27397/99

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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GEORGE E. BOOTH, as the Administrator of the Estate of KAREN BOOTH, deceased,

Plaintiffs,

-against-

GREGORY LIEBERMAN, M.D., SEBASTIAN LATTUGA, M.D., HARVEY ORLIN, M.D., JOHN FEDER, M.D., ISAAC COHEN, M.D., ORLIN & COHEN ORTHOPEDIC ASSOCIATES, LLP, EDGAR M. MENDIZIBAL, M.D., MARK BLUTH, M.D., ROBERT W. DALY, M.D., and MERCY MEDICAL CENTER,

Defendants.

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EXAMINATION BEFORE TRIAL of the Defendant, SEBASTIAN LATTUGA, taken by the Plaintiff, pursuant to Order, held at the offices of Lewis, Johs, AVallone, Aviles & Kaufman, Esqs., 425 Broad Hollow Road, Melville, New York, on November 16, 2000, at 9:30 a.m., before a Notary Public of the State of New York.

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

IT IS FURTHER STIPULATED AND AGREED that the within 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 C.P.L.R., and shall be controlled thereby.

IT IS FURTHER STIPULATED AND AGREED that the filing and sealing of the original of this examination are waived.

xxxxx

S E B A S T I A N L A T T U G A,
having been first duly sworn before a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY
MR. BASSIN:

Q. Please state your name for the record.
A. Sebastian Lattuga.
Q. What is your address?
A. 8 Copperfield Lane, Old Brookville, New York 11545.
Q. What is your education after high school? Where did you go to college?
A. St. John's University.
Q. After St. John's did you continue on with some medical education?
A. I went to Stony Brook Medical School.
Q. What years?
A. I have had many graduations in my life. I think it was -- in the '80s, '81

to '85, I was at Stony Brook Medical School, and 1985 to 1989, Stony Brook orthopedic residency.

Q. Straight through?

A. I was there, yes. And then I went to University of Miami, Jackson Memorial Medical Center for adult and pediatrics and spine surgical fellowship.

Q. When did you finish that?

A. Approximately four years ago, so '96.

Q. Are you licensed to practice in the State of New York?

A. Yes.

Q. Any other states?

A. Florida.

Q. Since you came to New York, have you been in the private practice of medicine?

A. Yes.

Q. Where was your first office in New York State?

A. In Rockville Centre, my current office.

Q. Are you in practice with any other

doctors?

A. Yes.

Q. What is the name of the practice and who are the doctors who you are in practice with?

MR. LICALZI: Their names?

A. Orlin & Cohen Orthopedic Associates, and the physicians are Harvey Orlin, Isaac Cohen, John Feder, Gregory Lieberman, Sebastian Lattuga, Craig Levitz, Walter Rho and Alpesh Shah.

Q. Who was in the practice in 1997 and '98?

A. All of those physicians except for Walter Rho and Alpesh Shah.

Q. It is an LLP? Are you all partners?

A. Yes.

Q. Are you a partner in the organization?

A. Yes.

Q. Are you familiar with an individual whose name is Karen Booth or was Karen Booth?

A. Yes.

Q. Was she at any time a patient of yours?

A. Yes.

Q. When was the first time you ever heard of Karen Booth?

A. I believe the date is -- I had seen her in my office roughly March of 1997.

Q. March 12, '97; would that refresh your memory?

A. Correct, correct.

Q. What are you looking at?

A. My office record.

MR. BASSIN: Mark that as Plaintiff's Exhibit 1 for this deposition.

MR. LICALZI: Fine.

MR. BASSIN: Mark the entire chart. Then we will mark that page as 1-A. Mark the entire folder as Exhibit 1.

(Whereupon a copy of office records of Dr. Lattuga was marked Plaintiff's Exhibit 1, for identification as of this date.)

Lattuga

MR. BASSIN: Mark the document the doctor described as 1-A.

(Whereupon a document was marked Plaintiff's Exhibit 1-A, for identification as of this date.)

Q. Let me see Exhibit 1, please.

A. Yes.

MR. LICALZI: This is a copy of the office records of the doctor. I did not bring the original chart, but I will make a copy today. I sent a copy to your office. It is a marked exhibit, so I have no problem making a copy of it before you leave today. That is easy.

Q. Doctor, look at Plaintiff's Exhibit 1.

A. Yes.

Q. To your knowledge, is that the full office records that your office kept for Karen Booth's treatment?

A. Yes.

Q. Was that record kept in the ordinary course of business in your practice?

A. Yes.

MR. LICALZI: I will have the original chart at Dr. Lieberman's deposition.

MR. BASSIN: Fine.

Q. You stated you that you had an opportunity to go through the entire chart and you have only -- you only saw the patient one time?

A. Correct.

Q. Can you tell us if you have any writing on any page other than 1-A which is in your handwriting anywhere in that chart?

A. I don't take any hand notes at all.

Q. Do you take notes by dictating into a machine then you give it to a service?

A. Transcribed immediately.

Q. Then put into the chart?

A. Yes.

MR. LICALZI: He has his initials on the bottom of the page.

Q. When you saw her on March 12th, was she seen before by your office?

A. Yes.

Q. By whom?
A. Harvey Orlin.
Q. When did Dr. Olin see her?
A. 2/26/97.
Q. Did he write a note that is in the chart also?
A. Yes.
Q. It is also a typewritten note?
A. Yes.
Q. Did anybody else either perform any services or do any tests or something else for Ms. Booth between the first visit from the date of February 26, '97 up until and through March 12, 1997?
A. She had a nerve conduction study done on March 7, 1997.
Q. By somebody who works in your office?
A. Associated with our office.
Q. Who would that be?
A. It's a technician associated with our rehabilitation service. I don't know specifically the person that did it. I have the report here.

Q. You saw her on March 12, 1997, and you wrote a two-paragraph note; is that correct?

A. Correct.

Q. That is Plaintiff's Exhibit 1-A?

A. Correct.

Q. Do you remember whether you spoke to Dr. Olin before you saw her?

A. I have no recollection.

Q. It says here that, "The patient is referred to me by Dr. Olin."

Is it a written referral or did he speak to you on the phone or something else?

A. He is in the office with me, and I just -- it was a patient -- the protocol, the patient was seen by Dr. Olin and she had an appointment to see me, and she came in and said, "Dr. Olin sent me because I have a spine problem," and I was there to evaluate the spine problem.

Q. Is that your specialty in the office, spine problems?

A. Yes.

Q. Dr. Olin --

A. He is general orthopedic surgeon.

Q. He deferred to your expertise?

A. Yes.

Q. What information did you have prior to examining her?

A. I believe I have the MRI, although I don't have a notation -- I don't have a notation in the chart.

Q. Which MRI?

A. Of her spine.

MR. LICALZI: What is the date?

THE WITNESS: 3/10/97.

Q. It is two days before you saw her?

A. Yes.

Q. You had an opportunity to review that report?

A. Yes, probably the films.

Q. As an orthopedist, you prefer to see the films?

A. I always review the films prior to seeing the patient, if available.

Q. To your recollection, they were

available in this particular case?

A. Yes.

Q. Did you have an opportunity to review Dr. Olin's note of February 26th before you saw her?

A. Yes.

Q. Did you have an opportunity to review the nerve conduction report?

A. Yes.

Q. Did you review the actual --

A. No.

MR. LICALZI: Let him finish.

Q. Did you review the actual graph, whatever you got from the nerve conduction test?

A. No.

Q. Anything else you had available to you before you did the examination?

A. X-rays.

Q. Those x-rays are kept in the ordinary course of your practice?

A. Yes.

Q. Are those x-rays kept by your practice even after the patient is no

longer a patient?

A. For a period of time.

Q. To your knowledge, are those x-rays still somewhere within the files of the practice?

A. Perhaps. We have a six-month, eight-month purge protocol, so if a patient has not been seen in eight months, we purge the films.

MR. BASSIN: I would ask for copies.

MR. LICALZI: I think they exist, because there is -- because there is a legal action.

MR. BASSIN: We will ask for any copies of the nerve conduction tests themselves, as well as the report and MRI films as well as reports, and radiographic test, whatsoever anything else that the test results, and the reports -- even if they are not kept in the chart themselves because of size or for whatever reason.

Lattuga

MR. LICALZI: I'm not sure if the graph is maintained apart from the report. If he knows that, fine.

Q. Do you know if those are maintained by your office?

A. I don't know.

MR. BASSIN: If they are, we will ask for copies. If not, we will ask for a letter from counsel saying that.

MR. LICALZI: Fine.

REQUEST NOTED:

Q. Can you tell us, do you remember the examination of Ms. Booth independent of looking at this particular 3/12/97 note?

A. No.

Q. Maybe if you look at the note, it would refresh your memory of the examination. Take a moment to read it.

A. Okay. Yes.

Q. Does that refresh your memory of the examination itself?

A. Yes.

MR. LICALZI: You are asking

if he recalls doing the examination?

Q. Do you recall doing it?

A. I have no recollection of that event whatsoever other than what is written here.

Q. Do you have any remembrance of Ms. Booth as a person? Do you remember what she looked like?

A. Not from this event, but from the subsequent encounter, yes.

Q. In the hospital?

A. Yes.

Q. Can you describe her; short, tall, large small?

MR. LICALZI: Describe her.

A. When someone is lying flat on their back in the bed, it is difficult to ascertain other than the fact I believe she was on the larger side, and not elderly, but moderately older. I am not wishing to offend anybody.

Q. So do you remember any conversations you had with her? Was she able to communicate with you?

A. I have no recollection independent

of the record.

Q. As a total recollection of Ms. Booth, both there and in the hospital, was she able to communicate complaints to you?

A. Yes.

Q. Okay.

A. Based on my subsequent meeting with her in the hospital.

Q. Was she able to be lucid and intelligent in response to questions?

A. Yes.

Q. In your estimation, was she a person who was sophisticated enough to give you answers?

A. Yes.

Q. Was she a good historian of her own physical condition?

A. Yes.

Q. Do you have a recollection of whether or not she was able to verbalize complaints of pain?

A. Yes.

MR. LICALZI: All within the hospital, I imagine.

MR. BASSIN: Yes. We are talking about generally as a person.

MR. LICALZI: Okay.

Q. Did you have any as you sit here today, do you remember having any feeling that she was misrepresenting any pain she was having?

A. I do not feel she was misrepresenting her pain.

Q. Going back to this physical examination, the examination -- obviously, the writing speaks for itself, but did you have a normal practice or normal procedure for examining somebody that came to you for a spinal examination back in 1997?

A. Yes.

Q. Do you remember after reviewing what you already told us you reviewed, what you did with this patient based on your normal practice at the time and based on reviewing the note?

A. Routinely I would encounter the patient, ask them specifically their complaint and where their pain was, and the

duration of the -- the duration of the pain, associated symptomatology and do a physical examination specified for those particular areas that I thought were of concern or of question.

Then I would review her x-rays. Then I would review the MRI. Then I would discuss with the patient what the options were for treatment.

Most people that see me are there for information as well as treatment, so it is an overall educational process of what it is that is bothering them, why they have pain, and I recommend treatment for them.

Q. Was it the normal practice, your practice, to take a medical history of a patient when they first came to your office?

A. I believe I answered that already. That is the first thing I do.

Q. Not you, but in general, is there a medical history other than orthopedic?

A. We have a routine intake sheet, patient questionnaire where the patient is

asked to -- asked to write down all of the concurrent medical problems, medications and allergies, past medical and surgical history, and then I don't know when we implemented it, but -- we will go through every system and analyze that and go through the systems.

Q. In this chart is that history present?

A. Intake form noted as patient registration.

Q. That intake form has a listing of the things you mentioned?

A. Yes.

Q. Did you review that before you examined her in March of '97?

A. Yes.

Q. Was anything on it that you felt was important for you to identify as part of your pre-examination of her?

A. Well, everything is important.

Q. Anything specific in this case?

A. Specifically I would look to see if she had a previous spinal procedure,

surgery. She did not. That is all I would focus on.

Q. Does that form indicate that she was a diabetic?

A. Yes.

Q. Does that form indicate her weight at the time, approximately?

A. No.

Q. What is the date on that form? Do you know?

A. 2/26/97.

Q. That is the date she first came to see Dr. Orlin and the first time she was in your office?

A. Yes.

Q. Did the issue of her size and her diabetes impact on your examination in any way?

A. No, not really.

Q. Tell me what you found on examination for this particular patient.

A. Basically she had severe congenital stenosis, and she -- the predominant symptom was right lower extremity pain. So

A. About the same.

Q. Were they more specific or less specific or something else; in other words, the place in the body where she complained of pain?

A. I reviewed this this morning.

Q. I will get back to it later, but I just want to equate it to the chart.

A. Complaining of right lower extremity pain when I examined her on the morning in Mercy Medical Center.

Q. That was the same as her complaint to you before?

A. Yes.

Q. Reading that note and the note in your office chart, there is no way you can tell whether there were any differentiations between the complaints of pain; is that correct?

A. That is correct.

Q. Differentiation between any level or complaints of pain; is that correct?

A. It appeared to me the same.

Q. When you examined her and you made

these things, you noted she was a diabetic. You thought that was important to note?

A. Yes.

MR. LICALZI: In the hospital?

Q. Back in March 12th, that is one of the things you mentioned?

A. True.

Q. That was something you felt was important at that time?

A. Yes.

Q. You recommended shots, and then you said to follow up two weeks later for shots.

Did she come back for that?

A. I don't believe she did. I have no office records to confirm that and no independent recollection of that.

Q. Is there anything else you can tell us based on your review of the note about that examination?

A. No.

Q. On the bottom of that it says S.L., and then /PMO. S.L. stands for your name?

A. Yes.

Q. The PMO is the name of the person that transcribed it?

A. Yes.

Q. Someone that worked in your office?

A. Yes.

Q. Underneath that is -- the only thing in writing is initials. Is that the way you sign your initials at all times?

A. It appears to be my signature.

Q. Do you always make the S the same way?

A. No. My signature is an evolution and my scroll is an evolution, and this is early on in my practice. I may have been -- this appears to be my signature, my initials.

Q. You always use a small L? That is correct?

MR. LICALZI: He said it is an evolution.

A. I don't make my signatures like this at all anymore.

Q. To your knowledge, was Ms. Booth seen by you or by any member of your

practice again prior to her admission to Mercy Hospital on 2/13/98?

A. Yes.

Q. Who was she seen by?

A. Dr. McGee.

Q. Did you mention Dr. McGee before?

A. I did not.

Q. Who is Dr. McGee?

A. Physiatrist, associated with -- nonpartner associated with our physical rehabilitation center.

Q. Is that located at the same address?

A. Different address.

Q. Rockville Centre?

A. Also Rockville Centre.

Q. When did Dr. McGee see her and what did he see her for?

A. 6/13/97, diagnosis: Lumbar sprain, diabetic neuropathy.

Q. To your knowledge, diabetic neuropathy and lumbar sprain, did the doctor connect the two?

MR. LICALZI: To the best of your understanding.

Q. Is this somebody that was part of your practice in some way?

A. Yes.

Q. And a physiatrist is a physical rehabilitative doctor?

A. Yes.

Q. Was she sent to him or do you know how she saw him?

A. She was referred.

Q. By?

A. Our group to physical therapy.

Q. Is there a report in the chart of what he did for her at that time?

A. I am reading from the report to answer your question.

Q. Is that report -- can I see that for a second?

A. Yes.

Q. Do you know the next time somebody from your office or associated with your office saw the patient either before or after? There may be something before that.

A. 2/10/98.

Q. That is the next time somebody saw

her?

A. Yes.

Q. After that physiatry visit, that one physical therapy visit, do you know if she went to another physical therapy after that or continued? Can you tell?

A. No notation in the chart.

MR. LICALZI: The notations, I believe, are kept separate. I have to check.

MR. BASSIN: If there are records of an associated organization such as this physiatrist or any other doctors referred to for medical treatment, for a physical therapist, a doctor, any medical professional or provider, if there are any records kept outside of the chart or referrals from this chart, I will ask that you get them for us or identify them for us.

MR. LICALZI: If Orlin and Cohen referred her to other doctors,

the consults would be in this chart; however, I will find out if there is a separate physical therapy chart that lists the physical therapy visits, and the copy will be provided if that exists.

REQUEST NOTED:

Q. 2/10/98 is the next time somebody saw her?

A. Yes.

Q. Who was the doctor that saw her?

A. Dr. Lieberman.

Q. His first name is Gregory?

A. Yes.

Q. Can I see the report?

A. Yes.

Q. Is that the only report of that particular examination in your file?

A. I think there is a front -- a second copy.

Q. Is there another report in your file for that day either a duplicate or something that is similar to it?

A. There is a duplicate. I notice it

only has the first page. Yes, right here.

Q. If you take a look at it, is it exactly the same? Take a look at the chief complaint line.

A. It looks exactly the same to me from what I have here.

Q. I will ask you whether or not in the ordinary course of your practice doctors often dictate two separate notes for the same examination.

A. It's possible. Sometimes the chart comes back saying, "No dictation," on it and you just dictate from memory, and you dictate from memory. Then they locate the first note and they may not be identical, because one is right after the patient and one is recollection.

MR. LICALZI: Dr. Lieberman will be produced for deposition.

MR. BASSIN: We will check with him.

Q. Did you discuss Ms. Booth with Dr. Lieberman before he examined her on May 10th?

A. Excuse me?

Q. On February 10th?

A. No recollection.

Q. Do you know if Ms. Booth was seen at any other time prior to the February 13, 1998 admission at Mercy at your practice?

A. I have no evidence or recollection of such an event.

Q. Did there come a time that you were notified that Ms. Booth had come to Mercy Hospital after February 10th?

A. Yes.

Q. How did you become aware of that?

A. I was given a telephone call very early on the morning of the 13th. I believe it is 2/13/98.

Q. That was the first time you learned that she had been or was at Mercy Hospital, correct?

A. Yes.

Q. In the emergency room?

A. Yes.

Q. I will take a step back and we will go to the hospitalization.

Back on February 10th, the only reference you have that she was seen in your office is that the note of Dr. Lieberman, correct?

A. Yes.

Q. To your knowledge, she was not seen by anybody else --

A. I --

Q. -- at that time?

MR. LICALZI: He can look through the chart.

MR. BASSIN: Just recollection.

A. Dr. McGee saw the patient.

Q. On that date, on February 10th?

A. I am not aware that she was seen by anyone else.

Q. Other than what is marked in that record, you would not know what her specific complaints were, correct?

A. Right, correct.

Q. You would not know what her specific plan was for her at that time other than what was in the record?

A. I was not really involved with her care at that time.

Q. Check that particular chart. Does it indicate anything, or maybe you know something about the way the charts are done or in your office or practice whether any hospitalization was made a part of the treatment plan?

A. As per the 2/10/98 note?

Q. Yes.

A. Let me see.

MR. LICALZI: Was any hospitalization planned as you can tell from that note of Dr. Lieberman?

THE WITNESS: No.

Q. You stated the first time you were notified that she was in the emergency room of Mercy, that was the first time you heard about the hospitalization?

A. Yes.

Q. Your now looking at the hospital chart?

A. It is in front of me.

Q. Is that the original chart?

A. Yes.

MR. BASSIN: Mark that as Plaintiff's Exhibit 2.

(Whereupon a hospital chart was marked Plaintiff's Exhibit 2, for identification as of this date.)

Q. Plaintiff's Exhibit 2 is in front of you. I will ask you to take a look at the chart and see, if you would, look to see if there is an ER admission.

A. Okay.

MS. FITZGIBBON: That was separate.

MR. LICALZI: I had it together.

MS. FITZGIBBON: It was not attached to here. I gave you the chart this morning, and the ER was not connected in the binder.

MR. LICALZI: No. That was prior.

MS. FITZGIBBON: A couple of days prior. You are right.

Lattuga

MR. BASSIN: I will ask about that.

Q. Do you know whether or not Ms. Booth was at the hospital, either admitted or in the emergency room, prior to February 13, 1998, earlier that month?

A. No, I do not.

MR. BASSIN: Do you have a copy of that other chart?

MS. FITZGIBBON: It was provided to you, and that is the original.

MR. BASSIN: I just want to see it. I don't have it with me.

Off the record.

(Discussion held off the record.)

MR. BASSIN: Mark this as Plaintiff's Exhibit 3 for this deposition, emergency room chart from Mercy Hospital dated 2/7/98.

MS. FITZGIBBON: Let me look at it.

MR. BASSIN: Sure.

MS. FITZGIBBON: Correct.

(Whereupon emergency room chart from Mercy Hospital dated 2/7/98 was marked Plaintiff's Exhibit 3, for identification as of this date.)

Q. I show you Plaintiff's Exhibit 3 which counsel has also brought with her today, and I will ask you if you were aware when you -- whether you were aware on 2/13/98 that Ms. Booth had presented at Mercy on 2/10/98 in the emergency room, if that refreshes your memory.

A. I was not aware at all.

Q. Again, in this chart, can you tell us anybody from your practice, if anybody from your practice saw her at that time or was involved in her care at that time or was notified at that time, any of the above?

A. In a brief review of this, I don't see a notation of one of my partners' names. I am just perusing quickly.

Q. I understand.

A. Yes.

Q. If go back to your chart, Dr. Lieberman's note of 2/10, does he reflect that he knows that she was in the hospital on that date?

MR. LICALZI: I am getting that copy now.

A. I reviewed that several minutes ago, and I did not see a notation.

Q. Let's go back to 2/13. We are in the hospital, in the ER room. Full turn back to Exhibit 2.

A. Yes.

Q. We are on the ER, emergency department nursing assessment triage treatment record.

A. Yes.

Q. Do you have that in front of you?

A. Yes.

Q. On that chart it says that she was admitted actually in the very early morning of 2/13; is that correct?

A. I --

MR. LICALZI: There is an

assessment time listed here.

MR. BASSIN: Okay.

Q. It says she appeared at the hospital or came to the emergency room at the -- at the very early hours?

A. Yes. That is what it says.

Q. By ambulance?

A. Yes.

Q. Complaining of back pain?

A. Correct.

Q. Essentially afebrile at the time?

A. Yes.

Q. Does the note indicate whether or not you were contacted about her coming to the hospital?

A. I --

Q. Look at the 7:50 note.

A. The note reflects my name, yes.

Q. Did you write anything on this page, by the way?

A. No.

Q. From 1:15 a.m. until 7:50 a.m., did you have any knowledge that she was in the hospital?

A. Yes.

Q. How did you know?

A. I was telephoned early in the morning of 2/13.

Q. Prior to that did you have independent knowledge she was in the hospital. Between those times were you called?

A. Yes.

Q. Did you appear between 1:15 and 7:50?

A. No.

Q. You didn't appear there?

A. No.

Q. Did you have someone under your direction examining her during those hours 1:15 to 7:50 a.m.?

A. No. I would not have someone under my direction examine the patient during that time.

Q. Can you tell from the chart if any orthopedist on the hospital staff or in the hospital examined her before the 7:50 time?

A. No.

Q. They did not?

A. Nobody from my group saw the patient.

Q. Before that time?

A. No.

Q. Can you tell from the chart if a resident or somebody else who was an orthopedist saw her before 7:50 other than the nurses --

A. She was seen by a physician at Mercy Medical Center at approximately 1:00 to 2:00 a.m. in the morning at that time.

Q. Do you know when she was admitted?

MR. LICALZI: The exact time?

Q. What time was she admitted?

A. 1:15 a.m.

Q. She wasn't admitted -- do you know if she was admitted to the hospital at 1:15 a.m. in the sense of formal admission as opposed to emergency room?

A. I would say between -- between 1:00 and 3:00 in the morning she became admitted to the hospital after, subsequent to my conversation with the ER physician.

Q. You actually got a call sometime between 1:15 and 3:00 a.m. in the morning?

A. Yes.

Q. To the best of your recollection?

A. Yes.

Q. Is that noted in the file or do you have independent recollection?

A. Independent recollection.

Q. Tell us the sum and substance of that conversation.

A. It was with an ER physician. I don't recall his name.

Q. Do you know how or why you were contacted?

A. I was on call from my group that night.

Q. To your knowledge, Ms. Booth told the hospital that she was a patient of your group?

A. Yes.

Q. The hospital itself, some staff member called your practice and they contacted you because you were on call?

A. Yes.

Q. Did you speak to a doctor or nurse or someone else?

A. Doctor.

Q. Do you remember the name of the doctor?

A. No.

Q. Do you have any other recollection of the doctor? Did the doctor identify himself as being a house doctor, ER specialist, chief doctor of the ER?

A. One of the ER physicians that typically would be staffing the ER at that time of the morning.

Q. You say "typically." Were you familiar with the practice of the emergency room at Mercy Hospital back at that time?

A. Yes.

Q. You were affiliated with the hospital at that time?

A. Yes.

Q. By looking at this particular ER triage record or anything else in the chart, can you tell or can you find the name of the doctor that would have been the

doctor that spoke to you on the phone?

A. There is a physician's signature on the emergency room department form. I can't make out the name.

Q. What was her condition as reflected in the ER records when she came?

MR. LICALZI: Read it from the chart, if you can.

A. (Reading) I can't read. There is 56 year old -- this is someone else's handwriting.

Q. Let me ask it in a different way.

You say you have an independent recollection of having been communicated with a doctor from the emergency room?

A. Yes.

Q. What was the sum and substance of that conversation?

A. Essentially he said there was a patient, Karen Booth, in the emergency room that was a patient of our practice complaining of the same pain that she always complains of.

Q. Did he say to you that she told him

that it was the same pain she had always, or did he have an independent understanding of what pain she always complained of?

MR. LICALZI: Objection to the form.

Your understanding.

MS. FITZGIBBON: Objection to the form.

MR. LICALZI: Your understanding.

A. My understanding is that she had related to him that the pain had come back, whatever pain she had.

Q. She told him she had a pain that your office was treating her for that; is your understanding?

A. Yes.

Q. Did he say anything else to you -- was it a man?

A. Man.

Q. Did the person have an accent of any kind?

A. I don't recall.

Q. Did the person know you on a first

name basis?

A. No.

Q. Did he tell you anything else on the phone?

A. He said that -- he said she wasn't able to walk. She was having so much pain that she was not able to walk, and that he thought it was -- you know, he couldn't discharge her. He couldn't treat the pain.

Q. Did he say she arrived by ambulance?

A. No.

Q. Did he tell you or did he quantify pain in any other way other than what you just told us?

A. Other than it was so severe, he didn't -- she couldn't walk to get home.

Q. Prior to that time that you had gotten the call from the hospital, do your records, either in your office or someplace else reflect or your memory reflect that she contacted your office directly prior to going to the emergency room that night?

A. I have no knowledge of that.

Q. At that time did your -- that was a

holiday weekend, correct, to your knowledge?

A. I --

Q. It was President's Day Weekend; do you have a memory of that?

A. I don't have a memory of that.

Q. At that time did your practice have a person on staff or an answering service or somebody else that would answer calls for you in the off hours?

A. Yes.

Q. If the office was open, somebody would answer the phones?

A. Yes.

Q. Was it your practice at that time to have that answering service answer calls over holiday weekends?

A. Yes.

Q. Was it your office practice when a call came in, if a patient called to speak to a doctor, that they would then call the doctor on call and tell them what the -- tell them that the patient had called at that time?

Lattuga

MR. LICALZI: Objection.

He may have a service. That is an expectation. You are saying is that his practice?

Q. Was that the expectation of the practice if the patient called to speak to the doctor, that the doctor would be contacted?

A. Yes.

Q. To your knowledge, you say you were on call that day, the 10th.

Were you on call the whole weekend or for that day or something else?

MR. LICALZI: The 13th?

MR. BASSIN: 13th.

A. For that evening.

Q. Just that evening?

A. Yes.

Q. Was it the practice of your practice at the time to have a different doctor on call for each evening?

A. Yes.

Q. In other words, it was rotated?

A. Yes.

Q. As you sit here today, your memory was you were on that evening and you were not on the evening before?

A. Right.

Q. Since it was five or six doctors, would it be a straight rotation if everybody was in town?

A. It is not always the same night that you are on call. It is a rotation. We rotate between the physicians.

Q. The general practice, it would be -- you would never be on call for two nights in a row?

A. Unless somebody was out of town.

Q. You have no memory of being on call for two nights in a row?

A. No memory.

Q. Was it different when there was a holiday weekend than on a normal basis at that time?

A. The only thing that changes the call schedule, if there are physicians out of town and if you are on call that weekend and in the case of shortage of physicians,

then the non-weekend physician would take two nights during the week. It is so variable, I couldn't give you it specifically.

Q. Did your office have an understanding or practice with the answering service that they kept a log of the calls made to them?

A. Yes.

Q. What was the name of the answering service you were using at that time?

A. I don't know.

Q. To your knowledge, is it the same service you are using now?

A. I don't know.

Q. Who in your office would be in charge of handling the communication with the -- coordination with the answering service?

A. Cathy Wright, office manager.

Q. W-R-I-G-H-T?

A. Yes.

Q. Is she still an employee of your practice?

A. Yes.

Q. She is the office manager of your practice?

A. Yes.

Q. To your knowledge, she at that time and today is the person who coordinated the answering service procedures?

A. Yes.

Q. To your knowledge, they kept a log of calls that came in?

A. I --

MR. LICALZI: He is asking what the answering service did, not whether your office keeps a log, the answering service.

THE WITNESS: I have seen on occasion, not being involved in the details of how that works, a log from a weekend where, you know, "Did you get that phone call, did you get that phone call," and we do that on occasion.

Does it happen every morning? No. It happens that especially over

the weekend when nobody is around, we make sure --

Q. There is some printout of the calls the answering service would get?

A. I have seen a photocopy of the note sheet, the message board.

Q. Would Miss Wright be the person that would receive that from answering service?

A. I think it gets faxed over. I'm not sure we store -- I don't think we store them.

Q. It was the procedure of your office at that time and you stated on certain occasions they would -- there would be some meeting of the doctors to say, "Did you get that call, that call," and go over the sheet?

A. It might be from the office manager or the nurse, the R.N. that we have employed. She may on occasion come over and say, "Did you get these messages," to the physician who may have been covering the night before.

Q. Was that the practice of your

practice at that time?

A. Yes.

Q. February of '98?

A. Yes.

Q. Do you have any independent recollection of being asked at any time from February of 1998 through today by anyone whether or not you received any calls from the Booth family, Karen Booth or other members of her family directly to your office prior to her admission on February 13, 1998?

A. I have no recollection of such an event.

MR. BASSIN: Let me take a short break, please.

(Whereupon the record was read back by the reporter.)

(Brief recess taken.)

MR. LICALZI: I made a copy of Plaintiff's Exhibit 1 and provided it to all counsel.

Q. Doctor, going back to the telephone calls for just a moment.

A. Yes.

Q. Was it part of your practice to note in the file if calls came into your practice overnight, in other words, if a doctor spoke to a patient, would it be noted in the file?

MR. LICALZI: The office chart?

MR. BASSIN: Office chart.

A. Not typically.

MR. BASSIN: Off the record.

(Discussion held off the record.)

(Brief recess taken.)

MR. BASSIN: We call for the name and address of the answering service you folks used back in February of 1998.

MR. LICALZI: Yes. Please have your office follow up in writing so we have a record of it, but that should not be a problem. I will investigate that, and if available, it will be provided to

you.

REQUEST NOTED:

Q. When you heard that Ms. Booth had presented to the ER, was that a concern to you regarding her lumbar condition?

In other words, did people usually go to the emergency room in the early morning hours if they have a spinal problem, in your experience?

MR. LICALZI: Objection to the form.

Q. Is it your experience that people with lumbar disk spinal problems often present to emergency rooms when they have complaints about pain?

A. Actually, it is quite frequent in that age group, that elderly people, even moderately -- mild to moderate disease can have severe exacerbations.

Because of the generalized weakened condition in the elderly, they are not able to cope with it, and they will frequently complain of pain, and they are admitted for social reasons.

Pain control -- in the old days, pain control was the reason for admission, but with HMO, you cannot do that. But to answer the question, yes.

Q. You stated you looked at this note, and I would like you to look at it again.

At the beginning of the assessment the patient stated she had been seen in the emergency room, it said Sunday night for back pain. Was that communicated to you by the doctor that called you?

A. No.

Q. Would that be something that would be important for you to know?

MS. FITZGIBBON: Objection to the form.

MR. LICALZI: Objection to the form.

You can answer.

A. All history is important.

Q. When is the first time that you became aware that she had been seen at the emergency room on 2/7/98?

A. Twenty minutes ago.

Q. Okay.

A. The patient did not communicate this to me when I examined her.

Q. When you came to the hospital at some time later after the triage note was written, did you have an opportunity to review the note?

A. Which note?

Q. The triage note.

A. I don't review it.

Q. You never did?

A. No.

Q. When you saw the patient in the hospital, she was in a great deal of pain?

A. Yes.

Q. Did the doctor relate to you that the patient had numbness in her legs?

A. No.

Q. Did the doctor relate to you that she had numbness in her buttocks?

A. No.

Q. This is the doctor that called you on the phone?

A. Yes.

Q. Did he relate to you that she had spasms in her lower back?

A. No.

Q. Did he relate to you that she had difficulty moving?

A. Yes.

Q. Did he relate that she had urinary incontinence?

A. No.

Q. Did he relate to you that the problem had started some twelve hours beforehand?

A. No.

Q. Did he relate to you that she had been complaining of constipation for two weeks?

A. No.

Q. Would that information be important for you to know when you were called that evening?

MR. LICALZI: Objection to the form.

MS. FITZGIBBON: Objection to the form.

Lattuga

MR. LICALZI: You can answer it.

A. All information is valuable in assessing a problem.

Q. When did you first learn any of that information after you came to the hospital?

A. I --

MR. LICALZI: Read the question back for me, please.

(Whereupon the record was read back by the reporter.)

MR. LICALZI: Objection to the form.

MR. BASSIN: I will rephrase the question.

Q. I am asking you about certain things that were in the triage note which you say you don't really remember.

Did you learn about those specific complaints subsequent to coming to the hospital to see Ms. Booth?

A. Not all of them.

Q. Did you review her chart when you came to the hospital?

A. No.

Q. Do you remember when you came to the hospital?

A. Between 8 and 9 o'clock on the morning of the 13th.

Q. Again, is there anything else on this triage note that we have been talking about dated 2/13 where your name is mentioned or any of your directions are noted or any directions you may have given?

MR. LICALZI: Other than the 7:50 phone call.

THE WITNESS: Excluding that?

MR. LICALZI: Yes. To the best of your recollection reading this.

A. I'm not sure I can testify as to what somebody else wrote here about --

Q. You say you are familiar with the ER room. Do you see anything else that you mentioned for them to do with the patient?

MR. LICALZI: From recollection?

THE WITNESS: Recollection.

Lattuga

MR. LICALZI: Yes.

Q. Recollection?

A. I can relate to you some pertinent information.

Q. Please go ahead.

A. After that --

Q. Let me rephrase it.

Is there anything else you can recollect for us regarding what you said or instructed the doctor to do when he called you earlier that morning?

A. Essentially the patient -- the physician related to me that this was an exacerbation of a pre-existing condition, and that because of -- the patient couldn't tolerate the pain, she needed to be admitted, okay.

By and large, it is infrequent to admit patients for pain control to a spine surgeon's service, so on further querying with that physician, I asked specifically, "Does this" --

MR. LICALZI: Go ahead.

A. -- "Are there any other associated

problems? Does this problem have any lab abnormalities?"

And he said, "No."

Q. Did he tell you what tests were taken or not taken?

A. No. I said, "Are all labs within the normal limits?"

And he said, "All fine."

Q. What else did you ask him and what else did he say to your recollection in sum or substance?

MR. LICALZI: Anything other than what you told him is what he is asking.

A. No.

Q. Did you ask him what more tests he had taken?

MR. LICALZI: Asked and answered.

Q. Did he tell you anything about her diabetes?

A. No.

Q. Did he mention whether or not she had a temperature?

A. No.

Q. Did he mention whether or not her insulin, her glucose level was elevated?

A. No. I specifically asked the question of laboratory values, all laboratory values.

Q. Was it mentioned to you?

A. I didn't hear you.

Q. Strike that.

Other than the call between 1:00 and 3:00 in the morning, did you receive any other calls from the emergency room that morning?

A. Yes.

Q. When was that?

A. Around 7:00 a.m.

Q. Do you remember who you spoke to in that telephone call?

A. A nurse.

Q. Do you remember the name of the nurse?

A. No.

Q. Was it a man or woman?

A. Female.

Q. Did that person have an accent or did that person have an accent of any kind?

A. Not that I remember.

Q. Do you remember the substance of the conversation?

A. She said the patient needs admit orders, and so I essentially gave some admit orders.

In general, I need to elucidate if the patient had pre-existing medical problems or pre-existing medical conditions and have a medical physician which manages those, so with respect to my conversation with the nurse, I said specifically, "Call the medical physician, find out what medications the patient is on, okay, and just put her on all her standard medications."

Then she said something like, "What about for pain?" And I gave her a pain medication.

Q. Anything else about the conversation that you remember?

A. That's it.

Q. Right under your name being called, is there another name or is there another name there?

Can you read that doctor's name? Can you read that for me, Mendizibal? Do you know who that is?

A. Her diabetologist.

Q. Do you know, was she under the care of some medical, internal medicine person or general practitioner?

A. Dr. Kirchblum.

Q. Was he notified?

A. I am not aware of that.

Q. That was her general doctor, to your knowledge?

MR. LICALZI: Who?

MR. BASSIN: Kirchblum.

A. With respect to that isolated conversation with the nurse at that time, the impression was that that Dr. Mendizibal was caring for her.

Q. That is different from the name you just told us about.

MR. LICALZI: Mendizibal.

Q. He is a diabetic specialist?

A. I believe so.

Q. That is your understanding of that name written under yours?

MR. LICALZI: I am looking at the 7:50 a.m. note, and it says, "FPS, 403, and PT is diabetic. Dr. Lattuga called and aware of patient's" --

THE WITNESS: That is finger stick.

MR. LICALZI: Underneath Dr. Lattuga there is writing, and he said to him it looks like Dr. Mendizibal.

MR. BASSIN: Fine.

Q. Look at 9:30.

A. (Reading) Yes. Seen and evaluated by Dr. Mendizibal.

Q. Did you order any tests to be done? Other than asking for the values of the tests that were done, did you order any independent tests and you can take a look at the chart?

A. I know I ordered an MRI of her back, as per --

MR. LICALZI: What is the question?

Q. Did you order any tests being done other than asking for the values that you got from tests that were done?

MR. LICALZI: I don't know if he got the values from tests that were done.

Objection to the form. He was informed of lab values.

Q. Other than that, did you order any tests yourself?

A. MRI of the spine.

MR. LICALZI: Objection to the form.

Q. Next page, after the ER admission, the ER chart, two pages further there is a --

MR. LICALZI: It is different in your chart. It is one page before that.

Q. This is -- it says x-rays were asked

for, spinal x-rays?

A. Yes.

Q. Is anything here your handwriting?

A. None of it.

Q. Was this done under your instructions?

MR. LICALZI: Do you know if it was?

THE WITNESS: I am not aware.

Q. You said you ordered MRI's. Is that the same thing as stated here, the spine x-rays?

MR. LICALZI: Is an MRI indicated here?

THE WITNESS: No.

Q. It says, "Admit to the ortho." That would be under your service?

A. Yes.

Q. Your name is not mentioned here on this page, or is it?

MR. LICALZI: You can ask the ER doctor or whoever wrote this.

Q. Do you know who Dr. Bresson, B-R-E-S-S-O-N, Dr. Bresson is?

A. Emergency room physician, but to be honest, I may know them by face but not all of their names.

Q. Do you know why the CBC was ordered?

A. Routine protocol for all elderly patients on admission to have -- customary practice to obtain lab values such as the CBC, electrolytes, chest x-ray, EKG. That is part of your evaluation.

Q. That includes a PT, PTT?

A. Yes.

Q. And urinalysis?

A. Although that is not necessarily in the first barrage of tests, that is a test you order early on.

Q. You stated an elderly patient in your practice.

At what age is somebody an elderly patient?

A. I --

Q. When you say elderly --

MR. LICALZI: What are your parameters?

A. I would say anybody over fifty. I

don't mean that is elderly. They are just likely to have associated medical problems.

Q. You are saying anybody over fifty --

A. I am getting there myself.

Q. Doctor, I will ask you to take a look at the chart and ask you whether or not you saw the patient in the hospital yourself.

A. Yes.

Q. When is the first time you remember seeing the patient in the hospital for that admission yourself?

A. What time.

Q. The first time?

A. Between 8:00 and 9:00, 2/13/98.

Q. When you saw her, where was she?

A. I believe she was in the ER, but I believe she was in the ER.

Q. She was still in the ER?

MR. LICALZI: To the best of your recollection?

A. To the best of my recollection.

Q. Did you examine her in the ER?

A. Yes.

Q. You stated it was not your practice to look at the chart at that point?

A. Yes.

Q. When you came to the ER, did any of the doctors or nurses or anybody else discuss Ms. Booth's condition with you at that time?

A. No.

Q. You went straight to the patient in the ER and examined her?

A. Correct.

Q. It was your understanding she was having another episode of back problems?

A. It is custom and practice of ER to admit based on diagnosis to the -- to a physician, the physician on call covering for that diagnosis.

So the diagnosis was made of lumbar radiculopathy and severe back pain, and to me, a specialist, a spinal surgeon, and I came on that morning to evaluate her for that problem.

Q. At the moment you saw her, she was not yet fully admitted to the hospital or

she was?

A. I think that is a semantical difference.

Q. As far as you know, she was still in the ER?

A. There were admit orders about thirty minutes prior to that.

Q. When you examined her, did you make a notation in the file of what you saw?

A. Yes.

Q. Where is that?

A. HNP -- excuse me, H&P.

MR. BASSIN: Mark that as Plaintiff's Exhibit 2-A for identification, that one document.

(Whereupon a note taken by Dr. Lattuga was marked Plaintiff's Exhibit 2-A, for identification as of this date.)

Q. This was a note that you took, and can you read that note to us? Is that your handwriting?

A. Yes.

Q. Read that note.

Lattuga

MR. LICALZI: There is a page before it.

THE WITNESS: Two-page document.

MR. LICALZI: The second page is marked on the record. He may have turned to a different page than you. It is two pages.

MR. BASSIN: Okay.

MR. LICALZI: It is a two-page document. It was marked on the second page.

A. (Reading) 56-year-old white female with acute lumbar radiculopathy. Unable to walk.

Q. 56 years old?

A. Right.

(Reading) Admit for pain control. PMH, past medical history, IDDM, insulin-dependent diabetes mellitus. No significant surgical history. Med, insulin. She denied any allergies.

Q. Under "M.D.," is that your initials there.

Lattuga

MR. LICALZI: There are two.

Q. The one on the left.

A. The one on the left is mine.

Q. It says physician underneath?

A. Yes.

Q. Okay, second page.

A. (Reading) Vital signs, stable, afebrile. HEENT, it is the head examination, normal cephalic, acephalic, normal head and occiput. Lungs were clear.

Her extremity examination showed weakness of the right quadricep and EHL, left lower extremity intact. She had spasm and tenderness, and the x-rays at the time showed degenerative arthritis of the spine, and the plan was admit for pain control MRI and rehabilitation service.

Q. Then your initials are on that one?

A. Yes.

MR. LICALZI: Where?

THE WITNESS: Lower right are my initials.

Q. Whose are the other set of initials on this sheet?

A. I believe my partner.

Q. Who is that?

A. Dr. Lieberman.

Q. S.L. and G.L.?

A. Yes.

Q. To your knowledge, was he part of that examination?

A. No.

Q. What was the procedure? He would sign at the same time you did or afterwards?

MR. LICALZI: Objection to the form.

If you are aware of this.

A. For it to be completed, all the T's have to be crossed and I's have to be dotted. The medical records are flagged for areas to make sure they are signed. We picked it up and were told to make sure all the signatures were on chart.

We just sort of review it, review the document and put the note -- put the signature or initials on notes that the hospital -- on things that ought to be

signed and, you know, so many documents have to be signed.

Q. To your knowledge, he was not involved in this particular examination?

A. He was not.

Q. He was not with you when you examined her at this time?

A. No.

Q. To your knowledge, did he see the patient prior to your seeing her at this time?

A. No. He did.

Q. Did he see her subsequent to your seeing her at this time?

A. I believe so.

Q. In the hospital?

A. I believe he saw her subsequent.

Q. He had seen her as a prior patient in the office but not in the hospital?

A. Correct.

Q. We talked about a note before which was the emergency room chart, and it had listed a spinal x-ray?

A. Yes.

Q. You were not involved in the decision to take that spinal x-ray; is that correct? Is that your prior testimony?

MR. LICALZI: Objection to the form.

A. I don't recall ordering it. It would be an appropriate test.

Q. Excuse me?

A. I don't recall ordering that, but it would be an appropriate test to order, and I did review that x-ray subsequent to this.

Q. What is after that? AP of the pelvis, what is that?

A. X-ray of the pelvis.

Q. Were there any other x-rays ordered at that time?

MR. LICALZI: If you can tell from the chart.

A. I am not aware by the chart.

Q. You ordered the MRI when you saw her?

A. Yes.

Q. Prior to that a spine x-ray and pelvic x-ray?

A. Yes.

Q. Can you tell from the chart, looking anyplace at it, whether any other x-rays or MRI's or radiographic tests were ordered between the time that she first presented at the emergency room until the time you examined her?

A. I am not aware of any.

MR. LICALZI: The chart speaks for itself.

MR. BASSIN: If he is aware.

Q. Do you feel that all of the tests or all of the radiographic examinations that needed to be done were ordered by that period of time?

MR. LICALZI: Objection to the form.

MS. FITZGIBBON: Objection to the form.

Q. Was it your understanding at that time when you saw her at some time around 8:00 or 9:00 that morning, that the combined ordering of the spine, pelvic -- spine and pelvic x-rays and MRI were all

the radiographic tests you needed for her at that time?

A. Only with respect to her spine.

Q. That is what you were dealing with at that time?

A. Yes.

Q. Does the chart reflect the results of those particular tests?

A. Excuse me?

Q. The medical chart?

A. I am sure it does. I wouldn't have reviewed the report by the -- you know, necessarily by the radiologist. I would read the films myself.

Q. It would be your practice at that time to review the x-rays yourself review, the MRI yourself?

A. Correct.

Q. Do you have a memory of having done that as you sit here today?

MR. LICALZI: Which ones?

MR. BASSIN: The two x-rays and MRI.

A. The x-ray, I did have an

opportunity, and the MRI was not done until subsequent.

Q. Do you know where it was done, the MRI?

A. I believe --

Q. When? Excuse me?

A. I believe it was done on the evening of the 14th.

Q. Take a look, just to refresh your memory, look at the radiographic consultation.

MR. LICALZI: How will that refresh his memory? He said after his involvement it was done, the MRI.

MR. BASSIN: He thought it was on the 14th. That is why I am asking that.

MR. LICALZI: Okay.

THE WITNESS: If you have the date, I will look at it.

MR. BASSIN: Over here.

MR. LICALZI: Here it is.

THE WITNESS: (Reading) Date

of service, 2/13.

Q. It says, "The study is limited by patient body habitus."

What does that mean?

A. She was overweight.

Q. Did you notice any infection when you looked --

MS. FITZGIBBON: He didn't look at this.

MR. LICALZI: This was after.

MR. BASSIN: I apologize.

Q. On the spine and pelvic films that you looked at, did you notice any indication of infection?

A. No evidence of infection.

Q. Do you know when you first had an opportunity to look at the MRI films?

A. I have never seen the MRI films.

Q. You have never seen them?

A. No.

Q. Did you ever become aware that her glucose level was high?

A. Yes.

Q. When was that?

A. Via telephone call at 7:00 a.m. that morning.

Q. Was it significantly elevated for this patient?

A. Yes.

Q. Would it be fair to say that diabetics have a difficulty --

A. Excuse me.

MR. BASSIN: Strike that.

Q. What, if anything, did you do about the glucose level?

MR. LICALZI: I don't know if he knew about the exact glucose level.

Q. Did you know that it was elevated?

A. I was told that the glucose was elevated.

Q. Did that raise any red flags for you at that time?

MR. LICALZI: Objection to the form.

You can answer.

A. Yes, because the labs were supposed to be normal.

Q. You had originally been told they were normal, but now you heard the glucose level was elevated?

A. Yes.

Q. Did you hear anything else in that call regarding differentiation from the normal labs or, quote, the normal labs?

A. No.

Q. Do you know what her CBC was?

A. I --

Q. Did you ever find out what her CBC was?

MR. LICALZI: At what point in time?

MR. BASSIN: Either the 3 o'clock call or 7 or by the 8 o'clock examination.

A. No.

Q. Did you ever find out that she had a CBC of 18,000?

MR. LICALZI: CBC? Objection to the form.

Q. White blood cell count of 18,000?

A. No.

MR. LICALZI: At the time he saw her in the hospital?

Q. Did you find out at the time you saw her at that time?

A. That was not available at that time.

Q. Did there come a time when you found out about that? When did you find out?

A. Subsequent to that event. Not on that day.

Q. When did you find out that she had that count?

A. I --

Q. Following day, day after that or something else?

A. I --

Q. If you remember.

A. I don't recall.

Q. At any time up until the time you examined her yourself, did she have a temperature --

A. I --

Q. -- other than normal that you knew of?

A. She was afebrile when I saw her on

that morning.

Q. Did you see her again in the hospital after that morning?

A. No.

Q. Did you ever see her again?

A. No.

Q. From either the first or second telephone call or your examination on that morning, did you ever consider whether or not she had an infection?

MR. LICALZI: Objection to the form.

I have no problem with the question, but you are limiting it to two phone calls. I don't know if that is the testimony.

Q. Was there anything other than those two phone calls? You said you had a phone call between 1:00 and 3:00, and one at 7:00.

Did you have any other phone calls that day?

A. I don't recall.

MS. HOWARD: Note my

objection.

Q. Prior to the examination --

MR. LICALZI: Ask him how many phone calls he recollects.

Q. How many phone calls did you get that morning?

MR. LICALZI: One, two, three?

A. I think three.

Q. Do you remember what time the third phone call was?

A. It was right in that half hour period between 7:00, 7:00 and 8:00.

Q. Who was that phone call from?

A. The nurse.

Q. Do you remember who the sum and substance of that phone call was?

A. The glucose was elevated.

Q. Did you get any other information at that time?

A. That is the information she provided to me.

Q. What did you tell her, if anything?

A. "Please refer this to Dr. Mendizibal. He is a diabetologist. If

that is elevated, you must inform him of that."

Q. Going back to the question I asked you before, we had three telephone calls, then you examined her earlier that morning?

A. Yes.

Q. At any time through the period of time that you examined her, did you ever consider that Ms. Booth had an infection?

A. Infection as in the spectrum of possible diagnosis for any condition.

Q. Did you personally -- as you sit here today, do you remember whether or not you considered that part of her problem might have been that she had an infection?

A. It is always in the differential.

Q. Did you do anything about that differential?

A. Ordered an MRI.

Q. What were your reasons for ordering the MRI?

A. She had a history of lumbar radiculopathy, back pain, leg weakness and multiple causes for that. She could have a

tumor of the spine, either primary or metastatic or acute disk herniation or exacerbation of stenosis, infection.

She could have metabolic disease for the spinal cord, and by ordering the MRI, that is a comprehensive examination for eliminating the spine as the source of her pain or including it as the source of her pain.

Q. Did you have any conversations with Dr. Mendizibal about her condition up until time that you examined her?

A. No. I was aware that he was aware of the information and was coming in to see him per my second phone call.

Q. Are you aware that diabetics have more difficulties fighting off infection?

A. Absolutely.

Q. Was the fact that she was a diabetic, did that give you increased concern about her elevated glucose level?

MR. LICALZI: Objection to the form.

The fact that she was a

diabetic, did --

Q. The fact that she was a diabetic, that she is more prone to infection and she had an elevated glucose level, did that give you concern about her condition?

A. I was concerned and ordered an MRI of the spine.

Q. Did you order any other tests that might look for or rule out inspection?

A. I am a spinal surgeon and spinal specialist.

MR. LICALZI: Did you order anything else in order to rule out --

THE WITNESS: Other than the MRI, I wouldn't order any other tests.

Q. Did you ask for a consult from any other doctors?

A. Dr. Mendizibal.

Q. Other than Dr. Mendizibal, did you ask for a consult from any other doctor?

A. No.

Q. Did you order Dr. Mendizibal, a

consult from him, or was that a consult that was asked for by the ER doctors?

A. I specifically stated that she needed to be evaluated by her primary care physician/endocrinologist and endodiabetologist, and the name given to to me by the ER was Dr. Mendizibal as a physician who had been caring for her.

I was not aware that he was her physician, or I would have called him.

Q. You said there was a differential that you had including infectious process?

A. Yes.

Q. Other than what you told us, did you do anything else at all to rule out infectious process as one of her conditions?

A. I ordered an MRI of the spine.

Q. That is the only thing?

A. That is what I did.

Q. Were you familiar at the time with the hospital protocols and procedures relating to circumstances regarding drawing of blood cultures?

Lattuga

MS. FITZGIBBON: Objection.

MS. HOWARD: Objection.

MR. LICALZI: You can answer.

A. I am not aware that there is a protocol.

Q. Do you know if there is a protocol for blood cultures being taken before she was admitted to the orthopedic floor?

MS. FITZGIBBON: Objection.

A. No, I am not aware if there is a protocol.

MR. LICALZI: Objection.

I don't know if she was admitted to the orthopedic floor.

Q. Was she admitted to the orthopedic service?

MR. LICALZI: That is different than the floor.

Q. Did the hospital have an orthopedic floor or ward at the time?

A. Yes.

Q. Was she admitted to the orthopedic ward?

MR. LICALZI: Do you know or

can you tell from chart?

A. I don't know what room she went to. Depending on the room she went to.

MR. LICALZI: Do you want him to find out what room?

MR. BASSIN: Well --

THE WITNESS: I don't know where she ended up.

Q. You asked her to be admitted orthopedically. Was it the practice to put them into a particular area?

MR. LICALZI: Objection.

Q. Was it your understanding or in 1998, was there a separate section of the hospital where orthopedic patients were normally admitted to?

A. Yes. If the primary diagnosis is an orthopedic problem.

If there are significant associated medical factors, diabetes, cardiac disease, they may get admitted to the telemetry unit, medical floor or orthopedic floor. I can't testify where she was, which floor.

Q. You stated before you knew she was a

diabetic, correct?

A. Yes.

Q. You stated before that you had at least one differential diagnosis where an infectious process was possible?

A. Yes.

Q. To your knowledge, she was admitted to your service, correct?

A. Yes.

Q. Do you know as you sit here today -- and you can look at her chart -- whether she was admitted to a special part of the hospital which was an orthopedic part of the hospital or whether she was admitted to a general floor?

A. I don't know where she was admitted to.

MR. LICALZI: It says she was -- it was nursing station 2 PAV, room 227.

Q. Do you know where that was in the hospital, whether or not that was an orthopedic section?

A. That is the orthopedic floor.

Q. She was admitted to the orthopedic section of the Mercy Hospital back on 2/13 when she was admitted?

A. Yes.

Q. You never saw her on that floor, to the best of your knowledge?

A. Correct.

Q. To your knowledge, she was treated subsequently by other members of your practice?

A. Yes.

Q. Was there a reason why you did not continue to see her even though she was admitted under your practice?

A. Yes. I left for vacation.

Q. Do you remember when you left for vacation?

A. Friday evening.

Q. Do you remember what day of the week that was?

A. I think --

MR. LICALZI: Friday evening?

THE WITNESS: 2/14, I believe.

MR. LICALZI: Let's be clear.

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Don't guess.

THE WITNESS: I need a calendar.

MR. BASSIN: I have a calendar.

THE WITNESS: 2/13.

Q. The day you saw her in the morning, you left for vacation that evening?

A. Correct.

Q. You did not see her again in the hospital or, in fact, again?

A. Right.

Q. Is there any other place in this chart where you specifically either use your handwriting to sign it or in any way were involved in adding to this chart?

MR. LICALZI: That is a general question.

MR. BASSIN: Off the record.

(Discussion held off the record.)

MR. LICALZI: There are also orders.

MR. BASSIN: I want him to go

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through the orders.

MR. LICALZI: Direct him to that.

MR. BASSIN: I assume discharge summary is the last thing, so let's get everything else before that.

MR. LICALZI: I know where it is.

MR. BASSIN: Off the record.

(Discussion held off the record.)

Q. I am asking you, Doctor, to take all time you need to go through whole chart and to show me anything else in the chart where you wrote an order or an order is indicated having come from you other than the discharge summary, which we will discuss later, any other orders or any other indications in the chart where you have written the note or where you directed somebody else to do something?

Take your time. Go through it page by page, then tell me what you find other

than what we have already discussed and the discharge summary that we will discuss afterwards.

A. The first thing is the orders that I gave, my second telephone call, 2/13/98, 6:45 a.m.

Q. 2/13/98?

A. Yes.

Q. Read the note.

A. (Reading) Just telephone order, Lattuga, Sutherland, R.N., admit regular unit, diagnosis, lumbar radiculopathy, IDDM, regular diet, Demerol and Vistaril for pain.

MRI of lumbar spine, ambulation, weight training and physical therapy. Weight bearing was tolerated with a walker, and it says CBC 7, UA, PT, PTT, EKG.

Q. That was your note in your handwriting?

A. No. The telephone call taken by the nurse.

Q. Listed on the bottom it lists all the things you want done?

A. Yes.

Q. All the different things that you needed done, and they are checked off?

A. I --

MR. LICALZI: What do you mean?

Q. CBC has a check?

A. Yes.

Q. Each one of them has a check over it meaning -- that means they were done?

A. What it means is that -- right. When they check it, it means they were done or drawn already.

Q. On your chart, which is a pink piece of paper, there are actually red checks on top of it?

A. Yes.

Q. Different pens at different times?

A. What?

Q. There is --

A. I don't check that.

Q. What is the circle around the UA?

A. I don't know.

Q. What is the scribble across it and

then up? What is that?

A. I don't know. It could be the nurse's note because she took the note, and I would anticipate that to be her.

Q. The one on the bottom, does that mean it was done or that somebody reviewed it or what?

A. I don't know.

Q. The S.L. is your signature?

A. Yes.

Q. You checked that after, and sometime later you signed your signature?

A. That was done at the end of the admission when I returned from vacation after the event.

Q. You went through the chart?

A. Yes. It is flagged and you sign all the telephone orders, et cetera.

Q. When you ordered that lumbar spine, somebody else was to take a look at that MRI --

A. Correct.

Q. -- after you left?

A. Correct.

Q. And to your knowledge, did somebody else take a look at that MRI?

A. Yes.

Q. Who was that?

A. One of my partners.

Q. As you sit here today, do you know who that was without referring to the records?

A. It was either Dr. Feder or Lieberman.

Q. When you were on vacation, you were not in contact with people from your office for a period of time?

A. Yes.

Q. Was it more of a period of time from the time she went to the hospital until she passed away?

A. Yes.

Q. The first time you learned she passed away is when you came back from vacation?

A. Yes.

Q. Who told you that?

A. One of my partners. I don't recall.

Q. Is there anything in that note that refers to or is there anything in that note that indicates your concern of a possible infection?

MR. LICALZI: Objection to the form.

Q. Is there any note here saying, "Rule out infection," or, "Rule out infectious process," or anything like that?

A. That is an order.

Q. Did you say anything to anybody that would be included in this note? And you can say no, there is nothing there.

A. No.

Q. Fine.

The tests that you ordered, you stated those tests were ordered because you were concerned about possible infection, correct, some of those tests?

MR. LICALZI: Objection to the form.

Q. Are those the tests you ordered in the normal course, the CBC?

MR. LICALZI: Which one?

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MS. FITZGIBBON: CBC, UA, et cetera?

Q. Why did you order the CBC?

A. I'm not sure why it appears here. I don't recall ordering those labs specifically.

Either the nurse just put them in because there is no specific order to make -- to justify having ordered the tests, and there has to be an order written for any test in the hospital, or I became aware at that time that those labs had not been ordered, and I said, "Well, they have to be ordered, obviously."

As you recall, and I testified to, that I was told at 2:00 a.m. in the morning that all tests and all labs were normal, and that was the only reason why she would come to the spinal orthopedic service, predicated upon normal labs.

Q. Your statement is that your first contact with the hospital, you were told that the labs were all normal, and that is why they were consulting you specifically

on this?

A. Yes.

Q. You came in and gave this note or when you called in this note at 6:45 a.m., you by that point had learned that the labs had not been done?

MR. LICALZI: Objection.

MS. FITZGIBBON: Objection.

Q. You said --

MR. LICALZI: He does not know if he ordered it or somebody else. That is what he said.

MR. BASSIN: Okay.

Off the record.

(Discussion held off the record.)

Q. You called the hospital and you said, "I thought you said before that you ordered these things to be done," or did you only order everything up until the last line, then that line wasn't your order but somebody else's?

Which is it? When you -- you ordered the MRI?

A. Correct.

Q. You ordered the EKG?

A. No. That is the point.

I have to say specifically that on this particular point I don't have a recollection of whether or not this is when I became aware that there were no labs ordered or on the subsequent phone call. That is all I can tell you.

Up to this point I was told and under the impression, okay, that this was a nonemergency admission for back pain, and I was coming into that -- that all the parameters to or criteria for admission to my service which include normal laboratory values had been met.

Now she was being admitted to me for evaluation of her back pain and leg pain, and the diagnosis provisional was lumbar radiculopathy, and I was coming in to evaluate that.

At 6:45 I received the orders, admit orders, and I gave the admit orders, and I don't remember saying specifically, "She

needs a CBC," or I was told.

And I said then, "She needs to get those, obviously, and why is she being admitted to my service if those tests were not done?"

I don't have a specific answer, to be honest, and that is what I am here to do.

Q. Going to the top, it says T-O, period, Lattuga?

A. Yes.

Q. That means?

A. Telephone order, Dr. Lattuga.

Q. It says, "/and Sutherland, R.N."?

A. Yes.

Q. Is that the person that you spoke to?

A. That is who wrote the note.

Q. The practice was that the person that wrote the note would put their name next to yours?

A. That is the practice, yes.

Q. We know that Nurse Sutherland is the person that took the note?

A. Yes.

Q. Do you know a Nurse Sutherland?

A. No.

Q. It says, "Admit." That was your order to have her admitted?

A. Yes.

Q. Regular unit, what is regular unit? What does that mean to you?

A. Not the ICU. Not a telemetry bed or monitor bed.

Q. As a spinal surgeon, when you give an order of regular unit, is that -- was it your understanding that that meant it would be to the orthopedic unit or medical regular unit or something else?

A. Any non-specialized care unit.

Q. You did not specify this had to be an orthopedic unit?

A. Yes.

Q. Diagnosis, lumbar radiculopathy and basically diabetes?

A. Yes.

Q. IDDM?

A. Yes.

Q. As far as you knew at that time, you were not concerned that she be specifically in an orthopedic unit, and your diagnosis was --

MR. LICALZI: He did not testify to that. Regular unit means non-specialized unit, no telemetry,

Q. You didn't specify?

A. Right.

Q. You felt it was back pain, and the diagnosis was back pain and diabetes?

A. Yes.

Q. Regular diet meaning --

A. Yes.

Q. It says Demerol?

A. Yes.

Q. That is for pain?

A. Yes.

Q. Vistaril?

A. Pain.

Q. Then it says for pain, obviously, at the time for pain?

A. Yes.

Q. MRI lumbar spine today, and there is

a number after that that indicates what?

A. I am not aware of what it means.

Q. Ambulation or some little mark before ambulation, can you see that?

A. Red mark.

Q. The note would say ambulation training?

A. Yes.

Q. With physical therapy?

A. Yes.

Q. As you said she had problems moving?

A. Yes.

Q. What did you mean by that?

A. The diagnosis of lumbar radiculopathy -- part of the treatment is you have to treat people also, so part of her -- you have to medicate her for pain and then now provide some therapeutic intervention, i.e., physical therapy, get her out of bed, mobilize her.

That was me giving the therapeutic regimen with regard to my diagnosis and expertise.

Q. If anybody came in with back pain at

that time, would you order ambulation training or would it have to be more serious than that to order that training?

A. I don't understand.

MR. LICALZI: I don't understand. Objection.

Q. You testified it was not just that she had back pain, but you were told by the doctor that called you on phone that she could not move, and that is why they had to keep her in the hospital for pain, because she couldn't get out of the hospital; isn't that true?

MS. FITZGIBBON: Objection to the form.

MR. LICALZI: Objection to the form.

His testimony is what it is.

Q. Is it true that that is what you said here? Is that your understanding at the time, that she couldn't move?

MR. LICALZI: Couldn't move is different than unable to walk.

MS. FITZGIBBON: Objection.

Q. Was it your testimony that she was in such pain that she was unable to get out of the emergency room?

MR. LICALZI: Objection.

Tell him what your testimony is. Tell him your recollection about the telephone conversation.

A. This patient was not paralyzed, did not have a paralytic condition and had the motor strength by his examination and by my examination to get up and walk, but rather it was a pain issue, and because it was painful, she found it too difficult to walk because of pain.

Q. Any ambulation training was in spite of the pain that she would be able to walk with the training?

A. They help make the first initial movements so she could overcome that and then start walking again.

Q. W-T bearing, which would be weight bearing, as tolerated with walker?

A. Yes.

Q. The next line is in the same

handwriting in your chart, as far as you know?

A. Yes.

Q. CBC, and then I can't read it, okay. 7, which means what?

A. 7.

Q. Which means what?

A. Electrolytes.

Q. Then it says UA?

A. Yes.

Q. Then PT?

A. Yes.

Q. Then PTT?

A. Yes.

Q. Right under that it says EKG?

A. Yes.

Q. All in the same handwriting?

A. Yes.

Q. Was it your experience at that time when the nurse took a note from a doctor over the phone as an order that they would independently write in tests to be taken if the doctor did not order them at that time?

A. I can't tell you what the

independent practice of nurses would be at the time. All I can say is that I don't remember or recall ordering those tests at that time.

Q. You remember everything but those last two lines?

A. Correct.

Q. Continue, Doctor. Are there any other notes or orders from you?

A. I will look.

(Reading) 2/13/98, it says telephone order, Dr. Lattuga. Valium, five milligrams PO times 1 now.

Q. Which means what?

A. Orally.

Q. That note is 7:45?

A. Yes.

MR. LICALZI: Well --

Q. It has the same handwriting. I can't tell from my copy.

MR. LICALZI: I can't tell what time it is.

A. I --

MR. LICALZI: Looks like 7:45.

I can't tell if that is the time written or picked up.

Q. It says p.m.?

A. Yes.

Q. What time did you go on vacation?

A. I left for skiing. I went up that evening.

Q. That would be after 7:45?

A. Yes.

Q. So in other words, you drove?

A. Yes, up to Vermont.

Q. Telephone order, Dr. Lattuga, then the name of another person, not Sutherland, K. Peterson?

A. I don't know whose name it is. It appears to be K. Peters.

Q. Valium, and now -- which, again, that would be immediately?

A. Yes.

Q. It was not --

A. My understanding, she was going to MRI, and she needed to be relaxed to do that and she needed Valium.

Q. That was relaxing her as opposed to

pain?

A. For relaxation.

Q. What is the next note?

A. Excuse me?

Q. Any other notes from you or is that the last one?

A. That is the last one I have.

Q. Other notes that you wrote or ordered anyplace in the record?

A. Yes.

Q. The other document that we discussed before was your -- there was a discharge summary which was actually dictated by you upon your returning from vacation?

A. Yes.

Q. That is a two-page discharge summary --

A. Yes.

Q. -- or three pages?

A. Yes.

Q. It was dictated by you on the 25th upon your return, approximately?

A. It was.

Q. 25th of February?

A. 2/25/98.

Q. Would that be the practice at the time you dictated it?

A. Excuse me?

Q. They would write down the time of the dictation?

A. I believe that is the practice of the hospital. I can't testify as to the typical practice of the hospital for annotating the date and time.

Q. Was it your practice to --

A. It is my practice to dictate the discharge summary when I have the opportunity.

MR. LICALZI: In the discharge summary would you say, "I am dictating it on such and such a date"?

THE WITNESS: Yes.

Q. It was typed the following day?

A. I --

MR. LICALZI: Does T mean typed? And if you don't know, tell him.

THE WITNESS: I don't know.

Q. You --

A. I don't know.

Q. You said the patient was last seen by you on the evening of the 13th because you left on vacation.

How long was the vacation?

A. I believe a week.

Q. You returned to practice sometime around the 20th, then?

A. I believe so.

Q. The patient died on the 20th, at least declared dead on the 20th? And you can look at your notes.

A. 2/20/98.

Q. That was at 8:30 in the evening or 8:25 in the evening?

A. Yes.

Q. You stated you returned approximately on the 20th.

Did you return to the hospital and see her before she was dead?

A. No.

Q. You wrote DIS 220?

A. Yes.

Q. That is the time of death?

A. Yes.

Q. What is DIS?

A. I believe it refers to discharge or termination date.

Q. It gives your admitting diagnosis, then your final diagnosis, and your admitting diagnosis is lumbar radiculopathy and stenosis?

A. Yes.

Q. Your final diagnosis is cardiac arrest and sepsis?

A. Yes.

Q. That is infection?

A. Correct.

Q. Major infection?

MR. LICALZI: Objection.

MS. FITZGIBBON: Objection.

Q. Where did you get that diagnosis from?

A. I reviewed the chart and consultations of the physicians that were involved in her care.

Q. Who did you speak to?

A. I spoke to no one, no one personally.

Q. You just reviewed the chart itself?

A. Yes.

Q. You didn't have individual conversations with Dr. Lieberman, Mendizibal or anyone else?

MR. LICALZI: At what time?

MR. BASSIN: Before he dictated the note as part of the preparation to dictate the note, other than reviewing the records.

Q. Other than that, did you discuss the patient with any specific doctor?

A. No.

Q. Any specific medical personnel from the hospital?

A. No.

Q. So your note is based on your review of the records solely?

A. Yes.

Q. The line says, "It was therefore recommended a stat MRI of the lumbar spine

be performed to evaluate the lumbar spine and neural elements."

Stat means immediate?

A. Yes.

Q. What were you referring to when you put down "neural elements"?

A. Nerves.

Q. At this point in time you knew she had died of sepsis?

A. Yes.

Q. You were writing that you had asked for an emergency MRI because of concerns for the spine and nerves, and you did not write down that you ordered it because you were concerned about infection; is that correct?

A. (Reading) One of the things, if you look at the previous paragraph, it says diagnosis of either acute herniated disk or diskitis, which means inflammatory condition, metabolic condition. No aplastic cancer or infection, and infection is in that word, diskitis, and cannot be excluded by physical examination.

Q. The second paragraph is my question --

MR. LICALZI: You can't take one paragraph after that and say you are not referring to the one before. He is directing his answer from your question back to the previous paragraph.

Q. I am asking you specifically, you stated in that line, that one sentence, that the reason you asked for a stat MRI is to evaluate the spine and neural elements?

A. Yes.

Q. You did not put it in that line that you were -- you did not put anything there that you were looking out for infection process?

MR. LICALZI: In that line?

MR. BASSIN: I am asking a question.

Q. Yes or no?

A. The word "infection" does not appear in that line.

Q. By that point in time you had known

that she had died from infection, correct?

MS. HOWARD: Asked and answered.

MS. FITZGIBBON: Asked and answered.

MR. LICALZI: He answered that.

MR. BASSIN: Off the record.

(Discussion held off the record.)

Q. Going to the next sentence --

A. Yes.

Q. -- "Discussion occurred with Dr. Bluth in the a.m.," which would be the 13th, in the a.m. of the 13th?

A. Yes.

Q. That is in terms of urgency of obtaining the MRI to rule out neurological injury?

A. Yes.

Q. Dr. Bluth was who?

A. Radiologist.

Q. Is that what you told the doctors, that you wanted to rule out neurological

injury?

A. No. I need to elaborate. Obtaining the MRI in the hospital is sometimes a difficult process --

MR. LICALZI: Just answer it.

A. -- and, therefore, I wanted to make sure, because I care for my patients, that they receive care in a timely fashion, so I called Dr. Bluth and I said, "This lady can't go on the regular schedule. She needs to have the spine MRI done urgently."

And my presumptive diagnosis, I wanted to make sure she didn't have a herniated disk, exacerbation of the problem, a tumor of the spine or infection of the spine. That was the genesis of my phone call.

Q. That is what your discussion was with Dr. Bluth, and you wrote down this neurological injury?

A. Right.

MS. FITZGIBBON: Read back the last two questions and answers.

(Whereupon the record was read

back by the reporter.)

Q. So, Doctor, I am trying to find out -- the paragraph says whatever it says, but your statement was that you spoke to Dr. Bluth, and in that conversation, what did you say? What was the sum and substance of the conversation with Dr. Bluth?

What did you say to him? What did you say you were concerned about, if anything, and what did he say to you?

A. I just testified to that.

Q. I would like to hear it again.

MR. LICALZI: Say it again.

A. I said, "Mark, this lady needs an MRI."

Q. Right?

A. "She needs -- she can't go on the regular schedule. See if you can get it done more quickly."

He said, "What do you think is going on?"

"Maybe she extruded a fragment of disk. Perhaps she has metastatic disease.

I just want to make sure there is nothing acute going on in the spine."

Q. Is that the total, the totality of everything you said to him on the phone?

A. Yes, to my recollection.

Q. You stated before, just a few minutes ago -- and I may have misunderstood -- that you were concerned about an infectious process as a possibility and that you stated that to the doctor as one of the reasons you wanted an MRI; is that true or not true?

A. I was --

MR. LICALZI: Did you use the term "infection" when you spoke to him.

THE WITNESS: I don't recall.

Q. Did you tell him you were concerned about diskitis or anything else that might have to do with infection as opposed to disk problems or something or physical problems other than infection?

A. I specifically stated to him that we need to rule out an acute process of her

spine.

Q. Was it your understanding when you told that to him that that included the possibility of an infection?

A. That is correct.

Q. You had worked with Dr. Bluth before then?

A. Yes.

Q. You had had him take x-rays for you or --

A. He is very good.

Q. It was your understanding when you used the phrase you just used that he would understand that you meant also infectious process?

MS. FITZGIBBON: Objection.

MR. LICALZI: Objection.

Q. Was it your understanding based on your experience of working with Dr. Bluth that he understood that the use of the phrases you used included the possibility that there was an infectious process?

MS. FITZGIBBON: Objection to what Dr. Bluth understood.

Q. I am asking you, what was your understanding of what -- of what you were communicating to Dr. Bluth?

MR. LICALZI: He told you.

Q. Was it your understanding that based on your experience in working with Dr. Bluth that he understood, your understanding of what he understood, that one of the things you were concerned about is the possibility of an infectious process?

And they can object if they want.

MS. FITZGIBBON: Objection.

MR. LICALZI: Don't answer that.

He said he considers what is an acute process. He said that part of his discussion with Dr. Bluth involved diagnosing what an acute process is.

He told you what an acute process is and infectious process, tumor, metastatic disease. I don't know if Dr. Bluth has the same

understanding.

MS. FITZGIBBON: Objection.

Mark it for a ruling.

MR. BASSIN: You can't object.

MR. LICALZI: I --

MR. BASSIN: You represent a doctor in a case, and I am putting it on the record. You are telling him not to answer -- off the record.

(Discussion held off the record.)

Q. You told us what your understanding is based on your experience in dealing with Dr. Bluth. You told us the phrase you used, and you told us what you understood it meant. Is that your testimony?

MR. LICALZI: Over my objection, does acute process include infectious process which Dr. Bluth, you think, understood that?

MS. FITZGIBBON: Note my objection to that question.

MR. LICALZI: If you don't have an understanding, you don't

have an understanding.

A. An MRI shows what it shows. You read it. It is infection or not. It is a tumor or not a tumor. It is there.

He is a very capable, excellent radiologist. If it was there, he read it, and if it was not, it wasn't in there.

Q. If it was an infectious process, it would show up on MRI?

MS. FITZGIBBON: Objection. Objection.

MR. LICALZI: Objection.

MS. HOWARD: What?

MR. LICALZI: Ridiculous. Call the judge. This is ridiculous.

Q. Was it one of the reasons? Was it one of the reasons?

You told us three times already you asked for an MRI because it could rule out infectious process. Did you tell us that before; yes or no?

MS. FITZGIBBON: The testimony is what it is.

Q. Is it your understanding that the

MRI that you ordered at this time, part of what it can do is rule out infectious process?

MR. LICALZI: Of what?

MR. BASSIN: Infectious process.

MR. LICALZI: Lumbar spine?

MR. BASSIN: In the area of the spine or anyplace else.

MR. LICALZI: It will not rule out infectious process of the head.

MR. BASSIN: In the area covered by the MRI.

A. It evaluates and delineates disease of the lumbar spine and to within several millimeters around the spine a very, very narrow area, and not the vertebral bodies and disks and neural elements. It is not adequate in evaluating those areas.

Q. You said you were concerned about infectious process, and the way that you were going to have ruled that out was to order an MRI.

Then that testimony before was not

correct, correct?

MR. LICALZI: You have to be kidding me. Infectious process of lumbar spine and that is causing pain, possibly, and that is why he ordered the MRI.

Q. You said at that Dr. Bluth was somebody you had worked with before.

Did you always review the films or did your office -- was it the practice of your office to review the MRI films themselves or to go by the doctor's report on the MRI films?

MR. LICALZI: Films taken in the hospital?

A. Not the practice of my partners to review MRI films of the spine.

Q. It was solely your practice to do that?

A. My own personal practice.

Q. Okay.

A. If available.

Q. If somebody else was treating the patient at the time of the MRI films when

they came back, it was not your understanding that your partners review the films, but it was your understanding that they review the report?

A. They would review the report.

Q. Other than what you told us about your conversation with Dr. Bluth at that time, do you have any other recollection of anything else that you discussed with Dr. Bluth on that occasion?

A. Sorry.

Q. Other than what you told us, was there anything else in the conversation?

A. I don't recall any other conversation with Dr. Bluth.

Q. Or any other part of that conversation other than what you told us?

A. I don't recall.

Q. It says -- it states on admission, it was noted -- the admission labs on the morning of 2/13 revealed the patient had elevated glucose and white count.

Do you know whether or not those were the tests that were ordered at the

time of your note or was it other tests that were taken?

MR. LICALZI: If you know.

A. I don't know which -- specifically which labs were drawn, whether it was one set or a second set. I can't testify to that.

Q. You write the MRI findings were consistent with severe lumbar stenosis and lumbar radiculopathy as per Dr. Bluth.

Is that based on Dr. Bluth's report in the file?

A. Yes.

Q. Turn to that report, please.

A. Yes.

Q. That is a two-page report, right?

A. Yes.

Q. Can you tell me the area of the body that this report covers? In other words, the MRI covered the body from where to where?

A. Lumbar MRI?

Q. Yes.

A. L1, L2, L3, L4, L5-S1.

Q. How far from the spine on either side would this MRI cover, if you know?

A. Several millimeters.

Q. So we are going from the top of the lumbar spine all the way to the bottom?

A. Yes.

Q. And you say several millimeters --

MR. LICALZI: From what point?

Q. Give it to me in inches.

A. It is accurate in terms of detail only for that segment that it is scanning.

Q. So on either side of the spine, two inches on either side?

MR. LICALZI: No.

A. Let's define what the spine is. The spine is made up of vertebral bodies and nerves coming out.

Q. From the center line of the spine going out in either direction, approximately how many inches in each direction?

A. It is more accurate to say from the confines of the vertebral body, the circumference of that, and I would say

accurate to only a quarter inch.

Q. On either side?

A. Yes.

Q. From the circumference of the vertebral body?

A. Yes.

Q. Were there MRI's done prior to this in your possession or in the hospital?

A. I testified to that.

Q. There was one?

A. Yes.

Q. Do you know whether or not Dr. Bluth had the advantage of having compared the MRI with the prior MRI?

A. I can't testify for him.

Q. Was it your practice or was it the practice of your practice if a patient was admitted to the hospital, to bring to the hospital any MRI films that you had in your file in the office?

A. That is not the practice.

Q. Did you communicate to him that the prior MRI existed in your office? Did you communicate that to Dr. Bluth when it was

ordered?

A. No.

MR. LICALZI: Objection. I will object.

I don't know specifically if the film was in his office. That is a bad question.

Q. Was it in the possession in one way or another in your practice in your office, in storage or someplace else?

A. Perhaps the report was in our possession. The physical films, I am not aware of.

Q. Who took the first MRI?

A. I don't know.

Q. Would that be reflected in the records?

A. It might be.

Q. Look at Plaintiff's Exhibit 1 and see if it is there.

A. I will check.

I see it in front of me.

Q. It was done where?

A. Rockville Centre Open MRI.

Q. To your knowledge, the report was in your possession; possibly the x-rays and certainly the x-ray would be available at Rockville Centre if not at your office itself, correct?

A. I don't know the process for how they store their films.

Q. Okay.

A. They may dispose of them and have them on disk, for example. They may not keep hard films.

Q. When you, Doctor -- is it your practice or you stated it was your practice to review MRI films yourself?

A. Yes.

Q. When you do that, is it often helpful to compare the MRI with the prior MRI of the same area?

A. Almost never.

Q. Okay.

A. That is for chest x-rays, not MRI's.

MR. LICALZI: Off the record.

(Discussion held off the record.)

Q. It says --

A. Can I close in?

Q. Sure.

Q. (Reading) Discussed the temperature. It says the patient's first temperature spike was in the morning of February 14th at approximately 12:00 p.m.

That would be approximately noon, right, or when you write 12:00 p.m., is that noon or night -- midnight or noon?

A. I don't know.

MR. LICALZI: Read the paragraph, all right, and tell him what you meant by 12:00 p.m. Read the whole thing, and if you can tell, you can tell.

THE WITNESS: I don't know. I can't tell.

Q. It says, "The temperature spike was discussed with the orthopedic and endocrinology service and urinalysis was sent for examination."

That is your understanding from reading the record?

A. Yes.

Q. "She continued to have low-grade temperature consistently for the next several days," next sentence?

A. Yes.

Q. When did your records indicate that she complained of constipation?

MR. LICALZI: Whose records?

MR. BASSIN: Hospital records. That is what he reviewed in order to write this discharge.

MR. LICALZI: Go through all the hospital records to see when constipation started.

A. The notation was made on the nursing emergency room intake sheet.

Q. It was originally -- she originally came in complaining of constipation, correct?

A. That is what that sheet says.

Q. Now, did there come a time on the 17th that the patient started to develop respiratory difficulties? You say that in the next sentence, correct?

A. Yes.

Q. And she started to go downhill from there?

A. I lost my spot. Sorry.

Q. Take your time.

A. Okay.

MR. LICALZI: What is the question?

Q. The patient started to have respiratory problems on the 17th; is that correct?

MR. LICALZI: What are you referring to?

MR. BASSIN: Next paragraph after the one I read about constipation.

A. On 2/17, the surgical house officer was called because the patient developed respiratory difficulties.

Q. So between -- from your review of the records between 2/14 and 2/17, there is no specific instance of respiratory difficulties or anything of that sort?

A. Yes.

Q. At that point it starts -- what happened to the patient starting on 2/17?

MR. LICALZI: Read.

A. (Reading) She had tachycardia, hypertension. On 2/17 had cardiac arrest. Evaluated and treated by the house officer.

Q. The records didn't indicate that she was being -- strike that.

Continue, Doctor.

A. What?

MR. LICALZI: You want him to read it?

THE WITNESS: (Reading) Consultations were called with the medical service, cardiology service, renal service, nephrology service and neurology service.

Q. Up until that time, did anyone consider that she was having these problems because of infection that you knew from reading the record?

MR. LICALZI: What problems? Respiratory difficulties?

MR. BASSIN: Anything prior to

that sentence that takes us to sometime mid-2/17, had he seen anything in the record that he used to prepare this discharge summary that indicated to him that anybody felt that the respiratory difficulties and cardiac arrest and tachycardia and whatever else was caused by infectious process?

A. I believe that --

Q. Up until 2/17?

A. When she had the -- up until 2/17, there is evidence to the contrary. On 2/14, urinalysis was sent for micro because of her temperature.

Q. When did that come back, do you know, the results of the urinalysis?

A. Let me see.

(Reading) 2/15/98, report of positive urine culture, which is the day after that, 2/14.

Q. That was the first time there was a result of infection?

A. Yes.

Q. What time was that result received?

A. 0200, 2/15/98.

MR. LICALZI: Received?

THE WITNESS: Collection time is 0200, 2/15/98.

Q. Okay. Can you tell from that particular note what page is that --

MR. BASSIN: Let's mark that so we have it.

MS. HOWARD: The culture?

MR. BASSIN: Yes.

Off the record.

(Discussion held off the record.)

MR. BASSIN: Mark that as Exhibit 2.

(Whereupon urine culture was marked Plaintiff's Exhibit 2, for identification as of this date.)

Q. What does it say, Doctor?

A. (Reading) Collection time, 0200, and 2/15/98, and receive time, 0300, 2/15/98.

MR. BASSIN: Off the record.

Lattuga

(Discussion held off the record.)

(Brief recess taken.)

Q. I'm not sure. I thought I was trying to find out when they first were aware that there was an infectious process.

Is it your statement that they were aware of it because they called for a urine test on the morning of 2/15 or that the results, the positive results were recovered at that time?

A. I --

Q. You stated there was a positive urine?

A. Yes.

Q. The test was called for and done on that morning.

Is there any indication as to what time the results of that deposit -- the positive results were noted?

MR. LICALZI: From looking at it, can you tell?

A. Excuse me?

MR. LICALZI: Can you tell by

Lattuga

looking at it what time it was reported?

THE WITNESS: I cannot tell.

Q. Is there anything in the record that you reviewed that you remember now for this discharge summary that indicated to you when they first were aware that there was an infection?

MR. LICALZI: Looking through the record?

MR. BASSIN: Whatever.

Q. That was my question before. When did they first learn about the infection?

MS. FITZGIBBON: Objection.

A. I can't testify for other physicians.

MR. LICALZI: You are going to be questioning other doctors who have the chart. You want him to go through every note?

MR. BASSIN: I asked him a question and he testified they knew of it on a certain date, and now he is saying they didn't know of it on

that day, and they started a test process and the results of the tests came back in sometime subsequent to that, but he is not able to pinpoint the time.

I am asking him if there is any place that he can show in the record that there is an indication that they were aware that the cause of the 2/17 problems with this patient were caused by an infection, and when is the first time it is indicated in the file that they were aware that it was from an infectious process of some sort?

I thought that was my question before.

A. I cannot speak to another doctor's conclusions about physical examination or what their impression was.

Q. In your review of the records, there is no way you can tell today when they first were aware that there was -- that these problems were caused by infection?

Lattuga

MR. LICALZI: You are very vague.

MR. BASSIN: Let me be specific.

Q. You have the records in front of you. Doctor, you used the record to prepare your discharge summary.

Doctor, in the discharge summary you say that the patient started to decline, had cardiac arrest, respiratory difficulties, tachycardia, hypertension on 2/17.

At what point in time can you tell us from the record did somebody at the hospital, some doctor at the hospital, any doctor, any medical professional at the hospital learn that the cause of these conditions was an infectious process?

MR. LICALZI: Objection.

He will not testify to that. He can testify -- he can tell you when there was any evidence of infectious process, but he cannot testify as to --

Q. Can you testify or can you tell us from the chart when is the first time it is indicated that some medical provider indicated that the infectious process was causing injury to this patient?

MR. LICALZI: Hold on.

MS. FITZGIBBON: Objection.

MR. LICALZI: Objection.

MR. BASSIN: This is a guy -- this is a woman dying in the hospital and she is -- -- she dies of infection.

At some time, you would think after a week, that they would know that she had infection and was dying from it.

MS. HOWARD: He wasn't around.

MR. BASSIN: He wasn't around. He read the record. He can look at the record and give me an opinion. If he has no opinion, he can say, "I don't know."

He is the doctor who signed the discharge summary, and I am

entitled to ask the question, and if he does not have an answer we will ask the question of the next three doctors.

I can know from him his understanding. This is not a hard question. It is a question. He can either come up with the answer or not.

MR. LICALZI: It is not a hard question. All these are possible signs of infection and --

MR. BASSIN: I am saying the woman is dying on 2/17.

MR. LICALZI: I understand she passed away.

MR. BASSIN: They know it is not from a bad back at that time.

When did they first figure out that she was dying from infection? That is what I would like to know. When is the first doctor who, after reading this record, who, after seeing that she had other things

other than a bad back, when did somebody -- and he is on vacation I am not blaming him necessarily.

He may be the cause of it, he may not be, but the problem is he is the one that signed this.

He said he reviewed the record, and I can ask him if he found within that any indication that some doctor said this woman is dying from infection process, and if so, when is it noted.

MS. FITZGIBBON: If and when. That is a big "if."

MR. LICALZI: You have about forty questions contained there.

MR. BASSIN: Is there an indication in the record?

Q. Is there an indication in the record, Doctor, that you reviewed in order to prepare this discharge summary, is there is there an indication of a place, time or date when some medical provider said this woman has a serious infectious process

which is causing her to die or some serious injury?

MR. LICALZI: Look at the consults.

MR. BASSIN: That is all I am asking.

MR. LICALZI: Off the record.

(Discussion held off the record.)

A. (Reading) No -- excuse me. It says page 1, nephrology consult, Dr. Paul Friedman.

Q. Yes.

A. (Reading) And it says the differential diagnosis includes sepsis.

MR. LICALZI: It says D: 2/17/98. F-R-I-E-D-M-A-N, Dr. Friedman.

Q. See if there are any other consults there, Doctor.

A. (Reading) Dr. Friedman, 2/17/98, also mentions sepsis.

Q. Same Dr. Friedman or a different Dr. Friedman? Are we talking about the same

nephrologist?

A. They have the same name.

MR. LICALZI: The second one is G. Friedman, a cardiologist.

THE WITNESS: (Reading) Dr. Jeret, the neurologist, on 2/17/98, patient with urosepsis.

Q. After 2/17, the patient continued to have serious problems and ultimately died on the 20th; is that correct?

MR. LICALZI: Objection to the form.

You can answer.

A. Patient was considered brain dead on 2/20/98.

Q. There is some change on this page. That is your handwriting?

A. Yes.

Q. Is that your initials on the page?

A. Yes.

Q. If you will note, there is a line that -- there is another discharge summary which Dr. Kirchblum dictated on the 21st?

A. Yes.

Q. And typed on the 24th?

A. Yes.

Q. Did you have the benefit of reviewing this before you did your discharge summary on the 25th?

A. I don't believe I did.

MR. LICALZI: That is K-I-R-C-H-B-L-U-M. I gave you the wrong spelling before. It is Kirchblum. It is Kirchblum, K-I-R-C-H-B-L-U-M.

Q. To your knowledge, when was the first CAT scan of the abdomen or, to your knowledge, when was the first CAT scan of the abdomen ordered for Ms. Booth?

A. The question again?

Q. When was the first CAT scan of the abdomen ordered for Ms. Booth in this hospital stay?

A. What kind of CAT scan?

Q. Abdominal.

A. I had some indication it was 2/17 or possibly 2/18. One on 2/17.

Q. What was the diagnosis for that?

A. (Reading) Bilateral psoas, P-S-O-A-S, muscle enlargement, most consistent with abscess formation.

Differential diagnosis would include hemorrhage, and also in appropriate clinical context, bilateral lower lung.

Q. After you reviewed the record, was that the first time that a psoas abscess was diagnosed on this patient in this chart?

MR. LICALZI: Objection to the form.

A. There is no diagnosis.

Q. Was this the first time?

A. That psoas abscess appears in the chart.

Q. It is, as far as you know?

A. Yes.

MR. BASSIN: Nothing further.

MS. HOWARD: Nothing.

EXAMINATION BY

MS. FITZGIBBON:

Q. Doctor just going back to your admit

and physical --

A. Yes.

Q. I think it was on page 2, on the right-hand side, there is something written, "Labs," and then a P with a circle?

A. Pending.

Q. Is that written in your writing, Doctor?

A. Yes.

MS. FITZGIBBON: Nothing further.

MR. BASSIN: "Labs pending"?

MR. LICALZI: "Labs P," with a circle.

(Time noted: 1:00 p.m.)

SEBASTIAN LATTUGA

Subscribed and sworn to before me this day of , 2000.

Notary Public

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29	Production of physical therapy chart
54	Name and address of answering service

C E R T I F I C A T E

I, ANGELO IODICE, hereby certify that the Examination Before Trial of SEBASTIAN LATTUGA was held before me on the 16th day of November, 2000; that said witness was duly sworn before the commencement of his testimony; that the testimony was taken stenographically by myself and then transcribed by myself; that the party was represented by counsel as appears herein;

That the within transcript is a true record of the Examination Before Trial of said witness;

That I am not connected by blood or marriage with any of the parties; that I am not interested directly or indirectly in the outcome of this matter; that I am not in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 30 day of November, 2000.

ANGELO IODICE

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CORRECTION SHEET

CAPTION: Booth v. Lieberman, et. al.
LJAA&K FILE NO: 1-1175

Page	Line	Should read.
25	14	and my initials are in evidence.
28	18	and the referral forms
	20	adequate to evaluate other areas.

Sebastian Lattuga

Notary Public

MICHAEL S. PASSET
Notary Public, State of New York
No. 4644921
Qualified in Nassau County
Commission Expires May 31, 2002

and physical --

A. Yes.

Q. I think it was on page 2, on the right-hand side, there is something written, "Labs," and then a P with a circle?

A. Pending.

Q. Is that written in your writing, Doctor?

A. Yes.

MS. FITZGIBBON: Nothing further.

MR. BASSIN: "Labs pending"?

MR. LICALZI: "Labs P," with a circle.

(Time noted: 1:00 P.M.)

SEBASTIAN LATTUGA

Subscribed and sworn to before me this 22 day of JANUARY, 2004.

Notary Public

MICHAEL S. PASSET
Notary Public, State of New York
No. 4644921
Qualified in Nassau County
Commission Expires May 31, 2002

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