

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CIRCUIT CIVIL DIVISION
CASE NO. 10-CV-22236-ASG

HOWARD ADELMAN and JUDITH
SCLAWY-ADELMAN, as Co-Personal
Representative of the Estate of
MICHAEL SCLAWY-ADELMAN,

Plaintiffs,

v.

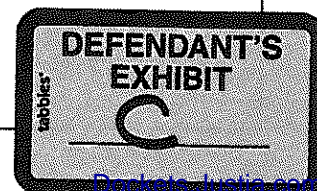
BOY SCOUTS OF AMERICA, THE SOUTH
FLORIDA COUNCIL, INC.; BOY SCOUTS
OF AMERICA; PLANTATION UNITED
METHODIST CHURCH; HOWARD K. CROMPTON,
individually; and ANDREW L. SCHMIDT,
individually,

Defendants.

DEPOSITION OF
RONALD D. BULLARD, M.D.

March 17, 2011
10:16 a.m.
1835 N. Corporate Lakes Boulevard
Weston, Florida

Stenographically Reported By:
Lynda Royer, R.P.R.
Registered Professional Reporter



1 A. Uh-huh.
 2 Q. Yes?
 3 A. Yes. That's correct.
 4 Q. Why is your stamp there, what does that mean?
 5 A. I think that the front office people put a
 6 stamp on that. I don't know really where that came
 7 from, honestly.
 8 Q. Is that --
 9 A. I don't think I know the answer to that
 10 question.
 11 Q. I was kind of wondering if that was in place of
 12 a signature?
 13 A. No. I mean, there's no signature required on
 14 that for our charting purposes. I don't know why they
 15 stamped it there, to tell you the truth.
 16 Q. Under that section it says "patient dash social
 17 dash family history." There's a check that says
 18 "reviewed," correct?
 19 A. Yes.
 20 Q. Does that mean you reviewed the chart or
 21 reviewed the history? I don't know what that means.
 22 A. That means the history is reviewed with the
 23 family. It could mean both. I mean, we certainly do
 24 look through the chart as we're talking to them be it
 25 either before or after, but it means both, implies both.

1 Q. Under "interval HX," it says two lines down
 2 "medications, current slash past," and it says "NEG." I
 3 assume that means negative?
 4 A. Right.
 5 Q. Does that mean he's not taking any medications
 6 as of this visit on 3/27/09?
 7 A. That means I asked him if he's taking any
 8 medicine or he's taking any recently and he said no.
 9 Q. And then --
 10 A. Because this is the subjective part of the
 11 visit. I write down what he tells me.
 12 Q. Then we have under that "allergies," and we've
 13 got "Pediazole"?
 14 A. Correct.
 15 Q. Down below that we have "dietary intake," and
 16 across the line I can't read your handwriting where it
 17 says "eating habits slash concerns."
 18 A. Yeah. That's pretty bad. It says "working on
 19 diet and exercise."
 20 Q. What does that mean, "working" on it?
 21 A. That means that we had a discussion with both
 22 Michael and his parents about the fact that he needs to
 23 work on eating more healthy foods and eating less
 24 amounts, working on his portions, in other words, and
 25 that he needs to be having an exercise program so that

1 he maintains a better weight for himself.
 2 Q. What is BMI?
 3 A. That is his -- basically we have a curve, so
 4 it's a Body Mass Index and --
 5 Q. Did you do one on him?
 6 A. I don't think we calculated his Body Mass Index
 7 that day.
 8 Q. Did you ever do a Body Mass Index on Michael
 9 Adelman?
 10 A. I don't recall, but his certainly would have
 11 been high.
 12 Q. What is "high"?
 13 A. It would have been above normal.
 14 Q. What is "normal"?
 15 A. I mean, I could go get my BMI pyramid and show
 16 you, but his --
 17 Q. Well, if we use the chart, which is Exhibit 1,
 18 and we look at Michael's height?
 19 A. 66 and a half inches.
 20 Q. Then we look at his weight, which is 221,
 21 correct?
 22 A. Uh-huh. Uh-huh.
 23 Q. Yes?
 24 A. Yes.
 25 Q. All right. Is he literally off the chart?

1 MR. PELTZ: Object to the form.
 2 THE WITNESS: Pardon me?
 3 MR. PELTZ: That means you can go ahead.
 4 A. Yes. He's off the chart for weight.
 5 BY MR. HASTY:
 6 Q. Was he above the chart or off the chart before
 7 March 27, 2009?
 8 A. Yes.
 9 Q. If we go back on the weight curve, which is
 10 Exhibit 1, --
 11 A. Uh-huh. Yes.
 12 Q. -- and we take a look at the first reading
 13 which is above the curve, off the chart, --
 14 A. Right.
 15 Q. -- what age is he at this age?
 16 A. Eleven and a half.
 17 Q. The next weight charted on the curve is what
 18 age?
 19 A. 12.
 20 Q. Is he off the chart on that curve?
 21 A. He's above the 95th percentile, yes.
 22 MR. PELTZ: Just for the record, I object to
 23 the form of all these questions about "off the
 24 chart."
 25 MR. HASTY: Well, he's not in the white

1 area.

2 A. We certainly don't use that terminology to talk
3 to our kids that way.

4 BY MR. HASTY:

5 Q. I didn't suggest that you did. I'm asking you
6 a medical question, not how you talk to a parent or a
7 patient.

8 A. Well, I'm just saying that we don't use that
9 terminology.

10 Q. Okay. I understand. The next time it was
11 charted was what age here?

12 A. 13.

13 Q. And he is outside the range or off -- what I
14 call -- he is on the chart, but he's not in the white
15 area?

16 A. Correct.

17 Q. And the next time he is how old?

18 A. 14.

19 Q. And someone put a dot there at the very
20 junction of the gray and the white area, correct?

21 A. Yes. He's at the 95th percentile.

22 Q. And the next time it was charted after 14 was
23 when?

24 A. 16.

25 Q. Is there a reason why it wasn't charted at 15?

1 A. I don't know. I never had to look at the day
2 sheet and see if he came in for a 15-year physical.

3 Q. At 16 what was his weight?

4 A. It looks like he was around 200 pounds or at
5 200 pounds or just under.

6 Q. And his height at 16 was?

7 A. About what it was at 17, about five-feet six
8 and a half. It was the same.

9 Q. And then the next time it was charted, he was
10 how old?

11 A. 17 and a half or whatever he was when he came
12 in for his last visit just short of 18. Right? 5/23/91
13 is his date of birth, so yes, 17 and three-quarters.

14 Q. Someone wrote the number there, they didn't put
15 a dot, correct?

16 A. Yes, that's right, because he was -- I mean,
17 they could have if they wanted to. It would be about --
18 let me see. Well, it's a little awkward there because
19 he's at the very end of 18, so she could have
20 approximated with a dot just like they did all the
21 others but she just chose not to.

22 Q. Well, the highest number on this graph in the
23 column is 210, correct?

24 A. Correct, so there wasn't a number corresponding
25 at that point.

1 Q. Meaning he literally is higher than even the
2 outward upward limits of normal?

3 A. Well, he's 18 so, I mean, that's how far it
4 goes for that age.

5 Q. So at 17 and three-quarters is he considered an
6 adult in your mind?

7 MR. PELTZ: Object to the form and predicate.

8 A. An adult in my mind?

9 BY MR. HASTY:

10 Q. Yeah.

11 A. No.

12 Q. He's still --

13 A. He's an adolescent.

14 Q. Now, the idea here is for the physician to use
15 the graph to keep what in mind in terms of the patient's
16 welfare and why this is all done?

17 A. Well, several things really. I mean, in the
18 early ages we're looking to make sure that they're
19 growing appropriately.

20 Q. Growing enough?

21 A. Growing enough and in some cases not growing
22 too much, but, you know, growing normally, first of all.
23 Second of all, that they are not morbidly obese, that
24 they are being appropriately nourished, and so it could
25 be a red flag that the child is eating too much or not

1 exercising enough so it's an opportunity for us to talk
2 about that, you know, explore family dynamics around
3 exercise and eating and certainly talk about that and
4 that's certainly something that we talk about a lot to
5 our families, and sometimes we're able to make an impact
6 and sometimes we're not. Many times families -- you
7 know, there's so many dynamics about that. It's
8 genetics. It's eating habits. It's all those things.

9 Q. What is your definition of "morbidly obese"?

10 A. Morbidly obese?

11 Q. Yes, sir. Is it a BMI above 30?

12 A. I mean, you know, the BMIs typically -- I mean,
13 anybody that falls above the 95th percentile for weight
14 that's less than the 50th percentile for height we
15 consider, you know, obese, but morbidly obese is going
16 to be more than 30, 35 on their BMI, maybe 40, but, you
17 know, I don't worry so much about that -- I don't worry
18 so much about the BMI number because I have to look at
19 the kid, too. Okay? Because we have kids come in all
20 the time. They're flagged with their BMIs at school,
21 okay, and you look at them and you look at their Body
22 Mass Index, but then you look at the child and they
23 might play football, okay, and they have a tremendous
24 amount of muscle weight, so you have to look at the BMI
25 but you also have to look at the kid.

1 I mean, I have some kids that are -- you know,
 2 their BMIs may not be all that bad but they really just
 3 don't do anything. They're terribly sedentary and they
 4 have a tremendous amount of body fat, so you really have
 5 to look at both the BMI and the kid and their habits.
 6 **Q. You said that you could get a BMI. Do you have**
 7 **to get another chart to do the BMI?**
 8 A. I just use a wheel which is over there in my --
 9 **Q. Would you get it for me?**
 10 A. Sure.
 11 (A recess was taken, after which the following
 12 proceedings were had:)
 13 BY MR. HASTY:
 14 **Q. You got your wheel for your BMI?**
 15 A. I do.
 16 **Q. If we look at Michael's last charting, 17 years**
 17 **and three-quarters and his weight was 221 and his height**
 18 **was five-foot six-and-a-half inches tall, what is his**
 19 **BMI?**
 20 A. 36.
 21 **Q. On a BMI scale are there parameters that the**
 22 **American Academy of Pediatrics recognizes as having**
 23 **significance or classifications or --**
 24 A. Yes.
 25 **Q. What are they? I don't know what the**

1 things like that, but I mean he just had, you know,
 2 plenty of muscle on him.
 3 **Q. So in your opinion and based on being his**
 4 **pediatrician, you never saw any indication that**
 5 **physically he was unfit to hike?**
 6 A. No.
 7 **Q. Did you ever get a form from the Boy Scouts to**
 8 **fill out to classify him or to clear him?**
 9 A. I don't remember. I may have.
 10 **Q. Okay.**
 11 A. I may have. I don't remember.
 12 **Q. Do you remember talking to Michael about his**
 13 **activities and scouting?**
 14 A. Yes.
 15 **Q. Did Mr. Adelman also indicate that he had been**
 16 **on hikes with Michael in scouting?**
 17 A. I don't recall having that conversation.
 18 **Q. Did anybody ever tell you that Mr. Adelman had**
 19 **been a volunteer leader in Michael's troop?**
 20 A. I don't remember that.
 21 MR. PELTZ: Object to the form.
 22 BY MR. HASTY:
 23 **Q. Okay. Let's continue with this March 27th, '09**
 24 **visit. If you look at the physical exam part, -- why is**
 25 **my copy better than your copy? That doesn't make any**

1 terminology is.
 2 A. I mean, he would be considered obese,
 3 significantly overweight.
 4 **Q. Would he be considered morbidly obese, in your**
 5 **opinion?**
 6 A. No.
 7 **Q. What is the definition you would use of**
 8 **morbidly obese?**
 9 A. I mean, I don't use the term "overly obese"
 10 with a specific BMI, but I mean I think that you --
 11 again, as I communicated to you previously, you look at
 12 the percentage -- you look at the patient and you look
 13 at their body fat and you consider that terminology when
 14 you have somebody with a BMI over 30, but you also look
 15 at their amount of muscle and you look at how, you know,
 16 fit they are.
 17 Generally I consider that -- I reserve that
 18 term with people for BMIs in the 35-plus range, 40. He
 19 could have been morbidly obese if he didn't have muscle
 20 on him or was very out of shape. I felt like he was --
 21 I wouldn't consider him morbidly obese, no. He did
 22 plenty of outdoor activities. He had broad shoulders
 23 and he had muscle.
 24 **Q. What outdoor activities did he do?**
 25 A. As far as I knew, he did his hiking and he did

1 sense to me at all.
 2 A. I don't know.
 3 **Q. All right. Well, if we look at the physical**
 4 **exam, under "weight" --**
 5 A. It looks like I somehow -- even though this --
 6 everything else looks like the original, somehow I don't
 7 think I have the original of that particular visit. I
 8 don't know why.
 9 **Q. If we look at "weight," whose handwriting is**
 10 **under that?**
 11 MR. PELTZ: Where?
 12 MR. HASTY: Right there. 221.
 13 A. 221 where it says "over" and height where it
 14 says "10 percent," is that where you're talking about?
 15 BY MR. HASTY:
 16 **Q. Yeah. Who wrote "over"?**
 17 A. The MA.
 18 **Q. What does that mean, "over"?**
 19 A. Above the 95th percentile.
 20 **Q. Going across, "appearance," it says "alert,"**
 21 **and what does that say?**
 22 A. Oh, appearance, those are just meant to be
 23 general descriptions of the patient, alert, active,
 24 strong, happy, so what that's meant to do is allow the
 25 physician, rather than have to write those things out,

<p style="text-align: right;">46</p> <p>1 MR. PELTZ: Object to the form and predicate.</p> <p>2 A. I don't know why it's circled specifically. I</p> <p>3 would have to make an assumption.</p> <p>4 BY MR. HASTY:</p> <p>5 Q. What's your assumption?</p> <p>6 MR. PELTZ: Object to the form and predicate.</p> <p>7 A. My assumption is that the MA who took the</p> <p>8 reading was concerned about it.</p> <p>9 BY MR. HASTY:</p> <p>10 Q. In the box down here in the lower right-hand</p> <p>11 corner it says "peer relations" is checked. What does</p> <p>12 that mean?</p> <p>13 A. That means that Dr. Fliegenspan discussed with</p> <p>14 Michael his relationships with his peers, his friends.</p> <p>15 Q. But you don't know what that would have been</p> <p>16 all about?</p> <p>17 A. Well, typically when we talk to them about</p> <p>18 their friends, we ask them, you know, what kind of</p> <p>19 friends do they have, we may ask them what are their</p> <p>20 social patterns, do they have friends at school, do they</p> <p>21 have friends outside of school, what do they do after</p> <p>22 school, you know, are they dating, those kinds of</p> <p>23 things.</p> <p>24 Q. On this form here for the 13th it says his</p> <p>25 activities are Boy Scouts, right?</p>	<p style="text-align: right;">48</p> <p>1 Q. And what was done about it in 2004?</p> <p>2 A. I would think --</p> <p>3 Q. Was that your visit or Dr. Fliegenspan?</p> <p>4 A. Dr. Paredes, Gil Paredes. P-A-R-E-D-E-S.</p> <p>5 Q. So in 2004 it was 233, and reference range high</p> <p>6 end of normal would have been 190?</p> <p>7 A. Yes.</p> <p>8 Q. So from 2004 it was 233 until the time it was</p> <p>9 checked or rechecked in 2005?</p> <p>10 A. Every patient with a high cholesterol is given</p> <p>11 a handout for high cholesterol which emphasizes working</p> <p>12 on diet and they're given a list of foods that they</p> <p>13 should not be eating that are high in cholesterol and</p> <p>14 they're told to increase their activity levels and</p> <p>15 discusses the benefits of exercise and reducing their</p> <p>16 cholesterol as well, and it indicates on -- and that was</p> <p>17 also about the time that Dr. Fliegenspan sent him to</p> <p>18 Weight Watchers as well.</p> <p>19 Q. He sent him in to Weight Watchers in '05, not</p> <p>20 '04?</p> <p>21 A. Well, I said "about the time." That was '04.</p> <p>22 And then between that visit and the next visit when his</p> <p>23 cholesterol was 211 he sent him to Weight Watchers.</p> <p>24 Q. Was his cholesterol repeated after the 211</p> <p>25 value from 2005 through the last visit of March 2009?</p>
<p style="text-align: right;">47</p> <p>1 A. Yes, sir.</p> <p>2 Q. Could we take a look at the last blood work</p> <p>3 that was done on Michael to check his cholesterol?</p> <p>4 A. Sure.</p> <p>5 Q. What day was that, please?</p> <p>6 A. 2005, I guess. Let me see if there's anymore</p> <p>7 recent ones. It was 211 on July 28, 2005.</p> <p>8 Q. The last cholesterol was July 28, '05?</p> <p>9 A. Uh-huh, that I see in the chart.</p> <p>10 Q. Do you want to check the labs? Go ahead and</p> <p>11 check the labs.</p> <p>12 A. That's the last one that I'm seeing.</p> <p>13 Q. The reference range for normal would be a range</p> <p>14 of a low of what number to a high of what number,</p> <p>15 according to the laboratory?</p> <p>16 A. A low range -- I mean, we don't really check a</p> <p>17 range. It's probably 90 up to 180, 190, so his would be</p> <p>18 considered higher, you know, higher than the upper range</p> <p>19 of normal, so 211 is high.</p> <p>20 Q. Is that considered hypercholesterolemia?</p> <p>21 A. Yes.</p> <p>22 MR. PELTZ: Object to the form.</p> <p>23 A. He actually had a higher level in 2004. It was</p> <p>24 233.</p> <p>25 BY MR. HASTY:</p>	<p style="text-align: right;">49</p> <p>1 A. I don't see one. I haven't found one.</p> <p>2 Q. The one before 2004 was when?</p> <p>3 A. The one before 2004?</p> <p>4 Q. Yes, sir.</p> <p>5 A. There's your original.</p> <p>6 Q. Oh, good.</p> <p>7 A. '02. September 26, '02.</p> <p>8 Q. So we have 9/26/02, and the value then was --</p> <p>9 A. 264.</p> <p>10 Q. And reference range for normal?</p> <p>11 A. Same thing.</p> <p>12 Q. 190?</p> <p>13 A. Uh-huh.</p> <p>14 Q. The next one is done what day in '04?</p> <p>15 A. Don't you have it written there?</p> <p>16 Q. I didn't get the month. I just got the year.</p> <p>17 I didn't get the --</p> <p>18 A. August 13th, '04.</p> <p>19 Q. And that one was 233?</p> <p>20 A. Uh-huh.</p> <p>21 Q. And then on 7/28 of '05 it was 211?</p> <p>22 A. Uh-huh. That's correct.</p> <p>23 Q. So you mentioned that Dr. Fliegenspan referred</p> <p>24 the patient in 2005 to Weight Watchers and that the mom</p> <p>25 would have been given a handout on cholesterol. The</p>