SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

CHRISTINE GAMBINO, et al,	:	
Plaintiffs,	:	
v.	:	Civil Action No.
	:	
MEDSTAR GEORGETOWN MEDICAL CENTER, Inc., d/b/a MEDSTAR GEORGETOWN UNIVERSITY HOSPITAL,	:	2016 CAM 1884
Defendant.	:	

Washington, DC
November 2, 2018

The above-entitled action came on for a jury trial before the Honorable HIRAM PUIG-LUGO, Associate Judge, and a jury empaneled and sworn in Courtroom Number 317, commencing at approximately 10:00 a.m.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS THE TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Plaintiffs:
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Daniel Scialpi, Esquire
Washington, DC

On behalf of the Defendant:
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Washington, DC

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Official Court Reporter

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WITNESSES

MISCELLANY

P R O C E E D I N G S

THE DEPUTY CLERK: Your Honor, calling the matter for trial, Christina Gambino, et al, versus MedStar Georgetown Medical Center, civil action CA 1884, 2016.

Parties please stand and state your name for the record.

MR. MALONE: Patrick Malone and Daniel Scialpi for the plaintiffs. And we have Mr. and Ms. Gambino with us.

THE COURT: Good morning.

MR. SPENCE: Good morning, Your Honor. Andrew Spence and Karen Cooke here on behalf of MedStar Georgetown University Medical Center. And with us is Ms. Wanda Banks.

MS. COOKE: Good morning.

MS. BANKS: Good morning.

THE COURT: As the jury comes in, could counsel please approach. There is something I wanted to discuss with you related to what happened yesterday. Come up here, please.

(Conference held at the bench.)

THE COURT: I just want to share with you some information so you can decide whether it is relevant to situations that you might encounter in the future. And it has to do with the fact that we had two Korean interpreters throughout the day in the courtroom yesterday that we did not utilize at all. I understand that we are required at

the request of a party to provide interpreter services for free, even if the parties can potentially pay for those services themselves. It is a new day at 500 Indiana Avenue Northwest. We are taking over a $10 million a year hit on our budget. We are letting people go. When people resign, we are not filling those positions.

It was evident that the person who has worked in the medical field for over 20 years and who has been able to pass a licensure in English is somewhat proficient in the language. It is also clear that the witness had a very strong accent, which is fine. But we essentially blew $2,000 yesterday for no reason whatsoever.

And I ask both sides that in the future if you ever find yourself in the situation where you are asking for an interpreter at taxpayer expense, that it really be necessary, not just a luxury. I just wanted to share that information with you.

MR. SCIALPI: Thank you.

MR. SPENCE: Thank you, Your Honor.

THE COURT: We will go back in open court and proceed. Thank you.

(End of bench conference.)

THE COURT: Welcome back. We are ready to proceed.

Is Ms. Hodge with us?

MR. SPENCE: Yes.

MS. COOKE: May I go get her, Your Honor?

THE COURT: Yes, please. Thank you.

Good morning, Ms. Hodge. If you could retake the witness stand. Since we placed you under oath at the end of the day yesterday, we are not going to do so today but please remember you are still under oath.

THE WITNESS: Yes.

THE COURT: Thank you.

Mr. Spence.

MR. SPENCE: Thank you, Your Honor.

DIRECT EXAMINATION CONTINUED

BY MR. SPENCE:

Q Good morning, Ms. Hodge.

Rick, if could you please bring up Defense Exhibit 1, page 010667. And, Rick, if you can just highlight the times from 7:00 a.m. through 15. Okay.

Ms. Hodge, based upon the nursing record here for January 16, 2013, do you have an understanding as to what frequency Ms. Kim assessed R__ G__'s PIV site?

A Yes.

Q What is your understanding?

A It was checked hourly.

Q All right. If Ms. Kim checked the PIV site on an hourly basis, do you hold an opinion that you hold to a

reasonable degree of nursing probability about whether the frequency of her checks or evaluations of the PIV site complied with the national standard of care?

A Yes, it did.

Q All right. Now, when Ms. Kim conducted her examinations, I want you to assume that there has been testimony that she would have visualized the PIV site and looked for such things as swelling, puffiness, color changes such as redness, that she would have touched the area to feel for any temperature changes and to inspect for any blanching. If she did those things as a matter of her customary practice at the time of these hourly assessments on January 18, 2013, do you hold an opinion that you hold to a reasonable degree of nursing probability about whether that complied with the national standard of care?

A Yes, it did.

Q Now, I want to direct your attention to 1:00 p.m. And that is 1:00 p.m.

Now, Rick, let's go to a different page, it is the next page 010668.

THE COURT: I'm sorry. What exhibit are we looking at?

MR. SPENCE: It is Defense Exhibit number 1.

THE COURT: Thank you.

BY MR. SPENCE:

MR. SPENCE: This is the page, 010668.

THE COURT: So they are different pages of the same exhibit?

MR. SPENCE: Yes, exactly.

THE COURT: Thank you. I just want the record to be clear. You may be continue, Mr. Spence.

MR. SPENCE: Thank you, Your Honor.

BY MR. SPENCE:

Q Do you have --

Rick, if we can highlight -- magnify the highlighted area.

From your review of this case, Ms. Hodge, do you have an understanding as to when the Vancomycin was started in Raquel Gambino's case on January 16, 2013?

A Yes. The record indicates it was around 12:00.

Q Do you have an understanding as to how long that infusion of Vancomycin lasted?

A Yes. It lasts -- the routine is for it to last around an hour.

Q All right. Are you familiar with the -- I think you are, but are you familiar with the phrase flushing?

A Yes.

Q I am going to briefly bring up an exhibit.

If we can have Defense Exhibit number 27.

Members of the jury have seen this before. Can

you just briefly describe the technique of flushing.

A Some of the syringes are already prefilled with saline or normal saline, but if not, you would have to draw that from a vial. And then you get all of the air out. And then you would attach it to the IV port, whichever one you would be using and then flush it.

Q All right.

A And then push a little bit in.

Q Are you familiar with the use of the flushing technique in connection with the discontinuation or the conclusion of an infusion of medication?

A Yes.

Q What is the purpose of flushing the line when you have concluded infusing a medication such as Vancomycin?

A The way it is delivered from the pharmacy, it is in a syringe and you have to connect it to tubing. And so some of the medication is still left in that tubing. And so you attach a syringe on the end or hook it up to the pump, either way, to flush the rest of the medication in that would be retained in the tubing if you didn't do that.

Q Okay. I want you to assume that Ms. Kim has testified that as matter of her customary practice on January 16, 2013, she flushed the line at 13:00 hours or 1:00 p.m. at the conclusion of the infusion of the Vancomycin. If Ms. Kim did that, do you hold an opinion

about whether that would have been appropriate and within the standard of care?

A Yes. That is what we have to do to finish the infusion.

Q Okay. Now, there is -- did you see any documentation in the chart at 1:00 p.m. that Ms. Kim specifically noted that she flushed the line at that time?

A No.

And that would not be required because that is part of our practice to finish the infusion.

Q Let's go back to the first page that we started with, Defense Exhibit number 1, page 010667.

Okay. If we can go to the 13:00 hour and just highlight across that line please, Rick.

Members of the jury have seen this before, Ms. Hodge. I want you to assume that there has been testimony from Ms. Kim that at 13:00 hours she did not observe any redness or color change, no swelling or puffiness, she did not detect any temperature change and that she did not find any blanching. If she -- if she essentially found no abnormalities at 1:00 p.m., do you hold an opinion to a reasonable degree of nursing probability whether it was acceptable for Ms. Kim to allow the IV infusion to continue to run at 1:00 p.m.?

A Yes, it was.

Q Okay. Rick, if you don't mind, let's go to the next entry on that page, which is 14:00 if you could bring that up, please.

Okay. 14:00 I think we all understand corresponds with 2:00 p.m.; correct?

A Yes.

Q And under this A here, what does that correspond with?

A That corresponds to the TPN that is highlight -- at the very top with the label of the infusion.

Q Just to be clear, if we -- I apologize if we have to toggle back, but what else was in that bag aside from the TPN?

A Well, in one bag would have been the TPN with its components and in the second bag or a syringe, intralipids.

Q What is D 9.3 percent?

A That is a percentage of glucose in the TPN.

Q Okay. I got it. Thanks, Rick.

Let's go back to the 14:00 entry. What did Ms. Kim record for her findings with respect to the A -- I will call it the A bag -- the A bag at 2:00 p.m.?

A I'm sorry, what did you ask me?

Q What did Ms. Kim record in the medical chart at 2:00 p.m. for purposes of the A intravenous bag or line?

A She was documenting that in that column that

corresponds to the TPN. And then it was infusing at 8.2 MLs per hour.

Q I'm sorry. What did she find at the time of her assessment of the site? My question may not have been clear.

A The N -- and it corresponds to on the flow sheet, infusing well. And then the P on the flow sheet, that is an option that she can select and it is puffiness.

Q If we go to the second column of information, the B line that corresponds with the lipids, what did she find for purposes of that evaluation or that check?

A It was the same, she documented N, for infusing well; and P, for puffiness.

Q All right. Now, you testified before that you have seen puffiness at PIV sites in NICU patients like R__G__; is that correct?

A Yes.

Q What are the potential causes of puffiness at a PIV site?

A One of the first things that you would think about when the IV is in the foot and with it situated on a footboard, is that that can easily constrict the blood flow, because the babies position their feet in different positions. It can be as it rotates. So that is very common that you would see for an IV in the foot or it could be in

the hand as well.

Q In your experience, is puffiness -- has puffiness ever been associated with IV infiltrations?

A Of course, yes.

Q Now, let's go back.

In other words, let's stay on this page, Rick. And if you could go to the place where it says site check and just bring that part of the page up.

We have already discussed this, but because we are in a trial, I have to ask you questions. What does the P stand for?

A Puffy.

Q What does the I stand for?

A Infiltrated.

Q What is the significance of having a separate designation P for puffiness from I for infiltration?

A Because, like I said, puffiness can be an indication that it is just positional because we have to use extremities for IV sites in babies. So it is something that we frequently encounter. And it is the nurse's responsibility to evaluate that.

Q All right. Do you have experience, Ms. Hodge, determining whether puffiness is from an IV infiltration as opposed to one of the other potential causes?

A Yes.

Q And how often did you do that during the course of your career in the NICU?

A Well, whenever you would take care of an IV, that would be an hourly assessment that you would follow that or look for that.

Q In your experience when there is puffiness alone, and no other findings such as color change like redness, temperature change or blanching, how often has that puffiness been associated with an IV infiltration?

A It is very common with an extremity.

Q My question is this: How often has there been an IV infiltration when there was puffiness alone with no other findings such as redness, temperature change or blanching?

A It can, in fact, with an extremity, the first thing you think about is puffiness. And without any other signs, that would not be an indication for infiltration.

Q Okay. There has been some testimony previously in the trial about the significance of taping and puffiness, so I want to ask you a couple of questions about that. If puffiness results from the taping that is used for the PIV site, do you expect to see the puffiness occur shortly after the PIV site is established or when in time do you expect that puffiness to occur, if it is from the taping?

A It is usually not at the beginning, because you are there positioning the IV, getting it all set up. It is

when the baby starts moving around and you have repositioned them to their tummies or on their side that over time the tape can be restrictive as they move that extremity.

Q How frequently do nurses in the NICU have to adjust tape or replace tape on these patients at the PIV sites?

A With an arm board or a foot board, very often.

Q All right. Is it something that you expect to see documented in the medical chart that they have stopped, replaced tape or adjusted tape?

A No. We just don't have time to do that kind of detail.

Q If puffiness -- if a nurse working in a NICU sees some puffiness and in his or her judgment the puffiness is from some type of positioning, are they required to document specifically in the medical chart that puffiness resulted from the position of the limb or something like that?

A No, we don't do that.

Q If -- again, going back to something I just touched on. If puffiness results from the position of the baby's limb where the PIV site is located, do you expect that type of puffiness to arrive shortly after the PIV site has been established and the baby's limb has been positioned or may it occur later on?

A Mostly you could see it, like I said, later on.

Because when you first finish with taping the IV and get it in, you position the baby and usually they go off to sleep because you have tried to start their IV. So there is not as much movement, in most cases. But, again, as they continue to move and you reposition them, then that tape can become constrictive.

Q We have spent a lot of time talking about puffiness during the course of the trial. Let me ask you this: What is the relative significance of redness or color change to the diagnosis of an IV infiltration?

A Redness you see more when you are contemplating infiltration, because of TPN and intralipids they can be caustic to the tissue. And that would show some irritation.

Q Similar question. Let's talk about the temperature change. What is the relative significance of a temperature change to a diagnosis of an IV infiltration?

A Well, again, with the redness and then that is going to denote some potential inflammation. So with inflammation, you will see a temperature change.

Q All right. And then finally blanching. Members of the jury I think are familiar with blanching at this point. What is the relative significance of blanching to the diagnosis of an IV infiltration?

A Again, showing tissue changes if there were to be an infiltration.

Q All right. Rick, let's go back to the 14:00 hour line, please.

I want you to assume, Ms. Hodge, that at 14:00 hours Ms. Kim did not observe any color change, redness. There was no observation of any temperature change and no observation of blanching and that her only finding was puffiness. Do you hold an opinion that you hold to a reasonable degree of nursing probability about whether it was within the national standard of care for Ms. Kim to conclude that there was no IV infiltration at that time?

A Yes. That would be very reasonable.

Q Did Ms. Kim remove or discontinue the PIV at 14:00 hours?

A No, she did not.

Q Have you formed an opinion to a reasonable degree of nursing probability about whether the national standard of care required Ms. Kim to stop the PIV or discontinue the PIV at 14:00 hours?

A No, she wouldn't be required to.

Q And by the way, to discontinue -- to stop or discontinue a PIV, how can that be -- how does a nurse do that?

A Well, if you are going to stop an IV, you would first turn off the pumps, which there would have been a pump that would have been infusing the TPN and intralipid. And

then if you were going to take it all out, you would start removing the tape very slowly, because tape can peel off the skin. And you would proceed to take off the foot board, the layers of tape and then remove the cannula with probably a cotton ball or a gauze so that you would hold with pressure as you pull it out.

Q Can you -- by stopping the infusion pump, can you stop the infusion without removing the PIV itself?

A Oh, yes. Yes.

Q At 14:00 hours on January 16, 2013, do you have an understanding about whether Ms. Kim removed the PIV or discontinued the PIV at that time?

A At what hour?

Q I think I just asked that. Let me -- let me ask you a slightly different question. You are familiar with flushing. We just talked about that a few minutes ago.

Are you familiar with the term aspiration?

A Yes.

Q Rick, if we can bring up Defense Exhibit number 26 again.

Can you -- members of the jury have already heard a lot of testimony -- just very briefly to reorient everyone in the courtroom, just tell us what aspiration is?

A Aspiration is when you attach a syringe to the tubing or the IV and you would pull back slightly to see if

you get blood return.

Q All right. I want you to assume for the sake of my next question that at 14:00 hours on January 16, 2013, Ms. Kim aspirated the line in an effort to investigate the puffiness. Do you hold an opinion to a reasonable degree of nursing probability about whether aspirating the IV line would be something that satisfied the national standard of care?

A Yes, that would be an appropriate thing to do.

Q Can you just elaborate on that?

A Well, you know, it shows you if there is blood return that it is in the vein. And that is -- you know, one of the few ways that we have to denote whether there -- the catheter is in the vein. We also do that when we first start an IV, you will get a flashback or what we call a blood return. That is the only way we know that it is in the vein.

Q The other side of the coin is that there might not be any blood in the syringe when you do the aspiration. What does that mean?

A That doesn't really mean anything. It is nice if you get a blood return. If you don't get a blood return, that still doesn't signal -- because we are talking about thread-like size veins in a baby this size. And so with their small blood pressures, a lot of time you don't have

the ability to get a blood return.

Q I want you to assume for the sake of my next question that at 14:00 hours Ms. Kim, in addition to aspirating the line, she also flushed the line, in response to her observation of puffiness. Do you hold an opinion that you hold to a reasonable degree of nursing probability about whether taking that step would have been appropriate and within the national standard of care?

A That is probably the step that means the most. Because when you have flushed -- and it doesn't take just a minute amount of fluid to flush that you see puffiness. Because, again, you are talking about a leg very, very small. And you can see that readily.

Q So that would be acceptable?

A Absolutely.

Q If Ms. Kim has testified that based upon -- when she aspirated and flushed the line that there was no observation of any abnormality, do you hold an opinion to a reasonable degree of nursing probability about whether she complied with the national standard of care for purposes of determining whether R__ G__ was experiencing an IV infiltration at 2:00 p.m.?

A Yes, she complied with the standard. Many times you would just observe, but she took a step further and flushed it.

Q Just to be very clear, if Ms. Kim has testified that she aspirated the PIV and found no problem and she flushed the line and found no problem at 2:00 p.m., do you hold an opinion to a reasonable degree of nursing probability about whether the national standard of care required her to suspect an IV infiltration at that time?

A No.

Q All right. Can you just briefly elaborate on your response?

A You know, because of the puffiness, you always -- you always have in the back of your mind that it might be infiltrated, but going through those steps assures you at this point in time the IV is okay. So because babies are -- can be a difficult stick and you don't want to take an IV out if it is not infiltrated, it is reasonable to continue to watch that and let it continue to infuse.

Q Have there been times in your career, Ms. Hodge, when you have observed puffiness at a PIV site and then you utilized aspiration and flushing in order to investigate that puffiness and determine that there was an IV infiltration?

A Yes, that is common for us to do.

Q I want you to assume for the sake of my next question there has been testimony in this trial that aspiration or flushing don't mean anything. What is your

response to that?

A That aspiration don't mean anything in evaluating an IV?

Q Yes. In evaluating a PIV for a potential IV infiltration.

A Well, not in the NICU. That is one of the only means that we have to assess that they are still infusing and infusing correctly. It is totally different than an adult and a child with a huge vein. We are talking about tiny, tiny babies.

Q When you reviewed the medical chart in this case, did you see any specific notation that Ms. Kim made at 2:00 p.m. that used the word aspiration or used the word flush or flushing?

A No. And that is not on the list that she can choose from as well.

Q All right. Are you familiar with the phrase custom and practice?

A Yes.

Q All right. What does that mean to you as an experienced NICU nurse?

A Well, you know, as you gain experience as a nurse or it could be any other position, you develop a pattern or methodical steps that you go through to evaluate what you might be seeing. In this case with an IV, you know, you

gain steps -- not a new nurse. But as you gain experience, steps on what you will look for and how you would evaluate that same thing. If I saw a problem with a baby's abdomen, say I went back to the bedside and this time it was a little bit extended, then I go through steps of assessing that, pressing on their little tummy, measuring with the tape to see if it is more distended and even things at home, you go through steps. And that, you just gain with experience.

Q All right. Do you hold an opinion to a reasonable degree of nursing probability about whether the national standard of care required Ms. Kim to specifically note in the medical chart that she had aspirated and flushed the line?

A No. We don't have time to do that kind of narrative charting.

Q All right. I want you to assume that Ms. Kim has testified that her notation of N for infusing well next to the notation, P for puffiness, confirms that she both aspirated and flushed the line at 2:00 p.m., because she would not write N next to P without first aspirating and flushing the line. If that is what she has testified to, do you hold an opinion to a reasonable degree of nursing probability about whether that documentation would have satisfied the national standard of care?

A Yes, it would have.

Q I want to play devil's advocate with you for a second. Let's just assume that for the sake of discussion that Ms. Kim on January 16, 2013, saw puffiness, saw no other findings, such as redness, color change, blanching, and decided not to aspirate and to not flush the line. So assume for the sake of my hypothetical question that she did not aspirate and flush the line. Do you hold an opinion to a reasonable degree of nursing probability of whether that would have satisfied the national standard of care?

A Yes, it would have. Many nurses would not have flushed the line.

Q All right. The members of the jury have heard a phrase that I want to bring up. They have heard a phrase, "When in doubt, pull it out." Does the decision to either remove a PIV or discontinue the infusion through a PIV involved nursing judgment?

A Absolutely.

Q If Ms. Kim at 14:00 hours on January 16, 2013, observed puffiness, but did not observe any of the other findings that we have been discussing and she aspirated and flushed the line and confirmed for herself that there was no IV infiltration and was confident there was no IV infiltration, did the standard of care require her to pull the PIV or just continue it?

A No, you would not -- not in the NICU, you would

not pull that line.

Q Are there potential ramifications to pulling a PIV or discontinuing a PIV for the patient?

A I would say in most patients you never want to pull the line if it is not infiltrated. That is why we check them so often, especially in a baby that is this size. You just don't have many options. She had a PICC line in her right arm that had problems and so they didn't go there. She had a previous IV in her left hand, so the only other option was in her feet. And so you just try to maintain a line as long as you can until it declares itself.

Q All right. Just very briefly, what do you mean by declares itself?

A That you would see symptoms that as you are judging what is going on that would indicate that it is infiltrated.

Q All right. Let's bring up Defense Exhibit number 8, Rick, please. It is a NICU procedure. Rick, if you would be nice enough to go to highlight where it says, prevention of peripheral IV infiltrate. Then if you go down to number 8.

Have you seen this policy in your review of materials for this case?

A Yes. And, yesterday, I did leave that out of the ones that I said I reviewed. And we talked about that

afterwards, that I had seen those.

Q All right. Now, Rick, if you can go -- the next page should be a figure 1. Let's go to that.

Do you see this page 2? Did you see this figure or this table that was attached to the procedure?

A Yes.

Q So it says figure 1, reference tool infiltrate. Thank you, Rick. Let's -- we are now going to go to stage 1.

Do you see where it says stage 1, Ms. Hodge?

A Yes.

Q And thank you, Rick. That is perfect.

Do you have an understanding as to the different stages for IV infiltrations?

A Yes.

Q Does puffiness alone constitute a stage 1 IV infiltration?

A No.

Q Are you familiar with the term edema?

A Yes.

Q What does -- is there any difference between edema and puffiness?

A It would depend on the nurse. For me, it is a little different because edema really means some swelling. Puffy is just a little bit of -- sometimes what you see with

an extremity. But some people would say they are the same, swelling.

Q Let me ask you this next question: If a NICU nurse observes edema that is less than 1 inch in any direction, does that constitute -- and there are no other findings, it is just the edema, does that constitute a stage 1 IV infiltration?

A It doesn't in and of itself being in isolation, no.

Q If Ms. Kim observed puffiness at 2:00 p.m. and no other findings, do you have an understanding based upon your interpretation of this NICU policy, as to whether this NICU procedure required her to discontinue the PIV or remove the PIV at 2:00 p.m.?

A Not at this stage, no.

Q All right. Let me -- let's go back to page -- and Defense Exhibit number 1, page 010667. Let's go to the site check, Rick, that little key and bring it up.

We have already discussed that there is a P that is separate from the I. In other words, there is P for puffiness and there is an I for infiltrated; right? If the Georgetown policy or the Georgetown NICU procedure required the removal of a PIV upon the finding of puffiness, would it make sense to have the P separate from the I on the site check?

A No. And I think the reason they have that is because with extremities, you can see puffiness because it is constrictive -- the least constrictive is one of the reasons it can be.

Q All right. Thank you, Rick.

Ms. Hodge, I want to now turn to the time period between 14:00 hours and 15:00 hours, in other words, between 2:00 p.m. and 3:00 p.m. I would like you to assume hypothetically that Ms. Kim has testified that given her observation of puffiness at 2:00 p.m., that it would have been her customary practice to check Raquel Gambino's PIV site one time or perhaps two times, between 2:00 p.m. and 3:00 p.m. If she did that, do you hold an opinion to a reasonable degree of nursing probability about whether that would have been within the national standard of care?

A Yes. It was a good thing that she did that. Our standard is to observe the IV site hourly.

Q All right. What is that understanding based on, just in general?

A That --

Q In other words, what from your career experience is that based on -- what are you basing it on when you say it is an hourly standard?

A I think it has become a standard because we usually within an hour can detect any problems that the IV

would have. So it has become -- the standard has become hourly for a NICU.

Q All right. Now, is there any documentation that you saw in the medical chart that Ms. Kim actually checked the PIV site one or two more times between 2:00 p.m. and 3:00 p.m.?

A No. And that wouldn't be required. That would just be a part of the practice that you know you need to evaluate and you do it.

Q All right. Are you familiar with the phrase or the term, "documentation by exception"?

A Yes.

Q What does that mean?

A Well, documentation is our communication between healthcare providers. That is the reason we document, for the patient safety and to make sure that communication is there. So as things have become more complex and as our time is shorter and shorter in the clinical setting, we have adopted a practice of charting by exception, meaning that a check or an abbreviation or something can mean that you have looked through different parameters in your mind as you are making a clinical judgment. And it means that I have done that and so I just check it. So by exception means that you have clinically gone through the steps and there is nothing that is outside the ordinary and it means that everything is

okay.

Q All right. I want you to assume that Ms. Kim has testified that she only would have documented between 2:00 p.m. and 3:00 p.m. If she observed some type of change compared to 2:00 p.m., if that was her practice, was that something that satisfied the national standard of care?

A Yes.

Q Okay. Now, I want to shift gears on you now. And I want to bring up a different topic. Okay? Rick, I am going to need your help for this. Plaintiff's Exhibit number 74 is a photograph.

Have you seen this photograph in your review of materials in this case?

A Yes, I have.

Q Let me ask you this to start out my questioning: Ms. Hodge, have you seen IV extravasation injuries in your career that have been this serious?

A Yes, I have.

Q I was asking you yesterday about your experience with serious IV extravasation injuries. And I asked you about full thickness and stage four IV extravasation injuries. My question is this: Approximately how many over the course of your career, how many full thickness IV extravasation injuries have you seen?

A Just stage four? Stage three, four because

sometimes, you know, you clinically you can't tell the difference. At least 50 or more. I mean, I have worked for 37 years. So you are going -- unfortunately you are going to see that.

Q All right. Have you had occasion to care for these babies in the hours and days after their IV extravasation injury was detected?

A Yes. One of the things that I did over the years was I became the contact for any IV infiltration that was serious in the NICU. And so I have seen a lot.

Q All right. Have you had an opportunity to see what the injuries looked like --

THE COURT: Can you come up here please, Counsel?

Ma'am, can you please step down.

(Conference held at the bench.)

THE COURT: The parents are becoming very perturbed because you just left that image up there. Are you done using that image?

MR. SPENCE: No. I am addressing Ms. Gardner's opinions. I don't meant to upset them.

THE COURT: Okay. I mean, they are about ready to walk out of the courtroom. Please be sensitive to those issues. Okay.

MR. MALONE: Should I go ahead? I could excuse her, I would rather not, but --

THE COURT: You know, it is just there is no need to leave that up there. And they are looking at it and I can tell they are upset. If you need to use it, use it. But you brought it up and you have asked an additional eight questions without referring to it at all.

MR. SPENCE: I can bring it down and then bring it up.

THE COURT: Bring it up when you need it.

MR. SPENCE: Thank you for telling me that, Your Honor.

(End of bench conference.)

THE COURT: Thank you, Ms. Hodge.

MR. SPENCE: Rick.

BY MR. SPENCE:

Q So, Ms. Hodge, have you had an opportunity to see the progression of those IV extravasation injuries in the days after they were diagnosed?

A Yes, for the beginning for days and days.

Q In general, what have you observed about the progression of those injuries following the diagnosis?

A What it looks like at the, you know, at the first sign of infiltration, that it has been declared an infiltration, that changes throughout the course of the next 24, 48, 72 hours.

Q Can you describe what you mean by that?

A In the first few hours and first day, you are going to see just swelling and edema, redness. It depends on the IV infiltrate. It depends on what was infusing. But the body starts an inflammation process and a lot of that shows up as swelling. I use, for example, sometimes when teaching a new nurse that, say, you were to have a bee sting or a wasp sting, you get that little prick or whatever. And then you can imagine the amount of swelling you might have seen that. So that is the inflammation process that the body undertakes at the beginning of something toxic in its system. And then as the inflammation progresses and the -- with an infiltrate, the chemical that you would see from what was infusing begins to damage the tissue. And eventually it will be white and eventually turn dark as it becomes what we call necrotic or it has died.

Q All right. Does the photograph that I previously put up on the screen -- does that fairly and accurately represent how Raquel's extravasation injury would have appeared at the time it was recognized at around 3:00 p.m.?

A No. There was necrotic tissue that you could see on the picture that you would not see at the beginning.

Q Have you seen IV extravasation injuries that were caused by the medication called Vancomycin?

A Not where we thought it was Vancomycin, no.

Q Are you familiar with extravasation injuries

caused by TPN and intralipids?

A That is the most common source of all of our IV infiltrates.

Q The members of the jury have seen the photograph, you have seen it. And we all recognize that there is an area of whiteness on that photograph along Raquel's leg; right?

A Yes.

Q Here is my question to you: Do you hold an opinion to a reasonable degree of nursing probability about what that whiteness represents?

A Yes.

Q What is that?

A It is necrotic tissue. It is when you have taken all of the blood out and the tissue is dying.

Q All right. I want you to assume that there has been testimony during the course of the trial that the whiteness that appears along Raquel's leg, that whiteness represents where Vancomycin ran along the leg. Do you hold an opinion to a reasonable degree of nursing probability as to whether it can be said that whiteness represents where Vancomycin leaked out of the vein?

MR. MALONE: Can we approach for a second?

THE COURT: Yes.

(Conference held at the bench.)

THE COURT: Mr. Malone.

MR. MALONE: I don't think that was -- accurately states the testimony. I thought the testimony was from Gardner that the Vancomycin irritated the vein between 12:00 and 1:00. And then there was infiltration of the TPN and the lipids between 1:00 and 3:00 and that is where she got the 17.6 from. She did not testify in court that there was a line of Vancomycin injury. I am quite sure of that.

MR. SPENCE: I have a vivid memory and I wrote it in my notes that Ms. Gardner testified that whiteness represents where the Vancomycin -- she used some dramatic language, ran down her leg.

THE COURT: Hold on a second.

MR. SPENCE: So I am addressing that very testimony.

THE COURT: Let me look at my notes, please.

MR. MALONE: I may be wrong, but whatever.

THE COURT: She said at Plaintiff's 74 -- she described it as part of the infiltration showing edema down the ankle and then the top of the calf. She said there was blanching and there was no circulation. She said to doubt the dark color was dead tissue because the tissue didn't get enough oxygen. She said that the top layer of the skin was denuding that the --

MR. MALONE: I think this is later on in her

testimony.

THE COURT: Probably, I am still scrolling down. I am just putting it on the record.

MR. SPENCE: Let me look at my notes, Your Honor.

THE COURT: Okay.

MR. MALONE: Maybe if you search for Vanco.

THE COURT: Do you have your notes, Mr. Spence?

MR. SPENCE: Here is what she -- this may assist, Your Honor, if I may --

THE COURT: This is on direct or redirect?

MR. SPENCE: This is on Mr. Malone's direct examination. She testified that Vancomycin is like, she used the word acid. She said it is acid. And then she said -- she pointed to the whiteness and she said, it leaked the whole way up -- I put it in my notes, I quoted it. It leaked the whole way up, so I am simply trying to address that point.

THE COURT: She did say that. My recollection was she said it in the context of making a point that in her point the Vancomycin essentially damaged the vein. And it was the Vancomycin corroding the vein that led to the infiltration.

MR. SPENCE: If I may, Your Honor, I think she was also correlating it with the color change on the photograph. She pointed to the photograph and said this whiteness

correlate -- and she was pointing to it and said, it leaked the whole way up and she pointed to it.

MR. MALONE: I just -- I don't remember that. Sorry. Because I don't think Vancomycin came up at all until redirect.

THE COURT: Hang on a second, please.

MR. SPENCE: It may have been redirect, Your Honor.

THE COURT: I think it was redirect. Okay.

MR. SPENCE: I apologize. It was redirect.

THE COURT: Gentlemen, it was toward the end of redirect.

MR. MALONE: Yeah.

THE COURT: She said that two doses of Vancomycin. That the Vancomycin eroded the inside of the vein and then started leaking. And it was -- yes. Okay. And then there was further redirect, because --

MR. MALONE: Or recross, yes, there.

THE COURT: Yes. There was recross and further redirect and then there was additional testimony on further redirect that the Vancomycin irritated the vein between 12:00 and 1:00 and then started leaking about 1:00 p.m. That was her --

MR. MALONE: But she didn't put it with the photo to say this is a line of Vanco injury. I don't remember

that at all.

THE COURT: I don't see any reference here being made to the photograph at that point.

Okay. She was looking at Plaintiff's 26. What is Plaintiff's 26?

MR. SPENCE: It is a photograph, Your Honor.

THE COURT: Right. I know it is a photograph.

MR. SPENCE: But I think it was taken on the 19th, if I remember correctly.

MR. MALONE: That is the first barber photo.

THE COURT: I am on redirect. She -- towards the end of redirect she said the Plaintiff's 26 and it is Plaintiff's 26 that she makes references to the Vancomycin, at least that is what my notes reflect.

MR. MALONE: Was she saying that the whiteness on there was from the Vancomycin?

THE COURT: Okay. The way that I recall this is that when she was explaining that it was her opinion that the Vancomycin had damaged the vein.

MR. MALONE: Yeah.

THE COURT: Between 12:00 and 1:00 and then, obviously, it is at 1:00 that the Vancomycin administration is over and then the testimony is that there was a flushing of the line, because the Vancomycin infusion had come to an end. I mean, I think what she said is that -- what the --

what the white showed was the leakage. I don't think she said that the white was the Vancomycin leaking. I think she said the leakage would have occurred after the Vancomycin had damaged the vein.

MR. SPENCE: My memory was, I think --

MR. SCIALPI: I think she was saying whiteness was the lipids. It was the fat.

THE COURT: She did say it was the lipids. So, I mean, you are correct that, you know, she did make reference to, you know, the -- the white being consistent with the flowing of the --

MR. SPENCE: Vancomycin.

THE COURT: No. What she said is the Vancomycin damaged the vein and then there was the leakage afterwards and it was the lipids.

MR. SPENCE: My recollection is just slightly different because I think she testified that the Vancomycin leaked the whole way up the leg and that she --

MR. MALONE: May I just suggest a compromise. As long as it is put hypothetically, if there was testimony that Vancomycin leaked up the leg, without referring to a specific witness, I will withdraw the objection to a single question.

THE COURT: Okay.

MR. SPENCE: Your Honor, I am just thinking

about -- in light of your commend the last time we approached the bench, you know, one thing I can do maybe is if I need to use a photograph, I can use a paper copy and stand her down and not expose Ms. Gambino.

THE COURT: Sure. Whatever is fine.

MR. SPENCE: I didn't realize that. I apologize.

THE COURT: You can.

(End of bench conference.)

THE COURT: All right. So that conversation leads to the following conclusion: Please rephrase your question, Mr. Spence.

MR. SPENCE: Okay. Where was I?

BY MR. SPENCE:

Q Ms. Hodge, I want you to assume, hypothetically for the sake of discussion, that there has been testimony, that the photograph demonstrates that Vancomycin leaked up the leg. Would you hold an opinion to a reasonable degree of nursing probability about whether it can be said that the Vancomycin leaked up the leg based upon the photograph that we have been discussing?

A No, I don't know of any way you would know that.

Q I am going to show you another photograph. But I am going to do it with you in a different way than what we have been doing, so just bear with me, if I may. I am showing you what has been marked as Plaintiff's Exhibit 26.

And I am just going to show it to you up here at the witness stand. And then I am going to -- with Your Honor's permission, briefly publish to the jury.

Have you seen this before in your review of the case?

A Yes.

Q This is Plaintiff's Exhibit 26. So you all have seen it before. My question to you, ma'am, is this, it is the same question. Assuming hypothetically that there has been testimony that the coloration in that -- that it can be concluded from the coloration in Plaintiff's Exhibit 26 that Vancomycin ran along the leg. Do you hold an opinion to a reasonable degree of nursing probability about whether that can be said to be true?

A No. Most of the IV infiltrate, the serious ones that you see, are from TPN and intralipids and that is what it looks like.

Q Furthermore, I want you to assume further that there has been testimony during the course of the trial that it can be concluded from the photographs that we have been discussing this morning that 30 CCs of IV fluid infiltrated in Raquel Gambino's case on the afternoon of January 16, 2013. My first question to you is this: Are you aware of any methodology that has been accepted in the nursing or medical community to estimate the volume of IV infiltration

based upon photographs that have been taken the day after a IV infiltration?

A No. We have never had any way to know how much fluid.

Q Have you reached an opinion that you hold to a reasonable degree of nursing probability about whether it can be concluded that 30 CCs of IV fluid infiltrated on January 16, 2013 based upon these photographs?

A I can't even imagine 30 MLs of fluid in a tiny leg like that. The child would be screaming. That is just -- it is not possible.

Q Can I have an exhibit sticker?

MR. SPENCE: Your Honor, if I may approach the witness.

THE COURT: Yes, sir.

MR. SPENCE: Thank you, Your Honor.

BY MR. SPENCE:

Q You may have to stand down briefly for this, Ms. Hodge. I am presenting you with --

A Here?

Q Yes. So the members of the jury can hear your testimony and see your testimony, I am showing you what has been marked as Defense Exhibit 32. It is a baby -- a model of a baby. Is this a -- does this resemble a full term baby or a premature baby?

A More full term.

Q If you could hold that for a moment. I am also showing you a syringe that has been marked as Defense Exhibit 61. Okay. And I think it is --

Counsel, you have seen this, I think.

MR. MALONE: Yeah, sure.

BY MR. SPENCE:

Q First question: It says along here 30 ML. We have been talking about CCs. What is the difference between 30 ML and 30 CCs, if any?

A Not any. We call it MLs now instead of CC.

Q Can you just show the members of the jury how many 30 CCs is compared to size of the baby's leg.

A And this is a big baby's leg. That is lot of fluid.

Q If -- if 30 CCs of fluid infiltrated between 1:00 p.m. and 2:00 p.m. -- bad question. If this IV infiltration started between 1:00 p.m. and 2:00 p.m., what would you -- and it was infiltrating at a steady rate and a total of 30 CC eventually infiltrated, how would you expect the site to appear at 2:00 p.m.?

MR. MALONE: Excuse me, Your Honor. Can we approach?

THE COURT: Sure.

(Conference held at the bench.)

MR. MALONE: This line of questioning is misstating what the original testimony is that they were rebutting. We had two numbers. The Nurse Gardner said it looks like 30 CCs from looking at the photo.

THE COURT: Yeah.

MR. MALONE: But she said the infiltration she believed occurred over two hours, 8.8 each hour, so maximum of 17.6. So the questioning now is raising a strawman that is was not the testimony.

THE COURT: Let me check my notes. I think she did say that it was 30 CCs.

MR. MALONE: No. She said it looked like 30 CCs, but that her opinion was that there was -- it looked like -- that her opinion was that the infiltration started about 1:00 p.m. shortly after the Vanco --

THE COURT: Uh-huh.

MR. MALONE: -- and therefore her opinion was 17.6. And Mr. Spence went on about that in his cross about the difference between the two.

THE COURT: Right. The reason that he went into it, because his cross -- because her testimony was that she estimated that 30 CC went into the infiltration. That is what my notes say. And then when he started his cross-examination, one of the things that he did after he crossed her on her -- her experience as an expert witness,

he pulled out the chart. And that is when he wrote -- so it was actually his using the chart that brought it down from 30 to 17.6, but her testimony was that it was 30.

MR. SPENCE: Thank you, Your Honor.

THE COURT: Thank you.

(End of bench conference.)

THE COURT: Thank you, Ms. Hodge.

You can continue, Mr. Spence.

BY MR. SPENCE:

Q This won't take much longer. If the IV infusion was occurring at a steady rate from 1:00 p.m. to 3:00 p.m., from the afternoon of January 16, 2013, and if we assume for the sake of discussion 30 CCs infiltrated, what would you have expected to find at 2:00 p.m. when a nurse observed the baby?

A The leg would be so edematous and so swollen, red, you would already have tissue damage from the standpoint of just inflammation process if it started that early.

Q Thank you, ma'am. I will take this back from you.

Based on everything that we have gone over today, Ms. Hodge, do you hold an opinion that you hold to a reasonable degree of nursing probability about whether the IV infiltration in Raquel Gambino's case began between 12:00, noon, and 1:00 p.m.?

A I don't think that it did, no. In no way, no.

Q Now, there has also been testimony in this case that a smaller amount of IV fluid -- a smaller amount than 30 CCs could not have caused the injuries that Raquel experienced.

MR. MALONE: No.

THE COURT: Come up here, please. Thank you.

(Conference held at the bench.)

THE COURT: Ms. Hodge.

MR. MALONE: Now, I absolutely know that misstates the testimony.

THE COURT: Okay. Run it by me again.

MR. SPENCE: Your Honor, Dr. --

THE COURT: Tell me what the question is.

MR. SPENCE: Yes. I was simply --

THE COURT: Tell me what the question is. Don't explain. What was the question? Literally repeat the question for me.

MR. SPENCE: The statement I made was, there has been testimony that a smaller amount of IV fluid than 30 CCs could not have caused the injuries that Raquel sustained.

THE COURT: You maintain that is what Dr. Hermansen said?

MR. SPENCE: Yeah.

MR. MALONE: Absolutely not.

MR. SPENCE: It may have been Ms. Gardner. Let me

get my --

THE COURT: Ms. Gardner was the one who said it was 30 CCs.

MR. SPENCE: I will get my notes. It was -- I think it was Ms. Gardner.

THE COURT: I know that Dr. Hermansen said that in terms of the dosage, that according to the records, Raquel was getting -- those were amounts that babies would tolerate well. He was referring to the 8.8.

MR. MALONE: Up to an hour. And he said that it would cross the line to go two hours and that is what caused the injury.

MR. SPENCE: I can go to Hermansen. I have my Gardner notes in front of me. May I make a comment about Ms. Gardner's testimony, Your Honor?

THE COURT: I am looking at Hermansen, so now you are going to Gardner? Okay.

It was Gardner.

MR. SPENCE: It was Ms. Gardner. Let me try to --

THE COURT: What portion of the testimony?

MR. SPENCE: I believe it was the direct testimony, Your Honor.

And, Your Honor, I can tell you exactly what she said. I am just looking for the date to make sure I got the date right. It was in her direct testimony. I think she

said after she started talking about the 30 CCs. She testified that a smaller amount could not have caused this injury. And then she -- this stands out in my memory. She said -- here is what she said. She said the kind and the amount could not have caused this injury, because she is suggesting that the type of IV fluid could not have caused the injury. And she also said -- so she used this expression, the kind and amount could not have caused this injury. That was specifically stated.

THE COURT: You examined her; right?

MR. SCIALPI: I think this came after his cross -- I think this came after his cross and my redirect. And my recollection of her testimony, that the smaller amount could not have caused it was when we had these little cup demonstrations. And I had her hold up the two smaller ones, which represented a half hour and an hour. And I asked her if those could have caused it and she said no.

MR. MALONE: Yeah, that is right.

THE COURT: Just give me a second, please.

MR. MALONE: And those amounts were 4.4 and 8.8.

THE COURT: Now that I have reviewed her redirect, what was your argument again, Mr. Scialpi?

MR. SCIALPI: Your Honor, that Mr. Spence said she said a small amount could not have caused it, but I think what she said was -- I asked her, could the smaller

containers, one representing a half hour, 4.4; and an hour, 8.8 could those have caused it? And she said, no. I never asked her and she never testified that it was some amount less -- it had to be 30, something less couldn't have caused it.

MR. MALONE: In fact, she said she thought it was a two-hour infiltrate so --

THE COURT: Right. But I think I do recall the way Mr. Scialpi mentioned that when we had like the little cups with the little samples --

MR. MALONE: Yeah.

THE COURT: And your recollection is that she said that which sample was --

MR. SCIALPI: The half hour and the hour samples could not have caused it. So, in other words, I think it would be fair to say she said 8.8 could not have caused it. And she did say it looked like 30 CCs worth of fluid in the wound would have caused it.

THE COURT: There were four of them; right?

MR. SCIALPI: Yeah. Because we had her do half hour, hour, two hours, three hours.

THE COURT: So whatever the hour was -- okay. Both of you are correct in your own ways. Okay. Because she didn't say things, she demonstrated things through the little cups and the amounts that were in the cups. Now, if

you want to pull out the cups and go through the same deal with her, you are welcome to do so. But that is the way that Ms. Gardner presented her testimony. She did -- you know, it was pointing to the different cups and opining over whether an amount in a specific cup would or would not cause the type of injuries we address here.

MR. SPENCE: I will be sure to address Mr. Scialpi's point about the 8.8.

MR. MALONE: She absolutely did not draw a line in the sand at 30 CC.

THE COURT: She didn't, but she also made reference to the cups and opined whether the amount in the --

MR. MALONE: A smaller amount.

MR. SPENCE: Thank you, Your Honor.

(End of bench conference.)

THE COURT: All right. Thank you, Ms. Hodge.

All right. Please proceed consistent with our conversation.

MR. SPENCE: Thank you, Your Honor. I am going to move it along.

BY MR. SPENCE:

Q Ms. Hodge, going back to where we were, I want you to just assume hypothetically for the sake of my next question that there has been testimony that an amount of IV

fluid less than 30 CCs could not have caused the injuries that we have been discussing that were seen on the photographs. Just assume that. The jury will decide whether that was the testimony or not. If -- my question to you is: Do you hold an opinion to a reasonable degree of nursing probability about whether an amount of IV infiltration fluid less than 30 CCs is capable of causing the type of injuries that we have been discussing?

A You can see injuries like we see here with just a small, small amount of fluid, 1 or 2 MLs.

Q All right. That is -- that gets me to my next question. So I want to follow up by asking you this question. There has been testimony that that 8.8 CCs of IV fluid ran in Raquel's case between 2:00 p.m. and 3:00 p.m. Do you -- is that your understanding from your review of the medical records?

A I think it is 8.2 or 8.3 or something like that, yes, plus the intralipids it is .6.

Q So that makes a total of roughly 8.8?

A Roughly, yes.

Q Do you hold an opinion to a reasonable degree of nursing probability about whether an amount of IV fluid less than 8.8 CC is capable of causing the types of injuries that we have been discussing and as are seen in the photographs?

A It is capable because of the damage that TPN and

intralipid can do to tissue.

Q Now, you testified that you have experience seeing some fairly significant IV extravasation injuries. Have you had occasion on any of these cases to determine the amount of IV fluid that had actually infiltrated or run before the injury was detected?

A I have never been asked to estimate the amount of fluid.

Q But on -- in your experience, have you seen cases where the amount of fluid was less than 8.8?

A Absolutely. In some that have been my own babies IVs.

Q All right. Were those babies receiving regular hourly checks?

A Yes.

Q All right. There has also been testimony in this, Ms. Hodge, if the PIV was pulled or discontinued, within one hour of the start of the IV infiltration, you would not have injuries like the ones we have been discussing, especially as seen in the photographs. Okay. My question to you is: Do you hold an opinion to a reasonable degree of nursing probability about whether IV fluids running for less than one hour have the capability of causing the types of injuries that we have been discussing?

MR. MALONE: Asked and answered, just now.

THE COURT: Sustained.

BY MR. SPENCE:

Q All right. Rick, if you could please bring up Defense Exhibit number 1, page 010489. Are you familiar -- this is a -- what -- have you seen this document, Ms. Hodge?

A Yes. That -- from what I can see here, it looks like the order for TPN and intralipid.

Q If you need to see a paper copy because this is across the room, we do have the binder there, in case you -- because I realize that some of this is small print.

A I can see it.

Q Just describe for the members of the jury what this form is or what this document is?

A On the doctor's order, whatever composition of TPN and intralipid that they want in -- this shows what will come up from the pharmacy.

Q All right. I want you to assume for the sake of my next several questions that there has been testimony during the course of the trial that the type of IV solution used in Raquel's case could not have caused the injuries that she sustained. And --

MR. MALONE: Incomplete.

THE COURT: No speaking objections, gentlemen. If you want to approach, you can approach. If not, let's move on with the appropriate guidelines.

MR. MALONE: I withdraw.

THE COURT: All right. Please proceed.

BY MR. SPENCE:

Q In general, do you hold an opinion to a reasonable degree of nursing probability about whether the type of IV fluids that were used in Raquel's case were capable of causing the injuries that we're here to talk about?

A Yes. Yes.

Q And were they -- do you have an opinion as to whether they were capable of causing these injuries in less than one hour's time?

A Yes, absolutely.

Q There has been --

THE COURT: Okay. Yes means what, that you have an opinion or --

THE WITNESS: Yes, that I have seen this type of damage from just a small amount of fluids as the TPN and intralipid.

BY MR. SPENCE:

Q All right. And have those cases that you have personally seen, been serious IV extravasation injuries or have they been insignificant-type things?

A I have seen both, very serious and very insignificant.

Q There has been testimony in this case that the TPN

solution that was used in Raquel Gambino's case was diluted -- that it was diluted. Is the TPN solution based upon your -- why don't we -- let me just back up one step. I am probably trying to get the cart ahead of the horse. What does this tell us about the components that are in the TPN solution?

A Well, it delineates each one of the components that make up the TPN. They have to be in balance, if not you would get a precipitate, meaning like a salt or calcium would precipitate out. So it has to all be balanced.

Q By the way, if there is not a pointer up there, we can get you a pointer.

A It is not up here.

Q You are free to use the pointer if you need to.

A There is not one up here.

Q Oh, we'll get you one.

A Thank you.

Q What are the components of the TPN, just go through them, please.

A Well, the first is dextrose or another word for it would be glucose. It is 9.2 percent, so a lot of times we just say D 10 because it is close to 10. Proteins, that is the amount of protein additives that are put in it. Lipids, you know, is a separate syringe or bag. And then these are your electrolytes, sodium, potassium, calcium, magnesium,

phosphate and acetate. All of those have to be in a balance. And you can only have so much of each, especially calcium. Calcium is very damaging to tissue. And we can't go above a certain amount with peripheral IV. That is why we like PICC lines because you can give a lot more. And then cysteine, all of these are vitamins and things like that we use, because this is, you know, many times the main source or the only source of nutrition for a baby.

Q All right. Now, which of these components are potentially caustic to the tissue if there is an IV infiltration?

A The two that I'd pick out would be glucose and the other calcium. Because, you know, we might have a baby that would have clear IV fluids. And you don't add a lot of this in clear IV fluids, you do sodium, potassium, calcium and glucose. So we know, because we see bad infiltrate, just not as bad, but from just a glucose solution. So the -- all of these components, mostly the calcium and glucose, can cause very serious damage.

Q Is there anything that the -- that the TPN components have -- I will say diluted in that makes them, I will say, less caustic?

A These are not diluted.

MR. SPENCE: All right. The Court's indulgence, Your Honor.

All right. Your Honor, thank you very much.

THE COURT: Thank you.

MR. SPENCE: Thank you, Ms. Hodge.

THE COURT: All right. Let's just take a 15-minute break and then we'll come back at 11:40 and proceed with cross-examination. Okay. Thank you very much.

(The jury leaves the courtroom.)

THE COURT: All right. 11:30, please.

MR. SPENCE: Thank you, Your Honor.

(Recess taken.)

THE COURT: Ms. Hodge, if you could please retake the witness stand and when the jury comes in, we will proceed with cross-examination.

If you guys want to sit while they knock on the door, that is fine.

(The jury is seated.)

THE COURT: All right. Welcome back. Please have a seat. Thank you, Ms. Hodge, Mr. Malone.

MR. MALONE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. MALONE:

Q Ms. Hodge, my name is Pat Malone. We haven't met.

Do you have a copy of the three reports that you submitted in this case with you?

A Not with me, no.

Q Okay. Let me just hand you up my copy. You submitted reports dated in October of 2016, June 2017 and August 2017. Do you recall that, roughly?

A Yes.

Q So I am going to give you the reports and the invoices you submitted.

A Okay.

Q The invoices are just -- look at those quickly. Do they accurately -- it is on the very end there, your invoices accurately reflect the time you spent and a rough summary of what you did on each day?

A Yes.

Q And grand total up to about a year ago is 10,000?

A Correct.

Q And I assume 5 or 6 since then, maybe?

A Roughly, yes.

Q And no criticism, but you are like every other expert witness in America that you know of, they bill for their time?

A Correct.

Q So but here is my question: Let's go back to those reports. Ma'am, who wrote those reports?

A They were written in combination with me talking about the clinical part and the attorneys for the hospital.

Q So parts by you and parts by them, is that what

you are saying?

A I don't know the legal term or how to phrase that part, but the clinical part was my part that I wrote.

Q Did you actually write it or did you let them write and then you reviewed it and edited?

A They wrote some of it, I edited quite a bit of it.

Q Let's just look at your invoices to show what we are talking about.

A Okay.

Q First invoice --

THE COURT: Is there a number for this exhibit?

MR. MALONE: We need to put one on there. Let's call it 10 -- what?

MR. SCIALPI: 111.

MR. MALONE: 111.

BY MR. MALONE:

Q Okay. The first time you mention your report is a 10/24 discussion with -- review of my report including finalization and 10/24 discussion with Ms. Cooke, and compilation of your expert cases, 1.7 hours on October 24th; right?

A Yes.

Q Okay. You don't -- I mean, don't mean to nitpick, you don't mean to say you wrote any part of the report?

A Not in the way that I worded that, no.

Q And let's look at the next report on the second page. So report number 2, editing second supplemental report. Took you 1.6 hours to do that second one?

A Okay.

Q To edit it; right?

A Uh-huh.

Q Okay. It doesn't say anything about you actually writing the report?

A But I did write it. Thank you.

Q Same with the third one. You said that you edited it, but you also wrote it?

A We talked about it. I edited and then we -- then I finished it and submitted it.

Q Wait a minute. Who wrote the third report? You said you only spent 0.4 hours on it?

A There was a lot of discussion, you can see by the last report, that it goes over a lot of the things that I said before. So a lot of it was -- most all of it was edited by me, some of it was written by the attorneys' office, as we all do.

Q Okay. So just to put it in a little context that third report is a page and a half, single spaced, and you only spent 0.4 hours on it, right, if your invoice is accurate?

A That is accurate. And I edited what we had

discussed and finalized it, that it is my opinion in this report.

Q Now, let's back up a second. At each stage, when you are doing a report, in talking with the attorneys, are you relying on your own independent evaluation of the materials, the medical records, et cetera, or are you -- well, let's just end the question there. Are you making sure before you put any opinion down that you have seen, personally, independent verification of it not just the lawyer's word?

A Absolutely. Our first discussion when I review the case, long before the report, are my opinions about the case.

Q And that is based on what you have seen by that point?

A That is based on the records that I reviewed.

Q Okay.

A Yes.

Q One of the reasons you had three reports was that you received things in stages here; right?

A Yes.

Q For example, you didn't see any of the -- let's just call up the page 2 your first report. Let's highlight the section that says what you reviewed.

A Okay.

Q Okay. Do you see it there?
A Yes.
Q Complaint. That is the complaint that we submitted to the court; right?
A Yes.
Q Selected records of the baby's admission to the hospital?
A Yes.
Q Report of Ms. Gardner?
A Yes.
Q And the Georgetown policies and procedures?
A Of the infiltrate and nursing policy and procedures.
Q End of the universe for what you had for that report; true?
A True.
Q Go back to page 1. Let me just ask you about the following passage. Nurse Kim's standard practice of performing a saline flush --
A Can you tell me where you are?
Q Okay. Let me show you. Do you see right there, Nurse Kim's standard of practice?
"Nurse Kim's standard practice of performing a saline flush checking for blood return and observing the site more frequently when the IV was noted to be puffy was

good clinical practice." Right?

A Yes.

Q Where was the information in these documents that you reviewed that supported any of that?

A I don't know where they were in the records.

Q The medical records, you are saying, must have had some verification of her standard practice of aspirating and flushing?

A This would have been in discussion with the attorneys that they -- that Nurse Kim said that she had done that, that was a part of her practice.

Q So you didn't independently verify aspects of your opinion before you put them into a report. I thought you just said you had?

MR. SPENCE: Objection, Your Honor; I think that mischaracterizes --

THE COURT: Wait. Overruled.

BY MR. MALONE:

Q Let me back up.

A Okay.

Q I thought I had asked you when you submitted a report that you independently verified the facts and opinions in that report with your own eyes without, you know, relying on the attorneys. Is that true or not?

A As much as I can see in the record, yes.

Q Well, are you saying now that some of the things in that first report, were fed to you by the attorneys and you just took their word for it?

MR. SPENCE: Objection; argumentative.

THE WITNESS: No.

THE COURT: Sustained.

BY MR. MALONE:

Q Let me back up.

Let's just make sure -- where did you get the bit about Nurse Kim's standard practice?

A I know that it was in her deposition that she did.

Q Okay. Turn to your second report.

A Okay.

Q Give us the date of the second report.

A I signed it June the 9th of 2017.

Q Read the first paragraph to us, please.

A "This letter will supplement the opinions stated in my October the 24th, 2016 expert report. Since my initial report, I have reviewed the following documents: Deposition transcripts of Kim, RN, and" --

Q Stop right there.

A Yes.

Q Doesn't that tell us that you did not see the deposition of Nurse Kim until months after you had committed to an opinion about what her standard practice was?

A I cannot -- I have to rely -- when I choose to take on a case, whether it plaintiff or hospital, I listen to -- not everything is in a medical record. So I listen to the attorneys, whichever side it is, as to what has happened. And if there were to be something later on, if Nurse Kim had denied that she had never done that -- so I have to base some of it on what attorneys say. Just like any expert witness does for either case. So based on what I saw, even though there wasn't documentation in the record, at 2:00 all that she saw was puffiness, I still was able to support that.

Q We are talking about her standard undocumented practice though; right?

A But as a nurse practicing, I know usually what we do.

Q Okay.

A And that would have been something that I would have considered. Like I said, had she said, no, I never do that or I just continued to watch -- so every step of the way, when I get information, influences my opinion and I sometimes have to withdraw it.

Q Okay.

A So --

Q And just in terms of the accuracy of this original report here, you listed four items that you reviewed and

then at the end you put a certification. I hereby certify this report is a complete and accurate statement of all of my opinions as of this date, and the basis and the reasons for them for which I will testify under oath in this matter. Right?

A It was the basis of my opinions, yes.

Q But you didn't say in there that part of what you were relying on was what the lawyers told you?

A I think that each expert witness relies on what the attorneys tell them, else you would not be able to accept the case initially.

Q Okay. All right. Now, the other thing that happened with that first report that I wanted to ask you about -- actually on the second report -- finish reading that first sentence where you read up to that you had -- "Since my first report I have seen Nurse Kim's deposition" and what else?

A "Since my initial report, I have reviewed the following documents: Deposition transcripts of Kim, RN; Mehta, MD, Christine Gambino; Gary Gambino; Shirley Goss; M. Hermansen, MD; and Sivasubramanian, MD; and CD containing photographs and a video of R.G. Gambino, plaintiff."

Q So 8 months after your 1st report was the first time you ever saw a -- any photographs of this injury; true?

A I don't know that -- I could have received it a

few days after the first report.

Q You wrote -- you submitted a report to the court, saying everything was fine here without ever looking at how bad this injury was --

MR. SPENCE: Objection. Your Honor.

MR. MALONE: -- on a photograph?

MR. SPENCE: Argumentative.

THE COURT: Come up here, please.

Madam, please stand by the door.

(Conference held at the bench.)

THE COURT: Your objection is what?

MR. SPENCE: I think this is argumentative and I think it is irrelevant, too.

THE COURT: It is not argumentative. I mean, he is confronting her with the fact, according to her report, she rendered an opinion before certain information was available to her. And he uses that to question the credibility of the report that she prepared.

MR. SPENCE: Okay. I think that it is still -- it is beyond the scope of the direct and --

THE COURT: No. We assess credibility the same way that --

MR. MALONE: Very good.

THE COURT: Objection, overruled. Thank you.

(End of bench conference.)

THE COURT: Thank you, Ms. Hodge. If you could retake the witness stand.

Objection overruled.

BY MR. MALONE:

Q So my question was: You committed to defending this case and you submitted an initial report without ever taking a look at a single photograph that showed how bad this baby's injury was; isn't that true?

A Yes. Because I could have envisioned how damaging it was because it had gone to litigation. I have seen those infiltrates before.

Q Well, the first time you saw a measurement of -- you know, with a centimeter ruler on the thing -- do you remember seeing the photograph with the centimeter ruler?

A Yes.

Q That was with -- you didn't get that until you did your third report?

A It didn't matter. I could visualize the extent of the damage. I have seen them before.

Q So 6 centimeters makes no difference as opposed to 1 or 2 centimeters, to you it is all the same?

A I don't understand your question. Of course, it is not the same. The damage is there, whether it is 6 centimeters or 1 centimeter, it is horrible either way.

Q And so -- and these are contact burns from

chemicals; right?

A From the infusion, yes.

Q The infusion seeps out into the tissue and wherever it goes, as long as it is there long enough, that is where you will get the burn; true?

A We don't know all of the steps of how an infiltrate happens. We just don't know if this part of the tissue got touched or not. There is no way to assess that clinically.

Q Okay. So next topic is -- relates to the same issue of -- when did Nurse Kim actually find this and how bad was it when she found it? Let's start with the first point. When did she find this problem, what is the most -- the best record of the most precise time?

A At 15:00, 3:00.

Q Did you see any records that suggested it was actually better documented as more closer to 3:25?

A Not by the nurse, no.

Q Well, that is my point: You look at the universe of the records of to figure out forensically what happened and when it happened, don't you?

A You can take those into consideration. But, again, the doctors are not at the bedside when the nurse is there taking care of the baby.

Q You read Dr. Mehta's deposition?

A Yes.

Q You relied on that in part along with everything else?

A Yes.

Q He was the attending?

A Yes.

Q He actually remembered some parts of it. He remembered seeing that thing; right?

A Yes, he said that.

Q He is a guy who is handling the entire unit of 20 or more babies and he remembers this one, right, that is what he said?

A That is what he said. There are some that I remember so --

Q The real bad ones?

A And the good ones. Not the ones but the ones that didn't cause as much damage, yes.

Q Okay. He says his best estimate of when he got there was a few minutes before 3:25, you remember that?

A Okay. Yes.

Q And he had a document for it. Let's show Plaintiff's 106. Let's look at the top part. This document says that at 15:25 for this baby, they ordered Vitrase, standard dose, 1 milliliter times 1 for wound care. Do you see that?

A Yes.

Q He testified Nurse Kim would have notified him within just a few minutes before that; right?

A I don't remember that in his deposition, but the --

Q He was called -- whoever called him to the bedside called him there?

A Somewhere around that time. That is when the medication was ordered. So he would have to have been there before and assessed the situation before he is going to order something.

Q And his testimony was that is the very first thing you do and it would be a matter of just literally a few minutes; right?

A The first thing that you do when you see the damage?

Q You see the damage, you know that the Vitrase is effective -- the faster you give it as an antidote, the more effective it is; right?

A In some cases. Sometimes it never works.

Q Well, my point is, he says the first thing he did was he ordered the Vitrase through his resident Dr. Valderama; right?

A After he saw the wound, yes. You wouldn't order it before you saw the wound.

Q Of course, not. But, you know, within 2, 3, 4 minutes is when he is summoned to that bedside before he orders the Vitrase. That is basically what he says; right?

A That is what he said, yes.

Q And you have no way to challenge that?

A I know the process of when you discover an infiltrate as far as the nurse's perspective. So it would have been a matter of several minutes before the attending would have been to the bedside.

Q Okay. Maybe that would push it back to when she would summon him at, what, 3:15?

A Let's talk about how that goes.

Q Can you answer the question first?

A I apologize. What was the question?

Q Okay. So he gets there sometime between 3:20, 3:25, I am asking you how long it would take her to do her assessment that she has got a terrible injury here before she calls in for reinforcement?

A That is what I was trying to explain.

Q Yeah.

A So when you discover the infiltrate, you are there at the baby's bed. And I think we know by the record at 15:00 there was a series of care that was done. You have her vital signs, you have her blood pressure. The diaper was changed, all of those things happened. That could have

happened while she was summoning. And usually the first person that you call is not the attending, unless he is right there at your bedside. You are going to call the resident. So when you find an infiltrate, you have got to take the foot board off in this case. You have got to easily and very gently take the tape off. And that takes a matter of a few minutes. And then either you go and call or you go and find the resident and ask them to come to the bedside. So you can see that could transpire into several minutes, 10, 15, 20 minutes, depending on how quickly -- but that is how it happens. When you see -- you have got to find the resident. Most of the time they are not at your bedside. And especially if you page them, you have got to make the call, page them.

Q They are right there in the unit?

A No, they are not right there in the unit.

Q You don't know that for a fact about Georgetown.

A I don't think anybody does. The doctors are either at another baby's bedside or they are at their desk. And that takes a few minutes to either walk to get them or to page them.

Q Have you ever been in the Georgetown unit?

A I have seen the diagram.

Q Okay. I mean, how big is it compared to the courtroom, the whole CCN1 unit?

A I don't know by feet.

Q No. I mean let's just -- you know, assume we have got a space here. Would the CCN1 unit have been bigger than our courtroom or smaller?

A I don't know. But that would have been where the babies were. The doctors' desk was outside of that.

Q Okay. And doctors are circulating around all of the time -- residents and doctors?

A Could be. It could be in different areas of the nurseries.

Q Speculation on your part, you just don't know about this day; right?

A I don't know.

Q Okay.

A I don't think anybody else remembered.

Q And what you're relying on for when she reported this to Dr. Mehta was her note to that effect on the flow sheet at the 15:00 hour; true?

A Yes.

Q Okay. Let's look at that for a second. Here, I will just hold it up here. You want to come over here for a second?

A Over there or can I look at it here?

Q Oh, yeah. You can look at it there.

A What page is it?

Q It is their page -- they have different paginations. Just come on over here for a second, if you don't mind.

A It is right here.

THE COURT: Why don't you bring it up to her?

BY MR. MALONE:

Q Are we on the same page literally?

A The vital signs. There we go.

Q And do you see the 15:00 hour there?

A Right here.

Q Okay.

THE COURT: Okay. So now you can walk away from the witness stand. Thank you.

MR. MALONE: Okay.

BY MR. MALONE:

Q Where it says at the 15:00 hour, right foot infiltrate reported to Dr. Mehta. That is what you rely on for saying it was 15:00 as opposed to 15:10, 15:20; correct?

A Well, you will notice that right foot infiltrate and report to Dr. Mehta is on the second line, so that could have been done at different times or it could have been done at all one time.

Q When did she report it to Dr. Mehta, that is my question? What is the best evidence?

A His recollection and what is in the record is at

15:25. But, again, the steps to get to that point of reporting it to Dr. Mehta, could have been several, several minutes earlier.

Q On this flow sheet 15 does not mean, necessarily, 15:00 ironclad; right?

A It is usually around that time. You will notice back at 11:30 she has vital signs, so somewhere around that time is when she was at the baby's bedside.

Q Okay.

A Because if not, she possibly could have put 12:00.

Q Sure.

A So you can see she is pretty accurate with her times.

Q Really? What does she say on this flow sheet when the Vitrase was given?

A She says on this that she documented when she noticed that the Vitrase vial was there. When you go back and look at the record for when it was --

Q No. No, ma'am. I am talking --

A I'm sorry.

Q -- about the accuracy of --

THE COURT: Come up here, Counsel.

Ms. Hodge, please step down. Please step down, ma'am.

MR. MALONE: I didn't mean to interrupt, Your

Honor. Go ahead.

THE COURT: Please approach, Counsel. Thank you.

(Conference held at the bench.)

THE COURT: You are essentially asking her to reconstruct the events of that day and in a way that is speculative. If you want to point out the absence or the presence of certain information in the medical records --

MR. MALONE: That is where I am going.

THE COURT: No. You are asking her to speculate. There is no way that she could have known the stuff that you are asking her about.

MR. MALONE: That is the point I am leading to is that she has some assumptions in her mind that are not necessarily accurate.

THE COURT: There is -- there is a difference between the opinion that she believes based on the records that she reviewed, the depositions that she has read, the photographs that she has looked at, her own professional experience, but you are not doing that. You are just asking her to speculate about something that she is not capable of doing if she is not qualified as an expert witness in reconstructing a scene of an accident. That is what you are essentially asking her to do.

MR. MALONE: Well, I -- I -- where I am going with this is that we are trying to figure out how long that

infiltrate was there before it was reported to the doctor.

THE COURT: Right. But you are asking her to speculate.

MR. MALONE: She claims it was at 15:00 and I am proving that it is later. That is my point right now.

And I was just going to say on this record that the -- she can't rely on the accuracy of Nurse Kim's document.

THE COURT: Those are arguments that you make to the jury. You are just getting into an argument with her and asking her to speculate about stuff she has no knowledge about. She wasn't there.

MR. MALONE: Okay. May I just -- I will do the best I can and I move on to my next question. My question right now was going to be simply, here -- she -- on this chart, if you rely on this page for accuracy of timing, the Vitrase was given in the 6:00 p.m. timeframe. And we can prove that it was not given at the 6:00 p.m. timeframe, which means we cannot rely --

THE COURT: 6:00 p.m. is when the note was made, not when things happened.

MR. MALONE: I would like to ask that to pin that down.

THE COURT: Ask the question. Don't ask her to reconstruct things she didn't witness.

MR. MALONE: Okay.

THE COURT: Thank you.

(End of bench conference.)

THE COURT: Ms. Hodge, thank you. Please retake the witness stand.

BY MR. MALONE:

Q When does Nurse Kim's documentation tell us when the Vitrase was given?

A It is in the line with 18:00 or 6:00.

Q And that is off by two hours from the other records we know?

A Yes. And I think that you can see in her deposition she explained why it is written there at that time.

Q Okay. So in terms of trying to reconstruct an accurate timeline here, one of the reasons we are handicapped is her failure to follow the policy for what you document after you have an infiltrate; true?

MR. SPENCE: Objection, Your Honor.

THE WITNESS: No.

THE COURT: Overruled.

BY MR. MALONE:

Q Let me show you the policy we are talking about. This is page 5 and 6 of the IV infiltration policy in the NICU. You have seen this document; right?

A Yes.

Q This is Georgetown's sample for the NICU of what they want documented for each infiltration according to Dr. Sivasubramanian who heads the unit; right?

A That is a part of the guidelines in the policy, yes.

Q Well, the policy says in three separate places -- I don't want to bore you with going through each of them now, but this piece here about performing assessment and documentation of the infiltration area, et cetera, et cetera, and estimated amount of infiltrated fluid based on time of discovery, that piece of it is stated three times in this six-page document?

A Yes. That particular one that you are talking about right there does not delineate who should do that documentation and diagram out the infiltrate.

Q Well, it says -- it puts a division of labor onto the doctor or the NNP, the nurse -- that is nurse practitioner?

A Correct.

Q Only for the actual staging of the infiltrate. That is where this form assigns a job to the advanced people, the MD or the nurse practitioner; right?

A Right.

Q It says, who was notified date and time? They

wanted that filled out with some precision, write a note that says, I reported -- you know, reported to Dr. Mehta at 15-whatever, not rounded off; right?

A This would be supplement to the record. You first want it in the medical record. That is just a guideline, that you could -- a lot of times you see those hanging up at the bedside so that you can see the size of it and the time that it happened. That -- as a nurse, that document doesn't preclude me documenting it here first and making sure that this is the accurate record that I have.

Q When you say here first, what are you talking about?

A Into the medical record itself.

Q So where did Nurse Kim, herself, as the attending nurse, document any of this stuff except for that she notified Dr. Mehta?

A Ask me again what you are talking about that you want her to document.

Q Okay. Let's break it down. Where did she document the site of the infiltrate and do a little sketch with the baby of the extent of it?

A She documents where it was. There is no sketch. And as a nurse, I wouldn't have time to sketch that out if I wasn't an artist.

Q Ma'am --

A And that is not a part -- you can see that that doesn't have a medical record number on it. So that would be something she would need to go and grab out of a file, stamp it with the baby's name and insert it into the medical record. That page right there is just part of the policy.

Q I understand it is a sample; right?

A Yes. But you would have to have that document or where the nurse could go get it and insert it into the medical record. Because without a stamp of the baby's name, it wouldn't be added to the medical record.

Q Sure. Of course. But you are not saying she didn't have time after they pulled the infiltrate to do this, are you?

A That would not have been a priority for me. Taking care of the baby, taking care of the wound, doing what the baby -- the baby's care that was needed. So --

Q I understand. But let's just look at plaintiff's 3 for a second in terms of what she had time to do. After --

A What page are you on?

Q This -- I think is 0667.

A Okay.

Q After they pulled the IV at 3:00 -- sometime in the 3:00 p.m. range, there is no IV that she has to monitor, until the next nurse comes on. You see different

handwriting at 8:00 p.m.; right?

A There is no other IV that she needs to -- no.

Q So that took -- gave her at least some time that she would have spent watching the IV, some free time that she could have filled out the form, at some point that afternoon; true?

A She could have. But again our first priority is the baby. And I, personally, cannot see the relevance of that from the standpoint of -- you are being critical of her not drawing the baby's leg. You want her to take care of the baby.

Q Of course.

A And that is -- that is her first priority.

Q Sure. Let me clarify. If you grab one of these from the file, you put the stamp on it of the -- you know, it says Babygirl G__. And there is a thing that just lets you do that in seconds; right?

A Well, you have got to go to the nurse's desk -- the nurse's station to get it and you have got to have it stamped and go back to your bedside.

Q Okay. What is that, 2, 3 minute process?

A It is not that simple. Because you are leaving the unit, you are leaving your other babies you are watching as well.

Q How many babies was she watching?

A Either -- probably one or two more.
Q I want you to assume she only had one other baby.
A Okay. Then she is leaving the bedside of that baby, of Baby Raquel to walk and get that document.
Q They work as a team. The nurses --
A They do.
Q -- will relieve each other, say, hey, watch my baby while I have got to go grab an important document, they do that, don't they or they have got to do something?
A Yes, they do.
Q Now, this document does not ask her to draw a sketch. It asks her to simply mark on the existing sketch where the area is, how far it extends; right?
A She could have done that. But, again, it doesn't change the outcome and affect the baby's care.
Q Hold on a second.
MR. SPENCE: Your Honor, I object.
THE COURT: Asked and answered. Move on, Mr. Malone.
BY MR. MALONE:
Q And in terms of estimating the amount of infiltrated fluid, based on time of discovery, we don't have anything where she did that; right?
A You would estimate the amount of fluid based on the last hour or whenever it was discovered. You know the

IV rate. So, again, that would have been in discussion at the bedside with the doctor and the nurse. You know, what did you see happen? How was the IV? Those things happen in discussion, not necessarily that you are going to see in the chart. That is the important thing is that that communication happens at the bedside.

Q So it is not important to you that anybody, nurse or otherwise, estimate the amount of infiltrated fluid?

A I think you do in your mind or you do in the discussion, but as far as it being documented, we don't know, how much was infiltrated.

Q How much do you think was infiltrated in this case?

A I think it was less than an hour.

Q I thought you said earlier that it could have been a matter of 1 or 2 milliliters?

A It could have been.

Q And that would mean what 5 minutes, 10 minutes from completely normal to what we saw?

A In my experience, it does not take very much for there to be damage from TPN. I have even seen with starting an IV or checking for an IV function and just push a half ML and it blow up like this. So that is -- there is no way to know how much infused.

Q I'm sorry. Blow up with a permanent, lifelong

injury from --

A No. I am just saying as far as the amount of fluid, it looks like a lot when you know that you pushed just a very small amount because that leg is so small.

Q Okay. So the reason I am asking these questions here is that -- you say that the photo that dad took of the next day, early afternoon is not relevant to what the condition was on day one? Do you remember that?

A No, I am not saying that.

Q What were you saying? Because that is what I thought you said.

A What you see on the next day or the next day, is not always what you see the day that the infiltrate was discovered or the hour the infiltrate was discovered, because I have seen ones where you would -- you know, at -- I can remember one specifically -- and I told the nurse, we'll just have to watch it. I am afraid that we are going to have a very serious IV infiltrate and the next day it is totally gone. So there is no way with this population of babies and the fluids that we give them that we can estimate the amount of damage.

Now, I am not saying that the damage wasn't done, but there is no way to estimate.

Q I was trying to get to a more concrete point which is, I thought you rejected the relevance of dad's photo in

terms of trying to figure out how bad the damage was the day before because you thought it had to have gotten much worse in those 24 hours?

A It does get worse, because the tissue starts to die because that fluid has blocked the blood flow.

Q And it turns blue and then black?

A It is red and then it turns kind of blue, blackish and then whitish. And that happens in a sequence as you see with any wound.

Q And so how -- I mean, obviously, not every baby is the same. But you don't start getting this blue and black stuff, dead tissue for a long time, I guess, right, is that what you are saying?

A What do you mean by a long time?

Q Well, what would you think would be the minimum amount of time before you would get bluish and blackish cyanotic tissue?

A Bluish would be cyanotic, black means necrosis. So those are different stages.

Q All right. But take it to cyanotic, how long?

A You can see that in a matter of 3, 4 hours.

Q After the infiltrate is found and it is pulled?

A Yes, you could.

Q Okay. Let's look at that resident's note at Plaintiff's 8. And do you have it? Have you seen that

document before?

A Yes, I have.

Q Okay. And either 5:00 p.m. or 6:00 p.m., let's just skip down to the description of what was going on at that time at 3:00 p.m. Nurse Kim noted that the right lower extremity is edematous, erythematous with areas of white lipid-like infiltration and areas of blistering cyanosis denuded, epithelium on foot dorsum. Do you see that?

A Yes.

Q According to this, this is what Nurse Kim saw at 3:00 p.m., blistering cyanosis?

A She noted that it was edematous and red, with white lipid-like -- that would be the intralipids. The blistering and -- and the redness could be from taking the tape off. Because many times you can pull that skin off very easily. So when we talk about denuded epithelium. And then the cyanosis, some of it could be blue. And I am --

Q In three, four hours. I thought you said blistering cyanosis has been going on for three or four hours.

MR. SPENCE: Objection, Your Honor. He interrupted the witness. I think the witness was trying to answer.

MR. MALONE: I don't mean to --

THE COURT: No. Gentlemen, overruled.

Continue.

THE WITNESS: So this note is staying what the doctor said that the nurse -- or this may be what the doctor saw or the nurse told her or him, whoever it was.

BY MR. MALONE:

Q But it is timed in terms of the observation within the note at 3:00. That is according to what we are seeing here. This is the doctor reporting what the nurse told him or her, the nurse saw at 3:00. Am I right about that?

A I can see that with an infiltrate. And I could see it happening in a few minutes. Again, it is very independent as to what you see.

Q Okay. So when you said a few minutes ago that you would see cyanosis within three, four hours of the injury, now you are saying you can see cyanosis within, what, a few minutes?

A Well, again, you don't know the area. Was this a small area right there at the insertion site? There is no way to qualify that. That doesn't mean that the whole leg was blue, but you can see that as far as the pictures, that we saw the next day, when that skin has been damaged and the tissue damage. So, again, there is no way to qualify the amount of cyanosis. When you -- even when without an IV infiltrate, when you stick that needle in and you go a day later, four hours later and take that out, you could see

some blueness right there at the insertion site, because you have damaged the tissue. So, again, I can't qualify how much cyanosis they were seeing. Around the insertion site, yes, you could see a little cyanosis.

Q Okay. Let me move to a different topic. Let's talk about what was causing that puffiness at 2:00. I thought I heard in your direct that you listed basically only one possibility, which was the baby must have moved her foot and the tape got too tight and it swelled a little bit. And then Nurse Kim must have taken it off and then everything was okay. Is that basically correct?

A Taken what off, the tape off?

Q Taken the tape off, retaped it, something to that effect?

A We don't know if she retaped it. But that is not the only reason for puffiness. That is one of the causes of puffiness that you see with an IV in the extremity.

Q Well, when you first looked at this case and you had gone through all of the medical records, what did you think were the possible causes of puffiness at 2:00?

A With it being in a foot, my first thing with it being labeled puffiness, would have been that it was positional. And that it could be infiltrate, but most of the time with a foot, that is the first thing that you see is the puffiness because of the positioning.

Q That was it, you had no other thoughts when you first reviewed all of the records about the cause of the puffiness at 2:00?

A I said that it could have been the beginning of an infiltrate, but that would not have been my first inclination based on my experience of watching peripheral IVs in the foot.

Q The Vancomycin, did that play any potential role at 2:00?

A No. Because when Nurse Kim would have finished the -- it would have -- the infusion would have finished around 1:00, give or take a few minutes. She would have, you know, flushed the rest of the medication in. So at that point in time -- and there was no note that anything was wrong. So I didn't think at that point that the Vancomycin had anything to do with it.

Q That was after you had reviewed all of the records?

A Right. I mean, we know that Vancomycin can cause a little irritation in the vein. But everything looked like it infused well once the medication was --

Q I wanted to pin down. You didn't think when you first reviewed this this was a potential Vancomycin starting to irritate the baby's vein which, of course, would cause leakage; right?

A Any of the medications that we give can cause leakage of the vein. So, you know, as you are methodically thinking back step by step, we know that anything could be a source.

Q Well, ma'am, let's just back up for a second. So on Vancomycin, the way it would -- it would have worked to caused a potential problem here is irritating the inner lining of that vein in her ankle and then starting to cause some leakage into the surrounding tissue, if that happened; right?

A That is the potential, that Vancomycin can irritate the vein, yes.

Q And you rejected that here, you are saying?

A Rejected it?

Q As one of the reasonable possibilities?

A I didn't reject it. I would consider it, yes. But methodically when you are thinking about it and putting the steps together and me visualizing what the nurse was looking at, I could see all of those scenarios.

Q Okay. So if the nurse is doing her aspirating and flushing at 2:00, if the walls of the blood vessel downstream from the insertion site are starting to leak because they have been irritated by the Vanco -- are you with me so far?

A Go ahead.

Q If that were to happen, you could still have your tip of your catheter right in the blood vessel and you could aspirate and flush and everything would look fine but you would still be having some leakage?

A No, I disagree with that. Vancomycin is concentrated right at the tip. Remember, it is infusion with the TPN and intralipid. But on downstream, as you are talking about, it is now diluted with the blood as well. So if you saw any adverse effects from the Vancomycin, you would see it at the insertion site or right around it, not of the vein. I haven't seen that.

Q Okay. Well, downstream -- I didn't mean, you know, far downstream. But my point is -- was that -- the different point, which is if that Vanco was starting to make the walls leaky, you could still do aspirating and flushing and you would not detect that?

A No. If it is leaking, those vessels are very fragile, you would see that when you flushed.

Q If you flushed?

A When you flush, yes.

Q Okay. So let me just show you the -- your first report on this case at -- I just want to focus you on the top of the 1st paragraph.

THE COURT: Is that Plaintiff's 111?

MR. SCIALPI: 112, Your Honor.

THE COURT: 112, thank you.

BY MR. MALONE:

Q There are other reasons that R.G.'s peripheral IV site could have appeared puffy to Nurse Kim at 14:00, for example, the limb may have been lying in a dependent position. The manner in which the ankle was attached to the board may have given the appearance of puffiness. Or the previous administration of Vancomycin from 12:00 to 13:00, may have caused irritation to the integrity of the vein. That is all I wanted.

A Uh-huh.

Q So you -- you didn't say anything on your direct examination about considering Vanco, like you said here, and then eliminating it as a possible cause here. All you talked about was foot board taping; true?

A I don't think that I was asked about Vancomycin.

Q Ma'am, we have documentation of Vancomycin from 12:00 to 1:00; true?

A Yes.

Q We have no documentation of any -- of the baby's foot dangling down at 2:00 as that being the cause; true?

A We are not obligated to document that the foot was dangling down.

Q I am just asking you what we have documentation for versus what we don't have documentation for. We do have

the Vanco, we don't have the foot dangling.

A It is required to document medications, yes.

Q We don't have the foot dangling; correct?

A I don't know that I have ever documented that the foot was dangling.

Q Well, when you write your note about when the infiltrate started, one of the things you would say in your note was to the effect, saw some puffiness at 2:00, but that was from a tape and therefore concluded that it was -- that the infiltrate could not have started that early. That is the purpose of this whole note right here. And I am talking about the -- the special note that is in the policy. True?

A It was documented that the site was puffy. How she evaluated that and her steps and methodically evaluating that, that we don't document. We don't have time to put in those kind of notes.

Q This kind of note that you have no time to put in, the infiltrate documentation note in the Georgetown policy after the fact?

A It is documented in here, what happened, that the IV was infiltrated.

Q I am talking 2:00 here. Because here we are in a situation --

A At 2:00, we don't have an IV infiltrate, so I wouldn't be documenting to that.

Q Here is what I am trying to get at -- let's put ourselves on January 16th for a minute. Nurse Kim had this injury happen. She knows about the policy to give some flesh and bones to what had happened. And instead of writing a narrative, as this calls for, she walks away from the case and totally forgets everything. Is that acceptable medical care?

A I don't know what you mean by forgets everything.

Q This is so you don't forget what happened. You write it down the same day, you write a narrative, ma'am.

A I think we know what happened by the document, by the medical record. We know what happened.

Q We know there was taping at 2:00?

A Sure, if she had gone back and done that, but how would that have changed the course? What I -- what I want is her to be taking care of the baby, not making a small diagram of what the site looked like. And if she had, it wouldn't have -- it wouldn't have been as applicable the next day, because the site changes as the damage is done. So I know that everybody wants us to document and document and document, but we document as much as we have time.

Q Okay. And -- and if we don't document and something terrible happens, we just assume that best practices were followed?

MR. SPENCE: Objection, Your Honor.

THE COURT: Sustained, argumentative.

Come up here, Counsel.

MR. MALONE: I will withdraw, Your Honor.

THE COURT: Come up here, Counsel.

Ms. Hodge, please stand by the door.

(Conference held at the bench.)

THE COURT: Come up here.

MR. MALONE: I am almost done.

THE COURT: This is at least the second time we have dealt with that diagram. The last series of questions where you asked you asked before --

MR. MALONE: I am done with it.

THE COURT: All right. Thank you.

(End of bench conference.)

THE COURT: Thank you, Ms. Hodge.

MR. MALONE: May I just be excused for one -- to talk for a second?

THE COURT: Yes, sir.

BY MR. MALONE:

Q Just a couple other points. And I want to switch gears. You reviewed some medical literature that we submitted in this case; right?

A Yes.

Q You agree that Dr. Hermanson is an authority on peripheral IV infiltrations?

A I think that he has experience in it, yes.

Q You would cite his article on the subject as an authoritative article; true?

A Yes, it could be.

Q Not just could, you said in a deposition 10 years ago in another case that you think Hermansen's is an authoritative article; true?

A It is in the literature and it would be one of the ones you could read and I think that you can take points from it, yes, to guide your practice.

Q Let's just show --

THE COURT: Okay. There is no inconsistency here.

MR. MALONE: It is not inconsistent. It just about --

THE COURT: Come up here, Counsel.

(Conference held at the bench.)

MR. MALONE: I am just going to ask her -- I wasn't asking inconsistency. I was just asking her to agree that this is an authoritative statement.

THE COURT: She did. I don't know why you are --

MR. MALONE: We haven't displayed this particular quote before with any witness.

THE COURT: Okay. But let me just -- as I understand it, if you ask the witness a question and the question gets the answer that you want, you don't get to

flash anything before the witness. Have you not asked --

MR. MALONE: I have to ask her what it is about his statement that she agrees with. And so I just have to show her that quote, that is all.

THE COURT: Okay.

MR. SPENCE: Can he show to her perhaps in paper format.

THE COURT: No. You guys have been showing up there --

Come up here. We are not done yet. I'm sorry we just need you for one more minute.

What other witnesses do you have today?

MR. SPENCE: We have no other witnesses for today.

THE COURT: So the expectation is that once we are done with redirect and we start working through jury instructions.

(End of bench conference.)

THE COURT: Thank you, Ms. Hodge.

BY MR. MALONE:

Q So just quickly in terms of what he says that you agree with as authoritative advice, showing you a quote from his article, "The best method of avoiding permanent extravasation injury resides with not with treating the injury, but in preventing it. Infiltration injury can be reduce by providing good visibility of catheter insertion

site, performing frequent hourly or more inspections of the site and immediately removing any catheter if there is a concern of a possible infiltration or phlebitis."

You think that is good advice?

A Yes.

Q And, finally, in terms of the one-hour rule, isn't the reason that we have the one-hour rule that we can protect babies if we are vigilant within that hour and we pull it out if there is any doubt. True?

A It is a way that we can look at the babies within a timely manner. And we, really, have no idea when an infiltrate happens. So the standard has become hourly in this country.

Q If a lot of babies were getting injuries, bad ones, from infiltrations, in 15 minutes, we would have a 15-minute rule or 30 minutes we would have a 30-minute rule, wouldn't we?

A I don't know that you can say that. Because, again, we don't know how long it takes for an IV to infiltrate. And, you know, staff would have to change if I needed to look at an IV every 15 or 30 minutes. We know that hourly is our best practice right now, has been for several years. What it will be in the future, I don't know. But it is the best practice we have right now.

MR. MALONE: Thank you. Nothing further.

THE COURT: Okay. Thank you.

Okay. How much time do you need?

MR. SPENCE: I will probably -- it is always tough to estimate, probably 20 minutes, Your Honor.

THE COURT: We are going to take a lunch break. See you at five after 2:00. Okay. Just so you know, after we are done with redirect, you will be excused for the rest of the day. The attorneys will start working on jury instructions. Okay.

So just to give you a heads up, when we are done with redirect, you will be excused until Monday. So five after 2:00. Thank you.

(The jury left the courtroom.)

THE COURT: Thank you, Ms. Hodge.

If there is any exhibits --

Counsel for both parties, if there are any exhibits that you gave Ms. Hodge, please take them back.

MR. SPENCE: Yes, Your Honor.

THE COURT: Thank you. I will see you at five after 2:00.

MR. SPENCE: Very good. Your Honor.

THE COURT: Thank you.

(Recess taken.)

THE DEPUTY CLERK: Now, recalling Gambino versus MedStar Georgetown, civil action 1884, year 2016.

All parties are present.

MR. SPENCE: If I need to use your table is that okay?

MR. MALONE: Sure.

(The jury is seated.)

THE COURT: All right. Welcome back.

Please have a seat, Ms. Hodge.

And we'll proceed with your redirect.

MR. SPENCE: Thank you, Your Honor. May I proceed?

THE COURT: Yes, sir. Thank you.

REDIRECT EXAMINATION

BY MR. SPENCE:

Q Ms. Hodge, good afternoon.

A Hello.

Q I am going to try to go through this top to bottom. So let's go back to the beginning of Mr. Malone's cross-examination. One of the first things he asked you about are your reports. Remember being asked those questions?

A Yes.

Q And he asked you some questions about whether you committed to expressing the opinion that Ms. Kim complied with the standard of care before reviewing her deposition. Remember being asked about that?

A Yes.

Q In your experience, when you have reviewed cases as an expert witness, how often is it that at the beginning of the case there are no depositions for you to read?

MR. MALONE: Objection. May we approach?

I have got a specific reason.

(Conference held at the bench.)

THE COURT: Mr. Malone, we just got back from lunch. You are already objecting?

MR. MALONE: I know. The deposition was taken one week before her report.

THE COURT: Which report?

MR. MALONE: Kim's, before the first report. So there is plenty of time -- I mean, they would have had to get a rush transcript --

THE COURT: Yeah.

MR. MALONE: I don't want to have to do something on recross --

THE COURT: No, you are not getting recross.

MR. MALONE: But why should he get into a misleading thing now? That is all I am saying.

THE COURT: He is not asking about this case. He is talking in general, if he were talking about this case --

MR. MALONE: Okay.

(End of bench conference.)

THE COURT: Objection overruled.

MR. SPENCE: Thank you, Your Honor.

BY MR. SPENCE:

Q So Ms. Hodge, when you have served as an expert witness at the beginning of the case when you get materials for the first time, how often is it that there are no depositions of the witnesses for you to review at that point in time?

A I would say most of them I only have the medical record.

Q All right. Now, when there is a medical malpractice lawsuit and a nurse's care is at issue, in your experience, who conducts the deposition, the lawyers who represent the patient and the patient's family or the lawyers who represent the nurse and the hospital?

A The -- as far as a fact witness like a nurse?

Q Yes, ma'am.

A It is my understanding the plaintiff requests that deposition.

Q All right. In -- what I am driving at here, is if the deposition -- in other words, here is --

THE COURT: Come up here, Mr. Spense.

Ms. Hodge, please stand by the door.

Mr. Malone.

(Conference held at the bench.)

THE COURT: What are you driving at?

MR. SPENCE: I have marbles in my mouth. I am just going to ask her that she -- Ms. Kim did not testify, you know, the way she thought in the deposition, she could have withdrawn as an expert witness. So I am just going to point that out.

THE COURT: Speculation.

MR. SPENCE: No, no, I don't think it is. If she found that what we told her -- I can fill in the picture a little bit better. Mr. Malone asked her if the lawyers told her about what the -- what Ms. Kim did and that was in her original report. What I want to point out is she would have changed her opinion after reading Ms. Kim's deposition if it was not compatible with what she was told at the beginning of the case. That is what I am trying to get at.

MR. MALONE: She already said that in her cross.

THE COURT: That doesn't mean he can't ask. As long as that is as far as you go, but nothing beyond that.

MR. SPENCE: I apologize.

THE COURT: Thank you.

(End of bench conference.)

THE COURT: Thank you, Ms. Hodge. Please retake the witness stand.

BY MR. SPENCE:

Q Let me get the marbles out of my mouth and restart

this. Let's go to 15A, the report of Ms. Hodge. And there is a sentence there that --

MR. MALONE: I'm sorry.

THE COURT: Do you need to approach?

MR. MALONE: I -- yes. Yeah, sure.

THE COURT: We will get through this, don't worry. Okay. Thank you, Ms. Hodge.

(Conference held at the bench.)

MR. MALONE: He can't start showing stuff --

THE COURT: Wait. Wait.

MR. MALONE: You can't start showing stuff that I didn't deal with her on.

MR. SPENCE: You read this sentence, it is acceptable the nurse practice -- you definitely read it.

MR. MALONE: Okay. I don't just want the whole --

MR. SPENCE: I am not going to go everything else.

(End of bench conference.)

THE COURT: Okay. Ms. Hodge, thank you.

Please focus the image to the appropriate segment.

MR. MALONE: My I show Rick the sentence, Your Honor. It will speed things up I think.

THE COURT: Sure.

MR. SPENCE: I appreciate everyone's patience.

MR. MALONE: I did not ask her about that sentence. I will show you what I asked her about.

(Pause.)

BY MR. SPENCE:

Q Thank you very much everyone for the patience.

During Mr. Malone's cross-examination he asked you about this sentence from your original report: "Nurse Kim's standard practice of checking performing a saline flush and checking for a blood return and observing the site more frequently when the IV was noted to be puffy, was good clinical practice." Do you remember him asking you about that?

A Yes.

Q Do you remember him asking you questions about whether that was found in the medical records?

A Yes.

Q And then he asked you whether you were basing your understanding about what Ms. Kim did and it was on the basis of what the lawyers told you. Do you remember him asking you about that?

A Yes.

Q So what I am driving at is this: You took a leap of faith and trusted a lawyer about what Ms. Kim did for purposes of your original report, is that --

MR. MALONE: Objection; leading.

THE COURT: Sustained.

BY MR. SPENCE:

Q All right. When you did your original report, your understanding about what Ms. Kim did for purposes of that sentence was based -- was that based on something you learned from my law firm?

A Yes. And I'd like to say that I have been where I have to go and talk to our hospital's attorney and I know the process that you interview the nurse or the people that are involved. In discussion with your firm, they explained Nurse Kim's practice and what she said she did.

Q All right. Now, here is my question, my next question. There came a time when you reviewed Ms. Kim's deposition testimony; correct?

A Yes.

Q If you had learned from reviewing her deposition transcript that she did not follow the same practice that you were advised of when you prepared this report, would you have told us, as the lawyers, that your -- what would you have told us about your opinions?

MR. MALONE: Calls for speculation.

THE COURT: Sustained. You need to rephrase it. As currently stated, it calls for speculation.

BY MR. SPENCE:

Q If you learned from your review of Ms. Kim's deposition testimony that she did not follow the steps that had been outlined for you by my office and you felt the

steps that she followed did not satisfy the national standard of care, would that have had an impact on your opinions in this case?

A I would have considered it. I would also know that puffiness can be a sign of positioning. So I think I remember telling your office that, I thought that she went above, because not every time that you saw puffiness would you necessarily flush the IV site, you would continue to watch it.

Q I am asking you something slightly different. I want you to assume you reviewed the deposition transcript and you reviewed Ms. Kim's testimony and you found that what she did was completely inappropriate. What would you do then as an expert witness in terms of your commitment to the case?

A Well, I mean, I would like I said before, I would say I can't take the case. I have done that before --

Q Okay.

A -- when I get the materials.

Q I apologize if I took forever to get to that point.

Now, next, Mr. Malone asked you some questions about your understanding of the nature of Raquel's injuries when you conducted your initial review of the case. Do you remember him asking you questions about that?

A Yes.

Q Do you remember him asking you about whether you had photographs of Raquel when you conducted your initial review of the case?

A Yes.

Q If I understand your testimony correctly, you did not have photographs; is that fair?

A Not that I remember, no.

Q All right. Did you have available to you the complaint that Mr. Malone's law firm filed, the legal complaint?

A Yes. I think that came with the medical records.

Q I am showing you what has been marked as Defense Exhibit number 57. Does that refresh your memory as to what you would have received?

A Yes.

Q All right. All right. If I may, Rick, I am going to need your help with the ELMO very briefly.

MR. MALONE: May I see what you are putting up there?

BY MR. SPENCE:

Q Did you -- directing you to page 1 of the pages of the complaint. Did you understand from your review of the initial complaint when you got the materials that this concerned a child who had sustained a full thickness burn,

that had full thickness damage to the skin of the foot and the ankle?

A Yes.

Q Did you understand that the scar caused her skin to contract and her foot to invert so that she had difficulty standing?

A Yes.

Q Did you also review -- the members of the jury have seen the resident's note from Dr. Avery. Did you also have available to you the -- this document that the jury has now seen several times during the course of the trial?

A Yes, that is in the medical record.

Q Did you understand that this case concerned a stage 3 to 4 IV extravasation injury?

A Yes.

Q Did you understand, ma'am, that this was a case involving some very serious injuries?

A Yes.

Q Now, Mr. Malone asked you some questions about Dr. Mehta's deposition. Do you remember him asking you about that?

A Yes.

Q Do you remember seeing in the medical chart any documentation by Dr. Mehta about the specific time that he arrived at the bedside?

A No.

Q All right. Do you -- let me show you -- Mr. Malone presented you with the deposition of Dr. Mehta?

MR. MALONE: I have a 706 objection.

THE COURT: Okay. Come up here.

Ma'am, thank you.

(Conference held at the bench.)

MR. MALONE: The rule I am talking about, the common variant is that you can show a witness on cross-examination materials that she has relied on out of court. It does not allow redirect on, you know, other things. If I said something wrong about what was in there, I think it would be fair.

MR. SPENCE: Well --

THE COURT: Where are we?

MR. SPENCE: First matter is this: I just want to establish the date of the deposition.

THE COURT: How is that relevant?

MR. SPENCE: Because it goes to the next point. The next point is that Mr. Malone cross-examined her on Dr. Mehta's testimony that he arrived at the bedside, around the time of the Vitrase order, but he also says, I think to point out to put into context that he does not have a good memory of that. And I think it is very, very important that I should be able to briefly conduct that part of the

examination.

THE COURT: What he is basically saying is under the rule of completeness, because there was reference in that transcript that would help to put in the appropriate context the portion that you cited that he would like to provide --

MR. MALONE: If he would publish just that portion, fine.

MR. SPENCE: I will. Thank you, Your Honor.

THE COURT: Thank you.

(End of bench conference.)

THE COURT: Ms. Hodge.

The objection is overruled. But you need to proceed as we discussed at sidebar.

MR. SPENCE: Yes, Your Honor. Thank you.

BY MR. SPENCE:

Q Ms. Hodge, I am presenting you with the deposition of Dr. Mehta. Just tell the members of the jury, what is the date of the deposition?

A November the 3rd, 2016.

Q Almost four years after the IV extravasation; correct?

A Yes.

Q Now, you read the deposition as part of your working on the case; correct?

A Yes.

Q Now, I want to direct your attention to page 89 of the deposition. Rick, if you would bring that up, please.

THE COURT: What line, please?

MR. SPENCE: Beginning at line --

THE COURT: Please focus it on the pertinent lines.

BY MR. SPENCE:

Q Line 11, please and down to 22.

Question -- this is a question by the plaintiff's attorney. Correct.

Question: "What I am trying to do is pinpoint as closely as possible -- as I possibly can, what time the IV -- what time you were at the bedside and what time the IV was removed."

Answer: "I think for lack of clearer memory about the exact minute, I would have to say that pretty close to just before the timing of the ordering of the -- of the Vitrase."

Question: "So you think probably closer to 15:25 than 15:00?"

Answer: "I would imagine so, but if you asked me to swear and take an oath, I don't know if I can."

Did you read that when you read this deposition over?

A Yes.
Q All right. Now --
THE COURT: Are we done with the transcript?
MR. SPENCE: Yes, we are. Thank you, Your Honor.
THE COURT: Okay. Thank you.
BY MR. SPENCE:
Q Now, certain steps would have to be followed to place an order for Vitrase; correct?
A Yes.
Q Dr. Mehta had to arrive -- had to come to the bedside. That is what he said he did?
A Yes.
Q Do we know where when he was contacted about Raquel's case?
A No, we don't.
Q Do you know whether he was immediately working on another patient or whether he was in his office, something like that?
A No. I don't think anyone remembers.
Q Do you have an understanding about whether Dr. Mehta assessed Raquel when he got to bedside?
A I think that he did.
Q Would that -- would that take place before --
THE COURT: Okay. Just a second, please.
Come up here.

Ma'am, please step down.

(Conference held at the bench.)

THE COURT: You are doing the same thing that Mr. Malone could not do, which is essentially to use her to reconstruct events that she did not see. If you can anchor it in the records, please do so, but otherwise this would be an inappropriate line of examination.

MR. SPENCE: I will make better questions.

THE COURT: Thank you.

(End of bench conference.)

THE COURT: Thank you, ma'am. If you could please.

It is not penance, okay? You can turn around and face this way.

THE WITNESS: I am having to stand in the corner.

THE COURT: Okay. Thanks.

BY MR. SPENCE:

Q Did Dr. Mehta assess Raquel before or -- in terms of the time -- the order for Vitrase. Did his assessment occur before or after he ordered the Vitrase?

A I think that it would have happened before his assessment would have happened, because you wouldn't order Vitrase until you knew what the site looked like.

Q Let's go to Defense Exhibit number 1, page 010132 and scroll down please, Rick. See where it says Vitrase,

1ML, highlight that sentence, please -- was injected --

Says "Vitrase 1ML was injected around the edges of the site to minimize injury after getting informed consent from mom."

Do you see that?

A Yes.

Q And so before the Vitrase was administered, was there any discussion with Ms. Gambino?

A It says that there was in the form of getting consent letting her know that they were going to infuse that.

Q Would that have -- in other words, did that occur before or after the Vitrase was actually ordered?

A Ask me that again.

THE COURT: It is speculation.

Next question. That is speculation.

BY MR. SPENCE:

Q Let's go to the Vitrase order 010 -- Defense Exhibit 1010408. Who placed the order for the Vitrase?

A It was one of the other doctors. I am assuming a resident or a fellow.

Q Did Dr. Mehta place the order?

A I don't think his name is on there, no.

Q So for that order to be placed, would it make sense that there was communication between Dr. Mehta and

this --

THE COURT: Sustained.

Again, no.

BY MR. SPENCE:

Q All right. Does the Vitrase order reflect the time that the PIV was pulled or discontinued?

A No.

Q Mr. Malone asked you if you reviewed the deposition of Ms. Shirley Goss in this case. And she is the grandmother of R__G__?

A Yes.

Q Does the timing that Dr. Mehta appeared at the bedside necessarily reflect the time that the PIV was pulled or discontinued?

A No.

Q I would like to take you to page 23 of Ms. Goss' deposition testimony beginning at --

MR. MALONE: Whoa. Excuse me. May we approach?

THE COURT: Yes, sir.

Thank you, ma'am.

(Conference held at the bench.)

THE COURT: Okay. What are you doing?

MR. SPENCE: I am trying to refute the plaintiff's argument --

THE COURT: Which is?

MR. SPENCE: -- which is that the PIV was not discontinued until 3:25, based upon Dr. Mehta's saying that he didn't get to the bedside until close to 3:25.

THE COURT: There is a difference between countering the plaintiff's argument and how you are using the transcript. How is it appropriate, number 1? I want you to tell us how it is that you intend to use this transcript. And afterwards, number 2, why is it appropriate for you to use it that way?

MR. SPENCE: I think the purpose of it is to show that she has a factual basis to conclude that Ms. Kim removed the PIV when she discovered the IV infiltration and that it is -- so I think that is the purpose.

THE COURT: Let's assume that is the case. Tell me why that is appropriate for you to do.

MR. SPENCE: Because it refutes the insinuation that is being made on cross-examination that the PIV did not get discontinued until close to 3:25.

THE COURT: When Mr. Malone made the insinuation, was he relying on things that Ms. Goss talked about?

MR. SPENCE: No. He was relying --

THE COURT: Okay. Then you cannot use the transcript. You can only use the transcript if that is where he anchored his point. Okay?

MR. SPENCE: All right.

(End of bench conference.)

THE COURT: Thank you, ma'am.

Please retake the witness stand.

Objection is sustained.

BY MR. SPENCE:

Q If Ms. Kim has testified that when she discovered the IV infiltration, she removed the PIV, would that be something that would be acceptable and within the national standard of care?

A Yes.

Q All right. Mr. Malone asked you a series of questions about documentation. I don't see the poster board here but the jury knows it very well. I don't think we need to put it up again. It is Georgetown policy that they have seen with the word documentation and a list of things that need to be done. Do you remember seeing that in your review of the case and on your cross-examination?

A Yes.

Q Would satisfying all of those different documentation requirements have prevented the IV infiltration and extravasation from occurring?

A No.

Q All right. Did you see the resident's note that I -- do you remember this Defense Exhibit number 1, page 010134, did you review this in your review of the case?

A Yes.

Q Did this document satisfy -- with the exception of the diagram of the baby that Mr. Malone showed you, did this document satisfy the documentation requirements under the Georgetown policy?

A Yes. It is very detailed.

Q All right. Mr. Malone asked you some questions about your report where you said that Vancomycin can irritate a vein. Do you remember him asking you that near the end of his examination?

A Yes.

Q Let's assume for the sake of discussion -- let's just assume that Vancomycin was irritating the vein sometime between, 12:00, noon and 1:00 p.m. or even up to 2:00 p.m. on the afternoon of January 16, 2013. My question is this: Did Ms. Kim properly evaluate the PIV site at 1:00 p.m.?

A Yes.

Q All right. If she -- if she -- if she flushed the line at 1:00 p.m. when the Vancomycin infusion stopped, and if the Vancomycin was causing not only irritation, but leakage from the vein, do you hold an opinion to a reasonable degree of nursing probability about when that flushing would have detected a problem?

A Yes, I think it would have.

Q All right. If she -- if at 2:00 p.m., if she

aspirated and flushed the line at 2:00 p.m. and if we assume for the sake of discussion that the Vancomycin was irritating the vein and also causing leakage, do you hold an opinion, again, to a reasonable degree of nursing probability, about whether or not aspiration and flushing at 2:00 p.m. would have detected any problem?

A Yes, I think that it would have.

Q And just so the record is clear, what problem do you think would have been detected at 1:00 p.m. from flushing and from aspiration and flushing at 2:00 p.m.?

A You would have seen more swelling, like we discussed earlier that it doesn't take much to see that in a baby's vein, tissue around it, and most likely redness if the Vancomycin would have irritated the vein.

Q What would the significance of all of those findings have been?

A That she would have determined that it was infiltrated.

MR. SPENCE: Very good. Thank, you ma'am. I think you are free to go back home. So thank you.

THE COURT: Thank you.

THE WITNESS: Thank you.

THE COURT: Have a good afternoon.

Counsel, please approach.

(Conference held at the bench.)

MR. SPENCE: Excuse me, Your Honor.

THE COURT: All right. So at this point are we ready to excuse the jury and proceed with jury instructions?

MR. MALONE: Yes.

THE COURT: We can start Monday at 9:30. So I will let them know that they need to be here at 9:30. Okay.

MR. SPENCE: Okay.

(End of bench conference.)

THE COURT: All right. We are done with your involvement in proceedings for the week. Like I said, we will remain here working on the jury instructions that we will give you before you begin to deliberate. We will resume this process of presenting the evidence to you at 9:30, so please be here Monday for us to bring you into the courtroom and present additional testimony for your consideration. Please don't discuss this case with anyone. Have a good weekend.

A JUROR: Thank you.

(The jury left the courtroom.)

THE COURT: Okay. Everybody please have a seat. Does everybody have a draft jury instructions that we compiled?

MR. MALONE: Yes.

MR. SPENCE: Yes, Your Honor. I just need a second to get them out.