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· ·····	JE WURDI & ASSOCIATES, 200 S. IJIH ST	THEET, LINUUN, NE 58508, 462-475-3375
le la	1       IN THE DISTRICT CURT OF KNOX COUNTY.         3       ONNA J. UIEBELHAUS.       ) Cese No. 12016         4       Pieint Iff.       ) DEPOSITION OF         5       VS.       ) TAKEN ON BEHAUF OF         6       0. J. NAGENGAST. M.D.       ) TAKEN ON BEHAUF OF         7       Defendent.       )         8       Taken at Brugen Memorie i Mospital.         9       On Hovember 10. 1993. Commercing at 1115 p.m.         11       A P P E A R A N C E S         13       F a the Plaintiff:         14       AP P E A R A N C E S         15       F a the Plaintiff:         16       MR. DAUID A DOMINA         17       2005 Context at Low         18       AP P E A R A N C E S         19       2405 Context at Low         14       AP O BOX 78         15       F a the Defendent:         16       MR. DEFENHALLON         17       2000 Context at Low         18       Context at Low         19       2000 Context at Low         10       Context at Low         11       Attorney at Low         12       Context at Low         13       F a the Defendent:       M. Context at Low	JOCC.2549 3 5 STIPULATIONS 1 IS STIPULATIONS 1
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•	2 1 INDEX	4 I DR. GLEN LAU,
	Z Appearances	2 Of lawful me, being first dulu cautioned and so tem ly syon as
	3       Stipulations       3         4       Reporten's Centificate       50	3 hereinafter certified, vas examined and testified as follows: 4
	5 UITNESS; 6 DR. GLEN LAU	5 Witness's researce to coth 1 do.') 6 DIRECT EXAMINATION
-	7 Direct Examination by Mr. Batailion 4	7 BY MR. BATAILLON
	E Cross-Examination by Mr. Domine 57 S EX4181TS: MARKED	B 0. Would you state your nome faithe <i>record</i> . 9 A. Glen Fredrick La,.
	10         1. 2/17/93 Memo to La, frun Domine         21           11         2. Dr. Leu's notes from textbook         22	19     Q.     And. Doctor. I need your Social Security Number.       11     A.     587-28-6741.
	12 3 Data from the National Cancer Institute 24 13 4. Dr. Lou's Report - not dated 24	12 0. And your data of birth? 13 A. 10-20-29.
	14     5. Packet of information on 0. Viebelhaus     28       15     6     Packet of information m 0. Viebelhaus     28       15     6     Packet of information m 0. Viebelhaus     28	<ul> <li>13 A. 10-00-09.</li> <li>14 0. Doctor, mu name is Joa Batailion. I represent</li> <li>15 Dr. Negencest In a laysuit that's been filed against him.</li> <li>16 And i'm going to esk you some questions this afternoon.</li> </ul>
	17	17 If you don't understand the questions that lask. Id
	18 19	18 request that you ask me to clarify the questions before 19 you answer. In that okay?
	20	20 A. Yes. 21 <i>O.</i> Doctor, what is your specialty?
	22	22 A. Family practica.
	23 24	23       0. And how long have you been doing that?         24       A. I went into prectice In 1954.
	8	25 9. Do vou have e curriculum vitae, Doctor?
· 🔨 '	MICHELLE S. BENES, RPR, JS WURM & ASSOCIATES, (402) 475-3376	MICHELLE S. BENES, APR, JS WURM & ASSOCIATES, (402) 475-3376
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	5		7
1	A. Not vith me. no.	1 school, for classes during the day and vent back to	CHINES IN CONTRACTOR
2	Q. You have one of the office, I taka it?	<ol><li>Beatrice and worked at night.</li></ol>	
3	A. I could wt one together,	3 D. Then when did you preduate from the Universi	tu I
4	Q, Okay, Weil, then. let's back up and do this the	4 of Nebroska-Lincoin?	
5	Way I'm supposed to do It. When did VOU graduate from	5 A. I did not eraduate from the University of	
6	college?	6 Nebreska-Lincoln, Completed my Junion user and vas	
7	A. Nineteen college, excuse ms. What level of	7 accepted into medical school. 8 Q. All right. When were you accepted to the ma	
a	college ane wou talking about?		
S	0. Lat's go back further then. Where did you go to		
1Ø 11	high school?	10 A. 1958. 11 Q. Did they have a family practice program ther	, ár I
	A. Clearvater, Nebraska.	12 vas that Just general or strike that. You're Just	
12 13	Q. And what wear did you graduate there? A. 1947.	13 talking about medical school. All right, 1958, medic	al
14	D. All right. And then where did you go to school	14 school. Uhen did you graduate from medical school?	
IS	after that?	IS A. 1962.	
16	A. Well, I took kind of a convoluted course, I	16 Q. And then did you do a residency or an	
17	spent one year at Norfolk junior College in Norfolk,	17 Internship?	
18	Nebraska. Spent one war in the Northwest institute of	18 A. I did an internship.	
19	Medical Technology in Hinnespolis following that. Then	19 D. And where was your internship?	
20	after I'd been in the Service, I attended the University	20 A. At Bruan Memorial Hospital, Lincoln, Nebras	ka.
21	of Nebraska-Lincoln,	21 D. Vas it a one-year rotating internship?	
22	Q. Okay.	22 A. Yes.	
23	A. And from theme I went to the University of	23 Q. And did you have any other speciality training	na
E4	Nebraska Medical Center.	24 after that?	
25	Q. And what branch of the Armed Services were you	25 A. I had one year of surgery residency.	
MIC	HELLE S. BENES, RPR., JS WURM & ASSOCIATES, (402) 475-3376	MICHELLE S. BENES, APR., JS WURM & ASSOCIATES, (402) 475-33	76
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1	6 in?	I Q. Whene?	8
1	1	I Q. Uhere? 2 A. Saint Elizabeth's Hospital, Lincoln, Nebras	
	in?		ka.
2	in? A. Marine Corps.	2 A. Saint Elizabeth's Hospital, Lincoln, Nebras	ka.
2	in? A. Marine Corps. O. How long vas fhat?	2 A. Saint Elizabeth's Hospital, Lincoln, Nebras 3 Q. Alirioht. And vas that a two-or e four-w	ka.
2	in? A. Marine Corps. O. How long vas fhat? A. Two wears.	2 A. Saint Elizabeth's Hospital, Lincoln, Nebras 3 Q. Alirloht. And vas that a two-on e four-w 4 residency?	ka. Ieor
2 3 4 5	in? A. Marine Comps. O. How long vas fhat? A. Two wears. O. From what wear to what wear?	2 A. Saint Elizabeth's Hospital, Lincoln, Nebras 3 9. All richt. And ves that a two-or e four-w 4 residency? 5 A. It vas a one-wear residency.	ke. Isor 1. Vas
2 3 4 5 6	in? A. Marine Corps. O. How long vas fhat? A. Two years. O. From what year to what year? A. 1951 through '53.	<ul> <li>A. Saint Elizabeth's Hospital, Lincoln, Nebras</li> <li>G. All richt. And ves that a two-or e four-w</li> <li>residency?</li> <li>A. It was a one-wear residency.</li> <li>G. Old they "" that one-wear residency program</li> </ul>	ke. Isor 1. Vas
2 3 4 5 6 7	<ul> <li>in?</li> <li>A. Manine Comps.</li> <li>O. How long vas fhat?</li> <li>A. Two wears.</li> <li>O. From what wear to what wear?</li> <li>A. 1951 through '53.</li> <li>Q. Old you serve in the Korean conflict?</li> <li>A. I was not overseas.</li> <li>Q. What was your "T what did you do in the Manine</li> </ul>	<ul> <li>A. Saint Elizabeth's Hospital, Lincoln, Nebrae</li> <li>Q. All richt. And ves that a two-or e four-w</li> <li>residency?</li> <li>A. It was a one-wear residency.</li> <li>Q. Old they "" that one-wear residency program?</li> <li>that that vesn't to train you to be a general surg</li> <li>wes it?</li> <li>A. It was part of that. was, eithough they did</li> </ul>	ke. Isar Isan, vas Isan,
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9	11
1 G. Uhen did that program end, if You know?	1 tvo primary hospitais.
2 A. l'm not sure.	2 0. All right, And you're paid a straight " a
3 0. Ves it designed on ly to be a one-wear program? 4 A. Yes,	3 seterul 18 that correct? 4 A. Yes.
4 A. tes. 5 0. Was it designed frægeneral practitioners and	4 A. Yes. S 0. And how long is your contract? is it a
6 physicians that vanted to do general surgery but couldn't	6 year-to-year thing or a month-to-month, or can you tell
7 set into any other program?	7 me?
8 A. I can only olve you mulmonession of why they	e A. Awear-to-wear.
9 had it. I believe that it probably had a twofold purpose.	9 0. And you have a contract vith them, I take it?
10 One was to fulfill a requirement for some other specially	10 A. Not really, An informal contract.
11 program such as unalogy where they would require a 12 one-year general surgery residency before going into their	11 O. All right. 12 A, Lyork. They pay.
13 subspeciality area,	13 Q. All richt.
14 O. Allright.	14 MR, DOMINAI You too much. Them not enough.
15 A. The other purpose vas probably to better prepare	15 A. Right.
16 general practitioners for entering practice.	16 a. (Buthr.Batailion) Old you sell your practice
17 0. So that they could do relatively simple	17 in '89, or how did that work?
18 procedures?	18 A. No. 1 did not sell it. I closed my prectice and
19     A. Yes.       20     0. How large a residency was it or how menu	19 informed mu patients that I was leaving active prectice 29 and gave then the choice of physicians to utilize but left
21 residents were there at musingle class7	21 the choice w to them. And in terms of my amengement
22 A. Tvo.	27 ulth the proctice at that time, the proctice was evaluated
23 0. Ail richt. Two, Old wow start a privata	23 for its worth, and i was paid one-fourth of that value.
24 practice then during this residency or after this	24 Q. Bu your partners?
25 residency?	🛎 A. Bulmu partmans.
MICHELLE S. BENES, RPR, JS ULIAM & ASSOCIATES, (402) 475-3376	MICHELLE S. BENES, RPR, JS WURH & ASSOCIATES, (402) 475-3376
	12
12 1 λ. After this πesidency,	12 1 a. All right, And who vers your pertners a? that
1 A. After this residency,	1 a. All right. And who yers your partners a? that
1     A. After this residency,       2     Q. Where did you start your private practice?	1 a. All right. And who were your partners a? <i>that</i> 2 time?
<ol> <li>A. After this residency,</li> <li>Q. Where did you start your private practice?</li> <li>A. I Joined Drs. Vendt and Veston in Lincoln.</li> <li>Nebraska.</li> <li>Q. And what your?</li> </ol>	<ol> <li>a. All right. And who were your pertners a? that</li> <li>time?</li> <li>A. Or. Wendt, Or. Weston Excuse me. Let me</li> <li>back up., I think Or. Wendt hed alreedy ratired at their</li> <li>point. So it you'ld have been Or. Weston end Or. Hinrichs.</li> </ol>
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<ol> <li>1. 0. Old wower have to reteke the examination?</li> <li>A. No.</li> <li>Are you still board certified in family</li> <li>prectice?</li> <li>A. Yes, Lun.</li> <li>O. When does the certification run out?</li> <li>A. Yes, Lun.</li> <li>O. When does the certification run out?</li> <li>A. I vas recertified a year ago.</li> <li>O. All right. Have you published?</li> <li>A. Only one paper when I yets a senior in medical school.</li> <li>O. All right. Can You did your practice ever</li> <li>substantially chance from the time that you started family practice until the time you ratired? And by that I mean</li> <li>estactice until the time you ratired? And by that I mean</li> <li>estactice until the time you ratired? And by that I mean</li> <li>estactice until the time you ratired? And by that I mean</li> <li>estactice until the time you ratired? And by that I mean</li> <li>estactice until the time you ratired? And by that I mean</li> <li>estactice until the time you ratired? And by that I mean</li> <li>distactive of 25 years, my surgical practice probabily</li> <li>diminished by choice.</li> <li>O. Any other changes?</li> <li>A. No.</li> <li>A star as the general act on wellness of your</li> <li>ecoulation, that stayed reletively stable?</li> <li>A. I would have to say that the average <i>me</i> of my petient recevision probabily increased over the years.</li> </ol>	<ol> <li>Underface yes it. If you can recall?</li> <li>A. J dan't recall.</li> <li>D. Do you know the Wigoe Houses on the Wigoe House"</li> <li>familu?</li> <li>A. No, I do not.</li> <li>G. How well do you know Mr. Domina?</li> <li>A. I have met him several times since he is a</li> <li>familumember of a cood friend of mine and a classmate of</li> <li>mine.</li> <li>A. His relative was a classmate of mine.</li> <li>A. Br. Alen Domina.</li> <li>A. Br. Alen Domina.</li> <li>A. Ali relative was a classmate of mine.</li> <li>A. Br. Alen Domina.</li> <li>A. Ali right. And Or. Alm Domina you'd be his</li> <li>cousin or some such thing, or do you have mulde?</li> <li>A. His relative.</li> <li>A. Ali right. And you and Or. Domina went to</li> <li>school together in medical school is that right?</li> <li>A. Yes.</li> <li>A. Yes.</li> <li>A. Yes.</li> <li>A. Yes.</li> <li>A. No.</li> </ol>
<ul> <li>1</li> <li>9. All right. But as for as velicess, it vouid</li> <li>2 chance only with respect to <i>Exer</i>?</li> <li>3. A. That would be Wy assessment, was.</li> <li>9. Okay. Old you even treat patients with</li> <li>9 mathematical second se</li></ul>	<ol> <li>A. I think I did contribute to his effort, wes.</li> <li>Q. All right. And so you've known thr. Domine fas quite a while: is that correct? You'd that be a fair statement?</li> <li>A. Definition of quite a while?</li> <li>Q. You've known him for at least the lest ten or fifteen years?</li> <li>A. Probably ten years.</li> <li>B. A. Probably ten years.</li> <li>B. Bave you had mu business dealings with him at least other than this case?</li> <li>A. Yes.</li> <li>B. How many. If you can tell me, generally?</li> <li>A. I believe that he esked me to evaluate two other tasses.</li> <li>Q. In the nature of medical meteractice or In the nature of Just general personal injury?</li> <li>A. In the nature of meteractice.</li> <li>B. Have you ever served as a vitness for either him or his firm in the pest?</li> <li>A. No.</li> <li>Q. Have you ever siven a deposition in a medical nealisence case before?</li> <li>A. No.</li> <li>P. Have you ever been sued for medical nealisence?</li> <li>A. Yes.</li> </ol>

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1	17	19
1	0. All right. I assume that your deposition yould	1 vears ago?
2	have been taken in those cases, however?	2 A. Ibelieve so, Ibelieve so,
3	A. Uhere I vas sued?	3 0. All right, Vas there enother attorney
4	Q. Yes.	
		4 representing Dr. Svanson?
5	A. Yes. Yes.	5 A. Yes, there was,
6	O. All right. i've just potten enced of muself.	6 0. Do you remember who that was?
7	Doctor, Just a second, All right. How menu times have	7 A. Itvas Fred Kauffman, Ibelleva.
8	vou been sued for medical negligence?	8 0. Ail rloht. And your defense to that claim ves
9	A. Once.	9 what, If you can recall?
re	Q. How law ago yes that?	
1		19 A. That it was not because of a dataw. it was due
11	A. I think probably eight, nine, ten years ago.	11 to unknown causes.
12	0. And what was the nature of that sult?	12 Q. And LCOnnect In assuming that you would have
13	A. It was alleged that cerebral palsy in a child	13 handled the prenatal and perinatal cars until you thought
14	resulted from a delawed cesarson section.	14 It vas nacessary to do a C-section, and then would
15	Q. Okay. I assume that your insurance rates vent	15 have called in Swanson?
1		
1	UP after that and that's when you decided you wanted to	
	stop delivering bables?	17 deliveru.
18	A. I thinh <b>I had a ready storped before</b> that.	18 Q. And then you would have both made the decision
19	0. You stanced before you vere sued?	19 with respect to whether to do the C-section?
20	A. Let me correct that. I think i did continue	20 A. Yes, wes.
1	delivering bebies at that point, but the suit vesn't filed	21 0. All right. Okay. Do you remember ?hename of
1		
1	until many years after the occurrence, the alleged	22 that child?
23	occurrence. I don't believe that mu maipractice premiums	23 A. No. Idon't.
24	did go w all that much.	24 O. All rioht. And then how long ago were you
a	<b>Q.</b> At <b>least none</b> that <b>you</b> could tell that <b>yould</b> be	25 contacted in relation to this case by Mr. Domina?
[		
1		
MICHE	LLE S. BENES, RPR. JS WURM & ASSOCIATES. (402) 475-3375	HICHELLE S. BENES, RPR. JS WURH a ASSOCIATES, (402) 475-3376
1		
1		
1		
		50
	18	29
1	related to that claim: is that correct?	129 1 A. Oh, Ithink that Ives Called somewhere in
I 2		
1	related to that claim: is that correct?	t A. Oh, Ithink that I vas Called somewhere in
2 3	related to that claim: is that correct? A. No. That's my feating, yes,	t A. Oh, I think that I ves Called somewhere in 2 perhaps January, I'm not one hundred percent sure.
2 3 4	related to that claim: is that correct? A. No. That's my feating, wes, G. Who represented you in that case, if you can recall?	<ul> <li>t A. Oh. Ithink that Ives Called somewhere in</li> <li>2 perhaps January. I'm not one hundred percent sure.</li> <li>3 Q. Of?</li> <li>4 A. Of this wear.</li> </ul>
2 3 4 5	related to that claim; is that correct? A. No. That's my feating, yes, G. Who represented you m that case, if you can recall? A. A hr, Lamson from Omaha.	tA.Oh.I think that I vas Called somewhere in2perhaps January.I'm not one hundred percent sure.3Q.Of?4A.Of this wear.5O.All right.
2 3 4 5 6	related to that claim; is that correct? A. No. That's my fealing, yes, G. Who represented you m that case, if you can recall? A. A hr, Lamson from Omena, O. Did that case go to trial or yes it settled?	<ul> <li>t A. Oh. Ithink that I vas Called somewhere in</li> <li>2 perhaps January. I'm not one hundred percent sure.</li> <li>3 Q. Of?</li> <li>4 A. Of this wear.</li> <li>5 0. All right.</li> <li>5 A. It may have been December of '92.</li> </ul>
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2 3 4 5 6 7 8 9	related to that claim: is that correct? A. No. That's my feating, yes, Q. Who represented you in that case. If you can recall? A. A.Mr. Lamson from Dmaha. O. Did that case of to trial or yes it settled? A. Yes, it did. O. Was it tried in Lincoln? A. Yes.	<ul> <li>A. Oh. Ithink that I was Called somewhere in</li> <li>perhaps January. I'm not one hundred percent sure.</li> <li>Q. Of?</li> <li>A. Of this wear.</li> <li>O. All right.</li> <li>A. It may have been December of '92.</li> <li>And then what materials have you had an</li> <li>opportunity to review?</li> <li>A. I reviewed ""</li> </ul>
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i	21	23	
1 1	material included the two sheets described up in number	1 you what's been marked as Exhibit No. 2, are those the	ŧ
2	five before that vere not inbelied. Bundle of material	2 notes that you prepared with respect to your testimony	•
3	labeled National Cancer institute. POO State-of-the Art Cancer Treatment Information dated 7,6,92. And a record	3 today? 4 A. These are the notes that I took in reviewing the	;
5	from the UNIC that appears to be the original record of	5 text that i previous in mentioned, yes.	1
6	Donna Wiebelhaus while hospitalized in that institution.	6 Q. And is there anything else in those notes	1
7	Q. All right. And do you still have the memo from	7 besides Just a suncests of that information in the text?	
8	Mr. Domina reflecting the chronologu?	8 A. in terms of material, no. it's all from that	ł
9	A. Yea. I do.	9 text. 10 9. Okey. And then the other two documents that you	1
10	0. Do you have that vith you <b>today?</b> A. Yen, Ido.	10 Q. Okav, And then the other two documents that you 11 have up front here are what?	ł
12	9. Can you show It to me, please?	12 A. One is the pecket of material that contains the	•
13	(Exhibit No. 1 was marked	13 laboratory, clinical madicine laboratory sheets and	
14	for identification.)	14 handwritten notes taken from presumebly from Dr.	
15	0. (By Mr. Batailion) And ve can substitute a copy	15 Negengest's files. At least they're labeled with his	
16	on get you the oniginal back. Doctor,	16 name. And the other one is the path report from LD1 on	÷
17 18	A. All right. O. Exhibit No. 1 is the memory from Mr. Domine that	17 the initial evaluation of the tumor, some information from 18 the Medical Center which is a at least part of an	
19	you would have received back in January of '931 is that	19 evaluation done by Dr. Blemman, the examination of the	:
29	correct?	29 oniginal slides done by the pathologist at the UNMC, and	
21	A. Yea. It's dated Februeru 17, 1993.	21 then there's the two sheats that I labeled number five in	,
22	Q. But this would have been Part of the initial	22 mu data bank here that were not othervise identified but	
23	information that you received with respect to your review	23 appear in this other document from Dr. Negeneest.	:
24 25	of this case? A. Yes.	24 Q, And then the third packet here, what is this? 25 A. This is a packet labeled National Cancer	1
			•
	TELLE S. BENES, RPR. JS VURM & ASSOCIATES, (402) 475-3375	MICHELLE S. BENES, RPR, JS WURM & ASSOCIATES, (402) 475-3376	:
1			
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L <u>.</u>			
			:
	22	24	
1 .	All richt. Subsequent to that time did you have	1 Institute, it's materials presumably obtained from The	
2	an opportunity to review muladditional information?	2 Notional Cancer institute a at least their publications	
3	A. I have new leved a copy of the T a deposition	3 provided to me buthr. Domine.	
4	elven bu Dr. Nøgengast.	4 Q. Solet's	
5	0. Anuthing else?	S A. And I have a summany or what Isur? to Mr.	
6	A. And idid review some information in a textbook. 9. Which text vas that?	6 Domnine. 7 C), Allrioht. Unudom 'two-ugivernetthis. Let's	
в	A. It's the text labeled Cancer Principles and	8 mark es number Exhibit 3 tho information frum The	
9	Practice of Oncology by DeVita, Heelman end Rosenberg,	9 National Cancer Institute data bank.	
10	Volume 2, 3rd Edition. Copyright 1989.	10 (Exhibit Nos. 3 and 4 vens	
11	0. All right, Do you have a caw of the article	11 marked for identification.)	
12	there. On that's Just your notes?	12 Q. (Bulfr, Batallion) Doctor, handing you what's	
13 14	A. No, these are Just mites that I made from that. 0. Okay. Well, ve might as well make an exhibit of	13 been marked as Exhibit No. 3. can you identify that for 14 the record?	
15	everything you've got there, Doctor, It will Just make It	15 A. It's the data from The National Cancer	
16	a lot easier.	16 Institute, POQ State-of-the-Ant Concer Treatment	
17	A. All right.	17 Information m. melanoma.	
18	0. So if you you'ld do your notes first, put then	18 Q. That ves provided to you by Mr. Domina's office:	
18 29	all together there, and we'll make it Exhibit No. 2. The	19 Is that correct?	
21	court reporter will mark it for you. You bon't have to worry about it. We'll staple it together, end then she'll	29 A. Yes. 21. Q. And that is what? Approximately how meny P6065	
22	mark it as Exhibit No. E.	22 Iono?	
23	(Exhibit No. 2 vas marked	23 A. Nine pages.	ĺ
24		24 Q. VV then Exhibit No. 4. cen you identify that	
a	_	a for us?	l
	Q. (Buthr. Batailion) All right, Doctor. Handing		
	Q. (Bullin, Batailion) All right, Doctor, Handing		ļ
ľ	Q. (Buthin, Bataillion) All right, Doctor, Handling HELLE S. BENES, RPR, JS WURM & ASSOCIATES, (402) 475-3376	HICHELLE S. BENES, NPR, JS VLIM & ASSOCIATES, (402) 475-3375	
		HICHELLE S. BENES, RFR., JS VLRM & ASSOCIATES, (402) 475-3376	
MIC		MICHELLE S. BENES, NPR, JS ULIM & ASSOCIATES, (402) 475-3376	

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<ul> <li>8 Nooencest's office notes but after you you'd have generated the report: le that correct?</li> <li>A. Weil, i sew some of Dr. Neoencest's office</li> <li>I reports. mat was pert of what was sent to me to review.</li> <li>P. I misspoke. The seven hours would be what you had generated up until the time and after you completed</li> <li>the written report: is that correct?</li> <li>A. It would include the report that I generated.</li> <li>wes.</li> <li>G. But it would have been before you had an corportunity to review Dr. Neoencest's deposition?</li> <li>A. Yes.</li> <li>G. And I see you did it you've sof it kind of in spurts. An hour and a half. An hour</li> <li>a. Deports. An hour and a half. An hour</li> <li>a. The set of the set of the set of the time and a half. An hour</li> <li>a. Terefore: a period a half. An hour and a half. An hour</li> </ul>	24       0. 0keu.         25       A. This sheet is a complication of mulhours.       24         HIOHELE 5. BENES, RPR, US VURH & ASSOCIATES, (482) 475-3375       HIOHELE 5. BENES, RPR, US VURH & ASSOCIATES, (482) 475-3375         1       0. Can I see it. Doctor? Dkey. And it looks like       1         2       you have about seven hours in <i>the case</i> so far: is that       2         3       correct?         4       A mat was before I looked at the desosition, was,         5       0. 0key. This would have been the hours that you         6       would have seent up to the time strike that. You have         7       ebout seven hours in this before you yould have         9       9 energest's office notes but after wou yould have         9       9. Other was pert of what yes sent to me to review,         11       rescrit is that correct?         12       P. I missocke. The seven hours would be what you         13       had energet up until the time and after you completed         14       the written rescrit is that correct?         13       had energet up until the time and after you completed         14       the written rescrit is that correct?         15       A. It yould include the rescrit that 1 energeted.         16       wes.         17       Q. But it	don't know. I would estimate thet probab a an hour of it. hour end a half mesbe. u don't have Dr. Nevengest's whole record a that correct?' . I don't. t You do have a copy of It as far as you f . DOMINA: Coursel, I think the vitness he a series of notes that he believes are fro t and a one-peop LCM clinical medicine res . BATAILLON: Right. . DOMINA: You've esked him If he has the . BATAILLON: And he doesn't know if he do . DOMINA: If you mean the petient's life h may be what he understands. I'm not su ou are communicating. . BATAILLON: That's right. . DOMINA: I believe this io be the entimed to the period of time during the
25       A. This event is a complicition or mulhours.         26       1         27       A. This event is a complicition or mulhours.         28       1         29       1         21       0. Can I see it. Doctor? Dkey. And it looks like         2       1         2       0. Can I see it. Doctor? Dkey. And it looks like         2       1         2       0. Can I see it. Doctor? Dkey. And it looks like         2       0. Can I see it. Doctor? Dkey. And it looks like         2       0. Oney. This would have been the hours that you         4       A mat was before 1 looked at the desosition, was.         5       0. Deey. This would have been the hours that you         4       A mat was before 1 looked at the desosition, was.         5       0. Deey. This would have been the hours that you         6       would have seent of up to the time - strike that. You have         9       0. Oney. This would have been before         9       0. Oney. This would have been before         9       0. Gev that	A. This sheet is a complicition of mulhours. MID-ELLE 5. BENES. RPR, US VURH & ASSOCIATES, (482) 475-3375 1 0. Can I see it. Doctor? Dkev. And it looks like 2 wou have about seven hours in <i>the</i> case so faril is that 3 correct? 4 A matives before I looked at the decosition, wes, 5 0. Okev. This would have been the hours that wou 6 two different 7 about seven hours in this before wou would have seen Dr. 8 Noemensh's office notes but after wou yould have 9 generated the resort is that correct? 10 A. Well, I sew some of Dr. Neemensh's office 11 reforts. Mait wes pert of what wes sent to me to review. 12 P. Limissoke. The seven hours would be what wou 13 had generated up until the time and after wou completed 14 the written resort is that correct? 15 A. It would include the resort that I cenerated. 16 wes. 17 0. But it would have been before wou had an 18 correctifier. Neemest's decosition? 19 A Yes. 20 C. And I see wou did It wou've dot it kind of in 21 sports. An hour and e half. An hour 22 and a half. These quarters of en hour. An hour and then 23 three quarters of an hour. How much of this tim would 24 wou estimate wes spent in reviewing medical records. If 25 A. And I see use for hour. An hour and then 26 And I see use for hour. An hour and then 27 A. And 28 And I see spent in reviewing medical records. If 29 And See use for hour. How much of this tim would 20 And I see use for hour. How much of this tim would 21 the initial referred to be 22 A. All 23 the initial referred to be 24 Woul estimate wes spent in reviewing medical records. If	
MIDELLE 5. BENES. RPR. US WURH & ASSOCIATES. (482) 475-3375         MIDELLE 5. BENES. RPR. US WURH & ASSOCIATES. (482) 475-3375         MIDELLE 5. BENES. RPR. US WURH & ASSOCIATES. (482) 475-3375         MIDELLE 5. BENES. RPR., US WURH & ASSOCIATES. (482) 475-3375         MIDELLE 5. BENES. RPR., US WURH & ASSOCIATES. (482) 475-3375         MIDELLE 5. BENES. RPR., US WURH & ASSOCIATES. (482) 475-3375         MIDELLE 5. BENES. RPR., US WURH & ASSOCIATES. (482) 475-3375         MIDELLE 5. BENES. RPR., US WURH & ASSOCIATES. (482) 475-3375         MIDELLE 5. BENES. RPR., US WURH & ASSOCIATES. (482) 475-3375         MIDELLE 5. BENES. RPR., US WURH & ASSOCIATES. (482) 475-3375         MIDELLE 5. BENES. RPR., US WURH & ASSOCIATES. (482) 475-3375         MIDELLE 5. BENES. RPR., US WURH & ASSOCIATES. (482) 475-3375         MIDELLE 5. BENES. RPR., US WURH & ASSOCIATES. (482) 475-3375         MIDELLE 5. BENES. RPR., US WURH & ASSOCIATES. (482) 475-3375         MIDELLE 5. BENES. RPR., US WURH & ASSOCIATES. (482) 475-3375         MIDELLE 5. BENES. RPR., US WURH & ASSOCIATES. (482) 475-3375         MIDELLE 5. BENES. RPR., US WURH & ASSOCIATES. (482) 475-3375         MIDELLE 5. BENES. RPR., US WURH & ASSOCIATES. (482) 475-3375         MIDELLE 5. BENES. RPR., US WURH & ASSOCIATES. (482) 475-3375         MIDELLE 5. BENES. RPR., US WURH & ASSOCIATES. (482) 475-3375         MIDELLE 5. BENES. RPR., US WURH & ASSOCIATES. (482) 475-3375         MIDELLE 5. BENES. RPR.,	MICHELLE 5. BENES, RPR. JS WURH & ASSOCIATES, (482) 475-3375       MICHELLE 5. BENES,         1       Q. Can I see it. Doctor? Dkey. And it looks like       1         2       wou have about seven hours in <i>the Case so fari</i> is that       2       other peckets         3       correct?       4       A       mat vas before 1 looked at the denosition, wes,       4       MR.         5       Q. Okey. This would have been the hours that you       S       to do 1?. The       4       MR.         6       would have seent up to the time strike that. You have       6       tw different       7         7       ebout seven hours in this before you yould have been Dr.       8       8       9       9         9       enderstis office notes but after you yould have       9       Q. (By       11       that for us?         11       resorts. Mat yes pert of what yes sent to me to review.       11       that for us?       12       P. I missecke. The seven hours yould be what you       12       A. Th yould include the resort that I enerested.       15       or materialsi       16       A. Yes.         13       A. Li yould include the resort that I enerested.       15       or materialsi       16       A. Yes.       17       Q. Add         13       hademeretid up until the time end after you completed <td></td>	
1       0. Can i see it. Doctor? Dkeu. And it looks like       1       make it clear. Let's make mother exhibit of the twe         2       uou have about seven hours in the case so far; is that       2       other peckets in uour dossier there.         3       correct?       3       HR. DOflikk: One exhibit?         4       A mat was before 1 looked at the deposition, wes.       3       HR. DOflikk: One exhibit?         5       0. Okeu. This would have been the hours that wou       4       HR. BATAILLON: If doesn't matter hou you will forent exclets, so let's mate         6       would have seent up to the time strike that. You have       5       to do 1?. There's tw different exclets, so let's mate         7       doout seven hours in this before you you'd have       5       to do 1?. There's tw different exclets, so let's mate         8       would have seent or the tome strike that. You have       6       tw different exclets.       6         9       0. (Bu h. Batallion) All right. Doctor, her       9       0. (Bu h. Batallion) All right. Doctor, her         11       resorts. mat was pert of what was seent to me to review.       12       A. This is some of the material that was peroview         13       had deerested up until the time and after wou completed       11       that for us?         14       0. That would have been perof that i enererated.       12 <td< th=""><th>1       Q. Can I see It. Doctor? Dkeu. And It looks like       1       make it clear.         2       uou have dout seven hours in the case so far: is that       3       other packets         3       correct?       3       MR.         4       A       mat was before I looked at the deposition. was,       3       MR.         5       Q. Okau. This would have been the hours that wou       5       to do I?. The         6       would have spent up to the time strike that. You have       6       tw different         7       about seven hours in this before you yould have       8       9         9       generated the report; le that correct?       9       Q. (Bu         10       A. Weill, I saw some of Dr. Necencest's office       10       ucu chat's bee         11       that for us?       11       that for us?         12       P. I misspoke. The seven hours would be what you       12       A. This         13       had generated up until the time and after you completed       13       to me bu thr. Q.         14       the written report; is that correct?       14       Q. That         15       A. It yould have been before you had an       17       Q. And         16       wes.       11       A. Yes.       19</th><th></th></td<>	1       Q. Can I see It. Doctor? Dkeu. And It looks like       1       make it clear.         2       uou have dout seven hours in the case so far: is that       3       other packets         3       correct?       3       MR.         4       A       mat was before I looked at the deposition. was,       3       MR.         5       Q. Okau. This would have been the hours that wou       5       to do I?. The         6       would have spent up to the time strike that. You have       6       tw different         7       about seven hours in this before you yould have       8       9         9       generated the report; le that correct?       9       Q. (Bu         10       A. Weill, I saw some of Dr. Necencest's office       10       ucu chat's bee         11       that for us?       11       that for us?         12       P. I misspoke. The seven hours would be what you       12       A. This         13       had generated up until the time and after you completed       13       to me bu thr. Q.         14       the written report; is that correct?       14       Q. That         15       A. It yould have been before you had an       17       Q. And         16       wes.       11       A. Yes.       19	
<ul> <li>2 wou have about seven hours in <i>the case</i> so far: is that</li> <li>3 correct?</li> <li>4 A mat was before 1 looked at the deposition, was,</li> <li>5 Q. Okey. This would have been the hours that would have seen the time strike that. You have</li> <li>6 would have spent up to <i>the</i> time strike that. You have</li> <li>9 could have spent up to <i>the</i> time strike that. You have</li> <li>9 could have spent up to <i>the</i> time strike that. You have</li> <li>9 could have spent up to <i>the</i> time strike that. You have</li> <li>9 could have spent up to <i>the</i> time strike that. You have</li> <li>9 could have spent up to <i>the</i> time strike that. You have</li> <li>9 could have spent up to <i>the</i> time strike that. You have</li> <li>9 could have spent up to <i>the</i> time strike that. You have</li> <li>9 could have spent up to <i>the</i> time strike that. You have</li> <li>9 could have spent of what was seen Dr.</li> <li>10 exects. The sevent hours would be what wou</li> <li>11 resorts. The sevent hours would be what wou</li> <li>13 had generated up until the time and after wou completed</li> <li>14 the written resort: is that correct?</li> <li>16 wes.</li> <li>17 G. But it would have been before wou had an</li> <li>18 correct?</li> <li>19 A. Yes.</li> <li>11 seorts. An hour and e half. An hour</li> <li>11 seorts. An hour and e half. An hour</li> <li>12 seorts. An hour and e half. An hour</li> <li>13 three superters of an hour. How much of this timu would</li> <li>14 three strikes of an hour. How much of this timu would</li> <li>14 three strikes of an hour. How much of this timu would</li> <li>15 the initial pecket of materials sent to wou' is that</li> <li>14 correct?</li> </ul>	2you have about seven hours in the case so farmer is that correct?2other packets other packets the deposition, yes, other packets the deposition, yes, to do 12. The other packets the deposition, yes, to do 12. The two different two different other packets to do 12. The two different the voluble have packet the time strikk that. You have generated the report; le that correct?2other packets other packets the written report; le that correct?12P. I misseoke. The saven hours would be what you had generated up until the time and after you completed the written report; lis that correct?16ucu chat's be to me bu th. C 1713had generated up until the time and after you completed the written report; lis that correct?14Q. That 1314but is to neview Dr. Negengast's deposition?18A. Also 2915A. It you'd have been before you had an sports. An hour and a half. An hour and a half. An hour and a half. Three quarters of an hour. An hour and then three quarters of an hour. How much of this timu you'd 2223the initial packets24wu estimate was spent in reviewing medical records, lf14correct?	r. Let's make mother exhibit of the tw
4Amat ves before 1 looked at the deposition, ues,5Int. Both the both	4       A mat was before 1 looked at the deposition, was,       4       MR.         5       Q. Okeu. This would have been the hours that would       5       to do 1?. The         6       would have spent up to the time strike that. You have       6       tw different         7       ebout seven hours in this before you would have seen Dr.       7         8       Naceneest's office notes but after you yould have       8         9       generated the report; le that correct?       9       Q. (Bu         10       A. Weil, I sew some of Dr. Naceneest's office       10       ucu chat's beet         11       reports. mat was pert of what was sent to me to review.       11       that for us?         12       P. I misspoke. The seven hours would be what you       12       A. This         13       had generated up until the time and after you completed       13       to me bu thr. C         14       the written report; is that correct?       14       Q. That         15       A. It would include the report that I generated.       15       of materialsi         16       wes.       16       A. Yes.       18       A. Also         19       A. The you'd include the report you had an       17       Q. And       A. Also         18       Yes.	
S0. Okew. This would have been the hours that wouldSto do 1?. There's tw different exclusion of the sector would have been to the time strike that. You have6would have seent up to the time strike that. You have6tw different exclusion.7ebout seven hours in this before wou would have seen Dr.7(Exhibit Nos. 5 end 6 would have seent to merked fa-identification.8Necencest's office notes but after wou yould have8merked fa-identification.999(Bu h_Batallion) All richt. Doctor, here10A. Well, I sew some of Dr. Necencest's office90. (Bu h_Batallion) All richt. Doctor, here11resorts. Mat wes pert of what wes sent to me to review.12A. This is some of the material that wes provid13had emereted up until the time end efter wou completed11to me bu hr. Domine.14the written report; is that correct?12A. This is some of the material that wes provid15A. Ti would include the report that I emereted.14G. That would have been pert of the initial percented.16wes.17G. And then Exhibit No. 6?17G. And I see would if t wou've got it kind of im2018A. Yes.1319A. Yes.1421sports. An hour end e half. An hour and e half. An hour22end a half. Three quenters of en hour. How much of this timu would23three quenters of en hour. How much of this timu would24wou estimate wes spent in reviewing medical records, if25wou estim	SQ. Okeu. This would have been the hours that youSto do 1?. The6yould have spent up to the time strike that. You have6tw different7ebout seven hours in this before you yould have6tw different8Nedendest's office notes but after you yould have89generated the report; le that correct?9Q. (Bu10A. Weil, i sev some of Dr. Nedendest's office16ucu chat's beet11reports. mat wes pert of what yes sent to me to review.11that for us?12P. I missecke. The seven hours would be what you12A. This13had generated up until the time end after you completed13to me bu thr. C14the written report; is that correct?14Q. That15A. It yould include the report that I generated.15of materials:16wes.16A. Yes.19Which includes17Q. But It yould have been before you had an17Q. And18A. Yes.19which includes29Q. And I sée you did It you've got It kind of Im2920D. And I sée you did It you've got It kind of Im2221Q. And I sée wanters of an hour. An hour and then2222Q. Antil sée wanters of an hour. An hour and then2223Q. Antil sée was spent in revieving medical records, If14	
6       vould have spent up to the time strike that. You have       6       two different exhibits.         7       doout seven hours in this before you yould have seen Dr.       8       merked fa- identificat         9       generated the report; le that correct?       9       0. (Bu bales abalition) All right. Doctor, here         10       A. Weill, I seview and of Dr. Necendest's office       9       0. (Bu bales abalition) All right. Doctor, here         11       reports. Mat was pert of what was sent to me to reporter.       11       that for us?         12       P. I missocke. The seven hours yould be what you       12       A. This is some of the material that was provid         13       had generated up until the time and after you completed       14       the written report; is that correct?         15       A. Ti yould include the report that I generated.       17       0. But It yould have been before you had an         19       A. Yes.       17       0. And the Exhibit No. 67         18       A. Yes.       19       A. Also materials; reported to me bu thr. Domine         19       A. Yes.       19       A. Also materials; reported to me bu thr. Domine         19       A. Yes.       19       A. Also materials; reported to before.         29       O. And I see your and a half. An hour and a half. An hour       11 <td< td=""><td>6       vould have spent up to the time strike that. You have       6       tw different         7       ebout seven hours in this before you yould have seen Dr.       7         8       Nevenest's office notes but after you yould have       8         9       generated the report; le that correct?       9       0. (Bu         10       A. Weil, I say some of Dr. Nevenest's office       10       ucu chat's beet         11       reports. mat was pert of what was sent to me to review.       11       that for us?         12       P. I misspoke. The seven hours would be what you       12       A. This         13       had generated up until the time and after you completed       13       to me bu thr. D         14       the written report; is that correct?       14       0. That         15       A. It yould include the report that I generated.       15       of materials:         16       wes.       16       A. Yes.       17       0. And         19       A. Yes.       19       which includes       20       which includes         29       Q. And I see ucu did It you've odt It kind of Im       20       but also includes         21       seurits. An hour and a half. An hour and then       22       Q. All         21       three qu</td><td></td></td<>	6       vould have spent up to the time strike that. You have       6       tw different         7       ebout seven hours in this before you yould have seen Dr.       7         8       Nevenest's office notes but after you yould have       8         9       generated the report; le that correct?       9       0. (Bu         10       A. Weil, I say some of Dr. Nevenest's office       10       ucu chat's beet         11       reports. mat was pert of what was sent to me to review.       11       that for us?         12       P. I misspoke. The seven hours would be what you       12       A. This         13       had generated up until the time and after you completed       13       to me bu thr. D         14       the written report; is that correct?       14       0. That         15       A. It yould include the report that I generated.       15       of materials:         16       wes.       16       A. Yes.       17       0. And         19       A. Yes.       19       which includes       20       which includes         29       Q. And I see ucu did It you've odt It kind of Im       20       but also includes         21       seurits. An hour and a half. An hour and then       22       Q. All         21       three qu	
<ul> <li>8 Novement's office notes but after you you'd have</li> <li>9 emerated the report is that correct?</li> <li>A. Vetil, i sow some of Dr. Novements's office</li> <li>11 reports. That was pert of what was sent to me to review.</li> <li>12 P. I missooke. The seven hours you'd be what you</li> <li>13 had evenerated up until the time and after you completed</li> <li>14 the written report is that correct?</li> <li>15 A. It would include the report that I evenerated.</li> <li>16 wes.</li> <li>17 Q. But it you'd have been before you had an</li> <li>18 exports. An hour and a half. An hour and a half. An hour</li> <li>19 A Yes.</li> <li>20 And I see you did it you've got it kind of in</li> <li>21 sports. An hour and a half. An hour and then</li> <li>22 and a half. Three system in reviewing medical records, if</li> <li>24 you estimate was spent in reviewing medical records, if</li> <li>25 and a half. Three system in reviewing medical records, if</li> <li>26 and a balf. Was spent in reviewing medical records, if</li> <li>27 and a balf. Was spent in reviewing medical records, if</li> <li>28 but estimate was spent in reviewing medical records, if</li> <li>29 but estimate was spent in reviewing medical records, if</li> <li>20 and a balf. Was spent in reviewing medical records, if</li> <li>21 correct?</li> </ul>	8       Neverwest's office notes but after you you'd have       8         9       generated the report; le that correct?       9       0. (Bu         10       A. Weill, i say some of Dr. Nevenaest's office       10       ucu chat's best         11       reports. mat was pert of what was sent to me to review.       11       that for us?         12       P. I misspoke. The seven hours would be what you       12       A. This         13       had generated up until the time and after you completed       13       to me bu thr. 0         14       the written report; is that correct?       14       0. That         15       A. It you'd include the report that I generated.       15       of materials;         16       wes.       16       A. Yes.       17       0. And         18       accortunity to review Dr. Nevenaest's decosition?       18       A. Also         19       A Yes.       19       which includes         29       Q. And I see ucu did It you've out it kind of Im       20       but also includes         21       sewrits. An hour and a half. An hour and e half. An hour       21       referred to be         21       seventers of an hour. How much of this timu you'ld       23       the initial pe         22       Q. All       <	
<ul> <li>9 generated the report; le that correct?</li> <li>9 G. (Bu has Batallion) All right. Doctor, here</li> <li>10 ucu chat's been marked as Exhibit No. 5. Can you ide</li> <li>11 reports. Mat was part of what was sent to me to review,</li> <li>12 P. I misseoke. The seven hours would be what you</li> <li>13 had generated up until the time and after you completed</li> <li>14 the written report; is that correct?</li> <li>15 A. It would include the report that I generated.</li> <li>16 ues.</li> <li>17 G. But it would have been before you had an</li> <li>18 correct?</li> <li>19 A Yes.</li> <li>29 G. (Bu has Batallion) All right. Doctor, here</li> <li>10 ucu chat's been marked as Exhibit No. 5. Can you ide</li> <li>11 that for us?</li> <li>12 A. This is some of the material that was provided to me bu fm. Domina.</li> <li>14 the written report is that correct?</li> <li>16 A. Yes.</li> <li>17 G. But it would have been before you had an</li> <li>17 G. And then Exhibit No. 6?</li> <li>18 correct?</li> <li>19 A Yes.</li> <li>20 G. And I see ucu did it you've got it kind of in</li> <li>21 securts. An hour and a half. An hour and e half. An hour</li> <li>22 G. All right. Three guarters of an hour. An hour and then</li> <li>23 the initial packet of materials sent to you; is that</li> <li>24 you estimate was spent in reviewing medical records, if</li> <li>24 you estimate was spent in reviewing medical records, if</li> </ul>	9generated the report; le that correct?90. (Bu10A. Weill, I sow some of Dr. Negenast's office10ucu chat's best11reports. mat was pert of what was sent to me to review.11that for us?12P. I misspoke. The seven hours would be what wou12A. This13had generated up until the time and after wou completed13to me bu thr. 014the written report; is that correct?140. That15A. It would include the report that I generated.15of materials;16wes.16A. Yes.17Q. But It would have been before wou had an17Q. And18A. Yes.19which includes29Q. And I see ucu did It wou've and it kind of Im39but also include21sports. An hour and a half. An hour and then22Q. All22wou estimate was spent in reviewing medical records, If14correct?	(Exhibit Nos. 5 and 6 w
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15       A. It would include the report that Leenerated.       15       of materials: is that correct?         16       ues.       15       of materials: is that correct?         16       ues.       16       A. Yes.         17       Q. But It would have been before you had an       17       Q. And then Exhibit No. 67         18       ceportunity to review Dr. Negengest's deposition?       18       A. Also materials provided to me bu Mr. Domine         19       A. Yes.       19       which includes primerily information from the Universe         20       Q. And I see ucu did It you've sot it kind of Im       30       but also includes the two unidentified sheets that I         21       seports. An hour and a half. An hour and e half. An hour       21       referred to before.         22       end a half. Three quarters of an hour. An hour and then       22       Q. All right. And that would have been a part         23       three quarters of an hour. How much of this tinu would       23       the initial packet of materials sent to yout' is that         24       wou estimate was spent in reviewing medical records, If       14       correct?	15       A. It you'ld include the report that I eenerated.       15       of materials:         16       ues.       15       of materials:         17       Q. But it you'ld have been before you had en       17       Q. And         18       ceportunity to review Dr. Negengest's deposition?       18       A. Also         19       A Yes.       19       which includes         29       Q. And I see ucu did it you've oot it kind of im       29       but also inclue         21       sepurits. An hour end e half. An hour and e half. An hour       21       referred to be         22       end e half. Three quarters of an hour. How much of this timu you'ld       23       the initial pe         24       you estimate was spent in reviewing medical records. If       14       correct?	
16       ues.         17       Q. But It would have been before you had an         18       coportunity to review Dr. Negengest's deposition?         19       A. Yes.         29       Q. And I see you did It you've sot it kind of Im         29       Q. And I see you did It you've sot it kind of Im         21       sports. An hour and a half. An hour and a half. An hour and then         21       referred to before.         22       end a half. Three quarters of an hour. How much of this tinu would         23       three quarters of an hour. How much of this tinu would         24       you estimate was spent in reviewing medical records, If	16       ues.       15       of Matter 101st         17       Q. But it would have been before you had en       16       A. Yes.         18       accortunity to review Dr. Negengest's deposition?       18       A. Also         19       A. Yes.       19       which includes         29       Q. And I see ucu did it wou've pot it kind of Im       29       but also inclue         21       sepurits. An hour and a half. An hour and a half. An hour       21       referred to be         22       and a half. Three quarters of an hour. An hour and then       22       Q. All         23       three quarters of an hour. How much of this tinu you'ld       23       the initial point         24       you estimate was spent in reviewing medical records. If       14       correct?	
<ul> <li>apportunity to review Dr. Negengest's decosition?</li> <li>A Yes.</li> <li>G. And I see ucu did It wou've sof it kind of Im</li> <li>spurts. An hour and a half. An hour and a half. An hour</li> <li>and a half. Three quarters of an hour. An hour and then</li> <li>three quarters of an hour. How much of this tinu would</li> <li>three quarters of an hour. How much of this tinu would</li> <li>three quarters of an hour. How much of this tinu would</li> <li>three quarters of an hour. How much of this tinu would</li> <li>three quarters of an hour. How much of this tinu would</li> <li>three quarters of an hour. How much of this tinu would</li> <li>three quarters of an hour. How much of this tinu would</li> <li>three quarters of an hour. How much of this tinu would</li> <li>the initial packet of materials sent to your' is that</li> <li>correct?</li> </ul>	18       accortanity to review Dr. Negengest's deposition?       18       A. Also         19       A Yes.       19       Vhich Includes         29       Q. And I see ucu did It you've got it kind of Im       29       but also inclu         21       sports. An hour and a half. An hour and a half. An hour       21       referred to be         22       and a half. Three quarters of an hour. An hour and then       22       Q. All         23       three quarters of an hour. How much of this tinu you'd       23       the initial pe         24       you estimate was spent in reviewing medical records. If       14       correct?	
19       A Yes.         19       A Yes.         20       Q. And I see ucu did It you've and it kind of Im         21       spurts. An hour and a half. An hour and a half. An hour and a half. Three quarters of an hour. An hour and then         22       and a half. Three quarters of an hour. How much of this tinu you'd         23       three quarters of an hour. How much of this tinu you'd         24       you estimate was spent in reviewing medical records, if	19       A       Yes.       10       At the         28       Q.       And I see ucu did it wou've sof it kind of im       29       but also inclue         21       spurts. An hour and a half. An hour and a half. An hour       21       referred to be         22       and a half. Three quarters of an hour. An hour and then       22       Q.       All         23       three quarters of an hour. How much of this tinu would       23       the initial period         24       wou estimate was spent in reviewing medical records. If       14       correct?	
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23       three quarters of an hour. How much of this tinu you'ld       23       the initial packet of materials sent to you'l's that         24       you estimate was spent in reviewing medical records, if       14       correct?	23       three quarters of an hour. How much of this tinu you'ld       23       the initial period         24       you estimate was spent in reviewing medical records, if       14       correct?	
24 you estimate was spent in reviewing medical records, if	24 you estimate was spent in reviewing medical records. If 14 correct?	Irloht. And that would have been a part
		packet of materials sent to your is that
	25 you can tell me, if you know? I i ∞ ∧ ∨₀₀	35. '

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1	0. Vere there mu other materials sent to you	$ \rangle_1$	1 9. And do you intend to offer muccelnions as to
е	initially other than the information that we have marked	/ 2	
3 ∡	es exhibits here?	K 3	3 earlier than it was?
4 5	A. There was a record that I took to be the medical record from the University of Nebraska Medical Center.	1	4 A. No. 5 <b>G. Do you</b> have mu oppinions m that issue?
6	<ol> <li>Anything else?</li> </ol>	6	
7	A. No.		7 submitted to Hr, Domina, if I way refer to mat.
8	Q. May I sea your report, Exhibit No. 4. Ooctor?	• • •	80. Sure.
9 10	Do you know Dr. Negengest's son that precilices surgery here in Lincoln?	9	9 A. In this case there was some delay between the 0 time the mole was first mentioned in the physician's.
10	A. Yes. I do.	11	
12	Q. Do vou know "" how do vou know htm a-what's	12	
13	your experience uith him?		3 and ve cannot say for sure that the ultimate outcome yould
14 15	A. Well, I first met him when I orlented him Into this hospital as he entered Practice here in Lincoln.	14 15	
15	Nebraska. Since that time, only through meeting him at	16	
17	committee meetings and "	17	
18	Q. He's a staff physician here at Bryan; is that	18	
19 2-09	CORRECT?	19	
20 21	A. Yes. Q. And he's a general surgeon?	20 21	<ul> <li>blopsy when the change was first brought to the attention</li> <li>of the physician.</li> </ul>
22	A. Yes.	د م 2 2	
23	0. Would be be qualified. In your opinion, to do $m$	23	3 a may not be indicative of Its level of Investon?
24	excisional blopsy of a mole?	24 25	
	A. I'm sorry. I missed the last part of it.	Č.	5 0. All rlaht. So that you could have a completely
!	HELLE S. BENES, RPR. JS WURM & ASSOCIATES, (402) 475-3376		IIO-ELLE S. BENES, RFR, JS WURM & ASSOCIATES, (402) 475-3376
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	38		32
••••••••••••••••••••••••••••••••••••••			32 1 normal looking mote that could be a Clarks IV matanoma,
1 2 3	Q of a mole?		1 normal looking mote that could be a Clarks IV metanoma, 2 vould wour agree with that?
1 2 3 4	Q of a mole? A. Yes.		<ol> <li>normal looking mote that could be a Clarks IV matanoma,</li> <li>vould wow agree with that?</li> <li>A. Possibly.</li> </ol>
	Q of a mole? A. Yes.	2	1 normal looking mote that could be a Clarks IV metanoma, 2 vould wour agree with that?
3 4 5 6	Q of a mole? A. Yes. Q. All right. And he would also be qualified to do	4	1       normal looking mote that could be a Clarks IV materianame.       2         2       vould wour agree with that?       3         3       A. Possibily.       4         4       MR. DOMINAL Are you talking about
3 4 5 6 7	<ul> <li>Q of a mole?</li> <li>A. Yes.</li> <li>Q. All right. And he would also be qualified to do a broadening of a videning of that excision in the event it was found to be a malignent tumor?</li> <li>A. Yes.</li> </ul>	4 5	<ol> <li>normal looking mole that could be a Clarks IV malanoma.</li> <li>vould you agree with that?</li> <li>A. Possibly.</li> <li>MR. DOTINAL Are you talking about</li> <li>hypothetically?</li> <li>MR. BATAILLON: Hypothetically.</li> <li>A. Hypothetically, yes.</li> </ol>
3 4 5 6	<ul> <li>Q of a mole?</li> <li>A. Yes.</li> <li>Q. All right. And he would also be qualified to do a broadening of a videning of that excision in the event it was found to be a malignant tumor?</li> <li>A. Yes.</li> <li>Q. A referral by a general practice physician to</li> </ul>	49	<ol> <li>normal looking mole that could be a Clarks IV melanoma.</li> <li>yould you agree with that?</li> <li>A. Possibly.</li> <li>MR. DOMINAL Are you talking about</li> <li>hypothetically?</li> <li>MR. BATAILLON: Hypothetically.</li> <li>A. Hypothetically, yes.</li> <li>Q. (By Mr. Batailion) All right. But You haven't</li> </ol>
3 4 5 6 7 8	<ul> <li>Q of a mole?</li> <li>A. Yes.</li> <li>Q. All right. And he would also be qualified to do a broadening of a videning of that excision in the event it was found to be a malignent tumor?</li> <li>A. Yes.</li> </ul>		<ol> <li>normal looking mole that could be a Clarks IV melanoma.</li> <li>yould you agree with that?</li> <li>A. Possibly.</li> <li>MR. DOMINAL Are you talking about</li> <li>hypothetically?</li> <li>MR. BATAILLON: Hypothetically.</li> <li>A. Hypothetically, yes.</li> <li>Q. (By Mr. Batailion) All right. But You haven't</li> </ol>
3 4 5 6 7 8 9	<ul> <li>Q of a mole?</li> <li>A. Yes.</li> <li>Q. All right. And he would also be qualified to do a broadening on a videning of that excision in the event it was found to be a mallement tumor?</li> <li>A. Yes.</li> <li>Q. A referral by a general practice physician to Dr. Nagengast's son would be appropriate if the physician</li> </ul>	4 5 8 8 19	<ul> <li>normal looking mole that could be a Clarks IV melanoma.</li> <li>yould you agree with that?</li> <li>A. Possibly.</li> <li>MR. DOMINAL Are you talking about</li> <li>hypothetically?</li> <li>MR. BATAILLON: Hypothetically.</li> <li>A. Hypothetically, yes.</li> <li>Q. (By Mr. Batailion) All right. But You haven't</li> <li>done mu research with respect to the doubling rate as any</li> </ul>
3 4 5 6 7 8 9 10 11 12	<ul> <li>Q of a mole?</li> <li>Q of a mole?</li> <li>A. Yes.</li> <li>Q. All right. And he yould also be qualified to do a broadening on a videning of that excision in the event it was found to be a malignant tumor?</li> <li>A. Yes.</li> <li>Q. A referral bu a general practice physician to Dr. Nagengest's son yould be appropriate if the physician believed that there needed to be further treatment from a sumplical standpoint for a disensed melanomal is that correct?</li> </ul>	2 4 5 6 7 8 8 8 9 9 18 17 17	<ul> <li>normal looking mole that could be a Clarks IV melanoma,</li> <li>vould your agree with that?</li> <li>A. Possibly.</li> <li>MR. DOMINAL Are you talking about</li> <li>hypothetically?</li> <li>MR. BATAILLON: Hypothetically.</li> <li>A. Hypothetically, yes.</li> <li>Q. (By Mr. Batailion) All right. But You heren't</li> <li>done mullesearch with respect to the doubling rate at any</li> <li>of the issues with respect to causation in this case; is</li> <li>that correct?</li> <li>A. No, only reading the one text and not all of</li> </ul>
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35 33 Patient or -- strike that. Can you olve us a parden A. Uell. I was always faught that in the case of a 1 1 variety, Doctor. I went you to look at a mole case? How plomented lesion on the skin, that if there vas change. 2 2 does that usually occur, if you could tell us in a any kind of a change, color change, elevation, size, that з 3 the prudent thing to do at that point you'd ba excisional 4 hypothetical? 4 A. It would have been My policy thet If I was asked 5 blopsy. The criticism I have is that apparently that vas s to look at a mole and vas told that it had changed in some not done. 6 6 Q. All right. Any other criticisms? 7 7 vey, I you'd have excised that mole. 8 A. m. 8 Q. Okay. At that time or whenever the patient 9 0. Now, when you talk about a pigmented lesion, 9 yould let you do it? A. I would have advised doing it right then. 10 you're talking about a mole in common parlance? ١Ø 0. All right. And you cm't recall e patient ever 11 A. Uell, there can be moles without plament. 11 12 Q. Okay. 12 saving to you I want to wait? 13 13 A. I'm talking about lesions that have b-A. I cannot recall that. 14 plament as part of their structure. 14 Ω. If a wtimt said to you I vant to vait. what ... 0. Okav. Does It matter whether the mle is raised IS yould you do? A. If there was change, obvious change, I would 16 a. If It's fist ulth the surface of the skin? 16 17 17 tail then that it would be my best feeling that a delay A. I'm not suce I understand what you mean but • • difference. 18 should mt occur. 19 0. Well, I expreciate that. Unen we talk about 19 9. And you'ld you tell than yhu? 29 plemented lesion. do we mean that it has to be an area of Yes. aB Α. 21 the skin that is raised. the lesion has to be raised, a 21 Ω. What would you tell then 7 55 can it just be a brown spot on the skin? 22 Α. That because of the change, ?he likelihood of 23 23 this being a malignant lesion was increased, and that if A. A nevus can be a brown spot on the skin. 24 ۵. All right. And you were "you used the word 24 that were true. that the very earliest removal possible 25 nevus, and that you'd be the medical definition then of 25 vould be prudent. MICHELLE S. BENES, RPR., JS JUPH & ASSOCIATES, (402) 475-3376 MICHELLE S. BENES, RPR. JS WURM & ASSOCIATES, (402) 475-3376 36 34 the planented lesion that you had referred to? 0. All right. But if the patient vmted to delay. 1 2 A. Yes. 2 the wtlent delaws; rloht? з 0. Old you in your practice remove these plamented A. Yes. but I would have documented that. з 4 lesions from time to time? 4 Q. Ail right. You you id have documented that the 5 A. Yes. 5 patient vmts to valt? 6 Q. And of all the pigmented lesions that you 6 A. That they refused excision at that time and 7 removed, only two turned out to be melanoma: 18 that 7 elected to vait, yes. 8 corner.t7 8 0. All right. And there's really nothing you can 9 8 do about that as a physician; is that correct? A. Yes. 10 0. All right. And one had already progressed to a 10 A. Not if they refused, right. 11 metestatic stage: is that correct? 0. τ÷ I assume that every plomented lesion that you 12 A. Yes 12 removed was one that had reported to you some change; is 13 Q. And the other one apparently not? 13 that correct? 14 Α. That's correct. 14 A. mt necessarily. 15 Ω. 15 How many pigmented lesions do you think you 0. Unat Other plomented lesions would you have 16 removed in your years of family practice? 16 removed? 17 I don't think that I could give you an accurate Α. A. If this vess a plomented lesion to an energy that 17 18 estimate. I would guess that I probably removed fifteen 18 yes likely to be irritated by cinthing or by some function 19 or tventu a year. Multiply that by tventy-five, and you 19 of the work that they performed. I wight have removed that 20 might have a ballpark figure. 20 even though there were no changes. If there were a mole 21 0. Sure. I understand. Did mu of the patients 21 on the pairs of the hand on the sole of the foot. I would 22 that you talked to elect to delay removing the lesim ever 22 have removed that. 23 that you know of? 23 0. And that you idn't have been so much for the A. I do not recall that ever happening. 24 24 potential of mailunancy but as f a convenience of tha а Q. All right. Unst generally would you tell the 25 patient: is that correct? MICHELLE S. BENES, RPR. JS HURM & ASSOCIATES, (402) 475-3376 MICHELLE S. BENES, RPR. JS WURM & ASSOCIATES, (402) 475-3376

37 - 19 A. Except for those m the hand and the foot. 1 the Patient's failure to follow your advice? 2 There's a higher incidence of malignancy in those lesions. A. I think it's my responsibility to emphasize to 2 3 and I would not have done that Just for their convenience, that patient the importance of doing that. But if they ٦ 4 0. But If theu had one that vas irritated by still refused, then I you'd document that refuse i in my 5 clothing, then that you'ld have been one that you you'd 5 record. 6 take off mostly for the patient's conventence? 0. If you told the patient that it was mailenant. 6 that there was a chars that It could be malignant, would 7 A. Mostly, or if there was mother change. 7 8 9. Iunderstand. For them to bring it to your that be enough do you think? 8 9 attention. does that automatically mean that there's a a A. matsimple statement. I don't believe that. 18 chaoge? 10 you ld be enough, 11 Α. NO. 11 0. All right. How much do you got to do. Doc? 12 Ω. Old VV ever have a Patlent that cam to upu I think you're on lived to tell his not only that 12 Δ 13 that nu.~con remember that cam to you and asked you to this could be malignent but that the natural history of 13 ы look at a mote that you do not believe had mu idea that mailgnant melanomes is very bad; that there is no good 14 15 there was a chance that a mole could be cancerous? treatment. Once a lesion like that becomes metestatic." 15 16 Δ Would wy restate that? their class is much blocher if they delay. 16 17 ۵. 0. All right, And you think you did that In each Have VV ever had a patient that came to you 17 18 that asked to you check a mole that you believe, either and every case of anybody that ever refused? 18 19 directly or indirectly, had midden that that mole had a 19 Α. I don't recall anybody specifically that 20 chance to be concernus? 20 refused. 21 MR. DOMINA: I'll object on foundation, go 21 Ω. All rlaht. 22 ahead. 22 But I believe it would have been my prectice to А 23 Α. I belleve that that occurred. 23 do that. 24 **Q**. (By Mr, Batal Ilon) How menu times do you think? 24 0. As far as a .. Nagengest's record is concerned. 25 when is the first time " strike that. Besed on your Α. I have no estimate. 25 MICHELLE S. BENES, RPR. JS WURM & ASSOCIATES, (402) 475-3376 MICHELLE S. BENES, RPR. JS WURM & ASSOCIATES, (402) 475-3376 48 38 1 0. Would you agree with the statement that most review of his record alone, when le the first time that 1 2 patients that come to you and ask you to check a mole have wou believe them is a documented change in this mole? 2 з an idea that the mole could be concerous? A. May 17 3 1 A. It's mulfeeling -a. SUM. Go sheed and look at the record. 5 0. Ten. The only notation indicating a change was made 5 Α. 6 Α. -- that from some article that they read or some on 8-31-92 when the notation savs mola ulcarated. 6 experience that they've had. either family member or 7 7 0. All rlaht. And you believe that at least he 8 something like that, that they are sensitized about a 8 should have recommended excision at that time? 9 plamented nevus and that would prompt them to ask me about 9 Α. Based only mhis record? 10 a lesim. 10 a. Yes. 11 0. And its Potential of being cancerous? 11 Α. Based only m his record, yes, that you'd have 12 Α. And their concern for that potential. 12 been reasonable. All right. You'd you agree that most Of those 13 0. 13 Q. All right. Now, based on everything that you've 14 patients that come in and ask you to check a mole then at 14 reviewed, do you have an opinion as to when he should have IS least In the back of their mind have the idea that there's IS recommended the mole to be excised? a chance that the mole could be cancerous? 16 A. Yes. 16 17 A. I don't know if most of then do. but certainly I 17 0. Uhen? 18 yould think that that yould be the primary reason fa-18 In the 22nd of August, which is the first Α. IS esking for It. 19 notation referring to the mole m the back. 20 Q. All right. And if you told a patient that you 20 Q. Dkau, And why do you balleve he should have 21 thought the mole should be removed, you yould expect the 21 recommended exclsion m the 22nd of August? 22 patient is follow your advice? 22 MR. DOMINAL Just a minute. 23 A. Yes. 23 A. Excuse me, i'm In error. The first notation Q. And if the patient does not follow your advice. 24 24 Ves 7-9-92. 25 Is It your opinion that you yould mit be responsible fa-25 N. (By Hr. Batal Lion) 7/9/92? MICHELLE S. BENES, RPR. JS JURN & ASSOCIATES. (402) 475-3376 MICHELLE S. BENES, RPR. JS WURM & ASSOCIATES. (402) 475-3376

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	43
41 1 A. Y <del>es</del> ,	43 I strap, how high is your level of suspicion of a cancerous
2 Q. Allrlaht.	2 leston?
3 MR. DOMINA: So the record is clear. Is that the	3 A. It wuld depend a little bit m the appearance
4 dau he should have first recommended excision?	4 of that lesion when lexemined it.
5 0. (Bullin, Batallion) That was after your	5 0. All right. And what would you be looking for?
6 attorney, Mr. Domina, flipped you back in the record a	6 A. tid be looking for variation in the color, i'd
7 little waws, I take it?	7 be looking favoriation in elevation. I'd be looking fa
8 A. Yes.	8 variation in the circumference: that io. Indentations a?
9 0. All richt. Now, let's talk about	9 the circumference of the lesion.
18 A. €2nut I high lighted It. Go anhead, I'm m.u.	10 O. All right.
11 0. Let's talk about 7-e-92. 12 A. Yes.	11 A. Any satellite lesions.
	12 0. Anuthing else? . 13 A. Evidence of inflammation, redness,
<ol> <li>0. Why do you believe that there should have been at</li> <li>recommendation to excise on 7-9-927</li> </ol>	14 <b>9</b> . All rlaht. What all a is there muspecific
15 A. From some information that at that time it was	15 color you'd be looking for one you or another?
15 referred to as being somewhat irritated. And I don't	15 A. No, just a variation in cola vithin the lesion.
17 recall the source, it may have been the H & P in the UNHC	17 . O. All right.
18 material that <b>I no longer</b> have.	18 A. Generally, It's darker but not always.
19 Q. Old you have a chance to review Mrs. Nagengast's	19 Q. So if the cola ves uniform in tone or uniform
29 a. Mrs. Viebelhous' deposition?	29 In cola. then that would say to you that it may not be
21 A. No.	21 cancerous?
22 Q. If the mole is on a interferes with her bre	22 A. That would decrease my suspicions,
a. strap, that cwild irritate it; is that correct?	23 0. And then if it's not elevated very much or
24 A. Yes.	24 depending on the elevation, that would also decrease your
25 Q. And if that is the cause of the irritation, you	a suspicion; is that correct?
MICHELLE S. BENES, RPR, JS WURM & ASSOCIATES, (402) 475-3376	MICHELLE S. BENES, RPR. JS WURM & ASSOCIATES. (402) 475-3376
42	44
1 yould recommend its excision because it causes innitation?	A. If it versifiat, it yould decrease the
1 yould recommend its excision because it causes irritation? 2 A. Yes, because it could be the cause of that	A. If it were flat, it would decrease the 2 suspicion. IC it were elevated. I? would increase.
<ol> <li>vould recommend its excision because it causes irritation?</li> <li>A. Yes, because it could be the cause of that</li> <li>irritation, but it could not also.</li> </ol>	<ol> <li>A. If it verse flat, it would decrease the</li> <li>suspicion, IC it verse elevated. I? would increase.</li> <li>O. And the circumference. What about the</li> </ol>
<ol> <li>vould recommend its excision because it causes irritation?</li> <li>A. Yes, because it could be the cause of that</li> <li>irritation, but it could not also.</li> <li>Q. But it's not clear at least at this time?</li> </ol>	A. If it vers flat, it vould decrease the     susplicion, IC it vers elevated. I? vould increase,     O. And the circumference. What about the     circumference? The size or
<ol> <li>vould recommend its excision because it causes irritation?</li> <li>A. Yes, because it could be the cause of that</li> <li>irritation, but it could not also.</li> <li>Q. But it's not clear at least at this time?</li> <li>A. Yesh.</li> </ol>	<ol> <li>A. If It vers flat, it yould decrease the</li> <li>suspicion. If it vers elevated. If yould increase.</li> <li>O. And the circumference. Unat about the</li> <li>circumference? The size or ""</li> <li>A. If It's uniform and smooth et its circumference.</li> </ol>
<ol> <li>vould recommend its excision because it causes innitation?</li> <li>A. Yes, because it could be the cause of that</li> <li>innitation, but it could not also.</li> <li>Q. But it's not clear at least at this time?</li> <li>A. Yesh.</li> <li>Q. M. July e7</li> </ol>	<ol> <li>A. If It vers flat, it would decrease the</li> <li>suspicion. If it vers elevated. If would increase.</li> <li>O. And the circumference. What about the</li> <li>circumference? The size or ""</li> <li>A. If It's uniform and smooth et its circumference.</li> <li>I?would decrease your suspicion. If it vers irregular.</li> </ol>
<ol> <li>vould recommend its excision because it causes innitation?</li> <li>A. Yes, because it could be the cause of that</li> <li>innitation, but it could not also.</li> <li>Q. But it's not clear at least at this time?</li> <li>A. Yesh.</li> <li>Q. M July e7</li> <li>Z. Yes.</li> </ol>	<ol> <li>A. If it vers flat, it yould decrease the</li> <li>suspicion. If it vers elevated. If yould increase.</li> <li>O. And the circumference. What about the</li> <li>circumference? The size or ""</li> <li>A. If It's uniform and smooth et its circumference.</li> <li>I?vould decrease your suspicion. If it vers inneguiar.</li> <li>indented, it yould increase your suspicion.</li> </ol>
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47 45 0. And you cm't remember where that history --A. No. 1 1 your knowledge of that history ~ an arom? Q. -- on August 227 2 2 3 A. No. I can't. A. No. з 4 Q. Do you remember what the change vas that was Q. Do you have mu recollection as to how much 4 5 information ha imparted to Mrs. Viebsihaus as to whather 5 reported? she should have had the mole excised? 6 6 A. It seemed like it had grown some in size and 7 A. N3. I don't. that there was some redness. 7 8 0. Well, the redness is -- could be explained by 8 0. Do you have any recollection of what his 9 the irritation buthe brastrep? 9 deposition was vith respect to how much information he 10 A. Could be, yes. 10 imperted to her? 11 0. This prowth in size yould be explained. In your 11 A. i don't recall that. no. opinion -- the prowth in size would be an indication of an a. All right, tat me esk you hypothetically. 12 12 13 Doctor, If Dr. Negengest indicated that In his opinion 13 increased likelihood of cancer in your estimation? 14 A. Centainiu increase your suspicion, yes. 14 that this mole should be removed because there is a 15 If the patient reflected that she had never possibility that there could be mailenancy and the patient 0. 15 indicated that she vanted to wait until after her 16 reatly paid much attention to it and didn't know whether 16 17 It had gotten larger or smaller m July 9, the only reason delivery, which was vithin a week a- two, do you ballave 17 18 that you would recommend excision yould be continued. 18 that he breaches the standard of cars ulth that 19 irritation. you'd that be correct? 19 information from a hypothetical standpoint? A. I believe that he should have edvised equinst 20 A. I believe so, vithout mu other factor there. 20 21 valting and that ha should has documented that in his 21 Q. Sure. All right. And that is something that's 22 completely w to the Patient vith respect to how much 22 record. 23 Q. In what respect? You mean, he has advised irritation he or she is villing to put up with: is that 23 24 24 excision, and then ha's supposed to put something mone? correct? 25 A. I think If there was -- equin, If there was m 25 She nefused? t MICHELLE S. BENES, RPR, JS JURN & ASSOCIATES, (402) 475-3376 MICHELLE S. BENES, HPR. JS WURM & ASSOCIATES, (402) 475-3376 46 48 A. If she refused. If he advised her evaluat Other indication fa-suspicion, then it could have been 1 1 2 elective, yes. 2 vaiting and she still refused, then I personally yould 0. Now, the next time the model is noted in Dr. 3 3 have documented both of those pieces of information. 4 Negengest's record is August what? Number one, that I had advised equinst vaiting, and number 4 5 A. Tuenty-tun 5 two, that she did refuse. 0. Now, and a 1 understanding you connectly that 6 0. When you did your record, did you use a scap 6 7 If the physician's level of suspicion yould be primarily 7 method? that the mole vas irritated because of a mechanical 8 A. I'm not familiar with that. 8 9 mechanism, that in your opinion he yould not be obligated D. All right. When you did -- when you wrote your 9 10 to go back and check the mole each time the patient came 10 records when you were in your family practice, did you 11 In. If the patient did not complain about It? 11 have a standard vay in which you documented office visits? 12 A. I believe that's probably right. 12 A. Are you referring to written records, typed 13 Q. Ail rloht. But if the physician had a 13 records? 14 continuing index of suspicion that there might be some Q, Yes. Yes. 14 15 malignancy, then you you'd say that ha at least should ask 15 A. We did both. In the early part of sw practice. 16 the patient about it or yould it matter? 16 we had written notations. Probably in the mid portion ve 17 A. if ha had a suspicion of malignancy, he should 17 switched to a dictated, tweed record. 18 have removed it when that suspicion arose in his mind. 18 Q. Did your record look, as far as content, any 19 Q. He sees the patient then m August 22, and at 19 different than Dr. Nagengast's record? 20 that tins -- I got to get to it, Doctor, i'm sorry, All 29 A. Not a great deal. 21 rleht. At that time he indicates in his record that he 21 Q. Things were put -- are put down in a shorthand 22 edvised excision: in that correct? 22 method, would that be a fair statement? 23 A. Yes. 23 A. 1 believe so. Q. You have mu reason to believe that he did not 24 Q. I mean, you don't try to do a narrative of 24 а advise exclsion --25 everything that occurred in any given situation? MICHELLE S. BENES, RPR., JS WURM & ASSOCIATES, (402) 475-3376 MICHELLE S. BENES, RPR. JS WURM & ASSOCIATES. (402) 475-3376

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49 A. Again, it depends m mu feeling as to the 1 a. How do you exclain that phenomena? 2 seriousness of the situation and the implications that are 2 A. There's probably several years of explaining it. involv<del>a</del>d. з 3 The mental status of the willing of the tins. feer. 4 a. How much difference is it going to make if she 4 doesn't allow than to assimilate all the information. It 5 waits a week, can you saw? 5 mube simply the volume of information that's presented 6 . A. Icm'tsau. 6 to then that they don't recall. Sometimes they Just don't 7 Q. I believe in your report you indicated that you 7 understand. In spite of being very succinct and definite. 8 believed that at least by the time the mole vas first 8 in less you can get there to being that same information. q visualized, that it was probably in its vertical phase? 9 here to you. It's sometimes difficult to know what they 10 10 It could have been really understand. Α. 11 Ω. a. And what they don't? Unu do uou esu that? 11 12 A. The history of it belm elevated a relised I 12 A. that they bm't. 13 Do you have -- See. I have a hard time with thinh would indicate that it's entered into its vertical 13 0. 14 phase. this case. Doctor, and I need to know where you're coming 14 15 9. And that would mean that it was probably Clarks from on this. And, frankly, I'va got to know whether you 15 16 IV at that point? really believe this or not, end i suspect you probably do. 16 17 A. I don't know that that means Clarks IV, but It but I vant to know for sure. If you tell a patient that 17 18 certainiy -- It certainly would Indicate. I think, that It you want the mole -- that you think the mole ought to be 18 19 has gone beyond Clarks I. excised, you would expect the within the follow your 19 20 0. Now, after you advised excision, how menu more 20 opinion: right? 21 times do you have to edvise excision before the wilmit --21 A. I would. 22 I mean, do you have to nota it every tinu you see the 22 a. And you couldn't imagine why a patient yould 23 patient that you've advised excision? refuse to follow your recommendation if you said there's a 23 24 A. If I make that recommendation, I you'd document 24 chance that that could be mailement cancer: Is that right? 25 It. 25 A. I'd probably have difficulty understanding that. MICHELLE S. BENES, RPR, JS WURH & ASSOCIATES, (402) 475-3376 MICHELLE S. BENES, RPR. JS WURM & ASSOCIATES, (402) 475-3376

52 50 Do you think most physicians you'd document it 1 Q. Why they would ever do that: right? after they've refused your first plece of advice? A. Yes. yes. 2 I have no v w of knowing that. з a. And now what you're saying Is even after you All right, Documentation is kind of an 4 tell them that. you have an additional obligation to say Individual style, is it mit. Doctor, how much you 5 you could die from cancer? 6 A. Ibelieve so 7 9. How far do you got to tell then that malignent All right, And it depends a lot m how much you 8 cancer can bill them? 8 A. I think unu have to an heurond just seving that 10 this could be malignent. 11 a. Uhu? 12 I think that " because in that statement you Α. 13 say this could be malignant, and that's not tailing them that really this Is mallonant. You don't know at this 14 15 point. 15 Q. That's rloht. 17 A. But if they say, m. i yent to welt. If you're 18 index of suspicion table that this realigned a very 19 and charge of being mailgnent, then I think LOU bave 10 29 take that next step and tail that patient | don't believe 21 that it's prudent for you to welt to do muthim about 22 this. I believe that the chances of this being malignent 23 are too prest for that. 24 a. So in that instance then you're forcing the 25 Issue Vith them? MICHELLE S. BENES, RPR. JS BURN & ASSOCIATES, (402) 475-3376

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8 trust the patient? 9 10 Α. Is that a question? 11 ۵ Yes. 12 I you'd thinh that you'd influence your Α documentation, yes. 13 14 Ω. Would you egnes. Doctor, that with respect to 15 patients, that subsequent events many times colors their 16 recollection of what occurred prior to a traumatic event? 17 Α. Vould you rephrase that? 18 α. Well, let me put it to you this you. There's 19 been a number of studies where surgical consents were 20 cottined and then after the surgery occurred, that the 21 patients have little. If env. recollection of Met was 22 actually told them prior to the surgery. Are you familiar with that literature? 23

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24 A. i'm not familiar with that itterature, but I 25 belleve that to be true.

MICHELLE S. BENES, RPR. JS JURN & ASSOCIATES, (402) 475-3375

55 53 1 neviewing? A. I would force the issue, if my index of 1 2 suspicion was high i yould force the issue. A. (Non-responsive.) 2 Q. That's a convoluted question. Did you take any 3 0. And I — num that your thinking le that ma 3 other notes besides Exhibit No. 2 is as question? reasonable person yould refuse to have it exclaed? 4 4 5 A. NO. A. No re-able, completely informed Patient yould 5 And Exhibit No. 2 is from DeVita, D-E capital 0 6 refuse. 6 U-1-T-A's book on openingue is that correct? 7 **Q**. And w by definition, when a patient refuses. 7 A. Cancer. It's labeled Cancer with a subtitle. B then wow haven't done wow" Job of reasonably informing я Q. And it says 3rd Edition, 1989, according to your я 9 them? 10 m. DOMINA: Objection, Angumentative, You're 10 notes? 11 Α. Yes. creating a circle. That's mt a fair question. 11 Uny did you go to this text? 12 12 Ω. MR. BATAILLON: He can answer it unless you're Vail. It was the newest text in our library. 13 instructing him not to. 13 Α. 1.4 MR. DOMINAL I'm certain is not doing that. 14 frankly. 15 A. Would you repeat your question. please? 15 ۵. On cancer7 15 0. (By Mr. Batalilon) You're saying bu definition, 16 On cancer. Α. 17 as junderstand it, that if the Patient refused, then you 17 0. Old you look at mu other texts or do mu other 18 dion't do a reasonable Job of Informing them that they 18 literature search? 19 should have the mole exclosed? 19 Α. I did mi. 20 A. Yes. I believe that I need to take that next 20 Q. And I assume that you believe that this text is 21 step and do more fa- than. a definitive enough pronunciation Of what cancer is that 21 22 0. You've never hed a Patient refuse to have a mole 22 you would rely upon it? 23 excised in your recollection? 23 A. Yes. 24 A. mat I recommended excision for? 24 0. All right. Was there enuthing that you read 25 ۵. Yes. 25 that you disagreed vith? MICHELLE S. BENES, RPR. JS WLFM & ASSOCIATES, (402) 475-3376 MICHELLE 5. BENES, APR. JS WURM 6 ASSOCIATES, (402) 475-3376 56 54 1 A. Not in murecollection. 1 Α. No 2 0. More than like in you would remember that. I take Are there muother texts that you yould 2 0 117 з 3 consider reliable in this area that you yould consult with 4 A. I vould think so. 4 respect to plamented lesions? 5 0. All right. But you would agree, however, that 5 A No. I'm sure there are many others, but I'm not 6 the ultimate decision on whether or not to have a famillar vith then. 6 7 procedure done is the patient's decision: is that correct? 7 Q. All right. Have you ever taught? 8 A. The patient has the right to refuse muthim. в A. Yes. 8 URS. 9 S. Old you teach in a clinical setting or in a 10 didactic satting? 0. Doctor, do you have mu other opinions about the 10 11 care that was rendered by Dr. Novencest to this patient 11 A. Clinical setting. 12 that we haven't discussed this afternoon? 12 0 And, of course, you would not have used any text 13 A. Okay. In relationship to the mole itself -as far as your --13 14 a. Yes. 14 A. M. 15 •• or to muthim else in the record? :5 0. What text did you usually keep in your office as Α. 16 0. No, with respect to the care that he rendered in 16 far as referring to patient cera? Naison's on pediatrics? 17 relation to this lawsuit, 17 Α. I had Neison's on pediatrics, G. Herrison's --18 ۱B A. NO. A. Herrison's. 19 0. All right. Let me look at my notes. Ve can 19 20 take a short break, Doctor. but I think I'm finished. 29 0. "" m internal medicine? 21 (At this time a brief recess 21 A. Uhat was the lest one? 22 was taken.) 22 0. Harrison's on internal medicine? 23 Q. (By Mr. Batailion) Doctor, did you do mu other 23 A. Yes. 24 notes while you very reviewing the medical record to help 24 0. Anuthing else that you cm think of? 25 you refresh your recollection as to what you were 25 I subscribed to the Medical Clinics of North Α. ł HICHELLE S. BENES, RPR., JS WURM & ASSOCIATES, (402) 475-3376 MICHELLE 5. BENES, RPR. JS JUPPH & ASSOCIATES. (402) 475-3376

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1	America, Surgical Clinics of North America, Pediatric	1 facts not in avidance, and it's not an appropriate
е	Clinics of North America, New England Journal or Medicine,	e hupothetical for the facts in this case. You can answer,
3	JAMA.	3 Doctor.
4	Q, But as far as texts?	4 A. Assuming that I had all that information, that
5	A. But as fates texts	S there was change, I you'd have recommended excision,
1		
6	0. Those version obabilis the only two?	6 Q. (Buthr. Domine) And if, as a matter of fact.
7	A. Those vers probably the main cres. I had Con's	7 those things occurred in this case but excision was not
8	textbook on treatment in my office.	8 recommended or counseled by the defendant physician, do
9	Q. Old MU rely on those from time to time when you	9 you have an opinion concerning whether or not the standard
18	did your practice?	10 of cars was breached?
11	A, Yea.	11 A. Yess,
12	0. Old MU find them generally to be informative?	12 Q. And your opinion?
13	A. Yes.	13 MR. BATAILLON: Same objections.
14	0. All rloht.	14 A. Can I answer?
15	MR. BATAILLON: I don't have enuthing further.	15 MR. DOMINA: Yes.
16	Thank MU. Doctor.	16 A. I believe that it was breached, yes.
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17	${f m}$ . DOMINA: I have just three ${f a}$ four questions	17 MR. DOMINA: No further questions.
18	I'd like to esk wou, Doctor,	18 MR. BATAILLON: Doctor, you have a right to read
19	CROSS-EXAMINATION	19 and sign the deposition, and it's up to you, whatever you
20	BY MR. DOMINA:	29 vent to do.
21	0. Devita's work m cancer is in the Bryan Hospital	21 MR, DOMINAL I'll get you a copy of it, so you
1		· ·
22	libraru?	22 can valve reading and signing.
23	A. Yes.	23 A. Okaw.
24	0. A twoical estient load for a family practitioner	24 (Deposition concluded at 2:37 p.m.)
æ	physician in a practice setting like Dr. Navengast's on a	25
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1	full dau of active clinical practice could be 30 to 40	1 CERTIFICATE
2	full dau of active clinical practice could be 30 to 40 Patients a day?	1         CERTIFICATE           2         1. Michaile 5. Benes, Registered Professional
1	full dau of active clinical practice could be 30 to 40	1 CERTIFICATE
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