

****DE-IDENTIFIED DEPOSITION OF AN INTERNAL MEDICINE DOCTOR IN A CASE OF FAILURE TO TIMELY TREAT TESTICULAR TORSION RESULTING IN DEATH OF A TESTICLE****

1

2 SUPREME COURT OF THE STATE OF NEW YORK

3 COUNTY OF

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5 , as m/n/g of , JR., and
6 , individually

6 Plaintiffs,

7 -against-

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9 M.D., "JOHN" , M.D., (the first name
10 being fictitious), "JOHN" , M.D. (the
11 first name being fictitious), "JOHN" ,
12 M.D., (the first name being fictitious), and
13 , M.D.,

11

Defendants.

12

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14

15 July 23,
16 10:37 a.m.

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18 EXAMINATION BEFORE TRIAL of the

19 Defendant, , M.D., s/h/a

20 "JOHN" , M.D.

21

22

23 TOMMER REPORTING, INC.

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

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BY: GERALD M. OGINSKI, ESQ.

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, ESQS.

9 Attorneys for Defendants

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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 by and

5 between the counsel for the respective parties
6 hereto that all rights provided by the
7 C.P.L.R., including the right to object to any
8 question, 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 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.

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 are hereby 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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17 ** ** **

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2 , M.D.,

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 , M.D.

11 Q Your address, please?

12 A

14 Q Doctor, the address that you just

15 gave to the reporter, is that your home address

16 or office address?

17 A That's my home address.

18 Q Currently where do you work?

19 A I'm currently employed at

20 , Department

21 of Internal Medicine.

22 Q What is your position or title

23 there?

24 A Attending Internal Medicine.

25 Q You're an employee at

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6

1 , M.D.

2 ?

3 A Yes,

4 Center. It's a conglomerate.

5 Q Where is your office located?

6 A I'm salary-based employee.

7 Q Which hospital do you work out of?

8 A Hospital.

9 Q That would be in ?

10 A .

11 Q How long have you been working in

12 that capacity at that hospital?

13 MR. : Over my objection

14 you can answer.

15 As an attending physician?

16 MR. OGINSKI: Yes.

17 MR. : How long?

18 A Two years.

19 Q In January, , where did you

20 work?

21 A I was with Hospital

22 .

23 Q That's also now known as

24 Hospital of ?

25 A That's right.

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1 , M.D.

2 Q At the time that you were working

3 there in January of , what was your

4 position there?

5 A My position is emergency room

6 attending.

7 Q When did you first start to work as

8 an emergency room attending at what was

9 Community Hospital, but is now known as

10 Hospital of ?

11 A I started April, ' to June, .

12 Q Did you work full-time there?

13 A Yes.

14 Q Approximately back in January of

15 , how many hours a week did you work?

16 A Forty hours a week.

17 Q Before coming here this morning,

18 did you review the hospital record for

19 ?

20 A Yes.

21 Q Did you review any other records

22 besides this emergency room record from January

23 24th, relating to this case?

24 A It's all related to the emergency

25 room, nurses notes, yes.

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1 , M.D.

2 Q Other than that particular visit to

3 the hospital on January 24th, did you review

4 any other records relating to ?

5 A It's only emergency room record.

6 MR. : Give me a second.

7 (Brief Recess)

8 Q Doctor, have you reviewed any

9 of the deposition transcripts of testimony

10 given in this case?

11 A No.

12 Q Before coming here today you

13 received a subpoena from my office to appear

14 and give testimony, correct?

15 A I have, yeah. I think I have. I

16 don't remember it was.

17 Q It looked like this and you

18 received it at your home?

19 A Yes, this is the same.

20 Q That's the subpoena you received?

21 A Yeah.

22 Q Do you have an independent memory

23 of treating this child, , back on

24 January 24th, ?

25 A Yes.

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1 , M.D.

2 Q Can you tell me what he looked

3 like?

4 A I can tell you exactly the case,

5 but how he looked like, it's two years ago, I

6 don't remember.

7 Q Do you remember his mother?

8 A No, I don't remember his mother.

9 Q Do you remember any other family

10 members that were with him at the time?

11 A No.

12 Q When you reviewed this hospital

13 record, did you learn or did you see that you,

14 in fact, had rendered treatment to

15 on that date?

16 A Yes.

17 Q Were you working in the emergency

18 room at that time?

19 A Yes.

20 Q When had you started your shift

21 that day or night?

22 A 7 o'clock in the morning to 7 the

23 following day, the morning.

24 Q Twenty-four hour shift?

25 A Twelve hours, 7 P.M. to 7 A.M.

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1 , M.D.

2 Q Can you turn, please, to the
3 hospital record?

4 MR. OGINSKI: This is the
5 original, correct?

6 MR. : Correct,
7 previously marked Plaintiff's Exhibit
8 1 on February 1, .

9 Q Doctor, looking at the first page,
10 which says Emergency Department on the top
11 left, is this page filled out in your
12 handwriting?

13 A Yes.

14 Q I'm going to go through with you
15 and ask you to read certain parts of the
16 record, and then I'm going to ask you certain
17 questions about it, okay?

18 At the top of the page on the left side
19 it says, Triage Notes, and there is certain
20 information filled in. Is any of the

21 information filled in in this section for
22 triage in your handwriting?

23 A No.

24 Q Who fills out that part of the
25 page?

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1 , M.D.

2 A The triage nurse.

3 Q By the way, just for our purposes,
4 the date of this note is what? That's January
5 24th, ?

6 A Yeah.

7 MR. : That's what's
8 written.

9 Q What time is listed under the
10 triage section at the time that the patient
11 arrived at the hospital?

12 A 2:12 A.M.

13 Q It says before that it says Triage,
14 and it gives a letter. After that, what is

15 that?

16 A After this?

17 Q Right here, the first word in the
18 triage section. It says Triage, and then it
19 has a capital letter A?

20 A A, yeah.

21 Q What does that mean, Doctor?

22 MR. : Note my objection.

23 It's not his entry.

24 Q On January, , after having
25 worked in the emergency room of

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1 , M.D.

2 Hospital for a number of years, did you
3 know what the various designations were when
4 they wrote various letters on this particular
5 sheet after the word Triage?

6 A What this means?

7 Q Yes.

8 A It's a condition that has to be
9 addressed, you know, that addressed that any
10 other case is so it has some priority.

11 Q What are the various gradations or
12 levels of priorities as you understand them to
13 have been in January, ?

14 A A, that's number one to be seen
15 first. B, then the next priority on this, and
16 C, may be the fast track group.

17 Q What is fast track?

18 A Those ambulatory patients that come
19 in and address us like an outpatient or those
20 that can be discharged easily on admission, I
21 mean, on consult.

22 Q Whose opinion is it, the person who
23 writes that classification A, B or C, who
24 writes that information down?

25 A The nurse, triage nurse.

1 , M.D.

2 Q I'm sorry, I just want to clarify,

3 you said A means the highest priority?

4 A Um-hmm.

5 Q You have to answer verbally.

6 A Yes.

7 MR. : Objection.

8 Q At some time after this child

9 arrived at the emergency room on January 24th,

10 were you called to see the patient?

11 A Yes.

12 Q What time were you called to see

13 him?

14 MR. : Objection to the

15 form, called.

16 Q Were you required to remain in the

17 hospital during your shift that you were in the

18 emergency room?

19 A Yes.

20 Q How was it that you came to see

21 ?

22 A I was there in the emergency room.

23 Q What time did you actually see him

24 for the first time?

25 A I wrote here 2:30 A.M.

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1 , M.D.

2 Q The date you have written is 1/24,

3 correct?

4 A That's right.

5 Q On the same line it says: Exam by,

6 and whose name is written after that?

7 A That's my signature.

8 Q I'd like you to read, please, your

9 note under the History portion, please, and if

10 there are abbreviations, tell me what they are?

11 A "This 11-year-old male patient care

12 of or complain of sudden onset of, sudden onset

13 and tenderness and pain of the left testes."

14 Q I'm sorry, Doctor, let me just

15 interrupt you. You said sudden onset of

16 tenderness and pain?

17 A "And pain of the left testes four

18 hours ago. Denies any fever, trauma or dysuria.

19 No nausea and vomiting. No abdominal pain."

20 Q How did you learn the information

21 that you just read to me?

22 A Talking to the mother.

23 Q When you wrote that the time frame

24 was four hours ago, what time would that be in

25 relation to when you wrote your note?

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1 , M.D.

2 A In relation to when I saw the

3 patient.

4 Q When you had written four hours

5 ago, you meant four hours before 2:30 A.M.,

6 correct?

7 A About four hours ago before 2:30.

8 Q That would be approximately 10:30

9 P.M.

10 A Approximately.

11 Q When you wrote four hours ago that

12 would be about 10:30 P.M., correct?

13 A That's right.

14 Q Did you ask 's mother what

15 she had done for the child at the time that she

16 first noticed he had this tenderness and pain?

17 MR. : Note my objection.

18 You can answer.

19 A I don't recollect whether I asked

20 the question.

21 Q Did you ask whether the pain and

22 the tenderness was a result of any type of

23 trauma?

24 A I stated that in the history,

25 denies any trauma or fever or dysuria.

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1 , M.D.

2 Q Did you ask either or his
3 mother if any medication had been taken as a
4 result of her observations?

5 A I don't remember.

6 Q If you had inquired about any
7 medication, would you have written that
8 information down if you had received a
9 response?

10 A Yes.

11 Q At the last line of that section
12 you have a zero or a circle with a line through
13 it; what does that represent, Doctor?

14 A The past history that's negative or
15 denies.

16 Q After taking your history am I
17 correct that you performed the physical exam?

18 A That's right.

19 Q Was anyone else with you at the
20 time that you performed your examination?

21 A I don't remember. Maybe the
22 mother.

23 Q Were any other physicians present
24 at the bedside at the time you conducted your
25 examination?

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1 , M.D.

2 A No.

3 Q Did the hospital have any residents
4 or interns that rotated through the emergency
5 room?

6 A No.

7 Q Before conducting your examination,
8 did you observe the child as far as what type
9 of condition he was in whether he was in pain
10 without even examining him?

11 A I observed that.

12 Q What did you observe?

13 A I mean, the mother relates it, the

14 child did not.

15 Q I understand that. I'm only asking
16 whether you personally observed the child's
17 condition prior to your examination and whether
18 you formed any opinions as to whether he was in
19 pain while you were assessing him?

20 A I mean, it states in the physical
21 examination that he was in pain.

22 Q Okay, I'll get to that in a second,
23 but before you actually put your hands on him
24 to examine him, did you form any opinions as to
25 anything that was going on with him?

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1 , M.D.

2 A I cannot make an opinion until I
3 finish my evaluation.

4 Q I'd like you to read through your

5 physical exam findings starting with the vital

6 signs?

7 A "Vital signs, blood pressure 137

8 over 72. Temperature 95.7 and pulse rate is 65

9 and respiratory rate is 60. The head

10 examination, HEENT, pupils equally reactive to

11 light and accommodation. The neck is supple

12 and no bruit. Next is heart, regular rate and

13 rhythm followed by lungs, which is clear breath

14 sounds. Abdomen, soft and non-tender, and

15 extremities, no edema and genitalia, left

16 testicle tender, elevated bluish, no mass."

17 Q Had you formed any opinions as to

18 what this child might be suffering from at the

19 time you completed your examination?

20 A After I completed?

21 MR. : Did he render a

22 diagnosis?

23 Q Either diagnosis?

24 A Impression?

25 Q Yes.

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1 , M.D.

2 A Yes.

3 Q What was your impression or

4 diagnosis?

5 A My impression was left testicular

6 torsion.

7 Q Can you define or tell me what

8 testicular torsion is, Doctor?

9 A Testicular torsion is characterized

10 by a sudden onset, first, it's common among

11 this age group, and it's characterized by a

12 sudden onset of pain and elevated testicle as

13 opposed to the other side.

14 MR. : He's asking you

15 specifically what is it. What takes

16 place, if you know.

17 A You have to be specific what the

18 question also or else I'll give you the medical

19 definition of testicular torsion.

20 Q Sure, what is the medical

21 definition?

22 A I'm defining the testicular
23 torsion. It's characterized by a sudden onset
24 of pain.

25 Q I'm not asking for the symptoms

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1 , M.D.

2 that you observed that suggests to you what you
3 find, I'm asking you what is it? What is the
4 anatomical definition if you can tell me?

5 A I mean that is defined. I mean,
6 what else can I describe?

7 Q Let me ask it this way. What is a
8 torsion?

9 A Torsion is a twisting.

10 Q That would be of the testicle?

11 A We're talking about the testicle.

12 Q What is it that actually twists, is

13 it the spermatic cord, is it the testicle or

14 something else?

15 A The spermatic cord.

16 Q Did you observe any torsion in the

17 right side of the testicle, the right side of

18 the scrotum I should say?

19 A I did not observe any abnormality

20 on the opposite side, yeah. No abnormality on

21 the opposite side.

22 Q The fact that you observed

23 discoloration in the left testicle, what, if

24 anything, did that suggest to you?

25 A It could be anything.

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21

1 , M.D.

2 Q You did, in fact, request a

3 surgical consultation, correct?

4 A Um-hmm.

5 Q That's at 2:30 A.M.?

6 A Um-hmm.

7 Q You also requested a left

8 testicular sonogram; is that correct?

9 A Um-hmm.

10 Q Why did you request a sonogram?

11 A The request was made to diagnose or
12 get an impression whether there's some blood
13 through to the testicle.

14 Q On January 24th, , did the
15 hospital that you worked in have sonogram
16 equipment available to you to have this test
17 performed?

18 A Yes.

19 Q This test was available even in the
20 middle of the night, correct?

21 A Yes.

22 Q Who performs this type of test, is
23 it a radiologist or some other physician or
24 technician?

25 A Technician.

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1 , M.D.

2 Q In addition to your history and
3 physical examination, did you order blood work
4 for this patient?

5 A Yes.

6 Q What blood work did you request?

7 A I requested CBC, SMA profile, PT
8 PTT, type-in screen of the blood.

9 Q Why did you request this blood
10 work?

11 A This is part of the examination and
12 to find out whether, you know, can find some
13 association with the pain, you know, whether
14 it's secondary to infection or urinary
15 infection. I think that's basically the reason
16 why.

17 Q Did you have any conversation with
18 's mother, with Mrs. about your
19 findings?

20 A I don't remember.

21 Q Do you recall having any
22 conversation with any family member or
23 himself about your findings and your diagnosis
24 or impression?

25 A I don't recollect, you know,

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1 , M.D.

2 talking or discussing with the mother or the
3 patient.

4 Q Who came to examine the child from
5 a surgical standpoint?

6 A The surgical house staff.

7 Q That was Dr. ?

8 A That's right.

9 Q Do you know Dr. ?

10 A Yes.

11 Q How do you know him?

12 A He works with the Department of
13 Surgery.

14 Q Were you present at the time that

15 Dr. examined ?

16 A Yes.

17 Q Did you have a conversation with

18 Dr. about his findings or conclusions?

19 A Maybe, but I couldn't recollect,

20 but I know he was there during the examination.

21 Q In addition to Dr. , was an

22 anesthesiologist called to evaluate ?

23 A I remember Dr. calling the

24 anesthesiologist, but I don't know.

25 MR. : He answered the

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1 , M.D.

2 question.

3 Q Were you present at the time that

4 an anesthesiologist came to see ?

5 A I don't recollect seeing the

6 anesthesiologist.

7 Q Do you have a memory as you sit
8 here today as to what anesthesiologist was on
9 call on the evening or early morning hours of
10 January 24th, ?

11 A I don't recollect seeing the or
12 knowing the anesthesiologist.

13 Q Was it your opinion that this
14 child, , needed to be admitted to
15 the hospital for either observation or some
16 other treatment?

17 MR. : Objection. He's
18 testified that it was his impression
19 that this was a torsion and he
20 recommended a surgical consult.

21 Q At the time that you had finished
22 examining , did you have any opinion as
23 to whether this child needed to be admitted to
24 your hospital?

25 A For the surgery to determine what

1 , M.D.

2 that is.

3 Q Did you ever make any assessment as
4 to whether this child should be admitted to
5 your hospital?

6 MR. : Objection.

7 MR. OGINSKI: I'm just asking
8 whether he ever made any assessment.

9 A No, I just called for the consult.

10 Q At the bottom of this particular
11 page where it says, Disposition, in the middle
12 of that section there is a box where it says
13 Admit, and it was checked, there is an X by
14 that word.

15 Do you see that?

16 A Uh-huh.

17 Q Next to that there's a doctor's
18 name, correct?

19 A It was crossed out.

20 Q I understand that, but there is a
21 doctor's name written there, correct?

22 A Yeah, . This one?

23 Q Yes.

24 A Dr. .

25 MR. : You want the name

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1 , M.D.

2 that's written or the name that's

3 crossed out?

4 THE WITNESS: Which one?

5 Q Next to the word Admit there says

6 M.D., and there is a name which we obviously

7 see is crossed out?

8 A Yeah.

9 Q Can you read and tell me whose name

10 appears on the cross out?

11 A He was crossed out because

12 probably --

13 MR. : He wants to know

14 do you know whose name that is?

15 A No.

16 Q Do you know why that box was
17 checked off and a doctor's name was written in
18 under the word Admit?

19 A No, I don't know.

20 Q Do you know whose handwriting that
21 is in that section?

22 A It's my handwriting.

23 Q Can you tell now looking at it when
24 you wrote that information?

25 A I don't have the time, you know,

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1 , M.D.

2 when I wrote it down. I don't remember when I
3 wrote it.

4 Q Directly above that there is a
5 check mark next to the words Transfer To,
6 correct?

7 A Yes.

8 Q There are words written which says,

9 I believe says, ?

10 A Uh-huh, yes.

11 Q Then it says, Send By, and then the

12 name is written there?

13 A Yes.

14 Q Whose handwriting is that?

15 A That's my handwriting.

16 Q How did you learn that this patient

17 was going to be transferred to ?

18 A This was after probably, not

19 probably, but this was after the evaluation of

20 the surgeon.

21 Q How did you learn that information?

22 Did the surgeon talk to you, did you read the

23 notes or something else?

24 A I don't remember.

25 Q Whose decision was it to transfer

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1 , M.D.

2 this child to another hospital?

3 A It's the Department of Surgery I

4 think because they're in a position to decide

5 where to bring the patient.

6 Q Did you participate in any decision

7 or discussion about transferring this child to

8 another hospital?

9 A No.

10 Q Do you have any knowledge as to why

11 this child was transferred to

12 Hospital in as opposed to any other

13 hospital in closer proximity to your hospital?

14 A No.

15 MR. : Objection to the

16 form. You have his answer.

17 Q Three quarters of the way down the

18 page there are medications listed and there are

19 signatures on the right side?

20 A Okay.

21 Q For the first medication that is
22 ordered, what medication is that?

23 A It's NPO.

24 Q A 's name appears there?

25 A Looks like , signed by

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1 , M.D.

2 circulating nurse.

3 Q The next order there, what is that
4 for?

5 A It's D-5 one-half normal saline,
6 that's the fluids.

7 Q Whose name appears for that order
8 or whose signature appears there?

9 A It's the same, . ,
10 something there.

11 Q Why did you request a surgical
12 consult after you completed your examination?

13 A It's a surgical case.

14 Q Why?

15 A It's a surgical case.

16 Q Why? What is it about your
17 findings that suggested to you that it's a
18 surgical case?

19 A Because of the anatomical
20 involvement of the testes. It's not medical.

21 Q Am I correct that in your training
22 in becoming a physician you did training in the
23 field of surgery?

24 A Not locally.

25 Q I understand that, but you did a

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30

1 , M.D.

2 residency in surgery, correct?

3 A Yes.

4 Q And also thoracic surgery, correct?

5 A Yes.

6 Q This was in the ,

7 correct?

8 A That's right.

9 Q In addition you also did training
10 in internal medicine here in the United States,
11 correct?

12 A Yes.

13 Q In January of , had you learned
14 about testicular torsions?

15 MR. : Over objection.

16 MR. OGINSKI: Let me rephrase
17 the question.

18 Q In the course of your medical
19 career and medical training did there come a
20 time when you learned about testicular torsion?

21 A In my medical training?

22 Q Yes?

23 A Not in my medical training, but in
24 my surgical training.

25 Q In any event at some point before

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1 , M.D.

2 January, , you had learned about testicular
3 torsion, correct?

4 A Yes.

5 Q You had learned about how to
6 diagnose them?

7 A Yes.

8 Q You had also learned how to treat
9 them, correct?

10 A Yes.

11 Q In your surgical training back in
12 the , had you learned how to treat
13 surgically testicular torsion?

14 A Yes.

15 Q Had you yourself performed surgery
16 to treat testicular torsion?

17 A It goes to the urology, urological
18 specialty.

19 Q Have you ever participated in any
20 surgery that addressed testicular torsion?

21 A I don't recollect. It's a long
22 time already.

23 Q Had you formed an opinion at the
24 time that you completed your examination of
25 as to whether his testicle was still

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32

1 , M.D.

2 viable and alive?

3 A I cannot make an opinion. That's
4 the reason we called the surgical specialty.

5 Q After the surgeon, Dr. , came
6 and evaluated this child, did he tell you his
7 opinion as to whether the child's testicle was
8 still viable and alive?

9 A I don't remember.

10 Q Did you ever have any conversation
11 with any anesthesiologist who came to see
12 to evaluate him preoperatively?

13 A I don't recollect.

14 Q Did you learn from anyone at the
15 hospital that day or January 24th that
16 had been scheduled or was expected to undergo
17 surgery at your hospital?

18 MR. : I'm sorry, can I
19 hear that question again.

20 (Whereupon, the requested
21 portion was read by the reporter)

22 MR. : Object to
23 expected. Did he learn from anyone
24 whether or not surgery was scheduled
25 at of ?

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1 , M.D.

2 MR. OGINSKI: Fine, I'll accept
3 that.

4 A No, I did not hear.

5 Q What was your understanding in
6 January of , as to the length of time that
7 a testicle would remain viable after the onset
8 of pain in a child such as 's age?

9 A I cannot make an opinion about the
10 relative time, you know. It's hard.

11 Q Was there any literature or text
12 books that you were aware of and had learned
13 about this condition which suggested to you a
14 particular time frame in which a testicle is no
15 longer viable after the onset of testicular
16 pain?

17 A No.

18 Q Do you know a Dr. ?

19 A By name, but I never met the guy.

20 Q As far as you know was Dr.
21 the chief of surgery at Hospital of
22 in January of ?

23 A Yes.

24 Q Did you ever have any contact with
25 Dr. related to ?

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1 , M.D.

2 A No.

3 Q Did you ever speak to a Dr. at

4 Hospital in New York about

5 ?

6 A I don't recollect, but maybe, yes.

7 Yes, I think because I had it in my notes here.

8 Q How was it that you would have

9 spoken to Dr. in concerning

10 ? How did that come about?

11 A Because the surgical people

12 requested Pediatric, you know,

13 consult or, what they call this, case being

14 referred.

15 Q Do you know why the child was going

16 to be referred to in ?

17 A No.

18 Q Did you ever learn from anyone at

19 the hospital that day on January 24th the

20 specific reason why this child was being

21 transferred to another hospital?

22 A Specifically from somebody?

23 Q Yes. I'm not talking about in

24 preparation for coming here and reviewing the

25 other people's notes in this chart. I'm

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1 , M.D.

2 talking about do you have a specific memory as

3 you sit here now about having any conversation

4 with any doctor or nurse in the hospital on

5 January 24th as to why was being

6 transferred to another hospital?

7 A I don't recollect having, you know,

8 having the idea of the transfer, but I know it

9 was requested, but how, I don't know how they

10 would go about it.

11 Q Do you know a Dr. ?

12 A , by name. Personally, no.

13 Q Do you know that he is a urologist

14 with attending privileges at your hospital?

15 A Yes.

16 Q Did you ever speak to Dr.

17 regarding ?

18 A No.

19 Q How did you learn that an

20 anesthesiologist was called to see and evaluate

21 ?

22 A I did not learn. It was the

23 surgical house staff probably called or I'm not

24 sure whether they called anesthesia.

25 Q Do you have any direct or personal

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1 , M.D.

2 knowledge --

3 A No.

4 Q -- about why anesthesia was called?

5 A No.

6 Q Did you have any opinion before a

7 decision was made to transfer the child to
8 as to whether he was going to undergo
9 surgery at your hospital, Hospital
10 of ?

11 MR. : Objection. You're
12 asking him his opinion if he was
13 going -- the question seems to ask
14 were you aware if he was going to
15 undergo surgery before transfer.

16 MR. OGINSKI: Fine, I'll
17 rephrase it.

18 MR. : It's not
19 clear.

20 Q Were you aware that was in
21 the process of being worked-up for surgery at
22 your hospital?

23 A Yes. Excuse me, not in our
24 hospital, you know. I know I'm aware there's
25 gonna be operated, but opinion-wise I cannot

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1 , M.D.

2 give the opinion.

3 Q Do you know why did not have

4 surgery at Hospital of ?

5 A No.

6 Q Was there any time urgency

7 associated with getting him surgical treatment

8 from the time that you examined him?

9 MR. : Note my objection.

10 I'm not sure I understand what you're

11 asking. Are you asking about the

12 time urgency of having a surgical

13 consult?

14 MR. OGINSKI: No.

15 Q Based upon your knowledge of

16 testicular torsion, what would occur to the

17 testicle if he did not receive surgical

18 treatment based upon your own knowledge?

19 MR. : I'm going to

20 object because that harps on

21 treatment rendered by others in this

22 case. Granted I understand there's a

23 surgical background, but he was not

24 treating this patient in a surgical

25 context and he, in fact, called a

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1 , M.D.

2 separate surgical consult.

3 So, any reference to a surgical

4 decision was left in somebody else's

5 hands who has already testified,

6 actually Dr. . So I would have

7 to object and advise him not to

8 answer that question.

9 Q Before was transferred to

10 for treatment, did you review any

11 notes written by Dr. ?

12 MR. : Prior to his being

13 transferred not in preparation for

14 today.

15 A No.

16 Q When you were conducting your

17 examination, was there any time urgency

18 associated with your exam?

19 A Yes.

20 Q Why was that?

21 A The first, the triage states A, and

22 the complaint of the patient.

23 Q Was there any time urgency

24 associated with treating the testicular

25 torsion?

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1 , M.D.

2 A I can't make opinion about that.

3 MR. : It speaks for

4 itself, but I'm going to object to

5 the question, but he's rendered his

6 answer. He can't render an opinion.

7 Q In January, , were you aware

8 that the hospital had put forth certain rules

9 and regulations regarding certain protocols
10 that they had for treating patients at your
11 hospital?

12 MR. : Objection. In
13 general?

14 MR. OGINSKI: In general.

15 MR. : Any patients?

16 MR. OGINSKI: I'm just asking
17 generally.

18 Q Were you aware that the hospital
19 had any rules and regulations that they
20 provided for certain situations?

21 A Yes.

22 Q From time to time were you provided
23 with copies of those rules and regulations as a
24 general question?

25 A Yes.

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1 , M.D.

2 Q Did you ever learn that in January
3 of the hospital had a particular policy or
4 rule or regulation regarding treatment of
5 children?

6 A I'm aware.

7 Q What was your understanding of that
8 policy?

9 A That the patients need to be
10 transferred, has to be transferred to
11 because we don't have pediatric services
12 in the hospital.

13 Q When did you first know about that
14 rule, regulation or policy?

15 A I don't remember.

16 Q That rule or regulation, do you
17 know why there are no pediatric services
18 provided in the emergency room?

19 A It's not my opinion to conclude
20 why, it's the hospital. I mean, that's the
21 hospital's policy.

22 Q Have there been any occasions while
23 you were working at Hospital of
24 where children were treated or operated
25 on upon presenting to your hospital?

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1 , M.D.

2 A I'm not aware of any case operated
3 in the hospital.

4 Q Do you know at what age a child
5 cannot be treated?

6 MR. : Objection.

7 Treated, he didn't say they can't be
8 treated. He said that pediatric
9 patients, that there are no pediatric
10 services in the hospital. He didn't
11 say that pediatric patients aren't
12 treated in the ER.

13 Q The policy that you told me about
14 that you don't provide pediatric services in
15 the hospital, is there a particular age cut off
16 which the hospital does not provide services to

17 a particular individual? In other words, a
18 child being under the age of something or over
19 a particular age?

20 MR. : My objection is to
21 the fact that pediatric services
22 represents a specific age group of
23 children whether it's infants,
24 adolescents, etcetera. To the extent
25 that there are specific services as a

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1 , M.D.
2 emergency room physician that he may
3 provide to a pediatric patient or
4 specifically not provide to a
5 pediatric patient, that's fine.

6 Q Doctor, are you aware of any
7 particular age in performing surgery to a child

8 in which surgery will not be performed at
9 Hospital of ? In other words, does
10 a child have to be above a certain age or below
11 a certain age or something else?

12 MR. : If you know.

13 A Above 17 years old.

14 Q Do you know why that is?

15 A It's considered adolescent.

16 Q It's considered adolescent?

17 A Yeah.

18 Q What is it specifically that would
19 prevent surgery from being performed to a child
20 under the age of 17, if you know?

21 MR. : Just note my
22 objection. That goes for the
23 formation of hospital policy, which
24 he's already testified he's not been
25 associated with. However, to the

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1 , M.D.

2 extent he's been advised to why, I'll

3 allow him to answer.

4 Q Do you know why specifically

5 children under the age of 17 will not receive

6 surgery at Hospital of , your

7 hospital?

8 A It depends on the capability of the

9 Department of Surgery and the Department of

10 Anesthesia.

11 Q Do you know what specifically it is

12 about those capabilities that would either

13 limit or restrict their ability to provide

14 surgical or anesthesia services to a child

15 under the age of 17?

16 MR. : Objection.

17 MR. OGINSKI: I'm asking if

18 he's aware.

19 MR. : Do you have

20 any idea?

21 A No.

22 Q You mentioned the capability of

23 surgery and anesthesia. Do you know what

24 specifically what capability that refers to?

25 A The training of pediatric services,

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1 , M.D.

2 whether it's available in the hospital.

3 Q Did you ever have any conversation

4 with any doctor in the evening or early morning

5 hours of January 24 about concerning the

6 surgical capability or the anesthesia

7 capability in providing surgical services to

8 him?

9 A No.

10 Q Are there any signs in the

11 emergency room waiting room to advise patients

12 that children under a particular age will not

13 be treated surgically in your hospital?

14 MR. : In January, ?

15 MR. OGINSKI: Correct.

16 A Is there a sign?

17 Q Are there any signs? Let me

18 rephrase the question. In January, , when

19 a patient came into the emergency room of

20 Hospital of , were there any signs

21 anywhere to indicate that children under a

22 particular age will not, if they need surgery,

23 will not receive surgery at that hospital, that

24 they will be transferred elsewhere?

25 A The patient itself?

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1 , M.D.

2 Q Was there any sign?

3 MR. : Was there anything

4 on the wall or a sign anywhere?

5 A No, I thought you mean the

6 patient.

7 MR. : No, sign in the

8 room, a written sign.

9 Q Were you aware if any emergency

10 services personnel, ambulance people were told
11 not to bring pediatric patients to
12 Hospital of in the event they required
13 surgery?

14 A No, I'm not aware.

15 Q Is there any reason that you are
16 aware of as to why the child was transferred to
17 Hospital of as opposed
18 to, say, Hospital?

19 MR. : I believe he's
20 answered that he had no knowledge as
21 to why the patient was transferred to
22 as opposed to any other
23 facility. If you want to ask
24 specifically .

25 Q Can you answer specifically?

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1 , M.D.

2 A No.

3 Q Do you have any other written notes

4 for this child?

5 MR. : Other than what's

6 contained in here.

7 A No.

8 Q Can you turn the page, please,

9 Doctor? Yes, right here.

10 A This one here?

11 Q Yes. There's a note written, a

12 nurses note, timed at 2:30 A.M.

13 Do you see that?

14 A Yeah.

15 Q That is written by Nurse ?

16 A .

17 Q As best you can tell me?

18 A Okay, so.

19 MR. : He's asking you

20 do you know who wrote that note. Do

21 you know?

22 THE WITNESS: No.

23 Q Five lines down from the top,

24 Doctor, there is a sentence that says, "Patient

25 seen by Dr. ."

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1 , M.D.

2 Do you see that?

3 A Yes.

4 Q Then it continues, "House surgeon

5 and anesthesia."

6 Do you see that?

7 A Uh-huh.

8 MR. : You have to say

9 yes or no.

10 A Yes.

11 Q What is written after the word

12 anesthesiologist?

13 A I don't know. That's not my

14 handwriting.

15 Q Whatever is written immediately

16 after there's something that says D-5 one-half

17 normal saline?

18 A Yes.

19 Q The sentence patient seen by Dr.

20 -- may I just see the original, thank

21 you -- house surgeon, and

22 anesthesiologist, does that refresh your memory

23 as to whether you saw the patient together with

24 those other physicians?

25 A No.

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1 , M.D.

2 MR. : He's testified

3 that he saw the patient with Dr.

4 .

5 THE WITNESS: With Dr. .

6 Q Is there anything in the notes that

7 you have reviewed for this particular patient
8 to indicate who was the anesthesiologist who
9 came TO see and examine ?

10 A No, I couldn't say.

11 Q When an anesthesiologist evaluates
12 a patient in the emergency room in January,
13 , based upon your knowledge of what was
14 done by anesthesiologists, was it customary for
15 them to make notes in the patient's charts
16 regarding their examination?

17 MR. : Objection. You're
18 asking him the custom and practice of
19 the anesthesiologist. He can't
20 answer that question.

21 Q I'd like you to turn to the next
22 page, please.

23 Do you know who wrote this progress
24 note timed at 2:30 A.M.?

25 A Dr. , the surgical house

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1 , M.D.

2 staff.

3 Q Did you ever see this note before

4 receiving a subpoena to come here and testify

5 about this matter?

6 A Honestly, I don't recall that.

7 Q On the fourth line down from the

8 top, Dr. writes, "Anesthesia on call came

9 and saw the patient."

10 Do you see that?

11 A Yeah, yes.

12 Q Is there anything that you have

13 seen in Dr. 's note to indicate the name

14 of the anesthesiologist what evaluated

15 ?

16 A No.

17 Q Did you ever have a discussion with

18 anyone from 's family concerning

19 the time frame in which he had the onset of

20 pain in relation to when he was examined and

21 what it meant to the child?

22 A No.

23 MR. : Objection. I'm a
24 little confused by that last part.

25 MR. OGINSKI: I'll rephrase the

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1 , M.D.

2 question.

3 MR. : I know what
4 you mean, but it doesn't make sense.

5 Q Did you ever tell Mrs. that
6 if her son does not receive surgical treatment,
7 he will lose his testicle?

8 A I don't recollect, no.

9 Q Did you ever tell Mrs. any
10 opinion as to whether his testicle was still
11 viable and alive at the time that you completed
12 your examination?

13 A No.

14 Q Did you ever learn from Dr.

15 whether he had a conversation with Mrs.

16 about his opinions?

17 A No.

18 Q Based upon your review of this

19 chart, was a testicular sonogram performed

20 before he left this hospital?

21 A I don't remember.

22 Q Is there anything in the chart to

23 suggest to you that a sonogram was performed?

24 A No.

25 Q I'd like you to turn, please, to

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1 , M.D.

2 the medication order sheet. On the right side

3 of the page it says: Non-medication Orders,

4 and the date is January 24, . At the top

5 is a time of 2:30 A.M.

6 Can you read the doctor's name that

7 appears at the top right?

8 A Dr. .

9 Q Underneath that, what does that
10 say?

11 A Diagnosis, acute torsion left
12 testes.

13 Q Can you read what's written
14 underneath that?

15 A NPO.

16 Q That means nothing by mouth?

17 A Yes.

18 Q Go ahead?

19 A CBC, SMA 18, UA, urinalysis if
20 available and consent.

21 Q To your knowledge what does it mean
22 if available?

23 MR. : Objection.

24 There's no foundation that he wrote
25 that note.

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1 , M.D.

2 Q Do you know the word consent, what

3 does that refer to?

4 MR. : Same objection.

5 You're asking what it refers to by

6 the author, and we have not

7 established who the author was and if

8 it wasn't him if he's had any

9 conversation as to what that means.

10 Q Based upon your experience working

11 at this hospital and based upon your experience

12 in reviewing patients' charts, can you

13 determine just from looking at this record what

14 the word consent means in the context of your

15 examination and this note?

16 MR. : Again, I'm going

17 to object. You're asking him to make

18 an evaluation of someone else's mind

19 frame. He didn't write that note nor

20 did he interpret that note.

21 Q Doctor, other times when you would
22 be required to review a person's chart when the
23 person who wrote it was not present?

24 A Again?

25 Q Are there occasions when you will

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1 , M.D.

2 be treating or examining patients and you will
3 be required to read various notes written by
4 other people that are contained within the
5 hospital chart?

6 A Yes.

7 Q When you review other doctors notes
8 or nurses notes, do you have to interpret those
9 particular notes at the time you read them if
10 they are not present to explain them, correct?

11 A Sometimes.

12 Q Can you tell me just from what you
13 know about his patient and this particular note
14 what you understand the word consent to mean
15 just on the non-medication order note?

16 MR. : Note my objection.
17 Again, his reference to other
18 people's note in the chart may or may
19 not include how someone else may list
20 non-medication orders, and to the
21 extent that's somebody else's note
22 and that somebody else may have
23 picked it up or interpreted, it's not
24 for this witness.

25 MR. OGINSKI: I'm only asking

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1 , M.D.
2 for his understanding. Since it was
3 done about the time he did his
4 examination, I'm just trying to
5 understand what is his understanding
6 to its meaning.

7 A It's very hard to understand it.
8 It could be consent to transfer, consent for
9 the blood test, consent for the surgery,
10 consent for anesthesia, whatever. It could be
11 -- it's not specific, the consent.

12 Q Was it customary in January of
13 to obtain consent prior to obtaining blood work
14 in the emergency room?

15 MR. : Are you referring
16 to his custom and practice to obtain
17 consent prior to obtaining blood
18 work?

19 MR. OGINSKI: Yes.

20 A There is a procedure that you need
21 consent.

22 Q Written consent?

23 A Yes.

24 Q In your review of the chart is
25 there any consent form that you see signed by

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1 , M.D.

2 anyone concerning any type of treatment to

3 ?

4 A No, I don't see any.

5 Q Could the consent form relate to a

6 consent for surgery as well among the others

7 that you've told me?

8 A Could possible.

9 Q Can you tell me the name of the

10 physician who wrote that note that we just went

11 through?

12 A This one I don't know. This is a

13 signature which I'm not familiar with.

14 Q Let me ask you to turn back,

15 please, to Dr. 's note, his progress note

16 at 2:30?

17 A The note of Dr. ?

18 Q Yes. There's a signature on Dr.

19 's note that appears to be the same as the

20 signature on the non-medication order sheet?

21 MR. : Objection. You

22 want him to analyze whether or not

23 it's the same signature.

24 MR. OGINSKI: I just want to
25 know according to him if it's the

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1 , M.D.

2 same one.

3 MR. : He's not a

4 handwriting expert.

5 MR. OGINSKI: I don't expect

6 him to be.

7 MR. : I'm not going

8 to let him answer. We've already had

9 the deposition of Dr. and at

10 that point he did or did not testify

11 as to whether or not he wrote this.

12 Q Doctor, let me ask you to turn to

13 the blood bank requisition slip?

14 MR. : Which one are you

15 turning to?

16 MR. OGINSKI: January 24, timed

17 at 2:45 A.M.

18 Q Did you fill out this form, Doctor?

19 A No.

20 Q Was this a form that is customarily
21 filled out when you request certain blood work?

22 A Yes.

23 Q According to this note in the top
24 right the blood in this request was drawn at
25 2:45 A.M.?

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1 , M.D.

2 A Yes.

3 Q At the bottom where it says nature
4 of request, there are two boxes checked off,
5 correct?

6 A Yes.

7 Q One is medical and one is
8 surgical/OR?

9 A Yes.

10 Q What does that refer to?

11 A It's a work-up for a medical and

12 surgical condition.

13 Q The OR would be operating room?

14 A Could be.

15 Q Is there anything else that you

16 know of that would represent the initials OR in

17 relation to the word surgical?

18 A Surgical could be it's a surgical

19 case, but it's an OR. It's not a specific.

20 MR. : He's just wants to

21 know does OR stand for operating

22 room?

23 THE WITNESS: Yes.

24 Q Underneath the date, the date is

25 January 24, and the time states 2:45 A.M. Next

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1 , M.D.

2 to that is the word, Stat, with a box checked

3 off; is that correct?

4 A Yes.

5 Q What does that mean?

6 A As soon as possible.

7 Q I'd like you to go back, please, to

8 your note. Specifically to the top portion of

9 the triage note. Is there anything within the

10 triage portion of the note that indicates for

11 how long or when the child had the onset of

12 pain?

13 A In the triage, no.

14 Q Did you inquire from 's

15 family as to what he was doing, if anything, at

16 the time that he had the onset of testicular

17 pain?

18 A I don't remember.

19 Q Did you inquire of 's family

20 whether they had contacted anyone?

21 A I don't recollect asking did the

22 mother.

23 Q Was the emergency room busy in the

24 early morning hours of January 24th at or

25 around the time that you examined ?

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1 , M.D.

2 A I don't remember.

3 Q Doctor, are you board certified in

4 any field of medicine?

5 A No, I'm eligible.

6 Q In what field of medicine are you

7 eligible?

8 A General Internal Medicine.

9 Q Have you ever taken the examination

10 to become board certified?

11 A Yeah, once.

12 Q When was that?

13 A .

14 Q Am I correct that you did not pass

15 the examination?

16 A Yes.

17 Q Have you ever taken the examination
18 again?

19 A No.

20 Q Your attorney has provided to me a
21 curriculum vitae, correct?

22 A Yes.

23 Q Have you reviewed that to see
24 whether or not it's accurate?

25 A It's accurate.

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1 , M.D.

2 Q Accurate up until the present time?

3 A The present.

4 Q Do you have any other publications
5 to your name other than the one that you had in
6 June of ?

7 A No.

8 Q Has your license to practice
9 medicine in the State of New York ever been
10 revoked or suspended?

11 A No.

12 Q You graduated from medical school
13 in in the ?

14 A Yes.

15 Q In addition to a general surgery
16 residency you also did a fellowship, correct?

17 MR. : The CV speaks for
18 itself.

19 A In surgery.

20 Q In cardiovascular and thoracic
21 surgery?

22 A Yes.

23 Q Did you complete that fellowship?

24 A Yes.

25 Q After completing the fellowship

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1 , M.D.

2 training you then indicated that you completed

3 training in general and thoracic surgery in the

4 Medical Center?

5 A Yes.

6 Q What did you mean by that, that you

7 completed training there?

8 A It's a two-year training. So, you

9 complete the two years training in the

10 subspecialty surgery.

11 Q Your curriculum vitae indicates

12 that you did that for four years, though, from

13 to ?

14 A Yes.

15 Q Yet you mentioned that it takes two

16 years to complete the training?

17 A Yes, let me check that. Yes,

18 because I was still doing the completion of my

19 general surgical training at this time with the

20 Armed Forces. ' to ' , right?

21 Q Yes.

22 A That was when I was with the Armed

23 Forces, but if you see the cardiovascular and

24 thoracic surgery at Health Center,

25 that's the one, but I went to the Armed Forces

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1 , M.D.

2 and I completed my general surgery at the same
3 time I was doing thoracic surgery. Because you
4 can do thoracic surgery up to two years.

5 Q Were you still considered a
6 resident during that time?

7 A Not in thoracic surgery. I was
8 considered a resident in general surgery
9 because I have to complete my general surgical
10 training program.

11 Q When did you come to the United
12 States?

13 A .

14 Q From up until , what, if
15 anything, did you do?

16 A I was with the dialysis, what do
17 you call this, dialysis technician with the
18 Nephrology Foundation, and all the dialysis
19 unit in and , and I was working
20 as a medical assistant, and also with the rehab
21 medicine.

22 Q Where did you work as a medical
23 assistant?

24 A It's a private clinic.

25 Q Where?

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1 , M.D.

2 A In .

3 Q Do you know the name?

4 A It's a private clinic.

5 Q Do you know the name of the clinic?

6 A I know the name of the doctor where

7 I work.

8 Q Who was that?

9 A .

10 Q Could you spell that?

11 A , and ,
12 , and at the same time
13 working my qualifying examinations, licensure,
14 Flex.

15 Q That would be your Flex and ECFMG?

16 A Yes.

17 Q Did you apply for any surgical
18 training here in the United States?

19 A No.

20 Q Is there any particular reason why?

21 MR. : Objection.

22 A It was over already.

23 Q Have you worked as a surgeon in any
24 hospital here in the United States?

25 A No.

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2 Q Your duties as a medical attending

3 now at Hospital, do you work in a

4 particular area within the hospital?

5 A Yeah, Department of Medicine floor

6 and admitting.

7 Q Are you licensed to practice

8 medicine in any other state besides New York?

9 A No.

10 Q Who was the Chief of Anesthesiology

11 in January of ?

12 A I don't know.

13 Q Did you ever have occasion to

14 interact with the people from the department of

15 anesthesia at Hospital of ?

16 A No.

17 Q Did you ever learn from anyone in

18 the Department of Anesthesia as to whether they

19 had the equipment available to treat and

20 operate and provide anesthesia service to

21 children under a particular age?

22 A No.

23 Q When did you last work at

24 Hospital of ?

25 A I think two years ago. About two

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1 , M.D.

2 years ago.

3 Q Did your leaving the hospital have

4 anything to do with regard to the treatment

5 rendered to ?

6 A No.

7 Q Did you ever have any conversations

8 with Dr. after had been

9 transferred to ?

10 A No.

11 Q Did you ever learn from anyone

12 separate and apart from receiving a subpoena to

13 come and testify today about what occurred to

14 at Hospital in

15 ?

16 A No.

17 Q Did you review any text books or

18 literature in preparation for today's

19 deposition?

20 A No.

21 MR. OGINSKI: Thank you, Doctor.

22 THE WITNESS: Thank you.

23 (Time noted: 11:55 a.m.)

24

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2 ACKNOWLEDGEMENT

3

4 STATE OF NEW YORK)

5) ss.:

6 COUNTY OF)

7

8 I, , M.D., hereby

9 certify that I have read the transcript of my
10 testimony taken under oath in my deposition of
11 the 23rd day of July, . That the
12 transcript is a true, complete and correct
13 record of what was asked, answered and said
14 during this deposition, and that the answers on
15 the record as given by me are true and correct.

16

17

18 , M.D.

19

20 Signed and subscribed to

21 before me this day

22 of , .

23

24

25 Notary Public

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2 I N D E X

3 EXAMINATION BY PAGE

4 Mr. Oginski

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2 C E R T I F I C A T E

3

4 I, , hereby certify

5 that the Examination of ,

6 M.D., was held before me on July 23, ;

7 That said witness was duly sworn

8 before the commencement of the testimony;

9 That the within testimony was

10 stenographically recorded by myself, and is an

11 accurate record of the Examination of said

12 witness;

13 That the parties herein were

14 represented by counsel as stated herein;

15 That I am not related to any of the

16 parties, in the employ of any of the counsel,

17 nor interested in the outcome of this matter.

18

19 IN WITNESS WHEREOF, I have hereunto set my hand

20 this 23rd day of July, .

21

22

23

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