

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

|                                   |   |               |
|-----------------------------------|---|---------------|
| SANDRA JOHNSON, Administratrix    | ) |               |
| of the Estate of Mose T. Johnson, | ) |               |
| Deceased,                         | ) |               |
|                                   | ) |               |
| Plaintiff,                        | ) |               |
|                                   | ) | Case Number   |
| vs.                               | ) | 97CV118106    |
|                                   | ) |               |
| AKBAR NAEEM, M.D., et al.,        | ) | Judge Mark A. |
|                                   | ) | Betleski      |
| Defendants.                       | ) |               |

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DEPOSITION OF MARY JANE MARTIN SMITH, R.N.  
August 15, 2000  
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DEPOSITION OF MARY JANE MARTIN SMITH, R.N.,  
called upon by the Plaintiff herein to testify  
via telephone pursuant to the Rules of Civil  
Procedure, before me, Melinda A. Melton,  
Registered Professional Reporter, a notary public  
within and for the State of Ohio, the witness  
being located in Pittsburgh, Pennsylvania with  
Mr. Spisak and Mr. Demsey and Ms. Petrello being  
located in Cleveland, Ohio, on August 15, 2000,  
commencing at or about 2:00 p.m.

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APPEARANCES:

On Behalf of the Plaintiff:

Richard L. Demsey, Esq.  
Nurenberg, Plevin, Heller & McCarthy  
Standard Building, 1st Floor  
1370 Ontario Street  
Cleveland, Ohio 44113  
(216) 621-2300

On Behalf of Defendant Marion Prince,  
M.D., and Acute Care Specialists:

Colleen H. Petrello, Esq.  
Mazanec, Raskin & Ryder  
34305 Solon Road  
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(440) 248-7906

On Behalf of Defendant Elyria Memorial  
Hospital:

Leslie J. Spisak, Esq.  
Reminger & Reminger  
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Cleveland, Ohio 44113  
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I N D E X

WITNESS:

EXAMINATION

Mary Jane Martin Smith, R.N.

By Mr. Demsey

4

PLAINTIFF'S EXHIBITS:

PAGE

No. 1 Fax with EMH Policy and Procedure

20

1 MR. DEMSEY: Hi, Ms. Smith. How are you?

2 THE WITNESS: (No response.)

3 MR. DEMSEY: I don't know if she heard me,  
4 Les. How are you today, ma'am?

5 THE WITNESS: Fine. Can you hear me?

6 MR. DEMSEY: Yes. Since we're on the  
7 speaker phone, what we'll do here is I'll try  
8 my best to wait until after you've given an  
9 answer, I'll try and do a pause. It's a little  
10 unnatural in speech, and it's particularly  
11 unnatural for lawyers ever to pause, but I'll  
12 try to. And if you can do the same, that way  
13 -- The speaker phone tends to cut off if two  
14 people speak at once.

15 THE WITNESS: I understand.

16 MR. DEMSEY: Okay. We're going to have  
17 the court reporter swear you in.

18 MARY JANE MARTIN SMITH, R.N.,  
19 a witness herein, having been first duly sworn, as  
20 hereinafter certified, was examined and testified as  
21 follows:

22 EXAMINATION

23 BY MR. DEMSEY:

24 Q. Can you state your name, please?

25 A. Mary Jane Martin Smith.

1           Q.     I'm Richard Demsey. I represent the  
2     Estate of Mose Johnson through Sandra Johnson, the  
3     administrator of that estate and that's his widow.  
4     I'll be asking you some questions today, a little  
5     bit about your background, the report you prepared,  
6     and the opinions that you hold in this case.

7                     Colleen Petrello may have some questions  
8     for you. She represents the emergency room folks,  
9     the doc and the group. That would be Dr. Marion  
10    Prince.

11                    If, at any time, you don't understand a  
12    question that I ask you or should Colleen have  
13    questions for you that she asks you, will you ask us  
14    to repeat or rephrase the question?

15           A.     Yes, I will.

16           Q.     Okay, thank you.

17                    Normally, I tell witnesses not to nod your  
18    head and answer outloud. Since we are on a speaker  
19    phone, I don't think that's going to be a necessary  
20    advance warning.

21                    What's your current home address?

22           A.     16 Cherokee Road, Pittsburgh, Pennsylvania  
23    15241.

24           Q.     And please pause for one moment. What was  
25    the street number again?

1 A. One six.

2 Q. It's one six, number 16?

3 A. 216.

4 Q. Okay. We both missed it over here, the  
5 216. That shows you the necessity for the pause.

6 Date of birth?

7 A. August 20th, 1934.

8 Q. Your educational background through  
9 professional schools?

10 A. Starting with?

11 Q. I graduated from high school at, in 19 --

12 A. Graduated from Mount Lebanon High School,  
13 1952. Graduated from the University of Michigan,  
14 Bachelor of Science in Nursing, in 1956. Graduated  
15 from the University of Pittsburgh with a Masters in  
16 Higher Education and a minor in nursing in 1976.  
17 Completed the course work and examinations for a  
18 Ph.D. in exercise physiology in 1984.

19 Q. '84?

20 A. I believe it was 1984 or '86. I can't  
21 exactly remember the year in which I took the  
22 comprehensive exams.

23 Q. Your employment background consists of  
24 what?

25 A. I worked as a staff nurse in medical/

1 surgical nursing and obstetrical nursing at  
2 St. Clair Memorial Hospital following graduation  
3 from the University of Michigan. I worked there  
4 part time. My full-time employment was  
5 approximately two years. I worked part time at the  
6 same hospital for about a year and a half.

7 I took maternity leave on or around that  
8 time. I then went to St. Joseph's Hospital School  
9 of Nursing and taught there part time for  
10 approximately two years.

11 I went from St. Joseph's Hospital School  
12 of Nursing to Community College of Allegheny  
13 County. I started there in 1968 and I've been there  
14 ever since full time.

15 Q. Where is that?

16 A. Community College of Allegheny County.

17 Q. Since 1968?

18 A. Yes.

19 Q. Do you have any publications? In other  
20 words, are you published?

21 A. Yes.

22 Q. And tell me your published fields.

23 A. I've published in community health  
24 nursing. You want to know the general fields of  
25 nursing?

1 Q. Well, what have you published, I guess is  
2 what I'm getting at?

3 A. Specific publications are listed on my CV  
4 but I can enumerate them for you, if you like.

5 Q. Sure.

6 A. I've authored a chapter in a textbook on  
7 community health nursing, authored with an attorney.  
8 That book was published in 1999. I have authored a  
9 number of articles in publications concerning the  
10 issues related to nursing, and in a couple of cases  
11 issues related to nursing that involved legal cases.

12

13 I've published a chapter on acute critical  
14 care patients with gastrointestinal problems. I've  
15 published a number of articles in journals relating  
16 to new methods of treatment relative to minimally  
17 invasive surgery, mycology updates, prognosis and  
18 treatment of my myocardial infarction, and various  
19 subjects like that.

20 Q. Okay. Do you have emergency room  
21 experience?

22 A. I supervise students who are precepted  
23 through emergency departments at times throughout  
24 the academic year.

25 Q. But you, from the sound of it,



1 professionally you've never been an emergency room  
2 nurse.

3 A. That's correct.

4 Q. And by supervising students, what do they  
5 do, report back to you?

6 A. No. I select the experience for them and  
7 liaison with the supervisor and sometimes with the  
8 staff nurses. And I teach the didactic part of  
9 their experience in the classroom on campus.

10 In terms of their clinical work, they, of  
11 course, are working along with the staff nurse. And  
12 I interface with the staff nurse in terms of their  
13 evaluation and their -- the object that they're to  
14 achieve while they're there, and post conference  
15 with them after their experience.

16 Q. So your role with the students is one of  
17 academics and supervision, or strictly supervision?

18 A. What do you mean by academics?

19 Q. That's why I backed away from that,  
20 because academics could mean the nuts and bolts of  
21 their education in terms of what they're actually  
22 doing in the emergency room or various departments,  
23 or it could mean somehow supervising them or seeing  
24 that they're just going to the right department. So  
25 I guess that's too broad of a term.

1           A.     When they're in the hospital, I'm there,  
2     too. I'm just not in the emergency room with them  
3     because they're usually only permitted to go one or  
4     two at a time. And I have a group of nine or ten  
5     students. So I'm generally on the trauma surgical  
6     unit with them or the general surgical or the open  
7     heart surgical. And one or two students from that  
8     same ten-student group might be in the emergency  
9     room on that day, for example.

10          Q.     Okay. All right. And I understand that  
11     zero percent of your professional experience has  
12     been working in emergency rooms. What percentage of  
13     your experience has been working in surgical areas  
14     of the hospital? Would it be a hundred percent?

15          A.     No, it wouldn't be a hundred percent. But  
16     it would be -- What time frame are you referring to,  
17     for example? Because some of my early nursing  
18     experience was in obstetrics and delivery rooms.

19          Q.     Let's just take your whole career, if we  
20     could somehow break it out into time. And I know  
21     you can't tell me you spent X number of hours in  
22     this place or another without actual employment  
23     records.

24                     But if you were to round it off, would you  
25     say, over my entire career, I would say I have

1 probably spent 90 percent of my time in surgical  
2 areas of nursing and 10 percent in obstetrical? Or  
3 maybe 9 percent and 1 percent in whatever, pain  
4 management or physical therapy or physiatry,  
5 whatever? How would you break it down, generally,  
6 over your career?

7 A. I'm a medical/surgical nurse. So if you  
8 are speaking about medical/surgical nursing, it  
9 would be 80 to 85 percent of my time.

10 Q. And then the remaining 15 to 20 percent?

11 A. Would be the early years when I worked in  
12 obstetrics.

13 Q. Okay. In your report that you provided to  
14 Mr. Spisak, I see you put the date July 25, 2000.  
15 Is that the only report that you've authored in this  
16 case?

17 A. Yes.

18 Q. Have you ever worked for Mr. Spisak's firm  
19 before, Reminger and Reminger?

20 A. Yes. I believe several years ago I  
21 reviewed a case for Mr. Spisak.

22 Q. Any other lawyers in the Reminger firm  
23 that you know of, not necessarily that you remember  
24 their name but that firm?

25 A. Not that I can recall.

1 Q. How many cases you have you reviewed for  
2 attorneys or doctors or attorneys representing  
3 doctors, I should say, or even attorneys  
4 representing people who claim there was some kind of  
5 malpractice?

6 A. For both plaintiff and defense attorneys,  
7 you're asking me?

8 Q. Correct.

9 A. Since 1991, probably 100, 120 cases,  
10 something around that.

11 Q. Would you say it's 50/50 plaintiff/  
12 defendant? A hundred percent? Ninety percent  
13 defendant? Ninety percent plaintiff? How does it  
14 break out?

15 A. It's probably very close to 50/50.

16 Q. I take it there have been times that  
17 you've reviewed cases where you've been critical of  
18 the care that the patient received?

19 A. That's correct.

20 Q. And vice versa, where you've found that  
21 there was no criticism to be leveled. In other  
22 words, the care fell within the standard of care?

23 A. That's correct.

24 Q. Okay. The first letter of -- I'm sorry.  
25 The first sentence of your letter says, "Pursuant to

1 your request, I have reviewed documents relating to  
2 a claim that has been made by Sandra Johnson against  
3 Dr. Naeem, et al."

4           What documents are you referring to? And  
5 tell me everything that you reviewed in connection  
6 with this case.

7           A. I reviewed four deposition transcripts,  
8 those of Dawn Sturgeon, R.N., dated February 1,  
9 2000; Marion R. Prince, M.D., February 2, 2000; Rose  
10 Fenik, R.N., dated January 5th, 2000; May, R.N.,  
11 dated January 5th, 2000; Joel B. Zivot, M.D., dated  
12 June 15th, 2000.

13           I reviewed Elyria Memorial Hospital  
14 medical records of Mose Johnson, dated  
15 November 10th, 1996, and November 23rd, 1996.

16           Reports of Joel B. Zivot, M.D., dated  
17 11/12/97 and 5/18/2000. And an Elyria Regional  
18 Medical Center policy and procedure titled, "Vital  
19 signs: Blood pressure, temperature, pulse,  
20 respirations, admission," dated January 1997.

21           MR. DEMSEY: Okay. This question is for  
22 Mr. Spisak. Les, do you plan to have the  
23 witness offer -- because I just want to save  
24 time here and not get into a long line of  
25 questions if it's not necessary.

1                   Do you have -- I'm sorry. Do you plan to  
2                   have this witness offer opinions about the  
3                   physical conditions that Mr. Johnson may have  
4                   had or may not have had at any given point in  
5                   time or the proximate cause of his death or  
6                   even general medical opinions about the various  
7                   areas of medicine? In other words, the  
8                   specific physiological issues in this case?

9                   MR. SPISAK: No.

10                  MR. DEMSEY: Was that a no?

11                  MR. SPISAK: That's a no.

12                  MR. DEMSEY: Okay.

13 BY MR. DEMSEY:

14                  Q. Ma'am, you heard what Mr. Spisak said.  
15 And you agree with that?

16                  A. Yes, I do.

17                  Q. Your opinion in this case, or your  
18 opinions, are -- Actually, your only request in this  
19 case was to determine whether or not, to a  
20 reasonable degree of professional certainty within  
21 your profession, there was a deviation from the  
22 accepted standards of care by any Elyria Memorial  
23 Hospital personnel on November 10 of 1996?

24                  A. Yes. Specifically, I was asked to render  
25 an opinion regarding the nursing care.

1 Q. Okay. And whether or not Mr. Johnson had  
2 a temperature on November 10, you do not know?

3 A. No, I do not know.

4 Q. In your report, you say that, based on  
5 your review of this case, you've concluded that the  
6 nurses met the applicable nursing standards of care  
7 on November 10 of '98. I think you meant '96.

8 A. That's correct, that's an error.

9 Q. And complied with generally accepted  
10 nursing practice. And you base that opinion on,  
11 well, three points that you make in your report.  
12 First, you say that there is no general nursing  
13 standard of care that requires nurses to always take  
14 vital signs. You agree with that statement that you  
15 made?

16 A. Yes.

17 Q. And that would include body temperature in  
18 an emergency department setting. You say there is  
19 no general nursing standard of care?

20 MR. SPISAK: That requires -- well, okay.

21 BY MR. DEMSEY:

22 Q. I'm sorry. That requires that the  
23 temperature, among other vitals, be taken in the  
24 emergency department setting, no general nursing  
25 standard of care; is that correct?

1           A.     Yes.

2           Q.     You say that the general nursing standards  
3 of care require, instead, that nurses would follow  
4 the policies of their employing institution insofar  
5 as what procedures to perform for any given patient;  
6 is that correct?

7           A.     You add "for any given patient." But the  
8 statement prior to that phrase is correct as stated  
9 in my report.

10          Q.     Okay. Well, I was trying to paraphrase a  
11 little bit and I didn't mean to put words in your  
12 mouth. If I paraphrase not to your satisfaction,  
13 please correct me.

14                 Let's say for the emergency department  
15 setting, what a nurse is required to do relative to  
16 the taking of vital signs is dictated by the  
17 employing institution?

18          A.     To the extent that they would have a  
19 policy and/or procedure that would address that.  
20 The nurse also can use her clinical judgment and  
21 choose to take the patient's vital signs or to take  
22 the temperature if she chooses to or if she has  
23 specific physician's order to do so.

24          Q.     Okay. If the hospital has no policy,  
25 either written or oral, is there a standard of care



1 as to whether or not a patient admitted to an  
2 emergency department -- and this would include just  
3 a standard emergency department, an acute, or a  
4 nonacute side, whether they have that division or  
5 not -- does the standard of care dictate that  
6 temperature, vitals must be taken, general nursing  
7 standard of care?

8 A. No.

9 Q. Okay. What is a nurse to do when a  
10 patient presents to an emergency department and  
11 there is no procedure? Or are you saying there  
12 always is one?

13 A. Didn't say there always is one.

14 Q. Okay. If there is no procedure in a  
15 nursing department relative to the taking of vitals,  
16 what is a nurse to do?

17 A. The nurse would follow her clinical  
18 judgment. And if she had a question, would consult  
19 with the nursing supervisor and/or the physician.

20 Q. Is that how you were trained?

21 A. Correct.

22 Q. Are there times when you do not take  
23 vitals?

24 A. Are there times -- I can't answer that  
25 because your question is too general.

1 Q. Well, okay. You've never as  
2 the triage nurse for any patient in t'  
3 department. You take vitals as a nur  
4 surgical area, or do you not?

5 A. Yes, I do.

6 Q. I am just wondering if you take vitals.  
7 When do you take vital signs, including temperature?

8 A. Frequently.

9 Q. Frequently?

10 A. Yes.

11 Q. Is it within your clinical judgment or is  
12 it within the standard of care for a surgical nurse?

13 A. It varies according to what the  
14 physician's order is, what the patients's clinical  
15 condition is, what the patient is there for. It  
16 varies considerably from patient to patient.

17 Q. Okay. The second item in your report,  
18 page two -- Do you have that in front of you?

19 A. Yes, I do.

20 Q. Item Number 2 reads, "Elyria Memorial  
21 Hospital's emergency services policy and procedure  
22 regarding vital signs states that when patients are  
23 admitted to the MedExpress Service, vital signs are  
24 only taken -- excuse me -- are taken only for  
25 medical patients over twelve years of age, minor

1 surgical patients as indicated, by physician's order  
2 and at the discretion of the nurse.

3 "There is no requirement that vital signs  
4 must be taken when a MedExpress patient is admitted  
5 with an injury."

6 On what do you base that statement? Let's  
7 break it down to the first part. You say their  
8 policy and procedure, EMH's policy and procedure  
9 regarding vital signs, states that when patients are  
10 admitted to the MedExpress Service, vitals are only  
11 taken for med patients over twelve, minor surgical  
12 patients as indicated, by physician's order and at  
13 the discretion of the nurse.

14 Where did you see that policy and  
15 procedure? Or did you take that from the  
16 deposition?

17 A. No. I read it in a policy.

18 Q. What policy is that?

19 A. When I stated initially that I had  
20 reviewed EMH Regional Medical Center policy and  
21 procedure, subject: Vital signs, date January 1997  
22 \_- or '94.

23 Q. Are you looking at the policy and  
24 procedure that's dated January '97, superceding the  
25 October '94, that Mr. Spisak says was in effect in

1 November of '96? Is that what you're referring to?

2 A. Yes.

3 Q. We'll mark that as Plaintiff's Exhibit 1.

4 Is your last name hyphenated? I want to make sure I  
5 do this correctly.

6 A. No, it is not.

7 MR. DEMSEY: So Plaintiff's Exhibit 1  
8 Smith, and then August 15, '00. Les, you know  
9 what I'm talking about there?

10 THE WITNESS: Are you talking to me?

11 MR. DEMSEY: No. I'm talking to  
12 Mr. Spisak. Les, we're talking about the  
13 correct document, page 2 of the fax that you  
14 just sent to me and to Colleen today.

15 MR. SPISAK: What I sent you was a  
16 one-page policy and procedure. And I think  
17 it's been amply described, yeah.

18 MR. DEMSEY: It's a one-page policy and  
19 procedure. But it's page two of the fax, the  
20 cover letter being page one

21 MR. SPISAK: Fine.

22 ---oOo---

23 (Plaintiff's Exhibit No. 1 was marked for  
24 identification.)

25 ---oOo---

1 BY MR. DEMSEY:

2 Q. Okay. The policy that would apply to  
3 MedExpress patients is Roman numeral two; is that  
4 correct?

5 A. That's correct.

6 Q. And that reads, "Upon admission to  
7 MedExpress, patients shall have vital signs taken  
8 and recorded on their Emergency Services chart.  
9 Vital signs include."

10 Now, it says "shall have vital signs taken  
11 and recorded" on their chart. On what do you base  
12 the statement that there has to be a physician's  
13 order or it's the nurse's discretion. I see it says  
14 that later and I'm not sure what that mean. Is that  
15 what you're looking at, the second portion there?

16 A. Yes. That's my interpretation of the  
17 policy as it's written.

18 Q. You don't read that to mean that upon  
19 admission to the MedExpress, patients shall have  
20 vital signs taken and recorded on their emergency  
21 services chart?

22 A. I see that statement. But the qualifiers  
23 are below it. Under these circumstances, this is  
24 what is done. That's the way I read the policy.

25 Q. Okay. What's the name of the hospital

1 that you're currently affiliated?

2 A. I'm not affiliated with a h  
3 work at Community College of Alleghen

4 Q. Okay. What percentage of yc  
5 spent in active nursing?

6 A. I spend approximately 80 percent of my  
7 time in nursing.

8 Q. As a surgical nurse?

9 A. Medical/surgical nursing instructor and  
10 doing clinical supervision.

11 Q. Okay. If you would break out the  
12 instructing and supervising, what percentage is  
13 instructing and supervising?

14 A. Speaking about clinical instruction and  
15 supervision?

16 Q. Yes. Teaching, clinical instruction,  
17 supervising, your teaching aspects?

18 A. I'm not clear exactly on what you're  
19 asking me. And I want to be sure that I answer you  
20 accurately.

21 Q. That's fine. I'm trying to figure out how  
22 much of what you do is hands-on nursing, you do what  
23 a nurse does, as opposed to supervising students.

24 A. Twelve to fifteen hours per week.

25 Q. Twelve to fifteen hours per week is actual

1 hands-on nursing?

2 A. That's correct.

3 Q. What percentage of your time does that  
4 boil down to?

5 A. Of my overall teaching responsibilities,  
6 is that your question?

7 Q. Well, 12 to 15 hours is actual nursing  
8 hands-on. The other number of hours that you put in  
9 in an average workweek would be your teaching and  
10 administrative and other responsibilities. Would  
11 that be a fair separation of the two?

12 A. I don't have any administrative  
13 responsibilities. The remainder of my time at the  
14 college is spent in classroom instruction or skills  
15 lab instruction.

16 Q. Okay. What percentage is hands-on nursing  
17 versus teaching?

18 A. Approximately 90 percent would be clinical  
19 and approximately 10 or 12 percent would be  
20 classroom, of my teaching.

21 Q. Okay. And of your teaching versus your  
22 actual nursing where you are serving as a surgical  
23 nurse, what's the breakdown? The academic side with  
24 the 90/10 versus the actual nursing side?

25 A. Mr. Demsey, I think I could clarify that

1 I will. Of the 15 hours a week I'm with students  
2 providing direct patient care in a hospital setting,  
3 I take care of patients with the students in  
4 conjunction with the hospital employees who are  
5 assigned to those same patients.

6 Four hours or six hours, depending upon  
7 the week, I teach in a classroom at the college.  
8 That's my full-time job and that's what it consists  
9 of.

10 Q. Is there one hospital that you've been  
11 affiliated with for a substantial period of years up  
12 to the present time?

13 A. I'm not affiliated with any of the  
14 hospitals. But I have been primarily to Allegheny  
15 General hospital, UPMC Montefiore Hospital, and to a  
16 variety of suburban hospitals such as North Hill  
17 Passivant, Suburban General, Divine Providence.

18 Q. So you go to many hospitals within your  
19 geographical area?

20 A. I do. It depends on the semester and it  
21 depends upon the year.

22 Q. Do all of the hospitals named by you just  
23 moments ago have emergency departments?

24 A. I believe they do.

25 Q. Do you know what the policies are at those



1 hospitals for their emergency departments, acute or  
2 nonacute or just general, relative to whether or not  
3 vitals should be taken when a patient comes in,  
4 regardless of injury or condition?

5 A. I don't know the policies as of today for  
6 some of the hospitals because I have not been there  
7 in the past five years. I know from personal  
8 experience that Allegheny General Hospital does not  
9 have a policy that requires all patients to have all  
10 vital signs taken when they present to the emergency  
11 department.

12 Q. How do you know that?

13 A. Because I've had occasion to need to be  
14 familiar with the policies in that emergency  
15 department in the past year.

16 Q. The year 1999?

17 A. Yes.

18 Q. Why was that?

19 A. I had occasion to discuss the possible  
20 placement of some of my students there for  
21 observations, and I needed to become familiar with  
22 the policies and procedure there.

23 Q. What was the policy and procedure relative  
24 to vital signs at that hospital in 1999?

25 A. I'm sorry, I can't quote it for you

1    verbatim.  But I know that in the subacute section  
2    the issue of taking vital signs was at the direction  
3    of the physician or at the clinical judgment of the  
4    nurse who was taking care of the patient at the  
5    time.

6           Q.    Would you know whether or not a patient  
7    who presented to an emergency room where there was a  
8    suspicion of infection as a possible secondary  
9    diagnosis for hip pain should have their temperature  
10   taken?

11                   MS. PETRELLO:  Objection.

12                   MR. SPISAK:  Objection.  Go ahead.

13                   THE WITNESS:  Do I know if they should,  
14   was that your question?

15  BY MR. DEMSEY:

16           Q.    Do you believe that they should?  Yes.

17           A.    Do I believe that if a patient had a  
18   secondary diagnosis that was formulated by a  
19   physician that they should have their temperature  
20   taken, is that your question?

21           Q.    Well, I don't know about a secondary  
22   diagnosis.  But a suspicion where infection was a  
23   possible secondary diagnosis, where there is a  
24   suspicion?

25           A.    I don't understand your question, I'm

1     afraid.

2           Q.     All right.  If there is a secondary  
3     diagnosis that can be made of infection to explain  
4     hip pain, for example, in a patient that doesn't  
5     respond to pain medication, do you know whether or  
6     not that patient -- do you believe that patient  
7     should have their temperature taken?

8           MS. PETRELLO:  Objection.

9           THE WITNESS:  It would depend upon the  
10    circumstance and it would depend upon the  
11    discussions the nurse would have with the  
12    physician.

13  BY MR. DEMSEY:

14           Q.     And under what circumstances would the  
15    temperature be taken, that you're referring to?  
16    What circumstances are you referring to where the  
17    patient would have their temperature taken?

18           MS. PETRELLO:  Objection.

19           THE WITNESS:  If the physician requested  
20    that it be taken, the nurse would take it.

21           Q.     Are you familiar with Toradol?

22           A.     Yes.

23           Q.     What is Toradol?

24           A.     Anti-inflammatory medication.

25           Q.     Is there a standard dosage that is

1 typically given?

2 A. There is a range.

3 Q. What is that range?

4 A. Thirty to sixty milligrams. I have also  
5 had occasion to give 15 milligrams.

6 Q. What was that occasion, a child?

7 A. No. Just that was the way the order was  
8 written.

9 Q. Okay. That would be the physician who  
10 would order the administration of any medication,  
11 including Toradol?

12 A. Yes.

13 Q. Is there a difference -- You say in your  
14 report in paragraph, numbered paragraph 3, "The  
15 nurse deferred properly Mr. Johnson's vital signs  
16 because he was not admitted with a medical condition  
17 and the physician did not order that vital signs be  
18 taken." What do you mean by that?

19 Later, you go on saying he was admitted  
20 with an injury. What's the difference between a  
21 medical condition and an injury?

22 A. A medical condition is an illness such as  
23 diabetes, coronary artery disease.

24 Q. Okay. And when you say that he was  
25 admitted, do you mean taken through the emergency

1 department as opposed to admitted to the hospital?

2 A. I meant admitted in the sense that the  
3 policy says admission to the emergency care center  
4 and/or admission to MedExpress, in the context of  
5 the way the policy characterizes patients who are  
6 seen in the emergency department.

7 Q. Okay. Would it be a fair statement -- How  
8 many years have you been a licensed nurse?

9 A. Forty-four years.

10 Q. Would it be a fair statement that the only  
11 time in those 44 years that you're aware of any  
12 hospital, exclusive of our case here -- I'm talking  
13 about your own experience now. Would it be a fair  
14 statement that the only time in those 44 years as a  
15 nurse that you were aware of a hospital that had a  
16 policy not to take a patient's vital signs under  
17 certain circumstances when the patient came into the  
18 emergency department would be last year, 1999, at  
19 that one hospital?

20 A. No, that wouldn't be correct, Mr. Demsey,  
21 because I certainly can't recollect what my  
22 familiarity or knowledge was of policies four years  
23 ago or even 35 years ago or even 20 years ago.

24 I would become familiar with and I operate  
25 under policies that I'm using at the time that I

1 need to know. But I don't store them in memory.  
2 And they change and are revised and reviewed at  
3 frequent intervals.

4 So I simply have no recollection of what  
5 they might have been during any previous years.

6 Q. Okay. So it's a fair statement you can't  
7 recall any others?

8 MS. PETRELLO: Objection.

9 THE WITNESS: I can't recall any others in  
10 any context other than the ones that I'm  
11 currently using or have occasion to need to  
12 know.

13 BY MR. DEMSEY:

14 Q. Is there a hospital that you visit the  
15 majority of the time, let's say over the last five  
16 years?

17 MS. PETRELLO: Objection. Asked and  
18 answered.

19 THE WITNESS: I believe I did say that  
20 Allegheny General Hospital and UPMC Montefiore  
21 are the hospitals that I've spent the majority  
22 of time with. I don't believe you asked me  
23 previously about the past five years. But that  
24 would be correct relative to the past five  
25 years.

1 BY MR. DEMSEY:

2 Q. And was Allegheny Gener  
3 told us about that had that poli  
4 currently familiar with because  
5 issue?

6 A. Yes.

7 Q. You don't know what their policy was '98  
8 and before?

9 A. No, I don't know. I may have known at the  
10 time but I couldn't recall.

11 Q. On what do you base your opinion that  
12 there is no general nursing standard of care as to  
13 -- for an emergency department nurse as to when  
14 vitals are to be taken, when or whether?

15 A. I'm not aware of any written statement  
16 that says that vital signs must be taken in an  
17 emergency department setting on all patients.

18 Q. Okay.

19 Based on your review of the records, do  
20 you have an opinion one way or the other as to  
21 whether or not the emergency department doctor,  
22 Dr. Prince, should have taken Mr. Johnson's vital  
23 signs.

24 MS. PETRELLO: Objection.

25 THE WITNESS: No, I don't have an opinion.

1 BY MR. DEMSEY:

2 Q. So that I understand it then,  
3 of your opinion here, your opinion in this  
4 nurse is to follow the hospital's procedure.  
5 Whatever that procedure may be is what the standard  
6 of care is for that nurse at that given point in  
7 time. The nurses here followed their hospital's  
8 procedure. And, therefore, there was no deviation  
9 from the standard of care that applied to them, that  
10 standard of care being the hospital's policy.

11 Does that summarize your opinions in this  
12 case in a nutshell?

13 A. I would stand by how I've stated it in my  
14 report. I'm not sure that it is exactly the way you  
15 repeated it now. But to the extent that it  
16 represents exactly what I said in my report, that is  
17 my opinion.

18 Q. Okay. Did you see a death certificate?

19 A. I saw Mr. Johnson's autopsy report. I  
20 don't know if I saw an actual death certificate. It  
21 may or may not be in the records that I have. Would  
22 you like me to look?

23 Q. Yes, please

24 MS. PETRELLO: Maybe no one has seen it.

25 MR. DEMSEY: Colleen, I think I've seen



1           it. I don't know. I know we've talked about  
2           it.

3           MS. PETRELLO: You asked Glauser about it  
4           at the depo.

5           MR. DEMSEY: I know.

6           MS. PETRELLO: Maybe it wasn't Glauser, I  
7           don't know. Or somebody's depo I've just been  
8           reading lately.

9           MR. DEMSEY: You're right. I did ask  
10          Dr. Glauser about it.

11          MS. PETRELLO: So I went back to take a  
12          look at it and I couldn't find it.

13          MR. SPISAK: Colleen, stop reading those  
14          depos. It confuses things.

15          MS. PETRELLO: I'm sorry. I'm getting  
16          ready here, you know. I've got them all  
17          indexed. I'm ready to go.

18          MR. DEMSEY: You're always ready to go.

19          THE WITNESS: I don't see it in the  
20          records of the hospital that I have.

21          MR. DEMSEY: Okay. Bear with me for just  
22          a moment. Colleen, do you have any questions?

23          MS. PETRELLO: No, I don't.

24          MR. DEMSEY: Okay. Well, I'm almost  
25          done. Let me take a look at my notes here.

1 BY MR. DEMSEY:

2 Q. Ms. Smith, you don't have any criticisms  
3 of Dr. Naeem?

4 A. No.

5 MR. DEMSEY: Colleen, I did find the death  
6 certificate. And it appears that it was  
7 attached to responses to requests for  
8 production.

9 And I recall asking Dr. Glauser if he had  
10 any, if there was anything on either the  
11 autopsy or the death certificate that he  
12 disagreed with, and he said no.

13 MS. PETRELLO: Can you fax that over to  
14 me, and I would imagine to Les as well?

15 MR. SPISAK: Can you fax it to my office,  
16 Richard?

17 MR. DEMSEY: Let me get fax numbers from  
18 everybody here. Les, 68 --

19 MS. PETRELLO: I can tell that you Glauser  
20 never saw it and I have never seen it.  
21 Whatever.

22 MR. SPISAK: Area code (216) 687-1841.

23 MR. DEMSEY: Okay. And, Colleen?

24 MS. PETRELLO: Mine is (440) 248-8861.

25 MR. DEMSEY: I do not have grief

1           counseling records.

2           MS. PETRELLO: I'm sorry. You don't have

3           what?

4           MR. DEMSEY: Grief counseling records.

5           MS. PETRELLO: You don't?

6           MR. DEMSEY: You asked me if I had those

7           records.

8           MS. PETRELLO: Well, she testified that

9           her and her daughter went to New Horizons or

10          something like that.

11          MR. DEMSEY: I don't have those records.

12          MS. PETRELLO: She also testified -- wait

13          a second. Are you done with this witness?

14          MR. DEMSEY: Yes.

15          MS. PETRELLO: All right. Are we off the

16          record?

17          MR. DEMSEY: No. Les, waiver? Read?

18          MR. SPISAK: She'll take a look at it.

19          I'll ask the court reporter to send me my copy

20          and I will have Mrs. Smith take a look at it.

21          MR. DEMSEY: Thank you, Mrs. Smith.

22          THE WITNESS: I'm sorry. I didn't hear

23          your last statement.

24          MR. DEMSEY: I just said, "Thank you,

25          Mrs. Smith."

1 THE WITNESS: You are welcome.

2 MS. PETRELLO: Thank you. It was nice  
3 meeting you. Stay on the line, folks. We've  
4 got a couple housekeeping things.

5 For the court reporter, I'll take a copy  
6 of it. And I need it as soon as possible.

7 BY MR. DEMSEY:

8 Q. Mrs. Smith?

9 A. Yes?

10 Q. Do I owe you a few bucks?

11 A. I'll send you an invoice.

12 MR. DEMSEY: Les, You'll give her my  
13 address.

14 Q. What do you bill?

15 A. \$125.00 an hour for testimony.

16 Q. Okay. So we started at about quarter  
17 after and went until 3:00, so let's just call it an  
18 hour. What do you say?

19 A. That's fine.

20 Q. What do you charge for coming to and from  
21 court?

22 A. Court?

23 Q. Well, yes. When you're testifying in  
24 court, what do you bill?

25 A. I bill travel time at \$60.00 an hour and  
36

1 testimony time at \$125.00 an hour, plus expenses for  
2 mileage and, depending upon the time I'm here, any  
3 meals I might need.

4 Q. Okay. By the way, what percentage of your  
5 time is spent doing litigation matters, say in a  
6 given year?

7 A. About 12 to 15 percent probably.

8 MR. DEMSEY: Okay. Colleen, anything  
9 based on that?

10 MS. PETRELLO: No, I don't have anything

11 MR. DEMSEY: You wanted Les to stay on the  
12 line for some housekeeping issues?

13 MS. PETRELLO: You, too.

14 MR. DEMSEY: We're off the record now

15 ---oOo---  
16 (Deposition concluded at 3:00 p.m.)  
17 ---oOo---

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1 STATE OF OHIO )  
2 COUNTY OF CUYAHOGA ) CERTIFICATE

3 I, Melinda A. Melton, Registered  
4 Professional Reporter, a notary public within and  
5 for the State of Ohio, duly commissioned and  
6 qualified, do hereby certify that the foregoing  
7 witness, Mary Jane Martin Smith, R.N., was by me  
8 first duly sworn to testify the truth, the whole  
9 truth and nothing but the truth; that her testimony  
10 then given was reduced by me to stenotype shorthand,  
11 subsequently transcribed into typewritten  
12 manuscript; and that the foregoing is a true and  
13 accurate transcript of said testimony so given as  
14 aforesaid.

15 I do further certify that this deposition  
16 was taken at the time and place as specified in the  
17 foregoing caption, and was completed without  
18 adjournment.

19 I do further certify that I am not a  
20 relative, friend or counsel for either party or  
21 otherwise interested in the outcome of these  
22 proceedings.

23 I do further certify that Plaintiff's  
24 Exhibit Number 1 was marked for identification  
25 during this deposition and is attached to the  
transcript herein.

IN WITNESS WHEREOF, I have hereunto set my  
hand and affixed my seal of office this 16th day of  
August 2000.

Melinda A. Melton  
MELINDA A. MELTON  
Registered Professional Reporter

Notary Public within and for the  
State of Ohio

My Commission Expires  
February 5, 2003