

PLAINTIFF’S MOTION IN LIMINE NO. 17 FOR RULING ON OBJECTIONS IN DEPOSITION TESTIMONY OF DR. XXX

Pursuant to the Tennessee Rules of Evidence, Plaintiff respectfully moves, *in limine*, for the Court to rule on the objections in the following excerpts from the deposition testimony of Dr. XXX: A copy of the condensed transcripts of Volumes I and II of Dr. XXX’s deposition testimony is attached hereto (without the index and exhibits) as collective Exhibit A.

Testimony	Objection	Argument
<p>Page 89, lines 15-24: Q: Do you agree that it would be a violation of the standard of care to send home a patient, a dialysis patient with a potassium level of 6.6 without giving the patient any treatment to bring down that potassium level?</p> <p>XXX: Object to the form. Go ahead.</p> <p>By XXX:</p> <p>Q: You can still answer the question. A: Yes.</p>	<p>Form</p>	<p>Plaintiff does not recognize a basis for this objection.</p>

<p>Page 101, lines 3-10: Q: You would agree that if, in fact, XXX had not completed her dialysis on XXX before coming to the emergency room, that her – that she may have had a critically elevated potassium level at the time that she was in the emergency room?</p> <p>XXX: Object to the form.</p> <p>XXX: It's possible.</p>	<p>Form</p>	<p>Plaintiff does not recognize a basis for this objection.</p>
<p>Page 163, line 2 – page 165, line 7: Q: And so the fact that this – that lab work is ordered in XXX's chart, doesn't that indicate to you that perhaps that information was communicated to you either by the patient or Dr. XXX, and that you, in response to that, ordered the lab work?</p> <p>XXX: Object to the form.</p> <p>The Witness: No. I don't believe that happened at all.</p> <p>By XXX:</p> <p>Q: Well, sir, isn't that a possibility?</p> <p>A: No. Because I have very distinct memories of this case because of Dr. XXX's discussion with me two days later.</p> <p>Q: Well, you have distinct memories, and yet you don't</p>	<p>Form</p>	<p>The only basis Plaintiff can conceive of for Defendant's objection is that the question is compound. A compound question is one that brings up two separate facts within a single question. The question at issue addresses one fact - whether the presence of an order for lab work in XXX's chart indicates to the deponent that he learned information from Dr. XXX that prompted him to order the lab work. This question cannot be severed into two separate questions and therefore it is not compound.</p>

<p>remember one way or the other whether you ordered this lab work, correct?</p> <p>A: That’s correct, but – the ordering the lab tests. But I do remember the discussions and her not telling me anything more about this patient other than asking me to put the stitch in. That’s very clear in my mind.</p> <p>Q: Okay. Well, you didn’t record – as far as your note for your conversation with Dr. XXX, you just made a note that you discussed the patient with Dr. XXX; is that correct?</p> <p>A: Yes.</p> <p>Q: And you didn’t record that she told you to put in a pursestring suture, did you?</p> <p>XXX: Object to the form.</p> <p>The Witness: I wrote down the procedure, which was what she had told me, but I didn’t indicate specifically that that came out of the conversation. But that’s indeed what happened.</p> <p>By XXX:</p> <p>Q: Okay. Well, isn’t it then also possible that you didn’t indicate specifically that from your conversation with Dr. XXX that she asked you to run lab work on this patient but that, yet, you ordered the lab work?</p>	<p>Form</p> <p>Asked and answered</p>	<p>Plaintiff does not recognize a basis for this objection.</p> <p>This question has not been asked and answered.</p>
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<p>XXX: Objection, asked and answered.</p> <p>By XXX:</p> <p>Q: You can still answer the question.</p> <p>A: No.</p> <p>Q: You don't see that as being – the fact that – (Overlapping speech.)</p> <p>A: It's not possible –</p> <p>XXX: Wait, wait, wait. We're not going to go over this again and again. You've asked this question twice now. He's answered you twice. We're not going to beat this to death. I'm sorry.</p> <p>XXX: I can ask the questions and you can state the objection.</p> <p>XXX: And I'm going to stop him from answering if you ask the same question again. You've asked it twice, and I let him answer it twice. He's not going to answer it again.</p> <p>By XXX:</p> <p>Q: Dr. XXX, you did not record the specifics of your conversation with Dr. XXX in this patient's chart, did you?</p> <p>A: No.</p> <p>Q: If you ordered lab work for XXX and a nurse cancelled that lab work, would you not criticize the nurse for doing that without your direction?</p>	<p>Form</p>	<p>Plaintiff does not recognize a basis for this objection.</p>
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<p>XXX: Object to the form.</p> <p>The Witness: I would be concerned, which I was concerned, about how this sort of thing could happen. And I would complain, which I did, to the nurse manager, to prevent this sort of thing from happening again.</p>		
<p>Page 197, line 24 – page 198, line 5:</p> <p>Q: If you had or should have had information at the time that she did not complete her dialysis and in fact had less than ten minutes of dialysis before she came to you, these labs are critical, aren't they?</p> <p>XXX: Objection to the form.</p> <p>XXX: Join the objection.</p> <p>A: Those labs are definitely high, yes.</p>	<p>Form</p>	<p>Plaintiff withdraws the objection and asks this court to overrule XXX's objection as there is no basis for the objection.</p>
<p>Page 198, line 13 – page 200, line 22:</p> <p>Q: And let's – let's explore for a minute what you did and what you didn't know –</p> <p>A: Okay.</p> <p>Q: – in the emergency room on this patient. Did you know this patient had come directly from XXX?</p> <p>A: I believe I was told that by nursing, yes.</p> <p>Q: And do you know what XXX is?</p> <p>A: Yes.</p>		

<p>Q: What is it? A: It's a dialysis center. Q: And why do people go to a dialysis center? A: For dialysis. Q: And why do they need dialysis? A: Because they have renal failure. Q: Their kidneys aren't working. Isn't that correct? A: That's correct. Q: And people who don't have kidney function have to have dialysis on a regular basis, do they not? A: Yes, they do. Q: And if they do not have dialysis on a regular basis, that's potentially a life-threatening situation, is it not? A: It can be. Q: And as an emergency room physician, when a patient comes to you, doesn't it make sense that the first thing you try to determine is if the patient has a life-threatening problem? A: Yes. Q: And then you may treat whatever they're complaining about. But the first thing is you want to make sure they're not going to die on your watch – A: Absolutely. Q: -- isn't that correct? A: Uh huh. Q: So are you telling us that you were not advised that this patient did not complete dialysis? A: That's correct.</p>	<p>Asked and answered.</p>	<p>This question has not been asked and answered.</p>
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<p>XXX: Objection. Asked and answered.</p> <p>A: That's correct. I answered it in the first deposition, and it's the same answer today.</p> <p>Q: (By XXX) I'm sorry. I wasn't at the first deposition.</p> <p>A: You've had access to read it, though, sir, I assume.</p> <p>XXX: He's answered that question today. He's given that testimony at least twice that I can recall today.</p> <p>Q: (By XXX) If a nurse was told that this patient came from – from XXX and that the patient had not completed the dialysis, would the standard of nursing practice in your emergency room require that nurse to tell you that?</p> <p>XXX: Object to the form.</p> <p>XXX: Object as well.</p> <p>A: I would think they should, yes.</p>	<p>Form</p>	<p>Plaintiff withdraws the objection and asks this court to overrule Mr. XXX's objection as there is no basis for the objection.</p>
<p>Page 203, lines 7-24:</p> <p>Q: Did you ask her, "Did you complete your dialysis?"</p> <p>A: I know I did not.</p> <p>Q: Would you think the standard of professional practice would require you to ask the patient who's undergoing regular dialysis that comes into your emergency room because of bleeding around the catheter</p>		<p>The questions are not argumentative. The question is aimed at learning the witness's opinion on the standard of professional practice in treating a dialysis patient who has not completed her dialysis and whether the witness asked the patient whether she had completed her dialysis. These questions do not contain jury</p>

<p>whether she was able to complete her dialysis on that event? A: Not necessarily, no. Q: Even if she didn't complete her dialysis, that could create a life-threatening situation? XXX: Objection, argumentative. A: It would have been nice have known. Q: (By XXX) But, you didn't ask? XXX: Objection, argumentative. A: No, I did not. I assumed she had and therefore didn't ask.</p>	<p>Argumentative</p>	<p>arguments.</p>
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NOTICE OF HEARING

THIS MOTION IS EXPECTED TO BE HEARD ON XXX AT XXX A.M. ON THE COURT'S REGULAR MOTION DOCKET. FAILURE TO FILE AND SERVE A TIMELY RESPONSE MAY RESULT IN THE MOTION BEING GRANTED WITHOUT FURTHER HEARING.