THE STATE OF OHIO,)
) SS:
COUNTY OF CUYAHOGA.)

Doc. 82

IN THE COURT OF COMMON PLEAS

CAROL HAYES, et al.,)
)
Plaintiffs,)
)
vs.) Case No. 106509
)
C. MICHAEL BUECHLER, M.D.,)
et al.,)
)
Defendants.)

- - -

Deposition of C. MICHAEL BUECHLER, M.D., a Defendant herein, taken by the Plaintiffs as if upon cross-examination before Kerry L. Paul, a Registered Professional Reporter and Notary Public within and for the State of Ohio, at the offices of Charles Kampinski Co., L.P.A., 1530 Standard Building, Cleveland, Ohio, on Tuesday, the 20th day of May, 1986, commencing at 10:00 a.m., pursuant to notice.

APPEARANCES:

Charles Kampinski Co., L.P.A., by:
Charles Kampinski, Esq.,
and
Christopher M. Mellino, Esq.,

On behalf of the Plaintiffs.

Jacobson, Maynard, Tuschman & Kalur, by:
Robert C. Maynard, Esq.,

On behalf of the Defendant C. Michael Buechler, M.D.

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STIPULATIONS

It is stipulated by and between counsel for the respective parties that this deposition may be taken in stenotypy by Kerry L. Paul; and that her stenotype notes may be subsequently transcribed in the absence of the witness.

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C. MICHAEL BUECHLER, M.D.,

a Defendant herein, called by the Plaintiffs for the purpose of cross-examination as provided by the Ohio Rules of Civil Procedure, being by me first duly sworn, as hereinafter certified, deposes and says as follows:

CROSS-EXAMINATION

BY MR. KAMPINSKI:

Q. Would you state your full name, please, for the record.

A. Charles Michael Buechler, B-u-e-c-h-l-e-r.

Q. And your address?

A. Office?

Q. No, home.

A. Home is 40 Hopewell Trail, Chagrin Falls.

Q. Did you bring with you a CV, Doctor?

A. No, sir.

Q. How old are you?

A. Thirty-eight.

Q. And where did you go to school at?

A. To undergraduate I went to Washington University.

Q. Where did you go to high school?

A. Assumption High School in East St. Louis, Illinois.

Q. When did you graduate?

A. 1966.

Q. And then you went to Washington University?

A. Yes, in St. Louis. I graduated in 1970.

Q. And what was your major, sir?

A. Biology.

Q. And what did you do after graduation from Washington University?

A. Then I went to medical school at Northwestern University in Chicago.

Q. And from when to when?

A. 1970 to 1974.

Q. You graduated with an M.D. degree?

A. Yes, sir.

Q. And then what did you do?

A. Then I did a surgical internship and residency at Akron City Hospital in Akron, Ohio.

Q. How long was your internship and when was it from and until?

A. The internship was from July of 1974 to July of 1975.

Q. Okay. And residency?

A. From July of 1975 to July of 1979.

Q. And this was in what, general surgery?

A. Yes.

Q. What does that entail, Doctor? I mean, just briefly.

A. It involves an exposure to all of the surgical subspecialties.

MR. MAYNARD: I think he meant what does general surgery entail, not the residency.

A. I'm sorry. General surgery is a surgical specialty that deals with -- well, it kind of depends on where you are practicing, but basically a general surgeon, by training, is trained to deal with disease processes in the chest, the abdomen, and the skin surfaces.

Q. And I guess it's self-explanatory, but I'll ask it anyhow. It involves surgery with respect to those areas?

A. Yes, sir.

Q. And when you say disease processes, does that mean that you deal with those areas, but not necessarily always dealing in surgery; is that correct?

A. I'm not sure I understand.

Q. If somebody had an abdomen problem or a problem relating to the chest or the skin, you wouldn't also treat them surgically, would you?

A. No. Some conditions can be treated with just medication and some require no treatment and some require surgery.

Q. All right.

A. That's correct.

Q. When you talk about general surgery as specializing in these areas, I guess I'm a little confused. Are you saying that you are a specialist in surgery in these areas or a specialist in these areas which also includes surgery?

MR. MAYNARD: It's the diagnosis and treatment, isn't it? Go ahead and answer the question.

A. Well, I'm not sure I understand completely. A general surgeon is trained to diagnose and treat, primarily surgically, diseases or injury processes in those areas. As part of our training, we are exposed to the medical treatment of these areas, but, again, our training is primarily geared to the ultimate surgical treatment.

MR. KAMPINSKI: Okay. I guess maybe what I was thinking, Bob, is perhaps a cardiothoracic surgeon, all right, who basically just gets referrals and opens the chest and does whatever a cardiologist might tell him to do.

Q. That's not the type of thing you are talking about?

A. No. The general surgeon sees more of the patient earlier on in the diagnostic phases.

Q. Okay.

A. The subspecialty of the cardiothoracic surgeon, the neurosurgeon, the patients usually come to them pretty much worked up already and, like you say, here is what the patient has and this is what we need done. The general surgeon is often involved more often in the diagnostic process in addition to the treatment. Yes, sir.

Q. All right. But from the discussion we have just had, I assume that your specialty is not that much different than others in the medical profession and that is that you do use other doctors where you see fit for consultations or referrals, things of that nature?

A. Yes, sir.

Q. So by saying your training is in general surgery, that doesn't mean that you can do everything in these areas, chest, abdomen, skin? There would be things that you would leave to other doctors?

A. That's correct, yes.

Q. For example, if there were problems, let's say, pertaining to the chest, and we are going to talk about some of them here today. I'm not going to try to be cute with you; and certainly if you don't understand any of my questions, you tell me; but with respect to a problem like Mrs. Hayes had in terms of a breast implant, what would be the appropriate specialty to deal with that, if not yourself; and if it's yourself, tell me that.

A. The breast implant --

Q. Leakage of the breast implant.

A. Generally speaking, a plastic surgeon would deal with that as far as removing it.

Q. Would he deal with any other part of it?

A. They put them in.

Q. How about dealing with the damage done by the leakage? Who would deal with that?

A. The silicone outside of the bag?

Q. Yes.

A. Again, the plastic surgeon or the definitive care would primarily deal with that.

Q. When did you deal with a plastic surgeon with respect to Mrs Hayes?

A. The consultation for plastic surgery was placed some time after January 17th.

Q. When?

A. I don't know the exact date.

Q. Do you have the records with you, sir?

A. The notation regarding the plastic surgery consultation is dated 1-17-85 and simply states, referred to Dr. Shaw at St. Vincent Charity Hospital for reconstructive surgery.

Q. Let's back up. At what point in time in your treatment of Mrs. Hayes were you aware of the fact that there was leakage of the silicone outside of the bag?

A. 12-13-84.

Q. All right.

A. I'm sorry. That's an error. 12-13-84 was the last day that I saw her in the office. The date that I was sure that she had silicone leaking from the prosthesis was on the date of her surgery, which was 1-11-85.

Q. And did you get a consult that day?

A. No.

Q. Why not?

A. On that date the patient was in the hospital for a biopsy for diagnosis of her problem. That diagnosis was made and the consult was to be made during the postoperative follow-up period.

Q. That's not what the records reflect in the hospital, is it, Doctor? It says that you got consults, didn't you?

A. It was a verbal consultation.

Q. With who?

A. Pardon?

Q. With who?

A. That was a verbal consultation obtained by myself and the chief plastic surgery resident who was rotating at St. Vincent at that time.

Q. Who?

A. Dr. Rodney Green.

Q. You are sure of that?

A. Pardon?

Q. You are sure of that?

A. Yes.

Q. You remember that as you sit here today?

A. Yes.

Q. What did you tell Dr. Green and what did he tell you?

A. I talked to Dr. Green stating that I had a lady that was coming in. I was going to do a breast biopsy on her. She had a mass on her right breast and I had said that she also had a silicone implant in place and I was asking him in regards to

the technical aspects, should there be anything I need to be concerned about regarding the bag, itself. He said, no, just stay away from the capsule and that was the extent of our preoperative conversation.

Q. Is the reason you asked him that because you had never done a biopsy on someone who had a silicone implant before?

A. To my knowledge, I had not done a biopsy on one of those patients before, that's correct.

Q. And did you ask the plastic surgeon to do the biopsy?

A. No.

Q. Would that be standard or is that within your field of expertise?

A. That's within our field, the field of a general surgeon.

Q. Is it your testimony, sir, prior to that date; that is, January 11th, you were not aware of the fact there was any leakage outside of the bag? Is that your testimony?

A. I had no definitive evidence that there was leakage outside of the bag.

Q. When you say definitive evidence, I certainly don't want to have semantics with you.

Did you have evidence? Did you believe that there was? Tell me in your own words, Doctor.

A. Prior to the biopsy on 1-11-85, the patient was presenting with an enlarging lump in the right breast and I had no evidence that there was silicone leakage. It was certainly a part of the differential diagnosis.

She had a silicone implant and it certainly could contribute to the mass, but the patient had presented with a mass in the breast and I approached it as I usually do and we always construct a differential diagnosis; so prior to that date, it was possible that this mass was from a leaking implant, but I had no proof that it was. That was, indeed, a portion of the point of the biopsy, was to find out what the mass was from.

Q. You had taken a biopsy previously, hadn't you?

A. A fine-needle aspiration.

Q. A fine-needle aspiration, right?

A. Yes.

Q. When was the date of that, sir?

A. That was 10-17-84.

Q. And that was in your office?

A. That's correct.

Q. And was that the first time that you saw Mrs. Hayes?

A. Yes.

Q. And did she tell you that she had an implant?

A. Yes, she did.

Q. Did you do anything to insure that there would be no compromize of that implant at that time?

A. Yes, sir.

Q. What did you do?

A. I altered my usual technique for fine-needle aspiration. Generally when that procedure is done, the needle is -- the mass is affixed between two fingers and the needle is introduced perpendicular to the skin of the breast into the lump and then a specimen is taken in that fashion.

In Mrs. Hayes, because she had said that she had the implant, rather than doing a transfixing of the mass and putting this needle in perpendicular, it was introduced tangentially to the surface of the breast, such that as the needle was advanced under the skin, it was passing on a tangent to the implant rather than towards it.

Q. Okay. Let me stop here, because obviously the motions with your fingers and hands

can't get down on the transcript.

A. I'm sorry.

Q. It's not your fault.

MR. MAYNARD: You can't help it.

Q. (BY MR. KAMPINSKI) It is not a function of the court reporting machine. What you are doing, and I certainly don't want to paraphrase it incorrectly, is you indicated that your usual procedure is, as I saw it, to place the needle into the breast directly into it?

A. Yes, sir.

Q. Okay. And that you did it differently here. You put it in -- what would that be, vertical?

MR. MAYNARD: Tangentially.

Q. You said tangentially; but as far as directionally --

A. Sideways.

Q. -- sideways, so it wouldn't go directly into the breast and puncture the bag to the extent that there was a bag there, right?

A. Yes. Rather than the needle pointing towards the center of the breast, it was superficially pointed.

Q. And when you did this aspiration, and

that's sticking the needle into the lump, the purpose of that is what, to get whatever is in there and analyze it?

A. Right. It is to obtain a sample of cells or fluid, depending upon whether the mass is fluid filled or solid, and then submitting it to pathology.

Q. What did you get when you did that, sir?

A. The specimen -- there was no fluid that came back. It is not --

Q. No, no. I mean what right then and there in the office. When you stuck the needle in, what happened, sir?

A. I see. Not much. All we see are little tiny fragments of cells coming back.

Q. Was it sticky?

A. No.

Q. It wasn't?

A. Just two little pieces of cells.

Q. Two little pieces of cells?

A. That's really all that comes back through the needle, just little tissue fragments. It's not a big needle, so we don't get big pieces of material.

Q. Did you have discussions with Mrs. Hayes

before you did this aspiration? I mean, obviously you took a history, right?

A. Yes, sir.

Q. And is that contained in your records somewhere?

A. Yes. The note of 10-17.

Q. Do you have your original record with you?

A. Yes.

MR. KAMPINSKI: Okay. Why don't we mark the original and what I would ask, Bob, is just that any proceedings at depositions, that you have the original available.

MR. MAYNARD: Sure.

MR. KAMPINSKI: Obviously you retain them.

(Plaintiff's Exhibit No. 1 was marked for identification.)

Q. (BY MR. KAMPINSKI) What I would like you to do, Doctor, is count the pages and just identify what Plaintiff's Exhibit No. 1 is, consisting of however many pages there.

A. You just want the total?

Q. Yes. We will go through them all.

A. Twelve in total.

MR. MAYNARD: Let me count them to

make sure. You did not count that, did you?

THE WITNESS: Yes.

MR. MAYNARD: I don't think we need that.

MR. KAMPINSKI: Ruby? If they are there, I'm sure I will get to ask him to explain them all.

MR. MAYNARD: Basically 11 pages and somebody put a telephone note that is nonspecific. I don't know what it refers to. There's actually 11 pages of records plus whatever this note reflects.

Q. (BY MR. KAMPINSKI) And that's contained in Plaintiff's Exhibit No. 1, is that correct, all of those 12 documents?

A. Yes, sir.

Q. And would you indicate for the record what Plaintiff's Exhibit No. 1 is, Doctor?

A. Page by page?

Q. Just basically what those records are. Those are your office records?

A. My office chart on Mrs. Carol Hayes.

Q. Whose writing is it, for example, on the first page?

A. There are four entries on page one. Two

are mine and two are Michelle Allebach's.

Q. And have you brought her records with you today?

A. This is the extent of our records.

Q. Michelle Allebach's personnel records?

A. No. I don't have any of her personnel records.

Q. What do you have with respect to Michelle Allebach? Pay records? How did you pay her?

A. We have, I imagine, old payroll records.

Q. Did you bring them?

A. No, I didn't.

Q. Why not?

A. I didn't know they were necessary.

Q. What is her last known address?

A. It's somewhere on Lakeshore Boulevard, I believe.

Q. Where?

A. I don't know.

Q. Can you make a phone call to find out?

MR. MAYNARD: I have made investigation and I'll get it for you.

MR. KAMPINSKI: I want it today, Bob. I have waited. I want her last known address.

MR. MAYNARD: Her last known

address?

MR. KAMPINSKI: Yes.

MR. MAYNARD: We will get it for you, her last known address. Do you have it in your office, her last known address?

THE WITNESS: No, I don't.

Q. (BY MR. KAMPINSKI) Where is it?

A. She no longer works for me.

Q. I understand.

A. As you know.

Q. But she did at one time?

A. Yes.

Q. You knew her address then, didn't you?

A. Yes, I did.

Q. Where would that information be?

A. I suppose the most readily obtainable place -- if it's not in the phone book, my accountant would have it. I can check with him.

Q. Why don't you call him? I'll wait.

THE WITNESS: Do you want me to?

MR. MAYNARD: Sure.

A. I don't have it written down. Where is the phone you want me to use?

Q. Right here.

A. It's long distance.

Q. That's fine. Just dial one.

(The following conversation was had via the telephone.)

THE WITNESS: Hi, is Mike Taylor in? Okay. This is Dr. Buechler. Who is doing my accounting? Is she around? Thanks. Hi, Brenda. This is Dr. Buechler, how are you doing? Real good. Well, kind of good. Can you look back and get me Michelle Allebach's last address, whatever you guys have. Thanks a lot. 14012 Lakeshore Boulevard. No. Run that by me one more time. 14012. Apartment 214. Thank you. Thank you very much.

(Telephone conversation concluded.)

Q. (BY MR. KAMPINSKI) Why don't you read it into the record?

A. Michelle Allebach, last known address is 14012 Lakeshore Boulevard, Apartment 214, Cleveland, 44114.

Q. Doctor, after your residency in July of '79, what did you do?

A. I went out into the private practice of general surgery.

Q. Where at?

A. In Wooster, Ohio.

Q. And were you with a group or --

A. Private practice.

Q. By yourself?

A. Yes, sir.

Q. What was your address there?

A. It was 1716 Bellal Avenue, Wooster, 44691.

Q. All right.

A. The numbers may be incorrect on that street address, but that's close.

Q. Did you have any affiliations with any hospitals?

A. Yes. I was on the staff of Wooster Community Hospital in Wooster, Ohio, Dunlap Memorial Hospital in Orville, Ohio and Joel Pomerene Memorial Hospital in Millersburg, Ohio.

Q. And how long did you do that?

A. I was in that area from '79 until the fall of '83, 1983.

Q. Why did you leave?

A. I came up to Cleveland to St. Vincent's. I was offered a position of director of their trauma service.

Q. And have you been doing that since you came to Cleveland?

A. Yes, I have been at St. Vincent's since the fall of 1983.

Q. As the director of the trauma service?

A. Yes.

Q. Is that as an employee or how?

A. I receive a salary from the hospital to administer the trauma division.

Q. All right. Do you get anything else, office space, anything of that nature?

A. No.

Q. You also have a private practice?

A. Yes, sir.

Q. How long has that been true?

A. In the Cleveland area since the fall of 1983.

Q. All right. From when you first came here?

A. Yes, sir.

Q. And what is your business address?

A. 2322 East 22nd Street, Suite 200. It's in Cleveland, 44115.

Q. Has that been your address since you have been in Cleveland?

A. No. Prior to that it was 2475 East 22nd Street, Suite 506, same zip.

Q. And how long have you been at the 2322 address?

A. Since December 1st of this year we moved

over.

Q. Of '85?

A. Right.

Q. And how long had you been at the 2475 address?

A. Since I came to Cleveland until December of '85.

Q. Are you Board certified?

A. Yes.

Q. And in what specialty?

A. The American Board of Surgery.

Q. And when did you get your certification?

A. In 1980.

Q. What hospitals do you have privileges at currently?

A. St. Vincent's Charity. That's the only hospital.

Q. Have your privileges ever been revoked or suspended at any hospital?

A. No, sir.

Q. How is it that you got involved in trauma service? As a matter of fact, you were in the newspaper not long ago discussing trauma centers, right, Doctor?

A. Yes.

Q. Did you take any specialized courses or study regarding trauma centers?

A. No, no formal. Yes and no. The general surgeon, through training, is exposed to the surgery of the trauma patient and that's been what I have been always interested in; and when I started my practice in Wooster, I became more interested in trauma and the other surgeons down there weren't, so I gained more experience.

I was made director of the trauma program at Wooster Community Hospital and then became a member of the trauma committee of the Ohio Chapter of the American College of Surgeons and my interest over the years in trauma continued to grow.

As far as specialized training, other than my general surgical residency and my avocation, I introduced the American College of Surgeons advanced trauma life support course for physicians in Ohio, but primarily it has just been an avocation throughout the years and my interest in trauma grew and I became more familiar with the physicians up in Cleveland. Ultimately I was contacted by St. Vincent's and I just came up here.

Q. Do you have a CV, Doctor?

A. Yes, I do.

MR. KAMPINSKI: Can I get a copy of it?

MR. MAYNARD: Yes. I don't have one either.

A. No problem.

Q. (BY MR. KAMPINSKI) Is it current?

A. Yes, sir.

Q. Have you written any books or publications?

A. No, I haven't.

Q. What societies do you belong to, medical societies?

A. The American College -- I'm a fellow of the American College of Surgeons, the Ohio Chapter of the American College of Surgeons, American Medical Association, the Ohio State Medical Association and the Society of Critical Care Medicine.

Q. I'm sorry. I didn't hear that?

A. The Society of Critical Care Medicine. The Cleveland Academy of Medicine. I think that's most of them.

Q. What journals do you subscribe to?

A. I subscribe to the Annals of Surgery, American Journal of Surgery, Surgical Clinics of

North America, Current Problems in Surgery, the Journal of Trauma, the Archives of Surgery, Journal of the American Medical Association, the publication of the Critical Care Medical Society. I have forgotten the title of that. The Ohio State Medical Association publication.

Q. Did you subscribe to all of these in October, November, December of '84 and January of '85?

A. Yes, sir.

Q. Since having an office here in 1983, have you always been a sole practitioner or have you had partners or been part of a group?

A. I've been a solo practitioner. At one point I was sharing 2475 office space with an internist, but it was just a space sharing arrangement. There was no blending of the practice.

Q. All right. When was that that you were sharing space?

A. Probably the last year that I was there. Maybe from the fall of '84 until we moved in December.

Q. Of '85?

A. Yes, sir.

Q. And who was the internist you were sharing space with?

A. Bruce Resnik.

Q. What was the office arrangement as far as help, secretarial, nursing, whatever you had? What did you have, first of all?

A. There was one office employee, Michelle Allebach, who is a medical assistant. She was the only employee in the office.

Q. And she worked for both you and Bruce Resnik?

A. That's correct.

Q. Who hired her?

A. I did.

Q. When?

A. I came up in the fall of '83. It was within a month of my arrival, so it would be very late 1983.

Q. How did you hire her?

A. I forget her name. I don't remember the exact mechanism of how I came by her resume. I believe -- I just can't remember. She had submitted a resume. I interviewed three people and she was one of the three.

Q. Where is her resume?

A. I don't have it in my records anymore.

Q. Why not?

A. When I released her from employment, I didn't see any reason to keep her records around.

Q. What did you do with them?

A. I imagine they were thrown away.

Q. What do you mean you imagine? What did you do with them?

A. I don't remember. Again, I just --

Q. How long ago did you release her?

A. It was in January of 1985.

Q. Why?

A. She had a record of tardiness. She would come in late, miss days and it was unacceptable for when -- again, she was the only person in the office.

Q. When in January of '85 did you let her go?

A. I don't remember the exact date.

Q. Beginning, middle, end?

A. I think it was towards the end.

Q. How long had this record of tardiness been going on?

A. For about the last three to four months that she had been working for me it had been getting noticeably worse.

Q. Was she single, married?

A. Single.

Q. How old was she?

A. In her late twenties.

Q. What else did you know about her for the two years plus that she worked for you?

A. That was about all, other than, again, she was a medical assistant; and as far as personal, not much at all about her.

Q. What is a medical assistant?

A. Medical assistant is an entity. There's a two-year training program for medical assistants. The intention being that the graduates of these programs can come into an office with a medical background and assist doctors.

Q. Where did she get her training?

A. It was in Stark County, Ohio.

Q. Where?

A. I don't remember the exact school.

Q. Well, did she have some type of license or degree or diploma that you looked at that was provided that you checked out?

A. It was in her resume where she graduated from and what her degree was, but, again, I don't have that with me. I don't have it.

Q. Was she a college graduate?

A. No.

Q. What is your recollection then in terms of her education?

A. My recollection is that it was high school and --

Q. High school graduate?

A. As far as I recall, yes, sir.

Q. Do you recall where?

A. No, I don't.

Q. Was she from Stark County?

A. Yes.

Q. Do you know where in Stark County?

A. No, sir.

Q. Go ahead.

A. What was the question?

Q. High school graduate?

A. She graduated from high school and then I believe she went into the medical assistant program, which is a two-year program.

Q. Was that affiliated with a hospital or a college or where would one get such a medical assistant training?

A. Specifically for hers, I don't remember the affiliation. Where one obtains one, it can be associated with universities. It can be associated with community colleges, vocational-type schools.

There's a number of affiliations that are possible.

Q. And what is a medical assistant capable of doing once they get this affiliation? They can't do surgery, I take it?

A. No. They are primarily just to assist.

Q. Well, they are not nurses, right?

A. That's correct.

Q. Nurses assist doctors too, but a medical assistant assists them differently?

A. The medical assistant goes through a different type training program than an RN or LPN would do.

Q. All right.

A. The medical assistant is essentially exposed to medical terminology, certain medical procedures. Again, not that they are to go performing them, but they are going to be assisting, so they have a familiarity with the programs.

Q. Such as what? What medical procedure can they assist in?

A. Dressing changes, suture removals. From a surgeon's point of view, they could assist in a sigmoidoscopy, proctoscopies. Pretty much whatever the individual physician would allow them to assist in, they would be familiar with that.

Q. Well, is there some type of society of medical assistants, some licenser, some provisions that provide what they can and can't do?

A. I don't know the answers to those things. I think what they can and can't do in large depends upon their employer.

Q. I see. So that it's really up to the doctor to let them do whatever he thinks they are capable of doing? I think that is what you are saying?

A. I think within limits, yes.

Q. How about examining a patient?

A. I think under supervision that's the appropriate thing to do.

Q. Was she the only employee that you had working for you during this year and a half period of time approximately?

A. Yes. In the interim period when I first moved up from Wooster prior to hiring someone here, the LPN who helped in my Wooster office also came up to make the transition for me here. Michelle is the only one that had worked for me during that period that you mentioned.

Q. So in Wooster you did not have a medical assistant? You had an LPN?

A. That's correct.

Q. Is there a reason that you didn't choose to hire a nurse here as opposed to a "medical assistant"?

A. No. I do very little in the way of office procedures, et cetera; and the medical assistant, LPN, there really was no preference for one over the other. The other people that applied for my position did not have the medical background that Miss Allebach did.

Q. And medical background, again, is this medical assistant program that you don't know where it was?

A. That's correct.

Q. She also acted as a secretary?

A. Yes.

Q. Receptionist?

A. Yes.

Q. Did she need any specialized training for that?

A. She needed an introduction to our bookkeeping and billing-type system.

Q. She did billing too?

A. Yes.

Q. And office recordkeeping?

A. Right. She was the only one in the office.

Q. Did she also do any medical assisting for Dr. Resnik?

A. I'm not sure how he utilized her.

Q. Did you have any specialized training, Doctor, with respect to silicone implants?

A. No, I didn't.

Q. When Mrs. Hayes first came to you, I think you said that you took a history. Could you show me where in your records that history is contained, sir?

A. The history would be right in the notation under 10-17-84.

MR. MAYNARD: You can take those back. He's got copies.

MR. KAMPINSKI: We will go through them all.

A. On your top sheet.

Q. (BY MR. KAMPINSKI) I'm sorry. You were saying that it is contained in that --

A. The history that was recorded in my office notes from Mrs. Hayes' first visit is recorded under 10-17-84.

Q. Why don't you read the history that you

took from Mrs. Hayes?

A. The initial history states the initials SP, which is status post, augmentation implant both breasts. Now with mass at 7:00 right breast. 7:00 position right breast. Tender, no trauma. The initial PE, physical examine.

MR. MAYNARD: He just wanted the history.

Q. (BY MR. KAMPINSKI) All right. That's it?

A. Yes.

Q. That's the history?

A. Yes.

Q. Did you get any history of her family background?

A. It's not recorded.

Q. Did you get any history of how long the mass was there?

A. I didn't record it.

Q. Was it one mass or two masses?

A. It was one mass.

Q. That's because mass is singular in your record or do you have an independent recollection?

A. No. Because of what is here.

Q. And I assume if it were two masses, you would have put masses plural?

A. Masses and the dimensions of each.

Q. Did you put the dimension of the one?

A. Yes.

Q. All right. And that would have been on the physical examine?

A. Yes, sir.

Q. All right. Was that all of the history that you noted, Doctor, or did you ask other questions that you just didn't put down? I mean, are there things that you can sit here and you recall asking her that you just didn't note on your records?

A. Not with assuredness that I can recall, no, sir.

Q. Well, was it important to you that once you became aware of the fact that she had implants, what the nature of the implants were, who did them, when they were put in, any prior history on the implants, anything of that nature?

A. Yes.

Q. Where is that recorded, sir?

A. It's not in the office notes. I can, as far as the implants, themselves, recall discussing that they had -- that she said that they had been in for at least seven years. She told me that they

were saline implants.

Q. Did that affect you in terms of your thinking as to how to approach the mass, that she told you they were saline?

A. No, sir. I approached her breast mass as I do all breast masses that I see.

Q. Well, wait a minute. You told me that you approached her differently because of the fact that there were implants?

A. Technically in the fine-needle aspiration. The actual technique of the aspiration was different, but the overall approach was the same.

Q. All right. And I take it that your primary concern is determining whether it was cancerous?

A. Essentially.

Q. Malignant, right?

A. Yes.

Q. When you say essentially, are there other things you are concerned with?

A. That's the bottom line. That's the most worrisome that the breast lump can be is malignant and the bottom-line consideration is that.

Q. But not having any experience with implants previously, I take it that you weren't

concerned about any leakage on October 17, 1984?

A. As I said, that's part of the differential diagnosis in her, that it would be a problem related to the prosthesis, whether it is saline or silicone or free silicone.

Q. That is something that you took into consideration right off the bat?

A. It's part of the differential diagnosis, yes.

Q. How about any analysis that you made that you have any recollection of her -- and I'm not really sure how to phrase this, but I'll do the best I can. For lack of a better term, her emotional state or her concern about her body, specifically her breasts?

I mean, was there anything that entered into your thought process in dealing with Mrs. Hayes at that time once she told you that she had had implants?

A. I'm not sure. Different from any other woman with a breast lump?

Q. That's right.

A. No. Again, I approached it like all of my patients with breast lumps.

Q. Did it ever occur to you, and perhaps it

did not, that perhaps Mrs. Hayes had some more emotional concern about her breast because she had implants put in at one time in her life? That was not something that even struck you?

A. I don't know that that was an overriding concern. Again, I was concerned about the lump.

Q. All right. Did you discuss with her her prior medical history, other doctors, any medication that she was taking?

A. No, sir.

Q. Why not?

A. For patients that I see with breast lumps in the office, specifically her, I usually don't go into that extensive of a history in the office.

Q. Do you know how she got to you to begin with? I may have asked that. I'm sorry.

A. No, you did not. I noticed on her information sheet, which our patients fill out, which is part of this. It is the handwritten multilined document. In the upper right-hand column, referred by Dr. Streepey is mentioned there. Dr. Streepey is the director of our emergency department; but what the relationship between Mrs. Hayes and Dr. Streepey is or was, I don't know.

Q. Is this how you keep your records on

patients? It just looks like this or do you have a folder?

A. They are in a manila folder.

Q. Did you bring that?

A. Yes.

Q. Can I see it?

MR. MAYNARD: Is it here?

THE WITNESS: Yes.

(Plaintiff's Exhibit No. 1A was marked for identification.)

Q. (BY MR. KAMPINSKI) Doctor, I'm going to hand you what has been marked Plaintiff's Exhibit No. 1A. Can you identify that for me, please.

A. This is the manila folder to Carol Hayes' office records.

Q. When does it start? I mean, there's writing on the inside cover, right?

A. Yes.

Q. And when does that writing start, sir?

A. Chronologically?

Q. The first entry.

A. This was all entered at one sitting. These are my notes on how things have -- how this has progressed after the operation on Mrs. Hayes on 1-11-85. The date these were entered, I don't know.

Again, this was all one notation, just chronologically to place things.

Q. Why?

A. For my own recollection for this day.

Q. Was it entered before or after the lawsuit?

A. After.

Q. Let's go back to some of your records. Are all of the records pertaining to Carol Hayes contained within these 12 pages of Plaintiff's Exhibit Nos. 1 and 1A or are there additional records, Dr. Buechler?

A. It is Buechler. The Exhibit 1 and 1A are all of the contents of my office records. The only thing that is not in there are the letters from you to me and Mr. Maynard to me and you and that's it.

MR. MAYNARD: He's asking medical records pertaining to --

MR. KAMPINSKI: That's right.

MR. MAYNARD: -- Carol Hayes. That's the question. Correspondence from you to him and me to you is not medical records of Carol Hayes, so the question is -- answer his question regarding medical records.

A. The only other medical record would be at

St. Vincent Charity Hospital that I'm aware of.

Q. (BY MR. KAMPINSKI) Have any records been removed, changed, altered in any way, shape or form?

A. Not to my knowledge.

Q. You would know if they were, wouldn't you?

A. Well, I would known if they had been altered or removed, but I haven't checked them recently.

Q. Why don't you check them?

A. I don't have those available. The hospital records I'm talking about.

Q. I'm talking about your records.

MR. MAYNARD: All he really wants to know is do you have anything else regarding your patient care of Carol Hayes that you haven't brought here today?

THE WITNESS: No, just right there.

Q. (BY MR. KAMPINSKI) How about billing? Have you brought the billing too?

A. Yes, I believe it is.

Q. Let's go back to Michelle Allebach for one moment, because I want to know what records you have pertaining to her or what they are and where they are.

MR. MAYNARD: I think this has been

asked and answered.

MR. KAMPINSKI: It may be.

Q. (BY MR. KAMPINSKI) You have told me you threw the resume away or you don't know if you did. You don't know where it is, right?

A. I cannot presently find a resume on Carol Hayes -- or Michelle Allebach. I'm sorry.

Q. What do you have pertaining to Michelle Allebach, not necessarily in your possession? You understand if you turned it over to Mr. Maynard or to PIE or to anybody else, I consider that still within your --

MR. MAYNARD: Knowledge.

Q. (BY MR. KAMPINSKI) Yes. Thank you.

A. I have nothing like that that I had that I found in my office and I gave to somebody else. The only thing -- the only records that may be available would be what Mike Taylor might have kept as far as exemptions and things like that. I have no data on Michelle that PIE or Mr. Maynard or anybody else has. I just don't have anything.

Q. Who is the girl that is working for you -- do you have the same girl now that was working as of when Michelle Allebach was discharged?

A. After Michelle left, I hired the present

person, yes.

Q. Who is that?

A. Tina Ineman, I-n-e-m-a-n.

Q. And she still works for you?

A. Yes, sir.

Q. And is she a medical assistant?

A. No.

Q. What is she?

A. She's a secretary. She's just a secretarial-type person.

Q. Does she do the same types of things that Michelle Allebach did?

A. No.

Q. What did Michelle Allebach do for you specifically? Give me some specifics.

A. Specifics?

Q. Yes.

A. She was the only person in our office. She would schedule appointments with patients to come in. When they would come in, she would take the information as is listed there. She would then place the patient in the office to be examined by me.

Subsequent to that then, she would also generate the billing; and if there were follow-up

visits, surgery scheduled, laboratory work scheduled, she had been in charge of scheduling that. She would also be responsible for answering the telephone during the day should patients phone in and forwarding messages on to me.

Q. How about any hands-on things that she might do with respect to patients?

A. When she was working with me, she would work under my supervision, as far as taking care of the patients, changing dressings, things like that, taping.

Q. Would you always be there when she was doing that?

A. I would either be there in the office or immediately available.

Q. What do you mean by immediately available?

A. Across the street in the hospital.

Q. Would she be able to make diagnoses?

A. Independently?

Q. Yes.

A. She would be able to --

Q. Like, for example, that looks okay, that's fine, go home, come back?

A. Yes, as far as checking incisions, things like that. Yes, she could do that.

Q. She would be able to tell whether or not postsurgical incisions were okay?

A. If it was healing properly or was infected, yes; and if there was a problem, then she was instructed to call me.

Q. Do you consider that appropriate for a medical assistant, Dr. Buechler?

A. Yes, I do.

Q. You don't consider that diagnosis?

A. I consider that -- specifically the case I mentioned, inspecting a wound?

Q. Absolutely.

A. I think in the bounds of their training and --

Q. You got to know what training she had, do you?

A. Working under supervision, I think that is reasonable.

Q. You don't know what training she had, do you? You just told me that.

A. She had a M.A.; and to my knowledge, you can't just buy those. Those are earned by two years of training.

Q. And that allows her to make a diagnosis postop? I thought you said you did not know --

MR. MAYNARD: Objection. Did he say it was a diagnosis?

Q. (BY MR. KAMPINSKI) Is it a diagnosis?

A. It is a matter of semantics. If checking a wound and saying it is okay is a diagnosis, if that's how we wish to define it, then it is.

Q. Would you define it that way, sir?

A. No, I don't think so. I think a diagnosis is more of a compilation of data on an unknown entity and coming up with a solution as opposed to saying a wound looks okay or it doesn't. Again, it is semantics and one could argue either way.

Q. Let's call it something different. Would you call that medical advice?

A. The results of a wound inspection?

Q. Yes.

A. It is data.

Q. Data to be analyzed by whom?

A. By me.

Q. What about a medical assistant? I mean, can she analyze data regarding a postsurgical incision to determine whether or not it is okay or not?

A. A medical assistant, I feel, can look at

a wound and say it's red, something is leaking, it's pused, it's healing well and accurately relay that to a physician.

Q. Okay. And she would have been within the course and scope of her employment with you in doing that with respect to Mrs. Hayes?

A. As long as I was immediately available, yes, sir.

Q. Were you immediately available when she did that?

A. Yes, I was in the hospital.

Q. So that she was doing it within the course and scope of her employment with you; is that right?

A. Yes.

Q. And the hands-on things that she would do in conjunction with viewing such a postsurgical incision, that would have been also within the course and scope of her employment with you; is that correct?

A. Yes.

Q. Okay.

A. The only time she would view an incision or change a dressing, et cetera, was when I was tied up at the hospital. Otherwise I would do

those myself.

Q. On this document where the first notation is October 17, 1984, whose writing is whose? The first entry consisting of five lines --

A. The initials CMB, those are mine.

Q. And the next entry, November 13, 1984, whose writing is that?

A. That's Michelle Allebach's.

Q. And the next one December 13th, 1984?

A. That's mine, CMB.

Q. And the next one, January 17, 1985?

A. That is Michelle Allebach's.

Q. And how is it determined who would make what entry? If you did the work, you would make the entry? If she did the work, she would make the entry?

A. Essentially that's correct. Whoever had the observation recorded their data.

Q. All right. Why don't you go ahead.

(A short recess was had.)

(Question and answer read back by the reporter.)

Q. (BY MR. KAMPINSKI) All right. If you would, go on from where you stopped on the first entry, Doctor. I think you stopped after no trauma.

A. Yes. Then we go on to the physical examination. There's a two by two centimeter mass, firm, moveable, tender. NEG, negative skin changes, and nodes and needle aspiration carefully done to avoid injury to bag. Mammogram negative.

Q. Now, when was this entry written, Doctor?

A. It would have been on or close to 10-17-84.

Q. Is this what you normally put down in your entries, adjectives such as carefully?

A. Yes.

Q. For example, if you would have slipped, would you have put negligently?

A. I wouldn't have put cavalierly, but, again, I knew the implant was there. I felt that was a reasonable adjective to put in, because I had altered my technique of fine-needle aspiration, as I mentioned before.

Q. Okay. So that injury to the bag was something that you were concerned with right from the start, correct?

A. By putting anything into that breast, the potential of injurying the bag is a possibility.

Q. Did you explain that potential to Mrs. Hayes?

A. Yes.

Q. And did you make any other comments about what would occur if you accidentally punctured the bag?

A. I don't believe so, no.

Q. Do you recall a comment to the effect of if I ruin it, I'll pay for it?

A. Definitely not.

Q. You don't recall or you are saying that you did not make the comment? Which?

A. I don't recall making the comment and that kind of comment from me to a patient would be totally out of character. I have never made a comment like that to a patient.

Q. So that you deny making it is what you are saying?

A. Yes, sir.

Q. All right.

MR. MAYNARD: Can you read back that comment?

MR. KAMPINSKI: I'll say it again. If I ruin it, I'll pay for it.

MR. MAYNARD: Thank you.

Q. (BY MR. KAMPINSKI) Do you have any recollection, sir, of anything being sticky and

gummy on the needle when you removed it?

A. No, sir.

Q. And making a comment to the effect of "I don't know what that is"?

A. No, sir.

Q. You wouldn't have said that either?

A. No, sir.

Q. What did you do with the two cells that you removed from the breast?

A. The tissue fragments are placed into a fixative and subsequently taken to the lab.

Q. By the way, just let me back up a minute. What does it mean to you, sir, mass firm, moveable tender? What does that mean to you as a doctor, those findings? Why were they significant for you to put down?

A. Firm, just indicating the consistency. Moveable meaning it's not fixed to the surrounding tissue, especially the skin, and tender as opposed to nontender. Most breast malignancies, for instance, are not tender.

Q. Okay. So this gave you what, some indication that there might be a malignancy, the fact that it was tender?

A. No.

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Q. Do I have that confused?

A. Most malignancies are not tender. It would, again, tend to lure one's -- lower one's indication of suspicion.

Q. You had a mammogram done?

A. Yes, sir.

Q. What is a mammogram?

A. A mammogram is an x-ray of the breast tissue.

Q. Do you have that with you?

A. No, I don't.

Q. Do you have that in your office?

A. No. It's at the hospital. It's part of the hospital record.

Q. And that came back negative?

A. Right.

Q. Which tells you what?

A. There was no indication of a malignancy on the mammogram, itself.

Q. You were starting to tell me about the aspiration.

A. Yes. The tissue fragments that come back through the needle on aspiration are put into a fixative. Anything that is in the needle ends up going into the fixative.

Q. What is a fixative?

A. A chemical solution which maintains the architecture of the cells so that the cells aren't disrupted over time.

Q. Okay,

A. And then that's delivered to the lab at St. Vincent's.

Q. Was that done?

A. Yes, sir.

Q. Was it done *the* same day?

A. Yes.

Q. And you have got a copy of that?

A. Yes, I do.

Q. It is handwritten. Is that normal?

A. Yes.

Q. It is normal?

A. Yes. The pathologist reads these on the same day and issues a handwritten statement initially.

Q. All right.

A, And then usually is is followed up -- usually, but not always, it is followed up with a written report.

Q. Okay. All right.

A. Typewritten report.

Q. Was it followed up by a typewritten report?

A. It did not enter into my office notations if there was one.

Q. Do you know this Dr. Galang?

A. Yes, sir.

Q. All right.

A. He's the director of our laboratory.

Q. All right. Why don't you read for the record what his diagnosis was?

A. The diagnosis is "Benign stromal cells, few epithelial cells, histocytes and multinucleated cells seen. No neoplastic cells seen."

Q. Let's start with the last part of that.

A. Okay.

Q. What are neoplastic cells?

A. Those would be cancer cells is what he's referring to.

Q. And that was consistent with the negative mammogram?

A. Consistent.

Q. And also consistent with your clinical findings; that is, it was not tender, right?

A. It was tender.

Q. I'm sorry. Okay.

A. Yes. Neither the mammogram nor the physical are 100 percent accurate, but this finding is certainly consistent with those.

Q. So all of the information you were getting back reflected that there was no cancerous process going on --

A. Yes, sir.

Q. -- in the breast of Mrs. Hayes, correct?

A. That's correct.

Q. Let's go to the beginning of the diagnosis. Benign stromal cells. What are those?

A. Stromal cells are the cells that provide the architectural structure for the breast. They are normal breast cells.

Q. And then few epithelial cells. What are those?

A. Epithelial cells are the cells that line the ductal structures of the breast.

Q. And what is the significance of finding a few of those?

A. That's normally what you would expect to find on a fine-needle aspiration.

Q. How about the next one?

A. Histocytes and multinucleated cells are seen in inflammatory reactions in the breast.

Q. Inflammatory reactions to what?

A. It could be to local trauma, to infection, to fibrocystic disease that's active, foreign bodies.

Q. There was something wrong in there, wasn't there?

A. Something was causing some inflammation in the breast to cause a tender mass, right.

Q. And you knew that from this finding, right?

A. Putting everything together, the mass she had and the cytology, we knew there was a tender mass in the breast.

Q. Did you call Dr. Galang? Is that the correct pronunciation?

A. Yes.

Q. And say what is the makeup or structure of the multinucleated cells?

A. No.

Q. Can you tell that or just that they are multinucleated?

A. Multinucleated or multinucleated cells. They are just big giant cells.

Q. Can you tell, though, if they are cells from silicone?

A. I don't believe so.

Q. No?

A. Unless they would have actual silicone vacuoles trapped inside.

Q. Did you get this back the same day?

A. It would have come back the same day or the next day.

Q. Did you call Mrs. Hayes and tell her the findings?

A. I don't recall. We usually do, but I can't recall.

Q. What did you tell her?

A. I can't recall if I talked to her.

Q. Did you tell her that because there were histocytes and multinucleated cells, that there was some sort of inflammatory process going on in her breast and it wasn't cancerous?

A. With her, I can't remember exactly what was said. My general procedure after a fine-needle aspirate, if it's benign, is I let the patient know it's benign. If it is malignant, we let them know it is malignant and the plan for further management is made after that.

Q. What was the plan?

A. The options presented are either

observation of the lump to see what it is going to do; or if my index suspicion is high for malignancy, I will recommend biopsy.

Q. Did you make a follow-up with her?

A. The usual instructions to the patient are if the mass continues to enlarge, if it becomes more painful, if it changes, if it is a cause of concern, call back.

Q. Well, let's stop. The mass didn't go away by your aspiration, did it?

A. No, sir.

Q. All right. What was all of the evidence that you had indicative of the problem being in her breast at that time that you did the aspiration? You ruled out cancer, right?

A. Right.

Q. You knew she had an implant. As a matter of fact, you changed your technical procedure to try to prevent anything further occurring to that, correct?

A. Yes.

Q. It came back. You knew there was some abnormality based upon the frozen section, the aspiration?

A. We knew there was an inflammatory process,

yes.

Q. What does silicone do when it gets out of the bag, sir?

A. It can just sit there or it can cause an inflammatory process.

Q. When you say inflammatory process, that sounds very antiseptic. What does it do to the breast tissue?

A. It can cause it to become nodular and tender.

Q. What else can it do, destroy it?

A. I don't know.

Q. You don't know what it can do?

A. It causes nodularity and tenderness; and as a result of that, there can be scarring.

Q. Can there be destruction?

A. If one counts scarring as destruction, yes, I guess you could say that. Yes.

Q. What do you count it as?

A. It depends on the extent and how much. A tremendous amount of scarring throughout any structure can result in, quote, destruction of that structure, yes.

Q. Was that a concern of yours once you realized that there was some type of inflammatory

process in this lady's breast?

A. Initially it depends on where we are at time framewise.

Q. We are at October 17, 1984, when you got this memorandum back from Dr. Galang.

A. All right. At that point we are dealing still with the differential diagnosis of a tender breast lump in a 35-year-old who did have an implant in.

Q. Yes.

A. I had at that time no for sure diagnostic evidence that there was a hole in the bag. It was a part of the differential diagnosis. Again, these cells and this clinical picture could have resulted from the other conditions I have mentioned.

Q. So what did you do to follow that up?

A. We went into the observation period.

Q. Wait a minute, sir.

A. I'm sorry.

Q. The bag of silicone, is it placed under the muscle in the breast?

A. They can be placed under the muscle or they can be on top of the muscle.

Q. And if there is a leak, does the leak just plug itself up or what happens?

A. There's a broad gambit of what they can do. The silicone bags sweat. Seventy percent of them give or take will leak silicone around. Some have defects in the seams where there can be an explosive release of the silicone and some leak slowly. It is a gambit.

Q. Is it important to find out what it's doing? If, in fact, there is a leak, could it get worse?

A. If it's on the gambit of an ongoing significant leak, yes, it can get worse.

Q. Isn't it important then to find out as early as possible whether it is leaking and getting worse?

A. Yes. One would want to know if the lump is enlarging and getting more tender.

Q. Did you seek a consult with anybody familiar with that process and with silicone implant leakage in October of 1984?

A. No, sir.

Q. Why not?

A. We were going to see what this lump was going to do, whether it was going to get larger, more tender, et cetera. If it remained small and not a major problem, my plan was not to pursue it

much beyond that.

Q. When was the next contact that you had with Mrs. Hayes?

A. She made telephone contact with our office on 11-13-84.

Q. Did she talk to you?

A. She did not. She talked to Miss Alleback.

Q. What did she talk to her about?

A. Pardon?

Q. What did she talk to her about?

A. That the mass was becoming more tender.

Q. So you got a consult then?

A. No, sir.

Q. Why not?

A. We gave her a course of an anti-inflammatory agent, Butazalodine. That's the name of a medication, B-u-t-a-z-a-l-o-d-i-n-e.

Q. Was that designed to plug the leak?

A. No. It was designed to relieve her discomfort.

Q. Who prescribed it?

A. I did.

Q. Without talking to her?

A. Correct. I talked to -- Michelle had related to me what Miss Hayes had said; and on the

basis of that, we thought we had to go on a seven-day course of Butazalodine.

Q. You and Michelle?

A. Me.

Q. There are some things that are crossed out there. Who crossed them out?

A. This was Michelle's entry.

Q. What did you prescribe?

A. Butazalodine, 100 milligrams, TID.

Q. It's got a one in front of the TID? Well, first of all, something was crossed out, right? I mean, we can see that.

A. Yes, something was crossed out.

Q. Can you tell what was written in there first?

A. No, I can't.

Q. Do you know why it was crossed out and changed to 100 milligrams?

A. No, I don't.

Q. Do you know if that was what you prescribed?

A. 100 milligrams is the standard dose for Butazalodine.

Q. It looks like three times a day. That's crossed out and made one time a day?

A. Well, it's one TID.

Q. All right.

A. One pill three times a day with meals.

Q. I see. So you think she just put it in wrong?

A. I think she had -- well, I don't know what she did, but what is written is one three times a day with meals.

Q. And No. 21 is what?

A. That's how many pills there were. It was a seven-day course.

Q. This was to do what, to make her feel better?

A. To reduce the inflammation and to see if that --

Q. Wait a minute. To reduce the inflammation? How was it going to do that if it is a silicone leak, sir?

A. We still were working with the silicone leak as being part of the differential diagnosis. Not as the definitive diagnosis.

Q. What did you do to make a definitive diagnosis? I mean, did you have her in for additional tests then when she complained of this tenderness? What did you do?

A. Actually we used it in this particular instance -- well, my approach to breast lumps is as outlined and the Butazalodine is an anti-inflammatory agent. It's not a pain pill.

It is purely an anti-inflammatory drug. The feeling was if we gave this for seven days and she had total relief of her symptoms subsequent to the seven-day course, once again, we would not be obligated or necessitated to pursue this, to see if it would settle down and, indeed, many inflammatory lumps in the breast behave that way. If at the end of the seven-day course of the Butazalodine, things were persisting, then, as you say, that's the time to investigate further and that was the approach taken.

Q. Doctor, you knew there was a finding of histocytes and multinucleated cells that were seen, didn't you?

A. Yes.

Q. You knew that?

A. Yes.

Q. So that you knew that there was a problem in the breast, didn't you?

A. I knew there was an inflammatory process in the breast.

Q. And you knew that there was a silicone implant?

A. Yes.

Q. And that was one of your potential diagnoses?

A. Yes.

Q. And you knew that one of the possibilities, if left alone, is that it would get worse, correct?

A. It potentially could get worse.

Q. Did you do anything to apprise Mrs. Hayes of that? Did you do anything to try to alleviate the potential problem of it getting worse at that time, either in October of 1984 or November of 1984? Did you, sir?

A. Other than the course, we're going to -- the lesion is not malignant. We are going to follow it in the patient. The instructions go along that line; and the trial of Butazalodine for diagnostic purposes, as well as therapeutic purposes, that was the follow-up.

Q. When was the next time that you saw Miss Hayes?

A. She returned to the office on 12-13-84.

Q. Why?

A. For a re-examination of the breast.

Q. Was it scheduled or did she call you again?

A. She called.

Q. Why did she call? You mean you did not schedule a follow-up with her?

A. She called.

Q. Why did she call?

A. The mass was becoming larger and it was still tender.

Q. What did you do then?

A. At that time the physical examine was repeated and at that time the lump was essentially the same; that is, moveable, tender, except it had enlarged.

Q. All right.

A. We did, because of the size -- the change in size, we reaspirated again using the same technique.

Q. Carefully?

A. Carefully, yes. No fluid was obtained and then the plan was made for excisional biopsy.

Q. It says still no fluid?

A. Yes.

Q. What does that mean, still no fluid?

A. Some of the breast lumps that we aspirate are cystic and some are -- especially the tender ones can actually be abscesses or infection, in which case we will get pus or a clear fluid back, so there was no fluid obtained. Then the plan was made for excisional biopsy because of the change in size.

Q. You were going to remove the lump?

A. Yes.

Q. That's what excision means?

A. Correct.

Q. Why were you going to do that?

A. We needed to explain why it was enlarging.

Q. So you removed it to explain it?

A. It's a diagnostic modality. It's an excisional biopsy, rather than relying on the fine needle. The next step is to excise the lump or a lump thereof and present it to a pathologist for further study.

Q. When you did the reaspiration, did you give anything to the pathologist for study?

A. Not on the second time, no.

Q. Why not?

A. Because at that point we had decided to go ahead and excise it and present, again, the

whole lump or a portion thereof to the pathologist. The reason for the reaspiration was primarily because it increased in size and looking for pus. If it was an abscess --

Q. So you weren't aspirating for the purpose of submitting a biopsy?

A. This wasn't to rediagnose as far as cell type. If it was an abscess, that can just be drained in the office without her going to an operating theater.

Q. You could have done that back in October. You knew it wasn't an abscess.

A. But it had enlarged from October to December. The sized changed.

Q. Yes.

A. That was the difference.

Q. So tell me, again, why you reaspirated, if not to present a portion to biopsy?

A. I was reaspirating on 12-13-84 to determine if there was pus in the mass at this time, because it had enlarged --

Q. Okay.

A. -- in the proceeding interval. Since there was no pus, it was not an abscess clinically and, again, I had already decided if there was no

pus, that an excisional biopsy at that point was indicated.

Q. Let me understand what you used to do this aspiration. You used a needle that you actually pierced the mass with?

A. That's correct.

Q. And it has a syringe --

A. -- attached to it.

Q. -- feature that allows you to draw out cells?

A. That's right.

Q. And you did that on both occasions, is that correct, in October and December?

A. That's correct.

Q. Why wouldn't you, as a matter of course, submit that for biopsy? You already have the cells, don't you, sir?

A. Yes.

Q. Is there any downside to submitting them?

A. Other than the cost and the redundancy, as of 12-13, there's no downside.

Q. Redundancy? I mean, she's in there because it had increased. You are saying it was just redundant to have it checked again?

A. No. What I'm saying is the needle was

put in the second time to see if there was pus in the mass. If it's an abscess, we would just drain that in the office and not excise it at surgery. If there was no pus, then an excisional biopsy was indicated.

Q. In the surgical record, didn't you say that you submitted it for biopsy?

A. Yes, I did.

Q. And why did you say that, sir?

A. I didn't have these office records in front of me when I was dictating that.

Q. All right.

A. And I thought I had submitted both, but I hadn't. I only submitted the first.

Q. And in your record here, this December 13th entry, which is the accurate one, it says "Mass is much larger now. Still tender. Basically the same except larger." I'm not sure I understand that. The same how?

A. The same as far as firm, moveable, tender.

Q. Okay. All right. So the plan was then to excise the lump because of the increase in size; is that right?

A. Yes, sir.

Q. And what did you do? Did you schedule

her to go to the hospital for that?

A. Yes. It was an inpatient procedure, an in-hospital procedure.

Q. And that was done what, January 11th, right?

A. Yes, January 11, 1985.

Q. All right. And did you get a consult? I think you said that you did talk to a plastic surgeon?

A. This was a verbal -- yes, a verbal consult with Dr. Rodney Green.

Q. And when was that verbal consult?

A. I can't remember the exact date. It was in proximity to the date of the biopsy. It may have been on the same morning.

Q. In proximity to the date of the biopsy? What biopsy?

A. The biopsy of 1-11-85. The excisional biopsy.

Q. You did not talk to him before she came into the hospital?

A. No, I don't believe so.

Q. Why not?

A. We were bringing her in for an excisional biopsy of a breast lump.

Q. Yes.

A. And that is a standard general surgical procedure.

Q. Who is Coznik?

A. The anesthesiologist.

Q. It has a consult with him listed?

A. Anytime the anesthesiologist administers anesthesia, that is put there by medical records.

Q. What did Dr. Green tell you?

A. My question to Dr. Green was what is the best way to dissect through a breast with the implant present and he suggested using low cautery electric; so that if the implant is touched, it seals right over and it was really just -- it was more of a technical question that I posed to him.

Q. In surgery, what did you find?

A. I made an incision over the lump in the breast; and upon entering the subcutaneous tissue, there were multiple pockets of silicone found in the breast tissue, the subcutaneous tissue in the area where the mass was or that was the mass.

Q. What had the silicone done to the tissue?

A. It had caused inflammation. The tissue was harder than normal breast tissue should be. It was compressed and inflamed.

Q. So what did you do when you found that out? Did you call somebody in to look at it then, consult or have somebody available?

A. There was no one available. Dr. Shaw, who is an attending plastic surgeon, and Dr. Green were finishing a case in a room down the hall and I asked the circulating nurse to see if Dr. Green could come in and look to see what it looked like, but he was unable to drop out of the case and so what we did is excise most of the mass, not all, and then closed the incision.

Q. So that I assume you had a plastic surgeon come in afterwards then and look at the slides with you or talked to them about it?

A. On this admission?

Q. Yes.

A. No. The patient went home the next morning early and the plan was, again, for out-patient follow-up.

Q. What kind of follow-up is that, Doctor?

A. She was coming back to my office in the week after the surgery and then we would follow-up with formal consultation with Dr. Shaw.

Q. Is that right?

A. Yes.

Q. All right.

A. Is that right?

Q. Yes, **is** that right, sir?

A. Yes.

Q. The plan was to have her follow-up with Dr. Shaw?

A. The plan was to come back to my office and then obtain formal consultation with Dr. Shaw.

Q. Did you talk to Dr. Shaw in the meantime?

A. No, I didn't.

Q. Why not?

A. I was waiting for Mrs. Hayes to come back and then make the referral.

Q. All right. The reason you were waiting for her to come back was so that you could examine her again?

A. We needed to get her back again for a check and see how she wished to proceed.

Q. We, you and Michelle?

A. Me.

Q. All right.

A. To check the wound and determine how she was to proceed with the consultation.

Q. And how was she when you examined her when she came back?

3

A. I didn't see her.

Q. Why not?

A. I was in the hospital.

Q. Well, why was she there if you weren't there?

A. She was a scheduled visit and, again, often my duties at the hospital as director of the trauma service and the critical care unit actually necessitate my canceling office hours.

Q. What about your duties to Mrs. Hayes?

MR. MAYNARD: Objection. Go ahead and let him finish the answer. He wasn't finished. Finish the answer that you were giving.

A. The only time that I leave a patient sitting in the office ever is if I'm tied up in the emergency room with a critical patient or the intensive care unit or the operating room with a nonelective case.

My usual procedure is to have my nurse or, in this case, Michelle cancel everybody unless somebody is sitting in the office that needs to be checked.

Q. So she checked her?

A. Yes.

Q. She said that she was okay?

A. The note recorded 1-17-85, Michelle wrote, the incision looked good. Examined by, and she has her initials M.A., and referred to Dr. Shaw at St. Vincent for reconstructive surgery.

Q. Did you talk to Mrs. Hayes after the January 17th visitation to your office?

A. Yes, we had a telephone conversation.

Q. Is that somewhere in your records?

A. No, sir.

Q. Why don't you tell me what you recall about it?

A. She had called and said she was unable to get in to see Dr. Shaw and was having problems with the incision. She noticed silicone beginning to leak, so I called -- she lives on the west side. I called a physician that I know over there and got the name of another plastic surgeon, a Dr. Scarcella.

Q. Did you tell her that you talked to Dr. Scarcella?

A. I don't recall if I told her I talked to him. The appointment was made for her to get to see him.

Q. Who made the appointment?

A. I don't recall if she did or if I did for

ner.

Q. All right, What was your next contact with *her?*

A. Then after she had seen doctor -- we had another telephone conversation on January 30th, after she had seen Dr. Scarcella. He had called me, said that she was having silicone leaking from the incision.

Q. You knew that already, didn't you?

A. By what she had told me --

Q. Sure.

A. -- on the phone, and that the prosthesis needed to be removed.

Q. You knew that too, didn't you?

A. Yes, after the biopsy on 1-11.

Q. How about the biopsy on -- is it your testimony that you didn't know that in accordance with the biopsy on October 17th?

A. In accordance with the biopsy on October 17th, we knew that she had an inflammed breast.

Q. Did you or did you not know that she had leaking silicone as a result of the biopsy on October 17, 1984? Yes or no, sir.

A. No.

Q. And, therefore, you sought no consult and

did nothing further with respect to that leakage?

MR. MAYNARD: Objection.

A. I didn't know the leakage was there.

Q. No? As you sit her today, seeing her breast, seeing what was going on, do you know now, sir, that this inflammatory process was the leakage of the silicone from the prosthesis?

A. I can presume retrospectively it was.

Q. Can you presume it from anything contained in the pathology report?

A. All I can say is there was an inflammatory process in that pathology report.

Q. And looking at it now and knowing all we do know, that the inflammatory process was a leakage of silicone, wasn't it, sir?

A. Presumably retrospectively it was.

Q. We are looking at it retrospectively. It was at the time?

A. At the time we were looking at an inflammatory mass in the breast retrospectively.

Q. What did Dr. Scarcella say to you, sir?

A. Basically what he said was that she had silicone leaking. The prosthesis needed to come out and he said that I could do it.

Q. You could do it? What did you tell him?

A. I told him I didn't feel comfortable doing it. I couldn't reconstruct the breast and it was left at that. At that time then that's when I had my next conversation with Mrs. Hayes. I called her back after Dr. Scarcella had called and said he wasn't going to operate.

Q. Let me just get one thing clear. You hadn't talk to Dr. Scarcella at all before you sent Mrs. Hayes to him, had you, sir? He did not even know you, did he?

A. I don't know. I don't think I talked to him personally.

Q. How did you pick him, out of the phone book?

A. As I said, I called a physician that I know on the west side and asked for the name of a good plastic surgeon.

Q. Were you just trying to get rid of her at that point?

A. I was trying to have her see a plastic surgeon. The one I had referred her to, Dr. Shaw, was unable to see her.

Q. Just like he was when she was in the hospital?

A. He wasn't asked to see her in the

hospital, except for that verbal consultation, and he was unable to leave his case. The postop follow-up visit, why he couldn't see her in the office, I don't know. She called me, said that she was having problems, couldn't see the person that I referred her to. I sought consultation, again, with a physician that I know in Lakewood.

Q. Who?

A. Dave Lehtinen. He's a neurosurgeon and I asked for someone who was a good plastic surgeon and he recommended Dr. Scarcella, saying that Dr. Scarcella had done a lot of breast reconstructive work and, accordingly, Mrs. Hayes was referred to Dr. Scarcella.

Q. Well, when you say referred, you gave her his name is what you are saying?

A. Again, I don't remember if we made the appointment or if we said call Dr. Scarcella, he's the one to see.

Q. Was he angry with you when he called?

A. He didn't seem to be. He just reported the data.

Q. Did he tell you why he wouldn't do it?

A. No.

Q. Did you inquire of him as to why he

wouldn't do it? He was the plastic surgeon. He was the one that you referred Mrs. Hayes to?

A. No, I didn't.

Q. You knew, didn't you?

A. I figured he was afraid to get involved in something that might go into litigation, but that's his business, who he operates on and who he doesn't.

Q. Why were you assuming at that point that this would get into litigation? Was there something that concerned you about his handling of this case?

A. No. The patient was having -- was not going along smoothly and --

Q. Despite your best efforts, right?

A. Despite the way I had approached her.

Q. That's not the question I asked. Despite your best efforts?

A. Despite my usual approach to patients with breast lumps, yes, she was not going smoothly and I think that's what he was concerned about.

Q. I thought you said that you were the one concerned about it going into litigation?

A. No. You asked me why he didn't operate and why I thought he didn't operate on her.

Q. I'm sorry.

A. And that's why I thought he didn't operate.

Q. Is this still your usual approach with breast lumps?

A. Yes.

Q. And is it your usual approach with breast lumps in situations where there have been implants or have you had any others?

A. I haven't had since.

Q. This is the only one that you ever had?

A. It's the only one that I recall.

Q. So your usual approach is only your usual approach in breast lumps that don't involve silicone implants?

A. In breast lumps, yes.

Q. After talking to Dr. Scarcella, you said that you had a conversation with Mrs. Hayes. Did you call her or did she call you?

A. I called her.

Q. And what did you tell her?

A. That I talked to Dr. Scarcella and he wasn't going to do anything and we had to get her to see someone who could do something and at that -- I'm sorry. Go ahead.

Q. Go ahead.

A. At that point she said that she had already contacted Dr. Esselstyn at the Cleveland Clinic, which was fine. He's very good, and then she was to see him very shortly after that.

Q. Did you make any comments with respect to Dr. Scarcella, any deprecatory comments?

A. I don't believe so.

Q. You don't recall that either?

A. No.

Q. I'm sorry if this is a silly question. Did the lump get better or worse after you aspirated the first time in October of 1984?

A. It enlarged. It got worse. It was still tender and it got bigger, so it progressed.

Q. After you aspirated the second time in November, did it get better or worse? Was it November or December?

A. December.

Q. Did it get better or worse?

A. I hadn't noted much significant change until she came into OR.

Q. And where did you note that?

A. Pardon?

Q. You said that you didn't note any

significant change. Where did you note it?

A. There isn't any notation relative to that second office visit of the biopsy. The office visit is mentioned in the op report, but that's all.

Q. When you closed her up on January 11th, you knew that she would have to undergo surgery again, didn't you?

A. Yes.

Q. And what kind of anesthesia was she under?

A. She was asleep, general anesthetic.

Q. Did you consider the possibility, Doctor, in all honesty, that you would find what you found when you opened up her breast on January 11, 1985?

A. The silicone?

Q. Yes.

A. Yes, it was part of the differential diagnosis.

Q. In God's name why didn't you have somebody ready and available to remove it at that point?

A. That would have been an option. I, again, was doing the biopsy to see exactly what was going on and I was going to evaluate step by step. Certainly that would have been an option.

Q. Why didn't you exercise that option?

A. Again, all I can say is I was just doing the biopsy for tissue purposes.

Q. What kind of emotional state -- and if it's not a fair question, its not fair, Doctor -- was Mrs. Hayes in after you got done with all of your treatment, as far as your phone conversation with her?

MR. MAYNARD: What date are we talking about?

MR. KAMPINSKI: Let's say subsequent to January 17th.

Q. (BY MR. KAMPINSKI) You talked to her about Dr. Scarcella and Dr. Shaw and all of that.

A. She was angry and I believe her comment was she was being shuttled from doctor to doctor and she was becoming frustrated and angry.

Q. How did you analyze that analysis of hers?

A. I thought it was very reasonable.

Q. Did you make any further attempts to talk to her or contact her after that?

A. After the 30th?

Q. Yes. You got a letter from me, didn't you?

A. Yes. After I got your letter, then I called her to see what was up and she explained

what ha3 happened and that was the last conversation.

Q. What did she say?

A. She said that she had gone into the Clinic and had a big operation and lost a portion of her breast.

Q. Do you have any opinion, Doctor, as to what the result might have been if you had made the diagnosis on October 17, 1984 of a leaking silicone implant? Let's assume, just for the sake of argument, that you made the diagnosis at that time as opposed to having it as a differential diagnosis, which, by the way, is not contained anywhere in your record, is it, the leaking silicone implant?

A. No.

Q. So, in your own mind, you made that?

A. Yes.

Q. Let's assume that you made that diagnosis as a specific one based upon the pathology report, okay? What would you have done had you made that diagnosis then?

A. If on 10-17-84 had we known that she definitely had a leaking implant, the procedure would have been identical to the one that was followed at the 1-11-85 surgery; that is, referral

to the plastic surgeon for removal of the bag and the area of leaked silicone.

Q. And do you have an opinion, Doctor, as to the amount of damage sustained by Mrs. Hayes in terms of breast tissue or the extent of breast tissue damage between when you first saw her on October 17th and when you last saw her on January 11, 1985?

A. The mass had enlarged in that interval, so there was more tissue involved in January with the inflammatory process than there was back in October.

Q. And let me see if I understand. It was your opinion, I take it, in October, October 17th, that the problem was not the leakage, because you would have acted on that if you were convinced that it was a silicone leak?

A. Again, at that time we had a breast lump with a differential diagnosis, which included the leaking silicone or leaked silicone, either past or present or ongoing, but the question that remained was how was that going to progress with time? Was it going to remain static or the lump get smaller or get bigger? That really, as of 10-17, was the unknown.

MR. KAMPINSKI: Could you read my question back? I'm sorry.

(Question read back by the reporter.)

MR. MAYNARD: That's all right. You have answered the question.

MR. KAMPINSKI: I'm not sure that I heard an answer to that question.

MR. MAYNARD: I think it was answered.

Q. (BY MR. KAMPINSKI) Well, did you believe that she had a silicone leak on October 17, 1984? Yes or no.

A. It was part of the differential. I don't know how to answer it more specifically than that. It was part of the differential diagnosis at that time.

Q. But you weren't convinced that was a diagnosis, otherwise you would have acted upon that, correct?

A. I was not convinced that it was the sole cause of her breast lump, no.

Q. Were you convinced that it was any part of the cause of her breast lump?

A. It was a possible cause of her breast

lump.

Q. It became probable in January? I mean, it became certain, not probable, right?

A. After the biopsy, yes.

Q. And essentially if it wasn't the cause in October of 1984 and if it wasn't the cause in December of 1984, the two things that intervened that I can think of with respect to involvement with her breast were your two fine-needle aspirations? Would that be a fair statement, sir?

A. If there was no leakage at those two times, the only thing that was different, besides spontaneous leakage, where the needle aspirates.

Q. And if the needle aspirates are what punctured the bag, then absent those needle aspirates, there wouldn't have been any damage to the breast tissue? Would that be a fair statement, sir?

A. I don't know how hypothetical you are constructing that.

Q. I'm not sure I'm at all hypothetical.

A. Well, we won't stay hypothetical. In my opinion, technically from these two needles, that bag was not penetrated. It couldn't have been. It was too superficial.

Q. And you are so expert at silicone bags that you know that sitting here?

A. I'm not expert in silicone bags, but I have done several hundred fine-needle aspirates of thyroid glands, which are adjacent to major arteries and breasts and several other organs, that I feel comfortable with putting the needle where I put it and it goes where it's supposed to go.

Q. Let me ask you this. If you would have removed the needle and if it had been sticky and gummy, what would that have meant to you? Would it mean that you would have, in fact, punctured the bag?

A. No. It would have meant it would have come into contact with some silicone somewhere. Not necessarily that I punctured it.

Q. It could have been silicone, in fact, that you came in contact with?

A. It could have been silicone where the needle was, whether it is free in the breast tissue or the bag or anywhere in between.

Q. And you are certain the reason that you fired Michelle Allebach was because she kept -- she was late, right?

A. There's absolutely no doubt about that.

Q. But yet, despite this three or four months of being tardy, you had no compunction or hesitancy with letting her examine postoperative patients to determine whether their incisions were fine?

A. I had no problem with the quality of her work. It was the quanity.

Q. Did you receive or did you have any contacts with her after you discharged her?

A. Miss Allebach?

Q. Yes.

A. No.

Q. Do you know where she went to work afterward?

A. No, I don't.

Q. Do you know if she got married?

A. No, I don't.

Q. You had no contacts whatsoever?

A. No.

Q. Did you ever discuss this case with her?

A. This?

Q. Yes.

A. No, I didn't. I haven't spoken to her since the day that she was fired.

Q. Did you every discuss this case with her

before you told her *she* was fired?

A. No.

Q. Never?

A. (Indicating.)

Q. You have to answer verbally.

A. Oh. No.

Q. When did you dictate your operative report, sir?

A. 2-25-85.

Q. Why is that?

A. If the operative report isn't dictated initially after the surgery, the chart cycle goes down to medical records and then it gets done when the chart comes up. I would say in this case on 2-25-85 that was the day that I got your initial letter requesting charts, documentation, et cetera, et cetera, so I went down to medical records and pulled Miss Hayes' chart and dictated the incomplete operative report.

Q. Dictated the incomplete operative report?

A. It hadn't been dictated prior to that date.

Q. Are you supposed to dictate an operative report after you do the operation?

A. Yes, it should be done initially.

Q. You waited a month and a half before you did that?

A. Again, it wasn't dictated the same day and then the chart gets into medical records.

Q. Well, how did you do it, by recollection?

A. Yes.

Q. Did you have any notes?

A. No.

Q. Had you done any operations in the meantime?

A. Yes.

Q. How many?

A. I don't know. Fifty, 60, something like that, I would imagine.

Q. And you recalled all of the specifics of her operation a month and a half afterwards? Is that what you are saying?

A. Yes.

Q. Including the part about "Prior to embarking upon a surgical procedure at this time, consultation had been obtained with the Plastic Surgery Service in the event that the lump we were dealing with was a leak of the prosthesis"? You recall that?

A. With Dr. Green, as previously mentioned.

Q. Have you talked to Dr. Green since this operation about this case?

A. Yes.

Q. All right.

A. He had rotated back through St. Vincent's and he had contact with Mrs. Green at the Clinic.

Q. Mrs. Hayes?

A. Mrs. Hayes. I'm sorry. At the Clinic.

Q. All right. Did he recall this consultation?

A. I didn't ask him specifically about that.

Q. Have you talked to him about that at all?

A. No, I haven't.

Q. And in the operative report you make the statement "The majority of this mass was removed." Page two.

A. Yes.

Q. Is that true?

A. Yes.

Q. How much of it was removed, Doctor?

A. Oh, I would say approximately 60, 70 percent.

Q. All right.

A. This is of the lump that we were feeling preoperatively.

Q. And it is your testimony Dr. Green was what? What was he? Did you say the senior surgical resident in plastic surgery?

A. Right.

Q. Is that your testimony?

A. Yes.

Q. And he was in surgery with Dr. Shaw?

A. Yes.

Q. And neither one of them could leave to come assist you?

A. That was the report, that they were unable to leave the case.

Q. Report from whom?

A. The circulating nurse.

Q. Can you tell from the record who that is or who that was?

A. I don't have the hospital chart.

Q. Here is the chart and maybe you can help me find out who that is.

A. They are identified by initials and I can't identify them from the initials, but there's a scrub nurse listed and a circulating nurse.

Q. You can't tell who it is?

A. No. They are just initials.

Q. Let me see your record for a moment,

Doctor, if I could, please. Do you have the folder? Okay. Who is GB, do you know?

A. No.

Q. This was dictated at the hospital or at your office?

A. From the hospital. GB would be the transcription person.

Q. You didn't have anybody assist you in the surgery? You did it yourself?

A. There was a surgical assistant present.

Q. Who is that?

A. Vicky Mihalik.

Q. Vicky Mihalik?

A. Yes.

Q. Is she a doctor, resident?

A. Surgical assistant.

Q. What is a surgical assistant?

A. They hold retractors for us.

Q. I'm sorry, Doctor. Is she someone that has gone through medical school?

A. No.

Q. Is she a nurse?

A. No, she's a surgical assistant. They have a training program much like the MA's do. The hospital hires a cadre of surgical attendants to

hold retractors and assist during surgical cases. They don't do the surgery. They just hold retractors.

Q. Who else was in the operating room?

A. Myself and Vicky, the anesthesia people and --

Q. Are they doctors?

A. Dr. Coznik is.

Q. Did he have anybody help with him?

A. She.

Q. She.

A. There are anesthesia assistants that the anesthesia department employs. I imagine one of them was present assisting Dr. Coznik.

Q. Who else was there?

A. And then the scrub nurse who passes instruments and the circulating nurse who gets things for the scrub nurse.

Q. Are these the only charges that you had for Carol Hayes, Doctor?

A. The initial office visit should be on there.

Q. I'm sorry. There is another one.

A. Okay. Between these two, if that one has got the office visits on it.

Q. Yes.

A. All right. Those are the only charges.

Q. What is this?

A. I assume this was just a note that was on my desk. That was on my desk. Call Ruby at Extension 2454.

Q. Who is Ruby?

MR. MAYNARD: It has nothing to do with this case. It is my recommendation that we get rid of it.

MR. KAMPINSKI: Let's leave it there until we find Michelle.

MR. MAYNARD: Okay.

Q. (BY MR. KAMPINSKI) You sent out the bill for the biopsy, I guess, the surgery, February 21st?

A. I don't know when the bill is issued. I guess that's when she sent it out. I don't know. I don't know how it's recorded. I would assume that's when it went out. I think she usually sent bills out at the end of the month.

Q. This would have been your new girl that sent it out, right?

A. Probably. Yeah, I think Tina was working for me then.

Q. Now, when you sat down to recollect what

occurred, you started with the operating room. Is there any reason that you didn't start with when she first came in to see you?

A. No. That was the prospective data there in my office notes from October on.

Q. Well, what about the operating room, January 11th? That was there, wasn't it?

A. I was putting it in a chronology, the operation, the subsequent office visit and then the details as they occurred after that.

Q. You have got "To RTO, January 15, 1985." Is that return to office?

A. Yes.

Q. You have got a question mark next to that?

A. Because, according to my office notes, she came in on the 17th.

Q. All right. I guess the same question, why do you have that?

A. In the hospital record, the written follow-up instructions were to return to the office on the date that would have been the 15th.

Q. Well, actually the instructions are to return to see you, not to return to the office, but just return to see Dr. Buechler. That's what the instructions were?

A. Yes.

Q. She did not see you, though, did she?

A. I was unable to be in the office the day that she came in.

Q. Did you call her and tell her that you would not be there and to come back the next day?

A. If she wasn't already there, she would have been called or if she wasn't on her way in. That's our usual practice. When I get tied up in an emergency, the patients that are not physically sitting in the office, we call to tell them not to come.

Q. Would there be a record at the hospital as to what you were doing at that time?

A. It is unlikely, unless I have it in the OR. That's the only place it would be documented. If I was in ER. SIC, there would be no record of that.

Q. Are you married, sir?

A. Yes.

Q. Do you have children?

A. Three.

Q. Did you talk to Dr. Shaw about seeing her?

A. No.

Q. Do you have a relationship, referral

relationship, with Dr. Shaw?

A. I refer patients to him intermittently, yes.

Q. He's a plastic surgeon with privileges at St. Vincent?

A. That's correct.

Q. Are there others there?

A. Plastic surgeons?

Q. Yes.

A. Yes.

Q. Does Dr. Shaw refer patients to you and you refer patients to him?

A. I don't think Dr. Shaw has referred a patient to me that I can recall. I refer to him occasionally.

Q. Why would you have here "Referred to Dr. Shaw" if you hadn't spoken to him at all about Carol Hayes? Isn't it normal to at least call the doctor and say, hey, I treated her and this is what happened and I would like you to see her? This is the problem. Isn't that the normal standard practice for a doctor?

A. I don't know if it's standard practice. What I do in my own practice is when I send a patient to a subspecialist for consultation, I will

either make the appointment myself, if the patient so desires or I will let the patient make the appointment.

I will give the patient the physician's name and phone number and let them do it. I don't have a hard and fast rule about doing it one way or the other.

Q. I'm talking about talking to the referring doctor before the patient ever goes to see them so that they have some -- all right. Let's deal with you. Don't you do that?

A. Not in all cases, no.

Q. What was there about Carol Hayes that prevented you from talking to -- where is Dr. Shaw's offices?

A. He sees patients down at St. Vincent's at the hospital.

Q. Where is his private practice?

A. I'm not sure.

Q. Is it in your building?

A. No.

Q. Was it then?

A. No.

Q. Do you see him at the hospital almost everyday?

A. No. Maybe once a week I'll see him.

Q. Did you ever think to stop to talk to him about Carol Hayes?

A. Not specifically, no.

Q. So this reference where it says "Referred to Dr. Shaw," that just means what, you gave his name to Carol?

A. We told her that he was a plastic surgeon that she would be seeing, yes. It doesn't mean that we contacted him personally.

Q. What does OOT, first two weeks February mean?

A. I was out of town.

Q. You were in town, though, January 17th?

A. Yes.

Q. You are sure?

A. (Indicating.)

Q. You have to answer verbally.

A. Yes, I'm sure.

Q. You called doctor who?

A. Esselstyn.

Q. Why did you call him?

A. He's the one that she had seen at the Clinic.

Q. What business did you have calling him?

A. I just wanted to see how she was doing.

Q. These last three notes, "Saw moon, 2-5-85, OR 2-6-85, 3-29-85, reconstructed", those were notes you put down as a result of the call from Carol Hayes?

A. No. Those are notes from the copies of some of the Cleveland Clinic chart that I had seen from Mr. Maynard. Again, just the chronology when those events took place.

Q. Are there any disputes with respect to insurance coverage with PIE?

MR. MAYNARD: Objection. I advise the doctor that he need not answer any questions on that subject inasmuch as it's a matter to be resolved by the Court when it's resolved by the Court.

MR. KAMPINSKI: All right. Can I have the policy?

MR. MAYNARD: I didn't bring it with me, but I told you that it is available for your inspection at any time.

MR. KAMPINSKI: That's why I asked for it.

MR. MAYNARD: You say that. I don't recall seeing a specific request for it.

MR. KAMPINSKI: That's why I asked for it now.

MR. MAYNARD: Just now.

MR. KAMPINSKI: You are right. You haven't seen one.

MR. MAYNARD: I have told you before that you are welcome to see the policy.

MR. KAMPINSKI: All right. I would like to see it.

MR. MAYNARD: I don't have it with me.

MR. KAMPINSKI: Okay. Why don't we take about a two-minute break? I think I'm done. Let me just review my notes and make sure that I have asked the questions that I need to ask.

MR. MAYNARD: All right.

MR. KAMPINSKI: I would like to make a copy of all of these, as well as the folder.

MR. MAYNARD: All right.

(A short recess was had.)

Q. (BY MR. KAMPINSKI) You indicated that the only person that you know of that might have records regarding Michelle Allebach would be your accountant?

A. Yes.

Q. What is your accountant's name?

A. Mike Taylor, T-a-y-l-o-r.

Q. Where is located?

A. He's in Millersburg, Ohio. I don't know the street address offhand.

Q. He would have her Social Security number, for example?

A. Yes.

MR. KAMPINSKI: I don't really want to depose him, unless I have to. If you could get me whatever information that he has regarding her, I would appreciate it, including Social Security number, driver's license, parents, anything that he has.

MR. MAYNARD: I'll get it.

MR. KAMPINSKI: That's it. You have got a right to read your testimony. You have got a right to waive signature.

MR. MAYNARD: I advise not to waive.

MR. KAMPINSKI: All right. I would like it written up and submitted to the doctor for his signature.

MR. MAYNARD: The rule provides that he has seven days in which to read and respond once the deposition has been given to him, unless

the parties agree otherwise, and I would like to enlarge that to, say, three, four weeks so that he has the opportunity, since we are not under any compulsion, in case he's out-of-town, whatever, so I would like to agree that he has 21, 28 days to read and either sign or waive.

MR. KAMPINSKI: Off the record.

(A discussion was had off the record.)

MR. KAMPINSKI: On the record. That's fine.

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I have read the foregoing transcript from page 1 to page 109 and note the following corrections:

PAGE:	LINE:	CORRECTION:	REASON:

C. MICHAEL BUECHLER, M.D.

Subscribed and sworn to before me this day of , 1986.

Notary Public

My commission Expires:

THE STATE OF OHIO,)
) SS: CERTIFICATE
COUNTY OF CUYAHOGA.)

I, Kerry L. Paul, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that C. MICHAEL BUECHLER, M.D. was by me, before the giving of his deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above set forth was reduced to writing by me by means of Stenotypy and was subsequently transcribed into typewriting by means of computer aided transcription under my direction; that said deposition was taken at the time and place aforesaid pursuant to notice; and that I am not a relative or attorney of either party or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I hereunto set my hand and seal of office at Cleveland, Ohio, this 3rd day of June, 1986.

Kerry L. Paul

Kerry L. Paul, RPR, Notary Public
Within and for the State of Ohio
540 Terminal Tower
Cleveland, Ohio 44113

My Commission Expires: October 12, 1988.

I have read the foregoing transcript from page 1 to page 109 and note the following corrections:

PAGE:	LINE:	CORRECTION:	REASON:

C. MICHAEL BUECHLER, M.D.

Subscribed and sworn to before me this day of 16 June, 1986.

Eileen Peska
Notary Public

My Commission Expires:

EILEEN PESKA
Notary Public, State of Ohio
County of Cuyahoga
My Comm. Expires 08-11-89

THE STATE OF OHIO,)
) SS:
COUNTY OF CUYAHOGA.)

IN THE COURT OF COMMON PLEAS

CAROL HAYES, et al.,)
)
Plaintiffs,)
)
vs.) Case No. 106509
)
C. MICHAEL BUECHLER, M.D., et al.,)
)
Defendants.)

- - -

Deposition of C. MICHAEL BUECHLER, M.D., a Defendant herein, taken by the Plaintiffs as if upon cross-examination before Kerry L. Paul, a Registered Professional Reporter and Notary Public within and for the State of Ohio, at the offices of Charles Kampinski Co., L.P.A., 1530 Standard Building, Cleveland, Ohio, on Tuesday, the 20th day of May, 1986, commencing at 10:00 a.m., pursuant to notice.