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IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM DARLINGTON COUNTY
HONORABLE J. MICHAEL BAXLEY, CIRCUIT COURT JUDGE
C/A NO. 2004-CP-16-322

Ruth J. Person,

Appellant,

vs.

Carolina Pines Regional Medical Center,

Respondent.

RECORD ON APPEAL
(VOLUME IV OF V)

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about six years. I served on the Board of Directors of Republic National Bank in Columbia. When we sold that bank, I went on the Advisory Board for Lexington State Bank. When we sold that bank to BB&T I went on BB&T's Advisory Board. Then we started another bank in Spartanburg, and I went on their Advisory Board. This year we started a new bank in Columbia called Bank Meridian, and I am Vice Chairman of that Board. I also own five farms in Tennessee, which are, a business.

Q. Dr. Wood, do you have any special experience in the area of investments?

A. Yes. I have taught courses on money and capital markets, and bank management at the University for about twenty-seven years. I have served on loan or investment committees at the various banks I have been associated with.

Q. Dr. Wood, have you written any books involving economics or finance?

A. Yes. I have authored or coauthored seven books articles.

Q. Seven books or articles?

A. Yes.

Q. Dr. Wood, tell the Jury what your experience is in evaluating economic loss in personal injury, wrongful

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1 death, business loss cases, and employment cases,
2 please.

3 A. For the last thirty-seven years I made studies in
4 cases where someone has been killed or injured, or a
5 business has had a loss, and testified about the
6 various economic aspects of those cases. Over the
7 last twenty-years I have testified on various aspects
8 of cases involving potential punitive damages.

9 Q. Dr. Wood, what is your experience in evaluating the
10 financial condition of corporations in cases involving
11 potential punitive damages awards?

12 A. Over the last twenty-years I have made studies of
13 corporations, balance sheets, income statements, and
14 so forth, and drawn conclusions regarding the ability
15 to pay.

16 Mr. Corbin: Your Honor, at this time I would
17 like to submit Dr. Wood, to Your Honor, as an Economic
18 Expert in the evaluation of financial aspects of
19 corporations, and their ability to pay punitive damage
20 awards.

21 The Court: Are there, questions for the
22 witness?

23 Mr. Sweeney: No, I don't have any questions of
24 the witness. We do agree that he is qualified to give
25 expert opinion testimony as to economic factors. As to the

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1 later part of what he is supposed to be an expert in, I
2 don't believe, that category exists. And, we would
3 certainly object to that.

4 The Court: I sustain that objection. The Court
5 finds that the witness is qualified in the area of, and I
6 will use your term, --

7 Mr. Sweeney: -- economic factors.

8 The Court: -- Economic Factors.

9 Mr. Sweeney: Thank you --

10 The Court: -- You --

11 Mr. Sweeney: -- Yes, sir. Your Honor --

12 The Court: Economics. You may proceed.

13 Mr. Corbin: Thank you, Judge.

14 Direct Examination by Mr. Corbin

15 Q. Dr. Wood, did you review and actually watch the
16 deposition testimony of Mr. Castleberry, Carolina
17 Pines' CEO?

18 A. Yes.

19 Q. Dr. Wood, using your experience and qualifications,
20 have you compiled ways that HMA'S exercise operational
21 and financial control over Carolina Pines?

22 A. Yes.

23 Q. What financial information have you examined regarding
24 the Health Management Associates, Inc.?

25 A. I have looked at the 10-K documents filed by HMA'S

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1 with the SEC, 1-10-Q, which is a quarterly report to
2 the SEC And also the 14-A, which is a proxy statement
3 filed with the SEC.

4 Q. What is a 10-Q?

5 A. A 10-Q is just a quarterly version of the 10-K.

6 Q. Dr. Wood, have you prepared charts to illustrate your
7 findings?

8 A. Yes.

9 Q. Would you please come down and talk about your charts
10 to the Jury?

11 (Pause)

12 The Court: Dr. Wood, just one moment. Let's
13 make sure that we get a voice check on you for our
14 recording. Very good. Please speak up. Thank you.

15 A. Yes. I have reviewed Mr. Castleberry's deposition,
16 and I've looked at ways that HMA'S exercises
17 operational and financial control over Carolina Pines
18 as stated in that deposition that we just looked at.
19 All right. I have listed these points. I have listed
20 page reference. I promise I am going to be quick.

21 Mr. Castleberry works for Health Management
22 Associates, and reports to the Board. HMA is the sole
23 shareholder. Nobody else in the world owns Carolina
24 Pines. I am employed by HMA, I was hired by HMA, and
25 appointed CEO. I report directly to another executive

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1 of HMA, Paige Vaughan. HMA can transfer him if he
2 wishes. HMA decides whether or not he can be fired.
3 HMA decides if he gets a raise. HMA provides him with
4 a 401-K, which is a retirement plan. HMA pays part of
5 his health insurance. They can terminate him. HMA
6 owns sixty hospitals, physicians. Credentialing is
7 important to make sure patients get safe care. He
8 agrees that whoever has the authority or ability to
9 control the over all --

10 **Mr. Sweeney:** Your Honor, may it please The
11 Court. This is not a credentialing expert. We object to
12 any kind of testimony that tries to infer in any way that
13 operationally HMA credentialing at Carolina Pines Hospital.

14 **The Court:** Response --

15 **Mr. Sweeney:** His testimony is just the opposite
16 of that.

17 **The Court:** Response, Mr. Corbin.

18 **Mr. Corbin:** Yes, sir. It is taken directly
19 from Mr. Castleberry's deposition according to Dr. Wood.

20 **The Court:** All right. Counsel, that would be a
21 decision for the Jury as a fact finder. I realize you may
22 have a different position. We will give you cross
23 examination on that.

24 The objection is noted. You may proceed, Dr.
25 Wood.

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1 A. (By Dr. Wood) He agrees that whoever has the
2 authority or ability to control the overall management
3 of the hospital deserves significant control over it.
4 HMA provides resources for us so we can manage the
5 hospital on a day-to-day basis.

6 The Bylaws, Article I, Number V says: The CEO
7 means the individual appointed by HMA to act on behalf
8 of the overall management. It is my responsibility to
9 oversee the overall operations of Carolina Pines for
10 HMA. The CFO's responsibility, is to insure proper
11 accounting of all expenses and income, and report to
12 sole owner, HMA. HMA appoints Mr. Castleberry and
13 CFO. Money at Carolina Pines goes to HMA. I didn't
14 read the pages, but you can read that where I took it
15 from.

16 Carolina Pines is financially controlled by HMA.
17 The medical staff and then ultimately the Board is the
18 one who controls the credentialing process. HMA
19 would accept responsibility for a bad credentialing
20 decision. Employees of Carolina Pines receive
21 paychecks from Hartsville HMA, which is owned by HMA.
22 No doubt in his mind that HMA owns Carolina Pines.
23 When employees get a check from Hartsville HMA it is
24 really getting a check from HMA. We get stock
25 options. Those that are of no SEC documents of HMA

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1 that would indicate the doctors really control the
2 day-to-day operations of Carolina Pines. HMA
3 maintains centralized financial control through
4 implementation of a proprietary pulse system
5 management information technology. HMA owns the
6 equipment, the building, and the land upon which the
7 hospital sits. This is the last page. All HMA
8 hospitals have the same accounting system that runs
9 from Naples, Florida. The buck stops with HMA in
10 Florida. HMA would provide the capital resources to
11 allow the expansion of Carolina Pines to go forward.
12 HMA owns the property, pays the property tax for
13 Carolina Pines. If Carolina Pines had a financial
14 deficit we would ask our corporate office to help us.
15 HMA is the owner of Carolina Pines. According to Mr.
16 Schoen, Chairman of the Board, HMA has clearly
17 established itself as a leading operator of non-acute
18 and acute care, medical hospitals in southeast and
19 southwest United States. Carolina Pines is on it's
20 own, cannot borrow money. HMA controls the debt of
21 the hospital. Carolina Pines does not prepare its own
22 income tax returns. HMA in Florida prepares what are
23 called consolidated tax returns. Carolina Pines
24 equipment is bought by HMA. And lastly, Carolina
25 Pines has leased equipment through HMA.

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1 Q. Dr. Wood, could you please explain what consolidated
2 tax return means, and why that is significant to show
3 HMA controls Carolina Pines?

4 A. Consolidated returns are filed by companies to include
5 all its subsidiaries. You have a whole company and
6 several subsidiaries. They file one tax return. They
7 don't file one for each individual entity. That means
8 in essence they control those entities. They are
9 filing consolidated tax returns.

10 Q. Dr. Wood, in general what does d/b/a mean?

11 A. Doing business as.

12 Q. In this case we have HMA d/b/a Carolina Pines. What
13 does that mean in the general sense?

14 A. Carolina Pines doing business as HMA.

15 Q. Dr. Wood, have you reached a conclusion as to who
16 actually controls Carolina Pines?

17 A. Yes. It is clear throughout that deposition on many
18 different aspects, financial and otherwise that HMA
19 controls Carolina Pines operationally and financially.

20 Q. Dr. Wood, do you have an opinion as to whether the
21 Jury ought to consider HMA's financial status to
22 determine punitive damages?

23 Mr. Sweeney: We object to that. The Jury can

24 --

25 The Court: I'm going to sustain, counsel,

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1 before you even go further. I sustain that. It will up to
2 the Jury to determine whether the Jury believes they should
3 consider it. You may ask the expert his position, but not
4 with regard to what the Jury should do.

5 Q. (By Mr. Corbin) What is your position, Dr. Wood?

6 A. What is the question, I don't --

7 Q. Would you consider the financial status of HMA to
8 determine Carolina Pines' ability to pay?

9 A. Yes. They control every financial aspect of Carolina
10 Pines.

11 Q. Dr. Wood, please continue.

12 A. All right. The other question that I was asked to look
13 at was the financial ability of Health Management
14 Associates to pay a potential punitive damage award.
15 I have looked at a number of aspects of HMA.

16 First, let's look at the assets, the liabilities,
17 and the stockholders' equity. Assets are things
18 owned like buildings, land, equipment, and cash of
19 accounts receivable. Liabilities are things owed. We
20 owe the bank. We owe bond holders, etcetera. You
21 take what we have that we own, the assets, subtract
22 what we owe, and that gives us the stockholders'
23 equity in the things that we own. The stockholders'
24 equity for HMA has risen from \$1.3 billion to \$2.4
25 billion as of March 31, 2006. In other words, this

1 business has grown its assets significantly, and it
2 has also grown its net worth or stockholders' equity.

3 Chart two looks at the income statement or profit
4 loss statement for HMA. First looking at total
5 revenue, the total revenue for HMA has gone from \$1.8
6 billion to \$3.6 billion a year. Their income before
7 taxes has risen from \$316 million to \$565 million.
8 Their net income after taxes has risen from \$195
9 million to \$353 million in the latest fiscal year. If
10 we take that income from continuing operations, \$585
11 million to \$565 million, that is an average of
12 \$10,870,885 per week, and \$1,548,729 for a day, 365
13 days. Another to look at Health Management is to look
14 at the cash provided by the operating activities. The
15 operating activities, we are going to exclude their
16 ability to borrow money, or the investing activities.
17 This is just cash thrown off by operations. Their
18 cash thrown off by operations has gone from \$354
19 million to \$563 million in the last fiscal year. On
20 an average weekly basis it is \$10,840,673 and per day
21 \$1,544,425.

22 This chart is a little smaller print so we move
23 up. This chart shows the exact compensation of the
24 one, two, three, four, five highest paid individuals.

25 Mr. Sweeney: We object to that evidence.

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1 **The Court:** All right. There is an objection.
2 Until a foundation is laid, I sustain the objection.

3 Q. (By Mr. Corbin) Dr. Wood, why have you prepared the
4 chart indicating the compensation of HMA's executive
5 to show the ability of Carolina Pines to pay?

6 A. This chart clearly shows how HMA uses part of their
7 money. Part of their money is to pay the top five
8 executives. They can use that money for other
9 purposes. They could use it on training, equipment,
10 or hospitals, advertising, or whatever. This is one
11 important way this company uses its money, and that is
12 to pay five top executives --

13 **The Court:** Just one moment. Do you persist in
14 your objection?

15 **Mr. Sweeney:** I do, but he has already said it.

16 **The Court:** The Court overrules your objection,
17 and will allow the testimony.

18 A. (By Dr. Wood) All right. Let's take the chairman,
19 Mr. Schoen. Now there is a Chairman of the Board,
20 this other gentleman, Joseph V. Vumbacco, he's the
21 CEO Vice Chairman. But the chairman got \$300,000
22 salary last year. He got other annual compensations
23 of \$122,000, and he got \$1 million in long term
24 incentive payments. Long term incentive payments are
25 a given when a company meets certain objectives, such

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1 as revenue and profits. He got a \$1 million each over
2 the last three years. Now, the CEO, his salary is
3 \$700,000. He got a cash bonus of \$437,500. He got
4 another compensation of \$111,000. He got 437 shares
5 of restricted stock. You can go down through here and
6 see the other salaries and bonus payments for the
7 other three executives right there.

8 This chart shows the aggregated option exercises
9 in the last fiscal year. One way a corporation pay
10 their executives are not cash, but to give them stock.
11 You give them stock, and if that stock appreciates
12 they can then sell that stock and reap the profit. In
13 the case of Mr. Schoen, he acquired last year
14 \$2,550,000 shares of stock, and he realized a profit
15 of \$26,729,541. He has other stock that he hasn't
16 exercised that has a potential value of \$50 million.
17 That is just Mr. Schoen. Mr. Vumbacco --- remember
18 Mr. Schoen got a lower salary, but he got more
19 options. Mr. Schoen had a higher salary, and he did
20 not exercise any options. His potential options are
21 \$17 million. That is just the way they choose to pay
22 their executives. Now, under the new tax law,
23 companies have to write these options off as of
24 January first of this year. They used to give those
25 options out not as an expense, and that tended to

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1 overstate income. As of the beginning of this year
2 those have to be expenses against the income. And
3 again, it is a fairer way of doing that.

4 The last chart, this is the balance sheet on
5 March 31, 2006. On that date they had cash and cash
6 equivalent would be things like short term cash
7 instruments, CDs, Treasury Bills, and so forth,
8 \$134,623,000. They had other current assets of \$945
9 million, a total current assets of \$1 billion.
10 Current assets of those assets that can be turned into
11 cash quickly. Current liabilities, the current
12 liabilities are \$446,000. Current assets exceed
13 current liabilities by a two-to-one margin. There is
14 a billion up there and four hundred and some million
15 up there, that is a two-to-one, and then the
16 shareholders' equity we have talked about is \$2.354
17 billion. This is the balance sheet on March 31 of
18 this year.

19 Q. Dr. Wood, knowing what you know about HMA's financial
20 position, do you have an opinion as to how to get
21 HMA's attention?

22 **Mr. Sweeney:** Again, Your Honor, I object to
23 that. That is really --

24 **The Court:** Sustained.

25 Q. (By Mr. Corbin) Dr. Wood, have you formulated an

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1 opinion as to the ability to pay in this case, where
2 it would not have any material impact on HMA's
3 operation?

4 **Mr. Sweeney:** I object to that. Everything paid
5 has a material impact.

6 **The Court:** Speaking objections. The Court
7 notes your objection. I'm going to give you cross
8 examination on the point, and will allow the question.
9 Objection overruled.

10 A. (By Dr. Wood) Yes.

11 Q. How much can they afford to pay?

12 A. They have a net worth of, \$2,289,000,000, that is a
13 substantial net-worth. This is also, a company that
14 has a net income of \$353 million. This is also a
15 company that has income from continuing operations of
16 \$1.5 million per day. This is a company that is
17 throwing off cash at a rate of \$10.8 million per week.
18 This is a company that has the ability to pay long
19 term incentive payments of a million dollars a year
20 for the last three years to the Chairman of the Board.
21 This is a company that awards stock options that
22 generated \$26 million and gained for the Chairman.
23 Lastly, this company has \$134,623,000 in cash, or cash
24 equivalency. So they have the ability to pay some
25 punitive damage award.

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1 **Mr. Corbin:** Thank you, Dr. Wood.

2 **Q.** Dr. Wood, could you examine this document and tell the
3 Jury what, in fact, it is?

4 **A.** This is an 8 and ½ by 11 version of the first
5 information that I went over.

6 **Mr. Corbin:** Your Honor, we move to introduce
7 that as Plaintiff's Exhibit.

8 **The Court:** Is there objection?

9 **Mr. Sweeney:** Subject to the same objection we
10 have made all along.

11 **The Court:** Overruled. Let's take a moment and
12 the Court will admit that over objection.

13 **Whereupon, Plaintiff's**
14 **Exhibit Number 41 was marked**
15 **and admitted into the Record.**

16 **The Court:** You may proceed.

17 **Q.** (By Mr. Corbin) Dr. Wood --

18 **The Court:** Just one moment. Let's wait, until
19 we have marked that as being admitted please. Thank you.

20 **Mr. Corbin:** I'm sorry. I thought she was
21 through.

22 **The Court:** All right, you may proceed.

23 **Mr. Corbin:** Thank you, Your Honor.

24 **Q.** (By Mr. Corbin) Dr. Wood, could you identify what
25 that document is, please?

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1 A. This is an 8 and ½ by 11 version of the financial
2 information for HMA that I went over.

3 Mr. Corbin: Your Honor, we move to introduce
4 this document into evidence.

5 Mr. Sweeney: Same objection.

6 The Court: Same objection noted. Overruled,
7 and the Court will admit it into evidence over objection.

8 Whereupon, Plaintiff's
9 Exhibit Number 42 was marked
10 and admitted into the Record.

11 The Court: Exhibits 41 and 42 in evidence for
12 the Plaintiff.

13 Mr. Corbin: Thank you, Dr. Wood. Answer any
14 questions of the Defense.

15 The Court: Cross examination.

16 Mr. Sweeney: Thanks, Your Honor, may it please
17 the Court.

18 Cross Examination by Mr. Sweeney

19 Q. Can you see me okay?

20 A. I can.

21 Q. How about now?

22 A. Yes.

23 Q. Let me ask you a couple of questions first --

24 The Court: It is hard for our court reporter to
25 hear that. It is blocking her. Please speak loudly, if

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1 you would.

2 **Mr. Sweeney:** Why don't I move it up here, is it
3 all right with you?

4 **The Court:** Please start your question again,
5 counsel. Thank you.

6 **Mr. Sweeney:** Thank you, Your Honor.

7 Q. First of all, as I understand it, your testimony
8 depends upon SEC filings, and the testimony of Mr.
9 Castleberry, which you saw today. Is that correct?

10 A. Correct.

11 Q. Just so we will know, we are assuming that you believe
12 Mr. Castleberry told the truth?

13 A. Yes.

14 Q. And the SEC filings were accurate?

15 A. Correct.

16 Q. So several hours of testimony that we heard asking the
17 same questions, he was consistent, was he not?

18 A. Yes.

19 Q. And you are not here to testify about the
20 credentialing process of the hospital.

21 A. Correct.

22 Q. My guess is you don't even know what this case is
23 about, is that true?

24 A. That is a stretch, I did have the Complaint.

25 Q. Okay. So you know a little bit, enough to be

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1 dangerous, is that fair?

2 A. I read the Complaint.

3 Q. But you don't have any medical training, or experience
4 of any kind?

5 A. Four years short of finishing Medical School.

6 Q. You probably don't know what the credentialing means
7 really, or you might have some idea?

8 A. I think I can take a guess at it.

9 Q. Okay. But you don't have the credentialing process
10 works, or how the privileging process works, or how it
11 is done in a particular hospital, correct?

12 A. No, that is a medical question.

13 Q. And you talked about how it is done. That's the kind
14 of thing that can be delegated to the particular
15 hospital in question, and even if HMA controls
16 financially the hospital, they can delegate that to
17 the Board of Directors, and to other people at their
18 own hospital, can they not?

19 A. HMA can do anything. So they would delegate
20 purchasing, credentialing, advertising, or whatever to
21 somebody else.

22 Q. Okay. So, when the doctors and Mr. Castleberry and
23 others say that credentialing and privileging, are
24 done at a local hospital, that they have autonomy in
25 doing that, that could easily be something that is

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1 delegated, could it not?

2 A. Yes. HMA would delegate that.

3 Q. Okay. So, that kind of process would be handled
4 locally by people who know the local doctors, and know
5 the requirements of the community, and things of that
6 nature, correct?

7 A. Yes.

8 Q. You are here to testify solely as an economist, right?

9 A. Yes.

10 Q. You were asked several times about the ability to pay
11 and stuff like that, and those are all high numbers
12 based on the fact that it is a successful operation.
13 But you are not telling anybody what they should pay,
14 are you?

15 A. I didn't.

16 Q. I know that. But sometimes the way the question is
17 asked, it sounds like you are.

18 A. I did not answer that question.

19 Q. You understand that is in the province of the Jury to
20 decide?

21 A. Yes.

22 Q. If someone is entitled to something, correct?

23 A. Yes.

24 Q. You are enough of an American to believe that you
25 don't just --

1 **Mr. Corbin:** Excuse me, Your Honor. Asking him
2 if he is enough of an American --

3 **The Court:** Overruled. We haven't heard the
4 question, counsel.

5 **Mr. Sweeney:** Thank you.

6 Q. (By Mr. Sweeney) You are enough of an American to
7 understand it is within the province of the Jury to
8 decide if somebody gets something, and just because
9 they currently have more money than another doesn't
10 mean that client should be prejudiced, isn't that
11 true?

12 A. I am not going to invade the province of the Jury.
13 And for sure, I am not going to invade the province of
14 the Judge. I'm not here to instruct anybody on the
15 law, or tell them what to do.

16 Q. Are you a capitalist as an economist?

17 A. Yes.

18 Q. So you would agree with me, it is not a bad thing for
19 a private enterprise to come into an area and try to
20 make investments in that area.

21 A. No.

22 Q. In fact, you would agree that when private enterprise
23 does this kind of thing it is often good for the
24 community in which it comes?

25 A. That's true.

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1 Q. In this particular thing, a situation involving a
2 hospital often private enterprise can bring services
3 to a community that they couldn't support themselves,
4 either through taxes or through other means, isn't
5 that true?

6 A. It is true you can have private hospitals and public
7 hospitals.

8 Q. You read the business purpose of HMA, correct?

9 A. Yes.

10 Q. That business purpose, a good company has a good
11 business purpose, would you agree with that?

12 A. Yes.

13 Q. And yours is to deliver services to non-urban
14 communities, basically communities that could not
15 otherwise afford to have the kind of facilities they
16 provide, isn't that right.

17 A. It is a good purpose.

18 Q. It is not bad, is it?

19 A. No.

20 Q. And in doing that they give as much as they get in a
21 sense, do they not?

22 A. Well, in the general sense, yes. If they provide a
23 service, a quality service, the public will use it.
24 If they provide a bad service, the public will not use
25 it.

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1 Q. That is why I asked you if you were a capitalist.

2 A. That is a basic capitalist idea.

3 Q. The better you do the more you grow.

4 A. That's correct.

5 Q. That is a very growing institution, is it not?

6 A. Yes, HMA has been very successful.

7 Q. When they come into a community like the community
8 here they bring valuable services that the community
9 would otherwise not have.

10 A. They can bring them in. Some other institution may do
11 it also, but if you bring the service here it is
12 valuable to the community.

13 Q. They bring in jobs to a community that, that community
14 would not have.

15 A. Yes, they would stimulate employment in the health
16 care field.

17 Q. There has been a mention, but I don't know that you
18 know this, if you don't --- Do you know the local
19 hospital here hired more than six hundred people,
20 everything from doctors, people, who work on the
21 grounds, to CEO's?

22 A. Correct.

23 Q. Providing a base for the community to be employed is a
24 good thing?

25 A. Yes, it is.

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1 Q. They increase the tax base of the community, the
2 community has more taxes since it's a private company
3 they pay taxes, it's like a government?

4 A. That's true.

5 Q. They bring doctors into the community that would not
6 otherwise be here.

7 A. I can't answer that. But they do bring doctors in.

8 Q. Okay. Presumably the doctors come to where the
9 hospitals are most of the time?

10 A. Yes.

11 Q. They bring in other specialties that would not
12 otherwise be here, MRI machines, to CT-Scans, things
13 of that nature.

14 A. Correct.

15 Q. Sometimes the difference between life and death is the
16 difference in a five minute drive from Hartsville, or
17 it takes you five minutes longer to get to McLeod,
18 depending on where you live, isn't that true?

19 A. That's possible.

20 Q. So in other words, it is a positive thing for the
21 entire community?

22 A. Yes, if they do it right.

23 Q. Sure, if they do it right. Economy grows up around
24 it. There are hospital vendors, people who sell to
25 the hospital, there are side businesses that grow up

1 in the community because the hospital is there. There
2 are food service people who provide food service, and
3 buy groceries and things of that nature. There are
4 pharmacies that grow up in and around hospitals, isn't
5 that true?

6 A. Yes.

7 Q. All of these are positive things so that the community
8 prospers when the hospital like HMA is in there.

9 A. If they do it right.

10 Q. If they do it right. Now, all you know is whether
11 their financials are doing it right, isn't that true?

12 A. Correct.

13 Q. Their financials are doing it right?

14 A. HMA is.

15 Q. Yes, sir. You don't really know about the local
16 hospital, do you?

17 A. In what respect?

18 Q. What their net worth is, or what their income is, or
19 anything of that nature?

20 A. It hasn't been provided.

21 Q. You don't have that information?

22 A. It was not provided correct. The SEC documents say,
23 that Carolina Pines is owned by HMA.

24 Q. Okay. But regardless of who owns it, you don't have
25 any criticism of the credentialing process, or

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1 privileging process, or anything related to the
2 liabilities in this case, isn't that right?

3 A. Correct. I'm not qualified to say that.

4 Q. Thank you.

5 A. Thank you.

6 **Mr. Sweeney:** No further questions, Dr. Wood,
7 thank you.

8 **Dr. Wood:** Thank you.

9 **Mr. Corbin:** No further questions, Your Honor.

10 **The Court:** Any objection to the release of the
11 witness, hearing none, you are free to go. Please watch
12 your step when you exit the witness box.

13 **Mr. Corbin:** Your Honor, may we approach the
14 Bench?

15 **The Court:** You may.

16 (Whereupon, a bench conference was held in
17 the presence of the jury but out of the hearing of the
18 jury.)

19 **The Court:** Counsel, are you ready for your next
20 witness?

21 **Mr. Corbin:** Yes, sir.

22 **The Court:** Come back and let's talk about
23 scheduling one more time.

24 (Whereupon, a bench conference was held in
25 the presence of the jury but out of the hearing of the

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1 jury.)

2 **The Court:** All right. We are going to take our
3 afternoon break before we call our next witness, ladies and
4 gentlemen. I'm going to let you go back to the Jury Room.
5 If you wish to go outside to take a smoke break we will
6 make that available to you. Lets everyone, remain where
7 they are while our Jury departs the courtroom.

8 (Whereupon, the jury exits the courtroom at
9 3:27 p.m..)

10 **The Court:** The Court will be in recess for
11 approximately 15 minutes.

12 (Whereupon, a recess was taken from 3:27
13 p.m. until 3:46 p.m.)

14 **The Court:** Are we ready for the Jury?

15 **Mr. Corbin:** Yes, sir.

16 **Mr. Sweeney:** Could I have just a minute?

17 **The Court:** Sure. While Mr. Driggers is coming
18 in, please bring in the Jury. I think everyone will be
19 here by that time.

20 (Whereupon, the jury comes into the
21 courtroom at 3:46 p.m.)

22 **The Court:** Welcome back, ladies and gentlemen.
23 Mr. Corbin, please call your next witness.

24 **Mr. Corbin:** We would call Lori White to the
25 stand, please.

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1 **The Court:** Please come forward and take the
2 oath of a witness.

3 **Lori White Sanders**

4 **After Being Duly Sworn Testifies as Follows**

5 **Direct Examination by Mr. Corbin**

6 Q. Ms. White, please state your complete name.

7 A. Lori Jan White Sanders.

8 Q. You are Ms. Ruthie's daughter?

9 A. Yes, sir.

10 Q. How old are you, please?

11 A. I'm twenty-six-years-old.

12 Q. Do you have any children?

13 A. Yes, sir, one. Her name is Kiarra White Sanders.

14 Q. How old is Kiarra?

15 A. She is seven years old.

16 Q. Is that what Ms. Ruthie has been referring to as
17 little Kia?

18 A. Yes, sir.

19 Q. Are you married?

20 A. Yes, sir, I just got married.

21 Q. You did?

22 A. Yes, sir.

23 Q. Congratulations. Lori, where do you live now?

24 A. Now I live at 301 Riverburch Lane.

25 Q. How far away is that from your mom?

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1 A. It is about two and a half or three minutes.

2 Q. Lori, can I take you back to Carolina Pines in April
3 of 2001?

4 A. Yes, sir.

5 Q. Your mamma testified about her vomiting and gagging.

6 A. Yes, sir.

7 Q. Can you tell us what you recall about that happening,
8 what happened in the hospital? What are your most
9 vivid memories about your mom?

10 A. When my mom was having the nausea, and she kept doing
11 the hocking and gagging, she kept trying to vomit and
12 she couldn't. When she finally did, it was a piece of
13 pinkish looking flesh. She spit it in her hand, and
14 the nurse flushed it down the commode. Another bad
15 time --

16 Q. Let's stop there.

17 A. I'm sorry.

18 Q. Did you actually see it?

19 A. Yes, sir, I saw it, and it stunk. It was a piece of
20 pink looking hunk of tissue.

21 Q. How was your mom's appearance, what do you recall of
22 the way she looked when she was at Carolina Pines
23 after the surgery?

24 A. When I first saw her, which was hours later, she just
25 looked like a pale looking ghost to me. I asked my

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1 aunt --- it was my aunt and my brother, and I asked
2 her what was wrong. I just burst out in tears. She
3 couldn't hardly breathe, she was wrapped up from head
4 to toe, she couldn't really say anything to me. So I
5 went down in the little sanctuary part and I prayed.
6 I mean, it looked like to me that my mom had died. I
7 don't know what coding is, but I have seen movies on
8 tv and whatnot, and I told my Aunt Daisy, I said, it
9 looks like to me my mom died, just by looking at the
10 movies on tv.

11 Q. Lori, do you recall a conversation with Dr. Mincheff?

12 A. Yes, sir.

13 Q. Do you recall a conversation the morning your mom was
14 transferred out of Carolina Pines?

15 A. Yes, sir.

16 Q. Tell this Jury what Dr. Mincheff told you.

17 A. He called us that day --- The nurse called us that day
18 and told us your mom is being transferred, and for us
19 to come to the hospital. So when we came to the
20 hospital, my brother and I, and my step-dad, we went
21 into the room, and he drew on the board a picture of
22 my mom's pancreas.

23 Q. Who drew this, please?

24 A. Dr. Mincheff drew on the board a picture on the little
25 chalk board of my mom's pancreas. And he told us he

1 cut her pancreas, he damaged her pancreas.

2 Q. Tell us about your mom's condition right before she
3 was put in the ambulance going to Columbia. What do
4 you recall about that, how did she look, and what was
5 happening?

6 A. She was still about the same. Her body was still
7 draining the fluids. She was still running the
8 fevers. She still had the nausea. She wasn't getting
9 any better. We thought she was going to die. We were
10 surprised she made it the five days that she was in
11 Carolina Pines.

12 Q. The Columbia hospitalizations, how would you describe
13 her condition there?

14 A. She was about the same in the beginning. They worked
15 on her, the doctors there. I feel they did a
16 wonderful job. And the saved my mom's life. They
17 said that --- the doctor said my mom was the worse ---
18 one of the worse patients that they have ever had, and
19 she worse than an AIDS or cancer patient.

20 Q. Your mom had to be put into a comma when she got
21 there?

22 A. Yes, sir.

23 Q. Tell us about when your mom came out of the comma,
24 what do you recall?

25 A. When my mom came out of I was home, Kia and I were

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1 home. I had gotten a telephone call, and when I
2 answered the phone the nurse said, is this Lori, and I
3 said, yes, ma'am, this is Lori. She said I want to
4 let you know your mom has just come out of the comma.
5 I couldn't say anything for awhile. I didn't believe
6 it. She had been in there for weeks. I didn't think
7 it was a joke, but it was just unbelievable and
8 unexpected. I picked the phone back up and I said,
9 are you sure, I said, are you talking about Ms. Ruth,
10 she said, yes, your mom, she said, I'm talking about
11 her. She said, she is out of the comma, she said, and
12 she said, you can come and see her. She said, she is
13 doing better, you can come and see her now. When I
14 walked in the hospital --- I think I probably got from
15 Hartsville to Columbia in about forty to thirty-five
16 or forty minutes, speeding down I-20, because I was
17 ready to see my mamma. I had to talk to my mom.

18 (Pause)

19 At the time when my mom had gotten sick I had
20 still been very sick from having my baby. I went to
21 see my mom and talked to her --- some days when I was
22 a little girl I could not do by my own baby, and then
23 I was always dependant upon my mom, so I had to do for
24 myself. So when I walked in the hospital to see her,
25 I just started shouting, I started rejoicing because

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1 Dr. Bynoe and Dr. Payne her doctors thought she was
2 not going to make it, and she had pulled through.

3 Q. Lori, let's get out of the hospital and go back home.
4 Tell us what you did for your mom and her wounds when
5 she got home.

6 A. When my mom came home she had a colostomy bag, so I
7 would have to change the colostomy. Her stomach was
8 left open so she could heal from the inside out. I
9 used to have to put the Syledyncream on her stomach,
10 the wound cleaner. We had to clean it. Even my baby
11 was like one and half years old, and she learned to do
12 it. The nurses that would come she said she learned
13 to do it better than they could do it. And we would
14 clean her stomach. We would wash her in the mornings.
15 My baby and I would bathe her. We would wash her
16 tush, wash her bottom off, wash her from head to toe,
17 but we could not let any water touch her stomach,
18 because that may cause an infection from the bacteria.

19 Q. Did your mom ever get an infection from her treatment
20 at home by Kia and you?

21 A. No, sir, she never had an infection the entire twenty
22 months she was open, she never had an infection.

23 Q. You indicated that you had to wipe your mom. Tell us
24 what is going on.

25 A. My mom could not wipe her bottom. She could not wipe

1 her behind, so I used to have to clean her. I had to
2 wash her every once in awhile. Sometimes even when
3 you have a colostomy bag a little bit of stool comes
4 out of your rectum every once in awhile, and I would
5 have to clean it because she couldn't do it, because
6 any pulling on the stomach could bust the stomach
7 open. It was already open, but it could come loose.

8 Q. Before your mom was at Carolina Pines, did she enjoy
9 going to her church?

10 A. Yes, sir, we enjoy going to church. We would go to
11 church all the time. But once my mom had the surgery
12 and the colostomy bag she was not able to go to
13 church. Her doctors, Dr. Bynoe and Dr. Fann and them
14 said she did not need to be around people because she
15 was prone to infection. And just by people hugging
16 you, everyone has bacteria on their body, and she did
17 not need to be around anyone. But, we did go a couple
18 of times, but it wasn't often.

19 Q. Did your mom have a good time at church?

20 A. We would sit in the back of the church in case she had
21 to go out. I remember one day we had gone to church
22 and the colostomy bag came off in church. So I had to
23 take my mom out. I rode her to the back of the
24 church, and I remember this elderly lady, she came in
25 the bathroom, and when she walked in the bathroom she

1 made such an ugly face. And she turned her nose up,
2 she did not speak or anything. When she came out I
3 heard her tell the people in the hall that is the most
4 awful smell I have ever smelled. After that we did
5 not go back anymore.

6 Q. Ms. Ruthie talked about some of her nightmares,
7 little Kia coming to comfort her like a baby.

8 A. Yes, sir.

9 Q. Is that true?

10 A. Yes, sir, and I would. Sometimes my mom would have
11 the nightmares, she had them in the hospital, she had
12 them after she came home. I would hear her say
13 sometimes, no, don't kill me, please, Dr. Mincheff,
14 don't kill me, just leave me alone, don't kill me.
15 And Kia would rock her, and I would rock her. I would
16 be on one side and Kia would be on the other side, and
17 just lay in bed with her until she fell back asleep.
18 Sometimes she would go back to sleep, sometimes she
19 wouldn't. If she took a Xanax or something, I mean,
20 she would eventually go back to sleep and kind of calm
21 down some.

22 Q. Ms. Ruthie indicated she did not want to burden her
23 family anymore. You got married recently?

24 A. Yes, sir.

25 Q. Your little girl has a daddy?

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1 A. Yes, sir.

2 Q. You're not in the house anymore?

3 A. No, sir.

4 Q. Is your mamma a burden on you?

5 A. No, my mom is not a burden at all. I told my mom if
6 she ever gets where she's just lonely, if she just
7 doesn't want to be there by herself, she can come any
8 time. I go and check on her. I call her. She's
9 welcome in our house any time, and my husband
10 understands that.

11 Mr. Corbin: Thank you.

12 The Court: Cross examination?

13 Mr. Sweeney: No, Your Honor, no questions.

14 The Court: All right. Ma'am, you may step down.
15 Please watch your step leaving the witness box.

16 Mr. Corbin: I forgot. May I ask one more
17 question, please?

18 The Court: You may. I'll give cross
19 examination on that point, whatever it may be.

20 Q. (By Mr. Corbin) Ms. Lori, your mom testified that
21 sometimes she would get a sore throat. Do you know
22 what this is?

23 A. Those are Cepacol sore throat lounges.

24 Q. Have you ever bought those for your mom?

25 A. Yes, sir, you can buy them from Wal-Mart, Eckerd's,

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1 even CVS.

2 Q. How much do they cost?

3 A. Like \$4.75, somewhere around in there.

4 Mr. Corbin: Your Honor, we would move to
5 introduce that into evidence.

6 The Court: All right. Is there any objection?

7 Mr. Sweeney: It was just a surprise. No.

8 The Court: Let's mark it then without
9 objection.

10 Whereupon, Plaintiff's

11 Exhibit Number 43 was marked

12 and admitted into the Record.

13 The Court: Plaintiff's 43 in evidence without
14 objection.

15 Q. (By Mr. Corbin) About four bucks?

16 A. Yes, sir.

17 Mr. Sweeney: May it please The Court. I
18 thought he had one more question.

19 Mr. Corbin: This is it, Mr. Sweeney.

20 Q. (By Mr. Corbin) About four bucks? Look on Page 24,
21 of the Health Management Associates bill, Exhibit
22 Number 3.

23 A. Yes.

24 Q. Tell how much they charge for Cepacol.

25 A. \$26.90.

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1 **Mr. Corbin:** Thank you, ma'am.

2 **The Court:** Cross examination on that point?

3 **Mr. Sweeney:** No. I do object to that question
4 and response, relevance, but I have no questions.

5 **The Court:** I will overrule your objection.

6 Ma'am, you may step down. Please watch your step.

7 Counsel, please call your next witness.

8 **Mr. Corbin:** Your Honor, may we approach?

9 **The Court:** You may.

10 (Whereupon, a bench conference was held in
11 the presence of the jury but out of the hearing of the
12 jury.)

13 **The Court:** Ladies and gentlemen, the Plaintiff
14 advises, Mr. Corbin, do you intend to rest at this time?

15 **Mr. Corbin:** Your Honor, Ms. Ruby Person, would
16 rest.

17 **The Court:** All right The Plaintiff tells me
18 they intend to rest at this point.

19 Before we go into any further witnesses, this is
20 probably a good point for us to stop, because whatever
21 witness may go beyond the 5:00 hour. The Court has certain
22 matters I need to take up at the end when a party rests, no
23 matter which party it is. We do this in all cases. So I
24 have a few administrative things I need to do. So I am
25 going to let you go. I am going to ask you to be back

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1 at 9:00 on Monday morning. Now, when you get here, I just
2 want to tell you in advance, there is another jury term,
3 general sessions, that's criminal court will be operating
4 here. What is going to happen is, that Jury is going to
5 gather in a building over across on the square, not here in
6 the courthouse. So when you walk in the courthouse
7 somebody probably may not fully know what's happening is
8 going to say to you, well, the Jury is gathering over here
9 at, and, I believe it is at the Old Morgan Building.
10 Please do not listen to whatever anyone tells you about
11 where the Jury is gathering. Please come back to your jury
12 room at 9:00 on Monday morning. And we will begin again at
13 9:00 in the Defendant's case.

14 Now, let's see, do we have any further
15 information from the Clerk's Office for our Jurors? All
16 right, then we will look to see you then. I hope you have
17 a nice weekend, those of you that get to enjoy a holiday.
18 We will see you Monday morning at 9:00.

19 One last thing, please. We will take those up
20 from you and we will keep them. And I say to you again, no
21 one will have access to your notes. They will be kept
22 secure.

23 Please don't discuss the facts of this case with
24 anyone. Please don't undertake some investigation of your
25 own, whether it be via internet or whatever it may be.

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1 Just come back on Monday morning having had a restful
2 weekend. We will see you at 9:00.

3 Any questions now from our Jury about scheduling
4 or about any other issue? All right, have a nice weekend.
5 Let's all remain where we are while our Jury departs the
6 courtroom.

7 (Whereupon, the jury departs the courtroom
8 at 4:04 p.m..)

9 Motion

10 **The Court:** Counsel, the first thing I want to
11 do is, we're going to give you a photocopy of what our
12 normal medical malpractice charge is. This, of course, is
13 not a normal medical malpractice case. What I would like
14 for you to do is to take this as a templet, and over the
15 weekend please work on what charges you believe, whether
16 you wish to change something here or add to it, help
17 yourself. Please don't think these are all inclusive.
18 Feel free to make whatever suggestions you propose.

19 It is also my intention to email to you this
20 weekend what I believe will be the proposed Order that has
21 been so long awaited on the Summary Judgement issues. I am
22 going to send it to you in proposed form, because I like
23 for you to review it for misstatement of your position, or
24 misstatement of fact. There has been a lot of evidence
25 here in the courtroom. I don't want to jumble that with

1 what's in this pretrial Order. So let me ask, Mr.
2 Driggers, for your email so I can send you via email.

3 **Mr. Driggers:** Yes, sir, Your Honor.
4 msd@swblaw.com

5 **The Court:** All right, very good. Mr. Corbin?

6 **Ms. Stewart:** cbscorbinlaw@bellsouth.net.

7 **The Court:** cbscorbinlaw@bellsouth.net.

8 **Ms. Stewart:** Yes, sir.

9 **The Court:** It may be Sunday before it arrives,
10 but I intend to send you a proposal for you to review.

11 All right, now, probably the first order of
12 business would be to take any Defendant's Motions we have
13 here at the close of the Plaintiff's case, and then we will
14 come back to whatever issues Mr. Corbin may have.

15 **Mr. Driggers:** We would move for a Directed
16 Verdict on behalf of the Defendant under Rule 50.

17 **The Court:** On what basis?

18 **Mr. Driggers:** The bases, of these, Your Honor,
19 is that we don't have the Order yet. The Court has told us
20 that analyzed this case under general negligent principles.
21 Looking at those general negligent principles a duty, a
22 breach, proximate cause, and we believe Plaintiff has
23 failed to meet their burden under those general principles.

24 First of all, in the course of the breach in any
25 medical malpractice case you have to have expert testimony

1 to identify both the standard and breach of the standard.

2 And that is no different than the case we have here.

3 For the identification of the standard or breach,
4 first of all two experts offered. Ms. Laura Voigt
5 testified without question that she was not a medical
6 provider. She had no medical background for that type of
7 experience. And, she was only certified, and the Court
8 only certified her as an expert on credentialing, which was
9 established that her testimony, and I believe Dr. DeMaria's
10 testimony, included the gathering and the verification of
11 application materials. So we believe she did not give any,
12 and was not authorized to give any expert testimony on the
13 issue, which really is the question of privileging and
14 giving a doctor permission to perform a laparoscopic nissen
15 or open procedure, which is the allegation that this should
16 --- in this case. There is not an issue in the case ---
17 The only reason the case is going to privilege is not for
18 credentialing.

19 The only standard she even pointed to, even if
20 you look at that for those from SAGES, which Doctor DeMaria
21 pointed out were only applicable through laparoscopic
22 procedures. Dr. DeMaria also pointed out to The Court that
23 the issue in this case is an open procedure. Dr. Mincheff
24 was qualified properly credentialed privilege to perform an
25 open procedure, because that is where the difficulty ---

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1 the outcome occurred, that the injury occurred in this
 2 case. And we believe that Ms. Voigt's testimony does not
 3 support that standard or a breach of that standard. We
 4 then turn to Dr. DeMaria's testimony. He testified that he
 5 only again he can only open --- He also stated that
 6 surgeons qualified for that if he does anywhere from the
 7 number of twenty to thirty. What he termed as
 8 gastricesophageal type surgeries, he pointed to those
 9 specific number or specific procedure, he gave a category,
 10 and then once more on top of that, he said, and quote,
 11 because I wrote it down when he said it, there is no way of
 12 knowing if it was likely that Dr. Mincheff was qualified,
 13 because he didn't have the information to say whether he
 14 had sufficient number of surgeries in that category. So he
 15 could not say whether he had that standard or not. He
 16 identified the standard, but Dr. DeMaria could not say
 17 whether Dr. Mincheff breached that standard of privilege
 18 that he set or not. And that is well below of course what
 19 South Carolina requires for there being a most probable to
 20 a reasonable degree of medical certainty.

21 Finally, Your Honor, even getting past both of
 22 those points, of course we come proximate cause. Was there
 23 a duty, was there a breach, or was there a standard, was it
 24 breached, and then if it was, did that cause the injury
 25 that we are here for in this case. I don't believe the

1 Court, or the Jury heard from Ms. Voigt, or Dr. DeMaria,
2 either one of them say that the privileging decision,
3 whatever it was, Carolina Pines Regional Medical Center
4 caused the damages that we have been hearing from in this
5 case.

6 We heard there was causation on the part about
7 Dr. Mincheff in the surgery possibly. Dr. DeMaria said
8 there was some causation of some things from Richland
9 Memorial Hospital, that all the causation testimony that
10 was offered centered strictly around the medical treatment
11 and medical procedures. Nobody tied that to a causal link
12 back to the privileging decision. For that reason we
13 believe there is no proper standard identified; and if
14 there was, there was no proper breach of that standard
15 identified, and even if you get past those two points no
16 one has stated with any degree of certainty that either one
17 of those proximately caused the damage that we heard about
18 in this case.

19 For all of those reasons, we believe the
20 Defendant, Carolina Pines is entitled to a directive
21 verdict at this point, because there is just simply not
22 sufficient evidence to go forward.

23 **The Court:** All right, response, Mr. Corbin?

24 **Mr. Corbin:** Your Honor, I think the expert
25 testimony in this case about the experience Dr. Mincheff

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1 should have had, and according to his depositions or
2 testimony he did not have it. He could not satisfy SAGES
3 Guidelines. He could not meet the standards established by
4 the literature in terms of a learning curve. He could not
5 even abide by the Greeley Company Clinical Privilege White
6 Paper that Carolina Pines concedes is authoritative.

7 I recall testimony from both Ms. Voigt and Dr.
8 DeMaria, about the gross inexperience of Dr. Mincheff, that
9 he was not qualified to obtain those privileges. And
10 because of that inexperience, because he was given that
11 privilege to do the surgery Ms. Person was hurt.

12 **The Court:** Let's focus on proximate causation.
13 Where do you believe your evidence of proximate causation
14 came in?

15 **Mr. Corbin:** I think it came in from both Ms.
16 Voigt, who said that he should never have been given those
17 privileges, he was not qualified to do it. And Dr.
18 DeMaria, who said he should have never been given the
19 privileges to do it. And, because he did it, Ms. Person
20 was hurt.

21 He went even further to say that she was hurt
22 because of the inexperience, and there is no reasonable
23 basis to give him privileges

24 **The Court:** And that is Ms. Voigt?

25 **Mr. Corbin:** That is Dr. DeMaria, yes, sir.

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1 **The Court:** All right. Do you wish to reply to
2 that, Mr. Driggers?

3 **Mr. Driggers:** Um, We still don't have the
4 Order, so I don't want to waive anything. Also, I want to
5 renew our objections as to the cause of action being
6 brought and the issues in the summary. But, getting past
7 that response, directly to Mr. Corbin, I think if you
8 listen, we can go back and listen to the testimony. But
9 certainly Ms. Voigt gave no testimony on causation. She
10 said without question, she's not a medical person now, she
11 can't say what medically caused the injuries we are talking
12 about. And, that is what the position of this case is
13 about, medical injury. So she didn't offer any opinion on
14 causation.

15 Dr. DeMaria, again, he said repeatedly some of
16 the injury could have happened during Dr. Mincheff's
17 operation, some of it could have happened during the
18 Richland Memorial --- He identified the bowel perforation,
19 other things that happened, happened at Richland Memorial.
20 But he never, never said the decision to privilege Dr.
21 Mincheff caused any of the injuries. You have got to make
22 that connection, and you've got to make it with the
23 applicable standard, which is to a reasonable degree of
24 medical certainty most probable, and that was simply not
25 done.

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1 **The Court:** All right.

2 **Mr. Driggers:** If the person causing the injury
3 or their testimony, as we have heard, is not in this
4 courtroom, is not a part of this lawsuit, and certainly is
5 out of the equation, and that is all this Court has heard.

6 **The Court:** Let's go back on that issue again.
7 You heard Mr. Driggers argument as to what is required.
8 Tell me again how you believe that you met it.

9 **Mr. Corbin:** I recall Dr. DeMaria testifying
10 that Dr. Mincheff was not qualified to do the surgery. He
11 should have never been given privileges to do the surgery.
12 And because he was given privileges being inexperienced, he
13 hurt Ms. Person. That is what I recall.

14 **The Court:** All right. You believe that is
15 sufficient for proximate causation?

16 **Mr. Corbin:** With respect to credentialing, yes,
17 sir. In addition, if you recall, even Dr. Mincheff's own
18 records indicates that he inadvertently injured Ms.
19 Person's pancreas. And if you recall in the deposition
20 parts that I published, Dr. Mincheff himself saying, that
21 yes, I caused the pancreatitis, and I cause the
22 pancreatitis that failed to meet the standard of care. If
23 I caused the pancreatitis that is why she went to Columbia.
24 I think that alone would be enough.

25 **The Court:** All right, Mr. Driggers, I'm going

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1 to deny your Motions, sir, for these reasons: The
2 evidence, of course, doesn't really come with one witness
3 sitting down here, laying it all out ad ceritem. It just
4 comes from various sources. And what I have is the
5 admissions of Dr. Mincheff, which are in the record. The
6 testimony of Ms. Voigt, as well as Dr. DeMaria, both of
7 whom testified to a standard of care and the breach of it.

8 My recollection of Dr. DeMaria's testimony went
9 further, and did touch upon proximate causation. South
10 Carolina law says that you may have more than one proximate
11 causation of an injury. And given the totality of the
12 evidence put forth by the Plaintiff, I find there is
13 sufficient evidence to go forward and send this case to the
14 Jury. For those reasons I am going to deny your Motion.

15 **Mr. Driggers:** Thank you, Your Honor.

16 **The Court:** Yes, sir. Anything further, from
17 the Defense?

18 **Mr. Driggers:** No, sir, Your Honor.

19 **The Court:** All right, hearing nothing further.
20 Are there other issues that we perhaps can resolve now and
21 save us some difficulty on Monday morning?

22 **Mr. Corbin:** Yes, sir, absolutely, Your Honor.
23 The most pressing concern that I have, and I will not bore
24 Your Honor with all of the history. But the bottom line is
25 October 26, Your Honor Ordered Carolina Pines to answer my

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1 Discovery Requests. Their answers were vocal. The biggest
2 concern that I had is Dr. Mincheff's experience doing these
3 surgical procedure. He said he had privileges since 1996.
4 He indicated what he did to Ms. Person she was number nine.
5 He said he had done eight Laparoscopic Nissens before. He
6 had done three Laparoscopic Hill procedures before. I
7 requested specifically Operative Reports and Discharge
8 Summaries for each one of those eleven procedures, as well
9 as any procedure of Dr. Bannister, who was his assistant,
10 involved in those procedures.

11 The critical period to me, if I am only allowed
12 to have part of the story would be his experience before
13 Ms. Person got hurt. If I am allowed to have only part of
14 the story, I want to have Discharge Summaries instead of
15 Operative Reports. Discharge Summaries incorporate
16 consulting reports of other doctors just besides the
17 surgeon. Discharge Summaries like in Ms. Person's case is
18 when the doctor puts in, I inadvertently hurt her pancreas
19 and had to transfer her to Columbia. It wasn't in the
20 Operative Report.

21 In response to that, I got one Operative Report
22 dated December 17, 1996, no Discharge Summary. The second
23 document that I got was a 1998 Operative Note, no Discharge
24 Summary. That is out of twenty-two sets of records I
25 should have had, and I got two. I got the December 16,

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1 2002, Operative Report of Dr. Mincheff, no Discharge
2 Summary for that. Now, just the ones before Ms. Person got
3 hurt, I am entitled to twenty-two documents, and I got 10%,
4 and I do not think that is good enough. The law,
5 and I can site the Statute, absolutely requires this
6 hospital to maintain for ten years and if you are aware of
7 litigation, or if these records are to be important, you
8 have to maintain them even longer. Now, they have a legal
9 duty to maintain these records. Their excuse for not
10 producing them is that, gosh, we can't find them, we don't
11 know where they are, we are looking as hard as we can
12 Daryl, you will just have to wait. I don't think that is
13 good enough.

14 **The Court:** All right. I hear what you are
15 saying. What request are you making of the Court, Mr.
16 Corbin?

17 **Mr. Corbin:** I would like some kind of sanction,
18 at this point. And, I haven't thought about how you level
19 the playing field. I suspect that they are loading up on
20 me. I suspect they have all kinds of documents they can
21 find in their case. And, I haven't thought of an
22 appropriate sanction. You know, Your Honor, strikes
23 witnesses, and I still get this kind of conduct, and I am
24 frustrated.

25 **The Court:** Do you wish to reply?

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1 **Mr. Driggers:** Yes, sir, Your Honor. Again, we
2 have give everything that we have and can get out hands on.
3 The documents are maintain. They are just boxed in
4 warehouses and places that we can't get and comb through in
5 the space of ten days while other activities are going on,
6 other documents are trying to be produced, other witnesses
7 are trying to be arranged, and we have given everything ---
8 We aren't going to be walking in here with anything, any
9 materials, that Mr. Corbin doesn't have. We have
10 witnesses, who he has had available to him, meaning the
11 physicians in this case, who have been deposed. He has had
12 an opportunity to be deposed if he wasn't satisfied, and
13 that is what we've got. I can't produce simply what I
14 don't have. I have given him everything that I know to do.
15 It is not --- It is not from any kind of obfuscation, or it
16 is not any type of --- or to keep anything from him. I
17 have given him all the documents that we have. If he had
18 asked us for them, you know, when this litigation started,
19 or even six months ago, or three months ago, then it would
20 be a different story. He asked us for these --- Again, the
21 Order is again October 26, not --- a little more than a
22 week --- And, that is what I've got. I don't know how to
23 respond. I don't want any sanctions.

24 I understand his frustrations. I am frustrated too
25 that I can't find them, but we will have the physicians

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1 here to testify. And, he can ask them how many he has
2 done, and if he doesn't believe them, do you have records
3 to back that up. The doctors have their own independent
4 ways of counting for what they do. They don't have to ---
5 We do not have to send them any type of records to do
6 anything to influence them. We come in and testify.

7 **The Court:** Where does Carolina Pines keep their
8 Discharge Summaries?

9 **Mr. Driggers:** They are kept according to year,
10 if they don't have some age on them, there is a facility
11 called Iron Mountain in Florence. It is document
12 production, or document holding company. They not only do
13 it for Carolina Pines, they do it for other places. That
14 is who maintains and keeps their stored documents, and they
15 are in warehouses. I am not sure how many warehouses there
16 are I am sure there are several. But, they are the ones
17 that they contract to do that with.

18 **The Court:** These documents now, present day
19 documents digitally produced and are stored electronically,
20 or are you still on a paper system?

21 **Mr. Driggers:** They are still on a paper system,
22 as far as I know.

23 **The Court:** All right.

24 **Mr. Corbin:** I kind of doubt that they even
25 checked, but Your Honor, it is my recollection that I have

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1 asked for relevant documents in this case for their
2 defense, and I suspect they have been loading up Dr.
3 Mincheff. And, I would like for them to put on the record
4 that they are unaware of any other documents they are going
5 to use in this case. I think they have a duty to disclose
6 them, if they know about them.

7 **The Court:** Do you wish to respond, counsel?

8 **Mr. Driggers:** I thought, Your Honor, I have
9 said that emphatically, that we are not going to bring
10 anything, we don't have anything that we haven't already
11 produced to Mr. Corbin.

12 **Mr. Corbin:** Will Dr. Mincheff bring additional
13 records?

14 **Mr. Driggers:** I don't know if he will or not.
15 You may ask him to. He's coming to testify. He's been
16 subpoenaed. He will be here. But, Dr. Mincheff is not a
17 party to this case. He is somebody Mr. Corbin could have
18 subpoenaed, or Notice of Deposition, or done whatever he
19 wanted to.

20 **The Court:** The Court will just simply take this
21 matter under advisement. I really can't make any type of
22 ruling at this point, as it is not sufficiently firm before
23 me to know how this will apply to make some sort of ruling.
24 I'm just going to take it under advisement.

25 **Mr. Corbin:** Your Honor, if I may please. I

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1 will bring a list of things Monday to solidify the issues.
2 But I have also asked for compilations of complications
3 that they have got those things. Dr. Mincheff said the
4 hospital had those things. They keep records about
5 surgical complications and I haven't been handed that stuff
6 either.

7 **Mr. Driggers:** Your Honor, I believe if he asks,
8 Dr. Mincheff would tell him, this is really only his only
9 serious complications. That's what we have been told, and
10 that is what we understand. I don't think --- Again, we
11 have given him what we have.

12 **The Court:** All right, very good. Anything
13 further now on any other issue before we end our record for
14 the week. From the plaintiff?

15 **Mr. Corbin:** I don't believe so, thank you.

16 **Mr. Driggers:** No.

17 **The Court:** Counsel, I hope you get some rest
18 this weekend, as well as the ability to prepare for next
19 week. This Court will be in recess until 9:00. I intend
20 to come a few minutes early, but I would like to start at
21 9:00 on Monday morning.

22 Have a good weekend.

23 (Whereupon, the forth day of trial ends at
24 4:25 p.m. on Thursday, November 9, 2006.)
25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	FOURTH JUDICIAL CIRCUIT
	)	
RUTH J. PERSON,	)	
	)	VOLUME 3 OF 3
Plaintiff	)	
	)	
versus	)	200R-CP-16-0322
	)	
CAROLINA PINES REGIONAL	)	
MEDICAL CENTER	)	NOVEMBER 06, 2006
Defendant	)	to
	)	NOVEMBER 14, 2006

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

Daryl J. Corbin, Esquire
Attorney for the Plaintiff

Martin S. Driggers, Jr., Esquire
William O. Sweeney, III, Esquire
Attorneys for the Defendant

Pamela Ozment-Cartee
Circuit Court reporter

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1 (Whereupon, The Court comes to order at 9:00
2 a.m. on Monday, November 13, 2006.)

3 DAY FIVE OF TRIAL

4 The Court: Please be seated. Ladies and
5 gentlemen, good morning. I trust you had a good weekend.
6 We are ready to begin the Defendant's case. Is there
7 anything for our record before we begin today?

8 Mr. Corbin: Just one quick issue. I don't even
9 think it is an issue. I have prepared a Motion to Exclude
10 anyone from referencing Ms. Person's prior settlement. I
11 would hand it up to you. I gave it to Defense counsel a
12 few minutes ago. I don't believe -

13 Mr. Driggers: Your Honor, we don't have intent
14 to settlement we set part of his Motion to set off issues,
15 and not to consent to that. But we certainly don't have
16 any intent to bring up a settlement at this point as part
17 of this case.

18 The Court: All right, very good. We will have
19 a chance to discuss obviously set off, if it becomes an
20 issue at some later time. Apparently there's an agreement
21 with regard to the mention of previous settlement. So I
22 think we all are of the same accord. Anything else now
23 from the Defense before we begin today?

24 Mr. Corbin: I have one scheduling matter, Your
25 Honor. We have Dr. Gary Barker here again this morning.

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1 It could be that he takes up most of the morning, and I
2 anticipate him being awhile. The second witness we intend
3 to call is Dr. Tom Mincheff. He will be available at 1:00.
4 So I would ask if for some reason Dr. Barker ends sooner
5 than we think, we just take an early lunch break and begin
6 with Dr. Barker, I mean Dr. Mincheff after lunch.

7 **Mr. Corbin:** No objection, Your Honor.

8 **The Court:** Very good. We will work around it.
9 Let's just talk a little bit about scheduling now that you
10 have given a little closer look to your case, and your
11 order of witnesses. Tell me how long do you think the
12 presentation of your case will take. I'm not limiting in
13 any way. I am just trying to --

14 **Mr. Driggers:** I think we can be done reasonably
15 speaking in a day and a half.

16 **The Court:** Okay. All right. So we are
17 probably looking at concluding this case, Jury Verdict and
18 all by the end of the day Tuesday roughly.

19 **Mr. Sweeney:** Possibly, yes, sir.

20 **The Court:** I was just trying to schedule
21 Georgetown which, you have many things on your schedule
22 also. We will shoot for that goal, and see what we are
23 able to obtain.

24 Is there anything else now for our record?

25 **Mr. Corbin:** My paralegal had to step out and

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1 get someone. They may come in the next five minutes. I
2 just wanted to alert The Court.

3 **The Court:** All right. We are missing one juror.
4 So we will be at ease a moment, while we are waiting.

5 (Pause)

6 **Mr. Corbin:** Your Honor, after we finish Dr.
7 Barker's direct, could we have a five minute break so we
8 can scan a document?

9 **The Court:** Yes, we will do that, sure.

10 (Pause)

11 **The Court:** All right. Gentlemen, I will now
12 hear from the parties. It is now 9:15. Mr. Samuel did not
13 return his jury information sheet, so we do not have a
14 telephone number for him. In looking in the public
15 listings there is no Kenneth Samuel listed on the street
16 for which we have an address for him on the jury list. It
17 would be the Court's intention to release him, and we would
18 be down to eleven jurors. And by agreement we still could
19 lose one more and be safe. What says the Plaintiff?

20 **Mr. Corbin:** Your Honor, I would ask The Court
21 to wait another five or ten minutes. If he were just an
22 alternate that's one thing, but I'm concerned about going
23 another day or two about losing additional jurors.

24 **The Court:** What is the Defendant's position?

25 **Mr. Sweeney:** Whatever pleases The Court.

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1 **The Court:** All right, it is now 9:16. We will
2 wait until 9:20. I hesitate to do that, we have physicians
3 present, lawyers obviously, court personnel, jury, and all
4 waiting on Mr. Samuel. We will give him four minutes.

5 **(Pause)**

6 **The Court:** All right, it is now 9:20, and we
7 are still unable to reach the juror. We have heard nothing
8 from the juror. We will check later in the day when we
9 have more personnel as to what his status is, and perhaps
10 bring him in here by deputy. But that does not resolve our
11 issue right now. Let's go ahead and bring in the jury. We
12 will dismiss the juror, and then proceed with the trial.
13 Everyone ready for the jury? What says the Plaintiff?

14 **Mr. Corbin:** Plaintiff is ready, Your Honor.

15 **The Court:** Defense?

16 **Mr. Driggers:** Defense is ready.

17 **The Court:** Very good. Please bring in the
18 jury.

19 (Whereupon, the jury comes into the
20 courtroom at 9:21 a.m.)

21 **The Court:** Good morning. Welcome back,
22 everyone. We were all here and actually sitting in the
23 courtroom at 9:00 this morning. We have actually been
24 waiting on, one your colleagues, Mr. Samuel, and unable to
25 reach him. And for that reason we are going to go ahead

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1 and dismiss him as a juror and proceed with the case.

2 Thank you for your patience this morning while we
3 all waited for Mr. Samuel.

4 Ladies and gentlemen, let me ask --- Before I
5 ask, let me just say that I hope you had a good weekend.
6 Welcome back to the courtroom.

7 Let me ask if there is any member of the jury
8 panel who's had any discussion about the facts of this
9 case, or been contacted by anyone since we were last
10 together concerning this case? If that applies to you,
11 please raise your hand.

12 Let the record reflect then that no one has
13 raised their hands. I should tell you that out of your
14 presence the parties have agreed to proceed with eleven
15 jurors, as opposed to declaring a mistrial for lack of
16 twelve. And for that reason we will proceed.

17 The Plaintiff's closed their case, rested at the
18 end of the week. We now turn to the Defense. Mr. Driggers,
19 please call your first witness.

20 **Mr. Driggers:** Thank you, Your Honor. May it
21 please The Court, the Defense calls Dr. Gary Barker to the
22 stand.

23 **The Court:** Please come forward and take the
24 oath of a witness.

25 **Gary Allan Barker, M.D.**

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After Being Duly Sworn Testifies as Follows

Voir Dire Examination by Mr. Driggers

Q. Dr. Barker, please introduce yourself to the jury.

State your full name.

A. Gary Alan Barker.

Q. Dr. Barker, where do you live?

A. About two miles east of Hartsville.

Q. Okay. Dr. Barker, tell the jury in addition to being a physician what's some of the activities you have in the community. For instance, how many children do you have?

A. I get that often. It's a pretty straightforward question, a little bit difficult to answer in my case. I have no children of my own. I have fifteen people that call me dad. They are adopted, foster, and stepchildren.

Q. Okay. That might take care of the rest of your activities, I guess.

A. It keeps me busy.

Q. Where do you attend church?

A. St. Mary's Catholic Church in Hartsville.

Q. Where do your children go to school?

A. In the Hartsville Community Schools.

Q. Dr. Barker, please tell the jury, if you will, a little bit about your education.

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1 A. Well, I grew up in Iowa. Attended public school in
2 Winterset. Then went to the University of Iowa.
3 Secondary Education was interrupted by a stint in the
4 Navy. I went back to school after working with my
5 father for a few years. And I graduated in 1977 with
6 a Bachelors in Science. I attended Medical School in
7 Iowa, completed that in 1981. Moved to Florence,
8 South Carolina where I did Family Practice Residency
9 Program, and at the same time starting a part-time
10 practice in 1982 in Society Hill.

11 Q. Okay. Let's back up just a little bit. Which part of
12 the Navy did you serve?

13 A. I was in the Submarine Service.

14 Q. Okay. And after coming to Florence, you came here for
15 Medical Training; is that correct?

16 A. That's correct.

17 Q. At McLeod.

18 A. True.

19 Q. What is the specialty that you practice?

20 A. Family Medicine.

21 Q. Following your training at McLeod, where is it that
22 you actually practice medicine?

23 A. I started half way through my second year of Residency
24 a part-time practice in a Federally Funded Clinic in
25 Society Hill.

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1 Q. Okay. What are some of the other physicians that you
2 have practiced with?

3 A. Dr. Ken Moyd joined the practice not too long after I
4 did. We had several residents come through there on a
5 temporary basis as part of their training. Steven
6 Smith is there now. It has actually become part of
7 Care South Carolina.

8 Q. Okay. So now the practice that you work for is
9 CareSouth South Carolina?

10 A. Yes, most people refer to it as Care South.

11 Q. And where does Care South have offices and medical
12 practice?

13 A. If I'm correct, there are thirteen of them scattered
14 around this part of the State. They are from McCall,
15 Lake View, Bennettsville, Bishopville, Hartsville,
16 Society Hill, Chesterfield.

17 Q. Okay. How long have you worked for Care South?

18 A. Well, it was originally the Society Hill Family Health
19 Clinic. I started there in 82, and I'm still with the
20 same organization.

21 Q. Okay. What's your current position with Care South?

22 A. Staff Physician.

23 Q. Okay. And you do now --- where do you now primarily,
24 do your work?

25 A. I'm a hospitalist at Carolina Pines Regional Medical

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1 Center.

2 Q. Explain to the jury what is a Hospitalist.

3 A. It is a growing specialty in Medicine of physicians
4 that provide care for patients admitted to the
5 hospital.

6 Q. And those are patients from Care South?

7 A. That is correct. Most Hospitalist, work for the
8 hospital in which they provide care. I'm an employee
9 of Care South, independent of the hospital.

10 Q. Okay. So Care South has a sufficient number of
11 patients that they have that many patients at one time
12 treated at the hospital.

13 A. Yeah, finding something to do is not a problem.

14 Q. Okay. Again just to reiterate, your title now is a
15 Hospitalist, but you do not work for Carolina Pines
16 Regional Medical Center.

17 A. No, I work there, but not for them.

18 Q. I got you. Okay. Are you board certified, Dr.
19 Barker?

20 A. Board Certified in Family Medicine.

21 Q. What year did you become Board Certified?

22 A. 1984.

23 Q. Just for the jury's benefit, I want you to ask you if
24 you can identify this. I think is basically
25 information we have been going over.

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1 A. It is my Curriculum Vitae.

2 Q. Okay. Does that recount what we have discussed as far
3 as your education and training background?

4 A. Yes, sir.

5 Q. Okay.

6 Mr. Driggers: We would like to offer Dr.
7 Barker's Curriculum Vitae as Defendant's Exhibit --- I'm
8 not sure of the number. Defendant's Exhibit 4, Your Honor.

9 The Court: Any objection?

10 Mr. Corbin: No, Your Honor.

11 The Court: All right, without objection. Let's
12 take a moment. We will mark it as admitted.

13 Whereupon, Defendant's

14 Exhibit Number 4 was marked

15 and admitted into the Record.

16 Q. Dr. Barker, what hospitals - To start off, you
17 practice now primarily at Carolina Pines Regional
18 Medical Center, correct?

19 A. Normally at Carolina Pines.

20 Q. Normally at Carolina Pines. During the course of your
21 twenty-year career in Darlington County, what other
22 hospitals have you worked at?

23 A. I originally worked at McLeod. I did a little bit of
24 work at Bruce Hospital in Florence, generally at the
25 time when I was a Resident. And I started part-time

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1 hospital practice at Southland Medical Center in
2 Darlington, which is no longer in existence.

3 Q. Okay. At any of these places, have you ever been
4 denied the privilege to work at these hospitals?

5 A. No.

6 Q. And how long have you had privileges to work at
7 Carolina Pines?

8 A. I joined Byerly in 1989 when Southland closed.
9 Byerly, of course, became Carolina Pines when HMA took
10 over.

11 Q. When you first came to work in Darlington County, what
12 is your estimate of how many doctors had been
13 practicing in the County or Carolina Pines?

14 A. I think there were roughly probably twenty-five
15 perhaps at Byerly when I joined the staff.

16 Q. Okay. Did you ever have situations where there was
17 medical treatment needed, but could not be provided on
18 account of that?

19 A. Patients were not, infrequently transferred to
20 Florence Hospital. Excuse me. Originally, we did not
21 have very many specialist at the hospital in
22 Darlington.

23 Q. Okay. And how many doctors do you believe are
24 practicing now in Darlington?

25 A. Well, I think there are fifty-three on active staff at

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1 Carolina Pines. I'm not sure of the number, but I
2 think it is fifty-three.

3 Q. Okay. Are there specialty services that you can get
4 medical treatment for now that you could not when you
5 first began your practice?

6 A. Most of the specialists are represented at the
7 hospital now.

8 Q. Okay. Tell the jury exactly when Carolina Pines
9 Hospital, when did it come about.

10 A. I think six or seven years ago. I'm really not sure,
11 Mr. Driggers.

12 Q. Okay. And before that, you have already testified
13 that it was Byerly Hospital, correct?

14 A. Correct.

15 Q. And how did it come from being Byerly Hospital to now
16 being Carolina Pines Regional Medical Center?

17 A. Well, the Board of Trustees at Byerly Hospital could
18 well note, that it was becoming dated. And it was
19 felt that a new facility would be appropriate, and was
20 needed, but that the community probably could not
21 afford to build it. And so requests for proposals, I
22 think they are called, were sent out to some of the
23 Health Organizations in the Country. And at the same
24 time, serendipitous HMA contacted the Board with an
25 interest in buying the hospital. And they felt it

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1 should fit the nitch that they try to serve, suburban
2 hospitals of one hundred, two hundred beds, not even
3 know that we were looking for a new facility. We
4 toured some of their facilities, and talked with
5 McLeod, and so on. And eventually decided to sell to
6 HMA.

7 Q. Okay. Dr. Barker, if you will, explain to the jury
8 what is The Byerly Foundation.

9 A. The Byerly Foundation is derived from the sale of
10 Byerly Hospital. The money generated several million
11 dollars from HMA for the purchase of the facility.
12 And this money is directed by a Board of Trustees to
13 benefit the community. I'm not on the board. But
14 they do things for education and other --- I think
15 they run Byerly Park. A number of things for the
16 community.

17 Q. Okay. So if we read about the Byerly Foundation,
18 wherever we see that heading, that is funds coming for
19 the sale of Byerly to HMA, correct?

20 A. As I understand it, yes, sir.

21 Q. Dr. Barker, other than, of course, you described that
22 you treat patients at Carolina Pines, how else do you
23 serve there?

24 A. I'm Chief of Medical Staff.

25 Q. Please explain to the jury what it means to be the

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1 Chief of Medical Staff.

2 A. Well, I'm elected by the Medical Staff, to basically
3 run the medical staff meetings. I head the Medical
4 Executive Committee, work with Administration,
5 somewhat as an liaison between physicians and
6 Administration.

7 Q. Okay.

8 A. Sometimes address problems.

9 Q. Okay. And how long have you served in that capacity?

10 A. This is my tenth year.

11 Q. Okay. And you said earlier, I believe, there's fifty-
12 three doctors.

13 A. I think it's fifty-three.

14 Q. Okay. So you are the Head Physician of those who have
15 privileges to work at Carolina Pines?

16 A. I guess you could look at it that way.

17 Q. You might not want to be called that at this time.

18 Now, Dr. Barker, we are here, of course, for a
19 case that happened back in April of 2001. Were you
20 the Chief of Staff at that time?

21 A. Yes.

22 Q. What issues come before the Medical Staff, what do
23 doctors have to do with you working as a staff --

24 A. Let's see, it would be various committees, Peer
25 Review, Credentialing, Case Review, and appropriate

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1 changes in the by laws if need be.

2 Q. Okay. Among those you deal with I think you said
3 Privileging or Credentialing of Physicians, correct?

4 A. Correct.

5 Q. Who gives you and the medical staff their authority to
6 work at the hospital?

7 A. Well, they are appointed ultimately by the Board of
8 Trustees.

9 Q. Okay. And how many Board Members are there at
10 Carolina Pines?

11 A. I think there's fifteen, but I'm not sure.

12 Q. If you can, as best you can, who are some of the
13 members of the Board?

14 A. Ted Newman is an Optometrist. He is the Head of the
15 Board. Steve Terry is a Professor at Coker. And
16 there is a gentleman from Tally Metals. Six physicians
17 I believe, six or seven.

18 Q. So even people without medical backgrounds, and also
19 with medical backgrounds?

20 A. Correct.

21 Q. Who are some of the physicians who sit on the Board?

22 A. Well, I am one of them. We just changed some of the
23 members. I'm trying to remember. Brooks Bannister,
24 I believe. Tilly Hassler has been on board. I'm not
25 sure if he is now. Elizabeth Morphis.

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1 Q. And what type of practice is Doctor Hassler?

2 A. He's an orthopaedist.

3 Q. Okay. How about Doctor Morphis?

4 A. She's a Pediatrician.

5 Q. Okay. Now again, you established for yourself that
6 you are not an employee of the hospital.

7 A. That's correct.

8 Q. Just because a physician has privileges at the
9 hospital that is not an employment relationship?

10 A. No.

11 Q. Okay. So explain exactly what it means to the jury
12 for a doctor to have privileges at a hospital, what
13 does that mean?

14 A. Well, that means that they are allowed to provide
15 patient care at the hospital.

16 Q. And tell the jury for instance, if a doctor requests
17 privileges, are those privileges given within a
18 particular specialty?

19 A. Yes.

20 Q. So as you just mentioned, a pediatrician that works at
21 the hospital, correct?

22 A. Correct.

23 Q. And you have orthopedist surgeons, you mentioned, Dr.
24 Hassler, correct?

25 A. Correct.

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1 Q. And they have privileges to practice that field of
2 medicine, correct?

3 A. Correct.

4 Q. So you're not, you don't have privileges to go in and
5 perform surgery, for instance, correct?

6 A. Well, I do circumcisions.

7 Q. Okay.

8 A. But that's it.

9 Q. Okay. Now, the Medical Staff and its function, how
10 are y'all governed, what do you look to, to know what
11 it is that you can do? Is there anything written?

12 A. By laws, as well as Regulations and Policies and
13 Procedures.

14 Q. The by laws that are currently in effect at Carolina
15 Pines, who wrote those?

16 A. Luke Baxley and Gary Barker Alan Smith held monthly
17 meetings for about sixteen months rewriting the by
18 laws about twelve years ago.

19 Q. What has been marked as Plaintiff's Exhibit 38-A, can
20 you identify that; is that a copy of the by laws?

21 A. It is a copy of Carolina Pines Regional Staff By laws.

22 Q. That is what you were just referring to that I believe
23 you and Doctor Baxley had put together sometime ago?

24 A. Correct.

25 Q. Now, the Medical Staff you have already said is

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1 charged with Credentialing and Privileging of those by
2 laws, correct?

3 A. I'm sorry, what, Mr. Driggers?

4 Q. The Medical Staff is given the charge to oversee
5 Credentialing and Privileging and those by laws,
6 correct?

7 A. Correct.

8 **Mr. Driggers:** Your Honor, at this time we would
9 like to offer Doctor Gary Barker as an expert in the field
10 of General Medicine, but also in Hospital Medical Staff
11 Practice.

12 **The Court:** What saith the Plaintiff?

13 **Mr. Corbin:** No objection.

14 **The Court:** Without objection, so admitted.

15 **Direct Examination by Mr. Driggers**

16 Q. Explain to the jury, in general terms, what is meant
17 by credentialing, a doctor's credentialing, that
18 process.

19 A. The process?

20 Q. Yes, the process.

21 A. A physician would apply to the Medical Staff Secretary
22 basically for an Application Packet.

23 Q. Okay.

24 A. And complete that and return it to the Medical Staff
25 Secretary who would verify basically all of the

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1 information in it. Such as, Undergrad Studies,
2 Medical Degree, Completion of Residency, appropriate
3 training in addition to that, if any.

4 Q. Okay. Go ahead.

5 A. And at that point if it is complete, and not until it
6 is complete, it would go to the Head of the Department
7 to which the Application for Privileges is being made.
8 And then he or she would review the Application and
9 say yea or nay.

10 Q. Okay. Just one minute. You mentioned the Medical
11 Staff Secretary. The jury has heard from Ms. Charlene
12 Enoch. Is she the Medical Staff Secretary?

13 A. She is now, she wasn't at the time.

14 Q. Okay. At the time, who served in that role?

15 A. Crystal Copeland.

16 Q. Again, their role as Medical Staff Secretary is not
17 involved in the actual granting of any privileges?

18 A. No, they have no decision making power at all. They
19 simply collect the data, and make sure it is correct.

20 Q. Okay. Once that is done, what happens to that
21 information then?

22 A. It goes to the Department, Head of the Department for
23 which Application and Privileges are being --

24 Q. Tell the jury what various Departments of Medicine you
25 have.

1 A. The Department of Medicine, The Department of Surgery,
2 The Department of Pediatrics, The Department of
3 OB/GYN. I think that is it.

4 Q. The Head of that Department would review an
5 Application for Privileges within that Department,
6 correct?

7 A. Correct.

8 Q. Who is the Chairman --- I guess the Medical Director
9 for Surgery?

10 A. Doctor Bannister.

11 Q. Who else? I know this again goes back to 2001. What
12 other physicians or surgeons have served that role?

13 A. Dr. Mincheff, Doctor Cooler, Doctor Leroy Robinson,
14 and Dr. Terry Hassler, I believe. And Doctor
15 Bannister served previously too.

16 Q. You mentioned the application has to be received
17 initially, correct?

18 A. Right.

19 Q. How do you know what exactly, what specialty that
20 particular applicant is asking for?

21 A. Well, he would fill out, the portion of the privileges
22 that he desires.

23 Q. What is Delineation of Privileges?

24 A. That is the form they fill out requesting what they
25 plan on doing in the hospital.

001574

1 Q. Okay. Can you identify what has been marked as
2 Defendant's Exhibit 5?

3 A. This is a Delineation Privileges in General Surgery.

4 Q. So an applicant wanting to practice General Surgery
5 that is what they would submit to the hospital?

6 A. Correct.

7 Q. That is --- Is this including information that goes on
8 to the medical director that you earlier described?

9 A. Yes.

10 Q. Just to again try and make this clear, because some is
11 new to me, and I know the hospital does not authorize
12 specific procedures, or specific operations, correct?

13 A. I'm not sure, what you mean.

14 Q. I mean, when a physician is proceeding --- you review
15 the process of receiving privileges, once that is
16 granted who determines what specific operations to do
17 or not to do?

18 A. Well, ultimately the decision rests with the Board of
19 Trustees.

20 Q. I mean, for a particular operation if a surgeon wants
21 to treat a particular patient, is each one of those
22 treatments submitted through this process?

23 A. No, they are not all delineated. There are certain
24 things that are felt to be basically part of the
25 Residency Training.

001575

1 Q. Okay. Now, and again, the authorization you give is
2 for the doctor to work in that specialty, correct?

3 A. Correct.

4 Q. And once that is given, then the physician decides how
5 to use that privilege, correct?

6 A. Correct.

7 Q. Now, the application asks for certain information in
8 the by laws, correct. And I know that is for
9 experience, correct?

10 A. Correct.

11 Q. Background, training, correct?

12 A. Correct.

13 Q. Okay. So that means every instance

14 **Mr. Corbin:** Excuse me, Your Honor. Leading.

15 **The Court:** Sustained, counsel.

16 Q. (By Mr. Driggers) What information would you be
17 looking for, for instance, if someone is applying for
18 Family Practice Privileges?

19 A. Well, one of the main things I guess would be
20 completion of appropriate residency.

21 Q. A Residency, within that specialty?

22 A. Correct.

23 Q. Would the same be true for those other categories,
24 experience and training, they are specialty specific?

25 A. Correct.

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1 Q. Okay. And if someone submitted an application for
2 surgery, would the same be true?

3 A. Correct.

4 Q. What happens after that application is reviewed by ---
5 you said the Medical Director initially, where does it
6 go from there?

7 A. It goes to the Medical Executive Committee.

8 Q. Okay. And what is the Medical Executive Committee
9 consist of?

10 A. It is basically a group of physicians and some of the
11 administration --- upper administration levels at the
12 hospital that meet on a monthly basis to review
13 perhaps may be a change needed in the by laws, review
14 Applications for Credentialing.

15 Q. Who currently sits on that Committee, The Medical
16 Executive Committee?

17 A. Myself, The Head of Surgery, The Head of Medicine,
18 there are two physicians at large, the Vice Chief of
19 Staff, Secretary, Treasurer, CEO, COO, and COM of the
20 Hospital.

21 Q. Are there any non doctors that actually have any vote
22 or actual authority making abilities?

23 A. No.

24 Q. Okay. So the actions taken are strictly taken by
25 physicians?

001577

1 A. Correct.

2 Q. Tell the jury what is in the by laws refer to as
3 Credentialing or Peer Review Committee.

4 A. Well, I believe at the time in 2001, there were two
5 separate committees. Now they are the same committee.

6 Q. Okay. How about credentialing at that time, what was
7 the Credentialing Committee?

8 A. What was it?

9 Q. Yes.

10 A. A Committee that met to review Applications for
11 Privileging.

12 The Court: Excuse me, the end of your
13 sentences, are falling off in volume, and our recording
14 system is not picking that up. So please make sure you
15 keep your volume.

16 Mr. Driggers: Yes, sir.

17 The Court: Thank you.

18 Q. (By Mr. Driggers) The Credentialing Committee, you
19 said review these same applications, correct?

20 A. Correct.

21 Q. Okay. And is that done for before it goes to the
22 Medical Executive Committee, that you just described?

23 A. Yes, it is. I think I left that step out.

24 Q. Okay. So again, after it is seen by a Medical
25 Director, what happens from that point?

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1 A. It goes to the Peer Review Credentialing Committee.

2 Q. Who comprises the Peer Review of the Credentialing
3 Committee?

4 A. That is a group of somewhere around ten physicians and
5 then, of course, upper administration sits on the
6 committee.

7 Q. Do they vote?

8 A. No.

9 Q. If you have names that will be fine, but what
10 specialties are represented on that commission?

11 A. We try basically to get all specialist on that
12 committee. It's one of the reasons it is so big.

13 Q. Okay. And we are here today, of course, for a case
14 involving General Surgery. Would you tell the jury
15 what other type of surgeons, practice at Carolina
16 Pines?

17 A. Orthopaedic, Neurosurgeon, OB/GYN. That is all that
18 comes to mind.

19 Q. And, those would all be members of those fields that
20 would sit on this Credentialing Committee correct?

21 A. Well, not all of them. We don't have a neurosurgeon
22 on the committee.

23 Q. OB/GYN?

24 A. Right, General surgery. I'm pretty sure that Dr.
25 Hassler is on that committee.

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1 Q. He's an Orthopaedic Surgeon?

2 A. Right.

3 Q. After the application is reviewed by the Credentialing
4 Committee, what happens to it then?

5 A. Then it goes to MEC.

6 Q. Then goes to MEC, okay.

7 A. Yes.

8 Q. Which is that committee you described comprised of
9 other physicians, correct?

10 A. Yes.

11 Q. Is that also limited to physicians?

12 A. No.

13 Q. And how many members fill the MEC?

14 A. Seven physicians, I believe.

15 Q. And then after the MEC reviews an application, what
16 happens after that?

17 A. It goes to the Board of Trustees.

18 Q. Again, you have already said how many physicians are
19 on the board.

20 A. Six, I believe.

21 Q. What is ultimately done by the Board, what can they do
22 when they receive an Application?

23 A. Basically they can approve it, or disapprove it, or
24 send it back to the Committee for further review.

25 Q. In addition to just reviewing these, do any of these

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1 committees generate any actual report, or anything
2 like that?

3 A. I don't think they generate a written report.

4 Q. Okay. But the report is given to the next level?

5 A. Well, there is like a paper trail if the Application
6 is approved.

7 Q. At any point and time are those levels of review ---
8 what can happen on --- what are the options?

9 A. Basically to approve it and move it on or reject it.

10 Q. Okay. The by laws or in any speciality those by laws
11 don't do --- does Carolina by laws ever ask for any
12 specific number of --- of --- of --- procedures or a
13 specific type of experience and background?

14 A. No not numbers, no.

15 Q. Um, in your experience with other hospitals that you
16 have worked in, have you ever encountered a hospital
17 that requires a specific number of patient procedures?

18 A. No.

19 Q. Doctor, we have heard a little bit about JCAHO in this
20 case, Explain a little bit to the jury what is JCAHO?

21 A. Joint Commission of Accreditation of Health
22 Organizations. It's basically a National Program that
23 accredits hospitals, and some physician's offices, at
24 least, if they are federally funded can be. I'm not
25 sure about regular physicians. But mostly for

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1 hospitals and nursing homes.

2 Q. And as Chief of Staff, what involvement and
3 requirements have in regards to the JCAHO
4 Accreditation?

5 A. I'm usually involved in some of their meetings.

6 Q. Okay. Explain to the jury what that --- When you say
7 their meetings, what happens when JCAHO is conducting
8 any kind of meeting.

9 A. There is usually, in my experience, three people from
10 JCAHO that come and it is usually a physician, a
11 nurse, and I am not sure about the third person ---
12 And, they are kind of split up and look at the many
13 aspects of the hospital, and have many meetings.

14 Q. Okay. And how long does that process take?

15 A. Usually three days.

16 Q. Okay. What, if any, other regulatory bodies have
17 authority over the hospital?

18 A. DHEC.

19 Q. Any others besides at the State level?

20 A. There probably is, but it's not coming to mind.

21 Q. Does the Federal Government have any?

22 A. The Department of Health and Human Services, yes.

23 Q. Is there any other body, other than JCAHO that sets
24 any kind of standards for hospitals to meet?

25 A. Not that I am aware of.

001582

1 Q. Is that something that hospitals want to be, JCAHO
2 Accredited?

3 A. Oh, yes.

4 Q. Why is that?

5 A. If you are not Accredited that will affect your
6 ability to get payment for patient care.

7 Q. And, dah, does --- You mentioned JCAHO relates to an
8 area of hospital practices, correct.

9 A. Many areas.

10 Q. Okay. What are some of the areas that they review?

11 A. The cleanliness, Medical Records, The Laboratory, they
12 go look at the ER, look at Credentialing, patient
13 safety.

14 Q. So Credentialing is a specific area they review?

15 A. Correct.

16 Q. You said you had been the Chief of Staff for ten years
17 now?

18 A. This is my tenth year.

19 Q. And, Dr. Barker, I am going to first hand you what's
20 been marked as Defendant's Exhibit Number 6. What is
21 that, doctor?

22 A. 1997 Performance Report for Byerly Hospital from The
23 Joint Commission.

24 Q. You were the Chief of Staff in 97, correct?

25 A. Yes.

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1 Q. Okay. And was Byerly accredited on that review?

2 A. Were they accredited?

3 Q. Yes.

4 A. Yes.

5 Q. Okay. Tell the jury what the credentialing for Byerly
6 Hospital rating?

7 A. What page is that on?

8 Q. Maybe Page eight.

9 A. I'm pretty sure it was a one, but I'm having trouble
10 finding it. Credentialing was One.

11 Q. Okay. What does it say?

12 A. Credentialing one.

13 Q. Explain to the jury what are the skills that JCAHO
14 uses to review.

15 A. One through five. One being basically the best.

16 Q. Again, that was for 1997?

17 A. Correct.

18 Mr. Driggers: Your Honor, we would ask to have
19 Defendant's 6 as an Exhibit into evidence.

20 Mr. Corbin: No objections.

21 The Court: Without, objection. Defendant's
22 Number 6, in evidence.

23 Whereupon, Defendant's

24 Exhibit Number 6 was marked

25 and admitted into the Record.

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1 **The Court:** Just one second. All right, go
2 ahead, sir.

3 Q. (By Mr. Driggers) Dr. Barker, is it more or less
4 difficult to obtain a higher rate for credentialing by
5 JCAHO?

6 A. More or less difficult than what?

7 Q. Than the other categories.

8 A. Do you mean two, three or four?

9 Q. I mean for the other areas of the hospital.

10 **Mr. Corbin:** Objection, lack of foundation

11 **The Court:** Sustained. Please lay your
12 foundation if you wish to pursue that, counsel.

13 **Mr. Driggers:** Sure.

14 Q. (By Mr. Driggers) Dr. Barker, go back to the
15 Credentialing Review section of the report.
16 According to JCAHO themselves, as they consider to
17 other hospital rating, what percentage of hospitals
18 received?

19 A. Over 52%?

20 Q. For instance, on that same page, for governous, how
21 many percentage of hospitals received?

22 A. 96%.

23 Q. So in your opinion, is it more or less difficult
24 according to JCAHO to get a high rating in
25 credentialing?

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1 A. This indicates more difficult.

2 Q. In your experience, is it more difficult to get
3 credentialing at Carolina Pines Regional Medical
4 Center?

5 A. We have been told that by physicians applying for
6 privileges.

7 Q. Let me ask you to identify Exhibit 7.

8 A. This is a Performance Report from 2000 for Carolina
9 Pines Regional Medical Center by the Joint Commission.

10 Q. How often does the Joint Commission come around for
11 inspection?

12 A. Well, they don't have a set pattern. Basically if you
13 are doing well about every three years, I believe.

14 Q. So the next one you have is 2000?

15 A. Yes, after the 97.

16 Q. You were the Chief of Staff at that time, right?

17 A. Correct.

18 Q. Again, what rating did Carolina Pines receive for
19 credentialing?

20 A. Let me see if I can do a better job of finding it this
21 time. A, one.

22 Mr. Driggers: Your Honor, we would move to have
23 Defendant's Exhibit 7 entered into evidence.

24 Mr. Corbin: No objection.

25 The Court: Just one moment. We will mark that

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1 as admitted without objection.

2 Whereupon, Defendant's

3 Exhibit Number 7 was marked

4 and admitted into the Record.

5 The Court: You may proceed, counsel.

6 Q. (By Mr. Driggers) Dr. Barker, see if you can
7 identify what is marked Defendant's Exhibit Number 8.

8 A. This is a 2003 Performance Report for Carolina Pines
9 Regional Medical Center from the Joint Commission.

10 Q. That is another three-year interval, correct?

11 A. Correct.

12 Q. You were Chief of Staff at that time?

13 A. That is correct.

14 Q. What was the rating the Joint Commission gave to
15 Carolina Pines for credentialing in 2003?

16 A. A, one.

17 Q. What was the percentage of hospitals across the
18 country that received that same rating?

19 A. 50%.

20 Mr. Driggers: Your Honor, we would ask to have
21 Defendant's Exhibit Number 8 entered into evidence.

22 Mr. Corbin: No objection.

23 The Court: Without, objection. Defendant's
24 Exhibit Number 8, admitted into evidence.

25 Whereupon, Defendant's

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Exhibit Number 8 was marked

and admitted into the Record.

Q. (By Mr. Driggers) You state you have some experience at McLeod Hospital, is that correct?

A. As a Resident and Courtesy Staff after I completed my Residency.

Q. And you already indicated that Carolina Pines credentialing, at least, according to JCAHO is more difficult than most to give high ratings than other hospitals, correct?

A. Correct.

Mr. Corbin: Objection, to the next Exhibit, Your Honor.

Q. (By Mr. Driggers) Can you identify that document for me?

A. This is a 2002 Performance Report from McLeod Health from the Joint Commission.

The Court: Counsel, there has been an objection to that. I believe we previously discussed that issue. The Court will sustain the objection.

Mr. Corbin: Thank you, Judge.

Mr. Driggers: We don't intend to offer that into evidence.

The Court: Very good, mark that for identification only.

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1 Whereupon, Defendant's
2 Exhibit Number 9 was marked
3 for identification only for
4 the Record.

5 Q. (By Mr. Driggers) Dr. Barker, what rating on that
6 report did McLeod Regional Health --

7 **Mr. Corbin:** Excuse me, Your Honor.

8 **The Court:** Just a moment, before you answer
9 Doctor --- Just a moment, please. Counsel, for the reasons
10 I previously have sustained an objection, The Court would
11 sustain an objection to that question.

12 **Mr. Driggers:** Thank you, Your Honor. Dr.
13 Barker has experience at McLeod, and we have established a
14 testimony that there is some type of different standards,
15 different hospital, different ratings, so we would offer
16 this to be in evidence to show what those different
17 standards might be.

18 **The Court:** I don't believe the doctor testified
19 he had experience with credentialing and privileging aspect
20 of McLeod, but simply had been on staff there. Am I
21 correct?

22 **Mr. Driggers:** Yes, sir, but he has received
23 privileges to work there.

24 **The Court:** Counsel, come up for a moment and
25 let's just discuss that issue. Ladies and gentlemen, we

1 will be with you in a moment.

2 (Whereupon, a bench conference was held in
3 the presence of the jury but out of the hearing of the
4 jury.)

5 **The Court:** Ladies and gentlemen, it appears
6 there is a matter of law that I need to discuss with the
7 lawyers. I'm going to ask you to step back to your jury
8 room just a moment. Enjoy your break and we will send for
9 you shortly. Thank you.

10 (Whereupon, the jury exits the courtroom at
11 10:07 a.m.)

12 **The Court:** Mr. Samuel, good morning.

13 **Mr. Samuel:** Good morning.

14 **The Court:** What happened to you this morning?

15 **Mr. Samuel:** We was working this morning, and I
16 woke up at quarter after nine.

17 **The Court:** Well, we started at 9:00, and
18 actually waited until 9:20. I had physicians here waiting,
19 lawyers, and other jurors, and the entire court staff, the
20 only thing I could do was just release you, and we went
21 ahead and started the case without you. We tried to call
22 you. We didn't have an adequate telephone number. We had
23 no way to reach you at your address, so we were just unable
24 to wait for you, sir. And for that reason, I'm going to
25 release you as a juror. And there is no --- You won't have

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1 any further responsibility this week. Did you work the
2 midnight shift last night?

3 Mr. Samuel: Yes, sir, I work swing shift.

4 The Court: Where do you work?

5 Mr. Samuel: Right here at Georgia Pacific
6 Distribution.

7 The Court: I realize you have a lot of
8 pressures on you trying to be a juror and have a job too.
9 And we carried this case over beyond last week, which was
10 unexpected. For all those reasons I'm just going to simply
11 let you go. And I'm sorry that we had to release you, but
12 we had no other alternative.

13 Mr. Samuel: I'm sorry about all of this. And,
14 I apologize.

15 The Court: Thank you for your service. You are
16 free to go. You have a good day. Try to get some sleep if
17 you can. You will receive a small check for your service
18 last week, and it will come to you within the next week or
19 so. You are free to go. You have a good day, sir.

20 Mr. Samuel: All right.

21 The Court: Back on the record for the
22 evidentiary issue. The Court had previously during the
23 Plaintiff's case on cross examination excluded the
24 Defendant's efforts to put in the JCAHO, scores for McLeod.
25 It may also have been Duke. I'm not sure what other

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1 facilities were offered. Now tell me what's the difference
2 here, Mr. Driggers that there.

3 **Mr. Driggers:** Yes, sir, Your Honor. The
4 difference here is the document we're discussing part of
5 the objection, McLeod Regional Medical Center is a specific
6 facility --- he has received privileges to work there. He
7 was trained there as a Resident. So I believe he would
8 have knowledge, at least, to how he received his privileges
9 and what was required. And that goes well beyond any prior
10 issues.

11 And, then beyond that, Your Honor, I believe
12 Plaintiff's expert, first Ms. Voigt, testified there were
13 different --- that it wasn't --- in her opinion necessarily
14 to get a higher rating JCAHO --- and we pointed out some
15 of that itself. But I think showing what other hospitals
16 received --- and let the jury decide whether it is
17 difficult or not.

18 And, secondly, Your Honor, I think you did hear
19 correctly on cross examination on Dr. Eric DeMaria he was
20 asked about whether Duke University had gotten a one rating
21 for credentialing consistently. And, while no documents
22 were entered into evidence he acknowledged that that
23 certainly was not the case just on cross. The jury has
24 heard this information. It is relevant to what we are
25 talking about here, which is the credentialing and

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1 privileges of process at the hospital.

2 **The Court:** And you propose to give them McLeod
3 based upon the fact that Dr. Barker has practiced at
4 McLeod?

5 **Mr. Driggers:** Well, particularly for that, Your
6 Honor, but I think he has experience in JCAHO reviews.
7 He's already testified about what Carolina Pines has
8 received in regards to their credentialing. He's testified
9 that he has been told by other doctors that they are more
10 stringent, they are more difficult than others. And so we
11 think he is qualified to even look at other JCAHO reports,
12 and tell the jury what other hospitals have received.

13 **The Court:** At our bench conference Mr. Corbin
14 took the position that he had asked for this information in
15 2004, whatever you intended to use at trial, and has no
16 response to his Interrogatory or Request for Production.
17 What do you say to that?

18 **Mr. Driggers:** We had produced these again when
19 --- First of all we say all of these reports are publically
20 available. It is nothing that I have gotten from the
21 hospital that was provided to me that somehow some
22 secretive --

23 **The Court:** I am sure the point is whether you
24 intend to use at trial is what the questions pertained to.

25 **Mr. Driggers:** I did provide these to Mr. Corbin

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1 when I saw him, and intended to use them, which was not
2 during the trial, but it was within --- certainly within
3 the thirty days before trial. It may have been a couple of
4 weeks, but they were mass produced to him prior to trial.
5 So he's had Notice that was it was at least part of our
6 intention. That's how it was identified, here are exhibits
7 from JCAHO that we intend to use at trial.

8 **The Court:** All right. Mr. Corbin, do you have a
9 response?

10 **Mr. Corbin:** Dr. Barker working at McLeod twenty
11 years ago is not an appropriate foundation, and is nothing
12 but gross hearsay. August of 2004, I requested this
13 information and I got none. They did produce a big pile of
14 stuff a couple of days before the trial started.

15 Your Honor, excluded this information with Dr.
16 DeMaria and Ms. Voigt, appropriately so as frank hearsay.
17 It is not material, what McLeod or any other hospital does.
18 The only issue in this case is whether or not this hospital
19 properly credentialed Dr. Mincheff, no other issue.

20 The only issue in this case is whether or not
21 this hospital properly credentialed Dr. Mincheff. No other
22 issue.

23 **The Court:** What about the Defendant's position
24 that Ms. Voigt said it was easy to get a JCAHO rating, and
25 I am paraphrasing, but what's your response to that?

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1 **Mr. Corbin:** I don't recall that. And I don't
2 think that gives a right to violate the Interrogatories. I
3 don't think it gives him a right to put someone on the
4 witness stand and ask about any hospital in the world. He
5 has no information. He never received surgical privileges
6 from anybody. That is an issue in this case. I asked him
7 twenty-years ago, you worked at the hospital therefore,
8 let's talk about 2003; is inappropriate.

9 If I had realized this was going to be a big
10 issue, I would have deposed JCAHO, I would have had McLeod
11 to come. They did not list a single witness from McLeod to
12 document or verify these information, or what JCAHO
13 actually did, and I think it is just gross, gross hearsay.

14 **The Court:** Counsel, one more time back to the
15 issue. What is it that you say Ms. Voigt said about the
16 JCAHO standard?

17 **Mr. Corbin:** Just one moment.

18 **The Court:** Dr. Barker, we have had four days of
19 testimony with multiple witnesses who have testified on
20 various points. And it's hard to remember specifically on
21 each point.

22 What is it that you say the witness said?

23 **Mr. Driggers:** Your Honor, first of all she
24 clearly said JCAHO was the standard of care for hospitals.
25 That was her own testimony at deposition and at trial. But

1 no one confronted Carolina Pines' rating as being
2 consistently the best under her own standard. Her response
3 to that was, well, that's ah --- that's not, --- that
4 doesn't necessarily tell you anything, or something to that
5 effect.

6 So we think that allows us to say what does a top
7 rating from JCAHO mean? The jury certainly doesn't know
8 that. Once more, Dr. Barker has been designated with no
9 objection as an expert for hospital practices. So he's
10 certainly in that capacity can look at ratings from other
11 hospitals and tell the jury his opinion.

12 **Mr. Corbin:** What Ms. Voigt said was, JCAHO
13 would come in, but would not review every single case.
14 That JCAHO in her experience would come in and review a few
15 of those.

16 **The Court:** Fifteen files, I think she said.

17 **Mr. Corbin:** Something like that. I think it
18 was a percentage of fifty-five. I just don't think this
19 Court ought to allow the defense to talk about any other
20 hospital that they want to pick and choose with no proper
21 foundation. It is nothing but gross hearsay.

22 **The Court:** All right. Counsel, I'm going to
23 again sustain the objection for these reasons. If we had a
24 JCAHO witness here who could talk about the specifics, and
25 the formula used for giving a specific number, and the

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1 formatting of those numbers, and how that works, then the
2 jury would be able to appreciate and understand what it
3 means. But for the same reasons that I previously excluded
4 I will again exclude the evidence. Your record is clear.
5 The proffer is made. You can tell me if you will, what the
6 number is for McLeod so the record will show it.

7 **Mr. Driggers:** McLeod had received a two, and
8 the other hospitals had received, ones from time to time,
9 but no other hospital I have ever found in South Carolina
10 has gotten consistently one ratings on credentialing.

11 **The Court:** All right. If you have an exhibit
12 that you want to mark as Court's exhibit, I will be glad to
13 let you do that.

14 **Mr. Driggers:** I just have here --- This is just
15 a summary of the hospitals.

16 **The Court:** We will mark that as The Court's
17 Exhibit.

18 **Whereupon, Court's Exhibit**

19 **Number 3 Was Marked and**

20 **Admitted into the Record.**

21 **The Court:** The Court will be in recess for
22 approximately fifteen minutes. If you want to take a break
23 now, you are free to do so. Please watch your step as you
24 leave that witness box. And, I am going to ask you not to
25 speak with either side lawyer about the case, because you

1 are under testimony.

2 This Court will be in recess.

3 (Whereupon, a recess was taken from 10:07
4 a.m. until 10:33 a.m.)

5 **The Court:** Are we ready to proceed? Let's
6 bring the jury in. All right. Mr. Medlin.

7 **Bailiff:** All right, sir.

8 (Whereupon, the jury enters the courtroom at
9 10:33 a.m.)

10 **The Court:** Ladies and gentlemen, welcome back
11 to the courtroom. I do want to give you a personal update
12 on Mr. Samuel. We heard from Mr. Samuel. He actually
13 came, and I had a chance to speak with him during the
14 break. He works swing shifts, he worked third-shift last
15 night, got off at 7:00. He said he laid down for a few
16 minutes to rest, woke up a little bit after 9:20. And for
17 that reason --- I appreciate the fact that he was
18 attempting to continue to serve and work at the same time,
19 which would have been extremely difficult for him. We
20 released him. I just wanted you to know that's personally
21 he is fine except for the oversleeping issue, and
22 understandably so.

23 All right. As you will recall, we were in direct
24 examination. Mr. Driggers, you may proceed.

25 **Mr. Driggers:** Thank you, Your Honor. One

001598

1 housekeeping matter, Your Honor. He identified Exhibit
2 Number 5, which is the privileges. We would like to offer
3 that in evidence.

4 The Court: Are there any objections?

5 Mr. Corbin: None.

6 The Court: All right. Defendant's Exhibit
7 Number 5 in evidence without objection.

8 Whereupon, Defendant's

9 Exhibit Number 5 was marked

10 and admitted into the Record.

11 The Court: The Court sustained the previous
12 objection which had been made right at the time you left
13 the courtroom.

14 So go to your next area, counsel.

15 Mr. Driggers: Thank you, Your Honor.

16 Q. (By Mr. Driggers) Dr. Barker, again when JCAHO comes
17 into a hospital in terms of credentialing, what is it
18 they actually review?

19 A. They pick files of a few doctors and basically look
20 through them to basically make sure everything is
21 correct.

22 Q. Now Doctor, this case involves a general surgeon, Dr.
23 Tom Mincheff, you understand that, correct?

24 A. Correct.

25 Q. And Dr. Mincheff does have privileges to practice his

001599

1 specialty at Carolina Pines?

2 A. He does.

3 Q. And has he ever been denied privileges, to your
4 knowledge as chief of staff going back ten years?

5 A. Not to my knowledge.

6 Q. Dr. Barker, you also understand that we are here today
7 for a case involving Ms. Ruth Person.

8 A. Correct.

9 Q. Did you ever treat Ms. Person yourself?

10 A. Yes, I did.

11 Q. When was that that you were her doctor?

12 A. Well, in reviewing some medical records I think as
13 early as 1985, if I remember correctly.

14 Q. Okay. So that would have been when you worked at Care
15 South?

16 A. Well, at the time it would have been Society Hill
17 Family Health Clinic, I think.

18 Q. Okay. And what had you treated her for, as best you
19 can remember?

20 A. Well, basically, pretty much anything that came up
21 medically. I remember one thing that she did have was
22 fairly severe Reflux Disease. Not fairly severe,
23 actually quite severe.

24 Q. Doctor, can you identify Exhibit 10?

25 A. This is a Report of an Emergency Room visit to

001600

1 Carolina Pines on April of 2001.

2 Q. Okay.

3 Mr. Driggers: Your Honor we would offer --

4 Mr. Corbin: No objection.

5 The Court: Without objection. Defendant's
6 Exhibit Number 10 admitted.

7 Whereupon, Defendant's

8 Exhibit Number 10 was

9 marked and admitted into
10 the Record.

11 The Court: Mr. Driggers, you may continue.

12 Q. (By Mr. Driggers) What was the occasion for Ms.
13 Person visited to the Emergency Room on that date?
14 What was the date you said?

15 A. April 8, 2001.

16 Q. What was the occasion for her visiting the Emergency
17 Room on that day?

18 A. Her chief complaint was flu-like symptoms.

19 Q. See if you can identify this document, Exhibit 11.

20 A. This is a Record of Admission on April 7 to Carolina
21 Pines.

22 Q. Who admitted Ms. Person to Carolina Pines that day?

23 A. I did.

24 Q. And what was the reason for the admission?

25 A. Well, listed on here is Hypoxia and Hypokalemia,

001601

1 Dehydration.

2 Q. So you were treating her for those conditions?

3 A. According to this.

4 Q. Can you identify Exhibit 12?

5 A. It is a consultation by Dr. Alan Smith on Ms. Person,
6 dated April 8, at Carolina Pines Regional Medical
7 Center.

8 Q. Who requested that consultation?

9 A. Most likely I did.

10 Q. Explain to the jury again, when a doctor asks for a
11 consultation, what is that?

12 A. Basically asking a specialist for help.

13 Q. What type of doctor was Dr. Alan Smith?

14 A. A Pulmonologist specializes in lung diseases.

15 Q. What did his consultation produce?

16 A. He made some recommendations on antibiotics, suggested
17 a barium swallow, other medication suggestions, he
18 felt that she was suffering from aspiration pneumonia.

19 Q. First of all, why did you feel the need to ask for a
20 specialist to come in and see Ms. Person at that time?

21 A. I would imagine she probably wasn't improving as
22 rapidly as was expected with a simple case, like was
23 said from the Emergency Room documents it was felt
24 that she possibly had the flu. It apparently appeared
25 to be more than this.

001602

1 Q. Explain for the jury, you said Dr. Smith was concerned
2 about aspiration pneumonia.

3 A. That is what he listed as one of the diagnoses.

4 Q. What is that?

5 A. Basically that would be some of the stomach contents
6 entering the lungs.

7 Q. How was that related to --- I believe you referred to
8 GERDS earlier.

9 A. GERDS, is Gastroesophageal Reflex Disease. In other
10 words it means, that some of the stomach contents,
11 reflux, comes back into the esophagus.

12 Q. What is Pneumonia, what does that mean?

13 A. Well, Pneumonia is disease of the lungs, usually
14 bacterial.

15 Q. If Aspiration Pneumonia is not treated, what can
16 happen to a patient?

17 A. You could ultimately die. Aspiration Pneumonia
18 usually involves --- can involve a Bacterial
19 Pneumonia. It can also involve Chemical Pneumonitis,
20 inflammation of the lung tissue basically from stomach
21 acid, and other digestive products.

22 Q. What did Dr. Smith say in his consultation should be
23 done about this aspiration?

24 A. I would suggest an urgent GI evaluation.

25 Q. Okay. See if you can identify Defendant's Exhibit 13,

001603

1 particularly the bottom note on the note.

2 A. This is a copy of a Progress Record from the Medical
3 Record of Ms. Person, dated April 10 by Dr. Smith.

4 Q. That is the same physician who had done the earlier
5 consultation you referred to, correct?

6 A. Correct.

7 Q. What does he say there in the Progress Note about Ms.
8 Person?

9 A. Barium Swallow showed significant free-flowing GI
10 reflux. Patient reports long history of trial with
11 Meds. without true success, recommend surgical
12 evaluation. And then in parentheses says, i.e.,
13 request Dr. Mincheff.

14 Q. Okay. What does that mean when some of those medical
15 terms, free-flowing I think you said?

16 A. It would just be an indication that the reflux is
17 pretty severe.

18 Q. And, also the fact that there is Aspiration Pneumonia.
19 Is that an indication that it is severe?

20 A. It pretty much, there is a ring of muscular tissue
21 that basically keeps the stomach contents in the
22 stomach. And if that is not working very well, it can
23 come back out the wrong side. And if it is severe
24 enough it can get into the lungs.

25 Mr. Driggers: Your Honor, we would like

001604

1 Defendant's 13 be admitted into evidence.

2 Mr. Corbin: No objection.

3 The Court: All right, without objection, 13 in
4 evidence for Defense.

5 Whereupon, Defendant's

6 Exhibit Number 13 was marked

7 and admitted into the Record.

8 Q. (By Mr. Driggers) Dr. Barker, can you identify
9 Defendant's Exhibit 14?

10 A. This is a Discharge Summary dated April 13 on Ms.
11 Person at Carolina Pines Regional Medical Center.

12 Q. And who generated that?

13 A. I did.

14 Q. What happens on discharge, what was your note?

15 A. Patient will return on April 16 for a PH probe study
16 and will see Dr. Mincheff on April 18.

17 Q. Did you agree with Dr. Smith's assessment request for
18 a surgical consultation?

19 A. Yes.

20 Q. Do you normally discuss --- Have you treated GERDS or
21 Gastro Reflux Disease in other patients?

22 A. It is really pretty common. But not as severe as Ms.
23 Person.

24 Q. Is a surgical consultation something that you normally
25 have for somebody suffering from GERDS?

001605

1 A. Typically, no. It would be for severe cases.

2 Q. How is it treated short of surgery, how would you
3 treat GERDS?

4 A. You could use medications that help reduce the acidity
5 of the stomach acid, or stomach contents. There is
6 also some medicine you can use to help with the
7 propulsion of the food and stomach contents out into
8 the intestines. Reposition patient, have them sit
9 upright for awhile after eating.

10 Q. Again, how was it determined that Dr. Mincheff would
11 be the doctor to review Ms. Person?

12 A. From the record it was what she requested.

13 Q. Doctor, have you referred other patients of yours for
14 surgical consultation?

15 A. Frequently.

16 Q. What your opinion of Dr. Mincheff, as a surgeon?

17 A. I think he is a --- Well, he's quite compassionate.
18 He is very competent, and he is pretty conservative.

19 Q. Dr. Barker, I would like to see if you can identify
20 Exhibit 15.

21 A. This is a consultation note on Ms. Person from April
22 25, 2001.

23 Q. Okay. And who wrote that note?

24 A. I did.

25 Mr. Driggers: Your Honor, we would ask

001606

1 Defendant's 14 and 15 be admitted into evidence.

2 Mr. Corbin: No objection.

3 The Court: Defendant's Exhibit Numbers 14 and
4 15 then admitted into evidence without objection.

5 Whereupon, Defendant's
6 Exhibit Numbers 14 and 15
7 were marked and admitted
8 into the Record.

9 The Court: Mr. Driggers, you may continue.

10 Mr. Driggers: I have no further questions, Dr.
11 Barker. Please answer any questions of Mr. Corbin.

12 The Court: Cross examination.

13 Cross Examination by Mr. Corbin

14 Q. Dr. Barker, how long have you been a credentialing
15 expert?

16 A. Well, frankly I don't consider myself an expert in
17 much of anything. I have had a lot of experience in
18 raising children, but --

19 Q. Let's talk about your credentialing expertise. Are
20 you an expert?

21 A. As I said, I don't really consider myself as an
22 expert. I am knowledgeable about it.

23 Q. Yes, sir. And, in fact, when I took your deposition
24 May 27, 2005, you were honest with me and admitted you
25 are certainly not an expert in credentialing, correct?

1 A. I don't consider myself an expert in credentialing.

2 Q. But it has been your job as Chairman of the MCE for
3 ten years, correct?

4 A. What's been my job?

5 Q. You have been in charge of Credentialing and
6 privileging and Chairman of the Committee?

7 A. I am Chairman of the Committee of MEC, not Chairman of
8 the Committee of Credentialing Committee.

9 Q. You don't even consider yourself to be the most
10 knowledgeable person at Carolina Pines about
11 credentialing and privileging, do you?

12 A. Not necessarily.

13 Q. If you do, tell me. Are you the most knowledgeable?

14 A. I have not really interviewed everybody there. I
15 don't know that I'm the most knowledgeable, no, sir.

16 Q. Ms. Enoch, she's a clerk.

17 A. She is a Medical Staff Secretary.

18 Q. Is she, the Clerk?

19 A. She's a Medical Staff Secretary.

20 Q. Do you treat her like a clerk?

21 A. Not particularly.

22 Q. And, in fact, wouldn't you agree, Dr. Barker, that you
23 believe Ms. Enoch is the most knowledgeable person at
24 Carolina Pines about Credentialing and Privileging
25 Procedures and Procedures and the process, and what

001608

1 qualifications a doctor must have to meet the by laws,
2 correct.

3 A. I would not agree with all of that.

4 **Mr. Driggers:** I just want to object to
5 relevance, Your Honor. We have already heard from Ms.
6 Enoch.

7 **The Court:** Overruled. You may answer.

8 A. (By Dr. Barker) I would agree with the first two
9 aspects, not the third part.

10 Q. Which part do you disagree with?

11 A. What was the third part of your question?

12 Q. She is the person that is most up on credentialing
13 policies and procedures, and what qualifications a
14 doctor must have to obtain privileges at Carolina
15 Pines, fair enough?

16 A. She would know what qualifications a doctor would have
17 it would not be her job to determine if they are met
18 or not.

19 Q. In fact, when I asked you who the most knowledgeable
20 person was at Carolina Pines would be about
21 Credentialing and Privileging, you told me that would
22 be Ms. Enoch, correct?

23 A. I don't think she would be the most knowledgeable one
24 in regards to the procedure.

25 Q. Is anything more important than credentialing

001609

1 procedures, in the process?

2 A. More important? Well, verification, a lot of things
3 that are important.

4 Q. You not only told me she was the most knowledgeable
5 person at Carolina Pines about procedures, she also
6 was the most knowledgeable about methods and all the
7 requirements that a physician must have to obtain
8 privileges, fair enough?

9 A. She is the one that collects all of the data to make
10 sure it is all complete.

11 Q. And she would know all of the requirements a physician
12 must have to obtain privileges, correct?

13 A. Yes.

14 Q. Ms. Enoch is the most knowledgeable person, and you
15 might be the second most knowledgeable person,
16 correct?

17 A. I am not sure I can answer that.

18 Q. Would you put yourself in second position?

19 A. I am knowledgeable about it. It is hard to rate.

20 Q. In addition, Dr. Barker, wouldn't you agree that as
21 chairman of the MEC that you have a duty to know what
22 the Joint Commission requires of hospitals, correct?

23 A. Well, I certainly don't have all of their requirements
24 memorized. But I am knowledgeable in many aspects.

25 Q. You are aware that Carolina Pines must abide by Joint

001610

1 Commission Regulations and Substandard, correct?

2 A. That would be necessary if they wished to be
3 accredited.

4 Q. At Carolina Pines you must abide by the standards of
5 JCAHO?

6 A. If you are going to be accredited that is correct.

7 Q. You have been in charge of credentialing as the
8 Chairman for about ten years now. Tell this jury if
9 you know of any better place to look to see if
10 credentialing is appropriate by looking at the
11 national standards of JCAHO, But I can't find a better
12 place to look?

13 A. I can't think of one.

14 Q. Isn't it true further, Dr. Barker, you have never even
15 read the Joint Commission Standards, is that fair?

16 A. I have not read them through and through, no.

17 Q. SCMEC Chairman and also the Chief of Staff for a
18 decade or so, you had better know what the Joint
19 Commission requires, correct?

20 A. Many of my duties and responsibilities are delegated.

21 Q. When you delegate, do you also supervise the person to
22 whom you delegate?

23 A. On a day-to-day basis, no.

24 Q. How can you delegate --- Once you have delegated,
25 does that mean you have no responsibility to make

001611

1 certain Carolina Pines abides by the regulation?

2 A. It would depend on the incident. There would be times
3 when I would not feel myself qualified as much as some
4 of the people I may delegate responsibilities to.

5 Q. Dr. Barker, how can you be the person in charge of
6 Credentialing and Privileges and delegate away some of
7 your responsibilities and not even know what the Joint
8 Commission requires of you?

9 A. First of all, I'm not in charge of the Credentialing
10 Committee. That is where probably a lot of the nuts
11 and bolts work takes place of credentialing.

12 Q. The question was: If you don't what you are required
13 to do under the guidelines, how can you supervise
14 those of whom you delegate the duties?

15 A. I think that they are more qualified in some instances
16 than I am.

17 Q. Isn't it true that when I took your Deposition you
18 could not even tell me, after holding that position
19 for ten years, what the Joint Commission required
20 about the re-application period being two years? You
21 did not know, did you?

22 A. I did not know what?

23 Q. You did not know that the Joint Commission required
24 Carolina Pines every two years to reconsider
25 credentialing, you weren't aware of that?

1 A. I am aware of that.

2 Q. Were you aware when I asked you that question?

3 A. I don't remember you asking me that question.

4 Q. Dr. Barker, would you agree that nothing is more
5 important at Carolina Pines than properly
6 Credentialing and Privileging Physicians in terms of
7 patient safety, fair?

8 A. No.

9 Q. Is that fair?

10 A. No.

11 Q. Would you agree that the most powerful tool, that
12 Carolina Pines does have, to prevent unqualified
13 surgeons from doing operations he ought not to do
14 would be privileges? Pretty powerful tool?

15 A. That's reasonable.

16 Q. Do you know of any, more powerful tool?

17 A. Not offhand.

18 Q. Isn't it true, Dr. Barker, that you held the
19 Chairmanship of the Credentialing Committee for ten
20 years or so, because no one else at Carolina Pines
21 even wants that job?

22 A. I have never been chairman of the Credentialing
23 Committee.

24 Q. What is your function on the committee, what position
25 do you hold?

001613

1 A. Which committee is that?

2 Q. The Medical Executive Committee.

3 A. I'm the Chief of Staff, so therefore I run the Medical
4 Executive Committee Meetings.

5 Q. You run the meetings?

6 A. Correct.

7 Q. What is that title called?

8 A. Chairman of the Medical Executive Committee.

9 Q. So you were or have been the Chairman of the MEC for
10 more than ten years, correct?

11 A. This is my 10 year.

12 Q. And the reason for the MEC going on ten years is
13 because no one at Carolina Pines even wants that job,
14 correct?

15 A. I would not say that.

16 Q. Do you recall your deposition testimony when I took
17 your deposition?

18 A. I recall the event, yes, sir.

19 Q. Do you recall me asking you this particular question?

20 **Question:** Do you belong to
21 any particular organizations
22 specifically involving
23 Administration or credentialing
24 Issues?

25 And your answer then was:

001614

1 Not specifically, no.

2 Question: Do you belong to
3 any particular --- How long have
4 you ---- How have you held this
5 particular position for so long,
6 talking about your chairmanship?

7 Do you recall your answer?

8 Answer: No.

9 Q. Could you read line 13, on Page 69?

10 A. Nobody else would take it.

11 Q. Was that the truth then?

12 A. It was not really meant seriously.

13 Q. You were joking?

14 A. Yes.

15 Q. Has anybody else tried to get the chairmanship
16 position away from you?

17 A. Chairmanship of the MEC?

18 Q. Yes, sir.

19 A. That is not really what you are --- there have been
20 people who what would you say, who run for Chief of
21 Staff.

22 Q. Doctor, how do you decide at Carolina Pines whether or
23 not a particular policy is good or bad?

24 A. It is discussed in committees I would assume. I am
25 not real sure what you mean.

001615

1 Q. Involving Laparoscopic Nissen Fundoplication
2 procedures in the application, has anything changed
3 since 1996?

4 A. Well, I am not part of the Surgical Committee. So I
5 am not sure.

6 Q. Let's talk about what you do know in terms of
7 Credentialing and Privileging being the Chairman of
8 the Committee.

9 A. I am not the Chairman of the Credentialing Committee.

10 Q. You're the Chairman of the MEC, correct?

11 A. That's correct.

12 Q. You said no to the Credentialing Committee. When did
13 that come about ---

14 A. There has always been backup

15 Q. Being the Chief of Staff, and on the MEC committee,
16 the Chairman of the MEC Committee, are you aware of
17 any changes at all in any policies of Carolina Pines
18 involving Laparoscopic Nissen Fundoplication
19 Procedures since 1996?

20 A. Well, frankly I am not aware of any policy that
21 specifically addresses that procedure at all.

22 Q. Fair enough. Do you think there ought to be a policy
23 covering Laparoscopic Nissen Fundoplication
24 procedures?

25 A. I would leave that to the Surgical Committee.

001616

1 Q. Leave it to Dr. Mincheff?

2 A. The Surgical Committee.

3 Q. Leave it to his partner?

4 A. The Surgical Committee.

5 Q. Let's talk about Department Heads of Surgery. You
6 indicated to the jury that during the privileging
7 process it goes to Ms. Enoch first, right?

8 A. An application?

9 Q. Yes, sir.

10 A. Correct.

11 Q. From there whatever she does, whether it is clerical
12 or whatever else Ms. Enoch, the next step is that it
13 goes to the Department Head of Surgery involving a
14 surgical procedure, correct?

15 A. Correct.

16 Q. Dr. Mincheff in 1998, applied for Surgical Privileges
17 to do Laparoscopic Nissen Fundoplication procedures,
18 correct?

19 A. I will take your word for it.

20 Q. Was his partner the Head of Surgery in 1998?

21 A. I don't know.

22 Q. In 1998 his partner was the Department Head, do you
23 know who was?

24 A. No, I do not.

25 Q. Dr. Mincheff himself was Head of Surgery in 1998 when

001617

1 he reapplied for the privilege, correct?

2 A. I will take your word for it.

3 Q. There is no policy at Carolina Pines preventing Dr.

4 Mincheff from voting on his own privileges, is there?

5 A. I doubt that he would.

6 Q. Sir, the question was, is there any policy at Carolina

7 Pines preventing him from doing that?

8 A. Not that I am aware of.

9 Q. Is it a pretty good idea not to have a policy to

10 prevent someone from voting for their own privileges?

11 A. I think you can rely to a certain extent on their

12 integrity.

13 Q. To an extent, correct?

14 A. Yes.

15 Q. Dr. Mincheff, he reapplied in the year 2000, every two

16 years, correct?

17 A. I would assume that would be the case. That's the way

18 it usually works.

19 Q. And the year 2000 Ms. Enoch, would gathered

20 information from Dr. Mincheff and pass it along to the

21 head of surgery for a yea or nay, is that correct?

22 A. Ms. Enoch would not have been the Medical Staff

23 Secretary at that time.

24 Q. Whoever it was would pass it onto the head of surgery,

25 correct?

001618

1 A. Yeah, but if it was a particular person, then it would
2 go to the Vice Chairman.

3 Q. Do you know who the Head of Surgery was in 2000 when
4 Dr. Mincheff reapplied for the second time to do Ms.
5 Person's surgery?

6 A. No, I do not.

7 Q. In fact, it was Doctor Cooler, his medical partner,
8 correct?

9 A. I'm sorry, I did not hear you.

10 Q. It was Doctor Cooler, his medical partner, correct?

11 A. Well, Dr. Cooler is his medical partner, yes.

12 Q. I would like to show you, so you are familiar with who
13 the department heads were. These are Interrogatory
14 answers provided by your attorney. Could you look at
15 that and tell the jury ins 1998 who the Head of
16 Surgery was?

17 A. In 1998?

18 Q. Yes, sir.

19 A. Dr. Mincheff.

20 Q. In 2000, who was Head of Surgery when Dr. Mincheff
21 reapplied the second time?

22 A. Dr. Cooler.

23 Q. And you agree Dr. Cooler is Dr. Mincheff's partner,
24 correct?

25 A. Yes.

1 Q. In 2002, who was the Head of Surgery that approved or
2 recommended Dr. Mincheff's privileges?

3 A. Dr. Bannister was the Head of Surgery at that time.

4 Q. Again, we are dealing with Dr. Mincheff's medical
5 partner, correct?

6 A. Correct.

7 Q. 2002, who was the Department Head of Surgery?

8 A. 2002, Dr. Bannister.

9 Q. Again, he's Dr. Mincheff's partner correct?

10 A. Yes.

11 Q. 2004, when Dr. Mincheff reapplied for the third or
12 fourth time, was his medical partner the head of
13 surgery?

14 A. Dr. Bannister was.

15 Q. Can you tell this jury it is a good idea ---Let me ask
16 it this way. Tell the jury if you believe allowing
17 Dr. Mincheff's partner to say yea or nay to his
18 application protects patient's safety, how does it do
19 it?

20 A. Their safety is protected by the fact there is a
21 committee decision, not one individual.

22 Q. Does Carolina Pines have any concern at all or any
23 policies to prevent conflict of interest? In other
24 words, letting doctors or even the doctor himself give
25 a yea or nay to privileges.

1 A. The first part of your question was, does Carolina
2 Pines have any concern regarding that?

3 Q. Any conflict of interest concerns, or any policies to
4 cover --

5 A. -- There is a policy of conflict of interest for the
6 Board of Trustees. I'm not so sure there is one for
7 the Medical Staff.

8 Q. The Board of Trustees don't do the operations Dr.
9 Mincheff does, correct?

10 A. They approve the privilege.

11 Q. There is no conflict of interest policy preventing
12 conflicts of interest of privileging at Carolina
13 Pines, correct?

14 A. I don't believe there is.

15 Q. Why not?

16 A. You will have to ask the Administration.

17 Q. You have been in charge of the MEC as Chairman for ten
18 years or so.

19 A. That is correct.

20 Q. Have you ever voiced any concern at all that when Dr.
21 Mincheff applied for privileges either himself or his
22 medical partners give the yea or nay?

23 A. As I said, this is a committee decision, not one
24 individual.

25 Q. Has the committee ever rejected the Head of Surgery's

001621

1 recommendation to give someone a privilege?

2 A. Well, I am not sure. The Head of the Department is
3 not going to give the privileges unless the Committee
4 approved it. So, I am not real sure how to answer
5 that question.

6 Q. Let me break it down for you. The first decision in
7 the privileging process it goes to Ms. Enoch or
8 someone in her position.

9 A. She does not make a decision.

10 Q. She decides to give it to the Head of Surgery,
11 correct?

12 A. She has to give it to the head of whoever, correct?

13 Q. The Head of Surgery, he or she, can stop that process
14 by saying, Committee, I know this person, he's not
15 qualified for doing the operation, correct?

16 A. I'm not so sure that would happen without discussing
17 it with the committee.

18 Q. Dr. Barker, in your ten years on that committee, have
19 you ever seen any circumstance where the Head of
20 Surgery recommended a surgeon for a privilege and the
21 committee went against him?

22 A. Well, as I said, I think you kind of got things
23 backwards. I guess no would be the answer. But
24 that's not the way it works.

25 Q. Dr. Barker, informed consent in terms by Ms. Person's

001622

1 medical care, what does, informed consent mean?

2 A. That a patient is informed regarding the risk and
3 benefits of whatever particular procedure or event is
4 planned.

5 Q. You provided some medical care to Ms. Person after Dr.
6 Mincheff's surgery, correct?

7 A. Not that I recall. I think she was transferred
8 shortly after surgery.

9 Q. You were asked about your Consultation Report on April
10 25, 2001, by Carolina Pines attorney. Do you remember
11 reading that?

12 A. Yes.

13 Q. Do you agree that, in fact, you were in charge of the
14 management of her medical care after the surgical
15 consultation?

16 A. Medical care, not surgical post-op care.

17 Q. But that was your function because of Ms. Person's
18 complications from the surgery, you were the manager
19 of her medical care in the hospital, correct?

20 A. Her medical care, not her surgical post-op care.

21 Q. She almost died, right?

22 A. As I understand it, she had a very difficult time.

23 Q. You had been Ms. Person's doctor since the 1980's,
24 fifteen or twenty-years, correct?

25 A. Correct.

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1 Q. Was Ms. Ruby more than just a patient to you during
2 those fifteen or twenty-years?

3 A. I am not sure, what you mean.

4 Q. Was she a friend?

5 A. The only time I saw her, was when I provided medical
6 care to her. Did I care about her, yes, I did.

7 Q. Was she your friend?

8 A. That is a difficult question to answer. I saw her
9 only for her care. I am not sure what you mean by
10 friend.

11 Q. She was just a patient?

12 A. She was a patient. I wouldn't say she was just a
13 patient. That is very demeaning.

14 Q. Well, demeaning --- don't remember who she is too,
15 isn't it?

16 A. I remember her.

17 Q. And Dr. Mincheff would you, at least, agree that he is
18 your friend?

19 A. He is an associate. We don't socialize together.
20 And, I am not sure what you mean by a friend.

21 Q. If someone would ask you if Dr. Mincheff was your
22 friend, you can't answer that question, is that true?

23 A. It depends on what you mean by friend.

24 Q. How would you define a friend?

25 A. A friend would be somebody that you spend time with

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1 probably away from work, or see on social occasions.

2 Q. Okay. So can we agree you don't believe Dr. Mincheff
3 is your friend, correct?

4 A. We don't socialize together.

5 Q. Isn't it true that you saw, according to your records
6 if they are correct, Ms. Person several times after
7 her surgical complications at Carolina Pines, fair
8 enough?

9 A. I would have to review the record to make sure when.

10 Q. Do you realize you're coming to Court to testify about
11 Ms. Person, and you are aware of your consultation
12 report? Did you review the records?

13 A. Only pieces. My understanding was I was coming to
14 court regarding the credentialing process at Carolina
15 Pines.

16 Q. Ms. Person, you say that you remember her. And you
17 testified about her severe GERDS and other conditions
18 over the last fifteens years or so before the
19 operation, correct?

20 A. I saw her several times before the operation.

21 Q. Did you consider Ms. Person's condition after Dr.
22 Mincheff's surgery to be serious?

23 A. That is why she was transferred.

24 Q. In fact, she needed blood transfusions.

25 A. I don't recall.

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1 Q. You actually ordered these because of the pancreas
2 damage correct?

3 A. I don't recall specifically, no.

4 Q. You certainly did concur that she needed to be
5 transferred somewhere else for additional medical
6 care, correct?

7 A. I certainly did not argue against it. It was a
8 recommendation of her surgical team.

9 Q. Part of the team?

10 A. Her surgical team.

11 Q. And you agree, Ms. Person's best chance to survive
12 from her medical complications was to go elsewhere,
13 correct?

14 A. I did not disagree with the surgical team. That was
15 their recommendation.

16 Q. Ms. Person had known you since the 1980s. And if she
17 were to say she thought you were her friend, would you
18 agree with her?

19 A. That would be something for her to decide.

20 Q. Dr. Barker, I know now you say you remember Ms.
21 Person. When I took your Deposition in 2005, on May
22 27, a year or so ago, you could not remember who she
23 was, could you?

24 A. That is not exactly true.

25 Q. When I asked you, have you been Ms. Person's

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1 physician, do you know what you told me?

2 A. I don't recall.

3 Q. In fact, you said the name sounds familiar, but I'm
4 not sure. Is that not a fair assessment of what you
5 recollect?

6 A. If that's what the record says.

7 Q. If I asked you, you don't remember Ms. Person at all,
8 and your answer was, no recollection; is that fair?

9 A. I don't recall the specific hospitalization.

10 Q. In fact you told me after you said you did not know
11 who she was, I hope she's not insulted. Do you
12 remember telling me that?

13 A. No.

14 Q. Do you recall me asking you, do you recall ever
15 receiving any information about Ms. Person's surgical
16 complications, you ought to remember that, right?

17 A. This was about the time I quit having an office
18 practice, and did not follow-up patients outside of
19 the hospital.

20 Q. When I asked you, do you recall Ms. Person, do you
21 recall any information at all, because you did just
22 told me you did not know who she was. The next line
23 of question was, do you recall anything about Ms.
24 Person's medical complications, and you told me no,
25 right?

1 A. That is because probably I did not see her and follow-
2 up as an outpatient.

3 Q. Yes, sir, you were paid to treat her surgical
4 complications, correct, did you get paid for your
5 service?

6 A. I assume the people I work for did.

7 Q. Who would that have been?

8 A. Care South.

9 Q. I asked you how badly Ms. Person was hurt during the
10 surgery, and you told me you had no remembrance,
11 correct?

12 A. That's correct. I wasn't in the surgery, I don't
13 remember, or know how, or when she was hurt.

14 Q. I even asked you after you told me you did not know
15 who she was, you did not remember anything about any
16 complications, you did not treat her. Then I said, do
17 you know anything about this lawsuit? Have you talked
18 to Dr. Mincheff about it? And what was your answer
19 then?

20 A. No. I assume.

21 Q. And you gave a deposition. And you got a subpoena to
22 appear, correct?

23 A. To appear here?

24 Q. No, sir, for your deposition in 2005.

25 A. Yes, I did.

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1 Q. You saw where Carolina Pines was involved in
2 litigation concerning Dr. Mincheff's care, right?

3 A. From my understanding, the deposition wasn't in
4 regards to Carolina Pines credentialing process.

5 Q. Did it have anything to do with Ms. Person's care?

6 A. She was a patient the suit was from.

7 Q. You knew that. But it is your testimony that I didn't
8 speak to Dr. Mincheff at all about it, correct?

9 A. That is correct.

10 Q. Have you spoken to him since about it?

11 A. Not really.

12 Q. Dr. Barker, as the Chief of Staff you have certain
13 duties under Carolina Pines By laws to monitor what
14 happens at the hospital, correct?

15 A. You can say that.

16 Q. What would you say?

17 A. I'm not sure what you're asking.

18 Q. Under the by laws, you have a duty to monitor surgical
19 activities in the hospital, correct?

20 A. Not directly.

21 Q. Do you do anything in credentialing to monitor
22 surgical activities at the hospital?

23 A. I am not part of the Credentialing Committee.

24 Q. Whatever your position is, when you sit as the
25 Chairman of the MEC, and I thought you were familiar

1 with that process, does surgical care have anything to
2 do with credentialing?

3 A. Mr. Corbin, I am really not sure what you are asking.

4 Q. If you don't know if you have any duty at all, that is
5 a good answer. The question was, do you have any
6 duties or responsibilities being the Chief of Staff at
7 the hospital to monitor clinical activities, yea or
8 nay?

9 A. Yes.

10 Q. What are your duties?

11 A. Well, I am Chairman of the MEC, I am part of the Board
12 of Trustees, I meet with Administration on occasions,
13 once in awhile I may serve as liaison between the
14 physician and the Administration. Many of my duties
15 and responsibilities that we have mentioned are
16 delegated.

17 Q. As the MEC Chairman and the Chief of Staff, given your
18 duties whatever they may be involving monitoring
19 surgeries, if you see something bad happen involving
20 surgery, are you supposed to do anything?

21 A. The Surgical Committee, part of their function is to
22 review complication, etcetera. It is not really my
23 position.

24 Q. You have a duty, don't you, if you are aware that a
25 surgical patient has had significant surgical

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1 complications to notify somebody, fair?

2 A. Surgical complications automatically come before the
3 Surgical Committee before they would reach the MEC. I
4 am not involved in the day-to-day operation of the
5 Surgery Department, nor do I assist the surgeon, nor
6 do I do surgery.

7 Q. The question is: If you know by seeing it with your
8 eyes or treating a patient with severe medical
9 complications from surgery, do you have any duty at
10 all to tell anybody?

11 A. Of course.

12 Q. Of course you do. Who would you tell?

13 A. Probably take it to the Head of Surgery or the Surgery
14 Committee.

15 Q. Did you do that in Ms. Person's case?

16 **Mr. Driggers:** Objection, Your Honor, relevance.
17 I would like to approach the Bench.

18 **The Court:** You may approach.

19 (Whereupon, a bench conference was held in
20 the presence of the jury but out of the hearing of the
21 jury.)

22 **The Court:** The specific question is overruled.

23 Q. (By Mr. Corbin) Dr. Barker, being Ms. Person's
24 managing physician when she had the surgical
25 complications, knowing that she had to be transferred,

1 because of the nature of her injuries, did you report
2 it to anybody?

3 A. Things like that would be reported if you felt like
4 nobody knew about it. I was not her managing doctor,
5 post-surgically. The surgeons handled her
6 postoperative care.

7 Q. So in other words you told no one, correct?

8 A. The surgeons were already well aware. There was no
9 point in telling anyone. It was not a secret.

10 Q. You told no one correct?

11 A. That would be correct.

12 Q. Informed consent. In general would you agree that a
13 doctor has to examine the patient, come to some kind
14 of conclusion as to appropriate treatments for any
15 conditions, explain potential treatment methods to the
16 patient, lay the options out, talk about complication
17 risk or other factors, and let the patient decide what
18 option to choose, fair?

19 A. Correct.

20 Q. If a patient gives a doctor informed consent to do
21 surgery, does that mean the patient gives consent for
22 medical malpractice?

23 A. I would not think so.

24 Q. In fact, you know so, correct?

25 A. I would not think they would. It doesn't make much

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1 sense.

2 Q. So, just because Ms. Person signed an informed Consent
3 Form, she was giving anyone the right to commit
4 medical malpractice and hurt her, correct?

5 A. I am sure she wasn't.

6 Q. The informed Consent Form, I would like to show you,
7 one, Ms. Person signed at Carolina Pines, dated April
8 16, 2001. In general, can you tell us what that
9 document is?

10 A. Informed Consent for Surgery, Anesthesia, and/or
11 Special Procedure.

12 Q. Is that one of Carolina Pines' documents regarding Ms.
13 Person's care?

14 A. It doesn't say Carolina Pines on it, but it does look
15 familiar.

16 Q. In fact, it relates back to your recommendation that
17 she have some of these tests performed on her,
18 correct, through Dr. Smith and Dr. Mincheff?

19 A. You could say that.

20 Mr. Corbin: Your Honor, we would move to
21 introduce this document.

22 Mr. Driggers: No objection.

23 The Court: Defendant's Exhibit Number 44 in
24 evidence without objection.

25 Whereupon, Plaintiff's

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Exhibit Number 44 was marked

and admitted into the Record.

Q. (By Mr. Corbin) Dr. Barker, we talked Exhibit 44 for a minute. That is Ms. Person's Informed Consent, correct?

A. Yes.

Q. When her name is at the top that means she is the patient and she is giving consent for a procedure, correct?

A. Her name is not at the top. But, yes, that would be correct.

Q. It says, myself?

A. Correct.

Q. That means Ms. Person?

A. Correct. I am not trying to be difficult. I am just trying to be truthful.

Q. I understand, and that's what I want you to do. That consent by Ms. Person on April 16, she gave the doctors permission to do precisely what to her?

A. Esophageal Mammography and PH probe study.

Q. And, in fact, the nurse, it appears, actually filled out the name of the procedure for which she was consenting, fair?

A. I'm not sure who Janice Harrell is.

Q. Whoever she is, she apparently filled out the form at

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1 the top under the identification of procedure, and put
2 those words, correct?

3 A. It looks like it.

4 Q. The patient does not fill out that line, does she?

5 A. I would not think so.

6 Q. So, under that particular form, Ms. Person gave a
7 doctor permission to do those procedures handwritten
8 on the document, correct?

9 A. Correct.

10 Q. Which doctor did she give the consent to do those
11 procedures?

12 A. Inform ssays, Mincheff comma Collier.

13 Q. Dr. Barker, that means either Dr. Mincheff or Dr.
14 Cooler had Ruthie's consent to do that procedure
15 listed above, correct?

16 A. Correct.

17 Q. In other words, either one of those doctors had to be
18 qualified to do that procedure, correct?

19 A. Correct.

20 Q. If neither one of those doctors is qualified to do the
21 procedure, or if one or the other, we have got
22 something wrong there, don't we, fair?

23 A. Right.

24 Q. Ms. Person, after she had those particular tests
25 performed, signed another consent at Carolina Pines to

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1 do surgery, correct?

2 A. I don't know.

3 Q. Would you look at that document please, and in general
4 tell us what it is?

5 A. Informed Consent for surgery, Anesthesia, and/or
6 Special Procedure.

7 Q. Does it say Ruth Person at the top?

8 A. It does.

9 Q. She is the patient, correct?

10 A. Correct.

11 Q. Just like the last form, can you tell us what is
12 handwritten on that document as the procedure to which
13 she consents?

14 A. Laparoscopic Nissen Fundoplication, Surgical Wrapping
15 of Portion of the Stomach around the Esophagus by
16 Cutting and Inserting Instrument.

17 Q. Pretty obvious that she is consenting to the
18 Laparoscopic Surgery, correct?

19 A. Right.

20 Q. Tell this jury beneath her consent for the
21 Laparoscopic Procedure, which doctors are required to
22 be privileged to do the Laparoscopic Surgery. Who are
23 the doctors?

24 A. The doctors listed are Mincheff, Cooler, and
25 Bannister.

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1 Q. But Bannister did not have those privileges, did he?

2 A. I would not know.

3 Q. You would know if Dr. Bannister does not even have
4 privileges to do that surgery on the Consent Form
5 something's wrong, correct?

6 A. I am not aware, of what his particular surgical
7 procedures --- what he has credentials for.

8 Q. I accept your lack of knowledge about that issue. But
9 the question was: Looking at that Consent Form, and
10 you just talked about the other one too, Dr.
11 Bannister, better have the privilege to do that
12 procedure, correct?

13 A. That would be true. I am sure he would not do a
14 surgery he is not qualified to do.

15 Q. If Dr. Bannister is listed under that Laparoscopic
16 Surgical Privilege, or Laparoscopic Surgical Consent
17 Identification, and he's listed there, somebody made a
18 mistake by putting his name there, correct?

19 A. If he's not privileged to do that, that is correct.

20 Q. That particular procedure to which Ruthie consented,
21 that is the one she had on April 25, right?

22 A. Well, I was not in the operating room. But I'm pretty
23 sure that was what was, at least, was started.

24 Q. You indicated, at least, it was started that way.
25 Would you agree under that Consent Form it better

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1 start that way, fair?

2 A. That would be what would be expected.

3 Q. Would you agree that Dr. Mincheff did not have the
4 privilege to do the Laparoscopic Nissen Procedure
5 under that Consent Form, surgery would not have
6 happened on April 25, fair?

7 A. Start that over again.

8 Q. You indicated Dr. Mincheff did the Laparoscopic
9 Procedure, at least, started out like he is required
10 to do, correct?

11 A. Correct.

12 Q. Would you agree if Dr. Mincheff did not have
13 Laparoscopic Privileges to do that surgery, looking at
14 that form there, would not have been surgery that day
15 correct?

16 A. Correct.

17 Q. Would you agree if Dr. Bannister did not have
18 privileges to do the Laparoscopic Nissen
19 Fundoplication Procedure on Ms. Person on that date,
20 and he was the doctor doing it there would be no
21 surgery, correct?

22 A. I think that is safe to say.

23 Q. The bottom line is, for whatever reason if those
24 doctors were not qualified to do it, and did not have
25 the privileges, Ms. Person would not have had that

1 surgery on April 25, fair enough?

2 A. If none of them had the privilege, that is right.

3 Q. Have you ever heard the expression, putting the cart
4 before the horse?

5 A. Yes.

6 Q. Dr. Barker, you're not privileged to do that
7 Laparoscopic Procedure, correct?

8 A. That is correct.

9 Q. You certainly don't want to tell this jury you know
10 anything about how to technically do this particular
11 surgery, fair enough?

12 A. That is true.

13 Q. But you do know as Chairman of the MEC, Chief of Staff
14 for ten years, the surgical procedure Dr. Mincheff
15 started to do on Ms. Person is a laparoscopically
16 advanced type of surgery, fair enough?

17 A. It is Laparoscopic Surgery. Beyond that, I could not
18 comment.

19 Q. Should you know whether or not it is advanced
20 laparoscopic?

21 A. I am not a surgeon. I don't think that is something I
22 would need to know.

23 Q. Is it important to know that when somebody applies for
24 procedures to do a particular type of surgery, whether
25 or not it is, in fact, considered an advanced or

1 complex type of surgery, is that important to know?

2 A. It would be important to know whether or not a person
3 is qualified to do it, whether or not it is advanced
4 --- I'm not real sure what your point is.

5 Q. You're familiar with Dr. Mincheff's education, and
6 training, and experience, correct?

7 A. In general.

8 Q. If we could go back and assume this is correct, in
9 1996, January 1996 --

10 Mr. Driggers: Your Honor, may we approach?

11 The Court: If you have an objection, go ahead
12 and state it, counsel.

13 Mr. Driggers: Objection as to relevance, and I
14 need to approach.

15 The Court: I haven't heard the question,
16 counsel. First, let me hear the question and then we will
17 determine whether or not an approach is necessary.

18 Q. (By Mr. Corbin) Dr. Barker, assume in January of
19 1996, Dr. Mincheff submits his initial application to
20 Carolina Pines to do Open Reflux Surgery. The
21 policies and procedures at Carolina Pines, what
22 experience do they require him to have?

23 The Court: Your objection is?

24 Mr. Corbin: Your Honor, I would object to
25 relevance and I think it needs some --

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1 **The Court:** I can't hear you.

2 **Mr. Driggers:** I object to relevance, but I
3 would ask the Court's permission to approach to briefly
4 explain.

5 **The Court:** Then you may. Just one moment
6 please, ladies and gentlemen.

7 (Whereupon, a bench conference was held in
8 the presence of the jury but out of the hearing of the
9 jury.)

10 **The Court:** Ladies and gentlemen, counsel tells
11 me that the continuing cross examination may take as much
12 as an hour. Do you want to take your break at this time?
13 We have had already had one this morning, but lets just
14 take another break. We will just stop right here.

15 Let the jury go back to the jury room. Enjoy
16 your break.

17 (Whereupon, the jury exits the courtroom at
18 12:25 p.m.)

19 **The Court:** Dr. Barker, you may step down, if
20 you wish. I ask you not to talk with either attorney.
21 Just enjoy your break.

22 Mr. Driggers, do you want to put on the record
23 what was just discussed?

24 **Mr. Driggers:** Yes, sir.

25 **The Court:** Go ahead, Mr. Driggers. Just one

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1 moment. Go ahead, Mr. Driggers.

2 Mr. Driggers: Yes, sir, Your Honor. We have
3 been sort of dancing around a line of questioning regarding
4 the privileging process. This has been an issue throughout
5 the case. The Court is well aware we have made objections
6 throughout Discovery to documents, to discussions, to
7 minutes, to questions even to deponents about deliberations
8 of the privileging of the MEC, or anybody that takes place
9 in the credentialing process.

10 Mr. Corbin before the trial began agreed that he
11 would not ask any questions, enter any deposition testimony
12 into evidence, or seek to have anything to do with items
13 that are not allowed by our Supreme Court's precedence in
14 McGee verses Bruce Hospital System.

15 We believe that McGee is very clear that what Mr.
16 Corbin is --- the questions allowed to surround is:
17 Number one, the by laws, the policies, the procedures, what
18 we have been talking about in large part. And in addition
19 to that, what the outcome of those --- that credentialing
20 or privileging process is, which we have been asked about
21 that, but McGee clearly closes the door on anything that
22 happened in between there. And I believe the questions
23 that are being asked, and I certainly anticipate it is
24 going to go for another hour about what the committee
25 requires, what the committee looks at when they are looking

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1 at Mincheff's application, or anybody's application, what
2 the committee looked at specifically is simply --- is not
3 relevant because it is privileged. And it is forcing me to
4 make objections repeatedly in front of the jury like we are
5 hiding something. This is something that he said was off
6 the table, and is putting us in a position that is
7 prejudice frankly, Your Honor, to conduct the trial this
8 way.

9 **The Court:** All right. Mr. Corbin, tell me how
10 your last question is appropriate under McGee.

11 **Mr. Corbin:** It is my reading of McGee, that I
12 am allowed to ask general policy and procedure questions.
13 I am allowed to ask the outcome. And I asked him what
14 would be the general policy and procedure involving an
15 applicant for this particular type of surgery. That is all
16 I am asking.

17 **The Court:** All right, well, again as Mr.
18 Driggers has commented, if it is an hour more coming. And
19 I feel that you are getting ready to invade the Statute,
20 confidentiality Statute and Peer review. But, again,
21 please be careful. So the last question you asked the Court
22 will allow it. But again, please be careful as you go
23 incrementally beyond, it is getting ready to stop, because
24 you just can't violate the confidentiality process.

25 **Mr. Corbin:** I understand, Your Honor.

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1 **The Court:** Very good. We will be down for
2 approximately ten minutes.

3 (Whereupon, the Court took a recess from
4 11:40 a.m. until 11:51 a.m.)

5 **The Court:** Mr. Medlin, please bring in the
6 jury, please.

7 (Whereupon, the jury comes into the
8 courtroom at 11:51 a.m..)

9 **The Court:** Welcome back to the courtroom,
10 ladies and gentlemen. Mr. Corbin, you may continue.

11 Q. (By Mr. Corbin) Dr. Barker, Carolina Pines owed Ms.
12 Person, a duty to properly credential Dr. Mincheff,
13 fair.

14 A. Correct.

15 Q. In fact, Carolina Pines owes all its patients a duty
16 to properly credential and privilege its physicians,
17 correct?

18 A. Correct..

19 Q. If Carolina Pines does not satisfy its duty and allows
20 an unqualified surgeon to operate, the patient could
21 get hurt, correct?

22 A. Correct.

23 Q. In fact, in your position you understand the
24 importance of credentialing and privileging. If you
25 don't do it right, it is foreseeable that a patient

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1 could get hurt, fair?

2 A. Correct.

3 Q. Ms. Person's complications that you have treated her
4 for at Carolina Pines, did you even tell her what the
5 problems were?

6 A. I wasn't in the operating room. I am not actually
7 familiar with exactly what caused her complications.

8 Q. Did you even ask Dr. Mincheff what caused Ruthie's
9 complications?

10 A. I really don't remember any discussion we had after
11 the surgery.

12 Q. Is it difficult to manager her medical care if you
13 don't know the nature of the complications?

14 A. Well, once again, I was managing her medical aspects
15 of her care, not her post-op care.

16 Q. Did she have pancreatitis; would you agree with that?

17 A. According to the record, yes.

18 Q. Do you believe the pancreatitis arose during the
19 surgery?

20 A. I really don't know.

21 Q. Did you have an inquiry as to what caused her
22 pancreatitis to anybody?

23 A. No.

24 Q. So you never asked Dr. Mincheff what caused Ruth to be
25 hurt, fair?

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1 A. I don't recall any discussion we had after surgery.

2 Q. If you believed, or had information that a doctor
3 committed an error and hurt one of your patients,
4 would you tell her?

5 A. Yes.

6 Q. The Discharge and Transfer Summary of Ms. Ruthie, you
7 were part of the transfer process, correct?

8 A. The surgeons handled her transfer, as I recall.

9 Q. Tell me, as a seasoned doctor, what this means to you.
10 When a doctor says quote: I was definitely concerned
11 about an inadvertent and iatrogenic injury to the tail
12 of the pancreas; what in the world do those big words
13 mean?

14 A. That would mean that there was possible injury to the
15 pancreas. It was not intended. It was an accident.

16 Q. Is it fair to say whoever wrote this note,
17 inadvertently means error or mistake?

18 A. It was certainly not done intentionally.

19 Q. And would you agree that whoever wrote this particular
20 note, and he put in there hyothrogenic, (Phonetic)
21 that means physician caused, correct?

22 A. Correct.

23 Q. Isn't it fair to say, Dr. Barker, reading this note
24 signed by Dr. Mincheff, he's saying during the surgery
25 I made a mistake, and I caused injury to Ms. Person's

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1 pancreas, fair?

2 A. If I recall what you read, he said he was concerned
3 that he might have.

4 Q. Did you even discuss that with your patient?

5 A. Well, no, I think Dr. Mincheff took care of that quite
6 appropriately.

7 Q. Upon what do you base that testimony?

8 A. Dr. Mincheff's integrity, his compassion, his
9 competence.

10 Q. Do you have any personal knowledge of what he told Ms.
11 Ruthie and her family?

12 A. No, I do not.

13 Q. What you know about his integrity and compassion,
14 would you agree that he would tell the family, I made
15 a mistake, I injured Ms. Ruthie's tail of her
16 pancreas, and she has some problems because of that,
17 fair enough?

18 A. From what you read to me, he thinks that he might
19 have. I don't know that he felt that he did.

20 Q. Based upon your information about Ms. Ruth's
21 condition, and the surgery that she had, are you going
22 to tell this jury you know of any other reason for her
23 pancreatitis, other than this inadvertent
24 hyothrogenic (phonetic) injury to her pancreas?

25 A. No, she certainly could have had some underlying

1 condition that we were unaware of.

2 Q. No proof of that, correct?

3 A. That is correct.

4 Q. None at all, correct?

5 A. That is correct.

6 Q. If the words mean what they appear to mean that Dr.
7 Mincheff made a mistake during Ms. Ruthie's surgery,
8 and hurt her pancreas, and you are aware of that, did
9 you do anything about it?

10 A. Well, first of all if what you read to me --- I'm not
11 so sure he said he made a mistake, I think he said he
12 was concerned he might have.

13 Q. Did you do anything about what happened with Ms.
14 Person involving the surgery?

15 A. By anything, what do you mean?

16 Q. Did you report it to anybody?

17 A. I did not see a need to report it. It is in the
18 record.

19 Q. Are you aware --

20 A. -- Complications in surgery routinely are looked at by
21 the Surgical Committee.

22 Q. Are you aware that after this particular surgery that
23 Dr. Mincheff reapplied to get more permission in 2002,
24 to keep on doing this surgery on patients? He got
25 that privilege, didn't he?

001648

1 A. I would assume he did. I am not aware of that
2 specifically.

3 Q. And he has never had any kind of restriction or any
4 privilege taken away, whatever he has applied for he
5 has got, correct?

6 A. I believe so.

7 Q. What would it take for a physician under the General
8 Policy at Carolina Pines in terms of surgical
9 complications to prevent privileges?

10 A. Again, I am not on the Surgery Committee. But I
11 assume it would be a trend of bad outcomes.

12 Q. Carolina Pines has an absolute duty to know the
13 outcomes of surgery done in its hospital, correct?

14 A. They have a duty to know that, yes. I am not sure
15 what you mean by absolute.

16 Q. Do you think it is an absolute duty?

17 A. It is a duty.

18 Q. Okay. Carolina Pines, if a surgeon has complications
19 and reapplies for privileges, it knows that
20 information already, correct?

21 A. I'm sorry, Mr. Corbin, repeat that, please.

22 Q. If a surgeon reapplies for privileges and he has had
23 complications before involving that surgery, the
24 hospital knows that, correct?

25 A. It would be something reviewed by the Surgical

001649

1 Committee.

2 Q. Are you familiar with the by laws of Carolina Pines?

3 A. Fairly.

4 Q. Are doctors supposed to know what is in the by laws?

5 A. They sign a statement declaring that they have read
6 them.

7 Q. Being on the MEC, are you required to know what is in
8 the by laws?

9 A. I have read them. I certainly don't have them
10 memorized.

11 Q. What do the by laws have to do with privileging?

12 A. They would, at least, partially outline the procedure.

13 Q. If you could look at Carolina Pines By laws. Dr.
14 Barker, could you look on the front and identify which
15 Exhibit that is, please?

16 A. Exhibit 38-A, Plaintiff's.

17 Q. Thank you, sir. Please turn to Page 6.

18 A. I'm there.

19 Q. Would you agree it is pretty tough to enforce by laws
20 if you don't know what they mean?

21 A. Yes.

22 Q. Paragraph 3, on Page 6 deals with what process,
23 please.

24 A. Eligibility Criteria, and Qualifications for the
25 Medical staff.

001650

1 Q. In other words, minimum requirements a surgeon must
2 have to apply for laparoscopic procedures, correct?

3 A. It would include that.

4 Q. That particular provision states, the practitioner
5 shall document or demonstrate the following
6 qualifications for medical staff membership and
7 clinical privileges, with sufficient adequacy and
8 completeness. In other words, when Dr. Mincheff
9 applied, or any surgeon applied for certain privileges
10 he must absolutely produce this evidence for you to
11 review, correct?

12 A. It would be a requirement for him to produce it.

13 Q. The very first item listed under the criteria is what?

14 A. Do you mean 3-A-1?

15 Q. Yes, sir, the very first word.

16 A. Experience.

17 Q. Is experience important in making privileging
18 decisions?

19 A. Yes.

20 Q. Why so?

21 A. Because it is.

22 Q. Anything more important?

23 A. It's difficult to categorize apples and oranges. I
24 mean, I don't know.

25 Q. For whatever reason - and you said you did these by

001651

1 laws, correct?

2 A. About twelve years ago.

3 Q. Why did you put experience as number 1?

4 A. It could have been that a lot of it was copied from
5 the previous by laws.

6 Q. Why did you put experience as number one under
7 qualifications?

8 A. No particular reason.

9 Q. Experience as a doctor, a member of the medical staff
10 who must know and understand the by laws. How can you
11 have experience doing a surgery if you have not done
12 it for nine or ten years?

13 A. Well, I am not a surgeon. But, it is my understanding
14 that a lot of the techniques and procedures, if you
15 will, and so on, cross over from one procedure to
16 another.

17 Q. We will talk about that later. But you are talking
18 about SAGES Guidelines. Do you know what SAGES
19 Guidelines are?

20 A. I know what they are.

21 Q. Well, you know that SAGES doesn't say if you can do an
22 appendectomy you could do another type of surgery,
23 correct?

24 A. I don't know specifically what they say. I know what
25 they are.

001652

1 Q. At Carolina Pines, it is your position the policy is
2 if you can do one you can do others as well, correct?

3 A. I feel that some of the techniques and expertise, and
4 so on crosses over.

5 Q. Which ones?

6 A. I don't know specifically. I am not a surgeon.

7 Q. Is it your impression that during an Open Hill
8 Procedure, crosses over to doing an appendectomy?

9 A. I have no idea. I am not a surgeon.

10 Q. Do you have any opinion whether or not doing a
11 gallbladder surgery really means you can also do the
12 reflux surgery too, is that what it means?

13 A. Not necessarily.

14 Q. Do you know if any procedure, in your opinion, if you
15 can do one you can do another one?

16 A. I am not a surgeon. I really could not say.

17 Q. The next phrase I want to ask you about is paragraph 1
18 is demonstrative ability. Dr. Barker, does that mean
19 when a person applies for privileges he has to prove a
20 demonstrative ability that he has done it before,
21 correct?

22 A. It would imply that he knows how to do it.

23 Q. Can you produce evidence that you know how or
24 demonstrate your ability to do it without actually
25 doing surgery?

1 A. That is too general of a term. I don't know.

2 Q. Under Carolina Pines policies and procedures, if a
3 surgeon were to say I did one of these ten years ago,
4 is that good enough?

5 A. Good enough for what?

6 Q. To satisfy demonstrative ability.

7 A. Basically that would be up to the Surgery Department.
8 Again, I am not trying to be difficult. I am not a
9 surgeon. I can't answer that.

10 Q. The ability to perform the privileges requested under
11 this particular policy, how does a surgeon prove he
12 has the ability to perform a Laparoscopic Nissen
13 Fundoplication without doing one?

14 A. Training basically.

15 Q. Under the policies at Carolina Pines if a surgeon has
16 never done a Laparoscopic Nissen Fundoplication
17 Procedure on a human being, would it satisfy that
18 requirement to have the ability to perform?

19 A. Again, I am not a surgeon. I'm not sure what they
20 would delineate, the criteria to be.

21 Q. Experience, does that mean, if a doctor applies to do
22 the Laparoscopic Nissen Procedure experience on pigs
23 is enough?

24 A. I don't know.

25 Q. Does experience mean operations on humans?

001654

1 A. I don't know.

2 Q. Paragraph 5, means that if a surgeon applies for the
3 Laparoscopic Nissen Procedure, he has got to prove to
4 Carolina Pines that he has performed a specific number
5 of those procedures in the past, correct?

6 A. There is no definite number there.

7 Q. Does he need to prove, at least, to satisfy Carolina
8 Pines that he has performed a sufficient number of
9 Laparoscopic Nissen Fundoplication Procedures, fair?

10 A. I would leave that up to the Surgery Committee.

11 Q. Does that mean on pigs or human beings?

12 A. I would leave that up to the Surgery Committee.

13 Q. Could a physician who has done the Laparoscopic
14 Procedure involving Ms. Ruthie's surgery satisfy this
15 requirement by just operating on two pigs and no
16 humans?

17 A. I would leave that up to the Surgery Committee.

18 Q. The next clause indicates Dr. Mincheff has to produce
19 sufficient evidence to satisfy the hospital about
20 quote: The management of a sufficient number of
21 cases, quote: Involving Laparoscopic Procedures,
22 correct?

23 A. Come again?

24 Q. Dr. Mincheff applying in 1996 for the first time, he
25 had to prove to the hospital that he had managed a

001655

1 sufficient number of cases involving Laparoscopic
2 Nissen Procedures, correct?

3 A. If he satisfied the requirements of the Surgery
4 Committee.

5 Q. Can you satisfy the Surgery Committee only experience
6 operating on pigs?

7 A. Mr. Corbin, I am not a surgeon. I'll leave those
8 decisions to the Surgery Committee. I don't know.

9 Q. The next thing Dr. Mincheff, has to have was a
10 sufficient patient care contact involving that
11 particular procedure, pigs or humans?

12 A. Is that a question?

13 Q. Yes, sir, pigs or humans.

14 A. Pigs or humans what?

15 Q. Management of patient care. Are we talking about pigs
16 or humans?

17 A. I assume they are talking about humans.

18 Q. When he talks about the sufficient number of
19 procedures, would you also assume we are talking about
20 humans?

21 A. I would leave it up to the Surgery Committee.

22 Q. Since you are the author, do you have any opinion
23 about a policy of a hospital to allow a surgeon who
24 wants to do an new Laparoscopic Procedure who has done
25 it on two pigs before to let him do it on humans

001656

1 without a preceptor?

2 A. The author of what?

3 Q. The by laws.

4 A. As I have stated, I think numerous times, I am not a
5 surgeon. I leave those decisions to the Department of
6 Surgery.

7 Q. As the author, Dr. Barker, if you wanted to make
8 certain that a physician applying for these privileges
9 had operated on humans you could have put that in
10 there, couldn't you?

11 A. It could have been put in there, I guess.

12 Q. You can't tell us when you put those words in there
13 about demonstrative ability and experience, the author
14 can't even tell us whether that means pigs or humans,
15 correct?

16 A. As I told you, a lot of this was copied from the
17 previous by laws.

18 Q. If there is confusion about this provision you put in
19 the by laws about experience, you don't know if that
20 means pigs or humans? Any way to fix that, to clarify
21 that, if you wanted to?

22 A. The by laws can always be changed by a majority vote
23 of the Medical Staff.

24 Q. Have you ever raised the issue to the Medical Staff,
25 I'm really not sure what this experience, and

001657

1 demonstrative ability, and management cases, means, it
2 could mean pigs or humans, and let's clarify it, did
3 you ever do that?

4 A. No.

5 Q. The medical literature as a physician in general, do
6 you keep current with it?

7 A. I try to.

8 Q. In fact, it is important for physicians to, at least,
9 read reliable materials to help them treat patients,
10 correct?

11 A. We are required to have a certain amount of continuing
12 medical education each year.

13 Q. Likewise the hospital doing the privileging of
14 physicians, somebody had better understand what the
15 literature says, correct?

16 A. The literature is only used as a guideline.

17 Q. If someone were to tell you, Dr. Barker, no medical
18 literature, no text book, nothing written down
19 anywhere is reliable involving Ms. Person's surgery
20 and qualifications to do it, what would you say,
21 ridiculous?

22 A. It seems unlikely.

23 Q. In fact, because physicians who sit on these
24 Credentialing Committees are not qualified to do this
25 particular surgery, somebody had better do the

001658

1 research and see what the medical society indicates a
2 surgeon ought to have to do it safely, or the
3 literature, correct?

4 A. There are surgeons on the Credentialing Committee.

5 Q. If a surgeon is applying for a new type of privilege
6 to him, and the Medical Staff Secretary or you are not
7 familiar with that type of surgical procedure, you
8 could go to SAGES for example and read their written
9 guidelines, could you not?

10 A. I could.

11 Q. A pretty good source?

12 A. It is one source.

13 Q. In fact, SAGES consists of about eight thousand of the
14 leading experts in the country who do this operation,
15 correct?

16 A. I would not know.

17 Q. Do you know of a better source?

18 A. No, not necessarily. I don't know of one that is
19 worse either.

20 Q. Under the SAGES Guidelines, do you know when they were
21 published?

22 A. No, I do not.

23 Q. They were published in 1992, 1994, 1998. Have you
24 ever read them?

25 A. I have read parts of them.

001659

1 Q. Anything sticks in your mind involving that particular
2 guideline?

3 A. I have quite a few pages still.

4 Q. I'm sorry.

5 A. There are quite a few pages to it.

6 Q. Did you read all the pages?

7 A. No.

8 Q. Do you had time to read all of the pages?

9 A. Not really.

10 Q. If patient safety is the most important thing at
11 Carlina Pines --

12 A. -- When we did we establish that?

13 Q. Let's go ahead and do it now. Is patient safety the
14 most important responsibility of the hospital?

15 A. It is certainly a very important one. It's kind of
16 hard to rate.

17 Q. What would even be on the list besides patient safety?

18 A. Uh'm, I guess most of them would relate to patient
19 safety. I'm thinking integrity of the physical plant,
20 the background of employees. I guess they ---
21 probably most of it relates to patient safety.

22 Q. Okay. Is it fair for me to say that the most
23 important duty at Carlina Pines involves patient
24 safety, fair?

25 A. That seems reasonable.

001660

1 Q. If you could look at Exhibit Number 31. Have you read
2 these --

3 A. -- I don't have Exhibit 31.

4 Q. Exhibit 32.

5 A. It looks like 37. I guess that's a moot point, but
6 you are talking about this, right?

7 Q. The document you have in your hands it is either 32 or
8 37, fair enough.

9 A. Okay.

10 Q. If Carlina Pines wanted to know what SAGES says a
11 surgeon must have to safely do this particular
12 surgery, somebody could have read this report,
13 correct?

14 A. They may have.

15 Q. And, the basic premise of SAGES is that before you do
16 the laparoscopic surgery, you have to well versed in
17 doing the open surgery, because you may have
18 complications, fair?

19 A. Sounds reasonable.

20 Q. Is it enough that at Carlina Pines apply for this lap
21 procedure if you have not done the open for ten-years?

22 A. Is it what?

23 Q. Is it acceptable under your policies, if the surgeon
24 applied for a lap procedure when he has not even done
25 the open for about ten-years?

001661

1 A. I would leave that to the Surgery Committee.

2 Q. The SAGES Guidelines, it talks about the learning
3 curve involving this particular procedure, correct?

4 A. I assume it does.

5 Q. Tell the Jury what a learning curve is involving
6 medicine.

7 A. Learning curve would be efficiency, improving as
8 experience increases.

9 Q. In other words, involving the Laparoscopic Nissen
10 Procedure, an advanced laparoscopic procedure, would
11 you agree there is a learning curve during which a
12 surgeon is more pronged or more likely to have
13 complications?

14 A. Seems likely that he could improve as he progressed.

15 Q. During that learning curve period, is it important to
16 have somebody, a preceptor or proctor assist that
17 physician during the leaning curve?

18 A. That would be a decision for the Surgery Committee to
19 make.

20 Q. Do you think that would be important?

21 A. For them to make that decision, yes.

22 Q. In fact, you know what a preceptor is, correct?

23 A. Correct.

24 Q. You know what a proctor is, correct?

25 A. Well, not real sure if I know exactly what the

001662

1 difference is.

2 Q. If I were to say, a preceptor is someone paid to
3 actually assist a surgeon during the leaning curve,
4 and assume responsibility with the patient who is
5 there; is that fair?

6 A. Sounds okay.

7 Q. In other words, a preceptor helps the inexperienced
8 surgeon to avoid complications, and if you have some,
9 to takes steps, correct?

10 A. Sounds reasonable.

11 Q. The sole purpose of preceptorship; is patient safety
12 correct?

13 A. I'm sure that's one of the reasons for precepting.

14 Q. Dr. Mincheff never had a preceptor, did he?

15 A. I wouldn't know.

16 Q. Under the SAGES Guidelines, if you will look at page
17 three, SAGES recommends that before you give a surgeon
18 privileges to do this type of surgery, you had better
19 have a summary letter from a preceptor, stating the
20 surgeon can competently perform the procedure, agreed?

21 A. I don't know, where is it?

22 Q. Can you read that section to the Jury, what SAGES
23 suggest that Carlina Pines do --

24 A. Summary Letter from a preceptor and/or Program
25 director and/or Chief of Surgery stating the applicant

001663

1 can independently and competently perform the
2 procedure in question.

3 Q. Is that a pretty good policy?

4 A. Sounds reasonable.

5 Q. Does Carlina Pines have that policy?

6 A. I'm not sure. Probably depends on the situation and
7 training and procedure.

8 Q. At the bottom of the page, where it talks about the
9 course that a physician could take, it states a formal
10 course elect is not appropriate training to begin
11 performing a procedure independently. Is that a
12 pretty good policy?

13 A. Sounds reasonable.

14 Q. Does that Carlina Pines have that --

15 **Mr. Driggers:** -- I object to the relevance.

16 **The Court:** What do you say to relevance?

17 **Mr. Driggers:** Yes, sir, Your Honor.

18 **Mr. Corbin:** I'm asking if he has that policy.

19 He says it's a good policy.

20 **The Court:** I will, overrule. Go ahead, you may
21 proceed.

22 Q. (By Mr. Corbin) Does Carlina Pines have any policy
23 like SAGES Guidelines, stating a formal course alone
24 is not appropriate training to begin performing the
25 procedure independently?

1 A. I don't think so.

2 Q. Why not?

3 A. You would have to ask the Surgery Committee.

4 Q. A couple of pages over, paragraph D, Practical
5 Experience. Now, SAGES recommends that Dr. Mincheff
6 have quote, Documented experience that includes an
7 appropriate volume of cases equivalent to the
8 procedures in question in terms of complexity. Do you
9 have a policy like that, appropriate volume of cases?

10 A. No, specific numbers.

11 Q. Does it sound like a good policy for SAGES?

12 A. Sounds reasonable.

13 Q. Why, would Carlina Pines not have that policy?

14 A. Well, you probably need to ask the Surgery Committee.
15 I can imagine that it would be difficult to delineate
16 each specific procedure, how many cases, etcetera.
17 But again, you really need to take that up with the
18 surgeons.

19 Q. The last page of the SAGES Guidelines, they recommend
20 and hospitals don't have to accept SAGES advice,
21 correct, fair?

22 A. That's correct.

23 Q. SAGES can't make you do anything, right?

24 A. Right.

25 Q. SAGES can do the research, give its expert opinions,

001665

1 but Carlina Pines does not have to honor that advice,
2 correct?

3 A. No hospital does.

4 Q. SAGES, recommends that Dr. Mincheff have, quote: An
5 appropriate level of continuing clinical activity
6 involving Lap Nissen Procedures. Do you have a
7 similar policy at Carlina Pines?

8 A. There is no policy specific for Lap Nissen Procedure
9 that I'm aware of.

10 Q. Do you think the SAGES Guidelines is a good one?

11 A. Well, it is certainly put together by experts. It
12 seems reasonable.

13 Q. Why would you not follow it?

14 A. Well the only standards for credentialing and
15 qualifications excepted by the hospital are by the
16 joint commission, and we do follow them.

17 Q. The Joint Commission --- You indicated that you have
18 not read, all of the standards, correct?

19 A. Correct.

20 Q. You're not an expert about Joint Commission Standards
21 and regulations, correct?

22 A. That's correct.

23 Q. Ms. Voigt is, right?

24 A. I wouldn't know.

25 Q. If Ms. Voigt, who is Certified as a Credentialing

001666

1 Specialist, were to review your bylaws and the records
2 and find thirty-eight violations, can you dispute it?

3 A. Well, it would depend on what they are.

4 Q. The last page of the SAGES Guidelines, if you can
5 look, at that. There is a footnote if you would take
6 a look at that, and let's talk about the guideline
7 being published in 1991; do you see that Article
8 Number 9?

9 A. No, sir. I'm sorry, I thought you said the last page.

10 Q. We're just talking about the SAGES Guidelines now.
11 SAGES Guidelines represents --- its materials were
12 published in 1991, footnote nine; do you see that?

13 A. Yes.

14 Q. Footnote number thirteen, it also says that it was
15 published again in 1994, fair?

16 A. Correct.

17 Q. Seven or eight years before Ms. Person's surgery,
18 correct?

19 (Pause)

20 Q. Correct?

21 A. Which one, 94?

22 Q. We can go with 94, seven or eight years before her
23 surgery.

24 A. Correct.

25 Q. Carlina Pines, if it wanted to, had seven years to

001667

1 check with SAGES to see if they had any written
2 guidelines, correct?

3 A. You could say that.

4 Q. Did you do that?

5 A. I'll leave that up to the Surgery Committee.

6 Q. If you did that, did Carlina Pines abide by SAGES
7 Guidelines?

8 A. They are not used specifically, no, they are used as
9 guidelines.

10 Q. So the answer to the question is, no?

11 A. What's your question?

12 Q. Did you abide by SAGES Guidelines?

13 A. No.

14 **The Court:** Counsel, let's talk about scheduling
15 for a moment. Please come up, if you will.

16 (Whereupon, a bench conference was held in
17 the presence of the jury but out of the hearing of the
18 jury.)

19 **The Court:** Ladies and gentlemen, we are going
20 to take our lunch break at this time. I'm going to ask you
21 to be back in an hour and fifteen minutes, which it is
22 12:30 now, so if you would be back at 1:45 we will come
23 back and conclude Dr. Barker's testimony. So, that is
24 1:45, please be back in the jury room. Any questions about
25 that from the jury? Lunch is on your own. Have a nice

001668

1 lunch. If you would leave your notes there, and we will
2 all just remain here while you depart. We will see you at
3 1:45.

4 (Whereupon, the jury exits the courtroom at
5 12:32 p.m..)

6 **The Court:** Please see that the door is closed
7 so we can talk privately in the courtroom for a moment.

8 **Clerk of Court:** The door is closed, Your Honor.

9 **The Court:** Mr. Corbin, most of your SAGES
10 Guidelines, even Joint Commission Guidelines are in
11 evidence through Ms. Voigt. I am not sure, what benefit -
12 -- of course, it's up to you for your trial strategy and
13 tactics, but I'm not sure what benefit there is in going
14 over it with Dr. Barker, who continually responds that he
15 leaves that up to the surgeons.

16 I mention this because we need to get Dr.
17 Mincheff's testimony up and concluded today because of his
18 wife's surgery tomorrow. So, I suspect it may take two to
19 two and a half hours for Dr. Mincheff.

20 **Mr. Corbin:** Are you talking about his direct,
21 your honor?

22 **The Court:** Well, I'm talking about his direct
23 and cross. I'm not sure how long his cross is going to be.
24 I don't know about direct either. But I want to make sure
25 that we don't run beyond what is going to be difficult for

1 his schedule. And, of course, we are trying to conclude
2 this case if we can by Tuesday, or at the latest Wednesday.
3 I just make that editorial comment to tell you as I sit
4 here, and observe the Jury, listening to them shifting
5 within their seats, you may want to reconsider over lunch
6 how far you want to go with Dr. Barker, and these issues.

7 Anything further, Counsel?

8 **Mr. Driggers:** I have two Exhibits I want to
9 enter into evidence, I don't think --- Two medical records,
10 eleven and twelve. They are marked, but I did not actually
11 put them in evidence.

12 **The Court:** Dr. Barker, you may step down, and
13 we will see you at 1:45. Please watch your step there,
14 please.

15 All right. Are there any objection to that, Mr.
16 Corbin?

17 **Mr. Corbin:** No sir.

18 **The Court:** Let's mark these into evidence
19 without objection. We will stand down.

20 Counsel, we are going to print another copy of
21 the order for you. Defendant's exhibits 11 and 12 entered
22 into evidence without objection.

23 **Whereupon, Defendant's**
24 **Exhibit Number 11 and 12 were**
25 **marked and admitted into the**

001670

1 Record.

2 (Whereupon The Court was in recess from
3 12:47 and reconvenes its sitting at 1:50 p.m.)

4 **The Court:** Dr. Barker, do you want to come back
5 to the stand?

6 **Dr. Barker:** Yes, sir.

7 **The Court:** I trust you had a nice lunch.
8 Welcome back. Is there anything before for our record
9 before we bring in the jury. I'm told all the jurors are
10 here. Anything from the plaintiff?

11 **Mr. Corbin:** Nothing, your honor.

12 **The Court:** Anything from Defendant?

13 **Mr. Driggers:** No, your honor.

14 **The Court:** All right. Please bring in the
15 jury, Mr. Medlin.

16 (Whereupon, the jury enters the courtroom at
17 1:50 p.m.)

18 **The Court:** Welcome back, ladies and gentlemen.
19 I trust you had a nice lunch.

20 As you recall, we remain in cross examination.
21 Go ahead, please.

22 **Mr. Corbin:** Thank you, judge.

23 Q. (By Mr. Corbin) Dr. Barker, you mentioned awhile ago
24 that the Joint Commission is part of HHS, correct,
25 Health and Human Services?

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1 A. I guess, I mean, I don't remember mentioning that. I
2 guess they are.

3 Q. Who is the Department of Health and Human Services
4 involving Hospital Administration, what is their role?

5 A. I really don't know.

6 Q. If the Joint Commission is part of the HHS, would you
7 agree that when HHS speaks the hospitals had better
8 listen?

9 A. It seems reasonable.

10 Q. Would you turn to Tab 4, please, and I think I have it
11 to the right page for you. This is an article from
12 HHS. In fact, it is a chapter. Would you read the
13 first couple of sentences under the AHRQ Mission
14 Statement, please?

15 A. The Agency for Health Care Research and Quality, AHRQ,
16 is the lead Federal Agency charged with improving the
17 quality, safety, efficiency, and effectiveness in
18 health care for all Americans. As one of twelve
19 agencies within the Department Health and Human
20 Services, AHRQ supports Health Services Research that
21 will improve the quality of health care and promote
22 evidence based decision making. AHRQ is --

23 Q. Doctor, that's enough, thank you. Feel free to read
24 more, but I would like to ask you about that. Would
25 you agree that sounds pretty authoritative from HHS?

001672

1 A. Yes.

2 Q. Would you turn to page three of this chapter? Do you
3 remember awhile ago when you told this jury that you
4 really can transfer skills from one surgery to another
5 one, do you remember that?

6 A. I told them it is my understanding that some of the
7 skills cross over.

8 Q. Would you go to paragraph three, and read what HHS
9 believes about transfer of skills?

10 A. Some of the skills obtained with one minimum access
11 procedure do not transfer to others.

12 Q. Do you believe that statement?

13 A. That's what they say.

14 Q. Do you think that is an authoritative statement
15 whether or not in fact you can transfer skills from
16 one surgery to another performing laparoscopic?

17 A. That's their opinion.

18 Q. Do you think it is reliable?

19 A. I don't know exactly how --- I guess so. I don't know
20 exactly how this --- I guess so.

21 Q. In fact, that's not your policy at Carlina Pines, is
22 it?

23 A. What do you mean, what policy?

24 Q. The policy at Carlina Pines is that you really can
25 transfer skills from one surgery to another, correct?

001673

1 A. It is not addressed at all as far as I remember.

2 Q. Dr. Barker, further in that same paragraph, the HHS
3 states quote, studies investigating into
4 implementation, talking about the reflux surgery,
5 suggest a threshold of twenty-five to thirty cases,
6 before a surgeon can obtain proficiency. Pretty
7 authoritative?

8 A. It's what is written.

9 Q. When you hear that HHS tells you that a doctor
10 applying for Laparoscopic Nissen Fundoplication
11 Procedure privileges must have a threshold of twenty-
12 five to thirty cases, does that mean anything to you
13 at all?

14 A. That's their opinion.

15 Q. Do you accept that opinion as authoritative?

16 A. Mr. Corbin, I never really thought about it, I'm not a
17 surgeon. I leave those decisions to the Surgical
18 Committee.

19 Q. Does that information from HHS, talking about the
20 skills do not transfer laparoscopically from one to
21 another, and you really need to do twenty-five to
22 thirty according to the learning curve, does that mean
23 anything at all to Carlina Pines?

24 A. Well, sir, I couldn't speak for the hospital as a
25 whole.

001674

1 Q. Did Carlina Pines, when you authored the bylaws, when
2 you talk about the number of cases and case
3 management, did you even consider information
4 contained within this document?

5 A. I have never seen this document before.

6 Q. Dr. Barker, the footnotes that HHS references to their
7 conclusion, that research indicates that it takes
8 twenty-five to thirty cases before a surgeon obtains
9 proficiency. Could you look at the last page of the
10 article and tell this jury what the basis of that
11 research is, footnotes thirty-one through thirty-four;
12 can you tell us what years?

13 A. Are you talking about on page ten of fifteen?

14 Q. Yes, sir, footnote thirty-one.

15 A. 1999.

16 Q. Could you have read that if you had wanted to, before
17 Ms. Person's 2001 surgery?

18 A. Certainly.

19 Q. Did you, in fact, do it?

20 A. No.

21 Q. The next footnote is what, please?

22 A. Number thirty-two.

23 Q. What year, please?

24 A. 1996.

25 Q. Have you ever read that article?

001675

1 A. No.

2 Q. If somebody at Carlina Pines wanted to read this
3 article from 1996, he could have done that five years
4 before Ms. Person's surgery's, correct?

5 A. Of course.

6 Q. The next article was written when, please?

7 A. 1999.

8 Q. Again, two years before Ms. Person's surgery. No one
9 read that one?

10 A. I'm sure some people read it.

11 Q. Are you aware of anybody at Carlina Pines reading it?

12 A. I have no idea.

13 Q. Did you read it?

14 A. No, I have not.

15 Q. Were you too busy to read it?

16 A. The issue never came up. I am not particularly --- I
17 don't particularly read about surgical literature.

18 Q. Footnote number thirty-four, what year, please?

19 A. 1998.

20 Q. Again, you did not read it?

21 A. No, I did not.

22 Q. Are you aware of anybody at Carlina Pines reading this
23 particular article?

24 A. There's no reason I would know if they did or not.

25 Q. Did these four articles have any effect at all on

001976

1 credentialing at Carlina Pines?

2 A. Not to my knowledge, but I'm not part of the Surgical
3 Committee.

4 Q. You keep referencing I didn't do this, and I didn't do
5 that, because I'm not part of the Surgical Committee.
6 Do you defer to the Surgical Committee to do whatever
7 it wants to do?

8 A. Of course not.

9 Q. Okay. You do accept responsibility as being the MEC
10 Chairman when you defer something responsibility goes
11 back to the top doesn't it?

12 A. Technically.

13 Q. In other words, you don't tell Dr. Mincheff, you go
14 back with your medical partners and you decide what
15 privileges you get, you don't do that, do you?

16 A. No, the company decides, which is more than Dr.
17 Mincheff and his partner.

18 Q. Do you have any opinion as to whether or not if
19 anybody at Carlina Pines would have, understand what
20 HHS said? Do you have any opinion whether or not it
21 would have affected the policies at all at Carlina
22 Pines?

23 A. I could not say.

24 Q. Dr. Barker, the bylaws, it talks about a quorum. What
25 is a quorum, in general?

001677

1 A. In the text of the bylaws it would refer to, how many
2 people need to be present to conduct the business at a
3 meeting.

4 Q. The votes and how many votes it takes, for a committee
5 to pass something is very important, right?

6 A. It takes the majority.

7 Q. According to your bylaws, tell this jury how many
8 people need to, show up to vote and bind the hospital?

9 A. Quorum, those present should constitute a quorum for
10 any such annual, regular and/or special medical staff
11 meeting.

12 Q. Those present, one?

13 A. Theoretically possible.

14 Q. Did you put that provision in there too?

15 A. It was against my wishes.

16 Q. Not a good policy, is it?

17 A. Depends on how you look at it. The majority of the
18 medical staff felt like it was.

19 Q. Well, let's look at it from the patient's safety.
20 Under the rules and regulations at Carlina Pines in
21 the MED, all it takes is one person showing up and
22 voting, correct?

23 A. Technically that's correct. I appoint people to the
24 MEC that I feel comfortable will attend the meetings.

25 Q. Explain to this jury how having a quorum that anybody

001678

1 who shows up is enough for those patients' safety.

2 A. As I said, I was opposed to this, and if we obviously
3 have more than one show up.

4 Q. Does it promote patient safety?

5 A. For one, no, probably not.

6 Q. It couldn't get any worse than that, could it?

7 A. Well, I suppose you could have, nobody show up.

8 Q. Dr. Barker, I want to ask you a few questions if you
9 don't mind, about Exhibit Number 39. In Exhibit
10 Number 39, is a Clinical Privilege White Paper Ms.
11 Enoch identified for us as being reliable, do you
12 agree?

13 A. Reliable in what regard?

14 Q. Well, let's talk about Laparoscopic Nissen
15 Fundoplication minimum qualifications, fair?

16 A. That's their opinion, yes.

17 Q. Before I start asking you about what is in writing, do
18 you know of any written guidelines, by laws, medical
19 literature, text books, articles anywhere that support
20 your position that Dr. Mincheff was qualified, can you
21 show us anything?

22 A. No.

23 Q. The Greeley Company is actually paid by HMA --

24 **Mr. Driggers:** Your honor, I object to relevance
25 of this question.

001679

1 The Court: Overruled.

2 Q. (By Mr. Corbin) The Greeley Company is actually paid
3 by HMA to provide Carlina Pines with credentialing and
4 privileging advice, correct?

5 A. They met with us once almost two years ago.

6 Q. Carlina Pines can accept that advice or not, right?

7 A. True.

8 Q. Since you don't have any documents we can look at
9 about numbers, do you mind if we talk about what
10 Greeley told Carlina Pines, in this document?

11 A. Not at all.

12 Q. Dr. Barker, on the first page, will you agree it is
13 talking about specifically the surgery Ms. Person, had
14 A Laparoscopic Nissen Fundoplication Procedure
15 correct?

16 A. That's what the paper is about, yes.

17 Q. Yes, sir. And it give you background about that
18 particular procedure on page one, correct?

19 A. Correct.

20 Q. In general, it tells surgeons and anybody who is
21 reading this, the typical procedures to do the
22 operation, correct?

23 A. It tells them what?

24 Q. The typical procedures, and in general how the
25 operation is done?

001680

1 A. Well, I have not read it.

2 Q. Please skim it doctor.

3 (Pause)

4 A. Repeat your question, Mr. Corbin, please.

5 Q. The question was, on number one, page number one,
6 would you agree in general it is discussing the way to
7 do the procedure and its purpose?

8 A. Very general terms, yes.

9 Q. Yes, sir. Page two, the Greeley Company indicates taut
10 it incorporated SAGES Guidelines as to particular,
11 correct?

12 A. You say it mentions the Greeley Company in here?

13 Q. Yes, sir. This is the Greeley Company, sir. On page
14 two it indicates, it references and incorporates SAGES
15 Guidelines, correct?

16 A. They are mentioned here.

17 Q. Okay. Page three, the Greeley Company is indicating
18 the basic minimum requirements to do this procedure,
19 correct?

20 A. Correct.

21 Q. Not the maximum but the minimum, correct?

22 A. Correct.

23 Q. So paragraph Three-A, basic minimum requirement is
24 that the surgeon be privileged and be comfortable with
25 the procedure for which laparoscopic procedures are

001681

1 being sought, correct?

2 A. This is where?

3 Q. Paragraph Three-A.

4 A. Yes.

5 Q. Seems like a reasonable proposal?

6 A. I'm not a surgeon, but I guess so.

7 Q. You're not a surgeon?

8 A. No, I'm not.

9 Q. The bottom of page three, can you read to the jury
10 what Greeley believes in this particular White Paper?

11 A. Proctoring by a laparoscopic surgeon experiencing the
12 same or similar procedure until proficiency has been
13 observed and documented in writing.

14 Q. Carlina Pines has no requirements under its policies
15 and procedures to require proctors, correct?

16 A. As far as I know that's correct.

17 Q. Does a proctorial requirement in the Greeley Proposal
18 seem reasonable to you?

19 A. I would leave that up to the Surgery Committee.

20 Q. The purpose of proctoring is patient safety, correct?

21 A. I'm sure that's one of the purposes.

22 Q. Do you believe this particular provision would promote
23 patient safety?

24 A. Seems like it would.

25 Q. Why wouldn't Carlina Pines not have its provision to

001682

1 promote patient safety by proctoring?

2 A. I wouldn't know.

3 Q. Next page, page five, it's talking about renewal of
4 privileges, correct?

5 A. For renewal privileges, first line.

6 Q. This guideline in paragraph four states, quote, before
7 attempting such a procedure independently a surgeon
8 should be preceptor by a surgeon experienced in the
9 procedure. Would that improve patient safety?

10 A. Possibly.

11 Q. Would it hurt patient safety?

12 A. Not likely.

13 Q. Does Carlina Pines have any similar type of provision
14 to promote patient safety?

15 A. No.

16 Q. Any good reason why not?

17 A. I wouldn't know.

18 Q. Next page, page six. The Greeley Company actually
19 consulted with a Harvard Profession, Dr. Prichard,
20 right?

21 A. Creechlow is mentioned here.

22 Q. Okay. When I read this provision to you about Dr.
23 Creechlow tell me about your thoughts, please. Quote:
24 The question then comes up, says Creechlow, about the
25 number of procedures a surgeon needs to perform and

001683

1 under what sort of guidance. I think most people
2 would say that the leaning curve for the operation
3 would be about twenty-five cases. Pretty reasonable
4 statement?

5 A. I could not say. I am not a surgeon.

6 Q. Does Carlina Pines have any general policies and
7 procedures that would incorporate this particular
8 concept it takes twenty-five cases?

9 A. Not that I'm aware of.

10 Q. Do you believe that the Creechlow statement would
11 improve patient safety?

12 A. I am really not sure.

13 Q. It would not hurt it, would it?

14 A. It is not likely.

15 Q. Dr. Creechlow continues, quote: For maintaining
16 confidence Creechlow considers that doing ten cases a
17 year would be adequate. That is about one case per
18 month he says. That is a rough number that should do
19 it. Seem reasonable to you?

20 A. I would not know. I am not a surgeon.

21 Q. Ten cases a year at a minimum. Does Carlina Pines
22 have any comparable policy or procedure to protect
23 patients?

24 A. Not that I am aware of.

25 Q. Do you believe Creechlow's proposal of 10 Laparoscopic

001684

1 Nissen Funduplications per year would enhance patient
2 safety at Carlina Pines?

3 A. I would leave that up to the Surgery Committee.

4 Q. The document continues, do you see where it says
5 required previous experience?

6 A. Yes.

7 Q. Please read that sentence to the jury.

8 A. The applicant must be able to demonstrate that he or
9 she has successfully done at least twenty-five
10 Laparoscopic Nissen Funduplication Procedures in the
11 past twelve months.

12 Q. Sound reasonable?

13 A. I really would not know. I'm not a surgeon.

14 Q. Well, you do know that Carlina Pines certainly doesn't
15 have any kind of policy like that, correct?

16 A. To have done twenty-five?

17 Q. Yes, sir.

18 A. That is correct.

19 Q. In fact, Carlina Pines doesn't really have any number
20 for re-application, correct?

21 A. That is correct.

22 Q. All it says is that you must have proof demonstrable
23 ability that a sufficient number of cases, but that
24 could be pigs, couldn't it?

25 A. I wouldn't know. I leave that to the Surgery

001685

1 Committee.

2 Q. Do you think in any way that proposal if a doctor
3 reapplied for privileges he must have done ten the
4 previous year? Would that hurt a patient in any way?

5 Mr. Driggers: your honor, I would object as to
6 relevance.

7 The Court: Counsel, what's the relevance?

8 Mr. Corbin: Would it hurt a patient or would it
9 help a patient?

10 The Court: I am going to overrule, but it
11 appears to me the witness begins to answer more and more
12 that he relies upon the surgeon's decisions, and he's not
13 proficient in surgery. For these reasons, I'm not certain
14 what the benefit of this testimony is, but I overrule the
15 objection.

16 You may answer, Dr. Barker.

17 A. What was the question?

18 Q. (By Mr. Corbin) The proposal that when a doctor
19 reapplies for example in 1998, 2000, 2002, 2004, the
20 proposal that Dr. Mincheff would have to have at least
21 ten human operations during the previous year, would
22 that policy hurt a patient in any way?

23 A. I don't believe so.

24 Q. Could it help a patient?

25 A. Possibly.

001686

1 Q. If, in fact, Carlina Pines would abide by Greeley's
2 proposals, Ms. Person's would have never had her
3 surgery, fair?

4 Mr. Driggers: Object to the form, your honor,
5 relevance.

6 The Court: Overruled.

7 Q. (By Mr. Corbin) Fair?

8 A. I don't really feel competent to answer that.

9 Q. The Greeley Company really makes it easy for its
10 hospital client, because they actually prepare the
11 privileged request form for you, correct?

12 A. I don't know.

13 Q. Well, look at that particular White Paper. Turn to
14 the last page. Can you tell the jury what that is?

15 A. Clinical Privilege White Paper Advisory Board.

16 Q. The next to the last page.

17 A. Privilege request form Laparoscopic Nissen
18 Fundoplication.

19 Q. So the Greeley Company includes in their research and
20 actually prepared a proposed request form that they
21 recommend you give you doctors like Dr. Mincheff,
22 correct?

23 A. It would appear to be what this is, yes, sir.

24 Q. What I want to do is let's look at Greeley's form, and
25 let me ask you a few questions. The top of the

001687

document states, quote: In order to be eligible to request clinical privileges for Laparoscopic Nissen Fundoplication, an applicant must meet the following minimum special criteria. That means just to be eligible to be considered you must, at least, have what, is on this document, correct?

A. That's what it states.

Q. If you don't have what is on the document you need not even apply, correct?

A. Would seem foolish to do so --

Q. Again, we're talking about minimums --

A. -- If you were using this application form.

Q. We are using minimums, not maximums, correct?

A. That's what it says.

Q. The first requirement involves education. A physician must have an M.D. or D.O. degree. Dr. Mincheff passes, correct?

A. Yes.

Q. The second requirement, minimum formal training states, quote: The applicant must demonstrate the successful completion of a formal course in Laparoscopic Nissen Fundoplication that included Preceptorships by a surgeon experienced in the procedure. No Preceptorship you don't qualify, correct?

001688

1 A. On this form that's correct.

2 Q. Did Dr. Mincheff ever have a preceptorship?

3 A. Not that I'm aware of.

4 Q. Can we go to the next requirement? Required
5 experience it states, quote: The applicant, must be
6 able to demonstrate that he or she has successfully
7 done, at least, twenty-five Laparoscopic Nissen
8 Fundoplication Procedures in the past twelve months.
9 If Dr. Mincheff, has not done twenty-five Laparoscopic
10 Nissen Fundoplication Procedures in his life, he
11 certainly wouldn't qualify, right?

12 A. That is correct.

13 Q. The next section indicates references. Do you see
14 that?

15 A. Yes, sir.

16 Q. It states, Dr. Mincheff must produce, quote: A
17 letter that evaluates competency, and it must come
18 from the Preceptor of the applicant's additional
19 Laparoscopic Nissen Fundoplication Procedure. No
20 preceptor, disqualified, correct?

21 A. By this form that is correct.

22 Q. The next provision it talks about reappointment.
23 Let's assume the doctor is qualified to begin with, in
24 1996, you have three or four more chances to evaluate
25 him, correct?

001689

1 A. What do you mean?

2 Q. 1998, 2000, 2002, 2004, right.

3 A. You bet.

4 Q. That's the purpose of reappointment to reconsider,
5 correct?

6 A. Correct.

7 Q. Greeley states, quote: The applicant must
8 demonstrate that they have maintained competency by
9 showing the evidence that they have successfully done,
10 at least, ten Laparoscopic Nissen Fundoplication
11 Procedures in the past twelve months. If you have not
12 done ten the year before you reapply disqualified,
13 correct?

14 A. By this form that is correct.

15 Q. At Carlina Pines, are you aware of any year where all
16 of the physicians who do this procedure had any where
17 near ten?

18 A. I could not say.

19 Q. Are there years when nobody does any at Carlina Pines?

20 A. I could not say.

21 Q. But you can say that if Dr. Mincheff did not do ten on
22 his re-applications in 1998, 2000, 2002, or 2004 under
23 this written proposal he would be disqualified,
24 correct?

25 A. Correct.

001690

1 Q. Then at the bottom, the surgeon must stipulate that he
2 meets the minimum threshold criteria for the request,
3 agreed?

4 A. Agreed.

5 Q. You have no similar policy or procedure at Carlina
6 Pines?

7 A. We have none that requires a certain number of
8 procedures.

9 Q. How can a policy that requires no particular number of
10 procedures promote patient safety; how is that
11 possible?

12 A. Surgical Committee looks at all of our procedures and
13 the doctor's qualifications. It's not --- we go by
14 Joint Commission Standards, which don't require to the
15 number.

16 Q. You were talking earlier about the Joint Commission
17 surveys every three years or so.

18 A. Correct.

19 Q. Do you believe they happen every three years?

20 A. I believe that is correct.

21 Q. Are you willing to tell this jury that somebody at
22 Carlina Pines has ever to a member of the Joint
23 Commission took Ms. Person's records, and told them
24 you had better look at this one, has anyone done that,
25 ever?

001691

1 A. Not that I know of.

2 Q. Can you even tell this jury that you know the Joint
3 Commission has ever even seen documents involving Dr.
4 Mincheff's laparoscopic procedures, can you even say
5 that?

6 A. Not that I know of.

7 Q. In fact, the procedure of a survey is only as good as
8 Carolina Pines producing records and documents for
9 those people to examine, correct?

10 A. We produce the documents they request.

11 Q. Do you ever lose documents?

12 A. I haven't.

13 Q. In fact, Carlina Pines has a duty not to lose patient
14 records, correct?

15 A. I should think so.

16 Q. If Carlina Pines were to lose some of Dr. Mincheff's
17 records involving this procedure, do you know of any
18 way the Survey Committee from the Joint Commission
19 could examine them if they are not there?

20 A. As far as I know that has never been a problem.

21 Mr. Corbin: Thank you, Dr. Barker.

22 The Court: Is there redirect?

23 Mr. Driggers: There is briefly, your honor.

24 The Court: Go ahead.

25 Redirect Examination by Mr. Driggers

001692

1 Q. Dr. Barker, is it safe to say that the best source of
2 surgical information that Carlina Pines has is the
3 surgeons that practice medicine there?

4 A. The best source of what?

5 Q. Of information, information on surgeries?

6 A. Well, I should think they should be as up to date as
7 anybody on the staff.

8 Q. You were asked about the Department of Health and
9 Human Services. Has that department, or DHEC, or
10 anybody ever stopped surgeries from happening at
11 Carlina Pines?

12 A. No.

13 Q. We painstakingly went through information from SAGES
14 Guidelines, you had some Greeley Company guidelines,
15 and you read several other pages and documents to the
16 jury. All of those that you read were dealing with
17 laparoscopic procedures, correct?

18 A. I would think that's fair to say.

19 Q. And you testified earlier, I believe, that's how this
20 procedure of Ms. Person began, but you are aware that
21 it was converted to an open procedure, correct?

22 A. Correct.

23 Q. Is there anything about Laparoscopic Guidelines
24 dealing specifically with Ms. Person's procedure, or
25 anything that happened during that procedure?

001693

1 A. I am not sure what you are asking.

2 Q. I am asking as far as any injury Ms. Person has
3 suffered came during an open procedure, correct?

4 A. Could it have?

5 Q. No, it did. It did. He said it did, it was during an
6 open procedure, correct?

7 Mr. Corbin: Objection, leading.

8 The Court: Counsel, this is your witness, so
9 you may not lead.

10 Mr. Driggers: Yes, sir, Your Honor.

11 Q. (By Mr. Driggers) But in any event, the records and
12 guidelines you were looking at, and recited to the
13 jury deals solely with laparoscopic procedures,
14 correct?

15 A. Other than the mention of the need to possibly convert
16 to the open.

17 Q. And, you have already referenced, I believe, what is
18 the only body that ever sets any standards regarding
19 credentialing?

20 A. The Joint Commission.

21 Q. And The Joint Commission has reviewed Carlina Pines
22 and Byerly Hospital for about ten years, correct?

23 A. Correct. Well, further back than that most likely

24 Q. Further than that. When they come in, I think you
25 already said, but you hand them a stack of documents.

001694

1 How do they get the credentialing files over to you?

2 A. Mr. Driggers, the specifics of the procedure I am
3 really not familiar with. I think they request
4 records.

5 Q. And you produce them?

6 A. They are produced, yes, sir.

7 Q. For those ten years, has there been any type of
8 deficiency that the Joint Commission has found in
9 regards to the Carlina Pines credentialing process?

10 A. None of which I'm aware.

11 **Mr. Driggers:** Nothing further, your honor.

12 **The Court:** Any objection to the release of the
13 witness, if he wishes to leave?

14 **Mr. Corbin:** Not from Ms. Person, your honor.

15 **The Court:** You are free to leave if you wish.
16 You are not required to, but you are free to.

17 Please call your next witness.

18 **Mr. Driggers:** Your honor, at this time we call
19 Dr. Thomas Mincheff.

20 **The Court:** Please come forward and take the
21 oath of witness.

22 **Thomas B. Mincheff, M.D.**

23 **After Being Duly Sworn Testifies as Follows**

24 **Direct Examination by Mr. Driggers**

25 Q. Dr. Mincheff, can you hear me okay?

001695

1 A. Yes, I do.

2 Q. Please state your name for the jury.

3 A. My name is Dr. Thomas B. Mincheff.

4 Q. Dr. Mincheff, how long have you been in the practice
5 in Darlington County?

6 A. I have been now a little bit over thirteen years.

7 Q. Where do you attend church?

8 A. I go to the Wesley united Methodist church in
9 Hartsville.

10 Q. What is your wife's name?

11 A. My wife's name is Katie Mincheff.

12 Q. Do you have any children?

13 A. I have two children, Phillip age thirty, and my other
14 son is Andrew, age twenty-two.

15 Q. Did they go to school here in Darlington county?

16 A. They completed their high school here in Hartsville.

17 Q. Where do they live now?

18 A. My oldest son has a small business in Columbia, South
19 Carolina, a small restaurant business. My second son
20 works for a law firm in Washington, D.C.

21 Q. Doctor, where were you earlier today prior to coming
22 to court?

23 A. I was at work doing surgery at Carlina Pines.

24 Q. Now, you've been in the courtroom on a number of
25 occasions during this past week, is that correct?

001696

1 A. Yes, sir.

2 Q. If we do not complete the case today, we will return
3 tomorrow. Doctor, will you be able to come tomorrow?

4 A. Tomorrow I can't come, my wife is going to have
5 surgery in Columbia, South Carolina.

6 Q. Why is she having surgery?

7 A. Well, she has possibly a cancerous growth in her
8 ovary.

9 Q. Doctor, please tell the jury just a little bit about
10 your educational background.

11 A. I went to high school partly here in the United
12 States. Both of my parents were immigrants from
13 Europe. My parents decided to go back to Europe. I
14 completed high school at the Oxburg American High
15 School in Germany. Thereafter, I went to Paris where
16 I went to the American College. Now it is called the
17 American University of Paris in Paris, France. After
18 that, decided to remain in Europe, and went to Medical
19 School in Munich, Germany at the Ludwig Maximillians,
20 Munich, Germany.

21 Q. Okay. Where did you continue your medical training?

22 A. Medical training, I stayed in Germany for about three
23 years. Since I'm the only son, my parents wanted me
24 to stay. At that time I already had my wife and my
25 first child, so I stayed and worked there as a

001697

1 surgical assistant. Back in 1982 I then decided to
2 come to the United States. My wife was originally
3 from Bulgaria, and I thought it was a good idea then
4 at that time to finally come back to the United
5 States. So I went to Surgical Residency at NYU and
6 the New York Downtown Hospital. Remained there for
7 four years, and then joined the Air Force, and
8 completed my Residency in the Air Force at Wifford
9 Hall in San Antonio, Texas.

10 Q. What were those residencies in?

11 A. General Surgery.

12 Q. Those were both General Surgery Residencies in New
13 York and then in Texas, I think you said?

14 A. That is correct.

15 Q. Where did your practice lead after you finished your
16 General Surgery Residency Training?

17 A. After completing my General Surgery Residency at
18 Wifford Hall I then became the Chief of Surgery at the
19 416th Medical Group Air Force Hospital in Rome, New
20 York. I was there for two years from 92 to -- no,
21 from 91 to 93.

22 Q. Okay. When did you first arrive to practice in
23 Darlington County?

24 A. After close to about eight years in the Air Force I
25 decided to go into private practice and came down to

001698

1 Hartsville, joined another gentleman taut was already
2 in practice here, and remained with him for about six
3 years.

4 Q. What is the name of the physician you first worked
5 with here in Hartsville?

6 A. Doctor Robert Harris.

7 Q. Okay. And that is through what years?

8 A. That was from October of 93 through the end of July of
9 1999.

10 Q. Okay. Where did you primarily do your work --- Where
11 do you have privileges to do your surgery?

12 A. Usually at the Byerly Hospital in Hartsville, and
13 later at the Carlina Pines.

14 Q. You had performed surgeries prior to that in Texas and
15 New York, correct?

16 A. That is correct.

17 Q. Okay. Doctor, tell the jury just a little bit about
18 what memberships you have in any professional
19 societies.

20 A. I have several memberships. I'm a Fellow of the
21 American College of Surgeons, and also a Fellow of the
22 International College of Surgeons. I'm also a Fellow
23 of the Southeastern Surgical Congress. I'm a member
24 of the South Carolina Surgical Society, the South
25 Carolina Medical Association, the American Society of

001699

1 General Surgeons, also the Society of American
2 Gastricendoscopic Surgeons, which is SAGES, and also
3 the Laparoendoscopy Surgery society.

4 Q. You said you are a Fellow in the American College of
5 Surgeons.

6 A. That's correct.

7 Q. What does that involve, how does one become a Fellow
8 of the American College of Surgeons?

9 A. In order to become a Fellow you have to send in an
10 application, you have to have several letters of
11 reference from several other surgeons in your field.
12 Also, you have to send in a log of many of your
13 surgeries.

14 Q. Those would be open surgeries?

15 A. Open, laparoscopic, all together.

16 Q. All together. Okay. How about including in your ---
17 just what we went through --- Are you Board Certified
18 in General Surgery?

19 A. I'm Board Certified in General Surgery.

20 Q. When did you become Board Certified?

21 A. In 1993.

22 Q. Is that Certification still current?

23 A. Yes, it is. Every ten years you have to recertify.

24 Q. When did you recertify?

25 A. I recertified, in 2001.

001700

1 Q. What does it take to become Board Certified in General
2 Surgery? Explain to the jury the terms, what does
3 that mean?

4 A. In order to become Board Certified, you have to
5 complete a General Surgery Residency. Then you have
6 to send in your entire log of all of your operations
7 basically. You apply to take the qualifying exam. If
8 they accept you, for the qualifying exam, then take
9 your qualifying examination. If you pass your
10 qualifying examination then you have to also take the
11 oral examination. Once you pass both of those then
12 you become Board Certified in your field.

13 Q. Okay. Now, Doctor, all those groups you mentioned,
14 there are several. Do all of them issue different
15 papers, opinions, or guidelines for different matters?

16 A. Could you repeat that, please?

17 Q. The groups that you are a member of, do they publish
18 guidelines?

19 A. They have guidelines and recommendations, yes.

20 Q. Do any of them set any specific standards for
21 practice?

22 A. No.

23 Q. I think the last one that you mentioned was the SAGES
24 group, that we have heard a lot about, is that
25 correct?

001701

1 A. Yes.

2 Q. So you are a member of SAGES, correct?

3 A. Yes, sir.

4 Q. And, I think we have heard it characterized as an
5 elite group of several thousand surgeons across the
6 country, is that fair to say?

7 A. Yes.

8 Q. How do you become a member of SAGES?

9 A. Again, you have to apply, you have to send in your
10 operative list of cases that you have done. You also
11 have to get letters of reference from other surgeons
12 in your field.

13 Q. Does it primarily deal with laparoscopic matters, is
14 that what SAGES does?

15 A. It involves laparoscopic and endoscopic procedures.

16 Q. But, not necessarily open procedures, is that correct?

17 A. No.

18 Q. In addition to being a member of SAGES, tell the jury
19 what you have had occasion to publish through the
20 SAGES group.

21 A. I have been involved with two papers out of SAGES,
22 outcome cases, both esophageal as well as lower GI,
23 these were prospective studies.

24 Q. So you have actually had your work or your medical
25 reviews published by this SAGES group?

001702

1 A. Yes sir, I participated in the collection of data.

2 Q. I believe you said part of that publication dealt
3 specifically with esophagus type procedures?

4 A. That's correct. One was esophagus of stomach and
5 duodenum, and the other one was colon.

6 Q. Doctor, where do you primarily get your patient
7 population?

8 A. We get our patient population from referrals that are
9 sent to us from Family Practitioners, Internal
10 Medicine, GYN Doctors, and associated other physicians
11 in our hospital and elsewhere.

12 Q. Doctor, tell me if you can identify what has been
13 marked as Exhibit 16 there.

14 A. That is my CV.

15 Q. Does that entail the information we have been going
16 through with the jury about your education and your
17 training?

18 A. Yes, yes it does.

19 Q. Does it recite there for us the specific articles that
20 you have had published on your work?

21 A. Yes, these are some of my publications that have been
22 published. I have had other ones written, but they
23 were not published.

24 Mr. Driggers: W would like to enter Exhibit, I
25 think it is 16 into evidence.

001703

1 **Mr. Corbin:** No objection, Your Honor.

2 **The Court:** Just one moment, counsel. We will
3 mark it in evidence without objection, Defendant's 16.

4 **Whereupon, Defendant's**
5 **Exhibit Number 16 was marked**
6 **and admitted into the Record.**

7 **The Court:** All right, sir, you may proceed.

8 Q. (By Mr. Driggers) Doctor, do you get any referrals
9 of patients from outside the Darlington county area?

10 A. I've gotten referrals. I personally have gotten
11 referrals from Kershaw County, Lee County, even from
12 Bennettsville.

13 Q. Okay. Just again to be clear for the jury. What is
14 the name of your current practice?

15 A. Hartsville Surgical Center.

16 Q. Who do you currently work with?

17 A. I work with Dr. Brooks Bannister and also Dr. Art
18 Cooler. Now we have a fourth partner, Dr. Jason
19 Dameron.

20 Q. And that's been since which year?

21 A. Our newest newcomer just started in August.

22 Q. When did you stop working with Dr. Harris, and go to
23 work?

24 A. That was July of 99.

25 Q. How many --- Give the jury some idea of how many

001704

1 number of operations that you do as a surgeon?

2 A. I do quite a lot of operations. Recently we tallied
3 it all up, over the last thirteen years that I have
4 been here I have done close to eight thousand
5 operations.

6 Q. In any given week, how many operative procedures are
7 you doing?

8 A. I do, at least, somewhere between three and five
9 laparoscopic procedures during the week, a load of
10 endoscopic procedures, and a good number of open
11 procedures.

12 Q. What is a number for an average number of open
13 procedures you do during a week?

14 A. During a week, at least, two or three.

15 Q. For endoscopic?

16 A. Endoscopic, at least, six or seven.

17 Q. Earlier we were given a category by Dr. DeMaria, I
18 believe you were actually here for that testimony, is
19 that correct?

20 A. Yes, I heard that.

21 Q. And we heard a category of what he called esophageal
22 or esophagus gastric surgery. Did you hear him use
23 that category?

24 A. Yes, I heard that.

25 Q. First of all, explain to the jury what is that

001705

1 category, and why would you group esophageal surgery
2 together as he did.

3 A. Well, you can divide the upper abdomen --- you can
4 divide the abdomen into the upper abdomen and the
5 lower abdomen. Upper abdomen including liver,
6 esophagus, spleen, stomach, pancreas, gallbladder.
7 The lower abdomen obviously the colon, small bowel,
8 uterus, ovaries in women.

9 **The Court:** Mr. Driggers, when you ask your
10 questions your voice is trailing off at the end and not
11 picking up for our reporter. Please speak up, if you will.

12 **Mr. Driggers:** Thank you, your honor, I will.

13 Q. (By Mr. Driggers) First of all let's just say you
14 did surgeries even during your residency, correct?

15 A. I did a large number of surgeries during my residency,
16 yes.

17 Q. Tell this jury of that category --- which that
18 category that you gave us of esophageal gastric
19 surgeries does not encompass all of the surgeries you
20 would have done, correct?

21 A. No, no it doesn't.

22 Q. During your residency or even now.

23 A. It's just a part of what we do.

24 Q. Okay. And during your residency tell this jury how
25 many esophageal gastric type surgeries did you

001706

1 complete.

2 A. I have done forty-two according to my records.

3 Q. That was just during your residency, correct?

4 A. That was my residency.

5 Q. Which would have ended in what year?

6 A. 1991.

7 Q. Okay. And then since then you just testified that you
8 do how many not surgeries that are not Laparoscopic --
9 - How many other type surgeries are you doing a week?

10 A. At least ten to twelve a week.

11 Q. Okay. And that would have been since when 1990 --

12 A. Since 93.

13 Q. Since 93. Okay. Now you heard again Dr. DeMaria
14 testify about --- He testified specifically about Open
15 Nissen Procedures, correct?

16 A. That's correct.

17 Q. What did you hear as an adequate number of procedures
18 to have done before you would be competent to do it
19 Open Nissen?

20 A. He had mentioned twenty-five to thirty --- But with
21 all due respect, I don't think he knew my credentials,
22 and did not know my background, did not understand how
23 many I have done in my residency, or since my
24 residency.

25 Q. In fact, I think you testified as such isn't that

001707

1 correct.

2 A. That is correct.

3 Q. He said that he wasn't aware of any your background
4 other than Laparoscopic Nissen Procedures, correct?

5 A. Correct.

6 Q. And you had done over forty before you even left your
7 residency.

8 A. Forty-two, that's correct.

9 Q. Tell the jury what is your laparoscopic history. When
10 did you first receive your laparoscopic training?

11 A. The first time I went to a laparoscopic course was in
12 1992. I went to the Mass General up in Boston, going
13 through Harvard, and did my initial gallbladder
14 surgery with Dr. Andrew Warshaw, who was one of the
15 top people at the time, and is still there, and did
16 work for the U. S. Animal Lab, and then later on went
17 back to our Base. One of my associates had already
18 laparoscopic experience and so we worked together
19 during the first couple of gallbladders.

20 Q. Okay. Would you briefly explain to the jury when you
21 use that term laparoscopic, first of all what is that,
22 laparoscopic?

23 A. Laparoscopic is just a different approach to a
24 procedure that can be done open. It's just making
25 smaller incisions. It's less invasive for the

001708

1 patient. The advantage obviously is that recovery
2 time is quicker, they get to go home sooner, go back
3 to a regular diet sooner. That's the advantage of a
4 laparoscopic procedure. Initial ones we started off
5 doing laparoscopic, and laparoscopic procedures, among
6 general surgeons is really back in the early 90s was
7 really in its infancy. It really got started around
8 88 or 89, and started taking off a little bit more in
9 the early 90s first with gallbladders, and then later
10 on it went on to other organs, including the Nissens
11 as well as colon surgery, and soft organ surgeries.

12 Q. Again, Nissen Procedures were around long before there
13 was laparoscopic procedures, correct?

14 A. The Nissen Open Procedure was around for decades.

15 Q. Okay. What did it treat? What did --- When did you
16 have --- Why would you need a Nissen Fundoplication?

17 A. The Nissen is used for people that have reflux disease
18 to prevent acid from entering the esophagus, which is
19 a very large irritant to the esophagus.

20 Q. Had the open procedure, or the Nissen, changed in any
21 great degree since it began decades ago?

22 A. It has not changed at all.

23 Q. I believe you said you had even again done Open
24 Nissens in addition to the other type of open
25 surgeries you have done even in your residency.

001709

1 A. I did multiple in my residency. I did six on adults
2 and about four or five on children.

3 Q. Okay. Since your residency --- Again, You --- You ---
4 I --- I --- I may be bad with math, but it sounds like
5 you have done hundreds of gastricesophageal type
6 surgeries annually, for open procedures.

7 A. Yes, we do quite an abundant amount of surgery.

8 Q. I believe you gave a total of close to eight thousand?

9 A. Close to eight thousand surgeries since I have been
10 here.

11 Q. Since you have been in Hartsville?

12 A. That's correct, yes.

13 Q. And that is not including what you have done at other
14 hospitals?

15 A. No.

16 Q. At the time of Ms. Person's surgery in 2001, did you
17 have privileges to do an Open Nissen Fundoplication?

18 A. Yes, I do.

19 Q. Had you always had those privileges?

20 A. Yes, I do.

21 Q. At the time of her surgery, did you have privileges to
22 do Laparoscopic Nissen Fundoplication?

23 A. Yes, I do.

24 Q. Tell the jury what your history is specifically with
25 Laparoscopic Nissen Fundoplication?

001710

1 A. I came here and then in 94 I went to my first course
2 up at Duke. There at the time was Dr. Steve Eubanks
3 and Ted Pappas, and learned to do the Laparoscopic
4 Nissen in addition to several of the other procedures
5 like appendectomies and so forth. Then I went back
6 again in 95 to a larger course over a several day
7 period, and did again the Nissen Fundoplication. In
8 addition to that I did a colon there, one or two
9 colons again in the Animal Lab.

10 Q. Explain to the jury what goes on when you take these
11 courses for these procedures.

12 A. Well, the course involves lecturing as well as hands
13 on experience. In these courses you are using both
14 hands, you are learning to use laparoscopic equipment.
15 You become more familiar with the equipment. And as
16 technology progresses we also progress.

17 Q. You said you did that twice at Duke?

18 A. I went there twice.

19 Q. There was another occasion at the University of
20 Cincinnati, is that correct?

21 A. That was later on I did inguinal hernias.

22 Q. You said you had instructors there that were teaching
23 you the laparoscopic --

24 A. Yes, sir.

25 Q. The laparoscopic procedure, right?

001711

1 A. This is the laparoscopic approach to a previously open
2 procedure.

3 Q. Again, you were continuing to do the Open Nissen,
4 correct?

5 A. That's correct.

6 Q. Which the procedure had not changed since --

7 A. --It has not changed for decades.

8 Q. Okay. When you took these courses, did any of your
9 instructors ever tell you not to go back and perform
10 these procedures until you had done a certain number,
11 or until you had had a certain amount of proctoring,
12 preceptors, any of those standards we have heard
13 about?

14 A. No. We had talked about the learning curve being
15 twenty. But you have to look at the learning curve as
16 a comfort level.

17 Q. Okay.

18 A. If you are doing advanced laparoscopic procedures
19 already, and if twenty is chosen as an arbitrary
20 number, and twenty may be the amount needed for
21 somebody who is not really experienced in laparoscopic
22 procedures. But, somebody who is already doing
23 laparoscopic procedures, that feels comfortable doing
24 laparoscopic procedures after two or three you feel
25 comfortable doing them.

001712

1 A. What are some of the laparoscopic procedures that you
2 are privileged to do?

3 A. I do Laparoscopic Ventral Hernias. I do Laparoscopic
4 Inguinal Hernias. I do Appendectomies,
5 Oophorectomies. As a matter of fact, that's what I
6 did no Ms. Person, I did a Laparoscopic Appendectomy
7 and Oophorectomy prior to her surgery.

8 Q. Prior to?

9 A. Prior to her surgery.

10 Q. How did you continue your training for laparoscopic --

11 A. I'm sorry.

12 Q. How did you continue your training in South Carolina
13 for Laparoscopic Nissen?

14 A. I kept going to the courses and then continuing my
15 practice.

16 Q. When you had the occasion to observe Dr. Dale Abbott?

17 A. That was after the second time I went to Duke. At
18 that time there were not enough qualified proctors at
19 that time --- the laparoscopic procedure was in its
20 infancy, so there weren't really a lot of qualified
21 proctors; so I did the second best thing. I went to
22 Dr. Lawmaker, who was at that time the top man in
23 South Carolina.

24 Q. Where did he practice?

25 A. Columbia, South Carolina.

001713

1 Q. As a General Surgeon?

2 A. A General Surgeon.

3 Q. What did you do with Dr. Lawmaker?

4 A. I went there and observed him. I went there three
5 times on three different occasions, closed my office
6 to go there and learned his technique.

7 Q. Did Dr. Lawmaker, ever warn you or tell you not to go
8 back and begin doing these procedures after he had
9 shown you his techniques?

10 A. No, not at all.

11 Q. In fact, did Dr. Lawmaker, ever commend your practice
12 of medicine?

13 A. Yes.

14 Mr. Corbin: Objection.

15 The Court: I'm sorry, on what basis?

16 Mr. Corbin: Hearsay, for what some doctor told
17 him years ago.

18 The Court: Counsel response?

19 Mr. Driggers: Yes, sir, Your Honor, this goes
20 to specific reference to his actual SAGES membership. He
21 had to have doctors write and attest to his practice and
22 this is one of those.

23 The Court: Overruled.

24 Q. (By Mr. Driggers) Go ahead, Dr. Mincheff.

25 A. Even after I did my first several of Laparoscopic

001714

1 Nissens I stayed in telephone contact with Dr.
2 Lawmaker, and we talked about the different cases.
3 Later on I joined SAGES, and I even asked Dr. Lawmaker
4 for a letter of recommendation.

5 Q. And did he write that letter?

6 A. Yes, he did.

7 Q. So he was a sponsor for you to this elite group of
8 surgeons?

9 A. Yes, he was.

10 Q. Dr. Mincheff, after receiving this training for
11 Laparoscopic Nissens, how many have you done --- how
12 many advanced esophageal type laparoscopic surgeries
13 had you done prior to Ms. Person's surgery?

14 A. At the time of Mrs. Person's surgery I had already
15 done ten laparoscopic anti-reflux procedures, eight of
16 those were Nissens, and two of them were Hill
17 procedures, which is a modification of the Nissen.
18 Essentially the same procedure, somewhat modified.

19 Q. Okay. Again, both of those using --- safe to say the
20 stomach to treat gastric reflux?

21 A. That is correct.

22 Q. Now, this is in addition to whatever open
23 gastroesophageal procedures you had done, correct?

24 A. That's correct.

25 Q. Had you had complications with any of those prior

001715

1 Laparoscopic Nissen Procedures?

2 A. The only complication I had was a lady that had
3 rheumatoid arthritis. She was on large doses of
4 steroids, and we started off with a laparoscopic
5 approach. My partner who was holding down the
6 stomach, which you have to pull the stomach down with
7 a Babcock, the Babcock itself, the instrument,
8 actually tore a small hole in her stomach. It was
9 immediately recognized, and I thought at that time
10 that Dr. Harris was with me at the time, and I said,
11 you know, with her tissues being so weak I think we'll
12 just do this open. We went ahead and did it open.

13 Q. Okay. So, you again at the same time in addition you
14 were also doing open procedures?

15 A. That's correct.

16 Q. Did that require --- That one incident with the
17 stomach, did that require any length of stay, or
18 treatment?

19 A. The stay is a little bit longer when you do it open,
20 plus she had a lot of co-morbidities, so she was in
21 the hospital a little bit longer.

22 Q. But, not as a result of anything that happened with
23 the stomach?

24 A. No, no, no that was fine.

25 Q. You were here for Dr. DeMaria's testimony. He gave

001716

1 us a success rate of 90% for Nissens, is that correct?

2 A. What he was quoting was in the laparoscopic repair,
3 which is also similar to the open repair, the success
4 rate is 90%. That means taut 10% of those will recur,
5 they may have recurrent problems afterwards.

6 Q. Okay.

7 A. But overall the success rate is pretty high for both
8 laparoscopic as well as open.

9 Q. You gave us ten without any complication.

10 A. That is correct.

11 Q. So that would exceed that percentage, correct?

12 A. Yes.

13 Q. Even since Ms. Person's surgery, have you continued to
14 do laparoscopic Nissens?

15 A. After her I did three more Nissen Fundoplications
16 after her. My last one being in 2003. Just recently
17 we have done two large Periesophageal Hernias, which
18 is a large defect in the diaphragm.

19 Q. Okay. And did you have any complications from any of
20 those?

21 A. No.

22 Q. Doctor, do you serve on the Credentialing Committee at
23 Carlina Pines?

24 A. I have been on the peer review and Credentialing
25 Committee since 1993.

001717

1 Q. Whenever it comes up and you are on that committee ---
2 of course, you have privileges at Carlina Pines,
3 correct?

4 A. That's correct.

5 Q. For all general surgical procedures, correct?

6 A. That's correct.

7 Q. And for Laparoscopic Nissen Procedures?

8 A. Yes.

9 Q. And you told us the other laparoscopies you have
10 privileges for?

11 A. Yes.

12 Q. Do you vote on your own request for privileges when
13 you serve on that committee?

14 A. No. At the time when I had to apply, I had to
15 actually step out of the room so that the committee
16 could vote.

17 Q. When did you say you first applied and received
18 privileges for Laparoscopic Nissens, what year was
19 that?

20 A. For the Laparoscopic Nissen was '95.

21 Q. I guess you would have gotten initial privileges from
22 the open Nissen in 93, correct?

23 A. Yes, when I came to the hospital.

24 Q. At that time who was your surgical partner, who did
25 you practice with?

001718

1 A. Dr. Robert Harris was my partner, who had close to
2 thirty years of experience.

3 Q. So you would not have had any business relationship or
4 medical practice relationship with either Dr.
5 Bannister or Cooler at that time?

6 A. Actually, Dr. Cooler wasn't even there when I first
7 came. It was just Dr. Bannister and Dr. Moyd and we
8 were two separate surgical groups.

9 Q. Doctor, each time that you applied for a request for
10 privilege, did you have an expectation it would be
11 granted?

12 A. No, I didn't. Everything has to go through a certain
13 process. If it gets accepted, it gets accepted. If
14 it doesn't there are provisions, but that didn't
15 occur.

16 Q. Okay. The other courses and all the educational
17 training you have told us about for all of your
18 surgical procedures, you did those with other
19 physicians, correct?

20 A. That's correct.

21 Q. Did those physicians, to your knowledge, also receive
22 the privileges you did to do these procedures when
23 they returned to their hospitals?

24 A. That's correct.

25 Q. Okay. Now when you were actually received the

001719

1 privilege for this procedure, doctor, that was given,
2 of course, by the various chains of the committees
3 that we have heard testimony about?

4 A. That's correct.

5 Q. And ultimately approved by the Board of Trustees?

6 A. Uh'huh.

7 Q. You don't find any fault for them for giving you this
8 privilege for doing these procedures, correct?

9 A. Not at all.

10 Q. Okay. So, if there is any injury that Mrs. Person's
11 suffered that happens during a surgical procedure,
12 correct?

13 A. That's correct.

14 Q. That you had received proper privileges for, correct?

15 A. That's correct.

16 Q. Do you blame the hospital for any injury Ms. Person
17 suffered?

18 A. No.

19 Q. Tell the jury again a little bit about your medical
20 history to Ms. Person --- with Ms. Person, what else
21 have you treated her for?

22 A. Well, Ruthie I knew her for many years, she had come
23 to our office. I actually did most of her surgeries,
24 which included her hysterectomy, and then later on I
25 had to do her laparoscopic appendectomy, oophorectomy.

001720

1 I've done in the past a colonoscopy on her, I think an
2 EGD. And I believe my partner actually did her breast
3 surgery.

4 Q. Okay. Now each time that you treated her surgically
5 you had to speak with her and tell her about possible
6 complications, correct?

7 A. That's correct.

8 Q. And the other organs that could be affected during
9 those procedures, correct?

10 A. That's correct.

11 Q. And that it could possibly lead to other unforeseen
12 things, correct?

13 A. That's correct. We had a thorough understanding of
14 what was going on, and we both had a very good
15 relationship.

16 Q. Okay. Did she ever any of those multiple times when
17 you were her surgeon, did she ever hesitate, to have
18 you operate on her?

19 A. No, she liked me, and she trusted me, and she wanted
20 me to do her surgery.

21 Q. Did she ever during any of those procedures that you
22 did, the oophorectomy, the hysterectomy, the
23 appendectomy, any of the ones you have gone through,
24 did she ever ask you how many times you had done a
25 particular procedure?

001721

1 A. No, no, she didn't.

2 Q. Okay. Did she ever ask for a second opinion of some
3 other surgeon?

4 A. No, she didn't.

5 Q. Did she always feel comfortable with you doing those
6 procedures?

7 A. Yes, and I felt comfortable working with her.

8 Q. Would you that you and Ms. Person had bonded in some
9 way as patient and doctor?

10 A. Yes, we had, like I said, we had a very good
11 relationship for many, many years.

12 Q. Did that even extend to other family members?

13 A. Yes. My wife actually worked in my office with Dr.
14 Harris. She was our Office Manager. So my wife was
15 quite familiar with Ms. Person.

16 Q. Okay. And that would have been prior of course to
17 this procedure happening?

18 A. Oh, yes, many years.

19 Q. Dr. Harris being before 1999?

20 A. Many years before that.

21 Q. You had had that type of relationship going back even
22 to your earlier practice?

23 A. Yes.

24 Q. OKAY. We have heard about reflux condition. First of
25 all, tell this jury, is it typical to treat reflux

001722

1 surgically, is that how you normally would treat
2 somebody?

3 A. No, you first like to try to treat it medically. You
4 treat it with --- Years ago they didn't have proton
5 pump inhibitors like protonics, Nexium like you hear
6 on tv now. They just had Zantac and Carafate and
7 those things. Then it came along the Proton pump
8 inhibitors which are a little bit more effective ---
9 you try to treat it medically. Then it comes a time
10 when it becomes so severe then you have to change over
11 and think about doing a surgical procedure. There are
12 patients taut try to take the protonpump inhibitors
13 and then after a time it becomes --- First of all, it
14 is very, very expensive, and it's a burden to
15 constantly take protonpump inhibitors over a long
16 period of time. Those patients that don't want to
17 continue taking the protonpump inhibitors, are the
18 ones that usually come and request to discuss a
19 different option, a different route to treat the
20 problem.

21 Q. Okay. In fact, you don't even see patients directly
22 for a Nissen --- or treatment for esophageal reflux,
23 is that correct?

24 A. Most of the patients are treated by their family
25 practitioners or internist, and they are later

001723

1 referred to us if the problem becomes severe.

2 Q. Okay. And that happened in Ms. Person's case,
3 correct?

4 A. That's correct. Actually, I saw Ruth back in around
5 97 or so, in or 98, that time frame. She was taking
6 the protonpump inhibitors and she was, you know,
7 talking about how bad it was. At that time I said,
8 you know, if it continues like it is, and you are
9 still having problems, you know, we have to think
10 about doing an operation.

11 Q. So you weren't trying to push her into a procedure,
12 correct?

13 A. No, not at all.

14 Q. In addition I believe to Dr. Barker and Dr. Smith, who
15 we have heard testimony, referred Ms. Person to you
16 for this consultation, correct?

17 A. That's correct. Actually what happened was that she
18 was up on the floor, she was being treated for
19 aspiration pneumonia. One of my partners, I think Dr.
20 Cooler, had seen her first, and then Dr. Bannister
21 actually did her EGD and determined that she had real
22 severe reflux esophagitis, her esophagus was quite
23 inflamed. And then it came to the point where the
24 discussion was about surgery. Dr. Barker asked me to
25 see her, because she wanted me to do her surgery.

001724

1 At the time she was still being treated for the
2 pneumonia. I said, I told her at that time we will
3 have to get you over the pneumonia before we can do an
4 operation. And so we got her through the
5 hospitalization first.

6 Q. Okay. I think --- All three of the surgeons at some
7 point and time had actually done some kind of
8 treatment just prior to this surgery, correct?

9 A. That's correct.

10 Q. Okay. I think the consent forms had all of your names
11 on it for this procedure.

12 A. We are all in the same group and we assist each other.

13 Q. But there's no question you were the one, doing this
14 surgery, correct?

15 A. That's right. I'm the Chief Surgeon, I'm in command.

16 Q. The reason that you were the one doing this one as
17 opposed to --- is because that is who Ms. Person
18 wanted to do it?

19 A. That's correct.

20 Q. Who are some of the other physicians in the area that
21 refer you patients for this treatment?

22 A. There are a lot of physicians that have referred
23 patients to me. Dr. Bell has referred a number of
24 them. Dr. Barker, I think Dr. Chapman, and maybe Dr.
25 Bullard, the majority of the family physicians.

001725

1 Q. Okay. Do any of them ever hesitate to have you do an
2 advanced esophageal type laparoscopic procedure?

3 A. No.

4 Q. After it was determined that you do the surgery,
5 Doctor, you had a specific appointment again with Ms.
6 Person, correct, to discuss the procedure?

7 A. Yes, after she got over her pneumonia, she then came
8 to my office. We sat down again and talked about the
9 procedure. I actually even showed her one of my text
10 books, and showed her the pictures of how it is
11 supposed to look, and went through obviously the risks
12 and complications very, very, thoroughly.

13 Q. Okay. So you actually had a diagram so she could
14 visualize what was going on?

15 A. Yes. And I do that with all of my patients. I show
16 them what the surgery involves, what it is supposed to
17 look like, and we talk about some of the risks and
18 complications. Obviously pancreatitis is such a rare
19 complication, it's not one that I discussed
20 specifically with her.

21 Q. Okay. Did you give her any types of guarantees as to
22 the outcome of her procedure?

23 A. No.

24 Q. Did you have any concerns about your ability to do
25 this procedure?

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1 A. No, I had no concerns. Like I said, I did ten before
2 that and felt very very comfortable with the
3 procedure.

4 Q. Even though at that time, again you were doing weekly
5 other laparoscopic procedures, correct?

6 A. Not only laparoscopic even open procedures.

7 Q. The numbers you gave us earlier about four
8 laparoscopic a week, or however many, four or five
9 open a week those are consistent with this time frame?

10 A. Constantly. You don't get eight thousand operations
11 in thirteen years, just sitting in your office.

12 Q. Now, during this surgery, after you explained to Ms.
13 Person what the surgery would involve, and after she
14 asked you to perform that surgery --- First of all,
15 did you have anybody else with you during that
16 surgery, any other surgeons?

17 A. I had my partner, Dr. Brooks Bannister.

18 Q. How long has Dr. Bannister been practicing?

19 A. He's been practicing here in Hartsville since 1982.

20 Q. And this was going to be a Laparoscopic Nissen
21 Fundoplication?

22 A. That was our plan.

23 Q. Tell the jury what happened during the course of the
24 operation.

25 A. In the course of the operation it started off

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1 laparoscopically, and we noted that we could not
2 progress with the procedure. Meaning, we couldn't get
3 exposure to that small area beneath the liver. She
4 had a very very large liver. Also her colon was
5 markedly dilated, it was abnormal. And that's the
6 reason why I elected to switch over to do an open
7 procedure, because I couldn't get exposure.

8 Q. Was there any way for you to know how those were going
9 to show themselves before you actually began the
10 procedure?

11 A. No, I didn't.

12 Q. Again, your were initially trying to do with smaller
13 scopes, correct?

14 A. That's correct.

15 Q. You were not able to see what you needed to see so you
16 had to change to an open?

17 A. That's right. It was very very difficult to even
18 deflect the liver out of the way, because it was so
19 large, especially the left lobe of the liver. You
20 have to get that out of the way in order to see that
21 area.

22 Q. Again, as Dr. DeMaria testified that is perfectly
23 normal given that scenario, correct?

24 A. That's correct.

25 Q. It's not below any standard of care to convert to an

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1 open procedure?

2 A. No, it is not.

3 Q. Now --- So what you tell this jury then is there was
4 not any complication, or injury of any type during the
5 laparoscopic part, I guess you would say in this
6 procedure.

7 A. That's correct.

8 Q. Okay. You began it laparoscopically and converted to
9 what you call an open, correct?

10 A. We made the right judgement by opening the patient.

11 Q. Okay. So is it safe to say that once --- After that
12 conversion --

13 **Mr. Corbin:** Excuse me, your honor, I need to
14 object to leading.

15 **The Court:** Sustained. Counsel, you have been
16 leading your witness. There has not been an objection, but
17 I have noticed that in several questions. Please don't
18 lead your witness.

19 **Mr. Driggers:** Thank you, your honor.

20 Q. (By Mr. Driggers) Did any laparoscopic training
21 play into the surgery after that point?

22 A. No, it was a completely open procedure.

23 Q. Okay. And, was Dr. Bannister privileged or able to
24 the Nissen Procedure?

25 A. He has been privileged since 1982.

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1 Q. Okay. And in fact, has he done open Nissens
2 Procedures in the past?

3 A. Yes.

4 Q. Okay. Is he currently still have privileges to do
5 them?

6 A. He does open procedures.

7 **The Court:** Our court reporter is again telling
8 me that your voice is dropping off Mr. Driggers. Please
9 keep your voice up.

10 **Mr. Driggers:** Maybe is the television, I don't
11 know, but I'll step up.

12 **The Court:** Thank you.

13 Q. (By Mr. Driggers) Doctor, are there any SAGES
14 Guidelines that apply to the open procedures?

15 A. No.

16 Q. Okay. Was the procedure completed open? Describe
17 what happened after that conversion.

18 A. Well, like I said before, her colon was markedly
19 dilated. Her liver was enlarged. Even during open it
20 was very --- it was a very very difficult operation.
21 We tried to deflect the colon down. Also, you had to
22 deflect the stomach down in order to get up there. In
23 the process of trying to deflect those organs, the
24 stomach and the colon down, we unfortunately evulsed
25 several of the small fragile vessels between the

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1 stomach and the spleen, so we had to get the bleeding
2 under control. We finally got that under control,
3 unfortunately there was a significant amount of
4 bleeding up 1300 ccs. But we got the bleeding under
5 control and then proceeded with the procedure.

6 I first went ahead and did the Nissen
7 Fundoplication. I noted that there was a little
8 tension on the repair, and I elected to take it down,
9 and then elected to do a Hill Procedure, which is also
10 an anti-reflux procedure, it is just a modification of
11 the Nissen.

12 Q. Okay. Did you note at the time that you were actually
13 performing the operation any kind of damage to any
14 organ?

15 A. No.

16 Q. And you actually had --- I believe you said, how many
17 surgeons did you there treating the bleeding that
18 occurred?

19 A. Well, it was myself and Dr. Bannister.

20 Q. Okay. And, then we have heard some testimony about
21 the length of time for this procedure. Explain to the
22 jury about the time that it took for you to do all of
23 this.

24 A. Well a normal Nissen procedure laparoscopic takes to
25 three to four hours to do. And the open procedure

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1 obviously took us, you know, five hours, including
2 converting and then doing it open.

3 Q. Okay. Now explain to the jury after you were able to
4 complete the procedure, what happened next with Ms.
5 Person.

6 A. We put the patient in the intensive care unit and
7 watched her there. Noticed on the next day that there
8 was an infusion in the left chest. When you see an
9 infusion in the left chest you always are concerned
10 that could there be some injury to the esophagus. So
11 I elected to do a gastrograph study where they have to
12 drink some dye, look down through the esophagus, and
13 there was no leak. That was fine. Then the following
14 day noticed that there was more of an increase of
15 fluid in her chest. Then I elected to tap her chest
16 by putting a needle and catheter in her chest and
17 drawing some of the fluid off. I sent that fluid off
18 to see what was in the fluid. It was very very clear.
19 I sent the fluid off. It was very, very high in
20 amylase, and that made me suspicious that there was
21 something wrong with the pancreas. Then she
22 subsequently developed a large fluid collection just
23 around the spleen and up underneath the diaphragm on
24 the left-hand side. Then I sent her to the Radiology
25 Department to have, under CT guidance, a Catheter

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1 placed right in the subdiaphragmatic space, that space
2 around the spleen. Again, it showed that same type of
3 fluid that I found in the chest. That made me very
4 concerned that there was something wrong with her
5 pancreas. That's when I started making some phone
6 calls. I called down to Charleston and talked to the
7 guys down there, and then I finally talked to our
8 friends in Richland, specifically Dr. Bynoe about the
9 problem. At that time I was very very concerned that
10 she could have possibly had a ductal injury.

11 Q. What do you mean by ductal injury?

12 A. The duct in the pancreas. But I didn't know exactly
13 where the injury was, somewhere, you know, in the
14 middle, the tail possibly. But anyway, I was
15 concerned about a ductal injury.

16 Q. When you say that, what do you mean by a ductal
17 injury?

18 A. Well, the duct in the pancreas.

19 Q. Okay.

20 A. But, I didn't know exactly know where the injury was.
21 Somewhere you know in the middle of the tail,
22 possibly. Anyway, I was concerned about a ductal
23 injury, and then I called them to see if they could
24 see her to evaluate and then treat her.

25 Q. Okay. Tell the jury, what is pancreatitis? If

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1 somebody has had a diagnosis of pancreatitis what --

2 A. Pancreatitis is just an inflammation of the pancreas.

3 Q. Okay. And is that caused by --- What can cause that?

4 A. Most of the time it's caused by biliary disease,
5 alcohol can cause pancreatitis. And also there is a
6 form called idiopathic pancreatitis where there's
7 really no explanation for the pancreatitis. Also
8 people that are on high doses of steroids can develop
9 pancreatitis.

10 Q. Is it possible just during the course of surgery?

11 A. Yes, she could have had a contusion, which is a bruise
12 to the pancreas that caused the pancreatitis.

13 Q. Okay. You mentioned idiopathic. Again, I think
14 that's a term Dr. DeMaria used. What does that mean
15 when you say idiopathic?

16 A. Meaning that there is no explanation for it.

17 Q. Okay. If there are all these other potentials ---
18 Tell the jury why your notes mention potential injury
19 to the tail of the pancreas.

20 A. I was very very truthful and honest about it. I
21 really did not know where that fluid was coming from.
22 I thought the next course of the plan was to do an
23 ERCP where you have to go in and actually shoot some
24 dye into the duct to see if there is, in fact, an
25 injury to the duct. That's why I put that in the

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1 note. I had no idea at that what was going on with
2 the pancreas.

3 Q. Okay. Did you, in fact, ever find out was there any
4 injury to the pancreas?

5 A. The fact of the matter is when she got over there --

6 Q. -- Over where?

7 A. Over at Richland, Palmetto Richland in Columbia. Once
8 she got there they actually did not do anything for
9 about fourteen days. Actually they had removed her
10 drain that we had put in. And I think that had they
11 not removed her drain her pancreatitis may not have
12 gotten so bad. But anyway, they elected to take out
13 her drain. They were starting to feed her, and then
14 her pancreatitis got worse. About the fourteenth day
15 after being there her pancreatitis got worse, and they
16 had to take her to the operating room.

17 Q. Okay. As her surgeon in Hartsville, did you continue
18 to monitor her care?

19 A. I called, yes, sir. I called Dr. Bynoe several times,
20 had some very good discussions with him about the
21 problem. He reassured me that she --

22 Mr. Corbin: Objection, your honor, please,
23 hearsay unless Dr. Bynoe wants to come.

24 The Court: I will sustain the objection to
25 hearsay.

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1 Q. (By Mr. Driggers) Did you ever learn from any source
2 of any, as you termed it, ductal injury to Ms.
3 Person's pancreas?

4 A. Well, if you look at the Operative Reports there's no
5 indication that she had a ductal injury. She had
6 pancreatitis.

7 The Court: Mr. Driggers, while you are paused,
8 how long do you think your direct will be?

9 Mr. Driggers: Uh, it should be I'm guessing
10 another twenty.

11 The Court: Let's take our break at this time.
12 This is a good point to stop. We will take our afternoon
13 break. Ladies and gentlemen, just return to the jury room.
14 If you wish to go outside, we will make that available to
15 you.

16 Everyone, else remain where they are while our jury
17 departs the courtroom.

18 (Whereupon the jury exits the courtroom at
19 3:15 p.m.)

20 The Court: Sir, you are free to step down.
21 There is a restroom down the hall. All right. The Court
22 will be in recess approximately fifteen minutes.

23 (Whereupon the Court was in recess from 3:15
24 p.m. and resumes its sitting at 3:34 p.m.)

25 The Court: Dr. Mincheff, please just make

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1 yourself comfortable there. We will try to get you up and
2 out this afternoon. Good luck with Mrs. Mincheff's
3 surgery. I hope that the news is good.

4 **Dr. Mincheff:** Thank you, I hope so too.

5 **The Court:** Counsel, are we ready?

6 **Mr. Driggers:** Yes, sir, your honor.

7 **Mr. Corbin:** Yes, sir.

8 **The Court:** Let's bring in the jury, please.

9 (Whereupon the jury enters the courtroom at
10 3:36 p.m.)

11 **The Court:** Welcome back, Madame Forelady,
12 members of the jury. Mr. Driggers, you may continue.

13 **Mr. Driggers:** Thank you, your honor.

14 Q. (By Mr. Driggers) Dr. Mincheff, we talked about Ms.
15 Person's treatment at Richland Memorial Hospital.
16 Just so the jury is clear, what was her condition when
17 she left Carlina Pines regional Medical Center?

18 A. She was in fair condition.

19 Q. Were you able to speak with her?

20 A. Oh, yes.

21 Q. Upon transfer that was still the case, correct?

22 A. Yes.

23 Q. Then when she arrived at Richland you were describing
24 for the jury, that they made some choices, in the
25 treatment of her pancreatitis, correct?

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1 A. Yes, they elected not to do anything immediately.
2 They observed her for close to thirteen or fourteen
3 days. In that time frame they did remove her drain,
4 for whatever reason they decided to remove the drain.
5 Then they fed her, and then she got sick again. Then
6 according to the records she developed some fluid in
7 her abdomen. They went in to explore her, and that is
8 when they actually --- When they went in they made a
9 hole in her stomach. They recognized it, and they
10 repaired it, and they examined her pancreas. She did
11 have pancreatitis. She did not have a laceration to
12 her pancreas. She did not have any lacerations to her
13 spleen which had been alleged. Her spleen was fine.
14 There's nothing in the reports that show that she had
15 a splenic injury, but she did have pancreatitis. And
16 they had to do a debridement of that.

17 Q. Just for the jury benefit, what do you mean when you
18 say they had to do a debridement?

19 A. Debridement, removing any tissue around the pancreas
20 that is non-viable.

21 Q. Was there any other injury that was suffered at
22 Richland Memorial Hospital?

23 A. About two or three days later they went back in to do
24 another washout, and that's when they got into her
25 colon. They perforated her colon, and then all the

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1 colonic contents, stools were spilled out into her
2 abdominal cavity. Well, you can't close the abdomen
3 when that happens. They had to remove a part of her
4 colon and actually bring out the colon as a colostomy
5 over to the side. They had to leave her open.

6 Q. Okay. So the pictures that we have seen, the injury
7 that Ms. Person's has described, we have seen those,
8 were those the choices made by Richland Memorial
9 Hospital?

10 A. They were made by Richland.

11 Q. And that was not her present that was not her
12 condition when she left Carlina Pines?

13 A. No, it was not.

14 Q. Do you believe that the physicians at Richland made
15 poor choices?

16 A. Well, I don't think maybe removing the drain might
17 have been too premature. I think maybe had they left
18 the drain in that could have kept things under
19 control, and maybe she wouldn't have gotten any worse.
20 It's hard to say, but that's my concern.

21 Q. Okay. Do you believe that the physicians at Richland
22 Memorial were truthful with Ms. Person?

23 A. Actually as we heard, she didn't know anything about
24 it.

25 Q. Okay.

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1 A. And, that's something that sort of disturbs me. I
2 think they should have, at least, told her the truth.

3 Q. Okay. And did you attempt to be truthful with Ms.
4 Person in your treatment of her?

5 A. Like I said before, you know, and it's even in my
6 record, I was concerned about an injury to her
7 pancreas. I was quite up front with her and her
8 family. I told her my concerns, and I thought the
9 best thing to do was to have this further evaluated,
10 and that's why I sent her to Columbia to have that
11 evaluated.

12 Q. Okay. Did you attempt to contact her again in any way
13 following her transfer?

14 A. Well, it's very difficult to contact somebody in the
15 ICU there, the HIPAA Rules and everything, you just
16 can't call in. But I did speak with Dr. Bynoe several
17 times.

18 Q. How about any of her family members?

19 A. I think on the floor I ran into one of her family
20 members and we talked about it. I think I mentioned,
21 you know, if they could call me.

22 Q. Okay. Now, doctor, what would have happened if Ms.
23 Person had not had her aspiration pneumonia not been
24 treated?

25 A. Well, she would have continued to have moments of

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1 aspiration, and you can die from pneumonia.

2 Q. Okay. And you understand the issue in this case is
3 whether you had, enough training to perform a Nissen
4 Fundoplication, correct?

5 A. I think my records show that I have had a substantial
6 amount of training.

7 Q. A lot more than a few pigs, correct?

8 A. That's correct.

9 Q. Okay. Now, you again have heard at least their
10 standard this jury has heard that you should have done
11 twenty to thirty gastricesophageal type surgeries
12 before doing an open Nissen, correct?

13 A. That's right.

14 Q. Okay. What procedures would that include in the most
15 simple terms for the jury?

16 A. Well, you have to include Partial Gastrectomies,
17 Gastrectomies, Esophagectomies, Liver Resections,
18 Splenectomies, Pancreatic Surgery; all of which I had
19 during my residency.

20 Q. Okay. And we have talked about that. Even since your
21 residency, how many of those procedures would you have
22 done from the time you finished your training until
23 2001 when you treated Ms. Person?

24 A. I did a lot of surgery, abdominal open, as well as
25 laparoscopic surgery in the time that I have been

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1 here.

2 Q. Okay. And from the numbers you gave us earlier, is it
3 fair to say hundreds of procedures?

4 A. I have done alone over seven hundred and fifty
5 laparoscopic procedures here in Hartsville.

6 Q. And a equal number of open procedures, correct?

7 A. Yes.

8 Q. Now. Doctor, again, your assistant in the procedure,
9 your backup, so to speak, was Dr. Bannister, correct?

10 A. He was my assistant, yes.

11 Q. And that's certainly better than not having any
12 assistants at all, correct?

13 A. That's right.

14 Q. Other teaching hospitals often times there is a
15 student that serves in that role?

16 A. It's a resident.

17 Q. Dr. Bannister certainly was not a resident or student
18 in surgery, correct? At the time --

19 A. Dr. Bannister has had training and has been here since
20 1982.

21 Q. Okay. Okay. Is it safe to say that he would have
22 done more open --- any types of procedures than you,
23 correct?

24 A. That's correct.

25 Q. Doctor, has, in fact, your credentialing file ever

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1 been subject to any kind of review, to your knowledge?

2 A. I think in 2003 they had some Federal Agency come look
3 at several of our files. I think one was mine.

4 Q. Okay. Was there any problem identified with your
5 credentialing file?

6 A. No, not that I'm aware of.

7 Q. Okay. Now, again, when you gave Carlina Pines your
8 application for surgical procedures, they reviewed it,
9 correct?

10 A. That's correct.

11 Q. And you believe that you were qualified for that,
12 correct?

13 A. That's correct.

14 Q. Do you blame Carlina Pines in any way for giving you
15 the right to perform these procedures?

16 A. No.

17 **Mr. Driggers:** That's all the questions I have,
18 your honor.

19 **The Court:** Cross examination.

20 **Cross Examination by Mr. Corbin**

21 Q. Dr. Mincheff, good afternoon.

22 A. Good afternoon.

23 Q. In fact, Dr. Eubanks at Duke when you took that course
24 to learn how to the Laparoscopic Nissen
25 Fundoplication, and you took it, he, in fact, told

1 you, you would have to do twenty, didn't he?

2 A. No, he didn't say I have to do twenty. We're talking
3 about the learning curve being twenty.

4 Q. Do you remember when you gave a deposition to me on
5 November 25, 2003, do you recall that?

6 A. Yes, I recall.

7 Q. Do you recall when I asked you the question, did Dr.
8 Eubanks, ever teach you that it takes, at least twenty
9 times to go off of the learning curve before you have
10 expertise in doing this procedure, did Dr. Eubanks
11 ever teach you that? Do you recall what you told me?

12 A. I remember talking about the learning curve.

13 Q. Your response was, it was discussed, you have to do
14 twenty cases. Is that the truth?

15 A. Well, you have to do twenty cases to get the learning
16 curve of twenty. But then you have to understand that
17 the arbitrary number of twenty is a comfort level. If
18 you're doing advanced laparoscopic procedures, you
19 don't need twenty to feel comfortable with the Nissen
20 Laparoscopic Procedure. If you doing laparoscopic
21 procedures already using two hands it is much easier
22 to adapt doing a Nissen Laparoscopic if you have
23 already done advanced laparoscopic procedures. So you
24 really don't need the twenty.

25 Q. The courses that you took at Duke, had you ever

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1 operated on a human being doing the Laparoscopic
2 Nissen Procedure?

3 A. No, you work in an Animal Lab.

4 Q. Animal Lab. In fact, your experience was operating on
5 two pigs, correct?

6 A. That's correct.

7 Q. After you finished operating on two pigs, Dr. Eubanks
8 told you, you have to do twenty. You came back to
9 Carlina Pines and applied for privileges.

10 **Mr. Driggers:** Objection, your honor.

11 A. Well, he didn't say to do twenty on pigs.

12 **The Court:** Excuse me, sir. What's your
13 objection.

14 **Mr. Driggers:** Objection, your honor, to
15 misstatement of the testimony.

16 **The Court:** Counsel, you will have redirect.
17 The jury has heard that, and they are aware of whether it
18 is a misstatement or a correct statement. Overruled.

19 Q. (By Mr. Corbin) Dr. Mincheff, you came to Carlina
20 Pines, and applied for privileges to do the
21 Laparoscopic Nissen Fundoplication Procedure, correct?

22 A. That's correct.

23 Q. And you got that privilege, didn't you?

24 A. Yes, I did.

25 Q. Had you ever done that operation on a human being

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1 before you got privileges?

2 A. Yes, not laparoscopically, but I did it open.

3 Q. I'm talking about the laparoscopic. You don't mind
4 talking about that, do you?

5 A. No.

6 Q. Okay. The fact is the only operations you had done
7 involving Laparoscopic Nissen Fundoplication before
8 you got your privilege here consisted of two pigs,
9 fair?

10 A. That's correct.

11 Q. Two pigs, was your experience doing Laparoscopic
12 Procedures, you came to Carlina Pines and they gave
13 you the green light to do it on humans, correct?

14 A. That's correct.

15 Q. No proctor was required, was it?

16 A. No.

17 Q. No preceptorship requirement, was it?

18 A. No.

19 Q. You got the green light, right?

20 A. Yes, I was allowed to do it.

21 Q. The Open Procedure, the Open Nissen Procedure, when
22 you applied in 1996 for privileges, when was the last
23 time you had ever done an open procedure involving
24 GERDS on an adult?

25 A. Prior to 1996 was 1992.

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1 Q. Did you do an open GERDS procedure in 1996?

2 A. Open, yes. 96?

3 Q. Yes, sir.

4 A. In 96, yes, I did.

5 Q. The question was, before 1996.

6 A. Before 1996?

7 Q. Yes, sir.

8 A. That was 1992.

9 Q. In fact, your experience doing the Open Nissen
10 Procedure on an adult was one in New York, right?

11 A. One in 1992.

12 Q. Before you had done Ms. Person's surgery in 2001, when
13 was the last time you had done an Open Nissen
14 Procedure on a human being?

15 A. The last time was 1996, and it was not a Nissen, it
16 was a Hill Procedure.

17 Q. So the question was Nissen, when was the last time
18 before Ms. Person's open --- When was the last time
19 before Ms. Person's Laparoscopic Nissen Procedure had
20 you ever done an Open Nissen Procedure on an adult?

21 A. It was 1992. But like I said, a Hill and Nissen are
22 very similar.

23 Q. 1992, that's about nine years before Ms. Person's
24 surgery, correct?

25 A. If you are specifically talking about Nissen, yes.

1 Q. Knowing what Dr. Eubanks, your instructor, told you
2 and you were aware of all of the literature, we don't
3 need to go through that, it indicates the learning
4 curve for this procedure is, at least, twenty. Why
5 did you feel so comfortable you could go from two pigs
6 to a human being?

7 A. Actually, sir, it was not only two pigs. I went
8 through that course twice. Each course involved two
9 pigs. So it was actually four pigs. As I said, if
10 you feel comfortable doing Advanced Laparoscopic
11 Procedures, and at that time I already did Advanced
12 Laparoscopic Procedures, including appendectomies,
13 oophorectomies, and felt very comfortable using two
14 hands to do intracarpal and extracorporeal knot tying.
15 I felt very comfortable with the procedure. I really
16 did not need twenty to get to that learning curve that
17 you're talking about, three was adequate for me.

18 Q. Well, when you got your privileges was zero adequate?

19 A. I got my privileges without having the twenty? I
20 don't understand your question.

21 Q. When you got your privileges in 1996 --

22 A. That's correct.

23 Q. --- Your experience doing Laparoscopic Nissen
24 Fundoplication on a human being, was zero, fair?

25 A. Yes. If I can just tell you the process, by which you

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1 get your privileges. At that time, as I stated, there
2 were not any qualified, or enough qualified proctors
3 in this country. It was early on in its infancy of
4 doing this procedure. I did the second best thing, I
5 went to Columbia and observed and trained with Dr.
6 Lawmaker, picking up his technique. I came back to
7 Carlina Pines, at the time it wasn't Carlina Pines, it
8 was Byerly, applied and went up the proper channels,
9 received temporary privileges first. Once I received
10 temporary privileges, I did several of the Nissen
11 Funduplications. They watched my outcomes, they were
12 good. Reapplied again, went through the same channels
13 again, and got permanent privileges. At that time
14 that was adequate.

15 Q. At Carolina Pines, correct?

16 A. At Byerly. We are talking about Byerly.

17 Q. Dr. Mincheff, you come, and you said you did four
18 pigs, but you really did two Laps. Open Procedures on
19 two pigs, correct?

20 A. Separate pigs.

21 Q. The other two pigs were some other procedure, fair?

22 A. Well, you could do a Nissen and you can do something
23 else on the pig; it's not just one procedure on the
24 same pig.

25 Q. The fact is you had done two Nissens on two pigs,

1 correct?

2 A. Yes.

3 Q. Okay. So, when you came back from this training at
4 Duke, you got the green light to operate on a human
5 being. Did you feel any kind of ethical duty or
6 medical requirement that you should warn your
7 patients, say hey, --

8 **Mr. Driggers:** Your honor, I object on
9 relevance.

10 **The Court:** Sustained.

11 Q. (By Mr. Corbin) Dr. Mincheff, do you believe that a
12 doctor has any duty if he has never done this
13 particular surgery on a human being to disclose that
14 information to a patient?

15 A. I think if it is the first time you're doing it, yes.

16 Q. Did you ever disclose to anybody your experience
17 level?

18 **Mr. Driggers:** Again, relevance, the same
19 question.

20 **The Court:** Counsel, at the Court's request come
21 here for a moment and let's discuss that issue.

22 (Whereupon, a bench conference was held in
23 the presence of the jury but out of the hearing of the
24 jury.)

25 **The Court:** Again, the objection is sustained.

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1 Please move to your next question.

2 Q. (By Mr. Corbin) Dr. Mincheff, when you got back from
3 Duke, and got what you called temporary privileges,
4 was there any kind of restriction or requirement from
5 Carlina Pines that you disclose to your patients your
6 experience?

7 A. No.

8 Q. In fact, there is no policy or procedure at Carlina
9 Pines requiring you, or any other surgeon to disclose
10 to patients experience levels, correct?

11 A. That's correct.

12 Q. Let's talk about the Columbia doctors. Do you blame
13 the Columbia doctors, and accuse them of doing
14 anything beneath the standard of care treating Ms.
15 Person?

16 A. No.

17 Q. In fact, you accept responsibility for Ms. Person's
18 pancreatitis, correct?

19 A. I do.

20 Q. You would agree without the pancreatitis she would
21 have never been transferred to Columbia, fair?

22 A. That is correct.

23 Q. Do you agree without the pancreatitis she would have
24 never had the amylase, the fluid accumulation around
25 her spleen and organs, correct?

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1 A. That's correct.

2 Q. You would agree without the pancreatitis for which you
3 are responsible, she would have never had respiratory
4 distress, fair?

5 A. That's correct.

6 Q. Would you agree without you giving her pancreatitis or
7 causing her pancreatitis that she would never have
8 been, on a ventilator, fair enough?

9 A. Well, I had some concerns about the way the
10 pancreatitis was handled, that if it was handled a
11 little bit differently maybe she wouldn't have gotten
12 that worse in Columbia.

13 Q. But you do not blame the Columbia doctors?

14 A. I can't blame them.

15 Q. Because when Ms. Person got there she had
16 pancreatitis, right?

17 A. That's correct.

18 Q. She had high amylase levels in her fluids, correct?

19 A. That's correct.

20 Q. That was proof enough for you that she had
21 pancreatitis.

22 A. Oh, yes, nobody disputes that she did not have
23 pancreatitis.

24 Q. Pancreatitis is dumping of her pancreatic juices into
25 her system. Can that cause erosion on the inside of

001752

1 Ms. Person's body?

2 A. It can cause irritation, yes, it can.

3 Q. Doctor, do you remember you talked about the
4 compartments, Intra-abdominal Compartments Syndrome;
5 what condition is that?

6 A. That's increased pressure inside the abdomen.

7 Q. Ms. Person, before she left, her stomach was
8 distended, at Carlina Pines, fair?

9 A. That's correct.

10 Q. When she got to Columbia, she developed Intra-
11 abdominal Compartments Syndrome, fair?

12 A. Well, let's look back at it. She was there for
13 fourteen days, they didn't do any surgery on her.
14 They unfortunately removed her drain. Had they not
15 removed her drain, again I say, maybe her pancreatitis
16 would not have gotten so bad.

17 Q. Are you willing to testify to a reasonable degree of
18 medical certainty that if the Columbia doctors had
19 done something differently she would not have had
20 these complications, are you willing to say that?

21 A. It is a possibility that her problems would not have
22 gotten so bad.

23 Q. Dr. Mincheff, can you state to a reasonable degree of
24 medical certainty that the doctors in Columbia should
25 have done something different?

001753

1 A. I can't do that.

2 Q. In fact, you have referred patients before to Dr.
3 Bynoe.

4 A. Oh, yes.

5 Q. With no complications, correct.

6 A. Correct.

7 Q. Have you referred any to Dr. Bynoe since Ms. Person?

8 A. Yes.

9 Q. With more medical complications, fair?

10 A. Not medical complications. These were trauma
11 patients.

12 Q. Have you done any pancreatic debridements at Carlina
13 Pines?

14 A. No, but I did them in my residency.

15 Q. Back in the 1980?

16 A. Late 1980s and early 90s.

17 Q. Twenty or twenty-five years ago, fair?

18 A. twenty-twenty-years ago, probably less than that,
19 early 90s.

20 Q. twenty-years ago?

21 A. It is like twelve years ago.

22 Q. Do you have privileges at Carlina Pines to do
23 pancreatic surgery?

24 A. Sure.

25 Q. You have not done that in twelve years?

001754

1 A. No, I haven't.

2 Q. Do you have current confidence to do pancreatic
3 surgeries?

4 A. Of course, I do.

5 Q. But not in twelve years?

6 A. I have not done it in twelve years, but I can do it.

7 Q. Carlina Pines you can do it, right?

8 A. Sure.

9 Q. Do you have privileges anywhere else to do
10 Laparoscopic Nissen Fundoplication?

11 A. No.

12 Q. Have you ever done that particular procedure anywhere
13 else besides Carlina Pines?

14 A. No.

15 Q. Do you feel comfortable operating on a pancreas?

16 A. Yes.

17 Q. Dr. Mincheff, would you agree that you told Ms. Person
18 that you injured her pancreas before she was
19 transferred?

20 A. Yes, I know what I told her, and I know what I wrote
21 in my Transfer Summary. I was very, very concerned
22 that I possibly injured her pancreas. But we know by
23 the records from Columbia that was not the case. She
24 had merely pancreatitis.

25 Q. In fact, when she got to Columbia they had to do the

001755

1 pancreatic debridement involving the tail of her
2 pancreas, fair?

3 A. That's correct.

4 Q. How did you get it right, because when she left
5 Hartsville in your Discharge Summary you said, most
6 probably she had an injury to the tail of her
7 pancreas; you got that right, didn't you?

8 A. I came close, yes.

9 Q. You came close because you knew you had damaged the
10 tail, didn't you?

11 A. No, I did not know that.

12 Q. In fact, when you started the Laparoscopic Procedure
13 you anticipated it to last about forty-five minutes to
14 an hour, air?

15 A. A Laparoscopic Nissen take about three to four hours
16 to do. I don't know where they came up with forty-
17 five minutes. If you are doing a gallbladder that
18 takes forty-five minutes, but a lap-Nissen doesn't
19 take forty-five minutes. It takes about four hours to
20 do.

21 Q. Four hours?

22 A. Three to four hours to do.

23 Q. Do you know what the literature says the average time
24 to do a lap-Nissen would be?

25 A. About two to three hours.

001756

1 Q. Two to three?

2 A. Yes.

3 Q. Why did it take you twice as long?

4 A. I work slowly.

5 Q. Is that because of inexperience?

6 A. No, I just work slowly.

7 Q. Dr. Mincheff, you agree that the consent that you got
8 from Ms. Ruthie involved specifically starting with
9 the Laparoscopic Nissen Fundoplication Procedure,
10 fair?

11 A. That is correct.

12 Q. Under that consent form involving the operation on
13 that day if you did not, at least, start Laparoscopic
14 Nissen Fundoplication there would be no surgery,
15 correct?

16 A. There would be no surgery.

17 Q. If you did not start with the Laparoscopic Procedure
18 that she gave you permission to do there would have
19 been no surgery, right?

20 A. Well, Laparoscopic Nissen is surgery.

21 Q. The question was. She gave you permission and your
22 instruction, under that consent was to, at least,
23 start with the laparoscopic procedure, correct?

24 A. Correct.

25 Q. You did not have the right not to start with the lap

001757

1 procedure, fair?

2 A. Whenever you are doing a laparoscopic procedure you
3 have to think ahead of time that you may have to
4 convert to an open procedure. That's one of the
5 things that you discuss.

6 Q. The question was, under that consent form, it is your
7 position that you are going to tell the jury you had
8 the right not to even attempt the lap procedure first?

9 A. You would have to show me the consent form that you're
10 talking about, because I don't understand what you are
11 talking about.

12 Q. Were you here for Dr. Barker's testimony?

13 A. No, I wasn't.

14 Q. Do you have, any idea what he said?

15 A. No.

16 Q. Look at Exhibit 3. Dr. Mincheff, that is the precise
17 consent form involving the surgery of Ms. Ruthie on
18 April 25, 2001, correct?

19 A. That is correct.

20 Q. Tell the jury what you were authorized to do according
21 to the written portion right beneath her name.

22 A. Laparoscopic Nissen Fundoplication.

23 Q. Would you at least agree that under that consent you
24 must at least start with the procedure that she
25 consented to?

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1 A. That is what we started with.

2 Q. In other words, without doing that procedure first the
3 operation that day would never have happened, fair?

4 A. That's right.

5 Q. So you had better be qualified under that consent form
6 to safely do that procedure, fair?

7 A. That's fair.

8 Q. Dr. Mincheff, when you did the procedure you started
9 with a Laparoscopic Nissen Fundoplication, and about
10 an hour or an hour and a half into that procedure you
11 had some complications, didn't you?

12 A. No, I did not have any complications.

13 Q. Doctor, in about an hour and a half or so or two hours
14 into that procedure for whatever reason we had a
15 sudden blood loss of about 900 ccs of blood, fair?

16 A. Not during the laparoscopic portion. This is after I
17 opened.

18 Q. During that procedure, would you agree that for
19 whatever reason all of a sudden there was a 900 MS.

20 CATOE: blood loss of Ms. Person?

21 A. Yes, I explained that before that after I opened
22 because we couldn't progress with the procedure I had
23 to convert to an open procedure, which is not a
24 complication. It is just you are opening it up.
25 Because of the large colon that I have mentioned

1 before, also her liver was very very large, and Mrs.
2 Person is also not a very small lady. She's quite a
3 large lady. Exposure was even difficult open. In
4 trying to deflect the colon as well as the stomach
5 downwards in order to get exposure up to where the
6 esophagus is we evulsed a few of the fragile little
7 vessels between the stomach and the spleen, and we had
8 to get control of those vessels. And, yes, we did
9 have some significant bleeding of those vessels.

10 Q. The short gastric vessels, given your experience, with
11 doing whatever number you have done, what is the
12 anticipated blood loss just from the short gastric
13 vessels?

14 A. It can be significant.

15 Q. What would be the anticipated loss?

16 A. A liter. Two liters.

17 Q. From the short vessel?

18 A. From the short vessels, yes, it can be a couple
19 hundred ccs up to a liter. We lost 1300 ccs.

20 Q. In fact, according to the Anesthesia Report, there was
21 a sudden blood loss of eight to 900 ccs of blood. Do
22 you recall at about what time?

23 A. I can't recall what time, but I know exactly what
24 happened. We evulsed several of the vessels and that
25 is where the bleeding came from.

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1 Q. According to the Anesthesia Report.

2 A. Yes.

3 Q. It indicates it happened shortly before 1300, that
4 would be about 12:30 or 12:45, fair enough?

5 A. Okay.

6 Q. And the operation started at 10:30 or so?

7 A. Well, counting the time the patient comes in the room,
8 we do the anesthesia and prep the patient, counting
9 the time the patient came into the room.

10 Q. Isn't it true, Dr. Mincheff, the source of that 1300
11 ccs of blood loss was from the slices to the spleen on
12 three different sides that you did involving Ms.
13 Person.

14 A. That is incorrect, sir, because we know from reports
15 from Richland that there were no slices to her spleen.

16 Q. Were there lacerations?

17 A. No lacerations.

18 Q. Would you, at least, agree Dr. Mincheff that if, in
19 fact, when Ms. Person got to Columbia on May 2, 2001,
20 the doctors did a CT-scan of her abdomen and it
21 indicates multiple lacerations to her spleen? You
22 would accept responsibility for that, would you not?

23 A. Of course, but we know for a fact that she did not
24 have any lacerations to her spleen.

25 Q. Would you agree that if Ms. Person's, did have

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1 lacerations to the spleen, and you caused it, and that
2 falls beneath the standard of care, does it not, fair?

3 A. I guess you did not understand that she did not have
4 any lacerations to her spleen.

5 Q. Dr. Mincheff, the question was, that if, in fact, she
6 did have lacerations to her spleen, and I know you
7 deny it, you had to have caused it, fair?

8 A. That's fair.

9 Q. Nobody else was in her stomach before the CT-scan in
10 Columbia, fair?

11 A. That's correct.

12 Q. If she had multiple lacerations to her spleen, you
13 caused it, and that falls beneath the standard of
14 care, fair enough?

15 A. That's fair.

16 Q. Now, the May 2, CT-Scan report of Ms. Person's pelvis
17 from Palmetto Richland Hospital, have you ever read
18 that CT-Scan?

19 A. I believe I have.

20 Q. On that CT-Scan when it says, multiple splinted
21 lacerations, what does that mean?

22 A. They are seeing areas of the spleen that are not
23 vascularized well, there were no splenic lacerations.

24 Q. So when the report in Columbia says multiple splenic
25 lacerations, you don't agree with that, fair enough?

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1 A. I don't agree with it because I know the reports from
2 the Operative Reports, there are no signs of
3 lacerations to the patient's spleen. You are looking
4 at a Radiological Evaluation.

5 Q. Dr. Mincheff, before Ms. Person left Carlina Pines you
6 had done a CT-Scan of the stomach, had you not?

7 A. Yes.

8 Q. And that was consistent with lacerations too, wasn't
9 it?

10 A. For a splenic infection.

11 Q. The Columbia Report, in fact, states quote: The exam
12 of the spleen reveals multiple hypodisc low shaped
13 areas anteriorly, laterally, and inferiorly consistent
14 with lacerations, correct?

15 A. Yes, that is the report.

16 Q. Top, bottom, side?

17 A. That's correct, sir.

18 Q. All three sides?

19 A. All three sides.

20 Q. Did you lacerate all three sides?

21 A. Again, I mention that if you take time to look at the
22 Operative Reports from Richland there's no mention of
23 any splenic injury. As far as I know, Ms. Person
24 still has her spleen.

25 Q. The CT-Scan taken at your hospital on April 22, have

001763

1 you read that one?

2 A. Yes, I have.

3 Q. That reports also says that the injury to the spleen
4 is consistent with lacerations, fair?

5 **The Court:** Counsel --- Dr. Mincheff, just one
6 moment. Counsel, is that report on the screen?

7 **Mr. Corbin:** yes, sir.

8 **The Court:** You are testifying without being
9 able to see that.

10 **Dr. Mincheff:** Right, I'm looking at the back of
11 a TV set there.

12 **The Court:** Do you wish to see?

13 **Dr. Mincheff:** Yes. I would like to see the
14 entire report because he keeps mentioning about the splenic
15 injury.

16 **The Court:** Please accommodate your witness, if
17 you will.

18 **Mr. Corbin:** I will move.

19 (Pause)

20 **The Court:** Counsel, the Court has no objection
21 to the witness coming down with you and standing in front
22 of the screen as long as we can make sure everyone can
23 hear.

24 (Pause)

25 A. (By Dr. Mincheff) Do you want me to read it?

001764

1 Q. I don't mind if you want to read it, sure.

2 A. I would love to read it.

3 It says: A large amount --- amount of
4 free fluid in the left upper abdomen,
5 low density peripheral lesion in the
6 spleen consistent with infarctions, or
7 post surgical splenic injury.

8 Q. Either or at Carlina Pines?

9 A. Yes, Carlina Pines.

10 Q. Carolina Richland it was not, either/or was it?

11 A. You may want to show that to me too.

12 Q. I don't mind you reading this one either.

13 A. I don't mind reading it.

14 Q. Please go ahead and read it.

15 A. Sure. Let me find specifically where the spleen is
16 here.

17 The exam of the spleen reveals
18 multiple hyperdensified red shaped areas
19 interiorly, laterally, and inferiorly
20 consistent with lacerations.

21 Q. Any infarction talk?

22 A. No. But, if I may, mention again, we know from the
23 Operative Reports, and these are people looking inside
24 the abdomen, that there were no lacerations to the
25 spleen. Had there been lacerations to the spleen Ms.

001765

1 Person would not have a spleen.

2 Q. Dr. Mincheff, in your records would you agree that if
3 your Transfer and Discharge Summary is accurate, that
4 conduct falls beneath the standard of care, and
5 constitutes medical malpractice, if the discharge
6 summary is correct, fair enough?

7 A. If, yes.

8 Q. Fair enough?

9 A. Yes.

10 Q. If your record is correct you committed medical
11 malpractice, fair?

12 A. If there was a laceration to the pancreas, yes, there
13 would be. But again, we know that there was not. The
14 patient had pancreatitis.

15 Q. Looking at those records, the Discharge and Transfer
16 Summary, please.

17 A. You may want to point it out to me because there is a
18 lot --- I don't know where it is thing.

19 Q. Ms. Person has lots of Medical Records, agreed?

20 A. Yes.

21 Q. Feel free to read that to yourself, if you would like
22 to.

23 A. Sure.

24 Q. Or you can read it out loud.

25 A. Just the initial diagnosis severe Gastroesophageal

001766

1 Reflux Disease, Hiatal Hernia; Discharge Diagnosis
2 Severe Gastroesophageal Reflux Disease, Status post
3 attempted Nissen Fundoplication, Open Hill Procedure,
4 Left Plural Effusion, Pancreatic Ascites secondary to
5 iatrogenic injury to the tail of the pancreas.

6 Q. Dr. Mincheff, if your record is correct that
7 constitutes medical malpractice, fair?

8 A. No, I don't believe so it does.

9 Q. The Pancreatic Ascites Secondary to a iatrogenic
10 injury to the tail of the pancreas, iatrogenic means
11 you caused it?

12 A. I caused it, but it does not fall below the standard
13 of care.

14 Q. Have you told me before that if you injured Ms.
15 Person's pancreas, and caused her pancreatitis in
16 Hartsville, that would in fact constitute medical
17 malpractice?

18 A. I said that if the pancreas had been lacerated that
19 would fall below the standard of care, but causing the
20 contusion does not fall below the standard of care.
21 Falling below the standard of care would be if you did
22 not recognize it and treat it.

23 Q. In fact, if we take your whole discharge summary - I
24 would just like to focus on that statement that you
25 made that you caused an injury to Ms. Person's

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1 pancreas. If you take a discharge summary and accept
2 it word for word as being truthful, that conduct would
3 fall beneath the standard of care, correct?

4 A. I don't think so.

5 Q. Do you recall when I took your deposition and asked
6 you the following question? If we take your Discharge
7 Summary and assume it to be factually correct, and I
8 know later on you got information to change your
9 opinion, right?

10 A. (No response)

11 Q. But if we just take your Discharge Summary, assume it
12 to be factually correct, that conduct would fall
13 beneath the standard of care, correct? Do you recall
14 what you told me then?

15 A. I think, I think you were implying, there was a
16 laceration, and that's where you keep going to being a
17 laceration of the pancreas. I did not lacerate the
18 pancreas. She developed --- She had a contusion of
19 her pancreas which caused the pancreatitis. That does
20 not fall below the standard of care. It's a rare
21 complication, but that does not fall below the
22 standard of care.

23 Q. In fact, your response was, I think that type of
24 injury would have --

25 A. Again, you're implying that there was a laceration to

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1 the pancreas. And again, we know from the Operative
2 Reports that she did not have a laceration. That it
3 was a contusion, a post operative pancreatitis as a
4 result of the surgery. That is true.

5 Q. Dr. Mincheff, if you, in fact, caused a iatrogenic
6 injury to the tail of Ms. Person's pancreas, do you
7 believe that falls beneath the standard of care?

8 A. As I said, I think if there's a laceration to the
9 pancreas, which we know there is not, if there is a
10 laceration that would fall beneath the standard of
11 care. Having a contusion, just a contusion, that does
12 not really fall below the standard of care. Plus, it
13 was recognized and treated.

14 Q. Page 69 of your Deposition, I would like to read the
15 following question to you and have you read the
16 answer.

17 **Question:** So even if this
18 occurred according to your
19 Discharge Summary that you
20 inadvertently caused a iatrogenic
21 injury to the tail of Ms. Person's
22 pancreas during surgery, even if
23 that is correct you don't believe
24 that fell beneath the standard of
25 care?

001769

1 Read your response on lines 8 through 10,
2 please.

3 A. It says: Yes. But again, I think you are
4 implying --

5 Q. Dr. Mincheff, please just read the lines.

6 Mr. Sweeney: He has a right to answer the
7 question.

8 The Court: First of all, what I would ask you
9 to do is please read what he is asking, and then you may
10 respond to it, if you wish.

11 Q. (By Mr. Corbin) Please read your complete answer
12 lines 8 through 10.

13 A. It says: Well, yes, if I did cause a break in the
14 pancreas, which is a laceration, then I think that
15 would have, yes.

16 The Court: All right. If you have any further
17 response go ahead, if you wish.

18 A. (By Dr. Mincheff) We are talking about a break in
19 the pancreas.

20 Q. When I ask you to read it verbatim you added a few
21 words about the laceration.

22 A. It says: Break in the pancreas.

23 Q. Nothing about laceration, correct?

24 A. Break --- laceration --- I would assume that --- I'm
25 understanding a break in the pancreas is a laceration.

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1 Q. What does inadvertent mean in the medical records?

2 A. Well --

3 Q. When you put in the Medical Records that you
4 inadvertently injured Ms. Person's pancreas, what did
5 you mean?

6 A. It means unintentionally.

7 Q. And, in fact, would you not agree that if you caused
8 an inadvertent injury to Ms. Person's pancreas that
9 would be beneath the standard of care too, would you
10 agree?

11 A. Again, my thoughts are, that you were talking about a
12 break or a laceration to the pancreas. Nobody
13 disputes that the patient had pancreatitis. She had
14 pancreatitis, post operative pancreatitis, there is no
15 question about it.

16 Q. In your Deposition I asked you this question and you
17 provided the following answer.

18 **Question:** When you use the
19 word inadvertent, starting on,
20 Page 74, when you use the word
21 inadvertent what did you mean by
22 that?

23 Your answer, was: By an
24 injury that was not performed by
25 mistake.

1 **Question:** Beneath the
2 standard of care, correct?

3 **Answer:** Well, yes an injury
4 to the --

5 **Question:** In addition, when
6 you use the word or phrase
7 iatrogenic injury, what did you
8 mean by that?

9 **Answer:** Caused by myself.

10 **Question:** Would that also
11 be beneath the standard of care?

12 **Answer:** Well, if it's an
13 injury to the pancreas and caused
14 by me it would be below the
15 standard of care.

16 Would you still agree with that?

17 A. I understand what you are trying to say. But again,
18 see, my concerns were that she had a ductal injury. A
19 ductal injury is a crack in the pancreas with a break
20 in the ductal system within the pancreas. That was my
21 concern. I was very truthful with the patient, and
22 that is why I sent her to Richland to have that
23 evaluated. The facts showed that she did not have a
24 ductal injury, she had pancreatitis, which is a result
25 of the surgery, which is a well-known complication.

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1 It's rare, but she had that. Nobody disputes that.

2 Q. Nobody disputes you caused it, fair?

3 A. That's fair.

4 Q. You accept responsibility of it being your fault she
5 got pancreatitis from the surgery, correct?

6 A. She developed post operative pancreatitis, yes.

7 Q. And that's your fault, fair?

8 A. I did her surgery, yes.

9 Q. Dr. Mincheff, you were asked questions about Dr.
10 DeMaria, and you said you done thirty, forty, fifty,
11 whatever operations open in the stomach. Do you
12 recall that?

13 A. Did he say that? Who? I didn't quite understand who
14 said what.

15 Q. That was your testimony, correct?

16 A. When did I say that?

17 Q. Didn't you say that you gathered up proof that you had
18 done thirty or forty Open Procedures in the stomach?

19 A. Oh, I've done more than that.

20 Q. Didn't you say that is what Dr. DeMaria said was
21 required of you?

22 A. Sure, I did even more than even what he required of
23 me.

24 Q. You review his Deposition?

25 A. Yes.

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1 Q. And, in fact, what he said in his deposition was as
2 follows: I would categorically state that if I were
3 to learn, and I know you told me to let you know - - -

4 **Mr. Driggers:** Your Honor relevance. Dr.
5 DeMaria has testified --- If he wants to tell us about his
6 testimony, it he wants to tell me what his testimony, Dr.
7 Mincheff to read the whole thing, and there is no purpose
8 in reading the whole Deposition Transcript.

9 **Mr. Corbin:** He reviewed it, and I think --

10 **The Court:** Just a moment. One word objection
11 was?

12 **Mr. Driggers:** Relevance.

13 **The Court:** All right. Now, what do you have in
14 response, counsel?

15 **Mr. Corbin:** Relevance. He reviewed Dr.
16 DeMaria's Deposition. Dr. DeMaria was asked if you said in
17 your deposition this, would it be true.

18 **The Court:** All right. Do you have a response,
19 counsel?

20 **Mr. Driggers:** Yes sir, Your Honor. Dr. DeMaria
21 clearly testified that he did not have all of the
22 information this day, even when he testified, much less
23 during his deposition.

24 **The Court:** All right. Again, the jury has an
25 understanding of this, and I'm going to allow the question.

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1 You may pose it, and you may respond if you know the
2 answer.

3 Q. (By Mr. Corbin) The question Dr. DeMaria by Carolina
4 Pines' attorney was: You don't have any information
5 regarding any other open procedures that Dr. Mincheff
6 may have done to the esophageal area or the stomach.
7 Did I read that correctly?

8 A. Yes.

9 Q. Dr. DeMaria then said answer: And I would
10 categorically state that if I were to learn, and I
11 know you told me to let know sixty days ahead if I
12 changed my opinion, that if I were to learn at some
13 point in this process that he has done hundreds of
14 esphogestomies, or gastrectomies, or what have you,
15 then I would be glad to amend my opinion on his
16 experience. He did not say twenty or thirty, he said
17 hundreds, fair?

18 A. That's fair.

19 Q. Do you have hundreds?

20 A. I have got hundreds of abdominal surgeries, yes.

21 Q. Do you have hundreds of gastrectomies?

22 A. I've got multiple gastrectomies.

23 Q. Do you have hundreds?

24 A. No, I don't have hundreds.

25 Q. Do you have hundreds of esphagectomies?

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1 A. I don't have hundreds of esophagectomies. I don't
2 think there are a lot of people out there that have
3 those numbers either.

4 Q. Being a member of SAGES, what would you say if a
5 fellow member of SAGES were to tell you SAGES
6 guidelines are not authoritative, they are not
7 reliable, they are not even good; what would you say?

8 A. I think, the SAGES Guidelines are recommendations.
9 Again, each institution, each hospital has their own
10 credentialing criteria, and that's what we go by.
11 SAGES, is just a recommendation.

12 Q. Is SAGES information reliable?

13 A. It is reliable, but SAGES is not out there alone. You
14 have got the society of Laparoendoscopic Surgery, you
15 have got The American College of Surgeons, all
16 inclined to use their recommendations.

17 Q. In fact, when I asked in your Deposition what you
18 would consider the most reliable source you said
19 SAGES, fair?

20 A. Well, I don't remember you asking me that question.
21 But SAGES is one of the sources that we look at.

22 Q. SAGES actually has researched Laparoscopic Nissen
23 Fundoplications Procedures, and actually published
24 guidelines for hospitals to consider in privileging
25 surgeons, correct?

1 A. That's correct.

2 Q. Hospitals do not need to accept SAGES Guidelines,
3 correct?

4 A. That's correct.

5 Q. Carolina Pines, certainly does not accept SAGES
6 Guidelines, fair?

7 A. No.

8 Q. With respect to your Laparoscopic Nissen
9 Fundoplication privileges, it violated procedure
10 guidelines, correct?

11 A. I don't think so. Again, you have to look back into
12 the 94, 95, time frame. This is early on in the
13 infancy of this procedure.

14 Q. In 1996 you got your first privilege. Those
15 guidelines were published in 1991 and 1993, right?

16 A. Again, they are just recommendations.

17 Q. And the big point about SAGES Guidelines, is the
18 preceptorship, in other words, when you are in the
19 learning curve you had better have more seasoned,
20 qualified surgeon to assist you, to minimize
21 complications, fair?

22 A. You can have a complication any where, any time. It
23 doesn't matter how many you have done, you can do a
24 thousand and you may have a complication.

25 Q. The big deal about your Organizations Guidelines is

001777

1 that the preceptorship requirement, fair?

2 A. As I said before, at that time there were not a lot of
3 qualified preceptors.

4 Q. Under those guidelines, and if we need to pull the out
5 again, but would you, at least agree
6 contemporaneously, the big point SAGES makes is that
7 when you learn how to do these surgical procedures you
8 need to have a preceptor, is that fair?

9 A. I know for a fact that a lot of guys were doing
10 Nissens and they didn't even have a preceptor.

11 Q. I'm asking about the Guidelines.

12 A. They are recommendations, sir.

13 Q. I'm asking about the recommendations. Would you, at
14 least, agree that in the recommendations it indicates
15 preceptorship?

16 A. Yes, there is some indication, yes.

17 Q. You certainly did not meet that recommendation, fair?

18 A. I did not have a preceptor.

19 Q. You did not satisfy SAGES Guidelines, fair?

20 A. That's correct.

21 Q. In addition, if we wanted to look at another published
22 guideline we can look at the Greeley Company that
23 Carolina Pines uses, could we not?

24 A. Yes. But again, Greeley Company came to our hospital
25 in the early part of 2000, 2003.

001778

1 Q. Do you know of any guideline from any organization
2 that would say that your qualifications coming from
3 Duke, operations on two pigs is enough to get
4 privileges to do Laparoscopic Nissen Fundoplications
5 without a preceptor, do you know of any?

6 A. Would you repeat the question, please?

7 Q. Do you know of any written guidelines from anybody
8 that would approve of Carolina Pines giving you
9 privileges to do Laparoscopic Nissen Fundoplication
10 Procedures having come from Duke operated on a few
11 pigs, taking your courses, and never done one on a
12 human, any guidelines that you know of?

13 A. I am not aware of any.

14 Q. Any literature anywhere in the world to support your
15 position?

16 A. I am not aware of any.

17 Q. When you reapply --- You had your first privilege in
18 1996, you had not done a single one on a human. 1998,
19 according to Greeley in 1997, from that point until
20 you applied you needed to do, at least, ten to
21 maintain competency and safely do it. You failed that
22 guideline, didn't you?

23 A. I don't agree with that. That is totally unrealistic,
24 there's nobody out there that, and a lot of people
25 don't do ten a year.

001779

1 Q. Dr. Mincheff, Question one: Would you, at least,
2 admit under the Greeley Guidelines, in 1998 when you
3 reapplied Carolina Pines looking at you again, you did
4 not satisfy their requirement of doing ten the year
5 before, fair?

6 A. I might not have satisfied their criteria, but I
7 certainly satisfied our hospital's criteria, and that
8 is what we go by.

9 Q. Is Carolina Pines' criteria not quite as tough as
10 Greeley's?

11 A. I think it is pretty good. We have a very good
12 credentialing policy.

13 Q. When you reapplied in 2000, again the year before you
14 would be disqualified under the Greeley Guidelines,
15 correct?

16 A. Well, you know, I have got --

17 **Mr. Corbin:** Excuse me, I would ask the witness
18 to answer and that he fully respond.

19 **The Court:** Counsel, the jury is observing this.
20 I will not require him to answer in any particular way.
21 You may answer as you intended to. Go ahead.

22 A. According to the Greeley Guidelines, no.

23 Q. Carolina Pines had another chance to look at your
24 experience and your utilization of privileges in 2002.
25 Isn't it true under the Greeley Guidelines the year

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1 before you applied in 2002 for privileges you would
2 have been disqualified, fair?

3 A. If I can answer that question, during this entire
4 period I am doing advanced laparoscopic procedures,
5 ventral hernias, inguinal hernias, appendectomies,
6 gallbladders, constantly doing laparoscopic
7 procedures. I am constantly doing surgery open as
8 well as laparoscopic.

9 Q. But you were not doing enough under the Greeley
10 Guidelines to be privileged, correct?

11 A. Well, I think the Greeley Guidelines, I hate to say,
12 are a little bit too stringent and unrealistic,
13 truthfully.

14 Q. In 2004 again Carolina Pines had a chance to look at
15 your experience, under the Greeley Guidelines again
16 because you had not done ten the year before you are
17 disqualified, correct?

18 A. According to their guidelines, yes.

19 Q. The bottom line, Dr. Mincheff, is that when you
20 initially applied under the Greeley Guidelines you had
21 not done twenty-five, fair?

22 A. At the time --

23 Q. You initially applied in 1996.

24 A. No, I didn't do twenty-five laparoscopies, no.

25 Q. At no time during the re-application process have you

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1 ever met the Greeley Guidelines, fair?

2 A. That is fair.

3 Q. If Carolina Pines would have chosen to follow the
4 Greeley Guidelines you never would have done Ms.
5 Person's surgery, fair?

6 A. Right, but at that time we did not have the Greeley
7 Guidelines.

8 Q. The Greeley Guidelines, and feel free to look at it,
9 we went through this with Dr. Barker, is based upon
10 the SAGES Guidelines in 1992, 1993, agreed?

11 A. Yes.

12 Q. Okay. So if Carolina Pines really wanted to find out
13 what expert credentialing was saying they could have
14 learned that back in 1996, fair?

15 A. They could have.

16 Q. But for whatever reasons Carolina Pines did not, fair?

17 A. Fair.

18 Q. We spoke about Dr. Lawmaker, did Dr. Lawmaker ever
19 come to Hartsville and watch you do surgery?

20 A. No, he did not.

21 Q. In fact, he never saw you do a Laparoscopic Nissen
22 Fundoplication Procedure, correct?

23 A. No, he did not.

24 Q. Not even on a pig, fair?

25 A. Yes.

001782

1 Q. In the letter of recommendation to SAGES he certainly
2 could not have said Dr. Mincheff can safely do
3 Laparoscopic Nissen Fundoplication Procedures, he
4 could not say that, could he?

5 A. Sure he could.

6 Q. He had never seen you do it?

7 A. No, but we talked over the phone, and I told him how
8 many cases I had done, and all the other cases I had
9 done, and they went well.

10 Q. Telephone conference?

11 A. Sure, several times.

12 Q. In fact, every two years, you are supposed to produce
13 letters of recommendation from surgeons who have
14 actually seen you do Laparoscopic Nissen
15 Fundoplication Procedures, fair?

16 A. That's fair.

17 Q. Who provided those letters for you?

18 A. Several, I actually help Gynecologist, I help
19 Urologist, I help other General Surgeons, and I get
20 recommendations from them.

21 Q. Dr. Mincheff, the question was, when you applied and
22 reapplied under the SAGES Guidelines you had to submit
23 a letter from an experienced surgeon saying that I
24 have seen Dr. Mincheff do Laparoscopic Nissen
25 Fundoplication Procedures. Do you have any letters

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1 like that?

2 A. It should be in my file.

3 Q. Who gave you any recommendations or stated they had
4 seen you do Laparoscopic Nissen Fundoplication
5 Procedures? Who?

6 A. I can't remember who I got letters from. I would have
7 to look at my file.

8 Q. Is that person going to testify in this case?

9 A. Possibly. I don't know who sent those letters.

10 Q. If some doctor said good things about you doing this
11 particular procedure in the past, he would be a pretty
12 good witness, wouldn't he?

13 A. Sure.

14 Q. He's not coming, is he?

15 A. I don't understand what your question is.

16 Q. Do you know of anybody whoever wrote you a letter?

17 **Mr. Driggers:** I am going to object to relevance
18 and ask to approach.

19 **The Court:** Counsel, overruled. You may answer
20 his questions. Actually it is asked and answered, counsel,
21 but go ahead if you want to pose it again one final time.

22 Q. Dr. Mincheff, if you wanted to find out who actually
23 wrote you these letters you could find out, couldn't
24 you?

25 A. It should be in my file, yes.

001784

1 Q. So the question is, nobody is going to testify on your
2 behalf who has ever written a letter of recommendation
3 for you, correct?

4 A. Why not?

5 Q. I don't know. You tell me.

6 A. Why shouldn't they? See, don't understand what your
7 question is again.

8 Q. Dr. Lawmaker, when you went to Columbia, you said you
9 trained under him, is that fair?

10 A. Trained, I observed him.

11 Q. You watched him do a surgery, correct?

12 A. That's correct.

13 Q. Did you participate in the surgery with instruments?

14 A. No, with discussion and observation.

15 Q. Did you do anything with respect to that surgery, in
16 the operating room?

17 A. No.

18 Q. Did Dr. Lawmaker, see you do anything with an
19 instrument?

20 A. No.

21 Q. Ever?

22 A. No. I don't have privileges at Baptist or Providence
23 Hospital in Columbia.

24 Mr. Corbin: Thank you, Dr. Mincheff.

25 The Court: Is there any redirect?

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1 **Mr. Driggers:** Yes, sir, your honor, briefly.

2 **Redirect Examination by Mr. Driggers**

3 Q. Dr. Mincheff, just briefly if you would for the jury
4 again, describe what are the similarities between a
5 Nissen and an Open Hill Procedure?

6 **Mr. Corbin:** Your Honor, excuse me, please.

7 Asking him again to testify to the same thing over.

8 **Mr. Driggers:** He brought it up on cross
9 examination, Your Honor.

10 **The Court:** All right. Counsel, I am going to
11 overrule because it did come up on cross examination. You
12 may go ahead.

13 Q. (By Mr. Driggers) You said they were similar. Just
14 tell the jury exactly how similar they are.

15 A. They are similar in the fact that the dissection is
16 the same, you have to do the same repair on the
17 hiatus, which is the muscles around the esophagus, you
18 have to gain control around the esophagus. The only
19 difference is a wrap. The Nissen involves wrapping
20 the stomach around 360-degrees and sewing it
21 internally, whereas the Hill Procedure is securing the
22 stomach to the ligament that is close to the aorta,
23 and also doing an interior type of wrap.

24 Q. The way someone is actually fastened around the
25 esophagus?

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1 A. That's correct.

2 Q. In fact, what did you ultimately do in Ms. Person's
3 procedure?

4 A. That's right.

5 Q. You did the Hill?

6 A. I did the Hill Procedure.

7 Q. Explain to the jury again, you are using a lot of
8 medical terms, and I know I get lost in some of them.
9 But, when you use the term regarding to spleen, when
10 you say laceration what are you talking about when you
11 use that term?

12 A. You are talking about a deep cut into the spleen. If
13 you have a deep cut into the spleen, it is going to
14 bleed.

15 Q. And you didn't see any blood from the spleen while you
16 were operating on Ms. Person, correct?

17 A. No.

18 **The Court:** Counsel, again please don't lead
19 your witness. This is your witness.

20 Q. (By Mr. Driggers) Explain to the jury, what is the
21 other term you used in regards to the spleen was a
22 contusion. What is a contusion?

23 A. A contusion is a bruise.

24 Q. I believe you also used the term infarction. When you
25 use that term what, do you mean?

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1 A. Infarction is an area where the blood supply is sort
2 of diminished. On a CT-scan or Nuclear Study those
3 are areas where it does not light up.

4 Q. That is different, of course, from a cut, is that
5 right?

6 A. That is correct.

7 Q. You talked about this earlier, but regards to any
8 damage to Ms. Person's spleen, who better can tell you
9 that, a Radiologist or a Surgeon?

10 A. A surgeon.

11 Q. Why is that?

12 A. Because a surgeon is there, he can see it.

13 Q. I know we had up on the screen several Radiological
14 Reports, correct?

15 A. Correct.

16 Q. We didn't have a chance to see the Operative Notes.
17 Tell the jury again about the Operative Notes with
18 regards to Ms. Person's spleen.

19 A. The Operative Notes again explain and show, that there
20 was no injuries to the spleen.

21 Q. In fact, the findings in even the Radiological Report
22 show consistent with a contusion, correct?

23 The Court: Counsel, you are leading your
24 witness.

25 A. Infarction.

001788

1 **The Court:** Just one moment. Any time you end
2 the question with correct, you have made a statement, and
3 that is a leading question.

4 **Mr. Driggers:** Thank you, your honor.

5 **The Court:** Yes, sir.

6 Q. (By Mr. Driggers) Is it true that pancreatitis can
7 be caused by a contusion?

8 A. Yes, it can.

9 Q. Did, in fact, you hear Dr. DeMaria comment on that?

10 A. Yes.

11 Q. Okay. What did he say in his testimony?

12 A. The same.

13 Q. In regards to the standards Dr. DeMaria set for us, I
14 know again the jury was here, I was here, and you were
15 here during his testimony in court, correct?

16 A. Correct.

17 Q. Again, he didn't point to any specific Open Procedure,
18 that people are to have to have a sufficient number,
19 did he?

20 A. No

21 Q. He dealt in categories, didn't he?

22 A. Right.

23 **The Court:** Counsel --

24 **Mr. Corbin:** Object, leading. Your Honor.

25 **The Court:** I'm going to continue to break in

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1 here. There was an objection this time. You are leading
2 this witness.

3 **Mr. Driggers:** Yes sir, Your Honor.

4 **The Court:** You are consistently leading. Do
5 you have any further questions?

6 **Mr. Driggers:** Yes, sir, Your Honor, I do.

7 Q. (By Mr. Driggers) For Dr. DeMaria what was that
8 category?

9 A. Twenty-three, I believe.

10 Q. Of what type of surgeries?

11 A. Gastroesophageal surgeries.

12 Q. Okay. And, if you can, explain to the jury why the
13 --- what sense does that make to categorize experience
14 in terms of a surgical category as opposed to a
15 particular thing?

16 A. Working in that particular area of the abdomen.

17 Q. Why is that a good indicator of experience as opposed
18 to doing a specific procedure?

19 A. Well, if you are comfortable in that particular area
20 of the abdomen, you are comfortable with doing any
21 type of procedure in that area.

22 Q. Okay. And your testimony was you have done how many
23 in that area, first in your residency?

24 A. My residency I did something over forty stomach
25 operations.

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1 Q. Okay. Okay. And ah, was it more than that in the
2 esophagus operation?

3 A. It wasn't more, it was less than that.

4 Q. What I mean in addition to.

5 A. In addition to that, yes.

6 Q. Since your residency how many of that category, have
7 you done?

8 A. Multiple.

9 Q. Okay. A multiple of what?

10 A. Hundreds.

11 Q. Hundreds? Okay.

12 A. Yes.

13 Q. You mentioned that you had done work with other
14 surgeons even in different fields of medicine,
15 correct?

16 A. I'm sorry. I couldn't hear you.

17 Q. You mentioned you did some work with some other type
18 of surgeons. I think you mentioned Urologist and
19 other types.

20 A. Yes, I have worked with Urologist. I have worked with
21 Gynecologist. I actually assist Gynecologist and
22 Urologist on their procedures.

23 Q. Who are some of the other physicians you have worked
24 with?

25 A. Dr. O'Kelly, a Urologist. Doctor Carasar, also

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1 another one of our Urologist. Doctor Leroy Robinson,
2 Dr. Scott Daniels, who are both Gynecologist, and Dr.
3 Tora Danzey a Gynecologist.

4 Q. Did any of these other types of surgeons, ever
5 question your ability to perform surgery?

6 A. Never. They ask me for my help.

7 **Mr. Driggers:** Nothing further, Your Honor.

8 **The Court:** Mr. Corbin, do you have questions on
9 a new issue?

10 **Mr. Corbin:** I think so, your honor. It won't
11 take two minutes.

12 **The Court:** What would be the new issue brought
13 up in redirect?

14 **Mr. Corbin:** the Spleenectomy issue.

15 **The Court:** All right, sir. Then to that issue
16 you may go forward.

17 **Re-cross examination by Mr. Corbin**

18 Q. Dr. Mincheff, you were inside Ms. Person's abdomen,
19 you could actually see her spleen, and you would
20 actually know whether or not you hurt it, fair?

21 A. Fair.

22 Q. And you know that you did not hurt her spleen, fair?

23 A. Yes.

24 Q. You never told her that you hurt her spleen, fair?

25 A. Yes.

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1 Q. You never did, right?

2 A. Never did.

3 Q. Okay. And there would be no need to tell her you
4 might need a Splenectomy because you certainly didn't
5 hurt the spleen, fair?

6 A. That's correct.

7 Q. In your Discharge Summary you state --

8 **The Court:** All right. Counsel, before you
9 publish, if you wish to either show this document to the
10 witness, or have him come down where he can see the
11 document, please do so.

12 **Mr. Corbin:** I will give him the document, your
13 honor.

14 **The Court:** Out of fairness. Thank you.

15 **Mr. Corbin:** Yes, sir.

16 Q. (By Mr. Corbin) Dr. Mincheff, this is my copy, and I
17 have actually underscored the part I want to ask you
18 about. Tell me if I read this correctly. This is Ms.
19 Person's Transfer Summary, this involves the transfer
20 of Ms. Person, correct?

21 A. Correct.

22 Q. In this document you indicate what you told Ms.
23 Person, fair?

24 A. Fair.

25 Q. And it states: The patient is also aware that a

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1 Distal Pancreaectomy may be required as well as a
2 Spleenectomy.

3 A. Yes, sir.

4 Q. You told her she might need a Spleenectomy because you
5 hurt it, fair?

6 A. No, that's not correct. I thought that she might have
7 a ductal injury. Sometimes when you have to do a
8 Distal Pancreatectomy sometimes you have to do a
9 Spleenectomy.

10 Q. Take out the spleen?

11 A. Yes, at the same time.

12 Q. Before Ms. Person left that day you told her that you
13 injured the spleen and it might need to be removed,
14 fair?

15 A. No, I did not say that I injured the spleen. I said
16 there might be a ductal injury. I said I might have
17 injured the pancreas. And, when you injure the
18 pancreas if there is a ductal injury, and sometimes
19 when you have to remove part of the pancreas you have
20 got to remove the spleen.

21 **Mr. Corbin:** Thank you.

22 **The Court:** Now, on that issue do you wish to
23 follow?

24 **Mr. Driggers:** Nothing further, Your Honor.

25 **The Court:** All right, very good. Any objection

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1 to the release of the witness?

2 Mr. Corbin: none, your honor.

3 The Court: All right, sir, you are free to
4 leave or you may remain if you wish too.

5 Dr. Mincheff: Thank you.

6 The Court: All right. Counsel, let's talk
7 about scheduling for just a moment.

8 (Whereupon, a bench conference was held in
9 the presence of the jury but out of the hearing of the
10 jury.)

11 The Court: Ladies and gentlemen of the jury,
12 there is another witness here, a physician witness that we
13 believe is going to be short. I would like to take that
14 witness now. We probably will end no later than 5:30. I
15 will give you an opportunity now if you need to call a
16 loved one or family member who may be looking at you at
17 5:00 or before 5:30 for responsibility, to pick someone up,
18 and if you need to make a phone call we will make that
19 available to you. Is there any member of the jury who
20 needs to make a phone call? All right, sir, we will let
21 you step back and do that.

22 Why don't we just remain right here, is that
23 satisfactory? Does anyone else need to make a call? We
24 will just stay where we are. Ladies and gentlemen, if you
25 would be more comfortable standing, you may. Please make

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1 yourself comfortable.

2 (Whereupon, a brief recess was taken.)

3 **The Court:** Is everything okay?

4 **Juror:** Yes, sir.

5 (Whereupon, a bench conference was held in
6 the presence of the jury but out of the hearing of the
7 jury.)

8 **The Court:** Counsel, come up one more time and
9 let's talk about scheduling so I can give this jury a
10 little bit more information at the end of our day.

11 **The Court:** All right. Please call your next
12 witness.

13 **Mr. Sweeney:** May it please The Court. We call
14 Dr. Bannister.

15 **The Court:** Please come forward and take the
16 oath of a witness.

17 **Darrell Brooks Bannister. M. D.**

18 **After Being Duly Sworn Testifies as Follows**

19 **Direct Examination by Mr. Sweeney**

20 Q. Dr. Bannister, would you state your full name, please?

21 A. Darrell Brooks Bannister.

22 Q. And where do you live?

23 A. Hartsville, South Carolina.

24 Q. How long have you been a resident of Hartsville?

25 A. Since 1980.

001796

1 Q. Will you tell the jury briefly what your educational
2 background is?

3 A. I graduated from Wofford College in 1968. Medical
4 University of South Carolina with an M.D. Degree in
5 1972. From 72 to 77, I did a Surgery Internship and
6 Residency at William Beaumont Medical Center in El
7 Paso, Texas. From there I was stationed at Fort
8 Jackson, and worked at Montcrief Army Hospital from
9 1977 until 1980, which is when I came to Hartsville.
10 And Dr. Mincheff said 82, but it was actually it was
11 1980.

12 Q. Okay. And are you Board Certified in anything?

13 A. Yes, I am, in General Surgery.

14 Q. Tell us what hospital affiliations you had other than
15 what you have today.

16 A. I was on the Surgical Staff at Montcrief Army
17 Hospital. I have also had Operating Privileges at Lee
18 County Memorial Hospital, Wilson Hospital in
19 Darlington, South Carolina, Byerly Hospital in
20 Hartsville, and Carolina Pines Hospital, which is the
21 follower of Byerly Hospital.

22 Q. All right. Now, I only want to ask you a few
23 questions because you were present at the procedure
24 that Dr. Mincheff did on Ms. Person; is that correct?

25 A. That is correct.

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1 Q. And in what capacity did you serve?

2 A. I was there as an assistant.

3 Q. Typically, do assistants have the kind of credentials
4 that you have?

5 A. That may vary, but normally you either have a Scrub
6 Nurse or Scrub Tech. At a small hospital, like some
7 of the other hospitals like Teaching Centers you may
8 have a Resident or Intern.

9 Q. And you are more than that; is that correct?

10 A. That is correct.

11 Q. How many Open Procedures have you done?

12 A. It's been hundreds over the years. Because I came
13 along, when there was no Laparoscopic Procedures. So
14 all they were doing was Open Gastroesophageal work.

15 Q. All right. Now, during the procedure that Dr.
16 Mincheff was doing on Ms. Person, did he demonstrate
17 at anytime any kind of ineffectiveness, or lack of
18 experience, or training in any way?

19 A. He did not.

20 Q. When you are doing that kind of surgery, when you
21 convert from laparoscopic to open, do you convert
22 because a mistake has been made, or why do you
23 convert?

24 A. Well, it could be several reasons. If the operation
25 is not going well, exposure is not going well, then

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1 certainly you would want to open. And the foremost
2 thing is the safety of the patient. And if it is
3 deemed risky to proceed laparoscopically then the
4 decision is made to do an open procedure.

5 Q. So, from your observation, was anything done wrong
6 that caused it to have to convert?

7 A. To my knowledge, no.

8 Q. All right. And it is fairly common to convert based
9 on the unusual aspects of anatomy; is that not
10 correct?

11 A. It can occur.

12 Q. When the conversation was made, and it goes to open,
13 that's your field, right, that's where you have
14 expertise?

15 A. Well, that would be where I was most comfortable.

16 Q. All right. If Dr. Mincheff drops dead right there you
17 can take over?

18 A. That's correct.

19 Q. As part of your duties as assistant, would you be
20 examining the various organs and stuff of the body?

21 A. Mostly I'm holding retractors. But there are four
22 sets of eyes that are looking at everything --- I mean
23 two sets of eyes, I'm sorry.

24 Q. To your knowledge, was there any cuts to the pancreas?

25 A. I did not see a cut to the pancreas.

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1 Q. To your knowledge, was there any laceration or cut to
2 the spleen?

3 A. I did not see a laceration of the spleen.

4 Q. And do you agree if that had occurred, she would have
5 to have a new spleen, wouldn't she?

6 A. Well, if that had occurred with that amount of
7 bleeding then most likely she would have required a
8 splenectomy.

9 Q. All right. Do you know of anything that was done
10 wrong during this procedure in any way by Dr.
11 Mincheff?

12 A. Not to my knowledge.

13 Q. All right. What is your opinion of him as a surgeon?

14 A. Dr. Mincheff, I think, is a very excellent surgeon.
15 As was stated, we were competitors when he initially
16 got here. Later on he joined Doctor Cooler and myself
17 at Hartsville Surgical Center. I have had the
18 pleasure of working along side him. I would have no
19 qualms about him operating on me or any of my family.
20 And I know that not is he a good surgeon, but he is
21 really a decent, caring, and honest man.

22 Mr. Sweeney: Thank you. I have no further
23 questions.

24 The Court: Cross examination.

25 Cross Examination by Mr. Corbin

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