

****DE-IDENTIFIED DEPOSITION OF FOOT DOCTOR IN A CASE OF A YOUNG CHILD WHO SUFFERED BURNS FROM A CAST CUTTER WHILE REMOVING HIS CAST****
1

1

2 SUPREME COURT OF THE STATE OF NEW YORK

3 COUNTY OF

-----X

4

as Mother and Natural Guardian of
5 , an Infant Under The Age
of Fourteen Years,

6

Plaintiffs,

7

-against-

8

and ,

9

D.P.M.

10

Defendants.

11

-----X

12

13

February 21,
14 1:30 p.m.

15

16

17 EXAMINATION BEFORE TRIAL of a

18 Non-Party Witness, , M.D.

19

20

21

22

23

TOMMER REPORTING, INC.

192 Lexington Avenue

24

Suite 802

New York, New York 10016

25

(212) 684-2448

TOMMER REPORTING, INC. (212) 684-2448

2

1

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

3

4

THE LAW OFFICES OF GERALD M. OGINSKI, LLC

Attorney for the Plaintiff

5

150 Great Neck Road, Suite 304

Great Neck, New York 11021

6

BY: GERALD M. OGINSKI, ESQ.

7

8

, LLP

9

Attorneys for the Defendants

10

11 BY: , ESQ.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

TOMMER REPORTING, INC. (212) 684-2448

3

1

2 STIPULATIONS

3

4 It is hereby stipulated and agreed by and
5 between counsel for the respective parties
6 hereto that all rights provided by the
7 C.P.L.R., including the right to object to
8 all questions except as to form, or to move to
9 strike any testimony at this examination, are
10 reserved, and, in addition, the failure to
11 object to any question or to move to strike any
12 testimony at this examination shall not be a
13 bar or a waiver to doing so at, and is reserved
14 for, the trial of this action;

15 It is further stipulated and agreed by
16 and between counsel for the respective parties
17 hereto that this examination may be sworn to by
18 the witness being examined before a Notary
19 Public other than the Notary Public before whom
20 this examination was begun, but the failure to
21 do so, or to return the original of this
22 examination to counsel, shall not be deemed a
23 waiver of the rights provided by Rules 3116 and
24 3117 of the C.P.L.R., and shall be controlled

25 thereby;

TOMMER REPORTING, INC. (212) 684-2448

4

1

2 It is further stipulated and agreed by
3 and between counsel for the respective parties
4 hereto that this examination may be utilized
5 for all purposes as provided by the C.P.L.R.;

6 It is further stipulated and agreed by
7 and between counsel for the respective parties
8 hereto that the filing and certification of the
9 original of this examination shall be and the
10 same hereby are waived;

11 It is further stipulated and agreed by
12 and between counsel for the respective parties
13 hereto that a copy of the within examination
14 shall be furnished to counsel representing the
15 witness testifying without charge.

16

17

18 ** ** **

19

20

21

22

23

24

25

TOMMER REPORTING, INC. (212) 684-2448

5

1

2

, M.D.,

3

called as a witness, having been first

4

duly sworn, was examined and testified

5

as follows:

6

EXAMINATION BY

7

MR. OGINSKI:

8

Q State your name for the record,

9

please.

10 A , M.D.

11 Q State your address for the record,
12 please.

13 A , ,
14 .

15 Q Good afternoon, Doctor.

16 Did you perform surgery to
17 regarding his club foot?

18 A Yes.

19 Q As a result of that surgical
20 procedure did you apply a cast to his foot?

21 A Yes.

22 Q As part of his care and treatment
23 to treat the club foot did he require serial
24 casting?

25 A Prior to or after?

TOMMER REPORTING, INC. (212) 684-2448

6

1 , M.D.

2 Q After the surgery.

3 A No serial casting. In other

4 words, casting that was done was just a

5 postoperative course.

6 Q What was your position at
7 in December of ?

8 A I am the Director of Podiatric
9 Surgical Services. I'm also the Director of
10 Podiatric Medical Education.

11 Q How long have you held those
12 positions?

13 A Director of Podiatric Medical
14 Education, basically since .

15 Director of Podiatric Surgical
16 Services since .

17 Q All my questions are going to
18 relate to the time frame of the year .

19 In that time did have a
20 residency program involving podiatry?

21 A Yes.

22 Q Did podiatrists rotate through
23 various departments within the hospital for
24 their training?

25 A Yes.

TOMMER REPORTING, INC. (212) 684-2448

7

1 , M.D.

2 Q Do you know a Dr. ?

3 A Yes.

4 Q Who was Dr. as of the year

5 in relation to what he did at ?

6 A He was my Chief Resident in

7 Podiatric Surgery.

8 Q As far as you know, is Dr.

9 an attending now at ?

10 A Yes.

11 Q Are you also an attending at

12 ?

13 A I have to be.

14 Q Are you affiliated with any other

15 hospitals?

16 A Yes.

17 Q Which one?

18 A Medical Center, ,

19 Medical Center, ,

20 .

21 Q Any others?

22 A That's it.

23 Q That would be an attending in

24 podiatry?

25 A Yes.

TOMMER REPORTING, INC. (212) 684-2448

8

1 , M.D.

2 Q Generally in the year who
3 would be responsible for removing a cast

4 involving a person who had a cast applied by
5 someone in the Podiatry Department?

6 A Well, let me go back on this
7 question a little bit, okay.

8 It's a teaching program so the
9 resident involved would be supervised by the
10 attending. There would be no resident who

11 would do this without an attending supervision.

12 Q Describe for me what you mean when
13 you say an attending supervising the resident?

14 A I would be right there. I would
15 be right there with the resident.

16 Q Were there occasions when a
17 resident in podiatry would be removing a cast
18 technically under the supervision of the
19 attending but not actually where the attending
20 would not actually be within the room?

21 A Podiatric attending, you're
22 talking about?

23 Q Yes.

24 A The only way that would happen
25 would be the emergency room.

TOMMER REPORTING, INC. (212) 684-2448

9

1 , M.D.

2 Q On December 27, were you
3 present in the room when had his

4 cast removed?

5 A I was present at all times when

6 had his cast removed.

7 Q Did Dr. remove the cast as

8 far as you remember on December 27, ?

9 A Yes.

10 Q Were you present in the room?

11 A Yes.

12 Q Was 's mom also present in

13 the room?

14 A Yes.

15 Q Was anyone else in the room with

16 you?

17 A Not that I can remember. There

18 might have been a resident that came in and

19 out.

20 Q When you teach the residents how

21 to remove casts, what do you tell them and how

22 do you tell them to remove a cast?

23 A Well, first of all the residents

24 are privileged in doing that.

25 First year residents have to be

TOMMER REPORTING, INC. (212) 684-2448

10

1 , M.D.

2 privileged in certain credentials.

3 Second year residents are

4 privileged in more advanced credentials.

5 Chief resident is credentialed for

6 three years. He's removed hundreds and

7 hundreds of casts.

8 Whether it would be in the

9 presence of an attending which in this case in

10 a teaching environment it would always be an

11 attending in the emergency room or in an

12 emergency situation.

13 Q How should a cast be removed?

14 A In what sense? Are you asking the

15 procedure involved?

16 Q Yes, the procedure.

17 MR.: You are not

18 referring to something --

19 MR. OGINSKI: Generally.

20 A Two linear incisions from top to
21 bottom medial, lateral on the inside and
22 outside. It's an oscillating saw. It's an up
23 and down motion.

24 Q The saw that you're referring to
25 is that commonly known has a cast cutter?

TOMMER REPORTING, INC. (212) 684-2448

11

1 , M.D.

2 A Correct.

3 Q Is there any specialized knowledge
4 or training in use of the cast cutter?

5 A Not really. It's part of a
6 teaching environment to where maybe the first
7 time, if you've never done it, a first year
8 resident or even as a student -- by the way,
9 they do this, an attending might show them the
10 procedure is done -- but by the first year in a

11 surgical residency program you've been
12 privileged to do that.

13 Q Generally when a cast is applied,
14 is there any type of material placed under the
15 cast such as felt or anything else to protect
16 the tissue?

17 A Actually, the technique, that's
18 what you're asking me, more of the technique?

19 Q Yes.

20 A A stocking net. There's webril,
21 which is padding. The areas which are padded
22 are around the fibula head more excessively
23 than anyplace else which is high up on the leg
24 in and around the surgical site and in and
25 around the ankle area because the skin there is

TOMMER REPORTING, INC. (212) 684-2448

12

1 , M.D.

2 very, very thin. Then the cast is applied.

3 Usually two or three rolls, maximum, four rolls.

4 Q Again, this is a general question.

5 Are there any risks associated with the removal
6 of a cast?

7 A In 15 years, no.

8 Q Have there ever been any instances
9 that you are aware of in your career where a
10 cast has been removed and the cast cutter has
11 caused injury or some sort of wound to the
12 underlying tissue and skin?

13 A No, not that I've ever experienced.

14 Q When Dr. removed
15 cast on December 27th, did you observe
16 's leg after the cast was removed?

17 A December?

18 Q December 27, .

19 A Yes.

20 Q What did you see?

21 A There was an area very
22 superficially almost like a scratch mark.

23 That's the best way I can describe
24 it. If you were taking your hand and

25 scratching your skin.

TOMMER REPORTING, INC. (212) 684-2448

13

1 , M.D.

2 Q To what, if anything, did you
3 attribute that scratch mark?

4 A My experience has been, whenever I
5 see something like that, either someone has
6 stuck something down there. Been very common
7 people can stick a wire hanger. That's what it
8 seemed like to me. And it was very superficial
9 and it was very, very small.

10 Q Where on the leg did you observe
11 this superficial scratch mark?

12 A If I remember correctly, it was --
13 I believe it was on the lateral side. I'm not
14 100 percent sure on that.

15 Let me put it to you this way,

16 whichever side it was -- I might not be clear
17 on that -- the other side was clear and that is
18 clear memory to me.

19 Q Where within that side in terms of
20 part of the leg, foot or some other area can
21 you describe for me where it was besides simply
22 saying it was on a particular side?

23 A I would say the superficial area
24 was possibly mid-leg area.

25 Q Would that be the calf area or

TOMMER REPORTING, INC. (212) 684-2448

14

1 , M.D.

2 somewhere else?

3 A Yes, you know, halfway down the
4 leg in a child.

5 Q Do you --

6 A An infant.

7 Q Do you have an independent memory
8 of that particular event with Dr.
9 removing this particular cast?

10 A The memory that I have, it was
11 uneventful.

12 Q Did you review the child's records
13 from prior to today's deposition?

14 A Briefly, not extensively.

15 Q Did you review any other records
16 relating to this case other than the medical
17 records?

18 A No.

19 Q Did you look or see any
20 photographs regarding the child's condition and
21 any scars or incision that he had?

22 A That time?

23 Q At any time.

24 A No.

25 Q From the time that he was last

TOMMER REPORTING, INC. (212) 684-2448

1 , M.D.

2 seen at up until today.

3 MR.: He means when you

4 met with me.

5 A Yes, that's the pictures that I

6 did see.

7 Q The photographs that you saw,

8 describe them for me. What is it that you

9 observed in the photos?

10 THE WITNESS: This is the one you

11 showed me?

12 MR.: Yes.

13 A There was a large area of where

14 there was either a contusion or deep wounds to

15 the area which then healed over which would --

16 from a clinical point of view would tell me

17 that that area was very, very deep just because

18 of the hyperpigmentation and the extent of the

19 scar tissue that was there.

20 Q Did you ever learn from Ms.
21 whether anything had happened to her son from
22 the time that his -- 's cast was taken
23 off on December 27th up until the time the
24 photograph that you saw was taken?

25 A No.

TOMMER REPORTING, INC. (212) 684-2448

16

1 , M.D.

2 Q If the cast was taken off
3 properly, would you expect to see any injury to
4 the underlying skin?

5 A Well, let's go back on that. The
6 cast was taken off properly.

7 Q I'm talking generally, not
8 specifically in this case in a general sense.

9 A Right.

10 Q If the cast is removed properly

11 you would not expect to see any underlying
12 injury to the skin or to the leg, correct?

13 A Let me repeat. The scratch that
14 was there in my opinion, 150 percent, was not
15 from a cast cutter.

16 Q Tell me what you base that opinion
17 on?

18 A Because it was linearly. What I
19 mean by that, it was superficial, as though
20 someone was scratching it.

21 Let me put it to you this way.
22 You would have to apply so much pressure to go
23 through that cast and through the padding onto
24 the skin and the type of wound you would see if
25 you removed the cast would be one of cradle

TOMMER REPORTING, INC. (212) 684-2448

2 like. Not one of superficial scratch.

3 Q Did you ever ask Ms. whether
4 she applied any instrument or anything else
5 into the cast that might have caused what you
6 observed, that's a superficial scratch mark?

7 A No, at any time Ms. and I
8 ever had discussions about the child was a
9 pleasant discussion, you know, the child is
10 doing better, the child is fine.

11 Q I understand.

12 A No, never mentioned. It was never
13 discussed, if anything, we had a pretty good
14 time with the child.

15 Q Would you expect a child of
16 's age to have inserted some device or
17 something to cause the superficial scratch?

18 A No, let me go back. That's not
19 what I'm saying.

20 I'm saying it's been my experience
21 with children when they have a cast on they
22 could be crying where the mother can't stop

23 that crying. I'm not trying to insinuate
24 anything. My observations would be that
25 something else happened. A child that age is

TOMMER REPORTING, INC. (212) 684-2448

18

1 , M.D.

2 not going to tell you, "Hello, you know, I'm in
3 pain or it's itching me or you know I want the
4 cast off."

5 No, I wouldn't expect a child that
6 age to take off a cast.

7 Q The child was about seven months
8 old at that time?

9 A Yes.

10 MR.: Off the record.

11 (Informal discussion held off the
12 record)

13 Q Do you have any recollection as to

14 whether Dr. had any difficulty in taking
15 the cast off on that particular day, December
16 27th?

17 A No, I was there.

18 Q Did you write your own note for
19 anything you saw or observed on December 27th?

20 A There was nothing that I observed
21 that contradicts what the note says.

22 Teaching environment, attending
23 supervisor, chief resident or other surgical
24 resident, they could write the note as long as
25 the attending is there.

TOMMER REPORTING, INC. (212) 684-2448

19

1 , M.D.

2 Q Is it customary that you, as the
3 attending, co-sign the note at some point?

4 A Sometimes.

5 What do I mean by that? To
6 alleviate payment of the mother going to the
7 clinic sometimes we take them in to private
8 section into the hospital.

9 Ms. was never seen in a
10 clinic. She was seen personally by me and Dr.
11 , the whole follow-up.

12 Q What was the reason for that?

13 A Basically because it was a
14 seven-month-old child. The waiting time -- we
15 were trying to be human about this.

16 I know how it would be as a father
17 to have a seven-month-old child crying in their
18 arm for whatever reason. The mother doesn't
19 understand waiting in the clinical waiting area.

20 So I routinely do that. I
21 routinely take those children under my belt.

22 Q On the occasion when Ms. did
23 bring in to be seen by you and another
24 resident did you make notes in the patient's
25 chart?

TOMMER REPORTING, INC. (212) 684-2448

20

1 , M.D.

2 A Just what Dr. has in the

3 chart.

4 Q In reviewing the chart, specifically
5 the December 27th note, I'll show you a copy
6 which you probably seen this already, is there
7 anything in there to confirm that you were
8 present that day?

9 A No.

10 In this note?

11 Q Just in that note.

12 A Right.

13 Q I've seen in other notes before
14 that that there are references to you. Is
15 there anything in this note in your handwriting
16 for the December 27th notation?

17 A No, there isn't.

18 Q As far as you know is that

19 Dr. 's handwriting and his note?

20 A Yes.

21 Q Have you spoken with Dr.

22 about your coming in to give testimony in this

23 matter?

24 A Not really. I've spoken to him

25 about -- well, let me go back.

TOMMER REPORTING, INC. (212) 684-2448

21

1 , M.D.

2 I knew that this was being brought

3 up and I said, "Are you okay?" He said, "I'm

4 okay." I said, "Pretty much they probably want

5 to speak to me too." He goes, "Yes, thank

6 you." That's the conversation to him.

7 He's also now on the teaching

8 staff. He's also one of my teaching

9 attendings.

10 Q Was there any discussion between
11 you and Dr. at any time from December
12 27, up until today as to how this child
13 may have received wounds to his leg?

14 A There was no discussion because
15 there was never any discussion about any
16 wounds.

17 Q Before this lawsuit was started,
18 did you ever learn from anyone about injuries
19 that received to his leg, specifically
20 the right leg in which you had performed
21 surgery to earlier?

22 A Injury?

23 Q Let me go back.

24 From December 27, when
25 's cast was removed up until the time

TOMMER REPORTING, INC. (212) 684-2448

1 , M.D.

2 the lawsuit was started --

3 MR.: Well, he wouldn't

4 know when the lawsuit was started until

5 he learned about it.

6 MR. OGINSKI: Until he learned

7 about it.

8 Q Did you ever learn that

9 ever suffered any type of wounds or incisions

10 or injuries to his leg?

11 MR.: Other than the

12 surgery incision?

13 MR. OGINSKI: Correct, other than

14 the surgery.

15 A No.

16 Q Doctor, I'm going to show you a

17 number of photographs which have previously

18 been marked during the October 9,

19 deposition and ask you to take a look at them,

20 please.

21 Do you have any knowledge as to
22 how this child sustained the condition that is
23 shown in these various pictures that were
24 previously marked?

25 MR.: Other than the

TOMMER REPORTING, INC. (212) 684-2448

23

1 , M.D.

2 surgical incision?

3 MR. OGINSKI: I'll rephrase it.

4 Q The surgical incision that you
5 made with regard to the club foot, that relates
6 to the foot itself, correct?

7 A No.

8 Q What parts of his leg or foot did
9 you operate on?

10 A Well, let's go back.
11 had serial mobilization before surgery. The

12 only part of the club foot that we directed our
13 attention to was the tight Achilles tendon.

14 So there were three percutaneous
15 incisions made at the level of the Achilles
16 tendon which on those pictures you can't even
17 see those incisions.

18 Q Can or cannot?

19 A You cannot.

20 Q Putting that aside can you tell me
21 or do you have an opinion as to how
22 sustained the condition that's shown in these
23 photographs relating to the various openings on
24 his right leg?

25 A You want my opinion?

TOMMER REPORTING, INC. (212) 684-2448

24

1 , M.D.

2 Q Yes, sir.

3 A A very, very heavy object,

4 repetitive trauma.

5 Q Can you be any more clear or any

6 more explicit?

7 A I think I was explicit before. A

8 cast cutter in my opinion would never do this.

9 Q What type of heavy object might in

10 your opinion cause this?

11 A Anything metal, sharp, pointy,

12 with intense pressure.

13 Q Is there anything else in your

14 opinion that would account for the condition

15 that's shown in these numerous photographs to

16 his right leg?

17 A Well, let me put it this way. It

18 had nothing to do with the cast cutter.

19 Q Tell me why you say that?

20 A Seventeen years, 4,000 surgeries,

21 thousands and thousands of casts removed,

22 people moving, not moving, children moving, not

23 moving. Never, never, never have I seen that.

24 Q Can a cast cutter cause a thermal

25 burn?

TOMMER REPORTING, INC. (212) 684-2448

25

1 , M.D.

2 A Can a cast cutter cause a thermal
3 burn? Possibly.

4 Q Okay.

5 A But it has to be maintained in one
6 area for a duration of time. I'd have to take
7 that cast cutter and hold it in that place
8 until you feel heat.

9 Q How long would that take?

10 A Depends on the material. We use
11 fiberglass. Fiberglass comes right through.

12 I routinely take the cast cutter
13 and put it to my hand to show the patient that
14 it does not cut. I do this with the cast
15 cutter repetitively (indicating).

16 Q You're talking about applying it
17 actually right to your hand?

18 A To my skin.

19 MR.: While the blade is
20 oscillating?

21 THE WITNESS: While the blade is
22 oscillating and nothing happens to my
23 skin.

24 Q Did you learn based upon your
25 review of this child's records that at some

TOMMER REPORTING, INC. (212) 684-2448

26

1 , M.D.

2 point, I think it was in July of , during
3 one of the times when the cast was removed he
4 did, in fact, sustain a burn injury from the
5 cast removal?

6 A Not that I saw at surgical time.

7 Q Let me rephrase my question.

8 In the records of July 2,
9 there's a notation by someone in the Podiatry
10 Service; it states "Superficial 3-centimeter
11 abrasion to lower leg secondary to cast
12 cutter."

13 Do you see that?

14 A This is by Dr. who is my
15 attending in charge of clinical rotation.
16 Still, you know, 3-centimeter abrasion would
17 never do that. I'm sorry, it would never do
18 that.

19 MR.: When you say "that"
20 you're referring to the photographs?

21 THE WITNESS: Yes, those
22 photographs, 3-centimeter abrasion on a
23 child (indicating.)

24 Q The condition that you see in
25 these photographs, for example, could you

1 , M.D.

2 describe the type of condition that you
3 observe, in terms of is it linear, is it
4 circular, is it down to fascia or something
5 else?

6 A This is linear but it would be
7 cradle-like. I would classify it as full skin
8 thickness down to the level of superficial
9 fascia muscle.

10 Q Would you expect a child to
11 experience any pain associated with the
12 condition that you see in those photographs?

13 A You know, that's an interesting
14 question because a child is seven months old
15 could never experience the type of pain that
16 you might be eliciting to.

17 Q Not what I'm referring to or what
18 I may be accustomed to or experience.

19 A A child could be crying, mother
20 thinks it might be hungry. It could be
21 something else. You can go on from there. I
22 mean I think we're all parents in this room.

23 Q In your experience, Doctor, have
24 you seen this type of condition that was not
25 brought about by any type of medical condition?

TOMMER REPORTING, INC. (212) 684-2448

28

1 , M.D.

2 A If I've seen similar not because
3 of any cast cutters or anything like that.

4 Q I'll rephrase the question.

5 Do you have an opinion whether the
6 injuries that are shown in these photographs
7 are a result of any type of abuse by Ms.
8 or anybody in the family or anybody taking care
9 of the child?

10 A Personally?

11 Q I'm asking for your medical

12 opinion.

13 A That would be my number one. If I
14 saw that child in the emergency room I would
15 immediately call the state.

16 Q Did you become aware that
17 Ms. returned to on January 3,
18 and saw Dr. at that time?

19 A It could possibly be. I know at
20 one point I was with conferences with the
21 residency program.

22 Q Did you ever learn from
23 Dr. or Ms. that the reason she
24 returned on January 3rd was because she wanted
25 to get a letter from either you or Dr.

TOMMER REPORTING, INC. (212) 684-2448

1 , M.D.

2 to confirm that the child's condition to his
3 leg occurred as a result of some procedure and
4 not because of something she did or may have
5 done? Did you ever learn of something like
6 that?

7 A No.

8 MR.: Off the record.

9 (Informal discussion held off the
10 record)

11 Q Do you have any memory of
12 Ms. getting upset with Dr. on
13 December 27th after the cast had been removed?

14 A No.

15 Q Did you ever tell Dr. to
16 apologize to Ms. for the lacerations that
17 he caused while removing the cast?

18 A Did I?

19 Q Yes.

20 A Say that again.

21 Q I'll rephrase it.

22 At any time on December 27,
23 or later did you ever tell Dr. to
24 apologize to Ms. for any injury he may
25 have caused to ?

TOMMER REPORTING, INC. (212) 684-2448

30

1 , M.D.
2 A Absolutely not.
3 The only discussion that I
4 remember having was one in where Ms.
5 happened to say he's restless. And I did say
6 to Dr. we should apologize to Ms.
7 for something -- the child in the cast so long
8 but not anything else and that was as a means
9 of trying to bring down the level of where the
10 mother was complaining where the child was
11 restless or not.
12 I remember that conversation. I

13 went out and explained to Ms. , "This is to
14 be expected, the child had a cast, they feel
15 confined, we apologize if we did that," in a
16 humorous way.

17 Q When you say, "Did that," you're
18 referring to just being in the cast for a
19 period of time?

20 A For being in a cast. Having a
21 seven-month-old child being that way. Being a
22 father knowing what that would mean.

23 Q Did the cast that had on
24 cause any friction blisters that you observed?

25 A No.

TOMMER REPORTING, INC. (212) 684-2448

31

1 , M.D.

2 Q Was there anything to warrant
3 in December of to be referred to

4 any plastic surgeon for consult for any wound
5 management relating to the condition that's
6 described in these photographs?

7 A Absolutely not.

8 Q What would you describe these
9 conditions to be, are they wounds, are they
10 linear abrasions, incisions or something else?

11 A They are deep abrasions, wounds.
12 Deep abrasions.

13 Q Were these conditions that are
14 shown in these various photographs present on
15 the day that his cast was removed on December
16 27th?

17 A Absolutely not, no.

18 Q Do you know a Dr. ,
19 an orthopedist at ?

20 A No.

21 Q Have you ever spoken with a Dr.
22 regarding ?

23 A No.

24 What would be his interest?

25 MR.: You don't ask

TOMMER REPORTING, INC. (212) 684-2448

32

1 , M.D.

2 questions. He asks you.

3 Q Dr. treated the child in
4 January and afterwards. Did you ever
5 learn that he rendered certain opinions about
6 the condition that appears to his right leg at
7 any time after he came under his care?

8 A Absolutely not.

9 Q I'm going to show you a note
10 written by Dr. .

11 MR.: This is a fact
12 witness.

13 MR. OGINSKI: I understand but it
14 relates to his knowledge.

15 Q The note is dated January 15,

16 . Take a look at that note, Doctor.

17 A Okay.

18 Q I'm going to direct your attention

19 to the first paragraph, specifically the

20 highlighted portion that I have here in the

21 note which discusses his observations of what

22 he terms a "Noninfected second-degree cast

23 cutter burn."

24 Do you see that?

25 A Yes.

TOMMER REPORTING, INC. (212) 684-2448

33

1 , M.D.

2 Q Specifically, the dimensions of

3 what he observes to be approximately 7-to

4 8-centimeters in length?

5 A Yes.

6 Q Again, he describes -- I'll read

7 the sentence and ask you a question about it.

8 "This is a large -- what appears to be

9 noninfected second degree cast cutter burn on

10 the medial aspect which is approximately 7-to

11 8-centimeters in length."

12 Now, Doctor, the medial aspect of

13 the leg is which part of the leg?

14 A Inside border.

15 Q At any time while you were caring

16 for from December 27th until you last

17 saw him, did you ever observe any injury,

18 anything unusual to the medial aspect of his

19 leg?

20 A As I stated before, the only thing

21 I observed was superficial abrasion and I don't

22 remember whether it was on the lateral or

23 medial side.

24 Q The dimensions of what it was that

25 you observed, do you have any recollection

TOMMER REPORTING, INC. (212) 684-2448

1 , M.D.

2 today as you sit here now as to the dimensions
3 of that?

4 A Depth you are saying?

5 Q Depth or length.

6 A Length-wise it was maybe about an
7 inch to an inch and a half, very superficial
8 scratch.

9 Q In converting the inches to
10 centimeters, is that approximately consistent
11 with a 7- to 8-centimeters?

12 A No, absolutely not.

13 Q Did you see again after
14 December 27, ?

15 A Not that I can recall.

16 Q Do you have any notes of your own
17 separate and apart from what's contained in the
18 hospital records which would reflect any exams
19 that you conducted, any observations that you

20 made?

21 A The whole ambulatory surgical

22 chart.

23 Q Separate and apart from that chart

24 is there anything else that you maintained

25 elsewhere relating to the child's care and

TOMMER REPORTING, INC. (212) 684-2448

35

1 , M.D.

2 treatment about any observations you may have

3 made?

4 A Under Dr. and myself?

5 Q Anything else?

6 A None.

7 Q Dr. continues by stating

8 "The width of this area at the mid point is

9 approximately 1-centimeter. There is a smaller

10 area by about one third on the lateral border

11 of the leg."

12 When you saw on December
13 27th was there anything there to the skin or to
14 his leg on the lateral border of the leg as
15 described by Dr. ?

16 A Again, the only thing I remember
17 is the superficial inch, inch and a half, very
18 superficial. I don't remember if it was
19 lateral or medial. But if this was present no
20 one would forget.

21 Q Do you have any knowledge as you
22 sit here now as to how this child sustained the
23 condition that Dr. describes in his note
24 of January 15th that I just read to you?

25 A I have no knowledge at all.

TOMMER REPORTING, INC. (212) 684-2448

2 Q Other than what you've told me
3 previously about your opinion as to how this
4 child might have sustained the deep abrasions
5 in the photographs, do you have any knowledge
6 as to how he might have sustained the condition
7 described by Dr. ?

8 A No.

9 Q Once the cast for this child was
10 removed -- this is post surgery, correct, the
11 surgery is done, cast is applied, then it's now
12 approximately two months later the cast is
13 removed?

14 A Well, no. The cast doesn't
15 necessarily have to be removed in two months.
16 It could be periodically, three weeks, six
17 weeks.

18 Q I'm sorry, I'll rephrase the
19 question and withdraw it.

20 Once 's cast was removed on
21 December 27th was he recasted that day?

22 A I don't believe so.

23 Q Was any dressing applied to the
24 surgical area where you had performed the
25 surgery?

TOMMER REPORTING, INC. (212) 684-2448

37

1 , M.D.

2 A Very superficial dressing because
3 it already was healed but just to be more of a
4 prophylactic reason, protective reason then let
5 the mother understand that the child would be
6 better.

7 Q What type of dressing?

8 A Very superficial.

9 Q What do you mean?

10 A Maybe little bit of Betadine, some
11 gauze, some cling. I don't remember if we used
12 a soft cast. But I believe at that point
13 was very well-healed.

14 As a matter of fact, discussions I
15 had with the mother afterwards is that at this
16 point he should go probably and have some
17 physical therapy, stretching exercises, just to
18 reduce it even more.

19 Q Taking a look at Dr. 's
20 note, why was normal saline used?

21 A It's a cleansing solution.

22 Q What was it that he was cleansing?

23 A Just the surgical area. Routine
24 normal procedure.

25 Q Was there any other part of the

TOMMER REPORTING, INC. (212) 684-2448

38

1 , M.D.

2 leg that he was using normal saline to clean
3 that's shown or depicted in that note?

4 A "Cleaned with normal saline,

5 dressing right foot applied, mother educated on
6 treatment plan, return to clinic in one week."

7 Q Did you learn from Dr. or a
8 nurse on that date that Ms. was given some
9 type of ointment, whether it was bacitracin or
10 some other type of ointment to apply to the
11 child's legs unrelated to the surgical incision
12 site?

13 A That we gave?

14 Q Yes.

15 A No.

16 Q How do you treat a superficial
17 burn or thermal burn to the skin?

18 A This is a seven-month-old child.
19 Do you know what growth factors are in a
20 seven-month child? You honestly believe that
21 that child would need wound care?

22 Q I have to ask the question.

23 A Absolutely not.

24 You want to talk about wounds. We
25 can talk about wound. Growth factors -- trust

TOMMER REPORTING, INC. (212) 684-2448

39

1 , M.D.

2 me, that child would heal uneventful.

3 Q That would be without treatment?

4 A There would be no reason for

5 treatment. There's no infection, no

6 cellulitis, no drainage, no pus. None.

7 What would you treat it for? When

8 your child has a little scratch, do you put --

9 treatment, you go to a wound care center?

10 Absolutely not, right.

11 Q Is there any reasoning that you

12 can think of now as to why anyone at

13 Medical Center would have given

14 Ms. any type of ointment or cream to apply

15 to the child's leg in areas other than the

16 surgical area that you operated on?

17 A I don't know of any such thing

18 happening and I wouldn't know why.

19 Q I want you to assume for purposes
20 of my question that Ms. has testified that
21 on December 27th she was given various
22 ointments or creams to apply to 's right
23 leg. Assuming for the moment that that fact is
24 true, do you have any knowledge as to why
25 anyone would have given her such ointment or

TOMMER REPORTING, INC. (212) 684-2448

40

1 , M.D.

2 cream?

3 A What ointment? What creams?

4 Q To apply to any --

5 A But what?

6 Q Bacitracin.

7 A Why?

8 Q I can only tell you what Ms.

9 has testified to.

10 A I can only tell to you what I'm
11 testifying to. That order was not given by me.
12 There was no such reason to give that. It was
13 nothing medically indicating for such things
14 for that.

15 By the way, any superficial
16 ointment, it's basically for your piece of mine
17 and for my piece of mind, it absolutely does
18 zero.

19 Q Doctor, I'm going to read to you
20 part of Dr. 's testimony that he gave
21 previously on November 12th.

22 MR.: What page?

23 MR. OGINSKI: 46, line 17.

24 Actually, line 18.

25 Q "Did you give her any instructions

TOMMER REPORTING, INC. (212) 684-2448

1 , M.D.

2 as to the management or treatment of the
3 superficial cut you saw?"

4 "Yes, I did."

5 "What did you tell her?"

6 "I told her to apply topical
7 antibiotic cream and just follow up in one
8 week."

9 Page 47, "Did you tell her what
10 type of antibiotic cream to use."

11 "I don't remember at this point.
12 Probably any topical antibiotic cream would be
13 fine."

14 Given Dr. 's testimony, is
15 there any reason for him to have prescribed or
16 to order any antibiotic therapy for what you
17 observed as a superficial cut?

18 MR.: Well, he didn't
19 order it, okay. He prescribed or
20 recommended. I have no problem.

21 MR. OGINSKI: I'll rephrase it

22 using that word.

23 Q In your opinion, would any topical

24 antibiotic cream or ointment be beneficial to

25 the child for the condition that you observed

TOMMER REPORTING, INC. (212) 684-2448

42

1 , M.D.

2 on December 27th?

3 A What I observed on December 27th,

4 absolutely nothing, no.

5 Q From the time you first started

6 treating up until the time you last saw

7 him at , was there anything to

8 suggest to you that Ms. was anything other

9 than a loving, caring mother?

10 A No.

11 Q Was there anything that she did or

12 said or that you got the impression of from her
13 in caring for her son that she was abusive to
14 her child in any fashion whatsoever?

15 A No, the only discussion that I did
16 have with Ms. that her concern was of the
17 child being restless and we took her to my
18 private clinical area and every time she was
19 there I just reassured her the child was okay.

20 As a matter of fact, at times from
21 my recollection she would also try to feed the
22 baby because the baby was restless.

23 Q But in terms of an abuse situation
24 or something that you observed, nothing?

25 A No.

TOMMER REPORTING, INC. (212) 684-2448

43

1 , M.D.

2 Q Doctor, do you have any

3 publications to your name?

4 A Do I have any publications to my
5 name?

6 Q Yes.

7 A No.

8 Q You're licensed to practice
9 podiatry in the State of New York?

10 A Yes.

11 Q For how long or when were you
12 licensed?

13 A ' , ' .

14 Q Is there any board certification
15 associated with the practice of podiatry?

16 A I am board certified in podiatric
17 surgery.

18 Q When were you board certified?

19 A I was board certified in ' in
20 forefoot and rearfoot reconstructive and
21 recertified again in .

22 Q Is that a separate board?

23 A It's a board certification in
24 podiatric surgery by the American Board of

25 Podiatric Surgery.

TOMMER REPORTING, INC. (212) 684-2448

44

1 , M.D.

2 Q Where did you go to podiatry
3 school?

4 A College of Podiatric
5 Medicine.

6 Q Have you ever testified as an
7 expert in any type of case?

8 A For who?

9 Q Anybody.

10 A Yes, I have.

11 Q How many times?

12 A Twice.

13 Q Plaintiff, defendant, one, both?

14 A Both.

15 Q For?

16 A Once for plaintiff and once for
17 defense.

18 Q Doctor, you are here today
19 pursuant to a subpoena that my office served
20 upon you, correct?

21 A Yes.

22 Q Have you ever had any other
23 conversation with Ms. after December 27,
24 regarding injuries that her son sustained
25 to his right leg?

TOMMER REPORTING, INC. (212) 684-2448

45

1 , M.D.

2 A No.

3 Q Have you ever seen any medical
4 records by any physician who has seen and
5 treated after he was last seen at

6 Medical Center other than what I

7 showed you here today?

8 A No.

9 Q The photographs that Mr.

10 showed you, is that contained within the

11 photographs I showed you?

12 A I believe so.

13 Q Have you seen any other

14 photographs relating to the child?

15 A No.

16 Q With regard to the July ,

17 3-centimeter abrasion that the child sustained

18 when his cast was removed --

19 A Let's go back. I didn't say when

20 the cast was removed.

21 Q Not you, another physician,

22 another doctor made an observation and wrote a

23 note about what he observed?

24 A He never contacted me.

25 Q Based only on the note do you have

1 , M.D.

2 any knowledge or understanding as to how that
3 cast cutter caused that 3-centimeter abrasion?

4 MR.: If it did.

5 A The cast cutter never caused that
6 3-centimeter abrasion.

7 Q Do you have any knowledge, as you
8 sit here today, based upon what's contained in
9 this record, as to anything else causing this
10 child's abrasion that he observed other than
11 the cast cutter?

12 A Knowledge, no. Opinion...

13 Q Do you have any reason to believe
14 as you sit here today that the doctor --
15 Dr. incorrectly interpreted what he
16 saw as an injury or an abrasion?

17 A Let me put it this way, okay. Dr.
18 is a clinical podiatrist. He is not

19 a surgical podiatrist.

20 The child came to the clinic.

21 Could have observed it. Could have made up his

22 own mind. Never discussed it with anybody else

23 and that is his opinion but it's not my

24 opinion.

25 Q Right.

TOMMER REPORTING, INC. (212) 684-2448

47

1 , M.D.

2 I'm only asking whether you had

3 any knowledge.

4 A Never had that knowledge.

5 Q Fine.

6 You would expect a podiatrist who

7 -- I assume he's board certified -- if you

8 know?

9 A Dr. is board certified

10 in wound care but not board certified in
11 podiatric surgery.

12 Q Would it be fair to assume that
13 Dr. being board certified in wound
14 care would know the difference between an
15 abrasion caused by a cast cutter as opposed to
16 something else?

17 A No, that's a surgical experience.

18 Q Do you know if Dr. has
19 any surgical experience?

20 A He was my resident.

21 Q So I assume the answer is yes?

22 A One year.

23 Q Do you have any reason to disagree
24 with Dr. 's observation of the
25 abrasion being caused by the cast cutter?

TOMMER REPORTING, INC. (212) 684-2448

1 , M.D.

2 A I would have a difference of

3 opinion, yes.

4 Q What would you base that opinion

5 on?

6 A I don't believe it was a cast

7 cutter.

8 Q You didn't see the child on that

9 date, correct?

10 A Right.

11 Q You didn't observe the child when

12 the cast was removed; am I correct, on July 2nd?

13 A Okay.

14 Q What information would you base

15 your opinion on that it would not be caused by

16 the cast cutter?

17 A Well, let's go back and give a

18 little story here. You have a little crack in

19 a wall and I never saw that. Six months later

20 or three months later I go to your house and

21 it's the same little crack on the wall. What

22 would make you think there was any difference?

23 Does it matter?

24 What I saw on this specific date

25 that you are asking questions here, never saw

TOMMER REPORTING, INC. (212) 684-2448

49

1 , M.D.

2 that.

3 Let me say one other thing. It's

4 going out of my -- but I'm going to say it any

5 way. I'm a father. I have kids. I take this

6 seriously.

7 Q Fine.

8 A If I ever saw that I'd be the

9 first one to be very upset. I wouldn't have

10 to sit here but I'm a father. That would never

11 happen.

12 Q Was Dr. ever reprimanded

13 for any treatment he rendered to Ms. ?

14 MR.: Not Ms. . You

15 said to treatment he rendered to Ms.

16 .

17 MR. OGINSKI: To the child, to

18 .

19 A Absolutely not.

20 Q Can you determine looking at the

21 photographs that I've shown to you how old

22 these injuries are that appear in the

23 photographs?

24 A Knowing what I know about a child?

25 Q Yes, sir.

TOMMER REPORTING, INC. (212) 684-2448

50

1 , M.D.

2 A It could be a week. It could be

3 -- this wound was so deep it's already starting
4 to heal. So it could be a week.

5 Plus there's wounds up on top that
6 are not linear. They are transverse.

7 Observing that would tell me that
8 something was stuck in there. Look at this
9 (indicating). This is above the knee.

10 Q Let me ask you this, Doctor. The
11 child's cast was an above-the-knee cast,
12 correct?

13 A No.

14 Q Below the knee?

15 A Below the knee.

16 Q Once the cast is removed on
17 December 27th no other cast is applied,
18 correct, as far as you know?

19 A Correct.

20 Q Looking at Dr. 's note
21 there's nothing to indicate that any other cast
22 was applied on that date?

23 A No.

24 Q From what you've described, the

25 superficial abrasion was exactly what you

TOMMER REPORTING, INC. (212) 684-2448

51

1 , M.D.

2 mentioned, superficial?

3 A Very superficial.

4 Q If there's no more cast on the
5 child's leg what would be the need, if there
6 was one, for repetitive injury or trauma or
7 something to the child's leg?

8 MR.: We went over this
9 before. He told you what his number one
10 opinion is. You asked him specifically
11 what you think caused this. He told
12 you. So it's asked and answered.

13 Q Can you determine looking at the
14 pictures as to whether these injuries shown in
15 the photograph occurred while the cast was on

16 or off or something else?

17 A No, they didn't occur, no.

18 MR. OGINSKI: Mark these.

19 (Thereupon, three photographs were

20 marked a Plaintiff's Exhibits 1, 2, 3

21 for identification)

22 Q Take a look at these three

23 photographs marked as Plaintiff's Exhibit 1, 2,

24 3 taken on February 27, . Can you determine

25 from looking at those photographs for how long

TOMMER REPORTING, INC. (212) 684-2448

52

1 , M.D.

2 the injury was present on the child right leg?

3 A Original injury?

4 MR.: In other words, how

5 long had the condition you see in that

6 photograph been there.

7 A I believe they healed and then

8 they were restarted again.

9 Q What makes you say that?

10 A Granulation tissue in the middle,

11 peeled off. You see it's healed, here, here,

12 something happening here, something happening

13 here, something happening here (indicating).

14 Interesting the lateral side is not shown.

15 Q Well, we do have other

16 photographs, Doctor.

17 These 3 photographs dated March

18 14th, anything involving the lateral side of

19 the right leg?

20 A They healed. Hypertrophic scar.

21 I mean, you know, thicker scar than normal.

22 From my opinion from a repetitive injury.

23 Q Can you be any more specific as to

24 what type of repetitive injury?

25 A Well, let me put it this way. If

TOMMER REPORTING, INC. (212) 684-2448

1 , M.D.

2 a child take -- I don't know -- when I was
3 growing up this was happening to be part of a
4 gang, you take a nickel, rub it against the
5 skin, you do that you'd be part of the "elite,"
6 in other words, you were brave enough to do
7 that to your skin and cause a hyper -- thick
8 scar, you would be marked; in other words,
9 you're part of the gang. Something is rubbing
10 that's constantly to do that.

11 Q Is there any way for you to tell
12 what?

13 A Something of possibly metal,
14 sharp. Something which is against the ability
15 for that skin to heal.

16 Q Looking at these photographs, do
17 you have an opinion as to whether this child
18 will have permanent scars from these

19 lacerations or these abrasions as is shown in
20 the photographs?

21 A I hope not.

22 Q I'll show you six photographs,
23 pictures taken of on August 6, .

24 Looking at those photographs,
25 Doctor, do you have an opinion as to whether

TOMMER REPORTING, INC. (212) 684-2448

54

1 , M.D.

2 the scars that are seen on his leg will be
3 permanent?

4 A Well, what happened to the
5 surgical scars?

6 Q You tell me.

7 A They are gone.

8 Q Okay.

9 A So you tell me if you think that

10 that was something which was induced or
11 something that was surgically done.

12 Q Let me rephrase my question.

13 Maybe I wasn't clear.

14 Are the scars to the child's right
15 leg, his calf area and above the knee area and
16 in your opinion as of August of , do you
17 have an opinion as to whether these scars will
18 be permanent?

19 A There's a possibility.

20 Q Can you be any more specific or
21 give me any percentage of possibility?

22 A No, the child is growing.

23 MR. OGINSKI: Thank you, Doctor.

24 Thank you for coming.

25 (Time noted: 2:30 p.m.)

TOMMER REPORTING, INC. (212) 684-2448

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

A C K N O W L E D G E M E N T

STATE OF NEW YORK)

:Ss

COUNTY OF)

I, _____, M.D., hereby
certify that I have read the transcript of my
testimony taken under oath in my deposition of
February 21, _____; that the transcript is a
true, complete and correct record of what was
asked, answered and said during this
deposition, and that the answers on the record
as given by me are true and correct.

_____, M.D.

Signed and subscribed to
before me, this _____ day

22 of , .

23

24 _____

25 Notary Public

TOMMER REPORTING, INC. (212) 684-2448

56

1

I N D E X

2

3 EXAMINATION BY PAGE

4 MR. OGINSKI 5

5

E X H I B I T S

6

PLF'S

7 FOR ID DESCRIPTION PAGE

8 1-3 Three photographs 52

9

10

11

12

4 the Examination Before Trial of
5 , M.D. was held before me on February
6 21, ;

7 That said witness was duly sworn before
8 the commencement of the testimony;

9 The within testimony was
10 stenographically recorded by myself and is a
11 true and accurate record of the Examination
12 Before Trial of said witness;

13 That the parties herein were represented
14 by counsel as stated herein;

15 That I am not connected by blood or
16 marriage with any of the parties. I am not
17 interested directly or indirectly in the matter
18 in controversy, nor am I in the employ of any
19 of the counsel.

20
21 IN WITNESS WHEREOF, I have hereunto set my hand
22 this 21st day of February, .

23

24

25

TOMMER REPORTING, INC. (212) 684-2448