

1 in respect to the Prince William application, would
2 you tell the Court, to the best of your recollection,
3 it was that you contacted Dr. Hampers?

4 A In July.

5 Q Where did you see Dr. Hampers in July?

6 A I flew to Boston, in his office.

7 MR. PLEDGER: I have nothing further, your
8 Honor.

9 CROSS EXAMINATION

10 BY MR. HIRSCHKOP:

11 Q At the time you first started with Dr. Osheroff,
12 you say that was the beginning of June, 1978, is
13 that correct?

14 A That's when I started practicing with Dr.
15 Osheroff.

16 Q Then you testified that Dr. Tolkan started
17 several months later, what did you mean by several
18 months?

19 A It might have been one or two, I'm not sure.

20 Q He started the month after you did, did he not?

21 A It might have been one or two, I'm not sure.

22 Q Do you recall sometime in July of 1978?

23 A It might have been, July or August.

1 Q At that time, Dr. Chan was there full time,
2 was she not?

3 A She wasn't there full time.

4 Q How much was she there?

5 A She worked part of the day, I think four days
6 a week.

7 Q And the fifth day Dr. Goldberger was there to
8 help with rounds, was he not?

9 A He was there one shift.

10 Q On Monday.

11 A Yes.

12 Q And she was there Tuesday through Friday.

13 A As I recall.

14 Q So there was another doctor there, aside from
15 you, Osheroff and Tolkan, each of the five days,
16 was there not?

17 A Part of the day, yes.

18 Q Were there three full shifts each of those
19 five days?

20 A No.

21 Q How many of those five days was there only
22 one shift?

23 A There were three shifts three days and two

1 shifts three days.

2 Q During the days there were two shifts, Dr.
3 Chan was there both days, was she not?

4 A She was not there Saturday; Tuesday and Thurs-
5 day, she might have been there just in the morning,
6 I don't remember.

7 Q You were the one making up the schedules, but
8 you don't remember when she was in?

9 A I think she was there just in the morning on
10 Tuesdays and Thursdays.

11 Q Prior to the time you showed up in June of '78,
12 you had no experience working in a private unit, isn't
13 that correct?

14 A That's wrong.

15 Q Where did you work previously?

16 A I worked for the Central Ohio Valley Center
17 in Columbus.

18 Q Was that attached to the university at all?

19 A It was a private National Medical Care unit,
20 unaffiliated with Ohio State.

21 Q That was part of your fellowship, wasn't it?

22 A No.

23 Q How long did you work there?

1 A I worked there for about six months.

2 Q I would like to go back over the dates you gave
3 us originally. What were the dates you worked on
4 your fellowship?

5 A This was during my fellowship, but it was a
6 moonlighting opportunity.

7 Q How often did you work there on a moonlighting
8 opportunity?

9 A I believe it was several times a week. I worked
10 with one of the other fellows and we rotated. The
11 chief of nephrology of Ohio State was medical director
12 of the unit, and he paid us a salary to see some of
13 the shifts.

14 Q It wasn't a full time job.

15 A No, it was after hours and odd hours.

16 Q So it was a fill in job, more or less?

17 A Yes.

18 Q You never had a full time job in a private
19 dialysis center prior to coming to Osheroff's?

20 A No.

21 Q Did you make up the schedules at the dialysis
22 facility in Ohio?

23 A I did with the other renal fellow, we made up

1 our own schedule. The doctor told us when he was
2 not going to be there, and we made up the schedule
3 among ourselves to cover the shifts.

4 Q You just worked it out with him who would
5 cover the shift.

6 A Yes.

7 Q The doctor left that up to you?

8 A Yes.

9 Q He hadn't posted a schedule as to who would
10 show up when in that facility, had he; that was
11 between you and this other guy?

12 A That's right.

13 Q When you first went to work for Dr. Osheroff,
14 it was clear that was a practice that two people
15 could run, isn't that correct?

16 A Yes.

17 Q And yet there were four doctors in it at that
18 point, including Dr. Chan, isn't that right?

19 A Yes.

20 Q So there were more than ample doctors to run
21 that practice, were there not?

22 A Yes.

23 Q At the time you joined his practice, Dr.

1 Osheroff had about the same number of patients as
2 he had some months previous, isn't that correct?

3 A I think that is correct, that had not been
4 changed.

5 Q So by bringing in two new people it was obvious
6 that Dr. Osheroff wanted to cut back a little, isn't
7 that correct?

8 A Are you asking for a conclusion?

9 Q Yes.

10 A It would appear to me he wanted some help.

11 Q But in a practice that two doctors could have
12 run, having four doctors it was clear there wasn't
13 enough to keep everyone busy full time, isn't that
14 correct?

15 A I felt there were more than enough doctors to
16 handle the practice.

17 Q And he was the boss, was he not?

18 A Yes.

19 Q If he wanted you to make rounds and not him,
20 it's up to him to say that, wasn't it?

21 A Yes.

22 Q He had the authority, as far as you understood,
23 if he said look, I don't want to go on hospital rounds,

1 you do it and you do it, to give that kind of
2 instruction, did he not?

3 A I would have accepted his pronouncements as
4 long as I thought it was in good patient care.

5 Q Was it bad patient care for you to make rounds?

6 A No.

7 Q Was it bad patient care for Dr. Tolkan to make
8 rounds?

9 A No.

10 Q Was it bad patient care for Dr. Chan to make
11 rounds in the unit?

12 A No.

13 Q Was it bad patient care for Dr. Goldberger to
14 come and make rounds in the unit?

15 A No.

16 Q And you had found out, before you ever joined
17 Dr. Osheroff, that National Medical Care had recently
18 purchased the unit, had you not?

19 A Yes.

20 Q In fact, the unit was still in flux from the
21 changes being brought about by having brought in a
22 full time administrator from National Medical Care,
23 isn't that correct?

1 A The administrator was there when I got there.
2 I didn't notice a great deal of flux in an adminis-
3 trative way. I noticed confusion that was there, not
4 flux because a new administrator had been put in.

5 Q You say you set up time schedules, in fact
6 before you got there, there were a certain amount of
7 time schedules, were there not?

8 A In the dialysis unit?

9 Q Yes.

10 A I have no way of knowing.

11 Q You know Dr. Goldberger was making rounds
12 certain days, do you not?

13 A Yes.

14 Q You didn't set that up, Dr. Osheroff set that
15 up, isn't that correct?

16 A Between Dr. Chan and Dr. Goldberger, they had
17 set times to see those patients.

18 Q So there was a schedule before you got there,
19 wasn't there?

20 A In that respect, yes.

21 Q You heard Dr. Tolkan testify, as far as you
22 knew, the patients were getting adequate medical care
23 before you guys there, do you disagree with that?

1 A It's a hard question to answer because I have
2 some question whether they were in the dialysis unit.
3 There were lots of basic problems with patient
4 communication and dissatisfaction. When you say
5 adequate, it wasn't satisfactory to me.

6 Q In fact, it was satisfactory enough for you to
7 say I will keep your practice and I will wait for you
8 to come back, wasn't it?

9 A Those are two separate things.

10 Q But you said those things when he went to the
11 hospital, didn't you?

12 A I said I would maintain his practice until he
13 would be able to participate fully in the practice.

14 Q So from your observation of the man during
15 the six months of practicing with him, he was a
16 competent doctor or you wouldn't have agreed to stay
17 with him, isn't that correct?

18 A I had questions, but I was assuming that the
19 problems he demonstrated were related to his depression.
20 What I saw as a physician in Dr. Osheroff, I was not
21 ready to accept as a physician after he came back.

22 Q Now you say you were given a contract to sign,
23 do you recall that?

1 A Yes.

2 Q That contract had a non-compete clause, did
3 it not?

4 A Yes.

5 Q So it was perfectly plain to you that he and
6 his lawyer were interested in a non-competitive
7 situation when they hired you?

8 A Yes.

9 Q Did you feel by not signing that contract you
10 were not bound by the non-competitive situation, that
11 you could, as an employee, set up competition from
12 within?

13 A I felt if I had signed the contract, I would
14 have agreed to it. I didn't sign it. I didn't make
15 any statement either way by not signing it.

16 Q You never went to Mr. Westerman and said I
17 do not agree with the non-compete clause, did you?

18 A That was one of the clauses I had a question
19 with- but that was not the main reason I didn't sign it.

20 Q You didn't mention that in your direct
21 examination, did you?

22 A Why I didn't sign the contract?

23 Q Yes, that wasn't the reason you gave at all.

1 A No, it was because of the partnership stipu-
2 lation, that was not in there, but there were other
3 reasons I didn't sign it.

4 Q And it was clear with regard to the partnership
5 you wouldn't get that for at least four years, was
6 it not?

7 A I think that's correct.

8 Q You say that you and Ray Osheroff made rounds
9 together originally, is that correct?

10 A Yes.

11 Q There is nothing wrong with that, is there?

12 A No.

13 Q You were just out of fellowship, were you not?

14 A Yes.

15 Q Perfectly valid for a senior doctor to make
16 rounds with a person just out of fellowship and just
17 starting in the business, isn't it?

18 A I had no objection to that. I thought that
19 was good.

20 Q Did he ever make rounds without you?

21 A Yes.

22 Q This would be in June, right?

23 A Yes.

1 Q What about July when Dr. Tolkan came?

2 A I think he made a few rounds by himself.

3 Q A few rounds in July?

4 A Yes.

5 Q By August and September, according to you, he
6 had stopped making rounds, is that correct?

7 A I believe that is correct.

8 Q You heard Sue Smith testify that he made rounds
9 regularly for a matter of months, apparently she is
10 wrong, is she not?

11 A What time period?

12 Q In August and September.

13 A If he did, it was very infrequent.

14 Q Were you at her deposition?

15 A Yes.

16 Q Did you hear her state that through the end of
17 October he made rounds regularly?

18 A I also heard --

19 Q Did you hear that, sir?

20 A Yes.

21 Q You knew it was wrong at the time, did you not?

22 A What do you mean wrong?

23 Q That he hadn't been making rounds regularly

1 through the end of October.

2 A It was my understanding that he made very in-
3 frequent rounds, if any.

4 Q In addition to very infrequent rounds, you
5 testified that when he is supposed to be on call was
6 not available sometimes, do you recall that?

7 A That was a problem that I was facing frequently.

8 Q He was only on call every third weekend, isn't
9 that correct?

10 A That's the brief period of time when we tried
11 to get a schedule going, most of the time it didn't
12 work that way.

13 Q During that brief period of time, how many
14 times would you expect him to be called to Alexandria
15 intensive care unit, that would be very infrequent,
16 would it not?

17 A It would be fairly infrequent.

18 Q So Sue Smith couldn't have seen him regularly
19 in the intensive care unit taking into account he
20 wasn't making rounds regularly and infrequently got
21 called to the ICU.

22 A I don't know what you mean regularly.

23 Q More than three or four times.

1 A In a month?

2 Q In a period of three or four months when he
3 was going through this depression.

4 A During the fall of the year, I would not suspect
5 that he was there more than once or twice a month.

6 Q You say the scheduling wasn't working; as a
7 doctor you have testified that you recognized he was
8 depressed, is that correct?

9 A Yes.

10 Q You recognize, as a doctor, that a person in
11 the throes of a severe depression would have a
12 difficult time keeping any schedule, do you not?

13 A Yes.

14 Q Regimentation would be almost impossible for
15 a man in the throes of a deep depression, isn't that
16 correct?

17 A Yes.

18 Q His pacing was consistent with a man in deep
19 depression, isn't that correct?

20 A That is the first time I have ever heard of it
21 or seen it. I have never seen it.

22 Q You said during this period in the autumn of
23 '78 he continually voiced his concern about whether

1 he got a good deal from NMC, concerns about the dollar
2 value of the business, number of patients, and things
3 along that line, isn't that right?

4 A That's right.

5 Q He was telling you, was he not, that he was
6 very concerned about his business, about his practice,
7 isn't that correct?

8 A Yes.

9 Q Didn't you testify that in phone calls and
10 visits this was an absolute pattern with this man?

11 A That's right.

12 Q And yet in March you started setting in gear
13 the mechanism to take part of his practice away from
14 him, why is that?

15 A You are talking about the dialysis unit?

16 Q Yes.

17 A The dialysis unit was not competing with Dr.
18 Osheroff, it was competing with National Medical Care.
19 Dr. Osheroff does not own the unit.

20 Q Dr. Osheroff got extra money according to
21 the number of patients who were going through the unit,
22 did he not?

23 A Extra money?

1 Q He got paid as the doctor seeing the patients
2 in the unit, did he not?

3 A He got the professional fees, that's right.

4 Q And if a patient left that unit and went to
5 another unit, he stopped getting the professional
6 fees, didn't he?

7 A Unless he followed the patient to the other
8 unit, then he would get the full professional fee.

9 Q All these conversations with you about his
10 psychiatric treatment, about his going to see Dr.
11 Wellhouse, about his business, they were of a personal
12 nature, were they not?

13 A I felt they were, apparently he didn't.

14 Q The man took you deep into his confidence,
15 didn't he?

16 A Me along with others.

17 Q Did he go to anyone else's house every night
18 in the week?

19 A He couldn't have, he was at our house.

20 Q So you are the only one he went to that
21 frequently, isn't that correct?

22 A That's correct.

23 Q Did he go make rounds with other people and

1 sit and talk with them on rounds?

2 A He did talk to other physicians frequently
3 about his personal problems.

4 Q Who did he make rounds with?

5 A He made rounds with me.

6 Q Do you know if he asked another physician to
7 go see Dr. Wellhouse with him at any time?

8 A No, he didn't.

9 Q And you were the physician that helped transport
10 him to Chestnut Lodge, were you not?

11 A That's right.

12 Q So as far as you versus anyone else, you were
13 the major confidant he had during the autumn and
14 early winter of 1978, isn't that true?

15 A I would say I was the major one, but not the
16 only one.

17 Q In fact, when his calls were restricted, you
18 were the only one they would let him call, aside from
19 his mother, isn't that correct?

20 A I don't know.

21 Q Do you know of anyone else he was calling?

22 A I don't know whether he was calling Mr. Notaris
23 or Mr. Westerman.

1 Q Let's include those two, do you know anyone
2 else he called beside the four of you, his mother,
3 Notaris, Westerman, and yourself?

4 A I don't know of anyone else.

5 Q Aside from you four, he was isolated from the
6 world, was he not?

7 A That was the impression I got from talking
8 with people at Chestnut Lodge.

9 Q As far as the day to day workings of that unit,
10 he was solely dependent on you to give him information of
11 what was happening at the Northern Virginia Dialysis
12 Center, was he not?

13 A He could get the financial information from
14 Mr. Notaris. I did not know that Dottie Smith was not
15 allowed to see him. Most of the information did come
16 from me, yes.

17 Q You gave him very little information, didn't you?

18 A No, I answered his questions.

19 Q Aside from answering his questions, did you
20 volunteer a lot of information?

21 A About the dialysis unit?

22 Q Yes.

23 A I told him about the -- I tried to, I tried to

1 talk about patients, but he was not interested.

2 Q In the eight months he was in Chestnut Lodge,
3 you only went to see him three times, isn't that
4 correct?

5 A Three that I can remember.

6 Q And the last two or three months he was at
7 Chestnut Lodge, you didn't see him once, did you?

8 A That's right.

9 Q During the whole summer of 1979, you didn't
10 see him once.

11 A It was two months or so.

12 Q In fact, once you got yourself your raise to
13 a hundred thousand dollars and got him to sign the
14 slip that you were now acting medical director, you
15 didn't go see him again after that, did you?

16 MR. PLEDGER: I have to object to the form of
17 the question. Again, we take and telescope everything
18 as though there was no time interval between those
19 things happening, and it is an impossible type of
20 question to answer, unless you go into a very long
21 answer to put things in the timeframe. I think we
22 should ask questions and ask them properly.

23 MR. HIRSCHKOP: On cross examination, I think

1 it is a perfectly valid question, your Honor.

2 THE COURT: Rephrase the question.

3 Q While he was in the mental hospital, you got
4 a raise to \$100,000, isn't that correct?

5 A Yes.

6 Q How long after he went in the mental hospital
7 did you get that raise?

8 A It might have been a month or two.

9 Q And you were the one who told Dottie Smith to
10 make out those checks in a larger amount, isn't that
11 correct?

12 A No. Any raise went through Mr. Notaris and
13 Mr. Westerman, as per the agreement in Mr. Westerman's
14 office.

15 Q Did you ever have any written request for that
16 raise?

17 A No.

18 Q Do you have any written confirmation for that
19 raise?

20 A No.

21 Q Do you have anything in writing to show that
22 you consulted Westerman or Notaris at all about that
23 raise?

1 A No.

2 Q Do you have anything in writing to show you
3 consulted anybody about Tolkan's raise?

4 A No.

5 Q Other than the letter that Mable Lowrey had,
6 do you have anything in writing to show that you
7 consulted anybody about her four thousand dollar raise?

8 A Nothing in writing.

9 Q As the person who was acting as the guardian
10 or taking care of the practice while he was in a
11 mental insitution, did it not seem strange to you
12 that this secretary, Mabel Lowrey, got a four thousand
13 dollar raise?

14 A I think it was three thousand dollars.

15 Q How much was she earning, twelve, thirteen
16 thousand?

17 A I think the final figure was seventeen, it was
18 three or four thousand.

19 Q She went from thirteen to seventeen, did she
20 not?

21 A I would have to see the letter.

22 Q As the person who was taking care of the
23 practice, didn't it seem odd to you that she got a

1 substantial raise?

2 A It seemed odd, but there was a close relation-
3 ship, and she was one of the confidants of Dr.
4 Osheroff, and I referred that to Mr. Notaris and Mr.
5 Westerman; any raises, any purchases went through
6 those two fellows.

7 Q Can you show us anything in writing to sub-
8 stantiate your testimony that you referred it to Mr.
9 Notaris and Mr. Westerman?

10 A I never did anything like that in writing.
11 The only notes I have are medical.

12 Q Also within the first couple of months he was
13 in the mental institution, you got a letter signed
14 appointing you the acting medical director, isn't
15 that correct?

16 A Yes.

17 Q Where was that letter typed?

18 A Probably it was typed in Dr. Osheroff's office.

19 Q Who dictated the letter?

20 A As I recall, I and Mr. Westerman had discussed
21 the letter.

22 Q Who dictated the letter, who decided what
23 language went on that piece of paper?

1 A I think I did.

2 Q And you wanted that letter, did you not?

3 A There was a reason I wanted it and a reason
4 Mr. Westerman wanted it.

5 Q You, in fact, wanted the letter, did you not?

6 A There is a reason I wanted it and a reason
7 Mr. Westerman wanted it.

8 Q You, in fact, requested the letter, did you not?

9 A I called Mr. Westerman and we discussed it,
10 and he told me it was important from his point of
11 view to have the letter.

12 Q At the time you called him, it was to request
13 that letter, was it not?

14 A That's correct.

15 Q And you initiated the call, did you not?

16 A As I remember, I did.

17 Q Prior to going into the mental institution,
18 Dr. Osheroff had several discussions with you about
19 whether or not he should be institutionalized, did
20 he not?

21 A Yes.

22 Q You demanded that he be institutionalized,
23 did you not?

1 A No. I told him as it look from my perspective,
2 the only way to save himself was to be institutionalized.
3 My point of view was if he didn't, then I would have
4 to leave, this was just before he went in. To me he
5 was suicidal, and I thought he was going to commit
6 suicide, and I couldn't continue doing what I was doing
7 if he did not take that kind of therapy.

8 Q Did he ever try to commit suicide?

9 A In a way he did, he was a very heavy drinker,
10 and took a lot of drugs.

11 Q Was he ever committed to a hospital for treat-
12 ment for those drugs, overdose, or anything like that?

13 A No.

14 Q Did you ever treat him for overdosing on drugs?

15 A No.

16 Q With regard to going into the mental institution,
17 you made it clear that you would no longer accept
18 out patient therapy, he had to go into the mental
19 institution, that was the price of your staying, wasn't
20 it?

21 A I was not going to stay unless he took that
22 form of therapy. He had tried everything else, out
23 patient, he had tried drugs, hypnosis, and continually

1580

1 worse and worse. I couldn't see any other alternative.

2 Q In fact, you and he went to Marty Gannon in
3 early December of 1978?

4 A I don't know whether that was the date.

5 Q It was sometime in December of 1978, wasn't it?

6 A Yes.

7 Q And it was certainly at least two weeks before
8 he went into the mental institution, was it not?

9 A I would think so.

10 Q At that meeting, Marty Gannon said to you why
11 don't you try some more out patient therapy, and you
12 said no, he absolutely must go into the mental
13 institution or I am leaving.

14 A At that point, I don't know whether I used those
15 words, I told him it was important to me to have in
16 patient therapy.

17 Q REgardless of the words, did you not convey to
18 Marty Gannon that unless he went into a mental
19 institution, you were leaving?

20 A I don't remember specifically.

21 Q If Marty Gannon said that, you wouldn't dispute
22 it, would you?

23 A I didn't force Dr. Osheroff to go into the

1 mental hospital. I, also, could not practice with
2 him under those present circumstances. If Mr. Gannon
3 had given me another rational alternative, I would
4 have listened.

5 Q Marty Gannon suggested very strongly, did he
6 not, that Dr. Osheroff should get further out patient
7 therapy?

8 A He might have. This was after a year of out
9 patient therapy, and years of drugs.

10 Q In your conversation with Gannon, you also told
11 him that you would take care of the practice for
12 the man while he was gone, did you not?

13 A I would take care of the patients and the
14 practice, and as long as it took for him to get well,
15 assuming he would come back and practice adequately.

16 Q There is no question that in December, 1978
17 it was his practice, is that correct?

18 A That's right.

19 Q There is no question in December '78 they were
20 his patients, isn't that correct?

21 A I have trouble dealing with the phrase whose
22 patients they are. To me a patient is whoever they
23 want to be. I have trouble with the patients being

1 looked at as property, ownership of patients. A
2 patient is affiliated with me today, he is my patient;
3 if he changes tomorrow, he is somebody else's patient.

4 Q Until he changes he is your patient.

5 A If a patient wants a certain physician, he
6 is a patient of that physician.

7 Q In May of 1978, you had never lived in Northern
8 Virginia, had you?

9 A No.

10 Q Did you have a wide familiarity with doctors
11 practicing in Northern Virginia?

12 A No.

13 Q Did you have any close personal contacts who you
14 expected would give you a lot of referrals when you
15 first came to Northern Virginia?

16 A No.

17 Q You were a total stranger to this area, were
18 you not?

19 A No. I grew up in Montgomery County.

20 Q Your professional contacts in Northern Virginia,
21 to say the least, were extremely limited.

22 A That's right.

23 Q And you came here to practice because it was th

1 only job you could get in your specialty in the
2 metropolitan area, isn't that true?

3 A The jobs were limited. For the type of job I
4 wanted, there was only one opening. I could have done
5 other things and been in the area.

6 Q But not as a nephrologist?

7 A I might have gotten a faculty position at
8 GW. I was offered a faculty position at Ohio State,
9 going academic was one of the alternatives.

10 Q Were you offered a faculty position at GW?

11 A No, I didn't pursue it.

12 Q When you first moved to Northern Virginia and
13 started making rounds for Dr. Osheroff, you started
14 meeting doctors, did you not?

15 A Yes.

16 Q But still you were basically a stranger to the
17 area?

18 A Yes.

19 Q He was getting most of the referrals in the
20 Alexandria area, was he not?

21 A Absolutely.

22 Q Now with regard to drug therapy, you said that
23 he had tried it and it hadn't worked, what drugs was

1 he given at Silver Hill?

2 A I believe he was given phenathiazines.

3 Q Was he given those prior to 1979?

4 A He had had phenathiazines in the past, but I
5 am not sure whether there was a particular type of
6 phenathiazine.

7 Q You mentioned that he had Sinequan, is that
8 correct?

9 A Yes.

10 Q Do you consider Sinequan to be a phenathiazine?

11 A I think it is, I am not sure.

12 Q You don't know, do you?

13 A I think it is an antidepressant.

14 Q Are phenathiazines antidepressants?

15 A Sometimes.

16 Q They are not, are they?

17 A Sometimes.

18 Q What are they chiefly used for?

19 A They treat psychiatric disorders, agitation.

20 Q They are used for psychosis, not depression,
21 isn't that correct?

22 A There are different forms of depression, there
23 are agitated forms of depression as well that can be

1 treated with phenathiazines.

2 Q Prior to his getting drug therapy in 1978,
3 you know he was not in psychotic depression, do you not?

4 A I don't know that.

5 Q Didn't you tell the judge this morning that
6 he wasn't agitated, he was more passive aside from
7 the pacing?

8 A At what time?

9 Q In 1978, it wasn't until he got these drugs
10 that he became agitated.

11 A The point is you can be depressed and be agitated,
12 you can be depressed and pacing, you can be depressed
13 and not agitated, there is no relationship.

14 Q You wouldn't want to stake your professional
15 reputation on whether phenathiazine is an antidepress-
16 sant, would you?

17 A I would stake my reputation that it can be
18 used in an agitated form of depression.

19 Q It would have to be extremely agitated, would
20 it not?

21 A You wouldn't use it unless a patient was agitated,
22 it's a circular argument.

23 Q Doctor, what specific drugs was he given at

1 A I don't know what he was given at Silver Hill.

2 Q In what dosage was he given Sinequan prior
3 to going to Silver Hill?

4 A I don't know what the dosage was.

5 Q You don't know if he got adequate dosage, do you?

6 A No.

7 Q You don't know whether he had adequate drug
8 therapy in 1978, do you?

9 A I am not a psychiatrist. I do know that he
10 represented to me that he was going to an expert in
11 depression, was going to several experts in depression
12 around the country.

13 Q You know a lot of so-called experts don't
14 turn out to be so, that's true, is it not?

15 A Whether they are board certified or not, that
16 is true.

17 Q In fact, you don't know what that doctor pre-
18 scribed in New York for him, isn't that correct?

19 A It is my understand it was Sinequan.

20 Q How did you find out, did you talk to the doctor?

21 A No. I saw a bottle when he came back.

22 Q AND the only knowledge you had of what drugs
23 he got in '78 was seeing some bottles laying around,

1 isn't that true?

2 A And what Dr. Osheroff told me.

3 Q Did he sit down and discuss with you the
4 dosage he was getting of Sinequan?

5 A No.

6 Q Did he discuss with you the specific drug he
7 was getting other than Sinequan?

8 A No.

9 Q Did he ever tell you exactly what drugs he got
10 in Silver Hill?

11 A No.

12 Q You mentioned something about a biopsy in 1978,
13 actually when that occurred there would have been a
14 number of other people there, would there not?

15 A Yes.

16 Q Hospital personnel?

17 A Yes.

18 Q No hospital personnel ever complained about a
19 man sticking needles in someone for thirty to forty-
20 five minutes, did they?

21 A There was never a formal complaint.

22 Q We have only your word for the fact that that
23 happened, isn't that correct?

1 A If you allow us to have another witness, I
2 can give you another word.

3 Q Did you ever enter that in a record anywhere,
4 in that patient's chart, for instance?

5 A It was really Dr. Osheroff's patient.

6 Q Doctors don't own patients, didn't you tell me
7 that a few minutes ago?

8 A But the patient had a relationship with Dr.
9 Osheroff, he was following the patient.

10 Q Who performed the procedure, you did, right?

11 A Both of us.

12 Q You were the one who ultimately performed the
13 procedure, right?

14 A We both performed it, I was successful.

15 Q As the one who performed even a part of the
16 procedure, you had an obligation to see the medical
17 record was full and accurate, did you not?

18 A Yes.

19 Q You didn't do that, according to your testimony
20 here. You never put a word in that medical record
21 of this thirty to forty-five minutes of probing around
22 with a pin.

23 A No, I didn't do that; why should I embarrass

1 Dr. Osheroff.

2 Q The first time you ever complained about it is
3 when you had the fight over who had the patients in
4 Prince William Dialysis Facility, isn't that correct?

5 A The first word about what?

6 Q About the biopsy procedure.

7 A It came up at the Executive Committee meeting.

8 Q It was after he fired you.

9 A That's right.

10 Q Well over a year after the supposed event?

11 A That's right.

12 Q You say that you never heard of Chestnut Lodge
13 prior to Dr. Osheroff's commitment, is that correct?

14 A Yes.

15 Q You lived all your life in Montgomery County,
16 is that correct?

17 A That's right.

18 Q You went to medical school in Baltimore, is
19 that correct?

20 A That's correct.

21 Q You went through your residency in Baltimore?

22 A Yes.

23 Q Your internship in Baltimore?

1 A How many psychiatric facilities are there in
2 the Maryland suburbs?

3 A The only other one in Baltimore is Enoch Grad,
4 but I had no relationship. The only reason I can tell
5 you that is because that is one of the psychiatric
6 hospitals I heard named at the same time I heard
7 Chestnut Lodge. I had no contact with any of those
8 placed while I was in training.

9 We had a psych unit at the University of
10 Maryland Hospital. I did psychiatry a couple of years
11 in Baltimore but the patients were in patients at the
12 hospital.

13 Q You say you did what in Baltimore for a
14 couple of years?

15 A Two years of my training in medical school I
16 took psychiatry rotation at the in patient facility
17 at the University of Maryland.

18 Q And still you assert that you never heard of
19 Chestnut Lodge during that time?

20 A That's right.

21 Q You know Chestnut Lodge has been around for
22 a long, long time, do you not?

23 A It has a good reputation, I understand.

1 Q Where do you understand that from?

2 A Dr. Osheroff told me.

3 Q Before he went in.

4 A Just after I heard it, he mentioned it's a
5 good place to go, and I talked about it with his mother.

6 Q She's from New York, isn't she?

7 A Yes.

8 Q You testified that during the time he was there
9 he got worse, did he not?

10 A In my mind, he showed some deterioration after
11 he got there.

12 Q What treatment were they giving him at
13 Chestnut Lodge?

14 A My understanding was daily visits with a
15 psychiatrist, and I believe he had ward meetings, a
16 group meeting once or twice a week with Dr. Dingman.

17 Q No medication whatsoever, isn't that correct?

18 A As far as I knew, he did not get medication.

19 Q As far as you know, Chestnut Lodge doesn't
20 believe in medication for depressed people?

21 A That's what I came to find out.

22 Q And you consider that to be a good institution?

23 MR. PLEDGER: Your Honor, I am going to have to

1 object to this. I don't want to get involved in other
2 litigation and I don't want any questioning here. It
3 is my understanding that Dr. Osheroff is contemplating
4 or has authorized his attorneys to file suit against
5 Chestnut Lodge. I don't think we ought to take
6 testimony here as to what this doctor's opinion of
7 Chestnut Lodge is.

8 THE COURT: Only to the extent that it is
9 relevant to the issues in this case.

10 MR. HIRSCHKOP: He's the one who said he heard
11 it was a good institution unsolicited.

12 Q Is that a good institution that will not give
13 medication to a depressed person?

14 THE COURT: Objection sustained.

15 Q Do you have any specific knowledge of depression?

16 A Me, I've been depressed.

17 Q I assume you are trying to be cute. You have
18 never been depressed as this man was back in 1978,
19 have you?

20 A No, I have been depressed, but I have never
21 been that depressed.

22 Q You have never been depressed enough to go
23 into an institution, have you?

1 A No.

2 Q You have never been depressed enough to get
3 medical treatment for depression, have you?

4 A When I was at the University of Maryland Hos-
5 pital and took my rotation, part of it was discussions
6 with a psychiatrist there. I did have some depression
7 when I was in medical school, but not to the degree
8 that Dr. Osheroff had.

9 Q Do you claim to have a specialized knowledge
10 of depression more than the average doctor?

11 A No.

12 Q You heard Dottie Smith testify about how Mabel
13 Lowrey got her raise, did you not, that you came in
14 and ordered it and she had a disagreement with you
15 about it, do you remember that?

16 A I remember she was concerned that I called
17 her Mrs. Osheroff and flipped it on her desk.

18 Q You completely deny that happen, right?

19 A I don't remember calling her Mrs. Osheroff and
20 whether or not I flipped something on her desk, but
21 I showed her the letter. I think I also made Mr.
22 Notaris or Mr. Westerman aware of it.

23 Q You think you did, is there anything in writing

1 to show that at all?

2 A No.

3 Q Not only were three raises given during the first
4 two months Dr. Osheroff was gone, but you got the
5 new van, is that correct?

6 A That's right.

7 Q Anything in writing to show you were authorized
8 to get a new van?

9 A No.

10 Q And you bought new rugs for the office, isn't
11 that correct?

12 A They were ordered but the order was cancelled.

13 Q And then someone finally put them in, didn't
14 they?

15 A The rugs were not there when I left.

16 Q Dr. Greenspan, Dr. Osheroff was depressed,
17 he wasn't completely crazy, was he?

18 A I thought --

19 THE COURT: What does completely crazy mean?

20 Q Totally unable to function, put it that way.

21 A He had problems with certain activities of
22 daily living.

23 Q For instance, when you went to see him with Mr.

1 Westerman, Mr. Westerman offered to sell the practice
2 to you, do you think he was able to comprehend what
3 Westerman was saying on that day?

4 A I had questions.

5 Q Did you have an opinion whether he was or
6 was not able to comprehend? When you took this offer
7 seriously that Westerman made in the man's presence,
8 did you have an opinion whether he was able to com-
9 prehend what Westerman was saying?

10 A I had questions; that's why we thought a
11 guardian would be important.

12 Q Did you have such an opinion, yes or no?

13 A I have questions as to whether he understood
14 what was going on.

15 MR. HIRSCHKOP: Your Honor, can we have an
16 answer to that question; it is a very simple question
17 whether or not he had such an opinion?

18 THE COURT: Can you answer that?

19 A Repeat the question once more.

20 Q Do you have any opinion whether or not Dr.
21 Osheroff was able to comprehend what Westerman was
22 saying in the meeting when you say Westerman offered
23 to sell you the practice?

1 A Yes, I have an opinion.

2 Q What is your opinion?

3 A I don't think he was able to comprehend it fully.

4 Q He just didn't understand, is that correct?

5 A He wasn't paying attention; in other words,
6 at the time I was there, his mind was elsewhere.

7 Q When he would call you when in these conversations
8 when he first went in and he would ask you about the
9 practice in terms of number of patients, and the
10 reasonableness of selling to NMC, these were thoughts
11 that he had before, were they not?

12 A Yes.

13 Q And they showed you that he at least understood
14 or recalled what he had done with NMC, did they not?

15 A Yes, he seemed to be consistent in the same
16 questions and the same answers. The problem was that
17 they were the same, thousands of times over.

18 Q Thousands of times, that's a little exaggerated,
19 isn't it?

20 A I hardly think so.

21 Q After he was in the hospital two weeks they
22 limited his phone privileges, isn't that correct?

23 A It was a short period after he went in, it

1 might have been two weeks.

2 Q It might have been days?

3 A It might have been.

4 Q But you know it wasn't two months.

5 A I would say I knew it wasn't two months; it
6 might have been a month, up to a month.

7 Q After that, he called you how frequently?

8 A We had contact once a week.

9 Q In fact, when you got to July and August, you
10 didn't have contact once a week, isn't that correct?

11 A That's right.

12 Q It got to be more like once for the whole
13 summer?

14 A The last two months, we didn't have any contact.

15 Q You didn't talk to him on the phone or see him
16 in person during July and August, isn't that correct?

17 A That's right.

18 Q And that's when you were sending out all these
19 letters to get support for the Prince William Dialysis
20 Facility, isn't that correct?

21 A I believe that is what I was doing.

22 Q You never sent him a copy of one of those
23 letters, did you?

1 A I was not sure, at that time, he would under-
2 stand what was going on.

3 Q You never sent him a copy of the application,
4 did you?

5 A No.

6 MR. HIRSCHKOP: Could you put Exhibits 12, 18,
7 19, 22 through 24, 26, 27, 28 and 29 before the Court?
8 The Court has not yet admitted these specific exhibits.

9 Q I would like to put some exhibits before you,
10 sir. You have Exhibit No. 12, a letter of July 17,
11 1979, do you see that, sir?

12 A Yes.

13 Q You received that letter in the course of your
14 preparations for the Prince William Dialysis Facility,
15 did you not?

16 A Yes.

17 Q And see Exhibit 18, a letter of August 4, 1979?

18 A Yes.

19 Q Those were also part of the same preparations,
20 weren't they?

21 A Yes.

22 Q Exhibit No. 19, a motion of August 7, 1979?

23 A Yes.

 Q From the Prince William County Board of Supervisors

1 that was also part of the same preparation, was it not?

2 A This was in the certificate of need application.

3 Q Exhibit 22, a letter from George Brown to
4 Greenspan of August 10th, also part of that preparation?

5 A I don't recall 22 specifically.

6 Q It starts off "Thank you for your letter of
7 August 1 giving me additional information about your
8 intention of opening a new dialysis center in Prince
9 William County. You did write the Chamber of Commerce
10 about such intention, did you not?

11 A Yes.

12 Q You don't question this is the letter you got
13 back that you supplied us?

14 A I don't remember seeing it, but I can't argue
15 with it being authentic.

16 Q And the letter from Ann Thompson of August 10,
17 1979, part of the same preparation, Exhibit 23?

18 A Yes.

19 Q And the resolution of the dialysis center of
20 Prince William County signed by Harry Parrish of the
21 City of Manassas of August 13, 1979, part of the same
22 preparation, was it not?

23 A Yes.

1 Q Let's look at Exhibit 24. Did you appear
2 before that body?

3 A I believe I did.

4 Q I ask you to read in the record the fifth
5 paragraph.

6 THE COURT: It's not in evidence yet.

7 Q This was secured as part of your preparation
8 to open the Prince William facility, is that correct?

9 A Yes.

10 MR. HIRSCHKOP: I would move Exhibit 24 in
11 evidence, your Honor.

12 MR. PLEDGER: No objection.

13 THE COURT: Exhibit 24 is admitted.

14 Q Now, would you read into the record the next to
15 the last paragraph?

16 A Now, therefore, be it resolved by the council
17 of the City of Manassas meeting in regular session
18 the 13th day of August, 1979 that the efforts of the
19 Northern Virginia Dialysis Center, Inc. to establish
20 a dialysis center in Prince William County be endorsed.

21 Q You took that document, with that paragraph
22 in it, and made it part of the application, did you not?

23 A Yes.

1 Q You read it, did you not?

2 A Yes.

3 Q Did you make any attempt in writing to correct
4 the statement in that paragraph that it was the
5 efforts of the Northern Virginia Dialysis Center to
6 establish a dialysis center in Prince William County?

7 A Yes, but later.

8 Q What did you do in writing?

9 A I wrote a letter later on to clarify it.

10 Q That was February or March of 1980, was it not?

11 A That's right.

12 Q In fact, your application was pending for
13 some months by that time, was it not?

14 A That's right.

15 Q Why did you wait several months to file that
16 correction?

17 A I would like to give a bit of a lengthy answer
18 to that, if I may.

19 Q Certainly, I want a full answer.

20 A I think the point about all the letters and
21 the Prince William Dialysis Facility is the following --

22 Q Pardon me. Would you just answer me with
23 regard to this one document?

1 MR. PLEDGER: That wasn't the question.

2 THE COURT: The question was why did you wait
3 until February or March to clarify this.

4 MR. HIRSCHKOP: I am referring to the paragraph
5 in that document, your Honor.

6 A Because it didn't make any difference. I can
7 explain why it didn't make a difference in my mind.

8 Q In fact, the application was approved before
9 you ever wrote the letter?

10 A You mean the letter of February?

11 Q Let me be clear. YOU filed this resolution
12 as part of your application, you said that.

13 A Yes.

14 Q And that application was approved in January
15 '80, wasn't it?

16 A When you say approved, do you mean for a
17 provider number or for a certificate of need?

18 Q What did you get in January of '80?

19 A I think we got the state approval, but we had
20 not gotten the federal approval yet.

21 Q And you had never notified the state prior to
22 that time that this document was inaccurate, had you?

23 A I notified the authorities at the board meeting

1 the HSA that it was inaccurate, not the statement
2 but the fact of the statement was inaccurate.

3 Q Did you ever in writing seek to have the city
4 council change this particular resolution which you
5 have alleged to be inaccurate?

6 A As far as I recall, I wrote Mr. Parrish in
7 February that it was in error.

8 Q At that point, you had this thing for some
9 six months, had you not?

10 A That's right.

11 Q Why did it take you six months to seek a
12 correction?

13 A In my mind, it didn't make a difference, and
14 the reason it didn't make a difference was the back-
15 ground being that Dr. Osheroff could not have a unit
16 in Prince William County; therefore, and this had been
17 told to me by Dr. Hampers, someone was going to have
18 a unit in Prince William County, there was need. If
19 Dr. Osheroff came back into the practice and was able
20 to practice medicine, then this would be my contri-
21 bution to the practice, as that's the only way he could
22 get in is through me.

23 If he didn't come back, he had told me multiple

1 times about my having the first right of refusal to
2 buy his practice, so to me it didn't make any difference.

3 Q Didn't Dr. Hampers tell you it did matter to
4 him and he didn't think a unit was necessary in Prince
5 William County?

6 A He told me Dr. Strauch had told him that he
7 felt there was no need.

8 Q Isn't it a fact Dr. Hampers told you that if you
9 were to take the right of first refusal you would be
10 bound by Ray's contract, and you couldn't open a
11 center there, either?

12 A He told me there was a problem with me having
13 an independent unit at the same time I was medical
14 director of a National Medical Care unit.

15 Q Isn't it a fact that you didn't write that
16 letter of clarification until you had been before
17 Judge Lewis and lost, and been told by the federal
18 judge that what you were doing was unethical?

19 A In my mind, the situation had been clarified
20 when I went before the board of the HSA and specifically
21 told them that this unit does not relate to National
22 Medical Care, or the Northern Virginia Dialysis Center,
23 or Dr. Osheroff. That had clarified it, as far as I

1 was concerned, and when the testimony came up in the
2 federal case that there was still concern and discussions
3 about it, that's when I wrote the letter.

4 Q Look at Exhibit 26, Greater Manassas Chamber
5 of Commerce, August 14, 1979. You received this as
6 part of your effort at that time to get support for
7 the Prince William Dialysis Facility, did you not?

8 A I don't remember submitting this particular
9 piece of paper in the application.

10 Q You received it as part of your efforts to get
11 the Prince William Dialysis Facility, did you not?

12 A I don't remember getting the minutes of the
13 meeting.

14 Q You know this was supplied to us by your counsel
15 in discovery, do you not?

16 A I don't know for certain, I can't argue.

17 Q Are you saying you have never seen this before,
18 you are totally unfamiliar with it?

19 A I don't remember seeing it. I can't argue
20 its authenticity.

21 Q Look at Exhibit 27, Minutes of meeting of
22 August 22, 1979.

23 A Yes.

1 Q You secured that, also, as part of the con-
2 tinuing effort to get the Prince William Dialysis
3 Center, did you not?

4 A I don't remember seeing these minutes.

5 Q Go back to 26 for a moment. Look at paragraph
6 number five, Mrs. Jett presented a letter from Dr.
7 Greenspan requesting an endorsement from the Chamber
8 of a kidney dialysis facility to be built on Davis
9 Ford Road. You, in fact, did make such a request as
10 set for therein, did you not?

11 A Yes.

12 Q Mr. Aholt recommended the Chamber support the
13 project and all agreed; in fact, they did so agree,
14 did they not?

15 A Yes.

16 Q That would appear to be an accurate reflection
17 of the actions taken by you and the Chamber, would
18 it not?

19 A Yes.

20 Q And the minutes of the meeting, Exhibit No. 27,
21 you see the bottom paragraph in the first page, do
22 you not, sir?

23 A Yes.

1 Q President Brown called upon the Executive
2 Director to make a report on the proposed dialysis
3 center in Prince William County.

4 That is consistent with your understanding of
5 what was happening at the time?

6 A Yes.

7 Q The Executive reports that the Chamber of
8 Commerce has been contacted by six patients or family
9 members.

10 To your knowledge, some patients or family
11 members were contacting the Chamber during that time,
12 were they not?

13 A Yes.

14 Q And that each indicated the hardship now involved
15 in seeking dialysis treatment in Alexandria.

16 You, in fact, had sent a letter around to the
17 patients of Northern Virginia Dialysis Center who were
18 residents of Prince William County for them to contact
19 people, had you not?

20 A Yes.

21 Q And that statement in these minutes is con-
22 sistent with that memo, is it not?

23 A Yes.

1 Q Do you want to see the memo, or are you clear
2 in your mind what I am talking about?

3 A You can ask me questions about it, but if
4 you are going to ask me questions, I would like to see
5 it.

6 Q I will show you our copy. This is the memo
7 you sent around to the patients, is it not?

8 A Yes.

9 Q And at the time, they were patients who were
10 being dialyzed at Northern Virginia Dialysis Center,
11 were they not?

12 A That's right.

13 Q Turn to the next page, the minutes of the
14 meeting, 27; The Executive then introduced Dr. Robert
15 Greenspan of Alexandria, Virginia.

16 You went to that meeting, did you not?

17 A Yes.

18 Q So you know these minutes are accurate as far
19 as they reflect on the dialysis facility?

20 A Yes.

21 (Brief recess)

22 Q I ask you to look at Exhibit 28, a letter from
23 George Brown, August 23, 1979; do you see that, sir?

1 A Yes.

2 Q You received that as part of your efforts to
3 establish Prince William Facility, is that correct?

4 A I assume I did.

5 Q In fact, that refers back to the minutes of
6 the meeting you were at, in the first paragraph, it
7 ties right into the meeting you went to?

8 A Which exhibit again?

9 Q Number 27.

10 A Yes.

11 MR. HIRSCHKOP: Your Honor, at this time, I
12 would submit into evidence Exhibits 12, 18, 19, 22,
13 23, 26, 27 and 28.

14 THE COURT: Any objection?

15 MR. PLEDGER: Your Honor, as to two of those
16 I do question their admission at this time. Your
17 Honor, Exhibit 26 is apparently the Minutes of the
18 Executive Committee of August 14 of the Chamber of
19 Commerce, and it has been the testimony of this witness
20 that he does not recall seeing this.

21 I recognize Mr. Hirschkop apparently feels as
22 though I gave them to him. I don't think that is
23 accurate, this is something they got from the Chamber.

1 Exhibit 27 is the minutes of the general
2 membership and the Board of Directors of the Chamber
3 of August 22, 1979, and again, the issue, is not, I
4 guess, whether Dr. Greenspan appeared there, but
5 whether these are documents that he generated, and they
6 are certainly not.

7 I would object to those.

8 MR. FUDELLA: Your Honor, may I respond to that
9 because I handled this. Both of these documents
10 were attached to a request for admissions during the
11 course of discovery, and they were admitted to be
12 authentic and also admitted to be public records by
13 the defendant.

14 MR. PLEDGER: The question that was asked by
15 Mr. Hirschkop of the witness was didn't you get these,
16 or weren't these generated by you in the course of
17 your application, which is not exactly accurate. I
18 object to them on that basis.

19 As to whether they are published records, I
20 believe they probably are. If they are introducing
21 them, at this time, as part of the public record that
22 Dr. Greenspan has testified that he appeared there,
23 so at least they are accurate in that they show he

1 appeared there on one date, and he wrote a request on
2 another date, I have no objection for that purpose.

3 THE COURT: Plaintiff's exhibits 12, 18, 19,
4 22, 23, 26, 27, and 28 are admitted. I have already
5 admitted 24.

6 MR. HIRSCHKOP: Thank you. We are withdrawing
7 29, your Honor, in case there is any question about it.
8 It seems to correspond exactly with 28.

9 Q Dr. Greenspan, you said that when you would
10 talk with Dr. Osheroff on the phone, you would hear
11 screaming in the background, is that correct?

12 A I assume the timeperiod is just after he went in.

13 Q Did it change at all later during the time he
14 was in Chestnut Lodge?

15 A No.

16 Q So during the eight months he was in Chestnut
17 Lodge whenever you talked to him on the phone, you
18 would hear screaming and loud noises in the back-
19 ground, is that correct?

20 A There were loud noises, and one particular
21 screaming woman that I could hear.

22 Q Did you consider that a good environment for
23 treatment of this man's disorder, from what you could
hear?

1 A As I said, I was concerned that he was not
2 getting better, that is why I called Mrs. Palacious
3 to relay my concerns.

4 Q You were concerned that he went to Silver
5 Hill, were you not?

6 A I was concerned about the transfer, that's right.

7 Q You objected to the fact that he went to Silver
8 Hill, did you not?

9 A I objected to the fact that I didn't know any-
10 thing about it. I wasn't told anything about the
11 transfer, and I didn't know anything about Silver Hill.
12 I was also told by Mrs. Palacious that he had to
13 get worse before he got better, this was their program.

14 Q She was a social worker, wasn't she?

15 A Yes, she was my line of communication.

16 Q Nothing stopped you from trying to contact the
17 psychiatrist, did it?

18 A I was told definitely not to talk to the
19 psychiatrist.

20 Q Who told you that?

21 A Mrs. Palacious.

22 Q You were so upset about his leaving that you
23 called up Dr. Dingman a week after he was gone, did
you not?

1 A I called to verify that he was transferred,
2 because this was something I had heard, and I first
3 wanted to find out had he been transferred, and why
4 and where.

5 Q What do you mean to verify, he called you from
6 Connecticut and said I'm at Silver Hill, didn't he?

7 A This is before he called me.

8 Q Didn't you say on direct that's how you found
9 out he went to Silver Hill, he called you?

10 A No, somebody told me.

11 Q Who told you?

12 A I can't remember specifically, but it might
13 have been Dottie or Kay.

14 Q You hadn't talked to the man for two months,
15 and out of the clear blue sky you come up with the
16 knowledge he's gone to Silver Hill?

17 A That's one of the things that concerned me.

18 Q Now you knew at Chestnut Lodge he had not been
19 getting better, did you not?

20 A From my viewpoint, he was not getting better.
21 I can't tell you psychiatrically whether he was getting
22 better.

23 Q And you knew there were people screaming in

1 the background, isn't that correct?

2 A There was one woman screaming in the background,
3 and there were sounds of voices. I didn't know where
4 he was calling from, whether it was an auditorium,
5 his room, or what.

6 Q And you knew he wasn't getting medication in
7 Chestnut Lodge, isn't that correct?

8 A That's what I was told.

9 Q And you knew nothing about Silver Hill, isn't
10 that correct?

11 A That's right.

12 Q Then how could you, as a responsible medical
13 person, object to Silver Hill without finding out
14 something about it?

15 A I objected after Dr. Dingman told me that he
16 had reservations about Dr. Osheroff being transferred.
17 He didn't feel it was appropriate.

18 Q When you objected, did you happen to have in
19 mind that if the man got better and came back that
20 one year period might not have run, and you might not
21 be able to get his medical practice?

22 A I was looking forward to him coming back from
23 the beginning.

1 Q You had made up your mind by the time he went
2 to Silver Hill that you would not practice medicine
3 with him.

4 A No.

5 Q You say the nurses all knew, they were getting
6 calls, is that correct?

7 A Early on after he was admitted to Chesnut
8 Lodge, nurses came to me and said they were getting
9 calls, and was he hospitalized.

10 Q Tell me which nurses on the unit he was calling,
11 at that time.

12 A I can't give you names, I believe it was the
13 shift leader.

14 Q Doctor, you have heard these nurses repeatedly
15 testify they didn't know where he was during that period
16 of time. They heard he was on vacation, that he was
17 abroad, you have heard that repeatedly, haven't you?

18 A That's what I kept telling them, that's probably
19 why they said it.

20 Q You heard them say that repeatedly, have you not?

21 A Yes.

22 Q Not one of them, in all this discovery, suggested
23 that he ever called them from a mental institution,

1 isn't that correct?

2 A I don't remember her saying that.

3 Q In light of that, do you want to reconsider your
4 prior answer, or can you give me the name of one
5 nurse he called from the mental institution?

6 A I do not want to reconsider my testimony.

7 Q Then give the name of a nurse he called.

8 A I can't.

9 Q Now you say the first visit to Chestnut Lodge,
10 you just had small talk, is that correct?

11 A That's right.

12 Q Isn't that the visit you said here, sign this
13 document making me the medical director?

14 A No.

15 Q When did you say that to him?

16 A It was a later visit, and I didn't say that.

17 Q You did bring that document for him to sign,
18 did you not?

19 A Yes.

20 Q And he signed it in your presence at your
21 request, is that correct?

22 A Yes.

23 Q Well, if his mental state was so questionable

1 in your mind that you couldn't send him a copy of all
2 these letters, you couldn't send him a copy of the
3 application, how could he reasonably sign that letter?

4 A That's a question that we had, I had mentioned
5 to Mr. Westerman. Mr. Westerman wanted him to sign
6 the document, also.

7 Q But guardians weren't appointed for him for
8 some months after that, isn't that correct?

9 A As far as I know.

10 Q You never had the guardians ratify that
11 action, did you?

12 A No, but it was imperative, at that time, to
13 have a medical director at the unit. There was no
14 official director, and it was my understanding from
15 Mr. Westerman that National Medical Care was concerned
16 that there was no one there, no official medical
17 director and they wanted one. Whether it was me or
18 someone else, they had to have someone at the helm.

19 Q Aside from National Medical Care, you were
20 content to have him sign the letter and you made no
21 other effort to get official ratification, isn't that
22 true?

23 A That's right. At that point, Mr. Westerman

1 was his representative to me and that was Mr.
2 Westerman's wishes.

3 Q Now, the second visit, you went with Mr.
4 Westerman, isn't that correct?

5 A I believe that is correct.

6 Q Did you drive out together?

7 A I don't think so.

8 Q You said on direct examination that you didn't
9 know the purpose of that visit, do you remember that?

10 A As I recall, I didn't know a specific reason
11 at that point.

12 Q Is it your testimony that you and Mr. Westerman
13 happened to show up coincidentally at the same time?

14 A No, there was a visit organized, but sitting
15 here I can't remember the purpose of the visit.

16 Q Who organized the visit?

17 A I don't remember.

18 Q You said on direct examination that a week after
19 you got to Alexandria, this would be early June of '78,
20 Ray offered to sell you the practice, did you mean to
21 say that?

22 A I don't believe that is what I said. What I
23 said was about a week after I got there, he was talking

1 about selling, not in a very specific or official way,
2 but he did offer in an official way just prior to
3 going into Chestnut Lodge, but throughout that time-
4 period he was making statements like he didn't want
5 to practice medicine any more.

6 He wanted to make sure I had the first right
7 of refusal, he's covered by National Medical Care, he
8 didn't want the Georgetown group in should he not come
9 back, those kinds of statements. I never really took
10 them seriously.

11 Q Now the second time you went to Chestnut Lodge
12 when Westerman was also there, you know that's not
13 the time he signed the letter making you medical
14 director, do you not?

15 A I don't know that for sure.

16 Q You know that was not done in Westerman's
17 presence, do you not?

18 A I don't think it was.

19 Q So it must have been the third time you went
20 there that he signed the letter.

21 A Again, if it wasn't the second, it was the third.

22 Q The second and third visits were fairly
23 close in time, were they not?

1 A Certainly within a month.

2 Q Now the letter to Dr. Hampers that you dictated,
3 do you remember about when he signed it?

4 A I would say within a few months after he got in
5 Chestnut Lodge.

6 Q That was the second or third time you saw him?

7 A That sounds right.

8 Q So you didn't see him again after April of 1978.

9 A There might have been another visit after
10 that, but I don't remember.

11 Q You can't point to such a visit, can you?

12 A No, I don't specifically remember.

13 Q You can't remember seeing this man any time
14 April '78 or later until he finally shows up back in
15 October '78.

16 A I can't specifically remember a visit. The
17 reason for the visit, the fact of the visits were
18 slowed down was the fact that he continued to look
19 worse to me, and his behavior deteriorated. I wasn't
20 doing him any good. I couldn't communicate with him,
21 it was a waste of my time and his time.

22 Q According to Mrs. Palacios, as you say, she
23 told you that he would get worse.

1 A He would get worse and that was part of the
2 therapy, that his personality had to be restructured.
3 In order to be restructured, there had to be some
4 tearing down and rebuilding.

5 Q During the six month period '78, you made no
6 effort to keep him apprised of what was happening to
7 his medical practice, did you?

8 A There was no point to it. From my point of
9 view, he didn't understand, and that's why he needed
10 a guardian.

11 Q During this six months, you made no effort to
12 keep him apprised of what you were doing with the
13 Prince William Facility, isn't that correct?

14 A That's right.

15 Q You mentioned two conversations with Dr. Dingman.
16 You heard Dr. Dingman's testimony there was a third
17 conversation, did you not?

18 A Yes.

19 Q You have denied that conversation previously,
20 haven't you?

21 A What I was denying was the first conversation.
22 The two conversations I have always had in mind was
23 the conversation after he was transferred to Silver

1 Hill, and the second conversation was after he was
2 discharged and came back from Silver Hill.

3 Q You previously denied every talking to Dr.
4 Dingman after Ray got out of Silver Hill, have you not?

5 A Again, I talked to Dr. Dingman at the time he
6 was coming back on visits; whether he had been
7 actually discharged from Silver Hill or not, but I had
8 the conversation when it looked like he was coming
9 back from Silver Hill.

10 Q After Dr. Osheroff got out of Silver Hill,
11 you called Dr. Dingman to question why the man was
12 getting released, did you not?

13 A I had questions based on what Dr. Dingman had
14 told me on the previous conversation.

15 Q Why did you call Dr. Dinghamn, who hadn't seen
16 him in three months, and was administrator of another
17 place?

18 A Because, in my mind, he knew the most. He had
19 been with him for many months and had intimate daily
20 contact with him. At Silver Hill, he had a group
21 session once a week, and I didn't know of any psy-
22 chiatrist who had anything -- I was told there was
23 no psychiatrist who had any contact with him.

1 Q If you were concerned, as you say, why didn't
2 you call Silver Hill?

3 A For what purpose?

4 Q To find out if it was reasonable to discharge
5 him at this time, what his mental state was.

6 A I assume they felt it was reasonable because
7 they did discharge him.

8 Q Did you make any effort then to find out what
9 kind of institution Silver Hill was?

10 A My understanding was primarily from Dr. Dingman,
11 who told me they believed almost solely on medication.
12 I had serious questions about Silver Hill after that
13 conversation with Dr. Osheroff in which he was reciting
14 poetry, and just sounded to me the same way he did
15 on drugs before, it sounded like the same type of thing.

16 Q Yet you told the Executive Committee on December
17 27th that Dr. Osheroff was much improved, his symptoms
18 were much better, did you not?

19 A He felt better and he sounded, from a lay
20 perspective, he sounded happier.

21 Q Other than talking to Dr. Dingman, after you
22 found out Ray was getting out of Silver Hill, did you
23 make any effort to otherwise check out Silver Hill?

1 A No.

2 Q Did you make any effort to secure from Silver
3 Haill any kind of report or evaluation of this man's
4 condition?

5 A No.

6 Q Now, you say you called Dr. Dingman because he
7 had seen him daily; Dingman didn't see him daily,
8 Dingman never had anything to do with his treatment,
9 isn't that correct?

10 A If that's the case -- he was the ward adminis-
11 trator, and it was my understanding he was there
12 every day.

13 Q Was he the ward administrator or the hospital
14 administrator?

15 A He was on the particular ward that Dr. Osheroff
16 was on.

17 Q Who was the treating psychiatrist?

18 A Dr. Ross.

19 Q You never made any effort to find out from
20 Dr. Ross about Silver Hill, did you?

21 A I was told never to call Dr. Ross.

22 Q But there is no question now that you, in fact,
23 called Dr. Dingman when you heard this man was getting

1 released from Silver Hill, no question about that,
2 is there?

3 A That's right, I called him.

4 Q You said when Ray got to Silver Hill he called
5 you after he had been there a week or two, do you
6 recall that?

7 A Yes.

8 Q He told you he was getting better?

9 A He was feeling better.

10 Q His appetite was returning?

11 A Yes.

12 Q Isn't it a fact that a classic symptom of
13 this type of disorder is loss of appetite?

14 A Again, I am not an expert in depression.

15 Q Isn't it a fact that when you saw him at
16 Chestnut Lodge, he already had a severe weight loss?

17 A He had lost weight, yes.

18 Q His hair had grown down to his shoulders?

19 A Yes.

20 Q He had black marks on his feet from pacing?

21 A I didn't see his feet.

22 Q He was emaciated and clearly physically ill in
23 addition to being mentally depressed, at that time,

1 isn't that correct?

2 A I didn't think he was seriously physically ill
3 as you describe, when I saw him, that came out later.

4 Q When he called you he said I am eating lobster,
5 I've got an appetite and eating, that was a positive
6 sign, was it not?

7 A Well, he was overweight when I knew him. I
8 thought it was a positive sign that he was feeling
9 better. I was glad to hear he was feeling better.

10 A Gain, my particular concern was to his
11 medical ability. As I said before, I wanted him to
12 feel better, but I was thinking of him coming back
13 as a practicing physician.

14 Q You told the Executive Committee, did you not,
15 that you had no question of his medical knowledge?

16 A At what time?

17 Q On December 27th.

18 A His medical knowledge at what period.

19 Q At that time, they asked you if you questioned
20 his medical knowledge, and you said no, isn't that
21 correct?

22 A I believe I was referring to the time before
23 he went in.

1 Q Did you feel when he came back he had for-
2 gotten all his medical knowledge?

3 A I had questions. It is very difficult to be
4 away from medicine for that long a period of time
5 without losing something.

6 Q You had a meeting in August of 1979, do you
7 recall that, with Westerman and your lawyer?

8 A Yes.

9 Q Do you recall a prior meeting you spoke about
10 Westerman offered to sell you the practice, as you
11 put it, the second meeting at Chestnut Lodge?

12 A I believe it was the second meeting.

13 Q As a result of that meeting, you asked Mr.
14 Rubin to ask Notaris to get figures together for you?

15 A I told Mr. Rubin what had taken place, and he
16 said in order for us to consider this we needed
17 figures, so the impetus to get figures came from Mr.
18 Rubin as my attorney.

19 Q And Mr. Rubin had been representing you in
20 your affairs with regard to this practice for almost
21 a year, had he not?

22 A That's true.

23 Q He reviewed the contract sent to you in June

1 or July of '78, did he not?

2 A Yes.

3 Q In fact, Mr. Rubin is a life long friend of
4 yours, is he not?

5 A Yes.

6 Q And someone in whom you had great confidence?

7 A Utmost confidence.

8 Q In fact, his father is one of the major backers
9 of the Prince William Dialysis Center?

10 A Yes.

11 Q Now at the conclusion of the August meeting,
12 you are saying that you were to await figures from
13 Notaris, is that correct?

14 A Yes.

15 Q Isn't it a fact that at that meeting Westerman
16 suggested that you have a probationary period for
17 Ray to come back?

18 A We talked about this in general terms, and I
19 agreed with that, in general terms.

20 Q Let me be more specific then. Not only did
21 they propose it, but you and your lawyer specifically
22 rejected any probationary period for him to come back.

23 A There was difficulty defining probationary

1 period, and one of the problems we had was we had
2 no objection to him coming back and getting back into
3 the practice, but if you are talking about whose to
4 judge whether he is ready or not, it is kind of
5 ridiculous for a person to come back to a practice
6 and then ask that person is he ready to practice.

7 Q At that time, you rejected it, didn't you, sir?

8 A We rejected the possibility of me making a
9 judgment on Osheroff when he came back, of me saying
10 you are going to be in the practice or you are not
11 going to be in the practice.

12 If Dr. Osheroff were to come back as a function-
13 ing nephrologist, he would have been welcomed back
14 into the practice. For there to be a period where a
15 judgment was to be made by me or Dr. Tolkan, it just
16 didn't make sense for us to say no, you are not ready
17 and you can't practice any more. What he was saying
18 didn't make any sense.

19 Q Dr. Greenspan, while all of this was going on,
20 this talk about buying the practice in August, you
21 had long been negotiating with United Health Care and
22 Dr. Kim about setting up a facility in Prince William
23 County, had you not?

1 A Mr. May called me during the summer --

2 Q May I interrupt you?

3 A I had been negotiating.

4 Q You had been negotiating since March or April,
5 hadn't you, long before this summer?

6 A I had listened to their request, they had
7 approached me.

8 Q The first contact was in March or April, wasn't
9 it?

10 A Yes, by Mr. May.

11 Q And you weren't negotiating with them in good
12 faith because you never intended to open a facility
13 with them, isn't that correct?

14 A It depended on what they had to offer. What
15 they initially offered to me, the type of set up they
16 offered to me was not acceptable. If they had offered
17 me something different, I would have listened. What
18 they had to offer, I didn't feel was worthwhile.

19 Q Dr. Greenspan, see if you can answer this yes
20 or no, sir. Isn't it true that you were concerned
21 they would beat you to the punch and get an application
22 in before you did?

23 A Yes, they would beat me to the punch, and that

1 National Medical Care would beat me to the punch in
2 Manassas, either way, that would be it. I had two
3 concerns about opening a dialysis unit quickly in Prince
4 William County; one was the fact there was a very
5 severe medical need for patients, and two is the fact
6 that Dr. Osheroff couldn't do it by contract.

7 Q Pardon me, I asked you if you could answer it
8 yes or no, obviously I was wrong.

9 Can you answer this yes or no: Isn't it a
10 fact that part of your reason for negotiating with
11 them was to stall so they wouldn't file an application,
12 can you answer that yes or no?

13 THE COURT: Do you want a yes or no answer as
14 to whether he can answer yes or no, or do you want an
15 answer to the question?

16 MR. HIRSCHKOP: I want the first, your Honor.

17 A No, I can't answer yes or no.

18 Q Did you, in fact, try and stall them?

19 A Part of what I was doing was stalling, part of
20 it was anticipating a better figure.

21 Q You said Jay Long started to help you about
22 that time, is that correct?

23 A Yes, I called Jay Long for some help.

1 Q When you called Jay Long, didn't he advise you
2 of a corporate opportunity problem?

3 A He advised me of the problem, however, I didn't
4 feel there was a corporate opportunity problem since,
5 again, we are talking about a National Medical Care
6 unit which I had or was going to tell the parent
7 corporation about it. I didn't see any problem if
8 you notify the people who have the interest.

9 Q You hired him because he was supposedly an
10 expert in preparing these applications, did you not?

11 A Yes.

12 Q Your own expert advised you that you might have
13 a corporate opportunity problem, did he not?

14 A I believe that was before I explained to him
15 what the situation was.

16 Q And despite that advice, you never in writing
17 tried to apprise National Medical Care, Dr. Osheroff,
18 or Dr. Osheroff's representatives of the application,
19 of all the letters you were sending out, or any of
20 those activities, did you?

21 A That's incorrect. I notified -- in writing,
22 that's correct. I didn't notify anybody in writing.
23 I did it orally.

1 Q You have heard Dr. Hampers' testimony that when
2 you saw him in November you asked him don't rehire
3 this man, force him to sell to me, you remember that,
4 don't you?

5 A I remember his testimony, I disagree with it.

6 Q Now --

7 A (Interposing) Dr. Hampers had a conflict of
8 interest himself in that I was becoming a fairly
9 formidable competitor to his outfit.

10 Q How could you be a competitor to Dr. Hampers
11 and not be a competitor to Dr. Osheroff?

12 A Very simple.

13 Q How simple?

14 A Because the dialysis unit in Northern Virginia
15 was owned by National Medical Care. We are talking
16 about the sources of income and the patients, Prince
17 William was an open unit, therefore professional fees
18 could have been attained by Dr. Osheroff if he had
19 applied. The profits were to go to National Medical
20 Care, the sixty percent of the profits, the forty
21 percent of the profits that Dr. Osheroff had obtained,
22 as far as I could see, that was about to go because
23 another corporation was going to get the provider

1 number in Prince William County.

2 Q With regard to Dr. Osheroff, that's what
3 happened anyhow, someone else got the provider
4 number, isn't that true?

5 A That's what happened, but National Medical Care,
6 his own corporation was trying to get the provider
7 number to do the same thing I am alleged to have done.

8 Q But he wasn't paying any of them a salary,
9 was he?

10 A Who, National Medical Care?

11 Q This corporation.

12 A No, he wasn't.

13 Q The only income you were deriving is what that
14 man was paying you in 1978, isn't that correct?

15 A That's right.

16 Q And you were setting up this facility on time
17 for which he was paying you, isn't that correct?

18 A That's incorrect, I can't say that I worked for
19 him 24 hours a day.

20 Q You used a list of his patients with your
21 application, did you not?

22 A AGain, you are dealing with his and whose
23 patients. I used a list of patients who currently were

1 being dialyzed at the Northern Virginia Dialysis Center.

2 Q You made application on Northern Virginia
3 Dialysis stationery, did you not?

4 A Yes, I did, which was not his.

5 Q You referred to we all the time in that
6 stationery, isn't that true?

7 A Yes, I did, and the reason for doing that was
8 the fact, as I said before, ultimately from either
9 of two ways, it really didn't matter, if Dr. Osheroff
10 came back as a functioning nephrologist, he would be
11 welcome and the unit would be from me into the practice,
12 if he didn't come back, I was to purchase the practice
13 anyway, so to me it did not matter.

14 Q And the majority of the staff you listed in
15 the application were under the employ of National
16 Medical Care in the center in which he had been
17 medical director, isn't that correct?

18 A That's right.

19 Q What about the social worker, the social worker
20 is someone who worked for Ray for years, isn't that
21 correct?

22 A That's right.

23 Q You didn't meet her until you came to work in

1 his practice, isn't that correct?

2 A Yes.

3 Q The dietician, same thing, right?

4 A Yes.

5 Q The nurses, same thing, right?

6 A That's right.

7 Q You listed all those people to go to work for
8 you, didn't you?

9 A I didn't list the nurses specifically by name.
10 The dietician and social worker was part time, and the
11 job they have now is part time, so there is no in-
12 consistency about working part time in both places.

13 Q Now you suggested in an answer a minute ago
14 that while it would have been an open facility, he
15 could have come down there, do you recall saying that?

16 A I said that at the Executive Committee meeting
17 in December, by the way.

18 Q Haven' you, in fact, testified under oath that
19 at the time you filed that application you had not
20 made up your mind whether it would be an open or
21 closed facility?

22 A That's correct, at the time I filed it. The
23 decision was crystalized at the full board meeting
of the HSA.

1 Q At the time you filed the application, while
2 you were in his employ, it was not clear that he
3 could have come down there and followed his patients.

4 A Again, the unit would either have been in our
5 practice if he had come back, or he would have sold,
6 so it was a moot point.

7 Q You said there were two reasons in your meeting
8 with Hampers that you had for getting a separate
9 facility in your own name; one, you couldn't have
10 followed your patients if someone else had opened up
11 that facility, do you recall that?

12 A If someone opened a closed unit I couldn't
13 follow the patients.

14 Q And you were prodded by your lawyer because you
15 couldn't remember the second reason, and you finally
16 remembered you were negotiating the purchase of Ray's
17 practice, and you wanted to protect the practice
18 against someone else opening a unit down there.

19 A Yes.

20 Q How would it hurt the practice if someone opened
21 a unit down there?

22 A It depends, in one respect, whether it was an
23 open or closed unit. If it was a closed unit, those

1 patients would have been lost; if it was an open unit,
2 it wouldn't have hurt a bit. It would help the patients
3 since they wouldn't have to travel and we would do
4 the travelling, which didn't bother me.

5 Q If it was a closed unit, would he be any more
6 hurt in owning the practice than you would have been
7 hurt in owning the practice?

8 A I don't understand.

9 Q You said you wanted to protect the practice
10 because you thought you might own it.

11 A Yes.

12 Q And you said if someone were to open a unit in
13 Prince William County it would hurt that practice.

14 A Yes.

15 Q It would equally hurt the practice whether he
16 owned it or you owned it, if it was a closed unit down
17 there, wouldn't it?

18 A If we are both in the same practice or different
19 practices?

20 Q Regardless of who owned the practice, Osheroff's
21 practice would have been hurt if someone opened a
22 closed unit down in Prince William County.

23 A If he were not admitted to the unit, that's right.

1 Q Even opening an open unit, it probably would
2 have hurt the practice, would it not?

3 A Well, you would have to define how it would
4 hurt the practice.

5 Q People like to be treated by the physician at
6 the unit they are going to.

7 A Not necessarily, they like to be treated by the
8 physician -- that's really not the case, it is more
9 personal than that, people have a very close relation-
10 ship to the doctor who treats them, it is not just
11 whoever is the medical director.

12 Q Mr. Talbot, the gentleman you put on the stand
13 the other day, you heard him say Dr. Kim was his doctor,
14 didn't you?

15 A Yes.

16 Q In fact, while Dr. Kim was his doctor, you gave
17 him one of those forms to sign, didn't you?

18 A I gave him a form because I was responsible
19 for him, at that time.

20 Q And you gave Dr. Goldberger's patients forms
21 to sign to choose you, didn't you?

22 A No.

23 Q Goldberger had patients in that unit on

1 dialysis, didn't he?

2 A There were patients in the unit who preferred
3 to be followed by Dr. Goldberger.

4 Q They were patients that Dr. Goldberger had
5 brought into that unit for dialysis.

6 A That's right.

7 Q And you gave those patients your form to sign,
8 didn't you?

9 A No. I was responsible, at that point to all
10 those patients, I felt, and if I was not responsible,
11 I wanted the patients to tell me. I had an obligation
12 to each of those patients to be there if they wanted
13 me. There were patients who had preferences, I knew,
14 to Dr. Osheroff, DR. Goldberger and other doctors, but
15 I didn't know which was which at that point. I ex-
16 plained to them if they signed it they would have a
17 preference for me; if they didn't, they wouldn't. I
18 was not ready to abandon the whole flock or any new
19 patient.

20 Q Have you a patient Eva Allen?

21 A I believe so.

22 Q Eva Allen was Goldber's patient, was she not?

23 Q I was responsible for Eva Allen in the dialysis

1 unit, and had been seeing her many times for many
2 weeks, and was responsible until Eva Allen said I
3 prefer another doctor.

4 Q You were responsible because you had been
5 medical director?

6 A No, because I had been seeing the patient, and
7 there was an on-going relationship with those patients.

8 MR. PLEDGER: Your Honor, I have to enter an
9 objection to asking about patients like Eva Allen now.
10 If counsel wants to pursue that, then I will produce
11 these patients so they can testify as to why they
12 made a certain choice.

13 You have to make some kind of selection, and
14 we have tried to present a cross section. As a
15 matter of fact, last Wednesday, I take that back, last
16 Monday when counsel wanted to know which patients we
17 were going to call, so he could be prepared, and he
18 wanted to know by Wednesday evening, I told the Court,
19 at that time, what my problem was, it was difficult
20 to work out schedules and know who could appear and
21 when. Because we did not know by Wednesday evening
22 Miss Imhoff could be present to testify today,
23 she was barred from testifying because we didn't tell

1 him about her.

2 I did not list all these other patients, and
3 I have not sought to bring them. If we are going to
4 talk about individual patients, and let's talk about
5 this Eva Allen and wasn't she somebody else's patient,
6 I will be happy to bring Eva Allen and any other
7 patient that he wants so that can come before the court.

8 THE COURT: I don't believe Eva Allen was
9 mentioned on direct examination.

10 MR. HIRSCHKOP: He went into how careful he
11 was in checking, and I just wish to show -- I haven't
12 heard a valid objection, I have heard a speech.

13 THE COURT: Let me decide whether it's valid.

14 MR. HIRSCHKOP: Well, I don't know what his
15 objection is.

16 MR. PLEDGER: Beyond the scope of direct
17 examination.

18 THE COURT: Your objection is sustained.

19 Q You did say on direct examination you were very
20 careful about giving these forms out so you would
21 know whose patients they are, did you not?

22 A I wanted to know if the patients had preferences
23 and what the preferences were.

1 Q You heard Mr. Talbot testify Dr. Kim was his
2 doctor, did you not?

3 A Yes.

4 Q In fact, you knew Goldberger and Kim had
5 patients there in the facility, did you not?

6 A I knew there were patients in the facility
7 who preferred to have Dr. Goldberger and Dr. Kim as
8 their physician, and I certainly respected that. I
9 didn't know specifically what was what and until I
10 was told, I continued to feel responsible for them.
11 That is what I wanted to find out on December 12th.

12 Q You gave the form out to everybody, did you not?

13 A I gave it out to every patient who was there.

14 Q YOU had it attached to some of the charts
15 when they weren't there, isn't that correct?

16 A No. I didn't want that to be given to the
17 patients unless I gave it to them in as benign a way
18 as possible, although I would have chosen other
19 circumstances if I had an opportunity to.

20 Q You say sometime in October Ray started coming
21 back, is that correct?

22 A That's correct.

23 Q You didn't see him more than a couple of times

1 or a couple of weekends in October, isn't that correct?

2 A That is probably correct.

3 Q At no time in the autumn of '79 was he ever in
4 your home again, isn't that correct?

5 A That's right.

6 Q In fact, you only sat down and ate with him
7 once, isn't that correct?

8 A That is my recollection.

9 Q In fact, you never ate with him that time,
10 isn't that correct?

11 A No, I finished my lobster, it was very good.

12 Q Didn't you get a buzzer on your little beeper
13 and before you ate you ran out?

14 A No, I ate the lobster, I like lobster, but I
15 had to see a patient.

16 Q Do you remember being asked about that in
17 your deposition?

18 A About the meeting?

19 Q Do you remember being deposed?

20 A Yes.

21 Q A year ago?

22 A I think it was about a year ago.

23 Q Would your memory be better a year ago than

1 it is today if you think about events occurring in the
2 autumn of '79?

3 A It probably would.

4 Q Let me go back to United Health Care. You
5 negotiated with them over a period of several months,
6 did you not?

7 A I don't know it was that long.

8 Q You, in fact, didn't give them a formal re-
9 jection until you had your application all prepared
10 and ready to file, isn't that true?

11 A That's true.

12 Q Now, you testified about a meeting with Dr.
13 Hampers at the airport, do you remember that?

14 A Yes.

15 Q When was that meeting?

16 A I would guess November.

17 Q November 1979?

18 A Yes.

19 Q That's the meeting which Hampers said you told
20 him not to reappoint the man, and you deny that
21 occurred.

22 A That's right.

23 Q At that meeting, you say Hampers told you not

1 to let Ray see patients, do you recall that?

2 A I don't recall at that meeting. My recollection
3 it was one of several telephone calls we had.

4 Q When did that happen?

5 A This was around the same period. We had
6 conversations October, November from here to Boston,
7 and that was one of his instructions.

8 Q Do you recall on or about October 29th some
9 letters were written to Hampers by some nurses in
10 the unit?

11 A Yes.

12 Q Do you recall the Tolkan incident when Ray
13 said I want to make rounds?

14 A I wouldn't classify it as the Tolkan incident.
15 I thought it was a serious incident.

16 Q Do you recall that happened before the
17 November 29 letters went to Hampers?

18 A The nurses letters you are referring to?

19 Q Yes.

20 A I never knew the nurses -- when the nurses'
21 letters went to Dr. Hampers.

22 Q Didn't you say on direct examination you found
23 out about the letters right after they were written?

1 A Yes, but I didn't know whether they were sent.

2 Q You know you had already told Ray he couldn't
3 see patients on the unit at that time, isn't that
4 correct?

5 A That, I can't remember.

6 Q It was December 12th you were fired.

7 A That, I can remember.

8 Q The refusal to let Ray see patients happened
9 at least two weeks before that, didn't it?

10 A It was about two weeks.

11 Q It would have preceded Hampers receiving any
12 letters from these nurses about Ray.

13 A I don't know when the letters were sent.

14 Q Let's assume they were written on the 29th of
15 November, which is the date they say. It would have
16 been before Hampers received those letters, wouldn't it?

17 A If they were sent on November 29th, would that
18 be before Dr. Osheroff was restricted from the unit?

19 Q It would have been after the time that Osheroff
20 was restricted from the unit.

21 A If that's the case, I suppose it would be.

22 Q I am asking you what Hampers would know about
23 Ray's medical condition, other than what you told him?

1 A From what Pat Shine told Mr. Shalaba and other
2 people at National Medical Care.

3 Q Pat Shine only knew what you told her, isn't
4 that correct?

5 A Obviously from a medical standpoint, she did,
6 but he also had observations.

7 Q During the ten months that Ray was away, she
8 didn't have any observations, did she?

9 A I am talking about after he came back.

10 Q What about the ten months he was gone?

11 A No, she had no observations.

12 Q The only one at that unit who knew anything
13 about that man's mental condition was you.

14 A That's correct.

15 Q And the only one who Dr. Hampers could get any
16 information about his medical treatment or his medical
17 condition while he was gone was you, isn't that correct?

18 A Unless he inquired directly to Chestnut Lodge
19 and the doctors there. I assume they would give that
20 information.

21 Q And if Dr. Hampers said he did not, and he
22 relied on you to tell him --

23 MR. PLEDGER: I have to object to that. That

1 is not Dr. Hampers' testimony.

2 THE COURT: Even if it is, the form of the
3 question is improper.

4 The question is withdrawn.

5 MR. PLEDGER: I understand that. I object to
6 our trying to characterize what is in a deposition
7 that has been offered into evidence. If counsel wants
8 to pose a question based on that, let's pose it based
9 on that. We have had several questions that are
10 supposedly based on something in the deposition, we
11 never get a page or statement. I think if we are
12 going to use questions in that fashion --

13 MR. HIRSCHKOP: I have been very specific as
14 to page and statements.

15 Q If I may, in October, you saw Osheroff on one
16 or two weekends, is that correct?

17 A Yes.

18 Q When was the conversation at the Lobster Shed?

19 A Probably it was in November sometime.

20 Q Was that on a weekend?

21 A I don't remember.

22 Q Ray was discharged from Silver Hill November 1st,
23 does that meet with your recollection?

1 A He never told me that he was discharged. I
2 heard that. I don't know how I heard that.

3 Q Prior to November, you had only seen him on
4 one or two weekends.

5 A That's right.

6 Q And nothing specific happened on those weekends,
7 did it?

8 A Not that I can recall.

9 Q In November he came back and you only saw him
10 a day or two at a time during the first week in
11 November, is that correct?

12 A As I recall, during the month of November, I
13 can't really break down the month specifically. I saw
14 him on the two occasions I mentioned, and I also saw
15 him in the unit.

16 Q You didn't see him every day in the unit, did
17 you?

18 A No.

19 Q In fact, after you barred him from the unit,
20 he didn't come on the unit again until the day he
21 fired you, isn't that correct?

22 A As far as I recall, after the time he was told
23 that he should not be seeing patients until December 1, 1961,

1 I can't remember seeing him on the unit.

2 Q Your total observation of him was during
3 this three or little bit more week period in November,
4 isn't that correct?

5 A The timeperiod up until I was fired, I didn't
6 see him on the unit, I might have seen him around in
7 the office, or here and there. I can't make the
8 statement I did not see him for that long.

9 Q You can't tell us that you did in fact see him
10 between the time you told him he couldn't make rounds,
11 sometime the end of November, and the time you were
12 fired?

13 A I can't say definitely I saw him; I can't
14 say definitely I didn't.

15 Q You know you didn't have any conversations of
16 substance with him during that period, isn't that
17 correct?

18 A I didn't have any conversations of substance
19 before.

20 Q The day you told him you cannot see patients,
21 that was a conversation of substance, was it not?

22 A I didn't tell him that.

23 Q What did you tell him?

1 A The background of the incident was the fact
2 that I did not think he would be attempting to see
3 patients without some kind of a medical recall.

4 Q Dr. Greenspan, I thought I said what did you
5 tell him.

6 A I didn't tell him anything.

7 Q Well, there came a time when he tried making
8 rounds.

9 A Yes.

10 Q And you came on the unit and you didn't tell
11 him anything when he said he wanted to make rounds?

12 A No.

13 Q How come he didn't make rounds?

14 A Dr. Tolkan called me and told me that Dr.
15 Osheroff was going to make rounds. As the acting
16 medical director, what should I do, and I had told
17 Dr. Tolkan previously that it was my instructions from
18 Dr. Hampers that he should not be making rounds on
19 patients. This was between me and Dr. Tolkan, and I
20 believe it might have been Pat Shine.

21 Q Is this a party phone call you had?

22 A I am talking about the people who knew of this
23 situation and the conversation between me and Dr.

1 Tolkan, it was our instruction he should not be making
2 rounds, and he shouldn't be making rounds. Then I
3 called Dr. Hampers after that to say, to tell him Dr.
4 Osheroff was making rounds, does he still concur with
5 his previous statement that Dr. Osheroff should not
6 make rounds. Dr. Hampers told me yes, the instruction
7 was the same, he should still not be making rounds.

8 Q You were supposed to be out of town that day,
9 were you not?

10 A I was hoping to go to a meeting on diabetes and
11 eye disease in New York.

12 Q When you got the call from Dr. Tolkan, you
13 then went to the unit, did you not?

14 A I don't remember.

15 Q You don't remember going to the unit that day
16 and telling him that he could not make rounds, that
17 Dr. Hampers did not want him to make rounds?

18 A I don't remember that. My recollection is that
19 I told Dr. Tolkan that that was the case.

20 Q Dr. Tolkan was at the hospital.

21 A I think he was at the hospital, he might have
22 been home.

23 Q Dr. Osheroff was at the unit, as far as you know?

1 A As far as I knew, yes.

2 Q And you were the acting medical director, now
3 how was he supposed to find out that Dr. Hampers
4 didn't want him making rounds?

5 A That was the problem. I made a mistake and I
6 really should not have let Dr. Hampers put me in the
7 middle. I should have told Dr. Hampers if you don't
8 think he should be making rounds, you tell him, don't
9 put me in the middle.

10 I didn't think the situation would become a
11 reality, because I didn't think he would want to
12 make rounds until he had talked about the patients
13 with us.

14 Q I am just trying to find out very simply, if
15 you were home and Tolkan was at the hospital, and
16 Osheroff was at the unit, and you were the medical
17 director, how was he supposed to find out that day
18 he was not supposed to make rounds unless you told him?

19 A It was my understanding Dr. Tolkan was going
20 to tell him, since he had called Dr. Tolkan and Dr.
21 Tolkan asked me what should be done.

22 Q Do you deny that you told some of the nurses,
23 at that time, that they were not to take orders from

1 Dr. Osheroff?

2 A I believe I did tell some of the supervising
3 nurses that at this point those are the instructions.

4 Q At that point, you were his employee and fully
5 salaried by him, were you not?

6 A Yes.

7 Q At that time, you already had a good indication
8 he wasn't going to get his privileges at Alexandria
9 Hospital, or his privileges would be suspended, did
10 you not?

11 A It depended on whether he started seeing
12 patients. It was something that Dr. Haut nor I wanted
13 to get into. We hoped he wouldn't see patients until
14 there would be some kind of adaptation period.

15 Q By the end of November, you had it pretty clear
16 in your mind that if he tried seeing patients at
17 Alexandria Hospital, his privileges would be suspended?

18 A Yes, I knew that.

19 Q Why didn't you sit down with this man, who was
20 your employer, who paid your salary, and who was back
21 a month at that point, and say if you try to see
22 patients they are going to suspend your privileges,
23 why didn't you give him some warning?

1 A Because I didn't think he would try to see
2 patients, you don't just walk into a hospital and
3 start seeing patients without talking to us. If he had
4 come to us and said let's review the patients, let's
5 talk about the history of these people, then it wouldn't
6 have been a problem for me. I didn't expect him to
7 waltz in the hospital without any review whatsoever.
8 I didn't think it was necessary to worry about it.

9 Q When he called Dr. Tolkan, you had a pretty
10 good indication he wanted to see patients.

11 A That's why I got very concerned at that point.

12 Q If you were so concerned, why didn't you tell
13 the man, look, if you go to the hospital and see
14 patients, they are going to suspend your privileges?

15 MR. PLEDGER: I realize this is cross examination,
16 and you can jump from one subject to another, but he
17 is asking first about privileges and the hospital, then
18 we go back to the dialysis facility, and now we are
19 back to privileges at the hospital. This question
20 has been asked and answered.

21 MR. HIRSCHKOP: Your Honor, all I need the
22 hospital for is the privileges, the dialysis facility
23 is the point in time. Once Dr. Osheroff tried seeing

1 patients at the dialysis facility, it is perfectly
2 obvious he might try to see them at the hospital.
3 Why didn't this employee in the man's pay ever warn
4 the man if he tried seeing patients, they would
5 suspend his privileges. He can answer that question.

6 THE COURT: Objection is overruled.

7 A After that incident that you just pointed out,
8 I didn't see him any more.

9 Q Doctor, he was a phone call away, wasn't he?

10 A He was coming and going, and that timeperiod,
11 he was really not -- I am not sure I even knew where
12 he lived. His house was being refurbished and he
13 lived in temporary quarters and was spending a lot of
14 time elsewhere out of town.

15 Q Couldn't you have said to Dottie, I would like
16 to talk to Dr. Osheroff, or Kay, you could have
17 done that, couldn't you?

18 A It's something I could have done, I don't deny
19 that. It was a difficult situation for me to be in.

20 Q You made no effort to let him know the knowledge
21 that you had gotten from Dr. Haut, isn't that true?

22 A That's right.

23 Q Didn't you say a few minutes ago you think you

1 saw him around the office from the time of that incident
2 with Tolkan until December 12th?

3 A I might have seen him in or out.

4 Q Well, if you saw him, you could have said, Dr.
5 Osheroff, I would like to talk to you for a minute,
6 couldn't you?

7 A I could have.

8 Q But you chose not to, didn't you?

9 A It's not that I chose not to. The conversations
10 between me and Dr. Osheroff during that timeperiod
11 was just as strange as it had been before, and I am
12 not sure the meaning of those conversations would have
13 been received.

14 Q Did you have any arguments with him during that
15 period?

16 A .Which period?

17 Q During the period November, 1979.

18 A I didn't have arguments.

19 Q He sought you out to go to the Lobster Shed
20 to have lunch or dinner, did he not?

21 A Yes.

22 Q That was his idea, wasn't it?

23 A Yes.

1 Q And he said to you, Dr. Greenspan, I want to
2 come and practice, did he not?

3 A Yes.

4 Q You could have told him then Hampers doesn't
5 want you back, and Haut may lift your privileges, you
6 could have told him any of these things, and chose not
7 to tell him, didn't you?

8 A Dr. Osheroff was carrying the conversation,
9 he was talking about personal problems. I could have
10 done it then, that's right.

11 Q He did say to you, according to your own direct
12 examination, I want to come back into practice.

13 A Yes.

14 Q Now, you were here when Dr. Tolkan testified
15 that Ray tried talking to Tolkan, I want to come back
16 to practice, and Tolkan sat there quietly and didn't
17 answer, you heard that, didn't you?

18 A Yes.

19 Q Is that what you did when he said I want to
20 come back into the practice?

21 A I made an effort to talk about the things I
22 thought were important.

23 Q Wasn't it important to you to sit him down and

1 with you and say Ray, I would like to know what your
2 medical condition is; you didn't do that, did you?

3 A I didnt ask him about his medical condition,
4 at that time.

5 Q Wasn't it important to you, when he said I want
6 to come back to practice, to say, Doctor, we ought to
7 sit down and go over the patients first, you didn't
8 do that, did you?

9 A I was going over patient information, medical
10 type information that was just not responded to. I
11 would talk about a patient in the unit, and medical
12 problems, and the response would be I've got to set up
13 my house; which were reasonable responses, but it just
14 told me it was going to be a long time before he was
15 coming back.

16 Q You saw him on the unit at various times in
17 the middle weeks of November going over patient charts,
18 talking to patients, reading a manual, did you not?

19 A Yes.

20 Q You could have gone up to him then and talked
21 to him, could you not?

22 A I said hello.

23 Q That's not talking about patient information,
is it?

1 A He was reading what I felt, were in some
2 respects, appropriate types of things. He was reading
3 the Washington Manual, which is really a medical
4 student review, and I felt that was appropriate.

5 Q It is more than a medical student review, it
6 has all the current drugs in it, doesn't it?

7 A I can't say all the current drugs.

8 Q It is published every year or twice a year so
9 it can stay current, is it not?

10 A That's true.

11 Q If you have been out of the practice for a year,
12 it is one of the places you should go to see what new
13 drugs there are in your specialty?

14 A As an internist, not as a sub-specialist. It is
15 a general medical review for internists and residents.

16 Q It has a section on nephrology, does it not?

17 A It has a section on nephrology that interns
18 should know, not that a nephrologist should know.

19 Q The section on nephrology includes new drugs,
20 does it not?

21 A I would assume it does. I thought that was
22 appropriate at that stage. I had no problem with that.

23 Q Now you testified on direct examination about

1 these bylaws; you drafted the bylaws from another
2 center, did you not?

3 A I would like you to define the term drafted.

4 Q The final set of bylaws was typed up in the
5 unit, who typed it?

6 A The final set, I believe, Mabel Lowrey typed,
7 she was a secretary at Northern Virginia.

8 Q And she typed it from something you gave her,
9 isn't that correct?

10 A I don't recall whether I gave it or Pat Shine
11 gave it. In fact, now, I remember, Pat gave me the
12 DuPont bylaws. I crossed out DuPont Circle, put in
13 Northern Virginia; crossed out the particular names
14 that I mentioned, and gave it back to Pat, and that
15 was it. Then she gave it to me to sign.

16 Q You were the one who chose to leave in there the
17 section that closed the staff to everyone but
18 George Washington, isn't that correct?

19 A When I read it, I thought it was a pretty good
20 idea. I didn't think to myself, at that point, I am
21 going to change Dr. Osheroff's contract or anything
22 like that. I just thought this is what Georgetown
23 was going to do, and they have been successful, so thi:

1 is what we should do.

2 Q Would you answer my question?

3 A I did.

4 Q It was your choice, wasn't it?

5 A To leave it in?

6 Q Yes.

7 A It was my choice because I signed it, and Pat
8 Shine's choice because she signed it.

9 Q With regard to the medical staff bylaws, the
10 medical director is the one who was basically in
11 charge of that, isn't that correct?

12 A I don't understand what you mean in charge of
13 the bylaws. You promulgate bylaws.

14 Q The medical director is the one who promulgated
15 those bylaws, isn't he?

16 A I was responsible for the bylaws since I was
17 the acting medical director.

18 Q And you wanted that in to keep the Georgetown
19 people out, didn't you?

20 A That is what I was thinking as I was reading it.

21 Q To that extent, it was a closed facility, was
22 it not?

23 A That's right. Well, unless those people from

1 Georgetown could get privileges at GW. There was one
2 particular person I know who did have privileges at
3 both hospitals, who would have fallen into that
4 category.

5 Q They had to be on the staff of George Washington.

6 A Yes.

7 Q Now, you say after the bylaws were drawn, you
8 stuck them in the drawer, did you not?

9 A No, I didn't stick them in my drawer.

10 Q You stuck one set in your drawer.

11 A I might have. I gave them back to Pat Shine,
12 I don't know whether I got a copy then or several
13 months later.

14 Q And you included the head nurse in the govern-
15 ing body, did you not?

16 A Yes.

17 Q Who was the head nurse?

18 A Peggy Hess.

19 Q At the time you drafted the bylaws?

20 A I believe so, I don't really remember.

21 Q Did you give her a copy of the bylaws?

22 A No.

23 Q Did you give Dr. Tolkan a copy of the bylaws?

1 A No.

2 Q Did you give Dr. Goldberger a copy of the bylaws?

3 A No.

4 Q In fact, other than Pat Shine, you didn't give
5 anybody a copy of the bylaws?

6 A No.

7 Q You made no effort to have them known to
8 anybody, isn't that true?

9 A There was no reason.

10 Q Of course, it was some seven or eight months
11 later that you started writing dozens and dozens of
12 letters to United States Senators and State Senators,
13 and making phone calls and going to see legislators
14 demanding that facilities should be open facilities.

15 MR. PLEDGER: Your Honor, I think that is well
16 beyond the scope of direct examination. I know we
17 would like to get this through this evening.

18 MR. HIRSCHKOP: Your Honor, I am not going to
19 finish this evening. I haven't gotten into his
20 deposition yet, I am just going through his direct
21 examination.

22 This goes to the bylaws that they raised, and
23 they consistently raised throughout this litigation

1 the fact that he was so insistent it had to be an open
2 facility, when he, himself, drafted a closed set of
3 bylaws, didn't tell anybody about it, and later on
4 went to everybody making complaints about Ray having
5 a closed facility, when he, himself, had drafted the
6 closed facility bylaws.

7 MR. PLEDGER: I don't think the defendant is
8 the one who raised the bylaws. The plaintiffs in
9 this action have raised the bylaws and we simply have
10 said what the facts are.

11 THE COURT: You alluded to the bylaws on direct
12 examination.

13 MR. PLEDGER: That is one of the allegations in
14 this case. Whether he wrote the senators or somebody
15 else after this case was filed is not something that
16 was part of the direct examination.

17 THE COURT: If it has to do with the bylaws,
18 he may inquire into that.

19 MR. PLEDGER: The letters to senators, I under-
20 stand did not have anything to do with the bylaws.

21 THE COURT: To the extent that the bylaws
22 may have been part of a closed unit.

23 MR. PLEDGER: It seems to me that's been asked

1 and answered. He's already elicited it was made clear
2 to the governing authorities in the State in October,
3 1979 that it was an open unit, the Woodbridge unit.
4 If we are confusing that with the issue of Northern
5 Virginia Dialysis Center, I will stipulate to the fact
6 that Northern Virginia Dialysis Center was not open
7 as a unit for other people, other than those permitted
8 by Dr. Osheroff until 1981.

9 MR. HIRSCHKOP: Your Honor, the exhibits on
10 this are already in evidence, there is no question of
11 materiality.

12 On direct examination, he not only asked him
13 about the bylaws, but he asked him also did he ever
14 do anything to hurt Dr. Osheroff. When they filed
15 the federal suit, they raised the bylaws, and not only
16 he, himself, but he had his lawyers go and make com-
17 plaints about Dr. Osheroff. I am going to get to that.
18 He was asked about all this in terms of general
19 questioning.

20 THE COURT: Objection overruled.

21 Q You wrote dozens and dozens of letters, did you
22 not, to lots of legislators, state and federal, com-
23 plaining about closed facilities?

1 A Yes.

2 Q And at that time, you didn't tell any of them
3 that you had proposed a closed set of bylaws yourself,
4 did you?

5 A There was no comment in the Prince William
6 application of either open or closed. When they asked
7 about it, I stated it was open.

8 Q In fact, the final series of questions on your
9 direct examination was about the inspection, and you
10 said you had nothing to do with the inspection,
11 is that correct?

12 A I, personally, had nothing to do with the
13 inspection.

14 Q Who is David Tatel?

15 A He is one of the lawyers of Hogan and Hartson,
16 who did send a copy of the federal lawsuit to some
17 federal authorities.

18 Q He was your lawyer, was he not, in the federal
19 lawsuit?

20 A He was one of the lawyers representing me, yes.

21 Q On December 19, seven days after you are fired,
22 he sent a copy of the complaint you filed in federal
23 court to the Deputy Administrator of the Health Care

1 **Financing Administration.**

2 A I found out about it after he had done it.

3 Q Well, did you find out that prior to your
4 hiring him to represent you, he had a dispute with
5 Dr. Osheroff?

6 A Repeat that, please.

7 Q Did you find out that prior to the time you
8 hired him he had a private dispute with Dr. Osheroff?

9 A I had no knowledge of that. Mr. Tatel has
10 a dispute with Dr. Osheroff?

11 Q Yes, that Mr. Tatel had a private dispute.

12 A No, this is news to me.

13 Q You filed your lawsuit against Dr. Osheroff
14 on the 15th day of December, 1979.

15 A That sounds correct.

16 Q Is there any question in your mind that that
17 letter to HCVA was related to the filing of that suit?

18 A It was related to the filing of the suit, it's
19 named in the letter.

20 Q And there is no question in your mind that man
21 was your agent, and you were paying him a fee to
22 represent you in a federal lawsuit, is there?

23 A That's right.

1 Q In fact, that man told you that he was personally
2 friendly with someone at HCFA, did he not?

3 A He told me that he had a relationship with the
4 Health Care Financing Administration.

5 Q And this was in relation to contacting him
6 about this lawsuit, wasn't it?

7 A Again, this was after that. I don't know
8 whether it was in relationship to that letter or not.
9 In fact, I know it wasn't since I found out the letter
10 had been sent after it was sent. I don't know when
11 he told me that he knew somebody in HCFA.

12 Q When he told you that, it was during the same
13 period of time that you were sending all these letters
14 out, and contacting legislators about open facilities,
15 was it not?

16 A I don't know whether it was or wasn't.

17 Q Now let's go to December 12.

18 THE COURT: Let's do that tomorrow.

19 MR. HIRSCHKOP: I will be very candid, the
20 way I have been proceeding is to go through my notes
21 on direct examination, and then go back to the notes
22 of the deposition. Having the evening will allow me
23 to incorporate the two, and it will be more efficient.

1671

April 20, 1982

E D I N G S

THE... ready to proceed?
MR. ... your Honor.

Whereupon,

ROBERT GREENSPAN,

resumed the stand, was questioned and testified as follows:

CROSS EXAMINATION

BY MR. HIRSCHKOP:

Q Dr. Greenspan, you said yesterday the first mention you made of the Prince William Dialysis Facility was in July of 1979, do you recall that?

A Yes.

Q You actually started negotiating with United Health Care and Dr. Kim at least three months before that, did you not?

A I believe I was contacted before I contacted Dr. Hampers.

Q You say you contacted Dr. Hampers before you talked to Dr. Kim?

A I was contacted by Mr. May before I contacted Dr. Hampers.

Q And you, in fact, entered negotiations with

1 Dr. May and negotiated with him for at least two or
2 three months before you ever contacted Dr. Hampers.

3 A I had this discussion with Mr. May before I
4 discussed anything with Dr. Hampers.

5 Q As the acting medical director, why did you
6 wait for a period of months before notifying Dr.
7 Hampers?

8 A In my mind, those were just preliminary dis-
9 cussions. I had nothing specific, and when Mr. May
10 contacted me, it solidified the idea that something
11 had to be done. Before he contacted me, we were still
12 in a fairly preliminary stage, that was one of the
13 impetus that got me going.

14 Q With regard to when you were notified not to
15 come in the unit, you were notified on December 12th
16 you were not to go into the unit and you would be
17 arrested if you did, right?

18 A Yes.

19 Q Did you tell Dr. Tolkan that?

20 A I probably did.

21 Q So if Dr. Tolkan testified that he didn't find
22 out until a week later that he wasn't to go in the
23 unit, that would be incorrect, wouldn't it?

1 A I don't know that would be incorrect. I don't
2 remember whether I told him that day or not.

3 Q With regard to that day, you were very busy,
4 were you not?

5 A That's an understatement.

6 Q Let's see if we can review some of the things
7 you did that day. You had to clean out your office
8 with necessitated making several trips to your car,
9 is that correct?

10 A Yes.

11 Q You went and talked to as many patients as you
12 could, did you not?

13 A I made rounds on the afternoon shift.

14 Q In addition to making rounds, you had this form
15 that you were handing out?

16 A That was on rounds.

17 Q You had to draft the form, did you not?

18 A Yes.

19 Q And Mabel Lowrey had to type the form for you,
20 did she not?

21 A Yes.

22 Q And that form was typed on stationery from an
23 organization you no longer had authority to use their

1 stationery, isn't that correct?

2 A That was a little vague at that point.

3 Q You had been told that you were no longer
4 medical director?

5 A Yes.

6 Q And Mabel Lowrey was not your employee, was she?

7 A No.

8 Q But that day she became your employee?

9 A She continued with National Medical Care for
10 several weeks part time, she worked for both of us
11 for awhile.

12 Q So one of the things you did in that busy day
13 was reach some kind of understanding with Mabel Lowrey
14 about working for you?

15 A We didn't make a specific agreement.

16 Q She didn't force her way into your office,
17 did she?

18 A No. I asked her to type the statement, and she
19 typed it up. I didn't offer her a job, and she didn't
20 ask for a job. There was kind of a limbo period where
21 she actually did work for us and National Medical
22 Care, and then resigned from National Medical Care
23 several weeks later.

1 Q What about Hall, she also went to work for you
2 that day?

3 A Yes.

4 Q You had some discussion with her that day about
5 working for you.

6 A Yes.

7 Q In addition, you had discussions with your
8 wife, isn't that correct?

9 A Yes.

10 Q In addition, there were arrangements about
11 renting an office that day, isn't that correct?

12 A Yes.

13 Q Then when you made your regular medical rounds
14 you stopped and talked to each patient about this form?

15 A I made that particular statement to each patient
16 that I outlined, yes.

17 Q And some of them must have had some questions?

18 A Yes.

19 Q Normally, it takes forty-five minutes to an hour
20 just to make medical rounds, isn't that correct?

21 A Anywhere from ten minutes to an hour.

22 Q How many patients would be on those machines
23 in a shift?

1 A Usually fifteen.

2 Q Sometimes twenty?

3 A I think we had nineteen stations at that time.

4 Q To make rounds of fifteen patients in ten
5 minutes, you really had to rush, didn't you?

6 A I didn't feel rushed. If a patient had no
7 complaint and was very stable, I went to the next
8 patient. I didn't chitchat.

9 Q You are saying you can spend less than a minute
10 with the patient and do an adequate job if they had
11 no complaints.

12 A You can.

13 Q You, also, had negotiations that day?

14 A In what form?

15 Q With regard to your continuing to see patients
16 there..

17 A Yes.

18 Q And you also had conversations with Mr. Rubin
19 that day?

20 A Yes.

21 Q With regard to that day, you also hired the
22 three technicians, did you not, the hospital techs?

23 A I wasn't there when that took place. I just

1 know what I heard.

2 Q With regard to that day, you also had conver-
3 sations with Tolkan, did you not, about his going
4 with you?

5 A Yes, Dr. Tolkan did not really know what was
6 going on on the twelfth. I told him I had been fired
7 and it was up to him to decide what he wanted to do.
8 It was not until later that evening that he actually
9 decided to come with me. That's the reason his name
10 wasn't on the petition, I didn't know whether he
11 was coming or not.

12 Q You also called Dr. Haut that day?

13 A Either that day or around that time, as I
14 remember.

15 Q On that day, you said on direct examination you
16 had a great deal of concern regarding the patients,
17 that you were not willing to abandon them, those
18 were your exact words, do you recall that?

19 A Yes.

20 Q If you weren't willing to abandon them, sir,
21 why didn't you stay when Ray Osheroff offered you the
22 chance, let's just stay and see patients, and we'll
23 try and work things out. Why say no, if you see a

1 patient, I am walking out of here; why did you take
2 that posture?

3 A You are misquoting; I didn't say if you see a
4 patient I am walking out of here. My concern was the
5 fact that he would be seeing patients over that time-
6 period, and I again, had a lot of doubts about his
7 ability to see those patients safely.

8 Q He did offer you the ability to stay and see
9 patients while you were trying to work things out,
10 did he not?

11 A That's right. Our suggestion was over a two
12 week period, we stay, see the patients, and negotiate
13 and try to work something out as long as he did not
14 see the patients. That's the way the agreement, in
15 our minds stood, and the next morning, he was making
16 rounds.

17 Q Dr. Greenspan, try and answer my questions and
18 maybe we can finish today. My question was he offered
19 you, not what you offered him.

20 A I don't remember him offering us that.

21 Q Are you denying the fact that he offered you
22 you all
23 guys that you could stay there and see patients, and
have a cooling off period and try to work things out?

1 A When you say you all see patients --

2 Q He would see patients, too.

3 A Yes, and we weren't agreeable to that.

4 Q But he did offer that, didn't he?

5 A Yes.

6 Q And by your refusing that and walking out, in
7 essence he was the only one who could see the patients.

8 A We didn't walk out, we went into the unit to
9 see the patients.

10 Q He told you you couldn't go into the unit to
11 see patients.

12 A That's right.

13 Q The net effect was that all the patients were
14 left alone for him to see.

15 A We saw the patients, we made rounds for several
16 days.

17 Q After several days, you couldn't make any more
18 rounds.

19 A We could not make rounds from a jail cell.

20 Q But he told you on the 12th you would be locked
21 up for trespass if you tried to go into the unit.

22 A Mr. Westerman told us that, but again, there
23 was a bit of inconsistency and confusion in our minds

1 in that Pat Shine did not know anything that day, and
2 Dr. Hampers was totally silent that day, so the people
3 who were the administrators of the unit had not told
4 us anything.

5 Q When you had questions before, you managed to
6 reach Hampers with a phone call, did you not?

7 A That's right, and one of the things I could
8 have done was to call Dr. Hampers and verify what was
9 going on. The point being, in my mind, there still
10 was a persistent danger in the unit and things might
11 have been different if a physician, who I felt was
12 qualified, was going to see those patients -- then I
13 am not sure I would have gone in the unit that
14 afternoon.

15 Q When you were told by Ray Osheroff that he had
16 been appointed by Hampers as acting medical director,
17 that they had decided to fire you, why didn't you call
18 Hampers then?

19 A My immediate concern was for the patients. I
20 might have called him, but if he had said, if he had
21 verified the story, I still would have gone into the
22 unit. The only way I would not have gone into that
23 unit is if Dr. Hampers had sent down a nephrologist

1 who I was comfortable with, then I probably would not
2 have gone in that afternoon.

3 Q It's clear you knew at the time you could have
4 called Hampers?

5 A That's right.

6 Q Now, you, just two weeks before had relayed
7 orders to the nurses that Ray couldn't see patients,
8 and they weren't to take orders from him, had you not?

9 A After instructions from Dr. Hampers, that's
10 right.

11 Q If you, as acting medical director, had the
12 authority to bar him, why didn't he, as the medical
13 director, have the authority to bar you from seeing
14 patients?

15 A He didn't have any authority to make me place
16 those patients in what I thought was a medical danger.

17 Q After a week you took his admonition seriously
18 and you stopped seeing the patients in the unit, did
19 you not?

20 A Yes.

21 Q Did you, at that time, say to him look, I am
22 so concerned about these patients, what about your
23 prior offer, we will see patients together and maybe

1 we will try and work something out, did you do that?

2 A I had no more evidence, at that time, that --
3 let me -- I was getting information throughout that
4 period from nurses that he was seeing patients in a
5 very inconsistent way, that he was writing questionable
6 orders and questionable procedures --

7 Q Dr. Greenspan, please answer my question. Did
8 you do it, yes or no?

9 MR. PLEDGER: I have to object. I believe the
10 doctor was trying to answer the question. Sometimes
11 the answer is not always what we want. I think the
12 witness ought to be permitted to finish the answer,
13 then if it is not answered, he can re -ask the question.

14 A I did not do that because of the growing concern
15 I had with the way Dr. Osheroff was running the unit.

16 Q You gave some testimony in your direct examina-
17 tion about drugs prescribed by Dr. Osheroff, and that
18 he went to the Executive Committee and you brought
19 them some evidence that he had given a wrong prescrip-
20 tion, do you remember that testimony?

21 A Yes.

22 Q Doctors, from time to time, make mistakes on
23 prescriptions, do they not?

1 A Yes.

2 Q Some of the differences of opinion that doctors
3 have on prescriptions depends on physical viewing
4 of the patient at the time, isn't that correct?

5 A Yes. You have to remember that I was talking
6 to doctors at the meeting, so they understood the
7 same thing.

8 Q You, yourself, have made mistakes on prescriptions,
9 have you not?

10 A Yes.

11 Q You, in fact, administered Tolwin to one patient
12 when the records of the patient said the patient was
13 allergic to Tolwin.

14 MR. PLEDGER: Your Honor, again, we are going
15 into side issues.

16 THE COURT: Your objection is sustained.

17 MR. HIRSCHKOP: Your Honor, we would like to
18 make a proffer that he administered Tolwin to a patient
19 named Jackson who died as the result of the adminis-
20 tration of the wrong drug when the patient's records
21 said that he was allergic to that drug.

22 That he further administered Norpace to another
23 patient, who subsequently died from overdosing on

1 Norpace in four times the quantity the Physician's
2 Desk Reference says you can give to a patient.

3 THE COURT: You may ask whether or not he made
4 a mistake, but we are not going to go off and try
5 side issues.

6 Q With regard to Jackman, you did administer
7 Tolwin when it said clearly in his records that he
8 was allergic to the drug.

9 A No.

10 Q Did you order the drug to be given?

11 A When it was clearly written that he was allergic,
12 no. I can give you the background on the story, if
13 you like.

14 Q Did the records reflect the man was allergic
15 to Tolwin?

16 A After it was given, not before.

17 Q How did it get in there afterwards?

18 A It was written after he got it. I will be
19 glad to go over it.

20 Q Charles Lee, do you remember that patient?

21 A Yes.

22 Q Did you administer Norpace to that patient?

23 A I don't remember.

1 Q I show you physician's order for Lee, Charles H.,
2 does that refresh your recollection that you ordered
3 Norpace 150 milligrams every six hours?

4 A No.

5 MR. PLEDGER: Your Honor, I would, at this time,
6 like to inquire as to whether the plaintiffs have
7 received from these patients, whose records they
8 apparently gone through and obtained copies of, as to
9 whether there is any authorization for them to do so?

10 THE COURT: Do you represent the patients?

11 MR. PLEDGER: I represent Dr. Greenspan. This
12 is a patient that is Dr. Greenspan's, and as far as I
13 know that patient has never authorized the breach of
14 the confidentiality of his physician-patient relation-
15 ship. It would appear to me that unless they have
16 something from this patient, there should not be any-
17 thing in this record with respect to this patient.

18 Perhaps if they have done that, I would assume
19 that Dr. Osheroff has had him under his care for a
20 period of time, he's gotten a written authorization
21 from him saying that he can release this information
22 to the public.

23 I am sure his counsel has cautioned him about

1 that, but I think that ought to go into evidence before
2 we start talking about these things, if there is a
3 release from this patient.

4 MR. HIRSCHKOP: Your Honor, they have used
5 patients' names freely and so have we in this litigation.
6 We will agree to seal the names of the patients. These
7 are two deceased patients we are talking about. Jackman
8 came up in discovery.

9 THE COURT: All right, you may proceed.

10 A Could I see that again, please?

11 Q Still doesn't refresh your recollection?

12 A There are a couple of comments I could make
13 about this.

14 Q Does it refresh your recollection?

15 A Yes.

16 Q Did you, in fact, give that order to give that
17 dosage?

18 A Yes.

19 Q With a patient under hemodialysis, that would
20 not be a reasonable dosage, would it?

21 A I disagree with that. You have to reduce the
22 dose in hemodialysis. As you know from the order, the
23 patient was in the intensive care unit, at that time, and

1 transferred to the coronary care unit, and you can
2 use higher doses of drugs early on, including Digitalis,
3 that you wouldn't use on a regular chronic basis.
4 This was a very unstable patient when that drug was
5 used, and I had just stopped Quinaden because that
6 was ineffective, and changed over to another drug.
7 Sometimes you use a higher dose early on, and then
8 taper down.

9 Q You were giving that patient 600 milligrams a
10 day, were you not?

11 A That one day.

12 Q For patients with severe renal insufficiency --
13 I am reading from the Physicians Desk Reference --
14 the recommended dosage regimen is 100 mg at intervals
15 shown in the table below, with or without an initial
16 loading dose of 150 milligrams.

17 Do you agree with that statement so far?

18 A Yes.

19 Q The table shows below that when you have less
20 than a creatinine clearance of 15, you can only give
21 it every 24 hours, that is 100 mg every 24 hours.

22 A Could I see that, please?

23 Q Sure. This patient by definition had a

1 creatinine level of less than fifteen, didn't he?

2 A Yes. Down further it says: A limited number
3 of patients with severe refractory ventricular
4 tachycardia have tolerated daily doses of Norpace up
5 to 1600 mg per day (400 mg every six hours) resulting
6 in disopyramide plasma levels up to nine micrograms
7 per milileter."

8 Q That doesn't supply to the severe, does it --
9 it was a separate paragraph.

10 A He was in intensive care, and I considered him
11 a severe arrythmia patient.

12 Q What does it say right there, Doctor, for 8/12/79,
13 just read what that one line says.

14 A Widening QRS complexes.

15 Q Because you gave him the drug for five successive
16 days at that level, and that is what killed that man,
17 isn't it?

18 A No. The man had severe heart disease and had
19 cardiac surgery.

20 Q You gave him 600 mg for five successive days,
21 didn't you?

22 A I don't know, I would have to sit down and
23 review this. You are talking about the person who

1 wrote that was the cardiac surgeon.

2 Q He wasn't your patient, you were called in on
3 a consult, isn't that correct?

4 A By Mr. Lee?

5 Q He had a cardiac problem, he had severe arry-
6 thymia and he was put in the hospital for that, isn't
7 that correct?

8 A That's right.

9 Q You were called in because he was a prior hemo-
10 dialysis patient as a consult, at that time, were you
11 not? You were not the admitting physician in the
12 hospital at that time.

13 A The patient also had a cardiologist, Dr. Schwartz.

14 Q And it was Schwartz who called you in, wasn't it?

15 A That's right.

16 Q And you were the one who gave him 600 mg a day
17 for five successive days of that drug?

18 A With the knowledge of the cardiologist. The
19 cardiologist's consult is right on there.

20 Q With regard to Jackman, page 584 of the medical
21 record, what is the date of that record?

22 A 8-11-77.

23 Q It does indicate allergies Tolwin, does it not?

1 A Yes, it does. If I may explain?

2 Q Please.

3 Q Number one, the writing is different, and the
4 problem was the patient had sycle cell disease and
5 was in severe pain. We usually got Demerol. We were
6 out of Demerol in the unit, and I asked about analgesics
7 and there were none written on the chart. We gave him
8 Tolwin, and the patient had a seizure about a half
9 hour later and was admitted to the hospital. I called
10 up his wife and asked her for some more history, and
11 was there any problem with Tolwin. She told me that
12 he was allergic to Tolwin and had a problem in the
13 hospital before and was very embarrassed that she
14 hadn't told us, and then we went back to the chart
15 and wrote in Tolwin.

16 Q The handwriting on the Tolwin is apparently the
17 same as the fill in please handwriting, and the ID
18 policy number handwriting, is it not?

19 A It looks like it's the same, but you would have
20 to talk to the wife to verify what I just said.

21 MR. HIRSCHKOP: I would submit this chart as
22 our next exhibit.

23 THE COURT: Any objection, other than what you

1 have already stated?

2 MR. PLEDGER: No, your Honor.

3 THE COURT: It will be admitted as Plaintiff's
4 Exhibit 190.

5 Q Just so it is clear, your administration of
6 Tolwin was in 1979, was it not?

7 A As I recall, it was.

8 Q You said that Sue Smith showed you the petition
9 that she drafted, is that correct?

10 A Yes.

11 Q Do you know why she would deny showing you the
12 petition?

13 A She might not have remembered it.

14 Q You said that you received a copy of the petition,
15 but you failed to say from whom you received it; from
16 whom did you receive it?

17 A As I recall, I made a copy when Sue Smith showed
18 it to me.

19 Q So when she testified that she didn't supply
20 you with a copy, that was not true?

21 MR. PLEDGER: Your Honor --

22 THE COURT: Objection sustained. The form of
23 the question is improper.

1 Q You say you never told patients that Dr.
2 Osheroff was incompetent, is that correct?

3 A That's right.

4 Q But you heard Mr. Sparrow's testimony that he
5 says you told him that.

6 A Yes.

7 Q Do you have any explanation for the difference
8 in your testimony?

9 A Yes.

10 Q What is that?

11 A Mr. Sparrow is one of the patients I mentioned
12 who was fairly aggressive in asking me what was going
13 on, and what the mental health of Dr. Osheroff was.
14 Again, my response was that I couldn't work with him,
15 and I couldn't see how he could misinterpret that.

16 Q Let me read you specifically what Mr. Sparrow
17 said.

18 "Do you recall specifically what was said?"

19 "Yes, something to the effect that they thought
20 he was incompetent and should no longer continue
21 in the role that he was in, and they wanted to get
22 him out of the unit."

23 Mr. Sparrow testified to that under oath, and

1 you say that is not correct?

2 A When he says something to the effect of, in my
3 mind, that is his interpretation of what we were
4 saying. We did not say we wanted him out of the unit,
5 and we didn't say he was incompetent; at least, I didn't.

6 Q You say you had conversations with your wife
7 regarding Ray's competence.

8 A Yes.

9 Q You heard her testify that she never spoke to
10 you about that?

11 A I don't remember her saying that.

12 Q You say you brought suit in federal court to
13 protect patients, but you sued for \$600,000.

14 A I didn't know anything about triple damages.

15 Q You have read the complaint?

16 A I read the complaint, and I was told by the
17 lawyers that is what you usually do.

18 Q And you hadn't set up any patient's fund to
19 give them any benefits from the damages you sought in
20 that suit, is that correct?

21 A No.

22 Q Of course, if you saw patients in the unit, you
23 could get that \$260 a month, couldn't you?

1 A That's correct. The money that we hoped to
2 be able to get from the \$260 was money we would hope
3 to support the antitrust litigation which hopefully
4 would open units around the country. We weren't able
5 to afford that, and that's one of the reasons we
6 dropped the antitrust suit.

7 Q You dismissed that case, didn't you?

8 A That's right, we couldn't afford it.

9 Q You said in the Aminophyllin incident you got
10 a call from somebody, who called you?

11 A I don't remember whether it was Sue or Peggy,
12 Sue Smith or Peggy Hess.

13 Q Sue Smith denied called you, you know that,
14 don't you?

15 A I said I don't remember.

16 Q Peggy Hess denied talking to you about it.

17 A My recollection sitting here is that one of
18 the two called. I don't remember which or either, I
19 don't know.

20 Q You know in your deposition you denied having
21 the third conversation with Dingman, you remember that?

22 A You have to define which conversation were
23 talking about.

1 THE COURT: Didn't you go through that
2 yesterday?

3 MR. HIRSCHKOP: I will give him the specific
4 deposition number later on.

5 Q With regard to the Aminophyllin incident,
6 that occurred in late December when you had been gone
7 from the unit at least two weeks.

8 A Yes.

9 Q You said that Ray was very perfunctory in his
10 rounds.

11 A That's not the word I used, that is Dr.
12 Tolkan's word.

13 Q You testified that he was very brief in his
14 rounds and he treated them in a perfunctory manner,
15 didn't you?

16 A That is correct.

17 Q YOU know Dr. Tolkan, himself, didn't show up
18 for rounds until two hours after the person was put
19 on the machine, he's testified to that under oath.

20 A That is not uncommon for everyone to do.

21 Q Very often people are on the machine only
22 three hours.

23 A That's right.

1 Q And showing up at that point, you can only
2 spend two or three minutes with the patient?

3 A Well, you can spend an hour with the patient
4 or longer.

5 Q And not leave any time for the other fourteen
6 patients that are on the machines, right?

7 A That would be correct.

8 Q And of course, a ten minute round that you
9 made sometimes, it would be almost impossible to go
10 any faster than that unless you didn't say anything
11 to any patients?

12 A No. I say something to every patient, but you
13 can do it depending on how many patients there are.

14 Q You have testified several times about the
15 burden on you and Dr. Tolkan, but Dr. Chan was there a
16 substantial amount of time at the unit, and she was a
17 good and competent doctor, was she not?

18 A That's two questions. When you say substantial
19 amount of time?

20 Q Let me withdraw that question. She was a very
21 helpful and good doctor, was she not?

22 A Yes.

23 Q And you testified that people left the unit

1 when you got there, there was a lot of dissatisfaction,
2 but, in fact, during all that period of several months
3 only one or two people left the unit, isn't that
4 correct?

5 A The period after I came?

6 Q Yes.

7 A I said they were leaving, they did not leave
8 after I came.

9 Q In fact, one may have transferred into another
10 unit during that same period of time?

11 A That might have happened after I came.

12 Q Now, you had testified that you made an agree-
13 ment with Ray you would keep his practice until he got
14 back. You believed that he would be gone from six
15 to twelve months at the time you made that agreement,
16 didn't you?

17 MR. PLEDGER: Your Honor, I am going to object
18 to the question. It wasn't an agreement, apparently
19 there was a statement made, as Mr. Bader characterized
20 it, the type that you would give to reassure a friend
21 so he would get the medical care he needed, but a
22 statement made that I will watch this.

23 MR. HIRSCHKOP: Your Honor, they have answered

1 in the complaint they agreed to maintain his practice.

2 THE COURT: Let's not quibble over whether it
3 was an agreement or statement, at this juncture.

4 Q You told numerous people, Marty Gannon, Mr.
5 Westerman, Mr. Notaris, Ray Osheroff, and others,
6 including Dr. Tolkan that you would maintain and
7 keep that practice for Dr. Osheroff until he got back,
8 did you not?

9 A That's correct, at which time he would come
10 back as a functioning nephrologist. I don't under-
11 stand why you always present half the statement because
12 I always presented that picture to everybody.

13 Q You, in fact, told Dr. Osheroff that same
14 thing that you just said, did you not?

15 A The same thing I just said which is what I
16 told everybody.

17 Q At the time you gave those assurances, or agree-
18 ments, or whatever they were, you had a firm belief
19 it might take six to twelve months for him to get
20 back from a mental hospital?

21 A Initially, I thought it would be shorter. I
22 was given the time six to twelve months at Chestnut
23 Lodge. I didn't know whether it was going to be two

1 months, three months or longer. In fact, later on, I
2 was given the impression it would be longer than a
3 year.

4 Q But at Chestnut Lodge, that was the very first
5 day, and that is the same day you gave those assurances
6 to Ray.

7 A At Chestnut Lodge, my impression was six to
8 twelve months.

9 Q So when you gave the assurances at some period,
10 you knew it might be six to twelve months?

11 A Yes.

12 Q There came a time however, long before he got
13 out of the hospital, you made up your mind you wouldn't
14 practice medicine with him regardless of those
15 assurances, isn't that correct?

16 A I wouldn't practice medicine with him unless
17 he came back as a functioning nephrologist. I would
18 not go back to the same type of relationship that I
19 had before where my social life and private life were
20 totally being abused. I wanted a partner, not some-
21 body I had to care for.

22 Q In the hearing before Judge Lewis, Page 286,
23 do you recall this question and answer:

1 "MR. CLEMENTS: Had you made that decision?

2 "Answer: Yes, over the several months prior
3 to his returning I had made the decision that most
4 likely I would not be able to work with him on his
5 return."

6 Did you make that answer?

7 A Yes, that's right.

8 Q So you had made the decision prior to his
9 return, prior to the time you saw him or knew if he
10 was cured, you most likely wouldn't work with him.

11 A That's correct, I was continuing to get in-
12 formation by way of telephone conversations with him
13 at Silver Hill, seeing him when he came back, there
14 was really no change in his expectations of me being
15 much, much more than a partner. I wanted a partner.

16 Q You, also, had negotiated with United Health
17 Care, that's true, also, isn't it? You can answer that
18 yes or no.

19 A Yes.

20 Q And you had also filed an application for
21 Prince William Dialysis Facility?

22 A At what time?

23 Q Prior to his coming back.

1 A I believe that is correct.

2 Q You had also gotten a raise to a hundred
3 thousand dollars prior to his coming back, that's
4 true, also?

5 A Yes.

6 Q So there were a lot of changes after you made
7 the assurances to him and prior to changing your mind,
8 a lot of changes, weren't there?

9 A There were changes. I don't believe the changes
10 have anything to do with what you are trying to implicate,
11 they are separate things.

12 The unit increased. The number of patients
13 and his practice increased which was a change. His
14 practice was much better throughout that summer,
15 which was a change.

16 Q You were trying to get his business, weren't
17 you, in the summer of 1979?

18 A No.

19 Q Let me ask you a question, page 308 of the trial
20 transcript:

21 "Question: You tried to give them a choice
22 at that time to become your patients?

23 "Answer: That is right, after I was terminated.

1 "But the termination was at that time --

2 A (Interposing) Who is questioning, Mr. Clements
3 or Judge Lewis?

4 Q Does it matter?

5 A It matters to me.

6 Q I think it was Mr. Troy who was asking the
7 question.

8 "But the termination was at that time that you
9 did not want to be an employee of Osheroff or his
10 partner, correct?

11 "Answer: Please repeat that.

12 "Question: You would have taken the business,
13 correct, you would have gotten the business from
14 Osheroff completely?

15 "Answer: I would have either got it or compromised
16 one or the other, we were hoping to compromise."

17 So if you didn't compromise, you were going to
18 get his business, that was your intention, isn't that
19 correct?

20 A How you get someone's business in a medical
21 situation is unclear to me. We were hoping to
22 compromise. If there was no compromise, we were going
23 to practice and compete.

1 Q Isn't it a fact you stated to another doctor,
2 prior to his coming back, that there won't be anything
3 to buy when Ray gets back?

4 A That was with respect to the Georgetown group.

5 Q Who did you say that to?

6 A Where are you reading that from?

7 Q Who did you say that to?

8 A I don't remember saying that.

9 Q Do you recall a conversation with a Dr. Ocuin?

10 A Yes.

11 Q When did that conversation occur?

12 A This was during that summer period at the
13 DuPont Circle unit; he was one of the doctors over
14 there. He called me up and invited me over.

15 Q And you talked to him about setting up a unit,
16 did you not?

17 A He had heard that I was interested in a unit,
18 and they wanted to help finance it, and they wanted
19 to invest in it.

20 Q Was he anywhere around in any of your conver-
21 sations with Dr. Hampers?

22 A He had a conversation with Dr. Hampers after
23 my conversation at the airport.

1 Q In November, 1979.

2 A If that is when it was.

3 Q And you were talking to Dr. Hampers then about
4 what?

5 A Dr. Hampers had called me up and wanted to
6 discuss the northeast application.

7 Q Let me read your testimony from your deposition
8 in the other lawsuit, page 153:

9 "Did you tell him by the time Dr. Osheroff --

10 A (Interposing) Did I tell who, Dr. Hampers?

11 Q I was talking about Dr. Ocuin, do you remember?

12 "Did you tell him by the time Dr. Osheroff got
13 out of the hospital there wouldn't be much practice
14 left to purchase?

15 "Answer: I don't recall makign that statement
16 to him.

17 "Do you recall saying something like that?

18 "Answer: I might have because that is the way
19 I felt. I did feel by the time he got out there
20 wasn't much to sell of the private practice, al-
21 though again, for the numbers I mentioned, I was
22 willing to offer a very fair price."

23 A That's correct, if I can explain.

1 Q Try, please.

2 A I don't have to try, it's very easy.

3 If Dr. Osheroff were going to sell -- you have
4 to remember that the Georgetown group was a competitor
5 to me in the sale, any sale that Dr. Osheroff made
6 would have been, in my mind, either to them or to me.
7 And me being in the practice and knowing the patients
8 gave me an advantage over the Georgetown group, and
9 that's what I was talking about. I had that advantage
10 of being more worth to me than to them.

11 Q Being on the inside did give you an advantage,
12 didn't it?

13 A I don't deny that.

14 Q Being on the inside gave you some special
15 obligations, did it not?

16 A To the patients. I did have an obligation to
17 Dr. Osheroff that I met.

18 Q When you made these assurances to Osheroff,
19 and Westerman, and others that you would maintain
20 the practice for six to twelve months, you discussed
21 that with Dr. Tolkan, at that time, did you not?

22 A Yes.

23 Q And he agreed with you, and said he would

1 maintain the practice, did he not?

2 A Yes.

3 Q And you relayed that to Mr. Westerman, did you
4 not?

5 A I probably did.

6 Q Now at the time you gave these assurances that
7 you would maintain the practice, you had sought Mr.
8 Rubin's advice with regard to that subject, didn't you?

9 A I probably did, he was very close.

10 Q You say you probably did; you know for a fact
11 you did, don't you?

12 A I probably did, I talked to him just about
13 everything.

14 Q Let me refresh your recollection, page 94, in
15 your deposition of the 7th.

16 "What I want to know at the time you were
17 entering discussions with Dr. Osheroff and Mr.
18 Westerman, I believe you said with regard to main-
19 taining Ray's practice until he got better, did
20 you seek advice of counsel as to the ramifications
21 of your agreement to doing that?

22 "MR. PLEDGER: Is your question whether he
23 sought advice of counsel at the time he undertook
this?

1 "MR. FUDELLA: Right, fine.

2 "Question: Did you?

3 "Answer: Yes.

4 "Question: Was that Mr. Rubin?

5 "ANSWER: Yes."

6 Does that refresh your recollection?

7 A My memory was better during the deposition
8 than it is now.

9 Q So you will agree now that you did seek such
10 advice?

11 A I am sure I did.

12 Q With regard to your salary increase once you
13 were in, you only assumed Osheroff granted that
14 increase, did you not?

15 A Yes.

16 Q Yet you saw him three times, why didn't you
17 discuss it with him directly?

18 A I didn't think it would be helpful to him, and
19 number two, he was in no condition to consider that
20 kind of information. He was totally in his own
21 thoughts at that point. Most of the business matters
22 went through Mr. Notaris and Mr. Westerman, and they,
23 I assume, relayed to Dr. Osheroff, but I am sure that

1 would have been a difficult situation for them. In
2 my mind, was one of the reasons a guardian was
3 appointed.

4 Q A guardian wasn't appointed until the summer,
5 isn't that correct?

6 A There were two guardians.

7 Q But they weren't appointed until the summer.

8 A That is probably correct, I don't know exactly.

9 Q By the time a guardian was appointed, you had
10 not seen Ray any more.

11 A I don't know exactly when a guardian was
12 appointed.

13 Q Doctor, I would like to show you Exhibit No. 8.
14 This is the letter to Constantin Hampers granting you
15 medical director. You said yesterday you dictated
16 and had that letter typed, is that correct?

17 A Yes.

18 Q You hand carried that letter to Dr. Osheroff
19 in the hospital and he signed that letter, at that
20 time.

21 A That is my recollection.

22 Q And this was late March, he had already been
23 in the hospital almost three months.

1 A That's right.

2 Q If he could sign this letter competently granting
3 you the medical directorship and agreeing that you
4 were an associate, which would have the ramifications
5 of giving you the right of first refusal under the
6 contract, if he could deal with those fine legal
7 issues, why couldn't you ask the man about a raise of
8 forty thousand dollars?

9 A There was a serious question in my mind and
10 Mr. Rubin's mind whether that letter was valid, since
11 we were concerned about the competence prior to that
12 letter, and one of the reasons for the guardian was
13 because of our concerns that any contract signed would
14 not be valid.

15 But again, that letter in substance, as far
16 as the medical directorship, was just a form, and was
17 requested, as I mentioned, by Dr. Hampers.

18 Q Your getting a hundred thousand dollars wasn't
19 a matter of form, that was a lot of money, wasn't it?

20 A A lot of money for a lot of work, twelve to
21 fifteen hours a day.

22 Q You went from forty-five thousand dollars to
23 a hundred thousand dollars within a period of seven months.

1 A That's correct, and I went from twelve to
2 fifteen hours a day to twelve to fifteen hours a day.

3 Q You testified yesterday that two doctors could
4 run the practice; there was you, Dr. Tolkan, Dr. Chan
5 and Dr. Goldberger, wasn't there?

6 A That's right.

7 Q Now with regard to the appointment of guardian,
8 I would like to show you what has been marked as Ex-
9 hibit 83 that a guardian wasn't appointed until August
10 8, 1979, almost five months after you put that under
11 his nose to sign, the right of first refusal letter.
12 Does that refresh your recollection when a guardian
13 was appointed?

14 A Yes.

15 Q And dealing with these fine legal issues of
16 right of first refusal, and whether you were associated
17 in practice, you cannot produce one thing in writing
18 to show that you went to Westerman and requested I
19 need a guardian because we are dealing with legal
20 issues and I had him sign this letter.

21 MR. PLEDGER: Your Honor, counsel, I realize,
22 wasn't here when that testimony came out, but it is
23 clear from Mr. Westerman that the guardian was his ide

1 if you recall his testimony, and he is the one that
2 thought there was a question and a look of impropriety
3 if somebody is in a mental institution, and he wanted
4 to do that for himself.

5 There was never any testimony that Dr. Green-
6 span had a guardian appointed, and the form of his
7 question to which I object assumes that to be the
8 fact. I can excuse counsel because there is a lot of
9 testimony here that he is unfamiliar with. I think
10 first you have to lay the foundation, did he, in fact,
11 request the guardian, and if so, why. But the facts
12 are that he didn't, and there is yet another guardian
13 that was requested by Mr. Gannon, and who actually,
14 as I understand it, has not been discharged, so Dr.
15 Osheroff, at the present time, has a guardian.

16 THE COURT: Does he now have a guardian?

17 MR. HIRSCHKOP: No, the guardian has been
18 dismissed. Your Honor, he's been insisting that he
19 had questions in his mind about the man being able
20 to understand.

21 THE COURT: You may ask him if he requested or
22 suggested that a guardian be appointed.

23 Q Did you request of Mr. Westerman in March, when

1 these letters were being signed by Dr. Osheroff that
2 a guardian be appointed?

3 A No.

4 Q But you did discuss with Mr. Rubin the right
5 of first refusal issue, did you not?

6 A Yes, I discussed it with Mr. Rubin.

7 Q And at that time, you had Dr. Osheroff's
8 contract, did you not?

9 A Yes. But again, if it was an illegal letter
10 because he is incompetent, what difference does it make?

11 Q Were you practicing a fraud on the man when you
12 got him to sign an illegal letter?

13 A That didn't enter my mind, because I was doing
14 that pursuant to a request from Dr. Hampers, trying
15 to protect the unit.

16 Q The right of first refusal wasn't protecting
17 Dr. Hampers, that was protecting you, was it not?

18 A That's right, it was to protect both of us.

19 Q The only reason to have in there associated in
20 practice was to give you that right of first refusal,
21 wasn't it?

22 A That was one of the dual purposes of the letter.
23 The other reason was to give the dialysis unit a

1 medical director.

2 Q Now, you said yesterday you couldn't recall
3 when Ray's telephone calls got limited. I would like
4 to read you from your deposition of the 8th.

5 A When I say I didn't recall, I gave you the
6 timeperiod.

7 Q Do you recall today that it was, in fact,
8 within the first few weeks of his being at Chestnut
9 Lodge?

10 A That's what I said yesterday, I believe.

11 Q With regard to that letter, you were the one
12 who requested the letter, were you not?

13 A Which letter.

14 Q The one I have been asking you about, the
15 right of first refusal letter.

16 A I called Mr. Westerman because of my concern.
17 He, also, had concern because he wanted the letter
18 to say, also, information about the medical director.

19 Q But you initiated that letter, did you not?

20 A As I remember, I called him because I had a
21 concern.

22 Q With regard to Peggy Hess, you recommended to
23 Pat Shine that Peggy Hess be hired, did you not?

1 A Yes, I discussed it with Dr. Osheroff, too.

2 Q Peggy Hess was referred to you by your wife,
3 isn't that correct?

4 A Yes.

5 Q And pursuant to that, you recommended to Pat
6 Shine that Hess be hired, did you not?

7 A I suggested that Pat Shine interview Miss Hess,
8 and Pat Shine interviewed Miss Hess, and Pat Shine
9 hired Miss Hess, with my recommendation, by the way.

10 Q You said under oath that you recommended she
11 be hired.

12 A That's right.

13 Q Yesterday there was some question about who
14 wrote the bylaws. There is no question in your mind
15 you wrote both sets of bylaws, isn't that correct?

16 A I did exactly what I told you I did.

17 Q On both sets of bylaws?

18 A Yes.

19 Q You were asked in March in your deposition,
20 Page 151, the first trial:

21 "Did you write the bylaws?

22 "Yes.

23 "Did you write the governing body bylaws as

1 well as the medical staff bylaws?

2 "That's correct."

3 THE COURT: I think you have sufficiently
4 covered that subject.

5 THE WITNESS: If you continue reading, I
6 explain the same way.

7 Q Now, you have mentioned the Georgetown group
8 wanted to buy the practice and asked you about some-
9 thing being left -- they had offered one million
10 dollars for that practice.

11 A That is what I understand from Dr. Osheroff.

12 Q And Osheroff had rejected that offer as being
13 insufficient, isn't that correct?

14 A That was my understanding from Dr. Osheroff.

15 Q In August, when there was discussion of buying
16 the practice, you offered a million dollars for the
17 practice, did you not?

18 A I think I said that we would match the George-
19 town offer, but we wouldn't be able to pay in a lump
20 sum.

21 Q But the aggregate sum was a million dollars,
22 wasn't it?

23 A That's right, but I think you would have to

1 verify that is what Georgetown had offered, because I
2 have no evidence that's what they really offered.

3 Q And Osheroff had demanded three million dollars,
4 isn't that correct?

5 A This is in August?

6 Q Yes.

7 A I don't remember. He was in the hospital in
8 August, I don't remember a discussion with Dr. Osheroff.

9 Q What about on December 12th, a demand of three
10 million dollars for the practice then?

11 A That's right.

12 Q And you made a counter off of one million
13 dollars to purchase the practice.

14 A No. What we offered was an amount of money
15 over the years just to have privileges in the unit,
16 and to allow patients to choose whoever they wanted.
17 We didn't offer to buy the practice then.

18 Q Let me read you from your deposition of January
19 8, 1981, page 330:

20 "There were negotiations on December 12th as
21 to whether you would actually buy the practice
22 on that day?

23 "Yes.

1 "Who was present for those negotiations?

2 "Westerman, Osheroff, Rubin, Tolkan and myself.

3 "Mr. Evans and Mr. Bader weren't involved at
4 that point?

5 "No."

6 Mr. Bader and Mr. Evans had been the guardians,
7 had they not?

8 A Yes.

9 Q Going back to the transcript:

10 "Was there a figure mentioned as to what the
11 value would be?

12 "The value as represented to me was a total
13 of three million dollars."

14 Now, up to that point, is that all correct?

15 A If you are reading it, I assume it's correct.

16 Q Well, you were there on the 12th, I wasn't.

17 Do you agree those things happened on the 12th?

18 A Yes.

19 Q Continuing with the transcript:

20 "Did you make an offer to purchase the practice
21 then?

22 "Yes. We offered to purchase the practice
23 initially; that figure came up following our
negotiations.

1718

1 "You made an offer on December 12th, is that
2 right?

3 "Yes.

4 "How much was that offer for?

5 "That was for one million dollars.

6 "And they came back and said no, the thing is
7 worth three million?

8 "We initially offered a hundred thousand dollars
9 a year for ten years."

10 You admit all that occurred on December 12th?

11 A Yes. Keep reading.

12 Q That's where my question ends, your counsel can
13 ask you.

14 MR. HIRSCHKOP: Your Honor, I can read the
15 whole transcript.

16 MR. PLEDGER: He should read the next question
17 and answer.

18 Q "Question: We are talking about two different
19 things, aren't we?

20 "Answer: Yes, that is what I am about to say,
21 it is not to buy his practice.

22 Is that what you are referring to?

23 A Yes, I had made a mistake and corrected that in

1 the next sentence or two.

2 Q You have apparently reviewed these transcripts,
3 you know them pretty well, don't you?

4 A I know I made a mistake in that transcript at
5 that point, and I corrected it.

6 Q And you also know in these transcripts you
7 absolutely denied a third conversation with Dr. Dingman
8 after he got out of Silver Hill, isn't that true?

9 A I don't remember one way or the other.

10 Q Is it your position that there were no more
11 negotiations to actually purchase the practice after
12 August of '79?

13 A That's right.

14 Q Now, you heard Mr. Westerman testify about
15 your July 26, 1979 conversation with him, is that correct?

16 A That's the telephone conversation?

17 Q Yes, sir.

18 A Yes.

19 Q At that time, he made a memo to the file of
20 exactly what was said between you, did you hear him
21 say that?

22 A Yes.

23 Q Have you reviewed that memo?

1 A Yes.

2 Q Is it your contention that memo is incorrect?

3 A Absolutely.

4 Q You have testified, have you not, that there
5 in fact was such a telephone call from Mr. Westerman?

6 A Yes, there was.

7 Q And you indicated in that phone call that the
8 Prince William center would be for yourself, is that
9 correct?

10 A Yes.

11 Q Did you tell him, at that time, that you never
12 told Osheroff because Osheroff didn't ask that this
13 thing would be for yourself?

14 A I don't remember that. I don't remember saying
15 that I told Dr. Osheroff when he was at Chestnut Lodge.

16 Q We agree you didn't tell Dr. Osheroff.

17 It's clear that you did not tell Osheroff
18 about it at Chestnut Lodge.

19 A I don't believe I did. Most of the things I
20 was saying were not heard anyway.

21 Q Of course, in March of 1980 you testified in
22 your deposition "I, in fact, told both Dr. Osheroff and
23 Mr. Westerman about the unit while Osheroff was in

1 Chestnut Lodge." That wasn't true when you said that
2 under oath, was it?

3 A I can't remember. My main concern that summer
4 was with Mr. Notaris, Mr. Westerman and the guardians;
5 Dr. Osheroff, as far as I was concerned, was not
6 hearing what I was saying.

7 Q At Page 65 in that deposition, you were asked:

8 "Do you recall whether they asked you whether
9 it was for Dr. Osheroff or for yourself?

10 "Answer: Dr. Osheroff never asked."

11 Does that refresh your recollection on that?

12 A I would have to see that, but again, I don't
13 recall any specific conversation at Chestnut Lodge
14 with Dr. Osheroff about the dialysis unit.

15 Q At the time you told Westerman that this unit
16 was only for you, did you tell him that was because
17 Osheroff couldn't go into Prince William County under
18 his contract?

19 A That was one of the reasons.

20 Q Did you tell that to Westerman?

21 A I told that to him along with other things.

22 Q That is fairly consistent with his memo where
23 he says you didn't put his name on it because he

1 couldn't go into Prince William County but it was for
2 him?

3 A No, that's not the way I said it.

4 Q You not only applied for Prince William while
5 you were employed with Osheroff, but you also filed
6 for two other facilities, is that correct?

7 A That's right.

8 Q And you didn't tell Osheroff about either of
9 those two other facilities, did you?

10 A No.

11 Q In the application for the two other facilities,
12 you listed a number of personnel who were employed
13 by Osheroff, did you not?

14 A Not by Dr. Osheroff, as I recall it, I might
15 have listed people employed by National Medical Care,
16 other than my wife.

17 Q Your wife was employed by Dr. Osheroff?

18 A On a part time basis.

19 Q And Dr. Tolkan was employed by Dr. Osheroff,
20 was he not?

21 A Yes.

22 Q You listed Dr. Tolkan as a co-director on one
23 of those applications, did you not?

1 A Please show me. I might have.

2 Q Is this the application for the mid-Montgomery
3 dialysis facility?

4 A Yes.

5 Q That is a true copy of it?

6 A As far as I can tell.

7 Q Is this a copy of the Northeast Washington
8 dialysis facility that you filed?

9 A It appears to be.

10 Q Look at the Northeast application, Page 1051;
11 what is that, sir?

12 A That is a CV of Dr. Tolkan.

13 Q You included his resume in your application?

14 A Yes.

15 Q At the time he was a full time employee of
16 Dr. Osheroff, is that correct?

17 A Yes.

18 MR. HIRSCHKOP: Your Honor, I would like to
19 admit these two into evidence.

20 MR. PLEDGER: No objection, your Honor.

21 MR. HIRSCHKOP: The mid-Montgomery application
22 will be the first one.

23 THE COURT: Will be admitted as Exhibit 191.

1 MR. HIRSCHKOP: The Northeast dialysis
2 application will be the second one.

3 THE COURT: Will be admitted as 192.

4 Q At the time you filed both of these applications,
5 Ray Osheroff was already back at the center?

6 A He probably was on leave, back and forth at
7 that time.

8 Q Doctor, you filed one on November 19th, that
9 was the mid-Montgomery one.

10 Q Yes.

11 Q You filed the Northeast one on December 3rd.

12 A Yes.

13 Q I know yesterday you testified you didn't know
14 where he lived during that period, but you know without
15 any question you could have contacted him, that you
16 were seeing him periodically during that period.

17 A I think if I had made an effort to reach him,
18 I could have.

19 Q Didn't you, in fact, in the meeting at National
20 Airport with Dr. Hampers have an argument about these
21 applications?

22 A There was a discussion about the Northeast
23 application.

1 Q He voiced his objection to it, did he not?

2 A When you say objection, he voiced his concern
3 and was trying to make a compromise.

4 Q Despite that conversation, you still did not go
5 to Dr. Osheroff and tell him about it, isn't that
6 correct?

7 A I just didn't see any relevance of Dr. Osheroff
8 with these applications.

9 Q With regard to either of these applications,
10 did you request his assistance from Miss Thompson at
11 George Washington Hospital?

12 A She wrote a letter for the application, in
13 support of the application.

14 Q And you specifically requested that she mail
15 you the letter at your home rather than at Northern
16 Virginia Dialysis Center, isn't that correct?

17 A I believe that is correct.

18 Q What was the reason for that?

19 A That was Mr. Rubin's advice.

20 Q What was the reason for it, sir?

21 A He wanted to create a clear separation.

22 Q You wanted to be clear that the centers were
23 to be separate from any affiliation with Dr. Osheroff,

1 isn't that correct?

2 A That's what I just said.

3 MR. HIRSCHKOP: May I have Exhibit 34, please?

4 Q Do you recognize that as the application for
5 Prince William Dialysis Facility?

6 A Yes.

7 Q You made no effort, at that time, to have any-
8 thing mailed to your home to keep the address
9 separate, did you?

10 A No. Mr. Rubin had a sharper legal mind than
11 I did. My feeling throughout the whole application
12 was that it didn't matter, because if Dr. Osheroff
13 came back into practicing, this unit would have been
14 part of his practice. We would have joined it,
15 gotten together on it. If he didn't come back and sold,
16 then it wouldn't matter anyway, so I never gave any
17 second thought to the letterhead or to the other
18 differentiation with Mr. Rubin, as a lawyer, who had
19 second thoughts.

20 Q You say your lawyer's legal judgment was better,
21 but you were consulting your lawyer during this period
22 of time about the Prince William Dialysis application,
23 were you not?

1 A The application was almost complete by the
2 time I contacted him.

3 Q By this time, you had been regularly contacted
4 about your business in the Northern Virginia Dialysis
5 Center, had you not?

6 A Yes, but Mr. Long wrote the application.

7 Q And Long advised you, at the time, that you had
8 to keep it separate from NVDC, didn't he?

9 A He didn't make that statement. He said that
10 there may be problems with National Medical Care. But
11 from my perspective, that is one of the reasons I
12 went to National Medical Care, to get their input.

13 Q Long told you specifically that you could not
14 use the facility at Northern Virginia Dialysis Center
15 to promote the Prince William application, didn't he?

16 A I don't remember him making that statement.

17 Q I will see if I can refresh your recollection
18 from his deposition, page 34:

19 "Answer: I told him I didn't have any problem
20 with it being a separate application, that I had
21 seen this often in the review process where new
22 facilities were involved, someone had to file for
23 them, and that is why I agreed to help him with a

1 narrative because I felt it was a separate application?
2 as long as he understood that he could not use the
3 facilities of Northern Virginia to promote the
4 application."

5 Does that refresh your recollection?

6 A The first part does, but I don't remember him
7 saying not to use those facilities.

8 Q In fact, you used the facilities to promote
9 the application, didn't you?

10 A In what specific way; Jay Long typed it, Jay
11 Long wrote it.

12 Q You used Northern Virginia Dialysis Center
13 stationery to send out most of your letters, didn't you?

14 A That's right.

15 Q Dottie Smith got you various names of people
16 that you could write to, did she not?

17 A That, I don't remember.

18 Q Mabel Lowrey typed your letters, did she not?

19 A She typed the letters requesting responses.

20 Q Mr. Notaris prepared the financial statement,
21 did he not?

22 A No. He prepared my financial statement.

23 Q That you used in this application?

1 A Yes.

2 Q And that's the reason for which you requested
3 him to prepare it, for this application?

4 A Yes, and that's exactly -- what happened at
5 that time, I told him it was separate from the unit,
6 and during that conversation he offered to supply
7 Dr. Osheroff's money to support the application. I
8 told him I couldn't use Dr. Osheroff's money because
9 it was separate, and then I got a call from Mr.
10 Westerman after that.

11 Q And without belaboring it, we have been through
12 a number of resumes that you included; these were a
13 number of people employed by NVDC or Dr. Osheroff,
14 do you recall that?

15 A You have to be more specific about who you mean.

16 Q We have been over that.

17 Now, in the application, Page 1845, you say in
18 the second paragraph at the top, the second sentence:
19 "There are currently seventeen Medicare patients
20 travelling from this area to the Northern Virginia
21 Dialysis Center alone."

22 You knew how many patients were going to NVDC
23 because you were at NVDC, isn't that correct?

1730

1 A Yes, and because it was public information.

2 Q You didn't have to go to public information,
3 you used the information you had.

4 A That's because it was easier to get.

5 Q You were the attending physician for those
6 patients, were you not?

7 A Yes. I am glad you admitted I was the
8 attending physician.

9 Q I'll admit you stole the patients, if that
10 helps you.

11 When you went to public hearings on this
12 application, who was representing the Northern Virginia
13 Dialysis Center at those hearings?

14 A I believe there were administrators or physicians
15 who were related to National Medical Care who were
16 at the meetings.

17 Q Who represented Northern Virginia Dialysis
18 Center at any of those meetings.

19 A There was no direct representative.

20 Q In fact, there was one meeting that Dr. Osheroff
21 asked you about going to, and you told him not to go to,
22 isn't that correct?

23 A I didn't tell him not to go, I said it wouldn't

1 be a good idea.

2 Q When you went to these meetings, you were there
3 as the applicant, were you not?

4 A Yes.

5 Q You weren't there as the medical director of
6 NVDC?

7 A That's right.

8 Q You never said I am not here as the medical
9 director of NVDC, did you?

10 A I said there was no affiliation between myself
11 and the unit in NVDC and Prince William. I did not
12 make a statement I am not here as medical director of
13 NVDC.

14 Q You signed numerous letters seeking support
15 of that application as acting medical director, didn't
16 you?

17 A That's the way I signed the letters for support.

18 Q And in those letters, you refer to we are
19 opening a center, do you not?

20 A Yes.

21 Q Who is the we?

22 A That was Dr. Osheroff's practice.

23 Q Well, how could you say Dr. Osheroff's practice

1 was opening a center, when you hadn't consulted him,
2 and you hadn't informed him, and you didn't have his
3 permission to do it, how could you say that?

4 A Well, a little bit of lack of clear thinking
5 at that point, and a lot of understanding the practice
6 was going to be sold, and things would have hopefully
7 worked out anyway, as far as this unit if he were
8 going to be coming back.

9 Again, going back to the fact that it was clear
10 in my understanding that Dr. Osheroff could not have
11 a unit in Prince William County as verified by Dr.
12 Hampers and Mr. McNeeley.

13 Q He could with National Medical Care.

14 A They did not give permission, and that is one
15 of the reasons I went up to Boston.

16 Q They never refused permission, because he never
17 got to ask, isn't that true?

18 A That's one of the things I did in Boston, was
19 to ask.

20 Q You didn't ask him if you could ask, did you?

21 A No.

22 Q In the application, page 1849, you make the
23 following statement under paragraph number five:

1 "The Northern Virginia Dialysis Facility has
2 reached a capacity of 2.5 shifts per day, and an
3 additional facility in Prince William County would
4 allow for them to take new patients without going to
5 a sixth shift." Do you see that?

6 A Yes.

7 Q That was your language, was it not?

8 A That was the language of Mr. Long, but I
9 certainly signed the application.

10 Q And you certainly read it and approved it
11 before you filed it, did you not?

12 A Yes.

13 Q The them you are referring to there is the
14 Northern Virginia Dialysis Center, is it not?

15 A It's unclear to me; it might refer to the
16 additional facility in Prince William County, and it
17 might refer to NVDC, it's unclear.

18 Q Prince William couldn't go to a sixth shift
19 because they didn't have any shifts, did they?

20 A More likely than not, it represents the
21 Northern Virginia Dialysis Facility.

22 Q Dr. Greenspan, I asked you yesterday about the
23 resolution of Manassas Council. You never told the

1 mayor of Manassas Park, I am sorry of Manassas, that
2 the Prince William Facility would not be part of
3 the Northern Virginia Dialysis Center, isn't that true?

4 A Not early on.

5 Q You never told him, isn't that true?

6 A I assume that he was on the list of individuals
7 we wrote in February.

8 Q Let's see if we can refresh your recollection
9 regarding that; page 102 of your March deposition in
10 the other case:

11 "Question: Are you aware of how it was the
12 resolution came of the view that it was Northern
13 Virginia Dialysis Center seeking to open a
14 Prince William County center?

15 "Answer: The mayor was never told that would
16 be part of their unit. He might have gotten it
17 from the mailing address.

18 "He might have gotten it from the mailing
19 address?

20 "He might have, but again, he was never told
21 specifically it would be affiliated at all with the
22 dialysis center in Virginia.

23 "Was he ever told to the contrary?

1 "Answer: No."

2 That is your recollection, is it not?

3 A Yes, unless he was on the list in February of
4 the people we sent out.

5 Q Of course, when you got that resolution in mid-
6 1979, you didn't have to wait six months, you could
7 have called him up and said mayor, you made a mistake,
8 could you not?

9 A Again, it didn't make a difference. I didn't
10 recognize there was a problem because if Dr. Osheroff
11 came back, then the unit would have been in his
12 practice. That's the only way I saw Dr. Osheroff
13 having a unit in Prince William County was through me.

14 Q You said before when you said we in these
15 letters seeking support, you meant Osheroff's practice,
16 is that correct?

17 A That's right.

18 Q In your deposition, the same one in March, at
19 Page 111:

20 "Question: And the we therefore, I assume you
21 mean particularly since it is on Northern Virginia
22 Dialysis Center and Dr. Osheroff's stationery, that's
23 what you mean by we?

1 "Answer: That's right."

2 Did you also mean the Northern Virginia
3 Dialysis Center as part of that we?

4 A No, that wasn't the way I was writing it.

5 Q After July 10th or 11th, whenever it was when
6 you had the discussion with Hampers in Boston about
7 the dialysis facility, you never talked to him again
8 about the Prince William facility, isn't that correct?

9 A No. He called a couple of days later. He
10 told me he was going to check with other physicians
11 who he had contracts with and let me know.

12 He called back and told me that he had talked
13 to Dr. Strauch and Strauch said there was no need,
14 and therefore, since Dr. Strauch had contracts with
15 Prince William County, National Medical Care could
16 not go into that county.

17 Q Your deposition, page 159 and 160:

18 "Did you discuss the Woodbridge facility with
19 Dr. Hampers again in November and December?

20 "I don't recall ever discussing it again after
21 July 10 with Dr. Hampers."

22 Was that just a mistake you made in that deposition?

23 A No. November and December, we never discussed

1 it. I mentioned in the deposition before, whenever
2 the meeting was in Boston, I got a call a couple of
3 days later relaying the information I just mentioned.
4 I told about that several times before.

5 Q Your answer: "I don't recall ever discussing
6 it again after July 10 with Dr. Hampers", that would
7 be in error, would it not?

8 A Not if I was under the impression that July 10
9 was the second telephone call.

10 Q I had asked you before about not informing
11 Osheroff about the United Health Care Association
12 contact you had under discussion. You didn't inform
13 either Westerman or Notaris of that, did you?

14 A About what again?

15 Q The negotiations with United Health Care.

16 A I don't remember discussing it with them.

17 Q In fact, in your July meeting with Dr. Hampers,
18 you didn't tell him about that either, did you?

19 A I don't remember telling him, no.

20 Q With regard to the meeting with Hampers in July,
21 you didn't tell Osheroff, Westerman or Notaris about
22 that meeting, did you?

23 A I don't remember telling them, no.

1 Q Yet Osheroff was your employer, not Hampers,
2 wasn't he?

3 A That's right.

4 Q Didn't you have some duty to keep Osheroff or
5 his guardians informed of your actions regarding his
6 practice?

7 A Yes, I had an obligation. The point was that
8 I just didn't feel that Dr. Osheroff had any direct
9 or indirect relationship at that point, since he
10 was restricted.

11 Q I had asked you about your conversation with
12 Westerman. I want to read from your deposition, page
13 169, July 7 -- it's January 7th, this is you talking:

14 "Implicit in my statement, and I may have said
15 other things, but I specifically remember telling
16 him that Dr. Osheroff could not have an interest in
17 Prince William County. To me it would be awkward
18 then to file in Dr. Osheroff's name. I told him
19 that would be in violation of his contract."

20 Does that refresh your recollection about the
21 conversation with Westerman?

22 A Yes.

23 Q You told Westerman those things, did you not,

1 not only that Osheroff hadn't bothered asking you so
2 you didn't tell him about the Prince William facility,
3 but that it would be awkward to file in his name.

4 A Illegal and awkward, as far as I was concerned.

5 Q How could Dr. Osheroff ask you about the Prince
6 William facility if he didn't know about it?

7 MR. PLEDGER: Your Honor, this cross examination
8 has ranged far and wide, and I think it is delaying
9 this case unduly, and the questions are beyond any
10 realm of reason in this.

11 Again, counsel has omitted, when he comes back
12 and reframes his questions, and my objection is speci-
13 fically to the form of the question. The response was
14 to me it would be awkward then to file in Dr. Osheroff's
15 name. I told him that would be in violation of his
16 contract. So we have awkward to file in his name,
17 and violation of his contract. If you take that and
18 take two words out of the center of it, then it appears
19 to be a different statement than what is in the
20 original transcript.

21 MR. HIRSCHKOP: I haven't changed the man's
22 testimony.

23 Your Honor, we have one rebuttal witness I would

1 like to take at this time unless he will stipulate.
2 We have these records that I have put before witnesses
3 of people's attendance during the period that is in
4 question.

5 She is the bookkeeper who keeps the records
6 during the ordinary course of business and they say
7 whether someone was present or not. That's all. It
8 is just to get them in evidence. They are having a
9 state inspection soon, so she needs to get back to work.
10 May I just put her on for that, unless he is going to
11 stipulate?

12 MR. PLEDGER: A) I am not going to stipulate to
13 it, and B) I am not going to permit this witness to
14 be interrupted at this time for that, and C) that
15 witness is going to take a little bit more time than
16 a minute or two. I think rebuttal witnesses can come
17 at the end of the case.

18 MR. HIRSCHKOP: Your Honor, we have taken
19 patients out of turn. She had a particular need, and
20 we do have an inspection to worry about.

21 MR. PLEDGER: I have a lawyer sitting here,
22 who has been here, because counsel represented that
23 his cross examination would take no longer than the

1 direct, and it is double that now.

2 I am not going to interrupt at this point. If
3 he wants to finish with this witness, and in the mean-
4 time I can see the records, maybe we can work out
5 some kind of stipulation.

6 THE COURT: We will take that up after you
7 complete your cross examination of Dr. Greenspan. We
8 will take a recess and maybe you can stiate it.
9 Will you permit Mr. Pledger to talk to the witness so
10 he can satisfy himself as to the authenticity of
11 the records?

12 MR. HIRSCHKOP: Yes, sir.

13 (Brief recess)

14 BY MR. HIRSCHKOP:

15 Q At the time you talked to Mr. Long, before you
16 filed the application, he warned you there would be
17 problems with patients choosing doctors, did he not?

18 A Yes, he said that was a concern.

19 Q You knew that he had been involved in a lawsuit
20 over that very problem, did you not?

21 A Something related to that, I didn't know the
22 specifics.

23 Q You had all that knowledge when you drew up

1 that form on December 12th, did you not?

2 A I had that knowledge, I didn't think of it.

3 Q At the time Mr. Long advised you, he advised
4 you that you might end up in a lawsuit with National
5 Medical Care over setting up the Prince William
6 facility, did he not?

7 A Yes, he said that was a possibility.

8 Q Yet despite all those warnings, and the warnings
9 about corporate problems, you never chose to put any-
10 thing in writing to Ray or his representatives
11 concerning the establishment of the Prince William
12 facility, did you?

13 A That's correct. In my mind, he had nothing to
14 do with it; that's why I went to Boston.

15 Q With regard to the Prince William facility,
16 you testified about how patients had difficulty getting
17 up here in a snow storm, they had just as much difficulty
18 down there in a snowstorm, didn't they?

19 A Yes.

20 Q In fact, you have patients at the Prince William
21 facility that travel more than an hour to get there,
22 do you not?

23 A I can't say that they travel more than an hour.

1 They do travel from Fairfax County down, some of them
2 do, by their choosing. Patients are given the choice
3 of dialyzing at any unit in Fairfax County or dialyzing
4 at the Prince William unit.

5 Q Page 225 of your deposition of the 8th:

6 "Question: Were some of the patients who are
7 now dialyzing in Prince William, who formally
8 dialyzed at Northern Virginia Dialysis Center,
9 travelling more than an hour to get there?

10 "Answer: Yes."

11 Do you recall that?

12 A I don't recall it, but as I said, close to an
13 hour.

14 Q At the time you were deposed on January 8,
15 1979, of the roughly 26 or 27 patients at Prince
16 William facility, approximately 20 had previously been
17 at the Northern Virginia Dialysis Center, is that
18 correct?

19 A I can't argue with that.

20 Q You appeared before the Executive Committee,
21 and at that time they asked you about Ray Osheroff's
22 mental state upon his return, did they not; do you
23 recall that, sir?

1 A Not specifically, in general, I do.

2 Q Did you tell them at that time that sympto-
3 matically he was better?

4 A I believe I did, yes.

5 Q Did you tell them, at that time, that his mood
6 was elevated, he was no longer depressed?

7 A Yes.

8 Q Did you tell them his mood was not unreasonably
9 elevated?

10 A I don't know whether I told them, but in my
11 own mind it was not unreasonably elevated.

12 Q Did you tell them at that time you thought he
13 had adequate knowledge of nephrology?

14 A I believe I was referring to the time before
15 he went to Chestnut Lodge that he had adequate
16 knowledge.

17 Q Your exact statement "As far back as then, I
18 did not think Ray's knowledge of nephrology was poor,
19 I thought it was adequate.

20 MR. PLEDGER: Your Honor, I am going to object.
21 We have taken it out of context because the statement is -

22 MR. HIRSCHKOP: Your Honor, I was going to read
23 the whole statement. I was trying to read it and he

1 interrupted me in the middle of a question.

2 MR. PLEDGER: I am objecting because the
3 portion he chose to read gives a different light than
4 it does if you read the next five words.

5 MR. HIRSCHKOP: That's what I was doing when
6 he stood up. May I finish the question?

7 THE COURT: The objection is well taken. You
8 read it first in part, read the whole thing. Why
9 don't you read all of it before you give him a chance
10 to answer.

11 MR. HIRSCHKOP: In fairness, your Honor, he
12 said, and I read the language as far back as then. I
13 didn't have to refer to that at all.

14 Q Continuing from where we were: I can't say
15 that now. It was not the knowledge of medicine, it
16 was the practice of medicine. It was the application
17 of that knowledge and the consistency of that knowledge
18 that was lacking then. You recall that, do you not?

19 A Yes.

20 Q I couldn't go away for weekends because I knew
21 I would get calls. I knew they couldn't find him.
22 He ordered this, this and this, what do you think.
23 This was on my weekends off. Not only was I doing my

1 practice, I was backing up his practice. That's why
2 I told him to make a decision. If you can't make a
3 decision, go some place and get the ability to make
4 a decision.

5 THE COURT: Before he answers; are you satis-
6 fied that is the entire statement?

7 MR. PLEDGER: Yes, sir.

8 A Yes.

9 Q There was more to the answer, I picked up in
10 the middle, now let me read you the first part.

11 "How do you compare your impression of Ray's
12 capacity to treat patients now as compared with
13 the time when you first joined him in patient care?

14 "Dr. Greenspan: I would say it's about the
15 same. Let me, also, add that as soon as I came here
16 in June, I was doing the practice. I was it. We go
17 to see a consult, let's say at Circle Terrace, he
18 would be on the telephone talking to his accountant, and
19 I would go back and see the patient. There never
20 really was that much concurrent medicine. As far back
21 as then, I did not think Ray -- et cetera. Now, that
22 is the whole answer. Do you recall that?

23 A Yes.

1 Q When you say I would say it's about the same in
2 response to the question, is that what you meant to
3 say at that time?

4 A In the question it says his fund of knowledge?

5 Q The question was how would you compare your
6 impression of Ray's capacity to treat patients now as
7 compared with the time when you first joined him in
8 patient care.

9 A I have a disagreement with that statement it
10 was about the same.

11 Q So you didn't tell the truth to the medical
12 committee?

13 A The rest of the answer told the truth. I am
14 not sure I interpreted the question correctly, but the
15 explanation was correct.

16 Q You told them you were perfectly content to
17 have him come down and admit patients to the Prince
18 William Dialysis Facility at that time; it was an open
19 unit and he could come and admit patients.

20 A I said it was an open unit, and he was free
21 to apply.

22 Q So you might not have accepted him?

23 A That's a possibility. We have never turned down

1 a physician. If you look at the Executive Committee
2 minutes, you will see the explanation I gave.

3 Q You never circulated any notice to anyone that
4 it was an open facility, did you?

5 A It was in the newspaper, it was everywhere,
6 and if Dr. Osheroff could not have practiced for some
7 reason, his representative could have practiced. We
8 have no rule limiting an employer; employee of a
9 physician from practicing in Woodbridge.

10 Q He wasn't stopping you from having a representa-
11 tive practice in Northern Virginia.

12 A Yes, he is.

13 Q YOU referred that patient on the stand yester-
14 day to a doctor up in Northern Virginia, didn't you?

15 A The doctor I referred to is a referall, he
16 is not a physician I work with. He does not allow any
17 physician who works with me, the chief of nephrology
18 at GW couldn't go in his unit if that physician worked
19 with me. That's one of the bylaws.

20 Q There is no question that in the first two weeks
21 in December, you instructed the nurses not to take
22 orders from Osheroff, is there?

23 A Yes.

1 Q And you did not allow Osheroff to treat patients,
2 that's true, also?

3 A As I recall, he wasn't there.

4 Q In fact, you knew his hospital privileges were
5 actually suspended before he did?

6 A I am not sure I knew they were suspended. I
7 knew they would be suspended if he started seeing
8 patients, and I knew he hadn't started seeing patients.
9 The actual suspension was up to Dr. Haut. All he
10 wanted to know from me is when Dr. Osheroff was coming
11 back, and that's all I told him. I didn't suspend
12 Dr. Osheroff.

13 Q Page 82 of your January 3rd deposition in the
14 other case:

15 "Question: When did you become aware Dr.
16 Osheroff's privileges at Alexandria Hospital had
17 been suspended?

18 "Answer: Dr. Haut informed me either the same
19 day or within the same timeframe that he was sus-
20 pended. I wasn't told Dr. Osheroff was suspended
21 prior to him being notified.

22 "No, let me take that statement back. Dr. Osheroff
23 was in a suspended status. It was not told for

1 a while. He would have been told if he entered into
2 the hospital to see patients. That is what I was
3 told from Dr. Haut, that he would not invoke the
4 suspension unless Dr. Osheroff saw patients in
5 the hospital. Dr. Osheroff didn't see patients in
6 the hospital for a long time period while he was
7 back.

8 "Question: Were you informed of the suspension?
9 Obviously, you were informed of it before Dr.
10 Osheroff was.

11 "Answer: That's right."

12 Does that refresh your recollection?

13 A At this point, I don't remember Dr. Haut telling
14 me that he had suspended Dr. Osheroff. I just
15 remember making the telephone call to tell him what
16 happened. That, I don't remember.

17 I can't disagree with what I said then, I can
18 just tell you what I remember now.

19 Q Did you inform Osheroff of the full HSA meeting
20 with regard to Prince William Dialysis Facility?

21 A That's the one that he asked me to go to.

22 Q You advised him not to go.

23 A I said it wouldn't be a good idea.

1 Q After that, did you advise him of the Network
2 meeting?

3 A No.

4 Q And he was not aware of the Northeast Washington
5 facility application, was he, as far as you know?

6 A Not from me, but Pat Shine was aware of all
7 these applications, all these meetings, everyone at
8 National Medical Care was aware. National Medical
9 Care had representatives at the full board meeting
10 and at the local meetings, so National Medical Care
11 was totally aware, and he had free access through
12 National Medical Care to all meetings and all discussions.

13 Q You said yesterday the only time you ever
14 talked to him about coming back was at the Lobster
15 Shed, do you recall that?

16 A No. There was another meeting in my office,
17 as I remember there were two times.

18 Q At the meeting in your office, he told you that
19 he wanted to come back, did he not?

20 A Yes.

21 Q When was that?

22 A I would say sometime in November.

23 Q Remember when I asked you before about the

1 application you were preparing for Northeast and
2 Montgomery, you said you weren't sure you could get
3 hold of him. He came into your own office and sat
4 down with you saying I want to go back into practice,
5 you could have told him then. I am setting up a
6 Prince William facility, I am applying for a Northeast
7 facility, and I am applying for a Montgomery facility;
8 you didn't tell him any of those things.

9 A I could have told him that, and he could have
10 told me he wants to talk about patients, about medical
11 care, talk about a lot of things. He could have done
12 a lot of things, and he never did.

13 Q You weren't in a mental institution.

14 A He was supposed to be rehabilitated.

15 Q You knew his wife had separated from him?

16 A Yes.

17 Q This was a man under great stress still, wasn't
18 he?

19 A That's why I didn't want to press things.

20 Q As a doctor, you are supposed to be understand-
21 ing of people's conditions, are you not?

22 A Yes.

23 Q Wasn't it incumbent upon you to take this man

1 who was under stress and tell him that you were doing
2 these things?

3 A No. In my mind, I wasn't hiding it from him.
4 I didn't think that was an appropriate thing to be
5 talking about.

6 Q Regardless of your statement you weren't sure
7 how to get hold of him, you didn't know where he lived,
8 he came into your office and you could have told him
9 anything you wanted.

10 A I could have reached him before, but those were
11 not appropriate discussions at that time, in my mind.

12 Q Then why did you say you didn't know where he
13 lived, that was an out and out lie, wasn't it?

14 A I didn't know where he lived.

15 Q You went to his house when he was so-called
16 committing suicide, you knew where he lived then,
17 didn't you?

18 A His house on Prince Street was being refurbished
19 and he didn't live there.

20 Q Where did he live?

21 A I don't know. You tell me.

22 Q When he came into your office, you were the
23 acting medical director, were you not?

1 A Yes.

2 Q When he came to you and said I want to come
3 back into medical practice, you, as acting medical
4 director, had some responsibility for that facility,
5 did you not?

6 A I had a responsibility to the patients.

7 Q You had a responsibility as to who came in there
8 and practiced medicine at that facility, did you not?

9 A Yes, that's what I was trying to maintain.

10 Q At that time, you didn't try to discuss with
11 him any schedule of when he was coming back, did you?

12 A I thought he had already begun scheduling by
13 reading the Washington Manual, by going into things.
14 I had no idea what was going to happen December 12th.
15 I didn't know whether we were talking about a couple
16 of weeks or a couple of months. But at that point, he
17 was doing the appropriate thing by starting to review.
18 I didn't feel like I wanted to pressure him and put
19 him on a schedule.

20 Q I would like to read you the following question
21 and answer of January 8 on page 309 from your deposition
22 to see if it will refresh your recollection on another
23 matter.

1 "Question: When Dr. Osheroff was discharged
2 from Silver Hill, did you make any contact with
3 any of his psychiatrists or staff people to inquire
4 about the discharge?

5 "Answer: No.

6 "Did you inquire of anyone at Chestnut Lodge
7 with regard to that discharge?

8 "Answer: No.

9 "Did you call Dr. Dingman?

10 "Answer: No."

11 That answer was untrue, was it not?

12 A I called Dr. Dingman after he had left Silver
13 Hill.

14 Q So your answer given in this deposition was
15 untrue, was it not?

16 A That's right.

17 Q And it wasn't until you heard Dr. Dingman testify
18 under oath that he in fact got such a call from you,
19 that you changed your testimony, isn't that true?

20 A That's not ture. That may have slipped my
21 mind during the deposition. I do remember at least
22 two telephone calls.

23 Q You went to Dr. Dingman's deposition at Chestnut

1 Lodge and sat there and heard him testify?

2 A Yes, I did.

3 Q And prior to that time, you never sought to
4 correct this incorrect testimony that you hadn't
5 called Dr. Dingman, had you?

6 A I am not sure I read it at that point.

7 Q You didn't waive signature in your deposition,
8 and you read that deposition, didn't you?

9 A Which deposition.

10 Q Your deposition of January 8th that I just read
11 to you, you refused to waived your signature.

12 MR. PLEDGER: Your Honor, rather than let the
13 mischaracterization go, he didn't refuse, I told him
14 not to waive his signature, so it is not a question
15 of his refusing. It is a question of my advice to
16 my client.

17 Q And you thereafter read your deposition, didn't
18 you?

19 A I glanced it over.

20 Q And Dr. Dingman's deposition was after you had
21 received and read your deposition?

22 A Probably true.

23 Q You said on direct examination you did not

1 express to anyone your reservations about Ray's
2 competence. You did, in fact, tell Pat Shine you
3 had reservations about Ray's competence, did you not?

4 A Yes, I did, and she told me the same thing.

5 Q When you said on direct that you hadn't dis-
6 cussed it with anybody, that also was untrue, wasn't it?

7 THE COURT: He included several people, and
8 I think she was one of the ones he included.

9 Q You expressed reservations about his medical
10 competence to Hampers, also, did you not?

11 A Yes.

12 Q With regard to the letters from Eileen Collins
13 and Pat Shine to Hampers, you may have seen them before
14 they were sent, isn't that correct?

15 A I might have, I didn't know when they were sent.

16 Q You discussed Osheroff's competence with the
17 medical community, did you not?

18 A The executive committee.

19 Q Is that what you mean by medical community?

20 A That's the only time I discussed his competence
21 was at the executive committee.

22 Q You were asked at your deposition, page 369:

23 "Do you today have problems with Ray's medical
competence?"

1 "Answer: Yes.

2 "Question: Have you discussed that with
3 members of the medical community?

4 "Answer: Yes."

5 Are you saying you meant by that answer it was
6 just the members of the executive committee?

7 A Yes.

8 Q Was Dr. Goldberger on the executive committee?

9 A No.

10 Q Let me read you further without skipping:

11 "You don't discuss it with just anyone, do you?"

12 "Answer: A select few.

13 "Any of them doctors?"

14 "Dr. Tolkan.

15 "Anyone other than that?"

16 "Dr. Goldberger."

17 So you discussed his medical competence with
18 Dr. Goldberger.

19 A Yes, we discussed it together. He was coming
20 to me, and I couldn't deny what was going on to him.

21 Q And you told Haut specific concerns you had
22 about Dr. Osheroff, didn't you?

23 A Yes, he asked what was going on, and what

1 concerns I had, and I told him.

2 Q I had asked you before about a suspension, I
3 will read you further testimony, page 382.

4 "But you did know before you were fired that
5 he was suspended?

6 "That's my recollection.

7 "And you didn't tell him that he was suspended?

8 "No."

9 Does that further refresh your recollection
10 that you knew he was suspended before you were fired?

11 A Again, I can't remember now if you had one
12 and one is two. Dr. Haut told me he was going to be
13 suspended if he was going to practice medicine, and
14 I told him he was going to be practicing medicine.

15 Q Now, you said all you said to the patients was
16 that they should make a choice between doctors, is
17 that correct?

18 A Yes.

19 Q When you gave this form to the patients, you
20 did it at that time because you were upset, isn't
21 that correct?

22 A I can't say I wasn't upset.

23 Q Isn't that the reason you were doing it at that
time?

1 A No. There is no relationship.

2 Q During the time you handed out these forms,
3 you told the patients you were uncomfortable with
4 Dr. Osheroff, didn't you?

5 A No. Only the patients who asked me why I had
6 been fired and what was going on and questioned me,
7 that's the response I gave. I was uncomfortable and
8 I couldn't work with him.

9 But that was not a statement I made on rounds.
10 I made no statement on rounds, except the statement I
11 described, and the patients questioned me later that
12 day or later the next day, and those were the comments
13 I was making.

14 Q In the hearing before Judge Lewis, you recall
15 testifying, do you not?

16 A Yes.

17 Q The Judge asked you this question, page 305:

18 "Why didn't you wait then and talk to them when
19 they were in a normal condition?

20 "I was very upset."

21 Do you remember saying that?

22 A I was upset at Judge Lewis, not the patients.
23 Let me explain why I chose that particular time if

1 that is what you are getting at.

2 Q The Court, page 304:

3 "Were they all on the machine?

4 "Most were on the machine. There were very
5 few patients who came down and took the paper --

6 "The Court (Interposing) Did you not consider
7 that to be highly unethical for a doctor to go
8 around soliciting patients when they're under a
9 machine, or in pain, watching their own blood go
10 up and down, is that proper?

11 "The Witness: I think the patients should have
12 a choice.

13 "The court: Is there anything in there, you
14 gave them a choice while they were going through
15 with this, is that right?

16 "The witness: They were aware of what they
17 did and the nurses --

18 "The court: My, my, my, you did it while they
19 were going? Why weren't you manly enough to wait
20 until they had come off and walk around, and come
21 talk to you, because they didn't, didn't they?

22 "The witness: That is right.

23 "Why didn't you wait and talk to them when

1 they were in a normal condition?

2 The witness: I was very upset."

3 That was your reply to Judge Lewis' questions.

4 A That's what I replied. However, the patients
5 were not in a normal condition either before or after
6 dialysis. There was no other time except on rounds
7 which I believed to be the most consistent time to
8 talk to patients.

9 I have had occasions in the past when I had
10 talked to a patient before dialysis, who had been
11 fluid overloaded, and they do not feel like talking
12 before dialysis. They have a schedule to get on
13 dialysis. After dialysis, they often feel terrible.

14 Q You had them coming down to your office after
15 dialysis for prescriptions, didn't you?

16 A I didn't have them come down, they came down.

17 Q You could have done it then, couldn't you?

18 A I don't know how I could have reached all the
19 patients that way.

20 Q Not only were you upset, but at the time you
21 were giving this form to patients on the machine, they
22 were upset, weren't they?

23 A That's right, and that was the tragedy of the

1 day. I had no other way of notifying those patients
2 what happened, and that situation, to me, was created
3 by your client.

4 Q You, in fact, informed some of these patients
5 when you gave them the form to sign that Osheroff's
6 privileges had been suspended, didn't you?

7 A No.

8 Q Pages 83 and 84 of your deposition in the other
9 case.

10 "Have you talked to any of the patients at
11 the Northern Virginia Dialysis Center about Dr.
12 Osheroff's suspension of privileges at Alexandria
13 Hospital?

14 "There might have been one or two patients who
15 asked me specifically what happened if I get
16 hospitalized, where do I go. A lot of patients
17 asked me and continued to ask me what will I do
18 if I need to go in the hospital. There might have
19 been one or two patients that I made aware of the
20 suspension, I can't remember specifically. Under
21 no circumstances did I tell everyone. In fact, I
22 could not say more than one or two people were
23 aware of that from me."

1 Does that refresh your recollection?

2 A Yes, I can't ascribe to any more knowledge
3 now than I had then.

4 Q At that point, it was common knowledge in the
5 unit, the staff knew all about it, didn't they?

6 A I don't know.

7 Q You told technicians, also, who quit Osheroff
8 that day that he was suspended from the hospital.

9 A I don't remember seeing the technicians that
10 day when they came to the office.

11 Q Let me continue where I just left off:

12 "Answer: I might have told one or two patients,
13 again, I can't give you names because I can't remember
14 specifics, but if I told anyone, it was no more
15 than one or two patients, but again, I can't
16 remember telling anyone.

17 "Question: You now say you didn't tell anyone.

18 "I can't remember telling anyone specifically
19 Dr. Osheroff was on suspension and you can't see
20 him in the hospital.

21 "We are talking about patients now -- did you
22 tell the staff of Northern Virginia Dialysis Center?

23 "I think I told a couple of staff members."

1 You said that under oath, didn't you?

2 A Yes.

3 Q Was it true?

4 A I can't remember.

5 Q Now.

6 A What's wrong with telling the truth?

7 Q Was it true when you said it then?

8 A I am talking about the suspension; again, I
9 don't remember any more now than I did then.

10 Q You said unequivocally on direct examination
11 you didn't tell anyone.

12 A I can't remember now I told them.

13 Q But you said then, in a deposition just a
14 month after the event, I think I told a couple of
15 staff members; so the likelihood is that you told a
16 couple of staff members, isn't that correct?

17 A My recollection certainly would be better then
18 than it is now.

19 Q And you thought then I probably told a couple
20 of nurses, line 8.

21 "Question: Did you tell the technicians who
22 worked at Alexandria Hospital that he had been
23 suspended?

1 "Answer: I don't recall telling any technicians.

2 "You don't?

3 "Answer: No, I probably told a couple of nurses.

4 "You don't recall discussing it with Claudia
5 Brown or John Doyle?

6 "I might have discussed it with them. When you
7 say technicians, the reason I think of them is
8 because they are not in the chronic unit, they were
9 acute technicians."

10 So according to this, you might have discussed
11 it with them, is that correct?

12 A That's right.

13 Q In fact, those are two of the three technicians
14 who worked in the hospital for Dr. Osheroff and who
15 quit immediately upon the firing.

16 A That's right. Again, let me explain a couple
17 of points. This was just talking about Alexandria
18 Hospital. He still had privileges at eight other
19 hospitals.

20 Q Those technicians worked at Alexandria Hospital.

21 A They worked everywhere.

22 Q But they worked at Alexandria primarily, did
23 they not?

1 A Yes, and Dr. Osheroff had the opportunity of
2 hiring someone or asking someone to see patients for
3 him at Alexandria Hospital, or to see his patients at
4 Alexandria Hospital.

5 Q You told the patients you were uncomfortable
6 with Dr. Osheroff, did you not, when you passed out
7 this form?

8 A No, I did not. If they asked why have you been
9 fired, what was the reason, I told them the reason
10 was that I was uncomfortable and I couldn't work with
11 him, that was it. If they didn't ask, and most
12 didn't, I didn't say anything.

13 Q Now you have said you don't recall at this time
14 telling staff people about him losing his privileges
15 at the hospital, although you said it a month after.

16 I would like to refer you to your deposition
17 of January 8, 1981, a year after the event. Do you
18 recall discussing with staff members as to whether
19 or not he had privileges?

20 A At what time, after December 12th?

21 Q Yes, on or after December 12th.

22 A At this point, I don't remember that.

23 Q Did staff members and patients come to you

1 with a multitude of rumors regarding his privileges?

2 A Yes, they did.

3 Q At that time, didn't you tell some of the
4 staff members that he had lost his privileges?

5 A Again, I can't remember. I found it very
6 difficult to lie to people. If a staff member had
7 said has he lost privileges, I would have said yes.

8 Q Who is Jeanne Rawles?

9 A One of the technicians.

10 Q Did you ever instruct her not to do dialysis
11 for Dr. Osheroff?

12 A Yes, she was working for us, and did a treat-
13 ment for Dr. Osheroff when she was in our employ.

14 Q You knew Martha Hall was contacting patients,
15 did you not?

16 A After she was contacting them, yes.

17 Q Did you give her any instructions with regard
18 to that?

19 A When I found out she was contacting the patients,
20 I told her to make sure she was careful in telling
21 the patients they had a choice of either way to go.

22 Q You didn't try to stop her in any way from
23 contacting patients, did you?

1 A I believe she had made most of the calls, but
2 I didn't tell her not to make calls.

3 MR. HIRSCHKOP: No further questions.

4 REDIRECT EXAMINATION

5 BY MR. PLEDGER:

6 Q You began having thoughts about a facility in
7 Woodbridge, Virginia, was it your intent at that time
8 to set up some type of competing facility?

9 A No.

10 Q You have been asked at great length about why
11 you did not tell Dr. Osheroff about Prince William,
12 why you did not tell him about the various meetings
13 on the application, would you explain to the Court
14 what you were thinking at that period of time with
15 respect to the Prince William application, and how
16 Dr. Osheroff fit into it, if he did?

17 A In my view, he did not fit into it at all,
18 because of his contract with National Medical Care
19 which precluded him from going into that area. The
20 people I thought had direct involvement were the
21 owners of his unit, National Medical Care, and those
22 are the people that I made aware of everything that was
23 going on. Every meeting Pate Shine was aware of, and

1770

1 facility in Manassas. Actually, it was Dr. Hampers
2 who had signed the application, so it was a National
3 Medical Care application.

4 Q Would you explain to the Court what you saw
5 as Dr. Osheroff's potential role in the Prince William
6 facility, if and when he came back from psychiatric
7 care?

8 A If and when he came back from psychiatric care,
9 I was assuming that he would come back as a practicing
10 nephrologist and be in the practice, and we would be
11 able somehow to work the Prince William County unit
12 into our practice; in other words, that would be my
13 contribution to the practice.

14 One of the things that had to be worked out was
15 a waiver for the Georgetown group to waive their
16 rights to Prince William County in order to bring the
17 Prince William Dialysis unit into the practice. I
18 felt if I had the provider number, they would be
19 willing to do that, in just the same way they had given
20 Dr. Osheroff a waiver to have his unit in Alexandria.

21 The whole Northern Virginia area was promised
22 to this Georgetown group by National Medical Care,
23 and Dr. Osheroff was given a waiver by the Georgetown

1 group to have his Northern Virginia Dialysis Center.
2 I felt the same mechanism could come into effect,
3 but I couldn't wait because other people were already
4 preparing applications. I had no choice.

5 Q As to the last conversation you had with Dr.
6 Hampers with respect to this Prince William application,
7 did you understand that he was still considering
8 whether that was a possibility of adding that to
9 the National Medical Care group?

10 A As far as I know that remained a possibility
11 throughout. That is one of the reasons I was a little
12 unclear initially about the status of open or closed,
13 because if it were going to be somehow related to
14 National Medical Care that was an area I was unclear
15 about, however, I did specifically open the unit
16 at the board meeting in Manassas.

17 Q When Dr. Osheroff returned from Silver Hill
18 in the fall of 1979, did you consider him to be ready
19 to return to the active practice of nephrology?

20 A Not at all.

21 Q Would you explain to the Court why you didn't
22 consider him to be ready to return?

23 A Many of the same characteristics that I had

1 Loudon County where there was need for a dialysis
2 unit.

3 Q On cross examination, you also stated that the
4 names of people who came from certain areas were
5 part of the public knowledge. Would you explain to
6 the Court what you mean by that?

7 A Required by regulation is the fact that every
8 dialysis unit has to supply the Renal Network with
9 information of patients' names and localities from
10 which they derive their statistics regarding need and
11 service areas.

12 So that all one needs to do is call up the
13 renal network to find out how many patients on dialysis
14 live in a specific area, and they will give you the
15 addresses and zip codes. I don't know whether they
16 give names or initials, but they have the addresses
17 and zip codes.

18 Q Were you aware of that fact at the time your
19 application was being prepared by Mr. Long?

20 A Yes.

21 Q Did there come a time when you were requested
22 by one of the government agencies that was reviewing
23 your application to supply the names and addresses

1 Q Do you recall your conversation with Mr.
2 Westerman as to what input he put into the
3 preparation of that document?

4 A Just in general that he was concerned there
5 was no acting medical director in an official way,
6 and he wanted a document to verify it.

7 Q Did Mr. Westerman tell you as to what might
8 occur if there were no medical director appointed
9 in the absence of Dr. Osheroff?

10 A I can't remember him telling me. I do know
11 that there was a concern that the --

12 MR. HIRSCHKOP: Objection. The question was
13 only what he told him.

14 Q Do you recall Mr. Westerman's testimony before
15 this Court that he was concerned that National
16 Medical Care would appoint a director?

17 A Yes.

18 Q Do you remember that as a part of your
19 conversation with him?

20 A I don't remember him saying that to me. I do
21 know that he was extremely concerned about having a
22 director. Again, that feeling I had was that he
23 wanted a medical director, but I don't remember him

1 telling me specifically that statement.

2 Q Do you remember him telling you, as he testified
3 in this Court, that he felt it was a necessary thing
4 to protect Dr. Osheroff?

5 A Yes, I do remember concern about Dr. Osheroff
6 and wanting to protect his interests.

7 Q When you went out to see Dr. Osheroff in
8 Chestnut Lodge with this letter that would appoint
9 you as the acting medical director, did Mr. Westerman
10 know that is what you were going to do?

11 A Oh, yes.

12 Q Did he feel that was an appropriate thing for --
13 Did he ask you not to go out there and have him sign it?

14 A No, he was aware of me doing it, that's how it
15 had to be signed.

16 Q There came a time when there was a second letter
17 dealing with this subject or a letter from National
18 Medical Care asking for clarification of your relation-
19 ship with Dr. Osheroff, did there not?

20 A I am a little confused. The letter that I am
21 talking about is the one in which I state I am associated
22 in practice, pursuant to your request letter.

23 Q I show you what has been admitted as Plaintiff's

1 number five, were you aware of that letter prior to
2 the time you were fired?

3 A I believe I was.

4 Q Was this letter brought up in your conversation
5 with Mr. Westerman with respect to your being appointed
6 as the acting medical director?

7 A Yes.

8 Q Did he tell you that he had a telephone conver-
9 sation with National Medical Care in which he had
10 requested your appointment?

11 A I believe he did.

12 Q You have read Dr. Hampers' deposition, have
13 you not, which has been offered into evidence in this
14 case?

15 A Yes.

16 Q Do you recall Dr. Hampers testifying that he
17 wanted the letter, which is Exhibit No. 8, signed in
18 order to officially appoint you as the acting medical
19 director?

20 A Yes, that is correct.

21 Q Did Dr. Hampers tell you that it was necessary
22 for you to get this letter in order to carry out Mr.
23 Westerman's request that you be appointed?

1 particular shift that he was doing. However, there
2 were occasions when some of his patients were on
3 other shifts because of transportation limitations,
4 and there were times when he couldn't see his patients.

5 Q I show you what has been marked as Plaintiff's
6 Exhibit No. 13, a memorandum to the file that Mr.
7 Westerman has testified to. You were asked whether
8 you told him, at that time, your reasons for putting
9 the application in your name, and as to whether Mr.
10 Westerman's memo to that effect was correct, and you
11 said it was not.

12 Would you tell the Court what your recollection
13 of that telephone conversation, on or about July 26,
14 1979, with Mr. Westerman was?

15 A He called me to verify that I was putting in
16 an application for a Prince William County unit, and
17 I told him that I was. He told me that it should be
18 for Dr. Osheroff. I told him that under Dr. Osheroff's
19 contract with National Medical Care, Dr. Osheroff
20 could not have a unit in Prince William County, nor
21 t he profits from Prince William County.

22 Q Did he respond to that, when you said that?

23 A His response was he wanted to send me a letter

1 for me to say it was somehow related to Dr. Osheroff
2 and wanted me to sign it.

3 Q Did he tell you that you were misinterpreting
4 the contract between Dr. Osheroff and National Medical
5 Care when you said he could not go into that area?

6 MR. HIRSCHKOP: Objection. He's still his
7 witness, he cannot put words in his mouth. All he
8 can ask is what he said in the conversation.

9 Q What did he say in that conversation with
10 respect to the statement you made that Dr. Osheroff
11 could not go into Prince William County?

12 A He didn't deny that that was a fact. He wanted
13 me still to sign a statement that it was related to
14 Dr. Osheroff, and I told him that I couldn't because
15 it wasn't.

16 Q Did you tell him that you had discussed it as
17 of that time with Dr. Hampers?

18 A No, I didn't tell him that.

19 Q Did he ask you to put in writing that you had
20 obtained a waiver from National Medical Care?

21 Q He never mentioned anything about a waiver,
22 that I recall.

23 Q Did you tell him, as he has incorporated in

1 this memorandum --

2 MR. HIRSCHKOP: Your Honor, did you tell him
3 is really leading, this is his own witness.

4 MR. PLEDGER: I wanted to ask him this state-
5 ment that is contained in the memorandum.

6 THE COURT: You may ask him whether or not he
7 made the statement contained in the memorandum.

8 Q At the end of the second paragraph of Exhibit
9 13: "I asked Bob whether he considered the filing to
10 be on behalf of Ray, and he responded immediately that
11 the filing would belong to Ray." Did you tell him
12 this filing would belong to Ray?

13 A Absolutely not.

14 Q The next sentence states: "Since he (Bob) was
15 an-employee of Ray's, I asked Bob to confirm in writing
16 the substance of his conversation with Gus Hampers
17 so as to establish NMC's waiver with respect to the
18 Woodbridge area, and to confirm in writing that the
19 application would belong to Ray." Did he ask you to
20 do that?

21 A No. The first time I heard the word waiver
22 was during Mr. Westerman's deposition.

23 Q He concludes by stating : "Bob agreed to do thi.

1 indicating that copies of letters would be prepared
2 and mailed within the next several days." Did you
3 ever prepare a letter stating that National Medical
4 Care had waived, and that the application would
5 belong to Ray?

6 A I never prepared a letter and I never agreed
7 to prepare a letter.

8 Q Did Mr. Westerman ever contact you again,
9 following up what he has said you were going to do
10 in this memorandum that he put in his file?

11 A No.

12 Q At the meeting on August 21st, when Mr. Bader
13 was present, Mr. Evans was present, you, Mr. Rubin
14 and Mr. Westerman, did Mr. Westerman ever tell you
15 that what he was proposing to sell to you on behalf
16 of Dr. Osheroff would include the Prince William
17 application?

18 A The Prince William application never came up.

19 MR. PLEDGER: I have nothing further.

20 RE CROSS EXAMINATION

21 BY MR. HIRSCHKOP:

22 Q Dr. Strauch, when he went to these meetings,
23 he was a competitor of Ray Osheroff, was he not?

1 A In one sense, yes; in one sense, no.

2 Q You have previously testified that he came to
3 you in early '79 and talked to you about leaving
4 Ray, haven't you?

5 A He came to me shortly after I came to Virginia
6 in 1978.

7 Q Do you deny that he came and talked to you
8 after Ray went in the hospital?

9 A I can't remember a second time; I remember a
10 first time.

11 Q Do you recall Dr. Tolkan testifying that
12 Dr. Strauch talked to him shortly after Ray went to
13 the hospital about joining them, and he said well, I
14 am working out a contract so Strauch wouldn't bother
15 him anymore; do you recall that?

16 A Yes.

17 Q Then he came to you right after that, does that
18 refresh your recollection?

19 A I really don't remember him coming to me after
20 that. I remember the dinner they invited me to.

21 Q You testified, did you not, sir, that the
22 reason you had to move on Prince William back in early
23 '79 was that the Bethesda group were going to move

1 down to Manassas and take the territory if you didn't
2 get it; do you remember that?

3 A Yes, I was concerned about another facility.

4 Q As competitors?

5 A That's right.

6 Q So when he appeared at these meetings, how
7 could he represent the interests of Northern Virginia
8 Dialysis Center since he was there as a competitor?

9 A He represented the interests of National
10 Medical Care that owned the Northern Virginia Dialysis
11 Center.

12 Q You said that you were requested to supply
13 names to the federal government in March of 1980, but
14 you heard Martha Hall testify that she called these
15 patients based on knowledge that she had gotten of
16 these patients in the three and a half years she had
17 worked for Dr. Osheroff, didn't you?

18 A I heard that, yes.

19 Q When she called those patients, she was your
20 agent, was she not?

21 A Yes.

22 Q You said you didn't use anything but public
23 record information in the application , but the

1 curriculum vitae of these people who worked for NVDC
2 and worked for Ray, they were not public records,
3 were they?

4 A No.

5 Q And the knowledge of whether the unit would
6 expand or not expand, and the effect on the unit,
7 that was not public record, was it?

8 A It was not public record, though that information
9 was requested by planning agencies.

10 Q Ray Osheroff's contract wasn't public record
11 either, was it?

12 A I don't think so. When you say public record,
13 I would guess it's not.

14 Q When you got his contract from Ray, you got
15 it in light of your private employment relationship
16 with him, isn't that correct?

17 A That's right, he gave it to me.

18 Q Now, you say you never told Pat Shine that
19 Ray couldn't make rounds or wasn't allowed in the unit,
20 you told her, when he had asked Tolkan to make rounds,
21 you told her and the nurses, and you stated this in
22 your sworn deposition, he is not allowed to make rounds,
23 Dr. Hampers said so, didn't you?

1 A That's what I said, I just said ten minutes ago
2 that Pat Shine was aware of that fact, of the
3 instructions that Dr. Hampers had given me.

4 Q When you say you didn't need all these letters
5 of support, they really weren't necessary, you wrote
6 the patients on August 7, 1979, over your own signature,
7 calling yourself acting medical director, and saying
8 in order to be approved for this unit, we need
9 community support, didn't you?

10 MR. PLEDGER: I would suggest that is objection-
11 able as being beyond the extent of redirect.

12 MR. HIRSCHKOP: He said he didn't need the
13 letters.

14 MR. PLEDGER: The question now is whether he
15 wrote the patients.

16 THE COURT: If he didn't think he needed the
17 letters, why did he write the patients.

18 MR. PLEDGER: I am not sure there are any
19 patient letters in there.

20 MR. HIRSCHKOP: Let me read the exact line to
21 clear up the objection, your Honor.

22 Q In order to be approved for this unit, we need
23 community support. He didn't limit it to patients.

1 You wrote that to your patients, did you not?

2 A That we needed community support?

3 Q Yes.

4 A Yes.

5 Q Was that a lie?

6 A Again, I was a novice at the whole situation,
7 and my feeling then was we needed as much support as
8 we could get. After looking at the situation later
9 on and in conversations with people who knew more of
10 what they were doing, as it turned out, we probably
11 didn't.

12 Q In the same memo, you told the patients "This
13 unit would be staffed by some of the same nurses and
14 technicians now at NVDC as well as by the same
15 physicians." That is what you told the patients back
16 in August of 1979.

17 A Yes, I was under the impression that it would
18 be worked out. I was represented that by the defendant.

19 Q One further thing with regard to Mr. Westerman's
20 memo. Are you saying that this partner in a major
21 law firm fabricated a memo of a conversation with you?

22 A Absolutely.

23 Q He has no financial stake in the outcome of thi

1 litigation, does he?

2 A He has a close relationship with Dr. Osheroff
3 as an employee.

4 Q You say he is an employee of Dr. Osheroff?

5 A Yes.

6 Q But you didn't make a memo of any of these so-
7 called conversations that you had, did you?

8 A I don't believe I have ever made a memo of any
9 conversation.

10 Q You didn't bother writing letters to Osheroff,
11 to Westerman, or to Hampers to confirm or set straight
12 any of these things, did you?

13 A No, I still don't do that now.

14 MR. HIRSCHKOP: No further questions.

15 THE COURT: Any re-redirect?

16 MR. PLEDGER: No, your Honor.

17 THE COURT: Thank you, Doctor, you may step
18 down.

19 MR. HIRSCHKOP: We would like to put on the
20 records clerk to authenticate some records.

21 MR. PLEDGER: Your Honor, I am willing to,
22 based on my conversations, to stipulate the young lady
23 will say that she received those forms, that she made