

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
NORTHERN DISTRICT

SUPERIOR COURT

NO. 03-C-104 *Pages 9 thru 13 describe his long torturous death, allegedly, according to the recordings, from poisonous gasses.*

SHERRY HIEBER, EXECUTRIX OF THE ESTATE OF CRAIG HIEBER.
AND SHERRY HIEBER, INDIVIDUALLY AND ON BEHALF OF
EDWARD HIEBER AND JANA HIEBER

V.

THOMAS F. D'APRIX, M.D., GRANITE STATE EMERGENCY ROOM
PHYSICIANS, AND CATHOLIC MEDICAL CENTER

MEMORANDUM ORDER

LYNN, J.

This is a medical negligence action arising out of allegedly substandard care and treatment received by plaintiffs decedent, Craig Hieber, at the emergency department of Catholic Medical Center (CMC) on July 18, 2002. In addition to the claim for negligent treatment of Mr. Hieber, the decedent's wife, plaintiff Sherry Hieber, also seeks to recover in her own right and on behalf of her children for severe emotional harm manifested by physical symptoms sustained by them as a result of witnessing the negligent treatment provided to Mr. Hieber. Presently before the court is defendants' Motion to Dismiss for Failure to Produce Property Executed Releases for the Plaintiffs' Medical Records. Although I agree with plaintiff that, at this point, dismissal is not an appropriate remedy, I also find that plaintiff must execute the releases sought by defendants.

Defendants seek an order compelling plaintiff to execute unrestricted releases which would permit defendants to obtain directly from the medical care providers records concerning prior medical care and treatment provided to Mr. Hieber, Mrs. Hieber, and the Hiebers' two children, Edward and Jana, Plaintiff objects to providing such releases,

claiming this request exceeds the proper scope of discovery and that the information at issue is privileged. See RSA 329:26 (Supp. 2002); RSA 330-A:32 (Supp. 2002): N.H.R.E.503.

Dealing first with the records of the decedent, I find that, by instituting this litigation, plaintiff has placed Mr. Heber's general medical history at issue, at least for a reasonable period of time prior to the allegedly negligent treatment rendered by the defendants. See Nelson v. Lewis, 130 N.H. 106, 110 (1987) (holding that, by instituting claim for medical negligence, a plaintiff partially waives the physician-patient privilege, the waiver being limited to "what is relevant to plaintiff's claim"). Discovery provided thus far indicates that Mr. Heber was treated by a number of other physicians prior to his visit to CMC on July 18th. Records of these providers is "relevant to the subject matter involved in the pending litigation" or "reasonably calculated to lead to the discovery of admissible evidence," Super. Ct. R. 35(b)(1), in at least two ways. First, such records may contain information indicating that the decedent suffered from a medical condition related to the condition that ultimately caused his death, and thus could have a direct bearing on the issues of negligence and causation in this case. Second, even medical records regarding conditions that are unrelated to that which caused Mr. Heber's death could well be relevant on the issue of damages. Plaintiff seeks general damages for pain and suffering and loss of enjoyment of life by Mr. Heber. By making such a claim, plaintiff, in effect, asks the jury to measure what Mr. Heber's life would have been like had it not been for defendants' negligence, and to compensate his estate for that loss. If, for example, the medical records disclose that Mr. Heber had a pre-existing condition that caused him substantial pain or that limited his ability to engage in certain life activities, or if the records were to reveal that he suffered from problems with drugs, alcohol, depression, etc., that could be found by a jury to reduce the "value" of his prior life and thus would reduce the

amount of damages his estate sustained. See McLaughlin v. Fisher Engineering, _ N.H. ___, No. 2002-770 (Oct. 27, 2003), slip op. at 4 (upholding admissibility of evidence of plaintiffs decedent's substance abuse as relevant to the issue of damages).

The above analysis is also applicable to medical records of Mrs. Hieber and the children for a reasonable period of time prior to July 18, 2002. By making claims for emotional distress damages which caused physical symptoms, Mrs. Hieber and the children have placed both their emotional history and their physical history at issue. Thus if the medical records of Mrs. Hieber disclose that she experienced a traumatic event prior to witnessing the treatment rendered to her husband by the defendants, that could provide an alternative explanation for her emotional upset. Similarly, if she or one of the children sustained a physical injury or illness of some kind, that could provide an alternative explanation for the loss of sleep, loss of appetite, chest pains, stress-relates shingles, or Irregular menses which Mrs. Hieber claims resulted from her emotional upset from witnessing her husband's negligent treatment by the defendants.

I next address the issue of whether defendants should be entitled to obtain releases allowing their counsel to obtain the medical records at issue directly from the health care providers. Having concluded that all medical records of Mr. Hieber, Mrs. Hieber and the children for a reasonable period of time prior to July 18, 2002, are discoverable by defendants, I further find that defendants are entitled to obtain the records in question directly from the providers. While I do not for a moment question the integrity of plaintiff or her counsel, under our adversary system of justice it is simply inappropriate to require defendants to accept the say-so of plaintiff or her counsel as their only assurance that they have received a complete set of the discoverable records. Furthermore, because all medical records for the applicable time frame are discoverable there is simply no reason for requiring that such records be screened by or pass through

the hands of plaintiff or her counsel prior to their being disclosed to defendants' counsel. Plaintiff is of course entitled to receive, directly from the providers, her own complete copy of all records which each provider submits to the defendants; and, if plaintiff so desires, she can arrange to receive her copies from the providers a reasonable time before the defendants receive their copies of the records (so that plaintiff and her counsel will know in advance exactly what records defendants will be receiving).

In addition, because the medicals records at issue are privileged except insofar as the privilege has been waived by the filing of the instant lawsuit, I also impose the following protective order. All medical records received by the defendants or their counsel pursuant to this order shall be used by them only in connection with this litigation. Said records shall not be disclosed to anyone other than as may be necessary in connection with the prosecution or defense of any claim involved in this litigation and any person to whom said records are disclosed shall be made aware of the contents of this order and shall sign a written acknowledgement agreeing to comply with its terms. At the conclusion of this case, defendants shall provide the court with one complete set of all the records received by them pursuant to this order and shall return to plaintiff all additional copies of said records which they may have made. The copy furnished to the court shall be placed under seal so as to be available to the supreme court in the event of an appeal. It also must be noted that this order does not constitute a ruling on the admissibility at trial of any information produced to the defendants pursuant to the order.

Lastly, I find that a time frame of ten (10) years prior to July 18, 2002, represents a reasonable historical period for which defendants should be entitled to examine the health care records of Mr. Hieber, Mrs. Hieber and the children. It is reasonable to assume that any health care conditions of these individuals which could potentially have a bearing on any of the liability or damages issues in this case would be reflected in records covering

this time span. If examination of the records for this period suggests that earlier medical records may contain information pertinent to any issues in this case, defendants may file a motion seeking additional disclosures.

For the reasons stated above, it is hereby ordered that within twenty (20) days of the date of this order plaintiff shall provide defendants with a full and complete list of all health care providers who have examined or provided care and treatment of any kind to Mr. Hieber, Mrs. Hieber and the Hieber children from July 1, 1992 to the present time. For each such provider, the plaintiff shall execute unrestricted releases allowing defendants' counsel to obtain directly from the providers any and all health care records of the aforesaid individuals for the covered time period. The records so provided shall be subject to the terms of the protective order specified above.

So ordered.

October 31, 2003

Associate Justice

ROBERT J LYNN

1 I'm sorry. I did, I spoke with Dr. Pacey.
 2 Q Did she ask you information regarding
 3 your husband's salary and that type of thing?
 4 A Yes.
 5 Q Did your husband have any plans to try
 6 to relocate to a different position?
 7 A No.
 8 Q He, as far as you know, he was set at
 9 St. Anselm's?
 10 A Yes.
 11 Q I'm shifting gears again back to
 12 July 18th; when your husband was taken to the
 13 hospital in the ambulance, did you go with him?
 14 A No, I didn't.
 15 Q Did you stay behind to make arrangements
 16 for the kids or something like that?
 17 A No, I went in the car with the kids.
 18 Q Right behind the ambulance?
 19 A Yes.
 20 Q How soon do you think you arrived after
 21 your husband was taken into the emergency
 22 department?
 23 A I don't know.

1 Q Was Jana still there or had she gone
 2 with you?
 3 A No, Jana was in a camp at the Majestic
 4 Theatre which was right behind CMC. So when we
 5 arrived in the morning, I had Eddie take her up to
 6 the camp; and when I took Eddie, I went and talked
 7 to Jana.
 8 Q Did you tell her how her father was
 9 A Yes.
 10 Q And what did you tell Jana?
 11 A I told Jana that he was doing better and
 12 that they had to put him in the hospital to do a
 13 test and if the test came out okay, we could leave
 14 and that I would come and get her after camp and
 15 bring her up to see Dad in the room.
 16 Q Is it fair for me to assume based upon
 17 the information that you provided Jana, that you
 18 left to go talk to her sometime after the decision
 19 had been made to admit your husband?
 20 A Yes.
 21 Q Did Jana ever come back to the hospital
 22 before your husband expired?
 23 A No.

1 Q Did you go in to the room where he was
 2 being examined or treated?
 3 A Yes, I did.
 4 Q Were you there the entire time upon your
 5 arrival?
 6 A In the emergency room where he was until
 7 he left the room?
 8 Q Yes.
 9 A No, I wasn't.
 10 Q Can you tell me why you left or when you
 11 left and the circumstances of departing?
 12 A I left -- I don't think I can give you
 13 times necessarily, but I left at one point to get
 14 some Advil. I left to check on Eddie who at one
 15 point went down to the family room and went to
 16 sleep. I went down to check on him. I left later
 17 in the morning to take Eddie to -- to go talk to
 18 Jana and to take Eddie to the Y.
 19 Q And Eddie was going to the Y for what?
 20 A He had a class.
 21 Q When you -- obviously you came back to
 22 the hospital after taking Eddie?
 23 A Yes, I did.

1 Q Did Eddie come back to the hospital?
 2 A No.
 3 Q Just in case it becomes an issue, what
 4 kind of class was it that Eddie was taking at the
 5 Y?
 6 A It was with fitness person, Susan, but
 7 I can't think of her last name. He was working out
 8 with Susan.
 9 Q When you returned, was your husband in
 10 the same location as when you had left him?
 11 A Yes. You mean, when I returned from
 12 taking Eddie?
 13 Q Yes.
 14 A Yes.
 15 Q So where was he at that time?
 16 A He was in the room, the emergency room.
 17 Q He had not yet been taken up to the
 18 telemetry unit or whatever unit they took him to?
 19 A No.
 20 Q When you returned -- strike that, let me
 21 go back now. Would you recognize Dr. D'Aprix if
 22 you saw him?
 23 A I'm not sure.

Page 37

1 Q Were you in a room when Dr. D'Aprix came
2 in to examine your husband and speak with him?
3 A Yes.
4 Q Were you there the entire time?
5 A Yes, I believe I was.
6 Q Did Dr. D'Aprix ask your husband
7 questions regarding the events leading up to being
8 found in the hallway?
9 A I believe he asked him questions.
10 Q Do you recall your husband's responses?
11 A No, I don't.
12 Q Did your husband have responses?
13 A Yes.
14 Q Did you feel like you were filling in
15 any of the gaps?
16 A What I remember is when he asked what
17 happened, I remember telling him what I had
18 observed. That's what I remember.
19 Q And is that what you have already told
20 me?
21 A Yes, pretty much. I mean, there may be
22 some more.
23 Q What do you remember telling the doctor?

Page 38

1 A Well, I tried to just give him an over-
2 view of what had happened that morning.
3 Q I'm trying to figure out whether there
4 is something in the overview that you told
5 Dr. D'Aprix about that you haven't yet told me, so
6 I need to ask you what you recall telling him?
7 A I don't recall specifically. I just
8 told him everything that had happened that morning.
9 Q There's a note in the chart that your
10 husband may have experienced shortness of breath;
11 in fact, it may be characterized as "profound
12 shortness of breath," or I don't have that right in
13 front of me at the moment. Do you recall your
14 husband telling Dr. D'Aprix that he had been short
15 of breath?
16 A No, I don't recall that.
17 Q Do you recall him telling anybody that
18 he had been short of breath?
19 A No, I don't recall that.
20 Q Do you recall him, do you recall your
21 husband describing his respiration, either rate or
22 condition of or anything, to Dr. D'Aprix?
23 A No, I don't recall what Craig said to

Page 39

1 Dr. D'Aprix.
2 Q And "shortness of breath" is not some-
3 thing that you conveyed to Dr. D'Aprix?
4 A No.
5 Q Is it fair for me to assume that from
6 the time that you arrived at your husband's side
7 in the hallway until he is taken to or is in the
8 emergency department, that he does not complain to
9 you or tell you that he has pain in any part of
10 his body?
11 A I just lost where we were when you
12 started that question, so can you repeat it?
13 Q Sure. I'm trying to cover the time
14 period from when you arrived at your husband's
15 side in the hallway at home up until the time he
16 arrives in the emergency department. You have no
17 recollection of him telling you that he had pain in
18 a particular part of his body?
19 A Up until he arrived?
20 Q Right.
21 A I didn't see him. I mean, once he left
22 in the ambulance, I didn't see him until he was in
23 the emergency department; so the only time I saw

Page 40

1 him was as he was going to the ambulance. No, he
2 did not complain of pain at that time.
3 Q And once arriving in the emergency
4 department, do you have any recollection of him
5 complaining of any kind of pain?
6 A Yes, I do.
7 Q What kind of pain?
8 A Back pain.
9 Q To whom?
10 A To me and the nurse.
11 Q And do you think those, the comments
12 regarding back pain, were made prior to Dr.
13 D'Aprix's arrival in the room to examine your
14 husband?
15 A Well, he knew he had back pain because
16 he came in to get him off the back board.
17 Q You are saying that Dr. D'Aprix knew
18 that your husband had back pain?
19 A Yes.
20 Q Because your husband was on the back
21 board?
22 A Because he was complaining of it.
23 Q The complaints that you heard about back

1 pain, were they made prior to D. D'Aprix's
 2 arrival in the room?
 3 A Yes, they were.
 4 Q And that's the only type of pain that
 5 your husband complained of that day?
 6 A That was what he -- that's what I heard
 7 him complain about.
 8 Q Are you aware of anybody else hearing
 9 about complaints of a different sort of pain?
 10 A I'm not aware of anybody else hearing
 11 complaints.
 12 Q Were you -- strike that. Let me start
 13 over. It sounds to me, or it appears to me from
 14 the emergency department records that your
 15 husband's mental state improved slowly while he was
 16 there; would you agree with that characterization?
 17 A Yes, I would.
 18 Q And that he slowly become more
 19 responsive to what I'll call verbal stimuli?
 20 A He became more coherent as the morning
 21 went on, yes.
 22 Q Do you recall a discussion between
 23 Dr. D'Aprix and your husband in which you may have

1 A I don't remember.
 2 Q Did Dr. D'Aprix have any discussions
 3 with your husband regarding your husband's primary
 4 care physician or family physician that you recall?
 5 A He came in at one point and told us that
 6 Dr. Calhoun did not have admitting privileges at
 7 CMC and he was going to try to find someone else to
 8 admit him. That is the only conversation that I
 9 recall about that.
 10 Q Other than what you have already told
 11 me, any other discussions by Dr. D'Aprix at any
 12 time as to why he was trying to have your husband
 13 admitted?
 14 A No, that was why he told me he was
 15 being admitted. Because he wanted to have that
 16 one test redone in 12 hours.
 17 Q Did he tell you whether he had sought a
 18 consultation with anybody else?
 19 A No, he did not.
 20 Q Did you have a discussion at any time
 21 that day after your husband was transferred to the
 22 telemetry unit with any other physician about your
 23 husband's condition?

1 participated regarding Dr. D'Aprix's thoughts as to
 2 what had caused your husband's condition?
 3 A You mean after the tests?
 4 Q Well, at any time. I know that you have
 5 talked about one already in connection with our
 6 discussion regarding Interrogatory answers, but I
 7 want to focus on any such discussion that day.
 8 A I just remember that he said he was
 9 going to have some tests done.
 10 Q Did he say anything else surrounding
 11 why he was going to have the tests done?
 12 A I don't recall him saying why?
 13 Q Did you go with your husband to the
 14 x-ray unit?
 15 A No, I did not.
 16 Q Did he go there while you were still at
 17 the hospital or ---
 18 A Yes.
 19 Q So you stayed and spoke to Jana at that
 20 time or what were you doing when your husband was
 21 taken to radiology?
 22 A No, I just stayed in the room.
 23 Q How long was he gone?

1 A After he was transferred?
 2 Q Yes.
 3 A Yes.
 4 Q Who did you have discussions with?
 5 A I had discussions with the doctor who
 6 came into the room and the doctor who came down the
 7 hall to tell me that Craig had an embolism.
 8 Q When your husband was transferred to the
 9 telemetry unit, did you go with him?
 10 A Yes, I did.
 11 Q Were you in the room when he went to the
 12 bathroom?
 13 A Yes, I was.
 14 Q Who discovered that your husband was
 15 having, my term, difficulties at or about the time
 16 that he had gone to the bathroom?
 17 A I did.
 18 Q How did you discover that?
 19 A He yelled for me from the bathroom and
 20 said he was fainting.
 21 Q Let me try and go at this then from --
 22 I want to try to get as much detail as I can
 23 regarding what occurred after he was transferred

1 down?

2 A Right.

3 Q From the conversation with your husband,
4 did it sound as if he had actually crouched down or
5 in some way gotten his head lower?

6 A I don't know.

7 Q No further discussion regarding symptoms
8 or complaints he had regarding his condition prior
9 to when he couldn't remember anything more?

10 A Well, we talked about that more than
11 once. We talked about it when we were in the back
12 waiting. About that happening and how --- I mean,
13 he eventually realized that that is what happened,
14 you know. And I asked him, what do you mean you
15 couldn't breathe? Do you mean that you couldn't
16 get a breath; what do you mean? And he said I
17 could breathe in and out, but I couldn't get any
18 air. That's what he told me.

19 Q And this was something that he told you
20 after you had been moved to the back of the ---

21 A No, he told it to me before and we
22 talked about it a couple of times. He told me
23 about it before we got the results from

1 Dr. D'Aprix.

2 Q And the results were of tests in general
3 or do you have a particular one in mind?

4 A No, they were the tests in general.

5 Q Your husband never characterized it as
6 "short of breath"?

7 A He said he couldn't breathe.

8 Q And what did you do with that
9 information?

10 A I told Dr. D'Aprix.

11 Q And when did you tell him?

12 A I told him when he gave us the test
13 results.

14 Q Do you think you told him also that your
15 husband had said that he was breathing regularly,
16 but felt like he couldn't get any air?

17 A Yes, I did.

18 Q Do you recall whether Dr. D'Aprix had
19 any kind of reaction to that information?

20 A He didn't particularly react to it.

21 Q Did he say anything that acknowledged
22 the information?

23 A No.

1 Q And your husband never described in that
2 waiting period, while you were waiting for the test
3 results or waiting to get transferred to a
4 different unit, didn't further define his symptoms
5 as including any kind of chest pain?

6 A He never told me that.

7 Q And he never commented on the rate of
8 his breathing?

9 A Not to me.

10 Q Did you hear him comment about chest
11 pain or rate of his breathing to anybody else that
12 day?

13 A I don't recall hearing that. Can we
14 take a short break?

15 MR. ABBOTT: Absolutely.

16 (Whereupon, a recess was taken.)

17 Q All set to continue?

18 A Yes.

19 Q I want to go back to July 18. At the
20 risk of being repetitive, and I apologize, but is
21 there anything else that your husband told you
22 during that period of time where you were waiting
23 for the test results or waiting to go up into the

1 hospital that you can recall?

2 A I don't believe so. I mean, about --
3 you are asking not things in general, but about
4 the situation, what has happened to him?

5 Q The situation.

6 A Right.

7 Q Did Dr. D'Aprix ever tell you that the
8 test results that he was interested in repeating
9 had anything to do with cardiac function or cardiac
10 rhythm or did he describe it in any way?

11 A He said that there was an enzyme that
12 was slightly elevated. It was not out of the
13 normal range, but it was slightly elevated and it
14 showed some strain to his heart. He said it didn't
15 necessarily mean that there was anything wrong with
16 his heart, but that he wanted to repeat the test.

17 Q And did he tell you anything about the
18 conclusions he drew from the tests that had already
19 been performed?

20 A He said the other tests were normal.

21 And I asked him, well, then why did Craig faint and
22 he said I don't know. People faint for a lot of
23 reasons.

1 Q Any further discussions with Dr. D'Aprix
 2 about the fainting?
 3 A I don't believe so.
 4 Q I want to go back or go ahead in time
 5 to when you arrive in the telemetry unit. Any
 6 further discussions with Craig about the events of
 7 that day from the time you arrive in the telemetry
 8 unit?
 9 A No.
 10 Q At some point in time, did Craig
 11 indicate that he wanted to go to the bathroom or
 12 did he just get up and go?
 13 A He said I have to go to the bathroom and
 14 he got up and went.
 15 Q And he was able to do that without
 16 assistance?
 17 A Yes.
 18 Q At that time, would you characterize
 19 him as being normally coherent?
 20 A Yes, he was.
 21 Q And then again the next thing you heard
 22 was him -- he was calling you from the bathroom?
 23 A Yes.

1 is this a second occurrence of the sweating?
 2 A Yes.
 3 Q So at some point in time, the sweating
 4 appearance had gone away?
 5 A Yes, it had.
 6 Q And it came back at some point?
 7 A Yes, it did.
 8 Q All right; any other observations you
 9 made?
 10 A No.
 11 Q What did you do then?
 12 A I ran out down the hall and got the
 13 nurses.
 14 Q At this point when you ran out was your
 15 husband, forgive me for asking, was he on the floor
 16 or was he on the toilet?
 17 A He was sitting on the toilet.
 18 Q And did you find a nurse?
 19 A I did.
 20 Q Did a nurse come back with you?
 21 A Yes.
 22 Q What happens next?
 23 A There were a couple of nurses. They --

1 Q What did he say?
 2 A He said I'm fainting.
 3 Q Did you go in to see him or did you call
 4 the nurse or what did you do?
 5 A I ran in to see him.
 6 Q And had he fainted?
 7 A No.
 8 Q What happens next?
 9 A He was completely gray.
 10 Q Had that gray color that you describe
 11 now, is that similar to what you would describe
 12 when you were in the house?
 13 A Yes.
 14 Q Had that gone away before?
 15 A Yes, it had.
 16 Q Other than the gray color and his
 17 telling you that he was fainting, any other
 18 recollections from this period of time about
 19 complaints he had or observations you made?
 20 A I recall that he started sweating
 21 profusely, but I don't remember if it was at that
 22 particular time, but I know that that happened.
 23 Q And when you say you know that happened,

1 I ran in, I was holding Craig up sitting on the
 2 toilet. They were trying -- you know, they hadn't
 3 seem him yet, they didn't know what was going on.
 4 They were trying to figure out what was going on.
 5 Q Did they know why he was there?
 6 A I don't know.
 7 Q I'm sorry, a perfectly reasonable
 8 answer to my question. Did they ask any questions
 9 that led you to believe that they might not know
 10 why he was there?
 11 A I didn't have any sense that anybody
 12 knew why we were there. I mean, we had just
 13 arrived. No, I don't know.
 14 Q So the nurses come down and you are
 15 helping ---
 16 A Right.
 17 Q Your husband.
 18 A And they wanted to get him to the bed.
 19 And they got a wheelchair in there and they wanted
 20 to get him into the wheelchair.
 21 Q Were they successful?
 22 A Eventually.
 23 Q I'm sorry, I infer that there may have

1 been some difficulties?
 2 A Yes.
 3 Q Can you describe the process for me?
 4 A Yes. Craig said --- They said you need
 5 to get in the wheelchair and he said if I stand
 6 up, I will faint. And they said we have to get
 7 you in the wheelchair. And I moved out of the way
 8 and a few of them got around him and then they
 9 did -- they went with the count of three; one, two,
 10 three, stand up. And he stood up and he just fell
 11 right on the floor. And then they got him into
 12 the wheelchair from the floor, which was pretty
 13 amazing.
 14 Q Amazing as ---
 15 A He is big.
 16 Q And once they got him in the wheelchair,
 17 was he still passed out or unconscious?
 18 A He was unconscious; and when he got in
 19 the wheelchair, his body went completely rigid.
 20 Q Can you tell me, can you describe that
 21 for me? I apologize; but when you say rigid, as
 22 in straightened out or just stiff?
 23 A No, it was kind of straightened out.

1 Q So no one was asking him questions to
 2 which he was responding?
 3 A I don't remember them asking him
 4 questions.
 5 Q So he said he wasn't able to breathe.
 6 What happens next?
 7 A They were trying to get him hooked up.
 8 Q I'm sorry, I know these are difficult
 9 questions. Would you like to take another break?
 10 A No, I wouldn't.
 11 Q Were they successful in getting him
 12 hooked up in your view?
 13 A I don't know. I know they were trying
 14 to take a blood pressure and they couldn't. I do
 15 remember that.
 16 Q Couldn't as in couldn't get the
 17 mechanism on him or couldn't obtain one?
 18 A Couldn't get a blood pressure.
 19 Q I'm sorry, I need to keep probing to
 20 find out what happens. So what happens next; they
 21 tried to hook him up and they have tried to get a
 22 blood pressure?
 23 A I don't know what happened. I just know

1 I thought he was having a seizure, but I don't know
 2 why I thought that. That is just what came into
 3 my mind, that he was having a seizure.
 4 Q How long did he remain in that
 5 condition?
 6 A I don't remember.
 7 Q Did they take him to the bed?
 8 A Yes.
 9 Q Do you think he was still rigid when
 10 they got him to the bed?
 11 A No, I don't think so.
 12 Q I assume that they got him into the bed?
 13 A They did.
 14 Q How many nurses are there at that time?
 15 A I'm not sure, maybe three.
 16 Q After he's in the bed, what happens
 17 next?
 18 A He became conscious.
 19 Q And as conscious as he was before he
 20 went into the bathroom?
 21 A I don't know. I don't know because he
 22 was saying that he couldn't breathe, so I can't
 23 assess how conscious he was.

1 that he was in incredible distress because he could
 2 not breathe. They were trying to position him in a
 3 way that I guess they thought was good for him to
 4 be in and it was very -- it was really hard on him
 5 to be in that position. It made it hard for him
 6 to breathe. Harder. So there was a lot of that
 7 going on, trying to get him in whatever they
 8 thought was a good position. They were trying ---
 9 I don't know what they were trying to do, but they
 10 were trying to do different things, I just don't
 11 know what they were.
 12 Q Did you remain in the room from this
 13 period until the end of the code that I know was
 14 called later on?
 15 A No.
 16 Q At some point, you were asked to leave
 17 or you excused yourself?
 18 A I was asked to leave.
 19 Q Do you know when that was?
 20 A Yes, I was asked to leave twice. I was
 21 asked to leave when Craig lost consciousness; and
 22 then after they used those paddles to try to get
 23 him, whatever they were doing, they asked me to

1 leave again.

2 Q The first time that they asked you to
3 leave was when he lost consciousness, is this at
4 the time when they tried to stand him up to get him
5 in the wheelchair or is this a second time?

6 A Oh, no, this is a second time.

7 Q In terms of the chronology, we haven't
8 gotten to that point yet?

9 A No, we haven't.

10 Q The positions they were attempting in
11 order to facilitate breathing, can you describe
12 those for me?

13 A No.

14 Q What do you recall, if anything, from
15 the time that they were trying to move Craig into
16 different positions until he lost consciousness
17 when they asked you to leave the room?

18 A I recall that -- I recall telling them
19 that this had happened earlier. I had tried to
20 get across to the nurses what had happened that
21 morning. I recall that I asked is a doctor coming.
22 I know that a nurse went out -- there was a nurse
23 who wanted to get him something and another nurse

1 time that it was learned that a physician had
2 indicated or said not to give the drug that the
3 nurse was contemplating; was your husband still
4 awake and conscious?

5 A Yes, he was.

6 Q Other than the difficulty breathing and
7 trying to find an appropriate position, any other
8 comments or statements made by your husband during
9 this period of time?

10 A All of his comments were about not
11 being able to breathe and being uncomfortable.

12 Q Can you tell me if he described the
13 discomfort in a way --- I mean, did he describe how
14 he was uncomfortable?

15 A No, but they would move him and he
16 would go -- you know, he would make like no, that
17 hurts, you know. So no, he didn't. You could just
18 tell that he was uncomfortable and he was in a lot
19 of distress because he couldn't get any air, he
20 couldn't breathe.

21 Q Did a physician arrive before your
22 husband lost consciousness?

23 A Yes.

1 went and called a doctor and came back and said
2 the doctor said no to whatever the nurse wanted to
3 get him. And that nurse got very upset about not
4 being able to give it to him. And then I said is
5 there a doctor coming because I felt like there was
6 a doctor somewhere making the decisions and there
7 were no doctors in the room.

8 Q What did you learn in response to that
9 query?

10 A I think they said the doctor was coming,
11 but I don't really remember that clearly. I can't
12 be certain of that.

13 Q Do you know what it was -- do you have
14 any idea what the drug was or what it would do or
15 whatever that the one nurse wanted to give and then
16 was told not to give it?

17 A I don't remember what it was called.

18 Q Even if you don't know the names of the
19 drugs, sometimes we recall things by how we think
20 they would act or what they would do.

21 A No, I don't know what the purpose of the
22 drug was.

23 Q Is your husband still conscious at the

1 Q Do you know who that was?

2 A I know now who it was, Dr. Shea.

3 Q How do you know now, is it based
4 upon ---

5 A Well, I have known for a long time, but
6 I didn't know at the time who he was.

7 Q When he arrived, is that about the time
8 when you were asked to leave?

9 A No.

10 Q So he arrived before your husband had
11 lost consciousness?

12 A Yes.

13 Q Did Dr. Shea have any verbal interaction
14 with your husband?

15 A Yes.

16 Q What do you recall about that?

17 A I recall him trying to calm him down.
18 I recall that -- I don't know if it was just when
19 he arrived or shortly thereafter or just before,
20 but very soon Craig started to hyperventilate and
21 so I remember the doctor trying to calm him down.

22 Q And was Craig at all responsive?

23 A At that point, Craig had been unable to

1 breathe for I would say -- I don't know how long
 2 it was, but to me it seemed like it was like about
 3 15 or 20 minutes. I'm not sure about that, but it
 4 was a very long time.
 5 Q I'm sorry, is it safe for me to assume
 6 that you don't recall anything that Craig may have
 7 said to Dr. Shea?
 8 A No, I don't know.
 9 Q Let me ask you; between the time that
 10 Dr. Shea arrived and your husband began to hyper-
 11 ventilate until the time that he passed out, do
 12 you recall what else happened during this period of
 13 time?
 14 A I think he listened to him with a
 15 stethoscope. I just don't remember anything else.
 16 Q When your husband lost consciousness,
 17 did you leave the room upon request?
 18 A I went to the door. I stood in the
 19 doorway.
 20 Q What happened from that point forward
 21 after he loses consciousness? What happens next
 22 that you recall by way of the sequence?
 23 A A lot more people came in the room.

1 Q I assume you weren't able to see
 2 anything from where you were?
 3 A No.
 4 Q Were you able to hear anything?
 5 A No.
 6 Q What's the next you learn about your
 7 husband's condition?
 8 A A doctor came down the hall and told me
 9 that they thought Craig had a pulmonary embolism
 10 and they were working on him. They had given him
 11 something to try to break up the clot I think he
 12 said; but if it didn't work, he might die.
 13 Q Was that Dr. Shea or was that a
 14 different physician?
 15 A It was a different doctor.
 16 Q And do you know that person's name?
 17 A I don't.
 18 Q When was the next time that you heard
 19 anything from anybody regarding Craig's condition?
 20 A When they came to tell me that he had
 21 died.
 22 Q And do you know who came to tell you?
 23 A It was Dr. D'Aprix, Dr. Shea and the

1 There was a lot of frantic activity. They brought
 2 in, I don't know what you call it, the machine
 3 with the paddles and they shocked him.
 4 Q Was there any response that you were
 5 aware of?
 6 A I don't know. A nurse came over to me
 7 because I yelled into the room what is going on.
 8 A nurse came over to me and said they were trying
 9 to get a good sinus rhythm and that they thought
 10 that he might have some fluid around his heart.
 11 Q What else do you recall about statements
 12 made to you by any of the health care providers at
 13 this time?
 14 A That is the only person who spoke with
 15 me.
 16 Q I think that you told me earlier that
 17 you were asked to leave the room twice, the second
 18 time was when?
 19 A Was around then. It was around then.
 20 I'm not sure if it was that same nurse, but
 21 somebody said, suggested that I wait down the hall.
 22 Q And did you go down the hall?
 23 A Yes, I did.

1 other doctor who had come down the hall.
 2 Q And what do you recall about that
 3 conversation?
 4 A The only thing I recall is that they
 5 told me he had died.
 6 Q Did anybody suggest the cause of death
 7 at that point in time?
 8 A I don't remember. I just knew that they
 9 thought it was a pulmonary embolism, but I don't
 10 know if that was because of the prior conversation
 11 or because they said that. I asked how he could
 12 have died.
 13 Q And what was the response?
 14 A I don't remember.
 15 Q I'm sorry, I need to ask you, do you
 16 have any recollections about who said what or what
 17 the subject matter of that conversation was?
 18 A I don't. I just don't remember.
 19 Q Is it fair for me to assume that up
 20 until your husband called to you from the bathroom
 21 about feeling faint or fainting, that your
 22 impression was that he had been improving?
 23 A Yes, my impression was that he was