STATE OF CONNECTICUT

SUPERIOR COURT

JOHN K. PARSONS and ALANA B. PARSONS, Plaintiffs,	Judicial District of Waterbury at Waterbury	
vs.		
RONALD J. SAXON, M.D. and SAXON & NOVA, P.C., Defendants.	X 01 CV 0169956 (HEN)	January 10, 2003

DEPOSITION of ROBERT CARPENTER, M.D., M.S., F.A.C.S.

Taken at the request of the Plaintiffs before Tiffany V. Pratt, a Licensed Court Reporter and Notary Public within and for the State of Connecticut, pursuant to Re-Notice and the Connecticut Practice Book, at the offices of Stanger & Arnold, 29 South Main Street, West Hartford, Connecticut, on January 10, 2003 commencing at 1:07 p.m.

Tiffany V. Pratt, LSR #00128
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APPEARANCES:

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By: HERBERT J. SHEPARDSON, ESQUIRE

S T I P U L A T I O N S

IT IS STIPULATED by the attorneys for the parties that each party reserves the right to make specific objections in open court to each and every question asked and the answers given thereto by the witness, reserving the right to move to strike out where applicable, except as to such objections as are directed to the form of the question.

IT IS STIPULATED and agreed between counsel for the parties that the proof of the authority of the Notary Public before whom this deposition is taken is waived.

IT IS FURTHER STIPULATED and agreed that the reading and signing of this deposition is not waived and any defects in the Notice are waived.

INDEX

(Deposition commenced: 1:07 p.m.)

(Plaintiffs' Exhibit 1 marked for identification; Re-Notice of Deposition.)

ROBERT CARPENTER, M.D., M.S., F.A.C.S., Deponent, of 225 Hopmeadow Street, Simsbury, Connecticut 06070, being first duly sworn by the Notary Public, was examined and testified on his oath as follows:

D I R E C T E X A M I N A T I O N

BY MR. KOCIENDA:

Q Good afternoon, Doctor. My name is Jake Kocienda. I represent the plaintiffs in the matter captioned John and Alana Parsons versus Saxon, M.D. We're here for your deposition today. It's my understanding that you have been disclosed as an expert witness in the case. Is that your understanding as well?

A That's correct.

Q Did you receive before coming today any copies of your Notice of Deposition for today?

A I have copies of what I have received.

Q We'll get into that in a little bit.

MR. SHEPARDSON: I don't think he did.

A I didn't actually receive a deposition notice.

BY MR. KOCIENDA:

Q I'll show you what's been previously marked as Exhibit 1 for this. If you can take a look at that. Does that look like a copy of something that you've seen?

A Yes, I believe I have that in my records there. No, actually, I do not have this.

MR. SHEPARDSON: He wouldn't have had that. I didn't send it to him. For the record, he brought his entire file here. Nothing has been removed. I don't know if I saw anything on billing. If it's not there, I'll give it to you. I filed an objection to the request to produce on all these, but I -- there's nothing else there, so...

MR. KOCIENDA: Okay.

BY MR. KOCIENDA:

Q All right. Doctor, in front of you you have a file of materials?

A Yes.

Q That was brought for this deposition as far as what Attorney Shepardson has indicated per our request?

A This is pretty much all I received in terms of what to review for the case, yes.

Q We'll go through that in a little bit. Just preliminarily, have you ever been deposed before?

A Yes, I have.

Q So this might be a little familiar to you. To make a clear record, if you can audibly answer all my questions rather than nodding your head or shrug your shoulders. That would make a much better record. Also, if you have any questions regarding the meaning or clarity of my questions or what I'm saying to you, please let me know, and I'll be happy to clarify or rephrase if I have to to make sure you understand what I'm asking, and I'll do the same with you, if that's okay.

A Okay.

Q If you'd like me to repeat anything, let me know. I'll be happy to do that. In normal conversation it's typical that we interrupt each other when we realize where the question is going, and we preempt the end of the question or the sentence. In this context, if you would, and I'll have the same courtesy, could you let me finish my questions before you answer so that we have a clear record of what the question is?

A Okay.

Q If you need a break at any time, let me know. I'll be happy to do that.

The pile of materials you have in front of you, if you would, can you explain to me what you have?

MR. SHEPARDSON: Go through and I.D. each.

A Curriculum vitae, letters from --

BY MR. KOCIENDA:

Q Could you pull that out? We'll have that marked as Exhibit 2.

(Plaintiffs' Exhibit 2 marked for identification; CV of Dr. Carpenter.)

A Letters I received from the attorney and records and depositions concerning the case are pretty much listed there.

BY MR. KOCIENDA:

Q So what you're referring to as records from the case and depositions seems to be a big pile of materials that are separated by green pieces of paper --

A Correct.

Q -- and blue. They're not held in any binder or anything. The depositions are on the bottom. Are these all the depositions, Doctor?

A Those are all the depositions.

Q Without going through this big stack, are there any depositions within this --

A There's another deposition here.

Q Without going through the stack of medical records, are there any deposition transcripts folded within here?

A I don't believe so. I think these are all the

medical records.

MR. SHEPARDSON: Take a look, Doctor. I don't know, in case he wants you to look through. I think they're all medical records, too.

A They appear to be all medical records, and that's medical records. As far as I can tell they're all medical records.

BY MR. KOCIENDA:

Q Prior to coming here today, Doctor, did you review these medical records and the deposition transcripts?

A I did.

Q What you've brought today, the medical records, the transcripts and what has been marked as Exhibit 2, your CV, other than those things, is there anything else you've reviewed in preparation for today's deposition?

A No.

Q Is there anything else you've reviewed or looked at in order to formulate any opinions in which you'll be giving today?

A No.

MR. KOCIENDA: Let's have the records marked as Exhibit 3.

MR. SHEPARDSON: Do you want to mark the index?

MR. KOCIENDA: Yes, why don't we do that.

(Plaintiffs' Exhibit 3 marked for identification; Medical Records.)

BY MR. KOCIENDA:

Q The records which have been marked, on the top page which is the index, it states "Medical Records, John Parsons, dob 4/22/40," and it's titled "Table of Contents," starts off with number 51 and goes down, but they don't appear to be numbered in any particular order. Also, there are some letters written to Dr. Carpenter from the law firm of Cooney, Scully and Dowling dated September 10, September 19, September 24, October 31, 2002 -- all those were 2002 -- November 11, 2002, and also a memorandum written to Herbert Shepardson, Esquire, from Erda Koehn, R.N., M.S., Koehn is spelled K-o-e-h-n, dated Wednesday, June 19, 2002. And after that, it appears that the medical records begin.

As Exhibit 4 I'll have the deposition transcripts marked as a group.

(Plaintiffs' Exhibit 4 marked for identification; Deposition transcripts.)

BY MR. KOCIENDA:

Q These transcripts are for the deposition of John Parsons of November 14, 2002; Ronald J. Saxon, M.D., dated February 1, 2002; looks to be a second copy of the deposition of Ronald J. Saxon, M.D., dated February 1,

2002. Doctor, is there any difference between these two as far as you know?

A Not as far as I know.

Q Also, there is a deposition transcript of Howard Lantner, M.D., dated January 29, 2002; deposition of Ewtan Rubenstein, M.D., dated January 28, 2002; deposition of Nader Bahadory dated February 14, 2002; a deposition of Michael Twohig, M.D., dated April 15, 2002; and transcript of Steven C. Lange dated January 29, 2002.

Other than these transcript depositions which I just reviewed and you have brought with you, were there any other depositions you have reviewed in preparation for today or at any point?

A No.

Q Other than what you've reviewed and you brought with you today, did you do anything else to prepare for today's deposition?

A No.

Q Did you speak with anyone from the law offices of Cooney, Scully and Dowling?

A I spoke with Mr. Shepardson and maybe his secretary once.

Q As you sit here today, are you aware of any information regarding the deposition of William Lavelle, M.D., pertaining to this case?

A I don't think I received that deposition.

Q Do you know anything about that deposition that went forward?

A I reviewed just a synopsis of that.

Q Was it a written synopsis?

A A written synopsis, yes.

Q Where is that written synopsis now?

A I'm not sure where that is.

Q Did you bring that with you?

A No.

Q Are you sure? You can look through the records or items you brought with you if you need to.

A I don't know where that would be. That was Lavelle?

Q Yes, Doctor, Lavelle, L-a-v-e-l-l-e.

A Is that one from back in January or --

Q No. That was taken --

MR. SHEPARDSON: It was taken fairly recently. I don't know if you reviewed that or not, to be honest with you. I don't know. If you reviewed it, you have a right to claim it, and then we'll argue about it, relating to anything in there, because I don't have the whole file in here.

A You mentioned one, Lange. I only reviewed the ones that were here.

BY MR. KOCIENDA:

Q You said you reviewed a synopsis of what you thought was Dr. Lavelle's deposition, and you didn't bring it with you?

A I don't know who Dr. Lavelle is, actually.

Q Did you review any other synopses of depositions?

A No.

Q So you believe you at least reviewed one synopsis of a deposition?

A I'm not sure now, because I don't have anything.

MR. SHEPARDSON: I don't believe we had it long enough. Is it in there? I mean, nothing's been taken out of it.

BY MR. KOCIENDA:

Q Right. What I'm getting at, Doctor --

A Like I said, I thought I was thinking of Lange, I guess. I don't know who Lavelle is.

Q Even regardless of who may be the subject of the synopsis, did you review a written synopsis of a deposition at some point?

A No.

Q So what was the synopsis you were referring to earlier in your testimony?

A I'm not sure. I thought it was something I had in here.

MR. SHEPARDSON: Can I see the file for a second? I'm not going to take it. I'm just going to look at it. Let me take this over here.

MR. KOCIENDA: Actually, can we take a break?

(Off the record: 1:18 p.m. to 1:20 p.m.)

(Plaintiffs' Exhibit 3-A marked for identification; Memorandum from Erda Koehn R.N., M.S.)

BY MR. KOCIENDA:

Q Okay. Doctor, in reviewing what's been marked as Exhibit 3-A, which is a memorandum from Erda Koehn R.N., M.S. which was part of Exhibit 3, I notice that it says, "I received a telephone call from Robert Carpenter, M.D., and his opinion is as follows." Did you speak with Erda Koehn regarding this case at some point?

A Evidently I spoke to her on the phone. I don't remember specifically.

Q The date of this memorandum is June 19, 2002. Do you remember when you spoke with Miss Koehn?

A No, I don't.

Q Do you remember the substance of that conversation at all?

A Not specifically, no.

Q Generally, do you remember what the conversation was about?

MR. SHEPARDSON: Can he look at the memo?

MR. KOCIENDA: I want to know before he looks at the memo if he has any recollection.

A I think they're asking me what my opinion -- basic opinion was after looking at the records.

BY MR. KOCIENDA:

Q Opinion regarding any particular aspect of, I assume, the Parsons matter?

A I can't remember specifically.

Q How about generally, do you --

A It was a long time ago.

Q Do you remember the general opinions they were talking to you about?

A I don't remember specifically what I said to her, no.

Q Generally, though, you said that they were asking you for your opinions regarding this case. Do you remember generally --

A I would assume, but I don't --

MR. SHEPARDSON: I'm not going to let you question him about a document without him reviewing it.

MR. KOCIENDA: I'm not --

MR. SHEPARDSON: You can ask him -- just hear me out. You can ask him if he remembers the substance of a conversation that took place, which I think is what you're asking, and there's a memo from my office on it, but if he

remembers, he remembers.

BY MR. KOCIENDA:

Q Right. That's exactly what I'm asking is regarding your conversation, your memory.

A No, I don't.

Q And you said specifically you don't remember. Do you have a general recollection of the topics you spoke with Miss Koehn about?

A I don't, no.

Q Do you have any idea of who Erda Koehn was or is?

A No, I don't.

Q According to this memo, it appears that you called Miss Koehn. It says, "I received a telephone call from Robert Carpenter," written by Erda Koehn.

A If I did, I must have received a message to call her that my secretary gave me, I would assume.

MR. SHEPARDSON: She's my paralegal, just for the record.

MR. KOCIENDA: Erda Koehn is?

MR. SHEPARDSON: Erda Koehn is, yes. That's my office.

BY MR. KOCIENDA:

Q You don't have a specific recollection as to why you felt compelled to call her?

A I assume she called me and asked me to call her,

otherwise I wouldn't have called her.

Q If you can take a look at what's been marked as Exhibit 3-A, and feel free to read it through.

MR. SHEPARDSON: Can I take a look at it?

(Pause.)

A Okay.

BY MR. KOCIENDA:

Q After reviewing the record, does that refresh your memory as to any specifics that you spoke to Miss Koehn about?

A It doesn't refresh my memory specific about speaking to her, but this is basically my feelings after reviewing the records concerning this case.

Q Thank you, Doctor. Other than Miss Koehn and Herb Shepardson, have you spoken to anyone else regarding any information, facts or opinions concerning the Parsons case?

A No.

Q Do you know who Dr. Ronald Saxon is personally?

A Yes.

Q Do you have any personal relationship or connection with Dr. Saxon?

A No.

Q Can you tell me what your relationship with him is?

A Well, he's a practicing otolaryngologist in the Hartford area, so I see him at meetings occasionally.

Q What meetings do you see him at?

A I see him every few months at, it's called Mortality and Morbidity Conference, when he comes up to the University.

Q What are those conferences for?

A Excuse me?

Q Those conferences, Mortality and Morbidity Conferences, what's the purpose of those?

A The purpose of those is to review any complications that occurred in the area over the last month in the hospitals that are attended by our residency program.

Q When you say area, do you mean geographical area?

A Geographical area, Hartford Hospital, St. Francis, New Britain and the University.

Q Of Connecticut?

A Of Connecticut.

Q Are the topics discussed related solely to otolaryngology?

A Yes.

Q Is that a state mandated or state associated meeting in any way?

A I believe it's mandated by the residency program in order for accreditation, the University of Connecticut.

Q Do you recall ever having participated in a conference where the medical case of John Parsons was discussed or was the subject of the conference?

A No.

Q Could it have been a subject of the conference at some point and you don't recall?

A That's possible.

Q Are there any meeting records, minutes, anything like that kept regarding these conference meetings?

A No.

Q Other than yourself and Dr. Saxon, who else attends these conferences?

A It would be pretty much every practicing otolaryngologist in this area. They're required to go to 50 percent of them, so some people are there and some people are not there depending on the month.

Q Is there someone who's in charge or heads up the conferences, a lead person, so to speak?

A There's a chairman of the department.

Q What department is that?

A Otolaryngology.

Q And that's the department at UConn?

A Correct.

Q Who is that?

A Gerald Leonard.

Q Doctor?

A Doctor.

Q And he's affiliated with UConn?

A Correct.

Q Does he practice out of any other hospital?

A No.

Q Doctor, looking at Exhibit 2, your curriculum vitae, I notice at the end of your name you have "M.S. (OTO.)" What is M.S.?

A Master of Science in Surgery.

Q Subject being otolaryngology?

A Correct.

Q And then F.A.C.S.?

A Fellow of the American College of Surgeons.

Q Do you work solo or do you work in a practice?

A I'm full time at the University of Connecticut at the present time.

Q And what is your --

A Associate Professor in Otolaryngology.

Q Do you practice otolaryngology or are you merely academic at this point?

A I practice. I practiced at Hartford Hospital for 23 years in private practice, and I just joined the University two months ago.

Q November of 2000?

A Correct.

Q Two, rather.

I notice you're the president of the Connecticut Ear, Nose and Throat Associates? That's a clinical appointment?

A Not at the moment. I was president --

Q Has that resigned when you became --

A -- for a period of time of the group at Hartford Hospital.

Q How long were you affiliated or associated at all with the Connecticut Ear, Nose and Throat Associates?

A That was a group that I formed, actually, of all the individuals in private practice at Hartford Hospital, and I think that's been formed about seven years now.

Q Prior to that, where did you work?

A I was in private practice at Hartford Hospital.

Q Did you have an association you worked for or group?

A It was by myself.

Q Solo?

A Yes.

Q How long were you solo?

A Probably 15 years.

Q Prior to that, where did you work?

A Prior to that I was at the University of

Connecticut Health Center from 1978 to maybe '81.

Q What was your position or association there?

A Assistant professor.

Q You have no -- you don't practice as an ENT now?

A No, I do, I practice full time.

Q Can you describe for me since your newest position at UConn what your practice entails?

A Just clinically seeing patients with ear, nose and throat problems, diagnosing their problems, and surgery.

Q Do you have any academic duties?

A I work with the residents and medical students, and they accompany me when I see patients.

Q Any classroom-type experience or duties?

A No.

Q You received the honor award in the American Academy of Otolaryngology in 1984. What was that for?

A That was for accumulating enough credits for writing papers and giving instruction courses to qualify for it.

Q Doctor, giving you back Exhibit 2, which is your CV, there's a very extensive list of publications which it appears you've authored or at least participated in their authorship; am I correct in that?

A Correct.

Q Could you go through that and point out to me any authored papers, articles or literature that you participated in relating to any issues in Parsons in which you intend to render an opinion on?

A I don't believe there are any.

Q You said that part of your duties in your present position is surgery?

A Correct.

Q What type of surgery do you perform?

A All types of ear, nose and throat surgery, sinus surgery. I work with the neurosurgeons in some neurosurgical areas that encompass sinuses.

Q Functional endoscopic sinus surgery, is that one of the surgeries you practice now?

A Yes.

Q How long have you practiced functional endoscopic sinus surgery?

A I believe it came into vogue, oh, probably 10, 12 years ago, somewhere back in there, and I've been doing it probably that long.

Q Is that also known as FESS?

A Correct.

Q I'll refer to it as FESS in the future just so we understand each other.

On average, including your present position and

the positions you've had in the past, how often do you perform FESS?

A Probably once a week.

Q So it would be fair to say that you perform approximately 52 surgeries a year, FESS surgeries?

A I'd say maybe 30 or 40, taking weeks where I'm not operating.

Q Have there been any years where you've performed a substantial amount more than the average for one reason or another?

A I would say there are years where I've probably done 100 in a year.

Q Off the top of your head, can you tell me what years those might have been?

A Probably in the mid '90s. Back when that type of surgery first came into vogue, there seemed to be a higher incidence of patients using the surgery at that time, less people performing the surgery.

Q What sort of training or experience do you have regarding FESS surgery?

A I've been doing instruction courses many years ago when that type of surgery first was being used, and we also give instruction courses to our residents here and there in terms of using the surgery. Most of the experience is just generally in terms of practically doing it.

Q Hands-on, so to speak?

A Hands-on.

Q You said you attended some instructional courses years ago. Where were those courses?

A There's one I attended in Boston, one in New York, Chicago, Philadelphia. I think there was one here in Hartford.

Q Did you receive any certificates or graduation kind of diplomas from any of these?

A Nothing I would have retained.

MR. SHEPARDSON: Or if you did, you knew where it was, right?

THE WITNESS: I gave up saving all that stuff.

BY MR. KOCIENDA:

Q Doctor, what areas do you feel qualified in to testify in the Parsons matter as an expert?

A In the area of functional endoscopic sinus surgery, possible complications, postoperative course.

Q Are you aware of any of the other experts disclosed in this matter who are expected to testify?

A From reviewing the depositions, yes.

Q Fair enough. Does the name Dr. -- I've already mentioned the name Dr. William Lavelle. Does that name ring a bell?

A It doesn't really ring a bell, no.

Q How about Dr. Robert Levitz?

A Levitz, I'm not sure I had his deposition, either. I'm not sure.

MR. SHEPARDSON: It hasn't been taken yet.

MR. KOCIENDA: It hasn't been taken yet.

MR. SHEPARDSON: So you don't. We showed you all the others, but I'm not sure -- you've identified them.

BY MR. KOCIENDA:

Q Prior to today, have you spoken with any of the doctors that you have the deposition transcripts for --

A No.

Q -- regarding Parsons.

Do any of the doctors you have transcripts for, do you work with them, do you know of any of them personally?

A No, I don't.

Q How about on a professional level?

A Nobody I've worked with or I know really, no.

Q Is there anything you'd like to have read or reviewed prior to today's deposition that you didn't have a chance to?

A No.

Q Did you take any notes regarding your review of any of the medical records?

A No.

Q Are you being paid for your testimony today?

MR. SHEPARDSON: Objection to the form of the question. Paid for his time you mean?

MR. KOCIENDA: I'll rephrase.

MR. SHEPARDSON: Fair objection.

MR. KOCIENDA: Fair objection.

BY MR. KOCIENDA:

Q Doctor, are you being paid for your time regarding your involvement in this case?

A Yes, I am.

Q Can you explain to me your, what we usually refer to as your fee schedule that you're charging for this matter?

A I believe the charge at this point, because that depends on what the University of Connecticut charges, because I work for them, is a flat fee of $1,500 or $400 an hour if it goes over four hours.

Q And that's for the deposition today you're referring to?

A Correct.

Q How about for reviewing the medical records? Did you charge anyone for your time in doing that?

A I believe that charge was either $200 or $250 an hour.

Q Do you remember how you first became involved in this case?

A I received a call from the law offices asking me if I'd review a case.

Q Law offices of -- what law offices are you referring to?

A Mr. Shepardson.

Q What was the process of your determining whether to review this matter or not?

A I said I'd be happy to look at it, and they sent me the records to review.

Q Have you been asked to review records as an expert before this matter?

A Yes.

Q How about since your initial contact from the law offices of Cooney, Scully and Dowling?

A Yes.

Q How many times have you reviewed records in your career as an expert?

A In my career, I probably review records three or four times a year. I can't really give you a career number, but probably more in the last five or eight years than when I first started in this area.

Q Can you give me an estimate how often the defense side requests your review of records as opposed to the plaintiffs?

A Maybe 60 percent.

Q Sixty percent is defense?

A Sixty, 70 percent seem to be defense.

Q Have you ever testified in trial as an expert?

A Yes.

Q How many times?

A I believe three times.

Q And how many of those times were for the defense side as opposed to the Plaintiffs' side?

A I believe those were all for the defense.

Q Other than the deposition we're here for today, how often have you been deposed as an expert regarding your opinions in any particular case you've reviewed?

A I would say perhaps five or six times.

Q And of those depositions, how many were for the defense as opposed to the plaintiff?

A Maybe four or five for the defense and one or two for the plaintiff.

Q Doctor, for the three trials that you testified for during trial as an expert, what were the issues that you were asked to testify on? What were those cases about?

A One was a complication during endoscopic sinus surgery. One was a complication after a cosmetic procedure.

Q A what type of procedure?

A Cosmetic procedure on the nose. And I believe the other one was also endoscopic sinus surgery.

Q The second one regarding the endoscopic sinus surgery, was that having to do with a complication as well?

A Complications, correct.

Q Doctor, the first complication regarding FESS surgery, that issue that you mentioned in the trial, what was the complication that you testified regarding?

A That was an orbital complication, as I remember.

Q Who was the doctor that was involved?

A I really can't remember.

Q Do you remember what your opinion was in that matter?

A It was a question of whether the standards of care were met in the case, and my opinion was that they were.

Q What happened to the patient in that case? What was the reason why the lawsuit was brought, damages that were being alleged?

A The patient had an orbital complication where they -- one of the eye muscles was injured.

Q Have you ever acted as an expert or consultant for Dr. Saxon prior to the case regarding John Parsons?

A I don't believe so, no.

Q In the second case that you were involved in as an expert concerning complications of FESS, what was the complication at issue in that case?

A That was a spinal fluid leak.

Q Is that usually known as a CSF leak?

A Correct.

Q What was your opinion in that matter?

A My opinion in that matter was the leak was taken care of in the manner it should have been at the time it occurred.

Q Do you remember the disposition of the first trial?

A I'm not good at remembering. I never heard, actually, the disposition of any of those.

Q Any three, either of the three trials?

A The cosmetic one I heard, and that was found in favor of the defendant.

Q But the other two complications --

A I never heard any results.

MR. SHEPARDSON: For the record, let him ask the full question. I know it's easy to --

THE WITNESS: Okay. I'm sorry.

MR. SHEPARDSON: In case I object, too, we need the full question. I didn't mean to interrupt your questioning. It was going...

BY MR. KOCIENDA:

Q Doctor, do you have any transcripts of any of the testimony you provided deposition-wise in the past?

A No.

Q Have you ever acted as an expert or reviewed medical records concerning a complication of FESS surgery where there was a breach between the sinus and the brain cavity?

A Yes.

Q Any of the two trials that you've mentioned?

A One we talked about, the CSF leak there.

Q Any others besides that particular one?

A There has probably been at least two or three other cases I've reviewed concerning that, because those are probably the most common complications for that type of surgery, the orbital or cranial.

Q Doctor, have you ever been the subject of a medical malpractice suit?

A Yes.

Q When was that?

A I believe in 1988, 1989.

Q Was that the only one?

A Yes.

Q Have you ever been sued before in any capacity?

A No.

Q What was the disposition of that lawsuit?

A It was found in favor of the defendant.

Q Did it go to trial?

A Well, it didn't go to trial. I guess I would say

it was settled.

Q You don't recall testifying at trial on the matter?

A No.

Q Do you know the expert that was involved in your defense in that case?

A No.

Q Do you remember being deposed in that case?

A I do, yes.

Q What was that matter about? What was the lawsuit against you concerning?

A Someone had ringing in their ear after ear surgery.

Q What did they allege you did wrong?

A Caused the ringing.

Q What was the breach of the standard of care they allege that you committed?

A I didn't tell them they could have had ringing in their ear prior to the surgery.

Q Strictly a lack of informed consent?

A It was lack of informed consent.

Q They didn't say you did anything wrong within the surgery itself?

A No.

Q Were you disclosed or were you an expert on your

own behalf in that matter?

MR. SHEPARDSON: I don't know if he testified. I don't think he testified.

A I can't answer that.

BY MR. KOCIENDA:

Q Do you not know?

A I don't know.

MR. SHEPARDSON: He doesn't know if he was disclosed as an expert.

MR. KOCIENDA: I just wanted to know.

BY MR. KOCIENDA:

Q Do you remember what court or jurisdiction that suit was pending in?

A No.

Q Do you remember who the attorney was representing you at the time?

A No.

Q Do you remember who the attorney was representing the plaintiff?

A No.

Q Do you remember the name of the plaintiff?

A No, I don't remember that, either.

Q Do you feel that the outcome of that lawsuit against you was fair?

MR. SHEPARDSON: Objection to the form of the

question.

BY MR. KOCIENDA:

Q You can answer if you understood the question.

MR. SHEPARDSON: You can answer. It's a discovery deposition. I don't think it's relevant ultimately.

A No.

BY MR. KOCIENDA:

Q I'm sorry. You said no?

A No.

Q What do you feel was unfair about the outcome of that matter?

MR. SHEPARDSON: Objection to the form of the question.

A It was a question of informed consent, and it was sort of my word against his, and I didn't write down that as a complication on the paper. I was concentrating more on you could lose your hearing, you could have facial paralysis, all the serious things, and I didn't write down tinnitus, so it was my word against his whether I told him about it or not.

BY MR. KOCIENDA:

Q The documents that have been marked as Exhibit 3 and 3-A, how did you receive those documents or come into possession of them?

A I believe they arrived in the mail.

Q Do you know who sent them to you?
A Excuse me?
Q Do you know who sent them to you?
A I assume Mr. Shepardson's office.
Q Did you receive any of the medical records that have been marked as Exhibit 3 from any other source besides Herb Shepardson's office?
A Not that I'm aware of.
Q The CV that's been marked as Exhibit 2, is this the most updated curriculum vitae you have?
A Yes.
Q And I might have asked you this before. Other than this memorandum marked as Exhibit 3-A, are there any other memorandums that you received from any source --
A Not that I'm aware of.
Q -- regarding this case?
A No.
Q Have you ever spoken to Dr. Saxon since you were retained as an expert in this matter?
A No.
Q Was Dr. Saxon ever present when you discussed this matter with Herb Shepardson?
A No.
Q Concerning the process, the procedure of FESS surgery, do you consider any textbooks or articles as

authoritative on the procedure itself?

A Nothing particular, no.

Q Doctor, have you ever seen a copy of the disclosure of yourself as an expert in this matter?

A I believe I have a copy of that.

Q Did you bring that with you today?

A It may be in this pile of documents.

Q Could you find it for me?

A I'm not entirely sure. I'm not sure I received one or not. They talked to me on the phone. I don't see anything specifically here.

MR. SHEPARDSON: Is that his file over there, too?

MR. KOCIENDA: Yes.

MR. SHEPARDSON: Those are just depositions.

MR. KOCIENDA: I'll have this marked as 5.

(Plaintiffs' Exhibit 5 marked for identification; Disclosure of Expert Witness.)

BY MR. KOCIENDA:

Q Doctor, I'm going to show you what's been marked as Exhibit 5. It's titled Disclosure of Expert Witness and has your name on it, I believe. Doctor, you've had a chance to review Exhibit 5?

A Yes.

Q Do you recall seeing that or a copy of that or

version of that at any point?

A I can't remember whether I've seen that before or not.

Q Could you take a moment and read it through?

(Pause.)

A I might have received a copy of that at some point, but I don't see it -- I'm not sure when.

BY MR. KOCIENDA:

Q Doctor, is -- I'm sorry. I don't mean to interrupt you. Are you finished?

A Yes.

Q Doctor is there anything you've received from Herb Shepardson's office that you no longer have possession of?

A Not that I'm aware of.

Q How about anything you received from any other source concerning the Parsons matter that you're no longer in possession of, have you received anything like that?

A No.

MR. SHEPARDSON: Not that he's aware of. If he got that and didn't keep it -- I mean, that's what his answer was.

MR. KOCIENDA: Right, and then he wouldn't be in possession of it.

MR. SHEPARDSON: Yes.

BY MR. KOCIENDA:

Q Dr. Carpenter, according to this disclosure, it states that you are expected to testify with regard to the standard of care of Dr. Saxon. Do you have an opinion regarding -- let me finish. You're expected to testify with regard to the standard of care of Dr. Saxon, that the defendant did not deviate from the standard of care in his care and treatment of the plaintiff. Is that your opinion?

A Yes, it is.

Q What is the care of Mr. Parsons that you believe -- strike that.

Do you plan on offering any opinion regarding the case of John Parsons concerning causation?

MR. SHEPARDSON: Objection to the form of the question only insofar as causation is sort of a legal term. Maybe you could expound on that, whether it's the kind that caused the damages or something.

BY MR. KOCIENDA:

Q Dr. Carpenter, do you have an opinion today concerning the case of John Parsons as to what caused the injuries that he's suffering from?

A No.

Q Do you have an opinion as you sit here today as to the damages which John Parsons is claiming he suffered in this matter?

A Well, from reviewing his deposition.

Q You have an opinion concerning those damages?

A No.

Q Regarding the standard of care which you've been disclosed as expected to testify on, do you have a definition and what is your understanding of the definition of standard of care?

A The standard of care would be the acceptable standards within the community of patient care.

Q Is there any particular aspect of Mr. Parsons's care that you plan on offering an opinion regarding?

A Well, in reviewing the records, it appears that the -- that the standard of care was met in terms of informing the patient of the surgery and the complications and the postoperative care.

Q Section 3 indicates that your opinions are expected to be based on your education, experience, training and your review of the applicable medical records and deposition testimony?

A Right.

Q Is there anything else you plan on basing any opinions you plan on testifying to regarding John Parsons?

A No.

Q Are there any particular medical records that you found dispositive in rendering your and forming your

opinions?

A You're referring to the medical records I reviewed?

Q Yes.

MR. SHEPARDSON: Objection to the form of the question in terms of dispositive. Relevant?

BY MR. KOCIENDA:

Q Are there any particular medical records that you've reviewed regarding the care of John Parsons that you found relevant in forming your opinion that the standard of care in his treatment performed by Dr. Saxon was met?

A My review of Dr. Saxon's office notes, the operative note, and I formed my opinion based on that.

Q Could you find those in what has been marked as Exhibit 3.

MR. SHEPARDSON: Use the index to the extent it's correct.

A I believe that is this. I'll pull it all apart. They would start here, February 4, 1999.

MR. SHEPARDSON: I think he asked you to pull them out.

BY MR. KOCIENDA:

Q Exactly, if you can just separate them from the pile of Exhibit 3, but keep it in order so it can be reconstructed.

Other than what you've handed to me, Doctor, are there any other records that you've found relevant in forming your opinions?

A The operative note.

Q These pages aren't numbered in any way, are they?

A No.

Q I'll give you a sticky Post-It note pad, if you can mark where you're pulling it from so it can be replaced.

A You're asking me to pull out all the records that I feel apply to this?

Q Whatever records you reviewed, Doctor, that you found relevant in forming your opinion, I'd like you to --

MR. SHEPARDSON: You know something?

A Probably the operative note and office notes.

MR. SHEPARDSON: Just let me -- for the -- I have no problem. I used the word relevant. I think he obviously testified he reviewed everything. You're asking him to get the key records out so you can question him on them?

MR. KOCIENDA: Exactly. That's exactly what I'm asking.

BY MR. KOCIENDA:

Q Doctor, as you sit here today, what is your understanding of the information that Dr. Saxon provided John Parsons in obtaining the informed consent for the FESS

surgery?

A Well, he's seen two times prior to surgery, I believe, February 4 and February 22.

Q Doctor, at any point if you need to look at the records that have been marked as Exhibit 3 to answer the questions, please feel free to do so. Just let me know you're doing that so I can look on.

A He was seen on February 4 and February 25 prior to his surgery. In the February 4 record he states, "Explained functional endoscopic sinus surgery IN brain injury." And then when he saw him on February 25, and there's an informed consent in here for the procedure, which is signed by patient, he again states that, "Discussed FESS surgery again and explained complications." So from those office notes, it appears that he discussed the possible complications of the surgery twice with the patient, and plus he signed an informed consent form stating he understood the complications.

Q From those records, can you determine the specifics of what was told to Mr. Parsons by Dr. Saxon concerning the complications of FESS?

A Well, he says IN brain injury, and typically the complications of endoscopic sinus surgery would be injury to the orbit causing loss of vision or decrease in vision or functional problem with the muscles and would be injury to

the roof of the ethmoid cavity, which we call a spinal fluid leak or possible infection.

Q Is it your opinion that Dr. Saxon actually spoke to John Parsons about those particular complications based on the record of February 4, 1999?

A I assume he did since he states here in the note that he explained the complications to him, and that's the standard of care, to explain it to the patient and then make a note that you spoke to them about it.

Q You don't know from that note, however, specifically what complications Dr. Saxon spoke about; is that correct?

MR. SHEPARDSON: You're asking him just about the note now, not about his deposition?

BY MR. KOCIENDA:

Q I'm asking just about the note.

A No, I don't. I don't know exactly specifically what he said.

Q Do you know as you sit here today specifically what Dr. Saxon informed John Parsons of the complications?

A No, I don't.

Q And then the other note you said you looked at was February 25?

A Correct.

Q And, again, does that note indicate anything to

you regarding the specific complications Dr. Saxon informed John Parsons of?

A No. He just -- he states that he discussed the complications with him. In the previous note, he discussed -- he says he discussed orbital and brain injury. In this one he says he again discussed complications.

Q You reviewed Dr. Saxon's deposition --

A Yes.

Q -- at some point prior to coming here today. When was the last time you reviewed the deposition transcript of Dr. Saxon?

A It was probably a week ago.

Q Is there anything in that deposition transcript that you are basing your opinion that the standard of care for informed consent was met by Dr. Saxon?

A I'm just basing it on his notes.

Q Doctor, what are the complications of FESS surgery which you feel are important to inform a patient of before obtaining the informed consent?

A That would be possible orbital injury or brain injury would be the two major complications.

Q Are there any minor complications that you feel a doctor should make --

A I --

Q Let me finish, Doctor. -- should make the patient

aware of before obtaining the informed consent?

MR. SHEPARDSON: Do you mean to comply with the standard of care?

MR. KOCIENDA: Correct, to comply with the standard of care.

A Those are the two main ones, I believe, to comply with the standard of care. Sometimes bleeding is mentioned, possible bleeding in the postop period.

BY MR. KOCIENDA:

Q As far as the brain injury you're referring to, what is the brain injury that's a complication of FESS?

A Most common would be a spinal fluid leak.

Q How does that happen?

A That happens from breaching the bone, having a crack in the bone between the sinus cavity and the brain.

Q Would that be the cribriform?

A That would be through the roof of the ethmoid sinus or the cribriform.

Q What is that complication? What are the possible outcomes of that complication as far as you know as you sit here today?

A Well, continued spinal fluid leak, though it would need to be repaired by a second procedure, and the possibility of infection, meningitis if bacteria gained access up through the opening.

Q Have you ever performed a FESS surgery where a complication of the breach of the roof of the ethmoid sinus occurred?

A Not yet.

Q In your entire career?

A No.

Q Do you know the percentage likelihood of the complication of brain injury -- strike that.

Do you know the chances or the likelihood of a breach of the roof of the ethmoid sinus occurring during FESS surgery?

A I'd say it would probably be less than 1 percent.

Q Again, Doctor, you have no intentions of testifying as to opinion as to -- strike that. Let me go back.

The rest of Exhibit 5, the disclosure of you as an expert, states that you also are expected to testify that the nature and extent of the Plaintiffs' alleged injuries were not caused by the negligent conduct of the defendant; is that correct?

A Correct.

Q Do you have an opinion as to what did cause the alleged injuries of John Parsons?

A No, I don't. I think in retrospect there was some opening made into the -- through the roof of the ethmoid

during the procedure, but usually in that situation you'd see a spinal fluid leak, and nothing was seen that would make you think that anything occurred at that time.

Q Doctor, you're referring to an operative note in forming that opinion; is that correct?

A Correct, because the operative note states that they encountered some bleeding during the procedure, which is fairly common, but they didn't recognize at that point that anything else had occurred.

Q Okay. You've pulled that out of the file. The date, I think it's March 18, 1999. Is that the operative note you're referring to?

A Correct.

Q Is that the only thing you're basing that opinion on, Doctor?

A Do you want to restate the question? Basing my opinion that --

MR. SHEPARDSON: Could you just either restate or re-ask the question? He'll ask it again.

MR. KOCIENDA: Could you read it back?

(Off the record.)

BY MR. KOCIENDA:

Q Doctor, do you have an opinion as to the bleeding which occurred in the March 18, 1999 operation which Mr. Parsons underwent at the hands of Dr. Saxon?

MR. SHEPARDSON: Objection to the form of the question. I don't understand it, but if he does...

BY MR. KOCIENDA:

Q Go ahead and answer the question, Doctor, if you can.

A I'm just looking for the note of that in the operative note.

First of all, it's typical to have bleeding, especially in sinus surgery, and sometimes the bleeding is so much that you lose your visualization in term of trying to do the procedure. It seems in this situation they had a small amount of bleeding from a small blood vessel, which is usually -- what he calls the anterior ethmoid artery, and the bleeding was taken care of by packing that area, and they were able to proceed with the rest of the procedure. After that, because the bleeding was controlled, in the rest of the procedure he states that care was taken in the anterior and posterior base of the skull; it was carefully preserved; the cribriform plate likewise was not entered, nor was the roof of the ethmoid. So it appears they had good visualization during the procedure, and as far as I can determine from the operative note, the standard of care was met.

Q Under the standard of care after this procedure, was there any requirement that a prophylactic antibiotic be

given to prevent any infection that may result from the bleeding that was encountered during the operation?

MR. SHEPARDSON: Object to the form. You can answer.

A It would not be a requirement for an antibiotic to be given because of bleeding, because bleeding is very common, probably occurs in 99-and-a-half percent of cases, but generally we do give a patient a prophylactic oral antibiotic, because they have packing in their nose, so they don't get a sinus infection.

Q Doctor, have you reviewed the entirety of the medical records marked as Exhibit 3?

A Yes.

Q Can you turn to Dr. Saxon's office visit of March 22, 1999? Do you have an opinion, Doctor, as to the standard of care appropriate -- strike that.

Doctor, would you agree that an infection was found in John Parsons' brain at some point resulting in the necessity for a craniotomy?

A Yes.

Q At what point or what time or day, if you can tell me, was that infection realized in the medical records?

A I believe it was realized on the evening of April 1, 1999.

Q Do you believe that the infection that was found

on April 1 of 1999 existed on March 22, 1999?

A No, I don't believe it would exist then.

Q Are you aware of what caused the infection that was found on March 1, 1999?

A It would appear to be caused by a breach in the roof of the ethmoid cavity causing some bleeding intracranially and then subsequent infection.

Q Do you have an opinion as to what caused that intracranial bleeding in the breach as you just stated?

A Well, in retrospect, after reviewing the neurosurgical records, there appears to have been a breach in the roof of the ethmoid cavity, and most probably that was caused during the endoscopic sinus surgery.

Q What is your knowledge of the symptoms Dr. Parsons was aware of on March 22, 1999 that John Parsons was suffering from?

MR. SHEPARDSON: Objection to the form of the question.

A The main one noted is headaches.

BY MR. KOCIENDA:

Q And you're referring to the March 22, 1999 --

A The office note, correct.

Q Are there any other documents, either deposition transcripts or other source, that you have reviewed in preparation for this deposition and for your opinions

identifying other symptoms John Parsons was suffering from on that date?

A I believe symptoms were stated in Mr. Parsons' depositions. I'm going basically on what is written down in the medical record.

Q Okay. So your testimony today is that Dr. Saxon was aware only that Mr. Parsons was suffering from a lot of headaches; is that correct?

MR. SHEPARDSON: Objection to the form of the question. I think that mischaracterizes what he said. He didn't say only. You asked for the major issue.

A This appears to be a standard note. He notes that he is not febrile. He notes his vision is stable, which goes along with any possible orbital complications. He notes that he cleaned the nose out, and there's no note that there's any spinal fluid leak or bleeding, which would be the other thing that might make you think there was a problem. And the main positive finding is headache, so it seems that he has covered the things that we would think of looking for a complication in terms of fever, spinal fluid leak or orbital complications, and none of those were present at that point in time.

BY MR. KOCIENDA:

Q Under the standard of care that's applicable to Dr. Saxon's review of John Parsons postoperatively on

March 22, 1999, are there any other issues that Dr. Saxon should have been looking to review at that time besides what you've just mentioned?

A No, not that I'm aware of.

MR. SHEPARDSON: Can we take a two-minute break?

MR. KOCIENDA: Yes.

(Off the record: 2:17 p.m. to 2:27 p.m.)

BY MR. KOCIENDA:

Q Okay. Doctor, is it possible that during the process of FESS surgery that a breach of the roof of the ethmoid sinus can occur but the surgeon not notice or realize that during the surgery?

A Evidently, but generally it would -- I think there would be -- usually you'd look for spinal fluid leak, which you think would occur in probably close to 100 percent of cases.

Q And how would that be characterized? What would it look like?

A You'd have clear --

Q You've got to let me finish.

How would a doctor realize a spinal fluid leak was occurring?

A You'd see clear, watery-looking fluid coming out of an area in the roof of the sinus.

Q Could the fluid that's leaking also be mixed with

blood?

A Well, it would be a different consistency. It would be more watery, so it's -- if there were blood involved, it's pretty obvious, because the consistency is different.

Q You'd agree it is possible that a breach could occur and not be noticed during the surgery?

A Yes.

Q Okay. Have you ever treated a patient who had a breach of the ethmoid sinus during FESS surgery?

A Yes.

Q How many times? How many patients?

A Oh, five or six, at least.

Q You also testified earlier that you have never breached the ethmoid sinus?

A Correct.

Q So they were obviously someone else's patients before they were referred to you?

A Referred in for surgery.

Q Can you explain to me the circumstances of you being referred patients that have a breach of the ethmoid sinus? In other words, what status are they in when you receive them as patients?

A They have a spinal fluid leak, which is usually noted that when they lean forward they have watery fluid

dripping out of their nose.

Q This is after the surgery was completed?

A After the surgery.

Q What is the standard of care regarding treating someone with a CSF leak after a FESS surgery?

A It depends on the timing of it. If it's very soon after surgery, usually the patient would be admitted to the hospital and a lumbar catheter would be placed to decrease the spinal fluid pressure. And the conservative treatment is to wait a few days to see if it was going to stop on its own. A lot of times that occurs after automobile accidents, also.

Q Does the standard of care require treatment with antibiotics of a patient suffering from a CSF leak as a result of FESS surgery?

A That's controversial. One thought is they should be covered with antibiotics in order to try to prevent an infection. The other school of thought is if you have them on antibiotics, it might pre-select out bacteria that may not have been present otherwise.

Q Do you have an opinion regarding the treatment of John Parsons as to which approach you just referred to was taken by Dr. Saxon in the care of John Parsons?

A In that situation -- and generally we do cover patients with antibiotics postoperatively and if there's a

sign of any situation.

Q So you would agree that Dr. Saxon chose to cover John Parsons with an antibiotic when a central nerve -- a CSF leak was discovered?

MR. SHEPARDSON: Objection to the form.

A I don't --

MR. SHEPARDSON: Just a second, Doctor. If I object, just let me put my objection on the record.

My objection was I think that's a different question, form of the -- you were talking about discovery of a CSF leak, and I don't think it was discovered initially, and we're talking about application of antibiotics.

MR. KOCIENDA: Fair objection. Can you repeat my question, the one right before the last?

(The question on page 55, line 21 was read by the Court Reporter.)

BY MR. KOCIENDA:

Q Can you answer that question, Doctor?

A I think we're talking about a different thing there, because we're talking about CSF leaks, and there's been no indication in this particular case that there was a CSF leak. So in this case the approach taken by Dr. Saxon was to place him on prophylactic oral antibiotics, which is generally what everybody does, so that would be within the standard of care.

Q When did Dr. Saxon place John Parsons on prophylactic antibiotics that you're referring to?

A Generally would be placed on antibiotics when they go home from the hospital.

Q From the FESS surgery?

A From the FESS surgery.

Q Was John Parsons placed on a prophylactic antibiotic?

A I believe he was on Keflex, which would be a standard prophylactic antibiotic.

Q Doctor, a CSF leak is an indication of a breach of the ethmoid sinus; is that correct? Would you agree with that?

A Correct.

Q Do you have an opinion as to what the standard of care is in treating a breach of the ethmoid sinus as a result of FESS surgery?

A It depends on what the breach is.

Q Have you ever treated a patient where there was a brain hemorrhage as a result of FESS surgery in a breach of the ethmoid sinus?

A No, I haven't.

Q Are you aware that John Parsons was suffering from a hemorrhage in the brain after the FESS surgery of March 18, 1999?

MR. SHEPARDSON: Object to the form of the question.

A That appears -- what was found on April 2. I don't think prior to that -- or when the patient had -- was in the hospital. I don't think prior to that anyone realized that there was a breach in the roof of the ethmoid.

BY MR. KOCIENDA:

Q Would you agree that on March 28, 1999, Dr. Saxon was aware of a hemorrhage in John Parsons' brain?

MR. SHEPARDSON: I'm sorry, March 28?

MR. KOCIENDA: March 28.

A Correct, on March 28 when they did the CAT scan in the emergency room, a hematoma was noted, which would be bleeding into the brain that had formed a clot.

BY MR. KOCIENDA:

Q Do you have an opinion as to what caused that hematoma in the brain?

A In retrospect, after reading the neurosurgical report, it appears that it was caused by an opening made in the roof of the ethmoid sinus.

Q What time was that opening made? Do you have an opinion about that?

A In retrospect, it appears that it had been made at the time of the endoscopic sinus surgery.

Q Do you have an opinion as to what the standard of care was on March 28, 1999 as to the treatment of John Parsons' hematoma of the brain on March 28, 1999?

MR. SHEPARDSON: Object to the form of the question. If you can understand it, you can answer it.

A I think generally reviewing the records, the standard of care was met. The patient was seen in the emergency room. The diagnosis was made. Ear, nose and throat service was called, and a neurosurgical consultation was called. It's really a neurosurgical situation, so you depend on the neurosurgeons for guidance and where to go in terms of treatment. And the patient was admitted to the hospital.

BY MR. KOCIENDA:

Q Would you agree that the standard of care applicable to John Parsons' treatment by Dr. Saxon required Dr. Saxon to seek a consultation from a neurosurgical doctor?

MR. SHEPARDSON: Object to the form of the question, time frame.

BY MR. KOCIENDA:

Q On March 28, 1999.

A The general procedure would be to have a neurosurgeon see the patient in consultation, because it's in their area of expertise, and you'd rely on them to

develop a plan of care.

BY MR. KOCIENDA:

Q Would you agree that that is the standard of care applicable to the treatment of John Parsons on March 28, 1999 by Dr. Saxon?

MR. SHEPARDSON: Objection.

A Yes.

BY MR. KOCIENDA:

Q What is it that the consultation with the neurosurgeon is intended to discover or learn?

A You would want their opinion in terms of possible further complications, and then you would want their opinion in terms of how to treat the patient for the hematoma.

Q Doctor, you referred to a CAT scan of John Parsons on March 28, 1999. Did you review the report of that CAT scan in preparation for your opinion?

A I did.

Q Could you find that in your records for me?

A Here we go, CAT scan, March 28, 1999.

Q Can I look at that, Doctor, before you --

MR. SHEPARDSON: You have to keep those things in order.

MR. KOCIENDA: Please use the --

MR. SHEPARDSON: Some sort of order. And there's this over here that's on the top, I think, and there's

something over there, probably the Saxon records.

THE WITNESS: Right.

MR. KOCIENDA: Why don't we take a moment to put it back together, because it's starting to get too separated.

THE WITNESS: That's there, and I believe this is here. This is here and this is here.

BY MR. KOCIENDA:

Q The operative report is where the sticky goes, am I correct, Doctor?

A Yes, the operative report is here, I believe, put it back in there.

Q Okay. Doctor, the CAT scan of March 28, 1999 indicates that the findings of John Parsons' CAT scan were consistent with a right frontal hematoma; would you agree?

A That's the report, yes.

Q Are you aware of when Dr. Saxon learned of that report and the information contained in it?

A I don't. I'm aware the neurosurgeons saw the CAT scan when they saw the patient in the emergency room, because it's mentioned, I believe, in their consultation.

Q What do you base that on? The consultation?

A The consultation in the hospital records.

Q Could you turn to the consultation that you're referring to?

MR. SHEPARDSON: The neurosurgeon consult?

MR. KOCIENDA: Yes.

A That would be in the hospital records, which --

BY MR. KOCIENDA:

Q Neurosurgery, right here. Look under 56. You don't have 56 in the --

A This is when he's in the hospital. Here we go. This is when the neurosurgeon saw him in the emergency room.

Q Okay. You have that consultation in front of you, Doctor?

A I do.

Q Doctor, you reviewed that record in forming your opinions today?

A Yes.

Q Can you read the bottom half of the neurosurgeon report? Strike that, actually. Doctor, you said that you were aware the neurosurgeon was aware of the CAT scan report, correct?

A Right.

Q Can you find for me in the neurosurgery consult report that you just turned to where you use to base that statement on?

A It says, "CT head reviewed, subfrontal hematoma with intracranial air."

Q Okay. Doctor, were you aware of any antibiotic that John Parsons was placed on while in the emergency room on March 28, 1999?

A I believe they gave him a dose of Gentamicin.

Q Any other antibiotics?

A I'm not aware of any other right at that specific point in time. I know at some point in time there he was placed on a prophylactic Zinocef or something, whatever that was.

Q Do you know what time or at what point in his treatment in the hospital he was placed on Zinocef?

A No, I don't

MR. SHEPARDSON: You mean without reviewing the records?

BY MR. KOCIENDA:

Q You can look in the records.

A I'm not even sure where I would find that. Probably somewhere in the nurse's notes.

Q Doctor, does the standard of care require that, applicable to John Parsons' treatment on March 28, 1999, that he be placed on a prophylactic antibiotic given the CAT scan report and the neurosurgery consult which you have right in front of you?

A Generally you'd place him on antibiotics at that time to cover for infection.

Q What type of infection does the standard of care require on March 28, 1999 concerning John Parsons?

A They would want to cover for any sinus bacteria that would get into the brain.

Q Doctor, do you have an opinion as to whether or not Zinocef is an appropriate antibiotic to cover that eventuality under the standard of care applicable to John Parsons on March 28, 1999 by Dr. Saxon?

A Zinocef would be a typical antibiotic that ear, nose and throat doctors would use to cover the sinuses and any eventuality to -- cephalosporin antibiotic and supra-spectrum antibiotic.

Q Did you say atypical --

A It's a typical -- it's an antibiotic that would be used. In other words, that's the type of antibiotic that would be used.

Q Do you mean it is --

A -- a normal antibiotic that would be used to cover for bacteria in the sinuses, because it's a broad spectrum antibiotic. And, actually, in the Physician's Desk Reference it does say that it's a treatment for meningitis.

Q Doctor, are you aware of Zinocef's ability to treat a brain infection?

A It's really out of my area of expertise. For something like that I'd depend on the neurosurgeons to give

me an opinion.

Q Given that John Parsons had a hematoma which was consistent with an infected hematoma, what is the standard of care in your opinion as to the appropriate treatment for Dr. Saxon to have rendered to John Parsons on March 28, 1999 to treat the potential infected hematoma?

MR. SHEPARDSON: Objection to the form of the question in the way it's phrased, infected hematoma, potential infected hematoma. I object to the form.

MR. KOCIENDA: Strike that. I'll rephrase that.

BY MR. KOCIENDA:

Q Doctor, given the CAT scan report which you've reviewed and the neurosurgical report, what is the standard of care required on March 28, 1999 of Dr. Saxon to treat the symptoms described in the CAT scan report for John Parsons?

A I think at this point it appears that he had a potentially infected hematoma, and I'd depend on the neurosurgical consultation to point me in the right direction of antibiotics, but generally we would cover it with an antibiotic such as Zinocef, unless appropriate note was made by the neurosurgeons to use something else.

Q Doctor, would it have been within the standard of care for Dr. Saxon to have chosen to treat the potentially infected hematoma without a neurosurgical consultation?

A Generally a neurosurgical consultation would be

obtained because of the hematoma, and it's really out of our area of our expertise.

Q Would it have been within the standard of care for Dr. Saxon to have treated the potentially infected hematoma without a neurosurgical consultation?

MR. SHEPARDSON: Objection to the form of the question.

BY MR. KOCIENDA:

Q It's a yes or no question.

MR. SHEPARDSON: Objection to the form.

A I can't answer that. That would depend on the institution, I think, and the experience of the ear, nose and throat physician that's treating the patient; in other words, whether they had experience dealing with intracranial problems.

BY MR. KOCIENDA:

Q So I understand your testimony, Doctor, if the particular ear, nose and throat doctor, the otolaryngologist, had sufficient expertise or experience in treating brain infections as a result of FESS surgery, it would be within the standard of care for that ear, nose and throat doctor to treat without a consultation of a neurosurgeon?

A If they had significant expertise in that area. I think generally the standard of care in this area would be

to obtain a consultation from the neurosurgeons.

Q Do you know of what expertise, if any, Dr. Saxon had in the area of treating a brain infection caused by FESS surgery on March 28, 1999?

A I don't know his expertise, but I would say generally in this area we would depend on the neurosurgical consultation to point us in which direction in treating the patient.

Q Doctor, do you have an opinion as to -- strike that.

Do you know what direction, if any, the neurosurgeon consultation pointed Dr. Saxon in as a result of the consultation on March 28, 1999?

A I do.

Q And what direction was he pointed in?

A Well, the note says, "Admit for observation." It says, "Consider antibiotics, since there's an increased chance for infection," and it says, "Follow-up in one week." So from my point of view, I don't think they gave him much to make him change whatever his thoughts were at that time. They don't recommend any specific antibiotic. They actually don't recommend even putting him on antibiotics. They say consider, which to me just means they're not really worried one way or the other. And they don't say we're going to see him in four hours. They say

see him in one week. So when I read this consultation, I'd be led to believe that the patient needs to be admitted for observation, he should be on appropriate -- he should be on a prophylactic antibiotic to treat possible infection, and I think that's what was done.

Q What possible infection are you referring to, Doctor?

A Well, the infection in the brain. They say here "increased chance of infection." I think when they were reading the CAT scan, they weren't reading it as a -- there was no abscess present at that time, and there was a question whether there was infection or not. I think they were looking at it as there was a hematoma.

Q What do you base that opinion on, Doctor?

A The patient wasn't febrile, and they didn't have any other findings here that would make you think that the patient had meningitis or any other specific intracranial problem.

Q So the potential infection you're referring to is the brain infection, Doctor?

A Correct.

Q You mentioned, Doctor, that it was your belief Mr. Parsons was on a prophylactic antibiotic to treat the potential brain infection, correct?

A Correct.

Q What antibiotic are you referring to?

A He was on Zinocef.

Q So it's your understanding that Zinocef was used prophylactically to treat the potential brain infection, correct?

MR. SHEPARDSON: Objection to the form.

A I don't have any -- I would say Zinocef --

MR. SHEPARDSON: I don't mean to interrupt you. I was going to object and say he already testified --

A Zinocef is an antibiotic used to generally cover sinus problems. We call the neurosurgical opinion if the antibiotic was going to be changed to something that we're not used to using.

BY MR. KOCIENDA:

Q Doctor, as you sit here today, do you know if Dr. Saxon received on March 28, 1999 an opinion regarding the appropriate antibiotic to treat the potential brain infection Mr. Parsons was suffering from on that date?

A I don't recall any specific evidence of anything he received from anybody.

Q Do you recall any general evidence?

A No.

Q Do you know whether or not Dr. Saxon received any consultation concerning the appropriateness of Zinocef to prophylactically treat the potential brain infection

John Parsons was suffering from on March 29, 1999?

A I'm not aware of anything.

Q What is your opinion, Doctor, regarding the standard of care of Dr. Saxon after receiving -- strike that.

Assuming Dr. Saxon received the information contained in the neurosurgery consult report of March 28, 1999, what is your opinion regarding the standard of care for what Dr. Saxon should have done to determine what antibiotic he should have prescribed John Parsons to prophylactically treat the potential brain infection he was suffering from?

A I think, reviewing the patient's hospital course in the hospital, it appears that everyone felt the antibiotic here he was on was appropriate, because it appeared the patient was improving between March 29 and April 1. That's the opinion of the ear, nose and throat people, the neurologist and the neurosurgeons.

Q Can you point to me what you base that opinion on, Doctor?

A I base it by following the office notes and the hospital notes. On April 29 they state that headache has left, he is less -- he is alert and feeling better, and they're going to repeat the CAT scan, which is appropriate to see if there has been any major change.

Q What date is that, Doctor?

A March 29.

Q Can I see that record, Doctor, before you move on to the next one?

A On the 29th he's not any worse. He says he's alert, he has no fever, and they say repeat CAT scan; in other words, they're looking for any continuation of a problem.

And then that evening Dr. Saxon saw the patient, says afebrile, alert, headache is better. He says continue antibiotics and repeat -- he reviewed the CAT scan. It's stable. In other words, nothing has worsened, and they're going to follow him neurologically. So the next day, it appears in the evening they've done a CAT scan, nothing is worse, and they're keeping him on the present antibiotics. And if you follow that along, the next day they say headache improved, he still has no fever, vision is normal, there's no neurological problems, and they're continuing to observe him. So there are no signs in here -- there are signs in here that the patient is improving.

On the 31st, pretty much the same, CAT scan shows improvement, awake, alert, no neck and rigidity, and they say repeat another CAT scan. That's the neurosurgeon, Dr. Lange. So I don't see anything in here that anybody's worrying about anything. The patient is not running a

fever. They've CAT scanned him every day. They've requested to change the antibiotics. It appears the hematoma is improving.

Even on April 1 they say awake, alert. And, interestingly, on the 1st he ran a fever the night before, so the ear, nose and throat doctors at that point say, "Fever last night is concerning, appreciate neurosurgical input." So the first sign of a fever, they're jumping into let's get the neuro guys to look at him and see if there's a problem. So I think from the ear, nose and throat point of view, this is perfectly in the standard of care. I think, interestingly enough, at that point the neurologist saw him and said everything was completely normal, the exam was normal, the patient was improving, there were no symptoms, he didn't see any significance in the fever the night before, he thought it was from blood in the spinal fluid, and they pretty much sign off. There wasn't a problem here between the neurosurgeons and the neurologist. Then that night he spikes a fever, and they find there's an abscess.

So I guess that's the scenario I'm following in there. It seems like they had the appropriate consultations. The patient has been followed. The neurosurgeon has seen him. The neurologists have seen him. There's no signs of alarm, no "do this, do that." If I were the attending physician in that situation, I would feel I

had the appropriate consultations and I'd feel the patient was improving.

Q Doctor, the appropriate consultations you're referring to are the neurosurgeon's consultations and the neurologist?

A Those are the two experts in that area.

Q Did you review the written consultation reports of the neurosurgeon and neurologist?

A I did.

Q Is there anything in those records that indicate consultations included a review of the antibiotic which John Parsons was on?

A There's no recommendation one way or the other, so I would assume it's part of the consultation, the antibiotic would be reviewed.

Q Is it the standard of care for Dr. Saxon applicable during March 28 through February 1, 1999 to not inquire of the consulting physicians as to the appropriateness of the antibiotic which John Parsons was on at the time?

A Generally, when you do a consultation, you'd review the antibiotics and the hospital course and the medications, and then you'd make a recommendation if you felt things should be changed.

Q Doctor, are you aware at any point from

March 28 --

MR. SHEPARDSON: I think the last question said February but we knew what you meant.

MR. KOCIENDA: Okay.

BY MR. KOCIENDA:

Q Doctor, are you aware of any consultation with infectious disease from March 28, 1999 through April 1, 1999?

A No.

Q Doctor, turning back to the neurosurgeon consultation of March 28, 1999, if you would, Doctor, what is your interpretation of the last couple lines from the bottom where it says "question mark, ID, question mark"?

A I'm assuming he's questioning whether they should have infectious disease see the patient.

Q Doctor, is it the standard of care on March 28, 1999 concerning Dr. Saxon's treatment of John Parsons that Dr. Saxon should have consulted with an infectious disease doctor concerning the treatment of the potential infected brain hematoma?

MR. SHEPARDSON: Object to the form of the question.

A I believe the standard of care at that point in time -- I'd depend on the neurosurgical consultation to tell me what to do in terms of antibiotics, because at this point

in time we don't know that there's an abscess in there; we're just covering the patient for potential infection, so generally I don't think an infectious disease consult would be required at that point.

BY MR. KOCIENDA:

Q What was the information Dr. Saxon received from this neurosurgeon consultation regarding the appropriate antibiotic to treat John Parsons' brain hematoma on March 28, 1999?

A He didn't give him any information.

Q Given that there was no information -- strike that.

Given that Dr. Saxon did not receive any information on how to treat with antibiotic the potential brain infection from the neurosurgeon on March 28, 1999, did the standard of care require Dr. Saxon to seek an infectious disease consultation to answer the question as to what antibiotic should be used to treat the potential brain hematoma?

A No.

MR. SHEPARDSON: Objection.

BY MR. KOCIENDA:

Q Why is that, Doctor?

A There isn't any -- no hard and fast rule of who you get at consultation at that point in time. Probably

depends on the institution. I think I'd depend on the neurosurgeons to give me a little up in the direction of what I should use for antibiotics.

Q And, Doctor, I believe you stated that the neurosurgeon's consultation did not notify Dr. Saxon of what antibiotic to treat John Parsons with; is that correct?

A Correct.

Q So given that Dr. Saxon did not receive from what it appears from the consultation report any information concerning how to treat with antibiotic John Parsons' potential brain hematoma, was the standard of care such that it required him to find another consultation to answer that question?

MR. SHEPARDSON: Object to the form question. I think that was asked and answered.

A No. I think at that point in time, with the patient's present condition, you'd place him on a broad spectrum antibiotic, as was done.

BY MR. KOCIENDA:

Q Do you have an understanding as to why this consultation was requested by Dr. Saxon on March 28, 1999?

A I think actually the consultation -- they saw the patient in the emergency room, and I don't have an understanding of who called in the consultation, no.

Q Do you know what the purpose of the consultation

was?

A I assume to evaluate the patient and recommend treatment, which is the usual purpose of a consultation.

Q So is it your testimony, Doctor, that the fact that the neurosurgeon did not give Dr. Saxon the recommendation as to how to treat with antibiotic the potential brain hematoma, that no antibiotic to treat the potential brain hematoma was necessary?

MR. SHEPARDSON: Objection to the form of the question.

A No, I didn't say that. I said I thought that since they didn't give him a recommendation, the antibiotic he was placed on at the time seemed to be appropriate at the time, because it had been reviewed, obviously, in the next day or two by the neurosurgeons and the neurologist, and no one made a recommendation otherwise.

BY MR. KOCIENDA:

Q And in that opinion, Doctor, are you assuming that Zinocef was already prescribed to John Parsons at the time the consultation was given?

A I think it had been prescribed after the consultation had been given, but I assume it would be reviewed by the consulting doctors in their rounds.

Q And what do you base that opinion on?

A Standard hospital procedure.

Q Doctor, just to clean up some prior questions, do you feel you have any expertise at all to render an opinion regarding the nature or extent of John Parsons' damages claimed in this lawsuit?

A No.

Q Doctor, do you feel that you have any expertise to render an opinion concerning the causal -- the cause of the damages John Parsons has alleged in this lawsuit?

MR. SHEPARDSON: Objection. Could I have that read back?

(The last question was read by the Court Reporter.)

MR. SHEPARDSON: Objection to form of the question only because it's such a broad claim on the damages which hasn't been the focus of his review. He already testified about the surgery and what he thinks happened, but answer to the best of your ability.

A In retrospect, the cause of the hematoma appears to have occurred in a breach of the roof of the ethmoid sinus during surgery which was unrecognized at the time.

BY MR. KOCIENDA:

Q Do you intend to render an opinion on any other cause of John Parsons' injuries other than the hematoma?

A No.

Q Doctor, going back to March 22, 1999, Dr. Saxon's

office visit note, if you can turn to that.

A The 22nd?

Q Yes, Doctor.

MR. SHEPARDSON: Dr. Saxon's office notes, which are here.

BY MR. KOCIENDA:

Q Actually, before we do that, Doctor, do you want to put that back together?

A I can remember his office notes pretty well, so...

MR. SHEPARDSON: Want to look on mine? They're all the same. Is that all right?

MR. KOCIENDA: That's been marked as an exhibit at some point?

MR. SHEPARDSON: Yes, it's already marked.

MR. KOCIENDA: It's marked as Exhibit --

MR. SHEPARDSON: -- Exhibit 1, 12/12/02.

BY MR. KOCIENDA:

Q If it would be easier, Doctor, you can use Herb Shepardson's.

A Okay.

Q Doctor, on March 22, 1999, is it your understanding that that was the first office visit after the FESS surgery of March 18, 1999?

A Yes.

Q Do you know the purpose of that visit?

A The purpose in this note isn't stated, but I can tell you generally why people are seen at that point in time after endoscopic sinus surgery.

Q Why is that, Doctor?

A To check their nose; sometimes to debride, which means taking any packing out that's in there; to check them for any possible complications; generally see how they're doing.

Q Doctor, what does the standard of care require a surgeon who performs the FESS surgery to inform their patient of expected postoperative recovery?

A Well, that's variable depending on the patient. I don't think there's any specific standard of care to inform the patient in terms of recovery, except to say that you're going to have headache afterwards, your nose is going to be blocked up, you're going to have a lot of facial pain. And everybody's different, so it's hard to tell people exactly when they're going to be feeling better. I usually say four, five days, a week, ten days, depends.

Q Doctor, you said you reviewed Dr. Saxon's deposition testimony and his transcript?

A Yes.

Q As well as John Parsons' deposition transcript?

A Yes.

Q And Alana Parsons' deposition transcript as well?

A Yes.

Q Are you aware of what Dr. Saxon informed John and Alana Parsons as to what to expect postoperatively from his FESS surgery of March 18, 1999?

MR. SHEPARDSON: You mean without looking at the deposition?

A Without looking?

BY MR. KOCIENDA:

Q If you can.

A I'm not aware without looking of specifics.

Q If I told you that Dr. Saxon informed John Parsons that he would be able to return to work by March 22, 1999 after the March 18, 1999 FESS surgery, would that be within the standard of care to inform him of that?

MR. SHEPARDSON: Objection to the form of the question.

A Standard of care, I'm not sure that has anything to do with standard of care, but it would be possible to go back to work then.

BY MR. KOCIENDA:

Q It's not unreasonable?

A It's not unreasonable.

Q In your opinion, Doctor, at what point would --

strike that.

Doctor, on March 26, 1999, can you tell me what

symptoms John Parsons presented that office visit with?

MR. SHEPARDSON: Do you want to look at my records here?

A His main symptom was headache. He says headache, can't sleep. Other than that, it's the standard office note. He has no fever, and he put him on irrigation of the nose.

BY MR. KOCIENDA:

Q Doctor, do you know of any other symptoms which Dr. Saxon was aware of on March 26, 1999 concerning John Parsons' postoperative recovery?

A No, I don't.

Q Doctor, are you aware that Alana Parsons is John Parsons' wife?

A Yes.

Q Are you aware that Alana Parsons made phone calls to Dr. Saxon's office after March 22, 1999 and before March 26, 1999 complaining of additional symptoms John Parsons was suffering from during that time period?

A I believe that's what she stated in her deposition.

Q Do you know what symptoms those were?

A Not off the top of my head, no.

Q Doctor, are you also aware that Alana Parsons kept a diary of the time period between March 22, 1999 and

March 26, 1999 of her conversations with Dr. Saxon's office?

A Yes.

Q Did you see that diary as part of the transcript of Alana Parsons' deposition?

A I believe that was in the transcript, yes.

Q And, Doctor, I have a copy of that right here. I'll read to you.

MR. SHEPARDSON: Can you reference what you're reading under?

MR. KOCIENDA: Yes, absolutely.

BY MR. KOCIENDA:

Q "March 22, 1999, Monday. He's worse, can't lift his head. He says it's hard to lift it. Called Dr. Saxon's office, made an appointment for today. John not a complainer by nature. He seemed to be able to cover up the pain he was in. I told Dr. Saxon this. I told him that he was having very hard time lifting his head, that he felt like head was going to explode. Dr. Saxon examined him. He said he couldn't understand why John was still in pain. He said maybe in John's case it would take a little longer for pain to go away. I told him that John couldn't eat, throwing up. He gave us an appointment for Friday. He said he couldn't understand why John was still in pain.

"March 23. John is not any better. He's in such agony, still not eating. I've been sleeping in John's room

since surgery, because he says any movement of the bed is excruciating to his head, not sleeping at all.

"March 24, 1999. John still not eating, vomits whenever he tries to eat. Pain is horrible for the last few days. He takes his medicine about 15 minutes early. He just can't bear it. He is very miserable. I called Dr. Saxon's office. They said medicine could make him sick.

"March 25. Not eating. He looks as if he's lost a lot of weight. Pain is still excruciating. Antibiotic is finished, Cephalexin."

Given the symptoms described by Alana Parsons which she explained to Dr. Saxon, what is the standard of care as far as treating John Parsons' symptoms at that point in time?

MR. SHEPARDSON: Just let me interpose an objection. Objection to the form of the question, lack of foundation, given the symptoms and given the fact they were communicated, obviously that's an assumption which is inherent in the question.

MR. KOCIENDA: I'll agree.

BY MR. KOCIENDA:

Q Assume that Dr. Saxon is was aware of the information Alana Parsons describes in her diary which I read to you, what is the standard of care for Dr. Saxon to

treat John Parsons' symptoms?

A I think the standard of care is to have him come to the office and evaluate the symptoms yourself. A lot of times what people say is happening and what is really happening when you see the patient is divergent probably 99 percent of the time. And you make a determination when the patient is in the office whether the symptoms are concerning or whether they seem to be within the realm of postoperative pain.

Q Would you agree with me that the described symptoms in the diary are subjective symptoms that cannot be diagnostically tested?

A Well, I think a lot of those things could be determined speaking to the patient in the office and trying to determine if there is something happening here that should be looked into more or not. I think that's clinical judgment.

Q How would Dr. Saxon, assuming he knew this information and did, in fact, call John Parsons into the office as a result of these symptoms, how would Dr. Saxon have been able to determine whether or not the pain was as bad as Alana described in her diary?

MR. SHEPARDSON: Objection to the form of the question.

A I think you'd have to look at the patient, see if

there's any bleeding, any signs of spinal fluid leak, swelling, and just make a determination by looking at the patient whether things seem to be severe enough to be more concerned. As I said, that's sort of a judgment call when the patient comes to the office.

BY MR. KOCIENDA:

Q Would you agree that what you just described are visual observations a doctor could perform on the patient to determine whether or not additional treatment is needed?

A Well, visual observation, whether the patient is running a fever, that type of thing would be the things he would look at in the office.

Q Would there be any indication -- let me go back.

On March 26 Alana also had in her diary additional entries regarding John Parsons, which I'll read to you as well, and I'll have some follow-up questions.

"March 26, 1999, Friday. Called Dr. Saxon's office for appointment. John's strength amazes me. He manages to try to put on a good front. It's hard to help him walk. John told Dr. Saxon how bad the pain was. He pulled a piece of packing out and some mucous, but said there was no bleeding and that it looks as if he was starting to heal. He said he couldn't understand why John was in so much pain. He kept repeating that he didn't know why and that he couldn't understand it. He gave John a

prescription for a stronger pain killer, Endocet.

"March 27, 1999, Saturday. I'm in tears. I'm so upset, and John's patience has worn out. He's absolutely unbearable. His attitude is horrible. He's still not eating. He bites my head off. He hasn't slept since the surgery.

"March 28, 1999, Sunday. I'm at my whits' end. I've been crying since yesterday. I don't know what to do. I called Jason and Denise to ask their opinion. They weren't home. I called Karen and Stuart. They weren't home. I called Dr. Sherber's office and left a message for the covering doctor to call me. Dr. Musick called me back about 1:30. I explained what was going on. He said that the polyp surgery was a routine surgery, but pain this long wasn't the normal. He said that it sounded as if there might be a blockage. He also told me that I could do one of two things. One, I could take John to the emergency room, or, two, I could call Dr. Saxon, but he might not have an answer for me, more like a wishy-washy answer. He repeated again to take John to ER. I said, 'Thank you very much.' That's all I wanted to know. I called Johnny to tell him that I was taking John to the ER. I was upset and crying. Johnny said he right down to take to the hospital, because it didn't sound as if I was all right."

Would you agree that the standard of care on

March 28, 1999, assuming the statements Alana made in her diary are true, required John Parsons to visit the emergency room?

MR. SHEPARDSON: Object to the form of the question. You can answer.

A I think at that point in time, since I guess it's the weekend and they can't make another office visit, that would be the appropriate thing to do. If his symptoms are worsening, he would be seen in the emergency room.

BY MR. KOCIENDA:

Q Would you agree that pain as described in Alana's diary from March 26, 1999 through March 28, 1999 required Dr. Saxon, had he known of the pain as described in her diary, under the standard of care to perform a diagnostic test to determine if there was any infection or other problems with John's head?

MR. SHEPARDSON: Object to the form of the question. You can answer it if you understand the question.

A Pain is very variable, and I think you just have to make a clinical judgment at some point in time there, is the pain going on longer than you think it should be and are there any signs that any other tests should be done, so I can't really say within the standard of care of when would you do any other tests. I think by this point in time,

considering it's on the weekend and things haven't approved, that it was appropriate to go to the emergency room for further evaluation.

Q At any point between March --

A At that point in time you'd -- you know, probably did a CAT scan, which I think was appropriate at that point in time.

Q Under the standard of care applicable in March 1999, what symptoms are required at a minimum level for Dr. Saxon to have sent John Parsons for a diagnostic imaging test?

MR. SHEPARDSON: Objection to the form of the question. It's vague.

A I don't think there are any hard and fast rules there when you're dealing with just pain. If you're dealing with fever or changes in your sensorium, in other words, memory and all that, or visual changes, things you can put your finger on, I think you'd think of looking into it a little further, but pain is a very hard one, it's so subjective, to put a number on when you would look into it further.

Q Doctor, under the standard of care applicable in March of 1999, what symptoms were required under the standard of care for a doctor to then send the patient after FESS surgery to have a diagnostic testing done?

MR. SHEPARDSON: Objection.

A As I said, I don't think there are any hard and fast rules, unless someone was spiking a fever, was unconscious, had changes in memory, was losing their vision or some serious obvious, you know, cranial-type complication, had fluid coming out of their nose or they were bleeding. But in lack of all those symptoms, what I'm saying, it's very subjective of how much pain is someone having and when is it appropriate to look into it further.

BY MR. KOCIENDA:

Q Are symptoms of severe headaches that are increasing over time, vomiting and nausea sufficient symptoms under the standard of care in March 1999 for a patient who, as in John's situation underwent FESS surgery, should be sent to have a diagnostic imaging test of his head?

A I think in a situation where the surgery as far as you can tell went well and there weren't any obvious complications at the time of surgery, as I said, it's very subjective of when you'd do anything there. Nausea and vomiting, the first thing you think about, as stated in there, would be medication. If someone had continued headache and continued nausea and vomiting, as I said, at some point in time it would be appropriate to do a CAT scan.

Q Doctor, you said you've treated about five or six

patients post FESS that had CSF leaks?

A Correct.

Q Did any of those patients ever have an intracranial infection in one form or another?

A No.

Q Did you ever treat them prophylactically for a possible intracranial infection?

A Usually everybody is treated prophylactically when they have a spinal fluid leak.

Q How are they treated prophylactically with a spinal fluid leak?

A Generally with a broad spectrum cephalosporin antibiotic, such as used in this case --

Q Zinocef?

A -- would be our standard of care.

Q When you say "our," who are you referring to?

A Ear, nose and throat physicians.

Q Have you ever referred any of those particular patients, the five or six you referred to, for consultation with a neurosurgeon or infectious disease doctor as to how to continue to treat them?

A Usually there's a consultation with a neurosurgeon because of a spinal fluid leak.

Q Has a neurosurgeon ever advised additional or different antibiotic for any of those patients?

A They usually do in situations where they don't think the antibiotic is appropriate or there's indications that something else is happening that wasn't initially recognized.

Q In any of those five patients, did that occur?

A I can't remember specifically.

Q Do you remember any neurosurgeon ever changing the antibiotic that the patient was on at the time of the consultation with those five or six patients?

A Yes, that happens semi-frequently in situations like that.

Q And what antibiotic do the neurosurgeons -- have they prescribed at that point in their consultation?

MR. SHEPARDSON: I'm going to --

A It really depends on the type of infection, and it's not my range of expertise.

MR. SHEPARDSON: He answered the question, but your question was sort of general. That's my objection.

BY MR. KOCIENDA:

Q So, Doctor, are you saying that it's beyond your expertise as to what antibiotic is appropriate to treat a potential intracranial infection?

A Correct.

Q Doctor, you indicated before an opinion that was based on the institution of the hospital that the doctor was

in as to what consultation, and correct me if I'm wrong, as to what consultation should be requested in a situation as John's as he presented on March 28, 1999; am I correct?

A Correct.

Q Are you aware of St. Francis Hospital's standard of care regarding what consultation should be requested of a patient presenting as John did on March 28, 1999?

MR. SHEPARDSON: I object to the form of the question, and your use of the word standard of care --

A I don't think there is any --

MR. SHEPARDSON: Doctor, let me finish. -- use of the word standard of care. There's one standard of care; it's just done through different types of consults. I think that's what he testified to, so I object.

A I don't think there's any written, quote, standard of care that would dictate when you'd get a referral and when you wouldn't. As I stated, it would depend on certain institutions on the expertise of the physician involved. There are some hospitals in the United States where ear, nose and throat physicians do skull-based surgery and do brain surgery and all that, and they probably would have enough expertise to treat the patient on their own without a consultation.

BY MR. KOCIENDA:

Q Doctor, I'm just a little confused on what your

answer is. Are you saying there's a difference one way or another between Hartford Hospital and St. Francis as to what consultation is requested when a patient such as John Parsons in his condition and how he presented on March 28, 1999 as far as how to further treat him?

MR. SHEPARDSON: Objection.

A No. I don't think there's a difference there, no.

BY MR. KOCIENDA:

Q Can you explain to me what difference you're referring to?

A I'm speaking about institutions in the United States where they might -- the ear, nose and throat doctors do more neurosurgery, say at Mass General or in Pittsburgh, and since they treat patients like that all the time, over a course of time they would probably have more expertise in terms of what antibiotics to use, because they've worked with the neurosurgeons so many times.

Q So is it fair to say what you're really saying is that the type of consultation an ear, nose and throat doctor would require on the standard of care is going to be based on the ear, nose and throat doctor's expertise and experience with treating patients such as John Parsons as he presented on March 28, 1999?

A Correct.

Q And it's not the institution; in other words, if a doctor with the appropriate experience treated a patient such as John Parsons on March 28, 1999, the same doctor but at different hospitals, the standard for that doctor would be the same no matter what hospital he treated in?

MR. SHEPARDSON: Objection to the form of the question.

BY MR. KOCIENDA:

Q If you follow me.

MR. SHEPARDSON: I don't follow you.

A If there were an ear, nose and throat doctor somewhere in the United States that treated so many patients with brain abscesses and intracranial complications, he'd have multiple consultations with infectious disease people and neurosurgeons over the years, he'd probably be at the point that he wouldn't need a consultation and would know what to do.

Q Other than that scenario that you just described, is there any other training that an ear, nose and throat doctor could receive or undergo that would allow them to make a decision as to how to prophylactically treat a potential brain infection?

A No. I think it's a question of the standard of care would be if you feel like you're outside your range of your expertise, you usually get a consultation.

Q Do you have an opinion today as to whether or not Dr. Saxon has sufficient expertise to make a decision as to how to treat with antibiotic prophylactically John Parsons' potential brain infection of March 28, 1999 and at any point thereafter up to April 2, 1999?

A No.

Q Doctor, had sufficient symptoms and results of examination occurred on March 22, 1999 to cause Dr. Saxon to feel a further treatment was necessary of John Parsons, what type of radiographic images, if any, would the standard of care require John Parsons to undergo?

A Well, they were doing serial CAT scans, and it appeared the patient was improving. The other test you can do is an MRI scan depending on the consultation of the radiology department.

Q I'm not sure if it's -- your hearing me or my statement. I was referring to March 22, 1999. My understanding is --

A March 22. Repeat your question.

Q Assuming sufficient symptoms and results of the office examination of John Parsons occurred on March 22, 1999 to warrant Dr. Saxon to pursue additional forms of treatment of John Parsons, what treatment would the standard of care have required he undergo?

MR. SHEPARDSON: Object to the form of the

question.

A If there were sufficient symptoms in his judgment, do further testing. He probably would admit him to the hospital, and to get a CAT scan would be the next step.

BY MR. KOCIENDA:

Q What form of CAT scan would that be? Do you have any opinion of that, Doctor?

A No.

Q Would a consultation be required under the standard of care to determine what type of radiographic imaging was required to further treat John Parsons assuming sufficient symptoms and office results required sending to the hospital for such testing?

A You would do a --

MR. SHEPARDSON: Objection.

A -- standard CAT scan of the sinuses, as was done when he was in the emergency room.

MR. KOCIENDA: Okay. I think I'm done, but I'm just going to take a quick break if that's okay.

MR. SHEPARDSON: Fine.

(Off the record: 3:34 p.m. to 3:44 p.m.)

BY MR. KOCIENDA:

Q Doctor, you said you reviewed Dr., I think it was Lange and Dr. Lantner's deposition transcripts in the course of your review for this deposition?

MR. SHEPARDSON: Lander?

MR. KOCIENDA: Lantner.

A Dr. Lange was the neurosurgeon. I'm not sure of Dr. Lantner.

BY MR. KOCIENDA:

Q I believe Dr. Lantner was the author of the consultation of March 28, 1999, the neurosurgeon consultation. Do you need to look at that again, Doctor, to refresh your memory? Well, actually, you have the transcripts. You might as well look at them to see if that refreshes your memory, Exhibit 4.

A Lantner's, okay.

MR. SHEPARDSON: There's no question yet.

BY MR. KOCIENDA:

Q Do you remember reviewing that, Doctor?

A I do.

Q Doctor, have you ever requested from a neurosurgeon a consultation regarding the appropriate antibiotic and been told to consult an infectious disease expert instead?

A No.

Q What is your understanding as to what information a neurosurgeon consult would provide you as an ENT doctor in treating a potential brain infection?

MR. SHEPARDSON: Object to the form of the

question. You can answer it if you can.

A I expect them to provide me with appropriate treatment in terms of antibiotics or whatever else they did deem necessary.

BY MR. KOCIENDA:

Q Doctor, does the standard of care in treating a patient after FESS surgery who presents as John Parsons did on March 28, 1999 ever require a consultation of an infectious disease doctor?

A I think it ought to be in the judgment of the physicians at the time of admission of what type of infection they were dealing with, whether they're dealing with an infection and what type and basically the condition of the patient; or over the next few days in the hospital, if the patient isn't improving on the appropriate treatment, then you get a consultation to see if something could be changed.

Q Did the standard of care require, as in the case of John Parsons on March 28, 1999, when the neurosurgeon suggests possibly consulting with an infectious disease doctor, that that doctor do, in fact, consult with an infectious disease doctor?

A No.

MR. SHEPARDSON: Objection to the form of the question. You answered it. Objection to the form of the

question in terms of what was actually on the record, but you answered it.

A No, but I think the neurosurgical consultation I guess I'd say was fairly weak in terms of recommending anything.

BY MR. KOCIENDA:

Q You're referring to the March 28, 1999 consult in John Parsons' case?

A Correct.

Q Did the standard of care require, given the weakness of that consultation, that Dr. Saxon seek out an additional consultation from someone who would give him the information he was seeking?

A No. I think that consultation would give me the feeling that there was no big deal going on and they weren't worried about it too much, so just keep an eye on him.

Q What do you base that opinion on, Doctor?

A That everything was questioned and they say, "We'll see him in a week."

Q I'm sorry, Doctor, what portion -- is it solely based on language in the consult report?

A Correct.

Q What language are you referring to?

A It says: Question, consider antibiotic, question ID, follow-up one week. That would lead me to believe that

they're not really too worried about anything.

Q Doctor, what presentment would the standard of care require for an ear, nose and throat doctor with a patient such as John Parsons to seek an infectious disease consult at all?

A As I just said in the previous answer, if the patient's conditions seem to be deteriorating, there are signs of -- there was any sign of a situation where things were worsening, deteriorating and you wanted an opinion of how else the patient should be treated.

Q Doctor, going back to the time period between March 22, 1999 and March 28, 1999, have you ever been presented with a patient after FESS surgery who complained of headaches?

A All the time.

Q How about vomiting?

A That's fairly common.

Q Why is that common?

A Usually from Codeine, from the pain medication.

Q Do you know what type of Codeine prescription John Parsons was receiving at that time?

A No, I don't.

Q If I told you it was Tylox, would that -- do you remember that being the case, or do you have --

A It would be a common one that could cause nausea

and vomiting.

Q What are the ingredients of Tylox? Is Tylenol part of that?

A I believe Tylenol is part of it, and then there's, I believe, hydrocodone, which is a synthetic Codeine.

Q Nausea as well, is that a symptom of Tylox?

A Nausea and vomiting is semi-common with narcotics.

Q And sleeplessness, is that also a side effect of a narcotic?

MR. SHEPARDSON: Of what narcotic?

MR. KOCIENDA: Tylox.

A Either a side effect of a narcotic, or it can be usually from people -- people complain of that in terms of their nose being blocked after surgery and pain.

BY MR. KOCIENDA:

Q Doctor, at what level of complaints of headaches, vomiting and nausea would you send your patient to have radiographic imaging done in a hospital?

MR. SHEPARDSON: I'm going to object to the form of the question. I'll let him answer it, but he's answered this one about six different times.

MR. KOCIENDA: I'm asking the doctor personally, not the standard of care at this point.

A I can't quantify that. It really depends on looking at the patient in the office and trying to determine

if there's really something going on here or do they just have a low pain threshold.

Q Has a patient after FESS surgery which you've performed ever presented to you with headaches, vomiting, nausea without a fever and without bleeding or a CSF leak and you have sent them to the hospital for radiographic imaging?

A No.

Q Doctor, you had said that the standard of care required that Dr. Saxon assess John Parsons when he presented on March 22 and March 26, 1999 as to reviewing his complaint of headaches, nausea, vomiting and sleeplessness. What in particular does the standard of care require that Dr. Saxon be looking for in assessing the patient's rendition of those symptoms?

A I've covered this a few times, but you're looking for fever, any orbital changes, any change in memory, neck stiffness, bleeding, spinal fluid leak.

Q Assuming those were not present, you had said that Dr. Saxon, under the standard of care, is required to review the subjective symptoms as they're explained by the patient to him. What is it in reviewing the patient in explaining those symptoms that the doctor, Dr. Saxon in this case, should have been looking for as far as reviewing those symptoms?

MR. SHEPARDSON: Objection to the form of the question as being convoluted, unanswerable.

BY MR. KOCIENDA:

Q Let me back up, then. Doctor, correct me if I'm wrong, I believe you said the standard of care required Dr. Saxon on March 22 and March 26 to assess the symptoms being related to him by John and Alana Parsons in the presence of the patient, correct?

A Correct.

Q Okay. In assessing those symptoms, the symptoms being headaches, increasing headaches, vomiting, nausea, what is it Dr. Saxon should have been looking for under the standard of care with regard to assessing the patient's rendition of those symptoms and those symptoms only?

MR. SHEPARDSON: Object to the form of the question.

A That's really hard to answer, because it really depends on the assessment of the patient in the office, and you're not really looking for anything specific, because they're all subjective symptoms. If you cancel out all the things I mentioned before which would be objective symptoms and you're just dealing with how much headache does a person have and what do they look like, and I don't think there's a scale for that.

Q Is there ever a level of headaches, vomiting and

nausea without the objective symptoms that you would agree the standard of care required the patient to be sent to the hospital for radiographic imaging?

A No.

MR. SHEPARDSON: That's been -- he answered it. Objection.

BY MR. KOCIENDA:

Q Is there any negative downfall for sending a patient to have radiographic imaging done?

MR. SHEPARDSON: Objection.

A No. Cost.

BY MR. KOCIENDA:

Q Does Hartford Hospital have infectious disease doctors available for consultation?

A Yes.

Q Have you ever consulted with infectious disease doctors as far as treating a post FESS patient?

A Not that I can remember specifically, no.

MR. KOCIENDA: I think that's all I have.

MR. SHEPARDSON: No questions.

MR. KOCIENDA: For the record, exhibits --

MR. SHEPARDSON: One of those is yours. How many of those are actually yours?

MR. KOCIENDA: A couple of them.

MR. SHEPARDSON: Whatever are yours, do you want

to keep them and make copies?

MR. KOCIENDA: Yes. For the record, I have Exhibit 1 and Exhibit 5, Exhibit 1 being the re-notice of taking the deposition, and Exhibit 5 being the disclosure of expert witnesses. And I believe Dr. Carpenter has Exhibit 3 which is the medical records.

THE WITNESS: 3, 3-A and 2.

MR. KOCIENDA: 3-A, which is the memorandum, and 2, which is the curriculum vitae, and Exhibit 4, which is the stack of deposition transcripts. Thank you, Doctor.

(Deposition concluded: 3:56 p.m.)

JURAT

_____
Robert Carpenter, M.D., M.S., F.A.C.S.

Subscribed to and sworn before me on
this _____ day of _____ 2003.

_____

My Commission Expires:

T. Pratt

ERRATA SHEET

Page	Line	From	To

_____ _____
Date Robert Carpenter, M.D., M.S., F.A.C.S.

Sworn to before me this_____day
of_____, 2003.

_____
Notary Public

My Commission Expires:_____

T. Pratt

C E R T I F I C A T I O N

STATE OF CONNECTICUT:
COUNTY OF HARTFORD:

I, TIFFANY V. PRATT, a Notary Public duly commissioned and qualified in and for the State of Connecticut, do hereby certify that pursuant to Re-Notice there came before me on the 10th day of January, 2003, the following named person, to wit: ROBERT CARPENTER, M.D., M.S., F.A.C.S., who was by me duly sworn to testify to the truth and nothing but the truth; that he was thereupon examined upon his oath; that the examination was reduced to writing by computer under my supervision and that this transcript is a true record of the testimony given by said witness.

I further certify that Exhibits 1 and 5 were retained by Attorney Kocienda, Exhibits 2, 3, 3-A and 4 were retained by the witness.

I further certify that I am neither attorney nor counsel for, nor related to, nor employed by any of the parties to the action in which this deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, or financially interested in the outcome of this action.

In witness whereof I have hereunto set my hand

this_____day of_____, 2003.

_____
Tiffany V. Pratt
Notary Public

My Commission expires
July 31, 2005

BRANDON-SMITH REPORTING SERVICE, LLC
44 Capitol Avenue
Hartford, CT 06106
(860) 549-1850

_____, 2003

Herbert J. Shepardson, Esquire
Cooney, Scully and Dowling
Hartford Square North
10 Columbus Boulevard
Hartford, Connecticut 06106-1944

Dear Mr. Shepardson:

Enclosed please find your copy of the deposition transcript of ROBERT CARPENTER, M.D., M.S., F.A.C.S., taken on January 10, 2003.

The original jurat and errata sheets are also enclosed. Please note that the witness is allowed 30 days to read and sign the deposition as the rules provide.

Please return only the original notarized jurat and errata sheets to Attorney Kocienda for filing. Thank you for your prompt attention to this matter.

If you have any questions, please feel free to call me.

Sincerely yours,

Tiffany V. Pratt, LSR 00128
Brandon-Smith Reporting Service, LLC

BRANDON-SMITH REPORTING SERVICE, LLC
44 Capitol Avenue
Hartford, CT 06106
(860) 549-1850

CASE NAME: John K. Parsons and Alana B. Parsons
vs.
Ronald J. Saxon, M.D. and Saxon & Nova, P.C.

DEPOSITION OF: Robert Carpenter, M.D., M.S., F.A.C.S.
DATE: January 10, 2003

The following items checked pertain to the above-captioned case:

* ORIGINAL TRANSCRIPT enclosed in protective, sealed white envelope.
_____ EXHIBITS attached to ORIGINAL TRANSCRIPT.
_____ READING/SIGNING WAIVED * NOT WAIVED

When you receive the Notarized JURAT and ERRATA SHEET from the deponent, DO NOT open the sealed envelope. Just attach notarized sheets to the outside of said envelope and properly retain for the Court.

Signed _____
Tiffany V. Pratt
Brandon-Smith Reporting Service, LLC

Date Sealed _____