

**In The Matter Of:**

*Napolitano v.*

*Wighton, et al.*

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*November 10, 2025*

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*Queens Supreme Court, Civil Division*

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF QUEENS: CIVIL TERM: PART MDP

3 -----X

4 LUIGI NAPOLITANO,

5 Plaintiff,

6 -against-

7 Index No. 700321/2022  
8 JURY TRIAL

9 JOSEPH DEMONTE PCA,  
10 MADELINE FILS-ALME R.N.,  
11 NORTH SHORE UNIVERSITY HOSPITAL,  
12 NORTHWELL HEALTH,

13 Defendants.

14 -----X

15 Supreme Courthouse  
16 88-11 Sutphin Boulevard  
17 Jamaica, New York 11435  
18 November 10, 2025

19 B E F O R E:

20 HONORABLE TRACY CATAPANO-FOX,  
21 Justice of the Supreme Court

22 A P P E A R A N C E S:

23 HARRIS KEENAN AND GOLDFARB, PLLC

24 Attorneys for the Plaintiff

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BY: SETH A. HARRIS, ESQ.

BY: JASON KAUFER, ESQ.

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DALILA CUMMINGS, RPR  
Senior Court Reporter

(Whereupon, the documents were marked as Plaintiff's Exhibit 1 in evidence, by the Reporter.)

THE COURT: Good morning. We are here for trial on the matter of the Luigi Napolitano versus what was, as a caption, Robert L. Wighton, MD; Sulman Mahmood, D.O.; Joseph DeMonte, PCA; Madeline Fils-Alme, R.N.; Carol Curry, R.N.; Karyn Carlson, R.N.; North Shore University Hospital - Northwell, Index Number 700321 of '22.

Counsels, you could put your appearances on.

MR. HARRIS: Seth Harris, Harris, Keenan and Goldfarb for Mr. Napolitano.

THE COURT: Good morning.

MR. KAUFER: Good morning. Jason Kaufer from Harris, Keenan and Goldfarb on behalf of Mr. Napolitano.

THE COURT: Good morning.

MS. DI LEO: Good morning.

Diana Di Leo, Wagner, Doman, Leto and Di Leo on behalf of the defendants Joseph DeMonte, PC; Madeleine Fils-Alme, R.N.; and North Shore University Hospital.

Thank you.

THE COURT: I want to thank you, the parties for expeditiously selecting a jury. I note that the caption needs to be amended to reflect the appellate decision, which affirmed dismissal with regard to some of the defendants, but reversed and remanded this back for trial

1       for three of the defendants.

2               So the caption should now read: Luigi Napolitano  
3       against Joseph DeMonte, PCA, Madeline Fils-Alme, R.N., and  
4       North Shore University Hospital, Northwell Health. Is that  
5       so agreed?

6               MR. HARRIS: Yes.

7               MS. DI LEO: So agreed.

8               THE COURT: Wonderful. Any other issues for the  
9       record?

10              MR. HARRIS: No, Judge.

11              MS. DI LEO: No, Your Honor.

12              THE COURT: I note that the parties have agreed to  
13       a liability -- a bifurcated trial. At this time we will do  
14       a liability trial, and then we will proceed to damages.

15              MR. HARRIS: I am curious, Judge -- if I may -- as  
16       to the Court's schedule for the rest of the week.

17              THE COURT: I am here.

18              MR. HARRIS: Okay.

19              THE COURT: Other than tomorrow, obviously.

20              MR. HARRIS: Tomorrow, right. So working  
21       Wednesday, Thursday, Friday this week?

22              THE COURT: 9:30 to 4:30.

23              MR. HARRIS: What about next week, Judge?

24              THE COURT: Off the record.

25       (An off-the-record discussion was held.)

## THE COURT'S INSTRUCTIONS

4

1 THE COURT OFFICER: All rise. Jury entering.

2 (The jury enters the courtroom.)

3 THE CLERK: Do both parties stipulate that the  
4 jurors are present and properly seated?

5 MR. HARRIS: Yes.

6 MS. DI LEO: Yes.

7 THE CLERK: Shall I swear the judge in, Your  
8 Honor?

9 THE COURT: Yes, Madam Clerk.

10 THE CLERK: Jurors, please raise your right hand.  
11 (Whereupon, the jury was sworn in by the court  
12 clerk.)

13 THE CLERK: Please be seated.

14 THE COURT: Good morning, Members of the Jury.

15 Hi. I am Judge Tracy Catapano-Fox, and it is my absolute  
16 privilege and pleasure to get to work with you on this  
17 trial. I don't know if you have ever been to our  
18 courthouse before; if you ever served on a jury before, but  
19 on behalf of myself, my excellent staff, the attorneys, and  
20 the parties, I want to welcome you to our courthouse, and  
21 thank you so much for being here.

22 Now, I have been a judge for over five years, and  
23 I was a attorney practicing for over twenty before that,  
24 and I can tell you I have never met a juror who has come in  
25 here, and said, yeah, I'm so excited to be here on jury

## THE COURT'S INSTRUCTIONS

5

1 duty; there's no other place I want to be.

2 Most of the time when you get the jury notice you  
3 immediately go, oh, no; what do I do? What about my  
4 family? My life? My friends? My work? What am I  
5 supposed to do?

6 But then as you are sitting over across the street  
7 in the jury pool, you start to think, maybe this is  
8 interesting; I have seen it on TV; read about it in books;  
9 maybe online; I wonder what jurors do. And it is that  
10 little bit of curiosity that I hope you have, that I plan  
11 on working with to say in all honestly thank you so much  
12 for being here. We could not have our system of justice  
13 without good people from our community who are willing to  
14 take the time to listen to the attorneys' presentation,  
15 carefully weigh the evidence, and make a true and just  
16 decision at the end.

17 It is the essence of our system, and we are one of  
18 the few countries who still have jury trials for civil  
19 matters. What you are doing is incredibly important, and I  
20 thank you again.

21 I will do my best to give you an idea of the  
22 schedule each day, and what's happening. And I look  
23 forward to working with you as we go through this trial.

24 So right now I'm about to read some instructions  
25 to you. It should take about 15 minutes. After which, you

## THE COURT'S INSTRUCTIONS

6

1 will hear from the attorneys. Sit back and relax, and  
2 again, pleasure meeting you.

3 Members of the Jury, we are about to start the  
4 trial of this case, which you have heard some details  
5 during jury selection. Before the trial begins, however, I  
6 will provide you with these instructions to help you  
7 understand what you will see and hear, and to guide your  
8 conduct during a trial.

9 Now the party who brings a lawsuit is called the  
10 plaintiff. And in this case the plaintiff is Luigi  
11 Napolitano. The party against whom a lawsuit is brought is  
12 called the defendant. And in this case the defendants are  
13 Joseph DeMonte, PCA; Madeleine Fils-Alme R.N.; and  
14 North Shore University Hospital Northwell Health.

15 In this case, you will decide only the question of  
16 liability; that is which party or parties, if any, are  
17 responsible for the accident that brings them here to  
18 court. You are being asked, therefore, to decide only the  
19 question of fault. And should there be any mention of an  
20 injury, you will only consider that reference in deciding  
21 how the incident occurred, and not for any other purpose.

22 This procedure is being followed at my direction,  
23 and you should not draw any conclusions against any party  
24 from that fact. After I have completed this opening  
25 instructions, the attorneys will make what's called opening

## THE COURT'S INSTRUCTIONS

7

1 statements, in which each will outline for you what they  
2 intend to prove. The purpose of opening statements is to  
3 tell you about each party's contentions so you will have a  
4 better understanding of the evidence as it's introduced.  
5 But what is said in opening statement is not evidence. The  
6 evidence upon which you will base your decision will come  
7 from the demeanor of witnesses here in court, or in sworn  
8 testimony given before trial, or in the form of  
9 photographs, documents or other exhibits that are admitted  
10 into evidence.

11 In our case the plaintiff will make an opening  
12 statement first, followed by the defendant. After the  
13 opening statements, the plaintiff will present all of their  
14 witnesses and evidence in support of their claims. Once  
15 the plaintiff has done so, the defendant will then chose or  
16 chose not to submit evidence to you to support their  
17 claims. And sometimes we have rebuttal in response to  
18 that.

19 A witness is examined first by the party who calls  
20 the witness to testify, and then may be questioned by the  
21 opposing party in what we call cross-examination, and  
22 sometimes additional questioning occurs.

23 At times during the trial an attorney may make an  
24 objection to a question, or to the introduction of an  
25 exhibit, or may make motions concerning legal questions



## THE COURT'S INSTRUCTIONS

8

1       that apply to the case. Arguments in connection with such  
2       objections or motions may be made outside your presence,  
3       but any ruling that I make will be based solely upon the  
4       law; and therefore, you must not conclude from any ruling I  
5       make or from anything I say during the trial that I favor  
6       either party to the lawsuit, because I do not.

7               After all the evidence is introduced, the  
8       attorneys will again speak to you on what's called a  
9       closing statement or summation. In summing up the  
10      attorneys will point out what they contend the evidence has  
11      shown; what inferences or conclusions they contend you  
12      should draw from the evidence; and what conclusions they  
13      contend you should reach as your verdict.

14             But what the attorneys say in summation, just like  
15      what they say in opening statements, or in the making of  
16      motions or objections, is not evidence. And under our  
17      system, the defendant will sum up first, followed by the  
18      plaintiff.

19             After summations, I will instruct you on the rules  
20      of law that apply to the case, and you will retire for your  
21      deliberations.

22             Your functions as jurors is to decide what has or  
23      has not been proven and to apply the rules of law that I  
24      give to you to the facts as you find them to be. And the  
25      decision you reach will be your verdict. Your decision

## THE COURT'S INSTRUCTIONS

9

1 will be based on the testimony you hear, and any exhibits  
2 that are received into evidence during trial.

3 You are the sole and exclusive judges of the  
4 facts, and nothing I say or do should be taken by you as to  
5 any indication as my opinion about the facts. Neither I  
6 nor anyone else can take away your responsibility to  
7 determine the facts. I will preside impartially, and not  
8 make any opinions about the facts, because my opinions  
9 would be totally irrelevant, because it is for you the jury  
10 to decide what the facts are.

11 On the other hand, and with equal emphasis, I  
12 instruct you that in accordance with the oath you just took  
13 as jurors, you must accept the rules of law I just gave to  
14 you whether or not you agree with them. You are not to ask  
15 anyone else about the law, nor should you consider or  
16 accept advice about the law from anyone else but me.

17 As the sole judges of the facts you must decide  
18 which of the witnesses you believe, what portion of their  
19 testimony you accept, and what weight you give to it.

20 At times during the trial I may sustain an  
21 objection to a question, which means there won't be an  
22 answer, or if the witness already answered, I will ask my  
23 exceptional reporter to strike the answer from the record,  
24 and you the jury disregard it from your minds. You may not  
25 draw any inference or conclusion from any unanswered

## THE COURT'S INSTRUCTIONS

10

1 question, nor may you consider testimony that was stricken  
2 from the record when reaching your verdict.

3 The law requires that your decision be based  
4 solely upon the admitted evidence, and any items that I  
5 exclude will be excluded because they are not legally  
6 admissible.

7 A lawsuit is a civilized method of determining  
8 disputes. It is basic to the administration of any system  
9 of justice that the decisions on both the law and facts be  
10 made fairly and honestly. You as the juror and I as the  
11 Court have a heavy responsibility to assure that a just  
12 result is reached when deciding the differences between  
13 these parties.

14 As a fair and impartial juror you must guard  
15 against the application of any stereotypes or attitudes  
16 about people or groups that might leave you to render a  
17 decision based on those stereotypes or attitudes. Please  
18 keep in mind that bias is not always obvious or conscious.

19 In assessing the testimony and other evidence in  
20 the case, you must not be swayed by any stereotypes or  
21 attitudes.

22 Now, the law does not require that you accept all  
23 the evidence I admit. In deciding what evidence you might  
24 accept, you must make your own evaluation of the testimony  
25 given by each of the witnesses, and decide how much weight,

## THE COURT'S INSTRUCTIONS

11

1 if any, you choose to give to a witness' testimony.

2 The testimony of a witness may not conform to the  
3 facts as they've occurred either because the witness is  
4 intentionally lying or because the witness does not express  
5 himself or herself clearly when testifying or because the  
6 witness did not accurately hear or see that which the  
7 witness testifies about or because the witness'  
8 recollection is faulty.

9 There's no magical formula that we use to evaluate  
10 testimony. You bring with you to this courtroom all of  
11 your life experiences, and in every day of your lives you  
12 have to decide the reliability or unreliability of  
13 statements that people make to you. In the same way that  
14 you weigh credibility and reliability in your lives, you  
15 will do the same in your deliberations. And in deciding  
16 how much weight, if any, you choose to give to a witness'  
17 testimony, you may consider the interest or lack of  
18 interest of a witness in the outcome of the case; the bias  
19 or prejudice of a witness, if any; the age; the appearance;  
20 the manner in which the witness gives testimony on the  
21 stand; the opportunity the witness has to observe the facts  
22 about which he or she testifies; and the probability or  
23 improbability of a witness' testimony when taken in light  
24 of all the evidence in the case.

25 And if there's a conflict in the evidence, you

## THE COURT'S INSTRUCTIONS

12

1 will have to decide whether and to what extent that  
2 apparent conflict can be reconciled by fitting the  
3 different versions together. But if that's not possible,  
4 you will have to decide which of the conflicting versions,  
5 if any, you choose to accept.

6 To help ensure that a just result is reached when  
7 you decide the case and consistent with the oath you just  
8 took as jurors, there are several rules that you must  
9 govern your conduct while you are serving on the jury.

10 Now because this case involves something that  
11 happened in a certain location, you might be tempted to  
12 visit it; you might be tempted to go online and look at it,  
13 but you may not do so. Even if you work at the location,  
14 even if you are familiar or have friends at the location,  
15 you cannot do any research looking online or going to the  
16 location while you are serving on the jury.

17 In fairness to the parties in this lawsuit it is  
18 very important that you keep an open mind throughout the  
19 trial. You must reach our decisions and discussions and  
20 verdict on the evidence and only the evidence that I admit  
21 during the trial. And then only after have you heard the  
22 summations of the attorneys and my instructions on law.  
23 Then you will have a chance to talk to each other and  
24 exchange your views in order to reach your verdict.

25 Now, it is human nature to form tentative opinions

## THE COURT'S INSTRUCTIONS

13

1 while the trial progresses when you hear witnesses in  
2 evidence, and you might have a temptation to talk about the  
3 case amongst each other, but the law does not permit it.  
4 The reason for this is that if you engage in premature  
5 discussions without the benefit of all the evidence, the  
6 attorneys summations, and my charge to you on the law, then  
7 your discussions will not be fully informed and that would  
8 be unfair to these parties.

9 For this reason, among others, please don't do any  
10 research either by talking to other people, going online,  
11 books, magazines, social media, anything like that, about  
12 any of the topics in the case, including the attorneys, the  
13 law, the parties, the witnesses or the Court.

14 Once you have rendered your verdict and  
15 discharged, you are free to do whatever you look. You  
16 could talk to the world. You could write about it. I  
17 don't know, people like, I don't know, like TikTok. I  
18 don't understand any of that, but people do. People like  
19 it.

20 After you are discharged, go wild. Have a great  
21 time. Or don't tell anyone. I always tell my jurors you  
22 can pretend you were on vacation and never tell a soul you  
23 came to court. That is your privilege and prerogative, but  
24 only after I have discharged you.

25 And should anyone try to talk to you despite you

## THE COURT'S INSTRUCTIONS

14

1       telling them not to, please let my excellent officer know  
2       and I will make sure to take care of that. Please remember  
3       the reason for this is that not only is the law mandating  
4       it, but the parties are depending on you to fairly and  
5       impartially consider only the admitted evidence, and to  
6       allow outside information which could be inaccurate,  
7       unreliable or incomplete to affect your judgment would be  
8       unfair to these parties, and could lead to a retrial of  
9       this case.

10               Please note while you are in the courtroom and in  
11       your deliberations all cellphones, smartphones or personal  
12       electronic devices must be turned off. We do take breaks.  
13       We will have one morning break and one afternoon break, and  
14       we have lunch. There's plenty of time to check your phones  
15       or any of your devices. If you have a particular issue  
16       about, be it you have to add money to your park app or there  
17       is a medical issue that you need or family issue that you  
18       need to look at your phone, please let my excellent officer  
19       know, and we will take an extra break. That's not a  
20       problem. Again, we want to make this service as easy and  
21       best for you.

22               Now, please do not talk either amongst yourselves  
23       or with anyone else about any topic related to the case.  
24       You can tell people you are on jury duty, you can tell them  
25       when you are coming to court and when you are leaving, but

## THE COURT'S INSTRUCTIONS

15

1 again, you can cannot discuss anything that happens here  
2 with anyone either online or in person in any other way.  
3 Should someone ask you despite you telling them not to,  
4 please let my excellent officer know, and I will handle it.

5 Although it's a normal human tendency to talk to  
6 people with whom you come in contact, while you are serving  
7 on the jury, please do not talk either inside or outside  
8 the courtroom with any of the attorneys, the parties or the  
9 witnesses.

10 Now, by this I mean not only don't talk about the  
11 case, but don't talk about anything. Don't talk about the  
12 weather. Don't talk about whether maybe St. Johns will  
13 actually go further than one round in the NCAA this year.  
14 Don't talk about the holidays. Nothing. If they see you  
15 outside either in the elevator or at Starbucks or at lunch  
16 and they ignore you, they are not being rude. They are  
17 excellent professional attorneys, but they are following my  
18 directive to make sure that you guys stay completely  
19 neutral and fair, and that no one influences you in any way  
20 during the trial.

21 So again, should someone try to speak to you  
22 despite you telling them not, please let my excellent  
23 officer know, and I will handle it.

24 Now, during the trial you may have an issue with  
25 where you may need to talk to me about it. If that



## THE COURT'S INSTRUCTIONS

16

1       circumstance arises, please let my excellent officer know  
2       either through a written note or just verbally explain, and  
3       I will be able to talk to you further.

4               I also point out you see that there's TVs and  
5       cameras? These are not on. Don't get excited. There's  
6       nobody watching us, I assure you. These are for times when  
7       we have witnesses who cannot come to court, and when they  
8       cannot come to court we can do what's called remote  
9       testimony. And what that does is it allows the witnesses  
10      to see us; and more importantly, for us to see them.

11             These cameras are not on unless we have remote  
12      witnesses, but we often time also have evidence that we  
13      would like you to see. So during the course of the trial,  
14      the attorneys may use the computer equipment, and you will  
15      be able to see the evidence a lot easier. So that's the  
16      only reason it's there.

17             If you have any questions about it, again, don't  
18      hesitate to ask.

19             Finally, under the law only six jurors will  
20      ultimately deliberate on the case. We have alternate  
21      jurors because sometimes during trial a juror is unable to  
22      continue their service due to some exceptional  
23      circumstance; however, you are all required to pay full and  
24      careful attention throughout the trial so you are all fully  
25      familiar with the case. And the fact that we have

## OPENING STATEMENTS - PLAINTIFF / MR. KAUFER

17

1       alternate jurors does not mean that the regular jurors can  
2       not pay attention or not show up. You all need to be here  
3       every day fully and carefully paying attention.

4               The description of trial procedure, the rules  
5       governing your conduct, and the legal principles I have  
6       just described, I hope will make it easier for you to  
7       understand the trial as it progresses, and to reach a just  
8       result at its conclusion.

9               I want to thank you so much for your time and  
10       attention. And we will now begin with the opening  
11       statements of counsel.

12              Mr. Harris.

13              MR. HARRIS: Mr. Kaufer.

14              MR. KAUFER: Thank you, Your Honor.

15              THE COURT: Thank you.

16              MR. KAUFER: May it please the Court, Counsel,  
17       Ladies and Gentlemen. One of the most basic and  
18       fundamental responsibilities of a hospital's emergency room  
19       is to keep its patients safe from injury and harm while  
20       they are in the emergency room. It is their responsibility  
21       to create the safest environment possible to ensure their  
22       safety while they are in the hospital.

23              Patients come to the emergency room because they  
24       are sick; they are in pain; they are vulnerable. They come  
25       to the emergency room with trust. They put their trust

1 into the hands of those that are at the hospital. They put  
2 their trust not only that they are going to receive proper  
3 medical care, but they are going to be kept safe from harm  
4 or injury. So while the ultimate job of the emergency room  
5 in the hospital is to provide appropriate medical care,  
6 they are also responsible for taking all reasonable steps  
7 to ensure that their patients are safe, while they are in  
8 the hospital.

9 We are here today because the defendants in this  
10 case failed in that very basic duty. They failed to  
11 protect Luigi Napolitano -- who is sitting right over  
12 here -- from harm, and protect him from falling. The  
13 defendants, they are negligent. They departed from the  
14 standard of care, and they failed to provide Mr. Napolitano  
15 with the appropriate care that he was entitled to.

16 It is these failures that caused Mr. Napolitano to  
17 fall in the emergency room at North Shore University  
18 Hospital.

19 Now, before I get into the specifics of what  
20 happened in this particular case or what we are actually  
21 alleging, I want to tell you a little bit about  
22 Mr. Napolitano. Mr. Napolitano was 69 years old on the  
23 date of incident, which by the way was July 9, 2021. He is  
24 73 years old now.

25 Mr. Napolitano was born and raised as a child in

1 Naples, Italy. He came to the United States in 1971 when  
2 he was about 20 years old. He has been married to his  
3 wife, Patricia, for about 40 years. And they have an adult  
4 son together.

5 Mr. Napolitano and his wife, they live right here  
6 in Queens. Mr. Napolitano, for the bulk of his adult life,  
7 worked as a licensed barber, commuting from Queens to lower  
8 Manhattan regularly on a daily basis to support his family.

9 On July 9th of 2021, Mr. Napolitano went to North  
10 Shore University Hospital's emergency room because he  
11 needed help. He needed medical treatment. He had been  
12 experiencing extreme pain in his lower back, radiating down  
13 his leg for the past two days before going to the hospital.  
14 He could no longer, at this point in time, walk on his own.  
15 His wife, Patricia, drove him to the hospital that  
16 afternoon.

17 Now, at the time this took place, Mr. Napolitano  
18 had a pretty significant medical history. It included  
19 diabetes, high blood pressure, high cholesterol, chronic  
20 back pain, a history of several falls in the six months  
21 before this date. And now, he was there suddenly with an  
22 inability to walk because of the pain and weakness in his  
23 legs.

24 You are going to hear that upon Mr. Napolitano's  
25 arrival at the hospital, he was unable to get out of the

1 car on his own. He was unable to walk into the emergency  
2 room. Instead, a security guard came and helped. A  
3 security guard got Mr. Napolitano a wheelchair, and wheeled  
4 him directly into the emergency room, and took him directly  
5 to what is called the triage area of the emergency room.

6 Now, you are going to hear through the course of  
7 the trial that the triage area of an emergency room is  
8 typically the first place that a patient is seen when they  
9 arrive in an emergency room. They are seen by a member of  
10 the hospital staff first in the triage area.

11 A triage nurse works in this area. It is the  
12 triage nurse's responsibility, among other things, to  
13 determine why the patient was at the hospital; to fully  
14 assess the patient's condition upon his arrival at the  
15 hospital; to determine the urgency in which a patient  
16 should or needs to be seen by a medical doctor; and  
17 finally, must determine if the patient is a risk for  
18 falling while they are in the hospital.

19 The triage nurse in this particular case was one  
20 of the defendants in this case: Defendant  
21 Madeleine Fils-Aime.

22 It was 4:18 p.m.; 4:18 in the afternoon when  
23 Ms. Fils-Aime saw Mr. Napolitano in the triage area.

24 Now, you are going to hear, and you are going to  
25 see in the medical records -- and the records are available

for you to review -- that Ms. Fils-Aime, she did document why Mr. Napolitano was in the hospital, why he came to the emergency room. She documented that he was there because of severe back pain radiating down his leg. You are going to also see that she documented his physical condition upon arrival at the hospital. She recorded and documented all of his vital signs. She also recorded in the medical record that Mr. Napolitano's level of pain was a ten out of ten either being active or sitting at rest.

Now, Ms. Fils-Aime also determined how quickly Mr. Napolitano should be seen by a medical doctor. She used a tool called the Emergency Severity Index or the ESI, and assigned a level of severity to Mr. Napolitano. You are going to hear the ESI is a system used in triage where patients are ranked from most urgent, all the way down to least urgent. They use a scale of one to five. An ESI level of one indicates the patient is in need of immediate life threatening care, all the way down to a five. A level five is a patient that is not urgent, and can wait until he or she can be seen.

Ms. Fils-Aime assigned a ESI level of 2 to Mr. Napolitano indicating that he was at pain, in pain, at risk, and in need of emergent care.

Now, also based on Mr. Napolitano's medical history, and his present complaints, that he made upon his

1 arrival at the hospital, and Ms. Fils-Aime's assessment of  
2 the patient, she also determined and documented that  
3 Mr. Napolitano was a patient that was at risk for falling  
4 while he was in the emergency room.

5 She even placed a yellow plastic bracelet on his  
6 wrist that specifically says fall risk. You will see it.  
7 Indicating that he was a fall risk, and alerting the entire  
8 hospital staff that he was a fall risk, and precautions  
9 needed to be taken.

10 You are going to see, and you are going to hear  
11 all of this clearly documented in Ms. Fils-Aime's triage  
12 note.

13 Now, when Ms. Fils-Aime completed the triage  
14 process, Mr. Napolitano was directed to the waiting room.  
15 He was told to sit in the wheelchair that the security  
16 guard got for him in the waiting room, and wait for his  
17 name to be called. He did just that.

18 Now, despite being assigned an ESI level of two,  
19 meaning he was in need of emergent care, Mr. Napolitano's  
20 name was not called until 7:30 p.m. Over three hours after  
21 his arrival at the hospital. During those three plus hours  
22 Mr. Napolitano sat in the while chair completely unsecured,  
23 no food, no drink, no bathroom while he waited for his name  
24 to be called to have medical attention. For over three  
25 hours Mr. Napolitano was not checked upon or monitored in

any way by the hospital staff.

As he sat there in his wheelchair he nodded off from time to time. It was to get relief from the pain that he was in. Now, it was about 7:30 p.m. that one of the other defendants in this case, who you will meet, Joseph DeMonte entered the waiting room and yelled out the name Luigi Napolitano, and woke Mr. Napolitano.

In response to being woken up by hearing his name, Mr. Napolitano attempted to get up to make his presence known; however, he immediately fell to the ground due to the pain and weakness in his legs.

Now, there should be no dispute in this case, that this fall actually happened. There's no dispute in this case that the fall took place at the exact time and place that we are alleging it took place. There should also be no dispute in this case as to how this fall happened. It's all documented in the medical records by the defendants. Every bit of it.

Now, this fall -- it did not have to happen. It didn't have to be. And by the end of this case you too will see that this did not have to be. The defendants in this case, they knew that Mr. Napolitano was a risk for fall. They knew it. It's documented. Yet they didn't act upon it. They failed to do what was needed to protect Mr. Napolitano from falling. They failed to implement any



1 of the appropriate fall prevention or interventions that  
2 were needed and available to put in place to prevent this  
3 fall.

4 Now, I anticipate that when I'm done speaking to  
5 you, that Ms. Di Leo is going to stand up and speak to you  
6 as well. I anticipate that she is going to tell you that  
7 the hospital did everything that they were supposed to do,  
8 and that they did everything that they could do to prevent  
9 this fall, and that this fall was nothing more than an  
10 unpredictable, unavoidable accident. Or may even try to  
11 blame Mr. Napolitano for this fall because he stood up.  
12 However, you are going to hear from Plaintiff's expert --  
13 Plaintiff's expert in this case is a board certified  
14 physician who practices emergency room medicine. The  
15 expert has practiced room emergency for over forty years.  
16 The expert will tell you this is simply not true. This  
17 fall was predictable. This fall was preventible and  
18 avoidable.

19 Plaintiff's expert is going to explain to you that  
20 the very first step that must be taken by the emergency  
21 room staff to protect patients from falling is to perform a  
22 thorough assessment of the patient's condition, so that  
23 they can rate the level of risk of fall. The expert is  
24 going to explain that there are a number of different  
25 factors that come into place when making the determination

1 when a patient is at risk; such as patient's age, pain  
2 level, ability to walk, ability to stand, chronic illnesses  
3 such as diabetic, and such as high blood pressure, and also  
4 a history prior falls.

5 This expert is going to explain to you that  
6 Mr. Napolitano's medical history made him a risk for fall.  
7 He's going to explain to you and tell you that  
8 Mr. Napolitano was, in fact, a high risk for fall while he  
9 was in the hospital.

10 Now, this too should really not be disputed in  
11 this case because we know by looking at the medical records  
12 that Ms. Fils-Aime documented in the chart that this  
13 patient was a fall risk. She even put the bracelet on his  
14 wrist to indicate that he was a fall risk.

15 Now, Plaintiff's expert will then go on and  
16 explain to you that when a party in an emergency room is  
17 determined to be a risk for fall, that there are numerous  
18 precautions or interventions to help prevent that patient  
19 from falling. Defendants -- the plaintiff's expert is  
20 going to tell you that the defendants in this case were  
21 negligent and departed from the standard of care in failing  
22 to assess and implement the appropriate precautions to help  
23 prevent Mr. Napolitano from falling. The expert will tell  
24 you the standard of care under these circumstances dictated  
25 that Mr. Napolitano be placed on a stretcher with the side

1 rails up because of his risk of falling. Not sitting  
2 unsecured in a wheelchair in a waiting room alone for  
3 hours.

4 The expert will tell you that any patient that  
5 arrives at a hospital with a pain level of ten out of ten,  
6 an inability to walk, chronic back pain, history of prior  
7 falls, coupled with Mr. Napolitano's age of 69, and his  
8 history of diabetes and high blood pressure, must be placed  
9 on a stretchier to protect them from falling. Side rails  
10 up. It is this that protects the patient that is at risk.

11 It is this that would have prevented  
12 Mr. Napolitano from falling. The expert is going to tell  
13 you that the defendants were negligent and departed from  
14 the standard of care by leaving Mr. Napolitano unsecured in  
15 a waiting room for hours, and that it was a departure from  
16 the standard of care that he was not placed on a stretcher  
17 with the side rails up until he could be seen and examined  
18 by a medical doctor.

19 Now, you are also going to hear that the standard  
20 of care dictates that patients who have been deemed a high  
21 risk for fall, be closely monitored while they are in the  
22 emergency room. You will see from the medical records,  
23 three hours went back before Mr. Napolitano was monitored.  
24 Plaintiff's expert is going to tell you this too was  
25 negligent and a departure from the standard of care.

Now, in addition, as I said to you, Mr. Napolitano is diabetic. He spent hours in that waiting room without any food, and without any water. His glucose sugar levels were not tested once before his 7:30 p.m. fall. Not once. Immediately after the fall at 7:30, his glucose levels were tested. They came back extremely elevated. You are going to hear that extremely elevated glucose levels can lead to disorientation, dizziness, unsteadiness. Yet, they were never checked before the fall. Plaintiff's expert is going to tell you that this too was negligent and a departure from the standard of care.

And then you are going to finally hear from Plaintiff's expert. These failures and these negligence and these departures from the standard of care, all of them are what caused Mr. Napolitano to fall in the emergency room on July 9, 2021, and sustained permanent injuries. All of them.

By the time this trial is over, you too will see and understand just how negligent the defendants were. Just how many times that you heard from the standard of care, and that this is what caused the fall. You will see that this fall did not need to be. It was predictable. It was avoidable.

This case is about accountability. When someone comes to the emergency room, they do so with trust. The

1 trust in this case for Mr. Napolitano was broken.

2 We are here today to ask you to hold the  
3 defendants accountable for their failures, and hold them  
4 accountable for failing to provide Mr. Napolitano with  
5 proper care while he was in the emergency room. Hold them  
6 accountable for failing to protect Mr. Napolitano from  
7 falling in the emergency room.

8 At the end of this trial, we are going to ask you  
9 to render a verdict in favor of the plaintiff, finding that  
10 the defendants in this case were negligent and departed  
11 from the standard of care.

12 Thank you for your time.

13 THE COURT: Thank you, Counselor. Ms. Di Leo.

14 MS. DI LEO: This is not a case of medical  
15 malpractice. This is not a case of negligence. This case  
16 is simply about a man who chose to stand up from a  
17 wheelchair, apparently felt his legs get weak, and fell.  
18 That's it. This is not about any wrongdoing on the part of  
19 hospital staff.

20 May it please the Court, Counsel, Ladies and  
21 Gentlemen of the Jury, allow me to introduce myself once  
22 again. My name is Diana Di Leo. I am with the firm  
23 Wagner, Doman, Leto, and Di Leo. And I am here today on  
24 behalf of the defendants, on behalf of Nurse Madeleine  
25 Fils-Aime -- seated in the first row over there -- and

1 Joseph DeMonte, who was working as a PCA on July 9 of 2021,  
2 at North Shore University Hospital, when Mr. Napolitano  
3 came in.

4 You will hear from each of these witnesses, these  
5 parties to the action. They are defendants here today.  
6 Defendants in a lawsuit about this.

7 I'm also here representing the hospital North  
8 Shore University Hospital located in Manhasset. I'm not  
9 here on behalf of the building, the bricks and mortar. I'm  
10 here on behalf of the physicians and the nurses, and the  
11 aides, and the therapists, and all of the techs that go  
12 about their business every day of helping people.

13 (Whereupon, the following was recorded and  
14 transcribed by Senior Court Reporter Noah Collin.)

15 (Continued on next page.)

16 \* \* \* \* \*

1 MS. DI LEO: Yes, helping people in need. Yes doing  
2 the best that they can to help each and every patient that  
3 comes through the doors of the hospital. Check.

4 Now, remember, as I said in jury selection, any  
5 patient can bring a claim. Anybody can bring a lawsuit,  
6 and claim anything, claim negligence, claim medical  
7 malpractice. Here in this courtroom, plaintiff has the  
8 burden of proof to prove that there was negligence here,  
9 that there was medical malpractice here. The defense does  
10 not have to prove anything. I don't have to make an  
11 opening statement, I don't have to question any witness, I  
12 don't have to call a witness to the stand. But I will just  
13 to make it a it abundantly clear to you what really  
14 happened here. I submit to you plaintiff's allegations  
15 against these defendants, they are false. They can't be  
16 proven. But that will be your conclusion to draw at the  
17 end of all of the evidence.

18 Now, you will learn that this story really doesn't  
19 begin on July 9 of 2021. You heard that's the day when  
20 Mr. Napolitano presented to North Shore University  
21 Hospital. But, you will want to hear about Mr. Napolitano  
22 and who was he before that day and how was he before that  
23 day. And you'll learn this was not the first day he ever  
24 came to North Shore University Hospital to the emergency  
25 room. You will hear he had been there previously, and you

1 may see previous records. And you will hear that he had  
2 and I think plaintiff mentioned that he had other  
3 preexisting conditions. You heard diabetes, high blood  
4 pressure, high cholesterol. You will hear he had back  
5 pain. Plaintiff said he had back pain for years and  
6 certainly even more so the last couple of days before this  
7 and that he had prior falls. Now you may also hear that  
8 Mr. Napolitano was 69 years of age leading an active  
9 lifestyle. He was living in Bayside working in Manhattan.  
10 He would commute to work every day where he would stand on  
11 his legs all day as a barber or a hairdresser. He was also  
12 physically active, going to the gym regularly. So that's  
13 who this patient was. Then on July 9 of 2021,  
14 Mr. Napolitano decided to go to the emergency room due to  
15 back pain, and his wife drove him to the hospital to be  
16 evaluated. You'll hear that he was offered a wheelchair at  
17 security before he entered the hospital as a security guard  
18 is offered to everybody patient who pulls up in a car.  
19 Would you like a wheelchair, sir? They put him in a  
20 wheelchair out of courtesy. They wheel him into the  
21 hospital, into triage. You will hear about that. Then you  
22 will learn the first face that he came into contact was our  
23 Nurse Madeleine Fils-Aime. You will hear testimony from  
24 her because this wasn't her first day on the job. She was  
25 working as a triage nurse at North Shore for years before



1           that. And she speaks to each person that comes in, but  
2           it's a brief conversation; it's not a full assessment. She  
3           can't sit there and speak to them for an hour. That's not  
4           her job, that's not her role. Nor would you want it to be  
5           if you were the next patient waiting. This is an emergency  
6           room, this is triage, this is a preliminary assessment.  
7           She needs to determine the patient in front of me who I am  
8           seeing for the first time in my life. Is this the patient  
9           who's having a heart attack or having a stroke or in need  
10          of urgent surgery? Do they need to be seen immediately?

11                 Then, there's everything else that may be coming into  
12          the emergency room; right? Any number of things that  
13          people may come in with.

14                 So a nurse in that position has to make a preliminary  
15          assessment. They very briefly speak to the patient. What  
16          brings you here today? What do you need? And she makes a  
17          determination. And yes, she takes his vital signs, his  
18          blood pressure, his heart rate, his respiratory rate, how  
19          is he breathing, his oxygenation. You are going to see  
20          because she makes a note at the time and she documents all  
21          of that. And yes, she asks him what is your pain level?  
22          She asks every patient that. And pain is very subjective.  
23          I could tell you right now, I am having terrible back pain.  
24          You don't know if I am or not. It's how I feel, what I  
25          tell you. Everybody's different. But she certainly

1 documents what the patient tells her. And she certainly  
2 says, out of an abundance of caution, I have a patient  
3 who's 69 with back pain, I am going to give him a fall-risk  
4 bracelet because she is concerned about patient safety,  
5 absolutely. Because everybody in that ER is concerned  
6 about patient safety every day that they come to work.

7 So she puts on a yellow fall-risk bracelet. You will  
8 see that she gives the patient instructions. She tells  
9 him -- now, we wish everybody could be seen immediately  
10 when they come to the emergency room. And certainly when  
11 we are patients, we would like to be seen right away. But  
12 that's not realistic. That's not what happens. So you  
13 come, and it all depends upon how busy is the ER that day,  
14 how many people have come in that are having a heart attack  
15 or having a stroke? They are going to be seen before  
16 somebody who's having back pain.

17 So she assesses the patient. Is this patient stable?  
18 Can he sit and wait to be seen? She makes that assessment  
19 based upon her education, training, experience. And she  
20 says OK, Mr. Napolitano. And what else is important? This  
21 is a man who is competent, like you and I. He's not  
22 confused, he doesn't have dementia, nothing like that.  
23 There is no dispute about that here in this case.

24 So, she says to him you're seated in the wheelchair,  
25 please wait. Wait to be called back for treatment in the

1 emergency treatment area when there is a bed available for  
2 you. Someone will call out your name, they will bring you  
3 back. You have to wait.

4 And Mr. Napolitano does wait. And Mr. Napolitano's  
5 wife is with him for a good period of time while they're  
6 waiting. And at some point, and you will hear from  
7 Mr. Napolitano, that he told his wife it's going to be a  
8 while, why don't you go home. And she leaves after a  
9 while. But to say he didn't have anything to eat or drink  
10 in the waiting area, I don't know if he did or didn't.  
11 We're not here to serve people in the waiting area, but  
12 there are certainly vending machines. If he needed  
13 something, certainly that could have arranged.

14 In any event, Mr. Napolitano was a stable patient in  
15 the waiting area. He wasn't the only patient in the  
16 waiting area. And he waited for several hours. And you  
17 will see that -- by Mr. Napolitano's own testimony you will  
18 hear he was about fifteen feet from the triage desk. Why?  
19 You will hear from our triage nurse that she wanted to keep  
20 an eye on him. She wheeled him over about 15 feet from her  
21 desk so that she would have him in her sight. Why?  
22 Because she was concerned about patient safety. After  
23 about three hours of a PCA Joseph DeMonte came out to check  
24 patients that had been waiting a while. He came out  
25 because he said I want to check your vitals signs. So he

1       came over, and you'll see that he documents that in the  
2       Court because that is what they do at the hospital. And  
3       you, as jurors, will have the opportunity to see the  
4       hospital records, records that are made at the time of the  
5       events. Not everything gets documented. You can't  
6       possibly document everything that is said or done. But  
7       certainly, the vital signs. So we know that Joseph DeMonte  
8       went out to the waiting area, he took patient's vital signs  
9       to check on them, and he had an interaction with  
10      Mr. Napolitano at that time. And Mr. Napolitano's vital  
11      signs, his blood pressure, his heart rate, his respiratory  
12      rate, his oxygenation was all normal. That's documented in  
13      the chart. Then after that, a few minutes later,  
14      Mr. DeMonte is told there's a bed in available in the back.  
15      Mr. Napolitano is the next patient. He comes out and calls  
16      him: Luigi Napolitano.

17             What happens? Mr. DeMonte expects a patient raises  
18      his hand, hey, I'm over here or calls out. But for  
19      whatever reason, Mr. Napolitano stood up from the  
20      wheelchair, he says that he felt his legs get weak, he fell  
21      in the emergency department waiting area. Well, that was  
22      very unexpected. Certainly, Mr. DeMonte didn't expect  
23      that. He didn't expect this patient to stand up. He  
24      didn't ask him to stand up. He didn't tell him to stand  
25      up. His intention was to walk over, take the wheelchair,

1 unlock it, wheel him back to the treatment area. That's  
2 what he was doing with all the other patients.

3 So what happened here? I submit to you this is not a  
4 case of negligence. There's nothing that this triage nurse  
5 or this PCA did wrong. They didn't create an unsafe  
6 environment for Mr. Napolitano. Ladies and gentlemen of  
7 the jury, we have free will. We have the ability to make  
8 decisions and then to accept the consequences of those  
9 decisions.

10 Now, if plaintiff's claim that Mr. Napolitano should  
11 have been put in a stretcher with side rails up because he  
12 was considered a fall risk, well, that's not the standard  
13 of care. And if they bring an expert witness who will say  
14 that that is the standard of care, we will bring in  
15 emergency medical expert who will say that's not the  
16 standard of care. And then we will ask you to use your  
17 common sense. Is it reasonable that you are going to have  
18 an ER waiting area with all patients on stretchers with the  
19 side rails up? And by the way, if you were that patient  
20 with the side rails up and you wanted to get up, you still  
21 have free will, and people all the time try to climb over  
22 side rails, try to climb through side rails, and sometimes  
23 get hurt doing that. So that's not the standard of care.  
24 That was not done here. And you will listen to what  
25 happened here based upon the testimony before you and the

1 records before you. You will likely hear from an expert on  
2 behalf of the plaintiff's, and you will likely here from an  
3 expert on behalf of the defendants.

4 So I ask you please use your common sense as you  
5 listen to all of the witnesses in this case. And I think  
6 you need to ask yourself, would a reasonable person in that  
7 situation, especially if you are having terrible back pain  
8 and you can't walk your leg hurts and the pain is going  
9 down your leg, would you stand up from your wheelchair?  
10 Why? Why would you do that? I submit to you,  
11 Mr. Napolitano did not act reasonably in this situation and  
12 the hospital staff did exactly what was expected of them in  
13 this situation.

14 So the staff, yes, I submit to you, they rendered good  
15 care. But unfortunately, you can't always predict what a  
16 patient may do. Mr. Napolitano did not follow their  
17 directions. He stood up on his own, and he fell and the  
18 staff was unable to prevent that fall. But they didn't  
19 cause the fall. They're not responsible for what he did in  
20 that waiting area. And to suggest that that fall is due to  
21 their negligence or their malpractice is very unfair when  
22 this patient fell due to his own actions. So to suggest  
23 that these hospital employees should be held accountable, I  
24 have to say that I think Mr. Napolitano should be held  
25 accountable for his own actions. And that is why we are

1           here. So please resist the urge to play Monday morning  
2           quarterback, because that's never fair to anyone. We can  
3           all look back and say maybe we should have said this or  
4           maybe you we should have done that or may be that would  
5           have been made a difference here. But that's not fair.

6           As jurors, please look at the actions of our triage  
7           nurse, of PCA DeMonte, and of Mr. Napolitano, based upon  
8           the facts and circumstances before them at the time.

9           I submit to you that the staff acted very reasonably.  
10          I ask you to listen closely to all of the evidence and keep  
11          an open mind. These criticisms that have been lodged  
12          against the hospital staff, it's really, really unfair.  
13          And I hope to stand before you at the end of this case and  
14          ask you to return a verdict in favor of the defendants and  
15          let them get back to their job and feel good about what  
16          they do. Thank you.

17          THE COURT: Thank you, Counselor.

18          All right. Members of the jury, we are now going to  
19          take our five-minute break. Please don't discuss anything  
20          you have heard or seen. I am looking forward to see you in  
21          five minutes when we will begin the testimony in this case.  
22          Thank you so much.

23          THE COURT OFFICER: All rise. Jury exiting.

24          (Whereupon the jury exited the courtroom.)

25          THE COURT: Anything for the record, Counselors?

1 MR. KAUFER: Other than a request for the easel for  
2 the blowups.

3 MS. DI LEO: No, Your Honor. Thank you.

4 MR. KAUFER: Maybe we could premark the blow-ups.

5 (Whereupon a recess was taken.)

6 THE CLERK: Members of the jury present and properly  
7 seated.

8 THE COURT: Good morning members of the jury. Have a  
9 seat. Members of the audience, counselors, please have a  
10 seat. I want to thank you for your time and attention this  
11 morning I am going to note we are working until about 1245.  
12 That is when we take our lunch break to 2. During that  
13 break in lunch, we come back, feel free to bring I always  
14 say, water, coffee, tea. No happy drinks. It is a  
15 courthouse.

16 Yes, you are welcome to help you throughout the day.  
17 In the morning or afternoon to bring you something to help  
18 you know keep us all going. Thank you again. We are going  
19 to begin with our first witness.

20 Who are you calling?

21 MR. KAUFER: We are.

22 MR. HARRIS: We are calling Nurse Fils-Aime.

23 Fills am.

24 M A D E L E I N E F I L S - A I M E, a witness called on  
25 behalf of Plaintiff, after having been first duly sworn by the



## Opening Statements - Defendants / Ms. Di Leo

40

1 clerk of the court took the witness stand and testified as  
2 follows:

3 THE CLERK: Please be seated. Please speak into the  
4 microphone. In a loud, clear voice state and spell your  
5 name.

6 THE WITNESS: Madeleine Fils-Aime. M-A-D-E-L-E-I-N-E.  
7 F-I-L-S - A-I-M-E.

8 THE COURT: Your work address.

9 THE WITNESS: 300 Community Drive, North Shore,  
10 Manhasset.

11 THE CLERK: The witness has been sworn.

12 THE COURT: Good morning.

13 THE WITNESS: Morning, Your Honor.

14 THE COURT: So today, these attorneys are going to ask  
15 you some questions. If you wouldn't mind directing your  
16 answers to our jury in as loud, clear, and slow of a voice  
17 as possible so my amazing reporter can get everything down.  
18 Feel free to move your chair and the mic. I can see you  
19 have a lovely very quiet voice. Imagine you were back in  
20 the ER. You've got to shout; right?

21 THE WITNESS: Yes.

22 THE COURT: So feel free to shout. No one will be  
23 offended. We want to make sure we hear you.

24 Mr. Harris, you may proceed.

25 DIRECT EXAMINATION

1 BY MR. HARRIS:

2 Q. Good morning, Nurse Fils-Aime.

3 A. Good morning.

4 Q. We have never met before; yes?

5 A. No.

6 Q. Are you still a nurse at North Shore Hospital?

7 A. Yes, I am.

8 Q. When did you begin working there?

9 A. In 2004.

10 Q. 2004?

11 A. Yes.

12 Q. In the emergency department or somewhere else?

13 A. I have been there until presently, yes.

14 Q. You have been where until recently?

15 A. No, until now at North Shore Emergency.

16 Q. OK, since 2004; yes?

17 A. Yes.

18 Q. Now you were working there in July of 2021; yes?

19 A. Yes.

20 Q. And you were on July 9, 2021, what is called a triage  
21 nurse, in the emergency department at north shore on that day.

22 Do I have that correct?

23 A. Yes.

24 Q. Now, the term triage, that means to assess a patient  
25 that comes in the door, to know what level emergency they are

1 and how to prioritize them in terms of the treatment they are  
2 about to receive in your department, do I have that right?

3 A. Yes.

4 Q. And, how long had you done triage nursing work prior  
5 to that day?

6 A. I have been working there for 21 years. So after one  
7 year, we are able to triage patient. So, I have been assigned  
8 there whenever they assign me to triage.

9 Q. So as of 2021, you had worked as a triage nurse for  
10 many years before that; right?

11 A. Yes.

12 Q. And, you were working on that day yes, July 9?

13 A. Yes.

14 Q. What shift were you working that day?

15 A. 7A to 7P.

16 Q. 7?

17 A. 7 in the morning to 7 p.m.

18 Q. Twelve hours?

19 A. Yes.

20 Q. OK. Was that sort of normal at that time, a  
21 twelve-hour shift?

22 A. That's a normal shift.

23 Q. Right. Now, a patient, Luigi Napolitano, arrived in  
24 the emergency department on that day; yes?

25 A. Yes.

1 Q. You saw him first; correct?

2 A. Yes.

3 Q. In the emergency department?

4 A. Yes.

5 Q. OK. And he was in a wheelchair; yes?

6 A. Yes.

7 Q. Do you know how he got into the wheelchair?

8 A. Normally, at North Shore Hospital, when somebody  
9 comes, the security is outside and offers a wheelchair to a  
10 patient. If the patient wants it, they will place them in the  
11 wheelchair.

12 Q. OK. You said, normally, I think your answer began;  
13 right?

14 A. Yes.

15 Q. I am not asking normally, ma'am.

16 A. That is everyday practice. That is the way we do it.

17 Q. I am not asking about everyday practice. I am asking  
18 you in this particular case, do you know -- if you know, and you  
19 may not know -- did you see how he got into the wheelchair on  
20 that day? Yes or no.

21 A. Yes, I know. Because that is the security placed him  
22 in the wheelchair.

23 Q. Did you see the security place him in the wheelchair?

24 A. Inside, the security -- I'm inside. I'm inside.

25 Q. When you say you are inside, does that mean that you

1 believe security placed him in a wheelchair outside?

2 A. From the curb, yes.

3 Q. Did you ever go outside the hospital and see him  
4 placed in the wheelchair?

5 A. No. We are not trained for that.

6 Q. I am not asking about what you are trained, ma'am.  
7 You told us normally, that they are placed in a wheelchair  
8 before they come in. I am just merely trying to point out you  
9 didn't see that. Am I wrong or right?

10 MS. DI LEO: Objection to the form?

11 THE COURT: So, I am going to sustain it and just ask  
12 you to rephrase.

13 MR. HARRIS: Sure.

14 BY MR. HARRIS:

15 Q. Yes or no, did you see Mr. Napolitano placed in a  
16 wheelchair by any security guards that day? Yes or no.

17 A. No.

18 Q. Thank you. Now he arrived at your station in the  
19 emergency department at 4:21 p.m. or 4:19 p.m. I heard 4:19 in  
20 the openings, but I think the chart says 4:21. Do you recall?

21 A. I don't recall that.

22 Q. Does your note -- well, withdrawn.

23 Did you review certain materials in preparation for  
24 your testimony here today, ma'am?

25 A. Yes.

1 Q. Did you do that?

2 A. Yes, yes.

3 Q. And one of the materials you reviewed was the hospital  
4 chart; right?

5 A. Yes.

6 Q. That was to refresh your recollection about the  
7 occurrences of that day; am I correct?

8 A. Yes.

9 Q. Did you review anything else?

10 A. The patient's chart. That is the only thing I  
11 reviewed.

12 Q. Did you review any affidavits by Mr. DeMonte or any  
13 statements by others?

14 A. No.

15 Q. Any deposition transcripts?

16 A. No.

17 Q. Any photographs?

18 A. No.

19 Q. OK. So the only thing you looked at was the hospital  
20 chart itself; right?

21 A. Yes.

22 Q. And I'm assuming that you have treated thousands of  
23 patients since July of 2021 up until today; am I correct?

24 A. Yes, you are.

25 Q. So, I mean nothing unusual about Mr. Napolitano other

1       than he fell that day that would cause you to remember him  
2       specifically; correct?

3           A.    I don't even remember. But just based upon the chart.  
4       I don't remember patient from the time I walked out of the  
5       hospital.

6           Q.    Of course. Yeah, yeah, I understand. In fact, you  
7       don't recognize him here in this courtroom do you?

8           A.    No.

9           Q.    Does seeing him refreshing your recollection at all  
10      from that day?

11          A.    No, it has been four years, no.

12          Q.    Understood. Now, when you first spoke with him, would  
13      it be fair to say since you don't have a recollection of him,  
14      you don't have a recollection of him being in a wheelchair when  
15      you spoke with him at that time. Do I have that right?

16          A.    It was documented in the triage earlier. The patient  
17      came in a wheelchair.

18          Q.    I understand that.

19          A.    Yes.

20          Q.    And nobody's disputing that he was in a wheelchair?

21          A.    Yes.

22          Q.    In terms of your own memory, ma'am, would it be fair  
23      to say you don't independently recollect him being in a  
24      wheelchair that day; correct?

25          A.    Yes.

1 Q. Yes, I am correct? Or yes, you do remember him being  
2 in a wheelchair?

3 A. Based upon the note, on the triage note.

4 Q. Let's put the triage note aside. I want to examine  
5 your memory, what's inside of your head; OK? Inside of your  
6 head, can you picture him in a wheelchair that day? Do you have  
7 that picture in your mind? Yes or no.

8 A. I don't remember him. No, I don't.

9 Q. That's my point. Now, according to the chart, and we  
10 should really -- if we can, Officer take the blow up. I  
11 think -- I don't know if it is 1A.

12 THE COURT: We need the easel.

13 THE COURT OFFICER: So set up the easel.

14 MR. HARRIS: I don't know which of the blowups it was  
15 numbered. Even though we have it at a blowup, Judge,  
16 unless the jurors have unbelievable eyesight, I don't know  
17 they can see the print on there. Are we able to move that  
18 in front? I will give the witness a copy. Is that OK?

19 THE COURT: That's fine with me. You have a copy?

20 MR. HARRIS: I have a copy.

21 THE COURT: You can use it on there. Then everyone.

22 MR. HARRIS: At my age, Judge, I am the old-fashioned  
23 way.

24 THE COURT: No, this is why we have this equipment.

25 THE COURT OFFICER: Hold on. We have to make sure.



1 Just give us a second.

2 THE COURT: Now, this is Plaintiff's Exhibit 1A?

3 THE COURT OFFICER: This is part -- it's part of  
4 Plaintiff's Exhibit 1. The blowup was marked as  
5 Plaintiff's 1A.

6 THE COURT: OK. This is in evidence. No objection?

7 MS. DI LEO: No objection thank you, Your Honor.

8 THE COURT: Thank you. Jurors, can you see it?  
9 See, that is what the screens are for.

10 BY MR. HARRIS:

11 Q. OK. We are now looking at the first page of your  
12 note. Do I have that right?

13 A. Yes.

14 Q. All right. It starts here, ED adult triage note; yes?

15 A. Yes.

16 Q. It says if we go to the right, it says document was  
17 updated at 16:21. That would be 4:21 p.m.; yes?

18 A. Yes.

19 Q. Now is that in essence the first time that you saw  
20 Mr. Napolitano?

21 A. Yes.

22 Q. All right. And, when you saw him, how did that work?  
23 I know you don't remember him specifically, but were you  
24 typically behind your nursing station desk and the patient was  
25 sitting in front of it or something else?

1           A.    The patient was wheeled over to the triage booth, and  
2           then we just greet the patient.  And then we ask the patient for  
3           his information.

4           Q.    Did you sit down with him at that time?

5           A.    No.  That's what we do.  When the patient first comes  
6           in the triage booth, you put the patient's information in the  
7           computer.

8           Q.    Right.  And when you do that, are you sitting or  
9           standing behind your desk?

10          A.    Just to recall, since I triaged the patient, normally  
11          what we do, there is a nurse who's doing the quick registration.  
12          There will be the nurse who is going to meet the patient first.  
13          Then I will be the second nurse to triage the patient.

14          Q.    Right.  My question was were you sitting or standing  
15          when you spoke with him.

16          A.    When I met him, I was sitting in the booth.

17          Q.    Sitting in the booth?

18          A.    Yes.

19          Q.    OK.  And that was -- because that was your practice,  
20          right?  You don't remember sitting in the booth talking to him  
21          that day; correct?

22          A.    No, no.  What I am saying, when the patient just  
23          walked in in triage, there is one nurse who meets the patient  
24          first and puts the information in the computer.  Then after  
25          that, the patient got wheeled to the triage booth.  Then that is

1 the time I met the patient.

2 Q. OK. Where is the triage booth in relation to the  
3 nursing station in the emergency department at North Shore  
4 Hospital?

5 A. Just nearby.

6 Q. How far away?

7 A. Two or three feet. It's nearby.

8 Q. OK. If we go, go to his chief complaint, it says back  
9 pain with radiation to the left leg, yes?

10 A. Yes.

11 Q. OK. And you have to determine how much pain he is in;  
12 correct?

13 A. Yes.

14 Q. And how do you do that?

15 A. Subjectively, we ask the patient to rate the pain from  
16 one to ten.

17 Q. He told you a ten out of ten; am I correct?

18 A. Yes.

19 Q. You noted that on the next page, which we can put  
20 here. This is?

21 MR. HARRIS: Everything we are showing, Judge, is in  
22 evidence.

23 BY MR. HARRIS:

24 Q. Right over here, you see that, pain radiating? And he  
25 gave that a zero to ten, a ten was the answer; correct?

1 A. That was his subjective answer, yes.

2 Q. Did I ask you whether it was subjective or objective?

3 A. No, you didn't.

4 Q. But you are volunteering that information?

5 MS. DI LEO: Objection, Your Honor.

6 THE COURT: Overruled.

7 BY MR. HARRIS:

8 Q. My question is why are you volunteering that  
9 information that it's subjective. We all know pain is  
10 subjective.

11 MS. DI LEO: Objection, Your Honor.

12 THE COURT: Sustained.

13 Q. Is pain generally subjective or objective, just so  
14 we're clear?

15 A. It's subjective.

16 Q. Is there any way to objectively measure pain,  
17 somebody's human pain? Is there a way to do that? Yes or no.

18 A. As a nurse, I am trained to be what the patient tells  
19 me, that's subjective.

20 Q. That is not my question. My question is in medicine  
21 is there an objective -- since you specifically have volunteered  
22 subjective, is there an objective way to measure somebody's pain  
23 as a human being? Yes or no.

24 A. Yes.

25 Q. How can you measure somebody's pain?

1           A.    If the patient is nonverbal, there is an assessment  
2           you do.  If the patient is nonverbal, you do it objectively.  
3           You assume the patient is in pain.

4           MS. DI LEO:  Can we have the answer read back?  I  
5           couldn't understand.

6           THE COURT:  She said if they're are nonverbal -- you  
7           can have it read back, but she said if they're nonverbal,  
8           you can to assume they are in pain.

9           MR. HARRIS:  Thank you.

10          BY MR. HARRIS:

11          Q.    If they're nonverbal, what was the rest of it?

12          A.    That's what I said.  Objectively, then you will assess  
13          the pain.  You do the pain assessment for the patient.

14          Q.    What I am asking you, Nurse, is is there a test in  
15          medicine, and an MRI, an X-ray, any kind of machine that you can  
16          hook up to a patient that tells you how much pain they are in?

17          A.    No.

18          Q.    So whenever a patient reports how much pain they're  
19          in, it's always based upon what they are feeling; yes?

20          A.    Yes.

21          Q.    Which means it is subjective; yes?

22          A.    Yes.

23          Q.    Now when he said ten out of ten, is there any reason  
24          on that day you did not believe him when he told you his pain  
25          was a ten out of ten?

1           A.    I was not judging him.  I just have to document what  
2 he told me.

3           Q.    Well, it is your job to judge him because you have to  
4 assign how emergent his condition is with a level; isn't that  
5 true?

6           A.    Yes.

7           Q.    So you do have to make a judgment; yes?

8           A.    Yes.

9           Q.    That's your job as a triage nurse to judge; yes?

10          A.    Not for pain assessment.

11          Q.    Well, if somebody says a ten out of ten and, you know,  
12 they seem perfectly fine, do you consider that when you are  
13 determining the emergent level you assign the patient?  Yes or  
14 no.

15          A.    I still have to document what the patient tells me.

16          Q.    And in this case, you documented ten out of ten?

17          A.    What he tells me, yes.

18          Q.    And then if we go back to the first page, you assign,  
19 a triage a acute level of two; correct?

20          A.    Yes.

21          Q.    Now, I know it was mentioned during the opening  
22 statements, but just to be clear from you, because, what the  
23 lawyers say is not evidence --

24                MS. DI LEO:  Objection to the colloquy.

25                THE COURT:  I am going to strike the portions about

1           what lawyers say. Just get to the question.

2           MR. HARRIS: Thank you, Judge.

3 BY MR. HARRIS:

4           Q. The scale of emergent care can run from one, which  
5 means the person's in dire need of care, they are having a heart  
6 attack up to five where they need medical attention, but it's  
7 not an emergency; is that correct?

8           A. Yes.

9           Q. In this case, you assigned it is a two which means it  
10 is emergent; correct?

11          A. It was a soft two. I did that because of the pain  
12 assessment.

13          Q. No, no. You're now giving more information than what  
14 I asked you. Do you agree that? Do you agree you are adding to  
15 your answer more than what I asked?

16          MS. DI LEO: Objection.

17          THE COURT: Overruled. If you can answer that yes or  
18 no, or I can't answer yes or no.

19 BY MR. HARRIS:

20          Q. You answered a soft two when I asked if you assigned a  
21 two. Do you recall that answer you just gave us?

22          A. Yes.

23          Q. Were you prepped before you came in here to say soft  
24 two?

25          MS. DI LEO: Objection, Your Honor.

1           A.    No.

2                   THE COURT:   Sustained.   I am striking the answer.

3   BY MR. HARRIS:

4           Q.    Well, anywhere in this chart, does it say soft two on  
5   there. Show it where it says the word "soft." Do you see that?

6           A.    No. But there are many reasons you could put two.

7           Q.    OK. Since you have no recollection of Mr. Napolitano,  
8   and now you have told this jury under oath it was a soft two,  
9   how is it possible you remember it was a soft two when you don't  
10   even remember the patient? How is that possible?

11          A.    Based upon the nurse's note, the triage's note.

12          Q.    Which nurse's note are you relying upon there? Can  
13   you show me?

14          A.    I put the two because of the pain assessment. At  
15   Northwell, anytime anybody has a pain level from seven to ten,  
16   we have to put them as a two.

17          Q.    You says based upon the nursing note, I signed it as a  
18   two. Can you show me the note you're talking about?

19          A.    I said the triage assessment.

20          Q.    OK. Can you point to which section of the note you're  
21   talking about?

22          A.    Where it says ESI level 2. I knew the two, I put it  
23   because of the a pain assessment. That was ten out of ten.

24          Q.    You are saying you put the two because of the pain  
25   level of ten out of ten; yes?



1 A. Anything seven to ten, yes.

2 Q. How do you know it wasn't because he was grimacing in  
3 dire pain? How do you know that? Since you don't recollect him  
4 or what he even looks like, how do you remember what grimaces he  
5 had as he you sit here on the stand today? You don't remember;  
6 do you?

7 A. I don't remember his face.

8 Q. No, no. So when you say soft 2, we can agree that was  
9 a term manufactured for this trial; correct?

10 MS. DI LEO: Objection, Your Honor.

11 THE COURT: Sustained.

12 BY MR. HARRIS:

13 Q. In fact, after you assigned a two, meaning he needed  
14 emergent care, meaning he had to be seen right away; correct?

15 A. Yes.

16 Q. When you are a level two, how much time should pass  
17 when you are emergent, generally speaking, before a doctor sees  
18 you? How much time?

19 A. Level two, it depends what reason I put the level two.  
20 It could be half an hour to one hour. Based upon the  
21 circumstances.

22 Q. Nurse, when there is nothing else in the chart but the  
23 number two, what are the protocols at North Shore say on how  
24 quickly a patient should be seen when the triage nurse says two?

25 A. As I said before, it goes by the priority and the

1 reason why the patient is a two.

2 Q. Does it explain on this piece of paper that we're  
3 looking at that's in evidence why he was a two? Does it say it  
4 on there?

5 A. Just as I review it, I knew that is the reason I put  
6 it as two because of the a of the pain assessment.

7 Q. How much time is the doctor supposed to see a  
8 patient -- not Mr. Napolitano -- in general, back in 2021 --

9 MS. DI LEO: Objection.

10 Q. -- when triage nurse assigns a level 2.

11 MS. DI LEO: Objection to what the doctor is supposed  
12 to do.

13 THE COURT: I am going to overrule it. If you can  
14 answer that, yes or no.

15 THE WITNESS: No, I can't. Because the Doctor -- I  
16 cannot control the doctor's flow. It varies.

17 BY MR. HARRIS:

18 Q. Let's talk about from what you observed then. Because  
19 Mr. Napolitano is not the first time that you ever assigned  
20 level two to a patient; correct?

21 A. Yes, yes.

22 Q. Yes I'm correct or no I'm not correct?

23 A. You are correct, yes. That's not the first time.

24 Q. So from what you observed between 2004 and 2021 as a  
25 triage nurse at North Shore, how quickly does a doctor see a

1 patient there when you assign a level two from your own  
2 experience?

3 MS. DI LEO: Objection.

4 THE COURT: Sustained.

5 BY MR. HARRIS:

6 Q. Would it be fair to say -- withdrawn.

7 A moment ago, you told us that there was a window of  
8 time that a doctor had to see a patient when there was an  
9 emergent level 2 assigned. Do I have your prior answer correct?

10 MS. DI LEO: Objection.

11 THE COURT: Overruled. To the extent of yes, no, or  
12 that is not what I said.

13 A. No, that's not what I said.

14 BY MR. HARRIS:

15 Q. Do you have any idea as you sit here today, ma'am, as  
16 to how quickly a doctor should see a patient when a level 2 is  
17 assigned? Do you have any idea?

18 A. No, because it depends how the floor is and how busy  
19 is the emergency room.

20 Q. When you say how busy the emergency room is, so  
21 somebody could wait hours after being assigned a level two if  
22 it's a busy emergency room?

23 A. Yes.

24 Q. And that's acceptable to you?

25 MS. DI LEO: Objection.

1 THE COURT: Sustained.

2 BY MR. HARRIS:

3 Q. Are you saying, ma'am, that is within the standard of  
4 accepted medical practice to have somebody wait for hours after  
5 they have been triaged as a level two?

6 MS. DI LEO: Objection.

7 THE COURT: I am going to ask you to rephrase it. You  
8 said standard of medical care. If you are asking about  
9 nursing care, that might be different.

10 MR. HARRIS: Understood, Your Honor. I will make that  
11 amendment.

12 BY MR. HARRIS:

13 Q. Nurse, within a reasonable degree of nursing  
14 certainty, is it accepted practice, nursing practice, to not  
15 treat a patient for hours after they have been assigned an  
16 acuity level of two by the triage nurse?

17 A. It's not, but can I add something? Once the patient  
18 is --

19 Q. Answer the question, please.

20 A. I said, no, it's not.

21 Q. No, it's not accepted practice. Thank you.

22 A. Yes.

23 Q. Now in this case, Mr. Napolitano was not seen for  
24 three hours and nine minutes after you assigned that level 2; am  
25 I correct?

1 A. Yes.

2 Q. And that would not be accepted nursing practice;  
3 correct? Under what you just said; correct?

4 MS. DI LEO: Objection, Your Honor.

5 THE COURT: Sustained.

6 Q. Well, not only did you assign him a level two, but you  
7 determined, according to the chart, that he was a fall risk;  
8 correct?

9 A. That is common practice. Anybody 65 and above, and he  
10 came in with back pain, yes.

11 Q. Whether it is common practice or uncommon, in this  
12 case, you assigned him as a fall risk; correct?

13 A. Yes, yes.

14 Q. OK. As a result, a yellow bracelet that says fall  
15 risk was put on his wrist.

16 MR. HARRIS: Can we go to No. 2 there? Yeah. If we  
17 can put that up on the easel? Is that Plaintiff's 2?

18 THE COURT: Plaintiff's 2.

19 MR. HARRIS: Thank you.

20 BY MR. HARRIS:

21 Q. Now, did you put this on his right arm?

22 A. Yes, I did.

23 Q. OK. Now the purpose of these bracelets is so that  
24 everyone on the hospital that treats a patient is alerted to the  
25 fact that hey this patient is unsteady on their feet or they

1 have balancing problems or they have other medical problems that  
2 make them a fall risk. Do you I have that; right?

3 A. Yes.

4 Q. And it's the color yellow to make sure everybody sees  
5 it; right?

6 A. Yes, yes.

7 Q. OK. Then in addition to the bracelet, it is also  
8 written in the record that he's a fall risk?

9 A. I documented it, yes.

10 Q. Based upon your assessment; correct?

11 A. Yes.

12 Q. Now can we also agree when a patient is assigned a  
13 level two acuity level, they require what is called close  
14 monitoring; yes?

15 A. Yes.

16 Q. OK. Now close monitoring can mean checking their  
17 vital signs, yes, on a regular basis?

18 A. Checking the vital signs, any changes in condition and  
19 mental status.

20 Q. And mental status; right?

21 A. Yes.

22 Q. What about their glucose levels? If somebody is a  
23 diabetic, would you want to know the glucose levels as part of  
24 the monitoring process?

25 A. Not in triage. We don't do the glucose monitoring

1 unless the patient came in for something for diabetes.

2 Q. Well, what about somebody who -- by the way, as part  
3 of his history, you knew at the time you met with him that he  
4 was diabetic; correct?

5 A. Not in triage. We only do a focused assessment, not a  
6 full assessment in triage.

7 Q. Not my question. My question was according to the  
8 chart, did you know that he was diabetic when you saw him?

9 A. No, because we don't ask those questions in triage.  
10 It's a quick assessment.

11 Q. When was the first time someone in the hospital  
12 learned he had a history of diabetes?

13 MS. DI LEO: Objection.

14 THE COURT: Sustained.

15 BY MR. HARRIS:

16 Q. When was it first noted in the chart he was diabetic?

17 MS. DI LEO: Objection.

18 THE COURT: Overruled. If you know.

19 A. No.

20 (Whereupon, the following was recorded and transcribed  
21 by Official Court Reporter DALILA CUMMINGS.)  
22  
23  
24  
25

1 DIRECT EXAMINATION

2 BY MR. HARRIS:

3 Q Let me ask you a question. Generally speaking, if a  
4 patient is assigned one of these fall risks bracelets, are there  
5 times where the patient is then put in a stretcher with the  
6 guard rails up on the stretcher to help ensure that they don't  
7 fall? Does that happen sometimes in the triage emergency  
8 department?

9 A Not in the waiting room, no.

10 Q Where would that happen?

11 A In the main treatment -- when they go inside.

12 Q When they go inside? If a patient is a fall risk at  
13 North Shore, and everybody knows that they are a fall risk,  
14 regardless of how long they are waiting in the triage unit,  
15 regardless of how many hours, they are never placed in a  
16 stretchier with the guardrails up until they are actually  
17 escorted inside the emergency room?

18 A Yes.

19 Q Well, can we agree that some patients that are deemed a  
20 fall risk need to be restrained?

21 MS. DI LEO: Objection.

22 THE COURT: Overruled.

23 Q Can we agree on that? Yes or no?

24 A You have to -- it's against the law to put a restraint  
25 on a patient just because they are a fall risk.



1 Q No, no. That wasn't my question.

2 A Yes.

3 MR. HARRIS: Can we have my question read back,  
4 Your Honor? If you don't mind?

5 (The reporter reads back the requested portion of  
6 the proceedings.)

7 A No.

8 Q You cannot agree?

9 A No.

10 Q So patients that are fall risks never need to be  
11 restrained? Is that your testimony?

12 A Yes.

13 Q Are there lap belts that help secure a patient in a  
14 wheelchair? Does that lap belt exist at the hospital?

15 A It's not standard practice, no.

16 Q I can't hear you.

17 A No.

18 Q There are no wheelchairs with lap belts or safety  
19 belts?

20 A No. That would be a restraint.

21 Q Are there restraints at the hospital that would be used  
22 with wheelchairs? Yes or no?

23 A Patient has it meet the requirements for restraints.

24 Q That was not my question. I am asking does the  
25 hospital maintain the equipment? Do they have it?

1 A Not in the waiting area, no.

2 Q I didn't ask about the waiting area. At the hospital,  
3 anywhere in the building?

4 A I don't think so.

5 Q There's no restraints for wheelchairs at North Shore  
6 Hospital in 2021?

7 A No.

8 Q Is that your testimony?

9 A Yes.

10 Q Do the wheelchairs back in 2021, do they have a locking  
11 mechanism so that they can't move?

12 A Yes.

13 Q Do you know -- as you sit here today, do you have a  
14 recollection about whether Mr. Napolitano's wheelchair was  
15 locked on that day?

16 A Yes.

17 Q You can recall that?

18 A Not specifically. That's what we practice. That's  
19 what we do.

20 Q Does it indicate on your chart that the wheelchair was  
21 locked?

22 A No, it's not in there.

23 Q It's not in there. You left that out?

24 MS. DI LEO: Objection.

25 THE COURT: Sustained.

1           Q     Well, what about socks? Is there something called  
2 non-skid socks? Red socks that have a grip on the bottom of  
3 them, that the hospital gives out to patients that are fall  
4 risks? Do you have those socks?

5           A     Yes. Not in the waiting area. It's inside.

6           Q     The socks are inside?

7           A     Yes. Not in the waiting area.

8           Q     Do you know if anyone went inside and got  
9 Mr. Napolitano the non-skid socks to put on while he sat there  
10 for over three hours in the triage unit?

11          A     No, because patient --

12          Q     I didn't ask why. I just asked yes or no.

13          A     No.

14          Q     Thank you.

15                So just so I have this correct, ma'am, before his  
16 fall -- and he did fall, yes?

17          A     Yes.

18          Q     Before his fall at 7:30 p.m. -- yes?

19          A     Yes.

20          Q     He was not placed on a stretcher with guard rails,  
21 correct? That did not happen, correct?

22          A     No.

23          Q     He was in a wheelchair without any safety belt,  
24 correct?

25          A     Yes.

1 Q And he was not wearing any non-skid socks on his feet,  
2 correct?

3 A Yes.

4 Q What was he wearing on his feet?

5 A From the nurse's note -- the nurse documented patient  
6 was wearing sturdy shoes.

7 Q Sturdy shoes?

8 A Yes.

9 Q Do you know what that means? Sturdy shoes?

10 A That means he came in street clothes, I'm assuming.

11 Q Okay.

12 A That non-skid was not going to fall because of his  
13 shoes.

14 Q Now, after you deemed him to be a fall risk and you put  
15 the bracelet on, where did you place him in the triage area?

16 A Ten to fifteens feet from the triage booth.

17 Q Which is very close, yes?

18 A Yes.

19 Q It's about as close as you and I are standing now?

20 A Yes. Definitely.

21 Q You put him close to you because you were worried that  
22 he might fall, correct?

23 A Yes.

24 Q Were there other patients that you put that close to  
25 you in the triage area at that time?

1           A     Yes.

2           Q     How many patients were near Mr. Napolitano at that  
3 time?

4           A     I don't recall at that time, but we cannot put anybody  
5 with risk for fall -- we put them closer to us.

6           Q     Do you have any recollection on whether it was crowded  
7 that day?

8           A     Yes, it was.

9           Q     What is your definition of crowded? Fifty patients? A  
10 hundred patients? How many patients?

11          A     Maybe at least 30 to 40 patients waiting to go inside.

12          Q     And how many were deemed of those 30 to 40, a level  
13 two?

14          A     I don't recall the whole --

15          Q     How many were level one?

16          A     It was level two because of something different.  
17 Everybody comes for different reason in the emergency room.

18          Q     Everyone comes to the emergency room for different  
19 reasons, yes. My question is regardless of whatever reasons  
20 they came for, how many of the 40 patients approximately that  
21 were waiting to be seen at that time, were either a level two  
22 are or a level one?

23          A     Level one will never stay in the waiting room. Level  
24 one that somebody who has to be inside right away. They will  
25 never be out there.

1 Q How many level ones were seen right away at that time?

2 A The level one won't be out there. They would be coming  
3 by ambulance.

4 Q Do you remember how many level ones there were around  
5 that time at 4:30 in the afternoon?

6 A Not on that day. I was outside in triage. I don't  
7 know what's going on inside because ambulance is coming --

8 Q Outside in triage, of the 40 patients waiting, how many  
9 were level twos?

10 A I don't recall. I don't have the whole census in front  
11 of me.

12 Q Did you see Mr. Napolitano fall? Did you actually see  
13 him fall?

14 A No. I already went home.

15 Q I'm sorry?

16 A No, I was not there anymore.

17 Q Where were you?

18 A I went home. I was off duty.

19 Q What time did your shift end?

20 A Seven.

21 Q So you left a half hour before him?

22 A Yes.

23 Q So in that half hour between seven, 7:30, who took your  
24 place to keep a close eye on him like you were doing?

25 A Whoever came to take -- whoever was replacing me, and

1 we just give end of the report.

2 Q Did you say whoever?

3 A I don't remember who was the next nurse.

4 Q Did you use the word whoever?

5 A The next nurse that came to relieve me. That's the one  
6 I gave report.

7 Q Do you know who came to relieve you?

8 A I don't remember that day.

9 Q Is there any indication in the chart as to who came to  
10 relieve you at 7:00 p.m. that day?

11 A I don't. I think maybe the nurse what was out in the  
12 triage area.

13 Q But you don't know for sure, do you?

14 A I don't recall.

15 Q Would there be records at the hospital that would  
16 indicate who came to relieve you at 7:00 p.m. that day?

17 A Yes. The management will have it.

18 Q But you didn't review those records along with the  
19 chart in preparation for your testimony today, correct?

20 A I just reviewed the record, yes. The charts.

21 Q No, no. I'm asking did you review any of the  
22 administrative records --

23 A No.

24 Q -- to see who was working on the next shift after you  
25 left?

1           A     No.

2           Q     Can we agree, ma'am, that at least until you left at  
3     7:00 p.m. from the time that you placed him ten feet away or  
4     fifteen feet away from you, that he received absolutely no  
5     medical care in that two and a half hour period of time?

6           A     Yes. Because he had no changes in condition. He was  
7     mentally alert, and he showed no sign of symptom of distress.

8           Q     How do you know that he showed no sign of distress?  
9     Does it say that in your chart? Because you don't remember him.

10          A     That's common practice. That's what we do.

11          Q     But you stated that he had no sign of distress to this  
12     jury under oath as if you somehow remembered.

13                     MS. DI LEO: Objection to the form.

14                     THE COURT: Sustained. You can could rephrase.

15                     MR. HARRIS: Sure.

16          Q     Do you have an independent recollection -- by the way,  
17     do you know what I mean when I use that term independent  
18     recollection?

19          A     Yes.

20          Q     Meaning without looking at the chart. In your memory.  
21     Do you have an independent recollection that he was under no  
22     distress? Yes or no?

23          A     If he did, I would document it.

24          Q     Was that my question?

25          A     I know. But if he had --



1           Q     You know, but let's try to answer the question if you  
2     can.

3                     Do you have an independent recollection -- I'm going to  
4     do this again -- yes or no, of whether he was in distress at  
5     that time? Yes or no?

6           A     No.

7           Q     Thank you.

8                     And by the way, somebody who is a ten out of ten pain,  
9     do you think if somebody who is a ten out of ten pain could sit  
10    through without any stress or agitation for over three hours in  
11    a wheelchair?

12                    MS. DI LEO: Objection.

13                    THE COURT: Sustained.

14           Q     Does that make any nursing sense at all to you?

15                    MS. DI LEO: Objection.

16                    THE COURT: Sustained.

17           Q     Do you have an opinion within a reasonable degree of  
18    nursing certainty, as to whether somebody in ten out of ten pain  
19    can go over three hours without feeling agitated? Do you have  
20    an opinion about that?

21           A     I have no opinion about that, no.

22           Q     What does common sense indicate to you?

23                    MS. DI LEO: Objection, Your Honor.

24                    THE COURT: Sustained.

25           Q     You were present when your attorney Ms. Di Leo gave her

1 opening statement to this jury, yes?

2 MS. DI LEO: Objection, Your Honor.

3 THE COURT: Overruled.

4 A Yes.

5 Q And you heard her tell this jury that the fall, quote,  
6 was unexpected? Did you hear her say those words to this jury  
7 this morning?

8 A Yes.

9 Q Can we agree that somebody wearing a fall risk bracelet  
10 in yellow, alerting everybody that they are a fall risk means  
11 that everybody should be expecting this person to fall?

12 MS. DI LEO: Objection, Your Honor.

13 THE COURT: Sustained.

14 Q Am I correct about that?

15 THE COURT: Sustained.

16 Q Can we agree that a fall risk bracelet, puts everybody  
17 on notice at the hospital that this is a patient that might  
18 fall?

19 A Yes.

20 Q So our claim that Mr. Napolitano was a fall risk on  
21 July 9, 2021, is correct, yes?

22 A He was, yes.

23 MR. HARRIS: No further questions.

24 THE COURT: Cross?

25 MS. DI LEO: Yes. Thank you, Your Honor. Okay.

1 CROSS-EXAMINATION

2 BY MS. DI LEO:

3 Q Good afternoon, Nurse.

4 A Good afternoon.

5 Q Please tell us about your educational background.

6 A Okay. I been a nurse since 1988. I went to nursing  
7 school in Haiti. And then I have a -- I have a BSN in nursing.

8 Q And does that mean you have a bachelor's degree in  
9 nursing from a school in Haiti?

10 A Yes.

11 Q Okay. And when did you come to the United States?

12 A I came here in 1990.

13 Q And did you become licensed as a registered nurse in  
14 the State of New York?

15 A Yes. In 1992.

16 Q Okay. And after 1992, when you became licensed, where  
17 did you work professionally?

18 A I worked at Holy Family Home, which is a long-term care  
19 with elderly patients, for eight years. Then I worked at -- I  
20 was working through an agency as a med-surg, until -- -- medical  
21 surgical nurses, and telemetry nurse in different hospital, like  
22 including North Shore. And I used to go to different hospitals.

23 Then after that I used to do home care. And then in  
24 2021, I was -- decided to work at Winthrop where they gave,  
25 like, a critical care training for three months for med-surg

1 nurses to become an emergency room nurse.

2 Q So when did you become an emergency room nurse?

3 A In 2021 -- 2001, sorry.

4 Q 2001?

5 A Yes.

6 Q So is it fair to say you have been an emergency room  
7 nurse for 24 years now?

8 A Yes.

9 Q And you have been at North Shore for 21 years?

10 A Yes.

11 Q Okay. Do you hold any certifications?

12 A Yes.

13 Q In what area?

14 A You have to get BLS, ACLS, PALS -- Pediatric  
15 certification -- and TNCC. That's a trauma nurse care.

16 Q Okay. So you said BLS. Is that basic life support?

17 A Yes.

18 Q And ACLS?

19 A Advanced life support.

20 Q Okay. And TNCC?

21 A TNCC, trauma nursing care call. And PALS is for  
22 pediatric life support.

23 Q Okay. And generally, at North Shore University  
24 Hospital in 2021, were you working day shifts?

25 A Yes.

1 Q And was that 7:00 a.m. to 7:00 p.m.?

2 A Yes.

3 Q And when you would leave the hospital at the end of  
4 your shift after 12 hours at about 7:00 p.m., would another  
5 nurse take over for you?

6 A Yes.

7 Q And at that time when you leave and another nurse takes  
8 over, do you give a report to the other nurse?

9 A Yes. We have to do a sign off. Yes.

10 Q And when you give a sign out, would you let that nurse  
11 know whatever patients are waiting in the waiting area?

12 A Yes. And the acuity, and who needs to go in as soon as  
13 possible.

14 Q Okay. And is the ER at North Shore University Hospital  
15 open 24 hours, seven days a week?

16 A Yes.

17 Q And do some parties arrive by ambulance and some by  
18 private car?

19 A Yes.

20 Q Now, can you tell us from your experience working at  
21 that hospital for many years, when someone drives up to the  
22 hospital in a private car, tell us what is the process?

23 A The first, they will meet security. Offer them a  
24 wheelchair, and if they want it they will -- the security will  
25 place them in the wheelchair and bring them inside.

1 Q Okay. So now, in a case like this, with this patient  
2 that we have been talking about, Mr. Napolitano, he didn't just  
3 arrive at triage, but would it be fair to say that he was  
4 wheeled in by security?

5 A Yes.

6 MR. HARRIS: Objection, Your Honor. She's saying  
7 custom, not what actually happened.

8 THE COURT: Overruled. You can pursue that on  
9 redirect.

10 MS. DI LEO: Okay.

11 Q Now, how do you know that patients are offered  
12 wheelchairs by security?

13 A Because he came in a wheelchair.

14 Q But generally, how do you know that?

15 A I know. They will ask them to -- offer them the  
16 wheelchair.

17 Q Okay. And when a patient comes to you at triage, are  
18 you able to tell whether that is their own personal wheelchair  
19 or whether that wheelchair was given to them at North Shore?

20 A Yes.

21 Q How do you know that?

22 A Because it is a North Shore wheelchair.

23 Q Is there any identifying marking on it?

24 A It's blue and yellow wheelchair.

25 Q Now, can you tell us approximately how many people come

1 into the E.R. at North Shore on a given day, generally?

2 A About two hundred people.

3 Q And how many beds are there approximately in the main  
4 E.R. -- in the treatment area?

5 A About sixty.

6 Q Okay. So when a patient comes in to the front doors of  
7 the hospital, can you tell us how is that waiting area? Can you  
8 describe it for us?

9 A It's like an open area. And then at first you have the  
10 triage booth, and they will meet one nurse, and then on the  
11 right-hand side we have two triage -- two nurses could triage at  
12 the same time. And on the left-hand side we have the security.

13 Q Okay. Now, I want to refer to your triage note, if I  
14 may, which you looked at a moment ago. If I could just have  
15 Exhibit 1A, please. And is it fair to say that this is a  
16 three-paged note?

17 A Yes.

18 Q Okay. And did you enter this note yourself?

19 A Yes.

20 Q Okay. And thank you.

21 I'm going to show you page 269, for the record. Okay.  
22 You said this is a note that you entered yourself, and you  
23 entered it at about 1621?

24 A Yes.

25 Q And is it fair to say that it indicates here, chief

1 complaint, quote, and then what did you write there?

2 A That's what the patient told me. That he had back pain  
3 radiating to his left leg.

4 Q How common or uncommon is it for a patient to complain  
5 of back pain at triage?

6 A Very common.

7 Q Okay. And then we see ESI acuity level two, which is  
8 less than one and greater than three.

9 A Yes.

10 Q Okay. Now, under safety bands, is it fair to say that  
11 it says name band right arm? What does that mean?

12 A When the patient comes in they will give the  
13 information, which it includes the name, the birthday. And then  
14 the label that print out, and including that information. So if  
15 we place it on the patient, so anybody that has to take care of  
16 the patient, they have to verify the birthday and the patient's  
17 name.

18 Q Okay. So does this document mean that you put that ID  
19 band on this patient's arm?

20 A Yes.

21 Q And right below that it also says additional safety  
22 bands, and it says fall risk; is that right?

23 A Yes.

24 Q And does that mean that you put a small risk band on  
25 the patient's arm?



1           A     On the same side, yes.

2           Q     And can you tell us, generally, speaking what is the  
3 criteria for you as a triage nurse in 2021 to put a fall risk  
4 bracelet on a patient?

5           A     Anybody who has -- is confused, like mental status is  
6 confused, anybody 65 and above, unsteady gait, we will put it.

7           Q     So now, as I look down it says here arrival  
8 information; source of information, patient. What does that  
9 mean?

10          A     The patient was alert, oriented times four. He was  
11 able to provide the information.

12          Q     So that means that you were asking the patient  
13 questions, and he was able to answer you?

14          A     Yes.

15          Q     Okay. And then it says means of arrival wheelchair?

16          A     Yes.

17          Q     And then it says mode of arrival walk-in. What does  
18 that mean?

19          A     That means he didn't come in by ambulance.

20          Q     Okay. And underneath it says mode of arrival private  
21 auto?

22          A     Yes.

23          Q     And then it says accompanied by immediate family  
24 member?

25          A     Yes.

1 Q And from home?

2 A He came from home, not from the doctor's office.

3 Q And then it says direct to room care initiated, no.  
4 What does that mean?

5 A That means it was waiting to be assigned a bed inside.

6 Q And then there is a list of vital signs. Do you see  
7 that?

8 A Not on my screen. I'm sorry. Thank you. Thank you.

9 Q Now, do you see it?

10 A Yes.

11 Q And can you tell us just briefly, what you do in order  
12 to enter those vital signs?

13 A We have to do the patient blood pressure. We check the  
14 pulse, temperature, and respiration.

15 Q Okay. And you entered those values?

16 A Yes.

17 Q Okay. And then on the next page --

18 MS. DI LEO: If I could have B. Thank you.

19 Q And then on the next page of that triage note that you  
20 have in front of you, and I will have in a moment, is it fair to  
21 say that it indicates his temperature? Do you see that?

22 A Yes.

23 Q And that means that you took his temperature?

24 A Yes.

25 Q Okay. And then there is indications for his weight.

1 Did you take his weight or do you ask him about his weight?

2 A We ask for the weight.

3 Q Okay. And you document what the patient tells you?

4 A Yes.

5 Q If the patient couldn't answer your questions that you  
6 have indicated responses to, would you note that?

7 A Yes.

8 Q Okay. And then you indicated pain. And where do you  
9 get that value from?

10 A From the patient.

11 Q Okay. So you would have asked the patient what's your  
12 pain on a scale of one to ten?

13 A Yes.

14 Q And Nurse, from your experience, are there some  
15 patients that say they have a pain of ten and look very  
16 uncomfortable?

17 A Yes.

18 Q And are there other patients that say they have pain of  
19 ten out of ten and look very comfortable?

20 A Yes.

21 Q Okay. And now, we have COVID history there. And then,  
22 the last page that we have, I guess it's C -- 1C, we have your  
23 electronic signature. Is that right?

24 A Yes.

25 Q And it shows 1621 there that you signed that?

1           A     Yes.

2           Q     So now, I understand that you don't remember  
3 Mr. Napolitano specifically, correct?

4           A     Yes.

5           Q     You told us what triage is, and you told us how you  
6 made this documentation at the time. I want to know, based on  
7 your custom and practice, in a situation like this where you  
8 have a patient who has presented at 69 years of age, who has  
9 back pain, and you took his vital signs, what was his mental  
10 status based on your review of that note?

11          A     He was alert oriented times four.

12          Q     And how do you know that?

13          A     He knows his name. He knew where he was. And then the  
14 time. He knows the time. And he was able to make his own needs  
15 known.

16          Q     And can you tell us, generally, at the hospital, how  
17 long a patient like this will have to wait to be seen in the  
18 treatment area?

19          A     It depends on the flow.

20          Q     And you are saying it depends on the flow, what does  
21 that mean?

22          A     What's going on in the emergency room at that time.

23          Q     Okay. Does it mean how many patients are before him  
24 that have a more serious condition at that time?

25          A     I mean if beds are available inside for the patient in

1 the waiting room to be assigned a bed inside.

2 Q Okay. And in a situation like that where you have a  
3 patient in front of you at triage that is going to have to wait  
4 to be seen, what do you tell that patient?

5 A We tell them to wait until their name is called to be  
6 brought inside. And then as far as ask for assistance if  
7 needed.

8 Q Okay. And now in a situation like that, where you put  
9 a fall risk bracelet on a patient, how far do you put that  
10 patient from your station?

11 A Ten to fifteen feet.

12 Q And why do you do that?

13 A Because the patient is at risk for falls, so we put  
14 them so they would be nearby if they need anything they could  
15 call for assistance.

16 Q Now, tell us about the your triage area, and whether  
17 you are able to see that patient that's ten to fifteen feet from  
18 you?

19 A Yes. It's glass in there. Eyeball supervision. It's  
20 not too far.

21 Q Did you say there's glass? Can you describe what that  
22 means?

23 A In the waiting rooms we have small cubicles, but with  
24 glass so we could see through. We could see the patient.

25 Q So does that mean that you would be able to keep a

1 patient like this under your supervision?

2 A Yes.

3 Q Okay. And I think you said earlier today that there  
4 was no change in his condition like distress. If he had shown  
5 distress, what, if anything, would you have done?

6 A I reassess him, do a rapid focus assessment, repeat his  
7 vital signs, and then call inside for the charge nurse to assign  
8 a bed as soon as possible.

9 Q And now, I believe you were asked earlier about  
10 non-skid socks. Typically as a triage nurse in the E.R. waiting  
11 area, do you give non-skid socks to any patient?

12 A Not in the waiting room, no.

13 Q In the waiting room, what are patients wearing?

14 A Their street clothes.

15 Q The clothes that they came in with?

16 A From outside, yes.

17 Q And are they wearing the shoes or sneakers that they  
18 came in with?

19 A Yes. Yes.

20 Q Do you have any seatbelts on wheelchairs in the  
21 hospital?

22 A No.

23 Q Why not?

24 A It is a restraint.

25 Q And when you say restraint, what do you mean by that?

1           A       We need the doctor's order. Patient has to be -- we  
2 have to try all the ways to prevent the seatbelt because it is a  
3 restraint. We limiting the patient from his own movement.

4           Q       Okay. And a stretcher with the side rails, is that  
5 something that's ever applied to for a patient in the waiting  
6 area of the emergency room?

7           A       No.

8                   THE COURT: Ms. Di Leo, we are going to break for  
9 lunch.

10                  MS. DI LEO: Okay.

11                  THE COURT: Members of the Jury, I want to thank  
12 you for your time and attention this morning. We are now  
13 going to break for lunch. You are welcomed to go anywhere  
14 in the area. There's a lot of really good food places.  
15 Enjoy.

16                  Please make sure you are back here by two o'clock  
17 so we can continue with this witness' testimony. Please  
18 don't discuss anything you have heard or seen, I look  
19 forward to seeing you at two o'clock.

20                  And Nurse, I remind you, you are under oath, you  
21 can't discuss your testimony with anyone during lunch  
22 including your attorneys.

23                  Thank you all.

24                  THE WITNESS: Thank you.

25                  THE COURT OFFICER: All rise. Jury exiting.

1 (The jury exits the courtroom.)

2 THE COURT: Anything for the record, Counselors?

3 MS. DI LEO: No, Your Honor.

4 MR. HARRIS: No.

5 THE COURT: All right. Great. Have a good day  
6 lunch. Thank you.

7 MR. KAUFER: Thank you, Judge.

8 (A lunch recess was taken.)

9 (Whereupon, the following was recorded and  
10 transcribed by Senior Court Reporter Noah Collin.)

11 (Continued on next page.)

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1 THE COURT OFFICER: All rise. Jury entering.

2 (Whereupon the jury entered the courtroom.)

3 THE CLERK: Members of the jury are present and  
4 properly seated.

5 THE COURT: Good afternoon. Counselors, jurors,  
6 please have a seat. I hope you had a nice lunch. Good to  
7 see you. We will now continue with the witness's  
8 testimony.

9 I remind you you are under oath.

10 Thank you. Ms. Di Leo, your witness.

11 MS. DI LEO: Thank you, Your Honor.

12 CROSS EXAMINATION (CONTINUED)

13 BY MS. DI LEO:

14 Q. Nurse, have you ever testified before?

15 A. No.

16 Q. Have you ever been any a courtroom before?

17 A. No.

18 Q. This morning, when the plaintiff's counsel was asking  
19 you questions, did you say that if a patient complains of pain 7  
20 to 10, you assign an ESI level 2?

21 A. Yes.

22 Q. And then you used a term, quote unquote, soft 2.  
23 Explain what you mean by soft 2.

24 A. Soft 2, because patient was alert/oriented times 4.  
25 Then I put in the 2 because of the pain that was ten out of ten,

1 subjective pain.

2 Q. OK. Then you told us I believe, on plaintiff's  
3 questioning that anyone over age 65 gets a fall-risk bracelet?

4 A. Yes.

5 Q. And why do you do that?

6 A. Because as a protocol, anybody 65 and above, we  
7 consider them as risk for fall. So the staff will be alerted to  
8 provide assistance to the patient as needed.

9 Q. OK. When you say to provide assistance as needed, do  
10 you mean like if they have to go to the bathroom?

11 A. If they have to go to the bathroom, if they have to  
12 move from one place to another place. So the staff will assist  
13 them.

14 Q. OK. When you are seated in triage and let's say in  
15 July of 2021, were you the only employee in the waiting area of  
16 the ED?

17 A. No.

18 Q. So can you tell us approximately how many employees  
19 there would be there?

20 A. There were three nurses, 2 PCAs, and one security.

21 Q. OK. And you indicated earlier that with a patient  
22 who's a fall risk, you apply close monitoring. And can you tell  
23 us what close monitoring means?

24 A. It's eyeball supervision.

25 Q. How do you supervise a patient like that?

1           A.    From the distance, you can watch them. From time to  
2 time, someone will walk around the waiting room, and just  
3 eyeball the patients who are waiting.

4           Q.    OK. And you told us earlier that a patient like this  
5 would be put ten to fifteen feet from your triage desk; is that  
6 right?

7           A.    Yes.

8           Q.    How does the patient get from the triage desk to that  
9 point ten to fifteen feet away from you?

10          A.    Once we done triaging the patient, we will move the  
11 patient from that area to the waiting area, and we make sure the  
12 wheelchair is locked. So the staff will be the one to move the  
13 patient from the triage booth to the waiting area.

14          Q.    And is that something that you do yourself?

15          A.    Yes.

16          Q.    OK. Generally when you place a patient ten to  
17 fifteen feet away from you, do you tell them how long they'll  
18 have to wait before they get brought to the back?

19          A.    No. Because we don't have any specific length of time  
20 for the bed to be assigned.

21          Q.    Do you have any control over the wait time?

22          A.    No.

23          Q.    OK. So in a situation like that, when you bring that  
24 patient ten to fifteen feet away from you, what instructions if  
25 any, do you give them?

1           A.    We tell them to wait until their name is called so  
2           they could be brought back in the main treatment area and ask  
3           for assistance when needed.

4           Q.    And those patients that you put a fall-risk bracelet  
5           on, generally speaking, do they ever say, hey nurse, I need to  
6           go the bathroom while they are waiting?

7           A.    Yes.

8           Q.    What do you do in a situation like that?

9           A.    If I cannot do it, I will ask somebody else to provide  
10          assistance.

11          Q.    Like a PCA?

12          A.    A PCA, or another nurse to bring them to the bathroom.

13          Q.    OK.  Nurse, in all the years you have been a triage  
14          nurse at North Shore, have you ever had a patient stand up from  
15          the wheelchair in the waiting area and fall?

16          A.    No.

17               MR. HARRIS:  Objection.

18               THE COURT:  Overruled.

19               MS. DI LEO:  Nothing further.

20          REDIRECT EXAMINATION

21          BY MR. HARRIS:

22               Q.    Good afternoon.  Nurse Fils-Aime, did you have you an  
23               opportunity to speak to anybody about over the lunch break about  
24               your testimony?

25               A.    No.

1 Q. Did you review any document or anything like that over  
2 the lunch break?

3 A. No.

4 Q. By the way, you say every one of your patients over 65  
5 gets a fall bracelet? Every single one?

6 A. If the patient came in with a steady gait, they are  
7 oriented, we don't put it. But because he came in with back  
8 pain and radiation to the left leg and weakness, that is why we  
9 put it.

10 Q. Because of the severe back pain?

11 A. And the radiation.

12 MS. DI LEO: Objection.

13 Q. And his age; yes?

14 A. Yes.

15 THE COURT: Overruled.

16 Q. Understood. Before the lunch break, when Ms. Di Leo  
17 was questioning you, you testified that there was no stretchers  
18 in the waiting area. Do you recall that testimony?

19 A. Yes.

20 Q. Now do you know a Dr. Wighton?

21 A. Yes.

22 Q. I want you to assume that he testified previously in  
23 this case to the following. Then I will have a follow-up  
24 question for you.

25 MR. HARRIS: Your Honor, would you like a copy of the

1 transcript?

2 THE COURT: Sure.

3 Members of the jury, remember I said to you this  
4 morning you are only to consider testimony if you are in  
5 the courtroom. But I did mention a little exception, what  
6 we call sworn testimony before trial, depositions, or  
7 examinations before trial. What that means is that this  
8 witness appeared prior to us coming here today with the  
9 attorneys and a stenographer who swore her in. She was  
10 asked questions and gave answer in the same manner we're  
11 watching now. They were transcribed into a transcript.  
12 And, again, it is sworn testimony that I direct that you  
13 consider and give the same weight and critical reasoning  
14 and analysis that you would give regular live testimony in  
15 court. Thank you so much. You may continue.

16 BY MR. HARRIS:

17 Q. I want you to assume that you testified to the  
18 following, beginning at page 19, line 16:

19 "QUESTION: When you treat a patient with a high risk  
20 bracelet, what is the purpose of alerting you to same?

21 "ANSWER: To keep the rails up.

22 "QUESTION: When you say keep the rails up, you mean  
23 on a stretcher or --

24 "ANSWER: Correct.

25 "QUESTION: Does the emergency department have

1           stretchers?

2                   "ANSWER:   Yes.

3                   "QUESTION:  What determines whether a patient gets put  
4           on a stretcher?

5                   "ANSWER:  Clinical assessment.

6                   "QUESTION:  Are patients who are on high risk put on  
7           stretchers?

8                   "ANSWER:  Probably yes.

9                   Do you agree or disagree with that testimony, ma'am?

10                  MS. DI LEO:  Objection, Your Honor.

11                  THE COURT:  Overruled.

12                  To the extent that you have an opinion, yes, no, or  
13           you have no opinion.

14                  A.    I disagree.

15                  THE COURT:  You disagree?

16                  THE WITNESS:  Yes.

17   BY MS. DI LEO

18                  Q.    You disagree?

19                  A.    Yes.

20                  Q.    You are disagreeing, so the jury understands, with a  
21           doctor in your own emergency department; am I correct?

22                  Am I correct?

23                  A.    Yes you are, but it's through different context.

24                  Q.    OK.  Thank you.

25                  A.    You're welcome.

1 Q. Now, you did say before the lunch break that  
2 Mr. Napolitano's vital signs were taken by you shortly after you  
3 met with them at around 4:21 p.m.; correct?

4 A. Yes.

5 Q. And I don't recall, did you say his vital signs were  
6 normal or abnormal this morning?

7 A. It was fairly normal, except the blood pressure that  
8 was a little high.

9 Q. A little high. What was the blood pressure?

10 A. I don't recall, but it is documented.

11 Q. Before we check the chart, what is a normal blood  
12 pressure reading?

13 A. For men, at least 140 over 80.

14 Q. 140 over 80. 120 over 80 is optimal; yes?

15 A. Yes.

16 Q. 140 over 80 is in still normal?

17 A. For a male, yes.

18 Q. When it is elevated about above 140, it becomes  
19 abnormal; yes?

20 A. Yes.

21 Q. So 160, 170 over 80 would be slightly abnormal or  
22 elevated; yes?

23 A. Yes.

24 Q. 270 would be very high; correct?

25 A. It was 207, not 270.



1 Q. It was what?

2 A. 207.

3 Q. 207. OK. Let's check. You may be right. I don't  
4 remember. Yes, 207 over 81. That's high; yes?

5 A. Yes, but pain could raise up the blood pressure.

6 Q. OK. When you say yes, but, let's focus on the yes  
7 part of your answer first. If 207 is high, why did you tell the  
8 jury earlier it was mildly high?

9 MS. DI LEO: Objection, Your Honor.

10 THE COURT: Overruled. If you can answer that.

11 A. Patient came in for pain. Most of the time in the  
12 emergency room, patient blood pressure would be high because  
13 they are anxious, they don't know what is going to happen.

14 Q. Can patients with an elevated blood pressure become  
15 dizzy?

16 A. Yes, but he was not dizzy.

17 Q. Oh, you remember that?

18 A. It's not documented he was dizzy.

19 Q. In other words, you didn't write it down. But it  
20 doesn't mean he wasn't dizzy; correct?

21 A. It is not documented. That means he was not dizzy.

22 Q. Can you tell us from your own independent recollection  
23 as you sit here today that he was not dizzy on July 9, 2021?  
24 Can you do that?

25 A. I don't remember, but I always make sure I documented

1 my interaction with the patient.

2 Q. By the way, you told us also earlier before the lunch  
3 break that there was about 200 patients that would typically  
4 come through the emergency department on any given day back in  
5 21 at North Shore; yes?

6 A. She asked me for any typical days. It varies. We  
7 have no control over the flow.

8 Q. I'm just asking is that what you told us when your  
9 attorney asked you the same question.

10 A. Yes.

11 Q. And you also told us that you put Mr. Napolitano  
12 within ten to fifteen feet of you, correct, so you can keep an  
13 eye on him. Who was keeping an eye on him on eye on him for you  
14 when you were meeting with other patients in triage. Because I  
15 assume that every patient a comes through, a nurse like yourself  
16 has to sit down with that patient and assess them as to what  
17 emergent levels they are, what immediate care they need or don't  
18 need; am I correct?

19 A. There is another nurse in the front at the podium.

20 Q. Who did you tell to keep an eye on him?

21 A. There is another nurse at the front. That's part of  
22 the nursing standing out there.

23 Q. I am asking for a name. What person or nurse did you  
24 tell to keep an eye on him when you met with other patients?

25 A. I don't remember who was the other nurse, but that

1 window --

2 Q. Thank you, ma'am. Thank you.

3 MR. HARRIS: No further questions.

4 THE COURT: OK. I didn't know if you were just  
5 sitting.

6 Any recross?

7 MS. DI LEO: Just a couple, Your Honor. Thank you.

8 RECROSS EXAMINATION

9 BY MS. DI LEO

10 Q. Nurse, you were asked about some certain questions and  
11 answered by Dr. Wighton. Are you familiar with his testimony at  
12 all prior to today?

13 A. No.

14 Q. OK. Does Dr. Wighton position himself in the ER area  
15 near triage where you would have been on July 9, 2021?

16 A. No.

17 Q. I believe you said earlier to Mr. Harris's questions  
18 that there are two different points. So is Dr. Wighton situated  
19 in the ER treatment and evaluation area?

20 A. Yes.

21 MR. HARRIS: Objection, Your Honor. The predicate of  
22 that question is was not -- there was nothing about two  
23 points.

24 THE COURT: I am going to sustain it.  
25

1 BY MS. DI LEO:

2 Q. Are there different areas in the emergency room from  
3 the time a patient comes to the front doors of the hospital?

4 MR. HARRIS: Objection. Beyond the scope of the  
5 redirect.

6 THE COURT: Sustained.

7 BY MS. DI LEO:

8 Q. Can you tell us where in the hospital Dr. Wighton  
9 works?

10 MR. HARRIS: Objection. Beyond the scope.

11 THE COURT: Overruled.

12 A. In the main treatment area.

13 Q. Where is the main treatment area in relation to the  
14 triage area?

15 A. That's where the patient would be assessed by the  
16 nurse, the nurse and the attending doctor.

17 Q. OK. In the triage area, where you were working on  
18 July 9 of 2021, were there any stretchers?

19 MR. HARRIS: Objection.

20 THE COURT: Overruled.

21 A. No.

22 BY MS. DI LEO:

23 Q. Now if a patient comes to the triage area and  
24 complains to you of dizziness, is that something that you would  
25 document?

1           A.    Yes.

2           Q.    And in this case, if there was a complaint of  
3 dizziness, would you have documented that?

4           A.    Yes, I would.

5           MS. DI LEO:  Thank you.  Nothing further.

6           THE COURT:  Thank you so much.  Have a good day.

7           THE WITNESS:  Thank you.

8           (Whereupon the witness left the witness stand.)

9           THE COURT:  Please call your next witness.

10          MR. HARRIS:  Thank you, Your Honor.  We call PCA  
11 Joseph Demonte.

12          THE COURT OFFICER:  Remain standing.

13          J O S E P H   D E M O N T E, a witness called on behalf of  
14 Plaintiff, after having been first duly sworn by the clerk of  
15 the court took the witness stand and testified as follows:

16          THE CLERK:  In a loud clear voice, state and spell  
17 your name.

18          THE WITNESS:  Joseph DeMonte. J-O-S-E-P-H  
19 D-E-M-O-N-T-E.  M is capital.

20          THE CLERK:  Business address.

21          THE WITNESS:  300 Community Drive, Manhasset New York,  
22 11030.

23          THE COURT:  Madam clerk, great job.  How are you?

24          THE WITNESS:  Good.  How are you?

25          THE COURT:  Well.  You have seen this already.  The

1 attorneys are going to ask you some questions. Please  
2 answer in the direction of our jury in a loud, clear, but  
3 slow voice as possible so my amazing reporter can get down  
4 everything you say. Move the mic or chair.

5 Your witness.

6 MR. HARRIS: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. HARRIS

9 Q. Good afternoon, Mr. DeMonte.

10 A. Good afternoon.

11 Q. You and I have never met before; is that correct?

12 A. No.

13 Q. Have you testified before, sir?

14 A. No, never.

15 Q. You gave an affidavit, a sworn statement in this case  
16 a few years ago; am I correct?

17 A. Yes.

18 Q. And did you review that in preparation for today?

19 A. I did.

20 Q. OK. And did you review any other documents or  
21 materials in preparation for today?

22 A. I reviewed the part of chart that I am part of.

23 Q. The part of the chart that what?

24 A. That I'm part of, that I did.

25 Q. OK. You didn't review anything from nurse Fils-Aime

1 at all, you didn't review what she wrote?

2 A. I reviewed the triage note, my part of the chart, and  
3 and the post-fall assessment of the chart.

4 Q. The post-fall assessment?

5 A. The post-fall assessment.

6 Q. In essence, the accident report or the fall report;  
7 correct?

8 A. Yes.

9 Q. We'll get to that part. And nothing else?

10 A. No.

11 Q. Did you have the opportunity to meet with Ms. Di Leol,  
12 your attorney prior to coming to court?

13 A. Like today, or in general.

14 Q. Prior.

15 A. Yes.

16 Q. In preparation for today?

17 A. Yes.

18 Q. And obviously, I am not going to ask you what you  
19 spoke about. But can you just tell me how much time you spent  
20 together?

21 A. Roughly like an hour total, maybe more.

22 Q. When did that take place?

23 A. Friday.

24 Q. Are you sure?

25 A. Yes, Friday.

1 Q. OK. Where did that take place?

2 A. It was over Zoom.

3 Q. Over Zoom?

4 A. Yes.

5 Q. In July of '21, you were working as a PCA or patient  
6 care assistant; correct?

7 A. Yes.

8 Q. That was at North Shore University Hospital?

9 A. That's correct.

10 Q. Same hospital where this accident took place; correct?

11 A. Yes.

12 Q. How long have you been working there, sir?

13 A. Since 2019.

14 Q. Did you work at any other facility as a PCA prior to  
15 North Shore?

16 A. No.

17 Q. When did you become a PCA, sir?

18 A. 2019.

19 Q. So, as the time of this accident, you were a PCA as of  
20 two years ago?

21 A. Yes.

22 Q. Give or take a few months?

23 A. Yes.

24 Q. What are the general duties of a patient care  
25 assistant, sir?



1           A.    A patient care assistant is, in a sense, a nursing  
2           assistant. We assist patients to the bathroom, we will do bed  
3           baths and clean, we will draw blood, take vital signs, take  
4           EKGs, and kind of assist the nurse with whatever we can help  
5           with that is inside of our very limited scope of practice.

6           Q.    Understood. All right. You heard Nurse Fils-Aime  
7           tell us there was approximately 200 patients that could come  
8           through the emergency department in any given day on average.  
9           Would you agree with that, sir?

10          A.    I do.

11          Q.    By the way, do you yourself have an independent  
12          recollection of July 9, 2021?

13          A.    I do.

14          Q.    You do.

15          Q.    Why is that, sir? Why do you remember that specific  
16          day?

17          A.    He has been the only patient I have seen fall.

18          Q.    He's the only patient you have seen fall?

19          A.    Correct.

20          Q.    Great. OK. And so that stuck out in your mind?

21          A.    Yes.

22          Q.    And were you able to describe him?

23          A.    He is, at the time, just a little older, thinner,  
24          Italian looking man.

25          Q.    You recognize him today; yes?

1 A. Yes. He's sitting right over there (indicating).

2 Q. OK. By the way, how many shifts did you work per week  
3 back then?

4 A. Our shifts are eight hours. So up to five.

5 Q. What were your hours that day?

6 A. That day, I was part-time. I am pretty sure I came in  
7 at 7 p.m. is when I started my shift that day. That's an  
8 estimate, because I worked all different shifts.

9 Q. I see. So you were working there from 7 p.m. to 2 in  
10 the morning?

11 A. 7 a.m.

12 Q. 7 p.m. to 7 p.m.?

13 A. Uh-huh.

14 Q. I thought you said eight-hour shifts.

15 A. They are eight-hour shifts. But the 7 p.m. is half of  
16 another shift, me being part-time, we can pick up four-hour  
17 blocks.

18 Q. So in that case, it would have been a twelve-hour  
19 shift?

20 A. On this day, yes. The average is eight hours if you  
21 are full-time, five days a week. Nothing more than forty hours  
22 per week.

23 Q. And how do you prepare? Like, what do you do during  
24 the day before your shift?

25 A. Before my shift?

1 Q. Yes.

2 A. If I am doing an overnight shift, I will sleep during  
3 the day so I'm wakeful and alert for the night.

4 Q. Do you remember what you did that particular day?

5 A. Sleep.

6 Q. You recall that?

7 A. I always do.

8 Q. But do you recall that?

9 A. I was awake. So, yes.

10 Q. I was awake, so yes? Is that your answer?

11 A. I was awake and alert, yes.

12 Q. I wasn't asking if you were awake and alert, sir. I  
13 assume you were.

14 A. Yes.

15 Q. What I am asking you specifically is do you recall  
16 sleeping that day as you sit here today?

17 A. I guess I can't recall sleeping four years ago.

18 Q. I understand.

19 A. Yes.

20 Q. But just asking. Had you worked the day before, the  
21 shift before?

22 A. I do not know.

23 Q. You don't recollect?

24 A. No, I don't recollect that.

25 Q. Do you remember what day of the week this was?

1 A. No.

2 Q. Do you recall how many shifts you had worked in the  
3 week before?

4 A. No.

5 Q. Are you still at North Shore?

6 A. I am.

7 Q. And do you still work as a PCA?

8 A. Yes, I do.

9 Q. And you said you have never testified before; correct?

10 A. No, I have not.

11 Q. Do you remember what Mr. Napolitano was wearing that  
12 day when he fell?

13 A. Not necessarily.

14 Q. Not necessarily?

15 A. Street clothes, but I couldn't say exactly what he was  
16 wearing.

17 Q. Do you remember anything that he was wearing  
18 specifically?

19 A. No, besides shoes.

20 Q. What color shoes?

21 A. That, I don't know. I do know he had shoes on  
22 his feet though.

23 Q. It says on the record he had shoes on; correct? In  
24 the chart you reviewed in preparation for today, it says he had  
25 you shoes on; yes?

1           A.    Yes.

2           Q.    So of course you would know that from he reviewing the  
3 chart; right?

4           A.    That, and if people weren't swearing shoes, that also  
5 sticks out in my mind as differentiating from the norm or  
6 differentiation from the norm of people wearing shoes in triage.

7           Q.    Was he with anyone or was he alone in the emergency  
8 room that day?

9           A.    When I was there, he was alone.

10          Q.    The wheelchair that he was in, could you describe what  
11 that looked like?

12          A.    The wheelchair is a big, very heavy, probably a few  
13 hundred pounds blue wheelchair that has two foot pedals that are  
14 spring loaded for you to put your feet on as well as an elevated  
15 to slant you backwards.

16          Q.    Any type of security belt that can be used with that  
17 wheelchair, sir?

18          A.    No.

19          Q.    You have never seen one?

20          A.    No.

21          Q.    How does one who is a fall risk, how are they  
22 prevented from falling our of the chairs?

23          A.    The chair itself slants you backwards. As you are  
24 naturally sitting, you do lean backwards ever so slightly.

25          Q.    And that's the only way that keeps the person in the

1 chair, that slight incline?

2 A. That and their own accord of sitting there.

3 Q. OK. Your position, sir, here in this case is that at  
4 around 7:30 p.m., you called out his name, he stood and he fell.  
5 Did I get that right?

6 A. You did.

7 Q. In fact, that's what you said in your affidavit, that  
8 sworn statement you referred to from a couple years ago;  
9 correct?

10 A. That's correct.

11 Q. And you told the Nurse Curry. Is there a Nurse Curry  
12 there, the woman who filled out the incident report or the  
13 post-fall?

14 A. Curry, yes.

15 Q. You must have spoken with her I'm guessing?

16 A. Yes.

17 Q. You told they are that same thing?

18 A. Yes.

19 Q. Then she wrote it down in that report; yes?

20 A. She wrote down what the patient said, and then does  
21 her own assessment.

22 Q. OK.

23 A. That means there is quotes in there; correct?

24 Q. Right. Well, I think we should just pull that up for  
25 a second if we could. This is in evidence also.

1 THE COURT OFFICER: This is part of 1?

2 MR. HARRIS: This is part of 1.

3 MR. KAUFER: 1D.

4 MR. HARRIS: 1D. Thank you, Officer.

5 THE COURT: It is in evidence. No objection?

6 MS. DI LEO: Correct. Thank you.

7 MR. HARRIS: It's in evidence.

8 THE COURT: Great.

9 Members of the jury, can you see it? Good.

10 BY MR. HARRIS:

11 Q. Now, sir, let me ask you a question. You say you saw  
12 him stand up. He lost his balance and he fell.

13 MS. DI LEO: Objection to the form. "Lost his  
14 balance." I am objecting to.

15 THE COURT: That is what I am going to say. Other  
16 than that, if you can rephrase it.

17 MR. HARRIS: Sure.

18 BY MR. HARRIS:

19 Q. You saw him stand up and he you saw him fall?

20 A. Yes.

21 Q. OK.

22 MS. DI LEO: If we if we look at the note here from  
23 Ms. Curry, it says time of fall 1930 which is 7:30 p.m.;  
24 correct?

25 A. That's correct.

1 Q. Then it says while in triage, yes?

2 A. Yes.

3 Q. Patient stood up when name was called, felt legs get  
4 weak, and give out. And you see there's quotes there?

5 A. Yes.

6 Q. Does that quotes mean that Mr. Napolitano said that to  
7 Ms. Curry, Nurse Curry?

8 A. Yes, that's right below.

9 Q. Then patient found on floor by triage PCA.  
10 Now, you are the PCA she is referring to there; yes?

11 A. Yes.

12 Q. I can't hear you.

13 A. Yes.

14 Q. This is can called an interdisciplinary post-fall  
15 assessment. What does that mean, interdisciplinary?

16 A. Interdisciplinary means that it is multiple teams. In  
17 this case, nurse and physicians.

18 Q. Does it say anywhere in her report, sir, that you saw  
19 Mr. Napolitano stand and fall?

20 A. In this, no.

21 Q. I'm sorry?

22 A. No, it does not.

23 Q. It says you saw him after he fell; correct?

24 A. That's what it says.

25 Q. Patient found on floor by triage PCA; yes?



1 A. That's what it says.

2 Q. It doesn't PCA saw patient fall after he stood up in  
3 the chair; correct?

4 A. Correct.

5 Q. Do you know why Nurse Curry would have left that  
6 important detail out of this report objection?

7 THE COURT: Sustained.

8 BY MR. HARRIS:

9 Q. If you know.

10 MS. DI LEO: Objection.

11 THE COURT: Sustained.

12 BY MR. HARRIS:

13 Q. But in your affidavit, sir, you swear under the  
14 penalties of perjury that you saw Mr. Napolitano fall; correct?

15 A. That is correct.

16 Q. OK. If someone like a PCA witnesses a fall in a  
17 hospital, can you we agree that is important to note in the  
18 report?

19 MS. DI LEO: Objection.

20 THE COURT: Overruled. If you can answer.

21 MS. DI LEO: It's not his report though.

22 THE COURT: That is why I said if he can answer.

23 A. It's not my report.

24 BY MR. HARRIS

25 Q. Not in your report, sir. In a report, wouldn't that

1 be important to note, sir, in a report like this that you  
2 witnessed the actual you fall as opposed to just finding him on  
3 the floor?

4 MS. DI LEO: Objection. It's calling for what others  
5 should do.

6 THE COURT: Again, you can answer, or you can say I  
7 can't answer.

8 A. I can't answer that.

9 BY MR. HARRIS:

10 Q. Sir, isn't it true that you took Mr. Napolitano's  
11 vital signs five minutes before he fell?

12 A. That is when it was documented. It was actually taken  
13 probably to five minutes prior to that, because I took multiple  
14 patient's vital signs.

15 MR. HARRIS: I will put this up.

16 BY MR. HARRIS:

17 Q. I am putting up now the page of the vital signs check  
18 that you did on that day and it says 1925. It says 7:25 p.m.

19 A. Correct.

20 Q. Now you just explained to the jury, without being  
21 asked, that it might have been ten minutes before.

22 MS. DI LEO: Objection to the form of the question.

23 THE COURT: I am going to strike the portion about  
24 "not being asked." And you can proceed.

25 Q. Let me ask you this, sir. You have a recollection

1 that even though this says 1925, that somehow, it was actually  
2 five minutes before that; correct? That's what you are telling  
3 us?

4 A. Correct.

5 Q. You can remember that as you sit here today; correct?

6 A. Correct.

7 Q. OK. And this is you over here, Joseph Demonte PCA;  
8 correct?

9 A. Correct.

10 Q. And it says entered 1926?

11 A. Correct.

12 Q. Which means, according to this this record, despite  
13 your own memory --

14 MS. DI LEO: Objection to the form.

15 MR. HARRIS: I haven't finished question.

16 THE COURT: I am going to strike the part "despite  
17 your own memory."

18 MR. HARRIS: I will rephrase.

19 THE COURT: Good idea.

20 BY MR. HARRIS

21 Q. Is it fair to say, sir, according to this report, the  
22 vitals were taken at 1925 or 7:25 p.m. and that the results were  
23 entered one minute later at 7:26 p.m. Is that what the report  
24 says?

25 A. The report is 7:25 p.m. is when I started to enter the

1       vital signs not necessarily when I took them.

2               (Whereupon, the following was recorded and transcribed  
3       by Official Court Reporter DALILA CUMMINGS.)

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1 DIRECT EXAMINATION

2 BY MR. HARRIS:

3 Q That's what I'm asking you. Is that when it was  
4 entered?

5 A It was entered at 7:25.

6 Q No, it was entered at 7:26.

7 A 7:26 is the time that my password was typed in to  
8 finalize the vital signs. When I start typing them in, which  
9 takes a minute to click the temperature, where a I took it, the  
10 blood pressure, it's about one minute until I'm writing my  
11 password, which is what the enter part of that is.

12 Q Sir. I'm sorry. Have I asked you any questions about  
13 your password or what your procedure for entering was?

14 MS. DI LEO: Objection, Your Honor.

15 THE COURT: Overruled.

16 A No.

17 Q Can you just simply answer this. Does it say here on  
18 the record that this data was entered at 7:26 p.m.? Yes or no?

19 A It does.

20 Q Okay. Thank you.

21 Now, at that time, you took his temperature, yes?

22 A I did.

23 Q You took his heart rate, yes?

24 A Correct.

25 Q And you took his blood pressure?

1 A Correct.

2 Q Which at 170 was elevated, correct?

3 A Yes.

4 Q And I'm assuming, sir, that if we spent the time to  
5 take his vital signs, you noticed at that time you took his  
6 vital signs that he had a fall risk bracelet on, correct?

7 A Correct.

8 Q And you knew, sir, that his name was Napolitano? Yes?  
9 Luigi Napolitano?

10 A As I took the vitals, yes.

11 Q Okay. And then five minutes later, you say you called  
12 out his name, because he was ready to be seen in the emergency  
13 department. Did I get that right?

14 A Correct.

15 Q Can we agree, sir, it makes no sense to call out  
16 someone's name who you know is a fall risk and you know who it  
17 is, because you just took his vital signs five minutes before?  
18 Correct?

19 A No.

20 Q No, I'm not correct?

21 A No.

22 Q I guess the jury will decide, yes?

23 MS. DI LEO: Objection, Your Honor.

24 THE COURT: Sustained.

25 Q By the way, sir, this is your sworn affidavit. Did you

1 include in here that you took his vital signs five minutes  
2 before he fell? Yes or no?

3 A I believe it was -- I took his vitals. I don't  
4 remember off the top of my head if there was a time.

5 MR. HARRIS: May I give a copy of his affidavit to  
6 the witness, Your Honor.

7 THE COURT: Just show it to counsel first.

8 MR. HARRIS: Sure. You have a copy.

9 THE COURT: Okay.

10 MR. HARRIS: Can we have this marked as  
11 Plaintiff's 3 for identification, Your Honor.

12 THE COURT: Sure. You want to mark it now?

13 (Whereupon, the document was marked as Plaintiff's  
14 Exhibit 3 for identification, by the Reporter.)

15 THE COURT OFFICER: Plaintiff's Exhibit 3 so  
16 marked for identification only.

17 THE COURT: Thank you very much.

18 THE COURT OFFICER: Handing the witness  
19 Plaintiff's Exhibit 3 marked as identification only.

20 THE COURT: Thank you.

21 Q Sir, I would like you to take a look at specifically  
22 paragraphs three and four of your affidavit, and let me know  
23 when you are finished having a look at those paragraphs, sir.

24 A I read it.

25 Q Okay. A moment ago you said that you thought it was

1 indicated in your affidavit that you had taken the vital signs  
2 five minutes before. After reviewing it do you see it in there?

3 A I do not.

4 Q I can't hear you.

5 A I do not.

6 Q So when you thought that part was in your affidavit,  
7 you were mistaken?

8 A I was mistaken.

9 Q If you look at the back of it, sir, the last several  
10 paragraphs there, anything in there about taking his vital  
11 signs?

12 A It does not say.

13 Q It does not say. Okay. But it does say that you  
14 called out his name, Luigi Napolitano saw the patient stand up  
15 from the wheelchair and fall down, yes?

16 A Correct.

17 Q Why was the detail about taking his vital signs five  
18 minutes before left out of this affidavit?

19 A I can't answer that.

20 Q Who prepared this affidavit? Did you prepare and type  
21 this yourself?

22 A No.

23 Q Who did?

24 A My lawyer.

25 Q I'm sorry?



1           A     My lawyer.

2           Q     And when was it given to you?

3           A     When? 2023, I believe.

4           Q     And you reviewed it, yes? For accuracy?

5           A     Yes.

6           Q     Okay. And you understood it to be a sworn statement  
7 under the penalties of perjury, correct?

8           A     Yes, I do know that.

9           Q     And you signed it, yes?

10          A     Yes. That it has my signature and notarization in the  
11 back.

12          Q     Did you include in the affidavit that Mr. Napolitano  
13 was a fall risk? He had a fall bracelet on at the time you took  
14 his vitals five minutes before? Did you include that in your  
15 affidavit?

16          A     No.

17          Q     Why was that part left out?

18          A     I can't answer that.

19          Q     In your affidavit from two years ago, sworn statement,  
20 did you include anywhere that you knew at the time that he was a  
21 fall risk?

22          A     I did not write that down, no. Or I did not say that,  
23 no.

24          Q     But you understand what our claim is here, right?

25          A     I do.

1           Q     And you left it out?

2                     MS. DI LEO:  Objection, Your Honor.

3                     THE COURT:  Sustained.

4                     MR. HARRIS:  No further questions.  Actually, I  
5     move to admit the affidavit into evidence.

6                     THE COURT:  Any objection?

7                     MS. DI LEO:  It's unnecessary, but I'm not going  
8     to object to it, Your Honor.

9                     THE COURT:  All right.  Plaintiff's three is now  
10    in evidence.  No objection.  Thank you.

11                    Ms. Di Leo, your witness.

12                    MS. DI LEO:  Thank you, Your Honor.

13                    (Whereupon, the document was marked as Plaintiff's  
14    Exhibit 3 in evidence, by the Reporter.)

15                    THE COURT OFFICER:  Plaintiff's Exhibit 3 marked  
16    in evidence.

17                    THE COURT:  Thank you.

18    CROSS EXAMINATION

19    BY MS. DI LEO:

20           Q     Good afternoon, Mr. DeMonte.

21           A     Good afternoon.

22           Q     Thank you for being with us this afternoon.

23                    You were asked a few questions about your affidavit a  
24    moment ago.  Is there anything about that affidavit that you  
25    just had an opportunity to review that is not true?

1           A     No.

2           Q     Does that affidavit indicate what hours you were  
3 working that day?

4           A     No, it does not.

5           Q     Does it indicate how many patients were in the E.R.  
6 waiting area?

7           A     It does not.

8           Q     Does it indicate how many other staff members were  
9 working?

10          A     No.

11          Q     Mr. DeMonte, I want to ask you a few questions about  
12 your background. Can you tell us about your educational  
13 background?

14          A     I have a degree in criminal justice. A bachelor's  
15 degree in criminal justice from Florida Atlantic University in  
16 2017. And I am currently about to graduate with my associates  
17 in nursing in a few weeks.

18          Q     Congratulations. From where?

19          A     Suffolk County Community College.

20          Q     And can you tell us do you hold any certifications?

21          A     I do.

22          Q     And tell us what are those?

23          A     I have my emergency medical technician basic  
24 certification, advanced cardiovascular life support, basic life  
25 support, tactical emergency casualty care, and AED.

1 Q What's AED?

2 A Automated External Defibrillator.

3 Q Just tell us briefly what does that mean?

4 A When someone goes into cardiac arrest, there's usually  
5 AEDs around in malls, public areas. There's probably one in  
6 this building, somewhere on this floor, and it seems that I'm  
7 knowledgeable and certified to know how to use it effectively to  
8 save that patient's life.

9 Q And did you tell us you have a certification as an EMT  
10 basic?

11 A Correct.

12 Q What does that mean?

13 A It means I am an EMT that when 911 is called and  
14 activated, I am the one who shows up and does an assessment. I  
15 am the one who comes when you call.

16 Q Are you currently working as an EMT?

17 A Yes, correct.

18 Q Where are you working?

19 A Bay Shore Brightwaters Rescue Ambulance.

20 Q Thank you.

21 And how long have you been doing that EMT work?

22 A Since 2020.

23 Q And so, are you an EMT at the same time that you are  
24 working at North Shore?

25 A Correct.

1 Q And you continue to work at North Shore today?

2 A Correct.

3 Q And have you received any professional awards?

4 A Yes.

5 Q Tell us what have you received?

6 MR. HARRIS: Objection.

7 THE COURT: What's the basis of your objection?

8 MR. HARRIS: Relevancy.

9 THE COURT: Overruled.

10 A I have two Suffolk County regional EMS CPR safe awards,  
11 and I have South shore University Hospital EMS Star Of Life  
12 award.

13 Q What does it mean, a Star of Life award?

14 A A Star of Life award means that me and the team that I  
15 was part of provided patient care that allowed a severely  
16 critical patient to walk home to their loved ones.

17 Q Thank you. Now, I'm going to direct your attention to  
18 your duties as a patient care associate at North Shore  
19 University Hospital in July of 2021. And tell us briefly what  
20 your duties consisted of.

21 A I'm sorry. Say that again.

22 Q Sure. As a PCA at North Shore in July of 2021, what  
23 were your job duties?

24 A Assisting the nurse with vital signs; toileting  
25 patients; cleaning them if they can't clean themselves; movement

1 from the ER to upstairs like an in patient area; movement from  
2 triage to the main treatment area; drawing blood; taking EKGs;  
3 and documenting vital signs.

4 Q Okay. And you told us, I believe, on Plaintiff's  
5 questioning that you did have an opportunity to review the chart  
6 concerning Mr. Napolitano. Were there any entries in that chart  
7 that you made?

8 A Yes. One.

9 Q And what was that one?

10 A The vital signs that is on the screen in front us.

11 Q Is it still on your screen?

12 A It is.

13 Q Let me just ask you for a moment, excuse me, about  
14 those vital signs. Okay. Because we had some questions a few  
15 minutes ago about it. It says on the left-hand side 1925, which  
16 is military time, and means 7:25 p.m.?

17 A Correct.

18 Q Okay. And then on the right hand it says entered at  
19 1926. So can you tell us based upon your note, what that means,  
20 the 1925 and the 1926?

21 A That means when I got to the computer and I added a  
22 time column to add these vital signs, was at 1925. So it hard  
23 locks that time and keeps it locked. The time that it takes to  
24 insert all the vital signs because it is not automatic. I have  
25 to type them all manually to the time that I am saving them,

1 which is what the entered means.

2 Q Okay.

3 A So it took roughly one minute for me to type them all.

4 Q So basically, it took one minute for you to complete  
5 the entry of that note?

6 A Right.

7 Q Okay. Now, tell me why did you take Mr. Napolitano's  
8 vital signs on July 9 of 2021?

9 A We had an exceptionally long wait, and I was taking  
10 multiple patient's vital signs in the E.R. that were waiting for  
11 some time to add them to their charts.

12 Q Okay. And is that something that you remember as we  
13 are here today?

14 A Yes.

15 Q Okay. Now, can you describe for us physically the  
16 layout of North Shore E.R. waiting area?

17 A The North Shore E.R. is a room smaller than this.  
18 Probably about two thirds of it. With two squares. You have an  
19 outside square where you can see left and right, and then an  
20 inside square seated area with glass walls that you can see  
21 through, as well as booths for the triage nurse.

22 Q Okay. And as you sit here today, do you remember  
23 approximately how many patients were in the waiting area when  
24 you took Mr. Napolitano's vital signs?

25 A Over thirty.

1 Q Okay. And how many patients were you walking around to  
2 take their vital signs?

3 A Multiple. I don't have a number, but it was multiple.

4 Q Okay. And how is it that you or -- let me withdraw  
5 that.

6 Why is it that you went to Mr. Napolitano?

7 A He was waiting for a while.

8 Q Okay. And I want to know -- I suppose were you given a  
9 list or did someone tell you to go to a certain number of  
10 patients to take vitals?

11 A No.

12 Q So how is it that you went to him?

13 A I have the -- we call it a status board, in front of us  
14 that has all the patients names and the length of stay that  
15 they've had. And then I just went from top to bottom. Taking  
16 multiple people's vitals.

17 Q Okay. Thank you.

18 Now, when you are going around in the waiting area to  
19 take people's vital signs, what equipment, if any, do you have  
20 with you?

21 A A vital sign machine. It is a rolling vital signs  
22 machine.

23 Q Do you remember of these multiple patients that you  
24 were taking vital signs for, was Mr. Napolitano one of the first  
25 or one of the last of that group?



1           A     I don't remember.

2           Q     Okay.  At the time -- and if you don't remember  
3 specifically, generally, when you go over in a waiting area to  
4 take a patient's vital signs, do you say anything to that  
5 patient?

6           A     Yes.  I let them know what I'm going to do.

7           Q     And tell us generally what you are going to say?

8           A     I'm Joe.  I'm here to take your vital signs, recheck  
9 them.  Can I have an arm for the blood pressure?

10          Q     Okay.  And generally, do patients cooperate with you on  
11 that?

12          A     Yes.

13          Q     Okay.  Now, at that time, do you give that patient any  
14 indication as to when they would be brought back to the E.R.  
15 treatment area?

16          A     No.

17          Q     Now, if I told you that Mr. Napolitano was seated in a  
18 wheelchair, do you remember that?

19          A     I do.

20          Q     Okay.  And do you remember anything specific about that  
21 wheelchair?

22          A     No.  It was a regular wheelchair.

23          Q     Okay.  And when you say a regular wheelchair, do you  
24 know the difference between somebody's personal wheelchair that  
25 they came in with or a North Shore wheelchair?

1           A     Yes.

2           Q     And how do you know that?

3           A     The Northwell wheelchairs are very large, heavy plastic  
4 and blue. And patients' wheelchairs at home, although they  
5 vary, they are usually small, foldable, cloths, collapsable and  
6 black.

7           Q     And the North Shore wheelchairs, do they have any  
8 safety features on them?

9           A     The slightly elevated front of the seat, and the foot  
10 pedals to kind of push you backwards.

11          Q     And what about the wheels? Is there anything about the  
12 wheels?

13          A     Also, a locking mechanism to lock the wheels.

14          Q     And do you have any customary practice of checking the  
15 locking mechanism?

16          A     Yes.

17          Q     And what do you do in that regard?

18          A     If you push the wheelchair ever so slightly or touch  
19 it, if it's unlocked the wheels would move.

20          Q     And is that something you check when you were taking  
21 vital signs?

22          A     Yes.

23          Q     And when you go over to check a patient's vital signs,  
24 do you look at their ID bracelet?

25          A     Yes.

1 Q Why?

2 A Because I have to make sure that I'm taking vital signs  
3 of the right patient so I don't insert them into the wrong  
4 chart.

5 Q And do any of the wheelchairs at North Shore University  
6 have seatbelts?

7 A They do not.

8 Q When you saw Mr. Napolitano because you took his vital  
9 signs, did you notice that he was wearing a fall risk bracelet?

10 A Yes.

11 Q Is it common or uncommon to see fall risk bracelets in  
12 the waiting area?

13 A Extremely common.

14 Q And what, if anything, do you do for a patient that you  
15 are taking vital signs on that has a fall risk bracelet?

16 A Make sure that the wheelchair is locked, and tell them  
17 if they need anything to let us know.

18 Q And did you consider asking Mr. Napolitano to get in a  
19 stretcher with the side rails up?

20 A No.

21 Q Any reason why not?

22 A He was sitting comfortably in the wheelchair.

23 Q Do you have stretchers in the waiting area of the E.R.?

24 A No.

25 Q On July 9 of 2021, when you saw Mr. Napolitano, seated

1 in the wheelchair, approximately how far was he from the triage  
2 desk?

3 A Around 15 feet.

4 Q Did you consider giving Mr. Napolitano non-skid socks?

5 A No.

6 Q Why not?

7 A He wasn't standing or walking.

8 Q Okay. Are any of the patients in this waiting area in  
9 hospital non-skid socks?

10 A No.

11 Q What are they wearing?

12 A Their regular clothes.

13 Q Generally, how long do patients wait to be treated in  
14 the E.D. at North Shore University Hospital?

15 A It depends on the availability in the back or the main  
16 treatment area.

17 Q At the time that you took Mr. Napolitano's vital signs,  
18 did you make any observation about his mental status?

19 A No.

20 Q Did Mr. Napolitano make any complaints to you at that  
21 time, like dizziness?

22 A No.

23 Q If he had, what, if anything, would you do?

24 A I would alert the triage nurse, and we would recess.

25 Q After taking Mr. Napolitano's vital signs, what did you

1 do next?

2 A I believe I took a few more vital signs, went back to  
3 the computer, and then entered all the ones that I had.

4 Q And we looked at your vital signs note that you started  
5 typing in at 7:25 and finished at 7:26. Are you able to  
6 approximate how many minutes prior you had taken  
7 Mr. Napolitano's vital signs?

8 A Five to ten.

9 Q Okay. So now, I believe that you testified earlier on  
10 plaintiff's questioning that there came a time that you called  
11 out Mr. Napolitano's name. Why did you call out his name?

12 A I needed to identify him.

13 Q Okay. And why did you need to identify him?

14 A Because since I saw so many people during that short  
15 brief amount of time, I needed to make sure that I'm taking the  
16 right patient back. I can't assume.

17 Q Okay. Did you call out his name because it was your  
18 intention to bring him back to the treatment area?

19 A Yes.

20 Q How were you notified that he was ready to go back to  
21 the treatment area?

22 A On the status board next to his name, there will be a  
23 color. It would switch to a different color that would notify  
24 which section to bring them back to.

25 Q Okay. Is this a common practice for you back in July

1 of 2021 that you would call out a patient's name in the waiting  
2 area of the E.R.?

3 A Yes.

4 Q And why do you call out a patient's name, generally?

5 MR. HARRIS: Asked and answered. Objection.

6 Asked and answered.

7 THE COURT: Overruled.

8 A Because I need to identify the patient.

9 Q And what response, if any, do you expect from a patient  
10 when you call out their name?

11 A A hand up or a verbal call out.

12 Q And when a patient puts their hand up or calls out to  
13 you I'm over here, what if anything do you do?

14 A I walk over to the patient, and then double check the  
15 wrist band to make sure that this is the correct patient.

16 Q Okay. And then what do you do?

17 A Then we will go back.

18 Q And if a patient is seated in a wheelchair in the ER  
19 waiting area, after you call their name and they respond in some  
20 form, how do you bring them back to the treatment area?

21 A In that wheelchair.

22 Q Okay. In this instance with Mr. Napolitano,  
23 approximately how far were you from him when you called out his  
24 name?

25 A Probably around 15 feet.

1 Q Did you ever ask Mr. Napolitano to stand up?

2 A No.

3 Q Did you expect him to stand up?

4 A No.

5 Q Did Mr. Napolitano fall out of the wheelchair?

6 A No.

7 Q Did the wheelchair move?

8 A No.

9 Q Was there anything on the floor? Was there any kind of  
10 spill or anything on the floor that caused him to slip?

11 A No.

12 Q Did the wheelchair break?

13 A No.

14 Q Did the wheelchair move?

15 A No.

16 Q Was Mr. Napolitano alone at the time you called out his  
17 name?

18 A Yes.

19 Q Did he appear to be sleeping?

20 A No.

21 Q When you took his vital signs was he sleeping?

22 A No.

23 Q When you called out Mr. Napolitano's name, what did he  
24 do?

25 A He started to stand from his wheelchair.

1 Q And then what happened?

2 A His leg buckled and then he went on to his butt from  
3 the floor while I was trying to get to him.

4 Q So he fell on to the floor?

5 A On his butt.

6 Q Okay. And so you saw him sitting on the floor?

7 A Uh-hmm.

8 Q Just say yes?

9 A Yes.

10 Q And he was sitting on the floor next to the wheelchair?

11 A Yes.

12 Q Okay. And when that happened, did you go over to  
13 Mr. Napolitano?

14 A Yes.

15 Q Did you assist him?

16 A Yes.

17 Q And how did you assist him?

18 A With my arm back into the wheelchair.

19 Q Okay. You helped him back into the wheelchair?

20 A Yes.

21 Q And then what did you do?

22 A Brought him immediately back to the treatment area, and  
23 then notified the nurse and the physician.

24 Q Okay. And when you notified the nurse and the  
25 physician, did you stay around with the nurse and the physician?



1 A No, I returned to the triage.

2 Q Okay. Did you complete the Post Fall Assessment Sheet  
3 that plaintiff showed you earlier?

4 A No.

5 Q Did you write the affidavit that Plaintiff showed you  
6 earlier?

7 A No.

8 Q Mr. DeMonte, you told us earlier that you have an  
9 independent recollection of Mr. Napolitano. And can you tell  
10 the jury why you have an independent recollection?

11 A He is the only patient to fall in my presence in six  
12 years.

13 Q Thank you.

14 MS. DI LEO: Thank you.

15 THE COURT: Any redirect?

16 MR. HARRIS: Yes, Your Honor. Briefly.

17 RE-DIRECT EXAMINATION

18 BY MR. HARRIS:

19 Q Mr. DeMonte, the vital signs machine that you would  
20 wheel around from patient to patient, was that capable of  
21 testing a patient's blood sugar?

22 A No.

23 Q Were you able to test a patient's blood sugar?

24 MS. DI LEO: Beyond the scope.

25 THE COURT: That was a little late on the game.

1 Just saying.

2 Overruled. I will allow it.

3 A Say that one more time.

4 Q Did you ever test a patient's blood sugar in the  
5 emergency room?

6 A Have I ever?

7 Q Yes?

8 A Yes.

9 Q What equipment do you have to do that?

10 A A glucometer.

11 Q You would see what those sugars level were?

12 A Yes.

13 Q Did you ever take Mr. Napolitano's blood sugar at or  
14 around the time of when you took his vital signs?

15 A No.

16 Q Why not, by the way?

17 A Um, we would take blood sugars if we felt there was a  
18 reason. Could this be something with the blood sugar? We  
19 wouldn't just take it just because you are a diabetic.

20 Q Well, if a patient's waiting around for hours without  
21 any liquid or anything to eat, isn't it possible for their blood  
22 sugars to significantly fluctuate?

23 MS. DI LEO: Objection.

24 THE COURT: Sustained.

25 Q You said you called his name out a few moments ago

1 because you needed to ID him, yes? But again, you had just met  
2 him five minutes before taking his vital signs, so you knew who  
3 he was, correct?

4 A No.

5 MS. DI LEO: Objection.

6 THE COURT: Overruled.

7 Q In five minutes you forgot who he was? That's your  
8 testimony?

9 A I met multiple people during that time. I needed to  
10 make sure I have the correct patient.

11 Q Well, you said that he fell out of a chair, correct?

12 MS. DI LEO: Objection.

13 A No.

14 THE COURT: Overruled. You said no. Thank you.

15 MR. HARRIS: Sure. I would like to, if I may,  
16 just -- I'm going to show you your affidavit that's now in  
17 evidence. And then I'm going to go to Ms. Curry's report  
18 that's also in evidence. The affidavit is number three.  
19 Ms. Curry is part number one, Judge.

20 Q Okay. Number three, paragraph four, this is your  
21 affidavit which you signed under oath, just so the jury sees it.  
22 And you said you called out the patient's name Luigi Napolitano.  
23 I then saw the patient's stand up from a wheelchair and fall  
24 down. It looked like the patient's leg just buckled, and he  
25 fell. Yes?

1           A     Correct.

2           Q     Then when we go to Nurse Curry's report -- sorry.  
3 Patient found on the floor by triage PCA.

4                     Can we agree, sir, that there is a significant  
5 difference between what Nurse Curry wrote in her report and what  
6 you wrote in our affidavit?

7                     MS. DI LEO:  Objection.

8                     THE COURT:  Overruled.  If you could answer.

9           A     I cannot.

10          Q     You cannot answer whether it is significantly  
11 different, sir?

12          A     It's different.

13          Q     It's very different.

14                     MS. DI LEO:  Objection, Your Honor:  It's very  
15 different.

16                     THE COURT:  I'm going to sustain it.  That's a  
17 statement not a question.

18          Q     One says, sir, that you found the patient on the floor.  
19 The other says you saw his leg buckle and fall.

20          A     Correct.

21          Q     Which one are we to believe?  What Ms. Curry wrote --

22                     MS. DI LEO:  Objection.

23          Q     -- what Ms. Curry wrote or what you swore to in your  
24 affidavit?

25                     THE COURT:  I am going to ask you to rephrase.

1 MR. HARRIS: Sure.

2 Q Which one is accurate, sir, the affidavit or what Nurse  
3 Curry wrote down what you told her at the time?

4 MS. DI LEO: Objection, Your Honor.

5 THE COURT: Overruled.

6 A My affidavit.

7 Q But your affidavit was prepared in 2023, two years  
8 later, correct, sir? By your lawyer?

9 A Correct.

10 Q And Nurse Curry wrote that at the time of the incident,  
11 correct?

12 A Yes.

13 Q And you are telling the jury, they should believe what  
14 you wrote two years later that your lawyer prepared, not what  
15 Nurse Curry wrote at the time of --

16 MS. DI LEO: Objection, Your Honor.

17 THE COURT: Sustained.

18 MR. HARRIS: No further questions.

19 MS. DI LEO: I have a couple, Your Honor.

20 THE COURT: Sure. Recross.

21 MS. DI LEO: Thank you.

22 THE COURT: Sure.

23 RE-CROSS EXAMINATION

24 BY MS. DI LEO:

25 Q Just a couple of things. Firstly, with regard to

1 checking a patient's blood sugars, do you do that by pricking  
2 their finger?

3 A Yes. You have to stick a lancet, which is a small  
4 needle, into their finger and draw blood from it.

5 Q And in what instances, if any, do you do that as a PCA  
6 in the E.R. waiting area at North Shore?

7 A We would do it if there was a question about could this  
8 be because of their blood sugar? Are they dizzy? Are they  
9 semiconscious? Are they pale? Do they not look good? Are they  
10 unconscious?

11 Q Okay. And those factors that you just told us about or  
12 possible symptoms, did Mr. Napolitano look like he was pale or  
13 he was unconscious or he was dizzy or weak or at the time that  
14 you took his vital signs?

15 MR. HARRIS: Objection to form.

16 A No.

17 THE COURT: Overruled. If you can answer.

18 A No.

19 Q Were there any symptoms that Mr. Napolitano was  
20 displaying that caused you concern at or about the time that you  
21 took his vital signs?

22 A No.

23 Q Now, with regard to the Post Fall Assessment Sheet, I  
24 believe you have that in front of you. Correct?

25 A Yes.

1 Q You didn't write this Post Fall Assessment Sheet,  
2 correct?

3 A I did not.

4 Q And by the way, the quotes, felt legs get weak and give  
5 out; is it your understanding that that's what Mr. Napolitano  
6 said to this nurse?

7 A Yes.

8 Q And the quotes when it says patient's statement  
9 regarding the fall: I stood up, felt my legs get weak and give  
10 out, quotes; is that your understanding of what the patient told  
11 the nurse?

12 A Yes.

13 Q Were you present when the nurse wrote this sheet?

14 A No.

15 Q And when it says patient found on the floor by triage  
16 PCA, did you go over to the floor where Mr. Napolitano was on  
17 the floor after his fall?

18 A Yes.

19 Q So did you then pick him up?

20 A Yes.

21 Q Okay. So you did find him on the floor and help him  
22 up, correct?

23 A Yes.

24 Q Is there anything on this form, the Post Fall  
25 Assessment form that's in front of you that says you witnessed

1 the event or you did not witness the event?

2 A It does not say.

3 MS. DI LEO: Thank you.

4 THE COURT: Thank you, sir.

5 Counsels, can we approach.

6 Excuse me, please.

7 (An off-the-record discussion was held away from  
8 the jury.)

9 THE COURT: Members of the Jury, this is our  
10 afternoon five-minute break. Please don't discuss anything  
11 you have heard or seen, and I look forward to seeing you in  
12 five minutes. And just so you know, we will finish the day  
13 at 4:30. So we have one more hour left. Thank you so  
14 much.

15 THE COURT OFFICER: All rise. Jury exiting.

16 (The jury exits the courtroom.)

17 THE COURT: Anything for the record?

18 MS. DI LEO: No, Your Honor. Thank you.

19 THE COURT: See you in a few minutes.

20 MR. HARRIS: One quick thing, Judge.

21 THE COURT: On the record?

22 MR. HARRIS: It's not a legal thing. It's just  
23 more of a housekeeping thing.

24 THE COURT: Off the record.

25 (Whereupon, an off-the-record discussion was



1 held.)

2 THE CLERK: Remain seated. Come to order.

3 THE COURT OFFICER: All rise. Jury entering.

4 (The jury enters the courtroom.)

5 THE CLERK: Members of the Jury are present and  
6 properly seated.

7 THE COURT: Thank you, Madam Clerk.

8 Good afternoon, Members of the Jury. Please be  
9 seated. Members of the audience, Counsel, please have a  
10 seat.

11 I want to again thank you for your time. We are  
12 going to work until 4:30. And we are off tomorrow. It is  
13 Veterans Day. For those of who are veterans, thank you so  
14 much for your service and time. Or family members of  
15 veterans, thank you for that even more.

16 But we are off tomorrow. We will come back  
17 Wednesday at ten. So we will keep going for now.

18 Your witness.

19 MR. HARRIS: Thank you, Your Honor. We call the  
20 plaintiff, Luigi Napolitano.

21 THE COURT OFFICER: Watch your step.

22 THE WITNESS: Hello, Judge.

23 THE CLERK: Hello. Please raise your right hand.  
24 Please raise your right hand.

25 THE WITNESS: Oh.

1                   L U I G I    N A P O L I T A N O, called as a  
2                   witness by and on behalf of the Plaintiff, after having  
3                   been first duly sworn, was examined and testified as  
4                   follows:

5                   THE CLERK:   You can lower your hand.   In a loud  
6                   clear voice, please state your name for the record.

7                   THE WITNESS:   Luigi Napolitano.

8                   THE CLERK:   And please state your address for the  
9                   record.

10                  THE WITNESS:   1594 208th Street, Bayside, New York  
11                  11360.

12                  THE CLERK:   Thank you.

13                  THE WITNESS:   You're welcome.

14                  THE COURT:   Good afternoon, sir.   How are you  
15                  doing?   Hi.

16                  Are you okay?   What's the matter?

17                  THE WITNESS:   Oh.   I thought --

18                  THE COURT:   Are you okay?

19                  THE WITNESS:   Yeah.   That's just my back.

20                  THE COURT:   Okay.   We are going to need that  
21                  microphone.   You are going to want that.

22                  THE WITNESS:   Oh.

23                  THE COURT:   So the attorneys are going to ask you  
24                  some questions.   If you wouldn't mind answering the  
25                  questions to the jury --

1 THE WITNESS: Yes.

2 THE COURT: -- in as loud, clear, but slow voice  
3 as possible, so my excellent --

4 THE WITNESS: I would do my best.

5 THE COURT: I believe you. So my reporter can get  
6 down everything you say.

7 All right. Let's try.

8 MR. HARRIS: Thank you, Judge.

9 THE COURT: Mr. Harris, your witness.

10 DIRECT EXAMINATION

11 BY MR. HARRIS:

12 Q Good afternoon, Mr. Napolitano.

13 A Good afternoon, sir.

14 Q How are you today, sir?

15 A Not bad.

16 Q Okay. What is your date of birth, sir?

17 A November 6, 1951.

18 Q Oh. Happy birthday.

19 A Thank you.

20 Q Just turned seventy-five?

21 A No, seventy-four.

22 Q Seventy-four. Sorry.

23 A Not seventy-five. Not too fast.

24 Q Sorry. And where were you born, sir?

25 A Naples, Italy.

1 Q All right. And when did you come to the United States?

2 A 1971.

3 Q And when you got to the United States, were you married  
4 or single?

5 A Single.

6 Q Did you get married?

7 A Yes.

8 Q And what is your wife's name?

9 A Patricia Napolitano.

10 Q You still live with her today?

11 A Yes.

12 Q You are still married?

13 A Yes.

14 Q Okay. And is she able to come to court with you at  
15 all, sir?

16 A No. She's not well.

17 Q Do you have any children together, sir?

18 A Yes. One.

19 Q And what is your -- boy or girl?

20 A One boy.

21 Q And how old is he?

22 A Thirty-six.

23 Q And what does he do?

24 A He's a sales manager at the Hilton at the Hampton Hotel  
25 in the city in New York.

1 Q And what is your profession, sir?

2 A A hairdresser.

3 Q How long have you been cutting hair?

4 A I start to work since I'm nine years old. How many  
5 years? Sixty-five years. Start in Italy a little boy.

6 Q All right. And what about your education. What's your  
7 highest level of education?

8 A Fifth grade.

9 Q Fifth grade?

10 A Yes.

11 Q And why did you stop going to school after fifth grade,  
12 sir?

13 A Why in Italy they believe more to learn trade than to  
14 go to school. So I got out of my family so I went to work. I  
15 did whatever I can to support, whatever I can, my family.

16 Q Okay. I would like to direct your attention now to  
17 July 9, 2021. Do you remember that day, sir?

18 A Yeah.

19 Q Did you go to North Shore Hospital?

20 A Yes.

21 Q Okay. And why did you go to the hospital on that day?

22 A That morning, pain on my right leg. I try everything.  
23 Tylenol, Advil, but it didn't go away. It was just  
24 unbelievable. Painful. And so, I told my wife to drive me  
25 North Shore Hospital, the emergency room in Manhasset, which she

1 did. So we drove there. So the guy came out, I told him what I  
2 had, I need a wheelchair, which he did. So he took me inside.

3 I check to the desk. The lady there I told reason I  
4 was there: I had terrible pain. She said okay, sit down on the  
5 chair. And that was it. In the waiting room there.

6 Q Yeah.

7 A I don't know for how long. Three hours maybe.

8 Q And did they put a bracelet on your arm?

9 A Yes, they did.

10 Q And do you know what the bracelet said?

11 A Fall risk.

12 Q And did you tell them that you were a fall risk, sir?  
13 Or they made that determination on their own, if you know?

14 A No, I told them I can't walk. That's why she put the  
15 bracelet a fall risk. She knew I get out the car. I had to go  
16 in with the wheelchair. She knew I can't walk.

17 MS. DI LEO: Objection.

18 A So that's --

19 MS. DI LEO: Move to strike. Not responsive?

20 THE COURT: I'm going to sustain it and strike the  
21 portion of what the nurse knew.

22 MR. HARRIS: Understood.

23 Q You said the security guard came over with a wheelchair  
24 when you drove up with your wife?

25 A When I stop at the gate, he said what are you here for.

1 So I told him. He said go ahead, park. I came. I need a  
2 wheelchair. My wife, she going to drop me off here, and then  
3 she come back in the waiting room -- in the emergency room. So  
4 he took me with the wheelchair inside the hospital. The  
5 emergency room.

6 Q Now, the fellow that just testified, Mr. DeMonte, the  
7 man that was on the stand --

8 A Yes.

9 Q -- right before you.

10 A Yes.

11 Q Do you remember him at all from that day?

12 A No.

13 Q Okay. What about the nurse from this morning? Do you  
14 remember speaking to her at all this day?

15 A No, I don't remember.

16 Q Do you remember what you were wearing that day, sir?

17 A What I what?

18 Q What were you wearing? What kind of clothes, and  
19 shoes?

20 A Maybe just sneakers and the jump suit. Nothing.  
21 That's it.

22 (Whereupon, the following was recorded and  
23 transcribed by Senior Court Reporter NOAH COLLIN.)

24 (Continued on next page.)

25 \* \* \* \* \*

1 DIRECT EXAMINATION (CONTINUED)

2 BY MR. HARRIS:

3 Q. Was it a warm day in July that day?

4 A. Not warm. Yeah, warm and hot. I don't remember.  
5 Yeah. Probably was warm.

6 Q. And how would you describe the level of pain you were  
7 in that day?

8 A. Huh?

9 Q. How would you describe the level pain?

10 A. The high you can go. Ten. That's what it was.

11 Q. Uh-huh. You told the nurse that when you got there?

12 A. Yes.

13 Q. And do you recall how long you were waiting?

14 A. How long I was waiting?

15 Q. Waiting there after you checked in?

16 A. I was with my wife already about an hour and a half.  
17 So I told her to go home, which she said no, I insist. She  
18 said, OK, I go home. So I was there for maybe another hour and  
19 half, maybe more. Not exactly that. I know for sure three  
20 hours, I sit there.

21 Q. Now at some point, did you fall? Did you have a fall?

22 A. Yeah.

23 Q. Tell us what happened.

24 A. I was like probably half asleep. I heard my name,  
25 Luigi Napolitano. So the instinct was I get up. I told her I



1 come back, but no, I just went down. That was it. I was there  
2 for a few minutes. The lady came. I believe the lady with the  
3 dark hair, she picked me up. They put me on the stretch, they  
4 put me on another side. I don't know how long. I was there  
5 until 12 o'clock at night until they find a room to take me  
6 upstairs.

7 Q. You said they put you on a stretcher after you fell?

8 A. Yeah, like a bed. You know, like a bed. Yeah. I  
9 think that's what they put me on the top. I don't remember  
10 exact. But I believe I was on the bed, on the stretcher  
11 probably.

12 Q. Sir, thank you very much.

13 A. You're welcome.

14 THE COURT: Your cross.

15 MS. DI LEO: OK.

16 CROSS-EXAMINATION

17 BY MS. DI LEO

18 Q. Good afternoon, Mr. Napolitano.

19 A. Good afternoon, madam.

20 Q. Do you recall meeting me at a deposition?

21 A. Huh?

22 Q. Do you remember meeting me a couple of years ago at a  
23 deposition?

24 A. Yes, I do.

25 Q. And you recall I had an opportunity to ask you some

1 questions then?

2 A. Yes.

3 Q. And you were represented by counsel then?

4 A. Yes.

5 Q. And you answered my questions?

6 A. Yes.

7 Q. And we are going to do a little bit more of that  
8 today?

9 A. Huh?

10 Q. Can we do that again today? Can I ask you some  
11 questions?

12 A. I will do my best to answer.

13 Q. Thank you. I appreciate that.

14 Can you tell me before coming here today to testify as  
15 you're doing now, did you review the questions and answers from  
16 the deposition that you had on this case?

17 A. Did I review the answers in the deposition? No.

18 Q. OK. Mr. Napolitano, we're here to talk about the day  
19 that you went to North Shore on July 9 of 2021; OK?

20 A. Yes.

21 Q. All right. Is it fair to say that before that day  
22 that you went to North Shore, that you were working?

23 A. I was working?

24 Q. Yes. Before that day.

25 A. Oh, before that day, yes. I went to work, yeah.

1 Q. OK. That is what I am asking you; OK?

2 A. Yes.

3 Q. And you were working as a hairdresser; right?

4 A. Yes.

5 Q. All right. And as a hairdresser, is it fair to say  
6 that generally you are standing on your legs all day?

7 A. I used to. Not anymore.

8 Q. Right. My questions right now are before 2021; OK?

9 A. Yes.

10 Q. All right. I am trying to get out what your practice  
11 was, what you were doing before July 9 of 2021.

12 A. Yes.

13 Q. OK?

14 A. Oh, yeah.

15 Q. Is it fair to say you were working in Manhattan at  
16 Union League?

17 A. Yes.

18 Q. And that is on 37th Street and Park Avenue?

19 A. Yes.

20 Q. And you were living in Bayside?

21 A. Yes.

22 Q. And how did you get from Bayside to the city to go to  
23 work?

24 MR. HARRIS: Objection. Relevance.

25 THE COURT: Overruled.

1           That's OK.

2           A.    I take the express bus.

3           Q.    So you would take the express bus.  Is it fair to say  
4 would you get off around 34th Street and walk three blocks?

5           A.    34th and Park which is about two, three blocks away  
6 from the club.

7           Q.    Thank you.

8           A.    You're welcome.

9           Q.    Is it fair to say before the day you went to North  
10 Shore that you were working five days a week, Monday through  
11 Friday, 9 to 5?

12          A.    Yeah, no, no.  Since Covid, whatever, it's not anymore  
13 like it used to be.  I do maybe three, four people a day, maybe.  
14 But I stopped working five days a week.  I couldn't do it.

15          Q.    OK.  I am not sure that you understand me.  My  
16 question is about before the fall that you're here to talk about  
17 that happened in 2021.  Before that day at North Shore, were you  
18 working Monday through Friday, 9 to 5, as a hairdresser?

19          A.    Yes, yes.

20          Q.    Thank you.  Isn't it true that before that fall on  
21 July 9 of 2021, you were also a member of a gym?

22          A.    You remember what?

23          Q.    I said you were also a member of a gym,  
24 New York Sports Club?

25          A.    Oh, yeah, yeah.  Oh.

1 Q. Is it the language or are you having trouble hearing  
2 me?

3 A. Yeah, a little bit.

4 THE COURT: Why don't you youth microphone?

5 MS. DI LEO: I'm sorry.

6 Q. Is this better for you?

7 A. Yeah, yeah.

8 Q. So now, before July 9 of 2021, the day at North Shore,  
9 isn't it true that you were going to New York Sports Club three  
10 to four times a week?

11 A. Not three, four times. I would say a couple of times  
12 a week. Not three or four times. Yes, I did.

13 Q. Is it true that you would walk fast on the treadmill  
14 and work your legs at the gym?

15 A. I never walk fast on the treadmill, not before and not  
16 after. Maybe just walk slowly, that's about it. Not to make me  
17 big, just relax the muscles, that's about it. I don't lift  
18 weights.

19 Q. OK. So Mr. Napolitano, you gave a deposition as we  
20 noted a moment ago. On October 21, of 2022, do you recall being  
21 asked questions and giving answers at that time?

22 A. What? Answer from me.

23 Q. All right. I'm trying to reference the date that we  
24 had a deposition?

25 A. Oh, oh, I see. Yeah, I answered all the questions

1       that you asked me; right?

2           Q.    Yes, that's what I am asking you about.

3           A.    Oh, oh.

4           Q.    OK.  So now my question is turning to page 23 of your  
5 deposition, and I am going to ask you did you say at that  
6 time -- OK.  I am going to move on from that.  I am going to ask  
7 you something else; OK?

8           A.    Yeah.

9           Q.    Let's talk about July 9 of 2021, the date that you  
10 went to the hospital; OK?

11          A.    Yeah.

12          Q.    Fair to say your wife drove you to the hospital that  
13 day?

14          A.    Yes.

15          Q.    Fair to say that she pulled up to the front of the  
16 hospital where the security booth was?

17          A.    Yes.

18          Q.    Fair to say that the security guard asked you what  
19 brings you the to the hospital today?

20          A.    Yes.

21          Q.    OK.  Fair to say that you stepped out of the car and  
22 the security guard helped you get into a wheelchair?

23          A.    I didn't step out of the car until he brought the  
24 wheelchair.  I was unable to stand.  He put it very, very close  
25 and helped me to get into the chair.

1 Q. So he helped you out of the car?

2 A. Huh?

3 Q. You are telling us he helped you out of the car?

4 A. Yes, yes.

5 Q. He didn't carry you out of the car; did he?

6 A. No. He just helped me you out to put me in the chair,  
7 that's about it.

8 Q. Right. Before that day, is it fair to say you never  
9 used a walker?

10 A. No.

11 Q. OK. And is it fair to say that the security guard  
12 wheeled you up to the registrar inside the hospital doors?

13 A. Yes.

14 Q. Is it fair to say that you spoke to a female at the  
15 registrar desk?

16 A. Correct.

17 Q. You don't know that person's name; right?

18 A. No.

19 Q. You don't remember them to describe them; do you?

20 A. No, it's been -- I don't remember, no.

21 Q. OK. Is it fair to say that you did not tell them that  
22 you had chronic low back pain for years?

23 A. I didn't tell her what?

24 Q. Let me phrase it another way. When you went to the  
25 registrar desk, when you went inside the hospital, did you

1 complain that you had chronic back pain for years?

2 A. No, I just told them about my leg. I couldn't walk.  
3 I was in terrible pain. I don't know about the pain.

4 Q. Did you tell anyone at the hospital that you were  
5 having pain for the last two days?

6 A. Nobody came over. I just sit there, but nobody came  
7 to ask any questions.

8 Q. OK. When you first got inside the hospital, when the  
9 security guard wheeled you inside --

10 A. Yeah.

11 Q. -- did you go to a desk where there was a female  
12 seated at the desk?

13 A. Yeah. That's when you registered myself, yeah.

14 Q. Did that female ask you questions about what brought  
15 you to the hospital that day?

16 A. I told them I had a terrible pain, I couldn't walk on  
17 my right leg.

18 Q. OK. My question to you is did you tell that person  
19 that you were having chronic back pain for years?

20 A. I don't have chronic back pain for years. I just had  
21 my leg that day, that's about it.

22 Q. OK. Is it true your wife was with you in the  
23 emergency room?

24 A. I can't hear you.

25 Q. Did your wife join you in the emergency room?



1           A.    Yeah.  She was there for an hour and a half, maybe  
2           two.  I told her to leave.

3           Q.    OK.  Now, isn't it true that the female at the desk  
4           that you say you saw at registrar told you to wait to be brought  
5           back to the emergency room for treatment?

6           A.    No, she just put the bractlet that was in the  
7           wheelchair, they just took me out.  I don't know how many  
8           people, maybe ten people were waiting.  I didn't protest  
9           anything because I was there for three hours.  I saw people,  
10          they need more care than me.  So I don't protest, I didn't say  
11          anything, even if it was four hours, I didn't say anything.

12          Q.    When you were waiting, how far were you seated from  
13          the person at the desk that you had spoken to?

14          A.    How long what?

15          Q.    How far were you seated from the person at the desk?

16          A.    I don't remember.  It was quite a bit.  I don't know  
17          how much.  If I saw, I don't know.  Because I was angled this  
18          way.

19                MS. DI LEO:  I am going to move to strike as  
20          nonresponsive.

21                THE COURT:  So stricken.

22          BY MS. DI LEO:

23          Q.    I am going to refer to your deposition at page 42,  
24          line 5.  I am going to tell you, I asked this question and I am  
25          going to read you this question.  Page 42, line 5.

1 "QUESTION: When you were waiting, how far were you  
2 from that person at the desk?

3 "ANSWER: I am not sure, not too far.

4 "QUESTION: So I want you to approximate for me if you  
5 can. Were you ten feet, were you forty feet?

6 "ANSWER: Maybe 15 feet.

7 My question is do you recall being asked those  
8 questions and giving those answers?

9 A. It's not that big, fifty feet. It's a small room. I  
10 don't remember exactly. I was not close and not far. I don't  
11 remember.

12 Q. And I understand, sir, that you don't remember  
13 exactly, but the deposition that I just read from was from 2022.  
14 So was your memory better in 2022 or is it better today?

15 A. No today, three years later, I can't remember  
16 everything. You know, I try to do my best, like I said.

17 Q. OK. While you were waiting and your wife was present,  
18 did your wife stay with you with the entire time that she was  
19 there?

20 A. No, I told her to leave after an hour, an hour and a  
21 half. I told her to go, because I knew it was going to take a  
22 long time. She wasn't feeling well. I said just go home, which  
23 she did.

24 Q. Thank you. Isn't it true while you were sitting in  
25 the wheelchair waiting to be called in the back, your pain was a

1 little better?

2 A. No. Because they didn't give no pills. Nobody came  
3 to see what it was, so they can give any medication. Like I  
4 said, I stayed quiet because I saw people they need more care  
5 than me. So I didn't say anything. But nobody came.

6 MS. DI LEO: I am going to move to strike to  
7 nonresponsive.

8 MR. HARRIS: Object to the motion.

9 THE COURT: I am going to strike the portion at the  
10 end about people who needed more help.

11 BY MS. DI LEO:

12 Q. I am going to refer to the deposition transcript. I  
13 am going to ask you if you recall being asked this question and  
14 giving this answer. Page 45, line 14:

15 "QUESTION: Did you experience the pain even when you  
16 were sitting?

17 "ANSWER: For a little while, yes, I had pain, yes.

18 "QUESTION: Was the pain less when you were sitting  
19 than when you were standing?

20 "ANSWER: Little less when I was sitting.

21 My question to you is do you remember being asked that  
22 question and giving that answer?

23 A. Yes, I remember.

24 Q. OK. And is your testimony the same today or different  
25 today?

1           A.    No, the same.

2           Q.    OK.  Now, Mr. Napolitano, when you say that you spoke  
3           to a woman at the desk when you came into the hospital, did that  
4           woman tell you to sit and wait to be called into the back for  
5           treatment?

6           A.    Yeah, she just put a bracelet.  I don't remember what  
7           she said.  Just stay waiting in the emergency room.  That's  
8           about it.  But I don't remember exactly what -- it's three years  
9           ago.

10          Q.    OK.  So I am going to refer you to page 45, line 21.  
11          And I am going to ask you do you recall being asked this  
12          question and giving this answer.  Line 21.

13                "QUESTION:  You said you spoke to a female at the  
14           desk.  Did that female tell you, that you are going to have  
15           to wait and someone will call you to go into the main  
16           religion department?

17          A.    Yeah, that's what she said.

18          Q.    Let me finish.

19                "ANSWER:  Yes.

20                Mr. Napolitano, now that I've read that to you, does  
21           that refresh your recollection that you were told to wait to be  
22           brought back to the emergency department?

23          A.    I think so.  There's a few things I am not sure.  But  
24           more or less, that's what they said.  It's been a while.  The  
25           memory is not refreshed like three years ago.  I can do, like I

1 said, my best.

2 Q. OK. Is it fair to say that you personally had been to  
3 the North Shore emergency room before July 9 of 2021?

4 MR. HARRIS: Objection. Outside the scope, Your  
5 Honor.

6 THE COURT: Overruled.

7 A. For me? No, I never been there before.

8 Q. Sir, isn't it true you were there in 2010 and in 2014,  
9 prior visits to the emergency room?

10 A. Maybe I went to some. I remember once I had a bad  
11 sore throat maybe, something like that. Yeah, that's about it.  
12 I don't remember any other time that I went.

13 Q. Isn't it true you were there with your wife in the  
14 North Shore emergency room about a year or two before this event  
15 on July 9 of 2021?

16 A. Say it again? I was with my wife a year before?

17 Q. Yes.

18 A. At the emergency room?

19 Q. Yes?

20 A. For who? For her or for me?

21 Q. My question is about being in the emergency room. My  
22 question is isn't it true that you were thereabout a year and a  
23 half earlier with your wife?

24 A. Yeah, she had been there many times for emergency.

25 Q. OK. Isn't it true that when she was there many times

1 for emergencies, that you were there with her?

2 A. Yes, always I was with her.

3 Q. Thank you. Isn't it true that there was a process  
4 that a patient would go to the first desk, as you call  
5 registrar, and then they would sit and wait to be called into  
6 the back for treatment?

7 A. Right.

8 Q. Now in this case, isn't it true that your name was  
9 called out at some point while you were seated in the emergency  
10 waiting area? Yes or no, sir.

11 A. Yes.

12 Q. Thank you. And isn't it true when your name was  
13 called up, you got up from your wheelchair?

14 A. Yes.

15 Q. Did anybody at the hospital tell you, Mr. Napolitano,  
16 stand up?

17 A. I heard my name. Like I said, I was a little sleepy.  
18 So I get up, the instinct. I get up. I can't even get up.

19 Q. Thank you. Sir, did you fall out of that wheelchair?

20 A. Huh?

21 MS. DI LEO: Let me withdraw that.

22 BY MS. DI LEO:

23 Q. Isn't it true you tried to stand up from the  
24 wheelchair?

25 A. No. The only time I stand up when I heard my name

1 called.

2 Q. That is what I am referring to.

3 A. Yeah, I was sit all the time.

4 Q. Sir, as you waited in that emergency department  
5 waiting area for I believe you said three hours or three and a  
6 half hours, isn't it true that you heard other people's names  
7 get called and other people physically brought back to the  
8 emergency room?

9 A. I believe I heard it. Like I said, I was half asleep.  
10 I don't pay much of attention of who they call. When I heard my  
11 name, the instinct was to get up.

12 Q. OK. Sir, did you tell anyone at the hospital that  
13 when you got up, your legs felt weak and you fell?

14 A. Yeah. I told a woman that came to pick me up. When I  
15 stand up, also, I just fell down at my side. I went down, some  
16 blood went to my kidney, I had bruises --

17 Q. OK, OK. I didn't ask you about that. That would be  
18 inappropriate.

19 MS. DI LEO: And I would ask for that to be stricken.

20 THE COURT: So stricken.

21 BY MS. DI LEO:

22 Q. Mr. Napolitano, what were you wearing on your feet  
23 when you were sitting in the waiting area of the emergency  
24 department?

25 A. I have a pair of sneakers.

1 Q. Like the sneakers you are wearing today?

2 A. Something like that, yes.

3 Q. And there's been some questions raised about your  
4 diabetes?

5 A. Yes.

6 Q. Is it fair to say you were diabetic for years before  
7 July 9 of 2021?

8 A. I don't say for years. I discovered maybe seven,  
9 eight years ago. I take a pill. I don't know for how long it  
10 was, but I am taking a pill, Metformin every day, twice a day.  
11 That's about it.

12 Q. From the time were you diagnosed with diabetes, you  
13 have been taking medication, like you said, a pill, twice a day?

14 A. Yes, which I still do it.

15 MS. DI LEO: All right. Thank you, Mr. Napolitano.

16 THE WITNESS: I'm done.

17 THE COURT: Any redirect?

18 MR. HARRIS: No.

19 THE COURT: You are done.

20 THE WITNESS: Oh.

21 (Whereupon the witness left the witness stand.)

22 THE COURT: Members of the jury, we are actually a  
23 little early for me. We will be done for the day. We  
24 would have worked until 4:30. I will give you the extra 17  
25 minutes to go, or 13 actually. So, we're off tomorrow.



1 Again, enjoy your Veterans Day. Thank you for all of you  
2 who served and families of service members. See you  
3 Wednesday at 10. We'll proceed with the case. Please  
4 don't discuss anything you have heard or seen. I look  
5 forward to seeing you Wednesday morning 10 a.m. Have a  
6 great night. Safe trip home.

7 THE COURT OFFICER: All rise. Jury exiting.

8 (Whereupon the jury exited the courtroom.)

9 THE COURT: Anything for the record?

10 MS. DI LEO: No, Your Honor.

11 MR. HARRIS: On the schedule, Judge.

12 THE COURT: Off the record. Thank you so much. See  
13 you Wednesday.

14 (Whereupon, an off-the-record discussion was held.)

15 MR. HARRIS: Judge, defendants are producing their  
16 Dr. Weiner they exchanged for Thursday morning just so  
17 we're clear?

18 MS. DI LEO: That's my expectation. I haven't spoken  
19 to him today. I didn't know for sure that Thursday would  
20 be his day when we started this morning. I didn't know for  
21 sure how we would do with our witnesses and our trial. But  
22 that is my expectation.

23 THE COURT: OK.

24 MR. HARRIS: If by chance between now and then,  
25 between now and Wednesday, you discovery that Dr. Weiner is

1 available for Wednesday afternoon, let us know at some  
2 point tomorrow so that we're ready to cross-examine him on  
3 Wednesday should you choose to do that.

4 MS. DI LEO: So I understand what you said. But I  
5 think that that would be overly ambitious under the  
6 circumstances. Because I don't know how long the rest of  
7 the case is going to take. I would hate to start him  
8 Wednesday afternoon and not be able to finish him Wednesday  
9 afternoon. I think the Judge said we could do a charge  
10 conference Wednesday afternoon, have him testify on  
11 Thursday if possible.

12 THE COURT: I'm looking at your client.

13 So this is our plan. Wednesday 10 a.m., your expert.  
14 We will do our charge conference Wednesday afternoon. So  
15 you can get me your charges during lunch. That way, you  
16 will have your expert completed. Thursday morning, I  
17 imagine your expert should not take long.

18 MS. DI LEO: I imagine that as well.

19 THE COURT: So we would immediately go into sum and  
20 charge.

21 MS. DI LEO: Thank you.

22 MR. HARRIS: Thank you, Judge.

23 (Whereupon, an off-the-record discussion was held and  
24 the case was adjourned to November 12, 2025 at 10 a.m.)  
25

<b>A</b>	<b>actions (3)</b> 37:22,25;38:6	120:12,15,19;121:5, 23,24;122:2;136:5; 138:16,18,21;139:6, 24;140:2,6,7	<b>alerted (2)</b> 60:24;89:7	<b>appear (1)</b> 134:19
<b>ability (3)</b> 25:2,2;36:7	<b>activated (1)</b> 123:14		<b>alerting (3)</b> 22:7;73:10;93:20	<b>appearance (1)</b> 11:19
<b>able (15)</b> 16:3,15;42:7;47:17; 77:18;80:11,13; 83:14;84:17,25; 104:22;132:5;136:23; 147:14;169:8	<b>active (3)</b> 21:9;31:8,12	<b>affidavits (1)</b> 45:12	<b>allegations (1)</b> 30:14	<b>appearances (1)</b> 2:9
<b>abnormal (3)</b> 95:6,19,21	<b>actual (1)</b> 113:2	<b>affirmed (1)</b> 2:24	<b>alleging (2)</b> 18:21;23:15	<b>appeared (1)</b> 93:8
<b>above (4)</b> 60:9;80:6;89:6; 95:18	<b>actually (11)</b> 15:13;18:20;23:13; 63:16;69:12;77:7; 113:12;114:1;121:4; 167:22,25	<b>afternoon (26)</b> 14:13;19:16;20:22; 39:17;69:5;74:3,4; 88:5;91:22;101:9,10; 121:20,21,22;143:10; 144:8;145:14;146:12, 13;152:18,19;169:1,8, 9,10,14	<b>allow (3)</b> 14:6;28:21;137:2	<b>appellate (1)</b> 2:23
<b>absolute (1)</b> 4:15	<b>acuity (4)</b> 59:16;61:13;76:12; 79:7	<b>again (18)</b> 5:20;6:2;8:8;14:20; 15:1,21;16:17;28:22; 39:18;72:4;93:12; 113:6;124:21;138:1; 144:11;153:10; 164:16;168:1	<b>allowed (1)</b> 124:15	<b>application (1)</b> 10:15
<b>absolutely (2)</b> 33:5;71:4	<b>acute (1)</b> 53:19	<b>against (7)</b> 3:3;6:11,23;10:15; 30:15;38:12;63:24	<b>allows (1)</b> 16:9	<b>applied (1)</b> 86:5
<b>abundance (1)</b> 33:2	<b>ad (1)</b> 14:16	<b>age (8)</b> 11:19;25:1;26:7; 31:8;47:22;83:8;89:3; 92:13	<b>alone (4)</b> 26:2;108:7,9; 134:16	<b>apply (4)</b> 8:1,20,23;89:22
<b>abundantly (1)</b> 30:13	<b>add (3)</b> 59:17;125:22; 126:11	<b>agency (1)</b> 74:20	<b>along (1)</b> 70:18	<b>appreciate (1)</b> 153:13
<b>accept (7)</b> 9:13,16,19;10:22, 24;12:5;36:8	<b>added (1)</b> 125:21	<b>agitated (1)</b> 72:19	<b>alternate (2)</b> 16:20;17:1	<b>approach (1)</b> 143:5
<b>acceptable (1)</b> 58:24	<b>adding (1)</b> 54:14	<b>agitation (1)</b> 72:10	<b>Although (2)</b> 15:5;129:4	<b>appropriate (4)</b> 18:5,15;24:1;25:22
<b>accepted (4)</b> 59:4,14,21;60:2	<b>addition (2)</b> 27:1;61:7	<b>ago (16)</b> 58:7;78:14;101:16; 103:20;106:17;109:8; 118:25;120:19; 121:24;125:15; 137:25;152:22; 156:20;163:9,25; 167:9	<b>always (8)</b> 10:18;13:21;37:15; 39:13;52:19;96:25; 106:7;165:2	<b>approximate (2)</b> 132:6;161:4
<b>accident (5)</b> 6:17;24:10;102:6; 103:10,19	<b>additional (2)</b> 7:22;79:21	<b>agree (16)</b> 9:14;54:14,14;56:8; 61:12;63:19,23;64:8; 71:2;73:9,16;94:9; 104:9;112:17;117:15; 139:4	<b>amazing (2)</b> 40:17;101:3	<b>approximately (8)</b> 68:20;77:25;78:3; 89:18;104:7;126:23; 131:1;133:23
<b>accompanied (1)</b> 80:23	<b>address (3)</b> 40:8;100:20;145:8	<b>agreed (3)</b> 3:5,7,12	<b>ambitious (1)</b> 169:5	<b>area (69)</b> 20:5,7,10,11,23; 34:1,10,11,15,16; 35:8,21;36:1,18; 37:20;65:1,2;66:5,7; 67:15,25;70:12; 75:13;76:11;78:4,7,9; 83:18;84:16;85:11; 86:6,14;89:15;90:11, 11,13;91:2,15;92:18; 98:14,19;99:12,13,14, 17,23;122:6;125:1,2; 126:16,20,23;127:18; 128:3,15;130:12,23; 131:8,16;132:18,21; 133:2,19,20;135:22; 141:6;165:10;166:5, 23
<b>accord (1)</b> 109:2	<b>adjudged (1)</b> 169:24	<b>ahead (1)</b> 150:1	<b>ambulance (5)</b> 69:3,7;76:17;80:19; 123:19	<b>areas (2)</b> 99:2;123:5
<b>accordance (1)</b> 9:12	<b>administration (1)</b> 10:8	<b>aides (1)</b> 29:11	<b>amended (1)</b> 2:23	<b>Arguments (1)</b> 8:1
<b>according (5)</b> 47:9;60:7;62:7; 114:12,21	<b>administrative (1)</b> 70:22	<b>A-I-M-E (1)</b> 40:7	<b>amendment (1)</b> 59:11	<b>arises (1)</b> 16:1
<b>accountability (1)</b> 27:24	<b>admissible (1)</b> 10:6	<b>alert (7)</b> 71:7;80:10;83:11; 106:3,11,12;131:24	<b>among (2)</b> 13:9;20:12	<b>arm (7)</b> 60:21;79:11,19,25; 128:9;135:18;149:8
<b>accountable (5)</b> 28:3,4,6;37:23,25	<b>admit (3)</b> 10:23;12:20;121:5	<b>alert/oriented (1)</b> 88:24	<b>amongst (2)</b> 13:3;14:22	<b>around (14)</b> 69:4;90:2;95:3; 109:4;123:5;127:1, 18;131:3;133:25; 135:25;136:20; 137:14,20;155:4
<b>accuracy (1)</b> 120:4	<b>admitted (3)</b> 7:9;10:4;14:5		<b>amount (1)</b> 132:15	<b>arranged (1)</b> 34:13
<b>accurate (1)</b> 140:2	<b>adult (3)</b> 19:3,6;48:14		<b>analysis (1)</b> 93:14	
<b>accurately (1)</b> 11:6	<b>Advanced (2)</b> 75:19;122:24		<b>angled (1)</b> 160:17	
<b>ACLS (2)</b> 75:14,18	<b>advice (1)</b> 9:16		<b>answered (7)</b> 9:22;54:20;98:11; 133:5,6;153:5;156:25	
<b>across (1)</b> 5:6	<b>Advil (1)</b> 148:23		<b>anticipate (2)</b> 24:4,6	
<b>act (2)</b> 23:23;37:11	<b>AED (2)</b> 122:25;123:1		<b>anxious (1)</b> 96:13	
<b>acted (1)</b> 38:9	<b>AEDs (1)</b> 123:5		<b>anymore (3)</b> 69:16;154:7;155:12	
<b>action (1)</b> 29:5	<b>affect (1)</b> 14:7		<b>app (1)</b> 14:16	
	<b>affidavit (26)</b> 101:15;109:7; 112:13;117:25;118:5, 22;119:1,6,18,20;		<b>apparent (1)</b> 12:2	
			<b>apparently (1)</b> 28:17	

<b>arrest (1)</b> 123:4	45:22;67:10;117:4	74:8;122:14	154:20,22	129:6
<b>arrival (9)</b> 19:25;20:14;21:6; 22:1,21;80:7,15,17,20	<b>assure (2)</b> 10:11;16:6	<b>back (71)</b> 2:25;6:1;19:12,20; 21:4;26:6,23;27:6; 31:4,5,15;32:23;33:3, 16,25;34:3,35:14; 36:1;37:7;38:3,15; 39:13;40:19;50:8; 52:4,7;53:18;57:8; 60:10;64:3,5;65:10; 79:2,5;83:9;86:16; 90:18;91:2,92:7,10; 97:4;105:3;119:9; 120:11;128:14; 131:15;132:2,16,18, 20,24,25;133:17,20; 135:18,19,22;144:16; 145:19;150:3;152:1; 158:22;159:1,19,20; 160:5;161:25;163:4, 22;165:6;166:7	<b>became (1)</b> 74:16	<b>blame (1)</b> 24:11
<b>arrive (3)</b> 20:9;76:17;77:3	<b>Atlantic (1)</b> 122:15		<b>become (5)</b> 74:13;75:1,2;96:14; 103:17	<b>blocks (3)</b> 105:17;155:4,5
<b>arrived (2)</b> 42:23;44:18	<b>attack (3)</b> 32:9;33:14;54:6		<b>becomes (1)</b> 95:18	<b>blood (29)</b> 19:19;25:3;26:8; 31:3;32:18;35:11; 81:13;95:7,9,11;96:5, 12,14;104:3;116:10, 25;125:2;128:9; 136:21,23;137:4,13, 17,18,21;141:1,4,8; 166:16
<b>arrives (1)</b> 26:5	<b>attempted (1)</b> 23:9		<b>bed (10)</b> 34:1;35:14;81:5; 84:1;85:8;90:20; 104:2;152:8,8,10	<b>blow (1)</b> 47:10
<b>aside (1)</b> 47:4	<b>attending (1)</b> 99:16		<b>beds (2)</b> 78:3;83:25	<b>blowup (2)</b> 47:15;48:4
<b>asleep (2)</b> 151:24;166:9	<b>attention (11)</b> 16:24;17:2,3,10; 22:24;39:10;54:6; 86:12;124:17;148:16; 166:10		<b>began (1)</b> 43:12	<b>blowups (2)</b> 39:2;47:14
<b>assess (5)</b> 20:14;25:22;41:24; 52:12;97:16	<b>attitudes (3)</b> 10:15,17,21		<b>begin (5)</b> 17:10;30:19;38:21; 39:19;41:8	<b>blow-ups (1)</b> 39:4
<b>assessed (1)</b> 99:15	<b>attorney (5)</b> 4:23;7:23;72:25; 97:9;102:12		<b>beginning (1)</b> 93:18	<b>BLS (2)</b> 75:14,16
<b>assesses (1)</b> 33:17	<b>attorneys (17)</b> 4:19;6:1,25;8:8,10, 14;12:22;13:6,12; 15:8,17;16:14;40:14; 86:22;93:9;101:1; 145:23	<b>background (3)</b> 74:5;122:12,13	<b>begins (1)</b> 6:5	<b>blue (3)</b> 77:24;108:13;129:4
<b>assessing (1)</b> 10:19		<b>backwards (4)</b> 108:15,23,24; 129:10	<b>behalf (12)</b> 2:14,18;4:19;28:24, 24;29:9,10;37:2,3; 39:25;100:13;145:2	<b>board (3)</b> 24:13;127:13; 132:22
<b>assessment (30)</b> 22:1;24:22;32:2,6, 15;33:18;52:1,13; 53:10;54:12;55:14, 19,23;57:6;61:10; 62:5,6,10;85:6;94:5; 102:3,4,5;109:21; 111:15;123:14;136:2; 141:23;142:1,25	<b>attorneys' (1)</b> 5:14	<b>bad (2)</b> 146:15;164:10	<b>behind (2)</b> 48:24;49:9	<b>books (2)</b> 5:8;13:11
<b>assign (8)</b> 42:8;53:4,13,18; 58:1;60:6;85:7;88:20	<b>audience (2)</b> 39:9;144:9	<b>balance (2)</b> 110:12,14	<b>below (2)</b> 79:21;111:8	<b>booth (11)</b> 49:1,6,16,17,20,25; 50:2;67:16;78:10; 90:13;157:16
<b>assigned (19)</b> 21:13,21;22:18; 42:7;54:9,20;56:13; 57:19;58:9,17,21; 59:15,24;60:12; 61:12;63:4;81:5;84:1; 90:20	<b>auto (1)</b> 80:21	<b>band (4)</b> 79:11,19,24;133:15	<b>belt (3)</b> 64:14;66:23;108:16	<b>booths (1)</b> 126:21
<b>assigns (1)</b> 57:10	<b>Automated (1)</b> 123:2	<b>bands (2)</b> 79:10,22	<b>belts (3)</b> 64:13,18,19	<b>born (2)</b> 18:25;146:24
<b>assist (5)</b> 89:12;104:2,4; 135:15,17	<b>automatic (1)</b> 125:24	<b>barber (2)</b> 19:7;31:11	<b>benefit (1)</b> 13:5	<b>both (2)</b> 4:3;10:9
<b>assistance (6)</b> 84:6,15;89:8,9; 91:3,10	<b>availability (1)</b> 131:15	<b>base (1)</b> 7:6	<b>besides (1)</b> 107:19	<b>bottom (2)</b> 66:2;127:15
<b>assistant (4)</b> 103:6,25;104:1,2	<b>available (6)</b> 20:25;24:2;34:1; 35:14;83:25;169:1	<b>based (18)</b> 8:3,9;1;10:3,17; 21:24;33:19;36:25; 38:7;46:3;47:3;52:19; 55:11,17;56:20; 61:10;83:6,10;125:19	<b>best (7)</b> 5:21;14:21;30:2; 146:4;153:12;161:16; 164:1	<b>boy (3)</b> 147:19,20;148:5
<b>Assisting (1)</b> 124:24	<b>Avenue (1)</b> 154:18	<b>band (4)</b> 79:11,19,24;133:15	<b>better (5)</b> 7:4;156:6;161:14, 14;162:1	<b>bracelet (24)</b> 22:5;25:13;33:4,7; 60:14;61:7;67:15; 73:9,16;80:4;84:9; 89:3;91:4;92:5;93:20; 117:6;120:13;129:24; 130:9,15;149:8,10,15; 163:6
<b>associate (1)</b> 124:18	<b>average (2)</b> 104:8;105:20	<b>basic (7)</b> 10:8;17:17;18:10; 75:16;122:23,24; 123:10	<b>Beyond (3)</b> 99:4,10;136:24	<b>bracelets (3)</b> 60:23;63:4;130:11
<b>associates (1)</b> 122:16	<b>avoidable (2)</b> 24:18;27:23	<b>basically (1)</b> 126:4	<b>bias (2)</b> 10:18;11:18	<b>bractlet (1)</b> 160:6
<b>assume (7)</b> 52:3,8;92:22;93:17; 97:15;106:13;132:16	<b>awake (4)</b> 106:9,10,11,12	<b>basis (3)</b> 19:8;61:17;124:7	<b>bifurcated (1)</b> 3:13	<b>break (15)</b> 14:13,13,19;38:19; 39:12,13;86:8,13; 91:23;92:2,16;95:1; 97:3;134:12;143:10
<b>assuming (3)</b>	<b>award (3)</b> 124:12,13,14	<b>bath (1)</b> 104:3	<b>big (3)</b> 108:12;156:17; 161:9	<b>breaks (1)</b>
	<b>awards (2)</b> 124:3,10	<b>baths (1)</b> 104:3	<b>birthday (3)</b> 79:13,16;146:18	
	<b>away (14)</b> 9:6;33:11;50:6; 56:14;68:24;69:1; 71:3,4;90:9,17,24; 143:7;148:23;155:5	<b>bathroom (6)</b> 22:23;89:10,11; 91:6,12;104:2	<b>birth (1)</b> 146:16	
		<b>Bay (1)</b> 123:19	<b>birthday (3)</b> 79:13,16;146:18	
		<b>Bayside (4)</b> 31:9;145:10;	<b>bit (6)</b> 5:10;18:21;23:18; 153:7;156:3;160:16	
			<b>black (1)</b>	
	<b>B</b>			
	<b>bachelor's (2)</b>			

<p>14:12 <b>breathing (1)</b> 32:19 <b>bricks (1)</b> 29:9 <b>brief (2)</b> 32:2;132:15 <b>briefly (5)</b> 32:15;81:11;123:3; 124:19;136:16 <b>Brightwaters (1)</b> 123:19 <b>bring (14)</b> 11:10;30:5,5;34:2; 36:13,14;39:13,17; 76:25;90:23;91:12; 132:18,24;133:20 <b>brings (4)</b> 6:9,17;32:16; 157:19 <b>broken (1)</b> 28:1 <b>brought (11)</b> 6:11;84:6;90:18; 91:2;128:14;135:22; 157:23;159:14;160:4; 163:22;166:7 <b>bruises (1)</b> 166:16 <b>BSN (1)</b> 74:7 <b>buckle (1)</b> 139:19 <b>buckled (2)</b> 135:2;138:24 <b>building (3)</b> 29:9;65:3;123:6 <b>bulk (1)</b> 19:6 <b>burden (1)</b> 30:8 <b>bus (2)</b> 155:2,3 <b>business (2)</b> 29:12;100:20 <b>busy (4)</b> 33:13;58:18,20,22 <b>butt (2)</b> 135:2,5</p>	<p>20:5;21:12;22:17,20, 24;33:25;39:24; 41:20;61:13;66:1; 84:5;91:1;100:13; 109:4;111:3,14; 117:11;119:14; 123:13;132:10; 133:23;134:16,23; 137:25;138:22;145:1; 161:25;163:4;165:5, 9,13;166:1,7 <b>calling (3)</b> 39:20,22;113:4 <b>calls (4)</b> 7:19;35:15,18; 133:12 <b>came (43)</b> 13:23;19:1;20:2; 21:2;27:6;29:3;30:24; 31:22;34:23,24;35:1; 46:17;54:23;60:10; 62:1;67:10;68:20; 69:25;70:5,7,9,16; 74:12;77:13;81:2; 85:15,18;92:6,7; 96:11;105:6;128:25; 132:10;149:1,23; 150:1;152:2;159:6,6; 162:2,5;163:3;166:14 <b>cameras (2)</b> 16:5,11 <b>can (113)</b> 4:24;9:6;12:2; 13:22;14:24,24;15:1; 16:8;17:1;21:19,20; 24:23;27:7;30:2,5,5; 33:18;38:2;40:17,18; 47:6,10,17,21;48:8; 50:19;51:25;52:4,7,8, 15;54:4,17;55:12,18, 20;56:8;57:13;59:17; 60:16,17;61:12,16; 63:19,23;64:3;65:17; 71:2,14;72:2,19;73:9, 16;76:20;77:8,25; 78:7,7;80:2;81:11; 83:16;84:21;86:17; 89:18,22;90:1;96:10, 14,22,24;97:12;99:8; 101:3;102:19;104:4; 105:16;108:16;110:9, 16;111:14;112:17,20, 22;113:6,6,24;114:5; 116:17;117:15; 118:10;122:12,20; 125:19;126:15,19,20; 128:9;136:9;139:4; 141:17;143:5;145:5; 146:5;148:15,15; 151:10;153:10,10,14; 161:5;162:3;163:25; 169:15 <b>capable (1)</b></p>	<p>136:20 <b>capital (1)</b> 100:19 <b>caption (3)</b> 2:5,22;3:2 <b>car (10)</b> 20:1;31:18;76:18, 22;149:15;157:21,23; 158:1,3,5 <b>cardiac (1)</b> 123:4 <b>cardiovascular (1)</b> 122:24 <b>care (46)</b> 14:2;18:3,5,14,15; 21:18,23;22:19; 25:21,24;26:14,16,20, 25;27:11,14,21;28:5, 11;36:13,14,16,23; 37:15;54:4,5;56:14; 59:8,9;71:5;74:18,23, 25;75:15,21;79:15; 81:3;97:17;103:6,24; 104:1;122:25;124:15, 18;160:10;162:4 <b>careful (1)</b> 16:24 <b>carefully (2)</b> 5:15;17:3 <b>Carlson (1)</b> 2:7 <b>Carol (1)</b> 2:6 <b>carry (1)</b> 158:5 <b>case (60)</b> 6:4,10,12,15;7:11; 8:1,20;10:20;11:18, 24;12:7,10;13:3,12; 14:9,23;15:11;16:20, 25;18:10,20;20:19, 20;23:5,12,14,16,20, 22;24:13;25:11,20; 27:24;28:1,10,14,15, 15;33:23;36:4;37:5; 38:13,21;43:18; 53:16;54:9;59:23; 60:12;77:1;92:23; 100:2;101:15;105:18; 109:3;111:17;153:16; 165:8;168:3;169:7,24 <b>casualty (1)</b> 122:25 <b>Catapano-Fox (1)</b> 4:15 <b>cause (2)</b> 37:19;46:1 <b>caused (5)</b> 18:16;27:15,21; 134:10;141:20 <b>caution (1)</b> 33:2 <b>cellphones (1)</b></p>	<p>14:11 <b>census (1)</b> 69:10 <b>certain (4)</b> 12:11;44:23;98:10; 127:9 <b>certainly (8)</b> 31:6;32:25;33:1,10; 34:12,13;35:7,22 <b>certainty (2)</b> 59:14;72:18 <b>certification (3)</b> 75:15;122:24;123:9 <b>certifications (2)</b> 75:11;122:20 <b>certified (2)</b> 24:13;123:7 <b>chair (10)</b> 22:22;40:18;101:4; 108:23;109:1;112:3; 138:11;149:5;157:25; 158:6 <b>chairs (1)</b> 108:22 <b>chance (2)</b> 12:23;168:24 <b>change (1)</b> 85:4 <b>changes (2)</b> 61:18;71:6 <b>charge (5)</b> 13:6;85:7;169:9,14, 20 <b>charges (1)</b> 169:15 <b>chart (28)</b> 25:12;35:13;44:20; 45:4,10,20;46:3;47:9; 55:4;56:22;60:7;62:8, 16;65:20;70:9,19; 71:9,20;95:11; 101:22,23;102:2,3; 107:24;108:3;125:5, 6;130:4 <b>charts (2)</b> 70:20;126:11 <b>check (13)</b> 14:14;30:3;34:23, 25;35:9;81:13;95:11; 96:3;113:17;129:20, 23;133:14;149:3 <b>checked (3)</b> 22:25;27:9;151:15 <b>checking (4)</b> 61:16,18;129:14; 141:1 <b>chief (2)</b> 50:8;78:25 <b>child (1)</b> 18:25 <b>children (1)</b> 147:17 <b>cholesterol (2)</b></p>	<p>19:19;31:4 <b>choose (4)</b> 11:1,16;12:5;169:3 <b>chose (3)</b> 7:15,16;28:16 <b>chronic (7)</b> 19:19;25:2;26:6; 158:22;159:1,19,20 <b>circumstance (2)</b> 16:1,23 <b>circumstances (4)</b> 25:24;38:8;56:21; 169:6 <b>city (2)</b> 147:25;154:22 <b>civil (1)</b> 5:18 <b>civilized (1)</b> 10:7 <b>claim (7)</b> 30:5,6,6,6;36:10; 73:20;120:24 <b>claims (2)</b> 7:14,17 <b>clean (2)</b> 104:3;124:25 <b>cleaning (1)</b> 124:25 <b>clear (10)</b> 30:13;40:4,16; 51:14;53:22;100:16; 101:2;145:6;146:2; 168:17 <b>clearly (2)</b> 11:5;22:11 <b>CLERK (22)</b> 4:3,7,9,10,12,13; 39:6;40:1,3,11;88:3; 100:14,16,20,23; 144:2,5,7,23;145:5,8, 12 <b>click (1)</b> 116:9 <b>client (1)</b> 169:12 <b>climb (2)</b> 36:21,22 <b>Clinical (1)</b> 94:5 <b>close (11)</b> 61:13,16;67:17,19, 21,24;69:24;89:22, 23;157:24;161:10 <b>closely (2)</b> 26:21;38:10 <b>closer (1)</b> 68:5 <b>closing (1)</b> 8:9 <b>clothes (6)</b> 67:10;85:14,15; 107:15;131:12; 150:18</p>
<b>C</b>				
<p><b>call (23)</b> 7:21;30:12;34:2; 75:21;84:15;85:7; 93:6;100:9,10; 117:15;123:15; 127:13;132:11,17; 133:1,4,10,11,19; 144:19;163:15;165:4; 166:10 <b>called (38)</b> 6:9,12,25;8:8;16:8;</p>				

<b>cloths (1)</b> 129:5	8:4	47:18,19,20;92:25; 118:5,8	152:14;154:25;156:4; 160:21;162:9;164:6; 166:20;167:17,19,22; 168:7,9,12,23;169:12, 19	129:14 <b>cutting (1)</b> 148:3
<b>club (3)</b> 155:6,24;156:9	9:25;17:8;30:16	<b>counsel (7)</b> 17:11,16;28:20; 88:18;118:7;144:9; 153:3	<b>courtesy (1)</b> 31:20	<b>D</b>
<b>coffee (1)</b> 39:14	<b>conclusion (3)</b> 6:23;8:11,12	<b>Counselor (2)</b> 28:13;38:17	<b>courthouse (3)</b> 4:18,20;39:15	<b>daily (1)</b> 19:8
<b>collapsable (1)</b> 129:5	<b>conclusions (3)</b> 20:14;21:5;24:22; 53:4;61:18;71:6; 83:24;85:4	<b>Counselors (4)</b> 38:25;39:9;87:2; 88:5	<b>courtroom (14)</b> 4:2;11:10;14:10; 15:8;30:7;38:24;46:7; 87:1;88:2,16;93:5; 143:16;144:4;168:8	<b>DALILA (2)</b> 62:21;115:3
<b>College (1)</b> 122:19	<b>conditions (1)</b> 31:3	<b>Counsels (2)</b> 2:9;143:5	<b>Court's (1)</b> 3:16	<b>damages (1)</b> 3:14
<b>Collin (3)</b> 29:14;87:10;150:23	<b>conduct (3)</b> 6:8;12:9;17:5	<b>countries (1)</b> 5:18	<b>COVID (2)</b> 82:21;155:12	<b>dark (1)</b> 152:3
<b>colloquy (1)</b> 53:24	<b>conference (2)</b> 169:10,14	<b>County (2)</b> 122:19;124:10	<b>CPR (1)</b> 124:10	<b>data (1)</b> 116:18
<b>color (4)</b> 61:4;107:20; 132:23,23	<b>conflict (2)</b> 11:25;12:2	<b>couple (7)</b> 31:6;98:7;109:8; 140:19,25;152:22; 156:11	<b>create (2)</b> 17:21;36:5	<b>date (5)</b> 18:23;19:21; 146:16;156:23;157:9
<b>column (1)</b> 125:22	<b>conflicting (1)</b> 12:4	<b>coupled (1)</b> 26:7	<b>credibility (1)</b> 11:14	<b>day (84)</b> 5:22;11:11;17:3; 29:12;30:19,22,23,23; 31:10,11,24;33:6,13; 39:16;41:21;42:5,12, 14,24;43:20;44:16; 45:7;46:1,10,24;47:6; 49:21;52:24;65:15; 68:7;69:6;70:8,10,16; 75:24;78:1;87:5;97:4; 100:6;104:8,16; 105:5,6,7,20,24; 106:3,4,16,20,25; 107:12;108:8;113:18; 122:3;143:12;144:13; 148:17,21;150:11,14, 16;151:3,3,7;153:18, 21,24,25;154:6;155:9, 13,17;156:8;157:13; 158:8;159:15,21; 167:10,10,13,23; 168:1,20
<b>comfortable (1)</b> 82:19	<b>conform (1)</b> 11:2	<b>COURSE (4)</b> 16:13;20:6;46:6; 108:2	<b>criminal (2)</b> 122:14,15	<b>decide (11)</b> 6:15,18;8:22;9:10, 17;10:25;11:12;12:1, 4,7;117:22
<b>comfortably (1)</b> 130:22	<b>congratulations (1)</b> 122:18	<b>COURT (182)</b> 2:3,12,15,21;3:8,12, 17,19,22,24;4:1,9,11, 14;6:18;7:7;10:11; 13:13,23;14:25;16:7, 8;17:15,16;28:13,20; 29:14;35:2;38:17,23, 25;39:8;40:1,8,12,14, 22;44:11;47:12,13,19, 21,24,25;48:2,3,6,8; 51:6,12;52:6;53:25; 54:17;55:2;56:11; 57:13;58:4,11;59:1,7; 60:5,18;62:14,18,21; 63:22;65:25;71:14; 72:13,16,24;73:3,13, 15,24;77:8;86:8,11, 25;87:2,5,10;88:1,5; 91:18;92:15;93:2,15; 94:11,15;96:10;98:4, 24;99:6,11,20;100:6, 9,12,15,23,25;102:12; 110:1,5,8,15;112:7, 11,20,22;113:6,23; 114:16,19;115:3; 116:15;117:24;118:7, 9,12,15,17,18,20; 121:3,6,9,15,17; 124:7,9;133:7; 136:15,25;137:24; 138:6,14;139:8,16,25; 140:5,17,20,22; 141:17;143:4,9,15,17, 19,21,24;144:3,7,21; 145:14,18,20,23; 146:2,5,9;147:14; 149:20;150:23;	<b>criteria (1)</b> 80:3	<b>decided (2)</b> 31:14;74:24
<b>coming (7)</b> 14:25;32:11;69:2,7; 93:8;102:12;153:14	<b>connection (1)</b> 8:1		<b>critical (3)</b> 74:25;93:13;124:16	<b>deciding (4)</b> 6:20;10:12,23; 11:15
<b>common (11)</b> 36:17;37:4;60:9,11; 71:10;72:22;79:4,6; 130:11,13;132:25	<b>conscious (1)</b> 10:18		<b>criticisms (1)</b> 38:11	<b>decision (7)</b> 2:23;5:16;7:6;8:25, 25;10:3,17
<b>community (4)</b> 5:13;40:9;100:21; 122:19	<b>consequences (1)</b> 36:8		<b>Cross (4)</b> 73:24;88:12; 121:18;152:14	<b>decisions (4)</b> 10:9;12:19;36:8,9
<b>commute (1)</b> 31:10	<b>consider (11)</b> 6:20;9:15;10:1; 11:17;14:5;53:12; 89:7;93:4,13;130:18; 131:4		<b>cross-examination (3)</b> 7:21;74:1;152:16	<b>deemed (4)</b> 26:20;63:19;67:14; 68:12
<b>commuting (1)</b> 19:7	<b>considered (1)</b> 36:12		<b>cross-examine (1)</b> 169:2	<b>defendant (5)</b>
<b>competent (1)</b> 33:21	<b>consisted (1)</b> 124:20		<b>crowded (2)</b> 68:6,9	
<b>complain (2)</b> 79:4;159:1	<b>consistent (1)</b> 12:7		<b>cubicles (1)</b> 84:23	
<b>complains (2)</b> 88:19;99:24	<b>contact (2)</b> 15:6;31:22		<b>CUMMINGS (2)</b> 62:21;115:3	
<b>complaint (3)</b> 50:8;79:1;100:2	<b>contend (3)</b> 8:10,11,13		<b>curb (1)</b> 44:2	
<b>complaints (2)</b> 21:25;131:20	<b>contentions (1)</b> 7:3		<b>curiosity (1)</b> 5:10	
<b>complete (2)</b> 126:4;136:2	<b>context (1)</b> 94:23		<b>curious (1)</b> 3:15	
<b>completed (3)</b> 6:24;22:13;169:16	<b>continue (5)</b> 16:22;86:17;88:7; 93:15;124:1		<b>currently (2)</b> 122:16;123:16	
<b>completely (2)</b> 15:18;22:22	<b>Continued (5)</b> 29:15;87:11;88:12; 150:24;151:1		<b>Curry (15)</b> 2:6;109:11,11,14; 110:23;111:7,7; 112:5;138:19;139:5, 21,23;140:3,10,15	
<b>computer (5)</b> 16:14;49:7,24; 125:21;132:3	<b>control (3)</b> 57:16;90:21;97:7		<b>Curry's (2)</b> 138:17;139:2	
<b>concern (1)</b> 141:20	<b>conversation (1)</b> 32:2		<b>custom (2)</b> 77:7;83:7	
<b>concerned (3)</b> 33:4,5;34:22	<b>cooperate (1)</b> 128:10		<b>customary (1)</b>	
<b>concerning (2)</b> 7:25;125:6	<b>copy (6)</b>			
<b>conclude (1)</b>				

**(5) defendants - earlier**

<p><b>early (1)</b> 167:23</p> <p><b>easel (4)</b> 39:1;47:12,13; 60:17</p> <p><b>easier (2)</b> 16:15;17:6</p> <p><b>easy (1)</b> 14:20</p> <p><b>eat (2)</b> 34:9;137:21</p> <p><b>ED (3)</b> 48:14;89:16;131:14</p> <p><b>education (3)</b> 33:19;148:6,7</p> <p><b>educational (2)</b> 74:5;122:12</p> <p><b>effectively (1)</b> 123:7</p> <p><b>eight (4)</b> 74:19;105:4,20; 167:9</p> <p><b>eight-hour (2)</b> 105:14,15</p> <p><b>either (10)</b> 8:6;11:3;13:10; 14:22;15:2,7,15;16:2; 21:9;68:21</p> <p><b>EKGs (2)</b> 104:4;125:2</p> <p><b>elderly (1)</b> 74:19</p> <p><b>electronic (2)</b> 14:12;82:23</p> <p><b>elevated (8)</b> 27:6,7;95:18,22; 96:14;108:14;117:2; 129:9</p> <p><b>elevator (1)</b> 15:15</p> <p><b>else (13)</b> 9:6,15,16;14:23; 32:11;33:20;41:12; 45:9;48:25;56:22; 91:9;102:9;157:7</p> <p><b>emergencies (1)</b> 165:1</p> <p><b>emergency (82)</b> 17:18,20,23,25; 18:4,17;19:10;20:1,4, 5,7,9;21:3,12;22:4; 24:14,15,20;25:16; 26:22;27:15,25;28:5, 7;30:24;31:14;32:5, 12;33:10;34:1;35:21; 36:15;41:12,15,21,25; 42:24;43:3;44:19; 50:3;54:7;58:19,20, 22;63:7,17;68:17,18; 75:1,2,6;83:22;86:6; 93:25;94:21;96:12; 97:4;99:2;104:8; 108:7;117:12;122:23,</p>	<p>25;137:5;148:25; 150:3,5;159:23,25; 160:5;163:7,22; 164:3,9,14,18,21,24; 165:9;166:4,8,23</p> <p><b>emergent (10)</b> 21:23;22:19;53:4, 13;54:4,10;56:14,17; 58:9;97:17</p> <p><b>emphasis (1)</b> 9:11</p> <p><b>employee (1)</b> 89:15</p> <p><b>employees (2)</b> 37:23;89:18</p> <p><b>EMS (2)</b> 124:10,11</p> <p><b>EMT (5)</b> 123:9,13,16,21,23</p> <p><b>end (9)</b> 5:16;23:20;28:8; 30:17;38:13;69:19; 70:1;76:3;162:10</p> <p><b>engage (1)</b> 13:4</p> <p><b>Enjoy (2)</b> 86:15;168:1</p> <p><b>ensure (4)</b> 12:6;17:21;18:7; 63:6</p> <p><b>enter (4)</b> 78:18;81:12; 114:25;116:11</p> <p><b>entered (15)</b> 23:6;31:17;78:22, 23;81:15;88:2; 114:10,23;116:4,5,6, 18;125:18;126:1; 132:3</p> <p><b>entering (4)</b> 4:1;88:1;116:13; 144:3</p> <p><b>enters (2)</b> 4:2;144:4</p> <p><b>entire (2)</b> 22:7;161:18</p> <p><b>entitled (1)</b> 18:15</p> <p><b>entries (1)</b> 125:6</p> <p><b>entry (1)</b> 126:5</p> <p><b>environment (2)</b> 17:21;36:6</p> <p><b>equal (1)</b> 9:11</p> <p><b>equipment (5)</b> 16:14;47:24;64:25; 127:19;137:9</p> <p><b>ER (20)</b> 33:5,13;36:18; 40:20;76:14;78:1,4; 85:10;98:14,19;</p>	<p>122:5;125:1;126:10, 16,17;128:14;130:23; 133:2,18;141:6</p> <p><b>escorted (1)</b> 63:17</p> <p><b>ESI (8)</b> 21:12,14,16,21; 22:18;55:22;79:7; 88:20</p> <p><b>especially (1)</b> 37:7</p> <p><b>essence (3)</b> 5:17;48:19;102:6</p> <p><b>estimate (1)</b> 105:8</p> <p><b>evaluate (1)</b> 11:9</p> <p><b>evaluated (1)</b> 31:16</p> <p><b>evaluation (2)</b> 10:24;98:19</p> <p><b>Even (15)</b> 12:13,14;22:5; 24:10;25:13;31:6; 46:3;47:15;55:10; 56:4;114:1;144:15; 160:11;162:15; 165:18</p> <p><b>event (4)</b> 34:14;143:1,1; 164:14</p> <p><b>events (1)</b> 35:5</p> <p><b>everybody (9)</b> 31:18;33:5,9;61:4; 63:13;68:17;73:10, 11,16</p> <p><b>Everybody's (1)</b> 32:25</p> <p><b>everyday (2)</b> 43:16,17</p> <p><b>everyone (3)</b> 47:21;60:24;68:18</p> <p><b>evidence (41)</b> 2:2,5;15:7;4,5,6,10, 14,16;8:7,10,12,16; 9:2;10:4,19,23,23; 11:24,25;12:20,20; 13:2,5;14:5;16:12,15; 30:17;38:10;48:6; 50:22;53:23;57:3; 109:25;110:5,7; 121:5,10,14,16; 138:17,18</p> <p><b>exact (2)</b> 23:14;152:10</p> <p><b>exactly (6)</b> 37:12;107:15; 151:19;161:10,13; 163:8</p> <p><b>EXAMINATION (12)</b> 40:25;63:1;88:12; 91:20;98:8;101:7;</p>	<p>116:1;121:18;136:17; 140:23;146:10;151:1</p> <p><b>examinations (1)</b> 93:7</p> <p><b>examine (1)</b> 47:4</p> <p><b>examined (3)</b> 7:19;26:17;145:3</p> <p><b>excellent (8)</b> 4:19;14:1,18;15:4, 17,22;16:1;146:3</p> <p><b>except (1)</b> 95:7</p> <p><b>exception (1)</b> 93:5</p> <p><b>exceptional (2)</b> 9:23;16:22</p> <p><b>exceptionally (1)</b> 126:9</p> <p><b>exchange (1)</b> 12:24</p> <p><b>exchanged (1)</b> 168:16</p> <p><b>excited (2)</b> 4:25;16:5</p> <p><b>exclude (1)</b> 10:5</p> <p><b>excluded (1)</b> 10:5</p> <p><b>exclusive (1)</b> 9:3</p> <p><b>excuse (2)</b> 125:13;143:6</p> <p><b>Exhibit (10)</b> 2:2;7:25;48:2,4; 78:15;118:14,15,19; 121:14,15</p> <p><b>exhibits (2)</b> 7:9;9:1</p> <p><b>exist (1)</b> 64:14</p> <p><b>exited (2)</b> 38:24;168:8</p> <p><b>exiting (4)</b> 38:23;86:25; 143:15;168:7</p> <p><b>exits (2)</b> 87:1;143:16</p> <p><b>expect (4)</b> 35:22,23;133:9; 134:3</p> <p><b>expectation (2)</b> 168:18,22</p> <p><b>expected (1)</b> 37:12</p> <p><b>expecting (1)</b> 73:11</p> <p><b>expects (1)</b> 35:17</p> <p><b>expeditiously (1)</b> 2:22</p> <p><b>experience (5)</b> 33:19;58:2;76:20;</p>	<p>82:14;162:15</p> <p><b>experiences (1)</b> 11:11</p> <p><b>experiencing (1)</b> 19:12</p> <p><b>expert (22)</b> 24:12,13,15,16,19, 23;25:5,15,19,23; 26:4,12,24;27:9,13; 36:13,15;37:1,3; 169:13,16,17</p> <p><b>explain (8)</b> 16:2;24:19,24;25:5, 7,16;57:2;88:23</p> <p><b>explained (1)</b> 113:20</p> <p><b>express (3)</b> 11:4;155:2,3</p> <p><b>extent (3)</b> 12:1;58:11;94:12</p> <p><b>External (1)</b> 123:2</p> <p><b>extra (2)</b> 14:19;167:24</p> <p><b>extreme (1)</b> 19:12</p> <p><b>extremely (3)</b> 27:6,7;130:13</p> <p><b>eye (7)</b> 34:20;69:24;97:13, 13,13,20,24</p> <p><b>Eyeball (3)</b> 84:19;89:24;90:3</p> <p><b>eyesight (1)</b> 47:16</p>
<b>F</b>				
				<p><b>face (2)</b> 31:22;56:7</p> <p><b>facility (1)</b> 103:14</p> <p><b>fact (7)</b> 6:24;16:25;25:8; 46:6;56:13;60:25; 109:7</p> <p><b>factors (2)</b> 24:25;141:11</p> <p><b>facts (11)</b> 8:24;9:4,5,7,8,10, 17;10:9;11:3,21;38:8</p> <p><b>fail (1)</b> 165:19</p> <p><b>failed (5)</b> 18:10,10,14;23:24, 25</p> <p><b>failing (3)</b> 25:21;28:4,6</p> <p><b>failures (3)</b> 18:16;27:13;28:3</p> <p><b>fair (29)</b> 10:14;15:19;38:2,5; 46:13,22;58:6;75:6;</p>



<p>77:3;78:15,25;79:10; 81:20;114:21;153:21; 154:5,15;155:3,9; 157:12,15,18,21; 158:8,11,14,21;164:2; 167:6</p> <p><b>fairly (3)</b> 10:10;14:4;95:7</p> <p><b>fairness (1)</b> 12:17</p> <p><b>fall (106)</b> 18:17;22:6,7,8; 23:13,14,16,19,23; 24:1,3,9,9,11,17,17, 23:25:6,8,13,14,17; 26:21;27:4,5,9,15,21, 22:36:12;37:18,19, 20:60:7,12,14;61:2,8; 63:4,7,12,13,20,25; 64:10;66:3,16,16,18; 67:12,14,22;68:5; 69:12,13;73:5,9,10, 11,16,18,20;79:22; 80:3;84:9;89:7,22; 91:15;92:5;102:6; 104:17,18;108:21; 110:19,23;111:19; 112:2,14,16;113:2; 117:6,16;119:15; 120:13,13,21;130:9, 11,15;134:5;136:2, 11;138:23;139:19; 141:23;142:1,9,17,24; 149:11,12,15;151:21, 21;155:16,20</p> <p><b>falling (12)</b> 18:12;20:18;22:3; 23:25;24:21;25:19, 23:26:1,9,12;28:7; 108:22</p> <p><b>fall-risk (4)</b> 33:3,7;89:3;91:4</p> <p><b>falls (5)</b> 19:20;25:4;26:7; 31:7;84:13</p> <p><b>false (1)</b> 30:15</p> <p><b>familiar (3)</b> 12:14;16:25;98:11</p> <p><b>families (1)</b> 168:2</p> <p><b>family (8)</b> 5:4;14:17;19:8; 74:18;80:23;144:14; 148:14,15</p> <p><b>far (11)</b> 50:6;84:6,9,20; 131:1;133:23;160:12, 15;161:1,3,10</p> <p><b>fast (3)</b> 146:23;156:13,15</p> <p><b>fault (1)</b> 6:19</p>	<p><b>faulty (1)</b> 11:8</p> <p><b>favor (3)</b> 8:5;28:9;38:14</p> <p><b>features (1)</b> 129:8</p> <p><b>feel (5)</b> 32:24;38:15;39:13; 40:18,22</p> <p><b>feeling (3)</b> 52:19;72:19;161:22</p> <p><b>feet (25)</b> 34:18,20;50:7; 60:25;67:1,4,16;71:3, 4;84:11,17;90:5,9,17, 24;97:12;107:22; 108:14;131:3;133:25; 161:5,5,6,9;166:22</p> <p><b>fell (18)</b> 23:10;28:17;35:20; 37:17,22;46:1; 107:12;109:4;110:12; 111:23;113:11;118:2; 135:4;138:11,25; 152:7;166:13,15</p> <p><b>fellow (1)</b> 150:6</p> <p><b>felt (7)</b> 28:17;35:20;111:3; 137:17;142:4,9; 166:13</p> <p><b>female (6)</b> 158:14;159:11,14; 160:3;163:13,14</p> <p><b>few (14)</b> 5:18;35:13;101:16; 103:22;108:12; 121:23;122:11,17; 125:14;132:2;137:25; 143:19;152:2;163:23</p> <p><b>fifteen (9)</b> 34:18;71:4;84:11, 17;90:5,9,17,24;97:12</p> <p><b>fifteens (1)</b> 67:16</p> <p><b>Fifth (3)</b> 148:8,9,11</p> <p><b>Fifty (2)</b> 68:9;161:9</p> <p><b>filled (1)</b> 109:12</p> <p><b>Fills (1)</b> 39:23</p> <p><b>F-I-L-S (1)</b> 40:7</p> <p><b>Fils-Aime (15)</b> 20:21,23;21:1,10, 21:22:13;25:12; 28:25;31:23;39:22; 40:6;41:2;91:22; 101:25;104:6</p> <p><b>Fils-Aime's (2)</b> 22:1,11</p>	<p><b>Fils-Alme (4)</b> 2:6,19;3:3;6:13</p> <p><b>finalize (1)</b> 116:8</p> <p><b>Finally (3)</b> 16:19;20:17;27:12</p> <p><b>find (3)</b> 8:24;142:21;152:5</p> <p><b>finding (2)</b> 28:9;113:2</p> <p><b>fine (2)</b> 47:19;53:12</p> <p><b>finger (2)</b> 141:2,4</p> <p><b>finish (3)</b> 143:12;163:18; 169:8</p> <p><b>finished (3)</b> 114:15;118:23; 132:5</p> <p><b>firm (1)</b> 28:22</p> <p><b>first (34)</b> 7:12,19;8:17;20:8, 10;24:20;28:25; 30:23;31:22,24;32:8; 39:19,25;43:1;46:12; 48:11,19;49:5,12,24; 53:18;57:19,23; 62:11,16;76:23;78:9; 96:7;100:14;118:7; 127:24;145:3;159:8; 165:4</p> <p><b>Firstly (1)</b> 140:25</p> <p><b>fitting (1)</b> 12:2</p> <p><b>five (23)</b> 4:22;21:16,18,19; 38:21;54:6;105:4,21; 113:11,13;114:2; 117:11,17;118:1; 119:2,17;120:14; 132:8;138:2,7; 143:12;155:10,14</p> <p><b>five-minute (2)</b> 38:19;143:10</p> <p><b>floor (17)</b> 58:18;111:9,25; 113:3;123:6;134:9, 10;135:3,4,6,10; 139:3,18;142:15,16, 17,21</p> <p><b>Florida (1)</b> 122:15</p> <p><b>flow (4)</b> 57:16;83:19,20; 97:7</p> <p><b>fluctuate (1)</b> 137:22</p> <p><b>focus (2)</b> 85:6;96:6</p> <p><b>focused (1)</b></p>	<p>62:5</p> <p><b>foldable (1)</b> 129:5</p> <p><b>follow (1)</b> 37:16</p> <p><b>followed (3)</b> 6:22;7:12;8:17</p> <p><b>following (8)</b> 15:17;29:13;62:20; 87:9;92:23;93:18; 115:2;150:22</p> <p><b>follows (3)</b> 40:2;100:15;145:4</p> <p><b>follow-up (1)</b> 92:23</p> <p><b>food (3)</b> 22:23;27:3;86:14</p> <p><b>foot (2)</b> 108:13;129:9</p> <p><b>forgot (1)</b> 138:7</p> <p><b>form (11)</b> 7:8;12:25;44:10; 71:13;110:13;113:22; 114:14;133:20; 141:15;142:24,25</p> <p><b>formula (1)</b> 11:9</p> <p><b>forty (3)</b> 24:15;105:21;161:5</p> <p><b>forward (5)</b> 5:23;38:20;86:19; 143:11;168:5</p> <p><b>found (5)</b> 111:9,25;139:3,18; 142:15</p> <p><b>four (11)</b> 46:11;80:10;83:11; 106:17;118:22; 138:20;155:13; 156:10,11,12;160:11</p> <p><b>four-hour (1)</b> 105:16</p> <p><b>free (6)</b> 13:15;36:7,21; 39:13;40:18,22</p> <p><b>Friday (5)</b> 3:21;102:23,25; 155:11,18</p> <p><b>friends (2)</b> 5:4;12:14</p> <p><b>front (16)</b> 32:7;47:18;48:25; 69:10;78:6;81:20; 84:3;97:19,21;99:3; 125:10;127:13;129:9; 141:24;142:25; 157:15</p> <p><b>full (3)</b> 16:23;32:2;62:6</p> <p><b>full-time (1)</b> 105:21</p> <p><b>fully (4)</b></p>	<p>13:7;16:24;17:3; 20:13</p> <p><b>functions (1)</b> 8:22</p> <p><b>fundamental (1)</b> 17:18</p> <p><b>further (8)</b> 15:13;16:3;73:23; 91:19;98:3;100:5; 121:4;140:18</p>
<b>G</b>				
<p><b>gait (2)</b> 80:6;92:6</p> <p><b>game (1)</b> 136:25</p> <p><b>gate (1)</b> 149:25</p> <p><b>gave (9)</b> 9:13;50:25;54:21; 70:6;72:25;74:24; 93:10;101:15;156:19</p> <p><b>general (3)</b> 57:8;102:13;103:24</p> <p><b>generally (16)</b> 51:13;56:17;63:3; 75:23;77:14;78:1; 80:2;83:16;90:16; 91:5;128:3,7,10; 131:13;133:4;154:6</p> <p><b>Gentlemen (3)</b> 17:17;28:21;36:6</p> <p><b>gets (4)</b> 35:5;89:3;92:5; 94:3</p> <p><b>girl (1)</b> 147:19</p> <p><b>given (8)</b> 7:8;10:25;77:19; 78:1;97:4;104:8; 120:2;127:8</p> <p><b>gives (3)</b> 11:20;33:8;66:3</p> <p><b>giving (7)</b> 54:13;131:4; 156:21;161:8;162:14, 22;163:12</p> <p><b>glass (4)</b> 84:19,21,24;126:20</p> <p><b>glucometer (1)</b> 137:10</p> <p><b>glucose (6)</b> 27:3,5,7;61:22,23, 25</p> <p><b>goes (2)</b> 56:25;123:4</p> <p><b>Goldfarb (2)</b> 2:11,14</p> <p><b>Good (36)</b> 2:3,12,13,15,16; 4:14;5:13;34:5;37:14; 38:15;39:8;40:12;</p>				

<p>41:2,3;74:3,4;86:14; 87:5;88:5,6;91:22; 100:6,24;101:9,10; 110:9;114:19;121:20, 21;141:9;144:8; 145:14;146:12,13; 152:18,19 <b>govern (1)</b> 12:9 <b>governing (1)</b> 17:5 <b>grade (3)</b> 148:8,9,11 <b>graduate (1)</b> 122:16 <b>great (6)</b> 13:20;87:5;100:23; 104:20;110:8;168:6 <b>greater (1)</b> 79:8 <b>greet (1)</b> 49:2 <b>grimaces (1)</b> 56:4 <b>grimacing (1)</b> 56:2 <b>grip (1)</b> 66:2 <b>ground (1)</b> 23:10 <b>group (1)</b> 127:25 <b>groups (1)</b> 10:16 <b>guard (12)</b> 10:14;20:2,3;22:16; 31:17;63:6;66:20; 149:23;157:18,22; 158:11;159:9 <b>guardrails (1)</b> 63:16 <b>guards (1)</b> 44:16 <b>guess (3)</b> 82:22;106:17; 117:22 <b>guessing (1)</b> 109:15 <b>guide (1)</b> 6:7 <b>guy (1)</b> 149:1 <b>guys (1)</b> 15:18 <b>gym (4)</b> 31:12;155:21,23; 156:14</p>	<p>31:11;148:2;154:3, 5;155:18 <b>Haiti (2)</b> 74:7,9 <b>half (13)</b> 56:20;69:21,23; 71:5;105:15;151:16, 19,24;160:1;161:21; 164:23;166:6,9 <b>Hampton (1)</b> 147:24 <b>hand (9)</b> 4:10;9:11;35:18; 125:18;133:11,12; 144:23,24;145:5 <b>Handing (1)</b> 118:18 <b>handle (2)</b> 15:4,23 <b>hands (1)</b> 18:1 <b>happen (5)</b> 23:19;63:7,10; 66:21;96:13 <b>happened (12)</b> 12:11;18:20;23:13, 16;30:14;36:3,25; 77:7;135:1,12; 151:23;155:17 <b>happening (1)</b> 5:22 <b>happens (3)</b> 15:1;33:12;35:17 <b>happy (2)</b> 39:14;146:18 <b>hard (1)</b> 125:22 <b>harm (3)</b> 17:19;18:3,12 <b>Harris (105)</b> 2:10,10,10,14;3:6, 10,15,18,20,23;4:5; 17:12,13;39:22; 40:24;41:1;44:13,14; 47:14,20,22;48:10; 50:21,23;51:7;52:9, 10;54:2,3,19;55:3; 56:12;57:17;58:5,14; 59:2,10,12;60:16,19, 20;62:15;63:2;64:3; 71:15;73:23;77:6; 87:4;91:17,21;92:25; 93:16;98:3,21;99:4, 10,19;100:10;101:6, 8;110:2,4,7,10,17,18; 112:8,12,24;113:9,15, 16;114:15,18,20; 116:2;118:5,8,10; 121:4;124:6,8;133:5; 136:16,18;138:15; 140:1,18;141:15; 143:20,22;144:19; 146:8,9,11;149:22;</p>	<p>151:2;154:24;162:8; 164:4;167:18;168:11, 15,24;169:22 <b>Harris's (1)</b> 98:17 <b>hate (1)</b> 169:7 <b>head (3)</b> 47:5,6;118:4 <b>Health (2)</b> 3:4;6:14 <b>hear (33)</b> 6:1,7;9:1;11:6; 13:1;19:24;20:6,24; 21:14;22:10;24:12; 26:19;27:7,12;29:4; 30:21,25;31:1,4,7,16, 21,23;34:6,18,19; 37:1;40:23;64:16; 73:6;111:12;119:4; 159:24 <b>heard (18)</b> 6:4;12:21;27:20; 30:19;31:3;38:20; 44:19;73:5;86:18; 104:6;143:11;151:24; 165:17,25;166:6,9,10; 168:4 <b>hearing (2)</b> 23:8;156:1 <b>heart (6)</b> 32:9,18;33:14; 35:11;54:5;116:23 <b>heavy (3)</b> 10:11;108:12;129:3 <b>held (7)</b> 3:25;37:23,24; 143:7;144:1;168:14; 169:23 <b>Hello (2)</b> 144:22,23 <b>help (13)</b> 6:6;12:6;19:11; 25:18,22;30:2;39:16, 17;63:6;64:13;104:4; 142:21;162:10 <b>helped (7)</b> 20:2;135:19; 157:22,25;158:1,3,6 <b>helping (2)</b> 29:12;30:1 <b>herself (1)</b> 11:5 <b>hesitate (1)</b> 16:18 <b>hey (3)</b> 35:18;60:25;91:5 <b>Hi (2)</b> 4:15;145:15 <b>high (18)</b> 19:19,19;25:3,8; 26:8,20;31:3,4;93:19; 94:6;95:8,9,24;96:4,7,</p>	<p>8,12;151:10 <b>highest (1)</b> 148:7 <b>Hilton (1)</b> 147:24 <b>himself (2)</b> 11:5;98:14 <b>history (10)</b> 19:18,20;21:25; 25:4,6;26:6,8;62:3, 12;82:21 <b>hold (6)</b> 28:2,3,5;47:25; 75:11;122:20 <b>holidays (1)</b> 15:14 <b>Holy (1)</b> 74:18 <b>home (13)</b> 34:8;69:14,18; 74:18,23;81:1,2; 124:16;129:4;151:17, 18;161:22;168:6 <b>honestly (2)</b> 5:11;10:10 <b>Honor (43)</b> 3:11;4:8;17:14; 39:3;40:13;48:7;51:5, 11;54:25;56:10; 59:10;60:4;64:4; 72:23;73:2,12,25; 77:6;87:3;88:11; 92:25;94:10;96:9; 98:7,21;100:10; 101:6;116:14;117:23; 118:6,11;121:2,8,12; 136:16;139:14;140:4, 16,19;143:18;144:19; 164:5;168:10 <b>hook (1)</b> 52:16 <b>hope (4)</b> 5:10;17:6;38:13; 88:6 <b>Hospital (91)</b> 2:8,19;3:4;6:14; 17:22;18:1,5,8,18; 19:13,15,25;20:10,13, 15,18;21:2,6;22:1,8, 21;23:1;24:7;25:9; 26:5;28:19;29:2,7,8; 30:3,21,24;31:15,17, 21;35:2,4;37:12,23; 38:12;41:6;43:8;44:3; 45:3,19;46:5;50:4; 60:24;62:11;64:14, 21,25;65:2,6;66:3; 70:15;73:17;74:21; 75:24;76:3,14,21,22; 78:7;83:16;85:21; 99:3,8;103:8,10; 112:17;124:11,19; 131:9,14;148:19,21,</p>	<p>25;150:4;157:10,12, 16,19;158:12,25; 159:4,8,15;163:3; 165:15;166:12 <b>hospitals (1)</b> 74:22 <b>hospital's (2)</b> 17:18;19:10 <b>hot (1)</b> 151:4 <b>Hotel (1)</b> 147:24 <b>hour (13)</b> 32:3;56:20,20; 69:21,23;71:5; 102:21;143:13; 151:16,18;160:1; 161:20,20 <b>hours (32)</b> 22:20,21,25;26:3, 15,23;27:2;34:16,23; 42:18;58:21;59:4,15, 24;63:15;66:10; 72:10,19;76:4,15; 105:4,5,20,21;122:2; 137:20;149:7;151:20; 160:9,11;166:5,6 <b>housekeeping (1)</b> 143:23 <b>Huh (5)</b> 151:8;152:21; 153:9;158:2;165:20 <b>human (4)</b> 12:25;15:5;51:17, 23 <b>hundred (3)</b> 68:10;78:2;108:13 <b>hurt (1)</b> 36:23 <b>hurts (1)</b> 37:8</p>
<b>I</b>				
<b>ID (3)</b> 79:18;129:24;138:1				
<b>idea (4)</b> 5:21;58:15,17; 114:19				
<b>identification (4)</b> 118:11,14,16,19				
<b>identify (3)</b> 132:12,13;133:8				
<b>identifying (1)</b> 77:23				
<b>ignore (1)</b> 15:16				
<b>illnesses (1)</b> 25:2				
<b>Imagine (3)</b> 40:19;169:17,18				
<b>immediate (3)</b> 21:17;80:23;97:17				

<b>immediately (7)</b> 5:3;23:10;27:5; 32:10;33:9;135:22; 169:19	9:25	21,22;32:11;40:3; 43:7,19;78:1;93:11; 121:5;123:4;130:3; 135:18,19;141:4; 157:22,25;163:3,4,15; 165:5;169:19	29:1;30:19;31:13; 41:18,20;42:12; 45:23;73:21;89:15; 96:23;98:15;99:18; 103:5;104:12;124:19, 22;126:8;130:25; 132:25;148:17;151:3; 153:19;154:11; 155:21;156:8;157:9; 164:3,15;167:7	<b>kind (5)</b> 52:15;104:4; 129:10;134:9;150:18
<b>impartial (1)</b> 10:14	<b>inferences (1)</b> 8:11			<b>knew (13)</b> 23:22,23;55:22; 57:5;62:3;83:13; 117:8;120:20;138:2; 149:15,16,21;161:21
<b>impartially (2)</b> 9:7;14:5	<b>influences (1)</b> 15:19	<b>introduce (1)</b> 28:21	<b>jump (1)</b> 150:20	<b>knowledgeable (1)</b> 123:7
<b>implement (2)</b> 23:25;25:22	<b>information (12)</b> 14:6;49:3,6,24; 51:4,9;54:13;79:13, 14;80:8,8,11	<b>introduced (2)</b> 7:4;8:7	<b>juror (4)</b> 4:24;10:10,14; 16:21	<b>known (2)</b> 23:10;83:15
<b>important (6)</b> 5:19;12:18;33:20; 112:6,17;113:1	<b>informed (1)</b> 13:7	<b>introduction (1)</b> 7:24	<b>jurors (16)</b> 4:4,10;5:9;8:22; 9:13;12:8;13:21; 16:19,21;17:1,1;35:3; 38:6;47:16;48:8;88:5	<b>knows (3)</b> 63:13;83:13,14
<b>importantly (1)</b> 16:10	<b>initiated (1)</b> 81:3	<b>involves (1)</b> 12:10		
<b>improbability (1)</b> 11:23	<b>injuries (1)</b> 27:16	<b>irrelevant (1)</b> 9:9	<b>justice (4)</b> 5:12;10:9;122:14, 15	
<b>inability (2)</b> 19:22;26:6	<b>injury (3)</b> 6:20;17:19;18:4	<b>issue (4)</b> 14:15,17,17;15:24		<b>L</b>
<b>inaccurate (1)</b> 14:6	<b>insert (2)</b> 125:24;130:3	<b>issues (1)</b> 3:8	<b>jury (60)</b> 2:22;4:1,2,11,14,18, 25;5:2,7,18;6:3,5;9:9, 24;12:9,16;14:24; 15:7;28:21;30:4;36:7; 38:18,23,24;39:6,8; 40:16;55:8;71:12; 73:1,5,6;86:11,25; 87:1;88:1,2,3;93:3; 94:20;96:8;101:2; 110:9;113:20;117:22; 136:10;138:21; 140:13;143:8,9,15,16; 144:3,4,5,8;145:25; 167:22;168:7,8	<b>label (1)</b> 79:14
<b>inappropriate (1)</b> 166:18	<b>inside (30)</b> 15:7;43:24,24,24, 25;47:5,5;63:11,12, 17;66:5,6,8;68:11,24; 69:7;76:25;81:5; 83:25;84:1,6;85:7; 104:5;126:20;149:2; 150:4;158:12,25; 159:8,9	<b>Italian (1)</b> 104:24		<b>lack (1)</b> 11:17
<b>incident (4)</b> 6:21;18:23;109:12; 140:10	<b>insist (1)</b> 151:17	<b>Italy (4)</b> 19:1;146:25;148:5, 13		<b>Ladies (3)</b> 17:17;28:20;36:6
<b>incline (1)</b> 109:1	<b>instance (1)</b> 133:22	<b>items (1)</b> 10:4		<b>lady (3)</b> 149:3;152:2,2
<b>include (4)</b> 118:1;120:12,14,20	<b>instances (1)</b> 141:5	<b>J</b>		<b>lancet (1)</b> 141:3
<b>included (1)</b> 19:18	<b>Instead (1)</b> 20:2	<b>Jason (1)</b> 2:13		<b>language (1)</b> 156:1
<b>includes (1)</b> 79:13	<b>instinct (3)</b> 151:25;165:18; 166:11	<b>job (8)</b> 18:4;31:24;32:4; 38:15;53:3,9;100:23; 124:23		<b>lap (3)</b> 64:13,14,18
<b>including (4)</b> 13:12;74:22;79:14; 86:22	<b>instruct (2)</b> 8:19;9:12	<b>Joe (1)</b> 128:8		<b>large (1)</b> 129:3
<b>incomplete (1)</b> 14:7	<b>instructions (6)</b> 5:24;6:6,25;12:22; 33:8;90:24	<b>Johns (1)</b> 15:12		<b>last (5)</b> 31:6;82:22;119:9; 127:25;159:5
<b>incredibly (1)</b> 5:19	<b>intend (1)</b> 7:2	<b>join (1)</b> 159:25		<b>late (1)</b> 136:25
<b>independent (8)</b> 71:16,17,21;72:3; 96:22;104:11;136:9, 10	<b>intention (2)</b> 35:25;132:18	<b>Joseph (11)</b> 2:6,18;3:3;6:13; 23:5;29:1;34:23;35:7; 100:11,18;114:7	<b>K</b>	<b>later (6)</b> 35:13;114:23; 117:11;140:8,14; 161:15
<b>independently (1)</b> 46:23	<b>intentionally (1)</b> 11:4	<b>J-O-S-E-P-H (1)</b> 100:18	<b>Karyn (1)</b> 2:7	<b>law (16)</b> 8:4,20,23;9:13,15, 16;10:3,9,22;12:22; 13:3,6,13;14:3;16:19; 63:24
<b>Index (2)</b> 2:8;21:12	<b>interaction (2)</b> 35:9;97:1	<b>Judge (21)</b> 3:10,15,23;4:7,15, 22;47:15,22;50:21; 53:3,9;54:2;87:7; 138:19;143:20; 144:22;146:8;168:11, 15;169:9,22	<b>KAUFER (10)</b> 2:13,13;17:13,14, 16;39:1,4,21;87:7; 110:3	<b>lawsuit (7)</b> 6:9,11;8:6;10:7; 12:17;29:6;30:5
<b>indicate (7)</b> 25:14;65:20;70:16; 72:22;122:2,5,8	<b>interdisciplinary (3)</b> 111:14,15,16	<b>judges (2)</b> 9:3,17	<b>Keenan (2)</b> 2:10,14	<b>lawyer (4)</b> 119:24;120:1; 140:8,14
<b>indicated (4)</b> 82:6,8;89:21;119:1	<b>interest (2)</b> 11:17,18	<b>judging (1)</b> 53:1	<b>keep (14)</b> 10:18;12:18;17:19; 34:19;38:10;39:18; 69:24;84:25;93:21, 22;97:12,20,24; 144:17	<b>lawyers (2)</b> 53:23;54:1
<b>indicates (3)</b> 21:17;78:25;81:21	<b>interesting (1)</b> 5:8	<b>judgment (2)</b> 14:7;53:7	<b>keeping (1)</b> 97:13	<b>layout (1)</b> 126:16
<b>indicating (3)</b> 21:22;22:7;105:1	<b>interventions (2)</b> 24:1;25:18	<b>July (32)</b> 18:23;19:9;27:16;	<b>keeps (2)</b> 108:25;125:23	<b>lead (2)</b> 14:8;27:7
<b>indication (3)</b> 9:5;70:9;128:14	<b>into (29)</b> 7:10;9:2;18:1,19; 20:1,4;24:25;31:20,		<b>kept (1)</b> 18:3	<b>leading (1)</b> 31:8
<b>indications (1)</b> 81:25			<b>kidney (1)</b> 166:16	<b>League (1)</b> 154:16
<b>inference (1)</b>				

<p><b>lean (1)</b> 108:24</p> <p><b>learn (4)</b> 30:18,23;31:22; 148:13</p> <p><b>learned (1)</b> 62:12</p> <p><b>least (4)</b> 21:16;68:11;71:2; 95:13</p> <p><b>leave (5)</b> 10:16;76:3,7;160:2; 161:20</p> <p><b>leaves (1)</b> 34:8</p> <p><b>leaving (2)</b> 14:25;26:14</p> <p><b>left (15)</b> 50:9;65:23;69:21; 70:25;71:2;79:3;92:8; 100:8;112:5;119:18; 120:17;121:1;126:19; 143:13;167:21</p> <p><b>left-hand (2)</b> 78:12;125:15</p> <p><b>leg (14)</b> 19:13;21:4;37:8,9; 50:9;79:3;92:8;135:2; 138:24;139:19; 148:22;159:2,17,21</p> <p><b>legal (3)</b> 7:25;17:5;143:22</p> <p><b>legally (1)</b> 10:5</p> <p><b>legs (11)</b> 19:23;23:11;28:17; 31:11;35:20;111:3; 142:4,9;154:6; 156:14;166:13</p> <p><b>length (2)</b> 90:19;127:14</p> <p><b>LEO (112)</b> 2:16,17,17;3:7,11; 4:6;24:5;28:13,14,22, 23;30:1;39:3;44:10; 48:7;51:5,11;52:4; 53:24;54:16,25; 56:10;57:9,11;58:3, 10,25;59:6;60:4; 62:13,17;63:21; 65:24;71:13;72:12, 15,23,25;73:2,12,25; 74:2;77:10;81:18; 86:8,10;87:3;88:10, 11,13;91:19;92:12, 16;94:10,17;96:9; 98:7,9;99:1,7,22; 100:5;110:6,13,22; 112:10,19,21;113:4, 22;114:14;116:14; 117:23;121:2,7,11,12, 19;136:14,24;137:23; 138:5,12;139:7,14,22;</p>	<p>140:4,16,19,21,24; 143:3,18;149:17,19; 152:15,17;156:5; 160:19,22;162:6,11; 165:21,22;166:19,21; 167:15;168:10,18; 169:4,18,21</p> <p><b>Leol (1)</b> 102:11</p> <p><b>less (4)</b> 79:8;162:18,20; 163:24</p> <p><b>Leto (2)</b> 2:17;28:23</p> <p><b>level (49)</b> 21:8,13,17,18,21; 22:18;24:23;25:2; 26:5;32:21;41:25; 53:4,13,19;55:15,22, 25;56:16,19,19;57:10, 20;58:1,9,16,21;59:5, 16,24;60:6;61:13,13; 68:12,15,16,21,22,23, 23;69:1,2,4,9;79:7; 88:20;137:11;148:7; 151:6,9</p> <p><b>levels (6)</b> 27:3,5,7;61:22,23; 97:17</p> <p><b>liability (3)</b> 3:13,14;6:16</p> <p><b>licensed (3)</b> 19:7;74:13,16</p> <p><b>life (14)</b> 5:4;11:11;19:6; 21:18;32:8;75:16,19, 22;122:24,24;123:8; 124:11,13,14</p> <p><b>lifestyle (1)</b> 31:9</p> <p><b>lift (1)</b> 156:17</p> <p><b>light (1)</b> 11:23</p> <p><b>likely (2)</b> 37:1,2</p> <p><b>limited (1)</b> 104:5</p> <p><b>limiting (1)</b> 86:3</p> <p><b>line (6)</b> 93:18;160:24,25; 162:14;163:10,12</p> <p><b>liquid (1)</b> 137:21</p> <p><b>list (2)</b> 81:6;127:9</p> <p><b>listen (4)</b> 5:14;36:24;37:5; 38:10</p> <p><b>little (15)</b> 5:10;18:21;93:5; 95:8,9;104:23;</p>	<p>136:25;148:5;153:7; 156:3;162:1,17,20; 165:17;167:23</p> <p><b>live (3)</b> 19:5;93:14;147:10</p> <p><b>lives (2)</b> 11:11,14</p> <p><b>living (2)</b> 31:9;154:20</p> <p><b>loaded (1)</b> 108:14</p> <p><b>located (1)</b> 29:8</p> <p><b>location (4)</b> 12:11,13,14,16</p> <p><b>lock (1)</b> 129:13</p> <p><b>locked (5)</b> 65:15,21;90:12; 125:23;130:16</p> <p><b>locking (3)</b> 65:10;129:13,15</p> <p><b>locks (1)</b> 125:23</p> <p><b>lodged (1)</b> 38:11</p> <p><b>long (18)</b> 42:4;63:14;83:17; 90:17;103:12;123:21; 126:9;131:13;148:3; 149:7;151:13,14; 152:4;160:14;161:22; 167:9;169:6,17</p> <p><b>longer (1)</b> 19:14</p> <p><b>long-term (1)</b> 74:18</p> <p><b>look (19)</b> 5:22;12:12;13:15; 14:18;38:3,6;80:7; 82:15,19;86:18; 110:22;118:21,23; 119:9;129:24;141:9, 12;143:11;168:4</p> <p><b>looked (5)</b> 45:19;78:14; 108:11;132:4;138:24</p> <p><b>looking (8)</b> 12:15;25:11;38:20; 48:11;57:3;71:20; 104:24;169:12</p> <p><b>looks (1)</b> 56:4</p> <p><b>lost (2)</b> 110:12,13</p> <p><b>lot (2)</b> 16:15;86:14</p> <p><b>loud (6)</b> 40:4,16;100:16; 101:2;145:5;146:2</p> <p><b>loved (1)</b> 124:16</p> <p><b>lovely (1)</b></p>	<p>40:19</p> <p><b>low (1)</b> 158:22</p> <p><b>lower (3)</b> 19:7,12;145:5</p> <p><b>Luigi (13)</b> 2:4;3:2;6:10;18:11; 23:7;35:16;42:23; 117:9;119:14;138:22; 144:20;145:7;151:25</p> <p><b>lunch (16)</b> 14:14;15:15;39:12, 13;86:9,13,21;87:6,8; 88:6;91:23;92:2,16; 95:1;97:2;169:15</p> <p><b>lying (1)</b> 11:4</p>	<p>28:16;33:21; 104:24;150:7</p> <p><b>management (1)</b> 70:17</p> <p><b>manager (1)</b> 147:24</p> <p><b>mandating (1)</b> 14:3</p> <p><b>Manhasset (4)</b> 29:8;40:10;100:21; 148:25</p> <p><b>Manhattan (3)</b> 19:8;31:9;154:15</p> <p><b>manner (2)</b> 11:20;93:10</p> <p><b>manually (1)</b> 125:25</p> <p><b>manufactured (1)</b> 56:9</p> <p><b>many (30)</b> 27:20;33:14;42:10; 55:6;63:15;68:2,10, 12,15,20;69:1,4,8; 76:21;77:25;78:3; 83:23;89:18;105:2; 107:2;122:5,8; 126:23;127:1;132:6, 14;148:4;160:7; 164:24,25</p> <p><b>mark (1)</b> 118:12</p> <p><b>marked (8)</b> 2:1;48:4;118:10,13, 16,19;121:13,15</p> <p><b>marking (1)</b> 77:23</p> <p><b>married (4)</b> 19:2;147:3,6,12</p> <p><b>materials (3)</b> 44:23;45:3;101:21</p> <p><b>matter (2)</b> 2:4;145:16</p> <p><b>matters (1)</b> 5:19</p> <p><b>may (30)</b> 3:15;7:20,23,25; 8:2;9:20,24;10:1; 11:2,17;12:13;15:24, 25;16:14;17:16; 24:10;28:20;31:1,7; 32:11,13;37:16;38:4; 40:24;43:19;78:14; 93:15;96:3;118:5; 138:15</p> <p><b>maybe (22)</b> 5:7,9;15:12;38:3,4; 39:4;68:11;70:11; 102:21;149:7;150:20; 151:18,19;155:13,13; 156:16;160:1,8; 161:6;164:10,11; 167:8</p> <p><b>MD (1)</b></p>
<b>M</b>				
<p><b>ma'am (10)</b> 43:15;44:6,24; 46:22;58:15;59:3; 66:15;71:2;94:9;98:2</p> <p><b>machine (4)</b> 52:15;127:21,22; 136:19</p> <p><b>machines (1)</b> 34:12</p> <p><b>Madam (4)</b> 4:9;100:23;144:7; 152:19</p> <p><b>Madeleine (6)</b> 2:18;6:13;20:21; 28:24;31:23;40:6</p> <p><b>M-A-D-E-L-E-I-N-E (1)</b> 40:6</p> <p><b>Madeline (2)</b> 2:6;3:3</p> <p><b>magazines (1)</b> 13:11</p> <p><b>magical (1)</b> 11:9</p> <p><b>Mahmood (1)</b> 2:5</p> <p><b>main (8)</b> 63:11;78:3;91:2; 99:12,13;125:2; 131:15;163:15</p> <p><b>maintain (1)</b> 64:25</p> <p><b>makes (4)</b> 32:16,20;33:18; 117:15</p> <p><b>making (2)</b> 8:15;24:25</p> <p><b>male (1)</b> 95:17</p> <p><b>malls (1)</b> 123:5</p> <p><b>malpractice (4)</b> 28:15;30:7,9;37:21</p> <p><b>man (4)</b></p>				

2:5 <b>mean (27)</b> 15:10;17:1;43:25; 45:25;61:16;71:17; 74:8;79:11,18,24; 80:9,18;81:4;83:21, 23,25;84:25;85:25; 88:23;89:10;93:22; 96:20;111:6,15; 123:3,12;124:13 <b>meaning (4)</b> 22:19;56:13,14; 71:20 <b>means (26)</b> 9:21;41:24;52:21; 54:5,9;67:9,10;73:10; 80:12,15,19;81:5,23; 84:22;89:23;93:7; 96:21;109:23;111:16; 114:12;123:13; 124:14;125:16,19,21; 126:1 <b>measure (3)</b> 51:16,22,25 <b>mechanism (3)</b> 65:11;129:13,15 <b>media (1)</b> 13:11 <b>medical (27)</b> 14:17;18:3,5;19:11, 18;20:16,25;21:7,11, 24;22:24;23:17;25:6, 11;26:18,22;28:14; 30:6,9;36:15;54:6; 59:4,8;61:1;71:5; 74:20;122:23 <b>medication (2)</b> 162:3;167:13 <b>medicine (3)</b> 24:14;51:20;52:15 <b>med-surg (2)</b> 74:20,25 <b>meet (6)</b> 23:5;49:12;64:23; 76:23;78:10;102:11 <b>meeting (4)</b> 6:2;97:14;152:20, 22 <b>meets (1)</b> 49:23 <b>member (4)</b> 20:9;80:24;155:21, 23 <b>Members (18)</b> 4:14;6:3;38:18; 39:6,8,9;86:11;88:3; 93:3;110:9;122:8; 143:9;144:5,8,9,14; 167:22;168:2 <b>memory (7)</b> 46:22;47:5;71:20; 114:13,17;161:14; 163:25	<b>men (1)</b> 95:13 <b>mental (5)</b> 61:19,20;80:5;83:9; 131:18 <b>mentally (1)</b> 71:7 <b>mention (2)</b> 6:19;93:5 <b>mentioned (2)</b> 31:2;53:21 <b>merely (1)</b> 44:8 <b>met (10)</b> 4:24;41:4;49:16; 50:1;62:3;95:3;97:24; 101:11;138:1,9 <b>Metformin (1)</b> 167:10 <b>method (1)</b> 10:7 <b>mic (2)</b> 40:18;101:4 <b>microphone (3)</b> 40:4;145:21;156:4 <b>might (9)</b> 10:16,23;12:11,12; 13:2;59:9;67:22; 73:17;113:21 <b>mildly (1)</b> 96:8 <b>military (1)</b> 125:16 <b>mind (9)</b> 10:18;12:18;38:11; 40:15;47:7;64:4; 104:20;108:5;145:24 <b>minds (1)</b> 9:24 <b>minute (5)</b> 114:23;116:9,10; 126:3,4 <b>minutes (22)</b> 5:25;35:13;38:21; 59:24;113:11,13,21; 114:2;117:11,17; 118:1;119:2,18; 120:14;125:15;132:6; 138:2,7;143:12,19; 152:2;167:25 <b>mistaken (2)</b> 119:7,8 <b>mode (2)</b> 80:17,20 <b>moment (7)</b> 58:7;78:14;81:20; 118:25;121:24; 125:13;156:20 <b>moments (1)</b> 137:25 <b>Monday (3)</b> 38:1;155:10,18 <b>money (1)</b>	14:16 <b>monitored (3)</b> 22:25;26:21,23 <b>monitoring (6)</b> 61:14,16,24,25; 89:22,23 <b>months (3)</b> 19:20;74:25;103:22 <b>more (20)</b> 16:10;24:9;31:6; 54:13,15;83:24; 102:21;105:21;132:2; 137:3;143:13,23; 144:15;148:13; 151:19;153:7;160:10; 162:4,10;163:24 <b>morning (28)</b> 2:3,12,13,15,16; 4:14;14:13;38:1;39:8, 11,17;40:12,13;41:2, 3;42:17;73:7;86:12; 88:18;93:4;95:6; 105:10;148:22; 150:13;168:5,16,20; 169:16 <b>mortar (1)</b> 29:9 <b>Most (4)</b> 5:2;17:17;21:15; 96:11 <b>motion (1)</b> 162:8 <b>motions (3)</b> 7:25;8:2,16 <b>move (15)</b> 40:18;47:17;65:11; 89:12;90:10,12; 101:4;121:5;129:19; 134:7,14;149:19; 157:6;160:19;162:6 <b>movement (3)</b> 86:3;124:25;125:1 <b>MRI (1)</b> 52:15 <b>much (22)</b> 4:21;5:11;10:25; 11:16;17:9;38:22; 50:11;52:16,18; 56:16,18;57:7;93:15; 100:6;102:19;118:17; 143:14;144:14; 152:12;160:17; 166:10;168:12 <b>multiple (8)</b> 111:16;113:13; 126:10;127:3,3,16,23; 138:9 <b>muscles (1)</b> 156:17 <b>must (13)</b> 8:4,9;13,17;10:14, 20,24;12:8,19;14:12; 20:17;24:20;26:8;	109:15 <b>myself (3)</b> 4:19;28:21;159:13  <b>N</b>  <b>name (44)</b> 22:17,20,23;23:6,8; 28:22;34:2;40:5; 79:11,13,17;83:13; 84:5;91:1;97:23; 100:17;109:4;111:3; 117:8,12,16;119:14; 132:11,11,17,22; 133:1,4,10,19,24; 134:17,23;137:25; 138:22;145:6;147:8; 151:24;158:17;165:8, 12,17,25;166:11 <b>names (2)</b> 127:14;166:6 <b>Naples (2)</b> 19:1;146:25 <b>Napolitano (117)</b> 2:4,11,14;3:2;6:11; 18:11,14,16,22,22,25; 19:5,6,9,17;20:3,23; 21:2,11,13,22;22:3, 14,22,25;23:7,9,22, 25;24:11;25:8,23,25; 26:12,14,23;27:1,15; 28:1,4,6;29:2;30:20, 21;31:8,14;33:20; 34:4,7,14;35:10,15, 16,19;36:6,10;37:11, 16,24;38:7;42:23; 44:15;45:25;48:20; 55:7;57:8,19;59:23; 66:9;68:2;69:12; 73:20;77:2;83:3; 97:11;107:11;111:6, 19;112:14;117:8,9; 119:14;120:12;125:6; 127:6,24;128:17; 130:8,18,25;131:4,20; 133:22;134:1,5,16; 135:13;136:9;138:22; 141:12,19;142:5,16; 144:20;145:7;146:12; 147:9;151:25;152:18; 153:18;156:19;163:2, 20;165:15;166:22; 167:15 <b>Napolitano's (20)</b> 19:24;21:8,24; 22:19;25:6;26:7;34:4, 17;35:10;65:14;95:2; 113:10;126:7,24; 131:17,25;132:7,11; 134:23;137:13 <b>naturally (1)</b> 108:24 <b>nature (1)</b>	12:25 <b>NCAA (1)</b> 15:13 <b>near (2)</b> 68:2;98:15 <b>nearby (3)</b> 50:5,7;84:14 <b>necessarily (3)</b> 107:13,14;115:1 <b>need (31)</b> 14:17,18;15:25; 17:2;21:17,23;22:19; 27:22;30:1;32:9,10, 16;37:6;47:12;54:5,6; 63:20;64:10;84:14; 86:1;91:5;97:17,18; 130:17;132:13;133:8; 145:20;149:2;150:1; 160:10;162:4 <b>needed (16)</b> 19:11,11;22:9; 23:24;24:2;34:12; 56:13;84:7;89:8,9; 91:3;132:12,15; 138:1,9;162:10 <b>needle (1)</b> 141:4 <b>needs (5)</b> 2:23;20:16;32:7; 76:12;83:14 <b>negligence (6)</b> 27:13;28:15;30:6,8; 36:4;37:21 <b>negligent (7)</b> 18:13;25:21;26:13, 25;27:10,19;28:10 <b>Neither (1)</b> 9:5 <b>neutral (1)</b> 15:19 <b>New (6)</b> 74:14;100:21; 145:10;147:25; 155:24;156:9 <b>next (16)</b> 3:23;29:15;32:5; 35:15;50:19;70:3,5, 24;81:17,19;87:11; 100:9;132:1,22; 135:10;150:24 <b>nice (1)</b> 88:6 <b>night (3)</b> 106:3;152:5;168:6 <b>nine (2)</b> 59:24;148:4 <b>Noah (3)</b> 29:14;87:10;150:23 <b>nobody (5)</b> 16:6;159:6,6;162:2, 5 <b>nobody's (1)</b> 46:20
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<p><b>nodded (1)</b> 23:2</p> <p><b>nonresponsive (2)</b> 160:20;162:7</p> <p><b>non-skid (8)</b> 66:2,9;67:1,12; 85:10,11;131:4,9</p> <p><b>nonverbal (5)</b> 52:1,2,6,7,11</p> <p><b>nor (4)</b> 9:6,15;10:1,32:4</p> <p><b>norm (2)</b> 108:5,6</p> <p><b>normal (8)</b> 15:5;35:12;42:20, 22:95:6,7,11,16</p> <p><b>Normally (5)</b> 43:8,12,15;44:7; 49:10</p> <p><b>North (53)</b> 2:7,19;3:4;6:14; 18:17;19:9;29:2,7; 30:20,24;31:25;40:9; 41:6,15,21;43:8;50:3; 56:23;57:25;63:13; 65:5;74:22;75:9,23; 76:14;77:19,22;78:1; 91:14;97:5;103:8,15; 107:5;123:24;124:1, 18,22;126:16,17; 128:25;129:7;130:5; 131:14;141:6;148:19, 25;153:19,22;155:9, 17;156:8;164:3,14</p> <p><b>Northwell (5)</b> 2:8;3:4;6:14;55:15; 129:3</p> <p><b>notarization (1)</b> 120:10</p> <p><b>note (34)</b> 2:22;3:12;14:10; 16:2;22:12;32:20; 39:11;44:22;47:3,3,4; 48:12,14;55:11,11,12, 17,18,20;67:5;78:13, 16,18,22;81:19;82:6; 83:10;102:2;110:22; 112:17;113:1;125:19; 126:5;132:4</p> <p><b>noted (3)</b> 50:19;62:16;156:20</p> <p><b>notice (3)</b> 5:2;73:17;130:9</p> <p><b>noticed (1)</b> 117:5</p> <p><b>notified (3)</b> 132:20;135:23,24</p> <p><b>notify (1)</b> 132:23</p> <p><b>November (2)</b> 146:17;169:24</p> <p><b>Number (9)</b> 2:8;24:24;32:12;</p>	<p>56:23;127:3,9; 138:18,19,20</p> <p><b>numbered (1)</b> 47:15</p> <p><b>numerous (1)</b> 25:17</p> <p><b>nurse (88)</b> 20:11,19;28:24; 31:23,25;32:14; 34:19;36:4;38:7; 39:22;41:2,6,21;42:9; 49:11,12,13,23;51:18; 52:14;53:9;56:22,24; 57:10,25;59:13,16; 67:5;70:3,5,11;74:3,6, 13,21;75:1,2,7,15; 76:5,7,8,10;78:10; 80:3;82:14;85:7,10; 86:20;88:14;91:5,12, 13,14,22;97:15,19,21, 23,25;98:10;99:16, 16;101:25;104:4,6; 109:11,11;111:7,17; 112:5;124:24;126:21; 131:24;135:23,24,25; 139:2,5;140:2,10,15; 142:6,11,13;149:21; 150:13;151:11</p> <p><b>nurses (5)</b> 29:10;74:21;75:1; 78:11;89:20</p> <p><b>nurse's (4)</b> 20:12;55:11,12; 67:5</p> <p><b>nursing (17)</b> 42:4;48:24;50:3; 55:17;59:9,13,14; 60:2;72:14,18;74:6,7, 9;75:21;97:22;104:1; 122:17</p>	<p>116:14;117:23;121:2, 6,10;124:6,7;133:5; 137:23;138:5,12; 139:7,14,22;140:4,16; 141:15;149:17; 154:24;164:4</p> <p><b>objections (2)</b> 8:2,16</p> <p><b>objective (4)</b> 51:2,13,21,22</p> <p><b>objectively (3)</b> 51:16;52:2,12</p> <p><b>observation (1)</b> 131:18</p> <p><b>observe (1)</b> 11:21</p> <p><b>observed (2)</b> 57:18,24</p> <p><b>obvious (1)</b> 10:18</p> <p><b>obviously (2)</b> 3:19;102:18</p> <p><b>occurred (2)</b> 6:21;11:3</p> <p><b>occurrences (1)</b> 45:7</p> <p><b>occurs (1)</b> 7:22</p> <p><b>o'clock (3)</b> 86:16,19;152:5</p> <p><b>October (1)</b> 156:20</p> <p><b>Off (13)</b> 3:24;14:12;23:2; 69:18;76:9;118:4; 143:24;144:12,16; 150:2;155:4;167:25; 168:12</p> <p><b>offended (1)</b> 40:23</p> <p><b>Offer (2)</b> 76:23;77:15</p> <p><b>offered (3)</b> 31:16,18;77:11</p> <p><b>offers (1)</b> 43:9</p> <p><b>office (1)</b> 81:2</p> <p><b>OFFICER (23)</b> 4:1;14:1,18;15:4, 23;16:1;38:23;47:10, 13,25;48:3;86:25; 88:1;100:12;110:1,4; 118:15,18;121:15; 143:15;144:3,21; 168:7</p> <p><b>Official (2)</b> 62:21;115:3</p> <p><b>off-the-record (5)</b> 3:25;143:7,25; 168:14;169:23</p> <p><b>often (1)</b> 16:12</p>	<p><b>OK (76)</b> 33:20;41:16;42:20; 43:5,12;45:19;47:5, 18;48:6,11;49:19; 50:2,8,11;55:7,20; 60:14,23;61:7,16; 89:2,9,14,21;90:4,16, 23;91:13;94:24;96:3, 6;98:4,14;99:17; 101:20,25;103:1; 104:20;105:2;109:3, 22;110:21;112:16; 114:7;151:18;152:15; 153:18,19;154:1,1,8, 13;155:1,15;156:19; 157:4,6,7,10,21; 158:11,21;159:8,18, 22;160:3;161:17; 162:24;163:2,10; 164:2,25;166:12,17, 17;168:23</p> <p><b>old (5)</b> 18:22,24;19:2; 147:21;148:4</p> <p><b>older (1)</b> 104:23</p> <p><b>old-fashioned (1)</b> 47:22</p> <p><b>Once (8)</b> 7:14;13:14;27:4,4; 28:21;59:17;90:10; 164:10</p> <p><b>one (54)</b> 5:17;14:13,13; 15:13,19;17:17; 20:19;21:16,17;23:4; 40:22;42:6;45:3; 49:23;50:16;54:4; 56:20;63:4;68:15,22, 23,24;69:2;70:5; 78:10;79:8;82:12; 89:12,20;90:12;92:4, 5;108:19,21;114:23; 116:10;123:5,14,15; 125:8,9;126:3,4; 127:24,25;137:3; 138:19;139:18,21; 140:2;143:13,20; 147:18,20</p> <p><b>ones (4)</b> 69:1,4;124:16; 132:3</p> <p><b>online (5)</b> 5:9;12:12,15;13:10; 15:2</p> <p><b>only (26)</b> 6:15,18,20;12:20, 21;13:24;14:3,5; 15:10;16:16,19;18:2; 34:15;45:10,19;60:6; 62:5;89:15;93:4; 104:17,18;108:25; 118:16,19;136:11;</p>	<p>165:25</p> <p><b>open (4)</b> 12:18;38:11;76:15; 78:9</p> <p><b>opening (11)</b> 6:24,25;7:2,5,11, 13;8:15;17:10;30:11; 53:21;73:1</p> <p><b>openings (1)</b> 44:20</p> <p><b>opinion (6)</b> 9:5;72:17,20,21; 94:12,13</p> <p><b>opinions (3)</b> 9:8,8;12:25</p> <p><b>opportunity (7)</b> 11:21;35:3;91:23; 102:11;121:25;125:5; 152:25</p> <p><b>opposed (1)</b> 113:2</p> <p><b>opposing (1)</b> 7:21</p> <p><b>optimal (1)</b> 95:14</p> <p><b>order (4)</b> 12:24;81:11;86:1; 144:2</p> <p><b>oriented (3)</b> 80:10;83:11;92:7</p> <p><b>others (3)</b> 13:9;45:13;113:4</p> <p><b>out (78)</b> 8:10;16:4;19:25; 21:8;23:6;26:5;31:20; 33:2;34:2,23,24;35:8, 15,18;44:8;46:4; 50:17;52:23,25; 53:11,16;55:23,25; 65:23;66:3;68:25; 69:2;70:11;72:8,9,18; 76:10;79:14;82:19; 88:25;97:22;104:20; 108:5;109:4,12; 111:4;112:6;117:12, 15;119:14,18;120:17; 121:1;132:11,11,17; 133:1,4,10,11,12,23; 134:5,16,23;137:25; 138:11,22;142:5,10; 148:14;149:1,15; 154:10;157:21,23; 158:1,3,5,6;160:7; 165:9,19</p> <p><b>outcome (1)</b> 11:18</p> <p><b>outline (1)</b> 7:1</p> <p><b>outside (12)</b> 8:2;14:6;15:7,15; 43:9;44:1,3;69:6,8; 85:16;126:19;164:4</p> <p><b>over (46)</b></p>
---	---	---	--	---

<p>4:22,23;5:6,18;11; 22:20,24;24:15; 27:18;28:25;34:20; 35:1,18,25;36:21; 49:1;50:24;66:10; 72:10,19;76:5,8;89:3; 90:21;91:23;92:1,4; 95:13,14,14,16,21; 96:4;97:7;103:2,3; 105:1;114:7;126:25; 128:3;129:23;133:13, 14;135:12;142:16; 149:23;159:6</p> <p><b>overly (1)</b> 169:5</p> <p><b>overnight (1)</b> 106:2</p> <p><b>overrule (1)</b> 57:13</p> <p><b>Overruled (25)</b> 51:6;54:17;58:11; 62:18;63:22;73:3; 77:8;91:18;92:15; 94:11;96:10;99:11, 20;112:20;116:15; 124:9;133:7;137:2; 138:6,14;139:8; 140:5;141:17;154:25; 164:6</p> <p><b>own (19)</b> 10:24;19:14;20:1; 34:17;37:17,22,25; 46:22;58:1;77:18; 83:14;86:3;94:21; 96:22;109:2,21; 114:13,17;149:13</p> <p><b>oxygenation (2)</b> 32:19;35:12</p>	<p>9;158:22;159:1,3,3,5, 16,19,20;161:25; 162:15,17,18</p> <p><b>Painful (1)</b> 148:24</p> <p><b>pair (1)</b> 166:25</p> <p><b>pale (2)</b> 141:9,12</p> <p><b>PALS (2)</b> 75:14,21</p> <p><b>paper (1)</b> 57:2</p> <p><b>paragraph (1)</b> 138:20</p> <p><b>paragraphs (3)</b> 118:22,23;119:10</p> <p><b>park (4)</b> 14:16;150:1; 154:18;155:5</p> <p><b>part (21)</b> 28:18;48:3,3;61:23; 62:2;96:7;97:21; 101:22,22,23,24; 102:2,9;110:1,2; 114:16;116:11;119:6; 120:17;124:15; 138:19</p> <p><b>particular (5)</b> 14:15;18:20;20:19; 43:18;106:4</p> <p><b>parties (14)</b> 2:21;3:12;4:3,20; 6:16;10:13;12:17; 13:8,13;14:4,8;15:8; 29:5;76:17</p> <p><b>part-time (2)</b> 105:6,16</p> <p><b>party (8)</b> 6:9,11,16,23;7:19, 21;8:6;25:16</p> <p><b>party's (1)</b> 7:3</p> <p><b>pass (1)</b> 56:16</p> <p><b>password (3)</b> 116:7,11,13</p> <p><b>past (1)</b> 19:13</p> <p><b>patient (181)</b> 20:8,13,15,17; 21:17,19;22:2,3;25:1, 13,18;26:4,10;30:2,5; 31:13,18;32:5,7,8,15, 22;33:1,2,4,6,8,17,17; 34:14,15,22;35:15,17, 23;36:19;37:16,22; 41:24;42:7,23;43:10, 10;46:4,16;48:24; 49:1,2,2,5,10,12,13, 22,23,25;50:1,15; 51:18;52:1,2,3,13,16, 18;53:13,15;55:10;</p>	<p>56:24;57:1,8,20;58:1, 8,16;59:15,17;60:24, 25;61:12;62:1;63:4,5, 12,25;64:13,23; 66:11;67:5;73:17; 77:1,17;78:6;79:2,4, 12,15,16;80:4,8,10, 12;81:13;82:3,5,10, 11;83:8,17,25;84:3,4, 9,10,13,17,24;85:1, 11;86:1,3,5;88:19,24; 89:8,21,25;90:4,8,10, 11,13,16,24;91:14; 92:6;93:19;94:3; 96:11,12;97:1,15,16; 99:3,15,23;103:5,24; 104:1,17,18;109:20; 111:3,9,25;112:2; 119:14;124:15,16,18; 125:1;128:5,13; 130:3,14;132:16; 133:8,9,12,14,15,18; 136:11,20,20;138:10; 139:3,18;142:10,15; 165:4</p> <p><b>patients (49)</b> 17:19,23;18:7; 21:15;24:21;26:20; 33:11;34:24;36:2,18; 45:23;63:19;64:10; 66:3;67:24;68:2,9,10, 10,11,20;69:8;74:19; 76:11;77:11;82:15, 18;83:23;85:13;90:3; 91:4;92:4,94:6;96:14; 97:3,14,24;104:2,7; 122:5;124:25;126:23; 127:1,10,14,23; 128:10;131:8,13</p> <p><b>patients' (1)</b> 129:4</p> <p><b>patient's (25)</b> 20:14;24:22;25:1; 35:8;45:10;49:6; 79:16,19,25;113:14; 123:8;126:10;128:4; 129:23;133:1,4; 136:21,23;137:4,20; 138:22,23,24;141:1; 142:8</p> <p><b>Patricia (3)</b> 19:3,15;147:9</p> <p><b>pay (3)</b> 16:23;17:2;166:10</p> <p><b>paying (1)</b> 17:3</p> <p><b>PC (1)</b> 2:18</p> <p><b>PCA (25)</b> 2:6;3:3;6:13;29:1; 34:23;36:5;38:7; 91:11,12;100:10; 103:5,14,17,19;107:7;</p>	<p>111:9,10,25;112:2,16; 114:7;124:22;139:3; 141:5;142:16</p> <p><b>PCAs (1)</b> 89:20</p> <p><b>pedals (2)</b> 108:13;129:10</p> <p><b>Pediatric (2)</b> 75:14,22</p> <p><b>penalties (2)</b> 112:14;120:7</p> <p><b>people (28)</b> 5:13;10:16;11:13; 13:10,17,18,18;14:24; 15:6;29:12;30:1; 32:13;33:14;34:11; 36:21;77:25;78:2; 108:4,6;132:14; 138:9;155:13;160:8, 8,9;162:4,10;166:7</p> <p><b>people's (3)</b> 127:16,19;166:6</p> <p><b>per (2)</b> 105:2,22</p> <p><b>perfectly (1)</b> 53:12</p> <p><b>perform (1)</b> 24:21</p> <p><b>period (2)</b> 34:5;71:5</p> <p><b>perjury (2)</b> 112:14;120:7</p> <p><b>permanent (1)</b> 27:16</p> <p><b>permit (1)</b> 13:3</p> <p><b>person (10)</b> 15:2;32:1;37:6; 73:11;97:23;108:25; 159:18;160:13,15; 161:2</p> <p><b>personal (3)</b> 14:11;77:18;128:24</p> <p><b>personally (1)</b> 164:2</p> <p><b>person's (2)</b> 54:5;158:17</p> <p><b>phone (1)</b> 14:18</p> <p><b>phones (1)</b> 14:14</p> <p><b>photographs (2)</b> 7:9;45:17</p> <p><b>phrase (1)</b> 158:24</p> <p><b>physical (1)</b> 21:5</p> <p><b>physically (3)</b> 31:12;126:15;166:7</p> <p><b>physician (4)</b> 24:14;135:23,25,25</p> <p><b>physicians (2)</b> 29:10;111:17</p>	<p><b>pick (3)</b> 105:16;142:19; 166:14</p> <p><b>picked (1)</b> 152:3</p> <p><b>picture (2)</b> 47:6,7</p> <p><b>piece (1)</b> 57:2</p> <p><b>pill (3)</b> 167:9,10,13</p> <p><b>pills (1)</b> 162:2</p> <p><b>place (20)</b> 5:1;19:17;20:8; 23:14,14,15;24:2,25; 43:10,23;67:15; 69:24;76:25;79:15; 89:12,12;90:16; 102:22;103:1,10</p> <p><b>placed (12)</b> 22:5;25:25;26:8,16; 43:21;44:1,4,7,15; 63:15;66:20;71:3</p> <p><b>places (1)</b> 86:14</p> <p><b>plaintiff (16)</b> 6:10,10;7:11,13,15; 8:18;28:9;30:7;31:2, 5;39:25;100:14; 136:3,5;144:20;145:2</p> <p><b>Plaintiff's (28)</b> 2:2;24:12,13,19; 25:15,19;26:24;27:9, 13;30:14;36:10;37:2; 48:2,4,5;60:17,18; 88:18;89:2;118:11, 13,15,19;121:9,13,15; 125:4;132:10</p> <p><b>plan (2)</b> 5:10;169:13</p> <p><b>plastic (2)</b> 22:5;129:3</p> <p><b>play (1)</b> 38:1</p> <p><b>please (40)</b> 4:10,13;10:17;13:9; 14:1,2,10,18,22;15:4, 7,22;16:1;17:16; 28:20;33:25;37:4; 38:1,6,19;39:9;40:3, 3;59:19;74:5;78:15; 86:16,17;88:6;100:9; 101:1;143:6,10; 144:8,9,23,24;145:6, 8;168:3</p> <p><b>pleasure (2)</b> 4:16;6:2</p> <p><b>plenty (1)</b> 14:14</p> <p><b>plus (1)</b> 22:21</p> <p><b>pm (28)</b></p>
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20:22;22:20;23:4; 27:4;42:17;44:19,19; 48:17;66:18;70:10, 16;71:3;76:1,4;95:3; 105:7,9,12,12,15; 109:4;110:23;113:18; 114:22,23,25;116:18; 125:16 <b>podium (1)</b> 97:19 <b>point (11)</b> 8:10;16:4;19:14; 34:6;44:8;47:9;55:20; 90:9;151:21;165:9; 169:2 <b>points (2)</b> 98:18,23 <b>pool (1)</b> 5:7 <b>portion (5)</b> 9:18;64:5;113:23; 149:21;162:9 <b>portions (1)</b> 53:25 <b>position (3)</b> 32:14;98:14;109:3 <b>possible (12)</b> 12:3;17:21;40:17; 55:9,10;76:13;85:8; 101:3;137:21;141:12; 146:3;169:11 <b>possibly (1)</b> 35:6 <b>Post (4)</b> 136:2;141:23; 142:1,24 <b>post-fall (5)</b> 102:3,4,5;109:13; 111:14 <b>pounds (1)</b> 108:13 <b>practice (18)</b> 43:16,17;49:19; 59:4,14,14,21;60:2,9, 11;64:15;65:18; 71:10;83:7;104:5; 129:14;132:25; 154:10 <b>practiced (1)</b> 24:15 <b>practices (1)</b> 24:14 <b>practicing (1)</b> 4:23 <b>precautions (3)</b> 22:8;25:18,22 <b>predicate (1)</b> 98:21 <b>predict (1)</b> 37:15 <b>predictable (2)</b> 24:17;27:22 <b>preexisting (1)</b>	31:3 <b>prejudice (1)</b> 11:19 <b>preliminary (2)</b> 32:6,14 <b>premark (1)</b> 39:4 <b>premature (1)</b> 13:4 <b>preparation (6)</b> 44:23;70:19; 101:18,21;102:16; 107:24 <b>prepare (2)</b> 105:23;119:20 <b>prepared (3)</b> 119:20;140:7,14 <b>prepped (1)</b> 54:23 <b>prerogative (1)</b> 13:23 <b>presence (3)</b> 8:2;23:9;136:11 <b>present (9)</b> 4:4;7:13;21:25; 39:6;72:25;88:3; 142:13;144:5;161:17 <b>presentation (1)</b> 5:14 <b>presented (2)</b> 30:20;83:8 <b>presently (1)</b> 41:13 <b>preside (1)</b> 9:7 <b>pressure (16)</b> 19:19;25:3;26:8; 31:4;32:18;35:11; 81:13;95:7,9,12;96:5, 12,14;116:10,25; 128:9 <b>pretend (1)</b> 13:22 <b>pretty (2)</b> 19:18;105:6 <b>prevent (6)</b> 24:2,8;25:18,23; 37:18;86:2 <b>prevented (2)</b> 26:11;108:22 <b>preventible (1)</b> 24:17 <b>prevention (1)</b> 24:1 <b>previous (1)</b> 31:1 <b>previously (2)</b> 30:25;92:22 <b>pricking (1)</b> 141:1 <b>principles (1)</b> 17:5 <b>print (2)</b>	47:17;79:14 <b>prior (13)</b> 25:4;26:6;31:7; 42:4;58:9;93:8;98:12; 102:12,14;103:14; 113:13;132:6;164:9 <b>prioritize (1)</b> 42:1 <b>priority (1)</b> 56:25 <b>private (3)</b> 76:18,22;80:20 <b>privilege (2)</b> 4:16;13:23 <b>probability (1)</b> 11:22 <b>Probably (9)</b> 94:8;108:12; 113:13;123:5;126:18; 133:25;151:5,24; 152:11 <b>problem (1)</b> 14:20 <b>problems (2)</b> 61:1,1 <b>procedure (3)</b> 6:22;17:4;116:13 <b>proceed (4)</b> 3:14;40:24;113:24; 168:3 <b>proceedings (1)</b> 64:6 <b>process (4)</b> 22:14;61:24;76:22; 165:3 <b>producing (1)</b> 168:15 <b>profession (1)</b> 148:1 <b>professional (2)</b> 15:17;124:3 <b>professionally (1)</b> 74:17 <b>progresses (2)</b> 13:1;17:7 <b>proof (1)</b> 30:8 <b>proper (2)</b> 18:2;28:5 <b>properly (4)</b> 4:4;39:6;88:4; 144:6 <b>protect (6)</b> 18:11,12;23:24; 24:21;26:9;28:6 <b>protects (1)</b> 26:10 <b>protest (2)</b> 160:8,10 <b>protocol (1)</b> 89:6 <b>protocols (1)</b> 56:23	<b>prove (3)</b> 7:2;30:8,10 <b>proven (2)</b> 8:23;30:16 <b>provide (8)</b> 6:6;18:5,14;28:4; 80:11;89:8,9;91:9 <b>provided (1)</b> 124:15 <b>public (1)</b> 123:5 <b>pull (1)</b> 109:24 <b>pulled (1)</b> 157:15 <b>pulls (1)</b> 31:18 <b>pulse (1)</b> 81:14 <b>purpose (4)</b> 6:21;7:2;60:23; 93:20 <b>pursue (1)</b> 77:8 <b>push (2)</b> 129:10,18 <b>put (55)</b> 2:9;17:25;18:1; 24:2;25:13;31:19; 36:11;47:4;49:6; 50:19;55:6,14,16,22, 24;56:19;57:5;60:15, 17,21;63:5,24;66:9; 67:14,21,24;68:4,5; 79:18,24;80:3,6;84:8, 9,13;88:25;90:5;91:4; 92:7,9;94:3,6;97:11; 108:14;113:15;149:8, 14;152:3,4,7,9; 157:24;158:6;160:6; 163:6 <b>puts (4)</b> 33:7;49:24;73:16; 133:12 <b>putting (1)</b> 113:17	73:5;79:1;88:22 <b>quotes (6)</b> 109:23;111:4,6; 142:4,8,10
<b>R</b>				
<b>radiating (4)</b> 19:12;21:4;50:24; 79:3 <b>radiation (3)</b> 50:9;92:8,11 <b>rails (14)</b> 26:1,9,17;36:11,19, 20,22,22;63:6;66:20; 86:4;93:21,22;130:19 <b>raise (4)</b> 4:10;96:5;144:23, 24 <b>raised (2)</b> 18:25;167:3 <b>raises (1)</b> 35:17 <b>ranked (1)</b> 21:15 <b>rapid (1)</b> 85:6 <b>rate (7)</b> 24:23;32:18,18; 35:11,12;50:15; 116:23 <b>reach (5)</b> 8:13,25;12:19,24; 17:7 <b>reached (2)</b> 10:12;12:6 <b>reaching (1)</b> 10:2 <b>read (10)</b> 3:2;5:8,24;52:4,7; 64:3;118:24;160:25; 161:13;163:20 <b>reading (1)</b> 95:12 <b>reads (1)</b> 64:5 <b>ready (3)</b> 117:12;132:20; 169:2 <b>realistic (1)</b> 33:12 <b>really (7)</b> 25:10;30:13,18; 38:12,12;47:10;86:14 <b>reason (13)</b> 13:4,9;14:3;16:16; 35:19;52:23;56:19; 57:1,5;68:17;130:21; 137:18;149:3 <b>reasonable (5)</b> 18:6;36:17;37:6; 59:13;72:17 <b>reasonably (2)</b>				
<b>Q</b>				
<b>quarterback (1)</b> 38:2 <b>Queens (2)</b> 19:6,7 <b>quick (3)</b> 49:11;62:10;143:20 <b>quickly (4)</b> 21:10;56:24;57:25; 58:16 <b>quiet (2)</b> 40:19;162:4 <b>quite (1)</b> 160:16 <b>quote (3)</b>				



<p>37:11;38:9  <b>reasoning (1)</b>  93:13  <b>reasons (3)</b>  55:6;68:19,19  <b>reassess (1)</b>  85:6  <b>rebuttal (1)</b>  7:17  <b>recall (24)</b>  44:20,21;49:10;  54:21;65:17;68:4,14;  69:10;70:14;92:18;  95:5,10;106:6,8,15,  17;107:2;151:13;  152:20,25;156:20;  161:7;162:13;163:11  <b>receive (2)</b>  18:2;42:2  <b>received (4)</b>  9:2;71:4;124:3,5  <b>recently (1)</b>  41:14  <b>recess (3)</b>  39:5;87:8;131:24  <b>recheck (1)</b>  128:8  <b>recognize (2)</b>  46:7;104:25  <b>recollect (4)</b>  46:23;56:3;106:23,  24  <b>recollection (18)</b>  11:8;45:6;46:9,13,  14;55:7;65:14;68:6;  71:16,18,21;72:3;  96:22;104:12;113:25;  136:9,10;163:21  <b>reconciled (1)</b>  12:2  <b>record (20)</b>  3:9,24;9:23;10:2;  21:8;38:25;61:8;  70:20;78:21;87:2;  107:23;114:12;  116:18;143:17,21,24;  145:6,9;168:9,12  <b>recorded (7)</b>  21:6,7;29:13;62:20;  87:9;115:2;150:22  <b>records (12)</b>  20:25,25;23:17;  25:11;26:22;31:1;  35:4,4;37:1;70:15,18,  22  <b>recross (3)</b>  98:6,8;140:20  <b>RE-CROSS (1)</b>  140:23  <b>Red (1)</b>  66:2  <b>redirect (5)</b>  77:9;91:20;99:5;</p>	<p>136:15;167:17  <b>RE-DIRECT (1)</b>  136:17  <b>refer (4)</b>  78:13;160:23;  162:12;163:10  <b>reference (2)</b>  6:20;156:23  <b>referred (1)</b>  109:8  <b>referring (2)</b>  111:10;166:2  <b>reflect (1)</b>  2:23  <b>refresh (2)</b>  45:6;163:21  <b>refreshed (1)</b>  163:25  <b>refreshing (1)</b>  46:9  <b>regard (4)</b>  2:24;129:17;  140:25;141:23  <b>regarding (1)</b>  142:9  <b>regardless (3)</b>  63:14,15;68:19  <b>regional (1)</b>  124:10  <b>registered (2)</b>  74:13;159:13  <b>registrar (5)</b>  158:12,15,25;  160:4;165:5  <b>registration (1)</b>  49:11  <b>regular (6)</b>  17:1;61:17;93:14;  128:22,23;131:12  <b>regularly (2)</b>  19:8;31:12  <b>related (1)</b>  14:23  <b>relation (2)</b>  50:2;99:13  <b>relax (2)</b>  6:1;156:17  <b>Relevance (1)</b>  154:24  <b>Relevancy (1)</b>  124:8  <b>reliability (2)</b>  11:12,14  <b>relief (1)</b>  23:3  <b>relieve (4)</b>  70:5,7,10,16  <b>religion (1)</b>  163:16  <b>relying (1)</b>  55:12  <b>Remain (2)</b>  100:12;144:2</p>	<p><b>remanded (1)</b>  2:25  <b>remember (60)</b>  14:2;30:4;46:1,3,4;  47:1,8;48:23;49:20;  55:9,10;56:4,5,7;  69:4;70:3,8;71:9;  83:2;93:3;96:4,17,25;  97:25;104:15;106:4,  25;107:11,17;114:5;  118:4;126:12,22;  127:23;128:1,2,18,20;  148:17;150:11,14,15,  16;151:4;152:9,22;  155:22;158:19,20;  160:16;161:10,11,12,  15;162:21,23;163:6,  8;164:10,12  <b>remembered (1)</b>  71:12  <b>remind (2)</b>  86:20;88:9  <b>remote (2)</b>  16:8,11  <b>render (2)</b>  10:16;28:9  <b>rendered (2)</b>  13:14;37:14  <b>repeat (1)</b>  85:6  <b>rephrase (6)</b>  44:12;59:7;71:14;  110:16;114:18;  139:25  <b>replacing (1)</b>  69:25  <b>report (21)</b>  70:1,6;76:8;102:6,  6;109:12,19;111:18;  112:6,18,21,23,25,25;  113:1;114:21,23,25;  138:17;139:2,5  <b>Reporter (13)</b>  2:2;9:23;29:14;  40:17;62:21;64:5;  87:10;101:3;115:3;  118:14;121:14;146:5;  150:23  <b>reports (1)</b>  52:18  <b>represented (1)</b>  153:3  <b>representing (1)</b>  29:7  <b>request (1)</b>  39:1  <b>requested (1)</b>  64:5  <b>require (2)</b>  10:22;61:13  <b>required (1)</b>  16:23  <b>requirements (1)</b></p>	<p>64:23  <b>requires (1)</b>  10:3  <b>Rescue (1)</b>  123:19  <b>research (2)</b>  12:15;13:10  <b>resist (1)</b>  38:1  <b>respiration (1)</b>  81:14  <b>respiratory (2)</b>  32:18;35:11  <b>respond (1)</b>  133:19  <b>response (3)</b>  7:17;23:8;133:9  <b>responses (1)</b>  82:6  <b>responsibilities (1)</b>  17:18  <b>responsibility (4)</b>  9:6;10:11;17:20;  20:12  <b>responsible (3)</b>  6:17;18:6;37:19  <b>responsive (1)</b>  149:19  <b>rest (4)</b>  3:16;21:9;52:11;  169:6  <b>restrained (2)</b>  63:20;64:11  <b>restraint (5)</b>  63:24;64:20;85:24,  25;86:3  <b>restraints (3)</b>  64:21,23;65:5  <b>result (4)</b>  10:12;12:6;17:8;  60:14  <b>results (1)</b>  114:22  <b>retire (1)</b>  8:20  <b>retrial (1)</b>  14:8  <b>return (1)</b>  38:14  <b>returned (1)</b>  136:1  <b>reversed (1)</b>  2:25  <b>review (17)</b>  21:1;44:23;45:9,12;  57:5;70:18,21;83:10;  92:1;101:18,20,25;  102:1;121:25;125:5;  153:15,17  <b>reviewed (7)</b>  45:3,11;70:20;  101:22;102:2;107:24;  120:4</p>	<p><b>reviewing (2)</b>  108:2;119:2  <b>right (74)</b>  3:20;4:10;5:24;  18:11;19:5;32:12,23;  33:11;38:18;40:20;  42:2,10,23;43:13;  44:9;45:4,20;46:15;  48:12,14,16,22;49:8,  14,20;50:24;56:14;  60:21;61:2,5,20;  68:24;69:1;79:11,21,  22;82:23;87:5;90:6;  96:3;104:6;105:1;  108:3;109:5,24;  111:8;117:13;120:24;  121:9;125:18;126:6,  19;130:3;132:16;  144:23,24;146:7;  147:1;148:6,22;  150:9;153:21;154:3,  5,8,8,10;156:23;  157:1;158:8,17;  159:17;165:7;167:15  <b>right-hand (1)</b>  78:11  <b>rise (7)</b>  4:1;38:23;86:25;  88:1;143:15;144:3;  168:7  <b>risk (53)</b>  20:17;21:23;22:3,6,  7,8;23:22;24:23;25:1,  6,8,13,14,17;26:1,10,  21;36:12;60:7,12,15;  61:2,8;63:12,13,20,  25;67:14;68:5;73:9,  10,16,20;79:22,24;  80:3;84:9,13;89:7,22;  93:19;94:6;108:21;  117:6,16;120:13,21;  130:9,11,15;149:11,  12,15  <b>risks (3)</b>  63:4;64:10;66:4  <b>RN (6)</b>  2:6,7,7,19;3:3;6:13  <b>Robert (1)</b>  2:5  <b>role (1)</b>  32:4  <b>rolling (1)</b>  127:21  <b>room (74)</b>  17:18,20,23,25;  18:4,17;19:10;20:2,4,  5,7,9;21:3;22:4,14,16;  23:6;24:14,15,21;  25:16;26:2,15,22;  27:2,16,25;28:5,7;  30:25;31:14;32:6,12;  33:10;58:19,20,22;  63:9,17;68:17,18,23;</p>
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<p>75:1,2,6;81:3;83:22; 84:1;85:12,13;86:6; 90:2;96:12;99:2; 108:8;126:17;137:5; 148:25;149:5;150:3, 3,5;152:5;159:23,25; 160:5;161:9;163:7; 164:3,9,14,18,21; 166:8</p> <p><b>rooms (1)</b> 84:23</p> <p><b>Roughly (2)</b> 102:21;126:3</p> <p><b>round (1)</b> 15:13</p> <p><b>row (1)</b> 28:25</p> <p><b>rude (1)</b> 15:16</p> <p><b>rules (5)</b> 8:19,23;9:13;12:8; 17:4</p> <p><b>ruling (2)</b> 8:3,4</p> <p><b>run (1)</b> 54:4</p>	<p>21:16;54:4;82:12</p> <p><b>schedule (3)</b> 3:16;5:22;168:11</p> <p><b>school (4)</b> 74:7,9;148:11,14</p> <p><b>scope (5)</b> 99:4,10;104:5; 136:24;164:4</p> <p><b>screen (3)</b> 81:8;125:10,11</p> <p><b>screens (1)</b> 48:9</p> <p><b>seat (5)</b> 39:9,10;88:6;129:9; 144:10</p> <p><b>seatbelt (1)</b> 86:2</p> <p><b>seatbelts (2)</b> 85:20;130:6</p> <p><b>seated (19)</b> 4:4,13;28:25;33:24; 39:7;40:3;88:4;89:14; 126:20;128:17; 130:25;133:18;144:2, 6,9;159:12;160:12, 15;165:9</p> <p><b>second (3)</b> 48:1;49:13;109:25</p> <p><b>section (2)</b> 55:20;132:24</p> <p><b>secure (1)</b> 64:13</p> <p><b>security (24)</b> 20:2,3;22:15;31:17, 17;43:9,21,23,24; 44:1,16;76:23,24; 77:4,12;78:12;89:20; 108:16;149:23; 157:16,18,22;158:11; 159:9</p> <p><b>seeing (5)</b> 32:8;46:9;86:19; 143:11;168:5</p> <p><b>seem (1)</b> 53:12</p> <p><b>seems (1)</b> 123:6</p> <p><b>sees (3)</b> 56:17;61:4;138:21</p> <p><b>selecting (1)</b> 2:22</p> <p><b>selection (2)</b> 6:5;30:4</p> <p><b>semiconscious (1)</b> 141:9</p> <p><b>Senior (3)</b> 29:14;87:10;150:23</p> <p><b>sense (6)</b> 36:17;37:4;72:14, 22;104:1;117:15</p> <p><b>serious (1)</b> 83:24</p> <p><b>serve (1)</b></p>	<p>34:11</p> <p><b>served (2)</b> 4:18;168:2</p> <p><b>service (4)</b> 14:20;16:22; 144:14;168:2</p> <p><b>serving (3)</b> 12:9,16;15:6</p> <p><b>set (1)</b> 47:13</p> <p><b>Seth (1)</b> 2:10</p> <p><b>seven (6)</b> 55:15;56:1;69:20, 23;76:15;167:8</p> <p><b>seventy-five (2)</b> 146:20,23</p> <p><b>seventy-four (2)</b> 146:21,22</p> <p><b>several (4)</b> 12:8;19:20;34:16; 119:9</p> <p><b>severe (2)</b> 21:4;92:10</p> <p><b>severely (1)</b> 124:15</p> <p><b>Severity (2)</b> 21:12,13</p> <p><b>Shall (1)</b> 4:7</p> <p><b>Sheet (4)</b> 136:2;141:23; 142:1,13</p> <p><b>shift (13)</b> 42:14,21,22;69:19; 70:24;76:4;105:7,16, 19,24,25;106:2,21</p> <p><b>shifts (7)</b> 75:24;105:2,4,8,14, 15;107:2</p> <p><b>shoes (13)</b> 67:6,9,13;85:17; 107:19,20,21,23,25; 108:4,6;150:19</p> <p><b>Shore (54)</b> 2:7,19;3:4;6:14; 18:17;19:10;29:2,8; 30:20,24;31:25;40:9; 41:6,15;43:8;50:3; 56:23;57:25;63:13; 65:5;74:22;75:9,23; 76:14;77:19,22;78:1; 91:14;97:5;103:8,15; 107:5;123:19,24; 124:1,11,18,22; 126:16,17;128:25; 129:7;130:5;131:14; 141:6;148:19,25; 153:19,22;155:10,17; 156:8;164:3,14</p> <p><b>short (1)</b> 132:14</p> <p><b>shortly (1)</b></p>	<p>95:2</p> <p><b>shout (2)</b> 40:20,22</p> <p><b>show (7)</b> 17:2;55:5,13,18; 78:21;118:7;138:16</p> <p><b>showed (4)</b> 71:7,8;136:3,5</p> <p><b>showing (1)</b> 50:21</p> <p><b>shown (2)</b> 8:11;85:4</p> <p><b>shows (2)</b> 82:25;123:14</p> <p><b>sick (1)</b> 17:24</p> <p><b>side (16)</b> 25:25;26:9,17; 36:11,19,20,22,22; 78:11,12;80:1;86:4; 125:15;130:19;152:4; 166:15</p> <p><b>sight (1)</b> 34:21</p> <p><b>sign (6)</b> 71:7,8,11;76:9,10; 127:21</p> <p><b>signature (2)</b> 82:23;120:10</p> <p><b>signed (4)</b> 55:17;82:25;120:9; 138:21</p> <p><b>significant (2)</b> 19:18;139:4</p> <p><b>significantly (2)</b> 137:22;139:10</p> <p><b>signs (58)</b> 21:7;32:17;34:25; 35:7,8,11;61:17,18; 81:6,12;83:9;85:7; 95:2,5;104:3;113:11, 14,17;115:1;116:8; 117:5,6,17;118:1; 119:1,11,17;124:24; 125:3,10,14,22,24; 126:8,10,24;127:2,19, 21,24;128:4,8;129:21, 23;130:2,9,15;131:17, 25;132:2,4,7;134:21; 136:19;137:14;138:2; 141:14,21</p> <p><b>simply (3)</b> 24:16;28:16;116:17</p> <p><b>single (3)</b> 92:5;147:4,5</p> <p><b>Sit (20)</b> 6:1;22:15;32:3; 33:18;49:4;56:5; 58:15;65:13;72:9; 96:23;97:16;106:16; 114:5;126:22;149:4; 151:20;159:6;163:4; 165:5;166:3</p>	<p><b>sitting (22)</b> 5:6;18:11;21:9; 26:1;48:25;49:8,14, 16,17,20;98:5;105:1; 108:24;109:2;130:22; 135:6,10;161:24; 162:16,18,20;166:23</p> <p><b>situated (1)</b> 98:18</p> <p><b>situation (8)</b> 37:7,11,13;83:7; 84:2,8;90:23;91:8</p> <p><b>six (3)</b> 16:19;19:20;136:11</p> <p><b>sixty (1)</b> 78:5</p> <p><b>Sixty-five (1)</b> 148:5</p> <p><b>slant (1)</b> 108:15</p> <p><b>slants (1)</b> 108:23</p> <p><b>sleep (2)</b> 106:2,5</p> <p><b>sleeping (4)</b> 106:16,17;134:19, 21</p> <p><b>sleepy (1)</b> 165:17</p> <p><b>slight (1)</b> 109:1</p> <p><b>slightly (4)</b> 95:21;108:24; 129:9,18</p> <p><b>slip (1)</b> 134:10</p> <p><b>slow (3)</b> 40:16;101:3;146:2</p> <p><b>slowly (1)</b> 156:16</p> <p><b>small (5)</b> 79:24;84:23;129:5; 141:3;161:9</p> <p><b>smaller (1)</b> 126:17</p> <p><b>smartphones (1)</b> 14:11</p> <p><b>sneakers (4)</b> 85:17;150:20; 166:25;167:1</p> <p><b>social (1)</b> 13:11</p> <p><b>socks (11)</b> 66:1,2,2,4,6,9;67:1; 85:10,11;131:4,9</p> <p><b>soft (11)</b> 54:11,20,23;55:4,5, 8,9;56:8;88:22,23,24</p> <p><b>sole (2)</b> 9:3,17</p> <p><b>solely (2)</b> 8:3;10:4</p> <p><b>somebody (13)</b></p>
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Min-U-Script® Queens Supreme Court, Civil Division (17) somebody's - tactical

<b>talk (18)</b> 12:23;13:2,16,25; 14:22;15:5,7,10,11, 11,12,14,25;16:3; 57:18;153:18;155:16; 157:9	40:1;88:14;92:17, 22;93:17;100:15; 101:13;107:9;132:9; 145:3;150:6	12:18;16:24;39:16	<b>top (3)</b> 118:4;127:15;152:9	97:14;98:15;99:14, 17,23;102:2;108:6; 111:1,9,25;125:2; 126:21;131:1,24; 136:1;139:3;142:15
<b>talking (5)</b> 13:10;49:20;55:18, 21;77:2	<b>testifies (2)</b> 11:7,22	<b>Thursday (5)</b> 3:21;168:16,19; 169:11,16	<b>topic (1)</b> 14:23	<b>triaged (2)</b> 49:10;59:5
<b>tea (1)</b> 39:14	<b>testify (3)</b> 7:20;153:14;169:10	<b>TikTok (1)</b> 13:17	<b>topics (1)</b> 13:12	<b>triage's (1)</b> 55:11
<b>team (1)</b> 124:14	<b>testifying (1)</b> 11:5	<b>times (14)</b> 7:23;9:20;16:6; 27:20;63:5;80:10; 83:11;88:24;156:10, 11,11,12;164:24,25	<b>total (1)</b> 102:21	<b>triaging (1)</b> 90:10
<b>teams (1)</b> 111:16	<b>testimony (34)</b> 7:8;9:1,19;10:1,19, 24;11:1,2,10,17,20, 23;16:9;31:23;34:17; 36:25;38:21;44:24; 64:11;65:8;70:19; 86:17,21;88:8;91:24; 92:18;93:4,6,12,14; 94:9;98:11;138:8; 162:24	<b>TNCC (3)</b> 75:15,20,21	<b>totally (1)</b> 9:9	<b>trial (31)</b> 2:3,25;3:13,14; 4:17;5:23;6:4,5,8;7:8, 23;8:5;9:2,20;12:19, 21;13:1;15:20,24; 16:13,21,24;17:4,7; 20:7;27:18;28:8;56:9; 93:6,7;168:21
<b>technician (1)</b> 122:23	<b>testing (1)</b> 136:21	<b>today (39)</b> 18:9;28:2,23;29:5; 32:16;40:14;44:24; 45:23;56:5;58:15; 65:13;70:19;85:3; 93:8;96:23;98:12; 101:18,21;102:13,16; 104:25;106:16; 107:24;114:5;124:1; 126:13,22;146:14; 147:10;153:8,10,14; 157:19;161:14,15; 162:24,25;167:1; 168:19	<b>touch (1)</b> 129:18	<b>trials (1)</b> 5:18
<b>techs (1)</b> 29:11	<b>therapists (1)</b> 29:11	<b>together (4)</b> 12:3;19:4;102:20; 147:17	<b>Tracy (1)</b> 4:15	<b>tried (1)</b> 165:23
<b>telemetry (1)</b> 74:21	<b>thereabout (1)</b> 164:22	<b>toileting (1)</b> 124:24	<b>trade (1)</b> 148:13	<b>trip (1)</b> 168:6
<b>telling (6)</b> 14:1;15:3,22;114:2; 140:13;158:3	<b>therefore (2)</b> 6:18;8:4	<b>told (41)</b> 22:15;34:7;35:14; 44:7;50:17;52:24; 53:2;55:8;58:7;79:2; 83:5,5;89:2;90:4; 97:2,8,11;109:11,17; 125:4;128:17;136:8; 140:3;141:11;142:10; 148:24;149:1,3,14; 150:1;151:11,17,25; 159:2,16;160:2,4; 161:20,21;163:21; 166:14	<b>trained (3)</b> 44:5,6;51:18	<b>trouble (1)</b> 156:1
<b>tells (7)</b> 33:1,8;51:18;52:16; 53:15,17;82:3	<b>thinner (1)</b> 104:23	<b>tomorrow (6)</b> 3:19,20;144:12,16; 167:25;169:2	<b>training (2)</b> 33:19;74:25	<b>true (20)</b> 5:15;24:16;53:5; 113:10;121:25; 155:20;156:9,13; 159:22;160:3;161:24; 164:8,13,22,25;165:3, 8,12,23;166:6
<b>temperature (5)</b> 81:14,21,23;116:9, 21	<b>thirds (1)</b> 126:18	<b>took (39)</b> 9:12;12:8;19:17; 20:4;23:14,15;35:8; 40:1;69:23;81:23; 83:9;100:15;103:10; 113:10,13;115:1; 116:9,21,23,25;117:5, 10,17;118:1,3; 120:13;126:3,4,24; 130:8;131:17;132:2; 134:21;137:14; 141:14,21;149:2; 150:4;160:7	<b>transcribed (6)</b> 29:14;62:20;87:10; 93:11;115:2;150:23	<b>trust (5)</b> 17:25,25;18:2; 27:25;28:1
<b>temptation (1)</b> 13:2	<b>thirty (1)</b> 126:25	<b>tool (1)</b> 21:12	<b>transcript (3)</b> 93:1,11;162:12	<b>try (10)</b> 13:25;15:21;24:10; 36:21,22;72:1;86:2; 146:7;148:22;161:16
<b>tempted (2)</b> 12:11,12	<b>Thirty-six (1)</b> 147:22		<b>transcripts (1)</b> 45:15	<b>trying (4)</b> 44:8;135:3;154:10; 156:23
<b>ten (50)</b> 21:8,9;26:5,5; 50:16,17,17,25,25; 52:23,23,25,25;53:11, 11,16,16;55:15,23,23, 25,25;56:1;67:16; 71:3;72:8,8,9,9,18,18; 82:12,15,19,19;84:11, 17;88:25,25;90:5,9, 16,24;97:12;113:21; 132:8;144:17;151:10; 160:8;161:5	<b>thorough (1)</b> 24:22		<b>trauma (2)</b> 75:15,21	<b>turned (2)</b> 14:12;146:20
<b>tendency (1)</b> 15:5	<b>though (4)</b> 47:15;107:22; 112:21;114:1		<b>treadmill (2)</b> 156:13,15	<b>turning (1)</b> 157:4
<b>tentative (1)</b> 12:25	<b>thought (4)</b> 105:14;118:25; 119:6;145:17		<b>treat (2)</b> 59:15;93:19	<b>TV (1)</b> 5:8
<b>term (4)</b> 41:24;56:9;71:17; 88:22	<b>thousands (1)</b> 45:22		<b>treated (2)</b> 45:22;131:13	<b>TVs (1)</b> 16:4
<b>terms (2)</b> 42:1;46:22	<b>threatening (1)</b> 21:18		<b>treatment (22)</b> 19:11;33:25;34:1; 36:1;42:1;63:11;78:4; 83:18;91:2;98:19; 99:12,13;125:2; 128:15;131:16; 132:18,21;133:20; 135:22;160:5;163:5; 165:6	<b>Twelve (1)</b> 42:18
<b>terrible (5)</b> 32:23;37:7;149:4; 159:3,16	<b>three (32)</b> 3:1;22:20,21,24; 26:23;34:23;50:7; 59:24;66:10;72:10, 19;74:25;79:8;89:20; 118:22;121:9;138:18, 20;149:7;151:19; 155:4,5,13;156:9,11, 12;160:9;161:15; 163:8,25;166:5,5		<b>treating (2)</b> 33:19;74:25	<b>twelve-hour (2)</b> 42:21;105:18
<b>test (3)</b> 52:14;136:23;137:4	<b>three-paged (1)</b> 78:16		<b>trains (1)</b> 60:24	<b>twenty (1)</b> 4:23
<b>tested (2)</b> 27:4,6	<b>throat (1)</b> 164:11		<b>triage (88)</b> 20:5,7,10,11,12,19, 23;21:14;22:11,13; 31:21,25;32:6;34:18, 19;36:4;38:6;41:20, 24;42:4,7,8,9;46:16; 47:3,4;48:14;49:1,6, 13,23,25;50:2;53:9, 19;55:19;56:24; 57:10,25;59:16; 61:25;62:5,6,9;63:7, 14;66:10;67:15,16, 25;69:6,8;70:12;77:3, 17;78:10,11,11,13; 79:5;80:3;81:19;83:5; 84:3,16;85:10;89:14; 90:5,8,13;91:13;	<b>twice (2)</b> 167:10,13
<b>testified (11)</b>	<b>throughout (3)</b>			<b>two (58)</b> 19:13;22:18;50:7; 53:19;54:9,11,20,21,

<p>24;55:4,6,8,9,14,16, 18,22,24;56:13,16,19, 19,23,24;57:1,3,6,20; 58:1,21;59:5,16;60:6; 61:13;68:13,16,21; 71:5;78:2,11,11;79:7; 86:16,19;98:18,22; 103:20;108:13; 120:19;124:10; 126:18,18;140:7,14; 155:5;159:5;160:2; 164:14</p> <p><b>twos (1)</b> 69:9</p> <p><b>Tylenol (1)</b> 148:23</p> <p><b>type (4)</b> 108:16;119:20; 125:25;126:3</p> <p><b>typed (1)</b> 116:7</p> <p><b>typical (1)</b> 97:6</p> <p><b>typically (4)</b> 20:8;48:24;85:10; 97:3</p> <p><b>typing (2)</b> 116:8;132:5</p>	<p>94:20</p> <p><b>Understood (6)</b> 46:12;59:10;92:16; 104:6;120:6;149:22</p> <p><b>unexpected (2)</b> 35:22;73:6</p> <p><b>unfair (4)</b> 13:8;14:8;37:21; 38:12</p> <p><b>unfortunately (1)</b> 37:15</p> <p><b>Union (1)</b> 154:16</p> <p><b>unit (2)</b> 63:14;66:10</p> <p><b>United (4)</b> 19:1;74:11;147:1,3</p> <p><b>University (18)</b> 2:7,19;3:4;6:14; 18:17;19:10;29:2,8; 30:20,24;75:23; 76:14;103:8;122:15; 124:11,19;130:5; 131:14</p> <p><b>unless (3)</b> 16:11;47:16;62:1</p> <p><b>unlock (1)</b> 36:1</p> <p><b>unlocked (1)</b> 129:19</p> <p><b>unnecessary (1)</b> 121:7</p> <p><b>unpredictable (1)</b> 24:10</p> <p><b>unquote (1)</b> 88:22</p> <p><b>unreliability (1)</b> 11:12</p> <p><b>unreliable (1)</b> 14:7</p> <p><b>unsafe (1)</b> 36:5</p> <p><b>unsecured (3)</b> 22:22;26:2,14</p> <p><b>unsteadiness (1)</b> 27:8</p> <p><b>unsteady (2)</b> 60:25;80:6</p> <p><b>unusual (1)</b> 45:25</p> <p><b>up (72)</b> 8:9,17;17:2;23:8,9; 24:5,11;26:1,10,17; 28:16;31:18;35:19, 23,24,25;36:11,19,20, 20;37:9,17;45:23; 47:10,13;52:16;54:6; 60:17;63:6,16;76:21; 91:14;93:21,22;96:5; 105:4,16;109:24; 110:12,19;111:3; 112:2;113:15,17; 119:14;123:14;</p>	<p>130:19;133:11,12; 134:1,3;138:23; 142:9,19,22;149:24; 151:25;152:3;157:15; 158:12;165:13,13,16, 18,18,18,23,25; 166:11,13,14,15</p> <p><b>updated (1)</b> 48:17</p> <p><b>upon (22)</b> 7:6,8,3;10:4;19:24; 20:14;21:5,25;22:25; 23:24;33:13,19; 36:25;38:7;46:3;47:3; 52:19;55:11,12,17; 56:20;61:10;125:19</p> <p><b>upstairs (2)</b> 125:1;152:6</p> <p><b>urge (1)</b> 38:1</p> <p><b>urgency (1)</b> 20:15</p> <p><b>urgent (4)</b> 21:15,16,19;32:10</p> <p><b>use (9)</b> 11:9;16:14;21:16; 36:16;37:4;47:21; 70:4;71:17;123:7</p> <p><b>used (10)</b> 21:12,14;64:21; 74:22,23;88:22; 108:16;154:7;155:13; 158:9</p> <p><b>usually (2)</b> 123:4;129:5</p>	<p><b>veterans (4)</b> 144:13,13,15;168:1</p> <p><b>views (1)</b> 12:24</p> <p><b>visit (1)</b> 12:12</p> <p><b>visits (1)</b> 164:9</p> <p><b>vital (58)</b> 21:7;32:17;35:7,8, 10;61:17,18;81:6,12; 83:9;85:7;95:2,5; 104:3;113:11,14,17; 115:1;116:8;117:5,6, 17;118:1;119:1,10, 17;124:24;125:3,10, 14,22,24;126:8,10,24; 127:2,19,21,21,24; 128:4,8;129:21,23; 130:2,8,15;131:17,25; 132:2,4,7;134:21; 136:19;137:14;138:2; 141:14,21</p> <p><b>vitals (7)</b> 34:25;114:22; 117:10;118:3;120:14; 127:10,16</p> <p><b>voice (7)</b> 40:4,16,19;100:16; 101:3;145:6;146:2</p> <p><b>volunteered (1)</b> 51:21</p> <p><b>volunteering (2)</b> 51:4,8</p> <p><b>vulnerable (1)</b> 17:24</p>	<p>131:8;133:1,19; 137:20;141:6;149:5; 150:3;151:13,14,15; 160:8,12;161:1,17,25; 163:7;165:10;166:5, 23</p> <p><b>wakeful (1)</b> 106:3</p> <p><b>walk (18)</b> 19:14,22;20:1;25:2; 26:6;35:25;37:8;90:2; 124:16;133:14; 149:14,16;155:4; 156:13,15,16;159:2, 16</p> <p><b>walked (2)</b> 46:4;49:23</p> <p><b>walker (1)</b> 158:9</p> <p><b>walk-in (1)</b> 80:17</p> <p><b>walking (2)</b> 127:1;131:7</p> <p><b>walls (1)</b> 126:20</p> <p><b>wants (1)</b> 43:10</p> <p><b>warm (4)</b> 151:3,4,4,5</p> <p><b>watch (2)</b> 90:1;144:21</p> <p><b>watching (2)</b> 16:6;93:11</p> <p><b>water (2)</b> 27:3;39:14</p> <p><b>way (27)</b> 11:13;15:2,19; 18:23;21:15,18;23:1; 36:19;43:16;47:23; 51:16,17,22;62:2; 71:16;72:8;92:4;97:2; 104:11;105:2;108:25; 117:25;137:16;142:4; 158:24;160:18; 169:15</p> <p><b>ways (1)</b> 86:2</p> <p><b>weak (7)</b> 28:17;35:20;111:4; 141:13;142:4,9; 166:13</p> <p><b>weakness (3)</b> 19:22;23:11;92:8</p> <p><b>wearing (16)</b> 67:1,4,6;73:9; 85:13,17;107:11,16, 17;108:6;130:9; 131:11;150:16,18; 166:22;167:1</p> <p><b>weather (1)</b> 15:12</p> <p><b>Wednesday (13)</b> 3:21;144:17;168:3,</p>
<p><b>U</b></p>		<p><b>V</b></p>	<p><b>W</b></p>	
<p><b>Uh-hmm (1)</b> 135:7</p> <p><b>ultimate (1)</b> 18:4</p> <p><b>ultimately (1)</b> 16:20</p> <p><b>Um (1)</b> 137:17</p> <p><b>unable (5)</b> 16:21;19:25;20:1; 37:18;157:24</p> <p><b>unanswered (1)</b> 9:25</p> <p><b>unavoidable (1)</b> 24:10</p> <p><b>unbelievable (2)</b> 47:16;148:24</p> <p><b>uncomfortable (1)</b> 82:16</p> <p><b>uncommon (3)</b> 60:11;79:4;130:11</p> <p><b>unconscious (2)</b> 141:10,13</p> <p><b>under (15)</b> 8:16;16:19;25:24; 55:8;60:3;71:12,21; 79:10;85:1;86:20; 88:9;112:13;120:7; 138:21;169:5</p> <p><b>underneath (1)</b> 80:20</p> <p><b>understands (1)</b></p>		<p><b>vacation (1)</b> 13:22</p> <p><b>value (1)</b> 82:9</p> <p><b>values (1)</b> 81:15</p> <p><b>varies (2)</b> 57:16;97:6</p> <p><b>vary (1)</b> 129:5</p> <p><b>vending (1)</b> 34:12</p> <p><b>verbal (1)</b> 133:11</p> <p><b>verbally (1)</b> 16:2</p> <p><b>verdict (8)</b> 8:13,25;10:2;12:20, 24;13:14;28:9;38:14</p> <p><b>verify (1)</b> 79:16</p> <p><b>versions (2)</b> 12:3,4</p> <p><b>versus (1)</b> 2:4</p>	<p><b>Wagner (2)</b> 2:17;28:23</p> <p><b>wait (22)</b> 21:19;22:16;33:18, 25,25;34:3,4;58:21; 59:4;83:17;84:3,5; 90:18,21;91:1;126:9; 131:13;160:4;163:4, 15,21;165:5</p> <p><b>waited (3)</b> 22:23;34:16;166:4</p> <p><b>waiting (73)</b> 22:14,16;23:6;26:2, 15;27:2;32:5;34:6,10, 11,15,16,24;35:8,21; 36:18;37:20;63:9,14; 65:1,2;66:5,7;68:11, 21,23;69:8;76:11,11; 78:7;81:5;84:1,23; 85:10,12,13;86:5; 89:15;90:2,3,11,13; 91:6,15;92:18;122:6; 126:10,16,23;127:7, 18;128:3;130:12,23;</p>	

5,13,25;169:1,3,8,8, 10,13,14 <b>week (13)</b> 3:16,21,23;76:15; 105:2,21,22;106:25; 107:3;155:10,14; 156:10,12 <b>weeks (1)</b> 122:17 <b>weigh (2)</b> 5:15;11:14 <b>weight (8)</b> 9:19;10:25;11:16; 81:25;82:1,1,2,93:13 <b>weights (1)</b> 156:18 <b>Weiner (2)</b> 168:16,25 <b>welcome (6)</b> 4:20;39:16;94:25; 145:13;152:13;155:8 <b>welcomed (1)</b> 86:13 <b>weren't (1)</b> 108:4 <b>what's (12)</b> 5:22;6:25;8:8;16:8; 47:5;69:7;82:11; 83:22;123:1;124:7; 145:16;148:6 <b>wheel (3)</b> 31:20;36:1;136:20 <b>wheelchair (83)</b> 20:3;22:15;23:2; 26:2;28:17;31:16,19, 20;33:24;35:20,25; 37:9;43:5,7,9,11,19, 22,23;44:1,4,7,16; 46:14,17,20,24;47:2, 6;64:14;65:14,20; 66:23;72:11;76:24, 25;77:13,16,18,19,22, 24;80:15;90:12; 91:15;108:10,12,13, 17;119:15;128:18,21, 22,23,24,25;129:18; 130:16,22;131:1; 133:18,21;134:5,7,12, 14,25;135:10,18,19; 138:23;149:2,16,23; 150:2,4;157:22,24; 160:7;161:25;165:13, 19,24 <b>wheelchairs (10)</b> 64:18,22;65:5,10; 77:12;85:20;129:3,4, 7;130:5 <b>wheeled (7)</b> 20:3;34:20;49:1,25; 77:4;158:12;159:9 <b>wheels (4)</b> 129:11,12,13,19 <b>whenever (2)</b>	42:8;52:18 <b>Whereupon (18)</b> 2:1;4:11;29:13; 38:24;39:5;62:20; 87:9;88:2;100:8; 115:2;118:13;121:13; 143:25;150:22; 167:21;168:8,14; 169:23 <b>whole (2)</b> 68:14;69:10 <b>who's (5)</b> 32:9;33:3,16;49:11; 89:22 <b>wife (18)</b> 19:3,5,15;31:15; 34:5,7;148:24; 149:24;150:2;151:16; 157:12;159:22,25; 161:17,18;164:13,16, 23 <b>wife's (1)</b> 147:8 <b>Wighton (6)</b> 2:5;92:20;98:11,14, 18;99:8 <b>wild (1)</b> 13:20 <b>willing (1)</b> 5:13 <b>window (2)</b> 58:7;98:1 <b>Winthrop (1)</b> 74:24 <b>wish (1)</b> 33:9 <b>withdraw (2)</b> 127:4;165:21 <b>withdrawn (2)</b> 44:22;58:6 <b>within (4)</b> 59:3,13;72:17; 97:12 <b>without (10)</b> 5:13;13:5;27:2,3; 66:23;71:20;72:10, 19;113:20;137:20 <b>witness (60)</b> 7:19,20;9:22;11:2, 3,4,6,7,18,19,20,21; 30:11,12;36:13; 39:19,24;40:1,6,9,11, 13,21;47:18;57:15; 86:24;88:10;93:8; 94:16;100:7,8,8,9,13, 15,18,21,24;101:5; 118:6,18;121:11; 143:1;144:18,22,25; 145:2,7,10,13,17,19, 22;146:1,4,9;167:16, 20,21,21 <b>witness' (5)</b> 11:1,7,16,23;86:17	<b>witnessed (2)</b> 113:2;142:25 <b>witnesses (14)</b> 7:7,14,9:18;10:25; 13:1,13;15:9;16:7,9, 12;29:4;37:5;112:16; 168:21 <b>witness's (1)</b> 88:7 <b>woke (1)</b> 23:7 <b>woken (1)</b> 23:8 <b>woman (4)</b> 109:12;163:3,4; 166:14 <b>wonder (1)</b> 5:9 <b>Wonderful (1)</b> 3:8 <b>word (2)</b> 55:5;70:4 <b>words (2)</b> 73:6;96:19 <b>work (21)</b> 4:16;5:4;12:13; 31:10;33:6;40:8;42:4; 48:22;74:17,24; 103:14;105:2;107:7; 123:21;124:1;144:12; 148:4,14;153:25; 154:23;156:14 <b>worked (8)</b> 19:7;42:9;74:18,19; 105:8;106:20;107:2; 167:24 <b>working (32)</b> 3:20;5:11,23;29:1; 31:9,25;39:11;41:8, 18;42:6,12,14;70:24; 74:20;75:24;76:20; 99:17;103:5,12; 105:9;122:3,9; 123:16,18,24;153:22, 23;154:3,15;155:10, 14,18 <b>works (2)</b> 20:11;99:9 <b>world (1)</b> 13:16 <b>worried (1)</b> 67:21 <b>wrist (4)</b> 22:6;25:14;60:15; 133:15 <b>write (6)</b> 13:16;79:1;96:19; 120:22;136:5;142:1 <b>writing (1)</b> 116:10 <b>written (2)</b> 16:2;61:8 <b>wrong (3)</b>	36:5;44:9;130:3 <b>wrongdoing (1)</b> 28:18 <b>wrote (12)</b> 102:1;109:19,20; 139:5,6,21,23;140:3, 10,14,15;142:13 <b>X</b> <b>X-ray (1)</b> 52:15 <b>Y</b> <b>year (5)</b> 15:13;42:7;164:14, 16,22 <b>years (40)</b> 4:22;18:22,24;19:2, 3;24:15;31:5,8,25; 42:6,10;46:11;74:19; 75:7,9;76:21;83:8; 91:13;101:16;103:20; 106:17;109:8;120:19; 136:12;140:7,14; 148:4,5,5;152:22; 158:22;159:1,19,20; 161:15;163:8,25; 167:6,8,9 <b>yelled (1)</b> 23:6 <b>yellow (6)</b> 22:5;33:7;60:14; 61:4;73:10;77:24 <b>York (6)</b> 74:14;100:21; 145:10;147:25; 155:24;156:9 <b>youth (1)</b> 156:4 <b>Z</b> <b>zero (1)</b> 50:25 <b>Zoom (2)</b> 103:2,3 <b>1</b> <b>1 (4)</b> 2:2;48:4;110:1,2 <b>10 (5)</b> 88:20;168:3,5; 169:13,24 <b>11030 (1)</b> 100:22 <b>11360 (1)</b> 145:11 <b>12 (3)</b> 76:4;152:5;169:24 <b>120 (1)</b>	95:14 <b>1245 (1)</b> 39:11 <b>13 (1)</b> 167:25 <b>14 (1)</b> 162:14 <b>140 (4)</b> 95:13,14,16,18 <b>15 (5)</b> 5:25;34:20;131:3; 133:25;161:6 <b>1594 (1)</b> 145:10 <b>16 (1)</b> 93:18 <b>16:21 (1)</b> 48:17 <b>160 (1)</b> 95:21 <b>1621 (2)</b> 78:23;82:25 <b>17 (1)</b> 167:24 <b>170 (2)</b> 95:21;117:2 <b>19 (1)</b> 93:18 <b>1925 (6)</b> 113:18;114:1,22; 125:15,20,22 <b>1926 (3)</b> 114:10;125:19,20 <b>1930 (1)</b> 110:23 <b>1951 (1)</b> 146:17 <b>1971 (2)</b> 19:1;147:2 <b>1988 (1)</b> 74:6 <b>1990 (1)</b> 74:12 <b>1992 (2)</b> 74:15,16 <b>1A (4)</b> 47:11;48:2,5;78:15 <b>1C (1)</b> 82:22 <b>1D (2)</b> 110:3,4 <b>2</b> <b>2 (18)</b> 21:21;39:12;55:22; 56:8;57:10;58:9,16; 59:24;60:16,17,18; 88:20,22,23,24,25; 89:20;105:9 <b>20 (1)</b> 19:2 <b>200 (2)</b>
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97:3;104:7 <b>2001 (2)</b> 75:3,4 <b>2004 (4)</b> 41:9,10,16;57:24 <b>2010 (1)</b> 164:8 <b>2014 (1)</b> 164:8 <b>2017 (1)</b> 122:16 <b>2019 (2)</b> 103:13,18 <b>2020 (1)</b> 123:22 <b>2021 (40)</b> 18:23;19:9;27:16; 29:1;30:19;31:13; 41:18,20;42:9;45:23; 57:8,24;65:6,10; 73:21;74:24;75:3,24; 80:3;89:15;96:23; 98:15;99:18;104:12; 124:19,22;126:8; 130:25;133:1;148:17; 153:19;154:8,11; 155:17,21;156:8; 157:9;164:3,15;167:7 <b>2022 (3)</b> 156:20;161:13,14 <b>2023 (2)</b> 120:3;140:7 <b>2025 (1)</b> 169:24 <b>207 (5)</b> 95:25;96:2,3,4,7 <b>208th (1)</b> 145:10 <b>21 (7)</b> 42:6;75:9;97:5; 103:5;156:20;163:10, 12 <b>22 (1)</b> 2:8 <b>23 (1)</b> 157:4 <b>24 (2)</b> 75:7;76:15 <b>269 (1)</b> 78:21 <b>270 (2)</b> 95:24,25	155:4,5 <b>37th (1)</b> 154:18	<b>73 (1)</b> 18:24 <b>7A (1)</b> 42:15 <b>7P (1)</b> 42:15		
	<b>4</b>			
	<b>4 (1)</b> 88:24 <b>4:18 (2)</b> 20:22,22 <b>4:19 (2)</b> 44:19,19 <b>4:21 (4)</b> 44:19,20;48:17; 95:3 <b>4:30 (5)</b> 3:22;69:5;143:13; 144:12;167:24 <b>40 (5)</b> 19:3;68:11,12,20; 69:8 <b>42 (2)</b> 160:23,25 <b>45 (2)</b> 162:14;163:10	<b>8</b>	<b>80 (5)</b> 95:13,14,14,16,21 <b>81 (1)</b> 96:4	
	<b>5</b>	<b>9</b>		
	<b>5 (4)</b> 155:11,18;160:24, 25	<b>9 (25)</b> 18:23;27:16;29:1; 30:19;31:13;41:20; 42:12;73:21;96:23; 98:15;99:18;104:12; 126:8;130:25;148:17; 153:19;154:11; 155:11,18,21;156:8; 157:9;164:3,15;167:7 <b>9:30 (1)</b> 3:22 <b>911 (1)</b> 123:13 <b>9th (1)</b> 19:9		
	<b>6</b>			
	<b>6 (1)</b> 146:17 <b>65 (5)</b> 60:9;80:6;89:3,6; 92:4 <b>69 (5)</b> 18:22;26:7;31:8; 33:3;83:8			
	<b>7</b>			
	<b>7 (10)</b> 42:16,17,17;88:19; 105:7,9,11,12,12,15 <b>7:00 (6)</b> 70:10,16;71:3;76:1, 1,4 <b>7:25 (6)</b> 113:18;114:22,25; 116:5;125:16;132:5 <b>7:26 (5)</b> 114:23;116:6,7,18; 132:5 <b>7:30 (8)</b> 22:20;23:4;27:4,5; 66:18;69:23;109:4; 110:23 <b>700321 (1)</b> 2:8			
<b>3</b>				
<b>3 (6)</b> 118:11,14,15,19; 121:14,15 <b>30 (2)</b> 68:11,12 <b>300 (2)</b> 40:9;100:21 <b>34th (2)</b>				