

**\*\*DE-IDENTIFIED DEPOSITION OF A FOOT DOCTOR WHO REMOVED  
A CHILD'S CAST CAUSING BURNS TO THE CHILD'S LEG\*\***

1

2 SUPREME COURT OF THE STATE OF NEW YORK

3 COUNTY OF

----- X

4

, as Mother and Natural Guardian

5 of , an infant under  
the age of Fourteen,

6

Plaintiff,

7

-against-

8

MEDICAL CENTER, and ,

9 D.P.M.,

10 Defendants.

11 ----- X

12

13

November 12,

14 2:16 p.m.

15

16

17 EXAMINATION BEFORE TRIAL of one of

18 the Defendants, , D.P.M.

19

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21

22

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, ESQS.

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11 BY: , ESQ.

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2           S T I P U L A T I O N S

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4           It is hereby stipulated and agreed

5 by and between counsel for the respective  
6 parties 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  
13 be a bar or a waiver to doing so at, and is  
14 reserved 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  
22 of this examination to counsel, shall not be  
23 deemed a waiver of the rights provided by Rules  
24 3116 and 3117 of the C.P.L.R., and shall be  
25 controlled thereby;

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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.

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18           \*\*           \*\*           \*\*

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2 S , D.P.M.,

3 called as a witness, having been

4 first duly sworn, was examined and

5 testified as follows:

6 EXAMINATION BY

7 MR. OGINSKI:

8 Q State your name for the record,

9 please.

10 A , D.P.M.

11 Q State your address for the record,

12 please.

13 A , ,

14 .

15 Q Good afternoon, Doctor.

16 Are you here today pursuant to a

17 subpoena that was served upon you?

18 A Yes.

19 Q Do you have an independent memory

20 of a child ?

21 A Yes.

22 Q Do you have an independent memory

23 of his mother ?

24 A Yes, I do.

25 Q Where do you currently work?

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1 , D.P.M.

2 A I work at Medical Center.

3 Q What do you do there?

4 A I'm an attending there.

5 Q In what specialty?

6 A Podiatry Pediatric Surgery.

7 Q When did you become an attending?

8 A July 1, .

9 Q In December of , where did you  
10 work?

11 A I was a resident at the same  
12 hospital, Medical Center.

13 Q What department were you a resident  
14 in?

15 A Department of Podiatry.

16 Q Is that a three-year or four- year  
17 program?

18 A It's a three-year program.

19 Q Did you complete that program?

20 A Yes, I did.

21 Q You graduated?

22 A Yes.

23 Q Were you licensed to practice  
24 podiatry in the State of New York?

25 A Yes, I am.

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1           , D.P.M.

2       Q   When were you licensed?

3       A   I was licensed in           after I  
4 graduated from school.

5       Q   After completing your podiatry  
6 residency, did you take any additional classes  
7 or formalized training?

8       A   No, sir.

9       Q   Did you take any type of fellowship  
10 program after completing your podiatry  
11 residency?

12      A   No, sir.

13      Q   Before coming here today, did you  
14 review the records for           ?

15      A   Yes, I did.

16      Q   In addition, did you review the  
17 hospital records?

18      A   Yes, sir.

19           MR. : For clarification,

20 not the whole thing. He didn't  
21 really go through the Neonatal Chart  
22 or Clinic.

23 MR. OGINSKI: That's fine.

24 Q Did you review any other  
25 records outside of the hospital records?

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8

1 , D.P.M.

2 A No, sir.

3 Q Did you review any deposition  
4 transcripts of testimony given in this case?

5 A No.

6 Q Have you spoken with any doctor  
7 affiliated with about this case?

8 A No, I have not.

9 Q Did you remove the cast on  
10 's leg on December 27, ?

11 A Yes, I did.

12 Q How was it that you came to remove  
13 his cast that day?

14 A I don't understand the question.

15 Q I'll rephrase.

16 Was he scheduled to have his cast  
17 removed on that day?

18 A Yes, sir.

19 Q Where within the hospital  
20 physically were you at the time that you  
21 removed the cast?

22 A I was in the Podiatry Office, Room  
23 307.

24 Q Is that part of the Podiatry Clinic  
25 or something else?

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1 , D.P.M.

2 A Part of the Podiatry Office, and  
3 Dr. 's office.

4 Q Who is Dr. ?

5 A Dr. is the Director of the  
6 Department of Podiatry and Director of  
7 Podiatric Medical Education.

8 Q When you would see and treat  
9 patients in the Podiatry Office, was it always  
10 under the supervision of an attending  
11 physician?

12 MR. : Until he became an  
13 attending?

14 A Yes.

15 Q All my questions, Doctor, are going  
16 to relate to the time in the year and  
17 , okay --

18 A I understand.

19 Q -- unless I indicate otherwise.

20 On , when you  
21 removed 's cast who was in the room with  
22 you at the time you removed it?

23 A It was me and Dr. .

24 Q Was Ms. present in the room  
25 with her son?

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1           , D.P.M.

2       A    Yes.

3       Q    Was anyone else in the room?

4       A    No, I don't think so.

5       Q    How did you remove the cast that  
6   day?

7       A    I removed it with a cast cutter.

8       Q    What is a cast cutter?

9       A    The machine that removed the cast.

10      Q    Describe what it looks like?

11      A    It's a portable machine with a  
12   blade and the engine that basically helps to  
13   take the cast off.

14      Q    Is the blade in the form of a  
15   circular blade?

16      A    Yes, it is.

17      Q    Does the blade rotate and spin?

18      A    The blade does rotate but it  
19   doesn't spin.

20      Q    Does this machine require water to  
21   lubricate the blade as it's being used?

22 A No, sir.

23 Q You can use it in a dry fashion?

24 A Yes, sir.

25 Q How long did it take you to remove

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11

1 , D.P.M.

2 the cast that day?

3 A I don't remember the exact time but

4 probably five minutes.

5 Q What was Dr. doing during

6 the time that you were removing the cast?

7 A He was supervising me removing the

8 cast.

9 Q Did he actually have his hands on

10 the cast cutter during the time that you were

11 removing it?

12 A No.

13 Q When you say he was supervising, he  
14 was observing what you were doing?

15 A Yes.

16 Q Did he make any comments to you  
17 during the time that you were removing the  
18 cast?

19 A No, sir.

20 Q Did Ms. make any comments to  
21 you while you were removing the cast?

22 A Yes, she did.

23 Q What did she say to you and what  
24 did you say to her?

25 A Well, she was always -- this point

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12

1 , D.P.M.

2 in time she was -- I mean it wasn't the first  
3 time when the cast was removed.

4 Q I'm only asking on this date. I'll  
5 ask about others later.

6 A She was very apprehensive about the  
7 cast being removed and she was basically -- she

8 was concerned about her child's well-being and  
9 I don't remember the exact words but in general  
10 that's what it is.

11 Q When you mentioned she was  
12 apprehensive about the cast being removed, do  
13 you recall what it was that she said to you or  
14 why she was apprehensive?

15 A She was afraid that the cast might  
16 not be...

17 Q What was that?

18 A She was afraid that the cast  
19 wouldn't be slipping off the child's foot  
20 correctly.

21 Q Did she say what she meant about  
22 that?

23 A Not to my recollection.

24 Q Did you understand what she meant  
25 by that?

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1           , D.P.M.

2       A    Yes.

3       Q    What did you understand her to

4   mean?

5       A    I understand that she was -- just

6   as a mother she was concerned about her child's

7   well-being.

8       Q    Did you say anything in response to

9   either of her concerns that she mentioned to

10   you?

11      A    Yes, I was trying to calm her down.

12      Q    How did you do that?

13      A    Verbally, I was saying to her that

14   it's a regular procedure and we went through it

15   before many times and the cast and the cutting

16   of the cast and removing the cast from the leg

17   shouldn't cause any problems to the child.

18      Q    Where was the baby at the time you

19   were taking the cast off?

20 A The baby was sitting on mom's lap,

21 mom's knees.

22 Q Were you standing or sitting during

23 the cast removal?

24 A I was standing.

25 Q What was the length of the cast

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1 , D.P.M.

2 that you removed?

3 MR. : You mean above the

4 knee, below the knee?

5 MR. OGINSKI: As he can tell

6 me.

7 MR. : You don't want

8 centimeters or inches?

9 MR. OGINSKI: Whatever he can.

10 MR. : Okay.

11 A It was above the knee cast.

12 Q Can you estimate the length of this

13 cast?

14 A Probably I'd say about 15

15 centimeters.

16 Q Had you applied that cast?

17 A No.

18 Q Do you know who had applied it?

19 A I have to rephrase.

20 The cast was applied in the

21 Operating Room after the surgery was performed

22 and it was applied by my co-resident. I'm not

23 sure if I was physically applying the cast but

24 I was there during the surgery as well as

25 Dr. .

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1 , D.P.M.

2 Q On December 27th the only time that

3 the cast had been placed immediately before

4 that date was during surgery; is that correct?

5 A Yes.

6 Q Can you tell me the thickness of

7 the cast at any given part?

8 A Yes, about two to three

9 centimeters.

10 Q Is there anything in the records

11 that you saw in preparation for today to

12 indicate whether you were present for the

13 application of the cast, the one that was

14 ultimately removed on December 27th?

15 MR. : He just told you he

16 was in the Operating Room. He just

17 doesn't know whether he actually had

18 his hands on it but he knows -- he

19 said he was there; am I correct, you

20 were there?

21 THE WITNESS: Yes.

22 Q At the time that the cast was

23 applied post-operatively, were there any open

24 lesions or wounds to the child's leg?

25 MR. : Other than surgical

16

1           , D.P.M.

2           wounds?

3           MR. OGINSKI: Other than

4           surgical wounds.

5           A    No, sir.

6           Q    Where were the surgical incision or

7           surgical wounds?

8           A    There were three incisions, all of

9           them on the posterior surface of the child's

10 lower leg at the area of the Achilles tendon.

11          Q    On December 27,    when you

12          removed the child's cast, what did you see

13          when you removed the cast?

14          A    I saw felt under the cast which is

15          a protective -- we call it "padding,"

16          protective padding that's usually applied under

17          the cast to protect the skin.

18 Q Did you remove the felt?

19 A Yes, I did.

20 Q What, if anything, did you see once  
21 you removed the padding about the child's leg?

22 A What do you mean by that?

23 Q Were there anything unusual about  
24 the child's leg at the time that you removed  
25 the cast and the padding?

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1 , D.P.M.

2 A No.

3 Q Was there any injuries, wounds,  
4 incisions to the child's leg that you observed  
5 on that date after the cast was removed?

6 A There was -- I wouldn't call it an  
7 injury, it was a superficial skin cut.

8 Q How many superficial skin cuts did  
9 you observe?

10 A I remember one on the lateral side  
11 of the child's lower leg.

12 Q That would be the outer side of the

13 leg?

14 A Correct.

15 Q How long was this superficial skin

16 cut that you mentioned?

17 A Maybe three centimeters.

18 Q Can you tell me how wide this

19 superficial skin cut was?

20 A It wasn't wide. It was just cut

21 which is -- cut, (indicating.)

22 Q How did the child sustain that

23 superficial skin cut that you mentioned?

24 A Well, in general the child was

25 moving during the removal of the cast. So I

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18

1 , D.P.M.

2 didn't see any unusual behavior in respect to

3 the cut or anything else.

4 Q Was this skin cut caused by the

5 cast cutter?

6       A    May be caused by the cast cutter,  
7   right.

8       Q    Is there anything else that you  
9   know of that this skin cut that you observed  
10  could have been caused by?

11      A    No, sir.

12      Q    At the time that you were taking  
13  off the cast were you holding the baby's leg?

14      A    Yes, sir.

15      Q    Is there some type of device on  
16  cast cutter which prevents it from going down  
17  past a certain depth of the cast?

18      A    The cast cutter's just designed the  
19  way it's designed.  It doesn't go through -- I  
20  don't understanding what you mean by the  
21  "device"?

22      Q    Sure.

23            When you use the cast cutter, it's  
24  designed to cut through the cast, right?

25      A    Right.



1           , D.P.M.

2           Q   Is there anything that stops it  
3 from going into the skin?

4           A   Yes, the way it's designed it can't  
5 go through the skin.

6           Q   What is it that prevents you using  
7 the tool from it going into the skin?

8           A   The blade itself. Like it's --  
9 because of the cast design, the blade itself  
10 cannot go through the skin.

11          Q   Can you explain why?

12          A   I'm not sure I can tell you why but  
13 I know the cast cutter is designed that it  
14 can't go through the skin.

15          Q   The blade --

16          A   The blade cannot go through the  
17 skin.

18          Q   -- that is attached to the cast  
19 cutter, what is its diameter?

20 MR. : Obviously,

21 approximately.

22 MR. OGINSKI: Correct.

23 A Ten centimeters about.

24 Q The felt that was underneath the  
25 cast that you mentioned was for the padding,

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1 , D.P.M.

2 when you took the felt off, were there any  
3 lacerations that you observed through the felt?

4 A No, sir.

5 Q Did you look at the felt to see if  
6 there were any cuts, incisions, lacerations or  
7 anything?

8 A Yes, sir.

9 Q What, if anything, did you observe  
10 about that?

11 A I didn't see anything unusual.

12 Q Were there any other lacerations,  
13 cuts, or any wounds that you observed to the  
14 child's leg other than the one you told me on  
15 the lateral side of his leg?

16 A No, sir, I don't remember anything.

17 Q Did Dr. see what you  
18 described as a superficial skin cut?

19 A Yes, sir.

20 Q Did he say anything to you as a  
21 result of his observation?

22 A I don't remember.

23 Q Did Ms. say anything to you as  
24 a result of seeing this cut on the skin?

25 A Yes, sir, she did say something

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21

1 , D.P.M.

2 that I cannot tell you exactly but she was  
3 really -- she wasn't happy about that  
4 superficial cut.

5 Q When you say superficial, how far

6 down was the skin open?

7 A It wasn't open. It was -- probably  
8 went through the epidermis but not through the  
9 dermis.

10 Q Before December 27, , had you  
11 ever used a cast cutter before?

12 A Before December 27th?

13 Q Yes, sir.

14 A Before that date, yes, sir.

15 Q Are there different types of cast  
16 cutters that were available for your use?

17 MR. : At ?

18 MR. OGINSKI: Correct, at

19 .

20 A No, they are all the same.

21 Q In the course of your experience  
22 before December 27th, had you ever encountered  
23 a situation where the cast cutter caused an  
24 incision to a person upon removal of the cast?

25 A No, sir.

1           , D.P.M.

2       Q   Did Dr.   ask you to apologize

3 to Ms.       on December 27th?

4       A   Not that I remember, sir.

5       Q   Did Dr.       ask you on two

6 separate occasions this day to apologize to Ms.

7       for causing the lacerations to the child's

8 leg?

9       A   There were no lacerations, as I

10 mentioned.

11       Q   I'll rephrase the question.

12       Did Dr.       ask you to apologize

13 to Ms.       or any injury caused to the

14 child's leg as a result of removing the cast?

15       A   Not that I remember, sir.

16       Q   As a result of your removing the

17 cast on December 27th, did you write a note of

18 that fact in the patient's chart?

19       A   Yes, I did.

20       Q   Can you turn to that note, please?

21 MR. : The doctor is  
22 looking at a note of December 27,  
23 on Medical Center  
24 Progress Note Sheet.

25 MR. OGINSKI: That's a

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1 , D.P.M.

2 photocopy, for the record.

3 MR. : Oh, yes, it's a

4 photocopy. I'm sorry.

5 Q Doctor, this note is in your

6 handwriting?

7 A Yes, sir.

8 Q At the top it has the date 12/27/

9 and POD, that would represent Podiatry Service?

10 A Yes.

11 Q At the bottom appears your

12 signature?

13 A Yes.

14 Q Is there anything to indicate in  
15 this note that Dr. was present?

16 A No, sir.

17 Q Is there anything in any of the  
18 notes you reviewed for today to suggest or  
19 indicate that Dr. was present during the  
20 cast removal on that date?

21 MR. : You're assuming  
22 there are other notes for December  
23 27th?

24 MR. OGINSKI: I'll rephrase the  
25 question.

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24

1 , D.P.M.

2 Q Are there any notes you wrote  
3 to indicate Dr. was present during this  
4 cast removal on December 27th?

5 A That's the only note.

6 Q Did you make any mention in your

7 note, Doctor, of the observation of what you  
8 described as a superficial skin cut?

9 A No, sir, it was so superficial that  
10 I didn't mention in the note even though I  
11 probably should have.

12 Q At the bottom on the "Plan," can  
13 you read the last three lines, please?

14 A Yes. It says, "Plan: Clean with  
15 normal saline and dressing of the right foot  
16 applied and then mother educated on treatment  
17 plan and return in one week."

18 Q That would be return to clinic?

19 A Yes, sir.

20 Q What was it that you were cleaning  
21 with normal saline?

22 A That was the lower leg, the right  
23 leg.

24 Q Why were you doing that?

25 A Because of -- probably because of



1           , D.P.M.

2   that cut which I didn't mention.

3       Q   The dressing on the right foot

4   applied, where did you apply the dressing?

5       A   Right ankle, right foot. That area

6   of surgery.

7       Q   Is there any way to tell whether

8   you were referring to the surgical area or to

9   what you described as a superficial skin cut?

10      A   It doesn't say in the note.

11      Q   The child had surgical treatment on

12   October 25th, correct?

13      A   That's correct.

14      Q   Were you present when Ms.

15   returned to the Podiatry Service or Podiatry

16   Office in January of   ?

17      A   I don't remember, sir.

18      Q   Is there any note that you have

19   that you have seen to indicate that Ms.

20   returned to the Podiatry Office, I believe it

21 was January 3, ?

22 A No, sir.

23 Q Did the cast cutter on December

24 27th cause any burn injury to the child that

25 you observed?

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26

1 , D.P.M.

2 A No, sir.

3 Q Did the cast cutter cause any other

4 incision that you observed other than the one

5 that you mentioned to me when you removed the

6 cast on December 27th?

7 A No, sir.

8 Q Did you refer Ms. out to any

9 plastic surgeon to evaluate the skin cut that

10 you observed?

11 A No, sir, I didn't think it was

12 necessary at all.

13 Q Did you refer her out to any

14 physician to address the wound or the skin cut

15 that you observed?

16 A No, sir.

17 Q Did you ever tell Ms. that the

18 skin cut that you referred to was a result of a

19 blister from the cast?

20 A Not that I remember. I don't think

21 so.

22 Q In your opinion, Doctor, did this

23 child ever experience any type of blisters to

24 his leg as a result of the cast being applied?

25 MR. : You mean this

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27

1 , D.P.M.

2 particular cast or any other cast?

3 MR. OGINSKI: Any of the other

4 casting.

5 A No, sir.

6 MR. OGINSKI: Off the record.

7 (Informal discussion held off

8 the record)

9 Q Doctor, do you have the

10 Podiatry Record for July 2, ?

11 A Yes.

12 Q Down towards the bottom third of

13 the page on the right-hand side there's a note

14 there that says, "Superficial three-centimeter

15 abrasion to lower leg secondary to cast

16 cutter," do you see that?

17 A Yes, I do.

18 MR. : Not to interrupt.

19 It's the top third, not the bottom.

20 MR. OGINSKI: Oh, thank you.

21 Q Can you tell me who wrote this

22 note?

23 A The signature is here, Dr.

24 .

25 Q In December had you learned

1                   , D.P.M.

2   that the child had suffered a three-centimeter

3   abrasion to his lower leg as a result of the

4   cast cutter?

5                   MR. : You mean on

6   2nd?

7                   MR. OGINSKI: I'll rephrase the

8   question.

9    Q   At any time while were you

10   caring for this child at any time between July

11   and December of           , had you ever learned that

12   he had experienced this abrasion to his leg?

13    A   Yes.

14    Q   How did you learn that information?

15    A   We usually discuss our -- we

16   discuss the clinic cases after the end of the

17   day and at the time I was chief resident there

18   so all clinic cases are presented.

19    Q   As of the time this child had

20   surgery in October had this abrasion healed?

21 A Yes, sir.

22 Q Have you published any literature

23 in the podiatry field?

24 A On-line, that's the only

25 publication I have.

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1 , D.P.M.

2 Q When you say "On-line," can you be

3 specific?

4 A Yes, there was one article on-line

5 for the College of Podiatric Surgery.

6 Q What was the topic of that

7 publication on-line?

8 A I don't remember right now.

9 MR. : We'll leave a blank.

10 He will fill in.

11 MR. OGINSKI: Maybe I can help

12 him.

13 MR. : Go ahead.

14 Q The on-line publication that  
15 you mentioned, was that a summary of another  
16 article that you had reviewed?

17 A Yes.

18 Q You had, in fact, summarized it and  
19 presented it under your name under the  
20 College of Foot Surgeons?

21 A College of Foot and Ankle  
22 Surgery is a part of residence presentation.

23 Q You did not author the paper upon  
24 which you summarized, correct?

25 A No, sir.

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1 , D.P.M.

2 Q Other than summarizing that  
3 particular paper -- by the way, do you recall  
4 the topic of that paper?

5 A No, sir.

6 Q Did it involve management of foot

7 care wounds?

8 A Something to that extent. I'm not

9 sure, exactly.

10 Q If I told you the title was

11 "Simulated Healing of Recalcitrant Wound,"

12 would that refresh your memory?

13 A Absolutely, yes.

14 Q Other than that, do you have any

15 other publications to your name?

16 A No, sir.

17 Q Does podiatry have a board

18 certification?

19 A Yes, sir.

20 Q Are you board certified?

21 A No, sir.

22 Q Are you board eligible?

23 A I'm board qualified and eligible.

24 Q Have you taken the examination to

25 become board certified?

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1           , D.P.M.

2       A    Yes, sir.

3       Q    Have you passed that?

4       A    Yes, I did.

5       Q    Are there two parts to the exam?

6       A    Yes, sir, it's one part when you  
7   become board qualified which I passed in June  
8           and the second part is an oral

9   presentation of the cases when you become -- if  
10   you pass, you become board certified.

11      Q    Have you taken the oral  
12   examination?

13      A    No, sir, not yet.

14      Q    Do you need a certain number of  
15   years and cases to present before you can take  
16   the examination?

17      A    Yes.

18      Q    Are you scheduled and expected to  
19   take it in the near future?

20      A    Yes.

21 Q I'm going to show you a note,  
22 Doctor, that was previously marked as  
23 Defendant's Exhibit I at plaintiff's deposition  
24 on October 9th which has the title,  
25 "," it's dated January 3, .

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1 , D.P.M.

2 I'd like you to look at that,  
3 please, and read it to yourself.

4 A Okay.

5 Q Did you write that note?

6 A Yes, sir.

7 Q How was it that you came to write  
8 that note for Ms. ?

9 A I don't remember. I'm not sure.

10 Q Is there anything in the note to  
11 indicate why you wrote that note?

12 A No.

13 Q Is the note addressed to anyone?

14 A "To whom it may concern."

15 Q Do you know who asked you to write

16 that note?

17 A No, sir, I don't remember.

18 Q Did Ms. ask you to write the

19 note?

20 A As I said, I don't remember.

21 Q Did Ms. ask you to write a

22 note describing the child's injuries to his leg

23 in order to make sure that no one questioned

24 her as possibly causing damage to the child

25 herself?

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1 , D.P.M.

2 A I don't remember if I saw her at

3 that particular point so I cannot say.

4 Q Did Ms. say to you in

5 substance, "I'm concerned about the child's

6 leg, someone is going to question me and think  
7 that I caused the injuries to his leg, would  
8 you please write me a note indicating what you  
9 did and what you saw"?

10 A I don't think so.

11 Q Do you have any knowledge, as you  
12 sit here now, or recollection as to why you  
13 wrote the note dated January 3rd?

14 A No, sir.

15 Q The notes that appear at the bottom  
16 of this page which has been previously marked  
17 Defendant's Exhibit I, is that in your  
18 handwriting?

19 A Here?

20 Q Yes.

21 A No.

22 Q Did you form any opinion on  
23 December 27, as to whether the surgical  
24 correction of the child's orthopedic or  
25 podiatric condition had been corrected?

1           , D.P.M.

2       A   Repeat it again.

3           MR. : He wants to know if  
4       the club foot had been corrected by  
5       the posterial casting and surgery; am  
6       I correct?

7           MR. OGINSKI: Yes.

8           THE WITNESS: Yes, sir.

9       Q   Was there any intention for you  
10   to recast the child's foot as of December 27th?

11       A   No, sir.

12       Q   Did you ever tell Ms.     that if  
13   anyone questioned why the child had certain  
14   injuries or wounds to his leg that they could  
15   call you to explain what had occurred?

16       A   No, sir.

17       Q   No, she didn't say that or no, you  
18   don't recall?

19       A   No, I never said that.

20       Q   I'll clarify.

21           Did you ever tell Ms.     that if  
22 anyone questioned why her son has the wounds to  
23 his leg that they could call you to explain  
24 what had been done for his leg?

25       A    No, sir, I didn't see any wounds so

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1           , D.P.M.

2 I couldn't tell you.

3       Q    Did you ever see       after

4 December 27th?

5       A    No, sir.

6       Q    I'm going to show you photographs,

7 Doctor,     that have been previously marked at

8 plaintiff's deposition.

9           I'm going to show you what was

10 previously marked as Defendant's Exhibit L and

11 ask you to look at that.

12           I want you to assume that

13 Ms.    has testified the photographs which I

14 am showing you now and will show you in a  
15 moment are of her son and that these  
16 photographs were taken at some point shortly  
17 after December 27, .

18 The child's right leg as it appears  
19 in that photograph, is there any wound that's  
20 observable in that photograph?

21 A Yes, sir.

22 Q What do you see there?

23 A I see deep laceration, deep wound,  
24 I see three wounds.

25 Q What part of the child's leg is

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1 , D.P.M.

2 that wound on?

3 MR. : Which wound?

4 MR. OGINSKI: The largest one

5 that you see in the photograph.

6 A The largest one is on the

7 medial side of the child which is inside of the  
8 child's lower leg.

9 Q On December 27, when you  
10 removed the cast, was there any wound or  
11 laceration to that area of the child?

12 A No, sir.

13 Q The other wound that you can see in  
14 the photograph?

15 MR. : He said he saw two  
16 more.

17 MR. OGINSKI: Yes, the other  
18 two.

19 Q The one at the top towards the  
20 knee, what area would you describe that to be  
21 in, Doctor?

22 A Medial side of the child's knee.

23 Q Can you estimate, by the way, the  
24 length of the first incision that you  
25 mentioned?



1           , D.P.M.

2           MR. : We don't know if

3           it's an incision. It's a wound.

4           MR. OGINSKI: Thank you.

5           Q    Can you estimate the length of

6           the wound that you see in front of you?

7           MR. : Don't guess.

8           A    I don't know. I'm not sure.

9           Q    The wound that appears further up

10          the leg closer to the knee area, I think you

11          said medially, is that a smaller wound than

12          what's observed before?

13          A    Yes, sir.

14          Q    What part of the leg is that wound

15          on, Doctor?

16          A    On the medial side of the knee.

17          Q    Did you observe any injury or wound

18          to that area of the child at the time you

19          removed this cast?

20 A No, sir.

21 Q The third one that you mentioned,

22 Doctor?

23 A The third one is on the medial side

24 of the child's foot.

25 Q Is that down towards the Achilles

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1 , D.P.M.

2 tendon area?

3 A No, sir.

4 MR. : It's just under the

5 malleolus, right?

6 THE WITNESS: Right, distal to

7 the medial malleolus.

8 Q Is this wound that's observed

9 in this photograph in the area you just

10 mentioned part of the surgical wound?

11 A No, sir.

12 Q Was this wound visible on December

13 27th when you removed the child's cast?

14 A No, sir.

15 Q Do you have any knowledge as to how

16 any of these wounds appeared on this child's

17 leg?

18 A No, sir.

19 Q I'll show you Defendant's Exhibit U

20 and ask you a general question.

21 Were any of the wounds that are

22 observed in that photograph visible on December

23 27th after you removed the cast?

24 A No, sir, absolutely not.

25 Q I'll show you Defendant's Exhibit P

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1 , D.P.M.

2 and ask you the same question understanding

3 that this is days, weeks or some point after

4 December 27th.

5 Is there anything about that

6 photograph that refreshes your memory as to

7 what was present on December 27th when you

8 removed the cast?

9 A No.

10 Q Do you have any knowledge as to how

11 this child sustained the wounds to this leg?

12 A No, sir.

13 Q In your opinion, Doctor, can a cast

14 cutter cause the type of wounds that are

15 observed in those photos?

16 A Not at all.

17 Q Can you tell me why?

18 A Previously I told you the cast

19 cutter cannot cut through skin. In here it's

20 not only the skin, it's deep cut. Even muscle

21 I can see.

22 Q The cast cutter you mentioned can

23 cut through the cast, correct, which is a hard

24 material when it's dry, correct?

25 A Yes.

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1           , D.P.M.

2       Q    What is it about the cast cutter  
3   that prevents it from going through skin, which  
4   I assume is softer than the hard cast?

5       A    Right, absolutely.

6       Q    What prevents it from being so?

7       A    The way the cast cutter is  
8   designed, like I said, I'm not exactly sure of  
9   the exact mechanisms, it never cuts through  
10  skin.

11       MR. : Off the record.

12       (Informal discussion held off  
13   the record)

14       Q    I'm going to show you  
15  Defendant's Exhibit S.

16       Can you tell me on what part of the  
17  child's leg this wound appears?

18       A    Yes, sir, outside lateral side of  
19  the child's lower leg.

20 Q Was this wound visible on December  
21 27th after you removed the cast?

22 A No, sir.

23 Q In relation to this photograph and

24 the wound that you see in Exhibit S, where was

25 the cut that you observed from the cast cutter

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1 , D.P.M.

2 on December 27th?

3 A The cut -- the superficial cut that

4 I did observe was about the same area in

5 relationship to this cut. However, it was much

6 smaller and it was like I said, it wasn't even

7 going through the skin. This cut goes deeper

8 to the skin through the subdermis area, through

9 the epidermis, the dermis and the subdermal

10 connective tissue.

11 Q Would you agree each of the

12 photographs I've shown you so far are more than  
13 superficial wounds?

14 A Absolutely.

15 Q Showing you Defendant's Exhibit T  
16 which is another photograph of the child's --  
17 would that be lateral side of the leg?

18 A Yes, sir.

19 Q Is there anything on this  
20 photograph that you can show me where you  
21 observed that superficial cut that you  
22 described earlier?

23 A If this is the same --

24 MR. : When he says if this  
25 is the same, referring to Exhibit S

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1 , D.P.M.

2 and T.

3 A -- if S and T are the same,

4 then that's about the area where the  
5 superficial cut was.

6 MR. : Off the record.

7 (Informal discussion held off  
8 the record)

9 Q I'll show you Exhibit W which  
10 is another photograph.

11 What part of the anatomy do you see  
12 in that, the wound, Doctor?

13 MR. : You mean in the  
14 wound itself?

15 MR. OGINSKI: I'll rephrase the  
16 question.

17 Q What part of the child's leg do  
18 you see the wound that's observed in that  
19 photograph?

20 A Medial side of the child's lower  
21 leg which correlates with Exhibit L.

22 Q On December 27th did you see any  
23 wound in that area after the cast was removed?

24 A No, sir.



25 MR. : Just for the record,

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1 , D.P.M.

2 the two photographs just referred to

3 also show the wound at the knee and

4 the lateral -- I'm sorry, medial

5 aspect of the foot.

6 Q Do you have any opinion with a

7 reasonable degree of podiatric probability as

8 to what would cause the type of wounds that you

9 observed in these photograph?

10 A I don't have any opinion.

11 Q Do you know Dr. at

12 Medical Center?

13 A No.

14 Q Did you ever learn from any doctor

15 or any physician that the child had been

16 diagnosed as having second degree burns

17 secondary to the use of a cast cutter?

18 A No, sir.

19 Q Did you ever prepare any Incident

20 Report in relation to the cast being removed on

21 December 27th?

22 A No, sir.

23 Q Was the cast cutter machine working

24 properly on December 27th, to your knowledge?

25 A Yes.

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1 , D.P.M.

2 Q Had you used it at all that day

3 before using it on ?

4 A I don't remember, sir.

5 Q Had you received any reports or

6 information from any of the residents about

7 that particular unit not working properly?

8 A No.

9 Q Do you know when that machine, the

10 cast cutter that had been used -- had last been

11 maintained?

12 MR. : You mean serviced or

13 repaired?

14 MR. OGINSKI: I was going to

15 ask them separately but I'll accept

16 that.

17 A No.

18 Q Since December have you used

19 the cast cutter that was used for ?

20 A Yes, sir.

21 Q Have you encountered any

22 difficulties since that time with that unit?

23 A Not at all.

24 Q Can you identify this particular

25 unit that you used?

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1 , D.P.M.

2 MR. : By what? By brand

3 or model?

4 MR. OGINSKI: Anything.

5 A Yes, sir.

6 Q How do you distinguish it from any  
7 of the others?

8 MR. : He said they are all

9 the same. That's at .

10 It's the same.

11 MR. OGINSKI: Right, but if  
12 there's some way he can identify the  
13 unit he use as opposed to any others.

14 MR. : Oh, okay.

15 In other words, can you  
16 specifically somehow identify the  
17 particular saw -- cast cutter that  
18 you used for as opposed to  
19 any other cast cutter that may be in  
20 the hospital at that time.

21 A I think there were two cast  
22 cutters. So I cannot identify directly which  
23 one I used.

24 Q Do you recall if they had a  
25 particular brand name, company name, machine

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1           , D.P.M.

2 name?

3       A    No, sir.

4       Q    Who's responsible for changing or  
5 maintaining the blades on that machine?

6       A    The OR staff. The OR supervisor.  
7 I'm not sure I can tell you.

8       Q    To your knowledge, Doctor, can the  
9 cast cutter that you used cause burns to the  
10 skin?

11      A    No, sir.

12      Q    What instructions did you give Ms.  
13           on December 27th with regard to wound care  
14 for the cut that you observed that day?

15      A    There was no wound for the  
16 superficial cut that I did observe.

17      Q    I'll rephrase the question.  
18           Did you give her any instructions

19 as to the management or treatment of the  
20 superficial cut that you saw?

21 A Yes, I did.

22 Q What did you tell her?

23 A I told her to apply topical  
24 antibiotic cream and just follow up in one  
25 week.

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1 , D.P.M.

2 Q Did you tell her what type of  
3 antibiotic cream to use?

4 A I don't remember at this point.  
5 Probably any topical antibiotic cream would be  
6 fine.

7 Q In December , did you have  
8 different parts of podiatry that you were  
9 assigned to or different assignments as part of  
10 your duties as a resident?

11 MR. : You mean different  
12 areas like patient clinic, surgery,  
13 whatever?

14 MR. OGINSKI: Yes.

15 A Yes.

16 Q If you had participated in  
17 's surgery, would you expect to see him  
18 for follow-up on a regular basis?

19 A Yes, sir.

20 Q Did Dr. say anything to you  
21 at any time after you removed the cast about  
22 's leg?

23 A I don't remember the specifics but,  
24 of course, he was interested in seeing the  
25 results of surgery. He was saying that it's

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1 , D.P.M.

2 fine.

3 Q Other than the results of surgery,

4 did he say anything else to you?

5 A No, sir.

6 Q Was 's case brought up and  
7 discussed at any type of round or grand rounds  
8 for residents specifically after December 27th?

9 A No, sir.

10 Q Did you ever have a conversation  
11 with Dr. about any wounds to this  
12 child's leg after December 27th?

13 A No, sir.

14 Q When you were removing the cast on  
15 December 27th, where did you make the initial  
16 cut on the cast?

17 A The usual procedure there are two  
18 cuts. I'm not sure about December 27th. I

19 can't tell you.

20 Q I don't want to know your general  
21 practice. I want to know specifically on that  
22 date where did you make the initial cut?



23 A I don't remember.

24 Q How many different physical cuts

25 did you make on the cast that were not

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1 , D.P.M.

2 continuous?

3 A Two.

4 Q Do you recall where those cuts were

5 made?

6 A Yes, sir.

7 Q Where?

8 A One is on the lateral side and the

9 other one is on the medial side of the leg of

10 the cast.

11 Q Is that your general practice?

12 A Yes, sir.

13 Q I'm asking you specifically on this

14 day do you have an independent memory as you

15 sit here now as to where you made those cuts?

16 A Exactly as I said before, one is on  
17 the lateral side, one is on the medial side. I  
18 don't remember which one it was.

19 Q You mentioned earlier that the  
20 child was moving around. Was the baby crying?

21 A Yes, sir.

22 Q Was the mother able to hold the  
23 baby still while were you taking the cast off?

24 A No, sir.

25 Q Did you say anything to Ms.

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1 , D.P.M.

2 about that?

3 A Yes, sir.

4 Q What did you say?

5 A I don't remember specifically, but  
6 I did say that she should try to hold the baby  
7 still or if the baby is hungry, to feed the  
8 baby before the procedure.

9 Q Was there any nurse or assistant in  
10 the room to help hold the baby?

11 MR. : The only other  
12 person present was Dr. . You  
13 did that at the beginning.

14 MR. OGINSKI: Thank you.

15 Q Did Dr. help hold the  
16 child's leg still?

17 A No, sir.

18 Q Did the child moving around affect  
19 your ability to take the cast off?

20 A To a certain extent, yes.

21 Q How so?

22 A It makes it more difficult. It  
23 takes more time to take the cast off if the  
24 person is moving.

25 Q The superficial skin cut that you

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2 described, was it bleeding?

3 A No, sir.

4 Q Did you ever tell Ms. that the  
5 only reason the child had any wounds to his leg  
6 was as a result of blisters that occurred from  
7 the cast?

8 MR. : Asked and answered.

9 MR. OGINSKI: I asked about  
10 that day specifically.

11 MR. : All right. I'll  
12 let him answer again but my  
13 perspective it's asked and answered.  
14 I didn't say he can't answer it.

15 But go ahead, answer.

16 A No, sir.

17 Q In your opinion, Doctor, the cut  
18 that you observed, again on December 28th, did  
19 you have an opinion as to whether that cut  
20 would leave any type of residual scar?

21 A December 27th, no.

22 Q No, it would not leave a scar?

23 A No.

24 Q Was there anything in the

25 photographs that I showed to you where you were

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1 , D.P.M.

2 able to see the superficial skin cut that you

3 observed on December 27th?

4 A No, sir.

5 Q How do you know when you're cutting

6 a cast when you have gone through the cast

7 material?

8 A Once you get through the cast

9 material, you don't feel any resistance and

10 that means that you're through and through the

11 cast.

12 Q In the event and once you go

13 through and through, how does the blade stop or

14 how does the machine stop from causing further

15 cutting?

16 MR. : You already asked.

17 He said there's no mechanism. You  
18 asked that at the beginning of the  
19 deposition.

20 THE WITNESS: Right.

21 Q The switch to turn the  
22 mechanism -- the blade on or off, is that on  
23 the same place where you actually hold the  
24 unit?

25 A Yes, sir.

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1 , D.P.M.

2 Q Or is it a foot-operated switch or  
3 something else?

4 A No, this machine has the switch on  
5 the unit.

6 Q Is this a hand-held machine?

7 A Yes, sir.

8 Q Besides the electrical cord, is  
9 there any other type of tubing or device that

10 extends from the hand-held unit to any other  
11 place?

12 A Yes, sir.

13 Q What is attached and why is it  
14 attached?

15 A There's a tubing for separate --  
16 for doing suction for any debris that are  
17 attached.

18 Q Is there anything on the machine  
19 that tells you how fast the unit is operating  
20 in terms of RPM's or any other gauge?

21 A No, there's only one speed.

22 Q Did you tell Ms. that this  
23 cast cutter was specifically made for babies?

24 A No, sir.

25 Q Are there pediatric cast cutters

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1 , D.P.M.

2 that are different from the kind of cast

3 cutters you used on an adult?

4 A Not that I know of.

5 Q Does Dr. still work at

6 , to your knowledge?

7 A Yes, sir.

8 Q Is he still the Director of

9 Podiatry there?

10 A Yes, sir.

11 MR. OGINSKI: Off the record.

12 (Informal discussion held off

13 the record)

14 Q Did you ever learn from

15 Dr. whether Ms. had returned to the

16 clinic within the week that you told her to

17 return?

18 MR. : After the 27th?

19 MR. OGINSKI: Yes.

20 A I don't remember if she

21 returned at all.

22 Q Have you spoken to any doctor who

23 has cared for this child after December 27th



24 for any reason at all?

25 A For this case?

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1 , D.P.M.

2 Q No, for any reason.

3 MR. : Any doctor who has

4 cared for this child?

5 THE WITNESS: No, sir.

6 MR. OGINSKI: Off the record.

7 (Informal discussion held off

8 the record)

9 Q Doctor, referring back to the

10 letter dated January 3, , were you still a

11 podiatry resident at that time?

12 A Yes, sir.

13 Q Were you still caring for

14 as of January 3, ?

15 A I don't remember that particular

16 occasion. It is my handwriting. So, yes, that

17 was me who wrote the letter but I don't  
18 remember if at that particular point I saw  
19 either -- I don't think I saw the child. I  
20 don't remember seeing the mother but I'm not  
21 sure.

22 Q Did Dr. make any notes in  
23 the patient's records that you saw in your  
24 review of the chart for December 27th or  
25 January 3rd?

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1 , D.P.M.

2 A No, sir.

3 Q If Dr. sees and examines a  
4 patient in the Podiatry Office, would it be, to  
5 your knowledge, his custom to make a note in  
6 the patient's chart about his examination and  
7 his findings?

8 A Yes, sir.

9 Q Where did you go to college,

10 Doctor?

11 A College of Podiatric

12 Medicine.

13 MR. : College.

14 A Oh, college. ,

15 .

16 Q When did you graduate?

17 A .

18 Q When did you come to the United

19 States?

20 A .

21 Q From until , what did you

22 do as far as your education?

23 A From to after I graduated

24 from college I was working.

25 Q Doing what?

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2 A I was just free enterprise.

3 Q Anything relating to medicine,  
4 podiatry?

5 A No, sir.

6 Q Can you be specific as to what type  
7 of work you did?

8 A Yes, sir.

9 I was working on the treatment  
10 plan. Originally, I graduated from the  
11 University of with a degree of  
12 Bachelor of Science in studies.  
13 , this is the type of  
14 work I did after I graduated.

15 Q In ' ?

16 MR. : He came to the  
17 United States.

18 A

19 Q Are you a US citizen?

20 A Yes, sir.

21 Q When did you graduate  
22 College of Podiatric Medicine?

23 A June ' .

24 MR. OGINSKI: Thank you.

25 (Time noted: 3:21 p.m.)

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

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4 STATE OF NEW YORK )

5 :Ss

6 COUNTY OF )

7

8 I, , D.P.M., hereby certify

9 that I have read the transcript of my testimony

10 taken under oath in my deposition of November

11 12, ; that the transcript is a true,

12 complete and correct record of what was asked,

13 answered and said during this deposition, and

14 that the answers on the record as given by me

15 are true and correct.

16

17

\_\_\_\_\_

18

, D.P.M.

19

20 Signed and subscribed to

21 before me, this day

22 of , 2002.

23

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\_\_\_\_\_

25 Notary Public

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EXAMINATION BY

PAGE

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MR. OGINSKY

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2 CERTIFICATE

3

4 I, , hereby certify that

5 the Examination Before Trial of ,

6 D.P.M., was held before me on November 12, ;

7 That said witness was duly sworn before

8 the commencement of the testimony;

9 The within testimony was stenographically

10 recorded by myself and is a true and accurate

11 record of the Examination Before Trial of said

12 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 12th day of November, .



23

24

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25

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