
20 reduction?
21 A Yes.
22 Q And if after two weeks there is no
23 movement of those fracture fragments, it would still
24 be your opinion to continue this patient in a closed
25 reduction, as in a cast?

0057

1 57
2 A I would give him the option.
3 Q How can a patient make that
4 determination, if you just told me that if the
5 fracture fragments haven't moved, there is no need
6 for open reduction, so why would you give the patient
7 the option of that, of having open surgery?
8 A If there is a good callus formation, I
9 won't give him any option anymore, but follow him.
10 And if in future, if he has a problem, we can correct
11 it, which was also informed to him right at the
12 beginning on the day I treated him.
13 Q And you have a specific memory of that?
14 A I always give that to all my patients,
15 customary.
16 Q I'm not asking custom and practice. I'm
17 asking specifically.
18 A I don't recall on this patient, but my
19 customary discussion with the patient is when I
20 discuss about the surgical option and closed
21 treatment options, that if there is a problem, he
22 still would need an operation.
23 Q What did Dr. say about whether
24 this patient needed an open reduction or closed
25 reduction on August 15th?

0058

1 58
2 A I don't recall exact words what he told
3 me, but depending on his advice, I discussed the same
4 thing with the patient.
5 Q And am I correct that Dr. is
6 making a decision based upon the information you are
7 providing to him?
8 A Yes.
9 Q If your information is either inaccurate
10 or not complete, then he's making a decision based
11 upon either incomplete or inaccurate information;

12 correct?
13 A That's a possibility.
14 Q Can you read your note for August 19th?
15 A "Distal radius ulna fracture, closed
16 reduction. Send him for X-ray." I wrote something,
17 which is not meant for the patient, so I scratched it
18 off.
19 Q You made an entry in the patient's chart,
20 which was not related to his care and treatment;
21 correct?
22 A Yes.
23 Q It was somebody else's information?
24 A Yes.
25 Q And you crossed it out?

0059

1 59
2 A I crossed it out. Then I wrote, "X-ray,
3 no change. Continue in long arm cast. Return to
4 clinic one week for post -- I'm sorry, repeat X-rays,
5 discuss with Dr. ."
6 Q Was the patient in pain at the time of
7 this visit?
8 A I don't recall exactly but --
9 Q I'm just asking you to look at the note,
10 Doctor, the top right portion of that, pain?
11 A It says "complaints of pain."
12 Q And this is a form, a stamp, it says
13 specifically, "Are you in pain?" And there is a
14 place for someone to check off yes or no and in this
15 case, it's checked off yes; correct?
16 A Yes.
17 Q As part of the initial history, it says,
18 "complaints of pain"; correct?
19 A Yes.
20 Q And the information that appears at the
21 top portion of this page of August 19th, is that your
22 handwriting?
23 A Not my handwriting.
24 Q Do you know who customarily takes that
25 information down?

0060

1 60
2 A Customary, one of the nurses.
3 Q Did you show Dr. the X-rays that
4 were taken on August 19th?
5 A I don't recall.
6 Q If you had shown him the X-rays, would
7 you have made a note indicating that you showed him
8 the X-rays?
9 A Not routinely.
10 Q Did you have the radiologist's report of
11 the August 15th X-rays in the patient's chart, when
12 you saw him four days later on the 19th?
13 A I don't recall.
14 Q Do you know how long it takes to have a
15 patient's X-ray report placed into the patient's
16 chart?
17 A I don't recall.

18 Q Did you have any conversation with the
19 physician who saw Mr. when he returned to the
20 orthopedic clinic on August 29th?

21 A I don't recall.

22 Q Let me ask you to take a look please,
23 Doctor, at this computerized note.

24 MS. : What's the
25 date on that?

0061

1 61

2 Q There are a number of different dates,
3 but I'm asking you to look at the bottom, where it
4 indicates for the 19th of August, it says, "visit
5 provider," and it has your name next to that?

6 A Yes.

7 Q Under, "preceptor and billing provider,"
8 it has " , M.D."

9 Do you know why his name appears in that
10 place?

11 A We routinely put Dr. as a preceptor
12 in the clinic.

13 Q Why?

14 A Because Dr. is on and off.

15 Q Did you ask Dr. to come in and
16 see Mr. on August 19th?

17 A I don't recall.

18 Q When Mr. returned to the clinic on
19 August 29th, he had his cast changed from a long arm
20 cast to a short arm cast?

21 MS. : Objection.

22 A I haven't seen the patient, I don't know.

23 Q Can you look, please, at the August 29th
24 note?

25 MS. : I'm not having

0062

1 62

2 him answer any questions on that.

3 MR. OGINSKI: What's the
4 basis for that?

5 MS. : He did not see
6 the patient. His treatment ended
7 with the patient on the 19th. The
8 deposition ends on the 19th.

9 MR. OGINSKI: What is your
10 basis for not allowing him to answer
11 any questions about the treatment
12 the patient received after --

13 MS. : He didn't see
14 the patient after. I'm objecting to
15 him answering any questions as of
16 the last date that he saw the
17 patient.

18 If you want to call the judge,
19 go ahead. And I'm directing him not
20 to answer any questions as to any
21 treatment after the last date he saw
22 the patient.

23 MR. OGINSKI: It's still an

24 improper objection and you know
25 that.

0063

1 63

2 MS. : No, it's not.

3 MR. OGINSKI: If you read the
4 rules, you know you can't make that
5 objection.

6 MS. : I read the
7 rules.

8 Q When you first saw Mr. on
9 August 15th, before you attempted any closed
10 reduction, did you form an opinion as to whether
11 there was any deformity to his arm?

12 A I did write in my note that there was no
13 gross deformity noted and he was in a posterior
14 splint.

15 Q And the posterior splint means it's a
16 half cast?

17 A Yes.

18 Q And that was changed to a full fiberglass
19 cast?

20 A Yes.

21 Q Under what circumstances would a cast be
22 changed from a long arm cast to a short arm cast?

23 MS. : Are you
24 talking generally or about this
25 patient?

0064

1 64

2 MR. OGINSKI: Generally.

3 A Generally it's customary that any patient
4 who has a distal -- in the distal half of the forearm
5 fractures, like to put a short arm cast as soon as
6 possible, so that his elbow won't be frozen. But at
7 the same time, we also want to make sure that the
8 fragments are not moving around when we change into a
9 short arm cast.

10 Q Was it customary in the orthopedic
11 clinic, that once a cast is changed, that X-rays are
12 taken to evaluate the anatomical alignment?

13 A It all depends upon what the person,
14 whoever saw him, feels when he is changing the cast,
15 how the bones are, how he felt when he was changing
16 the cast, if they were moving or not moving, things
17 like that. Physical examination is more important to
18 send him for X-ray or not.

19 Q How can you, as a physician, know whether
20 or not there is any mobility or movement to any
21 fracture fragments, unless an X-ray is taken?

22 A X-rays are not the final thing for
23 everything.

24 Q Are there any other diagnostic tests that
25 were available to you in August and September of

0065

1 65

2 2005, that would assist you in determining --

3 A I didn't see the patient.

4 Q Let me finish the question. Are there
5 any diagnostic tests that were available to you in
6 August and September 2005, besides an X-ray, which
7 would tell you whether or not there was mobility of
8 the fracture fragments?
9 A I told you, physical examination that we
10 do at the end of -- that's what we depend on. That's
11 all I'm telling you.
12 Q Maybe I didn't state it clearly. You are
13 familiar with the term diagnostic tests; correct?
14 A Yes.
15 Q That's separate and apart from any
16 physical examination; right?
17 A No.
18 Q You're saying that physical examination
19 includes diagnostic tests?
20 A Yes.
21 Q What diagnostic tests, during a physical
22 examination, will tell you whether or not there is
23 mobility of fracture fragments?
24 A I just told you, the physical examination
25 of the patient dictates whether to do any further

0066

1 66
2 tests or not.
3 Q That wasn't my question, Doctor. My
4 question was, how do you determine, without an X-ray,
5 whether the patient's bone fragments have moved?
6 A By examining the patient.
7 Q And what is it about the examination,
8 which is going to tell you whether or not there has
9 been movement of the bone fractures?
10 A When we change the cast, you can tell
11 whether their bones are still moving or not.
12 Q How?
13 A By physical examination of the patient.
14 Q How exactly can you tell; what is it that
15 you see, that will tell you that?
16 A If there is any deformity or when you are
17 changing the cast, we can see whether it's moving or
18 not, physical examination (indicating).
19 Q When you take a cast off, do you
20 intentionally attempt to manipulate the patient's
21 fracture?
22 A We do not attempt to change the
23 fractures, manipulation.
24 Q How is it that you can examine or
25 evaluate the patient during an exam and determine

0067

1 67
2 whether or not there is movement of the bone
3 fragments?
4 A When we change the cast, you can easily
5 see if the bone fragments are moving or not.
6 Q How?
7 A By simple observation.
8 Q What is it that you will see? I'm trying
9 to understand what you are telling me. I'm just

10 asking you for specifics.

11 A I can't tell you any specifics without
12 examining a patient, that's all I can tell you.

13 Q What is it that you would see that would
14 suggest to you that there is movement or that the
15 bones have moved?

16 A When you are taking the cast off, you can
17 see that the hand is trying to move this way and that
18 way (indicating).

19 Q When you remove a cast, is it not your
20 intention to keep the bones again in anatomic
21 position, so that there is no additional movement
22 there?

23 A We try the best to do that.

24 Q So under what circumstances would you see
25 a patient moving their hand or arm when you change a

0068

1 68
2 cast?

3 A When we are trying to take the cast off,
4 if there is movement in the bones, they move no
5 matter what care you take.

6 Q And you're saying that that clinical
7 examination constitutes a diagnostic test?

8 A I believe it is diagnostic test for me
9 and if I need anything further, I get something
10 further done.

11 Q Other than X-rays, what else was
12 available to you in August or September of 2005 to
13 evaluate a patient's fracture?

14 A You are asking the same question again
15 and again, that's all I can say.

16 Q Other than X-ray and your clinical
17 examination, what else was available to you, in terms
18 of diagnostic tests?

19 A There is nothing else.

20 Q I'm going to show you a photograph --

21 MS. : Objection,
22 it's not happening.

23 MR. OGINSKI: Why?

24 MS. : He's not
25 looking at those photos.

0069

1 69
2 MR. OGINSKI: Why? I have a

3 number of questions. They were
4 marked.

5 MS. : He's not
6 looking at the photos.

7 MR. OGINSKI: Why?

8 MS. : Call the
9 judge.

10 MR. OGINSKI: I want a basis,
11 a legal basis, otherwise I have to
12 make a motion. This is a patient's
13 condition --

14 MS. : I don't know
15 who took the pictures.

16 MR. OGINSKI: I don't care.
17 MS. : I don't know
18 when the pictures were taken. I
19 don't know if that's the patient. I
20 don't know anything about those
21 pictures.
22 MR. OGINSKI: Then you
23 haven't read the file.
24 MS. : I don't know
25 if he is twisting his arm.

0070

1 70
2 MR. OGINSKI: You didn't read
3 the deposition?
4 MS. : I am not
5 having him answer questions relating
6 to the photos.
7 MR. OGINSKI: Then you have a
8 problem because the doctor is going
9 to have to come back because you are
10 obstructing this unnecessarily.
11 MS. : I'm not. Call
12 the judge.
13 MR. OGINSKI: These were
14 marked at the plaintiff's
15 deposition. He testified about
16 them. He testified he appears in
17 the pictures. He discussed his
18 condition, what time, what date and
19 it indicates on the photograph when
20 it was taken.

21 I have a few questions for the
22 doctor about the photographs and his
23 own personal observations of the
24 patient when he was treating him and
25 so my questions are relatively

0071

1 71
2 simple. And I don't understand any
3 objection because at trial, I can
4 ask him any question I want about
5 any photograph concerning this
6 patient. So your objection, I
7 think, is totally improper and
8 obstructive.

9 MS. : Call the
10 judge.

11 MR. OGINSKI: I'm going to
12 ask the question and you can make
13 whatever objection you want, so I
14 have my basis to make the motion and
15 ask for cause and sanction.

16 Q Doctor, I'm going to show you a
17 photograph of Mr. taken on October 18, 2005,
18 previously marked as Defendant's Exhibit A at
19 plaintiff's deposition on October 4, 2006.
20 Did you have a chance to look at it,
21 Doctor?

22 A (Witness indicating.)
23 Q You have to answer verbally.
24 A Yes.
25 Q In the photograph of Mr. left

0072

1 72
2 forearm, can you tell me based upon your examination
3 of Mr. on August 15th, whether his arm, before
4 you attempted the closed reduction, looked the way
5 that it appears in this photograph before you? And
6 by the way, there are three photographs on this
7 sheet.

8 A I don't recall.
9 MS. : Objection to
10 you answering the question.

11 Q I'm going to show you another three
12 photographs, again previously marked as Defendant's
13 Exhibit B, taken on October 18, 2005, that Mr.
14 has identified.

15 And I'm going to ask you the same
16 question, is the condition that's shown in these
17 three photographs, are they the same condition as his
18 forearm appeared on August 15th, before you attempted
19 the closed reduction or is it different?

20 MS. : Objection.
21 You can answer over my objection.

22 A I told you, I don't recall.
23 Q In the first exhibit, Exhibit A, do you
24 see there is a deformity in the left forearm, based
25 upon the photographs?

0073

1 73
2 MS. : Objection.
3 You can answer over my objection.
4 Can you tell if that's a
5 deformity or do you need to see the
6 patient physically to tell if that's
7 a deformity?

8 THE WITNESS: I need to see
9 the patient physically.

10 Q I'm asking based upon the photographs,
11 whether you can tell me if the condition of the
12 patient as it appears in those photographs,
13 represents any type of deformity?

14 A It's highly difficult.

15 Q Why is it difficult?

16 A It's not that easy to see a photo and
17 then say it's deformed or not deformed.

18 Q Based upon your experience and training
19 when you see a patient, before you put your hands on
20 them to examine them, you look to see whether there
21 is any gross deformity; correct?

22 A Yes.

23 Q In these photographs, the three
24 photographs that you see before you, in your opinion,
25 Doctor, based upon a reasonable degree of medical

0074

1 74

2 probability, do you have an opinion as to whether
3 there is any type of deformity visible in these
4 photographs?

5 MS. : Objection.
6 You may answer over my objection.
7 Can you tell anything from
8 these photos?

9 Q Is there any type of angulation visible
10 in the left forearm in the three photographs?

11 A It's difficult to say from these
12 photographs.

13 Q Is there anything to suggest that there
14 is a rotational component to Mr. forearm in
15 those three photographs, Defendant's Exhibit A?

16 MS. : Objection.
17 You may answer over my objection, if
18 you can tell.

19 A I cannot.

20 Q Looking at Defendant's Exhibit B, these
21 additional three photographs, I'll ask you the same
22 question, can you tell me from a gross standpoint,
23 whether there is any obvious, either angulation or
24 rotational component to Mr. forearm?

25 MS. : Objection.

0075

1 75
2 You may answer over my objection.

3 A It's difficult to say anything on these
4 photographs.

5 Q Is there any gross deformity visible in
6 these photographs to his left forearm?

7 MS. : Objection,
8 asked and answered. He answered the
9 question. He said it's difficult to
10 tell.

11 MR. OGINSKI: I'm asking
12 based upon this exhibit, not the
13 first one.

14 A Unless we examine the patient, I cannot
15 tell you exactly what it is.

16 Q I'm not asking that, Doctor. I
17 understand your comment, but I'm only asking based
18 upon these photographs.

19 Can you form any opinion based upon your
20 experience and your training, as to whether you
21 observe any gross deformity to his left forearm,
22 that's observable in these photographs?

23 MS. : Can you tell
24 anything from this photo?

25 A Not from this photo, I cannot say.

0076

1 76

2 Q Let me show you what's been marked
3 previously as Defendant's Exhibit C, which are an
4 additional three photographs, again taken on
5 October 18, 2005.

6 Looking specifically at the top
7 photograph, Doctor, is there any gross deformity

8 visible on that photograph?
9 MS. : Objection.
10 Q Do you have an opinion within a
11 reasonable degree of medical probability, as to
12 whether there is any gross deformity that is visible
13 on that photograph?
14 A It's very difficult to just say that
15 there is a gross deformity or no deformity.
16 Q The condition that appears in this
17 photograph, Doctor, was this present on August 15,
18 2005, before you reduced the fracture?
19 MS. : What
20 condition?
21 MR. OGINSKI: Whatever
22 condition is appearing in this
23 photograph.
24 MS. : He said it's
25 difficult to tell. What condition

0077

1 77
2 are you referring to?
3 Q Do you see any bump or raise in his
4 forearm in Exhibit C that's before you, do you see
5 it?
6 A I see a small raise. That means nothing.
7 Q In your opinion, there is no deformity
8 based upon what you see in that photograph?
9 A I can't say exactly that it's a
10 deformity. You can be -- I just can't answer that
11 without seeing the patient and examination.
12 Q I'm going to show you what's previously
13 marked as Defendant's Exhibit D and that is a whole
14 series of photographs of Mr. and his left arm.
15 I ask you to take a look at that. In any
16 of the photographs shown on this sheet, Exhibit D, is
17 there any indication, Doctor, that there is a gross
18 deformity that appears on his left forearm?
19 MS. : I'm going to
20 object again and I'm going to direct
21 him not to answer, only because he
22 said the same thing over and over
23 and over again.
24 MR. OGINSKI: These are
25 different views. These are a

0078

1 78
2 different set of photographs, so I
3 would like him to answer based on
4 this set of photographs.
5 MS. : And I'm
6 directing him not to answer.
7 Q Doctor, is there any angulation deformity
8 visible on any of the photographs on Defendant's
9 Exhibit D?
10 MS. : Can you tell
11 anything from these photos?
12 A I can't really tell if there is a real
13 gross deformity or is it just from the photographic

14 imaging that it shows like that, until I see the
15 patient.
16 Q Do you think there is a way to manipulate
17 that, to create what's seen in those photographs?
18 MS. : Last I
19 checked, he's a doctor, not a
20 photographer.
21 MR. OGINSKI: He just made a
22 comment that he thinks there was
23 something in the photographs.
24 MS. : He did not.
25 He said he cannot tell from the

0079

1 79
2 photograph.
3 MR. OGINSKI: Because of the
4 imaging process.
5 Q Is there something in there about any of
6 the photographs that were taken, that suggests to you
7 anything?
8 A I'm not an expert on photographing.
9 Q Being an expert in your field of
10 medicine, Doctor, again in Exhibit D, is there
11 anything there to suggest to you that there is some
12 type of deformity?
13 A Unless I see the patient and examine
14 personally --
15 Q I'm not asking about that. I understand
16 your comments; you made it a number of times.
17 Can you say anything about what you
18 observe in the photograph?
19 A I cannot comment.
20 Q Do you know Dr. , an
21 orthopedist?
22 A No.
23 Q Do you know a Dr. ?
24 A No.
25 Q Did you ever learn from any physician,

0080

1 80
2 that Mr. had an angulation deformity of
3 anywhere between 19 to 30 degrees?
4 A No.
5 Q Is an angulation deformity of 30 degrees
6 considered to be severe --
7 A As I told you, I'm not an orthopedic --
8 orthopedist and I cannot tell you exactly if that is
9 significant or not.
10 Q Based upon your training and your
11 experience, Doctor, do you know whether an angulation
12 deformity of 30 degrees is a significant one?
13 A It should be significant.
14 Q Why?
15 A I don't think there is any functional
16 problem, unless I see the patient and examine. I
17 cannot tell you exactly what the functional things
18 is.
19 Q I didn't ask about functional deformity.

20 A Only for cosmetic, yes, you will see a
21 deformity.

22 Q Did you ever tell Mr. that if he
23 has some type of deformity, as you put it, cosmetic
24 deformity, that there is nothing to do, nothing to
25 worry about?

0081

1 81
2 A I never told him anything like that.

3 Q Did you ever suggest to Mr. if he
4 has any cosmetic deformity, there is always surgery
5 available to him to fix the problem?

6 A I cannot specifically tell what I talked
7 to the patient because I don't recall it. But I
8 generally tell all my patients, as a customary
9 practice.

10 Q Did you ever see the X-ray report of
11 August 29th, at any time after you saw Mr. on
12 August 19th?

13 A The last time I seen was on the 19th,
14 August 19th. After that, I didn't see him, so I --

15 Q That wasn't my question, Doctor. My
16 question was, did you ever see any X-ray report for
17 August 29th, at any time after you saw him on the
18 19th of August?

19 MS. : Did you see
20 any X-ray reports?

21 A No.

22 Q Do you know who saw him on August 29th?

23 A (No response.)

24 Q Can you turn to the August 29th clinic
25 visit?

0082

1 82
2 August 29th, can you tell from that note,
3 who saw him on that visit?

4 A Signature says it's Dr. .

5 Q And on September 23rd, when he followed
6 up in the clinic, can you tell who saw him on that
7 visit?

8 A It shows it's P.A. .

9 Q And to your knowledge, is P.A. still
10 working at Hospital?

11 A Yes.

12 Q Do you know P.A. first name?

13 A No.

14 Q I'm sorry, Mr. , it's a man; right?

15 A Yes.

16 Q And I think you mentioned Dr. is
17 still at Hospital; right?

18 A Yes.

19 Q Did you see any callus formation on the
20 X-rays that you reviewed on August 19th?

21 A August 19th, no.

22 Q We have the patient's X-rays here and I
23 know we don't have a light box, but if you can, as
24 best you can, I would like you to take a look at the
25 August 19th films.

0083

1

83

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0084

1

84

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0085

1

85

2

3

4

5

MS. : We don't have a light box, how do you expect him to look at this?

MR. OGINSKI: He can hold it up. If he can't determine based upon the lights we have, let me know.

Off the record.

(At this time, a discussion was held off the record.)

Q Doctor, again, how many films are there for the 19th?

A One film.

Q And two views?

A Two views.

Q And do you have sufficient light to view these X-rays, Doctor?

A Yes.

Q And can you tell from the film that you have in front of you, whether there is any callus formation in either of the two views for August 19th?

A There is no callus formation.

Q Is there any movement of the bone fragments, in comparison to the August 15th X-rays?

A I have to look at the film.

Q Before we compare them, can you tell if there is any movement or displacement of any of the bone fragments on this film?

A They're near anatomical. They are not absolutely anatomical position. The bone is out to length and mild dorsal displacement of the ulna.

Q Are you specifically referring to the view on the right side?

A Yes.

Q And, Doctor, if the patient's bones heal in the position that is seen on the right side of this film, is it your opinion that that's an acceptable method or acceptable manner of healing?

MR. OGINSKI: I'll rephrase it.

Q Is the patient going to be left with any physical deformity if the bone heals in the manner in which it's shown in the film on the right side?

A I don't see any problem in healing. He will be fine if it heals that way.

Q With that deformity that you mentioned, you said angular?

A I didn't say angulation. I said

displacement, that will correct. It's not a problem.

Q And you characterize that as a mild displacement?

A Yes.

6 Q Can you look, please, at the
7 pre-reduction films of August 15th?
8 There are two films; correct?
9 A Yes.
10 Q And which is the AP view?
11 A This is the AP view (indicating).
12 Q Can you tell from the AP view, whether
13 there is any rotational deformity that's visible on
14 that film?
15 A I don't see any rotational deformity.
16 Q Is there any angulation deformity?
17 A There is angulation.
18 Q In which bone do you see the angulation?
19 A Both bones.
20 Q Both the ulna and the radius?
21 A Yes.
22 Q Can you quantify that amount?
23 A I can't exactly say without sets to
24 measure the angles.
25 Q Can you approximate, your best estimate,

0086

1 86
2 Doctor?
3 A Approximately, probably around 20
4 degrees.
5 Q And in both bones or one?
6 A In both bones, around 20, 25.
7 Q And can you look at the lateral film,
8 please?
9 A Yes.

10 MR. OGINSKI: Off the record.
11 (At this time, a discussion
12 was held off the record.)
13 Q In looking at the lateral film, can you
14 see any angulation deformity in that film?
15 A I don't see any angulation deformity, but
16 there is displacement of the ulna.
17 Q Can you quantify that or characterize it?
18 A Not at this overlapping -- it does show
19 it's displaced. How much of it is in contact, I
20 don't know.
21 Q If you could take a look at the
22 post-reduction films, there appear to be four of
23 them?
24 A I think they made two copies of each.
25 Yes, there are two copies of each. When it printed

0087

1 87
2 out, it made it that way. They're the same.
3 Q And on the AP view, Doctor, is there any
4 angulation deformity still visible on either of the
5 two bones?
6 A In the ulna, I see about less than five
7 degrees and the radius looks normal.
8 Q Is that within accepted standards?
9 A That's accepted standards.
10 Q And the lateral film, do you see any
11 angulation or rotational deformity?

12 A No, I don't see any.
13 Q Do you see displacement?
14 A I see a displacement of about five to ten
15 percent in the ulna. Radius looks normal.
16 Q And it was your opinion that that is
17 going to heal without any functional or cosmetic
18 deformity --
19 A Yes.
20 Q (Continuing) In that manner?
21 A Yes.
22 Q In your experience, Doctor, in treating
23 patients with this type of fracture, both the ulna
24 and the radius, what has been your experience as far
25 as the results when using closed reduction, as

0088

1 88
2 opposed to open reduction?
3 A I had good results both ways, both
4 closed, as well as open reductions.
5 Q Were there occasions in your experience
6 where the results have not been optimal using closed
7 reduction for this type of fracture?
8 A Very little, like one percent.
9 Q If bones heal in anatomic misalignment,
10 what happens to the function of the bones or the body
11 part?

12 MS. : What degree of
13 misalignment are we talking about,
14 any misalignment?

15 MR. OGINSKI: Yes.

16 MS. : Five percent,
17 ten percent, I don't know, fifty
18 percent?

19 Q Can you tell me if the bones heal in an
20 incorrect alignment --

21 MS. : What degree
22 are we referring to? I need
23 clarification on that question.

24 Q Are there occasions when bones will heal
25 in an incorrect alignment, which will cause a

0089

1 89
2 functional deformity?

3 A It depends upon how much of misalignment
4 is there. Yes, it can cause.

5 Q And customarily, how much misalignment do
6 you tend to see with a functional deformity?

7 A Evaluate the patient and see what
8 functional deformity he has and depending on that, we
9 advise him what to do.

10 Q Are there patients who can experience a
11 functional deformity with a minimal misalignment and
12 others who have a functional deformity with a larger
13 misalignment?

14 MS. : Again, what is
15 minimal?

16 MR. OGINSKI: I don't know,
17 I'll ask the doctor.

18 MS. : Are you asking
19 the doctor to tell what you minimal
20 is?

21 MR. OGINSKI: Yes.
22 A As I told you, I have to examine the
23 patient and see what happens, you know. I'm not an
24 authority on fractures and their healing. But what I
25 see from the patients, that's what I can translate to

0090

1 90
2 you.

3 Q Going back to your initial examination of
4 Mr. on August 15th, when you spoke to
5 Dr. about your evaluation of the patient, did
6 Dr. disagree with your assessment based upon
7 the information you gave him?

8 A I don't recollect.

9 Q If he had recommended based upon what you
10 told him, that the patient have an open reduction to
11 correct his fracture, would you have somehow either
12 scheduled him or told the patient about that?

13 A Definitely.

14 Q And if a decision was made by Dr.
15 that the patient needed open reduction, you mentioned
16 that he would not have had surgery that day, he would
17 have been told to come back on a different day?

18 A Yes.

19 Q Did you ever learn from anyone, any
20 medical doctor, and I'm not talking about your
21 attorney, that Mr. required an osteotomy five
22 months after he was treated at Hospital, to
23 correct the condition of his arm?

24 A This is the first time I'm hearing about
25 the patient.

0091

1 91

2 Q If you participate in an open reduction
3 procedure, do you typically follow the patient
4 postoperatively, when they come back for follow-ups?

5 A As far as possible. It's the whole team.
6 It is whoever gets to see him, will see him. If
7 there is any abnormality, the surgeon who has
8 operated would be informed.

9 Q Do you have an opinion as you sit here
10 today, as to whether if Mr. had had an open
11 reduction initially, after being seen in the
12 emergency room at Hospital, as to whether
13 the condition of his fracture would have been better
14 or remained the same?

15 A I cannot answer that.

16 Q If a patient --

17 MS. : Better than
18 what?

19 Q If a patient undergoes an open reduction,
20 is there anyway for the bones to move at that point,
21 since you now have hardware fixing the fracture?

22 A I didn't follow the patient too long.

23 Q I'm asking as a general question, Doctor,

24 if a patient has an open reduction with hardware, are
25 the bones then fixed with the hardware?

0092

1 92
2 A Yes.
3 Q And not movable; correct?
4 A Yes.
5 Q And do you have an opinion as to whether
6 if Mr. had had an open reduction initially,
7 whether his outcome would have been the same as it
8 ultimately was?
9 MS. : Objection. He
10 didn't see the patient after the
11 19th and I'm not going to have him
12 answer that question. I'm sure you
13 hired an expert.
14 Q Do you know Dr. Giddumal?
15 A No.
16 Q Did you ever review Dr. Giddumal's report
17 of his examination of this patient --
18 A No.
19 Q (Continuing) In 2006?
20 A No.
21 Q Did you have any conversation with
22 Physician Assistant Oken about Mr. ?
23 A I don't recall.
24 Q Was Mr. case ever presented at
25 rounds, either in the department of orthopedics or

0093

1 93
2 any other department, for any reason whatsoever?
3 A I don't recall.
4 Q Did you ever speak with Mr. at any
5 time after August 19, 2005?
6 A I don't recall seeing him.
7 Q When you saw him on August 15th in the
8 emergency room at Hospital, was anyone with
9 him at the time?
10 A I don't recall.
11 Q When you saw him on August 19, 2005 in
12 the orthopedic clinic, was anyone with him at the
13 time of your examination?
14 A I don't recall.
15 Q Did you prescribe Mr. any pain
16 medication on August 19th?
17 A I don't recall.
18 Q Going back to your note, Doctor, on
19 August 19th, whose signature appears next to yours?
20 A That's mine. This is my signature, then
21 my number (indicating).
22 Q Did you have a conversation with
23 Mr. on August 19th about any other treatment
24 options, besides continuing to watch and observe him?
25 A It's customary procedure.

0094

1 94
2 Q I'm not asking customary. I'm asking
3 specific conversation that you had with him?

4 A I don't recall.
5 Q On August 19th when you examined him in
6 the orthopedic clinic, were his fingers visible
7 through the cast or before the cast ended?
8 A The type of cast I put in, they should be
9 visible.
10 Q Did you ask him if he had any problems
11 with his fingers, either movement or sensation?
12 A It's customary to ask.
13 Q I asked, did you ask him?
14 A I don't recall.
15 Q Is there anything in your note of
16 August 19th, to suggest whether you did or didn't ask
17 him those questions?
18 A There is nothing to denote. I didn't
19 write that specifically.
20 Q And do you have any memory of asking him
21 either about sensation or motor control for the 19th?
22 A It's customary for me ask every patient
23 who comes.
24 Q And what were the results of that?
25 A Must be normal, that's why I didn't note

0095

1 95
2 it down.
3 Q The fact that that information is not
4 contained within your note, there could be two
5 reasons for that; right, either you didn't ask and
6 didn't write it down or it was normal and didn't
7 write it down; correct?
8 A That's correct.
9 Q You had mentioned in your emergency room
10 note, your consult note of August 15th, that you had
11 discussed with the patient surgery versus
12 conservative care.
13 And in your opinion, the conservative
14 care represented the closed reduction?
15 A Closed reduction.
16 Q And what did you tell the patient about
17 surgery?
18 A That he will need two incisions to be
19 made on his forearm. This is customary that I talk
20 to every patient. And we put plates and screws at
21 the fracture site and so that they heal in proper
22 anatomical position.
23 He also has to know about different
24 complications, like nerve injury and infection and
25 the complications from anesthesia itself and it's not

0096

1 96
2 just limited to them, it can be --
3 Q Did you tell Mr. what the success
4 rate was of an attempted closed reduction?
5 A Looking at his X-rays, I said you have a
6 50/50 chance.
7 Q Of what?
8 A Of healing without surgery. If it
9 doesn't heal, you will still need surgery done.

10 Q And did you tell him how much time he
11 would have to make that decision or to make that
12 determination?

13 A I did tell him that within 10 to 14 days
14 is the maximum that we can allow before we can do the
15 surgery without much complications. That's my
16 customary.

17 Q Did you ever tell Mr. that you
18 don't handle workers' compensation cases?

19 A Pardon?

20 Q Did you ever tell Mr. in the
21 emergency room, that your hospital does not handle
22 patients who have workers' compensation cases or
23 something to that effect?

24 A I don't recall.

25 Q Does Hospital, to your

0097

1 97
2 knowledge, handle patients who have workers'
3 compensation cases?

4 A In the orthopedic clinic, we do not
5 because we are not in the compensation board, board
6 of doctors.

7 Q So if a patient needed treatment and they
8 were a workers' compensation case, what would they do
9 to get additional care and treatment?

10 A We advise them to seek a compensation
11 doctor and give him the numbers where they can get
12 the doctors who can take care. And ask them to go
13 right away, do not delay. We don't deny treatment to
14 them.

15 Q I understand. Did Mr. tell you
16 that he wanted to have surgery because he didn't want
17 to have to go through the healing process twice?

18 A I don't recall.

19 Q How long does this type of fracture take
20 to heal, Doctor?

21 A You mean --

22 Q The fractures that you observed on
23 August 15th, how long does it typically take to heal?

24 A Six weeks is the customary period for it
25 to -- for the casting.

0098

1 98
2 Q And if the patient has open reduction to
3 fix the fractures, how long does that take to heal,
4 assuming no complications?

5 A For any fracture, the bone takes three
6 months to heal completely, whether you do an open
7 reduction or a closed reduction.

8 Q You just told me a moment ago it takes
9 six weeks to heal?

10 A The cast --

11 MS. : He said six
12 weeks for the cast.

13 MR. OGINSKI: That wasn't my
14 question.

15 Q With closed reduction, how long does it

16 take for these types of fractures, the type that
17 Mr. experienced, to heal?
18 MS. : Completely
19 heal?
20 MR. OGINSKI: Yes.
21 A Completely heal, three months.
22 Q And the same could be said if he had open
23 reduction; correct?
24 A Three months for the bone to heal
25 completely.

0099

1 99
2 Q How did you reduce this fracture?
3 A I don't recall specifically.
4 Q How do you reduce this type of fracture?
5 A This had minimal angulation, so I just
6 hang the hand and then apply the cast and manipulate
7 it or what do you call that, re-model the cast
8 carefully so that the angulation is corrected.
9 Q Before you apply the cast, do you
10 manipulate the arm?
11 A Yes. That's what I'm saying, I hang up
12 the hand (indicating).
13 Q To apply traction?
14 A To apply traction and then manipulate and
15 correct the angulation and then apply the cast and
16 then re-model.
17 Q How do you know in what position to put
18 it in, is what I'm asking?
19 A That's why I look at the X-ray. That's
20 why I want to look at the X-ray and see which way I
21 have to move.
22 Q And when you apply the cast, do you angle
23 the elbow?
24 In other words, do you leave it straight;
25 how do you set the arm?

0100

1 100
2 A Hang it up at 90 degrees like this, so I
3 can put some weight over here (indicating).
4 Q Once you reduce the fracture, the arm is
5 casted in a 90 degree angle at the elbow?
6 A At the elbow.
7 Q Do you have any memory of actually
8 reducing this particular patient?
9 A I don't recollect.
10 Q Did ever see Mr. after his cast
11 had been removed, when he was last seen in the
12 orthopedic clinic, either in passing or somewhere in
13 the orthopedic clinic?
14 A I don't recollect seeing him.
15 Q Did you ever see Mr. arm after
16 his cast had been finally removed?
17 MS. : He just
18 testified he never saw him. How is
19 he going to see his arm if he never
20 saw him?
21 Q Did you ever speak to the physician's

22 assistant after the cast had been removed?
23 A I don't recollect.
24 Q Did the physician's assistant ever
25 indicate to you that he had any type of swelling
0101
1 101
2 after his cast was finally removed on September 23rd?
3 A I don't recollect.
4 Q Do you know what type of work Mr.
5 did?
6 A I don't recollect exactly what he told.
7 Only from the note, I can say some bricks fell on his
8 hand.
9 Q Other than your consult note, Doctor, for
10 August 15, 2005, did you write any other note on
11 August 15th in the emergency room?
12 A No.
13 Q Did you write any note that does not
14 appear within this record, something you may have
15 written, for whatever reason didn't make it into the
16 chart?
17 A I don't have a habit.
18 Q I'm not asking habit, I'm asking
19 specifically in this case.
20 A I don't recall.
21 Q Are you, as a special fellow, permitted
22 to prescribe medication to patients?
23 A As a physician, yes.
24 Q As a special fellow working at
25 Hospital?

0102
1 102
2 A I'm a physician, so I can prescribe.
3 Q Do you have privileges to see or admit
4 patients to Hospital, separate and apart
5 from anybody you may see either in a clinic or in the
6 emergency room?
7 A I never ask for that, so I cannot answer
8 that.
9 Q Do you work at any other hospital besides
10 Hospital?
11 A No.
12 Q From 2005 up until the present, have you
13 ever worked at any other hospital?
14 A No.

(Continued on the next page.)

0103
1

103

2 Q Has your employment with
3 Hospital changed at all from 2005, up until the
4 present time?

5 A No.

6 MR. OGINSKI: Thank you.
7 (Time noted: 12:40 p.m.)
8
9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0104

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

0105

1

2

3

4

104

I N D E X T O E X H I B I T S
Plaintiff's
__Exhibits_ Description For I.D.
1 Chart pg. 12

105

ERRATA SHEET
VERITEXT/NEW YORK REPORTING, LLC
1-800-727-6396
200 OLD COUNTRY ROAD 1350 BROADWAY
MINEOLA, NEW YORK 11501 NEW YORK, NEW YORK 10018

