

IN THE COURT OF COMMON PLEAS

Doc. 204

CUYAHOGA COUNTY, OHIO

THOMAS WILLIAMS, JR.,
ADMINISTRATOR, ETC.,

Plaintiff,

- vs -

JUDGE C.B. FRIEDLAND
CASE NO. 258274

YOEL S. ANOUCHI, M.D.,
et al.,

Defendants.

- - - -

Deposition of BRUCE JANKE, M.D., taken as if
upon cross-examination before Lynn D. Thompson,
a Notary Public within and for the State of
Ohio, at St. Luke's Medical Center, 11311 Shaker
Boulevard, Cleveland, Ohio, at 10:00 a.m. on
Friday, June 10, 1994, pursuant to notice and/or
stipulations of counsel, on behalf of the
Plaintiff in this cause.

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12 On behalf of the Defendants
13 Dr. Anouchi and Kaiser Permanente;

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19 On behalf of the Defendants
20 Dr. Sauer, Dr. Janke and
21 MetroHealth St. Luke's Medical Center.

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1 BRUCE JANKE, M.D., of lawful age, called
2 by the Plaintiff for the purpose of
3 cross-examination, as provided by the Rules of
4 Civil Procedure, being by me first duly sworn,
5 as hereinafter certified, deposed and said as
6 follows:

7 CROSS-EXAMINATION OF BRUCE JANKE, M.D.

8 BY MR. ZUCKER:

9 Q. Doctor, my name is Dale Zucker. I represent the
10 Williams family in this lawsuit.

11 I'm sure you have had an opportunity to
12 meet with Mr. Moscarino prior to the
13 deposition. I understand this is the first time
14 you've ever had your deposition taken. Is that
15 correct?

16 A. Correct.

17 Q. I'll be asking you a number of questions, and
18 it's your job to make sure that before you
19 answer any of those questions, you understand
20 the questions. If I should botch the question
21 for any reason, medical terminology or
22 otherwise, which is very likely, will you please
23 make sure to have me repeat the question or
24 clarify it so that you do understand it?

25 A. Okay.

1 Q. If you answer a question, I'll assume that you
2 understood it and that you're telling the
3 truth. Okay?

4 A. All right.

5 Q. I'd like to first review with you your medical
6 education, if I may. When did you graduate from
7 medical school?

8 A. I graduated from medical school in 1991, May of
9 1991.

10 Q. What medical school did you go to?

11 A. University of Miami School of Medicine, Miami,
12 Florida.

13 Q. And what's your birthdate, doctor?

14 A. August 30th, 1966.

15 Q. Where were you born?

16 A. Flint, Michigan.

17 Q. What did you do after you graduated from medical
18 school?

19 A. I started my residency program here at
20 St. Luke's.

21 Q. Here at St. Luke's?

22 A. Yes.

23 Q. Where do you presently live?

24 A. Shaker Heights.

25 Q. Can I have your home address, please?

1 A. 2566 Kemper Road, Apartment 202, Shaker Heights,
2 Ohio 44120.

3 Q. And your Social Security number?

4 A. 267-87-8933.

5 Q. Doctor, in the course of your medical school
6 attendance, did you take any courses or receive
7 any instruction in the prevention, detection and
8 treatment of deep venous thrombosis and/or
9 pulmonary embolism?

10 A. Could we break that down?

11 Q. Did you take any courses or did you receive any
12 instruction in medical school wherein the
13 subject matter of deep venous thrombosis and/or
14 pulmonary embolism --

15 A. A specific course, no, but I'm sure it was
16 covered in the general four-year curriculum.

17 Q. In what courses would those two subjects have
18 been part of the curriculum?

19 A. General surgery rotation.

20 Q. That would be the only course including that
21 subject matter?

22 A. That I can recall.

23 Q. Did you take courses in vascular medicine?

24 A. No.

25 Q. Courses in hematology?

1 A. I believe so.

2 Q. When you came to St. Luke's to do your
3 residency, was there any type of orientation
4 involved?

5 A. Regarding what?

6 Q. Regarding your coming to do your residency
7 here.

8 A. Yes. We had a three-day orientation period to
9 St. Luke's Hospital.

10 Q. And what did you do after that?

11 A. I started my internship in general surgery.

12 Q. Who was the person in charge of residents when
13 you started here?

14 A. In charge of?

15 Q. Orthopedic residents.

16 A. Dr. Nash.

17 Q. What's his first name; do you know?

18 A. Clyde.

19 Q. Did you do any type of rotation or were you
20 strictly in the orthopedic program?

21 A. I did one year of general surgery, which
22 included two months of orthopedic surgery.

23 Q. You came here when, doctor?

24 A. July of 1991.

25 Q. So from July of 1991 through approximately July

1 of 1992, you did a rotation in general surgery?

2 A. Correct.

3 Q. And during that rotation in general surgery, did
4 you receive any instruction or education in deep
5 venous thrombosis and/or pulmonary embolism?

6 A. Yes, we did.

7 Q. From whom?

8 A. It's not one specific lecture. It's just
9 covered in general, passed on from attendfngs to
10 residents, et cetera. I can't recall if there
11 were any specific lectures at that time.

12 Q. Under any other circumstances, would you have
13 received any instruction in those two areas?

14 A. Not that I can recall.

15 Q. Such as grand rounds?

16 A. I can't recall grand rounds.

17 Q. Had you ever worked with Dr. Anouchi prior to
18 treating Lillie Mae Williams in March of 1993?

19 A. Yes, I had.

20 Q. Was Dr. Anouchi one of your instructors prior to
21 that time?

22 A. Yes.

23 Q. What was his position here at the hospital, if
24 you know?

25 A. He was an attending in orthopedics.

- 1 Q. Did you ever attend any lectures or courses of
2 instruction that were done by Dr. Anouchi? If
3 you recall.
- 4 A. I don't recall.
- 5 Q. Prior to March of '93, had you worked with
6 Dr. Anouchi relative to patients of his?
- 7 A. Yes.
- 8 Q. What did you do after July, 1992 here at the
9 hospital?
- 10 A. July 1st, 1992 is when I started my orthopedic
11 training, first year orthopedic resident.
- 12 Q. How long will your residency in orthopedic
13 training be?
- 14 A. It's five years total, four years of
15 orthopedics.
- 16 Q. And one year of the general surgical rotation?
- 17 A. That's included in the five, right.
- 18 Q. Four years orthopedic and one year general?
- 19 A. Correct.
- 20 Q. Doctor, do you have any independent memory of
21 the Lillie Mae Williams case?
- 22 A. What do you mean by "independent"?
- 23 Q. That means do you in your own mind recall any of
24 the events without having to look at any
25 documents or --

1 A. I recall the general hospitalization, yes.

2 Q. You recall the general hospitalization?

3 A. Yes.

4 Q. You have the original medical chart in front of
5 you; is that correct, doctor?

6 A. Yes, I do,

7 Q. Would you turn to the doctor's orders portion of
8 that chart, please.

9 MR. MOSCARINO: You can use the
10 copy or whatever is easier for you.

11 Q. Are you there?

12 A. Yes.

13 Q. I'd like to go through these orders, and I'd
14 like you to tell me which, if any, were entered
15 by you.

16 A. Okay.

17 Q. Would you starting with the first page of the
18 orders?

19 A. The first page, these orders are by Dr. Anouchi,
20 and by Dr. Lee is the second set.

21 MR. MOSCARINO: Do you want him to
22 identify the ones that represent his or do
23 you want --

24 MR. ZUCKER: No. I would only ask
25 that he identify those that are his.

1 A. Okay. There's a verbal order by me on 3-18 at
2 1:00 p.m.

3 Q. And would you tell me -- would you read that for
4 me, please.

5 A. "One Ducalax suppository given today. Verbal
6 order to Dr. Janke."

7 Q. Thereafter, are there any other entries made by
8 you?

9 A, The following page, it says, "Start O₂ at two
10 liter nasal cannula. May give titrate of
11 magnesium. Verbal order to Dr. Janke."

12 The next page, nothing.

13 Do you want me to go through the typed
14 orders here as well?

15 Q. Yes, please.

16 A, Okay. None on this page.

17 On 3-16-93 at the bottom is where mine
18 start. Would you like me to read all these?

19 Q. No. If you'd repeat that. At 3-16?

20 A. '93.

21 Q. At what time, 10:24?

22 A. 10:24.

23 Q. And you said that's when yours start?

24 A. Regarding the typed orders. This is the first
25 typed order I have.

1 Q. Okay.

2 A. The following set of orders is mine as well.

3 3-16-93, 10:24. The following set is mine,

4 3-16-93, 10:25. Again, the following set,

5 3-16-93, 10:25.

6 Q. Doctor, can I assume that if I see after the

7 words "Entered By" your name that it was an

8 order that was entered by you?

9 A. Correct.

10 Q. Okay. And how are these orders entered into the

11 computer, if you know?

12 A. Either I type them in myself or if it's a verbal

13 order, the nurse will type it in for me. These

14 were all entered by myself though. It says,

15 "Entered By: Janke: Bruce."

16 Q. And when you say you entered into the computer

17 yourself, where is the computer located?

18 A. There are computers at every floor, recovery

19 room, you name it.

20 Q. Is Marcia Lewan a doctor, if you know?

21 A. I do not know if she's a doctor.

22 Q. Under your 3-16-93, 10:31 order, there's an

23 order written -- or entered by. Excuse me --

24 Marcia K. Lewan.

25 MR. MOSCARINO: Do you want to

1 show that to him?

2 A. I am not sure where.

3 Q. 3-16-93 at 11:30. You made an order at 10:31.

4 Underneath that, there's an 11:30 order entered
5 by Marcia K. Lewan. Do you know who that is?

6 A. Oh. No, I don't know who that is.

7 MR. MOSCARINO: Just so the record
8 is clear, it says written order entered for
9 Dr. Lee,

10 MR. ZUCKER: Yes, I saw that.

11 Q. Could a nurse's name be -- or could a nurse's
12 name follow the "Entered By"?

13 A. Yes.

14 Q. Doctor, I am skipping along here to 3-19 of
15 these computerized notes.

16 MR. MOSCARINO: You don't need him
17 to identify what's in between, right?

18 MR. ZUCKER: No.

19 A. Okay.

20 Q. And I am looking at a note --

21 MR. ZUCKER: On your Page 62,
22 Gary.

23 Q. -- on 3-19-93 at 13:10 hours. Is that correct?

24 A. Correct.

25 Q. And what was your order there?

1 A. "101 heart station ECG with copy. Indication:
2 Chest pain, schedule: stat.

3 "102, Arterial blood gas. Room air,
4 schedule: stat."

5 Q. The following order, 13:17, doctor, was yours as
6 well, correct?

7 A. Correct.

8 Q. And that indicates the administration of what
9 drug?

10 A. Citroma magnesium citrate liquid 300
11 milliliters.

12 Q. What was the purpose for that medication?

13 A. That is a cathartic drug. And earlier that day,
14 she had complained that she had not had a bowel
15 movement.

16 Q. On the next page, doctor, there are several
17 orders entered by you, beginning with the order
18 of 14:03. You entered an order to have a
19 perfusion lung scan performed. Is that correct?

20 A. Correct.

21 Q. And what was the purpose for ordering that?

22 A. The purpose of the ventilation and perfusion
23 scan was to evaluate the patient.

24 Q. The indication here states "hypoxia." Is that
25 correct?

1 A. Right.

2 Q. And did you know at that time that she was
3 hypoxemic?

4 A. Correct.

5 Q. How did you know that?

6 A. From her arterial blood gas that was drawn.

7 Q. So you'd already received the results of that
8 test?

9 A. Correct.

10 Q. At 15:19 on 3-19-93, you had ordered a chest
11 x-ray?

12 A. Correct.

13 Q. Well, did you in fact order that, doctor? It
14 says, "Entered By: Rene Shea." I don't see
15 your name anywhere.

16 A. You're right. That was entered per Gregory
17 Arko, who is our radiologist.

18 Q. Do you know who Rene Shea is?

19 A. She's probably a nurse.

20 Q. Doctor, down to 1646 hour on 3-19. An order was
21 entered for you by Sonia Ward; is that correct?

22 A. Correct.

23 Q. Is she a nurse? If you know.

24 A. She is a ward clerk.

25 Q. And you ordered oxygen by nasal cannula; is that

1 correct?

2 A. Correct.

3 Q. Why did you do that?

4 A. This was after the arterial blood gas, and, like
5 I mentioned, she was hypoxic. So we placed her
6 on O₂.

7 Q. Doctor, if you recall, did you see Lillie Mae
8 Williams each day of her hospital stay between
9 3-16 and 3-22, the date of her discharge?

10 A. I saw her every day except for -- let me refer
11 to the chart -- 3-20-93.

12 Q. How do you know that?

13 A. Because there's no note written by me. It's a
14 Saturday, and I didn't come in that day.

15 Q. You specifically recall that?

16 A. Yes.

17 Q. Doctor, you were working under the supervision
18 of Dr. Anouchi in Lillie Mae Williams' case; is
19 that correct?

20 A. Yes.

21 Q. And were you working with any other residents?

22 A. Dr. Sauer.

23 Q. Was there some type of a procedure whereby
24 residents would be assigned to a particular
25 patient at that time?

- 1 A. If you operate on the patient or assist with the
patient during surgery, you are to follow the
patient postoperatively.
- 4 Q. Was there a procedure at the time to determine
5 upon which patients you would operate or assist
6 in the operation of?
- 7 A. The chief resident determines who will be
8 assigned to which case, and it's usually based
9 on how many you've done.
- 10 Q. And had you done a lot of total hip replacements
11 prior to Lillie Mae Williams?
- 12 A. I had not. I was just an assistant.
- 13 Q. Had you assisted in any prior to Lillie Mae
14 Williams?
- 15 A. Yes.
- 16 Q. Do you have an idea of how many?
- 17 A. The exact number, no.
- 18 Q. When you entered the orders that we just talked
19 about, did you do so prior to consulting with
20 Dr. Anouchi or subsequent to consulting with
21 Dr. Anouchi?
- 22 A. Regarding the arterial blood gas and the EKG,
23 those were ordered prior to speaking with
24 Dr. Anouchi.
- 25 Q. And did we determine that you ordered the

1 perfusion lung scan?

2 A. Yes, I did.

3 Q. And that was done at what point?

4 A. That was --

5 Q. Before or after consulting with Dr. Anouchi?

6 A. That was ordered -- I'm not sure if it was
7 before or during the same time as consulting
8 with him.

9 Q. So it could have been ordered by you before
10 consulting with him or at a time when you were
11 consulting with him. Is that what you said?

12 A. Correct.

13 Q. But not after consulting with him?

14 MR. MOSCARINO: No, I don't think
15 that's what he said.

16 MR. ZUCKER: That's not a good way
17 of stating it.

18 MR. GOLDWASSER: I'm not sure I
19 understood that whole sequence so let's
20 just start over.

21 MR. MOSCARINO: I'm going to
22 object and ask that it be stricken, but I
23 think a fair way is that you reask the
24 question. Because I don't think his answer
25 was directed to your question.

1 Q. I don't want to mischaracterize your testimony.
2 I'm merely trying to ascertain some facts here.

3 I think what you said is that the ABG and
4 the EKG were ordered by you before consulting
5 with Dr. Anouchi?

6 A. Correct.

7 Q. And that the perfusion lung scan was either
8 ordered before or during a conversation with
9 Dr. Anouchi, Is that correct?

10 A. Correct.

11 Q. Did you consult with Dr. Sauer regarding any of
12 those tests?

13 A. Yes.

14 Q. Do you know which ones you consulted with him
15 on?

16 A, I can't recall.

17 Q. Were you the lead resident on Lillie Mae
18 Williams' case?

19 A, No.

20 Q. Was there such a thing as a lead resident on the
21 Lillie Mae Williams's case?

22 A. Dr. Sauer.

23 Q. Dr. Sauer was the lead resident. And would that
24 be by virtue of an assignment or would that be
25 by virtue of the fact that he was a fourth-year

1 resident and you were a first-year or
2 second-year resident?

3 **A.** Correct. He was chief resident.

4 **Q.** Technically, you were a second-year resident at
5 the time, a first-year orthopedic resident; is
6 that correct?

7 **A.** Correct.

8 **Q.** Did you at any time suspect deep venous
9 thrombosis in Lilli Mae Williams' case?

10 MR. MOSCARINO: Object to the
11 form.

12 You can go ahead and answer. He's
13 asking you at any time if you suspected the
14 possibility **of** --

15 **A.** **I** did not suspect a deep venous thrombosis.

16 **Q.** You had no level of suspicion whatsoever
17 regarding a DVT; is that correct?

18 **A.** Correct.

19 **Q.** Did you have any level **of** suspicion that she may
20 possibly have been suffering a pulmonary
21 embolism?

22 MR. MOSCARINO: Object to the
23 form. Go ahead and answer.

24 **A.** It was a suspicion.

25 **Q.** After these tests were run and you received the

1 results, did you personally, and not in
2 consultation with anybody else, formulate a
3 diagnosis?

4 MR. MOSCARINO: Object to the
5 form. Also, I want to make sure we are on
6 the same level. You're asking him did he
7 do something on his own without
8 consultation with anybody else? That's
9 what you asked him, right?

10 MR. ZUCKER: That's what I said,

11 MR. MOSCARINO: And the reason I'm
12 objecting is that flies in the face of the
13 entire teaching realm at this
14 hospitalization and during the time that he
15 was a second-year intern. He's not the
16 lead physician. He's not the man in
17 charge. Or woman in charge.

18 So with that objection, you go
19 ahead and answer if you can.

20 MR. ZUCKER: George, would you
21 like to put something on the record now
22 regarding this teaching stuff so that we
23 don't have to be, you know --

24 MR. MOSCARINO: No. I'll just go
25 question by question. I am just as happy.

1 As long as you know that, and I am sure you
2 do because you're a good lawyer and you
3 know what's happening.

4 Q. My question was after receiving the results of
5 the tests that you had ordered, did you
6 formulate a diagnosis in your mind regarding
7 Lillie Mae Williams?

8 MR. MOSCARINO: Same objection.
9 Go ahead.

10 A. I think I need to break this down.

11 Q. That's fine.

12 A. Regarding the ABG and the EKG result, we
13 formulated a differential diagnosis. Pulmonary
14 embolus was one of those differentials. At that
15 point, the VQ scan was ordered. I was not there
16 for the results of the VQ scan, Those results
17 were --

18 Q. May I interpret you and ask what was the other
19 part of the differential diagnosis after
20 receiving the results of the ABG/EKG?

21 A. The differential included her previous symptoms
22 that she had had of dysphagia as well as
23 atelectasis as well as myocardial infarction.
24 Those are probably the highest ones up on the
25 list.

1 Q. What were the findings of the EKG, if you
2 recall?

3 A. I do not recall offhand.

4 Q. Okay. Well, let's take a look at it.

5 A. The EKG here from 3-19 demonstrates sinus
6 tachycardia.

7 Q. And the time of that, doctor?

8 A. 10:33

9 Q. And what is sinus tachycardia?

10 A. It's an accelerated heart rate originating from
11 the sinus node.

12 Q. And was there any other abnormal finding on the
13 EKG?

14 A. This reads, "Increased R/S ratio in V1.
15 Consider early transition or posterior
16 infarct." The last line says, "Abnormal ECG."

17 Q. What did that mean to you in the context of her
18 diagnoses?

19 MR. MOSCARINO: Objection. Go
20 ahead.

21 A. I'm not an expert in EKG's, but this was
22 compared to a preoperative EKG which is not in
23 this record. And in comparison to the previous
24 EKG, which I documented on my note on 3-19,
25 there was no significant difference.

1 Q. Was there any sinus tachycardia on the
2 preoperative EKG you just referred to?

3 MR. MOSCARINO: If you remember.

4 A. I don't recall.

5 Q. What was the result of the arterial blood gas?

6 A. Let me find it in the notes here.

7 Q. Doctor, you're free to go into the notes at any
8 time.

9 A. Here it is. The arterial gas from 3-19-93 was
P0 pH of 7.46; pCO₂ of 33; pO₂ of 57; oxygen
11 saturations, 86; bicarbonate, 23; base excess,
12 plus .4; CO₂, 3.0.

13 Q. Was there an acidosis?

14 A. No, there's not.

15 Q. And what did you make of the arterial pO₂?

16 MR. MOSCARINO: Object to the
17 form.

18 A. The pO₂ was 57.

19 Q. Would that indicate to you or did that indicate
20 to you that she was significantly hypoxemic?

21 A. That indicates hypoxemia.

22 Q. You wouldn't consider it significant hypoxemia?

23 A. No.

24 Q. Why not?

25 A. You can see the normal here is 75 to 95. And it

1 is not significantly lower.

2 Q. 57 would not be significantly lower than.

3 MR. MOSCARINO: You don't have to
4 answer again. You've already 'answered
5 three times.

6 Unless you think he's going to
7 change.

8 Q. Doctor, the $p\text{CO}_2$ was at 33. Would you consider
9 that to be significantly low?

10 A. No.

11 Q. I believe you indicated that you were not
12 present when the results from the lung perfusion
13 scan were obtained. Is that correct?

14 A. Correct.

15 Q. And was that the Saturday that you weren't
16 working, if you recall?

17 A. On Friday is when all the events occurred in the
18 afternoon, and I was leaving so I signed it out
19 to the resident on call to check the results of
20 the ventilation scan. He checked those results.

21 Q. And when did you learn of those results?

22 A. Not till Sunday morning, which is the 21st.

23 Q. And after learning of the results from the lung
24 perfusion scan, what was your diagnosis of
25 Lillie Mae Williams' condition?

1 MR. MOSCARINO: Same objection as
2 before. Go ahead.

3 Q. My diagnosis was she had a low probability for
4 pulmonary embolus and most likely attributed to
5 her previous symptoms of dysphagia.

6 A. Well, doctor, hypoxemia is not a symptom of
7 dysphagia, is it?

8 A. Hypoxemia is not a symptom.

9 Q. I mean --

10 A. Let me correct it. Hypoxemia, period, is not a
11 symptom.

12 Q. The condition hypoxemia is not related to the
13 condition of dysphagia, is it, doctor?

14 A. No.

15 Q. Well, did you consider her hypoxemia after
16 obtaining all the results of these tests?

17 A. Yes, we did.

18 Q. Did you yourself?

19 A. Yes.

20 Q. And what did you yourself feel the cause of the
21 hypoxemia was?

22 MR. MOSCARINO: Objection. Go
23 ahead and answer.

24 A. My own opinion was likely atelectasis.

25 Q. You just said "we," and I'm assuming that you

1 had discussions or a discussion or a number of
2 discussions during her hospital stay with
3 Dr. Anouchi and Dr. Sauer. Am I correct?

4 A. Correct.

5 Q. Do you recall any discussions with the doctors
6 after all the test results were obtained
7 regarding a diagnosis or differential diagnosis?

8 A. Not specifically.

9 Q. Do you remember -- you don't recall any specific
10 conversations?

11 A, No, I do not.

12 Q. I'd like you now to look at the progress notes,
13 if you would, the portion of the medical chart.

14 MR. MOSCARINO: Any specific one
15 or --

16 Q. Well, if you would turn to the first page. I
17 don't think we need to go over the computerized
18 portions of these. So starting with the first
19 page, could you point out to me any entries that
20 you made in the progress notes portion of Lillie
21 Mae Williams' chart?

22 A. 3-16, the operative note was entered by myself.

23 Q. Doctor, did you in fact assist in her surgery?
24 Were you in the operating room?

25 A. Yes, I was.

- 1 Q. Was Dr. Sauer in there as well?
- 2 A. Yes.
- 3 Q. And besides Dr. Anouchi, were there any other
- 4 doctors that you recall?
- 5 A. The anesthesiologist.
- 6 Q. No other orthopedic surgeons?
- 7 A. No.
- 8 Q. Okay. Go ahead. I'm sorry.
- 9 A. The postoperative check on 3-16-93 is also
- 10 entered by myself.
- 11 Q. Okay.
- 12 A. Postoperative Day No. 1, 3-17, was entered by
- 13 myself. 3-17-93, the addendum was entered by
- 14 myself. Postoperative Day No. 2, 3-18-93,
- 15 entered by myself. 3-19-93, Postoperative Day
- 16 No. 3, entered by myself.
- 17 Q. Doctor, can you read that order to me, please,
- 18 the 3-19-93, the first one that you just
- 19 mentioned?
- 20 A. What would you like me to read?
- 21 MR. MOSCARINO: The last one that
- 22 he mentioned?
- 23 Q. The last one that you mentioned.
- 24 A. The entire note you want read?
- 25 Q. Yes.

1 A. Okay. "Ortho. Postoperative Day No. 3. No
2 complaints. T max was 38 and currently shows
3 37."

4 Q. Her temperature was normal then; is that
5 correct?

6 A. Yes.

7 "Right hip: The incision was clean and
8 dry. She had no calf pain. She had
9 neurovascular intact.

10 "PT. She ambulated five feet.

11 "Assessment plan was -- she was stable.
12 And the plan was to, No. 1, continue PT. No. 2,
13 D/C her PCA pump. No. 3, D/C Foley. Number 4,
14 check labs."

15 Q. Doctor, I assume that these findings were the
16 result of a physical examination that you
17 conducted at that time. Is that correct?

18 A. Correct.

19 Q. The next note was not entered by you, was it?

20 A. No.

21 Q. Doctor, I see -- back to the 3-19 note, that you
22 read for us, I also see Dr. Sauer's signature
23 there.

24 A. Correct.

25 Q. Am I correct?

1 4. Yes.

2 Q. Would his signature have been entered
3 concomitantly with yours or prior to or
4 subsequent to, if you know?

5 A. It was entered that morning, after he saw the
6 patient.

7 Q. Did you see the patient together?

8 A. No.

9 Q. Did you ever see the patient together with
10 either Dr. Sauer or Dr. Anouchi during her
11 hospital stay? If you recall.

12 A. I can't recall.

13 Q. On the next page of the progress notes, 3-19,
14 are any of those entries made by you?

15 A. The addendum was entered by me at the bottom.

16 Q. Who made the -- if you know, who entered that at
17 the top of the page?

18 A, Dr. Cromer.

19 Q. Who is Dr. Cromer?

20 A. He's currently a chief resident here.

21 MR. GQEDWASSER: How do you spell
22 "Cromer"?

23 THE WITNESS: C-r-o-m-e-r.

24 Q. And what is his area of specialty, if you know?

25 A. Orthopedics.

1 Q. Can you tell me why he was involved in
2 Mrs. Williams' case at that point?

3 A. I was not available at that time.

4 Q. Did you consult with him regarding this note?

5 A. He spoke with me after he found me.

6 Q. What did he tell you? And you can refer to the
7 note if you'd like.

8 A. I cannot recall what he told me, but he told me
9 the gist of the event.

10 Q. And that's included in his note here on 3-19-93?

11 A. Correct.

12 Q. Can you read that?

13 A. "3/19/93. Ortho. Patient complains right
14 sternal -- costosternal pain and difficulty with
15 swallowing liquids. Patient states that she had
16 similar chest pain prior to surgery but now has
17 worsened in severity with point tenderness at
18 right costosternal margin. No chest pain
19 previous. No neck or left arm pain.

20 "Physical exam -- afebrile. Vital signs
21 stable. Tenderness at the right costosternal
22 ribs 3 through 6.

23 "Assessment plan. Probable
24 costochondritis. Will discuss with
25 Dr. Anouchi."

1 Q. Doctor, isn't elevated temperature a symptom of
2 atelectasis?

3 A. Correct.

4 Q. Isn't that almost always the case?.

5 MR. MOSCARINO: Objection.

6 Q. In your experience?

7 MR. MOSCARINO: He wants you to
8 say is it almost always the case. You can
9 go ahead and answer with that objection.

10 A. I'm not sure I understand what you're referring
11 to. In this case, in all cases or in hip cases
12 or --

13 Q. In general, in all cases of atelectasis, isn't
14 an elevated temperature a common finding?

15 A. Correct.

16 Q. The next note on 3-19, the addendum, you stated
17 that you wrote that?

18 A. Yes.

19 Q. Would you read that for me. And I'm not asking
20 you to read these for any exercise. I just
21 can't read them myself,

22 A. "Addendum." And then the numbers on the left
23 represent -- 8.3 being her white blood cell
24 count. And then L and H was 8.8 and 26. The
25 numbers on the right reveal her chemistry, which

1 is sodium of 137; potassium, 3.7; chloride, 98;
2 CO₂; 28, BUN, 13; creatinine, 1.1; glucose, 128.

3 Q. Let me stop you there if I may. Were the
4 results of the blood count that you've just
5 stated those results from the blood count that
6 you ordered on 3-19?

7 A. These are routine blood that are drawn on your
8 first and third postoperative day. These are
9 the results of those.

10 Q. And did you find -- how did you interpret her
11 CBC?

12 A. Her CBC was 8.3, which is normal.

13 Q. Was she anemic?

14 A. Her L and H was 8.8 and 26, which is fairly
15 normal for Postoperative Day 3 total hip.

16 Q. Now, at this time, you knew that she had chest
17 pains, correct?

18 MR. MOSCARINO: Objection.

19 A. At this time, I knew she had sternal pain.

20 Q. At this time that you entered this note, had you
21 checked the ABG and the EKG yet?

22 A. At this time, they were being ordered. They
23 were ordered or in the process of being ordered.

24 Q. So when you stated in your entry "Will check ABG
25 and EKG," that means you had ordered it and you

1 will check it?

2 A. Correct.

3 Q. Can you read the rest?

4 A. "Will also give magnesium citrate."

5 MR. MOSCARINO: No. There's two
6 words.

7 A. "Will check ABG and EKG for above." Referring
8 to Dr. Cromer's note.

9 Q. And then it reads what?

10 A. "Will also give magnesium citrate." Then I have
11 a slash that says "No flatus. No bowel
12 movements."

13 Q. The next order on 3-19 below that order you just
14 read, was that entered by you?

15 A. No. That is not an order.

16 Q. That would be a confirmation that the VQ scan
17 was run; is that correct?

18 A. Correct.

19 Q. On the next page, did you write that addendum?

20 A. Yes.

21 Q. And would you read that for me?

22 A. "ABG was 7.46/33/47/86 percent. Preop, O₂, 77;
23 sat, 94 percent. EKG, normal sinus rhythm. No
24 changes from pre-op. Will check V/Q scan.
25 Placed on two liters O₂ and will follow. Will

1 transfuse last autologous unit."

2 Q. You had already transfused blood prior to
3 entering that note; is that correct?

4 A. No. We were going to transfuse.

5 Q. Well, it says will transfuse the last unit?

6 A. Let me refer to the progress notes.

7 I'm sorry, At 3-17, she was transfused.

8 Q. Do you recall the reason why?

9 A. Her L and H on 3-17 was 7 and 24.

10 Q. Could you continue reading the note?

11 A. I'm finished with my note.

12 Q. The top note?

13 A. I read it all.

14 Q. Did you enter the next order, on the 20th?

15 A. **No**, I did not.

16 Q. Did you order the note on the bottom?

17 A. No.

18 Q. Doctor, I've looked through this chart on
19 numerous occasions, and I don't see a diagnosis
20 or a differential diagnosis stated anywhere in
21 the chart. Have you reviewed this chart?

22 A. Yesterday.

23 Q. And do you agree with my statement?

24 MR. MOSCARINO: Objection.

25 A. No, I do not.

1 Q. Can you tell me where the word "atelectasis" --
2 outside of the chest x-ray, can you tell me
3 where word "atelectasis" appears in this chart?

4 MR. MOSCARINO: Stop.' Are you
5 asking him now is there a diagnosis
6 written --

7 MR. ZUCKER: In the chart of
8 atelectasis.

9 MR. MOSCARINO: Before, you said is
10 there a differential diagnosis.

11 MR. ZUCKER: I will restate the
12 question.

13 MR. MOSCARINO: Just so that you
14 understand the question. Because every
15 once in a while, like all lawyers, he asks
16 two questions at the same time, and then it
17 gets confusing, and he doesn't want you to
18 be confused, because that's what he said at
19 the beginning. So let's just make sure
20 everybody is on the same wavelength.

21 Q. Did you personally enter your diagnosis or
22 differential diagnosis regarding Lillie Mae
23 Williams in the hospital chart?

24 MR. MOSCARINO: Objection.

25 A. Yes.

1 Q. Where?

2 A. On 3-21, I wrote that she had dysphagia.

3 Q. Can you point that out to me?

4 A. At the very bottom, where it says, "Assessment
5 Plan."

6 Q. 3-21?

7 A. 9:30 a.m. At the very bottom.

8 Q. Let's back up. You didn't write any of the
9 other notes on this page, did you, the 3-20-93
10 or the 3-21?

11 A. No.

12 Q. So the next note that you wrote subsequent to
13 the 3-20-93 note -- I'm sorry -- the 3-19-93
14 3:40 p.m. note, the next note that you write is
15 on what date?

16 A. 3-21. 9:30.

17 Q. And could you read that note for me?

18 A. "Ortho. Postoperative Day No. 5. Complains of
19 difficulty with swallowing. No emesis. She did
20 have flatus, and she had diarrhea yesterday.
21 Her T max was 37.8. She was currently 37.3.
22 Her vital signs were stable. Lungs were clear
23 to auscultation. Her heart had irregular rate
24 and rhythm. Her abdomen was soft, minimal
25 distention, nontender. Her right hip, her

1 incision was clean and dry. No calf pain. She
2 was neurovascularly intact. **PT**, she ambulated
3 40 feet three times times over one.

4 "Assessment plan, stable. No. **1**,
5 dysphagia likely secondary to intubation.
6 Continue to follow. Diet as tolerated.
7 Continue PT."

8 Q. What part of that that you just read includes a
9 diagnosis or differential diagnosis for her
10 hypoxemia?

11 A. There is no differential for hypoxemia in this
12 note. It's regarding her difficulty swallowing,
13 dysphagia.

14 Q. Let me ask you a question regarding her
15 hypoxemia. Did you ever consider what the cause
16 of her hypoxemia was?

17 A. Yes.

18 Q. And what did you consider the cause to be?

19 MR. MOSCARINO: Object to the
20 form.

21 MR. GOLDWASSER: Well, he's
22 already answered it, too.

23 Q. That is the atelectasis you had referred to?

24 A. Correct.

25 Q. Did you make any entries in this chart regarding

1 your diagnosis of atelectasis?

2 A. No.

3 Q. Why not?

4 A. I don't recall.

5 Q. Did you make any entry in this chart regarding
6 your differential diagnosis of pulmonary
7 embolus?

8 A. No.

9 Q. Why not?

10 A. I don't recall.

11 MR. MOSCARINO: Let me just object
12 and again interject. You keep saying "your
13 diagnosis," and you know very well from the
14 deposition of Dr. Anouchi that this is a
15 team concept and that he is the lead
16 physician, So I just don't want the record
17 to reflect that Dr. Janke as a first-year
18 orthopedic resident is making the diagnosis
19 in the case. I'm sure you appreciate that,
20 and I just want the record to reflect
21 that. He understands that. Fair enough?

22 MR. ZUCKER: Fair enough on my
23 part. And for the record, I understand
24 that Dr. Janke was a second-year resident,
25 first-year orthopedic resident at the time

1 he was treating Lillie Mae Williams.

2 MR. MOSCARINO: Okay. And just so
3 the record is clear, you haven't asked him
4 certain questions as to who was involved in
5 what, and I just don't want the record to
6 unfairly reflect and you use that in some
7 kind of motion response that these were his
8 diagnoses and his diagnoses only, And with
9 that, we should go on.

10 Q. Doctor, did you review this chart prior to
11 today's deposition?

12 A. Yes.

13 Q. When did you do that?

14 A. I've done it over the past couple weeks.

15 Q. Did you note anywhere in the chart where any
16 person made an entry regarding a diagnosis or
17 differential diagnosis regarding Lillie Mae
18 Williams' hypoxemia?

19 A. No.

20 MR. GOLDWASSER: Well, that's not
21 true. There's an order that says
22 "Indication further chest films and
23 embolus."

24 MR. MOSCARINO: Well, the question
25 was did he see it.

1 MR. ZUCKER: Well, Gary, I think
2 that's --

3 MR. GOLDWASSER: All right. He
4 didn't see it. Okay. Fair enough,

5 MR. MOSCARINO: All these
6 questions are on his review. He doesn't
7 say what the chart says. The chart speaks
8 **for** itself.

9 Q. Regarding what Mr. Goldwasser just said, some **of**
10 the tests do indicate the indication for
11 embolus, hypoxemia, but that is not a diagnosis;
12 is that correct?

13 A. Correct.

14 Q. You don't recall any discussions with
15 Dr. Anouchi regarding how to treat the
16 hypoxemia; is that correct?

17 A. Specifically, no.

18 Q. How did the team, you, Dr. Anouchi and
19 Dr. Sauer, treat her hypoxemia?

20 A, We placed her on two liters O₂, and as a routine
21 order, she gets incentive spirometry.

22 Q. Where is spirometry treatment indicated in the
23 chart?

24 A. If you refer back to the original postoperative
25 orders.

1 Q. No. I mean where is the actual carrying out of
2 the spirometry indicated in the chart?

3 MR. MOSCARINO: If you know.

4 A. It's in the nurses' notes.

5 Q. Let's take a look at the nurses' note subsequent
6 to -- or beginning 3-19.

7 Doctor, first, again, let me just clarify
8 this. You were not present in the hospital on
9 the 20th?

10 A. Correct.

11 Q. That was the Saturday that you were out?

12 A. Right.

13 Q. Prior to the 20th, do you recall Mrs. Williams,
14 who you visited every day but the 20th,
15 complaining -- strike that. Do you recall what
16 her general complaints were?

17 A. I can only go by what the record shows.

18 Q. You have no independent recollection?

19 A. No.

20 Q. Beginning with the first nurses' note on March
21 19th -- doctor, I don't want to confuse you.
22 I'm going to ask you to back up. Was there an
23 order entered by you or either of the other two
24 doctors to administer the spirometry?

25 A. Like I mentioned before, it's a postoperative

1 order written on the day of surgery

2 Q Let's look at that, please. Is that in the
3 computerized portion of those orders?

4 A Computerized orders

5 Q Is that standard in these types of cases?

6 A Yes, it is.

7 Q Is that standard in all surgery basically,
8 spirometry?

9 A I can't say it's standard for all surgery. It
10 depends on the type of surgery.

11 Q Can you point out the postoperative order
12 regarding the spirometry?

13 A I'm on Page 3 of the computerized orders
14 3-18-98 10:20 Middle of the page No 28

15 'Incentive spirometry while awake'

16 Q And that means every hour while awake?

17 A Correct.

18 Q Is there any indication for how long that should
19 continue, the spirometry?

20 A Until it is discontinued per physician's orders
21 Q Do you know when Lillie Williams's
22 spirometry was discontinued?

23 A. Upon discharge.

24 Q. Back to the nurses' notes now beginning with the
25 first page on B-19 Can you point out to me

1 where it indicates that she underwent the
2 spirometry?

3 MR. MOSCARINO: Object to having
4 this witness interpret the nursing notes.

5 MR. ZUCKER: I'm not asking him to
6 interpret it; I'm asking him to read it and
7 see if he can just point it out to me.

8 MR. MOSCARINO: It's the same
9 thing. **It's** the same objection.

10 Go ahead if you can help him out.

11 A. On this day, I do not see where they indicated
12 it. It's usually under oxygen therapy
13 treatments.

14 Q. But it is not indicated, correct?

15 A. At this point, they did not write it.

16 Q. Do you see it thereafter, the spirometry
17 treatment?

18 A. I see it on 3-21-93.

19 Q. In between that, you don't see it?

20 A. No, I do not.

21 Q. It's not indicated on the assessment parameters
22 for 3-20?

23 A. On 3-20, yes. It says here at 5:00 p.m. they
24 entered it.

25 Q. And you see it on 3-21 as well. Is that what

1 you said, doctor?

2 A. Correct.

3 Q. Was there any on 3-22 indicated, the date of
4 discharge?

5 A. Yes, there was.

6 Q. Would she have been undergoing spirometry
7 treatment every hour while she was awake at this
8 point, from 3-19 on?

9 A. It was ordered.

10 Q. As per the preoperative order?

11 A. Correct.

12 Q. Refresh my memory. Your diagnosis for the
13 hypoxemia was?

14 MR. MOSCARINO: Objection. He's
15 answered this I think at least two times.

16 Go ahead so we can get this
17 deposition over with.

18 Q. I don't recall specifically your --

19 MR. MOSCARINO: I have objections
20 regarding "his diagnosis."

21 A. Atelectasis.

22 Q. Did you personally ever consider calling a
23 consultant in on this case?

24 A. No.

25 Q. That thought never entered your mind?

1 A. It's not my responsibility.

2 Q. I didn't ask you that. Did the thought ever
3 enter your mind to bring in a consultant to deal
4 with the hypoxemia?

5 A No.

6 MR. MOSCARINO: He's testified he
7 didn't have the power to bring a consultant
8 into the case. That's what he's trying to
9 tell you.

10 Q. Speaking of powers, what powers do you have
11 relative to ordering tests in a case such as
12 Lillie Mae Williams, a total hip replacement
13 case where you assisted in the surgery and
14 you're assisting in managing the patient
15 subsequent to the surgery?

16 A. I enter the routine orders usually.

17 Q. An ABG and EKG, lung perfusion scan, would those
18 be considered routine orders?

19 A. An ABG and EKG are fairly routine orders. Lung
20 perfusion scan is not.

21 Q. Why wouldn't the lung perfusion scan be routine?

22 A. It's not a routine order.

23 Q. But that is something that you ordered; is that
24 correct?

25 A. I have the power to order it.

1 Q. Did you order it in this case?

2 A. Yes, I ordered it.

3 Q. And you ordered it either before or during the
4 conversation with Dr. Anouchi, correct?

5 A. Correct.

6 Q. But the ABG and the EKG you ordered prior to
7 discussing it with Dr. Anouchi?

8 A. Correct.

9 Q. So on the 19th, you became aware of her pO₂, her
10 hypoxemia, correct?

11 A. Correct.

12 Q. And what treatment did the team render to
13 alleviate the atelectasis?

14 MR. MOSCARINO: Haven't we already
15 been over this?

16 MR. ZUCKER: Not the hypoxemia.

17 MR. MOSCARINO: Object as asked
18 and answered, but go ahead and answer.

19 A. She was placed on oxygen as previously
20 mentioned. She was continued on her incentive
21 spirometry.

22 Q. How long was she on the oxygen; do you know?

23 A. I don't know.

24 Q. Let's look at those nurses' notes again.
25 Beginning on the 19th.

1 Doctor, on the assessment parameters for
 2 3-19-93 under 'O2 therapy,' am I correct that
 3 the oxygen began sometime after the third shift
 4 here at 4:50? Is that correct?

5 A. Correct.

6 Q. There was no oxygen prior to that?

7 A. No.

8 Q. On the assessment parameters for the 20th, I saw

9 O2 therapy at 6A Can you read that?

10 A What part would you like me to read?

11 W Mh O2 therapy under 6:00 a.m.

12 4 'O2 two liters, nasal cannula.'

13 W on the following two assessments, the 8:30 a.m.
 14 and 5P, there's an 'NA,' correct?

15 A Correct.

16 Q What does that designate?

17 ER ROSCARINO: objection Go

18 ahead and answer.

19 C If you know.

20 Y 4 Not applicable or available

21 Q. "Not applicable" meaning that she wasn't having
 22 any? Is that correct?

23 A I don't know what that means

24 W Obviously not available because we know that
 25 oxygen is available in a hospital, correct?

1 A. Correct.

2 Q. On the O₂ therapy for the 21st in the assessment
3 parameters portion of these notes, is she
4 receiving it at 1:45 a.m.?

5 A. Not per these notes.

6 Q. What does that say? Can you read that?

7 A. "O₂ Therapy" says "IS" something "q one hour
8 while awake."

9 Q. What does that mean?

10 A. Use incentive spirometer every hour while she's
11 awake. And it's repeated in the next two --

12 Q. No more nasal cannula is noted; is that correct?

13 A. Correct.

14 Q. On the 22nd assessment parameter for 12:35 a.m.
15 under "O₂ therapy," does that say "No noted
16 (cough)" or "Noted (cough)"? Can you tell?

17 MR. MOSCARINO: I'm going to
18 object again to him interpreting the nurse
19 notes.

20 A. I can reread what you read. It says "No noted,"
21 and then in parentheses, it says "cough."

22 Q. A zero with a slash through it is your symbol
23 for "no," correct?

24 A. Yet.

25 Q. And, again, spirometry at both 12:35 A.M. and

1 8:30 A; is that correct?

2 A Correct.

3 Q Is there a note there that she is -- under 8:30

4 A. "Chest pain with deep inspiration." Is that
5 correct?

6 A Correct.

7 Q So can we assume from the nurses' notes that she
8 stopped receiving the oxygen that you had
9 ordered after determining that she was hypoxemic
10 on the 20th, on March 20th at 8:30 a.m.?

11 MR. MOSCARINO: Object to the
12 form.

13 A We can only go by what the nurses wrote.

14 MR. GOLDWASSER: Dale, we can do
15 this on or off the record, but just for
16 your benefit, the record does indicate she
17 was on nasal cannula until she was
18 discharged. It may not be in the nurses'
19 notes. I want you to make sure you
20 understand that so when you talk to your
21 expert witness, he can be aware of the
22 facts of the case.

23 MR. ZUCKER: Thank you.

24 MR. MOSCARINO: And that's why I
25 objected to the form of the question when

1 you said "Can we assume."

2 He doesn't really want you to
3 assume anything, and he doesn't want you to
4 guess, and he can depose the nurses **if** he
5 requests, and he knows that. So like I
6 told you before the deposition, stay within
7 your roles. Answer his questions. That's
8 why I'm objecting.

9 MR. ZUCKER: Thank you, Gary. I
10 appreciate that.

11 Q. You've stated that the team of doctors treating
12 Lillie Mae, consisting of you, Dr. Sauer and
13 Dr. Anouchi, diagnosed her hypoxemia as being
14 atelectasis, or as being caused by atelectasis,
15 correct?

16 A. Correct.

17 Q. And you treated it with oxygen, correct?

18 A, Correct.

19 Q. And you transfused a couple units of blood,
20 correct?

21 A. One unit.

22 Q. Did you do any testing after the 19th to see if
23 the atelectasis had resolved?

24 A. No.

25 Q. Did you do any testing after the 19th to

1 determine if the hypoxemia had resolved?

2 A. No.

3 Q. And can you think of any reason why you didn't?

4 MR. MOSCARINO: Object to the
5 form.

6 Q. "You" being the team of doctors.

7 A, I can only answer for myself.

8 Q. Okay. And why didn't you consider trying to
9 determine whether or not the atelectasis had
10 resolved or the hypoxemia had been improved?

11 A. It's a clinical picture, Her clinical picture.

12 Q. And what was her clinical picture?

13 A. As I've stated in the notes, she had no -- let
14 me refer to the notes so I won't get misquoted.

15 Q. Which notes are you referring to?

16 A. The progress notes.

17 On 3-21-93, my note.

18 Q. Written portion?

19 A. Written.

20 Q. 3-21-93?

21 A, Yes.

22 Q. Okay.

23 A. I wrote her only complaints were difficulty with
24 swallowing and she had no emesis, no flatus. Or
25 she did have flatus and diarrhea yesterday. No

1 other complaints.

2 Q. Now, you weren't there on the 20th, but would
3 you have read her nurses' notes from the 20th
4 when you came back to the hospital on the 21st?

5 A. I don't recall.

6 Q. When you came back to work on the 21st, were you
7 aware that on the 20th, she had complaints of
8 weakness and dizziness and general malaise?

9 A. No.

10 Q. No, what, you don't --

11 A. No, I don't recall,

12 Q. Your answer to my question regarding why you
13 didn't follow up with any testing to determine
14 if the atelectasis had resolved or the hypoxemia
15 had improved was the clinical setting. Is that
16 correct?

17 A. Correct.

18 Q. I don't understand that, Can you explain it to
19 me?

20 A. If a patient appears to be doing better, you
21 don't always have to follow up with repeat
22 tests.

23 Q. That's the standard of care as far as you're
24 concerned?

25 A. Correct.

1 Q. So when she was discharged on the 22nd, you
2 didn't know if she had atelectasis, correct?

3 A. Correct.

4 MR. MOSCARINO: Object to the
5 form.

6 Q. And you didn't know if she had hypoxemia,
7 correct?

8 MR. MOSCARINO: Object to the
9 form.

10 A. Correct.

11 Q. What were her complaints prior to the 19th?

12 A. I'd have to refer to the records.

13 Q. Go right ahead.

14 MR. MOSCARINO: Are you asking
15 during her hospitalization or are you
16 referring to her prehospitalization
17 symptoms?

18 MR. ZUCKER: Her postoperative
19 symptoms up to the 19th.

20 Q. What were her complaints?

21 A. Postoperative Bay No. 1, her only complaint was
22 right hip pain. Postoperative Bay No. 2, she
23 had no complaint except she wanted a laxative.
24 Postoperative Day No. 3, she had no complaints.
25 And that takes me up to the 19th.

1 Q. That would be Postoperative Day No. 4, the 19th?

2 A. Three.

3 a. Three?

4 A. Three.

5 Q. Well, she certainly had complaints on the 19th,
6 didn't she?

7 A. Not to me she did not.

8 Q. Not to you when you examined her?

9 A. No.

10 Q. Continue.

11 A. Postoperative Day No. 4, I was not there.

12 Postoperative Day No. 5, as I had previously
13 mentioned, she had difficulty with swallowing.
14 She had no emesis. She was passing flatus, and
15 she did have diarrhea the day before.

16 Postoperative Day No. 6, she had no
17 specific complaints. She still had difficulty
18 swallowing.

19 Those were all her complaints.

20 Q. So she didn't voice any of the complaints that
21 are indicated in the nurses' notes to you on
22 those occasions that you examined her; is that
23 correct?

24 MR. MOSCARINO: Object to the
25 form.

1 A. Correct.

2 Q. Based on the amount of education, medical
3 education and skill that you had on March 19th,
4 1993 through the 22nd, March 22nd, 1993, do you
5 think it was in accordance with good and
6 acceptable medical practice not to have followed
7 up with any testing to determine if the
8 atelectasis had resolved or if the hypoxemia had
9 improved?

10 MR. MOSCARINO: You don't have to
11 answer that question.

12 MR. ZUCKER: Why not?

13 MR. MOSCARINO: Because you're
14 asking him the standard of care question.
15 He's a first-year orthopedic resident.
16 You've got an expert you tell me, and I am
17 not going to have him answer that
18 question. That's unfair. You want him
19 to --

20 MR. ZUCKER: I said based on the
21 amount of education and experience that he
22 had up to that point in time. That's a
23 relevant question.

24 MR. MOSCARINO: It's an improper
25 question. It's irrelevant. He cannot even

1 qualify as an expert under the rules, and
2 you want him to --

3 MR. ZUCKER: Let's go off the
4 record.

5 MR. MOSCARINO: No. Let's put it
6 all on the record.

7 MR. ZUCKER: All right. Why can't
8 he qualify file as an expert?

9 MR. MOSCARINO: Because he was a
10 resident physician at the time you know
11 that.

12 MR. ZUCKER: I've got case law
13 here that says what you're saying is total
14 crap.

15 MR. MOSCARINO: Okay.

16 MR. ZUCKER: So what are you
17 saying?

18 MR. MOSCARINO: What I am saying
19 is what I said. I'm not going to allow him
20 to answer the question. If you want to
21 submit to the court and I am in error, that
22 is fine. And you don't have to swear at
23 me, and you can be a gentleman like you
24 were before.

25 MR. ZUCKER: You're in error.

1 MR. MOSCARINO: But I am not going
2 to allow you to get a back-door expert, and
3 he's not going to answer a question about
4 what he thinks the standard of care was.
5 He has been more than helpful with you.

6 MR. ZUCKER: I'm going to repeat
7 the question, please, and I'm not done
8 yet. Okay?

9 MR. MOSCARINO: Through the course
10 of the entire deposition, I've allowed him
11 to answer questions about nursing notes.
12 We have tried to be as helpful as we can,
13 but you want him to answer a question on
14 standard of care, and I'm not going to
15 allow that.

16 Q. Okay. Here's the question. Relative to your
17 practice on March 19th, or through March 22nd,
18 1993 relative to the medical care and treatment
19 that you rendered to Lillie Mae Williams, based
20 on the amount of education that you had had up
21 to that point in time, based on the amount of
22 experience and training that you had had up to
23 that point of time, did you think -- do you
24 think it was good medicine to not have ordered
25 further tests to determine if the atelectasis

1 had resolved or if the hypoxemia had resolved?

2 MR. MOSCARINO: Same objection.

3 You don't have to answer the question.

4 A. I object.

5 MR. MOSCARINO: You can't object.

6 MR. GOLDWASSER: That's good.

7 That's fine. I like that answer.

8 MR. MOSCARINO: The objection
9 should also be noted to the form of the
10 question, too.

11 Q. In your medical educations and in the training
12 that you received in the two years of residency
13 here at the hospital, was it your understanding
14 that certain people undergoing certain types of
15 surgical procedures were at higher risk for DVT
16 and pulmonary embolism than other people?

17 A. What two years are you referring to?

18 Q. Your first year as a general surgeon resident
19 and your second year as a first-year orthopedic
20 resident.

21 A. **Now**, can you repeat the rest of the question?

22 Q. Yes. Were you trained or did you know that some
23 people were at higher risk for DVT and PE after
24 a surgical procedure as opposed to other people?

25 A. Yes.

1 Q. You knew that?

2 A. Yes.

3 Q. And do you have an opinion as to what risk
4 category, high or low or medium, that Lillie Mae
5 Williams was in?

6 MR. MOSCARINO: The same
7 objection. You don't have to answer
8 opinion questions.

9 MR. ZUCKER: He treated this
10 lady. I am asking him if he thought she
11 was in a high, a medium or a low --

12 MR. MOSCARINO: Why don't you just
13 ask him "During the course of the
14 treatment, did you come to some conclusions
15 after going with the team or did you have a
16 judgment at the time?" Stop asking him
17 opinion questions.

18 Q. Postoperatively, was Lillie Mae Williams in a
19 high-risk category for DVT and PE?

20 A. She's at the same risk anybody undergoing a
21 total hip procedure is for PE.

22 Q. No more, no less?

23 A. No more, no less.

24 Q. In coming to your diagnosis of atelectasis and,
25 obviously, ruling out pulmonary embolus, did you

1 put a great deal of weight on the results of the
2 perfusion lung scan?

3 MR. MOSCARINO: Object to the
4 form. Go ahead and answer.

5 A. I put a moderate amount of weight to that.

6 Q. Were you aware at the time of the literature
7 indicating that low probability for pulmonary
8 embolus on a lung perfusion scan does not mean
9 no probability for pulmonary embolus?

10 MR. MOSCARINO: Object to the
11 reference to the literature, but if you
12 were aware at that time that when you have
13 a low probability on a VQ scan, it doesn't
14 rule out PE, you can go ahead and answer.

15 A. I agree at the time, I wasn't aware of the
16 literature.

17 Q. Have you ever read the Pioped study?

18 A. No.

19 Q. In the progress note on 3-19 -- I believe it was
20 in an addendum. I'm sorry, It wasn't your
21 progress note. On 3-19, it was Dr. Cromer. He
22 indicates relative to the probable
23 costochondritis, "Will" -- do you want a break?

24 THE WITNESS: Yes. Let me take a
25 second.

1

- - - -

2

(Thereupon, discussion was had off

3

the record.)

4

- - - -

5

Q. Lillie Mae was put on heparin prophylactically.

6

Isn't that correct doctor?

7

A. Correct.

8

Q. Can you tell me how that was administered and

9

for what period of time it was administered?

10

A. We have a routine protocol, which is our heparin

11

dosage protocol, started immediately

12

postoperatively, and it goes --

13

Q. In Lillie Mae's case specifically, how was it

14

administered?

15

A. It's a routine order. We can go through the

16

orders.

17

Q. Physically, how is it administered? IV?

18

A. Subcutaneously every eight hours. And adjusted

19

according to her PT, PTT.

20

Q. And in Lillie Mae's case, the heparin was

21

discontinued at discharge; is that correct?

22

A. Correct.

23

Q. Why was it discontinued at discharge?

24

A. It's routine.

25

Q. That's routine?

1 A. Yes.

2 Q. After you obtained the results of the tests, the
3 battery of tests that you ordered on the 19th,
4 including the ABG, the EKG, the lung perfusion
5 scan, the **CBC**, did you consider doing any of
6 the -- I think there are three tests basically
7 to examine the veins of the lower extremity, the
8 venous return of the lower extremity. Did you
9 consider doing any of those tests on Lillie Mae?

10 A. On the 19th or the 20th, I did not have any **VQ**
11 scan. Like I said, I was not there until the
12 21st.

13 Q. On the 21st, when you came back and saw the
14 result of the lung perfusion scan, did you
15 consider doing any of the tests to look at the
16 venous return in her lower extremities?

17 A. No.

18 Q. Did you consider at any time during your
19 treatment of Lillie Mae Williams doing any tests
20 to determine if she had suffered a pulmonary
21 embolus aside from the lung perfusion scan?

22 A. No.

23 Q. If you know, if you recall, did Dr. Sauer or
24 Dr. Anouchi ever mention to you that they were
25 considering doing any of the tests that I just

1 asked you about?

2 A. No.

3 MR. ZUCKER: Give me a few more
4 minutes to look over my notes,' and we
5 should be on our way.

6 MR. GOLDWASSER: Sure.

7 MR. MOSCARINO: Absolutely.

8 - - - -

9 (Thereupon, a discussion was had off
10 the record.)

11 - - - -

12 Q. Doctor, have you ever discussed this case with
13 Dr. Anouchi or Dr. Sauer subsequent to the
14 filing of this lawsuit?

15 A. No.

16 Q. Have you ever discussed it with them at all
17 subsequent to Lillie Mae's discharge?

18 A. No.

19 Q. When did you become aware of her death?

20 A. I became aware of her death sometime after the
21 emergency room incident.

22 Q. Do you recall if Lillie Mae's case was ever
23 discussed at grand rounds?

24 MR. MOSCARINO: You don't have to
25 answer that.

1 You're asking about a peer review.

2 MR. ZUCKER: No. Grand rounds I
3 said.

4 MR. MOSCARINO: You want to know
5 if her case after her death was discussed.

6 MR. ZUCKER: At grand rounds with
7 other doctors, yes.

8 MR. MOSCARINO: And I think that
9 is encompassed in peer review so I am not
10 going to have him answer the question.

11 Q. Doctor, do you teach residents at present?

12 A. I guess I teach them a little bit.

13 Q. Would you agree with the statement that teaching
14 residents begins as soon as you become a
15 resident?

16 A. Yes.

17 Q. Do you agree that it's a resident's job to carry
18 out the plan of the attending surgeon in any
19 given surgical case?

20 A. Yes.

21 Q. And if you disagreed with the plan or **if** you
22 disagreed with a diagnosis that an attending
23 surgeon would make, would you voice your
24 disagreement?

25 A. Yes.

1 Q. And if you disagreed and you voiced your opinion
2 to the attending surgeon and the attending
3 surgeon was unwilling to alter the decision he
4 had made, what would you then do? .

5 MR. MOSCARINO: Objection to the
6 form. It's a hypothetical. But you go
7 ahead and answer.

8 A. It's all hypothetical. You're saying if I had a
9 different opinion than what he had?

10 Q. Yes.

11 A. What would I do?

12 Q. Yes.

13 A. I'd probably talk to other residents about it
14 and get another opinion. Or read on it.

15 Q. To your knowledge, did Dr. Cromer render any
16 other care and treatment to Lillie Mae other
17 than on the one day that he indicated in his
18 progress note?

19 A. I can only go by what the progress notes say.

20 MR. ZUCKER: I have no further
21 questions. Thanks a lot, doctor.

22 MR. GOLDWASSER: No questions.

23 MR. MOSCARINO: We'll read the
24 deposition.

25

BRUCE JANKE, M.D.

C E R T I F I C A T E

The State of Ohio,) SS:
County of Cuyahoga.)

I, Lynn D. Thompson, a Notary Public within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named BRUCE JANKE, M.D., was by me, before the giving of his deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy, and was later transcribed into typewriting under my direction; that this is a true record of the testimony given by the witness, and was subscribed by said witness in my presence; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulations of counsel; that I am not a relative or employee or attorney of any of the parties, or a relative or employee of such attorney or financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this ____ day of _____, A.D. 19 ____.

Lynn D. Thompson, Notary Public, State of Ohio
1750 Midland Building, Cleveland, Ohio 44115
My commission expires January 21, 1995