

1 Dr. Greenfeld - Cross 262

2 A. You know, it's very difficult to
3 make a diagnosis in that short of time. In
4 fact, I can tell you this, at Yale New Haven,
5 the policy was to put borderline traits down
6 because this was someone who was looking
7 borderline I remember but it wasn't really
8 clear this was a pervasive pattern, or the code
9 used from DSM was they had groups of clusters
10 of symptoms in the diagnostic, it was like a
11 Chinese menu. They would say cluster C trait
12 saying this was someone that looked kind of
13 borderline but I don't know if it was really
14 case. This is a premature labelling of someone
15 that follows them around for decades.

16 Q. Based on your experience as a
17 clinician and treating many patients, in your
18 experience patients that may have this
19 borderline personality disorder, have they been
20 the types that would make false accusations and
21 carry them out over an extended period of time?

22 A. I don't know that there is a type
23 for that.

24 Q. Can you explain that.

25 MR. BROPHY: I think the answer has

1 Dr. Greenfeld - Cross 263

2 been given.

3 Q. Can you explain what you mean by
4 there is not a type for that?

5 THE COURT: Overruled. You can
6 answer the question.

7 A. I don't know of any type of
8 patient, psychiatric patient, who is the type
9 to make false accusations. In the course of my
10 work on the in-patient service there were
11 occasional patients that made accusations that
12 turned out not to be true, they didn't fall
13 into any specific diagnostic. It was more
14 random, more what kind of people they were.

15 Q. Did Noelle Feldman fall into a
16 category that she would make false accusations
17 about someone and carry them out?

18 MR. BROPHY: Objection. Way beyond
19 the scope of direct. The question has
20 been answered in another form.

21 THE COURT: Overruled.

22 A. As I said, my expertise extends
23 only to psychiatric symptoms and illnesses.
24 People who are dishonest and unscrupulous don't
25 fall into a type -- that wasn't a source of my

1 Dr. Greenfeld - Cross 264

2 investigation with her. I don't know that about

3 her or about any of the parties involved here.

4 MR. HANNIGAN: Thank you, Doctor.

5 MR. BROPHY: Nothing further.

6 THE COURT: Thank you, Doctor. You

7 may step down.

8 (Witness excused.)

9 MR. HANNIGAN: At this point, Your

10 Honor, plaintiff rests their case.

11 MR. BROPHY: Reserve motions, Your

12 Honor.

13 THE COURT: Obviously this is a

14 good time to break for the day.

15 Plaintiff is finished with plaintiff's

16 case. We will resume tomorrow morning

17 with defendant's case. We will meet at

18 9:30. By now everyone knows what I'm

19 going to say. Please do not discuss

20 this case with anybody or among

21 yourselves or do any research of any

22 kind however tempting that may be. See

23 you in the morning.

24 (Jury exits courtroom.)

25 THE COURT: Your charges?

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Dr. Greenfeld - Cross

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MR. BROPHY: I haven't received plaintiff's request yet. Mr. Hanngian assures me it will be sent and when I get back to the office, I will have my proposed request to charge in the morning.

THE COURT: Tomorrow?

MR. BROPHY: We have Dr. Knack. Friday morning Dr. Lerman. Monday afternoon Dr. Stone. We will fit in the examination before trial of Dr. Shander. I request plaintiff hand back the marked copy with objections to our designations and I'll make color copies and we'll hand them up to the Court and Your Honor can rule on that before we start. It's about 65 pages. We want to read about forty.

THE COURT: I looked at it.

MR. HARRINGTON: It's not clear when that is being offered and to be read.

THE COURT: That we will fit in.

MR. BROPHY: That's the idea.

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Dr. Greenfeld - Cross

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MR. HANNIGAN: I don't think we will have that tomorrow.

MR. BROPHY: Plaintiff counsel has my markings. I don't have his.

MR. HARRINGTON: I don't know that I will have it tomorrow morning. I will do my best.

MR. BROPHY: That's all I can ask.

THE COURT: Probably most likely it would be Friday afternoon and we will have the charge conference then.

Have a good night.

(Case adjourned to March 9, 2017.)

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Dr. Knack - Direct

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March 9, 2017.

NEW YORK STATE SUPREME COURT

COUNTY OF WESTCHESTER : PART TJR

NOELLE FELDMAN,

Plaintiff,

-against-

WILLIAM KNACK, Defendant.

INDEX NUMBER: 69747/2014

CONTINUED: TRIAL

BEFORE: HON. TERRY JANE RUDERMAN,

Justice of the Supreme Court

APPEARANCES: Same as previously noted.

THE COURT: Before we bring the jury in, what's happening with the request of charge.

MR. BROPHY: Your Honor I received the plaintiff's request of charge. I worked last night. I sent out a proposed request of charge to plaintiff's counsel and to Mr. Tartaglia. Because of the hour and

1 Dr. Knack - Direct 268

2 unavailability of equipment I was not

3 able to E file it. Mr. Tartaglia should

4 have it.

5 THE COURT: He does have it?.

6 MR. BROPHY: It appears there is

7 going to be some discussion concerning

8 burden of proof in this case. Plaintiff

9 is asking for a preponderance. We are

10 asking for clear and convincing. We

11 will have to discuss that when the time

12 comes. There are other charges we are

13 asking for and they are not asking for.

14 THE COURT: That's why we have a

15 charge conference and that's why we

16 need it from you. Do you have a hard

17 copy?

18 MR. BROPHY: Your Honor, it would

19 take some time for me to find it. I

20 have one in my bag. Exactly where it is

21 right now I'm not sure.

22 MR. HARRINGTON: We did receive it

23 and we will respond.

24 MR. BROPHY: Mr. Tartaglia was on

25 the addressee list.

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Dr. Knack - Direct

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MR. HARRINGTON: With respect to Dr. Shander's deposition, if I can have it to you after the lunch break. I'm almost through it.

THE COURT: Okay. The other issue is the weather today. They are talking about two to five inches. I will be able to get here but I don't know about others.

MR. BROPHY: Perhaps we could start a little later and we should be fine.

MR. HANNIGAN: I would do whatever it takes. I live about an hour twenty minutes in Connecticut.

THE COURT: Let's bring out the jury.

(Jury enters courtroom and take seats.)

THE COURT: Good morning, ladies and gentlemen. Defense.

MR. BROPHY: Defense calls William Knack.

W I L I A M K N A C K, called as a witness on behalf of Defense,

1 Dr. Knack - Direct 270

2 having been first duly sworn, testified

3 as follows:

4 DIRECT EXAMINATION

5 BY MR. BROPHY:

6 Q. Good morning, Dr. Knack. Did you or

7 did you not rape Noelle Feldman?

8 A. I did not.

9 Q. Did you or did you not do any of

10 the things which you were accused in

11 plaintiff's Exhibit 1, the November 14, 2013

12 e-mail?

13 A. I did not.

14 Q. Did you or did you not do any of

15 the things which Noelle Feldman accused you in

16 the police report?

17 A. I did not.

18 Q. Have you or have you not ever done

19 any of those things to anybody?

20 A. No, sir.

21 Q. Some members of your family are

22 here?

23 A. Yes.

24 Q. Would you point them out and tell

25 us who they are?

1 Dr. Knack - Direct 271

2 A. My wife Dr. Penny Knack. My
3 daughter Stella. My son to be son-in-law Brad.
4 My daughter Hillary who was here earlier is not
5 here today. She's in medical school.

6 Q. And tell us a little bit about your
7 background, where are you from originally?

8 A. Originally I was born in Flushing,
9 Queens, New York. I lived for a brief period of
10 time as a child in El Paso, Texas. Grew up
11 mostly in Hicksville on Long Island.

12 Q. What is your profession?

13 A. I'm a clinical psychologist.

14 Q. What got you interested in
15 psychology?

16 A. I've always been interested in
17 understanding what makes people tick. It's
18 often said that those interests begin in our
19 own childhood in terms of understanding our own
20 families but human behavior is pretty complex
21 and interested and it's something I've always
22 been interested in.

23 Q. Tell us about your education,
24 please?

25 A. Well, a graduate of Hicksville High

1 Dr. Knack - Direct 272
2 School, Nassau Community College and Adelphi
3 University on Long Island. At Adelphi I was a
4 psychology philosophy double major and a member
5 of the national honor society in psychology
6 there. I went on to Hofstra University and
7 completed a masters and Ph.D. in applied
8 psychological research and evaluation and
9 psychology and subsequently completed a post
10 doctoral clinical diploma in psychology at the
11 Turner Institute of Advanced Psychological
12 Studies at Adelphi University.

13 Q. How long a program was it after
14 your Ph.D. for your further training in
15 clinical psychologist?

16 A. There was a full time three year
17 program. It's the equivalent as a second
18 doctorate.

19 Q. When you completed -- withdrawn.

20 After you completed your Ph.D., did
21 you start doing some work in the field of
22 psychology?

23 A. Well, I went directly into the post
24 doctoral program for advanced training.
25 Subsequent to that completed a full time

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Dr. Knack - Direct

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clinical internship in psychiatry and
psychology at Nassau University Medical Center.

Q. And where are we now in point of
year?

A. That would have been 1984.

Q. And after you completed your
training did you obtain some positions in the
field of psychology?

A. Yes.

Q. And what was the first such
position that you worked in as a fully trained
psychologist?

A. Meaning licenses?

Q. Licensed, trained, yes.

A. I first went to the New York City
Police Department and worked as a New York City
Police psychologist for two years. While I was
there I was one of the founding and first
members of the psychology trauma response team.
Decades before 911 and we responded to the
scenes of catastrophic accidents, police
shootings, so on so forth for trauma debriefing
and assessment.

Q. What was your role as a clinical

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Dr. Knack - Direct

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psychologist at the scenes of serious accidents and traumatic events?

A. For assessment of psychiatric status, determination of what the patients need might be. They might need to be triaged to the hospital. There was a lot of, what was new research, that indicated if you could get to a subject at the very first time that they were experiencing trauma and work with them around processing the trauma while they were in the middle of it, that that would mitigate against the development of PTSD.

Q. Were these patients you are talking about police officers?

A. Yes, they were police officers.

Q. After two years working as a psychologist for the New York City Police Department, what did you do next?

A. I moved to Westchester and I took a position with Westchester Jewish Community Services as a psychologist. An important part of that role was to serve as one of the first psychological consultant to Westchester County child sexual abuse trauma unit.

1 Dr. Knack - Direct 275

2 Q. How long did you hold this position

3 with Jewish Community Services?

4 A. I'm thinking it was about three

5 years.

6 Q. And what was the next position that

7 you held in your career as a clinical

8 psychologist?

9 A. I think I became chief psychologist

10 at Stoney Lodge Hospital in Briarcliff Manor

11 which is a psychiatric treatment facility that

12 also treats substance abuse patients.

13 Q. Let's finish that, after you worked

14 at the Stoney Lodge Hospital, I take that was a

15 psychiatric hospital?

16 A. Yes.

17 Q. After you worked at the Stoney

18 Lodge Psychiatric Hospital, what was your next

19 position?

20 A. I went to Four Winds, also a

21 psychiatric hospital up in Katonah. I worked as

22 a consultant for psychological evaluation and

23 assessment. I provided psychological service

24 assessments to each of the units in the

25 hospital, some of which service children and

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Dr. Knack - Direct

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some adults. So I was responsible for assessments and diagnosis.

Q. How long did you work there?

A. I think about two years.

Q. After you worked at Four Winds, where are we up to now in point of time, approximately?

A. I'm going to imagine about 1993.

Q. Next job was?

A. I went to Arms Acres which is a chemical dependency treatment facility in Carmel. And for a year in Carmel served as the director of their dual diagnosis unit. It treated adolescence who suffered from substance abuse and psychiatric issues. After a year I stayed with the same company which was Liberty Health Care and moved over to be the clinical director of their Manhattan and Queens out-patient substance abuse treatment departments.

Q. How long did you do that?

A. I think my whole tenure there was probably about five years.

Q. After your tenure, the five years

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Dr. Knack - Direct

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with that company, what was the next thing you did?

A. I had an opportunity to start a children's psychiatric crisis residence at the Children's Village. So I moved over to Children's Village and set up two psychiatric children's crisis residences which are essentially like psychiatric ER's for kids.

Q. What kind of psychiatric emergencies were treated in that facility?

A. A lot of acting out, aggressive behavior, substance abuse. I started the first substance abuse treatment program within Children's Village at the time to work with these kids. Often they had a history of severe physical abuse, sexual abuse. There was a lot of work done in tandem with Child Protective Services and with the whole foster care system in terms of getting the kids placed. They came in for assessment, diagnosis, treatment and then discharged to some appropriate level of care.

Q. After you worked at Children's Village, what was your next position?

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Dr. Knack - Direct

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A. I think that I worked as a consultant with The Therapy Center in Mount Kisco and also began to build and focus on my private practice. I had a private practice since 1984, but with these various hospital positions and affiliations it was very parttime. So at this point I started consulting with different organizations and working on developing the practice.

Q. Now you mentioned earlier -- withdrawn.

Over the years that you have worked as a psychologist have you developed any particular expertise?

A. A number of them. So police psychology is an area of expertise for me as a function of my work with NYPD I've done a lot of fitness for duty assessment. The assessment to be responsible for a firearm, responsibility for firearm removal and that has become a part of my private practice as well. So I've consulted with a number of the departments in Westchester and sometimes in the City. Additionally because I have training and

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Dr. Knack - Direct

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experience in working with a variety of different kinds of people who struggle with addiction, which includes alcoholism, that's been a large part of my practice. Along with that comes people who struggle with post traumatic stress disorder, and other histories of abuse because those folks often wind up medicating themselves with alcohol and other drugs.

Q. You mentioned a term earlier, dual diagnosis. Could you explain to the jury what duly diagnosis means?

A. A dual diagnosis is a person who in addition to suffering from a diagnosable psychiatric condition which includes personality disorders, also has developed some substance use disorder, alcoholism or other kinds of addictions.

Q. Over the years in your private practice, what types of substance abuse problems have you treated?

A. Certainly a lot of alcoholism. Marihuana abuse. In recent years there is a sharp rise in the abuse of prescription

1 Dr. Knack - Direct 280
2 medications. A lot of people that have abused
3 oxycodone, Vicadin, so on. I recently presented
4 at a conference for Westchester Medical Center
5 on adolescent oxycodone abuse and methods of
6 intervention. Some of my patients abuse other
7 street drugs such as heroin, although those are
8 fewer, LSD, really the full range of drugs.

9 Q. In your private practice,
10 approximately what proportion of your patients
11 are these dual diagnosis patients?

12 A. Probably about half.

13 Q. Now I'm going to ask you a few more
14 questions about your private practice later.
15 Right now let's get back to your work history.
16 Have you been in full time private practice for
17 any period of time or is it parttime? You tell
18 me.

19 A. It's been full time for different
20 periods of time. I would consider a full time
21 private practice to be somewhere around thirty
22 patients. So the practice has been up to that.
23 In recent years it's hovered around twenty,
24 somewhere between ten and twenty. I've done
25 other things.

1 Dr. Knack - Direct 281

2 Q. That was my next area of inquiry.
3 Besides the various institutions and services
4 that you've worked for over the years, have you
5 had any academic -- have you been involved in
6 any academic activities?

7 A. Yes. I've always enjoyed teaching
8 as an adjunct. So I've taught at Westchester
9 Community College. SUNY Purchase. I taught at
10 Saint Francis College in Brooklyn, I taught
11 undergraduate and graduate at Saint John's
12 University in Queens. I've taught at Mercy, all
13 as adjunct. I currently have a position as
14 assistant clinical professor of psychiatry in
15 the Behavioral Services Unit at Westchester
16 County Medical Center part of New York Medical
17 College.

18 Q. What do you do -- what are your
19 duties at New York Medical College?

20 A. I train psychiatric residents, new
21 doctors, in both methods of psychotherapy,
22 various methods of that and I teach a course in
23 the diagnosis and treatment of addictive
24 disorders.

25 Q. Are you currently affiliated with

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Dr. Knack - Direct

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the State University of New York in some
manner?

A. Yes.

Q. Please tell us where and when you
became affiliated with the State University
system?

A. I started working as an assistant
professor of psychology at the State University
at Old Westbury in 2001.

Q. Was that an adjunct position?

A. No, that's a full time academic
position.

Q. And how has your career at Old
Westbury progressed since 2001?

A. It's been kind of the usual
progression. I went through the whole tenure
process and after seven years was awarded
tenure. I was promoted to associate professor
and four years ago I was made chair of the
psychology department. That's a three year
term. Last year I was re-elected as chair. I
also served a one year term as their director
of counselling services in the college's
counselling unit.

1 Dr. Knack - Direct 283

2 Q. Counselling whom?

3 A. Students.

4 Q. Do you have certain teaching

5 responsibilities at Old Westbury?

6 A. I do. Part of what I did there was

7 to work in tandem with another psychologist to

8 develop a masters program in mental health

9 counselling. Mental health counselling is a

10 relatively newly licensed clinical title in New

11 York State that produces masters level

12 clinicians who treat patients with mental

13 health disorders and issues. So they are taught

14 to assess, diagnosis and plan psychotherapy

15 treatment plans for people with psychiatric

16 problems.

17 Q. Do you teach undergraduates?

18 A. I haven't taught undergraduates in

19 quite a while. I used to teach behavioral

20 psychopharmacologic, introduction of methods of

21 psychotherapy, personality disorders and

22 abnormal human behavior tend to be my under

23 graduate courses.

24 Q. Do you still have teaching

25 responsibilities at Old Westbury?

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Dr. Knack - Direct

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A. Yes.

Q. What level?

A. They are graduate courses.

Q. What graduate courses do you teach now?

MR. HANNIGAN: I object, Your Honor. Can we have a side bar please.

THE COURT: Yes.

(Approach off the record.)

Q. Dr. Knack, does the community, academic community at Old Westbury about this lawsuit?

A. Yes.

Q. How do they know?

A. Well in two ways. The minute I found out about it I went to the probost, the chief academic officer, and exactly the same time the director of human resources called me in and had seen an online posting of an article that had appeared in I believe it was the Journal News.

Q. And have you discussed this lawsuit with the administration of the college?

A. I have.

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Dr. Knack - Direct

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Q. Have any of your duties been limited, have you been disciplined in anyway?

A. Absolutely not.

Q. Have you ever been disciplined in any manner for anything at the State University?

A. Not there or anywhere else.

Q. Have you ever been convicted of a crime?

A. No.

Q. Have you ever been sued for malpractice?

A. No.

Q. Have you ever been disciplined by any regulatory agency such as the Department of Professions?

A. Never a complaint.

Q. Do you still maintain your private practice?

A. I do.

Q. Do your patients know about this lawsuit?

A. They do.

Q. How do they know?

1 Dr. Knack - Direct 286

2 A. I tell them about it.

3 Q. Has anybody left your care?

4 A. Nobody's left my care.

5 Q. What kind of patients do you see in

6 your private practice?

7 A. It's a varied group and the group

8 itself various from time to time. Mostly I work

9 with adults, young adults and older adults. I

10 do some work with couples. I do work with

11 people who have suffered from traumatic events

12 and struggle with PTSD. A large part of the

13 practice is around the area of the treatment of

14 addiction. Some family work in treating

15 families that struggle with addiction. Mostly

16 working with the addict themselves.

17 Q. Does your -- where do you conduct

18 your practice?

19 A. In my office in my home in

20 Chappaqua.

21 Q. Are you available to your patients

22 when you are not in your office?

23 A. Yes.

24 Q. How?

25 A. By telephone, text, e-mail.

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Q. Do you or do you not meet with your patients behind closed doors?

A. I do.

Q. To the present day do or do you not meet with your patients behind closed doors?

A. I do.

Q. Explain in general what you do as a clinical psychologist in the treatment with people with the disorders and problems you told us about?

A. Well, you know who we are at the moment is a function of where we've come from, what's happened to us. Everybody starts with a genetic endowment and from that point forward it has a lot to do with the experiences that we have growing up. So early family dynamics affect the development of both strength and weaknesses. So when people are experiencing problems and difficulties they typically have roots and those roots are important to understand. Sometimes people can't get better without understanding where it came from. Other people are able to improve simply by learning skills. It's referred to as a top down versus a

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bottom up sort of approach. So from the top down you are working with people who are capable of getting better just by teaching them to do different things. When that's not possible then you have to work from the bottom up and go to the root of whatever the issues may have been.

Q. In the course of your treatment of patients, do you prescribe medications?

A. No.

Q. Why not?

A. I'm a clinical psychologist, I'm not entitled to prescribe.

Q. Could you explain please the difference between a clinical psychologist practice today and a psychiatrist?

MR. HANNIGAN: Objection.

Relevance.

THE COURT: Overruled. You can answer that question.

A. So the psychologist's practice much in the manner I just described. It's a verbal intervention and there may be behavioral strategies that are recommended for

1 Dr. Knack - Direct 289
2 intervention. Psychiatrists are typically of
3 two types. One type that I would refer to as
4 more old school psychiatrists. These are
5 psychiatrists who in addition to being firmly
6 grounded in the neurobiology of psychiatric
7 disorders and psychopharmacology of psychiatric
8 disorders, also have extensive training in
9 models of psychotherapy. I refer to them as old
10 school psychiatrists because that's not typical
11 of the models of training in psychiatry which I
12 know because I'm part of training in psychiatry
13 these days. The background in psychotherapy is
14 very limited for newer psychiatrists. They tend
15 to focus mostly on medication.

16 Q. In the course of your psychotherapy
17 practice, do you or do you not -- withdrawn.

18 Are many of your patients at the
19 same time under your care also under the care
20 of a psychiatrist?

21 A. Yes.

22 Q. How many?

23 A. On the average at least half, and
24 sometimes more.

25 Q. Now although you don't prescribe

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Dr. Knack - Direct

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medications yourself, in the course of your practice must you be knowledgeable concerning the affects of prescription drugs on your patients?

A. It's a New York State license requirement for all of the titles of people who provide psychotherapy. Psychologists, social workers, mental health counsellors are required to be capable of monitoring a person's progress on medications. Because we're often the gatekeepers, so to speak. We're often the person that sees the patient first. So you need to be aware of effects, drug interactions, behavioral indications that a patient might not be taking it or may be taking more or maybe adding street medications or other drugs that they are not supposed to be taking.

Q. How do your patients pay you?

A. By check typically.

Q. Do you maintain billing records?

A. Very limited. It's a small practice.

Q. Do you maintain records of your patients' office visits?

1 Dr. Knack - Direct 291

2 A. Yes.

3 MR. BROPHY: At this time I would

4 ask if Dr. Knack could be provided with

5 his records of Noelle Feldman which has

6 been marked as Defendant's Exhibit B.

7 (Handing to witness.)

8 Q. Dr. Knack, are these records in

9 front of you, are those the original records

10 that you made regarding your psychology

11 treatment of Noelle Feldman?

12 A. They appear to be, yes.

13 Q. How do you make these records?

14 A. Typically I make a note for each

15 office visit. I don't take notes during a

16 session. I find that it interferes with the

17 interaction with the patient. I may sometimes

18 make a note on the same day of the visit but

19 typically my notes are made at the end of the

20 week on a Saturday. I sit down and write my

21 notes for the week. Sometimes I fall behind and

22 have to catch up.

23 Q. Have these records that you made

24 concerning your treatment -- are these records

25 that you made concerning your treatment of

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Dr. Knack - Direct

292

Noelle Feldman, are they the original records that you made at or about the time you were treating her?

A. Yes.

Q. Have you taken any notes or records out of Exhibit B at any time?

A. No.

Q. Have you altered anything in Exhibit B at any time?

A. No.

Q. Have these records been in your possession since this lawsuit started?

A. No, they have not.

Q. Where have they been?

A. In your possession.

Q. In addition to the records in exhibit B -- by the way your billing cards are in there too?

A. Yes.

Q. In addition to the records in Exhibit B, recording your office visits, were there interactions that you had with Noelle Feldman from time to time that aren't in the records?

1 Dr. Knack - Direct 293

2 A. How do you mean interactions?.

3 Q. Well, were there times that you

4 would see Noelle Feldman in a more informal

5 manner than in your office?

6 A. There were a couple of times, yes.

7 Q. Tell us about that?

8 A. There was one time I ran into her

9 in Mrs. Green's supermarket. I was coming back

10 from a run and stopping off to pick up

11 something. And there were two times she pulled

12 into my driveway when I was mowing the lawn.

13 Q. In addition to these office

14 records, did you receive e-mails from Noelle

15 Feldman from time?

16 MR. HANNIGAN: Objection. Leading.

17 THE COURT: Sustained.

18 Q. Did you or did you not receive

19 e-mails from Noelle Feldman from time to time?

20 MR. HANNIGAN: Objection. Leading.

21 THE COURT: Sustained.

22 Q. Did you communicate with Noelle

23 Feldman by other means besides sitting down and

24 talking with her in your office?

25 A. Yes.

1 Dr. Knack - Direct 294

2 Q. How?

3 A. By telephone, by text and by
4 e-mail.

5 Q. Do you have records of the
6 telephone calls?

7 A. I'm thinking because there might be
8 a reference to a phone call or two in my
9 progress notes, but I don't believe I have
10 records of telephone calls.

11 Q. Do you have records of text
12 messages?

13 A. No.

14 Q. Do you have copies of e-mails?

15 A. Only a few. Only a few. There were
16 literally hundreds of texts and hundreds of
17 e-mails that unfortunately were not preserved
18 at the time that they were coming in, there
19 seemed no reason to hold on to them. They were
20 just communications back and forth.

21 Q. After this lawsuit was filed, did
22 you make some effort to obtain copies of
23 e-mails between you and Noelle Feldman?

24 A. I did. Because I felt like the
25 content was really important and relevant.

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Dr. Knack - Direct

295

Q. And how did you do that?

A. We sent my laptop out to a forensic firm to try to recover whatever they could off the hard drive.

MR. BROPHY: Can I have this marked.

(Marked Defendant's Exhibit R for identification.)

Q. Have you had the opportunity to review the contents of Defendant's Exhibit R?

A. I've seen them. I haven't reviewed them recently.

Q. Dr. Knack, are the e-mails copies that are contained in Exhibit R true and accurate copies of the e-mail correspondence between you and Noelle Feldman?

A. I think my best answer is that they are true and accurate for what they are but they are not complete.

MR. BROPHY: I offer them. I have copies for counsel.

MR. HARRINGTON: No objection.

(Defendant's Exhibit R in evidence.)

Q. I will now change the subject and

1 Dr. Knack - Direct 296
2 ask you questions about your care and treatment
3 of Noelle Feldman. With the Court's permission,
4 could Dr. Knack refer to a transcript that he
5 prepared himself from the notes?

6 MR. HANNIGAN: Can we see whatever
7 this is. I'm not familiar with this
8 document.

9 THE COURT: I think the transcript
10 was in the motion. Is this what you are
11 talking about.

12 MR. HANNIGAN: Can we have a copy
13 of it?

14 THE COURT: Do you have a copy of
15 that?

16 MR. HARRINGTON: Not here, Your
17 Honor.

18 MR. BROPHY: Should we have a side
19 bar?

20 MR. HARRINGTON: We should.

21 THE COURT: The notes are very
22 hard to read.

23 MR. BROPHY: That's the point.

24 (Approach off the record.)

25 Q. Dr. Knack, I'm going to ask you if

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Dr. Knack - Direct

297

you have to refer to records please refer to your handwritten notes to refresh your recollection?

A. That will be a little more time consuming.

MR. HANNIGAN: Your Honor the transcript should not be in front of the witness; is that correct?

THE COURT: Right, he should be reading from his notes. If they are difficult to read how will the jurors be able to read them.

Q. How many visits of Noelle Feldman to your office are reported in your records?

A. I believe it's 119.

Q. Over what period of time?

A. A little over two years.

Q. How did it come about that Noelle Feldman became your patient?

A. She was referred to me in July of 2011 by Dr. Jerome Linsner who is a psychologist practicing in Westchester also who does largely family therapy.

Q. And what was the reason for the

1 Dr. Knack - Direct 298

2 referral as you understood it?

3 A. So Dr. Linsner had come to me a few

4 weeks before the referral seeking some

5 supervision around the area of the assessment

6 of alcoholism. He said he had a patient he was

7 struggling with that didn't quite know what to

8 do with her. We talked about different

9 strategies and then a few weeks later he called

10 and asked if I would see this patient, and that

11 patient was Noelle Feldman.

12 Q. Were you informed before Noelle

13 Feldman came to you of any prior diagnosis

14 regarding her psychology condition?

15 A. Yes.

16 Q. What were you informed of?

17 A. The only two diagnosis that were

18 mentioned at the time were alcoholism and

19 borderline personality disorder.

20 Q. We've heard something from Dr.

21 Greenfeld about borderline personality

22 disorder. Would you please explain your

23 understanding of the diagnosis of borderline

24 personality disorder and how it applied, if it

25 did apply, to Noelle Feldman?

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Dr. Knack - Direct

299

A. Sure. Just for the sake of being complete, while Dr. Linsner and I talked about the diagnosis of borderline personality disorder, it's not a condition that he believes it. So it was prefaced by saying we have a patient that most people would think is suffering from borderline personality disorder but he doesn't think in that way. So he was, of course, correct when the patient came in that she certainly met the criteria for that diagnosis. Yesterday there was testimony about the necessity to have these personal disorder symptoms prevalent over a long period of time in order to make the diagnosis so they are not just transient kind of behaviors. This diagnosis for Noelle actually goes back to the very early 1990's and it's a diagnosis that has appeared repeatedly throughout the records. It's characterized by both anxiety and depression. One of the key features of borderline personality disorder is what's described as a stable instability, meaning that they are predictable unstable over long periods of times. So they have ups and downs. Sometimes

1 Dr. Knack - Direct 300
2 these patients are confused with patients that
3 suffer from by polar disorder, because you get
4 the same kind of mood swings. And I have
5 entertained that possibility that that might be
6 a component of Noelle's issues. But, the reason
7 for the fluctuations in mood is different
8 between the bipolar patient and borderline
9 patient. In the bipolar patient it's looked at
10 as a neurochemical fluctuation. In personal
11 struggles with a bipolar disorder it has to do
12 with their self view and the way they see
13 themselves. They tend to go between highs and
14 they see themselves as very grandiose and
15 entitled and better than others and other times
16 it switches and they tend to see themselves as
17 really very unworthy, bad, garbage is an
18 expression patients have often used.

19 MR. HANNIGAN: Your Honor,
20 objection. I move to strike that
21 testimony. Can we have a side bar
22 please.

23 (Approach off the record.)

24 THE COURT: Objection is
25 sustained. The general testimony about

1 Dr. Knack - Direct 301

2 bipolar individuals is stricken.

3 Q. Getting back to your statement, in
4 response to an earlier question regarding a
5 history of a diagnosis over time in Noelle
6 Feldman's case, were there any other prior
7 mental health treaters whom you spoke to early
8 on about Noelle Feldman's diagnosis?

9 A. I spoke with Dr. Linsner just
10 before and in the beginning of my treatment.
11 And then actually a few times after because he
12 continued to do some family work with her. I
13 spoke with Dr. Lerman who was the previous
14 treating psychiatrist.

15 Q. Please tell us about -- how did
16 Noelle Feldman present herself when she first
17 came into your office?

18 A. Well, her physical presentation was
19 very similar to what you see now, although she
20 was some what heavier and a lot more animated.
21 Not quite as sedate as she appears at the
22 moment. She was rageful, angry, couldn't sit
23 still, flailing her arms around, threatening.
24 Her husband had made the appointment for her
25 and it was my understanding that she and her

1 Dr. Knack - Direct 302

2 husband were coming together. He showed up at

3 the appointed time in his own car without her

4 and explained that he was unclear about whether

5 or not --

6 MR. HANNIGAN: Objection. Clear

7 hearsay.

8 THE COURT: Sustained.

9 Q. Did you obtain a history of

10 Noelle's prior life?

11 A. I did.

12 Q. Who did you obtain it from?

13 A. From --

14 Q. Initially?

15 A. From Andrew Feldman first and then

16 Noelle.

17 Q. What did you learn about her

18 history, from her?

19 MR. HANNIGAN: Hearsay as to Andrew

20 Feldman.

21 THE COURT: Right. Sustained as to

22 Andrew Feldman.

23 THE WITNESS: Can I take a minute

24 to look at the note to make sure who is

25 who.

1 Dr. Knack - Direct 303

2 MR. BROPHY: Sure.

3 (Pause in proceedings.)

4 A. So in that first visit, most if not

5 all of the history, came from Andrew.

6 Q. How much time did Noelle spend with

7 you in the office at the time of the first

8 visit?

9 A. She came in ten minutes before the

10 session ended.

11 Q. Did you get any information out of

12 her on that visit?

13 A. Not in terms of history. I

14 certainly got an awful lot of behavioral

15 information. She was highly agitated, barely in

16 control. I was concerned. I work in my home. I

17 don't typically worry about whether or not I

18 might need to reach the police, but I was aware

19 of where my cell phone was during this

20 interview in case I needed to. The rage was

21 directed at him, not at me. She did appear to

22 attend to some of the things that I said to

23 her. Ultimately was unaccepting. She felt, it

24 appeared to me , as if she felt railroaded into

25 this and she went storming out and left. Andy

1 Dr. Knack - Direct 304

2 stayed behind for a moment and I told him we

3 would try this again.

4 Q. So what transpired -- when was the

5 second visit?

6 A. The second visit was about five

7 days later and again the husband arrived early,

8 the husband arrived on time. Noelle showed up

9 just about ten minutes late. So she was there

10 for about 35 minutes of the session. Again, he

11 was seated. She found it difficult to sit.

12 Walked around a lot. Yelled. Was very angry of

13 him. Was accusing him of being an alcoholic, of

14 being abusive to her. She would go back and

15 forth between threatening him and feeling

16 threatened by him. So it was in this second

17 session that she first mentioned owning a K-bar

18 and stating that she has a K-bar and she knows

19 how to use it.

20 Q. What's a K-bar?

21 A. A K-bar is a combat knife.

22 Q. How did she present herself in

23 terms of her physical appearance on that

24 occasion?

25 A. Well, I mean, she was disshevelled.

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Dr. Knack - Direct

305

This was at the very beginning of her treatment. This was a low spot. So she was not well dressed, she wasn't organized, her personal hygiene was poor, there was a body odor. She looked like somebody that was actively drinking.

Q. Now, in your notes at the end of that particular visit there is a statement very sexual. Could you explain that notation?

A. So that notation comes up a couple of times. More than a couple of times. It's really meant to describe a variety of different things. Sometimes it means flirtatious behavior, sometimes it means being dressed in a particularly seductive way, sometimes it means being overtly suggestive of something sexual.

Q. How does that -- how if at all does the presentation of a patient who is sexualized how does that fit into the diagnosis of borderline personality disorder?

A. It's kind of central to the diagnosis. As we heard yesterday in some testimony about borderline personality disorder --

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Dr. Knack - Direct

306

MR. BROPHY: Let me withdraw the question and ask it a different way.

Q. How did the description of Noelle as sexualized, how did that fit into the diagnosis in her case?

MR. HANNIGAN: Objection. Leading.

THE COURT: Overruled. You can answer the question.

A. I thought that I was speaking about her case. So I'm not clear about what I shouldn't say.

MR. BROPHY: Your Honor, I was anticipating an objection because I didn't ask the question the right way the first time. Could the court reporter please read back the last question and Dr. Knack answer as best you can.

(Question read back.)

A. So for peoples whose self esteem is particularly vulnerable, sexuality is often a way that is used to gain attention. Attention, recognition, validation and in interactions with men it can also be a way of putting one's

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Dr. Knack - Direct

307

self in a position of power.

MR. HANNIGAN: Objection. Move to strike as non-responsive with respect to Noelle Feldman.

THE COURT: Is that the end of your statement?

Granted.

THE WITNESS: The end of my statement? I could continue.

MR. HARRINGTON: I'm sure you could.

THE COURT: I'm sustaining the objection and granting the striking of that from the record.

Q. Let's move on to the next visit. July 28, 2011. How was Noelle behaving on that visit?

A. Let me take a moment to read it.

(Pause.)

A. I need some guidance how to answer this, given that the answer includes -- it's an interaction between Noelle and Andy.

THE COURT: You answer the question as best you can.

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Dr. Knack - Direct

308

A. So in a way this was sort of structured more like a coupled session than an individual session because the two of them were present and interacting with one another. This is I think her third visit, third time back. So I had some sense that there was a connection being formed because she returned. She was late again but she did come. So Andrew started to present some of his complaints to her and they included identifying her as non-functional was an expression that was used, that she wasn't capable of getting things done in the house, that --

MR. HANNIGAN: Your Honor.

THE COURT: Sustain. This is Andrew?

THE WITNESS: Yes.

THE COURT: Granted.

Q. How did Noelle interact with her husband on the occasion of that visit?

A. She was really angry. Really angry. She responded in particular to the word victimology which is something she took exception to repeatedly. It was a word that was

1 Dr. Knack - Direct 309

2 used to describe what I have also seen as

3 Noelle typically experiencing herself as a

4 victim in situations.

5 Q. The observation of Noelle

6 experiencing herself as a victim that you told

7 us about, did that or did that not continue as

8 a theme throughout the two years she was in

9 treatment?

10 A. Absolutely. Absolutely. Yes.

11 Q. The observations that you told us

12 from the last three visits of angry behavior,

13 did that behavior or did it not, continue

14 throughout the two years that she was in

15 treatment?

16 A. It did to different degrees and it

17 was directed at different people.

18 Q. Who was it directed at?

19 A. Mostly at me, but that is typically

20 the function of a therapist in working with

21 someone who is struggling with these issues.

22 You know, it certainly seems like horrible,

23 horrible things have happened to Noelle from

24 pretty early on in childhood. She has good

25 reason to be angry. Some of that anger is so

1 Dr. Knack - Direct 310
2 intense that it intrudes and it disrupts all of
3 the relationships that she's reported to me .
4 It's been an issue with her husband, in her
5 relationship with her children and in her
6 relationship with others in terms of making
7 difficulties in getting along with people. So
8 part of what is helpful for someone when they
9 struggle with this and for Noelle is to be able
10 to tolerate. The expression in psychotherapy is
11 to be able to contain it. They need to be able
12 to get angry. And you need to not react to it,
13 in other words not fight, contain it.

14 Q. There is a statement on July 28,
15 2011, does it say patient seems superior and
16 entitled?

17 A. Yes.

18 Q. Would you explain what that
19 statement means?

20 A. So what that's describing is
21 something called compensatory narcissism,
22 reactive narcissism. It describes Noelle as
23 someone who often presents herself as better
24 than often because she may really feel less
25 than.

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Dr. Knack - Direct

311

Q. How did Noelle present herself in terms of her physically at the third visit?

A. I've noted that she appeared disshevelled, was wearing make up, but poor hygiene, had body odor. I wrote poorly constituted, meaning not well put together. Delusional --

MR. BROPHY: I just asked about how she presented herself.

Q. Over the course of your treatment of Noelle over the next couple of years, did this presentation of being disshevelled and poor hygiene, did that get better, worse or stay the same?

A. I would say in the first year there was a lot of tumult and a couple of hospitalizations that were necessary. So during that time I would say that her hygiene was similar. It would get a little bit better or a little bit worse but it was roughly about the same.

Q. And after that?

A. It started to improve dramatically.

Q. After the words poorly constituted,

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Dr. Knack - Direct

312

delusional question mark, paranoid question mark, psychotic, question mark. Can you explain what your thought processes were when you wrote those down with regard to this patient, Noelle?

A. These are questions to myself about the extent to which she's able to perceive reality accurately. Delusional. Whether or not her fears are real and justified. Paranoid. Whether or not she's able to accurately perceive reality.

Q. As the course of your treatment progressed over the next two years, did you make any other observations, did you make any observations that helped you decide whether she was delusional, yes or no?

A. Yes.

Q. What other observations did you make over the course of two years plus of therapy in regard to the question of whether or not she was delusional?

A. Well, you know, the delusions that I was concerned about often seemed paranoid in nature. She often expressed a fearfulness that someone was out to get her or hurt her. Often

1 Dr. Knack - Direct 313
2 her husband. That kind of a belief, you have to
3 be very careful about labelling paranoid
4 because her husband has in fact hurt her and
5 has been abusive to her. They say paranoid
6 people have enemies too. So you have to be
7 careful about what you label paranoia. But when
8 a house is empty and someone is sitting in a
9 car in their garage with this K-bar terrified
10 and making a telephone call to me because they
11 believe there are ghosts and spirits around the
12 house and they are frightened, that's
13 delusional.

14 Q. Did that happen in the case of
15 Noelle?

16 A. Yes.

17 Q. What does psychotic mean?

18 A. Psychotic is a diagnostic category
19 that's meant to describe someone who is unable
20 to tell the difference between what's real and
21 what's not real. Noelle is not generally
22 psychotic.

23 Q. Are there times or not times when
24 you observed she was having difficulty telling
25 the difference between what's real and what was

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Dr. Knack - Direct

314

not real?

A. Yes.

Q. Please explain.

A. I would include the ghosts and spirits in that category. There were many times when she would talk about having been assaulted or abused by her husband where it was very difficult to determine whether this is something that actually happened or was a delusional belief or just not a true report. If I can explain just a little bit further. To say that somebody is not psychotic generally is to imply that most of the time they can accurately read things but they have periods where they can't. That original term borderline was meant to describe somebody who was on the borderline between psychosis and neurosis and this is a description of my experience of Noelle in the time we worked together. You can't just assume that what she is saying is totally false because sometimes, sometimes, it's grounded in little pieces of truth. Other times it's not.

Q. Moving along in this record, you indicated, there is a note says may need a

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Dr. Knack - Direct

315

higher level of care. What does that mean?

A. As I told you she was pretty out of control in the office. And her stability was a concern and she did have this knife that she made reference to often and I wasn't seeing her really settle down or calm down. So the possibility that she might need a more restrictive safe setting to safeguard her and others was a possibility right from the beginning. And one that she was aware of.

Q. Did there come a time she was hospitalized?

A. Yes.

Q. I will ask about that shortly. Now I will move ahead to August 1, 2011. What was discussed on that occasion with her?

A. So this was a discussion that I had with her about medication. So one of the things that makes it possible to treat somebody in an out-patient office as opposed to an in-patient office is having them properly medicated so that they are stable enough to be seen in an out-patient setting. This constant anger and rage and threatening was suggesting that maybe

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Dr. Knack - Direct

316

we couldn't do that work. So the question of needing to be in a hospital comes up. And this was really a question about my saying you need medication and in order to be able to be seen as an out patient, you need medication. Her comment to me was that's why I left Dr. Lerman. He wanted me on medication and he told me he would put me in the hospital if I didn't take medication.

Q. Was she on her medications on August 1, 2011?

A. I didn't believe so. But I only would say that based upon the behavior.

Q. When she returned on the next occasion -- withdrawn.

This theme of rage, anger, did these -- did you continue to make these observations about her through the earlier periods of treatment?

A. Yes.

Q. And the next time she returned, did she give you some history about an injury she sustained in the past?

A. Yes, that actually came up in the

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Dr. Knack - Direct

317

very first session and it came up repeatedly throughout the treatment. The way that the patient described it to me originally, her husband in a fit of anger, a rage of anger, assaulted her and broke her shoulder. And my recollection is that that was about ten years prior to her coming in to treatment with me. She had also described Andy as an alcoholic and the implication was that he had been drinking at the time he assaulted her and broke her shoulder. On further inquiry, the reality of the situation as it was reported to me by Noelle when further information came through, much further into the treatment, is that the two of them were drunk and fighting and got into a donnybrook rolling around on the floor and her shoulder got broken. That doesn't relieve him of the responsibility of breaking her shoulder. Noelle has never been able to accept any part of that.

Q. In that note there is a notation very entitled. What is very entitled have to do with this history of the shoulder injury, if anything?

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Dr. Knack - Direct

318

A. The sense was that because he had done this to her, he owed her.

Q. Did there come a time in the early part of your treatment of Noelle that she described having been sexually abused in childhood?

A. Yes.

Q. That's in one of your notes?

A. It might have been the second or third visit, maybe the third visit.

Q. August 9, 2011.

A. Yes, it's noted there. It may have come up in an earlier session with her. But this is where she went into greater detail.

Q. At the end of the August 9, 2011, there is a notation patient is boundaryless. What does that mean in the context of this particular patient?

A. You know, it's a lot of detail to disclose early on in treatment. Typically patients take a long time to kind of get to know you and get comfortable. They have a boundary up before they open. And often they teach you early on that disclosure of

1 Dr. Knack - Direct 319
2 information so early in a session is often a
3 sign of greater psychopathology, meaning that
4 there is no filter. When we say no boundary,
5 it's no filter. You can look at it in a more
6 positive way that she was becoming more
7 comfortable with me and more willing to
8 disclose. It came out more as a spillage, as an
9 uncontrollable kind of expression.

10 Q. On August 11, 2011, the next visit,
11 there is a word in there that you wrote
12 credibility, question mark.

13 MR. HANNIGAN: Objection. I think
14 I've held off on this. The witness
15 should be the one reading the notes and
16 not being told what's in there by Mr.
17 Brophy.

18 MR. BROPHY: Okay. I'll try.

19 THE COURT: Sustained.

20 Q. Well, in that case, please read us
21 the note on August 11, 2011?

22 A. Ashamed and embarrassed. Went too
23 far. Cried. Yelled all the while while laying
24 on the couch. Stayed there. Credibility,
25 question mark. Says Andy has taken advantage of

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Dr. Knack - Direct

320

her, too. Noteworthy that she denies --
noteworthy that she dresses in such a
provocative manner.

Q. What's the significance of you
writing credibility question mark in this
particular note?

A. You know, if somebody has been
abused, you don't want to negate their
experience, that's a second injury, right. But
at the same time this is a pretty traumatic and
horrific kind of story. And other than the
patient's report of it in very over-the-top
kinds of terms, I'm not aware of any evidence
of it. And when it's communicated in such a
dramatic way it pulls for a lot of sympathy. It
pulls for a lot of attention. It doesn't cause
me not to believe it but it causes me to
question it. You can't know without data. You
have a report. And you have someone whose made
the same report over a great many years, that
can be someone saying the same thing for a long
time or it can reflect a truth about it. I
didn't know. I didn't know. My decision was to
act as if.

1 Dr. Knack - Direct 321

2 Q. Did there come a time August 16,

3 2011 -- withdrawn.

4 Read us the note for August 16?

5 A. Approached topic of drinking, very

6 defensive. Complete denial. Complained of Andy

7 and the kids using her.

8 Q. Complete denial about what?

9 A. Drinking. That it was an issue. The

10 problem was the way that other people were

11 treating her, not that she was drinking too

12 much.

13 Q. Was she or was she not, in your

14 professional opinion, drinking too much at that

15 time?

16 A. She certainly appeared to be.

17 Q. How do you make that determination?

18 A. You know, again, she appeared

19 bloated and puffy in the way that somebody who

20 is consuming large amounts of alcohol often

21 looks. The lack of personal care in someone who

22 is personal appearance really is important to

23 her suggests a certain level of deterioration.

24 When somebody comes in smelling like mouthwash

25 or mints, which was frequently the case, or

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Dr. Knack - Direct

322

covered with perfume so it blocks, sometimes people do these things to block other sets. So those things.

Q. Moving down to September 13, 2011. Could you read that please.

A. Discussed drinking to calm self versus medication. Patient easily becomes enraged in session and flies off the handle. Over the top. Hard to contain her.

Q. September 22, what did you write then?

A. Looks hung over. Unkept. Breasts popping out and popping them back in. Toxic. Angry. Difficult discussion. That might be defiant discussion, about drinking, to abusive Andy. Meaning it went the range of talking about drinking to her husband's abusive behavior.

Q. Did there come a time that Noelle's relationships with her husband and her children were subjects of discussion in your therapy?

MR. HANNIGAN: Objection. Leading,

Your Honor.

THE COURT: Sustained. Perhaps we

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Dr. Knack - Direct

323

will take a short break now.

(Recess taken).

MR. BROPHY: In an effort to move things faster I will do things a little differently.

Q. Dr. Knack, did you have an understanding with Noelle about how often she was suppose to come to your office?

A. Yes, she was scheduled to come twice a week.

Q. Did she or did she not consistently come twice a week?

A. She did not.

Q. During the month of October, 2011, I call your attention to your notes for that month, and I would ask you to look at the notes and tell me was she coming twice a week during October?

A. It looks like she made six out of eight sessions.

Q. And in your record keeping procedure how if at all did you make a note that the patient missed a session?

A. If I made a note about it, it would

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Dr. Knack - Direct

324

be in the session that followed the missed session.

Q. Was it your practice and custom to make a note of each and every session the patient came in?

A. Yes.

Q. Getting back to my earlier question, I'll try to move along a month at a time. What themes, what issues, were in your meetings with Noelle during the month of October 2011?

A. Trauma regarding her father murdering her brother, rage at her husband describing him as Satan, feeling used and taken advantage of, I believe that was by family members; sad and expressing concern about Andy abusing the children, saying hateful things to the daughter, physically threatening Bobby; some focus on her son's impulsivity and concerns about angry acting out, smoking pot, more details about the problems between Bobby and her husband, namely the husband putting him in a choke hold and patient gave me enough information to warrant my calling Child

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Dr. Knack - Direct

325

Protective Services.

Q. Why did you do that?

A. Well, because an incident was described where the husband was accused of putting the son in a choke hold. And it seemed like reasonable cause to suspect that this was over the top.

Q. Let's move on to the month of November, 2011. How many visits are reported for the month of November?

A. Nine.

Q. And what were some of the issues that you were discussing in November of 2011 with Noelle?

A. She felt validated and supported by my willingness to get help to get CPS involved. She was worried about that. She was denying drinking. She reported that her husband was not happy about the report and vindictive. Talked about wanting to get rid of the little prick, meaning divorce. Talked about her employment history as having been a super model, getting some what grandiose.

Q. Please explain what you mean by

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Dr. Knack - Direct

326

grandiose and what significance it had in this patient's case?

A. An inflated self view.

Q. Continuing after the note grandiose reference?

A. So 11/10, became enraged around the issue of her working. Andy should support her in the manner in which she is accustomed to. Patient cannot run the house, clean, get things done. Talks about working ending up in her telling stories about having been married to an Earth Wind and Fire musician by the name of Al.

Q. Continuing through some of the themes and issues that were discussed in November?

A. These were themes revolved around Child Protective Services getting her to help out, discussions about her moving toward becoming more self supportive, more functional. The word divorce is not written in here, but that started to come up when she was talking about on the 8th in terms of getting rid of him. So the issue of her becoming employable was important. So that was in there.

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Dr. Knack - Direct

327

Additionally we started talking about -- well we didn't start talking about it, but there was more tolerance for discussions about her getting involved in Alcoholics Anonymous.

Q. What role did you see for her in Alcoholics Anonymous, what was the reason?

A. So Alanon mix would be helpful to Noelle on a lot of different levels. Noelle has trouble with people, has trouble interacting with people. AA is a people oriented group. So one of the things that would make it hard for her would be she would have to confront people. By confront I don't mean challenge, I mean be with. One of the things to be helpful would be getting used to being with other people and not cloistered in her home which is typically the way it went. So AA was really important for her and not uncommon, she was very resistant to going but it's something that I pushed pretty aggressively.

Q. Is there something called a therapeutic alliance in psychology?

A. Sure.

Q. How was your therapeutic alliance

1 Dr. Knack - Direct 328

2 going as of the middle of November of 2011?

3 A. Well, that would have to be a

4 relative statement. It was better. She was

5 coming. She wasn't coming all the time. But she

6 was coming. We were having these discussions

7 about AA. She wasn't going or wasn't really

8 going. But she was tolerating the discussions.

9 There was a connection there, as is typical in

10 my work with Noelle throughout the time. You

11 would go through cycles of her perceiving me as

12 a savior was the word used.

13 MR. HANNIGAN: Objection. He was

14 asked a direct question.

15 THE COURT: Sustained.

16 Q. Let me ask you this, did you make a

17 note dated November 15 and November 17?

18 A. Yes.

19 Q. Could you please read that note to

20 the jury?

21 A. It's identified as an out of

22 sequence note. Last weeks note is 11/15 and 17.

23 Patient is exhausting and draining in her

24 relentless attacks. Entitled. Comes late. Runs

25 over. Perceives direction or containment as

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Dr. Knack - Direct

329

rejection. Won't take meds. May not be able to manage on an out-patient level of care. Still raging at husband for broken shoulder ten years earlier.

Q. What were the issues and things that you discussed with Noelle during the month of December, 2011?

MR. HANNIGAN: Your Honor, I object as to relevance. We're at more than a year before the alleged rape is even claimed. To go through every page of this, I don't know what relevance it has to the charges and claims in this case.

MR. BROPHY: Would you like argument on the record on that, Your Honor. If so I would request the jury --

THE COURT: I'm going to overrule it.

Q. The question was things discussed in December of 2011?

A. I'll try to be more summarizing. So the holidays were approaching, she was sad. Talked about having gone to an AA meeting. I

1 Dr. Knack - Direct 330
2 felt like that was a major step forward for
3 her. She did conclude that it was not for her,
4 but it did give us an opportunity to talk a
5 little bit about Alcoholics Anonymous and how
6 and why AA could be useful to her and how it
7 could work with psychotherapy. I remember that
8 discussion. She was angry with Andy, there were
9 financial problems and the expression was that
10 he didn't make enough money for a proper
11 Christmas. Did seem to be scapegoating him. And
12 just before Christmas approached her experience
13 seemed to shift to a very positive, happy,
14 expectation of good holidays and sort of
15 idealized beautiful memories of happy childhood
16 Christmases.

17 Q. After Christmas, how did she do,
18 after the holidays in January of 2012?

19 A. She began complaining of more PTSD
20 symptoms. Began drinking more heavily. I did
21 become concerned about her stability. She was
22 not -- she didn't meet the criteria for an
23 involuntary hospitalization, but she did need
24 to go to the hospital.

25 Q. Why did she need to go to the

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Dr. Knack - Direct

331

hospital?

A. She was drinking again. Drinking exacerbates everything. So no matter what problems or issues there are that someone is dealing with, once you throw alcohol or other drugs in there all bets are off. I became concerned about her ability to be safe.

Q. Safe?

A. Yes.

Q. Please explain.

A. Well, sometimes there was discussion about passive suicidal ideation. I was more concerned about homicidal rage and homicidal ideation. I described for you the things that she said to me about her own fearfulness and spirits and ghosts and being afraid that Andy was going to hurt her or kill her in some way. She has this knife, I think it's about 13 to 15 inches long, the thing is huge. And now she's drinking.

Q. Have you seen it?

A. I confiscated it from her.

Q. What discussions did you have with her in January of 2012 before she went into

1 Dr. Knack - Direct 332

2 Silver Hill for the first time?

3 A. January of 2012, so Noelle was

4 willing to talk about the hospital, talk about

5 it as an option. And remember that had been not

6 an approachable topic from the beginning. It's

7 what broke the relationship with Dr. Lerman, in

8 my understanding of things. So her willingness

9 to talk about it was a positive thing. However,

10 she was very anxious about where it would be.

11 There was a lot of criteria for it, it couldn't

12 be too far away. It needed to be a classy

13 place. Some place that had some status. She

14 agreed to consider Silver Hill. I reached

15 Silver Hill. I arranged for this admission to

16 happen. There wasn't a bed available

17 immediately. We had to wait for a little while

18 for a bed. She did hold it together and

19 eventually was admitted to the hospital at the

20 end of that month.

21 Q. I have a note I'd like you to read.

22 January 19, 2012. Please read the note to the

23 jury?

24 A. January 19?

25 Q. I believe so. Yes.

1 Dr. Knack - Direct 333

2 A. Basically needed to repeat the last

3 session, seemed to not remember.

4 Q. What, if any, significance did that

5 have as the patient didn't seem to remember the

6 last session?

7 A. Well, there could be a couple of

8 reasons in this case for Noelle. One would be

9 not wanting to remember it. We talked about

10 going into the hospital. The other could be an

11 alcohol induced memory problem.

12 Q. How long was she in Silver Hill on

13 the first occasion?

14 A. Admitted on the 28 and back to me

15 on the 9.

16 Q. Were you in communication with the

17 folks at Silver Hill when she was in there?

18 A. I was. I was. And Noelle wanted me

19 to remain in touch with her. I was in touch

20 with her as well.

21 Q. And after she was discharged, did

22 she send you the discharge summary?

23 A. They did.

24 Q. When she got out, how was she doing

25 when she got out? Let's talk about the notes

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Dr. Knack - Direct

334

for February after her discharge?

A. Well, so from my notes what I can say is that she came out better than she went in. Medication compliance with still going to be an issue, as it had been throughout treatment, before this and subsequent to it. She started speaking with me about her objection to being identified as the identified patient in the family system. Her husband and her children really did give her a hard time and not really take her seriously, blame her for whatever else went wrong in the house. It was always something about her. To be sure there were times things didn't get done that needed to be done. But in that family she made it possible for nobody else to look at themselves. It was always blamed on her. And it was a healthy thing for her to object to that.

Q. How was she doing in the month of March, 2012, could you summarize the records in that month?

A. Well, her month was with her and ill. There were issues that came up around that. Noelle's father and brother's abuse is

1 Dr. Knack - Direct 335
2 most traumatic and received a lot of attention.
3 But her mother was really continually abusive
4 and demeaning to her as well. Her husband was
5 willing to have her mother come into the house
6 and stay with them and live with them, so the
7 family system changed a little bit. She had a
8 lot of stress. A lot of stuff going on for her
9 in March. She required a lot of support. She
10 seemed to feel like she was getting that
11 support. Came to treatment pretty regularly but
12 mother continued to deteriorate.

13 In some ways, and this actually an
14 important thing about Noelle, the crisis tended
15 to organize her, it sort of helped her pull it
16 together. She had an ill mother with her and a
17 difficult family to manage and for a period of
18 time she was able to kind of rise to the
19 occasion and came to treatment more frequently,
20 felt better about treatment, accepted support
21 but sad.

22 Q. What happened in April of 2012,
23 according to your notes?

24 A. Well the theme of feeling like a
25 scapegoat in the family continued. Her mother's

1 Dr. Knack - Direct 336
2 illness and presence in the house brought up a
3 lot of these family origin issues she had to
4 deal with, the kind of things shared with you
5 already about father and brother and mother,
6 and all of those difficulties. Mom is back in
7 the picture and there is a lot to remind her.
8 She started to appear much more interested in
9 me in allowing herself to have more of a need
10 for me and I think that's reflected in the
11 session attendance.

12 Q. What is the significance of that
13 reaction of the patient to you?

14 A. There is something positive about
15 it as opposed to being alone and isolating
16 herself. It's allowing a connection to happen.
17 As I remember it, she was talking pretty
18 directly about real issues and that was a good
19 thing. It's always a very fine line to walk
20 with Noelle between dependency, which is not a
21 bad thing for her to develop, and an eroticized
22 transference or a sexual dependency. Affection
23 and sex can sometimes get confused.

24 Q. What's transference mean?

25 A. It's the feelings that patients

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Dr. Knack - Direct

337

develop for therapist.

Q. Is there counter transference?

A. Those are feelings that therapists develop for patients.

Q. What kind of transference?

A. There is subjective counter transference. Feelings about a patient that have to do with his or her personal psychology. An objective counter transference is feelings about a patient that has to do with her -- that she pulls for or puts on to the therapist.

Q. I'm going to ask you to read a complete note, April 10, 2012. I'd like to ask you some questions about that.

A. My handwriting is not great. Abrupt shift back old behavior and themes. Projects impulses, anger and rage making the world a scary place. Everyone wants to fuck her. Can't accept any of her own motives. Andy is going to hurt her and bury her in the backyard. On a tirade about him. Needs a constant object, container for her rage. Something more at me. Set limits and boundaries. Patient opened legs in session seductively sucking on a bottle.

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Dr. Knack - Direct

338

Confronted. Left session. Anger. Ran out.

Q. Confronted about what?

A. About sitting on the couch and opening her legs.

Q. What does it mean needs a consistent object and container for her rage?

A. Well that's what I was talking about before in that there are a great many things for her to be legitimately angry about and there is a portion of anger on top of that. If she were to hold on to that herself, she would become horribly depressed and suicidal so it has to come out. When it comes out it has to go somewhere. Simply standing in a room and screaming alone is not the same as sharing it with another person. That's part of your job as a therapist is to be able to be there in the room while somebody is doing that. Usually it would be when she would be very angry, berating, diminishing me, making fun of me, things like that.

Q. When she came back on April 12, what note did you make?

A. Would not discuss the previous

1 Dr. Knack - Direct 339

2 session. Said to me you are sick. I would
3 never do that. I just want money. Meaning me.
4 Children need to be supported. She needs money.
5 Where will it come from. Andy is such a dick.
6 Everyones, I believe that's degrading or
7 disgusting her, I can't make that out.

8 Q. Without going into each and every
9 record for the rest of April up until the early
10 part of May, could you summarize what your
11 records reflect for that period of time?

12 A. Well, she had a hard time. This
13 session on the 10th was very disruptive as were
14 the next few. They sort of continued in the
15 same theme. She was drinking. Idealizing her
16 mother, meaning that in that process called
17 splitting, that was described yesterday, all
18 good, all bad, her mother has now been split to
19 the all good side and all of the memories of
20 her were positive ones. And her mother passed
21 away.

22 Q. How did she do after that?

23 A. It's an enormous thing to deal
24 with. She was sad. She had already been
25 drinking. She either continued to drink or

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Dr. Knack - Direct

340

drink more. Emotionally she became more labile.
More up. More down. Really needed to go back
into the hospital.

Q. And did she?

A. She did. I arranged for a
re-admission and she went back into the
hospital around the second week of May.

Q. How long was she in the hospital,
approximately?

A. She went from a more acute level of
care. I have her as being transferred over to
Barrett House which is like a residential part
of the hospital that might have been River
House. I think the contact number I had for her
was at Barrett House. She was there until June
21. Left Barrett House. I was told against
medical advice because of intrapersonal
conflicts with other patients.

Q. When did she return to you?

A. That would have been I think the
21.

Q. If we could summarize the visits
for the next few, June 21, June 28, July 5,
could you summarize how she was behaving at

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Dr. Knack - Direct

341

that point?

A. She didn't really -- in terms of her presentation when she came back to me , she really hadn't improved too much as a function of that second hospitalization. She wasn't unstable in the same way that she was when she went in. When you are in the hospital you can't drink, medication is monitored, there are people there to provide a lot of support and assistance but she came back really wanting things done for her, wanting to be taken care of.

Q. Would you please read the note from June 28?

A. June 28. Continued in the same theme, focus on supporting ego functions and ADL's. Discussions were task oriented. Very entitled. Wants things done for her. You really don't care for me. Seductive.

Q. There is a longer note on July 5, 2012. Please read in it's entirety.

A. There is a thin line between supporting, assisting, teaching patient and care taking. Her inclination is to get people

1 Dr. Knack - Direct 342
2 to do things for her. She can be flirtatious
3 seductive, cute, manipulative and easily feels
4 wounded, rejected when this is identified or
5 not responded to. Then becomes enraged and
6 attacking. For her in a very real way people
7 are their functions. When you are performing
8 your function, you are on the positive side of
9 the split. When you are not you are on the
10 negative side of the split. Not just all good
11 and all bad. But absolute best and absolute
12 worst.

13 Q. Would you please summarize your
14 notes for the following visits, July 12 through
15 August 16?

16 A. So this all relates to the task
17 orient comment in one of the earlier notes I
18 just read. Noelle had a great deal of work to
19 do. She was the executor of the her mother's
20 estate. There were bags of papers that needed
21 to be addressed and dealt with. Andy was not
22 involved in helping her or assisting her with
23 any of these things. She didn't really have the
24 organizational ability or the knowledge to be
25 able to organize this stuff. The comment

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Dr. Knack - Direct

343

earlier about helping support her ego functions meant helping her to begin to learn the things that she would need to do to take care of herself. And in this case that involved opening her mail, filing her mail, putting the bills that needed to be paid on a time line, indicating correspondence that needed to be written to the attorney that was representing her mother's estate, there was some inherited money, perhaps stocks or bonds that needed to be addressed, there was a home in Arizona that needed to be sold. All of this fell on Noelle to do. And it wasn't something that she was really prepared to do. It's a common practice when someone is challenged in this way to help them with it.

Q. What was your role in connection with these financial estate issues that Noelle had?

MR. HANNIGAN: Objection.

Relevance. Nothing to do with the claims in this case.

THE COURT: Do you want to address that?

1 Dr. Knack - Direct 344

2 MR. BROPHY: I'll ask a different

3 question.

4 Q. You talked about opening envelopes.

5 Where did that take place?

6 A. In my office.

7 Q. Going through mail, where did that

8 take place?

9 A. In my office.

10 Q. Looking through records, where did

11 that take place?

12 A. In my office.

13 Q. Let's move along to September of

14 2012. How many notes are there for September of

15 2012?

16 A. Two.

17 Q. Was she still on the twice a week

18 schedule?

19 A. Yes.

20 Q. And what was the note on September

21 13, 2012?

22 A. Talking about her need to work, has

23 to be in a high status job, correspondence.

24 Q. How many times did she show up in

25 October 2012?

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Dr. Knack - Direct

345

A. Twice.

Q. How many times in November 2012?

A. Three times.

Q. What did you discuss with her on
November 13, 2012?

A. So theme was consistent with the
previous meetings and I was suggesting to her
that a simple non-challenging job would be a
good way for her to try to work herself back
into the work force. I specifically suggested
some kind of retail position that wouldn't be
terribly demanding. I made the mistake of
suggesting that she consider going to Target.
She got highly offended.

Q. What did she say?

A. Asked me what I thought of her, as
if the suggestion was demeaning to her. That
she was better than that. What I was trying to
accomplish was to get her back into getting up,
to leave the house, to go out, to get into
interacting with other people.

MR. HANNIGAN: I'll object to a
continuing objection to all of this.

THE COURT: We are at the month

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Dr. Knack - Direct

346

before. Let's move on. Sustained.

Q. What was discussed with her on
December 11, 2012?

A. She was telling me that she said
you know that -- you know you find me
attractive. I said something that was meant to
diffuse that. I don't mean exactly what. I
certainly didn't tell her that she wasn't
attractive. But I probably said something like
Noelle, these conversations had happened before
and she said something like come on, everybody
wants me. She did tolerate a discussion about
this. She did not leave the office.

MR. BROPHY: I would like this
marked.

MR. HANNIGAN: It's my
understanding this is already in
evidence. This is demonstrative
evidence.

THE COURT: We are marking the
blowups individually. So S is received
into evidence.

Q. What was discussed on December 27,
2012?

1 Dr. Knack - Direct 347

2 A. Teary about Christmas and idealizes

3 Christmas as a child. No one loves and

4 appreciates her. She was contrasting how she

5 felt about Christmas in the present and

6 idealized memory of beautiful Christmases in

7 the past.

8 Q. What was discussed on January 3,

9 2013?

10 A. Reports Andy raped her. Physically

11 abusive. Says seems took advantage of her when

12 drunk. Advised her to see a physician.

13 Q. There are quotation marks around

14 the word raped?

15 A. Yes.

16 Q. Is there a reason for that?

17 A. I was questioning it. She used the

18 word and I was questioning it.

19 Q. Why?

20 A. She was reporting being drunk when

21 it took place. I don't know what actually

22 happened. She's telling me that it occurred.

23 Andy is not there. This has come up many times

24 before. My belief is that he has done these

25 things in the past. I don't know he's done them

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Dr. Knack - Direct

348

every time they come up.

Q. When was the next time she returned to you?

A. On January 17th.

Q. What, if anything, is the significance of the fact that there are no notes recorded in your records between January 3 and January 17th of 2013?

A. It strongly suggests that she wasn't there.

Q. What was discussed on January 17, 2013?

A. I noted that there was a very odd emergence of paranoia. Dr. Shander said that she can read my mind. In quotes. Do you think that she can put thoughts into my head. I don't want to get her in trouble. Spirits and ghosts. Sitting in the car in the garage with a knife.

Q. And as far as your record reflects, how many times did she come to your office in the month of January, 2013?

A. Three times.

Q. And on the third time what did you note?

1 Dr. Knack - Direct 349

2 A. That that was a reschedule of some

3 missed session. I questioned whether she was

4 drinking and she appeared dishevelled.

5 Q. In the next notation for a visit is

6 what day?

7 A. In March. March 14.

8 Q. What did you write then?

9 THE COURT: Did you hear the

10 question?

11 Q. Could you read your writing for

12 March 14?

13 A. March 14. Many missed sessions.

14 Session was low key. Reconnecting.

15 Q. In between January 23 and March 14

16 were you in communication with Noelle or was

17 she in communication with you by e-mail?

18 A. I don't know.

19 MR. BROPHY: I forget the exhibit

20 number. Is this a good time for the

21 lunch break?

22 THE COURT: We will break for

23 lunch. Please no discussions among

24 yourselves or with anyone else. No

25 research. No internet. See you at 2.

1 Dr. Knack - Direct 350

2 (The jury exits the courtroom for a
3 luncheon recess.)

4 (Luncheon recess.)

5 A F T E R N O O N S E S S I O N

6 THE COURT: Good afternoon. Are we
7 ready to go?

8 MR. BROPHY: Yes, Your Honor.

9 (The sworn jury enters the
10 courtroom and takes their seats in the
11 jury box.)

12 THE COURT: Good afternoon
13 everyone. Please be seated. Mr. Brophy,
14 you may continue.

15 DIRECT EXAMINATION CONTINUED

16 BY MR. BROPHY:

17 Q. Dr. Knack, I want to ask you a few
18 questions about the e-mails. I'm not going to
19 ask you to read them to the jury for the most
20 part I will ask for dates and subject lines.
21 First, what is the first e-mail that you
22 received from Noelle after the 10 of January,
23 2013?

24 THE WITNESS: I want to make sure
25 I have the right one.

1 Dr. Knack - Direct 351

2 A. The subject line?

3 Q. The first date after January 10?

4 A. The date is January 26, 2013.

5 Q. And what is the subject line?

6 A. My horse cat.

7 Q. Is there a photograph attached to

8 it?

9 A. Yes.

10 Q. What's in the photograph?

11 A. It is a picture of her horse.

12 Q. Is there a young man in the picture

13 as well?

14 A. Yes.

15 Q. Do you recognize that young man?

16 A. I believe it's Bobby.

17 Q. What was the next date you received

18 an e-mail from Noelle after January 26?

19 A. February 2.

20 Q. What was the subject of that

21 e-mail?

22 A. Missing jewelry.

23 Q. After that what was the next one?

24 A. Also missing jewelry. February 2 as

25 well. A little bit later in the day.

1 Dr. Knack - Direct 352

2 Q. The next day after February 2?

3 A. After February 2 is February 14.

4 Q. And what was the subject matter of

5 that e-mail?

6 A. Feldman decision interim support.

7 Thank you very much.

8 Q. After that what was the next one?

9 A. February 14. Some document was sent

10 but the attachment is not part of it.

11 Q. Next date after February 14?

12 A. March 26.

13 Q. And what is the subject matter of

14 that?

15 A. E-mail to lawyer.

16 Q. Who is the lawyer?

17 A. This was a lawyer representing Miss

18 Feldman's mother's estate, I believe. I wrote a

19 letter for her to send to her attorney.

20 Q. And following the 26 of March, what

21 is is the next e-mail?

22 A. March 26. Then May 17. The subject

23 title is Steven P. McSweeny.

24 Q. Who is that?

25 A. That was her divorce attorney.

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Dr. Knack - Direct

353

Q. May 17th. What is the next one?

Was there another one on May 17?

A. Yes. Also called McSweeny.

Q. Actually I'd like you to read the e-mail, the text of that e-mail. Would you do that please?

A. Both McSweeny's or one?

Q. Both.

MR. HANNIGAN: Objection.

Relevance. Her divorce attorney.

THE COURT: Overruled.

A. Dear Dr. Knack, I'm giving you permission to speak with Steve McSweeny regarding my mental health, past and present.

Second one on the 17th. He told me he wants to speak about my PTSD in particular considering Andy brought it up in court saying it made me imagine things.

Q. What's the -- when is the next one you received?

A. May 22.

Q. Was there a subject line?

A. No subject.

Q. Would you please read the text to

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Dr. Knack - Direct

354

us?

A. Doctor Mac I'm giving you permission to speak with Alayne Katz regarding my daughter. She has been appointed Suzie's attorney. I give you her cell phone number thank you so much.

Q. What is the next date after that you received an e-mail from Noelle?

A. June 20th. I've been thinking.

Q. I'd like you to read to us the text of that e-mail?

A. Since you don't want me to text you, let me tell you I am not as fucked up as you make me believe. You have been cancelling a lot on me lately. We can review it if you want. I do keep a calendar, pathetic, big surprise. Please stop making it seem it's all me. You have been cancelling on me more frequently. FYI my phone was smashed and I could not afford a new one until yesterday which is why I asked Steve McSweeny to call you on Tuesday when we were talking. Lately I would have really appreciated more kindness and less criticism. If you do not care, it's okay. I am used to it.

1 Dr. Knack - Direct 355

2 By the way, I sent you a lot of my writings and

3 poetry. They were so meaningful to me . Not

4 once did you ever acknowledge any of it.

5 Although I never said anything I often thought

6 about it waiting to for your opinion. It would

7 have meant a lot to me . Dr. Shander said I

8 should try publish my writings. She obviously

9 read them. If you don't want to ever see me

10 again, I understand.

11 Q. That was what time?

12 A. That was at 10 p.m. on June 20.

13 Q. Did she send you another e-mail on

14 June 21?

15 A. Yes, she did.

16 Q. What time?

17 A. At 11:15. It just added and I don't

18 care.

19 Q. When was the next e-mail you

20 received from her?

21 A. June 21, 2013. 12:51 a.m., by the

22 way, please stop telling me I'm going to end up

23 in a psycho ward. I would never have gone there

24 if it were not for you and I'm sick, sick, sick

25 sick of you telling me this. It's cruel.

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Dr. Knack - Direct

356

Q. Next one that she sent?

A. The date is September 21, 2013.

MR. BROPHY: May I approach the witness. I think we are missing something. I just want to check.

Q. What is the date of the next one?

A. June 21, 2013.

Q. What time?

A. 12/19.

Q. And what did she say in that e-mail?

A. Okay. Thank you. In response to my writing, happy to talk with you about all of this on Tuesday.

Q. What is the next one?

A. June 21, 2013. 1:43.

Q. What did she write in that one?

A. Actually I'm not sure I want to come in any more. I've been doing a lot of thinking and I'm conflicting. At times you make me feel your tolerating me. Now you said call you. I did not have a phone for two and a half weeks. Why didn't you call me or e-mail me to see what happened? After that incident in

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Dr. Knack - Direct

357

March, I feel so expendable. You rescheduled me because you wouldn't make it back in time from Long Island but you kept your appointment with another person. Wow. Again I'm expendable. Just another fucked up person. It probably wouldn't matter to you if I came in or not anyway.

Q. Did you respond to that e-mail?

A. That was June 21. 1:43. We should talk about all of this on Tuesday. Face to face. Not in e-mails. Please conform that I will see you Tuesday.

Q. That's from you?

A. Yes. Noelle writes no.

Q. When is the next communication you receive by e-mail from Noelle?

A. June 22, 2013, 2:55. Fuck you.

Q. 2:55 a.m. or p.m.?

A. A.m.

Q. That's all?

A. Well, Noelle.

Q. And what was your response to that?

A. I think that was in response to what I wrote earlier, which is we should talk about all of this on Tuesday face to face not

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Dr. Knack - Direct

358

e-mails. Please confirm I'll see you on
Tuesday.

Q. Did you make a response to that
e-mail to that two word e-mail that you just
read?

A. I have to look. Takes a minute
because they go from the bottom of the page to
the top. Looks like I wrote. Okay. That's
enough. If you ever feel like coming in and
talking, let me know.

Q. What time did you write that?

A. 7:33 a.m.

Q. Did she respond?

A. I do but you hurt me.

Q. What time and date was that?

A. June 22, 9/4 8 a.m.

Q. And did she send another e-mail
adding something to the one that you just read?

A. It's hard for me to keep track of
the sequence.

MR. BROPHY: Your Honor, may I have
permission to lead a tiny bit.

MR. HANNIGAN: At this point, it's
fine.

1 Dr. Knack - Direct 359

2 THE COURT: Okay.

3 Q. Calling your attention to an e-mail

4 on Saturday June 22, 9:53?

5 A. I have that.

6 Q. Who sent it?

7 A. Noelle sent it. I received it. Fine

8 if you don't ever want to see me again. If you

9 ever don't want to see me. You hurt me.

10 Q. And did she add something to that

11 e-mail before you responded?

12 A. I believe so. 22nd, 9:57 a.m.,.

13 Whatever. I guess I really am expendable.

14 Q. And did she send yet another e-mail

15 that morning?

16 A. 10:53, such a casual laid back I

17 don't give a shit answer.

18 Q. Signed?

19 A. Noelle.

20 MR. BROPHY: I apologize for

21 leading. Just to make it going faster.

22 Q. Did you respond on June 22, 2013 at

23 or about 3:44 p.m.?

24 MR. HANNIGAN: Continued objection.

25 Relevance.

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Dr. Knack - Direct

360

THE COURT: Overruled.

A. I wrote to her stop this. You have not been ditched. I asked you to come in. You told me fuck you. Stop this. Stop writing and come in on Tuesday.

Q. And did she respond to that?

A. She did at 1:50. She wrote my foot is badly broken.

Q. And did you respond to the e-mail my foot is badly broken?

A. I did. I wrote to her I knew it. I'm pleased you listened to me and went to the doctor. Now it can begin to heal. Take care of yourself. See you on Tuesday.

Q. Her response was?

A. Okay. Thank you.

Q. After that thread of e-mails, when was the next time Noelle contacted you?

A. I have one from June 26.

Q. And the subject line is?

A. Susanna.

Q. What did she write to you?

A. Can you please tell me when we can review Susanna's test scores.

1 Dr. Knack - Direct 361

2 Q. And your response was?

3 A. Hi Noelle. Remember that you and I
4 did briefly review Susanna's test scores. The
5 next system I was suppose to see her. This was
6 my agreement with her. So we need to make an
7 appointment for her to come in.

8 Q. Her response to that?

9 A. Hi Dr. Knack. Yes, I remember. We
10 discussed it briefly. Andy was suppose to come
11 that evening. Please let me know when you have
12 time to see her. Thank you. Noelle.

13 Q. And when was the next time she
14 contacted you after that?

15 A. The 26. Saying sure. We'll set it
16 up when we talk on Tuesday.

17 Q. After that, what is the next dated
18 e-mail?

19 A. October 4th.

20 Q. Subject matter is?

21 A. Forward HUD announces new short
22 sale requirements.

23 Q. And after that did you receive an
24 e-mail on the 14 of November 2013?

25 A. Yes. It's entitled therapy.

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Dr. Knack - Direct

362

Q. Is that the e-mail we've seen in Court?

A. Yes.

Q. Before you received that -- withdrawn. What was your reaction when you received that e-mail?

A. I was pretty shocked because it references an event that didn't occur in the way that she described it and the event is not anything that was alleged back in January. It's the event that occurred in September.

MR. HANNIGAN: Your Honor, for completeness, given all these e-mails are read into the record, can the Doctor read this e-mail as well.

THE COURT: Well, it's in evidence.

MR. BROPHY: It's in evidence.

THE COURT: He's putting in his case.

MR. HANNIGAN: I'll have him read it. Thank you.

Q. So we're finished with the e-mails, Dr. Knack. So let me go back to your records. I

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Dr. Knack - Direct

363

believe you left off on March 14, 2013. Next
one after March 14, what you wrote on March 28,
2013?

A. Seemingly Andy is broke. Once again
feels like she is the victim. Rage at Andy. Who
will take care of me. Quotes.

Q. Are there visits in April in your
notes?

A. Yes.

Q. How many?

A. Two.

Q. Are there visits in May?

A. Four.

Q. June?

A. Five.

Q. I will ask you to read a few of
those. June 6th what do you write?

A. Rejection abusive in session.
Boundaryless.

Q. June 13 what did you write?

A. Angry abuse.

Q. June 18th?

A. Late giggly. School girl
flirtatious.

1 Dr. Knack - Direct 364

2 Q. June 25, 2013?

3 A. Scheduling resuming two times a

4 week. And accruing bill but really only making

5 it in one time a week. Coming late. Leaving

6 early. Flirtatious and easily feels rejected.

7 Testing boundaries. Rage.

8 Q. What was noting on June 20, 2013?

9 A. Concern that daughter is acting out

10 sexually. Brought up used condoms again found

11 in the daughter's room. Concerned daughter is

12 smoking pot and having sex with brother's

13 friends. Stated I didn't raise her to be a

14 slut.

15 Q. How many times did she come in July

16 of 2013?

17 A. Three.

18 Q. Tell me what you wrote in July 16,

19 2013?

20 A. Confronted about missed sessions.

21 Got angry and left.

22 Q. How many times did she come in in

23 August?

24 A. Once.

25 Q. August 30 did you note something

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Dr. Knack - Direct

365

that she said to you. Read us the note.

A. Many missed or briefly attended sessions in July, August. Clearly needs to retain contact. Talking about how wonderful I am but not addressing why she's not been here.

Q. And thereafter, what is your note on September 3, 2013?

A. Patient recommitted to attending treatment regularly.

Q. On the 5th of September, what did you write?

A. Brought in some legal documents, bills and things she wanted help with.

Q. September 10, 2013?

A. Reconnecting, warm and personable.

Q. At this point around the 10th of September, did you have an as assessment of your own mind in progress in therapy?

A. She was reconnecting and starting to look better.

Q. What happened on September 17th?

A. Brought a cake that she baked in the shape of a horseshoe. Felt I could not reject it. Even talking about it seemed

1 Dr. Knack - Direct 366

2 insulting to the patient. She left feeling bad.

3 Q. Is there some custom or practice

4 that psychotherapists are supposed to follow

5 regarding gifts from patients?

6 A. Generally we don't accept them.

7 Q. Why?

8 A. It's not a typical part of the

9 therapist relationship.

10 Q. Please explain.

11 A. I provide a therapy service. They

12 pay their bill. There aren't suppose to be

13 gifts, especially any kind of expensive gift.

14 So that's a general approach. There could be

15 lots of exceptions to that. But generally not

16 for anything of great value.

17 Q. Could you elaborate on the

18 statement she left feeling bad?

19 A. Well, because I was talking with

20 her about it, it not being okay to have a cake

21 baked for me. It was a beautiful cake. It was

22 very elaborate horseshoe with icing on it. I

23 think it's a good luck on it. Some time and

24 effort went into it. It was a nice gesture.

25 Q. What happened in session on the 19

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Dr. Knack - Direct

367

of September?

A. She talked about how good she felt, that I had accepted the cake and that I valued it.

Q. And what happened on the 23 of September?

A. On the 23 sitting on the couch with patient, reviewing some documents that she had asked for help with. Out of no where the patient threw herself on top of me pushing me down on my back on the couch. Laid on top of me kissing me, holding my arms down, laughing, saying you know you want me. Stop acting like you don't. Trying to push patient off of me without hurting her. You see I knew you liked it. Patient had opened my pants and when she pulled on my penis I jumped up and pushed her off. Patient was tearful for a moment then flew into a rage. You led me on. You made me do this just to humiliate me. Here's your fucking birthday present. Patient threw an open package on my desk and flew out of the office.

Q. When did you write that note?

A. On the 23.

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Dr. Knack - Direct

368

Q. What was in the package?

A. The package contained a very expensive Robert Graham belt. The package was from Neiman Marcus. It was addressed to Noelle.

Q. Would you please explain why you wrote trying to push her off me without hurting her?

A. Well, for a number of reasons. First of all, I wouldn't want to hurt her. I didn't consider this to be a hostile act. It was coming from somewhere else. Affection, sexuality, something like that, it didn't feel hostile or angry at all. All throughout her treatment she talked about how easily she bruised. She has an injured shoulder that she might have just another surgery on prior to this event. I didn't want to hurt her. I didn't want to offend her. I wanted to get her off me. It wasn't so easy. If I was just going to fight and throw her around, it would have been easier but that's not what I was trying to do.

Q. When is the next entry?

A. She came back for what would have been a regularly scheduled session.

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Dr. Knack - Direct

369

Q. What date?

A. On the 25 and she arrived early for this session. I wasn't really expecting her although I figured either she or I would initiate some contact after that incident on the 23. But she did show up and early, which was uncharacteristic. As I was coming downstairs, because I wasn't in the office, I wasn't sure she was coming, she came in through the waiting room, as I was coming down the staircase from the house to go into the office I saw her darting into the office from the basement area. The way that the house is set up, there is a separate entrance to awaiting room, which opens on to the office and then I don't know the waiting room in the office is kind of a utility area, it has our dirty laundry, tools, things like that. It's not an area we actually don't like anybody to go in there.

Q. Did she say anything when you saw her?

A. I believe I asked her what she was doing. She denied it. It was kind of silly

1 Dr. Knack - Direct 370
2 because I saw it. Denied so even though I saw
3 her. She said to me you know you wanted me to
4 do that. Referring to the earlier incident, was
5 my understanding. You put the idea in my head.
6 I saw that you liked it. We talked about this.
7 Patient would have no responsibility for her
8 actions yelling you never cared for me. I tried
9 to challenge that, that I had some very
10 positive feelings about her but that this was
11 not appropriate and could not continue. Her
12 response was you're a dick like everyone else.
13 Everyone fucks me over. Fuck you. And the
14 patient left.

15 Q. Did she ever return to you for
16 treatment?

17 A. No, sir.

18 Q. When is the next time you spoke to
19 her?

20 A. I'm not sure. I'm not sure. There
21 were e-mails -- not e-mails. I'm sorry.
22 Multiple, multiple texts that went back and
23 forth after this. You know I could characterize
24 them as similar to the other e-mails or texts
25 that I've read. Some of them acting like we

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Dr. Knack - Direct

371

hadn't terminated. Some of them telling me I was a terrible person. But voluminous texts. I don't believe that we spoke on the telephone at all.

Q. Did there come a time that you did receive a telephone call from her?

A. The next time would have been one of those controlled calls from the New Castle Police Department.

Q. I just want to ask you a couple of questions about that particular call. She said something about working on her fourth step?

A. Yes.

Q. What did you understand that to mean?

A. I thought that that was a very positive communication.

Q. Why?

A. Remember the way we left things off, I was trying to get her to take some responsibility for the incident that occurred between the two of us, when she had jumped on me and she would have none of it. And that was in September. Now this phone call is coming

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Dr. Knack - Direct

372

through, I think July, the controlled call. So the call is coming to me after the last time I saw her when she initiated this activity. So in my mind that call is related to this event.

Q. What's the fourth step about?

A. The fourth step is about taking personal responsibility. It's making a fearless moral inventory of one's self. It's a critical step in the program of Alcoholics Anonymous. It's really where people begin to accept what character defects or shortcomings they may have which is the first step toward fixing them. There are twelve steps in AA. The first three are about letting go and trusting in God and fourth step is finally doing work on yourself. So when she calls me and tells me she's working on a fourth step, I heard a couple of things. I heard she was doing better. I heard that she was working on a fourth step. To me this sounded like she was making progress. Oh, and that she needed help.

Q. Did you offer her help?

A. I was a little freaked out because in between this event that occurred and the

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Dr. Knack - Direct

373

phone call about asking for help with this fourth step, there was that e-mail accusing me of doing the things that she had done in September. The November e-mail accused me of what she had done in November. So that's not taking responsibility for one's self. Now I get this call that makes it sounds like she is. I'm hopeful but that e-mail frightened me. That e-mail was accusatory. It was putting things in writing that were not true. But frankly, that could land me here, which is exactly what happened. So I was nervous.

Q. I believe that call you said you trusted her?

A. Yes.

Q. Could you explain what you meant by telling her that?

A. So this event happened in my office that should not have happened. And I did not initiate it and I did terminate it. But I don't feel good about it having happened. I feel like I ought to have anticipated it. I feel like some of the positive feelings that I've had for her sort of made me not see things the way that

1 Dr. Knack - Direct 374

2 they really were. I do feel some responsibility

3 for that happening and it's a terrible way to

4 end a treatment. As tumultuous as this

5 treatment was and as difficult and as nasty and

6 abusive as it can be there was a lot of good

7 work. She got sober. She connected to AA. She

8 was able to connect with me for a period of

9 time. She got out of a terrible marriage. She

10 met a new man. The first man she ever described

11 like she felt loved. There was relapse in

12 there. Relapse is part of the illness. There

13 was good stuff that happened and then it was a

14 horrible, horrible way for it to end. So I do

15 feel terrible about it and I do feel some

16 responsibility for it.

17 Q. There was a second phone call we

18 heard?

19 A. Yes.

20 Q. Do you recall receiving that phone

21 call?

22 A. I don't remember the exact time. I

23 remember that I was at work at Old Westbury and

24 I was in my office for part of the time and I

25 was walking across the quad on campus to

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Dr. Knack - Direct

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another building to deliver a package and back to my office. So I was moving around and covering some ground when I got the call. I was nervous about the call when it came in because I was suspicious of what the motive really was. Once again she told me she was asking for help and she told me that she was feeling all fucked up about what had happened in the office. In my mind clearly what happened in the office was what happened in September. Nothing happened in the office the previous January, eight months before that, or however long it was before that. Nothing was ever said in that phone call referencing anything happening back in January. Certainly the word rape was never used. There was no way for me to know that in that phone call would be characterized as a response to anything other than what happened between she and I in that office in September. So I was nervous about that call.

Q. Do you recall her asking you in that phone call do you think as a psychologist having sex in your office is appropriate?

A. I absolutely do.

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Dr. Knack - Direct

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Q. And could you tell the jury in words or in substance was your response was to that question?

A. Nobody had sex in that office. That incident that occurred when she pounced on me did not result in intercourse. There was no sex.

Q. Now the next question that -- I'm going to read, I'd like to read it from the transcript. May I show you. Could you please read the transcript?

MR. HANNIGAN: If he wants to put the transcript into evidence that's fine than read from it.

MR. BROPHY: In that case I'll do it another way.

Q. Do you recall something she said in that second call about you putting her coat and bag outside your office?

A. I do. I do.

Q. Did you ever -- did you know what that was about?

A. I now know that was about. At the time of the call, I was a little anxious and

1 Dr. Knack - Direct 377
2 increasingly hysterical as the call went on. As
3 the call went on it just got worse and worse
4 and worse as you heard. So at the time I wasn't
5 even thinking about that. That's actually
6 something that happened several times in
7 session. Noelle had told me a story about her
8 husband's brother having been a CIA operative.
9 I know that that sounds you people from the CIA
10 bugging you, but her husband confirmed his
11 brother was a CIA operative and Noelle had a
12 concern on several occasions that in the
13 process of this divorce Andy might have her
14 brother bugging her sessions to see what she
15 was saying and talking about whether or not
16 that could be something used in a divorce. So
17 there were a number of times when she expressed
18 that, that either she put her stuff out in the
19 hallway or I did.

20 Q. You did say you were sorry in that
21 phone call?

22 A. More times than I should have. Yes.

23 Q. What, if anything, were you sorry
24 for?

25 A. A number of things. I spent almost

1 Dr. Knack - Direct 378
2 eight minutes trying to have a normal
3 conversation with her about what happened in my
4 office. And again what happened in my office in
5 September. In my mind that call had nothing to
6 do with anything that she's allegedly happened
7 in January, because I would not even have known
8 about that. I do feel bad about what happened
9 in the office. I tried talking with her about
10 it. I think you can hear on the tape, as you
11 get to those few moments before my voice
12 finally kicks in, she is disagreeing with me.
13 She's saying no. I disagree. No. No. No.
14 Something like that. She's getting more
15 agitated. And then you start to hear me say
16 things. You don't hear the eight minutes of the
17 telephone call leading up to that.

18 Q. What were you saying that she was
19 disagreeing with?

20 A. So because I don't have the luxury
21 of a recorded conversation of my voice, I can't
22 tell you exactly. I can tell you what I was
23 trying to say to her was this was something
24 that she had initiated. That this was something
25 that she had done. And in as soft and gentle

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Dr. Knack - Direct

379

and passive way as possible. Clearly that was not being received. All I really was hearing was I was a bad man, I was a terrible guy and I made probably the stupidest decision of my life to try to just say what she wanted to hear. She started that phone call telling me she wanted an apology. She ended that phone call telling me she wanted an apology. I did truly feel bad about it. So I apologized. And I apologized clearly. And I took responsibility for everything and the goal really was just to quiet her and get off the phone and not answer it the next time.

Q. When did you first learn of this forcible rape allegation?

A. I'm not quite sure. I got a couple of calls from Detective Sergeant Wilson. The first call I got I thought it was a PBA solicitation. So I took the call and we started talking and then he said, why don't you, very pleasantly, why don't you come by and talk to me. And as I mentioned I work with the police department for a period of time. It didn't sound like a genuine invitation. I said what's

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Dr. Knack - Direct

380

up. He said, well, there is somebody here that has said that something happened in your office, that she has a complaint about. Why don't you come down and talk to me. I said, well, I don't think it's wise for me to do that. I probably should talk to an attorney. Who is it? At that time he wasn't saying. At some point later he called me back and said that he had a formal complaint from Noelle Feldman. As he put it about something that either did or didn't happen in the office. Would I come in and talk with him about it. What I said to him was I couldn't confirm or deny whether that person was my patient. If he thought that she was he needed to get a release. If he presented me with a release, then we could talk about whether or not I would have a conversation with him. I know what happened in September. She's in the police department -- which she's blaming me for. I think she's blaming me for September. She's in the police department. I'm not going there without an attorney. So I consulted counsel.

Q. Did the police ask you or -- did

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Dr. Knack - Direct

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the police provide you with a release from her
or not?

A. They did not. I never had an
inquiry for another piece of information.

Q. And how did you learn of this
accusation of forcible rape?

A. I get confused about the correct
labels for various legal documents. So I'm not
sure if the first thing that gets generated is
a Bill of Particulars or a complaint. Is the
complaint the thing that's offered first?

Q. I can't answer that.

A. Well, if a complaint is the
document first completed that was sent to me
from Mr. Hannigan with a series of allegations
on them. The most serious of which was forcible
rape. And it was that document that I took to
Mr. Squirrel at the time. My understanding was
the complaint had not been filed. That we were
being threatened with it being filed.

MR. BROPHY: May I have a moment,

Your Honor.

THE COURT: Yes.

(Pause in proceedings.)

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Dr. Knack - Direct

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Q. I do have another question. Do you have any kind of mark or mole on your right thigh?

A. I have a scar on my right thigh. A small centimeter. Very small scar.

Q. Where on your thigh is it located?

A. Four inches above my knee.

Q. When you were mowing your lawn on those occasions, what were you wearing?

A. Shorts.

Q. That is the occasions that Noelle came by. And when you were running and went into the store what were you wearing?

A. I was wearing running shorts.

Q. Would that scar be visible or not visible when you are wearing shorts?

A. It's visible.

MR. BROPHY: I don't have anything else. Thank you.

MR. HANNIGAN: May we take a short break now.

THE COURT: Sure. Five, ten minutes.

(Jury exits courtroom for a brief

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Dr. Knack - Cross

383

afternoon recess.)

(Recess taken.)

THE COURT: Are we ready to
proceed? Bring in the jury.

(Jury enters courtroom and take
their seats).

THE COURT: You may cross examine
the witness.

CROSS EXAMINATION

BY MR. HANNIGAN:

Q. Dr. Knack, we met before when I
took your deposition in this case?

A. Yes.

Q. And I have a number of questions
about your direct testimony specifically but
there is one thing that's a little troubling or
confusing to me . And we'll go into this in
detail. That second telephone call. Are you
telling us that during the inaudible portion of
the tape, the first ten minutes, that you
talked to Noelle about this attack you say she
made on you but in the audible portion of the
tape, the second ten minutes, we heard no
reference yesterday to her attack on you

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Dr. Knack - Cross

384

specifically; is that right?

A. Yes, that's correct.

Q. Early in your direct testimony there was mention by your attorney and you possibly about Noelle having borderline personality disorder. Can you point out to me in your notes any where the words borderline personality disorder are mentioned or BPD. Is that your note somewhere?

A. Certainly the term borderline is.

Q. That wasn't my question. Borderline personality disorder, those three words go together?

A. I would abbreviate.

Q. How would you abbreviate?

A. By saying borderline.

Q. You do make reference to borderline personality disorder in your notes by saying borderline?

A. I believe so.

Q. How many times did you do that?

A. I couldn't say.

Q. Did you stay or did you write in your notes that Noelle Feldman has borderline

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Dr. Knack - Cross

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personality disorder?

A. I believe that she's referred to as
borderline.

Q. Did you write in your notes that
she has borderline personality disorder. That
was my question?

MR. BROPHY: Asked and answered. We
just had this.

THE COURT: Overruled. You can
answer the question.

Q. Did you write in all those notes
you've been reading from from, did you write
Noelle Feldman has borderline personality
disorder?

A. No.

Q. Describe your office for me, the
one where you met with Noelle with the door
closed, the contents, the dimensions?

A. It's approximately 15 feet by 22
feet or so. It's furnished with a sofa, two
chairs to sit in, a desk a credenza. A large
office file. A couple of lamps. A printer,
computer.

Q. A desk is a desk you would sit

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Dr. Knack - Cross

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behind and do your work?

A. Yes.

Q. The sofa, it's more of a two cushion love seat kind of couch?

A. It regularly seats three.

Q. But on the bottom part is there two cushions or three across the bottom?

A. I believe it's two.

Q. Have you ever heard that described as a love seat in your life?

A. No, that's not what I furnished the office with.

Q. Have you ever heard that term love seat?

A. Yes.

Q. Have you heard it applied to a couch that has two seats as opposed to three?

A. Not what I put in the office, no.

Q. You know what I'm talking about, that design?

A. I do. That's not what I have in my office.

Q. But you do have a two cushion couch?

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Dr. Knack - Cross

387

A. Yes, very large cushions so it seats three.

Q. And that's the couch that you sat on next to Noelle when you were sorting her bills and documents and so forth?

A. At times.

Q. At times that's what you did, correct?

A. Yes.

Q. Now you mentioned before that you're somewhat an avid runner?

A. I was. It's been a while.

Q. In 2013 you were?

A. I think I had to stop running more around 2011.

Q. And on your Facebook page talks about you being an avid skier and horseman?

A. Yes.

Q. So you're in pretty good shape?

A. I had been. Not at the moment.

Q. 2013 you were?

A. I was in better shape then, yes.

Q. And in 2013 Noelle Feldman was drinking heavily at times; is that correct?

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Dr. Knack - Cross

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A. Yes.

Q. And she was taking different types of prescription medications according to your testimony?

A. Yes.

Q. So she was not in very good physical shape, is that fair to say?

A. That's correct.

Q. And you're about what 5'6", 150 pounds?

A. At the time, yes.

Q. I want to talk a bit about your claim that she attacked you --

A. I never used the term attack.

Q. I'll use the term attack. You told us she came off the couch and did all these things to you and grabbed your private parts?

A. I don't characterize it that way.

Q. That's not my question. Are those the things she did to you?

A. Yes.

Q. I'll call it an attack. Was this silent. In other words, did she say I'm coming to get you. Did she saying anything before she

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Dr. Knack - Cross

389

launched herself on to you?

A. There was conversation about the task and I remember some sort of joking and bantering but I can't remember the content of it.

Q. Did she say anything about along the lines of I'm coming to get you, I'm going to jump. Anything like that or did it totally come out of the blue?

A. It was pretty much out of the blue. She was smiling. She was warm and she got very close quickly.

Q. When you say pretty much out of the blue, what do you mean by that qualification?

A. It wasn't as you were suggesting that she pounced from some unforeseen corner. We were sitting together. We were talking. We were working on some papers. There was not a lot of physical distance between us. She moved closer quickly. It wasn't not like a lion pouncing on the back of a horse.

Q. Because she came down, according to you, on top of your front?

A. Yeah.

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Dr. Knack - Cross

390

Q. And according to your deposition testimony she took her arms and pinned both of your arms down so you could not move them; is that correct?

A. That is correct.

Q. And you were down on your back?

A. Yes. Yes.

Q. And she was holding your arms down, yes? You have to answer yes or no or whatever your answer is. You have to say it?

A. You are being more definitive about much of this than I can.

Q. I sure am.

A. Right.

Q. My job. He's characterizing my questions.

THE COURT: Just answer the questions please.

Q. I think you testified she was kissing you as well?

THE COURT: You have to answer verbally.

A. Yes.

Q. And at some point she has her arms

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Dr. Knack - Cross

391

around you holding your arms down and at some point you testified at your deposition, I believe, that she somehow managed to unhook your belt; is that correct?

A. Yes.

Q. So she would have to use one of her hands to unhook your belt, right?

A. Unless she released one of her other hands.

Q. One of her two hands, she used either her right or left hand to unhook your belt, one or the other; is that correct?

A. That's what I'm trying to say. Not necessarily. If she moved one of the other arms moved at the top she would have two arms available.

Q. Did she release both of her arms and come down and release your belt?

A. I cannot tell you that detail.

Q. If she did, then both of your arms would be free and you would be much better be able to get her off of you?

A. You would think so.

Q. But you didn't get her off of you

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Dr. Knack - Cross

392

at the moment she unhooked your belt?

A. I did not.

Q. After she somehow gets the belt open with her hand, behind that is your waistband?

A. The waistband?

Q. The upper part of your pants that holds your pants on. You are familiar with that? Did Noelle Feldman also you know do that button?

A. Must have, because it opened.

Q. Did you undo it?

A. I did not.

Q. And you were the only two there?

A. That's correct.

Q. So it had to be her, right?

A. Can I respond to that?

Q. You sure can.

A. If I don't have a direct examination of her taking her two hands and opening that button, my best answer is she must have, because I did not.

Q. So again in order to release the button, one or two of her hands and arms would

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Dr. Knack - Cross

393

have had to come down to your waste area and therefore no longer be holding your arms down, correct?

A. No, I would have the full weight of her body on top of me.

Q. But her arms would not be holding her arms down any more, would they?

A. That would be true.

Q. So during this part of this allegedly event when she was undoing your belt and undoing the button and didn't have both arms as you've agreed around you, you didn't push her off you, did you?

A. I was attempting continually throughout this entire event.

Q. And during that particular point in time when she was doing these activities and not holding you down with her arms, you didn't push her off of you, did you?

A. I wasn't successful.

Q. But you had your arms at least one of them and your legs and torso to push her off, right?

A. Theoretically I don't know where

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Dr. Knack - Cross

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each of those limbs were at that particular time.

Q. Well they were attached to your body?

A. They were attached to my body but I can't tell you where they were with regard to her.

Q. Were they making an effort to push her off?

A. Absolutely.

Q. Did you succeed when you had two legs, torso and one of your arms?

A. I did not.

Q. What kind of pants did you have on, khakis, jeans?

A. I believe they were jeans.

Q. Were they jeans with a fly down the front or button?

A. I don't know if they were zipper or button fly but they were one or the other.

Q. You have both?

A. Yes.

Q. So she either unzipped your zipper down with one of her hands at that point in

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Dr. Knack - Cross

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time or she unbuttoned a series of buttons if you were wearing the jeans with the buttons; is that correct?

THE COURT: Please answer.

A. Yes.

Q. Would you agree she would have had to use one of her hands to do that?

A. Yes.

Q. And the buttons would have been much more difficult to get down with one hand than the zipper, would you agree with that?

A. Actually not.

Q. You unbutton your jean buttons with one hand, is that the way you approach it?

A. It's not something I've given thought to but probably not.

Q. So she's unbuckled your belt. She's pulled down your fly or unbuttoned these series of buttons. You are struggling with getting her off of you. One of your arms is free. Then you testified at your deposition she somehow also pulled your jeans down to your knees; is that correct?

A. My pants came down. They were down.

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Dr. Knack - Cross

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Q. Did she pull them down?

A. Yes.

Q. So she's undone the belt, she's undone the buttons, pulled the zipper or fly buttons, pull down your pants, all this time you are fighting to get her off of you?

A. And there is some conversation between the two of us while this is going on.

Q. What are you asking her, please don't unbutton my zipper?

A. This needs to not be happening. Come on. Knock this off. We have to stop this.

Q. Are you trying to push her off of you at the time?

A. Yes.

Q. So she now as your pants down to your knees. Now what you say happens next is she somehow pulls your underwear down to your knees as well?

A. I don't remember.

Q. Do you recall testifying at your deposition that she pulled your underwear down after she pulled your pants down?

A. I don't remember.

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Dr. Knack - Cross

397

Q. As you sit here today you don't know if she pulled your underwear down?

A. I know the front was certainly down enough for there to be access to my genitals. I don't know if my underwear where pulled completely down.

Q. And this whole process, do you recall testifying at your deposition that from the start of this event that you say happened, her lunging on to you, until it was over, it was over because you finally pushed her off?

A. Yes.

Q. Do you recall testifying that that took five minutes?

A. I recall testifying that it took perhaps five minutes. What I said first was it took a few minutes.

Q. Do you recall saying it took perhaps five minutes?

A. Yes.

Q. So it's six minutes after three. It's 3:36. We'll see how long it takes for five minutes to pass. I will not stand here for five minutes. Five minutes ends up being a very long

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Dr. Knack - Cross

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time. I've done this before.

A. Can I say something about five minutes?

Q. I don't think so.

THE COURT: No.

Q. Mr. Brophy will take care of that I'm sure.

After this happened to you, did you tell your wife about it?

A. I did not.

Q. Did you tell any members of your family about it?

A. I did not.

Q. You could have shared that information with them without revealing the patient's name and not have any issue with confidentiality, correct?

A. Yes, I think that's correct.

Q. And you chose not to do that?

A. That's correct. That wasn't the issue.

Q. Did you speak to any of your colleagues, in other words, other psychologists about this event -- this was pretty traumatic

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Dr. Knack - Cross

399

for you, you've testified?

A. I wouldn't say it was traumatic. No. I'm upset about it having happened. I did not feel attacked. It didn't feel like that kind of violent crime that it's being characterized as. I feel like something got out of control and it got brought into control relatively quickly.

Q. Who is characterizing this alleged crime as a violent crime?

A. When you say attack that's what that means to me . I don't see it like that.

Q. Have you had other women patients during sessions jump off the couch and open your pants and pull your pants down and grab your private parts?

A. No, I have not.

Q. So this wasn't a usual thing?

A. Not at all.

Q. You sort of wrote it off?

A. I didn't just write it off. I had a lot of feelings about this.

Q. Were you upset about it?

A. Very much so.

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Dr. Knack - Cross

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Q. Did you seek out any of your colleagues and say Mr. Lerman or Linsner, this is what happened with a patient of mine. How do you think the best way to handle it or do you have experience or anything like that?

A. No.

Q. Did you tell anybody at your college where you teach, any of your colleagues there before you got the complaint, the legal complaint, did you report this to anyone -- there?

A. I did not report this to anyone, no.

Q. Just about five minutes now. So during that entire time I've been questioning you since we noted it was 3:35, that event from the time she jumped on you and you struggled, it took you five minutes to get Noelle Feldman off of you.; is that right?

A. Can I respond to that?

Q. That's my question. You certainly can.

A. So some time ago I had a car accident.

1 Dr. Knack - Cross 401

2 Q. Can you tell me whether it took you

3 five minutes. If you need to give the jury an

4 explanation about that you can.

5 A. I can't say that it took five

6 minutes. The best I could do perhaps it was

7 five minutes. I started with saying it was a

8 few minutes. When something like this happens,

9 time perception is often distorted. I had a car

10 accident that took like thirty seconds when my

11 car was spinning around I was sure five minutes

12 passed. I can't give you an accurate time.

13 Perhaps is the best I can do.

14 Q. When you were under oath at your

15 deposition and not here in the court before the

16 jury, you said perhaps five minutes?

17 A. I said perhaps five minutes.

18 Q. Is that what perhaps five minutes

19 means to you?

20 A. Yes, it's an estimate.

21 Q. Do you want to stick with the five

22 minutes?

23 A. I prefer a few minutes.

24 Q. So were you wrong not telling the

25 truth, what were you doing when you said

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Dr. Knack - Cross

402

perhaps five minutes?

A. Responding to many of your questions like this, when you weren't happy with the few minutes.

Q. My client is the only person that is not happy here. Those comments are not necessary.

MR. BROPHY: Objection, Your Honor.

This colloquy is not necessary either.

MR. HANNIGAN: I didn't start it.

THE COURT: Sustained. Ask your next question.

Q. You had some lengthy testimony about the tapes made in this case when Noelle Feldman called you from the police station. Plaintiff's Exhibit 3. Can we play from the point in the tape where ten minutes eight seconds in?

MR. BROPHY: I object to using part of the tape Your Honor. I object to using an excerpt. The jury heard the tape. I don't have objection to questions what's on it.

THE COURT: Overruled. We've heard

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Dr. Knack - Cross

403

the recording. We can zero in on parts of it now.

MR. HANNIGAN: Can you start playing the tape at that point now.

(Tape being played.)

Q. Dr. Knack, during the part of the conversation that's audible, that's what we will deal with. Did you just hear you say the words I was wrong?

A. Yes.

Q. And this was in response to Noelle Feldman speaking to you on that call?

A. Yes.

MR. HANNIGAN: Could you play at 11:53 please.

(Digital tape playing.)

Q. Did you hear yourself there on that audible part of the tape that you developed feelings for Noelle Feldman; is that correct?

A. Yes.

Q. And that you were wrong. You heard that as well?

A. Yes.

Q. Now you testified at your

1 Dr. Knack - Cross 404

2 deposition, do you recall testifying at your

3 deposition that you made these statements or

4 what can be characterized as incriminating

5 statements?

6 MR. BROPHY: I object to the term.

7 THE COURT: Sustained.

8 MR. HANNIGAN: I'll rephrase.

9 Q. You made these statements because

10 you chose to enter into the delusion or to

11 attempt to tranquilizing the patient because

12 she was upset; is that correct?

13 A. That was a partial explanation,

14 yes.

15 Q. Did you hear Dr. Greenfeld testify

16 that this entering the delusion methodology is

17 extraordinarily dated back to the 1950's and

18 even then it was only used for schizophrenic

19 patients and it's never used today. Did you

20 hear that testimony?

21 A. So I can't answer that with a yes

22 or no.

23 Q. Did you hear the testimony?

24 A. I did hear the testimony.

25 Q. Was he lying, was he

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Dr. Knack - Cross

405

misrepresenting the facts with respect to that methodology?

A. As I understood him he was talking about that approach as a method of treatment. When I used it, I used it as an example or a rationale for a particular strategy, a reason for saying something. I just spend hours going over the treatment that I provided. There was nothing in all of this that I discussed that had to do with entering the delusional world of the patient. What I was trying to do was relieve her of the responsibility that I felt was clearly upsetting to her for an event that occurred in September.

Q. Do you recall testifying at your deposition that you chose to enter the delusion and you used that approach to her?

MR. BROPHY: Objection. If we are going to talk about the deposition, we know how to use the deposition.

MR. HANNIGAN: I can ask first if he recalls testifying to it.

THE COURT: At this point overruled.

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Dr. Knack - Cross

406

Q. Do you have my question in mind?

A. I do. I also remember saying to you right after I would characterize you're making a bigger deal out of that statement than I intended it to. And that's in my deposition as well. I didn't present it to you as a treatment approach. I presented it to you as a way of understanding why somebody would say something to someone simply to calm them down. And you don't need such a sophisticated explanation to understand why you would say something to just calm somebody down.

Q. And you said to Noelle, I developed feelings for you. Did you need to tell her you developed feelings for her in order to calm her down. Is that what you are telling us?

A. If you listen earlier in the tape you will hear her tell you I hated her, I was a bad man, did I target her. Did I want to hurt her. All of these things that were about my being angry and hostile toward her. I was emphasizing that that was not the case. I did have positive feelings for her. I cared about her. I wanted her to get better. I worked

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Dr. Knack - Cross

407

really hard for her to.

Q. Let's play at the twelve minute mark.

(Digital tape playing.)

Q. So when you told her that I let myself act on those feelings. This was all part of calming her down and admitting that you did something because your feelings got away from you, is that what you're telling us?

A. I think part of why this is a little hard to understand --

Q. Enlighten me, please.

A. There are some things that are blended in there. I am trying to calm her down and I am taking responsibility for some things that were her responsibility, in my view. But it's also the case that I do feel bad that that incident in September even occurred. I do feel like my judgment -- that I saw her in a more positive way than I ought to have seen her. I didn't anticipate this happening. I didn't predict that this was going to happen. I was wrong. If I hadn't been sort of feeling as positive about where she was at at the moment,

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Dr. Knack - Cross

408

I might have been a little more critical and a little more cautious, but I wasn't.

Q. The statement I left myself act on those feelings, are you saying that that was -- that you didn't do anything, you didn't act on your feelings towards her at all, you were saying that to calm her down or are you telling us that you sort of did act on your feelings when, I don't know?

MR. BROPHY: Objection to the form.

THE COURT: Sustained. Rephrase it.

Q. You say I let myself act on those feelings. You heard yourself say those words?

A. Yes.

Q. Did you say those words to calm her down, yes or no?

A. My honest answer --

Q. I hope so.

A. Is yes and no. I can explain that to you.

Q. No. I think yes and no is confusing enough.

MR. BROPHY: Your Honor, colloquy is

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Dr. Knack - Cross

409

unnecessary.

THE COURT: Sustained.

Q. When you said, excuse the language, when you said my judgment was fucked up. You heard that?

A. Yes.

Q. That's not some psychiatric or psychological term. You were talking as a person?

A. That's pretty clear, yes.

Q. Was that phrase used to calm Noelle down to tell her that your judgment was fucked up. That's why you did that?

A. Why I did what?

Q. Say your judgment was fucked up?

A. I missed something. My judgment was fucked up. I missed something.

Q. In this tape when you apologize and you say you were wrong and you say your judgment is fucked up, are you talking about the incident, are you telling us that your talking all those times and all those sentences apply to the incident you say happened when she attacked you?

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Dr. Knack - Cross

410

A. Yes.

Q. I made a mistake, I'm sorry, I was wrong, my judgment was fucked up. This is all about this incident that you claim that she attacked you for perhaps five minutes?

A. Absolutely.

MR. BROPHY: Your Honor. I object. I thought the word attack was not proper and we keep hearing it.

THE COURT: Sustained as to attack. We could agree on lunge.

MR. HANNIGAN: Lunge is fine, Your Honor.

MR. HANNIGAN: Play 19:27. Please.

(Digital tape playing at this time.)

Q. So again, I just have to ask with respect to those statements, sir, those you are telling us refer to this incident where Noelle attacked you, you are not saying anything about her, Noelle lunged at you and did what you described here, you are not referring to her allegation, her claim, her statement that you forcibly raped her in your office?

1 Dr. Knack - Cross 411

2 A. There was no allegation or claim to

3 that affect at the time that this tape was

4 made. There would be no way for me to attribute

5 it to something that did not happen.

6 Q. But if it happened, these words

7 were certainly fit with that happening,

8 wouldn't they?

9 A. It didn't happen.

10 Q. And the words all fit because you

11 really meant them for an incident where she

12 attacked you?

13 A. Yes.

14 Q. And that's what you were sorry for?

15 A. I was sorry for the fact that it

16 ever happened.

17 Q. How did your feelings get away from

18 you with respect to an incident where she

19 attacked you. I don't get that part.

20 A. Things had come a long way,

21 particularly in those past few weeks. It looked

22 like she was getting a lot better. My guard was

23 down. I felt like she was doing well. I didn't

24 see this more eroticized kind of transference

25 building. Or if it wasn't just an eroticized

1 Dr. Knack - Cross 412

2 transference I wasn't aware of the possibility

3 that there might be drugs or drug interactions

4 fueling this. This was not a way that I had

5 seen Noelle before. There had been all of these

6 different levels of acting out. Flirtatious

7 behavior, flashing, so forth. Never did she

8 push herself on me in the past. I did not see

9 this coming. It's my job to see this coming.

10 Q. So was telling her that you're a

11 human being, that you're a psychoanalyst but

12 also a human being, but your feelings got the

13 best of you, was that to calm her down into

14 entering the delusion?

15 A. No. It's the truth. It was a

16 mistake.

17 Q. And the mistake wasn't that you

18 raped her?

19 A. Never happened.

20 Q. I'll look at some of my notes from

21 your direct testimony this morning. A lot of

22 time was spent -- let me ask you about the

23 notes. 119 approximate entries.

24 A. Yes.

25 Q. And there is not one cross out in

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Dr. Knack - Cross

413

those 119 entries where you wrote something and even crossed out a word?

A. I suspect that's probably true.

Q. And some of the notes you made ten of the week, you see a patient on Monday and make the notes on Friday or Saturday?

A. Yes.

Q. And you had these notes in your possession for a period of time after this lawsuit was commenced, correct?

A. The moment that I saw David Squirrel, he got those notes and then they moved from Squirrel to Mr. Brophy. So they went to David Squirrel when we became aware of this.

Q. If you had wanted to add in, alter, change or in any way those notes you knew Noelle made these allegations and you could have done that, correct?

A. I'm not sure I knew about any rape allegation.

Q. You knew about what allegation?

A. Well, what I knew about from the November letter was I was basically being accused of being a pig, behaving

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Dr. Knack - Cross

414

inappropriately and saying horrible things so on and so forth. I'm not sure that I knew about the rape allegation until we received papers from you. There was never even anything from Detective Sergeant Wilson about rape.

Q. There was a lot of testimony in the beginning of your direct about how Noelle Feldman when she first came to be your patient, how she was dishevelled, angry, uncooperative, how she felt she was being manipulated; is that right?

A. Yes.

Q. And reading all the stuff about unsanitary and these facts. Now you have a subspecialty of substance abuse practice?

A. Yes.

Q. You see a lot of people with alcohol substance abuse problems. Was this grossly unusual for a patient to show up who was in the middle of drinking and they are an alcoholic and they are in bad shape. Is that unusual?

A. It's a measure of their degree of deterioration.

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Dr. Knack - Cross

415

Q. Can you answer whether it's unusual. If you can't tell me.

A. Well, it's unusual in a higher functioning person and it's very common in a lower functioning person.

Q. Are a lot of them resistant to treatment, are a lot of them angry, do a lot of them blame other people?

A. Certainly resistant to treatment. Not necessarily angry. Blaming other people is common.

Q. She came to you for treatment and help?

A. Yes.

Q. Because she's an alcoholic as you heard her say?

A. Yes.

Q. Mr. Brophy had you read statements from your notes about her being angry, railroaded, that she looked like somebody actively drinking. That's all expected. That's why she was there?

A. Which is why it's documented, yes.

Q. And that's not unusual, correct?

1 Dr. Knack - Cross 416

2 A. No.

3 Q. And has nothing to do with the

4 claims in this case, correct, how she showed up

5 in your office and was dishevelled and was

6 drinking, does that have anything to do with

7 the claims in this case two years later?

8 A. So the claims in this case

9 challenge the quality of the treatment that I

10 provided for this woman. And what you have is

11 documentation of the assessment that I made and

12 treatment that was offered. I don't see how it

13 could possibly be irrelevant to any claims in

14 this case.

15 Q. Do your notes list any psychiatric

16 diagnosis?

17 A. I believe so. I think you will see

18 borderline. I think you will see depressed. I

19 think you will see anxious.

20 Q. There is a note in there somewhere

21 where your diagnosis is the following?

22 A. No, you would find that woven into

23 all of the notes.

24 Q. Did you ever diagnose her as being

25 delusional?

1 Dr. Knack - Cross 417

2 A. I questioned whether or not she was
3 delusional and that's in the notes.

4 Q. And you never wrote down the answer
5 in the notes to that question?

6 A. No, I would come up with that
7 answer for myself and I might not need to
8 document that. I'm the sole practitioner here.
9 These are notes for me.

10 Q. You testified at the end of your
11 direct that you did indeed believe that Andy,
12 her husband, had at some point raped her,
13 correct?

14 A. Yes.

15 Q. So that allegation of rape by her
16 you believed to be true, correct?

17 A. I believe so.

18 Q. Did you have any reason to doubt
19 her testimony here and her testimony at her
20 deposition that she had been subjected to the
21 various types of sexual abuse over time
22 including her father and brother?

23 A. Well, I did in part because there
24 were so many of them.

25 Q. I'm asking you about the father and

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Dr. Knack - Cross

418

brother?

A. I never had any direct confirmation of that. So as I tried to explain both in the deposition and here when you can't validate something like that and you have somebody who is severely troubled you make the assumption that it's happened. But you certainly aren't confident that that's the case.

Q. Her husband told you he believed it was the case?

A. Which had been reported to him.

Q. And that's reflected in your notes that he said that, correct?

A. Yes.

Q. Mr. Brophy had you read notes from where you talked about Noelle Feldman relapsing into drinking and denying she was drinking at various times. That's very typical of alcoholic patients, people, with that disease and ones that come and see you?

A. Absolutely.

Q. None of that was surprising to you or anybody else?

A. Not surprising, no.

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Dr. Knack - Cross

419

Q. All the stuff about this K-bar knife, this mysterious knife. Did she ever threaten you with this knife?

A. Actually there was one occasion that I took as a joke.

Q. Okay. So not as a threat?

A. I wasn't threatened by it. But I wasn't happy about it either.

Q. So let's say she never threatened you with this knife; is that correct?

A. No, she did not.

Q. Now her admissions to Silver Hill rehabilitation facility, you've had other patients in your practice admitted there?

A. Yes.

Q. Often alcoholics with difficulty problems?

A. And sometimes people that weren't addicted but with psychiatric issues.

Q. That's sometimes part of your treatment with your patients?

A. Yes.

Q. I wrote something down here, you talked about you recall the time her mother

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Dr. Knack - Cross

420

came to live with her because her mother was very sick and terminal?

A. Yes.

Q. And you said in your notes that she was idealizing her mother right before she died. Is that -- don't we all often do that when people are dying, we remember the good times and talk about them. Isn't that a normal human behavior?

A. Not necessarily. Do you want me to finish?

Q. Sure. Great. Finish.

A. The relationships that are most difficult to mourn are the ones that are the most complicated or ambivalent. So when you have a parent who has been abusive but still a parent whom you love, preparing to separate from that person is extremely difficult. And what you want to help the person to arrive at ultimately is a balanced experience of that person that is passing away. The good and the bad. For Noelle, that's extremely difficult. And the problem with just holding on to an idealized image is you feel you lost more than

1 Dr. Knack - Cross 421

2 you really have.

3 Q. So she was talking nicely about her

4 mother; is that correct?

5 A. More than nicely. And ignoring the

6 suffering and abuse that had been perpetrated.

7 Q. Do you think we all kind of do that

8 often times, forget the bad times?

9 A. You know I can't say that we all do

10 that. I can tell you it's clinically

11 significant for this patient because of the

12 history.

13 Q. Did you make a diagnosis that

14 Noelle Feldman had PTSD, post traumatic stress

15 disorder?

16 A. I accepted that diagnosis. She came

17 in with it.

18 Q. You don't quibble with it?

19 A. No.

20 Q. Do you know whether or not the

21 making of false accusations is a characteristic

22 of people with post traumatic stress disorder,

23 is that listed in the DSM diagnostic manual?

24 A. No, it's not a sign or symptom of

25 PTSD.

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Dr. Knack - Cross

422

Q. I wrote down you said when talking about this alleged lunging at you by Noelle and all the things she did to your pants and your arms and your fly, that you were pushing her off but you really did not want to offend her. Is that true?

A. I didn't want to hurt her.

Q. You testified you didn't want to offend her?

A. And I did not want to hurt her feelings, yes.

Q. While she was doing all these things to you, on top of you and grabbing your penis, you were thinking about gee, I don't want to offend this girl, let's ride this out?

A. I wouldn't say let's ride this out. I certainly was aware of not wanting to offend her and not wanting to injure her physically. Rejection has been a central issue in this case and that's the issue that terminated this case.

Q. Dr. Knack, this tape is in evidence in this case. So if the jury chooses to listen to it again or it's played again for any reason, is it your testimony that all of your

1 Dr. Knack - Cross 423

2 statements regarding your actions and the fact

3 that you were wrong and that your feelings got

4 away from you, they're to attribute, according

5 to your testimony, all of those statements to

6 this event that you say where she jumped on

7 you?

8 A. Absolutely.

9 MR. HANNIGAN: Thank you very much.

10 I have no further questions.

11 MR. BROPHY: One moment, Your Honor.

12 (Pause in proceedings.)

13 MR. BROPHY: No redirect. Thank you.

14 THE COURT: Thank you. You may

15 step down.

16 (Defendant steps off the stand.)

17 THE COURT: Mr. Brophy, I assume

18 we'll start tomorrow with the next

19 witness.

20 MR. BROPHY: Weather permitting.

21 THE COURT: I believe my clerk has

22 everyone's cell phone. Maybe we will

23 start at ten tomorrow. The Court's will

24 not be closed. Everyone have a good

25 evening. Please do not talk about the

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Dr. Knack - Cross

424

case. See tomorrow at ten.

(The sworn jury exits the
courtroom.)

MR. HARRINGTON: Your Honor, I have
those designations.

MR. BROPHY: I have not seen.

MR. HARRINGTON: I had to copy
them.

(Handing to defense counsel.)

THE COURT: We will continue
tomorrow. Look these over and see what
you agree on.

(Case adjourned to March 10, 2017.)

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Proceedings

425

March 10, 2017.

NEW YORK STATE SUPREME COURT

COUNTY OF WESTCHESTER : PART TJR

NOELLE FELDMAN, Plaintiff,

-against-

WILLIAM KNACK, Defendant.

INDEX NUMBER: 69747/2014

CONTINUED: TRIAL

BEFORE: HON. TERRY JANE RUDERMAN,
Justice of the Supreme Court

APPEARANCES: Same as previously noted.

(Jury not present).

MR. BROPHY: The witness is in the
back of the courtroom. Dr. Lerman. I
don't know if this affects him.

MR. HANNIGAN: It does.

THE COURT: Then you should step
out.

(Witness exits courtroom.)

MR. HANNIGAN: I wanted to put on
the record, later in the testimony of

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Proceedings

426

Dr. Lerman, given some of the testimony that went on yesterday, if I'm objecting repeatedly, I don't want it to appear that I'm deliberating obstructing the record or the movement of trial. I understand Your Honor gave in our view significant latitude to Dr. Knack when he was testifying and giving what in our view was quasi expert type opinion and lecturing the jury on background and other psychiatric disorders that were not directly related to testimony about Noelle Feldman and I understand Your Honor that latitude was likely justified because he's a party to the case and was here to basically defend himself. However, Dr. Lerman is a treating physician and a treating physician only and he should only be permitted to testify not about opinions, not about quasi opinions, not about psychiatric disorders generally or any of that. He should only be permitted under New York

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Proceedings

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law and cases that support that about his diagnosis and treatment and that testimony of his can't be cloaked in I'm just leading up to that, or this is just for background or the jury needs to understand this. That's impermissible. It's his notes, diagnosis and treatment and that's all that should be allowed.

MR. BROPHY: Well, if counsel had put me on alert of this I would have brought the cases that say that treating physicians in a personal injury action are able to state opinions to the extent that they are within their records. The records have been exchanged long since. In any event, this man is not here as an expert witness. I'm only going to be asking him of things of his own knowledge and things in his record. He hasn't been provided with any other records. He's not going to be asked about any other records. He's going to

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Proceedings

428

be asked about things he knows about,
so I don't think it's a problem. That's
all I have to say.

MR. HANNIGAN: I think he knows
about many things. I've looked into his
background. The issue is diagnosis and
treatment, not what he knows about. If
he sticks to diagnosis and treatment
I'll stay in my seat.

THE COURT: It sounds like now you
are both agreeing it's diagnosis and
treatment, let's keep it to that which
would be the appropriate testimony for
Dr. Lerman.

MR. BROPHY: That's what he's here
for and you will hear when I qualify
him, I never met with this man, never
discussed this case with this man, he
is here under subpoena that he's going
to testify about what is in his records
and what he knows.

MR. HANNIGAN: Any extensive
qualifying is not necessary. He's not
an expert witness and we don't need to

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impress the jury with his
qualification.

THE COURT: He obviously knows a
lot of things. It's restricted to
diagnosis and treatment of this
particular patient, plaintiff.

MR. BROPHY: I will keep
qualification of the witness to a
minimum.

THE COURT: I think our jurors
will understand he's a treating
physician. We'll take it from there.

MR. HANNIGAN: Thank you, Your
Honor.

MR. BROPHY: Before we bring in the
jury, while we are talking about expert
witnesses, yesterday Your Honor asked
for a copy of doctor stones report to
review before he comes in on Monday.
This is a print out of our response to
expert witness information, his report
and his CV which were previously
exchanged. If counsel wishes to look at
it before I hand it up, I am happy to

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do that. This was exchanged a month or so ago. January.

THE COURT: Counsel has a copy.

MR. BROPHY: I believe so.

MR. HARRINGTON: I have it.

MR. BROPHY: This is for the Court's use when there is time.

MR. HARRINGTON: Your Honor one other matter, with respect to the request to charge, we have a response to Mr. Brophy's request to charge. We would like to offer right now to the extent the Court is willing to accept it. I will give it to Mr. Brophy as well.

MR. BROPHY: We are having a charging conference this afternoon. Is that the plan?

THE COURT: That's the plan.

MR. BROPHY: Well, thank you.

THE COURT: You can have a copy of it now and look at it over lunch or break or any other time.

MR. BROPHY: I will certainly do

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that.

THE COURT: And we'll see the terms of the timing of the deposition.

MR. BROPHY: That should go about thirty to forty minutes. We have designated all of it. Reading a deposition is usually faster than taking a deposition. I'll ask Miss Lampasa to read the answers, I'll ask the questions with the understanding that this is not a dramatic presentation. It's neutral reading of the testimony. But it might be easier for the jury if we have one person reading the answers and one reading the questions as opposed to me doing both.

MR. HANNIGAN: That's fine.

THE COURT: You will read the questions and she will read the answers.

MR. BROPHY: And Your Honor has a copy of the designations. There are only a few points where there is any ruling necessary. At that point Your

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Honor I will stop and Your Honor can make the ruling and say either proceed or pick up again.

THE COURT: I think it's only that one objection that you pulled out yesterday and all other instances are really just amplifying or just reading another few lines. Mr. Harrington that was what your markings were.

MR. HARRINGTON: The only other point of clarification is Mr. Brophy will read our designations too.

MR. BROPHY: Sure.

THE COURT: I think the only actual objection is whether the bills were submitted to insurance.

MR. BROPHY: That's correct. And there was a request to read some colloquy. Your Honor will rule whether colloquy is appropriate for the jury to hear.

MR. HARRINGTON: Fair enough.

THE COURT: All right.

(The jury enters the courtroom and

1 Dr. A. Lerman - Direct 433

2 take their seats in the jury box.)

3 THE COURT: Good morning jurors.

4 Thank you. You will all hear promptly.

5 MR. BROPHY: I call Dr. Lerman.

6 A L E X A N D E R L E R M A N,

7 250 North Bedford Road, Chappaqua,

8 New York, called as a witness on behalf of the

9 defendant, having been first duly sworn

10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BROPHY:

13 Q. Sir, what is your profession?

14 A. I'm a psychiatrist.

15 Q. Would you please tell us briefly

16 what training you had and where and when you

17 had it in order to qualify as first a physician

18 and then psychiatrist?

19 A. I graduated cum laud from Downstate

20 Medical School. I was an intern in Medical

21 Kings at Kings County Hospital and subsequently

22 completed a psychiatry residency at New York

23 Hospital and a child fellowship in child

24 adolescence psychiatry at New York Hospital. I

25 also underwent psychoanalytical training at

1 Dr. A. Lerman - Direct 434

2 Columbia University. And I've had about 25

3 years of private practice and various

4 organizational affiliations since that time.

5 I'm currently the director of residency

6 training at the psychiatry program at

7 Westchester Medical Center and I oversee the

8 training education and certification of about

9 forty psychiatrists. I'm also the director of

10 the medical student clerkship for medical

11 students serving in psychiatry.

12 Q. Are you board certified in

13 psychiatry?

14 A. I'm board certified in both adult

15 psychiatry and child and adolescent psychiatry.

16 Q. When were you first board certified

17 in psychiatry?

18 A. 1992.

19 Q. What's involved in gaining board

20 certification?

21 A. You take a big written exam and at

22 that time conduct three patient evaluations in

23 front of outside auditors.

24 Q. Did we ever meet before this

25 morning?

1 Dr. A. Lerman - Direct 435

2 A. No.

3 Q. Are you acquainted with Dr. Knack?

4 A. Yes.

5 Q. Tell us how you know Dr. Knack?

6 A. I first -- heard of Dr. Knack when

7 my wife took a psychology test that he taught

8 and she spoke about how organized, interesting

9 and informative he was. I then began to -- I

10 learned that he had an expertise in substance

11 abuse and I began referring patients to him, I

12 probably have referred him one to two dozen

13 patients over the past fifteen years. More

14 recently when I assumed direction of the

15 residency training program I asked Dr. Knack to

16 teach and he has taught two different courses

17 at the Medical Center.

18 Q. Have you ever had any discussions

19 with Dr. Knack concerning any of the

20 allegations in this lawsuit?

21 A. I have not.

22 Q. Are you familiar with any of the

23 allegations in this lawsuit?

24 A. Well, let me refrain that. He -- I

25 saw a newspaper article stating that Mrs.

1 Dr. A. Lerman - Direct 436

2 Feldman was accusing him and I told him -- I

3 did speak to him briefly. And told him that I

4 did not want to discuss the case with him

5 because I anticipated I might be in the

6 situation that I'm in now. So, to that extent,

7 I did discuss the case with him and the

8 allegations.

9 Q. Have you ever discussed this case

10 with me?

11 A. No.

12 Q. What, if anything, did you do to

13 prepare to come here and testify today?

14 A. I looked through my notes.

15 Q. Prior to your coming here today,

16 did I or anyone else send you any medical

17 records of any other health care provider?

18 A. No.

19 Q. Prior to today, did you provide

20 anything to me other than copies of your

21 records?

22 A. No.

23 Q. Did you bring your records with you

24 today?

25 A. Yes, I did.

1 Dr. A. Lerman - Direct 437

2 Q. And prior to today, pursuant to a

3 subpoena, did you submit a certified copy of

4 your records to the court?

5 A. Yes, I did.

6 MR. BROPHY: Your Honor, if I may.

7 THE COURT: Sure.

8 MR. BROPHY: May I have this marked.

9 MR. HARRINGTON: No objection.

10 THE COURT: In evidence.

11 (Marked Defendant's Exhibit T in

12 evidence.)

13 Q. Doctor Lerman, before I ask you

14 questions -- withdrawn.

15 These records are of your care and

16 treatment of whom?

17 A. Noelle Feldman.

18 Q. And were they made and kept in the

19 usual course of your practice?

20 A. Yes.

21 Q. And were the entries in the records

22 made at or about the time that the services

23 were rendered?

24 A. Yes.

25 Q. And in addition to entries of

1 Dr. A. Lerman - Direct 438

2 treatment, are there some e-mails or

3 correspondence and copies between you and Miss

4 Feldman?

5 A. Yes.

6 Q. Are you here pursuant to a subpoena

7 served upon you by my office?

8 A. Yes.

9 Q. Now your treatment of Miss Feldman

10 started when?

11 A. I'll look at my notes, if you don't

12 mind. My initial evaluation --

13 MR. HANNIGAN: Your Honor, there is

14 a bunch of sticky notes on the

15 evidence. I was not shown that when I

16 was shown the copy.

17 THE COURT: I believe that is

18 Doctor Lerman's copies. He should be

19 looking at the evidence.

20 THE WITNESS: You want me to look

21 at this?

22 THE COURT: Please do.

23 MR. HANNIGAN: The other should be

24 put away. That is not the evidence.

25 MR. BROPHY: Okay.

1 Dr. A. Lerman - Direct 439

2 A. I'm looking at an intake note

3 written 3/29/06.

4 Q. Is that a record that you made of

5 your initial contact with Miss Feldman?

6 A. Yes.

7 Q. Do you have any recollection right

8 now as to how she was referred to you?

9 A. Yes. Doctor Jerome Linsner had

10 spoken to me about her and asked me to treat

11 her possibly fill in as a medication doctor for

12 her and she was at that time terminating with

13 or in the closing phase of a psychotherapy with

14 a previous psychologist.

15 Q. Do you remember the name of that

16 other psychologist?

17 A. It's in my notes. I think it's Dr.

18 Foster.

19 Q. Did you have any contact with Dr.

20 Foster about Miss Feldman that you recall?

21 A. I think I might have had a brief

22 contact. But I don't remember.

23 Q. And from March, if I recall

24 correctly, from the time of the initial

25 evaluation on March 29, 2006 until when did you

1 Dr. A. Lerman - Direct 440

2 continue to render psychiatric care to Miss

3 Feldman?

4 A. Well, I terminated treatment with

5 her in July of 2011.

6 Q. I'm not asking you to count, could

7 you give us a reason estimate about how many

8 times you saw Miss Feldman in your office over

9 that five year period?

10 A. I would say approximately fifty

11 times.

12 Q. And I'm going to ask you a few

13 questions about the initial consult. Let me try

14 it this way. Referring to your records as you

15 may need to, could you give us a general idea

16 of what your initial consult consisted of --

17 withdrawn.

18 Was this like a conversation with

19 Miss Feldman, the initial consult?

20 A. Well, I have a standard way that I

21 try to put people at ease and get a sense of

22 the immediate problem and also get a general

23 sense of somebody's life history and other

24 aspects to build a profile of who someone is.

25 Q. And did you follow that procedure

1 Dr. A. Lerman - Direct 441

2 in the case of Miss Feldman?

3 A. Yes.

4 Q. And were you with her one on one

5 during the initial interview?

6 A. Yes.

7 Q. What did you learn about her life

8 history that was relevant to your diagnosis and

9 treatment?

10 A. She's a complex person. She's a

11 survivor of horrific trauma. She has many

12 strengths and abilities and tremendous

13 vulnerabilities and tremendous recurrent

14 distress. She has a very complex and very

15 troubled family that was clearly a great source

16 of distress to her at that time and indeed was

17 so through the remainder of the time I worked

18 with her.

19 Q. Without going into details, what in

20 general was the nature of the abuse within the

21 family that she related to you?

22 A. She described both her parents as

23 being prone to impulsive extreme acts of

24 violence. The most notable of which was her

25 father shooting and killing her brother during

1 Dr. A. Lerman - Direct 442
2 a family quarrel. Many other instances of
3 beatings and things amounting to psychological
4 torture. It was also clear, both at the
5 beginning and throughout the treatment, that
6 there were depths of this legacy of pain that I
7 didn't know and there were aspects to Miss
8 Feldman's history that she did not relate to me
9 and would be too painful to relate.

10 Q. What, if anything, did you learn
11 about Miss Feldman's relationships after her
12 childhood, in general?

13 A. She was a private person. She was
14 prone to fairly intense quarrels with members
15 of her family and with her husband. She was
16 intensely devoted to her children.

17 Q. What, if anything, in the initial
18 evaluation did you learn about her
19 relationships with men in her life?

20 A. Well, if I look to my notes she had
21 a very intimate relationship with her father.
22 She described herself as her father's favorite.
23 She witnessed violence throughout her childhood
24 inflicted by her father on her siblings
25 culminating in the murder of her brother, she

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Dr. A. Lerman - Direct

443

did not witness but was on the scene minutes after that happened. She described violence. She described her marriage as a strategic marriage meaning motivated by practicality, rather than love. She described her husband as having a fine family, integrity and intelligence but him being a schizoid and, as I recall, a socially unperceptive person who was not a people person and didn't handle himself well.

Q. I would like to ask you if you received any information about prior relationships with men in her adult life before she was married to the husband she was married to when she saw you?

A. She had previously had different relationships, one with a man who was a very successful musician and led her into a kind of jet set lifestyle when she was still a teenager. And she had one child by that marriage and she subsequently had another relationship to a very wealthy man who had lived in different parts of the world at that time.

1 Dr. A. Lerman - Direct 444

2 Q. In the initial evaluation, did the
3 subject of nightmares come up?

4 A. Yes. Throughout her treatment with
5 me, starting that first day she talked about
6 horrific recurring nightmares.

7 Q. In the initial evaluation of Miss
8 Feldman, did the subject of alcohol abuse come
9 up?

10 A. Yes. She said after the birth of
11 her children she consumed alcohol up to 500 ml
12 of vodka a day and drinking is something that
13 reoccurred again throughout my treatment of
14 her.

15 Q. Did the subject of suicide or
16 suicidal thoughts come up during your initial
17 evaluation?

18 A. Yes. When I first evaluated her she
19 told me she had not had a drink in two years.
20 She described many suicide attempts, overdoses,
21 efforts at self injury and she stated she had
22 been hospitalized twice previously for suicide
23 attempts.

24 Q. Have you ever seen any of those
25 hospital records?

1 Dr. A. Lerman - Direct 445

2 A. I have not.

3 Q. Did you do something called a

4 mental status examination?

5 A. Yes.

6 Q. What's a mental status examination?

7 A. It is an effort to assess how

8 someone is thinking, how someone is functioning

9 emotionally and cognitively while you are

10 performing an interview with them.

11 Q. Would you tell us what you learned

12 in your mental status evaluation in Miss

13 Feldman in the initial visit?

14 MR. HANNIGAN: Could we have a date

15 for context.

16 THE COURT: Yes.

17 A. This is all in the initial

18 evaluation.

19 MR. HANNIGAN: What is the date?

20 THE COURT: March 29, 2006.

21 MR. HANNIGAN: 2000.

22 THE COURT: Yes.

23 A. My mental status note read alert,

24 fluid, tense, anxious, unfocused, absorbed in

25 reflection, I think. Positive for a sense of

1 Dr. A. Lerman - Direct 446

2 human, no evidence of thought disorder, which

3 would be psychotic or delusional activity.

4 Marked suicidal ideation, meaning a wish to die

5 but no acute intent. So she spoke favorable

6 about the concept of being dead is something

7 attractive but no approximate plans to hurt

8 herself. I wrote triple plus, meaning strongly

9 emphasized vulnerability to distorted thinking.

10 I'm not sure what the second word is,

11 impulsiveness. Impulsive self harm.

12 Q. In the terminology that you use as

13 a psychiatrist, what do you mean by

14 vulnerability to distorted thinking, in the

15 context of this case and this patient?

16 A. Well, I found Miss Feldman to be

17 intelligent, thoughtful, basically rational but

18 vulnerable to delusional thinking or sudden

19 misperceptions of reality under stress.

20 Q. Was this or was this not something

21 that you observed later in your treatment?

22 A. Yes, it was.

23 Q. And did you reach -- did you record

24 certain diagnosis in your notes at that time?

25 A. Yes, I did.

1 Dr. A. Lerman - Direct 447

2 Q. And before I get to the diagnosis,
3 I see it's proceeded by roman number one, two
4 and three. Do those numbers have some
5 significance to you in psychiatric treatment?

6 A. In the DSM at the time, access I
7 refers to a major mental illness or a brain
8 driven mental illness. Access II refers to the
9 presence or absence of a personality disorder.
10 Roman number III refers to medical problems.

11 Q. Under Roman number one, what
12 diagnosis did you record?

13 A. I gave her post traumatic stress
14 disorder, depressive disorder not otherwise
15 specified, and I had a question about attention
16 deficit disorder secondary to trauma. PTSD can
17 induce a fragmentation of inability to pay
18 attention. Or that could be conceptualized as a
19 prior childhood onset. I couldn't tell the
20 difference.

21 Q. What did you record under Access
22 II?

23 A. I wrote the numerical code 301.83,
24 which is the DSM number code for borderline
25 personality disorder and I added the note

1 Dr. A. Lerman - Direct 448

2 secondary to post traumatic stress disorder

3 because I felt these personality disorder

4 symptoms were so intertwined with a traumatic

5 process.

6 Q. What did you record under Access

7 III?

8 A. Obesity, question mark. Second to

9 affection. That was her concern at that time.

10 Q. Doctor, I'm not going to walk you

11 through each note. I have some questions about

12 particular notes that you made. I'm going to

13 first draw your attention to your note --

14 withdrawn.

15 Did you prescribe medications for

16 her?

17 A. Yes, I did.

18 Q. And did the medications that you

19 prescribe change from time to time?

20 A. Yes.

21 Q. Why?

22 A. I was trying to find ways to help

23 her and as I just was talking about the

24 interplay between trauma and ADHD and

25 depression and anger and other forms of

1 Dr. A. Lerman - Direct 449
2 distress, I attempted to formulate
3 neuropsychiatric, meaning brain based processes
4 that I could try to intervene with helpfully
5 with a drug and I made many different trials of
6 different medications.

7 Q. Without telling us each and every
8 medication you prescribed over a five year
9 period, what symptoms or problems were you
10 medicating her for?

11 A. Depression, inability to
12 concentrate, explosive problems with losing
13 emotional control. I'm not aware off the top of
14 my head without looking at my notes whether I
15 prescribed any psychotic medication. I don't
16 remember.

17 Q. Now I'd like to call your attention
18 to a note on 4/19/06. This is a handwritten
19 note?

20 A. Yes. 4/18 and 4/19.

21 Q. Okay. Let's do 4/18 first. What did
22 you record about your interaction with Miss
23 Feldman on 4/18/06?

24 A. My note reads emotional roller
25 coaster recently. Numerous calls to me but

1 Dr. A. Lerman - Direct 450
2 didn't return calls to schedule appointment. In
3 other words, Miss Feldman didn't return my
4 calls to her inviting her to come in. Mother
5 enraged at IP, that means the patient, for
6 defending Mimi, that's patient's sister. Blames
7 for death of Bobby. The next statement is a
8 quote, flood of memories, unquote. Brother
9 whipped with red cord. I believe that's a
10 memory of her eldest brother of being whipped
11 by her father. All this stimulated by quarrels
12 with her family over the phone.

13 Q. Regarding your note, you said
14 something about her making appointments or not
15 making appointments. Is it of some significance
16 to you as a psychiatrist what a patient's
17 pattern of attendance is, if that's the right
18 question?

19 MR. HANNIGAN: Objection.

20 MR. BROPHY: Withdrawn.

21 Q. Did Noelle have any pattern of
22 complying or not complying with appointments?

23 A. Yes.

24 Q. What was the pattern?

25 A. She would come for a brief period

1 Dr. A. Lerman - Direct 451

2 of time, sometimes we would appear to have

3 started a potential successful treatment. Then

4 I wouldn't see her for weeks to months at a

5 stretch. Then she would come back usually in

6 crisis.

7 Q. Please read your note 4/19?

8 A. Irradical compliance. That means

9 not necessarily taking the medication.

10 Discussed IP borderline, complains of nausea,

11 depressed and distracted. The last two words

12 are quotes.

13 Q. I'd like to skip down a couple of

14 visits -- before I do that. Was medication

15 compliance an issue or a problem with this

16 patient or was it not?

17 A. It was a problem.

18 Q. Please elaborate.

19 MR. HANNIGAN: Time frame, please,

20 Your Honor.

21 THE COURT: What time are we

22 talking about?

23 THE WITNESS: Over the course of

24 the whole treatment. Just as with -- I

25 often felt I was on the verge of

1 Dr. A. Lerman - Direct 452

2 establishing a successful stable

3 treatment only to see it fall apart. In

4 terms of medication, I was not able to

5 establish the normal procedures of a

6 psychopharmacological treatment because

7 the visits were so erratic there was

8 trouble sustaining medications long

9 enough to make rational observations

10 about whether it was effective. There

11 were so many crisis in Miss Feldman's

12 life it was difficult to draw rational

13 conclusions. That phrase emotional

14 roller coaster characterized a lot of

15 the stress she was under at that time.

16 Q. I'd like to ask you to read your

17 handwritten note on May 11, 2006?

18 A. Cancelled last session. Threatened

19 to discontinue all meds. Didn't receive phone

20 call. I have the word bitchy, in quotes, I

21 assume is the patient describing herself.

22 Discussed Dr. Foster's termination of

23 treatment. Marital problems. Discuss mood

24 stabilization treatment. That would be

25 treatment with medication to stabilize mood.

1 Dr. A. Lerman - Direct 453

2 And counselling regarding patient's -- there is

3 a word, overdose problems or side effect

4 problems. I'm not sure what that note on the

5 side says.

6 Q. Who threatened to discontinue all

7 meds?

8 A. Miss Feldman.

9 Q. Were there or were there not other

10 times when she would threaten to discontinue

11 her medications?

12 A. There were many times.

13 Q. I'd like to move ahead to June 22.

14 There is a type written note for July 27, 2006.

15 Would you please read that note to us.

16 A. The patient a few minutes later

17 will travel to Minnesota to see her family this

18 coming week. The patient's mother explosive.

19 Picked up invitation to reunion and mailed to a

20 different sibling because patient's brother she

21 felt disrespected by her admonishing her to

22 behave respectfully during gathering. Mother

23 nonetheless intends to attend the event.

24 Discussed borderline psychopathological of both

25 patient's parents. Mother's psychotic denial of

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Dr. A. Lerman - Direct

454

extreme physical abuse on patient stated I never hit you kids, when the contrary was in fact true. Discuss manner in which the patient is perpetually surprised by this.

Q. Now you never met her parents, did you?

A. No.

Q. What was the basis of your notation then of borderline psychotic pathology of both parents?

A. She described both of her parents as prone to really bizarre fits of rage and distorted behavior while at other times, either presenting to the outside world as normal or behaving affectionately in the way one expects a parent to behave. And there being no coherent understanding in the family of what happened, that history was constantly being distorted and denied.

Q. In the course of your five years of treatment of Noelle Feldman, did you or did you not have concerns that the history that you were getting from her might be distorted?

MR. HANNIGAN: Objection. Leading.

1 Dr. A. Lerman - Direct 455

2 THE COURT: Sustained.

3 MR. BROPHY: May I approach, Your
4 Honor.

5 (Approach off the record.)

6 Q. Let's move on, Doctor, to a note on
7 August 24, 2006. What was the subject of the
8 discussion on that date?

9 A. There was discussion of a number of
10 dreams, nightmares she had, a pervasive sense
11 of doom and her fear of her husband's anger.

12 Q. Did you make some notes of the
13 nightmares that she described?

14 A. Yes.

15 Q. Please read those notes to us.

16 A. First dream I'm in outer space. How
17 can I describe it. I'm caught in the wind like
18 a canyon, rocks all around. Wind. I was hanging
19 on. Eventually I would be caught up and then
20 splat. Then I felt that rushing.

21 Second dream, riding in a vehicle,
22 not a car, trapped in some sort of container. I
23 can't get out. Sees slivers of light like a
24 coffin.

25 Q. Third dream?

1 Dr. A. Lerman - Direct 456

2 A. There is no third dream. A note

3 saying sense of doom, scared something will

4 happen.

5 Q. I'm skipping over many

6 appointments. Moving to October 18, 2006. I'm

7 going to ask you to read the portion of the

8 note starts with impression.

9 MR. HANNIGAN: Objection. Can we

10 have a side bar please.

11 (Approach off the record).

12 Q. Your note of October 18, 2006,

13 there is a reference to something called

14 borderline diathesis. What's that?

15 A. What I meant by that is a

16 fragmentation of self, a fragmentation of

17 identity, a fragmentation of reality testing, a

18 kind of transient psychotic state. Similar if

19 you look at what a bullet does to a body, there

20 is a shock wave and if somebody is shot, you

21 can be paralyzed for a moment because

22 everything -- the shock wave has scrambled your

23 nervous system so you can say people with a

24 more severe borderline diathesis are prone to

25 becoming I believe mobilized and disrupted by

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Dr. A. Lerman - Direct

457

trauma or events or stress of one kind or another.

Q. Was this an ongoing theme in your treatment of Miss Feldman?

A. Yes.

Q. So we don't protract this unduly, there are several years more of notes. Were there any significant changes in Miss Feldman's diagnosis from the first time that you saw her until she left your care?

A. In terms of a DSM diagnosis, a formal psychiatric diagnosis, no.

Q. Were there any significant changes in the severity of her symptoms between the time you started treating her and when it ended?

A. The kind of borderline diathesis I'm talking about -- I don't know whether it got worse or I became more aware of it as Miss Feldman's life situation became more unstable, she became more emotionally unstable.

Q. Why did you terminate Miss Feldman as a patient?

A. There was a general reason and a

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Dr. A. Lerman - Direct

458

specific reason.

Q. Would you please give us the general reason first?

A. The general reason was that she was failing to progress, by rights and sort of my normal practice I would have terminated care with her in the first year of treatment, because she missed so many appointments, had so much following through with phone calls, tended to blame me for not making phone calls when I had. Generally speaking, that's a signal that the treatment is not going to succeed. I hung in with her partly because I had sympathy and respect for her as a person and also because there were two very young children at the house and at risk. And I don't like to walk away from a patient who is coming to me for help. So I delayed doing that for many years. But by the end, I felt I was not helping at all and the treatment was going no where. So that was the general reason.

Q. What was the specific reason?

A. The specific reason had to do with a group, psychotherapy project, that I started

1 Dr. A. Lerman - Direct 459
2 a year or six months before. I had three
3 patients who had similarly dire histories of
4 horrific family violence and trauma. I
5 attempted to start a trauma group partly
6 because all of these individuals were unable to
7 afford conventional psychotherapy at the
8 frequency they needed. And Miss Feldman became
9 more and more unstable in the group and
10 appeared to me to be actively lying and
11 creating havoc in the group by making
12 statements to one group member and saying you
13 mustn't tell anyone I told you this and
14 calculate creating a climate of mistrust and
15 destroyed the psychotherapy group and was
16 deleterious to the mental health to everyone
17 involved in it.

18 Q. What was she lying about?

19 A. The issue I remember best is that
20 she told one patient she was intensely
21 suicidal, but not to tell me. She told another
22 group member, I believe my memory of this is
23 not exact, that another group member was
24 acutely suicidal, again not to tell me. She
25 also told a group member that I had been

1 Dr. A. Lerman - Direct 460

2 staring at her obscenely and had my fly

3 unzipped. But again, not to tell anyone.

4 Q. Did you ever do such a thing?

5 A. I wish that I could say that I have

6 never forgotten to zip my fly. It's possible I

7 might have done that. I certainly would never

8 ogle a patient, let alone a patient with this

9 kind of abuse history. Generally with female

10 patients, especially vulnerable ones, I try to

11 be fairly scrupulous about not looking at their

12 bodies to closely.

13 Q. How did you terminate, what did you

14 do to terminate?

15 A. Well, without looking at my notes,

16 I did try to reach her by phone. I e-mailed her

17 and I sent her a formal treatment termination

18 letter with referral information and advice

19 about how could she could receive care

20 elsewhere.

21 Q. Is that termination letter in your

22 records?

23 A. Yes.

24 Q. Did she respond to that termination

25 letter?

1 Dr. A. Lerman - Direct 461

2 A. She responded by e-mail.

3 Q. Do you have a copy of that e-mail

4 in your record?

5 A. Yes.

6 Q. Without going into every word in

7 the e-mail, which will be in evidence, can you

8 give us -- withdrawn.

9 How did she react to being

10 terminated?

11 A. She was hostile. She said you're

12 just trying to cover your ass.

13 Q. Did you prepare a discharge summary

14 note in your record?

15 A. I'll have to look.

16 Q. Take your time.

17 A. Yes, here it is. June 6 -- June 10,

18 2011.

19 Q. Let me ask you a few more

20 questions. As of the time you discharged her,

21 did you have concerns about her alcohol use?

22 A. Yes.

23 Q. Please explain.

24 A. Well, it had become clear during

25 this period that she was drinking. She had at

1 Dr. A. Lerman - Direct 462

2 some point begun drinking heavily. I

3 recommended she be hospitalized and I think

4 that I was encouraging her to go from a

5 hospital into substance treatment program.

6 Although I don't see reference to that in the

7 discharge summary.

8 Q. How did she react to your

9 suggestion that she should be hospitalized?

10 A. She did not follow through. Our

11 communication was very poor at that time. It

12 was clear she had no intention of listening to

13 me .

14 Q. And in your discharge summary, I

15 see a phrase borderline decompensation. Can you

16 please explain what borderline decompensation

17 meant at that time in reference to this

18 patient?

19 A. Well, one of the core pathologies

20 of borderline personality disorder is a

21 tendency to fragmentation and a tendency to

22 project one's feelings on to other people. In

23 particular, at many points through the

24 treatment, but particularly at this point, Miss

25 Feldman appeared to feel that I was hostile to

1 Dr. A. Lerman - Cross 463
2 her, that I had no interest in helping her. She
3 seemed to be filled with rage at me and a
4 belief that I had behaved in an unprofessional
5 and disruptive way. Which I'm not perfect as a
6 psychiatrist. I make mistakes. But, if there is
7 one quality about me that I think is
8 consistent, is that I fight for my patients. I
9 try to do my best for my patients. And for her
10 to perceive me as hostile, indifferent, was
11 crazy, in my opinion. And entering into windows
12 of distorted perception like that is the
13 hallmark of what I would call a borderline
14 decompensation.

15 MR. BROPHY: I have nothing further
16 on direct, Your Honor.

17 MR. HANNIGAN: Can we have a few
18 minutes, please.

19 THE COURT: We'll take a five
20 minute break.

21 (Jury exits courtroom for a brief
22 recess.)

23 (Brief recess taken at this time.)

24 CROSS EXAMINATION

25 BY MR. HANNIGAN:

1 Dr. A. Lerman - Cross 464

2 Q. Good morning, Doctor. Did you stop

3 treating Noelle in June of 2011.

4 A. Yes.

5 Q. Are you aware the claims in this

6 case took place in the calendar year 2013?

7 A. I don't know, other than the piece

8 in the newspaper. I don't know anything about

9 the claims.

10 Q. So if they did indeed happen in

11 2013, two years had passed, a lot of things

12 could have happened with respect to Noelle's

13 psychiatric condition that you are not aware

14 of, correct?

15 A. Yes.

16 Q. And just to be clear, so you never

17 listened to the tapes, the phone calls made

18 between Noelle Feldman and Dr. Knack after the

19 claim of the alleged rape took place, did you?

20 A. No.

21 Q. Did you know there were such tapes?

22 A. No.

23 Q. And you don't know anything about

24 what may or may not have happened in his office

25 in January of 2013 between him, Dr. Knack, and

1 Dr. A. Lerman - Cross 465

2 Noelle Feldman; is that correct?

3 A. That's correct. I don't know

4 anything.

5 Q. Following up on some of your

6 testimony. In 2006 I believe -- is it true, and

7 I believe you testified that there was no

8 evidence of delusional activity, when you first

9 took her on as a patient?

10 A. Let me take a look at my note.

11 Q. You don't independently recall

12 that, do you?

13 A. I don't remember exactly what I

14 said at the note. On different times early in

15 that treatment there were times where I did

16 have questions about her grasp on reality. But

17 I may have said that no evidence of delusion in

18 the first note. I'm not sure.

19 Q. And to the extent that you observed

20 any delusional activity on her part, would it

21 be fair to say that your notes would reflect

22 that they were transient and under stress?

23 A. To a point. There were, as you'll

24 see in the note, there was a lot of back and

25 forth about her relations with the Fox Lane

1 Dr. A. Lerman - Cross 466

2 School District in relation to people trying to
3 help her son and Miss Feldman developed a very
4 sustained intense negative feelings, including
5 believing that different members of the school
6 were untrustworthy and refusing to talk to
7 them.

8 Q. You said she was intensely devoted
9 to her children, was that your testimony?

10 A. Yes.

11 Q. Did you understand that her son
12 Bobby had some psychological related issues
13 with respect to school and so forth?

14 A. Yes.

15 Q. And that she was fighting with the
16 school system to try to get him aids and
17 independent care and so forth for his issues,
18 were you aware of that?

19 A. Well, some of the arguments were to
20 do with services. Some of the other problems I
21 think there was -- she had tended to blame the
22 school for his misbehavior and to feel that
23 certain members of the district had acted
24 animosity towards her son.

25 Q. Did you appear with her at a

1 Dr. A. Lerman - Cross 467

2 hearing or interview of some type on these

3 issues?

4 A. Yes.

5 Q. Were you paid for that?

6 A. I assume so.

7 Q. You do charge for those?

8 A. Yes.

9 Q. Those meetings when you accompany

10 patients to those events?

11 A. I normally charge for my

12 professional time.

13 MR. HANNIGAN: Me, too.

14 Q. Is it anywhere reflected in your

15 notes that any of the psychiatric diagnosis

16 that you attributed to Noelle Feldman caused

17 her to make false accusations against people?

18 A. The only direct evidence of that

19 would be her implicit accusations at me at the

20 end of the treatment.

21 Q. Nothing other than that?

22 A. As far as I know, yes.

23 Q. That end of the treatment stuff you

24 were testifying about, do you recall in group

25 therapy that you made a statement in front of

1 Dr. A. Lerman - Cross 468
2 Noelle and other members of the group with
3 respect to her son and how if it wasn't for her
4 he would be either dead or in a mental
5 institution?

6 A. I don't recall making that exact
7 statement. But I certainly felt that her
8 devotion to him -- I don't recall making that
9 statement. That sounds extreme.

10 Q. Do you remember her getting very
11 upset about that and telling you she thought
12 you violated her confidence when she had shared
13 that information about her son and you
14 shouldn't have said it?

15 A. I recall something of that kind,
16 yes.

17 Q. And could that have been the basis
18 for her being angry with you?

19 A. It could have been. There were many
20 times in my treatment with Miss Feldman where
21 she would take grave offense at something I had
22 done and be very upset with me and later the
23 treatment would regain its stability.

24 Q. So you may have said those things
25 in the group therapy, you just don't recall one

1 Dr. A. Lerman - Cross 469

2 way or the other?

3 A. Without looking at my notes, I

4 don't recall.

5 Q. So you may or may not have?

6 A. Yes. What you are saying, I think

7 she did take grave offense at things I said,

8 both in group therapy and at times earlier in

9 the treatment.

10 Q. You said the last thing you said

11 when you were testifying, you said in relation

12 to her thinking badly of you for these reasons

13 that was just, quote unquote, crazy?

14 A. Yes.

15 Q. Is that a DSM diagnosis or is that

16 somebody talking casually?

17 A. It's a casual term which we

18 normally say psychotic or some other mouthful

19 words. I think that her perception of me

20 reflected a very disorganized and distorted and

21 false perception of my actual intentions.

22 Q. But she heard her words about her

23 son and that made her angry?

24 A. I don't recall those exact words.

25 MR. HANNIGAN: I'll withdraw it. I

1 Dr. A. Lerman - Cross 470

2 didn't ask you about exact words,
3 that's okay.

4 Q. So this statement by you that she's
5 crazy, my question was is that a DSM diagnosis,
6 does that appear under some number when you
7 submit insurance records it says crazy and
8 there is a number next to it?

9 A. It does not occur in the DSM. I
10 have a somewhat longer answer to that.

11 MR. HANNIGAN: My question was only
12 that. That's fine.

13 Q. There has been talk and this term
14 borderline personality disorder has been
15 sounded in this courtroom. Your discharge
16 diagnosis where you list your diagnosis of
17 various things that Noelle Feldman is suffering
18 from, to use a layman's term, did you list
19 borderline personality disorder?

20 A. I would have to look.

21 Q. Could you look please. I think it's
22 June 11. June 10?

23 A. No, it's not listed.

24 Q. What you have listed here is
25 discharged diagnosis complex trauma disorder,

1 Dr. A. Lerman - Cross 471
2 depressive disorder not otherwise specified,
3 alcohol abuse and attention deficit
4 hyperactivity disorder inattentive type.

5 Were those the five items that you
6 listed in June of 2011 as your discharge
7 diagnosis?

8 A. Yes.

9 Q. And you would have made a complete
10 list there, correct?

11 A. Yes. I have an additional note
12 about that, if you want to hear it.

13 Q. You told us earlier in your
14 testimony, I may not get this right, you will
15 correct me, that either you referred a dozen
16 patients to Dr. Knack or he referred them to
17 you, which was it?

18 A. To my knowledge, he's never
19 referred me a patient. I have referred many
20 patients to him.

21 Q. How did it come about that you
22 spoke to him about this newspaper article about
23 this case?

24 A. I think he called to thank me
25 because when the newspaper article appeared, I

1 Dr. A. Lerman - Cross 472

2 responded with a statement that I'm very

3 acquainted with him and I consider him an

4 outstanding professional.

5 Q. You vouched for him?

6 A. Yes.

7 Q. How did that come about? Were you

8 contacted by someone to seek your opinion?

9 A. No, I saw the piece come up in the

10 local newspaper online.

11 Q. And what did you do?

12 A. I posted a statement, a comment.

13 Q. Online?

14 A. Yes.

15 Q. Where online?

16 A. On the LoHud site.

17 Q. The newspaper site?

18 A. Yes.

19 Q. And did you comment about the

20 charges in the case, that you knew they were

21 false or anything like that?

22 A. No.

23 Q. You were just generally he's a good

24 guy?

25 A. Yes.

1 Dr. A. Lerman - Cross 473

2 Q. Based on your experience?

3 A. Yes.

4 Q. In this case did there come a time

5 when you received through the mails or by some

6 method an authorization that Noelle Feldman had

7 signed that said you could give out her

8 information that you had, your file about her?

9 A. When my record was subpoenaed there

10 was a release of information from her.

11 Q. Did you understand when you

12 received that authorization that you could have

13 declined based on confidentiality, that you

14 were not required to produce those documents?

15 MR. BROPHY: Objection.

16 THE COURT: Sustained.

17 Q. Did you feel you had a legal

18 obligation to turn your entire file over to

19 whoever?

20 A. Yes, I believe I did.

21 Q. And that trumped your

22 confidentiality obligation to Noelle?

23 MR. BROPHY: Again, Your Honor.

24 THE COURT: Sustained.

25 Q. In your opinion, as a professional,

1 Dr. A. Lerman - Cross 474

2 did you have the right to maintain

3 confidentiality and not turn over your file?

4 MR. BROPHY: Same objection.

5 MR. HANNIGAN: Withdrawn.

6 Q. You testified you never met or

7 spoke with Mr. Brophy; is that right?

8 A. Other than a brief conversation on

9 the phone telling him that I didn't want to

10 discuss the case with him. We spoke probably

11 two or three times before today.

12 Q. You may have misheard me. I'm

13 talking about Mr. Brophy?

14 A. The attorney?

15 Q. Sitting right here. You spoke to

16 him two or three times?

17 A. I think so. I think he told me he

18 was going to subpoena my records.

19 Q. And you at some point made a

20 transcript. You took your records and you

21 reviewed them and you created a typed

22 transcript?

23 A. That was another call, yes.

24 Q. Did you do that at his request?

25 A. Yes.

1 Dr. A. Lerman - Cross 475

2 Q. Were you paid for that?

3 A. I don't think so.

4 Q. Do you normally do that

5 voluntarily?

6 A. I might.

7 Q. You did have a confidential

8 relationship with Noelle Feldman as your

9 patient?

10 A. Yes.

11 Q. And pursuant to that relationship

12 you are not permitted to discuss your treatment

13 of her without her authorization?

14 MR. BROPHY: Objection. Objection.

15 MR. HANNIGAN: No. Can we have a

16 side bar?

17 (Approach off the record.)

18 MR. HANNIGAN: May I have this

19 marked for identification.

20 (Marked Plaintiff's Exhibit 4 for

21 identification.)

22 Q. Doctor, showing you 4 for

23 identification, have you seen this document

24 before?

25 A. I'm not aware of seeing it before.

1 Dr. A. Lerman - Cross 476

2 Q. Then let me ask you this. What was
3 your basis for turning over your records of
4 your confidential meetings with your patient
5 Noelle Feldman?

6 A. I had a signed release of
7 information and a subpoena.

8 Q. Is that the release of information
9 on the second page and signed by Noelle
10 Feldman?

11 A. No. I have not seen this document
12 before.

13 Q. So there is some other document
14 that you believe released from your
15 confidentiality?

16 A. I think there was, yes. In a
17 correspondence from -- it should be in the
18 material I submitted.

19 MR. HARRINGTON: May we approach
20 again on this issue. It's important.

21 (Approach off the record.)

22 MR. HANNIGAN: Your Honor, I'll
23 move on to some other areas and come
24 back to that after lunch.

25 THE COURT: Yes.

1 Dr. A. Lerman - Cross 477

2 Q. Dr., in these conversations you had
3 with Mr. Brophy, did he in anyway tell you or
4 make any statements about the fact that Noelle
5 Feldman is claiming that Dr. Knack sexually
6 assaulted her?

7 A. No.

8 Q. Did he tell you that Dr. Knack was
9 claiming that Miss Feldman assaulted him?

10 A. No. These were very brief
11 conversations.

12 Q. What were they about?

13 A. Just that I described, saying a
14 subpoena was being sent requesting a transcript
15 of the handwritten remarks.

16 Q. Did you ever receive a request to
17 allow you to speak with Mr. Brophy or anybody
18 from his office?

19 A. No.

20 Q. Going back to your testimony for a
21 minute, if you could look at your notes that
22 you were testifying about earlier, February 15,
23 2010, under the heading MSE clinical assessment
24 form no evidence thought disorder. What does
25 that mean?

1 Dr. A. Lerman - Cross 478

2 A. That means there is no gross
3 evidence of delusion or psychosis.

4 Q. When she first -- you first began
5 treating with her and she related things to you
6 about her history and her marriage, did you
7 believe that her claims regarding her husband's
8 conduct and the way he treated her to have
9 merit?

10 A. Yes.

11 Q. And was that based on -- what was
12 that based on?

13 A. She presented as an earnest and
14 troubled but honest person.

15 Q. If you could look at April 14,
16 2010. Can you read the paragraph under present
17 status.

18 A. Session focus on sexual assault in
19 California years ago and Andy's attack in
20 recent past. Patient struggles with PTSD she
21 shares with acute distress. Accuracy of
22 patient's account unverified but intensity of
23 affect consistent with genuine severe trauma
24 history compounded with developmental trauma.

25 Q. That was her mental state or

1 Dr. A. Lerman - Cross 479

2 psychiatric status at the time, how would you

3 characterize that, what you describe here?

4 A. I would say that's an assessment of

5 how she's doing.

6 Q. Your assessment as her

7 psychiatrist?

8 A. Yes.

9 Q. Could you look at October 14, 2010

10 entitled trauma group. What is that document?

11 A. That's a group note for the trauma

12 group that I mentioned previously.

13 Q. So were you present at that

14 meeting?

15 A. Yes.

16 Q. This is in your office?

17 A. Correct.

18 Q. It's part of your treatment plan,

19 would you say?

20 A. Part of the treatment.

21 Q. And the bottom section where it

22 says trauma, the bullet points under that, what

23 do they refer to?

24 A. Under trauma? It refers to feelings

25 that people have about trauma survivors

1 Dr. A. Lerman - Cross 480

2 frequently struggle with feelings of

3 loneliness, defectiveness and self denigration.

4 Q. Is that about the particular people

5 in that group or is that general?

6 A. General.

7 Q. Can you read what that says.

8 A. This is a trauma group. People who

9 survive trauma often feel alone, defective,

10 crazy, damaged, stupid, no one else will

11 understand, tend to disparage themselves.

12 Q. And Noelle Feldman was in this

13 group?

14 A. Yes.

15 MR. HANNIGAN: Other than the

16 issues discussed at the side bar, I

17 don't have any further questions.

18 MR. BROPHY: May we have a side bar.

19 (Approach off the record.)

20 THE COURT: Jurors, you will be

21 excused now for lunch. We will resume

22 at two o'clock. Please remember no

23 testimony among yourselves. You heard

24 about an article that appeared in the

25 newspaper, please do not do any

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research. See you at two o'clock.

(The sworn jury exits the courtroom for a luncheon recess.)

THE COURT: Doctor, would you please wait in the hall.

(Witness exits courtroom.)

MR. HANNIGAN: This is a bit of housekeeping. Could I have five minutes to discuss this with co-counsel we may be able to resolve him coming back.

THE COURT: Sure.

(Brief recess).

MR. HANNIGAN: Your Honor, I appreciate that allowance for that time to discuss it and it will save us time. I'll put on the record I have no further questions of the witness.

THE COURT: All right.

MR. BROPHY: I'm at a bit of a loss. I don't have any redirect for the witness. Is this kerfuffle about an authorization, is this going to require a ruling on the part of the Court? Is plaintiff making an application?

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MR. HANNIGAN: I just said I have no further questions of the witness. If you want to start a fight, I don't think we need to.

MR. BROPHY: Then we're done with this witness.

MR. HANNIGAN: Thank you.

THE COURT: We'll resume at two o'clock. We can bring the doctor back in to excuse him.

Dr. Lerman, there are no further questions of you. You are free to leave. Thank you.

(Witness excused.)

A F T E R N O O N S E S S I O N

MR. BROPHY: Over the lunch hour, I went back to my office and reached in my filing cabinet, we have a folder marked Dr. Lerman's records. In the folder there are copies of two letters. First is dated February 17, 2015 with HIPAA authorization duly executed by the plaintiff simply requesting records.

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EBT Reading

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Then records were duly produced by Dr. Lerman and attached to that letter.

On the 2nd of December 2015 having received the Arons authorization I sent by fax and regular mail with the following letter to Dr. Lerman. As you know, we are defending Dr. Knack in a lawsuit brought by Noelle Feldman. You previously provided us with copies of your records. At this time, I would like to speak with you concerning the contents of your records and treatment of Miss Feldman and authorization is attached permitting you to discuss this patient with me. You may contact me at my number. Etc.

Here is the Arons authorization attached to that letter.

I believe the faxed cover sheet is also here. After having sent that letter I spoke to Dr. Lerman on the telephone. Asked him for an interview. He expressed reluctance. I asked if he could provide a transcript of the

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handwritten portion of his records that I couldn't read and he did that. That's the whole story. There was nothing nefarious going on. And I believe that's the implication the jury got. I would ask the Court instruct the jury to disregard the questions and answers regarding the authorizations in the record or preclude plaintiff's counsel from commenting on that.

MR. HANNIGAN: I oppose striking any of the testimony. The Arons authorization is the one I had marked for identification as Plaintiff's 4. I asked if the witness if he had seen it before. I don't think he did. And then we had a number of side bars regarding this. I don't think any impressions were given to the jury about Mr. Brophy doing anything wrong. I didn't say anything in front of the jury. It was discussed at side bar.

THE COURT: I just asked if it was voluntary or not and then we talked up

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here at the bench. I don't think anything has to be stricken.

In terms of your summation, I don't know if it's something you are going to focus on.

MR. HANNIGAN: The document is not in evidence. I don't think there is -- if nothing is struck, the record is available for me to use. I don't want to be worry go about what I can say and what I can't say. He didn't know what the document was.

(Read back.)

MR. BROPHY: I would ask he not mention it in the summation. If he's not precluded I'm betting a nickel it will be mentioned.

MR. HANNIGAN: I didn't say anything that shouldn't have been said. I asked questioned and he answered them.

THE COURT: He said he had some other document and it wasn't followed up. I don't think there is anything the

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jury is going to imagine.

MR. BROPHY: I respectfully except. We pre-marked a document that has not yet been admitted. I offer it right now.

THE COURT: What is it?

MR. BROPHY: This is a letter from Dr. Shander to me with a version of Plaintiff's Exhibit 1 that was sent to her and her response to Miss Feldman, Plaintiff's 1 being the e-mail of November 14, 2013. It was identified and marked at the EBT. It has some further back and forth between the doctor and Miss Feldman concerning this particular document. It's nothing radioactive or earth shaking. It will be mentioned in the EBT. The jury should be allowed to see it.

MR. HARRINGTON: Here is the issue, it's Mr. Brophy telling Dr. Shander that there is no mention in your records of Miss Feldman having any mention of any misconduct on the part

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of our client. So this is a lawyer's letter of his characterization and why he thinks her testimony is important. It's unnecessary to have this in the jury room.

THE COURT: Where is that referred to and why do you need it, in the EBT?

MR. BROPHY: Your Honor has a copy of the deposition.

THE COURT: I do.

MR. BROPHY: Page 19 starting line 10. It goes back to the prior page.

MR. HARRINGTON: My issue is the McCarthy Fingar letterhead and Mr. Brophy characterizing what he says is important evidence. It is not evidence.

THE COURT: I don't understand why your letter is significant.

MR. BROPHY: Let's leave the letter off. I'll offer it as U without the letter. It is a version -- there is testimony from the doctor who according to Miss Feldman helped her write the e-mail and there is testimony about the

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EBT Reading

488

e-mail going back and forth --

THE COURT: This is the draft that they are talking about.

MR. BROPHY: It's not a draft. After it was mailed the very same day there was a back and forth between the plaintiff and Dr. Shander. That's in addition to what we already have.

MR. HARRINGTON: Fine.

MR. BROPHY: So we'll take my cover letter off. Remark this. We can stipulate that can go in.

MR. HARRINGTON: Yes.

THE COURT: Marked in evidence.

(Defendant's U marked in evidence.)

THE COURT: Do you want to go through the objections now before you read the EBT? Every orange spot doesn't mean you are objecting to it.

MR. HARRINGTON: That's right.

MR. BROPHY: Here are my objections, page five. I object to the statement on the record by Mr. Harrington.

THE COURT: Should we put on the

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EBT Reading

489

record Judge Lefkowitz' order?

MR. HARRINGTON: We're okay with you taking that out.

MR. BROPHY: Page 9 there is colloquy about the court order requiring the witness to testify, a subpoena, a decision and order. I think that colloquy is unnecessary.

MR. HARRINGTON: Fine Your, Honor.

THE COURT: All right. That's out.

MR. BROPHY: Page 13 there is an objection by Mr. Harrington, the question exceeds the copy of the order.

MR. HARRINGTON: Fine. We'll withdraw that.

MR. BROPHY: We will go from the word insurance and down to line ten.

MR. HARRINGTON: Yes.

MR. BROPHY: Top of page fifteen. I asked a question --

MR. HARRINGTON: Withdrawn.

THE COURT: All right. That's out.

MR. BROPHY: Page 27 starting line

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EBT Reading

490

three. There was a question to the witness to preserve text messages. I don't see any need to read it and some colloquy from Mr. Harrington. I state we'll discuss it with the Court and in the meantime you will preserve them. My propose is knock that out and we will not talk about text messages. She didn't produce any. We didn't preserve. There are lots of text messages made we don't have.

THE COURT: So the whole discussion about text messages from line 13 to 18.

MR. BROPHY: There are other designations by plaintiff's counsel, if I haven't made an objection and asked for a ruling, I guess I blew my chance and we'll read them.

THE COURT: This should take about forty minutes. After this I will tell the jury we are resuming at two o'clock on Monday.

(Jury enters the courtroom.)

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EBT Reading

491

THE COURT: Mr. Brophy.

MR. BROPHY: At this time we wish to read the testimony of Dr. Shander.

THE COURT: I reiterate what I said the other day about examinations before trial. This witness answered questions under oath and a stenographer recorded the questions and answers and transcribed it into a document and this is to be considered as if the witness was on the witness stand.

MR. BROPHY: Miss Lamparaso will read the answers and I'll read the questions. We'll read it in neutral voices.

Starting page 5. Line 24.

"Q. Good morning Dr. Shander. Have you ever given a deposition before?

A. Yes, sir.

Q. So you understand if you don't understand one of my questions you are entitled to ask for an explanation.

A. I do .

Q. Please don't answer a question if

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EBT Reading

492

you don't know the answer.

A. Okay.

Q. Do you have to leave at any time
time?

A. I'd like to leave by 11. I can give
you 11:15.

Q. Have you reviewed any documents or
things in preparation for coming here to
testify today?

A. I have.

Q. What have you reviewed?

A. My notes.

Q. Anything else?

A. No, sir.

Q. Do you have any address in the
State of New York?

A. No.

Q. What is your address?

A. 1933 Long Ridge Road, Stamford,
Connecticut 06903.

Q. Are you licensed to practice
medicine?

A. Yes, sir.

Q. In what state or states?

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EBT Reading

493

A. Connecticut and New York. But I don't practice there.

Q. Have you ever spoken to me or anyone from my firm before about Noelle Feldman's claim against Dr. Knack?

A. Yes.

Q. When?

A. Your request for her records have been repeated and I keep saying I sent them.

Q. I'm asking about conversations right now. Have you ever had a conversation on the phone or in person with anyone from my law firm?

A. No, sir.

Q. Have we ever met before?

A. No.

Q. Have you ever met Mr. Hannigan before?

A. Which one is he?

Q. The gentleman on the end with the glasses.

A. Yes.

Q. When did you meet with Mr. Hannigan?

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EBT Reading

494

A. He came to my office briefly. I don't remember, a week ago, two weeks ago.

Q. Is that the very first time you ever met Mr. Hannigan?

A. Yes.

Q. Are either of these gentlemen, Mr. Hannigan or Mr. Harrington here representing you?

A. No.

Q. What did you discuss with Mr. Hannigan when you met him a week ago?

A. That there is a court order that restricts me to two topics.

Q. Have you ever been in communication with me by letter, e-mail or by fax?

A. Yes.

Q. In regard to what?

A. In regard to records. I have them all here.

Q. You have the copies of the e-mails and letters with you?

A. I do.

Q. Are you here voluntarily today?

A. I'm here under a record

1 EBT Reading 495

2 requisition. Do you call that a subpoena?

3 MR. BROPHY: Page 11. Line 6.

4 Q. Okay. In that notice to take

5 deposition it states on the bottom of the first

6 page Dr. Shander shall be required to produce

7 at such examination any documents and records

8 of or related to plaintiff Noelle Feldman

9 whether handwritten and/or electronically

10 created or stored including but not limited to

11 office notes, psychotherapy records,

12 prescription records, billing records,

13 appointment records, correspondence, e-mails

14 which you have in your possession custody or

15 control.

16 Have you brought any of the records

17 that are on that list that I just read to you?

18 A. Correct.

19 Q. Have you brought office notes?

20 A. Right.

21 Q. Have you brought psychotherapy

22 records?

23 A. I don't have any. This is what I

24 have. My notes. Everything are in my notes.

25 Q. We'll mark your notes in a minute.

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EBT Reading

496

Have you brought any prescription records?

A. They're in my notes.

Q. Are there any prescription records that exist in a format that is not in your notes specifically on prescription pads or some other format?

A. It's possible I gave her a prescription and I didn't note it down in my notes. That happens.

Q. When you, certain types of prescription, is it the practice to keep a prescription pad with a permanent record called triplekit prescription?

A. No, we don't do that in Connecticut.

Q. Have you maintained any billing records?

A. I don't have any billing records other than the notes that tell me when she was there.

Q. So if there is no note that she was there and you didn't bill her for there?

A. There are times she comes just for prescriptions and I don't bill her.

1 EBT Reading 497

2 Q. We'll get to that in a minute. Do

3 you keep a record of appointments with this

4 particular patient by any format?

5 A. I usually go by my notes. I have an

6 appointment book. These are kind of far away.

7 I'm not sure I can put my hands on an old

8 appointment book when I saw her. These are

9 complete notes, anything I have.

10 Q. Okay. We'll get to those in a

11 minute. I'm trying to find out what the data

12 base is.

13 A. Okay.

14 Q. Do you have any correspondence in

15 your -- let me get back to billing. On those

16 occasions when Noelle has -- withdrawn. On

17 those occasions when your paper services to

18 Noelle have you ever submitted any bills to

19 insurance?

20 A. See, I don't remember because I

21 think she's pretty much always had

22 out-of-network benefits which means we don't

23 submit them.

24 Q. When she pays you, how does she pay

25 you?

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EBT Reading

498

MR. BROPHY: There was an objection.

MR. HARRINGTON: Withdrawn.

MR. BROPHY: Line 22. You know what,
I don't remember. I'm sorry.

Q. Is there a customary fee you charge
here each time she comes in for an office
appointment?

A. No.

Q. Okay. Have you had any
correspondence with Noelle Feldman, that is
letters?

MR. BROPHY: An objection.

MR. HARRINGTON: Withdrawn.

A. I have one e-mail that you already
have.

Q. So you only have one e-mail?

A. Correct.

MR. BROPHY: Let the record reflect
an e-mail was marked on that occasion.
I offered that document as Exhibit U.
And I'm offering it in evidence at this
time.

THE COURT: It was received.

MR. BROPHY: Thank you.

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EBT Reading

499

Line 16. Okay. So for the record this is an e-mail dated it says August 28, '15 and it's from an address gmail and it says this the only thing that I could find. It consists of two pages.

Whereupon Mr. Harrington and says Joe, I think you said 8/28/15; is that correct. It's 9/28. I reply 9/28. That's fine.

Page 15 line 7. So, okay, Doctor. This is a simple yes or no question. The e-mail Exhibit C which I just read the message from Noelle, this is the only thing I could find. That's the e-mail you are referring to, correct?

A. Correct.

Q. Now there seems to be something a series of messages as a part of that e-mail, fair to say?

A. Correct.

Q. There is an e-mail going backwards there is a forwarding message from E Shandler on November 13, 2014 subject re: Therapy. Says me, too with four zeroes and two and then some

1 EBT Reading 500

2 little emojis following me, too. Do we agree

3 that's what it says?

4 A. Wait a second. Let me catch up with

5 you.

6 Q. Okay.

7 A. Okay. I'm with you. You are

8 referring to you are referring to the one that

9 says me, too.

10 Q. Yes, from E Shandler dated November

11 14 to Noelle, re: Therapy, said me too?

12 A. Okay.

13 Q. Do you have a recollection of

14 having sent such an e-mail to Noelle on or

15 about November 14, 2013?

16 A. Yes.

17 Q. Did you ever check your e-mails,

18 your own records and e-mails to see if you have

19 a record in your own records of that particular

20 e-mail that you sent?

21 A. Unfortunately I erased by accident

22 2000 e-mails and two years of e-mails are gone.

23 Q. So below the e-mail from you, me,

24 too, then there is another longer e-mail also

25 dated November 14, 2013 which starts with the

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EBT Reading

501

words I just mailed it and then it's signed
Noelle. Okay. Are we in agreement that's what
it says?

A. Yes.

Q. Do you have a present recollection
as you sit here today of having received such
an e-mail from Noelle on or about November 14,
2013?

A. Yes.

Q. Okay. And what were the
circumstances that preceded her sending you
that e-mail, if you know?

MR. BROPHY: There was an objection,
Your Honor.

MR. HARRINGTON: Withdrawn.

A. What's your question?

Q. Do you have a recollection of
leading up to you receiving that e-mail from
Noelle, November 14, 2013 that starts with the
words I just mailed it?

A. Yes.

Q. What is your recollection of the
circumstances?

A. If you go down one more I helped

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EBT Reading

502

her write an e-mail to Dr. Knack.

Q. When did you do that?

A. Some time around November 14, 2013.

Q. And how did you help her write that e-mail?

A. She discussed what's in that e-mail with me in a session and wanted help on confronting him. I said I would help her write the e-mail.

Q. Okay. And is there any notation in your office records concerning the session in which she had that discussion with you?

A. No. Not that I could find. I looked.

Q. So there are a series of statements following the portion that says I just mailed it, end quote. And then there is a forwarded message to Dr. Knack that starts Dr. Knack I just want you to know I will not be coming back to therapy any more with you, I have known -- I have for a long time known that your sexual acting out with me is absolutely not acceptable. Closed quote. That's the e-mail that you helped her write?

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EBT Reading

503

A. Correct.

Q. In what manner did you help her?

A. I don't recall exactly. I probably wrote some of the sentences for her or reworked them for her so they were clearer.

Q. Did she send you some sort of a draft?

A. We might have done it in a session. I really don't remember.

Q. Was that session on or about November 14, 2013 or some other time?

A. It should have been prior to that because my last note prior to 9/4, I believe. I have a note on 9/4/2013 which doesn't, doesn't say anything about it and then I have one on 10/13/2014. So in between the session where we discussed the content of this e-mail and I helped her write it which is not unusual for me to do.

Q. So if I understand your testimony correctly, you don't have any recollection of whether she ever sent you a draft to look at or change or anything. Would that be correct?

A. It's my usual procedure when I have

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EBT Reading

504

a circumstances in my office when somebody needs help is I sit and type the e-mail or the note with the person in the room and we do it together. And then I send it to her.

MR. BROPHY: Your Honor, I'm going to withdraw the question at line 18 because when we get down to the following page at line 13.

Q. When Noelle sent you Exhibit C -- page 20. So when you sent -- withdrawn. When Noelle sent you Exhibit C on or about September 28, 2015, did you have the conversation with her before she sent it to you?

A. I was made aware by one of you that there was an e-mail which I had no recollection of and I asked her to please find any e-mail exchange that we had had and she sent this to me.

Q. So you called her on the phone, sent her an e-mail, how did you conduct her?

A. I probably called her on the phone and said do you have an e-mail from me. Could you send it to me . I can't find it. She sent it to me .

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EBT Reading

505

Q. Okay. By the way, do you expect to be compensated for your time today?

A. I do.

Q. Who are you going to send your bill to?

A. You.

Q. Are you board certified in psychiatry?

A. Yes.

Q. Where did you go to medical school?

A. Albert Einstein College of Medicine.

Q. When did you graduate?

A. June 1979.

Q. Are you currently employed?

A. Yes, sir.

Q. Where?

A. Silver Hill Hospital in New Canan, Connecticut and private practice.

Q. Is your Silver Hill job a full time job?

A. No.

Q. How many hours a week do you work there?

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EBT Reading

506

A. Depends on who is on vacation and who I am covering.

Q. What is your job description at Silver Hill?

A. I'm an attending physician at Silver Hill.

Q. How long have you worked there?

A. Since June of 1983. You are supposed to say that I don't look that old.

Q. Sorry, ma'am, I'm here for business. Since 2012 special what portion of your practice did you present on private versus hospital practice?

A. Three quarters of the time private practice, one quarter at Silver Hill.

Q. And did you originally meet Noelle as a patient at Silver Hill?

A. I believe so.

Q. Do you recall rendering medical services to her when she was at Silver Hill?

A. Yes.

Q. One or more than one admission?

A. I don't recall. I'm going to say multiple but I'm not positive.

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EBT Reading

507

Q. Have you ever met Dr. Knack?

A. No.

Q. Ever talk to Dr. Knack?

A. Yes.

Q. When?

A. Very early on in my treatment of
Noelle I had a short conversation with him.

Q. About what?

There is an objection?

MR. HARRINGTON: Withdrawn.

A. Introducing myself as her new
psychiatrist and anything I could do please
stay in contact.

Q. That was your only contact with
him?

A. I believe so.

Q. While Noelle was in the hospital,
did she tell you anything about Dr. Knack?

A. That he was her therapist.

Q. Anything else?

A. Not that I recall.

Q. Did she have anything to say about
him, anything bad to say about him or don't you
remember?

1 EBT Reading 508

2 A. Nothing I recall.

3 Q. So after Noelle's discharge from
4 the hospital, she became your private patient;
5 is that right?

6 A. She became my patient for
7 medication management.

8 Q. Please explain what you mean by
9 that?

10 A. She has a therapist, Dr. Knack. I
11 see her for medication and brief interactions.

12 Q. So if I understand correctly you
13 have not been in a relationship as a
14 psychotherapist of Noelle?

15 A. Well, there is always a mix. You
16 can't medicate somebody and not talk to them.
17 So I often have discussions with people about
18 their lives, what's going on, their families,
19 what's happening to get a broader aspect before
20 I medicate them.

21 Q. So we'll come back to that. Is
22 Noelle still your private patient?

23 A. Yes.

24 Q. When was the last time you saw her
25 as a patient?

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EBT Reading

509

A. I don't remember. I didn't check.
Maybe a month ago.

Q. Do you ever communicate with Noelle
by text messages?

A. Probably. I text. Most of my
patients text back and forth with me all day.

Q. Do you have access to any text
messages that you've exchanged with Noelle at
the present time?

A. Am I suppose to answer this?

Q. Yes.

A. Okay. I don't know. We can take a
look.

MR. BROPHY: Page 26. Line 9.

Q. Over what period of time are those
text messages, if you know?

A. I'm looking.

Q. Our time is limited.

A. I have a lot of texts. I'm going
back to see where they start. It's unclear what
year we are in. I have them back to May, it
could be. What are we? '15. Probably back to
May of 2015. Sorry.

Q. Without going to each one right

1 EBT Reading 510

2 now, in general, what is the subject matter?

3 A. Appointments, medication. Can I

4 come buy pick up my script. Complaints about

5 her daughter. Complaints about her boyfriend. A

6 whole bunch of texts. I couldn't figure out

7 which lawyer was who and he's getting my

8 records. I asked her to give me the names.

9 Which lawyer is who is but mostly can she pick

10 up her medication and they are on the door.

11 Q. Page 27 line 19.

12 Do you recall that Noelle ever sent

13 you any poems that she had written or anything

14 she had written in the nature of creative

15 writing, escapes?

16 A. I do.

17 Q. When was that?

18 A. I have no idea.

19 Q. Did you keep that stuff?

20 A. No.

21 Q. How did she send it to you?

22 A. You know, I don't remember, if it

23 was an e-mail or a piece of paper. I remember

24 seeing the poems but I don't remember how I got

25 them.

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EBT Reading

511

Q. You didn't keep them?

A. No.

Q. Do you have any audiotapes or videotapes of any conversations or sessions with Noelle?

A. No.

Q. During the period of time that Noelle has been your patient, has she seen you on a schedule basis, monthly, bimonthly, weekly or anything like that?

A. It's not on a regular basis. Pretty much she texts me when she needs to come in.

Q. Has there ever been a period of six months when she hasn't been in contact with you since you started being her doctor?

A. I don't recall.

Q. I'm sorry?

A. I don't recall.

Q. Do you have any notes or records of any telephone calls that you got from Noelle?

A. No.

Q. Are there any particular telephone calls you ever got from Noelle in connection with her treatment that stick in your mind?

1 EBT Reading 512

2 A. I don't recall any.

3 Q. Okay. Let's get to the office

4 records. May I take a look at your office

5 records please. I'm going to look these over. I

6 believe they were the same as what you

7 previously sent us. So with your permission,

8 I'm going to have this marked as E.

9 Could counsel stipulate these

10 office records are now in evidence here?

11 MR. HARRINGTON: Stipulated, Your

12 Honor.

13 MR. BROPHY: Top of page 30. If you

14 would please compare E to the record

15 that you brought with you let me know

16 whether these are the same except of

17 course for the first two pages.

18 A. Okay. Exactly the same.

19 Q. Thank you. So you can work from

20 either copy you like. So my first question in

21 regard to these office records that you

22 provided, are these records that you made and

23 kept in the regular course of your medical

24 practice?

25 A. Yes.

1 EBT Reading 513

2 Q. Are these all the records that you

3 have?

4 A. Yes.

5 Q. Do these records contain notations

6 for every time that Noelle was in your office?

7 A. Probably not.

8 Q. Now it says at the top of each

9 page, HTTPS double forward slash Practice

10 Fusion closed quote and there is a

11 continuation. Can you explain how these records

12 are made and kept?

13 A. They are computer records. There is

14 a program called Practice Fusion. I log on with

15 my security code and I have every patient in

16 the program and I can open up a note and write

17 a note when they come. This was in the

18 beginning of my having Practice Fusion. So I

19 have a little bit of a learning curve here.

20 Q. But all these records that you

21 provided are on the same program, correct?

22 A. Correct.

23 Q. So when you make notations and

24 Practice Fusion concerning encountered with

25 Noelle Feldman do you make them at the time

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EBT Reading

514

she's sitting there with you?

A. Yes.

Q. Every time?

A. Well, if she comes in for medications and scripts I probably didn't open the chart.

Q. On some of those occasions when she comes in for medications or scripts, does she sit and talk with you?

A. There may have been times.

Q. If there were such occasions you have no record of them?

A. I can't say that every single encounter I ever had with her was recorded in Practice Fusion. There might have been a time here or there that I did not make a notation because it was a more casual encounter. She came in for her scripts. We talked for a few minutes. She left.

Q. Let's talk about her scripts. Are her scripts recorded on the first three pages of record attached to Exhibit E?

A. Each note has. So I thought I was suppose to talk about two things and I don't

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EBT Reading

515

want to get into any trouble about that.

Q. Well, I'm trying to figure out how complete these records are, how complete the information is. That's why I'm asking these questions. You have the question. Would you like it read back?

A. Yes.

(The question was read back).

A. Each progress note should have present medications. However I want you to know that Practice Fusion was new to me . It was a new program early on and they had some bugs in the system. Not all the medications came forward all the time. It's generally speaking these are medications she should have been on the date of the note.

Q. And how were these, if you know, does Practice Fusion generate this list, page 4 of 25, 5 and 6 of 25?

A. They are pop ups.

Q. So when you know the current, if I understand you correctly, you know the current medication on a particular page corresponding to a visit. Once you note that medication on a

1 EBT Reading 516

2 particular page it comes back and populates the

3 field in --

4 A. I don't know exactly what you said.

5 Q. I can clarify. Let's say we take --

6 A. Let's say we take encounter

7 9/12/2012.

8 Q. What page is that?

9 A. I don't have numbers on mine.

10 Q. Use this one. Defendant's E. You've

11 already compared it. It has numbers on the top

12 right?

13 A. Okay. It's page 7 of 26. It's just

14 an easy note to go over.

15 Q. Okay.

16 A. So there is a chief complaint which

17 is not recorded because I put in subjective.

18 Again it was a learning curve. Objective is how

19 she looked at that moment. Assessment. Stable

20 today. Plan: Not sleeping. So I changed her

21 medicine. And then it says medications attached

22 to this encounter. That's a button you press

23 and all the medications she's presently on at

24 that moment should repopulate.

25 Q. What do you mean by repopulate?

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EBT Reading

517

A. The computer does it. You press medications attached and it gives you all the present medications she's on automatically. It populates it. It puts it into space. It doesn't give you historic. Just present. Took a while for me to figure this out.

Q. Let me see if I understand the way this is noticed. I'm sorry, correction. Three and four. Let's take a look at three and four. There is something called active medications on three. Something called historical medications on four?

A. I had to press the button to get historic medications populated. Let's say I want to remember what this patient was on before. I press the button down that says historical medications. The program gives me everything she's been on since I started putting her into Practice Fusion.

Q. Page 37. Line 16. What's an E-script?

A. I can send it by electronic record from Practice Fusion which connects to her pharmacy and I can write the script and it goes

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EBT Reading

518

electronically.

Q. Other scripts that just say script?

A. Correct.

Q. Are those you wrote out by hand?

A. Correct.

Q. Are certain medications eligible for E-script and others aren't?

A. Correct.

Q. Controlled substances are not eligible, would that be correct?

A. Correct.

Q. So if you write a prescription for a patient for a controlled substance, you would have to write it out by hand and put it in her hand?

A. Correct.

Q. So if we have a record say a pharmacy of a prescription written by you for a controlled substance, would that mean that the patient would have had to see you at or about the date you wrote it in order to get the prescription?

A. Not necessarily.

Q. Explain.

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EBT Reading

519

A. Sometimes I give her two months at a time. I do that often with patients. They'll get a September prescription for Adderall and October one to leave with.

Q. So there is no way we can tell in between, correct me if I'm wrong, is there any way we can tell in between the reported dates of the encounters and the electronic medical record what date Noelle was in your office?

A. Correct.

Q. We can't?

A. Correct. We can't. I didn't charge her for those times. Just gave her a script.

Q. Page 41. Line 14.

Do you have an understanding of what allegations that Noelle is making against Dr. Knack in this lawsuit?

A. I do now.

Q. What is your understanding?

A. That he raped her.

Q. When did you learn that was her allegation?

A. After she did her -- after she did her deposition with her lawyer I believe her

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EBT Reading

520

prior to that. No. Around the time that she gave her deposition. No. Sorry. Around the time that she told me that she and Tom were finding a lawyer to -- to sue Dr. Knack. That's correct.

Q. When was that?

A. Probably a month before she went to her lawyer, my best recollection.

Q. Did you refer her to that lawyer?

A. No.

Q. When Noelle told you for the first time that she was going to make an allegation of rape against Dr. Knack, what is the best recollection of exactly what she told you, what is your best recollection?

A. My best recollection is this e-mail that I helped her write which describes the relationship that she was having with Dr. Knack which resulted in her terminating with him. The next discussion was shortly before she decided to press charges in which she told me not only did this happen which is referenced in the e-mail, but he also raped her.

Q. When Noelle told you for the first

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EBT Reading

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time, when she told you she was going to go to an attorney and she told you for the first time that Dr. Knack had raped her, did she provide you with any specifics as to the incident that she claimed happened?

A. No.

Q. Has Noelle ever told you when she claims that Dr. Knack raped her?

A. No. I just asked her why she hadn't told me.

Q. What did she say?

A. She said she was ashamed. She didn't tell anybody.

Q. In between the time you helped Noelle with the e-mail and time she eventually told you that or alleged to you that Dr. Knack had raped her, did you have any conversations with anyone from law enforcement regarding allegations that Noelle was making against Dr. Knack?

A. Yes.

Q. So just to make it clear, whatever conversations you had with law enforcement, were those conversations prior to Noelle

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EBT Reading

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telling you that she was going to sue Dr. Knack because she claimed he raped her?

A. It's my best recollection that I spoke to the policeman around the time that Noelle told me. Yes. It was around the time Noelle told me and my best recollection is after that the policeman called me.

Q. When the policeman -- do you know what policeman called you?

A. I have no recollection.

MR. BROPHY: Your Honor, there is a reference to Exhibit F can we stipulate Exhibit F was the police report.

MR. HARRINGTON: Yes, Your Honor.

Q. So Dr. Shander, I'd like to call your attention to page three. This report has numbers in the upper right-hand corner?

A. Okay.

Q. Go to page 3. Look in the middle of page 3. May 27, 2014.

A. Okay.

Q. Line 21. There is a portion that is highlighted that starts after speaking with black out. I tried call Dr. Shander once more. Would

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EBT Reading

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you please read the hilighted portion to
yourself.

A. I did.

Q. Okay. Does that refresh your
recollection as to when you had a conversation
with the police?

A. It says May 27, 2014.

Q. Does that help you remember when it
happened?

A. No.

Q. Was it this year or was it last
year that you talked to the police, do you
remember that?

A. No.

Q. Did you tell the police that Noelle
had told you about inappropriate touching by
Dr. Knack?

A. Correct.

Q. Did the police then ask you if you
had -- if Noelle had ever told you anything
about Dr. Knack raping her and you said no.

A. I said no. That I had not heard it.

Q. So as of the time you had that
conversation with the police, Noelle had never

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EBT Reading

524

told you that Dr. Knack had raped her; is that a correct statement?

A. That's what this says.

Q. Is that a correct statement?

A. I guess so.

Q. To the best of your recollection?

A. Best of my recollection.

Q. Line 3. Okay. Just a few more questions. Subsequent to the very first time that Noelle told you that Dr. Knack had raped her, did you have any other conversations with her concerning that allegation?

A. I'm sorry. I was distracted.

(Question was read back.)

A. No, well yes. I said before that I asked her why she didn't tell me about it.

Q. Other than what you've already told me?

A. No.

Q. So you've now told me about every conversation you ever had with Noelle in which the subject matter of Dr. Knack allegedly raping her came up?

A. I believe so. To the best of my

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EBT Reading

525

recollection.

Q. I'd like to call your attention to page 25 of Exhibit E.

MR. BROPHY: It's in evidence in this trial.

MR. HARRINGTON: Yes, Your Honor.

Q. That is a note for an encounter with Noelle on 5/5/15. Page 47 line 2. You are looking at your own?

A. No, I'm looking at yours because.

Q. Because it has the fax numbers. 25 of 26?

A. Right. So this is May 15, 2015.

Q. Yes.

A. Okay.

Q. There is a statement there under assessment she is trying not to think about, quote, the court case, closed quote. Other than that statement right there, do you have any recollection of anything she's ever said to you about the court case then or any other time?

A. No. Just maybe her lawyer.

Q. Page 48 line 16. Is a mental status examination something you did every encounter

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EBT Reading

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with a psychiatric patient?

A. I do. As I said. I haven't always documented it in every encounter. That's something one does as you are sitting with a patient.

Q. And one of the things you want to know in mental status examination, in any psychiatric patient is whether the patient has any suicide ideations?

A. Correct.

Q. Or suicidal plans?

A. Correct.

Q. And this is a patient Noelle is a patient who had expressed suicidal ideations and suicide plans to you when she was in Silver Hill, do you remember that?

A. Correct. In Silver Hill I have to go by my records as to what she said.

Q. So if you don't have a present recollection let me ask you this, we're almost finished. At any time Noelle has been your private patient has she ever expressed to you any suicide ideations?

A. I would have to look through every

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EBT Reading

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page that we have here and see if I said anything specific about it. You can be sure she didn't leave my office with an active plan.

Q. Understood. Let me ask it this way. If she had expressed suicide ideations would you have made note of it?

A. I'm hesitating because if a patient tells me they have suicide thoughts I would say I would document it in the common course of my practice. However early on I was having some difficulties and I'm concerned to say something that might not have been recorded. But if -- but if she had said she was in any danger of hurting herself it would have been in the note specifically. Contract for safety. You can't leave my office. I'm calling the police. I would have put it in the report.

Q. So if I understand your answer correctly as far as suicidal ideations is concerned you cannot tell from the notes that you have made whether she ever expressed any suicide ideations to you while she was your office patient; is that correct?

A. I can't tell you looking at these

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EBT Reading

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notes.

Q. Do you have a present recollection of her ever expressing any suicide ideations to you since she's been your private patient?

A. None that I -- not that I can recall.

Q. In addition to this may be going over something I asked, in addition to the computerized record, do you have any handwritten notes about Noelle anywhere?

A. No.

MR. BROPHY: Page 52 line 18.

Q. Do you have any recollection of when for the first time Noelle ever told you that Dr. Knack had engaged in any type of sexual acting out or other inappropriate behavior with her?

A. The first time had to have been the day I prepared the e-mail with her because I was outraged. I never would have agreed for her to go back had somebody told me this.

Q. You mean to go back to Dr. Knack?

A. Correct.

MR. BROPHY: That's all, Your Honor.

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EBT Reading

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THE COURT: That completes the testimony we are going to have today. Because of scheduling we will not resume Monday morning but Monday afternoon at two o'clock. We will have a further witness. Have a good weekend.

Please do not discuss this case with anyone or among yourselves and do not do any research on the matter.

Two o'clock Monday.

(Jury exits courtroom.)

THE COURT: We will meet upstairs in my chambers for a jury charge, just counsel.

(Case adjourned to Monday, March 13, 2017.)