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IN THE CIRCUIT COURT FOR THE

THIRTEENTH JUDICIAL CIRCUIT OF ALABAMA

MOBILE COUNTY

GARY L. HORTON, As Administrator of the Estate of Bryan Lee Horton,

Plaintiff,

vs.

DR. REYNALD T. SIMMONS, SPRINGHILL MEMORIAL HOSPITAL, ET AL

Defendants,

CIVIL ACTION NUMBER:

CV-81-000442

The testimony of ELIAS G. CHALHUB, M.D., taken at the Providence Hospital, Mobile, Alabama, on the 27th day of January, 1984, commencing at approximately 1:00 o'clock p.m.

the witness, having first Seen duly **sworn** to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY MR. HUGHES:

Q Would you state your name and residence address, Doctor?

A Elias George Chalhub, 210 Woodlands Avenue, Mobile, Alabama.

Q **How** long have you lived there, Doctor?

A Since 1978.

Q What do you do for a living?

A I'm a physician.

Q That's a medical doctor?

A **Yes.**

Where do you have offices?

I have offices at University of South Alabara, and at 3632 Dauphin Street, Mobile, Alabama.

Are those the only locations where you have offices at the present tim

A Yes.

Q Doctor, what is your medical education, and can we start with where did you attend medical school?

A Emery University in Atlanta, Georgia.

Q Bid you have any training after Emery?

A Yes. I did.

Q Where did you go from there?

A I went to the University of North Carolina, and did an internship in Pediatrics.

Q Did you have a residency following your internship?

A No. I did a special staff fellowship in infectious diseases at the National Institute of Health in Bethesda, Maryland.

Q Was that your employer at that time, the National Institute of Health?

A The Public Health Services, yes.

Q How long were you there?

A Two years.

Q And in that capacity, what did you do?

A I did virology, basically dealing with respiratory viruses, and the preparation of live vaccines.

Q Do you have a specialty now?

A Yes. I do.

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Q What is your spedialty?

A Neurology.

Q Do you specialize in children primarily, Pediatric Neurology, or is it just general Neurology?

A No. I do both adult and child Neurology, but have special competence in child Neurology.

Q Where are you licensed, Doctor?

A In Alabama and Florida.

Q Any place else?

A I may be, but I'm just not certain.

Q Doctor, are you Board certified in any specialties?

A Yes.

Q What are those specialties?

A The American Board of Pediatrics and the American Board of Psychiatry and Neurology.

Q When did you obtain your Board certification in Pediatrics?

A I will have to look back, but approximately 1976.

Q When did you obtain your Board certification of, what was it, Psychiatry and Neurolocy?

A Yes. It was approximately the same time, either 1975 or 1976.

Q How long have you been in private practice?

A Since 1978.

Q Has your private practice been confined to Mobile?

Yes

Who do you practice with?

Practice with Dr. Curtis Graf, Dr. Fritz LaCour,

Q What are they?

A The Mobile Infirmary, Providence Hospital,

A Yes, excuse me.

Q How long have you been on the staff at Springhill Memorial Hospital?

A Probably since 1378, maybe 1979.

Q Do you serve on any committees, whether they be medical staff committees or any other committees at Springhill Memorial Hospital?

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A Yes.

Q What are those committees, olease?

A Internal Medicine.

Q Any others?

A No.

Q Since 1980 have you been on any committees other than Internal Medicine at Springhill Memorial Hospital?

A I'm sure I have. I can't remember which ones those are, though.

Q Have you ever been on the Emergency Room Committee at Springhill Memorial Hospital?

A Not to my knowledge.

Q Have you ever served on the Emergency Room Committee of any hospital here in Mobile?

A I don't believe so, but I would have to look back.

Q How long have you Seen on the staff at Springhill?

A I think I have already said that, since 1978.

Q I'm sorry.

Do you have any interest in Springhill Memorial Hospital, the business entity, as opposed to just being on the staff at the Hospital?

A I'm not sure I understand the question.

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Q Do you own any part of Springhill Memorial Hospital?

A No.

Q Any stock in that corporation?

A No.

Q Do you teach anywhere here in town, Doctor?

A Yes. I told you I was on the staff at University of South Alabama Medical Center.

Q What do you teach there?

A Pediatric Neurology.

Q How long have you done that?

A Since 1978.

Q Do you teach weekly, or how does that work?

A Teach daily.

You have a class every day?

No. It's not classes. It's clinical medicine, so you teach by seeing the patients, discussing them with residents, and interns, and then treating the patient.

Q Do you ever give lectures?

A Yes. We give those weekly.

Q Where do they occur?

A At the University of South Alabama.

Q Have you ever done any clinical instruction at

Springhill Memorial Hospital?

A Yes.

Q What was the occasion for that, and when did that occur?

A Again, since 1978. It's hard to give you all the specifics. We have a lot of involvement with neuro-diagnostics there, and we instruct the technicians in how to do the tests, and how to interpret them, and so forth.

Q It's an ongoing sort of thing?

A Yes. It's a continual thing.

Q Did you know Dr. Reynald Simmons?

A I just know the name. I don't know him personally.

Q Do you know whether or not you have ever met Dr. Simmons?

A I may well have, but I'm not sure I would know who he is if I saw him.

Q Doctor, have you ever had occasion to practice in the Emergency Room at Springhill Memorial Hospital?

A Yes. I have.

Q How often has that occurred?

A When my patients, for some reason or another, come to Springhill, and I see them.

Q

A Yes.

Q Do you know whether or not you had occasion

A You'll have to tell me who you are talking about.

Q I guess at that tine it would have been either Dr. Simmons, Dr. Jones, or Dr. Ennis.

A Yes. I have come in contact with Dr. Ennis and Dr. Jones many times since 1980.

Q So, you have had no occasion to work with Dr. Simmons; is that correct?

A Not that I can recall. It's just hard to remember those specifics,

Q Would you know him to see him?

A Not really.

Q Doctor, did you do any reading of any articles in medical journals or any other medical materia.! in preparation for your deposition here today?

A I cnntinuc to read articles every day.

Vol 1, specifically in preparation for your

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deposition today?

A No.

Q After your medical school, Doctor, did you have any rotations in Emergency Rooms? Did you ever work in an Emergency Room?

A Certainly.

Q In your experience in working in Emergency Roorrs, did you have occasion to see and examine and treat children

A Yes.

Q Would you say that you have a lot of experience in that area?

A Yes.

Q Doctor, you have been deposed before, haven't you, given a deposition before?

A In relation to what?

Q Just period. Have you ever qiven a deposition before?

A Yes.

Q How many times would you say you have given a

deposition?

A I don't recall.

Q Well, more than ten?

A Approximately ten to fifteen.

Q Have you hac? your deposition taken recently?

A Yes.

Q Have you ever testified either by deposition or in Court in a medical malpractice suit before?

A Yes. I have.

Q Have you testified on behalf of the Plaintiff in such a case?

A Yes. I have.

Q When was the most recent tine you did that?

A This month.

Do you recall the name of that case?

A Yes.

Could you tell me, please?

A Mary Sue Berry versus Pfizer Laboratories.

Q Other than in that case, have you testified for Plaintiffs?

Yes.

Q Do you recall the names of any of those cases?

A Not right now, no.

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Q Have you testified for a Plaintiff at the request of any law firms here in town?

A No.

Q Have you testified on behalf of any Defendants at the request of any law firms here in town?

A Yes. I have.

Q Do you recall the names of any of those cases?

A Yes. The most recent one is Dr. -- I can't

Q Have you testified for Mr. Reeves here (indicating) before?

A By deposition, yes.

Q

A

Q

Mr. Reeves?

A I don't know how many depositions that we have given. It's certainly the only cases I'm involv with, and there are approximately five or six cases

Q Five or six cases.

Coctor, how did you learn about the Horton case? How did you first hear about it?

A I first heard about it at -- my partner had seen the Horton baby, Dr. Silverboard, and then was later contacted by Mr. Reeves, who asked me to review the file.

Q When was that, approximately?

A Sometime within the last year. It's hard to be certain about the date.

Q Had you and Dr. Silverboard discussed that case before Mr. Reeves called you?

A No. He had just told me that he had seen this infant in the Emergency Room. I think he had only seen him for a short period of time.

Q At the University of South Alabama, or at Providence?

A Yes, the University of South Alabama. I think his note is in the record.

Q Doctor, were you supplied any materials to review prior to giving your opinion in this case?

A Yes.

Q What were those materials?

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A The hospital records, the depositions of Dr. Granoff (phonetic) and Dr. Simmons.

Q Which hospital record?

A The Providence Hospital records, the Springhill

A Well, I'm not certain as to the cause of the death, because I'm not sure it's absolutely established.

your review of records, did not form a medical opinion of the cause of Bryan's death?

A No. I didn't say that. I said there were a number of possibilities.

Q What are those possibilities?

A One is shock, one is a cardiac arrhythmia; one

is cerebral edema and herniation.

Q Are there any others?

A No. I think those were the immediate causes of death, if that is what you're referring to.

Q Yes. I am. Did you form an opinion as to what those causes were secondary to?

A You'll have to be specific.

Q Did you form an opinion as to whether or not the cardiac arrhythmia or the cerebral edema and herniation -- what was the other one you gave me?

Q

Q Let's start --

A There were a lot of answers --

Q

A Yes.

Q Khat was that bacterial infection?

A Hemophilus Influenza.

Q Meningitis?

A No. I said Hemophilus Influenza.

Q Do you think Bryan hall Meningitis at the time

he died, Doctor?

A At the time that he died, yes, I do.

Q The cardiac arrhythmia, what do you feel that was secondary to?

A Again, that is hard to be certain of. It could

It could have been due to ischemia to his heart. A child

Q

Meningitis.

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Q Did you form an opinion in this case?

A Yes, I have. I have told you that.

Q What is that opinion?

A In terms of what?

Q As to whether or not Bryan's death was secondary to Hemophilus Influenza Meningitis?

A I said that I did not think his death, the immediate cause, and there is a distinction, was due to Hemophilus Influenza Meningitis.

Q He did have the disease at the time he died, didn't he Doctor?

A I think we have already said that, yes.

Q At the tine he died, was the disease -- well, to what extent did he have the disease? Was it a pervasive disease, or was he in the first stages?

A I don't understand what you mean by pervasive.

Q Was it serious?

A Bacterial Meningitis, yes, it is a serious disease.

Q Bacterial Meningitis is a progressive disease, isn't it?

A If untreated, yes.

Q How far had Bryan's progressed when he died?

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In terms of what? I don't know what you mean by how far it had progressed.

Q How infected was he?

A I don't understand what you mean.

Q What am I confusing you with?

A I don't know what you mean by infected. Define what you mean by infected.

Q

protein, and a low glucose, you know, again it's an the disease.

Q Did you form an opinion as to whether or not the Hemophilus Influenza Meningitis that you saw recorded was of the fulminant variety?

A I think by definition that this child died in a relatively short period of time would mean that it's fulminant, yes.

Q Doesn't fulminant Meningitis progress in a different manner than a nonfulminant variety of Meningitis?

A Your question is vague. You have to define what you mean by -- first of all, what are you classifying as fulminant, and what are you classifying as nonfulminant?

Q Can you define fulminant for us?

A You're asking the questions, and I'm giving the answers.

Q Would you please define fulminant Meningitis for us, in medical terms?

A I don't use the term fulminant Meningitis, so you will have to --

Q Have you heard the tern fulminant Meningitis

A It means to me it comes on quickly.

Q Is there a distinction between the progress of Meningitis, or a Meningitis, whether it's Hemophilus Influenza or one from a pneumococcidal strain. Is there a difference between the onset and the progress of that disease -- well, strike that.

Acute fulminant Meningitis doesn't mean anything specific to you; is that correct?

A It means that the Meningitis came on quickly -- or that is what it means to me.

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Hemophilus, excuse me. Hemophilus Influenza Meningitis do to the child that it infects? How does

BY THE REPORTER:

Q Hemophilus, excuse me. Hemophilus Influenza Meningitis do to the child that it infects? How does the disease physiologically affect him?

A Hemophilus Influenza is a gram negative organism that can cause a variety of clinical syndromes. They can be anywhere from a cellulitis to a pericarditis, to pneumonia, to an ear infection, to Meningitis, to an abcess.

Q Based on your review of the records pertaining to Bryan Horton, how did it affect him physiologically?

A It causec? pneumonia. It caused Meningitis, and it caused shock.

Q Is that your opinion based on the review of the records?

Q How did the disease, if you're able to say, progress through his body? Can you tell where the source was by your review of the records?

A Well, I think, we can make some educated guesses in terms of its presentation. He presented with pneumonia

Q Doctor, how did it affect Bryan physically? Did it cause him to become or have infectious sites in other parts of his body other than this pneumonia?

A I don't understand what you mean.

Q Did he develop other sites of infection other than the lungs?

A Yes. He developed Meningitis.

Q What is that?

A That is an inflammation of the leptomeninges.

Q In Bryan's case, how did that manifest itself in the meninges?

A You mean laboratory-wise, or clinical?

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term?

A Yes.

Q Did pus develop in his meninges?

A He had a number of inflammatory cells, yes.

Q Is that what inflammatory cells mean; pus?

A It's an accumulation -- a concentrated accumulation of inflammatory cells.

Q Were you able to determine whether there was much pus in Bryan Horton's case by your review of his records?

A Well, I could not say firsthand, because all I did was read the pathology report. The slides were not available to me. I don't know where those are. I have not been able to review those.

Q How did it appear to you, based on your review of his records? Was it extensive?

A No. I would say a usual case of bacterial Meningitis.

Q As that disease progresses, is it painful for the

patient?

A I don't know what you mean. In terms of what?

Q Does the patient suffer pain? Does it hurt?

A Yes. I mean, I expect they have headaches and they have soreness of their muscles. They may have abdominal pain. It depends on what other sources of the body the bacteria is infecting, and whether the symptoms

which organism?

Q Hemophilus Influenza in a six to seven month old boy?

A And we are talking about a hypothetical case?

Q Late in the disease.

A What do you mean by late? One week, two weeks, three weeks, one day?

Q How about immediately prior to death?

A Well, that is hard to be absolute. It depends on the situation in terms of if, you knot,, if there is

bacteria in the blood. If the patient is in shock. IF he has an electrolyte disturbance. If he's having seizures, there is a number of things. If you want to qualify that, then we can answer it.

Q Let me back up a minute. Doctor, did you form an opinion as to how long Bryan had Hemophilus Influenza Meningitis?

A Yes.

Q How long did he have it, in your opinion?

A Again, I could only hypothesize, you know, based on the clinical records that were provided. At the time of the clinical exam at Springhill Memorial Hospital, he did not appear to have Meningitis clinically. Now, it is possible that he had Meningitis. But I don't know how to detect that other than by clinical exam, and a lumbar puncture. But his exanination did not dictate that he had the disease. He had pneumonia, which was treated. So, he could have had the disease anywhere from that morning, that evening, or the next day. All are possible, but I would have to say based on his clinical examination, his findinqs at the time he was seen in the Emergency Room, then most likely he develop it within the nest twelve to twenty-four hours.

Q You do not believe that he had Hemophilus Influenza Meningitis at the time he presented himself in the Emergency Room at Springhill Memorial?

A I didn't say that. I said that is a possibility. But you have to go based on what the doctor reported in the examination at the time he saw the child. And clinically he did not have the symptoms that were entirely consistent with Meningitis.

Q Doctor, why do you give a lumbar puncture?

A You'll have to clarify that for me.

Q Let's assume that an individual presents symptoms that are at least consistent in a six to seven month old infant. Presents symptoms that are at least consistent with Meningitis?

A Is this a hypothetical case?

Q Yes, this is a hypothetical case. Why would you do a lumbar puncture?

A If I thought that a child had Meningitis, I would do a lumbar puncture to detect whether he had Meningitis so I could treat it.

Q Is there any other way to determine whether he has Meningitis other than doing a lumbar puncture?

A Not that I know of.

Q That is the only way to rule out whether an

Q **Is it** important to do that lumbar puncture as early in the course **of** the disease **as** possible?

Doctor, why **is it** important to do **it** early? Why **is it** important to perform a lumbar puncture early

and the total therapy for a child who has Meningitis despite the fact that we have effective antimicrobial therapy in 1983, still a large number of children have a significant morbidity and mortality. So antibiotics are not,alone, what has to be done.

Q It's important, isn't it, to learn whether or not you have the disease early, because morbidity is directly related to how early you catch it, isn't it?

A You're again talking about a general, hypothetical situation; is that correct?

Q Yes. I am.

A Yes. It is.

Q Doctor, when you treat a patient in an Emergency Room, do you pay any attention to the history given you by either the patient or the patient's parents?

A Again a hypothetical case?

Q I'm asking in your experience, in your practice, do You?

A Certainly we do.

Q Do you give it a lot of attention?

A It depends on who is giving it, ant what the source is, and what the facts arc.

Q How about the mother of an infant child?

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Yes.

Well, because that is usually the only source that you have of the history.

stage of the disease -- or in any stage of the disease, in a six to seven nonth old child?

A child can have anything from just a fever,

A That is what you said.

Q I'm asking you, doesn't it?

A No. It doesn't.

Q Is that an early symptom?

A Yes. It is.

Q What about a bulging fontanelle, is that an early symptom?

A Can be.

(Break)

Q Is that the usual course of events that the bulging fontanelle is seen early in the onset of the disease?

A That is usually what brings the diagnosis to the attention of most physicians in a six to seven month old, either that or a stiff neck.

Q Are there any signs of the disease that come late in the development or the progress of the disease?

A I think as I have already stated, that when Meningitis is developed, and again you'll have to tell me what you mean by late first, and then maybe I can answer. What do you mean, one week, two weeks, three weeks?

Q Earlier you were talking, and you yave us an answer as to what developed in the early stages, what about

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after what you consider those early stages?

A What I consider as late Meningitis is a child stiff neck at six to seven months of age. Thky have a bulging fontanelle. Who may be in continual seizures.

of which organism you're talking about, and which host, and what their status is.

A Their immune status: whether they are a well child. Do they have an immune deficiency or --

Q Did you form any impression as to what Bryan's status was by your review of the records?

A Yes.

a)

Q What is your opinion?

A That he was a well child.

Q Doctor, you have indicated that he had a -- and I'm not trying to put words in your mouth, I don't know exactly what you said. But a normal checkup, he appeared to be okay at the time of his checkup; is that right, at

A I think that is the way I phrased it. But I do not feel that the child had any clinical symptoms that

Q I think at that time you said it was a reasonably normal exam?

A For a child with pneumonia.

Q Is the stiff neck that a child gets, is that a progressive thing? Or does all of a sudden it just get rigid, or does it slowly get stiff?

A I think it slowly gets stiff.

Q What causes the child's neck to get stiff?

A That is not entirely known. There is a great deal of controversy as to what does cause a stiff neck. Whether it's spinal route nerve irritation, which is

A Again, the literature is confusing in this area, and not everyone agrees. They think the most accepted impression at the present time is that it's due to the

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Again, there is -- it is not entirely known. There are a number of speculations concerning what causes a decreased level of consciousness. And it makes a great deal of difference, again, as to which stage of the disease that you're talking about, and what else exists. For example, if a child had a cerebral abcess as a complication of the Meningitis, or a venous sinus thrombosis, or an ischemic infarct secondary to Meningitis. It may be due to the fact that it has affected both hemispheres, or one hemisphere causing a depressed level of consciousness. It may be due to cerebral edema. It may be due to a metabolic disturbance which they often get both glucose metabolism and electrolyte imbalance.

Q Doctor, in your giving us your opinion here today, have you assumed that everything Dr. Simmons said in his deposition is accurate?

A I don't usually assume anything. You'll have to tell me --

Q Did you assume that Bryan followed the light when Dr. Simmons moved it in front of his eyes?

A The doctor, you know, stated that he did do that, he wrote it down, and I, you know, have to believe that that is what he said, And that is what is accurate.

Q So, you're assuming the truth of that; is that correct?

A Well, the record states it. And I, you know, I think that is all that one has to go on.

Q Why would it be significant that Bryan follow the light?

A It would mean that he is alert. That he is attentive, the high cortical function is probably in tact.

Q If the doctor had recorded that he did not follow the light, say that his stare was glassy, and he was non-responsive, would that have some significance to you?

A Yes.

Q What would it have indicated to you?

A It could be a number of things. What are you referring to?

Q Would you tell me what they would be, those things?

A It could be all the way from the fact that he was sleepy and unattentive, to the fact that he might have had a partial seizure. To the fact that he had a depressed levelof consciousness.

Q Doctor, let me just ask you to assume a few facts,

and ask you your opinion based on those facts. Would you please assume that on March the 7th, 1980 at approximately eight a.m. the mother of Bryan Horton noted that the infant had a fever. At that time she gave him Tylenol. His temperature didn't respond, so she gave him Ampicillin around nine a.m.

Also assume that shortly thereafter the infant vomitted up his formula and medicine. Assume, please, that during the course of the day she continued to give Bryan Tylenol and Ampicillin every four hours.

Please assume that Mrs. Xorton after Bryan vomitted on the first occasion put him in a tub to break his fever, and it did go down.

Please assume that Bryan seemed very thirsty all day long.

Please assume that he was drowsy and slept on and off all day.

Assume that he cried often during the day.

Please also assume that throughout the day his temperature ranged up and down from a hundred and four to normal. Later on during the early evening his eyes became glassy. And when his mother moved her hand back and forth in front of his eyes, he did not blink or respond in any way.

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Please assume that later in the day and into the early evening he acted as though he didn't want to move his head.

Please assume it was then that Mr. and Mrs. Horton took Bryan to the Emergency Room at Springhill Memorial Hospital.

Assume also that in the Emergency Room Mrs. Horton described Bryan's condition and behavior to the hospital admitting clerk, and to nurse 'Parnell. Assume that the clerk typed quote temp T-E-M-P, neck hurting, vomitting, close quote, in the space designated for chief complaints on Bryan's hospital chart,

Also assume that nurse Parnell wrote on the chart, quote mother states infant has had, and then an arrow pointing in an upward direction, fever, vomitting today, and acts as if can't lift head. Has been sleeping all day.

Doctor, please assume that Dr. Simmons was given Bryan's chart at the time he examined the boy.

Please also assume that Mrs. Horton described Bryan's condition and behavior to Dr. Simmons.

Assume also that she had given Bryan Tylenol and Ampicillin during the day.

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Assume that Dr. Simmons examined Bryan's neck, ears, head, throat, chest, abdomen, and extremities.

Please assume that Mr. Horton observed -- excuse me, Mrs. Horton observed Dr. Simmons when he moved the light back and forth in front of Bryan's eyes.

Assume that as Mrs. Horton observed that exanination, Bryan's expression was blank, and he didn't move his eyes or head.

Please assume that Bryan cried when moved during the examination.

Assume that during his examination Dr. Simmons noted questionable rales in one of Bryan's lungs, and ordered a chest x-ray.

Assume that after viewing the x-ray, Dr. Simmons diagnosed Bryan as having early pneumonitis and discharged him at about eleven fifteen p.m.

Assume that the doctor advised Mrs. Horton to continue Ampicillin and take Bryan to see Dr. McLaughlin the following morning.

Assume further that Bryan began having convulsions around six a.m. the following morning.

Assume that Bryan was brought into the Providence at about six twenty-seven a.m. !larch the 8th in a convulsive

state with a bulging fontanelle.

Please assume that after being medicated at Providence, and after a lumbar puncture was performed, Bryan was transferred to U. S. A. Medical Center, where he died at one forty-seven p.m.

Assume the autopsy done on Bryan revealed that he had suffered Leptomeningitis and pneumonia.

Assume also that the histopathologic findings were not consistent with fulminant Meningitis.

Doctor, please also assume your medical education, background, experience, and assuming all of those factors and facts. Can you tell me whether or not you have an opinion as to whether or not Bryan Horton had Meningitis when he was seen by Dr. Simmons in the Emergency Room at Springhill Memorial Hospital?

MR. HUGHES:

Q Subject to his objection.

A I can't answer that, because first of all, I can't remember all the assumptions. And, you know, I don't know. It seems to me that you have put in some things that are in the chart, and some things that you may have made up, or

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obtained from somewhere else, because I don't find some of the things that you said in the documented chart, nor in the history. So, if we can start at the top and we'll take them one at a time, I'll assume them and comment OR them. But I can't answer that question like that.

Q Doctor, how much of this --

A That is impossible.

Q How much of this can I recite to you at one time and you are able --

A I think we ought to start right at the top. I'll be glad to sit here as long as you want and answer them. But I cannot make, you know, give you a statement based on all of those assumptions unless you tell me first of all where you obtained the historical factors, who obtained

Where it's documented in the chart. Then let's look at the records. Let's look at the documentation by a competent observer, such as a physician, and then we can make statements.

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to assume --

A You just described the patient.

MR. REEVES: I'm going to object to the form of the question that you have presented. I'm going to object to you arguing with the doctor. You have assumed facts that are no way in evidence in this matter, You can call it a hypothetical question if you want to, but it's beyond the scope of any hypothetical that I know of. You read him a book.

R. HUGHES:

Doctor, are *you* unable to answer the question?

As you worded it, yes, I am.

Doctor, let me ask you to assume some other acts, then. Would you assume that on March the 7th, 1980 --

Let's start right at the beginning. Are we talking about a hypothetical case again? Or are we talking about this case?

We are talking about --

asked me to assume two pages of facts which --

Q I certainly have.

A -- it's hard to answer.

we see where that is at?

I'll tell you what we can do. Why don't we

questions --

MR. REEVES: You're asking the questions. He is answering to the best of his ability. If

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you don't have anything else you want to ask, we will end the deposition. Are you through?

MR. HUGHES: You know I'm not through.

MR. REEVES: Well, then ask your question.

MR. HUGHES: Well, that is what I'm doing, and I'm not getting --

MR. REEVES: If you want to take all day, that is grand.

MR. SFORZINI: Let's go talk to Judge Kittrell about it, Mark. Because I'm sure Judge Kittrell will require the doctor to answer that question.

MR. REEVES: All right. Let's go to Judge Kittrell. Get him on the phone right now, and you read him that question.

MR. SFORZINL: How about you going Sack and reading it, and I will write it out. The doctor is playing games with us, Boyd.

MR. REEVES: The doctor is not playing any games at all with you.

YR. SFORZINI: He can assume anything. It doesn't have to be in the file. We --

MR. REEVES: Put all of this in the

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record, ma'am.

MR. SFORZINI: Go ahead.

MR. REEVES: I want all of this on the record.

MR. SFORZINI: He's playing games, he is playing games, he is playing games.

MR. REEVES: This doctor is not playing games with anyone. He is presented here as an expert witness. He is answering your questions. You're asking him facts that aren't anywhere in this file that I have ever seen.

MR. SFORZINI: It doesn't have to be in the file, Neil.

MR. REEVES: I'm Boyd.

MR. SFORZINI: I'm sorry.

MR. REEVES: That's all right.

MR. SFORZINI: It doesn't have to be in the file. We can assume hypothetical questions.

MR. REEVES: You can assume anything you want to. He doesn't have to answer anything.

THE WITNESS: If you will just say what is in the file and what is not in the file, what is fact and what is fiction, then I will be glad

to answer.

MR. SFORZINI: The question was put to you as to what was in the file. It asked you to assume certain things.

THE KITNESS: Right.

MR. SFORZINI: And I know, Doctor, that you are intelligent enough to assume those things.

THE WITNESS: But I can't answer with one statement to all of the above. That is what I'm trying to get you to do. If you will separate the questions, because I don't first of all agree with all of the things, and I cannot make a statement, and I cannot even remember what you said to 40 back and tell you with each part what I disagree with. So, let's take it one step at a tine.

MR. SFORZINI: I perceive what you're saying. But, why don't you agree with it. What is there to disagree --

MR. REEVES: Are you asking the questions, or is he asking *the* questions.

MR. SFORZINI: I'm askinq --

MR. REEVES: No you're not going to is;:

him any questions, either. Mark can ask him anything he wants to. Do you want to talk to Kittrell about that? One lawyer can ask a question, that is what we're here doing. I don't care what you are whispering to him.

MR. HUGHES:

Q It's a fair question. Doctor, in the hypothetical question I asked you, what did you find to disagree with?

A Let's start with the top, and we will go through it.

Q We'll do this as often as we have to. On March noted that the infant had a fever. Do you disagree with that?

A No.

that?

A After I find -- where was that recorded?

Q In Dr. Simmons' deposition it was recorded. Does it have to be in his deposition before we can agree with it?

A No. I would just like to see it on the chart. You're asking me to be an expert witness based on the facts

that are provided in the hospital chart and the records.

Q No, sir, I'm not asking you that. I'm asking you to assume hypothetical facts and to rely on your medical experience.

These facts are in no way related to this case, that what you're telling me?

Q They do not have to be, but they may be.

A So, they are totally hypothetical?

Q They are totally hypothetical.

A Okay. Then let's read on.

Q Let's start again.

MR. SFORZINI: Ask her to read the question.

MR. HUGHES:

Q Let's just do it over again. Let's assume, Doctor, that Bryan Horton was a male between the age of six and seven months on March the 7th, 1980. Let's also assume on March 7th, 1980 at about eight a.m. the mother of Bryan Horton noted that the infant had a fever, meaning Bryan.

Please assume that she gave Bryan Tylenol.

Assume also the temperature didn't respond, and so she gave him Ampicillin at approximately nine a.m.

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the same morning.

A Okay. May I ask you questions concerning your statement?

Q Can you remember them to ask me at the end?

A No. You've got two pages there.

Q Go ahead, Doctor. Go ahead and ask me.

A Where was the Ampicillin prescribed? Was that just because she felt that was something to do? Was that prescribed by a physician?

Q Let's assume that she gave that to him on her own, okay?

Let's assume that shortly thereafter, after giving him the Ampicillin, shortly after nine a.m. Bryan vomitted up the formula that he had been given earlier and medicine.

A Which medicine, the Tylenol, the Ampicillin, or both?

Q The Tylenol and the Ampicillin. Presumably they were both in his stomach from -- or both qiven between eight and nine a.m.

Please assume that Mrs. Horton then put Bryan in a bathtub in an attempt to break his fever, and that his temperature did go down. Are you okay?

Q To almost normal. Almost ninety-eight point six.
A Okay.
Q Please assume that Bryan seemed very thirsty during the course of the day.

Assuine that throughout the day his temperature ranged up and down from one hundred and four to a mere normal.

Assume that later --
A Is this with or without treatment? Or just spontaneously, or what?
Q Just assume, Doctor, that she continued to attempt to medicate him with Tylenol and Ampicillin every fcur hours after the first time she gave it to him.
A How much Ampicillin?
Q According to the directions on the bottlc.
A Where was the bottlc from? How old was the medicine? There arc a lot of -- the problem with the question is that there arc a lot of facts that you have

to know to make an adequate, accurate judgment on your assumption, and you are not giving them to me. Is it one hundred and twenty-five milligrams per five cc's? Is it one hundred milligrams per kilogram? Is it two hundred and fifty milligrams per kilogram?

Q Are you unable to answer the question unless you know that?

A Well, it is helpful, yes.

Q Are you unable to answer it unless you know that?

A Adequately and accurately, yes.

Q Would you be in a position that unless you have that information you would rather not answer the question?

A I'm not trying to be difficult, I'm really not. I just want to get an accurate assessment of your question. So let's go ahead and finish it, and see whether we can answer it or not.

Q Later that day Bryan's eyes were glassy. And that evening when Mrs. Horton moved her hand back and forth in front of his eyes, he did not blink or respond in any way.

Please assume that late in the day and in the evening he acted as though he didn't want to move his head.

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Please assume it was after manifesting that behavior that Mr. and Mrs. Horton decided to take Bryan to the Emergency Room at Springhill Memorial Hospital.

condition -- excuse me. Assume also that Mrs. Horton went into the Emergency Room, described Bryan's condition an? behavior to the hospital admitting clerk, and nurse Parnell.

Assume that tne hospital admitting clerk typed quote temp, T-E-F-P, neck hurting, vomitting, close quote, in the space designated for chief complaints on Bryan's hospital chart.

an arrow pointing in an upward direction, fever, vomitting today, and acts as if can't lift head. Has been sleeping

Q His behavior and condition all throuyhout the day

MR. REEVES: What you just read?

Q What I just read.

A But that is not anywhere in evidence that I know; is that correct?

Q Assume that she did give him that infornation, please.

A (Witness nods head).

Q Assune she told him, meaning Dr. Simmons, that she had given the boy Tylenol and Ampicillin during the day.

Assume that Dr. Simmons examined Bryan.

Assume that he examined Bryan's neck, his ears, his head, his throat, his chest, his abdomen, and his extremities.

Assume Mrs. Horton observed Dr. Simmons when, as part of the exanination, he moved a light back and forth in front of Bryan's eyes.

Please assume that when the light was moved back and forth in front of Bryan's eyes, his expression was blank. He d d not move his eyes or head.

Please assume that Bryan cried when moved durin the examination.

Please assume that during his examination Dr. diagnosed Bryan as having early pneumonitis, and discharged

Please assume the doctor advised Mrs. Horton to continue Ampicillin, and take Bryan to see Dr. McLaughin the next morning.

Assume further that Bryan began having convulsaons around six a.m. the following morning.

Assume that Bryan was brought into Providence Hospital at about six twenty-seven a.m. March 8th, in a convulsive state, with a bulging fontanelle.

Assume that his parents brought him into the Providence Hospital.

Assume that after being medicated at Providence, that he was transferred -- excuse me, after being medicated at Providence and a lumbar puncture being performed, he was transferred to U. S. A. Medical Center, where he died at one forty-seven p.m.

Assume that the autopsy done on Bryan revealed that he suffered Leptomeninqitis and pneumon~ a .

Assume that the histopathologic findings were not consistent with fulminant Meningitis.

Doctor, please also assume your experience and your education, medical education and medical expcriense. Based on all of those assumptions, do you have an opinion as to whether or not Bryan Horton had Meningitis when presented at Springhill. Memorial Hospital in the Emergency Room on March 7th, 1980?

MR. REEVES: Object to the form of the question.

A Again, let me just ask some things, because I'n not sure I understand, First of all, when you started the question you said this was hypothetical. Then at the end you said, you know, you're using this patient's name, his autopsy, and so fort;?. Are we talking about Bryan Horton, or are we talking about a hypothetical case? Can I ask you that?

MR. HUGHES:

Q We are talking about hypothetical case named ryan Horton

A Assuming that the facts are as you have presented them?

YES, SIR

A Not as anywhere elsc.

Q Yes, sir.

A Then read me the last part of your question. What do you want me to tell you?

Q Do you have an opinion as to whether or not Bryan Horton had Meningitis when he was presented at Springhill Memorial Hospital Emergency Room on March 7th, 1980?

A I think it is difficult based -- first of all --

Q Do you have an opinion first of all?

A Yes. An opinion.

Q What is that opinion?

A I have to clarify it, my opinion, because it is first of all based on the fact that these are assumptions. That this is a hypothetical case. This is in no way related to the case that we are talking about today. And the fact that some of the terms that you use, I may or may not agree with. But, I think, there are a number of possibilities. It is possible that he had Meningitis at the time that he was seen by Dr. Simmons. It is equally, if not more likely, that he did not have the Meningitis at that time. Because we well know that a child does not have the symptoms described at that time by Dr. Simmons -- well, the symptoms

that you are describing may well reflect a whole host of disorders. All the way from just a viral illness, to pneumonia, to a number of other problems. It's equally well-known that individuals can develop Meningitis within a period of fifteen to twenty minutes. So, I don't know, I don't think I can tell you specifically that this child had Neningitis, or did not.

Q Are you saying, then, that you don't have an opinion as to whether or not he had it?

A I said there are a number of possibilities. One it is possible. It is equally likely, if not more possible, that the child that you presented did not have it.

Q Why more likely? Based on those assumptions.

A You did not give the classic symptoms of Meningitis at age six to seven months. If it's not classic, then it is probably more likely that he had another disease.

Q Again, assuming all of those facts, Doctor, do you have an opinion as to what other disease Bryan had at the time he was presented at Springhill Memorial Hospital?

A He had pneumonia. Are you talking about again, you know, I'm having difficulty, we are jumping back and forth between this patient and the hypothetical case. Are we back to the hypothetical case?

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A With the facts that you present

Q Yes, sir.

A I think it is possible that this child had pneumonia. As I said, I think, it is possible that the

Q Yes, sir.

A -- as the exam, I think it has to be a judgment decision. The hypothetical Dr. Simmons in this case, and again you have not given me, you know, some of the information we need. But based on ,what you have given me,

this individual found source of the f r. He found a source of the i ction. He ade tely evaluated th child for it, the signs of Meningitis, and he gave an adequate drug which would treat the disorder. He arranged for follow upwith the family physician. To the contrary, I think, he acted in an acceptable standard of care, and delivered the appropriate diagnosis and treatment.

MR. HUGHES: Excuse me for one second.

Let me look at something.

(Break)

MR. HUGHES:

Q Doctor, would you please assume all those same facts, and based on those facts, would you tell ne whether or not you have an opinion as to whether a lumbar puncture performed -- excuse me. If a lumbar puncture had been performed on the hypothetical Bryan Horton while in the Emergency Room at Springhill Memorial Hospital, as to whether or not an examination of the fluid obtained in that puncture would have been normal or abnormal?

MR. REEVES: Object to the form of the question. Answer it if you can.

A I don't think there is anybody that can give you the answer to that. I can give you numerous examples o'

patients that had lumbar punctures that were absolutely normal, within eight to twelve hours developed Meningitis. And that is clearly well documented literature. Well documented by my experience, well documented by my experience in the Emergency Room in similar situations. So, you know, I don't know the answer to that.

Q Doctor, have you discussed this matter -- the fact that you're testifying in this case with any other physicians here in town, other than your partner, Dr. Silverboard?

A I may well have. We talk about these cases in the Doctor's Lounge.

Did anybody supply you, Doctor, with a list of plaintiffs expert witnesses?

A I see them on the interrogatories. Mr. Reeves supplies me with copies of the interrogatories in preparation for the case.

Q Do you have a copy of all of the interrogatories and answers to the interrogatories?

A I don't know whether I have all of them. I have some of them.

Q Do you recall from those answers to interrogatories that a plaintiff named Dr. Steven Shartran as an expert

witness in this case -

MR. REEVES: You mean a plaintiffs name -- oh, a plaintiff named, I'm sorry?

MR. HUGHES: Yes.

A Yes.

MR. HUGHES:

Q Doctor, have you discussed Dr. Shartran's being named as an expert witness with any other physician, or any other people here in town?

A I may well have.

Q Have you complained to anybody about it?

A No. No.

Q Have you talked to anybody at the University South Alabama about the fact that Dr. Shartran is going

A Again, we tall: about these cases, you know, I may well have.

Do you have any recollection of talking to anybody at the University of South Alabama about -- at the University of South Alabama about --

A I'm there every day.

Q Do you remember talking to somebody about the fact that Dr. Shartran was going to testify?

Q Do you have any recollection of any conversations that involves that fact at all?

A As I said, yes, we talk about these cases. So, you

Q To the best of your recollection, who have you to about it?

I don't know. I would h to go through a whole lot of physici As I said, we meet every m ing, we go on rounds, and we talk about things.

Q Have you expressed your displeasure that Dr. Shartran was going to testify in this case?

A No.

Q Have you indicated to anybody that you don't think he should testify in this case?

A No. I think everybody is entitled to their own opinion.

Q Do you recall suggesting to anyone that, Doctor, it is inappropriate for Dr. Shartran to testify in this matter?

A No. I don't think it's inappropriate for anybody to do what they wish to do.

Q Have you talked to Dr. Shartran about it?

A No. I haven't

Q

individuals that you have discussed this case with was in the Pediatric Department at U. S. A.?

Q Is there someone else who is in a position of authority with respect to the Pediatric Department at t University of South Alabama Medical Center?

Q Is there an Assistant Chairman?

A There may well be. I don't know who that is.

Q Is there somebody who is in charge of the personnel, let's say, for the Pediatric Department, who all the doctors answer to directly?

A There may well be. I don't know who that is in the Department of Pediatrics.

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Yes.

Cause it to go down, couldn't it?

A Yes. But we might add that usually in serious Meningitis, Tylenol is ineffective in controlling the temperature.

Q Doctor, if you were presented with Bryan Horton and given the same history that was given Dr. Simmons as reflected by this medical record at Springhill Memorial Hospital, Medical Record, Springhill Memorial Hospital Medical Record, Plaintiff's Exhibit 1, would you have done anything differently than he did?

A It's hard to answer because, I think, one has to be there to take the history and to do the physical examination. Then I could tell you that. But other than that, I cannot.

Q You have read his deposition. Would you have proceeded differently. Would you have started out differently than he did?

A Again, you know, I can't answer that. You have given me the information. I've already stated that based on what he has recorded, what he has here, that his conduct and his care of this patient is entirely appropriate. Now, what I would have *done* may well be different, but that

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is based upon my experience. That is based on my taking the history and doing the physical examination. I may well have arrived at the same conclusion. I have personally, you know, seen individuals, have arrived at a diagnosis, and twenty-four hours later they have a different disease. That always happens to people. We hope it happens in as few times as possible, but it does occur. You cannot do every test on every single patient that comes to the Emergency Room.

Q Have you seen instances, Doctor, where physicians haven't rendered appropriate care in an Emergency setting?

A Well, yes.

Q Have you seen such instances with respect to diagnosis of -- or failure to diagnose Meningitis in a child?

A Yes.

Q Have you been involved in those cases, and I mean, from a medical standpoint?

A Not a legal standpoint?

Q *Not* a legal standpoint.

A Yes. I personally have failed to diagnose Meningitis myself simply because the symptoms were not present. My evaluation of the patient did not yield for

me to do the lumbar puncture. Anti again it's a careful judgment that one has to entertain. Doing a lumbar puncture is not an innocuous procedure, there are problems with it, it's well published in the literature, and you don't do that in every single case. You have got to assess the case as an individual, the situation as an individual. If perhaps he did not arrive at a source of infection in this patient, then he might have considered the lumbar pnncture. We don't know that.

Q Well, Doctor, if you can have more than one source of infection with Meningitis, and you arrive and you discover that other source of infection, does that mean that a doctor isn't required to proceed any further? He doesn't have to look any further?

A As I told you before, medicine is based on the history and the physical examination, and judgment, and what the patient appears to look like. This patient obviously did not appear to be critically ill to him. Appeared to have pneumonia, which was consistent with his chest s-ray, was consistent with his physical examination. And in his judgment did not dictate a lumbar puncture. I don't see anything inappropriate with that, anything unacceptable, any deviation from the standard of care.

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Q Doctor, just assuming the history that the intake clerk and Ms. Parnell noted there, does that sound like a well child to you? Does that sound like a child who is ill?

A The child is ill. We have not stated that this child is not ill.

Q I'm just asking you if he sounds like a child who is ill, or a child who is well?

A I don't think there is any question that the child is ill.

Q Doctor, if you had seen a child with that history, the same history that you're looking at right here on Bryan's chart, and you heard questionable rales in one of his lungs, and you had taken an x-ray and looked at it and found some clouding, and you determined that there was pneumonitis. Would you, in your experience. would you have determined, or would you have automatically ruled out everything else and just decided it was early pneumonitis?

A Let's first clarify what you stated. The patient had rales. The patient did have an x-ray which was consistent with pneumonia and not just some clouding. pn(: in fact at the autopsy the patient did !la\ pneumonia.

So, there is no question that the child did have pneumonia, which is an accurate diagnosis. Now, what I would have done, given this situation, as I have already told you is, I can't tell you because I am not there. I cannot tell you, you know, what -- if I took the history, I examined the patient, what my opinion would have been unless I was there. And nobody can do that,

Q How long would you have spent with the child, Doctor?

A Just depends on what I felt the situation dictated.

Q You have read Dr. Granoff's (phonetic) deposition, have you not?

A Yes.

Q Where and in what areas do you agree with Dr. Granoff?

A It's a long deposition, you will have to ask me what you're talking about.

Q Well, Dr. Granoff had the opinion that Dr. Simmons was negligent based on his review of Dr. Simmons' deposition, Springhill Memorial Hospital records. Based on his review of the Providence records, and his review of U. S. A. records, he felt a lumbar puncture

should have been performed, do you recall that?

A Yes.

Q And you disagree with that, is that correct?

A Yes.

Q Do you feel that a lumbar puncture would have been inappropriate in Bryan's case?

A No. I don't think it would have been inappropriate. I think that it is up to the decision of the physician who is evaluating the child at that time. I was at Washington University, I worked in the Emergency Room at Washington University. I was a fellow there, I directed and taught there, and I can assure you in disagreeing with Dr. Granoff this child probably would not have received a lumbar puncture in St. Louis at Washington University. So, I do not think that Dr. Simmons was negligent. I think that one has to assume that his history is accurate, his physical is accurate, his diagnosis was accurate at that time, and he give the appropriate care.

Q You made some reference earlier, Doctor, to the fact: that you had not seen the slides or the sections that were taken during the autopsy. Would they be significant to you?

A Yes. It would be nice to review them.

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Why?

A I would just like to see if the pathologis was right.

Doctor, in the depositions that you -- excuse me, in the cases that you have testified for the plaintiff in medical malpractice cases, where were they? Where were those cases located?

A Some of them have been while I have been in Mobile.

Q Are the cases filed here in Mobile?

A I don't recall. Somo of them may have, and some of them may have been filed in another state.

Q Texas or Arkansas?

A Yes.

Would that have been -- u were testifying for the plaintiff in that instance?

A That is correct.

Q Do you recall what city in Texas or Arkansas?

A Little Rock.

Q The plaintiffs lawyer?

A Yes.

Q Who was that?

A One of them is Mr. McMath

Q ... any physicians
in M
A No.
Q Have you been asked to?
A Yes.
Q How often have you been asked to?
A I was asked by Mr. McDermott in this particular case
Q Yes, sir. You were.
A But I had; already been engaged by Mr. Reeves.
How many other tines were you asked?
A I don't really recall.
Q More than ten?
A No. I would not think so.
Q More than five?
A I don't know.
Q Have you ever been sued, Doctor?
A No. I haven't.
Q Doctor, have you given Yr. Reeves a written report?
A No. I haven't
Q Did you make a report or any notes for yourself as you reviewed this case?

A I'm sure I did.

Q Where are they located?

A In my office.

Q Do you have a file on this case?

A Yes. I do.

Q Is everything -- all your notes, everything relating to this case that you have done, is that contained in that file?

A Probably not.

Q Where else would it be?

A It may be at my home, at my other office. May be in another file concerning Meningitis.

Q What are you charging Mr. Reeves for your services in this case, Doctor?

A It varies from one hundred dollars to two hundred dollars per hour.

Q What does that depend on?

A It depends on how much tine I spend, and what I'm doing.

Q Could you tell me what is the two hundred dollars an hour for?

A That is usually for deposition, Court appearance.

Q What is the one hundred dollar an hour charge?

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A Depending on whether I'm receiving -- getting records, checking on x-rays, etcetera.

Q Excluding this deposition, how much time do you have out on this case?

A I don't know. I would have to go back and look at my records.

Q Have you sent a bill yet?

A I honestly don't know. You can ask Mr. Reeves. I really don't recall whether I have yet or not.

MR. HUGHES: That is all I have. Thank you, Doctor.

FURTHER, DEPONENT SAYETH NOT.

Q The fact that an individual has pneumoni wouldn't necessarily rule out the fact that he would have Meningitis, would it, Doctor?

A Are you talking about hypothetically and what age, and what --

Q Hypothetically in a six to seven nonth old child.

A No. That is correct.

Q Meningitis is often accompanied by another situs of infection, isn't it?

A It may be.

Q It occurs often, doesn't it?

A Again, you have to tell me which organism you're dealing with, what age, what type of host, you know, then we can talk about percentages, because it matters a great deal.

Q Let's talk about --

A Like meningococcemia or meningococcal Meningitis, it docsn't.

Q How about the disease that we are talking about here today, primarily Hemophilus Influenza Meningitis.

A What is the question?

Q Docs it often appear or -- excuse me. When it

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appears, is there often another situs of infection, like

Q How about a cough? Is there usually some cough?

A Again it can or cannot.

Q Do young children, children who aren't able to talk yet, do they react typically? Do they typically react by crying, or fussing when they are handled if they have Meningitis?

A Again, it depends on which organism, which disease process.

Q Let's talk about the one we are talking about here today.

A Again, they nay or may not. We see children that are absolutely on a clinical exam, except for fever normal. And they may well have Meningitis. One has to use their clinical judgment. You cannot do a lumbar puncture

indications based on the clinical exam to do that.

Q Doctor, have you ever been in a position where

Q If you had been in such a position on -- during March, 1980 in Springhill Memorial Hospital, and you were reviewing the Emergency Room records from the night before. And on the 8th you were presented with Bryan Horton's chart, would you have any questions for Dr. Simmons?

A You will have to ask me what you're talking about, be specific.

Q If you were in charge of reviewing the medical records for that evening, for the 7th. And you saw that chart, the one that you have looked at from Springhill Memorial Hospital on the 9th of March, 1980, that pertains to Bryan Horton. Would you have had any questions for Dr. Simmons, any questions at all?

A Concerning which part of the record?

Q Concerning any part of the record?

A No. I think that an adequate history was obtained. An adequate physical examination was done. A diagnosis was made. An appropriate antibiotic was prescribed.

appropriate follow up was obtained.

MR. HUGHES: Would u mark this,please?

(Plaintiff's Exhibit 1 was received and marked for identification)

Q Let me hand you what has been marked as Plaintiff's Exhibit, depcsition Exhibit 1, and ask you if that appears to be a true copy of the chart that you reviewed in providing Mr. Reeves with your opinion?

A Yes. It is.

Q That chart pertains to Bryan Horton, does it not?

A That is what the name says.

Q Do you recognize that char;?

A Yes. I do.

Q Doctor, you have indicated that there is an adequate history taken. Would you tell me what you're referring to when you say an adequate history was taken?

A What is recorded at the top.

Q Are you talking about that portion that the nurse wrote?

A Yes.

Q What about the portion that Dr. Simmons wr

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A Well, it's a physical examination.

Q Let's take a look at right under Ms. Parnell's signature there, right after the part she wrote, where it says T to one o four. T and then there is a mark last night unable to go to the office today. Isn't that part of the history?

A Yes. I'm sorry. I assumed that he had read what the nurse wrote, asked other questions and recorded what he thought was pertinent.

Q Let me ask you not to assume that. Let me just ask you to refer to the chart. Is that an adequate history?

A Well, I think, considering what the problem was, and what the nurse had asked, and what he recorded, you know,' I find no problem with what he obtained.

Q Doctor, just again referring strictly to the chart. Is there any reference to the fact that Bryan had been taking Tylenol?

A No. Not on this record.

Q How about any reference to the fact he was takin;: Ampicillin?

A No. That is not on the record crthcr

Q Would that be significant?

A Yes. But I think Dr. Simmons stated in his

deposition that that was the case. Now, whether he recorded it or not, you know, we don't record everything that we do in terms of the history and the physical. It is impossible to record absolutely everything.

Q Why would that have been significant, Doctor, in view of this chart?

A Anything can be significant.

Q Why would it be significant in view of this chart?

A I don't understand what you mean,

Q I asked you a minute ago if it would have been significant, and you said yes.

A Uh-huh.

Q In light of this chart, the history provided here, and the examination down here, why would that be significant?

A A child has a fever and one is giving them antipyretics such as Tylenol. obviously it is easily controlled because the temperature is one hundred point two, you know, the temperature before was one hundred and four. So, either the child is getting better, or the Tylenol was easily controlling the temperature. Now, if the child had been on antibiotics, it may well be treating

the infection, or may well not be.

Q Would you have recorded on this chart the

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Q Of those diseases or those illnesses you have just mentioned, is one more life threatening than the others in a young child, a child Bryan Horton's age?

A Again it depends on the organism. A pneumonia with a viral organism can be as life threatening as any one of those, as well as septicemia with streptococcus,

the

Then they do a physical examination trying to rule in or

Q That is called a differential diagnosis?

A No. That is not called e differential diagnosis.

Q What --

A It's called a physical examination, okay?

Q

A You do the physical examination looking to exclude or include certain disease processes. In this

Meningitis. He checked the neck and that was supple. The child was'alert, followed the light. The temperature was low. He was not impressed that the child had'any significant symptoms referable to that. He did find rales, which are indicative of pneumonia. He obtained a chest x-ray which, I think, is entirely proper. And arrived at a diagnosis of pneumonitis, which was confirmed later on the autopsy. And prescribed an antibiotic, which apparently the mother had started on her own, and continued it. And then arranged for an appropriate follow up.

Q Doctor, I think, we talked earlier about the fontanelle. Do you see reference in the records to the condition of Bryan's fontanelle?

A No. I don't.

Q Is that significant?

A Well, I think, again as I pointed out to you before, we don't record everything. Obviously he examined his head and his neck. If he felt the fontanelle was full and bulging, I am sure he would have recorded it. But he may not have felt that, and did not record it. And I think that if the fontanelle is bulging, it's fairly obvious for any physician, particularly an Emergency Room

physician, and probably would have recorded it.

Q The fontanelle to be symptomatic of Meningitis doesn't have to be bulging, does it? Can it be taut?

A If it's taut, it's usually bulging.

Q It's a progressive thing, isn't it, this bulge. I mean, it doesn't just pop up, does it?

A It comes up rather rapidly, yes. I don't think anybody knows. I don't think we have ever measured the time it takes for the fontanelle to pop up. But, you know, children are symptomatic, and one of the signs is a bulging fontanelle. It may not take very long.

Q But you don't know that; is that right?

A I'm sorry --

Q You don't know that whether or not it pops up. You have never observed it, have you?

A It has to happen rather rapidly just by mothers' descriptions of their babies. Many mothers come in and tell you the fontanelle is bulging, something is wrong with the soft spot. And, I think, as observant as you have outlined in your hypothetical question this mother was, then I think the bulging fontanelle might have been something she might have noticed.

Q Doctor, is it difficult in an infant to detect

whether or not his neck is stiff? By an infant, I mean a child under seven months of age.

A I don't think so. I think it depends on your experience with dealing with the disease. And as many of the leading people that deal with Meningitis and have a great deal of experience will tell you that a stiff neck is -- it may be present at two weeks of age, as well as six months, as well as at nine months. This depends on how you do the examination.

Q Doctor, does it make it more difficult if the child is crying?

A Depends, yes.

Q Does that depend on the experience of the examiner?

Does what depend on the experience of the examiner?

Q Whether it's more difficult to determine stiff neck if the child was crying?

A I think any part of the examination depends on the experience of the examiner.

Q Do you know what Dr. Simmons' experience was?

A Concerning what?

Q Examination of children.

A I would have to go back and look at his credentials, I can't remember at the present time. He's an Emergency Room physician who has examined numerous children, and I assume that he is competent. We have no reason not to believe that he is not.

Q You're assuming that he has some degree of expertise in examining children?

A Well, yes.

Q Where are you getting that assumption?

A Well, that he has gone through an accredited medical school. Done a rotation on pediatrics, and done an internship.

Q Do you recall how long his pediatric rotation was?

A No.

Q Is two months extensive experience, you think?

A You know, again it depends on what he did during those two months. If he worked in an Emergency Room or a clinic, then it may well be. You know, he obviously had to do it during medical school. He took pediatrics at an accredited medical school, and he is licensed to practice.

an infant a very basic skill for a medical doctor?

A I don't understand what you mean.

Q Should a doctor who gets out of -- completes an internship in, let's say, general medicine. Let's say he goes to work in an Emergency Room. Is he immediately competent to recognize symptoms of Meningitis in a seven month old child, six month old child?

A I don't know whether I can answer that. Generally speaking, probably yes. If he's been to an accredited medical school and an accredited internship, then he has Seen exposed to diagnosis and physical examination, and the skills that are requisite to do that.

Q Would such a physician, the one I just described, would he, or should he be aware that a lumbar puncture is the only way to rule out the presence of Meningitis?

A Are you talking about should Dr. Simmons be aware of this or --

Q Anybody. This physician I just asked you about.

A You will have to ask him.

Q Doctor, do you have any problem at all, or do you have any question at all about the way Dr. Simmons handled the examination and treatment of Bryan Horton at Springhill Memorial Hospital Emergency Room? Based on

your review of the records, and taking into account his deposition, do you have any problem at all?

A In respect to what part? You asked about a lot of records.

Q I'm asking about your -- the Springhill Memorial Hospital Emergency Room record, and assuming his deposition that you have read. Do you have any questions or any problems about the way he handled Bryan's examination and treatnent?

A In reference to what? Are you stating that it's not accurate, or that -- I don't understand what you mean.

Q Let's ask about accuracy first. Do you have any question about the accuracy?

A No. I think he described what he -- his history He described his encounter with the mother and the child, the physical examination, his laboratory tests, and the diagnosis, which was accurate.

diagnosis, which was accurate.

Q Doctor, do you have any question about how h handled the examination, care of Bryan in the Emergenc Room professionally, and I mean medically?

A No. I think that he is, you know, he's done an examination on an infant which is entirely appropri

this child had. The child sometime later had another disease. I think every physician is in that position when they will see an individual on a one-time basis, and they may develop something later. I mean, a person that goes to a cardiologist who has chest pain, and has an EKG, and twelve hours later he could be dead. I mean, there is no way that you can anticipate everything. You have to do things in a logical, systematic manner, and eliminate them, based on what your findings are. And I think in this case that was done.

Q Doctor, in the history that nurse Parnell noted, and that the intake clerk noted, they both made references to Bryan's neck. The intake clerk noted neck hurting. And nurse Parnell noted that Eryan acted as if he couldn't life his head. Would that be particularly suggestive to you when you were looking at this chart?

A Yes. I would pay attention to that, obviously he did. He felt the neck and felt that it was supple, and was not in any pain. First of all, the clerk writes down only what the mother says. Second of all, the nurse does the same thing. So, these are not things that somebo you know, elicited and let's be sure we understand that. Yes, he did. He paid attention to it, he examined it and

felt it was not stiff. You must also recall that those particular symptoms are seen in a whole host of diseases.

Q I think you indicated that the doctor obviously, in your opinion, considered the possibility of Meningitis: is that right?

A Well, I would think if somebody is examining the neck as he is in a febrile child at six to seven months of age, yes, he is.

Q The statement of the mother then, and we can assume, can't we, as you just have, and I assumed that this reference to the neck did come from the mother. Can we assume -- or are you assuming that they weren't accurate?

A No. I didn't say that.

Q Are you saying --

A I don't know who they came from. I wasn't there and I didn't obtain it. And I don't know where they were obtained. Whether it was the mother, father, or somebody that was accompanying them. If you tell me it's the mother and she testifies to that, then that is what it is.

Q Are we assuming that -- are you assuming in your testimony here today that Bryan's neck did or didn't hurt? Or are you making no assumption one way or the other?

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No. I am stating that that was a complaint.

You know, Bryan cannot talk, so, it, you know, did he have a headache? Did he have pain in his cheek? Did he have swollen lymph nodes? Did he have a sore throat? Did he have pneumonia which was causing his neck to hurt? We don't know. Dr. Simmons paid attention to that complaint. He examined the neck, the neck was supple, which in his estimation was against the diagnosis of Meningitis, Did, you know, find an appropriate source for his fever and his infection, and treated it.

Q How did he treat it?

A With Ampicillin.

Q How did he treat it with Ampicillin?

A I assume he told the mother to continue the Ampicillin.

Q Do you recall Dr. Simmons' deposition?

A Not every single page.

Q Do you recall the questioning regarding how much Ampicillin he told her to give the child?

A No.

Q If you had seen Bryan Horton presented, or had presented with all the same hrstory, and you had made an examination of Bryan, and You obtained the same [illegible] Dr.

Simmons says he obtained, wou you have told Mrs. Horton to continue the Ampicillin?

A Yes.

Q Would you have told her how much to give the child?

Well, based on per kilo basis.

Is there any notation of that in this record?

Not on this record.

Q Is that important?

A Yes. To note the appropriate dosage is important.

Q Would you have put that on the record?

A I may or may not have.

Q As a matter of practice, do you put that on the reco

A Again, it depends on the situation.

How about in this situation, would you have put it on the record?

A If she already had the medicine, and she was going to see a physician within, you know, six to twelve hours, I may or may not have. If she had no medicine, then I would have given her a prescription anti probably recorded it.

Q Doctor, what does Tylenol do? If you have a

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febrile child, what is the effect of giving him Tylenol?

A From which oryan and which system?

Q On the child's body at large, how about that?

A I'm not sure I can answer that in two minutes.

Q Will Tylenol bring fever down?

A Yes.

Q Will Tylenol help control inflammation or irritation, muscular irritation?

A Generally not.

Q Does it relieve pain?

A Yes.

Q What about Ampicillin? Does Ampicillin have anv effect on -- or would it have any effect on irritation of a child's muscles?

A I guess it depends on what it's being irritated from.

Q How about Hemophilus Influenza Meningitis?

A I don't -- first of all, that doesn't irritate muscles.

Q All right, tissue.

A Which tissue?

Q Meninges?

A Well, yes. Ampicillin obviously is a drug. If

susceptible to the Ampicilli

then it will reli it, yes.

Q Would the fact that Ampicillin is given a child before seeing a doctor, a child who has Meningitis, Hemophilus Influenza Meningitis, would Ampicillin tend to mask the symptoms of Meningitis in that child?

A Again that depends on the dosage and how it is administered. But generally speaking, no. In well documented studies by a number of physicians that have shown that oral Ampicillin probably does not inhibit or alter the CSF in the clinical findings in Meningitis, and that is well documented,

Q How about Tylenol? Would it affect--

A I don't think so. Not in somebody that has Meningitis.

Q Wouldn't affect the fever at all?

A Fever, yes. But you're talking about Meningitis.

Q Well, isn't a fever a symptom, clinical --

A It's a synpton of everything elsc.

Q But of Meninqitis it is too, isn't it?

A Tt's also a symptom of anything elsc that one might have.

Q But it would affect the fever, wouldn't it

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SIGNATURE OF WITNESS

I, ELIAS G. CHALHUB, M.D., do hereby certify that on this the _____ day of _____, 1984, I have read the foregoing transcript, and to the best of my knowledge it constitutes a true and accurate transcript of *iny* testimony taken OR oral examination on January 27, 1984.

ELIAS G. CHALHUB, M.D.

SUBSCRIBED AND SWORN TO BEFORE ME THIS 21st DAY OF Feb, 1984.

NOTARY PUBLIC
STATE OF ALABAMA AT LARGE

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CERTIFICATE

STATE OF ALABAMA

COUNTY OF MOBILE

I do hereby certify that the above and foregoing transcript of proceedings in the matter aforementioned was taken down by me in machine shorthand, and the questions and answers thereto were reduced to writing under my personal supervision, and that the foregoing represents a true and correct transcript of the proceedings given by said witness upon said hearing.

I further certify that I am neither of counsel nor of kin to the parties to the action, nor am I in anywise interested in the result of said cause.

Terri Carter

TERRI CARTER,
COURT REPORTER

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IN THE CIRCUIT COURT FOR THE

THIRTEENTH JUDICIAL CIRCUIT OF

ALABAMA, MOBILE COUNTY

GARY L. HORTON, As Administrator of the Estate of Bryan Lee Horton,

Plaintiff,

vs.

DR. REYNALD T. SIMMONS, SPRINGHILL MEMORIAL HOSPITAL, et al.,

Defendants.

CIVIL ACTION NUMBER
CV-81-000442

CERTIFICATE OF CORRECTIONS

PAGE NO.	LINE NO.	CORRECTIONS
17	15	"it" changed to "him"
24	13	"negative" changed to "gram negative"
36	7	"ideology" changed to "etiology"

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I hereby certify chat the above corrections were made to the original deposition of ELIAS G. CHALHUB, M.D., taken on January 27, 1984, at 1:00 o'clock, p.m., on this the 23rd day of February, 1984.

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Dr. Curtis M. Graf
Dr. Fritz A. LaCour, Jr.
Dr. Elias G. Chalhub
Dr. Gerald Silverboard

February 17, 1984

Page 17	Line 15	him not it
Page 24	Line 13	*gram* **negative**
Page 36	Line 7	etiology not ideology

Elias G. Chalhub M.D.

Elias G. Chalhub, M.D./cg

DEPOSITION OF ELIAS CHALUB, M.D.
[Estate **of** Bryan **Lee** Horton]

TAKEN ON January 27, 1984
by MR. HUGHES, ESQ.

Pg/Ln	
2/20	Did virology - dealing with respiratory viruses
13/23 - 14/1	Causes of death: shock, cardiac arrhythmia, cerebral edema and herniation
27/14	He had cerebral infarction - disease has been there for an extensive period of time
20/17 - 21/3	Other sites of infection other than lungs: - meningitis: evidence of increased cells in spinal fluid; elevated protein and **Low** sugar
	Meningitis clinically →→
80/10	Oral ampicillin does not inhibit or alter the CSF in meningitis