(Thursday, February 9, 2017)

P R O C E E D I N G S

(Defendant present in the courtroom.)

THE COURT: Okay. Let's get going.

THE BAILIFF: All rise.

(Members of the Jury enter the courtroom.)

THE COURT: Thank you. Please, be seated.

State, call your next witness.

MISS SHUGHART: State calls Dr. Robert Ippolito.

(Witness sworn by the Court.)

THE COURT: Proceed.

ROBERT IPPOLITO, MD,

the witness hereinbefore named, having been duly sworn by the Court, testifies under oath as follows:

DIRECT EXAMINATION

BY MISS SHUGHART:

Q. Doctor Ippolito, can you hear me okay?

A. Yes.

Q. You can hear everything okay?

A. Yes.

Q. All right. Perfect. Can you introduce yourself to the jury, and tell them what you do.

A. Yes. I'm Robert Ippolito. I've been a surgeon for 41 years. I've been chief of surgery in many

institutions in Dallas. And I was chief of surgery at the time that these matters occurred.

Q. Can you tell the jury a little bit about your background and training.

A. Yes. I'm a reconstructive plastic surgeon. I do mostly surgery of the hand and upper extremity. I fellowship-trained in hand and upper extremity surgery. I do a lot of nerve surgery of the upper extremity and reconstructive surgery.

Q. Have you been on hospital boards and committees, and things like that?

A. Yes.

Q. Tell us a little bit about those.

A. Basically, been at Medical City for over 20 years. I've been part of the committees there and was chief of surgery at the Kindred Hospital on Greenville Avenue in Dallas. I've participated numerous times on different committees, on quality issues.

Q. How does one become the chief of surgery?

A. It's elected by the other surgeons to be chief of surgery.

Q. What are your duties, as chief of surgery?

A. You have to be a patient advocate and, at the same time, a doctor's advocate. I have to be balanced, and make sure that the bylaws of the hospital are followed.

Q. Okay. And are you keeping an eye on all of the surgeons?

A. Well, you know, rarely do we have any problems with the other surgeons. As I said, I've been a surgeon for many years and there's been a few occurrences here and there. Most of the times, we don't have any problems with our fellow doctors.

Q. How did you come to know Dr. Christopher Duntsch?

A. We had one encounter in the operating room at Dallas Medical Center.

Q. Can you tell us about that.

A. Yes. I was called by the then director of medical staff, Mr. Russell. Apparently, Dr. Duntsch wanted to do a craniotomy on patient Brown. He had no privileges for craniotomy.

At the same time, Ed Posey, the director of surgical services, called me and told me that the hospital had no equipment to do a craniotomy. We didn't have anything available for that kind of surgery, because we didn't do any cranial surgery.

Q. Okay. And so, as this information is coming in, what are you doing with it?

A. Well, basically, I had to inform, very politely, Dr. Duntsch that the procedure cannot be done at Dallas Medical Center for two reasons: one, we didn't have the

equipment; and, two, we didn't have the privileges for that procedure.

Q. And when you say you didn't have the privileges, what do you mean "we didn't have"?

A. Well, when a surgeon applies for privileges at the hospital -- any hospital -- there's a list of privileges that you ask for, based on your experience and what you have done in the past. And there's little boxes that you check for procedures.

And that particular box, craniotomy, had not been checked by Dr. Duntsch.

Q. Did you pull the records, where he was asking for his privileges?

A. Did I what?

Q. Did you pull them out of the file?

A. No. Actually, Russell came to me with the file.

Q. Okay. So Russell showed it to you?

A. Yes.

Q. And you were able to confirm that he did not have privileges for a craniotomy?

A. That is correct.

Q. And he hadn't even applied for them?

A. No.

Q. And was there anything on record showing that he had ever done a craniotomy before?

A. None, whatsoever.

Q. What about the hospital, did the hospital's bylaws allow for this procedure to happen?

A. No. In other words, if a surgeon has no privileges in one particular area, he cannot do that procedure.

Q. Okay. And what happens, if the hospital allows a surgeon to do an operation he doesn't have privileges for?

A. It's a violation of the rules, of the bylaws.

Q. Okay. Can the hospital get in trouble for that?

A. Yes.

Q. Did you go into the surgery that the Defendant was operating, at some point?

A. I went in the operating room complex, and I briefly talked to Dr. Duntsch. It was a quiet conversation. I had not met Dr. Duntsch before.

You know, to me, he was just a peer -- a peer doctor, another surgeon. And I just informed him, you know, this is the situation: "Look, we have no equipment and you have no privileges. I think it's better off to transfer this patient elsewhere to get the surgery done, period."

Q. What did he say?

A. I don't think his reaction was favorable, if I would say.

Q. What did that look like?

A. He was kind of agitated.
Q. Was he giving you some push back?
A. I honestly don't remember.
Q. Okay.
A. I do remember that his response was not favorable.
Q. Okay. And did you have to kind of put your foot down and tell him this wasn't happening?
A. That's really not the role -- no, I didn't do that. That's not the role of the chief of surgery.
We're here to protect the patients and, at the same time, make sure that the doctors are following the bylaws.
Q. Have you ever had to go into an operating room and talk to a surgeon like that before?
A. No.
Q. Okay. Was it necessary to do this craniotomy at your hospital, right then and there?
A. I'm not a neurosurgeon, so I really can't answer the question. That's a question for a neurosurgeon.
Q. Were there other hospitals in the area that could handle this sort of thing?
A. Yes.
Q. And was it possible to transfer the patient?
A. Yes.
Q. Can you tell the jury a little bit about what a physician should be doing, if they have a patient who's in

Ms. Brown's condition.

A. Who is in what?

Q. What should a doctor do, if they have a patient who's not doing well, like Ms. Brown?

A. I think he's obligated to attend to the patient immediately.

Q. Okay. Should he be leaving her?

A. No.

Q. If he decides he's going to leave her and go into another operation, what should he do?

A. Well, the minimal that you can do is call a colleague in the same specialty and make sure that the colleague or another peer in the same specialty delivers care on an emergency basis.

Q. So he would have needed to call another neurosurgeon?

A. That's correct.

Q. Okay. If he just had the intensivist watching over his patient, is that good enough?

A. I don't think so.

Q. Is it okay, when you have a patient in Ms. Brown's condition, to leave and go operate on another elective patient?

A. No.

Q. When you went into the surgery to talk to the

Defendant, did you also see Dr. Benjamin Kim?

A. Yes.

Q. And he was the anesthesiologist, right?

A. That's correct.

Q. And when y'all were talking about whether he -- the Defendant should do a craniotomy, how was Dr. Kim acting?

A. I've known Dr. Kim for a long time. He's a well-respected anesthesiologist. He was very concerned about this plan.

Q. Okay. Did he indicate to you that he did not think the Defendant should do a craniotomy?

A. That is correct.

Q. Did you take that into account, in making your decision at all?

A. Yes.

Q. Did the Defendant ever come out of the surgery and talk to you?

A. I think I talked to him briefly, when he was out of the operating room.

Q. Okay. So he came out, and you talked to him out there?

A. Right.

Q. And then later, did you go back in and talk to him?

A. I went in to talk to Dr. Kim, because Dr. Kim asked me to talk to him.

Q. Okay.

A. He sent a nurse out, asking me to go in briefly and talk to him.

Q. Okay. Is there anything else that happened during that time frame?

A. Not really.

Q. What about after the Defendant finished his surgery, did somebody ultimately transfer Ms. Brown somewhere else?

A. I believe the patient was transferred to Zale Lipshy, either the same day or the following day.

Q. Okay. And what about the other patient, the one he had been operating on, what happened with her?

A. Ms. Efurd?

Q. Ms. Efurd, yes.

A. I got a call from the chief of radiology informing me that two screws had been misplaced.

At the same time, I called Dr. Henderson, a neurosurgeon, to review the x-rays and examine the patient. As you know, that's an emergency. That needs emergency care. Two foreign bodies are placed incorrectly, it can cause extensive damage. So it required immediate attention. So I called Dr. Henderson, and he kindly came in and saw the

patient.

Q. Okay. Did you also talk to the OR director, Ed Posey?

A. Yes.

Q. Okay. How did that go?

A. Well, he had told me there's concerns about these foreign bodies, these two long screws, in the wrong place.

Q. Okay. So he had also saw the screws?

A. Yes.

Q. So the radiologist and Ed Posey are calling you?

A. Yes.

Q. And did you look at the images yourself?

A. Yes.

Q. And what did you think about those images?

A. They were basically placed incorrectly. They went through soft tissues, probably pressing on nerves.

Q. And was that pretty obvious to you?

A. Yes.

Q. And, you're not a neurosurgeon.

A. I'm not a neurosurgeon, no.

Q. Okay. So why did you call Dr. Henderson?

A. I felt that -- again, as the chief of surgery and a patient advocate, I felt the patient needed immediate emergency care.

Q. Dr. Henderson, do you trust him?

A. Yes.
Q. Is he a good surgeon?
A. Excellent.
Q. Who is in charge of the operating room?
A. Director of surgical services is in charge, as far as, you know, running the nurses, the techs, the equipment.
The surgical department, ultimately, is responsible for the well-running of the entire complex.
Q. Okay. What about in this specific surgery, who was the leader of the surgery?
A. The surgeon.
Q. Okay.
A. We call it the "captain of the ship".
Q. And everybody else works with him?
A. That is correct.
Q. But the surgeon gets to make the final decisions?
A. He's ultimately responsible for everything that happens in the operating room.
Q. If a physician has a patient in the hospital, are they supposed to be easily reachable?
A. Yes.
Q. Okay. How quickly are they supposed to respond?
A. I think there's a lag time of -- I'm not sure if it's 15 or 30 minutes that you have to reply, once they get in touch with you.

Q. And all the doctors know that they're supposed to be reachable?

A. Yes.

Q. Do you have much to do with the credentialing process?

A. No.

Q. When a physician is coming into the hospital, do you review the papers?

A. I review -- as chief of surgery, I review what the file has, in terms of past experience, training, medical school, so on and so forth.

Q. And then what do you do with that information? Do you have to sign off on it or anything?

A. Yes.

Q. And, in this particular case, the Defendant had temporary privileges for this week?

A. Yes.

Q. Okay. And how did that week go?

A. I believe, in order to get temporary privileges, the chief of medical staff office has to call by phone the hospital where the surgeon had previously worked. The hospital or hospitals.

So, if he worked in many hospitals, he has to call the responsible person at those hospitals and have a phone conversation to verify that he's a bona fide surgeon, you

know, and give us appropriate information on the background.

Q. Okay. And, ultimately, your hospital gave him the temporary privileges.

A. Based on the Russell information, yes.

Q. Based on the info that y'all had kind of started the background research.

A. Right.

Q. Did you revoke his privileges pretty quick?

A. Yes.

Q. And what did you do that based on?

A. Again, based on the two patients that had been operated at our facility: Ms. Brown and Ms. Efurd.

I decided to discontinue the privileges for Dr. Duntsch, until further investigation.

Q. I mean, those were pretty bad outcomes, weren't they?

A. Very serious, negative outcomes. Yes.

Q. Have you seen anything like that, in your days as a surgeon?

A. Not in 41 years.

Q. I'm going to show you State's Exhibit 102. Do you recognize that?

A. Yes.

Q. Okay. Is that your termination letter?

A. Yes.

MISS SHUGHART: We'd offer State's Exhibit 102, part of the credentialing file, which is part of State's Exhibit 90.

MRS. LEHMANN: Just our 404(b) objection, Judge.

THE COURT: Overruled. Admitted.

Proceed.

Q. (By Miss Shughart) Dr. Ippolito, if the jury were to look closely at this paper, what date did you revoke his privileges on?

A. It's dated July 27th, 2012.

Q. And what does it say that's based on?

A. It's based on concerns of management of the care of the following cases: Ms. Efurd and Ms. Brown.

Q. Okay. Thank you. Did the Defendant have other surgeries scheduled at your hospital?

A. Honestly, I don't remember.

Q. Okay. Did the Texas Medical Board eventually contact you?

A. The who?

Q. The Texas Medical Board.

A. There was a person from the Texas Medical Board that talked to me and the other doctors that were involved with some of these cases.

Q. Okay. And did the Texas Medical Board agree with

you suspending his privileges to quickly?

A. They were very, very happy of my management.

MISS SHUGHART: We'll pass this witness.

CROSS EXAMINATION

BY MRS. LEHMANN:

Q. Good morning, Doctor.

A. Morning.

Q. Can you hear me okay?

A. Yes.

Q. Okay. When did the Texas Medical Board come to you and talk to you and these other doctors?

A. It was in 2012. But, I don't remember. I remember being called by the CEO, and I met the lady from the Texas Medical Board.

Q. Okay. The CEO being Raji Kumar?

A. Do what?

Q. You said you remember hearing from the CEO. Is that Raji --

A. I was called by administration there was a person from the Texas Medical Board in the office that wanted to talk to me.

Q. Okay. And they wanted to talk to you about the surgeries -- Dr. Duntsch's surgeries, that you just discussed?

A. About him, yes.

Q. And you think it was in 2012?
A. I'm not sure when it was. I have no recollection. But I do remember talking to the representative of the Texas Medical Board.
Q. So it could have been in 2012, it could have been some time later?
A. Could be.
Q. Okay. Did you initiate any contact with the Texas Medical Board?
A. No.
Q. Did anyone at your hospital do that?
A. I don't know.
Q. Let's talk a little bit about the credentialing. I know you said that you don't have a whole lot to do with that, right?
A. No.
Q. Okay. That's whose job at the hospital?
A. Right.
Q. Whose job is that to handle credentialing?
A. That's medical staff.
Q. Medical staff. Who, at the time -- I guess, around 2012 -- early part of 2012 -- or, I should say somewhere in 2012, who was the medical staff?
A. It was Mr. Russell. Aaron Russell.
Q. Aaron Russell?

A. Yes.

Q. Okay. He's the person that would have called Baylor to talk to them about their experience of Dr. Duntsch?

A. I believe so. Yes.

Q. Okay. And based on what you know, they didn't say anything bad about Dr. Duntsch?

A. I don't recollect exactly the words that Russell -- the conversation that Russell had with the medical staff at Baylor.

Q. Well, if they said something bad about him, you wouldn't have given him temporary privileges, would you?

A. That's correct.

Q. So it's safe to assume they said nothing bad about him. They gave you no red flags.

A. As far as I'm concerned, you know, I remember there was no mention of anything.

Q. Would Russell report back to you and tell you what his conversations were like with Dr. Duntsch's previous hospitals?

A. Well, basically, what happens is that the temporary privileges are granted on the basis of the doctor's previous experience, training and last hospital privileges.

Q. Well, I guess what I'm trying to understand is,

how does the information that Russell received from the previous hospitals -- in this case, Baylor -- get to you?

A. He would talk to me and verify that the previous experience had been verified.

Q. Okay. So it's safe to assume that, in this case, he called Baylor, they said nothing bad about Dr. Duntsch. He communicated that to you, and he was given temporary privileges.

A. That's correct.

Q. Okay. Now, you're the chief of surgery -- or you were at the time, at Dallas Medical Center.

A. Right.

Q. Who's the chairperson of the Department of Surgery?

For the record, I'm showing you State's Exhibit 205.

A. Who's the --

Q. Chairperson.

A. I'm the chairperson. Chief and chairperson is the same thing.

Q. Okay. Okay. It's nice to have more than one title, right?

A. Yeah.

Q. Okay. So, in this letter, this says: (Reading) "Congratulations, Dr. Duntsch. You get temporary privileges because the chairperson of the Department of Surgery has

approved you."

A. Right.

Q. Right?

A. Right.

Q. And you'd never met Dr. Duntsch?

A. No.

Q. Okay. Did Raji Kumar talk to you about her conversations with Dr. Duntsch?

A. No.

Q. She didn't tell you about how he said, "I voluntarily resigned my privileges at Baylor and I had a bad outcome"?

A. I don't remember anything about that.

Q. She never said anything like that to you?

A. No.

Q. Would you have considered that a red flag?

A. Do what?

Q. If you do know that -- if you did know that Dr. Duntsch revealed that he had a bad outcome and that he voluntarily resigned his privileges at Baylor, would that have given you any pause in granting him temporary privileges at your hospital?

A. Yes.

Q. So it's safe to assume she never said that to you.

A. Nothing was mentioned to me about bad outcome at

Baylor.

Q. What was Raji's role at Dallas Medical Center?

A. I think she was the Chief Executive Officer at that time.

Q. She was the CEO?

A. Right.

Q. Because a hospital is a business, essentially.

A. Yes.

Q. Hospitals are there -- not only just to care for patients and make them better, they're there to make money.

A. That's correct.

Q. There's a lot of competition.

A. Yes.

Q. I mean, we see bill boards everywhere: Come to my hospital for this or that, right?

A. Yes.

Q. That's why you have a CEO that graduated from Harvard at your hospital. Right?

A. I guess.

Q. To make money.

A. What is the question?

Q. You have a CEO -- a very well-educated -- probably, talented -- CEO at a hospital to make money. That is her purpose.

A. I think the primary responsibility is to run the

hospital well, not the concern about making money. But running a facility where appropriate care, in my opinion, is provided.

Q. Right. You want appropriate care, but you also need to generate revenue and compete.

A. I'm a doctor. I can't answer that question.

Q. Okay. Y'all didn't have a neurosurgeon on staff at Dallas Medical Center at the time that Dr. Duntsch was recruited?

A. A neurosurgeon?

Q. Neurosurgeon.

A. Well, Dr. Henderson was on staff.

Q. Okay. Let me rephrase the question, or start it this way: Are you aware that Raji, she's the one that initiated contact with Dr. Duntsch?

A. No.

Q. Okay. She sought him out, because she wanted a neurosurgeon.

A. I didn't know about that.

Q. So, assuming you don't know how much money neurosurgery can generate for a hospital --

A. Again, I'm a doctor. I don't know. You talking about money. I'm talking about patients and patient care.

Q. So your concern is patient care. Raji's concern is making money for the hospital.

A. You have to ask Raji that question.

Q. Okay. Are you familiar with the National Practitioner's Databank?

A. Yes.

Q. What is it?

A. Basically, it's a databank where all malpractices are reported, the action against a particular doctor.

Q. Okay. So that's where you go, as someone who's chief of surgery, to see if the surgeon's being 100 percent honest about his background.

A. That's really the job of the medical staff office.

Q. Okay. Well, your medical staff office goes there and relies on it. They rely on that databank.

A. Well, they go into the databank to access information on the past experience of the physician, yes.

Q. Because you don't just rely on what the physician tells you about his or her background.

A. No.

Q. That's why you call hospitals, and that's why you go to this databank, to see if he's leaving something out, right?

A. That's correct.

Q. But in order for the system to work, hospitals, such as Baylor, have to report this very relevant information to this databank. Isn't that true?

A. Yes, they have to report it. I think there's a time lag on that, too.

Q. Do you know if your hospital reported the fact that you revoked his temporary privileges to the databank?

A. Did I what?

Q. Do you know if Dallas Medical Center reported to the databank that you revoked Dr. Duntsch's temporary privileges?

A. I don't know. That's the medical staff responsibility.

Q. But that would be something that should be reported, that other hospitals would want to know.

A. That should be reported by the medical staff office. That's correct.

Q. Now, you obviously played a role in granting Dr. Duntsch his temporary privileges.

A. I did.

Q. Okay. And you didn't know him?

A. No.

Q. You did know that, relatively speaking, he was pretty inexperienced, compared to other neurosurgeons. Isn't that correct?

A. Upon what Russell had provided, he appeared to be a well-trained surgeon.

Q. But he wasn't even board certified yet. Right?

A. He was what?

Q. He had not passed his boards yet, for board certification.

A. That's correct.

Q. So that indicates that he's pretty new, when it comes to clinical practice.

A. Well, you have a time lag from the time you finish your residency until you can take your boards.

Q. It's an option, when you grant privileges to someone, to require that a more experienced surgeon do surgery with you.

A. Not necessarily. I mean, we have surgeons that come out of residency. I think the majority of people come out of residency, they are well-trained surgeons, responsible surgeons and they don't need any supervision.

Q. Okay. Well, my question was: it's an option. It's an option.

A. I don't think that is a criterion. It can be used as an option.

Q. You don't think it's appropriate to have a more senior surgeon to do surgery with a surgeon that you have given temporary privileges to?

A. No.

Q. I'm sorry. Go ahead, Doctor. I'm sorry. I cut you off. Go ahead.

A. The majority of surgeons come out of residency and practice by themselves. They don't need supervision.

Supervision is only granted when a new procedure is requested or there is problems with that particular individual.

Q. Okay. Well, in this particular case, you have a surgeon who's brand new to your hospital. He performed a surgery on Ms. Brown, who's not doing well, and then starts another surgery.

Did it cross your mind to get another surgeon in on that surgery with Ms. Efurd?

A. That's a decision that the surgeon and his well-balanced approach to the patient has to do.

If I need help with a particular case, and I feel that the case is not doing well, it is my responsibility, as a surgeon, to ask a peer in my same specialty to come in and help me. It's not a decision made by another surgeon, in another specialty.

Q. But, that's your hospital.

A. At any hospital.

Q. You're the chief of surgery. You're the one who gave him the privileges to operate in your hospital.

A. Yeah. But it's his responsibility to his patient to make sure that the patient has appropriate and adequate care.

Q. Now, y'all gave Dr. Duntsch temporary privileges before you had complete disclosure from Baylor about the peer review outcomes.

A. I'm not sure that's correct. I think Russell did the extensive calling of the medical staff office at Baylor.

Q. Okay. Doctor, I'm showing you State's Exhibit 186. Have you seen that before?

A. No.

Q. Okay. That's a request from Dallas Medical Center to Baylor for information on Dr. Duntsch.

Does that appear to be accurate?

A. It's written -- it's signed by Patel.

Q. Okay. Right. And, you know that person?

A. Yes.

Q. And that's dated July 20th, 2012, which is the same date that you granted him temporary privileges, right?

A. Yes.

Q. So, if you're sending this to Baylor, this authorization signed by Dr. Duntsch, on the same day that you grant privileges, that means you don't have a complete file from Baylor.

A. As I stated earlier, Mr. Russell had already called Baylor to obtain verbal information on Dr. Duntsch.

Q. And peer review information is confidential.

A. You'd have to ask that to Mr. Russell.

Q. Okay. This letter, which is State's Exhibit 199, is dated July 23rd, 2012.

That's a letter from Baylor to Dallas Medical Center saying, if you want everything, you need to sign this special consent form. Right?

A. Okay.

Q. Okay. So, doesn't that indicate that they did not reveal everything to Russell; that in order to get more information, Dr. Duntsch needs to sign that?

A. I don't know.

Q. So, let's talk about Ms. Efurd's surgery. Some other people have described that operating room as "chaotic".

Would you agree with that?

A. I wasn't there.

Q. Okay. You went inside the operating room, at one point.

A. I briefly was there and I talked to him. I get him out of the operating room and talked to him, briefly. I have no idea what this statement is all about.

Q. Okay. And you interrupting a surgery is something you've never had to do before, right?

A. I did what?

Q. Going into an OR while a surgery is ongoing, that's the first time that you've had to do that?

A. For a particular case like that, yes.
Q. Okay. So that was an unusual circumstance?
A. Well, you know, we basically go into operating rooms all the time with other surgeons. The uniqueness of the situation is that Duntsch wanted to do a craniotomy.
Q. Okay. And Dr. Duntsch seemed aggravated when you talked to him, didn't he?
A. He what?
Q. Seemed agitated, when you told him "no".
A. When he came out -- you know, he was wearing a mask, and I was wearing a mask. You know, you really can't tell much about somebody's facial movements, after you're wearing a mask. All you have to do is -- you know, we had a normal conversation: "Look, you have no privileges and we have no equipment."
Q. Well, Doctor, earlier, when you were answering questions for the prosecutor, you said, in response to a question about Dr. Duntsch's reaction to you telling him no to the craniotomy, you said his reaction wasn't favorable. He was agitated.
A. Yeah. At the end of the conversation. Obviously, he didn't like my decision. But, you know, those are the facts. "You have no privileges, and we have no instruments."
Q. How many times did he have to break scrub to go

outside to talk to you?

A. He what?

Q. He left the operating room how many times to go and talk to you?

A. Just once.

Q. Just one time?

A. Just one time.

Q. And then you came in one time?

A. And I came in and talked to Dr. Kim. That was it.

Q. And someone -- are you aware that someone called the operating room at the beginning of the surgery to talk about Ms. Brown?

A. I don't recall exactly what he was doing at that particular time, whether it was the beginning, the middle or the end of the operation.

Q. Okay. You've done lots of surgeries yourself, right?

A. Yes.

Q. When you do surgery, do you like your operating room to be peaceful?

A. Yes.

Q. And that produces better outcomes versus a chaotic operating room.

A. In my operating room, I have no music. Next door to me, there's an orthopedic surgeon, would blast his music.

You know, he likes the music. I don't like the music. And we get good results, no matter whether you have music or no music.

Q. Okay. My point is this: You'd agree that the surgeon needs to be calm? If it means playing loud music to make him calm, so be it.

A. I really don't buy that. If you're the captain of the ship, you're in control all the time, whether you have a storm or you have skies that are blue and the weather is serene and no problems. You're the captain of the ship, period.

Q. Okay. That means you need to be cool, calm and collected, right?

A. You have to be in control. You can be worried about personal stuff, you can be worried about political stuff, you can be worried about something else, but your concentration has to be on the patient, period.

Q. Now, it took a long time to get Ms. Brown to the other hospital.

A. Do what?

Q. It took a long time to get her there.

A. I had nothing to do with that.

Q. Okay. But you know it took a long time.

A. That was somebody else's decision, not mine.

Q. But it could have been your decision.

A. No.

Q. You didn't have authority, as chief of surgery, to say, "This woman needs to get to another facility now"?

A. I'm not a neurosurgeon. That's a neurosurgery decision.

Q. So you're really here today saying that, as the chief of surgery, as the head honcho, you don't have the authority to transfer a patient that you think is in dire need of medical care that you can't do?

A. No. I think the only thing you can do is call a neurosurgeon, that you believe is excellent in his profession, and make that neurosurgeon make the decision.

Q. Well, you had a neurosurgeon saying she needed a craniotomy. And that's something your hospital can't do.

Doesn't that indicate to you she needs to go to another hospital?

A. Again, it's a neurosurgery decision.

MRS. LEHMANN: I'll pass the witness.

REDIRECT EXAMINATION

BY MISS SHUGHART:

Q. Who was the only neurosurgeon in that hospital at the time?

A. Dr. Henderson.

Q. Dr. Henderson. And who was handling the patient care of Ms. Brown?

A. I believe Dr. Patel.
Q. Okay. And what about the Defendant, was he the neurosurgeon on Ms. Brown's case?
A. Yes.
Q. And if somebody was gonna transfer the patient, whose job was that?
A. Dr. Duntsch's.
Q. Because, it's his patient.
A. That's correct.
Q. Because he's the neurosurgeon on her case.
A. He's the ultimate responsible person.
Q. And is it his job to find another neurosurgeon at another hospital to transfer her to?
A. Yes.
Q. It's not anybody else's job?
A. No. If I have a problem with a patient, and I feel my patient is not doing well, for any reason, and I want to transfer the patient to Parkland, I have to call and talk to a surgeon at Parkland and discuss the patient with that particular surgeon in detail so that he knows what's going on.
Q. And every surgeon knows this?
A. Every surgeon knows that.
Q. That's normal, classic, protocol?
A. Yes.

Q. And the Defendant didn't transfer Ms. Brown until later in the day. Isn't that right?

A. Yes.

Q. And it's because he was in this other surgery, right?

A. Yes.

Q. I mean, it wouldn't be something he could do, where he could go and fined another neurosurgeon to call when he's in the middle of operating on someone else, right?

A. Correct.

Q. But he decided to go into this surgery, knowing Ms. Brown's condition, correct?

A. Yes.

MISS SHUGHART: We'll pass the witness.

RECROSS EXAMINATION

BY MRS. LEHMANN:

Q. So I take it, Doctor, you don't agree with Dr. Duntsch's decision to proceed with Ms. Efurd's surgery, when Ms. Brown wasn't doing well.

A. Well, you know, everybody has a different approach in medicine with a patient.

If I feel that the patient of mine is not doing well, I would -- I have done this. I have basically cancelled my surgery and taken care of my patient. It's a duty on the part of the surgeon to attend to the patient that needs most

your care.

Q. So, you are not saying that you disagree with his choice.

A. I don't know what the condition -- I don't approve or disapprove, because I don't know the condition of Ms. Brown at the time. I don't know what the conditions were. I'm just talking general times.

If you have a patient that is not doing well and has a bigger problem, which could be lethal, then I think it's your responsibility to make sure that you attend to that patient urgently.

Q. But you don't know what Ms. Efurd's condition was at the time that Dr. Duntsch started his surgery with Ms. Brown. I'm sorry --

A. I think you've got it wrong. Brown?

Q. I'm sorry. Ms. Brown's condition was at the time that Dr. Duntsch started his surgery with Ms. Efurd.

A. No.

Q. You don't know?

A. No, I don't know.

Q. If I were to ask you your opinion on Dr. Duntsch's decision to proceed with Ms. Efurd's surgery, you would say, "I don't have an opinion. I don't have enough information. I don't know"?

A. That's correct.

Q. Okay. At the time that Dr. Duntsch was at Dallas Medical Center, you were employed by Dallas Medical Center; is that correct?

A. No.

Q. How does that work?

A. I'm not employed.

Q. You were not employed there?

A. No.

Q. Okay. You had privileges there?

A. That's correct.

Q. Okay. How did you become the chairperson?

A. They basically, the other surgeons, elected me.

Q. Okay. They elected you. Which means that, in addition to your patients, you have concern over other surgeon's patients.

A. No.

Q. No?

A. That's their responsibility.

Q. It's also your responsibility.

A. My responsibility is to make sure that the surgeons are following strictly the bylaws and that there is no negative events with patients that occur.

I mean, the chief of surgery doesn't take care of somebody else's patients. Chief of surgery is just overseeing the entire system, making sure that the bylaws

are followed correctly.

Q. Surely, you would have intervened if Mrs. Brown was crashing and needed immediate attention, if Dr. Duntsch wasn't available to treat her, or you thought he was making a colossal mistake, in terms of how he wanted to treat her.

A. I don't know what to say to that.

Q. You would intervene, if you saw a patient at your hospital in distress, that needed help.

A. Yes.

MRS. LEHMANN: I'll pass the witness.

MISS SHUGHART: Nothing further, Your Honor.

THE COURT: Thank you, Doctor.

MISS SHUGHART: May this witness be released?

MRS. LEHMANN: We have no objections.

THE COURT: Next witness.

MISS SHUGHART: State calls Barbara Ellison.

(Witness sworn by the Court.)

THE COURT: Proceed.

BARBARA JEAN ELLISON,

the witness hereinbefore named, having been duly sworn by the Court, testifies under oath as follows:

DIRECT EXAMINATION

BY MISS SHUGHART:

Q. Ms. Ellison, can you please introduce yourself to the jury and tell them what you do.