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IN THE DISTRICT COURT OF KNOX COUNTY, NEBRASKA

COPY

DONNA J. WIEBELHAUS,

Plaintiff,

-vs-

D. J. NAGENGAST, M.D.,

Defendant.

Case No. 12018
DEPOSITION

Doc 329

Deposition of D. J. NAGENGAST, M.D., taken before me,.
Valorie R. Olson, Registered Professional Reporter, General
Notary Public in and for the State of Nebraska, commencing at
2:00 o'clock p.m. on July 1, 1993, at the Lundberg Memorial
Hospital Conference Room, Creighton, Nebraska, on behalf of
the Plaintiff and pursuant to the within stipulations,

APPEARANCES:

David A. Domina
Domina and Copple, P.C.
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2425 Taylor Avenue
Norfolk, Nebraska, for the Plaintiff:

Joseph F. Bataillon
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7000 Spring Street
Omaha, Nebraska, for the Defendant:
Donna J. Wiebelhaus;
Dennis Wiebelhaus.

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EXHIBITS :

MARKED OFFERED

Exhibit Number 5.....	3	80
(Copy of Dr. Nagengast's file regarding Donna Wiebelhaus, consisting of 7 pages)		
Exhibit Number 6.....	3	80
(Copy of Dr. Nagengast's file regarding Shelby Wiebelhaus, consisting of 7 pages)		
Exhibit Number 7.....	54	80
(Copy of letter dated 9/16/92 from State of Nebraska to D. J. Nagengast, and copy of letter dated 9/18/92 to State of Nebraska from D. J. Nagengast regarding PKU Tests)		
Exhibit Number 8.....	56	80
(Copy of Lundberg Memorial Hospital file for Donna Wiebelhaus' delivery, consisting of 30 pages)		
Exhibit Number 9.....	76	80
(Copy of National Cancer Institute's Treatment information on melanoma dated 7/6/92 consisting of 9 pages)		

EXAMINATION:

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STIPULATION FOR DEPOSITION

It is stipulated and agreed by and between the parties that the deposition of D. J. NAGENGAST, M.D., is being taken by the Plaintiff in accordance with Discovery Rules of the Nebraska Supreme Court, for discovery and use at trial by the parties, on the 1st day of July, 1993, commencing at the hour of 2:00 o'clock p.m., at the Lundberg Memorial Hospital Conference Room, Creighton, Nebraska, before Valorie R. Olson, a notary public.

Thereafter, the deposition may be transcribed by the Reporter, taking the same out of the presence of the witness. Subject only to the approval of the witness whose deposition is taken, the examination, reading and signature of the witness to the deposition is not waived. Upon the completion of the transcription of the deposition, it shall be transmitted to the attorney for the Plaintiff and certificate of service filed with the Clerk of the District Court of Knox County, Nebraska, with copies of the certificate of service served on all counsel of record.

It is further stipulated that all objections may be reserved until time of trial except those objections going to form and/or foundation of the question.

(Exhibits Number 5 & 6 marked for identification,)

D. J. NAGENGAST, M.D.,
called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DOMINA:

4 Q would you introduce yourself, please.

A Yes. Delwyn J. Nagengast.

4 Q You're a physician?

E A Yes.

t Q Licensed in Nebraska?

7 A Yes.

E Q Elsewhere?

9 A No.

10 Q And what's your educational history?

11 A Graduated from Creighton University, Bachelor of Science,
12 Summa Cum Laude, 1952; M.D., Creighton University, 1956;
13 rotating internship, Cook County Hospital, Chicago,
14 Illinois, July 1, 1956 to June 30, 1957.

15 Q Societies and organizations?

16 A Nebraska State Medical Association, American Academy of
17 Family Practice.

18 Q Board certified in the latter?

19 A Diplomat to the American Board of Family Practice and
20 recertified three times.

21 Q **And** when was the most recent recertification?

22 A 1990.

23 Q Was that by examination?

24 A By examination.

25 Q Where was the examination?

26 A Washington, D.C.

Q Did any of the examination include disorders of the skin?

A Well, there are about 500 questions in the examination so it probably did.

Q There wasn't a specific area--

A No.

Q --on dermatology, was there?

A No, not a specific area.

Q Have you had any particular training, specialized training, beyond that offered as required for medical students in the area of dermatology?

1 A Yes, I had a month of dermatology rotation at Cook County
1 Hospital, Chicago, Illinois, during my internship. I've
1 taken additional courses in dermatology at the University
1 of Minnesota,

1 Q Since getting your M.D. degree?

1 A Yes.

1 Q When was that?

1 A Probably-- I don't have those exact dates. Probably 15
1 and 12 years ago.

2 Q Was that on a residence student basis?

2 A No, this is a three day type of course,

2 Q You'd be there for three days?

2 A Yes, um-huh.

2 Q And in the course of that instruction did you study moles,
2 their structure, their changes?

2 A Yes.

1 Q Do you remember who taught that--
2 A No, I don't.
3 Q --course of instruction? Okay. Dr. Nagengast, you've
4 practiced in Northeast Nebraska for **how** long?
5 A 34 years.
6 Q And why don't you describe the nature of your practice,
7 would you, please?
8 A I'm in family practice in Bloomfield, Nebraska. I'm the
9 only physician in Bloomfield, Nebraska.
10 Q **How** much of your practice would be focused on the care of
11 geriatric patients?
12 A Probably 50 percent.
13 Q And could you give us an estimate on a percentage basis
14 about **how** much would be focused on care for pregnant
15 mothers or new-- newborn children?
16 A Well, probably ten percent obstetrics, and newborn
17 children probably five percent in my practice.
18 Q Of course you know Donna Wiebelhaus.
19 A Yes.
20 Q And do you remember how long you've known her?
21 A I've seen her as a patient since February, 1986.
22 Q And did you know her before she became--
23 A No.
24 Q --a patient? Your first acquaintance with her was when
25 **she** called upon you professionally?
26 A Yes.

1 Q Before her-- well, you were present during her deposition,
2 weren't you?

3 A Yes.

4 Q Was there any time before her 1992 pregnancy when you
5 treated Mrs. Wiebelhaus for any disorder of the skin?

6 A No.

7 Q She described a miscarriage during the course of an
8 earlier pregnancy and you were present during that
9 testimony, I'm sure.

10 A To back up to your previous question, on 5/2/1987 I did
11 see Mrs. Wiebelhaus and she stated she'd walked in an area
12 after weeds were sprayed. She developed a rash on her
13 ankles and the area was purple and it was my impression
14 she had a contact dermatitis of her legs and she was
15 treated appropriately, so I did treat her for a skin
16 condition.

17 Q And what-- do you remember what that treatment was?

18 A Aristocort A, 0.1 percent, cream.

19 Q And that's a cortisone-based product?

20 A Cortisone, urn-huh.

21 Q Is that-- is that a dosage of that particular drug that
22 would now be available over the counter--

23 A No.

24 Q --but may not have been then?

25 A No.

26 Q Do you know what the threshold is?

A Yes.

Q What is the threshold?

A Well, Aristocort is Triamcinolone, which to my knowledge is not available over the counter. Hydrocortisone is available over the counter.

Q Okay. Any other skin conditions--

A No.

Q --for which you treated her? You've got all of your notes for the entire record of her care at your clinic?

10 A Yes.

11 Q And are those before you?

12 A Yes. I do not have the hospital record here.

13 Q All right. And the hospital record would relate to the
14 delivery of the child?

15 A Yes.

16 Q Do you have any-- do you know of any hospital records
17 concerning this patient other than the record of her
18 delivery?

19 A Yes.

20 Q That is up to the time of her diagnosis of melanoma?

21 A Oh, no.

22 Q Okay. I've seen only your notes, Doctor, for the period
23 beginning January 14 of 1992, and I'm going to focus
24 virtually all of my conversation on that period with you,
25 as you might expect. Is that the first visit you had with
26 Mrs. Wiebelhaus concerning the pregnancy that resulted in

the delivery of her daughter on August 27 of '92?

A Yes.

Q Would you mind if I just briefly **look** at your records for the period--

A Sure.

Q --before that? Let's see-- Doctor, **it** looks like some of the 1990 entries-- and I'm not sure of this-- might be in the handwriting of someone else and signed by someone else. Would that make sense?

1 A That's Dr. James Ramsay from Atkinson, Nebraska.

1 Q And was he covering for you?

1 A He was working for me when I was gone in 1990.

1 Q **How** long were you gone? A couple of weeks?

1 A I may have been gone about ten days in July.

1 Q And I notice that during the 1990 pregnancy you received a
1 report back from Midwest **OB-GYN** apparently on something
1' related to the progress in the pregnancy. Can you tell
1 from the records what that was?

1 A It's probably an ultrasound, I would think. Let me see.

2 Q I notice that the-- that Mrs. Wiebelhaus was spotting.

2: There was some--

2: MR. BATAILLON: What date was that again?

2: MR. DOMINA: It's during the 1990 pregnancy. I don't
2: think I mentioned a more specific date.

2: A No, she was examined at the-- at the Midwest OB-GYN
2t office.

1 Q Okay. And you've been kind enough to show me an August 13
2 letter which is the report referenced in your notes, isn't
3 it?
4 A Yes. That's--
5 Q And apparently she had a spontaneous miscarriage of her
6 fetus?
7 A That was Dr. Davis' opinion.
8 Q And he communicated that diagnosis to you?
9 A Um-huh.
10 Q It looks like that may have happened while you were being
11 covered for by Dr. Ramsay.
12 A Well, no, I had--
13 Q You'd seen her once on the 11th?
14 A I'd-- right. When I came back on the 11th.
15 Q And then you'd sent her down to Norfolk?
16 A Apparently, yes. Um-huh.
17 Q It also **looks** like from your notes she's been regular in
18 having pap smears annually?
19 A Yes.
20 Q Okay. Do you use on a regular basis, Doctor, physicians
21 to whom you refer patients with particular kinds of health
22 problems or concerns?
23 A Well, I refer, because of my location, to a great many
24 areas. Sometimes that's dependent on where the patient
25 wants to go because they may want to go to Omaha because
26 they have family there or they may want to go to **Norfolk**

1 because they have family there, so we try to work out with
2 the patient wherever they want to go. Of course, it
3 depends on what type of referral or referring physician
4 they need.

5 Q Do you have physicians to whom you regularly refer
6 patients for dermatological care?

7 A Most of the patients I send for dermatology problems go to
8 Dr. Luckasen's group.

9 Q In Omaha?

10 A Midwest Dermatology Clinic who come to Norfolk and
11 Yankton. Most of our patients are seen at either Norfolk
12 or Yankton.

13 Q And is Dr. Luckasen a physician with whom you ordinarily
14 deal in that regard?

15 A I would work with any of the physicians in that group.

16 Q Do **you** know Luckasen personally?

17 A I have met him, yes. Luckasen; Papenfuss; and I don't
18 know who the others are.

19 Q You know Dr. Papenfuss as well?

20 A Yes.

21 Q Have **you** referred patients with skin cancers to that
22 group?

23 A Occasionally, Rarely.

24 Q Have you removed skin cancers and treated them yourself?

25 A Yes.

26 Q Is that a regular part of your practice?

A Yes, um-huh.

Q Can you estimate how often you would do that, Doctor?

A Well, we looked up-- in 1952 we sent in I think it was 52
or 56 pathology specimens. Not all of those are skin
cancers, many of those are benign lesions, but probably 25
of them are skin cancers.

Q You said 1952?

A I mean 1992. I meant 1992.

Q And did you send all of them to the same pathology
laboratory?

A Yes.

Q In Sioux Falls?

A Yes.

Q The one that you used for Mrs. Wiebelhaus?

A Yes.

Q And when you say you looked that up, you did that
anticipating this deposition, I presume?

A Yes. Um-huh. I think it was one of the questions in
your Interrogatories, what experience have you had.

Q Okay. Have you referred any patients other than Mrs.
Wiebelhaus on to another physician for treatment after
receiving results back from a pathology report--

A Yes.

Q --on a skin tissue sample?

A Yes.

Q **And** has that always been Midwest Dermatology?

A No.

Q Who else have you used?

A In my career I can recall four patients with malignant melanoma and all of those have gone to the Mayo Clinic.

Q Up to Mrs. Wiebelhaus?

A Yes. Um-huh. Four other than Mrs. Wiebelhaus.

Q Did they all die of the melanoma?

A One of them is still alive.

Q Was there anything at all outside of the ordinary about Mrs. Wiebelhaus' 1992 pregnancy?

A Other than the problems she had with the melanoma, I would say no.

Q Insofar as you were concerned, did she follow your instructions during the course of her pregnancy?

A Yes.

Q She was a satisfactory patient?

MR. BATAILLON: With respect to the pregnancy, is that the question?

MR. DOMINA: Yes, it is.

MR. BATAILLON: All right.

A Well, by and large she probably gained a little more weight than I like my pregnant patients to gain, but she was probably average for the Bloomfield patients.

Q All right.

A But no, she was a good, faithful patient who followed the advice and stuff.

Q And have you also treated her husband, Doctor?

A Yes, and I do not know those dates.

Q You didn't bring his chart? I didn't ask you to.

A No.

Q Have you ever at any time had any difficulty with Dennis Wiebelhaus as a patient that you can recall--

A No.

Q --without reviewing the record?

A I have not seen Dennis very often as a patient.

10 Q But when *you* have your relationship--

11 A Yes.

12 Q --has been satisfactory?

13 A Yes.

14 Q when-- let me ask you this; without reviewing your notes,

15 and I know you've done that now and I appreciate that you

16 have; without reviewing your notes, however, do you have a

17 recollection of the first presentation of this mole by

18 Mrs. Wiebelhaus to you?

19 A I'd have to review my note to get an accurate date.

20 Q I understand that.

21 A Yes.

22 Q And I'm not interested in trying to quiz you about the

23 date. My question is can you remember--

24 A Yes.

25 Q --in your mind's eye when it happened? /

26 A Yes.

Q All right, And now without the date because I-- for the moment I don't care about the date.

A Yes.

Q I'm interested in what you remember.

A Mrs. Wiebelhaus came into my office and I always talk to my patients in my personal office where my desk is, then we move the patients to another examining room, as she stated, where they're weighed and temperature and blood pressure, and then they're moved to one of three more examining rooms where the patients are examined.

1 Q And those are rooms with tables that--

12 A Yes. Um-huh. She said on that particular date that she
13 wanted a mole checked.

14 Q Okay. Do you remember that she said that when she was in
15 your office?

16 A Yes, when she was in my office.

17 Q All right. And what did you say?

18 A I said fine.

19 Q Okay.

20 A And so then I wrote down, as I usually do on this chart,
21 you know, the regular things for pregnancy, weight, blood
22 pressure, abdomen, extremities, and then I also put down
23 chest circle, and chest circle is a symbol that we need to
24 have a patient with-- in a gown with their clothes off
25 above their waist. Sometimes we put breasts, obviously
26 you can't check breasts except in a gown, or sometimes we

1 might just put back if we need to check a back or
2 something, but-- so then we did move Mrs. Wiebelhaus into
3 an examining room and I completed my OB visit and examined
4 her mole.

5 Q All right. What do you remember about that particular OB
6 visit? Anything outside of the ordinary?

7 A I don't remember anything out of the ordinary,

8 Q All right. Do you remember, was there someone present,
9 someone working for you who was present during the exam?

10 A Yes, I'm sure there was.

11 Q That would be standard procedure?

12 A That would be standard procedure.

13 Q Do you remember who that person was?

14 A It would either be Debbie Schmeckpeper or Jill Whitney.

15 Q This just depended on how the work--

16 A That's right.

17 Q --fell out that day?

18 A Um-huh.

19 Q All right. Tell me about what you recall of the mole and
20 the examination of the mole.

21 A I think I asked Mrs. Wiebelhaus was she having a problem
22 with the mole. I think I asked her first how long she'd
23 had the mole, and she said she'd had the mole all her
24 life. Then I asked her if she was having a problem with
25 the mole, and she said the mole was irritated.

26 Q All right. What happened then?

1 A Then I examined the mole.

2 Q What did you-- what did you observe?

3 A Okay. The mole was about the size that she mentioned,
4 about the size of a lead pencil, about .6 to .8
5 centimeters in size.

6 Q That's diameter?

7 A Diameter, um-huh. It was superficially elevated, very
8 superficial. It was round, smooth. It was brown. It was
9 not black or blue or red or anything like that. The area
10 around the mole was a little bit reddened and I think I
11 asked her if her bra strap was rubbing on the mole, and
12 she said yes.

13 Q Okay. You saw her today point to a mole on her right
14 temple. I know you didn't get a chance to look at it real
15 closely, but she's here in the room.

16 A Um-huh.

17 Q Does it help you, is that an accurate representation?

18 A I think the mole that I saw that day was slightly larger
19 than that.

20 Q All right. In diameter?

21 A Uh-huh.

22 Q That's yes?

23 A Yes.

24 Q Okay. And would you say that in terms of it-- the
25 coloration of the mole that you saw that day, it would be
26 about the same as--

3 A Yes.

4 Q --as what she has now?

5 A Yes.

6 Q All right. Your examination of the mole was a visual
7 examination?

8 A Yes.

9 Q Did you do anything in particular to document its size or
10 shape?

11 A No. I was not at all impressed by the mole. To me it
12 looked like a thousand other moles I've seen the past
13 year.

14 Q And you thought, well, probably a bra strap irritation?

15 A That's right, um-huh.

16 Q And so you gave her some good practical advice, which was
17 try to keep the bra strap off the mole, huh?

18 A Well, right, I said if you have problems, let me know.

19 Q Okay. All right. At that particular point in time did
20 you make any effort-- well, do you remember the appearance
21 of the area of redness around the mole at all?

22 A It **was** very superficial. We see many women in our-- in my
23 practice who are involved in hard work.

24 Q Physical work?

25 A Physical work. Um-huh. Many of them are active in sports
26 and softball, so it's a frequent thing to see a mole
that's irritated by a bra strap or clothes or that type of
thing.

1 Q Okay. Were you aware at that time that this particular
2 patient had other moles on her body?

3 A No, Huh-uh. Most people do. The average is 27 or
4 something like that.

5 Q Sure. Okay. There wasn't any reason for you to be doing
6 comparisons of that mole against some other at that time?

7 A No.

8 Q Any special instructions about the mole?

9 A No.

10 Q She left and--

11 A Yes,

12 Q --her instructions were to return for the usual upcoming
13 OB visit?

14 A Yes. Right.

15 Q Which I take it was about a month away?

16 A I believe *so*, I'd have to look at my chart.

17 Q And *feel* free to do that. *As* do you that, why don't you
18 date the date of this visit that you've just described,
19 *too*.

20 A Okay. That date was 7/9/92.

21 Q All right. And you next saw her?

22 A August 1, '92.

23 Q Before we go to the August 1 visit, I want to just check a
24 couple of things that I had a little trouble reading in
25 your handwriting. I see an instruction numbered one, it
26 says watch weight. I presume that's a caution you gave

1 the patient?

2 A Yes.

3 Q And number two?

4 A Stuartnatal which is a prenatal vitamin.

5 Q Oh, that's something you recommended that she be taking?

6 A Right. That's a routine iron calcium vitamin supplement.

7 Q What does RW mean?

8 A Return three weeks.

9 Q Which she-- which she did on August 1?

10 A Yes.

11 Q What do you remember about her sprained ankle at that

12 time?

13 A Well, she'd said she sprained her right ankle and I

14 apparently examined her ankle and was not impressed. We

15 did not take an x-ray.

16 Q Do **you** remember what history she gave you about that

17 sprain?

18 A No.

19 Q No recollection of how it occurred?

20 A Huh-uh.

21 MR. BATAILLON: You have to say yes or no for the court

22 reporter, Doctor.

23 A Oh, no,

24 Q **Any** recollection of what the ankle looked like?

25 A **As** I recall, the ankle was not a--- not unusually

26 discolored or swollen.

1 Q Do you remember any swelling?

2 A No.

3 Q Any discoloration?

4 A No.

5 Q Did you test it for range of motion?

6 A Yes, we did.

7 Q You don't remember doing it, but you probably did?

8 A Yes.

9 Q You didn't make any notes about any limitations--

10 A No.

11 Q --in that regard?

12 A No.

13 Q All right. What else happened at the time of the August 1

14 visit?

15 A Okay. We checked her abdomen and we saw-- measured her

16 uterus as-- at 37 centimeters. We checked her heart

17 tones, which were 144 per minute. We did a vaginal

18 examination.

19 Q Is that-- is that 144 the fetus?

20 A Fetal heart tones.

21 Q Okay.

22 A Vaginal examination in which we found the presenting part

23 to be high and the cervix to be closed.

24 Q Is that a normal set of circumstances?

25 A Yes.

26 Q And what else did you do, then?

1 A That's all.

2 Q I see a note, it looks like it might be in someone else's
3 handwriting on that date, that I haven't deciphered
4 clearly. It's off to the right-hand side of your
5 handwriting. Is it also your handwriting?

6 A No.

7 Q What-- what's that?

8 A Okay. That's the results of the urine specimen.

9 Q And whose handwriting is that?

10 A That was done by Jill Whitney and reported out at 9:32 in
11 the morning and those are her initials, JW.

12 Q And can you interpret what she's saying there for us,
13 please?

14 A Yes, The urine specimen, the microscopic examination
15 showed one to three white blood cells; the albumin was
16 negative; sugar was negative; specific gravity 1020; Ph
17 was 6; urine specimen was clear and yellow and it was
18 reported by her at 9:32 in the morning.

19 Q Are those circumstances all normal?

20 A Yes.

21 Q And then I see an R7d for return in seven days?

22 A Yes ,

23 Q On August 1 of '92, do you have any recollection at all of
24 any conversation with Mrs.-- Mrs. Wiebelhaus about this
25 mole on her back?

26 A No. I-- to the best of my recollection and as listed in

my records, I did not examine the mole on that day. And if we had examined her chest, we would have had an area chest circled or we would have put back or something like that, so I did not examine the mole on that date.

Q Meaning that you would have given an instruction when she was first in your-- your office to have her gownned?

A Yes.

Q For that examination?

A Um-huh.

1 Q Can you tell me where on this patient's back the mole was
1 situated?

1 A On her right shoulder in the area of her right scapula.

1 Q All right. The scapula is the shoulder blade?

1 A Shoulder blade.

1 Q And can you tell us where with reference to the inner
1 aspect of the scapula it was located?

1' A Oh, it was-- I would say at the medial portion of the
1 scapula.

1 Q Readily touchable by the patient putting her shoulder-- or
2 arm over her shoulder?

'2 A Yes.

2: Q But not visible to her visually?

2: A Yes.

2: Q Is that correct?

2' A Yes.

2: Q She couldn't have seen it directly herself?

1 A No.

2 Q Was it sufficiently located high enough on her body so
3 that by unbuttoning the upper button of her blouse she
4 could have allowed you to see it?

5 A No.

6 Q That's not possible?

7 A No, I don't think so.

8 Q You didn't ever try?

9 A No,

10 Q Certainly could have seen it easily enough by just lifting
11 her--

12 A Yes, but it was not examined on that date.

13 Q Well, I understand that that's your testimony and I
14 understand that. I appreciate that, but had she worn a
15 T-shirt or frankly any kind of blouse, it would have been
16 possible to do that examination by just slipping it up her
17 back, isn't that right?

18 A Yes. But I think she was wearing a maternity-type top at
19 that time.

20 Q A loose fitting top?

21 A Um-huh,

22 MR. BATAILLON: You have to say yes or no, Doctor.
23 Um-huhs or huh-uhs don't work on that--

24 A Okay.

25 MR. BATAILLON: --for the court reporter.

26 A Yes.

1 Q Do you remember, Doctor, whether the patient came to your
2 clinic on August 1 alone?
3 A I believe the patient came alone. ✓
4 Q And is there anything in your notes that assists you in
5 determining whether she was alone?
6 A No.
7 Q Do you remember ever meeting her husband during the course
8 of this pregnancy?
9 A I don't recall seeing him in my office until the night
10 that Mrs. Wiebelhaus came at 9:30 in labor, in the evening
11 in labor.
12 Q That's the only time you remember?
13 A That's the only recollection I have of his being in my
14 office during this pregnancy.
15 Q All right. And let me try to-- to see if there's a
16 distinction to be drawn there or not and you correct me if
17 there isn't. Are you saying that he wasn't ever there
18 before or that you don't recall it?
19 A To the best of my knowledge, he was not with Mrs.
20 Wiebelhaus on any of those visits. Now whether he would
21 have been in the waiting room, I don't know.
22 Q If he says he was there and was with her, at least you
23 don't recall it?
24 A No. ✓
25 Q What's your normal daily patient count in your practice on
26 a typical day?

1 A Probably 30 patients or so.

2 Q And that would be in the clinic?

3 A 15 in the morning and 15 in the afternoon. 10 to 15 in

4 the morning, 10 to 15 in the afternoon.

5 Q And also hospital rounds daily, if necessary?

6 A Yes.

7 Q And where would that be?

8 A At this hospital.

9 Q In Creighton?

10 A Yes.

11 Q Your residence is in Bloomfield?

12 A Yes.

13 Q **And** would you ordinarily make your rounds once or twice a

14 day?

15 A Once a day.

16 Q And when?

17 A Usually at 7:00 o'clock in the morning.

18 Q You would be at the hospital at 7:00?

19 A Yes.

20 Q Your arrival time here would ordinarily be about 7:00 a.m.

21 A Between 7:00 and 7:15.

22 Q And I know that this would be a fluctuating number, but

23 approximately what would be your daily hospital patient

24 count?

25 A Anywhere from two to seven.

26 Q Do **you** use other hospitals regularly?

A Not regularly.

Q What about calls on geriatric patients at nursing homes?

A Yes.

Q And can you tell me what your schedule in 1992 was for that work?

A Okay. Usually I go to the Creighton Care Center on Tuesday and Thursday mornings, but I only have about 15 patients there so I only make those calls on three days of the month. I usually see five patients probably on the first Tuesday and maybe the next Tuesday or Thursday or however it works out. I also have probably 70 patients at the Bloomfield Nursing Home. If I'm not busy at the hospital or some days I may not have any patients at the hospital, then I go to the Bloomfield Nursing Home in the morning.

Q At 7:00?

A At 8:00 usually. And otherwise I go to the Bloomfield Nursing Home at noon, between 1:00 and 2:00.

Q Daily?

A Almost every day.

Q And **see** some patients?

A See some patients, um-huh.

Q Do **you** get around then to each patient there on a regular schedule like once every two weeks or something?

A Once a month probably.

Q Do you know how many babies you delivered in '92?

1 A Probably 15 to 20 babies.

2 Q Is that typical for the past ten years?

3 A It's a gradually decreasing number. Probably ten years

4 ago we were delivering 30 babies a year, Twenty years ago

5 we were delivering 50 to 60.

6 Q So about a decline of from an average of one per week to

7 about one for every three weeks?

8 A That's right.

9 Q Three to four weeks, I guess.

10 A Um-huh.

11 Q All right. When did you-- when do you next have a

12 recollection of a conversation with anybody about anything

13 outside of the ordinary in Mrs. Wiebelhaus' care after

14 this first examination of the mole?

15 MR. BATAILLON: Specifically referring to the mole or--

16 MR. DOMINA: Anything. Anything.

17 MR. BATAILLON: --the pregnancy itself?

18 MR. DOMINA: Either one.

19 A Well, we saw Mrs. Wiebelhaus August 8th and I do not-- I

20 did not at that time check the mole. And we saw her on

21 August 15th and we did not check the mole. And so

22 everything was really regular until August 22nd when we

23 again checked the mole.

24 Q All right. So your testimony is that on the 8th and the

25 15th of August there was nothing said to you about the

26 mole--

A That's right.

Q --so you-- you didn't look at it?.

A Right.

Q I take it from the way you've described your notes as working that on those two dates the patient was not gowned in a gown that--

A Yes.

Q --would have been worn from the waist up?

A Right.

10 Q How frequently are the breasts ordinarily checked during
1: care for an obstetrics patient?

1: A Probably only on the initial visit.

1: Q Not again near the time of delivery?

1: A No. No.

1: Q What if the patient plans to breast-feed, is that
1: different?

1: A It does not make any difference in my practice.

1: Q All right. And your testimony is that during these August
1: visits, August 1; August 8; August 15; the patient was in
2: alone?

2: A Yes.

2: Q And absolutely nothing whatsoever was said and no
2: examination conducted on any of those three occasions that
2: related to this mole?

2: A That's absolutely correct.

2: Q No skin condition disorders or problems of any kind?

1 A No. Not at all.

2 Q On August 22nd you saw her?

3 A Yes.

4 Q And on that occasion you have a note about the mole?

5 A Yes.

6 Q Just simply back mole, advise excision, is that right?

7 A Yes,

8 Q Does the August 22nd note work physically the same way as

9 the others, which is to say that the handwriting in the

10 left-hand column is yours: the handwriting in the darker

11 print in the right-hand column is one of your nurse's?

12 A Yes. Except I usually write the laboratory work I want

13 done, so I write urine, microscopic-- m, a and s,

14 microscopic, albumin and sugar, and then the laboratory

15 people fill in the findings.

16 Q The values?

17 A Yes.

18 Q What does the L stand for there?

19 A Leukocytes three plus.

20 Q All right. What happened on August 22nd about this mole?

21 A **Mrs.** Wiebelhaus came in and said she'd like the mole-

22 rechecked.

23 Q Where did this conversation occur?

24 A In my office before we went to an examining room.

25 Q All right. And what inquiry did you make at that point?

26 A I put down back because we wanted to look at the mole.

1 Q Okay. And you would have written while she was in the
2 office?
3 A Yes.
4 Q All of the things in this column?
5 A Yes.
6 Q All right, And then she would have left your office and
7 gone to where?
8 A She would have gone to the next room where **she** would have
9 been weighed and her **blood** pressure would have been taken
10 and they would have got her urine specimen, and then she
11 would have gone to one of our three examining rooms where
12 I would have checked her abdomen and her legs for edema
13 and then where we did a vaginal exam and then checked her
14 mole on her back.
15 Q Okay. Now, I just want to-- I think I'm getting a picture
16 for how you keep these records, Doctor, you tell me. On
17 any one of these dates, the patient who's in for an
18 obstetrics check comes in, does she sit down in your
19 office?
20 A Yes.
21 Q All right. And you're sitting behind your desk?
22 A Yes.
23 Q **And** you have what before you: if it appears to be a blank
24 sheet of paper, it's a blank sheet of paper--
25 A Right.
26 Q --**and** maybe one-third full or something?

hi

- 1 A Yes.
- 2 Q And you write down the date?
- 3 A Yes.
- 4 Q And **who** writes down Wt for weight?
- 5 A I do that.
- 6 Q Who fills in the amount or the number?
- 7 A One of the-- my medical assistants when they move the
- 8 patient to the next room.
- 9 Q **Okay.** And BP, you write that?
- 10 A Yes.
- 11 Q And they fill in the value?
- 12 A Yes ,
- 13 Q Abdamen?
- 14 A Yes.
- 15 Q And that's Abd, you write that?
- 16 A Yes,
- 17 Q And then you have some symbols here. I see what looks
- 18 like a Vtx, is that what it is?
- 19 A Yes. I would fill that in when I examine the patient.
- 20 That means vertex presentation, baby's head is down, The
- 21 "X" marks the abdomen and the-- the-- the vertical and
- 22 horizontal lines transecting are a mark on the abdomen and
- 23 the "X" is located where the fetal heart tones are.
- 24 Q And-- oh, see. Where they're located?
- 25 A Located on the abdomen.
- 26 Q And is that with a Doppler?

1 A Yes.

2 Q All right. And then Ext is for an extremities check?

3 A Yes.

4 Q And it looks like on 8/15 as an example, you just have an
5 "X" which I presume means checked?

6 A Yes.

7 Q And on 8/22 it says-- is it L/R?

8 A No, it's plus one edema.

9 Q Oh, okay. All right.

10 A There's also another sheet we fill out for the hospital,
11 which I guess-- that's sort of a summary sheet, that's why
12 that's kind of immaterial.

13 Q All right. In any event, you'd fill out this plus one
14 edema--

15 A Yes.

16 Q --or an "X" if everything is okay when you do the check?

17 A Right.

18 Q **And** then it says vag for vaginal?

19 A Yes.

20 Q **And** here it says thick FT?

21 A Thick and fingertip. It means the cervix is thick and
22 dilated **a** fingertip.

23 Q And that-- that obviously is a physical examination--

24 A Yes.

25 Q --of the cervix. And then the words back and mole?

26 A Yes.

1 Q You wrote the word back there when she was in the office?
2 A Yes.
3 Q And the word mole?
4 A When I examined her.
5 Q And then return seven days?
6 A Yes.
7 Q And below that the words advise excision?
8 A Yes.
9 Q Okay. Could I see your copy there?
10 A All right.
11 Q I also see a one, it looks like, I wondered if it was a
12 copying error, but it's not. I thought maybe it was a
13 mark on the photocopy. What is the one point?
14 A One refers to the top of the page, the Stuartnatal.
15 Sometimes when people are on six medications, instead of
16 writing them all out, we just put one, two, three, four,
17 five, six. If they're on one, we just put one.
18 Q Okay. I notice that on every other note in this record
19 except February 8 of '92, the last instruction or the last
20 note you made is the return in X number of days note: R7d,
21 R4w, R3w, whatever it may be. And on February 8 it says
22 something, US at 20 weeks?
23 A It says ultrasound at 20 weeks.
24 Q Okay. And is that a note for something you want to do in
25 the future?
26 A That's just a plan of care, that we plan to do an

1 ultrasound when the patient is 20 weeks pregnant.

2 Q At February 8 she was about ten weeks, is that right?

3 A Yes.

4 Q Okay. And then on 8/22 of '92 your note says R7d for
5 return in seven days and advise excision?

6 A Um-huh.

7 Q That's also a plan of care?

8 A Yes.

9 Q When did you plan to do the excision?

10 A Well, the more appropriate question would be what did the
11 mole look like that day.

12 Q Okay. That's-- that's fair. Why don't you tell me that.

13 A Well, the mole had changed considerably since I had first
14 seen it and it was larger. I estimated it was at one
15 centimeter in diameter. It had changed color, it was
16 bluish or darker. And it was more-- it was-- it had
17 increased in height. So it had changed significantly from
18 my first examination. And on that date, then I said that
19 that mole should be excised or removed.

20 Q All right. When?

21 A At **any** time.

22 Q **What** did you tell the patient?

23 A I-- I told the patient the mole should be removed because
24 it could be malignant.

25 Q YOu said those-- those words--

26 A Yes.

1 Q --or words to that effect? Did you tell her when she
2 should remove it?
3 A No.
4 Q You left that--
5 A I didn't say when or anything. She said she wanted to
6 wait until after she had delivered the baby.
7 Q Did you say anything else to her about the mole at that
8 time?
9 A No.
10 Q Okay. Now, you had the normal workup on the urine, is
11 that right?
12 A Yes.
13 Q All right. And was there anything outside of the ordinary
14 there?
15 A No.
16 Q Does-- does the-- can you tell from the initial which of
17 your office people did that workup?
18 A That was Debbie Knutson.
19 Q Does that initial give you any indication at all about who
20 was present during the examination?
21 A No.
22 Q Debbie Knutson ordinarily would not be?
23 A No, she would ordinarily not be.
24 Q This could have again been--
25 A Deb Schmeckpeper or Jill Whitney.
26 Q Had you at any time before August 22nd talked with Mrs.

1 Wiebelhaus about the risks associated with moles?

2 A No. I had only seen the mole at one time and to me it was
3 not at all an impressive mole.

4 Q When Mrs. Wiebelhaus became an obstetrics patient in your
5 care, did you give her any instruction or advice then
6 about things to be attentive to as an expectant mother?

7 A Yes.

8 Q What would your normal regimen of advice then have been?

9 A The normal routine would be weight gain, vaginal bleeding.
10 We give patients a book on obstetrics and on one page
11 there's a list of warnings, like if you have vaginal
12 bleeding, baby doesn't move.

13 Q Probably smoking and drinking?

14 A Right. This is all listed in the OB book; call the
15 physician if you have these problems.

16 Q Do you know who publishes that book?

17 A I think it's published by the Milex Company, M-I-L-E-X.

18 Q A drug company?

19 A No, it's a-- more of a surgical supply company.

20 Q You wouldn't object--

21 A NO.

22 Q --to furnishing one of those to Mr. Bataillon--

23 A No.

24 Q --to give to us? Is there anything in that book known--
25 known to you presently that deals with skin conditions in
26 pregnant mothers?

1 A Not that I'm aware of.

2 Q what are the risks of change associated with moles and
3 changes in them for pregnant women if they're different
4 from the rest of the population?

5 A There's a lot of debate about that.

6 Q Okay. Is-- is the debate about whether there's a
7 difference for pregnant women?

8 A First of all, I think there's kind of a general uniform
9 belief that most pregnant women have some change in their
10 moles when they're pregnant, Many of them change their
11 complexion, their face gets darker, the so-called mask of
12 pregnancy, and along with that change in their
13 pigmentation they also may have a change in their moles.

14 Q That would be commonplace?

15 A That could be-- that would be commonplace.

16 Q Okay. Are there-- is a change in the appearance of a mole
17 in its shape, its size, diagnostically significant?

18 A Yes. It means it should be removed.

19 Q Why?

20 A Because it might be malignant.

21 Q And do you know of any statistical base for extrapolating
22 the frequency with which moles changing in appearance or
23 condition are found to be malignant?

24 A I don't know that statistical base.

25 Q Okay. I take it in your practice in 1992 about half, 25
26 out of 52, were malignant?

1 A Those are not all moles, many of those are obviously basal
2 cell carcinomas or squamous cell carcinomas--

3 Q And those are--

4 A --and many of them are moles which you don't know what
5 they are until you take them off.

6 Q Okay. I presume that you probably deal particularly with
7 members of the farming community--

8 A Yes.

9 Q --with a number of basal and squamous cells? Malignancies
10 in the skin--

11 A Yes.

12 Q --ordinarily on the face and neck, arms--

13 A --hands, or anywhere. The youngest patient I've ever had
14 with a malignancy on their shoulder is a 17 year old girl
15 with a basal cell carcinoma, so it can occur at any age.

16 Q Would you say that the approximate 50 percent level of
17 experience with those kinds of pathological submissions
18 you had in 1992 would be ordinary in your practice?

19 A Be hard to say. Be difficult to say.

20 Q But you do know--

21 A Yes.

22 Q --that on a very high level of probability when you take a
23 lesion off the skin in your practice there's a pretty high
24 probability it's going to be cancerous?

25 A That's right. Yes.

26 Q Even higher if it's a mole that's changed its color and

1 configuration and size?

2 A You really don't know until you get it off.

3 Q Either it will be or it won't be.

4 A Either it will be or it won't be and I've been--

5 certainly.

6 Q All right. Now, can you remember treating obstetrics

7 patients for suspected cancerous moles during pregnancy

8 before Mrs. Wiebelhaus?

9 A No.

10 Q During the summer of 1992 and during this lady's

11 pregnancy, was-- was she, in your opinion, exposing

12 herself unduly to the sun?

13 A Not that I'm aware of.

14 Q **And** she wasn't tanned or burned--

15 A NO.

16 Q --inappropriately?

17 A No.

18 Q Okay. How did you examine this mole on August the 22nd of

19 '92?

20 A Basically I looked at it and I could see it was certainly

21 larger than what it was. It was darker in color and I

22 believe I felt it and it was thicker, so it had certainly

23 changed.

24 Q You didn't measure it at that time--

25 A No.

26 Q --in any way?

1 A I-- I made the decision that it should be excised.

2 Q All right. Did you talk with the patient about how you

3 might excise it?

4 A No. I just said it should be taken off and sent in and

5 looked at under a microscope.

6 Q Okay. In your words, probably should have been taken off?

7 A Um-huh.

8 Q Yes?

9 A Yes. Um-huh.

10 Q Okay. ~~One~~ of the Wiebelhauses this morning, I think it

11 was Mr. Wiebelhaus, mentioned something about burning it

12 off.

13 A I don't recall ever recommending burning this mole off.

14 Q All right. Have you burned moles off in the past?

15 A We burn off skin tags and papillomas.

16 Q What's a papilloma?

17 A It's like a little skin tag that's-- these are obviously

18 or should obviously be benign.

19 Q All right. Sometimes--

20 A Warts we burn off.

21 Q You burn off warts?

22 A Um-huh.

23 Q Is a papilloma different from a wart?

24 A Yes.

25 Q What's the difference, I-- I don't know?

26 A Well, a wart is due to a virus and it's a new growth due

1 to a virus, whereas a papilloma is an excessive growth of
2 skin.

3 Q Did you have any suspicion at any time that what you were
4 seeing in Mrs. Wiebelhaus was either a wart or a
5 papilloma?

6 A No.

7 Q Do you remember discussing with them, the Wiebelhauses,
8 either one of them, whether this might be a wart or a
9 papilloma?

10 A My impression on the very first visit when I looked at
11 this was that this was a mole. My impression on the
12 August 22nd visit was that this was something that needed
13 to come off and I did not think it was a wart. I did not
14 think it was a papilloma.

15 Q I should ask you, what's a mole?

16 A A mole is a new growth of skin usually with some
17 coloration to it.

18 Q All right.

19 A A growth of skin. It may not necessarily be-- be a new
20 growth, a new--

21 Q Clearly distinguished from a wart because a wart is viral?

22 A Yes, a wart is viral.

23 Q And distinguished from a papilloma how?

24 A Usually moles have color to them and papillomas are normal
25 skin color.

26 Q The-- the structure, for lack of a better word and I lack

1 a better word, on Mrs. Wiebelhaus' right temple today is a
2 what?

3 A I would call that a mole.

4 Q Okay. Is there anything about the physiology of a mole
5 other than what you've mentioned that distinguishes it
6 from either a papilloma or a wart?

7 A I'm not in a position to answer that question, in terms of
8 physiology, I'm not aware that there is anything,
9 Basically the goal and standard is to remove the lesion
10 and look at it under a microscope and then you know what
11 you're looking at.

12 Q All right. Fair enough. Back to the August 22nd date.

13 A Um-huh.

14 Q How long did the examination of the mole take?

15 A Probably three to five minutes or so.

16 Q And tell me, from the time you started until the time you
17 were finished with the subject?

18 A No, probably that we dealt with that mole alone.

19 Q Okay, And what did you do during that time?

20 A Basically looked at the mole and told her what I thought
21 needed to be done.

22 Q Did you use any instrument--

23 A No.

24 Q --magnifying glass?

25 A No.

26 Q And you touched it?

1 A Yes.

2 Q And you studied it for three to five minutes?

3 A No, I would look at at-- I think you can look at it in 15
4 seconds and make your decision, but it's a matter of
5 talking to the people and saying what you-- what you
6 recommend.

7 Q All right. Would she have been in a seated position when
8 you looked at it?

9 A Yes,

10 Q On an examination table?

11 A Yes.

12 Q And do you recall if you left the room and returned after
13 she was dressed to talk to her about this mole or did you
14 just simply look at it, make your decision and counsel her
15 right away?

16 A I probably told her right away.

17 Q And what was said?

18 A I said that the mole should be removed, taken off. It
19 should be looked at under a microscope because it could be
20 malignant.

21 Q What else was said?

22 A That was about the size of it.

23 Q What did she say? Go ahead.

24 A She said she would prefer to wait until after she had the
25 baby.

26 Q What did you say?

1 A I said if that's what you want to do, that's fine,
2 Q Okay,
3 A She was due to deliver in six or seven days.
4 Q I notice a return seven days and you were obviously
5 thinking she might not make that next visit, I take it, is
6 that right? Earlier-- earlier your records indicate an
7 August 31 anticipated delivery date, so--
8 A Yes, right, so she would have-- actually, she would have
9 been due in nine days, I guess,
10 Q Was there any discussion about a risk being associated
11 with waiting?
12 A No.
13 Q Did **you** give the patient any advice about urgency in
14 getting the mole off?
15 A I told her it should be removed,
16 Q Have you had occasions when you've told patients that in
17 your opinion they need a particular kind of care
18 immediately, and that delay--
19 A Yes.
20 Q --is contraindicated by the circumstances?
21 A Yes, that's not an unusual situation.
22 Q But this was not such a situation in your view?
23 A Well, it certainly needed to come off relatively soon.
24 Q Okay. From the perspective of this patient's pregnancy
25 and the delivery date and circumstances, are you satisfied
26 that it came off in time, when you--

1 A Well, as you look back in retrospect, obviously it would
2 have been better to have removed it at the very first day,
3 but on-- but on the other hand, if you look at it from the
4 situation of what we found on July 9th, I think I used
5 good medical care in the judgments that I made.

6 Q Yes, and then--

7 A I mean hindsight is wonderful.

8 Q Hindsight's perfect, I guess--

9 A Yes.

10 Q --and I'm trying to put you in that August 22nd posture
11 looking forward--

12 A Yes.

13 Q --and not from today looking backwards. Do you have any
14 self criticism now-- let-- let me ask it this way: if I
15 put you back at August 22nd of 1992 and ask you to know
16 for this hypothetical purpose only what you knew then, if
17 the patient had said, well, Doctor, I want to go ahead and
18 deliver my baby if that's all right with you and we'll get
19 this done no later than the middle of September, would
20 that have been all right with you?

21 MR. BATAILLON: Objection, hypothetical question. You
22 can answer, Doctor.

23 A I think I would have done just what I did on that date.

24 Q Which was to say--

25 A Say yeah, that it needs to come off, and if you want to
26 have the baby you let me know when you want it taken off.

1 Q You saw her then, Mrs. Wiebelhaus, on August 26th?
2 A Yes.
3 Q She was in labor then?
4 A Yes.
5 Q Active labor?
6 A Yes.
7 Q And you sent her to the hospital?
8 A Yes.
9 Q Certainly no-- she complained of a backache, but no
10 examination of the back at that time?
11 A No, those were her labor contractions I'm sure. Backache
12 every seven minutes.
13 Q No-- no examination of the mole area?
14 A Oh, no. Huh-uh.
15 Q And she delivered at 2:21 a.m.
16 A Yes,
17 Q At the hospital in Creighton?
18 A Yes.
19 Q Normal vaginal delivery?
20 A Yes.
21 Q **Any** complications at all with the delivery?
22 A No.
23 Q Do-- have you reviewed the hospital record of that time?
24 A Yes.
25 Q Do you have it with you here today?
26 MR. BATAILLON: I have a copy.

Q Have you reviewed it, Doctor?

A Yes.

Q Are there any references at all in the hospital record to the mole on the patient's back?

A Yes.

Q Did you examine the mole during the period of hospitalization?

A Yes. I think Mrs. Wiebelhaus delivered at 2:12-- :21 on the 27th and I saw her the morning of the 27th and then she stayed overnight and I saw her again the 28th and I recall looking at the mole on the 28th.

Q Go ahead and take a look at the hospital record if you would like.

MR. BATAILLON: You can. He said you can.

Q Yeah, you can look at it if you want to.

A Yeah, I looked at it yesterday.

MR. BATAILLON: Oh, okay.

Q Okay. What do you recall about the mole or its appearance while she was in the hospital?

A I thought it had probably-- well, it looked about the same size probably as it did five days previously, but it may have been slightly larger. It was dark, and I believe during the hospital stay was the first time that I had seen it oozing. I had not personally myself seen it oozing on her. Of course, the only other time I had seen it was August 22nd. At that time it did not appear to be

1 oozing .
2 " saw it oozing in the hospital, what was the--
3 what were the circumstances?
4 A Well, Mrs. Wiebelhaus had a hospital gown on which
5 obviously makes for easy access to the mole and I believe
6 she had some Band-Aids on it.
7 Q All right. Did you remove those and look at the-- at the
8 mole?
9 A I don't recall that I did, but I could get a pretty good
10 idea of what was going on under that.
11 Q Was it oozing a combination of some clear fluid plus
12 blood?
13 A I don't recall any blood.
14 Q Do you remember talking to her earlier on the August 22nd
15 occasion about whether it was oozing any material?
16 A No.
17 Q Do you remember any comments that she made to you at any
18 time--
19 A No.
20 Q --about stains on her clothing?
21 A No, I don't recall that;
22 Q Or do you remember her showing you the stained clothing?
23 A No.
24 Q Did you review any part of the nurses' notes in the
25 hospital record for references?
26 A Yes.

Q And on how many occasions?

A There's one note by Dorothy VanBrocklin about an oozing wart on the patient's right shoulder.

Q Okay. And do you recall the nursing staff talking with you about it?

A Mrs. VanBrocklin asked me about the lesion on the patient's right shoulder and I told her that we anticipated-- planned to remove it after the baby was delivered.

Q And did that conversation occur at the hospital?

A Yes.

Q Did it occur after the delivery of the child?

A Yes.

Q But before discharge of the patient?

A Yes.

Q Do you remember anything else that Mrs. VanBrocklin said to you?

A No.

Q Do *you* recall discussing with anyone the odor emitting from that?

A No.

Q Do *you* remember detecting an odor emitting from it?

A No.

Q Were you told of an odor?

11 A No.

21 Q Would the emission of an odor from this kind of a site on
3 the body be diagnostically significant?

4 A I would say it would not be diagnostically significant.
5 There are many things, many skin conditions, that cause an
6 odor.

7 Q It doesn't help to distinguish one from another, then?

8 A No.

91 Q Melanoma doesn't have an odor of its own, then?

10 A No.

11 Q What does it mean for a mole to be ulcerated?

12 A It usually means that part of it may be becoming necrotic.
13 That it's-- the top of it may be-- the tissue may be
14 dying, That would be my interpretation.

15 Q All right. Your August 31 note indicates that you saw the
16 patient.

17 A Yes,

18 Q At your clinic?

19 A Yes.

20 Q And I note you've written mole ulcerated.

21 A Yes. I think that day Mrs. Wiebelhaus was there primarily
22 with the baby. The baby was there for a PKU test and
23 three day examination, And I was concerned-- she was not
24 there for her own appointment, as I recall, but I **was**
25 concerned about the mole and wanted to look at it, so we
26 looked at it and it was ulcerated,

1 Q So you asked ta see it?
2 A Yes, as I recall.
3 Q And by ulcerated you mean--
4 A I mean that the top was irregular and part of it was
5 somewhat necrotic.
6 Q Okay. Was it oozing a material then?
7 A I'm not-- I don't recall that it was. on that 'particular
8 day. It may have been because it was when I saw it in the
9 hospital.
10 Q Do you remember if Mr. Wiebelhaus was along then?
11 A I think he was in the waiting room because the baby was
12 there, also. I'm not sure--
13 Q You don't recall--
14 A --but I believe he probably was there.
15 Q Do you remember how much time you spent on the examination
16 of the mole that day?
17 A Probably not a great deal because it was just a matter of
18 looking at it.
19 Q Any new advice given then?
20 A Well, we had already talked about removing it after
21 delivery and I don't know that we specifically talked
22 about that, but I probably said whenever you want to come
23 in and have it taken off, come on in and have it taken
24 off ,
25 Q You didn't ask her to have it done that particular day?
26 A No, I did not,

1 Q All right. And then you wanted to see the baby again, I'm
2 sure, at some point--

3 A Yes.

4 Q --not too long after that. And, of course, when the baby
5 was born, the baby became pati nt in your practice so
6 she got a record of her own, is that right?

7 A um-huh. Yes.

8 Q And you've been kind enough to furnish that as Exhibit 6,
9 haven't you?

10 A Yes.

11 Q And actually the first record you'd have of care for the
12 baby at the clinic would be this August 31 visit?

13 A Yes, um-huh.

14 Q I don't see at the August 31 date, Doctor, a return visit
15 date. I do see a return two weeks after the September 14
16 date. Would there have been a return instruction at
17 August 31?

18 A The instruction may have been given when the patient
19 leaves the hospital. Usually we see the babies at two
20 weeks. Sometimes we do the PKU in the office and then
21 they come back in two or three days, so usually when they
22 leave the hospital they're told when to come in for the
23 PKU and for their first visit.

24 Q In-- in this particular case it looks like PKU tests were
25 performed on two separate occasions: once in the hospital
26 within 24 hours of birth and then once maybe on the August

1
2
3 A Well, it would be very unusual to do a PKU the first day
4 after birth and I'm-- I'm not sure what the significance
5 of that is. The PKU that the report was done-- that's
6 recorded was done at my office 8/31/92. See, what is that
7 one of?
8 Q I think I'll mark it as an exhibit and I'll give these
9 both to you, Doctor.
10 (Exhibit Number 7 marked for identification.)
11 (Off the record discussion was held.)
12 Q Would you take a look at the two letters in' Exhibit 7,
13 please.
14 A Apparently she did have a PKU done at the hospital prior
15 to 24 hours of age, which is not the usual course of
16 activity .
17 Q **And so** then it was repeated?
18 A Yes.
19 Q At your clinic?
20 A Yes.
21 Q Isn't that what accounted for the visit at three days,
22 that you needed the PKU?
23 A Yes. Yes.
24 Q Ordinarily the discharge instruction to the mother would
25 have been bring the baby in at ten days to two weeks?
26 A **That's** right.

Q Okay. So the-- is it probable then, Doctor, that what happened is that on-- after Mrs. Wiebelhaus and Shelby, her daughter, left the hospital, you learned that there was a need for a correctly timed PKU to be done so you called them in?

A That's probably correct. Let's see what the hospital record shows.

MR. BATAILLON: Do you want to look at the records?.

A Yes.

10 MR. BATAILLON: You can do it quicker than I can.

1: A When she left the hospital, she was given this slip. It
1: says please call for appointment for the baby.

1: Q For Monday, August 31?

1: A Yes.

1: Q And then the nurse's signature and hers?

1: A Yes.

1: Q Okay. Why don't we mark the hospital record while we're
1: at it, too, so that we'll know what we're referring to.

1: What you have just referred to is Exhibit 8, which is the
20 record of Lundberg Memorial Hospital concerning the
2: hospitalization of Donna Wiebelhaus for the delivery of
2: her daughter, Shelby, in August of '92.

2: A Yes.

24 MR. BATAILLON: For the record, Mr. Domina, that's my
25 copy and I don't know if it's absolutely complete so, I mean,
26 just so that we understand that, that's not a problem.

3 MR. DOMINA: Okay.

4 MR. BATAILLON: I'm going to take my yellow sticky that
5 says extra copy off of it. Off the record.

6 (Exhibit Number 8 marked for identification.)

7 (Off the record discussion was held.) ✓

8 Q Do you remember, Dr. Nagengast, whether you ever spoke
9 with Mr. Wiebelhaus about the mole on his wife's back.?

10 A I don't recall that I ever did.

11 Q The hospital record that you just referred to with the
12 discharge instruction that Mrs. Wiebelhaus return to your
13 care on August 31--

14 A Yes.

15 Q --with the baby led-- that led to the August 31 visit,
16 didn't it?

17 A Yes.

18 Q And then your record for Shelby of August 31 doesn't state
19 a return date, but the September 14 return would have been
20 normal, wouldn't it?

21 A Yes.

22 Q So likely she got an oral instruction to come back in two
23 weeks?

24 A Yes.

25 Q And insofar as you were concerned, when Mrs. Wiebelhaus
26 left your office on that date, August 31, your expectation
would have been that you would next see her in two weeks?

A Yes.

1 Q Okay. And so then in terms of this August 31 note on Mrs.
2 Wiebelhaus' chart that says mole-- mole ulcerated, your
3 expectation would have been for her, too, that she'd be
4 back in a couple of weeks?

5 A Yes,

6 Q Okay. She did come back on the 14th of September of '92
7 and that was for two purposes, Mrs. Wiebelhaus.' back--

8 A Yes.

9 Q --and the checkup for the baby?

10 A Yes.

11 Q Do you remember if she was alone then?

12 A No, I think her husband was with her on that date.

13 Q All right. By the way, was-- was she ever accompanied to
14 your office by anyone-- anyone else other than her
15 husband?

16 A I don't recall that she was, prior to the removal of the
17 mole.

18 Q Yes. That's what I meant, too, thank you. On September
19 14th then, you did remove the mole?

20 A Yes, she came in and I remember her words were, I'm here
21 today to get that mole off.

22 Q All right. Which did you do first that day, the removal
23 of the mole or the check on the baby?

24 A We probably did the check on the baby first.

25 Q Do you have a recollection?

26 A Yes, that would be the ordinarily-- the ordinary way we

1 would do things.

2 Q Okay. The mole removal was done in an examination room?

3 A Yes.

4 Q You were assisted by somebody?

5 A Yes, one of my assistants.

6 Q Can you remember who?

7 A I think it was Jill Whitney, but it could have been Debbie

8 Schmeckpeper.

9 Q All right. And can you describe for us physically what

10 you did to remove the lesion?

11 A Yes. Well, the mole had increased in size, I think, since

12 it was seen here on August 22nd.

13 Q What did it look like on this date?

14 A It was larger, it was darker and it was oozing.

15 Q Can you tell us what size it was then?

16 A The pathology report reported it as 1.5 centimeters in

17 diameter and I think that's an accurate size.

18 Q Okay. What else did you note about it? Anything else?

19 A No. I did not see any bleeding that day.

20 Q Okay. How did you take it off?

21 A We infiltrated the area with Xylocaine and then used a

22 sterile knife and the forceps to do a rather wide excision

23 with about a half a centimeter of margin on each side of

24 the mole so we would be well to be well rounded.

25 Q And then how did you complete the excision beneath the

26 mole?

1 A We want to make sure that you get all the way down past
2 the bottom of the mole. I mean, you don't want to cut it
3 in half, so we went all the way through the thickness of
4 the skin down to the subcutaneous tissue and removed that
5 entire area and then we sutured it with the appropriate
6 suture.

7 Q How deep was the excision wound?

8 A Through the thickness of the skin which-- oh, maybe .4
9 centimeters, That's cutting it pretty close, but--

10 Q And how long did it take to perform this procedure?

11 A Probably 10 minutes, 15 minutes.

12 Q And technically this is a surgery, isn't it?

13 A Yes.

14 Q How did you handle the bleeding at the wound site? Swab
15 it?

16 A There was no significant bleeding, When you suture the
17 wound it controls the bleeding.

18 Q Okay. Was all of the removed material saved?

19 A Yes.

20 Q And how did you handle it?

21 A It was put in formaldehyde solution and sent to the LCM
22 Laboratories.

23 Q Intact?

24 A Yes.

25 Q Not in pieces, all in one--

26 A All in one piece.

2 A In a surgical container, in a specimen container which
3 they provide us ,
4 Q The patient was conversant during the procedure?
5 A Yes.
6 Q Did she have any difficulty with pain?
7 A No.
8 Q Did you have any indication before the procedure was
9 performed that the patient was at all hesitant because of
10 concern--
11 A No.
12 Q --for pain? It's not a painful procedure, is it?
13 A Most people would not regard it as a painful procedure.
14 Q **And** this patient didn't?
15 A Did not, no.
16 Q Did any of the material that you removed, the material
17 below the level of the skin, have any appearance that
18 impressed you in one way or another?
19 A No.
20 Q You **were--** you were not able to draw any conclusions--
21 A No.
22 Q **--from** what you saw on first examination?
23 A No.
24 Q Did you conduct any kind of gross examination of the
25 specimen you removed?
26 A No. I just looked at it and sent it in,

1 Q All right. And after you-- how many-- how many sutures
2 did it take to close the wound?

3 A Probably four or five. I don't recall.

4 Q What kind of material did you use?

5 A Usually we use a three aught point silk suture.

6 Q Is that a material that you have to remove?

7 A Yes.

8 Q Did you yourself remove these sutures?

9 A No, because the patient was elsewhere at the time.

10 Q Did you give her any instructions about removal of those
11 sutures when she departed from your care?

12 A Told her to come back in a week and we'd remove the
13 sutures.

14 Q I notice that she had a-- a temperature at September 14 of
15 99.4. Is that at all significant?

16 A It's hard to say.

17 Q Did you attach any significance to it then?

18 A No.

19 Q Do you think now that there was any relationship between
20 that rather modest temperature elevation and what was
21 going on with this mole?

22 A Probably not. She was breast-feeding. Sometimes women
23 who are breast-feeding, if they have engorged breasts, run
24 fevers.

25 Q All right. The tissue sample would have been transmitted
26 to the lab by the usual course; which is what?

1 A A courier who picks it up at our office at night and
2 transports it to Sioux Falls, South Dakota.
3 Q Is that a particular medical courier or is it--
4 A Yes.
5 Q Okay. And you got-- how do you ordinarily receive your
6 reports back from them, then?
7 A By mail ordinarily.
8 Q And in this case?
9 A By telephone or mail. Um-huh, in this case it was
10 telephone.
11 Q Okay. And you learned of the results when?
12 A The day that I called the Wiebelhauses.
13 Q And that was what day?
14 A I'm not sure what day that was. I think that was a
15 Wednesday or a Thursday, maybe a Thursday.
16 Q Okay. The 14th was what day of the week?
17 A The 14th was a Monday.
18 Q Okay.
19 A So this was read out-- so we probably got the report on
20 Thursday.
21 Q When you're finished with it, do you mind if I look at
22 that just for readability--
23 A Sure,
24 Q I'm having trouble with this one, Doctor, the report
25 itself which you've handed me has a date in the lower,
26 left-hand corner. Is that what you refer to as the read

1
2 A Yeah, that would be the 16th. That would have been the
3 date that the doctor read it.
4 Q That would be Wednesday?
5 A That would be Wednesday.
6 Q And it says report telephone to you, it doesn't say when
7 it was phoned to you?
8 A No.
9 Q But your recollection is that was Thursday, the 17th?
10 A That's my recollection,
11 Q All right. And then you've said that you called the
12 Wiebelhauses?
13 A Yes.
14 Q Do you have a recollection of doing that?
15 A Yes.
16 Q You placed the call?
17 A I think-- no, they called me and I at that time had heard
18 what the diagnosis was, so then I called them back and
19 asked them to come to my office.
20 Q Did you tell them the results on the phone?
21 A I don't recall.
22 Q Do you have any recollection of any conversation on the
23 telephone?
24 A I think I did tell them the results on the phone, I'm not
25 sure.
26 Q Okay. What do you recollect of the phone call?

1 A That I told them it was a skin cancer and it was serious.
2 Q And who did you give that information to?
3 A Mrs. Wiebelhaus.
4 Q They came to your office?
5 A At noon.
6 Q Same day?
7 A Yes.
8 Q How long did you spend with them?
9 A Oh, probably 30 to 45 minutes.
10 Q Who else was there?
11 A I think it was just Mr. and Mrs. Wiebelhaus on that visit.
12 Q Did you have in your possession this lab report then?
13 A I don't recall that I did.
14 Q You just had the telephone results?
15 A Um-huh.
16 Q What did you tell them?
17 A Told them that she had a malignant melanoma and that it
18 was read out as a Clarks Level IV.
19 Q And what else did you tell them?
20 A That it was a serious situation and that they would need
21 to go on to seek further medical attention.
22 Q And what did they say?
23 A They were willing to do that.
24 Q And then what happened?
25 A Well, then the question was where should they go, of
26 course.

1 Q Did they have questions for you about what you meant by a
serious situation?

3 A I think they understood what a serious-- you know, I told
4 them it was a skin cancer and it was serious.

5 Q Did you tell them what was meant by this reference to a
6 Clark's Level IV?

7 A Yes.

8 Q What did you tell them?

9 A That these tumors are gauged on depth and Clark's levels
10 are I to V and this was a Clark's Level IV.

11 Q Meaning that it was at the severe end of the scale?

12 A Yes.

13 Q Five being the worst?

14 A Yes.

15 Q Did they have any questions about what kind of care would
16 be required?

17 A Yes.

18 Q What discussion did you have about that?

19 A Usually people who have a malignant melanoma need a wide
20 excision of the area with possibly lymph node dissection,
21 although that's debated. There's a lot of debate in the
22 books, as in the current literature, as to the appropriate
23 care for melanoma. So what one center may feel, another
24 center may do a little bit differently, but generally in
25 the Midwest for this type of a situation you need a wide
26 excision with a node dissection'and I stated that they

1 should-- need to go to a medical center for this type of
2 care.

3 Q Did you mention that?

4 A Yes.

5 Q And what did you talk about?

6 A I mentioned the Mayo Clinic; I mentioned Lincoln,
7 Nebraska; I mentioned Omaha, Nebraska.

8 Q And there **was** some discussion of your son?

9 A Yes.

10 Q And his specialty is?

11 A My-- my son is a board certified general surgeon.

12 Q And he practices in Lincoln?

13 A Yes.

14 Q And he would be qualified to perform the procedure?

15 A Yes. I discussed the situation with him and he
16 recommended exactly what was done at the University
17 Hospital.

18 Q The same surgical procedure?

19 A Yes. Um-huh.

20 Q Which could have been done at one of the hospitals where
21 he practices?

22 A Yes ,

23 Q Are those Lincoln General and--

24 A Bryan Hospital-- well, he practices at all three
25 hospitals, but Bryan Hospital has an oncology floor. **As I**
26 understand, it's primarily the 'oncology hospital,

1 Q Okay. Did the Wiebelhauses pose any questions when you
2 shared the results of the laboratory workup about the
3 prognosis that Mrs. Wiebelhaus faced?

4 A No.

5 Q Did you know then what the probable prognosis was?

6 A Yes. Um-huh.

7 Q Did you tell them?

8 A No.

9 Q Do you know now what her probable prognosis is?

10 A I don't think that you can say that I could have given the
11 prognosis without further laboratory studies, you know.

12 First of all, you need a-- one of the things everybody
13 needs is a chest x-ray and that would shed a light on the
14 prognosis, but you know that a Clark's Level IV is worse
15 than a III, which is worse than a II, which is worse than
16 a I.

17 Q And the invasion of the reticular dermis means?

18 A It's a Clark's Level IV.

19 Q Since that date have you had any more discussion with
20 these folks?

21 A No. Well, yes. I did then call my son and make an
22 appointment and they were very anxious to be seen quickly
22 and actually they wanted the surgery done the same day or
24 the next day and, of course, this was getting to be the
25 weekend and so that was fine with me and I thought my son
26 and the people in Lincoln would give them good care. In

1 fact, I thought they would give them excellent care
2 because there's an excellent group, of oncologists there.
3 Then I heard from them and they decided to go to the
4 University of Nebraska Medical Center to Dr. Bierman
5 because a relative had been treated for lymphoma by Dr.
6 Bierman, and that was fine with me and I did call Dr.
7 Bierman-- Dr. Bierman's office, and as I recall Dr. .
8 Bierman called me back.

9 Q Are you acquainted with Dr. Bierman?

10 A No, I am not.

11 Q So you had a chance to share with him what you knew of the
12 case?

13 A Yes. Um-huh.

14 Q And was that basically to pass on to him what was then an
15 oral pathology report?

16 A Yes. But then, I think it was on Thursday then, I think
17 the people-- I think the Wiebelhauses were to be seen
18 there on Friday and I think some of the relatives actually
19 drove to Sioux Falls to pick up the slides and then they
20 took the slides with them to Omaha, as I understand it.

21 Q You don't have any criticism of the Wiebelhauses for being
22 **dilatory** about choosing a method of treatment, do you?

23 A I don't understand your question.

24 Q Well, you don't think that these folks were too slow to
25 make decisions about how to get care for Mrs. Wiebelhaus
26 after your--

1 A No.

2 Q September 17 date?

3 A You mean lax in going to Omaha?

4 Q Yes.

5 A No.

6 Q And you don't think they were lax in following **up** with

7 what you know of the instructions from Omaha, do you?

8 MR. BATAILLON: Objection, foundation. He didn't care

9 for them after that.

10 A I really didn't care for them, no.

11 Q I know you didn't, but you've looked at the records,

12 haven't you?

13 A No, I really haven't.

14 Q Okay.

15 A I have very few records after the initial records and I

16 obviously have no records from the John Wayne Cancer

17 Institute and I did not have complete records from Omaha.

18 Q All right. Doctor, is it your-- is it your position here

19 that Mrs. Wiebelhaus was somehow herself remiss in not

20 having this mole removed from her body soon enough?

21 A It's my position that she was advised to have it removed,

22 and **she** is the one to make the decision when to have it

23 removed and that's up to her.

24 Q **And** have you now shared with us all of the information

25 that **you** shared with the patient about the circumstances

26 that attended to the need to remove that mole?

1
MR. BATAILLON: Objection, foundation, and the form of
the question is broad and indefinite. You can answer it if
you can, Doctor.

4 A I don't understand your question.

5 Q All right. You've told me that-- and that's fair, I want
6 to be sure that I get it right and it probably was too
7 broad. You've told me, as I understand it, that on August
8 the 22nd--

9 A Yes.

10 Q --of 1992 you noticed that the mole had changed in its--

13 A Yes.

12 Q --appearance?

13 MR. BATAILLON: Doctor, you have to let him finish the
14 question so that-- it will make it go a little faster.

15 Q The mole had changed in its configuration?

16 A Yes.

17 Q And that you thought it should come off?

18 A Yes.

19 Q You didn't give her any-- and you also told her then that
20 it should come off to be looked at under a microscope
21 because it might be malignant?

22 A Yes. Yes.

23 Q Did you give her any more information upon which to base a
24 decision?

25 A No. That should-- to me that would be ample knowledge to
26 make a decision whether it should be removed or not

1 removed.

2 Q All right. And between August 22nd and September the 14th

3 you saw the patient on August 26th at 9:35 p.m.

4 A Yes.

5 Q And on August 27 in the middle of the night when you

6 delivered the baby?

7 A Yes.

8 Q And the next day during follow-up rounds?

9 A Yes.

10 Q And you saw her on August 28th in the hospital?

11 A Um-huh.

12 Q Right?

13 A Yes.

14 Q And she was discharged on August 29th?

15 A Yes.

16 Q You saw her--

17 A No, she was discharged on the 28th.

18 Q Oh, all right. So you didn't see her on the 23th and you

19 didn't see her on the 30th and then you saw her on the

20 31st?

21 A Yes.

22 Q And when she left your office on the 31st you expected to

23 see her again in two weeks?

24 A Yes.

25 Q Was there ever any consideration given, Doctor, to doing

26 any sort of a culture or study or microscopic examination

of the material this mole was oozing?

A No.

Q Do you know whether or not any study of that kind would have been diagnostically significant?

A I don't think it would have been helpful.. What you need is an excision and microscopic examination.

Q Of the actual mole tissue?

A Right.

Q Are you familiar with the National Cancer Institute?

10 A Yes.

1: Q What do you know about the National Cancer Institute?

1: A They do research studies into various types of cancer.

1: Q Is it a respected organization?

1: A Yes.

1: Q Do you consider its work authoritative?

10 A It's probably one of the authoritative sources. I'm not personally familiar with their work.

1: Q But you know that it's respected in the profession of medicine?

20 A Yes.

2: Q Can you explain at all and I-- and I suspect this is a topic for a treatise, but briefly and explain if you can and as you would to a patient, the difference between a basal cell or a squamous cell skin cancer and a melanoma?

2: A I'm not a pathologist. I would think clinically I would be able to diagnose those with a high-- a reasonable high

* Microscopically, you mean.

A Clinically, looking at them, with some degree of accuracy, but I would not consider myself a pathologist and want to go out and describe the microscopic features of different skin cancers.

Q What about in terms of their consequences for the patient? What differences are there? What's the ordinary treatment experience for a basal cell skin cancer?

10 A Usually a basal cell carcinoma, if it's excised completely
1 is all the treatment that's needed.

1: Q It's just simply--

1: A That's it.

1: Q It's a lesion that heals up and it's fine,

1: A That's right.

10 Q And what about a squamous cell?

1: A A squamous cell carcinoma may metastasize.

10 Q There is risk of that?

19 A There's a risk of that.

20 Q And the treatment for it is ordinarily what?

2: A Ordinarily wide excision.

2: Q And if it metastasizes, then what?

22 A Then further treatment, which I would not feel was within
24 my realm of expertise to discuss.

25 Q You'd refer a patient?

26 A Right, with metastatic squamous cell carcinoma.

1 Q Okay. Do you know of differences in the progress of the
2 two diseases, a metastasized squamous-- squamous, I've
3 said it, cell skin cancer and a melanoma that's
4 metastasized?

5 A What is your question again?

6 Q The question is are the prognosis-- prognoses for two
7 patients of those-- suffering those two different
8 conditions different?

9 A I'm really not able to comment on that.

10 Q Doctor, did it occur to you at any time before the lab
11 results were back from Sioux Falls that what you might be
12 dealing with in Mrs. Wiebelhaus' case was a melanoma?

13 A Yes.

14 MR. BATAILLON: Was a-- was a what?

15 MR. DOMINA: Melanoma.

16 MR. BATAILLON: Okay. I'm sorry.

17 Q When did you first suspect that?

18 A Yell, when I sent this in on the day of surgery, I put
19 down here rule out melanoma as one of the things.

20 Q That was your September 14--

21 A Yes.

22 Q --note? Before that date, before you took the-- before
23 you took the mole off on September 14, did you have a
24 suspicion it would be a melanoma?

25 A I was suspicious that it should be a lesion that should be
26 removed and really you don't know what you're dealing with

1 until you remove it and look at it under a microscope.

2 Q You certainly knew that it was-- that melanoma was one of
3 the possibilities?

4 A Could be, um-huh.

5 Q I take it that there were basically four possibilities
6 that you were concerned about: it was benign: it was
7 melanoma; it was a basal cell cancer; or it was a squamous
8 cell cancer?

9 A Yes.

10 Q Is that right?

11 A Yes.

12 Q And that was apparent to you at August 22nd?

13 A Yes.

14 Q You know, don't you, that it is best to treat any cancer
15 as early as possible?

16 A It's best to advise the patient to have it treated as
17 early as possible.

18 Q Well, in terms of achieving a recovery, it's also best to
19 treat it as early as possible, isn't it?

20 A Yes.

21 Q And this particular-- the disease melanoma is one that--
22 that you know is life threatening if not checked, correct?

23 A Yes.

24 Q In fact, it's ordinarily fatal, isn't it?

25 A It's not ordinarily fatal. Many people survive.

26 Q But none in your practice?

1 A Yes.

2 Q One.

3 A I have two others who I'm taking care of who are doing
4 well who were seen initially by other physicians.

5 Q At Clark's Level IV?

6 A No.

7 (Exhibit Number 9 marked for identification.)

8 Q I'm going to ask you to take a look, If you would, please,
9 at Exhibit Number 9. I know you haven't had a chance and
10 I'll ask you if you've seen it before. I suspect you
11 haven't had a chance to look at it. Have you seen it
12 before?

13 A No.

14 Q Why don't we break for a couple minutes and you take a
15 little time and read through it, would you? Would you do
16 that?

17 A Well, it'd take about an hour to read it.

18 Q Well, it's how many pages long?

19 A Eight.

20 MR. BATAILLON: Nine.

21 A Nine?

22 MR. BATAILLON: Nine.

23 A What is the point that you're making with the article?

24 Q I just want to ask you some questions about it. Why don't
25 you just look through it. I'm not going to ask you about
26 the footnotes, that cuts out half of it, and I'll be back

1 in a second, okay?

2 A Sure.

3 (A recess was taken.)

4 Q Dr. Nagengast, you mentioned that you had not, of course,
5 seen Exhibit 9 or any parts of it before, and you've only
6 had time to do a superficial review of it, I know, is that
7 correct?

8 A Yes.

9 Q Are you familiar from any source other than Exhibit 9 with
10 any statistical information of the kind reported under the
11 heading Stage Information on Page 2 concerning
12 specifically survivability rates?

13 A Yes, I'm familiar with the Breslow's Classifications.

14 Q Okay. And how do you have familiarity with the Breslow's
15 Classifications?

16 A From my reading about it.

17 Q All right. And would that have been a course, a topic you
18 would have studied in any formal course of instruction
19 at--

20 A It s been a topic in a course of formal instruction.

21 Q Would that be one of those University of Nebraska courses?

22 A Yes, as well as the Clark's ievel of classification.

23 Q They were taught there as well?

24 A Yes.

25 Q Insofar as you know, is the survivability data reported
26 there, then, accurate?

1 MR. BATAILLON: I'll object on foundation.

2 A I have no way of knowing, but I would presume it's
3 accurate.

4 Q It's information of the kind you would rely on--

5 A Yes.

6 Q --in the course of your practice?

7 MR. BATAILLON: Objection, foundation.

8 Q Doctor, based on your examinations of Mrs. Wiebelhaus and
9 the mole that we've been talking about, have you formed
10 any opinions about the rapidity with which it was growing
11 during the months of July, August and September of 1992?

12 A I would say it **was** growing rather rapidly.

13 Q Do you have an opinion, then, about the extent of its
14 invasion below the skin into the patient's body at July 9
15 of 1992?

16 A I have no idea what that would be. I did discuss this
17 with the pathologist who read the slide.

18 Q And--

19 A Dr. Schultz, on the telephone.

20 Q **And** was that at the time he reported the results to you?

21 A No, after. I read that-- I discussed it with him about
22 one week ago.

23 Q All right. And what discussion did he and you have?

24 A I outlined the clinical case, and he had read the slides,
25 and mentioned that this was first looked at on July 9 and
26 it was his opinion as told to me over the telephone, not

1 in writing, that he would have-- that he thinks-- that he
2 thought this would have been a Clark's Level IV at that
3 time.

4 Q And that's based--

5 A That's his opinion per the telephone.

6 Q And that's based, as you understand it, primarily on what
7 he saw of the tumor when it was excised at September 14?

8 A I suppose his experience as a pathologist.

9 Q Is it the movement of this kind of cancer into the
10 subcutaneous tissue that allows it to metastasize?

11 A I don't know.

12 MR. BATAILLON: Objection, foundation.

13 A Cancer doesn't always follow rules. My own wife died with
14 cancer at age 47. She had a biopsy in April and she was
15 dead the following February, so sometimes the rules just
16 don't follow.

17 Q What kind of cancer?

18 A Breast cancer.

19 MR. DOMINA: I have no further questions for you. Thank
20 you very much for your patience.

21 MR. BATAILLON: Doctor, you have the right to read and
22 sign this deposition, I'd suggest that you do that,

23 A Okay. Fine.

24 MR. BATAILLON: And the court reporter will get in touch
25 with you and make the arrangements.

26 (End of deposition.)

(Exhibits offered by Mr. Domina at conclusion of depositions.

Objections to exhibits reserved by Mr. Bataillon.)

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CERTIFICATE

2 STATE OF NEBRASKA)
3 : SS
4 COUNTY OF MADISON)

5 I, Valorie R. Olson, a General Notary Public in and for
6 the State of Nebraska, do hereby certify that D. J.
7 NAGENGAST, M.D., was by me duly sworn to testify the truth,
8 the whole truth and nothing but the truth; that said
9 deposition by him as herein set forth was taken upon a
10 Stenograph by myself and thereafter reduced to writing by me
11 from my notes; that said deposition is a true record of the
12 testimony given by said witness and the reading and signing
13 of said deposition by the witness was not waived by all
14 parties as shown herein; that said deposition was taken at
15 the time and place herein specified; that I am not counsel,
16 attorney or relative of any of the parties concerned or
17 otherwise interested in the outcome of this suit.

18 IN TESTIMONY WHEREOF I have hereunto subscribed my name
19 and affixed my seal of office this 13th day of July, 1993.

20 



22 Valorie R. Olson, RPR, CM
23 General Notary Public
24 608 North 11th Street
25 Norfolk, NE 68701
26 (402) 379-0507
My commission expires 9/17/94