

IN THE UNITED DISTRICT CIRCUIT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 10-CV-22236-ASG

HOWARD ADELMAN and JUDITH SCLAWY-
ADELMAN, AS CO-PERSONAL
REPRESENTATIVES OF THE ESTATE OF
MICHAEL SCLAWY-ADELMAN,

COPY

Plaintiffs,

vs.

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.

-----/

1835 N. Corporate Lakes Boulevard
Weston, Florida
Thursday, April 14, 2011
10:15 a.m.

D E P O S I T I O N

of

RONALD BULLARD, M.D.

taken on behalf of the Plaintiffs pursuant to a
Notice of Taking Deposition.

- - - - -

FRIEDMAN, LOMBARDI & OLSON
C O U R T R E P O R T E R S

PLAINTIFF'S
EXHIBIT
7
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1 to see Michael grow up from literally being five days
2 old until reaching age 17?

3 A. Yes.

4 Q. During that time, have you had the
5 opportunity to get to know Michael from a medical
6 standpoint as a patient over those years?

7 A. Yes.

8 Q. Are you aware of any other doctors that
9 would be in a position to know Michael as well as you
10 and your partners from a medical standpoint?

11 MR. LEVIN: Objection, form.

12 MR. SCHEVIS: Form.

13 THE WITNESS: No, I am not aware of any.

14 BY MR. PELTZ:

15 Q. Doctor, when you have the opportunity to
16 see a patient over many years, in this case,
17 17 years, does that provide a context for you in
18 treating the patient?

19 MR. LEVIN: Objection to form.

20 THE WITNESS: Can you clarify what you
21 mean, a context for?

22 BY MR. PELTZ:

23 Q. Well, when you see a patient, when you saw
24 Michael, would your office have had a context of
25 having seen him many years before without any

1 particular visit?

2 A. Right, yes.

3 Q. And is having the ability to see a patient
4 in context, is that important to you as a
5 pediatrician when you see a patient on any particular
6 occasion?

7 A. Yes, very important.

8 Q. Is that important to you in determining
9 what the patient's health and wellbeing is on any
10 particular visit?

11 MR. LEVIN: Objection to form.

12 BY MR. PELTZ:

13 Q. Let me ask it again. Does having the
14 context of having seen a patient for many years, is
15 that important to you in determining the patient's
16 health and wellbeing on any particular visit?

17 MR. SCHEVIS: Objection to form.

18 THE WITNESS: It is important. There is
19 much being made in today's medical literature about
20 the importance of the medical home because it
21 emphasizes continuity of care, it emphasizes the
22 importance of the doctor/patient relationship, and
23 how that affects clinical judgment, and how that
24 affects good medical decision making on the part of

25 the physician as he knows the patient and as he or

1 she knows the patient well.

2 BY MR. PELTZ:

3 Q. You have mentioned some terms, I would ask
4 you if you could please explain what you mean. When
5 you say continuity of care, what does that refer to?

6 A. That means seeing the same - having the
7 patient see the same physician or at least the same
8 small group of physicians but preferably the same
9 physician over a period of time so that medical
10 decision making is more accurate. It is more clear.
11 Mistakes are minimized or eliminated.

12 Q. Why is medical decision making more clear
13 when you have this continuity of care?

14 A. Communication is made more clear. Medical
15 judgment is facilitated because the patient is able
16 to communicate between visits, progress is able to be
17 recognized or lack thereof.

18 Q. As a pediatrician, is there a problem in
19 taking isolated physical findings or vital signs out
20 of context?

21 MR. SCHEVIS: Objection to form.

22 MR. LEVIN: Form.

23 THE WITNESS: There can be.

24 BY MR. PELTZ:

25 Q. Let me ask the question this way; in order

1 to reach accurate conclusions concerning someone's
2 health and wellbeing, what role does context play in
3 that?

4 MR. LEVIN: Form, compound.

5 THE WITNESS: You have to know - you would
6 know the situation, you would have to know the
7 overall health of the child. You need to know what
8 the situation was with that patient in terms of other
9 factors that may have affected a particular vital
10 sign.

11 Many times it may have to do with the
12 person taking the vital sign, it may have to do with
13 the accuracy.

14 When we are talking about vital signs, when
15 we are talking about laboratory findings, you need to
16 make sure it fits the clinical profile of the
17 patient.

18 BY MR. PELTZ:

19 Q. Do you have an opinion as a pediatrician as
20 to whether or not a physician can take isolated
21 physical findings or vital signs by themselves and
22 reach accurate conclusions?

23 MR. LEVIN: Form.

24 THE WITNESS: I think that every piece of
25 medical information that you have about a patient is

1 just that, it is a piece of medical information and
2 that you have to put it together with all of your
3 physical findings, including history of the patient,
4 the physical findings, the laboratory findings, the
5 vital signs, all of that is put together in medical
6 decision making, and that is very important that you
7 use all of those things to come to a clinical
8 judgment, to a medical decision.

9 BY MR. PELTZ:

10 Q. Would that be analogous to a single piece
11 of the puzzle?

12 MR. LEVIN: Form.

13 MR. SCHEVIS: Join.

14 MR. FRANZ: Join.

15 THE WITNESS: Similar.

16 BY MR. PELTZ:

17 Q. You were asked a number of questions
18 earlier about BMI calculations, body mass index
19 calculations?

20 A. Yes.

21 Q. Are BMI calculations merely mathematical
22 formulas that look at the combination of an
23 individual's height and weight?

24 MR. LEVIN: Objection to form.

25 MR. SCHEVIS: Join.

1 MR. FRANZ: Join.

2 THE WITNESS: Yes.

3 BY MR. PELTZ:

4 Q. Do they provide the same number regardless
5 of whether someone is an all-pro football lineman or
6 simply a fat and overweight couch potato?

7 MR. LEVIN: Form.

8 MR. SCHEVIS: Join.

9 MR. FRANZ: Join.

10 THE WITNESS: They're just a mathematical
11 calculation so the answer is yes.

12 BY MR. PELTZ:

13 Q. So if you had an all-pro football lineman
14 who was six foot two and 280 pounds, and you had an
15 individual who was six foot two and 280 pounds of the
16 same age, but who engaged in no exercise whatsoever,
17 would you have the same BMI calculations?

18 MR. LEVIN: Form, leading all the last
19 three questions.

20 MR. SCHEVIS: Join.

21 MR. FRANZ: Join.

22 THE WITNESS: Yes.

23 BY MR. PELTZ:

24 Q. From your standpoint, do BMI calculations
25 have any meaning in isolation?

1 a fairly muscular individual?

2 A. I honestly don't remember what I said to
3 his parents regarding his muscularity.

4 Q. Based on your examinations of Michael over
5 the years, particularly the last examination on
6 March 27, 2009, did you reach any conclusions as to
7 whether Michael was fit and in shape for someone his
8 age?

9 A. Michael, as I recall, reminded me of a
10 typical teenager who was moderately overweight, who
11 didn't strike me as somebody who was at risk for any
12 particular disease, or was in any way ill, who could
13 certainly be cleared for physical activities
14 outdoors, and he needed to work on his diet and his
15 exercise.

16 Q. Now, the last occasion you would have seen
17 Michael would have been on March 27th, 2009?

18 A. Yes.

19 Q. Let me show you some records which were
20 referred to previously, and ask you if these are true
21 and accurate copies of your records for that
22 particular visit?

23 A. Yes, they are true and accurate copies.

24 MR. PELTZ: We'll mark those as - how do
25 you guys want to do it, we went one through three the

1 detailed, intensive than the taking of the heart rate
2 and the blood pressure by the medical assistant?

3 MR. LEVIN: Objection, leading.

4 MR. SCHEVIS: Join.

5 MR. FRANZ: Join.

6 THE WITNESS: Yes. What the medical
7 assistant does is actually puts on an automated - she
8 puts on a blood pressure cuff, and its an automated
9 machine, which actually reads out the blood pressure
10 and the pulse on the machine. And that is all that
11 the medical assistant does.

12 She records the reading that the machine
13 gives her.

14 BY MR. PELTZ:

15 Q. Will the blood pressure rate, can that be
16 affected by a number of factors including how well
17 the cuff fits on the person?

18 MR. LEVIN: Form.

19 MR. SCHEVIS: Join.

20 MR. FRANZ: Join.

21 THE WITNESS: Yes, it can be affected by
22 that. I mean it is actually an electronic device, so
23 it could be affected by the placement of the cuff,
24 the size of the cuff. If the person has an arm that
25 is too large for the cuff, it can give an elevated

1 reading.

2 MR. LEVIN: Move to strike.

3 BY MR. PELTZ:

4 Q. And do you use the same cuff for every
5 patient that comes in here?

6 MR. LEVIN: Form.

7 THE WITNESS: The medical assistants are
8 instructed to use the appropriate size cuff for the
9 appropriate arm.

10 BY MR. PELTZ:

11 Q. Now, you have indicated that as part of
12 your evaluation you will do a cardiac evaluation, and
13 when you are testing for the heart rate, how do you
14 do that?

15 A. I listen to the heart. I always have a
16 second hand on my watch, and I check the rate when I
17 am listening to the heart.

18 Q. So you use a stethoscope for that?

19 A. Yes, I use a stethoscope and check the rate
20 when I am listening to the heart.

21 The heart exam is actually the first thing
22 I do with every patient.

23 Q. Is that a more accurate way of determining
24 someone's heart rate than the way the medical
25 assistant does it?

1 MR. LEVIN: Form.

2 MR. SCHEVIS: Join.

3 MR. FRANZ: Join.

4 THE WITNESS: In my opinion, the most
5 accurate way to check a heart rate or a pulse is to
6 listen and to time it, and check it.

7 BY MR. PELTZ:

8 Q. And that is what you do?

9 A. I'm more comfortable with that than an
10 automated system.

11 Q. And if the cardiac evaluation is normal,
12 how do you indicate that on your record,
13 specifically, Exhibit No. 4?

14 MR. LEVIN: Form.

15 MR. SCHEVIS: Join.

16 MR. FRANZ: Join.

17 THE WITNESS: I just use the checkmark if
18 everything is normal. If there is something
19 abnormal, I write it out to the side.

20 BY MR. PELTZ:

21 Q. So on the line next to heart, where it
22 says, normal, what did you indicate?

23 A. I just put a checkmark under heart exam.

24 Q. And did that indicate that your cardiac
25 exam was completely normal?

1 MR. LEVIN: Form.

2 THE WITNESS: Yes.

3 BY MR. PELTZ:

4 Q. Including the heart rate?

5 A. Yes.

6 Q. Based on your cardiac evaluation of Michael
7 and your listening to his heart rate using a
8 stethoscope and timing it as you have described, what
9 range would his heart rate have been when you
10 examined him?

11 MR. LEVIN: Form, predicate.

12 THE WITNESS: It would have been between 60
13 and 100 for his age.

14 Typically, if somebody - am I allowed to
15 continue?

16 BY MR. PELTZ:

17 Q. Sure.

18 A. Typically, if somebody is here specifically
19 with chest pain or something that is related to the
20 heart, we will document things that we would say are
21 pertinent positives, and in that case, I would have
22 actually documented his heart rate myself.

23 In this case, he was here for a routine
24 physical exam, and there was no specific concern
25 about his heart, therefore, I did not document his

1 heart rate.

2 Q. And if there was some concern or some
3 abnormality with regard to your cardiac evaluation,
4 would that be indicated in the box on the chart under
5 the column that says abnormal?

6 MR. LEVIN: Form.

7 MR. SCHEVIS: Join.

8 MR. FRANZ: Join.

9 THE WITNESS: Yes.

10 BY MR. PELTZ:

11 Q. Is there anything indicated there?

12 A. No.

13 Q. And even though you found a different heart
14 rate than the medical assistant, you would not go
15 back and change the information put in by the medical
16 assistant?

17 MR. LEVIN: Form, leading, no predicate.

18 MR. SCHEVIS: Join.

19 MR. FRANZ: Join.

20 MR. LEVIN: No foundation.

21 THE WITNESS: I might have. In this case,
22 I didn't.

23 BY MR. PELTZ:

24 Q. Is that because you don't think it was
25 important to do that?

1 MR. LEVIN: Form, asked and answered.

2 MR. SCHEVIS: Join.

3 MR. FRANZ: Join.

4 MR. LEVIN: And leading.

5 THE WITNESS: I don't really recall the
6 reason at this point.

7 BY MR. PELTZ:

8 Q. Based on your evaluation, did Michael have
9 tachycardia?

10 MR. LEVIN: Form.

11 THE WITNESS: No.

12 BY MR. PELTZ:

13 Q. Based on your evaluation, did you find any
14 evidence of arrhythmias or other abnormalities?

15 MR. LEVIN: Form.

16 THE WITNESS: No.

17 BY MR. PELTZ:

18 Q. Based upon your evaluation, did you find
19 any evidence of any heart disease or irregularity?

20 MR. LEVIN: Form.

21 THE WITNESS: No.

22 BY MR. PELTZ:

23 Q. Under the data filled in by the medical
24 assistant there is a blood pressure of 133/84?

25 A. Yes.

1 Q. First of all, is that, does that fall
2 within what is considered to be the normal range?

3 A. Yes.

4 Q. Do you know whether that blood pressure
5 could have been temporarily elevated for the same
6 reasons that the heart rate would have been reported
7 as being temporarily elevated when the medical
8 assistant did his or her initial electronic --

9 A. I mean, it certainly could have been.

10 MR. LEVIN: Form.

11 MR. SCHEVIS: Join.

12 MR. FRANZ: Join.

13 MR. LEVIN: Lack of foundation, move to
14 strike.

15 THE WITNESS: There is no way to know that,
16 but it could have been.

17 MR. LEVIN: Just a second, I'm going to
18 object after his answer, and we're talking over each
19 other a lot, so as long as I have a chance to get it
20 in before the next question is what I will do.

21 MR. PELTZ: What ever.

22 BY MR. PELTZ:

23 Q. You had mentioned in your cardiac
24 evaluation that you found Michael's heart rate had a
25 regular rhythm, there were no murmurs, and that the

1 S1, S2 were within normal limits, what does that mean
2 in lay terminology?

3 A. It means that the first and second heart
4 sounds sounded normal. There is what we call a
5 lubdub, no unusual sound, and it was regular. It
6 didn't have any - one didn't come at a time that you
7 wouldn't expect it to come, you know, just boom,
8 boom, boom, boom, just like that.

9 Q. During the course of this evaluation or any
10 other one that you had done of Michael, did you ever
11 observe any clinical signs or symptoms that would be
12 consistent with hypertension?

13 MR. LEVIN: Form.

14 THE WITNESS: No.

15 BY MR. LEVIN:

16 Q. Now, on the same page that we have been
17 referring to, near the bottom it says, assessment?

18 A. Yes.

19 Q. And what was your No. 1 assessment?

20 A. Healthy.

21 Q. Would you have advised Michael and his
22 parents that your assessment was that he was healthy?

23 A. Yes.

24 Q. And based on your evaluation on March 27th,
25 2009, as well as your familiarity with Michael over

1 MR. LEVIN: Form, asked and answered.

2 MR. SCHEVIS: Join.

3 MR. FRANZ: Join.

4 MR. LEVIN: And leading.

5 THE WITNESS: I don't really recall the
6 reason at this point.

7 BY MR. PELTZ:

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9 tachycardia?

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12 BY MR. PELTZ:

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14 evidence of arrhythmias or other abnormalities?

15 MR. LEVIN: Form.

16 THE WITNESS: No.

17 BY MR. PELTZ:

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19 any evidence of any heart disease or irregularity?

20 MR. LEVIN: Form.

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24 assistant there is a blood pressure of 133/84?

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2 within what is considered to be the normal range?

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5 could have been temporarily elevated for the same
6 reasons that the heart rate would have been reported
7 as being temporarily elevated when the medical
8 assistant did his or her initial electronic --

9 A. I mean, it certainly could have been.

10 MR. LEVIN: Form.

11 MR. SCHEVIS: Join.

12 MR. FRANZ: Join.

13 MR. LEVIN: Lack of foundation, move to
14 strike.

15 THE WITNESS: There is no way to know that,
16 but it could have been.

17 MR. LEVIN: Just a second, I'm going to
18 object after his answer, and we're talking over each
19 other a lot, so as long as I have a chance to get it
20 in before the next question is what I will do.

21 MR. PELTZ: What ever.

22 BY MR. PELTZ:

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24 evaluation that you found Michael's heart rate had a
25 regular rhythm, there were no murmurs, and that the

1 S1, S2 were within normal limits, what does that mean
2 in lay terminology?

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4 sounds sounded normal. There is what we call a
5 lubdub, no unusual sound, and it was regular. It
6 didn't have any - one didn't come at a time that you
7 wouldn't expect it to come, you know, just boom,
8 boom, boom, boom, just like that.

9 Q. During the course of this evaluation or any
10 other one that you had done of Michael, did you ever
11 observe any clinical signs or symptoms that would be
12 consistent with hypertension?

13 MR. LEVIN: Form.

14 THE WITNESS: No.

15 BY MR. LEVIN:

16 Q. Now, on the same page that we have been
17 referring to, near the bottom it says, assessment?

18 A. Yes.

19 Q. And what was your No. 1 assessment?

20 A. Healthy.

21 Q. Would you have advised Michael and his
22 parents that your assessment was that he was healthy?

23 A. Yes.

24 Q. And based on your evaluation on March 27th,
25 2009, as well as your familiarity with Michael over

1 the years, did you feel that there was any further
2 testing of any nature that was necessary for him at
3 that time?

4 MR. LEVIN: Form.

5 THE WITNESS: Not at that time.

6 BY MR. PELTZ:

7 Q. On the part of the form where it says
8 laboratory, there is a number of potential tests that
9 can be performed?

10 A. Correct.

11 Q. And if you are going to recommend one of
12 those tests you would mark off which test it is?

13 A. Correct.

14 Q. At that point in time, did you feel there
15 was any need to do any further cholesterol testing?

16 MR. LEVIN: Form.

17 THE WITNESS: Not on that visit.

18 BY MR. PELTZ:

19 Q. Did you advise Michael just to continue to
20 be active?

21 A. Yes.

22 Q. On the other page for Exhibit No. 3, there
23 is a section that says sports/camp physical
24 questions?

25 A. Yes, okay.

1 Q. Are these questions that you ask the
2 patient?

3 A. Sometimes I ask the patient and sometimes I
4 have them fill it out before I walk into the room.

5 Q. Okay.

6 A. Honestly, I don't remember who made those
7 checkmarks. I may have that day, I don't remember.

8 Q. Are these questions that are designed to
9 elicit information that would be significant to you
10 as a pediatrician to determine whether the individual
11 can engage in sports and camping and physical
12 activities?

13 MR. LEVIN: Form, leading, compound.

14 THE WITNESS: That's correct.

15 BY MR. PELTZ:

16 Q. And in this case were all of the responses
17 negative?

18 A. Yes.

19 Q. Now, underneath that on the form where it
20 says, chief complaint, does that mean that there is
21 an actual complaint or is that referred to why the
22 patient is there?

23 A. That is an area that is reserved for
24 patients to - if the patient, on a physical
25 examination if the patient actually, in addition to

1 the physical exam, has concerns about their illness,
2 I will write that there.

3 I also typically will just make a general
4 comment about the patient.

5 Q. So you indicate that Michael was there for
6 a history and physical, his entire family?

7 A. That's correct.

8 Q. And was apparently--

9 A. On his way to college. He voices no
10 complaints about his health, he is happy.

11 Q. When you use, it looks like a PO
12 complaints?

13 A. It actually says no complaints.

14 Q. Okay. So you say, voices no complaints
15 about health, and is happy, that would have been
16 information that Michael gave you?

17 A. Yes.

18 Q. And his parents?

19 A. Yes.

20 Q. Now, just below that where it says,
21 patient's social family history?

22 A. Yes.

23 Q. Now, there is a row and in that row it
24 says, heart/chol, which I assume means cholesterol
25 risk?

A. Yes, correct.

Q. And there is a plus and a minus?

A. That is right.

Q. And in Michael's case, what did you indicate for heart/cholesterol risk?

A. Negative.

Q. And what does that mean?

A. Typically, I ask if there is a family history of high cholesterol, and if the parents say, yes, the mother, the father, the grandparents have high cholesterol, then I will circle positive.

If they say no, then I will circle negative.

Q. If you have any concerns about the patient's cholesterol based on cholesterol tests that the patient might have had in the past, would you have indicated positive there?

A. Yes, but it is based on history, it is based on what they tell me.

Q. A little further down it says, behavior/developmental history WNL, what does that mean?

A. Within normal limits.

Q. And by developmental history, what does that mean?

1 A. You're asking about his psycho
2 developmental history, his neuro developmental
3 history, is he normal, behaviorally and cognitively.

4 Q. There is a question about whether the
5 patient snores on a frequent basis, and what was
6 indicated by Michael?

7 A. That he does not.

8 Q. A little further down it talks about
9 nutritional assessment and it says, dietary intake,
10 and what does it say after that?

11 A. Negative, meaning there is no problems.

12 Q. Okay.

13 A. No concerns specifically.

14 In other words, basically, what we are
15 looking for there is, is there a problem with his
16 dietary intake, does he have problems in terms of
17 food selection, that kind of stuff.

18 Q. And did you feel that he had any problems
19 in that field at that time?

20 A. Well, no. As I put on the, after eating
21 habits and concerns, that he is working on his diet
22 and his exercise, so we talked about quantity and
23 food selection.

24 Q. Was there anything that you saw during the
25 course of your examinations and interactions with

1 Michael over the years that would lead you to believe
2 that he was anything other than a typical teenager?

3 MR. LEVIN: Form.

4 MR. SCHEVIS: Join.

5 MR. FRANZ: Join.

6 THE WITNESS: I don't recall anything that
7 made me think differently than that.

8 BY MR. PELTZ:

9 Q. If you had been concerned that there was
10 some type of ongoing problem with his cholesterol,
11 would you have put something other than negative for
12 dietary intake?

13 MR. LEVIN: Form, leading.

14 THE WITNESS: Yes.

15 BY MR. PELTZ:

16 Q. Going back to the top of the form where it
17 says active, strong and happy, did you underline
18 those descriptions?

19 A. I'm sorry?

20 Q. At the top.

21 A. I'm sorry.

22 Q. Active, strong and happy, the other form?

23 A. Yes.

24 Q. Does that mean that that is how Michael

25 appeared to you on that day?

1 MR. LEVIN: Form, leading.

2 THE WITNESS: Yes, he did.

3 BY MR. PELTZ:

4 Q. Did Michael appear to you to be active,
5 strong and happy when you saw him?

6 A. I mean one of the things that I actually do
7 recall about the physical exam and the visit of the
8 entire family is that it was very pleasant. The
9 entire family was very upbeat, including Michael.

10 Q. Now, as we previously discussed, Michael
11 had been seen at your office by your partner, Dr.
12 Fliegenspan?

13 A. Yes.

14 Q. On May 13th, 2008?

15 A. Yes.

16 Q. Let me show you and ask you if those are
17 true and accurate copies of your records of those
18 visits, and if so, we'll mark those as Exhibit No. 5.

19 A. Yes.

20 (The document referred to was marked for
21 Identification Plaintiffs' Exhibit No. 5.)

22 BY MR. PELTZ:

23 Q. Do these have an order as to which is
24 first?

25 A. This would be first.

1 keeping among our providers so that we are doing the
2 same things and that we are compliant with
3 regulations.

4 Q. So when Dr. Fliegenspan filled out the
5 portion of Exhibit No. 5 that contains the various -
6 that contains the cardiac evaluation, would there be
7 firm procedures that would be in place that he would
8 follow that would have been in place the same as when
9 you filled out yours?

10 MR. LEVIN: Form.

11 THE WITNESS: Yes.

12 BY MR. PELTZ:

13 Q. So would you have, based on - well, in a
14 pediatric practice, too, do you often rely on each
15 other's records?

16 A. Of course.

17 Q. Is it routine or typical in a pediatric
18 private practice where a patient will be seen by one
19 doctor on one occasion and another doctor on another
20 occasion in the group?

21 A. Yes.

22 Q. Because of that, is it important that all
23 of the doctors in the group fill out a chart in the
24 same way?

25 A. Yes.

1 Q. With regards to Dr. Fliegenspan's exam of
2 May 13th, what does he indicate with regard to the
3 cardiac portion?

4 A. He indicates that the patient had a normal
5 cardiac exam.

6 Q. And based upon the firm procedures which
7 were in affect at the time, would he have performed
8 the same type of exam with a stethoscope that you had
9 described previously for when you saw Michael?

10 MR. LEVIN: Form, leading, no predicate, no
11 foundation.

12 THE WITNESS: There is no reason to think
13 that he wouldn't have.

14 BY MR. PELTZ:

15 Q. Based upon the firm procedures or based
16 upon the practice procedures - strike that.

17 Based upon your group practice procedures
18 that were in affect at the time, when Dr. Fliegenspan
19 checked off normal next to the heart exam, what did
20 you understand that to be?

21 MR. LEVIN: Same objection.

22 THE WITNESS: That he oscillated the heart,
23 checked the rhythm, checked the rate, listened to the
24 first and second heart sounds, and determined that
25 the patient had a normal cardiac exam.

1 BY MR. PELTZ:

2 Q. Would that include a normal heart rate?

3 MR. LEVIN: Same objection.

4 MR. SCHEVIS: Join.

5 MR. FRANZ: Join.

6 THE WITNESS: Yes.

7 BY MR. PELTZ:

8 Q. At the bottom where it says assessment, on
9 that same page, what are those letters and what do
10 they mean?

11 A. WC means well child.

12 Q. Is that the same thing, within normal
13 limits?

14 A. Yes, it means the same thing.

15 MR. SCHEVIS: Objection to form.

16 BY MR. PELTZ:

17 Q. So what was Dr. Fliegenspan's assessment of
18 Michael's overall condition including his heart?

19 A. That he had a normal physical exam.

20 MR. LEVIN: Form

21 BY MR. PELTZ:

22 Q. If Dr. Fliegenspan had felt that there was
23 any problem with Michael's heart rate or blood
24 pressure, under your group practices, policies and
25 procedures, would he have indicated something

1 different on this document?

2 MR. LEVIN: Object to form.

3 MR. SCHEVIS: Join.

4 MR. FRANZ: Join.

5 THE WITNESS: It would have been indicated
6 in two places. One under the abnormal column by
7 heart, to the right and in the assessment column at
8 the bottom of the physical exam, the second page of
9 Exhibit No. 5.

10 BY MR. PELTZ:

11 Q. Is there anything indicated on the abnormal
12 column?

13 A. No, there is not.

14 Q. And the assessment as you previously
15 indicated is well child?

16 MR. LEVIN: Form, leading.

17 THE WITNESS: No, there is nothing there,
18 well child.

19 BY MR. PELTZ:

20 Q. Did Dr. Fliegenspan indicate that there was
21 any necessity for doing any cholesterol evaluations
22 when he saw Michael?

23 MR. LEVIN: Form.

24 THE WITNESS: There is no cholesterol
25 ordered on that visit.

1 BY MR. PELTZ:

2 Q. On the other page to that visit, where it
3 says, nutritional assessment, what is indicated there
4 under dietary intake?

5 A. I believe that says normal.

6 Q. If Dr. Fliegenspan had any concerns about
7 Michael's dietary intake or cholesterol, under the
8 office practices and procedures which were in affect
9 for your group at the time, would he have used the
10 word normal to describe dietary intake?

11 MR. LEVIN: Form.

12 MR. SCHEVIS: Join.

13 MR. FRANZ: Join.

14 THE WITNESS: No, and he would have
15 documented something under concerns.

16 BY MR. PELTZ:

17 Q. Is there anything under concerns?

18 A. No.

19 MR. LEVIN: Form.

20 BY MR. PELTZ:

21 Q. Now the last time we were here, we had - I
22 think it was Mr. Hasty had shown you this Scout -
23 this was already marked at your last deposition I
believe as exhibit something --

25 MR. LEVIN: Three.

1 A. No. Since then we have asked our front
2 office employees to please make copies of all forms.
3 I'm not sure exactly when that policy went into
4 affect but we certainly do like to keep copies of our
5 health form in our charts whenever possible.

6 BY MR. PELTZ:

7 Q. At the time of this particular exam back in
8 2008, would it have been unusual under your office
9 policy and procedures as they existed at that time
10 for all such forms not to be within a patient's
11 chart?

12 A. Yes, it wouldn't have been unusual.

13 Q. Do you see at the top right-hand corner
14 where it says all Class 3 activities require a health
15 examination within the past 12 months by a licensed
16 healthcare practitioner and this includes youth and
17 adult members participating in high adventure
18 activities, athletic competition and World Jamborees?

19 A. Yes.

20 Q. And then a little below that where it says,
21 licensed healthcare practitioner's evaluation/advice,
22 it says, proof for participation in all activities is
23 checked?

24 MR. LEVIN: Form.

25 THE WITNESS: Yes, yes, yes.

1 BY MR. PELTZ:

2 Q. And would you as of the time that you saw
3 Michael, would have concurred with Dr. Fliegenspan's
4 opinion on the date that he filled out this form?

5 MR. LEVIN: Form.

6 THE WITNESS: Ask that question again.

7 BY MR. PELTZ:

8 Q. As of the date that you saw Michael --

9 A. As of the date that I saw him --

10 Q. In March of 2009, would you have concurred
11 with what Dr. Fliegenspan indicated?

12 A. Had I been given the form at that date,
13 yes.

14 MR. LEVIN: Form, leading.

15 MR. SCHEVIS: Join.

16 MR. FRANZ: Join.

17 THE WITNESS: Yes.

18 BY MR. PELTZ:

19 Q. So at any time when you saw Michael on
20 March 27th, 2009 did you impose any limitations on
21 his physical activities?

22 MR. LEVIN: Form.

23 THE WITNESS: No, I did not.

24 BY MR. PELTZ:

25 Q. I will ask you about a few other records

1 BY MR. PELTZ:

2 Q. This document that says Pediatric
3 Associates, is this document a true and accurate copy
4 of a laboratory report that is part of your group's
5 records?

6 A. Yes.

7 MR. PELTZ: We'll mark this as Exhibit
8 No. 10.

9 (The document referred to was marked for
10 Identification Plaintiffs' Exhibit No. 10.)

11 BY MR. PELTZ:

12 Q. And let me show you a report from Lucille
13 Beseler dated December 10th, 2003, is this a report
14 from Lucille Beseler that was provided to your group
15 that is part of your official records?

16 A. Yes.

17 MR. LEVIN: Objection.

18 MR. PELTZ: We'll mark this as Exhibit
19 No. 11.

20 (The document referred to was marked for
21 Identification Plaintiffs' Exhibit No. 11.)

22 BY MR. PELTZ:

23 Q. Doctor, if we look at these documents which
24 we have just marked in chronological order.

25 A. Okay.

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Q. Exhibit No. 9 would be dated what?

A. September 26th, 2002.

Q. And on that date was it reported that a cholesterol test had been done on Michael?

A. Yes.

Q. And what was the result of that test?

A. 264.

Q. And that was on September 26, 2002?

A. Correct.

Q. Now, next in chronological order would that be Lucille Beseler's report?

A. Yes, dated December 9, 2003.

Q. Does she indicate that Michael had lost weight?

MR. LEVIN: Form, leading.

THE WITNESS: It says that she saw Michael for nutrition followup, and his weight was 145 pounds and that he had a 4.5 weight loss at that time.

MR. LEVIN: Let the record reflect that counsel is pointing at the part of the document that he would desire the witness to the read from.

BY MR. PELTZ:

Q. Well, you are able to read this on your own--

MR. LEVIN: Place it on the table for him

1 to look at instead of holding it in front of him and
2 pointing to the part you want him to read.

3 BY MR. PELTZ:

4 Q. Let me start again. Does Exhibit No. 11,
5 the report that your office received from Lucille
6 Beseler, indicate whether or not Michael had lost
7 weight since first seeing her?

8 A. Yes.

9 Q. And what does it indicate in that regard?

10 A. It indicated that he had lost four and a
11 half pounds.

12 Q. Does the report of Lucille Beseler indicate
13 whether Michael was improving or not as far as his
14 goals of weight reduction?

15 A. It shows that he had some improvement, yes.

16 Q. Does the report that has been marked as
17 Exhibit No. 11 indicate that Michael was improving or
18 not as far as his selection of foods?

19 A. It shows that he has been working to change
20 problems in eating patterns, but --

21 MR. LEVIN: Move to strike, nonresponsive.

22 BY MR. PELTZ:

23 Q. Now, doctor, is Exhibit No. 10 the next
24 laboratory report that would be in your records that
25 would contain cholesterol testing for Michael?

1 A. Dated August 13th, 2004 his cholesterol is
2 233.

3 Q. Does this show a significant decrease from
4 the time that the cholesterol was first taken in
5 September of 2002?

6 MR. LEVIN: Form, leading.

7 MR. SCHEVIS: Join.

8 MR. FRANZ: Join.

9 THE WITNESS: Yes.

10 BY MR. PELTZ:

11 Q. Is this cholesterol reading - strike that.
12 Is a drop from 264 to 233 significant in
13 your opinion?

14 A. Yes.

15 Q. And was this second cholesterol reading,
16 did this occur in time after Michael had been to see
17 Lucille Beseler, and had started working with her?

18 MR. LEVIN: Objection to form.

19 MR. SCHEVIS: Join.

20 MR. FRANZ: Join.

21 THE WITNESS: Apparently, it did.

22 BY MR. PELTZ:

23 Q. Now, with regard to Exhibit No. 8, this
24 would be --

25 A. The following summer of July 28, 2005.

1 Q. Does this indicate - would this be the next
2 cholesterol reading that your office has on Michael?

3 A. It seems to be the next one on record, yes.

4 Q. And what was his cholesterol report--

5 A. It was 211.

6 Q. In your opinion, was the change from 233 to
7 211 significant?

8 MR. LEVIN: Form.

9 THE WITNESS: In my opinion, yes.

10 BY MR. PELTZ:

11 Q. In your opinion was the change from 264
12 back at the end of 2002, to the reading of 2011 in
13 2005 significant?

14 MR. LEVIN: Form.

15 THE WITNESS: Yes.

16 BY MR. PELTZ:

17 Q. And what did that indicate to you?

18 A. It would indicate that he had been making
19 dietary choices.

20 Q. And from July 28th, 2005 on, did either you
21 or Dr. Fliegenspan according to your records ever
22 feel the need to continue on with further cholesterol
23 testing for Michael?

24 MR. LEVIN: Form, leading.

25 THE WITNESS: I don't know all of the

1 reasons behind it, but it doesn't appear that he had
2 another cholesterol check.

3 BY MR. PELTZ:

4 Q. If you had been concerned about Michael's
5 cholesterol, would you have recommended that it be
6 checked?

7 MR. LEVIN: Form.

8 THE WITNESS: Probably. I mean, sure we
9 would have checked it if we had been concerned about
10 it.

11 BY MR. PELTZ:

12 Q. And based on your review of your records,
13 was it ever recommended that it be checked again?

14 A. No, it was not.

15 Q. With regard to the report that you have
16 that is dated, it is marked as Exhibit No. 8, that is
17 dated July 28, 2005, on the line that says, under
18 nutritional assessment, dietary intake, what is
19 indicated?

20 A. I'm sorry, where?

21 MR. PELTZ: Am I allowed to point?

22 THE WITNESS: Yes, it is normal.

23 MR. LEVIN: I would say no, but go ahead.

24 MR. PELTZ: I didn't, he found it on his

25 own.

1 THE WITNESS: Amazing.

2 BY MR. PELTZ:

3 Q. On the part of the report dated July 28,
4 2005 where it indicates eating habits/concerns, what
5 is indicated?

6 A. Within normal limits.

7 Q. Would this have been the same visit that
8 Michael's cholesterol reading had dropped to 211?

9 MR. LEVIN: Form.

10 THE WITNESS: This would be the same visit.

11 MR. LEVIN: If you need a quick break?

12 THE WITNESS: Yes.

13 (Whereupon, a break from the proceedings
14 was taken at this time.)

15 MR. PELTZ: Back on the record.

16 BY MR. PELTZ:

17 Q. Doctor, let me show you another document
18 and ask you if this is a true and accurate copy of
19 your group's office records of August 13th, 2004?

20 A. Yes.

21 MR. PELTZ: And we'll mark this as Exhibit
22 No. 12.

23 (The document referred to was marked for
24 Identification Plaintiffs' Exhibit No. 12.)

25 BY MR. PELTZ:

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Q. Doctor, on this form, once again, would this have been filled out, if this was filled out pursuant to your office's normal practices and procedures, what would it indicate about Michael's cardiac evaluation on that day?

MR. LEVIN: Form.

THE WITNESS: It would have indicated that he has normal cardiac evaluation.

BY MR. PELTZ:

Q. On the bottom of this form it indicates, it says sports physical assessment, what is indicated there?

A. Cleared without limitation.

Q. Apparently your forms changed somewhat in time after that because we don't see that particular box later on?

MR. LEVIN: Form, leading.

THE WITNESS: Apparently, they did change, yes.

BY MR. PELTZ:

Q. But did your opinion or that of your partners change between August 13th, 2004 and the date that you last saw Michael on March 27th of 2009 concerning Michael's ability to participate in sporting activities?