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1  
2 SUPREME COURT OF THE STATE OF NEW YORK  
3 COUNTY OF NASSAU

4 \_\_\_\_\_  
5 and ,  
6 Plaintiffs,  
7 - against -  
8 , M.D.,  
9 , M.D., , M.D.,  
10 NEW YORK NEUROLOGICAL ASSOCIATES, LLP  
11 and ST. FRANCIS HOSPITAL,  
12  
13 Defendants.

14 \_\_\_\_\_  
15 242 Crossways Park Drive  
16 Woodbury, New York  
17 June 24, 2004  
18 2:15 P.M.

19  
20 EXAMINATION BEFORE TRIAL of ,  
21 one of the Defendants herein, taken by the  
22 Adverse Parties, pursuant to Article 31 of the  
23 Civil Practice Law and Rules of Testimony, and  
24 Order, held at the above-mentioned time and  
25 place, before , a Notary Public of the  
26 State of New York.

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2 APPEARANCES :  
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BY: , ESQ.

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2       IT IS HEREBY STIPULATED AND AGREED by and  
3       between the attorneys for the respective parties;  
4       THAT all objections, except as to the form of  
5       the question, shall be reserved to the time of  
6       the trial; and  
7       THAT failure to object to any question or to  
8       move to strike any testimony at this examination  
9       shall not be a bar or waiver of the right to make  
10      such objection or motion at the time of the trial  
11      of this action, and is hereby reserved; and  
12      THAT this examination may be signed and sworn  
13      to by the witness examined herein before a Notary  
14      Public, but failure to do so or to return the  
15      original of the examination to the attorney for

16 the party on whose behalf the examination is  
17 taken shall not be deemed a waiver of the rights  
18 provided by Rules 3116 and 3117 of the Civil  
19 Practice Law and Rules of Testimony, and shall be  
20 controlled thereby; and

21 THAT certification and filing of the original  
22 of this examination are waived; and

23 THAT counsel for the witness examined herein  
24 shall be provided with a copy of this examination  
25 at no charge.

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2 , after having first  
3 been duly sworn by a Notary Public of the State  
4 of New York, was examined and testified as  
5 follows:

6 MR. MIKLOS: the doctor's  
7 record Plaintiff's 1.

8 ( Document was ed Plaintiff's  
9 Exhibit 1 for identification, as of this  
10 date.)

11 EXAMINATION BY

12 MR. MIKLOS:

13 Q Please state your name for the record.

14 A .

15 Q What is your address?

16 A 23 Turf Lane, Roslyn Heights, New York  
17 11577.

18 Q Good afternoon. I'm going to ask you  
19 some questions today. If you don't understand  
20 the question, please let me know and if the  
21 question doesn't make sense medically to you,  
22 please let me know that, also. When you answer,  
23 you have to do so verbally. Try not to shake  
24 your head because the reporter cannot record the  
25 shaking of your head.

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2 Have you understood everything I've said  
3 so far?

4 A Yes.

5 MR. MIKLOS: that Plaintiff's  
6 2.

7 ( Document was ed Plaintiff's  
8 Exhibit 2 for identification, as of this

9 date.)

10 Q We've had Plaintiff's Exhibit 1 for  
11 identification ed and everybody's been given  
12 a copy of that.

13 Is that your complete office record  
14 regarding Mrs. ?

15 A Yes.

16 Q We've had ed as Plaintiff's Exhibit  
17 2 your C.V., is that correct?

18 A Yes.

19 Q Are there any additions or corrections  
20 or changes that need to be made to your C.V.?

21 A No.

22 Q Have you published anything in the  
23 medical literature or contributed to any  
24 textbooks?

25 A No.

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1 6

2 Q So, there's no publications in addition  
3 to this?

4 A No.

5 Q According to this, you've been licensed  
6 in New York for how long?

7 A Since 1978.

8 Q You've been specializing in what field  
9 of medicine?

10 A Internal medicine.

11 Q Before testifying today, aside from your  
12 records, did you look at anything else to help  
13 you testify?

14 A Today?

15 Q Yes.

16 A No.

17 Q Did you do any research, look at any  
18 medical books or articles or talk to any doctors  
19 about any of the medical topics that we'll be  
20 speaking about today?

21 A No.

22 Q And during the time that you were  
23 treating Mrs. , did you consult with any  
24 textbooks or medical articles to look up any  
25 medical issues about her condition?

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2 A No.

3 Q As I understand it, both Mrs. and  
4 her husband had been patients of yours?

5 A Yes.

6 Q I only want to talk about Mrs.  
7 today; okay?

8 A Okay.

9 Q If you can tell me, and you can look at  
10 your records any time you need to, I'm just here  
11 to get some information, when did you first start  
12 seeing Mrs. as a patient?

13 A On October 17, 1999.

14 Q And when was the last time that you saw  
15 her?

16 MR. : Doctor, is it October  
17 17 or October 12?

18 THE WITNESS: I'm sorry. 12th.

19 MR. : Off the record.

20 (A discussion was held off the  
21 record.)

22 Q You're looking for the last time you saw  
23 her.

24 A 6/17/02.

25 MR. MIKLOS: Off the record.

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2 (A discussion was held off the  
3 record.)

4 Q At some point between those two dates,  
5 did you learn that Mrs. had a stroke?

6 A Yes.

7 Q Do you know what the date of her stroke  
8 was? I'm talking about the first stroke now.

9 A The record from St. Francis Hospital,  
10 according to that, it's dated 6/11/2001, and she  
11 had symptoms of stroke a day before that, so that  
12 will be 6/10/2001.

13 Q What I want to know is, these are tough  
14 questions, it will take a little bit of time to  
15 answer it, between October 12, 1999, the first  
16 visit, and I guess it's June 10, 2001, how many  
17 times did you see her as a patient? Just the  
18 number of times.

19 MR. : Can he pull out --

20 Q You can do whatever you want.

21 MR. : Take as much time as  
22 you need. Why don't you pull out each  
23 office visit?  
24 Q I just want to get how many times you  
25 saw her and if you can give me the date when you  
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1 9  
2 finish, I'd greatly appreciate it.

3 MR. : You can answer.

4 A Ten times.

5 Q Could you please give me the date  
6 between your first visit of October 12, 1999 and  
7 the date of her stroke, which is June 10, 2001?

8 A The second visit was 3/30/2000, third  
9 visit was 5/2/2000, fourth one was 5/9/2000,  
10 fifth 6/30/2000, 8/18/2000, 9/6/2000, 12/12/2000,  
11 3/9/01, and 5/20/01.

12 Q Just put them on the side for a second.  
13 We'll go back to them in a little bit.

14 You had mentioned in answering the prior  
15 question that the first symptoms of stroke that  
16 Mrs. had according to the hospital record  
17 was, I think, June 10 of 2001.

18 Do you remember that?

19 A Yes.

20 Q What were the symptoms of stroke that  
21 she had at that time?

22 MR. : Doctor, can you just  
23 refer to what page in the hospital  
24 record you were referring to?

25 A I'm looking at the St. Francis Hospital  
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1 10  
2 emergency department record of June 11, 2001.

3 Q What were the symptoms?

4 A According to this note, she had right  
5 side weakness, slurred speech since yesterday.

6 Q Is that everything?

7 MR. : That's everything you  
8 were referring to before?

9 THE WITNESS: Yes.

10 Q During the this period of time of  
11 October 12, 1999 up until June 10 of 2001, during  
12 this period of time, did you ever suspect that  
13 Mrs. might be at risk for developing a

14 stroke?

15 MR. : Just note my  
16 objection.

17 He didn't see the patient after  
18 5/2/01 and before 6/10/01.

19 MR. MIKLOS: You're a hundred  
20 percent correct.

21 Q Let's just back up.

22 From the first day you saw her on  
23 October 12, 1999 up until, let's say, May 2, 2001  
24 inclusive, did you ever think that Mrs.  
25 might be at risk for developing a stroke?

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2 MR. : Just note my  
3 objection.

4 Can you rephrase that?

5 Q During this period of time, again same  
6 time period, from October 12, 1999 to May 2,  
7 2001, were you familiar with the signs and  
8 symptoms of stroke in a patient?

9 A Yes.

10 Q Were you familiar during the same period  
11 of time with risk factors that patients have that  
12 put them at higher risk for developing a stroke  
13 than the average population?

14 A Yes.

15 Q What are the risk factors that put a  
16 patient at a higher risk for developing a stroke  
17 that you were aware of at the time?

18 A High blood pressure, high cholesterol  
19 level, history of smoking, any evidence of  
20 symptoms.

21 Q Symptoms of what?

22 A Symptoms like sudden onset of vision  
23 problems, slurring of speech, weakness on one or  
24 two limbs.

25 Q Anything else? Is that it?

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2 A Smoking.

3 Q You said that. History of smoking.

4 MR. : Off the record.

5 (A discussion was held off the  
6 record.)

7 A Being overweight. Lifestyle, inactive  
8 lifestyle, lack of exercise.  
9 Q Anything else?  
10 A That's all I can think of at this point.  
11 Q Now, I'm going to go down the list you  
12 gave me. If I missed something, just let me  
13 know.  
14 A Coronary artery disease.  
15 Q Did Mrs. during that period of  
16 time, we're still talking about from October 12,  
17 1999 up through and including May 2 of '01, just  
18 before her stroke happened, did she have high  
19 blood pressure?  
20 A Yes.  
21 Q Did she have high cholesterol?  
22 A Yes.  
23 Q Did she have a history of smoking?  
24 A No.  
25 Q Was she overweight?

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1 13  
2 A Yes.  
3 Q How about her lifestyle? Was that a  
4 factor for her?  
5 A According to her, she was exercising in  
6 the form of walking, stretching and some  
7 cardiovascular workouts.  
8 Q Didn't seem to be working if she was  
9 overweight, right? So, her lifestyle was a risk  
10 factor for her?  
11 A Her lifestyle was a risk factor for her.  
12 Q How about coronary artery disease? Did  
13 she have that?  
14 A Yes.  
15 Q Now, given the items that were positive  
16 in terms of increased risk factor, did you feel  
17 that Mrs. was at risk for developing a  
18 stroke?  
19 MR. : Again, just note my  
20 objection.  
21 Do you understand that?  
22 Do you mean was she at a higher  
23 risk?  
24 MR. MIKLOS: Higher risk than the  
25 general population.

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2 A Yes.

3 Q During this period of time that you felt  
4 that Mrs. was at a higher risk for  
5 developing stroke, did she require any medical  
6 monitoring to monitor for that increased risk?

7 A Yes.

8 Q What type of monitoring was required to  
9 make sure that she didn't, in fact, or did, in  
10 fact, suffer from stroke?

11 MR. : Counselor, can you  
12 just clarify what you mean by medical  
13 monitoring.

14 Q Just so I understand this, do you know  
15 what a transient ischemic attack is?

16 A Yes.

17 Q What is it?

18 A It's a temporary lack of blood supply to  
19 the brain.

20 Q When we talk about strokes, have you  
21 ever heard the terminology a white stroke or a  
22 red stroke as being two different kinds of  
23 strokes?

24 A I have heard about the terminology.

25 Q What is your understanding of what a

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2 white stroke is and what a red stroke is?

3 A I cannot remember at this time, sir.

4 Q Mrs. 's stroke, was that a result  
5 of a blood vessel hemorrhaging in the brain or  
6 was that the result of an occlusion, a clot  
7 forming in one of the vessels, or both or  
8 something else?

9 MR. : You can look at the  
10 record.

11 Q You can look at anything you need.

12 A As far as I can tell from these records,  
13 she did not suffer from a hemorrhaging.

14 MR. : What were you looking  
15 at?

16 THE WITNESS: Report of the St.  
17 Francis Hospital done on 6/11/01.

18 Q So, is it correct then to say that the

19 most likely cause of her first stroke was embolic  
20 in nature?

21 A Yes.

22 Q When we were talking about Mrs. 's  
23 risk factors that placed her at higher risk for  
24 stroke than the average population, could you  
25 give us your best estimate at how many times more  
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2 she was at risk than the average person? Was it  
3 twice, three times, four times, ten times, a  
4 hundred times?

5 A I cannot tell that.

6 Q Did you consider her to be significantly  
7 at risk or just a minor concern of interest but  
8 of no real importance?

9 A She was at some risk to have stroke more  
10 than average person. There were serious factors.

11 Q From your point of view, was there  
12 anything that could be done medically by yourself  
13 or anybody else to monitor her to see if she was  
14 going to develop a stroke?

15 A Well, she was being monitored for blood  
16 pressure, blood sugar and physical examination.

17 Q And when you say physical examination,  
18 was there any part of the physical examination  
19 that was being specifically directed at  
20 evaluating her risk for developing stroke?

21 A General physical examination including  
22 neurological examination of the fundus,  
23 examination of the pulses and auscultation of the  
24 pulses, especially in the neck.

25 Q Just so we're all on the same page here,  
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2 when you say the fundus, you're talking about an  
3 eye examination?

4 A Eye examination.

5 Q How does an eye examination determine  
6 the condition of the patient relative to risk of  
7 stroke?

8 A Depending on the condition of the  
9 arteries in the fundus, whether they are -- how  
10 they appear on examination.

11 Q If there's an increased risk or a

12 problem, what would you expect to see as opposed  
13 to just a normal eye exam when you look at the  
14 fundus?

15 A We look for the size of the arteries,  
16 any blockage in the arteries.

17 Q When you say the size, would they be  
18 bigger, smaller?

19 A They will be smaller.

20 Q And you had mentioned that there would  
21 be examination of the pulses and there would be  
22 auscultation of the pulses, is that right?

23 A Yes.

24 Q Is there a difference between the two,  
25 an examination and auscultation, or the same

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2 thing?

3 A Examination includes both auscultation  
4 and palpation.

5 Q So, you would feel them?

6 A Yes.

7 Q That's palpation.

8 What is auscultation?

9 A Auscultation is listening to the blood  
10 flow for any abnormal sound over the course of  
11 the arteries.

12 Q And is this done with the use of a  
13 stethoscope?

14 A Yes.

15 Q And you told me that in particular  
16 you're focusing in on the neck, is that correct?

17 A Yes.

18 Q Do the vessels that you're listening to  
19 by auscultation with a stethoscope have a name,  
20 medical name?

21 A Yes.

22 Q What would that be?

23 A Carotid arteries.

24 Q Is there with carotid artery two, three?

25 A One on each side, which is main carotid

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2 artery.

3 Q So, there's one main carotid artery on

4 each side?

5 A Yes.  
6 Q That's what you listen for?  
7 A We listen for the bifurcation of the  
8 arteries dividing into two.  
9 Q How do you make that determination  
10 through stethoscope?  
11 A Angle of the neck, the land for the  
12 artery listening point.  
13 Q Does the angle of the neck have a name?  
14 A Angle of the jaw.  
15 Q It doesn't have one of those Latin  
16 names?  
17 A No, not to my knowledge.  
18 Q And it's not named after some doctor?  
19 They do that too.  
20 A I don't know.  
21 Q It's not like 's triangle or  
22 something?  
23 A Not that I know.  
24 Q What is it you're listening for with the  
25 stethoscope at the bifurcation? What abnormality  
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2 would you hear that would make you suspicious  
3 that something might be going on?  
4 A You're listening for a bruit.  
5 Q Can you tell us what a bruit is, please?  
6 A bruit, could you describe what it is you're  
7 hearing?  
8 A A bruit is a swishing sound.  
9 Q What is that indicative of?  
10 A Which can originate in the carotid  
11 artery locally or can be transmitted from the  
12 heart.  
13 Q Can you tell which is which by  
14 listening, meaning where is the origin; is it  
15 coming from the heart or is it coming locally  
16 from the artery itself?  
17 A Yes. Sometime you can distinguish  
18 between the two.  
19 Q How do you do that?  
20 A Most often a bruit locally present in  
21 the carotid artery will not have any radiation  
22 from the chest. It will be locally present.  
23 Q When you say radiation from the chest,

24 what are you referring to?

25 A Compared to the heart murmur, which can  
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2 transmit the sound along with the carotid  
3 arteries in the neck.

4 Q Is it that a heart murmur can cause the  
5 transmission of a sound that you can hear in the  
6 carotid arteries?

7 A Yes.

8 Q Is there anything else about the heart  
9 other than a murmur that can cause the  
10 transmission of a sound to be thought of as a  
11 bruit?

12 A Anything else?

13 Q Any other heart pathologies or is it  
14 just heart murmurs?

15 A Just the heart murmurs.

16 Q And if you're in a situation where  
17 you're hearing a bruit and you want to know if  
18 it's a heart murmur, do you listen to the heart  
19 with the stethoscope over the chest to hear the  
20 murmur?

21 A Yes.

22 Q And if there's no murmur, then you know  
23 it's a localized condition?

24 A Yes.

25 Q Did Mrs. have a heart murmur at  
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2 any time?

3 A No, not according to my records.

4 Q This examination of the carotid arteries  
5 on the left side and the right side at the  
6 bifurcation you told us about, using a  
7 stethoscope, how long does it take to do this  
8 procedure? Are we talking less than a minute,  
9 ten minutes, an hour?

10 A It depends from person to person.

11 Q But average?

12 A If the arteries are prominent, you can  
13 palpate them easily, you're able to locate them  
14 and listen to them, it takes maybe five minutes,  
15 less than five minutes.

16 Q In a person like Mrs. , who has

17 all of these increased risk factors for  
18 developing a stroke, does good medical practice  
19 require that she be regularly evaluated by  
20 listening to the carotid arteries by stethoscope?

21 A That's part of physical examination by  
22 any patient comes to office.

23 Q What I'm asking is, given the fact that  
24 she has an increased risk for developing stroke  
25 and given the fact that listening to the carotid  
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2 arteries can give you some advance warning of an  
3 impending stroke, should the patient be evaluated  
4 on each and every visit in terms of listening to  
5 the carotid arteries by stethoscope?

6 A Yes.

7 Q And that represents a standard of care  
8 for evaluating this type of patient like  
9 Mrs. ?

10 A Yes.

11 Q Now, when you as a physician are  
12 examining a patient and you're performing an  
13 important part of the examination such as  
14 listening to the carotid arteries because you're  
15 concerned that she may be at risk for having a  
16 stroke, should that examination be recorded in  
17 your record?

18 A Yes.

19 Q And in your particular case, when you  
20 examined Mrs. between your first visit  
21 with her on October 12, 1999 through May 2 of  
22 2001, did you record your examination of her  
23 carotid arteries on each of the visits? Let's  
24 take the first visit, if you don't mind. On  
25 October 12, 1999, did you examine her carotid  
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2 arteries and make a note of it?

3 A Yes.

4 Q Let's go to the next visit, March 30,  
5 2000.

6 MR. : It's 3/13.

7 MR. MIKLOS: My mistake. I  
8 apologize.

9 Q On 3/13/2000, is there a notation that

10 you examined the carotid arteries?  
11 A Examination, there's a notation says,  
12 "no bruits."  
13 Q And was the same thing present on the  
14 first visit; no bruits were noted?  
15 A Yes.  
16 Q Does it actually say "no bruits"?  
17 A Yes.  
18 Q So, for October 12, '99 you actually  
19 wrote "no bruits" and for March 13, 2000 you  
20 wrote "no bruits" also?  
21 A Yes.  
22 Q And May 2?  
23 A Yes.  
24 Q Is there an examination recorded?  
25 A Yes.

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1 25  
2 Q What's the word that indicates the  
3 examination?  
4 A "Examination of neck, no bruits."  
5 Q The next notation is when?  
6 A 5/9/2000.  
7 Q Is there a notation you examined the  
8 neck?  
9 A Yes.  
10 Q What does the notation say?  
11 A "No bruits, no nodes."  
12 MR. : Off the record.  
13 (A discussion was held off the  
14 record.)  
15 Q We were up to June 30.  
16 You said "no bruits" for 5/9?  
17 A Yes.  
18 Q June 30, what does it say?  
19 A I did not record "no bruits."  
20 Q When you did not record "no bruits,"  
21 does that mean either you forgot to record it or  
22 you didn't do the examination?  
23 A I forgot to record it.  
24 Q It could be the other way?  
25 A That I did not do the examination?

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1 26  
2 Q Yes.

3 A No, not possible.  
4 Q Your explanation for not recording it is  
5 what?  
6 MR. : I think he answered  
7 that.  
8 Q Was it a busy day?  
9 A Possible it was a busy day. Did not  
10 record it.  
11 Q So, what you're saying is you usually  
12 make the note but here, for some reason that you  
13 can't tell me, you don't know why it wasn't  
14 recorded?  
15 A Yes.  
16 Q The next date is August 18?  
17 A Yes.  
18 Q Is there a notation about examining the  
19 bruits there?  
20 A Yes.  
21 Q What does it say?  
22 A "No bruits."  
23 Q The next date I have is September 6.  
24 A "No bruits."  
25 Q December 12?

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1 27  
2 A It's not recorded.  
3 Q Can you explain why you didn't write  
4 anything down?  
5 A Same thing maybe. I have no  
6 explanation.  
7 Q Is one of the possibilities that you  
8 just forgot to write it?  
9 A That's a possibility, yes.  
10 Q Is it also a possibility that you didn't  
11 perform that examination?  
12 A No.  
13 Q Now, incidentally, you wrote down other  
14 things for that day, right?  
15 A Yes.  
16 Q The next note I have is March 9 of 2001?  
17 A Right.  
18 Q Is there any notation about the bruits?  
19 A Yes.  
20 Q What is it?  
21 A "No bruits."

22 Q The last date I have is May 2?

23 A Yes.

24 Q Is there a notation there?

25 A Yes.

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2 Q What does it say?

3 A No bruits.

4 Q Could you tell me with respect to this  
5 finding of bruits, is a bruit considered to be a  
6 transitory finding or a permanent finding,  
7 meaning every time you do an examination it's  
8 going to be there or sometimes it will be there  
9 and sometimes it won't?

10 A Once it is there, it should be there on  
11 the subsequent examinations.

12 Q All the time?

13 A All the time. Except when there's total  
14 occlusion of the carotid artery and there's no  
15 blood flowing, will not hear any bruit.

16 Q Is there any idea with bruits what  
17 quantifies them? By that I mean is there  
18 something like a hard bruit, a soft bruit, a very  
19 minimal bruit, very loud bruit; anything like  
20 that?

21 A Not really, because the intensity of the  
22 bruit is subjective. Depends on the person, how  
23 he hears it.

24 Q Now, there's something called a carotid  
25 artery dopplar evaluation.

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2 Are you familiar with that?

3 A Yes.

4 Q I don't want a textbook discussion about  
5 it but just in general, what is it?

6 A Device which passes sound waves at a  
7 certain frequency which gives the blood flowing  
8 through the arteries and the sound waves are  
9 reflected back and picked up by a transducer.

10 Q Let's just call this machine a dopplar  
11 for purposes of today.

12 Can a dopplar pick up a bruit that you  
13 cannot pick up by stethoscope?

14 A Dopplar will not pick up a bruit because

15 always have a sound when you listen to an artery.  
16 With a dopplar there's always a sound, but it can  
17 discern between the normal sound and abnormal  
18 sound.

19 Q So, are you saying that a dopplar  
20 examination of the carotid artery can pick up an  
21 abnormality that you cannot pick up by  
22 stethoscope?

23 A Yes.

24 Q As part of a preventative evaluation of  
25 a patient at risk for developing strokes, is

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2 there any role for performing dopplar evaluations  
3 at some interval?

4 MR. : Just note my  
5 objection.

6 Limited to his practice?

7 MR. MIKLOS: Of course.

8 MR. : It's very general,  
9 the way you asked it.

10 Q Do you understand what I've asked you?

11 A Yes.

12 Q You're treating a patient. You know the  
13 patient's at risk for developing stroke. You  
14 know there's a test out there that can pick up  
15 some abnormality in the carotid arteries that you  
16 cannot pick up by stethoscope.

17 My question is, is there any role in  
18 terms of preventative medicine for either  
19 ordering or performing periodic dopplar  
20 evaluation of the carotid arteries?

21 MR. : I have to object  
22 again. You have to limit it to his  
23 practice.

24 Q Your practice, do you perform these  
25 tests?

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2 A Myself, no.

3 Q But you can recommend they be performed?

4 A Yes.

5 Q In the terms of your practice, when you  
6 have a patient who is at high risk, knowing that  
7 these dopplars can pick up abnormalities in the

8 carotid arteries, is there any role for  
9 recommending or ordering that the patient undergo  
10 periodic carotid artery dopplar evaluation?

11 MR. : Objection. I'm not  
12 going to let him answer that question.

13 Can you ask him or will you adopt  
14 this question: Doctor, in your  
15 practice, are there certain patients  
16 that you would customarily recommend for  
17 carotid artery dopplars?

18 MR. MIKLOS: That's a good  
19 question.

20 MR. : You can answer my  
21 question.

22 THE WITNESS: Yes.

23 MR. : Was the Plaintiff one  
24 of these patients?

25 THE WITNESS: No.

0032

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2 Q Now, a carotid artery dopplar, I know  
3 you don't do them but just in general, is that a  
4 cardiovascular procedure?

5 A No.

6 Q Is that a painful procedure to the  
7 patient?

8 A No.

9 Q And you've answered your lawyer's  
10 questions about there are some people who should  
11 have periodic carotid artery dopplar  
12 examinations, is that right?

13 A Yes.

14 Q Now, are patients in high risk for  
15 stroke included in that category of people who  
16 should be recommended to have periodic carotid  
17 artery dopplar evaluations?

18 A Yes.

19 Q And when we say high risk, aside from  
20 all the risk factors that this patient has, are  
21 there any other risk factors that have to be  
22 present before you would recommend a patient have  
23 carotid artery dopplar exam?

24 A Yes.

25 Q What other risk factors or findings do

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2 you think should be present before you would  
3 recommend routine screening by dopplar?

4 A Presence of a bruit.

5 Q Anything else?

6 A Difference in pulsation on either side.

7 Q What about the idea that the patient  
8 presents with new symptoms or new complaints  
9 which are compatible with transient ischemic  
10 attacks? Would that be an indication to  
11 recommend dopplar examinations?

12 A Yes.

13 Q And when we say that a patient presents  
14 with symptoms or complaints consistent with  
15 transient ischemic attacks, TIA's, would that  
16 include new onset of dizziness or lightheadedness  
17 as possible complaints?

18 A Yes.

19 Q When we talk about some of the symptoms  
20 of TIA, if a patient complains of difficulty with  
21 balance and poor memory and being incoherent in  
22 speech, is that also consistent with the TIA  
23 complaints?

24 A Coupled with other findings, yes.

25 Q When you say coupled with other

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2 findings, are you saying bruits have to be there?

3 A Bruits or abnormal pulsations.

4 Q Is it possible for a patient to come in  
5 to you complaining of dizziness, lightheadedness,  
6 having trouble with balance, bad memory, maybe  
7 difficult to understand speech, can those be  
8 signs of a TIA in the absence of bruits being  
9 heard by stethoscope?

10 MR. : Objection.

11 Counselor, I've let you go far  
12 astray here with these questions. Let's  
13 talk about his records. I know exactly  
14 where you're going because basically  
15 you've set him up. Why don't we go to  
16 the record. It can become more fact  
17 specific.

18 Q Do you know this physician by the name  
19 of Dr. ?

20 A Yes.  
21 Q And I know you've been in practice a  
22 long time.  
23 Over the course of the years, have you  
24 had occasion to send patients to him from time to  
25 time?

0035

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2 A Yes.  
3 Q It's not an exact number, but how many  
4 years have you been referring patients to  
5 Dr. for, ballpark; ten, twenty, five, two,  
6 one?

7 A Five or ten years.

8 Q And have you ever spoken to Dr.  
9 about your patients that you had referred over  
10 there?

11 A Yes.

12 Q And in this case, in Mrs. 's case,  
13 do you recall ever having discussions with  
14 Dr. about Mrs. ?

15 A I might have.

16 Q I apologize to you. All I want to know  
17 is do you remember, not if you might have. If  
18 you remember. I'm going to ask you what you  
19 remember. If you don't remember, just tell me "I  
20 don't know."

21 Do you remember having any discussions  
22 with Dr. at or about the time of her  
23 stroke?

24 A No.

25 Q Were you aware that on or about June 6  
0036

1 36

2 of 2001 that Mrs. was seen by Dr. ?

3 MR. : Could you read back  
4 the question?

5 (The requested portion was read  
6 back.)

7 A Yes. June 6.

8 Q The answer's yes?

9 A Yes.

10 Q You had last seen Mrs. , I think  
11 it was May 2 of 2001, prior to this June 6 visit,  
12 right?

13 A Yes.

14 Q Did you send Mrs. to Dr.  
15 for that June 6 appointment?

16 A Not according to my note.

17 Q Were you aware from the day of your  
18 first visit up until this May 2 visit that  
19 Dr. had facilities and equipment and know  
20 how to perform carotid artery dopplar  
21 examinations of patients where he felt it was  
22 indicated?

23 A No.

24 MS. : Just note my objection.

25 Q If you had suggested that Mrs. be  
0037

1 37

2 seen by another physician, say to go see a  
3 cardiologist or ENT or whatever the specialty may  
4 be, was there any paperwork involved in that  
5 recommendation as a matter of custom in your  
6 office?

7 A I think her insurance required a  
8 referral from my office.

9 Q Did you keep copies of all the referrals  
10 made in this case?

11 A To the best of my knowledge, yes.

12 Q If you could look through there, can you  
13 just tell me what types of referrals did you  
14 make? Are the pages a special color, the  
15 referral pages? The colors are pink, the  
16 referral forms?

17 A Yes. That's it.

18 Q Just as a matter of practice in your  
19 office, these pink Empire Blue Cross-Blue Shield  
20 forms, are they filled out by one of the workers  
21 in your office or are they filled out by you or  
22 the patient?

23 A One of my office managers.

24 Q And do you sign or you just tell them to  
25 sign your name?

0038

1 38

2 A They sign it.

3 Q How does it normally work? You speak to  
4 a patient and you say to the patient, "I want you  
5 to see an ENT doctor"?

6 A Yes.  
7 Q And do you tell the patient to go see  
8 one of your workers and she'll fill out the form  
9 for you?  
10 A Yes.  
11 Q And do they have the books to see who  
12 the participating physicians are in your office?  
13 A That's right.  
14 Q On these forms that you've separated for  
15 us, your office actually lists who they should  
16 see?  
17 A Yes.  
18 Q Your last visit before her stroke, was  
19 May 2.  
20 Would you take a look at these and tell  
21 me what's the closest referral you have to the  
22 May 2 visit?  
23 A 3/13.  
24 Q Of which year?  
25 A '01.

0039

1 39  
2 Q That's the day on which the referral is  
3 dated, 3/13?  
4 MR. : No. Actually, it  
5 looks like 3/18.  
6 Q This is a referral to Dr. , is  
7 that correct?  
8 A Yes.  
9 Q And at the bottom it says the reason for  
10 referral is CAD.  
11 What is that?  
12 A Coronary artery disease.  
13 Q SP?  
14 A Status post.  
15 Q What's the last word?  
16 A Angioplasty.  
17 Q So, you were sending her to see  
18 Dr. for what reason, in layman's terms?  
19 A I think a follow-up.  
20 Q Follow-up of what?  
21 A Cardiology follow-up. She had  
22 angioplasty done.  
23 Q In looking through all of these  
24 referrals, I'm just talking about before the date

25 of her stroke, or better yet, let's do May 2,  
0040

1 40

2 '01.

3 Could you give me an idea of how many  
4 referrals there were before and including May 2,  
5 2001 from the start up until the present, up  
6 until that May 2 date? I'm sorry. So the  
7 question's clear, from October 12, 1999 to May 2,  
8 2001, how many referrals were there?

9 A Five.

10 Q Were any of those referrals specifically  
11 addressed to the risk of her having stroke? Did  
12 you refer her to any specialist, whether it be a  
13 vascular surgeon, a cardiologist or any medical  
14 specialty that dealt with people who have stroke  
15 risks?

16 MR. : Do you understand  
17 that question?

18 THE WITNESS: No, I don't  
19 understand that question.

20 Q Tell me what the first referral  
21 specialty was.

22 A Pulmonary.

23 Q She was having trouble breathing?

24 A Yes. She was having chronic cough.

25 Q And that's why you made that referral?

0041

1 41

2 A Yes.

3 Q What was the next referral for?

4 A Stress thalium at Franklin Hospital.

5 Q That was to assess her cardiac status?

6 A Yes.

7 Q Next one was what?

8 A Next one was for ENT checkup.

9 Q What was the problem there?

10 A For sinusitis. Infection or  
11 inflammation of the sinuses.

12 Q What was the next one?

13 A Dr. .

14 Q For what reason?

15 A Follow-up after angioplasty.

16 Q We talked about that, right?

17 MR. : No, that's not the

18 one you talked about. It's earlier.  
19 A The next one, which was dated 3/18/01,  
20 was Dr. for coronary artery disease status  
21 post angioplasty.  
22 Q Let's switch topics for a minute.  
23 Would you look at your office record and  
24 turn to May 2 of '01? Do you have it?  
25 A Yes.

0042

1 42  
2 Q The date of this visit is May 2, 2001,  
3 is that correct?  
4 A Yes.  
5 Q And I see it was your practice to write  
6 down the last time you had seen the patient?  
7 A Yes.  
8 Q There's a date on the right-hand top of  
9 this record, November 2, '50.  
10 Is that her birthday?  
11 A Yes.  
12 Q This is your standard form you were  
13 telling us about?  
14 A Yes.  
15 Q That you were reading from before, I  
16 should say.  
17 There's a box in the middle of this  
18 page, to the right middle, I should say. It  
19 starts out with, on the preprinted form, "head,  
20 eyes, ears, neck, throat"? Am I right? It goes  
21 on.  
22 A Yes.  
23 Q This is the part of your record where,  
24 at least on this day, May 12 of 2001, you  
25 examined the neck and you wrote, "supple, no

0043

1 43  
2 nodes and no bruits"?  
3 A Yes.  
4 Q That's where the information should be,  
5 right?  
6 A Yes.  
7 Q On those two occasions, the June 30,  
8 2000 and the December 12, 2000, when you told us  
9 you didn't write anything, was the neck part of  
10 the page left blank completely?

11 A No. "Neck supple."  
12 Q And it didn't mention nodes and it  
13 didn't mention bruits?  
14 A That's's right.  
15 Q When it says, "S: Chief complaint risk  
16 of present illness," there's a reflection of your  
17 discussion with the patient asking her, "Why are  
18 you here? What's bothering you"?  
19 A Yes.  
20 Q And you wrote "CO;" complaint of, is  
21 that what it stands for?  
22 A Yes.  
23 Q "Dizziness and lightheadedness," is that  
24 right?  
25 A Yes.

0044

1 44  
2 Q It says, "crying fits"?  
3 A Yes.  
4 Q "Problems with husband, poorly  
5 sleeping"?  
6 A Yes.  
7 Q So, that's a summary, I take it, of what  
8 it is she was complaining to you about?  
9 A Yes.  
10 Q Am I correct she gave you more  
11 information than what you recorded here?  
12 A Yes.  
13 Q This complaint of dizziness and  
14 lightheadedness, is this the first time that she  
15 ever complained to you about this condition?  
16 A Yes.  
17 Q And did you perform any part of your  
18 examination specifically directed to finding out  
19 why she was saying she was dizzy, why she was  
20 lightheaded?  
21 A That's for the history recorded system  
22 review, which says that "she's extremely  
23 emotional, being pressured by husband to ride in  
24 the van against her wishes, unable to sleep,  
25 secondary to above, wants to stay home. Has no

0045

1 45  
2 palpitations, no shortness of breath and no chest  
3 pains."

4 Q What do you remember about this  
5 discussion? What does this mean about being  
6 pressured by her husband to ride in the van?

7 A According to her, her husband had some  
8 business where he required her to ride with him  
9 and take notes as he goes around his business.

10 Q He was a real estate appraiser?

11 A I don't remember that.

12 Q That doesn't refresh your memory about  
13 anything?

14 A No. And she was tired of, if I remember  
15 her correctly, of being abused by him.

16 Q What do you mean by abused?

17 A Like he pressures her all the time and  
18 she doesn't want to go. She has other chores to  
19 do at home. He forces her to go with her.

20 Q So, he was kind of pressuring her to  
21 help with his business?

22 A That was the idea which I thought. And  
23 also during this visit it was practice of her  
24 husband to come to the examination room during  
25 the visit and this was -- she requested he not be  
0046

1 46  
2 present.

3 Q When you were talking to her about being  
4 pressured by her husband to help in the business,  
5 was her husband there for this discussion or was  
6 he outside?

7 A He was outside the room.

8 Q Did you ever learn from her that there  
9 were times that she really didn't mind helping  
10 him with his business, but there were times it  
11 bothered her?

12 A That's what I presume from this  
13 discussion.

14 Q This statement of yours that she was  
15 extremely emotional, what did you mean by that?

16 A That she would hardly talk, she was  
17 crying, she had tears in her eyes.

18 Q Did you feel that her emotional state  
19 was out of proportion to what she was telling you  
20 or was appropriate?

21 A It was appropriate from what she was  
22 telling me.

23 Q Did you --

24 A She also mentions she's constantly  
25 fatigued and she's unable to sleep.

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2 Q Was her mental state related back to the  
3 idea that she had had surgery on her heart,  
4 bypass surgery?

5 A It did not reflect.

6 Q What do you mean by that it did not  
7 reflect?

8 A It's because of her surgery.

9 Q You didn't come to that idea?

10 A No.

11 Q Her complaints of dizziness and  
12 lightheadedness, did she exhibit those complaints  
13 at the time of the office visit or was this  
14 something that she reported that happened in the  
15 past?

16 A That's what she reported that happened  
17 outside the office. At the present time when she  
18 was visiting me, she did not have dizziness and  
19 lightheadedness.

20 Q In terms of the history of dizziness and  
21 lightheadedness, were these symptoms that  
22 appeared separately or together or both?

23 A To me they appeared to be together with  
24 all else was going on with her.

25 Q That's where we're going next.

0048

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2 This dizziness and lightheadedness, how  
3 long had this been going on for before this  
4 office visit? You had last seen her in March and  
5 she did not have that complaint and now it's May,  
6 roughly two months later. Had this lasted for  
7 two months? Was it a week long? A day long?  
8 What was the duration of these problems?

9 A I don't know that.

10 Q Would that be important information to  
11 know in trying to figure out what's wrong with  
12 her?

13 A Probably, yes.

14 Q And if it's a recurring thing, something  
15 that keeps reoccurring, she feels it stops for a

16 period of time and comes back again, that would  
17 be important to know, right?

18 A Yes. I don't think she had recurrent  
19 episode of dizziness and lightheadedness. This  
20 was fairly recently.

21 Q So, your recollection now is it happened  
22 just one time or more than one time?

23 A That's why she came to see me, because  
24 it was bothering her at that point.

25 Q If it had happened to somebody just one  
0049

1 49

2 time and they felt lightheadedness and dizziness  
3 and it never came back, they probably wouldn't  
4 come to see you, is that correct?

5 A Not necessarily.

6 MR. : Note my objection.

7 From now on, just ask him if he  
8 recalls exactly what --

9 Q In her case, the dizziness and the  
10 lightheadedness, was that associated with any  
11 activities?

12 A I don't remember.

13 Q That would be important to know,  
14 wouldn't it, if the dizziness or the  
15 lightheadedness was associated with an activity?

16 MR. : Just note my  
17 objection.

18 Q Do you know what I'm referring to when I  
19 talk about activities producing dizziness and  
20 lightheadedness?

21 A Yes.

22 Q What do you think I'm referring to?

23 A Walking.

24 MS. : Off the record.

25 (A discussion was held off the  
0050

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2 record.)

3 Q So, going back to her dizziness and her  
4 lightheadedness, can you tell me how many times  
5 she experienced this?

6 A I don't remember that.

7 Q Was it daytime, nighttime, any time?

8 What was the occurrence of this?

9 A If I remember, she vaguely said she'd  
10 been dizzy and lightheaded. I don't have any  
11 remembrance of her mentioning any specific time  
12 or activity.

13 Q Would it be your custom and practice to  
14 inquire into how often this was happening?

15 A Yes.

16 Q Did you make any notation as to how  
17 often she was having these problems?

18 A No.

19 Q Would it have been your custom and  
20 practice to ask for how long the dizziness and  
21 the lightheadedness lasted for? Was it a ten  
22 minute occurrence, three second occurrence,  
23 something else? Would you ask those kinds of  
24 questions, "how long were you dizzy for"?

25 A Yes.

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2 Q And that would be your custom to ask  
3 those questions?

4 A Yes.

5 Q Did you make any notes about that?

6 A No.

7 Q Did you ask her or would it have been  
8 your custom to ask were the complaints of  
9 dizziness and lightheadedness related to her  
10 posture; was she getting up, sitting down, laying  
11 down?

12 A Yes.

13 Q Did you make any notation like that?

14 A No.

15 Q Is there any reason why you didn't make  
16 notations about that type of information?

17 A The reason is that when I was conducting  
18 this interview with her it was very hard to get  
19 information because of her crying. This took me  
20 at least half an hour to get.

21 Q But in spite of it being difficult  
22 because of her crying to get the information, did  
23 you feel that type of information about duration,  
24 the length time, the activities, did you feel  
25 that was important information to have?

0052

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2 A I'm sure I got that information from  
3 her, but I didn't record it.

4 Q So, in spite of her crying, you were  
5 able to get it?

6 A Yes.

7 Q And do you know why you didn't record  
8 it?

9 A Constraint of time, because she already  
10 had forty minutes with me, early morning, first  
11 patient in the office.

12 Q Now, I was looking at your form and I  
13 saw the words "impression/diagnosis."

14 Do you see that there?

15 A Yes.

16 Q Could you just read what you wrote  
17 there?

18 A "Depression."

19 Q What's the scribbling before that?

20 A That's nothing.

21 Q Depression, what is your definition of  
22 depression medically?

23 A Depression is depression.

24 Q Depression is a medical diagnosis?

25 A Yes.

0053

1 53

2 Q It's a psychiatric diagnosis?

3 A Yes.

4 Q Were you using the term depression in  
5 the psychiatric context?

6 A I'm using it in the context of someone  
7 being depressed.

8 Q When you say the person was depressed,  
9 you're talking about Mrs. ?

10 A Yes.

11 Q Did she complain to you of being  
12 depressed? People often say, "I'm very  
13 depressed, I'm feeling blue, I'm under the  
14 weather." Did she say anything like that?

15 A Not according to my notes.

16 Q Just so we're clear about this, when you  
17 say you used the word depression meaning the  
18 person is depressed, what you're saying is this  
19 is your interpretation of her complaints to you  
20 and your ability to observe her condition?

21 A Yes.  
22 Q Now, are you aware that there are  
23 diagnostic criteria that are put out by the  
24 American Psychiatric Association which lists all  
25 of the criteria necessary to diagnose somebody as  
0054

1 54  
2 being medically depressed?

3 A I'm sure there are.

4 Q And you're not saying she was medically  
5 depressed from a psychiatric point of view, are  
6 you?

7 A No.

8 Q I was looking at your curriculum vitae,  
9 Exhibit 2.

10 Did you have any formalized training in  
11 India where you went to medical school and did  
12 some other studies, internships, any training  
13 there in psychiatry?

14 A Formal training?

15 Q Yes.

16 A No.

17 Q Did you diagnose and treat depression in  
18 India at all?

19 A Yes.

20 Q Under what circumstances, if I may ask?

21 A I don't remember the circumstances.

22 Q How about when you came to the States?  
23 Did you have any formalized training in  
24 psychiatry?

25 A No.

0055

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2 Q In your practice, is it routine for you  
3 to treat depression in patients or do you refer  
4 them out?

5 A Both.

6 Q And how do you make a determination as  
7 to what you should do?

8 A Make an impression of depression and you  
9 try medications. If there's no result, you send  
10 them to the psychiatrist.

11 Q Did you feel at this time that the  
12 patient required psychiatric consultation for  
13 depression?

14 A At this point in time, no.  
15 Q You prescribed medication for her  
16 depression, is that correct?  
17 A Yes.  
18 Q And that medication is what?  
19 A Paxil.  
20 Q Is that the same drug that we see in the  
21 newspapers today?  
22 A What newspapers?  
23 Q The Attorney General of the State of New  
24 York is investigating the manufacture of that.  
25 A Maybe. I don't know.

0056

1 56  
2 Q Where did you get your training relative  
3 to the usage, contraindications and precautions  
4 relative to the use of Paxil? Did you get that  
5 in India?  
6 A PDR.  
7 Q So, you basically went to the PDR and  
8 you had heard of the drug Paxil before?  
9 A Yes.  
10 Q Where did you hear about it? Word of  
11 mouth, you read something in a newspaper or  
12 television?  
13 A I also work in nursing homes and we have  
14 residents who are on Paxil with a diagnosis of  
15 depression, seen by the psychiatrist, diagnosed  
16 by psychiatrists, and they recommend Paxil for  
17 those people.  
18 Q So if I understand this, according to  
19 your C.V., you began to do nursing home work  
20 when?  
21 A 1998.  
22 Q And in 1998, where was that?  
23 A Jamaica, Queens.  
24 Q Fitzpatrick Pavilion Nursing Home?  
25 A Yes. And Ozanan, O-Z-A-N-A-N, Nursing

0057

1 57  
2 Home in Bayside in '98.  
3 Q At those two facilities, you had seen  
4 psychiatrists prescribe Paxil to psychiatric  
5 patients?  
6 A Depressed patients.

7 Q From there you went to the PDR and you  
8 looked up the drug and decided it would be okay  
9 to use for this particular patient?

10 A Yes.

11 Q Had you consulted with anybody, either  
12 in person or by telephone, with regard to  
13 Mrs. and the idea you'd start her on  
14 Paxil?

15 A No.

16 Q Did you give her any special  
17 instructions; to take one pill a day, two pills a  
18 day?

19 A One pill a day.

20 Q Does it come in a dosage?

21 A Yes. Ten milligrams, twenty milligrams.

22 Q Which one did you give her?

23 A Twenty milligrams.

24 Q Did you give her any instructions about  
25 side effects for the drug?

0058

1 58

2 A Yes.

3 Q What did you tell her?

4 A To take it in the morning because can  
5 cause insomnia sometimes. It can cause  
6 palpitations.

7 Q Did you --

8 A It can cause stomach upset.

9 Q Did you give her any instructions about  
10 discontinuing the medication; any warnings,  
11 cautions?

12 A I told her to call me back forty-eight  
13 to seventy-two hours if there's no improvement,  
14 if there's any further symptoms.

15 Q You mean with regard to the Paxil?

16 A Paxil or her general condition.

17 Q When you say her general condition, does  
18 that include the dizziness and lightheadedness?

19 A Includes everything she was  
20 experiencing.

21 Q Other than the dizziness and  
22 lightheadedness and the crying, what else was she  
23 complaining about?

24 A Insomnia. Unable to sleep.

25 Q One of the things that you wrote down

0059

1 59

2 here was "neuro consult," am I correct?

3 A Yes.

4 Q Neuro consult means neurology?

5 A Neurology consult, yes.

6 Q You also wrote down "MRI" -- is that  
7 brain?

8 A "MRI brain if dizziness persists."

9 Q Did you fill out or direct her to go to  
10 your staff to get the referral for the neuro  
11 consult?

12 A No.

13 Q The MRI of the brain, did you feel at  
14 that point in time that there might be a  
15 connection to some brain condition causing her  
16 dizziness and lightheadedness?

17 A Not at that time.

18 Q But you were considering an MRI for an  
19 evaluation of that?

20 A Yes.

21 Q And the idea was, if I understand you  
22 correctly, she was there, she complained of  
23 dizziness and lightheadedness, you gave her some  
24 Paxil and you were going to recommend the MRI and  
25 the neuro consult if her symptoms persisted?

0060

1 60

2 A Yes.

3 Q How long would you want the symptoms to  
4 persist for before you thought an MRI would be  
5 warranted?

6 A I mentioned in the record I told her  
7 call me back within forty-eight hours,  
8 seventy-two hours.

9 Q So, two to three days?

10 A Two to three days.

11 Q If she had had these symptoms for more  
12 than a week before coming to you, the MRI would  
13 have been indicated at that point?

14 A If she had the symptoms for more than a  
15 week, possible.

16 Q Now, after this visit, she went to see  
17 Dr. ?

18 A Yes.

19 Q And he sent you that letter?  
20 A Right.  
21 Q Before we get to the letter, the next  
22 note that you have in the record, you saw the  
23 patient July 20 of '01, is that right?  
24 A Yes.  
25 Q And she had had a diagnosis made that  
0061

1 61  
2 she had carotid artery occlusions?  
3 A Yes.  
4 Q An occlusion means a narrowing, a  
5 closing of the vessel?  
6 A Yes.  
7 Q And you wrote, "status post TIA  
8 secondary to left carotid artery stenosis. Needs  
9 surgery"?  
10 A Right. You said stenosis.  
11 Q I'm sorry. What does it say under  
12 "chief complaints, history, present illness"?  
13 A "Status post TIA secondary to left  
14 carotid artery occlusion. Needs surgery."  
15 Q Now, as I remember your testimony, you  
16 indicated that once there's a bruit, that it's  
17 always going to be there unless there's an  
18 occlusion?  
19 A Yes.  
20 Q And when you examined on this day the  
21 neck, you wrote down there's no nodes and there's  
22 no bruits?  
23 A Right.  
24 Q Is that because she was completely  
25 occluded?  
0062

1 62  
2 A She had ninety percent occlusion of the  
3 artery.  
4 Q And the fact there were no bruits, how  
5 do you account for that?  
6 A The blood flow is too small. The amount  
7 of blood flowing is too slow to produce any  
8 sound.  
9 Q We're going to return to this in a  
10 moment, but I wanted to finish up with  
11 Dr. 's report to you.

12 Can you tell me when you got this letter  
13 dated June 6, 2001?  
14 A The date I got the letter?  
15 Q Yes.  
16 A No.  
17 Q Do you have any procedure in your office  
18 when you down when the mail is received?  
19 A No.  
20 Q Is there a procedure in your office -- I  
21 assume the mail's delivered by the postman or do  
22 you pick it up?  
23 A Delivered by the postman.  
24 Q When the mail comes in, what happens to  
25 it?

0063

1 63  
2 A It's opened by the office manager.  
3 Q What does she do with the mail?  
4 A She gives me the papers which I need to  
5 see.  
6 Q So, let's take this particular piece of  
7 mail. I'm trying to find out what your procedure  
8 is.  
9 This piece of mail from Dr. dated  
10 June 6, 2001 comes into your office, your office  
11 manager opens it up.  
12 She keeps the envelope or throws it  
13 away?  
14 A Throws it away.  
15 Q And she takes the letter and places it  
16 on your desk? Do you have a special place for  
17 it?  
18 A On the desk in front of me.  
19 Q I know this isn't the only piece of mail  
20 you get.  
21 Does she pile up all the mail for the  
22 day?  
23 A No.  
24 Q What happens to it? You don't have a  
25 folder or bin? All of the mail just gets placed

0064

1 64  
2 on the desk in one place?  
3 A Not all of the mail.  
4 Q So, all of the mail she wants you to

5 see?

6 A Yes.

7 Q Just laid on your desk?

8 A Yes.

9 Q And you go through them?

10 A Yes.

11 Q And you read each piece of mail?

12 A Yes.

13 Q And you read it on the day it comes in?

14 A The day it comes in or the next day.

15 Q After you finish reading it, what do you  
16 do with it?

17 MR. : You're asking him

18 what he did with this?

19 Q Just generally, what is the procedure?

20 It doesn't have to be this. You've gone through  
21 the mail. What do you do with it?

22 A File it and see if there's any  
23 recommendations.

24 Q When you say file it, you don't file it,  
25 right? You give it back to somebody to file?

0065

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2 A I put it in the chart myself. The  
3 letter is usually there, too.

4 Q Somebody pulls the patient's chart and  
5 you have all the information in the chart to  
6 refer back to?

7 A Yes.

8 Q You read through this letter on June 6  
9 or whenever it came into your office, is that  
10 correct?

11 A Yes.

12 Q Is it your memory you had received this  
13 letter before the patient had had her stroke or  
14 after?

15 A After she had the stroke.

16 Q So, you think you got the letter  
17 sometime after June 10?

18 A Yes.

19 Q Is there any way we can confirm that,  
20 the date you received it?

21 A No, I cannot, because I don't have the  
22 envelope.

23 Q Now, when you got it, how did you know

24 she already had a stroke?

25 A Her husband told me. Called the office  
0066

1 66

2 and he mentioned that she had a stroke and she  
3 went to St. Francis Hospital.

4 Q And then you got the letter?

5 A Yes.

6 Q Do you remember anything more than the  
7 conversation between yourself and her husband?  
8 Was that on the 10th?

9 A No.

10 Q 11th? 12th?

11 A Sometime after the stroke. She was in  
12 the hospital already.

13 Q So, your best memory is a day or two  
14 after the stroke?

15 A Yes.

16 Q When you got this letter from  
17 Dr. , did you call him?

18 A No.

19 Q Did you read it?

20 A Yes.

21 Q Did you ever discuss the contents of the  
22 letter with Mr. or Mrs. ?

23 A No.

24 Q At least according to this letter, on  
25 June 2 she was seen by Dr. ?

0067

1 67

2 A Yes.

3 Q Around the time of this office visit,  
4 did you ever speak to Dr. by telephone or  
5 in person about the idea that he had just seen  
6 Mrs. and what his findings were?

7 A I don't remember.

8 Q When you say you don't remember, it  
9 might have happened or it might not have  
10 happened; you just don't remember?

11 A I don't remember.

12 Q Assuming for the moment that you had  
13 been contacted about this letter, would you have  
14 made any recommendations based on the letter?

15 A I would have told her to go for studies,  
16 like is mentioned here, if her symptoms still

17 persisted.

18 Q As of the date of this letter, she  
19 already had the symptoms for thirty days,  
20 roughly?

21 A As far as I was concerned, she didn't  
22 call me back within forty-eight to seventy-two  
23 hours to tell me her symptoms persisted or  
24 abated.

25 Q How do you know that?

0068

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2 A Because I didn't receive any phone call.

3 Q Do you personally answer the phone in  
4 your office?

5 A No.

6 Q Did you have a system of where phone  
7 calls are logged in your office in any way?

8 A No.

9 Q The staff in your office, are they  
10 authorized to pick up the phone and talk to  
11 patients?

12 A They do talk to the patient about  
13 appointments.

14 Q Does the staff sometimes give them test  
15 results?

16 A No.

17 Q They don't tell the patient the blood  
18 test is okay?

19 A Only when I'm there.

20 Q You have to be physically in the office?

21 A Yes.

22 Q You don't stand physically next to the  
23 office worker when they tell the patient --

24 A The staff will only tell the person if I  
25 tell them to.

0069

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2 Q Now, I was looking at Dr. 's  
3 letter. The last paragraph of his letter says,  
4 "Mrs. was started on Paxil 10 milligrams  
5 daily."

6 I thought that you had started her on 20  
7 milligrams a day?

8 A That's what my record says.

9 Q Of course you prescribed the

10 prescription or did you give her sample pills?

11 A Prescription.

12 Q So, there should be a prescription of  
13 what you ordered that day?

14 A Yes.

15 Q Because Dr. goes on to say he  
16 increased the dosage to 20 milligrams a day?

17 A Yes.

18 Q That doesn't make sense to you, since  
19 you already put her on 20, right?

20 A Yes.

21 Q I was looking through your records and  
22 you wrote some sort of a note. There's a signed  
23 copy and an unsigned copy, I guess, of the same  
24 thing.

25 Is that your signature?

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2 A Yes.

3 Q Do you know why you wrote that or had  
4 that typed and then signed it, I should say?

5 A At her husband's request.

6 Q What's written in that, is that true?

7 Are those true statements?

8 A Yes.

9 Q Can you give me some idea as to the date  
10 that was written? I know it was after May 2,  
11 2001. I guess it's after December of 2001, also.

12 A She already had the stroke and she's  
13 already going to physical therapy.

14 Q Did you consider her condition to be a  
15 permanent condition?

16 MR. : What condition?

17 Q The condition you refer to here.

18 You say she had a debilitating stroke,  
19 was left dependent for ADL, adult daily living  
20 activities?

21 A Yes.

22 Q And unable to do any work without  
23 extensive assistance, needing occupational,  
24 physical, speech therapy.

25 All of those things I take it were

0071

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2 caused by the stroke itself, correct?

3 A Yes.

4 Q And the damage that she sustained at the  
5 time you wrote the letter, did you consider that  
6 to be a permanent condition?

7 A At that point, yes.

8 Q Were you involved in any way with the  
9 idea that there was a delay in scheduling the  
10 surgery to treat her for the stroke that she had?

11 MS. : Note my objection.

12 MS. : Note my  
13 objection.

14 MR. : Rephrase it.

15 Q You know she was diagnosed with a stroke  
16 in the early part of -- I think it was June,  
17 right?

18 A Yes.

19 Q And the surgery to try to correct the  
20 condition didn't take place immediately, is that  
21 correct?

22 A Yes.

23 Q It took place several weeks later?

24 A Yes.

25 Q Were you involved in any way in  
0072

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2 discussing it, recommending it, any way at all,  
3 with the idea that the surgery was not going to  
4 be performed as soon as the diagnosis was made?

5 A No.

6 Q Did you have any discussions with a Dr.  
7 DiPippo (phonetic)?

8 A No.

9 Q Were you consulted at all during the  
10 admission to St. Francis Hospital with regard to  
11 the stroke?

12 A No.

13 Q Did you ever see the patient there?

14 A No.

15 Q You didn't speak to any of the doctors?

16 A No.

17 Q Did you speak to Mr. or  
18 Mrs. during that period of time?

19 A No.

20 MR. MIKLOS: Off the record.

21 (A discussion was held off the

22 record.)  
23 Q Let's go to this July 20, 2001 visit.  
24 MR. : Off the record.  
25 (A discussion was held off the

0073

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2 record.)

3 Q She's here on July 20 at your office and  
4 you write down that she needs surgery?

5 A Yes.

6 Q Did you discuss with her the type of  
7 surgery that she was going to have?

8 A No. It was told to me by the husband he  
9 was told by the radiologist she would need  
10 surgery at some point.

11 Q Did they ask your opinion about the  
12 surgery? Did the patient or her husband say to  
13 you, "Doctor, what do you think about having the  
14 surgery"?

15 A If they ask me, I must have told them  
16 she needs surgery.

17 Q But you don't remember one way or the  
18 other?

19 A No.

20 Q As far as the discussions that took  
21 place that day, can you tell me anything about  
22 them?

23 A The discussion, what I remember is we  
24 went over what happened to her, the surgery  
25 she'll need and before that to radiologist and

0074

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2 hospital staff who were treating her there, when  
3 they think they'll do it, it's up to them.

4 Q When you say you went over the stuff  
5 that happened in the past, can you be a little  
6 more specific about that or that's just your  
7 general recollection?

8 A General recollection and I remember  
9 specifically the patient's husband telling me  
10 that as far as he's concerned there was not a  
11 problem with me taking care of her in the past or  
12 in the future because I examined her thoroughly  
13 every time she came there.

14 Q That's what he said to you?

15 A That's what he said to me.  
16 Q Was there ever, and I know you saw them  
17 for a little bit more time after this, but was  
18 there ever any concern expressed by the husband  
19 or the wife with the idea they were unhappy that  
20 his wife had a stroke, was having all these  
21 problems with the dizziness, the lightheadedness  
22 and the slurred speech and confusion and nobody  
23 picked up on it? Never complained to you?  
24 A They were concerned, they were worried,  
25 they were not happy about having a stroke, but he  
0075

1 75  
2 never mentioned to me she was neglected with the  
3 dizziness, lightheadedness or slurring of speech  
4 was concerned. I have my record. I never saw  
5 her symptoms except for dizziness and  
6 lightheadedness.

7 Q Now, you have written down, if I'm  
8 reading this right -- what does "FBS at home"  
9 mean?

10 A Fasting blood sugar at home.

11 Q The other thing you have written down,  
12 is this mild expressive aphasia?

13 A Yes.

14 Q What is that?

15 A She had problems formulating and  
16 expressing herself.

17 Q Was this something new or was this part  
18 of her stroke?

19 A It was part of the stroke.

20 Q Her difficulty expressing herself, over  
21 the time you continued to see her, did that ever  
22 get better?

23 A Yes.

24 Q Over the time that you continued to see  
25 her, did you ever evaluate her mental status?

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1 76  
2 Did she seem to have full mental capacity? Did  
3 she have memory problems, anything like that?

4 A She did not seem to have any memory  
5 problems. She was able to formulate and express  
6 her feelings and in words.

7 Q And as far as the treatment with Paxil,

8 did you continue her on Paxil?

9 A She was taking it for a while.

10 Q I don't see it listed on the July 20  
11 record.

12 A It's listed on the next visit, September  
13 14, '01.

14 Q I see it, yes.

15 During the period that you were treating  
16 her, was she utilizing a cane or ?

17 A After the stroke?

18 Q After the stroke.

19 A Yes.

20 Q Both or just one?

21 A Using a cane.

22 Q And did she have any left sided, right  
23 sided weakness that you can tell us about?

24 A She had weakness of the right side,  
25 hemiparesis.

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2 Q On the right side?

3 A Yes.

4 Q That was caused by the stroke?

5 A Yes.

6 MR. MIKLOS: Thank you so much for  
7 your time. I have nothing else to ask  
8 you.

9 MS. : No questions.

10 EXAMINATION BY

11 MS. :

12 Q My name is . I'm an  
13 attorney with & . We represent  
14 Dr. .

15 I want to go back to this letter you  
16 received from Dr. dated June 6, 2001.

17 You testified earlier that you read this  
18 letter after learning that the patient had a  
19 stroke, correct?

20 A Yes.

21 Q And the way you learned that was because  
22 the husband had called you and advised you the  
23 patient had had a stroke?

24 A Yes.

25 Q When did the husband call you?

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2 A I don't have the exact date.

3 Q Do you have a custom and practice as to  
4 making notations within your chart concerning  
5 telephone calls either from the patient or a  
6 family member or even another doctor as to the  
7 patient's condition?

8 A At times I do. Not always.

9 Q At what times do you?

10 A I don't know. I don't have any specific  
11 answer to that question.

12 Q Did you make a note in this patient's  
13 chart as to receiving a phone call from her  
14 husband regarding that his wife had a stroke?

15 A No.

16 Q Is there any particular reason why you  
17 didn't do that?

18 A No.

19 Q Had Dr. seen this patient at your  
20 behest prior to this June 2, 2001 visit? Had you  
21 asked the patient or recommended the patient be  
22 seen by Dr. prior to this visit?

23 MR. : You're talking about  
24 just prior?

25 MS. : At any time prior.

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2 A Yes. He had seen her in the past.

3 Q At any time during your care and  
4 treatment of Ms. , did you ever discuss her  
5 condition with Dr. either in person or  
6 over the phone?

7 A I might have discussed her condition  
8 with him in the hospital.

9 Q In what hospital?

10 A Franklin Hospital.

11 Q When would that have been?

12 A If I run into him while making the  
13 rounds; "I saw this person in my office and I'll  
14 write sending you a letter."

15

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18 (Continued on following page  
19 in order to include jurat.)



11 Exhibit 1  
12 Doctor's records 4 8

13 Exhibit 2  
14 Curriculum vitae 5 7

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1 CERTIFICATION 82  
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5 I, , a Notary Public in and for  
6 the State of New York, do hereby certify:  
7 THAT the witness whose testimony is  
8 hereinbefore set forth, was duly sworn by me; and  
9 THAT the within transcript is a true record  
10 of the testimony given by said witness. I  
11 further certify that I am not related, either by  
12 blood or marriage, to any of the parties to this  
13 action; and

14 THAT I am in no way interested in the outcome  
15 of this matter.

16 IN WITNESS WHEREOF, I have hereunto set my  
17 hand.

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