

****DE-IDENTIFIED DEPOSITION OF A UROLOGY RESIDENT
IN A DEATH CASE****

1

2 SUPREME COURT OF THE STATE OF NEW YORK

3 COUNTY OF

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4

, as Administratrix of the

5 Estate of ,

6 Plaintiff,

7 -against-

8 ,

9 , M.D., and

, M.D.

10

Defendants.

11

----- X

12

13

14 April 16,

10:18 a.m.

15

16

17 EXAMINATION BEFORE TRIAL of a

18 Non-Party Witness, , M.D.

19

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23 TOMMER REPORTING, INC.

192 Lexington Avenue

24 Suite 802

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

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BY: GERALD M. OGINSKI, ESQ.

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, LLP

9 Attorneys for the Defendants

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11 BY: , ESQ.

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2 S T I P U L A T I O N S

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4 It is hereby stipulated and agreed by and

5 between counsel for the respective parties

6 hereto that all rights provided by the

7 C.P.L.R., including the right to object to
8 all questions except as to form, or to move to
9 strike any testimony at this examination, are
10 reserved, and, in addition, the failure to
11 object to any question or to move to strike any
12 testimony at this examination shall not
13 be a bar or a waiver to doing so at, and is
14 reserved for, the trial of this action;

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

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

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

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

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18 ** ** **

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2 , M.D.,

3 called as a witness, having been first

4 duly sworn, was examined and testified

5 as follows:

6 EXAMINATION BY

7 MR. OGINSKI:

8 Q State your name for the record,

9 please.

10 A , M.D.

11 Q State your address for the record,

12 please.

13 A , ,

14

15 Q Good morning, Doctor. Where do you
16 currently work?

17 A At Hospital in the

18

19 Q What did you do there?

20 A I'm a urology resident.

21 Q What year?

22 A PGY6 but a third-year urology

23 resident.

24 Q How many years do you have left to

25 complete your urology residency?

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1 , M.D.

2 A One.

3 Q In were you working at

4 Hospital?

5 A , no.

6 Q I'm sorry, .

7 A I believe so. I would have to look

8 at the chart.

9 Q During the course of your residency

10 at would you do various rotations

11 through different hospitals?

12 A Yes.

13 Q Did one of your rotations include

14 time spent at ?

15 A Yes.

16 Q Do you remember a patient named

17 ?

18 A Vaguely.

19 Q Did you review the patient's

20 hospital record?

21 A Yes.

22 Q Did you review any deposition

23 transcripts?

24 A Yes.

25 Q Which ones?

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1 , M.D.

2 A Dr. 's and Dr.

3 .

4 Q Do you have any notes separate and
5 apart from what's contained within the hospital
6 record?

7 A No.

8 Q Did you identify and locate your
9 notes which you wrote for this patient?

10 A Yes.

11 Q What were you doing; in other
12 words, what were you assigned to do when you
13 were at Hospital in January of ?

14 A As the urology resident on the
15 Urology Oncology Service at we
16 basically did what we were told.

17 Q How many people were on the team
18 that you participated in each day?

19 MR. : Objection to form.

20 You can answer.

21 A Sometimes two. Sometimes

22 three.

23 Q Were there other residents that

24 participated in the rounds that you made in

25 caring for patients on that service?

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1 , M.D.

2 A Sometimes.

3 Q Do you remember Dr.?

4 A Yes.

5 Q You mentioned you were a PGY6. Had

6 you done another residency before becoming a

7 urology resident?

8 A I did three years of general

9 surgery.

10 Q Where?

11 A At Medical Center.

12 Q Did you complete that program?

13 A No.

14 Q Where did you go to medical school?

15 A at .

16 Q When did you graduate?

17 A .

18 Q After completing your medical

19 school at where did you go?

20 A Medical Center.

21 Q At the present time are you

22 licensed to practice medicine in the State of

23 ?

24 A Yes, I have a license as a urology

25 resident, yes.

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9

1 , M.D.

2 Q Last year in were you

3 licensed?

4 A Yes.

5 Q Are you board certified in any

6 field of medicine?

7 A No.

8 Q Do you have any publications to

9 your name?

10 A They are in progress.

11 Q Nothing that's been published yet?

12 A No.

13 Q Can you tell me the topics in which

14 the publications are in progress, generally?

15 A Urology erectile dysfunction.

16 That's pretty much it that I can recall.

17 Q Have you reviewed any literature or

18 texts in preparation for today's deposition?

19 A No.

20 Q You were here today because of a

21 subpoena that my office served upon you?

22 A Yes.

23 Q Did you discuss this case with Dr.

24 ?

25 A No.

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1 , M.D.

2 Q Did you discuss this case with Dr.

3 ?

4 A No.

5 Q Am I correct that you met with

6 either Mr. or someone from his office

7 sometime last week?

8 A Yes.

9 Q After Mr. died on January

10 23, , were you asked to prepare any written

11 statements about the events that had occurred

12 to him?

13 A No.

14 Q Were you ever asked to give any

15 presentation to any conference or group of

16 residents or physicians at to discuss

17 the care that was rendered to him?

18 A No.

19 Q Were you ever present for any

20 conference that discussed Mr. after

21 his death?

22 A I can't recall.

23 Q Did you participate in any decision

24 about Mr. 's anticoagulation therapy?

25 A No.

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11

1 , M.D.

2 Q Did you have any discussions with

3 the GI physicians about Mr. 's

4 proposed endoscopy that was scheduled to be

5 done originally on January 21st?

6 A No.

7 Q Did you participate in the

8 endoscopy?

9 A No.

10 Q What is the first note that you

11 have for this patient?

12 A I would have to refer to the chart.

13 Q Go ahead.

14 A January 20, .

15 Q In your review of Dr. 's
16 deposition and Dr.'s deposition, did
17 either of those two documents refresh your
18 memory about the events that had occurred in
19 this case?

20 A Vaguely.

21 Q I'd like you to read your note in
22 its entirety and if there are abbreviations
23 tell me what they represent?

24 A "GU which is genitourinary January
25 20, at 9 a.m., TM which is T-Max is 38.

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1 , M.D.

2 The hour represents what it's now which is 37
3 degrees Celsius. HR is heart rate which is
4 100. At the present time it's 80. Blood
5 pressure 100/56 which represents a blood
6 pressure. Finger stick glucose which is FSG is
7 156."

8 Q Is that within the normal range?

9 MR. : For who?

10 MR. OGINSKI: For Mr.

11 .

12 A I don't know.

13 "Foley catheter 400 which would be

14 ML and suprapubic tube 1,700 which is ML and

15 then 3,400 total."

16 Q Urine output, fluid output?

17 A I can't recall.

18 Q What would that represent to you,

19 Doctor?

20 A Most likely urine output.

21 Q Go ahead.

22 A That would be in a 24 hours.

23 "Patient S/without complaints. Continues to

24 hiccup but improved. Persistent low grade

25 temperature. Continue present management.

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1 , M.D.

2 Chest x-ray today." , my signature.

3 Q How was it that you came to see Mr.

4 that day?

5 A I don't know what day of the week

6 this was.

7 Q It's a weekend. Assume for

8 purposes of my question that would be a Sunday.

9 A Okay, I most likely was on call or

10 post call on the weekend and I would be

11 rounding with someone and I don't recall which

12 fellow that would be.

13 Q You have a note -- I'm sorry, you

14 dated this particular note January 20, .

15 Would it be correct to say that that was

16 incorrect, that it should be ?

17 A Yes.

18 Q Had you seen Mr. at all

19 on the 19th?

20 A No.

21 Q Did you examine Mr. ?

22 A I can't recall.

23 Q If you had examined him what type
24 of findings would you expect to write in your
25 note?

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1 , M.D.

2 A His lung exam, his abdominal exam,
3 his extremity exam and his general appearance.

4 Q The fact that those items that
5 you've mentioned are not listed within this
6 note, does that suggest to you that you did not
7 perform a physical exam?

8 A I can't recall.

9 Q Just based on your note. And based
10 upon your custom and practice can you tell me
11 whether that would indicate that you had not
12 performed a physical on that date?

13 MR. : Object to form.

14 Can you answer as opposed to

15 somebody else doing it?

16 MR. OGINSKI: Correct.

17 A I can't recall.

18 Q Was it customary that when you saw

19 a patient on a particular date and time that

20 you generally conducted a physical examination?

21 MR. : Objection.

22 Under what circumstances? You

23 have not established the

24 circumstances under which she sees

25 the patient.

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1 , M.D.

2 Q Was there a coverage note?

3 A Can you explain coverage?

4 Q What was the purpose of writing the

5 note on that date at that time?

6 A So there's documentation of the

7 patient's vital signs in the chart.

8 Q From where did you obtain those
9 vital signs?

10 A From the Vital Signs Chart that's
11 at the bedside.

12 MR. : Off the record.

13 (Informal discussion held off
14 the record)

15 Q Is there anything within your
16 note to suggest that you or anybody else
17 examined the patient on that date at that time?

18 A Perhaps.

19 Q What would that be?

20 A The fact that there's a note
21 written.

22 Q Tell me what you mean?

23 A I would not write a note on a
24 person that I didn't know or I was with someone
25 who was examining the person at the time.

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1 , M.D.

2 Q If someone else had been in your
3 presence, another physician who examined the
4 patient in your presence, would you expect to
5 make a note of that physician's findings on
6 examination?

7 A Usually, but not always.

8 Q Under what circumstances would you
9 not make such an observation or notation about
10 that?

11 A Time.

12 Q What do you mean?

13 A A factor of time. If we were in a
14 rush to do something else, take care of another
15 more seriously ill patient, I would have just
16 written a brief note to document that we had
17 seen the patient and probably not have written
18 the physical examination if it were not
19 pertinent.

20 Q If you had seen a patient with

21 another physician who had conducted the
22 examination, would it have been your custom to
23 document who it was who conducted the
24 examination?

25 A Sometimes.

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1 , M.D.

2 Q Under what circumstances would you
3 put the person's name down or wouldn't put the
4 person's name down?

5 A If there was a pertinent physical
6 finding.

7 Q Did you review the patient's chart
8 prior to seeing Mr. that morning on
9 January 20th?

10 A No.

11 Q Did you have any conversations with
12 any physician that morning prior to seeing him?

13 A No.

14 Q Did you speak with him that

15 morning?

16 A I can't recall.

17 Q Does your note suggest to you that

18 you did or didn't speak to him that morning?

19 A My note suggests that I did speak

20 to him.

21 Q How do you know that you did not

22 review the chart prior to seeing him that

23 morning?

24 A Because he was not on my service

25 and I did not know him prior to this morning.

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18

1 , M.D.

2 Q Whose service was he on?

3 A I can't recall.

4 Q Can you tell from the record whose

5 service he was on?

6 MR. : Don't guess. If you

7 know.

8 A I don't remember.

9 Q I'm not asking you to remember.

10 I'm asking to you look at the notes in this

11 record to see whose service he was on?

12 A I can't read the signatures.

13 Q Looking up at the top right, the

14 addressograph plate section, it has Dr. 's

15 name on it, does that indicate it was

16 Dr. 's service?

17 A Dr. 's service.

18 Q As far as you know is he a

19 urologist?

20 A Yes.

21 Q When you say that Mr. was

22 not on your service, what did you mean?

23 A My service with the fellow that I

24 was working with at the time.

25 Q That would be Dr.?

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1 , M.D.

2 A Yes.

3 Q As far as you know Dr. was a

4 urology fellow, correct?

5 A Yes.

6 Q Who was working under Dr. 's

7 service, correct?

8 A I don't believe on that day.

9 Q Is there anything in this chart

10 other than your note that would refresh your

11 memory as to whether you conducted your own

12 physical examination of the patient on January

13 20th?

14 A No.

15 Q Is there anything in this hospital

16 records other than your note of January 20th to

17 suggest if another physician was present with

18 you at the time that you saw Mr. ?

19 A No.

20 Q Did you write any orders for the

21 patient as a result of your visit?

22 A On what day?

23 Q That day January 20th?

24 A I would have to look.

25 Q Go right ahead.

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1 , M.D.

2 A Yes.

3 Q What orders did you write for

4 January 20th?

5 A Blood cultures, echocardiogram for

6 January 21st.

7 Q To be done on the 21st?

8 A Yes.

9 Q Do you have a time for those

10 orders?

11 A Yes, I do, 2:40 p.m.

12 Q Okay.

13 A And the same date, January 20th, at

14 5 p.m. I wrote for an IV fluid order.

15 Q How was it that you came to make
16 those orders for Mr. at those times?

17 A I can't recall.

18 Q Had you been contacted by a nurse
19 or a physician during the course of that day
20 requesting certain cultures or echocardiogram
21 or IV fluids?

22 A I can't remember.

23 Q Do the notes refresh your memory as
24 to the reason why they were requested?

25 A No.

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1 , M.D.

2 Q As you sit here now do you have any
3 memory of having any conversations with Dr.
4 about the need for the item you ordered
5 on January 20th for Mr. ?

6 MR. : She said she wasn't

7 working under on that day.

8 MR. OGINSKI: No, under her.

9 MR. : She said she wasn't

10 working under that day.

11 started Monday.

12 Q Whosever service you were on on

13 January 20th, that Sunday, did you have any

14 conversation with any physician about why these

15 particular things were requested or ordered?

16 A I don't remember.

17 Q Did you order these things on your

18 own or at the request of some other physician?

19 A I don't remember.

20 Q Is there anything within the notes

21 to suggest to you whether it was because of

22 someone else requested them and wanted it done?

23 A No.

24 Q Had you rendered any opinion as to

25 why Mr. was continuing with his

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1 , M.D.

2 hiccups?

3 A No.

4 Q Did you learn from anyone before

5 seeing him that day that he was tolerating his

6

6 diet and was able to drink fluid?

7 A No.

8 Q Were you aware that Nurse's Note

9 the day before indicated that the patient was

10 tolerating his regular diet and drinking

11 fluids? I'm referring to the January 19th

12 Nurse's Note 7 a.m., 7:30 p.m. shift which is

13 the note timed at 4 p.m.

14 MR. : The previous day you're

15 talking about?

16 MR. OGINSKI: Right here.

17 A "Patient is tolerating well

18 regular diet."

19 MR. : You're talking about the

20 day before she signed this?

21 MR. OGINSKI: Yes.

22 A Repeat your question.

23 Q Sure.

24 Did you ever learn before seeing

25 Mr. on the morning of the 20th that

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1 , M.D.

2 he had now, according to the Nurse's Note, been

3 tolerating his regular diet and was drinking

4 fluids?

5 A I did not know before I saw him on

6 the 20th that he was tolerating a diet or

7 drinking fluids.

8 Q Had you had any conversation with

9 the GI physicians on January 20th about

10 Mr. ?

11 A No.

12 Q Had you made any decisions or

13 rendered any orders about his anticoagulation

14 therapy on the 20th?

15 A No.

16 Q What's the next note you have for

17 this patient?

18 A January 22, , 6 a.m.

19 Q ?

20 A Yes, correct.

21 Q Doctor, what year were you licensed

22 to practice medicine?

23 A .

24 Q Has your license to practice ever

25 been suspended or revoked?

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1 , M.D.

2 A No.

3 Q Are you licensed in any other state

4 besides ?

5 A No.

6 Q Where did you go to college?

7 A , .

8 Q When did you graduate college?

9 A .

10 Q Did you do anything from the time
11 you graduated college until you began medical
12 school?

13 A Yes.

14 Q What did you do?

15 A I worked.

16 Q In what?

17 A Different jobs. Construction
18 company, janitorial services, I was a
19 receptionist.

20 Q How was it that you came to see Mr.
21 on January 22nd?

22 A I can only -- I guess -- I assume I
23 had changed services and now I was on this
24 service.

25 Q Is that the Urology Service or some

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1 , M.D.

2 other service?

3 A It's always a Urology Service but
4 there's different attendings that are grouped
5 and are called different services with
6 different fellows sometimes.

7 Q Did you physically examine
8 Mr. on the morning of January 22nd?

9 A I can't recall.

10 Q Is there anything in your note to
11 suggest that you personally examined him?

12 A No.

13 Q Is there anything in your note to
14 indicate that another physician in your
15 presence examined Mr. when you saw
16 him?

17 A No.

18 Q As you sit here now do you have an
19 independent memory of seeing Mr. with
20 any other physician in your presence?

21 A Yes.

22 Q On January 22nd?

23 A I can't recall.

24 Q I'd like you to read your note,

25 please, in its entirety?

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26

1 , M.D.

2 A "GU which is genitourinary 1/22/01,

3 which is really ' , 6:40 a.m., AF VSS which

4 means afebrile, vital signs are stable. That's

5 zero with a line means no hiccups. X which is

6 timed three days."

7 Q So he had no hiccups for three

8 days?

9 A Yes.

10 Q Go ahead.

11 A "Urine output 1,200 plus 1,500."

12 Q I'm sorry, is that 15 or 25?

13 A 15.

14 Q Go ahead.

15 A "SPT approximately -- I don't know

16 if that's 24 or 50 cc's."

17 Q What is SPT?

18 A Suprapubic tube.

19 "Awake, alert S with a bar is

20 without complaints. Abdomen soft. NTND

21 nontender, nondistended. SPT which is

22 suprapubic tube in place. WBC which is white

23 blood cell 8.3."

24 Q Is that normal?

25 A Within normal range.

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1 , M.D.

2 Q Go ahead.

3 A "Impression and plan which is I/P

4 stable, check mark, echo results endoscopy

5 today." Signed .

6 Q You wrote "abdomen soft nontender."

7 Does that indicate to you that either you or
8 somebody else placed your hands on his belly to
9 assess his abdomen?

10 A Yes.

11 Q Does it indicate that you performed
12 that examination or someone else?

13 A It doesn't indicate.

14 Q Had you evaluated Mr. 's
15 anticoagulation therapy?

16 A No.

17 Q As of that date?

18 A No.

19 Q Before seeing him on the 22nd had
20 you reviewed the notes for the patient from the
21 time you had last seen him on January 20th up
22 until the morning of the 22nd?

23 A No.

24 Q Had you had any conversations with
25 any other physician caring for

1 , M.D.

2 Mr. about the events that had

3 transpired from January 20th when you last saw

4 him up until January 22nd?

5 A I can't recall.

6 Q How did you learn that he was

7 scheduled to have the endoscopy as of that

8 date, the 22nd?

9 A I can't recall.

10 Q Did you learn as of January 22nd

11 whether Mr. had received any type of

12 anticoagulation medicine during the weekend on

13 the 19th or the 20th?

14 A As I sit here now or based on the

15 charts?

16 Q Well, first as you sit here now.

17 A I can't recall.

18 Q Based on the chart?

19 A Can you repeat the question?

20 Q Sure.

21 Did you learn from a review of the
22 chart that this patient did not receive low
23 molecular weight Heparin on either the 19th or
24 the 20th of January?

25 By the way, Doctor, you're looking

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1 , M.D.

2 at the Order Sheets?

3 A Right.

4 According to the Order Sheets
5 there's no Fragmin given on the 19th or the
6 20th. No Fragmin ordered.

7 Q Do you know Dr. ?

8 A No.

9 Q Did you see a note by Dr. for
10 January 18th, GI note?

11 A Since I reviewed the chart or at
12 that time?

13 Q When you reviewed the chart.

14 A I saw it, yes.

15 Q Do you see in that note according

16 to Dr. the patient's INR drops below 2.

17 That the patient was to receive low molecular

18 weight Heparin?

19 MR. : Objection to form.

20 Q Can you read the section I have

21 highlighted on my copy?

22 A Sure.

23 "Suggested plan: To proceed with

24 upper endoscopy likely Monday. Hold Coumadin.

25 When INR is less than 2 start low molecular

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30

1 , M.D.

2 weight Heparin."

3 Q Do you know why low molecular

4 weight Heparin was not given over the weekend

5 on January 19th or January 20th?

6 A No, I don't know.

7 Q Did you ever have any conversations

8 with any doctors caring for

9 Mr. that his life expectancy would be

10 in any way altered because of his medical

11 condition?

12 A I did not discuss that with anyone.

13 Q Did you learn on January 22nd that

14 Mr. had suffered a pulmonary embolus?

15 A At 6:40 a.m.?

16 Q No, at any time that day did you

17 learn that he had suffered a pulmonary embolus?

18 A I can't recall.

19 Q Am I correct that you also saw the

20 patient the following day on January 23rd?

21 A Yes.

22 Q By that morning did you learn that

23 Mr. had been diagnosed with having a

24 pulmonary embolus?

25 A Yes.

1 , M.D.

2 Q Had you read and seen the CAT scan
3 films that were taken of him the night before?

4 A No.

5 Q Had you had any conversation with
6 the radiologist who reviewed and interpreted
7 those CAT scan films?

8 A No.

9 Q What were your normal working hours
10 for the work week beginning with January 22nd?

11 A For the work week?

12 Q On a Monday January 22nd when did
13 you work from, from when to when?

14 A 6:30 a.m. until whenever, 7, 8, 9,
15 10, 11 p.m.

16 Q Is there anything in the record to
17 suggest that you were advised in the evening or
18 late afternoon of January 22nd that Mr.
19 had suffered an acute event?

20 A No.

21 Q Is there anything in the record to
22 suggest that you were contacted by any doctor
23 or nurse about Mr. 's acute episode of
24 shortness of breath around 5 p.m. that day?

25 A No.

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32

1 , M.D.

2 Q Do you know a Physician's Assistant
3 ?

4 A Yes.

5 Q How do you know her?

6 A I know her through
7 only.

8 Q Did you have any conversations with
9 Physician's Assistant on January
10 22nd about Mr. ?

11 A I can't recall.

12 Q Were there any other urology

13 residents assigned to a particular service

14 which you were on on January 22nd?

15 A No.

16 Q Was Dr. the urology fellow

17 for that particular service caring for

18 Mr. ?

19 A Yes.

20 Q Were there any other fellows

21 assigned to Mr. for that day?

22 A On January 22nd?

23 Q Yes.

24 A No.

25 Q Do you know Dr. ?

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33

1 , M.D.

2 A Yes.

3 Q Did you ever have any conversations

4 with Dr. about

5 Mr. ?

6 A No.

7 Q Was Dr. a urology fellow as

8 well?

9 A Yes.

10 Q Do you know Dr.

11 (phonetic)?

12 A Yes.

13 Q Was he also a urology fellow?

14 A Yes.

15 Q Did you ever have any conversations

16 with him -- I assume it's a him, right?

17 A Yes.

18 Q With him about Mr. ?

19 A Only if he was the one that was on

20 the 20th. I don't remember who was on the

21 20th.

22 Q In your review of this chart, did

23 you see any notes written by either Dr. or

24 Dr. for either the 19th of January

25 or the 20th of January?

1 , M.D.

2 A It's difficult to read their

3 handwriting. I would be guessing.

4 Q I don't want you to guess.

5 A I can't tell.

6 Q What do you do in the instance

7 where you're caring for a patient, another

8 physician has written in the chart a note and

9 you cannot make out whose handwriting it is or

10 even decipher the note, what do you do to find

11 out who wrote it or what is written there?

12 A I could ask the nurses who know

13 their handwriting better than I do or I would

14 ask if they knew who wrote it and ask that

15 person if they wrote that and ask them what

16 they wrote.

17 Q Did you have any conversation with

18 Dr. on January 22nd about

19 Mr. ?

20 A I can't recall.

21 Q Was Dr. present at the time
22 that you examined or saw the patient on the
23 morning of January 22nd?

24 A No.

25 Q How do you know that?

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35

1 , M.D.

2 A Because he normally was not there
3 at that time.

4 Q On the 23rd when you saw
5 Mr. that morning had you learned that
6 he had already suffered a pulmonary embolus?

7 A Yes.

8 Q How did you learn that?

9 A I can't recall how I learned it.

10 Q Is there anything in your note to
11 suggest to you how it was that you learned that
12 information?

13 A Yes.

14 Q What is it within your note that

15 suggests to you that information?

16 A Chest CT scan pulmonary: Bilateral

17 PE's which stands for pulmonary embolism.

18 Q Had you reviewed any part of

19 Mr. 's note before seeing him that

20 morning on January 23rd?

21 A I can't recall at this time.

22 Q When you wrote chest CT scan, are

23 you referring to a report that was issued that

24 you read or something else?

25 A I can't recall.

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1 , M.D.

2 Q Is there any way for you to

3 determine, looking at your note alone, how you

4 learned of the chest CT scan that showed the

5 bilateral pulmonary embolism?

6 A Not by my note alone.

7 Q Read your note in its entirety,

8 please, for January 23rd?

9 A "GU genitourinary 1/23/ , 6:40

10 a.m., PT's patient S/without complaints/with a

11 circle is no SOB shortness of breath, 35, heart

12 rate 118."

13 Q What does 35 represent?

14 A I can't recall.

15 Q Doctor, I'm not asking you to

16 recall. Based only on your note.

17 A I don't know.

18 Q Go ahead.

19 A "Heart rate 118, arrow 98, 115/90."

20 Q That's blood pressure?

21 A Yes.

22 Q Go ahead.

23 A "RR which is respiratory rate is

24 20."

25 Q Let me stop you for a moment. Are

1 , M.D.

2 there any other vital signs that you think 35

3 would represent?

4 A No.

5 Q Go ahead, please.

6 A "SAT saturation 98 percent. 2L

7 which would be 2 liters of oxygen."

8 Q How did you obtain that

9 information?

10 A I probably looked. I can't recall

11 to this note.

12 Q When you say you looked, what would

13 you be looking at?

14 A The whatever, you know...

15 MR. : Monitor?

16 THE WITNESS: No, not the

17 monitor. The actual oxygenation

18 delivery system.

19 Q Go ahead, please.

20 A "Urine output 1650 plus, plus. CTA
21 is clear to auscultation. RRR is regular rate
22 and rhythm. NL is normal B/S is bowel sounds
23 soft. SPT suprapubic tube site clean."

24 Q Let me stop you for a moment. The
25 CTA, does that represent a lung exam?

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1 , M.D.

2 A Yes.

3 Q Did you perform that exam?

4 A From my note alone, yes.

5 Q The regular rate and rhythm, is
6 that also listening to the patient's chest with
7 a stethoscope?

8 A Yes.

9 Q Go ahead, please.

10 A "Chest CT scan pulmonary: B/L is
11 bilateral. PES which is PE's.

12 Q Pleural, right?

13 A Yes.

14 Q Okay, continue.

15 A "I/P is impression and plan. PT is
16 patient. S bar is without RESP respiratory
17 problem today. Fragmin started yesterday. ID
18 and GI in appreciated. Cardiology consult echo
19 for pericardial effusion. Diflucan for this
20 flush. Duplex Doppler, ."

21 Q What was a duplex Doppler for?

22 A From my note I can't recall.

23 Q The echo that you wrote for
24 pericardial effusion, was that the effusion
25 that occurred after the pulmonary embolism?

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1 , M.D.

2 A I can't tell.

3 Q What was the original order for the
4 echocardiogram for?

5 A Thinking retrospectively it would

6 be for the low grade temperatures.

7 Q Would it be correct to say that as

8 of January 20th Mr. did not have

9 pericardial effusion?

10 A I can't tell.

11 Q How was it that you determined that

12 Mr. had pericardial effusion as of

13 January 23rd?

14 A Most likely from the CAT scan. The

15 chest CAT scan.

16 Q Did you make any assessment or have

17 any opinion as to whether the pleural effusion

18 was a result of his pulmonary embolus?

19 A I cannot make that assessment.

20 Q Is there anything in your note to

21 suggest that was the reason for the effusion?

22 A No.

23 Q Based upon your review of the chart

24 can you determine whether the effusion was the

25 result of the embolus?

1 , M.D.

2 A No.

3 Q You write under your impression and

4 plan, "Fragmin started yesterday." Tell me

5 what Fragmin is, Doctor?

6 A It's a low molecular weight

7 Heparin.

8 Q Where did you obtain the

9 information that you wrote, "Fragmin started

10 yesterday"?

11 A I can't recall how I obtained the

12 information.

13 Q Is there anything in your note to

14 suggest that any other doctor was present

15 during your examination of Mr. ?

16 A No.

17 Q Was Mr. attached to a

18 pulse oximeter?

19 A I can't recall.

20 Q In January of did the hospital

21 have a device known as a pulse oximeter?

22 A Yes.

23 Q Was that usually attached to a

24 finger tip?

25 A In certain patients, yes.

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1 , M.D.

2 Q Would the device then be attached

3 to some sort of monitor to then give a readout

4 as to the patient's saturation, oxygen

5 saturation level?

6 A Yes.

7 Q Did that monitor read out anywhere

8 else besides the patient's room?

9 A I can't recall.

10 Q How often would you be on call

11 during the week in January of ?

12 A Sometimes twice. Once or twice or

13 three times.

14 Q On the occasions when you would be
15 on call would you continue your work from the
16 morning hours when you first got there until
17 the end of the day and then continue through
18 the night?

19 A Yes.

20 Q Not next morning?

21 A Yes.

22 Q On the following morning would you
23 then be permitted to leave the hospital to go
24 home?

25 A Yes.

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1 , M.D.

2 Q Were you on call the evening of
3 January 22nd going into January 23rd?

4 A No.

5 Q How do you know that?

6 A Based on the charts.

7 Q If you had been on call during that
8 evening what within the chart would you expect
9 to see to tell you that you were there and you
10 were on call that night?

11 A You said the 21st or the 22nd?

12 Q The 22nd.

13 A Okay.

14 Q It's a Tuesday going into the
15 Wednesday?

16 A Right.

17 If I was on call on the 22nd if
18 some acute event had happened or something,
19 anything, I would have documented it in the
20 chart.

21 However, if there was no event
22 there would not be a note saying I was on call.

23 Q In this case we know that acute
24 event occurred to Mr. around 5 p.m.
25 on the 22nd, correct?

1 , M.D.

2 A Yes.

3 Q Do you know whether any physician
4 contacted Dr. to let him know, to let the
5 attending know about the patient's event and
6 the fact that a pulmonary embolus had been
7 diagnosed?

8 A I don't know.

9 Q Did you have any conversations with
10 Dr. on the 22nd in the evening about Mr.
11 's pulmonary embolus?

12 A I can't recall.

13 Q If you had such conversation with
14 Dr. would you have expected to write a
15 note in the chart about your conversation?

16 A Most likely, yes.

17 Q Going ahead to the January 23rd
18 note to the bottom of your note where you
19 write "ID and GI input appreciated," would it

20 be correct to say that you had read and
21 reviewed their consultations at the time you
22 wrote this note?

23 A No.

24 Q By this note are you asking for
25 consults for both Infectious Disease and GI?

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1 , M.D.

2 A No.

3 Q Tell me what you mean?

4 A What I mean is that somehow I know
5 whether it was from the chart or the fellow
6 told me, I can't recall, that they did put
7 input and that we recognized their input.

8 Q What is a duplex Doppler?

9 A It's a device that assesses blood
10 flow.

11 Q Under what circumstances would you
12 order a duplex Doppler for a patient?

13 A If you need to evaluate whether or
14 not there's adequate flow or resistance in any
15 part of the body.

16 Q Is that test useful for patients
17 who have developed an embolus or clots
18 somewhere in their body?

19 A It can be, yes.

20 Q What information would that tell
21 you in light of the a patient who had suffered
22 an embolus?

23 A If there's any direct etiology of
24 where the embolism came from.

25 Q Was the duplex Doppler performed

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1 , M.D.

2 before Mr. died?

3 A I can't tell from the chart.

4 Q Is there anything in the chart to
5 suggest that that test was performed prior to

6 his death?

7 A Not from the chart.

8 Q Let me direct your attention back

9 to that note, Doctor, the January 23rd note

10 where you wrote "Fragmin started yesterday; "

11 what was the significance of that to you?

12 A Can you rephrase that?

13 Q Sure.

14 What did you mean by that that

15 "Fragmin was started yesterday,"?

16 A That Fragmin was given yesterday.

17 Q Why was Fragmin given, that would

18 be January 22nd?

19 MR. : Under circumstances why

20 was it given?

21 MR. OGINSKI: Yes.

22 Q Based upon your note you wrote

23 "Fragmin started yesterday"?

24 A Yes.

25 Q Do you know why Fragmin was given

1 , M.D.

2 on January 22nd?

3 A Based on my note it appears that he
4 had undergone his endoscopy and therefore there
5 was no indication to hold it any longer and it
6 was part of his treatment plan so it was
7 resumed.

8 Q Do you know when it was resumed on
9 the 22nd?

10 A I'd have to refer to the chart and
11 the nurse's administration of the medications.

12 Did you say on the 22nd or 23rd?

13 Q 22nd.

14 Based upon your note where you say
15 "Fragmin started yesterday?"

16 A You're asking me to confirm that
17 you want to know what time that was given?

18 Q Yes.

19 A I have to look it up.

20 On January 22, , the Fragmin

21 order that was written appears to be picked up
22 at 3 p.m.

23 Q Can you look to see when it was
24 actually administered?

25 A 6 a.m. or 6 p.m. -- 6 p.m., January

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1 , M.D.

2 22nd. It's hard to read.

3 Q Doctor, you had mentioned in your
4 note that the oxygen saturation level is 98
5 percent. Is there anything else in this record
6 that you've seen that recorded the patient's
7 oxygen saturation level at any time on January
8 22nd from 5 p.m. up until the time you wrote
9 your note the next morning at 6:40 a.m.?

10 A I'd have to look at the chart.

11 Q If you can, please.

12 A The answer is yes.

13 Q Tell me what time and what sheet

14 you're looking at to give me that information?

15 A I'm looking at this sheet.

16 Q Tell me?

17 MR. : Give the name of it.

18 A Vital Signs Chart. In the last

19 column on January 22nd there's a documentation

20 of 98 percent and it appears to be at 8 p.m.

21 Q From that time until your note in

22 the morning is there any other recorded

23 observation of the patient's oxygen saturation

24 level?

25 A No.

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1 , M.D.

2 MR. : On this sheet.

3 A On this sheet.

4 Q Is there any other sheet in the

5 record which would tell you what the patient's

6 oxygen saturation level was from 8 p.m. on the

7 22nd until the next morning at 6:40 p.m. on the

8 23rd?

9 A Yes.

10 Q What?

11 A The Nurse's Note.

12 Q That would be the note directly

13 before yours?

14 A Yes.

15 Q What is it about that note that

16 tells you that information?

17 A It says, "7 p.m. to 7 a.m. January

18 22nd to January 23, . Remains on oxygen 2

19 liters nasal cannula saturation 99 percent."

20 Q Does that note tell you when that

21 observation was made?

22 MR. : Object to the form.

23 You're assuming it's one

24 observation, not a summary of an

25 evening or a night's worth of

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1 , M.D.

2 observations written in a different

3 shift.

4 MR. OGINSKI: Don't know.

5 MR. : You're making that

6 assumption.

7 MR. OGINSKI: I'll rephrase.

8 Q Is there anything within that

9 Nurse's Note from 7 p.m. to 7 a.m. shift

10 whether that observation that's recorded,

11 saturation level of 99 percent, as to, number

12 one, when it was recorded?

13 A It's says between 7 p.m. and 7

14 a.m.

15 Q Right.

16 Is there anything more specific?

17 A No.

18 Q Is there any indication in that

19 note to suggest whether that oxygen saturation

20 level is one recorded instance or represents a

21 multitude or varied observations of the

22 saturation level?

23 A In this note it does not state

24 that.

25 Q Do you have any knowledge about how

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1 , M.D.

2 often a patient's oxygen saturation level

3 should be monitored in light of a diagnosed

4 pulmonary embolus?

5 MR. : Objection to form.

6 You can answer.

7 A Did you ask me if I had an

8 opinion?

9 Q I'll rephrase it.

10 Were you aware of the standard of

11 care in which a patient's oxygen saturation

12 level should be measured in light of a

13 diagnosed pulmonary embolus?

14 MR. : Objection to form.

15 You can answer.

16 A No.

17 Q Did you ever have any conversations

18 with any physicians before

19 Mr. 's death as to whether the

20 anticoagulation therapy he was getting was

21 adequate?

22 A I can't recall.

23 Q Did you ever question any physician

24 as to why Mr. suffered his pulmonary

25 embolus if he was already adequately

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1 , M.D.

2 anticoagulated?

3 A I can't recall.

4 Q Is there anything in the chart to

5 suggest that you raised such a question?

6 A No.

7 Q On January 23, , do you see Mr.

8 again after your examination in the

9 early morning?

10 A Yes.

11 Q At what time?

12 A I can't recall.

13 Q What is it within the chart that

14 either refreshes your memory or suggests that

15 you were there?

16 A Nothing in the chart refreshes my

17 memory.

18 Q Is it something that you recall?

19 A Yes.

20 Q What is it that you recall?

21 A I was present at the code.

22 Q Did you participate in the code?

23 A No.

24 Q Were you present for the

25 conversations that the other doctors who were

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1 , M.D.

2 running the code were having?

3 A No.

4 Q Did you learn that there was an

5 issue as to whether anticoagulant would be

6 administered during the code?

7 A No.

8 Q Did you learn during the code that

9 a decision was made not to administer

10 anticoagulant?

11 A No.

12 Q Did you learn that Mr.

13 had broken ribs during the course of the code?

14 A No.

15 Q Were you present for any discussion

16 with any physicians during the code about the

17 likelihood of him bleeding from the fractured

18 ribs?

19 A No.

20 Q What do you recall about

21 Mr. 's code?

22 A Nothing in particular.

23 Q After Mr. died did you

24 have any discussions with Dr. about the

25 time that he died?

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1 , M.D.

2 A No.

3 Q Was Dr. present at the code?

4 A Yes.

5 Q Was any other urology physician

6 present at the code?

7 A I can't recall.

8 Q Did you overhear any conversations

9 about anyone talking about

10 Mr. 's anticoagulation therapy?

11 A No.

12 Q At any time while you were caring

13 for Mr. did you review the patient's

14 INR levels?

15 A I can't recall.

16 Q If you had reviewed his INR levels

17 would you had made a note of that in the

18 patient's chart?

19 A Yes, most likely.

20 Q Did you ever form an opinion as to

21 how Mr. suffered a second pulmonary

22 embolus causing his death?

23 A No.

24 Q Did you ever speak to the

25 pathologist who performed the autopsy?

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1 , M.D.

2 A No.

3 Q Did you ever speak to the

4 pathologist who performed the gross

5 examinations of specimens submitted?

6 A No.

7 Q Are you aware of any literature in
8 medicine to suggest that Fragmin is a primary
9 drug of choice to treat pulmonary embolus?

10 A I haven't reviewed the literature.

11 Q In your experience, Doctor, have
12 you ever had occasion to treat patients who
13 have experienced pulmonary embolus?

14 MR. : You mean for pulmonary
15 embolus as opposed to treating
16 patients who have one?

17 MR. OGINSKI: I'll rephrase the
18 question.

19 Q Have you had occasion to
20 diagnose patients who have suffered acute
21 pulmonary embolus?

22 A Yes.

23 Q Was that during your training as a
24 general surgeon, your three years of residency?

25 A I can't recall when specifically

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1 , M.D.

2 but it's been in the last six years.

3 Q Have you had occasion to treat

4 patients who have experienced and already been

5 diagnosed with pulmonary embolus?

6 A Yes.

7 Q Can you give me an approximate

8 number as to how many patients you have treated

9 who have had a diagnosis of pulmonary embolus?

10 A No.

11 Q Can you give me an approximate

12 number of patients you have diagnosed who have

13 suffered acute pulmonary embolus?

14 A One to three.

15 Q Did you have any conversation with

16 any doctor as to whether Mr. needed a

17 pulmonology consult?

18 A No.

19 Q Did you have any conversation with
20 any physician about whether Mr.
21 needed a vascular surgery consult in light of
22 his diagnosis of pulmonary embolus?

23 A No.

24 Q Do you have any opinion, as you sit
25 here now, with a reasonable degree of medical

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1 , M.D.

2 probability as to whether IV Heparin is the
3 drug of choice to treat an acute PE?

4 A No.

5 Q At this point are you eligible to
6 sit for any portion of the urology boards?

7 A No.

8 Q When you were on the Urology
9 Service of January , was it customary that
10 Urology Service would treat patients with PE's?

11 MR. : Object to the form.

12 Q How long did you spend during

13 your rotation at ?

14 A Three months.

15 Q During that time did you ever treat

16 any patients who had PE's?

17 MR. : Well, first of all she

18 already said she never treated a

19 patient with PE.

20 Q Did any urologist that you were

21 working with at during those three

22 months treat any patients with PE's?

23 MR. : Objection to form.

24 Q On the Urology Service?

25 MR. : Objection.

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1 , M.D.

2 She cannot know that. The way

3 you phrased it you're assuming she

4 has total knowledge of everything

5 that happened on the Urology Service.

6 MR. OGINSKI: No, that she was
7 participating in their care.

8 MR. : Rephrase it, please.

9 Even then I'm not sure she would
10 know.

11 Q During those three months that
12 you were on the Urology Service at did
13 you treat any patient who had been diagnosed
14 with a PE?

15 MR. : Objection to form.

16 What are you after here?

17 MR. OGINSKI: I want to know --

18 MR. : She already said she
19 hasn't treated any patient with PE at
20 all. So that's one thing.

21 Q Did you learn during your time
22 at that the Urology Service would
23 treat patients who had suffered PE's?

24 MR. : Objection to the form.

25 You can answer.

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1 , M.D.

2 A No.

3 Q Did you ever learn from Dr.

4 what experience he had in treating patients who

5 had been diagnosed with pulmonary embolus?

6 A No.

7 Q Did you ever form any opinion as to

8 whether Dr. had sufficient expertise in

9 treating patients with pulmonary embolus as

10 opposed to a pulmonologist?

11 A I have no opinion.

12 Q Do you have any opinion as to

13 whether Dr. had sufficient expertise to

14 treat a patient with a pulmonary embolus as

15 opposed to a pulmonologist?

16 MR. : Objection to form.

17 You can answer.

18 A I have no opinion.

19 Q Is a pulmonary embolus a
20 life-threatening event?

21 A It can be.

22 Q If you were the resident on call on
23 the evening of January 22nd when
24 Mr. had the acute shortness of breath
25 episode and ultimately was diagnosed with his

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1 , M.D.

2 pulmonary embolus, would it be good practice to
3 contact the attending physician to let him or
4 her know about that?

5 MR. : Objection.

6 She wasn't the one, so you're
7 asking her to speculate.

8 MR. OGINSKI: I'm asking good
9 practice for residents.

10 A I would have to have seen and

11 examined the patient and decided if I needed to
12 call.

13 Q Under what circumstances would you
14 contact the attending to let him or her know
15 about the event?

16 MR. : Note my objection.

17 You can answer.

18 You're asking her to speculate.

19 She wasn't there.

20 A The patients aren't stable.

21 Q Any other circumstances that would
22 warrant your calling the attending?

23 A Most likely but at this time I
24 can't think of one.

25 Q Did you participate in any decision

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1 , M.D.

2 of whether or not to transfer this patient in

3 the evening of January 22nd to the Intensive

4 Care Unit?

5 A I did not participate.

6 I was not aware until the morning

7 after that he had suffered a PE.

8 Q Do you have any other notes for

9 this patient after your morning note on January

10 23rd?

11 A No.

12 Q Did you write any orders for the

13 patient on January 23rd?

14 A I'd have to refer to the chart.

15 No.

16 Q Did you ever speak to any family

17 member of Mr. 's on January 22nd or

18 January 23rd?

19 A I can't recall. But most likely

20 no. I can't recall.

21 Q You were second-year resident last

22 year?

23 A In urology, yes.

24 Q Have you ever given any lectures to

25 any international or national bodies or

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1 , M.D.

2 conferences of urologists?

3 A Yes.

4 Q Which ones?

5 A We do the Valentine Essay Contest

6 which we have to present our research work. We

7 present it to residents and attendings.

8 Q Oh, okay. I'll be a little more

9 clear.

10 Other than making any presentation

11 to the physicians in your own hospital have you

12 presented any lectures or --

13 A Those presentations are outside of

14 my own hospital.

15 Q Are they?

16 A Yes.

17 Q How many times did you do that?

18 A Three.

19 Q The area of research you gave

20 lectures on was what?

21 A Mainly urology.

22 Q Anything within urology?

23 A Erectile dysfunctions, diabetic

24 cystopathy, prostate cancer.

25 Q Do you recall the names of those

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1 , M.D.

2 conferences, you said Valentine?

3 A Valentine Essay Contests.

4 Q Where were those given?

5 A At the New York Academy of Medicine

6 in New York.

7 Q That's on Fifth Avenue?

8 A Yes.

9 Q 103rd, 104th?

10 A Yes.

11 Q Did you ever form any opinion as to
12 whether the Diflucan that was ordered by the GI
13 physicians to treat the Candida would be
14 effective?

15 A For what?

16 Q For the Candida infection.

17 A Can you rephrase?

18 Q Sure.

19 Did you learn after the endoscopy
20 that been performed on January 22nd that a
21 diagnosis of Candida infection was made?

22 A Based on my note on the day of the
23 23rd, yes.

24 Q Did you form any opinion as to
25 whether the Diflucan which was ordered to treat

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1 , M.D.

2 that Candida would be effective?

3 A I did not form an opinion.

4 Q Did you form any opinion as to
5 whether Mr. would -- assuming the
6 Diflucan worked and treated his Candida --
7 whether he would be able to continue his oral
8 intake to improve his weight?

9 MR. : Objection.

10 She already said she didn't
11 have an opinion as to whether it
12 worked. Now you're asking her to
13 assume it did and have an opinion
14 beyond that. There's no foundation
15 for that.

16 Q Did you have any conversation
17 with any doctor caring for Mr. as to
18 the significance or implications of his weight
19 loss upon his admission to on January
20 16th?

21 A No, I did not speak to anyone.

22 MR. OGINSKI: Thank you, Doctor.

23 (Time noted: 11:27 a.m.)

24

11 record of the Examination Before Trial of said

12 witness;

13 That the parties herein were represented

14 by counsel as stated herein;

15 That I am not connected by blood or

16 marriage with any of the parties. I am not

17 interested directly or indirectly in the matter

18 in controversy, nor am I in the employ of any

19 of the counsel.

20

21 IN WITNESS WHEREOF, I have hereunto set my hand

22 this 15th day of April, .

23

24

25

TOMMER REPORTING, INC. (212) 684-2448