

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

AT "ANSAS CITY

JERALD WILLIAM TALLY AND)
 LAURA LEE TALLY AND BKET)
 WILLIAM TALLY, A MINOR, BY)
 AND THROUGH HIS FATHER AND NEXT)
 FRIEND, JERALD WILLIAM TALLY.)

PLAINTIFFS,)

VS.)

CASE NO. CV 8529885)

ANDREW B. KAUFMAN, M.D., ET AL,)

DEFENDANTS.)

WASHINGTON, D. C.

TUESDAY, OCTOBER 20, 1987

DEPOSITION OF:

RAOUL L. WIENTZEN, JR., MD, P

A WITNESS, CALLED FOR EXAMINATION BY COUNSEL FOR DEFENDANT
 DOCTOR ORGAN, PURSUANT TO NOTICE, AT THE GEORGETOWN HOSPITAL,
 3800 RESERVOIR ROAD, NORTHWEST, WASHINGTON, D. C. 20007,
 BEGINNING AT 11:09 O'CLOCK AM, BEFORE DOROTHY E. DEJARNETTE,
 A NOTARY PUBLIC IN AND FOR THE DISTRICT OF COLUMBIA, WHEN WERE
 PRESENT ON BEHALF OF THE RESPECTIVE PARTIES:

FRIEDLI, WOLFF & PASTORE, INC.
 1735 EYE STREET, N.W. SUITE #920
 WASHINGTON, D.C. 20006

PHONES: 331-1981
 331-1982

1 FOR THE PLAINTIFFS:

2 JAMES BARTIMUS, ESQ.
3 OF: THE LAW OFFICES OF LANTZ WELCH, P.C.
4 CITY CENTER SQUARE
5 TWENTY-NINTH FLOOR
6 KANSAS CITY, MISSOURI 64105

7 ~~FOR DEFENDANT DOCTOR ORGAN:~~

8 B. WILLIAM JACOB, ESQ.
9 OF: BAGBY & JACOB
10 2330 COMMERCE TOWER
11 P. O, BOX 13322
12 KANSAS CITY, MISSOURI 64199

13 ~~FOR DEFENDANT DOCTOR KANEREK:~~

14 WILLIAM H. WOODSON, ESQ.
15 OF: SPENCER, FANE, BRITT & BROWNE
16 1400 COMMERCE BANK BUILDING
17 1000 WALNUT STREET
18 KANSAS CITY, MISSOURI 64106

19 FOR DEFENDANT DOCTOR KAUFMAN:

20 NANCY E. KENNER, ESQ.
21 OF: BLACKWELL, SANDERS, MATHENY, WEARY & LOMBARDI
22 5 CROWN CENTER
23 2480 PERSHING ROAD
24 KANSAS CITY, MISSOURI 64108

25 FOR DEFENDANT ST. JOSEPH HOSPITAL:

26 JAMES W. MC MANUS, ESQ.
27 OF: SHUGHART, THOMSON & KILROY
28 TWELVE WYANDOTTE PLAZA
29 120 WEST 12TH STREET
30 KANSAS CITY, MISSOURI 64105

31 ~~ALSO PRESENT:~~

32 ANDREW B. KAUFMAN, M.D.

C O N T E N T S

WITNESS: RAOUL L. WIENTZEN, JR., M.D.

EXAMINATION BY COUNSEL FOR:

PAGE

DEFENDANT ST. JOSEPH HOSPITAL
(MR. MC MANUS)

77

PLAINTIFFS

(MR. BARTIMUS)

87

E X H I B I T S*

*NO EXHIBITS MARKED. COPY OF CURRICULUM VITAE OF RAOUL L.
WIENTZEN, JR., M.D. ATTACHED TO ORIGINAL
TRANSCRIPT.

P R O C E E D I N G S

WHEREUPON,

RAOUL L. WIENTZEN, JR., M.D.,

A WITNESS, WAS CALLED FOR EXAMINATION BY COUNSEL FOR DEFENDANT
DOCTOR ORGAN AND, AFTER HAVING BEEN FIRST DULY SWORN BY THE
NOTARY PUBLIC, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

EXAMINATION BY COUNSEL FOR DEFENDANT DOCTOR ORGAN
BY MR. JACOB:

Q DOCTOR, WOULD YOU STATE YOUR NAME, PLEASE?

A RAOUL L. WIENTZEN, JR., M.D.

Q WOULD YOU GIVE US YOUR HOME ADDRESS?

A 2828 NORTH 24TH STREET, ARLINGTON, VIRGINIA.

WE ARE HERE TODAY TAKING YOUR DEPOSITION IN
WASHINGTON, D. C., IS THAT CORRECT?

A THAT'S CORRECT.

Q DOCTOR, LET ME ASK YOU AS A PRELIMINARY QUESTION,
DO YOU HAVE ANY PARTICULAR INTEREST IN THE AREA OF PEDIATRICS;
IN OTHER WORDS, AS OPPOSED TO THE GENERAL PRACTICE OF PEDIATRIC
DO YOU HAVE SOME SPECIALIZED INTEREST?

A YES, I DO.

Q TELL US WHAT THAT IS, DOCTOR.

A INFECTIOUS DISEASES.

1 Q CAN YOU TELL US A LITTLE BIT ABOUT -- WHEN YOU
2 SAY, INFECTIOUS DISEASES, WHAT DOES THAT ENCOMPASS?

3 A THAT WOULD ENCOMPASS, ESSENTIALLY, ANY AND ALL
4 INFECTIONS THAT OCCUR IN CHILDREN AND YOUNG ADULTS, FROM,
5 REALLY, THE HEAD TO THE TOE.

6 Q HOW OLD ARE YOU, DOCTOR?

7 A FORTY.

8 Q IN YOUR PRACTICE AS A PHYSICIAN, HAVE YOU HAD
9 OCCASION TO TREAT CHILDREN WITH HYDROCEPHALUS?

10 A YES, I HAVE.

11 Q CAN YOU TELL ME, UNDERSTANDING, OF COURSE, THAT
12 YOUR SPECIFIC AREA OF INTEREST IS INFECTIOUS DISEASES, HOW
13 FREQUENTLY HAVE YOU COME IN CONTACT WITH CHILDREN WITH
14 HYDROCEPHALUS?

15 A I COME IN CONTACT WITH CHILDREN WITH HYDROCEPHALUS,
16 PROBABLY, FIVE OR SIX OR SEVEN TIMES A YEAR FOR THE LAST FIFTEEN
17 YEARS.

18 Q IN THAT FIVE TO SIX TO SEVEN TIMES A YEAR YOU HAVE
19 ENCOUNTERED A CHILD WITH THAT CONDITION, HAVE YOU, IN EACH
20 INSTANCE, BEEN THE PHYSICIAN, PRIMARILY, RESPONSIBLE FOR THE
21 CHILD OR HAVE YOU BEEN CALLED IN AS A CONSULTANT?

22 A A MAJORITY OF TIMES, I WOULD BE A CONSULTANT, BUT,

1 IN SOME OF THE CASES, THE PRIMARY PHYSICIAN.

2 Q HOW MANY TIMES HAVE YOU HAD THE PRIMARY RESPONSIBILI-
3 TY FOR THE CARE OF A CHILD WITH HYDROCEPHALUS?

4 A IN TERMS OF BEING THE ADMITTING DOCTOR **TO** A
5 HOSPITAL?

6 Q CORRECT.

7
8
9 Q HOW LONG HAVE YOU BEEN PRACTICING?

10 A OUT OF MY RESIDENCY THIS IS MY ELEVENTH YEAR
11 THREE YEARS IN RESIDENCY AND TWO YEARS OF FELLOWSHIP AND
12 TEN YEARS OF PRACTICE,

13 Q SO, HALF A DOZEN CASES IN ELEVEN YEARS?

14 A YES.

15 Q HAVE ANY OF THOSE INVOLVED AN OBSTRUCTED V. P.
16 SHUNT?

17 A YES, THEY HAVE.

18 Q CAN YOU TELL ME, OF THAT HALF DOZEN OR SO, **HOW**
19 MANY CULMINATED IN OBSTRUCTED SHUNTS?

20 A I DON'T HAVE THE PRECISE FRACTION OF THAT FIVE OR
21 SIX CASES. MY GENERAL RECOLLECTION WOULD BE, PROBABLY, ABOUT
22 HALF.

2 LITIGATION AS A POTENTIALLY LIFE-THREATENING SITUATION, AN
3 OBSTRUCTED SHUNT?

4 A CORRECT.

5 Q SO, WHEN YOU TELL ME HALF OF THE HALF A DOZEN OR
6 SO CASES, I WOULD ASSUME THAT THERE IS A SITUATION THAT STANDS
7 OUT IN YOUR MIND?

8 A INFECTIOUS DISEASES, AS I MENTIONED BEFORE, IS,
9 PERHAPS, SEVENTY PERCENT OF WHAT I DO; THIRTY PERCENT IS
10 GENERAL PEDIATRICS. WITHIN THE INFECTIOUS DISEASES, PART OF
11 MY JOB HERE AT THIS HOSPITAL, A VERY LARGE PERCENT OF WHAT I
12 DO IS LIFE THREATENING, AND, SO, I MEAN, IT IS A VERY HARD
13 THING FOR ONE OR TWO OR THREE CASES OF ANYTHING TO STICK OUT
14 IN MY MIND.

15 I SEE CASES OF MENINGITIS, SHOCK, SEPSIS AND HEAD
16 TRAUMA, AND, ALL SORTS OF THINGS THAT ARE LIFE THREATENING, BU
17 I CAN'T HAVE INDEPENDENT RECOLLECTIONS OF ALL OF THOSE CASES.

18 Q I APPRECIATE THAT, DOCTOR, BUT, MY POINT IS THIS,
19 AN OBSTRUCTED V. P. SHUNT IS A SITUATION WHICH IS POTENTIALLY
20 LIFE THREATENING, CORRECT?

21 A YES.

22 Q AND, IN YOUR CASE, HAVING ONLY HAD PRIMARY

1 RESPONSIBILITY FOR APPROXIMATELY SIX PATIENTS WITH A SHUNT IN
2 PLACE, I WOULD ASSUME THAT THOSE PATIENTS, OF THOSE SIX
3 PATIENTS WHO DEVELOPED THIS LIFE-THREATENING COMPLICATION,
4 YOU WOULD REMEMBER THEM, WOULD YOU NOT?

5 A YOU MAY ASSUME THAT, BUT I DON'T HAVE AN INDEPENDENT
6 RECOLLECTION OF THEM.

7 Q YOU JUST DON'T?

8 A THAT'S RIGHT.

9 Q HAVE YOU BEEN CALLED IN IN CONSULTATION IN A CASE
10 WHERE A CHILD HAS IN PLACE A V. P. SHUNT?

11 A YES, I HAVE.

12 Q HOW MANY CASES?

13 A THE MAJORITY OF CASES THAT I HAVE DEALT WITH THE
14 V. P. SHUNTS HAVE BEEN IN THAT CAPACITY.

15 Q CAN YOU TELL ME, IS THERE SOME PARTICULAR REASON
16 YOU WERE CALLED IN IN THESE INSTANCES WHERE A CHILD HAD
17 DEVELOPED A BLOCKED V. P. SHUNT?

18 A TO HELP ASSESS WHETHER OR NOT INFECTION OF THE V.P
19 SHUNT WAS THE REASON FOR THE OBSTRUCTION.

20 Q WERE YOU CALLED IN IN CONSULTATION, I ASSUME,
21 WITH OTHER PHYSICIANS?

22 A YES.

1 Q WHAT OTHER PHYSICIANS WOULD ROUTINELY BE INVOLVED
2 IN THE CARE OF ONE OF THESE PATIENTS?

3 A PEDIATRICIANS, NEUROSURGEONS AND NEUROLOGISTS.

14 OF THESE PATIENTS, THERE IS A NEUROSURGEON INVOLVED?

15 A THAT'S CORRECT.

16 Q AND, POSSIBLY, A NEUROLOGIST?

17 A CORRECT.

18 Q AND, POSSIBLY, A PEDIATRICIAN WHO REFERRED THE
19 CHILD, INITIALLY?

20 A CORRECT. ALTHOUGH, LET ME ADD TO THAT, SOMETIMES,
21 I AM ASKED TO ASSUME THAT ROLE **AS** THE PEDIATRICIAN, SINCE I
22 **AM** BOTH A PEDIATRICIAN AND INFECTIOUS DISEASE PHYSICIAN.

1 Q SO, IN SOME INSTANCES, YOU WOULD, ACTUALLY, BE THE
2 ADMITTING PEDIATRICIAN?

3 A THAT'S RIGHT, OR, THE CONSULTING PEDIATRICIAN.

4 Q HAVE YOU EVER BEEN INVOLVED IN A SURGERY WHERE A
5 V. P. SHUNT HAS BEEN PUT IN PLACE?

6 A NOT TO MY RECOLLECTION.

7 O WOULD THAT BE SOMETHING OUTSIDE OF THE SCOPE OF
8 YOUR EXPERTISE?

9 A THE ACTUAL INSERTION OF THE V. P. SHUNT?

10 Q RIGHT.

11 A OTHER THAN KNOWING, GENERALLY, WHERE IT IS DONE
12 AND HOW IT IS DONE, IT WOULD BE OUTSIDE OF THE SCOPE OF MY
13 EXPERTISE.

14 Q YOU WOULDN'T ATTEMPT TO PUT ONE IN?

15 A NO, SIR.

16 Q BY THE TIME THAT YOU ARE CALLED IN TO DETERMINE TH
17 ETIOLOGY OF AN OBSTRUCTION IN A CHILD, I WOULD ASSUME THAT
18 THE DIAGNOSIS HAS ALREADY BEEN MADE THAT THIS SHUNT IS
19 OBSTRUCTED, WOULD THAT BE .CORRECT?

20 A NOT NECESSARILY.

21 Q IT WOULD BE TRUE IN SOME CASES, HOWEVER?

22 A YES, IN SOME CASES, THE DIAGNOSIS HAS ALREADY BEEN

1 MADE; AND, IN OTHER CASES, THE DIAGNOSIS IS UNDER CONSIDERATION

2 Q IN THOSE SITUATIONS, WHERE THE DIAGNOSIS IS UNDER
3 CONSIDERATION, WHAT WOULD YOU, AS THE CONSULTING PEDIATRICIAN,
4 DO IN THAT SITUATION, IN TERMS OF PHYSICAL EXAM, HISTORY TAKING

5 A YOU PUT YOUR FINGER ON WHAT I THINK THE FIRST STEP
6 SHOULD BE, AN ACCURATE AND EXHAUSTING HISTORY OF THE SIGNS
7 AND SYMPTOMS THAT PRE-DATED MY VISIT TO THE PATIENT, THE PAST
8 HISTORY THAT MIGHT BE RELEVANT TO THE SHUNT.

9 THE PHYSICAL EXAMINATION WOULD BE A COMPETENT
10 NEUROLOGIC EXAM, AN EXAMINATION OF THE SHUNT FOR SITES OF
11 INFECTION, A VERY THOROUGH AND GENERAL PHYSICAL EXAM, WHICH
12 WOULD, ALSO, IN ADDITION TO THE NEUROLOGIC SYSTEM, WOULD DEAL
13 LARGELY WITH THE ABDOMINAL SYSTEM, TO BE SURE THERE WASN'T
14 ANY OBSTRUCTION AT THE DISTAL END OF THE SHUNT.

15 Q HOW WOULD YOU DETERMINE ON THE DISTAL END OF THE
16 SHUNT THAT THERE WAS AN OBSTRUCTION?

17 A SOME CHILDREN HAVE ABDOMINAL PAIN, ABDOMINAL
18 TENDERNESS. THEY CAN DEVELOP C. S. F., PSEUDOTUMORS IN THE
19 ABDOMEN THAT CAN OBSTRUCT THE SHUNT; SOMETIMES, THE SHUNT IS
20 DISCONNECTED AND BROKEN.

21 Q YOU, AS A PEDIATRICIAN, HOW WOULD YOU DETERMINE
22 THAT?

1 A IF A PATIENT HAD AN OBSTRUCTED SHUNT?

2 Q AT THE DISTAL END?

3 A AT THE DISTAL END?

4 Q YES.

5 A WELL, SOMETIMES, IT CAN'T BE EASILY DETERMINED.

6 ONE OF THE WAYS TO TELL WOULD BE TO EXAMINE THE PATIENT FOR
7 SIGNS OF ABDOMINAL TENDERNESS; ANOTHER TEST WOULD BE TO DO
8 A SHUNTOGRAM, X-RAY OF THE SHUNT, TO SEE WHETHER OR NOT IT IS
9 FRACTURED IN ITS COURSE ALONG THE THORACIC CAVE OR THE
10 ABDOMINAL CAVITY. THEY ARE THE TWO.

11 THERE ARE WAYS OF PUTTING CONTRAST MATERIAL IN THE
12 SHUNT TO SEE IF IT IS PATENT, BUT, WE DON'T, USUALLY, DO THAT.

13 Q WOULD ONE POSSIBILITY BE, ACTUALLY, OPENING THE
14 ABDOMINAL WALL AND LOOKING -- PHYSICALLY LOOKING AT THE DISTAL
15 END OF THE SHUNT?

16 A CORRECT; ALTHOUGH, I ANSWERED YOUR QUESTION **AS** TO
17 WHAT I, AS A PEDIATRICIAN, WOULD DO. I, AS A PEDIATRICIAN,
18 WOULDN'T DO THAT.

19 Q AND, I WANT TO MAKE THAT DISTINCTION. WHAT I JUST
20 DESCRIBED AS ONE METHOD OF DIRECTLY VISUALIZING THE SHUNT --

21 A (INTERPOSING) ESSENTIALLY, IT IS THE ONLY
22 DEFINITIVE WAY OF KNOWING WHETHER OR NOT THE SHUNT IS DRAINING

1 SPINAL FLUID INTO THE PERITONEAL CAVITY.

2 Q THAT WOULD BE THE DEFINITIVE WAY?

3 A THAT'S CORRECT.

4 Q YOU, AS A PEDIATRICIAN, WOULDN'T DO THAT?

5 A I MIGHT RECOMMEND THAT IT BE DONE, BUT, I WOULDN'T

6 Q YOU COULDN'T DO IT?

7 A THAT'S CORRECT.

8 Q I WOULD ASSUME YOU MEAN YOU DON'T HAVE PRIVILEGES
9 HERE TO DO THAT?

10 A I GUESS IN AN EMERGENCY SITUATION, I COULD, BUT,
11 NOT STANDING PRIVILEGES, NO.

12 Q LET'S BACK UP A LITTLE IN THE DIAGNOSTIC PROCESS
13 WE HAVE BEEN TALKING ABOUT, AND, LET'S GO BACK TO WHERE WE
14 ACUTALLY DETERMINE OR TRY TO DETERMINE WHETHER A SHUNT IS
15 OBSTRUCTED, AND, I WOULD ASSUME, THAT THAT WOULD BE PRECEDED
16 BY DETERMINATION, OR, AT LEAST, AN ATTEMPT TO DETERMINE, WHETHER
17 OR NOT THERE WAS INCREASED INTRACRANIAL PRESSURE?

18 A THAT'S CORRECT.

19 Q HOW WOULD YOU, AS A PEDIATRICIAN, DETERMINE THAT?

20 A HISTORY, PHYSICAL EXAM AND X-RAYS.

21 Q WOULD THERE BE A SITUATION WHERE YOU MIGHT WANT TO
22 MEASURE THE PRESSURE OF THE CEREBRAL SPINAL FLUID?

1 A YES.

2 Q HOW WOULD THAT BE ACCOMPLISHED?

3 A THE NEUROSURGEON WOULD OFTEN, IF A QUESTION ARISES
4 IS A VENTRICULAR PERITONEAL SHUNT OBSTRUCTED, ONE OF THE DIREC
5 TIONS FOR A NEUROSURGEON TO ANSWER THAT QUESTION AND ONE OF THE
6 WAYS THAT, OFTENTIMES, WE RECOMMEND, IS TO ACTUALLY INSERT A
7 NEEDLE INTO THE RESERVOIR OF THE SHUNT TO MEASURE PRESSURES
8 AND TAKE FLUID FOR SAMPLING, AND SO ON.

9 Q SO, ONCE YOU HAVE GONE BEYOND -- WELL, FIRST, WE
10 MAKE A DETERMINATION OF THE CHILD'S SYMPTOMS, HEADACHES,
11 CORRECT?

12 A CORRECT.

13 Q LETHARGY?

14 A CORRECT.

15 Q VOMITING?

16 A CORRECT.

17 Q AND, THEN, WHEN WE START OUR PHYSICAL EXAMINATION,
18 WE LOOK AT WHAT, THE EYES, FOR INSTANCE?

19 A CORRECT.

20 Q THAT WOULD BE ONE SIGN OF INCREASED INTRACRANIAL
21 PRESSURE?

22 A THERE ARE MANY SIGNS IN EXAMINING THE EYES FOR

1 INCREASE IN INTRACRANIAL PRESSURE, BUT, IT IS ONE ORGAN SYSTEM
2 TO EVALUATE FOR THE PRESENCE OF INCREASE IN INTRACRANIAL
3 PRESSURE.

4 Q IS IT SOMETIMES POSSIBLE TO PALPATE THE RESERVOIR
5 OF THE SHUNT TO DETERMINE IF, IN FACT, THE SHUNT IS PATENT?

6 A I DON'T BELIEVE SO. I THINK WHAT ONE DOES IS
7 PALPATE THE RESERVOIR TO SEE IF IT DOESN'T WORK AND HAVE SOME
8 DIRECT EVIDENCE THAT THE SHUNT DOESN'T WORK, BUT, A RESERVOIR
9 THAT COMPRESSES AND FILLS, DOESN'T EXCLUDE A BROKEN SHUNT
10 OR A NON-FUNCTIONING SHUNT.

11 Q SO, THAT PARTICULAR TEST WILL NOT RULE OUT AN
12 OBSTRUCTED SHUNT,?

13 A CORRECT.

14 Q WHEN YOU, AS A PEDIATRICIAN, HAVE DONE YOUR HISTOR
15 HAVE DONE YOUR PHYSICAL EXAMINATION, AND, YOU HAVE A FAIRLY
16 HIGH INDEX OF SUSPICION THAT THERE MAY BE AN OBSTRUCTED SHUNT,
17 WHAT DO YOU DO?

18 A IF I HAVE JUST ADMITTED A PATIENT TO THE HOSPITAL?

19 Q RIGHT.

20 A I WOULD ASK A NEUROSURGEON TO EVALUATE THE PATIENT

21 Q THE TEST THAT YOU DESCRIBED EARLIER OF ACTUALLY
22 PLACING A NEEDLE INTO THE SHUNT TO MEASURE THE INTRACRANIAL

1 PRESSURE, IS THAT A TEST THAT YOU CAN DO?

2 A AGAIN, UNDER EMERGENCY CIRCUMSTANCES, IT WOULD
3 BE SOMETHING THAT ANYBODY COULD DO, BUT, IT IS NOTHING THAT I
4 WOULD DO -- IT IS MY VIEW, THAT NO PEDIATRICIAN WOULD DO THIS
5 ROUTINELY.

6 Q SO, WOULD THAT BE SOMETHING THAT YOU WOULD LEAVE T
7 THE NEUROSURGEON?

8 A NEUROSURGEONS CAN GET VERY MAD IF YOU WERE PUTTING
9 NEEDLES INTO THEIR SHUNTS -- RIGHTFULLY SO.

10 Q WE HAVE TALKED ABOUT TWO METHODS, NOW, OF DEFINITIVE
11 DIAGNOSIS -- ONE WOULD BE OPENING THE ABDOMEN TO DETERMINE IF
12 THE DISTAL END OF THE SHUNT IS BLOCKED, CORRECT?

13 A CORRECT.

14 Q AND, THE SECOND IS PLACING A NEEDLE IN THE SHUNT
15 TO MEASURE THE INTRACRANIAL PRESSURE, CORRECT?

16 A CORRECT.

17 Q NEITHER OF THESE DEFINITIVE METHODS OF MAKING THAT
18 DIAGNOSIS ARE PERFORMED BY YOU **AS** THE TREATING PEDIATRICIAN,
19 CORRECT?

20 A THAT IS RIGHT.

21 Q YOU, **AS A** PEDIATRICIAN, WOULD POSSESS THAT DEGREE
22 OF SKILL THAT YOU SHOULD AT LEAST BE ABLE TO RECOGNIZE THE

1 ~~POSSIBILITY~~ OF AN OBSTRUCTED SHUNT, IS THAT RIGHT?

2 MR. BARTIMUS: I OBJECT TO THE FORM OF THE QUESTIC .

3 THE WITNESS: CORRECT. I AGREE.

4 BY MR. JACOB:

5 a HAVING MADE YOUR PHYSICAL EXAMINATION AND TAKEN
6 YOUR HISTORY, YOU WOULD, THEN, CALL IN A NEUROSURGEON?

7 A CORRECT.

8 Q HAVE YOU EVER HAD A PATIENT WITH A V. P. SHUNT
9 IN PLACE DIE?

10 MR. BARTIMUS: JUST FOR CLARIFICATION, FROM THE
11 SHUNT OR FROM SOME OTHER CAUSE?

12 MR. JACOB: WELL, I THINK THE QUESTION PRESUPPOSES
13 THAT I AM INTERESTED IN KNOWING THAT. I THINK HE INTERPRETED
14 IT THAT WAY.

15 THE WITNESS: I WAS THINKING OF ALL THE V. P.
16 SHUNT PATIENTS I HAVE SEEN. I NOTE SOME VERY PREMATURE BABIES
17 WHO HAVE DIED UNRELATED TO THE SHUNT, BUT, I DON'T HAVE A
18 RECOLLECTION OF ANY PATIENT WHO ACTUALLY DIED BECAUSE OF THE
19 SHUNT.

20 BY MR. JACOB:

21 Q OF AN OBSTRUCTED SHUNT?

22 A OF AN OBSTRUCTED SHUNT.

1 Q DOCTOR, WHEN WERE YOU FIRST CONTACTED CONCERNING
2 THE CASE OF CLINTON TALLY?

3 A LAST YEAR.

4 Q DO YOU RECALL APPROXIMATELY WHEN LAST YEAR?

5 A SOMETIME IN EARLY DECEMBER OF '86.

6 Q HOW WERE YOU CONTACTED?

7 A I BELIEVE I HAD A PHONE CALL FROM MR. BARTIMUS OR
8 HIS OFFICE,

9 Q WAS THIS THE FIRST OCCASION YOU HAD EVER HAD TO
10 WORK WITH MR. BARTIMUS?

11 A NO, IT WAS NOT.

12 Q HOW MANY TIMES HAVE YOU WORKED FOR MR. BARTIMUS?

13 A I HAVE REVIEWED RECORDS ON FOUR OR FIVE OCCASIONS
14 FOR MR. BARTIMUS OVER THE LAST FOUR YEARS.

15 Q FOUR TO FIVE?

16 A YES.

17 Q IS THIS THE FIRST CASE YOU REVIEWED FOR MR. BARTIMUS
18 INVOLVING A V. P. SHUNT?

19 A YES, IT IS.

20 Q JUST BRIEFLY, I DON'T WANT TO WASTE A LOT OF TIME,
21 CAN YOU TELL US BRIEFLY WHAT THE OTHER THREE OR FOUR CASES
22 WERE ABOUT?

1 A THERE WAS ONE CASE OF A BABY WHO 'DEVELOPED
2 MENINGITIS AND THE CONTENTION WAS THAT THE MENINGITIS WAS NOT
3 DIAGNOSED IN A TIMELY WAY. I FELT THAT THAT WASN'T THE CASE
4 AND I GAVE MY OPINION TO MR. BARTIMUS.

5 THERE IS A CASE OF A CHILD WITH HEMOPHILUS
6 MENINGITIS WHO DEVELOPED A HEARING LOSS BECAUSE THERE WAS A
7 DELAY IN DIAGNOSIS AND TREATMENT. I FELT THERE WAS A
8 CONSIDERATION FOR THAT.

9 THERE WAS A BABY, I BELIEVE A NEWBORN, WHO
10 DEVELOPED A NEWBORN INFECTION. THE QUESTION LIAS, WAS IT
11 DIAGNOSED IN A TIMELY WAY, AND, I FELT THAT THERE WAS TIMELY
12 DIAGNOSIS AND THAT THE CASE HAD NO MERIT.

13 THERE WAS A CHILD WITH, I BELIEVE IT IS VON
14 RECKLINHAUSER'S SYNDROME, AND, THE QUESTION WAS, WAS THIS
15 CHILD'S VON RECKLINHAUSER'S SYNDROME DIAGNOSED IN A WAY THAT
16 WAS COMPATIBLE WITH HIS BEST CARE, AND I FELT IT WASN'T.

17 Q SO, OUT OF THE FOUR OR FIVE CASES YOU HAVE AGREED
18 TO TESTIFY FOR MR. BARTIMUS, IN HOW MANY CASES --

19 A (INTERPOSING) I HAVEN'T AGREED TO TESTIFY, I
20 AM TRYING TO REMEMBER THIS NOW. IN TERMS OF THE VON
21 RECKLINHAUSER'S CASE, MY RECOLLECTION OF WHAT I DID FOR MR.
22 BARTIMUS -- I HAVEN'T TALKED TO HIM ABOUT THIS BEFORE THIS

1 MEETING -- WAS MORE INFORMATIONAL THAN ACTUALLY REVIEW FOR
2 MALPRACTICE PURPOSES; THAT IS TO SAY, I CAN RECALL THIS A
3 LITTLE BIT, BECAUSE IT HAPPENED OVER A THREE-DAY WEEKEND,
4 AND, I HAD A FRANTIC CALL FROM MR. BARTIMUS SAYING --

5 MR. BARTIMUS: (INTERPOSING) FRANTIC WASN'T
6 QUITE THE PROPER TERM --

7 THE WITNESS: (CONTINUING) -- THERE **WAS** A QUESTION
8 OF, I BELIEVE THE LEGAL TERMINOLOGY, IS EXPOSURE ON THE PART
9 OF THE PEDIATRICIAN TAKING CARE OF THIS CHILD, WHICH HAD NOT
10 BEEN EXPLORED TO DATE, COULD I POSSIBLY REVIEW THESE RECORDS
11 IMMEDIATELY AND GET BACK TO MR. BARTIMUS AS TO, WHAT IS THIS
12 ALL ABOUT, WHAT ARE THE FRECKLES IN VON RECKLINHAUSER'S,
13 CAFE-OLE SPOTS, AND, YOU KNOW, OTHER THINGS, AND
14 APPRISE HIM OF WHAT THIS DISEASE IS ALL ABOUT, AND, WHETHER OR
15 NOT THIS DOCTOR MIGHT HAVE MISSED THESE THINGS.

16 INDEED, AFTER HAVING DONE THAT IN A SUBSEQUENT
17 CONVERSATION, I DID AGREE TO TESTIFY FOR HIM BUT I DON'T HAVE
18 THAT AS AN INDEPENDENT RECOLLECTION.

19 BY MR. JACOB:

20 Q WELL, WITH THAT EXPLANATION, I AM STILL NOT CLEAR,
21 I DON'T THINK. YOU HAVE AGREED TO TESTIFY IN THIS CASE?

22 A IN THIS CASE, THE ONE PRIOR CASE THAT HAS ALREADY

1 BEEN SETTLED, I THINK, THIS CHILD WITH THE HEARING LOSS,
2 AND, I GUESS, IN THIS VON RECKLINHAUSER'S.

3 Q IN THOSE THREE CASES, AM I CORRECT, IN ASSUMING
4 THAT MR. BARTIMUS WAS NOT REPRESENTING THE DOCTOR IN ANY OF
5 THOSE CASES?

6 A I DON'T BELIEVE SO.

7 Q YOU TESTIFIED IN ALL OF THE CASES ON BEHALF OF THE
8 PLAINTIFF, OR THE PERSON MAKING THE CLAIM?

9 A THAT'S CORRECT.

10 ? OVER THE LAST TWO YEARS, CAN YOU TELL ME HOW MANY
11 TIMES YOU HAVE TESTIFIED, EITHER BY DEPOSITION OR, ACTUALLY,
12 IN A COURTROOM, IN A CASE WHERE MEDICAL MALPRACTICE HAS BEEN
13 ALLEGED?

14 A THE LAST TWO YEARS, I WOULD, PROBABLY, SAY, FOUR
15 TIMES, THREE TIMES A YEAR FOR THE LAST TWO YEARS, SIX OR EIGHT
16 TIMES.

17 Q OTHER THAN THIS CASE, DID ANY OF THOSE CASES
18 INVOLVE A CHILD SUFFERING FROM HYDROCEPHALUS WITH A V. P.
19 SHUNT IN PLACE?

20 A NO.

21 Q THIS IS THE ONLY CASE INVOLVING THAT PARTICULAR
22 SITUATION?

1 A THAT'S CORRECT.

2 Q WOULD THAT BE TRUE THROUGHOUT YOUR CAREER, YOU HAV
3 NEVER TESTIFIED IN A CASE SUCH AS THIS BEFORE?

4 A THE V. P. SHUNT BEING THE PRIMARY FOCUS?

5 Q YES.

6 A NO, I HAVE NOT.

7 Q OF THE SIX TO EIGHT TIMES YOU HAVE TESTIFIED IN TH
8 LAST YEAR, CAN YOU TELL ME HOW IT WOULD BREAK DOWN, PERCENTAGE.
9 WISE, TESTIFYING FOR THE PLAINTIFF VERSUS THE DEFENDANT?

10 A PROBABLY, 50-50.

11 Q CAN YOU TELL ME HOW MUCH TIME IN THIS PARTICULAR
12 CASE YOU HAVE SPENT IN REVIEWING THE CHART AND PREPARING FOR
13 YOUR TESTIMONY?

14 A WITH THE FIRST BOX OF RECORDS MR. BARTIMUS SENT
15 ME, I BELIEVE IT WAS SEVEN OR EIGHT HOURS. SUBSEQUENT TO THAT,
16 HE SENT ME SOME MORE RECORDS TO REVIEW, SOME MORE DEPOSITIONS,
17 AND, THEN, WITH THIS RE-REVIEW, PROBABLY, ANOTHER TEN OR TWELVE
18 HOURS.

19 Q SO, WHAT ARE WE TALKING ABOUT, ALL TOLD?

20 A EIGHTEEN OR TWENTY HOURS, TOTAL.

21 Q WHAT IS YOUR CHARGE TO MR. BARTIMUS?

22 A FOR REVIEWING RECORDS, \$250 A HOUR.

1 O YOU SPECIFIED \$250 A HOUR FOR REVIEWING RECORDS.
2 I TAKE IT FROM THAT THAT YOU HAVE A DIFFERENT CHARGE FOR GIVIN
3 DEPOSITIONS?

4 A YES, I DO.

5 Q WHAT WOULD YOUR CHARGE BE FOR GIVING A DEPOSITION?

6 A \$300 AN HOUR.

7 Q HOW ABOUT GOING TO COURT AND, ACTUALLY, TESTIFYING

8 A FOR A DAY IN COURT IS \$2,000 A DAY.

9 Q PER DIEM CHARGE FOR COURT TIME?

10 A CORRECT.

11 Q SO, IF YOUR TESTIMONY ON THE STAND TAKES AN HOUR
12 OR THREE HOURS, YOUR CHARGE IS STILL \$2,000?

13 A IF I GO TO A TRIAL IN THE CITY, IT WOULD BE HALF
14 A DAY. IF I HAVE TO TRAVEL, IF IT IS GOING TO TAKE ME AWAY
15 FROM MY OFFICE FOR TWO DAYS, IT WOULD BE TWO DAYS.

16 Q SO, IF YOU MAKE GOOD FLIGHT CONNECTIONS WHEN YOU
17 COME TO KANSAS CITY TO TESTIFY IN THIS CASE, YOUR CHARGE WOULD
18 BE \$2,000?

19 A YES, FOR ONE DAY.

20 Q AND, IF YOU DON'T MAKE SUCH GOOD CONNECTIONS, IT
21 WOULD BE \$4,000?

22 A I DON'T MAKE THE CONNECTIONS.

1 Q I UNDERSTAND. I AM NOT SUGGESTING YOU DO, BUT,
2 I AM JUST SAYING --

3 A (INTERPOSING) IF I AM AWAY FROM MY OFFICE FOR TWO
4 DAYS, THAT IS CORRECT.

5 Q SO, YOUR CHARGE FOR TESTIFYING IN THIS CASE COULD
6 BE FROM \$2,000 TO \$4,000 TESTIFYING AT TRIAL?

7 A THAT'S CORRECT.

8 Q AND, MY MATH ISN'T VERY GOOD, BUT, YOU, PROBABLY,
9 MADE TO THIS POINT, SOMEWHERE AROUND \$5,000 ALREADY ON THE
10 CASE?

11 A I HAVEN'T BILLED MR. BARTIMUS FOR IT, THE HOURS
12 ACCUMULATED SINCE I FIRST REVIEWED IT.

13 Q SO, IT WOULD BE FAIR TO SAY THAT VERY POSSIBLY YOU
14 COULD CHARGE AS MUCH AS \$10,000 FOR TESTIFYING IN THIS CASE?

15 A IF THE HOURS ACCUMULATE TO THAT AMOUNT, YES.

16 Q A LITTLE EARLIER YOU ALLUDED TO MATERIALS THAT
17 MR. BARTIMUS HAD SENT YOU. CAN YOU TELL US EXACTLY WHAT IT IS
18 THAT YOU HAVE BEEN SUPPLIED TO REVIEW FOR YOUR TESTIMONY IN
19 THIS CASE?

20 A I REVIEWED THE RECORDS OF THE FIRST HOSPITALIZATIO
21 IN 1981 FOR CLINTON TALLY; THE RECORDS OF FOREST KINDLE
22 (PHONETIC); THE OUT-PATIENT RECORDS OF DOCTOR KAUFMAN AND

1 DOCTOR ORGAN; I REVIEWED THE IN-PATIENT RECORDS OF THE SECOND
2 HOSPITALIZATION IN 1985 FOR CLINTON TALLY; AND, THEN, I
3 REVIEWED DEPOSITIONS OF DOCTORS ORGAN, KAUFMAN, KANEREC,
4 DEPOSITIONS OF THE NURSES INVOLVED IN THE CASE, GATES, BRUNO,
5 ASHBY, FULLER, SPINSKI (PHONETIC), ANSON, ADAMSON AND WIZEROLE
6 (PHONETIC), AND, I REVIEWED THE DEPOSITIONS OF THE TWO PLAINTIFFS'
7 EXPERTS, EXPERTS ELDEN FOLTZ AND CAROLINE EDISON.

8 IN ADDITION TO THAT, I REVIEWED SOME SUMMARIES
9 OF THE CASE, SORT OF FLOW SHEETS OF THE CASE, THAT MR.
10 BARTIMUS HAD INCORPORATED WITH HIS FIRST SHIPMENT OF RECORDS.

11 Q YOU SAY SOME FLOW SHEETS -- MAYBE, I MISUNDERSTOOD
12 YOU -- WERE THESE SHEETS THAT YOU PREPARED OR MR. BARTIMUS
13 PREPARED?

14 A I HAVE PREPARED MY OWN FLOW SHEETS, BUT, MR.
15 BARTIMUS HAD SUPPLIED ME WITH SOME FLOW SHEETS WHEN HE FIRST
16 SENT ME THE RECORDS.

17 Q DO YOU HAVE YOUR FLOW SHEETS HERE TODAY?

18 A THE ONES I PREPARED, YES.

19 Q HAVE YOU PREPARED ANY OTHER NOTES OR REPORTS OR
20 DOCUMENTATION OF ANY KIND, IN CONNECTION WITH YOUR REVIEW OF
21 THIS CASE?

22 A JUST HANDWRITTEN NOTES AS I WENT THROUGH THE

1 DEPOSITIONS AND THE RECORDS, AS THEY WERE. I MADE HANDWRITTEN
2 NOTES OF WHAT TRANSPIRED.

3 1, ALSO, LISTED SOME OF THE THOUGHTS I HAD ABOUT
4 SOME OF THE DIFFERENT PARTIES IN THE CASE IN TERMS OF WHAT MY
5 CONCERNS ABOUT THEIR PARTICIPATION IN THE CARE OF THE CHILD
6 MIGHT BE, AND, THAT IS, ESSENTIALLY, IT.

7 Q OKAY .

8 THE NOTES, AND THE NOTES THAT YOU ARE REFERRING
9 TO IN THE FLOW SHEET THAT YOU ARE REFERRING TO, ARE ON WHAT
10 WE CALL ORDINARY YELLOW LEGAL PADS, IS THAT CORRECT?

11 A CORRECT.

12 Q DO YOU HAVE ANY OTHER FILES, WHATSOEVER ON THIS CA'
13 OTHER THAN WHAT IS SITTING BEFORE YOU RIGHT NOW?

14 A NO, I DON'T. THERE ARE SOME NOTES I MADE ON THE
15 COVERS OF THE DIFFERENT DOCUMENTS I LISTED. AS I READ 'THROUGH
16 SOME OF THE DEPOSITIONS, I MADE CURSORY NOTES.

17 MR. JACOB: LET'S GO OFF THE RECORD.

18 (DISCUSSION OFF THE RECORD.)

19 MR. JACOB: BACK ON THE RECORD.

20 BY MR. JACOB:

21 Q DOCTOR, AS A RESULT OF YOUR REVIEW OF THE VARIOUS
22 MATERIALS THAT YOU HAVE JUST TICKED OFF, WOULD I BE CORRECT

1 THAT YOU HAVE ARRIVED AT SOME CONCLUSIONS AND OPINIONS CONCERN NG
2 THE CARE AND TREATMENT OF CLINTON TALLY?

3 A YES.

4 Q NOW, LET ME ASK YOU THIS: AT THE PRESENT TIME,
5 DO YOU HAVE ANY INTENTIONS OF REVIEWING ANY ADDITIONAL
6 INFORMATION?

7 A NO, I DON'T.

8 Q HAVE YOU ADVISED MR. BARTIMUS THAT THERE ARE
9 MATERIALS, ADDITIONAL MATERIALS, THAT YOU WOULD LIKE TO SEE OR
10 REVIEW BEFORE ARRIVING AT FINAL OPINIONS IN THIS CASE?

11 A NO, I HAVE NOT.

12 Q CAN WE ASSUME FROM THAT THAT THE OPINIONS YOU ARE
13 GOING TO TELL US HERE TODAY ARE FINAL OPINIONS?

14 MR. BARTIMUS: I WOULD OBJECT TO THE FORM OF THE
15 QUESTION. OBVIOUSLY, ANY ADDITIONAL DEPOSITIONS OR ANY
16 ADDITIONAL MATERIALS, TO BE FAIR TO THE WITNESS, WILL BE
17 PROVIDED TO HIM. WHETHER THEY ALTER HIS OPINIONS, I CAN'T
18 ANSWER THAT. IF IT DOES, HE WILL ADVISE ME, AND, I WILL ADVISE
19 YOU, BUT, THE FACT IS, HE WILL BE PROVIDED ADDITIONAL
20 MATERIAL AS WE GO ALONG WITH THIS CASE.

21 INCLUDED WITH THAT WOULD BE ANY OPINIONS THAT THE
22 DEFENSE EXPERTS, IF YOU HAVE ANY, WOULD HAVE, SO, THE FACT IS

1 THAT MAY ALTER IT. IF IT DOES, WE WILL ADVISE YOU. I THINK
2 YOU ARE ENTITLED TO KNOW THAT.

3 BY MR. JACOB:

4 Q I WANT TO BE IMMINENTLY FAIR WITH YOU, DOCTOR.
5 REALLY, WHAT I WAS TRYING TO GET AT HERE IS, AS OF TODAY,
6 YOU HAVE ARRIVED AT SOME FINAL OPINIONS?

7 A YES, AS OF TODAY.

8 Q AND, AS OF TODAY, YOU HAVE ARRIVED AT THOSE OPINIO 3
9 . AND DO NOT, AT THE PRESENT TIME, FEEL THE NEED TO REVIEW
10 ANYTHING ADDITIONAL CORRECT?

11 A I DO NOT FEEL THE NEED TO REVIEW ANYTHING
12 ADDITIONAL, BUT, I WILL REVIEW ANYTHING WHICH MR. BARTIMUS
13 ASKS ME TO REVIEW.

14 Q AND, I UNDERSTAND THAT SHOULD MR. BARTIMUS SEND
15 YOU ADDITIONAL MATERIAL, DEPOSITIONS OR OTHERWISE, YOU WOULD,
16 OF COURSE, REVIEW THAT MATERIAL, RIGHT?

17 A CORRECT.

18 Q AND, IF THAT MATERIAL CAUSED YOU TO ALTER YOUR
19 OPINIONS OR CHANGE YOUR OPINIONS, YOU WOULD, OF COURSE, TELL
20 MR. BARTIMUS SO THAT HE COULD, IN TURN, TELL US?

21 A THAT IS AGREED.

22 Q BECAUSE I KNOW YOU WANT TO BE FAIR WITH US, TOO?

1 A THAT'S CORRECT.

2 Q NOW, IN THE COURSE OF ARRIVING AT YOUR OPINIONS IN
3 THIS CASE, HAVE YOU HAD OCCASION TO REVIEW ANY LITERATURE
4 OF ANY KIND?

5 A YES, I HAVE.

6 Q CAN YOU TELL US, PLEASE, WHAT LITERATURE YOU
7 REVIEWED?

8 A I TRIED TO FIND AN ANSWER TO SOMETHING THAT CAME
9 UP IN DOCTOR KAUFMAN'S DEPOSITION WITH RESPECT TO THE LIFE
10 EXPECTANCY OF DANNY-WALKER PATIENTS, DANNY-WALKER SYNDROME
11 PATIENTS, AND, SO, I REVIEWED SOME GENERAL NEUROLOGY TEXTS
12 TO SEE WHETHER THERE IS ANYTHING IN THERE ABOUT THE LIFEHOOD
13 EXPECTANCY AND SO ON, OF THE DANNY-WALKER SYNDROME, AND I
14 COULDN'T FIND ANY.

15 Q SO, YOU, ESSENTIALLY, HAVE NO OPINION ON THAT?

16 A NO, I DON'T.

17 ? ANYTHING ELSE THAT YOU REVIEWED?

18 A NO, SIR.

19 Q DID YOU HAVE OCCASION TO DISCUSS THE CASE WITH ANY
20 OF YOUR COLLEAGUES OR OTHER PHYSICIANS?

21 A NO, I HAVE NOT.

22 4 HAVE YOU EVER BEEN PERSONALLY SUED FOR MALPRACTICE

1 A NO, I HAVE NOT, I HAVE BEEN NAMED AS A TREATING
2 PHYSICIAN OF A BABY AND BEEN SUBPONAED BUT NEVER BEEN SUED,
3

5 A THAT'S CORRECT.

8 RECORDS IN THIS CASE, YOU NOTED THAT DOCTOR ORGAN SAW THIS
CHILD ON MAY 13 OF 1985, CORRECT?

9 A CORRECT.

10 Q HE SAW THE CHILD IN HIS OFFICE?

11 A CORRECT.

12 Q AND, YOUR REVIEW OF THE RECORDS, I ASSUME, REVEALED
13 TO YOU THAT HE FOUND THAT THE TALLY CHILD'S PUPILS WERE DILATED,

15 A YES,

16 Q THAT HIS RESPIRATIONS WERE INCREASED?

17 A YES.

18 Q AND, THAT THE CHILD'S MOTHER REPORTED THAT HE COUL
19 NOT STOP VOMITING?

20 A THAT'S CORRECT. LET ME JUST -- I AM NOT POSITIVE
ABOUT THE RESPIRATIONS BEING INCREASED. I BELIEVE THE NOTE
SAYS DEEP TENDON REFLEXES WERE INCREASED. MAYBE, HIS

1 A MY FIRST CRITICISM WOULD BE --

2 Q (INTERPOSING) LET ME PREFACE THIS QUESTION AND THE
3 QUESTIONS THAT FOLLOW SO WE CAN MOVE ALONG. WE ARE, OBVIOUSLY,
4 NOT HERE ON AN ACADEMIC EXPEDITION, AND, WE ARE NOT INTERESTED
5 IN YOUR OPINIONS ABOUT WHAT YOU MIGHT HAVE DONE DIFFERENTLY,
6 OR, HOW IT MIGHT HAVE BEEN HANDLED DIFFERENTLY. YOU UNDERSTAND
7 THAT?

8 A YES.

9 Q WHAT WE ARE INTERESTED IN ARE YOUR OPINIONS
10 CONCERNING CARE AND TREATMENT IN THIS CASE WHICH FALLS BELOW
11 THE ACCEPTABLE MEDICAL STANDARD. WITH THAT PREFACE, PLEASE
12 GO AHEAD AND CONTINUE.

13 A MY FIRST CRITICISM OF DOCTOR ORGAN'S CARE ON THE
14 13TH IS THAT HE DID NOT CONSIDER THE TOTALITY OF THE CASE; THAT
15 IS, THE HISTORY AND THE PHYSICAL EXAM AND THE HOSPITAL COURSE
16 IN THE CONTEXT OF THE POTENTIAL DIAGNOSIS, LIFE-THREATENING
17 DIAGNOSIS OF AN OBSTRUCTED VENTRICULO PERITONEAL SHUNT, EVEN
18 THOUGH THE CAT SCAN WAS READ AS NOT HIGHLY SUGGESTIVE OF
19 WHATEVER THE TERMINOLOGY IN THE CHART IS, OF VENTRICULO
20 PERITONEAL OBSTRUCTIONS

21 ? OKAY.

22 A LET ME JUST SAY ABOUT THAT, THAT I AM SAYING, I

1 THINK IN A SHORT WAY, TO EXPAND ON THAT, IS, ^{we had} THINK IT IS ON\$
2 THING TO HAVE AN X-RAY THAT IS INDETERMINATE, AN X-RAY THAT
3 DOESN'T PROVE THAT SOMETHING IS PRESENT, A CAT SCAN, LET'S SAY,
4 , IN THIS CASE, BUT, ONE CAN'T JUST TAKE THAT X-RAY AND SAY IT
5 ABSOLVES US OF SERIOUS CONSIDERATION AND, PERHAPS, EVEN SERIOUS
6 ACTION WITH RESPECT TO A LIFE-THREATENING PROBLEM, IN THIS CASE
7 THE OBSTRUCTED V. P. SHUNT, AND, BY THAT, I MEAN, ONE HAS TO
8 LOOK VERY CLOSELY AT WHAT BROUGHT THE CHILD TO THE HOSPITAL/
9 WHAT THE EXAMINATION SHOWED AND WHAT THE HOURS IN THE HOSPITAL
10 BRING'.

11 Q WELL, BY THE TIME THE CHILD IS AT THE HOSPITAL,
12 WE HAVE A TENTATIVE DIAGNOSIS OF OBSTRUCTED V. P. SHUNT,
13 CORRECT?

14 A YOU HAD ASKED ME WHAT CRITICISMS I HAD, LET ME
15 JUST ENTER THEM INTO THE RECORD SO I DON'T LOSE MY TRAIN OF
16 THOUGHT, AND, WE CAN GO BACK.

17 Q OKAY .

18 A THE SECOND CRITICISM I HAVE OF DOCTOR ORGAN ON
19 THE 13TH, WAS THAT, IT SEEMS TO ME HE FAILED TO GIVE THE
20 ADEQUATE AMOUNT OF INFORMATION IN SIGN-OFF TO DOCTOR KANEREC
21 TO ENABLE HIM TO DEAL WITH WHATEVER MIGHT HAPPEN ON HIS TOUR
22 OF DUTY WITH RESPECT TO CLINTON TALLY.

1 Q NOW, HAVE YOU COVERED EVERYTHING ON THE 13TH?

2 A YES.

3 Q LET'S GO BACK TO WHAT I THINK YOU REFERRED TO AS
4 THE TOTALITY OF THE CASE, WHICH I AM HAVING A LITTLE DIFFICULT
5 IN UNDERSTANDING, SO HELP ME ALONG HERE.

6 THE CHILD WAS ADMITTED TO THE HOSPITAL WITH A
7 TENTATIVE DIAGNOSIS OF OBSTRUCTED V. P. SHUNT, CORRECT?

8 A YES.

9 Q WOULD YOU SAY IN RETROSPECT, WITH THE ADVANTAGE
10 OF 20/20 HINDSIGHT, WHICH WE NOW HAVE, THAT THAT WAS A CORRECT
11 DIAGNOSIS?

12 A I DON'T EVALUATE CASES WITH THE ADVANTAGE OF
13 HINDSIGHT, BUT, YES, IN HINDSIGHT, THAT WAS A CORRECT DIAGNOSIS

14 Q THAT WAS A CORRECT DIAGNOSIS, WASN'T IT?

15 A YES.

16 Q SO, THE TOTALITY OF THE PICTURE, IRRESPECTIVE OF
17 WHAT IT WAS, LED DOCTOR ORGAN ON ADMISSION OF THAT CHILD TO
18 ST. JOSEPH HOSPITAL TO THE CORRECT DIAGNOSIS?

19 A I DON'T THINK I UNDERSTAND.

20 Q YOU WERE TALKING ABOUT YOU THINK THAT DOCTOR ORGAN
21 FAILED TO APPRECIATE THE TOTALITY OF THE CASE, CORRECT?

22 A MY CRITICISM OF DOCTOR ORGAN ON THE 13TH IS THAT

1 AFTER THE CAT SCAN WAS READ AS NOT DIAGNOSING AN OBSTRUCTED
2 SHUNT, IT WAS, I THINK, WRONG NOT TO HAVE CONTINUED TO HAVE
3 A VERY HIGH INDEX OF SUSPICION THAT HE WAS RIGHT IN THE FIRST
4 PLACE, EITHER THE CAT SCAN WAS WRONG AND THAT IT DIDNT HELP
5 BUT THAT THIS CHILD STILL HAS AN OBSTRUCTED V. P. SHUNT.

6 Q HE REQUESTED A CAT SCAN BE DONE, CORRECT?

7 A CORRECT.

8 Q AND, THE CAT SCAN WAS READ AS BEING, ESSENTIALLY,
9 NEGATIVE OR BENIGN, I GUESS YOU SAY. I MEAN, IT IS NOT A
10 NEGATIVE CAT SCAN, PER SE, BUT, IT WASN'T ENOUGH TO DIAGNOSE
11 AN OBSTRUCTED SHUNT, CORRECT?

12 A YES.

13 Q WOULD YOU AGREE WITH THAT?

14 A YES.

15 Q WHAT WOULD BE THE NEXT STEP, THEN, IN YOUR OPINION
16 THAT WOULD NEED TO BE TAKEN IN ORDER TO RULE OUT THIS
17 OBSTRUCTED SHUNT?

18 A ONE STEP WOULD BE TO NEEDLE THE SHUNT.

19 Q YOU, AS A PEDIATRICIAN, DON'T DO THAT?

20 A THAT'S CORRECT. HAVE THE NEUROSURGEON NEEDLE THE
21 SHUNT.

22 Q WHAT WOULD BE THE NEXT STEP.

1 A THE NEXT STEP WOULD BE TO CONTINUE TO HAVE VERY
2 CLOSE OBSERVATION OF THE PATIENT, WITH THE POTENTIAL OF ANOTHE
3 CAT SCAN DONE IN A SHORT PERIOD OF TIME TO SEE IF THERE IS ANY
4 CHANGE.

5 Q WELL, WE KNOW THAT DOCTOR KAUFMAN ORDERED VERY
6 CLOSE MONITORING?

7 A YES, HE DID.

8 Q VITAL SIGNS EVERY TWO HOURS?

9 A EVERY ONE HOUR.

10 Q IS THAT WHAT YOU WOULD CONSIDER CLOSE MONITORING?

11 A YES, I WOULD.

12 Q AND, I THINK DOCTOR KAUFMAN REQUESTED A REPEAT
13 CAT SCAN ON THE MORNING OF THE 15TH?

14 A IT WAS PLANNED FOR THE 15TH.

15 Q WAS THAT A QUICK ENOUGH REPEAT CAT SCAN?

16 A NOT GIVEN THE CHILD'S SYMPTOMATOLOGY IN THE
17 HOSPITAL, NO.

18 Q WELL, IN ANY EVENT, ON THE 13TH, WITH THE CHILD
19 ADMITTED WITH A POSSIBLE OBSTRUCTED V. P. SHUNT, WOULD YOU
20 AGREE THAT, REGARDLESS OF WHAT OTHER DIFFERENTIAL DIAGNOSIS
21 THE PHYSICIAN MAY BE CONSIDERING, THE FIRST PRIORITY WOULD BE
22 TO RULE OUT THE SHUNT?

1 A ABSOLUTELY.

2 Q WE HAVE TALKED ABOUT SEVERAL WAYS, DEFINITIVE WAYS
3 OF DIAGNOSING THAT, CORRECT?

4 A CORRECT.

5 Q WHAT WOULD DOCTOR ORGAN, AS THE ADMITTING
6 PEDIATRICIAN, WHAT, IN HIS OPINION, SHOULD HE HAVE DONE ON THE
7 13TH, THAT HE DID NOT DO?

8 A CERTAINLY, ONE THING THAT HE SHOULD HAVE DONE THAT
9 HE DID NOT DO, WAS TO APPRISE DOCTOR KANEREC THAT THIS
10 PATIENT, EVEN THOUGH THE CAT SCAN WAS NEGATIVE -- IT TRULY
11 WASN'T NEGATIVE -- EVEN THOUGH THE CAT SCAN WAS NEGATIVE, STILL
12 HAS A VERY HIGH INDEX OF SUSPICION FOR AN OBSTRUCTED SHUNT,
13 SO, WATCH THIS PATIENT LIKE A HAWK OVER THE NIGHT. PLEASE
14 CONTACT THE NURSES, FIND OUT HOW HE IS DOING, AND, IF THERE IS
15 ANYTHING THAT SHAKES YOU, CALL DOCTOR KAUFMAN RIGHT AWAY. HE
16 WILL WANT TO KNOW THIS.

17 Q YOU ARE PARAPHRASING A CONVERSATION BETWEEN TWO
18 PHYSICIANS. OBVIOUSLY, YOU WEREN'T THERE WHEN THAT CONVERSATIO
19 TOOK PLACE, CORRECT?

20 A CORRECT.

21 Q YOU KNOW, FROM REVIEWING THE DEPOSITIONS, THAT A
22 CONVERSATION DID, IN FACT, TAKE PLACE BETWEEN DOCTOR ORGAN AND

1 DOCTOR KANERЕК?

2 A YES.

3 Q SO, IN FACT, YOU DON'T REALLY KNOW WHAT WAS
4 DISCUSSED BETWEEN THE TWO DOCTORS, DO YOU?

5 A I DON'T KNOW, SPECIFICALLY, WHAT WAS DISCUSSED,
6 I JUST KNOW HOW DOCTOR KANERЕК PROCEEDED TO TREAT THE PATIENT.

7 Q SO, BASED UPON WHAT DOCTOR KANERЕК DID, IT If
8 YOUR ASSUMPTION THAT DOCTOR ORGAN DIDN'T COMMUNICATE INFORMATION
9 SUFFICIENTLY?

10 A THAT'S CORRECT;

11 Q I KNOW YOU WANT TO BE FAIR. THAT IS SUPPOSITION
12 ON YOUR PART; THAT IS SPECULATION?

13 MR. BARTIMUS: WELL, I AM GOING TO OBJECT TO THE
14 FORM OF THE QUESTION. HE **HAS**, ALSO, HAD THE BENEFIT OF THEIR
15 SWORN TESTIMONY.

16 BY MR. JACOB:

17 Q THAT IS SUPPOSITION ON YOUR PART?

18 A I WOULD LIKE TO LOOK AT THE SPECIFIC AREAS OF
19 DOCTOR KANERЕК'S DEPOSITION AND DOCTOR ORGAN'S DEPOSITION
20 TO ANSWER THE QUESTION AS TO EXACTLY WHAT WAS SAID --

21 Q (INTERPOSING) AT \$300 AN HOUR, WE ARE NOT GOING
22 TO STOP TO DO THAT. I CAN'T AFFORD YOU THAT OPPORTUNITY, SO,

1 YOU WILL HAVE TO GIVE ME YOUR BEST RECOLLECTION.

2 A MY BEST RECOLLECTION OF DOCTOR ORGAN'S TESTIMONY,
3 IT TOOK THEM A FRACTION OF FIVE MINUTES TO DISCUSS THE CASE
4 WITH DOCTOR KANEREC. 'IT DOESN'T SEEM TO ME VERY MUCH TIME
5 TO TALK ABOUT A PATIENT WHO COULD BE DYING OF AN OBSTRUCTED~'
6 V. P. SHUNT.

7 Q WELL, IN THE HYPOTHETICAL IDEAL CONVERSATION THAT
8 SHOULD HAVE TAKEN PLACE YOU JUST TICKED OFF FOR US, I THINK
9 IT TOOK, PROBABLY, LESS THAN THIRTY SECONDS TO SAY ALL OF WHAT
10 YOU SATD. ARE YOU SAYING BECAUSE DOCTOR ORGAN SAID IT IN FIVE
11 MINUTES OR LESS, HE DIDN'T TELL DOCTOR KANEREC . --

12 A (INTERPOSING) I AM SAYING WHAT DOCTOR KANEREC
13 NEEDED TO KNOW ABOUT THIS PATIENT WAS, ESSENTIALLY, THE
14 PRESENTATION OF THIS CHILD'S ILLNESS FROM THE TIME HIS V. P.
15 SHUNT WAS INSERTED FIVE YEARS AGO TO THE TIME OF APRIL 26,
16 WHEN HE CAME BACK TO DOCTOR ORGAN'S OFFICE WITH A COMPLAINT OF
17 HEADACHE, TO THE FACT THAT THOSE HEADACHES PERSISTED FOR THREE
18 WEEKS UNTIL SEEN AGAIN BY DOCTOR ORGAN, THE FACT THAT THE CHILD
19 HAD DILATED PUPILS, INCREASED DEEP TENDON REFLEXES AND NYSTAGMUS,
20 BILIOUS VOMITING AND HEADACHE AND WAS ADMITTED TO THE HOSPITAL
21 AND HAD A CAT SCAN THAT DID NOT DIAGNOSE A V. P. SHUNT, AND, I
22 WOULD GO ON, EXCEPT FOR YOUR STATEMENT ABOUT TIME, BUT, IT WOULD
TAKE QUITE A BIT OF INTERACTION TO MAKE KNOWN HOW SERIOUS THIS

1 PATIENT COULD POSSIBLY BE.

2 Q HOW LONG DO YOU THINK YOU WENT ON JUST THEN?

3 A I SAID I WOULD GO ON CONSIDERABLY LONGER.

4 O LET'S GO BACK TO WHAT -- ALL RIGHT. YOU TICKED
5 OFF DOCTOR ORGAN SHOULD HAVE COMMUNICATED WITH DOCTOR KANEREK,
6 AND, EVEN THOUGH YOU DON'T KNOW WHAT WAS, IN FACT, COMMUNICATED,
7 IT IS YOUR ASSUMPTION THAT HE DIDN'T COMMUNICATE SUFFICIENTLY?

8 A WELL, I KNOW THAT DOCTOR KANEREK'S DEPOSITION
9 STATED THAT HE DID NOT KNOW ABOUT THE DILATED EYES WITH A
10 NYSTAGMUS, HE STATES IN HIS DEPOSITION, WHEN HE TREATED WITH
11 THE DEMEROL AND FIORNAL, SO, THAT CERTAIN PARTS OF THE PRESENTA -
12 TION TO DOCTOR KANEREK WERE OMITTED BY DOCTOR ORGAN.

13 Q WHAT OTHER ADDITIONAL STEPS, IN YOUR OPINION)
14 SHOULD HAVE BEEN TAKEN BY DOCTOR ORGAN THAT WERE NOT TAKEN ON
15 THE 13TH?

16 A I THINK THEY ARE MY MAJOR CRITICISMS OF DOCTOR
17 ORGAN ON THE 13TH.

18 Q SO, WE ARE THROUGH WITH DOCTOR ORGAN ON THE 13TH?

19 A YES.

20 Q MOVING ON, THEN, TO THE 14TH, CAN YOU TELL US
21 WHAT CRITICISMS YOU HAVE OF DOCTOR ORGAN'S CARE AND TREATMENT?

22 A THEY ARE VERY SIMILAR CRITICISMS. I THINK DOCTOR a

1 ORGAN EITHER DIDN'T KNOW OR DIDN'T TAKE SERIOUSLY ENOUGH THE
2 EVOLUTION OF THIS PATIENT'S PROBLEMS IN THE HOSPITAL, ESPECIALLY,
3 THE PROBLEM THAT OCCURRED IN THE NIGHTTIME SHIFT, FROM
4 MIDNIGHT ON WHEN DOCTOR KANEREK WAS TREATING THE PATIENT,
5 THE EVOLUTION, WHICH, IN FACT, REQUIRED THAT THIS PATIENT BE
6 TREATED WITH FIORNAL, TYLENOL AND DEMEROL. DEMEROL ON TWO
7 DIFFERENT OCCASIONS TO CONTROL HIS INTENSE PAIN.

8 THAT, IN AND OF ITSELF, IN MY MIND, IS ENOUGH TO
9 RECHALLENGE THE NEUROSURGEON WITH THE THOUGHT THAT THE CAT
10 SCAN MAY NOT PROVE IT, BUT, THIS CHILD CERTAINLY SEEMS TO HAVE
11 A TERRIBLE PROBLEM FROM THE STANDPOINT OF HYDROCEPHALUS, OR
12 INCREASED INTRACRANIAL PRESSURE, AND, LET'S DO SOMETHING
13 DEFINITIVE.

14 Q SO, THIS IS FROM MIDNIGHT ON THE 13TH?

15 A ACTUALLY, IT IS BEGINNING AT 4:00 TO 6:00 ON THE
16 13TH, CONTINUING WHEN DOCTOR KANEREK IS ON CALL FOR THIS
17 PATIENT, CONTINUING THROUGH THE MORNING HOURS OF THE 14TH.

18 Q BY THIS TIME, THE CHILD HAD ALREADY BEEN SEEN BY
19 DOCTOR KAUFMAN?

20 A YES.

21 Q AND, DOCTOR KAUFMAN HAD ALREADY LEFT HIS ORDER
22 THAT THIS CHILD BE MONITORED HOURLY?

1 A CORRECT.

2 Q I TAKE IT THAT IN YOUR REVIEW OF THE CHART, YOU
3 LOOKED AT THE FLOW SHEET, OR, WHAT THEY REFERRED TO AT ST.
4 JOSEPH'S HOSPITAL AS BEING THE FLOW SHEET? IS THAT CORRECT?

5 A YES.

6 Q AND, YOU WOULD AGREE, WOULD YOU NOT, DOCTOR, THAT
7 DURING THAT PERIOD OF TIME YOU JUST DESCRIBED TO US, AT
8 APPROXIMATELY 6:00 P.M., ON THE 13TH ON THROUGH THE 14TH, THAT
9 THE NEUROLOGICAL STATUS OF THE CHILD, AT LEAST, AS REPORTED
10 THERE IN THE CHART, INDICATED THAT THE CHILD HAD EQUAL GRASP,
11 GOOD STRENGTH, CORRECT?

12 A YES.

13 Q AND, THAT STAYED TRUE, ACTUALLY, UP UNTIL THE
14 MORNING OF THE 15TH?

15 A UNTIL HE WAS JUST ABOUT DEAD, YES.

16 Q P.E.R.L., PUPIL EQUAL REACT TO LIGHT?

17 A THERE IS ONE NOTATION OF DILATED PUPILS AT ABOUT
18 8:30 IN THE MORNING ON THE 14TH.

19 4 ONE ISOLATED INCIDENT. THE REST OF THE TIME, THEY
20 ARE EOUAL AND REACT TO LIGHT, ACCORDING TO THE CHART?

21 MR. BARTIMUS: I AM GOING TO OBJECT TO COUNSEL'S
22 COMMENTARY ABOUT ISOLATED. GO AHEAD.

1 BY MR. JACOB:

2 Q WELL, ONE NOTATION, ONE HOUR OUT OF TWO DAYS, I
3 WOULD REFER TO AS ISOLATED. EQUAL AND REACT TO LIGHT RIGHT
4 THROUGH TO THE MORNING OF THE 15TH, CORRECT?

5 A THAT'S CORRECT.

6 Q IS BLOOD PRESSURE AND RESPIRATION HE STATES,
7 ESSENTIALLY, STABLE UNTIL ABOUT 5:00 A.M. ON THE 15TH?

8 A ACTUALLY, I THINK THE BLOOD PRESSURE, ACCORDING TO
9 THE NURSE'S INTERPRETATION OF IT, WAS NOTED TO BE INCREASED AB
10 ABOUT 2:00 O'CLOCK ON THE 15TH, 2:00 A.M.

11 ? SO, UNTIL 2:00 A.M. ON THE 15TH?

12 A THAT'S CORRECT. WHAT IS INTERESTING ABOUT THE
13 VITAL SIGNS AS RELATES TO THE INTERPRETATION WHAT IS GOING ON,
14 IS, IT IS ONE THING TO KNOW THAT VITAL SIGNS ARE, "STABLE,"
15 AND IT IS ANOTHER THING TO KNOW THAT THEY ARE SIGNIFICANT OF
16 SOME UNDERLYING PROBLEM, AND, IN FACT, IF ONE GOES BACK TO THE
17 ORIGINAL PRIOR HOSPITALIZATION IN 1981 AND LOOKS AT THE
18 PRE-OPERATIVE BLOOD PRESSURE AND PULSE ON THIS CHILD, THEY
19 WERE, IN FACT, MORE NORMAL AT THE TIME EVERYBODY AGREED THERE
20 WAS INCREASED INTRACRANIAL PRESSURE AND HYDROCEPHALUS THAN THEY
21 WERE DURING THE TIME WHEN THE CHILD WAS IN THE HOSPITAL THE
22 SECOND TIME UNDER EVALUATION FOR POSSIBLE OBSTRUCTED SHUNT.

1 WHILE THEY WERE, "STABLE," THAT IS TO SAY, NOT
2 CHANGING, THEY ARE SIGNIFICANTLY DIFFERENT FROM WHAT WAS BEFORE
3 FOUND IN THE FACE OF INCREASED INTRACRANIAL PRESSURE.

4 Q THAT SHUNT WAS PLACED ABOUT FOUR YEARS PRIOR TO
5 THE HOSPITALIZATION, WAS IT NOT?

6 A CORRECT.

7 Q THE CHILD WAS FIVE YEARS OLD AT THE TIME?

8 A YES.

9 Q ARE YOU TALKING ABOUT A SITUATION OF THE VITAL
10 SIGNS TAKEN ON THIS CHILD FOUR YEARS PRIOR TO THIS HOSPITALIZA
11 TION JUST PRIOR TO SURGERY?

12 A PERHAPS, YOU MISUNDERSTOOD MY ANALOGY. YES, I
13 AM, BECAUSE IN PATIENTS WITH INCREASED INTRACRANIAL PRESSURE,
14 SOMETIMES, THE PULSE IS LOWERED. WHEN HE IS HOSPITALIZED TO
15 EVALUATE THE PRESENCE OF AN OBSTRUCTED SHUNT AND TO SAY ABOUT
16 THEM, THEY ARE STABLE WITHOUT SAYING THAT THE PULSE IS LOW OR
17 BLOOD PRESSURE IS HIGH, IS MEANINGLESS.

18 WHEN ONE LOOKS BACK TO THE PRIOR RECORD, ONE CAN
19 SEE THIS CHILD HAS "NORMAL PRESSURE," AND INCREASED INTRA-
20 CRANIAL PRESSURE. HOW CAN ONE LOOK AT THIS CHILD IN '85 AND
21 SAY HE DOESN'T HAVE INCREASED INTRACRANIAL PRESSURE, PULSE
22 AND BLOOD PRESSURE NORMAL. I CAN'T MAKE THAT INFERENCE.

1 Q THE FACT OF THE MATTER IS YOU HAVE FOCUSED IN ON
2 ONE THING, THAT THE BLOOD PRESSURE AND PULSE -- ARE YOU SAYING
3 THAT RULES OUT INCREASED INTRACRANIAL PRESSURE?

4 A NO, I AM SAYING THAT THEY ARE NOT ENTIRELY RELIABLE.

5 Q THEY ARE ONE OF THE PARAMETERS YOU CONSIDER?

6 A YES.

7 Q THAT IS ONE OF THE PARAMETERS WE JUST TALKED ABOUT
8 OVER A PERIOD FROM THE ADMISSION TO THE MORNING OF THE 15TH.
9 WHAT WERE THE THREE AGAIN?

10 A LOSS OF NEUROLOGICAL SIGNS, GRIP, GRASP; HIS
11 PUPILS EQUAL, REACT TO LIGHT, BLOOD PRESSURE AND RESPIRATION
12 STABLE -- NOT NORMAL, STABLE. IT IS MEANINGLESS TO SAY NOT
13 NORMAL, STABLE,

14 Q MEANINGLESS IN THE CONTEXT OF THE OTHER PARAMETERS
15 WE ARE TALKING ABOUT?

16 A I THINK IT IS IMPORTANT TO NOTE THE PUPILS ARE
17 EQUAL AND ROUND AND REACT TO LIGHT. IT DOESN'T SAY DILATED
18 BETWEEN SHINING THE LIGHT, THERE IS NO NOTATION ABOUT NYSTAGMUS.
19 NEGATIVE OR POSITIVE. THAT WASN'T NOTED. THE NURSES ARE NOT
20 THERE TO PRACTICE MEDICINE.

21 Q ARE YOU SUGGESTING THAT IF A POSITIVE FINDING, SUCH
22 AS NYSTAGMUS WERE PRESENT AND THE NURSE JUST DIDN'T NOTE IT --

1 A (INTERPOSING) EITHER DIDN'T NOTE IT OR DIDN'T
2 PUT IT DOWN. --

3 Q ARE YOU SUGGESTING IT WAS THERE?

4 A I DON'T KNOW IF IT WAS THERE, BUT, IN MY OPINION --
5 MR. BARTIMUS: YOU ARE INTERRUPTING HIM. LET HIM
6 FINISH THE ANSWER. YOU ARE GOING TO HAVE TIME TO ASK YOUR
7 QUESTIONS. LET HIM FINISH THE ANSWER. THAT IS THE THIRD TIME
8 YOU INTERRUPTED HIM. IT IS RUDE.

9 MR. JACOB: IF I AM RUDE, STOP ME.

10 MR. BARTIMUS: FINISH YOUR ANSWER IF YOU WANT TO,
11 DOCTOR.

12 THE WITNESS: THERE IS NO NOTATION, POSITIVE OR
13 NEGATIVE, AT LEAST, FROM MY REVIEW OF THE RECORDS, AS TO
14 WHETHER NYSTAGMUS WAS THERE OR NOT, BUT, IT IS MY OPINION IT
15 PROBABLY WAS THERE.

16 BY MR. JACOB:

17 Q IT IS YOUR OPINION IT PROBABLY WAS THERE LIKE IT
18 WAS YOUR OPINION THAT DOCTOR ORGAN REALLY DIDN'T MAKE A GOOD
19 SIGN-OFF WITH DOCTOR KANERЕК EVEN THOUGH YOU WERE NOT THERE 3R
20 THAT, EITHER. HE DIDN'T GIVE HIM ALL THE INFORMATION HE NEEDED

21 A I KNOW THAT THE NYSTAGMUS WAS THERE WHEN DOCTOR
22 ORGAN SAW THE PATIENT, AND, I KNOW THE NYSTAGMUS WAS THERE WHEN
DOCTOR KAUFMAN SAW THE PATIENT. I KNOW, ALSO, THAT THIS PATIENT

1 WAS HAVING EXCRUCIATING PAIN, HEADACHE, THROUGH THE NIGHT OF
2 THE 13TH AND 14TH, SEVERE ENOUGH TO REQUIRE FIORNAL AND
3 DEMEROL TWICE.

4 TO ME, THESE ARE SIGNS THAT THIS CHILD WAS HAVING
5 INCREASED INTRACRANIAL PRESSURE, AND, IF NYSTAGMUS WAS PRESENT
6 BECAUSE IT WAS THERE EARLY IN THE DAY, IT SHOULD BE THERE
7 DURING THE LATTER PORTION.

8 Q LET'S TALK ABOUT THE DEMEROL. WE ARE TALKING
9 ABOUT THE SEVERITY OF THE PAIN. WOULD I BE CORRECT THAT A
10 THERAPEUTIC DOSE OF DEMEROL IS .5 TO .8 MILLIGRAMS PER POUND?
11 DOES THAT SOUND ABOUT RIGHT TO YOU?

12 A I USE KILOGRAM. THAT IS ONE TO TWO MILLIGRAMS
13 PER KILOGRAM, SO, THAT IS ABOUT RIGHT, YES.

14 Q AND, THAT WHEN WE ARE TALKING ABOUT A THERAPEUTIC
15 DOSE, WE ARE TALKING ABOUT THAT DOSAGE EVERY THREE TO FOUR HOURS?

16 A THAT IS A FUNCTION OF WHATEVER OTHER MEDICINES ARE
17 BEING USED TO POTENTIATE OR NOT POTENTIATE THE DEMEROL, THE
18 AGE OF THE PATIENT, AND, THE PATIENT'S LIVER FUNCTION.

19 Q YOU ARE NOT SUGGESTING THAT FIORNAL IS A POTENTIATOR
20 OF DEMEROL, ARE YOU?

21 A 'I AM SURE IT IS.

22 Q YOU THINK IT IS?

1 A YES.

2 Q HAVE YOU LOOKED THAT UP?

3 A NO, I HAVE NOT.

4 Q IN ANY EVENT, WE KNOW THAT THIS CHILD NEVER RECEIVED
5 A DOSE LARGER THAN 25 MILLIGRAMS, CORRECT?

6 A THAT IS WHAT THE RECORD STATES, YES.

7 Q BASED UPON THAT CHILD'S AGE, THAT IS LESS THAN EVEN
8 A THERAPEUTIC DOSE, ISN'T IT?

9 A IF YOU WILL REFRESH ME. WHAT WAS HIS ADMITTING
10 WEIGHT?

11 Q I THINK HE WAS AROUND 70 POUNDS -- 74.

12 Q SO, HE IS GETTING JUST SHY OF ONE MILLIGRAM PER
13 KILOGRAM.

14 Q HE IS GETTING LESS THAN A THERAPEUTIC DOSE?

15 A HE IS GETTING A DOSE THAT PROBABLY WOULDN'T GIVE
16 HIM MAXIMAL RELIEF OF PAIN, YES.

17 Q IF WE LOOK AT THE 14TH, HE RECEIVED A DOSE AT 2:30
18 A.M.?

19 A THAT'S CORRECT.

20 Q A LESS THAN THERAPEUTIC DOSE?

21 A YES.

22 Q HE RECEIVED A SECOND DOSE, PER THE ORDER OF DOCTOR

1 ORGAN, AT 2130, CORRECT?

2 A THAT'S CORRECT.

3 Q AM I FURTHER CORRECT THAT IS EIGHT HOURS BETWEEN
4 THOSE TWO DOSES OF DEMEROL?

5 A 9:15 TO 2:30 A.M., IS THAT WHAT YOU HAVE?

6 Q YES.

7 A I HAVE THAT IS ABOUT FIVE HOURS,

8 Q I AM TALKING ABOUT ON THE 14TH.

9 A HE GOT A DOSE AT 2:30 A.M. ON THE 14TH. THE PRIOR
10 DOSE I HAVE LISTED IS ABOUT 9:15 ON THE 13TH, 9:15 P.M.

11 Q I AM TALKING ABOUT ON THE 14TH, THE ONE DOSE
12 ORDERED BY DOCTOR ORGAN THAT HE, IN FACT, RECEIVED, IS AT
13 1:30 ON THE 14TH?

14 A THAT'S CORRECT.

15 Q SO, WE ARE TALKING BETWEEN THAT TIME AND THE
16 PREVIOUS DOSE, WE ARE TALKING EIGHT HOURS?

17 A YES.

18 Q SO, WE ARE NOT ONLY TALKING LESS THAN THERAPEUTIC,
19 WE ARE TALKING WAY LESS THAN THERAPEUTIC?

20 A WITH RESPECT TO THE DEMEROL GIVEN ON THE 14TH BY
21 DOCTOR ORGAN, I THINK IT IS IMPORTANT TO STATE THAT THE CHILD
22 HAD RECEIVED TWO PRIOR DOSES OF FIORNAL IN THE EIGHT HOURS

1 BEFORE THAT.

2 Q IS IT OR IS IT NOT WAY LESS THAN A THERAPEUTIC
3 DOSE, THE DOSE BETWEEN 2:30 A.M. AND 2130 A.M. ON THE 14TH?

4 MR. BARTIMUS: AGAIN, I AM GOING TO OBJECT TO
5 COUNSEL'S VAGUE AND AMBIGUOUS COMMENTS AND HIS COMMENTARY ABOUT
6 WHAT CONSTITUTES, "WAY LESS." GIVE HIM SOMETHING TO GO ON.

7 MR. JACOB: I AM NO MORE VAGUE THAN HIS EARLIER
8 CHARACTERIZATION OF THE TOTALITY OF THE CASE. WE ARE JUST
9 TRYING TO COMMUNICATE AS BEST WE CAN, AND, I THINK HE AND I
10 ARE DOING A GOOD JOB.

11 BY MR. JACOB:

12 Q CONSIDERABLY LESS THAN A THERAPEUTIC DOSE, ISN'T IT?

13 A A THERAPEUTIC DOSE FOR THIS BOY, IF YOU USE ONE
14 MILLIGRAM PER KILOGRAM, WOULD HAVE BEEN IN THE RANGE OF 30 TO
15 35 MILLIGRAMS. HE GOT 25 MILLIGRAMS. WE CAN DEBATE FOR A LONG
16 TIME WHETHER THAT IS WAY LESS OR NOT WAY LESS. IT IS CLOSE
17 TO BUT NOT QUITE THE RECOMMENDED THERAPEUTIC DOSE.

18 THE TRUE THERAPEUTIC DOSE IS THE AMOUNT IT TAKES
19 TO RELIEVE THE PAIN.

20 Q BUT, WE ARE SKIPPING OVER SOMETHING. WE ARE, ALSO
21 'TALKING ABOUT AN EIGHT-HOUR DELAY BETWEEN DOSES' RATHER THAN
22 THREE TO FOUR HOURS, AREN'T WE?

1 Q AND, IN THAT EIGHT-HOUR PERIOD OF TIME, HE RECEIVED
2 TYLENOL AND FIORNAL TWICE TO CONTROL HIS PAIN?

3 MR. BARTIMUS: I THINK HE, PROBABLY, WANTED TO
4 IGNORE THAT.

5 (WHEREUPON, A SHORT RECESS WAS TAKEN.)

6 MR. JACOB: BACK ON THE RECORD.

7 BY MR. JACOB:

8 4 DOCTOR, I THINK WHEN WE BROKE WE WERE TALKING ABOUT
9 THE 14TH?

10 A YES.

11 Q DO YOU HAVE ANY ADDITIONAL CRITICISM OR COMMENTS
12 ON THE CARE OF THE CHILD ON THE 14TH?

13 A A CRITICISM THAT I MIGHT HAVE MENTIONED OR NOT
14 MENTIONED BEFORE, FOR DOCTOR ORGAN, THAT HE USED DEMEROL FOR
15 PAIN RELIEF ON THE 14TH ABOUT 9:30 AT NIGHT.

16 Q ARE YOU SUGGESTING THAT THAT ONE ISOLATED DOSAGE
17 OF DEMEROL HAD SOME IMPACT OR EFFECT ON THE OUTCOME OF THIS.
18 CASE?

19 MR. BARTIMUS: I OBJECT TO THE FORM OF THE QUESTION.

20 THE WITNESS: I DON'T THINK DEMEROL SHOULD BE USED
21 ON A CHILD WHO IS IN THE HOSPITAL FOR EVALUATION OF INCREASED
22 INTRACRANIAL PRESSURE.;

1 MR. JACOB: I UNDERSTAND YOUR CRITICISM, BUT, AGAI
2 I WANT TO GO BACK TO DISTINGUISH BETWEEN THINGS THAT YOU DON'T
3 NECESSARILY AGREE WITH, BUT, REALLY DIDN'T HAVE AN IMPACT ON
4 THE OUTCOME OF THIS CASE OR WERE NOT BELOW THE ACCEPTED
5 STANDARD OF CARE. DOES IT FALL INTO THAT CATEGORY?

6 THE WITNESS: I THINK IT FALLS INTO A MORE SERIOUS
7 CATEGORY; WHEREIN, THE DEMEROL, I THINK, WAS PARTLY MASKING
8 THIS CHILD'S SYMPTOMS OF INCREASED INTRACRANIAL PRESSURE,
9 THE HEADACHES, MAKING HIM FEEL BETTER, AND, SO, IT WAS MORE
10 DIFFICULT TO COME TO GRIPS WITH HOW MUCH DISCOMFORT HE WAS
11 HAVING, AND, I THINK, FROM THAT STANDPOINT, IT WAS BELOW THE
12 STANDARD OF CARE.!

13 I DON'T THINK THE DOSE OF DEMEROL AT 9:30 WAS A
14 CONTRIBUTING FACTOR TO THE RESPIRATORY ARREST THAT OCCURRED
15 LATER ON ON THE NEXT MORNING.

16 BY MR. JACOB:

17 Q THAT ANSWERS THE QUESTION. ANYTHING ELSE ON THE
18 14TH?

19 A I THINK ONE CRITICISM I WOULD HAVE OF DOCTOR ORGAN
20 ON THE 14TH WAS THAT HE DID NOT COMMUNICATE WITH DOCTOR
21 KAUFMAN IN TERMS OF HOW THE CHILD WAS DOING, I THINK THERE
22 WAS AN INDEPENDENT REQUIREMENT FOR DOCTOR ORGAN TO GET ON THE

1 PHONE AND TELL DOCTOR KAUFMAN THAT THIS PATIENT THAT THEY WERE
2 BOTH SEEING WAS REQUIRING NARCOTICS AND FIORNAL TO CONTROL HIS
3 TERRIBLE HEADACHE.

4 Q MY RECOLLECTION OF DOCTOR ORGAN'S TESTIMONY CONCER
5 ING HIS SEEING THE CHILD ON THE 14TH, WAS THAT WHEN HE ARRIVED
6 AT THE HOSPITAL THAT THE CHILD'S NEUROLOGIC SIGNS WERE STABLE,
7 RESPIRATION STABLE, BLOOD PRESSURE STABLE, AND, THE CHILD WAS
8 PUTTING TOGETHER A MODEL AIRPLANE.

9 ARE YOU SUGGESTING DOCTOR KAUFMAN SHOULD HAVE BEEN
10 CALLED IMMEDIATELY AND ADVISED THAT THE CHILD WAS PUTTING
11 TOGETHER A MODEL AIRPLANE?

12 A I THINK DOCTOR KAUFMAN SHOULD HAVE BEEN CALLED
13 IMMEDIATELY AND ADVISED THAT THE NIGHT BEFORE, THIS CHILD
14 REQUIRED TWO DOSES OF DEMEROL, ONE DOSE OF TYLENOL AND ONE
15 DOSE OF FIORNAL IN ORDER TO GET THROUGH THE NIGHT BECAUSE OF
16 THE INTENSE HEADACHE, AND, ISN'T THIS SOMETHING THAT DOCTOR
17 KAUFMAN WOULD LIKE TO KNOW ABOUT?

18 Q HOW MANY HOURS WERE THERE BETWEEN THE DOSES OF
19 DEMEROL?

20 A ON THE 13TH, EVENING, HE GOT A DOSE AT ABOUT 9:15;
21 ON THE 14TH, HE GOT A DOSE ABOUT 2:30 A.M., SO, THAT IS ABOUT
22 FIVE HOURS, FOUR HOURS AND FORTY-FIVE MINUTES.

1 Q WELL, THAT IS CONSIDERABLY LONGER THAN THE
2 THERAPEUTIC -- THE TIME SPAN BETWEEN A THERAPEUTIC DOSE, THREE
3 .TO FOUR HOURS, ISN'T IT?

4 A NO, I DON'T THINK IT IS CONSIDERABLY LONGER THAN
5 THE THERAPEUTIC ACTIVITY OF DEMEROL.

6 Q WHAT I AM SAYING IS, YOU SAID FOR THE CHILD TO MAK
7 IT THROUGH THE NIGHT, IS THE WAY YOU CHARACTERIZED IT, REALLY,
8 WHAT WE ARE TALKING ABOUT IS A MINIMAL DOSE OF DEMEROL. IT IS
9 NOT LIKE WE ARE HAVING TO LOAD THIS CHILD UP WITH DEMEROL?

10 A I DO NOT AGREE THAT 25 MILLIGRAMS OF DEMEROL IS
11 A MINIMAL DOSE OF DEMEROL FOR THE CHILD; MORESO, IN THE FACE
12 OF SOMEONE WHO IS RECEIVING FIORNAL AND TYLENOL AND WHO MIGHT
13 HAVE INCREASED INTRACRANIAL PRESSURE.

14 Q DO YOU KNOW HOW MANY DOSES OF FIORNAL HE RECEIVED?

15 A HOW MANY DID HE RECEIVE --

16 MR. BARTIMUS: (INTERPOSING) WHEN?

17 MR. JACOB: AT ANY TIME,, ALTOGETHER?

18 THE WITNESS: I WILL JUST COUNT UP MY NUMBERS.

19 IT APPEARS THAT HE RECEIVED FOUR DOSES OF FIORNAL.

20 BY MR. JACOB:

21 Q FROM, WHAT, THE EVENING OF THE 13TH TO THE MORNING
22 OF THE 15TH?

1 A THAT WOULD BE CORRECT.

2 Q ANY OTHER CRITICISMS ON THE 14TH?

3 A I THINK THAT WOULD ABOUT COVER IT.

4 Q THAT BRINGS US TO THE 15TH, MAY THE 15TH.

5 A CORRECT.

6 Q ANY CRITICISMS?

7 A CRITICISMS, AGAIN WOULD BE THAT HE GAVE DEMEROL
8 TO A PATIENT IN THE HOSPITAL WHO IS UNDER EVALUATION FOR
9 INCREASED INTRACRANIAL PRESSURE.:

10 Q HE ONLY ORDERED ONE DOSE ON THE 15TH?

11 A THAT'S CORRECT.

12 Q AND, THAT DOSE WAS NOT GIVEN?

13 A THAT'S CORRECT.

14 Q SO, THE CHILD DIDN'T RECEIVE ANY ON THE 15TH, AS
15 A RESULT OF DOCTOR ORGAN'S ORDER?

16 A THAT'S RIGHT.

17 Q OKAY.

18 ANYTHING ELSE ABOUT THE CARE AND TREATMENT RENDERED
19 BY DOCTOR ORGAN ON THE 15TH?

20 A I BELIEVE DOCTOR ORGAN ON THE 15TH, WHEN HE WAS
21 CALLED AT 4:15 IN THE MORNING, SHOULD HAVE NOTIFIED DOCTOR
22 KAUFMAN THAT THEIR PATIENT WAS UNDERGOING SIGNS AND SYMPTOMS;

2 THAT WERE CONTINUING TO BE VERY SUGGESTIVE OF INCREASED
INTRACRANIAL PRESSURE.

15 ORDER DEMEROL FOR THIS KIND OF PATIENT, PARTICULARLY, WITHOUT

Q WAS THE CHILD HAVING TROUBLE BREATHING AT 4:45?

19 A AT 4:45, THERE IS NO NOTATION ABOUT IT.

20 Q SO, WE ARE ASSUMING THAT THE CHILD WAS HAVING A
21 PROBLEM?

22 A I AM ASSUMING THAT THE CHILD WAS HAVING A PROBLEM,

1 AND, I AM, ALSO, STATING THAT A PHYSICIAN PRACTICING WITHIN
2 THE STANDARD OF CARE, TO ORDER THIS MEDICINE, WOULD NEED TO
3 KNOW, NOT JUST WHAT THE RESPIRATORY RATE WAS TWENTY MINUTES
4 BEFORE HE CALLED, BUT, HOW THE CHILD HAD BEEN DOING OVER A
5 PERIOD OF TIME BEFORE THE DEMEROL WOULD HAVE BEEN ORDERED.

6 O WELL, UP UNTIL 4:45 A.M., THROUGH 4:45 A.M., WAS
7 THE PULSE NOT AVERAGING BETWEEN 60 AND 68?

8 A THERE WAS A LOW PULSE, YES, AT THAT TIME.

9 Q RATE, 10 TO 28?

10 A TEN IS A LOW RESPIRATORY RATE.

11 Q THAT WAS LOW, BUT, DIDN'T IT AVERAGE HIGHER THAN
12 THAT?

13 A WE DON'T AVERAGE RESPIRATORY RATES IN CHILDREN
14 WHO ARE UNDER EVALUATION FOR INCREASED INTRACRANIAL PRESSURE.

15 Q I THOUGHT WE WERE SUPPOSED TO LOOK AT THE TOTAL
16 PICTURE?

17 A WE ARE SUPPOSED TO LOOK AT THE TOTAL PICTURE AND
18 PICK OUT THOSE THINGS WHICH MAY BE AT RISK FOR THE PATIENT.

19 O AND, THE TEN, THAT WE HAVE BEEN TALKING ABOUT, DID
20 NOT OCCUR UNTIL -- IT WAS, ACTUALLY, REPORTED AT ABOUT 12:45 A. .,
21 WAS IT NOT?

22 A I DON'T HAVE THE NOTE HERE, BUT, I WILL TAKE YOUR

1 WORD FOR IT.

2 Q IT RANGED FROM 28, 18, 14, 16, UP UNTIL 5:00 A.M.?

3 A YES, IT HAD RANGED FROM LOW TO NORMAL.

4 Q SO, WHEN WE TALK ABOUT DIFFICULTY BREATHING AT
5 4:45, WHEN DOCTOR ORGAN WAS CONTACTED, THAT IS SIMPLY SUPPOSI-
6 TION, SPECULATION ON YOUR PART?

7 MR. BARTIMUS: I AM GOING TO OBJECT TO THE FORM OF
8 THE QUESTION.

9 THE WITNESS: I AM SAYING HE SHOULD HAVE KNOWN.
10 HE SHOULD HAVE REQUIRED THE NURSE TO TELL HIM WHAT THE
11 RESPIRATORY PATTERN WAS LIKE IN THE HOURS BEFORE THE DEMEROL
12 WOULD BE GIVEN.

13 BY MR. JACOB:

14 Q AND, WITH THE ONE EXCEPTION ABOUT 12:45 OR 12:50,
15 WHEN IT WAS DOWN TO TEN, IT REMAINED WITHIN A FAIRLY ACCEPTABLE
16 NORMAL RANGE, DIDN'T IT?

17 A I WOULD SAY, OTHER THAN THAT ONE EXCEPTION, THE
18 RESPIRATORY RATE WAS WITHIN NORMAL RANGE.

19 Q SO, WHAT IS THE NURSE GOING TO TELL HIM, THAT IT
20 " WASN'T?

21 A THE NURSE WOULD TELL HIM THAT HE HAD IRREGULAR
22 RESPIRATIONS FOUR HOURS AGO, THREE HOURS AGO, WITH A VERY LOW

1 RESPIRATORY RATE OF TEN.

2 Q ANYTHING ELSE ON THE 15TH?

3 A I THINK THAT ABOUT COVERS IT.

4 Q HAVE WE ABOUT COVERED IT AS FAR AS DOCTOR ORGAN
5 IS CONCERNED?

6 A YES.

7 MR. JACOB: I DON'T HAVE ANY OTHER QUESTIONS.

8 EXAMINATION BY COUNSEL FOR DOCTOR KANEREK

9 BY MR. WOODSON:

10 Q DOCTOR, I REPRESENT DOCTOR KANEREK, AS YOU KNOW
11 FROM THE EARLIER INTRODUCTIONS, AND, I AM SURE THAT HAVING HAD
12 EXPERIENCE IN DEPOSITIONS AND TRIALS THAT YOU HAVE TESTIFIED
13 IN, YOU UNDERSTAND THAT IF YOU DON'T UNDERSTAND MY QUESTION,
14 TELL ME SO, AND, I WILL TRY TO MAKE IT PLAIN. I WILL ASSUME
15 IF YOU ANSWER, YOU UNDERSTOOD THE QUESTION..

16 A OKAY .

17 Q DOCTOR, ARE YOU AN EMPLOYEE OF THE GEORGETOWN
18 HOSPITAL?

19 A YES, I AM.

20 Q YOU HAVE A PRIVATE PRACTICE WHERE YOU HAVE YOUR
21 OWN PRIVATE PATIENTS?

22 A YES, WE DO.

1 Q I AM ASKING ABOUT YOU, PERSONALLY?

2 A I AM A MEMBER OF A PEDIATRIC GROUP HERE AT THE
3 HOSPITAL WHERE ALL OF THE PATIENTS ARE "PRIVATE PATIENTS." WE
4 DON'T GENERATE INCOME FOR OURSELVES FROM THESE PATIENTS, BUT,
5 THEY ARE ALL TREATED AS PRIVATE PATIENTS.

6 Q WELL, IN OTHER WORDS, THE HOSPITAL GETS THE INCOME?

7 A THE DEPARTMENT OF PEDIATRICS GETS THE INCOME.

8 Q WE HAVE ALL HAD THE BENEFIT, DOCTOR, OF A DEPOSITI
9 YOU HAVE GIVEN AT LEAST ONE OTHER OCCASION, AND, IF MY MEMORY
10 SERVES ME CORRECT, I THINK YOU TESTIFTED, MAYBE, TWENTY PERCENT
11 OF YOUR TIME WAS DEVOTED TO OTHER THAN INFECTIOUS MEDICINE
12 RATHER THAN THIRTY PERCENT, I THINK YOU SAID TODAY?

13 A TWENTY PERCENT, THIRTY PERCENT. IT VARIES YEAR TO
14 YEAR, MONTH TO MONTH. THIS YEAR, IN PARTICULAR, MY ATTENDING
15 DUTIES WILL NO LONGER BE ONE MONTH, BUT WILL BE CLOSER TO TWO
16 MONTHS; SO, IN FACT, THIS YEAR I AM DOING MORE GENERAL
17 PEDIATRICS.

18 Q WHEN YOU SAY YOU ARE ATTENDING, YOU ARE SEEING
19 PEOPLE AT CLINICS, IS THAT CORRECT?

20 A NO, SIR.

21 Q WHAT DOES THAT MEAN, DOCTOR?

22 A PART OF MY JOB HERE AS AN EMPLOYEE OF THE HOSPITAL

1 IS TO DO ATTENDING DUTIES ON THE IN-PATIENT SERVICE, PEDIATRIC
2 IN-PATIENT SERVICE, WHEREBY EVERY PATIENT THAT COMES INTO THE
3 HOSPITAL IS REVIEWED BY ME AND DISCUSSED BY ME WITH THE
4 RESIDENTS AND STUDENTS AND ATTENDING ADMITTING DOCTORS --

5 Q (INTERPOSING) LET ME INTERRUPT.

6 MR. BARTIMUS: DON'T INTERRUPT HIM. YOU ARE
7 STARTING TO DO WHAT HE IS DOING (INDICATING). LET HIM FINISH
8 HIS ANSWER.

9 MR. WOODSON: I WANT TO CLARIFY THAT.

10 MR. BARTIMUS: WAIT UNTIL HE GETS DONE.

11 MR. WOODSON: GO AHEAD THEN, DOCTOR.

12 THE WITNESS: UNTIL THREE YEARS'AGO, I BELIEVE,
13 THAT WAS ROUTINELY TWO MONTHS A YEAR. IT, THEN, WAS SHORTENED
14 TO ONE MONTH FOR SOMETIME, AND, NOW IT IS BACK FOR ME TO ABOUT
15 TWO MONTHS THIS YEAR. SO, IT VARIES YEAR TO YEAR IN TERMS OF
16 WHAT FRACTION OF TIME I SPEND ON THE ATTENDING SERVICE.

17 IN ADDITION TO THAT IN-PATIENT ATTENDANCE, I AM
18 ONE OF THE FIVE MEMBERS OF OUR OUT-PATIENT PEDIATRIC GROUP;
19 WHEREBY ONCE A WEEK, ONE WEEKEND OUT OF EVERY FIVE, EVERY MONDA
20 NIGHT, IN FACT, LAST NIGHT, I AM ON CALL FOR OUR PEDIATRIC
21 GROUP. I WEAR A BEEPER FOR 24 HOURS I AM ON CALL, ON THE
22 WEEKEND, I AM ON CALL FOR THE WHOLE WEEKEND, AND, I TAKE THINGS

1 FROM DIAPER RASHES TO PEPPERONI PIZZA, PERITONITIS, AND, I AM
2 A GENERAL PEDIATRICIAN IN THAT REGARD.

3 BY MR. WOODSON:

4 Q DOCTOR, I TAKE IT FROM WHAT YOU HAVE TOLD ME, YOU
5 HAVE NO INCOME FROM PATIENTS, PER SE. IT COMES FROM THE
6 HOSPITAL?

7 A IT COMES FROM THE DEPARTMENT OF PEDIATRICS.

8 Q AND, WHEN YOU SAY ATTENDING, I WANTED TO CLARIFY
9 THAT, WHEN THEY COME IN, WHEN YOU BECOME THE ATTENDING DOCTOR,
10 YOU MEAN YOU TAKE THAT PARTICULAR PATIENT ON AS YOUR OVERALL
11 RESPONSIBILITY UNTIL THAT PATIENT IS DISCHARGED?

12 A CORRECT, OR, UNTIL I DISCHARGE THAT PATIENT INTO
13 THE CARE OF SOME OTHER DOCTOR.

14 Q TO SOME SPECIALIST, FOR INSTANCE?

15 A OR, SOME OTHER GENERAL PEDIATRICIAN, IF I AM GOING
16 OUT OF TOWN.

17 Q AND, THIS IS A TEACHING HOSPITAL, IS THAT CORRECT?

18 A YES, IT IS.

19 Q I TAKE IT, THEN, THE PATIENTS THAT YOU ARE ATTENDING,
20 THERE ARE, ALSO, RESIDENTS THAT ARE FOLLOWING THAT PARTICULAR
21 PATIENT UNDER YOUR SUPERVISION, IS THAT CORRECT?

22 A YES.

1 Q AS AN ATTENDING PHYSICIAN, WOULD YOU SEE EVERY
2 PATIENT THROUGHOUT A 24-HOUR PERIOD, OR, WOULD YOU BE ON CALL
3 DURING THAT TIME?

4 A I DON'T THINK I UNDERSTAND YOUR QUESTION. I DON'T
5 STAY HERE FOR 24 HOURS.

6 Q BUT, IF YOU HAD A PATIENT THAT YOU HAD ADMITTED,
7 YOUR ARE ON CALL FOR THAT PATIENT FOR 24 HOURS?

8 A YES, FOR THE DURATION OF THE PATIENT BEING IN THE
9 HOSPITAL, UNLESS I SIGN OFF TO SOME OTHER PHYSICIAN.

10 Q DO YOU SIGN OFF AT NIGHT ON YOUR PATIENTS WHEN YOU
11 GO HOME?

12 A AGAIN, A LONG ANSWER TO THAT QUESTION. F'ROM OUR
13 PEDIATRIC GROUP, WE HAVE A ROTATION -- I AM ON ONE NIGHT,
14 DOCTOR RICHMAN (PHONETIC) IS ON THE NEXT NIGHT, SO, WE DO SIGN
15 OFF OUR PATIENTS AT THE END OF THE DAY.

16 WHEN I AM ON THE ATTENDING LIST, MY AND TWO MONTHS
17 TO BE THE ATTENDING, FREQUENTLY, WE GO WEEKS AT A TIME BEING
18 THE ATTENDING AND TAKE THE RESPONSIBILITY FOR ALL THE PATIENTS
19 FOR A WEEK AND NOT BEING ON AT NIGHT FOR A WEEK BUT BEING HERE
20 DURING THE DAY. I HOPE THAT CLARIFIES IT.

21 Q I AM NOT QUITE CLEAR. THE LAST TYPE OF PROGRAM
22 YOU JUST DESCRIBED, DOES THAT MEAN FOR 24 HOURS A DAY, HOWEVER

1 LONG THAT PATIENT IS IN THE HOSPITAL, THEY WOULD CALL YOU TO
2 COME IN, IF NECESSARY?

3 A CORRECT.

5 LIKE THAT ON AN AVERAGE?

6 A IT IS HIGHLY VARIABLE. WHEN I AM ON CALL IN THE
7 WINTER, IT IS VERY OFTEN THAT I COME IN ON WEEKENDS TO SEE
8 PATIENTS TO MAKE ROUNDS. I GET CALLED TO COME BACK TO SEE
9 THEM, I DON'T KNOW, MAYBE, ONE OUT OF TEN PATIENTS WOULD
10 REQUIRE ME TO COME BACK A SECOND TIME IN THAT SAME DAY. I SEE
11 THEM EVERY DAY.

12 Q I MEANT AT NIGHT, THE NIGHTTIME HOURS, HOW OFTEN
13 WOULD YOU BE CALLED IN?

14 A I WOULD SAY, PROBABLY, ONE OUT OF EVERY TEN PATIENTS,
15 OR ONE EVERY TEN NIGHTS. IT IS A SMALL PERCENTAGE OF THE TIME
16 THAT I WOULD HAVE TO COME BACK.

17 Q :DOCTOR, AS I MENTIONED, I AM HERE REPRESENTING
18 DOCTOR KANEREK. DO YOU HAVE ANY CRITICISMS OF THE CARE THAT
19 DOCTOR KANEREK FURNISHED THIS PATIENT?

20 A YES, I DO.

21 Q WOULD YOU STATE WHAT THEY ARE AND KEEP IT
22 CHRONOLOGICAL, IF IT IS NECESSARY? I KNOW DOCTOR KANEREK ONLY,

1 SAW THE PATIENT, WAS INVOLVED WITH THE PATIENT DURING THE
2 NIGHT HOURS OF THE 13TH AND 14TH. WHAT CRITICISMS DO YOU HAVE?

3 A "WELL, THE FIRST CRITICISM, I THINK, DOCTOR KANEREC,
4 DID NOT GET ADEQUATE SIGNOFF FROM DOCTOR ORGAN WITH RESPECT TO
5 THIS PATIENT.

6 Q WE TALKED ABOUT THAT. YOU DON'T KNOW WHAT THE
7 CONVERSATION WAS, BUT, PUTTING IT ALTOGETHER, YOU BELIEVE THAT
8 HE, PROBABLY, DID NOT GET ADEQUATE SIGNOFF?

9 A YES. IT APPEARS TO ME THAT HE DID NOT KNOW THE
10 SALIENT FEATURES OF THIS PATIENT'S HISTORY AND PHYSICAL EXAM
11 WHEN HE ORDERED DEMEROL AND FIORNAL TO TREAT THIS CHILD'S
12 HEADACHES. THE NEXT CRITICISM I HAVE --

13 Q (INTERPOSING) LET ME INTERRUPT YOU THERE ONE
14 MINUTE. WHAT IS A HALF LIFE OF DEMEROL, DOCTOR?

15 A ARE YOU TALKING ABOUT THE PHARMACOLOGIC HALF LIFE
16 OR THE THERAPEUTIC HALF LIFE?

17 Q THERAPEUTIC HALF LIFE.

18 A THREE TO FOUR HOURS.

19 Q THE PHARMACOLOGIC HALF LIFE?

20 A SHORTER THAN THAT.

21 Q WHEN YOU SAY THAT HALF LIFE, THAT MEANS IT SHOULD
22 HAVE AN EFFECT, THERAPEUTICALLY, FOR THREE OR FOUR HOURS ON A

1 GIVEN PATIENT?

2 A IN THE TERMINOLOGY OF HALF LIFE, YES.

3 Q GOING BACK TO THE SALIENT FEATURES, YOU USED THAT
4 TERM, WHAT SALIENT FEATURES ARE YOU TALKING ABOUT?

5 A I AM TALKING ABOUT THE NEUROLOGIC EXAMINATION DONE
6 BY DOCTOR KAUFMAN AND DOCTOR ORGAN WHEN HE WAS ADMITTED, THE
7 EXAMINATION WHICH DISCLOSED THE NYSTAGMUS AND THE DILATED
8 PUPJLS, THEY ARE THE TWO PRIMARY THINGS THAT COME TO MY
9 MIND RIGHT NOW.

10 O ANY OTHER CRITICISMS OF DOCTOR KANEREK?

11 A THAT HE DID NOT SIGN OFF TO DOCTOR ORGAN IN THE
12 MORNING AFTER HE FINISHED TAKING CARE OF THIS PATIENT,
13 ESPECIALLY, AFTER HE HAD ORDERED FIORNAL AND DEMEROL AND DEMEFOL
14 AGAIN.

15 Q WHEN YOU SAY, "SIGN OFF," YOU MEAN TELL HIM CERTAIN
16 THINGS?

17 A CALL HIM UP IN THE MORNING AND SAY, I WAS ON LAST
18 NIGHT, AS YOU KNOW, YOUR PATIENT HAD A LOT OF PROBLEMS, I HAD
19 TO ORDER THESE MEDICINES BECAUSE HIS HEADACHE WAS SO SEVERE:
20 HE COULDN'T SLEEP, AND, I WANT YOU TO KNOW THIS BECAUSE IT IS
21 SOMETHING YOU MIGHT WANT TO HANDLE.

22 Q IT WAS REFLECTED IN THE CHART FOR THE DOCTOR TO READ

1 THE NEXT TIME HE CAME?

2 A I DEFINITELY WAS IN THE CHART AND COULD HAVE BEEN
3 READ.

4 Q YOU ASSUME DOCTOR ORGAN READ THE CHART, DON'T YOU?

5 A I THINK HE HAS A RESPONSIBILITY TO KNOW WHAT IS IN
6 IT.

7 Q ANY OTHER CRITICISMS OF DOCTOR KANEREK?

8 A THAT HE ORDERED THE FIORNAL AND DEMEROL FOR A
9 PATIENT WHO WAS ADMITTED TO RULE OUT INCREASED INTRACRANIAL
10 PRESSURE.

11 Q WHAT IS THE BASIS OF YOUR CONCLUSION?

12 A WHY DO I BELIEVE THAT?

13 Q YES.

14 A BECAUSE DEMEROL AND FIORNAL ARE CONTRAINDICATED
15 IN PATIENTS WHO ARE POSSIBLY UNDERGOING INCREASED INTRACRANIAL
16 PRESSURE, OBSCURING THE SIGNS AND SYMPTOMS OF INCREASED
17 INTRACRANIAL PRESSURE AND MAKING IT MORE DIFFICULT TO DIAGNOSE
18 THOSE CONDITIONS.?

19 Q DO THAT FOR THE HALF LIFE OR FOR THE THERAPEUTIC
20 NUMBER OF HOURS, THREE OR FOUR HOURS, IS THAT CORRECT?

21 A FOR DEMEROL, YES; FOR FIORNAL, BECAUSE BARBITURATES
22 CAN BE LONGER ACTING, CAN BE LONGER THAN THAT.

1 Q HOW LONG, DOCTOR?

2 A AGAIN, IT IS HIGHLY VARIABLE IN TERMS OF HOW THE
3 HUMAN ORGANISM HANDLES IT. THE MATERIAL THAT IS WRITTEN ABOUT
4 IT IN THE P.D.R., FOR INSTANCE, TALKING ABOUT A THREE TO FOUR
5 HOUR THERAPEUTIC EFFECT FOR DEMEROL IS WORK THAT IS DONE IN
6 ADULTS.

7 I DON'T KNOW OF ANY WORK, SPECIFICALLY, LOOKING AT
8 CHILDREN FOR THE DURATION OF THERAPEUTIC EFFECT FOR DEMEROL.
9 'IN GENERAL, CHILDREN HAVE DIFFERENT REQUIREMENTS FOR DIFFERENT
10 MEDICINES, AND, IT MAY WELL BE DIFFERENT'.

11 Q AS A MATTER OF FACT, ISN'T THAT ACCOUNTED FOR BY
12 THE DOSAGES, BY HAVING SMALLER DOSAGES FOR CHILDREN? DOES THAT
13 TAKE CARE OF THAT FACTOR?,

14 A I DON'T KNOW THAT WE REALLY DO HAVE SMALLER **DOSES**.
15 IF YOU LOOK ON A KILO BASIS, WE HAVE LARGER DOSES FOR CHILDREN,

16 Q WE HAVE DETERMINED HERE THAT A THERAPEUTIC DOSAGE
17 FOR THIS YOUNG MAN, WHO WEIGHED 74 POUNDS, WOULD BE **35** INSTEAD
18 OF THE 25 HE WAS GIVEN, IS THAT CORRECT?

19 A JUST LET ME STATE RIGHT NOW, THE THERAPEUTIC DOSE
20 OF ANY DRUG IS THE AMOUNT THAT WORKS. WHAT IS PUBLISHED TO BE
21 EFFECTIVE IN THE AVERAGE PATIENT, IS NOT, NECESSARILY, THE
22 AMOUNT THAT IS REQUIRED IN ANY OTHER PATIENT, AND, SO, TO GIVE

1 35 MILLIGRAMS TO THIS CHILD -- LET ME CHANGE THAT -- IT WOULDN'
2 HAVE BEEN REASONABLE IN THIS CHILD TO GIVE ANY AMOUNT OF DEMERO ,
3 IN MY VIEW, BUT, IF YOU WANTED TO GIVE A CHILD WHO HAD A BROKEN
4 BONE, ANALGESIA FOR THAT PAIN, YOU COULD GIVE 35 MILLIGRAMS IN
5 GOOD FAITH. 25 MILLIGRAMS MAY WELL BE ENOUGH, BUT, 35 MILLIGRA 3
6 WOULD BE A REASONABLE DOSE.

7 IN THIS CASE, OR, IN ANY CASE OF THE USE OF DEMEROL
8 IT HAS BEEN SHOWN THAT OTHER AGENTS WHEN CO-ADMINISTERED OR
9 ADMINISTERED AT ABOUT THE SAME TIME, WILL POTENTIATE THE EFFECT
10 OF THE DEMEROL, MAKE IT MORE LONG LASTING AND REQUIRE A LOWER
11 DOSE.

12 THIS IS COMMONLY USED, FOR INSTANCE, IN OBSTETRICAL
13 'MEDICINE WHERE VISTERIL IS GIVEN WITH DEMEROL, SO YOU CAN GIVE
14 A SMALLER DOSE OF DEMEROL.

15 IN THIS CASE, FIORNAL, WHICH HAS ASPIRIN AND A
16 BARBITURATE, WAS USED INTERMITTENTLY DURING THE COURSE OF THE
17 CHILD'S HOSPITALIZATION, WHICH, IN MY OPINION, POTENTIATED THE
18 EFFECTS OF THE DEMEROL.

19 Q WHAT IS THE BASIS OF THAT OPINION? HAVE YOU
20 STUDIED ANY OF THE PHARMACEUTICAL PUBLICATIONS THAT RELATE THAT
21 CONCLUSION, WAS THAT BASED ON SOME STUDY?

22 A IT IS A WELL-KNOWN PIECE OF PHARMACOLOGIC DATA THAT

1 COMBINING A NARCOTIC, SUCH AS DEMEROL, AND, EITHER TYLENOL
2 OR ASPIRIN, IS A WAY OF POTENTIATING THE ACTION OF THE DEMEROL.
3 THAT IS WHY WE HAVE CODEINE WITH TYLENOL, ASPIRIN WITH TYLENOL
4 -- I'M SORRY, ASPIRIN WITH CODEINE.

5 Q CAN YOU POINT ME TO ANY PARTICULAR PUBLICATION OR
6 TEXT?

7 A I HAVEN'T REVIEWED THIS FOR THE PURPOSES OF THIS
8 DEPOSITION, BUT, I BELIEVE IT WOULD BE IN GOODMAN & GILMAN
9 (PHONETIC).

10 Q OF COURSE, THE EFFECT WOULD VARY WITH THE DOSE,
11 THE GREATER THE DOSE, THE GREATER THE POTENTIATION OF THE TWO
12 DRUGS, AND, THE SMALLER THE DOSE, THE LESS POTENTIATION, IS
13 THAT CORRECT?

14 A THAT WOULD, PROBABLY, BE CORRECT.

15 Q THE DOSES THAT WERE ACTUALLY INVOLVED, WERE
16 RELATIVELY SMALL DOSES OF BOTH DEMEROL AND FIORNAL, IS THAT
17 CORRECT?

18 MR. BARTIMUS: I WOULD OBJECT TO THE FORM OF THE
19 QUESTION -- RELATIVELY SMALL, SORT OF SMALL, MINIMAL, AND, HE
20 HAS EXPLAINED THAT OVER AND OVER. THAT IS YOUR INTERPRETATION.
21 SMALL.

22 MR. WOODSON: I WILL TRY TO CLARIFY IT, IF YOU

.

1 DON'T UNDERSTAND IT, I THINK THE DOCTOR DOES.

2 MR. BARTIMUS: I CAN UNDERSTAND IT, TOO.

3 MR. WOODSON: MORE THAN ANYTHING, THE JURY NEEDS
4 TO UNDERSTAND IT.

5 MR. BARTIMUS: THAT'S RIGHT, SO, LET'S GET AWAY
6 FROM SMALL AND MOVE ON TO SOMETHING ELSE.

7 BY MR. WOODSON:

8 Q DOCTOR, IT IS BELOW WHAT IS THE RECOMMENDED DOSAGE
9 IN THE P.D.R., IS THAT CORRECT?

10 A LET ME SAY, I DON'T KNOW THAT THERE IS SUCH A THING
11 AS A RECOMMENDED DOSE IN THE P.D.R. FOR FIORNAL, SINCE IT IS
12 NOT RECOMMENDED TO BE GIVEN TO CHILDREN UNDER THE AGE OF TWELVE
13 HOW YOU CAN REPRESENT THAT -- PERHAPS, YOU HAVE SOME INFORMATIO
14 THAT I DON'T HAVE.

15 Q IT ISN'T, ACTUALLY, ONE WAY OR THE OTHER, ISN'T
16 THAT CORRECT?

17 A IT SHOULD NOT BE USED IN CHILDREN UNDER THE AGE OF
18 TWELVE.

19 Q WHERE DO YOU GET THAT INFORMATION?

20 A THE P.D.R.

21 Q WHEN IT SAYS IN THE P.D.R., THERE ISN'T ANY
22 STATISTICS ABOUT THE USE IN CHILDREN, DOES THAT MEAN YOU

1 SHOULDN'T USE IT.

2 A IT DOESN'T MEAN YOU SHOULDN'T USE IT. IT MEANS
3 IF YOU HAVE A VERY GOOD REASON FOR USING IT, YOU NEED TO KNOW
4 THAT IT IS GOING TO BE SAFE FOR YOUR PATIENT.

5 Q DOCTOR, ISN'T IT GENERALLY TRUE IN THE PRACTICE OF
6 MEDICINE, FREQUENTLY, PHYSICIANS USING MEDICATION, ~~THE~~ P.D.R.
7 DOESN'T SAY, ONE WAY OR THE OTHER, WHETHER THEY SHOULD USE ~~THAT~~

8 A THAT IS TRUE.

9 Q ANY OTHER CRITICISMS OF DOCTOR KANEREC?

10 A NO, I THINK THAT IS ABOUT IT.

11 MR. WOODSON: I DON'T HAVE ANY FURTHER QUESTIONS.

12 EXAMINATION BY COUNSEL FOR DEFENDANT DOCTOR KAUFMAN

13 BY MS. KENNER:

14 Q DOCTOR, WE HAVE ALREADY BEEN INTRODUCED. MY NAME
15 IS NANCY KENNER. I AM HERE FOR DOCTOR KAUFMAN, SEATED TO MY
16 RIGHT. FIRST, I HAVE A QUESTION ABOUT TRIAL TESTIMONY. HAVE
17 YOU EVER, ACTUALLY, TESTIFIED IN COURT?

18 A YES, I HAVE.

19 Q WHEN WAS THAT?

20 Q I BELIEVE THE LAST TIME WAS IN MAY OR APRIL OF THIS
21 YEAR. I WAS A DEFENDANT'S EXPERT FOR A PEDIATRICIAN WHO WAS
22 BEING SUED.

1 Q WHERE WAS THAT?

2 A FLORIDA.

3 Q WHEREABOUTS IN FLORIDA?

4 A LONG BEACH STATE COMES TO MIND, BUT, I DON'T THINK
5 THAT IS IN FLORIDA. JUST OUTSIDE OF MIAMI. I CAN'T REMEMBER
6 THE NAME OF THE JURISDICTION.

7 Q DO YOU REMEMBER THE NAME OF THE LAWYER THAT YOU WERE
8 TESTIFYING FOR?

9 A YES, CARL SANTONE.

10 Q HE IS IN MIAMI?

11 A I DON'T REALLY KNOW. I THINK HE MIGHT BE.

12 Q I THINK YOU IMPLIED THAT YOU TESTIFIED IN COURT
13 ON ANOTHER OCCASION. WHEN WAS THAT?

14 A I WAS A DEFENDANT'S EXPERT ABOUT A YEAR AGO, MAYBE,
15 A LITTLE BIT MORE THAN A YEAR AGO FOR A PEDIATRICIAN WHO WAS
16 BEING SUED FOR MISUSE OF THE DIPHTHERIA, PERTUSSIS AND TETANUS
17 VACCINE.

18 Q WHERE WAS THAT?

19 A IT WAS EITHER MARYLAND OR THE DISTRICT. THIS WAS
20 A PANEL. I DON'T KNOW IF THAT FITS WITH YOUR JUDGMENT.

21 Q BUT YOU ACTUALLY DID GO IN A COURTROOM FORMAL
22 SETTING AND TESTIFY?

1 A YES.

2 Q WERE YOU CALLED BY A LAWYER TO TESTIFY -- WERE YOU
3 WORKING WITH A LAWYER ON THE CASE OR WERE YOU CALLED BY THE
4 COURT?

5 A A LAWYER.

6 Q DO YOU REMEMBER HIS NAME?

7 A NO, OFFHAND, I CAN'T.

8 Q DO YOU REMEMBER THE DOCTOR'S NAME?

9 A SOMETHING LIKE SAPERSTEIN (PHONETIC) OR SILVERSTEIN
10 (PHONETIC).

11 Q OKAY.

12 A DAVID LEVIN WAS THE LAWYER -- L-E-V-I-N.

13 Q TELL ME, DOCTOR, IF YOU HAVE ANY CRITICISMS HERE
14 TODAY OF DOCTOR KAUFMAN'S CARE THAT HE GAVE IN THIS CASE?

15 A DOCTOR KAUFMAN, I THINK, IS A LITTLE BIT MORE
16 DIFFICULT FOR ME TO DISCUSS THAN THE OTHER DOCTORS, BUT, I
17 THINK HE WAS, IN A WAY, PUT INTO A DIFFICULT SITUATION, BUT --

18 Q (INTERPOSING) WHY IS THAT?

19 A I THINK THE NURSES FROM THE HOSPITAL WERE NOT
20 INFORMING HIM COMPLETELY AS TO WHAT THE CONDITION OF THE
21 CHILD WAS, AND, WHAT WAS GOING ON WITH THE CHILD, SOMETHING THAT
22 I THINK SHOULD HAVE BEEN, IN FACT, HAPPENING, BASED ON THE FACT

1 THAT HE WROTE THE ORDERS FOR Q ONE-HOUR VITAL SIGNS, BUT
2 THAT HAVING BEEN SAID, I DO THINK DOCTOR KAUFMAN HAD A
3 RESPONSIBILITY TO RE-EXAMINE THE PATIENT THE DAY AFTER
4 ADMISSION, ESPECIALLY, SINCE HE ADMITS IN HIS OWN DTCTATE
5 SUMMARY OF HIS INITIAL EVALUATION, THAT, BECAUSE OF THE
6 PATIENT'S UNCOOPERATIVENESS, HIS INITIAL EXAM WAS NOT COMPLETE
7 OR ACCURATE.

8 THAT BEING THE CASE, I DO THINK THERE WAS A
9 REQUIREMENT FOR HIM TO RE-EVALUATE ON A PHYSICAL BASIS WHETHER
10 SOME OF THE SIGNS AND SYMPTOMS THAT WOULD BE WORRISOME TO HIM
11 AS AN EXPERT IN NEUROSURGERY WERE PRESENT OR NOT.

12 Q WHEN DO YOU THINK THE EXAMINATION SHOULD HAVE
13 TAKEN PLACE?

14 A SOMETIME THE NEXT DAY AT HIS CONVENIENCE.

15 Q IF DOCTOR KAUFMAN HAD CALLED IN -- I THINK YOU
16 HAVE READ HIS DEPOSITION, HAVEN'T YOU?

17 A YES, MA'AM.

18 Q YOU ARE AWARE HE CALLED IN THE NEXT DAY AND WAS
19 TOLD THE PATIENT WAS DOING FINE, SITTING UP IN BED, MAKING A
20 MODEL AIRPLANE. IF HE HAD CALLED IN, ASSUMING THAT IS ACCUFAT
21 DO YOU STILL FEEL HE SHOULD HAVE COME IN AND EXAMINED THE
22 PATIENT?

1 Q I THINK A PATIENT WHO IS RECEIVING TYLENOL, FIORNAL
2 AND DEMEROL FOR HIS PAIN, AND, A PATIENT WHO COULD HAVE AN
3 INTERMITTENT OBSTRUCTION FOR THE SHUNT, COULD WELL HAVE PERIODS
4 OF WELL BEING AND PERIODS OF SIGNS AND SYMPTOMS.

5 SO, I THINK HE STILL HAD A RESPONSIBILITY TO DO
6 AT SOMETIME THAT DAY, AN EXAMINATION. I DO THINK, THOUGH,
7 THAT HE SHOULD HAVE GOTTEN MORE INFORMATION, AND, ON THE OTHER
8 SIDE OF THE COIN, I THINK THE NURSE WHO IS TALKING TO HIM OVER
9 THE PHONE, IS AT FAULT FOR NOT HAVING GIVEN A MORE COMPLETE
10 STORY AS TO WHAT THE PATIENT'S STATUS WAS GOING THROUGH THE
11 NIGHT, AND, I THINK, DOCTOR KAUFMAN, IN HIS OWN DEPOSITION,
12 ADMITS HAD HE BEEN INFORMED OF SOME OF THE THINGS THAT WERE
13 HAPPENING WITH THE PATIENT, HE WOULD HAVE TAKEN A DIFFERENT
14 APPROACH TO THE EVALUATION OF THIS CHILD, AND, I THINK TO HAVE
15 KNOWN THAT DEMEROL AND FIORNAL WERE REQUIRED FOR THIS CHILD'S
16 HEADACHE, MIGHT HAVE MADE A BIG DIFFERENCE IN THE CHILD'S
17 OUTCOME.

18 Q ASSUMING THAT HE DID NOT KNOW, AS HE HAS TESTIFIED
19 TO, DO YOU STILL THINK HE SHOULD HAVE COME IN THE NEXT DAY TO
20 DO THE EXAM, WHEN HE IS NOT TOLD ABOUT THE CHILD'S CONDITION
21 THROUGH THE NIGHT, AND, WHEN HE CALLED, HE WAS TOLD HE WAS
22 DOING FINE?

1 A WELL, I THINK, SINCE THIS IS A LIFE-THREATENING
2 PROBLEM, AND, SINCE HE ADMITS THAT HIS FIRST EVALUATION WAS
3 NOT **AS** THOROUGH OR NOT AS ACCURATE OR RELIABLE, I GUESS I
4 WOULD SAY, AS IT COULD HAVE BEEN, I THINK HE HAD A RESPONSIBILITY
5 TO SEE THE PATIENT THE SECOND DAY.

6 Q TELL ME A LITTLE BIT ABOUT YOUR BACKGROUND IN
7 NEUROSURGERY. DID YOU ROTATE THROUGH THAT DURING YOUR RESIDENCY ?

8 A NO, NOT THROUGH MY RESIDENCY, DURING MEDICAL SCHOOL

9 Q ANY OTHER TRAINING, WHATSOEVER?

10 A ONLY WORKING WITH PATIENTS WITH OTHER NEUROSURGEONS

11 Q BUT, YOU HAVEN'T TAKEN ANY SPECIAL COURSES AND
12 YOU CERTAINLY DON'T HAVE ANYWHERE NEAR THE EXPERIENCE OF DOCTOR
13 KAUFMAN?

14 A I AGREE WITH YOU.

15 Q ANY OTHER CRITICISMS OF DOCTOR KAUFMAN?

16 A NO, THEY ARE MY TWO CRITICISMS OF DOCTOR KAUFMAN.;

17 Q I ONLY GOT ONE, DID I MISS SOMETHING?

18 A FAILURE TO OBTAIN SUFFICIENT INFORMATION FROM THE
19 NURSE TO SATISFY HIS DECISION THAT THERE WASN'T ANY NEED FOR
20 HIM TO COME BY AND RE-EVALUATE THE PATIENT.

21 Q SO, YOU ARE SAYING THE FAILURE TO OBTAIN THE
22 INFORMATION IN THE FIRST PLACE, AND, THEN, FAILURE TO DO THE

1 EXAM?

2 A I THINK HE COULD HAVE COME IN AND DONE THE EXAM
3 AND TAKEN THE INFORMATION FROM THE CHART, BUT, IF HE HAD A
4 PHONE CALL FROM THE NURSE WHO SAID HE IS DOING FINE, HE IS
5 SITTING UP IN BED MAKING A MODEL AIRPLANE, THAT IS NICE TO
6 KNOW, BUT, SINCE SHUNT OBSTRUCTIONS CAN BE INTERMITTENT, I
7 THINK ONE NEEDS TO KNOW THE PATTERN OF WHAT HAS HAPPENED SINCE
8 HE WAS ADMITTED AND THAT WASN'T OBTAINED,

9 Q BUT, YOU DON'T REALLY KNOW WHAT HAPPENED IN THAT
10 CONVERSATION, EITHER?

11 A NO, I DO NOT.

12 MS, KENNER: I DON'T HAVE ANY OTHER QUESTIONS,
13 THANK YOU.

14 EXAMINATION BY COUNSEL FOR DEFENDANT ST. JOSEPH
15 HOSPITAL

16 BY MR. MC MANUS:

17 Q DOCTOR, MY NAME IS JIM MC MANUS. I REPRESENT THE
18 HOSPITAL IN THIS CASE, THE SAME THING MR. WOODSON ASKED YOU
19 INITIALLY IS THE SAME HERE. I AM GOING TO ASK YOU A SERIES
20 OF QUESTIONS, AND, IF ANY OF THOSE QUESTIONS ARE UNCLEAR TO
21 YOU, WILL YOU PLEASE TELL ME; OTHERWISE, I WILL ASSUME THAT THE
22 QUESTION I ASKED YOU IS CLEAR TO YOU AND YOU HAVE GIVEN THE
APPROPRIATE ANSWER.

1 DOCTOR, I THINK YOU MENTIONED EARLIER IN RESPONSE
2 TO A QUESTION BY MR. JACOB, THAT NURSES DO NOT PRACTICE MEDICINE?

3 A THAT'S CORRECT.

4 Q AND, NURSES, OF COURSE, ARE NOT LICENSED TO PRACTICE
5 MEDICINE?

6 A THAT'S CORRECT.

7 Q AND, THE NURSES ARE NOT IN THE HOSPITAL TO PRACTICE
8 MEDICINE?

9 A THAT'S CORRECT.

10 Q IN YOUR HOSPITAL, DO YOU HAVE CERTAIN PROTOCOLS?

11 A FOR MANY THINGS, YES.

12 Q ARE YOU FAMILIAR WITH PROTOCOLS IN THE HOSPITAL
13 WHERE THE PROTOCOL IS SUCH THAT THE NURSES ARE TO CONTACT THE
14 PRIMARY ADMITTING PHYSICIAN?

15 A YES.

16 Q ARE YOU FAMILIAR WITH THE PROTOCOL, IN THIS CASE OF
17 ST. JOSEPH HOSPITAL, WERE THE NURSES WERE TO CONTACT THE
18 PRIMARY ADMITTING PHYSICIAN, DOCTOR ORGAN?

19 A I THINK DOCTOR ORGAN SHOULD HAVE BEEN NOTIFIED BY
20 THE NURSES.

21 Q DO YOU THINK THAT THE NURSES FAILED TO NOTIFY;
22 DOCTOR ORGAN?

1 Q I THINK THAT THERE WERE A COUPLE OF OCCASIONS WHEN
2 DOCTOR ORGAN WAS NOT NOTIFIED BY THE NURSES WHEN HE SHOULD HAVE
3 BEEN, AND, I THINK, ALSO, THAT THE NURSES HAD A RESPONSIBILITY
4 TO NOTIFY DOCTOR KAUFMAN, SINCE HE WAS THE ONE WHO HAD WRITTEN
5 THE ORDERS TO INCREASE THE VITAL SIGNS FROM EVERY FOUR HOURS
6 EVERY ONE HOUR, AND, IN THAT SENSE, HE HAS AGREED TO PARTICIPATE
7 IN THE MONITORING OF THIS AT-RISK PATIENT.

8 Q LET'S START OUT ON THE COUPLE OF OCCASIONS WHEN
9 YOU SAY THE NURSES SHOULD HAVE NOTIFIED DOCTOR ORGAN. WHAT
10 WERE THE TWO OCCASIONS, IF I UNDERSTAND YOU CORRECTLY, WHAT
11 WERE THE COUPLE OF OCCASIONS THAT DOCTOR ORGAN SHOULD HAVE BEEN
12 NOTIFIED BY THE NURSES?

13 A I THINK THERE WERE MANY OCCASIONS WHEN THINGS WERE
14 HAPPENING THAT COULD HAVE BEEN CALLED TO THE ATTENTION OF DOCTOR
15 ORGAN AND WEREN'T, BUT, WHICH I AM NOT HIGHLY CRITICAL OF. IT
16 SEEMS REASONABLE TO ME THAT WHEN PHYSICIANS ARE VISITING AND
17 CALLING, THAT MAY, IN A WAY, SUFFICE FOR SOME OF THE INTERIM
18 PROBLEMS.

19 WHAT I AM PARTICULARLY WORRIED ABOUT IS THE
20 NOTATION AT 12:50 A.M. ON THE 15TH, WHEN A NURSE NOTES IRREGULAR
21 BREATHING IN A PATIENT RECEIVING NARCOTICS AND BARBITURATES,
22 THAT SHOULD HAVE BEEN CALLED TO DOCTOR ORGAN'S ATTENTION, IN MY

1 VIEW. IT WAS A NEW FINDING, A NEW SIGN, SOMETHING THAT NURSES
2 ARE EXPECTED TO UNDERSTAND ABOUT WHEN THEY ARE GIVING MEDICINES
3 THAT CAN SUPPRESS THE BREATHING CENTER OF THE BRAIN, AND,
4 ESPECIALLY, IN THE CASE OF SOMEONE WHO IS IN THE HOSPITAL BECAUSE
5 OF THE POTENTIAL FOR INCREASED INTRACRANIAL PRESSURE, I THINK
6 THERE IS AN URGENCY TO COMMUNICATE SOMETHING AS BASIC AS WHAT
7 MIGHT BE THE BEGINNING OF A RESPIRATORY PROBLEM.

8 Q WHEN YOU SAY THAT, YOU PLACE THE PHRASE ON IT, WHAT
9 COULD HAVE BEEN THE BEGINNING OF A RESPIRATORY PROBLEM. ISN'T
10 IT TRUE WE ARE NOW LOOKING BACK -- AGAIN, HINDSIGHT IS ALWAYS
11 20/20, WE ARE LOOKING BACKWARDS, ISN'T IT TRUE THAT A NURSE
12 AT 12:50 ON THE 15TH MIGHT NOT HAVE HAD THE BENEFIT OF THAT
13 HINDSIGHT?

14 A I AM NOT WORRIED ABOUT HINDSIGHT. I AM WORRIED
15 ABOUT THE ORDER THAT SAYS, VITAL SIGNS AND THE KNOWLEDGE OF
16 THE NURSE THAT IF VITAL SIGNS ARE CHANGING AND THERE IS A
17 POTENTIALLY SERIOUS EVOLUTION OF THE ILLNESS ONGOING, SHE SHOULD
18 CALL THE DOCTOR.

19 I AM NOT ASKING HER TO COME TO A CONCLUSION. I
20 AM ASKING HER JUST TO REPORT IT TO THE DOCTOR, SO, HINDSIGHT
21 DOESN'T HAVE ANYTHING TO DO WITH IT.

22 Q SO, YOU ARE SAYING AT 12:50 ON THE 15TH, SHE SHOULD

1 HAVE CALLED THE DOCTOR?

2 . A YES.

3 Q THAT WOULD HAVE BEEN DOCTOR ORGAN?

4 A I BELIEVE SO. THE SECOND TIME IS ABOUT AN HOUR
5 TWENTY MINUTES LATER, 2:10, WHEN THE NURSE NOTICES THAT THE
6 BLOOD PRESSURE HAD INCREASED SOME, ELEVATION IN BLOOD PRESSURE
7 WAS ASKED OF ALL OF THE NURSES IN THEIR DEPOSITIONS, IS A
8 SIGN OF INCREASED INTRACRANIAL PRESSURE.

9 I DON'T THINK THE NURSES NEED TO EVALUATE WHETHER.
10 IN THIS PARTICULAR INSTANCE, IT IS A SIGN OF INCREASED
11 INTRACRANIAL PRESSURE. I THINK SHE SHOULD REPORT IT TO THE
12 DOCTOR, AND, HE IS THE ONE TO EVALUATE IT.

13 Q THIS IS BLOOD PRESSURE?

14 A YES.

15 Q WHAT WAS IT AT 2:10?

16 A 124/86. .

17 ? THE DIASTOLIC WAS STILL DOWN, WASN'T IT?

18 A AN 86 DIASTOLIC PRESSURE IS, PROBABLY, IN THE NIN
19 TIETH PERCENTILE, PERHAPS, EVEN NINETY-FIFTH PERCENTILE
20 FOR THE AGE, SO, IN ITS STRICTEST SENSE, IT HASN'T DEVIATED
21 MORE THAN TWO STANDARD DEVIATIONS FROM THE MIEN, BUT, IT IS
22 ABOUT AS HIGH AS YOU CAN GET WITHOUT SAYING, DEFINITELY,

1 THIS IS ELEVATED.

2 Q IT IS STILL WITHIN THE NORMAL CURVE, AS SUCH?

3 A YES.

4 Q AND, IT HASN'T ACTUALLY GOTTEN OUTSIDE OF THE
5 NORMAL CURVE?

6 A IT IS CERTAINLY HIGH ENOUGH FOR THE NURSE TO NOTE
7 IT. I DON'T KNOW WHO IT WAS. IT IS CERTAINLY HIGH ENOUGH
8 FOR THE NURSE TO NOTE, BLOOD PRESSURE INCREASED SOME, SO,
9 WHOEVER THIS NURSE WAS, WAS SMART ENOUGH TO NOTICE THIS WAS A
10 CHANGE.

11 Q ARE YOU SAYING THAT FELL BELOW THE NURSE'S STANDAR
12 OF CARE?

13 A I THINK SHE SHOULD HAVE NOTIFIED THE DOCTOR.

14 Q NOW, HAVE I DISCUSSED WITH YOU THE TWO OCCASIONS
15 THAT YOU THINK THE NURSES SHOULD HAVE CALLED DOCTOR ORGAN?

16 A YES. I THINK, DOCTOR KAUFMAN, AS I MENTIONED
17 BEFORE, SHOULD HAVE BEEN APPRISED BY THE NURSES THROUGH THE
18 DAY OF WHAT THE SITUATION AND THROUGH THE NIGHT, OF WHAT THE
19 SITUATION WITH THE PATIENT WAS.

20 Q WHAT DAY WAS THAT?

21 A FROM THE TIME OF ADMISSION, I THINK DOCTOR KAUFMAN
22 HAD A RESPONSIBILITY TO BE NOTIFIED BY THE NURSES WHEN THINGS

1 WERE DIFFICULT WITH THE PATIENT.^d

2 Q IF YOU WERE ASKED TO ASSUME THAT THE PROTOCOL,
3 THOUGH, AT THE HOSPITAL CALLED ONLY FOR THE PRIMARY ADMITTING
4 PHYSICIAN TO BE NOTIFIED BY THE NURSES, WOULD YOU STILL HAVE THE
5 OPINION THE NURSES SHOULD HAVE CALLED DOCTOR KAUFMAN?

6 MR. BARTIMUS: I AM GOING TO OBJECT TO TYE

10 NOTIFY THE PHYSICIANS WHO PUT DOWN THE ORDERS, AND WHETHER OR
11 NOT THEIR DUAL CAPACITY AT ST. JOSEPH HOSPITAL IS UNCLEAR BY
12 THEIR OWN PROTOCOL, YOU ARE ASKING HIM TO ASSUME FACTS NOT IN
EVIDENCE.

13 MR. MC MANUS: HIS OBJECTION IS NOTED FOR THE
14 RECORD, DOCTOR.

15 THE WITNESS: COULD YOU REPEAT THE QUESTION?

16 MR. MC MANUS: WOULD YOU READ IT BACK?

17 (WHEREUPON, THE PENDING QUESTION WAS READ BACK BY
18 THE COURT REPORTER,)

19 THE WITNESS: IT IS A VERY HARD QUESTION, ASSUMING
20 THAT A DOCTOR WRITING AN ORDER THAT A NURSE TAKES OFF AND
21 FOLLOWS, ROUTINELY, DOESN'T REQUIRE THAT DOCTOR TO BE NOTIFIED,
22 THEN, I WOULD SAY, YES. IN A WAY, IT IS CIRCULAR REASONING.

1 YOU ARE SETTING UP A STRAW MAN WITH YOUR QUESTION AND I WILL
2 ANSWER IT THE WAY **YOU** WANT IT ANSWERED, IF, IN FACT, THE
3 HOSPITAL POLICY HAS NO REQUIREMENT, WHATSOEVER, FOR ANYBODY
4 TO BE NOTIFIED EXCEPT THE ATTENDING DOCTOR, THE DOCTOR ON THE
5 NAME PLATE, THE DOCTOR OF RECORD, THEN, I GUESS THIS NURSE
6 DID NOT DEVIATE FROM THE STANDARD OF CARE.

7 **IT IS** MY VIEW, THOUGH, THAT WHEN THE DOCTOR
8 WRITES ORDERS, AS DOCTOR KAUFMAN WROTE THE Q ONE-HOUR VITAL
9 SIGNS, THAT HE HAS ASSUMED, IN PART, RESPONSIBILITY OF THE
10 CARE AND TREATMENT **OF** THE PATIENT AND SHOULD BE NOTIFIED,

11 BY MR. MC MANUS:

12 Q DO THE NOTES BY DOCTOR KAUFMAN CONTAIN ANY
13 REQUIREMENT **THAT THE** NURSE NOTIFY HIM?

14 A LET **ME** REFER TO THE ORDER, IF **I** MIGHT.

15 (WITNESS EXAMINING RECORD.)

16 A NO, IT DOES NOT.

17 Q WOULD THAT CHANGE YOUR OPINION?

18 A NO, IT DOES NOT,

19 Q ARE THERE ANY OTHER INSTANCES WHERE YOU ARE
20 CRITICAL OF THE NURSES?

21 A NO, I THINK THEY ARE MY MAIN CRITICISMS.

22 Q WHAT PERCENTAGE **OF** YOUR INCOME, ON AN ANNUAL BASIS

1 IS THE RESULT OF REVIEWING MEDICAL RECORDS AND TESTIFYING?

2 A OVER THE LAST TEN YEARS I HAVE BEEN DOING THIS,
3 PROBABLY, FIVE PERCENT. LAST YEAR, IT WAS MORE THAN THAT, BECAUSE

4 I DID A FAIR NUMBER OF DEFENSE CASES THAT WENT TO TRIAL,

5 Q LAST YEAR, WHAT WAS THE PERCENTAGE?

6 A PROBABLY, FIFTEEN PERCENT.

7 Q THIS YEAR, WHAT DO YOU THINK THE PERCENTAGE WILL BE?

8 A PROBABLY, ABOUT FIFTEEN PERCENT.

9 Q DOCTOR, YOU TOLD NANCY KENNER YOU TESTIFIED IN
10 APRIL OF THIS YEAR, AS I RECALL, IS THAT RIGHT?

11 A YES. THE CASE IN FLORIDA.

12 Q THAT WAS FOR A DOCTOR?

13 A YES.

14 Q DO YOU RECALL THE DOCTOR'S NAME?

15 A THAT WAS A LADY DOCTOR. I CAN'T RECALL HER NAME.

16 Q DO YOU RECALL THE PLAINTIFF'S NAME? I INTERRUPTED
17 YOU. YOU WERE GOING TO SAY SOMETHING ELSE.

18 A THIS IS MR. SANTONE'S CASE, RIGHT?

19 Q THAT IS CARL SANTONE?

20 A RIGHT. THE PLAINTIFF'S NAME. I SHOULD REMEMBER
21 THE NAME OF THE BABY, BUT, I CAN'T.

22 Q IT WAS A BABY CASE?

1 A YES. IT WAS A NEWBORN BABY. I AM SORRY. I CAN'T
2 REMEMBER IT.

3 Q WHAT WAS THE PROBLEM OR THE ALLEGATION?

4 A THE ALLEGATION WAS ONE OF FAILURE TO DIAGNOSE
5 GROUP "B" STREP DISEASE IN A NEWBORN BABY, AND, I THINK THERE
6 WERE SOME ANALOGIES IN THAT CASE TO THIS CASE IN THE SENSE
7 THAT SOME VERY CLEAR ORDERS WERE WRITTEN BY THE DOCTORS TO
8 NOTIFY THE PHYSICIAN FOR THE FOLLOWING A, B, C, D, F AND G,
9 AND, THE NURSES DID NOT DO THAT, SO THE BABY DIED IN THE BED
10 AFTER SEVERAL ABNORMALITIES OF THE PHYSICAL EXAM TAKEN BY THE
11 NURSES AND NO DOCTOR HAD BEEN NOTIFIED.

12 Q AND, YOU TESTIFIED IN COURT ON THAT ONE?

13 A YES.

14 Q DID YOU GIVE A DEPOSITION, AS WELL?

15 A I THINK -- YES, IN FACT, IT WAS A SATURDAY
16 DEPOSITION.

17 Q WHAT WAS THE OUTCOME **OF** THAT CASE?

18 A I KNOW THAT THE PEDIATRICIAN WHO WAS SUED WAS
19 EXONERATED. I DON'T KNOW ANY MORE SPECIFICS ABOUT IT THAN
20 THAT.

21 Q YOU MENTIONED THE OTHER CASE YOU TESTIFIED IN
22 RECENTLY WAS REALLY A PANEL?

1 A AN ARBITRATION PANEL IN ONE OF THE LOCAL JURISDIC-
2 TIONS,

3 Q SOMEWHERE IN D. C., YOU THINK?

4 A D. C. OR MARYLAND, I DON'T EVEN KNOW IF D. C. HAS
5 A PANEL. IF YOU FOUND OUT THAT MARYLAND HAS A PANEL AND D. C.
6 DOESN'T, THEN, IT WOULD HAVE BEEN MARYLAND.

7 Q WHEN WAS THAT?

8 A ALMOST EXACTLY A YEAR AGO.

9 Q I THINK YOU SAID DAVID LEVIN?

10 A YES.

11 Q IS HE AN ATTORNEY IN D. C.?

12 A I THINK HE IS AN ATTORNEY IN ANNAPOLIS, IN FACT.

13 Q CARL SANTONE IS AN ATTORNEY IN A PLACE OUTSIDE
14 OF MIAMI?

15 A HIS OFFICES MAY BE IN MIAMI. I DON'T MEMORIZE
16 LETTERHEADS.

17 MR. MC MANUS: THAT IS ALL I HAVE.

18 EXAMINATION BY COUNSEL FOR THE PLAINTIFF

19 BY MR. BARTIMUS:

20 Q I HAVE JUST A CLARIFICATION. WHEN MR. MC MANUS
21 JUST ASKED YOU ABOUT THE PROTOCOL AND YOU INDICATED THAT IT
22 WOULDN'T BE A DEVIATION FROM THE ACCEPTABLE STANDARD OF NURSING

1 CARE, THAT RELATED TO CALLING DOCTOR KAUFMAN, AS OPPOSED TO
2 THE INDEPENDENT DUTY OF A NURSE TO CALL SOMEONE?

3 A THAT'S CORRECT.

4 MR. BARTIMUS: THAT'S ALL I HAVE.

5 FURTHER EXAMINATION BY COUNSEL FOR DEFENDANT
6 DOCTOR KANEREK

7 BY MR. WOODSON:

8 Q DOCTOR, DO YOU HAVE AN OPINION, WITH REASONABLE
9 MEDICAL CERTAINTY, AT WHAT POINT IN TIME THIS CHILD'S CONDITION
10 BECAME IRREVERSIBLE? IN OTHER WORDS, A TIME WHEN PROPER
11 INTERVENTION WAS TOO LATE -- IT WAS TOO LATE FOR PROPER
12 INTERVENTION?

13 A I THINK PROPER INTERVENTION WOULD HAVE SALVAGED,
14 THE PATIENT SOMETIME, CERTAINLY, BEFORE 3:00 A.M.

15 Q ON WHAT DATE?

16 A ON THE 15TH, SEVERAL HOURS BEFORE THE RESPIRATORY
17 ARREST, WHICH HAPPENED ABOUT 5:00 A.M.

18 MR. WOODSON: I HAVE NO FURTHER QUESTIONS.

19 (WHEREUPON, AT 1:04 O'CLOCK P.M., THE TAKING OF
20 THE DEPOSITION WAS CONCLUDED.)

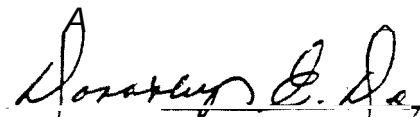
21 I HAVE READ THE FOREGOING 88 PAGES, WHICH CONTAIN
22 A CORRECT TRANSCRIPT OF THE ANSWERS GIVEN BY ME TO THE QUESTIONS

1 THEREIN RECORDED.

2
3
4
5 _____
6 RAOUL L. WIENTZEN, JR., M.D.
7 - - -

8 CERTIFICATE OF NOTARY PUBLIC

9 I, DOROTHY E. DEJARNETTE, THE OFFICER BEFORE WHOM THE
10 FOREGOING DEPOSITION WAS TAKEN, DO HEREBY CERTIFY THAT THE
11 WITNESS WHOSE TESTIMONY APPEARS IN THE FOREGOING DEPOSITION WA
12 DULY SWORN BY ME: THAT THE TESTIMONY OF SAID WITNESS WAS TAKEN
13 BY ME IN STENOTYPY AND THEREAFTER REDUCED TO TYPEWRITING UNDER
14 MY SUPERVISION; THAT SAID DEPOSITION IS A TRUE RECORD OF THE
15 TESTIMONY GIVEN BY SAID WITNESS; THAT I AM NEITHER COUNSEL FOR
16 RELATED TO, NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION
17 IN WHICH THIS DEPOSITION WAS TAKEN; AND, FURTHER, HAT I AM
18 NOT A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OR COUNSEL EMPLOYED
19 BY THE PARTIES THERETO, NOR FINANCIALLY OR OTHERWISE INTERESTE
20 IN THE OUTCOME OF THE ACTION,

21 
22 _____
DOROTHY E. DEJARNETTE, NOTARY PUBLIC
IN AND FOR THE DISTRICT OF COLUMBIA,

MY COMMISSION EXPIRES:
SEPTEMBER 30, 1992.