

Chapter 6 – A 32-year-old woman with headache

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Chapter 6 was found fairly early in the process. This was the case with material from 3 different attorneys; ED chart from one, deposition from another and trial testimony (thankfully as a word document) from a third.

Initially, I thought we may not use this as the diagnosis seemed too obvious, but the more I read through this case it became apparent it was not just about 'guess the diagnosis' and more about the process and medical decision making. The legal aspect of all these cases is there to bolster and reinforce the medical aspects of the cases. This case is no exception.

The trial testimony from the patient is particularly powerful and we included it as an example of where plaintiff's go with this, as well as to complete the story of Kelli.

In October, 2011, this case was written up for the Emergency Medicine Resident Association (EMRA) newsletter and the Journal of Urgent Care Medicine (JUCM) journal. Emilie Cobert, co-author of the first chapter, is a co-author of the EMRA submission and Jill Miller, friend of almost 30 years, is the co-author of the JUCM article.

Characters names? Hmm...

Not much interesting here except for a borrowed last name from a long-lost friend of mine, Jenny Carozza, who moved to Traverse City MI in 5th grade. You an ER doctor Jenny??

Oh, and a Kelli is from a woman I hiked with in Nepal in 1993. *Those* were different days...

CROSS EXAMINATION OF DEFENDANT PHYSICIAN

WHEREUPON, called to appear as a witness in this proceeding was one:

D O C T O R TIMOTHY MADISON who, having been duly sworn by the bailiff herein, testified as follows:

THE COURT: Mr. Morgan?

MR. MORGAN: Thank you, Judge.

AS UPON CROSS EXAMINATION

BY MR. MORGAN:

Q Could you state your name, please?

A Timothy Madison.

Q Doctor Madison, you were responsible for the care and treatment of Kelli Flood when she came to the ED on August 8th, 1999?

A That's correct.

Q When she came to that emergency facility you were employed by the defendant, The Best Health Care Services, Inc.?

A That's correct.

Q And you are still employed there?

A Correct.

Q And that's a professional corporation; is it not?

A That's my understanding; yes.

Q And you're a partner in that professional corporation?

A That's correct as well.

Q In The Best Health Care Services, Inc. there are approximately two hundred doctors, two hundred partners in that --

A As of the last count I heard.

Q Roughly?

A Certainly.

Q All right. They're in multiple states? I think five is what you had said.

A I'd have to sit back and re-think it at this point, but it sounds about right.

Q All right. Since 1990 have you been with The Best?

A Actually a company it absorbed from 1989.

Q Okay. Doctor Snyder, one of the doctors that is defending you, you and he are partners?

A Not at this time. Let me backtrack. Doctor Snyder and some of the other doctors at one contract decided to leave The Best. I believe it was about two years ago, but it may have been three. I believe he is no longer a partner or shareholder in the company, but I don't know that certainly.

Q At one time you were?

A That's correct.

Q And when Kelli Flood went to the emergency facility on August 8th you were?

A To be honest with you, I don't know. I'd have to go back and look at the date that that change occurred, sir.

Q If he says you were, you wouldn't dispute that?

A That's correct.

Q All right. The Best Health Care Services, Inc. is a group of doctors that provide primarily emergency care for patients who need it?

A That's correct.

Q All right. And that facility is staffed with doctors, nurses, receptionist, and lab techs. twenty-four hours a day, seven days a week?

A That's correct.

Q All right. It's the only emergency facility in the county?

A That is correct unless something has changed of which I'm not aware.

Q All right. You've been a doctor for approximately seventeen to eighteen years?

A I graduated from medical school in 1985; so, yes.

Q Okay. You've been involved in emergency practice since 1989?

A Correct.

Q All right. You are not board-certified in emergency medicine, but you've been specializing in that for a long time?

A That's correct.

Q All right. I'd like to ask you some questions about how emergency doctors, of which you're one of them, go about doing their job. I have some general things.

A Will I need to move, sir?

Q No. Can you see the chart?

A You need to angle it, or slide it back. That would be helpful. Thank you.

Q How's that?

A Better.

Q All right. I'll try to write a little more clearer than I did at the beginning of the case. I'm going to label this 'duty of emergency doctors'. Would you agree that your goal is to screen patients to find out which one of the patients, or, which of the patients has a disease or something that's life-threatening or disabling, and which don't?

A That's correct.

Q All right. Would you agree that your job is to diagnose and treat?

A To diagnose and treat? Of course.

Q One of the ways you do that is by doing a differential diagnosis?
A Correct.
Q You do that on virtually every patient that comes in to see you?
A Correct.
Q There is a couple of different ways you do that. One would be you take a history; right?
A Correct, assuming the patient can offer it. If not, you have to get information from bystanders or family members. It depends on the situation.
Q Sometimes people come in and they can't talk, or they're unconscious, or whatever; right?
A Correct.
Q The other way you do that is you do a physical examination?
A Correct.
Q And a third way would be different tests?
A If you feel it's indicated.
Q Sure. But, those are -- I mean, those are the three general ways you would do a differential diagnosis to come to some type of conclusions in order to diagnose and treat?
A As I noted, with the testing issues you have to assume, or, you have to feel that the patient requires a test.
Q Sure. You wouldn't want to do an unnecessary test.
A As a matter of fact, there's a big push to cut back on that now nationally.
Q All right. When you do a differential diagnosis there's a priority involved; isn't there?
A Which priority do you mean, sir?
Q Well, I'm talking about life-threatening situations have a higher priority. Would you agree with that?
A Yes.
Q All right. Emergency doctors, nor any doctor, knows everything. So, would you agree that part of your job as an emergency doctor is to know if you should consult with a specialist, or not?
A I agree with that.
Q Okay.
A At least when I feel it's indicated.
Q Sure. Part of that job is who to consult with; right? Isn't that part of your training to know who you should consult with?
A Well, obviously you wouldn't consult with a neurologist necessarily for a pediatric issue.
Q Right. So, you would agree with me?
A Uh-huh; yes.
Q All right. Now, the goal is to identify those conditions that may have a very bad outcome so you can treat it; right?
A Agree.
Q Now, let's go to that night. Kelli came in to the emergency room at six thirty-two P.M.?
A If you say it was six thirty-two. This is a copy of the record from that night. It does say six thirty-two.
Q All right. Do you know what day of the week that was?
A No, I do not remember what day of the week it was.
Q All right. It was a Sunday.
A Okay.
Q All right? Like most emergency visits, the nurse there took an initial assessment?
A That's correct.
Q And she took vital signs?
A That's correct.
Q One of the vital signs was blood pressure and that was above normal?
A That's correct.
Q One fifty-six over ninety-five?
A Let me look.
Q Feel free to check if you need to.
A Yea, one fifty-six over ninety-five.
Q All right. The other vitals - temperature, respirations, and pulse - those were not above normal? Those were okay; weren't they?
A That's correct.
Q All right.
A Well, respiration is a little high at eighteen.
Q All right. Nothing that alarmed you?
A By itself; no.
Q All right. At six thirty-two she came in. At six fifty-five you saw her?
A Correct.
Q All right. You did an exam and a history, or a history and an exam?
A Correct.
Q I know that you didn't time it, but your best estimate would be that that took approximately ten to fifteen minutes?
A That's typical.

Q Okay. You felt that she should have a CAT scan and so she went off to do a CAT scan; right?

A Correct.

Q And then you ordered, or, gave her some pain medication?

A Correct.

Q And some other things and at eight thirty-five, approximately two hours after she got there, you sent her home?

A It says eight thirty-five. Correct.

Q All right. Now, when she came in there you knew her blood pressure was high; right?

A Correct.

Q You knew that she had just delivered a baby eight days ago?

A Correct. She told me that.

Q That was your very first sentence on your chart; wasn't it?

A Uh-huh; that's correct.

Q And you would agree that's a major medical event in somebody's life?

A Delivering a baby?

Q Yes.

A I don't know about major medical event, but certainly a happy event.

Q Okay. How about a major physiological event?

A It depends on what your definition of major is. Certainly there are changes that occur during the pregnancy and then those have to return to normal.

Q Well, it was major enough that you put it in the first sentence; isn't that true?

A Well, I thought it was important because if I chose to give her drugs for whatever reason, well, I wanted to be sure if she was breastfeeding. I have a baby to worry about even if the baby's been delivered.

Q That was your only concern?

A No. I also had to think about things that might have been related to pregnancy as a cause for her presence in the emergency department.

Q Again, back to that chart.

A You mean under differential diagnosis?

Q Correct.

A Certainly. Yes.

Q All right. You knew that she had a severe headache?

A Correct. That's what she told me.

Q All right. The nurse had said that they asked on a scale of one to ten what is it. Her response was what?

A I'll check and I'll tell you.

Q Page two fifty-three at the very top.

A Two fifty-three? I'm sorry? Which page are you talking about, sir?

Q The page it's stamped.

A Okay.

Q At the very top.

A A scale of ten. I'm sorry. Thank you.

Q It was ten; right?

A Ten out of ten; correct.

Q Okay. She also told you that it was the worst headache of her life?

A Correct.

Q You had asked in your history about whether she had got hit in the head or if there was some type of trauma and you found out --

A I was told there was not.

Q All right. You knew that she had photophobia?

A Correct.

Q Nausea?

A Correct.

Q All right. Signs and symptoms of pre-eclampsia/eclampsia. The first thing involved is either you have a pregnant woman or recently delivered; would you agree with that?

A To a point. My training was that if it was after forty-eight hours post delivery that the likelihood of eclampsia and pre-eclampsia was essentially nil.

Q I'll get to that point in a little bit. You'll agree that it can happen with postpartum women?

A That's correct.

Q The hallmark, you know, is high blood pressure. That's an essential element of that diagnosis. Do you know that?

A It is part of the diagnosis; yes, sir.

Q Is it the hallmark, the essential part of that diagnosis?

A Probably.

Q All right. You know that severe headaches are part of the diagnosis, or, can be for pre-eclampsia?

A They can be, sir.

Q Okay. Really pre-eclampsia is a cluster of symptoms?
A Correct.
Q All right. These are some of the cluster; right, so far?
A So far.
Q All right. Visual disturbances. Is that part of the cluster?
A It certainly can be.
Q Proteinuria?
A It certainly can be.
Q Nausea or upper quadrant stomach pain?
A It certainly can be, sir.
Q Hyperactive reflexes. Can that be part?
A It certainly can be.
Q And for eclampsia you can have this cluster plus a seizure, or, seizures?
A A seizure is the defining element to make it eclampsia, sir.
Q Okay. You don't have eclampsia unless you have a seizure; right?
A Correct.
Q All right. Now, that night when you did an examination you knew that was there; right?
A Eight days postpartum, sir. Yes.
Q Again, I'll cover that. You knew she had high blood pressure?
A Correct.
Q You knew she had a severe headache?
A Let me backtrack to the blood pressure for a moment. I knew that at the time her blood pressure was elevated. What the cause was was yet to be determined.
Q Sure. But, you knew that her blood pressure was high, which is a sign or symptom of pre-eclampsia.
A It can be.
Q Okay.
A It can also be a sign or symptom of many other issues.
Q She had photophobia?
A Correct.
Q You didn't do this test; did you?
A That's correct.
Q All right. You knew she had nausea; right?
A So she told me.
Q But, you didn't check for stomach pain?
A I believe I did examine her abdomen.
Q If you could show me where that is on the chart?
A Let me double-check. I don't recall. No, I did not. I apologize.
Q So, you knew nausea. The other part of that is did not check. Is that fair?
A Correct.
Q And you did not check if she had hyperactive reflexes; is that true?
A Correct.
Q Let me write that down. Is that true?
A Yes, that is correct. I did not check her reflexes.
Q All right. How easy or difficult would it be to check her stomach to see if there was pain?
A During the examination it's easy enough to lay on hands if you feel it's indicated.
Q Well, sure. If you feel --
A I also didn't -- go ahead.
Q I mean, you didn't do it and you must not have felt that it was indicated.
A At that point; correct.
Q All right. How easy or difficult is it to check somebody's reflexes?
A Again, very easy during the physical exam.
Q All right. How easy or difficult is it to find out if someone has proteinuria?
A Assuming the lab is available, which it is at the facility, it can be done.
Q It's not a big deal; is it?
A No.
Q All right. If you thought seriously about pre-eclampsia you could have had a urinalysis to check to see if there was protein; is that a fair statement?
A Sir, I think it hedges the point. My training was that pre-eclampsia generally doesn't occur beyond forty-eight hours after delivery. The possibility of a pre-eclamptic state and eclampsia had run through my mind, but based on my experience and my training really, it was very unlikely to be the case because she was eight days postpartum. So, it was on the differential diagnosis. Someplace I vaguely remember as part of the training that you need to look at other things before you start trying to blame those symptoms on eclampsia at this point postpartum.
Q Again, I'll get to that part in a minute. You knew back then that eclampsia was a deadly, dangerous disease?
A It certainly has the potential to be; yes.

Q Sure. And you knew that when women go to their obstetrician during pregnancy that they check blood pressure and urine every time?

A That's standard. I believe that is standard of care, although if an obstetrician sat down and told me otherwise, well, I would have to defer.

Q You don't want to comment on the standard of care of an obstetrician; right?

A No.

Q Because you're not one?

A Correct.

Q But, you know that happens?

A I know that they often times do; yes.

Q All right. I like charts. I'll call this one 'duties of an emergency room doctor in diagnosing pre-eclampsia or eclampsia' - all right - 'and some of the characteristics of the disease'. It can be preventable; can it not?

A Which one - pre-eclampsia, or eclampsia?

Q Pre-eclampsia leading to the seizures, strokes, and coma.

A It's treatable.

Q Okay. So, it's treatable. Is that what you want me to use?

A I think if we try to say that it is something that is preventable, well, obviously until you have the high blood pressure and by definition have pre-eclampsia during pregnancy or the forty-eight hours thereafter then, by definition, it's already in place. It's not preventable.

Q Okay. But, from something going from pre-eclampsia to eclampsia that's preventable, or, can be?

A Uh-huh; that's correct.

Q And treatable?

A That's correct.

Q All right. Should a doctor, such as yourself, be familiar with the signs and symptoms of pre-eclampsia and eclampsia?

A I believe I already told you that I am familiar by answering your other questions, sir.

Q All right. Should they know what tools to use to diagnose pre-eclampsia or eclampsia?

A I believe that's correct; yes.

Q Should they know who to call if they need help?

A Do you mean a consultant, sir?

Q Sure.

A Correct.

Q You know, and should they know, that it's a medical emergency? Is that correct? Or, it can be? How's that?

A It certainly can be; yes, sir.

Q All right. It can progress to a life-threatening situation quickly. Should they know that?

A If you mean pre-eclampsia; yes, sir.

Q All right. Severe headaches and/or visual changes frequently come before a seizure. Should they know that?

A When you're talking about eclampsia, that's correct, sir. However, there are many other diseases in which you can see that process.

Q Postpartum pre-eclampsia or eclampsia can be up to three to four weeks postpartum. Is that possible?

A Based on my training the answer is postpartum eclampsia most often occurs in the first forty-eight hours and afterwards is much, much less likely.

Q Okay. My question was -- well, you're not saying it can't happen; right?

A Again, my training was in the first forty-eight hours post delivery.

Q Well, did you back on August 8th think that you couldn't get postpartum eclampsia if it was greater than forty-eight hours?

A That was my understanding based on my training, sir.

Q Okay. The medical management for eclampsia/pre-eclampsia as it pertains to the mother is the same before or after delivery of the child. You know that; don't you?

A I know that in general it can be, but there are other drugs that may be used postpartum that if the mother is not breastfeeding might also be used to control blood pressure that wouldn't be considered if she were, or if she were still pregnant.

Q One more chart. I'll call this 'care and treatment for pre-eclampsia/eclampsia'. Magnesium Sulfate. Did you know that was the drug of choice back then?

A Yes.

Q Okay. You phrased it something like you vaguely remember seeing some reports on the use of Magnesium Sulfate when your deposition was taken.

A I'm sorry?

Q Do you have your deposition?

A No, I do not.

Q You have reviewed it; I assume?

A The deposition? Yes, sir.

Q All right. This was taken, let's see, November of 2000.

A If you say so, I believe you. It sounds about right.

Q All right. You had a chance to read it over and sign it. I think that process took awhile and you finally read it over and signed it back in March of 2001?

A I thought I returned it more quickly than that. But, again, if you say so, I believe you.

Q Okay. On page seventy-seven I asked the question, to get to where I'm at, to put it in a context - "Okay. If you had a patient who had a diagnosis of pre-eclampsia in the emergency room how would you treat them?" Answer - "Known to be pre-eclamptic before that individual presented?" Question - "Or you considered them to be pre-eclamptic." Answer - "If I considered them to be pre-eclamptic obviously the blood pressure would need to be reduced. I believe the drug of choice is still Hydrozoline. That can be administered I.V. or P.O. by mouth. I'm sorry. I shouldn't use medical leads." Question - "Okay." Answer - "That's considered typical therapy." Question - "Okay." Answer - "There are also -- I vaguely remember seeing some reports of the use of Magnesium." Question - "Magnesium Sulfate?" Answer - "Correct." "So, those are the two main line drugs?" Answer - "From what I recall; yes, sir."

A Let me backtrack. In your original question to me right now did you ask me if it was the treatment of choice for the blood pressure, or the treatment of choice for seizures?

Q There wasn't any seizures; was there?

A Not the day that she saw me, no.

Q Not yet. It's the treatment of choice for pre-eclampsia. That was my question.

A I believe the treatment of choice for pre-eclampsia is blood pressure lowering and --

MR. HUFFMAN: Excuse me, Judge. I think in all fairness Mr. Morgan should read the question which prompted that answer, which does not include the question he's talking about here.

THE COURT: I think the witness was going back to the question not from the deposition, but from the question asked before the deposition. So, yea, be careful in the use of -- if you're going to use the depositions make sure that you use them accurately.

MR. MORGAN: I quoted word for word, your Honor.

MR. HUFFMAN: Well, how about --

MR. MORGAN: No, no.

MR. HUFFMAN: I'm just giving him a copy of the deposition.

MR. MORGAN: Oh. Great.

MR. HUFFMAN: My objection, Judge, is --

MR. MORGAN: What's he objecting to?

MR. HUFFMAN: My objection is that to fairly construe the answer one needs to look at the question which was asked, which has got nothing to do with eclampsia.

MR. MORGAN: The question I asked?

MR. HUFFMAN: No. The question in the deposition.

THE COURT: If that's the objection, well, that's what I'm getting at. If you're going to ask him to recall testimony at a deposition make sure that it's read accurately. If that wasn't done, then the objection is sustained. If that was done, then the objection is overruled.

MR. MORGAN: Okay. Thank you.

Q Vaguely remember is a little different than what you've heard and what you know the testimony to be on Magnesium Sulfate, right, concerning pre-eclampsia?

A Certainly from the testimony here, sir; yes. I've listened to all of the witnesses.

Q Now, am I correct that you thought that you could not have postpartum pre-eclampsia unless there was hypertension or complications of pregnancy and delivery?

A During what time period, sir? Again, my training was generally in the first forty-eight hours that it was more common, and then after that you had to look to other causes for a headache or other issues - even seizure.

Q So, my question -- all right. Well, you want to keep it forty-eight hours. In forty-eight hours you don't have to have a complication, or hypertension. But, you thought after forty-eight hours you have to have evidence of a problem during pregnancy in order to have postpartum eclampsia? Is that what you thought?

A Generally, it was my understanding that women who had problems during the pregnancy, such as pre-eclampsia, certainly can have eclamptic problems afterwards if it's not monitored closely and appropriately treated.

To arrive de novo, meaning without any previous problems, it's my understanding that that was an incredibly rare circumstance.

Q Well, not incredibly rare, but that it could not happen.

A I don't remember a hundred percent what I said in the deposition because I haven't reviewed it in a couple of days. Do you have a specific reference you're aiming at, sir?

Q Page seventy-one.

A Seventy-one?

Q Yes.

A Which line, sir?

Q Line seventeen. Question - "Would you agree that late postpartum eclampsia may occur without a history of pre-eclampsia during the pregnancy itself?" What was your answer?

A My answer was - "Yes, it can, within the first forty-eight hours postpartum." Oh, I'm sorry. Did you want me to read the whole answer?

Q Yes. Question - "Would you agree that late postpartum eclampsia may occur without a history of pre-eclampsia during pregnancy itself?" What was your answer?

A "Within the first twenty-four to forty-eight hours the answer is yes. If you want to include that the period up to ten days postpartum I have to say that based on my" -- I'm sorry -- "I'd have to say not, based on my training."

Q All right. Now, pre-eclampsia was on your differential diagnosis; is that your testimony?

A That's correct. I did consider it.

Q All right. Did you feel that you had to have edema in order to --

A It is -- I'm sorry. I didn't mean to cut you off.

Q Did you feel that you had to have edema, swelling, in order to diagnose pre-eclampsia back then?

A Edema certainly can be part of the syndrome, but it's not a requirement.

Q Could you look at your chart and tell me --

A The chart?

Q -- where you checked to see if edema was even there, or not there?

A I guess it depends on how you want it phrased, sir. What I did, was under 'skin' it says 'normal texture and turgor'. It should be the third page - under 'skin' under 'physical examination'.

Q Is there a spot for edema?

A I'm sorry? I don't understand the question.

Q Well, is there a spot that says edema?

A Specifically?

Q Yes.

A No. Skin turgor is a description.

Q No. On the chart.

A I'm sorry?

Q Would you look at the chart where it asks about whether there's edema, or not, and tell me what's checked, or not checked?

A Are you talking about on the nurse's notes, sir?

Q Yes.

A Okay.

Q Let me point it out.

A That would be helpful.

Q Edema. There's a big line there; right?

A This is on the nurse's notes, sir. The nurse did not comment one way or the other.

Q Okay. Well, did you say in your part that she had edema, or did not have edema?

A I said the skin had normal texture and turgor, sir. Turgor is a fancy way of saying is it swollen, is it puffy.

Q So, skin is swelling to you?

MR. HUFFMAN: Judge, I object to that.

Q Is that right?

MR. HUFFMAN: That's not what he said.

MR. MORGAN: I'm trying to clarify it.

THE COURT: The objection is overruled. He's asking a question.

A Certainly you can document it there, sir.

Q All right. At any rate, you know you don't need edema?

A That's correct.

Q Okay. Now, do you agree with Doctor Snyder, Doctor Yalch the emergency room doctor, and Doctor Snyder is the doctor who will be testifying -- you've read his deposition; haven't you?

A Yes, I have.

Q All right. Doctor Gilbert. Doctor Porter.

A I have not read Doctor Gilbert deposition.

Q You heard his testimony, though?

A Yes, I did.

Q He way the gray-haired obstetrician.

A Yes. Yes, I know who you're talking about.

Q And you've read Doctor Porter's deposition?

A Yes.

Q And you've read Doctor Sinai's deposition?

A That's correct.

Q Didn't each of those doctors talk in terms of weeks that postpartum pre-eclampsia can occur - from two weeks to six weeks, and not hours like you have said?

A What I know is that certainly Doctor Yalch and Doctor Gilbert had done so. I don't remember Doctor Snyder, to be perfectly honest, sir. I haven't reviewed that deposition in I'm going to guess at least six months, if not longer. Doctor Sinai, again, I don't remember.

Q If Doctor Snyder says that an emergency room doctor should know that prepartum (sic) eclampsia can

occur up to three weeks would you agree with that?

A That was not my training, sir.

Q Your training, or, what you're telling me your training is was forty-eight hours; right?

A Correct.

Q Now, if you needed help you could have looked it up in the textbook to find out the timing.

A Only if one is available. Only if one is available, sir.

Q Well, isn't there texts available?

A I don't remember which texts were available, if any, to be honest with you. There's usually a small library, but sometimes they get to be several editions old and so the information is not necessarily as current as it could be.

Q But, you could go on-line and check; couldn't you?

A No. As far as I know that capability was not available .

Q Could you have asked any of the two hundred partners that you have?

A I guess it's always possible to have done that. Yes.

Q But, you did not?

A That's correct.

Q All right. I want to go by your way of thinking here on forty-eight hours.

A All right.

Q Isn't there a clear-cut sign that even you would say that it could happen greater than forty-eight hours?

A test that you could do?

A If you're asking proteinuria, there are many things that can give you protein in the urine, including contamination with blood, sir.

Q Is the answer to my question that proteinuria is a test that --

MR. HUFFMAN: Excuse me, Mr. Morgan. Could you stand so that I could see him while he's testifying?

MR. MORGAN: Sure.

MR. HUFFMAN: I appreciate that. Thank you.

Q Proteinuria is a test that even you would agree that's clear-cut after forty-eight hours?

A No, sir. The way you're phrasing that question it implies that to do it, well, if it's positive then you have a definitive diagnosis. The answer is no, that you have a number of potential diagnoses.

Q I'm trying to do according to what you said. I'd like you to turn to page sixty-six or sixty-seven. Page sixty-six, like twenty-two.

A Line twenty-two?

Q Are you there?

A Yes, I am, sir.

Q Okay. Question - "Okay. Hypertension, proteinuria, and convulsions that occur later than forty-eight hours, but before ten days postpartum, are typically referred to as postpartum eclampsia." Your answer was - "I am aware of the term postpartum eclampsia. I have not heard it applied to anything that happened up to ten days without clear-cut diagnostic - how can I say it - without clear-cut evidence to prove that it was related, that it was a pregnancy related issue." Question - "How would you get the clear-cut evidence?" Answer - "I would want to see evidence of proteinuria." Right?

MR. HUFFMAN: Well, Judge, I'm sorry, but that's not a complete answer.

MR. MORGAN: Well, I'll keep going.

Q "I would want to see evidence of peripheral edema. A patient who is hypertensive and has a seizure need not have eclampsia or have had pre-eclampsia." Was that your answer?

A That's correct.

Q You did not do a proteinuria test; did you?

A No, I did not.

Q Again, your way of thinking, you attributed all of her symptoms to sinusitis; is that correct?

A It certainly can be associated with sinusitis. Yes, sir, in her case I believed it was.

Q You would describe her sinusitis as mild, or a small amount?

A I'm sorry? In what context? How much pain it caused her, or how it looked on --

Q In terms of what you claim, or, what you say you saw on the C.T. scan.

A What I thought I saw on the C.T. scan was a small amount of change. That doesn't describe how much it might hurt. But, yes.

Q Did you describe it as mild and a small amount?

A I don't remember the exact words. If you would like, I can look it up.

Q Page fifteen and sixteen.

A I guess I have a different numbering system, sir, so give me a moment.

Q Sure. Take as much time as you need.

A I'm sorry. I was looking at the interpretation of the C.T. scan.

Q On the very last line.

A Of the C.T. scan? Oh, okay. "The bone windows show evidence for mucoid material in both frontal sinuses." Is that what you're talking about, or are you talking about a different spot?

Q I'm talking about line twenty-five.

A Oh, twenty-five in this?

Q On page fifteen.

THE COURT: Are you reviewing the chart, or the deposition?

MR. MORGAN: The deposition.

A Oh, the deposition? I'm sorry. I thought you said the chart. I apologize.

Q I might have said that. I don't know.

A I'm sorry. So, that's page fifteen again? Is that right, sir?

Q Yes. Page fifteen, the last line. Just so we're clear.

A Do you want me to read this?

Q Well, my question was - did you characterize it as mild?

A Mild mucoid material within the frontal sinuses is what I had thought.

Q Okay.

MR. HUFFMAN: Excuse me, Judge. I wonder if he could read the entire answer.

A That's fine.

MR. MORGAN: I mean, that's up to him. He answered.

THE COURT: Well, it's not. There was a question here that was asked, and he answered the question. You'll have a chance to ask him questions, too.

Q So, your way of thinking, Doctor, is that this mild small amount of sinusitis caused the worst headache of her life and the pain which led to high blood pressure, nausea, and photophobia, the things you checked and knew about?

A I think there's a misperception there. The amount of abnormality that you see on a CAT scan doesn't always correlate with the clinically perceived symptoms.

Q Sure. As a matter of fact, the radiologist that read this x-ray read that it was completely normal; didn't he?

A That's correct.

Q And they're trained to just do that, to read x-rays?

A That's correct.

Q Looking at your way of thinking, she could have sinusitis and still have pre-eclampsia. Couldn't there be more than one disease process going on at the same time?

A It is uncommon, but possible.

Q Okay. She could still have sinusitis and a life-threatening disease?

A It is certainly possible; but, again, two disease entities presenting at the same time are unusual.

Q Yea, but you thought of it. You put it on your differential; right?

A That's correct. But, that doesn't necessarily mean that I felt that it was at the top of the differential as I worked my way through it.

Q Well, going back to this very first chart. When you have something that could be sinusitis, and something that could be pre-eclampsia, well, it begs the question that sinusitis is not on the same level as pre-eclampsia, is it, in terms of danger?

A Potentially? No. I think that pre-eclampsia has more likely to move on. But, people have had severe outcomes from sinusitis although, granted, very infrequently.

Q You didn't even see that; right?

A I'm sorry?

Q You didn't see that on any x-rays or any of your clinical findings - severe sinusitis?

A No.

Q So, you've got sinusitis and pre-eclampsia. How did you justify pointing towards sinusitis when you look for life-threatening things and try to rule that out?

A Well, as you imply there, the differential diagnosis is not a status entity. It starts out with your initial impression based on history and physical examination. Sometimes, or, often times there's retrospection, or, thoughts about the process. Can I rule this in, or out, based on what I did, or didn't find, in this particular patient? Based on the fact that she was eight days postpartum I felt that the likelihood of eclampsia or pre-eclampsia had moved down on the differential diagnosis for its original position.

Q You ruled pre-eclampsia in by having it on your differential diagnosis; correct?

A I'm sorry? Ruled it in?

Q Ruled it in because it was on your differential diagnosis. It was possible that she had that. Isn't that what differential means?

A I would agree to that; yes.

Q You've read these depositions. I asked both of the doctors defending you - 'was there anything on this chart that ruled it out' - and they said no. Do you agree with that?

MR. HUFFMAN: Excuse me. I object to the question. It's not clear whether he agrees that they said that, or whether he agrees with that statement.

MR. MORGAN: I'll ask both, Judge, just to make it clear.

Q Do you agree they said that?

A I don't remember.

Q Well, do you agree it's true?

A That there's nothing there that rules it out? The fact that she's eight days postpartum pushes it way down on the differential diagnosis.

Q I didn't say pushes it way down. I said rules it out.

A No.

Q Right before she went home you checked, or, well, I don't know if you checked it or caused her blood pressure to be checked; right?

A The blood pressure was checked; yes, sir.

Q All right. Again, your way of thinking was that the pain from the sinusitis was causing the problems. We've covered that. Right?

A It certainly could be causing all of it; yes.

Q You gave her a shot of Demerol, which is a narcotic, to reduce the pain?

A Correct.

Q The pain was reduced; was it not?

A Yes, it was.

Q The blood pressure went up?

A Yes, at the time that it was taken.

Q At eight-fifteen.

A If you say it was eight-fifteen; yes.

Q Well, how did that make pre-eclampsia go down and sinusitis go up on your differential diagnosis?

A There are many things that can cause an elevation in blood pressure, sir - from pain, to anxiety, to worry about getting home. It could have also been the technique that was used to perform the blood pressure. So, no, it doesn't make a difference in the differential diagnosis.

Q It didn't mean anything to you?

A I didn't say that.

Q Well, if it doesn't make a difference -- did it mean something to you that her blood pressure went up to one seventy-six over eighty?

A Yes. I thought it was due to other causes, as I just pointed out.

Q Even though you gave her a narcotic and the pain went down?

A Well, again, she didn't express to me whether or not she was worried about getting home to the children. She had a young baby at home and maybe it was time to be fed. There are a number of things that could have caused it.

Q All right. Wanting to go home to get a baby fed versus a dangerous pre-eclampsia --

A I can't tell you which caused the elevation in her blood pressure, sir. I know what I was thinking at the time.

Q Okay. Well, at any rate, you told her, after all this was said and done, to wait. Wait three or four days and if it wasn't better then have it re-checked.

A I think there's an addition to that. I also told her that if she was having worsening symptoms, despite what we were doing, that she should be re-checked in a more timely fashion.

Q Okay. But, if she wasn't having worsening symptoms she was to wait.

A Agreed.

Q Did you tell her that pre-eclampsia, that she had signs and symptoms of it, and that it was on your differential diagnosis? Did you tell her that?

A I don't believe I discussed differential diagnoses with her at all.

Q Why not? She's the patient; right?

A I don't think I would discuss differential diagnoses with most of my patients, sir.

Q Okay. Did you tell her that someone with signs and symptoms of pre-eclampsia and someone with severe headaches or visual changes frequently come before a seizure? Did you mention that to her?

A No, I did not.

Q You sent her home. You did not treat the pre-eclampsia; is that correct?

MR. HUFFMAN: Excuse me, Judge. I object to that. There's no evidence here that there was any pre-eclampsia.

MR. MORGAN: He didn't treat it, your Honor.

THE COURT: Well, I think the objection will be sustained. You can ask that another way. So, I'll sustain it the way it was asked.

Q Okay. The pre-eclampsia that we've talked about and that was on your differential diagnosis, did you treat that?

A I don't believe the patient had it at the time and so, no, I did not treat it.

Q You did not do any protein or lab work urinalysis?

A That's correct.

Q You did not check her stomach?
A I did not palpate the abdomen or do an abdominal exam; that's correct.
Q You did not check her reflexes?
A That's correct.
Q You sent her home?
A Yes.
Q To wait?
A To see if the intervention for the process that I thought was on-going would be successful as the Amoxicillin had not.
MR. MORGAN: That's all I have at this time, your Honor.
THE COURT: Okay. Doctor, you may step down. We'll get a chance to hear from you again later. Why don't counsel approach?

Direct examination of patient Kelli Flood + cross + redirect

TUESDAY, JANUARY 21
9:07 A.M.

THE COURT: Welcome back. Today is the 21st day of January, 2003. The parties are all present and represented.
Ladies and gentlemen of the jury, again, welcome back from the long weekend. I hope you had a nice restful weekend. We'll get started here in a minute. I did want to explain one thing to you. As you might have already observed as you came in, the neurologist is no longer in this case. You are not to speculate as to his absence or infer anything from the fact that he is no longer in this case. The defendants, remain, and you are to continue to consider this case as it relates to them only.
So, with that, we'll get started. We're still in the Plaintiffs' presentation of their case. Plaintiff attorney, your next witness?

PLAINTIFF ATTORNEY: Thank you, your Honor. We would call Kelli Flood to the stand.

BAILIFF: I can move the table there and then put that microphone on there.

THE COURT: Why don't we do that? Maybe that's a little better and then she won't have to stretch.
WHEREUPON, called to appear as a witness in this proceeding was Kelli Flood who, having been duly sworn by the bailiff herein, testified as follows:

THE COURT: Plaintiff attorney?

DIRECT EXAMINATION

BY PLAINTIFF ATTORNEY:

Q Kelli, I'd like to ask you some questions so the jury gets to know you a little bit better. Would you state your name?
A My name is Kelli J. Flood.
Q And where do you live?
I live in Small Town, Ohio. My address is 4567 East West Street.
Q Okay. You're married to Shane Flood?
A Yes, I am.
Q And you have three children?
A Yes, I do.
Q How old are they?
A 15, 8, and 3 1/2
Q And how old are you, Kelli?
A I'm thirty-six.
Q How did you get to know Shane, your husband?
A Well, I worked with him. We were really good friends. Then I quit my job and he called me up one day and asked me out on a date.
Q Have all three of your children always been in your custody?
A Yes.
Q And have there been times when you have been a single parent with the older two children?
A I'm not sure about what you're asking.
Q Okay. Well, are there times that you raised them as a single mother?
A Yes.
Q You gave birth to Jacob on July 30th, 1999?
A Yes.
Q Would you tell us what job you were doing at the time?
A I was an account representative for Stem Outdoor Advertising.
Q Okay. If we would watch you doing your job, what would we see you doing?
A I would be selling billboards.

Q Okay. How long had you been working for Stem approximately?
A Approximately a little over two years.
Q And were you working before that?
A Yes, I was. I was selling insurance.
Q Okay. We have submitted your tax returns and wage information to a Doctor Ralston, an economist, to review; is that correct?
A Yes.
Q Including fringe benefits that you received from work?
A Yes.
Q I'd like to summarize and see if these figures are approximately correct from what were submitted. In 1999, from July (sic) 1 until 7-12-99 when you took off for pregnancy, your wages in '99 for a little over a half year were twenty-four thousand nine hundred and thirty-three dollars and sixty-nine cents?
A That sounds right.
Q In 1998 your wages were forty-five thousand three hundred and sixty dollars?
A That sounds right.
Q In 1997 your wages were thirty-four thousand eight hundred and sixty-one dollars?
A Yes.
Q In 1996 your wages - excuse me - in 1996 your wages were fifty-four thousand one ninety-nine fifty-six?
A Yes.
Q And in 1995 your wages were thirty-one thousand two hundred and twenty-eight dollars and sixty-seven cents?
A Yes.
Q Okay. You also had some other fringe benefits which Doctor Ralston will evaluate, to the best of your knowledge?
A Yes.
Q Okay. Are both of your parents still living?
A Yes, they are.
Q And how close do they live to you?
A They live approximately sixteen miles away from me.
Q Is it sixty, or sixteen?
A Sixteen.
Q Kelli, I'd like to ask you some questions about how you're doing and how your family is involved in your life now; okay?
A Okay.
Q Would you generally describe your family and how it's functioning, in broad terms?
A I feel that we're very close. Do you mean my parents and I?
Q No. I mean, -- well, your parents and you are close. Well, what about you, and Shane, and the kids?
A We're a close family.
Q Okay. Could you describe that a little bit?
A I'm not understanding what you're asking.
Q Let me see if I can break it down a little bit. As to Jacob, would you describe Jacob for us?
A He's a wonderful little boy. He's three and a half. He is extremely active. He's just -- I can't say enough about him. I'm a very proud mother.
Q Okay. He was born entirely healthy?
A Oh, yes.
Q Okay. And he has no health problems?
A None.
Q What are some of the things that you like to do with Jacob?
A I like to play Leap Frog with him. If you have children you'll understand. It's a computer game. It has a required chip that is in it and, well, it doesn't matter, but I like to play Leap Frog with him. I like to help him count and teach him his alphabet. I like to play This Little Piggy with him. He climbs up and sits on my lap. I let him brush my hair. That's the kind of stuff that we do.
Q Are there times that you just like to watch him?
A Yes, there are.
Q What are some of the things that Jacob likes to do with you?
A He likes to read to me. He can't read, but he likes to tell me stories that he makes up. He pretends. He likes to help me with anything that I ask him to do. If I ask him to get mommy a drink of water, 'would you, Jacob', he'll run and get it. If I need a Kleenex, he runs and gets it.
Q Does Jacob love you?
A Yes, he does.
Q How do you know that?
A Because he tells me so. He throws his arms around my neck and says, "Mommy, I love you."
Q Do you love him?
A Yes.

Q And how do you show him that?

A I hug him and I give him kisses, like any other parent.

Q Do you think you've been helpful in the raising of Jacob?

A I'd like to believe so. I think I have been.

Q There's no doubt in your mind that he knows his mom loves him?

A Oh, yes, there's none.

Q Tell us a little about your daughter.

A She's eight. She's very jabbery. She likes to talk all the time. In fact, I can't get a word in edgewise. She's a very petite little girl. She's a joy. She's a pure joy.

Q Okay. What are some of the things that you like to do with each other?

A I help her with her homework. She reads to me. Her homework sometimes has to be checked by Shane because I can't see it very well. I'm talking about her math stuff, her math homework. He does do that. But, you asked me what I like to do with her. I like to play games with her. She climbs up on my lap. I sit in the recliner and we play Pretty Princess. We play cards and that kind of stuff.

Q Okay. Do you two talk about things? You're making me cough, too. Excuse me.

A That's all right.

Q Do you talk about things?

A Oh, yes.

Q What are some of the things that you talk about?

A Everything. We talk about everything. We talk about how she's doing in school and what her friends are like. You can't believe -- we just go from one end of the spectrum to the other.

Q Is it fun?

A Yes, it is. She's a joy.

Q How is she doing?

A I think she's doing okay so far.

Q Does she seem happy?

A Yes, she is. She's a happy little girl.

Q Does she seem well-adjusted?

A Yes, she is.

Q Is she doing well in school?

A Yes. She has straight A's and B's.

Q Is there anything that you do to show her that you're proud when she gets good grades, or anything like that?

A I tell her. I hug her and kiss her. For every A that she gets she gets a dollar. I don't want to say that we reward her with money, but she has to know the value of money and I think that I'm helping to teach her.

Q Okay. Do you think you're a help to her then?

A Yes, I do.

Q Okay. And is she a help to you?

A Yes, she is.

Q How is she a help to you?

A I have a thing that my pills are set out in, like for the whole week. She gets me those. I get them out and take them. She helps me when my feet kick out. I have a lot of spasms and they're always kicking out. So, she helps me put them back. She also runs and gets me whatever I need. But, more than just that, her and I talk to one another, just like any other mother and daughter.

Q Does she love you?

A Yes, she does.

Q And you love her?

A Yes, I do.

Q Tell me about your oldest daughter.

A She's fifteen. She's angry at me part of the time. She says that she blames me in one breath because she remembers the way I was before and she doesn't understand. She gets frustrated very easily with me. But, in the next breath, she says, "I'm sorry and I love you, mom." So, I mean, she's fifteen. She's a teenager.

Q What are some of the things that she likes to do?

A She likes to listen to her C.D. player. Music is a real big thing with her. She wants to get her permit to drive.

Q How would you describe your relationship with her?

A I love her dearly and I believe that she loves me. I feel that we're close.

Q When she has these times where she seems to, I guess, talk back as to your situation how do you react to that?

A Well, we fight. I do the best that I can as far as discipline goes but, let's face it, I can't enforce much. However, I do talk to her and I make her talk to me. Even when she's angry with me -- it's all out of love.

Q Why do you make her talk to you?

A Because I think that she is so frustrated that she needs someone to just talk to and to let it out.

Q All right. Tell us some of the good times that you have with her, the happy times when things are going good and it's a nice, smooth time. Does she help around the house?

A Yes, she does.

Q What are some of the things she does?

A Well, she made dinner for all of us the other day. We had spaghetti and garlic sticks, or, breadsticks. It was really very good.

Q Okay. Is there other things she would do that a fifteen year old girl would do?

A Well, I make her clean her room. It's a constant battle.

Q Okay. Do you know she loves you?

A Yes, I know she loves me.

Q And how do you know that?

A Even when we're fighting -- I just know. She tells me that she does. I just know in my heart that my daughter loves me.

Q And you love her?

A Yes.

Q Okay. Apart from you and your relationship with your kids, I'd like to ask you a couple of questions about the kids themselves. Do the kids play with each other?

A Yes.

Q What are some of the things that they play with each other all by themselves?

A Well, they play and then they bicker and fight like normal kids do.

Q Okay. Continue. What about some other things, some outside things?

A Well, they haven't been outside recently. We would go to the pool. Even I would go, even in my wheelchair, and Shane would put me in the pool. We would all be there together.

Q You said the kids fight?

A Yes, just like normal kids.

Q Okay. What are some of the things they fight about?

A Well, Jacob takes something that doesn't belong to him and he's screaming 'mine, mine, mine', and the other kids tell Jake that it's not his. So, the fight's on.

Q Do they also, at times, help each other and share like normal brothers and sisters?

A Oh, yes. They tell each other that they love one another all the time.

Q You've had some devastating injuries occur to you.

A Yes.

Q The pain doctor described your pain as being present twenty-four hours a day, seven days a week. Is that correct?

A Yes.

Q But, you have a family and the family is functionally in love with each other, even with a teenage girl, it sounds like.

A Yes.

Q Shane has two children?

A Yes.

Q Okay. Could you explain when they come over and what role they have in the family?

A They come every other weekend.

Q Okay. A . They're my son and daughter, too. I don't think of them any other way. Shane and I decided when we got married that his kids were mine, and my kids were his. That's the way it was going to be. That's the way that we conduct ourselves.

Q Okay. So, they get in and they like each other and fight with each other?

A Oh, yes.

Q All those things?

A Yes.

Q Are there some things that despite what's happened to you you've come to appreciate that people may not realize?

A I appreciate God just letting me be alive. I appreciate my mother and father.

Q What have they done for you?

A Everything. I appreciate Shane because he does absolutely everything for me. I wouldn't be here without him. He never left me the whole time I was in the hospital. He's my best friend. I love him very much.

Q Tell us about your left arm. Are you appreciative of being able to use that?

A Yes.

Q Some people who are quadriplegic can't use their arm. You're aware of that?

A Yes.

Q What advantages do you have of being able to use your arm? Would you tell us some of the things you can do with it?

A I can at least feed myself. I can brush my own teeth. I can brush my hair. I try to brush my daughter, Sarah's, hair. It's easier since she got it cut. It was really long before, until she got it cut, and so it's real easy now to brush. I appreciate everything that people do for me. All the prayers. They don't have to say prayers for me, but they do.

Q Okay. Is there anything about the children that comes to mind?

A Well, I appreciate all three of them for being my kids.

Q You talked a little bit about your mother and father, who have helped you. You're a mom. I guess is

your mom still your mom?

A Yes, she is.

Q Okay. Would you tell us a little bit about what she has done?

A Well, she makes sure that the laundry is done. She comes every Tuesday and stays with me and we visit. She is -- well, Shane's my best friend, but mom's my next second. I mean, you can't separate that. It's very hard to do. She's also my best friend because she's a comfort to me because she understands. I've been through so much and she's been right there with me.

Q I'd like to ask you some questions about Shane and you; okay?

A Okay.

Q You've described him some. Do you think you've described him well enough so people know him?

A No.

Q Okay.

A They can't know how wonderful he really is.

Q Why don't you explain that a little bit further then?

A He is a wonderful father to all of our children. He is a good provider. He works nights and so if he looks tired you'll have to understand. Well, maybe you don't. He's still working currently. I mean, he's sitting over there, but he worked last night. He gives me a bath. He just is my whole world. I don't know what I would do without him.

Q What do you do for Shane?

A Well, I hope that I'm his best friend. I give him love. I support him no matter what. I try to be affectionate with him. I try to -- well, I kiss and hug him. We make decisions together, whether it be about the kids or financial decisions. We share that. We share everything.

Q Okay. You were married to him on October 28th, 1998?

A Yes.

Q Did you extend to each other the traditional vows of having to hold from this day forward, for better or for worse, and in sickness and in health?

A Yes.

Q The traditional one?

A Yes.

Q It's probably the most common. Has he lived up to that?

A He's exceeded it.

Q You mentioned some things he's done for you. Would you just briefly describe, sort of in categories, other things that he's done for you or the children?

A Well, he's driven me to all of my medical doctors' appointments. He makes sure that the kids are extremely active in sports. He is a sports nut. Anyhow, all the kids play softball. He coaches the kids team.

Q Who does the feeding?

A Excuse me?

Q Who feeds the children?

A Shane does. Shane cooks their meals, whether it be breakfast, lunch, or supper. He cooks and fixes all the food in the house. I sit out in the kitchen and talk with him. I try to teach him how to cook new stuff, you know, out of my recipe books. I explain and he does it great.

Q Who does like the feeding, clothing, and bathing of Jacob? Well, he's three and a half now and so I assume he can do some of that. Does he do those kinds of things?

A Yes, Shane does. Shane, in fact, bathes -- well, I'm not talking about the girls

Q Has he helped you with exercises, physical therapy, and occupational type things at home?

A Yes.

Q Does he do the bulk of the housework, except for when your mom is involved?

A Yes. When mom comes on Tuesdays she does as much of it as she can. But, she also has a job. Shane vacuums. He dusts. It's not like I would do, but he does very well.

Q Okay. I'm not going to go into all the things that he did for you, and has done for you.

A Okay.

Q Does he love you?

A Yes, I believe he does.

Q And how has he shown that?

A He hugs and kisses me. He gives me support. He holds me when I need a hug or to be held.

Q Sometimes you need that. Okay. Do you show him -- well, I think we've covered that. You're both husband and wife, but you've remained good friends and companions as well?

A Yes.

Q You two have been attempting to raise a family?

A We've done the best we can.

Q In summary, how would you describe your family just generally through this phase in the last year or so on how they've gotten along?

A Struggling. However, we've done the best we can under the circumstances.

Q Okay. What are some of the things you think about?

A What do you mean?

Q What do you think about? Do you have thoughts about your family, or about your situation, or your

injuries?

A Well, I hope and pray that I'm getting better - that I'm going to get better. You never give up hope.

Q Do you ever have concerns as to whether you're letting your family down, or not?

A Yes, all the time. I feel like I'm failing them.

Q But, they've been there for you. When you feel that way they try to help you get out of that way?

A Yes.

Q What do you look forward to?

A I look forward to watching my family grow and age. I look forward to ten years down the road, like any other person.

Q Okay.

A I look forward to grandchildren. I don't know what else to say.

Q Okay. You've seen a lot of doctors over the last three and a half years or so; is that correct?

A Yes.

Q Has there been a doctor that you have seen that was requested by the defense in this lawsuit for you to be examined?

A Yes. I went to Cleveland at the request of --

Q The defense?

A Yes. It was to see their specialist.

Q And did he have your medical records?

A Yes.

Q And did he do an exam on you?

A Oh, yes, a very thorough exam.

Q How long did the exam take?

A Over two hours.

Q Kelli, I'd like to turn to the time after Jacob was born and you were headed to the ER on August 8th.

A Okay.

Q Do you know which one August 8th is?

A Is it the first one?

Q Yes, it's the first one. It was the first visit there. Would you tell us why you went there?

A I had the worst headache of my life. That was it.

Q What did it feel like?

A It's undescrivable (sic) how it felt. I thought my head was going to come off, or split in two. It just was the worst.

Q Was there anything else in your life to compare to that headache?

A No; nothing.

Q Did you have some earlier headaches in the week after you were discharged from the hospital?

A Yes, but that, by far, was the worst. That's why I went to the emergency room. That's why I asked Shane to take me to the emergency room.

Q Okay. Did you see a doctor there?

A Yes.

Q And did he look at you and have you perform a CAT scan?

A Yes, I believe so.

Q Okay. What did he indicate to you?

A That I had sinusitis.

Q Was that after you came back from the CAT scan?

A Yes. After he got done with his examination, well, that's when he was talking to me and that's what the paper said.

Q Did he then give you some medicine?

A Yes. He gave me a shot. I think it was Demerol and Phenergen.

Q Okay. Did that help?

A Yes, but it didn't take my headache away, but it did help a lot.

Q What did the doctor tell you about what to do? Did he send you home then?

A Yes. He discharged me.

Q With a prescription?

A Yes.

Q What did he indicate, if anything?

A If it wasn't better, to come back. I think he said in like three days if it wasn't better I should return. I'm not sure whether it was two or three days. But, that's what it was.

Q Okay. What happened on the next day, the following day?

A Shane and I did some errands. We had Jacob with us. Then we came back. My headache started to get worse. I fixed dinner. I fixed my family dinner, but I didn't eat anything because I just couldn't. Then I tried to lay down to help my head. Then I said, "Shane, would you please run me a bath?" He did.

Q Then what happened?

A I went into the bedroom, because that's where Jake was, and I couldn't see him. I yelled for Shane and I said, "Shane, I can't see the baby." He came. I said, "For that matter, I can't see you." I rubbed my fingers together clear up by my face and I couldn't see them. So, I sat down on the steps of the bathroom and I just don't

remember anything else. That's as far as I go.

Q Did you ever get into the water, or near the water?

A No. I didn't even undress.

Q When is the next time that you can remember something?

A I have little bits of times. I don't want to say, because I can't be sure, but I think that it was at [the next] Hospital. But, it's too cloudy to say. I mean, it just --

Q Okay. Do you remember seeing your parents there?

A No.

Q Do you remember seeing your kids there?

A No.

Q Do you remember being concerned about driving a car?

A Yes.

Q If he did see you, you just don't recall?

A No. I have no memory of it at all.

PLAINTIFF ATTORNEY: May I have a moment with counsel, your Honor?

THE COURT: Sure.

(WHEREUPON, Court went off the record briefly.)

Q Okay. Kelli, that's all the questions I have. They may be asking you some questions; okay?

A Okay.

THE COURT: Mr. Huffman?

MR. HUFFMAN: Thanks, Judge.

CROSS EXAMINATION

BY MR. HUFFMAN:

Q Just a couple of questions, Mrs. Flood. Any time you feel like you want to take a break, well, if you would say so we can certainly do that. Mrs. Flood, from the time Jacob was born until you went to the emergency room the first time you had had some episodes of some headaches during that time? Is that what I understand from your testimony?

A Yes. But, they weren't as severe.

Q Okay.

A I was at home. My mom was still there. But, they were nothing like what sent me to the E.R.

Q There's been some evidence, and I'm not sure whether you were here, that on one occasion between the time of the birth of Jacob and the time you went to the emergency room the first time that you may have called the OB's office. Do you recall that at all? It was about a prescription for, well, I'm not sure what.

A Yes. I didn't talk to the doctor. I talked to his nurse. She gave me a prescription. I believe it was for Amoxicillin.

Q Okay. Did you take the prescription?

A I don't remember, honestly.

Q Okay. What were the symptoms that you had which caused you to call Doctor OB?

A Just plain old congestion.

Q Sort of like we all get in the wintertime - that kind of thing?

A Just congestion. A cough.

Q Nasal congestion and cough?

A Just a cough.

Q Okay. I assume you remember when your deposition was taken in this case? Do you?

A Yes.

Q You talked at that time about being able to do some work on the computer. Are you still able to do that?

A Yes.

Q I'm not computer literate myself, but are you getting better at it?

A I'd like to think so.

Q Were you computer literate before these events?

A Yes. Yes, I was.

Q Okay. And you have a computer at home; do you?

A Yes. But, it's got a special keyboard. It's one that is adaptable to me. I can't get under the computer desk and so it's very inconvenient. It causes me a lot of discomfort when I use the keyboard.

Q You're able to watch television; are you?

A Yes.

Q In the medical records I believe a nurse's note, which may have been referred to here before, there is an indication that Doctor OB, and this would be right before you were transferred down to Columbus, had a discussion with you and Shane regarding whether or not he anticipated that you would make a full recovery or would have any brain damage. Do you recall that conversation at all?

A No.

Q Okay. You do some therapy at home; do you not?

A Yes.

Q I wonder if you would just describe the therapy that you do at home. What do you do?

A Well, I lift weights with my left arm. With Shane's help I do, or, I stand and do scrunches - when you

bend your knees and squat down and then push myself back up.

Q Okay. I'm not much of a weightlifter myself, but do you do that with a bar across your shoulders?

A No. It's just with hand weights.

Q Okay. So, you're able to do how many reps.?

A Oh, I do fifty a couple of times.
Q Fifty?
A Yes, with my left arm.
Q Okay. I didn't think you were doing fifty reps. on the squats. About how many of those can you do?
A Not as many. I can do five.
Q Okay. I wasn't quite sure whether you remembered a conversation in the hospital with regard to whether or not you would be able to drive again.
A I don't have any memory of that.
Q Okay. As I understood your testimony at your deposition and here again today, after this event at home when you couldn't see the baby, well, the next recollection you have is being in the hospital at St. Rita's here in Lima?
A Yes.
Q Okay. And you have no recollection of Shane's parents, or, your family members coming into the hospital?
A No.
Q Okay. Or the other doctors?
A No.
Q Mr. Flood is working? He's employed now; is he?
A Yes.
Q Do you folks have any other income?
A Yes.
Q What other income do you have?
PLAINTIFF ATTORNEY: Objection.
THE COURT: There's an objection. What's the basis?
PLAINTIFF ATTORNEY: It's collateral source information, your Honor.
THE COURT: Why don't counsel approach because I didn't hear your objection that well.
(WHEREUPON, Court and counsel had a brief discussion at the Bench, on the record, as follows.)
PLAINTIFF ATTORNEY: It's collateral source information. He's trying to get it in through other sources. They're not to consider it.
MR. HUFFMAN: It may be social security income or some other income of that kind.
THE COURT: Okay. I'm going to overrule the objection and allow you to go there. But, don't go into it deeply. If we have to, I can instruct the jury.
PLAINTIFF ATTORNEY: May I have a continuing objection?
THE COURT: Okay.
(WHEREUPON, Court continued on the record, as follows.)
Q What other income do you folks have, Mrs. Flood?
A I get S.S.D.I.
Q How much is that?
A Approximately?
Q The best you can do.
A I think just a hair under two thousand a month.
Q Okay. I think that's all. Thank you very much.
THE COURT: Any redirect?
PLAINTIFF ATTORNEY: Yes, your Honor.
REDIRECT EXAMINATION
BY PLAINTIFF ATTORNEY:
Q Kelli, all through this pregnancy you did not have severe headaches?
A No.
Q Do you recall even having headaches?
A No.
Q Okay. I'd like you to assume that Doctor OB has testified and put in a two page chart as to chest congestion and sore throat types of things. If the record would show that on June 8th of '99, about two months before this, that you felt miserable and were coughing, would that be consistent with your memory?
A Yes, it would.
Q In April of '99 you were given Amoxicillin for a sore throat and a possible sinus infection?
A I remember having a sore throat.
Q Okay. In February of '99, severe sore throat - Amoxicillin.
A Sounds right.
Q If the doctor's records on 8-5-99 indicate, and it doesn't say who the doctor is, 'that the patient called complaining of cough and chest congestion and was given Amoxicillin, five hundred milligrams, - well, is that consistent with your memory?
A Yes, it is.
Q You have had off and on congestion, sort of like you do today?
A Yes.
Q Okay. You do not have a headache today?
A No.

Q Your head does not feel like it's going to explode?
A It doesn't hurt at all.
Q That's something that only happened in early August of '99 for the first time when you had a headache of that type and to that degree?
A When I went to the E.R.
Q I don't believe I have anything further.
THE COURT: Any recross?
MR. HUFFMAN: No, sir. Thank you.
THE COURT: Okay. Thank you, Mrs. Flood. Your next witness will be?
MR. MERTZ: Doctor Ralston, your Honor.
THE COURT: He'll probably be a little longer; you think? Let's take a short break. It's an early break, but it's in anticipation that his testimony might take us to lunch. Who knows? We'll take a break, ladies and gentlemen of the jury. Remember the admonitions that I repeated several times last week. Don't discuss the case among yourselves or with anyone else. Don't reach any conclusions or do any deliberating until you've heard all of the evidence and gotten the instructions of law. So, we'll stand in recess for about ten minutes and then we'll resume. (WHEREUPON, Court was in recess.)

Following is the transcript of the discussion in chambers about how to tell the jury that the neurologist has settled. This happened *during* the trial, enabling the 'empty chair' defense. (see chapter)

TUESDAY, JANUARY 21, 2003 - 8:53 A.M.

THE COURT: Today is the 21st of January, 2003. We're on the record here. The parties are all present. The jury has not been brought back into the Courtroom since the weekend recess. The Court wanted to take up the issue that we left on Friday that Doctor Neurology had settled out of the case. The Court gave the parties over the weekend to formulate a request as to how the jury is informed of Doctor Neurology's absence.

Do the plaintiffs -- what's the suggestion from the plaintiffs?

MR. O'NEIL: Your Honor, our suggestion is that they just be advised that he has settled out of the case and just basically leave it at that. The reasons, among others, is that, one, he's obviously not here; secondly, what the jury would have expected as to advocacy with Neurology, Doctor Neurology, will not be taking place. The attorney for Doctor Neurology is now the attorney for the E.R. and they should know that he has changed hats along the way here. There is some case law that says settlement can be put in if it's not for the sake of establishing liability. Among other things, it's to explain why a party is not there; to explain why some evidence may be produced, or, not produced. Now, here we've produced evidence against Doctor Neurology, that evidence that would come up against him, and the jury was here. By way of defending him is not going to be present. The jury may have a concern that when looking at the preponderance for the E.R. that they're here and they fought it out with Doctor Neurology. Nobody fought anything out. So, gee, compared to Doctor Neurology, the hospital has got conflicts of evidence and things like that. I think that on the whole it just would be fairer and it would decrease confusion to the jury and the jury would still have to follow the Judge's instructions as to the negligence of these defendants that were a proximate cause of the damages.

THE COURT: Okay. Mr. Huffman, on behalf of your clients?

MR. HUFFMAN: Well, your Honor, all of the things that the plaintiff is talking about are the very reasons why the Court should not do that, should not embark upon talks about settling Dr. Neurology out, and evidence against this person is not evidence against others. All that does is just simply terribly complicate the whole matter. The jury needs simply to be told, "Ladies and gentlemen of the jury, this litigation," or, "Doctor Neurology is no longer involved in this litigation. You should not come to any," -- however you want to say that. "You should not come to any conclusions, or, you should not draw any conclusions from that fact. We're ready to continue the trial." That's all they need to know. There's no need to get this thing all complicated. Obviously Mr. O'Neil would like to have them say 'settled the case' because then that is an implication, the very implication that the civil rules -- the very implication for the reason for the civil rule. There shouldn't be any mention of settlement, Judge, any more than to say, for instance, if I got up and said, "Judge, I think what you ought to tell them is that the defendant (sic) has dismissed the case as to Doctor Neurology." That wouldn't be fair. It isn't fair to create this innuendo, this wonderment in the minds of the jury. It's the simpler the better. "Ladies and gentlemen, Doctor Neurology is no longer involved in this litigation. We're prepared to go to trial." I mean, simple is best, Judge. Let's don't get complicated.

THE COURT: Okay. Mr. Morgan, you're still here. You're now officially assisting --

MR. MORGAN: Assisting Mr. Huffman.

THE COURT: Okay.

MR. HUFFMAN: He's not assisting me, Judge. He's co-counsel.

THE COURT: Co-counsel? Okay.

MR. MORGAN: Which, I guess, means I'm assisting.

THE COURT: Well, as co-counsel, I guess, or as former counsel of Doctor Neurology, do you want to have any input in this issue about how Doctor Neurology's absence is handled?

MR. MORGAN: In thinking of what the jury should be told, your Honor, I thought maybe just to indicate to the jury something along the lines of what you were saying - "Ladies and gentlemen, you know, Doctor Neurology is no longer a party to this case." I think you had indicated that you were going to list reasons. But, I would not. I would just say, "He's no longer a party to this case. That could be for a variety of reasons. You're not to speculate as to why he's no longer a party. The case is now going forward against the remaining defendants."

THE COURT: Do you want, Mr. Huffman, Mr. Morgan, and Mr. O'Neil, do you want me to introduce you now as co-counsel for Doctor Madison and --

MR. HUFFMAN: I don't think that's necessary, Judge.

MR. O'NEIL: Your Honor, that has to be necessary.

THE COURT: I mean, you're still here. I could just indicate that Mr. Morgan is still going to be here as co-counsel for the remaining doctors. Is that fair enough?

MR. O'NEIL: For Doctor Madison and the other doctor.

THE COURT: I mean, the concern I would have is that if I tell them that Doctor Neurology is no longer in the case they're going to wonder why his lawyer is still here. So, if I just say that you're here as co-counsel for Doctor Madison.

MR. HUFFMAN: Fine.

THE COURT: Okay. The Court -- I've studied on this a little bit. In looking over Evidence Rule 408, and I tried to find cases where this specifically came up and I couldn't find anything specifically on point. But, I thought the best way to handle it would be just to indicate, and this is what I'm going to read - "Doctor Neurology is no longer in this case. You are not to speculate as to his absence or infer anything from the fact that he is no longer in this case. The defendants remain. You are to continue to consider the case as it relates to them."

MR. HUFFMAN: How about making it 'as to them only'?

THE COURT: And then I'll put in there that Mr. Morgan is remaining as co-counsel for the remaining defendants.

MR. HUFFMAN: Fine.

THE COURT: Anything else we need to talk about before we bring the jury in for the day?

MR. MORGAN: Your Honor, -- oh, did you have something, Joe?

MR. O'NEIL: Your Honor, just to make sure we have an objection for the record.

THE COURT: Yea, okay. Your objection is noted.

MR. MORGAN: I'm not sure if they're calling their economist first this morning. Are you guys?

MR. O'NEIL: If he's here, we would.

But, we're not sure he's quite ready.

MR. MORGAN: Okay. If he is, I would just put an objection on the record relative to his testimony to anything that has to relate to life expectancy in terms of, well, life expectancy as it relates to the loss of income and any life expectancy testimony as it relates to, or, associated with the Life Care Plan and the costs associated with the Life Care Plan just based on the testimony of the physical medicine doctor that there hasn't been any life expectancy testimony. He indicated he was not a life expectancy expert and did not consider the fact that Mrs. Flood had been a smoker. He was simply testifying that her ailments as a result of her illness did not reduce her life expectancy. So, I would just put an objection in to any testimony, therefore, as it relates to any life expectancy testimony and then the costs and conclusions he draws as a result of that.

THE COURT: Do the plaintiffs care to respond to that?

MR. O'NEIL: I think we're really splitting hairs. The doctor indicates that he knows of all of her medical issues involved in this case and these issues do not reduce her life expectancy and he would expect her life expectancy to be normal. Now, if there's some weird other disease that she's got that somebody doesn't know about, well, that's a different issue. She, certainly from this process, has a normal life expectancy from what's been testified to and there is absolutely nothing contrary to that.

THE COURT: Okay. Since I don't exactly know what the economist is going to testify to, I'll take that under advisement and see what the testimony is. If you want to raise that at the time of his testimony, just do a quick Bench conference on that and then I'll rule on it at that point. Anything else?

MR. O'NEIL: No.

THE COURT: Ready to go? All right. Is everybody here?

BAILIFF: Yes, sir.

THE COURT: Why don't we all just step out and take about five minutes to gather our thoughts and then we'll get going.

(WHEREUPON, Court was in recess.)