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IN THE COURT OF COMMON PLEAS
 CUYAHOGA COUNTY, OHIO
 MARY LOU ZIMMERMAN,
 et al.,
 Plaintiffs,
 -vs- JUDGE BURNSIDE
 CASE NO. 39941 1
 THE CLEVELAND CLINIC FOUNDATION,
 Defendant.

Deposition of PENNY SONTERS, R.N., taken as if
 upon cross-examination before Laura L. Ware, a
 Notary Public within and for the State of Ohio, at
 The Cleveland Clinic Foundation, 9500 Euclid Avenue,
 Room E2-101, Cleveland, Ohio, at 10:45 a.m. on
 Friday, October 12, 2001, pursuant to notice and/or
 stipulations of counsel, on behalf of the Plaintiffs
 in this cause.

WARE REPORTING SERVICE
 21860 CROSSBEAM LANE
 ROCKY RIVER OH 44116
 (216) 533-7606 FAX (440) 333-0745

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APPEARANCES:

Robert F. Linton, Jr., Esq. (Via Telephone)
 Linton & Hirshman
 Hoyt Block Building - Suite 300
 700 West St. Clair Avenue
 Cleveland, Ohio 44113
 (216) 771-5800,

- and -

Mark W. Ruf, Esq.
 Law Office of Mark W. Ruf
 Hoyt Block Building - Suite 300
 700 West St. Clair Avenue
 Cleveland, Ohio 44113
 (216) 687-1999,

On behalf of the Plaintiffs;

James L. Malone, Esq.
 Reminger & Reminger
 113 St. Clair Avenue
 Cleveland, Ohio 44114
 (216) 687-1311,

On behalf of the Defendant.

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PENNY SONTERS, R.N., of lawful age, called
 by the Plaintiffs for the purpose of
 cross-examination, as provided by the Rules of Civil
 Procedure, being by me first duly sworn, as
 hereinafter certified, deposed and said as follows:
 CROSS-EXAMINATION OF PENNY SONTERS, R.N.
 BY MR. RUF:
 Q. Could you please state your name and spell your
 name.
 A. Penny Sonters, S-O-N-T-E-R-S.
 Q. And what is your home address?
 A. 21510 Hillgrove Avenue.
 Q. Is it H-I-L-L--
 A. H-I-L-L-G-R-O-V-E.
 Q. And where is that?
 A. Maple Heights, Ohio.
 Q. And what's the zip code there?
 A. 44137.
 Q. Ms. Sonters, my name is Mark Ruf.
 A. Mrs.
 Q. I'm sorry, thank you for correcting me. Mrs.
 Sonters, my name is Mark Ruf. I represent the
 Zimmerman family in a lawsuit that's been brought
 against the Clinic. If at any time I ask you a
 question and you do not understand my question,

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please tell me. If you give me an answer to a
 question, I'll assume that you've understood the
 question. Okay?
 A. All right.
 Q. Have you been deposed before?
 A. No.
 Q. This is your first time?
 A. Yes.
 Q. Who is your employer?
 A. Cleveland Clinic Foundation.
 Q. And how long has The Cleveland Clinic Foundation
 been your employer?
 A. Twenty-nine years and about six months.
 Q. Could you run me through the positions that you've
 held here at The Cleveland Clinic?
 A. From the beginning of my employment?
 Q. From the beginning of employment.
 A. Staff nurse on an ENT nursing floor.
 Q. I'm sorry, staff nurse on a what?
 A. ENT, ears, nose and throat, floor.
 Q. And how long did you do that?
 A. About a year and a half.
 Q. What next?
 A. Then I came down to surgery August of '73.
 Q. Have you been in surgery since August of '73?

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- 1 A. Yes, I have.
 2 Q. Have you held different positions in surgery?
 3 A. Yes, I have.
 4 Q. Could you tell me the positions that you've held?
 5 A. I've been a staff nurse on general surgery.
 6 Q. When were you a staff nurse?
 7 A. When I came down to the OR.
 8 Q. And how long did you do that?
 9 A. Until 1980.
 10 Q. And what next?
 11 A. I was the head nurse of gynecology surgery until
 12 '82, and then I floated for a while.
 13 Q. How long did you float?
 14 A. I can't remember. I floated a while, a couple
 15 years.
 16 Q. Were you in different departments when you were
 17 floating?
 18 A. I worked with whoever needed the help. I worked on
 19 all the services in the operating room.
 20 Q. Did that include neurosurgery?
 21 A. It included everything except cardiac.
 22 Q. And what did you do next?
 23 A. Then I was the head nurse of general surgery for
 24 approximately five to six years.
 25 Q. Okay.

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- 1 A. And then I was the liver transplant coordinator for
 2 almost two years, and then I went back to floating,
 3 and I've been doing that ever since.
 4 Q. Floating?
 5 A. Uh-huh, staff nurse.
 6 Q. Have you ever held a position in the Surgical
 7 Processing Department?
 8 A. In the last -- in my last -- in this term, since
 9 I've been floating, I have held an Acting Manager
 10 position in SPD.
 11 Q. Is it Sterile Processing Department or Surgical
 12 Processing Department; which is the appropriate
 13 term?
 14 A. Both terminologies have been used, but it's supposed
 15 to be Sterile Processing Department.
 16 Q. Have both those terms always been used or --
 17 A. Yes.
 18 Q. -- is that a recent development? And how long were
 19 you Acting Manager of the --
 20 A. About a year and three months.
 21 Q. I'm sorry, I didn't finish my question. Do you want
 22 me to use the term Sterile Processing Department or
 23 Surgical Processing Department?
 24 A. It doesn't matter. I will understand whichever one
 25 you use.

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- 1 MR. MALONE: SPD.
 2 A. SPD is the simplest, yeah.
 3 Q. How long have you been an Acting Manager of the
 4 SPD?
 5 A. I am not currently the Acting Manager. I was an
 6 Acting Manager there.
 7 Q. For what period of time were you an Acting Manager?
 8 A. About a year and three months.
 9 Q. And during what years were you an Acting Manager?
 10 It's my understanding you were an Acting Manager
 11 during September of '98; is that correct?
 12 A. Yes.
 13 Q. Do you know how long before September of '98 you
 14 started as Acting Manager?
 15 A. I started -- oh, boy, I'd have to go -- that one I'm
 16 not sure of because I don't have my exact -- I don't
 17 have any exact dates in front of me. I know that
 18 that's about the time that I was about finished with
 19 downstairs.
 20 Q. Do you know when you ended as Acting Manager?
 21 A. I came back up here in staffing in October or
 22 November.
 23 Q. Of what year?
 24 A. '98.
 25 Q. So October or November of '98 would have been the

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- 1 end of the year and three months --
 2 A. Right.
 3 Q. -- you spent as Acting Manager?
 4 A. Correct.
 5 Q. Did you have another position in addition to Acting
 6 Manager at the time?
 7 MR. MALONE You mean coincidental --
 8 Q. Yes, were you also acting as a surgical nurse or was
 9 your position solely as Acting Manager?
 10 A. My position was solely as Acting Manager of SPD.
 11 Q. Did you have to have any training to become Acting
 12 Manager of SPD?
 13 A. No, I didn't.
 14 Q. There was no program that you went through?
 15 A. No. it was strictly a managerial position.
 16 Q. And when we talk about SPD, is that a department
 17 that focuses on sterilizing instruments and
 18 equipment for the operating room?
 19 A. Yes, it is.
 20 Q. Do they sterilize other equipment or instruments,
 21 other than for the operating room?
 22 A. No, they don't.
 23 Q. Is there another department that performs
 24 sterilization for other areas in the hospital other
 25 than the operating room?

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- 1 A. Yes, there is.
 2 Q. And what's the name of that department?
 3 3 A. It's the Central Supply Department, Central Service.
 4 Q. Have you ever worked in Central Services?
 5 A. No, I have not.
 6 Q. Have you ever received training from or gone to
 7 lectures given by Mary Eleanor Riley?
 8 A. No.
 9 Q. Do you have any type of certification in the process
 10 of sterilizing instruments?
 11 A. No, I do not.
 12 Q. Could you tell me what your educational background
 13 is?
 14 A. I'm a Registered Nurse.
 15 Q. Have you had any specialized training or education
 16 other than being an RN in the medical field?
 17 A. No, I have not.
 18 Q. I'm going to ask you a number of questions about
 19 sterilization, We're going to discuss
 20 sterilization, and I may not ask every question
 21 about September of '98, but the time period I'm
 22 referring to is a time period before and around
 23 September of '98. Okay?
 24 A. Okay.
 25 Q. Back in September of '98 do you know how many

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- 1 ethylene oxide gas sterilizers there were in SPD?
 2 A. In the whole of SPD?
 3 Q. Yes.
 4 A. Because you realize SPD is divided between several
 5 different buildings.
 6 Q. What buildings is SPD located in?
 7 A. It's located in the E building, the G building and
 8 the M building.
 9 Q. When you were Acting Manager during '98, was that
 10 the manager of all of these departments or just
 11 one?
 12 A. It's all one department.
 13 Q. What surgery is performed in the E building?
 14 MR. MALONE: You're talking about 1998
 15 now?
 16 A. In 1998?
 17 Q. In 1998 what surgery was performed in the E
 18 building?
 19 A. I've got to remember who was over here then.
 20 MR. MALONE: Would it be easier to list
 21 them by exception; that is, what was not done
 22 here?
 23 THE WITNESS: Right, it would be.
 24 A. It would be easier to list what was not done over
 25 there. Cardiac was not done over there, ortho is

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- 1 not done over there, ophthalmology is not done in
 2 the E building.
 3 Q. Was neurosurgery done in the E building in '98?
 4 A. Yes.
 5 Q. What about the J building?
 6 A. G?
 7 Q. I'm sorry, is it G?
 8 A. G building.
 9 Q. G building.
 10 A. That is cardiac.
 11 Q. And what's in the M building?
 12 A. Orthopedics, orthopedics and plastics.
 13 Q. Was general surgery in the E building in '98?
 14 A. Yes, it was.
 15 Q. How many surgical suites were there in the E
 16 building in '98?
 17 A. Twenty-five.
 18 Q. And in the E building how many ethylene oxide gas
 19 sterilizers were there?
 20 A. To the best of my knowledge, there are --
 21 MR. MALONE: Now, he's not asking you
 22 today. He's asking you three years ago,
 23 basically.
 24 THE WITNESS: That's what I'm trying to
 25 remember, three years ago how many there were.

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- 1 A. Three.
 2 Q. Do you know the manufacturers of those?
 3 A. No, I don't remember that.
 4 Q. Do you know if they were all Steris or were some of
 5 them 3M?
 6 A. I can't answer that one.
 7 Q. When you were Acting Manager, did you ever see any
 8 manuals or documentation from the manufacturer of
 9 any ethylene oxide gas sterilizer?
 10 A. No.
 11 Q. To your knowledge was any documentation kept from
 12 the manufacturer of any ethylene oxide gas
 13 sterilizer?
 14 A. I'm sure we probably do, but I never saw any of it.
 15 There was no reason for me to see any of it.
 16 Q. Do you know where that would be kept, what
 17 department would keep that?
 18 A. in that department.
 19 Q. I'm sorry, SPD would keep it?
 20 A. In SPD.
 21 Q. Is there somebody within SPD that would keep that
 22 information?
 23 A. I don't know who that would be.
 24 - - - -
 25 (Telephone interruption.)

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1 - - -
2 MR. RUF: Let's go **oft** the record.
3 - - -
4 (Thereupon, a discussion was had off
5 the record.)
6 - - -
7 (Thereupon, Mr. Linton joined the
8 deposition via telephone.)
9 - - -
10 Q. Now, back in 1998 you said there were a number of
11 different surgical services in the E building; is
12 that correct?
13 A. Yes.
14 Q. Was there any segregation of the surgical equipment
15 based upon the specific area, such as neurosurgery,
16 or was all the surgical equipment mixed together
17 after it was used?
18 MR. MALONE: You mean instruments?
19 MR. RUF: Yes.
20 MR. MALONE: As opposed to equipment,
21 okay.
22 A. You're talking about instruments segregated. Are
23 you talking about did we separate them out to do
24 them?
25 Q. Let me re-ask the question. I can ask it better.

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1 A. Okay.
2 Q. Did you separate out instruments based upon what
3 surgical area **of** practice used them? In other
4 words, were neurosurgical instruments kept separate
5 from general surgery instruments or other areas?
6 A. Are you talking about in the processing?
7 Q. I'm talking about after the instruments had been
8 used in the operative suites, what happened to those
9 instruments?
10 A. They're all processed in the same area.
11 Q. Would they all go down to the same area together?
12 A. You mean mixed from one case to another?
13 Q. Yes.
14 A. No.
15 Q. How do the instruments get down from the surgical
16 suite down to SPD?
17 A. They go back on the case cart that they came up on
18 in a closed case cart and sent down in an elevator
19 to the basement.
20 Q. What's a case cart; what does it look like?
21 A. It's a metal stainless steel cart with doors on it.
22 Q. **Is** there one person or several people that collect
23 instruments from the different ORs?
24 A. Oh, there's several people that handle those
25 instruments from the different **ORs**.

15

1 Q. And would they collect instruments from all
2 different rooms or --
3 A. No. I just got done telling you the instruments
4 from that case go in that one particular case cart,
5 and that case cart door **is** closed and that's sent
6 down to SPD closed.
7 Q. What happens when it gets down to SPD closed?
8 A. **It goes** into the decontamination area and they
9 put -- they take care of the instruments in there,
10 run through the process, the starting process of
11 cleaning them.
12 Q. When it goes to the decontamination area, are the
13 case carts opened?
14 A. That's the only way you're going to get the
15 instruments out.
16 Q. **So**, I'm sorry, what floor are the surgical suites on
17 in the E building?
18 A. Second floor.
19 Q. Are they only on the second floor?
20 A. In the E building, yes.
21 Q. And are the operative suites used for all different
22 types of surgeries, or are certain suites reserved
23 for certain areas of surgery?
24 A. They're assigned to certain areas, but that doesn't
25 always mean that they stay in that particular room.

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1 Q. So when the surgical instruments are down in the
2 decontamination area, are there instruments from all
3 different services?
4 A. Yes.
5 Q. And are those instruments mixed together?
6 A. From one service to another, no. You don't take an
7 instrument out of this set and put it in that one if
8 it doesn't belong.
9 Q. Well, I guess **I'm** a little confused. They come down
10 in the case carts?
11 A. Uh-huh.
12 Q. Could you explain to me the process of what happens
13 next?
14 A. The people that are down in the decontam. area who
15 are dressed properly open the case cart up, take the
16 instruments out of that case cart, and they either
17 have to hand wash them or they go on a conveyor that
18 they go into a machine and they're washed.
19 Q. Say the instruments go through the mechanical
20 process **of** decontamination.
21 A. Uh-huh.
22 Q. Are the instruments from only one case cart put
23 through the mechanical decontaminator?
24 A. No. The mechanical decontaminator can handle
25 several different instruments, pans of instruments,

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- 1 at one time.
- 2 Q. So are there instruments from different services
- 3 going into the decontaminator together?
- 4 A. There could be.
- 5 Q. What about the hand washed instruments, what
- 6 happens?
- 7 A. Those are taken to sinks and they're hand washed by
- 8 people who are in the -- the people who are working
- 9 in there.
- 10 Q. And would the people that are hand washing wash hand
- 11 washed instruments from different services?
- 12 A. Yeah.
- 13 Q. Now, in 1998, am I correct in saying that
- 14 neurosurgical instruments were sterilized in your
- 15 department?
- 16 A. Yes.
- 17 Q. How many surgical instrument pieces per day would
- 18 you sterilize down in SPD?
- 19 A. There would be no way I would know that.
- 20 Q. Could you give me an estimate?
- 21 A. I couldn't even give you an estimate.
- 22 Q. Some other witnesses have testified that it might be
- 23 eight to 9,000 pieces per day. Do you have any idea
- 24 if that's correct?
- 25 A. I wouldn't have any idea. I don't know how many

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- 1 cases we did during the -- I mean, I don't even know
- 2 how many cases we did back then. I don't even have
- 3 that knowledge. That's not something that I needed
- 4 to know to do the job.
- 5 Q. Do you know how many pieces on a yearly basis would
- 6 be sterilized in SPD?
- 7 A. No.
- 8 Q. Did you have any written instructions for the
- 9 workers down in SPD on how to perform
- 10 decontamination by hand washing?
- 11 A. The people down there are trained on the job by
- 12 their co-workers, usually by someone who has been
- 13 down there. If there is any written instruction, it
- 14 would be in the form of an orientation manual.
- 15 Q. Is everyone given an Orientation manual when they
- 16 begin down in SPD?
- 17 A. Not necessarily.
- 18 Q. What --
- 19 A. Because if there's only one manual then everyone
- 20 shares it.
- 21 Q. What types of people review the orientation manual
- 22 or are given the orientation manual?
- 23 A. The people working in the department review it and
- 24 there's an educator in SPD.
- 25 Q. Who was the educator when you were there?

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- 1 A. I'm trying to think who the educator was. I do
- 2 believe it was Ken Wagner.
- 3 Q. In Mary Lou Zimmerman's case there was a probe that
- 4 was used. Are you familiar with a probe that's used
- 5 in neurosurgical procedures?
- 6 A. There's a lot of different probes used in
- 7 neurosurgery. I may or may not be familiar with
- 8 it.
- 9 Q. Let me show you photo 11 out of 50. Could you take
- 10 a look at that and tell me what types of instruments
- 11 are shown in that picture?
- 12 A. There's a ruler here, a drill bit, scissors,
- 13 forceps, needle holders, a drill chuck bit, this, I
- 14 do believe, is what they call a wand, and I think
- 15 this is the Greenburg retractor.
- 16 Q. Do you know what this long, skinny piece that looks
- 17 like a needle is?
- 18 A. I'm not sure what that's called.
- 19 Q. Do you know which of those pieces, if any, would
- 20 have to be hand washed in the decontamination area?
- 21 A. No, I could not tell you that.
- 22 Q. Generally, what types of surgical equipment or
- 23 instruments are hand washed in the decontamination
- 24 area?
- 25 A. Very delicate instruments.

20

- 1 Q. Are instruments that contain electronic components
- 2 hand washed?
- 3 A. Not always. Most of the time, yes.
- 4 Q. Do you know what types of instruments with
- 5 electronic components are hand washed and which are
- 6 not?
- 7 A. No, I do not.
- 8 Q. To your knowledge are there any written instructions
- 9 on how to decontaminate neurosurgical equipment?
- 10 A. There is, possibly.
- 11 Q. Do you know what those instructions would be
- 12 called?
- 13 A. No. People can label things, several different
- 14 things, and unless I know -- I'm not going to say
- 15 unless I knew exactly what they were labeled, but
- 16 there probably is, but I wouldn't know how they
- 17 would label it. It could be labeled anything from a
- 18 picture, instruction book, to a manual.
- 19 Q. When all of the instruments would come down, how do
- 20 the people know which instruments have to be hand
- 21 washed as opposed to going into the mechanical --
- 22 A. They're taught that when they have their orientation
- 23 to decontam.
- 24 Q. So that's something they're taught on the job?
- 25 A. Exactly.

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1 Q. Are there pictures that are put up so people know
 2 which --
 3 A. There are possibly pictures in a book. I don't know
 4 at the time if they put pictures up on the wall or
 5 not.
 6 Q. Did you ever see pictures up on the wall or pictures
 7 in a book that would help guide employees to --
 8 A. Yes, I have.
 9 Q. And those books would help guide employees as to
 10 which instruments needed to be hand washed as
 11 opposed to --
 12 A. Correct.
 13 Q. -- go into the mechanical decontaminator?
 14 A. Correct.
 15 Q. To your knowledge is ethylene oxide gas expensive?
 16 A. It's much more expensive, yes.
 17 Q. And because of the expense, are the loads that are
 18 put in the ethylene oxide gas sterilizers always
 19 full?
 20 A. That is what they try and do because of the
 21 expense.
 22 Q. So they try to keep the ethylene oxide gas
 23 sterilizers as full as possible?
 24 A. Uh-huh. Correct
 25 Q. I'm sorry. You need to give a verbal answer.

22

1 A. Sorry.
 2 Q. Do you know if any organisms are resistant to
 3 ethylene oxide gas?
 4 A. That's a question that I cannot answer. I'm not a
 5 microbiologist.
 6 Q. When you were down in SPD, I'm assuming you were
 7 familiar with biological monitors?
 8 A. Yes.
 9 Q. What did those biological monitors look like?
 10 A. Like a little tube in a container.
 11 Q. And how would you know if one of the biological
 12 monitors turned positive?
 13 A. How would I know that they turned positive?
 14 Q. Or how would any employee down in SPD know?
 15 A. They're incubated and they look at them to see if
 16 they turn positive or not.
 17 Q. What's the indication when it is positive?
 18 A. That you don't use anything from that load.
 19 Q. I understand. Is there a certain color, or what
 20 happens to the monitor? Do you understand what I'm
 21 saying?
 22 A. Yes, I understand what you're saying, but I'm not --
 23 at the time I'm not sure which type of biological
 24 indicator we were using to tell you how it worked.
 25 Q. Could I take a look at this picture book. I'm

23

1 showing you what was marked photo 50 of 50. Is that
 2 a biologic monitor?
 3 A. This vial here is a biological monitor.
 4 Q. Could you describe the vial that you're talking
 5 about? It's the vial on the left-hand part of the
 6 photograph.
 7 A. On the left-hand part of the photograph.
 8 MR. MALONE: You want to be careful
 9 using left and right. It depends where the top
 10 is.
 11 THE WITNESS: That's right. There's
 12 nothing on this side.
 13 MR. MALONE: It's above the green half
 14 moon, I'll agree with that, or the red half
 15 moon.
 16 Q. There's a red half moon at the bottom and it appears
 17 to be a green top?
 18 A. A green topped container above it.
 19 Q. Is the biological monitor just a tube?
 20 A. There's something inside this container.
 21 Q. And what happens to what's inside the container if
 22 it's positive?
 23 A. This has to be put in an incubator. I don't know if
 24 it looks any different or not. There's -- it
 25 depends on what incubator you're using. Some of

24

1 them you put them in an incubator and it just shows
 2 positive or negative. There's a light that lights
 3 up. I don't know, looking at this, I could not tell
 4 you what kind of indicator this is and how it had to
 5 be incubated.
 6 Q. Were biological monitors put in every load?
 7 A. I do know that, yes, there is.
 8 Q. What would happen to the monitor after the load was
 9 finished?
 10 A. The biological monitor like this?
 11 Q. Yes.
 12 A. It has to be incubated.
 13 Q. How long does it have to be incubated for?
 14 A. I don't know because each one is different. I would
 15 have to go back and look at what the manufacturer
 16 recommends.
 17 Q. Does it go to a different department for incubation
 18 or --
 19 A. No.
 20 Q. -- does it stay down in SPD?
 21 A. No, it stays down in SPD.
 22 Q. And who would actually do the incubation, what type
 23 of employee?
 24 A. Any one of the employees down in SPD who are a Tech
 25 I or a Tech II who takes care of the load, puts the

25

- 1 vial in the incubator.
 2 Q. So would it be the same person that ran the load
 3 that put the biological monitor --
 4 A. Not necessarily. It depends on when the load comes
 5 out.
 6 Q. So a different employee could put the biological
 7 monitor in --
 8 A. It's possible.
 9 Q. I'm sorry, if you could just let me finish my
 10 questions. You have a tendency to answer before I'm
 11 done.
 12 So a different employee could wind up putting
 13 the biological monitor in an incubator than actually
 14 ran the load?
 15 A. It's very possible.
 16 Q. How do you know which biological indicator goes with
 17 which load?
 18 A. I'm assuming they should have a load number on the
 19 biological indicator.
 20 Q. Is there any other identifying information, to your
 21 knowledge, other than a load number?
 22 A. Not that I know of.
 23 Q. Do you know how load numbers are tracked for
 24 surgical instruments?
 25 A. I'm not sure on that one.

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- 1 Q. While you were down in SPD, did you ever have
 2 biologic monitors turn positive?
 3 A. Not to my knowledge.
 4 Q. Could that have occurred without your knowledge?
 5 A. No.
 6 Q. Is there some kind of process or procedure where if
 7 a biologic monitor turns positive that has to be
 8 reported to you?
 9 A. Yes, it does.
 10 Q. What else has to be done if a biologic monitor turns
 11 positive; could you tell me the procedure?
 12 A. Any of those instruments coming out of that load are
 13 not reused, they're rewashed and resterilized.
 14 Q. Well, could those instruments be taken somewhere
 15 while the monitor was being incubated?
 16 A. Not that I know of.
 17 Q. What happens to the instruments while the monitor is
 18 being incubated?
 19 A. I'm not sure if the instruments have to be aerated
 20 if they're gassed, if that's what you're talking
 21 about. If you're talking about gas sterilization,
 22 those have to be aerated, and I'm not sure how long
 23 the incubation time is. It depends on, like I said,
 24 which biological indicator you're using, the length
 25 of the incubation time, and by looking at this I

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- 1 can't tell -- by looking just at the picture of
 2 this, I wouldn't know.
 3 Q. While you were the Acting Manager of SPD, did you
 4 ever have to have a recall for surgical
 5 instruments?
 6 A. Not to my knowledge, no.
 7 Q. Could that have occurred without your knowledge?
 8 A. No.
 9 Q. Why not?
 10 A. Because I was the manager of the department. That's
 11 something that I should have been informed of.
 12 Q. Are there forms that have to be filled out with a
 13 recall?
 14 A. If there wasn't a recall, then I wouldn't know the
 15 answer to that one.
 16 Q. So you don't know whether or not there's forms that
 17 have to be filled out?
 18 A. No, I don't.
 19 Q. I'd like to give you an opportunity to take me
 20 through the whole process --
 21 A. Right.
 22 Q. -- of what happens to a surgical instrument after
 23 it's been used in the OR.
 24 A. Okay.
 25 Q. We did that in part, but could you run me through

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- 1 the entire process?
 2 A. And what do you mean by the entire process?
 3 Q. Well, explain exactly what happens to a surgical
 4 instrument from the time it's used in the OR until
 5 the time it's considered to be sterilized and ready
 6 for reuse. Do you understand what I'm saying?
 7 A. In other words, from the time it leaves -- you want
 8 to know what happens to that instrument once it
 9 leaves the OR and then once it's ready to go back up
 10 and be used again?
 11 Q. Right, the whole process of what the instrument
 12 would go through.
 13 A. The instrument is washed, it's sterile -- processed,
 14 it's packaged, and then it's sterilized, and it's
 15 put back on a shelf for use again.
 16 Q. Do you know what happens with the ethylene oxide gas
 17 sterilizers if there's air inside the chamber?
 18 A. You're asking me a technical question, and I cannot
 19 answer.
 20 Q. Do you know if the relative humidity is important in
 21 the ethylene oxide gas sterilizers?
 22 A. No, I don't.
 23 Q. Do you know what the operator of an ethylene oxide
 24 gas sterilizer needs to monitor while the
 25 sterilization is occurring?

29

- 1 A. What do you mean by monitor, monitor what?
- 2 Q. What does the operator do while the ethylene oxide
- 3 gas sterilizer is running?
- 4 A. Well, they don't sit there and watch it. They're
- 5 off doing other duties.
- 6 Q. What types of other duties?
- 7 A. They, the people that operate in SPD, can have
- 8 several different duties within a day. They may be
- 9 running the gas sterilizer, they may be in
- 10 decontam., they may be doing prepping and packing of
- 11 the instruments for sterilization. They just --
- 12 they're not just sitting at that desk watching the
- 13 sterilizer work. If they were to do that, they
- 14 wouldn't get anything done.
- 15 Q. So somebody that actually loads the ethylene oxide
- 16 gas sterilizer could wind up leaving and doing other
- 17 tasks while the sterilizer is running?
- 18 A. Exactly.
- 19 Q. And that's something that occurs on a regular
- 20 basis?
- 21 A. Yes.
- 22 Q. Do you know what happens if there's overloading of
- 23 an ethylene oxide gas sterilizer?
- 24 A. What do you mean by overloading?
- 25 Q. Well, can they be overloaded?

30

- 1 A. No, it's impossible. There's only so much space in
- 2 them.
- 3 Q. To your knowledge is the entire space loaded with
- 4 surgical instruments?
- 5 A. They try to keep the sterilizer full so that it's
- 6 more efficient to run it.
- 7 Q. Are there any problems with the placement or
- 8 position of certain types of instruments?
- 9 A. What do you mean by the placement and position?
- 10 Q. Well, is there a problem with sterilization if one
- 11 type of instrument is put next to another type of
- 12 instrument?
- 13 A. You mean when it's wrapped or when you're processing
- 14 it in the pan and wrapping it? There's two --
- 15 you're talking about two different things here. Do
- 16 you mean in the sterilizer or in the pan itself?
- 17 Q. Well, either one. I mean, could you explain to me
- 18 what types of problems could occur as far as, you
- 19 know, positioning or where something is put in the
- 20 sterilizer?
- 21 A. The sterilizer, the gas gets to it no matter where
- 22 it is in the sterilizer.
- 23 Q. What if you have a tube that's put next to
- 24 something, could that cause problems with the
- 25 sterilization?

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- 1 A. Not to my knowledge.
- 2 Q. To your knowledge were there any instructions on how
- 3 certain objects needed to be placed in the ethylene
- 4 oxide gas sterilizer?
- 5 A. That I would not know because I didn't -- I was not
- 6 familiar with the gas sterilization down there.
- 7 Q. As Acting Manager, did you supervise the people that
- 8 ran the ethylene oxide gas sterilizers?
- 9 A. I supervised the department. I did not directly
- 0 supervise each individual. I was the manager of
- 1 that department. I managed the people.
- 2 Q. Who was the direct supervisor back in '98 of the
- 3 people who actually ran the ethylene oxide gas
- 4 sterilizers?
- 5 A. There are supervisors on each shift.
- 6 Q. Do you know what types of problems can occur with
- 7 sterilization when using an ethylene oxide gas
- 8 sterilizer?
- 9 A. What do you mean by what types of problems?
- Q. Well, to your knowledge are there certain things
- 11 that can occur that can compromise the sterilization
- 12 process?
- A. Do you mean compromise the sterilization process of
- 14 the instrument itself?
- 15 Q. Yes.

32

- 1 A. Yeah, if the sterilizer doesn't work.
- 2 Q. Anything else?
- 3 A. There should -- if it's to be gas sterilized, then
- 4 that would be a recommendation from the company, so
- 5 there shouldn't be anything that would compromise
- 6 the sterilization if that were the recommendation
- 7 from the manufacturer.
- 8 Q. To your knowledge, were there any warnings to
- 9 employees back in '98 not to do certain types of
- 0 things with these ethylene oxide gas sterilizers?
- 1 A. What do you mean by not doing things with the
- 2 sterilizer?
- 3 Q. Were there certain actions that were prohibited?
- 4 mean, were there certain things that employees
- 5 should not do because it could compromise the
- 6 sterilization process?
- 7 A. That they should not do?
- 8 Q. Yes.
- 9 A. You mean in sterilizing the instruments there are
- 0 certain things, you're saying, they shouldn't do
- 1 that would compromise the sterilization of that
- 2 instrument?
- 3 Q. Yes.
- 4 A. It would depend on the instrument you're sterilizing
- 5 what you should not do.

33

- 1 Q. Well, I guess my question isn't very clear. Are
 2 there certain things that employees could do or not
 3 do that could result in an instrument not being
 4 sterilized during the ethylene oxide gas process?
 5 Do you understand my question?
 6 MR. MALONE: You mean other than
 7 keeping it out of the machine, once you've put
 8 it in?
 9 MR. RUF Yes.
 10 A. Yeah, once you put it in the machine there's really
 11 nothing that they can do that would compromise the
 12 instrument being sterilized.
 13 Q. Do you know if there's a problem in sterilizing long
 14 tubes with ethylene oxide gas?
 15 A. Not that I know of.
 16 Q. Do you know if there's a problem with sterilizing
 17 dead end tubes with ethylene oxide gas?
 18 A. Not that I know of.
 19 Q. Would you agree that if debris is left on surgical
 20 instruments and that instrument was put into an
 21 ethylene oxide gas sterilizer that could result in
 22 the instrument being unsterile?
 23 A. It's possible.
 24 Q. Would you agree that during a surgery debris gets on
 25 instruments, such as human tissue, blood and other

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- 1 matter?
 2 A. That's highly possible.
 3 Q. And is part of the job of a technician down in SPD
 4 to scrub or clean debris off instruments?
 5 A. Yes, that is.
 6 Q. Is that something that's required of employees?
 7 A. What do you mean by required; that it's required
 8 that they scrub the debris off?
 9 Q. Yes.
 10 A. Yes, it is.
 11 Q. And if an employee left debris on a surgical
 12 instrument, would that employee be failing in their
 13 job?
 14 A. Failing in which way; are you saying would we fire
 15 him, or what are you saying?
 16 Q. Well, is that something that would be unacceptable?
 17 A. Oh, it would be unacceptable, yes.
 18 Q. That would be unacceptable conduct in the
 19 decontamination process to leave debris on a
 20 surgical instrument?
 21 A. Correct.
 22 Q. And the reason for that is it could result in the
 23 instrument being unsterile while going through this
 24 whole process, correct?
 25 A. It could.

35

- 1 Q. And with ethylene oxide gas, if debris is left on a
 2 surgical instrument could there be a problem with
 3 the gas actually getting to all parts of the
 4 instrument if debris is left on that instrument?
 5 A. It's possible.
 6 Q. And could that result in pathological organisms
 7 being left on the instrument?
 8 A. That one I can't answer you because it would depend
 9 on what was left on it and if the ethylene oxide did
 10 anything to the debris left on the instrument.
 11 Q. Well, would you agree that potentially bacteria or
 12 other organisms could be left on the instrument if
 13 all the debris was not scrubbed off of it?
 14 A. It's a potential.
 15 Q. And could that result in contamination of a patient
 16 during surgery if that occurred?
 17 A. It's a potential.
 18 Q. So is it a rule down in SPD that all debris on all
 19 surgical instruments has to be removed?
 20 A. Yes, it is.
 21 Q. I mean, other than debris being left on instruments
 22 during the decontamination process, is there any
 23 other human error that can occur during this
 24 process?
 25 A. What kind of human error are you talking about: what

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- 1 do you mean?
 2 Q. I'm asking you, what kind of mistakes can be made as
 3 instruments are going through this sterilization
 4 process?
 5 A. That's kind of a hard one to answer. I --
 6 Q. I mean, one example is leaving debris on the
 7 surgical instruments?
 8 A. Right.
 9 Q. Are there other examples you can give me?
 10 A. That's probably one that we don't do, we shouldn't
 11 do. It would still come down to leaving debris, if
 12 you don't open up channels and take things apart and
 13 clean them.
 14 Q. Do you know if that long probe that I showed you has
 15 to be taken apart? That's this right here.
 16 A. I'm not familiar with it, so I wouldn't know.
 17 Q. And do you know how that item would be hand cleaned,
 18 if it is hand cleaned?
 19 A. When they hand clean items, depends on how big it
 20 is. They usually use a brush and use disinfectant
 21 soap and clean them.
 22 Q. Is there a certain amount of time that instruments
 23 have to be hand cleaned or scrubbed?
 24 A. Until they're clean.
 25 Q. So there's no time requirement?

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- 1 A. No. We're talking about disinfection, we're not
talking about sterilization.
- Q. So the person would just clean it until it was okay
- 4 by --
- 5 A. Until it looked clean.
- 6 Q. Okay by visual inspection?
- 7 A. Right.
- 8 Q. While you were in SPD, did the ethylene oxide gas
9 sterilizers either break or malfunction?
- 10 A. Yes, that's possible.
- 11 Q. What kinds of problems did you observe with the
12 ethylene oxide gas sterilizers while you were down
13 there?
- 14 A. We did have them malfunction, but I don't remember
15 exactly what the problem was.
- 16 Q. Who would you call if there was a problem?
- 17 A. The clinical engineers, but I'm not sure who they
18 were at that time. I'd look the number up in the
19 phone book or call them.
- 20 Q. Did you ever personally call the clinical engineers
21 while you were Acting Manager of SPD?
- 22 A. No, I didn't.
- 23 Q. To your knowledge, did somebody underneath you call
24 the clinical engineers?
- 25 A. It's possible that they were called, but it wasn't

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- 1 while I was there in the department during the day.
- 2 Q. Do you know if there ever was a problem with
3 humidity sensors?
- 4 A. Not that I can remember.
- 5 Q. Do you know if there were ever problems with the
6 temperature sensors?
- 7 A. Not that I can remember.
- 8 Q. Do you know if there were any problems with O rings
9 or valves unseating?
- 10 A. The maintenance I would not know about. That is
11 performed by someone outside of our department.
- 12 Q. What type of documentation is kept on maintenance
13 and who would keep that?
- 14 A. Clinical engineering usually keeps most of the
15 maintenance documentation, and when they do
16 maintenance they don't always necessarily have to
17 tell us they've done maintenance or what they've
18 done.
- 19 Q. I want to go back one second. If debris is left on
20 a surgical instrument, the biological monitor would
21 not turn positive, would it?
- 22 A. Not that I know of, but I'm not sure on that one.
- 23 The biological monitor keeps track of how many
24 organisms are inside the sterilizer, and you
25 can't -- I don't know. I can't answer that one.

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- 1 Q. Well, if the organisms remained underneath the
2 debris, then potentially the biological monitor
3 would not turn positive; is that correct?
- 4 A. I can't answer that one.
- 5 Q. While you were Acting Manager of SPD, was there ever
6 an investigation by infection control?
- 7 A. Not to my knowledge.
- 8 Q. To your knowledge did infection control ever perform
9 testing for colonization of organisms down in SPD?
- 10 A. I don't know if they did.
- 11 Q. You don't know one way or the other?
- 12 A. No, I don't.
- 13 Q. Did you ever see somebody from infection control
14 performing testing down in SPD while you were Acting
15 Manager?
- 16 A. No, I did not.
- 17 Q. Were you ever involved in any type of meeting in
18 which you were informed that infection control was
19 going to be doing some testing down in SPD?
- 20 A. No, I was not.
- 21 Q. Did you ever have any meetings in which you
22 discussed any type of problems with the ethylene
23 oxide gas sterilizers?
- 24 A. What do you mean by meetings?
- 25 Q. Meetings or discussions with other people.

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- 1 A. Not that I remember.
- 2 Q. Could you take me through the job titles of the
3 people in SPD while you were a manager there?
- 4 A. There was, of course, the director of the
5 department, underneath her there were supervisors
6 and there was a supervisor on each shift. There
7 were Tech Is, Tech IIs and surgical assistants.
- 8 Q. What's the difference between a Tech I, Tech II and
9 Surgical Assistant?
- 10 A. Surgical Assistant, those were people who did room
11 stocking, they pulled case carts, when trained they
12 did basic assembly of instrumentation.
- 13 Tech IIs were people who did everything in the
14 department, pull case carts, assemble instruments,
15 decontamination of instruments, gas and steam
16 sterilization loads.
- 17 Tech Is, there's Tech Is, and I can't say for
18 sure if there was one on every shift because some of
19 that had changed, but the Tech Is kind of oversaw
20 the work in their area and made sure that people
21 were assigned to do jobs as far as doing prep and
22 pack, decontam., the steam and gas loads, answer the
23 phones, and they kind of were the overseers, and
24 then they did everything in the area.
- 25 And then the supervisors are supervisors over

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- 1 the whole area for a shift, the whole area meaning
 2 all the SPD areas.
 3 Q. So whose responsibility would it be to perform
 4 decontamination and put a load in an ethylene oxide
 5 gas sterilizer?
 6 A. A Tech I or a Tech II.
 7 Q. Either one could do that?
 8 A. Yes.
 9 Q. When instruments are hand decontaminated, is one
 10 instrument done at a time or are there multiple
 11 instruments at somebody's station?
 12 A. There could be multiple instruments at a station,
 13 but they're washed one at a time.
 14 Q. When you told me you were Acting Manager, what does
 15 that fall under; is that the director or a
 16 supervisor?
 17 A. The director of the department.
 18 Q. So the director is the same as Acting Manager?
 19 A. Right.
 20 Q. Were you involved with the hiring and firing of
 21 people in the SPD department?
 22 A. Yes, I was. That's part of the managerial duties.
 23 Q. And how many employees did you have in SPD in
 24 September of '98, or around September of '98?
 25 A. To my best guess, about 70; that included all

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- 1 shifts.
 2 Q. And during one shift, approximately how many
 3 employees would be working at one time?
 4 MR. MALONE: In fairness, Mark, I don't
 5 think the three shifts are equally staffed.
 6 A. They're not. They're not equally staffed. They're
 7 staggered, and I don't remember what our ratio was,
 8 to be honest with you. I can't answer that one
 9 because I don't know what the ratio is.
 10 Q. So you run three shifts?
 11 A. Right.
 12 Q. So would sterilization be going on 24 hours a day?
 13 A. It's possible.
 14 Q. And do the employees work eight-hour shifts or
 15 longer?
 16 A. At that time most of the shifts were eight hours.
 17 Some of the shifts were split shifts that people may
 18 only work four or five, if I remember right.
 19 Q. Could you tell me approximately how many employees
 20 would be working during each shift?
 21 A. No. I mean, that's not something that I would
 22 remember.
 23 Q. Do you know if it would be more or less than 20
 24 people?
 25 A. It's possible.

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- 1 Q. And I assume that down in SPD you're like every
 2 other employer, that you have some employees who are
 3 good employees and some employees who are not so
 4 good?
 5 A. Oh, you have that everywhere.
 6 Q. And you have some employees that are hard working
 7 employees and some employees that are lazy
 8 employees?
 9 A. Yes, you have that everywhere.
 10 Q. And some employees that always follow the rules and
 11 some employees that it's difficult to get them to
 12 follow the rules?
 13 A. You have that everywhere.
 14 Q. Was a high school education a requirement for
 15 somebody to be a Tech I or Tech II?
 16 A. To my knowledge, it was.
 17 Q. Was a college degree a requirement?
 18 A. No, it was not.
 19 Q. Do you know the percentage of people with college
 20 degrees that were working in your department?
 21 A. There's no way I would know that.
 22 Q. Would you agree the vast majority of people working
 23 in SPD in '98 would not have a college degree?
 24 A. They probably would not.
 25 Q. Did you ever hire people that had never had a job

44

- 1 before down in SPD?
 2 A. Not that I can remember.
 3 Q. To your knowledge had you ever hired somebody that
 4 had prior poor job performance?
 5 A. No. Why would I hire someone with poor job
 6 performance? That would be simply foolish.
 7 Q. Did you hire people within the Clinic?
 8 A. Yes, I did.
 9 Q. From what departments?
 10 A. I know I had people that came from the nursing
 11 floors. From what other departments, I can't tell
 12 you. That's been too long ago.
 13 Q. Do you hire anybody from food service or janitorial
 14 or any departments like that?
 15 A. There's no way I can remember that.
 16 Q. Was there any type of age requirement for people
 17 working down in SPD?
 18 A. No.
 19 Q. What was the age of the youngest person working as a
 20 Tech I or II while you were supervisor?
 21 A. I didn't ask people their ages. I don't know how
 22 old they were.
 23 Q. Do you know if you had people that were less than 20
 24 years old working in SPD?
 25 A. Oh, I doubt that, not as a Tech I, no.

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1 Q. Do you know what the pay was for a Tech I or a Tech
2 II while you were in that department?
3 MR. MALONE Objection. You're getting
4 a little far field again. Go ahead. Do you
5 remember?
6 A. No.
7 Q. Do you know if it was less than ten dollars an
8 hour?
9 A. I can't even tell you what it was. That was --
10 MR. MALONE Show an objection. That
11 was three years ago.
12 A. --three years ago. There's no way I would remember
13 that.
14 Q. You have no idea what the amount was?
15 A. No.
16 Q. Did you keep documentation on the pay rate you would
17 hire people in at?
18 A. There's always somewhere --well, no, because once
19 you fill out the paperwork it leaves my hands.
20 Q. Was there a certain standard pay rate for people
21 that were hired in?
22 A. There was a pay range that we were told to keep
23 within, but there's no way I would even remember
24 that.
25 Q. Did you ever have to discipline an employee that

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1 worked in SPD in '98?
2 A. In '98?
3 Q. Yes.
4 A. I did do disciplinary action, but I can't tell you
5 what year it was in.
6 Q. To your knowledge, did you fire any employees while
7 you were Acting Manager?
8 A. That one I can answer. Yes, I did fire one
9 employee.
10 Q. One employee?
11 A. Yes, that I remember.
12 Q. What did you fire that employee for?
13 A. Attendance.
14 Q. Did you fire anyone or issue any disciplinary action
15 for poor performance on the job?
16 A. I just got done saying I fired one employee for
17 attendance.
18 Q. Okay. Other than that one employee, did you --
19 A. That was the only employee I fired while I was down
20 there.
21 Q. What about any other type of disciplinary action?
22 A. Yes, I did do other type of disciplinary action.
23 Q. What other types of disciplinary action?
24 A. For performance.
25 Q. Did you give people warnings?

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1 A. Yes.
2 Q. What else, were there suspensions, or, I mean, I
3 don't know the types of things you can do.
4 A. That I have to try and remember. I know I did
5 warnings. I don't know if I did any suspensions or
6 not. I can't remember that.
7 Q. Do you know what types of things you gave warnings
8 for or suspensions for, if you did give a
9 suspension?
10 A. I gave suspensions for attendance, I know that for
11 sure. I did give people warnings on their
12 performance, as far as their job duties. I can't
13 remember any others.
14 Q. Can you recall what you gave them warnings for, I
15 mean what types of things?
16 A. Job performance. I mean, actually not doing their
17 job or not being at their job where or when they're
18 supposed to be.
19 Q. Do you agree that human error can occur during the
20 sterilization process?
21 A. It can.
22 Q. After surgical equipment comes down to SPD, is there
23 any part of the process during which employees have
24 to use gloves?
25 A. In all of it. In the decontamination area, let me

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1 say, you have to wear a pair of gloves. I mean, I
2 wouldn't expect you to come in and pick up a bloody
3 instrument with a pair of bare hands.
4 Q. Did you ever see people not using gloves?
5 A. Not to my knowledge.
6 Q. Were these gloves that were reused or were they
7 sterile gloves?
8 A. There's no reason to use sterile gloves on dirty
9 instruments.
10 Q. What types of gloves were they; were they rubber
11 gloves?
12 A. They're big, heavy rubber gloves.
13 Q. And the employees would use those over and over
14 again?
15 A. During the course of the day they would. At the end
16 the day, they'd throw them out and get a new pair.
17 Q. Is there any part of the process during which people
18 would handle packages or instruments without
19 gloves?
20 A. When they're sterile.
21 Q. I'm sorry?
22 A. When they're sterile.
23 Q. They would handle the package just with their
24 hands?
25 A. Right. There would be no reason to put a pair of

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- 1 gloves on then.
- 2 Q. Was there a hand washing policy as far as employees
- 3 going to the bathroom back in 1998?
- 4 A. That's standard throughout the hospital.
- 5 Q. Would an employee be violating hospital policy if
- 6 they had a bowel movement and did not wash their
- 7 hands after that?
- 8 A. Well, if you can visibly see stool on their hands,
- 9 yes, but I didn't do a hand check on every employee
- 10 or stand by them when they came out of the
- 11 bathroom. I mean, that would be ludicrous.
- 12 Q. Was it the hospital's policy that all employees had
- 13 to wash their hands after going to the restroom?
- 14 A. That's standard throughout the hospital that you
- 15 should do that. I mean, that's pure human common
- 16 sense.
- 17 Q. Was there surgery going on 24 hours a day in the E
- 18 building back in '98?
- 19 A. That's possible. I can't tell you yes for sure, but
- 20 it is a possibility.
- 21 Q. Was the SPD department a busy place?
- 22 A. Yes, it is.
- 23 Q. Were instruments continuously coming down from the
- 24 surgical suites?
- 25 A. Yes. That's the only way they can get processed.

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- 1 Q. To your knowledge was there any in-service training
- 2 in '98 for employees in SPD?
- 3 A. Yes, there was.
- 4 Q. What types of in-service training?
- 5 A. There were in-service training on special equipment,
- 6 on reviews, we have all the standard in-services in
- 7 the hospital with safety.
- 8 Q. Were any written materials given out or videotapes
- 9 shown to the employees?
- 10 A. That's probable.
- 11 Q. Do you know what videotapes or written materials
- 12 would have been given to them?
- 13 A. No, I don't.
- 14 Q. Is there any way to determine at this point exactly
- 15 what instruments were used during Mary Lou
- 16 Zimmerman's surgery? In other words, is there any
- 17 way to determine the load number or determine the
- 18 specific instruments that were used during her
- 19 surgery? Do you understand what I'm saying?
- 20 Perhaps my question is not very clear.
- 21 A. Are you trying to say do I know -- if I knew that
- 22 set A or set B was used on her case?
- 23 Q. Let me re-ask it. Is there any way to track or
- 24 determine exactly what instruments were used during
- 25 her surgery?

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- 1 A. The tracking system is good for today. If I wanted
- 2 to find something, I could go in and look and it
- 3 tells me where that set is at today. I don't know,
- 4 no, that it can go back three years ago and say
- 5 that's exactly where that set was.
- 6 Q. So after a one day period of time, you can't
- 7 determine exactly where a certain load of
- 8 instruments is?
- 9 A. I can track today where that instrument is. I know
- 10 that that system is set up for that. Anything else
- 11 beyond that, I don't think it has the memory to do
- 12 that. I'm not sure, but I know that I can track
- 13 that set, where it's at today.
- 14 Q. Do you know if there was a certain shelf time for
- 15 neurosurgical instruments back in September of '98?
- 16 A. There's no shelf time. It's event related.
- 17 Q. So is there any limit to the period of time in which
- 18 neurosurgical instruments could sit in a cabinet or
- 19 area before being used?
- 20 MR. MALONE: You mean after being
- 21 sterilized?
- 22 A. After being sterilized?
- 23 Q. After being sterilized.
- 24 A. It's event related. It's not time related, it's
- 25 event related.

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- 1 Q. Which means what?
- 2 A. Event related means that there is no time limit
- 3 after that is sterilized to say that, no, it's not
- 4 sterile anymore. Event related means it's sterile
- 5 until the package integrity is no good or you open
- 3 it.
- 7 Q. Did you have a set of written rules, guidelines or
- 9 protocols that had to be followed down in SPD by
- 3 Tech I and Tech II employees?
- 13 A. What do you mean by guidelines?
- 11 Q. Well, I don't know. Was there any --
- 12 A. You mean job description?
- 13 Q. --written set of rules that would define what
- 14 procedures had to be followed? Do you understand
- 15 what I'm saying?
- 15 A. No.
- 17 Q. Was there any written set of rules or procedures
- 19 that would list exactly what steps a Tech I or Tech
- 13 II employee would have to follow?
- 23 A. For what, for doing their job?
- 21 Q. Yes.
- 22 A. There are job descriptions that tell what their job
- 23 entails.
- 24 Q. Is that generalized job descriptions?
- 25 A. Yes, it is.

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- 1 Q. Other than a generalized job description, is there
2 anything in writing that breaks down exactly what an
3 employee has to do while they're performing their
4 job?
- 5 MR. MALONE I think you asked that
6 pretty much at the beginning, Mark, and she
7 said no, but --
- 8 A. Yeah, I mean, there's nothing specific that says A-I
9 you have to mop the floor first, B, you have to
10 rinse out the mop. No, they have a generalized job
11 description.
- 12 Q. Where would neurosurgical instruments go after
13 leaving either a steam sterilizer or a gas
14 sterilizer?
- 15 A. That would depend on the instrumentation. Some of
16 the instrumentation is kept in SPD, some is kept up
17 in the core, and some of it is kept in the rooms.
- 18 Q. What is the core?
- 19 A. The core is in between the operating rooms there is
20 an area that's -- sterile instruments are kept
21 outside the ORs. They're within the OR but outside
22 the room, and some of it is kept in the OR itself in
23 the cupboards.
- 24 Q. And who would take the instruments up to the core or
25 the OR?

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- 1 A. Our people, that would be people in SPD, took them
2 up to the core. If they belonged in the rooms, they
3 did not put them away in the rooms. Any number of
4 variety of people could put them away, any number of
5 the nurses on the service.
- 6 Q. And would the person handling those instruments be
7 using gloves at that point or would they just be
8 using their hands?
- 9 A. No. Like I told you before, once the instruments
10 are sterilized there's no reason to wear a pair of
11 gloves to handle the outside wrapper.
- 12 MR. RUF Let me just talk to Bob one
13 second and I'll finish up.
14 - - - -
15 (Thereupon, a recess was had.)
16 - - - -
- 17 Q. Do you have any kind of written CV or written --
- 18 MR. MALONE: Resume.
- 19 Q. A written list of your credentials?
- 20 A. Yes, I do.
- 21 MR. RUF Could I get a copy of that,
22 Jim?
- 23 MR. MALONE I don't have one. If
24 she'll send one to me, I'll send it to you.
- 25 Q. Would you --

55

- 1 A. I'll send it to you.
- 2 Q. Could you send it to Mr. Malone and he can send it
3 to me?
- 4 MR. MALONE Send it to me.
- 5 Q. Do you know how you wound up becoming the Acting
6 Manager of SPD?
- 7 A. Yes, the director of the operating room called me
8 and asked me if I would be willing to take on that
9 job.
- 10 Q. Who was the director of the operating room?
- 11 A. I believe it was Lois Bach.
- 12 Q. Do you know, was that going to be a temporary
13 position for you?
- 14 A. I was acting as temporary.
- 15 Q. Oh, I'm sorry, I didn't understand that.
- 16 A. Acting Manager is temporary.
- 17 Q. Do you know why it was a temporary position?
- 18 A. Well, they were looking for someone permanently that
19 had the qualifications they wanted. Like I said, I
20 was only doing the managing. I wasn't doing
21 anything else in the department.
- 22 Q. Do you know what qualifications they wanted or
23 required for the director?
- 24 A. No, I don't, because I wasn't applying for the job.
- 25 Q. And is the reason why you left as Acting Manager

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- 1 that they found somebody to take over the position?
- 2 A. Correct.
- 3 Q. And is that Mr. Schule?
- 4 A. Correct.
- 5 Q. While you were Acting Manager, did you attend any
6 seminars on the process of sterilization?
- 7 A. No, I did not.
- 8 Q. Did you receive any written materials from the
9 Clinic to help train you in this area?
- 10 A. Why would I need to be trained when there were
11 people in the department that did their job?
- 12 Q. I'm just asking you if you received any written
13 materials --
- 14 A. No.
- 15 Q. -- to help train you in this area?
- 16 A. No.
- 17 Q. Did you receive any training in-house on
18 sterilization techniques?
- 19 A. I worked in the department alongside the other
20 people, so it was on-the-job training.
- 21 Q. Did you go through any kind of training process
22 before you took over as Acting Manager?
- 23 A. No, I did not.
- 24 Q. Did you ever physically do all the jobs in that
25 department?

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- 1 A. No.
 2 Q. What jobs did you physically do in that department?
 3 A. Physically do? I worked in the decontam. area, and
 4 I worked in prep and pack, and I worked pulling
 5 cases and putting supplies away on the shelf.
 6 Q. Would those be things a Tech I or II did?
 7 A. Or an SA.
 8 Q. Does an SA also decontaminate equipment?
 9 A. They can.
 10 Q. And is that the entry level position for the
 11 department?
 12 A. Yes, that is.
 13 Q. Does somebody have to start as an SA before they
 14 become a Tech I or II?
 15 A. Not necessarily.
 16 Q. Some people you would hire in as Tech Is or IIs?
 17 A. Never a Tech I. Tech Is are usually promoted from
 18 within.
 19 Q. I'm sorry, did you describe all the jobs you
 20 physically did while you were in the department?
 21 A. Yes, I did.
 22 Q. I didn't know if I cut you off or not.
 23 A. No.
 24 Q. Did you have a written job description?
 25 A. For myself?

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- 1 Q. Yes.
 2 A. There's written job descriptions for all the
 3 managers.
 4 Q. Do you know --
 5 A. But as far as me ever going and getting it, no.
 6 Q. You never saw a written job description for your
 7 job?
 8 A. I never asked for one because I wasn't taking the
 9 job permanently.
 10 Q. Do you know where a written job description would be
 11 kept?
 12 A. Probably in the department.
 13 Q. Were there any written procedures or policies for
 14 employee discipline?
 15 A. There is for the whole hospital, and that's the
 16 policies and procedures we follow.
 17 Q. Do you know what those are called: is there a
 18 certain name?
 19 A. Yeah, there's a policy and procedure book.
 20 Q. Is that just a general policy and procedure book, or
 21 is there a policy and procedure book for supervising
 22 employees or departments?
 23 A. There is a general supervising policy and procedure
 24 book for the whole hospital that all employees and
 25 all supervisors follow.

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- 1 Q. Now, if you disciplined an employee, did you have to
 2 give them a verbal warning first, or was it always a
 3 written warning?
 4 A. The procedure is a verbal warning and then a written
 5 warning.
 6 Q. Would they only have to be given one verbal
 7 warning?
 8 A. As far as what?
 9 Q. Is it only one verbal warning and then a written
 0 warning, or do you have to give more than one verbal
 1 warning; what's the procedure?
 2 A. That's usually up to the supervisor's discretion,
 3 depending upon what the event is that caused you to
 4 give them that verbal warning.
 5 Q. If there's a written warning, do you know where that
 6 documentation would be kept?
 7 A. In the employee's file.
 8 Q. During the time you were Acting Manager, did you
 9 give written warnings?
 0 A. Yes, I did.
 1 Q. Would there be any way to track those written
 2 warnings?
 3 A. That would be confidential. It's in the employee's
 4 file.
 5 Q. There's no central file where all written

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- 1 disciplinary action is kept?
 2 A. Yes, it is, but I would think that that would be
 3 considered confidential.
 4 Q. What type of file is that called?
 5 A. A lot of your written warnings go over to human
 6 resources, but, like I said, that's prying into
 7 people's confidential files.
 8 Q. And if you suspended somebody, would that have to be
 9 in writing as well?
 0 A. Oh, most definitely.
 1 Q. Any other type of disciplinary action that would
 2 have to be in writing?
 3 A. Uh-huh. I'm sorry, what do you mean by any other
 4 type?
 5 Q. Well, I don't know, other than warnings or
 6 suspension, would --
 7 A. Any counseling you may have done with them can or
 8 cannot be.
 9 Q. What's counseling?
 0 A. Well, sometimes the people come to you with a
 1 problem, you know, and a lot of that is done without
 2 writing down because they're coming to you trying to
 3 solve a problem. My Tech Is would come to me with a
 4 problem and say, okay, I need some advice, so that's
 5 considered counseling, and you don't always write

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- 1 that down.
- 2 Q. What types of problems did they have?
- 3 A. Maybe personality problems with employees or how do
- 4 I get them to do some work. I mean, that's not
- 5 something that needs to be documented, but any time
- 6 you write something down you put it in an employee's
- 7 file, but you can do stuff without writing it down.
- 8 Q. What other types of counseling would you give on
- 9 what other issues?
- 10 A. Attendance issues, performance. It's the same.
- 11 Q. Were there any specific performance problems that
- 12 you corrected while you were Acting Manager?
- 13 A. Good Lord, there's no way I would remember that. Do
- 14 you know how many people I run into in a day? It's
- 15 been three years ago.
- 16 Q. Could you tell me the types of performance problems
- 17 you do remember?
- 18 A. People incorrectly packaging sets or not counting
- 19 right. There's supposed to be five widgets in a set
- 20 and they put six in it, or they left them out
- 21 altogether, and a lot of times when you do that it's
- 22 an education issue that you say, okay, why are you
- 23 doing this, and you discuss it with the employee. I
- 24 do remember doing that. Issues with people calling
- 25 in sick, okay, what is your problem, why are you

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- 1 calling in so often or you're late.
- 2 Q. Any other performance issues that you specifically
- 3 addressed while you were Acting Manager?
- 4 A. People being slow in their work. Like in other
- 5 words, it took them 20 minutes to do a set when it
- 6 took someone else 5 minutes to do. You know, they
- 7 were lollygagging.
- 8 Q. Was speed and efficiency encouraged in the
- 9 department?
- 10 A. Both were encouraged, efficiency and speed.
- 11 Q. And could --
- 12 A. And accuracy.
- 13 Q. And could someone be given a verbal or written
- 14 warning if they were not processing enough
- 15 instrumentation or equipment?
- 16 A. Yeah, if their lips were flapping instead of their
- 17 hands moving, yes.
- 18 Q. Any other specific performance issues you remember
- 19 addressing?
- 20 A. People making mistakes and pulling case carts, not
- 21 pulling the right things or missing things. There's
- 22 a lot of issues. There's a lot of variables down
- 23 there.
- 24 Q. A lot of things are going on at once and it's a very
- 25 busy place?

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- 1 A. It's a very busy place.
- 2 Q. So it requires continuous monitoring by the
- 3 supervisory personnel?
- 4 A. Exactly. That's what a manager -- that's what I did
- 5 as a manager.
- 6 Q. Because you need to watch for people making mistakes
- 7 or errors that could compromise the sterilization
- 8 process?
- 9 A. And you can't be every place to everybody. We're in
- 10 three different buildings. There's no way.
- 11 MR. MALONE: You've answered.
- 12 Q. Could you identify the employees that you issued
- 13 disciplinary action against?
- 14 A. No way. That's impossible.
- 15 Q. Do you know who you fired in the department?
- 16 A. You mean name?
- 17 Q. Yeah.
- 18 A. I can't remember that, no.
- 19 Q. Do you know what the position of the person was,
- 20 Surgical Assistant, Tech I or Tech II?
- 21 A. No.
- 22 Q. Would you agree that human error could cause an
- 23 instrument going through SPD to not be sterilized?
- 24 A. To not be?
- 25 Q. Yes.

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- 1 A. It's highly unlikely that it would get through and
- 2 not be sterilized.
- 3 Q. But is that a possibility, that human error could
- 4 cause an instrument to go through SPD and not be
- 5 sterilized?
- 6 A. Possible.
- 7 Q. I mean, one of the examples is debris could be left
- 8 on an instrument; you would agree with that?
- 9 A. Yes.
- 10 Q. I just want to clarify, were you actually using an
- 11 event related system back when you were Acting
- 12 Manager?
- 13 A. Yes, we were.
- 14 Q. And with the event related system, a package would
- 15 be considered sterile until it was opened or
- 16 actually used?
- 17 A. Yes.
- 18 Q. Is there any other thing that could cause a package
- 19 to be pulled and not be used?
- 20 A. What do you mean pulled and not be used?
- 21 Q. Such as the appearance of the package.
- 22 A. Oh, most definitely. You have to inspect the
- 23 package for integrity.
- 24 Q. Is that something that's -- what types of things
- 25 would you look at as far as package integrity?

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- 1 A. Okay, integrity means it's intact.
 2 Q. Okay.
 3 A. So you would have to look to make sure that
 4 packaging was intact. If it wasn't, then you don't
 5 use it.
 6 Q. And you rely on people to do that, correct?
 7 A. Exactly.
 8 Q. Is there some human error involved in inspecting
 9 packages?
 10 A. There could be.
 11 Q. And could that result in contamination of sterilized
 12 instruments?
 13 A. It could.
 14 Q. Were there any written guidelines to judge package
 15 integrity or when a package should not be used?
 16 A. A package should not be used if the outside wrapper
 17 is damaged in any way or the tape that holds the
 18 package enclosed is damaged in any way, and those
 19 are standard guidelines that we all use. I'm not
 20 sure if those are written down, but if they were
 21 they would be in a policy and procedure book.
 22 Q. Okay. I'd just like you to look at this photo 13 of
 23 50 again. We depose Mr. Schule, and he has
 24 testified that that type of instrument would be hand
 25 washed. Would you have any reason to dispute that?

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- 1 A. That I wouldn't know because I don't know what the
 2 guideline is. I would have to go back and find out
 3 if they had --
 4 MR. MALONE: You answered. You don't
 5 know, you've answered.
 6 Q. Also, I don't know if you're aware, there's actually
 7 a sheath and then there's an instrument inside the
 8 sheath.
 9 MR. MALONE: She said she wasn't
 10 familiar with this instrument when you showed
 11 her the picture before. Why are we going
 12 through this again?
 13 Q. Well, I'm sure you're familiar that certain types of
 14 probes are used during surgery; is that correct?
 15 A. I'm not familiar with this one, no.
 16 Q. Have you seen other types of probes that have been
 17 used during surgery?
 18 A. What kind of probes are you talking about?
 19 Q. Well, let me ask you, for this type of instrument,
 20 if there's a probe inside a sheath during the
 21 decontamination process, does the probe have to be
 22 removed from the sheath?
 23 A. If there's a sheath on anything it has to be removed
 24 to wash it.
 25 Q. And why is that?

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- 1 A. So that you get everything clean.
 2 Q. And if you don't remove the probe from the sheath
 3 while you're scrubbing it in the decontamination
 4 process, that could result in a compromise of the
 5 stabilization process?
 6 A. It's a possibility.
 7 Q. Well, if an employee did not take the probe out of
 8 the sheath during decontamination, would that be a
 9 failure in the employee's job?
 10 A. It could be.
 11 Q. Well, for anything that would be inside a sheath,
 12 would they be required to remove it from the sheath
 13 during decontamination?
 14 A. That's what I just got done saying, yes.
 15 Q. Okay. I just wanted to clarify. For the things
 16 that are hand washed, how do they actually get to
 17 the hand washing area? Are they carried
 18 individually or are a number of instruments loaded
 19 on a tray?
 20 A. They're on the case cart that comes into the
 21 decontam. area and the people take them off the case
 22 cart.
 23 Q. But only certain instruments are taken off the case
 24 cart to be hand washed, correct?
 25 A. Correct.

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- 1 Q. Are they all put in one area together and then
 2 carried over to separate tables? Do you understand
 3 what I'm saying?
 4 A. No, I don't.
 5 Q. I mean, I don't understand. Are these instruments
 6 separately taken to different stations or different
 7 areas for hand washing or is a group of instruments
 8 all taken together?
 9 A. The instruments are grouped according to services,
 10 and when they're washed and decontam'd then they're
 11 sent over to the clean side to be prepped and
 12 packed.
 13 Q. After the decontamination process, during packaging
 14 and processing, are gloves used by the employees?
 15 A. No, it's not necessary. They've been cleaned.
 16 Q. So they're using their bare hands at that point?
 17 A. Yes, they are.
 18 Q. In the mechanical decontamination process, are there
 19 containers that the instruments are put in?
 20 A. The instruments are already in containers when they
 21 go down to the decontam. area in the case cart.
 22 That container is taken directly off the case cart
 23 and put onto the mechanical conveyor belt that feeds
 24 it into the machine.
 25 Q. And how many instruments would be in a case cart,

69

1 approximately?

2 A. That would depend on the type of case that's being

3 done.

4 Q. So instruments in a case cart would be kept together

5 unless they had to be hand washed?

6 A. They're all put in the case cart and sent down to

7 decontam.

8 Q. Right, but as far as decontamination then would the

9 hand washed instruments be separated from the other

10 ones in the case cart?

11 A. Once they got down to decontam. they would be.

12 Q. And would the other instruments in the case cart

13 remain together or would they be mixed with other

14 instruments?

15 A. What do you mean by mixed with other instruments?

16 Q. Well, I don't understand. Are case carts kept

17 separate during the entire process or are

18 instruments put together?

19 A. I still don't -- you're still not real clear with

20 your question.

21 Q. Well, after a case cart goes through

22 decontamination, what happens to it next?

23 A. It's sent on the prep and pack side to be put to --

24 processed and -- put together and processed.

25 Q. And are there a number of different types of

70

1 instruments together in this prep and pack area?

2 A. Oh, yes, whatever is done in that building.

3 Q. Did you ever do any kind of evaluation on the cost

4 of the event versus the time system?

5 A. No.

6 Q. Do you know if one is more expensive than the

7 other?

8 A. No.

9 Q. And with the event system, there's no outside time

10 limit; is that correct?

11 A. Correct.

12 Q. Now, for all of the employees in the SPD department,

13 is it true that there's no licensing or

14 certification requirement for any of the employees?

15 A. There is no requirement, no, not that I know of.

16 Q. During the time you were Acting Manager, do you know

17 how many people you hired, approximately?

18 A. It's impossible for me to know that, no.

19 Q. Do you know if it was more than 20, more than 50?

20 A. 50 is more than half the department.

21 Q. Do you know the number of people that left while you

22 were Acting Manager; could you give me an estimate?

23 A. No.

24 Q. Did you have a lot of turnover in that department?

25 A. Percentagewise, I couldn't tell you what the

71

1 turnover was.

2 Q. Well, did you have people continuously coming in and

3 people leaving?

4 A. You always do.

5 Q. How did you recruit people to become employees in

6 SPD?

7 A. There's job postings throughout the hospital.

8 Q. What about outside of the hospital?

9 A. Not that I know of. I never had them place an ad in

10 the paper, no.

11 Q. Is there any method that you used to recruit people

12 outside of the hospital while you were Acting

13 Manager?

14 A. Just the job postings.

15 Q. Where would those job postings be posted?

16 A. I can't tell you all the locations. There are

17 several locations within the foundation that have

18 job posting boards.

19 Q. So there's several job posting boards within the

20 hospital?

21 A. Correct.

22 Q. Well, as Acting Manager would you be the only person

23 involved in hiring and firing people, or would there

24 be other people that would also have that

25 authority?

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1 A. What do you mean by the only -- by the final say so;

2 is that what you're saying?

3 Q. Yes. I mean, would you be involved in every person

4 that was either hired or fired?

5 A. Into that department?

6 Q. Yes.

7 A. Yes, I would be.

8 Q. Were there regular job evaluations for the employees

9 in that department?

10 A. There is in every department.

11 Q. Are those written job evaluations?

12 A. Yes, they are.

13 Q. And so there's records kept on the job evaluation of

14 each employee?

15 A. Yes, there is.

16 Q. And where are those records kept?

17 A. They're usually kept in the employee's files.

18 Q. Is there a general file just for employees in a

19 certain department?

20 A. Each department has the files for their employees

21 working within their department.

22 Q. Would that also be in human resources as well?

23 A. Sometimes they are.

24 Q. What did you do to prep for your deposition today?

25 A. Jim gave me some material to read.

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1 Q. Do you know what you read?
 2 A. Uh-huh, it was another deposition.
 3 Q. Whose deposition?
 4 A. It was Richard's.
 5 Q. I'm sorry?
 6 A. It was Richard Schule.
 7 Q. How do you pronounce his name?
 8 A. Schule.
 9 Q. Schule. Did you review anything else?
 10 A. No, I did not.
 11 Q. Did you speak with anybody in order to prepare for
 12 your deposition today, other than Mr. Malone?
 13 A. Other than Mr. Malone, no.
 14 Q. And I'm assuming you had an opportunity to speak
 15 with Mr. Malone before the deposition?
 16 A. Yes, I did.
 17 Q. Are you familiar with the organism klebsiella
 18 oxytoca?
 19 A. No.
 20 Q. You've never heard of that organism?
 21 A. I've heard of it, yeah, but I haven't -- I'm not a
 22 microbiologist, so I can't tell you anything other
 23 than it's an organism.
 24 MR. RUF Just let me pick up and talk
 25 to Bob.

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1 MR. MALONE: Not again.
 2 - - - -
 3 (Thereupon, a discussion was had off
 4 the record.)
 5 - - - -
 6 MR. RUF I just have a few more
 7 questions, and then we'll be done.
 8 Q. When I asked about the cleaning of the probe in that
 9 picture, I think you said something about you'd have
 10 to check some guidelines?
 11 A. If there were any.
 12 Q. Where would --
 13 A. Manufacturers give us a lot of them, and I couldn't
 14 tell you where that would be.
 15 Q. Where would those guidelines be kept or found?
 16 MR. MALONE: She just got through
 17 telling you she doesn't know where they would
 18 be.
 19 A. I don't know where they would be.
 20 Q. I'm sorry. Who in the SPD department would know the
 21 most about the technical operation? You said you
 22 didn't know about it.
 23 A. The technical operation of what?
 24 Q. Of the whole sterilization process.
 25 A. I would imagine that would be Richard.

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1 Q. Richard Schule?
 2 A. I'm not sure.
 3 MR. MALONE: Schule.
 4 A. Schule.
 5 Q. Schule, I'm sorry. What about in '98, who would
 6 have the most technical knowledge of the process?
 7 MR. MALONE: Well, in fairness, Mark, I
 8 don't think it's changed.
 9 A. I don't think it has either.
 10 MR. MALONE: I mean, Richard is the
 11 guy. He was hired because he's nationally an
 12 expert in the area, in all aspects.
 13 Q. Well, Richard took over your job, right?
 14 A. Right.
 15 Q. He came in after or around October, November of '98;
 16 is that correct?
 17 A. I don't know when he came in. I mean, that would be
 18 something he would know. I don't know when he came
 19 in. I was down there temporarily. I wasn't
 20 counting the days. I didn't keep track of exactly
 21 how long I was there.
 22 Q. Well, during the time you were there, who would have
 23 the most technical knowledge about the operation?
 24 A. I wouldn't know that either. There's a lot of
 25 people that are experienced down there. I mean, to

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1 say who would know the most, I don't know.
 2 Q. During the time you were Acting Manager, how much
 3 time did you actually spend in the E building as
 4 opposed to the other buildings?
 5 A. I probably split my time between all the buildings.
 6 Q. So it would be about an equal split during an
 7 eight-hour day?
 8 A. Not quite, not quite, because the office was in the
 9 E building, so conducting business would be kind of
 10 hard because I can't pack a desk on my back.
 11 Q. Did you only work during the day shift?
 12 A. No, there were many nights I was here until 6:00,
 13 sometimes 7:00, sometimes later.
 14 Q. During Dr. Barnett's deposition, he testified that
 15 Mary Lou Zimmerman's course was consistent with
 16 there being a contaminated probe or a contaminated
 17 probe could have been used during her surgery.
 18 MR. MALONE: Would you read the
 19 testimony? If you're going to cross-examine
 20 her from it, let's read it correctly. She's
 21 not seen this testimony.
 22 Q. Sure. On page 47, starting on line 18.
 23 Question: I understand. Certainly based on
 24 everything that you know about the infection that
 25 developed and the brain abscess is entirely

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1 consistent with there being a contaminated probe?
 2 Answer: I would say it is consistent with that
 3 or another instrument.
 4 Question: Well, is there any other instrument
 5 that would have been inserted into the brain during
 6 this procedure?
 7 Answer: No, but the probe could have been
 8 contaminated --
 9 Question: It could have, dash, dash.
 10 Answer: -- by one of the producing tubes it
 11 goes through on the way in, but your point is that,
 12 yes, the probe itself would have to be
 13 contaminated.
 14 Question: But it may have been contaminated by
 15 another source?
 16 Answer: Yes.
 17 Given that testimony and the human error that
 18 we discussed, would you agree that you cannot rule
 19 out that an instrument used in Mary Lou Zimmerman's
 20 surgery was contaminated?
 21 MR. MALONE: Objection. Go ahead. Can
 22 you respond to that?
 23 A. No.
 24 Q. Would you agree that you can't say with certainty
 25 that either the probe or the sheath that was used in

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1 Mary Lou Zimmerman's surgery was not contaminated?
 2 MR. MALONE: Same objection.
 3 A. There's no way I can.
 4 Q. You can't say one way or the other?
 5 A. No.
 6 Q. And would you agree you can't say one way or the
 7 other whether a probe or the sheath was contaminated
 8 because an employee in the department of SPD did not
 9 do their job?
 10 A. No, there's no way I can say one way or the other.
 11 MR. RUF: Thank you. That's all I
 12 have. All right, Bob?
 13 MR. LINTON: Mark, could you pick up
 14 for a second.
 15 - - - -
 16 (Thereupon, a discussion was had off
 17 the record.)
 18 - - - -
 19 MR. RUF I just have one more
 20 question.
 21 Q. Would you agree at this point you would not be able
 22 to prove that the probe was not contaminated that
 23 was used during Mary Lou Zimmerman's surgery?
 24 MR. MALONE: Objection. She claims no
 25 expertise in that area, and it's not our burden

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1 of proof to answer the question.
 2 Q. Please answer the question.
 3 MR. MALONE: Don't answer the
 4 question. You have been instructed by
 5 counsel.
 6 MR. RUF: What's the legal basis?
 7 MR. MALONE: She's not an expert in the
 8 area. She has no burden to prove anything.
 9 - - - -
 10 (Telephone interruption.)
 11 - - - -
 12 MR. RUF: Do you want to get that? I
 13 don't know who it is.
 14 - - - -
 15 (Thereupon, a discussion was had off
 16 the record.)
 17 - - - -
 18 MR. RUF: Thanks for your time.
 19

PENNY SONTERS, R.N.

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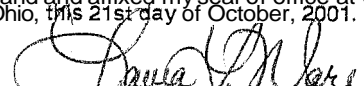
CERTIFICATE

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

I, Laura L. Ware, a Notary Public within and
 for the State of Ohio, do hereby certify that the
 within named witness, PENNY SONTERS, R.N., was by me
 first duly sworn to testify the truth, the whole
 truth, and nothing but the truth in the cause
 aforesaid; that the testimony then given was reduced
 by me to stenotypy in the presence of said witness
 subsequently transcribed into typewriting under my
 direction, and that the foregoing is a true and
 correct transcript of the testimony so given as
 aforesaid.

I do further certify that this deposition
 was taken at the time and place as specified in the
 foregoing caption, and that I am not a relative
 counsel or attorney of either party, that I am not,
 nor is the court reporting firm with which I am
 affiliated, under a contract as defined in Civil
 Rule 28(D), or otherwise interested in the outcome
 of this action.

IN WITNESS WHEREOF, I have hereunto set my
 hand and affixed my seal of office at Cleveland,
 Ohio, this 21st day of October, 2001.


 Laura L. Ware, Ware Reporting Service
 21860 Crossbeam Lane, Rocky River, Ohio 44116
 My commission expires May 17, 2003.

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