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

* * * * * * * * * * * * * * * * *

JESSEE RAY BRADFORD, a minor*
by and through his parents *
and next friends, Mark E. *
Bradford and Wendy L. *
Bradford, et al., *
Plaintiffs, *
* CIVIL ACTION NUMBER
vs. *
* 89-5957-CA
PUTNAM HOSPITAL, INC., d/b/a*
"Putnam Community Hospital,"*
et al., *
Defendants. *

* * * * * * * * * * * * * * * * *

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



A P P E A R A N C E S

FOR THE PLAINTIFFS: MESSRS. ALFORD & KALIL, P.A.
ATTORNEYS AT LAW
2400 INDEPENDENT SQUARE
JACKSONVILLE, FL 32202

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

FOR THE DEFENDANT, PUTNAM HOSPITAL:

MESSRS. JONES, CARTER & SINGER
ATTORNEYS AT LAW
POST OFFICE BOX 1526
GAINESVILLE, FL 32602

BY: RICHARD T. JONES, ESQUIRE

FOR THE DEFENDANT, DR. MARTINEZ:

MESSRS. SAALFIELD, CATLIN, COULSON, STQUDEMIRE & ETHERIDGE
ATTORNEYS AT LAW
1000 ENTERPRISE CENTER
225 WATER STREET
JACKSONVILLE, FL 32202

BY: JOHN R. SAALFIELD, ESQUIRE

FOR THE DEFENDANT, DR. RICHTER:

MESSRS. TAYLOR, DAY & RIO
ATTORNEYS AT LAW
10 SOUTH NEWNAN STREET
JACKSONVILLE, FL 32202

BY: JOHN C. TAYLOR, JR., ESQUIRE

LYNNROBINSON-DYKES
COURT REPORTER



I N D E X



E X H I B I T S

(There were no exhibits marked to this deposition.)

S T I P U L A T I O N

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

It is further stipulated that all notices provided for by said applicable sections of the Florida Rules of Civil Procedure are waived, except for the reading over of said deposition to or by the witness, the signing thereof by him, as is the signing and certification of said Lynn Robinson-Dykes, and all other requirements and technicalities of every sort which would be a prerequisite to the use of said deposition, including the filing of said deposition, it being the intent of the parties hereto that said



deposition may be used in evidence as though all requirements of said applicable sections of the Florida Rules of Civil Procedure had been complied with.

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

* * * * * * * * * * *

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

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



**ELIAS** GEORGE CHALHUB, M.D.,

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

DIRECT EXAMINATION

BY MR. ALFORD:

Q Would you state your name, please?

A Elias George Chalhub,

Q What is your address?

A 1720 Spring Hill Avenue, Mobile, Alabama,

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

A Yes.

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

A I believe sometime around the first of this year.

Q Okay. You've been provided materials to look

at?

A Yes.

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



A Yes.

Q Have you looked at the nurses' depositions?

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

Q Okay. Have you ever asked to see those?

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

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

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

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

A Sure, if they are given to me.

Q Okay. I guess my question is --

MR. ALFORD:

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

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



BY MR. ALFORD:

Q Okay.

MR. JONES:

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

MR, ALFORD:

Okay.

MR , JONES:

We won't need to come back,

MR. ALFORD:

All right,

BY MR, ALFORD:

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

A No, I haven't,

Q What depositions have you looked at?

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



Q Okay. Do you have notes -- is that everything you've looked at, then, Doctor?

A Yes.

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

A No.

Q It might save some time.

A Help yourself.

Q You have not made any notes of your review?

A No, I have not.

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

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

Q Sure.

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

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

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



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

A Sure.

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

A Right.

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

A No.

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

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

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

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

Q All right. So, if I were to ask you today any specific opinions you might have concerning any of the



care that was rendered by Dr. Martinez or Dr. Richter, you don't have any opinions?

A No.

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

A Correct.

Q What else have you reviewed?

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

Q Okay.

A Of --

Q A videotape?

A Yes. Shands' records, the Putnam County

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

*Q* The film?

A --the 27th and the 30th.

*Q* Okay.

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



MR. JONES:

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

THE WITNESS:

Was it the 2nd or the 4th?

MR. JONES:

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

BY MR. ALFORD:

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

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

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

A Right.

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

A Yes. No, I looked at the films.

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

A Yes.

Q And you've seen the actual EEG tracings? You've seen the EEG tracings themselves that you've listed or are you talking about EEG reports?



THE WITNESS:

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

MR. KALIL:

Can I just --

THE WITNESS:

No. That's their material.

MR. ALFORD:

Oh, okay.

THE WITNESS:

So, let's leave it up there.

MR. KALIL:

Okay.

BY MR, ALFORD:

Q What is the Rotary Center?

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

Q Oh, okay.

MR. KALIL:

Is that like -- you check that out?

THE WITNESS:

Yes.



MR. JONES:

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

MR. ALFORD:

Okay.

BY MR. ALFORD:

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

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

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

A No, I can't honestly remember.

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

A If there was, I don't recall.

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

A Not to my recollection.



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

case?

A Sure.

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

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

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

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

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

A Correct.

Q Are there any local -- have you been involved in any cases on behalf of the plaintiff for any local



attorneys here in this city?

A Yes.

Q And who would that be?

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

Q That's fine.

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

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

A Here in Mobile?

**Q Yes,** sir.

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

Q Cole, C-o-1-e?

A C-o-a-1-e.

Q **Oh,** okay. Anybody else?

A No, I believe that's it.

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



A The last time?

Q *Yes,* sir.

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

Q And where was that?

A In Washington, D.C.

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

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

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

Q You testified for the defense?

A Yes.

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

A That would be probably in December of last year.

Q And where was that?

A Gee, I *don't* recall. Maybe -- it may have been St. Petersburg, Florida, but I honestly can't remember,



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

A Over ten years?

Q Yes, say the past ten years?

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

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

A Pat Fogelson out of West Palm Beach.
Q Anybody else?
A I'm not -- most of the ones that I have reviewed for plaintiffs have never come to deposition or trial. So, you know, in terms of whether I've testified for them,--
Q Sure.
A --I can't tell you.
Q In this case, as we have established, you were listed as an expert on behalf of the hospital. And I assume that you are not a nurse?
A I think that's a good assumption.
Q Okay. Do you feel qualified to render opinions concerning nursing care in this case?
A Well, I can -- you know, I'm the administrator and head of this hospital. I also am familiar with the standard of care of nurses, but I am also a physician.
Q Sure.
A And I also practice medicine. So, I think I am probably in a unique position, more than most people are, in understanding that.
Q Have you had experience in the past of teaching any nursing classes?
A Sure, I think everybody that teaches academic medicine instructs nurses. I continue to do that.
Q You teach nurses that come to class to learn

about nursing?

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



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

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

Q You have never taught a nursing class, then?

A NO.

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

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

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

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

Q Are you familiar with any nursing standards of

21

care that might exist in the State of Florida, for example?

A For the state? No.

Q Yes, sir.

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

A No.

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

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

Q Wouldn't that be relevant - and let me finish -

in terms of any opinions that you may have concerning the standard of nursing care that was rendered to Jessee Bradford at that same hospital?

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

Q Sure.

22

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

Q I'm not sure I understand which hospital that

you are the administrator. Is it the Nobile Infirmary here?

A That's correct.

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

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

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

A Yes.

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

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

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



A Yes.

Q And you are familiar with those?

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

Q Most doctors that we depose in these cases --

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

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

Q And you are basing that solely on the pages of



the hospital record that you have looked at?

A What else would you base it on?

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

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

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

Q If a nurse taking care of Jessee Bradford, for example, on the 26th of August, 1986, saw him having what she had described as a seizure or symptoms suggestive of having -- of the child having a seizure and did not report -- did not, first of all, put it in the chart and, beyond that, did not report that to one



of the physicians, wouldn't you want to know that in this case in deciding whether or not these nurses met the standard of care?

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

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

recorded is pertinent,

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

Q If you don't know, Doctor -- I don't mean to again ask the obvious, but if you don't know what these nurses have said as to their recollection of the



child's condition and what they may not have charted, how can you sit there and tell us that it's your opinion that everything pertinent was put in the chart?

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

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

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

Probably not,

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

A SO?

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

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

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

A No, Go ahead,

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

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

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

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

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

Q Then, you agree with me that as we sit here



now, you do not have an opinion, then, as to whether or not the nursing care rendered to Jessee Bradford met the standards of care, the written standards of care, that were in effect at that hospital back in

1986?

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

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

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

Q What do you mean by that?

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

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

A I can't speak for the nurse, but I will be glad



to look at the deposition, if that is asked,

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

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

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

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

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

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

A In terms of what?

Q Well, in terms of deciding that the -- that, these nurses that were assigned to Jessee Bradford to



take care of him, did they really know when to give Valium? Did they have any guidelines when to give the Valium?

A It says p.r.n. and it says for a change condition,

Q Well, wouldn't you want to --

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

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

MR. ALFORD:

Do you have a copy of the chart there?

MR. JONES:

I will leaf to it in just a moment.

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

BY MR. ALFORD:

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

A Okay.

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

A Right.



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

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

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

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

Q Well, okay. My question is --

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

background and what occurs. So, it's going to vary,
Q Is it an adequate and appropriate order, for example, for the physician to say, if this child has seizures, give Valium? Now, wouldn't the nurse want to find out, Doctor, what do you mean by a seizure? Is it a seizure every five minutes, should I give Valium? If it lasts more than five minutes, should I



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

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

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

A I have not talked with them, so I don't know that,

Q And you haven't read their depositions?

A No.

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

that?

A No, I can't tell you that,

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



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

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

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

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

A I am here to testify --

Q And that --

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

Q Sure. Okay.

A And maybe we can end all this. Okay?



Q Okay.

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

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

A That's fine.

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

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

Q Okay.



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

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

carried out?

A That's correct,

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

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

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

MR. JONES:

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

BY MR. ALFORD:

Q Well, would it matter to you, Doctor, in



rendering an opinion as to the nursing care in this case, that we asked the three nurses, the 3:00 to 11:00 nurse -- excuse me, the 7:00 to 3:00 nurse, the 3:00 to 11:00 nurse, the 11:00 to 7:00 nurse, their understanding of when to give Valium and we got everywhere from, well, if it lasted more than five minutes, I probably should have done it or should do it, to I don't know, Doesn't that matter in terms of whether the nurses properly carried out their duties

in this case?

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

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

MR. JONES:

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



MR. ALFORD:

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

BY MR. ALFORD:

Q You are not a nurse, Doctor?

A That's correct.

Q You haven't taught nursing?

A No,

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

nursing manual at Putnam Community Hospital?

A That's correct.

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

A I was asked by Mr. Jones to look at these orders written by a neurologist and another physician as to whether they were appropriate orders, as they



were written, and as to whether they were carried out and whether this child changed materially over that period of time. And as a physician,--

Q Okay.

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

Q But --

A Wait a minute, now. Let me finish.

Q Okay. Go ahead.

A Or if they testified that this chart is just a bunch of hogwash, that nothing is true, that obviously is pertinent. But that's not my understanding of it. So, based on what I see here, and as a physician and a neurologist taking care of patients with seizures,

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

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



A Yes.

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

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

MR. JONES:

Richter.

A Richter and Dr. Martinez.

BY MR. JONES:

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

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

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

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

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



A No, he did not see the child either,

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

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

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

A And all throughout that day.

Q And isn't that something --

MR. JONES:

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

MR, ALFORD:

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



MR. JONES:

I would even object that it's in the

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

MR. ALFORD:

I understand,

BY MR. ALFORD:

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

A What do you have in mind?

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

A Okay,

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

A Well, you answered your own question, It says



status unchanged.

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

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

Q Well, Dr. Martinez has testified that he would

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

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

Q Did you read Dr. Collier's deposition?

A Who?

Q Collier?

MR. SAALFIELD:

It hasn't been typed up, has it?

MR. ALFORD:

I've got my copy, I don't know --



MR. JONES:

He hasn't.

MR. ALFORD:

That's not on the list.

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

BY MR. ALFORD:

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

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

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



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

A No, I have no opinion.

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

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

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

A No.

Q So, you have no opinion on that?
A No, but I would ask you, why is that material?
Q Well, I get to ask the questions in this setting, Doctor, I understand your point, that -- I guess your opinion is that, whatever happened at Putnam Hospital didn't have anything to do with Jessee's outcome; correct?
A No, I didn't say that,
Q Well, it's your opinion that whatever medical care was rendered or not rendered there had nothing to do with his outcome; is that a fair statement?



A No, I didn't say that either.
Q Tell me what your opinion is, then.
A My opinion is that the cause of this child's problem and the outcome is unrelated to the length of time at Putnam Community Hospital.
Q Doctor, was there any failure on the part of these nurses, in your opinion, to administer Valium as ordered?
A Is there any failure?
Q Correct. In other words, based -- again, I understand that you are limited as to what you've looked at, but based on the chart itself, do you have an opinion as to whether or not the Valium was administered appropriately? And my question is: I'm sure you noticed that he got one dosage of Valium while an inpatient at this hospital?

A That's correct.

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

A No, I mean, did they -- you know, and again it



was whether the seizures were excessive, changed, or in their assessment -- you know, and again, I have not read their depositions, but according to the chart, his condition really did not change significantly. So, it would not mandate that somebody give him additional medication.

Q Did he not continue to have seizures?

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

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

A Well, I understand.

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

A Correct.

Q To the floor, apparently?

A Yes.

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

A That's correct.

Q And throughout that hospitalization, isn't it

23 true that Jessee continued to have seizures?



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?
3 A No, One has to see the seizures themselves or

was brain damaged?

A Yes. Probably in utero.

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

A What do you mean by significantly and profoundly?

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

A Yes.

Q Okay.



A Ask your question again.

MR. ALFORD:

Read my question back, please.

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

THE WITNESS:

No, that's not the question.

THE REPORTER:

"Question: Well, functionally, to the point where he came -- to the condition he is today2 Do you know his condition today?"

THE WITNESS:

I said, yes, I do.

BY MR. ALFORD:

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

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

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



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

Q Sure.

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

Q Okay.

A Which accounted for his developmental delay and seizures.

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

A Yes.

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

A No.

Q You disagree, then, with that opinion?

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

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

Q Okay.



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

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

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

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

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

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

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

Q What is his condition now, or your understanding?
A He is microcephalic, he's blind, he's spastic, quadriparetic. He has seizures. He is incontinent and profoundly retarded,
Q When did that occur, those conditions?
A Well, he was microcephalic since birth. He had seizures as a result of his congenital problem. He was developmentally delayed as a result of that. When he became spastic, quadriparetic and had decreased vision was after he left Shands Hospital.
Q When Jessee arrived -- is it your opinion, then, that when Jessee was -- when Jessee first arrived at Putnam Community Hospital in the ER that morning of the 26th of August 1986, that he was not significantly brain damaged at that point?
A Well, no, I think he was significantly brain damaged from birth,
Q Okay. Describe for me, if you would, please, sir, your opinion as to his neurologic condition when he arrived at Putnam Community Hospital on the morning of August 26th, 1986.
A He had a decreased level of responsiveness and was having some seizures and some involuntary movements.
Q Okay. What caused his worsening condition?
A You mean after he left Shands?

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

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

Q What was the cause of that?

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

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

A Yes, I have,



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

A Which one did you have in mind?

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

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

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

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

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

A Oh, obviously, yes.

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



A That's not my theory, Mr. Alford. That's supported by the chart and the facts and the subsequent course, which is in the record.

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

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

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

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



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

A Sure.

Q Show me that, if you would.

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

Q Cerebral edema is not a laboratory test?

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

Q Oh, okay.

A It's a clinical finding.

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

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

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

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



Q Okay. You disagree, then, with what the doctors found at Shands as to the cause of this child's condition?

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

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

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

Q Sure.

A A lumbar puncture without cells has never

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

Q Such as?



A Well, such as pathology or a brain biopsy.

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

A Yes, I would disagree with that.

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

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

Q I thought it was pretty clear,

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

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

A How does he know that?

Q I'm, you know -- Doctor, please let me ask the question; okay?

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

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

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

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

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

Q So, what you looked to in the chart, then, to



support your theory that Jessee's problems were caused by a viral or a bacterial type infection are the elevated liver enzymes; correct?

A NO.

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

Then, give me your list again.

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

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

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

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

A No, That's not what I said.

Q Well, do you have an opinion as to what was the



cause of his seizures?

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

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

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

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

A More than several days.

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

A Well, I will do it one more time.

Q Okay.

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

Q I'm not asking you to change. I'm just trying



to understand it.

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

Q An infectious process, viral?

A Yes.

Q Or a metabolic?

A No.

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

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

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

A No, I don't mind you taking notes, but you can't get it all down, and we will be here all day,

Q Well, I'm not trying to be here all day. Believe me.

Could you give me the list again, then, as to -- it's an infectious process, viral?

A Causing hepatitis and encephalitis or an encephalopathy as a result of that or a metabolic degenerative disease.

Q Such as what? What metabolic degenerative disease?



A Disorders of amino acid metabolism, of urea cycle function, of fatty acid metabolism,

Q The infectious process that you've referred to, is that something that should have been diagnosed at Putnam?

A Well, if it's diagnosable, it -- at Putnam?

Q Yes, sir,

A No. I mean, and that's certainly the first day. The child didn't develop increased liver function studies until found at a later time, didn't develop cerebral edema until a number of days after he left Putnam. So, no, I would not expect them to do that within one day.

Q Well, we don't know if he had increased liver function studies -- excuse me, his liver enzymes were elevated. There was no test done at Putnam?

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

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



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

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

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

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

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

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

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

that over that length of time he stabilized, And I think they are still uncertain as to what occurred in this child,

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

A Sure, it was in the consideration,

Q Is that stated in the discharge summary?

A Sure.

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

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

Q What was the final diagnosis when Jessee left Shands?

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

Q Do you agree with that?

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

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

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

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

Q And why is that?

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

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

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

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



A It says so in the report, and I agree with it.

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

A I would agree with that,

Q Okay. Doctor, apparently the hospital chart at

Shands indicates that blood was flown to a Dr. Spielberg up in Toronto regarding seeking his opinion as to the cause for the elevated liver function test. Do you recall seeing that?

A Uh-huh.

Q And apparently he reported back to the physicians at Shands that it was his opinion that these elevated liver enzymes were due to Jessee's sensitivity to the anticonvulsant medications that he had been receiving?

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

Q Well, I'm just telling you what's in the chart. Do you disagree with that?

A Well, I don't know of any specific test that will tell you that. So, I guess I would have to -- unless there is some more information that you are not relating to me.



Q Well, I'm just telling you what was testified to the other day and what's in the chart. And as I understand, your opinion is that the liver function -- excuse me, the elevated liver enzymes was due to some type of infection process and was not due to the Dilantin sensitivity or toxicity, or whatever you want to call it? Is that a fair statement?

A No, it's not a fair statement. But I don't think it's due to the Dilantin.

Q What is it due to, in your opinion?

A The infectious process or the metabolic degenerative disease.

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

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

Q Well, whenever it was.

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

Q My question --

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



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

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

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

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

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

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

A Well, I think in the majority of the cases, you might. However, we have well documented cases in which they don't occur, and it's found at autopsy. You know, the fact that you don't have white blood cells certainly has never excluded encephalitis. And that's pretty standard knowledge,



Q Uh-huh. Okay. Do you have opinions concerning Jessee's life expectancy?

A Well, you know, I've not examined him, I have certainly looked at the videotape and have read the records. And, you know, I would have to -- if he's, I assume, essentially the same, being microcephalic, blind, spastic, quadriparetic, nonambulatory, bowel and bladder incontinent and profoundly retarded, I would say that I would certainly not expect him to live past the age of twenty.

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

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

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

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



MR. JONES:

He knows it as the Eyman study.

A It's Eyman, Grossman and Chaney.

BY MR. ALFORD:

Q Okay.

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

Q Aren't a lot of those children --

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

Q Oh, yeah.

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

BY MR. ALFORD:

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

A Well, the --

Q Or do you know?

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

Q I'm not sure I know.

MR. ALFORD:

Which study do you keep waving around?

MR. JONES:

The Eyman study is about ninety-three thousand profoundly retarded people in California,

MR. ALFORD:

All ages?

MR. JONES:

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

THE WITNESS:

This is the Pacific State Hospital?

MR. JONES:

Right.

MR. ALFORD:

Okay.

A But this is pretty -- most people agree with this data,

BY MR. ALFORD:

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

A Only if he's different from in the videotape or



something else is obviously different.

Q Okay.

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

be somewhat uncomfortable.

MR. ALFORD:

Excuse me just a second.

(Pause)

BY MR. ALFORD:

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

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

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



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

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

A Yes, I do.

Q In this case, if Jessee continued seizing at

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

A Say that once again.

Q I'm not sure I can.

MR. ALFORD:

Would you read that back?

THE REPORTER:

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

A I don't think I understand that,



BY MR. ALFORD:

Q Well, what don't you understand?

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

Q It's quite possible.

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

A He had intermittent seizures, yes,

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

and his present condition?

A Whether the intermittent seizures did?

Q Yes, sir.

A Yes, I do have an opinion.

Q And what is that?

A That they did not.

Q The same question at Shands. We know he continued having seizure activity there intermittently. Did those seizures contribute to his eventual outcome?

A Well, it's difficult to be certain, He certainly seized a great deal longer and without



having them stopped. And, you know, I can't tell you absolutely that they didn't contribute at Shands. E mean, he obviously had a number of laboratory studies that changed. He developed cerebral edema at Shands, He possibly herniated. He had a number of things that occurred at Shands which obviously didn't occur at Putnam, and obviously his laboratory studies and vital signs really were not significantly altered at Putnam. So, the evidence would support that there was a marked progression of his underlying disease, which is in all probability causing his neurological deficit, not seizures.

Q I gather from your testimony that you do not agree with Dr. McCormick's opinion as to the cause of Jessee's brain damage?

A Which is what?

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

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

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

A It's a condition characterized by an epileptic seizure that is frequently repeated or prolonged so as to create a fixed and lasting condition.



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

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

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

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

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

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

didn't make those statements.

Q Okay, Well, my question again, then -- maybe I'm not being -- I'm not being very articulate, but we know that he --



A No, I think you are just paraphrasing me incorrectly. I think you are very articulate.

Q I'm not trying to paraphrase you incorrectly. My question is this: Jessee came into the hospital and the doctor said status epilepticus, this is his condition, and then I think you said that would probably be, at that point in time, at least, a reasonable diagnosis?

A A working diagnosis. However, as we know, that's not the case.

Q Well, then, that's what I want to find out for sure. You don't believe, then, based on what you have looked at, that Jessee was in status at the time that he arrived at Putnam Community Hospital? Is that a fair statement?

A Well, again, you mean at the time or throughout the course? I mean, certainly -- if he was having seizures when he arrived, obviously he was having continuous seizures, You know, if they existed for greater than thirty to sixty minutes and continued, that's status epilepticus.

Q Okay.

A Intermittent seizures are not what we consider

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

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

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

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

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

Q To which you attribute to the underlying disease process?

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

Q Can you tell us, Doctor, when you -- I assume, I didn't ask you this, but you have not written any



type of report for Mr. Jones?

A No, I have not.

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

A Certainly.

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

A Yes, he did.

Q When was that, approximately?

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

MR. JONES:

Within the last week.

BY MR, ALFORD:

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

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

Q Sure, Just give me a ballpark date, if you can, as to when you advised Dr. -- excuse me, not Dr. Jones, Mr, Jones, Lawyer Jones, your opinions in the case?



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

Q Okay,

MR. JONES:

It was a week before I filed my witness --

MR. ALFORD:

I understand.

BY MR. ALFORD:

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

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



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

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

pediatrician, do they have --

Q They had all that. They had all that.

A Wait a minute, now, Let me finish.

Q Okay. Sure.

A I'm not sure Dr. Goodwin has all that. But, you know -- and again, you know, one has to be in this situation mutliple times. One has to be board certified, give the boards and have knowledge in those areas. Then one has to interpret the data. I mean, I have no disagreement with people having differences of opinion, but it has to be based on the facts, and the



facts in this case and the facts in this chart support the concepts that I have given you today, People are entitled to differences.

Q Sure.

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

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

A Well, I mean, the data is the data, the studies are there, If I told you -- if I could not give you a responsible opinion, you know, based on my knowledge, expertise and review, I would tell you that. I mean, and I don't make those statements without having the

confidence and knowledge to do that.

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



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

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

A No.

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

A No.

MR. ALFORD:

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

MR. JONES:

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

he is willing to do that,

MR. ALFQRD:

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



MR. JONES:

Questions?

MR. TAYLOR:

No questions.

MR. SAALFIED:

None.

FURTHER, DEPONENT SAYETH NOT.

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



C E R T I F I C A T E

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 anywise interested in the result of said cause.

LYNN ROBINSON-DYKES
COURT REPORTER

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.