DE-IDENTIFIED DEPOSITION OF A SURGEON

SUPREME COURT OF THE STATE OF
COUNTY OF WESTCHESTER

----------x

and ,

Plaintiffs,

-against-

, M.D., GROUP,
HOSPITAL
, , M.D.,
, D.O., , R.N.
and

Defendants.

----------x

White Plains,

September 17, 2002
10:30 a.m.

EXAMINATION BEFORE TRIAL of the Defendant, , M.D., s/h/a M.D.

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S T I P U L A T I O N S

It is hereby stipulated and agreed by and between counsel for the respective parties

hereto that all rights provided by the P.L.R., including the right to object to any question, except as to form, or to move to strike any testimony at this examination, are reserved, and, in addition, the failure to object to any question or to move to strike any testimony at this examination shall not be a bar or waiver to doing so at, and is reserved for, the trial of this action;

It is further stipulated and agreed by and between counsel for the respective parties hereto that this examination may be sworn to by the witness being examined before a Notary Public other than the Notary Public before whom this examination was begun, but the failure to do so, or to return the original of this examination to counsel, shall not be deemed a waiver of the rights provided by Rules 3116 and 3117 of the P.L.R., and shall be controlled thereby;

It is further stipulated and agreed

by and between counsel for the respective parties hereto that this examination may be utilized for all purposes as provided by the P.L.R.;

It is further stipulated and agreed by and between counsel for the respective parties hereto that the filing and certification of the original of this examination shall be and the same hereby are waived;

It is further stipulated and agreed by and between counsel for the respective parties hereto that a copy of the within examination shall be furnished to counsel representing the witness testifying without charge.

M.D., having been first duly sworn by a Notary Public within and for the State of , stated his business address as

and his home address as

, was examined and testified under oath as follows:

EXAMINATION BY MR. OGINSKI:

Q Good morning, Dr. . Did you perform surgery on on August 10, 2001 at Hospital?

A Can I look? I don't remember the date all of a sudden. August 10, 2001?

Q Yes.

A Yes.

Q For the record, you are looking now at a photocopy of the Hospital record?

A Yes.

Q Did you have any assistants during the course of that surgical procedure?

A No.

, M.D.

Q What were the indications for performing surgery on that date on

A Large bowel obstructions. Rule out sigmoid tumor.

Q Did you conduct an examination of Mrs. before performing surgery?

A Yes.

Q Do you have your note regarding your examination findings preoperatively?

A Yes.

Q What date are you looking at in the hospital record, Doctor?

A August 10, 2001.

Q Did you see Mrs. the day before, on August 9th?

A Yes.

Q How was it that you came to see Mrs. on August 9th?

A I don't remember, but I was called in to see her while she was in the hospital either in the emergency room or the floor.

Q Does your note of August 9th indicate where she was when you saw her;

, M.D.

whether it was the emergency room or somewhere else within the hospital?

A No.

Q Did you evaluate her on August 10th?

A Yes.

Q What was your overall impression as to what you felt was going on with her at that time?

A According to the note, my impression was colonic ilia secondary to obstipation. Rule out mechanical.

Q What is "obstipation," Doctor?

A Bad case of constipation.

Q Does that mean totally obstructed?

A No.

Q Does that mean that the patient has not been able to void at all?

A No.

Q When you say, "Bad case of constipation," can you be any more specific?

A She can move the bowel, but it could be every few days or more.

Q Were you aware that Mrs.

, M.D.

had been taking various medications; such as, stool softeners and laxatives, before August 9, 2001?

A I don't remember.

Q Is there anything in your note of August 9th which would suggest that she had been taking any types of laxatives or stool softeners?

A From my note?

Q Yes.

A No.

Q In 2001, did Hospital have residents that rotated through the department of surgery?

MS. : Just note my objection.

A I don't remember.

Q Are you still affiliated with Hospital?

A Yes.

Q What is your affiliation there? Are you an attending there?

A I'm the attending surgeon.

Q Are there other attending surgeons

, M.D.

on staff at Hospital to your knowledge?

A Yes.

Q Is there a residency program for the department of surgery?

MR. : Presently?

MR. OGINSKI: Presently.

MS. : Just note my objection.

A We don't have any residents who belong to the department of surgery, but we do have so-called rotation interns to the department of surgery and medical students.

We did have that. I don't remember exactly whether this day, but we had residents from Hospital. We did have residents rotating from the Hospital, but at this time I don't remember whether they were physically there.

Q On August 9th, had you scheduled Mrs. for surgery at that time?

A I didn't hear you.

Q At the time that you examined Mrs. on August 9th, had you determined

25 that she needed surgery as of the time of your

examination?

A No.

Q What was it that changed, if anything, on August 10th that suggested to you that she required surgery?

MR. : I don't know if anything did. I'm going to object to the form of the question.

Q On August 9th after you examined Mrs. , did you make a determination that she needed surgery?

A Yes.

Q Why?

A She underwent abdominal x-ray, according to this note.

Q Which note are you referring to, Doctor?

A August 10th.

Q Would that be your note?

A Yes.

Q Go ahead, please.

A "Surgical. Follow up abdominal x-ray. Increased distention of colon to compare with previous one. Emergency barium

enema was requested and performed, which revealed obstruction in mid to proximal sigmoid colon with dilated cecum."

Q What was your plan at that time?

A "Plan. Emergency transverse loop colostomy."

Q Were you the one who had ordered an emergency barium enema?

A Yes.

Q What indications were there for the need for an emergency barium enema?

A As I indicated, the mid abdominal x-ray revealed increased distention of the colon to compare with previous one on August 9th.

Q Had you personally compared the two x-rays from August 9th and August 10th?

A Yes.

Q What was different, if anything, about the two x-rays?

A The diameter of the colon was larger on August 10th than August 9th.

Q What was the medical significance of that finding to you, if any?

A That indicated she may have mechanical obstructions, an ileus.

Q Can you describe for me what an "ileus" is?

A Ileus is paralysed intestine without any mechanical obstructions.

Q What kinds of mechanical obstructions were you thinking about at that time?

A Tumor of colon.

Q Was there any other obstruction that you were aware of that would cause a mechanical obstruction?

A She could have a bad case of diverticulitis.

Q Was there any suggestion based upon your history and physical of Mrs. that she had in the past any type of diverticulitis?

A I don't have a recollection.

Q Is there anything in your notes that you reviewed in preparation for today's

deposition that would suggest to you that there was any hint or suggestion that she had

diverticulitis before August 9, 2001?

A I don't have recollection.

Q I'm not asking --

A No. No record. No record.

Q Going back to your plan on August 10th, Doctor, underneath the word, "Plan," can you read what you wrote?

A "Plan. Emergency transverse loop colostomy. Discussed with patient, including risks involved. Discussed with Dr. Shirley."

Q Who is Dr. Shirley?

A Her primary physician on other admissions.

Q Did you discuss the need for

surgery with the patient's husband?

A I don't have a recollection. I don't have a record.

Q When you talked to Mrs. about the need for surgery, what was her level of consciousness, if you could tell me?

A She was conscious. She was alert and oriented.

Q Are you referring now to the nurse's note or some other note?

, M.D.

A I'm talking about the nurse's note.

Q By the way, Doctor, do you have an independent memory of Mrs.

A No.

Q Did Mrs. explain to you or tell you that she was in any type of pain

prior to undergoing surgery on August 10th?

A No recollection.

Q Was Mrs. to your recollection sedated?

A No.

Q Was she receiving any pain medication as of the time that you examined her on August 10th?

A Do you want me to look at the chart?

Q Just from your recollection.

A No.

Q By the way, Doctor, you have reviewed this patient's hospital chart in preparation for today; correct?

A Yes.

Q Am I correct that you also

, M.D.

reviewed your own patient's record that you brought with you from your office?

A Yes.

Q Did you review any other records in preparation for today?

A No.

Q Did you review any medical literature or journals in relation to the topic that we will be discussing today?

A No.

Q Are you licensed to practice medicine in the State of ?

A Yes.

Q Are you licensed in any other states?

A

Q Do you practice in

A Yes.

Q When were you licensed in New York, approximately?

A

Q When were you licensed in

A About five, six years ago. Maybe

five years ago.

Q Would that have been in about 1996?

A 1996. We formed a medical group and we decided --

MR. : That's all right. Just the year.

A It was six years for myself.

Q Has your license to practice medicine in ever been revoked or suspended?

A No.

Q In has your license

ever been revoked or suspended?

A No.

Q Are you board certified in any field of medicine?

A Yes.

Q What field?

A Surgery.

Q When were you certified?

A Since 1980, '81.

Q Are you board certified in any other field of medicine?

A No.

Q In addition to the x-rays that you had requested and observed for August 9th and August 10th, did you also request that a CAT scan be performed?

A I didn't request a CAT scan. It

was done.

Q At the time that you examined Mrs. on August 10th, you had the benefit of the abdominal CAT scan results; correct?

A Yes.

Q In addition, you also had the benefit of having the barium enema results as well; correct?

A Yes. When you say, "results," do you mean the report or the x-ray itself?

Q Either one.

A X-ray was available, but I don't remember whether there was any typewritten report done.

Q Before taking the patient to surgery on August 10th, did you review the CAT scan film that had been taken the day earlier,

, M.D.

on August 9th?

A Yes.

Q Did you consult with and speak to the radiologist who reviewed and interpreted that CAT scan?

A I probably did.

Q With regard to the barium enema test, did you review the films from the barium enema test?

A Yes, with the radiologist.

Q That would have been before performing the surgery; correct?

A Yes.

Q Now, Doctor, I would like you to turn please to your typed operative note. I know you have a copy in your office chart as well.

A Yes.

Q Did you dictate this report?

A Yes.

Q It was dictated the date of the surgery; correct?

A Dictated August 10th.

Q You mentioned before that that was

the date of surgery; correct?

A Yes.

Q Now, under the Procedure paragraph in the third line you wrote, "An upper midline incision was made, which was carried down to the fascia and the peritoneum was entered." Did I read that correctly?

A Yes.

Q Can you tell me why you chose to use an upper midline incision?

A That's the site in putting that transverse loop colostomy. It's easier than

any other place.

Q Before August 2001, had you performed colostomies?

A Yes.

Q Approximately, in the last year before that time, how many colostomies had you performed?

A Many times.

Q Can you give me an estimate?

A I can't remember the number.

Q More than ten?

A Per year?

, M.D.

Q Within the year. From the year August 2000 until August 2001.

A Probably.

Q Was it more than 20?

A No.

Q Continuing under the Procedure paragraph, you write, "After identifying the dilated transverse loop colon limited exploration proceeded through the incision." Did I read that correctly?

A Yes.

Q Can you tell me why you conducted a limited exploration?

A Because the incision is small. It's not a large incision. So you cannot really look at all the organs, but you could feel that with your hand.

Q Was there any particular reason as to why you made the size incision that you did instead of opening it up further to allow you to visualize the other organs?

A Because there's no need to make such a big incision when the purpose of this procedure was to decompress and relieve the

obstructions.

Q During surgery did you visualize the cecum?

A No.

Q The fact that the colon was distended up to the mid-sigmoid colon, did that tell you that the patient was obstructed?

A Yes.

Q What was it that was actually obstructing the colon?

A There was about a 3 to 4 centimeter tumor in the sigmoid colon.

Q Now, did you actually visualize that tumor?

A No.

Q The 3 to 4 centimeters that you described, was that based upon your feeling it?

A Yes.

Q Did you take any biopsy of that

tumor?

A No.

Q Where was the tumor situated in relation to the incision that you had made?

A The incision is upper-mid abdomen.

The tumor is in the left-lower quadrant.

Q Can you approximate the distance from the incision area to where the tumor was felt to be?

A Probably, about two feet. One foot. I'm sorry. One foot.

Q Am I correct that during the August 10th surgery, you did not remove any part of that tumor?

A No.

Q Did you remove any part of the

tumor during the August 10th surgery?

A No.

Q In your postoperative diagnosis on the typed operative report, you write, "Rule out cancer;" correct?

A Yes.

Q How did you intend to do that?

A She was going to have the colonoscopy for the biopsy. That's the way to do the biopsy of colonic tumor.

Q Is that something that you intended to do in your office or would you have sent her out to someone else to have that done?

, M.D.

A Either way.

Q Why did the patient need a colonoscopy?

A To make diagnosis of carcinoma.

Q Was there any reason as to why the tumor that you had felt could not have been evaluated during the course of surgery on August 10th?

A That's not the way it's supposed to be done.

Q Why?

A Because the tumor is contained inside of an intestine. You have to make an incision to that area to remove the piece. That's not the way it's supposed to be done.

Q Is there any downside to going in and removing the tumor in the form of a colectomy during the course of the procedure that you were doing on August 10th?

A Yes.

Q What is the downside?

A When you have markedly dilated intestine, the more you handle it, you could get into more complications such as tearing of

, M.D.

the intestine, leakage of intestine, leakage of the feces in the colon. So there is a lot of morbidity involved by attacking the area where the area is blocked with tumor.

Q After the surgery, did you have a conversation with Mrs. about your findings?

A Yes.

Q What did you tell her postoperatively about your findings?

A According to my note on August 11th -- do you want me to read it?

Q Tell me where within your note you discussed with the patient.

A Below the fifth line. Below "Plan" it says, "Discussed again," which means I probably had discussed before, "with patient and wife;" it should be husband, "regarding her

problem, including discharge in few days and follow up in the office for surgical intervention of sigmoid colon tumor in few weeks."

Q What did you mean by those last two lines?

, M.D.

A She will require operation to remove the tumor and after to properly investigate it.

Q Did you mention anything that discussed the need for a colonoscopy?

A Yes. This explained that. It says, "surgical intervention." It means that that includes colonoscopy intervention.

Q In your opinion, is a colonoscopy surgical intervention?

A No. Investigation.

Q Why would the patient have to be reopened to have the tumor removed a few weeks from that date?

A Because you need time for this dilated intestine to be decompressed so that swelling and edema of the bowel will be subsided enough to remove it and do this anastomosis.

Q On August 10th during the surgery, were you able to determine whether there was any lymph node involvement at that time?

A No.

Q Did you do any lymph node sampling

on August 10th?

A No.

Q In your operative note of August

10th, is there anything in that typewritten note to indicate what your plan of treatment was with regard to ruling out the cancerous tumor?

A Not on this note.

Q Can you turn please to your Discharge Summary? Is there anything within your Discharge Summary, which is dated August 14, 2001, that indicates what your plan of treatment was to rule out the possibility of cancerous tumor?

A The last line, "For office follow up, as described above." In the office follow up, my intention was to --

MR. : There is no question.

Q As to the office follow up that you described on the second page of your Discharge Summary, is there anything within these two typewritten pages to indicate what your plan was to rule out any cancerous tumor?

A I don't understand the question.

, M.D.

Q I will rephrase the question. Did you put down in this Discharge Summary that you intended to have the patient return for surgical intervention?

A Yes. She is supposed to come back for the follow up to plan for surgical interventions.

Q I am only asking: Within your Discharge Summary, Doctor, is there anything here that discusses the need for further surgery?

A No. On this, nothing.

Q Is there anything in your Discharge Summary that discusses the need for a colonoscopy?

A It's not specified, but my Discharge Summary says, "Rule out carcinoma."

Q Now, within that Discharge Summary, did you indicate how you intended to rule out the carcinoma?

A I didn't describe it, but by the office follow up the intention was to have colonoscopy.

Q I understand that. I am asking

you what you intended to do based on your handwritten note. I am only asking you based on your handwritten note.

A No.

Q Can you turn please to your handwritten operative note of August 10th that is contained within the hospital record? Can you read the plan?

A "Internal sigmoid colon in two,

three weeks following the discharge after recovery of surgery."

Q If the colonoscopy revealed that the tumor was benign, would there still be a need to perform surgery?

A Yes.

Q Why?

A Because it was obstructed.

Q Was there anyone present during the course of this August 10th surgery to assist you with retractors or with any instruments, other than the nurse or the nurses that were in the operating room?

A No, not for this type of procedure. You do not need any assistance for

this surgery because the incision is very small and there is no room for another person to even

put his hand.

Q When you were doing the surgery on August 10th, did you observe or visualize the ascending colon?

A Not visualize. I palpated that.

Q What did it feel like?

A Feel normal.

Q What is an "adenoid carcinoma," Doctor?

A An adenoid carcinoma is carcinoma arising from a normal cell, which is usually adenomalacia consistent with adenoma tissues.

Q What is "peritonitis"?

A Inflammation of the peritoneal cavity.

Q During your August 10th surgery, was there any evidence that this patient had peritonitis?

A No.

Q Were you aware as of August 9th that Mrs. had come to the emergency

25 room of Hospital the day before?

1 , M.D.

2 MR. : Which day are you

3 talking about?

4 MR. OGINSKI: Let me rephrase the

5 question.

6 MR. : I am going to object to

7 the form of that because I don't know if

8 she did or not.

9 Q On August 9th when you first saw

10 Mrs. at Hospital, did you

11 learn that she had been in the emergency room

12 at Hospital one day earlier?

13 A When I reviewed the chart, yes,

14 she did.

15 Q At the time that you examined Mrs.

16 on August 9th, did you have the

17 benefit of her emergency room chart from the

day before?

A I don't remember.

Q Would it be customary for you to review the patient's prior record at the time that you perform an examination?

A If the chart is available.

Q Is there anything in your August 9th note to indicate whether you did or did not

examine the patient's emergency room record from August 8th?

A No, I don't have any record.

Q Did you speak to any physicians before examining Mrs. on August 9th about her?

A I don't remember.

Q Doctor, I would like you to read

please your note from August 9th. If there are abbreviations in the note, please tell me what they represent.

A "August 9, '01. Surgery. CC," which is chief complaint. Then an arrow pointing up meaning increased "abdominal discomfort and obstipation for four weeks (had three to four small bowel movements for last one month.)

PE," physical examination, "Alert, oriented, anxious. Head, eyes, ears, nose, throat, neck unremarkable. Chest symmetri Breasts, no masses palpable. Abdomen, soft, globular. Distended loops of colon. No localized tenderness."

Q I'm sorry, Doctor. What is after

"colon"? Is that a positive?

A Yes. Positive means distended loops of colon present. "No localized tenderness. Bowel sounds present. Rectal, large amount of soft stool, guaiac negative, not tender. Extremities unremarkable.

White blood cell count, 8,200. Hemoglobin to hematocrit 14.2/41.8. Platelets, 297,000. CMP," means complete metabolic profile, "within normal limits."

Next page. "Abdomen x-ray, CT scan of abdomen revealed," I have arrow to the left, "No. 1, markedly dilated colon with large amount of retained stools. No. 2, enlarged uterus. No. 3, no evidence of small bowel obstructions.

Impression. Colonic ileus secondary to obstipation. Rule out mechanical. Recommend, No. 1, Nulytely plus tap water. Discussed with patient and husband regarding laxative (Nulytely) and enema. She refused to take by mouth since she had the bad experience

in the past."

Q Did you recommend any alternative

medication similar to Nulytely that would allow her to experience the benefits of the Nulytely?

A I don't have a recollection. I don't have any notes here.

MR. OGINSKI: Do you have a copy of the August 8th hospital record, Mr. ? Is it within that record?

MR. : It might be.

A Yes, we have it.

Q Doctor, looking at the August 8th emergency room department record, do you see that the patient came in complaining of constipation and b ding?

A Okay. Complaint of constipation.

Q And b ding?

A B ding, yes.

Q It says, "Sent to emergency department by private medical doctor to rule out obstruction;" correct?

A Correct.

Q On one of the pages in that August 8th record, you do see that their diagnosis was constipation. Do you see that?

A Yes.

, M.D.

Q Did you speak to any of the doctors who cared for Mrs. on August 8th, at or about the time that you examined her on August 9th?

A No, I don't have any recollection.

Q On August 9th, did you form any opinion as to whether Mrs. needed to

have a CAT scan as of August 8th?

MR. : Objection.

Q On August 9th, when you saw Mrs. , did you ask any of the doctors in the hospital why she did not have certain testing done to evaluate the constipation before being discharged?

MS. : Note my objection.

MR. : On what date?

MR. OGINSKI: I will ask it another way.

Q On August 9th at the time that you examined Mrs. , did you speak to any of the doctors who had cared for her the day before?

A I don't have any recollection.

Q Did you ever ask anyone on August

9th why the patient was discharged with the diagnosis of constipation?

A No.

Q Did you ever ask anyone why the patient, Mrs. , did not receive any diagnostic tests to evaluate her complaint of constipation?

A No.

Q As of August 9th, did you form any opinion as to whether the patient had needed an abdominal x-ray the day before, on August 8?

MS. : Objection.

MR. : He didn't see the patient. So just going by this one particular sheet, I am going to object to that.

Q Was any type of x-ray taken on August 8th, while the patient was in the emergency room?

A Yeah. According to this record, she did.

Q May I see that?

A (Witness complies.)

Q You're referring now to the

, M.D.

Emergency Department Patient Record of August 8th; correct?

A Yes.

Q In that note it indicates that the patient had had a chest x-ray; is that correct?

A Besides chest x-ray, patient had abdominal series x-rays.

Q According to that, it showed a large amount of stool throughout the bowels; correct?

A Yes.

Q What is Mag Citrate?

A It's one of the laxatives.

Q Did you ask Mrs. if she

had been taking any type of laxative before coming to the hospital on August 9th?

A I don't have a recollection.

Q Is there anything recorded in your August 9th note to indicate whether she was taking any laxatives?

A No.

Q Would it be important for you to know whether the patient had been taking any type of laxative before her arrival that day?

, M.D.

A No.

Q Why is that not an important point?

A Because everybody has a different type of medication which works for them. So I really don't have any preference laxative of

which one works for this patient or another patient.

Q Do you have any opinion as you sit here now as to whether the diagnosis that was made on August 8th by the hospital was an accurate one?

MS. : Objection.

MR. : I am going to object to that.

MR. OGINSKI: What is the objection?

MR. : He didn't see the patient. Also, Carvalho comes into play here.

MR. OGINSKI: Carvalho is not an appropriate objection in this situation where you have a team who is treating the patient.

, M.D.

MR. : Are you saying that he was part of the team on August 8th?

MR. OGINSKI: No.

MR. : Fine. Carvalho applies.

Q I would like you to please turn to the CAT scan report of August 9th. Do you see that?

A Yes.

Q According to the CAT scan report, the patient had a markedly dilated colon; correct?

A Yes.

Q There were also air fluid levels reported as well; correct?

A Yes.

Q What is an "air fluid level"?

A When you take the x-ray of the human body, air rises above the fluid. So it's air fluid level.

Q Is an observation of an air fluid level of medical significance to you when evaluating a patient such as Mrs.

A It could be from the ilia that you

could see that air fluid level. It could be from mechanical obstructions. That alone does not indicate any real significant findings.

Q In addition, the CAT scan reported that there was a small amount of air in the cecum; correct?

A According to this report?

Q Yes.

A Yes. It's questioning of intramural gas in the region of the cecum.

Q In the last line, there is also a small amount of fluid noted in the pelvis; correct?

MR. : Where?

Q I'm sorry. Is there anything within this CAT scan report which suggests that there is some air fluid level in the pelvis?

A No.

Q Are you familiar with the term known as "pneumatosis intestinalis"?

A Yes.

Q Tell me what "pneumatosis intestinalis" is.

A That's massive air along the wall

of intestines.

Q Based upon this CAT scan report, is there anything within the report to suggest that this patient had the condition that you just described known as pneumatosis

intestinalis?

A No.

Q What was the significance of the CAT scan findings in the face of the large bowel obstruction?

A Could not draw any conclusions from this CAT scan finding.

Q Now, am I correct that the CAT scan shows air in the bowel wall?

MR. : In the bowel wall?

MR. OGINSKI: Or air in the bowel.

Q Is that correct?

A Yeah. That's normal.

Q What is "intramural gas," Doctor?

A Along the wall of intestine.

Q Is that a normal finding?

A It could be sometimes. This is, as you see, not definite. It's questioning.

Q If you can, please turn to the

, M.D.

next page to the barium enema results. That shows an obstructed bowel; correct?

A Right.

Q Possibly cancerous?

A Yes.

Q On August 10th after reviewing the barium films and the CAT scan films, did you form any opinion within a reasonable degree of medical probability as to whether there was any obstructive evidence to suggest that Mrs. was having or had had a perforation to a part of her intestine prior to surgery?

A No. If you look --

MR. : That's fine.

Q Was there obstructive evidence on August 9th to suggest to you that Mrs. had evidence of a perforation in her intestine?

MR. : Objection to the form

of the question.

Q On August 9th, did you form an opinion within a reasonable degree of medical probability as to whether this patient had evidence of a perforated intestine?

, M.D.

A No.

MR. : There was no evidence or you didn't have an opinion?

THE WITNESS: I didn't have any evidence at all.

Q On August 10th, did you have an opinion as to whether there was objective evidence to indicate that this patient had a perforation?

MR. : Objection to the form of the question.

Q Did Mrs. have a

perforation in her intestine on August 10th before surgery?

A No.

Q The air fluid level that we talked about a few moments ago, what is that from?

MR. : Which air fluid level, where?

MR. OGINSKI: Air fluid within the intestine.

A Normal intestine has air and fluid.

Q The amount or the type of air that

, M.D.

is described within the CAT scan report, did you form an opinion as to whether that was within normal limits as of August 10th?

A I told you that you cannot draw

any conclusion from that finding, but the air fluid level in the CAT scan suggested that there is dilated intestine. It could be from the ilia It could be from mechanical obstruction.

Q What would air in the cecum be due to?

A Same thing. There is air from the stomach, small intestine, cecum, transverse colon and all the way down to the rectum. That's normal.

Q Now, this barium enema that we discussed earlier was done on August 10th; correct?

A Yes.

Q That was the emergency barium enema that you described earlier; correct?

A Yes.

Q The barium enema results in the last full paragraph state, "There is however a

, M.D.

dilated loop of bowel in the right lower quadrant approximately 15 centimeters in diameter." Do you see that?

A Yes.

Q Is that in your opinion, Doctor, an abnormally dilated section?

A Yes.

Q Based upon your clinical findings and the findings of the CAT scan and the barium enema, can you tell me what surgical options were available to you on August 10th?

A Transverse loop colostomy as best choice, as I looked at this patient.

Q Were there any other surgical alternatives available to you, other than the transverse loop colostomy?

A Yes.

Q What were they?

A You could go in and try to remove that area of obstruction. As I described before, that increased morbidity on this patient considering how much the bowel was distended.

Q That would be known as a subtotal

colectomy?

A No.

Q What would it be known as?

A You could explore and do the sigmoid colon section, if that's the only pathology on this patient.

Q Was a colectomy an option on August 10th?

A On this case?

Q Yes.

A No.

Q Can you tell me why?

A Because the intestine was so distended that I felt it dangerous to perform this colectomy on August 10th, rather than decompress the dilated intestine.

Q Was the surgery that you performed on August 10th an emergency surgery?

A Yes.

Q Can you tell me what would have happened if the surgery had not been performed?

A The bowel would have been perforated.

Q Would you agree, Doctor, that in a

patient who is markedly dilated it would be good medical practice to visualize the cecum during the course of the surgery?

MR. : Objection to the form.

Q Do you have an opinion within a reasonable degree of medical probability as to whether it is good medical practice to visualize the cecum during the course of this surgery?

MR. : Objection.

MR. OGINSKI: What is the objection?

MR. : The form of the question.

Q The fact that the patient was markedly dilated and given the fact that the patient had findings on CAT scan and also on barium enema, would it also be important for you to evaluate the patient's cecum during the course of this procedure?

A No, because I am not completely convinced of that CAT scan finding because you see another x-ray doctor's report about that CAT scan. On this x-ray report on August 10th,

, M.D.

the other radiologist had reviewed that CAT scan and he did not see that there is any intraabdominal inflammatory process. So even with this CAT scan report alone, there are two different radiological opinions.

MR. OGINSKI: Read back the answer, please.

(The record was read.)

Q Did you speak to Dr. prior to performing your surgery on August 10th?

A I don't have a recollection.

Q Did you speak to Dr. Michael Schnur, the doctor who had interpreted the CAT scan, before your surgery of August 10th?

A No.

Q Doctor, the report of the

abdominal x-ray taken on August 10th was transcribed at the bottom on August 13th. Do you see that?

A Yes.

Q Do you recall as you sit here now having any conversation with this individual about his interpretation of the

CAT scan before you took the patient into surgery?

A No. Many times what I would do at Hospital, when the radiologist dictates this, it goes into the system. So you could hear all the reports this were dictated on August 10th.

I don't have any recollections, but I have a custom to get into the system, listen to all the reports from past x-ray

doctors before I make a final conclusion from that x-ray.

Q Are you saying that you can listen to their actual dictation?

A Yes.

Q Without the benefit of having a transcribed typed report?

A Yes.

Q Did you do that in this case?

A Most probably did.

Q Is there anything in your record to suggest that is what you did, other than your custom?

A No.

, M.D.

Q What is it about that abdominal report by Dr. to suggest to you that

there was nothing concerning the cecum?

MR. : Objection to form.

Q Dr. interpreted the CAT scan that had been taken the day before; correct?

A Yes.

Q It was his opinion that the CAT scan did not support a diagnosis of an intraabdominal inflammatory process?

A Yes.

Q How is that different from the individual who interpreted the CAT scan report?

MR. : The day before?

MR. OGINSKI: Yes.

A The radiologists have many different opinions, even when they look at the same structures all the time.

Q I understand. In your opinion and based upon your clinical findings, how is the CAT scan interpretation different?

A Clinically, she did not have any evidence of peritonitis.

Q I'm sorry, Doctor. Maybe I wasn't

, M.D.

clear. Is there anything in Dr. Marks' interpretation of the patient's CAT scan that he reviewed that was taken on August 9th to suggest that there was any cecum involvement?

A No.

Q The August 9th report of the CAT scan does, in fact, suggest that there might be some cecal involvement; correct?

A No.

Q Dr. Schnur on August 9th comments about the question of intramural gas in the area of the cecum; correct?

A Correct.

Q Am I correct that the following day Dr. Marks, who is examining the CT film, does not mention or talk about that particular

finding?

A Right.

Q Under what circumstances would you want to see the cecum during the course of the surgery that you performed?

A If the patient had clinical evidence of peritonitis.

Q What symptoms or signs would you

see in a patient who had clinical evidence of peritonitis?

A She may have a fever, leukocytosis, rebound tenderness.

Q The leukocytosis that you're talking about, is that similar to an increased white blood cell count?

A Yes.

Q Did the patient have an increased

white blood cell count prior to surgery?

A I have to look. According to the hospital lab, her white blood cell count on August 9th was 8,200, which is normal.

Q Was there also another result on the following day prior to surgery?

A Yes.

Q What was the result on August 10th?

A It was 8,200.

Q Is that also within normal limits?

A Yes.

Q Did the patient have any fever either on the 9th or the 10th?

A I will look. August 9th, August

10th, she did not have any fever.

Q What number do you consider to be febrile or having a fever?

A About 101.

Q Did you learn at some point after the patient was discharged from Hospital that she had been admitted to Hospital?

A Yes.

Q From whom did you learn that information?

A According to my office chart, my office staff had called the patient because she had an appointment to come and see me on August 17th. Since she failed to show up in the office, we have a custom to call the patient.

So my staff entered a note here on August 20, 2001, "Spoke with patient's husband about rescheduling a postop visit. Husband states patient was admitted to Hospital in and she had poison in her body and almost died."

Q Did you have any contact with any

25 physician at Hospital upon

learning that information?

A No.

Q Did you ever speak to any healthcare providers of Mrs. concerning the reason why she was hospitalized at Hospital?

A No.

Q Did you ever review the records?

A No.

Q Did you ever learn that she had suffered from a perforation in her intestine and that she needed emergency surgery at

A Yeah. I learned after she had

sued me.

Q Before that, did you learn from any healthcare providers; doctors, nurses or anyone else, that she had had emergency surgery as a result of a perforated intestine?

A No.

Q Was the purpose of your August 10th surgery to relieve the obstruction?

A Yes.

Q By performing the colostomy, did you, in fact, relieve the obstruction?

A Yes.

Q Am I correct that you mechanically removed the obstruction?

A Yes.

Q You created an alternative pathway for the stool to come out; correct?

A Right.

Q Once the mechanical obstruction has been removed, is there any way for the intestine where the obstruction is located to perforate?

A Possible.

Q How?

A If the tumor continues to grow, it could.

Q Is there any other reason, besides the tumor continuing to grow, that might cause the intestine to perforate in that area?

A "That area;" meaning, sigmoid colon, you're talking about?

Q Yes.

A Yes. If the tumor continues to

grow, it also comprises blood circulation to that area, which takes a long time.

Q The fact that the patient had a large amount of retained stool prior to surgery, did that effect your decision as to what type of surgery to perform?

A Yes.

Q Why?

A When you have a large amount of fecal matter in the large intestine, the less you handle it, the better. So given this colostomy, it is a better way to handle when there's a large amount of feces in the intestine because feces contains a large amount of bacteria.

So if you handle that portion of the intestine and try to do something more there is a greater chance of infections, spillage of feces, breakdown of anastomosis and eventually developing peritonitis. So whenever you have a large amount of feces; we call it unprepared intestine, you do not handle it too

much. That's the principal.

Q On discharge, did you tell the

patient that you removed the tumor?

A No.

Q Did you tell the patient that the tumor had been left in?

A Yes.

Q Did you tell her that she would need a second surgery to have it removed?

A Yes.

Q What did they say in response to that, if anything?

A They will do it.

Q Was it your impression that Mrs. understood what you were telling her?

A Yes. In fact, they made an

appointment to come back to see me on August 17th.

Q Was it also your impression that Mrs. 's husband had also understood what you were telling them?

A Yes.

Q Did you tell Mrs. on discharge that you still needed to rule out whether or not this mass was a cancer?

A Yes.

, M.D.

Q If this was a metastatic tumor, were there any risks to leaving the tumor in the patient for another few weeks before you went ahead and did the other surgery?

MS. : Objection.

Q Did you have an opinion as of the time of discharge on August 14th, as to whether

the obstructing tumor that you wrote about was metastatic?

A No.

Q Was there any risk to the patient for leaving in the tumor if it turned out to have been metastatic?

MR. : Objection.

Q Did you form any opinion as to the type of obstructing tumor that you observed or commented upon on August 10th, as to whether it was slow growing, fast growing or some other type of growing tumor?

A No.

Q Were you able to determine whether this obstructing tumor was benign on August 10th?

A No.

, M.D.

Q Was there any risk to the patient for leaving in a tumor for the next few weeks?

A No.

Q Once you performed the colostomy, am I correct that you had now relieved the obstruction?

A Yes.

Q By doing this, would you agree that there is no longer any pressure on the cecal wall?

A Right.

Q Did you make any determination on August 10th during your surgery as to whether the cecum was perforated?

A No.

Q Would it have been good practice to determine whether or not the cecum was perforated on August 10th?

MR. : Objection.

Q Is there a way anatomically where the obstruction is relieved, as you have told

me, by performing the colostomy, that the cecum can then perforate afterwards?

A No.

, M.D.

Q Would you agree that --

A I don't understand your question.

Q I will rephrase it. Would you agree that the only way that the cecum can perforate in an instance where you have relieved the obstruction would be if a perforation was present as of August 10th?

A I still don't understand the question.

Q Under what circumstances would the cecum perforate in this patient?

A A cecum can perforate at any time. If the large intestine has been dilated that

will compromise blood circulation to any wall of intestine, which I mentioned before. If the thin wall bowel was compromised with the blood circulation to that area, it could be perforated any time. It's possible; especially, once you start regular diet, which she did before she left the hospital.

Q How do you prevent that from occurring, if you can?

A No way.

Q How do you recognize something

like that, if it is to occur?

A Patient will have fevers, chills, more bad pains, there would be localized tenderness, rebound tenderness to suggest there is peritonitis, which she didn't have when she left the hospital.

Q Do you have an opinion within a reasonable degree of medical probability as you sit here today as to whether the failure to visualize the cecum in light of the CAT scan findings of August 9th and the barium findings of August 10th was a departure from the standard of care as it existed in the year 2001?

A No.

MR. : "No," meaning?

Q Is your opinion, no, it did not depart from the standard of care?

A Yeah.

Q In August of 2001, did you practice under a group name or a professional corporation?

A Yes.

Q What was the name of that entity?

, M.D.

A Group.

Q Were there any other members of that group, besides yourself?

A Yes.

Q Who was that?

A You want me to name them?

MR. : There are too many. I will give you that in a response.

Q How many physicians are in Group?

A About 70, 80 physicians.

Q Are there other surgeons as part of that group, besides yourself?

A Yes.

Q Were you the only surgeon from that group to see Mrs. during this hospitalization?

A Yes.

Q What was your affiliation with the group; were you an officer, shareholder,

member, president, employee or something else, if you know?

A They call it, I'm employed with a medical group.

, M.D.

MR. OGINSKI: Off the record.

(Discussion was held off the record.)

Q Doctor, have you published any journal articles in the course of your career?

A Yes.

Q Approximately, how many have you published?

A One.

Q What was the topic of that publication?

A If I remember, it was

Q When did you publish that?

A A couple of years ago.

Q Do you recall what journal it was in?

A American Journal of Surgery.

Q Have you published any other articles, other than that?

A No.

Q Have you published any abstracts?

A No.

Q Have you published any portions of

any textbooks?

A No.

Q Have you presented any lectures to any national organizations in your field of medicine?

A No.

Q Tell me where you went to medical school, please.

A

Q When did you graduate?

A

Q After medical school, what did you do as far as continuing your education?

A I did an internship in the hospital.

Q Which one?

A

Then I went into the navy as naval surgeon for three years.

Q Where was that?

A In

Q What did you do after that?

A I came to in and did an internship and residentship at

Hospital for five years.

Q Where were you primarily working out of; was that out of

A During the training?

Q Yes.

A Rotating.

Q That was in the field of surgery?

A Yes.

Q Did you complete that surgical residency?

A Yes.

Q When did you complete that?

A

Q What did you do after that?

A I started my practice.

Q Was that private practice?

A Private practice.

Q Was that solo or with another group?

A Solo.

Q Where was your office?

A It was in

, M.D.

Q How long did you practice there?

A Until about 1984.

Q Then what did you do?

A Then I moved to in 1984.

Q In terms of where you were working, where did you work in '84?

A In .

Q Was that also as a solo practitioner?

A Yes.

Q How long did you do that?

A I did that until about 1996 or '97, until we formed this medical group.

Q What hospitals are you currently affiliated with?

A Hospital and Hospital in

Q That would be in

A Yes.

Q What is your affiliation with the hospital?

A I'm attending surgeon, same as Hospital.

, M.D.

Q Have your privileges to practice at Hospital or hospital ever been suspended or revoked?

A No.

Q Did Hospital to your knowledge in August of 2001, have access to surgeons who specialized in colorectal surgery?

A No.

Q Did you have any subspecialty within the field of surgery for which you had gone on to do additional training?

A No.

Q Did you perform any types of fellowships?

A No.

Q Did you ever discuss Mrs. 's care and treatment during her August admission at Hospital with any of the physicians in your medical group?

A I don't have a recollection.

Q I would like you to go back please to the hospital record and to your August 11th note. I would like you to read that part of the page, Doctor. Then we are going to skip

, M.D.

the labs and continue on.

A "August 11, 2001. Surgical follow up. Postop No. 1. Feels much better. Abdomen soft, less distended. Colostomy is functioning well. Urine output okay."

Q Turning to the next page, Doctor, just briefly, were her lab values within normal limits?

A Except potassium was a little bit lower.

Q Was that of any significance to you?

A No. So I added potassium.

Q What were the other two things that you planned to do?

A Full liquid diet and out of bed.

Q Can you read the next paragraph, please?

A "Discussed again with patient and wife;" it should be husband, "regarding her problem, including discharge in few days and follow up in the office for surgical intervention of sigmoid colon tumor in few weeks."

Q Did you learn from anyone; and again this is before the lawsuit started, as to the type of tumor that Mrs. had?

A No.

Q Did you ever receive any pathology records from the Center concerning the evaluation of the tumor of the sigmoid colon?

A No.

Q Can you please turn to the next

note that you have? Can you read that, please?

A "August 12th. Surgical follow up. Postop No. 2. Complaint of hallucinations with Demerol and intermittent abdominal pain. The abdomen was soft, not distended, no localized tenderness. Colostomy is functioning well. Urine output is okay.

Plans. Discontinue Demerol. Trisoralen, 30 milligrams, Q six hours. Discontinue Foley catheter."

Q Let's go back for a moment to the August 9th note that you have, which is your first note for the patient. Her chief complaint was increased abdominal discomfort

and obstipation for four weeks; correct?

A Yes.

Q After the surgery, did you come to

any conclusions as to what had caused her to have the constipation and the obstipation?

A Because she had an obstructing tumor, but that may not --

MR. : There is no question.

Q Can you read your next note, please?

A "August 13th. Surgical follow up. Postop No. 3. As above, feels much better. Tolerating liquid diet. Colostomy is functioning well. Abdomen soft, not distended, nontender.

Plans. Discontinue I.V. fluids. Regular diet. Refer to home care for colostomy care. If remains stable, will discharge tomorrow. Discussed with patient's husband and home-care referral."

Q Was it customary that patients who would be discharged from the hospital with a colostomy would be recommended for home care?

A Yes.

, M.D.

Q Do you have any independent memory of any conversations that you had with Mrs. separate and apart from what you have listed in your notes on any of the times that you saw her on either the 11th, 12th or the 13th? Is there anything else that you can recall as you sit here now?

A No.

Q Did Mrs. express any concerns that she had to you about her condition on the 11th, the 12th or the 13th?

A No.

Q Can you read your next note on August 14th?

A "August 14, 2001. Surgical follow up. Feels better. Abdomen, soft, not distended, no localized tenderness. Colostomy

functioning well. (discharge planner) arranged home-care nurse to follow her starting tomorrow. Discussed with patient and husband and they prefer to go home today for office follow up. Will discharge today."

Q Was that your last note for the patient?

, M.D.

A Yes.

Q After the patient was discharged on August 14th, did you have a conversation with anyone from the ?

A No, I don't have any recollection.

Q Would it be customary that if a patient was sent home with home care or follow-up care with a visiting nurse that if there was a problem the visiting nurse would

make attempts to contact you either personally or at the office?

MS. : Objection.

A Yes.

Q On the occasion or occasions when a visiting nurse or home-care assistant would get in touch with you --

MS. : Objection.

MR. OGINSKI: I will withdraw the question.

Q Did you have a conversation with a visiting nurse who had seen on August 15th?

A I don't have a recollection.

Q If you are in the office when a

call comes in about a patient's visiting nurse, do you customarily make notes about your phone

conversations?

MS. : Objection to form.

MR. : Go ahead. You can answer it.

A If there is any problem, yes.

Q If there is no problem, you do not make any notes; am I correct?

MR. : Start the whole question again.

Q Under what circumstances would you make an entry in the patient's chart about a telephone conversation?

A The custom is, most of the time when I have a chart in front of me, that's what my staff usually do, I enter that conversation. If I'm in a patient's treatment room or the hallway, when I don't have any chart and if there is no problem, I may not enter that conversation. If there is any problem, I insist that I need the chart. So the staff will bring the chart in front of me.

Q On the occasion when you were not

, M.D.

in your office and you received a call from a visiting nurse or from a home-health aide, what did you do in those circumstances in terms of recording information in a patient's chart about a conversation?

A If there is no chart available, I make the note and enter that later on.

MR. OGINSKI: Excuse me for one minute.

(Brief recess was taken.)

Q Did you ever tell a visiting nurse that the patient had a palliative colostomy?

MR. : In this case?

MR. OGINSKI: In this case.

MS. : Just note my objection, please.

A There is no such terminology. This is the first time I heard that.

Q To relieve the obstruction, would that be a palliative treatment?

A No.

Q Is that a term that you would not use?

A No. Palliative means that you do

the procedure and that procedure will be the end of the procedure.

Q Did you ever tell a visiting nurse who would have been caring for Mrs. that the reason that you did not remove the tumor was because of the amount of stool that you observed during the procedure?

MS. : Note my objection,

please.

MR. : You can answer, Doctor.

A I don't have recollection.

Q Did you ever tell a visiting nurse that a follow-up surgery would be performed when all of the stool would be out of her system?

MS. : Objection.

A No.

Q Did you form any opinion on August 14th, when the patient was going to be discharged, as to whether she was physically capable of doing her daily activities?

A I believe that she was capable. That's why she was discharged from the hospital.

, M.D.

Q Did you ever learn from any

visiting nurse that Mrs. was too weak to do her daily activities?

MS. : Objection.

MR. : Objection.

Q Did any nurse that was caring for Mrs. ever tell you that the patient was too weak to bathe?

MS. : Objection.

MR. : Objection.

MR. OGINSKI: What is the objection?

MR. : You're trying to establish a fact by your question.

Q I just want to know if anybody told you that.

A No recollection.

Q Did you ever receive a telephone call from the visiting nurse advising you that Mrs. had a fever?

MS. : Objection.

A No recollection.

Q Would a fever postoperatively be something that you would want to know about?

, M.D.

A Yes, but many times there is so-called postop fever without any alarming situation. It's the body's reaction to anesthetic and general anaesthesia and they could get microaerophilous of the lung. They could get irritation of the I.V. tubing. They could get irritation from Foley catheters. The general body reacts to that stress. Operations and anesthesia is known for postop fever.

Q Would a fever of 101 be of any significance to you five days postoperatively?

A No, not really.

Q Were you ever told by any visiting nurse whether Mrs. was dehydrated?

MS. : Objection to the

form.

A No recollection.

Q Do you recall telling a visiting nurse that the patient did not have a bowel movement for one month before her surgery?

MS. : Objection.

MR. : Objection.

Q Did you tell any nurse that the patient had not had a bowel movement one month

, M.D.

prior to surgery?

MS. : Objection.

MR. : Objection.

A No recollection.

MR. : Would you have told a visiting nurse that she didn't have a bowel movement for one month?

THE WITNESS: Usually not.

Q Doctor, I am going to show you a note from the , which is dated August 15th. This note apparently relates to a conversation that a visiting nurse had with you. I want you to read it, please. Then I will ask you some questions about that.

Is there anything about that note that refreshes your recollection as to a conversation that you had with a visiting nurse on August 15th?

MR. : Objection to the form of the question.

Q Does that note refresh your memory about a conversation that you had with someone on August 15th about Mrs.

MR. : Same objection to the

form of the question.

Q At any time after was discharged from Hospital on August 14th, did you speak to any visiting nurse at any time about Mrs.

MS. : Objection.

A I don't have any recollection.

Q The note that I gave to you and your counsel, the note that you're looking at now, which is dated August 15th, that comes from the records, does that refresh your recollection as to whether or not you had a conversation with any visiting nurse about Mrs.

MS. : Objection.

MR. : Let me state that the note which is typewritten has a line for a signature and there is no signature. It also has a line for the date and there is no date. So I don't know what this is. I don't know where it came

from. I am going to object to its use.

MR. OGINSKI: I am only asking him if it refreshes his recollection about a

, M.D.

conversation that he had.

MR. : I think he told you that he does not have a recollection of having any conversations with a visiting nurse.

Q Did you ever speak to Mrs. on the telephone after August 14th?

A No, no record.

Q Was there anything to suggest to you on August 10th during the course of the surgery that Mrs. was septic?

A Not at all.

Q Was there any way for you to tell on August 10th during the surgery that you

performed whether her cecum was in any way perforated?

A No way.

Q Did you ever receive a telephone call from a Dr. Bashadi regarding Mrs.

A No.

Q What was the procedure back in August of 2001, whereby if a patient or other doctor needed to get in touch with you and you

were not in the office, how would they get in touch with you?

A My staff would page me and I would call them back as soon as I could.

Q If it was someone who needed to reach you after business hours, what was the

procedure about getting in touch with you?

A My answering service will page me through my beeper. Then I will call them.

Q As far as you know, in August of 2001, did you have or did you learn about any problems with communications between patients and yourself and your service?

A Not at all.

Q Do you know a Dr.

A Who is that?

Q I am just asking you if you know the name of that doctor.

A No.

Q Did you bring with you any billing records as to the treatment that you rendered to this patient?

A No.

Q Where would those billing records

, M.D.

be located?

A In my group billing department.

Q I would ask that you provide those to your attorney.

MR. OGINSKI: I would ask for copies of the patient's billing records.

MR. : Okay.

INSERT:_____

Q Do you know a ?

A Yes.

Q Who is ?

A He is an emergency room physician at Hospital.

Q Did you ever speak with Dr. on August 9th about Mrs.

A I don't have any recollection.

Q Did you ever speak to him on August 10th about Mrs.

A No recollection.

Q Do you know someone named

22

23 A I don't know the name.

24 Q Do you know a nurse named

25

1 , M.D.

2 A Yes.

3 Q Who is ?

4 A is a nurse working at the

5 emergency room at Hospital.

6 Q Did you ever speak to Nurse

7 on August 9th or 10th about Mrs.

8 A I don't have recollection.

9 Q Do you know a Dr.

10 or

11 A Yes.

12 Q Who is that doctor?

13 A He is another E.R. physician at

14 Hospital.

Q Did you speak to him on August 9th about Mrs.

A I don't have recollection.

Q Who is Dr. ?

A He was a hospitalist for the medical group.

Q For your medical group?

A Yes.

Q What is a "hospitalist"?

A Hospitalist is a doctor assigned to a hospital to see mostly inpatients and to

care for them.

Q Based upon the August 9th note, did you see that Dr. had seen the patient prior to you seeing the patient?

A Yes, I see the note.

Q Does this note tell you who called you in; whether it was Dr. Dr. or someone else?

A No, it doesn't tell you. It could be Dr. or it could be Dr.

Q Did you have any conversation with Dr. about his evaluation of the patient?

A I don't have recollection.

Q Did you speak to Dr. about his evaluation of the patient?

A No recollection.

Q When someone on your staff called Mrs. to learn why she had not shown up for the office visit, did you learn that she had been admitted to Westchester Square Hospital with a diagnosis of sepsis and perforation?

A No.

Q Did you visualize Mrs. 's

appendix during your August 10th surgery?

A No.

Q Did you speak to any physician after August 14th, but before she was admitted to Hospital on August 16th about ?

A No.

Q Do you have any other records, besides the office records and the billing records that you mentioned, concerning

A No.

Q Was there any reason that a colonoscopy could not have been performed intraoperatively during the time that the patient was under anesthesia on August 10th?

A Yes.

Q What was the reason?

A When you have a markedly distended

bowel, a colonoscopy insufflates air and would be very, very dangerous. It is contraindicated. Very contraindicated at this time.

Q Did you ever tell Mrs.

, M.D.

while she was in Hospital why the tumor was not removed during the surgery that you performed on August 10th?

A Yes, I explained it to her.

Q On which date or dates did you explain that to her?

A Can I see the chart? I entered that a couple of times.

MR. : Take your time looking at the chart, please.

A On August 10th, right after the operation, I probably did because I entered as

my plans that she will recover and then have surgical interventions. On August 11th, my note said that I discussed again with patient and husband. On the Discharge Summary, the diagnosis is to rule out carcinoma on office follow up.

So I explained to the patient and family what will be the next step. That's the reason why I asked them to come to see me at the office to plan for more investigations and interventions and progress.

Q When you say, "the patient and

family," did you mean anyone else, other than her husband?

A I think her husband.

Q Anybody else?

A I don't have recollection.

Q Had you ever seen or treated Mrs. before August 9th?

A No.

Q Thank you, Doctor.

MS. : No questions.

MS. : No questions.

(Time noted: 12:32 p.m.)

A C K N O W L E D G M E N T

STATE OF)
: ss
COUNTY OF)

I, , M.D., hereby certify that I have read the transcript of my testimony taken under oath in my deposition of September 17, 2002; that the transcript is a true, complete and correct record of my testimony, and that the answers on the record as given by me are true and correct.

_____

, M.D.

Signed and Subscribed to

before me, this ____ day

of _____, 2002

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Notary Public, State of

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I, LAURA K. PETRASEK, a Shorthand Reporter and Notary Public within and for the State of , do hereby certify:

That , M.D., the witness whose examination is hereinbefore set forth, was duly sworn by me and that this transcript of such examination a is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of September, 2002.

_____

LAURA K. PETRASEK

TOMMER REPORTING, IN (212) 684-2448