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STATE OF MICHIGAN

IN THE SUPREME COURT

JOELYNN T. STOKES, Successor Personal Representative of the Estate of LINDA HORN, deceased,

Plaintiff-Appellee,

vs.

MICHAEL J. SWOFFORD, D.O. and SOUTHFIELD RADIOLOGY ASSOCIATES, PLLC, Jointly and Severally
Defendants-Appellants.

Supreme Court No. 162302
Court of Appeals No. 349522

Mecosta Circuit No: 2018-164148-NH
Hon. Cheryl A. Matthews

Filed Under AO 2019-6

Joint Appendix

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APPENDIX 1

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

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STATE OF MICHIGAN

COURT OF APPEALS

ESTATE OF LINDA HORN, by JOELYNN T. STOKES, Personal Representative,

Plaintiff-Appellant,

v

MICHAEL J. SWOFFORD, D.O., and SOUTHFIELD RADIOLOGY ASSOCIATES, PLLC,

Defendants-Appellees.

FOR PUBLICATION
October 22, 2020
9:00 a.m.

No. 349522
Oakland Circuit Court
LC No. 2018-164148-NH

Before: BOONSTRA, P.J., and MARKEY and HOOD, JJ.

MARKEY, J.

This is a medical malpractice action involving the death of Linda Horn allegedly caused by the negligence of defendant Michael J. Swofford, D.O., with respect to his interpretation of a cranial computerized tomography (CT) scan and his communications to other medical personnel based on that interpretation. As plaintiff, Horn's estate, through personal representative Joelynn T. Stokes, commenced the suit and now appeals by leave granted[1] the trial court's order denying plaintiff's motion to confirm that the one most relevant specialty in this case is neuroradiology. Instead, the trial court sided with defendants and concluded that diagnostic radiology is the one most relevant specialty. We reverse and remand for further proceedings.

I. BACKGROUND FACTS AND PROCEDURAL HISTORY

According to plaintiff, Horn, who was 24 years old when she died, had a history of pseudotumor cerebri, which occurs when pressure inside the skull increases for no obvious reason. As a result, Horn suffered frequent headaches. To address her medical condition, a "posterior parietal approach shunt catheter" was implanted in her head on February 22, 2013, to remove

[1] *Estate of Horn v Swofford*, unpublished order of the Court of Appeals, entered October 10, 2019 (Docket No. 349522).

cerebrospinal fluid (CSF). On February 26, 2013, Horn went to the emergency room complaining of a headache, nausea, and vomiting. A cranial CT scan was performed, and the shunt appeared to be stable and functioning properly. Horn was given pain medication and discharged. On March 2, 2013, Horn returned to the emergency room by ambulance. She was experiencing a severe headache, nausea, and vomiting. Another cranial CT scan was performed. The emergency room physician ordered the CT scan, a radiologist dictated the scan, and Dr. Swofford verified the results of the CT scan. The CT scan was interpreted as showing that the "[b]ilateral lateral ventricles ha[d] increased in size since [the] prior study, especially the right[,]" which "[c]orrelate[d] clinically for [a] malfunctioning shunt." After receiving the interpretation of the CT scan, the emergency room doctor performed a lumbar puncture to remove CSF and relieve pressure on Horn's brain.[2] Unfortunately, Horn's condition continued to deteriorate and on March 4, 2013, she died. An autopsy report indicated that Horn "showed a diffusely swollen brain without evidence of inflammation or infection."

Plaintiff filed a complaint alleging medical malpractice by Dr. Swofford and his practice group, defendant Southfield Radiology Associates, PLLC (SRA). Plaintiff alleged as follows regarding Dr. Swofford:

> That Defendant SWOFFORD . . . was negligent inter alia in the following particulars in that a licensed and practicing Neuroradiologist, when encountering a patient exhibiting the history, signs and symptoms such as those demonstrated by [Horn] had a duty to timely and properly:
>
> a. Possess the degree of reasonable care, diligence, learning, judgment and skill ordinarily and/or reasonably exercised and possessed by a board-certified Neuro Radiologist under the same or similar circumstances;
>
> b. Evaluate, interpret, report and intervene regarding Ms. Horn's head CT of March 2, 2013;
>
> c. Acknowledge the CT scan of March 2, 2013[,] showed a dramatic change when compared to the February 26, 2013 CT scan, that required neurological emergent surgery, intervention;
>
> d. Acknowledge and appreciate that the CT scan of March 2, 2013[,] showed that the ventricular system had become severely dilated with subtle areas of low density adjacent to the ventricles that suggest shunt obstruction and the transependymal flow of CSF;
>
> e. Acknowledge and appreciate that findings on the CT scan of March 2, 2013[,] indicated acute obstructive hydrocephalus which is a neurological emergency;

[2] While at the hospital on March 2, 2013, Horn suffered three seizures.

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f. Acknowledge, appreciate and communicate that the brain in the CT scan of March 2, 2013[,] demonstrated downward transtentorial herniation and diffuse cerebral edema, all of which portent a devastating neurological injury in the absence of an urgent neurosurgical intervention;

g. Urgently communicate the head CT findings to the ordering physician and advise the ER physician that the patient must be treated by neurosurgery;

h. Notify and consult with neurosurgery;

i. Immediately advise the ER doctor that the findings on the March 2, 2013 CT of the head must be emergently addressed by neurosurgery tapping of the shunt or a placement of an EVD [external ventricular drain] and that he should avoid performance of a lumbar puncture because it would likely exacerbate herniation; [and]

j. Refrain from other acts of negligence which may become known through the course of discovery.

Plaintiff attached an affidavit of merit executed by Dr. Scott B. Berger, M.D., Ph.D., in which he asserted that he was a licensed medical physician specializing and board certified in the field of neuroradiology. Dr. Berger averred that he had spent the majority of his professional time in the year prior to the incident practicing neuroradiology or teaching neuroradiology. The affidavit of merit contained averments that mimicked the allegations in the complaint quoted above. Defendants filed their answer and an affidavit of meritorious defense executed by Dr. Swofford in which he averred that he was a board-certified diagnostic radiologist at the time of the events giving rise to plaintiff's action. Dr. Swofford contended that the standard of care in this matter required him to provide treatment equivalent to that performed by a reasonable board-certified diagnostic radiologist of ordinary learning, judgment, and skill under the same or similar circumstances. Dr. Swofford opined that he had complied with the appropriate standard of care with respect to the interpretation of Horn's cranial CT scan and his communications based on that interpretation.

Plaintiff moved to confirm that neuroradiology was the one most relevant specialty or subspecialty. Defendants argued in response that the one most relevant specialty was diagnostic radiology, not neuroradiology. The trial court denied plaintiff's motion and ruled that the one most relevant specialty in this case was diagnostic radiology. The court denied plaintiff's motion for reconsideration, and this appeal ensued.

II. ANALYSIS

A. STANDARDS OF REVIEW

This case turns on the interpretation of MCL 600.2169, and "[t]he construction of MCL 600.2169 presents a question of law subject to de novo review." *Crego v Edward W Sparrow Hosp Ass'n*, 327 Mich App 525, 531; 937 NW2d 380 (2019); see also *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006). We review for an abuse of discretion a trial court's decision concerning the qualifications of a proposed expert witness to testify. *Crego*, 327 Mich

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App at 531. When a trial court's decision falls outside the range of principled and reasonable outcomes, the court abuses its discretion. *Id.* A court necessarily abuses its discretion when a particular ruling constitutes an error of law. *Id.*

B. STATUTORY CONSTRUCTION

The *Crego* panel recited the principles that govern the construction of a statute, explaining as follows:

> When interpreting a statute, the primary rule of construction is to discern and give effect to the Legislature's intent, the most reliable indicator of which is the clear and unambiguous language of the statute. Such language must be enforced as written, giving effect to every word, phrase, and clause. Further judicial construction is only permitted when statutory language is ambiguous. When determining the Legislature's intent, statutory provisions are not to be read in isolation; rather, they must be read in context and as a whole. [*Crego*, 327 Mich App at 531 (quotation marks and citations omitted).]

C. DISCUSSION

1. MEDICAL MALPRACTICE – GOVERNING LAW

"The plaintiff in a medical malpractice action bears the burden of proving: (1) the applicable standard of care, (2) breach of that standard by defendant, (3) injury, and (4) proximate causation between the alleged breach and the injury." *Cox v Bd of Hosp Managers for the City of Flint*, 467 Mich 1, 10; 651 NW2d 356 (2002) (quotation marks and citation omitted). Failure to establish any one of these four elements is fatal to a plaintiff's medical malpractice suit. *Id*. The "standard of care is founded upon how other doctors in that field of medicine would act and not how any particular doctor would act." *Cudnik v William Beaumont Hosp*, 207 Mich App 378, 382; 525 NW2d 891 (1994) (quotation marks and citation omitted).

MCL 600.2912d(1) requires a medical malpractice plaintiff to "file with the complaint an affidavit of merit signed by a health professional who the plaintiff's attorney reasonably believes meets the requirements for an expert witness under section 2169." And in pertinent part, MCL 600.2169 provides:

> (1) In an action alleging medical malpractice, a person shall not give expert testimony on the appropriate standard of practice or care unless the person is licensed as a health professional in this state or another state and meets the following criteria:
>
> (a) If the party against whom or on whose behalf the testimony is offered is a specialist, specializes at the time of the occurrence that is the basis for the action in the same specialty as the party against whom or on whose behalf the testimony is offered. However, if the party against whom or on whose behalf the testimony is offered is a specialist who is board certified, the expert witness must be a specialist who is board certified in that specialty.

(b) Subject to subdivision (c)[inapplicable], during the year immediately preceding the date of the occurrence that is the basis for the claim or action, devoted a majority of his or her professional time to either or both of the following:

(*i*) The active clinical practice of the same health profession in which the party against whom or on whose behalf the testimony is offered is licensed and, if that party is a specialist, the active clinical practice of that specialty.

(*ii*) The instruction of students in an accredited health professional school or accredited residency or clinical research program in the same health profession in which the party against whom or on whose behalf the testimony is offered is licensed and, if that party is a specialist, an accredited health professional school or accredited residency or clinical research program in the same specialty.

2. CONSTRUCTION OF MCL 600.2169 – THE MICHIGAN SUPREME COURT'S OPINION IN *WOODARD*

"[I]f a defendant physician is a specialist, the plaintiff's expert witness must have specialized in the same specialty as the defendant physician at the time of the alleged malpractice." *Woodard*, 476 Mich at 560-561. Additionally, plaintiff's expert is required to hold the same board certification as the defendant doctor if in fact the physician is board certified in the pertinent specialty. *Id*. While specialties and board certifications must match, not all of them are required to match. *Id.* at 558. "Because an expert witness is not required to testify regarding an inappropriate or irrelevant standard of medical practice or care, § 2169(1) should not be understood to require such witness to specialize in specialties and possess board certificates that are not relevant to the standard of medical practice or care about which the witness is to testify." *Id.* at 559. The *Woodard* Court noted that the language of MCL 600.2169(1)(a) only requires a single specialty to match, not multiple specialties. *Id.* In other words, "the plaintiff's expert does not have to match all of the defendant physician's specialties; rather, the plaintiff's expert only has to match the *one most relevant specialty*." *Id*. at 567-568 (emphasis added). The specialty engaged in by the defendant doctor during the course of the alleged malpractice constitutes the one most relevant specialty. *Id*. at 560.

In *Woodard*, our Supreme Court explored the meaning of the terms "specialty" and "specialist" as used in MCL 600.2169(1)(a), along with examining the concept of a subspecialty, stating:

> Both the dictionary definition of "specialist" and the plain language of § 2169(1)(a) make it clear that a physician can be a specialist who is not board certified. They also make it clear that a "specialist" is somebody who can potentially become board certified. Therefore, a "specialty" is a particular branch of medicine or surgery in which one can potentially become board certified. Accordingly, if the defendant physician practices a particular branch of medicine or surgery in which one can potentially become board certified, the plaintiff's expert must practice or teach the same particular branch of medicine or surgery.

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Plaintiffs argue that § 2169(1)(a) only requires their expert witnesses to have specialized in the same specialty as the defendant physician, not the same subspecialty. We respectfully disagree. . . . [A] "subspecialty" is a particular branch of medicine or surgery in which one can potentially become board certified that falls under a specialty or within the hierarchy of that specialty. A subspecialty, although a more particularized specialty, is nevertheless a specialty. Therefore, if a defendant physician specializes in a subspecialty, the plaintiff's expert witness must have specialized in the same subspecialty as the defendant physician at the time of the occurrence that is the basis for the action. [*Woodard*, 476 Mich at 561-562.]

3. DR. SWOFFORD AND DR. BERGER – CREDENTIALS AND DIAGNOSTIC RADIOLOGY VERSUS NEURORADIOLOGY

There is no dispute that Dr. Swofford was a board-certified diagnostic radiologist when he interpreted Horn's cranial CT scan on March 2, 2013. Dr. Swofford graduated from medical school in 1992, was a resident in diagnostic radiology at a hospital from 1993 to 1997, participated in a one-year fellowship in neuroradiology from July 1997 to June 1998, was employed as a staff radiologist from 1998 to 2006 at a couple of hospitals, began working at SRA in 2006, and was currently a partner at SRA. Dr. Swofford obtained a certificate of added qualification in neuroradiology in 2002, but the certificate had expired absent renewal by the time he interpreted Horn's CT scan. Dr. Swofford was chief of neuroradiology during a hospital stint from 2002 to 2006.

In his deposition, Dr. Swofford testified, "I read approximately 25 percent of neurology-related . . . studies, and 75 percent based on diagnostic general radiology." He additionally testified that radiologists at SRA interpret neuroimages even though they have no extra certification in neuroradiology. The parties agree that diagnostic radiologists are certified and permitted to interpret neuroimages. Dr. Swofford testified that he would not hold himself out to be a neuroradiologist.

Dr. Berger is board certified in diagnostic radiology, received a certificate of added qualification in neuroradiology in 2000, renewed the certificate in 2010, and was in the process of once again renewing the certificate of added qualification in neuroradiology at the time of his 2019 deposition.[3] Dr. Berger testified that he spends the "vast majority" of his time practicing

[3] Dr. Berger testified that technically there is no board certification in neuroradiology. Instead, a certificate of added qualification in neuroradiology is available. But the *Woodard* Court ruled that for purposes of MCL 600.2169, there effectively is no difference between being board certified and having a certificate of added or special qualification:

> Because a certificate of special qualifications is a document from an official organization that directs or supervises the practice of medicine that provides evidence of one's medical qualifications, it constitutes a board certificate. Accordingly, if a defendant physician has received a certificate of special

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neuroradiology. In his deposition, he indicated that 90% to 95% of his practice consisted of neuroradiology and that the vast majority of his 25-year career had been focused on neuroradiology. Dr. Berger explained that "a CT scan of the head would fall into the category of a neuroimaging study." There is no dispute on that assertion. According to Dr. Berger, while every diagnostic radiologist is trained to interpret cranial CT scans, neuroradiologists have more expertise on the matter than diagnostic radiologists.[4] To obtain and maintain a certificate of added qualification in neuroradiology, a radiologist must have a "certain amount of reads per year" relative to neuroimages and must pass an examination establishing that he or she has a high level of proficiency in reading neuroradiological images.

4. APPLICATION OF FACTS TO LAW

Because the branch of medicine known as diagnostic radiology is one that provides or allows for board certification, diagnostic radiology is a "specialty" and a diagnostic radiologist is a "specialist" for purposes of MCL 600.2169(1). See *Woodard*, 476 Mich at 561-562. Taking into consideration the deposition testimony and recognizing that a physician can effectively become board certified in neuroradiology when a certificate of added qualification is bestowed on a doctor, see *id.* at 562, 565, it is clear that neuroradiology is also a "specialty" under the statute and more particularly a "subspecialty" of diagnostic radiology. The difficulty that arises in this case is that while no longer a board-certified, or its equivalent, neuroradiologist, Dr. Swofford was undoubtedly engaged in interpreting a neuroimage when he examined Horn's CT scan on March 2, 2013. Horn's CT scan could have been interpreted by a neuroradiologist or a diagnostic radiologist. We conclude that *Reeves v Carson City Hosp (On Remand)*, 274 Mich App 622; 736 NW2d 284 (2007), provides some guidance. In *Reeves*, this Court addressed the following set of circumstances:

> Catherine R. and Anthony L. Reeves filed this medical malpractice action against several defendants, including Lynn Squanda, D.O., who is board-certified in family medicine, but was working in the emergency room at the time of the alleged malpractice. The Reeveses claimed that Dr. Squanda and others were negligent in failing to timely diagnose and treat Catherine Reeves's ectopic pregnancy. The Reeveses filed an affidavit of merit signed by Eric Davis, M.D., who is board-certified in emergency medicine, but not board-certified in family medicine. [*Id.* at 623.]

> qualifications, the plaintiff's expert witness must have obtained the same certificate of special qualifications in order to be qualified to testify under § 2169(1)(a). [*Woodard*, 476 Mich at 565.]

[4] Dr. Berger did testify that it was his "opinion that when it comes to a head CT, . . . the standard of care that applies to a neuroradiologist or a diagnostic radiologist is the same, because they are trained to interpret those studies as a resident."

The trial court in *Reeves* ruled that Dr. Davis was not qualified to give expert testimony against Dr. Squanda, but this Court vacated the trial court's order. *Id.* at 624. The *Reeves* panel reasoned and held:

> In sum, because Dr. Squanda was practicing emergency medicine at the time of the alleged malpractice and potentially could obtain a board certification in emergency medicine, she was a "specialist" in emergency medicine under the holding in *Woodard*. Thus, plaintiffs would need a specialist in emergency medicine to satisfy MCL 600.2169; Dr. Davis, as a board-certified emergency medicine physician, would satisfy this requirement. However, the specialist must have also devoted the majority of his professional time during the preceding year to the active clinical practice of emergency medicine or the instruction of students. Because there is no information in the record regarding what comprised the majority of the expert's professional time, a remand for a determination on this issue is necessary. [*Id.* at 630.[5]]

Indeed, as we quoted earlier, the Supreme Court in *Woodard*, 476 Mich at 561-562, observed that "if the defendant physician practices a particular branch of medicine or surgery in which one can potentially become board certified, the plaintiff's expert must practice or teach the same particular branch of medicine or surgery."

In this case, Dr. Swofford was, in fact, practicing neuroradiology when he examined and interpreted neuroimages—the CT scan of Horn's skull—and he potentially could obtain, as he had done in the past, board certification in neuroradiology. And therefore Dr. Swofford was acting or practicing as a "specialist" or "subspecialist" in neuroradiology, at least for purposes of MCL 600.2169(1) as interpreted by *Woodard*. Although Dr. Swofford was also practicing diagnostic radiology when he interpreted Horn's CT scan considering that diagnostic radiologists are credentialed to interpret neuroimages, neuroradiology was the one most relevant specialty.

We do find it necessary to distinguish the facts in this case from those presented in *Woodard.* In *Woodard*, the defendant physician was board certified in pediatrics and also had certificates of special qualifications in pediatric critical care medicine and neonatal-perinatal medicine, but the plaintiff's proposed expert was only board certified in pediatrics and had no certificates of special qualifications. *Woodard*, 476 Mich at 554-555. The Supreme Court held that the one most relevant specialty in the case was pediatric critical care medicine; therefore, the

---

[5] Defendants argue that *Reeves* is distinguishable because there the defendant doctor was practicing outside her board certification, and it did not involve, as here, the overlap between a specialty and a subspecialty. We disagree. The whole point of *Reeeves* is that if a defendant physician was practicing a particular branch of medicine when the malpractice allegedly occurred, and board certification was available for the practice of that branch of medicine, then the physician was engaged in a "specialty" for purposes of MCL 600.2169, and the plaintiff's expert must have practical and/or teaching experience in that specialty. We see no difference in relation to the analysis if the case entails a defendant family doctor actually practicing emergency medicine or if the case regards a diagnostic radiologist actually practicing, more specifically, neuroradiology—the overlap in the latter is not a basis to jettison the principle.

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plaintiff's expert did not satisfy the same specialty requirement of MCL 600.2169(1)(a). *Id.* at 576. In this lawsuit, Dr. Swofford did not practice a specialty or have a board certification that was lacking in Dr. Berger.

In *Hamilton v Kuligowski*, the companion case to *Woodard*, the underlying facts were as follows:

> Plaintiff alleges that the defendant physician failed to properly diagnose and treat the decedent while she exhibited prestroke symptoms. The defendant physician is board certified in general internal medicine and specializes in general internal medicine. Plaintiff's proposed expert witness is board certified in general internal medicine and devotes a majority of his professional time to treating infectious diseases, a subspecialty of internal medicine. [*Woodard*, 476 Mich at 556.]

Our Supreme Court held that the plaintiff's proposed expert did not qualify to give testimony on the standard of care under MCL 600.2169, noting that the expert himself acknowledged that he was "not sure what the average internist sees day in and day out." *Id.* at 577-578. As opposed to the situation in *Hamilton* in which the expert witness's subspecialty in treating infectious diseases was not pertinent to diagnosing prestroke symptoms, Dr. Berger's credentials as a neuroradiologist were extremely relevant to the interpretation of neuroimages. Dr. Berger certainly knows what the average radiologist sees day in and day out. Stated differently, the defendant doctor in *Hamilton* was not practicing infectious disease medicine in treating the decedent, but Dr. Swofford was plainly practicing neuroradiology in interpreting decedent Horn's CT scan.

Finally, although it is an unpublished opinion, we feel compelled to touch on this Court's decision in *Higgins v Traill*, unpublished per curiam opinion of the Court of Appeals, issued July 30, 2019 (Docket No. 343664), because it is a very similar case. In *Higgins*, this Court affirmed the trial court's ruling in the context of the following facts:

> In October 2013, plaintiff, Joan Higgins, collapsed in her home. When Emergency Medical Services (EMS) arrived, Higgins could not speak, had right-sided weakness, and was experiencing facial droop. Higgins was transported to St. John Macomb-Oakland Hospital. Relevant to this appeal, plaintiffs argue that Dr. Fry read a CT angiogram of Higgins's head as normal when it actually showed an occlusion in the middle cerebral artery. Plaintiffs contend that Dr. Fry's failure to properly read the CT angiogram delayed Higgins's treatment, which caused her to experience the full effect of an ischemic stroke and resulted in her sustaining permanent neurological deficits.
>
> Following discovery, defendants moved for summary disposition under MCR 2.116(C)(10), arguing that plaintiffs' experts, Dr. Meyer and Dr. Zoarski, were not qualified to provide standard-of-care testimony under MCL 600.2169. Specifically, defendants asserted that the specialty that Dr. Meyer and Dr. Zoarski spent the majority of their time practicing—neuroradiology—did not match Dr. Fry's specialty—diagnostic radiology—so they were not qualified to testify against Dr. Fry. Plaintiffs, however, maintained that the specialty matched because at the

> time of the alleged malpractice Dr. Fry was practicing neuroradiology, not diagnostic radiology. The trial court agreed with plaintiffs, holding that Dr. Meyer and Dr. Zoarski were qualified to testify as experts against Dr. Fry under MCL 600.2169 and MRE 702, and denying defendants' motion for summary disposition. [*Higgins*, unpub op at 2.]

As we did above, the *Higgins* panel relied on *Woodard* and *Reeves* in affirming the trial court's ruling. *Higgins*, unpub op at 4-6. The Court observed that when defendant Dr. Fry was reading the brain angiogram, "he was engaged in the practice of neuroradiology." *Id.* at 4. The Court held that it could "discern no error in the court's determination that the relevant specialty was neuroradiology because that was what Dr. Fry was practicing when he read the CT angiogram." *Id.* We agree with this Court's ruling and reasoning in *Higgins*.[6] Moreover, on application for leave to appeal in *Higgins*, three Justices voted to deny leave, three Justices voted to direct oral argument on just the application, and one Justice did not participate due to a familial relationship. *Higgins v Traill*, 941 NW2d 670 (2020). Accordingly, the application for leave to appeal was denied. *Id.* Based on the facts and the case law, we conclude at this juncture that MCL 600.2169(1), as construed in *Woodard*, *Reeves*, and *Higgins*, supports our ruling.

We reverse and remand for proceedings consistent with this opinion. We do not retain jurisdiction. Having fully prevailed on appeal, plaintiff may tax costs under MCR 7.219.

/s/ Jane E. Markey
/s/ Karen M. Fort Hood

[6] "Although MCR 7.215(C)(1) provides that unpublished opinions are not binding under the rule of stare decisis, a court may nonetheless consider such opinions for their instructive or persuasive value." *Cox v Hartman*, 322 Mich App 292, 307; 911 NW2d 219 (2017). Additionally, we agree with the *Higgins* panel's reasoning in rejecting the contention that the Supreme Court implicitly overruled *Reeves* in an order in *Estate of Jilek v Stockson*, 490 Mich 961 (2011). *Higgins*, unpub op at 6.

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APPENDIX 2

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If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN

COURT OF APPEALS

ESTATE OF LINDA HORN, by JOELYNN T. STOKES, Personal Representative,

Plaintiff-Appellant,

v

MICHAEL J. SWOFFORD, D.O., and SOUTHFIELD RADIOLOGY ASSOCIATES, PLLC,

Defendants-Appellees.

FOR PUBLICATION
October 22, 2020

No. 349522
Oakland Circuit Court
LC No. 2018-164148-NH

Before: BOONSTRA, P.J., and MARKEY and HOOD, JJ.

BOONSTRA, P.J. (*concurring*).

I concur in the majority opinion. I write separately simply to encourage our Supreme Court, in this or another appropriate case, to clarify the law in this area. I note that while this case turns largely on the Supreme Court's decision in *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006), by which we are bound, that decision featured no less than four opinions, including two concurring opinions (one of which was authored by the author of the four-Justice majority opinion) and a three-Justice dissent that maintained that it actually was the majority opinion (by virtue of the second concurrence). Moreover, this Court's unpublished decision in *Higgins v Traill*, unpublished per curiam opinion of the Court of Appeals, issued July 30, 2019 (Docket No. 343664), featured a separate concurring opinion by Judge GLEICHER in which she maintained that *Woodard*'s analysis was faulty in certain respects and should be reconsidered. Although the Supreme Court subsequently denied leave to appeal in *Higgins*, it did so on an evenly-split 3-3 vote, with one Justice not participating. And there remains disagreement—which the Supreme Court could put to rest, one way or another—about whether its order in *Estate of Jilek v Stockson*, 490 Mich 961 (2011), implicitly overruled *Reeves v Carson City Hosp (On Remand)*, 274 Mich App 622; 736 NW2d 284 (2007).

For these reasons, I concur in the majority opinion, but encourage our Supreme Court to provide much-needed clarity in this complex area of law.

/s/ Mark T. Boonstra

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APPENDIX 3

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FILED Received for Filing Oakland County Clerk 6/14/2019 9:41 AM

STATE OF MICHIGAN IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

STOKES,JOELYNN,T, Plaintiff,
V
SWOFFORD,MICHAEL,J, Defendant,

NO: 2018-164148-NH
HON. CHERYL A. MATTHEWS

In the matter of:

ORDER REGARDING MOTION

Motion Title: **PLAINTIFF'S MOTION TO CONFIRM THE ONE MOST RELEVANT SPECIALTY [NEURORADIOLOGY] OR SUBSPECIALTY IN THE ABOVE CAPTIONED MATTER**

The above named motion is:

- ☐ **granted.**
- ☐ **granted in part, denied in part.**
- ☒ **denied.**
- ☐ **for the reasons stated on the record.**

In addition: The Court took the above titled motion under advisement on June 12, 2019.

The one most relevant specialty is diagnostic radiology.

IT IS SO ORDERED.

DATED: 06/13/2019

/s/ Cheryl Matthews
HON. CHERYL A. MATTHEWS AW
Circuit Court Judge

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APPENDIX 4

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STATE OF MICHIGAN IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

STOKES,JOELYNN,T, Plaintiff,
V
SWOFFORD,MICHAEL,J, Defendant,

NO: 2018-164148-NH
HON. CHERYL A. MATTHEWS

In the matter of:

ORDER REGARDING MOTION

Motion Title: **PLAINTIFF'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER ON PLAINTIFF'S MOTION TO CONFIRM THE ONE MOST RELEVANT SPECIALTY IN THE ABOVE CAPTIONED MATTER, ENTERED ON JUNE 13, 2019**

The above named motion is:

- [ ] **granted.**
- [ ] **granted in part, denied in part.**
- [x] **denied.**
- [ ] **for the reasons stated on the record.**

In addition: The Court finds Higgins v St John Providence, unpublished per curiam opinion of the Court of Appeals, issued July 30, 2019 (Docket No. 343664), to be persuasive. In this matter, like in Higgins, evidence and legal authority exists to support both views of the relevant specialty and standard of care. However, because sufficient evidence and authority exists to support the Defendants' view, the Court did not commit palpable error. Further, Higgins is non-binding on this Court and does not compel this Court to reach a different result. See MCR 2.119(F)(3). The Court again concludes that the most relevant specialty, and the standard of care at issue, is the standard of care practiced by a diagnostic radiologist.

In addition, the Defendants' motion to compel the deposition of Dr. Jeffrey Silverman is granted. The Plaintiff shall promptly coordinate with the Defendants to schedule the deposition of Dr. Silverman within 14 days of the date of this order. To clarify, the deposition may take place after 14 days so long as it is scheduled within 14 days.

IT IS SO ORDERED.

DATED: 09/19/2019

/s/ Cheryl Matthews

HON. CHERYL A. MATTHEWS KCY
Circuit Court Judge

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APPENDIX 5

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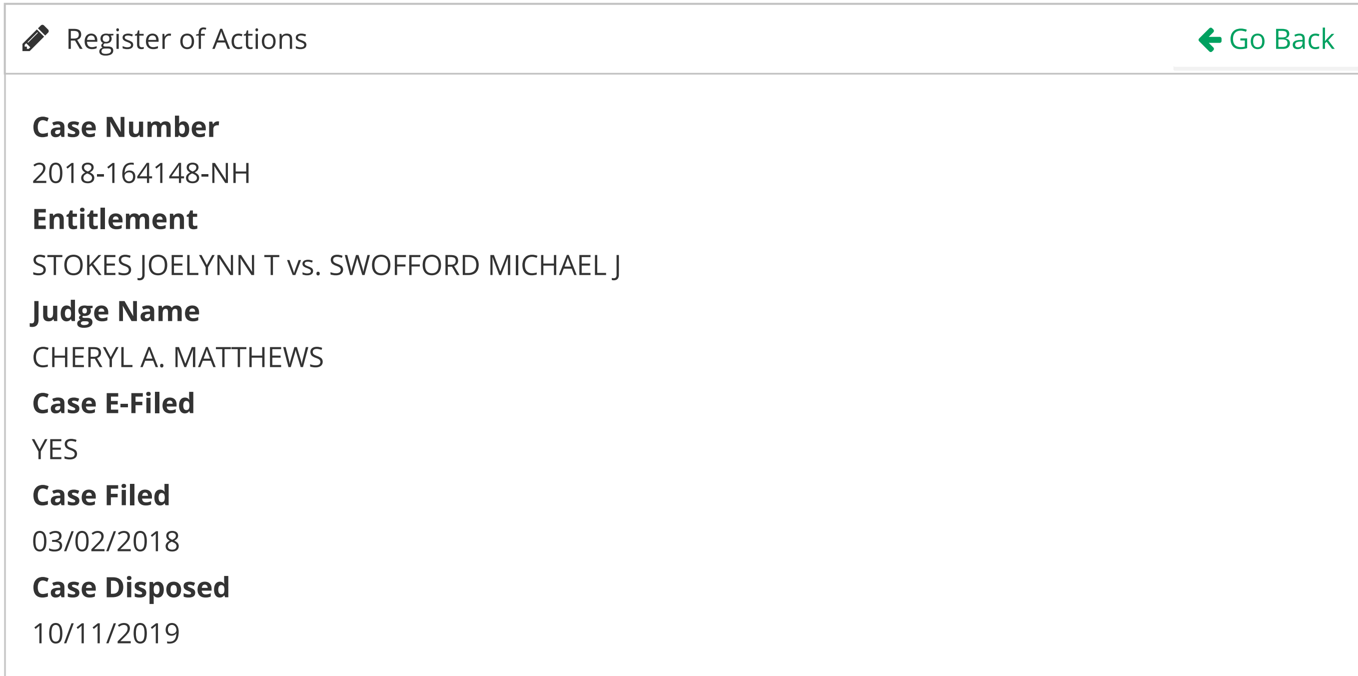
Court Explorer



Register of Actions

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Case Number
2018-164148-NH
Entitlement
STOKES JOELYNN T vs. SWOFFORD MICHAEL J
Judge Name
CHERYL A. MATTHEWS
Case E-Filed
YES
Case Filed
03/02/2018
Case Disposed
10/11/2019

Date	Code	Desc
11/04/2021	CPL	CONTINUED PENDING OTHER LITIGATION
11/04/2021	APC	ADJ-COUNSEL 11102021 TO 04132022 BY NOTICE
11/04/2021	APR	DATE SET FOR STAT CONF ON 04132022 08 30 AM Y 01
07/27/2021	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
07/27/2021	APC	ADJ-COUNSEL 07282021 TO 11102021 BY NOTICE
07/27/2021	APR	DATE SET FOR STAT CONF ON 11102021 08 30 AM Y 01
05/25/2021	CPL	CONTINUED PENDING OTHER LITIGATION
05/25/2021	APC	ADJ-COUNSEL 05262021 TO 07282021 BY NOTICE
05/25/2021	APR	DATE SET FOR STAT CONF ON 07282021 08 30 AM Y 01
03/23/2021	CPL	CONTINUED PENDING OTHER LITIGATION
03/23/2021	APC	ADJ-COUNSEL 03252021 TO 05262021 BY NOTICE
03/23/2021	APR	DATE SET FOR STAT CONF ON 05262021 08 30 AM Y 01
12/02/2020	CA	CLAIM OF APPEAL FILED /SWOFFORD/SOUTHFIELD/SUPREME CT
12/02/2020	MPS	MIFILE PROOF OF SERVICE FILED
11/05/2020	CPL	CONTINUED PENDING OTHER LITIGATION

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Date	Code	Desc
11/05/2020	APC	ADJ-COUNSEL 12032020 TO 03252021 BY NOTICE
11/05/2020	APR	DATE SET FOR STAT CONF ON 03252021 09 00 AM Y 01
11/05/2020	CPL	CONTINUED PENDING OTHER LITIGATION
11/05/2020	APC	ADJ-COUNSEL 12162020 BY NOTICE
10/22/2020	APR	DATE SET FOR STAT CONF ON 12162020 09 00 AM Y 01
10/22/2020	ORD	ORDER FILED COA
10/22/2020	ORD	ORDER FILED COA
09/15/2020	CPL	CONTINUED PENDING OTHER LITIGATION
09/15/2020	APC	ADJ-COUNSEL 09242020 TO 12032020 BY NOTICE
09/15/2020	APR	DATE SET FOR STAT CONF ON 12032020 09 00 AM Y
07/13/2020	CPL	CONTINUED PENDING OTHER LITIGATION
07/13/2020	APC	ADJ-COUNSEL 07162020 TO 09242020 BY NOTICE
07/13/2020	APR	DATE SET FOR STAT CONF ON 09242020 09 00 AM Y 01
07/10/2020	STO	STIP/ORD FILED SUB ATTYS
07/09/2020	MPS	MIFILE PROOF OF SERVICE FILED
03/12/2020	CPL	CONTINUED PENDING OTHER LITIGATION
03/12/2020	APC	ADJ-COUNSEL 03122020 TO 07162020 BY NOTICE
03/12/2020	APR	DATE SET FOR STAT CONF ON 07162020 08 30 AM Y 01
12/20/2019	SEN	SENT TO COA/FTP/JM
12/18/2019	NTC	NOTICE FILED REQ FOR FILE COA
12/16/2019	CPL	CONTINUED PENDING OTHER LITIGATION
12/16/2019	APC	ADJ-COUNSEL 12172019 TO 03122020 BY NOTICE
12/16/2019	APR	DATE SET FOR STAT CONF ON 03122020 08 30 AM Y 01
10/18/2019	APR	DATE SET FOR STAT CONF ON 12172019 08 30 AM Y 01
10/11/2019	ORD	ORDER FILED COA
10/11/2019	FD	FINAL DISPOSITION
10/11/2019	SY	STAY PER COA ORDER
09/27/2019	APM	ADJOURNED PER CASE EVALUATION CLERK FROM 12052019
09/27/2019	APR	DATE SET FOR CASE EVAL ON 02062020 NO TIME SET
09/26/2019	ADJ	ORDER OF ADJOURNMENT FILED TRIAL

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Date	Code	Desc
09/26/2019	ORD	ORDER FILED GRANT PLF EMER MTN FOR PROT ORD
09/26/2019	SO	SCHEDULING ORDER FILED /AMD
09/25/2019	M	MOTION (EMERG) FOR PROTECTIVE ORDER -GRANTED-
09/25/2019	DM	DEFENSE MOTION TO ADJ TRIAL -GRANTED-
09/25/2019	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
09/25/2019	APC	ADJ-COUNSEL 02102020 TO 04072020 BY ORDER
09/25/2019	APR	DATE SET FOR TRIAL ON 04072020 08 30 AM Y 01
09/25/2019	MPS	MIFILE PROOF OF SERVICE FILED
09/24/2019	MTN	MOTION FILED PROTECTIVE ORD/BRF/NOH/PLF
09/24/2019	MPS	MIFILE PROOF OF SERVICE FILED
09/20/2019	ORD	ORDER FILED RE PLF MTN RECONSIDERATION
09/19/2019	SE	SCHEDULING ERROR
09/19/2019	APJ	ADJ-JUDGE 10212019 BY NOTICE
09/19/2019	M	MOTION FOR RECONSIDERATION -DENIED-
09/12/2019	RES	RESPONSE FILED TO MTN ADJ TRIAL/POS/PLF
09/12/2019	MPS	MIFILE PROOF OF SERVICE FILED
09/10/2019	MPR	MOTION PRAECIPE FILED FOR 09252019 JUDGE 01
09/10/2019	MPS	MIFILE PROOF OF SERVICE FILED
09/10/2019	MTN	MOTION FILED ADJ TRIAL/BRF/NOH/POS/DFTS
09/09/2019	RES	RESPONSE FILED TO MTN FOR RECON/POS/DFT
09/09/2019	MPS	MIFILE PROOF OF SERVICE FILED
08/23/2019	RES	RESPONSE FILED TO DFT MTN TO STRIKE/POS/PLF
08/23/2019	RES	RESPONSE FILED TO DFT MTN/BRF/POS/PLF
08/23/2019	MPS	MIFILE PROOF OF SERVICE FILED
08/21/2019	MPR	MOTION PRAECIPE FILED FOR 08282019 JUDGE 01
08/21/2019	MTN	MOTION FILED FOR RECON OF CT ORD/POS/PLF
08/21/2019	MPS	MIFILE PROOF OF SERVICE FILED
08/21/2019	NOH	NOTICE OF HEARING FILED /POS
08/02/2019	MPS	MIFILE PROOF OF SERVICE FILED
08/02/2019	OBJ	OBJECTION FILED TO DFT AMD 3RD NTC TAKING DEP/POS/PLF

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Date	Code	Desc
08/02/2019	MPS	MIFILE PROOF OF SERVICE FILED
08/02/2019	MTN	MOTION FILED STRIKE PLF EXPERT/NOH/POS/DFTS
08/02/2019	MTN	MOTION FILED COMPEL SPECIFIC ANS/NOH/POS/DFTS
08/02/2019	MPR	MOTION PRAECIPE FILED FOR 08282019 JUDGE 01
08/02/2019	MPR	MOTION PRAECIPE FILED FOR 08282019 JUDGE 01
07/19/2019	MPS	MIFILE PROOF OF SERVICE FILED
07/19/2019	RES	RESPONSE FILED TO DFT INT/POS/PLF
07/19/2019	RES	RESPONSE FILED TO DFT INT/POS/PLF
07/19/2019	RES	RESPONSE FILED TO DFT INT/REQ PRDTN DCMNTS/POS/PLF
07/17/2019	MPS	MIFILE PROOF OF SERVICE FILED
07/17/2019	STO	STIP/ORD FILED RE DISC RESP
07/16/2019	MPS	MIFILE PROOF OF SERVICE FILED
07/16/2019	OBJ	OBJECTION FILED NTC TAKING DEP/POS/PLF
07/16/2019	POR	PROPOSED ORDER FILED
07/16/2019	MPS	MIFILE PROOF OF SERVICE FILED
07/16/2019	RES	RESPONSE FILED TO REQ PRODUCE DOC/POS/PLF
07/15/2019	TRN	TRANSCRIPT FILED 06/12/19 MTN
07/15/2019	NTC	NOTICE FILED OF FILING TRN/POS
07/12/2019	APM	ADJOURNED PER CASE EVALUATION CLERK FROM 08292019
07/12/2019	APR	DATE SET FOR CASE EVAL ON 12052019 NO TIME SET
07/12/2019	MPS	MIFILE PROOF OF SERVICE FILED
07/12/2019	MPS	MIFILE PROOF OF SERVICE FILED
07/12/2019	MPR	MOTION PRAECIPE FILED FOR 07242019 JUDGE 01
07/12/2019	OBJ	OBJECTION FILED TO DFT PROPOSED ORD/POS/PLF
07/12/2019	MTN	MOTION FILED ON PLF OBJ/BRF/NOH/POS/PLF
07/11/2019	SO	SCHEDULING ORDER FILED /AMD
07/10/2019	DM	DEFENSE MOTION TO STRIKE COMP/COMP DISC -G IN PART-
07/10/2019	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
07/10/2019	APC	ADJ-COUNSEL 09162019 TO 02102020 BY ORDER
07/10/2019	APR	DATE SET FOR TRIAL ON 02102020 08 30 AM Y 01

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Date	Code	Desc
07/10/2019	MPS	MIFILE PROOF OF SERVICE FILED
07/10/2019	NTC	NOTICE FILED PRESENTMENT/POR/POS
07/09/2019	M	MOTION TO STAY PROCEEDINGS -DENIED-
07/09/2019	ORD	ORDER FILED DENY PLF MTN STAY
07/08/2019	MPS	MIFILE PROOF OF SERVICE FILED
07/08/2019	RES	RESPONSE FILED TO DFT MTN TO STRIKE/BRF/POS/PLF
07/08/2019	MPS	MIFILE PROOF OF SERVICE FILED
07/08/2019	ANS	ANSWER FILED TO PLF MTN TO STAY/POS/DFTS
06/26/2019	MPR	MOTION PRAECIPE FILED FOR 07102019 JUDGE 01
06/26/2019	MTN	MOTION FILED STAY PROCEED/BRF/NOH/POS/PLF
06/26/2019	MPS	MIFILE PROOF OF SERVICE FILED
06/21/2019	MPR	MOTION PRAECIPE FILED FOR 07102019 JUDGE 01
06/21/2019	MTN	MOTION FILED TO STRIKE/BRF/NOH/DFT
06/21/2019	MPS	MIFILE PROOF OF SERVICE FILED
06/14/2019	ORD	ORDER FILED DENY PLF MTN RE SPECIALTY
06/13/2019	M	MOTION TO CONFIRM -DENIED-
06/12/2019	M	MOTION TO CONFIRM THE ONE MOST RELEVANT SPECIALTY -TUA-
06/07/2019	ANS	ANSWER FILED MTN CONFIRM SPECIALTY/MEM/POS/DFTS
06/07/2019	MPS	MIFILE PROOF OF SERVICE FILED
06/07/2019	APR	DATE SET FOR CASE EVAL ON 08292019 11:00 AM
06/05/2019	MPR	MOTION PRAECIPE FILED FOR 06122019 JUDGE 01
06/05/2019	MTN	MOTION FILED COMFIRM SPECIALTY OR SUB/BRF/POS/NOH/PLF
06/05/2019	MPS	MIFILE PROOF OF SERVICE FILED
06/04/2019	WLT	WITNESS LIST FILED /2ND AMD/LAY/EXPERT/EXH/POS/PLF
06/04/2019	MPS	MIFILE PROOF OF SERVICE FILED
06/03/2019	APM	ADJOURNED PER CASE EVALUATION CLERK FROM 06132019
06/03/2019	APR	DATE SET FOR CASE EVAL ON 08292019 NO TIME SET
05/30/2019	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
05/30/2019	APC	ADJ-COUNSEL 09302019 TO 10212019 BY ORDER

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Date	Code	Desc
05/30/2019	APR	DATE SET FOR TRIAL ON 10212019 08 30 AM Y 01
05/30/2019	SO	SCHEDULING ORDER FILED /AMD
05/30/2019	ORD	ORDER FILED AMD SCHED ORD
05/29/2019	DM	DEFENSE MOTION ADJOURN SCHEDULING ORDER -GRANTED-
05/24/2019	RES	RESPONSE FILED TO DFT MTN MODIFY SCHED ORD/BRF/PLF
05/24/2019	MPS	MIFILE PROOF OF SERVICE FILED
05/24/2019	RES	RESPONSE FILED MTN CMPL DEPOS/BRF/POS/PLF
05/24/2019	MPS	MIFILE PROOF OF SERVICE FILED
05/15/2019	MPS	MIFILE PROOF OF SERVICE FILED
05/15/2019	OBJ	OBJECTION FILED TO 3RD NTC OF DEP/POS/PLF
05/15/2019	MTN	MOTION FILED MODIFY SCHED ORD/NOH/BRF/POS/DFT
05/15/2019	MPS	MIFILE PROOF OF SERVICE FILED
05/15/2019	MTN	MOTION FILED COMPEL/NOH/POS/DFT
05/15/2019	MPS	MIFILE PROOF OF SERVICE FILED
05/15/2019	MPR	MOTION PRAECIPE FILED FOR 05292019 JUDGE 01
05/15/2019	MPR	MOTION PRAECIPE FILED FOR 05292019 JUDGE 01
04/17/2019	MPS	MIFILE PROOF OF SERVICE FILED
04/17/2019	OBJ	OBJECTION FILED NTC TAKE DISC DEPOS/POS
04/17/2019	OBJ	OBJECTION FILED
04/17/2019	OBJ	OBJECTION FILED NTC TAKE DISC DEPOS/POS
04/09/2019	WLT	WITNESS LIST FILED AMD LAY/EXPERT/EXHIBIT/POS/PLF
04/09/2019	MPS	MIFILE PROOF OF SERVICE FILED
04/05/2019	APR	DATE SET FOR CASE EVAL ON 06132019 8:45 AM
04/04/2019	ORD	ORDER FILED GRNT PLF MTN LV AMD WIT
04/03/2019	MPS	MIFILE PROOF OF SERVICE FILED
03/25/2019	ADJ	ORDER OF ADJOURNMENT FILED SCHED ORD DATES
03/25/2019	RES	RESPONSE FILED /BRF TO MTN AMD WLT/BRF/POS/DFT
03/25/2019	APM	ADJOURNED PER CASE EVALUATION CLERK FROM 03282019
03/25/2019	APR	DATE SET FOR CASE EVAL ON 06132019 NO TIME SET
03/25/2019	MPS	MIFILE PROOF OF SERVICE FILED

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Date	Code	Desc
03/22/2019	MPS	MIFILE PROOF OF SERVICE FILED
03/22/2019	MPS	MIFILE PROOF OF SERVICE FILED
03/22/2019	MPS	MIFILE PROOF OF SERVICE FILED
03/22/2019	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
03/22/2019	APC	ADJ-COUNSEL 09302019 TO 09162019 BY ORDER
03/22/2019	APR	DATE SET FOR TRIAL ON 09162019 08 30 AM Y 01
03/22/2019	ORD	ORDER FILED GRANT MTN TO STRIKE AMD WTNS/EXH LIST
03/22/2019	ORD	ORDER FILED DENY DFT MTN PROTECTIVE ORD
03/20/2019	MPR	MOTION PRAECIPE FILED FOR 03272019 JUDGE 01
03/20/2019	MPS	AFFIDAVIT/PROOF OF SERVICE FILED
03/20/2019	MPS	AFFIDAVIT/PROOF OF SERVICE FILED
03/20/2019	MPS	AFFIDAVIT/PROOF OF SERVICE FILED
03/20/2019	RES	RESPONSE FILED MTN LEAVE AMD WITNESS LIST/BRF/POS/DFT
03/20/2019	MPS	AFFIDAVIT/PROOF OF SERVICE FILED
03/20/2019	NTC	NOTICE FILED ENTER OF 7 DAY ORD
03/20/2019	NTC	NOTICE FILED ENTRY OF 7 DAY ORD
03/20/2019	NTC	NOTICE FILED ENTRY OF ORD/PROP ORD/POS
03/19/2019	MTN	MOTION FILED TO AMD WLT/BRF/NOH/POS/PLF
03/19/2019	MPS	AFFIDAVIT/PROOF OF SERVICE FILED
03/14/2019	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
03/14/2019	APC	ADJ-COUNSEL 06132019 TO 09302019 BY ORDER
03/14/2019	APR	DATE SET FOR TRIAL ON 09302019 08 30 AM Y 01
03/13/2019	M	MOTION ADJOURN DATES -GRANTED-
03/13/2019	DM	DEFENSE MOTION PROTECTIVE ORDER -GRANTED
03/13/2019	DM	DEFENSE MOTION DISMISS AMENDED WITNESS LIST -GRANTED-
03/01/2019	POS	AFFIDAVIT/PROOF OF SERVICE FILED
03/01/2019	MTN	MOTION FILED DISMISS/BRF/NOH/POS/DFTS
03/01/2019	POS	AFFIDAVIT/PROOF OF SERVICE FILED
03/01/2019	MPR	MOTION PRAECIPE FILED FOR 03132019 JUDGE 01

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Date	Code	Desc
03/01/2019	OBJ	OBJECTION FILED AMD LAY/EXPERT WLT/EXHIT/POS/DFT
02/28/2019	MPR	MOTION PRAECIPE FILED FOR 03132019 JUDGE 01
02/28/2019	MTN	MOTION FILED ADJ DATES/COMP DISC/BRF/NOH/PLF
02/28/2019	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/28/2019	MTN	MOTION FILED ADJ DATES/COMPEL DSCVRY/BRF/NOH/POS/PLF
02/28/2019	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/28/2019	MPR	MOTION PRAECIPE FILED FOR 03132019 JUDGE 01
02/28/2019	NOH	NOTICE OF HEARING FILED /POS
02/28/2019	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/26/2019	WLT	WITNESS LIST FILED /EXPERT/EXH/PLF
02/26/2019	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/26/2019	ANS	ANSWER FILED TO PLF MTN ADJ DATES/TRIAL/DISC/DFT
02/26/2019	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/22/2019	MTN	MOTION FILED FOR PROTECT ORD/POS/PLF
02/22/2019	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/20/2019	MPR	MOTION PRAECIPE FILED FOR 02272019 JUDGE 01
02/19/2019	MPR	MOTION PRAECIPE FILED FOR 02272019 JUDGE 01
02/19/2019	MTN	MOTION FILED PROTECTIVE ORDER/BRF/NOH/POS/DFT
02/19/2019	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/19/2019	MTN	MOTION FILED ADJ DATES/COMPEL DISC/BRF/NOH/POS/PLF
02/19/2019	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/11/2019	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/11/2019	ANS	ANSWER FILED /OBJ TO PLF INT/REQ TO ADMIT/PRDTN/DFT
02/06/2019	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/06/2019	OBJ	OBJECTION FILED TO NTC TAKING DEP/POS/PLF
01/29/2019	WLT	WITNESS LIST FILED /EXPERT/EXH/POS/DFTS
01/29/2019	POS	AFFIDAVIT/PROOF OF SERVICE FILED
01/25/2019	WLT	WITNESS LIST FILED /DFT/POS
01/25/2019	POS	AFFIDAVIT/PROOF OF SERVICE FILED
01/25/2019	WLT	WITNESS LIST FILED PRELIM/LAY/EXPERT/EXH/POS/PLF

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Date	Code	Desc
01/25/2019	POS	AFFIDAVIT/PROOF OF SERVICE FILED
01/14/2019	INT	INTERROGATORIES FILED /REQ ADM/PROD TO DFT/POS/PLF
01/14/2019	POS	AFFIDAVIT/PROOF OF SERVICE FILED
01/04/2019	APR	DATE SET FOR CASE EVAL ON 03282019 9:30 AM
08/08/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
08/08/2018	OBJ	OBJECTION FILED TO NTC OF TAKING DEP/POS/DFT
08/08/2018	DM	DEFENSE MOTION FOR PROTECTIVE ORDER/DISSEMINATION -DENIED-
08/03/2018	RES	RESPONSE FILED PLF/TO DFT REQ MED INFO/POS
08/03/2018	RES	RESPONSE FILED PLF/TO DFT INT/POS
08/03/2018	RES	RESPONSE FILED PLF/TO DFT REQ PRDTN DCMNTS/POS
08/03/2018	OTH	ATTACHMENTS TO INTERROGATORY RES FILED
08/03/2018	RES	RESPONSE FILED PLF/TO DFT INT/REQ PRDTN DOCUMENTS/POS
08/03/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
08/03/2018	RES	RESPONSE FILED PLF/TO DFT INT/REQ PRDTN DOCUMENTS/POS
08/03/2018	RES	RESPONSE FILED PLF/TO DFT INT/REQ PRDTN DCMNTS/POS
08/03/2018	RES	RESPONSE FILED PLF/TO DFT INT/REQ PRDTN DCMNTS/POS
08/03/2018	RES	RESPONSE FILED PLF/TO DFT INT/POS
08/03/2018	RES	RESPONSE FILED PLF/TO DFT INT TO PLF RE EXPERTS/POS
08/03/2018	RES	RESPONSE FILED PLF/TO DFT INT/REQ PRDTN DOCUMENTS/POS
08/03/2018	RES	RESPONSE FILED PLF/TO DFT INT/REQ PRDTN DCMNTS/POS
08/03/2018	NTC	NOTICE FILED TAKING DEP/PROD DOC/POS
08/03/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
08/03/2018	RES	RESPONSE FILED MTN PROT ORD RE PHONE CONV/BRF/POS/PLF
08/03/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
07/23/2018	MPR	MOTION PRAECIPE FILED FOR 08082018 JUDGE 01
07/23/2018	MTN	MOTION FILED PROTECTIVE ORD/BRF/NOH/POS/DFTS
07/23/2018	NOH	NOTICE OF HEARING FILED /POS

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Date	Code	Desc
07/23/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
07/23/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
05/31/2018	AFF	AFFIDAVIT FILED DFT/MERIT DEFENSE/POS
05/31/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
05/30/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
05/30/2018	NTC	NOTICE FILED TAKING DEP
05/25/2018	ORD	ORDER FILED PRETRIAL
05/14/2018	SO	SCHEDULING ORDER FILED
05/12/2018	SOP	SCHEDULING ORDER WRITTEN
05/12/2018		01/25/2019 EXPERT DATE.
05/12/2018		03/28/2019 CASE EVALUATION DATE.
05/12/2018		01/29/2019 WITNESS DATE.
05/12/2018		03/29/2019 MOTION DATE.
05/12/2018		02/28/2019 DISCOVERY DATE.
05/12/2018		06/13/2019 TRIAL DATE.
05/12/2018	APR	DATE SET FOR TRIAL ON 06132019 08 30 AM
05/03/2018	ORD	ORDER FILED PROTECTIVE
05/02/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
04/26/2018	INT	INTERROGATORIES FILED TO DFT/POS/PLF
04/26/2018	INT	INTERROGATORIES FILED TO SWOFFORD/POS/PLF
04/26/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
04/13/2018	RES	RESPONSE FILED REQ ADMISS/ADMISS/REQ PROD/POS/PLF
04/13/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
03/27/2018	M	MOTION AMEND WITNESS LIST -GRANTED-
03/23/2018	ATC	ANSWER TO COMPLAINT FILED DFTS/AFM/JD/POS
03/23/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
03/23/2018	SUM	P/S ON SUMMONS FILED 03/15/18
03/23/2018	SUM	P/S ON SUMMONS FILED 03/15/18
03/23/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
03/22/2018	APP	APPEARANCE FILED

Date	Code	Desc
03/22/2018	POS	AFFIDAVIT/PROOF OF SERVICE FILED
03/02/2018	AFF	AFFIDAVIT FILED OF MERIT SCOTT BERGER
03/02/2018	C	COMPLAINT FILED /JD
03/02/2018	SI	SUMMONS ISSUED
03/02/2018	SI	SUMMONS ISSUED
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APPENDIX 6

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LAW OFFICES
SOMMERS SCHWARTZ, P.C.
ONE TOWNE SQUARE • 17TH FLOOR • SOUTHFIELD, MICHIGAN 48076 • (248) 355-0300

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JOELYNN T. STOKES, Successor Personal Representative of the Estate of LINDA HORN, deceased,

Plaintiff,

-vs-

MICHAEL J. SWOFFORD, D.O. and SOUTHFIELD RADIOLOGY ASSOCIATES, PLLC,

Defendants.

______________________________________/

Case No. 2018-164148-NH

Hon. JUDGE CHERYL A. MATTHEWS

KENNETH T. WATKINS (P46231)
SOMMERS SCHWARTZ, P.C.
Attorney for Plaintiff
One Towne Square, 17th Floor
Southfield, Michigan 48076
Telephone: (248) 355-0300
kwatkins@sommerspc.com

______________________________________/

bd

A civil action between the Estate of Linda Horn and other defendants arising out of the same transaction or occurrence alleged in the complaint has been previously filed in this court, where it was given docket number 2015-148710-NH and assigned to Judge Cheryl A. Matthews. The action is no longer pending.

/s/ Kenneth T. Watkins

COMPLAINT, JURY DEMAND, AND
AFFIDAVIT OF MERIT OF SCOTT B. BERGER, M.D., Ph.D.

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NOW COMES Plaintiff, JOELYNN T. STOKES, Successor Personal Representative of the Estate of LINDA HORN, Deceased, b y and through her attorneys, SOMMERS SCHWARTZ, P.C., and for her Complaint against the above-named Defendants, states as follows:

PARTIES, JURISDICTION, AND VENUE

1. That at all times pertinent hereto, Plaintiffs' Decedent, LINDA R. HORN (hereinafter "Plaintiffs' Decedent"), was a resident of the City of Southfield, County of Oakland, State of Michigan.

2. That JOELYNN T. STOKES is the duly appointed Successor Personal Representative of the Estate of LINDA R. HORN, Deceased.

3. That at all times pertinent hereto, Defendant MICHAEL J. SWOFFORD, D.O., was engaged in the practice of his profession in the City of Southfield, County of Oakland and State of Michigan.

4. That at all times pertinent hereto, Defendant SOUTHFIELD RADIOLOGY ASSOCIATES, PLLC, was a Michigan Professional Limited Liability Company, duly organize and existing under and by virtue of the laws of the State of Michigan, and doing business sin the City of Southfield, County of Oakland and State of Michigan.

5. That at all times pertinent hereto, Defendant MICHAEL J. SWOFFORD, D.O., was the apparent, ostensible, implied and or express agent of and/or was employed by Defendant SOUTHFIELD RADIOLOGY ASSOCIATES, PLLC, and was acting in the course and scope of said employment and/or agency when the acts of negligence and malpractice hereinafter set forth and described were committed, thereby imposing vicarious liability upon Defendant SOUTHFIELD RADIOLOGY ASSOCIATES, PLLC, by reason of the doctrine of *Respondeat Superior*.

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6. That the amount in controversy exceeds Twenty-Five Thousand ($25,000.00) Dollars, exclusive of costs, interest, and attorney fees, and is otherwise within the jurisdiction of this Honorable Court pursuant to MCL § 600.605.

7. That venue is proper in this judicial circuit pursuant to MCL § 600.1629(a)(1) because Plaintiff Decedent's original injury occurred in Oakland County and Defendants have a place of business in Oakland County and conduct business in Oakland County.

COMMON ALLEGATIONS

8. Plaintiff Decedent Linda Horn was a 24 year old married woman who has a history of pseudotumor cerebri (PTC) which caused frequet headaches.

9. On February 22, 2013, a ventriculopentoneal (VP) shunt was placed through a right parietal approval. Stealth stereotactic navigation was used to place the ventricular catheter into the right lateral ventricle, which was confirmed with CT. A programmable valve was used to regulate the removal of cerebral spinal fluid (CSF).

10. On February 26, 2013 and again on February 28, 2013, Plaintiff decedent returned to the emergency Department of St. John Providence with complaints of severe headache, nausea and vomiting. The medical records reflect that she reported that the headache was similar to those that she had in the past with increased intracranial pressure.

11. Plaintiff decedent was treated for the pain with morphine. The shunt was not tapped. No imaging studies were done and no labs were sent.

12. That on March 2, 2013, at approximately 5:00 am, Plaintiffs' Decedent returned via ambulance to the Emergency Department of St. John Providence. She was "still having a headache" with worsening pain (10 out of 10), nausea, blurred vision, and lethargy. She was evaluated by Dr. Steven McGraw in the Emergency Department. He found her "sleepy but easily

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arouses." She was noted as alert and oriented times four, and in no respiratory distress. She was "awake, cooperative," and "she answers questions." Dr. McGraw performed a funduscopic examination which did not show severe papilledema.

13. That after Plaintiffs' Decedent, arrived at the Emergency Department, she had a "partial seizure." She was given Ativan IV and was taken for a CT of the head or brain without contrast at approximately 6:30 am. There, she had a generalized tonic-clonic seizure and was again given Ativan. When Plaintiffs' Decedent was returned to the Emergency Department, she had a third seizure and was then intubated for airway protection. She remained unresponsive thereafter.

14. That the CT done at 6:32 am revealed an increase in size of bilateral lateral ventricles (hydrocephalus) and was, therefore, concerning for shunt failure. It did not show significant brain edema, mass effect, or herniation. The fourth ventricle "appears to collapsed." The study was dictated by radiologist Sam Samaan, M.D., and verified by Defendant MICHAEL SWOFFORD, D.O. The results were reported to Dr. McGraw.

15. That Dr. McGraw, "knowing that the shunt looked somewhat dysfunctioning on CT of the brain ... elected to obtain an opening pressure." The shunt was not tapped, no external drain was placed, and no shunt series was performed. Instead, Dr. McGraw performed a lumbar puncture to "treat intracranial hypertension and evaluated for meningitis." He removed 15 cc of pink CSF, noting an opening pressure of 49 and a closing pressure of 19. He noted that there was no evidence of infection, but antibiotics were administered nevertheless.

16. That Dr. McGraw, contacted Dr. Ryan Barrett, and the neurosurgeon covering for Dr. Boyd Richards, about the procedure. A repeat CT angiogram of the head/neck and a CT of the head or brain without contrast were ordered at approximately 10:09 am.

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17. That the CT and CT aniogram results were reported to Dr. Barrett at approximately 10:40 am. The radiologist noted that there was no cerebral blood flow, most likely secondary to elevated intracranial pressure. In addition, the radiologist reported that there are findings suggestive for cerebral edema and infarction in the territory of the posterior circulation, and that these findings were consistent with transtentorial, tonsillar, and subfalcine herniation.

18. That despite the grim findings, Dr. Barrett still elected to place an external ventricular drain at 11:54 am, which revealed profoundly elevated intracranial pressures.

19. That when Steven Miles, M.D., examined Plaintiffs' Decedent, that same day, his dictated note at 2:04 pm documents that she had fixed and dilated pupils and absent gag and corneal reflex. There was no evidence of neurological function, and brain death was pronounced at 7:00 pm.

20. That Plaintiffs' Decedent, was pronounced dead on March 4, 2013. An autopsy of the brain showed a diffusely swollen brain without evidence of inflammation or infection.

COUNT I
NEGLIGENCE AND MALPRACTICE OF DEFENDANT MICHAEL J. SWOFFORD, DO

21. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully stated herein.

22. That at all times pertinent hereto Defendant MICHAEL J. SWOFFORD, DO (hereinafter "SWOFFORD") held himself out to the public and in particular to Plaintiff's Decedent, as a skilled and competent medical doctor practicing and Board Certified in Neuroradiology and capable of properly and skillfully treating, caring for, and curing individuals seeking his services.

23. That Defendant SWOFFORD owed Plaintiff's Decedent the duty to possess that reasonable degree of learning and skill that is ordinarily possessed by physicians practicing in the

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field of Neuroradiology throughout the nation and to use reasonable care and diligence in the exercise of his skill and application of his learning in the care and treatment of Plaintiff's Decedent, in accordance with the standards prevailing throughout the nation.

24. That Defendant SWOFFORD, inidividually and as an agent of SOUTHFIELD RADIOLOGY, was negligent *inter alia* in the following particulars in that a licensed and practicing Neuroradiologist, when encountering a patient exhibiting the history, signs and symptoms such as those demonstrated by Plaintiff had a duty to timely and properly:

a. Possess the degree of reasonable care, diligence, learning, judgment and skill ordinarily and/or reasonably exercised and possessed by a board certified Neuro Radiologist under the same or similar circumstances;

b. Eevaluate, interpret, report and intervene regarding Ms. Horn's head CT of March 2, 2013;

c. Acknowledge the CT scan of March 2, 2013 showed a dramatic change when compared to the February 26, 2013 CT scan, that required neurological emergent surgery, intervention;

d. Acknowledge and appreciate that the CT scan of March 2, 2013 showed that the ventricular system had become severely dilated with subtle areas of low density adjacent to the ventricles that suggest shunt obstruction and the transependymal flow of CSF;

e. Acknowledge and appreciate that findings on the CT scan of March 2, 2013 indicated acute obstructive hydrocephalus which is a neurological emergency;

f. Acknowledge, appreciate and communicate that the brain in the CT scan of March 2, 2013 demonstrated downward transtentorial herniation and diffuse cerebral edema, all of which portent a devastating neurological injury in the absence of an urgent neurosurgical intervention;

g. Urgently communicate the head CT findings to the ordering physician and advise the ER physician that the patient must be treated by neurosurgery;

h. Notify and consult with neurosurgery;

i. Immediately advise the ER doctor that the findings on the March 2, 2013 CT of the head must be emergently addressed by neurosurgery tapping of the shunt

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or a placement of an EVD and that he should avoid performance of a lumbar puncture because it would likely exacerbate herniation;

j. Refrain from other acts of negligence which may become known through the course of discovery.

25. That Defendant SWOFFORD did none of these things, and such acts or omissions constitute professional negligence and for this defendant is directly liable to Plaintiff.

26. That at all times relevant hereto, Defendant SWOFFORD was an employee, agent, servant, or ostensible agent of Defendant SOUTHFIELD RADIOLOGY ASSOCIATES, PLLC (hereinafter "SOUTHFIELD RADIOLOGY"), therefore SOUTHFIELD RADIOLOGY is vicariously liable for the negligence of Defendant SWOFFORD pursuant to the Doctrine of *Respondeat Superior* and/or ostensible agency.

27. That as a direct and proximate result of the negligence and/or malpractice of Defendant SWOFFORD, Linda Horn's obstructive hydrocephalus went undiagnosed and was not properly treated, resulting in cerebral edema and herniation, and ultimately resulting in brain death which led to her ultimate demise on March 4, 2013.

28. Additionally, had the March 2, 2013 CT scan been properly interpreted and evaluated, the findings that the ventricular system had become severely dilated with subtle areas of low density adjacent to the ventricles which suggested shunt obstruction and the transependymal flow of CSF would have been appropriately recognized; along with the findings of acute transtentorial herniation and diffuse cerebral edema, all of which portend a devastating neurologic injury in the absence of urgent neurological surgery, been properly appreciated and acted upon, it, more likely than not, would have been discovered that Linda Horn was suffering from obstructive hydrocephalus and VP shunt obstruction. Said condition could have been treated by draining the excessive CSF from the ventricles of the brain by either tapping the

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existing shunt, placing an external ventricular drain, and/or by externalizing the existing shunt. Had said treatment been initiated, instead of an ill advised and contra-indicated lumbar puncture on March 2, 2013, Ms. Horn, more likely than not, would have fully recovered with no permanent neurological deficits and would still be alive today thriving in her roles as wife, mother and daughter.

29. That prior to her death, Plaintiff Decedent, suffered permanent impairment of cognitive capacity rendering her incapable of making independent, responsible life decisions and permanently incapable of independently performing the activities of normal, daily living, thereby meeting the criteria regarding non-economic damages set forth in MCL 600.1483.

30. That Plaintiff JOELYNN T. STOKES, as Successor Personal Representative of the Estate of LINDA HORN, Deceased, on behalf of the Estate of LINDA HORN, Deceased, requests all damages allowable under the Michigan Wrongful Death Act, including but not limited to:

a. Reasonable medical, hospital, funeral and burial expenses;

b. Reasonable compensation for pain and suffering the Decedent experienced while she was conscious during the time between her and his death;

c. Losses suffered by the next of kin as a result of the decedent's death, including but not limited to:

i) Loss of society and companionship;

ii) Loss of services;

iii) Loss of financial support;

iv) Loss of parental training and guidance;

v) Loss of valuable gifts and/or gratuities;

31. That pursuant to MCL § 600.2912d, the Affidavit of Merit provided by SCOTT B. BERGER, M.D., Ph.D. supports the allegations herein are is filed herewith.

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WHEREFORE, Plaintiff JOELYNN T. STOKES,Successor Personal Representative of the estate of LINDA HORN, claims judgment against Defendant MICHAEL J. SWOFFORD and SOUTHFIELD RADIOLOGY ASSOCIATES, PLLC jointly and severally, for whatever amount said Plaintiff is found to be entitled, as determined by the trier of fact, together with interest, costs and attorney fees as well as all other damages allowed under Michigan Law.

COUNT II
NEGLIGENCE AND MALPRACTICE OF DEFENDANT SOUTHFIELD RADIOLOGY ASSOCIATES, PLLC

32. Plaintiff incorporates by reference each and every paragraph of this Complaint as though fully stated herein.

33. That at all times relevant hereto, Defendant SOUTHFIELD RADIOLOGY, by and through its duly authorized agents, servants and/or employees, including but not limited to Defendant SWOFFORD, had the duly to provide Plaintiff Decedent with the services of qualified and licensed staff and/or agents in accordance with the applicable standard of care.

34. That Defendant SOUTHFIELD RADIOLOGY is responsible for the selection of its medical staff and for the quality of care rendered by said staff.

35. That at all times hereinbefore and hereinafter mentioned, Defendant SOUTHFIELD RADIOLOGY in disregard of its duties and obligations to Plaintiff Decedent, by and through its agents, servants, and/or employees, including but not limited to Defendant SWOFFORD, and others, when encountering a patient exhibiting the history, signs and symptoms such as those demonstrated by Plaintiff had a duty to timely and properly:

a. Properly, fully, and completely maintain a staff of competent physicians, surgeons, residents and fellows, with appropriate knowledge, training and experience;

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b. Provide and furnish Linda Horn with the proper and necessary radiological interpretation, medical care, treatment, and communications for which she had contracted;

c. Draft, promulgate, adopt, implement and/or enforce appropriate rules, regulations, policies, procedures and orders so as to facilitate the appropriate and timely diagnosis, radiological interpretations and treatment of Linda Horn;

d. Refrain from other acts of negligence which may become known through the course of discovery.

36. That Defendant SOUTHFIELD RADIOLOGY did none of these things and such acts or omissions constitute professional negligence for which Defendant SOUTHFIELD RADIOLOGY is directly liable to Plaintiff.

37. That as a direct and proximate result of the negligence and/or malpractice of Defendant SOUTHFIELD RADIOLOGY, Linda Horn's obstructive hydrocephalus went undiagnosed and was not properly treated, resulting in cerebral edema and herniation, and ultimately resulting in brain death with led to her ultimate demise on March 4, 2013.

38. Additional had the March 2, 2013 CT scan been properly interpreted and evaluated, the findings that the ventricular system had become severely dilated with subtle areas of low density adjacent to the ventricles which suggested shunt obstruction and the transependymal flow of CSF would have been appropriately recognized; along with the findings of acute transtentorial herniation and diffuse cerebral edema, all of which portend a devastating neurologic injury in the absence of urgent neurological surgery, been properly appreciated and acted upon, it, more likely than not, would have been discovered that Linda Horn was suffering from obstructive hydrocephalus and VP shunt obstruction. Said condition could have been treated by draining the excessive CSF from the ventricles of the brain by either tapping the existing shunt, placing an external ventricular drain, and/or by externalizing the existing shunt.

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Had said treatment been initiated, instead of an ill advised and contra-indicated lumbar puncture on March 2, 2013, Ms. Horn, more likely than not, would have fully recovered with no permanent neurological deficits and would still be alive today thriving in her roles as wife, mother and daughter.

39. That prior to her death, Plaintiff Decedent, suffered permanent impairment of cognitive capacity rendering her incapable of making independent, responsible life decisions and permanently incapable of independently performing the activities of normal, daily living, thereby meeting the criteria regarding non-economic damages set forth in MCL 600.1483.

40. That Plaintiff JOELYNN T. STOKES, as Successor Personal Representative of the Estate of LINDA HORN, Deceased, on behalf of the Estate of LINDA HORN, Deceased, requests all damages allowable under the Michigan Wrongful Death Act, including but not limited to:

a. Reasonable medical, hospital, funeral and burial expenses;

b. Reasonable compensation for pain and suffering the Decedent experienced while she was conscious during the time between her and his death;

c. Losses suffered by the next of kin as a result of the decedent's death, including but not limited to:

i) Loss of society and companionship;

ii) Loss of services;

iii) Loss of financial support;

iv) Loss of parental training and guidance;

v) Loss of valuable gifts and/or gratuities;

41. That pursuant to MCL § 600.2912d, the Affidavit of Merit provided by SCOTT B. BERGER, M.D., Ph.D. supports the allegations herein are is filed herewith.

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WHEREFORE, Plaintiff JOELYNN T. STOKES,Successor Personal Representative of the estate of LINDA HORN, claims judgment against Defendant MICHAEL J. SWOFFORD and SOUTHFIELD RADIOLOGY ASSOCIATES, PLLC jointly and severally, for whatever amount said Plaintiff is found to be entitled, as determined by the trier of fact, together with interest, costs and attorney fees as well as all other damages allowed under Michigan Law.

Respectfully submitted,
SOMMERS SCHWARTZ, P.C.

By: /s/Kenneth T. Watkins
KENNETH T. WATKINS (P46231)
Attorney for Plaintiff
One Towne Square, 17th Floor
Southfield, MI 48076
Telephone: (248) 355-0300
kwatkins@sommerspc.com

Dated: March 2, 2018

DEMAND FOR TRIAL BY JURY

Plaintiff JOELYNN T. STOKES, Successor Personal Representative of the Estate of LINDA HORN, Deceased, by and through her attorneys, SOMMERS SCHWARTZ, P.C., hereby demand a trial by jury in the above matter.

Respectfully submitted,
SOMMERS SCHWARTZ, P.C.

By: /s/Kenneth T. Watkins
KENNETH T. WATKINS (P46231)
Attorney for Plaintiff
One Towne Square, 17th Floor
Southfield, MI 48076
Telephone: (248) 355-0300
kwatkins@sommerspc.com

Dated: March 2, 2018

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APPENDIX 7

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JOELYNN T. STOKES, Successor Personal Representative of the Estate of LINDA HORN, deceased,

Plaintiff,

-vs-

MICHAEL J. SWOFFORD, D.O. and SOUTHFIELD RADIOLOGY ASSOCIATES, PLLC,

Defendants.

Case No. 2018-164148-NH

Hon. JUDGE CHERYL A. MATTHEWS

______________________________/

KENNETH T. WATKINS (P46231)
SOMMERS SCHWARTZ, P.C.
Attorney for Plaintiff
One Towne Square, 17th Floor
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______________________________/

AFFIDAVIT OF MERIT OF SCOTT B. BERGER, M.D., PH.D.

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Re: Linda Horn, dec'd

AFFIDAVIT OF MERIT OF SCOTT B. BERGER, M.D., Ph.D.

STATE OF CONNETICUT)
) §
COUNTY OF FAIRFIELD)

SCOTT B. BERGER, M.D., Ph.D., being first duly sworn, attests to the following:

1. That I am a licensed medical physician specializing and Board Certified in the field of Neuroradiology, and spent a majority of my professional time the year prior to the incident at issue practicing in said specialty.

2. That I have reviewed Plaintiff's Notice of Intent to File a Claim, all medical records and neuroimaging studies supplied to me by Plaintiff's attorneys concerning the allegations contained in said Notice.

3. During the year immediately preceding the date of the occurrence that is the basis for the claim or action, I devoted a majority of my professional time to either or both of the following:

a. The active clinical practice of Neuroradiology.

b. The instruction of students in an accredited health professional school or accredited residency or clinical research program in Neuroradiology.

4. The applicable standard of practice or care in this matter required that **MICHAEL J. SWOFFORD, D.O.**, individually and as agent of **SOUTHFIELD RADIOLOGY ASSOCIATES**, while providing Neuroradiology care, interpretation, diagnosis and treatment to patients such as Linda Horn, do as follows:

a. Possess the degree of reasonable care, diligence, learning, judgment and skill ordinarily and/or reasonably exercised and possessed by a board certified Neuro Radiologist under the same or similar circumstances;

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b. To timely and properly evaluate, interpret, report and intervene regarding Ms. Horn's head CT of March 2, 2013;

c. To timely and properly acknowledge the CT scan of March 2, 2013 showed a dramatic change when compared to the February 26, 2013 CT scan, that required neurological emergent surgery, intervention;

d. To timely and properly acknowledge and appreciate that the CT scan of March 2, 2013 showed that the ventricular system had become severely dilated with subtle areas of low density adjacent to the ventricles that suggest shunt obstruction and the transependymal flow of CSF;

e. To timely and properly acknowledge and appreciate that findings on the CT scan of March 2, 2013 indicated acute obstructive hydrocephalus which is a neurological emergency;

f. To timely and properly acknowledge, appreciate and communicate that the brain in the CT scan of March 2, 2013 demonstrated downward transtentorial herniation and diffuse cerebral edema, all of which portent a devastating neurological injury in the absence of an urgent neurosurgical intervention;

g. To timely and urgently communicate the head CT findings to the ordering physician and advise the ER physician that the patient must be treated by neurosurgery;

h. To timely and properly notify and consult with neurosurgery;

i. To timely or immediately advise the ER doctor that the findings on the March 2, 2013 CT of the head must be emergently addressed by neurosurgery tapping of the shunt or a placement of an EVD and that he should avoid performance of a lumbar puncture because it would likely exacerbate herniation;

j. To refrain from other acts of negligence which may become known through the course of discovery.

5. The applicable standard of practice or care in this matter required that the staff and/or agents of **SOUTHFIELD RADIOLOGY ASSOCIATES GROUP**, by and through their agents, servants and/or employees including by not limited to **MICHAEL J. SWOFFORD, D.O.** each to provide the following care, interpretation, diagnosis and treatment to LINDA HORN:

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a. To properly, fully, and completely maintain a staff of competent physicians, surgeons, residents and fellows, with appropriate knowledge, training and experience;

b. To provide and furnish Linda Horn with the proper and necessary radiological interpretation, medical care, treatment, and communications for which she had contracted;

c. To draft, promulgate, adopt, implement and/or enforce appropriate rules, regulations, policies, procedures and orders so as to facilitate the appropriate and timely diagnosis, radiological interpretations and treatment of Linda Horn;

d. To refrain from other acts of negligence which may become known through the course of discovery.

6. That in my opinion **MICHAEL J. SWOFFORD, D.O.,** individually and as agent of **SOUTHFIELD RADIOLOGY ASSOCIATES** breached the applicable standard of practice or care in this matter by:

a. Failing to possess the degree of reasonable care, diligence, learning, judgment and skill ordinarily and/or reasonably exercised and possessed by a board certified Neuro Radiologist under the same or similar circumstances;

b. Failing to timely and properly evaluate, interpret, report and intervene regarding Ms. Horn's head CT of March 2, 2013;

c. Failing to timely and properly acknowledge the CT scan of March 2, 2013 showed a dramatic change when compared to the February 26, 2013 CT scan, that required neurological emergent surgery, intervention;

d. Failing to timely and properly acknowledge and appreciate that the CT scan of March 2, 2013 showed that the ventricular system had become severely dilated with subtle areas of low density adjacent to the ventricles that suggest shunt obstruction and the transependymal flow of CSF;

e. Failing to timely and properly acknowledge and appreciate that findings on the CT scan of March 2, 2013 indicated acute obstructive hydrocephalus which is a neurological emergency;

f. Failing to timely and properly acknowledge, appreciate and communicate that the brain in the CT scan of March 2, 2013 demonstrated downward transtentorial herniation and diffuse cerebral edema, all of which portent a

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devastating neurological injury in the absence of an urgent neurosurgical intervention;

g. Failing to timely and urgently communicate the head CT findings to the ordering physician and advise the ER physician that the patient must be treated by neurosurgery;

j. Failing to timely and properly notify and consult with neurosurgery;

k. Failing to timely or immediately advise the ER doctor that the findings on the March 2, 2013 CT of the head must be emergently addressed by neurosurgery tapping of the shunt or a placement of an EVD and that he should avoid performance of a lumbar puncture because it would likely exacerbate herniation;

j. Failing to refrain from other acts of negligence which may become known through the course of discovery.

7. It is my opinion that the staff and/or agents of **SOUTHFIELD RADIOLOGY ASSOCIATES GROUP,** by and through their agents, servants and/or employees including by not limited to **MICHAEL J. SWOFFORD, D.O.**, breached the applicable standards of practice or care in this matter by:

a. Failing to properly, fully, and completely maintain a staff of competent physicians, surgeons, residents and fellows, with appropriate knowledge, training and experience;

b. Failing to provide and furnish Linda Horn with the proper and necessary radiological interpretation, medical care, treatment, and communications for which she had contracted;

c. Failing to draft, promulgate, adopt, implement and/or enforce appropriate rules, regulations, policies, procedures and orders so as to facilitate the appropriate and timely diagnosis, radiological interpretations and treatment of Linda Horn;

d. Failing to refrain from other acts of negligence which may become known through the course of discovery.

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8. As a direct and proximate result of the negligence and/or malpractice of Michael J. Swofford, D.O. and Southfield Radiology Associates, Linda Horn's obstructive hydrocephalus went undiagnosed and was not properly treated, resulting in cerebral edema and herniation, and ultimately resulting in brain death which led to her ultimate demise on March 4, 2013.

Had the March 2, 2013 CT scan been properly interpreted and evaluated, the findings that the ventricular system had become severely dilated with subtle areas of low density adjacent to the ventricles which suggested shunt obstruction and the transependymal flow of CSF would have been appropriately recognized; along with the findings of acute transtentorial herniation and diffuse cerebral edema, all of which portend a devastating neurologic injury in the absence of urgent neurological surgery, been properly appreciated and acted upon, it, more likely than not, would have been discovered that Linda Horn was suffering from obstructive hydrocephalus and VP shunt obstruction. Said condition could have been treated by draining the excessive CSF from the ventricles of the brain by either tapping the existing shunt, placing an external ventricular drain, and/or by externalizing the existing shunt. Had said treatment been initiated, instead of an ill advised and contra-indicated lumbar puncture on March 2, 2013, Ms. Horn, more likely than not, would have fully recovered with no permanent neurological deficits and would still be alive today thriving in her roles as wife, mother and daughter.

9. That based upon my review of the records and documents indicated in paragraph 2 above, that the breaches of the applicable standard of practice or care in the treatment and management of Linda Horn by **Michael J. Swofford, D.O.,** individually and as agent of Southfield radiology Associates, resulted in the untimely death of Linda Horn.

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10. The opinions expressed in this Affidavit are based upon the documents and materials referred to in Paragraph 2 above and are subject to modification based upon additional information which might be provided at some future date.

11. That this Affidavit accurately presents my opinions.

12. I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information and belief.

SCOTT B. BERGER, M.D., Ph.D..

Subscribed and sworn to before me this
20th day of February, 2018..

Valerie J Hotaling
Notary Public for the County of Fairfield,
State of Connecticut
My commission expires: 5-24-18

VALERIE J HOTALING
NOTARY PUBLIC-STATE OF NEW YORK
No. 01HO6222453
Qualified In Dutchess County
My Commission Expires 5-24-18

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APPENDIX 8

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JOELYNN T. STOKES, Successor Personal Representative of the Estate of LINDA HORN, Deceased,

Plaintiff,

vs.

MICHAEL J. SWOFFORD, D.O. and SOUTHFIELD RADIOLOGY ASSOCIATES, PLLC,

Defendants.

C. A. No: 2018-164148 NH

HONORABLE CHERYL A. MATTHEWS

KENNETH T. WATKINS (P 46231)
kwatkins@sommerspc.com
Attorney for Plaintiff
Suite 1700
One Towne Square
Southfield, MI. 48076-3739
(248) 355-0300

DAVID M. THOMAS (P 32470)
dthomas@rmrtt.com
Attorney for Defendants
Suite 1600
333 West Fort Street
Detroit, MI. 48226-3148
(313) 965-6100

RUTLEDGE, MANION, RABAUT, TERRY & THOMAS, P.C.
ATTORNEYS AND COUNSELLORS
FORT WASHINGTON PLAZA
333 WEST FORT STREET, SUITE 1600
DETROIT, MICHIGAN 48226
(313) 965-6100

AFFIDAVIT OF MERITORIOUS DEFENSE OF MICHAEL J. SWOFFORD, D.O. ON BEHALF OF DEFENDANTS (MCL 600.2912e)

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

I, ***MICHAEL J. SWOFFORD, D.O.***, being first duly sworn, deposes and says the following:

1. This affidavit is based upon my personal knowledge and, if called upon to do so, I can and will testify competently to the facts stated herein.

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2. I am a physician licensed to practice medicine in the State of Michigan and was in the active clinical practice of medicine as a board certified diagnostic radiologist for the year proceeding the date of the claimed malpractice herein.

3. The majority of my professional time is devoted to the active clinical practice of diagnostic radiology.

4. I am familiar with the matter involving Joelynn T. Stokes, as Successor Personal Representative of the Estate of Linda Horn, Deceased, because I have personally reviewed an imaging study concerning the decedent, Linda Horn and have additionally reviewed the following documents:

a. Notice of Intent to File Claim.

b. Complaint.

c. Records and imaging studies of Southfield Radiology Associates, PLLC.

d. Other medical records provided to me by attorney, David M. Thomas.

e. I have also reviewed the Affidavit of Merit of Scott B. Berger, M.D., Ph.D.

5. The applicable standard of care in this matter required that I, individually and as an agent of Southfield Radiology Associates, PLLC, do or not do that which another reasonable board certified diagnostic radiologist of ordinary learning, judgment or skill would or would not do under the same or similar circumstances with respect to plaintiff's decedent, Linda Horn.

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6. After review of the relevant medical records, imaging study, Notice of Intent, Complaint and Affidavit of Merit of Scott B. Berger, M.D., Ph.D., it is my professional opinion that the medical care rendered to plaintiff's decedent, Linda Horn, by me was consistent with the governing standard of care for a board certified diagnostic radiologist.

7. I disagree with the criticisms made against me as contained in plaintiff's Complaint and Affidavit of Merit of Scott B. Berger, M.D., Ph.D.

8. This affidavit is intended to apply to the allegations against the undersigned as well as Southfield Radiology Associates, PLLC.

9. With respect to the interpretation of the CT of the head dated March 2, 2013, the standard of care required the undersigned to:

a. Possess the degree of skill of a reasonable board certified diagnostic radiologist who spends the majority of his time as a diagnostic radiologist to do that which another reasonable board certified diagnostic radiologist would do or not do under the same or similar circumstances with respect to plaintiff's decedent, Linda Horn.

b. Properly evaluate, interpret the CT of the head of March 2, 2013.

c. Communicate to the clinical service the appropriate diagnosis for the findings from the March 2, 2013 CT of the head.

d. Timely and properly acknowledge that the CT scan of March 2, 2013 showed that the bilateral

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lateral ventricles have increased in size since prior study.

e. Timely and properly acknowledge, as a finding, that the fourth ventricle appeared to be collapsed.

f. Timely and properly acknowledge, as a finding, that there was no acute hemorrhage or major vessel infarct.

g. Timely and properly acknowledge that there was no midline shift.

h. Timely and properly acknowledge and record an impression of bilateral lateral ventricles have increased in size since prior study, especially the right.

i. Correlate clinically for malfunctioning shunt.

10. In my opinion, the undersigned and Southfield Radiology Associates, PLLC complied with the appropriate standard of care with respect to the interpretation of the head CT of March 2, 2013.

11. I believe that the information documented within the CT of the head supports the manner in which the undersigned and Southfield Radiology Associates, PLLC complied with the applicable standard of care by:

a. Employing the requisite skill and knowledge required by a board certified diagnostic radiologist interpreting a CT of the head.

b. Properly interpreting the CT of the head of March 2, 2013 and properly communicating the results of the imaging study with the clinical service.

12. I deny any other acts of negligence allegedly attributable to me or Southfield Radiology Associates, PLLC and

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any acts of vicarious liability allegedly attributable to Southfield Radiology Associates, PLLC.

13. I disagree and deny that the alleged injuries claimed by the Successor Personal Representative on behalf of the decedent, Linda Horn, as set forth in her Complaint, were caused by any alleged breach of the standard of care by the undersigned or Southfield Radiology Associates, PLLC, for the reason that it is untrue.

14. Furthermore, it is my professional opinion there is no relationship between plaintiff's decedent's alleged injuries and any alleged action or omission of vicarious liability of the undersigned or Southfield Radiology Associates, PLLC.

15. The undersigned, individually, and Southfield Radiology Associates, PLLC, deny any direct and proximate cause of injury to plaintiff's decedent, Linda Horn.

16. The undersigned, individually, and Southfield Radiology Associates, PLLC, deny any breach of the standard of care or proximate cause that created a foreseeable risk of injury and/or death to plaintiff's decedent, Linda Horn.

17. This affidavit is prepared and filed in accordance with MCL 600.2912d; the opinions expressed herein are based upon my training, education and experience; review of the aforementioned materials, diagnostic study and selected medical records; my familiarity with the applicable, recognized and then

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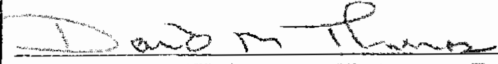
existing standard of care or practice of a board certified diagnostic radiologist; and are within a reasonable degree of medical and/or scientific certainty and/or probability.

18. I reserve the right to review additional information as this litigation progresses, which may add to or alter my opinions in this matter.

FUTHER DEPONENT SAITH NOT.

MICHAEL J. SWOFFORD, D.O.

Subscribed and sworn to before me
this 30th day of May, 2018.



DAVID M. THOMAS, Notary Public
Macomb County, Michigan
Acting in Oakland County, Michigan
My Commission Expires: 08/21/2018

RUTLEDGE, MANION, RABAUT, TERRY & THOMAS, P.C.
ATTORNEYS AND COUNSELLORS
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(313) 965-6100

STATE OF MICHIGAN

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Plaintiff,

vs.

MICHAEL J. SWOFFORD, D.O. and SOUTHFIELD RADIOLOGY ASSOCIATES, PLLC,

Defendants.

C. A. No: 2018-164148 NH

HONORABLE CHERYL A. MATTHEWS

KENNETH T. WATKINS (P 46231)
kwatkins@sommerspc.com
Attorney for Plaintiff
Suite 1700
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Southfield, MI. 48076-3739
(248) 355-0300

DAVID M. THOMAS (P 32470)
dthomas@rmrtt.com
Attorney for Defendants
Suite 1600
333 West Fort Street
Detroit, MI. 48226-3148
(313) 965-6100

CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2018, I electronically filed ***AFFIDAVIT OF MERITORIOUS DEFENSE OF MICHAEL J. SWOFFORD, D.O. ON BEHALF OF DEFENDANTS*** *and this* ***CERTIFICATE OF SERVICE*** on behalf of the defendants with the Clerk of the Court using the MiFILE TrueFiling system which will send notification and a copy of such filing to the attorneys listed below:

KENNETH T. WATKINS (P 46231)
kwatkins@sommerspc.com
Attorney for Plaintiff

/s/Mary F. Nightingale
Rutledge, Manion, Rabaut,
Terry & Thomas, P.C.
333 West Fort Street, #1600
Detroit, MI 48226
(313) 965-6100
mnightingale@rmrtt.com

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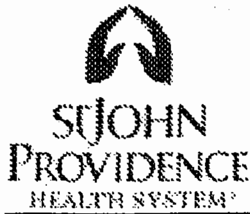
APPENDIX 9



Providence Hospital
16001 West Nine Mile Road
Southfield, MI 48075-

Patient: HORN, LINDA
Admit Dt: 3/2/2013
FIN: 88402870
MRN: 2272725

Computed Tomography Reports

ACCESSION	PROCEDURE	EXAM DATE/TIME	ORDERING PROVIDER
CT-13-0022885	CT Angiography Head/Neck	3/2/2013 10:50 EST	Mc Graw,Steven D DO
CT-13-0022886	CT Head or Brain w/o Contrast	3/2/2013 10:45 EST	Mc Graw,Steven D DO

Report
TECHNIQUE: Axial source images, volume rendered three-dimensional images, sagittal and coronal reconstructed images, and curved reformatted images were reviewed for this examination. 125 cc of Omnipaque 350 contrast was administered intravenously.

Total DLP (Radiation dose): 2022.03 mGy-cm

FINDINGS: There is classic aortic arch anatomy. The origins of the great vessels are patent. The right and left common carotid arteries are patent without hemodynamically significant stenosis or aneurysmal dilatation. The the bilateral internal carotid arteries demonstrate gradual nonopacification just beyond their respective bifurcations. There is no intracerebral blood flow identified. The external carotid arteries are patent bilaterally.
Preferential flow to the external carotid arteries and their branches is suggested given there is opacification of the middle meningeal arteries.
There is opacification of the right vertebral artery to the level of C3, gradually tapering to incomplete opacification thereafter. The left vertebral artery is patent but also gradually tapers to incomplete opacification at the skull base.

Redemonstrated is a right posterior parietal ventriculostomy catheter with its tip in the right lateral ventricle. There is a small amount of intraparenchymal hemorrhage along the tract of the ventriculostomy catheter. There is asymmetric dilatation of the frontal and temporal horns of the right lateral ventricle with obliteration of the third ventricle suggestive for subfalcine herniation. There is also effacement of the cortical sulci consistent with cerebral edema. There is obliteration of the basal, mesencephalic, and posterior fossa cisterns consistent with transtentorial herniation. There is also soft tissue fullness in the foramen magnum suggest tonsillar herniation.

Focal hypoattenuation is demonstrated in the brainstem and cerebellum, notably, the midbrain and the left cerebellar hemisphere. In addition, subtle areas of heterogeneous attenuation is demonstrated in the occipital lobes.

There is bilateral proptosis. There is scattered subsegmental atelectasis in the lungs bilaterally. Endotracheal tube is identified in appropriate position. An enteric tube is seen. There is no cervical adenopathy.

IMPRESSION:
No cerebral blood flow, most likely secondary to elevated intracranial pressure. In addition, there are findings suggestive for cerebral edema and

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Computed Tomography Reports

ACCESSION	PROCEDURE	EXAM DATE/TIME	ORDERING PROVIDER
CT-13-0022885	CT Angiography Head/Neck	3/2/2013 10:50 EST	Mc Graw,Steven D DO
CT-13-0022886	CT Head or Brain w/o Contrast	3/2/2013 10:45 EST	Mc Graw,Steven D DO

Report
infarction in the territory of the posterior circulation .

Findings consistent with transtentorial, tonsillar, and subfalcine herniation.

I have personally viewed this examination and agree with the interpretation.

Findings were discussed with Dr. Barrett at approximately 10:40 a.m. on 3/2/2013

Workstation: MIDETPHBA146728

FINAL
Dictated By: Semaan, Dominic T MD
And Verified By: Harb, Ali N MD

Electronically Signed Date: 03/04/13 13:50

ACCESSION	PROCEDURE	EXAM DATE/TIME	ORDERING PROVIDER
CT-13-0022847	CT Head or Brain w/o Contrast	3/2/2013 06:32 EST	Mc Graw,Steven D DO

Reason For Exam
(CT Head or Brain w/o Contrast) Bleed

Report
EXAMINATION: CT Head or Brain w/o Contrast

HISTORY: Intracranial hemorrhage, hydrocephalus

TECHNIQUE: Noncontrast axial CT images of the brain were obtained.

COMPARISON: 2/26/2013

Total DLP (estimated radiation dose): 2262.85 mGy-cm

FINDINGS: Study is limited due to motion artifact.
Right posterior parietal approach catheter is stable in position with tip within the medial aspect of the frontal horn of the right lateral ventricle. Bilateral lateral ventricle appear increased in size since prior examination, especially the right. The fourth ventricle appears to collapsed. There is no acute hemorrhage or major vessel infarct. There is no midline shift.

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Providence Hospital
16001 West Nine Mile Road
Southfield, MI 48075-

Patient: HORN, LINDA
Admit Dt: 3/2/2013
FIN: 88402870
MRN: 2272725

Computed Tomography Reports

ACCESSION	PROCEDURE	EXAM DATE/TIME	ORDERING PROVIDER
CT-13-0022847	CT Head or Brain w/o Contrast	3/2/2013 06:32 EST	Mc Graw,Steven D DO

Report
There is no abnormal extra-axial fluid collection. The paranasal sinuses are well-aerated.

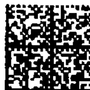
IMPRESSION:
Study is limited due to motion artifact.
Bilateral lateral ventricles have increased in size since prior study, especially the right. Correlate clinically for malfunctioning shunt.

I have personally viewed this examination and agree with the interpretation.

Workstation: PH960234

FINAL
Dictated By: Samaan, Sam F MD
And Verified By: Swofford, Michael J DO

Electronically Signed Date: 03/02/13 07:02



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Providence Hospital
16001 West Nine Mile Road
Southfield, MI 48075-

Patient: HORN, LINDA
Admit Dt: 2/26/2013
FIN: 88374186
MRN: 2272725

Computed Tomography Reports

ACCESSION	PROCEDURE	EXAM DATE/TIME	ORDERING PROVIDER
CT-13-0021474	CT Head or Brain w/o Contrast	2/26/2013 14:57 EST	Koester-Marsalese,Tina L DO

Reason For Exam
(CT Head or Brain w/o Contrast) Other - Specify in Special Instructions

Report
EXAMINATION: CT Head or Brain w/o Contrast

HISTORY: Headaches.

TECHNIQUE: Noncontrast axial CT images of the brain were obtained.

COMPARISON: 2/22/2013

Total DLP (estimated radiation dose): 1026.67 mGy-cm

FINDINGS:
The ventricles and cortical sulci appear stable in size since prior study from January 15, 2013. There is no acute hemorrhage or major vessel infarct. Right posterior parietal approach shunt catheter is identified with tip within the medial aspect of the anterior horn of the right lateral ventricle, this is stable in position since prior study from 2/22/2013. There is no midline shift.

There is no abnormal extra-axial fluid collection. The paranasal sinuses are well-aerated.

IMPRESSION:
Stable appearance of the brain since prior study

I have personally viewed this examination and agree with the interpretation. .

Workstation: MIDETPHAA341370

FINAL
Dictated By: Samaan, Sam F MD
And Verified By: Klein, Roger M MD

Electronically Signed Date: 02/26/13 15:41

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APPENDIX 10

CURRICULUM VITAE

Michael J. Swofford, D.O.
35393 Curtis Rd.
Livonia, Michigan 48152

EDUCATION:

Washington State University
Graduation: June 1988
Degree: Bachelor of Science
Honors/Activities
- President's Honor Roll
- Phi Kappa Phi, National Honor Society
- Intramural Sports

Kirksville College of Osteopathic Medicine
Kirksville, Missouri
Graduation: June 1992
Degree: Doctor of Osteopathy
Honors/Activities
- Sigma Sigma Phi, National Osteopathic Honor Society
- Michael Scott Memorial Scholarship 1992
- Atlas Club - Society Chairman
- Students for the Advancement of Osteopathic Medicine
- Washington Osteopathic Medical Association

Rotating Internship: Garden City Osteopathic Hospital
Garden City, Michigan 48135
July 1,1992 to June 30,1993
National Board of Osteopathic Medicine, certified

EDUCATION:

Residency: Diagnostic Radiology
Garden City, Michigan 48135
July 1,1993 to June 1997
Affiliation with Univ. of Mich. and Wayne State Univ.
Chief Resident 7/96-6/97
Didactics: Daily noon lectures
- 4 hours / week Wayne State University
- 2 hours / week PHYSICS Wayne State University

EXHIBIT NO. 1
Wit: Swofford
Date: 8-1[illegible]
Sabrina Smith, CSR-212

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Fellowship: Neuroradiology, Wayne State University
Including Interventional Radiology
Harper Hospital, Detroit, MI 48201
July 1,1997 to June 30,1998

EXPERIENCE: Staff Radiologist, Huron Valley Hospital of The Detroit
Medical Center, July1,1998 to Dec. 31,2001
Assistant Clinical Professor, dept.of Radiology
Wayne State University, July 1,1998 to present
Staff Radiologist, St. Joseph Mercy, Oakland
Chief of Neuroradiology 1/02 to 7/06
Director of MRI Quality Assurance, 7/02 to 7/06
Assistant Program Director, Radiology Residency
Jan. 1, 2003 to July 10, 2006
Staff Radiologist, Southfield Radiologist Associates at
Providence, Providence Park, and
Garden City Hospitals 8/06 to present
Dept. of Radiology Secretary 6/07 to 7/11
Assistant Program Director, Radiology Residency
Garden City Hospital 5/08 to present
Dept. of Radiology Vice Chairman 8/11 to present

LICENSE: Physician License, Michigan
Controlled Substance License, Michigan
Board certified Diagnostic Radiology 4/97
Certificate of Added Qualification Neuroradiology 4/02

RESEARCH: Efficacy of Combined GDC coil with Balloon
occlusion

for wide neck Intracranial Aneurysms, 2001- 2003
Diffusion weighted imaging of Lumbar Spine to differentiate
Benign verses Pathologic Compression Fractures 2002
Prognostic correlation of CT Brain Perfusion imaging with
Carotid CTA in the diagnosis of Acute Stroke – current/07
Functional brain MRI in Prediction and Treatment of
Addiction, March 09 to June 2013
Reduction of radiation dose in Coronary Artery CTA with
Beaumont consortium 1/15/11 to present

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PRESENTATIONS: Scientific Poster, Correlation of Post Myelogram CT of the Lumbar Spine after MRI diagnosis, AOCR national convention San Diego Nov, 96

Traumatic Injuries of the Knee and Ankle, Mich. State University Family Practice seminar (3 hr.)

Neuroanatomy of the Skull base and Pharynx, Wayne State University School of Medicine (3 hr.)

Results of Diffusion weighted MRI of Lumbar Spine Presented at RSNA Dec. 2003

Review of Acute Stroke on CT and MRI with emphasis on CT Perfusion 9/11/07

Neuroscience Stroke Grand Rounds 4/7/09
Update on CT perfusion – Acute Stroke with literature review

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APPENDIX 11

Michael J. Swofford, D.O.

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Michael J. Swofford was certified in diagnostic radiology by the American Ost
Radiology in 1997 and obtained a certificate of added qualification in neurora
licensed to practice in Michigan and is currently appointed to Ascension Prov
Southfield and Novi Campus. He also serves as an assistant clinical professo
radiology in Wayne State University. Dr. Swofford obtained his medical degre
of Osteopathic Medicine in 1992. His residency took place in the Garden City
Radiology Residency Program, in which he served as Chief Resident from 199
Swofford completed a fellowship in neuroradiology including interventional
State University/Harper Hospital. Dr. Swofford is a Clinical Assistant Profess
University College of Human Medicine.

In addition to being a devoted teacher and health care provider, Dr. Swofford
memberships in American Osteopathic Association, American College of Ra
Osteopathic College of Radiology, Association of University Radiologist, Mic
Society, and Michigan Radiological Society. Top

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Contact provider for availability

Dr. Michael Swofford, DO

Neuroradiology · Male · Age 53

Leave a Review

(248) 569-4353

Dr. Michael Swofford, DO is a neuroradiology specialist in Southfield, MI and has been practicing for 27 years. He graduated from At Still University Health Sciences/Kirksville College Of Osteopathic Medicine in 1992 and specializes in neuroradiology.

Overview About Me Reviews Locations Hospitals

Insurance Check

Search for your insurance provider

Try: Aetna, Cigna, HAP Insurance, or MultiPlan

Background Check

⊖ Healthgrades does not collect malpractice claims

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information for Michigan

- No disciplinary actions found for the years we collect data
- No board actions found for the years we collect data

Learn more about background checks

Experience Check

Check if Dr. Swofford treats your condition or procedure

About Me

Biography

Dr. Michael Swofford, DO is a neuroradiology specialist in Southfield, MI and has been practicing for 27 years. He graduated from At Still University Health Sciences/Kirksville College Of Osteopathic Medicine in 1992 and specializes in neuroradiology.

Specialties

Neuroradiology

Board Certifications

Diagnostic Radiology

Learn why a board certification matters

Education

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Joint Appendix 071

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RSNA'03
COMMUNICATION FOR
BETTER PATIENT CARE

Abstract Archives of the RSNA, 2003

G14

Neuroradiology/Head and Neck (Spine Interventional)

Scientific Papers

Presented on December 2, 2003

Participants

Jeffrey Ross MD, MODERATOR: Nothing to Disclose
A. Orlando Ortiz MD, MBA, MODERATOR: Nothing to Disclose

Sub-Events

G14-654 Magic Angle Effects in Magnetic Resonance Neurography
Graeme Bydder MBChB | Karyn Chappell | Matthew Robson PhD | Amy Herlihy PhD

G14-655 MR Flow Quantity Technique in the Evaluation of Cerebrospinal Fluid Circulation Obstacle Diseases
Xiaoli Zhu PhD | Tian-Zhen Shen MD | Xing-Rong Chen MD, PhD

G14-656 Prognostic Indicators of Baseline and Posttreatment MR in Long-term Multiple Myeloma Survivors
Edgardo Angtuaco MD | Jong Park MD | Leta Peterson RN | Margaret Justus MS, RN | Rudy VanHemert MD | Eren Erdem MD

G14-657 Differentiation of Benign and Malignant Acute Vertebral Fractures with Diffusion-weighted MRI Using Echo Planar Technique
Raman Danrad MD | Michael Swofford DO

G14-658 Radiofrequency Ablation Combined with Bone Cement for the Treatment of Bone Malignancies
Atsuhiro Nakatsuka MD | Koichiro Yamakado MD | Masayuki Maeda MD | Masao Akeboshi MD | Haruyuki Takaki MD | Kan Takeda MD

G14-659 Improved Functional Status and Reduced Pain and Medication Use following Percutaneous Polymethylmethacrylate Vertebroplasty for Vertebral Compression Fractures
Mark Hiatt MD, MBA | George Stukenborg PhD | Patricia Schweickert | William Marx MD | Mary Jensen MD | David Kallmes MD

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G14- MR-guided Radiofrequency (RF) Ablation of Sacrococcygeal Chordomas: Technical Innovation

000049
Joint Appendix 072

660 and Preliminary Experie es
Philippe Pereira MD | Volker Teichgraeber MD | Christophe Aube MD | Diethard Schmidt MD | Eckhardt Jehle MD | Claudius Koenig MD

G14-661 Percutaneous Vertebroplasty in the Treatment of Osteoporotic Vertebral Compression Fractures: An Open Prospective Study
Rosa Lorente-Ramos MD | Maria Alcaraz Mexia MD | Yolanda Del Valle-Sanz MD | Luis Alvarez-Galovich MD

G14-662 Postvertebroplasty Vertebral Body Changes Assessed by MRI
Alexis Kelekis MD | Karl Lovblad MD | Hasan Yilmaz MD | Jean-Bapiste Martin MD | Daniel Ruefenacht MD

Cite This Abstract

Ross MD, J, Ortiz MD, MBA, A, Neuroradiology/Head and Neck (Spine Interventional). Radiological Society of North America 2003 Scientific Assembly and Annual Meeting, November 30 - December 5, 2003 ,Chicago IL. http://archive.rsna.org/2003/4400714.html Accessed May 31, 2019

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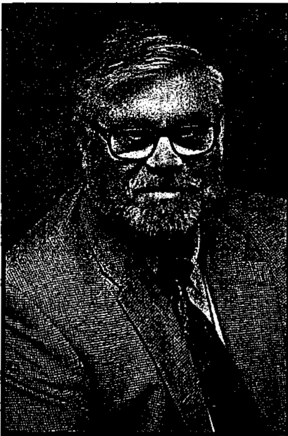
Southfield Radiology Associates

Our Doctors, Nurses & Assistants



Roger L. Gonda Jr., M.D., FACR, FICS

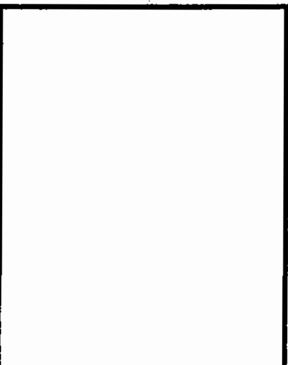
Dr. Gonda is board certified in diagnostic radiology by the American Board of Radiology and was awarded a certificate of added qualifications in vascular and interventional radiology. He is licensed to practice in Michigan. Dr. Gonda is the Chairman of the Department at Ascension Providence Hospital Southfield and Novi Campus. Dr. Gonda obtained his medical degree at the American University of the Caribbean in Montserrat, West Indies and completed his residency in diagnostic radiology at Providence Hospital. Afterwards, he pursued a fellowship in cardiovascular and interventional radiology at the University of Rochester Medical Center in upstate New York. Dr. Gonda is a Clinical Full Professor at Michigan State University College of Human Medicine.

Dr. Gonda holds professional memberships in the Society of Interventional Radiology, Radiological Society of North America, American College of Radiology, Michigan Radiological Society, American Medical Association, Michigan State Medical Society, and Oakland County Medical Society. Dr. Gonda was elected as a Fellow of the American College of Radiology and also as a Fellow of the International College of Surgeons. Dr. Gonda serves as an officer of the Michigan Radiological Society and has been a multi-year winner of the prestigious Top Docs award in Metro Detroit.

Denis R. Lincoln, M.D.

Denis R. Lincoln is certified by the American Board of Radiology in all areas of imaging and is licensed to practice in Michigan. He currently serves as the Section Chief of the Musculoskeletal Radiology Department at Ascension Providence Hospital Southfield and Novi Campus. Dr. Lincoln is a Clinical Assistant Professor at Michigan State University College of Human Medicine.

In addition to his many accomplishments, Dr. Lincoln holds professional memberships in Society of Skeletal Radiology, Radiological Society of North America, American College of Radiology, Michigan Radiological Society, and the Michigan State Medical Society. Top



Brian J. Puzsar, M.D.

Brian J. Puzsar is an ABMS Board of Radiology-certified radiologist licensed to practice in Michigan. He is currently appointed at Ascension Providence Hospital Southfield and Novi Campus. Dr. Puzsar pursued his medical degree from the American University of the Caribbean School of Medicine and completed his residency in diagnostic radiology from Providence Hospital in 2005. Dr. Puzsar is a Clinical Assistant Professor at Michigan State University College of Human Medicine.

Dr. Puzsar holds professional memberships in American College of Radiology, American Roentgen Ray Society, Radiological Society of North America, Society of Interventional Radiology, and the Michigan State Medical Society. His interests lie in interventional radiology. Top

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Sachit Malde, M.D.

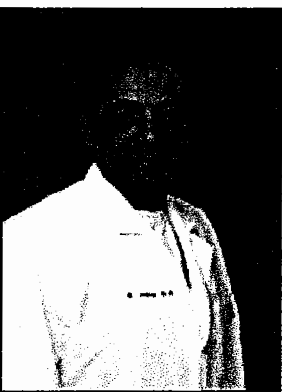
Sachit Malde is a Board Certified Diagnostic Radiologist and licensed to practice in the state of Michigan. He is currently appointed at at Ascension Providence Hospital Southfield and Novi Campus. Dr. Malde attended the University of Michigan Medical School in Ann Arbor and completed an Abdominal Imaging Fellowship at the University of California Los Angeles. Dr. Malde is also a Clinical Assistant Professor at Michigan State University College of Human Medicine.

Dr. Malde completed his residency at Henry Ford Hospital in Detroit, Michigan. Dr. Malde holds professional memberships in the American College of Radiology, Radiological Society of North America, the American Roentgen Ray Society, and the Michigan State Medical Society. Top

James E. Selis, M.D.

Dr. James E. Selis is a licensed radiologist in the state of Michigan, board-certified by the American Board of Radiology. He is a member of several professional societies, including the Michigan Radiological Society, the Society of Radiologists in Ultrasound, the Radiological Society of North America, the Society of Breast Imaging, the American College of Radiology, and the Michigan State Medical Society. His current hospital affiliation is at Ascension Providence Hospital Southfield and Novi Campus.

Dr. Selis received his Doctorate of Medicine from Wayne State University School of Medicine in Detroit. His post-graduate medical training included a Diagnostic Radiology Residency Program at the University of Illinois in Chicago. He is registered in Vascular Technology and Vascular Interpretation by the American Registry of Diagnostic Medical Sonographers. Dr. Selis is dedicated to teaching. He is a Clinical Assistant Professor at Wayne State University and Michigan State University College of Human Medicine. Top



Mehran Salari, M.D.

Mehran Salari was certified in diagnostic radiology by the ABMS Board of Radiology in 2002 and obtained a certificate of added qualification in vascular and interventional radiology in 2004. He is licensed to practice in Michigan and is currently appointed to Ascension Providence Hospital Southfield and Novi Campus. Dr. Salari obtained his medical degree at Shiraz University of Medical Science in Shiraz, Iran. He finished his residency in the Providence Hospital Diagnostic Radiology Residency Program and later completed a fellowship in vascular interventional radiology at the William Beaumont Hospital. Dr. Salari is a Clinical Assistant Professor at Michigan State University College of Human Medicine.

Dr. Salari holds professional memberships in Michigan State Medical Society, American College of Radiology, Oakland County Medical Society, Society of Interventional Radiology, Radiological Society of North America, American Roentgen Ray Society, and Michigan Radiological Society. Top

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Michael J. Swofford, D.O.

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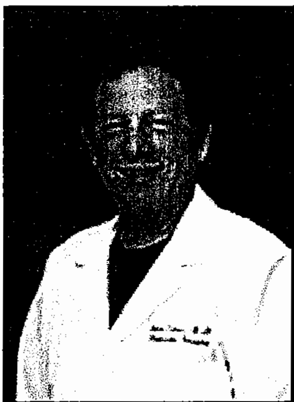
Michael Swofford was certified in diagnostic radiology the American Osteopathic Board of Radiology in 1997 and obtained a certificate of added qualification in neuroradiology in 2002. He is licensed to practice in Michigan and is currently appointed to Ascension Providence Hospital Southfield and Novi Campus. He also serves as an assistant clinical professor in the department of radiology in Wayne State University. Dr. Swofford obtained his medical degree from Kirkville College of Osteopathic Medicine in 1992. His residency took place in the Garden City Hospital Diagnostic Radiology Residency Program, in which he served as Chief Resident from 1996-1997. Afterwards, Dr. Swofford completed a fellowship in neuroradiology including interventional radiology at Wayne State University/Harper Hospital. Dr. Swofford is a Clinical Assistant Professor at Michigan State University College of Human Medicine.

In addition to being a devoted teacher and health care provider, Dr. Swofford holds professional memberships in American Osteopathic Association, American College of Radiology, American Osteopathic College of Radiology, Association of University Radiologist, Michigan State Medical Society, and Michigan Radiological Society. Top

David L. Osher, M.D.



David L. Osher is certified by the American Board of Radiology and holds ILO Certification of Occupational Lung Disease. He is licensed to practice in Michigan and he has served as the Director of Emergency Imaging at Providence Hospital. He is currently appointed at Ascension Providence Hospital Southfield and Novi Campus. Dr. Osher obtained his medical degree at Wayne State University School of Medicine in 1979 and completed his residency in the Oakwood Hospital Diagnostic Radiology Residency Program in 1984. He later served as the Director of the Providence Hospital Radiology Residency Program. Dr. Osher is a Clinical Assistant Professor at Michigan State University College of Human Medicine.

Additionally, Dr. Osher holds professional memberships in the American College of Radiology, Michigan Radiological Society, Radiological Society of North America, Michigan State Medical Society, and Oakland County Medical Society. Top

Edsa Negussie, M.D.

Board-certified by the American Board of Radiology, Dr. Edsa Negussie is a dedicated radiologist. She is a member of the Radiological Society of North America, the American College of Radiology, the North American Society of Cardiac Imaging, and the Michigan State Medical Society. Her current hospital affiliations in Michigan is at Ascension Providence Hospital Southfield and Novi Campus. Dr. Negussie is also a Clinical Assistant Professor at Michigan State University College of Human Medicine.

Dr. Negussie received her Doctorate of Medicine from Addis Ababa University Medical Faculty in Addis Ababa, Ethiopia. She then traveled to Southfield, Michigan to complete a Radiology Residency at Providence Hospital. Dr. Negussie continued her medical training with a Body Imaging Fellowship at the University of Michigan in Ann Arbor. Top

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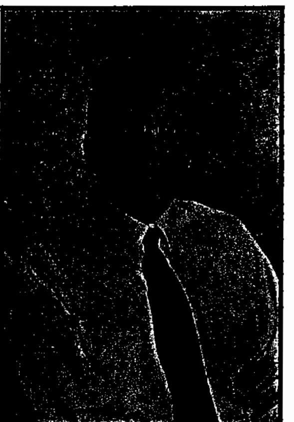
Mathew N. Chakko, M.D.



Mathew N. Chakko is a Board Certified Diagnostic Radiologist with a Certificate of Added Qualification of Neuroradiology, and is licensed by the state of Michigan. He is currently appointed at Ascension Providence Hospital Southfield and Novi Campus. Dr. Chakko obtained his medical degree from Indiana University School of Medicine, Indianapolis, IN. and completed a Fellowship in Neuroradiology from William Beaumont Hospital in Royal Oak, MI. Dr. Chakko is also a Clinical Assistant Professor at Michigan State University College of Human Medicine.

Dr. Chakko completed his residency at Providence Hospital and is a member of the American College of Radiology, American Roentgen Ray Society, the American Society of Neuroradiology, and the Michigan State Medical Society. Top

Lisa Govila, M.D.

Dr. Lisa Govila is board-certified by the American Board of Radiology. She received her Doctorate of Medicine from the American University of the Caribbean School of Medicine, Montserrat, British West Indies. Her post-graduate medical training included a Diagnostic Radiology Residency at Providence Hospital in Southfield, where she served as Chief Resident in her final year, followed by a two-year Fellowship in Neuroradiology at Henry Ford Hospital in Detroit, Michigan. Dr. Govila is also a Clinical Assistant Professor at Michigan State University College of Human Medicine.

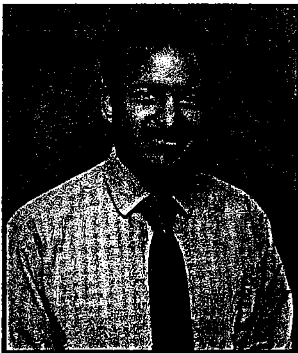
Professional memberships include the American College of Radiology, the Radiological Society of North America, the American Society of Emergency Radiology, the American Society of Neuroradiology, the American Society of Head and Neck Radiology, and the Michigan State Medical Society. Licensed to practice in Michigan, her current hospital affiliation is at Ascension Providence Hospital Southfield and Novi Campus. Top

Thomas M. Hall, M.D.

Board-certified by the American Board of Radiology, Dr. Thomas M. Hall is a licensed radiologist in the state of Michigan. He is a member of the American College of Radiology, the Michigan State Medical Society, the American Roentgen Ray Society, and the Society of Breast Imaging. His current hospital affiliation is at at Ascension Providence Hospital Southfield and Novi Campus. Dr. Hall received his Doctorate of Medicine from Michigan State University College of Human Medicine in East Lansing.

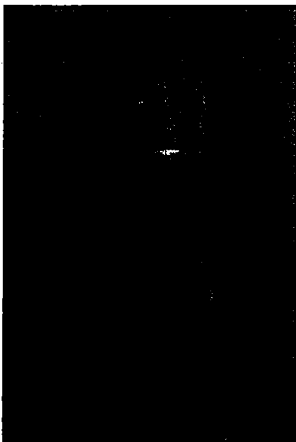
His post-graduate medical training included a Diagnostic Radiology Residency at St. Joseph Mercy Hospital in Oakland, followed by a Fellowship in Mammography, CT, and Ultrasound at Henry Ford Hospital in Detroit. Dr. Hall is currently the Director of Mammography at St. John/Providence Hospital System in Novi, Farmington, Livonia, and Southfield, Michigan locations. Dr. Hall is also a Clinical Assistant Professor at Michigan State University College of Human Medicine. Top

Alula Kenfe, M.D.



Alula Kenfe is certified by the American Board of Radiology and licensed to practice in the state of Michigan. He is currently appointed at Ascension Providence Hospital Southfield and Novi Campus. Dr. Kenfe obtained his Doctor of Medicine degree from Addis Ababa University Medical Faculty in Ethiopia. In 2011 he completed his Diagnostic Radiology Residency at Providence Hospital in Southfield, Michigan and in 2012 he completed his Abdominal Imaging and Cross-sectional Intervention Fellowship from University of Michigan in Ann Arbor. Dr. Kenfe is also a Clinical Assistant Professor at Michigan State University College of Human Medicine.

Dr. Kenfe is a member of the American College of Radiology, American Roentgen Ray Society, the Michigan Radiology Society, the Radiological Society of North America, and the Michigan State Medical Society. Top



Nedi Gari, M.D.

Nedi Gari is certified by the American Board of Radiology and licensed to practice in the state of Michigan. She is currently appointed at Ascension Providence Hospital Southfield and Novi Campus. In 2001, Dr. Gari obtained her Doctor of Medicine degree at Addis Ababa University Medical Faculty in Ethiopia. In 2010 she completed her residency at Providence Hospital in Southfield, Michigan and in 2011 she completed her Body Imaging Fellowship from William Beaumont Hospital in Royal Oak, Michigan. Dr. Gari is a Clinical Assistant Professor at Michigan State University College of Human Medicine.

Dr. Gari is a member of the American College of Radiology, the American Roentgen Ray Society, Michigan Radiology Society, Radiological Society of North America, and the Michigan State Medical Society. Top

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Evita Singh, M.D.

Evita Singh, M.D., is a Board Certified Radiologist and Mammography Quality Standards Act (MQSA) Accredited Radiologist for mammography, ultrasound, tomosynthesis, breast MRI and image-guided biopsy. She has subspecialty training in women's imaging (including breast, high risk obstetric imaging, abdomen and pelvic MRI and image guided procedures), which she enhanced during her fellowship from Harvard Medical School/ Brigham and Women's Hospital in 2011 and 2012.

Dr. Singh is currently appointed at Ascension Providence Hospital Southfield and Novi Campus. Dr. Sighn is also a Clinical Assistant Professor at Michigan State University College of Human Medicine.

Dr. Singh is a member of the Michigan Radiological Society, Radiological Society of North America, American Roentgen Ray Society, Society of Breast Imaging, Society of Abdominal Radiology, and Michigan State Medical Society. Top

Vikram A. Kinni, M.D.

Vikram A. Kinni is a Board Certified Diagnostic Radiologist licensed to practice in Michigan. He obtained his medical degree at Wayne State University School of Medicine in Detroit, MI and completed his residency at Henry Ford Hospital in Detroit, MI. Following residency, he pursued a fellowship in Musculoskeletal Imaging at the Cleveland Clinic in Cleveland, OH.

Dr. Kinni is currently appointed at Ascension Providence Hospital Southfield and Novi Campus. Dr. Kinni is a Clinical Assistant Professor at Michigan State University College of Human Medicine. He is a member of the Radiological Society of North America, Michigan Radiological Society and American Roentgen Ray Society. Top

Karl Kado, M.D.

Karl Kado, M.D. is a board certified radiologist licensed to practice medicine in the State of Michigan. Dr. Kado went to Wayne State University of undergraduate education followed by Wayne State University School of Medicine for his medical degree, graduating in 2011. Dr. Kado completed training in Diagnostic Radiology at Oakwood/Beaumont Hospital with a fellowship in Neuroradiology/Neuro-interventional Radiology at the University of Michigan in 2016.

Dr. Kado holds professional memberships in the American College of Radiology, the Radiological Society of North America, the American Society of Neuroradiology, the American Society of Head and Neck Radiology, and the Michigan State Medical Society. His current hospital affiliation is at Ascension Providence Hospital Southfield and Novi Campus. Top

Matthew L. Osher, M.D.

Matthew L. Osher is Board Certified in Interventional and Diagnostic Radiology, licensed to practice in Michigan. Following medical school at Wayne State University he completed his residency in diagnostic radiology at Providence-Providence Park Hospital. He went on to complete fellowship in Vascular and Interventional Radiology at the University of Michigan, Ann Arbor.

Dr. Osher has an appointment at Ascension Providence Hospital Southfield and Novi Campus. He is a Clinical Assistant Professor at Michigan State University College of Human Medicine. His professional memberships include Society of Interventional Radiology, Radiological Society of North America and the Michigan Radiological Society. He has specialized interests in interventional oncology, complex venous disease, biliary and lymphatic interventions. Top

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Kellee Lezotte ACNP-BC

Kellee is a board certified nurse practitioner with a specialization in interventional radiology. She has privileges at Ascension Providence Hospital Southfield and Novi Campus. She is a member of the Society of Interventional Radiology, Radiology Nurses Association and the American Association of Nurse Practitioners.

Kellee obtained her BSN from Oakland University and her Masters in nursing/nurse practitioner in acute care (MSN) from Wayne State University. Top

Karl Sinclair, PA-C

Karl Sinclair is board certified by the National Commission on Certification of Physicians Assistants (NCCPA) since 2008. He is credentialed at Ascension Providence Hospital Southfield and Novi Campus. Karl graduated with an Associates Degree in Science from Kellogg Community College. He later graduated with a Bachelor of Science Degree from Western Michigan University. Karl then became a board certified cardiac sonographer with a second Associates Degree from Baker College.

After working at Providence Hospital as both a registered cardiac sonographer and registered invasive specialist, he attended the University of Detroit's Physician Assistant Program. He is also is a member of the Michigan Academy of Physician Assistants as well as the American Academy of Physician Assistants. Top

Rhonda Baiocchi PA-C

Rhonda Baiocchi is a board certified Physician Assistant and is licensed to practice in the state of Michigan. Rhonda has privileges at Ascension Providence Hospital Southfield and Novi Campus. Rhonda received her Physician Assistant degree at Wayne State University in 1998. She has been employed by Southfield Radiology since 2007, where she practices in Interventional Radiology. Prior to joining SRA, she worked in Spine Orthopedics at University of Michigan as well as Vascular Surgery at Harper Hospital in Detroit, Michigan.

In 2006, Rhonda received the Orthopedic Department Annual Recognition Award at University of Michigan. Rhonda's special interests include music, golf, and being "Grandma" to her granddaughter. Top

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Aleka Baker PA-C

Aleka Baker is a board certified Physician Assistant and licensed to practice in Michigan. Aleka currently has privileges at at Ascension Providence Hospital Southfield and Novi Campus.

Aleka graduated from the University of Detroit Mercy Physician Assistant program in 2008. Prior to joining Southfield Radiology Associates, Aleka worked in general surgery and received the Providence Hospital midlevel provider excellence award in 2011. Aleka loves working in Interventional Radiology and has a particular interest in hepatobiliary procedures. Top

PHYSICIANS EMERITUS

John F. Brown, M.D.
Allan D. Fraiberg, M.D.
James J. Karo, M.D.
John E. Temple, M.D.
Roger L. Gonda, Sr., M.D.
Phillip E. Perkins, M.D.
Max D. Clark, M.D.
Thomas P. James, M.D.
James R. Reese, M.D.

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APPENDIX 12

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Scott B. Berger, M.D., Ph.D.

Current Appointment

Director of Neuroradiology, Caremount Health (MKMG), 2011-present.
Clinical Instructor, Yale University School of Medicine, Section of Neuroradiology, Department of Diagnostic Radiology, New Haven, CT, 1998 – present.
Hospital Privileges, Northern Westchester Hospital, Mt. Kisco, NY.

Previous Appointment

Vice Chairman, Department of Radiology, Danbury Hospital, Danbury, CT
Chief, Section of Neuroradiology, Department of Radiology, Danbury Hospital
Danbury Radiological Associates, Danbury, CT 1998-2011
Chairman, Department of Radiology, **Putnam Imaging Associates**, Putnam Hospital, Carmel, NY 2002-2011

Contact Information

Office: Department of Radiology, 90 S. Bedford Road, Mt. Kisco, NY 10549
Telephone: Office (888) 656-4723, (914) 241-1050
Home: 4 Weed Circle, Stamford, CT 06902 (203) 428-6359
Cellphone: 914-523-9196
Email: sberger@fastmail.net

Post Graduate Medical Training

Fellowship, 1996-1998 (Chief Fellow 1997-1998) **Section of Neuroradiology** Yale- New Haven Hospital, New Haven, CT
Residency, Diagnostic Radiology 1993-1997 **Department of Radiology** Yale- New Haven Hospital, New Haven, CT
Internship 1992-1993 Columbia University- Presbyterian Medical Center, NY, NY

Medical Education

Tri-Institutional MD-PhD Program, (Weill-Cornell Medical College, Memorial Sloan Kettering Cancer Center, Rockefeller University), New York, NY, 1983-1992.
PhD Thesis: Three-dimensional reconstruction of models of ischemia in the rat brain and their role in novel therapies.

Undergraduate Education

Emory University, Atlanta, GA, 1983 (Experimental Psychology)

Honors and Awards

Castle Connolly "Best Doctors", Neuroradiology, 2012-present
New York Magazine, Top Doctors -Neuroradiology, NYC, 2012-present
Westchester Magazine, Top Doctors, 2014-present
"Best Doctors in America", 2011-present
"Top Doctors in Connecticut", 2008-2011
Yale Diagnostic Radiology Teacher Award, 2013
Americares Service Award, 2004
Patient "Daisy" Awards, 2011-present.
Danbury Hospital "Teacher of the Year", 2001, 2002
RSNA Roentgen Resident Research Award, 1997
Dean's Research Award, Cornell University, 1992
Dean's List, Emory University, 1980-1983

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Licensure and Certification

Connecticut State License
New York State License
New Jersey State License (inactive)
American Board of Radiology 1998 (lifetime), CAQ, Neuroradiology, 1997, 2009
NPI 1366430027
DEA
CDS (CT)

Professional Society Memberships and Advisory Activities

Senior Member, American Society for Neuroradiology (ASNR)
Member, Board of Directors, Caremount Medical, 2017-19
Member, Emory University Alumni Board of Trustees, 2011-2016
Members, Board of Overseers, Weill Cornell Medical College, 1988-1991
American Society for Spine Radiology (ASSR)
Radiological Society of North America (RSNA)
American College of Radiology (ACR)
Society for Neurointerventional Surgery (SNIS)
American Society for Head and Neck Radiology (ASHNR)
American Society of Pediatric Neuroradiology (ASPN)
Radiology Business Management Association (RBMA)
Member, Federal Affairs Committee, RBMA, 2008-present.
Member, Economic Subcommittee, ASNR, 2012-present.
Ad Hoc reviewer, ASNR, 2012-present.
Advisor, Ella Health, 2010-present.
Expertise in legal cases involving product safety, neuroimaging

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Selected Bibliography

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Berger SB, Cepelewicz BC: Legal and regulatory issues for teleradiology with emphasis on managed care. (The reading room: teleradiology issues). RSNA special course in computers and radiology 1997: 55-60.

Berger SB, Cepelewicz BB: The impact of medical-legal issues in the strategic planning for PACS and teleradiology implementation. In *Filmless Radiology*, E Siegel and R Kolodner, Eds. Springer-Verlag (Berlin), 1998.

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APPENDIX 13

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STOKES v. SWOFFORD, D.O., ET AL.

SCOTT B. BERGER, M.D.

February 27, 2019

Prepared for you by

Bingham Farms/Southfield • Grand Rapids
Ann Arbor • Detroit • Flint • Jackson • Lansing • Mt. Clemens • Saginaw • Troy

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1 STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
2
3
JOELYNN T. STOKES, Successor)
4 Personal Representative of) C.A. No: 2018-164148 NH
the Estate of LINDA HORN,)
5 Deceased,) HONORABLE CHERYL A. MATTHEWS
Plaintiff,)
6)
vs.)
7)
MICHAEL J. SWOFFORD, D.O.)
8 and SOUTHFIELD RADIOLOGY)
ASSOCIATES, PLLC,)
9 Defendants.)
)
10
11
12
13
DEPOSITION OF: SCOTT B. BERGER, M.D., PH.D.
14
DATE: FEBRUARY 27, 2019
15
HELD AT: HUSEBY REPORTING & VIDEO
16 6 LANDMARK SQUARE
STAMFORD, CT
17
18
19
20
21
22
23
Reporter: Samantha M. Howell, LSR #00462
24
25

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6
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11 By: David M. Thomas, Esq.
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2 WITNESS: PAGE:

3 Scott B. Berger, M.D., Ph.D.

4

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6

7

DEFENDANT'S EXHIBITS

8 (for identification)

9

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13	Exhibit 3	Affidavit of Merit	9
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20	Exhibit 10	February 2, 2013 Slide Print	90

21

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22 (Reporter's Note: Original exhibits for identification were returned with original transcript.)

23

24

25

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

2

3 IT IS STIPULATED by the attorneys for the parties that

4 each party reserves the right to make specific objections

5 in open court to each and every question asked and the

6 answers given thereto by the witness, reserving the right

7 to move to strike out where applicable, except as to such

8 objections as are directed to the form of the question.

9

10 IT IS STIPULATED and agreed between counsel for the

11 parties that the proof of the authority of the Notary

12 Public before whom this deposition is taken is waived.

13

14 IT IS FURTHER STIPULATED and agreed that the reading

15 and signing of this deposition is not waived and any

16 defects in the Notice are waived.

17

18

19

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1 (Deposition commenced: 8:57 a.m.)
2
3 Scott B. Berger, M.D., Ph.D., called as a
4 witness, having been first duly sworn by Samantha
5 Howell, a Notary Public in and for the State of
6 Connecticut, was examined and testified as follows:
7
8 MR. THOMAS: Let the record reflect that
9 this is the discovery only deposition of Dr. Scott Berger
10 being taken pursuant to notice and to be utilized for the
11 sole purpose of discovery and/or impeachment at trial.
12 DIRECT EXAMINATION BY
13 MR. THOMAS:
14 Q Good morning, Dr. Berger, my name is David
15 Thomas, I'm here on behalf of my clients, Dr. Michael
16 Swofford and Southfield Radiology Associates. You are here
17 because Mr. Watkins has represented that you intend to be
18 an expert witness in this case, and as a result of the
19 Michigan court rules, I'm entitled to find out your
20 opinions and the basis of your opinions.
21 I apologize in advance; I don't feel well today,
22 I'm having a hard time breathing, so I'm going to take
23 numerous breaks throughout this. If you don't like it, you
24 can just tell me, we'll stop and we'll redo this at another
25 date, but I'm here for the purpose of trying to complete

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1 this deposition to the extent that I can; fair enough?
2 A Yes.
3 Q Normally I have a very loud voice, I don't today.
4 If you have difficulty hearing me or if you simply don't
5 understand my question, please indicate that you don't
6 understand my question and I'll restate it or rephrase it;
7 fair enough?
8 A Yes.
9 Q First of all, for the record, can I have your
10 full name?
11 A Scott Bruce Berger, B-E-R-G-E-R.
12 Q What is your date of birth, Dr. Berger?
13 A 2/2/1962.
14 Q So you are 56?
15 A Seven.
16 Q 57; thank you. I'm going to mark as Defendant's
17 Exhibit Number 1 a legal pleading entitled second notice of
18 taking discovery only deposition of plaintiff's expert
19 witness, Scott B. Berger, MD, PhD and notice to produce.
20 (Whereupon, Renotice of Deposition was
21 marked as Defendant's Exhibit 1 for identification.)
22 Q (By Mr. Thomas) Have you seen this document
23 before today?
24 A Yes.
25 Q Did you comply with the requested information

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1 contained within that document?
2 A I did.
3 Q Okay. What did you bring with you?
4 A Well, I brought my CV. I really have no other
5 materials, other than the images that I brought with me.
6 Q Okay. Does that complete your answer?
7 A Yes.
8 Q Thank you. So you've not reviewed any deposition
9 transcripts in this case?
10 A Oh, yes, I have. I reviewed one deposition,
11 yes.
12 Q That's different than what you told me 30 seconds
13 ago.
14 A I'm sorry, yes.
15 Q Okay. What depositions, if any, have you
16 reviewed in this case?
17 A The deposition of Dr. Swofford.
18 Q Have you reviewed any other depositions?
19 A No.
20 Q Have you reviewed any legal pleadings in this
21 case?
22 A No.
23 Q Have you reviewed any medical records in this
24 case separate and apart from imaging studies?
25 A I have reviewed the reports of the imaging

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1 studies.
2 Q Only; is that correct?
3 A Yes, that is correct.
4 Q So you've not reviewed any of the medical
5 records, your entire knowledge in this case, therefore, is
6 based upon review of Dr. Swofford's deposition, imaging
7 studies that we'll identify in just a moment, and the
8 imaging reports that correspond with those studies; is that
9 a fair and complete description?
10 A Yes.
11 Q Have you done any type of literature research in
12 association with any opinions you intend to render here
13 today?
14 A No.
15 Q Have you found any books, treatise, articles to
16 be authoritative or reasonable to the issues in this
17 case?
18 A No.
19 (Whereupon, 2018 CV was marked as
20 Defendant's Exhibit 2 for identification.)
21 Q (By Mr. Thomas) I'm going to hand you what's
22 been marked as Defendant's Exhibit Number 2. It is a
23 four-page document purported to be your curriculum vitae;
24 can you tell me whether that's current and accurate?
25 A Yes.

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1 Q Are there any additions or corrections that need
2 to be made to this document?
3 A No.
4 (Whereupon, Affidavit of Merit was marked
5 as Defendant's Exhibit 3 for identification.)
6 Q (By Mr. Thomas) I'm going to hand you what's
7 been marked as Defendant's Exhibit Number 3, pleading
8 entitled affidavit of merit of Scott B. Berger MD, PhD
9 consisting of six pages and purportedly signed on or about
10 February 20th of 2018. Can you identify that that's your
11 signature on page six, Doctor?
12 A Yes.
13 Q Is it signed on or about February 20th of 2018?
14 A Yes, that's what it says, yes.
15 Q In this document you indicated you reviewed the
16 plaintiff's notice of intent, but moments ago I asked you
17 if you reviewed any legal pleadings in this case and you
18 said no; which of those statements is true?
19 A What is in the document is true. The reason that
20 I'm having, you know, any question in my mind is because
21 the case was -- you know, it started some time ago and then
22 a portion of the case had been resolved, and I discarded my
23 materials at that time. So I just -- you know, then I was
24 contacted again, so I may have some confusion about those
25 steps.

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1 Q I understand that. We'll spend some time
2 exploring the before and the after to be succinct; okay?
3 A Yes.
4 Q But relative to the execution of this affidavit,
5 you either did or you did not review medical records; which
6 of those statements is true?
7 A Yes, I reviewed some medical records.
8 Q Now I need you to identify for me which medical
9 records you reviewed, because previously you said the only
10 thing you reviewed were the medical reports from the
11 radiologist.
12 A The medical records that I reviewed, to the best
13 of my recollection, would have been medical records taken
14 from the emergency department, and during the period of
15 time that the patient was in the emergency department.
16 Q And pursuant to the deposition of your notice and
17 the accompanying subpoena, did you bring those records with
18 you here today for me to review?
19 A I did not because I don't have them in a printed
20 format.
21 Q Do you have them where you can print them out on
22 your computer?
23 A I don't, I'm sorry.
24 Q Okay. Have you reviewed this document since you
25 executed it?

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1 A No.
2 Q To your knowledge, is it complete and accurate?
3 A Yes, it is complete and accurate, yes.
4 Q Thank you. Backing up for a moment, when you
5 made reference to the emergency room records, is that the
6 emergency room records from Providence Hospital of
7 March 2nd, 2013?
8 A Yes.
9 Q Is that the only emergency room records that you
10 have reviewed?
11 A I received some additional records that I perused
12 very lightly. She had been in the emergency room a few
13 times before that. And I acknowledge that I had them, but,
14 no, those are the only records that I reviewed in detail.
15 Q My question wasn't in detail, Doctor, you keep
16 changing my question. This will go a lot faster if you
17 respond to the question I ask you; okay?
18 A Okay.
19 Q The question I asked you was: Have you reviewed
20 in this case any medical records besides the emergency room
21 records of Providence Hospital dated March 2nd, 2013; yes
22 or no, please?
23 A Yes.
24 Q Okay. Now we need to clarify what had you
25 reviewed in addition to the emergency room records from

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1 Providence Hospital of March 2nd, 2013?
2 A I reviewed medical records in the emergency
3 department ranging from February -- on or about
4 February 22nd of 2013 through March 2nd of 2013.
5 Q Does that now complete your answer as to what
6 medical records you reviewed in this case?
7 A Yes.
8 Q So the only medical records you reviewed in this
9 case relate to emergency room presentations from some point
10 in early to mid March -- strike that.
11 From some point to early to mid February till
12 March 2nd 2013; is that complete and accurate?
13 A Yes, it is.
14 Q Have we now identified all the medical records
15 you have reviewed in this case?
16 A Yes.
17 (Whereupon, Invoice was marked as
18 Defendant's Exhibit 4 for identification.)
19 Q (By Mr. Thomas) Doctor, I'm going to hand you
20 what's been marked as Exhibit Number 4. It's a document
21 entitled Radiology Services, PLLC, and it's an invoice for
22 this deposition in the amount of $2,750. Did I accurately
23 describe that?
24 A Yes.
25 Q So that's the fee you're charging me for your

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1 deposition today is $2,750?
2 A That's correct.
3 Q Whether I take one hour or three hours or five
4 hours?
5 A That's correct.
6 Q Flat fee?
7 A It is.
8 Q You were initially retained by Mr. Watkins in a
9 prior case entitled Horn versus St. John's Providence,
10 Dr. McGraw and a series of others back in 2014; do you
11 recall that?
12 A Yes, I do.
13 Q Do you recall giving a deposition in that case on
14 May 10th, 2017?
15 A Yes, I do.
16 Q Have you reviewed that deposition at any point in
17 time from May 10th, 2017 till the present?
18 A Yes, I reviewed it after it was completed.
19 Q Okay. Back in 2017?
20 A Yes.
21 Q When it was completed? Have you reviewed it
22 since, let's say, the summer of 2017, when it would have
23 been completed and published?
24 A I would have reviewed it again when Attorney
25 Watkins contacted me that there was going to be some

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1 further action, yes.
2 Q When did Attorney Watkins contact you indicating
3 there would be some further action?
4 A Somewhere around mid 2018, I believe.
5 Q So you had some knowledge of various facts of
6 this case since 2014; correct?
7 A That's correct.
8 Q Including depositions of numerous parties;
9 correct?
10 A That's correct.
11 Q Many legal pleadings?
12 A Yes.
13 Q Hundreds of pages of medical records?
14 A Yes.
15 Q Dozens, if not hundreds of pages of legal
16 pleadings?
17 A Yes.
18 MR. WATKINS: Objection.
19 Q (By Mr. Thomas) You had all of that knowledge
20 before you executed the affidavit of merit in this case on
21 February 2018, which we've marked as Exhibit Number 3;
22 correct?
23 A That's correct.
24 Q So although you're serving as an expert in this
25 case, in this case you were aware before it even started of

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1 the medical management of Ms. Horn; is that a fair
2 statement?
3 A Yes, that is.
4 Q Including her demise and the reasons associated
5 therewith; is that a fair statement?
6 A Yes.
7 Q In association with the opinions you're going to
8 render here today, have you consulted with any other
9 physicians at any time for any reason?
10 A No.
11 Q Looking at your curriculum vitae, is it fair to
12 say that you spend 90 to 95 percent of your practice in the
13 medicine -- in the area of neuroradiology?
14 A Yes, that is fair.
15 Q Between the practice and teaching you spend 90 to
16 95 percent of your time as a neuroradiologist and about 5
17 percent of your time associated with either medical/legal
18 ventures or administrative responsibility; is that a fair
19 characterization?
20 A Well, yes and no.
21 Q What part about it isn't fair, please?
22 A Because in the community practice of
23 neuroradiology, instead of the academic practice of
24 neuroradiology I'm called upon to do a fair amount of
25 general radiology as well. So that while an academic

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1 neuroradiologist might spend 90 percent of their time doing
2 neuroradiology only, I probably spend another 20 percent of
3 my time doing various general forms of radiology as well.
4 Q We can agree readily that you spend the majority
5 of your time practicing as a neuroradiologist; is that a
6 fair statement?
7 A Yes.
8 Q That was true in 2013?
9 A Yes.
10 Q That's been true for 25 years; is that a fair
11 characterization?
12 A Yes.
13 Q When were you first board certified as a
14 diagnostic radiologist?
15 A I believe 1998.
16 Q And you've been recertified every ten years
17 then?
18 A Yes, I have.
19 Q When did you first obtain your certificate of
20 added qualification in neuroradiology?
21 A I believe 1999. I believe 1999 or 2000, yes.
22 Q Has that been renewed?
23 A Yes.
24 Q In what years, please?
25 A I renewed it in 2010, and the current renewal is

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1 ongoing right now. They've changed to a different renewal
2 format, so I'm involved it in right now.
3 Q So for the benefit of this record, the last time
4 you've obtained the certificate added qualification under
5 neuroradiology was in 2009?
6 A Correct.
7 Q Okay. And you meet the requirements to obtain
8 the certificate of added qualification of neuroradiology
9 because you spend the vast majority of your time in the
10 practice of neuroradiology?
11 A Yes.
12 Q When do you -- what do you need to do and when do
13 you anticipate completing that in order to obtain an
14 updated certificate of added qualification in
15 neuroradiology?
16 A The American Board of Radiology has recently
17 changed to a program called OLA, Online Accreditation. And
18 so every week they send us a series of questions. It's
19 necessary to accumulate 100 and some questions answered in
20 order to have that renewal. I'm in the process right now.
21 I believe I've done about a fourth of those, so I would
22 anticipate by the end of 2019 I would have completed the
23 number of questions answered to be recertified.
24 Q And, thus, you would continue spending the
25 majority of your time practicing the field of

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1 neuroradiology; correct?
2 A Yes.
3 Q In fact, you also teach fellows who want to
4 transition from being diagnostic radiologists to
5 neuroradiologists; is that true?
6 A Yes, that is.
7 Q And you have teaching responsibilities to do
8 that?
9 A Yes.
10 Q Where do you currently have staff privileges to
11 practice as a neuroradiologist?
12 A Northern Westchester Hospital is my main hospital
13 affiliation, and then I'm accredited in my group, which is
14 primarily an outpatient radiology practice.
15 Q I'm talking about you, not your group. Is it
16 true the only place you currently have active staff
17 privileges to practice as a neuroradiologist is at Northern
18 Westchester Hospital?
19 A That's the only hospital I have current
20 privileges to practice at, yes.
21 Q That's been true for a number of years;
22 correct?
23 A Yes.
24 Q Who's the chairman of the department there?
25 A Peter, Khouri, K-H-O-U-R-I.

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1 Q He's the chairman of the Department of Radiology
2 or the chairman of Department of Neuroradiology?
3 A Radiology.
4 Q Is there a chairman of the Department of
5 Neuroradiology?
6 A No.
7 Q Is it fair to say that almost 100 percent of your
8 practice is office-based as opposed to hospital-based?
9 A I wouldn't say 100 percent, but it's close.
10 Q 98 percent?
11 A Above 90.
12 Q Do you admit patients to Northern Westchester
13 Hospital?
14 A I do not have admitting privileges.
15 Q Do any other radiologists in your group have
16 admitting privileges to Northern Westchester Hospital?
17 A No.
18 Q Radiologists don't generally have admitting
19 privileges, do they?
20 A That's correct.
21 Q Are you head of the neuroradiology group with
22 your current employer?
23 A Yes, I am.
24 Q For the record, whom is that, please?
25 A Caremount, C-A-R-E-M-O-U-N-T, Medical, PC.

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1 Q And is there a different physician who is the
2 head of the diagnostic radiology section?
3 A Yes.
4 Q Who would that be?
5 A Dr. Virna, V-I-R-N-A, Lisi, L-I-S-I.
6 Q You hold a teaching position at Yale University;
7 is that active?
8 A Yes.
9 Q Is that a position for which you receive
10 compensation?
11 A No.
12 Q And at Yale you teach in the Department of
13 Neuroradiology; is that a fair statement?
14 A The section of neuroradiology within the
15 department of diagnostic radiology.
16 Q So you're teaching medical students, interns; who
17 is the subject of your teaching?
18 A Residents of diagnostic radiology and fellows of
19 neuroradiology.
20 Q Do you also hold a teaching appointment at
21 Mt. Sinai Medical School in New York City?
22 A Yes.
23 Q There do you also teach fellows in
24 neuroradiology?
25 A Yes.

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1 Q You're a member of the American Society of
2 Neuroradiology?
3 A Yes.
4 Q All this is consistent with you spending upwards
5 of 90 percent of your time in the active clinical practice
6 of neuroradiology?
7 A Yes.
8 Q And less than 10 percent of your time when you're
9 functioning as a neuroradiologist at Northern Westchester
10 Hospital, do you have authority to make direct references
11 to consultants?
12 A I'm not sure what you mean by "references".
13 Q Can you request a neurology consult or is that
14 done by either the attending physician or the emergency
15 room physician?
16 A That would be -- the request for consultations
17 would be done by either the emergency room physician or one
18 of the other clinical members of the staff.
19 Q In fact, it's never done by a radiologist or
20 neuroradiologist; isn't that true?
21 A I would not say never.
22 Q Can you tell my an example when you've done that
23 in your career?
24 A Sure.
25 Q Go ahead.

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1 A I -- in addition to doing diagnostic
2 neuroradiology, I also performed a large number of
3 interventional procedures, things like biopsies,
4 vertebroplasties, angiography and so forth. So there have
5 been times when I might have a patient who has had a
6 procedure and then has some potential complication, maybe
7 they wake up and they're confused or their vision's
8 changed, and it's been my responsibility to call the
9 neurologist and request a consultation.
10 Q Attending physician wouldn't do that?
11 A They could, but because I am taking care of that
12 patient, I have done it myself in the past.
13 Q What does the term "attending physician" mean,
14 Doctor?
15 A Pardon me?
16 Q What does the term "attending physician" mean?
17 A Attending physician means that they are the
18 physician who is on record as being responsible to care for
19 the patient.
20 Q And the person performing an ancillary procedure
21 is referred to as a consultant; is that a fair statement?
22 A Unless that's the sole reason the patient been
23 admitted to the hospital.
24 Q How many patients do you currently have admitted
25 to Northern Westchester Hospital?

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1 A Zero.
2 Q When have you last had a patient directly
3 admitted to Northern Westchester Hospital?
4 A I can't recall.
5 Q Decades?
6 A Right. You asked me does it ever happen. I said
7 it has happened. If you ask me if it's common, no. Do I
8 remember the last time, no.
9 Q My question was different than all three of your
10 responses.
11 A Okay, I'm sorry.
12 Q You haven't done that in decades, have you,
13 directly admitted a patient to Northern Westchester
14 Hospital, have you?
15 A No, I've only been on the staff for seven or
16 eight years, so it certainly wouldn't be decades.
17 Q But during that seven or eight years have you
18 ever admitted a patient to Northern Westchester Hospital?
19 A No.
20 Q In the five or ten years proceeding then, have
21 you admitted a patient directly to a hospital?
22 A No.
23 Q So we can agree it's been far more than a decade
24 since you last admitted a patient directly to a hospital;
25 is that a fair statement?

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1 A Yes, that is.
2 Q You simply can't recall with specificity how much
3 longer than at least a decade it's been; right?
4 A That is correct.
5 (Whereupon, 2017 CV was marked as
6 Defendant's Exhibit 4 for identification.)
7 Q (By Mr. Thomas) Dr. Berger, I'm going to hand
8 you what I've marked as Exhibit Number 5, which is a
9 four-page document purported to be your CV. I'm also going
10 to hand you what I previously marked as Exhibit Number 2,
11 which is also a four-page document which purports to be
12 your CV and ask you if the only difference in these
13 documents is that on Exhibit 5 on page two you represented
14 that you were, quote, an expert in legal cases involving
15 product safety and neuroimaging. First of all, did I read
16 that correctly, the last line?
17 A Yes, you did.
18 Q When was Exhibit Number 5 prepared?
19 A Probably some time in 2017; I don't recall.
20 Q When was Exhibit Number 2 prepared?
21 A Within the last few weeks I printed it out. It
22 was probably prepared around the turn of the year, maybe at
23 the end of 2018.
24 Q I don't care when it was printed. My question
25 was: When was it prepared?

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1 A Around the end of 2018.
2 Q So did something happened in the end of 2018 that
3 would be roughly less than six months ago where you stopped
4 being a, quote, expert in legal cases involving product
5 safety and neuroimaging?
6 A I didn't stop, I just -- I guess I --
7 typographical error, maybe it fell off; I don't know. It
8 doesn't strike me as something I intentionally did. If I
9 can see them both? Sometimes it's just a matter of fitting
10 the space on the pages, and so I must have felt that it
11 wasn't that important to put in there, you know.
12 Q Doctor, I'm going to hand you page two, and both
13 page twos of your CV, essentially the bottom 50 percent is
14 blank; is that a fair statement?
15 A Yes.
16 Q So there's plenty of space on either of these
17 documents to include the phrase, quote, expertise in legal
18 cases involving product safety and neuroimaging; isn't that
19 true?
20 MR. WATKINS: Form and foundation.
21 THE WITNESS: May I see the two documents?
22 MR. THOMAS: You sure may.
23 MR. WATKINS: A printout and how it appears
24 on the screen is dramatically --
25 MR. THOMAS: I'm referring to the exhibits

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1 specifically, Mr. Watkins.
2 MR. WATKINS: I'm talking about when it
3 prints out, you may not really make that comparison.
4 THE WITNESS: Yes, I see that. What are
5 you asking? I'm sorry, what was your question?
6 Q (By Mr. Thomas) When did you change your CV
7 wherein you eliminated the phrase, and I don't have it in
8 front of me so let me look over your shoulder, quote,
9 expertise in legal cases involving product safety and
10 neuroimaging, which I've marked as Exhibit Number 5 as
11 compared to Exhibit Number 2, which is the CV that was
12 produced today?
13 A Yeah, I must have taken it out at the end of
14 2018.
15 Q And my other question is why?
16 A I -- I can't say. I guess I thought it was
17 extraneous.
18 Q Prior to the end of 2018, you believed that you
19 were an expert in legal cases involving product safety and
20 neuroimaging; correct?
21 A Yes.
22 Q In neither of these documents did you indicate
23 you were expertise in legal cases involving general
24 diagnostic radiology; isn't that true?
25 A I guess not, yes.

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1 Q It is true; correct?
2 A It seems true; yes.
3 MR. WATKINS: Form, foundation.
4 Q (By Mr. Thomas) How many cases have you reviewed
5 at the request of Mr. Watkins or a member of his firm
6 commonly known as Sommers Schwartz?
7 A I would have to say I don't recall exactly, but
8 it's certainly under 5. Probably three; something in that
9 region.
10 Q So three to five cases?
11 A Three to five cases over the course of several
12 years, yes.
13 Q And on all of those cases have they been on
14 behalf of a patient plaintiff versus a defendant health
15 care provider?
16 A In the case of -- yes, Mr. Watkins -- for
17 Attorney Watkins's firm, yes.
18 Q When did you first begin doing medical/legal
19 reviews?
20 A About 16 years ago.
21 Q How many reviews have you done since that time to
22 the present?
23 A Well, let me say that what constitutes a review
24 may be -- let me first define that. Over the course of a
25 year I would say that somewhere between ten and fifteen

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1 times a year now. When I first started 16 years ago I got
2 very -- you know, maybe one or two cases a year at most
3 that someone would ask me about. Let's say starting from
4 about ten years ago, I would get inquiries, someone might
5 stop me, in fact, people stop me all the time and ask me
6 could you look at this, what's your opinion of this.
7 So during the course of the year I might be -- I
8 might have fifteen inquiries about some sort of matter or
9 another. Of those, let's say three or four ultimately are,
10 you know, really involve me. You know, after I've given
11 them a preliminary opinion I might need to write a letter
12 or I might need to have more of a discussion with an
13 attorney, so let's say three or four cases per year I
14 consider to be, you know, real cases over the course of 16
15 years.
16 And it's increased slightly over the last four or
17 five years, so I would have to guess the entirety of my
18 cases is somewhere around, I don't know, 60, something in
19 that range. I don't have a specific number.
20 Q How many depositions have you given as a expert
21 witness as opposed to a treating physician?
22 A Again, I don't have an exact number, but my
23 recollection is it would be somewhere in the range of ten
24 to fifteen.
25 Q How many depositions have you given in the past

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1 three years?
2 A Maybe four or five. Maybe four; I don't think
3 it's five.
4 Q So you're averaging more than one a year; is that
5 a fair statement?
6 A Yes.
7 Q How about trial appearance; have you ever
8 appeared as a live witness at a trial as an expert
9 witness?
10 A Yes, I have.
11 Q In what states?
12 A Pennsylvania, Connecticut and New York.
13 Q You ever testified as an expert witness in the
14 State of Michigan?
15 A No.
16 Q Those three cases where you testified as a live
17 witness, were you testifying as a neuroradiologist?
18 A Yes.
19 Q Because that's your expertise; correct?
20 A Yes.
21 Q If you were asked by Mr. Watkins to attend a
22 trial in this matter and testify as an expert witness in
23 the field of neuroradiology, what would your fee be for
24 that?
25 A My fee would be $700 per hour with a minimum of

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1 eight hours. So it would be $5,600, you know, as a flat
2 fee for testimony because I have to give up a full day of
3 my clinical practice.
4 Q So as a liberal arts person, the minimum fee
5 would $5,600; correct?
6 A That's correct.
7 Q And if you're required to stay overnight or take
8 a day-and-a-half to travel to Michigan and back, what would
9 the fee be for that?
10 A I don't charge extra for that. I haven't --
11 again, I've only done this a few times so I don't have a
12 specific policy about that. If I was required to testify
13 for a second day, then a second day fee would apply.
14 Q Another minimum of $700 per hour times eight
15 hours?
16 A Yes.
17 Q So that would be a total of --
18 A $11,200 if I testified for two days.
19 Q Have you reviewed any other cases for any other
20 attorneys who you reasonably believe are from the State of
21 Michigan?
22 A Not that I can recall.
23 Q Do you advertise your services as an expert
24 witness?
25 A No.

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1 Q Does your name belong to any services that
2 provide expert witnesses?
3 A Not that I know of.
4 Q How is it that you came to know Mr. Watkins?
5 A I was introduced to Attorney Watkins by a
6 colleague of mine I believe named Dr. Rosner.
7 Q Are you aware Dr. Rosner's been an expert for
8 Mr. Watkins on a number of occasions?
9 A I assume.
10 Q Have you ever read a deposition of Dr. Rosner?
11 A I have not.
12 Q You have not?
13 A No.
14 Q Never?
15 A I've never read a deposition of Dr. Rosner, no, I
16 haven't. He's a neurosurgeon in our area. At one point he
17 said to me I have an attorney in Michigan who is in need of
18 a neuroradiology expert, would you be interested. That's
19 the extent to which --
20 Q To your knowledge, how many times have you've
21 been an expert witness in the same case in which Dr. Rosner
22 has participated as an expert witness?
23 A Under eight, I don't know, something like that.
24 It's a small number over the course of -- I've known him
25 since 2002 so I would say maybe eight cases; something like

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1 that.

2 Q In this matter entitled Joelynn T. Stokes,

3 Successor, Personal Representative of the Estate of Linda

4 Horn, deceased, versus my clients, Michael J. Swofford, DO

5 and Southfield Radiology Associates PLLC, how many hours

6 have you spent reviewing the materials that you had

7 previously identified on this record?

8 A Under ten. I don't know the exact number. I

9 would have to -- I think it's been under eight.

10 Q So eight to ten hours; is that a fair

11 statement?

12 A I think it's less than eight. How about six to

13 eight is what I'd say is probably fair.

14 Q What did you charge per hour for reviewing those

15 materials for six hours?

16 A $400 per hour is the fee I charge for reviewing

17 materials.

18 Q So you charged somewhere between $2,400 to $3,200

19 for the review of this matter?

20 A Yes.

21 Q And you're charging me -- what is it?

22 A $2,750 for this deposition, yes.

23 Q Are you familiar with, based upon the materials

24 that you reviewed in this case, a timeline from when the

25 emergency room physician, Dr. Swofford, ordered a CT scan

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1 of Ms. Horn's brain --
2 A I'm sorry, can I interrupt you because I think
3 you said that incorrectly. Dr. Swofford did not order a CT
4 scan.
5 Q I didn't state it correctly if that's what I
6 said. Strike the question.
7 Are you familiar with the timeline in this case
8 wherein Dr. Steven McGraw, the emergency room physician,
9 ordered a CT scan STAT of Mrs. Horn's brain until the time
10 that CT scan report was signed out by the attending
11 radiologist, Dr. Swofford; yes or no, please?
12 A Yes.
13 Q I want you to slowly identify for me the timeline
14 that you believe exists regarding that issue?
15 A It's my impression that the CT scan was ordered
16 shortly after 6:00 a.m. on the morning of March 2nd. That
17 the scan was performed shortly after 6:30 a.m. on March
18 2nd. And that a signed report from Dr. Swofford was
19 completed shortly after 7:00 a.m. on the morning of March
20 2nd.
21 Q Does that complete your knowledge regarding the
22 timeline concerning when the CT scan was ordered until it
23 was reported out and signed by Dr. Swofford?
24 A Yes, that's -- yes, that's all I can recall.
25 Q Do you have any knowledge as to whether -- strike

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1 that.
2 This hospital has a PAC system, does yours?
3 A Yes.
4 Q Did you review the PAC system from Providence
5 Hospital regarding March 2nd of 2013?
6 A I did not personally review the PACS records.
7 Q Okay. When you say you have not personally
8 reviewed them, what does that mean?
9 A Reference was made to the timing of the PACS
10 records in Dr. Swofford's deposition, I believe, but I have
11 no -- I did not personally review the PACS records.
12 Q Have you asked to see those records?
13 A I don't recall.
14 Q If you have, you haven't received them;
15 correct?
16 A That's correct.
17 Q Because you have not reviewed them; correct?
18 A That's correct.
19 Q Do you have any knowledge as to whether or not
20 the ordering physician, Dr. McGraw, looked at the CT image
21 himself before Dr. Swofford signed his report? Just yes or
22 no you, you do or you don't.
23 A I don't -- I don't know.
24 Q Okay. Do you know whether or not the ordering
25 physician, Dr. McGraw, reviewed the preliminary study note

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1 of the resident, Dr. Sam Samond (phonetic); yes or no?
2 A It's my understanding that he did.
3 Q And Dr. Swofford would have had knowledge of the
4 study note before Dr. Swofford even saw the imaging study;
5 is that true?
6 A It's possible, yes.
7 Q If that's the testimony in this case you have no
8 basis to dispute it, would you?
9 A That's correct.
10 Q Do you know in this case if Dr. Swofford ever --
11 strike that.
12 Do you know in this case if the ER physician,
13 Dr. McGraw, ever spoke to the diagnostic radiology
14 resident, Dr. Samond, regarding his findings, or
15 interpretations, or impressions, or any other matter
16 related to the CT?
17 A I do not know.
18 Q Do you have any knowledge as to whether or not
19 Dr. McGraw, the ordering physician, ever spoke to the
20 interpreting radiologist, Dr. Swofford, regarding his
21 findings, impressions as quantified in his radiology
22 report?
23 A I only have secondhand knowledge from the
24 deposition.
25 Q What is your understanding?

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1 A My understanding is that Dr. Swofford never spoke
2 with Dr. McGraw.
3 Q Question was a little different. To your
4 knowledge, did Dr. McGraw ever speak to Dr. Swofford?
5 A To my knowledge, no.
6 Q Okay. Based upon your review of the emergency
7 room record from Providence Hospital on March 2nd of 2013,
8 at what point in time did Dr. McGraw, the ER physician,
9 intubate this patient?
10 A I don't recall without having that material in
11 front of me. I wouldn't have that level of detail.
12 Q You have it in front of you; correct?
13 A No, I don't.
14 Q You didn't bring that with you?
15 A I'm sorry, I did not.
16 Q Despite the fact that that's what the notice
17 requested; correct?
18 A That's correct.
19 Q Do you know at what point in time Dr. McGraw
20 began the procedure commonly known as a lumbar puncture?
21 A I don't know the exact time that he started it.
22 Q Do you have a reasonable opinion?
23 A I believe that he started the lumbar puncture
24 shortly after the completion of the CT scan of the head.
25 Q That's a very broad term.

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1 A Yes.

2 Q So let's identify it.

3 A Yes.

4 Q When was the CT scan, quote, completed, closed

5 quote, and what do you mean by "completed"?

6 A In that setting I use the term completed when the

7 report was finalized sometime shortly after 7:00 a.m.

8 Q Okay. Assuming that to be true, when did

9 Dr. McGraw start to perform the lumbar puncture?

10 A I don't recall specifically.

11 Q Do you know when, at what point in time Dr.

12 McGraw made the decision that he was going to perform the

13 lumbar puncture?

14 A I don't recall offhand.

15 Q To your knowledge, did Dr. McGraw consult with

16 any physician before initiating the procedure to perform a

17 lumbar puncture?

18 A I don't recall.

19 Q If he did, you're unaware of it; is that a fair

20 statement? I'm here to find out what you know, Doctor.

21 A Yes, I don't recall offhand. It's my

22 understanding that at one point he spoke with people from

23 the neurosurgery department, but I don't know whether that

24 was before or after he made the decision to do the lumbar

25 puncture.

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1 Q The answer to my question is: You don't know?
2 A I don't know. I don't recall.
3 Q Do you know what time Dr. Samond, the resident,
4 initially reviewed the CT scan?
5 A I don't recall the exact time.
6 Q Do you have ability to determine that based upon
7 the information you brought here with you today?
8 A No, not with what I have today, no.
9 Q I can only cross-examine you with what you have
10 in front of you.
11 A I don't have that information available, no. And
12 it's somewhere obviously between 6:30 and 7:00; I don't
13 know the exact time. I recall it being, you know, within
14 15 minutes or so, but I don't have that information.
15 Q You certainly don't have any criticisms of the
16 time in which the CT was ordered and completed, do you,
17 Doctor?
18 A No, I do not.
19 Q Do you know at what time Dr. McGraw first viewed
20 the image itself, the CT scan of March 2nd of 2013?
21 A I don't know when Dr. McGraw reviewed the images
22 themselves.
23 Q Do you know at what point in time the resident,
24 Dr. Samond, created his preliminary study note?
25 A I don't recall the exact time.

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1 Q Do you know whether or not Dr. Samond created a
2 preliminary study note?
3 A Yes, I'm aware he prepared a preliminary study
4 note.
5 Q Do you know at what point in time Dr. Swofford
6 reviewed Dr. Samond's preliminary study note?
7 A It don't know the exact time, but it would have
8 been before he signed -- finalized the report; shortly
9 after 7:00 a.m.
10 Q Do you know at what point in time Dr. Swofford
11 created the radiology report?
12 A I don't know. I think it's shortly after 7:00
13 a.m.
14 Q But you don't know with any more specificity;
15 correct?
16 A I don't.
17 Q Do you know what time the CT report was
18 electronically signed by Dr. Swofford?
19 A It was -- I don't have the report in front of me,
20 but it was, I believe, shortly after 7:00 in the morning.
21 Q Again, you don't know with any specificity;
22 correct?
23 A Correct. I would have to see the report again,
24 yes.
25 Q Do you have an understanding as to whether or not

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1 Dr. McGraw, the ER physician, ordered the CT scan, actually
2 looked at the images and performed the LP before Dr.
3 Swofford's report was even generated?
4 A I don't believe so, but I don't have any specific
5 knowledge of the exact time the lumbar puncture was
6 performed.
7 Q So you don't have an opinion one way or the
8 other; is that a fair statement?
9 MR. WATKINS: Form, foundation.
10 THE WITNESS: No, I wouldn't say I have no
11 opinion. What do you mean by that?
12 Q (By Mr. Thomas) Do you have an opinion within a
13 reasonable degree of medical probability?
14 MR. WATKINS: Form, foundation.
15 THE WITNESS: Of what?
16 Q (By Mr. Thomas) As to whether or not
17 Dr. McGraw --
18 MR. WATKINS: He can't give an opinion as
19 to facts.
20 MR. THOMAS: Don't interrupt my question.
21 You can make any objection you want, but don't interrupt
22 my question; okay? Stop.
23 MR. WATKINS: Let me interpose my
24 objection.
25 MR. THOMAS: Let me finish my question,

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1 then you can interpose your objection. Don't interrupt my
2 question.
3 MR. WATKINS: I didn't.
4 MR. THOMAS: You did?
5 MR. WATKINS: I don't want to get into a
6 childish --
7 MR. THOMAS: Well, then wait till I finish
8 my question.
9 MR. WATKINS: I said proceed, sir.
10 MR. THOMAS: Thank you.
11 Q (By Mr. Thomas) You don't know at what point in
12 time Dr. McGraw intubated this patient; correct?
13 A I don't recall.
14 Q I'm here to find out if you know. You know,
15 Doctor; yes or no?
16 A Do I know it from memory, no. At one point I
17 reviewed the records and did know it, yes.
18 Q I'm here today to find out what you do know. Do
19 you know whether or not, at what point Dr. McGraw intubated
20 this patient? If yes, tell me you do; if no, tell me you
21 don't.
22 A Yes, I know, but I don't have that information
23 with me.
24 Q You don't know what the answer to the question is
25 today while I'm here; correct?

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1 A Today when you're here, the answer is no.
2 Q No, you don't know?
3 A No, I don't know.
4 Q And do you know whether or not Dr. McGraw
5 actually looked at the image himself before he intubated
6 this patient?
7 MR. WATKINS: Form, foundation.
8 THE WITNESS: I don't recall.
9 Q (By Mr. Thomas) As you sit here today, you don't
10 know?
11 A I don't know.
12 Q And do you know whether or not Dr. McGraw started
13 the LP procedure before Dr. Swofford signed the official
14 radiology report in this case?
15 MR. WATKINS: Form, foundation.
16 THE WITNESS: It's my recollection that he
17 did not, but I don't have that specific knowledge.
18 Q (By Mr. Thomas) As we sit here today, you don't
19 know; correct?
20 A I don't know.
21 Q Okay. Do you have a copy of your affidavit
22 available, Doctor?
23 A No, I don't.
24 (Whereupon, a recess was held.)
25 Q (By Mr. Thomas) Doctor, handing you what we

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1 previously marked Exhibit Number 3, a document entitled
2 affidavit of merit of Scott B. Berger, MD, PhD consisting
3 of six pages. In paragraph one of that document you
4 indicate in part that you're board certified in the field
5 of neuroradiology; is that accurate?
6 A Not quite.
7 Q There is no board certification in the field of
8 neuroradiology, is there, Doctor?
9 A That's correct.
10 Q So that's inaccurate, isn't it?
11 A It's inaccurate, yes.
12 Q It further suggests that you spent the majority
13 of your time in the year preceding this practicing as a
14 neuroradiologist; correct?
15 A That's correct.
16 Q Paragraph two, you indicated you've reviewed all
17 the neuroimaging supplied to you by plaintiff's attorney.
18 Let's identify what neuroimaging was supplied to you by
19 plaintiff's attorney, Mr. Watkins?
20 A Yes.
21 Q I want to know, Doctor, what images did you --
22 were you supplied with and what images did you review, if
23 there's a difference?
24 A Sure.
25 Q Keep in mind, Samantha wants to record your

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1 answer.
2 A Yes. Just bear with me for one minute, if you
3 would. Sorry, I had the whole list loaded and then
4 the WiFi seems to have closed it, so just bear with me for
5 one more minute.
6 Q Certainly, thank you.
7 A Okay.
8 Q So in chronological order can you tell me what
9 images you've review?
10 A Yes.
11 Q Please do so.
12 A CT head, February 3, 2006. MRI brain,
13 February 4, 2006. CT head, August 17, 2011. MRI brain,
14 August 18, 2011.
15 Q Sorry, August what?
16 A 18, 2011. CT head, November 22, 2011. MRI
17 lumbar spine, January 9, 2013. CT head, January 15, 2013.
18 MRI and MRA of the brain, February 7, 2013. CT head,
19 February 22, 2013. There were two studies on that date.
20 CT head, February 26, 2013. CT head, March 2, 2013. There
21 were two studies on that date. That is the list.
22 Q It's not your understanding, is it, all the
23 imaging studies were from Providence Hospital?
24 A I don't recall where each of these were from. I
25 can look them up, but I don't recall offhand but that

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1 sounds familiar, but I don't recall where each study was
2 from.
3 Q It's not your impression that each of these
4 studies was interpreted by a radiologist at Southfield
5 Radiology, PLLC?
6 A No.
7 Q Regarding the two CTs of the head of 3/2/13, the
8 first one with the one read by Dr. Swofford?
9 A Yes.
10 Q And who was the second one read by?
11 A I don't recall the name of the physician.
12 Q In addition to actually looking at the imaging
13 studies that you've identified, did you also review the
14 corresponding reports that were generated by the Radiology
15 Department regarding all the reviewed studies?
16 A Yes, I did.
17 Q Have we now identified on this record all the
18 images that you've reviewed?
19 A Yes.
20 Q Have we identified on the record all the imaging
21 study reports you have reviewed?
22 A Yes.
23 Q Have we now identified on this record all the
24 medical records you've reviewed?
25 A Can you repeat that, please?

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1 Q Yes. Distinguishing between actual imaging
2 studies and reports generated as a result of those studies,
3 did you review any additional or different medical
4 records?
5 A Other than the emergency room records that I
6 referred to in the past, no.
7 Q And for clarity, that was the emergency room
8 records of March 2nd, 2013 from Providence Hospital;
9 correct?
10 A Correct.
11 Q You've reviewed no other records then; correct?
12 A Not that I can recall.
13 Q Well, not that you're aware of?
14 A Not that I'm aware of, right.
15 Q In paragraph three -- and I'm only
16 paraphrasing -- of your affidavit, you indicate you've
17 spent the majority of your time in the year preceding this
18 event in the clinical practice of neuroradiology; did I
19 read that correctly?
20 A Yes.
21 Q You also spent time instructing students in
22 accredited health professional schools, or accredited
23 resident programs for clinical research programs in
24 neuroradiology; correct?
25 A Correct.

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1 Q Nowhere there do you indicate that you've spent
2 time practicing as a radiologist; correct?
3 A Well, the active clinical practice -- oh, you
4 mean as a diagnostic radiologist; is that what you mean?
5 Q Correct.
6 A Oh, I see what you mean. No, I did not
7 specifically place that in this, yes.
8 Q Because a neuroradiologist has additional
9 training than a diagnostic radiologist, correct, that's
10 what the certificate of added qualification represents;
11 correct?
12 A That's correct.
13 Q That you have to meet certain amount of reads per
14 year over a period of time in order to even be eligible to
15 obtain a certificate of added qualification; correct?
16 A That's correct.
17 Q In addition to that, you have to answer questions
18 and pass an examination showing you have a certain level of
19 expertise or at least proficiency in reading
20 neurodiagnostic films; isn't that true?
21 A That's true.
22 Q And you are one of only four people in your group
23 of 18 radiologists so qualified; correct?
24 A That's correct.
25 Q What does the term "standard of care" mean to you

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1 as a neuroradiologist, Doctor?
2 A It means what a physician --
3 MR. WATKINS: I'm just going to object
4 that --
5 MR. THOMAS: You can object to form and
6 foundation and that's it. Don't give any lectures.
7 MR. WATKINS: I'm objecting to the form and
8 foundation in regard to --
9 MR. THOMAS: Thank you.
10 Q (By Mr. Thomas) Doctor, answer my question.
11 MR. WATKINS: -- with regard to the added
12 qualification. The area of specialty is diagnostic
13 radiology.
14 MR. THOMAS: You're giving a speech.
15 Q (By Mr. Thomas) Answer my question, Doctor.
16 MR. WATKINS: So I don't want you to
17 misguide us and --
18 MR. THOMAS: Please stop. Please stop,
19 Mr. Watkins.
20 MR. WATKINS: -- with regard to his
21 expertise and --
22 MR. THOMAS: I'm telling you right now, if
23 you continue to do this, we'll terminate the deposition
24 and we'll get a court order and we'll come back here.
25 You're violating the court rules.

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1 MR. WATKINS: Well, do what you wish.
2 MR. THOMAS: I'm not going to do what I
3 wish. I'm going to do what the court rules allow me to
4 do.
5 Q (By Mr. Thomas) So, Doctor, answer my question.
6 MR. WATKINS: You asked me earlier not to
7 interrupt you and I will ask the same courtesy be provided
8 to me.
9 MR. THOMAS: I think I just did.
10 MR. WATKINS: Thank you.
11 MR. THOMAS: You're welcome.
12 MR. WATKINS: So don't cut me off when I'm
13 objecting. If you have a problem with what I'm saying, we
14 can talk about it after I'm finished talking; okay?
15 MR. THOMAS: Mr. Watkins, you know the
16 court rules only allow you to object to form or
17 foundation. Despite that you want to act in violation of
18 the court rules.
19 Q (By Mr. Thomas) Go ahead, Doctor, you can answer
20 my question.
21 MR. WATKINS: I was getting something clear
22 on the record, as you chose to earlier, that you wanted me
23 not to interrupt you, and I want you to provide me the
24 same courtesy. Just don't interrupt me when I'm posing an
25 objection. And when I'm posing an objection, when I'm

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1 done speaking, then you speak; fair?
2 MR. THOMAS: Could you read my question
3 back, please?
4 (Whereupon, the record was read back.)
5 MR. WATKINS: Form, foundation.
6 THE WITNESS: I'm not a lawyer, of course,
7 but, to me, what it means is that how a physician of
8 reasonable training and reasonable experience would act in
9 a similar situation, or how they would, you know, make an
10 interpretation and so forth. You know, how they would
11 perform their function in a similar situation.
12 Q (By Mr. Thomas) And, again --
13 A A reasonably well-trained and prudent
14 physician.
15 Q We're not talking about physicians. We're
16 talking about, according to your affidavit here, a board
17 certified diagnostic radiologist with an added certificate
18 of qualification in neuroradiology; that's who you are,
19 correct?
20 A Well, yes; but that means that I'm also a board
21 certified diagnostic radiologist.
22 Q But we've already spent a fair number of
23 questions and answers in this deposition establishing the
24 fact that you spend upwards of 90 percent of your time
25 practicing as a neuroradiologist; correct?

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1 A Upwards of 80 percent of my time, yes.
2 MR. WATKINS: Form, foundation.
3 Q (By Mr. Thomas) And you spend time practicing
4 teaching neuroradiology; correct?
5 A I do.
6 Q And those combined make up almost 90 percent of
7 your professional time; correct?
8 A Yes.
9 MR. WATKINS: Form, foundation.
10 Q (By Mr. Thomas) And paragraph 4A, I'm going to
11 read it and ask you to look at it to make sure I read it
12 correctly; okay?
13 A Yes.
14 Q It states and I quote -- well, I'm going to read
15 the whole paragraph. Paragraph number four. "The
16 applicable standard of practice or care in this manner
17 required that Michael J. Swofford, DO, individually and as
18 an agent of Southfield Radiology Associates, while
19 providing neuroradiology care, comma, interpretation,
20 comma, diagnosis and treatment to patients such as Linda
21 Horn, comma, do the following, colon, subpart A. Possess
22 the degree of reasonable care, comma, diligence, comma,
23 learning, comma, judgment and skill ordinarily and, slash,
24 or reasonably exercise and possess by a board certified
25 neuroradiologist under the same or similar circumstances;"

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1 did I read that correctly?
2 A You did read it correctly.
3 Q And we know that what you're referring to is the
4 practice of a diagnostic radiologist with a certificate of
5 added qualifications of neuroradiology, correct, because
6 there is no board certification of neuroradiology;
7 correct?
8 MR. WATKINS: Form, foundation.
9 THE WITNESS: That's correct.
10 Q (By Mr. Thomas) Sir, subpart B says, quote, To
11 timely and properly evaluate, comma, interpret, report and
12 intervene regarding Ms. Horn's head CT of March 2nd of
13 2013; did I read that correctly?
14 A Yes, you did.
15 Q The diagnostic radiologist with a certificate of
16 added qualification twice within the document represented
17 that he's board certified in the field of neuroradiology,
18 how did Dr. Swofford fail to timely and properly evaluate,
19 interpret and report and intervene regarding Mrs. Horn's CT
20 scan of March 2nd, 2013?
21 MR. WATKINS: Objection. Form,
22 foundation.
23 THE WITNESS: It's my opinion that
24 Dr. Swofford did not interpret the CT scan of the head as
25 demonstrating impending brain herniation, that he did not

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1 communicate that finding to the emergency room physician
2 and, thereby, guide that physician in the appropriate care
3 of Mrs. Horn.
4 Q Does that complete your answer?
5 A Yes.
6 Q Can you pull up the 3/2/13 CT head as interpreted
7 by Dr. Swofford?
8 A Yes.
9 Q Let me know when you have it, please.
10 MR. WATKINS: You mean, pull it up on his
11 computer right now?
12 MR. THOMAS: Correct.
13 MR. WATKINS: Okay.
14 THE WITNESS: Yes, I have the images now.
15 Q (By Mr. Thomas) As a diagnostic radiologist with
16 a certificate of added qualifications in neuroradiology who
17 spends up to 90 percent of his professional time in the
18 practice of neuroradiology or teaching neuroradiology,
19 slowly dictate for me how you would have dictated that
20 report. I want to take notes, so if you could do it
21 slowly, I'd appreciate it.
22 A In order to do that I need to pull up the prior
23 study as well. You've asked me only to pull up this one.
24 In order to generate a report like that, I would have to
25 have the prior exam.

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1 Q You can do that, of course.
2 A And the prior exam is dated February 26th, 2013.
3 Just need you to bear with me again for a minute while I
4 get the images loaded. This is approximately what I would
5 say.
6 Q No, tell me what you would say, not what you
7 approximately would say. Tell me what you would say.
8 A Okay. Depends on the day, but, okay, this is
9 what I would say. CT --
10 Q Slowly please.
11 A -- images of the head were acquired at five
12 millimeter intervals without intravenous contrast, period.
13 Paragraph. Comparison, colon, February 26, comma, 2013,
14 period. Paragraph. History, colon, headache, comma,
15 nausea, comma, vomiting.
16 Q Can I stop you for a second? Where did you get
17 that history from?
18 A The requisition.
19 Q Okay.
20 A Period. Paragraph. A ventricular shunt catheter
21 projects from a right parietal approach traversing the body
22 of the right lateral ventricle and terminating in its
23 anterior horn near the foramen of monro, period. There has
24 been interval development of circumferential low density
25 surrounding the shunt catheter strongly suggesting

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1 transependymal, T-R-A-N-S-E-P-E-N-D-Y-M-A-L, flow of CSF,
2 period.
3 There has been a substantial interval increase in
4 the size of ventricular system with diffuse enlargement of
5 the lateral and third ventricles, semicolon, particularly
6 of note, comma, is new dilatation of the temporal horns,
7 parenthesis, right greater than left, closed parenthesis,
8 period. Since the prior study, comma, the patient has
9 developed --
10 Q For the record, what date when you said the prior
11 study?
12 A I said it that at the top.
13 MR. WATKINS: You can't dictate how he
14 dictated. You can't edit it while he's doing it.
15 Objection. Go ahead.
16 THE WITNESS: I made that date at the top
17 so I wouldn't normally put it in again.
18 Q (By Mr. Thomas) Fair enough, thank you.
19 A As compared with the prior study, comma, there is
20 new diffuse cerebral swelling with complete obliteration of
21 the basilar cisterns, comma, and collapse of the fourth
22 ventricles, period. Images through the posterior fossa,
23 comma, taken together with the above, comma, indicate
24 impending downward range transtentorial brain herniation,
25 period.

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1 The gray, dash, white junction, slash,
2 differentiation is preserved throughout the hemispheres and
3 in the cerebellum, period. There is no evidence of any
4 acute intracranial hemorrhage, period. No abnormal extra
5 axial fluid collections are seen, period. There is no
6 evidence of a calvarial fracture, period.
7 Paragraph. Of note, comma, there is an unusual
8 appearance of the anterior horns of the lateral ventricles
9 that has been present on prior studies, but is now
10 exaggerated by the ventriculomegaly, period. This is
11 likely developmental, period. Image portions of the
12 paranasal sinuses and mastoids demonstrate no abnormal
13 opacification, period. Based upon CT measurements, comma,
14 there is a suggestion of bilateral proptosis, period.
15 Paragraph. Impression, colon, one, period. New
16 significant ventricular dilatation with findings suggesting
17 transependymal flow of CSF in the presence of a ventricular
18 shunt catheter, period. This appearance is strongly
19 suggestive of shunt malfunction, period. Two, period. CT
20 findings suggesting early downward transtentorial brain
21 herniation, period. Three, period. No CT evidence of
22 acute cerebral hemorrhage, period.
23 Paragraph. Results of this study were discussed
24 with the ordering physician at such and such time, period.
25 Signed.

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1 Q Does that complete your response?
2 A Yes.
3 Q Thank you.
4 (Whereupon, a recess was held.)
5 Q (By Mr. Thomas) Doctor, do you agree that if a
6 shunt fails it can cause an obstruction even without
7 obstructive hydrocephalus?
8 A Yes.
9 Q Do you agree in looking at -- keep this film in
10 front of you; okay?
11 A Yes.
12 Q Do you agree that you can see the fourth
13 ventricle?
14 A On the scan from March 2nd, 2013; is that what
15 you're asking?
16 Q It's the only question I'm going to talk about
17 for the next half hour.
18 A Is this scan; okay. I disagree. You see
19 probably the aqueduct, but I don't think you see the fourth
20 ventricle.
21 Q Do you know whether or not you previously
22 testified you could see the fourth ventricle?
23 A It look -- it's a semantic issue. Yes, you see a
24 sliver of the fourth ventricle; let's call it that.
25 Q Can you also see a little of the quadrigeminal

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1 plate cistern?
2 A No.
3 Q This patient was shunt-dependent; true?
4 A The shunt had only recently been placed, so to
5 say she's shunt-dependent, I don't know what you mean by
6 that.
7 Q Well, why did they place the shunt?
8 A Good question.
9 Q The purpose would be arguably because she needed
10 it; correct?
11 A I'm not convinced she did.
12 Q Do you have an opinion that she didn't?
13 A I do have an opinion that she -- that this shunt,
14 you know, there was some questions about it. They did
15 place the shunt. I'm not going to -- you know, it's a
16 neurosurgical question, but I'm not just going to say she's
17 shunt-dependent.
18 Q Well, the purpose of placing the shunt was to do
19 what; what's the general purpose of placing the shunt in a
20 patient like Linda Horn?
21 A To remove cerebral spinal fluid from the
22 ventricular system.
23 Q Because her own system wasn't doing that
24 sufficiently, the shunt would facilitate that; correct?
25 A That is the theory.

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1 Q And, therefore, she would be dependent upon that
2 in order to have the proper amount of fluid dispersed;
3 correct?
4 A Correct.
5 Q You agree this study was compromised by motion
6 artifact?
7 A Slightly, but it was repeated; there were two
8 runs.
9 Q I'm talking about the one interpreted by
10 Dr. Swofford. I'm talking about this study; okay?
11 A Yes.
12 Q I can keep repeating myself if you want to --
13 A Let me say, this study -- I should have said this
14 in the report. The study included two versions. The
15 second version is much less motion degraded than the first.
16 It's virtually normal, you know, in that regard, it's
17 virtually free of artifacts.
18 Q You're saying the second study; what time was
19 that done?
20 A One minute later. The first study was done at
21 4:25, the next was done at 4:25.
22 Q And motion artifact does not result in an optimal
23 study; is that a fair statement?
24 A Yes, motion artifact can reduce the quality of a
25 study.

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1 Q Do you know in this case why there was motion
2 artifact?
3 A I believe the patient was having difficulties.
4 Q Do you believe this study reflects an acute
5 process?
6 A Yes.
7 Q Would you agree her flow was not obstructed on
8 2/26?
9 A Would I agree that her flow --
10 Q Her CFS flow was not obstructed?
11 A That's likely true, yes.
12 Q Because that's the film that you compared the 3/2
13 to; correct?
14 A Correct.
15 Q And you would also agree that the flow obstructed
16 on 2/28 because there's no imaging study from that date;
17 correct?
18 A There's not imaging from 2/28.
19 Q So you relied upon 2/26 to reach that conclusion;
20 correct?
21 A Correct.
22 Q That's what a reasonable interpreting physician
23 would do; correct?
24 A Yes.
25 Q Does your hospital have a critical findings

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1 policy regarding neuroimaging?
2 A Yes, we do.
3 Q Does it include obstructive hydrocephalus?
4 A It includes --
5 Q Yes or no, please. Either it does or it doesn't.
6 A It includes obstructive hydrocephalus when there
7 is brain herniation, yes.
8 Q So does it use the term "obstructive
9 hydrocephalus" or does it use the term "brain
10 herniation"?
11 A I don't recall offhand. I think it probably uses
12 the term brain herniation.
13 Q You can readily get a copy of that and produce it
14 to Mr. Watkins, can you not?
15 A I should be able to, yes.
16 Q Part of the hospital protocol for which you work;
17 correct?
18 A Yes.
19 Q And expressing the opinions that you did here
20 today and describing the pathological findings on the
21 March 2nd, 2013 CT, to complete that process you also
22 reviewed the prior study of the 2/26 CT; correct?
23 A I did compare it to the 2/26, yes.
24 Q Okay. You didn't compare it to the 1/15/13
25 study, though; correct?

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1 A Not today.
2 Q You indicated in part -- and I'm using that term
3 to indicate only in part -- that the ventricles were
4 enlarged on 3/2; correct?
5 A Correct.
6 Q Do you have an opinion to a reasonable degree of
7 medical probability as to what caused the ventricles to
8 become enlarged as they appear to you on March 2nd, 2013?
9 A I do not have an opinion as to what is the
10 medically most likely. I have a couple of theories, but
11 one or more of them can be the case.
12 Q That's different from an opinion with a
13 reasonable degree of medical probability; correct?
14 A That's correct.
15 Q The theories are speculation; correct?
16 MR. WATKINS: Form, foundation.
17 THE WITNESS: Yes, it would be more...
18 Q (By Mr. Thomas) Since I'm here, what are your
19 speculative theories?
20 A My theory, main theory is that the shunt catheter
21 itself, because it is placed into the foramen of monro, and
22 because the patient had a developmental abnormality of the
23 ventricles, right -- I mentioned to you that the frontal
24 horns looked abnormal and they've been abnormal for some
25 time -- I believe that the shunt catheter itself induced

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1 obstruction of the ventricles.

2 Q By creating blood?

3 A By creating -- one possibility is that there

4 could have been a little blood, but we don't see that. But

5 the second is, because that area of the brain is

6 developmentally abnormal, it's possible that, just based on

7 the shunt catheter itself, that it created a mass effect

8 and blocked the foramen of monro.

9 Q But it's a possibility; correct?

10 A Yes.

11 Q On the March 2nd image that you looked at, is the

12 cerebral spinal fluid draining from the third to the fourth

13 ventricle?

14 A Probably not.

15 Q Therefore, the obstruction's probably above the

16 fourth ventricle?

17 A Probably.

18 Q More likely than not?

19 A More likely than not.

20 Q Are there different forms of obstructive

21 hydrocephalus, such as can be caused by a tumor, it can be

22 caused by blood, it can be caused by mechanical failure?

23 A Sure.

24 Q And, therefore, a malfunctioning shunt would be a

25 specific form of obstructive hydrocephalus?

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1 A Yes, it would be one form, yes.
2 Q And under his impression, Dr. Swofford
3 specifically instructed Dr. McGraw, the ER ordering
4 physician, to correlate specifically for the malfunctioning
5 shunt, did he not?
6 A Yes, he did put that phrase in, yes.
7 Q And that was appropriate; correct?
8 A Seems reasonable.
9 Q Because you, yourself, in your impression, and
10 I'm paraphrasing, indicated that the patient probably had a
11 malfunctioning shunt; correct?
12 A Correct.
13 Q You don't practice in the emergency room;
14 correct?
15 A You mean, as an emergency room physician?
16 Q Yes.
17 A No, I do not.
18 Q You don't supervise emergency room physicians
19 at...
20 A Northern Westchester Hospital. No, I do not.
21 Q You don't supervise emergency room physicians
22 performing lumbar punctures at Northwestern Westchester
23 Hospital; correct?
24 A No, I do not.
25 Q Who is the chief of the Department of Emergency

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1 Medicine at the hospital?
2 A I -- you know, it's been recently changed because
3 it's been taken over by a large medical enterprise called
4 Northwell Health and I don't know that I know the name of
5 the current ER chief.
6 Q Okay. Can you tell me the name of the prior ER
7 chief?
8 A Debra -- Debra, her last name -- I don't remember
9 her last name. It's something like Spielvogel (phonetic)
10 or something like that. Debra, I just don't remember her
11 last name. It begins with an S.
12 Q Would you agree that you would need additional
13 views, such as a coronal view or a sagittal view, to rule
14 out hydrocephalus in this case?
15 A No, I don't agree with that.
16 Q Would you agree that MRI's a better tool to make
17 a diagnosis of brain stem herniation than a CT scan?
18 A Not necessarily.
19 Q Could be?
20 A No, not really.
21 Q Is an MRI a better tool to diagnose hydrocephalus
22 than a CT scan?
23 A It could be, yes. I would say it's -- in some
24 situations it is.
25 Q Can you cite to me any literature, any textbook,

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1 any journal, any article that indicates it's the duty of a
2 radiologist to consult with a neurosurgeon?
3 A Could you ask that question one more time?
4 MR. THOMAS: Could you read that back?
5 (Whereupon, the record was read back.)
6 MR. WATKINS: Form, foundation.
7 THE WITNESS: The American College of
8 Radiology has a guideline for communication. And I
9 believe that that document includes some language about
10 communicating with physicians. If the neurosurgeon was
11 involved with the patient's care then, yes, that would
12 indicate that you need to contact him, yes.
13 Q (By Mr. Thomas) My question didn't have any
14 foundation about associated with a neurosurgeon's care,
15 okay. My question simply was: Can you cite to me any
16 literature, any journal, any article to support your
17 contention that's expressed in paragraph 2H that Dr.
18 Swofford had a duty to timely and properly notify and
19 consult with a neurosurgeon; can you cite to me any
20 literature anywhere that he had a duty to do that?
21 A I'm sorry, which paragraph were you referring to?
22 Oh, I see it. Could you point to the paragraph you're
23 referring to; you said 8?
24 Q No, H.
25 A H.

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1 Q Quote, to timely and properly notify and consult
2 with neurosurgery, closed quote.
3 A I see. I take that from the American College of
4 Radiology standard on communications.
5 Q I'm going to hand you the American College
6 practice parameters for communicating the diagnostic
7 imaging findings, and you read to me the paragraph where it
8 says that, please, or sentence.
9 A Okay. So when it says here --
10 Q When you say "here," what page are you on?
11 A This is page four.
12 Q May I?
13 A C2, non-routine communications. "Routine
14 reporting of imaging findings is communicated through the
15 usual channels established by the hospital or diagnostic
16 imaging facility, period. However, in emergent or other
17 non-routine clinical situations, comma, the interpreting
18 physician should expedite the delivery of a diagnostic
19 imaging report, preliminary or final, in a manner that
20 reasonably insures timely receipt of the findings, period.
21 This communication will usually be to the ordering
22 physician, health care provider or his or her designee."
23 So that's where I --
24 Q Doctor, in this case, who was Dr. McGraw's
25 designee? He didn't have one, did he? It's a yes or no

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1 question.
2 A I don't believe he had a designee.
3 Q And that didn't make any specific reference to a
4 neurosurgery consult, did it, Doctor? I've read it several
5 times.
6 A It did not use the word neurosurgery, no.
7 Q Or neurology?
8 A Or neurology.
9 Q Or any other specialty?
10 A They did not identify a specific specialty;
11 that's correct.
12 Q In this case you don't know whether or not
13 Dr. McGraw, the ordering ER physician, actually looked at
14 the imaging studies before Dr. Swofford, the interpreting
15 radiologist, do you?
16 A It wouldn't change my opinion, but I don't
17 know.
18 Q Assuming that to be true, he would have had
19 direct communication himself; correct?
20 A Who would have had?
21 Q The ER physician, if he looked at the PAC system,
22 he would have had direct communication regarding the
23 imaging study and the study done by the resident; isn't
24 that true?
25 MR. WATKINS: Form, foundation.

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1 THE WITNESS: No, that's not considered
2 direct communication. What do you mean by that? Direct
3 communication means physician to physician.
4 Q (By Mr. Thomas) That's your -- does it say that
5 in here?
6 A I think that's understood by every one in the
7 field.
8 Q What's important is that the ordering physician
9 has the knowledge regarding what's contained within the
10 film; correct?
11 A Yes.
12 Q Because it's based upon what's contained in that
13 film, the knowledge they have may or may not dictate the
14 course of treatment for the patient; correct?
15 A That's correct.
16 Q And that why that communication is important,
17 isn't it?
18 A Yes.
19 Q It doesn't matter how the ordering physician
20 receives it, what's important is how he gets it; correct?
21 MR. WATKINS: Form, foundation.
22 THE WITNESS: You just said it doesn't
23 matter how he receives it, it matters how he gets it.
24 Q (By Mr. Thomas) Correct.
25 A I don't understand that question.

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1 Q You don't. So if the preliminary study doesn't
2 read exactly the same as the dictated report by Dr.
3 Swofford, somehow that would make a difference to you?
4 MR. WATKINS: Form, foundation.
5 THE WITNESS: What makes a difference to me
6 is that the urgency of the situation is communicated to
7 the ordering physician, and that's done by a physician to
8 physician contact.
9 Q (By Mr. Thomas) And the purpose of that is so
10 that the ordering physician can timely intercede on behalf
11 of the patient; correct?
12 A That's correct.
13 Q Turning to I. And I quote, To timely immediately
14 advise the ER doctor that the findings of the March 2nd,
15 2013 CT of the head must be emergently addressed by
16 neurosurgery, tapping of the shunt or a placement of the
17 EVD, and that he should avoid performance of a lumbar
18 puncture because it would likely exacerbate herniation.
19 Did I read that correctly?
20 A Yes.
21 Q Again, can you cite to me any literature that
22 says the interpreting radiologist of the CT of the head has
23 a duty to inform a neurosurgery of the manner in which they
24 should proceed or not proceed with treating a patient?
25 A You read that incorrectly. I didn't say to

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1 advise the ER doctor that a neurosurgery consultation
2 should be -- this is telling the ER doctor what must be
3 done.
4 Q All right.
5 A Yes. But, yes. Every radiology resident --
6 you're asking me for something -- you say is there a
7 document, is there a book, is there a this. The fact is,
8 radiology residents spend years in training, including
9 years interpreting head CTs. And most of what we do
10 doesn't really impact on a patient's life within a short
11 time. But I can tell you that every radiology resident
12 trained in this country, and everyone who I've trained
13 knows when you have a patient with brain herniation, that
14 they need to inform the emergency -- the ordering doctor
15 and let them know the gravity of the situation.
16 Q So you don't have staff privileges to practice at
17 any emergency room; isn't that true?
18 A That's correct.
19 Q And you don't practice as an emergency room
20 physician; isn't that true?
21 A That's true.
22 Q Yet, you are indicating here that it's the duty
23 of the radiologist to tell the emergency room physician
24 what they should or should not do; isn't that true?
25 A I believe it is the responsibility of the

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1 radiologist to say a neurosurgery consultation is
2 necessary, yes.
3 Q Right. You're dictating how the emergency room
4 physician should practice medicine; correct?
5 A I believe we're not dictating; we're advising.
6 Radiologists are consultants and advisers. It is our job
7 to advise that person. I do that all the time.
8 Q It's the ER physician's duty to make that
9 decision; isn't it?
10 A Yes, he has the final decision.
11 Q Turning to G; you have in front of you, Doctor?
12 A Yes.
13 Q "To timely and urgently communicate the head CT
14 findings to the ordering physician and advise the ER
15 physician that the patient must be treated by
16 neurosurgery." Again, you're telling us that it's the duty
17 of the interpreting radiologist of the CT of the head to
18 tell the emergency room physician that he must get a
19 neurosurgery consult?
20 A That a neurosurgery consult is advised, yes. We
21 do it every single day.
22 Q The language doesn't say that the neurosurgery
23 consult is advised. It says, quote, patient must be
24 treated by neurosurgery, closed quote; that's what it says,
25 correct?

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1 A That's what it says, yes.
2 Q That's different; isn't it, Doctor?
3 A It is.
4 Q In this case did Dr. Swofford perform intubating
5 the patient consult with a neurosurgeon, do you know?
6 A Doctor Swofford did not.
7 Q In this case Dr. McGraw, the ER physician,
8 consult with a neurosurgeon before intubating the
9 patient?
10 A I don't recall.
11 Q You don't know; correct?
12 A I don't recall.
13 Q Well, I'm here to find out. You know or you
14 don't know, Doctor?
15 A I don't know today.
16 Q You knew this was the date and time for your
17 deposition; correct?
18 A Pardon me?
19 Q You knew this was the date and time for your
20 deposition?
21 A Yes, I did.
22 Q And you knew based upon the exhibit that I marked
23 called the deposition notice what I asked you to bring with
24 you; correct?
25 A Yes.

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1 Q Can you pull up the, or I can hand you if you
2 want, a copy of the radiology report dictated by Dr.
3 Swofford?
4 A May I see it?
5 Q Sure.
6 A Thank you.
7 Q Examining date 3/2/13 at 06:32, correct, signed
8 by Dr. Swofford at the bottom, or at least has his name
9 dictated by Dr. -- verified by Dr. Swofford; correct?
10 A Yes. This is the report, yes.
11 Q Looking at the findings section; you have that in
12 front of you?
13 A Yes.
14 Q You agree the study was limited to motion
15 artifact?
16 A I agree to that, yes.
17 Q You agree that the right posterior parietal
18 approach catheter is stable in position with tip within the
19 medial aspect of the frontal horn of the right lateral
20 ventricle?
21 A I agree.
22 Q You agree that the bilateral lateral ventricles
23 appear increased in size since the prior examination,
24 especially the right?
25 A I agree.

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1 Q You agree the fourth ventricle appeared to be
2 collapsed?
3 A Yes.
4 Q You agree there was no acute hemorrhage or major
5 vessel infarct?
6 A Yes.
7 Q You agree there was no midline shift?
8 A Yes.
9 Q You agree there was no abnormal extra axial fluid
10 collection?
11 A Yes.
12 Q You agree that parasinal -- excuse me, paranasal
13 sinus are well aerated?
14 A Yes.
15 Q Okay. And under impression you agree study was,
16 again, limited due to motion artifact?
17 A Yes.
18 Q You agree the bilateral ventricles have increased
19 in size since prior study, especially the right?
20 A Yes.
21 Q And you agree that the ER physician receiving
22 this report was requested to correlate clinically for
23 malfunctioning shunt?
24 A I do, yes.
25 Q Okay. So you don't disagree with any of the

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1 findings or impressions that were recorded by Dr. Swofford;
2 correct?
3 A I don't disagree with what is on the page there,
4 yes.
5 Q Did this patient have a known chiari 1
6 malformation?
7 A I just need to go back and take a look, if I may?
8 Q Please.
9 A Bear with me for a minute. Yes, I believe that
10 that was diagnosed, that she had a mild chiari 1
11 malformation, yes.
12 Q Can you tell by looking at the film of 3/2/13
13 whether the chiari malformation extends to the bottom of
14 the cerebellum and into the foramen magnum?
15 A Yes.
16 Q Can you compare the appearance of the temporal
17 horns and basal cisterns on the 2/26/13 film, which you
18 looked at, and the 3/2/13 film, which you looked at?
19 A Yes.
20 Q What's your opinions?
21 A There's a dramatic difference.
22 Q When you say "dramatic difference," can you be
23 any more specific?
24 A Well, the temporal horns --
25 Q Difference in what, please?

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1 A Pardon me?
2 Q There's a dramatic difference in what?
3 A Oh, there was a dramatic difference in the size
4 of temporal horns and the appearance of the basilar
5 cisterns.
6 Q And do you have a opinion to a reasonable degree
7 of medical probability as to what caused that change or
8 appearance?
9 A Yes.
10 Q What is that, please?
11 A Obstructive hydrocephalus and brain herniation.
12 Q So it's your opinion that this patient was
13 already experiencing brain herniation at the time this CT
14 scan was performed?
15 A What I would call impending, yes.
16 Q That's different from the question I asked you.
17 You said that this reflected brain herniation; correct?
18 A Yes.
19 Q So my question was, following up on that
20 statement: You agree this patient was already experiencing
21 bran herniation at the time this CT scan was read?
22 A Yes, likely.
23 Q More likely than not; correct?
24 A More likely than not, yes.
25 Q What is the significance of any of the low

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1 density halo surrounding the BP catheter on 2/26 versus
2 3/2?
3 A It indicates an entity that we call reversal of
4 transependymal flow of CSF.
5 Q And what does that mean to me as a layperson?
6 A Cerebral spinal fluid is manufactured in two main
7 places in the brain; in tissue in the ventricles called the
8 choroid, C-H-O-R-O-I-D, plexus, P-L-E-X-U-S, and in the
9 lining of the ventricles, in cells along the lining of the
10 ventricles. Normally the lining of the ventricles cells
11 secrete CFS into the ventricle system. When the ventricles
12 are dilated and increase in size and come under high
13 pressure, than rather than those cells contributing CSF
14 into the ventricles, they reverse and the ventricular fluid
15 travels outside the ventricular system into the brain
16 itself.
17 Q Does that complete your response?
18 A Yes.
19 Q Thank you. Doctor, can you tell me whether or
20 not the 2/26 CT that you reviewed, whether the sulci are
21 visible or not?
22 A A few of the cerebellar sulci are visible, and a
23 few of the frontal sulci are visible.
24 Q So what does that mean?
25 A Yes, they are visible.

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1 Q Can you tell looking at that same image of 2/26
2 whether the basal cisterns are smaller than the 3/2?
3 A The basal cisterns are larger on 2/26 than they
4 are on 3/2.
5 Q What does that tell us on 3/2?
6 A That the basal cisterns are being crowded out by
7 brain herniation, and that that fluid's being pushed
8 away.
9 Q Is it your opinion that the 2/26 CT scan is
10 diagnostic of obstructive hydrocephalus?
11 A It is not my opinion that the 2/26 scan is
12 diagnostic of obstructive hydrocephalus.
13 Q So it is your opinion that the 3/2 is suggestive
14 of obstructive hydrocephalus?
15 A Correct.
16 Q Is that an acute process?
17 A Yes.
18 Q And for purposes of this record, when you're
19 using the term "acute," what do you mean?
20 A I mean that it is within a few days of
21 happening.
22 Q At what point in time was the -- at what point in
23 time did the brain stem herniation occur; chronologically,
24 what point in time?
25 A I couldn't be sure exactly.

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1 Q Do you have an opinion to a reasonable degree of
2 medical probability?
3 A As to when exactly the brain herniation occurred,
4 no, I do not.
5 Q Do you have a reasonable probability as to when
6 the brain herniation occurred?
7 A I can only say that it occurred somewhere between
8 February 26th and March 2nd, but I don't have any more
9 accurate time than that.
10 Q And that's all you can tell us; correct?
11 A Correct.
12 Q At your hospital are study notes used to convey
13 preliminary findings to ordering physicians?
14 A Do you mean in the PACS system?
15 Q Yes.
16 A Yes, they are used.
17 Q You would agree that the timeliness of a finding
18 is more important than the route of the communication
19 regarding the findings, wouldn't you, Doctor?
20 A I think they're equally important.
21 Q So in some cases the fact that the information
22 was communicated rather than the route of communication can
23 be more important than in other circumstances; isn't that
24 true?
25 MR. WATKINS: Form, foundation.

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1 THE WITNESS: In some circumstances, yes.
2 Q (By Mr. Thomas) Do you know in this case within
3 how many minutes the preliminary study note was available
4 to Dr. McGraw to review within the PAC system?
5 A Yes, it was available within a very small number
6 of minutes; maybe fifteen minutes, something like that.
7 Q Possibly a lot less?
8 A Yes. I think it was, yeah, within a couple of
9 minutes after the study was finished.
10 Q If the record reflected four minutes, you
11 wouldn't have any ability to disagree with that, would
12 you?
13 A That's correct.
14 Q That would with quite fast, wouldn't it?
15 A Four minutes is pretty fast.
16 Q You know in this case whether Dr. McGraw actually
17 looked at the films before the study notes were even
18 generated?
19 MR. WATKINS: Asked and answered.
20 THE WITNESS: I don't know. It wouldn't
21 change my opinion in any way.
22 Q (By Mr. Thomas) Once that information is
23 generated into the PAC system, it's available for not only
24 the ordering physician, Dr. McGraw or anybody else,
25 including the Neurosurgery Department; correct?

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1 A That's correct.
2 (Whereupon, a recess was held.)
3 Q (By Mr. Thomas) Generally would you agree that
4 some of the findings on the 3/2 CT scan are less
5 demonstrative than some of the findings on the 2/26 CT
6 scan?
7 A I don't understand your question.
8 Q For example, would you agree that the basal
9 systems are small as looking specifically at image number
10 eight on 3/2?
11 A Yes, the basilar cisterns are lost, yes, are
12 decreased on 3/2; I agree with that.
13 Q Could you also agree there's a prominence of the
14 right temporal horn seen on image number seven?
15 A I agree, I think it's better seen on image eight,
16 nine and ten, but, yes, I agree that the right temporal
17 horn is enlarged.
18 Q You agree on 3/2 the sulci are not visible on
19 image number 14?
20 A I agree with that.
21 Q You agree that the sulci are not visible on image
22 number 14?
23 A Yes, I agree with that.
24 Q Doctor, would you agree that in order to
25 determine the cerebral spinal fluid flow sequence, one

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1 would need to do an MRI?
2 A No.
3 Q Is it your opinion that the 3/2 does or does not
4 show significant cerebral edema or evidence of
5 transependymal flow of CSF?
6 A It is my opinion that it does not show
7 significant cerebral edema, but it does show transependymal
8 flow of csf.
9 Q And what's the significance to you, if any, that
10 there is no significant cerebral edema, but that there is
11 evidence of transependymal flow?
12 A It's my opinion that that indicates that at this
13 stage, where the patient is at this point, is likely a
14 reversible process. That if treated appropriately, that
15 she would be able to be resuscitated.
16 Q You're not a neurosurgeon; correct?
17 A No, I'm not.
18 Q You don't treat patients like her for this
19 condition; correct?
20 A I do not.
21 Q You don't have privileges at the hospital where
22 you're at to do that; correct?
23 A No, I don't.
24 Q On the 3/2 study is the appearance of a fourth
25 ventricle, I think you described it as being collapsed;

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1 first of all, is my memory correct?
2 A Correct.
3 Q Is that consistent with obstructive
4 hydrocephalus?
5 A Yes. Could be, yes.
6 Q Can you get increased lateral ventricles and a
7 collapsed fourth ventricle without having obstructive
8 hydrocephalus?
9 A Sure. I guess you -- I mean, there are some
10 situations, it's possible but unlikely. It's not a
11 medically likely possibility.
12 Q On the 3/2 study, Doctor, can you tell me whether
13 or not there was still some CSF fluid visible around the
14 brain stem?
15 A I see -- well, at the bottom most image, which is
16 the cervical medullary junction, there continues to be a
17 sliver of CSF; but by and large there is no CSF around the
18 remainder of the brain stem.
19 Q Okay. And the fact there's, quote, a sliver,
20 closed quote, suggests there's still some communication
21 between the brain and the spinal canal?
22 A No, no, it didn't.
23 Q Does not?
24 A No.
25 Q So the fact that this patient had a chiari 1

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1 malformation make it more difficult to diagnose
2 transtentorial herniation on the CT of 3/2/13?
3 A No.
4 Q Do you agree there's an inferior extension of the
5 cerebellum tonsils into the foramen mangum at the skull
6 base?
7 A Yes.
8 Q Is that finding similar to the 2/26 study?
9 A Yes.
10 Q Doctor, you made reference to the requisition
11 slip; can you pull that up?
12 A Yes.
13 Q Can you print that out for me?
14 A I can't print it, but I can show it to you right
15 here.
16 Q We're looking at the requisition slip for the
17 3/2/13 CT scan; correct?
18 A Correct.
19 Q And where it says "reason for exam," it indicates
20 "bleed" there; correct?
21 A Correct.
22 Q There's no other additional comments; correct?
23 A Well, yes, it says right here --
24 Q We're going to get there.
25 A Oh, not on that line. There no comments on that

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1 line.
2 Q Correct?
3 A Correct.
4 Q So as we go down, it says "order comments;"
5 correct?
6 A Yes.
7 Q HA stand for headache?
8 A Yes.
9 Q And NID stands for?
10 A Nausea, slash, vomiting.
11 Q And that's the entire history that was provided
12 to the Radiology Department; correct?
13 A Yes.
14 Q Radiology Department doesn't get physical exam
15 results?
16 A No, they don't.
17 Q They don't get lab results?
18 A Well, the lab results --
19 Q In this case, they didn't; correct?
20 A In this case, they didn't.
21 Q They didn't get -- strike that.
22 I'm going to hand you what I'm marking as Exhibit
23 Number 6.
24 (Whereupon, February 22, 2013 Slide Print
25 was marked as Defendant's Exhibit 6 for identification.)

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1 Q (By Mr. Thomas) And it is a slide from the
2 February 22nd, 2013 CT scan. I just ask -- and I
3 acknowledge it's a print, not a film or a digital copy --
4 what, if any, pathology can you read on that?
5 A Well, first of all, I believe, I'm not sure, that
6 there were two scans done on the 22nd; one was called a
7 stereotactic exam, which this may be, and if it is, is an
8 intentionally low quality study for purposes of
9 localization. Now, if you say, based on this print what
10 can I see, I can see a little bit of the ventricle. I can
11 see the tip of what looks like probably the shunt catheter,
12 but I don't know, or this could be --
13 Q Would that be the white dot?
14 A The white dot, yes. Normally I would have the
15 whole study to go through. I see one of the eyes. I don't
16 see any hemorrhage. I mean that..
17 Q Does that complete your answer?
18 A Yes.
19 Q Thank you.
20 (Whereupon, February 26, 2013 Slide Print
21 was marked as Defendant's Exhibit 7 for identification.)
22 Q (By Mr. Thomas) I'm going to hand you what I'm
23 marking as Exhibit Number 7, which is dated February 26,
24 2013. Again, acknowledging it's just a print, and tell me
25 what pathology, if any, you can identify on Exhibit Number

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1 7, please?
2 A Again, we see what looks like a part of the shunt
3 catheter is this white line.
4 Q Okay. Or white dot?
5 A The white dot; right. The ventricles are barely
6 visible. I just see a little bit of the ventricle. It's
7 hard to notice that because it's out of plane or because
8 they are collapsed or slit like. And I only see one of the
9 eyes, which would be unusual because normally the eyes are
10 in the same plane.
11 Q The two images that were done on 3/2/13, they
12 were done about a moment apart, not simultaneously;
13 correct?
14 A Correct.
15 (Whereupon, February 26, 2013 Slide Print
16 was marked as Defendant's Exhibit 8 for identification.)
17 Q (By Mr. Thomas) I'm going to hand you what I'm
18 marking as Exhibit Number 8, which also bears the date of
19 February 26th of 2013, the study that the proceeded the
20 March 2nd. Tell me what pathology, if any, you can read
21 from that picture.
22 A Well, we see the white structure which is the
23 shunt catheter.
24 Q Which appears larger than in the previous
25 photos?

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1 A Not larger, we're just seeing it in a --
2 Q More visible?
3 A Yes, it's more visible, yes. Now we see both of
4 the anterior horns of the lateral ventricles.
5 Q That's the dark above the white spot?
6 A Yes. We see the supracerebellar system, the
7 black stuff.
8 Q That's the dark spot located in the bottom
9 one-third?
10 A Yes.
11 Q Anything else you see, Doctor?
12 A Not really.
13 Q Okay.
14 (Whereupon, March 2, 2013 Slide Print was
15 marked as Defendant's Exhibit 9 for identification.)
16 Q (By Mr. Thomas) Now I'm going to hand you what
17 I've marked as Exhibit Number 9, it bears the date of March
18 2nd, 2013 at 6:30. This is an image of the film
19 interpreted by Dr. Swofford; correct?
20 A These are images from the first set of scans, not
21 from the second set.
22 Q Which were interpreted by Dr. Swofford;
23 correct?
24 A Yes.
25 Q Go ahead, please.

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1 A These show the shunt catheter.
2 Q Again, the white spot?
3 A The white material at the foramen of monro. The
4 anterior horns and the occipital horns of the lateral
5 ventricles are now enlarged. There is no CSF in the
6 basilar cisterns. You can see that there is -- it's hard
7 to tell from here because, you know, there's probably some
8 more effacement of the cell side, but that's about all I
9 can tell from these two slides.
10 Q Does that complete your answer?
11 A Yes.
12 (Whereupon, March 2, 2013 Slide Print was
13 marked as Defendant's Exhibit 10 for identification.)
14 Q And then, lastly, Doctor, I'm showing you Exhibit
15 Number 10. It's captioned March 2nd, 2013, again, at 6:30,
16 and ask you what pathology you can see in there?
17 A I can see the temporal horns are enlarged. The
18 right frontal horn is enlarged. There is effacement of the
19 cerebral cisterns. And the fourth ventricle is collapsed.
20 I'll stop there.
21 Q Okay, thank you.
22 (Whereupon, a recess was held.)
23 Q (By Mr. Thomas) Doctor, you still have the 3/2
24 image in front of you?
25 A Yes, I do.

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1 Q Can you show me, or can you identify, I guess, on
2 any of those images of 3/2/13 whether there is present
3 cerebral spinal fluid in the basal cisterns?
4 A No, I can't confidently identify any image that
5 shows any fluid in the basilar cisterns.
6 Q Looking at the same images of 3/2/13, can you
7 identify for me anywhere there's present CSF fluid in the
8 quadrigeminal plate cistern?
9 A No, I cannot.
10 Q Can you pull up series two, slice twelve for me,
11 please?
12 A Yes.
13 Q Does that image assist you in answering the
14 question, whether or not there is present CSF in either the
15 basal cistern or the quadrigeminal plate cistern?
16 A Yes, image twelve does not, in my opinion,
17 demonstrate any CSF in the quadrigeminal plate cistern.
18 Q You agree the -- there's some of the
19 quadrigeminal plate cistern visible on that image?
20 A I don't agree with that, no.
21 Q Can you turn to image number eight, series two,
22 slice eight?
23 A Yes.
24 Q Can you tell me whether or not in your opinion
25 there's some cerebral spinal fluid in the fourth ventricle

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1 in that image?
2 A There is likely a dot of -- yes, there's a small
3 amount of CSF in what is likely the fourth ventricle.
4 Series two, image eight, yes.
5 Q The 3/2/13 CTA, that was done later at roughly
6 10:45 a.m.?
7 A Yes.
8 Q I'm now switching on you; okay?
9 A Yes.
10 Q You agree that there's not even a sliver of the
11 quadrigeminal plate cisterns visible on that image?
12 MR. WATKINS: I'm sorry, what's the time of
13 the image?
14 MR. THOMAS: 10:45 a.m.
15 MR. WATKINS: Oh, you're talking about the
16 one that --
17 MR. THOMAS: Subsequent.
18 MR. WATKINS: Later.
19 THE WITNESS: Yes, I agree there's not even
20 a sliver of the fourth ventricle visible later.
21 Q (By Mr. Thomas) And this imaging wasn't affected
22 by artifact or the patient wasn't moving; correct?
23 A That's correct.
24 MR. WATKINS: Form, foundation.
25 Q (By Mr. Thomas) You agree there's not even a

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1 molecule of cerebral spinal fluid in the fourth ventricle
2 at this point in time; correct?
3 A Well, I don't know about a molecule. Molecules
4 would be below my ability to visualize them; but I agree
5 that there's no visible fluid, none visible by the eye,
6 yes.
7 Q Does the course suggest her condition has
8 progressed and deteriorated from the earlier study of
9 roughly 6:30 in the morning; correct?
10 A Yes.
11 Q Doctor, turning your attention back to the
12 affidavit of merit, just briefly.
13 A Yes.
14 Q I think we've gone over the significant portions
15 of it. On page 2J --
16 A J.
17 Q It reads, quote, to refrain from other acts of
18 negligence which may become known through the course of
19 discovery. Do you have any additional or different
20 opinions regarding the violation of the standard of care
21 that we haven't identified here on this record today?
22 A No.
23 Q I have no more questions at this time. Thank
24 you.
25 EXAMINATION BY

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1 MR. WATKINS:
2 Q I just wanted to clear something up. With regard
3 to the CT performed at 6:30 a.m., roughly, is it true that
4 there were two sets of images that were performed within a
5 minute of each other; one had significant artifact and the
6 other did not?
7 A That's correct.
8 Q Okay. All right.
9 MR. THOMAS: Foundation, but go ahead.
10 Q (By Mr. Watkins) And those images were being
11 interpreted?
12 A Yes, they were part of the same study.
13 Q Okay. And then there was a separate CT scan with
14 its own number of sets of images that was performed after
15 10:00 later?
16 A Yes, that's correct. There was another scan
17 later in the day.
18 Q Okay, all right. You are a board certified
19 diagnostic radiologist; is that correct?
20 A That's correct.
21 Q The imaging study that was needed to be properly
22 interpreted and communicated in this case was a CT scan,
23 and that is a neuroimaging study; is that correct?
24 A Yes, a CT scan of the head would fall into the
25 category of a neuroimaging study.

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1 Q Okay.
2 A But every diagnostic radiologist is trained to
3 interpret them.
4 Q All right.
5 A It's not like they're completely separate.
6 Q And a diagnostic radiologist interpreting
7 neuroimaging studies, such as the CT of the brain, needs to
8 exercise those skills in order to interpret it properly?
9 MR. THOMAS: Form and foundation.
10 THE WITNESS: It is my opinion that when it
11 comes to a head CT, that the standard of care that applies
12 to a neuroradiologist or a diagnostic radiologist is the
13 same, because they are trained to interpret those studies
14 as a resident.
15 Q (By Mr. Watkins) Okay. That's the standard that
16 you are opining in this case that should have been
17 followed?
18 A Yes.
19 Q Okay, all right. That's all I have. Thank you
20 very much, Doctor.
21 EXAMINATION BY
22 MR. THOMAS:
23 Q Just one or two follow up questions. Putting
24 aside whether you're right or wrong about the standard of
25 care, the fact is you practice, as we've gone over now, 90

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1 percent of your time either in the clinical practice of
2 neuroradiology or teaching fellows to become
3 neuroradiologists; correct?
4 A Teaching fellows and residents, yes.
5 Q I have no more questions, thank you.
6 THE REPORTER: Do you want to order a copy
7 of this transcript?
8 MR. WATKINS: I would, and I just want an
9 E-tran.
10 (Deposition concluded: 11:31 a.m.)
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1 JURAT
2
3
4
5
6 ______________________________
Scott B. Berger, M.D., Ph.D.
7
8
9
10
11 Subscribed to and sworn before me on this
12 ______________ of _______________________ 2019.
13
14 ______________________________
15
16 My commission Expires:
17
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1 ERRATA SHEET

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19 ____________________________________

20 ___________ ____________________

Date

21 Scott B. Berger, M.D., Ph.D.

Sworn to before me this _____ day

22 of ________________, 2019.

____

23 Notary Public

24 My commission Expires:________________

25

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1 C E R T I F I C A T I O N
2 STATE OF CONNECTICUT:
COUNTY OF HARTFORD:
3
4 I, SAMANTHA M. HOWELL, a Notary Public duly
commissioned and qualified in and for the State of
5 Connecticut, do hereby certify that pursuant to Mr. Thomas
there came before me on the 27th of February, 2019, the
6 following named person, to wit:
Scott B. Berger, M.D., Ph.D., who was previously duly sworn
7 to testify to the truth and nothing but the truth; that he
was thereupon examined upon his oath; that the examination
8 was reduced to writing by computer under my supervision and
that this transcript is a true record of the testimony
9 given by said witness.
10
I further certify that I am neither attorney nor
11 counsel for, nor related to, nor employed by any of the
parties to the action in which this deposition was taken,
12 and further, that I am not a relative or employee of any
attorney or counsel employed by the parties hereto, or
13 financially interested in the outcome of this action.
14 In witness whereof I have hereunto set my hand
this 12th day of March, 2019
15
16
17 ______________________________
Samantha M. Howell
18 Notary Public
19
20 My Commission expires
September 30, 2021
21
22
23
24
25

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APPENDIX 14

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STOKES v. SWOFFORD, D.O., ET AL.

MICHAEL JAMES SWOFFORD, D.O.

August 15, 2018

Prepared for you by

Bingham Farms/Southfield • Grand Rapids
Ann Arbor • Detroit • Flint • Jackson • Lansing • Mt. Clemens • Saginaw • Troy

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1 responding. If you respond to a question I pose, I'm
2 going to assume you understood the question and the
3 answer's appropriate, is that fair?
4 A. Yes.
5 Q. All right. You've had your deposition taken before?
6 A. One time.
7 Q. Okay. When was that?
8 A. I don't recall the exact year. Right around 2002.
9 Q. Okay. All right. So it's been a little while.
10 A. Yes.
11 Q. But the general rule is let's not talk over each
12 other. This nice, beautiful young lady to the left of
13 me and to the right of you is a Court Reporter, and
14 I'm sure you probably were told she takes down almost
15 everything that's being said unless we go off the
16 record. So it's important that only one person is
17 speaking at a time. I'm going to try not to step on
18 your responses and you try not to cut off my
19 questions, and come up with a clear transcript for us
20 in the future.
21 A. Okay.
22 Q. All right. State your full name.
23 A. Michael James Swofford, D.O.
24 Q. And you attribute your practice to a particular
25 specialty, correct?

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1 A. Yes.
2 Q. And it's radiology?
3 A. Diagnostic radiology.
4 Q. All right. Do you regularly read and interpret for
5 the various facilities that you interpret studies for,
6 neuro studies?
7 A. Yes.
8 Q. So you provide neuroradiological interpretation for
9 hospitals and the patients that require those
10 interpretations?
11 A. Yes.
12 Q. Okay. And you're affiliated with a particular group?
13 A. Yes.
14 Q. And the name of the group?
15 A. Southfield Radiology Associates.
16 Q. All right. And are you a partner there?
17 A. Yes, I am.
18 Q. And an employee?
19 A. Yes.
20 Q. And the group has a number of doctors that affiliate
21 with the group, is that right?
22 A. Yes.
23 Q. How many radiologists do you have?
24 A. I believe we have 22 currently.
25 Q. And do you contract with hospitals to assume

1 responsibility for interpretation of radiological
2 studies that are done at the hospitals for the
3 patients?
4 A. Yes.
5 Q. All right. And your responsibility encompasses
6 supervising the hospital's residents who are rotating
7 through the Radiology Department, is that fair?
8 A. Yes.
9 Q. Okay. You take on attending responsibility much like
10 other physicians in clinical status, supervising the
11 resident staff, right?
12 A. Yes.
13 Q. And you adhere to the responsibility chain known as
14 the attending is ultimately responsible for the care
15 provided by the residents under them?
16 MR. THOMAS: Object to the form of the
17 question, but you may respond.
18 THE WITNESS: I am the ultimate control of
19 my report, my interpretation.
20 BY MR. WATKINS:
21 Q. Okay, all right. But the record may reflect various
22 residents that may be either communicating with you or
23 preliminarily documenting information that you
24 ultimately use and give the ultimate interpretation
25 that is to be used for that patient's care and

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1 treatment, right?
2 A. Correct, yes. The resident physician is under my
3 supervision.
4 Q. All right. Now, I'm going to ask you a few questions
5 that might draw objection, but it's for discovery
6 purposes only and I want to talk about insurance
7 coverage.
8 A. Okay.
9 MR. THOMAS: Standing objection.
10 MR. WATKINS: Absolutely.
11 MR. THOMAS: Thank you.
12 BY MR. WATKINS:
13 Q. Does Southfield Radiology have separate and distinct
14 malpractice insurance or medical legal insurance for
15 their employees above and beyond the policy that,
16 policy of insurance that you may have?
17 A. I'm not aware of that.
18 Q. Not aware. Okay. All right. There is coverage
19 applicable for claims such as this pending case,
20 correct?
21 A. Yes.
22 Q. All right. And what is that coverage?
23 A. I believe it's 200,000.
24 Q. All right. Is it 200/400 or just a straight 200?
25 A. I think it's 200, my understanding, up to 600 in one

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1 year, so up to 3 claims.
2 Q. Okay, got it. Is there any excess coverage,
3 additional coverage or contingent coverage referenced
4 in the policy of insurance that proffers that
5 coverage?
6 A. No.
7 Q. You've been provided Interrogatory questions. These
8 are sworn witness statements that respond to these
9 questions propounded by us, and sometimes they're far
10 too numerous than they should be because a lot of them
11 are answered by the mere production of your CV, but do
12 you recall Interrogatory questions, and you made an
13 effort to give us responses or honest answers in
14 response to those questions, right?
15 A. Yes.
16 Q. And like most prudent physicians in this situation,
17 you filtered them through your attorney and ultimately
18 you provided me written, I mean signed answers?
19 A. Yes, I did.
20 Q. Okay. As you sit here today, are there any changes to
21 the Answers to Interrogatories that you wanted to make
22 but you didn't get a chance to or anything like that?
23 A. No.
24 Q. Okay. So the signed Answers to Interrogatories are at
25 least best prepared responses by you to this date?

1 A. Yes.
2 Q. Okay, all right. I'm going to talk a little bit about
3 your background and I'm just going to ask you an open
4 question. Why don't you give me a synopsis of your
5 educational background since undergrad through today
6 with experience.
7 A. Okay. I started my undergraduate career at Washington
8 State University in 1984. I was there for 4 years.
9 In 1988 I graduated with the degree, Bachelor of
10 Science. I then went to medical school, Kirksville
11 College of Osteopathic Medicine, which is in
12 Kirksville, Missouri. That was from 1992 through --
13 no, I'm sorry, it was from 1988 to 1992. 1992 was my
14 graduation date. I obtained the degree Doctor of
15 Osteopathic Medicine.
16 I did a rotating internship at Garden City
17 Osteopathic Hospital from July 1st of 1992 through
18 June 30th of 1993. I then started a residency in
19 diagnostic radiology at Garden City Hospital, which
20 was from July 1st, 1993 to the end of June, 1997.
21 Then I did a 1-year fellowship in neuroradiology,
22 Wayne State University here in Michigan, July 1st of
23 1997 to June 30th of 1998. In 1998, I took on my
24 first job as a staff radiologist at Huron Valley
25 Hospital. I was there for approximately 1 and a half

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1 years, then I took on my second job at St. Joseph
2 Mercy Oakland, which was from 2002 through July of
3 2006. I then went to my current job, which is with
4 Southfield Radiology Associates. That was from, that
5 was from 8-06 to the current time, current date.
6 Q. Are you affiliated with any hospitals as an employee?
7 A. No.
8 Q. Okay. All of your practice through or at hospitals
9 are pursuant to the contractual relationships through
10 your employer?
11 A. Yes.
12 Q. And the hospitals that you interpret studies,
13 radiographic studies at are what, at this time?
14 A. Garden City Hospital in Garden City, Michigan.
15 Providence in Southfield, Michigan; and Providence
16 Park, which is in Novi, Michigan.
17 Q. And through your practice, you interpret neuro studies
18 and others, is that correct?
19 A. Yes.
20 Q. Is there a predominance in one area versus the other
21 in your practice?
22 A. Yes. With my current job, I read approximately
23 25 percent of neurology-related or nerves-related
24 studies, and 75 percent based on diagnostic general
25 radiology.

1 Q. Okay. Would you hold yourself out as a
2 neuroradiologist?
3 A. No.
4 Q. You provide interpretation quality at the level of a
5 neuroradiologist when you're interpreting neuro
6 studies, is that correct?
7 MR. THOMAS: Object to the form of the
8 question. It calls for a legal conclusion.
9 If you know the answer, you may answer. If
10 not, tell him you don't know.
11 THE WITNESS: I don't know.
12 BY MR. WATKINS:
13 Q. Okay. Let's put it this way: You don't consider your
14 interpretations to be of a lesser standard than any
15 other interpretation of a neuro study that you take
16 on?
17 MR. THOMAS: Foundation.
18 Go ahead.
19 BY MR. WATKINS:
20 Q. Go ahead.
21 A. In our group, all the radiologists interpret neuro
22 films even though they have no training in
23 neuroradiology specifically.
24 Q. Okay. Have you had -- you've had training in
25 neuroradiological interpretation?

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1 A. Yes, I have.
2 Q. The same training that would be provided to any
3 radiologist who seeks to assume such a responsibility,
4 correct?
5 A. It's a subspecialty of diagnostic radiology, but as a
6 diagnostic radiologist, you are certified to read
7 neuro cases.
8 Q. Okay. Is there a separate Board for neuroradiology?
9 A. No.
10 Q. The Board is diagnostic radiology?
11 A. Correct.
12 Q. Are there other subspecialties for radiology?
13 A. Yes, there are 10 that I'm aware of.
14 Q. Okay. Do you hold any other subspecialty of
15 radiology?
16 A. Not at the current time.
17 Q. Okay. Has your license to practice been challenged in
18 any way?
19 A. No.
20 Q. Okay. It's been consistent and unencumbered from the
21 time that you assumed your license to practice and
22 your Board certification through today, correct?
23 A. Yes.
24 Q. Have you spoken with anyone about this particular
25 case, outside of your attorneys, of course?

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1 A. No.
2 Q. Do you recall the case involving Linda Horn, as you
3 sit here today, independently?
4 A. No, I don't have a specific recollection.
5 Q. Okay. You have had an opportunity to review some
6 materials to prepare for your deposition, fair?
7 A. Yes.
8 Q. Did you get a Dep Notice indicating this date is the
9 date scheduled for your deposition and we would like
10 for you to bring this list of materials with you,
11 anything like that?
12 MR. THOMAS: I will stipulate that he did.
13 And I'll also add that I filed an objection to your
14 notice of taking his deposition relative to the things
15 you asked him to produce; therefore, he didn't bring
16 them and he followed my instructions.
17 MR. WATKINS: I didn't recall you objecting
18 in blank that everything we asked for was improper.
19 MR. THOMAS: I can find it if it's
20 important to you, but anyway I filed a formal
21 objection, I know that.
22 MR. WATKINS: I did see it.
23 MR. THOMAS: It wasn't total. You asked
24 for a CV, a copy of which I have provided you today,
25 and you have a copy of his record that he produced.

1 His x-ray report and anything else would not be his
2 record.
3 BY MR. WATKINS:
4 Q. All right. Let me ask you this: Have you reviewed
5 any research-related materials that apply to, in any
6 way, the issues that you feel are relevant in this
7 particular case of Linda Horn?
8 A. No.
9 Q. Okay. You did review the actual films since this
10 action?
11 A. Yes.
12 Q. Okay, all right. And --
13 MR. THOMAS: For the record, the films
14 you're referring to 2-26 and 3-2, correct?
15 MR. WATKINS: You know what, I say films
16 and it's probably improper because I'm more on the lay
17 side.
18 BY MR. WATKINS:
19 Q. There are a number of images that are produced in the
20 production of a CT scan, is that correct?
21 A. Yes.
22 Q. And there would be a series of, several series of
23 those images that a radiologist of your caliber would
24 go through and come up with certain conclusions,
25 findings and interpretations, is that right?

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1 A. Yes. I reviewed the images from March 2nd of 2013.
2 Q. All right. Now, I believe, and we'll get to your
3 actual report, I believe that you made reference or
4 suggested that you at least looked at another CT scan,
5 maybe more on that day as well?
6 A. No. I recall a conversation that we had on the
7 telephone with yourself, that's the only time I
8 reviewed the other images.
9 Q. Okay. I'm talking about at the time of March the 2nd,
10 you would have compared the March 2nd CT scan to one
11 of the prior CT scans that was performed on this
12 patient, either a January study or a February study
13 that was done, is that fair?
14 A. I reviewed the CT brain from 2-26 of 2013.
15 Q. All right. And so you compared the 2-26 images,
16 however many you would typically look at, to the
17 images that were produced on March the 2nd?
18 A. Yes.
19 Q. And that helped you arrive at the findings and
20 conclusions that you shared on that day, is that
21 right?
22 A. In the report, yes.
23 Q. All right. Okay. You indicate on your CV a list of
24 research and some presentations. Any of those
25 materials or publications relate to the issues that

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APPENDIX 15

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JOELYNN T. STOKES, Successor Personal
Representative of the Estate of Linda
Horn, Deceased,

Plaintiff,

v. File No. 2018-164148-NH

MICHAEL J. SWOFFORD, et al,

Defendants.
_______________________________________/

MOTION TO CONFIRM RELEVANT SPECIALTY

BEFORE THE HONORABLE CHERYL A. MATTHEWS, CIRCUIT COURT JUDGE

Pontiac, Michigan - Wednesday, June 12, 2019

APPEARANCES:

For Plaintiff: MR. KENNETH T. WATKINS, P-46231
One Town Square, Suite 1700
Southfield, MI 48076
248-355-0300

For Defendants: MR. DAVID M. THOMAS, P-32470
300 River Place Drive, Suite 1400
Detroit, MI 48207
313-965-6100

TRANSCRIBED BY: Teresa R. Kozlowski, CER-1316
THERESA'S TRANSCRIPTION SERVICE
PO Box 21067
Lansing, MI 48909-1067
517-882-0060

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WITNESSES:

None

EXHIBITS: MARKED ADMITTED

None

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1 Pontiac, Michigan
2 Wednesday, June 12, 2019 - 9:18 a.m.
3 COURT STAFF: Calling number two on the docket --
4 Stokes versus Swofford, case number 1-8-1-2-4-1-4-8-N-H.
5 THE COURT: Good morning.
6 MR. WATKINS: Good morning, your Honor. May it please
7 the court, Kenneth Watkins on behalf of plaintiff or the estate
8 of --
9 MR. THOMAS: Good --
10 MR. WATKINS: -- Ms. Horn.
11 MR. THOMAS: Good morning, your Honor. David Thomas
12 on behalf of Doctor Swofford and Southfield Radiology
13 Associates, P-L-L-C.
14 THE COURT: Okay. So you guys still disagree about
15 this or not?
16 MR. WATKINS: Uh, I, I don't think there's any dispute
17 that the, the imaging study was a neuroimaging study.
18 Therefore, uh, it falls under the subspecialty --
19 THE COURT: You --
20 MR. WATKINS: -- of neuroradiology --
21 THE COURT: -- you want to lock him in about what
22 hear, about what hat he was wearing?
23 MR. WATKINS: Uh, yes. I, I just want to confirm that
24 the, uh, relevant, most relevant speciality is neuroradiology,
25 uh, and we have the appropriate expert that we had sign a, an

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1 affidavit of merit and, and, uh, testified in a discovery
2 deposition and prepared to be called at trial.
3 THE COURT: So, so why -- do you disagree with that?
4 MR. THOMAS: Completely, your Honor.
5 THE COURT: Okay.
6 MR. THOMAS: The facts in this case don't support his
7 argument at all.
8 MR. WATKINS: Well, the law does.
9 MR. THOMAS: No, it doesn't, your Honor.
10 THE COURT: Okay. Well, tell me about that cause I'm,
11 I'm, I'm confused because they're, they're both, both Berger
12 (sp) and Swofford are neuroradiology certified?
13 MR. THOMAS: Incorrect, your Honor. That's the
14 problem here. That is not true and it wasn't true on the date
15 that Doctor Swofford read this imaging study on March 2nd of
16 2013. That's not true. He was simply a board certified
17 diagnostic radiologist. He did not at that point in time
18 possess a certificate added qualification in neuroradiology and
19 there --
20 THE COURT: Oh, Swofford didn't?
21 MR. THOMAS: Correct, your Honor.
22 THE COURT: Oh.
23 MR. THOMAS: And, therefore, factually it's
24 uncontroverted that he was not a neuroradiologist on March 2nd
25 of 2013.

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1 THE COURT: Oh, okay.

2 MR. WATKINS: And, interestingly, even in their

3 response they, they haven't indicated when he supposedly, uh,

4 let his neuroradiology certificate of added qualification lapse.

5 But under the law it doesn't matter. At the time of the, uh,

6 relevant, uh, alleged malpractice he was interpreting a

7 neuroimaging study, a C-T of the brain.

8 This patient had undergone brain surgery to place --

9 THE COURT: Uh huh.

10 MR. WATKINS: -- a ventricular shunt to moderate the

11 amount of, uh, cerebral spinal fluid in her brain.

12 THE COURT: Okay.

13 MR. WATKINS: Because it was causing, uh,

14 extraordinary headaches and the like and she had a condition

15 called pseudotumor cerebri. But in any event, postoperatively

16 she had several E-R presentations. And on March the 2nd she

17 presented with seizure and she had to have a C-T of the brain

18 and very important findings, uh, needed to be interpreted and,

19 and communicated and they were not, as we allege in our

20 complaint against the, uh, defendant.

21 THE COURT: Uh huh.

22 MR. WATKINS: He failed to properly interpret the

23 neuroimaging study and, uh, it resulted in her death. Uh, so

24 the most relevant speciality under *Woodard* and the prodigy of

25 cases that we've cited, uh, all indicate that the proper expert

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1 for the plaintiff to, uh, uh, consult with and to retain in
2 order to provide the appropriate testimony under 21-69 is the
3 most relevant specialty. Clearly the most relevant specialty
4 here is neuroradiology, the interpretation of neuroimaging
5 studies.
6 Uh, in, in the defense counsel's response he cites,
7 um, a case, I think *Jilek* (sp), the *Jilek* case that, uh, uh, is
8 clearly distinguishable from the, the facts in this case. *Jilek*
9 was a, uh, the, where a family practice, uh, doctor, uh, seeing
10 a patient in the urgent care, uh, the court ruled ultimately
11 that the, uh, family practice, uh, defense experts could testify
12 on his behalf and it was not an emergency medicine standard of
13 care.
14 That did not overturn *Reeves* (sp). *Reeves*
15 specifically indicates that when the family practice doctor was
16 practicing in the emergency department, uh, an emergency
17 department standard is, was applicable under the cir-,
18 circumstances.
19 The reason why *Jilek* is, is separate -- there's no
20 subspecialty of, uh, uh, of urgent for urgent care, uh,
21 treatment of, of patients. There's no subspecialty under family
22 practice, emergency medicine or anything of that nature.
23 In this case there's clearly a, a subspecialty of
24 general diagnostic radiology, which is, uh, neuroradiology. Uh,
25 the defendant actually, uh, matriculated a, uh, a -- and had a,

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1 uh, board certification or certificate of added qualification in
2 neuroradiology. Again, he never indicated as to when he
3 supposedly let that lapse. But, again, that does not, uh
4 impact as to what the relevant specialty was. He was
5 interpreting a neuroimaging study so the most relevant
6 speciality is neuroradiology. Uh, that's supported by *Woodard*.
7 THE COURT: Wait.
8 MR. WATKINS: That's supported by *Johnson*.
9 THE COURT: I, I thought he, he said that, uh, I
10 don't, I don't think he talks about that. Doesn't he say, no,
11 the most relevant specialty is diagnostic radiology?
12 MR. WATKINS: Yes. He --
13 MR. THOMAS: Correct, your Honor.
14 THE COURT: (Inaudible words) --
15 MR. WATKINS: -- he --
16 THE COURT: -- what his response --
17 MR. WATKINS: -- he suggests that it's, it's
18 diagnostic radiology.
19 THE COURT: Okay. Okay.
20 MR. WATKINS: But diagnostic radiology is the general
21 board. Both defendants, both the defendant and my expert have
22 a board certification in, uh, general diagnostic radi-,
23 radiology.
24 THE COURT: They're both --
25 MR. WATKINS: But --

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1 THE COURT: -- certified. Sw- --
2 MR. WATKINS: Yes.
3 THE COURT: -- Swofford --
4 MR. WATKINS: And they --
5 THE COURT: -- and Berger?
6 MR. WATKINS: And Berger.
7 THE COURT: Both are --
8 MR. WATKINS: They're virtual --
9 THE COURT: -- certified --
10 MR. WATKINS: -- doppelganger.
11 THE COURT: Okay.
12 MR. WATKINS: Uh, uh, he, he, he did a, a fellowship
13 in neuroradiology, the defendant. Uh, my expert did a, uh, a
14 fellowship, completed a fellowship in neuroradiology.
15 THE COURT: Okay.
16 MR. WATKINS: Uh, but the, the issue is under 21-69,
17 uh, uh, subpart B, uh, where it requires that the expert that
18 the plaintiff, uh, retains has to have, uh, attributed the
19 majority of their professional time in the subspecialty area in
20 order to testify.
21 THE COURT: Uh huh.
22 MR. WATKINS: So the board certifications all match.
23 It's just the, uh, att-, attribution of time in their
24 professional services --
25 THE COURT: Okay.

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1 MR. WATKINS: -- in order to qualify them to testify
2 at trial.
3 THE COURT: Okay.
4 MR. WATKINS: We have appropriately matched that area
5 with an expert who attributes the majority of his special-, his,
6 uh, professional time in the area of, uh, neuroradiology and,
7 therefore, we're asking the court to confirm that the, uh,
8 relevant speciality, the most relevant specialty under *Woodard*
9 is neuroradiology in this case and my expert can, in fact,
10 testify.
11 THE COURT: Okay. So what, what do you want to say
12 about that? He does-, he doesn't want to unnecessarily depose
13 other people.
14 MR. THOMAS: Well, your Honor, uh, I'm blessed to have
15 a very busy law practice.
16 THE COURT: I'm sorry. Say it again?
17 MR. THOMAS: I said, your Honor, I'm very blessed to
18 have a very busy law practice. And I don't care to take
19 depositions that are not relevant either.
20 THE COURT: Uh huh.
21 MR. THOMAS: But I also have a duty to my client --
22 THE COURT: Uh huh.
23 MR. THOMAS: -- to see that the court enforces the
24 applicable law.
25 THE COURT: Yeah. I think I should try to do that.

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1 MR. THOMAS: And I think you do an excellent job.
2 THE COURT: Some, some days. Fifty percent of the
3 people think that.
4 MR. THOMAS: Well, that's probably --
5 MR. WATKINS: (Laughs) --
6 MR. THOMAS: -- probably more success than me, your
7 Honor. So I, I'm always learning.
8 Your Honor, uh, in this case, as the court is well
9 aware, Mr. Watkins, plaintiff's counsel, without leave of the
10 court initially filed an amended witness list wherein he
11 identified an expert witness in the field of diagnostic
12 radiology because presumably at that time he realized that he
13 needed one.
14 THE COURT: Well, he was, he's trying to cover all his
15 bases. Right?
16 MR. THOMAS: As I am, your Honor.
17 THE COURT: He doesn't want to spend his cli-, he
18 doesn't want to spend money unnecessarily or time or money
19 unnecessarily.
20 MR. THOMAS: Then he could have filed that motion
21 before that if he thought it was appropriate.
22 Your Honor, in this case -- and I'd like to make my
23 argument for the record, respectfully, your Honor -- that Mr.
24 Watkins made a plea to this court and I'd now like to address
25 the evidence that's reflected in the court's file in this case.

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1 Number one, my client, Doctor Swofford, signed an
2 affidavit of merit under oath --
3 THE COURT: Right.
4 MR. THOMAS: -- indicating on six different paragraphs
5 that he was a diagnostic radiologist and was not practicing as
6 a neuroradiologist. And plaintiff has possessed that knowledge
7 now for about a year and a half, since May of 2018.
8 In his deposition --
9 THE COURT: Yeah. But he's, he, he disagrees with
10 that, I guess. Right?
11 MR. THOMAS: Well, he can't disagree with the fact
12 that he signed it under oath and there's no contrary evidence.
13 There's some argument, but there's no evidence to the
14 contrary --
15 THE COURT: Okay.
16 MR. THOMAS: -- to Doctor Swofford's sworn statement
17 filed with this court more than a year ago that at all times
18 relevant hereto -- he repeated six times -- the speciality
19 applicable was board certified as diagnostic radiologist.
20 In his deposition, which was taken --
21 THE COURT: Well, he says regardless of what, you're,
22 they're board certified and that, uh, he says that's what, what
23 ha-, what hat he was wearing that --
24 MR. THOMAS: That's what --
25 THE COURT: -- (inaudible words) --

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1 MR. THOMAS: -- he says, your Honor --

2 THE COURT: Yeah.

3 MR. THOMAS: -- but that's argument and as we'll get

4 to --

5 THE COURT: Right.

6 MR. THOMAS: -- it's not relevant because --

7 THE COURT: Okay.

8 MR. THOMAS: -- under *Woodard* the most relevant

9 speciality test only becomes applicable if the defendant is

10 practicing in more than one specialty. Here he is not. He's

11 not holding himself out as a neuroradiologist. He's not

12 practicing as a diagnostic radiologist. In his answer to, in,

13 in the affidavit of merit six times he indicated the standard of

14 care and what he was practicing was diagnostic radiology.

15 In his deposition -- on four different times he was

16 asked a question and --

17 THE COURT: Well, he says his guy, Berger, is

18 certified in diagnostic radiology.

19 MR. THOMAS: He is, but he also has an added

20 certificate in neuroradiology and he testified he spends 90

21 percent of his time or more in the field of neuroradiology. My

22 client testified that he spends 25 percent of his time in

23 neuroradiology and 75 percent of his time in diagnostic

24 radiology and, therefore, he's not spending the majority of his

25 time in neuroradiology. He doesn't have at this point in time

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1 a certificate added qualification in neuroradiology. He wasn't
2 holding himself out as being a neuroradiologist.
3 THE COURT: (Inaudible word) --
4 MR. THOMAS: And then at his deposition on four
5 separate occasions he indicated he was a diagnostic radiologist.
6 Specifically, the direct question was on page 12, lines 1
7 through 3 -- would you hold yourself out as a neuroradiologist?
8 Answer -- no -- period. Not however, not unless, not if --
9 period.
10 In answers to interrogatories, your Honor, Doctor
11 Swofford, who signed them himself almost a year ago on June 19th
12 of two thousand -- indicated, indicated in four different
13 places. This is now 14 times Doctor Swofford under oath has
14 indicated to the court that on March 2nd of 2013, the alleged
15 date of malpractice in this case, he was practicing as a
16 diagnostic radiologist and not as a neuroradiologist.
17 So the *Woodard* case is inapplicable here, your Honor,
18 for the reasons I stated very briefly and that is the *Woodard*
19 case stands for the principle in part that to determine the
20 relevant speciality that becomes relevant if the defendant is
21 practicing in more than one area -- that is if he has
22 specialization in more than one area.
23 We cited the *Jilek* case because that stands for the
24 principle that if you have a subspecialty -- in that case
25 physician was practicing as a family practice physician in an

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1 emergency room and the issue was become -- well, does the
2 standard of care require emergency room physician or a family
3 practice.
4 THE COURT: Uh huh.
5 MR. THOMAS: And the court held at that point in time
6 that family practice was the applicable standard cause that's
7 what he was practicing, not as an emergency room physician.
8 So, your Honor, this case, uh, pursuant to 600-29-12,
9 subpart B, the statute also says that a subspecialty is
10 considered to be a separate specialty. Doctor Berger in this
11 case has a subspecialty in neuroradiology. He practices, under
12 his own testimony, more than 90 percent of his time is spent as
13 a neuroradiologist or teaching other doctors to become
14 neuroradiologists or monitoring other health care professionals
15 in the field of neuro-, neuroradiology. Doctor Swofford does
16 not do any of those three things.
17 For those reasons, your Honor, uh, the court should
18 deny plaintiff's motion to certify the most relevant medical
19 specialty as neuroradiology because other than his argument it's
20 all contrary to the facts which I've pointed out to this court
21 -- at least 14 times in sworn testimony by Doctor Swofford.
22 Doctor, uh, Berger's own testimony is that he spends more than
23 90 percent of his time in a subspecialty of neuroradiology. The
24 *Woodward* (ph) case we've distinguished is not applicable here
25 cause Doctor Swofford did not have more than one relevant

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1 speciality. And M-C-L-A 600 point 2-9-1-2 sub B indicates that
2 a subspecialty is a separate speciality and here there is no
3 question that Doctor Berger, who possesses at all times relevant
4 hereto, who practice more than 90 percent of his time in the
5 field of neuroradiology, was engaged in the majority of his time
6 in the field of neuroradiology and a specialist cannot be, uh,
7 spend more than a majority of their time in one field, period.
8 Thank you, your Honor.
9 THE COURT: Thank you. Brief response? A re- --
10 MR. WATKINS: Uh --
11 THE COURT: -- (inaudible words) --
12 MR. WATKINS: -- I, I, I just wanted to point, point
13 out that, uh, he misstated with regard to *Jilek*. That, that
14 case, uh, well, it did not involve emergency care or care in the
15 emergency department. The reason why it's --
16 MR. THOMAS: Urgent care.
17 MR. WATKINS: -- distinguished -- it was in the urgent
18 care, uh, and that's the reason why *Reeves* didn't apply. *Reeves*
19 is still good law. If we both went to our computers and
20 Shephardized it, we'll, we'll confirm that *Reeves* is still good
21 law when a family practice doctor, who only is board certified
22 in family practice, is practicing in the emergency department.
23 Under *Reeves*, which is progeny of, of *Woodard*, the relevant
24 speciality is emergency medicine for the plaintiff to match
25 against that, uh, specialty. So the argument that there's some

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1 hybrid application of, of *Woodard* under the circumstances where
2 a defendant decides to, uh, sign a bunch of things under oath
3 saying that I was doing the general specialty, not the
4 subspecialty, that's not the determining factor. The, the
5 factor is it, it emanates from the conduct of the defendant at
6 the time of the, the alleged malpractice. What, what he, was he
7 doing at the time? In this case, we had a patient who had
8 undergone brain surgery who was having complications and needed
9 neuroimaging interpreted by a physician qualified to interpret
10 neuroimaging studies. And it was a C-T of the brain. The
11 relevant speciality in this case is neuroradiology.
12 Thank you, your Honor.
13 THE COURT: I'm going to, I'm goi-, I've been in trial
14 for about two and a half weeks straight here so I'm going to
15 read this again and give you like a one, like a one liner.
16 Okay.
17 UNIDENTIFIED SPEAKER or MR. WATKINS: Okay.
18 MR. WATKINS: Okay.
19 THE COURT: Not a one liner joke, a one liner ruling.
20 Okay.
21 MR. THOMAS: Your Honor, when we're here --
22 THE COURT: All right.
23 MR. THOMAS: -- and I requested this the last time I
24 was here -- I would like the court to schedule a status
25 conference cause there are a number of discovery issues that

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1 remain up in the air or butting up against another time
2 constraint and I think --
3 THE COURT: Okay.
4 MR. THOMAS: -- that's the only way to accomplish it.
5 THE COURT: Well, if you have a discovery issue,
6 there's a discovery master or you can bring a motion. You mean
7 a status conference in terms of what? What, what are you
8 saying?
9 MR. THOMAS: Again, mainly a sched-, a scheduling
10 order. So is the co-, well, I guess we have to wait for the --
11 THE COURT: You have a --
12 MR. THOMAS: -- court's --
13 THE COURT: -- trial date. Right?
14 MR. THOMAS: -- ruling.
15 THE COURT: You have a trial date?
16 MR. THOMAS: October 21st.
17 THE COURT: Okay.
18 MR. THOMAS: And there's still numerous expert
19 witnesses of the plaintiff that need to be deposed.
20 THE COURT: Well, he's trying not to depose one of
21 them.
22 MR. THOMAS: Well, but --
23 MR. WATKINS: And --
24 MR. THOMAS: -- but --
25 MR. WATKINS: -- and we're trying -- and we, we're

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1 offering dates to, to, uh, uh, Mr. Thomas and Mr. Thomas'
2 schedule is, is very --
3 MR. THOMAS: Your Honor --
4 MR. WATKINS: -- very dense.
5 THE COURT: He's a --
6 MR. WATKINS: And he, he --
7 THE COURT: -- popular guy.
8 MR. THOMAS: That --
9 MR. WATKINS: -- he pushes them back --
10 MR. THOMAS: -- that is --
11 MR. WATKINS: -- at the --
12 MR. THOMAS: -- absolutely false, your Honor.
13 MR. WATKINS: -- with great --
14 MR. THOMAS: Have him produce --
15 MR. WATKINS: -- regularity --
16 MR. THOMAS: -- $100 to each of us for --
17 MR. WATKINS: I have two --
18 MR. THOMAS: -- every day --
19 MR. WATKINS: -- cases with him right now and I can't
20 get things on his, on the calendar because he turns down, uh,
21 every first set of, of, uh, dates that I have for my experts.
22 THE COURT: Okay.
23 MR. WATKINS: We're dealing with professionals in --
24 THE COURT: Yeah.
25 MR. WATKINS: -- medical malpractice.

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1 MR. THOMAS: Your Honor --
2 MR. WATKINS: They have calendars just like Mr. Thomas
3 and --
4 THE COURT: Okay.
5 MR. WATKINS: -- I.
6 THE COURT: Well, you're both here.
7 MR. THOMAS: Your Honor, I'm standing here as a
8 matter, as an officer of the court saying if he can produce me
9 one date for his proximate cause expert I'll give $1,000 to the
10 charity of the court's choice and, if he can't, he can.
11 One date that he's produced for me for, uh, his other
12 expert --
13 THE COURT: I'm a government employee. I'm the
14 government -- I'm the charity of my choice.
15 MR. THOMAS: Well, that's fine, your Honor.
16 (Laughter in courtroom)
17 MR. THOMAS: I, I've never gotten a single date to
18 depose Doctor Rozner (sp), ever --
19 MR. WATKINS: Well, in all --
20 MR. THOMAS: I've never --
21 MR. WATKINS: -- fairness --
22 MR. THOMAS: -- got -- excuse me.
23 MR. WATKINS: -- my apologies.
24 MR. THOMAS: I've never gotten a --
25 MR. WATKINS: This isn't --

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1 MR. THOMAS: -- date from --
2 MR. WATKINS: -- before the court.
3 MR. THOMAS: -- to depose --
4 THE COURT: Okay.
5 MR. THOMAS: -- Doctor Karagea (ph/sp).
6 THE COURT: Get it done.
7 MR. THOMAS: Never.
8 THE COURT: Get it done. Get it done. You can just
9 bring a discovery --
10 MR. THOMAS: Ever.
11 THE COURT: -- motion --
12 MR. WATKINS: (Inaudible word) -- trying.
13 THE COURT: -- every week. You can come every week --
14 MR. THOMAS: Well, that's what I'm trying to avoid for
15 the court --
16 THE COURT: All right.
17 MR. THOMAS: -- your Honor, but apparently that's how
18 we're going to practice.
19 THE COURT: All right.
20 MR. WATKINS: Well, I'm, I'm a very congenial, uh --
21 (pause) --
22 THE COURT: Let's get it done.
23 MR. WATKINS: -- practitioner.
24 MR. THOMAS: Are you saying that my statement is
25 false, Mr. Watkins, that you've never given me a date for Doctor

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1 Rozner --

2 THE COURT: Have a hap- --

3 MR. THOMAS: -- you've never given me a date --

4 THE COURT: -- have a happy Wednesday.

5 MR. THOMAS: -- for Doctor -- (inaudible name)?

6 MR. WATKINS: (No verbal response)

7 MR. THOMAS: Of course, you don't want to answer that.

8 MR. WATKINS: Have a, have a great day --

9 THE COURT: Thank you.

10 MR. WATKINS: -- your Honor. Thank you.

11 (At 9:35 a.m., proceedings concluded)

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STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

I certify that this transcript, consisting of 22 pages, is a complete, true, and correct transcript of the proceedings and testimony taken in this case, Joelynn T. Stokes versus Michael J. Swofford, et al, on Wednesday, June 12, 2019.

Dated: July 12, 2019

/s/ Teresa R. Kozlowski
Teresa R. Kozlowski, CER-1316

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