

1 IN THE COURT OF COMMON PLEAS

2 OF CUYAHOGA COUNTY, OHIO

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4 NADIRAH D. MALIK, etc.,

5 Plaintiff,

6 vs

Case No. 443949

Judge Russo

7 MERIDIA HEALTH SYSTEMS,  
8 et al.,

9 Defendants.

10 - - - - -

11 DEPOSITION OF ABDEL NIMERI, M.D.

12 FRIDAY, MAY 31, 2002

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14 Deposition of ABDEL NIMERI, M.D., a Witness  
15 herein, called by counsel on behalf of the  
16 Plaintiff for examination under the statute,  
17 taken before me, Vivian L. Gordon, a Registered  
18 Diplomate Reporter and Notary Public in and for  
19 the State of Ohio, pursuant to agreement of  
20 counsel, at the offices of Huron Road Hospital,  
21 13951 Terrace Road, East Cleveland, Ohio,  
22 commencing at 8:30 o'clock a.m. on the day and  
23 date above set forth.

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25

1 APPEARANCES:

2

On behalf of the Plaintiff

3

Becker & Mishkind

HOWARD D. MISHKIND, ESQ.

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Skylight Office Tower Suite 660

Cleveland, Ohio 44113

5

216-241-2600

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On behalf of the Defendant Meridia Health  
Systems

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Reminger & Reminger

CHRISTINE S. REID, ESQ.

8

The 113 St. Clair Building

Cleveland, Ohio 44113

9

216-687-1311

10

On behalf of the Defendant D'Hue

Reminger & Reminger

11

SUSAN M. SEACRIST, ESQ.

The 113 St. Clair Building

12

Cleveland, Ohio 44113

216-687-1311

13

On behalf of the Defendant Dickerson

14

Ulmer & Berne

MURRAY K. LENSON, ESQ.

15

900 Penton Media Building

Cleveland, Ohio 44115

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216-621-8400

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1 ABDEL NIMERI, M.D., a witness herein,  
2 called for examination, as provided by the Ohio  
3 Rules of Civil Procedure, being by me first duly  
4 sworn, as hereinafter certified, was deposed and  
5 said as follows:

6 EXAMINATION OF ABDEL NIMERI, M.D.

7 BY MR. MISHKIND:

8 Q. Would you state your name for the  
9 record, please.

10 A. Abdel Nimeri.

11 Q. You are a physician; is that correct?

12 A. Yes.

13 Q. Have you ever given sworn testimony  
14 under oath before, either at a deposition or in  
15 a courtroom?

16 A. No.

17 Q. So this is your first such occasion;  
18 correct?

19 A. Yes.

20 Q. I'm going to be asking you some  
21 questions concerning Molvin Edwards and your  
22 involvement in his care when he was a patient  
23 here back in January of 2000, okay?

24 A. Okay.

25 Q. When I ask you questions, wait until

1 I am done with the question and then only answer  
2 my question if you understand the question. If  
3 you don't understand the question, just tell me,  
4 Howard, or, Mr. Mishkind, I don't know what you  
5 are asking. I will try to rephrase it or I will  
6 have Vivian read it back or we will just go back  
7 to the beginning and start over again. But I  
8 want to make sure that before you answer a  
9 question, especially since this is the first  
10 time that you have done this, that you  
11 understand what I'm asking you. Fair enough?

12 A. Fair.

13 Q. Also, I'm going to wait, doctor,  
14 until you are done with your answer and I would  
15 ask that you do the same with regard to my  
16 questions so that we are not overlapping each  
17 other. Is that a fair request?

18 A. That's fair.

19 Q. Those are really all the preliminary  
20 instructions that I need to give to you at this  
21 particular point. I'm going to ask you a series  
22 of questions about your care, some questions  
23 about yourself, and then we will be done. We  
24 have a number of depositions to take, and  
25 whether you are the lucky one or the unlucky

1 one, you are first up today, okay?

2 A. Okay.

3 Q. Who are you employed by? Tell me  
4 that.

5 A. Meridia Huron Hospital.

6 Q. How long have you been employed by  
7 Meridia Huron Road Hospital?

8 A. Since July of 1999.

9 Q. In what capacity are you employed  
10 here at the hospital? What is your title or  
11 position?

12 A. I'm a surgery resident.

13 Q. What year residency are you in?

14 A. Now?

15 Q. Yes.

16 A. Third year.

17 Q. How many more years do you have to go  
18 in your surgery residency?

19 A. Two more years.

20 Q. Doctor, tell me what your plans are  
21 after you have completed your fifth year of  
22 residency.

23 A. I haven't decided yet.

24 Q. Where do you originate from? Are you  
25 a native of the U.S. or do you come from a

1 different country?

2 A. I am from Sudan.

3 Q. Did you do your primary education  
4 back in Sudan or did you come to the U.S. or  
5 elsewhere?

6 A. What do you mean by primary  
7 education?

8 Q. Before college.

9 A. Well, I went to medical school in  
10 Egypt.

11 Q. The name of the medical school?

12 A. Alazhar A-L-A-Z-H-A-R University.

13 Q. What year did you graduate from  
14 Alazhar?

15 A. 1996.

16 Q. Tell me what you did after graduating  
17 from medical school.

18 A. I did one year of internship.

19 Q. Where would that be at?

20 A. The same university.

21 Q. Okay.

22 A. Then came here and did an internship  
23 in internal medicine at the University of  
24 Illinois at Champaign and I came here.

25 Q. Here, being to Meridia Huron Road

1 Hospital?

2 A. Correct.

3 Q. And you started at Huron Road  
4 Hospital, do you remember the month and year  
5 that you started?

6 A. July 1st, 1999.

7 Q. Have you worked at any other  
8 hospitals in the Cleveland area aside from Huron  
9 Road Hospital?

10 A. Yes.

11 Q. What other hospitals?

12 A. Huron, Lake West, The Cleveland  
13 Clinic Foundation, and Metro Hospital.

14 Q. Back in January of 2000, which is the  
15 period of time that we are interested in  
16 primarily with regard to Mr. Edwards, were you  
17 working full time here at Huron Road?

18 A. I don't recall.

19 Q. Is it possible that you were working  
20 at some of these other hospitals, as well?

21 A. It's possible.

22 Q. Currently, are you working full time  
23 at Meridia Huron Road?

24 A. No.

25 Q. Tell me how you divide up your time,

1 just very briefly.

2 A. First year between Huron and  
3 Hillcrest; second year between The Cleveland  
4 Clinic, Huron and Robinson Memorial Hospital;  
5 third year between Akron Children's Hospital,  
6 Huron Road, and Robinson Memorial Hospital;  
7 fourth year at Huron; fifth year between Huron  
8 and Hillcrest.

9 Q. You were in your first year of  
10 residency when Mr. Edwards was a patient here;  
11 is that true?

12 A. That's correct.

13 Q. Who was your attending that you were  
14 working under at the hospital in January of  
15 2000?

16 A. I don't understand the question.

17 Q. You were a surgical resident. Were  
18 you working with Dr. D'Hue?

19 MS. REID: In this case?

20 MR. MISHKIND: In this case.

21 MS. REID: When you were involved  
22 with Mr. Edwards.

23 A. Yes.

24 Q. So Dr. D'Hue was the attending for  
25 Mr. Edwards; correct?



1 A. Correct.

2 Q. Did you take direction from  
3 Dr. D'Hue in terms of implemented orders for the  
4 patient?

5 A. Correct.

6 Q. There was a cardiologist involved,  
7 Dr. Dickerson, as well. I take it you know both  
8 Dr. Dickerson and Dr. D'Hue?

9 A. Yes.

10 Q. They both work at this hospital;  
11 correct?

12 A. Yes.

13 Q. I take it you have had a chance to  
14 talk with both of them about Mr. Edwards' case?

15 MS. REID: Well, about this lawsuit?

16 MR. MISHKIND: Right.

17 A. What do you mean?

18 Q. Have you talked with -- we will break  
19 it down. Have you talked with Dr. Dickerson  
20 about this lawsuit at all?

21 A. No.

22 Q. Have you talked to Dr. D'Hue about  
23 this lawsuit?

24 A. No.

25 a. As you sit here right now, have you

1 had an opportunity to review summaries or copies  
2 of any deposition testimony transcripts that  
3 were taken, sworn testimony from Dr. D'Hue?

4 A. No.

5 Q. What about Dr. Dickerson?

6 A. No.

7 Q. Did you know that either of those  
8 doctors had been deposed?

9 A. No.

10 Q. So July of '99 you came to Huron Road  
11 Hospital.

12 A. That's correct.

13 Q. And January of 2000 is when  
14 Mr. Edwards was a patient and passed away here  
15 at the hospital, so you were roughly four or  
16 five, six months into your first year of  
17 surgical residency here?

18 A. To be exact, seven months.

19 Q. Thank you. My math never was good.  
20 Doctor, just a couple housekeeping  
21 matters. Have you ever been named in any type  
22 of lawsuit before as a party?

23 A. Yes.

24 Q. How many times?

25 A. Once.

1 Q. Is that matter still pending?

2 A. Yes.

3 Q. But your deposition has not been  
4 taken in that case as of yet; is that true?

5 A. Correct.

6 Q. Tell me the name of the party that  
7 filed a lawsuit against you.

8 MS. REID: Let me have an objection.  
9 You can answer.

10 A. I don't remember the name.

11 Q. Do you remember a last name?

12 A. The patient's last name. Nadler.

13 Q. Was it a male or female?

14 A. Female.

15 Q. Do you remember the patient's first  
16 name?

17 A. Starts with an E, but I can't  
18 remember it now.

19 Q. Did Mrs. Nadler die?

20 A. Yes.

21 Q. What did Mrs. Nadler die of?

22 MS. REID: Let me have a continuing  
23 objection. Go ahead.

24 A. I don't know.

25 Q. What was your involvement, very

1 briefly -- I don't want you to go into a lot of  
2 detail -- but what was your involvement as it  
3 relates to the care of Mrs. Nadler?

4 A. I covered the weekend once for  
5 another resident while she was in the hospital.

6 Q. Do you know what type of an event  
7 occurred immediately prior to her death? In  
8 other words, did she go into cardiac arrest?  
9 Did she have a pulmonary embolism?

10 A. I don't know.

11 Q. I take it other people have been  
12 named besides yourself in that case?

13 A. That's correct.

14 Q. As you sit here right now, you  
15 haven't been deposed, but you have been named as  
16 a party; true?

17 A. That's correct.

18 Q. Any other cases where you have been  
19 named as a party to any lawsuits?

20 A. No.

21 Q. You are licensed to practice  
22 medicine, I take it?

23 A. Yes.

24 Q. Licensed in the State of Ohio?

25 A. Yes.

1 Q. You are not board certified yet;  
2 true? Or are you board certified?

3 A. I am not board certified.

4 Q. You have to finish your residency  
5 before you become board eligible?

6 A. Correct,

7 Q. I take it your intent is to pursue a  
8 surgical practice of some sort?

9 A. That's correct.

10 Q. Are you specializing or intending to  
11 specialize in any area of surgery?

12 A. I haven't decided.

13 Q. Now, you were working, at least in  
14 January of 2000, under the direction of  
15 Dr. D'Hue, the ENT surgeon, as it relates to  
16 this particular case.

17 Have you spent any particular time  
18 emphasizing any area of surgical practice while  
19 you have been working as a resident here at the  
20 hospital?

21 A. I don't understand the question.

22 Q. Dr. D'Hue is an ENT surgeon; true?

23 A. Yes.

24 Q. Have you worked with other surgeons  
25 other than Dr. D'Hue that are not ENT surgeons?

1 A. Yes.

2 Q. So as a surgical resident here at the  
3 hospital, you have had occasion to work with a  
4 number of different surgeons, whether it be a  
5 general surgeon, vascular surgeon, things of  
6 that nature; is that true?

7 A. That's correct.

8 Q. You have had occasion to work with  
9 Dr. D'Hue, I presume, on more than one occasion  
10 following any of either his private patients or  
11 patients that he was called in to see?

12 A. That's correct.

13 Q. Now, you said that you have not seen  
14 Dr. D'Hue or Dr. Dickerson's depositions. But  
15 have you at any time since Mr. Edwards passed  
16 away, which was on the morning of January 29,  
17 2000, have you talked with Dr. D'Hue about the  
18 circumstances that led to his death the early  
19 morning of January 29?

20 A. No.

21 Q. The same question with regard to  
22 Dr. Dickerson. Did you ever discuss with him  
23 the circumstances as to why this patient died on  
24 January 29 while on a telemetry floor, I guess  
25 it was 6 West --

1 MS. REID: 6 Main.

2 Q. 6 Main. Ever discuss anything with  
3 Dr. Dickerson about the circumstances of  
4 Mr. Edwards' death?

5 A. No.

6 Q. Have you ever written anything,  
7 doctor, in the medical literature, published  
8 anything?

9 A. Yes.

10 Q. What have you published?

11 A. A paper about Chronic Acalculous  
12 Cholecystitis in the journal Surgery, issue of  
13 October, 2001. I have a paper that's being sent  
14 for publication about the Human umbilical Vein  
15 Graft and Use in Lower Extremity Bypass Grafting  
16 that's not published yet.

17 Q. Have you submitted that for  
18 acceptance?

19 A. Submitted once and I am doing a  
20 revision for it.

21 Q. They sent it back to you to clean it  
22 up a bit?

23 A. Correct.

24 Q. The first article on the Acalculous  
25 Cholecystitis, you said Surgery is the journal?

1 A. October, 2001.

2 Q. Are you the main author on that?

3 A. What do you mean by main author?

4 Q. The lead?

5 A. After the attending, yes.

6 Q. Who is the attending?

7 A. Chen. P. Chen.

8 Q. Chen?

9 A. Peter Chen.

10 Q. Is Dr. Chen a general surgeon?

11 A. Correct.

12 Q. Anything else that you have submitted  
13 for publication or had published or is in the  
14 works currently, other than what you just told  
15 me about?

16 A. No.

17 Q. I take it you have never had your  
18 privileges suspended or revoked; is that true?

19 A. That's correct.

20 Q. I don't mean in any way to be  
21 disrespectful when I ask this question and  
22 sometimes people think that I am, but are you an  
23 American citizen?

24 MS. REID: Objection. You can  
25 answer.



1           A.     **As** of May 24th, yes.

2           Q.     May 24th, a week ago?

3           A.     That's correct.

4           Q.     Congratulations.

5           A.     Thank you.

6           Q.     That was a timely question, wasn't  
7     it?

8                     You have a copy or is this the  
9     original of Mr. Edwards' chart that you have in  
10    front of you?

11          A.     Yes.

12          Q.     Have you had a chance to look through  
13    it?

14          A.     Yes.

15          Q.     When, prior to the start of this  
16    deposition, did you last look at the chart?

17          A.     Not the original chart. I looked at  
18    a copy.

19          Q.     And I'm going to assume that the copy  
20    you looked at is a copy of the original?

21          A.     That's correct.

22                     MS. REID: I hope so.

23          Q.     When did you look at the chart?

24          A.     Yesterday.

25          Q.     Since Mr. Edwards' death in January

1 of 2000, have you looked at the chart at any  
2 time prior to yesterday?

3 A. I dictated the discharge summary two  
4 months after his death.

5 Q. Are there any other times that you  
6 have looked at the chart other than while you  
7 were caring for the patient, two months after  
8 his death, and yesterday?

9 A. Once when I was told that my name was  
10 going to be appearing as a deposed witness in  
11 this case.

12 Q. And how long ago was that?

13 A. I don't recall.

14 Q. Are we talking weeks ago or months  
15 ago?

16 A. Weeks ago.

17 Q. Any other occasions that you have  
18 reviewed the chart?

19 A. No.

20 Q. In reviewing the chart at any time,  
21 going back to the treatment, two months later  
22 when you prepared the discharge summary, or the  
23 couple occasions that you just mentioned, did  
24 you make any notes at all of any of the entries?  
25 Did you mark down anything on paper concerning

1 things that you picked up on?

2 A. No.

3 Q. When you reviewed the chart, did you  
4 notice any discrepancies at all or inaccuracies  
5 from your perspective in terms of what you  
6 remember happening versus what is recorded in  
7 the chart?

8 A. No.

9 Q. Do you remember Mr. Edwards?

10 A. Vaguely.

11 Q. Sometimes people when I depose them  
12 say they don't, sometimes they have very  
13 distinct memories of the patient, and sometimes  
14 I get a vague response.

15 Can you help me out a little bit in  
16 terms of what you vaguely remember about him  
17 that's independent of the chart itself, just  
18 what stands out in your mind?

19 A. I remembered nothing until I was  
20 shown the chart, and then by looking at my  
21 notes, I remember I was in the ICU at that time,  
22 but I don't remember specific things about  
23 either him or that time.

24 Q. If I were to show you a picture of  
25 Molvin, would you -- strike that.

1                   Are you able to picture in your mind  
2    what the patient looked like?

3           A.     No.

4           Q.     **So** if I showed you a picture, it  
5    would be --

6           A.     I don't know.

7           Q.     As to whether you would remember him  
8    or not, there is nothing that is distinctive  
9    that stands out in your mind at this point;  
10   true?

11          A.     That's correct.

12          Q.     What about his daughter, did you ever  
13   talk with his daughter or any friends or family  
14   members while he was a patient in the hospital?

15          A.     I don't remember.

16          Q.     Is there anything reflected in your  
17   notes in the chart that you had any type of  
18   interaction with the family?

19          A.     I don't know.

20          Q.     From what you could see from looking  
21   at the records, does it indicate communication  
22   by you to family members?

23          A.     I didn't pay attention if I did or  
24   not.

25          Q.     Why did you dictate the discharge

1 summary two months after?

2 A. It was assigned to me.

3 Q. Why wasn't the discharge summary  
4 completed in a more timely manner?

5 A. I don't know. I was called to  
6 dictate it and I came and dictated it.

7 Q. The normal process is that a  
8 discharge summary on a patient is to be prepared  
9 more timely than two months after the discharge;  
10 true?

11 A. I don't know.

12 Q. When a patient dies in the hospital,  
13 do you know what the hospital policy is in terms  
14 of the turnaround time that that final discharge  
15 summary is to be prepared?

16 A. I don't know.

17 Q. Who is it that asked you to prepare  
18 the discharge summary?

19 A. We get a list in our mailbox with  
20 patients that you have to either sign the chart  
21 or dictate the charts, and you take the list and  
22 go to the medical records and dictate or sign  
23 the charts.

24 Q. Who gives you that assignment? Is it  
25 a doctor, an attending that gives you that

1 assignment?

2 A. I don't know.

3 Q. With regard to the surgery itself,  
4 this was Dr. D'Hue's patient; correct?

5 A. Correct.

6 Q. And you were following this patient.  
7 Did you assist in the surgery?

8 A. No.

9 Q. Were you involved in the  
10 postoperative management of the patient?

11 A. In the ICU.

12 Q. ICU, okay. What about in the  
13 telemetry unit, were you involved at all?

14 A. No.

15 Q. Were you involved in the decision to  
16 transfer the patient from the ICU to telemetry?

17 A. Yes.

18 Q. Were you the one that wrote the  
19 orders for transfer?

20 A. Correct.

21 Q. Did you write those orders for  
22 transfer after consulting with some other  
23 physician?

24 A. Correct,

25 Q. And would that have been Dr. D'Hue or

1 Dr. Dickerson or both?

2 A. Both.

3 Q. I don't mean to bounce around with my  
4 questions. It's not intended to confuse you,  
5 it's just sometimes things come to mind and I am  
6 not sitting here with a lot of notes in front of  
7 me.

8 You told me that you have not talked  
9 with Dr. Dickerson or Dr. D'Hue about this case,  
10 either immediately after the death or during the  
11 course of this litigation; true?

12 A. Yes.

13 Q. Have you had occasion to talk with  
14 any of the other physicians that were involved  
15 in the ICU or on the telemetry floor since  
16 Mr. Edwards died about any aspect of his care?

17 A. No.

18 Q. Dr. Dickerson had a cardiology  
19 resident, Sylvia, I think it is Labes. Do you  
20 know Sylvia?

21 A. Yes.

22 Q. Does she still work here at the  
23 hospital?

24 A. I don't know.

25 Q. Did you ever talk with her about her

1 involvement in any aspect of Mr. Edwards' care?

2 A. No.

3 Q. There is also a resident, Dr. Ahmed,  
4 Dr. Noveed Ahmed.

5 A. Yes.

6 Q. I may be butchering his name.

7 A. It's very close.

8 Q. He was apparently a surgical  
9 resident, as well?

10 A. That's correct.

11 Q. Where was he in the hierarchy? Was  
12 he more senior to you?

13 A. Yes.

14 Q. You were a first year. What was he?

15 A. Fifth year.

16 Q. Have you had any communication,  
17 formally or informally, with him about  
18 Mr. Edwards in terms of the ICU care, or the  
19 telemetry care, since he has passed away?

20 A. Yes.

21 Q. When was that, sir?

22 A. I don't remember.

23 Q. Was it sometime this year that you  
24 talked to him?

25 A. I don't recall.



1           Q.     It was sometime after the death,  
2     though; true?

3           A.     Correct.

4           Q.     In what context did you and he talk?

5           A.     He just told me that he died.

6           Q.     **So** I take it your conversation that  
7     you had with him would have been relatively  
8     close to January of 2000; is that a fair  
9     statement?

10          A.     Correct.

11          Q.     What else did he tell you about the  
12     fact that Mr. Edwards died?

13          A.     I don't recall the details, but I  
14     remember I talked to him. He told me he died.

15          Q.     Did you have any questions at all for  
16     him at that time?

17          A.     I don't remember.

18          Q.     Do you remember anything that you  
19     said to him when you learned that Mr. Edwards  
20     had died?

21          A.     No.

22          Q.     Do you remember being surprised or  
23     confused in any way when you were told this  
24     patient had died, based upon what you knew about  
25     his condition when you last saw him?

1 MS. REID: Objection.

2 A. What do you mean?

3 Q. Well, obviously you were a first year  
4 resident and you were involved in the care of a  
5 patient who you felt was improving; true?

6 MS. REID: Objection, I don't know  
7 that we have established that, but if you want  
8 to ask him that question.

9 Q. You, in conjunction with Dr. D'Hue,  
10 had orders to transfer him from the ICU to the  
11 telemetry unit; true?

12 A. Correct.

13 Q. I take it that you felt that the  
14 patient was well enough to be transferred from  
15 the ICU to telemetry; true?

16 A. Correct.

17 Q. He was transferred to telemetry  
18 around, for ballpark purposes, around 11:00  
19 a.m. on January 28th, maybe 11:30, but we will  
20 just use that as a ballpark. You didn't see him  
21 at all once he was transferred out of ICU; is  
22 that correct?

23 A. That's correct.

24 Q. When you saw him last, would it have  
25 been early morning of January 28th?

1 A. Correct.

2 Q. Before the transfer?

3 A. Correct.

4 Q. And you felt he was well enough to be  
5 transferred to telemetry; correct?

6 A. Yes.

7 Q. With the idea of slowly progressing  
8 towards discharge criteria; true?

9 A. Yes.

10 Q. **So** when you learned that the patient  
11 died, I take it that you wondered why or were  
12 curious as to why he died, given the fact that  
13 he appeared to be doing better; true?

14 MS. REID: Objection.

15 A. I don't remember how I felt.

16 Q. Let me make it easy for you, because  
17 I am not trying to put words in your mouth, but  
18 is there anything that you recall generally or  
19 specifically about your conversation with this  
20 doctor when you learned that Mr. Edwards had  
21 passed on?

22 A. No.

23 Q. I asked you about the review of the  
24 chart. Tell me whether you ever made any notes  
25 at any time that were personal notes about any

1 involvement that you had in the care and  
2 treatment of this patient, in a journal for your  
3 residency, or anything of that nature, that  
4 wouldn't be part of the hospital record?

5 A. No.

6 Q. So everything that you recorded,  
7 good, bad, or indifferent, about this patient is  
8 reflected in the hospital chart; true?

9 A. Correct.

10 Q. I'm not going to go through all of  
11 the entries that you have made in the chart, but  
12 I want to try to get an idea of when you were  
13 first involved in Mr. Edwards' care, and you can  
14 refer to the chart as necessary to answer those  
15 questions for me.

16 MS. REID: You want to know what his  
17 first contact was or note was?

18 A. 1-26.

19 MR. LENSON: That's the date.

20 MS. REID: 1-26, 10:30 p.m.

21 Q. And was that prior to the radical  
22 surgery?

23 A. That's after.

24 Q. After?

25 A. The same night after surgery.

1 Q. Were you involved in the  
2 tracheostomy?

3 A. No.

4 Q. I think I may have asked this, but  
5 were you involved in the left modified radical  
6 neck dissection?

7 A. No.

8 Q. What was your involvement on the  
9 26th?

10 A. I am the person who is on call, who  
11 the first night after surgery comes to check on  
12 the patient. It's called a post-op check.  
13 That's my involvement.

14 Q. And you wrote a post-op note?

15 A. Yes.

16 Q. How was the patient doing on January  
17 26th?

18 A. He had an episode of low blood  
19 pressure. He needed fluids. I thought the swan  
20 was too far in, two centimeters, so I pulled it  
21 back two centimeters.

22 MR. LENSON: His what?

23 THE WITNESS: Swan ganz catheter.

24 A. After I checked his chest x-ray, I  
25 reordered another chest x-ray.

1 Q. And this is post-op day one?

2 A. Immediately post-op, the night after  
3 surgery.

4 Q. This is ground zero, so to speak, the  
5 first day.

6 Did you see him on post-op day one?

7 A. No.

8 Q. That would be the 27th; true?

9 A. I did not see him, according to the  
10 chart.

11 Q. Did you see him on post-op day two,  
12 the 28th?

13 A. Correct.

14 Q. You wrote some orders on the 28th,  
15 did you not?

16 A. Yes, I did.

17 Q. Tell me what the first order was that  
18 you gave on January 28th.

19 A. CBC, BMP.

20 Q. BMP is what?

21 A. Basic metabolic panel.

22 Q. Why was that ordered on the morning  
23 of January 28th?

24 A. To look at his blood work and his  
25 electrolytes.

1           Q.     What aspect of the blood were you  
2     monitoring?

3           A.     Look at the white blood cell count to  
4     make sure it's not getting high, look at the  
5     platelets count, make sure it's not getting  
6     lower, look at the hemoglobin and the  
7     hematocrit.

8           Q.     Now, on January 28th, there is a note  
9     that says that the **CBC** and the **BMP** had already  
10    been drawn. Do you see that at 4:30?

11                   MR. LENSON: 4 P?

12                   MR. MISHKIND: Looks like it's 4:30  
13    a.m.

14           A.     That's orders; right. That's  
15    correct.

16           Q.     That's your note, isn't it?

17           A.     Already drawn?

18           Q.     Yes.

19           A.     No.

20           Q.     It's your signature to the right;  
21    true?

22           A.     But the written in red is not my  
23    writing.

24           Q.     And all I have is in black and white.

25           A.     The black is mine but the red is the

1 person who took the order off.

2 Q. So if I had a technicolor copy, my  
3 already drawn at 4:30 would be in red?

4 A. That's correct.

5 Q. Your signature to the right is in  
6 black; true? Or blue?

7 A. Black.

8 Q. Did you review the CBC and the BMP at  
9 that point?

10 A. It's in my note from January 28th.

11 Q. That you did review it?

12 A. Correct.

13 Q. What were your findings in your note  
14 on January 28th?

15 A. White blood cell count went from  
16 10,000 to 16,000. His hemoglobin went from 9.1  
17 to 8.8. His hematocrit went from 27.7 to 25.9.  
18 And his platelets went from 145 to 154.

19 Q. And your progress note on the 28th  
20 was written at 6:00 a.m.; true?

21 A. That's correct.

22 Q. And just for my recordkeeping  
23 purposes, your beeper number is 7149?

24 A. Correct.

25 Q. The plan on January 28th at 6:00



1 a.m. was to transfer to 6 Main telemetry; true?

2 A. True.

3 Q. Was that plan one that you arrived at  
4 independently or in conjunction with Dr. D'Hue  
5 and/or Dr. Dickerson?

6 A. With them.

7 Q. With both of them?

8 A. Uh-huh.

9 Q. That's a yes?

10 A. That's a yes.

11 Q. As of the 28th, just to sort of lump  
12 things together, he was doing well enough on  
13 post-op day number two to be transferred to  
14 telemetry, notwithstanding any lab value  
15 abnormalities; true?

16 A. That's true.

17 Q. And you were going to DC the arterial  
18 line and DC the Foley; correct?

19 A. Correct.

20 Q. Now, right below that, advance --

21 A. -- to feeds full Heplok.

22 Q. Advance to feeds full Heplok, okay.  
23 And then you also ordered transfusion of two  
24 units of packed red blood cells?

25 A. Correct.

1 Q. And the reason that that order was  
2 given, or that that plan was indicated, tell me  
3 why that was.

4 A. Because he is 71 and his hemoglobin  
5 is 8.8, and he has history of cardiac surgery.

6 MR. LENSON: CABG?

7 THE WITNESS: Yes.

8 Q. Of what significance in a patient at  
9 that age with coronary artery disease, having  
10 had bypass surgery, is a hemoglobin of 8.8 from  
11 your perspective? What does it potentiate or  
12 what concerns do you have that would prompt a  
13 plan of transfusing two units of packed red  
14 blood cells?

15 A. It improves oxygenation.

16 Q. So you want to minimize the risk of  
17 cardiac ischemia or other cardiac events; true?

18 A. True.

19 Q. Now, doctor, would you have given  
20 this, or would you have marked down this plan in  
21 terms of two units of packed red blood cells  
22 independently or would this also have been in  
23 conjunction with consultation with both  
24 Dr. D'Hue and Dr. Dickerson?

25 A. Writing the note is by me. Writing

1 the order sheet, I would have to check with both  
2 of them.

3 Q. And right below the transfuse, you  
4 have seen and discussed with Dr. D'Hue. It may  
5 be obvious, but I don't want to assume anything,  
6 so tell me what you mean by that note, by that  
7 line.

8 A. He was seen and discussed with him at  
9 1:00 p.m. I just write that 1:00 p.m.

10 What happens is, I see the patient in  
11 the morning, I write my note, and then the whole  
12 surgery team rounds. The attending comes at a  
13 time of the day and I'm with him. When I sign  
14 with him, I add that I saw the patient with him.

15 Q. And were any of the orders or plans  
16 for Mr. Edwards changed based upon your  
17 discussing this with Dr. D'Hue at 1:00 p.m.?

18 A. Correct.

19 Q. They were changed or were they kept  
20 the same?

21 A. One was changed, which is regarding  
22 the hematology/oncology consult, we don't need  
23 it at that time.

24 Q. And why is that?

25 MS. SEACRIST: Objection.

1           A.     I don't know.

2           Q.     What was your understanding as to why  
3     there was no hematology/oncology consult  
4     required at that time?

5           A.     In general, when somebody has cancer,  
6     we have the hematology/oncology see him, but not  
7     necessarily immediately post-op. Just sometime  
8     before he goes home, because there is nothing  
9     that is going to be done.

10          Q.     Would that absence of a need for a  
11     hematology/oncology consult have been something  
12     that Dr. D'Hue would have indicated to you at  
13     1:00 o'clock?

14          A.     Yes. It says discussed with  
15     Dr. D'Hue regarding hematology/oncology consult  
16     not needed right now.

17          Q.     All other orders and plans still  
18     remained in effect; true?

19          A.     Right.

20          Q.     Did you write any further progress  
21     notes after this one that's timed at 6:00 a.m.?

22          A.     I don't see any in the chart.

23          Q.     When you made the note at what you  
24     believe to be 1:00 p.m. discussed with  
25     Dr. D'Hue, the patient was already on the

1 telemetry unit; correct?

2 A. Maybe it wasn't 1:00 p.m., I don't  
3 know. I said 1:00 p.m. because I saw that he  
4 wrote 1:00 p.m. I don't remember what time.

5 Q. You are speculating as to when you  
6 marked that note about discussing things with  
7 Dr. D'Hue?

8 A. Right.

9 Q. You just as easily could have  
10 discussed things with Dr. D'Hue sometime in the  
11 morning; true?

12 A. Correct.

13 Q. Whenever it was, though, Dr. D'Hue  
14 didn't cancel or change any of the orders, the  
15 plans, other than the hematology/oncology  
16 consult; true?

17 A. Correct.

18 Q. And then, doctor, I'm just trying to  
19 visualize the path that Mr. Edwards traveled.  
20 He is on telemetry, and at that particular  
21 point, was your responsibility in terms of  
22 following him over at that point?

23 A. No.

24 Q. Did you have any ongoing  
25 responsibility for monitoring the patient the

1 balance of the day on the 28th and into the  
2 early morning of the 29th when he died?

3 A. No.

4 Q. When would your responsibility for  
5 this patient have ended?

6 A. When he was transferred outside the  
7 ICU.

8 Q. To telemetry; true?

9 A. That's true.

10 Q. I think that's what I asked you. And  
11 if it was around 11:00, then it's your  
12 understanding that some other resident in  
13 conjunction with other doctors would then be  
14 responsible for his care?

15 A. That's correct.

16 Q. Is the next and only note that you  
17 prepared then the discharge summary?

18 A. That's correct.

19 Q. I have, it appears to be, a two-page  
20 discharge summary.

21 A. That's what I have.

22 Q. My copy is unsigned. Is yours  
23 signed?

24 A. It is signed.

25 Q. Does it reflect what date you signed

1     yours?

2                   MS. REID:  What date it was signed?

3                   MR. MISHKIND:  Yes.

4           A.     Usually they have a page here where  
5     they say.  And sometimes if I sign the chart, a  
6     note there, but I don't necessarily note here  
7     what date I signed it.  No, it does not.

8           Q.     We know Mr. Edwards died on January  
9     29, and we know, at least according to my  
10    interpretation of the computer system, it was  
11    dictated on March 14th.

12          A.     That's correct.

13          Q.     Transcribed on March 15th.

14          A.     That's correct.

15          Q.     Do you have any sense as to when on  
16    or after March 15th you would have actually then  
17    signed the discharge summary?

18          A.     You get called to dictate the chart  
19    and you dictate it and it gets transcribed and  
20    then you get called again to sign it and then  
21    you come sign it.

22          Q.     Are you able to tell me, though, from  
23    transcription to when you got called to sign it,  
24    how long a period of time that was?

25          A.     I don't know.

1           Q.       Whether it was hours or days or  
2       weeks?

3           A.       I don't know.

4           Q.       The copy in the chart, is it signed?

5           A.       It is signed.

6           Q.       Could I just see that for a second,  
7       because the copy I have is an unsigned copy.

8                    The copy in the chart is signed by  
9       both you and Dr. D'Hue; true?

10          A.       That's correct.

11          Q.       Do you know why Dr. Dickerson wasn't  
12       called upon to sign the discharge summary?

13          A.       Only the primary physician signs the  
14       discharge summary. The consultants **do** not sign.

15          Q.       When you dictate the discharge  
16       summary, I take it you had access to the chart;  
17       true?

18          A.       That's correct.

19          Q.       Especially with the amount of time  
20       that had gone by, the necessity of having a  
21       chart is even more important to make sure that  
22       what you are dictating accurately reflects the  
23       hospital course; true?

24          A.       I don't understand,

25          Q.       If you dictate something a day after



1 the patient is discharged, your memory may be  
2 better than if you just dictate the discharge  
3 summary as in this case, a month and a half  
4 later?

5 A. I still only dictate what's in the  
6 chart. When you dictate the chart, you look at  
7 the chart and dictate what's in the chart. It's  
8 just a description of what you see in the chart.

9 Q. When you planned for transfusion of  
10 two units of blood, that was given in response  
11 to the January 28th a.m. hemoglobin of 8.8 and  
12 the hematocrit of 25.9; true?

13 (Interruption.)

14 Q. When your plan was implemented or  
15 when you had the plan for transfusion, it was  
16 because the patient's H&H was 8.8 and 25.9;  
17 correct?

18 A. Correct.

19 Q. And you had expected, I take it, that  
20 the patient would receive two units of packed  
21 red blood cells on the 28th; true?

22 A. Correct.

23 Q. When you dictated the discharge  
24 summary, you indicate that the patient was  
25 transfused with two units of blood --

1 MS. REID: Could you let him see  
2 that?

3 MR. MISHKIND: Sure.

4 Q. What I am referring to specifically  
5 is where it says his IV was Heplok'd and he was  
6 transfused with two units of blood as the H&H  
7 was 8.8 and 25.9, which was a drop from 9.2 and  
8 27.7 with this cardiac history in that he had a  
9 CABG before the patient was transfused, that was  
10 part of your discharge summary; true?

11 MS. REID: Just answer the question.  
12 Is that part of your discharge summary?

13 A. True.

14 Q. And when you dictated the discharge  
15 summary, you had the chart available for you;  
16 correct?

17 A. Correct.

18 Q. You had every expectation that when  
19 you implemented the plan for transfusion that  
20 this patient was to be transfused on the 28th;  
21 true?

22 A. True.

23 Q. And he wasn't, was he?

24 A. He was not.

25 Q. Yet at the time you dictated the

1 discharge summary, and correct me if I am wrong,  
2 but I take it you assumed that he had been  
3 transfused?

4 A. When I dictated the discharge  
5 summary, I look at all the orders and look at  
6 all the notes and then I go day by day looking  
7 at the note and the order and then I dictate.

8 So when I read the 28th, I looked at  
9 the notes and it said transfuse two units of  
10 blood, and looked at the orders, transfuse two  
11 units of blood, that's what I dictated.

12 Q. In fact, when you looked at the  
13 orders, you saw that it was checked by a nurse  
14 on the 28th; correct?

15 A. The whole transfer orders were  
16 checked.

17 Q. And that, to you, signals that the  
18 order was written and a nurse had taken the  
19 order off to implement; true?

20 A. Correct.

21 Q. So is it reasonable to conclude when  
22 you are dictating the discharge summary that the  
23 transfusion of blood which you felt was  
24 necessary and should have been given on the 28th  
25 was, in fact, given based upon looking at the

1 order and seeing that it was taken off by a  
2 nurse?

3 MS. SEACRIST: Objection to  
4 necessary.

5 MS. REID: I'm going to object to the  
6 phrasing of it. I mean --

7 Q. Do you understand the question,  
8 doctor?

9 A. No.

10 Q. When you dictated the discharge  
11 summary, you felt that the transfusion to Molvin  
12 Edwards on January 28th was necessary; true?

13 MS. SEACRIST: Objection.

14 A. I felt it was necessary when I  
15 transferred him.

16 Q. And as far as his hemoglobin and his  
17 hematocrit, you didn't receive any additional  
18 information to suggest that the necessity for  
19 transfusion had been eliminated; true?

20 A. When I was dictating, you mean?

21 Q. Nothing came to your attention after  
22 6:00 a.m. on January 28th that caused you to  
23 believe that he no longer needed two units of  
24 packed red blood cells; true?

25 A. That's correct.

1           Q.       So when you dictated it or when you  
2 wrote it at 6:00 a.m. that he needed two units  
3 of packed red blood cells based upon his drop in  
4 his hemoglobin and hematocrit, you felt at that  
5 time that this was something that Mr. Edwards  
6 needed; true?

7           A.       True.

8           Q.       And did you ever see, while you were  
9 involved in his care, any additional blood work  
10 that indicated that he no longer required the  
11 packed red blood cells?

12          A.       No.

13          Q.       Or any type of a transfusion?

14          A.       No.

15          Q.       Is it fair to say that when you  
16 dictated this discharge summary, you had  
17 expected that Mr. Edwards would have some time  
18 on the 28th have received the two units of  
19 packed red blood cells that you had implemented,  
20 that you had written as the plan on January  
21 28th?

22                   MS. REID: Objection. Asked and  
23 answered, but you can answer again.

24          A.       No. Because I ordered each unit over  
25 four hours. I ordered each unit over four

1 hours, so both units would be given over eight  
2 hours, so you don't have to necessarily finish  
3 before midnight.

4 Q. You expected that transfusions were  
5 to have at least been started sometime on the  
6 28th based upon what you had indicated at 6:00  
7 a.m. on January 28th; correct?

8 A. Correct.

9 Q. Obviously, there is a process of  
10 typing and screening and crossmatching that has  
11 to be done before the patient receives the  
12 transfusion; correct?

13 A. Correct.

14 Q. And when you look at the chart, do  
15 you see that any one typed and screened and  
16 crossmatched Mr. Edwards for purposes of  
17 preparing him for the transfusion?

18 A. I didn't look at the nurse's notes to  
19 see. I don't know. I don't know.

20 Q. Would that be a nursing function in  
21 terms of complying with an order for transfusion  
22 that the patient be typed and screened and  
23 crossmatched prior to the implementation of the  
24 transfusion?

25 A. You mean drawing the blood? The lab

1 can do it or the nurses can do it.

2 Q. That's something that is the  
3 responsibility either of the lab or the nurses,  
4 to draw the blood, to type and screen the  
5 patient; correct?

6 A. Correct.

7 Q. And then crossmatching and getting  
8 everything prepared to start the transfusion and  
9 hanging the blood, that's a nursing function?

10 MS. REID: I don't think the nurses  
11 physically type and screen it.

12 Q. That's a hospital function as opposed  
13 to something that you as a resident --

14 A. That's correct.

15 Q. And from what you can see, is there  
16 any evidence that any of the preparatory steps  
17 to start the transfusion were done prior to  
18 Mr. Edwards dying on January 29th?

19 A. I don't know how those steps go.

20 Q. Do you see anything in the record  
21 that would reflect a type and a screen or a  
22 crossmatch documented by any nurses?

23 A. I don't know where they go in the  
24 record.

25 MS. REID: I will stipulate, Howard,

1     that there is not a type and crossmatch in the  
2     record on January 28th.

3           Q.     Do you have any explanation, doctor,  
4     for why this patient did not receive the  
5     transfusion on January 28th?

6           A.     I don't know.

7           Q.     Do you know of anything from what you  
8     can see from the record or from what you learned  
9     from Dr. D'Hue or anyone else, as to a reason  
10    that this patient could not have received the  
11    transfusion, something that would have  
12    interfered with his ability to be transfused?

13          A.     No.

14          Q.     Or any indication that he no longer  
15    needed a transfusion?

16          A.     No.

17          Q.     Your discharge summary indicating  
18    that he was transfused is in error; true?

19          A.     That's correct.

20          Q.     Was your error ever brought to your  
21    attention by Dr. D'Hue prior to his signing the  
22    discharge summary?

23          A.     No.

24          Q.     Did you ever discuss your error in  
25    the discharge summary with Dr. D'Hue at any time



1 after the discharge summary was signed?

2 A. No.

3 Q. Did you sign it first or did he sign  
4 it first?

5 A. I don't remember.

6 Q. I had a feeling you were going to say  
7 that. Is it your normal practice to go over the  
8 discharge summary with the attending?

9 A. With the attending? No.

10 Q. In terms of the monitoring of the  
11 patient on the telemetry unit on January 28th  
12 and through the balance of the day into the  
13 early midnight hours of January 29th, you were  
14 not involved in any of that; correct?

15 A. Correct.

16 Q. Were you even at the hospital when  
17 the code was called?

18 A. I don't know.

19 Q. Have you worked at all on the  
20 telemetry unit?

21 A. What do you mean?

22 Q. I know that you are a surgical  
23 resident. Do you follow patients routinely when  
24 they are transferred to telemetry?

25 A. If it's our patient.

1           Q.     So in terms **of** the telemetry strips  
2     that are generated on patients, do you have any  
3     knowledge as to how frequently the telemetry  
4     strips are to be recorded in the patient's  
5     chart?

6           A.     No.

7           Q.     Do you have any knowledge as to  
8     whether there were any problems that were  
9     encountered on January 28th with regard to the  
10    alarms on the telemetry monitors at or around  
11    the time that Mr. Edwards arrested? Do you have  
12    any knowledge one way or another on that?

13          A.     No.

14          Q.     Do you have any knowledge at all  
15    about the circumstances in terms of how long  
16    Mr. Edwards had been unconscious prior to being  
17    discovered by any nurses in his room?

18          A.     No.

19          Q.     So once the patient was transferred,  
20    your involvement was over; correct?

21          A.     Correct.

22          Q.     And as far as circumstances that led  
23    up to or caused the death, you really have no  
24    personal knowledge of any of that; correct?

25          A.     Correct.

1 Q. Have we exhausted your knowledge on  
2 the 28th with regard to Mr. Edwards and what you  
3 did and why you gave the orders that were  
4 written at 6:00 a.m.?

5 A. Correct.

6 MR. MISHKIND: Doctor, I have no  
7 further questions for you. Thank you for  
8 enduring my questions.

9 EXAMINATION OF ABDEL NIMERI, M.D.

10 BY MS. SEACRIST:

11 Q. I have just a couple.

12 Dr. Nimeri, we met earlier. I'm  
13 Susan Seacrist representing Dr. D'Hue.

14 You testified that you are nearing  
15 completion of the third year of your general  
16 surgical residency; is that right?

17 A. Right.

18 Q. I take it you have followed many  
19 patients over those three years postsurgically.

20 A. Correct.

21 Q. Would you agree with me that it is  
22 not unusual for a patient postoperatively to  
23 show some falling hematocrit and hemoglobin  
24 values?

25 MR. MISHKIND: Objection.

1 A. That's correct.

2 Q. And that could be due to either blood  
3 loss during the surgery; correct?

4 MR. MISHKIND: Objection.

5 A. Correct.

6 Q. Or maybe a dilutional effect if the  
7 patient receives fluids during surgery?

8 MR. MISHKIND: Objection.

9 A. Yes.

10 Q. When I use the phrase critical value,  
11 does that mean anything to you as a third year  
12 surgery resident in terms of blood value, after  
13 a hemoglobin or hematocrit?

14 A. It's the whole picture. 8.8  
15 hemoglobin in a 20-year-old and 8.8 in a  
16 50-year-old, it's different. You have to look  
17 at the whole picture.

18 MS. SEACRIST: Thank you. Nothing  
19 further.

20 EXAMINATION OF ABDEL NIMERI, M.D.

21 BY MR. LENSON:

22 Q. Doctor, I'm Murray Lenson and I  
23 represent Dr. Dickerson. I have one question.

24 In the entry that you made in the  
25 chart regarding the transfusion, you indicate

1     therein that you consulted with Dr. D'Hue; is  
2     that correct?

3             A.     Yes.

4                     MS. REID: Discussed with Dr. D'Hue.

5             Q.     There is no indication in the chart  
6     that you discussed it with Dr. Dickerson; is  
7     that correct?

8             A.     I did not personally, but the  
9     cardiology resident does. Usually the way it  
10    goes is, I'm a surgery resident, so I ask the  
11    cardiology resident to ask his attending.

12            Q.     The only question I have, you did not  
13    consult with Dr. Dickerson regarding the  
14    transfusion?

15            A.     Personally, no.

16                     MR. LENSON: Thank you, doctor.

17                     EXAMINATION OF ABDEL NIMERI, M.D.

18    BY MR. MISHKIND:

19            Q.     Doctor, I have one question.

20                     Even though you didn't personally  
21    consult with Dr. Dickerson, I take it from what  
22    you told me before and what you just said to  
23    Mr. Lenson is that Dr. Dickerson was consulted  
24    by his cardiology resident before the decision  
25    was made; is that true?

1           A.       That's correct.

2                   MR. MISHKIND:   Thank you.

3           EXAMINATION OF   ABDEL NIMERI, M.D.

4   BY MR. LENSON:

5           Q.       Let me follow up, doctor.

6                   Doctor, you have no knowledge that  
7 anyone consulted with Dr. Dickerson; is that  
8 correct?

9                   MR. MISHKIND:   Objection.

10          A.       I don't know.

11                  MR. LENSON:   Thank you.

12                  MS. REID:   We will read it, please.

13                               - - - - -

14               (Deposition concluded at 9:50 a.m.)

15                       (Signature not waived.)

16                               - - - - -

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1 AFFIDAVIT

2 I have read the foregoing transcript from  
3 page 1 through 54 and note the following  
4 corrections:

5 PAGE LINE REQUESTED CHANGE

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ABDEL NIMERI, M.D.

18

19

20 Subscribed and sworn to before me this  
21 day of , 2002.

22

23 Notary Public

24

25 My commission expires

1 CERTIFICATE

2

3 State of Ohio,

4 SS :

5 County of Cuyahoga.

6

7

8 I, Vivian L. Gordon, a Notary Public within  
9 and for the State of Ohio, duly commissioned and  
10 qualified, do hereby certify that the within  
11 named ABDEL NIMERI, M.D. was by me first duly  
12 sworn to testify to the truth, the whole truth  
13 and nothing but the truth in the cause  
14 aforesaid; that the testimony as above set forth  
15 was by me reduced to stenotypy, afterwards  
16 transcribed, and that the foregoing is a true  
17 and correct transcription of the testimony.

13

14 I do further certify that this deposition  
15 was taken at the time and place specified and  
16 was completed without adjournment; that I am not  
17 a relative or attorney for either party or  
18 otherwise interested in the event of this  
19 action. I am not, nor is the court reporting  
20 firm with which I am affiliated, under a  
21 contract as defined in Civil Rule 28 (D).

18 IN WITNESS WHEREOF, I have hereunto set my  
19 hand and affixed my seal of office at Cleveland,  
20 Ohio, on this 5th day of June, 2002.

20

21

*Vivian L. Gordon*

22

23 Vivian L. Gordon, Notary Public  
24 Within and for the State of Ohio

24 My commission expires June 8, 2004.

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17  
18  
19  
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21  
22  
23  
24  
25

INDEX

DEPOSITION OF ABDEL NIMERI, M.D.

BY MR. MISHKIND: .....	3:7
BY MS. SEACRIST: .....	51:10
BY MR. LENSON: .....	52:21
BY MR. MISHKIND: .....	53:18
BY MR. LENSON: .....	54:3

Abdel 1:11,14 3:1,6 3:10 51:9 52:20 53:17 54:3 55:17 56:9 57:2 ability 48:12 able 20:1 39:22 abnormalities 33:15 about 4:22,23 9:14 9:15,20,22 10:5 14:17 15:3,11,14 16:15 19:16,22 20:12 22:12 23:9 23:16,25 24:17 25:11,24 27:19 27:23,25 28:7 37:6 50:15 above 1:23 56:11 absence 36:10 Acalculous 15:11 15:24 acceptance 15:18 access 40:16 according 30:9 39:9 accurately 40:22 action 56:16 actually 39:16 add 35:14 additional 44:17 45:9 adjournment 56:14 advance 33:20,22 AFFIDAVIT 55:1 affiliated 56:16 affixed 56:18 aforesaid 56:11 after 5:21 6:16 16:5 18:4,7 21:1,9 22:22 23:10 25:1 28:23,24,25 29:11,24 30:2 36:21 39:16 40:25 44:21 49:1 52:12 afterwards 56:11 again 4:7 39:20 45:23 against 11:7 age 34:9 ago 17:2 18:12,14 18:15,16 agree 5:12 1 agreement 1:19 ahead 11:23 Ahmed 24:3,4 Akron 8:5 al 1:7 alarms 50:10 Alazhar 6:12,14	already 31:9,17 32:3 36:25 American 16:23 amount 40:19 and/or 33:5 another 12:5 29:25 50:12 answer 4:1,8,14 11:9 16:25 28:14 42:11 45:23 answered 45:23 anyone 48:9 54:7 anything 15:2,6,8 16:12 18:25 20:16 25:18 27:18 28:3 35:5 47:20 48:7 52:11 apparently 24:8 APPEARANCES 2:1 appeared 27:13 appearing 18:10 appears 38:19 area 7:8 13:11,18 around 23:3 26:18 26:18 38:11 50:10 arrest 12:8 arrested 50:11 arrived 33:3 arterial 33:17 artery 34:9 article 15:24 aside 7:8 asked 21:17 27:23 29:4 38:10 45:22 asking 3:20 4:5,11 aspect 23:16 24:1 31:1 assigned 21:2 assignment 21:24 22:1 assist 22:7 assume 17:19 35:5 assumed 43:2 attending 8:13,24 16:5,6 21:25 35:12 49:8,9 53:11 attention 20:23 44:21 48:21 attorney 56:15 author 16:2,3 available 42:15 away 10:14 14:16 24:19 A-L-A-Z-H-A-R 6:12 a.m 1:22 26:19 31:13 32:20 33:1 36:21 41:11	44:22 45:2 46:7 51:4 54:14  <b>B</b> back 3:23 4:6,6 6:4 7:14 15:21 18:21 29:21 bad 28:7 balance 38:1 49:12 ballpark 26:18,20 based 25:24 35:16 43:25 45:3 46:6 Basic 30:21 Becker 2:3 become 13:5 beeper 32:23 before 1:17 3:14 4:8 6:8 10:22 13:5 27:2 36:8 42:9 46:3,11 53:22,24 55:20 beginning 4:7 behalf 1:15 2:2,6,10 2:13 being 3:3 6:25 15:13 25:22 50:16 believe 36:24 44:23 below 33:20 35:3 Berne 2:14 besides 12:12 better 27:13 41:2 between 8:2,3,5,7 bit 15:22 19:15 black 31:24,25 32:6 32:7 blood 29:18 30:24 31:1,3 32:15 33:24 34:14,21 41:10,21,25 42:6 43:10,11,23 44:24 45:3,9,11 45:19 46:25 47:4 47:9 52:2,12 blue 32:6 BMP 30:19,20 31:9 32:8 board 13:1,2,3,5 both 9:7,10,14 23:1 23:2 33:7 34:23 35:140 9 46:1 bounce 23:3 break 9:18 briefly 8:1 12:1 brought 48:20 Building 2:8,11,15 butchering 24:6 bypass 15:15 34:10  <b>C</b> CABG 34:6 42:9	call 29:10 called 1:15 3:2 14:11 21:5 29:12 39:18,20,23 40:12 49:17 came 6:22,24 10:10 21:6 44:21 cancel 37:14 cancer 36:5 capacity 5:9 cardiac 12:8 34:5 34:17,17 42:8 cardiologist 9:6 cardiology 23:18 53:9,11,24 care 3:22 4:22 12:3 23:16 24:1,18,19 26:4 28:1,13 38:14 45:9 caring 18:7 case 1:6 8:19,20 9:14 11:4 12:12 13:16 18:11 23:9 41:3 cases 12:18 catheter 29:23 cause 56:10 caused 44:22 50:23 CBC 30:19 31:9 32:8 cell 31:3 32:15 cells 33:24 34:14,21 41:21 44:24 45:3 45:11,19 centimeters 29:20 29:21 CERTIFICATE 56:1 certified 3:4 13:1,2 13:3 certify 56:9,13 Champaign 6:24 chance 9:13 17:12 change 37:14 55:5 changed 35:16,19 35:21 chart 17:9,16,17,23 18:1,6,18,20 19:3 19:7,17,20 20:17 21:20 27:24 28:8 28:11,14 30:10 36:22 39:5,18 40:4,8,16,21 41:6 41:6,7,7,8 42:15 46:14 50:5 52:25 53:5 charts 21:21,23 check 29:11,12 35:1 checked 29:24 43:13,16	Chen 16:7,7,8,9,10 chest 29:24,25 Children's 8:5 Cholecystitis 15:12 15:25 CHRISTINE 2:7 Chronic 15:11 circumstances 14:18,23 15:3 50:15,22 citizen 16:23 Civil 3:3 56:17 Clair 2:8,11 clean 15:21 Cleveland 1:21 2:4 2:8,12,15 7:8,12 8:3 56:18 Clinic 7:13 8:4 close 24:7 25:8 code 49:17 college 6:8 come 5:25 6:4 23:5 39:21 comes 29:11 35:12 commencing 1:22 commission 55:25 56:24 commissioned 56:8 COMMON 1:1 communication 20:2 1 24:16 completed 5:21 21:4 56:14 completion 51:15 complying 46:21 computer 39:10 concerning 3:21 18:25 concerns 34:12 conclude 43:21 concluded 54:14 condition 25:25 confuse 23:4 confused 25:23 Congratulations 17:4 conjunction 26:9 33:4 34:23 38:13 consult 35:22 36:3 36:11,15 37:16 53:13,21 consultants 40:14 consultation 34:23 consulted 53:1,23 54:7 consulting 22:22 contact 28:17 context 25:4 continuing 11:22 contract 56:17 conversation 25:6
--	--	---	---	---

27:19 copies 10:1 copy 17:8,18,19,20 32:2 38:22 40:4,7 40:7,8 coronary 34:9 correct 3:11,18 7:2 8:12,25 9:1,5,11 10:12 11:5 12:13 12:17 13:6,9 14:7 14:12 15:23 16:11,19 17:3,21 20:11 22:4,5,20 22:24 24:10 25:3 25:10 26:12,16 26:22,23 27:1,3,5 28:9 30:13 31:15 32:4,12,21,24 33:18,19,25 35:18 37:1,12,17 38:15,18 39:12 39:14 40:10,18 41:17,18,22 42:16,17 43:1,14 43:20 44:25 46:7 46:8,12,13 47:5,6 47:14 48:19 49:14,15 50:20 50:21,24,25 51:5 51:20 52:1,3,5 53:2,7 54:1,8 56:12 corrections 55:4 counsel 1:15,20 count 31:3,5 32:15 country 6:1 County 1:25 6:5 couple 10:20 18:23 51:11 course 23:11 40:23 court 1:1 56:16 courtroom 3:15 covered 12:4 criteria 27:8 critical 52:10 crossmatch 47:22 48:1 crossmatched 46:16,23 crossmatching 46:10 47:7 curious 27:12 currently 7:22 16:14 Cuyahoga 1:25 6:5  <b>D</b> D 1:4 2:3 56:17 date 1:23 28:19 38:25 39:2,7 daughter 20:12,13	day 1:22 30:1,5,6 30:11 33:13 35:13 38:1 40:25 43:6,6 49:12 55:21 56:19 days 40:1 DC 33:17,18 death 12:7 14:18 15:4 17:25 18:4,8 23:10 25:1 50:23 decided 5:23 13:12 decision 22:15 53:24 Defendant 2:6,10 2:13 Defendants 1:8 defined 56:17 depose 19:11 deposed 3:4 10:8 12:15 18:10 deposition 1:11,14 3:14 10:2 11:3 17:16 54:14 56:13 57:2 depositions 4:24 14:14 description 4:18 detail 12:2 details 25:13 Dickerson 2:13 9:7 9:8,19 10:5 14:22 15:3 23:1,9,18 33:5 34:24 40:11 52:23 53:6,13,21 53:23 54:7 Dickerson's 14:14 dictate 20:25 21:6 21:21,22 39:18 39:19 40:15,25 41:2,5,6,7 43:7 dictated 18:3 21:6 39:11 41:23 42:14,25 43:4,11 44:10 45:1,16 dictating 40:22 43:22 44:20 die 11:19,21 died 14:23 23:16 25:5,12,14,20,24 27:11,12 38:2 39:8 dies 21:12 different 6:1 14:4 52:16 dilutional 52:6 Diplomate 1:18 direction 9:2 13:14 discharge 18:3,22 20:25 21:3,8,9,14 21:18 27:8 38:17 38:20 39:17	40:12,14,15 41:2 41:23 42:10,12 42:14 43:1,4,22 44:10 45:16 48:17,22,25 49:1 49:8 discharged 41:1 discovered 50:17 discrepancies 19:4 discuss 14:22 15:2 48:24 discussed 35:4,8 36:14,24 37:10 53:4,6 discussing 35:17 37:6 disease 34:9 disrespectful 16:21 dissection 29:6 distinct 19:13 distinctive 20:8 divide 7:25 doctor 4:13 5:20 10:20 15:7 21:25 27:20 34:19 37:18 44:8 48:3 51:6 52:22 53:16 53:19 54:5,6 doctors 10:8 38:13 documented 47:22 doing 15:19 27:13 29:16 33:12 done 4:1,10,14,23 36:9 46:11 47:17 down 9:19 18:25 34:20 Dr 8:18,24 9:3,7,8 9:8,19,22 10:3,5 13:15,22,25 14:9 14:14,14,17,22 15:3 16:10 22:4 22:25 23:1,9,9,18 24:3,4 26:9 33:4 33:5 34:24,24 35:4,17 36:12,15 36:25 37:7,10,13 40:9,11 48:9,21 48:25 51:12,13 52:23 53:1,4,6,13 53:21,23 54:7 draw 47:4 drawing 46:25 drawn 31:10,17 32:3 drop 42:7 45:3 due 52:2 duly 3:3 56:8,9 during 23:10 52:3,7 dying 47:18 D'Hue 2:10 8:18,24 9:3,8,22 10:3	13:15,22,25 14:9 14:14,17 22:25 23:9 26:9 33:4 34:24 35:4,17 36:12,15,25 37:7 37:10,13 40:9 48:9,21,25 51:13 53:1,4 D'Hue's 22:4  <b>E</b> E 11:17 each 4:16 45:24,25 earlier 51:12 early 14:18 26:25 38:2 49:13 easily 37:9 East 1:21 easy 27:16 education 6:3,7 Edwards 3:21 7:16 8:10,22,25 9:14 10:14 14:15 15:4 17:9,25 19:9 23:16 24:1,18 25:12,19 27:20 28:13 35:16 37:19 39:8 44:12 45:5,17 46:16 47:18 50:11,16 51:2 effect 36:18 52:6 Egypt 6:10 eight 46:1 either 3:14 10:7 14:10 19:23 21:20 23:10 47:3 52:2 56:15 electrolytes 30:25 eligible 13:5 eliminated 44:19 elsewhere 6:5 embolism 12:9 emphasizing 13:18 employed 5:3,6,9 encountered 50:9 ended 38:5 enduring 51:8 enough 4:11 26:14 27:4 33:12 ENT 13:15,22,25 entries 18:24 28:11 entry 52:24 episode 29:18 error 48:18,20,24 especially 4:9 40:19 ESQ 2:3,7,11,14 established 26:7 et 1:7 etc 1:4 even 40:21 49:16	53:20 event 12:6 56:15 events 34:17 ever 3:13 10:21 14:22 15:2,6 20:12 23:25 27:24 45:8 48:20 48:24 every 42:18 everything 28:6 47:8 evidence 47:16 exact 10:18 examination 1:16 3:2,6 51:9 52:20 53:17 54:3 exhausted 51:1 expectation 42:18 expected 41:19 45:17 46:4 expires 55:25 56:24 explanation 48:3 Extremity 15:15  <b>F</b> fact 25:12 27:12 43:12,25 fair 4:11,12,17,18 25:8 45:15 falling 51:23 family 20:13,18,22 far 29:20 44:16 50:22 feeds 33:21,22 feeling 49:6 felt 26:5,13 27:4,15 43:23 44:11,14 45:4 female 11:13,14 fifth 5:21 8:7 24:15 filed 11:7 final 21:14 findings 32:13 finish 13:4 46:2 firm 56:16 first 3:3,17 4:9 5:1 8:2,9 10:16 11:15 15:24 24:14 26:3 28:13,17 29:11 30:5,17 49:3,4 56:9 five 10:16 fBoor 14:24 23:15 fluids 29:19 52:7 fFoley 33:18 follow 49:23 54:5 followed 51:18 following 14:10 22:6 37:22 55:3 follows 3:5 foregoing 55:2
---	---	--	--	--

<p>56:12 formally 24:17 forth 1:23 56:11 Foundation 7:13 four 10:15 45:25,25 fourth 8:7 frequently 50:3 FRIDAY 1:12 friends 20:13 from 5:24,25 6:2,13 6:17 7:8 9:2 10:3 19:5 20:20,20 22:16 26:10,14 32:10,15,16,17 32:18 34:10 39:22 42:7 47:15 48:7,8,9 53:21 55:2 front 17:10 23:6 full 7:17,22 33:21 33:22 function 46:20 47:9 47:12 further 36:20 51:7 52:19 56:13</p> <hr/> <p><b>G</b></p> <p>ganz 29:23 gave 30:18 51:3 general 14:5 16:10 36:5 51:15 generally 27:18 generated 50:2 gets 39:19 getting 31:4,5 47:7 give 4:20 given 3:13 27:12 34:2,19 41:10 43:24,25 46:1 gives 21:24,25 go 4:6 5:17 11:23 12:1,8 21:22 28:10 43:6 47:19 47:23 49:7 goes 36:8 53:10 going 3:20 4:13,21 17:19 18:10,21 28:10 33:17 36:9 44:5 49:6 gone 40:20 good 10:19 28:7 Gordon 1:17 56:8 56:22 graduate 6:13 graduating 6:16 Graft 15:15 Grafting 15:15 ground 30:4 guess 14:24</p> <hr/> <p><b>H</b></p>	<p>half 41:3 hand 56:18 hanging 47:9 happening 19:6 happens 35:10 having 34:9 40:20 Health 1:7 2:6 help 19:15 hematocrit 31:7 32:17 41:12 44:17 45:4 51:23 52:13 hematology/onco... 35:22 36:3,6,11 36:15 37:15 hemoglobin 31:6 32:16 34:4,10 41:11 44:16 45:4 51:23 52:13,15 Heplok 33:21,22 Heplok'd 42:5 her 12:7 23:25,25 hereinafter 3:4 hereunto 56:18 hierarchy 24:11 high 31:4 Hillcrest 8:3,8 him 14:22 19:16,23 20:7 24:17,24 25:7,14,16,19,25 26:8,10,20,24 30:6,9,11 35:8,13 35:14,14 36:6 37:22 42:1 44:15 46:17 history 34:5 42:8 home 36:8 hope 17:22 hospital 1:20 5:5,7 5:10 7:1,4,9,13 8:4,5,6,14 9:10 10:11,15 12:5 13:20 14:3 20:14 21:12,13 23:23 28:4,8 40:23 47:12 49:16 hospitals 7:8,11,20 hours 40:1 45:25 46:1,2 49:13 housekeeping 10:20 Howard 2:3 4:4 47:25 Human 15:14 Huron 1:20 5:5,7 6:25 7:3,8,12,17 7:23 8:2,4,6,7,7 10:10 H&amp;H 41:16 42:6</p> <hr/> <p><b>I</b></p>	<p>ICU 19:21 22:11,12 22:16 23:15 24:18 26:10,15 26:21 38:7 idea 27:7 28:12 Illinois 6:24 immediately 12:7 23:10 30:2 36:7 implement 43:19 implementation 46:23 implemented 9:3 41:14 42:19 45:19 important 40:21 improves 34:15 improving 26:5 inaccuracies 19:4 independent 19:17 independently 33:4 34:22 INDEX 57:1 indicate 20:21 41:24 52:25 indicated 34:2 36:12 45:10 46:6 indicating 48:17 indication 48:14 53:5 indifferent 28:7 informally 24:17 information 44:18 instructions 4:20 intended 23:4 intending 13:10 intent 13:7 interaction 20:18 interested 7:15 56:15 interfered 48:12 internal 6:23 internship 6:18,22 interpretation 39:10 Interruption 41:13 involved 8:21 9:6 22:9,13,15 23:14 26:4 28:13 29:1,5 45:9 49:14 involvement 3:22 11:25 12:2 24:1 28:1 29:8,13 50:20 ischemia 34:17 issue 15:12 IV 42:5</p> <hr/> <p><b>J</b></p> <p>January 3:23 7:14 8:14 10:13 13:14 14:16,19,24</p>	<p>17:25 25:8 26:19 26:25 29:16 30:18,23 31:8 32:10,14,25 39:8 41:11 44:12,22 45:20 46:7 47:18 48:2,5 49:11,13 50:9 journal 15:12,25 28:2 Judge 1:6 July 5:8 7:6 10:10 June 56:19,24 just 4:3,6 8:1 10:20 16:14 18:23 19:17 23:5 25:5 26:20 32:22 33:11 35:9 36:7 37:9,18 40:6 41:2 41:8 42:11 51:11 53:22</p> <hr/> <p><b>K</b></p> <p>K 2:14 kept 35:19 knew 25:24 know 4:4 9:7 10:7 11:24 12:6,10 20:6,19 21:5,11 21:13,16 22:2 23:20,24 26:6 28:16 36:1 37:3 39:8,9,25 40:3,11 46:19,19 47:19 47:23 48:6,7 49:18,22 54:10 knowledge 50:3,7 50:12,14,24 51:1 54:6</p> <hr/> <p><b>L</b></p> <p>L 1:17 56:8,22 lab 33:14 46:25 47:3 Labes 23:19 Lake 7:12 last 11:11,12 17:16 25:25 26:24 later 18:21 41:4 lawsuit 9:15,20,23 10:22 11:7 lawsuits 12:19 lead 16:4 learned 25:19 27:10,20 48:8 least 13:13 39:9 46:5 led 14:18 50:22 left 29:5 Lenson 2:14 28:19 29:22 31:11 34:6</p>	<p>52:21,22 53:16 53:23 54:4,11 57:6,8 let 11:8,22 27:16 42:1 54:5 licensed 12:21,24 like 20:2 31:12 line 33:18 35:7 55:5 list 21:19,21 literature 15:7 litigation 23:11 little 19:15 long 5:6 18:12 39:24 50:15 longer 44:23 45:10 48:14 look 17:12,16,23 30:24 31:3,4,6 41:6 43:5,5 46:14 46:18 52:16 looked 17:17,20 18:1,6 20:2 43:8 43:10,12 looking 19:20 20:20 43:6,25 Looks 31:12 loss 52:3 lot 12:1 23:6 low 29:18 lower 15:15 31:6 lucky 4:25 lump 33:11</p> <hr/> <p><b>M</b></p> <p>M 2:11 made 27:24 28:11 36:23 52:24 53:25 mailbox 21:19 main 15:1,2 16:2,3 33:1 make 4:8 18:24 27:16 31:4,5 40:21 male 11:13 MALIK 1:4 management 22:10 manner 21:4 many 5:17 10:24 51:18 March 39:11,13,16 mark 18:25 marked 34:20 37:6 math 10:19 matter 11:1 matters 10:21 may 1:12 17:1,2 24:6 29:4 35:4 41:1 maybe 26:19 37:2 52:6</p>
--	---	--	--	---

mean 6:6 9:17 16:3 16:20 23:3 26:2 35:6 44:6,20 46:25 49:21 52:11 Media 2:15 medical 6:9,11,17 15:7 21:22 medicine 6:23 12:22 members 20:14,22 Memorial 8:4,6 memories 19:13 memory 41:1 mentioned 18:23 Meridia 1:7 2:6 5:5 5:7 6:25 7:23 met 51:12 metabolic 30:21 Metro 7:13 midnight 46:3 49:13 mind 19:18 20:1,9 23:5 mine 3 1:25 minimize 34:16 Mishkind 2:3,3 3:7 4:4 8:20 9:16 31:12 39:3 42:3 51:6,25 52:4,8 53:18 54:2,9 57:4 57:7 modified 29:5 Molvin 3:21 19:25 44:11 monitoring 3 1:2 37:25 49:10 monitors 50:10 month 7:4 4:13 months 10:16,18 18:4,7,14,21 21:1 21:9 more 5:17,19 14:9 21:4,9 24:12 40:21 morning 14:16,19 26:25 30:22 35:11 37:11 38:2 mouth 27:17 Murray 2:14 52:22 M.D 1:11,14 3:1,6 51:9 52:20 53:17 54:3 55:17 56:9 57:2	18:9 24:6 named 10:21 12:12 12:15,19 56:9 native 5:25 nature 14:6 28:3 nearing 51:14 necessarily 36:7 39:6 46:2 necessary 28:14 43:24 44:4,12,14 necessity 40:20 44:18 neck 29:6 need 4:20 35:22 36:10 needed 29:19 36:16 44:23 45:2,6 48:15 never 10:19 16:17 next 38:16 night 28:25 29:11 30:2 Nimeri 1:11,14 3:1 3:6,10 51:9,12 52:20 53:17 54:3 55:17 56:9 57:2 normal 21:7 49:7 Notary 1:18 55:23 56:8,22 note 28:17 29:14 31:8,16 32:10,13 32:19 34:25 35:6 35:11 36:23 37:6 38:16 39:6,6 43:7 55:3 notes 18:24 19:21 20:17 23:6 27:24 27:25 36:21 43:6 43:9 46:18 nothing 19:19 20:8 36:8 44:21 52:18 56:10 notice 19:4 notwithstanding 33:14 Noved 24:4 number 4:24 14:4 32:23 33:13 nurse 43:13,18 44:2 nurses 47:1,3,10,22 50:17 nurse's 46:18 nursing 46:20 47:9	51:25 52:4,8 54:9 obvious 35:5 obviously 26:3 46:9 occasion 3:17 14:3 14:8,9 23:13 occasions 18:17,23 occurred 12:7 October 15:13 16:1 off 32:1 43:19 44:1 office 2:4 56:18 offices 1:20 Ohio 1:2,19,21 2:4 2:8,12,15 3:2 12:24 56:3,8,19 56:23 okay 3:23,24 5:1,2 6:21 22:12 33:22 once 10:25 12:4 15:19 18:9 26:21 50:19 one 4:25 5:1 6:18 14:9 22:18 30:1,6 33:3 35:21 36:21 46:15 50:12 52:23 53:19 ongoing 37:24 only 4:1 38:16 40:13 41:5 53:12 opportunity 10:1 opposed 47:12 order 30:17 32:1 34:1 35:1 43:7,18 43:19 44:1 46:21 ordered 30:22 33:23 45:24,25 orders 9:3 22:19,21 26:10 30:14 31:14 35:15 36:17 37:14 43:5 43:10,13,15 51:3 original 17:9,17,20 originate 5:24 other 4:17 7:7,11 7:20 12:8,11,18 13:24,25 16:14 18:5,6,17 22:22 23:14 34:17 36:17 37:15 38:12,13 otherwise 56:15 out 19:15,18 20:9 26:21 outside 38:6 over 4:7 37:22 45:24,25 46:1 49:7 50:20 51:19 overlapping 4:16 oxygenation 34:15 o'clock 1:22 36:13	P 16:7 31:11 packed 33:24 34:13 34:21 41:20 44:24 45:3,11,19 page 39:4 55:3,5 panel 30:21 paper 15:11,13 18:25 part 28:4 42:10,12 particular 4:21 13:16,17 37:20 party 10:22 11:6 12:16,19 56:15 passed 10:14 14:15 24:19 27:21 path 37:19 patient 3:22 8:10 9:4 10:14 14:23 18:7 19:13 20:2 20:14 21:8,12 22:4,6,10,16 25:24 26:5,14 27:10 28:2,7 29:12,16 34:8 35:10,14 36:25 37:25 38:5 41:1 41:20,24 42:9,20 46:11,22 47:5 48:4,10 49:11,25 50:19 51:22 52:7 patients 14:10,11 21:20 49:23 50:2 51:19 patient's 11:12,15 41:16 50:4 pay 20:23 pending 11:1 Penton 2:15 people 12:11 16:22 19:11 period 7:15 39:24 person 29:10 32:1 personal 27:25 50:24 personally 53:8,15 53:20 perspective 19:5 34:11 Peter 16:9 phrase 52:10 phrasing 44:6 physically 47:11 physician 3:11 22:23 40:13 physicians 23:14 picked 19:1 picture 19:24 20:1 20:4 52:14,17 place 56:14 Plaintiff 1:5,16 2:2 plan 32:25 33:3	34:2,13,20 41:14 41:15 42:19 45:20 planned 4 1:9 plans 5:20 35:15 36:17 37:15 platelets 31:5 32:18 PLEAS 1:1 please 3:9 54:12 point 4:21 20:9 32:9 37:21,22 policy 21:13 position 5:11 possible 7:19,21 postoperative 22:10 postoperatively 51:22 postsurgically 51:19 post-op 29:12,14 30:1,2,6,11 33:13 36:7 potentiate 34:11 practice 12:21 13:8 13:18 49:7 preliminary 4:19 preparatory 47:16 prepare 21:17 prepared 18:22 21:8,15 38:17 47:8 preparing 46:17 pressure 29:19 presume 14:9 primarily 7:16 primary 6:3,6 40:13 prior 12:7 17:15 18:2 28:21 46:23 47:17 48:21 50:16 private 14:10 privileges 16:18 problems 50:8 Procedure 3:3 process 21:7 46:9 progress 32:19 36:20 progressing 27:7 prompt 34:12 provided 3:2 Public 1:18 55:23 56:8,22 publication 15:14 16:13 published 15:7,10 15:16 16:13 pulled 29:20 pulmonary 12:9 purposes 26:18
N NADIRAH 1:4 Nadler 11:12,19,21 12:3 name 3:8 6:11 11:6 11:10,11,12,16	O oath 3:14 object 44:5 objection 11:8,23 16:24 26:1,6 27:14 35:25 44:3 44:13 45:22	P P		

<p>32:23 46:16  <b>pursuant</b> 1:19  <b>pursue</b> 13:7  <b>put</b> 27:17  <b>p.m</b> 28:20 35:9,9,17  36:24 37:2,3,4</p> <hr/> <p><b>Q</b></p> <p><b>qualified</b> 56:9  <b>question</b> 4:1,2,2,3,9  8:16 13:21 14:21  16:21 17:6 26:8  42:11 44:7 52:23  53:12,19  <b>questions</b> 3:21,25  4:16,22,22 23:4  25:15 28:15 51:7  51:8</p> <hr/> <p><b>R</b></p> <p><b>radical</b> 28:21 29:5  <b>read</b> 4:6 43:8 54:12  55:2  <b>really</b> 4:19 50:23  <b>reason</b> 34:1 48:9  <b>reasonable</b> 43:21  <b>recall</b> 7:18 18:13  24:25 25:13  27:18  <b>receive</b> 41:20 44:17  48:4  <b>received</b> 45:18  48:10  <b>receives</b> 46:11 52:7  <b>record</b> 3:9 28:4  47:20,24 48:2,8  <b>recorded</b> 19:6 28:6  50:4  <b>recordkeeping</b>  32:22  <b>records</b> 20:21  21:22  <b>red</b> 31:22,25 32:3  33:24 34:13,21  41:21 44:24 45:3  45:11,19  <b>reduced</b> 56:11  <b>refer</b> 28:14  <b>referring</b> 42:4  <b>reflect</b> 38:25 47:21  <b>reflected</b> 20:16  28:8  <b>reflects</b> 40:22  <b>regard</b> 4:15 7:16  14:21 22:3 50:9  51:2  <b>regarding</b> 35:21  36:15 52:25  53:13  <b>Registered</b> 1:17  <b>REID</b> 2:7 8:19,21</p>	<p>9:15 11:8,22 15:1  16:24 17:22 26:1  26:6 27:14 28:16  28:20 39:2 42:1  42:11 44:5 45:22  47:10,25 53:4  54:12  <b>relates</b> 12:3 13:15  <b>relative</b> 56:15  <b>relatively</b> 25:7  <b>remained</b> 36:18  <b>remember</b> 7:4  11:10,11,15,18  19:6,9,16,21,22  20:7,15 24:22  25:14,17,18,22  27:15 37:4 49:5  <b>remembered</b> 19:19  <b>Reminger</b> 2:7,7,10  2:10  <b>reordered</b> 29:25  <b>rephrase</b> 4:5  <b>Reporter</b> 1:18  <b>reporting</b> 56:16  <b>represent</b> 52:23  <b>representing</b> 51:13  <b>request</b> 4:17  <b>REQUESTED</b> 55:5  <b>required</b> 36:4  45:10  <b>residency</b> 5:13,18  5:22 8:10 10:17  13:4 28:3 51:16  <b>resident</b> 5:12 8:17  12:5 13:19 14:2  23:19 24:3,9 26:4  38:12 47:13  49:23 52:12 53:9  53:10,11,24  <b>response</b> 19:14  41:10  <b>responsibility</b>  37:21,25 38:4  47:3  <b>responsible</b> 38:14  <b>review</b> 10:1 27:23  32:8,11  <b>reviewed</b> 18:18  19:3  <b>reviewing</b> 18:20  <b>revision</b> 15:20  <b>revoked</b> 16:18  <b>right</b> 9:16,25 12:14  31:14,20 32:5  33:20 35:3 36:16  36:19 37:8 51:16  51:17  <b>risk</b> 34:16  <b>Road</b> 1:20,21 5:7  6:25 7:3,9,17,23  8:6 10:10</p>	<p><b>Robinson</b> 8:4,6  <b>room</b> 50:17  <b>roughly</b> 10:15  <b>rounds</b> 35:12  <b>routinely</b> 49:23  <b>Rule</b> 56:17  <b>Rules</b> 3:3  <b>Russo</b> 1:6</p> <hr/> <p><b>S</b></p> <p><b>S</b> 2:7  <b>same</b> 4:15 6:20  14:21 28:25  35:20  <b>saw</b> 25:25 26:24  35:14 37:3 43:13  <b>says</b> 31:9 36:14  42:5  <b>school</b> 6:9,11,17  <b>screen</b> 47:4,11,21  <b>screened</b> 46:15,22  <b>screening</b> 46:10  <b>Seacrist</b> 2:11 35:25  44:3,13 51:10,13  52:18 57:5  <b>seal</b> 56:18  <b>second</b> 8:3 40:6  <b>see</b> 14:11 20:20  26:20 30:6,9,11  31:10 35:10 36:6  36:22 40:6 41:8  42:1 45:8 46:15  46:19 47:15,20  48:8  <b>seeing</b> 44:1  <b>seen</b> 14:13 35:4,8  <b>senior</b> 24:12  <b>sense</b> 39:15  <b>sent</b> 15:13,21  <b>series</b> 4:21  <b>set</b> 1:23 56:11,18  <b>seven</b> 10:18  <b>sheet</b> 35:1  <b>show</b> 19:24 51:23  <b>showed</b> 20:4  <b>shown</b> 19:20  <b>sign</b> 21:20,22 35:13  39:5,20,21,23  40:12,14 49:3,3  <b>signals</b> 43:17  <b>signature</b> 31:20  32:5 54:15  <b>signed</b> 38:23,24,25  39:2,7,17 40:4,5  40:8 49:1  <b>significance</b> 34:8  <b>signing</b> 48:21  <b>signs</b> 40:13  <b>since</b> 4:9 5:8 14:15  17:25 23:15  24:19</p>	<p><b>sir</b> 24:21  <b>sit</b> 9:25 12:14  <b>sitting</b> 23:6  <b>six</b> 10:16  <b>Skylight</b> 2:4  <b>slowly</b> 27:7  <b>some</b> 3:20 4:22  7:20 13:8 22:22  30:14 38:12  45:17 51:23  <b>somebody</b> 36:5  <b>something</b> 36:11  40:25 45:5 47:2  47:13 48:11  <b>sometime</b> 24:23  25:1 36:7 37:10  46:5  <b>sometimes</b> 16:22  19:11,12,13 23:5  39:5  <b>sort</b> 13:8 33:11  <b>speak</b> 30:4  <b>specialize</b> 13:11  <b>specializing</b> 13:10  <b>specific</b> 19:22  <b>specifically</b> 27:19  42:4  <b>specified</b> 56:14  <b>speculating</b> 37:5  <b>spent</b> 13:17  <b>SS</b> 56:4  <b>St</b> 2:8,11  <b>stands</b> 19:18 20:9  <b>start</b> 4:7 17:15 47:8  47:17  <b>started</b> 7:3,5 46:5  <b>Starts</b> 11:17  <b>state</b> 1:19 3:8 12:24  56:3,8,23  <b>statement</b> 25:9  <b>statute</b> 1:16  <b>stenotypy</b> 56:11  <b>steps</b> 47:16,19  <b>still</b> 11:1 23:22  36:17 41:5  <b>stipulate</b> 47:25  <b>strike</b> 19:25  <b>strips</b> 50:1,4  <b>submitted</b> 15:17,19  16:12  <b>Subscribed</b> 55:20  <b>Sudan</b> 6:2,4  <b>suggest</b> 44:18  <b>Suite</b> 2:4  <b>summaries</b> 10:1  <b>summary</b> 18:3,22  21:1,3,8,15,18  38:17,20 39:17  40:12,14,16 41:3  41:24 42:10,12  42:15 43:1,5,22</p>	<p>44:11 45:16  48:17,22,25 49:1  49:8  <b>sure</b> 4:8 31:4,5  40:21 42:3  <b>surgeon</b> 13:15,22  14:5,5 16:10  <b>surgeons</b> 13:24,25  14:4  <b>surgery</b> 5:12,18  13:11 15:12,25  22:3,7 28:22,25  29:11 30:3 34:5  34:10 35:12 52:3  52:7,12 53:10  <b>surgical</b> 8:17 10:17  13:8,18 14:2 24:8  49:22 51:16  <b>surprised</b> 25:22  <b>Susan</b> 2:11 51:13  <b>suspended</b> 16:18  <b>swan</b> 29:19,23  <b>sworn</b> 3:4,13 10:3  55:20 56:10  <b>Sylvia</b> 23:19,20  <b>system</b> 39:10  <b>Systems</b> 1:7 2:6</p> <hr/> <p><b>T</b></p> <p><b>take</b> 4:24 9:2,7,13  12:11,22 13:7  16:17 21:21 25:6  26:13 27:11  40:16 41:19 43:2  51:18 53:21  <b>taken</b> 1:17 10:3  11:4 43:18 44:1  56:14  <b>talk</b> 9:14 20:13  23:13,25 25:4  <b>talked</b> 9:18,19,22  14:17 23:8 24:24  25:14  <b>talking</b> 18:14  <b>team</b> 35:12  <b>technicolor</b> 32:2  <b>telemetry</b> 14:24  22:13,16 23:15  24:19 26:11,15  26:17 27:5 33:1  33:14 37:1,20  38:8 49:11,20,24  50:1,3,10  <b>tell</b> 4:3 5:3,20 6:16  7:25 11:6 25:11  27:24 30:17 34:2  35:6 39:22  <b>terms</b> 9:3 19:5,16  21:13 24:18  34:21 37:21  46:21 49:10 50:1</p>
--	---	--	--	--

50:15 52:12 Terrace 1:21 testified 5:1:14 testify 56:10 testimony 3:13 10:2 10:3 56:11,12 Thank 10:19 17:5 51:7 52:18 53:16 54:2,11 things 14:5 19:1,22 23:5 33:12 37:6 37:10 think 16:22 23:19 29:4 38:10 47:10 third 5:16 8:5 51:15 52:11 though 25:2 37:13 39:22 53:20 thought 29:19 three 51:19 through 17:12 28:10 49:12 55:3 time 4:10 7:15,17 7:22,25 13:17 14:15 18:2,20 19:21,23 21:14 25:16 27:25 35:13,23 36:4 37:4 39:24 40:19 42:25 45:5,17 48:25 50:11 56:14 timed 36:21 timely 17:6 21:4,9 times 10:24 18:5 title 5:10 today 5:1 together 33:12 told 16:14 18:9 23:8 25:5,14,23 53:22 towards 27:8 Tower 2:4 tracheostomy 29:2 transcribed 39:13 39:19 56:12 transcript 55:2 transcription 39:23 56:12 transcripts 10:2 transfer 22:16,19 22:22 26:10 27:2 33:1 43:15 transferred 26:14 26:17,21 27:5 33:13 38:6 44:15 49:24 50:19 transfuse 35:3 43:9 43:10 transfused 4:1:25 42:6,9,20 43:3	48:12,18 transfusing 34:13 transfusion 33:23 41:9,15 42:19 43:23 44:11,19 45:13 46:12,17 46:21,24 47:8,17 48:5,11,15 52:25 53:14 transfusions 46:4 traveled 37:19 treatment 18:21 28:2 true 8:11 11:4 12:16 13:2,22 14:6 16:18 20:10 21:10 23:11 25:2 26:5,11,15 27:8 27:13 28:8 30:8 31:21 32:6,20 33:1,2,15,16 34:17,18 36:18 37:11,16 38:8,9 40:9,17,23 41:12 41:21 42:10,13 42:21,22 43:19 44:12,19,24 45:6 45:7 48:18 53:25 56:12 truth 56:10,10,10 try 4:5 28:12 trying 27:17 37:18 turnaround 21:14 two 5:19 18:3,7,21 21:1,9 29:20,21 30:11 33:13,23 34:13,21 41:10 41:20,25 42:6 43:9,10 44:23 45:2,18 two-page 38:19 type 10:21 12:6 20:17 45:13 47:4 47:11,21 48:1 typed 46:15,22 typing 46:10	49:11,20 units 33:24 34:13 34:21 41:10,20 41:25 42:6 43:9 43:11 44:23 45:2 45:18 46:1 university 6:12,20 6:23 unluckv 4:25 unsigned 38:22 40:7 until 3:25 4:14 19:19 unusual 5:1:22 use 15:15 26:20 52:10 Usually 39:4 53:9 U.S 5:25 6:4	V vague 19:14 vaguely 19:10,16 value 33:14 52:10 52:12 values 5:1:24 vascular 14:5 Vein 15:14 versus 19:6 very 8:1 11:25 19:12 24:7 visualize 37:19 Vivian 1:17 4:6 56:8,22 vs 1:6	W wait 3:25 4:13 waived 54:15 want 4:8 12:1 26:7 28:12,16 34:16 35:5 wasn't 17:6 21:3 37:2 40:11 42:23 way 16:20 25:23 50:12 53:9 week 17:2 weekend 12:4 weeks 18:14,16 40:2 well 6:9 7:20 9:7,15 24:9 26:3,14 27:4 33:12 went 6:9 32:15,16 32:17,18 were 7:16,19 8:9,13 8:17,17,21 10:3 10:15 13:13 18:7 19:24 22:6,9,13 22:15,18 23:14 24:14 25:23 26:3 26:4 27:11,25	28:12 29:1,5 31:1 32:13 33:17 35:15,19,19 43:15 45:8 46:4 47:17 49:6,13,16 50:8,8 51:3 West 7:12 14:25 WHEREOF 56:18 while 12:5 13:18 14:24 18:6 20:14 45:8 white 31:3,24 32:15 whole 35:11 43:15 52:14,17 56:10 witness 1:14 3:1 18:10 29:23 34:7 56:18 wondered 27:11 words 12:8 27:17 work 9:10 14:3,8 23:22 30:24 45:9 worked 7:7 13:24 49:19 working 7:17,19,22 8:14,18 13:13,19 works 16:14 wouldn't 28:4 write 22:21 35:9,11 36:20 writing 31:23 34:25 34:25 written 15:6 31:22 32:20 43:18 45:20 51:4 wrong 43:1 wrote 22:18 29:14 30:14 37:4 45:2	X x-ray 29:24,25	Y year 5:13,16,21 6:13,18 7:4 8:2,3 8:5,7,7,9 10:16 24:14,15,23 26:3 51:15 52:11 years 5:17,19 51:19 yesterday 17:24 18:2,8	Z zero 30:4	I 1 55:3 1st 7:6 1-26 28:18,20 1:00 35:9,9,17 36:13,24 37:2,3,4 10,000 32:16	10:30 28:20 11:00 26:18 38:11 11:30 26:19 113 2:8,11 13951 1:21 14th 39:11 145 32:18 15th 39:13,16 154 32:18 16,000 32:16 1996 6:15 1999 5:8 7:6	2 20-year-old 52:15 2000 3:23 7:14 8:15 10:13 13:14 14:17 18:1 25:8 2001 15:13 16:1 2002 1:12 55:21 56:19 2004 56:24 216-241-2600 2:5 216-621-8400 2:16 216-687-1311 2:9 2:12 24th 17:1,2 25.9 32:17 41:12,16 42:7 26th 29:9,17 27th 30:8 27.7 32:17 42:8 28 56:17 28th 26:19,25 30:12 30:14,18,23 31:8 32:10,14,19,25 33:11 38:1 41:11 41:21 42:20 43:8 43:14,24 44:12 44:22 45:18,21 46:6,7 48:2,5 49:11 50:9 51:2 29 14:16,19,24 39:9 29th 38:2 47:18 49:13	3 3:7 57:4 31 1:12	4 4 31:11 4:30 31:10,12 32:3 44113 2:4,8,12 44115 2:15 443949 1:6	5 5th 56:19 SO-year-old 52:16 51:10 57:5
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52:21 57:6 53:18 57:7 54 55:3 54:3 57:8  6 6 14:25 15:1,2 33:1 6:00 32:20,25 36:21 44:22 45:2 46:6 51:4 660 2:4  7 71 34:4 7149 32:23  8 8 56:24 8.8 32:17 34:5,10 41:11,16 42:7 52:14,15 8:30 1:22  9 9.1 32:16 9.2 42:7 9:50 54:14 900 2:15 99 10:10				
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