

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK TRIAL TERM PART 33

JURY TRIAL
EXCERPT

PLAINTIFF,

INDEX NO.

-3.cja.insu -

TESTIMONY OF
DR. SCHNELLER

DEFENDANTS.

Riverhead, New York
November 9, 2006

BEFORE:

HON. THOMAS F. WHELAN,
SUPREME COURT JUSTICE

APPEARANCES:

SILBERSTEIN, AWAD & MIKLOS, P.C.
600 Old Country Road
Suite 412
Garden City,- New York 11530
BY: JOSEPH P. AWAD, ESQ.
AND: JENNIFER SPINA, ESQ.
Attorneys for the Plaintiff

GARBARINI & SCHER, P.C.
432 Park Avenue South
New York, New York
BY: CHRISTINE FERNANDEZ CORDOVA, ESQ.
Attorneys for Roman T. Pachulski, M.D.

Donna L. Pradas
Jennifer Burriciello
Senior Court Reporters

Schneller - Direct - Cordova

THE COURT OFFICER: Jury entering.

(Jury entering the courtroom)

THE COURT CLERK: All parties are present, Your Honor. The jury is all present.

THE COURT: Let's proceed with cross-examination.

CROSS-EXAMINATION

BY MR. AWAD

MR. AWAD: Thank you, Your Honor.

Q. Good afternoon, sir.

A. Good afternoon.

Q. Sir, when were you first contacted about
?

A. I'm not sure exactly. Probably a year ago or a little less, maybe. Probably less than a year.

Q. And who contacted you about ?

A. I don't remember.

Q. Why were you contacted?

A. To review the records and render an opinion on the appropriateness of the medical care given to the patient.

Q. Was the contact that was made to you about
i within the past year? Is that

Schneller - Cross - Awad

correct, it was the past year?

A. I think so, yes.

Q. Was that contact made to you by virtue of a telephone call, an in-person visit or a letter?

A. A telephone call.

Q. Did the telephone call come from law offices?

A. Yes, I believe it did.

Q. Did it come from the law offices of Garbarini & Scher?

A. I believe it did not.

Q. Did it come from the law office of Lewis Johs?

A. I'm not sure. Probably.

Q. At the time that you were contacted by a law office, were you advised that the law office that contacted you was defending a medical malpractice lawsuit?

A. Probably. I don't have an actual memory of that conversation.

Q. Is it likely that you were informed during the telephone conversation, is it not, that lawyers were contacting you because they desired to see when you'd be available to review records and

Schneller - Cross - Awad

depositions; correct?

A. You're asking me what is likely?

Q. Yes, sir.

A. I think it was likely that they just wanted my opinion on the care and whether I thought that the case was defensible.

Q. So you knew at the time of the initial contact that there would -- that this would be contact from a law firm that was defending a lawsuit; correct?

A. Oh, yes.

Q. And that is not the first time that a law firm has contacted you to see whether you could assist in the defense of a medical malpractice lawsuit; correct?

A. That is correct.

Q. Would it be fair to say that you have, over the years, at least since 1990, provided that assistance to -- in a variety of cases?

A. Yes.

Q. And when you received the records from the law firm to assist in defending the lawsuit, you had the perspective that at some day you may be coming to court and offering opinions to jurors in the

Schneller - Cross - Awad

defense of the lawsuit; correct?

A. Yes.

Q. Okay. Now, in doing so, you also knew that it would be highly unlikely, if not almost certain, that you would not be involved in the care and treatment of . . . , because a law firm had contacted you; correct?

A. Yes.

Q. Okay. So that, as you are here today, offering opinions regarding the care and treatment that she has received over the years, it is slightly different than the opinions that – slightly different than the context of a hospital setting in which you offer opinions contemporaneous with the care and treatment of the patient; correct?

A. This is a retrospective review, limited to review of the records.

Q. Okay. So my – I take it from your answer that, in terms of a retrospective review, that you concede that the opinions that you offer here today are being offered from the vantage point and perspective of defending a case on behalf of a physician and from a point of view that patient treatment directly will not be affected by the

Schneller - Cross - Awad

opinions you offer; correct?

A. Oh, yes.

Q. Okay. Now, in addition to which, Doctor, you know that, in coming here today, offering opinions, that -- withdrawn.

How do you -- how was your name obtained by the law firm that contacted you?

MS. CORDOVA: Judge, can we approach for one second? I have an objection.

THE COURT: Okay.

(Discussion held off the record)

Q. Have you done work for the law firm of Garbarini & Scher in the past?

A. I don't think so, no.

Q. Have you done work for a law firm called Lewis and Johs in the past?

A. Yes, I think so.

Q. And in the work with Lewis and Johs, was that work in the defense of a lawsuit?

A. Yes, I think so.

Q. Is it true, Doctor, that since 1990 you have appeared in a variety of states to give testimony on behalf of the defense in a lawsuit?

A. Defense and plaintiff, yes.

Schneller - Cross - Awad

Q. Well, let's address the defense of lawsuits right now, sir.

Is it true, sir, that you have been asked to give testimony in cases that involve the State of Connecticut?

A. Yes, I have, for the plaintiff.

Q. In the State of Connecticut, sir, you've recently given testimony in the defense of a medical malpractice lawsuit; correct?

A. Might maybe. I cannot call it to mind.

Q. Let me see if I can address some of these singularly, sir.

In the year 1997, for example, sir, I think you were retained by a law firm known as Kelly, Rode, Kelly and Kopff, Nardelli (phonetic), two different ones, in the defense of a medical malpractice lawsuit that was tried in Nassau County in Nassau Supreme Court. The name of the case is the Grossman - Alicia Grossman as the administrator of the estate of Ellen Grossman (phonetic). Were you contacted and asked to testify in that case, sir?

A. I don't remember the case, but I do remember that Nardelli name.

Schneller - Cross - Awad

Q. Okay. In the year -- sir, in the year 2003, in 2003, in Camden County Superior Court in New Jersey, sir, were you contacted by the defendant -- defense firm of Law Offices of James P. Savio, to offer testimony in Camden, New Jersey in the defense of a medical malpractice case. The case -- the case specifically involved an issue about Ticlid, a particular medication; is that correct?

A. I think so, yes. That was -- I believe --

Q. In Orange County --

A. But I believe that was a plaintiff's case. I believe. I don't remember for sure.

Q. In Orange County -- sir, in Orange County, New York, County of New York, in the year 2003, were you contacted and asked on behalf of a defendant in a defense firm by the name of Pelkington and Leggit (phonetic) or Feldman, Kleinman and Coffey to offer testimony in the defense of a medical malpractice lawsuit involving surgery for nose bleeds?

A. I don't remember the details, but I remember Pelkington and Lexington, yes.

Q. You were in the year 2003, again, asked to offer testimony, this time back in Nassau County Supreme Court on behalf of the defense, either by

Schneller - Cross - Awad

Bartlett McDonough, a defense firm, or the Lewis, Johs firm in the case in which Tracy McAllister as executrix of the Estate of Betty McAllister had a lawsuit involving" medical malpractice and the issue there was heart attack. Do you recall that case?

A. I don't recall it.

Q. Do you recall the case, sir - do you recall, sir, appearing in court and offering testimony in that case specifically in relation to whether or not someone, the husband of Betty McAllister, who presented to South Nassau Communities Hospital with severe substernal chest pain, nausea and sweating, whether or not that person received a quality of care in that emergency room on that date? Do you recall those facts?

A. I do not recall any facts like that, no.

Q. Do you recall the name of Judge Edward W. McCardon (phonetic) as being a presiding judge in that case.

A. No, certainly not. I don't.

Q. And would you - would you remember, for instance, sir, appearing in Stamford Norwalk Judicial District Superior Court, Stamford Connecticut and being asked by a defense firm in

Schneller - Cross - Awad

that case, in Connecticut, in the year 2000, to offer testimony in the defense of a hospital in Stamford Norwalk judicial district?

A. I don't have any specific memory of that.

Q. Do you recall the specific facts in which there involved a cesarean section that also involved high blood pressure in that case?

A. As I said, I don't have any specific memory of the details.

Q. When you say you don't have a specific memory, are you saying that that didn't occur or that you just don't remember that one?

A. The latter.

Q. Okay. Is that - do you recall the case in Kings County, in Brooklyn, New York, this was a case that involved a claim of malpractice in a claim involving a dentist in which you were retained either by Langan and Levy or Kopff, Nardelli to offer cardiological testimony in that case regarding endocarditis and valve replacement and dental care? Do you recall that case?

A. I don't recall the case, but I don't - I don't dispute it. I just don't have any specific memory.

Schneller - Cross - Awad

Q. Do you recall the case, sir, which you were called in, in Rockland County Supreme Court in December of 2003 by the defense firm of Rende (phonetic), Ryan and Downs or Kahn and McGuinness and asked in that lawsuit to offer testimony in the defense of a claim against a doctor involving a failure to prevent heart attack? Do you recall that case?

A. I don't know.

Q. Sir, when you do come to court and -- you are familiar with the protocols in courts at this point, correct? If I stood here and read to you another 10 or 15 cases that you've been involved in and to take up the jury time, each one of those cases involved an opportunity for you to come in and offer testimony as an expert in that case; correct?

A. Yes.

Q. You would consider yourself as having some experience in presenting evidence as an expert in the case; correct?

A. Yes.

Q. Would you agree, sir, that the test of the credibility of any expert in cardiology, engineering or otherwise, the test of credibility of an expert

Schneller - Cross - Awad

is the test of whether or not they've offered an opinion that fairly considers both sides?

A. Absolutely. Yes.

Q. To the degree that you're an advocate or any-expert is an advocate for the position of one party or another, that advocate could be considered to have bias and prejudice; correct?

A. The test of credibility is just answering the questions truthfully that are put to any expert.

Q. Didn't mean it to be a trick question; okay? Just asking you, in your mindset, receiving - let's come to this particular case. In your mindset, knowing that you're asked to come here to offer testimony in defense of a lawsuit and knowing we're doing a retrospective study, we would also agree, sir, that to the degree, if any, that someone would conclude that you did not fairly consider all of the facts for either side, do that degree, your opinion may be challenged as having less than full credibility; correct?

MS. KENNEY: Objection, Your Honor.

THE COURT: Overruled. It's cross-examination. Go ahead.

A. Well, I've testified for the plaintiff as

Schneller - Cross - Awad

well as for the defense in a variety of cases over 20 years, so I don't think that that's an issue in my case, at all. But -

Q. You see, Doctor, I -- this morning, the idea of using certain mental images or the idea of repeating certain words over and over, you would agree, sir, that it's not a matter of linguistics in the courtroom, it's not a matter of linguistics as you offer testimony, but really it's a matter of whether or not your opinions are based on a full and fair consideration of the facts; correct?

A. Absolutely, yes.

Q. Okay. To the degree that the full and fair consideration of the facts did not occur, did not occur, okay, the opinions that you offer may be flawed here? May be? Because I'm going to inquire into those facts with you in a few moments, maybe even less than a few moments, but I'm going to inquire with you.

To the degree that your opinions are not based on a full and fair consideration of the facts, they could have less than full reliability; correct?

A. Do you mean if I did not consider the facts?

Q. That's correct.

Schneller - Cross - Awad

A. Oh, yes, if a doctor didn't consider those facts, yes. All the facts have to be considered.

Q. Okay. Now, how much time did you spend before coming here reviewing the medical records?

A. I initially reviewed the medical records when I got them, within the past year, probably - I don't know for sure, maybe 10 hours, something like that, and then a similar amount over the past few weeks in preparation for this.

Q. Now, how much is your rate of charge when you get involved in cases; is it \$300? Is it 250? Is it \$350 an hour? What is your rate of charge?

A. \$300 an hour.

Q. So at \$300 is the rate per hour and you think you've put in approximately 20 hours before getting here today, so far?

A. Probably that's right, because the first 10 hours were, you know, many months ago, yes.

Q. Okay. Now, in that period of time, after reviewing the records, to what extent, if any, did you have a conversation with the attorneys representing Dr. Pachulski?

A. I think I had a few conversations that were brief over the past few weeks. There was one

Schneller - Cross - Awad

conversation when I first got the records, after I reviewed them, there was a conversation and then a long hiatus with no conversation and then more recently.

Q. And what records do you have, any notes that you've made, any records that you may have highlighted or doodled on or whatever of your initial evaluation of this matter?

A. I don't make notes or do doodles or alter the records in any way.

Q. Well, you used the term alter records. The copies that are provided to you are copies that attorneys obviously have made dozens of times before you're involved; right?

A. I don't mark - mark any marks on the records.

Q. Everything is then done in terms of your memory?

A. Yes, that's correct.

Q. So may I ask you, sir, what is your memory, if any, of the conversations that you had with any attorney, after you've reviewed - after you reviewed the St. John's records and particularly your memory of the conversations regarding the

Schneller - Cross - Awad

cardiologists who wrote notes in the record and what they said in the year 1999, when _____ was there in front of them, being treated?

A. I'm not sure what you're asking me. My memory of conversations with the lawyers about the conversations that the doctors had?

Q. Let's - specifically your conversations with lawyers that are defending the case regarding what the cardiologists who were treating her in 1999 were writing in the hospital record.

A. I don't have specific recollections of the details. We had a general conversation about the care and treatment of the patient, but at the time we had those conversations, I had the records in front of me and I could refer to them and I had recently reviewed them.

Q. Could you please tell the jury your understanding who Dr. Nussbaum is?

A. Dr. Nussbaum was the doctor that took care of the patient at St. John's Hospital.

Q. What do you mean, took care of the patient?

A. He was the doctor that dictated a discharge summary, that described the care and treatment of this patient during the hospitalization.

Schneller - Cross - Awad

Q. Okay. I'm just – because I notice that you focused on that discharge summary this morning and appropriately so. Could you please tell the jury when that discharge summary was dictated? Do you know when it was?

A. I don't have that in my memory.

Q. Do you know to what degree, if any. Dr. Nussbaum is a cardiologist?

A. I don't know his board certification status.

Q. Do you know whether or not Dr. Nussbaum offered any opinions as a cardiologist during the care and treatment of the patient at St. John's Hospital?

A. I think he was functioning as an internist, rather than a cardiologist, but I don't know his board credentials.

Q. Are you aware that there were cardiologists that evaluated _____ at St. John's Hospital?

A. Yes.

Q. Okay. These are cardiologists, would you agree, sir, in reading through – let me ask you, what did Dr. Grella say at St. John's Hospital about a pacemaker? What did he write in the record?

1

Schneller - Cross - Awad

1 A. I'll be happy to review the record. I don't
3 have the details of what any particular doctor said
4 at: any particular time. But if you want me to look
5 at it, I'm happy to.

6 Q. As I understand it, sir, you were critical
7 this morning of the interventional cardiologist at
8 St. Francis Hospital and their recommendation of no
9 pacemaker; correct?

10 A. I was -- I was not critical. I was not
11 critical, at all.

12 Q. Was this a matter of linguistics?

13 A. No, I was not critical. I was careful to
14 point out that the doctors quite appropriately --

15 Q. Excuse me, sir. Was it your --

16 MS. CORDOVA: Objection, Your Honor.

17 THE COURT: Overruled.

18 Q. Was it your opinion this morning, sir -- was
19 it your opinion this morning that the recommendation
20 of no pacemaker, you said that was -- you disagreed
21 with that; correct? Yes or no?

22 A. I disagreed with that, yes.

23 Q. Okay. Did you also disagree, this morning,
24 with the care and treatment of the cardiologist at
25 St. Francis Hospital? You disagreed with their --

Schneller - Cross - Awad

even their decision to do testing at St. Francis Hospital in terms of something called the EPS; correct?

A. Oh, no, I did not disagree with that nor was I critical of the doctors, at all.

I disagreed with the conclusions, but the doctors were careful enough and, appropriately so, which is why I'm not critical at all, to flagging that in their note, that there was a 10 percent chance that the conclusion they reached was wrong.

Q. We'll talk about the 10 percent chance in a moment.

MS. KENNEY: Objection, Your Honor.

He's interrupting the witness.

THE COURT: Overruled.

Q. You see, Doctor, this morning, with all due respect, you had four phrases that you used time and time and time again and we're going to explore them. But it almost sounded as if that you had four phrases that you had gone over with -

THE COURT: Counsel, do you have a question?

Q. Now, so, to be sure, sir, okay, there is no doubt in your mind, is there, that when Dr. Hoch

Schneller - Cross - Awad

said no pacemaker, together with his partner, Dr. Levine, no pacemaker, okay, and they discharged the patient from the hospital, there is no doubt that that action of discharging her without a pacemaker, combined with their words, no pacemaker, indicated that, at least as of January 11th, these electrophysiologists from Long Island said that there was no need for a pacemaker; correct?

A. Yes, and they said --

Q. Okay. Their actions actually in the context of a patient care and treatment are consistent with the words they wrote in the records; true?

A. Yes.

Q. Okay. Now, what cardiologist, if any, said no pacemaker for _____, beginning January 1st, 1999, until the time that Dr. Hoch and Dr. Levine discharged her from the hospital? Were there any other cardiologists that said the same thing?

A. There was no pacemaker implanted at St. John's Hospital. The patient was advised to get follow-up.

Q. Would you please tell the jury your understanding of the contemporaneous notes written in the St. John's Hospital record by either Dr.

Schneller - Cross - Awad

Grella or two of his partners in their evaluation?

A. I'd be happy to refer to them. I don't -

Q. Are you aware of anybody in the St.

John's -- who was in cardiology - withdrawn.

To be sure, sir, how many minutes of telemetry demonstrations are contained in the St. John's record that were done by the emergency room physician when . first arrived on January 2nd?

A. I don't see those in the medical record.

Q. What did you refer to this morning, when you pointed to the jury the various strips?

A. Telemetry strips from St. John's Hospital. I don't know for sure whether they relate to that report, but they were telemetry strips recorded during the patient's hospitalization.

Q. I want you to assume those - then, if we took the time, we might be able to coordinate with Dr. Grella's note, Dr. Richie's note and a couple of Dr. Grella's other partners, but assume that, just for a moment. Would you just tell us how many minutes did those tapes represent?

A. A few minutes. Representative tracings. Just a few moments.

Q. I'm sorry, sir, is it a few moments or a few

Schneller - Cross - Awad

minutes?

A. I think those are the same. Just -- minutes, I think. I mean I'd have to calculate it out,

Q. Okay. I'm not specifically asking you at this point, sir, to tell me that it's one minute 20 seconds or one minute 50 seconds, but just so the jury knows, just so the Court knows and just so the record knows, how many minutes, within 20 seconds either way, do those tapes -- do those strips that you referred to this morning refer to?

A. Just a few minutes. I mean we could calculate it up from the strips, but it's just a slice of time. A short period of time. A few minutes.

Q. Was it more than two minutes, more than five minutes, less than two minutes?

A. Sir, we could calculate from the time lines here.

Q. An estimate.

A. An estimate? Two to three minutes, something like that. It's just an estimate.

Q. Yeah. Would you please --

A. That is an answer. In other words,

Schneller - Cross - Awad

cumulated, those strips -

Q. Altogether?

A. It's not continuous.

Q. Right. Everything that's in the record, altogether, represents, at least from what you looked at this morning, something of about two to three minutes of time, altogether; correct?

A. That's what's recorded in the medical records, yes.

Q. Now, of that two to three minutes altogether in the record, sir, of that two to three minutes, I want you to assume, just for purposes of my question only, because if I'm wrong, whatever that consequences that are there, I want you to assume those are the strips that Dr. Grella looked at after he was called to come see the patient. Just assume that now, for the purposes of our discussion. Okay?

First of all, can you tell the jury when Dr. Grella first came to see the patient, in any way you want, and secondly, what he said after he evaluated the patient and looked at those strips?

A. I'd have to refer to the records, rather than quote him from memory.

Q. In your conversations -- now, again,

Schneller - Cross - Awad

there - I want to make this clear. Whatever conversations you had with any attorneys at any time, that's perfectly proper -- perfectly fine. I'm not implying otherwise, but in those conversations, before coming here, sir, did you discuss with the attorney what Dr. Grella wrote in the record and what the other cardiologists wrote in the record?

This case is about cardiology; right?

A. Yes.

Q. Okay.

A. And I'm a cardiologist.

Q. You're board certified in cardiology; right?

A. Yes.

Q. And there are a variety of other doctors that were actually treating the patient that are board certified in cardiology, as well. You're aware of that; right?

A. I believe that's true, yes.

Q. Now, aside from the doctors at St. Francis Hospital who were also subboarded - do you have subboards?

A. I finished my training before subboards were developed.

Schneller - Cross - Awad

Q. Okay. Have you ever had the opportunity to take the tests, oral and written, to become subboardified (sic) in a field, let's say, interventional cardiology or electrophysiology? Have you ever had that opportunity?

A. Yes. I hold the certificate of special competency in cardiac pacing from what is now called the Heart Rhythm Society, which administers that test. It was called, at the time that I took the test, the North American Society of Pacing and Electrophysiology. So, yes.

Q. That's not the same as the American College of Cardiologists?

A. That is correct.

Q. It's the American College of Cardiologists, that board certifies physicians in cardiology; correct?

A. Yes. I took that test, too. Sure.

Q. And that same group and college of the American College of Cardiologists also served to give oral and written boards in what are called subspecialties, such as interventional cardiology or electrophysiology; correct?

A. That is true.

Schneller - Cross - Awad

Q. Okay. That's not the same as that society you just referred to; correct?

A. That is true.

Q. Now, have you had the opportunity, if you had wanted to, to sit and offer either written -- take the written test or the oral test given by the American College of Cardiology in the subspecialty of electrophysiology? Have you ever done that?

A. No.

Q. So, at this particular moment, you are board certified by the American College of Cardiology in cardiology, but not in any of its subspecialties; is that a correct statement?

A. That is true.

Q. So let's return, then, to the cardiologists, the other ones who are also board certified and were treating the patient. How many cardiologists saw the patient at St. John's Hospital during that short interval?

A. How many? We could look it up. I don't have --

Q. Are you familiar with any of their evaluations?

A. Yes, I am.

Schneller - Cross - Awad

Q. Are you familiar with the evaluation of Dr. Grella?

A. Yes.

Q. Please tell the jury what Dr. Grella wrote in the hospital record, after he reviewed the telemetry and after he interviewed the patient and after he talked - and I want you to assume that he talked at that moment with the ER doctor, a Dr. Howard; okay? Tell the jury what your understanding is of what he thought about the telemetry.

A. I'd have to refer to the records. I don't want to state it by memory and be inaccurate. I ' m happy to.

I know that Dr. Grella thought the patient ultimately needed a pacemaker. What he said on this particular day, I'd have to look at the record to refresh my memory.

Q. In your discussions with the attorneys from the law firm of Garbarini & Scher, did you, at any time, engage in a conversation with the attorneys that retained you that said that you did not want to refer to any of the contemporaneous notes of the cardiologists who took care of _____, you only wanted to look at a discharge summary that was

Schneller - Cross - Awad

dictated by a non-cardiologist who may or may not have treated ? Did you suggest at all that you should never refer to the cardiologists' notes in clierecord?

A. No, I read everything and referred to everything and discussed everything.

Q. Was it - was there any discussion between you and any of the attorneys that said let's not present to the jury in any way what cardiologists wrote; let's just look at the discharge summary?

A. Oh, absolutely no.

Q. Now, there are times in which doctors hand write notes and records; correct?

A. Certainly.

Q. And I want you to assume - have you read Dr. Pachulski's testimony?

A. Much of it, yes.

Q. He was here just, I think, for the first time when we started on Friday. I asked questions that day and I asked - did you read the questions and answers I asked him about making records contemporaneous with the care and treatment of the patient?

A. Yes.

Schneller - Cross - Awad

Q. Without going too far afield in it, would you agree, Doctor, that part of the medical care of any patient is for a physician to write a contemporaneous note about what he or she found, spoke about or came to an opinion about, within a reasonable period of time of having seen that patient?

A. Write or dictate.

Q. Or dictate at that moment, as well. These days, at some hospitals, you probably can't write anymore, you can only enter in by virtue of a keyboard or otherwise; am I correct on that?

A. Yes.

Q. But in a – generally, whether you're writing the note or dictating it or typing it in directly, the standard of care requires all doctors to write contemporaneous notes about their pertinent findings, facts or whatever else they think is important to the patient's care and treatment; true?

A. I think in general that's true. Doctors try to write contemporaneous notes. That's customary.

Q. More than customary, it's a required requirement by the hospital association that accredits our hospitals throughout the country;

Schneller - Cross - Awad

correct? The Joint Commission on a Accreditation of Hospitals?

A. I would presume so. It is customary. Everybody does it. Doctors do that, yes. They write notes in the chart or they dictate notes to memorialize their care and treatment.

Q. Perhaps I'm being too much of a lawyer. Perhaps I'm being too much of a lawyer. When I hear the word customary, that implies a little something different than as a requirement. That is - and maybe I'm being too much of a linguistic at this point. But it's more than just custom; it's actually more than just routine. It is a requirement and that's what medical students are taught, residents, fellows and throughout; correct?

A. Absolutely, but the extent of writing, what you write, that's a matter of judgment and individual style and custom is involved in that.

Q. One of the reasons why medicine determined decades ago, if not a century ago, that it would be good to write contemporaneous notes with a patient is, in part, that then you have the actual thinking and findings of a physician on paper, rather than relying upon memory? It gives, in some instances, a

Schneller - Cross - Awad

better accuracy to the situation; correct?

A. It may, yes.

Q. Okay. For instance, a doctor who sees, let's say, 100, 200 patients a year in the emergency room, to ask that physician, her or him, two years later, to recall what they thought about that one out of the 200 patients, that's not very good for the physician, it's certainly not very good for the patient, in the sense that you're – way too much time had passed; correct?

A. Yes.

Q. Okay. Now, would you agree –

THE COURT: Counsel, are we going to come to a conclusion soon?

MR. AWAD: If you could – three minutes and I'm done.

THE COURT: Sure. Absolutely.

Q. Would you agree, sir, that a cardiologist's handwritten note, contemporaneous with the care and treatment of a patient, particularly , would have some factual significance of some level in reviewing the care and – in reviewing the quality of medicine here in this case?

A. Sure. All of the – all of the entries in

Schneller - Cross - Awad

the record are pertinent, yes.

Q. Did Dr. Grella - what did Dr. Grella say should be done for the patient, once she was admitted, once he had seen her and she was being admitted to the hospital and he had read the tapes? What did he say should be done? His handwritten note. And not that of Dr, Nussbaum, in the discharge summary.

A. Well, I'll be happy to see if I can find it to answer your question, because I don't have it in my memory.

Q. Okay. How about, let me just, three more questions, Your Honor, and I'm done.

Would you please tell the jury, what is the date that this Dr. Nussbaum dictated the - the summary at discharge that you and attorney Cordova relied upon to offer testimony here today? Could you please tell us? It's in the record, right?

A. The date of the discharge summary?

Q. The date that it was dictated.

MR. AWAD: Could we show that up on the board? Would you flag that?

Q. You know what, Doctor, we'll just show that.

A. I believe I have it.

Schneller - Cross - Awad

Q. We'll show it.

MR. AWAD: Would you please enlarge the bottom portion? Actually, a little bit higher. I'm sorry, that was me.

Good.

A. Dictated 1/28/99, transcribed 1/31/99.

Q. Let's see, as of January 28th, when that was dictated, the note that you and the attorney Cordova relied upon in offering testimony here, that means that this Dr. Nussbaum dictated it approximately 27 or 28 days after was discharged; correct?

No, I'm sorry, 25 days after she was discharged; correct?

A. Yeah. That's not a lengthy period of time, at all, for this.

Q. Okay. It's not a lengthy period of time for this? What do you mean, for this? I mean the patient's chart has to be closed down, does it not?

A. Yes but you're talking about 20 days.
That's not -

Q. I'm not critical of the 20 days, Doctor. I am asking you, though, sir, could you tell us what the January 2nd note of the cardiologist said, the January 3rd note of the cardiologist said and the

Schneller - Cross - Awad

January 4th note of the cardiologist, what they wrote in the records themselves, regarding , their diagnosis and their recommendations, if any?

A. Sure, I'm happy to. Dr. Grella wrote that the patient needed to be watched for bradycardia; that she should be admitted for observation on telemetry. There is a cardiology note that says "monitor on telemetry, continue as ordered, no need for a pacemaker at this time".

He does recall -- he does record that the patient had the rapid breathing and the paresthesia.

Then there is another cardiology note that says "the patient now feels well. I'm not convinced that she actually had atrial fibrillation".

Q. Let me stop you there for a moment, because we have to stop. I'm just curious, sir -- withdrawn. I apologize.

A. I'm sorry. Yes.

Q. I'm curious, sir, did you have any discussion with attorney Cordova that you would intentionally not refer to a single cardiologist's note in the St. John's record, but would only refer to the discharge summary dictated on January 28th, because it was worded, I think I used the word you

Schneller - Cross - Awad

used, linguistically, it was worded in a way that worked better for the defense of the case?

A. Oh, certainly not, sir. Certainly not. All the records are pertinent. That's just a good summary of everything that happened in the hospital, which is what it is meant to be. That's the purpose of a discharge summary.

Q. We're going to inquire about whether it's a good summary or not after we come back from lunch. Thank you very much.

THE COURT: Okay. Take our luncheon recess at this time. Please be back at 2 o'clock.

Please do not discuss the testimony you've heard so far. All right, 2 o'clock everyone.

(Whereupon, a luncheon recess was taken)

Dr. Schneller - Cross - Mr. Awad

COURT CLERK: Can I have the witness please come back up onto the stand?

Remain seated. Court will come to order, please.

Counsel, are we ready?

MR. AWAD: Yes.

MS . CORDOVA: Yes .

COURT CLERK: Please bring in the jury.

COURT OFFICER: Jury entering.

COURT CLERK: Remain seated, please .

All parties present, Your Honor, jury is all present.

I'll just remind the witness he's still under oath.

THE COURT: Let's proceed, please .

MR. AWAD: Thank you, Your Honor.

Good afternoon, jurors.

CONTINUED CROSS-EXAMINATION BY

MR. AWAD:

Dr. Schneller - Cross - Mr. Awad

COURT CLERK: Can I have the witness please come back up onto the stand?

Remain seated. Court will come to order, please.

Counsel, are we ready?

MR. AWAD: Yes.

MS . CORDOVA: Yes .

COURT CLERK: Please bring in the jury .

COURT OFFICER: Jury entering.

COURT CLERK: Remain seated, please .

All parties present, Your Honor, jury is all present.

I'll just remind the witness he's still under oath.

THE COURT: Let's proceed, please .

MR. AWAD: Thank you, Your Honor .

Good afternoon, jurors.

CONTINUED CROSS-EXAMINATION BY

MR. AWAD:

Dr. Schneller - Cross - Mr. Awad

Q. Sir, this morning when Ms. Cordova was going over your credentials with you, I believe I heard you say that you're associated with Columbia University Hospital, 40 percent general cardiology, 60 percent devotion to pacers; is that correct?

A. That's an approximate distribution.

Q- When you say "an approximate," you offered the testimony so I was wondering, sir, have you in other cases said that you basically practice internal medicine, which encompasses gastrointestinal system disorders, you offered that testimony recently?

A. I can't specifically say, but I am an internist as well as a cardiologist. My practice is primarily cardiology but I have a -

Q. Specifically, sir, on February 7, 2005 j
under oath sworn in a case in which you were j
offering testimony in Richmond County before the j
Honorable Joseph J. Maltese, a case that called i
for family practice, do you recall that case?

A. No, sir, I do not.

Q- You don't recall that case?

A. No, I do not.

Dr. Schneller - Cross - Mr. Awad

Q. Do you recall that you were asked to testify in that case by a law firm, this Kaufner Galley, Duff firm, do you recall being there?

•A. I do not.

Q. Do you recall at all the discussion in the case that you were offering testimony regarding the standard of care of a family practitioner?

A. I do not .

Q. Do you have any recollection that you actually were offering testimony about the use of Maalox and Mylanta?

A. I do not, but

Q. Doctor, in that particular case, sir, before a Judge of the Supreme Court in the State of New York but on Staten Island did you say that I am basically

MS. CORDOVA: Objection can we just approach, Your Honor?

Q. - I am basically a cardiologist who also practices internal medicine, did you say that in that case? Have you said that more than once in the last few years?

A. I have no specific recollection, but

Dr Schneller - Cross - Mr. Awad

that is a true statement, I do practice internal medicine as well as cardiology and -

Q. Have you specifically offered testimony not only in cases involving dentists but cases involving gastroenterology, family practice and internal medicine as well as cases involving cardiology, have you done that, sir, over the years?

A. I would only be speaking as a Board Certified cardiologist, also Board Certified in internal medicine.

Q- In that particular case, sir, do you remember being questioned by the attorney in that case asking you specifically why were you there offering testimony in a case involving family practice, and he asked you specifically the question about your involvement in inserting pacemakers, does that refresh your recollection at all?

A. No .

Q. Do you recall giving sworn testimony before a court reporter and a judge in that case where you specifically told the Court and the jury that your practice involving pacemakers

Dr Schneller - Cross - Mr. Awad

quote, "That's just another fraction of my busy practice," do you recall giving that testimony⁷

A. I do not, but -

Q. Do you recall, sir

MS. CORDOVA: Objection, Your Honor. Can the doctor finish the answer?

MR. AWAD: I'm asking a yes or no .

MS. CORDOVA: There was no preface.

Q. Do you recall, sir, stating specifically in that case that your practice involving pacemakers was not 60 percent but that your practice involving the insertion of pacemakers was 35 percent roughly, do you recall giving those percentages?

A. I do not, sir.

Q. Do you just change these percentages from case to case or - withdrawn. In that particular case, sir, 2005 the Court transcript of the matter of Adam L. Barnett deceased by his administratrix Patricia Bocina [phonetic] on behalf of the estate of Adam Barnett against

Dr Schneher - Cross - Mr Awad

Mary-anne L. LaBarbera M.D., State Supreme Court, Richmond County, February 7, 2005, the Honorable Joseph J. Maltese, Justice of the Supreme Court. Question on page 61 of that trial transcript, see if this refreshes it, Doctor:

"QUESTION: Did you testify that your practice includes gastroenterology?

"ANSWER: I testified that I practice internal medicine, which encompasses disorders of the gastrointestinal system^{fi}

Does that refresh your testimony to that point,, sir?

A. It does not refresh my memory, but that would be still a true statement because gastroenterology is part of internal medicine.

Q_ In addition to that case, did you also tell the Court and jury in that case that you're offering testimony on behalf of a family practitioner, that you also take care of diabetics, patients with thyroid diseases, pneumonia and otherwise, did you offer that testimony *

Dr. Schneller - Cross - Mr. Awad

A. I do not have a recollection. All those statements are true. I am very busy cardiologist practicing cardiology, cardiac pacing and internal medicine, and in my patients who have pacemakers, many of them have diabetes, which is a risk factor for other forms of coronary artery disease and valvular heart disease and many of them may have pneumonia and when they do I take care of them with those illness as well

Q. In 1994, sir, in another Supreme Court case, in "that case, sir, did you offer specific testimony at that time that your practice of cardiology and your practice of pacemaker actually involved 90 percent of your practice in a case of which pacemakers were an issue?

A. I have no specific memory. It is true that the practice of cardiology and cardiac -

Q. On this particular case -

MS. CORDOVA: Objection.

A. -- on a daily basis vary, sir, and there are some days when I see mostly pacemaker patients and some days when I see some pacemaker patients and some patients with valvular heart

Dr. Schneller -- Cross - Mr. Awad

disease, heart failure. I am a busy doctor who has a practice that encompasses all of these illnesses .

Q- This morning did you at all offer any testimony regarding your credentials, that I recall, did you offer any testimony that your practice includes internal medicine, gastroenterology or otherwise because maybe it was my impression, I thought I heard you say that at least 60 percent of your work was pacemakers and then you ended your day at the hospital , you ended your day at the hospital answering phone calls. Do you recall giving that testimony?

A. Yes, I just answered that question this morning, but there's nothing inconsistent with that. I'm telling the complete truth to characterize my practice , which is a busy practice

Q. Excuse me, sir I just asked you for a yes or no . You ' ll h a v e p i e n t y o f t i m e t o protest what you need to I 'm asking you specifically, sir, this morning you told us that you were certified in electrophysiology but

Dr Schneller - Cross •- **Mr Awad**

didn ' t tell us that is by the American College ,
you specifically said a society, and you
specifically told us , I think the record will
show , that you said 60 percent of your practice,
not 35, not 40 , not internal medicine but that
60 percent of your practice involved pacemakers.
That ' s probably not accurate, correct ?

*t_ No, sir. I believe that's accurate to
describe

Q. Excuse me, sir. I asked for a yes or
no .

So when you gave the testimony in
State Supreme Court eighteen months ago,
fourteen months ago, when you said on the
average maybe 40 percent, one month it may be 40
percent, one month it may be 45 percent, 35 to
40 percent day to day, week to week, that's my
best estimate, that was-not accurate testimony
at that time either; yes or no?

A. I'm sure it was accurate testimony at
that time.

Q. In terms of accurate testimony, would
you now please tell the jury how many minutes of
that two to three minutes that you identified

Dr. Schneller - Cross - Mr. Awad

before we ended this morning's session, how many minutes of the two to three minutes encompasses that area that you spoke to the jury about saying atrial fibrillation on the strips?

A. It was a brief one cycle of telemetry strips. We can count up the seconds but it was less than a minute.

Q. How much less than a minute?

A. Let me find the strip and we can calculate that from the strip.

Q. Please.

A. So it looks to me if it's atrial fibrillation, it encompasses certainly the middle of the strip, the strip above probably.

Q. If you could just calculate.

A. I'm going to try, sir. It's this much time, so I'm going to estimate.

Q. Doctor, with all due respect -

A. Five seconds.

Q. Five seconds?

A. Five seconds per strip approximately, and if it's part of this strip, it's maybe ten seconds and part of this strip, you're talking about a burst, a burst of fibrillation that

Dr Schneller - Cross - Mr. Awad

lasts less than a minute.

Q- Lest I heard you in the middle of your answer, you were at five seconds. Could you please complete the answer by giving us the quantity that you claim is being referred to as the atrial fibrillation in the life of

, is it less than 15 seconds when you count it all up?

A. It would be about 15, 20 seconds.

Q. So this morning when you got up and showed this to the jury and when you spoke at length about atrial fibrillation, somewhere in the midst about the bag with the worms in it, at that time was it your decision or the decision of Ms. Cordova to specifically leave out that you were talking somewhere between 5 to 15 seconds of one objective testing of,

or was that just an inadvertent lapse on your part?

A. No lapse, just the truth. We looked at the monitor strip. This is the monitor strip, this is what it shows.

Q. You know, Doctor, the reason we have expert witnesses to come in is because I don't

Dr. Schneller - Cross - Mr. Awad

know , the jury doesn't know how to read these things . We depend on experts . We think it might be of some interest to any one of us here that when you were suggesting that , quote , "they found gold, " that you might be looking and explaining to the jury that may be 5 to 15 seconds of perhaps atrial fibrillation.

A. You're misconstruing what I said. The gold was the concordance of the spontaneous symptoms with pauses on the electrocardiogram - let me answer your question. I did not claim that the discovery of atrial fibrillation was gold. What was gold was the discovery of a correlation between symptoms and Bradycardia. Separate from that -

Q. Are you still maintaining, by the way, Doctor, based upon that 5 to 10 seconds of time in the emergency room on January 2, 1999 that you would offer a diagnosis of atrial fibrillation in the description of

heart condition; yes or no?

A. I believe I said probably three or four times about that. That¹ s as best as I can tell from this strip it looks like atrial

Dr. Schneller - Cross - Mr. Awad

fibrillation.

Q. I'm asking you specifically, listen to my question, please, it's not the first time, right, we went over that.

By the way, all together, Doctor, would you say you came to court twenty-five times?

A. Probably over twenty-five years, I don't know.

Q. From 1994 would you say that you've come to court at least twenty-five times earning anywhere from 300 to \$350 an hour?

A. I probably come about twenty times, twenty-four times. I don't know exactly.

Q. And just for my understanding, in addition to the twenty hours at 300 or \$350 an hour, today you're being paid for your time away from your practice as well, correct?

A. Yes, I am.

Q. So today are you being paid by the hour or for the whole day?

A. For the whole day.

Q. For the whole day how much more are you charging?

Dr Schneller - Cross **Mr. Awad**

A. \$3,000.

Q. So \$3,000 more today.

My specific question, sir, is this:

On the basis of that 5 to 15 seconds of time on that one strip in the emergency room on January 2nd, is it your opinion, sir, that you can arrive at a diagnosis that says atrial fibrillation for ; yes or no?

A. Yes, from this strip, that brief period of time.

Q. Now, could you tell, sir, do you think there were other cardiologists that differ from you in that?

A. Oh, yes. It was not clear and it was not clear what the rhythm was and that's why I said probable. Probable means if I'm forced to choose yes or no and I think it's probable, the answer is yes, but it is not possible to be a hundred percent certain, but I have to answer yes or no, which is not a real medical thing, that's what I'm trying to do.

Q. So would you offer the diagnosis - again, I'll ask the question again, would you offer the diagnosis that there was atrial

Dr. Schneller - Cross - Mr. Awad

fibrillation; yes or no?

A. Yes, probably atrial fibrillation, that means more yes than no, yes.

Q. Did Dr. Grella agree with you?

A. In the hospital Dr. Grella - I would have to refresh my memory. There was a doctor who thought it was probably not atrial fibrillation. I will re-look at the signature on that note. Dr. Grella did think it was atrial fibrillation but he wrote A-fib most likely.

Q. Read the rest.

A. It says, "A/pause A-fib most likely secondary to conduction system clinical history of Lyme possible exacerbation by increased caffeine use, also she has stopped all meds two months ago. Need to watch for Bradycardia."

Q. Is that the first time you read that note or are you familiar with it?

A. I'm quite familiar with it.

Q. So Dr. Grella thinks that that may be related to Lyme's Disease or caffeine use?

A. That's what he says, yes.

Q. Have you read the deposition of

Dr Schneller - Cross - Mr. Awad

Dr. Grella?

A. Oh, yes, I believe so

Q- Are you familiar with what Dr. Grella has said under oath about that?

A. You would have to remind me.

Q. Are you familiar with what Dr. Riceio has said about it in the hospital letter?

A. Yes, I am. I have his notes in front of me.

THE COURT: Is there a question?

MR. AWAD: I'm sorry

Q. Do you see a number of physicians use the word artifact in the record?

A. Some physicians thought that artifact was a possible explanation.

Q. Are those physicians, to your knowledge, cardiologists?

A. Yes, yes. And that's also Dr. Grella also thought it was probably atrial fibrillation. There's a cardiologist who thinks it's more likely to be artifact.

Q- How much time did you spend reading

Dr Schnellsr - Cross - Mr Awad

Dr. Grella*s deposition, his sworn testimony?

A. I don ' t r e c a l l . I just don't recall .

Q. By the way, do you have an opinion with a reasonable degree of medical certainty as to whether or not Dr. Grella departed from standards of good and accepted medical practice in his evaluation or reporting of this patient?

A. I don't know that I particularly address that issue , but there's nothing in this record that would indicate that -- in terms of recording or his conclusions? I 'm not sure what you mean.

Q. In reviewing all the records, did you find any e v i d e n c e that in your op i n i o n Dr. Grella departed from standards of good and accepted medical practice and that departure led to the insertion of a pacemaker?

A. No .

Q. In your opinion, Doctor , whose responsibility ultimately is it for the determination of the placement of a pacemaker, is it of the person that's inserting the pacemaker ?

A. Ultimate ly the final decision is the

Dr. Schneller - Cross - Mr. Awad

person that performs the surgery, but it's a shared responsibility, as it was in this case, because the doctor who referred reviewed some of the history and knows the patient, so it's a shared endeavor to care for such a patient, but the ultimate final judgement is the person that actually does the procedure.

Q. Are you familiar with Dr. Grella's testimony, sir, regarding the reason why he referred

7

A. I believe he referred to Dr. Pachulski for an evaluation and for pacemaker implantation.

MR. AWAD: Could we please go to Dr. Grella's testimony? Could we please go to Page 59 and display that? Could you please enlarge Lines 12 through 24?

Q. Do you recall reading this testimony, sir (indicating)?

A. Yes, I did read it.

Q. Specifically could you please read the question that starts at Line 20 and the answer that gets completed at Line 24?

t

Dr . Schneller - Cross - Mr. Awad

A. "QUESTION: And when you say further evaluation , what do you mean⁹

"ANSWER: By a cardiac electrophysiologist who typically makes decisions regarding permanent pacemakers and would implant them."

Q. At least in that testimony by Dr. Grella , does he indicate anywhere here shared responsibility?

A. Well, in the sentence above he's saying that he thought that the patient needed a pacemaker but did not present it in a forceful way. That 's what the two sentences above mean. He said no , not in a forceful way saying you absolutely positively needed it. I recommended a further evaluation, so to me it is a somewhat shared thing, but it clearly is Dr. Grella is ultimately -

Q. Who ultimately has the responsibility to see to it that there are indications present to justify the implantation of the pacemaker?

A. It's a shared responsibility. Ultimately it falls to the doctor who is performing the surgery.

Dr Schneller - Cross - Mr. Awad

Q. In your opinion, Doctor, I want to ask you would you agree or disagree if a cardiologist came into this courtroom and said the following: Page 8 of the Court transcript. Line 14 :

"QUESTION: So in answer to my specific question, would you agree that the standards of medical care itself required you to make a record of the indications or findings or reasons for the insertion of the pacemaker?

"ANSWER: Yes, sir."

Would you agree, Doctor, that Dr. Pachulski would have that specific requirement under the standards of care?

A. I don't disagree with his answer to that question.

Q. Are you familiar that in fact it's Dr. Pachulski testifying?

A. Yes .

Q. Doctor, would you agree with this statement by a cardiologist -

MS. CORDOVA: Can we have the

D.r . Schneller - Cross - M r . Awad

page ? I'm sorry.

MR. AWAD: Page 36, Line 3.

Q. "Is that in part what a reasonable prudent doctor in your opinion does, try to gather all the information that could be relevant before surgery?"

"ANSWER: We try to gather all the information that can be gathered."

Would you agree with that testimony that testimony was given by a Board Certified cardiologist in this case?

A. I agree with it in general.

Obviously -

Q. Can you answer yes or no?

A. Yes .

Q. You agree with that?

A. Yes , I do.

Q. Would you agree, sir, with this testimony by a Board Certified cardiologist: "Would you agree, sir, that the standard of care would have -

MS. CORDOVA: Can I get a page ?

Dr. Schneller - Cross - Mr. Awad

MR. AWAD: Page 24 -- Page 23 .

I have the daily copy.

Q. "Would you agree that the standard of care would have been breached if the pacemaker was put into 1 . . . in whole or in part because of an AV block; yes or no, do you agree with that?"

"ANSWER: Yes.

"QUESTION: You would agree that that would not be reasonable prudent care by a cardiologist in this case involving correct?"

"ANSWER: I believe so."

Do you agree with Dr. Pachulski's testimony given here before this judge and jury?"

A. Yes .

MR. AWAD: Could we please demonstrate at this time and show Dr. Pachulski's record? Could we enhance that first paragraph again?"

Q. Have you reviewed Dr. Pachulski's letter of February 2nd?"

A. Yes, sir.

Dr. Schneller - Cross - Mr. Awad

Q- Would you please tell the jury where in Dr. Pachulski's letter of February 2nd he discusses reviewing the telemetry of January 2nd."

A. Not in the record.

Q. Do you know how many conversations, if any, Dr. Pachulski had with Dr. Grella?

A. I know that there was a conversation between Dr. Grella and either Dr. Pachulski or Dr. Coudrey, how many, I do not know.

MR. AWAD: Page 30 of

Dr. Pachulski's deposition, please. Could we please enlarge from Lines 14 through 23?

Q. I want you to assume this is taken from Dr. Pachulski's deposition and he's being asked questions, Line 15: "You testified earlier about a conversation you had with Dr. Grella prior to your seeing the patient, do you recall that?"

"ANSWER: Yes.

"QUESTION: Do you recall approximately when that conversation took place in relation to your first

Dr **Schneller - Cross - Mr. Awad**

visit with the patient?

"ANSWER: Specifically. No.

It would have been a week or two prior to the time I saw her."

Do you recall reading that testimony?

A. Yes.

Q. In reviewing any of the records that you reviewed, did you see whether or not Dr. Pachulski had any notes, any doodles, anything, any phone messages, that would have documented what, if anything, was said in that one conversation between him and Dr. Grella before he placed the pacemaker?

A. The only thing is the dictated note.

MR. AWAD: Could we please go back to the dictated note?

Q. Other than this dictated note, sir, are you aware of any other note by Dr. Pachulski that he signed regarding the indications for the implantation of this pacemaker?

A. Only this note.

Q- Do you see in the note, Doctor, where he is reporting to Dr. Grella that there is rapid atrial fibrillation and AV block, do you

Dr. Schneller - Cross - Mr. Awad

see that?

A. Yes .

Q. Are you familiar with the sworn testimony of Dr. Pachulski?

A. In general, yes.

MR. AWAD: Could we please go to Dr. Pachulski's testimony. Page 30 of the deposition beginning at Line 15 through Line 18?

Q. Did you discuss this testimony with the attorney Cordova that Dr. Pachulski himself gave?

A. I think in general, yes.

Q. Dr. Pachulski himself has given sworn testimony not only in a deposition but before this jury that he was told but he saw no evidence on the EKG tapes of rapid atrial fibrillation. Is Dr. Pachulski wrong when he says that; yes or no, sir?

A. Sir, it's not possible to give a yes or no answer to that kind of a question when I have already said -

Q. Excuse me. I just asked you for a yes or no .

Dr Schneller - Cross - Mr. Awad

A. It's not possible to answer yes or no to that question.

Fair enough.

Q-

A. Okay.

MR. AWAD: Could we please go

back to the page, Lines 10 and 11?

Q- By the way, Dr. Pachulski, he's Boarded in electrophysiology, correct?

A. Yes.

Do you see what he said under oath

Q- both at the deposition and here?

A. Yes.

"I'm aware of no evidence that she had

Q- AV block on her EKG or otherwise, so that is an error."

A. Yes.

Q. Is he wrong when he says that; yes or no?

A. It is not possible, as I indicated earlier this morning in my answer to this issue, that it's not possible to give a yes or no to that question. It's not possible. It's not medical. It's not possible.

Q. It's not possible for you, with all

Dr. Schneller - Cross - Mr. Awad

due respect, in your opinion, correct?

A. In my opinion, since the strips show only probable atrial fibrillation, there is reason for a divergence of interpretation on the limited strip.

Q. And on the basis of that questionable atrial fibrillation, it is your testimony before this jury that a woman of thirty-four years of age should have a pacemaker put in, correct?

A. No, sir, that is a complete misunderstanding and misconstruing and misquoting of my testimony. The atrial fibrillation was not the reason that the pacemaker was put in.

Q. So we can for the purposes of or discussion, atrial fibrillation does not serve as a basis for the insertion of pacemaker in
, true?

A. As a single entity, absolutely not.
In combination with other evidence -

MR. AWAD: Judge, at some point can I get an instruction?

THE COURT: Just answer the question

Dr. Schneller - Cross - Mr. Awad

Q. You can't answer this question yes or no either, the same as Dr. Pachulski, whether or not she did or didn't have AV block, correct, you don't want to answer that yes or no?

A. It is impossible to answer yes or no, as I already explained.

Q. Good. Additionally, Doctor, let's go to the St. Francis Hospital records.

MR. AWAD: Could we please go to the impression? Could we please go to the front page first? Could we please highlight, enlarge who the attending physicians are making this report?

Q. Do you know a Dr. David Hoch or Dr. Joseph Levine?

A. No, sir.

Q. Do you know that they are electrophysiologists at St. Francis Hospital?

A. Yes, I know who they are. I don't know them personally.

Q. Are you aware that they are Board Certified in electrophysiology?

A. I wouldn't know that specifically.

Dr **Schneller - Cross - Mr Awad**

They carry a good reputation in the

Q-

subspecialty of interventional cardiology?

A. I don't know that they are interventional cardiologists. They do lots of pacemaker and defibrillator surgery and electrophysiology studies.

Q. Are you aware of the credentials of any of these referring doctors on the left side, Grella, Riccio, Saunders, Palmer?

A. I believe they're cardiologists, but they're specific credentials, I don't know.

MR. AWAD: May we please go to Page 2 of the report, the impression?

O Were you referring his part of ^{V,~} Luc report this morning when you were talking to the jury about false negatives?

A. Yes.

Q. By the way, Doctor, the idea of false negative in terms of the testing, there can be different ranges of false negatives or false positives on many tests, correct?

A. Yes.

Q. Were you at all implying this morning

Dr. Schneller - Cross - Mr. Awad

that because these doctors report that there's an estimated false negative rate, that their workup at the hospital had no merit?

A. No merit, no, I was not suggesting it had no merit .

Q. Are you suggesting that because a particular test, EPS or otherwise, has a false negative rate of 5 to 10 percent range, that that test does not have any merit in the evaluation of patients in general?

A. I am not testifying that this test has no merit in general.

Q. Does the test have merit in that there's a 90 percent accuracy to the test?

A. Depends on what the 90 percent accuracy is for. It is not a test that is used to determine if a patient needs a pacemaker.

Q. Are you at all offering testimony to this jury that these doctors were using this test and this test alone to make their recommendation and determination in 1999 to give or not give the choice of pacemaker for

, is that the implication of your testimony that this is all they relied upon to

Dr Schneller - Cross - Mr. Awad

come to their determination?

A. I'm just reading what it says. They give the results of her history and evaluation. They say, "Thus, there is no indication for permanent pacemaker at present for false negative. For more significant Bradyarrhythmia is estimated at 5 to 10 percent range."

My interpretation of that, they're saying based on what we have found, we don't think she needs a pacemaker now, but there's a 5 to 10 percent chance that we have failed to find more significant Bradycardia due to the limitations of our testing.

Q. Could you please tell the jury what other " - ts were peillorineu dunnq the admission to St Francis Hospital?

A. She had a Tilt Table Test.

Q. In the various strips, in printouts of telemetry or otherwise at St. Francis Hospital at any time in January, was there any showing reported by the doctors at that time of atrial fibriHa t ion?

A. N o , sir.

Q. Was there any reports at St. Francis

Dr **Schneller - Cross - Mr. Awad**

Hospital - there were a variety of tests done.
correct?

A. Yes .

Q. There were EKGs, correct?

A. Yes .

Q. What 's the ultrasound of the heart
called?

A. An echocardiogram.

Q. They did an echocardiogram, correct?

A. Yes .

Q. They watched the patient?

A. Yes .

Q. They took histories of the patient?

A. Yes .

^ They brought the patient inside the
hospital, kept her there for how many days?

A. Date of admission was 1/8, date of
discharge 1/12, four days.

Q- Had received earlier evaluation
there on January 6th?

A. Yes .

Q. So on the basis of about five days of
evaluation, testing and observation, right, all
together, roughly speaking?

Dr. Schneller - Cross - Mr. Awad

A. Yes .

Q. After five days of evaluation, watching and monitoring, did the physicians at St. Francis Hospital report that they found any indications that they believed served as a basis for the insertion of a pacemaker?

A. They did not .

Q. You would agree, sir, that St. Francis Hospital is a hospital that has a particular reputation for attending to patients with cardiology problems, correct?

A. Yes .

Q. So, when you offered the testimony this morning like you just did now about that 5 to 10 percent false negative rate, is that meant to imply that that was the only thing they did or did I just misinterpret your testimony on that, because they did do a lot of other evaluations, right?

A. Yes, of course.

Q. And those evaluations were specifically for the idea does in and of herself, does her heart really need a pacemaker for her to live for the next sixty

Dr. Schneller - Cross - Mr. Awad

years or forty years, right?

A. I don't agree with that statement, sir, no. That's an incorrect statement medically.

Q. By the way, Doctor, there was a workup there, the idea that a heart may have an irregularity on an EKG does not in and of itself mean that the etiology of that heart problem is because of something that has either to do with the electricity or the plumbing in the heart, correct? Hearts can be affect by a variety of other diseases that cause it to act in an abnormal way, true?

A. That may happen, yes.

Q. Specifically, St. Francis Hospital specifically worked up to determine etiologies that might be responsible for some of the abnormality recorded at St. John's Hospital, correct, the Tilt Table Testing, right?

A. Yes .

Q. This morning I didn't hear any discussion but if we looked in the record they had specific advice to her doctors about what? What is it that they told her doctors when they

Dr Scineller •- Cross •- Mr Awad
were done evaluating her? Did they give
recommendations about other body systems or
functions that might need to be monitored or
managed?

A. No. You would have to tell me
specifically what you're getting at.

Q, Dehydration,- did you see the word
dehydration?

A. I may have. I don't remember.

Q. How much time of the twenty hours
before coming here to testify did you spend
looking at dehydration?

A. Looking specifically at dehydration?

Q. Yes.

/-/. noL a lot of uime, uut if there s a
word of dehydration there, that's fine. I have
no quarrel with the possibility of
dehydration -

Q. Electrolyte Metabolic Balances,
correct?

A. Yes. But no abnormalities were
detected

Q. I think I need to complete my
examination in a brief time.

Dr Schneller - Cross - **Mr. Awad**

Would you agree, sir, that you at
i;st saw a variety of references that a
 specifically recommended, not pacemaker, but
 specifically wondered recommended and reported
 that there's going to be monitoring of the
 patient, the patient should be monitored
 regarding her electrolytes, her metabolics and
 her hydration, true?

A. I would agree with that. That was
 their recommendat ion.

Q. You are aware that Dr. Pachulski was
 never provided with any of these records before
 he decided to operate, correct?

A. Yes, I am.

Q. You are aware, sir, that Dr. Greia
 specifically has testified that Dr. Pachulski
 never delivered to him a writing or the leier, I
 okay, of February 2nd until late in the month \
 long after the pacemaker was done, you are aware •
 of that testimony, correct?

A. Yes . !

Q- Dr. Grella got Dr. Pachulski ' s leier , j
 the only problem is he got it in the later part
 of the month of February long after the

D.r Schneller - Cross - Mr. Awad

pacemaker had been put in, correct?

A. That is a factual statement, yes.

Q- You don't have any information that at all questions Dr. Grella's testimony statement and specific notes in the office that specifically identify that Dr. Pachulski never provided him with this February 2nd letter until the end of the month of February, you're not really aware of any of that information that would counter that?

A. I would not counter that, no.

MR. AWAD: Can we go, please, to Dr. Slotwiner's records? I think they're behind you, sir.

BSiore we go there, ict me display to the jury Page 68 of the deposition of Dr. Grella, Lines 15 through Line 21.

Q- Do you recall this testimony given?

A. Yes .

Q. One phone conversation two weeks before, and could you please read from Line 19 the question and answers to when Dr. Grella got the letter?

1 Dr Schneller - Cross - Mr. Awad

2 A. "And when you received that letter,
would it indicate it came into your offices on
March 5th? Yes."

5 MR. AWAD: Could we please go

6 to Dr. Slotwiner's records?

7 And, sir, would you please turn your

8 Q-
attention to the December 15, 2004 note.

9 MR. AWAD: Could we please go

10 to the third paragraph? Actually,

11 could we please go to the second and

12 third paragraph first and then

13 enlarge it?

14 You are familiar with this record,

15 Q-
yes ?

16 A. Yes.

17 Q. This morning when you were speaking

18 about symptoms and symptoms related to

19 Bradycardia, did you at all provide any

20 information about this particular finding of

21 Dr. Slotwiner, 2004: "She's experienced no

22 symptoms or possibly related Bradycardia."

23 Do you see that?

24 A. Yes, I do.

25 Q. You specifically - did you offer some

Dr Schneller - Cross - Mr. Awad

criticism of Dr . Slotwiner in how he was deciding to treat the patient?

A. I'm not critical of Dr. Slotwiner.

Q. So if the jury was at all to have stopped listening this morning because you had convinced them of the righteousness of your testimony on the basis that Dr Slotwiner got it wrong, that would be a misconception for the jury to have, right?

A. I'm not critical of Dr. Slotwiner.

Q. Let 's read this together, sir, just so we have the facts: "As you will recall, I reprogrammed her pacemaker to a low rate of 40 beats per minute ^

I think you would be in passing, right ?

A. Yes .

Q. "Interrogation of the device reveals that she was atrially paced 2 percent of the time and ventricular ly paced 1 percent of that time *

Could you read the last sentence of this Board Certified cardiologist ?

A. "This confirms my strongest suspicion

1 **Dr. Schneller - Cross - Mr. Awad**

2 that she does not require a pacemaker.

3 MR. AWAD: Could we please go
4 to the fourth paragraph?

5 Q. What did Dr. Slotwiner do in December
6 of 2004 in his evaluation and then his treatment
7 of the patient? Do you think - withdrawn.

8 Do you think that Dr. Slotwiner when
9 he was treating this patient, and assuming he's
10 Board Certified, do you think he also was
11 worried about her driving her car into a bus?
12 Remember the testimony you gave this morning
13 about you don't wait, you're worried about
14 i driving her car into a bus? Do
15 you think that was on Dr. Slotwiner's mind when
16 he specifically did t s>

17 A. I know that I cannot testify as to
18 what was in his mind.

19 Q. Could you read that for us?

20 A. Yes. "I have lowered the pacing rate
21 to 30 beats per minute and i . •- will
22 return in two weeks with her past medical
23 records and a decision will be made at that
24 time."

25 Q. Do you know what decision

Dr Schneller - Cross -- Mr . Awad

Dr . Slotwiner is referring to?

A. I think he's trying to determine whether she needed the pacemaker.

Q- Really? Let's go to the next record. Is that your familiarity with the records?

Would you agree, sir, if we looked at the records, supposedly, it's not a question of 40 beats per minute, it's 30 beats per minute/ and he specifically later on is discussing not whether or not she needs the pacemaker, but whether he's just going to take it out?

A. Oh, yes, that's discussed in his records, sure.

Q. The discussion that is currently going on in Dr . Slotwiner's records has nothing to do with whether or not she needs the pacemaker, it only has to do with, correct, as to whether or not he recommends the surgery to take it out, right?

A. Yes .

Q. He doesn ' t think she needs a pacemaker, right?

A. He does not think she needs a pacema ker -

Dr. Schneller - Cross - Mr Awad

Q. Let me see, so far Dr. Riccio/
Dr. Grella - no, we'll take Dr. Grella out for
a moment and come back to him. Dr. Riccio, the
other cardiologist at St. John's, Dr. Hoch,
Dr. Levine, Dr. Slotwiner, all of these
Cardiologists who are in the patient setting
with the patient - there is something to be
given to a doctor when she or he is in the
patient's setting, right?

A. Yes .

Q. The patient setting is where a doctor
herself or himself can make an evaluation of a
patient regarding symptoms or the significance
of the symptoms, if any, in relation to the
testing, right?

A. Yes .

Q. That's a fundamental teaching, is it
not, of the residence at Columbia Presbyterian
or New York Cornell that the doctor in the
patient setting is the one that's in the best
position to determine the significance of the
symptoms as they're being presented, correct?

A. Yes, I think in general that is true,
yes .

Dr. Schneller - Cross - Mr. Awad

Q. JUST as an aside, what is it that Dr. Pachulski said under oath at his deposition is the reason for getting the pacemaker, do you recall that testimony?

A. Sick sinus syndrome.

MR. AWAD: Can we show Dr. Pachulski's testimony. Page 84? Could we please enlarge Lines 10 through 14?

Q. "The purpose of the pacemaker is to control and treat Bradycardia alone," correct?

A. That is what he said, yes.

Q. Let's go to Dr. Slotwiner's records knowing that - just to be clear, Bradycardia is a heart rate less than 60 beats per minute?

A. That's the definition, yes.

Q. General definition, right? We just looked at the December - that was December 15, 2004 records. Just put it back in context that last sentence, he now has it set not at 60, not at 50, not even at 40, he has it set at 30 beats per minute. It would only kick in at that time at 30 beats per minute, correct?

A. That's correct.

Dr. Schneller - Cross - Mr. Awad

Q. That's way below the Bradycardia line?

A. Oh, yes.

Q. Would it be a correct inference to draw by that action - withdrawn. Would it be a probable inference to draw from that action that Dr. Slotwiner at Long Island Jewish Hillside Medical Center in the patient clinical situation specifically believes needs no protection for Bradycardia at 60 beats per minute or 50 beats per minute or even 40 beats per minute?

MS. CORDOVA: Objection.

THE COURT: Overruled.

Q. Probable inference from this, right, by those actions?

A. But he doesn't think it should go below 30. In other words, there's a cutoff he's not willing to go based on this, as far as I can tell.

Q. Just to be clear, this the doctor who has been treating her how many years now from what you can gather, maybe two, two and a half years?

A. That's correct.

Q. Long Island Jewish Medical Center

Dr Schneller - Cross - Mr. Awad

carries a fine reputation?

A. Yes, it does.

Q. University Hospital has a residential staff, right?

A. Yes, it does.

Q- Sharon from Albert F, in r, t.c. in School of Medicine perhaps?

A. I don't know.

MR. AWAD: Could we please go to February 9, 2005? Could we please enlarge impression?

Q. Are you familiar with this entry?

A. Yes.

Q. Let's go to the very last one, the one the jury hasn't heard from anybody so far. Could you please read the very last sentence of Dr. Slotwiner's report?

A. "I therefore recommend we do not replace her pacemaker when the battery voltage just depleted completely."

Q. May I ask you, sir, the battery voltage, is that in reference to that part of the pacemaker that's sometimes referred to as the generator?

Dr. Schneller - Cross - Mr. Awad

A. Yes .

With Dr. Slotwiner having this in the

Q-

record, would it be a fair inference to draw that when the generator stopped working, he's not replacing it?

A. That is his recommendation, yes.

Q. Do you know when, if at all, this generator stopped working?

A. I can't specifically state when.

Q. Do you have an impression that the generator is not working as of this very moment?

A. I have no evidence one way or the other from this record .

Q. Would it surprise you to know that the generator is not working at this very moment?

MS. CORDOVA: Objection, Your Honor May we approach?

THE COURT: Sure.

(Whereupon, a discussion was held off the record.)

Q. Just for the record, could you read the sentence in which Dr. Slotwiner at Long Island Jewish Hillside Hospital as to what he describes as the extreme discomfort: "Given the

Dr **Schneller - Cross - Mr. Awad**

extreme discomfort -" could you read the rest of that, sir?

A. "Given the extreme discomfort she suffered and continues to suffer from the original pacemaker implant, I am concerned that any further surgical procedures in this site would exacerbate the symptoms. Similarly. I am cornered that a new implant from a contralateral site would result in similar symptoms."

Q. Therefore he does not recommend it, correct?

A. That 's what he says that 's why he would not recommend it, yes.

Q. Lyme's Disease, okay, was Lyme's Disease and experience with it well documented in 1999?

A. She was said to have Lyme's Disease.

Q. Certainly the cardiologist knew about it, correct?

A. Yes .

Q. At least the history of Lyme's Disease, true?

A. Yes .

Q. Lyme's Disease at times, does that

Dr Schneller - Cross - Mr. Awad

affect the immune system?

A. Yes .

Q- This morning there was a reference to a reading with you by one doctor about rheumatology, a reference to rheumatology, correct?

A. Yes .

In general, just as a general proposition, patient's with immune disease history, are those patients generally regarded more at risk for rejection or for unusual symptoms from the insertion of a foreign device than the general population?

A. I don't think so. Certainly not a pacemaker in m^v experience. I've never seen that .

Q. Have you seen with that she's had specific issues with that pacemaker planted there in her chest since it was planted there?

A. Yes, she has had complaints about it.

Q. A variety of doctors have commented about it, correct?

A. Oh yes.

Q- Not just Dr. Slotwiner, but do you

Dr Schneller - Cross - Mr. Awad

know Dr. Stein at New York Cornell?

A. I don't know him personally, but I've heard of him.

Q- Is he an electrophysiologist?

A. I don't know. He does pacemaker surgery like I do.

Q. Have you reviewed Dr. Stein's records?

A. Yes .

Q. Did Dr. Stein anywhere in his records recommend a replacement of the pacemaker?

A. I don't think he addressed that, no. No, I don't think he recommended a replacement of the pacemaker. I think the issue he was asked to address was the removal.

With removal. The idea of the unusual pain syndrome in and of itself is something that is known in medicine particularly with patients that are immune compromised; yes or no?

A. No. It's got nothing to do with immune compromise.

Q. Immune syndromes, are they from time to time involved in things like rheumatoid arthritis *

A. Yes .

Dr. Schneller - Cross - Mr. Awad

Q. Immune systems that are challenged can involve multiple sclerosis, Lupus, a whole variety of diseases, correct?

A. Yes.

Q. Those patients that have that type of genre, that type of genre, many times are much more pain sensitive than the patients that do not have their immune systems challenged, correct?

A. I don't think that's correct. It's certainly not related to pacemakers or pacemaker surgery.

MR. AWAD: May I approach the witness?

THE COURT: Yes.

Q. Are you familiar with Dr. Slotwiner's note of June 9, 2006?

A. You would have to show it to me so I can answer accurately.

Q. Just are you familiar with it?

A. Yes.

Q. Are you aware that as of June 6th - June 9th of 2006, Dr. Slotwiner is reporting to a Dr. Harvey Weeder and Dr. Kenneth Stein that

Dr Schneller Cr o s s - M r . A w a d

he ' s still seeing Lind a for f oil ow -up with severe pain at her pacemaker site?

A. Y e s .

Q- Are you further awa re as of that d ay, as o f t h a t day given all the H o l t e r m o n i t o r i n g , all the s i n u s p a u s e s , R v e r y t . h i n g t h a t h e r e p o r t s over the years he now says , o k a y . t h a t h e r e c o m m e n d s t h e r e m o v a l o f t h e d e v i c e ?

A. W h a t e v e r h e s a y s • I d o n ' t C i s a g r e e t h a t ¹ s w h a t h e s a y s .

Q. D i d y o u s e e t h i s a t a l l b e f o r e y o u c a m e h e r e t o d a y ?

A. Y e s . I ' l l l o o k a t i t a g a i n Y e s , h e r e c o m m e n d s t h e r e m o v a l o f t h e g e n e r a t o r a n d l e a v i n g t h e l e a d s i n p l a c e .

Q. J u s t w i t h r e s p e c t t o t h e l e a d s i n p l a c e : " I w o u l d n o t r e c o m m e n d r e m o v i n g t h e l e a d s i n i t i a l l y , a s t h i s i s a h i g h - r i s k p r o c e d u r e

A. Y e s .

Q. I s i t a h i g h - r i s k p r o c e d u r e t o r e m o v e t h e l e a d s ⁹

A. Y e s , i t i s .

MR. AWAD: Your H o n o r , c o u l d

Dr. Schneller - Cross - Mr. Awad

we have a two-minute recess and I may have five minutes left after that ?

THE COURT: It's time for a short little recess anyway. Retire the jury for a few minutes.

(Whereupon, a brief recess was taken)

COURT OFFICER: Jury entering. All the jurors are present.

THE COURT: Let's proceed.

MR. AWAD: Yes, Your Honor.

Thank you .

Q. Are you familiar with the amount of medication and the types of medication that started receiving once she was admitted to St. Francis Hospital?

A. I would have to review the records to know for sure .

Q. In reviewing the records, did you come across the entries in the chart that show that a particular drug by the name of Valium was being prescribed to her?

A. Yes, I saw Valium.

Dr. Schneller - Cross - Mr. Awad

Q. Additionally, did you see that this beta blocker Sectral was being prescribed?

A. Yes .

Q. I believe there was another drug Biaxin being prescribed?

A. Yes .

Q. In addition to which I believe there was a drug called Pulmicort that was being prescribed while she was at St. Francis and then continuing afterwards, correct?

A. Yes .

Q. And she was also prescribed something that I'm not quite clear I can pronounce called Guaifenesin?

" 3 i f G n

Q. Doctor, just tell the jury what is your knowledge of what drugs, medicines, was on when she first went to St. John's Hospital to the emergency room on January 2nd?

A. I can look at the record. As I recall she had stopped some medicines so that when she was in the hospital, she had already stopped them. According the chart it says that the patient was on some beta blockers and had

Dr Schneller - Cross - Mr. Awad

s t o p p e d t h e m p r i o r t o b e i n g a d m i t t e d t o t h e
h o s p i t a l .

Q. S o i n a n s w e r t o m y q u e s t i o n , s h e
w a s n ' t o n a n y m e d i c a t i o n s w h e n s h e a r r i v e d a t
S t . J o h n ' s H o s p i t a l , c o r r e c t ?

A. I t h i n k t h a t t h a t ' s r i g h t , s u b j e c t t o
y o u t e l l i n g m e t h a t I ' v e m i s s e d s o m e t h i n g .

Q. I t ' s n o t a t r i c k q u e s t i o n o n m y p a r t .

A. Y e a h , I t h i n k n o t .

Q. J u s t f o r a m o m e n t t o t a k e a s i d e t r i p
f o r a m o m e n t , w h o p r e s c r i b e d t h o s e b e t a b l o c k e r s
t h a t y o u j u s t r e m a r k e d u p o n t o t h e j u r y t h a t
s h e , q u o t e , s t o p p e d , a n d w h e n w e r e t h e y
p r e s c r i b e d ? T h i s i s t h e y e a r 1 9 9 9 , J a n u a r y o f
1 9 9 9 W h e n t o y o u r - k n o w l e d g e w a s t h e l a s t t i m e
a n y d o c t o r p r e s c r i b e d a b e t a b l o c k e r b e f o r e
1 9 9 9 * ?

A. I c a n ' t c a l l t h a t t o m e m o r y .

Q. A r e y o u a w a r e o f a n y m e d i c a l t r e a t m e n t
w a s o n i n 1 9 9 8 , ' 9 7 , ' 9 6 , o r ' 9 5 o r ' 9 4 ,
a r e y o u a w a r e o f a n y m e d i c a l r e c o r d s o r a n y
m e d i c a l t r e a t m e n t d u r i n g t h o s e f i v e y e a r s ?

A. I k n o w o f m e d i c a l t r e a t m e n t b a c k i n
' 9 1 . I c a n ' t b y m e m o r y t e l l y o u w h a t m e d i c a l

Dr. Schneller - Cross - Mr. Awad

treatment she was on in '94 to '97.

Q. Perhaps I can approach it this way, would you agree, Doctor, that there was no records that had been ever provided to you that indicate that was under the care and treatment of any cardiologist in 1998, '97, '96, '95 and just for a nice five fingers, '94, five years before no heart treatment at all, correct?

A. I have no memory of that at all. I don't find any evidence of that, that's correct.

Q. The medications that she was receiving at St. Francis Hospital, would that be considered by you to be a light regimen of medications, a moderate regimen, a significant regimen of medications? How would you describe that?

A. Multiple medicines. The pertinent medicine is the Sectral, which is in a low dose.

MR. AWAD: May I ask to display a page from St. Francis Hospital record?

Q. Sir, I'm not asking you to have exact knowledge of this chart, I just want to ask you some very general questions.

Dr. Schneller - Cross - Mr. Awad

In every hospital record the amount of medication and when it's given has to be documented, correct?

A. Yes.

Q. One of the places that it gets documented is pain - I guess this is PRN, whatever necessary medication orders?

A. Yes.

Q. In looking at the chart, for instance, on the Valium, medication, dosage, frequency, it says Valium, 10 milligrams, PO stands for by mouth, right?

A. Yes.

Q. every four hours, is that when nsc6ssar^u?

A. Yes.

Q. Would you tell the jury your understanding of the amount of dosage of Valium, is it by mouth 10 milligrams the most the manufacturer makes?

A. I would have to look that up.

Q. Is it towards the higher end of it?

A. It is a substantial dose of Valium.

Q. Valium came in 2 and a half, 5, maybe

1 **Dr. Schneller - Cross - Mr. Awad**

2 something greater but by mouth that's a pretty
3 high end?

4 A. Yes .

5 Q. If we were to look at the record, we
6 can see exactly when it's given, the dates, 1/7,
7 1/8, 1/9, that's the top line. We can tell the
8 time, we would know by military hour the time
9 she's receiving it, right?

10 A. Yes .

11 Q. The site, sometimes that could refer
12 to an IV PO here always means she took it by
13 mouth?

14 A. Yes .

15 Q. I guess the initials are probably a
16 reference to the nurse or of the person who
17 distributed it?

18 A. Yes .

19 Q. At St. Francis Hospital on any
20 particular day, let's take the day of January
21 8th, let's just count it at the top, one, two,
22 three times on January 8th, 30 milligrams of
23 Valium?

24 A. Yes .

25 Q. Would you consider that a significant

Dr. Schneller - Cross - Mr. Awad

dosage of Valium for most people?

A. Yes , I w o u l d .

Q. Same thing on January 9th, if you count it up, one, two, three, I can't tell if that's the 9th or 10th, at least three times on January 9th documented there, correct?

A. Yes .

Q. In addition to which that prescription was continued later on after she was discharged from the hospital and even when she was up at Stony Brook Hospital on February 2nd, correct?

A. Yes .

Q. Is Valium a sedative, a relaxer, an anti anxiety?

A. All of those, yes.

Q. Valium, obviously, is one of those medications you don't drive heavy machinery or operate it while on it?

A. Yes .

Q. You certainly don't want to be driving with the school buses out there, right?

A. Absolutely.

Q. The responsibility on February 2nd to obtain and provide information of

Dr. Schneller - Cross - Mr Awad

that responsibility was

Dr. Pachulski's was it not?

A. To obtain?

Q. A consent and to provide information, that was Dr. Pachulski's responsibility. correct?

A. Yes

Q. To some degree he could delegate that if he thought appropriate to a fellow or resident / but the buck always stops with the all ending who decides they are going to do the surgery, correct?

A. Yes.

Q. You would agree, sir, that if Dr. f A a i' u _ L s K l did not -- withdraw, , , , - , , v o u think that a patient should be informed, as a general matter, should be informed about what other doctors have reported about a procedure or the necessity for a surgery before you ask the patient to sign the consent for a?

A. Only if the patient does not know what those doctors have said or if the doctor getting the consent has reason to believe that the patient is unaware of the evaluations of the

Dr Schneller - Cross - Mr. Awad

other doctors

Q- You would agree that from some source
at some point should have been
told, and it would have been of some
significance for her to know that a variety of
other cardiologists had looked at the issue of
pacemaker and had said no pacemaker, she should
before undergoing that have been told that,
correct?

A. The doctors who performed whatever
evaluation they performed should certainly have
explained the results to her

Q- Do you have any notion or view of what
the discharge instructions were at St. Francis
Hospital regarding 'who was going to talk to
if anyone, about no pacemaker
necessary'.

A. You would have to point out that
specific reference. I don't have it in memory.

Q. Are you familiar with the testimony of
Dr. Pachulski regarding that area, particularly
what he heard or what he discussed with
about St. Francis Hospital and the no pacemaker?

A. I believe that that was not a subject

Dr. Schneller - Cross - Mr. Awad

that they discussed.

Q. As a general matter - withdrawn. Generally speaking, Doctor, would you agree that by 1999 patients should have the opportunity to make a determination, meaningful determination, as to how the care and treatment is going to be, particularly with respect to whether or not they want to take surgery or don't want to take surgery?

A. Yes .

Q. There are times, are there not - there are times, are there not, in which there can be a patient and the patient is told to do something for medical treatment and for whatever reason, whether because of religion, whether because of just stupidity, whether abstinence, the patient refuses to carry out that treatment, the doctors absolutely have the right to document in the chart against medical advice, AMA, right?

A. Yes .

Q. Certainly, the doctors need to do that when in fact they believe that they must have the treatment, it's in their best interest and

Dr **Schneller - Cross - Mr. Awad**

that the patient is making an irrational decision, correct?

A. Yes .

Q. In an elective surgery situation, in elective surgery situations, if a patient chooses to disagree with the doctor and not accept the advice, the doctor can, likewise, make a notation we recommended this, she's not inclined or he's not inclined to doing it?

A. Yes .

Q. In that situation, particularly specifically with in this case, she was entitled to know before the pacemaker went in the benefits of that pacemaker surgery, the benefits of not taking the pacemaker surgery and whether or not there were differences of opinion, to say the least, about whether or not, she needed the pacemaker, correct; yes or no?

A. That's impossible to answer yes or no in this particular case without me elaborating on the answer.

Q. Fair enough. Let me go further .

Are you aware, sir, of the testimony of Dr . Grella and Dr. Pachulski regarding the

Dr. Schneller - Cross - Mr. Awad

St. Francis records and who was getting them and who had them and who didn't have them?

A. I read all their testimony. I don't know what specifically you're asking now.

Q. Fair enough. There is nothing - have you read testimony?

A. A substantial part of it, yes.

Q. Do you know what it is that has stated in deposition as well as here about the extent of the discussion she had with Dr. Pachulski at Stony Brook Hospital?

A. I don't have it in memory.

Q. Are you aware of anything that she has said about her request to be able to speak with *u l . r a ^ i i U - L s K X D U L . L U C c v c i i c o u i w - (' u r r c Q . a j _ c j O U* familiar with her testimony on that at all?

A. Yes .

Q. Would you agree, Doctor, I'm just asking you hypothetically, if couldn't get her questions answered by Dr. Pachulski and Dr. Pachulski never spoke to her about the positives and the negatives and the alternatives and the reasons for surgery, if he didn't do that, he would have departed from

Dr. Schneller - Cross - Mr. Awad

standards of good and accepted practice, correct?

A. Unless he had reason to believe that the patient already had information on part of that, yes.

Q. His letter specifically states, does it not - withdrawn. In the absence of that knowledge, the absence of specific knowledge confirmed about the pacemaker, the pluses, the minuses, the risks, the benefits, the alternatives and the reasons for having it and not having it and the absence of her receiving it from any other source, it was his responsibility to make sure she knew about it, correct?

A. I think his responsibility was to explain that it was his recommendation that she receive the pacemaker because of sick sinus syndrome and documentation of the correlation between her symptoms and the pauses in the rhythm. That is from a reason to have a pacemaker, that's what his responsibility was.

Q. Even though his sworn testimony was that the only reason in this case for the

Dr. Schneller - Cross - Mr. Awad

pacemaker was Bradycardia, and even though outside of that 15 seconds at St. John's Hospital in the emergency room of January - withdrawn. Just to be sure about those symptoms, this morning you referred to that idea, sick sinus syndrome, I stopped keeping count after twenty, when you were referring to that you continued to refer to the telemetry or the strips that are in the St. John's record, correct?

A. Yes .

Q. And you weren't implying that anybody else ever made electrical recordings of the heart that would show otherwise, correct, right,

u u w u v

- j c / n l i i K l -

not even Stony Brook, right? I mean, they checked her heart at Stony Brook and it said normal sinus limit, right?

A. But this is a sporadic event, that's why it was very helpful -

Q. In your opinion, it's your opinion that it's a sporadic event, right?

A. Yes, it was my opinion.

Q. Because would you agree, sir, that not

Dr Schneller - Cross - Mr. Awad

only does the American College of Cardiologists and the American Heart Association but even entities such as Medicare require that there • s specific documentation sufficient in the records to support the finding that the cardiologist found symptoms consistent with and at. the time of the testing correct, in order to just ify any paceraaker , right ?

A. Yes . And the records -

Q. You ' re not suggesting that a person that shows sinus pauses automatically qualifies for a pacemaker, right?

A. That is correct.

Q- If a d o c t o r were to put a pa cema ke r in a patient even if the patient wanted it just on the basis of a 2-second sinus pause, even though they occur time and time again, there would have to be more than that, otherwise, an insurer like Medicare wouldn't pay for it, right? I !

A. A 2-second pause would only be i important if it was associated with symptoms — !

Q. Dr. Pachulski, returning to j
Dr Pachulski and this issue of consent, in the absence of knowing about the pacemaker,

Dr. Schneller - Cross - Mr. Awad

pluses and minuses, and the fact that a variety of cardiologists that all said no, if she didn't have that information, would you agree from this point of view she never gave an informed consent?

A. I do not believe it was Dr. Pachulski's responsibility or obligation in any way to discuss with her about what other doctors thought.

Q. Even though he told her that he was getting all the records, right?

A. Yes .

Q. It's one thing for a patient to come into a doctor's office and see the doctor four, five, six times, xⁱ u^KL^t" . ° - L¹ni. Von, there's a relationship that gets developed. That's one scenario, right? In this one case Dr. Pachulski saw her once before the surgery, right?

A. Yes, that's correct.

Q. And he's seeing her once before the surgery. You know that he said he specifically wanted to get all those records, right?

A. Yes .

Q. You know that he said it was his

Dr. Schneller - Cross - Mr. Awad

responsibility to get all of those records, right?

A. Yes .

Q. And you know that he wasn't going to take care of her in terms of her cardiac condition once the electrophysiology care and treatment was completed in the sense of completing the surgery otherwise, right, there was that agreement that he would not be involved in that way, right?

A. I think that was understood.

Q. For the only reason for getting all those records, the only rational reason to get all those records, in part was to gather all the information necessary, right?

A. I think Dr. Pachulski thought, justifiably, that he had sufficient information to make a diagnosis that would justify the procedure .

Q. I don't mean any disrespect, sir, but let's not talk about what you think Dr. Pachulski was thinking. Let's just talk about what you think.

It's your position before this jury

Dr. Schneller - Cross - Mr. Awad

that even though the treater thought he should get all of the records, may have delegated it to others, okay, and even though he specifically said to the patient, "I have reviewed all of the records," that he had no obligation to find out what those records said, because that's a different scenario, isn't it? Do you agree with me? If a doctor says, "I reviewed all the hospital records," he or she has undertaken an obligation to the patient to review all the hospital records, right?

A. The answer to that question is yes.

Q. In addition to which are you familiar with the testimony of Dr. Grella that he never

n a u Luc oi_ . £ x a n o x o -Lcri-wj-uS ava.xxa.iixc; uw Iixiu.

are you familiar with that?

A. Yes, that is true.

Q. Are you familiar with the testimony that he didn't send any St. Francis records to Dr. Pachulski, correct?

A. That is true, yes.

Q. Are you familiar with Dr. Pachulski's testimony, as I showed you today, that they had one phone conversation?

Dr . SchneHer - Cross - Mr. Awad

So in this particular case when Dr. Pachulski reports that the doctors and the hospitals had all recommended pacemaker surgery, you would stand by that statement by Dr. Pachulski as having been adequate and correct in advising the patient when he says he ' s just confirming what everybody else said?

A. It is not true that the other doctors recommended the pacemaker.

Q- Thank you. As a general matter, sir, would you agree that two minutes of chest symptoms with a patient in and of themselves, okay, in and of themselves, are not only common but certainly can't serve as any basis in and of the inselves to f O' '=n' " -1 -d P r\ r r'anqo f n r r" ,, -ir nj i -' J concern?

A. Depenc s on what the question is that the doctor -

Q. In evaluating the patient would you agree that complaints, for instance, of chest pain in an episode of two minutes can be caused from a whole variety of causes and would not necessarily suggest a cardiac cause, two minutes of chest pain?

i
I
1
|
|
j
'
j
i
i
j
j

Dr. Schneller - Cross - Mr. **Awad**

A. Yes, that's true.

Q. In medicine it is important to have something known as a differential diagnosis?

A. Yes.

Q. When it comes to hearts, palpitations, chest beating, symptoms like that, it's important in that realm to have a differential diagnosis, correct?

A. Yes. Until one reaches a more secure diagnosis.

Q. The differential diagnosis requires every physician to consider the possible causes and rule them out before recommending, with reason, with reasonable efforts, and rule them out before determining that the invasion of the patient's body is necessary to treat a particular diagnosis, correct?

A. In general, yes. Unless there¹s a diagnosis that is firm that presents itself before all the other possibilities are ruled out, meaning if you have a definitive diagnosis, I you don't need to rule out the ones that are already not applicable.

Q. At this very moment, at this very

Dr. Schneller - Cross - Mr. Awad

moment if I were put on an EKG and I sinus pauses of two seconds or greater and they repeated themselves, you would agree that that would not be enough for you or any doctor to recommend a pacemaker implantation, correct?

A. Yes, I do agree with that.

Q. Would you also agree that if I show two-second sinus pauses, that I could continue to show those for the rest of my life and not require a pacemaker?

A. That is true.

Q. many people have sinus pauses?

A. Right.

Q. That's why the guidelines require just more than sinus pauses, correct?

A. Yes.

Q. You would also agree, Doctor, that not every patient that has sinus pauses and has symptomology necessarily require a pacemaker, could be from other causes, correct?

A. It could be.

Q. If I had a bad flu, I had a bad infection, I had a variety of underlying illnesses, it may be important to first

