REDACTED DEPOSITION OF PHYSICIAN'S ASSISTANT
FAILURE TO DIAGNOSE HOLE IN EYE

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 2   SUPREME COURT OF THE STATE OF NEW YORK
 3   COUNTY OF NASSAU
 4   - - - - - - - - - - - - - - - - - - - - - -x
 5                    &                    ,
 6                     Plaintiffs,
 7              -against-
 8                    , P.A.,                        , INC.,
     d/b/a                 HOSPITAL,                       ,
 9   M.D., and                  , P.C.,
10                     Defendants.
11
     Index No.:  XXXX/09
12   - - - - - - - - - - - - - - - - - - - - - -x
13                    &                    ,
14                     Plaintiffs,
15              -against-
16                    , INC.
17                     Defendant.
18   Index No.:  21399/08
     - - - - - - - - - - - - - - - - - - - - - -x
19

20                     Roslyn, New York
21                     December 7, 2009
                       11:07 a.m.
22
     EXAMINATION BEFORE TRIAL of                   ,
23        P.A., s/h/a                   , P.A.
24
25
0002
 1                                                2
 2         EXAMINATION BEFORE TRIAL of
 3                    , P.A., s/h/a                   , P.A.,
 4   one of the Defendants in the above-entitled
 5   action, held at the above time and place,
 6   taken before Cynthia A. Laub, a Notary
 7   Public of the State of New York, pursuant
 8   to Court Order and stipulations between
 9   Counsel.
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0003
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0004
1 4
2 STIPULATIONS
3 IT IS HEREBY STIPULATED, by and between the
4 attorneys for the respective parties hereto, that:
5 All rights provided by the C.P.L.R., and Part 221
6 of the Uniform Rules for the Conduct of Depositions,
7 including the right to object to any question, except
8 as to form, or to move to strike any testimony at this
9 examination is reserved; and in addition, the failure
10 to object to any question or to move to strike any
11 testimony at this examination shall not be a bar or
12 waiver to make such motion at, and is reserved to, the
13 trial of this action.
14 This deposition may be sworn to by the witness

15 being examined before a Notary Public other than the
16 Notary Public before whom this examination was begun,
17 but the failure to do so or to return the original of
18 this deposition to counsel, shall not be deemed a
19 waiver of the rights provided by Rule 3116, C.P.L.R.,
20 and shall be controlled thereby.
21 The filing of the original of this deposition is
22 waived.
23 IT IS FURTHER STIPULATED, a copy of this
24 examination shall be furnished to the attorney for the
25 witness being examined without charge.
0005
1 5
2 , the witness
3 herein, having first been duly sworn by the
4 Notary Public, was examined and testified
5 as follows:
6 EXAMINATION BY
7 MR. OGINSKI:
8 Q. State your name for the record,
9 please.
10 A. .
11 MR. OGINSKI: Can you mark this
12 as 1.
13 [Whereupon, the original
14 hospital record was hereby marked as
15 Plaintiff's Exhibit 1 for
16 identification, as of this date, by the
17 reporter.]
18 MR. OGINSKI: Just for the
19 record, defense counsel has agreed to
20 accept service on behalf of
21 .
22 Q. Good morning.
23 Did you see and treat Mr.
24 on November 13, at
25 Hospital?
0006
1 6
2 A. I don't remember. According to
3 the chart I did.
4 Q. On November 13, , did you
5 diagnose a penetrating eye injury to
6 Mr. ?
7 MR. : Note my objection to
8 form.
9 You can refer to the chart and
10 answer over my objection.
11 A. I diagnosed him with a corneal
12 abrasion.
13 Q. I'll get to your notes. But my
14 question is did you diagnose a penetrating
15 eye injury?
16 MR. : Same objection.
17 You can answer.
18 A. A corneal abrasion, yes.
19 Q. Is a corneal abrasion the same

20   as a ruptured globe?
21   A.   I guess, yes.
22   Q.   You are not an ophthalmologist,
23   correct?
24   A.   Correct.
25   Q.   You are not an optometrist?
0007
1   7
2   A.   No.
3   Q.   You are not a physician?
4   A.   No.
5   Q.   You are not Board certified in
6   emergency medicine, correct?
7   A.   I am not Board certified in
8   emergency medicine.
9   Q.   In other words you're not a
10   Board certified emergency room physician?
11   A.   Correct.
12   Q.   You are not licensed as a
13   medical doctor, correct?
14   A.   Correct.
15   Q.   Did you ever tell
16   that you were a physician?
17   A.   I don't recall the case, but I
18   never introduce myself as a physician.
19   Q.   Do you have any independent
20   memory as you sit here now of telling this
21   patient, Mr.   , that you were a
22   physician?
23   A.   I never tell anybody that I'm a
24   physician.
25   Q.   Did you perform any type of
0008
1   8
2   residency in ophthalmology?
3   A.   No.
4   Q.   Did you perform any type of
5   fellowship in ophthalmology?
6   A.   No.
7   Q.   You are not and do not consider
8   yourself to be an eye doctor, correct?
9   A.   Correct.
10   Q.   Did Mr.   specifically ask
11   for an eye doctor to see him?
12   A.   I don't recall the case.
13   Q.   Okay. In November of   , did
14   Hospital have eye doctors who
15   are on staff and on call available to you
16   to call for consultation?
17   MS.   : Objection to form.
18   A.   Do they have ophthalmologists on
19   call for me to call, yes.
20   Q.   All of my questions all relate
21   to the November   period unless I
22   indicate otherwise.
23   During that time frame, am I
24   correct that you worked under the

25   supervision of an emergency room attending?
0009
1   9
2   A.   Yes.
3   Q.   In the instances where you would
4   see and examine a patient, would the
5   emergency room attending physician be
6   present with you when you conduct your
7   examination?
8   A.   I just want to make sure I
9   understand the question.
10   Q.   I'll rephrase it.
11   MR.   : If you don't
12   understand the question, please ask.
13   Q.   You told me that you worked
14 under the supervision of an emergency room
15 attending.
16   A.   Yes.
17   Q.   When you would see and examine a
18 patient, would the emergency room attending
19 be present with you at the time that you
20 were examining the patient?
21   A.   It depends.
22   Q.   Are there instances where the
23 emergency room attending physician will be
24 present with you when you examine a
25 patient?
0010
1   10
2   A.   Yes.
3   Q.   And are there also instances
4   where the emergency room attending
5   physician will not be present?
6   A.   Yes.
7   Q.   Under what circumstances would
8   an emergency room attending be present for
9   an examination?
10   A.   Can I just make sure I
11 understand the question? So you want to
12 know at what time an emergency room doctor
13 is present while I do my examination.
14   Q.   Correct.
15   A.   Okay, when I work in fast track,
16 there is an attending assigned to fast
17 track, and if I do an exam, he would be
18 present in the fast track area and
19 different parts of the exam, unless it's
20 personal and behind closed doors, he would
21 be subject to.
22   Q.   Describe for me what is fast
23 track.
24   A.   Fast track is an area that is --
25 people are sent to where you don't believe
0011
1   11
2   that they will need a lot of -- a lot of --
3   I don't know how to explain it. Let me

4   just take a minute.
5   MR.   : Take your time.
6   A.   Resources. If they do not need
7   a lot of resources, where there would more
8   than likely not be an admission.
9   Q.   Was Mr.   seen in a fast
10   track setting?
11   A.   Yes.
12   Q.   How do you know that?
13   A.   Because I saw him.
14   Q.   Is there something in the
15   hospital record which would confirm or
16   indicate that he was seen in the fast track
17   setting?
18   A.   Yes.
19   Q.   Show me where.
20   MR.   : What are we looking
21   at.
22   A.   We're looking at the triage
23   note.
24   Q.   What is it on the note that
25   suggests that you saw him in fast track or
0012

2   he was assigned to fast track?
3   A.   It says area, fast track.
4   MR.   : To be clear, it says
5   area, FT.
6   A.   FT.
7   Q.   Was that an area that you were
8   assigned to on that particular day?
9   A.   Yes.
10   Q.   When you saw Mr.   on
11   November 13,   , was an emergency room
12   attending present with you at the time that
13   you were doing the examination of
14   Mr.   ?
15   MR.   : Note my objection to
16   form.
17   Over my objection, you can
18   answer.
19   A.   I don't recall.
20   Q.   Is there anything in any note of
21   this hospital record which would indicate
22   to you whether an attending physician was
23   present at the time that you examined
24   Mr.   on November 13,   ?
25   MR.   : Refer to the chart
0013

2   if you need to.
3   A.   No.
4   Q.   I want you to assume that
5   Mr.   has given testimony in this case
6   and indicated that you were the only one
7   who examined him, and that there was no
8   other physician who ever examined him.

9 Would that refresh your --
10 assuming that testimony to be true, would
11 that refresh your memory --
12 A. No.
13 Q. Wait.
14 A. Sorry.
15 Q. -- as to whether an attending,
16 emergency room physician was present at the
17 time that you examined him?
18 MR. : Just note my
19 objection to form.
20 You can answer.
21 A. No.
22 Q. Who was the emergency room
23 attending that was supervising you on
24 November 13th in the fast track area in
25 Hospital?
0014
1 14
2 A. .
3 Q. Could you spell it?
4 A. No.
5 Q. Did Dr. examine this
6 patient in your presence?
7 A. I don't recall.
8 Q. If a physician performs an
9 examination of a patient, you would expect
10 that the physician would write a note in
11 the hospital chart indicating that they
12 conducted an exam, right?
13 MS. : Note my objection.
14 MR. : Over my objection,
15 you can answer.
16 A. No.
17 Q. Why is that?
18 A. If they agree with the findings,
19 it doesn't necessarily mean that they would
20 write an additional note.
21 Q. Are there instances where an
22 attending will write a note about their own
23 examination?
24 A. Yes.
25 Q. If they don't write a note, how
0015
1 15
2 would you or anybody else have known that
3 particular physician had seen and examined
4 a patient?
5 A. I don't know.
6 Q. Now, if you write a note --
7 sorry, if you examine a patient, you are
8 obligated to write a note in the patient's
9 chart, correct?
10 A. Yes.
11 Q. What's the purpose of that?
12 A. Documentation.
13 Q. For what purpose?

14   A.   For another person to come by
15 and read the chart and know what was done.
16   Q.   Is there anything in this
17 hospital record to indicate that
18 Dr.   saw and examined this
19 particular patient?
20   A.   No.
21   Q.   Is there anything in this
22 hospital record to indicate that any
23 attending physician saw and examined this
24 patient on November 13,   ?
25   A.   No.
0016
1   16
2   Q.   Did you discuss this patient's
3 physical exam and findings with any
4 attending physician before discharging him?
5   A.   I don't recall.
6   Q.   Do you have any note in this
7 hospital record that would confirm that you
8 had discussed your examination and your
9 findings with any attending physician on
10 November 13,   ?
11   A.   No.
12   Q.   Did you have a procedure or a
13 requirement that before discharging a
14 patient that you had examined, that you
15 obtain approval from the emergency room
16 attending who was supervising you?
17   A.   No.
18   Q.   Was it possible for you to see,
19 examine and treat a patient and discharge
20 them without ever discussing that patient's
21 care and treatment with any attending
22 physician?
23   A.   Yes.
24   Q.   Did any emergency room attending
25 physician confirm the diagnosis and
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1   17
2 conclusion that you came to regarding this
3 patient's -- I think you had noted corneal
4 abrasion?
5   MR.   : Refer to the chart.
6   A.   What was the question?
7   Q.   I'll rephrase it.
8   Did any emergency room doctor
9 confirm your physical examination findings?
10   MR.   : Please refer to the
11   chart.
12   A.   I don't recall.
13   Q.   Is there anything in the notes,
14 in the hospital record, to reflect that any
15 emergency room physician confirmed your
16 physical examination findings?
17   A.   No.
18   Q.   Is there anything in the

19   hospital record to confirm that any
20   emergency room attending confirmed your
21   diagnosis of a corneal abrasion?
22   A.   No.
23   Q.   What is a corneal laceration?
24   A.   It's a cut in the eye.
25   Q.   Is it a penetrating cut?
0018

2   A.   A laceration is.
3   Q.   Where does it extend to?
4   A.   You want anatomy?
5   Q.   Yes.
6   A.   It extends through the cornea
7   into the -- I don't know if I'm going to
8   pronounce it right, the vicious -- the
9   viscus.
10   Q.   In the course of your career,
11 have you ever diagnosed a patient with
12 corneal lacerations?
13   A.   Yes.
14   Q.   And before November 13,   ,
15 had you ever diagnosed a patient with
16 corneal abrasion?
17   A.   Yes.
18   Q.   Now, in your opinion, is a
19 corneal abrasion the same as a corneal
20 laceration?
21   A.   No.
22   Q.   What is the difference?
23   A.   Abrasion is into the outer
24 surface without penetrating into the globe
25 itself.
0019

2   Q.   And the laceration?
3   A.   Goes deeper.
4   Q.   How do you define a ruptured
5   globe?
6   A.   A ruptured globe is a
7   penetrating injury into the eye itself.
8   Q.   Have you ever diagnosed a
9   ruptured globe in your career?
10   A.   Yes.
11   Q.   What diagnostic tools do you
12 need in order to see a hole in an eye?
13   MR.   : Note my objection to
14   form.
15   Over objection, you can answer.
16   A.   Could you repeat that again.
17   Q.   When you examine a patient's
18 eye, there are various diagnostic tools
19 that you use to examine an eye, correct?
20   A.   Okay.
21   Q.   What tools do you need in order
22 to conclude that there is a rupture in
23 someone's eye?

24 MR. : Note my objection --
25 Q. Ruptured globe.
0020
1
2 MR. : Same objection.
3 You can answer.
4 A. You know, if you have a ruptured
5 globe and it's significant enough, I can
6 use -- just with my own eyesight you could
7 see it.
8 Q. Tell me what you mean by
9 "significant enough."
10 A. Well, if you have any kind of
11 findings, if you have a finding where your
12 pupil is unequal, if there's blood in the
13 anterior chamber, if there's a penetrating
14 injury with something sticking out of it, I
15 don't need any diagnostic tool to see that.
16 Q. If it's not so obvious, what
17 diagnostic tools can you use to make such a
18 diagnosis?
19 MS. : Just note my
20 objection.
21 MR. : Same objection.
22 A. A fundoscope, a Wood's lamp.
23 Q. Anything else?
24 A. Slit lamp.
25 Q. Anything else?
0021
1
2 A. Are you just asking for
3 instruments?
4 Q. Yes, correct.
5 I'm sorry, was there anything
6 else? Any other diagnostic instruments?
7 A. Instruments you're looking for.
8 Q. Yes.
9 MR. : Anything else, other
10 than what you've already testified to.
11 Q. Is that a yes, no?
12 A. You're just looking for
13 instruments, is that it?
14 Q. Yes.
15 Is that it?
16 A. Uh-huh.
17 MR. : You have to say yes
18 or no.
19 A. Yes.
20 Q. What is a fundoscope?
21 A. It is an attachment on a light
22 that you can magnify and you can look into
23 the anterior chamber. You can -- you can
24 adjust it to magnify it. It also has a
25 color on it that if you stain somebody's
0022
1
2 eye, you can look at it and look at the

3   stain through it.
4   Q.   Is that also known as an
5   ophthalmoscope?
6   A.   Yeah. Sorry.
7   Q.   What is a Wood's lamp?
8   A.   A Wood's lamp is a hand-held --
9   it's a hand-held light, black light, two
10 black lights, and in the middle is a
11 magnification area that you hold over the
12 person's eye.
13   Q.   What is a what a lamp?
14   A.   A slit lamp is -- is -- I'm
15 going to say it's a bigger more
16 sophisticated version of a Wood's lamp with
17 magnification.
18   Q.   Have you used a fundoscope in
19 your career?
20   A.   Yes.
21   Q.   Have you used a Wood's lamp?
22   A.   Yes.
23   Q.   Have you used a slit lamp?
24   A.   Yes.
25   Q.   Now, you've told me that you've
0023

2   had occasion to diagnose corneal abrasions
3   before.
4   A.   Yes.
5   Q.   Tell me generally what corneal
6   abrasions look like.
7   MR.   : Objection to form.
8   Over my objection, you can
9   answer.
10   A.   They're usually an area that has
11 an uptake in Fluorescein.
12   Q.   What is Fluorescein?
13   A.   Fluorescein is a little dye that
14 you put into somebody's eye, and it
15 enhances any abrasions, foreign bodies.
16   Q.   It allows you to see any
17 possible injury?
18   A.   Yes.
19   Q.   You learned from the patient
20 himself that he suffered some type of
21 trauma to his eye immediately prior to
22 coming into the hospital, correct?
23   A.   Yes.
24   Q.   And as a result of your
25 examination of the patient, you diagnosed a
0024

2   corneal abrasion, correct?
3   A.   Yes.
4   Q.   This was in the right eye?
5   A.   Yes.
6   Q.   Where within the right eye did
7   you observe the corneal abrasion?

 8   A.   (Indicating.)
 9   Sorry. The medial aspect of the
10   outer rim of the iris.
11   Q.   You have that noted under the
12   procedure, comments and assessments section
13   on the bottom left side of the page?
14   A.   Yes.
15   Q.   What would you call this
16   particular page?
17   A.   The back of the chart.
18   Q.   Is it a multi-page form? What
19   is it? Is it history, physical? You tell
20   me.
21   MR.   : The page or that
22   aspect of it.
23   MR. OGINSKI: I just want to
24   know what that form is part of.
25   A.   It's part of the -- it's part of
0025

 2   my note in the hospital.
 3   Q.   And the form itself, does it
 4   have a name?
 5   MR.   : I think he's
 6   specifically referring to this form
 7   where you have the area of the injury
 8   noted.
 9   Does it have a name? The other
10   page. Specifically this page. Does
11   this page specifically have a name.
12   A.   Not that I know of.
13   Q.   Together with your diagram of
14   the location of the abrasion that you
15   observed, you have some other notes next to
16   that, correct?
17   A.   Yes.
18   Q.   What is a cornea?
19   A.   It's the outer layer of the eye.
20   Sorry, I'm just a little
21   nervous.
22   MR.   : Take your time.
23   Listen to the question and then answer
24   what he's asking you.
25   I believe the question is what a
0026

 2   cornea.
 3   A.   The cornea is a lens.
 4   Q.   Now, you've told me what a
 5   corneal abrasion is.
 6   How do you diagnose a corneal
 7   abrasion?
 8   A.   History and physical exam.
 9   Q.   Can you be more specific?
10   A.   Diagnoses are based on patient's
11   history, what they tell you, and your
12   physical exam, your findings.

13 Q. What is it about a patient's
14 history or physical that would suggest to
15 you that they had a corneal abrasion?
16 A. I took the history --
17 Q. I'm not asking specifically yet.
18 I'll get to that.
19 I just want to know --
20 MR. OGINSKI: I'll rephrase it.
21 Q. When you do a physical
22 examination, you look at the patient
23 grossly, with your own eyes?
24 A. Uh-huh.
25 Q. You have to answer verbally.
0027

2 A. Sorry. Sorry. Yes.
3 Q. In addition, you use various
4 diagnostic tools to assess a patient's eye
5 specifically, correct?
6 A. Uh-huh.
7 MR. : You have to say yes
8 and wait until he's done with his
9 question, please.
10 Q. Are you able to diagnose a
11 corneal abrasion just by looking at a
12 patient with your own eyes without any
13 tools?
14 A. I have never.
15 Q. You have never diagnosed a
16 patient with an abrasion just by your own
17 eyes?
18 A. No. I've never.
19 Q. What tools do you need in order
20 to conclude that a patient has a corneal
21 abrasion?
22 A. Fluorescein, something to
23 activate the Fluorescein and Wood's lamp.
24 Q. In November of , did you
25 have the ability to use a Wood's lamp in
0028

2 Hospital?
3 MS. : Note my objection.
4 A. Yes.
5 Q. Did you have the ability to use
6 a slit lamp?
7 MR. : What time period.
8 MR. OGINSKI: The date the
9 patient was seen.
10 A. Yes.
11 Q. Did you have a Fundoscope
12 available to you?
13 A. Yes.
14 Q. How do you treat corneal
15 abrasion?
16 MR. : Note my objection to
17 form.

18   Over my objection, you can
19   answer.
20   A.   With antibiotic drops.
21   Q.   Why do you prescribe antibiotic
22   drops for an abrasion?
23   A.   It helps speed the healing
24   process.
25   Q.   Is an abrasion similar to a
0029

2   scrape or scratch on any other part of the
3   body?
4   MR.   : Note my objection to
5   form.
6   Over my objection, you can
7   answer.
8   MR. OGINSKI: I'll rephrase it.
9   Q.   A corneal abrasion is a scratch
10   to the cornea, correct?
11   A.   It's an abrasion to the cornea.
12   Q.   How would you define abrasion?
13   A.   There's a little bit of a
14   difference between an abrasion and a
15   scratch. An abrasion is more of a
16   superficial injury.
17   Q.   How is a scratch not
18   superficial?
19   A.   A scratch can penetrate through
20   layers.
21   Q.   How does the administration -- I
22   assume it's antibiotic drops?
23   A.   Uh-huh.
24   Q.   How does the administration of
25   antibiotic drops aid with healing?
0030

2   A.   Whenever you have any kind of
3   injury to your eye, it's your eye's own
4   makeup to have it tear. And that tearing
5   can become infectious. So the antibiotic
6   drops help stop that process and helps
7   allow the healing process to speed up,
8   whereas your own eye won't -- where your
9   own eye has that natural tearing and
10   discharge going on. It stops that and it
11   helps quicken.
12   Q.   How do you know what type of
13   antibiotic drops to prescribe?
14   A.   In monthly or every couple of
15   months, you get -- people subscribe to
16   literature and you get handouts on
17   literature and on drugs, and on drug
18   medication. And there is a number of
19   antibiotics that you could use for a
20   corneal abrasion.
21   Q.   We talked a little bit about
22   ruptured globe. How would you define a

23   ruptured globe?
24   A.   A penetrating eye injury through
25   the layers into the viscus.
0031

2   Q.   In an instance where the
3   penetrating eye injury through the layers
4   into the viscus are not so obvious, does a
5   fundoscope help you diagnose a ruptured
6   globe?
7   MR.   : Note my objection to
8   form.
9   Over my objection, you can
10   answer.
11   MR. OGINSKI: I'll rephrase it.
12   Q.   Can you see a ruptured globe
13 with a Fundoscope?
14   A.   Yes.
15   Q.   Can you see a ruptured globe
16 with a Wood's lamp?
17   A.   Yes.
18   Q.   Can you see a ruptured globe
19 with a slit lamp?
20   A.   Yes.
21   Q.   In November of   , for how
22 many years had you been a physician's
23 assistant?
24   A.   Six.
25   Q.   If a patient has a ruptured
0032

2   globe, what type of symptoms would you
3   expect them to have?
4   A.   I would expect an unequal pupil.
5   Q.   That's a diagnostic finding,
6   correct?
7   A.   Symptoms?
8   Q.   I'm talking about the patient's
9   symptoms.
10   A.   Sorry.
11   Pain.
12   Q.   Anything else?
13   A.   Visual changes.
14   Q.   Anything else?
15   A.   (No response.)
16   Q.   If you have an answer, you have
17 to verbalize.
18   Would you expect to see fluid
19 coming from that rupture from within the
20 globe?
21   A.   Yes.
22   Q.   What type of fluid would be that
23 be?
24   A.   Viscus.
25   Q.   Is the viscus fluid the same as
0033

2 tears.
3 A. A little thicker.
4 Q. Looking at the viscus fluid
5 compared to tears, when you say "a little
6 thicker," is it clear?
7 MR. : The viscus fluid.
8 MR. OGINSKI: I'll rephrase it.
9 Q. Is viscus fluid clear?
10 A. The question, is viscus fluid
11 clear?
12 Q. Yes.
13 A. Yes.
14 Q. Are tears clear?
15 A. Yes.
16 Q. How do you distinguish between a
17 patient who is expressing viscus fluid from
18 their eye as opposed to tears?
19 A. So the lacrymal sack in your eye
20 is in this area right here. So when I
21 would stain the eye over the abrasion or
22 the uptake of the fluid, I would expect
23 some pickup of the fluid coming out of that
24 area.
25 Q. When you say pickup of that
0034

2 fluid, is that going to be a dyed or
3 colored fluid?
4 A. Yes.
5 Q. So let's assume for a moment
6 that a patient has a ruptured globe and
7 there is some viscus fluid coming out from
8 that rupture, and at the same time there
9 are tears that are being produced as well
10 because of the irritation.
11 How do you distinguish from
12 whether the patient is experiencing viscus
13 fluid from the rupture itself as opposed to
14 tears?
15 A. When a person comes in and they
16 have an injury to their eye, one of the
17 first things I do after I get an acuity and
18 do an exam, is I give them some pain
19 medicine.
20 MR. : That's not the
21 question.
22 Listen to the question and then
23 give the answer to the question.
24 MR. OGINSKI: Could I have it
25 read back, please.
0035

2 MR. : Just answer the
3 question.
4 [The requested portion of the
5 record was read by the reporter.]
6 A. The site of the drainage.

7 Q. If the tears are coming out,
8 where would you expect to see the drainage?
9 A. Excuse me?
10 Q. You said you would distinguish
11 the two based upon the site of the
12 drainage.
13 So where would the tears be
14 coming from?
15 A. Tears would be coming from the
16 medial aspect of the eye.
17 Q. That's the corner of the eye?
18 A. Where the lacrymal pond is
19 (indicating).
20 Q. You're indicating the corner of
21 the eye closer to the nose or the bridge of
22 the nose.
23 If it was coming from the
24 ruptured globe, where would you see it?
25 A. From the point of rupture.
0036

2 Q. What treatment is required for a
3 patient who has a ruptured globe?
4 A. Ophthalmology consult.
5 Q. Other than calling in an
6 ophthalmology consult, are you aware of any
7 specific treatment that would be needed in
8 order to repair the rupture?
9 A. No.
10 Q. Did you call an ophthalmology
11 consult for this patient?
12 A. No.
13 Q. Is there a specific reason as to
14 why you did not call an ophthalmology
15 consult for this patient?
16 A. I didn't feel it was necessary.
17 Q. What symptoms or problems would
18 the patient need to have in order for you
19 to call an ophthalmology consult?
20 A. (No response.)
21 MR. : Do you need to have
22 the question read back?
23 A. Could you ask me again, because
24 I just --
25 Q. Sure.
0037

2 MR. : We can have the
3 question read back. Just listen to the
4 question.
5 [The requested portion of the
6 record was read by the reporter.]
7 A. Loss of vision, a pattern of
8 vision loss, like a shade coming down, not
9 being able to see in the periphery.
10 Foreign body in their eye. A tearing
11 pupil.

12 Q. What is that?
13 A. It's a pupil -- if you could
14 picture a tear of a pupil, a tear, instead
15 of the pupil being round, it makes the
16 pupil look like a tear. Or maybe better,
17 an irregular pupil.
18 Q. What would that suggest to you
19 if anything?
20 A. It would suggest that he had a
21 corneal abrasion -- not corneal abrasion.
22 It would suggest that he had a ruptured
23 globe.
24 Q. Anything else?
25 A. Blood in the anterior, posterior
0038

2 chamber of the eye. An ulcer on their eye.
3 Q. A what?
4 A. An ulcer on their eye, or a
5 lesion.
6 MR. : Anything else?
7 A. If they had a laceration or a
8 flap in their eye.
9 Q. Is this laceration different
10 from what we talked about earlier, about a
11 corneal laceration?
12 A. You have to tell me what we
13 talked about before.
14 Q. If a patient -- if you come to
15 the conclusion that the patient has a
16 corneal laceration, would that -- in that
17 instance, would you call an ophthalmology
18 consult for an evaluation?
19 A. Yes.
20 Q. If a patient has a corneal
21 abrasion, would you call an ophthalmology
22 consult?
23 A. No.
24 Q. If a patient specifically asks
25 for an eye doctor, would you call for an
0039

2 ophthalmology consult?
3 A. Yes.
4 Q. Why?
5 A. Because they specifically asked.
6 Q. I want you to assume that
7 Mr. specifically asked to see an eye
8 doctor. Assuming that fact to be true, do
9 you have any reason as you sit here now to
10 know why an eye doctor was not called on
11 November 13, ?
12 MR. : Objection to form.
13 Over my objection, you can
14 answer.
15 A. I have never not called somebody
16 when somebody has asked me to call.

17 Q. I'm not asking about what you
18 normally do.
19 I'm asking specifically, in this
20 particular case, I want you to assume that
21 Mr. has testified that he
22 specifically asked to see an eye doctor for
23 his eye injury. Do you have any reason to
24 know at this point, while you sit here now,
25 why an eye doctor was not called?
0040
1
2 MR. : Objection to form.
3 MS. : Note my objection.
4 A. No.
5 Q. You mentioned if a patient
6 exhibits a loss of vision or a pattern of
7 vision loss like shading, that you would
8 call for a consultation by an
9 ophthalmologist.
10 Why?
11 A. (No response.)
12 Q. In other words, why are those
13 significant enough to require a consult by
14 an ophthalmologist.
15 A. I'm just trying to think --
16 MR. : Think to yourself
17 and answer the question.
18 A. Because of the disease processes
19 that they could be leading you to believe
20 are going on.
21 Q. Would it be fair to say that you
22 are not qualified to evaluate or treat a
23 loss of vision?
24 MR. : Objection to form.
25 Over my objection, you can
0041
1
2 answer.
3 MR. OGINSKI: I'll withdraw it.
4 Q. The reason you call for an
5 ophthalmology consult is because they have
6 certain expertise in treating certain eye
7 conditions, correct?
8 A. Yes.
9 Q. Certain eye conditions that you
10 may not be qualified to treat, correct?
11 A. Yes.
12 Q. And loss of vision and partial
13 loss of vision would be two of those
14 examples, correct?
15 MR. : Objection to form.
16 A. (No response.)
17 Q. I'll rephrase it.
18 Are you qualified to treat a
19 patient who has total vision loss?
20 A. No.
21 Q. Are you qualified to treat a

22 patient who has partial vision loss as a
23 result of a trauma to the eye?
24 A. Could you be more specific.
25 Q. Sure. If a patient, after your
0042

2 evaluation, you determine that the patient
3 has only partial vision as a result of some
4 trauma to their eye. As of November ,
5 were you qualified to treat a patient's
6 partial vision loss?
7 MR. : Objection to form.
8 Over my objection, you can
9 answer.
10 A. It depends.
11 Q. On what?
12 A. On why -- why they're -- they
13 have vision loss.
14 Q. Would you agree that a physician
15 with experience in treating patients in the
16 field of ophthalmology would be better
17 qualified to evaluate and treat patients
18 with partial vision loss?
19 A. Absolutely.
20 Q. At any time while this patient
21 was in Hospital on November 13,
22 , did you ever call or request an
23 ophthalmology consult for this patient?
24 MR. : Objection.
25 Asked and answered.
0043

2 Over my objection, you can
3 answer.
4 A. No.
5 Q. A patient comes into the
6 emergency room in November of . You
7 make a decision, you need to get an
8 ophthalmology consult in to see the patient
9 before they leave.
10 How do you actually go about
11 getting that consult?
12 A. I call the on-call
13 ophthalmologist.
14 Q. Were those on-call
15 ophthalmologists present within the
16 hospital or did they have outside offices
17 and they would then come in to see the
18 patient?
19 A. Outside offices.
20 Q. You had mentioned to me that you
21 did not feel that the patient needed an
22 ophthalmology consult.
23 Tell me why.
24 A. I felt he had a corneal
25 abrasion, and the eyedrops would work, and
0044

1 44
2 he did not need an immediate ophthalmology
3 consult.
4 Q. Did you recommend to the patient
5 that he see an ophthalmologist that day?
6 A. No.
7 Q. Now, did you personally measure
8 this patient's visual acuity?
9 A. I don't recall.
10 Q. If you had measured the
11 patient's visual acuity, would you have
12 made a note that you had examined the
13 patient's visual acuity?
14 A. Yes.
15 Q. And do you have a note in the
16 patient's chart reflecting that you
17 conducted a visual acuity test?
18 A. Yes.
19 Q. And does that note reflect that
20 it was you who conducted the test as
21 opposed to the triage nurse?
22 A. No.
23 Q. In fact, if you look at the
24 triage note, you'll see that the visual
25 acuity was tested when he came into triage,
0045
1 45
2 correct?
3 A. No.
4 Q. Can you point to me where the
5 patient's visual acuity is noted in the
6 record, please.
7 A. It's noted on my note, in the
8 back of the chart. Left eye, 20/50, right
9 eye, 20/100. It is noted on the triage
10 note, left eye, 20/50, right eye, 20/100.
11 Q. The notes on the triage record,
12 is that in your handwriting?
13 A. No.
14 Q. Yes or no.
15 A. No. I said no.
16 Q. Did you learn from Mr.
17 that he had no problem with his right eye
18 before this incident on November 13th?
19 A. No.
20 Q. On November 13, , you were
21 employed by ,
22 P.C., correct?
23 A. Yes.
24 Q. For how long had you been an
25 employee of that group?
0046
1 46
2 A. I don't recall.
3 Q. Approximately. How many days,
4 weeks, months, years.
5 A. Three or four years.

6 Q. And you were a physician's
7 assistant, correct?
8 A. Yes.
9 Q. Before working for
10 , where did you work?
11 A. I worked at .
12 Q. In what department?
13 A. The emergency room.
14 Q. From when to when?
15 A. From until , as a
16 physician's assistant.
17 Q. Before becoming a physician's
18 assistant, were you in the medical field?
19 A. Yes.
20 Q. As what?
21 A. I was a nurse's aide.
22 Q. What does a nurse's aide do?
23 A. They help -- they actually are
24 sort of an extension of a nurse. They
25 don't prescribe medications or anything,
0047

2 but they will take vitals, they'll do EKGs,
3 they'll do patient care, take people to
4 their rooms.
5 Q. How long did you work as a
6 nurse's aide?
7 A. I worked from to .
8 Q. And before obtaining your
9 physician's assistant degree, did you have
10 any degree before that?
11 A. No.
12 Q. What do you do as a physician's
13 assistant?
14 A. Do you mean what do I do as a
15 physician' assistant in the emergency room,
16 or what do physician's assistants do?
17 Q. Let's take your role as a
18 physician's assistant in the emergency
19 room.
20 A. Okay, it's going to depend on
21 the hospital that I work in, what my --
22 what I'm allowed to do in each emergency
23 room.
24 Q. Let me be more specific. At
25 Hospital, what did you do as a
0048

2 physician's assistant in the emergency
3 room?
4 A. Patient care.
5 Q. Be more specific.
6 A. I would see a patient, take a
7 history and physical, do minor procedures,
8 sutures, suture removals. I might start an
9 IV, give medication, order labs, interpret
10 those results, order X-rays, interpret

11   those X-rays. I might order other
12   diagnostic modalities. Treat the patient.
13   Write prescriptions.
14   Q.   Were there certain types of
15   patients that you were not permitted to see
16   at   Hospital as a physician's
17   assistant?
18   MR.   : At any time in
19   November?
20   Q.   In   .
21   A.   That they specifically said you
22   can't see them.
23   Q.   In other words, a patient comes
24   in with a particular problem. Do they
25   assign usually to a physician as opposed to
0049

2   you, because of the severity of the
3   problem?
4   How does it work where a patient
5   will get assigned to you as opposed to a
6   medical doctor?
7   MS.   : Objection to form.
8   MR.   : Objection.
9   You may answer.
10   A.   It's really going to depend on
11   the triage nurse the person that I see.
12   In general, more severe, cardiac
13   arrests, MI, strokes, they would go into
14   the main treatment area.
15   Q.   As a physician's assistant, do
16   you participate in surgery?
17   A.   Me in particular, I do not at
18   this time. I have in the past.
19   Q.   I'm only talking about in
20   November of   .
21   A.   No.
22   Q.   When Mr.   was seen at
23   Hospital, was there any equipment
24   that you had available to you that was not
25   working that you needed in order to
0050

2   evaluate his condition?
3   A.   No.
4   Q.   Was all of the equipment that
5   you used to examine him, in your opinion,
6   working properly?
7   A.   Yes.
8   Q.   Now, if a patient specifically
9   requests for a specialist, would you agree
10   that you have an obligation to then request
11   and obtain a consult for that specialty?
12   A.   Yes.
13   Q.   What is the iris?
14   MR.   : Asked and answered.
15   Over and objection, you may

16 answer.
17 MR. OGINSKI: We talked about
18 the pupil.
19 A. The iris is the color part
20 around the eye that constricts the pupil.
21 Actually it's the iris that is going
22 around, that brown, on me it's brown.
23 Q. What is the purpose of the iris?
24 A. Purpose of the iris. The
25 purpose is the layer that constricts around
0051

2 the pupil.
3 Q. What is its function?
4 A. To help -- to help -- to help
5 the pupil -- I don't know the terminology.
6 To help the pupil sharpen -- accommodate.
7 Q. If there is it a corneal
8 abrasion, would you expect to see any
9 impact on the iris or any change in the
10 iris?
11 A. If the corneal abrasion is over
12 the iris, then I would expect the
13 Fluorescein to be taken up.
14 Q. What would you see in that
15 instance?
16 A. An uptake of the Fluorescein.
17 Q. What does that mean?
18 A. That means that there is an
19 abrasion, and Fluorescein is taken up in
20 that area, and it's only in the
21 conjunctiva.
22 Q. Are you saying that if there is
23 an issue with the iris, that dye is going
24 to be visible with the iris?
25 A. What I'm saying is that if
0052

2 there's an injury to the iris through the
3 globe, what's going to happen, because the
4 globe -- your eye is kind of dome shaped
5 and the iris kind of goes this way, so it
6 has a layer like that. If the injury is
7 significant enough to go down to the iris,
8 then the viscus fluid, when you uptake it
9 with the dye, would take up the dye and be
10 coming out of that part.
11 So would I necessarily see an
12 uptake in the Fluorescein at that point,
13 no. I would probably see the Fluorescein
14 coming out of the area itself.
15 Q. You talked about a ruptured
16 globe. My question was about a corneal
17 abrasion.
18 Would you see any impact on the
19 iris?
20 MR. : Asked and answered.

21 Over objection, you can answer.
22 Do you want it read back?
23 MR. OGINSKI: I'll rephrase it.
24 Q. In the event that you observe a
25 corneal abrasion, will that have any impact
0053
1
2 on the iris?
3 A. No.
4 Q. Have you ever seen a distorted
5 iris as a result of eye trauma?
6 A. Yes.
7 Q. Did you make any observation
8 that you recorded in the patient's record
9 about the iris?
10 MR. : Refer to the chart.
11 Q. Just for the record, you're
12 looking at the patient's original hospital
13 record which was marked Plaintiff's 1 for
14 identification.
15 A. No.
16 Q. Do you have an independent
17 memory as you sit here now of the
18 examination that you conducted of
19 Mr. on November 13th?
20 A. No.
21 Q. Do you have a memory of who he
22 is and what he looked like on that date?
23 A. No.
24 Q. Separate and apart from your
25 notes regarding this patient's examination,
0054
1
2 do you have any records anywhere else about
3 your treatment of this patient on November
4 13, ?
5 A. No.
6 Q. Are there any notes which you
7 took in the hospital that are not included
8 within the original hospital record in
9 front of you?
10 A. Any notes that I've handwritten?
11 Q. Yes.
12 A. No.
13 Q. Did you dictate any notes
14 regarding this patient?
15 A. No.
16 Q. In preparation for today, did
17 you review any documents?
18 A. Outside of with my lawyer?
19 Q. I'll rephrase it.
20 In preparation for today, you
21 looked at the hospital record, correct?
22 A. Yes.
23 Q. In addition to the hospital
24 record, did you review any other documents?
25 A. No.

0055
1 55
2 Q. Did you review any medical
3 literature?
4 A. No.
5 Q. Any textbooks?
6 A. No.
7 Q. Any journals?
8 A. No.
9 Q. Did you have any discussion with
10 any emergency room physician, letting them
11 know about this particular deposition?
12 A. No.
13 Q. Did you have any conversation
14 with Dr. about this patient?
15 A. No.
16 Q. In preparation for today.
17 A. No.
18 Q. Do you know a Dr.
19 ?
20 A. Yes.
21 Q. Who is he?
22 A. He's one of the emergency room
23 attendings, and I believe a co-director of
24 the E.R.
25 Q. In your review of this patient's
0056
1 56
2 chart, did you see his name appear as the
3 attending physician for this particular
4 patient?
5 A. Yes.
6 Q. Can you tell me, did Dr.
7 ever see or examine this patient on
8 November 13, ?
9 A. I have no idea.
10 Q. Did Dr. ever see or
11 examine this patient on November 13, ?
12 A. I have no idea.
13 Q. Was anyone present with you at
14 the time that you examined Mr. in
15 the emergency room?
16 A. I have no idea.
17 Q. Was there any friend or family
18 member with him at the time?
19 A. I have no idea.
20 Q. Let's talk about fundoscopic eye
21 exam.
22 How do you actually do a
23 fundoscopic eye exam?
24 A. Depending on the lighting in the
25 room, you may need to turn the light off to
0057
1 57
2 see. You have the person look at the
3 wall -- a point on the wall, so they're
4 looking. You come -- if it is your left

5 eye, then I'm coming in with my left eye.
6 I usually come from the lateral aspect and
7 look into the pupil.
8 Q. What are you looking for?
9 A. I'm looking for the
10 vascularization, the physiological cup, the
11 macular, the papula, arteries, veins, the
12 cup-to-disc ratio.
13 Q. What is that?
14 A. What?
15 Q. The cup-to-disc ratio.
16 A. Two to one.
17 Q. Tell me what it represents.
18 What does it mean?
19 A. If you have an enlarged -- it
20 can mean extra pressure, it can mean
21 pressure behind the eye.
22 Q. What does the ratio represent?
23 A. The ratio represents the
24 pressure in the eye.
25 Q. Did you obtain the patient's

2 pressure in the emergency room?
3 A. With my thumbs, I usually do it
4 all the time. When you...
5 Q. Tell me what you mean.
6 A. So when somebody comes in, as
7 part of your eye exam, you should assess
8 their pressure, so what you do is you just
9 push on the top of their eyes to make sure
10 that they're equal and they're not too
11 boggy or not too tense.
12 Q. You're talking about with their
13 eyelids closed?
14 A. No.
15 Q. You're not putting your fingers
16 on their eyes themselves?
17 A. Not on their eyes themselves.
18 Q. Are you aware that there are
19 diagnostic tests or equipment to help you
20 to evaluate and measure a patient's
21 pressure -- their intraocular pressure?
22 A. Yes.
23 Q. Do you have training to use
24 those types of diagnostic tools?
25 A. Yes.

2 Q. Did you have that equipment
3 available to you in the emergency room on
4 November 13, ?
5 A. No.
6 Q. Did you obtain the patient's
7 intraocular pressure in the emergency room?
8 A. You want to know if I obtained
9 it.

10 Q. Yes.
11 A. Not assessed.
12 Q. Did you obtain it.
13 A. No.
14 Q. Did you do this thumb test that
15 you told me about?
16 A. Yes.
17 Q. What was the result of that
18 thumb test?
19 A. The thumb test would have been
20 okay. I must have -- I assessed it as it
21 being normal and equal.
22 Q. You told me that you have no
23 independent memory of this patient.
24 Looking at the hospital record
25 for this patient, is there anything in the
0060

2 record to confirm, number one, that you did
3 this thumb test that you just told me
4 about?
5 MR. : If you need to
6 refresh your recollection, you can.
7 A. No.
8 Q. Is there anything in the
9 patient's record to confirm that the result
10 of any thumb test you may have performed
11 was negative?
12 A. No.
13 Q. Or normal.
14 A. No.
15 Q. Now, other than this fundoscope
16 that you used to do this examination, do
17 you use any other tool to perform this
18 fundoscopic eye exam?
19 A. No.
20 Q. In the course of becoming a
21 physician's assistant, you learned how to
22 perform a fundoscopic exam, yes?
23 A. Yes.
24 Q. In the course of your career
25 working as a physician's assistant, you had
0061

2 an opportunity to perform fundoscopic eye
3 exams?
4 A. Yes.
5 Q. There have been issues where you
6 noted abnormalities or problems with a
7 patient's eye based on your fundoscopic
8 exam, yes?
9 A. Yes.
10 Q. If you had determined that this
11 patient had a ruptured globe as a result of
12 your examination of the patient, would you
13 agree that good treatment would require
14 that the patient would need immediate

15   surgery with an eye specialist?
16   MR.   : Objection to form.
17   Over my objection, you can
18   answer.
19   MS.   : Note my objection.
20   A.   I would agree that he would need
21   an ophthalmology consult.
22   Q.   And you would leave it up to the
23   ophthalmologist in order to determine the
24   course of treatment?
25   A.   Yes.
0062

2   Q.   Now, when Mr.   came into
3   the emergency room, did you observe tearing
4   from his right eye?
5   A.   I don't recall.
6   Q.   Is there anything in your record
7   to reflect whether you observed any tearing
8   from his eye?
9   A.   No.
10   Q.   Is there anything in the chart,
11 whether triage or anywhere else, to suggest
12 that the patient had tearing in his eyes?
13   A.   Could you repeat the question.
14   Q.   Does the record reflect that the
15 patient had tearing in his right eye?
16   A.   No.
17   Q.   He was complaining of eye pain,
18 correct?
19   A.   Yes.
20   Q.   It was noted to be 10 out of 10?
21   A.   Yes.
22   Q.   And how would you describe 10
23 out of 10?
24   A.   I can't describe 10 out of 10.
25   Q.   What does the scale mean to you?
0063

2   A.   The scale is the worst pain of
3   his life. The most horrific pain in the
4   world.
5   Q.   Did you have any reason to
6   disagree with the patient's assessment of
7   the pain that he was experiencing?
8   A.   Pain is subjective.
9   Q.   I'm only asking whether you had
10 any reason to disagree about the patient's
11 interpretation of his pain.
12   A.   Yes.
13   Q.   Tell me the basis for why you
14 disagreed that the patient's assessment of
15 his pain was not as significant as he
16 described.
17   MR.   : Objection to form.
18   Over my objection, you can
19   answer.

20 A. I don't recall the case.
21 Q. Then let me stop you.
22 What do you base that statement
23 on that you believe the patient was not
24 accurately describing the extent of his
25 pain?
0064
1 64
2 A. End of my exam, I wrote his
3 distress is mild.
4 Q. Is this your handwriting on the
5 top left hand of the page?
6 A. Yes.
7 Q. The 10 out of 10 represents the
8 patient's opinion of his own pain.
9 A. Yes.
10 Q. And your notation, you circled
11 mild.
12 In this form, under the physical
13 examination, am I correct that there are
14 different items, there's constitutional,
15 correct?
16 A. Yes.
17 Q. There is alert and NAD, no
18 apparent distress, correct?
19 A. Uh-huh.
20 Q. The area that you circled, mild,
21 does that refer to constitutional, does
22 that refer to alert, does that refer to no
23 apparent distress, or something else?
24 A. It's right next to distress, so
25 it refers to his level of distress in my
0065
1 65
2 opinion at that time.
3 Q. Other than that observation, do
4 you have any reason to believe that the
5 patient's extent of his pain was not as
6 significant as he was describing?
7 A. No.
8 Q. Did you observe any bleeding
9 from his eye?
10 A. No.
11 Q. Did you observe any foreign body
12 within the eye?
13 A. No.
14 Q. Did you ask the patient what
15 happened to him?
16 A. Yes.
17 Q. And specifically in response to
18 your question, what did the patient say,
19 based upon your record you have in front of
20 you? And I'm not asking about triage. I'm
21 asking specifically your examination.
22 A. While at , felt like
23 something popped in it, in his eye.
24 Q. Did Mr. wear contact

25   lenses?
0066
 1   66
 2   A.   Not at the time that I saw him.
 3   Q.   Did you inquire whether he wore
 4   contact lenses?
 5   A.   No.
 6   Q.   Did you inquire whether he wore
 7   corrective lenses?
 8   A.   No.
 9   Q.   Is there anything in your note
10   to reflect that you inquired about any
11   corrective lenses?
12   A.   No.
13   Q.   Would you agree that when
14   examining a patient with eye trauma, it's
15   important to obtain a thorough and detailed
16   history?
17   MR.   : Objection to form.
18   Over my objection, you can
19   answer.
20   A.   Yes.
21   Q.   Why?
22   A.   To give you a base.
23   Q.   For what?
24   A.   For your exam.
25   Q.   Why is it important for you as a
0067
 1   67
 2   medical treater to know what the patient's
 3   baseline is?
 4   A.   So you could tell if there's any
 5   changes.
 6   MR. OGINSKI: Let's go off the
 7   record.
 8   [Discussion held off the
 9   record.]
10   Q.   Now, when you examined the
11   patient, you learned that his visual acuity
12   was 20/50 in his left eye, correct?
13   A.   Yes.
14   Q.   And 20/100 in his right eye,
15   correct?
16   A.   Yes.
17   Q.   How would you describe the
18   acuity in the left eye? Is it normal,
19   abnormal?
20   A.   It's different from the right
21   eye.
22   Q.   I'm not asking you to compare.
23   I'm just asking that visual acuity of
24   20/50, is it normal?
25   MR.   : Objection to form.
0068
 1   68
 2   Over my objection, you can
 3   answer.

4 A. I don't know if it's normal for
5 him or not.
6 Q. The 20/100, would you agree that
7 that is an abnormal reading for this
8 patient?
9 A. Yes.
10 Q. Did the patient express to you
11 that he had blurriness and difficulty
12 seeing out of the right eye?
13 A. I have no idea.
14 Q. You have no idea because you
15 don't recall?
16 A. Because I don't recall.
17 Q. Is there anything in your notes
18 to suggest that the patient had blurriness
19 or blurry vision in his right eye?
20 A. No.
21 Q. In a patient who has a vision of
22 20/100 that is not corrected, would you
23 expect them to have blurry vision in that
24 eye?
25 MR. : Note my objection to
0069

2 form.
3 Over my objection, you can
4 answer.
5 A. Just repeat it again.
6 MR. OGINSKI: Can I have it read
7 back.
8 [The requested portion of the
9 record was read by the reporter.]
10 A. Yes.
11 Q. How was this visual acuity test
12 taken?
13 A. I don't know if I understand the
14 question.
15 Q. How do you take a patient's
16 visual acuity?
17 A. Okay. All right. There's a --
18 in Hospital, there is a visual
19 acuity chart on the wall and it's marked on
20 the floor, and the patient stands behind
21 the mark that we have on the floor, and we
22 do a visual acuity. It's customary to do
23 the eye of injury first and then the next
24 eye, and then the opposite eye.
25 Q. It's an eye test, an eye chart?
0070

2 A. Uh-huh.
3 Q. You stand 20 feet away and ask
4 the patient to cover the unaffected eye and
5 ask them to read the smallest line?
6 A. In .
7 Q. Then you cover the affected eye
8 and ask them to read out of their good eye?

9 A. Yes.
10 Q. In treating a patient with a
11 suspected eye injury, would you agree that
12 it's good medical practice to determine
13 whether they have or use corrective lenses?
14 MR. : Note my objection to
15 form.
16 Over my objection, you can
17 answer.
18 A. Yes.
19 Q. Why?
20 A. For your baseline.
21 Q. Explain what you mean. Why is
22 it important for you to know whether or not
23 the patient wears corrective lenses?
24 A. Because if their vision during
25 their visual acuity isn't as good as you
0071

2 would like it to be, that could be the
3 reason for it. Because they've already
4 been diagnosed with an impairment.
5 Q. If you don't inquire about
6 whether or not they are wearing or have
7 corrective lenses, how would that impair
8 your ability to accurately assess the
9 patient's visual acuity?
10 A. Excuse me?
11 Q. I'll rephrase it.
12 To what, if anything, did you
13 attribute the visual acuity in the
14 patient's right eye of 20/100?
15 A. So you want to know why --
16 MR. : We can have the
17 question read back if you want.
18 Do you want the question read
19 back?
20 THE WITNESS: Please.
21 [The requested portion of the
22 record was read by the reporter.]
23 A. The fact that he said something
24 popped into his eye and his pain was a 10
25 out of 10.
0072

2 Q. Why would that cause a change in
3 visual acuity?
4 A. Most people, when they have a
5 corneal abrasion, or something pop into
6 their eye, tend to hold and rub their eye,
7 tearing, rubbing, rubbing away tears can
8 blur your vision.
9 Q. Now, you told me that there was
10 no evidence that you observed any tearing
11 in this patient.
12 At the time that his visual
13 acuity was obtained, was there any evidence

14   that he was tearing or had some impairment?
15   A.   No.
16   Q.   To what, if anything, did you
17   attribute his decreased visual acuity in
18   his right eye in the absence of tearing?
19   A.   I don't recall.
20   Q.   Now, would you agree that if, in
21   fact, this patient had a ruptured globe on
22   November 13,   , that you should have
23   been able to see that rupture? Correct?
24   MR.   : Note my objection to
25   form.
0073
 1   73
 2   You can answer over my
 3   objection.
 4   MR. OGINSKI: I'll rephrase.
 5   Q.   If the patient had a ruptured
 6   globe in his right eye, you would be able
 7   to see that just by gross examination, just
 8   by looking at him, correct?
 9   MR.   : Note my objection to
10   form.
11   You can answer.
12   A.   No.
13   Q.   If the patient had a ruptured
14   globe and you used Fluorescein and
15   performed a fundoscopic examination, you
16   should have been able to see any ruptured
17   globe, correct?
18   MR.   : Note my objection to
19   form.
20   Over objection, you can answer.
21   A.   No.
22   Q.   Explain why.
23   MR.   : Do you need to have
24   the question read back.
25   THE WITNESS: Do you mind, I'm
0074
 1   74
 2   sorry.
 3   [The requested portion of the
 4   record was read by the reporter.]
 5   MR. WITNESS: Can I go back, I
 6   think I misunderstood one of the
 7   questions.
 8   MR.   : Sure.
 9   A.   If I performed a fundoscopic
10   exam on somebody, would I be able to see if
11   they had a ruptured globe.
12   Q.   Yes.
13   A.   Based on a fundoscopic exam.
14   All ruptured globes, or the
15   average run-of-the-mill ruptured globe?
16   Q.   We're talking generally.
17   A.   Yes.
18   MR.   : So you want to

19 change your answer.
20 A. Yes. I want to change that.
21 THE WITNESS: I thought he said
22 if you just looked at it.
23 MR. : That was before
24 that.
25 Q. Would you agree that if you
0075

2 perform a fundoscopic examination using
3 Fluorescein and the patient does have a
4 ruptured globe, that the failure to see
5 that rupture would be a departure from good
6 and accepted medical practice?
7 A. I would not necessarily perform
8 a fundoscopic exam with Fluorescein.
9 MR. : That wasn't the
10 question that was asked of you.
11 MR. OGINSKI: I'll rephrase it.
12 MR. : Just listen to what
13 he's saying.
14 Q. If the patient comes in with a
15 ruptured globe and you perform a
16 fundoscopic exam, you've told me that you
17 should be able to see it and recognize it.
18 My question is a little bit of
19 the opposite. If you failed to recognize
20 it, would you agree that that would be
21 departure from good care?
22 MR. : Objection to form.
23 Over my objection, you can
24 answer.
25 A. Yes.
0076

2 Q. Why?
3 A. You failed to provide the care
4 that the patient needed.
5 Q. If the patient, in fact, had a
6 ruptured globe and you failed to refer the
7 patient to an ophthalmologist for a
8 consultation, would you agree that that
9 also would be departure from good care?
10 MR. : Objection to form.
11 Over my objection, you can
12 answer.
13 A. Yes.
14 Q. Would that be for the same
15 reason?
16 A. Yes.
17 Q. Did you learn from any physician
18 that after Mr. had left
19 Hospital, that two days later, he was
20 diagnosed with a ruptured globe?
21 A. No.
22 Q. Did you learn from anybody,
23 except your attorney, that Mr. was

24   diagnosed with a ruptured globe on November
25   15,   ?
0077
 1   77
 2   A.   No.
 3   Q.   Do you have an opinion as to
 4   whether an ophthalmologist, if an
 5   ophthalmologist had been called in to
 6   examine this patient, whether or not his or
 7   her findings would have been different from
 8   your findings on November 13,   ?
 9   MS.   : Objection.
10   MR.   : Objection.
11   She's not an ophthalmologist,
12   and objection to form.
13   But over my objection, you can
14   answer the question, if you can.
15   A.   I have no idea.
16   Q.   When evaluating a patient's
17   visual acuity, would you agree that it's
18   important not just to take it when the
19   patient first comes in, but at a later
20   point in time while the patient is still in
21   the hospital?
22   A.   No.
23   Q.   To see whether there's any
24   improvement?
25   MR.   : Objection to form.
0078
 1   78
 2   Over my objection, you can
 3   answer.
 4   A.   No.
 5   Q.   Can you tell me whether there is
 6   any benefit to you as a treating medical
 7   provider to know whether the patient's
 8   visual acuity has changed over a period of
 9   time?
10   MR.   : Objection to form.
11   You can answer.
12   A.   No.
13   Q.   Tell me why.
14   A.   It's not going to change my
15   treatment.
16   Q.   Was it your opinion that the
17   patient's blurriness in his right eye was
18   attributable to what you had concluded was
19   a corneal abrasion?
20   A.   Yes.
21   Q.   Did you consider any other
22   possibility for the patient's blurriness in
23   his right eye, other than the corneal
24   abrasion?
25   MR.   : At that time?
0079
 1   79
 2   MR. OGINSKI: Yes.

3 THE WITNESS: Would you repeat
4 that question, I'm sorry.
5 [The requested portion of the
6 record was read by the reporter.]
7 MR. : And it was at that
8 time.
9 A. No.
10 Q. What information does a slit
11 lamp give you different from a fundoscopic
12 exam?
13 A. More options.
14 Q. Can you be more specific?
15 A. You could have the patient
16 stationary, where with a fundoscopic exam,
17 you have to rely on the patient to stay
18 still. You have the ability to just -- to
19 not move around when looking at both -- at
20 either eye.
21 With a fundoscopic exam, you
22 literally have to go from the right eye and
23 then go and look at the left eye. Whereas
24 in a slit lamp, the patient's head is like
25 this, so you have two almost like

0080

2 binoculars (indicating).
3 Q. When you say "like this," you
4 mean sitting on some stationary piece?
5 MR. : For their chin.
6 A. Yes, so you don't have to worry
7 about them moving around, and you have the
8 opportunity to look at each eye
9 simultaneously.
10 Q. Tell me why did you not obtain a
11 slit lamp examination for this patient?
12 A. I didn't feel one was necessary.
13 Q. What would the patient have
14 needed or required in order to perform a
15 slit lamp examination?
16 MR. : You mean what would
17 make her think one was necessary?
18 MR. OGINSKI: Yes.
19 A. If I didn't have a finding.
20 Q. The Wood's lamp that you told me
21 about earlier, how was that different from
22 the slit lamp?
23 A. The Wood's lamp is a
24 magnification that you can't control. It's
25 just a magnification. It's a big area, so

0081

2 you can see the whole eye. It has the
3 black light that's the only source of
4 light, is a black light. So it enhances
5 the Fluorescein.
6 Q. Did you use a Wood's lamp to
7 examine this patient?

8 A. Yes.
9 Q. Did you find any foreign object
10 at all of any material in this patient's
11 right eye?
12 A. No.
13 Q. What is ptosis, P-T-O-S-I-S?
14 A. It's the lateral looking down.
15 Q. It's the what?
16 A. You look down laterally. Not
17 straight down, but you look down laterally.
18 Q. Are you familiar with something
19 that is called lid ptosis?
20 A. Lid ptosis, extropian is a form
21 of lid ptosis where the bottom lid curves
22 out, like this. It kind of -- instead of
23 being straight up, it comes down
24 (indicating).
25 Q. What about the top eyelid?
0082

2 A. You can have an entropian, so
3 that goes inwards. That's the top lid
4 going under.
5 Q. Did you observe any ptosis on
6 Mr. ?
7 A. No.
8 Q. What is corneal edema?
9 A. Corneal edema is the puffing of
10 the -- corneal edema is swelling within the
11 cornea.
12 Q. Did you observe any corneal
13 edema on Mr. ?
14 A. No.
15 Q. What is descemet's fold?
16 D-E-S-C-E-M-E-T-S.
17 A. I have no idea.
18 Q. Do you know what nuclear
19 sclerosis is?
20 A. No.
21 Q. Do you know what cataract is?
22 A. Yes.
23 Q. Did Mr. have evidence of
24 a cataract in his right eye?
25 A. No.
0083

2 Q. He had none or nothing is
3 reported about a cataract?
4 A. Nothing is reported about a
5 cataract.
6 Q. What is a cataract?
7 A. I can't explain.
8 Q. Did Mr. have a cataract
9 in his left eye?
10 A. I did not note it.
11 Q. What is a corneal tear?
12 A. A corneal tear would be the

13   uplifting of the outer area of the cornea
14   or the conjunctiva of the cornea. It would
15   be just the lifting up. It could still be
16   attached, but you would -- it would be a
17   lifting up or it could be -- it could be
18   taken completely away.
19   Q.   Would you consider a corneal
20   tear to be the same as a corneal
21   laceration?
22   A.   I would consider a tear the same
23   as a laceration.
24   Q.   Did Mr.   have evidence of
25   a corneal tear?
0084
 1   84
 2   A.   Not according to my chart.
 3   Q.   Do you know a Dr.
 4?
 5   A.   No, I don't.
 6   Q.   Do you know a Dr.,
 7?
 8   A.   No, I don't.
 9   Q.   Do you know a,
10?
11   A.   No, I don't.
12   Q.   Do you know a Dr.,
13?
14   A.   No.
15   Q.   Do you know whether
16   Dr.   's first name is   ?
17   A.   Yes.
18   Q.   What are the cranial nerves?
19   A.   The cranial nerves, usually you
20   check two through 12 because one is
21   olfactory.
22   MR.   : He's asking what
23   they are.
24   A.   They're the nerves that
25   innervate muscles. They're nerves that
0085
 1   85
 2   innervate certain muscles and organs.
 3   Q.   Can you tell me specifically
 4   what cranial nerve number three is. I'm
 5   just going to go through three through
 6   eight.
 7   MR.   : Right now you're
 8   asking three.
 9   MR. OGINSKI: Yes.
10   MR.   : Take your time.
11   Whatever you need to do.
12   A.   No.
13   Q.   Do you know what cranial nerve
14   number four is?
15   A.   Trochlear. T-R-O.
16   Q.   How about cranial nerve number
17   five?

18 A. No.
19 Q. Cranial nerve number six?
20 A. No.
21 Q. Seven?
22 A. Facial.
23 Q. Number eight?
24 A. No. Sorry. No.
25 Q. You don't know.

2 A. No.
3 Q. Why is it important when
4 performing a physical examination to
5 evaluate a patient's cranial nerves?
6 MR. : Objection to form.
7 Over my objection, you can
8 answer.
9 A. Can you repeat the question.
10 Q. I'll rephrase it.
11 Is it important when performing
12 a history or physical examination to
13 evaluate a patient's cranial nerves?
14 A. It depends on -- it depends on
15 the complaint.
16 Q. What is tonometry?
17 A. It's a pen to evaluate pressure
18 in the eye.
19 Q. Did you ever perform any type of
20 tonometry test on Mr. ?
21 A. No.
22 Q. What is pachymetry?
23 A. I have no idea.
24 Q. Where did you go to become a
25 physician's assistant?

2 A. College.
3 Q. When did you graduate?
4 A. .
5 Q. How many year program was that?
6 A. Two year.
7 Q. As a nurse's aide, did you get
8 any credit for being a nurse's aide or
9 working in that field for any period of
10 time?
11 A. No.
12 Q. After graduating from , did
13 you then go to work directly for
14 ?
15 A. No.
16 Q. Where did you work right after
17 school?
18 A. .
19 Q. After , where did you work?
20 In other words, after you left ,
21 did you go directly to ?
22 A. I worked in both places.

23   Q.   In   , in November, were you
24   working anyplace else besides
25   ?
0088

2   A.   College.
3   Q.   What were you doing there?
4   A.   I'm the academic coordinator.
5   Q.   In what division, department?
6   A.   PA. The physician's assistant
7   program.
8   Q.   Does that involve teaching
9   students any substantive courses in the
10   field of physician's assistants?
11   A.   Yes.
12   Q.   Which courses?
13   A.   Physical diagnosis.
14   Q.   What year students do you teach?
15   A.   Junior.
16   Q.   This is a four-year program?
17   A.   It's a two-year program.
18   Q.   A junior would be considered
19   what? Someone in their second year, first
20   year?
21   A.   First year.
22   Q.   Do you teach anything else?
23   A.   A portion of emergency medicine,
24   correlative medicine.
25   Q.   What is correlative medicine?
0089

2   A.   Correlative medicine is
3   developing a differential diagnosis.
4   Q.   Anything else?
5   A.   No.
6   Q.   Are you licensed as a physician
7   in New York?
8   A.   As a physician's --
9   Q.   My apologies. As a physician's
10   assistant.
11   A.   Yes.
12   Q.   When were you licensed?
13   A.   .
14   Q.   Are you licensed in any other
15   state as physician's assistant?
16   A.   No.
17   Q.   Has your license ever been
18   revoked?
19   A.   No.
20   Q.   Has your license ever been
21   suspended?
22   A.   No.
23   Q.   When you worked at
24   Hospital in November of   , did you
25   receive any compensation directly from New
0090

2 Hospital?
3 A. No.
4 Q. Am I correct that all of your
5 compensation came from Medical
6 Physicians PC?
7 A. Yes.
8 MR. : Working at New
9 .
10 MR. OGINSKI: Yes.
11 Q. Did you hold any title as
12 other than as a PA?
13 A. No.
14 Q. Have you published anything?
15 A. Yes.
16 Q. What have you published?
17 A. I published a paper.
18 Q. In what?
19 A. Sudden cardiac death.
20 Q. When was it published?
21 A. .
22 Q. In what journal or text was it
23 published?
24 A. It was published in a
25 magazine.

2 Q. What's the name?
3 A. I don't recall.
4 Q. Do you have a copy of that?
5 A. No.
6 Q. Do you recall the name of the
7 article that you wrote?
8 A. Sudden cardiac death. Comatose
9 cortace (phonetic), sudden cardiac death.
10 MR. : Tell her the title.
11 A. Sudden cardiac death in young
12 adults.
13 Q. Were you the only author?
14 A. No.
15 Q. How many others were there?
16 A. Two.
17 Q. What were their names?
18 MR. : Note my objection.
19 Over my objection, you can
20 answer.
21 A. .
22 Q. Any others?
23 A. , .
24 MR. : Do you know the
25 spelling?

2 THE WITNESS: No.
3 Q. Have you ever testified before?
4 A. No.
5 Q. Let's go through the original
6 hospital record, please.

7 MR. : Before we do that,
8 can we take a two-second break.
9 [A recess was taken.]
10 Q. When you were in physician's
11 assistant school, how much time did you
12 spend on learning to take an eye
13 examination?
14 MR. : Note my objection.
15 Over my objection, you can
16 answer.
17 A. You are taught -- the actual
18 exam?
19 Q. Yes.
20 A. It's taught in part in lecture
21 and part in lab. I believe that lecture is
22 about 18 hours, and the lab would consist
23 of one lab on the eye exam, which would be
24 about four hours.
25 Q. Would it be fair to say that the
0093

2 type of training that you receive as a
3 physician's assistant is significantly less
4 than an ophthalmologist receives in their
5 residency training?
6 MR. : Just note my
7 objection.
8 A. Yes.
9 MR. : Note my objection.
10 She's not an ophthalmologist.
11 She can answer the question.
12 She already did.
13 Q. Let's turn, please, to the
14 original hospital record. To the second
15 page, please.
16 The handwriting that appears on
17 this form, whose handwriting is that?
18 A. Mine.
19 Q. I would like you to read your
20 notes, please, and if there are
21 abbreviations, just tell me what they are.
22 MR. : Just go through it
23 nice and slow so the court reporter can
24 get you clear and loud.
25 A. Do you want me --
0094

2 MR. : Start from the top
3 and go down the left and then the
4 right, just as if we would normally --
5 A. I circled my name, I circled
6 that I was a PA, I wrote my name. Eye
7 pain, right eye.
8 Q. Let me just stop you for a
9 second. It says seen by and circled PA,
10 correct?
11 A. Yes.

12 Q. And it has your name, ?
13 A. Yes.
14 Q. Under HPI, that's history of
15 present illness.
16 A. Yes.
17 Q. That's a form. Tell us what you
18 wrote.
19 A. So after the HPI, it says chief
20 complaint, CC is chief complaint. I wrote
21 eye pain.
22 Location, right eye.
23 Quality, 10 out of 10.
24 Duration, in parenthesis, a
25 couple of hours ago.

2 Q. Couple hour ago, right?
3 A. Yes.
4 Q. Go ahead.
5 A. Severity, moderate.
6 Context, while at ,
7 felt like something popped in it.
8 Modifier, denies taking
9 anything.
10 Associated, positive pain,
11 positive tearing, timing continuous.
12 Then I wrote last tetanus, two
13 to three years ago.
14 Q. When you wrote "moderate," what
15 was that referring to?
16 A. When -- severity.
17 Q. Severity of what?
18 A. Severity of the injury.
19 Q. That's your assessment?
20 A. It's a standard assessment.
21 Q. But is that your assessment as
22 opposed to the patient's assessment?
23 A. It is my assessment.
24 Q. What was it about his injury
25 that you felt was of moderate severity?

2 A. Well -- I'm sorry. I would like
3 to go back.
4 The severity being moderate is
5 based on what the patient stated. The 10
6 out of 10 pain. I shouldn't say it's my
7 assessment. It's based on what they say.
8 It's not something that I make a judgment
9 call on.
10 Q. And the history is obtained
11 solely by talking to the patient, correct?
12 A. Yes.
13 Q. Were you talking to anybody else
14 at the same time in the room with the
15 patient?
16 A. I don't recall.

17 Q. Does your note reflect that you
18 were obtaining in information from someone
19 other than the patient?
20 A. It does not reflect that I
21 obtained this information from somebody
22 other than the patient.
23 Q. Did you speak to any ambulance
24 attendants who transported him in the
25 ambulance from ?
0097
1
2 A. I did not.
3 Q. Did you review any of their
4 notes at the time that you were talking to
5 Mr. ?
6 A. I don't recall.
7 Q. Is there anything in your note
8 to indicate that you had reviewed the
9 ambulance call sheet?
10 A. No.
11 Q. In your note, when you indicate
12 eye pain, do you indicate which eye?
13 MR. : It indicates
14 positive pain.
15 Q. I'm going back up to the top
16 line, where you say eye pain.
17 A. Yes.
18 Q. Now, is it correct to say that
19 the positive pain and positive tearing
20 would also be in the right eye?
21 A. Yes.
22 Q. And you told me earlier in
23 response to a question, I asked you whether
24 there was any evidence to reflect the
25 patient had tearing at the time you saw
0098
1
2 him.
3 Would you agree that this
4 reflects the fact that he was tearing at
5 the time you saw him?
6 A. No.
7 Q. You're saying that the patient
8 told you he was tearing.
9 A. Yes.
10 Q. What does it say under that line
11 after positive tearing?
12 A. It says in association to the
13 timing on the HPI, the timing, it says
14 continuous. So he's in continuous pain and
15 tearing.
16 Q. Can you read what it says after
17 that, continuous what?
18 A. Continuous, last tetanus, two to
19 three years ago.
20 Q. You then performed a physical
21 examination, correct?

22 A. Yes.
23 Q. In the course of your exam or
24 immediately afterwards, you made certain
25 notes on this form, correct?
0099

2 A. Yes.
3 Q. And under the left side of this
4 chart, under the eye section, in the
5 middle?
6 A. Yes.
7 Q. You circled the word pain,
8 correct?
9 A. Yes.
10 Q. Then you also circled discharge.
11 A. Yes.
12 Q. What does that mean?
13 A. It means something is coming out
14 of his eye.
15 Q. Did he have viscus fluid coming
16 out of his eye?
17 A. This is not my physical exam.
18 The left side of the chart is based upon
19 the patient's statement. This is
20 subjective information.
21 Q. Did you ask the patient what
22 type of discharge he had come from his eye?
23 A. I don't recall.
24 Q. Did you record any questions you
25 may have asked or responses from the
0100

2 patient about the type of discharge he had
3 from his eye?
4 A. Positive tearing.
5 Q. Anything about the quality or
6 the type of discharge he had?
7 A. I don't recall.
8 Q. Would you expect a patient who
9 is not in the medical field to know the
10 distinction between viscus fluid and fluid
11 from tears?
12 MR. : Objection.
13 Over my objection, you can
14 answer.
15 A. No.
16 Q. The vital signs that are
17 recorded on the top right of that form, did
18 you obtain those vitals or were they from
19 the triage nurse?
20 A. From the triage.
21 Q. And on the right side, this
22 represents your physical examination,
23 correct?
24 A. Correct.
25 Q. Now, when you circled corneal
0101

2 abrasion under the eye section, you had
3 already conducted that part of the exam?
4 A. Yes.
5 Q. And you had already applied
6 Fluorescein?
7 A. Yes.
8 Q. And you did your fundoscopic
9 exam?
10 A. Yes.
11 Q. Before putting in Fluorescein,
12 what did you observe about this patient's
13 eye grossly?
14 MR. : Objection to form.
15 Over my objection, you can
16 answer.
17 A. Before applying the Fluorescein?
18 Q. Yes.
19 A. I observed no abnormality.
20 Q. Was the application of the
21 Fluorescein the next thing that you did in
22 order to evaluate his eye?
23 A. No.
24 Q. What did you do after the gross
25 examination?

2 A. I just don't know what you mean
3 by the gross examination.
4 Q. You've told me that there are
5 multiple ways to examine a patient's eye.
6 First looking at it with no instruments at
7 all, just using your own eyes.
8 Would you agree that that is a
9 gross examination?
10 A. Okay.
11 MR. : Listen to what he's
12 asking you.
13 If you could just reask the
14 question.
15 Q. When you look at a patient's
16 eyes with your own eyes, without any
17 diagnostic tools, would you agree that that
18 is a gross eye examination?
19 A. Yes.
20 Q. After looking at the patient's
21 eyes with your own in the form of a gross
22 examination, what is the next step that you
23 did in order to evaluate this patient's
24 eye?
25 A. I checked, as my procedure is,

2 what I do next with an eye exam.
3 Q. Hang on. We've already
4 established that you have no specific
5 memory of this exam and this patient,

6 correct?
7 Now, I'm asking you based
8 upon -- putting aside what you customarily
9 do, I'm only asking you to focus on what
10 you actually did in this patient's case on
11 November 13th.
12 Based upon the notes that you
13 have in front of you, can you tell me what
14 is the next thing you did after the gross
15 eye exam.
16 MR. : If you can tell by
17 the notes. Can you tell what you did
18 next after doing a visual or gross eye
19 examination of the patient's eye? Do
20 the notes in front of you indicate?
21 You need to look at the notes.
22 He's specifically asking you if the
23 notes indicate that.
24 A. The notes don't indicate what I
25 did next.
0104
1
2 Q. Now, on the second page, where
3 you have notes written, there is a check
4 mark box in the top third on the left side,
5 it says all above tests ordered, supervised
6 and interpreted by me. Do you see that?
7 A. Yes.
8 Q. There is some signature that
9 appears there.
10 A. Yes.
11 Q. Is that your signature?
12 A. Yes.
13 Q. Now, Mr. came into the
14 emergency room at what time?
15 A. Two o'clock.
16 Q. And what document are you using
17 to provide you with that information? Just
18 tell me what that is.
19 A. Triage note.
20 Q. And the time that he was
21 discharged at 1615?
22 A. 4:15.
23 Q. Did you actually give him
24 Gentamycin drops?
25 A. Yes.
0105
1
2 Q. Was there an instance where you
3 discharged Mr. from the emergency
4 room and he returned back to you to speak
5 to you about five minutes later, five or 10
6 minutes later?
7 MR. : Objection to form.
8 Over my objection, you can
9 answer.
10 A. I have no idea.

11 Q. Did you give Mr. any
12 additional medications or drops for his
13 eye, other than what you have recorded
14 here?
15 A. Not that I know of.
16 Q. Did you tell him that the drops
17 would help stop his tearing?
18 A. I have no idea.
19 Q. Did you tell him that the drops
20 would help his visual acuity improve?
21 A. I have no idea.
22 Q. You told him to follow up with
23 an ophthalmologist in two days, correct?
24 A. I told him to follow up with an
25 ophthalmologist.
0106

2 Q. When?
3 A. I have no idea.
4 Q. It says follow up with optho and
5 it has a number?
6 A. Yes. Number seven.
7 Q. Is that your handwriting?
8 A. Yes.
9 Q. When did you want the patient to
10 follow up with an ophthalmologist?
11 A. I tell my patients to follow up
12 with an ophthalmologist without fail within
13 two days. So return if they're not getting
14 better or if they're getting worse.
15 Q. Is there anything in the note
16 that you have in front of you that
17 indicates that you wanted the patient to
18 return in two days?
19 A. I didn't want him to return to
20 me in two days.
21 Q. No. To return -- I'm sorry. Is
22 there anything in your note that they
23 should follow up with an ophthalmologist in
24 two days?
25 A. No.
0107

2 Q. There is a computer printout,
3 discharge instructions given to the
4 patient. I'm just going to ask you to look
5 at that.
6 MR. : Just for the record,
7 this is the first time that we're
8 seeing this document. I believe the
9 plaintiff testified at his examination
10 before trial that he was not in
11 possession of a discharge instruction.
12 But that being noted.
13 MS. : Can we see it
14 also, please.
15 MR. OGINSKI: It can't be the

16   first time, because in response to a
17   request for records, I provided
18   everybody with copies of whatever
19   records I had.
20   MR.   : That's fine.
21   Q.   Who provides this computer
22   printout to the patient?
23   A.   I do.
24   Q.   Who enters the information
25   contained on that printout to the patient?
0108
1   108
2   A.   I do.
3   Q.   And you provide that to them
4   before they're discharged?
5   A.   Yes.
6   Q.   What is the purpose of this
7   document that you have in front of you?
8   Why do you give it to the patient?
9   A.   It's not complete.
10   Q.   I'm just asking why you give
11   this type of document to a patient.
12   MR.   : Why you give a
13   discharge summary.
14   MR. OGINSKI: That's not a
15   summary.
16   Q.   Why do you give discharge
17   instructions to a patient.
18   A.   It's not the complete discharge
19   that I gave him.
20   Q.   How then would the patient have
21   a copy of that?
22   A.   It's not the complete.
23   MR.   : It's not the
24   complete. What you just handed to her
25   is not the complete.
0109
1   109
2   A.   It's not the complete.
3   Q.   Let me ask you this, did you
4   give Mr.   a copy of this sheet?
5   A.   Yes. But it's not --
6   MR.   : You answered.
7   Q.   Why do you give him this sheet?
8   MR. OGINSKI: I'm going to
9   rephrase it.
10   Q.   Why did you give him this sheet?
11   MR.   : In this instance,
12   why she gave him or why do you give it
13   in general.
14   Q.   Why did you give him this sheet?
15   MR.   : He's asking if you
16   recall why did you --
17   A.   I wouldn't just give him this
18   sheet. I'm just telling you. In order for
19   me to answer what the purpose of this sheet
20   is, it has to have the other sheets with

21   it. Because the purpose of the discharge
22   summary is so the patient is with knowledge
23   of what to do for follow-up care. So
24   without the rest of the sheet, this is
25   really nothing, because it doesn't explain
0110

2   all the rest of the things that he needs to
3   do for discharge. And that's the purpose
4   of the discharge sheet. So that the
5   patient knows what to do in case different
6   things happen. And this is not the
7   complete sheet that he gets.
8   Q.   What else does he get?
9   A.   He gets -- which is here, a
10   documentation along with this on corneal
11   abrasions (indicating).
12   MR. OGINSKI: Can I have this
13   marked as Plaintiff's 2.
14   [Whereupon, the discharge
15   instructions, patient's copy, was
16   hereby marked as Plaintiff's Exhibit 2
17   for identification, as of this date, by
18   the reporter.]
19   MR. OGINSKI: And let's mark
20   this as 3.
21   [Whereupon, the discharge
22   instructions, chart copy, was hereby
23   marked as Plaintiff's Exhibit 3 for
24   identification, as of this date, by the
25   reporter.]
0111

2   Q.   I'm showing you two documents,
3   Plaintiff's 2 and 3 for identification.
4   The first one that we've been talking about
5   is titled your discharge instructions,
6   that's Plaintiff's 3. The other one is
7   titled patient copy, patient discharge
8   instructions.
9   Is this the second page that
10   you're referring to, the corneal abrasion?
11   MR.   : Let's just look at
12   this.
13   I think the question is is this
14   the second page.
15   A.   Uh-huh.
16   MR.   : Is that a yes or no.
17   A.   Yes. Sorry. Yes.
18   Q.   You provide that information for
19   the diagnosis to the patient?
20   A.   Yes.
21   Q.   Now, on the page that's marked
22   as Plaintiff's 3, it says follow-up
23   physician, it's listed here,
24   , correct?
25   A.   Yes.

0112
 1   112
 2   Q.   How did you select that
 3   individual?
 4   A.   He is the ophthalmologist that
 5   is on our on-call list.
 6   Q.   Did you ever speak to him about
 7   this patient?
 8   A.   No.
 9   Q.   Now, go back, please, to your
10   written note. Under medications, you
11   have -- what does it say, two grams?
12   A.   Two drops.
13   Q.   Gentamycin, right eye?
14   A.   Yes.
15   Q.   You have the visual acuity
16   again, right?
17   A.   Yes.
18   Q.   It says prior to exam.
19   A.   Yes.
20   Q.   Did you ever take a visual
21   acuity after your examination?
22   A.   No.
23   Q.   The diagnosis you wrote is
24   corneal abrasion?
25   A.   Yes.
0113
 1   113
 2   Q.   Is that your signature that
 3   appears at the right side?
 4   A.   Yes.
 5   Q.   Now, under procedures and
 6   comments, I would like you to read what
 7   that says.
 8   A.   Two drops of Tetracaine,
 9   positive Fluorescein, right eye, no foreign
10   body noted. Positive abrasion.
11   Q.   The diagram to the left of that
12   represents the patient's right eye?
13   A.   Yes.
14   Q.   Did you observe any deformity or
15   misshapeness of the patient's pupil?
16   A.   No.
17   Q.   Would that be a significant
18   finding for you if you had seen it?
19   A.   Yes.
20   Q.   Did you observe any deformity of
21   the patient's iris?
22   A.   No.
23   Q.   Did you have a discussion with
24   Mr.   about when he could expect his
25   visual acuity to improve?
0114
 1   114
 2   A.   I don't recall.
 3   Q.   Did you have a conversation with
 4   Mr.   as to how he was feeling in his

 5   right eye in terms of pain at the time of
 6   discharge?
 7   A.   I don't recall.
 8   Q.   Did you have a conversation with
 9   Mr.   's wife at any time?
10   A.   I don't recall.
11   Q.   Now, in the right-hand side of
12   the page, under progress and extended
13   critical care notes, tell me what you wrote
14   there, please.
15   A.   Gentamycin, one drop every four
16   hours while awake for seven days, follow up
17   with ophthalmology, number given.
18   Q.   On the bottom right-hand side
19   your signature appears, correct?
20   A.   Yes.
21   Q.   On the physician order sheet
22   under medication reconciliation list.
23   A.   Yes.
24   Q.   You have the same exact
25   instructions, right, about the taking of
0115

 2   the Gentamycin?
 3   MR.   : Note my objection.
 4   Answer the question, please.
 5   A.   I noted that when the next dose
 6   was due.
 7   Q.   That would be at 8:00 p.m.,
 8   correct?
 9   A.   Yes.
10   Q.   You told me earlier that the
11   patient came into the hospital in triage at
12   two p.m., 1400, correct?
13   A.   Yes.
14   Q.   Can you turn to the triage
15   record, please. According to the nurse --
16   the triage nurse, the triage acuity level
17   was four?
18   A.   Yes.
19   Q.   What is the most severe?
20   A.   One.
21   Q.   Can you read the chief complaint
22   as recorded by the triage nurse?
23   A.   Right eye pain. Felt something
24   go into his eye while at   .
25   Q.   Did you have any conversations
0116

 2   with the triage nurse prior to examining
 3   Mr.   ?
 4   A.   I don't recall.
 5   Q.   Did you have any conversation
 6   with Mr.   after he left
 7   Hospital on November 13th?
 8   A.   I don't recall.
 9   Q.   Did you have any conversation

10   with Mrs.   at any time after November
11   13,   ?
12   A.   I don't recall.
13   Q.   Do you have an opinion with a
14   reasonable degree of medical probability as
15   to whether this patient had a ruptured
16   globe at the time that you examined him on
17   November 13,   ?
18   MR.   : Note my objection.
19   Over my objection, you can
20   answer the question.
21   A.   You're asking me --
22   MR.   : Do you want the
23   question read back?
24   THE WITNESS: Yes.
25   MR.   : Listen to the
0117

2   question.
3   MR. OGINSKI: I'm going to
4   rephrase it.
5   Q.   Before November 13,   , how
6   many occasions have you diagnosed a
7   ruptured globe? How many times before?
8   A.   I have to tell you the truth. I
9   can't recall -- it's been more than five.
10   Q.   Can you be any more specific?
11   A.   No.
12   Q.   Less than 10?
13   A.   I don't know.
14   Q.   When you say "more than five," I
15   just want to get some idea as to a range,
16   if you don't know specifically. Can you
17   say more than five and less than a certain
18   number?
19   MR.   : If you can say.
20   A.   I can't.
21   Q.   Can you tell me how many corneal
22   lacerations you have observed?
23   MR.   : Prior to 11/08?
24   MR. OGINSKI: Yes.
25   A.   I cannot.
0118

2   Q.   More than five?
3   A.   I'm going to say yes.
4   Q.   More than 10?
5   A.   I don't recall.
6   Q.   When was the last ruptured globe
7   that you had diagnosed before November 13,
8   ?
9   A.   I don't know.
10   Q.   Was it within the year   ?
11   MR.   : Note my objection.
12   Over my objection, you can
13   answer.
14   A.   I don't know.

15 Q. Did you ever see Mr.
16 again after November 13, ?
17 A. I have no idea.
18 Q. Were you ever asked to give any
19 type of written report about Mr. 's
20 care and treatment to any medical provider
21 at Hospital?
22 MS. : Objection.
23 MR. : Note my objection.
24 Over my objection, you can
25 answer the question.
0119

2 A. No.
3 Q. Were you ever present for any
4 discussion or conversation of Mr. 's
5 care and treatment at Hospital
6 after November 13th?
7 MS. : Objection.
8 MR. : Same objection.
9 Over my objection, you can
10 answer.
11 A. I don't know what you mean by
12 that.
13 Q. Are you familiar with something
14 called the morbidity and mortality
15 conferences?
16 A. Yes.
17 Q. Do you ever attend those?
18 A. No.
19 Q. Were you ever present when any
20 physician was discussing Mr. 's care
21 and treatment at Hospital?
22 MS. : Objection.
23 MR. : Note my objection.
24 Over my objection, you can
25 answer the question.
0120

2 A. I'm still not sure I understand
3 the question.
4 Q. After the patient left and was
5 discharged on November 13, , were you
6 ever present during a conversation where
7 someone, a physician, was discussing
8 Mr. 's care and treatment that
9 occurred at on November 13th?
10 MS. : Objection.
11 MR. : Note my objection.
12 Over my objection, you can
13 answer the question.
14 A. With me is this.
15 Q. Either with you or whether you
16 were present and overheard the
17 conversation.
18 A. I -- yes.
19 Q. Tell me about that.

```
20       A.     I was working --
21              MS.                    :  Note my objection.
22              MR.                    :  Same objection.
23              Over my objection, you can
24       answer the question.
25       A.     I was working in the emergency
0121
 1                                                     121
 2   room and the chief medical officer went by,
 3   it was after I was formally sued, and he
 4   said that they reviewed the chart.
 5       Q.     What else did he say?
 6              MS.                    :  Objection.
 7              MR.                    :  Same objection.
 8              Over my objection, you can
 9       answer.
10       A.     Nothing.
11       Q.     What did he say as a result of
12   reviewing the chart?
13              MR.                    :  Same objection.
14              Over my objection, you can
15       answer.
16              MS.                    :  Note my objection.
17       A.     He said not to worry about it.
18       Q.     Who was he having this
19   conversation with?
20       A.     Me.
21       Q.     Did he indicate who had reviewed
22   the chart?
23              MR.                    :  Note my objection.
24              MS.                    :  Note my objection.
25              MR.                    :  Over my objection,
0122
 1                                                     122
 2       you can answer.
 3       A.     No.
 4       Q.     Did he indicate that he was
 5   aware of what the claims were in the case?
 6              MS.                    :  Objection.
 7              MR.                    :  Note my objection.
 8              Over my objection, you can
 9       answer.
10       A.     No.
11       Q.     I want you to assume that two
12   days after Mr.                     left
13   Hospital, he was diagnosed with a ruptured
14   globe in his right eye.
15              Do you have any knowledge as you
16   sit here today as to how that condition was
17   diagnosed on November 15th and was not
18   diagnosed when you saw him on November
19   13th?
20              MR.                    :  Note my objection.
21              Over my objection, you can
22       answer his question.
23       A.     No.
24              MR. OGINSKI:  Thank you very
```

25 much.
0123

2 MS. : I have no
3 questions.
4 MS. : I have a couple of
5 questions.
6 EXAMINATION BY
7 MS. :
8 Q. Good afternoon, Ms. . My
9 name is from the Law Firm of
10 . We represent
11 in this action.
12 Just a handful of questions.
13 The same rules apply as co-counsel. I ask
14 that you speak up when you answer and let
15 me finish the question before you answer.
16 And if you don't understand something, just
17 let me know and I will rephrase.
18 Now, you testified earlier that
19 there were no foreign bodies noted upon
20 examination of the plaintiff. Correct?
21 A. Yes.
22 Q. If a patient comes into the
23 emergency room and indicates that something
24 went in his eye, would the patient be asked
25 what it was that went into his eye?
0124

2 MR. : Note my objection.
3 MS. : Generally. By her.
4 MR. : Note my objection.
5 A. Yes.
6 Q. Yes, they would be asked what
7 went into their eye?
8 A. Yes.
9 Q. Do you recall if Mr. was
10 asked what went into his eye?
11 MR. : Note my objection.
12 She's already testified she has
13 no recollection, but over my objection,
14 she can answer.
15 MR. OGINSKI: You mean what she
16 asked or what someone else may have
17 asked.
18 MS. : What she asked.
19 MR. : Note my objection.
20 You can answer.
21 A. I wrote that he had something --
22 MR. : She asked you if he
23 was asked what went into his eye.
24 If you know, you can answer that
25 question.
0125

2 A. Yes.
3 Q. I'm sorry, what was the

4   answer --
5   MR.   : Yes, that he was
6   asked if something had gone into his
7   eye.
8   Q.   Based on either your
9   recollection or your review of the chart,
10 was that something ever revealed? Did he
11 ever indicate what that something was?
12   MR. OGINSKI: Objection.
13   She indicated she doesn't have
14   any recollection.
15   MS.   : It's based on --
16   MR.   : You can put his
17   objection on the record.
18   Just rephrase the question.
19   Q.   Based on either your independent
20 recollection or on your review of the
21 chart, is there an indication if the
22 patient ever answered what that something
23 was?
24   MR. OGINSKI: Objection.
25   The witness indicated she has no
0126

2   recollection.
3   MR.   : Same objection.
4   Over my objection, you can
5   answer the question.
6   A.   My documentation writes
7   something. If he would have told me what
8   it was, I would have wrote that.
9   Q.   Just to clarify, since you
10 didn't write anything specific based on
11 your custom and practice, the patient did
12 not say specifically what it was.
13   A.   I don't recall.
14   MR. OGINSKI: Objection.
15   MR.   : Objection.
16   MS.   : Nothing further.
17   [Time noted: 1:40 p.m.]
18
                  ____
19   ,P.A.
20 Subscribed and sworn to
    before me this______day
21 of______________, 2009.
22 _______________________
        Notary Public
23
24
25
0127

2   I N D E X
3   WITNESS   EXAMINATION BY   PAGE
4   , P.A.   Mr. Oginski   5
5   Ms.   123

6
E X H I B I T S
7
PLAINTIFF'S DESCRIPTION PAGE
8

PLAINTIFF'S	DESCRIPTION	PAGE
Exhibit 1	Original hospital record	5
Exhibit 2	Discharge instructions, Patient's copy	110
Exhibit 3	Discharge instructions, Chart copy	110

11
[Attorney Oginski from the Law Office of
12 Gerald M. Oginski has retained all
exhibits.]
13
14
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0128
1 128
2 CERTIFICATION
3
4 I, Cynthia A. Laub, a Notary Public for
5 and within the State of New York, do hereby
6 certify:
7 That the witness(es) whose testimony as
8 herein set forth, was duly sworn by me; and
9 that the within transcript is a true record
10 of the testimony given by said witness(es).
11 I further certify that I am not related
12 to any of the parties to this action by
13 blood or marriage, and that I am in no way
14 interested in the outcome of this matter.
15 IN WITNESS WHEREOF, I have hereunto set
16 my hand this 16th day of December, 2009.
17
18 __________________________
19 Cynthia A. Laub
20
21 * * *
22
23
24
25
0129
1 129
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22
23 SUBSCRIBED AND SWORN TO BEFORE ME
THIS DAY OF , 20 .
24
25 ________________________ __________________________