

1 IN THE CIRCUIT COURT OF THE  
 2 JUDICIAL CIRCUIT, IN AND FOR  
 3 PUTNAM COUNTY, FLORIDA

4 \* \* \* \* \*

5 JESSEE RAY BRADFORD, a minor\*

6 by and through his parents \*

7 and next friends, Mark E. \*

8 Bradford and Wendy L. \*

9 Bradford, et al., \*

10 Plaintiffs, \*

11 \* CIVIL ACTION NUMBER

12 vs. \*

13 \* 89-5957-CA

14 PUTNAM HOSPITAL, INC., d/b/a\*

15 "Putnam Community Hospital,"\*

16 et al., \*

17 Defendants. \*

18 \* \* \* \* \*

19 The testimony of ELIAS GEORGE CHALHUB, M.D.,  
 20 taken at the doctor's offices at 1720 Spring  
 21 Hill Avenue, Suite 422, Mobile, Alabama, on the  
 22 13th day of June, 1991, commencing at  
 23 approximately 3:00 o'clock, p.m.

1 A P P E A R A N C E S  
 2 FOR THE PLAINTIFFS: MESSRS. ALFORD & KALIL,  
 3 P.A.  
 4 ATTORNEYS AT LAW  
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 JACKSONVILLE, FL 32202

5 BY: C. WAYNE ALFORD,  
ESQUIRE  
6 AND: JOHN S. KALIL,  
ESQUIRE

7 FOR THE DEFENDANT,  
PUTNAM HOSPITAL:

a

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BY: RICHARD T. JONES,  
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12 FOR THE DEFENDANT,  
DR. MARTINEZ:

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BY: JOHN R. SAALFIELD,  
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18 FOR THE DEFENDANT,  
DR. RICHTER:

19

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21

22

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MESSRS. TAYLOR, DAY & RIO  
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BY: JOHN C. TAYLOR, JR.,  
ESQUIRE

LYNNROBINSON-DYKES  
COURT REPORTER

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## I N D E X

2

3 Examination

Page

4 Direct - Mr. Alford

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## E X H I B I T S

a (There were no exhibits marked to this deposition.)

3           It is stipulated by and between the parties  
4 hereto and their respective attorneys at law that the  
5 deposition on oral examination of the witness, ELIAS  
6 GEORGE CHALHUB, M.D., may be taken before Lynn  
7 Robinson-Dykes, Commissioner, Notary Public for the  
8 State at Large, and that the said deposition on oral  
9 examination shall be taken in accordance with, and  
10 when so taken may be used in accordance with, the  
11 provisions of the applicable sections of the Florida  
12 Rules of Civil Procedure.

13

14           It is further stipulated that all notices  
15 provided for by said applicable sections of the  
16 Florida Rules of Civil Procedure are waived, except  
17 for the reading over of said deposition to or by the  
18 witness, the signing thereof by him, as is the signing  
19 and certification of said Lynn Robinson-Dykes, and all  
20 other requirements and technicalities of every sort  
21 which would be a prerequisite to the use of said  
22 deposition, including the filing of said deposition,  
23 it being the intent of the parties hereto that said  
1 deposition may be used in evidence as though all<sup>5</sup>  
2 requirements of said applicable sections of the  
3 Florida Rules of Civil Procedure had been complied  
4 with.

5

6           All objections save as to the form of questions  
7 asked are reserved until the time of trial in  
8 accordance with the applicable provisions of the said  
9 Florida Rules of Civil Procedure.

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14           I, Lynn Robinson-Dykes, Commissioner and Court  
15 Reporter, certify that on this date, as provided by  
16 the Florida Rules of Civil Procedure and the foregoing

17 stipulation of counsel, there came before me at the  
18 doctor's offices at 1720 Spring Hill Avenue, Suite  
19 422, Mobile, Alabama, on the 13th day of June, 1991,  
20 commencing at approximately 3:00 o'clock, p.m., Elias  
21 George Chalhub, M.D., witness in the above cause, for  
22 oral examination, whereupon the following proceedings  
23 were had:

6

1 ELIAS GEORGE CHALHUB, M.D.,

2 the witness, after having first been duly sworn  
3 to tell the truth, the whole truth, and nothing but  
4 the truth, was examined and testified as follows:

5

6 DIRECT EXAMINATION

7 BY MR. ALFORD:

8 Q Would you state your name, please?

9 A Elias George Chalhub.

10 Q What is your address?

11 A 1720 Spring Hill Avenue, Mobile, Alabama.

12 Q Doctor, Mr. Jones gave us this morning a copy  
13 of a curriculum vitae. Is that current?

14 A Yes.

15 Q You have been listed as an expert in this case  
16 to give testimony on behalf of the hospital. Can you  
17 tell us when you first got involved in this case?

18 A I believe sometime around the first of this  
19 year.

20 Q Okay. You've been provided materials to look

21 at?

22 A Yes.

23 Q Is that the stack you've looked at down there  
1 on the floor?

2 A Yes.

3 Q Have you looked at the nurses' depositions?

4 A No, I haven't. Those were not sent to me.

5 Q Okay. Have you ever asked to see those?

6 A I have asked to see them if we go any further.  
7 I mean, if this goes to trial, sure.

8 Q Well, my question is: Wouldn't what the nurses  
9 have to say on deposition have relevance to opinions  
10 that you may render in this case?

11 A You know, the chart has to speak for itself,  
12 but certainly I would like to see all the testimony.  
13 That's all that was provided for me,

14 Q Well, do you plan on looking at the depositions  
15 between now and the trial date?

16 A Sure, if they are given to me.

17 Q Okay. I guess my question is --

18 MR. ALFORD:

19 Maybe I could ask Dick, if -- you know, are we  
20 going to finish today? Are you going to give him the  
21 depositions and then he has further --

22 A If my opinions change, then I will be glad to  
23 notify Mr. Jones, and then he can notify you.

1 BY MR. ALFORD:

2 Q Okay.

3 MR. JONES:

4 And I will say for the record, I don't  
5 anticipate -- the doctor and I have generally  
6 discussed what the nurses have said. I don't perceive  
7 they have any relevance to any opinions he holds, but  
8 I -- if we go to trial, I plan, for his own protection  
9 from cross-examination, to make them available to him.

10 MR. ALFORD:

11 Okay.

12 MR. JONES:

13 We won't need to come back.

14 MR. ALFORD:

15 All right.

16 BY MR. ALFORD:

17 Q So, at this point, then, you have not looked at  
18 any deposition of any nurse that's been taken in the  
19 case?

20 A No, I haven't.

21 Q What depositions have you looked at?

22 A Dr. Menkes, Dr. McCormick, Dr. Molofsky, Dr.  
23 Fogelson and Dr. Shinnar.

1 Q Okay. Do you have notes -- is that everything<sup>9</sup>  
2 you've looked at, then, Doctor?

3 A Yes.

4 Q Do you mind if my partner has a look at those?

5 A No.

6 Q It might save some time.

7 A Help yourself.

8 Q **You** have not made any notes of your review?

9 A **No**, I have not.

10 Q Did you receive all the materials pretty much  
11 at the same time or have you gotten materials as we've  
12 taken depositions, for example?

13 A Well, obviously I didn't get all the  
14 depositions at the same time.

15 Q Sure.

16 A Those were sent to me as they were done. I  
17 believe I was sent part of the chart of Shands first,  
18 since it's such a voluminous chart, then additional  
19 parts at a later time.

20 Q **Do** you believe at this point in time that  
21 you've seen all of the hospital records concerning  
22 Jessee Bradford from Shands Teaching Hospital?

23 A Well, I don't know what is not there, so I  
10  
1 can't tell you that.

2 Q Okay. May I see the list that you've made of  
3 what you've looked at?

4 A Sure.

5 Q **So**, you've looked as Dr. Menkes, Dr. McCormick,  
6 Molofsky, Dr. Fogelson and Dr. Shinnar?

7 A Right.

8 Q Okay. You have not, then, looked at the  
9 deposition of either Dr. Martinez or Dr. Richter?



10 A       **No.**

11 Q       It's my understanding from what Mr. Jones tells  
12 us that you do not have opinions concerning the care  
13 rendered by either Dr. Martinez or Dr. Richter; is  
14 that correct?

15 A       Correct. He did not ask me to give an opinion  
16 in that area.

17 Q       Notwithstanding that, have you arrived at any  
18 opinions concerning the --

19 A       **No**, I haven't looked at the case from that  
20 standpoint. If he requests me to do that, I will be  
21 glad to do that.

22 Q       All right. So, if I were to ask you today any  
23 specific opinions you might have concerning any **of** the  
1 care that was rendered by Dr. Martinez or Dr. Richter,  
2 you don't have any opinions?

3 A       No.

4 Q       In addition to the depositions you have looked  
5 at, you've made a list of other materials that you've  
6 reviewed?

7 A       Correct.

8 Q       What else have you reviewed?

9 A       I had a tape which I think had you in it.

10 Q       Okay.

11 A       Of --

12 4       A videotape?

13 A       Yes. Shands' records, the Putnam County

14 Hospital records, two EEG's, one of January '86 and  
15 then of August '86, and then some outpatient records  
16 from Shands and the CT scans done at Shands, I  
17 think,--

18 Q The film?

19 A --the 27th and the 30th.

20 Q Okay.

21 A And the 4th of September. I think there may  
22 even be an additional one.

23

12

1 MR. JONES:

2 The 27th of August of '86, the 30th of August,  
3 '86, and I think the 2nd of September, '86.

4 THE WITNESS:

5 Was it the 2nd or the 4th?

6 MR. JONES:

7 The 4th. I'm sorry. It **was** the 4th. Yes,

8 BY MR. ALFORD:

9 Q The film that you looked at, the CT, I assume  
10 you are talking about the film itself?

11 A Yes. Well, I guess it's -- I don't know  
12 whether it's a copy. I don't think it's the original  
13 film.

14 Q Well, it's a copy of the film?

15 A Right.

16 Q I'm asking that as opposed to a report?

17 A Yes. No, I looked at the films.

18 Q And you probably saw those for the first time  
19 today?

20 A Yes.

21 Q And you've seen the actual **EEG** tracings?

22 You've seen the **EEG** tracings themselves that you've  
23 listed or are you talking about **EEG** reports?

13

1 THE WITNESS:

2 Well, wait a minute. This belongs to the  
3 Rotary Center.

4 MR. KALIL:

5 Can I just --

6 THE WITNESS:

7 No. That's their material.

8 MR. ALFORD:

9 Oh, okay.

10 THE WITNESS:

11 So, let's leave it up there.

12 MR. KALIL:

13 Okay.

14 BY MR. ALFORD:

15 Q What is the Rotary Center?

16 A That's the developmental center for the Mobile  
17 Infirmary.

18 Q Oh, okay.

19 MR. KALIL:

20 Is that like -- you check that out?

21 THE WITNESS:

22 Yes.

23

14

1 MR. JONES:

2 To help you, he has **seen** Xerox copies of the  
3 **EEG** tracings of January of '86 and August of '86.

4 MR. ALFORD:

5 Okay.

6 BY MR. ALFORD:

7 Q Do you know how it came about that Mr. **Jones**  
8 retained you in the case? And by that I mean, how did  
9 he find out about you, if you know that?

10 A No. I think he would probably be glad to tell  
11 you if you asked him, but I don't know.

12 Q When he called you, or whatever, or wrote  
13 you -- did he write you first or call you? Do you  
14 remember?

15 A No, I can't honestly remember.

16 Q Okay. There wasn't any conversation that,  
17 so-and-so gave me your name, or anything like that  
18 that you can recall?

19 A If there was, I don't recall.

20 Q Have you, to your recollection, been involved  
21 in any case in the past where Mr. Jones has been an  
22 attorney involved in the case?

23 A Not to my recollection.

15

1 Q Have you been involved in medical negligence  
2 cases in the past? And by that I mean, before this

3 case?

4 A Sure.

5 Q How often have you done that, say, in the past  
6 **five** years?

7 A I will give perhaps five to fifteen depositions  
8 **a** year. I **will** testify in court one to four times a  
9 year. Over the past year it has been considerably  
10 less.

11 Q Okay. And those are actually medical  
12 negligence cases as opposed to injury?

13 A **No.** Well, no. Not personal injury. I think  
14 there are some products cases, **of** some children here  
15 in Mobile that have had immunizations, and so forth.  
16 But other than that, some have been for plaintiffs and  
17 some have been for defendants.

18 Q Okay. Just in terms of cases where there have  
19 been allegations made of medical negligence -- this is  
20 what you are telling me that is your past experience?

21 A Correct.

22 Q Are there any local -- have you been involved  
23 in any cases on behalf of the plaintiff for any local  
1 attorneys here in this city?

2 A Yes.

3 Q And who would that be?

4 A It's a father and son, and I can't remember his  
5 name right now. I will think of it in a minute.

6 Q That's fine.

7 A But that was a polio vaccine case. I've  
8 reviewed cases for other firms. I think that's the  
9 extent.

10 Q Okay. In terms of reviewing cases for any  
11 other local plaintiffs' attorneys, who have you  
12 reviewed cases for?

13 A Here in **Mobile**?

14 Q Yes, sir.

15 A The Killion firm. I think the Coale, Helmsing,  
16 Lyons firm.

17 Q Cole, C-o-l-e?

18 A C-o-a-l-e.

19 Q Oh, okay. Anybody else?

20 A **No**, I believe that's it.

21 Q When is the last time you actually, if you  
22 recall this, testified in a courtroom setting in a  
23 medical negligence case?

17

1 A The last time?

2 Q Yes, sir.

3 A I guess about a month, month and a half ago.

4 Q And where was that?

5 A In Washington, **D.C.**

6 Q And do you recall what the case was about  
7 generally?

8 A Yes. It was a child that had sustained a  
9 cervical cord developmental malformation that was  
10 associated with some brachial plexus, also,

11 malformations and was delivered by cesarean section,  
12 and I believe the allegation was that the c-section  
13 caused the cervical cord injury. And I've never in  
14 twenty years, in all of the history of the literature,  
15 been able to find a case such as that.

16 Q You testified for the defense?

17 A Yes.

18 Q How about before that? What would be the next  
19 case back?

20 A That would be probably in December of last  
21 year.

22 Q -And where was that?

23 A Gee, I don't recall. Maybe -- it may have been  
1 St. Petersburg, Florida, but I honestly can't<sup>18</sup>  
2 remember.

3 Q In terms of testifying in the State of Florida,  
4 can you tell me approximately how many times you've  
5 testified in a courtroom setting in a medical  
6 negligence case in the State of Florida?

7 A Over ten years?

8 Q Yes, say the past ten years?

9 A I don't know. Ten times maybe. I don't really  
10 have an accurate figure.

11 Q Okay. Do you recall the names of any  
12 plaintiffs' attorneys in the State of Florida that you  
13 have been involved in a case with and testified on  
14 behalf of a plaintiff?

15 A Pat Fogelson out of West Palm Beach.

16 Q Anybody else?

17 A I'm not -- most of the ones that I have  
18 reviewed for plaintiffs have never come to deposition  
19 or trial. So, you know, in terms of whether I've  
20 testified for them,--

21 Q Sure.

22 A --I can't tell you.

23 Q In this case, as we have established, you were  
1 listed as an expert on behalf of the hospital.<sup>19</sup> And I  
2 assume that you are not a nurse?

3 A I think that's a good assumption.

4 Q Okay. Do you feel qualified to render opinions  
5 concerning nursing care in this case?

6 A Well, I can -- you know, I'm the administrator  
7 and head of this hospital. I also am familiar with  
8 the standard of care of nurses, but I am also a  
9 physician.

10 Q Sure.

11 A And I also practice medicine. So, I think I am  
12 probably in a unique position, more than most people  
13 are, in understanding that.

14 Q Have you had experience in the past of teaching  
15 any nursing classes?

16 A Sure. I think everybody that teaches academic  
17 medicine instructs nurses. I continue to do that.

18 Q You teach nurses that come to class to learn



19 about nursing?

20 A We have nursing students throughout our  
21 hospital on a continuing basis. And they are  
22 certainly exposed to me, as being head of the  
23 hospital, on a continuing basis.

20  
1 Q Well, I don't doubt that, but my question is:  
2 As the administrator of the hospital, do you go to a  
3 nursing classroom and stand there and teach Nursing  
4 101, for example, whatever that may be?

5 A Oh, I don't teach nursing. No, I'm not a  
6 nurse. I don't teach nursing under any circumstances.

7 Q You have never taught a nursing class, then?

8 A No.

9 Q And you've never taught a nursing class  
10 concerning how nurses ought to render nursing care,  
11-for example, to a seizure patient?

12 A No. I don't think there is any class that  
13 would do that. I think the class would be on whether  
14 you follow appropriate orders and how one does that.  
15 But I've not done that either.

16 Q Okay. What nursing standards of care are you  
17 familiar with?

18 A Well, I mean, in terms of what -- you know,  
19 nurses are obliged to be properly trained,  
20 credentialed, and then implement orders as they are  
21 recommended by the American Nursing Association and  
22 then also by the policies and manuals of a hospital.

23 Q Are you familiar with any nursing standards of  
21  
1 care that might exist in the State of Florida, for  
2 example?

3 A For the state? **No.**

4 Q Yes, sir.

5 Are you familiar with any nursing standards of  
6 care that exist insofar as Putnam Community Hospital  
7 is concerned?

8 A **No.**

9 Q Then you've never seen, I take it, the nursing  
10 standards of care that are printed and that are part  
11 of the nursing manual that was in existence back in  
12 August of 1986 at Putnam Community Hospital?

13 A **No.** Mr. Jones has not provided that to me.

14 Q Wouldn't that be relevant - and let me finish  
15 in terms of any opinions that you may have concerning  
16 the standard of nursing care that was rendered to  
17 Jesse Bradford at that same hospital?

18 A Yes, I think it may be relevant if there were  
19 some obvious deviations, but as I review the chart,  
20 there were orders written, the nurses carried those  
21 out, and I think in a timely manner. So, I see no  
22 deviation from my reviewing the chart.

23 Q Sure.

22  
1 A I would be happy to look at the policies and  
2 procedures manual.

3 Q I'm not sure I understand which hospital that

4 you are the administrator. Is it the Mobile Infirmary  
5 here?

6 A That's correct.

7 Q What does that involve, the running of the  
8 hospital from an -- I don't want to oversimplify, but  
9 just the administrative problems that the hospital  
10 has, funding, staffing, those kind of things?

11 A We have seven hundred and four beds,  
12 thirty-five hundred employees, and I'm responsible for  
13 the function of that hospital.

14 Q Okay. Your hospital would have a director of  
15 nursing, I assume?

16 A Yes.

17 Q And on each of your shifts each day, you would  
18 have a house supervisor on duty?

19 A Well, we have a nursing director and an  
20 assistant director of nursing. We have nursing  
21 supervisors, nurse managers, and we have a multitude  
22 of other type of nurses.

23 Q And do you have written standards of care that  
1 apply to the nursing staff at this hospital, that is,  
2 Mobile Infirmary?

3 A Yes.

4 Q And you are familiar with those?

5 A Well, I can't say that I've read every single  
6 one of them, no.

7 Q Most doctors that we depose in these cases --

a

8 and, for example, in this case, Mr. Jones has listed  
9 nurse as an expert on standards of care. And what I'm  
10 trying to find out is, why is it that you feel that  
11 you have the expertise to testify in this case as to  
12 whether or not these nurses met standards of care of  
13 nurses at Putnam Community Hospital?

14 A Well, I think really any physician is capable  
15 of doing that from a physician's standpoint, and  
16 that's what I'm doing, You know, I have the  
17 opportunity also to be an administrator of a large --  
18 of the largest private hospital in the State of  
19 Alabama. Now, in terms of the -- following orders,  
20 implementing them and reporting them in a timely  
21 manner, it was, you know, absolutely done in this  
22 case. And so, I have no difficulty with that.

23 Q And you are basing that solely on the pages of  
1 the hospital record that you have looked at? <sup>24</sup>

2 A What else would you base it on?

3 Q Well, wouldn't it be relevant as to what the  
4 nurses recalled about Jessee's condition at the time  
5 he was in the hospital that didn't necessarily get put  
6 in the chart?

7 A Well, I think it might shed light, but  
8 ultimately it's what's in the chart that will  
9 determine what one has to make a conclusion on.  
10 Obviously people have different memories and different  
11 recollections, and it also has to be consistent with

12 what's the matter with the child. I mean, if a  
13 recollection is totally inconsistent with a clinical  
14 course, then either somebody has a bad recollection or  
15 they are inaccurate. But in this case, I think their  
16 observations are entirely consistent with what  
17 occurred to this child.

18 Q If a nurse taking care of Jesse Bradford, for  
19 example, on the 26th of August, 1986, saw him having  
20 what she had described as a seizure **or** symptoms  
21 suggestive **of** having -- of the child having a seizure  
22 and did not report -- did not, first of all, put it in  
23 the chart and, beyond that, did not report that to one  
1 of the physicians, wouldn't you want to know that in<sup>25</sup>  
2 this case in deciding whether or not these nurses met  
3 the standard *of* care?

4 A Oh, I think they met the standard. He had a  
5 lot of seizures, and he probably had seizures they  
6 didn't put in there, but he didn't change. He made  
7 absolutely really no significant change throughout the  
8 night.

9 You can't record everything in a chart. A  
10 chart is to jog people's memory. It's not to record  
11 everything, and it's not to be held accountable for  
12 every single thing. Unfortunately, you know, we don't  
13 use medical records that way. We use medical records  
14 to record what may be pertinent. And in this  
15 particular case, I believe that everything that was

16 recorded is pertinent.

17 I mean, there is no question this child seized,  
18 you know, on the 26th. He seized on the 27th. He  
19 seized on the 28th. He seized on the 29th. And he  
20 seized on the 30th.

21 Q If you don't know, Doctor -- I don't mean to  
22 again ask the obvious, but if you don't know what  
23 these nurses have said as to their recollection of the  
24 child's condition and what they may not have charted,  
25 how can you sit there and tell us that it's your  
26 opinion that everything pertinent was put in the  
27 chart?

28 A What's in the chart appears pertinent. Now, if  
29 in those depositions they say that the chart is  
30 absolutely wrong and, you know, I never said that or  
31 never recorded that and I have another opinion now,  
32 then obviously I would pay attention to that.

33 Q How about if they've testified that the records  
34 have been changed, that on two pages of the chart what  
35 was in the original chart that was done at the time  
36 was changed some three years later? Wouldn't that  
37 have some relevance to you sitting here today saying  
38 that what's in the chart is -- everything there is  
39 pertinent and correctly put down?

40 A Well, it obviously would depend on what was  
41 changed. Is it going to depend on the condition of  
42 the child, the cause of his problem and the outcome?

20 Probably not.

21 Q Well, what if something was changed as to the  
22 time at which certain symptoms were observed by the  
23 nurse?

27

1 A So?

2 Q Well, that's my question. Wouldn't you want to  
3 know that?

4 A Well, sure, but it's not going to change the  
5 fact that the child remained essentially the same over  
6 that period of time, and he continued to seize for  
7 over three days at another hospital despite all kinds  
8 of things. And so, I don't understand your point.

9 Q Well, I guess my point is and my question is:  
10 In order to render opinions as to -- as I understand  
11 it, it's your opinion that you believe that whatever  
12 was pertinent that happened during that admission at  
13 Putnam was placed in the chart. And my question is:  
14 Don't you --

15 A No. Go ahead.

16 Q Don't you have to concede that without knowing  
17 what the nurses have said about those events, that you  
18 don't know that?

19 A I have told you that I -- you know, if Mr.  
20 Jones provides me the opportunity to read them, I will  
21 read them. Okay? Based on what I've seen at the  
22 present time, I have no problem with the chart and  
23 what occurred with this child and how that was

1 managed, particularly at Putnam, because it doesn't  
2 bear any relationship to what this child had or to his  
3 outcome. Now, if there are falsifications in the  
4 chart and there are omissions and there are additions  
5 that materially affect the studies and the outcome of  
6 this, then I obviously would pay attention. Sure, I  
7 would. That's not honest and that would not be  
8 appropriate. But whether it has any bearing on what  
9 the child had and the outcome is another point.

10 Q Doctor, how can you sit here today and, in good  
11 faith and in fairness to everybody involved in this  
12 case, testify that in your opinion the nurses at  
13 Putnam met the standard of care contained in their own  
14 hospital manual when you have never seen it?

15 A Oh, I can't. I've told you that. As it is in  
16 the chart and as I understand nursing, it's  
17 appropriate to me. Now, if the manual states that  
18 they should have done something else and it's in  
19 direct conflict, then, again, that may be -- they may  
20 not have met the standard of care from that aspect.  
21 Does that affect the cause of this child's problem and  
22 the outcome? No.

23 Q Then, you agree with me 'hat as we sit here  
1 now, you do not have an opinion, then, as to whether  
2 or not the nursing care rendered to Jesse Bradford  
3 met the standards of care, the written standards of  
4 care, that were in effect at that hospital back in



5 1986?

6 A Since I have not seen those policies and  
7 procedures, no, I can't tell you that. I can tell you  
8 that, for a child in this condition, with orders  
9 written such as this, those were met.

10 Q Do you have an opinion concerning the p.r.n.  
11 order that was written to give Valium on a p.r.n.  
12 basis? Wouldn't you have to agree that that's an  
13 ambiguous order that should have been -- that the  
14 nursing staff should have had clarified?

15 A No, I think that's up to the nurse.

16 Q What do you mean by that?

17 A Well, I mean, it's up to her understanding of  
18 it. It's up to the situation. And it's up to a set  
19 of circumstances.

20 Q Is it your opinion in this case that the nurses  
21 rendering direct patient care to Jesse Bradford had  
22 an understanding of what that order meant?

23 A I can't speak for the nurse, but I will be glad  
1 to look at the deposition, if that is asked. <sup>30</sup>

2 Q Well, you would want to know that, wouldn't  
3 you? You would want to know what the nurse understood  
4 that order to mean before you could render an opinion  
5 that that was a clear order and didn't need to be  
6 clarified?

7 A Well, most p.r.n. orders are somewhat  
8 ambiguous. It depends on that nurse's understanding

9 of the case, her understanding of the patient and her  
10 observations at that time. I do not see anything  
11 ambiguous in the chart. Now, if there is some  
12 testimony to the contrary, I will be glad to look at  
13 it and consider it.

14 Q Can you tell us what Nurse Stoeffler's  
15 understanding was as to when the Valium should have  
16 been given?

17 A Well, you know I've not read her deposition, so  
18 I can't tell you about it.

19 Q Well, wouldn't you want to know that in order  
20 to --

21 A In terms of what?

22 Q Well, in terms of deciding that the -- that,  
23 these nurses that were assigned to Jessee Bradford to  
1 take care of him, did they really know when to give<sup>31</sup>  
2 Valium? Did they have any guidelines when to give the  
3 Valium?

4 A It says p.r.n. and it says for a change in  
5 condition.

6 Q Well, wouldn't you want to --

7 A Let's get the order out and look at it. Which  
8 one are you talking about?

9 Q Sure. Okay. The order I'm talking about is  
10 the one that was contained in the -- the initial order  
11 that was written, I think, by Dr. Jones.

12 MR. ALFORD:

13 Do you have a copy **of** the chart there?

14 MR. JONES:

15 I will leaf to it in just a moment.

16 (WHEREUPON, THERE WAS AN

17 OFF-THE-RECORD DISCUSSION.)

18 BY MR. ALFORD:

19 Q Doctor, the order I'm asking about **is** on page  
20 17.

21 A Okay.

22 Q **Of** my -- I think your numbers are the same.

23 A Right.

32

1 Q It says Valium, two milligrams, IV, p.r.n.,  
2 seizures, and call Dr. Martinez at same or problem,  
3 And my question is: From a nursing standpoint, isn't  
4 that an ambiguous order?

5 A You would have to ask the nurse, and which  
6 nurse you are asking, as to whether it's ambiguous.

7 Q That would be a nursing standard of care  
8 question, I guess; is that what you are saying?

9 A No. I mean, you are just asking a question  
10 about how somebody interprets a sentence. I mean,  
11 that's a personal thing.

12 Q Well, okay. My question is --

13 A I mean, it's ambiguous, too, to say -- have  
14 Phenobarbital at the top. I mean, what does that  
15 mean? **So**, you have to ask somebody what that means.  
16 It depends on their level of knowledge, their

17 background and what occurs. **So**, it's going to vary.

18 **Q** Is it an adequate and appropriate order, **for**  
19 example, for the physician **to** say, if this child has  
20 seizures, give Valium? Now, wouldn't the nurse want  
21 to find out, Doctor, what do you mean by a seizure?

22 Is it a seizure every five minutes, should I give  
23 Valium? If it lasts more than five minutes, should I

1 give the Valium? If it's a focal point seizure,  
2 should I give it? Are you talking about a grand mal  
3 seizure? And so, wouldn't you expect a nurse, in  
4 order to carry out that order, to get that order  
5 clarified?

6 **A** No. I would expect the nurse, if she doesn't  
7 understand the order, to get it clarified. If she  
8 understands that, she can carry it out as it is  
9 indicated.

10 **Q** Is it your understanding in this case that the  
11 nurses that were charged with carrying out this order  
12 had a clear understanding themselves as to when to  
13 give Valium?

14 **A** I have not talked with them, so I don't know  
15 that.

16 **Q** And you haven't read their depositions?

17 **A** No.

18 **Q** And so, you can't tell us whether they thought  
19 that meant a grand mal seizure or a seizure that  
20 lasted over five minutes or anything; you don't know

21 that?

22 A No, I can't tell you that.

23 Q So, then, you couldn't tell us as we sit here  
1 today, as I understand it, whether or not, in your  
2 opinion, the nurses in this case properly carried out  
3 the doctor's orders?

4 A Well, they gave Valium, and if their  
5 understanding -- and if they were unclear of it and  
6 did not give it with an understanding of what they  
7 were doing, then obviously that's not appropriate.

8 Q Do you find anything in the record that you  
9 looked at that would tell you whether any of the  
10 nurses assigned to Jesse Bradford made any efforts to  
11 get this order - I'm referring now to the same order  
12 again on page 17 - clarified?

13 A Well, that's assuming they didn't understand  
14 it, Mr. Alford. So, I mean, I don't know. You would  
15 have to ask them.

16 Q Doctor, you are here today, as I understand it,  
17 to testify that these nurses did everything right?

18 A I am here to testify --

19 Q And that --

20 A Wait a minute. Let me finish, and I will tell  
21 you what I am here to testify.

22 Q Sure. Okay.

23 A And maybe we can end all this. Okay?

1 Q Okay.

2 A I'm here to testify that according to my review  
3 of the chart, there were orders written; they were  
4 carried out. This child did not change significantly  
5 over that twenty-four hour period that he was at  
6 Putnam. Furthermore, his condition remained the same,  
7 worsened at Shands, the basis of his underlying  
8 pathological process, and the period of time at Putnam  
9 does not contribute to or cause his problems, I mean,  
10 that's pretty clear from the chart, from the data and  
11 from the understanding of medicine.

12 Q I'm going to ask you questions, Doctor, about  
13 your opinions on the causation parts of the case.

14 A That's fine.

15 Q I promise you. I'm trying to see if I can find  
16 out more precisely what your opinions are as to the  
17 nursing care that was rendered. And let me tell you  
18 why I'm doing that, and that's because Mr. Jones,  
19 Lawyer Jones, told us that you were going to testify  
20 in that area.

21 A Yes, and I am, as a physician, as an  
22 administrator. I'm not a nurse.

23 Q Okay.

1 A Okay? And I'm not testifying as a nurse. I'm  
2 testifying as a physician who gives orders to nurses  
3 and they carry them out.

4 Q Uh-huh. And you believe based on this chart  
5 certain orders were given and certain orders were

6 carried out?

7 A That's correct.

8 Q And that's as far as you are willing to go in  
9 terms **of** talking about the nursing care that was  
10 rendered?

11 A Well, what else would you like me to say? I'm  
12 not a nurse.

13 Q Well, I was in hopes that you would have  
14 reviewed the entire case and could tell us --

15 **MR. JONES:**

16 And he has. Wait a minute. I object to the  
17 form of that question. He has reviewed the pertinent  
18 data. You know and I know the nurses' depositions  
19 don't make any difference. I know you think they do.  
20 I don't think they do or I would have given them to  
21 him.

22 **BY MR. ALFORD:**

23 Q Well, would it matter to you, Doctor, in  
1 rendering an opinion as to the nursing care in this <sup>37</sup>  
2 case, that we asked the three nurses, the 3:00 to  
3 11:00 nurse -- excuse me, the 7:00 to 3:00 nurse, the  
4 3:00 to 11:00 nurse, the 11:00 to 7:00 nurse, their  
5 understanding of when to give Valium and we got  
6 everywhere from, **well**, if it lasted more than five  
7 minutes, I probably should have done it or should do  
8 it, to I don't know. Doesn't that matter in terms of  
9 whether the nurses properly carried out their duties

10 in this case?

11 A Well, it matters whether they understood the  
12 order. And if they didn't understand the order, they  
13 should not have carried it out. It doesn't make any  
14 difference in what this child has and the outcome, no.

15 Q Well, I understand that's your opinion, but  
16 wouldn't you feel more comfortable in this case -- not  
17 having reviewed the nurses' depositions, not having  
18 reviewed the standards of care that the hospital had  
19 at Putnam, wouldn't you be more comfortable in this  
20 case not giving opinions as to whether the standard of  
21 care of these nurses were met?

22 MR. JONES:

23 Excuse me. I object to the form of the  
1 question. More comfortable is not the standard in  
2 Florida. The question is whether to a reasonable  
3 degree of probability the doctor holds an opinion,

4 MR. ALFORD:

5 Well, the threshold question is does he have  
6 the expertise in that area, and I'm just suggesting  
7 that -- and I think the doctor has told us.

8 BY MR. ALFORD:

9 Q You are not a nurse, Doctor?

10 A That's correct.

11 Q You haven't taught nursing?

12 A No.

13 Q You haven't seen the standards that are in the



14 nursing manual at Putnam Community Hospital?

15 A That's correct.

16 Q And my question is: Based on that -- and I  
17 will ask it this -- I know this is repetitious, but I  
18 want to see if I've got a complete answer. Why do you  
19 hold yourself out in this case as an expert on the  
20 nursing standard of care?

21 A I was asked by Mr. Jones to look at these  
22 orders written by a neurologist and another physician  
23 as to whether they were appropriate orders, as they  
1 were written, and as to whether they were carried out<sup>39</sup>  
2 and whether this child changed materially over that  
3 period of time. And as a physician,--

4 Q Okay.

5 A --that is not -- there is no deviation in that  
6 situation. Now, if somebody comes up and said, I  
7 didn't understand what I was doing and I'm  
8 incompetent, then that obviously would change some  
9 things.

10 Q But --

11 A Wait a minute, now. Let me finish.

12 Q Okay. Go ahead.

13 A Or if they testified that this chart is just a  
14 bunch of hogwash, that nothing is true, that obviously  
15 is pertinent. But that's not my understanding of it.  
16 So, based on what I see here, and as a physician and

a

17 neurologist taking care of patients with seizures,

18 they carried out the orders as given. And because  
19 this child did not change materially, I -- and the  
20 physicians were aware of what was this child's problem  
21 and the nurses were aware they were aware.

22 Q The nurses were aware that who was aware? The  
23 doctors?

40

1 A Yes.

2 Q What doctor was aware of anything that was  
3 going on with Jessee from 11:00 p.m. on the 26th of  
4 August until 7:00 o'clock the next morning?

5 A Well, Doctor - what's his name - Wright?

6 MR. JONES:

7 Richter.

8 A Richter and Dr. Martinez.

9 BY MR. JONES:

10 Q How were they aware of what was going on with  
11 this child from 11:00 o'clock on the 26th of August,  
12 1986, till 7:00 o'clock on the morning of August 27th?

13 A Well, they saw the child -- well, Dr. Martinez  
14 did not see the child, but Dr. Richter saw the child.  
15 He was aware. He obviously didn't change. So, he was  
16 aware that the child did not change.

17 Q Is it your understanding from your review of  
18 these records that Dr. Richter saw Jessee Bradford on  
19 the evening of August 26th, 1986, let's say, after  
20 5:00 p.m.?

21 A No, he wasn't there after 5:00 p.m.

22 Q And is it your understanding that after 11:00  
23 p.m. on the 26th of August, 1986, that Dr. Martinez  
1 saw this child? 41

2 A No, he did not see the child either.

3 Q Then, let me ask my original question: How did  
4 they know what was happening as far as Jessee is  
5 concerned from 11:00 at night to 7:00 in the morning?

6 A Well, if he would have changed, the nurses  
7 would have called him, but the record shows he didn't  
8 change, I think, significantly that night. So, I  
9 assume that because he did not change, they were not  
10 notified.

11 Q Well, doesn't Nurse Cordoza, who was the nurse  
12 from 11:00 p.m. to 7:00 a.m., doesn't she chart in the  
13 chart that Jessee had seizure activity all throughout  
14 that night?

15 A And all throughout that day.

16 Q And isn't that something --

17 MR. JONES:

18 Excuse me. Note my objection to the form of  
19 that question. That assumes a fact that is not  
20 written in the chart.

21 MR. ALFORD:

22 But a fact that's in a deposition, which the  
23 doctor hasn't seen. So, maybe that's...

1 MR. JONES:

2 I would even object that it's in the

3 deposition, because she said both things, and we've  
4 already been over that once, Wayne.

5 MR. ALFORD:

6 I understand.

7 BY MR. ALFORD:

8 Q Wouldn't Jesse's condition from 11:00 p.m. to  
9 7:00 a.m. as charted by Nurse Cordoza -- isn't what  
10 was happening with him during that shift something  
11 that ought to have been communicated to either Dr.  
12 Martinez or to Dr. Richter?

13 A What do you have in mind?

14 Q Well, I have in mind the note that she charted  
15 at the end of that shift, on page 29 of my--

16 A Okay.

17 Q --chart. In the very last note, where it says,  
18 status unchanged, continues to have periods of  
19 jerking, rolling eyes, approximately every fifteen to  
20 twenty minutes, with each episode lasting two to three  
21 minutes throughout the night. Now, aren't those  
22 symptoms that Dr. Martinez would want to know about?

23 A Well, you answered your own question. It says  
1 status unchanged. 43

2 Q Well, aren't those symptoms that Dr. Martinez  
3 would want to know about?

4 A Well, why are they different than what had  
5 occurred from 10:30 in the morning?

6 Q Well, Dr. Martinez has testified that he would

7 have liked to have been told about that. **So, do** you  
8 disagree with that?

9 A **No.** I mean, if he would have liked to, that's  
10 his option. I mean, the fact is that the child did  
11 not change significantly. Now, if the child did  
12 change significantly, and which is the impression of  
13 that nurse, then she should have notified somebody.  
14 But if he hasn't, she -- that is her option to do  
15 that.

16 Q Did you read Dr. Collier's deposition?

17 A Who?

18 Q Collier?

19 MR. SAALFIELD:

20 It hasn't been typed **up**, has it?

21 MR. ALFORD:

22 I've got my copy. I don't know --

23

44

1 MR. JONES:

2 He hasn't.

3 MR. ALFORD:

4 That's not on the list.

5 (WHEREUPON, THERE WAS AN

6 OFF-THE-RECORD DISCUSSION.)

7 BY MR. ALFORD:

8 Q Isn't that, in terms of Jessee's continued  
9 symptomatology -- and let's assume this nurse  
10 adequately observed and charted that, that these

11 things did continue throughout the night. And my  
12 question is this: Shouldn't that nurse have notified  
13 the doctor that these symptoms were recurring  
14 throughout the night?

15 A Well, **no**. I mean, the order is, at least as I  
16 understand it, if there are any significant changes **or**  
17 problems. Now, if it's the same, then she is assuming  
18 that the doctors are aware of that, and, you know,  
19 that's up to her. If she's uncomfortable with it,  
20 then obviously she can call the physician or call  
21 somebody else. I mean, that's certainly her  
22 prerogative, and I would encourage her to do that. If  
23 she's not uncomfortable with it, if the child is not  
45  
1 changing, then that's her option.

2 Q Do you have an opinion as to whether Nurse  
3 Cordoza, at her level of training, was competent to  
4 assess this child's condition throughout that night?

5 A **No**, I have no opinion.

6 Q And I will ask the same question as to Nurse  
7 Stoeffler, that was on from 3:00 to 11:00 p.m.?

8 A In terms of whether they are -- no, I don't  
9 have an opinion in terms of -- based on their  
10 training.

11 Q You can't tell from the bare chart whether they  
12 have had thirty years' experience treating seizure  
13 patients or ten days, can you?

14 A **No**.

15 Q       **So**, you have no opinion on that?

16 A       **No**, but I would ask you, why is that material?

17 Q       Well, I get to ask the questions in this  
18 setting, Doctor. I understand your point, that -- I  
19 guess your opinion is that, whatever happened at  
20 Putnam Hospital didn't have anything to do with  
21 Jessee's outcome; correct?

22 A       **No**, I didn't say that.

23 Q       Well, it's your opinion that whatever medical  
1 care was rendered or not rendered there had nothing to  
2 do with his outcome; is that a fair statement?

3 A       No, I didn't say that either.

4 Q       Tell me what your opinion is, then.

5 A       My opinion is that the cause of this child's  
6 problem and the outcome is unrelated to the length of  
7 time at Putnam Community Hospital.

8 Q       Doctor, was there any failure on the part of  
9 these nurses, in your opinion, to administer Valium as  
10 ordered?

11 A       **Is** there any failure?

12 Q       Correct. In other words, based -- again, I  
13 understand that you are limited as to what you've  
14 looked at; but based on the chart itself, do you have  
15 an opinion as to whether or not the Valium was  
16 administered appropriately? And my question is: I'm  
17 sure you noticed that he got one dosage of Valium  
18 while an inpatient at this hospital?

19 A That's correct.

20 Q And my question is: Based on the symptoms that  
21 the nurses charted, shouldn't they have administered  
22 Valium beyond that initial dose?

23 A **No.** I mean, did they -- you know, and again it  
1 was whether the seizures were excessive, changed, or <sup>47</sup>  
2 in their assessment -- you know, and again, I have not  
3 read their depositions, but according to the chart,  
4 his condition really did not change significantly.  
5 **So,** it would not mandate that somebody give him  
6 additional medication.

7 Q Did he not continue to have seizures?

8 A Yes, he did. He continued to have seizures for  
9 three or four more days, with many, many medications.

10 Q Uh-huh. Well, I'm trying to ask you about at  
11 Putnam right now.

12 A Well, I understand.

13 Q At Putnam Community Hospital, he was admitted  
14 at about 10:30 in the morning; correct?

15 A Correct.

16 Q To the floor, apparently?

17 A Yes.

18 Q In that time frame. He was there until the  
19 following morning and was transferred by helicopter to  
20 Shands Teaching Hospital?

21 A That's correct.

22 Q And throughout that hospitalization, isn't it



23 true that Jessee continued to have seizures?

48

1 A Intermittently, **yes, or** myoclonic jerks. You  
2 know, it's not entirely clear to me that all **of** these  
3 were seizures.

4 Q Based on your review of the chart, can you tell  
5 me, from what you see here, how often Jessee, in fact,  
6 had seizures?

7 A No. I mean, it's hard to know what these  
8 individual movements were. I mean, if you take every  
9 single movement that he had, which is unlikely, I  
10 would say every fifteen or twenty minutes. If not,  
11 then it -- it varies as to what you interpret those  
12 signs and symptoms as. Obviously his vital signs  
13 didn't change significantly, his temperature came  
14 down, which would be unusual with continuous seizures.  
15 **So**, I would have to say they probably weren't mal  
16 seizures.

17 Q **Is** it your testimony that Jessee never had  
18 continued seizures to the point where the nursing  
19 staff, in order to carry out the p.r.n. order that was  
20 in effect -- that it was not necessary to give Valium?

21 A That's a judgment decision by the nurse.

22 Q **So**, beyond giving the two milligrams of Valium,  
23 then, you have no opinion yourself as to whether or  
1 not the nursing staff in this case should have given  
2 additional Valium?

49

3 A No. One has to see the seizures themselves or

12 was brain damaged?

13 A Yes. Probably in utero.

14 Q Okay. Do you have an opinion when he became --  
15 at what point in time he became significantly,  
16 profoundly brain damaged?

17 A What do you mean by significantly and  
18 profoundly?

19 Q Well, functionally, to the point where he  
20 came -- to the condition he is today? Do you know his  
21 condition today?

22 A Yes.

23 Q Okay.

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1 A **Ask** your question again.

2 MR. ALFORD:

3 Read my question back, please.

4 "Question: Okay. Do you have an opinion when  
5 he became -- at what point in time he became  
6 significantly, profoundly brain damaged?"

7 THE WITNESS:

8 No, that's not the question.

9 THE REPORTER:

10 "Question: Well, functionally, to the point  
11 where he came -- to the condition he is today? Do you  
12 know his condition today?"

13 THE WITNESS:

14 I said, yes, I do.

15 BY MR. ALFORD:

16 Q And do you have an opinion as to when he became  
17 brain damaged to that extent?

18 A You mean -- to what extent? I'm having a hard  
19 time. I mean, this child was brain damaged before he  
20 went to Putnam. I mean, you are saying the cause of  
21 his brain damage after he left Putnam?

22 Q To what extent was he -- do you have an opinion  
23 as to what extent he was brain damaged before he came  
1 to Putnam? 53

2 A Yes. I mean, he's a child that was  
3 developmentally delayed.

4 Q Sure.

5 A And, in all probability, had an in utero  
6 disorder or either a developmental disorder or a  
7 metabolic degenerative disease.

8 Q Okay.

9 A Which accounted for his developmental delay and  
10 seizures.

11 Q Is that your opinion as to the cause of his  
12 seizure disorder, that it was in utero?

13 A Yes.

14 Q One of the hospital charts, maybe the January  
15 1986 chart, at Putnam refers to idiopathic epilepsy.  
16 Is that the same thing as what you are saying?

17 A No.

18 Q You disagree, then, with that opinion?

19 A Well, I think it's -- sometimes it's semantics.

20 I think Dr. Greer probably phrased it appropriately in  
21 1986 of January, when he says that the child has slow  
22 development on a congenital basis.

23 Q Okay.

1 A And would fit the finding of a small head<sup>54</sup>  
2 circumference or microcephaly, which just doesn't  
3 occur **for** any reason. It means the brain doesn't  
4 grow. That's usually as a result of an in utero  
5 developmental problem or metabolic degenerative  
6 disease, and I think that's appropriate in this case.

7 4 In this case, at the time -- excuse me, before  
8 Jessee came to Putnam Community Hospital on the  
9 morning of August 26th, 1986, you would agree that he  
10 was -- he could talk, he could see, he could walk; I  
11 mean, he wasn't severely brain damaged at that point  
12 in time; correct?

13 A Well, I don't know what you mean by severely.  
14 Compared to what?

15 Q Well, how would you -- is that not a medical  
16 definition?

17 A Well, I mean, severely -- what I think is  
18 severe and what you think is severe are two different  
19 things.

20 Q Do you think Jessee Bradford is severely brain  
21 damaged now?

22 A Yes. Well, I think he has a severe  
23 neurological impairment.

1 Q What is his condition now, **or** your  
2 understanding?

3 A He is microcephalic, he's blind, he's spastic,  
4 quadriparetic. He has seizures. He is incontinent  
5 and profoundly retarded.

6 Q When did that occur, those conditions?

7 A Well, he was microcephalic since birth. He had  
8 seizures as a result of his congenital problem. He  
9 was developmentally delayed as a result of that. When  
10 he became spastic, quadriparetic and had decreased  
11 vision was after he left Shands Hospital.

12 Q When Jessee arrived -- is it your opinion,  
13 then, that when Jessee was -- when Jessee first  
14 arrived at Putnam Community Hospital in the ER that  
15 morning **of** the 26th of August 1986, that he was not  
16 significantly brain damaged at that point?

17 A Well, no, I think he was significantly brain  
18 damaged from birth.

19 Q Okay. Describe for me, if you would, please,  
20 sir, your opinion as to his neurologic condition when  
21 he arrived at Putnam Community Hospital on the morning  
22 of August 26th, 1986.

23 A He had a decreased level of responsiveness and  
1 was having some seizures and some involuntary<sup>56</sup>  
2 movements.

3 Q Okay. What caused his worsening condition?

4 A You mean after he left Shands?

5 Q       **No**, sir. From the point in time -- from  
6 morning of August 26th, **1986**, would you agree that he  
7 became -- his condition worsened from that point in  
8 time?

9 A       Well, I think he was stable for a number of  
10 days, and then when he developed cerebral edema at  
11 Shands Hospital, as evidenced **by** the second scan, he  
12 got severely worse, and as a result of that, it has  
13 contributed to his other neurological impairment,  
14 which I think is significant in a child that's  
15 developmentally delayed.

16 Q       What was the cause of that?

17 A       Oh, I think that there are several  
18 probabilities, the most pertinent of which is an  
19 infection, either hepatitis, encephalitis or a  
20 metabolic degenerative disease.

21 Q       Uh-huh. Have you -- you've looked at the  
22 Shands records, then?

23 A       Yes, I have.

1 Q       Have you seen in the Shands records that the  
2 doctors did some studies and ruled out any type of  
3 viral encephalitis or bacterial infection?

4 A       Which one did you have in mind?

5 Q       Well, it's in the chart. You haven't seen  
6 that?

7 A       No. No. There is a lot in the chart, but  
8 which ones did you say they rule out?

9 Q I'm referring to the tests that Dr. -- you have  
10 not seen Dr. -- well, I guess it hasn't been written  
11 up yet. Dr. Goodwin, who is a pediatric intensivist  
12 that took care of Jesse at Shands, has testified on  
13 his deposition that the Shands physicians ruled out  
14 any type of viral encephalitis.

15 A Well, I don't know how he could do that. Is he  
16 a virologist?

17 Q I'm just telling you what he testified to. You  
18 disagree with that, obviously?

19 A Oh, obviously, yes.

20 Q What is it in the Shands chart that you point  
21 to that supports your theory that this child had a  
22 viral -- is that your theory, he had a viral  
23 encephalitis?

1 A That's not my theory, Mr. Alford. That's<sup>58</sup>  
2 supported by the chart and the facts and the  
3 subsequent course, which is in the record.

4 Q Tell me what in the chart, then, supports that  
5 theory. What are you looking at?

6 A This is a child that is obviously  
7 developmentally delayed, with microcephaly, that has  
8 fever, has intermittent seizures, which remains  
9 relatively stable, then develops markedly increased  
10 liver function studies, with an SGOT of over  
11 forty-five hundred, a prolonged partial thromboplastin  
12 time, then a number of days later develops a severe

13 cerebral edema, continuing seizures, despite all  
14 medications and all therapy, and has to go into a  
15 Phenobarbital coma, and in all probability, herniated.  
16 It's not clear to me that that occurred, but he  
17 suffered significant ischemic brain damage after a  
18 number of days at Shands Hospital as a result **of** the  
19 cerebral edema,

20       **Now**, that's either as a result of hepatitis and  
21 encephalitis or an hepatic encephalopathy or a direct  
22 encephalitic process **or** metabolic degenerative  
23 disease, still as yet undefined.

59

1 Q       Uh-huh. Is there any laboratory study that was  
2 done that you could show me in the Shands record that  
3 supports your position that Jessee had some type of  
4 infection, either viral or bacterial?

5 A       Sure.

6 Q       Show me that, if you would.

7 A       The increased **SGOT**, increased prothrombin time,  
8 cerebral edema and seizures.

9 Q       Cerebral edema is not a laboratory test?

10 A       It is a laboratory test. It's an x-ray.

11 Q       Oh, okay.

12 A       It's a clinical finding.

13 Q       I'm referring first of all just to a laboratory  
14 study. Is there anything -- for example, did they do  
15 a lumbar puncture and it came back with an abnormal  
16 white blood cell count?



17 A Well, so -- well, you know, everybody knows  
18 that you don't have to have an abnormal white cell  
19 count to have encephalitis. It occurs all the time.

20 Q Everybody knows, I guess, except Dr. Goodwin,  
21 huh?

22 A Well, then, if Dr. Goodwin doesn't know, he  
23 should know it.

1 Q Okay. You disagree, then, with what the <sup>60</sup>  
2 doctors found at Shands as to the cause of this  
3 child's condition?

4 A No. I mean, I don't know. I have not talked  
5 with every doctor. But based on the laboratory data,  
6 based on the clinical course and based on what  
7 individuals should understand on the pathophysiology  
8 of disease and infection and metabolic  
9 encephalopathies, it's clear that this child had a  
10 progressive course and has laboratory findings to  
11 support those.

12 Q Other than what you've listed, are there any  
13 other laboratory findings that support that?

14 A Well, I can't go through all the specific ones.  
15 There are some, I think -- no, there are a lot of  
16 positive and negative findings. I mean, in medicine,  
17 you practice things based on all of the findings, not  
18 just selected ones.

19 Q Sure.

20 A A lumbar puncture without cells has never

21 excluded viral encephalitis; never in the history of  
22 medicine. Other things have to exclude it.

23 Q Such as?

1 A Well, such as pathology or a brain biopsy. <sup>61</sup>

2 Q The physicians at Shands and Dr. Goodwin  
3 testified the other day that the elevated liver  
4 function studies were more likely than not the result  
5 of the Dilantin toxicity. Do you disagree with that?

6 A Yes, I would disagree with that.

7 Q And if Dr. Goodwin has testified that the  
8 doctors at Shands ruled out any type of viral or  
9 bacterial infection and also ruled out any type of  
10 Reye's type syndrome, then you disagree with that?

11 A Well, you just -- you've put some zingers in  
12 there. Why don't you separate out the question?

13 Q I thought it was pretty clear.

14 A No, it wasn't. You have a number of things in  
15 it. Which do you want to know? You said Reye's  
16 syndrome, viral infections and a whole bunch of other  
17 things.

18 Q I'm telling you that Dr. Goodwin has said, as  
19 one of Jessee's treating physicians at Shands Teaching  
20 Hospital, that they ruled out those conditions as  
21 being a cause of Jessee's present problems.

22 A How does he know that?

23 Q I'm, you know -- Doctor, please let me ask the  
1 question; okay? <sup>62</sup>

2 A Well, I know that, but if I don't understand  
3 them, you know, I can't answer them.

4 Q I'm just trying to establish if you disagree  
5 with that; if, in fact --

6 A Yes, I do disagree with that conclusion if  
7 that's his conclusion, because that's not based on the  
8 data, that's not based ~~on~~ what's known in medicine and  
9 what we understand.

10 Q And you feel better qualified to make that  
11 assessment as opposed to the doctor that was one of  
12 his attendings, that was there on a daily basis taking  
13 care of the child?

14 A Better qualified in what aspect? To review the  
15 data in total from the time he was born till the time  
16 he is now? I don't think Dr. Goodwin had that  
17 opportunity either. But now as you see all of the  
18 data in perspective, and understanding what the  
19 nervous system is, and I understand what viruses are  
20 and I understand what virology is and what it does to  
21 the body, then I think I am in a good position to do  
22 that.

23 Q So, what you looked to in the chart, then, to  
1 support your theory that Jesse's problems were caused  
2 by a viral or a bacterial type infection are the  
3 elevated liver enzymes: correct?

4 A No.

5 Q I'm going to make a list so I have everything.

6 Then, give me your list again.

7 A It's the total clinical picture. So, you can  
8 include everything in the chart, from the time he was  
9 born till the time he is right now.

10 Q Okay. So, the fact -- the fact that Jessee  
11 started having seizures on the morning of the 26th of  
12 August, 1986, does that play any causative role in his  
13 ultimate outcome?

14 A It's a reflection of his underlying disease  
15 process, which occurs in the majority of the cases of  
16 children that have seizures. And it is reflective of  
17 either a viral infection or an encephalopathy as a  
18 result of that or a metabolic degenerative disease.

19 Q So, the cause of his seizures on the morning of  
20 August 26th, 1986, was this underlying disease  
21 process?

22 A No. That's not what I said.

23 Q Well, do you have an opinion as to what was the  
1 cause of his seizures? 64

2 A You could read back my answer. It's the same  
3 thing. It's not going to change.

4 Q Okay. Well, that's my question. I was trying  
5 to understand that, Doctor. You were telling me  
6 earlier that it was the underlying -- I thought you  
7 told me it was underlying viral or bacterial infection  
8 that caused it?

9 A I don't think I ever used the word bacterial.

10 Q Well, then forgive me for being ignorant. Tell  
11 me again, if you would, what caused Jesse to start  
12 seizing on the morning of August 26th, 1986, and  
13 continue seizing, as you've stated, for several days,  
14 I guess?

15 A More than several days.

16 Q Well, whatever period of time. What caused  
17 that?

18 A Well, I will do it one more time.

19 Q Okay.

20 A I can't do it any differently and it's not  
21 going to change no matter how many times we go over  
22 it.

23 Q I'm not asking you to change. I'm just trying  
1 to understand it. 65

2 A An infectious process, viral, or an  
3 encephalopathy as a result of that, or a metabolic  
4 degenerative disease.

5 Q An infectious process, viral?

6 A Yes.

7 Q Or a metabolic?

8 A No.

9 Q Say it one more time. You talk fast. I can't  
10 write as fast as she can type it.

11 A But that's why you have recorders. You can  
12 read it when she gets it back.

13 Q Well, do you mind if I take notes, too?



18 A Well, I know, but you could assume that they --  
19 the liver function studies increased. So, they may  
20 have been normal or they may have increased. We  
21 certainly know he didn't have cerebral edema at  
22 Putnam.

23 Q At what point in time would one more likely  
1 than not be able to diagnose this infectious process?  
67

2 A Well, you know, it depends on when you can do  
3 the studies and when you can get some answers. It may  
4 take several weeks, and you still may not get the  
5 answers to the agent. Okay? You get the answer in  
6 terms of what the pathological process and the  
7 physiological process is by considering all of the  
8 data. And if you don't consider all of the data, then  
9 you don't get that.

10 Q Did they, in fact, ever make a diagnosis of any  
11 infectious process while Jessee was at Shands?

12 A What do you mean by diagnosis of -- of a  
13 culturable agent? No.

14 Q Did they ever say, this is an infection and we  
15 are going to treat it, while he was at Shands?

16 A What would you treat it with? These are ones  
17 you cannot treat, you support, as they did.

18 Q Well, my question, though, is: Did they ever  
19 make that diagnosis while he was at Shands?

20 A Well, I think they were considering a number of  
21 diagnoses while he was at Shands, and then the fact

22 that over that length of time he stabilized. And I  
23 think they are still uncertain as to what occurred in  
1 this child. 68

2 Q Did they ever make a diagnosis of any type of  
3 infective or infection process while Jessee was at  
4 Shands? Was that one of the diagnoses, is my  
5 question?

6 A Sure, it was in the consideration.

7 Q Is that stated in the discharge summary?

8 A Sure.

9 Q What infective process did they list while he  
10 was at Shands?

11 A The encephalitis or an encephalopathy. I can't  
12 remember where it's stated. It was in either the  
13 progress notes or in one of the discharges.

14 Q What was the final diagnosis when Jessee left  
15 Shands?

16 A The final diagnosis was -- principal diagnosis,  
17 it doesn't say final diagnosis, anoxic encephalopathy  
18 with seizure disorder.

19 Q Do you agree with that?

20 A Oh, I think that's what the end product is.  
21 It's not what caused the situation. Anoxia is a cause  
22 of disease in -- you know, many, many diseases.

23 Q Uh-huh. Doctor, some of the experts that the  
1 defendants have listed in this case have testified 69  
2 that in their opinion that Jessee became brain damaged



3 because he had some type of hypoxic event that  
4 occurred before his admission at Putnam. Do you agree  
5 with that or disagree with that?

6 A No, I disagree with that. I don't think -- I  
7 think that's certainly worthy of consideration, but I  
8 don't think the evidence supports that.

9 Q And why is that?

10 A Well, by the total -- by the clinical course of  
11 the child. There is really no evidence of any hypoxia  
12 or ischemia. He has an EEG when he's at Shands that  
13 hasn't changed significantly from his previous one.  
14 There is no cerebral edema on his first scan. It  
15 develops in a number of days after he's at Shands. He  
16 continues to have intermittent seizures, despite all  
17 medications and all therapy, even at Shands.

18 Q Which scan, which CT scan, shows cerebral edema  
19 at Shands? Can you recall from the dates?

20 A The second one. I can't tell you the dates.  
21 It may be the 20th -- 30th probably.

22 Q Is it your opinion that that CT scan does show  
23 evidence of cerebral edema?

1 A It says so in the report, and I agree with it. <sup>70</sup>

2 Q Okay. Well, I'm not asking what the report  
3 says. I assume you've seen the film itself, and I'm  
4 asking you --

5 A I would agree with that.

6 Q Okay. Doctor, apparently the hospital chart at

7 Shands indicates that blood was flown to a Dr.

8 Spielberg up in Toronto regarding seeking his opinion

9 as to the cause for the elevated liver function test.

10 Do you recall seeing that?

11 A Uh-huh.

12 Q And apparently he reported back to the

13 physicians at Shands that it was his opinion that

14 these elevated liver enzymes were due to Jessee's

15 sensitivity to the anticonvulsant medications that he

16 had been receiving?

17 A Gee, I don't know how he knows that.

18 Q Well, I'm just telling you what's in the chart.

19 Do you disagree with that?

20 A Well, I don't know of any specific test that

21 will tell you that. So, I guess I would have to --

22 unless there is some more information that you are not

23 relating to me.

71

1 Q Well, I'm just telling you what was testified

2 to the other day and what's in the chart. And as I

3 understand, your opinion is that the liver function --

4 excuse me, the elevated liver enzymes was due to some

5 type of infection process and was not due to the

6 Dilantin sensitivity or toxicity, or whatever you want

7 to call it? Is that a fair statement?

8 A No, it's not a fair statement. But I don't

9 think it's due to the Dilantin.

10 Q What is it due to, in your opinion?

11 A        The infectious process or the metabolic  
12 degenerative disease.

13 Q        Why would -- do you have an opinion as to why  
14 those liver enzyme studies improved within a day or  
15 two after they're abnormal?

16 A        It wasn't a day or two. It was more than a day  
17 or two.

18 Q        Well, whenever it was.

19 A        Okay. **So**, whatever it was is -- you will go  
20 along with whatever's in the chart?

21 Q        My question --

22 A        I just want to be accurate. When you say a day  
23 or two, that's not accurate.

1 Q        No, you said -- my question is real simple. Do  
2 you have an opinion as to why those liver enzymes  
3 improved?

4 A        Yes, because he got over his systemic illness  
5 or his possible bout of the -- a bout with a metabolic  
6 degenerative process. That's what happens when you  
7 have hepatic encephalopathy, when you have infectious  
8 hepatitis or encephalitis.

9 Q        What laboratory tests, if any, do physicians  
10 such as yourself order to help you assess whether a  
11 child Jesse's age -- whether that child has a viral  
12 encephalitis?

13 A        Well, I mean, there are a whole host of studies  
14 that are available, some of which weren't done. Viral

15 cultures, viral antibody studies, immunofluorescence,  
16 biopsy, the lumbar puncture, brain scan, **MRI** scan, a  
17 number **of** things, and one tries to correlate that with  
18 your knowledge and understanding **of** disease and **of**  
19 pathophysiological processes.

20 **Q** In a child with a viral encephalitis, wouldn't  
21 you expect reasonably to, with a lumbar puncture, see  
22 abnormal white blood cells?

23 **A** Well, I think in the majority of the cases, you  
1 might. However, we have well documented cases in <sup>73</sup>  
2 which they don't occur, and it's found at autopsy.  
3 You know, the fact that you don't have white blood  
4 cells certainly has never excluded encephalitis. And  
5 that's pretty standard knowledge.

6 **Q** Uh-huh. Okay. Do you have opinions concerning  
7 Jesse's life expectancy?

8 **A** Well, you know, I've not examined him. I have  
9 certainly looked at the videotape and have read the  
10 records. And, you know, I would have to -- if he's,

I

11 assume, essentially the same, being microcephalic,  
12 blind, spastic, quadriparetic, nonambulatory, bowel  
13 and bladder incontinent and profoundly retarded, I  
14 would say that I would certainly not expect him to  
15 live past the age of twenty.

16 **Q** Is that based on any studies you've seen or  
17 just your own experience?

18 **A** Well, it's based on my experience, and I think

19 there have been a number of studies out of California  
20 and other institutions with children that meet that  
21 criteria. You know, not -- in some situations, it's  
22 even less than that.

23 Q Is that the study Dr. Chaney did that Mr. Jones  
1 keeps waving around? 74

2 MR. JONES:

3 He knows it as the Eyman study.

4 A It's Eyman, Grossman and Chaney.

5 BY MR. ALFORD:

6 Q Okay.

7 A That's one of the studies. There are a number  
8 of studies.

9 Q Aren't a lot of those children --

10 A You guys have heard this before, I take it?

11 Q Oh, yeah.

12 (WHEREUPON, THERE WAS AN  
13 OFF-THE-RECORD DISCUSSION.)

14 BY MR. ALFORD:

15 Q Isn't it true that a lot of the children in  
16 that study are in state institutions,  
17 institutionalized?

18 A Well, the --

19 Q Or do you know?

20 A You mean the first study, the follow-up study  
21 or other studies that support that?

22 Q I'm not sure I know.

1 MR. ALFORD:

2 Which study do you keep waving around:!

3 MR. JONES:

4 The Eyman study is about ninety-three thousand  
5 profoundly retarded people in California.

6 MR. ALFORD:

7 All ages?

8 MR. JONES:

9 Fifty-six percent of which are  
10 noninstitutionalized, all ages. There is an earlier  
11 study that was only institutional people, but the --

12 THE WITNESS:

13 This is the Pacific State Hospital?

14 MR. JONES:

15 Right.

16 MR. ALFORD:

17 Okay.

18 A But this is pretty -- most people agree with  
19 this data.

20 BY MR. ALFORD:

21 Q Would your examining Jessee have any relevance  
22 to rendering an opinion as to his life expectancy?

23 A Only if he's different from in the videotape or  
1 something else is obviously different.

2 Q Okay.

3 A If I had not seen the videotape, then I would

4 be somewhat uncomfortable.

5           **MR. ALFORD:**

6           Excuse me just a second.

7           (Pause)

8 **BY MR. ALFORD:**

9 Q           **Doctor**, insofar as Jessee's admitting diagnosis  
10 at Putnam, and that's reflected, the status  
11 epilepticus, **do** you agree with that diagnosis?

12 A           Well, I would -- I mean, I think that's a  
13 justifiable diagnosis based on the assessment in this  
14 chart: I mean, I think once you see the way things are  
15 and the fact that the **EEG's** didn't change, there was  
16 no cerebral edema and a number of other things. I  
17 would have probably put intermittent seizures and coma  
18 as a result of a viral or infectious process or an  
19 encephalopathy as a result of that, or as a -- a  
20 metabolic degenerative disease would probably have  
21 been more accurate.

22 Q           Uh-huh. So, you don't necessarily agree with  
23 that? That's a factor in the diagnosis?

1 A           No. I think at this point, for twenty-four  
2 hours, that I don't have a problem with it.

3 Q           Okay. Do you agree that that is a medical  
4 emergency; that is, a child in status, excuse me,  
5 needs prompt aggressive medical treatment?

6 A           Yes, I do.

7 Q           In this case, if Jessee continued seizing at

8 Putnam in that twenty-four hours that he was there,  
9 approximately, isn't it more likely than not true that  
10 **those** continued seizures contributed to his ultimate  
11 outcome?

12 A Say that once again.

13 Q I'm not sure I can.

14 MR. ALFORD:

15 Would you read that back?

16 THE REPORTER:

17 "Question: In this case, if Jessee continued  
18 seizing at Putnam in that twenty-four hours that he  
19 was there, approximately, isn't it more likely than  
20 not true that those continued seizures contributed to  
21 his ultimate outcome?"

22 A I don't think I understand that.

23

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1 BY MR. ALFORD:

2 Q Well, what don't you understand?

3 A The way you phrased it. It doesn't make any  
4 sense to me.

5 Q It's quite possible.

6 He continued seizing, as I understand your  
7 testimony, while at Putnam?

8 A He had intermittent seizures, yes.

9 Q Intermittent seizures. Do you have an opinion  
10 as to whether those continued seizures contributed in  
11 any way to his outcome, that is, to the brain damage



12 and his present condition?

13 A        Whether the intermittent seizures did?

14 Q        Yes, sir.

15 A        **Yes**, I do have an opinion.

16 Q        And what is that?

17 A        That they did not.

18 Q        The same question at Shands. We know he

19 continued having seizure activity there

20 intermittently. Did those seizures contribute to his  
21 eventual outcome?

22 A        Well, it's difficult to be certain. He

23 certainly seized a great deal longer and without

1 having them stopped. And, you know, I can't tell you <sup>79</sup>

2 absolutely that they didn't contribute at Shands. I

3 mean, he obviously had a number of laboratory studies

4 that changed. He developed cerebral edema at Shands.

5 He possibly herniated. He had a number of things that

6 occurred at Shands which obviously didn't occur at

7 Putnam, and obviously his laboratory studies and vital

8 signs really were not significantly altered at Putnam.

9 **So**, the evidence would support that there was a marked

10 progression of his underlying disease, which is in all

11 probability causing his neurological deficit, not

12 seizures.

13 Q        I gather from your testimony that you do not

14 agree with **Dr.** McCormick's opinion as to the cause **of**

15 Jessee's brain damage?

16 A Which is what?

17 Q His opinion was that there was a hypoxic event  
18 that took place before Jessee got to Putnam that  
19 caused his brain damage.

20 A I do not agree with that, that's correct.

21 Q Doctor, can you give me your definition of  
22 status epilepticus?

23 A It's a condition characterized by an epileptic  
1 seizure that is frequently repeated or prolonged <sup>80</sup> so as  
2 to create a fixed and lasting condition.

3 Q In Jessee Bradford's situation, while at Putnam  
4 and based upon the hospital record, did Jessee  
5 Bradford continue in status while at Putnam?

6 A I don't -- I would classify him as having  
7 intermittent seizures, not continuous status  
8 epilepticus.

9 Q Wouldn't you have expected him to have  
10 recovered from the original seizures that morning if  
11 he had not -- if he wasn't in status? Does that make  
12 sense?

13 A Not necessarily. I mean, it depends on what  
14 causes them and depends on the underlying condition.

15 Q Your opinion would be that the underlying  
16 disease process is what was preventing him from  
17 regaining consciousness, not the fact that he was in  
18 status?

19 A No. You are changing my words. I mean, I



1 status epilepticus, and because you don't wake up  
2 doesn't mean that you are in status. I mean, we've  
3 had people that are postictal for forty-eight hours  
4 with one seizure. **So**, you know, it doesn't -- that's  
5 not the criteria.

6 Q In this case, as I understand your testimony,  
7 the reason Jesse didn't, quote, wake up, end quote,  
8 was the underlying disease process that we've been  
9 talking about?

10 A I think that's the most probable explanation.  
11 I mean, obviously there certainly can be others. I  
12 mean, he could have just been postictal.

13 Q Well, he never really did regain consciousness,  
14 did he?

15 A **No.** In fact, he got bad cerebral edema and  
16 probably herniated and is why he is the way he is  
17 right now.

18 Q To which you attribute to the underlying  
19 disease process?

20 A Sure. I mean, you know, this occurred at a  
21 much later time than he was ever at Putnam.

22 Q Can you tell us, Doctor, when you -- I assume,  
23 I didn't ask you this, but you have not written any  
1 type of report for Mr. Jones?

2 A No, I have not.

3 Q You have talked to him about the case, I'm  
4 sure?

5 A Certainly.

6 Q Sure. And I know he has met with you here  
7 today. Did he meet with you here before?

8 A Yes, he did.

9 Q When was that, approximately?

10 A A week **or** two weeks ago. I don't remember the  
11 exact date.

12 **MR. JONES:**

13 Within the last week.

14 **BY MR. ALFORD:**

15 Q A couple weeks back? Do you know when -- is  
16 that when you advised Mr. Jones as to what your  
17 opinions are in this case?

18 A No. I advised him after I reviewed the initial  
19 records and the depositions that I had. And obviously  
20 I got -- he brought me other depositions, EEG's and  
21 brain scans.

22 Q Sure. Just give me a ballpark date, if you  
23 can, as to when you advised Dr. -- excuse me, not **Dr.**

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1 Jones, Mr. Jones, Lawyer Jones, your opinions in the  
2 case?

3 A Well, I mean, obviously I told him what my  
4 opinions were leaning towards, and last week or ten  
5 days ago when I met with him, after having the  
6 majority of the information, told him what my final  
7 opinions were.

8 Q Okay.

9 MR. JONES:

10 It was a week before I filed my witness --

11 MR. ALFORD:

12 I understand.

13 BY MR. ALFORD:

14 Q Is there anything that -- I know you've looked  
15 at the EEG tracings. Is there anything that you've  
16 asked to see at this point that you haven't seen yet?

17 A Well, I have told you that obviously if -- that  
18 I would like to see the -- you know, eventually the  
19 nurses' depositions, and if there are policies and  
20 procedure manuals, certainly I would look at those,  
21 but other than that, unless you have something you  
22 would like for me to see, I think the information is  
23 sufficient.

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1 Q If you assume, Doctor, that the doctors at  
2 Shands had Jessee's records from Putnam as part of the  
3 transfer records that came to Shands with him, and  
4 they treated Jessee through whatever date it was that  
5 he was discharged from down there, why do you believe  
6 that you are in a better position to tell us today  
7 what the causes were for Jessee's outcome than they  
8 are?

9 A Oh, I don't know whether I'm in a better  
10 position. I mean, it depends on their knowledge,  
11 expertise, background. You know, are they a  
12 neurologist, are they a virologist, are they a

13 pediatrician, do they have --

14 Q They had all that. They had all that.

15 A Wait a minute, now. Let me finish.

16 Q Okay. Sure.

17 A I'm not sure Dr. Goodwin has all that. But,  
18 you know -- and again, you know, one has to be in this  
19 situation multiple times. One has to be board  
20 certified, give the boards and have knowledge in those  
21 areas. Then one has to interpret the data. I mean,

I

22 have no disagreement with people having differences of  
23 opinion, but it has to be based on the facts, and the  
1 facts in this case and the facts in this chart support  
2 the concepts that I have given you today. People are  
3 entitled to differences.

4 Q Sure.

5 A All I would ask them to do is produce the data  
6 to support those differences.

7 Q Well, maybe my question was unclear. I asked  
8 you -- and maybe it's an unfair question. I asked you  
9 why you felt in a better position. Why do you feel in  
10 the same position?

11 A Well, I mean, the data is the data, the studies  
12 are there. If I told you -- if I could not give you

a

13 responsible opinion, you know, based on my knowledge,  
14 expertise and review, I would tell you that. I mean,  
15 and I don't make those statements without having the

16 confidence and knowledge to do that.

17 Q If Jessee had a pediatric neurologist,  
18 including the chief of neurology at Shands, and had a  
19 pediatric intensivest who is boarded also in  
20 pediatrics and anesthesiology, a virologist, all those  
21 doctors, that have ruled out any sort of viral  
22 encephalitis or Reye's syndrome, wouldn't you defer to  
23 them in terms of the cause of Jessee's brain damage?

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1 A No. They have to do it based on what -- that's  
2 how we practice medicine, is based on what the data  
3 is. They did not rule it out, and as I've already  
4 told you, there are only several ways to do it. That  
5 wasn't done. It could be their opinion that that's  
6 not the case, but to say it's ruled out, no. And I  
7 think they would all agree with that.

8 Q Well, you haven't -- I don't mean to ask the  
9 obvious, but you have not read Dr. Goodwin's  
10 deposition?

11 A No.

12 Q Mr. Jones has not advised you as to the  
13 substance of his testimony?

14 A No.

15 MR. ALFORD:

16 Okay. That's all I have, Doctor. Thank you,

17 MR. JONES:

18 If it makes any difference to you, he will be  
19 glad to examine Jessee. You asked that question, and



20 he is willing to do that.

21 MR. ALFORD:

22 No. If he's comfortable without, that's fine,

23

88

1 MR. JONES:

2 Questions?

3 MR. TAYLOR:

4 No questions.

5 MR. SAALFIED:

6 None.

7 FURTHER, DEPONENT SAYETH NOT.

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CERTIFICATE OF WITNESS

I, ELIAS GEORGE CHALHUB, M.D., do hereby  
certify that on this the \_\_\_\_\_ day of \_\_\_\_\_,  
1991, I have read the foregoing transcript and to the  
best of my knowledge it constitutes a true and  
accurate transcript of my testimony taken on oral  
deposition on June 13, 1991.

\_\_\_\_\_

SUBSCRIBED AND SWORN TO BEFORE  
ME ON THIS THE \_\_\_\_\_ DAY OF  
\_\_\_\_\_, 1991.  
\_\_\_\_\_  
STATE OF \_\_\_\_\_ AT LARGE

1  
2

C E R T I F I C A T E

STATE OF ALABAMA:  
COUNTY OF MOBILE:

5

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

14

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

18

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LYNN ROBINSON-DYKES  
COURT REPORTER

DEPOSITION OF ELIAS CHALUB, M.D.  
[Estate of Jesse Bradford]

TAKEN ON June 13, 1991  
by C. WAYNE ALFORD, ESQ.

Pg / Ln

8/11                    Ultimately, it's what is in the chart

Obviously, if a recollection is totally inconsistent with a clinical course

58                    Viral infection causing brain damage

58/9                    Markedly increased liver function studies  
SGOT of over 4,500  
Prolonged PTT

61/1                    Such as pathology or a brain biopsy to find a viral infection

69/3                    Cerebral Edema: would mean hypoxia **before** hospital

72/14-16

Viral studies:

- viral cultures
- viral antibody studies
- immunofluorescence
- biopsy
- lumbar puncture
- brain scan
- MRI

74

In the majority of cases, you would find ..... / cases where they don't and it's found at autopsy

CHALHUB DEPOSITION (BRADFORD) 6-13-91

- 19). Hired on behalf of hospital  
opinions re: nursing care based on being an  
administrator of hospital
- 24). "Ultimately its what's in the chart that will determine  
what one has to make a conclusions on." "Obviously people  
have different memories and different recollections..."
- 29). Nurses met the standard of care  
never read nurses depos  
"looked at hospital nursing manuals
- 30). "As a physician and neurologist taking care of patients  
with seizures."
- 53). Brain seizure disorder due to in utero  
developmental or metabolic degenerative disease.
- 54). Cause of worsening neurological problem was infection  
lepatitis, encephalitis or metabolic degenerative disease
- 62). Disagrees with the treatings opinion ruling out viral  
involvement.
- 69). Disagrees with other defense experts who say hypoxic  
event caused problem.
- 73). Won't probably live past 20.