

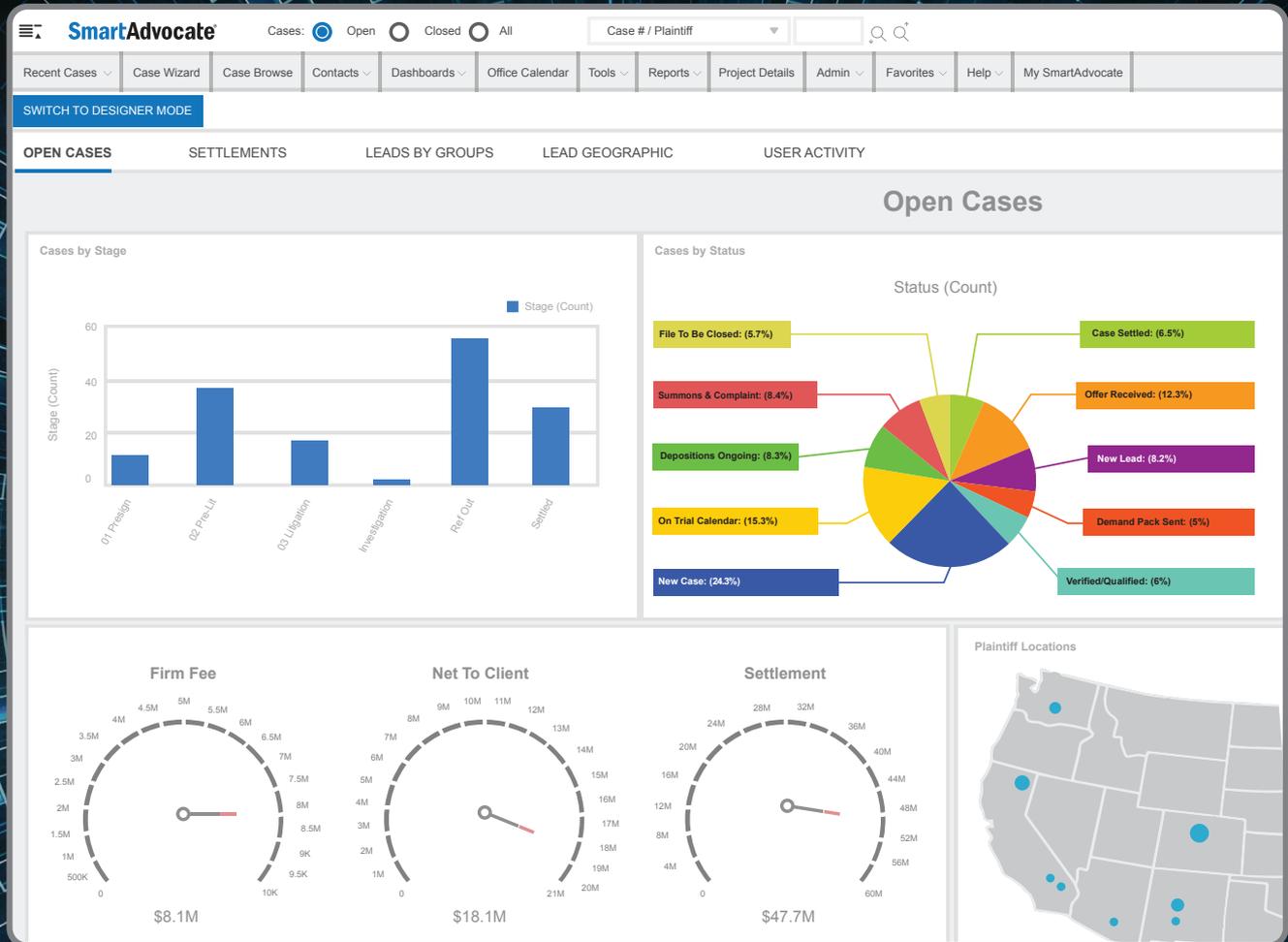
==New York State==
ACADEMY
OF TRIAL LAWYERS

**How to Litigate a Medical
Malpractice Case – Part 4:
Discovery & Depositions**

Materials by:
Andrew J. Smiley, Esq.

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NEW YORK'S GRIEVING FAMILIES ACT



HOW YOU CAN HELP

The Academy worked tirelessly with our coalition partners, advocates, and Academy members to achieve passage of the Grieving Families Act by the Senate and Assembly last legislative session. While Gov. Hochul ultimately vetoed the bill, we have never been closer to updating NY's 175 year-old Wrongful Death Law. Act now to help us pass the Grieving Families Act this legislative session!

SPREAD THE WORD

Tell your friends & colleagues to join over 5,000 Academy members in amplifying our message to the Governor to take action to support Grieving Families.



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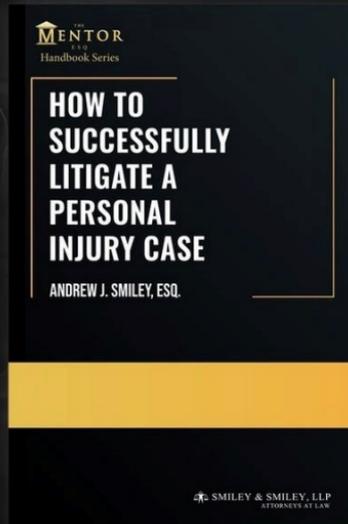
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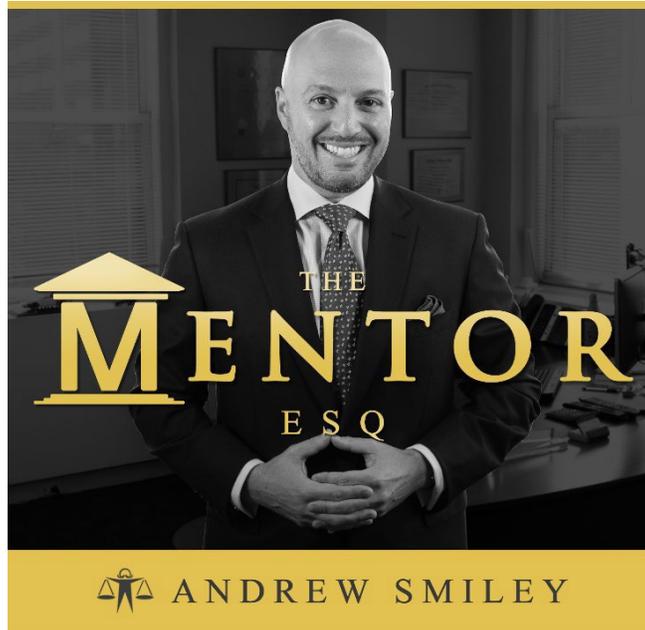
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CURRICULUM VITAE

Education:

·Brooklyn Law School - Juris Doctorate 1996

Moot Court Honor Society - Vice President/Executive Board (Chair of Trial Division)
Moot Court Honor Society - Competitor - National Appellate Trademark Competition
Moot Court Honor Society – Coach, National Trial Team – Regional Champions
CALI Excellence For The Future Award - Advanced Legal Research
Judge Edward and Doris A. Thompson Award for Excellence in Trial Advocacy

·Tulane University, New Orleans, LA - Bachelor of Arts (Honors, Psychology) 1993

Professional:

· *Smiley & Smiley, LLP*

Managing Partner & Senior Trial Attorney, January 2001 - present

Associate, June 1996 - December 2000

Law Clerk, September 1993 - June 1996

Major verdicts and settlements in plaintiffs' personal injury, medical malpractice and wrongful death litigation

Andrew J. Smiley, Esq. Curriculum Vitae, Page 2

· *Adjunct Clinical Instructor of Law - Brooklyn Law School, Trial Advocacy Program (1998-2004)*

· *The Mentor Esq. Podcast – A Podcast for Lawyers*

- Founder & Host (2019 – Present)

· *New York “Super Lawyer”*

2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022

Bar Admissions:

- The United States Supreme Court
- New York State Courts
- United States Eastern District, Southern District & Northern District of New York
- United State District Court of Vermont

Organizations/Affiliations:

· New York State Academy of Trial Lawyers

- Immediate Past President (May 2018- May 2019)
- President (May 2017 – May 2018)
- President-Elect – (April 2016- May 2017)
- Vice President – 1st Dept. (July 2013-May 2016)
- Executive Committee (May 2019 – present)
- Board of Directors (2013- present)
- Judicial Screening Committee (2013- present)
- Master CLE Instructor (2020 – present)
- CLE Instructor (2013 – present)

· New York City Trial Lawyers Alliance

- Chairman of Board of Governors (July 2017 – July 2019)
- President (July 2015 – July 2017)
- Vice President (June 2013 – July 2015)
- Treasurer (June 2011 – June 2013)
- Secretary (June 2009- June 2011)
- Board of Directors (2000-present)

- Judicial Screening Committee, Kings County Democratic Party (2013)
- New York State Bar Association
- Brooklyn Bar Association
 - Medical Malpractice Committee
 - Supreme Courts Committee
- American Bar Association
- The American Association for Justice

Andrew J. Smiley, Esq. Curriculum Vitae, Page 3

- Brooklyn Law School Alumni Association
- National Order of Barristers
- Porsche Club of America (Connecticut Valley Region)
- Porsche Sim Racing League
- Sports Car Driving Association (SCDA)
- Just Hands Racing Foundation – Board of Directors

Publications

Smiley, Andrew J. *How to Successfully Litigate a Personal Injury Case – A Practical Guide* (2022, The Mentor Esq. Handbook Series – Available on Amazon)

Continuing Legal Education (CLE) Presentations:

(58) *How to Litigate a Construction Accident Case – Part 4: Motion Practice*, New York State Academy of Trial Lawyers, December 7, 2022

(57) *Preparing for Depositions: Best Practices for Asking and Answering Questions*, Office of The NYS Attorney General, Legislature, 2022 Legislature Program, December 6, 2022

(56) *How to Litigate a Construction Accident Case – Part 3: Depositions*, New York State Academy of Trial Lawyers, November 2, 2022

(55) *How to Litigate a Construction Accident Case – Part 2: Commencing The Action*, New York State Academy of Trial Lawyers, October 3, 2022

(54) *Trial Series: Part 2 - Opening Statement Webinar*, Queens County Bar Association, September 22, 2022

(53) *How to Litigate a Construction Accident Case – Part 1: An Overview of New York Labor Law*, New York State Academy of Trial Lawyers, September 7, 2022

(52) *How to Litigate a Catastrophic Automobile Accident Case – Part 6: The Trial*, New York State Academy of Trial Lawyers, July 6, 2022

(51) *How to Litigate a Catastrophic Automobile Accident Case – Part 5: Mediation and Settlement*, New York State Academy of Trial Lawyers, June 2, 2022

(50) *How to Litigate a Catastrophic Automobile Accident Case – Part 4: Expert Depositions*, New York State Academy of Trial Lawyers, May 4, 2022

(49) *How to Litigate a Catastrophic Automobile Accident Case – Part 3: Liability and Damages Experts*, New York State Academy of Trial Lawyers, April 6, 2022

(48) *How to Litigate a Catastrophic Automobile Accident Case – Part 2: Commencing the Action*, New York State Academy of Trial Lawyers, March 2, 2022

Andrew J. Smiley, Esq. Curriculum Vitae, Page 4

Continuing Legal Education (CLE) Presentations Continued:

- (47) *How to Litigate a Catastrophic Automobile Accident Case – Part 1: The Investigation*, New York State Academy of Trial Lawyers, February 4, 2022
- (46) *Anatomy of a Trial, a Trial Skills Series – Part 5: Summations*, New York State Academy of Trial Lawyers, January 5, 2022
- (45) *Anatomy of a Trial, a Trial Skills Series – Part 4: Cross-Examination*, New York State Academy of Trial Lawyers, December 1, 2021
- (44) *Anatomy of a Trial, a Trial Skills Series – Part 3: Direct Examination*, New York State Academy of Trial Lawyers, November 3, 2021
- (43) *Anatomy of a Trial, a Trial Skills Series – Part 2: Opening Statements*, New York State Academy of Trial Lawyers, October 6, 2021
- (42) *Anatomy of a Trial, a Trial Skills Series – Part 1: Jury Selection*, New York State Academy of Trial Lawyers, September 10, 2021
- (41) *How to Successfully Litigate a Personal Injury Case Series - Part 7: It's a Wrap!*, New York State Academy of Trial Lawyers, July 7, 2021
- (40) *How to Successfully Litigate a Personal Injury Case Series - Part 6: The Trial*, New York State Academy of Trial Lawyers, June 2, 2021
- (39) *How to Successfully Litigate a Personal Injury Case Series - Part 5: Pre-Trial Disclosures and Gearing up for Trial*, New York State Academy of Trial Lawyers, May 5, 2021
- (38) *How to Successfully Litigate a Personal Injury Case Series - Part 4: Depositions*, New York State Academy of Trial Lawyers, April 7, 2021
- (37) *How to Successfully Litigate a Personal Injury Case Series - Part 3: Your Adversary, the Preliminary Conference and Initial Discovery*, New York State Academy of Trial Lawyers, March 3, 2021
- (36) *How to Successfully Litigate a Personal Injury Case Series - Part 2: Early Settlement, Jurisdiction, Venue & Commencing The Lawsuit*, New York State Academy of Trial Lawyers, February 3, 2021
- (35) *How to Successfully Litigate a Personal Injury Case Series - Part 1: Getting the Case, Investigation and Ready to File*, New York State Academy of Trial Lawyers, January 6, 2021
- (34) *Brick by Brick: Building a Personal Injury Practice*, New York State Academy of Trial Lawyers, December 10, 2020
- (33) *Working with Experts to Build Your Case*, New York State Academy of Trial Lawyers, October 8, 2020

Andrew J. Smiley, Esq. Curriculum Vitae, Page 5

Continuing Legal Education (CLE) Presentations Continued:

- (32) *Fitness Industry Liability: Gyms, Trainers and Waivers*, The Mentor Esq. Podcast, September 8, 2020
- (31) *Let's Make a Federal Case Out of It: Litigating Personal Injury Cases in Federal Court*, New York State Academy of Trial Lawyers, June 9, 2020
- (30) *Crisis Management - The Corona Virus Pandemic*, The Mentor Esq. Podcast, April 9, 2020
- (29) *Do You Have a Federal Tort Claims Act Case in Your Office*, New York State Academy of Trial Lawyers, December 10, 2019
- (28) *Auto and Truck Claims, Accidents and Litigation 2019 – Evaluating Damages and Use of Experts*, New York State Bar Association, September 9, 2019
- (27) *Thoughts and Strategies in the Ever-Evolving Product Liability Litigation – The Plaintiff's Perspective*, The Defense Association of New York, March 12, 2019
- (26) *Trial Techniques: Lessons on Dealing with Millennial Jurors; Summations; Requests to Charge and Post-Trial Motions*, The Defense Association of New York, January 31, 2019
- (25) *Trial Techniques: Interactive Lessons from the Plaintiff and Defense Perspectives*, The Defense Association of New York, September 17, 2018
- (24) *Punitive Damages – What to Plead, What to Prove: Medical Malpractice*, New York State Academy of Trial Lawyers, June 8, 2017 & June 21, 2017
- (23) Presenter on Evidence, *2016 Annual Update, Precedents & Statutes for Personal Injury Litigators*, New York State Academy of Trial Lawyers, September 30, 2016
- (22) *Medical Malpractice in New York: A View from All Sides: The Bench, The Bar and OCA*, New York State Bar Association, October 11, 2015
- (21) *Effectively Using Experts in Personal Injury Cases*, Lawline, October 8, 2015
- (20) *Killer Cross Examination Strategies*, Clear Law Institute, April 21, 2015
- (19) *Powerful Opening Statements*, Clear Law Institute, January 13, 2015
- (18) *The Dram Shop Law: New York Liquor Liability*, Lawline.com, November 20, 2014
- (17) *Killer Cross Examination Strategies*, Lawline.com, November 20, 2014
- (16) *Trial Techniques: Tricks of the Trade Update*, Lawline.com, October 14, 2014
- (15) *Personal Trainer Negligence Update*, Lawline.com, October 14, 2014

Andrew J. Smiley, Esq. Curriculum Vitae, Page 6

Continuing Legal Education (CLE) Presentations Continued:

- (14) *Trial Techniques – Part 2: Cross- Examination & Closing Arguments*, Brooklyn Bar Association, May 15, 2014
- (13) *Trial Techniques – Part 1: Jury Selection, Opening Statements & Direct Examination*, Brooklyn Bar Association, May 7, 2014
- (12) *Health, Fitness & Adventure Sports Liability*, New York State Bar Association, August 1, 2013
- (11) *Direct Exams: How To Make Your Witnesses Shine*, New York State Academy of Trial Lawyers, May 6, 2013
- (10) *Opening Statements: A Recipe for Success*, Lawline.com, August 7, 2012
- (9) *“You Had Me at Hello”: Delivering an Effective and Powerful Opening Statement*, New York State Academy of Trial Lawyers, April 1, 2012
- (8) *Preparing the Construction Accident Case*, New York County Lawyers Association, March 26, 2012
- (7) *The Nuts and Bolts of a Trial*, New York State Academy of Trial Lawyers, October 24, 2011
- (6) *Personal Trainer Negligence*, Lawline.com, March 22, 2011
- (5) *Trial Effectively Using Experts in Personal Injury Cases*, Lawline.com, May 4, 2011
Techniques: The Tricks of the Trade, Lawline.com, February 16, 2011
- (4) *Practice Makes Perfect: Learn to Practice Like a Pro*, Lawline.com, January 18, 2011
- (3) *Jury Selection 101*, New York State Academy of Trial Lawyers, December 14, 2010
- (2) *Practical Guidelines for Getting Items into Evidence*, Lawline.com, March, 2010
- (1) *Winning Your Case: Trial Skills that Count*, Lawline.com, August 21, 2009

Television Appearances – Legal Commentary:

Fox News Channel

- The O'Reilly Factor
- What's Happening Now with Martha McCallum
 - America's News Room
 - Fox & Friends
- Fox Business Channel
- Neil Cavuto

Andrew J. Smiley, Esq. Curriculum Vitae, Page 7

-Money with Melissa Francis

CNN -Anderson Cooper 360

ET – Entertainment Tonight

Bloomberg TV

Headline News

Tru TV

Court TV

The Morning Show with Mike and Juliet

Interests, Hobbies:

Porsche Club, High Performance Driving Events, Sim Racing, Tennis, Yoga, Cooking

| Plaintiff's PDF Page | Defendant's PDF Page | Date | Time | Chart | |
|---------------------------------|----------------------|-----------|--------|---|---|
| | 59 | 1/13/2019 | 16:34p | - ICU attending | "Urine turned green today, likely due to Propofol will reduce dosage and use Precedex, check CK and Triglycerides" |
| 290 | 63 | 1/13/2019 | 21:08p | [REDACTED] | "most likely rhabdo due to propofol infusion syndrome" |
| 296 | 68 | 1/14/2019 | 6:42a | [REDACTED] ICU Attending | He is also in rhabdo, propofol infusion syndrome vs? agitation episodes both at HSS and here" |
| 298 | 70 | 1/14/2019 | 7:09a | Ortho [REDACTED] consult note | "Found to have elevated CK and hypertriglyceridemia thought to be due to propofol infusion syndrome" |
| 307 | 79 | 1/14/2019 | 15:48p | [REDACTED] Dietician | "Propofol held 2/2 hypertriglyceridemia and c/f propofol infusion syndrome" |
| 304 | 76 | 1/14/2019 | 13:42p | [REDACTED] -Resident "Switch to precedex/dexmedetomidine" Propofol stopped due to concern for PRIS *"Switching Propofol" | "Lower concern for propofol-related infusion syndrome, given relatively low rates propofol - though does have elevated CK," |
| 355 | 126 | 1/17/2019 | 13:29p | Propofol Resumed Bronchoscopy note/procedure *Propofol given | see Orders for propofol by Dr. [REDACTED] pp.2403/2404 |
| 359-360 | 130 | 1/17/2019 | 14:25p | [REDACTED] M.D. [REDACTED] M.D. "was given propofol for Bronch, will reduce" p. 360 of same note "on propofol, will gradually come down" | "was given propofol for Bronch, will reduce" p. 360 of same note "on propofol, will gradually come down" |
| 362 | 133 | 1/17/2019 | 15:29p | [REDACTED] ICU -A. [REDACTED] - Resident | "We will try to get off this dose of propofol given possibility of 'Prop Inf. Syndrome'" -A. [REDACTED] Resident |
| 375 | 145 | 1/18/2019 | 13:21p | Anesthesia Endotracheal Intubation/Consult "Drugs for intubation- 30 mg propofol" [REDACTED] MD [REDACTED] MD | "Drugs for intubation- 30 mg propofol" |
| Same procedure as above? 378 | 148 | 1/18/2019 | 13:47p | ETT exchange "Per MD [REDACTED] ...60mg propofol" -Signed by nurse [REDACTED] | "Per MD [REDACTED] ...60mg propofol" |
| 380 | 149 | 1/18/2019 | 15:49p | "Propofol (reducing)" -A. [REDACTED] Resident | |
| 383 | 152 | 1/18/2019 | 17:44p | "We are trying to get off propofol given the triglycerides" - [REDACTED] | "We are trying to get off propofol given the triglycerides" |
| 393-394 | 163 | 1/19/2019 | 15:34p | Propofol stopped again "No further propofol given TG elevation" [REDACTED] Pulmonary & Critical Care Fellow | |
| 399-400 | 169 | 1/19/2019 | 21:19p | Resumed Propofol p. 400 "Drips" - Propofol + R Drip "Retrieved for [REDACTED] at 19, Jan 2019 21:25" "Rhabdomyolysis and fever of unknown origin" "May have caused kidney dysfunction"- - A. [REDACTED] - Resident | "Course also complicated by rhabdomyolysis and fevers of unknown origin" |

1 ██████████, M.D.

2 A. Not that I can recall.

3 Q. Have you ever published any
4 materials where your name is associated
5 with those materials either in written
6 form, online or otherwise specifically
7 about propofol infusion syndrome and
8 anything related to that condition?

9 A. Not that I can recall.

10 Q. Have you ever taught or trained
11 fellows, residents or other physicians in a
12 clinical setting on diagnosis and/or
13 treatment of propofol infusion syndrome?

14 A. Not formally.

15 Q. Have you in any way that you
16 recall not formally explained to a
17 resident, fellow or other physician the
18 methods upon which you would diagnose
19 propofol infusion syndrome?

20 A. I cannot recall any specific
21 instance, however, I may have discussed --
22 I can't -- I discuss many diseases
23 everyday. There's simply no way for me to
24 know if I specifically ever discussed that
25 or not.

1 ██████████, M.D.

2 Q. Do you recall discussing with
3 any other physicians, residents or fellows
4 how to treat propofol infusion syndrome?

5 A. No, I do not recall any
6 specific instance.

7 Q. Have you ever read any journal,
8 articles, research studies, texts,
9 treatises, chapters, anything online
10 specifically with regard to the diagnosis
11 and/or treatment of propofol infusion
12 syndrome?

13 A. I cannot recall any specific
14 treatise.

15 Q. I presume that you know what
16 propofol infusion syndrome is?

17 A. Yes.

18 Q. When did you learn what
19 propofol infusion syndrome is?

20 A. I cannot recall when I first
21 heard about that syndrome.

22 Q. Would that be something that
23 you would learn about in the medical school
24 setting or in clinical practice or in both
25 if you can answer that question?

1 ██████████, M.D.

2 A. For propofol infusion syndrome
3 I -- I cannot recall when but it could have
4 been something I learned in both of those
5 settings depending on the timing of where I
6 was and...

7 Q. Are there any journals,
8 textbooks, treatises that in your capacity
9 as a physician you read on a regular basis
10 to keep abreast of conditions that patients
11 you may treat may suffer from?

12 MR. ██████████: Yes or no.

13 A. Can you repeat the exact
14 wording.

15 Q. Sure. I may not repeat it
16 exactly but I'll try my best.

17 A. Okay.

18 Q. Are there any journals,
19 treatises, textbooks, online websites,
20 blogs that you read on a regular basis in
21 your capacity as a physician to keep
22 abreast of the work that you do as a
23 physician?

24 A. No. I specifically -- we do
25 literature searches continuously.

1 [REDACTED], M.D.

2 Q. But, for example, as lawyers
3 many of us daily get the New York Law
4 Journal. We read through that or we may
5 subscribe to blogs. In your capacity as a
6 physician, is there a regular weekly,
7 monthly journal that you get and read that
8 is issued in your practice?

9 A. No.

10 Q. Prior to January of 2019, did
11 you ever diagnose a patient under your care
12 as having -- being --

13 MR. SMILEY: Withdrawn.

14 Q. Prior to January of 2019, had
15 you ever diagnosed a patient who was under
16 your care as suffering from propofol
17 infusion syndrome?

18 A. Not that I can recall.

19 Q. Prior to January of 2019, were
20 you ever involved in the care or treatment
21 of a patient who had been diagnosed with
22 propofol infusion syndrome?

23 A. Not that I can recall.

24 Q. Prior to January of 2019, were
25 you familiar with the symptoms that a

1 ██████████, M.D.

2 patient would present if that patient
3 appeared to be suffering from propofol
4 infusion syndrome?

5 A. As I recall I would be familiar
6 with it.

7 Q. Since your treatment of ██████████
8 ██████████ back in January of 2019, have you
9 done any independent research to learn more
10 or find out more information about propofol
11 infusion syndrome?

12 A. I don't understand research --
13 restate the question -- what research
14 means.

15 Q. Okay.
16 Since January 2019, have you
17 independently done any studying, homework,
18 looking into online literature or other
19 type of medical research to further educate
20 yourself on the condition known as propofol
21 infusion syndrome?

22 A. I can't recall any specific
23 instance, but I would -- that's something I
24 would literature review frequently.

25 Q. Do you recall since the care

1 [REDACTED], M.D.

2 and treatment that you may have rendered to
3 [REDACTED] in 2019 doing any literature
4 searches specifically to obtain more
5 information about propofol infusion
6 syndrome?

7 A. Not any specific instance.

8 Q. To your knowledge, do you know
9 more today about propofol infusion
10 syndrome, the condition, how it presents,
11 how it is treated, than you did back in
12 January of 2019?

13 A. I just -- I can't quantify
14 that. I can't assess when I would have
15 known more.

16 Q. I'm asking if you believe that
17 you do know more now than you did then or
18 whether your knowledge of the condition is
19 generally the same now as it was back in
20 2019?

21 A. I believe it's generally the
22 same although it's hard to know.

23 Q. What is propofol infusion
24 syndrome?

25 A. It's -- as I understand it, as

1 [REDACTED], M.D.

2 I can recall, it's thought to be a disorder
3 that's incredibly rare, that is a poorly
4 defined group of problems that has no clear
5 diagnosis. There's no diagnostic testing
6 or criteria but can be a group of problems
7 that can be association with the high dose,
8 long-term administration of a sedative.

9 Q. Have you ever heard of the
10 abbreviated reference to propofol infusion
11 syndrome the term PRIS?

12 A. That's not something we use in
13 our general practice.

14 Q. Have you ever heard propofol
15 infusion syndrome referred to as PRIS?

16 A. Not that I can recall. I don't
17 recall that specific acronym, I guess.

18 Q. Okay.

19 Is propofol infusion syndrome a
20 condition that in 2019 you would be on the
21 lookout for as a physician overseeing a
22 patient who had been receiving over
23 24 hours worth of dosage of propofol
24 infusion?

25 A. In general, yes.

1 [REDACTED], M.D.

2 Q. What symptoms would you expect
3 a patient under your care to exhibit that
4 would lead to a potential diagnosis of
5 propofol infusion syndrome?

6 A. Symptoms medically mean, in the
7 technical sense, things that a person would
8 say and report that they feel, the person
9 who felt them would say that. So in
10 general terms as I understand it propofol
11 infusion syndrome is usually not a symptom,
12 there usually are not symptoms associated
13 with it.

14 Q. As a physician what, if any,
15 information with regard to a patient that
16 might be in an intensive care setting
17 indicate to you that the patient might be
18 suffering from propofol infusion syndrome?

19 A. The things that I would look
20 for would include things that are, have
21 been reported, as I understand them, to be
22 associated. Like being a small child. So
23 I would think about. I don't take care of
24 small children because I know, as I
25 understand it, it's more common and first

1 ██████████, M.D.

2 was described in small children. So it's
3 less likely to me if someone is not a small
4 child.

5 I might look for very high
6 doses and very prolonged administration of
7 the medication. I would think about some
8 of the most common things that have been
9 reported with propofol infusion syndrome
10 like metabolic acidosis, lactic acidosis,
11 certain dysrhythmias, slow heart rates,
12 severe cardiogenic heart dysfunctions,
13 things like that. There are other things
14 that I'm not recalling -- that I'm not
15 stating right now but there are other
16 things too.

17 Q. Any other things that you
18 recall right now that you would associate
19 as an indicator that a patient may be
20 suffering from propofol infusion syndrome
21 other than metabolic acidosis, a slow heart
22 rate, other cardiac issues that you just
23 gave in your prior answer?

24 A. I think about sometimes kidney
25 dysfunction or rhabdomyolysis sometimes.

1 [REDACTED], M.D.

2 Of course the problem -- well...

3 Q. I'm sorry?

4 A. That's it.

5 Q. And --

6 A. There may be other things but
7 I'm not -- they're not coming to mind right
8 now.

9 Q. So you told me all the things
10 you recall that are coming to mind at the
11 moment that you feel might be associated
12 with a patient suffering from propofol
13 infusion syndrome?

14 A. Yes.

15 Q. And when you said earlier that
16 it may be associated with high doses and
17 prolonged administration, what is your
18 definition of a high dose of propofol?

19 [REDACTED] He actually
20 said "Very high doses."

21 MR. SMILEY: Okay.

22 A. I don't have independent
23 knowledge of this but one marker is to use
24 something like 80 micrograms per kilogram
25 per minute for a couple of -- for more than

1 ██████████ M.D.

2 48 hours.

3 Q. What about boluses, is that
4 something that you would look into to see
5 if the patient had IV push boluses of
6 propofol in considering whether or not a
7 patient might be at risk for developing
8 propofol infusion syndrome?

9 A. Theoretically, you would have
10 to add that to the total amount of
11 medication that was given, but that tends
12 to be a much smaller amount of propofol
13 when given as an infusion.

14 Q. In a prior answer I believe you
15 said that prolonged administration of
16 propofol might be an indicator to you to be
17 on the lookout for propofol infusion
18 syndrome developing. Did I understand that
19 correctly?

20 A. Yes. I believe that's the way
21 I worded it, something close to that.

22 Q. How do you define prolonged
23 administration of propofol?

24 A. Main, many days, weeks.

25 Q. When you say "Many, many days,"

1 ██████████, M.D.

2 would that be four, five, six, seven days
3 or would it have to be longer than that to
4 be within your definition of prolonged
5 administration?

6 A. The longer it was given for
7 going on into days, into more than a week I
8 would think about it more although it's
9 very difficult to know because it's so
10 commonly given to so many thousands of
11 people without it happening. It's unclear
12 when people get this, if they do, when they
13 do.

14 Q. In January of 2019, in your
15 position with regard to the MICU at ██████████
16 ██████████, were you
17 required to be knowledgeable about propofol
18 infusion syndrome and how to diagnose and
19 treat it?

20 A. Not by any administrative --
21 there would be no administrative
22 requirement for that.

23 Q. What about within the accepted
24 practice of physicians that treat patients
25 in an intensive care setting back in 2019,

1 ██████████, M.D.
2 them extubated you want them to be as awake
3 as possible. So sometimes if the person
4 has had delirium, people can be more alert
5 off of propofol. Dexmedetomidine is more
6 of an anxiolytic than a sedative. So,
7 maybe we are trying to -- I believe we're
8 trying to keep him off the propofol because
9 we want him to be awake and we try to get
10 him off the narcotics because we want him
11 to be able to not require narcotics to
12 control his breathing.

13 Q. Doctor, at this time on
14 January 17, 2019, at 14:51, was one of the
15 reasons why you may have considered getting
16 ██████████ propofol to come down
17 because there is a concern still of
18 propofol infusion syndrome?

19 A. No, I don't -- that's not what
20 my thinking was. I didn't think he had
21 propofol infusion syndrome, no.

22 Q. I'm going to go back I think
23 this was just the one entry on that other
24 chart that was off and I'm going to go to
25 Page 133 of the pdf. And this says

1 [REDACTED], M.D.

2 January 17th at 15:29. So, this was less
3 than an hour after Dr. Singhal's note that
4 we were just reviewing, based on the
5 records, and it looks to be signed by you
6 January 17th, 15:37.

7 Would this be your note,
8 Doctor?

9 A. Yes.

10 Q. And does this indicate to you
11 this would be -- you would have been on
12 service from the morning of this day
13 attending to the MICU?

14 A. Yes.

15 Q. I'd like to look at your note
16 here. Do you see the area where I
17 highlighted where you state, quote, "We
18 will try to get off this dose of propofol
19 given the possibility of propofol infusion
20 syndrome."

21 A. Yes.

22 Q. Can you explain this note
23 entry.

24 A. Let me read the whole note in
25 the chart, please.

1 [REDACTED] M.D.

2 Q. Sure.

3 A. Yes, okay. I'm sorry.

4 Repeat the question or read it
5 back.

6 Q. Can you explain for me what you
7 meant by that note.

8 A. As I recall reading this, I was
9 very concerned about him self-extubating
10 and that we -- when we -- when he became
11 awake he was extremely distressed so I was
12 trying to explain why we were trying to not
13 keep him -- why we were not trying to keep
14 him so sedated allowing him to be lighter
15 and that I was worried, this is the way I
16 think, that there would be criticism of the
17 decision to stop the propofol. If we tried
18 to lower the propofol and he
19 self-extubates, what was the thinking?

20 Q. Okay.

21 A. That's why I tried to -- I said
22 hey, this could be -- there was some
23 concern about propofol side effects and
24 that's we're -- one of the reasons we were
25 trying to get him off it among other

1 [REDACTED], M.D.

2 reasons.

3 Q. So I just want to clarify,
4 Doctor, because in the note that we just
5 read from Dr. Singhal that was entered a
6 few hours before this note on the same day
7 in response to my question you said you
8 weren't even thinking of propofol infusion
9 syndrome and now --

10 A. Right.

11 Q. -- here in this note for the
12 first time I believe in the chart actually
13 you are putting in here that, quote, "We
14 will try to get off this dose of propofol
15 given the possibility of propofol infusion
16 syndrome," close quote.

17 So, isn't this you saying that
18 you're considering, at least at this time
19 when you're putting this note in on
20 January 17th at 15:37, the possibility that
21 [REDACTED] is suffering from propofol
22 infusion syndrome?

23 A. I believe I conflated propofol
24 side effects from propofol infusion
25 syndrome. I don't have any recollection of

1 ██████████, M.D.
2 thinking he had propofol infusion syndrome.
3 I thought he maybe had propofol -- that he
4 theoretically could have had some propofol
5 side effects although I think it's
6 incredibly unlikely.

7 Q. So, this entry though, would
8 this have been typed in by you or someone
9 else?

10 A. This is by me. No one types my
11 notes.

12 Q. And when you're actually typing
13 in the note the does propofol infusion
14 syndrome pop up or do you actually have to
15 -- does it pre-populate or do you have to
16 type in those three words --

17 A. No. I type -- sorry to
18 interrupt you. Finish.

19 Q. -- do you have to type in those
20 three words, "Propofol infusion syndrome"?

21 A. I have to type it in.

22 Q. So it wasn't a mistake. You
23 purposely typed in this sentence as we're
24 reading it; is that fair to say?

25 A. I think it's a mistake, but I

1 [REDACTED], M.D.

2 definitely typed it in.

3 Q. So why you would type in
4 something that you definitely typed in and
5 now say that it's a mistake. Can you
6 explain that?

7 A. I believe I conflated the idea
8 of other peoples' concerns about CK rise
9 and things of that nature with, I believe,
10 other peoples' words, had used those words.
11 No. I believe I conflated propofol
12 potential side effects, what other people
13 thought might be side effects from it from
14 what other people thought might be propofol
15 infusion syndrome. I believe I conflated
16 the terms.

17 Q. Okay.

18 So what you meant to say was
19 what?

20 A. What I wrote is what I meant to
21 say.

22 Q. And if you wanted to say that
23 you're concerned about the side effects of
24 propofol or you're concerned about the
25 triglycerides or something else, you could

1 ██████████, M.D.

2 have said, "We want to get him off this
3 dose of propofol in light of the side
4 effects of the propofol," right?

5 A. I could have said that, yes.

6 Q. Is there a reason you didn't do
7 it that way but instead talked about,
8 quote, "The possibility of a syndrome, of
9 propofol infusion syndrome"?

10 A. I don't know.

11 MR. ██████████: Asked and
12 answered. He answered that question
13 twice already.

14 Q. Then you put down there that,
15 "We think less likely that this was
16 malignant hyperthermia" as of January 17th
17 at 15:37?

18 A. Mm-hmm.

19 Q. You just have to give a verbal
20 response, please.

21 A. Yes.

22 Q. So at this point when
23 previously on the 15th you were looking for
24 alternative diagnoses for the fever, the
25 rhabdo so much so that you were looking

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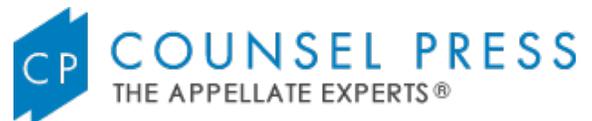
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