APPEARANCES:

Ann M. Garson, Esquire
DONNA TAYLOR-KOLIS CO., L.P.A.
1370 Ontario Street, Suite 330
Cleveland, Ohio 44113

On behalf of the Plaintiff

Peter N. Lavalette, Esquire
ROBISON, CURPHEY & O'CONNELL
Ninth Floor, Four Seagate
Toledo, Ohio 43604

On behalf of the Firelands
Community Hospital

James W. Hart, Esquire
FLYNN, PY & KRUSE CO., L.P.A.
165 East Washington Row
Sandusky, Ohio 44870

On behalf of SHAVINDER
Alehluwalia, M.D.

Deirdre G. Henry, Esquire
WESTON, HURD-FALLON, PAISLEY & HOWLEY, L.L.P.
2500 **Terminal** Tower
50 Public Square
Cleveland, Ohio 44113-2241

On behalf of Han J. Lee, M.D.

- - - - -

11/5/98

SHAVINDER AHLUWALIA M.D., of lawful age, a Defendant herein, called by the Plaintiff as upon cross-examination, pursuant to the Rules of Civil Procedure, being first duly sworn according to law, was examined and testified as follows:

CROSS-EXAMINATION OF SHAVINDER AHLUWALIA, M.D.

BY **MS. GARSON:**

Q Would you state your name for the record, please?

A Dr. Shavinder Ahluwalia.

Q Okay. Dr. Ahluwalia, my name is Ann Garson, I'm here on behalf of the Estate a Dan Lavely. I need to ask you some questions about the chart of Mr. Lavely from that April when you were involved in his care. I trust that your attorney has already explained to you that your answers need to be verbal for the Court Reporter. Additionally, however, I would like to get an agreement from you up front that if you answer a question of mine, can we agree that you understood the question?

A I'll try the best I can.

Q Okay. The converse of that is if you **don't**

understand my questions, either because of my language or the concepts or it just didn't make any medical sense, please let me know?

A I will.

Q Okay. And I will do my best to rephrase it. I'm not a doctor and sometimes I might ask questions that are convoluted or don't make any sense. Okay?

A Yes.

Q All right. I'm going to start off with a little b

have a copy of your CV in front of me. I don't want to waste a lot of time, but I do need to get some understanding of your training and educational background. Can you start with your undergraduate degree and take me through your medical education including your Board certifications?

A I'm from India and I did my high schooling as well as my medical schooling in India, and went to medical -- after my college degree I went to medical college at Government Medical College, and the name of the town is Patiala, that's in India. And then after receiving my medical degree I came to the United States.

Actually, before I came into the United States I did two years of internship and residency in India.

And then 1 came to the United States and took my ECFMG. And then I did a rotating internship at Resurrection Hospital in Chicago. And then I went to Grant Hospital in Chicago, did my family practice training, and then I went to St. Francis Hospital in Evanston, Illinois, and did my pediatric residency there. And then I went to Loyola University in Maywood, Illinois and finished my pediatric residency over there.

Q Okay. Are you Board Certified?

A No, I'm not. I am Board Eligible

Q In what?

A Pediatrics.

Q Board Eligible in Pediatrics?

A Uh huh.

Q And not Board **Certified** in any other **areas?**

A No.

Q When did you obtain your license to practice medicine?

A 1976.

Q Okay. So when did you finish at Loyola?

A 1979.

Q Okay. And what was your residency that you did there?

A Pediatric residency.

Q After your Pediatric residency in 1979, what did you do professionally?
A I went into practice.
Q You went into practice, into private practice?
A Yes, it was private practice.
Q Okay. Where?
A At Crystal Lake, Illinois.
Q Okay. And tell me about that private practice so I don't have to ask you a million questions. Tell me about the kind of office that it was, how many people were there?
A Over there, I had two employees. I was just starting out and did my family, I practiced there for about four years, four and a half years.
Q Were you the sole --
A I was sole practitioner.
Q And how long did you do that?
A Four and a half years.
Q And what kind of a practice was it, pediatrics?
A Pediatrics as well as family practice.
Q Okay. So you did that for four years, then what did you do?
A Then we moved to Sandusky.
Q Okay. What was the reason you moved to Sandusky?
A We have family in Cleveland and Toledo, and that was

the reason we moved here.

Q Okay. So that was 1983, approximately?

A '85.

Q '85, you came to Sandusky. What did you do when you got here?

A I have been practicing here since then.

Q What kind of a setting?

A Well, I was in a solo practice until two years ago, and then I joined my husband and other physicians.

Q Okay. You had a solo practice until 1995?

A Uh huh,

Q All right. And was that just an office of your own?

A Yeah, office of my own.

Q Were you affiliated, at the time were you affiliated with any particular hospital?

A I was affiliated with Providence Hospital here in Sandusky, as well as Firelands Community Hospital.

Q Okay. When you say affiliated, what does that mean?

A Minimal active staff there at the hospital.

Q Okay. Did you have any teaching responsibilities at Firelands or Providence Hospitals?

A No, I did not have any teaching responsibilities.

Q Do you now?

A No, I don't.

Q Do they have a residency program?

A Well, at Firelands they have some internship, you know, and sometimes some of the students in the residency do come along, but I'm not doing too much of the teaching.

Q Do you do any kind of teaching in the area of medicine?

A No, I don't.

Q Have you published?

A While I was doing my residency I did some publishing.

Q What topics?

A Different, you know, for example, family practice or pediatric topics or -- I was interested in neonatal Intensive Care, couple of articles I published in that, you know.

Q Okay. Are those on your CV?

A They might be, I'm not sure. I haven't looked at it for a long time.

Q I will ask your attorney to give us a list of your publications.

A Sure.

Q All right. So in 1995, what did you do? You left your solo practice?

A Actually, I joined my husband. He was already in practice here, so we just merged our practices.

Q What kind of a physician is he?

A He's an internist and cardiologist.
Q Okay. And when you joined his practice did you continue with your active staff --
A Uh huh.
Q -- positions at Providence and Firelands?
A That's right.
Q Okay. And does that continue to this day?
A Yes.
Q Have there been any changes in your privileges at those two hospitals?
A Well, you know, I was getting more busy in family practice for the last five or six years, and I used to do pediatric Intensive Care, like take care of premature and all that, I stopped doing that because I was getting really busy with the family practice.
Q Uh huh. Okay. Does that mean -- so that's a change in your role, but have your privileges there changed at all?
A No.
Q All right. When you say --
A Well, you know, because I did not want to take care of the sick newborns, so that's why I voluntarily changed the privileges. That was the only thing.
Q When you say you are on the active staff, what does

that involve exactly?

A That involves admitting the patients, taking care of them, you know, and I take care of everything, you know.

Q Okay. Do you see your private patients out of your own private office?

A Yes, I do.

Q Okay. As well as hospital patients?

A Yes, if they get admitted to the emergency room and I'm on call in the emergency room then I will admit the patients and take care of them.

Q You also serve on call?

A Yes, I do.

Q Okay. And what kind of an on call schedule were you on back in April of 1996?

A Well, I don't remember that.

Q Okay. Well, that's not fair. I'm not asking you to tell me what particular days of the week or how many hours at a time, but I guess in general, was it a certain number of days a month?

A It always changes, it depends on, you know, how many family practitioners are on call that month or, you know, probably, maybe I should say maybe once a week or so, something like that. I can't remember how many days I was on call.

Q All right. Where is your husband's -- where is your office, where was your office in April of 1996?

A April of '96, 3006 Campbell Street

Q Where is that in relation to Firelands Community?

A About five minutes

Q Five minutes away?

A Right.

Q Did you also have a separate office within the hospital at that time?

A No, I didn't.

Q Okay. And if you were on call, would you be at your office or in the hospital?

A It depends, you know, what I'm doing. Most of the times I'm in my office or at home.

Q Okay. So on call does -- you are not a house officer?

A No.

Q Okay. On call does not require you to be in the hospital?

A No. It requires us to be available within 20 minutes distance, you know.

Q Within 20 minutes, is that the hospital protocol?

A That's the hospital protocol, that's right.

Q Is your husband's name Charles?

A Uh huh.

Q Okay. A11 right. So since you've come to Sandusky have you always practiced in this area?

A That's right.

Q Okay. No other counties in Ohio?

A No, that's it.

Q All right. Would you consider "Harrison's on internal Medicine" an authoritative text?

A Uh huh.

Q That's a yes?

A Yes.

Q All right. So in April of '96 what was your employment position with Firelands Community Hospital?

A I was on the staff there.

Q You are not considered an employee?

A No, I'm not an employee.

Q Do you recall on April 23rd of 1996, or have you been able to determine where you were?

A I was at my office

Q Okay. All right. I'm going to back up for just a second, I'm getting ahead of myself. Have you reviewed any records for today's deposition?

A Yes, I have.

Q What did you review?

A Well, I went through the hospital records.

Q Okay. Do you have a separate office chart --
A Yes, I do.
Q -- regarding Mr. Lavely?
A Yes, I do.
Q Okay.
MS. **GARSON:** I'm going to have to request a copy of that. We haven't seen that.
MR. HART: Okay.
Q What kinds of things would be in that chart other than some duplicates of the hospital records?
A In my office chart?
Q Uh huh,
A Well, Dan used to come to me for minor problems, like colds and coughs or ear infections or skin infections, just a lot of scabies, you know, those sort of things, you know.
Q Okay. So he had been a patient of yours?
A For about three years, I think.
Q And you were aware of his medical history?
A Yes, I was.
Q Okay. Let's see, when you said you went and reviewed the hospital records, did you also review the medical records from the emergency room on April 22nd?
A Not today, but because they always sent the copies of the records to my office, you know.

Q Uh huh.
A So I have reviewed it before, not today, though.
Q Do you know whether you would have reviewed that prior to receiving the call regarding Mr. Lavely on the 23rd?
A Usually -- well, you know, no, because there was no way I was going to know about it. I was not called, you know, and then it takes a couple of days for the hospital to send the records.
Q That's what I was also thinking.
A Yeah.
Q Have y reviewed the autopsy in this case?
A No, I have not.
Q Have you received the death certificate?
A No, I have not.
Q Okay. Just to cover the bases, let me ask you if the coroner's office determined that the cause of death was acute bronchi pneumonia with diffuse alveolar damage, and then ARDS in parenthesis, would you, as far as you know at this point in time, have a dispute with that cause of death?
A No, I don't.
Q Okay. Are you aware of any pathogens that were eventually identified in this case?
A I'm not aware at this point.

Q All right. Let's look at the records. They are a little bit confusing, and I've tried to piece together in my mind what happened, when, but I need to confirm that with you. When were you first contacted regarding Mr. Lavely?

A On April 23rd.

Q Okay. Do you know when on April 23rd?

A I would say around 3:30 in the afternoon.

MS. HENRY: Pardon me?

THE WITNESS: 3:30 in the afternoon.

Q And are you basing that on a particular medical record?

A Yes, I do remember, and I'm also basing it on the medical record, too.

Q What medical record are you basing that on?

A The hospital records.

Q Can you show me where?

A Actually, I haven't brought anything from One South, you know, but I do remember, you know, the conversations I had with the nurse from One South, but I don't have the reports now.

Q Let me see if I can figure out what record it is that you would be looking for. Is it a nurses' notes?

A Nurses' notes from One South because that would be the psychiatrist's floor.

Q Well, let's see, I think we have those, Could you identify what that document is?

A Okay. Let's see --

Q I will indicate --

A It looks like these are the records for One South, the psychiatric floor from the nurses' notes.

Q I'll give you a minute, don't rush; read it over and see if you can identify for me when you were first contacted in this case.

A I would say around 3:00, but it might be 3:30 or something like that. It says around 3:00 I was contacted.

Q Could you read that note into the record, the one you are referring to and time that it states?

A Says (efuses -- "Dr. Ahluwalia notified of the chest x-ray and accepted patient to be transferred to Three North, Dr. Lee notified, Dr. S. Ahluwalia taking patient to be transported."

Q Okay. And that's says 3:00 on it?

A Uh huh.

Q I'd like to show you a page of orders, I believe, can you confirm for me that this is a page of physician's orders from April 23rd of 1996?

A Yes, it is.

Q Okay. All right.

MS. **GARSON:** I didn't make copies for everyone, you know where we are at,

Q Okay. On this note, what's the time on this note?

A 1450.

Q So that would be 2:50 in the afternoon?

A Yes.

Q Okay. Does that note indicate that you are aware or have been called regarding Mr. Lavely?

A Well, it says Dr. Lee has ordered I should be [illegible] And then at 2:50, I have ordered patient to be transferred to Three North, and it looks like it's 2:50, yes.

Q So before 3:00, at approximately 2:50?

A 2:50 or 3:00.

Q You ordered the transfer to Three North?

A That's right.

Q What kind of a floor is Three North?

A Three North is a medical floor.

Q That's not an Intensive Care Unit?

A It's not Intensive Care, but they have a telemetry and they can monitor the patient.

Q Whose decision was it to move Mr. Lavely to a medical floor?

A It was my decision.

Q It wasn't Dr. Lee's decision?

A No, it wasn't.
Q So it was strictly your decision
A (Nod indicating yes).
Q You have to say yes or no.
A Yes.
Q Okay. All right. You said that you recall the conversation that you had at the time that you were notified of Mr. Lavely?
A Yes, I do to some extent.
Q Tell me what you remember.
A Well, the nurse on the psychiatric floor said that Dan Lavely is running some fever and little bit short of breath, and at that time I told them to do some blood workup and ordered a chest x-ray that was already called to me, and then I knew that patient did have pneumonia, but she was not very concerned about it, and he did not look too bad. On the phone, the way she explained was that he was a little bit short of breath and he does have some fever. And I did order patient to be started on oxygen and to be transferred to Three North and order blood workup, including blood cultures, blood gases, and some IV's and I ordered some antibiotics for him at that time.
Q Okay. When you were first notified, do you know the name of that nurse that you spoke with?

A I don't remember the name.
Q Okay. Were you advised at that time of his pulse and respirations?
A She said he's a little bit short of breath, but she did not tell me the pulse, no.
Q Okay. So this nurse, the first person that you had contact with with regard to Mr. Lavely at approximately 2:50 to 3:00 did not advise you of his pulse or his respirations?
A I don't remember exactly, you know, what -- but she said that he's short of breath. That's all she said. I don't remember exactly what were the vitals or -- I don't know that.
Q I'm not necessarily expecting you to remember what they were independent of the records. What I am asking you to remember is whether or not this nurse told you what the vitals were.
A I don't remember that.
Q Okay. So you don't know if she told you what the vital signs were or not?
A I don't remember.
Q All right. I'm going to show you a nurse's note from 2:45, probably about five minutes before you were first contacted, the nurse's note from the Psychiatric Unit. I'll give you a minute to read it

and then I'll take it back. This note indicates that his temperature was 100.3 rectally, were you aware of that?

A I was aware that he had some fever.

Q And you can't recall whether she advised you of the vitals, including pulse and respiration or not?

A I do remember he was short of breath, but I don't remember what the exact vitals, whether she told me or not,

Q Do you remember her mentioning to you that he had blowing snorious respirations?

A No, I don't remember the exact words.

Q Do you recall her telling you that he was chilling?

A No, I don't remember.

Q And that he was restless?

A No.

Q Okay. And that he was complaining of having a hard time breathing when asked?

A I do remember she said he's a little bit short of breath, but I don't remember the exact words.

Q Did you ever talk to Dr. Lee directly about Mr. Lavely?

A No, I did not.

Q You didn't?

A No.

Q That was all handled through the nurses?
A Nurses, yes,
Q Were you ever advised through the nurses that Dr. Lee felt this man was in need of urgent medical care?
A Could you rephrase it, please?
Q Were you ever made aware through anyone that Dr. Lee considered this man in need of urgent medical care?
MR. HART: Objection. Go head and answer.
MS. HENRY: Objection.
A I don't remember that she said that he was in need of urgent medical care, but I was told that Dr. Lee thinks that I should -- a medical doctor should take over.
Q Okay. Were you ever advised or made aware through anyone that Dr. Lee considered that this man was in need of intensive medical care?
MS. HENRY: Objection.
A Dr. Lee cannot decide, he's a psychologist. I don't know whether he can, but he knew that patient needed medical care,
Q Okay. And you never spoke with him?
A No.
Q Okay. Is it fair to say that you never actually saw Mr. Lavely?

A Things happened so fast, you know, and I was not aware that he was this sick until 4:40, I wasn't -- when they called me that he's getting worse, I was not aware that he was that sick.

Q We are going to go through that. I guess I'm going to go back to my question: Did you ever see Mr. Lavely before he died?

A No.

Q During the hospitalization of April 23rd?

A No, I did not.

Q Your husband was the one who attended the code?

A That's right.

Q And he arrived at the hospital I think about 4 minutes after it had started?

A He left as soon as I talked to him, you know, around 4:40, I think he left the office around that time.

Q Uh huh.

A Around that time.

Q In fact, he's the one who called the code, wasn't he?

A No, he did not call the code, by the time he got there the patient was already being coded?

Q I'm sorry, he ended the code?

A He ended the code, yes.

Q That's what I meant. Okay. Why is it that your husband went to the hospital instead of yourself?

A I was very busy and I was doing a procedure in the office, and I was in the middle of it, and then my husband was -- he was more freer than I was, that's why I sent him there.

Q What kind of procedure were you involved in?

A Draining an abscess.

Q How long was that taking?

A Just takes about 20 minutes, you know.

Q Okay. April 23rd, do you know what day of the week that was?

A I don't remember the day.

Q Did you have appointments in your office that day?

A Yes, I did.

Q Okay. And when you received that first call from the nurse at 2:50 or 3:00, were you advised of any labs or diagnostic test results?

A Yes, I was.

Q What were you made aware of?

A I think she told me about the chest x-ray, but I'm not sure, and there was some white blood count.

Q So you don't know whether you were told about the x-ray or not?

A I don't know exactly whether she gave me the report, but she said the chest x-ray has been done, you know, but I don't remember whether I was given the report

or not, I don't remember that.

Q You don't think she would have told you what the finding was when the nurse's note said, "Notified of chest x-ray"?

A I don't remember whether she told me the report, because probably it wasn't ready yet by the radiologist. That's what I presume, but I'm not sure.

Q Well, let's look at it.

A He got admitted on the same day.

Q You've worked at Firelands Community for quite some time, you know that once an x-ray is taken, of course, it takes some time to dictate the findings and then have those transcribed, of course, correct?

A That's right.

Q But a physician who's caring for a patient can have access to the findings of an x-ray prior to its being dictated or transcribed?

A Yes, we do have it. It depends on how sick we are aware that the patient is, you know. It also depends, if we know how sick the patient is, we can go read it ourselves or we can take it to the doctor or the radiologist, but if we don't think the patient is not that sick, and then you usually -- the radiologist reads it the next day or transcribes it

the next day, so --

Q This chest x-ray was ordered stat?

A I --

Q How soon would you expect results to be from a stat chest x-ray?

A I don't have who ordered that chest x-ray.

Q You don't?

A I don't know. I ordered it later on.

Q Dr. Lee ordered that one?

A Dr. Lee ordered it. Okay, so I don't who ordered it, but I don't think I was given the report, but I'm not even sure, you know, but again, you know, chest x-ray was ordered by Dr. Lee, probably it wasn't ready at the time, that's what I'm presuming.

Q Why are you presuming that?

A Because it takes awhile you know, if Dr. Lee ordered it with a routine chest x-ray thinking that he has a fever, and usually it is read by the next -- radiologist the next day or so in the morning.

Q Well, what if it's ordered stat because the patient seems to be in respiratory distress, how soon would you expect the results of that x-ray to be made available to the physician?

A I presume within an hour -- it depends what time it was done and the technician has to go there, what

time it was done, and what time it was ready. It depends what time the radiologist is available, it just -- I can't answer that question.

Q You can't answer that question?

A It can be available, you know, within an hour or so.

Q Okay. It can be?

A I think this one was available in that period because --

Q Are you aware of when he was admitted?

A Probably sometime in the afternoon, you know.

Q Well --

A Maybe 1:00 or so, probably.

Q And have you reviewed that test that was ordered by Dr. Lee?

A I don't remember, but there was a white count and CVC available when she called me.

Q Okay. Let me ask you this: If a chest x-ray is ordered stat, we are not going to get into what the doctor is thinking now, but let's say a doctor orders a chest x-ray stat, and the nurses call you wanting to transfer that patient for medical care, and the notes indicate that Dr. Ahluwalia was notified of the chest x-ray, would you assume that you were advised of the result of that x-ray?

A See, it does not make a difference because I wasn't

aware whether the chest x-ray report was available to me or not, I knew that the patient had pneumonia because of his clinical condition and all that.

Q Okay. That's --

A I presumed it and treated him that way.

Q So you knew he had pneumonia?

A That was my 90 percent, you know, I was sure that he had pneumonia.

Q Without consideration of his temperature?

A It doesn't matter whether you have the chest x-ray report or not.

Q Tell me what factors led to your diagnosis?

A He had a fever, he was short of breath, that was a good enough reason, you know, for me to think that he had pneumonia.

Q Okay. And did the white blood count contribute to your thinking?

A Yes, his total white count was elevated.

Q Do you recall what it was?

A About 23,000.

Q That's very high, isn't it?

A It's high for a bacterial infection. We have seen -- it has been worse.

Q I'm sure, but what level of pneumonia or how significant is that white count to you in assessing

the severity of his pneumonia?
A It's different in different people.
Q Of course.
A Some people that have --
Q I'm talking about Mr. Lavely.
A Okay. Some people can have a high white blood count even with any minor ear infection or they can have a low white count with severe bacterial infection, so, yes, it does tell us a high white count does tell us, that there is some bacterial infection going on, but does not tell us how sick the patient is.
Q I'm not talking about ear infections. All right? You already said that you knew he had pneumonia?
A Yes, I knew, but, again, the pneumonia -- some people can die from it and some people we can treat it as an outpatient.
Q What's the treatment for pneumonia?
A Antibiotics.
Q What else?
A Shortness of breath -- oxygen, IV fluids, you know, if the patient is dehydrated, or if we think the patient is sick, and then is in the hospital and shortness of breath, you presume the patient is sick enough to have IV antibiotics.
Q So if they are short of breath you presume they are

sick enough to need antibiotics?

A Uh huh, and oxygen.

Q And oxygen. What's the purpose of the oxygen?

A To correct, if there is a low oxygen level, you correct the oxygen level to make the patient comfortable because of their shortness of breath.

Q Uh huh. Does it also have to do with expanding lung volume?

A It depends, you know, I did not have any blood gas report at the time, I do not know, you know, it depends what the blood gases are.

Q When was the first arterial blood gas drawn on Mr. Lavely?

A I don't remember the exact time, but I ordered it around 4:00.

Q You ordered it?

A Yes, ABG around 4:00.

Q May I see that, I'm not sure I have that page?

MS. GARSON: Can we get a copy of that? I definitely don't have this page.

MR. HART: Sure.

Q Okay. Well, this eliminates a lot of questions. This helps me understand what happened. But we're looking at the physician's orders for April 23rd at 4:00. What are the numbers written in after the

particular line items?

A I don't know what it is, some hospital code or whatever. I don't know what it is.

Q You don't know what that is?

A (Nod indicating no.)

Q Could that be the identity of the person or people ordering that particular test?

A I don't know, I don't know what it is.

Q You don't know what it is?

A No.

Q Okay. All right. I'm going to show you -- well, let's see at 3:00, is that the point in time where you accepted Mr. Lavely as your patient?

A Yes, I did, and I told them to -- I ordered him to be transferred to Three North medical floor, I gave the blood -- these are the orders given at the time. Okay? And I don't know what else I could have done, you know, because these are the orders, I gave it to them, I started him on oxygen, I started him on IV fluids, I ordered the medical workup, I ordered the blood gases, I gave him the IV antibiotics.

Q At 3:00 did you know what his pulse oximetry level was?

A On the psychology floor they don't check the pulse ox.

Q Did you order that to be checked on the medical floor?
A I ordered the blood gases and then -- they do it routinely, you know, and I ordered the blood gases.
Q They do the pulse ox routinely?
A Uh huh.
Q Do you know when the first pulse ox was recorded in this chart?
A I don't remember.
Q Well, the first -- you have to go through your whole chart if you don't recall. The first indication I see of pulse ox being recorded in the nurses' notes or anywhere, and I'm open for you to tell me I'm , is at 1555, where it's listed at 53 percent?
A Okay. Because I think it took awhile for them to transfer the patient from One South to Three North.
Q Uh huh.
A So when the patient got there I think that's when they recorded it on the medical floor, they don't record it in Three South.
Q Isn't the --
A Patient -- so see, this is Three North.
Q That's not the Three North, I think that's the ICU notes?
A No, he wasn't in ICU at that time.

Q That's right, okay.
A Three North, you know.
Q So you say it's routine for them to do it, but it took them awhile to transfer him, and that's why the first pulse ox notation is at 15:55?
A Uh huh.
Q Okay. Doctor, you were the attending as of approximately 3:00, correct?
A I accepted the patient, but I wasn't aware that he was that sick, and then I ordered the blood test and the whole works, and then from One South they transferred the patient to the medical floor, it probably took them about 45 to 50 minutes to transfer the patient, and I wasn't aware between that period that he was that sick of a patient.
Q Okay. When you accepted the patient, though, that's the moment when you were responsible for his well being; is that correct?
A That's correct, yes.
Q When you said you were not aware of how sick he was, is that because the information in the chart was not conveyed to you?
A Yes.
Q What information in the chart was not conveyed to you that would have led to you understand how sick he

was?

A You know, the nurse, the way -- the nurse from the psychiatric floor, the way she conveyed the information, she does not seem to be alarmed that he's a sick person. She told me he was very short of breath and he has a temperature and chest x-ray. I don't remember whether she told me the chest report, but I do remember the chest x-ray was done, and then I had a CVC report. But I was not aware of how -- she does not seem to be alarmed at all, and that can happen when a nurse is a psychology nurse and she does not know medical conditions, how sick -- they cannot evaluate, they are not trained to evaluate the medical condition.

Q You knew that she was a psychiatric nurse?

A She a psychiatric nurse and --

Q You knew that she was not trained to do --

MR. HART: Let her finish it. You always step on her answers. Go ahead.

Q Go ahead.

A The information I got from her, I did not think that I knew -- I presumed that he had the pneumonia because of what she said, and that's what happens in our patient when they have a fever, they are a little bit short of breath, we presume the patient has

pneumonia, but she did not seem to be alarmed about it. He is a very sick person. So many patients we admit with pneumonia, we treat them, but we have -- sometimes we treat and we don't have to see them, we just treat a few hours later, but she did not seem to be alarmed.

Q Okay. Would you have been alarmed if you had been advised of the pulse of 88 and respiration of 60 with blowing snorious respirations and chilling?

MR. HART: When was that?

MS. GARSON: 1445.

Q 15 minutes before you were notified of the chest x-ray?

A Yes, I would have been a little bit more concerned, but I don't know whether it would have changed the treatment.

Q Okay. Why would you have been more concerned?

A That patient has more respiratory distress than what she was telling me over the phone.

Q Those numbers are abnormal, aren't they?

A Pulse is not abnormal, but respiratory rate of 60 is abnormal.

Q A pulse of 88 is not abnormal?

A It doesn't go along with the patient's temperature -- it's not abnormal, no, it's normal -- kind of a

little bit higher than normal should be, but not that high.

Q Okay. So then at 3:00 you were aware of his white blood count?

A Uh huh.

Q When you say you wouldn't have -- I'm sorry, let's talk about the treatment that you rendered at 3:00.

A Uh huh.

Q I understand that your diagnosis at that time was pneumonia, correct?

A Yes.

Q And the treatments that you ordered, you've told me were -- I've heard a couple different lists of things, but you're going by this order?

A Uh huh,

Q At 16:00?

A No, I gave these orders, no, actually to the nurse over at Three North. Well, these orders I gave right away when she contacted me.

Q Well, that note indicates 16:00, which is --

A 4:00.

Q 4:00, but you accepted the care of this patient at 3:00; is that true?

A These ordered -- yes, I did accept the patient's care at 3:00.

Q Okay. Were there orders given at 3:00?
A Yes. Orders were given at 3:00 at the time when she contacted me the first time.
Q Which orders were given at 3:00?
A These orders.
Q The ones that are fisted in the charge as --
A These were given to the nurse in One South.
Q I want to make sure I understand. The orders in the chart that are listed as having been given at 4:00, you are saying they were given by you at 3:00?
A That's what I don't -- I gave these orders to the nurse on the psychiatric floor.
Q Okay. And you believe that was at 3:00 when you accepted the care of the patient?
A Yes, when she called me, yes.
Q When she called you initially, right?
A Uh huh.
Q Is that a yes?
A That's right.
Q So these were the orders that you gave right away?
A These are the orders I gave right away, yeah.
Q Okay. And on that list is oxygen at two liters; is that correct?
A It's six liters.
Q At six liters?

A That's what it looks like.
Q Did you ever give an order for oxygen at two liters?
A I don't remember, but it says six liters here. I don't remember how much oxygen.
Q Can you tell from this because I don't have all the pages of the order, so I'm asking you based on your pages?
A It says six liters.
Q Let me ask you, do you know from your list of records whether you ever ordered oxygen at two liters?
A No, I don't.
Q And that says six liters?
A Is says six liters.
Q And that's at 4:00?
A Uh huh.
Q But you are saying you give it at 3:00?
A I give the orders to the nurse in Three North, that's what I remember.
Q Okay. I understand it takes a little while to transfer the patient from the psychiatric floor to a medical floor?
A That's right.
Q But when you give these orders for a patient, and you presume that he has pneumonia, how soon do you expect them to be carried out?

A It depends, you know, what floor the patient is. In Three South, the psychiatric floor, it might take longer, but if the patient is in the intensive it would be right away if the patient is on the medical floor it might take a few minutes.

Q And if you were aware of a patient being very sick, then is there a method by which you could ensure the treatment was rendered promptly?

A But I wasn't aware that he was that sick.

Q Okay. Let's look at the nurses' notes from 3:25 that afternoon. I'll give you a chance to read it.

A Yes. 3:25 the patient was still there and then at 3:55 he got on Three North, which one is that -- which floor is this, I don't know. Yes, this is the psychiatric floor because they will notify Dr. Lee at the same time.

Q Okay. So this note from 3:25 he's still on --

A I wasn't contacted for that because only one phone call I got from Three North, and they put down that "Dr. Lee and Dr. S. Ahluwalia aware of the condition," but I had only one call.

Q Okay. This note at 3:25, can you read it into the record, what it states, please?

A "Blowing respirations are 60, rechecked times two, Dr. Lee and Dr. S. Ahluwalia aware of patient's

condition, and transferred to 3417."

Q Okay. Well, would you agree with me that this note states that you were aware of the patient's condition?

A Yes, I was as far as this phase of the note.

Q Are you saying that this is not true, that you were not contacted?

A 3:25, it says that, I was told that the patient had a respiratory rate of 60 per minute.

Q I'm not sure I heard what you said.

A According to this note it says that patient had a respiratory rate of 60 per minute.

Q Uh huh.

A According to this note,

Q Yes.

A But I don't remember whether I was told, I don't remember exact conversation, you know, but I knew that patient did have some shortness of breath, I knew that,

Q I appreciate if you don't remember an exact conversation. I heard you say that you were not notified as this note says you were?

A But that was at 3:25.

Q Yes, at 3:25. Before we move on I need to understand, are you denying that you were made aware

of his condition at 3:25?

A Probably I was. I do not deny this according to the notes, but I don't remember the conversations.

Q Okay. Earlier you had said to me that one of the pieces of information that would have helped you understand how sick he was knowing that his respirations were at 60?

A At that point I knew that the position was that he was being transferred to Three North where they could have taken care of the problem, and I had ordered the oxygen and the blood test and everything, and the antibiotics and the whole works.

Q Did this help you understand -- did this change your understanding of how sick he was at 3:25?

A Still it doesn't make me still think that he's a very, very sick patient, no. Patient still had shortness of breath and respiratory rate of 60 and not very, very sick with it.

Q Did it change your -- --

A It did not change my line of thinking, that he was being transferred to Three North, he's being started on the oxygen, he is being started on the IV fluid, he's being started on the IV antibiotics, it did not change my treatment at this point, no.

Q Did it change your consideration of how sick he was?

A I knew that he was sick and he had pneumonia, but it did not change too much of my thinking, but as long as I have ordered all the tests and all the blood tests and IV.

Q I understand that it didn't change your treatment. Did it change your thinking of how sick he was?

A It did change my thinking that he is sick, yes, he is sick and needed care, which has been given.

Q Sicker than you had thought at 3:00?

A Yes, that's right.

Q Okay. I just want to go back for a minute. When you had stated that you were advised of the white blood count --

A Uh huh.

Q -- at 3:00 by the nurse, and you thought it was in 23:00, correct?

A Uh huh.

Q I'm going to show you a -- let's see, it's a lab sheet printout, and let you take a look at it, for the blood work on April 23rd of '96, and the results inquiry is from 1445.

A That's right.

Q Okay. Do you see the handwriting on the bottom of the form?

MS. HENRY: Can I see that form?

A It says, "Dr. S. Ahluwalia aware at 2:50, 2:56" or something.

MS. HENRY: Could I just see that form for a minute?

MS. **GARSON:** Sure.

Q Are there any other hand marks on that page?

A What do you mean by hand marks?

Q The results of the white blood count and the hemoglobin are circled?

A Hemoglobin is 10.8, just a little bit on the low side, but then that's anemia. It's not alarming.

Q Let me finish my question. The hemoglobin and the white blood count results are circled; is that correct?

A That's right.

Q Are there any other results that are circled?

A No other results are circled.

Q The hemoglobin level can also be an indicator of what gas exchange is happening in that patient; is that true?

A It wasn't alarming to show that.

Q Can you listen to my question: The hemoglobin can be an indicator of gas exchange in a patient?

A Not necessarily.

Q Okay. Not necessarily?

A Uh huh.
Q But it can, correct?
A I don't think so, not at 10.8 of hemoglobin.
Q My question wasn't whether 10.8 was, my question is whether hemoglobin in general, the levels, can be an indicator as to the gas exchange in a patient, the level of oxygenation?
A Okay. Yes, if it is -- patient can become more hypoxic because oxygen -- hemoglobin carries oxygen.
Q So the hemoglobin level is an indicator of their oxygenation in their blood; is that correct?
A Yes, if the patient has hemoglobin of six, seven, or eight, you know, then hemoglobin has to carry the oxygen to the tissue.
Q Right.
A But 10.8 of hemoglobin is not going to cause too much of a problem of oxygenation --
Q Okay.
A -- of the tissue.
Q So you are saying the hernoglobin carries the oxygen to the tissues, correct?
A Yes.
Q And the oxygenation carried by the hemoglobin can be indicated by this lab test?
A Yes, it can be.

Q I'm not asking you for an interpretation of it.
A But I'm saying that this is how I'm trying to interpret, you know,
Q I know but I'm not asking you to interpret it. Now, the sheet indicates that the normal hernoglobin level is somewhere between 14 and 18, would you agree with that?
A Yes, but not all the people have it.
Q I understand. Do you remember being made aware of the hemoglobin level as well as the white blood count level at 2:50 in the afternoon?
A As far as I remember I only remember the white count being high, not the hemoglobin being -- I don't remember that, maybe it wasn't that important because 10 points of hemoglobin was not important to me at that point, you know.
Q So you might have been advised of it, but you don't recall?
A I don't recall it.
Q And if you had been advised of it, it wouldn't have caused you concern?
MR. HART: Objection. Go ahead.
A Not 10.8 of hemoglobin.
Q Fair enough.
A It would not cause that much of a concern. Yes, if

it would have been seven or eight I would have thought the patient was bleeding or something.

Q Okay. I'm going to get this time line together here. Let's go back to Three North and the nurses' notes. At 15:55, I can give you mine, I suppose, if you want to look at it.

A Okay, You want me to read it?

Q Maybe I will. "15:55, Dr. S. Ahluwalia's office notified per," a nurse's name, "D period Gearheart," maybe R.N., "Dr. S. Ahluwalia to call back, patient anxious, res. rate" -- I'm not sure what the next word is, "at 58, O2 applied at two liters per nasal cannula, pulse ox at 53 percent, color pale." Did I read that okay?

A Yes.

Q Okay. Did you give that order for the oxygen at two liters?

A No, it says six liters here.

Q Do you know who gave that order for oxygen at two liters? Is it within the province of the nurse to order oxygen at two liters?

A Yes, she can.

Q She can, under particular circumstances?

A Yes, if the patient is short of breath they can order it.

a Are there certain hospital protocols or guidelines with regard to when a nurse can order oxygen?

A Usually they do, you know, at two liters, you know, if the patient is a little bit short of breath, they can start the patient on two liters.

Q But you didn't order that two liters?

A No.

Q At this point in time it does not appear that there was any order for oxygen?

A It says six liters,

Q You are referring, again, to those orders that are marked 16:00; is that correct?

A But these orders -- well, again I gave them before 16:00, I give them you know --

Q Okay. So you are saying you gave orders at 3:00 and they were still not being carried out when the patient was transferred to Three North?

A It takes time for them to transfer patients.

Q I'm saying after he was transferred at 15:55, the patient is not being given six liters per your order, is he?

A Yeah, according to these notes, it just says two liters, you know.

Q Okay. At this point in time can you tell whether or not the arterial blood gas had been drawn?

A I'm not sure whether it was drawn or not.
Q Is it within the perimeters or province of respiratory therapists to order arterial blood gases?
A They can order it, yes.
Q They can?
A Yes. Depends if there is a code blue or whatever, they can order the blood gases.
Q Okay. Doctor, what does a pulse ox of 53 percent indicate to you?
A That means the patient is not oxygenating well.
Q What else would that indicate to you?
A That I need a blood gas.
Q Why do you need the blood gas?
A Because patient needs oxygen and patient needs blood gases.
Q Okay. What else does it mean to you?
A That patient is not oxygenating well. He is --
Q -- he can be?
A Yes, he can be.
Q This could be a life threatening number, couldn't it?
A Depends, there are a lot of other conditions that you need to review, too, but the first thing you need is a blood gas, yes.
Q Okay. Well, a pulse ox of 53 percent, is that a life threatening situation with Mr. Lavely at that time?

A It can be, it cannot be.

Q Okay, Can you find that sheet? I don't know if you have this one, maybe we can find it so we can work along on it together.

MR. HART: If we don't have it, we can make a copy.

MS. HENRY: I might have an extra copy.

MR. HART: We have it.

Q What is the 0 in the problem-free column, do you know what that is?

A I don't know,

Q I don't either. If anyone figures it out let us know.

A I don't know what that means.

Q Okay, Well, I guess we will be deposing the nurse anyway, so -- okay. Doctor, you said that a pulse ox of 53 percent could be a life threatening number, correct?

A It can be and it cannot be.

Q Okay.

A It just tells us only the oxygen level, but from the blood gases you can see whether it is life threatening or not,

Q Okay. If you combine the 53 percent pulse ox with an

approximately three hour history of difficulty breathing and respirations at 58 or 60, what picture does that present to you in terms of the condition of the patient?

A Okay. It tells us that, you know, patient is sick and that patient is not oxygenating well.

Q Okay. When you say sick, is this patient in need of Intensive Care?

A Yes, that's what I did, you know, I transferred the patient to the Intensive Care Unit.

Q Well, that didn't happen until almost an hour later?

A 4:40.

Q Yeah.

A But, again, I didn't know at what time did they call me, "Dr. S. Alehluwalia aware of the respiratory rate and pulse ox, 4:40," I was contacted and I immediately transferred the patient to Intensive Care.

Q Actually your office called back at 16:00, do you see that?

A Yes.

Q And it says ABG's drawn per respiratory therapy?

A Uh huh.

Q Sounds like respiratory therapy ordered that ABG, do you see that?

A No, they were ordered here, no.
Q I understand you are saying it's listed there, but the notes make it sound like respiratory therapy ordered the ABG?
A I ordered them, and they are supposed to draw the ABG, you know.
Q Okay. And then nail beds were cyanotic, do you see that note?
A Yes, that patient was getting, you know, 100 percent of oxygen at the time.
Q He was?
A He was getting --
Q At 16:00, how many liters was he getting?
A This happened between 4:00 and 4:40. Okay? I had 40 minutes -- how many times, probably they called me only one time after the patient was transported at 4:40, or maybe one time, I don't remember, you know, but, again, you know, patient was in Intensive Care at 4:40.
Q My question to you was: At 16:00, how much oxygen was he on?
A Let's see, maybe I can tell from the blood gases.
Q We can just look at this note at 1555, he was placed on two liters?
A Yes, according to the nurses' notes it says two

liters, but according to my order it says six liters.

Q You wrote the orders, but we can only tell what happened by looking at the nurse's notes; isn't that true?

A That's right.

Q Well, then looking at the nurses' notes, in terms of what did happen, at 16:00 he was receiving two liters of oxygen; is that correct?

A That's right.

Q Okay. And at 16:00 orders were received from your office it states that, "Dr. Ahluwalia's office called per D period Gearheart R.N., orders received," that's at 16:00?

A Uh huh. That's right.

Q And these notes that you've been referring to are noted being at 16:00, correct?

A That's right.

Q So the orders that you gave at 16:00 then are oxygen at six liters?

A Uh huh.

Q Is that correct?

A That's right.

Q Okay.

MR. HART: I think she said she gave the orders at 3:00, not 4:00.

Q Then look at what I'm saying here, at 16:00 it states that "orders were received," do you see that? "Dr. S. Ahluwalia's office called back and orders were received."

A That's right.

Q Let's go with your testimony that all these orders from April 23rd that says 16:00 were really given at 3:00. What orders did you give at 16:00?

A I don't -- because here I was called and it does not say anything whether I gave any orders at 16:00.

Q It says orders received?

A That says -- "Dr. S. Ahluwalia's orders received, ABG is strong." Okay?

Q Where it says "orders received," the nurse is saying that, right?

A Yes.

Q What orders --

A Maybe I just know these are the same orders, you know.

Q You gave the same orders --

A Usually it's very -- what they do when the patient is transferred to the floor, new floor, they always, even if the orders are given, they always call to confirm the orders, you know, that is what you want, even like in Intensive Care when -- I mean, when the

patient is in the emergency room, orders are written and the patient is transferred to another floor and they always call to confirm the orders.

Q It doesn't say orders confirmed, does it?

A Just says received, yes.

Q Okay. So you are saying that if you give an order of -- prior to a patient being transferred to a different floor, you cannot rely on that order reaching the new floor with the patient and being followed?

MR. HART: Objection.

A That can happen, can sometimes happen.

Q Then do you have it as part of your office protocol to call and ensure that those orders have been received and are being followed?

A Yes, we do have some protocol in there.

Q Is it in writing?

A In the office?

Q Uh huh,

A It's not in writing, but the nurse in my office calls, the receptionist, she's been instructed to do that.

Q What is she instructed to do?

A Any orders, they need to be read to me or orders, if the orders are given on one floor and the patient is

transferred, then the order should be read to me.
Q So you are not saying that you gave any additional orders at 16:00; is that correct? The orders that are marked 16:00, you actually gave at 15:00, correct?
A I did not --
Q Is that correct?
A Yes, that's what 1 think they are.
Q When in the nurses' notes it says, "at 16:00 orders received," that's just the same orders that you gave at 3:00?
A It is the same -- treatment did not change at that point, you know, treatment -- because I was already taking care of all the problems.
Q What do the nail beds being cyanotic indicate to you?
A That the patient is not oxygenating.
Q What does cyanotic mean?
A Cyanotic means he's not oxygenating.
Q It means they are blue or purple?
A Yes, they are blue.
Q Okay.
A It does not -- I have covered everything beforehand, I had covered everything beforehand, so the treatment he was starting on oxygen, he was starting on IV fluids, he was starting on IV antibiotics, I had

ordered the blood gases, I had ordered the blood cultures, at that point it was treatment -- he was getting what I needed him to get.

Q Okay. So no new orders were given at 16:00, correct?

A Probably not.

Q Okay. How sick would you say he is at this point, at 16:00 with his nail beds cyanotic?

A He looked sick, he had respiratory distress and I knew -- I presumed I was 90 percent sure that this patient had pneumonia, he was not oxygenating well.

Q He's got a 53 percent pulse ox and his nail beds are cyanotic and you did not give an additional order at that time; is that correct?

A Because I had already covered it, I knew that the blood gases are being drawn and I was waiting for the blood gases.

Q What were you going to do differently once you got the blood gases?

A I needed the blood gases before I could decide how much -- if I should increase the oxygen or what I should do where his particular care is concerned.

Q At 16:20 the note indicates that ABG results were called to your office?

A Uh huh.

Q And that the O2 was increased to six liters?

A No, see, it was changed to 100 percent mask.
Q I'm looking at 16:20
A This is at 4:15.
MR. HART: Can we take like a two minute break?
THEREUPON, there was a brief recess.
Doctor, I have had a chance to review the record sheets that were not in my possession, and I see that at 6:15 you ordered 100 percent mask?
MR. HART: 16:15.
Q 16:15, thank you. Now, can you help me to understand how it is that you would make that order at 16:15, were you still in your office?
A Uh huh.
Q Would you have made that order by telephone?
A Yes, I did.
Q To whom?
A To the nurse in Three North.
Q Okay Then help me understand why it appears at 6:15 in the order section of the chart and it's not picked up by the nurse until -- well, looks like 16:40, it's in the chart that they gave 100 percent oxygen mask?
A That, I don't know why it was not picked up, I don't know.

Q I'm asking if you can explain to me how that works at Firelands, If you're saying you called it into the nurses on the floor, it doesn't look like, from their notes, that they had that information until closer to 16:40?

A That, I don't know, I cannot say how the nurses function, different nurses function differently.

Q Okay. How do you understand that process to work when you call in an order from your office to a floor?

A 1 presume that it's done right away.

Q Uh huh.

A But how do I know, you know, what happens.

Q Why were you ordering 100 percent oxygen?

A Because his pulse ox was low.

Q Any other reason?

A Then I had his blood gases to go through, I think ABG results are called.

Q That was at 16:20, correct?

A Yeah -- well, the nurses can make a difference, five minute here and there, that probably can happen, you know.

Q Okay, Would it be faster if he were in the Intensive Care Unit?

A Probably, maybe a few minutes, yeah, just a couple of

minutes or so. I don't think it would have made that much time difference, no.

Q Well --

A On here you mean, the way the oxygen was ordered,

Q The order is written at 16:15, and yet it's not completed or it's not noted in the nurses' notes until 16:40?

A But how do I know it's not noted, you know.

Q How do you know what?

A How do I know that's it's not taken care -- that my order is not carried out until 16:40.

Q I know, I'm asking you, would you have more of an assurance if he were in the Intensive Care Unit that these orders would be carried out quickly?

A At that point --

Q Is that normal operating procedure?

A That can happen, but I had no presumption that it would not be carried out for 20 minutes.

Q Do you have a problem with that, that it didn't happen for 20 minutes?

MR. LAVALETTE: Objection.

A Yes, it might bother me a little bit.

Q Why is that?

A Okay. Let me explain what my thinking has been all along, I think I got the patient's care, that this

patient has pneumonia, he is not in respiratory distress, and I ordered the blood test, I ordered -- I knew about the chest -- but it did not make a difference whether I knew it or not because I knew that patient had pneumonia. I was 90 percent sure. . I ordered the oxygen, I ordered the IV, I ordered the IV antibiotics, I ordered the appropriate tests, it does not matter -- I took care of everything and I er: up everythi ng, and this patient was very sick, you know, to begin with, which I wasn't aware of, you know, initially, later on, yes, a few minutes later I knew that he was sick, but I had covered up. But this patient probably was sick and I got him too late.

Q You got him too late?

A I did not have enough hours to treat his pneumonia in an hour or two, I did not have enough time.

MR. HART: I don't think I caught that, what did you just say?

A I don't think I had enough time to treat his pneumonia or the respiratory distress.

Q You said you got him too late?

A Probably it was late for me to get him, at one and a half hours is not enough to treat his pneumonia and his hypoxia or whatever it was.

Q One and half hours may not be enough time to treat whatever bacterial or pathogen there might be causing infection, true?

A He got the antibiotic, you know, I gave him a very broad spectrum antibiotic, the most common antibiotic used to treat pneumonia.

Q An hour and a half is a good amount of time, plenty of time to treat hypoxemia, isn't it?

A But he was getting 100 percent of --

Q Yes or no?

A Yes, it can, but it's not that I did not treat his hypoxia, he was getting his oxygen.

Q When was he first hypoxemic, based upon your knowledge?

A When I got this 53 percent of pulse ox.

Q That's the first time you considered him hypoxic?

A I knew he had respiratory distress, but according to the pulse ox, 3:55, you know, they did it, you know, probably got the results around 4:00 or so, but he was already on oxygen. I had ordered the oxygen at whatever, you know, when they called me the first time.

Q Okay.

A It was not that I was not treating his hypoxia.

Q You ordered 100 percent oxygen you're saying because

of his pulse ox, correct?
A Uh huh.
Q Is 100 percent oxygen, that's treatment for hypoxia, right?
A Yes, it is.
Q Hypoxemia?
A Yes.
Q And you are also trying to expand the lung volume?
A Yes.
Q And that's so the lungs can improve their gas exchange?
A Yes.
Q So that the patient doesn't have to work as hard at breathing, correct?
A That's right.
Q And doesn't become fatigued and decompensated?
A That's right.
Q And when that fatigue and decompensation and the gas exchange deteriorates, he's subject to fatal arrythmia, isn't he?
A It can happen, yes.
Q It did happen?
A But it was not that he wasn't being treated with, he was getting 100 percent oxygen.
Q Okay. Now, so you are saying that's the first time

you believe that he was cyanotic or that he was hypoxia was when you got his pulse ox at 53 percent correct?

A Yes.

Q What time was that?

A It says 3:55, probably I was notified at 4:00.

Q Okay. Do you have any explanation as to why the orders are marked 16:00 if you really gave those orders an hour sooner? You know how Firelands works, maybe you would have an idea how that would happen?

A These health nurses didn't carry the order -- I don't know what happened.

Q Have you seen that happen before, that an order is marked an hour later than it was actually given?

A I don't take care of the patients on Three South, so I don't know how they work, I can only presume,

Q Was it unusual for you to be caring for a patient with acute respiratory distress and pneumonia?

A No, it's not, I treat it all the time.

Q Okay. When you gave the order, why did you order to transfer him to ICU?

A Because of his blood gases and the way he was breathing and he needed 100 percent of oxygen, he needed to be in the care unit.

Q What was going to be different for him in the

Intensive Care Unit?

A They monitor the patient more closely.

Q That's all?

A And, of course, you know patients need to be monitored, whatever, he was hypoxia or that -- I mean, in Three North they do take care, but they don't take their vitals like every hour, or 15, or half an hour, They might probably do vitals more often, but patients get more close treatment in the Intensive Care Unit. That's the reason.

Q That was the reason you were transferring him?

A Yes.

Q Because you didn't write any additional orders for him to be carried out once he arrived in the ICU, did you?

A I did not have a chance, he coded as soon as he got there and I sent my husband right away, at 4:40 I sent my husband, you know,

Q But I'm saying that you didn't write any orders at 4:40 to be carried out in ICU once he was transferred?

A He was getting all the treatment, you know, I don't know what --

Q That's my question. I'm not trying to be difficult. I'm trying to understand if you had some additional

course of treatment that you wanted him to get in ICU?

A He was getting all the treatment there, but I just wanted him to be closely monitored. He was getting all the treatment that I could --

Q There was no other element of treatment that you were thinking of having for him in the ICU that was not available on the medical floor?

A I was taking -- I was covering everything, I was taking care of his hypoxia, I was taking care of his IV fluids, I was taking care of hi6 IV antibiotics.

Q Is that a no, there was no other additional treatment that you were considering him to have in ICU that was not available to him on the medical floor?

A He needed to be intubated, you know

Q Did he need to be intubated?

A He could, yes, he could have been, yes.

Q Well, what would be the indications of intubating him?

A Respiratory failure.

Q What is the definition of respiratory failure

A High PCO2, hypoxia, as well as a low Ph.

Q Low Ph, high PCO2, and what else?

A Hypoxia.

Q Hypoxia. Okay. He had hypoxia, right?

A Uh huh.
Q We know that?
A Uh huh.
Q That was a yes?
A Yes, he did.
Q Did you know at approximately 16:40 what his Ph and his PCO2 were?
MS. HENRY: It says 4/30/96 at the top, arterial blood.
A PCO2 was 70.9, PO2 was 54.60, and Ph was 7.16.
Q That certainly fits the picture you've just given, the definition of acute respiratory distress, doesn't it?
A This was drawn at 4:40, but this blood gas probably was not available for another few minutes, you know.
Q Another few minutes, how long does it take to get a blood gas?
A 10 or 15 minutes.
Q Okay. All right. Well, let's look at the 1558 one, then.
A Okay.
Q That was drawn at 1558, is that the draw time at the top?
A That's right.
Q And you're saying -- how long would it take to get

that result?
A About 15 or 20 minutes, maybe.
Q And the Ph then is low at 7.29, correct?
A But it's not that alarmingly low.
Q Well, it indicates on this chart that it's low, correct?
A Uh huh.
Q And the PCO2 is 47.5, which is high, correct?
A That's right.
Q And the --
A But it's not that high, he's not in respiratory failure at that time.
Q Well, it indicates that it's high, correct?
A Uh huh.
Q What was the other one you were looking at, the O2?
A The O2 is 40.7.
Q What does the C mean?
A It's critical, meaning critical.
Q Critical, what was his O2 saturation at?
A 68.4.
Q What is that?
A That's low.
Q That's very low, isn't it?
A Yes.
Q These numbers certainly fit the parameters of your

definition of acute respiratory distress, don't they?

A It's respiratory distress, but it doesn't say respiratory failure. But at that point I changed his oxygen to 100 through non-rebreathable mask,

Q Okay. I'm going to need to ask you if it's possible to give me a yes or no answer.

A Okay, sure.

Q Just so we can go work on something else for this afternoon. If it's possible to say yes or no, do the arterial blood gas numbers drawn at 1558 indicate to you that Mr. Lavely was in acute respiratory distress?

A It says he appears hypoxic and --

Q Does it indicate that he is in respiratory distress?

A No, he's not in respiratory failure, no, he is not.

Q He's in respiratory distress, but not in respiratory failure?

A That's right.

Q Is it your testimony that those numbers do not indicate the need for intubation?

A His PCO2 is not high enough, usually respiratory is about 60.

Q It has to be what?

A It has to be 60 or above when the patient is in respiratory failure.

Q So even though this number is high you would only consider him in respiratory failure if the PCO2 is at 60?

A Yes, or the Ph is a little lower than 7.23 or that.

Q So you wouldn't intubate with the numbers from 1558, you'd just wait?

A Yes, I will increase oxygen because his oxygen level is low, but I will not --

Q And at 1558 did you increase the oxygen?

A Yes, I put him on 100 non-rebreathable mask.

Q And the numbers at 16:40, do those indicate to you the need to intubate that patient?

A At that time it did, but, yes, but I did not have those reports, you know.

Q Do you have any opinion as to whether -- I don't know if you have an opinion on this or not, if he had been intubated when you were aware of the arterial blood gas numbers at 1558, could that have avoided the respiratory arrest?

A Yes, but, again, these blood gases were drawn at 3:58, okay, according to that, but those were not available for a few more minutes, too, and by that time I had done another blood gas, you know, and on the 100 percent of non-rebreathable mask. I had ordered another blood gas to be drawn.

Q Well, let's go'back then. Let's say it takes 20 minutes to get the results back from the 1558 arterial blood gas drawn, is that fair?

A Okay, yes.

Q Then at 16:20 if Mr. Lavely had been intubated this respiratory distress that led to his death could have been avoided, couldn't it.

MR. HART: Objection.

A But then I had ordered another blood gas.

Q Is that a yes or no? I'm asking, do you have an opinion about that and you've said yes, so my question to you is: If, after you received the arterial blood gas results at 16:20, you were saying it takes 20 minutes to get them?

A Uh huh.

Q If you had then ordered that this patient be intubated in order for him to get oxygenation, would this respiratory arrest have been avoided?

A Okay.

Q Do you have an opinion about that question?

A It could have, yeah, but again I had ordered another blood gas which was done at 4:40.

Q Is it more likely than not that it would have avoided the respiratory distress, I mean the respiratory arrest?

MR. HART: Objection. Go ahead and answer if you know.

A Could you please rephrase it?

Q Yeah, sure. Do you know when you received the arterial blood gas results, the chart indicates that they were called to you at 16:20?

a Uh huh.

Q I don't know if you were aware of them or not, but I'm asking you if you know.

A I'm not aware, but probably this 3:58 results were called to me around 4:20.

Q Okay.

A That's what they are referring to.

Q Right. Okay. Okay. At that time if the patient had been intubated in order to improve his oxygenation, do you have an opinion, more likely than not, that the respiratory arrest that he suffered would have been averted?

MR. HART: Objection. Go ahead and answer if you know.

A Yes, but the patient is not in respiratory failure at that point, you know.

Q But your answer is that if he had been intubated --

A If he would have been in respiratory failure, yes.

Q If you had additional information at 16:20, what

additional information would have led you to intubate him at that time? I'm asking you because you said you didn't receive a11 the information at certain times, I'm wondering if there is some information that you did not have at that time that made you not appreciate his condition?

MR. HART: Objection, Go ahead and answer if you know.

A I don't know.

Q Okay. Based on your review of the records is it true that Mr. Lavely received no physical exam from a physician while he was in the hospital on April 23rd of 1996?

A He was seen by an ER physician

Q Well, that was the day -- in the mental heath facility?

A He was in the emergency room at 1:00, I think that's what it is.

Q Is the mental health services separate from the emergency room?

A I'm not sure, but I think he was in the emergency room on the same day.

Q Okay. Do you know which doctor -- are you presuming he was examined then by an emergency room doctor?

A I think he was, I'm pretty sure about it.

Q Are you aware of any other physical exam that he had the rest of that day?
A No. Between 1:00 and 4:00?
Q Between 1:00 and when he died?
A 1:00 and 4:00 or whatever, you know.
Q Between 1:00 and when he died?
A He was seen by Dr. Nescoda, who attended -- he was a physician on the floor and by my husband.
Q Okay. Well, Dr. Nescoda was trying to resuscitate him?
A Yes.
Q And your husband arrived to end the code?
A Yes, because we were not -- I wasn't aware that he was that sick, but just, you know, again, between 4:00 and 4:40, yes, he should have been -- between 4:00 and 4:40.
Q If this matter gets to trial I have to ask now what some of your opinions or beliefs are going to be. Will you be offering any criticisms in the care rendered by any of the nurses in this case?
MR. HART: Objection.
A I cannot comment on that.
Q You can't comment on that, is that because you don't have an opinion or you are not critical of them?
MR. HART: Objection. Go ahead

and answer if you know.

A Again, first the oxygen levels were not carried out properly and my orders were not carried out, you know, some of them properly.

Q Okay. Which ones?

A Especially the oxygen levels and all that, you know.

Q Okay.

A From two liters, I ordered six liters, you know, those kind of things.

Q You ordered six liters, but only two were given?

A For a few minutes, *yes.*

Q And then you ordered 100 percent, but that took what some 20 minutes before it was administered?

A That's right.

Q Are there any other criticisms that you have --

MR. LAVALETTE: Objection.

Q -- as to the nurses' care?

A I don't think *so.*

Q Do you believe that those nurses were acting within the protocols and guidelines of the hospital or do you have opinion as to whether they deviated from those protocols or guidelines?

MR. HART: Objection. Answer only if you know.

A I cannot say that.

Q Okay.
A Whether they were in the guidelines or not.
Q Do you believe that the failure of the nurses to carry out your orders, as you have just indicated, changed the outcome in any way for Mr. Lavely?
MR. HART: Objection. Go ahead and answer you know.
A I think so, probably did.
Q You do, probably it did?
A (Nod indicating yes.)
Q In what way?
A Because if he would have been oxygenated very well he would not have gone into respiratory arrest.
Q Okay. So if he had been given 100 percent oxygen when you ordered it at 16:15 he wouldn't have gone into respiratory arrest?
A That's a possibility, *yes.*
MR. LAVALETTE: Objection.
Q What?
A That's a possibility he would not have.
Q Okay. Well, a minute you said probably, so now you are saying possibly?
A Yes, he was not oxygenating and that was the reason that he went into respiratory arrest.
Q Right. Okay. Do you have criticisms of anyone else

involved in Mr. Lavely's care that day?

MR. HART: Objection, Go ahead and answer if you know.

A No, I don't think so,

Q Specifically Dr. Lee?

MS. HENRY: Objection.

Q Do you have any criticisms of Dr. Lee in this case?

MR. HART: Objection.

A I don't think so. He notified me when he found out that the patient was sick and needed medical attention, I was notified. I don't think he saw him, he probably did not see him between 1:00 and 3:00, so he notified me at 3:00, and then I --

Q Okay,

A I don't know whether he was aware that between 1:00 and 3:00 that he was medically sick, I'm not sure.

Q Uh huh. Are you saying that your opinion regarding whether you're critical of Dr. Lee might change if you became aware of Dr. Lee's knowledge?

MS. HENRY: Objection.

A I don't know, but whatever happen before I contacted -- I don't know what happened, you know, I just can't say what -- only what would have happened after the patient got in my care.

Q Okay. What medical information -- let me put it this

way; if you had a pulse ox on Mr. Lavely of 53 percent earlier, at, say, 3:00 when you took over his care, would you have then chosen to transfer him to the ICU?

A (Nod indicating yes)

Q You would?

A I would have.

Q Is that because of the pulse ox?

A Also depends on the blood gases and all that. There are other things, too, so many people we admit with a low pulse ox, you know, and then with the pneumonia, they get better with the oxygen level or just oxygen, simple oxygen, but, again, you need the whole blood gases and all that, you know.

Q Uh huh.

A To decide whether the patient needed to be in Intensive Care or what, you know. So many we treat on the medical floor with hypoxia.

Q Are there certain hospital criteria or protocol for the transfer of a patient to an Intensive Care Unit?

A It just -- I'm sure there are some policies there, but it's different with different physicians and how they feel about it.

Q So your answer is you are sure there are some things in writing, but that it depends on the physician?

MR. LAVALETTE: Objection.

A It depends on the physicians, you know.

Q And you are at Firelands, you have occasion to admit patients to ICU; is that correct?

A Yes, I do.

Q What criteria do you use for admitting a patient to ICU?

A Well, it depends on how clinically the patient is doing.

Q Sure.

A And, of course, you know if the patient is in shock or is in respiratory distress, it depends, you know, on how much respiratory distress there is.

Q Let's talk about that. How much respiratory distress would there need to be for you to consider a transfer to ICU?

A Any respiratory rate of over 55 or 60, you know, I will consider patient to be transferred. I depends on a lot of things, you know, age of the patient or, you know, age, whether other sickness are in the Ward or things that can affect the patient, sometimes the family doesn't want patient to be transferred to Intensive Care, even if respiratory distress. There are so many things you have to think, you know.

Q Okay. Would you consider a patient with a pulse of 88, respiration at 60 with difficulty breathing to be a stable patient?

A Patient is sick, but sometimes he doesn't need to be in Intensive Care as long as we are taking care of oxygen and trying to treat the respiratory -- shortness of breath or respiratory distress or we have to give him the oxygen, not necessarily, you know

Q Okay. So what I'm trying to understand is at what point does that respiratory distress lead you to admit that patient to ICU?

A The patient needs to be intubated or presuming that the patient will eventually need to be intubated or those kinds of things.

Q And the intubation parameter is a low Ph, a high PCO2, and hypoxia, correct?

A Yes.

Q Okay.

A It depends on the Ph, how low it is, too.

Q You prepared an affidavit as part of a pleading in this case, do you recall that?

A I have some idea, yes.

Q And the affidavit of -- well, does that look familiar to you?

A Yes.
Q And in that affidavit you stated that you immediately had Mr. Lavely transferred to Three North and ordered that he be started on 100 percent oxygen.
A 1 don't think, maybe it's not 100 percent. 1 ordered the six liters, you know, but later on, a few minutes later, it was changed to 100 percent of oxygen, but it doesn't say what time 100 percent of oxygen was ordered.
Q So the affidavit is incorrect in that you did not order 100 percent oxygen immediately upon him coming under your care; is that correct?
A A few minutes later it was, you know, it was changed to 100 percent.
Q When was it that 100 percent oxygen was ordered just so I'm clear?
A 4:15.
Q Okay. All right. 4:15. And he came under your care at 3:00, correct?
A Yes, 3:00, but he was getting oxygen -- he was getting six liters of oxygen.
Q Why did you give him six liters instead of 100 percent right off?
A Because 1 did not think that he needed 100 percent of oxygen. I didn't have any blood gases report at that

time, and he had some shortness of breath, that's why I ordered oxygen at six liters,

Q Were you planning to go and see him at some point?

A I was.

Q When?

A After I'm done with the office, which is about 4:30 or so.

Q About 4:30?

A Uh huh.

Q Okay.

A It depends on what my schedule is and how -- usually I'm done by 4:30 or quarter to five.

Q Are you aware of any hospital protocol or policy where a patient is on the psychiatric floor and needs to be triaged by a medical physician how that would happen?

MR. LAVALETTE: Objection.

A It depends on what the condition of the patient is, you know, it's just different for every patient,

Q I'm asking you if you're aware of any perimeters, how soon a patient should be triaged?

A I'm not, I do not work on the psychiatric floor, I'm not sure, you know, whether they have any or not.

Q Okay. Well, when we first started you said that when you were on call, the perimeters for that is that you

be available within 20 minutes; is that what you said?

A (Nods indicating yes.)

Q You were first contacted at 3:00, correct, and you planned to go see Mr. Lavely at 4:30; is that what you said?

A Uh huh, yes.

Q Is that consistent with the hospital guidelines?

A It depends, you know, if it is an emergency or real emergency if you think the patient is sick enough and you need to be there if the patient is coding or doing something, in shock or doing something, if they are bad, you know, then, of course, you need to be tl e t i 20 mi But if you think the patient is not that sick, you know, then sometimes you don't even see that patient until the next morning if the patient gets admitted in the middle of the night. If you think the patient is stable enough, you don't need to be there until the next morning.

Q You didn't think Mr. Lavely was that sick, did you?

A No, he wasn't.

Q Not until?

A Not until 4:20 or so.

Q And what was different at 4:20 that made you

realize --

A The blood gases and all that, his respiratory rate was getting higher.

Q His respiratory rate was higher?

A You know --

Q I thought it was about the same?

A It was about the same, but because of his blood gases that really made me think.

Q You're aware that his respiratory rate at 4:20 was about the same as it was at 1:00?

A I wasn't aware of his respiratory rate at 1:00.

Q Were you at any point aware of his pulse?

A I don't remember it.

Q Okay. Were you aware that his temperature was elevating?

A 101, yes.

Q Okay. Is it true that an alteration in mental status or agitation can be a sign consistent with respiratory distress?

A Yes, it can be, but Dan Lavely was usually -- it's very hard, you know, you have to know him, he was always kind of agitated because he was retarded, and then, you know, you cannot predict what he was going to do.

Q Can you tell me what the medical process is by which

bronchi pneumonia leads to respiratory arrest?

A It affects the oxygenation, there are so many infiltrations, and then mucus and all that in the lungs, and then it prevents the oxygenation, and that leads to hypoxia.

Q Okay. It can also lead to fatal arrythmia as well, can't it?

A Not necessary, not all the pneumonia.

Q Not all the time?

A But occasionally, yes, hypoxia can lead to arrythmias.

Q Okay. Was there anything that you knew about Daniel Lavely in terms of your past treatment of him or this hospitalization that would lead you to believe that his pneumonia and hypoxia was not highly treatable?

MR. HART: Objection. Go ahead and answer.

A Was not highly treatable?

Q Was there anything that led you to believe that --

A He had a ventricle septal defect, you know, which is a hole, which he had congenitally, but he was not in failure. Unless it was some kind of end product, you know.

Q He was only 26 years old?

A He was only 26 years old.

Q And I guess my question to you is: Was there anything that you were aware of in his records, as one of his treating physicians, that would lead you to believe that an episode of bronchi pneumonia should lead to is death?

MR. HART: No.

A No, he was 26 years old, you know, he was mentally retarded, he had VST, but VST was not causing any problems, so he came to me only for small things, you know, skin infections, coughs and colds, but nothing serious, you know.

MS. **GARSON:** Right. Okay. I don't think I have anymore questions. Thank you.

CROSS-EXAMINATION OF SHAVINDER AHLUWALIA, M.D.

BY **MS. HENRY:**

Q Doctor, **as** you know I represent Dr. Lee in this lawsuit. Are you aware of what specialty Dr. Lee practices?

A He's a psychiatrist.

Q Okay. You did not have any discussions with Dr. Lee on 4/23/96; is that right?

A No, I didn't.

Q Okay. If a patient in the hospital is under the care of a physician, for example, say, you were caring for

the patient and you felt he needed to be transferred to the service of another physician, would you leave orders for the nurse to get in contact with the physician tu whom you wanted the patient transferred?

A Yes, but Dr. Lee was aware that --

Q I just want to know would your procedure be to tell the nurses to contact the physician to whose service you want the patient transferred?

A Whose service? I'm sorry, I didn't get it.

Q I'm using what's called a hypothetical.

A Uh huh.

Q Don't even pay attention to this, this is just a general question. Say a patient was in the hospital under your care and you felt he needed to be transferred, for example, to the Psychiatric Unit, would you tell the nurse to contact Dr. Lee and explain the patient's condition and that need for transfer?

A That's right.

Q So in this particular case Dr. Lee told the nurse to contact you?

A Uh huh.

Q To advise you of the results of the tests and the needs for transfer to a medical floor, that would be the appropriate procedure?

A That's right.
Q All right. Now, in this particular case, Mr. Lavely does have a psychiatric history and diagnosis; is that right?
A That's right.
Q And he has had situations in the past where he has had inappropriate behavior as a patient and that sort of thing?
A He did, yes.
Q That was related to the psychiatric condition?
A That's right.
Q He was admitted to the hospital on the psychiatric floor; is that correct?
A Yes, uh huh.
Q Now, it appears that Dr. Lee gave orders at 14:15 for a stat EKG, stat chest x-ray, stat labs, and that was a telephone order at 14:15. Tho e wo ld e appropriate orders for Dr. Lee to give for testing if we was advised of problems with the pulse and the respiration, correct?
A Yes, I don't know what did he order, but, yes, it would have.
Q Let's try it this way. If Dr. Lee was advised that there was a pulse rate of 88, a respiration of 60, and he ordered a stat EKG, a stat chest x-ray, and

stat labs, which were CBC, Electrolytes, SMA 12, UA, and Thyroid, those would be appropriate initial studies to evaluate the patient, correct.

A That's right.

Q Now, when Dr. Lee received the results of the x-ray -- strike that. Dr. Lee also requested a consult and medical follow-up by you, that would be appropriate for Dr. Lee because he's not a medical doctor?

A That's right,

Q He's not treating medical conditions, correct?

A That's right.

Q Now, in this particular case I'm looking at the orders and it states, "At 14:15 transferred to Three North, Three North to call S period," and it looks like, W-A-L-E-N for orders. Who is S. Walen?

A I think probably sometimes they just spell my name wrong.

MR. HART: Just a few times.

Q Do you know a Dr. Walen, or here, let me show you. Do you know a Dr. Walen?

A S. Ahluwalia, sometimes they just shorten it.

Q Okay.

A That is my first initial.

Q I was a little confused as to who that was.

A Sometimes they use the full Ahluwalia and sometimes they shorten it.

Q And the procedure, in this case, was that you accepted the care of the patient and ordered the transfer to the medical floor, it looks like here at 2:50, is that accurate?

A 2:55 or 3:00, approximately around that time.

Q But at that point in time you became the attending physician providing the medical care to Mr. Lavely; is that right?

A Yes, he was transferred to my care, *yes.*

Q And what happens at the hospital is he would be discharged from the psychiatric floor and admitted to the medical floor; is that right?

A It depends on how long does it take to transfer and all that, so many factors are there, you know, they have got the orders at this time. It just depends, you know, on which floor, you know, he was taken care of, whether they can find the orderly or --

Q I just want to know, would he be discharged off the psychiatric floor and transferred to the medical floor?

A Should have been, yes.

Q All right. And then when he is admitted to the medical floor there is a Nursing Admission Assessment

that is done at that time?
A That's right.
Q And there is a separate Nursing Assessment done on the psychiatric floor?
A That's right.
Q Did you talk to Dr. Lee after Mr. Lavely's death?
A No, I haven't.
Q Dr. Lee cannot discharge a patient from the psychiatric floor and place him on the medical floor unless there's a physician --
A To accept the patient.
Q -- to accept the patient, correct?
A Yes.
Q And all of the information you received about this patient was received through telephone calls from nurses?
A That's right.
Q That's correct?
A Right.
Q And once Mr. Lavely arrived on the medical floor, then the nurses from the medical floor are the ones who would be communicating with you?
A That's right.
Q Okay. At Firelands Community Hospital, if a patient needed to be intubated, is that something that you

could do on the medical floor?

A Sometimes we do it on the medical floor and transfer the patient or sometimes just transfer the patient to Intensive Care, you know, it depends on the patient. If we think the patient -- we are anticipating the intubation, then we transfer the patient, so many things, you know.

Q But an intubation can be done, if necessary, on the medical floor?

A It can be done, yes.

Q And who would be the person, what medical professional would be the person to do the intubation?

A It depends, you know, sometimes the respiratory therapists do them, sometimes -- whosoever is available, you know, the physicians. Most of the time the respiratory therapist or the physician.

Q So the person that would be intubating would most likely be the respiratory therapist or the emergency room physician, correct?

A Most of the time, yes, if the anesthesiologist is available or whosoever, the doctor is available, you know, it depends.

Q Would you be qualified to do an intubation?

A Yes, I would be.

Q Do you have to have specific privileges at the hospital in order to be able to intubate a patient?
A Usually I do that, I do take care of some of the patients, if they are intubated, but most of the time I call, you know, for somebody else to do the procedure, it depends, or sometimes I transfer the patient to my husband and he does it, you know.
Q Let me just ask a general question. Does a physician need to have specific privileges or privilege levels at the hospital in order to do an intubation?
A Yes, you have to have -- yes.
Q You are not going to have a --
A But, again, if somebody is dying --
Q Wait, wait, wait.
A If you've got to do it, you've got to do it, you know.
Q Other than an emergency, in which case anyone who is around is going to try to do whatever they can to save the patient, other than an emergency, generally if there is a request to intubate a patient then it's done by physicians that have certain levels of privileges, correct?
A That's correct.
Q You don't really want a dermatologist doing an intubation or a podiatrist or a psychiatrist doing an

intubation?
A That's right.
Q Did any of the nurses ever tell you that the patient had a gray color?
A No.
Q Did any of the nurses ever tell you that the patient had cyanotic nail beds?
A I don't remember it, you know, that kind of thing.
Q You do believe that one of the nurses advised you of his respiratory rate and his pulse of 88 and 60; is that correct?
A I remember that, you know, the only thing that stuck in my mind was the shortness of breath, that's all.
Q If a nurse calls you and you believe the patient has pneumonia, do you ask them what are the vital signs of the patient?
A Yes, we do sometimes, but I don't remember, you know, exactly what the vitals were.
Q Do you recall whether or not you would have asked either the nurse on the psychiatric floor or the nurse on the medical floor what specifically Mr. Lavely's vitals were?
A I'm sure I did talk to them, but I'm not 100 percent, I don't remember it, but I knew that he had a fever, that's how I made the diagnosis of pneumonia and

shortness of breath.

Q I'm only talking about the vitals. Your normal procedure would be to ask them what the vitals were, but you can't recall what you were told in this case; is that right?

A I don't recall, you know, what the vitals were.

Q All right. You believe you asked, but you can't tell us today what specifically they were?

A That's right.

Q Okay.

A But now I know, of course.

Q Yeah. And your office chart just would contain office notes from various visits of Mr. Lavely to you; is that right?

A Yes.

Q **And you found out that he had gone into respiratory** arrest how?

A By a phone call.

Q Someone called you at your office?

A Yes

Q And Dr. Nescoda, is he an emergency room physician?

A He's in the emergency room

Q Okay. You were not giving any opinions that Dr. Lee deviated from the standard of care; is that correct?

A I can't say that.

Q Okay. And you did review the hospital records before your deposition; is that true?

A Yes, as far as my medical chart.

Q You didn't look at any other parts of the chart at any time?

A Maybe a long time ago, you know, but just probably -- I think I did go over it one time.

MRS. HENRY: Okay. Thanks.

MR. LAVALETTE: That's all you have?

MRS. HENRY: Yes.

CROSS-EXAMINATION OF SHAVINDER AHLUWALIA M.D.

BY MR. LAVALETTE:

Q Doctor, I'm Pete Lavalette, and I represent Firelands Community Hospital. You indicated that when Mr. Lavely was -- when you were first notified of his admission, you recall specifically that you were told that he had shortness of breath, and I think you said that he may have had a temperature; is that right?

A Yes.

Q You don't specifically recall what vitals you may have been told?

A Yes.

Q Would you agree you may have been advised of the vitals at that point, but you don't recall, to your

knowledge?

A I don't recall because, you know, as far as I recall that's how I made the diagnosis that he has pneumonia and that he had shortness of breath, has a temperature, but I don't recall, you know, specific vitals.

Q Okay. You testified that you believe that the physician's order that is charted as taking place at 16:00, you testified that you think you actually gave that order at 15:00; is that right?

A (Nod indicating yes.)

Q I just want to review, you would agree with me that the nursing notes indicate -- try and refer on your chart, I'm looking at the Nurse Progress Notes for the 23rd of April, '96, with the time of 1330 through 1525?

A 13 --

Q 1:30 through 3:15?

A I don't have those notes, I only have after 4:00.

Q I'm going to hand you a page out of the nursing notes, and that's what the nurses charted for the time period that would have covered 15:00, when you think that you made that order. If you can read what that says, just read it for yourself.

A Okay. "Refuses to rest in bed, watchful of his

activity, Dr. S. Ahluwalia notified of chest x-ray, and accepted patient, and patient is transferred to Three North, Dr. Lee notified of Dr. S. Ahluwalia taking patient and of transport, doctors notified by RN, and then at 3:10 to 3:20, or 3:25, sitting on sofa in TV area."

Q That's far enough.

A So he didn't look that sick, you know, he was sitting and watching and --

Q I guess my question is: That doesn't indicate that they received any orders from you at 15:00 on these nursing notes; is that right? You would agree that the nurse did not chart that she received orders?

A She did not chart it.

Q Okay. And then you earlier said that, I think, you talked earlier -- this is the next page of the same nursing note, 1525, it indicates that patient was transferred from One South to Three North, and I think it indicates --

A 3:25.

Q I think it indicates that Dr. Ahluwalia was aware of patient's condition?

A 3:25, yes.

Q Okay. And then if you could turn to your order at 16:00 -- apparently Nurse Gearheart has charted that

she received a telephone order from you at 16:00, right?

A (Nod indicating yes,)

Q That's when she charted it, correct?

A (Nod indicating yes,)

Q I'm now going to look at nursing notes from Three North, and I'll let you review these, but I specifically just want you to comment on the entry at 16:00. If you could read that for the record,

A At 3:50 he got on the floor, Three North,

Q So it took --

A Then I was contacted at 3:00 and they took about 25 minutes, you know, to get the patient to Three North.

Q Specifically at 16:00 I think the nurse indicated that your office called or your office was called it's not clear. Can you read what that says at 16:00?

A 16:00, Dr. Ahluwalia's office called per Dr. -- per some Gearheart nurse, RN, orders received ABG is strong, by the respiratory therapy and nail beds cyanotic.

Q But it does indicate, you agree, that at 16:00 it says, "Dr. Ahluwalia's office called per -- and "order received," right, it says that?

A That's right.

Q So this would be consistent with the 16:00 notation?
A 3:25 sitting and watching TV, and at 3:00 I was notified, and then 3:50 he was on Three North, took about 25 minutes, which is a reasonable time --
Q Okay.
A -- to get on the floor, and they contacted me at 4:00.
Q Okay. And it indicates here that you did, in fact, give some orders at 4:00, right?
A They notified me and I did give them orders.
Q Okay. And you said earlier, I think, you would have criticisms of the nursing staff at Firelands?
A This is -- only my criticism is that -- I should qualify it, this says something about oxygen, you kn , and orders, I ordered the six liters and only two liters were given, and then I ordered 100 percent non-rebreathable mask and they took 20 minutes, you know.
Q I'm interested --
A But this is the only problem I have, but otherwise --
Q Sorry.
A This is like, you know, a routine thing, you know, especially when the patient is sitting and watching TV, you know, Three North nurse does not think that he is looking sick or does not -- I was not aware of

that he was that sick or -- but a routine admission takes that long.

Q Okay. Thanks. At 16:20, I think -- or 16:15 you ordered 100 percent mask, correct?

A (Nod indicating yes.)

Q And you said earlier that you were concerned that that did not appear to take place until 16:40; is that accurate? Again, I'll let you read from the nursing notes. There's an entry at 16:40, there is an indication that Dr. S. Ahluwalia -- "of respiratory rate and pulse ox per D. Gearheart, orders received to transfer patient to ICU, 02 on at 100 percent." I'll let you review that.

A It says 02 on at 100 percent mask, what time -- I don't know what time did they put him on 100 percent.

Q That's my question.

A It would have been possible that they put it on at 4:15 or when I ordered it.

Q So the chart doesn't say specifically when --

A It says on, it doesn't say started at.

Q You would agree that this indicates there was 02 on at 100 percent at 16:40?

A I did not understand that note.

Q So you don't know when the 02 was put on, you have no reason to believe it wasn't put on at 16:15 when

you ordered it?

A After reading the chart again, I don't think so.

Q Okay.

A Is says on at 100 percent.

MR. LAVALETTE: Thanks. That's all I have for now.

MS. GARSON: Just a couple follow-up questions.

RECROSS-EXAMINATION OF SHAVINDER AHLUWALIA, M.D.

BY MS. GARSON:

Q We might as well go back to where we were. Your order from 16:15 is where you ordered 100 percent oxygen, right?

A Uh huh.

Q Based on the nurses' notes, it looks like the ABG results were called to your office at 16:20?

A Uh huh.

Q So then you ordered the 100 percent oxygen before you received the ABG results?

A Probably just, you know, going over the previous blood gas, the 3:15 one, what's why I increased the oxygen here.

Q Okay. So you are saying that -- you think it was the results of the first draw?

A First blood gases, and then after I got the results of that I increased it to 100 percent of oxygen,

Q What I'm saying is you got the results after you ordered the oxygen?

A Probably just a little timing error, you know, I was responding to the first blood gases. The second blood gas wasn't even drawn yet.

Q I know.

A Yeah.

Q Was the basis for your ordering the 100 percent oxygen based on the ABG results?

A On the first blood gas.

Q So you are saying that this must be an error, that you must have received the results before you ordered the oxygen; is that what I understand?

A I ordered the oxygen at 4:15.

Q Right. And the results of the test were called to you at 4:20?

A Maybe the nurse, you know, instead of 4:15 she put down 4:20. That's what I presume, you know.

Q Why are you presuming that?

A Because no other blood gas was drawn between 3:58 and 4:40.

Q Is it fair to say that your order of the 100 percent oxygen was based upon the --

A. First blood gas report.
Q The blood gas report?
A Must have been the first blood gas report at 3:58.
Q I'm going to show you the nursing -- well, you didn't see any written nurses' assessment forms while you were caring for Mr. Lavely on the 23rd; is that correct?
A No, I did not.
Q Because all your information was coming by phone?
A (Nod indicating yes.)
Q Then this has to be a hypothetical question. If you had been advised and you were aware that at 3:00, if the nurses had told you his temperature was 101.2, that his pulse was 109, that his respiratory rate was 58, that his blood pressure on the right was 144 over 70, and his blood pressure on the left was 162 over 74, that his respirations were labored, and that his -- you know I'm changing the time to 4:00, not 3:00.
A Okay.
Q And that his respirations were labored, and his nail beds were cyanotic, would your treatment have been any different?
A Probably not.
Q NO?

A No, because not from what I have done. I have ordered the blood gases, I have ordered the oxygen, I have ordered the blood cultures, I have ordered IV, and IV antibiotics, so I don't think it would be different.

Q This picture that I've given you, these critical symptoms and signs, do you consider those alone evidence of impending respiratory failure?

A Yes, but I'm looking at the blood gases and seeing what it is.

Q You can't make that diagnosis of respiratory failure without the ABG?

A Shortness of breath, you know, sometimes patients aren't in respiratory failure.

Q No, I'm talking about based on the clinical symptoms I just read to you.

A His blood pressure is normal.

Q Is that what you are saying it is, 144 over 70 and 162 over 74?

A That's not low, low, it's normal.

Q Combined with a -- I'm just going to give you the constellation of symptoms and ask you a couple questions about it. Okay?

A Okay.

Q Temperature is 101, pulse 109, respiration is 58,

I've given you the blood pressure, it's 4:00, his respirations are labored, and his nail beds are cyanotic?

A Yes.

Q Wait, wait. Is that a picture, a clinical picture, of a person with impending respiratory failure, yes or no?

A Unless --

Q If you can answer it yes or no.

A It can be, but I did the blood gases, I wanted to see whether he is going into respiratory failure.

Q Did you suspect -- if you had that information wouldn't you suspect impending respiratory failure?

A I could have, but, again, I needed the blood gases and all.

Q So you can't make that assessment without the blood gases?

A You need the blood gases report, and that's what I did, you know. He had the shortness of breath, but so many people have shortness of breath.

Q Even with the cyanotic nail beds you wouldn't be able to determine --

A He was getting 100 percent of oxygen.

MS. HENRY: Okay. I don't have anything **else.**

MS. BENRY: There is just a couple things.

RECROSS-EXAMINATION OF SHAVINDER AHLUWALIA, M.D.

BY MS. HENRY:

Q I saw on the record that Mr. Lavely was at Renaissance House or Renaissance Home, is that a group home?

A It's a group home.

Q When he would come to his visits at your office would someone from that group home bring him?

A Yes.

Q Did you ever meet any of Mr. Lavely's family?

A No, I did not.

Q Did he ever talk to you about his family or tell you anything about his family?

A No, it was very hard to understand him, too, you know just --

MS. HENRY: Okay. Thanks -- one last thing.

Q Did you ever talk to any of his family members after his death?

A No, I haven't.

MR. HART: Pete?

MR. LAVALETTE: Nothing.

MR. HART: We are going to reserve signature? Can we have more than seven days, like 30 days to review this?

MS. GARSON: Yes.

MR. LAVALETTE: Sure.

MS. HENRY: Yes.

THEREUPON, the deposition was concluded,

/S/_____

C O R R E C T I O N S

CERTIFICATE

STATE OF OHIO)
) ss.
COUNTY OF ERIE)

I, Dawn Michelle Egbert, Stenotype Reporter and Notary Public within and for the State aforesaid, duly commissioned and qualified, do hereby certify that the within named SBAVINDER AHLUWALIA, M.D. was by me, before the giving of her deposition, first duly sworn to testify the truth, the whole truth **and** nothing but the truth in the cause aforesaid; that the deposition as above set forth was reduced to writing by me by means of Computer-Aided Transcription to the best of my ability; that the said deposition was taken pursuant to Notice and was completed without adjournment; that I am not a relative or attorney of either party or otherwise interested in the eventual outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Sandusky, Ohio this 5th day of January, 1998.

Dawn M Egbert

HUNTLEY REPORTING SERVICE
Dawn M. Egbert
Notary Public
P. O. Box 1067
Sandusky, Ohio 44870

My commission expires 6/7/01