

COURT OF COMMON PLEAS
CUYAHOGA COUNTY

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ESTATE OF DENNIS NICHOLSON,)

)

)

Plaintiff,)

)

vs .

)

Case No. 375203

)

Judge Griffin

LAKEWOOD HOSPITAL, et al.,)

)

)

Defendants,)

- - -

Transcript of videotaped deposition of JAMES E.
BIANCHI, M.D., one of the Defendants herein, called by the
Plaintiff as upon cross-examination, pursuant to Notice and
Agreement of Counsel, pursuant to the Ohio Rules of Civil
Procedure, before Denise C. Winter, a Registered Merit
Reporter and Notary Public within and for the State of Ohio
on Wednesday, May 17, 2000, at the offices of Reminger &
Reminger, 113 St. Clair Avenue, 7th Floor, Cleveland, Ohio,
commencing at 10:15 a.m. and concluding at 12:55 p.m.

- - - -

MERIT REPORTING SERVICES
2000 East Ninth Street, Suite 310
Cleveland, Ohio 44115
216-781-7120

APPEARANCES:

Debra J. Dixon, Esq.
Kevin T. Toohig, Esq.
700 West St. Clair Avenue, Suite 16
Cleveland, Ohio
(216) 621-9100

on behalf of the Plaintiff;

Reminger & Reminger
Leslie J. Spisak
113 St. Clair Avenue, 7th Floor
Cleveland, Ohio
(216) 687-1311

on behalf of the Defendants,
Dr. Bianchi and Dr. Hastings;

Ulmer & Berne
Brian N. Ramm
Murray K. Lenson
900 Bond Court Building
Cleveland, Ohio
(216) 621-8400

on behalf of the Defendants,
Med Center, Dr. Allsop and Dr. Parris;

Moscarino & Treu
George M. Moscarino
1422 Euclid, Suite 630
Cleveland, Ohio
(216) 621-1000

on behalf of the Defendant,
Lakewood Hospital.

- - -

Also present: Randall Buckosh, Litigaid, Inc.
Joanne Sysick

- - -

I N D E X

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PROCEEDINGS

JAMES E. BIANCHI, M.D.

One of the Defendants herein, called by the Plaintiff as upon cross-examination, having been first duly sworn, as hereinafter certified, was examined and testified as follows:

- - -

MS. DIXON: Good morning,

Dr. Bianchi. We met off the record. My name is Debra Dixon. I'm one of the attorneys representing the Plaintiffs in this action. Before we get started here this morning, let me ask you, have you ever had your deposition taken before?

THE WITNESS: Yes.

MS. DIXON: Let me go over a few ground rules that I think if both you and I follow will make this process move a little smother and most importantly assist the court reporter in taking things down accurately.

All of your answers to my questions need to be oral. Although we're all inclined to use things like hand gestures, nods of the head, things like uh-huh, huh-uh, that's difficult for Denise to take down, interpret and take down accurately.

Second of all, if you don't understand a question that I have asked, please ask me to rephrase it or clarify it.

1 10:1 I'll not only be happy to do so, it's my absolute
2 obligation. If you answer the question, I'll assume that
3 your answer was truthful and accurate. And, finally, if at
4 any point in time you need to take a break, get something to
5 10:1 drink, take a page, please let me know. I'll be happy to
6 accommodate you.

7 Fair enough?

8 THE WITNESS: Uh-huh. Yes.

9 - - -

10 CROSS-EXAMINATION OF JAMES E. BIANCHI, M.D.

11 BY MS. DIXON:

12 Q. Please state your full name and spell your last name
13 for the record.

14 A. James Edward Bianchi. B, as in boy, I-A-N-C-H-I.

15 10:1 Q. Doctor, where do you currently reside?

16 A. 10803 B Detroit Avenue, Cleveland, Ohio.

17 Q. How long have you resided at the Detroit Avenue
18 address?

19 A. One year.

20 10:1 Q. And with whom do you reside at that address?

21 A. Myself.

22 Q. Doctor, I have been provided by counsel a copy of what
23 I understand to be your most recent curriculum vitae. I
24 have marked that as Exhibit 1. Can you take a moment and
25 10:1 review that document?

1 10:14 Does that appear to be your most current and updated
2 curriculum vitae?

3 A. No, because my address isn't correct.

4 Q. But for -- and I'm assuming the correct address is
5 10:14 what you gave us here this morning; correct?

6 A. Correct.

7 Q. Other than your address, are there any other changes
8 or amendments to what I have marked as Exhibit 1?

9 A. Not that I'm aware of.

10 10:14 Q. Okay. Now, directing your attention to your
11 undergraduate education, I notice that you began your
12 undergraduate studies at Columbia University; correct?

13 A. Correct.

14 Q. However, you did not complete your course work at
15 10:14 Columbia; correct?

16 A. Correct.

17 Q. You transferred in some fashion to Denison in
18 Granville, Ohio?

19 A. Correct.

20 10:14 Q. Under what circumstances did you leave Columbia
21 University?

22 A. I don't understand the question.

23 Q. Fair enough. You did, in fact, sever your studies at
24 Columbia; correct?

25 10:15 A. (No response).

1 10:15 Q. You didn't complete a course of study and receive a
2 degree?

3 A. I didn't receive my degree from there.

4 Q. Why did you leave Columbia?

5 10:15 A. I wanted to go to school closer to home.

6 Q. Was the decision to leave Columbia exclusively yours?

7 A. Yes.

8 Q. Was there any request on behalf of the administration
9 that you cease your studies at Columbia?

10 10:15 A. No.

11 Q. Were you in good academic standing at the time that
12 you left Columbia University?

13 A. Yes.

14 Q. Further in your CV you indicate that you served your
15 10:15 residency at Mt. Sinai Medical Center from 1994 through
16 1997. Is that accurate?

17 A. Yes.

18 MR. SPISAK: Actually, it says '94 to
19 '96, doesn't it?

20 10:15 THE WITNESS: But then up there.

21 MR. SPISAK: I'm sorry. All right.

22 I'll keep quiet.

23 BY MS. DIXON:

24 Q. What type of residency did you serve at Mt. Sinai?

25 10:16 A. Emergency medicine residency.

1 10:16 Q. Now, doctor, prior to appearing for your deposition
2 here this morning and separate and apart from any
3 conversations you may have had with Mr. Spisak, what
4 preparation did you undertake?

5 10:16 A. None.

6 Q. Did you review any documents?

7 A. No.

8 Q. Have you had an opportunity, in anticipation of this
9 deposition, to review the Lakewood Hospital emergency room
10 10:16 record for Dennis Nicholson of February 2nd, 1998?

11 A. I don't understand the question.

12 Q. Did you review the Lakewood Hospital emergency room
13 chart for Dennis Nicholson for his treatment of
14 February 2nd, 1998?

15 10:16 A. Yes.

16 Q. And did you do that in anticipation of your deposition
17 here today?

18 A. No.

19 Q. When was the last time prior to this morning that you
20 10:16 reviewed the February 2nd, 1998 Dennis Nicholson Lakewood ER
21 chart?

22 A. I don't remember.

23 Q. Was it within the last month?

24 A. No.

25 10:17 Q. Have you had an opportunity to review the autopsy

1 10:17 report on Dennis Nicholson?

2 A. I don't understand the question.

3 Q. Do you know what an autopsy report is?

4 A. Yes.

5 10:17 Q. Have you seen them in the past?

6 A. Yes.

7 Q. Have you had an opportunity to review an autopsy
8 report relative to Dennis Nicholson?

9 A. What do you mean by "opportunity"?

10 10:17 Q. Did you review the document?

11 A. No.

12 Q. You have never seen Dennis Nicholson's autopsy report?

13 A. I have seen it, but I have never -- I didn't read it
14 thoroughly.

15 10:17 Q. Did you read it?

16 A. Parts.

17 Q. You were provided the entire coroner's report;
18 correct?

19 A. Not that I'm aware of.

20 10:17 Q. You knew that Dennis -- you were aware of the fact
21 that Dennis Nicholson died within two days of being treated
22 by you at Lakewood Hospital; correct?

23 A. Yes.

24 Q. And when you learned that Dennis Nicholson died, did
25 10:18 you take any -- undertake any steps to obtain a copy of the

1 10:1 coroner's report?

2 A. No.

Q. Did you speak to any representative of the coroner's office?

5 10:1 A. Yes.

6 Q. And when was it that you spoke to a representative of
7 the coroner's office relative to Dennis Nicholson?

8 A. I don't recall.

9 Q. Was it within a month of his death?

10 10:1 A. I don't recall.

11 Q. What was it that prompted you to have contact with the
12 coroner's office regarding Dennis Nicholson?

13 A. He was a patient that I cared for and he had died and
14 I wanted to know what he died from basically.

15 10:1 Q. Would it be fair to say that your contact with the
16 coroner's office regarding Dennis Nicholson was on your own
17 volition as opposed to it being instructed by someone to
18 contact the coroner's office?

19 A. Yes.

20 10:1 Q. Who at the coroner's office did you speak to regarding
21 Dennis Nicholson?

22 A. I don't recall.

23 Q. Do you know whether or not it was the coroner who
24 actually performed the autopsy?

25 10:1 A. I don't recall.

1 10:19 Q. Did you request to speak with the coroner who
2 performed the autopsy on Dennis Nicholson?

I don't recall. I don't recall.

4 Q. Was your contact with the coroner's office relative to
5 10:19 Dennis Nicholson the first time you initiated contact with
6 the coroner's office regarding a patient who had been under
7 your care and treatment and subsequently died?

8 A. Can you repeat the question?

9 Q. Absolutely. You indicated that sometime after
10 10:19 learning that Dennis Nicholson died you contacted the
11 coroner's office because you had treated this patient,
12 learned he had died and you wanted to gain an understanding
13 of the cause of his death; correct?

14 A. Correct.

15 10:19 Q. My question is, prior to that, this Nicholson episode,
16 had you ever had an occasion to contact the coroner's office
17 to inquire as to the cause of death regarding a patient that
18 you had cared for?

19 A. Yes.

20 10:20 Q. And on how many separate occasions?

21 A. I don't recall.

22 Q. Was it more than once?

23 A. I don't recall. Probably.

24 Q. Can you recall, and I'm not interested in that
25 10:20 person's name, but can you recall a specific patient or

1 10:2 former patient whom you contacted the coroner's office
2 regarding their cause of death other than Dennis Nicholson?

3 A. No.

4 Q. Are you aware of any other patients that you provided
5 10:2 care and treatment for who ultimately died and you, in turn,
6 contacted the coroner's office who had a cardiac -- who you
7 were informed that the cause of death was cardiac in nature?

8 A. Can you repeat the question?

9 Q. Certainly. Based on your prior testimony, I
10 10:2 understand that you have a recollection of contacting the
11 coroner's office regarding the cause of death on a patient
12 or patients that you had previously treated separate from
13 Dennis Nicholson; correct?

14 A. Correct.

15 10:2 Q. You don't recall how many times that occurred, though;
16 correct?

17 A. Correct.

18 Q. My question is, regardless of how many times it
19 occurred, can you think of an incident where you had
20 10:2 provided treatment to a patient, subsequently learned that
21 they had died and contacted the coroner's office for a cause
22 of death and, in turn, learned that that cause of death was
23 cardiac in nature?

24 A. I don't recall.

25 10:2 Q. Since learning that Dennis Nicholson had died, have

1 10:22 you ever been provided a copy of the Med Center records
2 detailing his care and treatment at that facility?

3 A. I don't believe so.

4 Q. Have you ever requested to see the Med Center records
5 10:23 relative to Dennis Nicholson for February 2nd and/or
6 February 3rd of 1998?

7 A. No; I don't believe so.

8 Q. Getting back to your review of the Lakewood Hospital
9 emergency room record of February 2nd, 1998, as I understood
10 10:23 your previous testimony, at some point in time you did
11 review that record; correct?

12 A. Correct.

13 Q. And when you had the opportunity to review that
14 Lakewood emergency department record, were there any
15 10:23 inaccuracies or mis-statements contained in that record that
16 jumped out at you or you made note of?

17 A. Can I see a copy?

18 Q. I'm simply asking you based on your recollection at
19 this point.

20 10:23 A. Not that I'm aware of.

21 Q. Currently, doctor, are you board certified in
22 emergency medicine?

23 A. Yes.

24 Q. And when was it that you obtained your board
25 10:23 certification?

1 10:24 A. I don't recall. 1998, I believe, maybe. I would have
2 to look in my records. I don't know.

3 Q. At the time that you treated Dennis Nicholson in
4 February of 1998, were you board certified in emergency
5 10:24 medicine?

6 A. I don't recall. I would have to look in my records.

7 Q. Are those records readily available to you, meaning do
8 you have a file or some location in your home that would
9 have those, that information?

10 10:24 A. Yes.

11 Q. I would ask that you obtain that information, provide
12 it to Mr. Spisak and he, in turn, will give it to me.

13 MR. SPISAK: You want to know when he
14 became board certified?

15 10:24 MS. DIXON: Exactly.

16 BY MS. DIXON:

17 Q. Doctor, did you ever work as a physician at Parma
18 Community General Hospital?

19 A. Yes; I did.

20 10:24 Q. And was that in the emergency department at Parma?

21 A. Yes.

22 Q. Parma Hospital is not listed on your CV; correct?

23 A. No. I must have left that one out.

24 Q. Would there be a reason that you did not include Parma
25 10:24 Community General Hospital as part of your employment

1 10:2 experience on your curriculum vitae?

2 A. No. I just probably forgot. That's all.

3 Q. What period of time did you work at Parma Hospital's
4 emergency department?

5 10:2 A. 1996 to 1997.

6 Q. Was this a full-time position at Parma?

7 A. No. It was strictly part time for maybe four months.

8 Q. Under what circumstances did you stop working at Parma
9 emergency department?

10 10:2 A. I don't understand the question.

11 Q. You indicated earlier that you had worked at Parma's
12 ER on a part-time basis for approximately four months;
13 correct?

14 A. Correct.

15 10:2 Q. And at the end of that four-month period of time, you
16 no longer -- you ceased going to work at Parma; correct?

17 A. Correct.

18 Q. Why was that?

19 A. I was in my residency. Probably I worked there on an
20 10:2 occasion when I would get a free weekend. I probably didn't
21 have any more free weekends, and then I became a full-time
22 physician at Lakewood. It's probably because I didn't have
23 enough time.

24 Q. You say "probably." Do you have a specific
25 10:2 recollection as to why it was you severed your employment

1 10:2 with Parma?

2 A. No.

3 Q. Was the termination of your relationship with Parma
4 Community Hospital voluntary?

5 10:2 A. Yes.

6 Q. Who was your immediate supervisor at Parma?

7 A. Susan Longville, I believe.

8 Q. Dr. Bianchi, as you sit here today, who is your
9 current employer?

10 10:2 A. EPS.

11 Q. That's Emergency Professional Services?

12 A. Yes.

13 Q. How long have you been employed with EPS?

14 A. Three years.

15 10:2 Q. Is that three years on a full-time basis, or was it at
16 one point part time?

17 A. Full time.

18 Q. Currently do you have a full-time permanent assignment
19 with EPS?

20 10:2 A. Yes.

21 Q. And where is that?

22 A. Lakewood Hospital.

23 Q. How long has Lakewood Hospital been your full-time
24 placement?

25 10:2 A. Three years.

1 10:27 Q. In the time that you have served at Lakewood Hospital,
2 who is your immediate supervisor?

3 A. Mark Hastings.

4 Q. During the time that you have been full time with EPS
5 10:27 and assigned at Lakewood Hospital, have you held any other
6 part-time positions?

7 A. Yes.

8 Q. And where have you worked part time since being
9 employed by EPS?

10 10:28 A. MetroHealth Life Flight, Mt. Sinai Medical Center and
11 I believe Bedford Community Hospital.

12 Q. These part-time positions that you have just
13 identified for me, how often do you participate or provide
14 services to those entities?

15 10:28 A. As of now, I'm just full time at Lakewood and I don't
16 work at any other facilities.

17 Q. In the calendar year of 1998, did you participate in
18 any of these part-time positions?

19 A. I'm not sure.

20 10:28 Q. Do you have any documents that would reflect whether
21 or not you participated on a part-time basis with Metro Life
22 Flight, Mt. Sinai or Bedford Hospital?

23 A. I'm not sure.

24 Q. Do you know when it was that you provided part-time
25 10:29 services to either Metro Life Flight, Mt. Sinai or Bedford

1 10:29 Hospital?

2 A. I'm not sure.

3 Q. Is there a reason that you can't remember when it was
4 that you provided part-time services to any of those three
5 10:29 facilities?

6 A. It was three years ago. I would have to see if I have
7 a calendar and see if I have my schedules from three years
8 ago.

9 Q. How would the schedules from three years ago -- or let
10 10:29 me rephrase that.

11 Who assigned you to work shifts at Metro, Mt. Sinai
12 and/or Bedford Hospital? Was that through an agency, or
13 were those individual relationships with those facilities?

14 A. Individual relationships with those facilities.

15 10:29 Q. And would the human resource department or personnel
16 department for each of those facilities request you --
17 contact you and request that you provide them with services
18 on a given day?

19 A. No.

20 10:30 Q. Explain to me how it is that you would be scheduled to
21 provide services at each of those facilities?

22 A. I would contact the physician in charge of scheduling
23 and tell him the days I could work and he would let me know
24 or she would let me know if I could pick up a shift here or
25 10:30 there.

1 10:30 Q. Were you paid on a per diem basis in each of those
2 settings?

3 A. What do you mean by "per diem"?

4 Q. Would you get a fixed number of dollars for a shift
5 10:30 worked?

6 A. Correct.

7 Q. And, again, you don't recall whether or not you were
8 providing part-time services to any of those entities in
9 February of 1998?

10 10:30 A. I don't recall.

11 Q. Dr. Bianchi, other than the Nicholson matter, have you
12 ever been named as a defendant in a lawsuit?

13 A. Yes.

14 Q. Asserting professional negligence?

15 10:31 A. Yes.

16 Q. On how many separate occasions?

17 A. Once.

18 Q. Is that the Kitner matter?

19 A. Yes.

20 10:31 Q. As you sit here today, is the Kitner matter still
21 pending?

22 A. Yes.

23 Q. Are you aware of a trial date in that case?

24 A. I'm not sure.

25 10:31 Q. Has anyone notified you of a trial date?

1 10:31 A. I'm not sure. I have to look at my records.

2 Q. You indicated at the onset that you had had your
3 deposition taken in the past. Other than in conjunction
4 with the Kitner case, have you ever had your deposition
5 10:31 taken?

6 A. No.

7 Q. In the Kitner case, would you agree that the
8 Plaintiffs claim that you failed to diagnose a cardiac
9 problem in Sutton Kitner?

10 10:32 MR. SPISAK: Read that back to me.

11 (Record read as follows:)

12 THE NOTARY: "Question: In the
13 Kitner case, would you agree that the Plaintiffs claim that
14 you failed to diagnose a cardiac problem in Sutton Kitner?"

15 10:32 MR. SPISAK: Are you asking him does
16 he agree that that is what the claim is?

17 MS. DIXON: Yes.

18 MR. SPISAK: Because that's not quite
19 how it came out or was read back to me.

20 10:32 But the question to you is do you agree that that is
21 what the claim is.

22 A. I'm not sure if I understand the question.

23 Q. Dr. Bianchi, what is your understanding of the claim
24 being asserted against you in the matter of the Estate of
25 10:33 Sutton Kitner versus Lakewood Hospital, et al.?

1 10:3 A. I'm not sure if I understand the question.

2 Q. You're aware of the fact that you are a Defendant in a
3 case styled the Estate of Sutton Kitner versus Lakewood
4 Hospital, et al.; correct?

5 10:3 A. Correct.

6 Q. And there is a claim within that lawsuit pending
7 against you, James Bianchi, M.D., asserting a claim of
8 medical negligence; correct?

9 A. Correct.

10 10:3 Q. What is your understanding of what is being claimed
11 that you -- what is the act of negligence that you
12 understand is being claimed against you in that case?

13 A. I don't know.

14 Q. You don't know what assertions the plaintiffs have
15 10:3 made against you in the Kitner matter?

16 A. No.

17 Q. Would you agree that Mr. Kitner died shortly after
18 your treatment of him at the Lakewood Hospital emergency
19 department?

20 10:3 A. Yes.

21 Q. Do you know what Mr. Kitner's cause of death was?

22 A. I don't know. I would have to look to refresh my
23 mind.

24 Q. Would you agree with me that Mr. Kitner died of a
25 10:3 cardiac episode?

1 10:34 MR. SPISAK: He's already said he
2 doesn't know, but go ahead, doctor.

3 BY MS. DIXON:

4 Q. Does that refresh your recollection at all,
5 10:34 Dr. Bianchi?

6 A. Possibly, yes.

7 Q. Do you know how long after you saw and treated Sutton
8 Kitner at the Lakewood emergency department he died?

9 A. I'm not sure.

10 10:34 Q. Would you agree that it was less than 12 hours?

A. I'm not sure.

12 Q. Is it consistent with your recollection that during
13 your deposition in the Kitner matter, you claimed that you
14 had offered Mr. Kitner an EKG on several occasions which he
15 10:35 refused?

16 A. Can you restate the question?

17 Q. Certainly. Actually, let me ask you a predicate
18 question. Do you recall when your deposition was taken in
19 the Kitner matter?

20 10:35 A. I don't recall.

Q. Do you recall having your deposition taken in the
22 Kitner matter?

23 A. Yes.

24 Q. Since the deposition was taken, were you provided a
25 10:35 transcript of that testimony to review?

1 10:3 A. No.

2 Q. You do, though, have a recollection of having your
3 deposition taken; correct?

4 A. Correct.

5 10:3 Q. My question is, is it consistent with your
6 recollection that during the course of your testimony in the
7 Kitner -- your deposition in the Kitner matter, that you
8 testified that during his time in the Lakewood Hospital
9 emergency department, you offered Sutton Kitner an EKG on
10 10:3 several occasions, however, he refused?

11 A. Correct.

12 Q. Is it likewise consistent with your recollection of
13 your testimony in the Kitner matter that you claimed Sutton
14 Kitner was feeling better before he left the emergency room?

15 10:3 MR. MOSCARINO: Objection to questions
16 on the Kitner case as far as being relevant.

17 BY MS. DIXON:

18 Q. You can answer.

19 A. Can you repeat the question?

20 10:3 Q. Do you recall giving testimony in your deposition in
21 the Kitner matter that prior to leaving the emergency
22 department on the day you treated Sutton Kitner, he told you
23 that he was feeling better?

24 A. I don't recall. I would have to --

25 10:3 Q. Doctor, would you agree that the pain from a heart

1 10:3' attack may be intermittent?

2 A. Yes.

3 Q. Would you agree the pain -- a patient's pain from an
4 aortic dissection can also be intermittent?

5 10:3' A. Yes.

6 Q. Would you agree that the pain associated with an
7 aortic dissection can wax and wane?

8 A. Yes.

9 Q. Would you agree that the pain a patient experiences
10 10:3' associated with an aortic dissection is more often than not
11 most severe at its onset?

12 A. Yes.

13 Q. Do you have a specific recollection of the patient
14 Dennis Nicholson?

15 10:38 A. Yes.

16 Q. And how is it that you recall Mr. Nicholson?

17 A. I don't understand the question.

18 Q. Did you have a recollection of Dennis Nicholson
19 separate and apart from your review of the medical records
20 10: that relate to his care and treatment?

21 A. Yes.

22 Q. What is it that you recall about Dennis Nicholson?

23 MR. SPISAK: You can answer that.

24 A. I recall that he was a patient that I saw, that he was
25 10:38 complaining of some back pain after playing pool for several

1 10:38 hours. He did not seem to be in severe distress.

2 Q. Do you recall anything else about Mr. Nicholson?

3 A. No.

4 MR. SPISAK: I want the record to
5 10:39 reflect that you're asking him at this point independent
6 recall without the benefit of any records.

7 MS. DIXON: Absolutely.

8 BY MS. DIXON:

9 Q. Dr. Bianchi, let me ask you this: When I say the name
10 10:39 Dennis Nicholson, are you able to conjure a mental image of
11 him?

12 A. Vaguely.

13 Q. What is your mental image that you are able to conjure
14 as to Mr. Nicholson?

15 10:39 MR. SPISAK: You can answer it.

16 A. Just a gentleman that came to the emergency room
17 complaining of pain in his back, seemed to be no acute
18 distress.

19 MR. SPISAK: Are you asking for a
20 10:39 physical description?

21 BY MS. DIXON:

22 Q. Are you able to give me a physical description of
23 Mr. Nicholson?

24 A. No.

25 10:41 Q. Other than the medical records that relate to the

1 10: February 2nd, 1998 emergency room record, have you kept any
2 personal notes or diaries regarding the care and treatment
3 you provided to Mr. Nicholson?

4 A. No.

5 10: Q. Once you learned that Mr. Nicholson had died, did you
6 undertake any investigation or review of materials relative
7 to aortic dissection?

8 A. No.

9 Q. Doctor, based on your recollection of Mr. Nicholson at
10 10: the time that he was discharged from your care on
11 February 2nd of 1998, was he in a better or an improved
12 condition than he was when he presented?

13 A. Yes.

14 Q. And how is it that you were able to appreciate that
15 10: change in condition?

16 A. He seemed to be sleeping and seemed to be comfortable.

17 Q. During the time that Mr. Nicholson was in the Lakewood
18 Hospital emergency department, you performed two physical
19 examinations; correct?

20 10: A. I don't recall. I would have to look at the record.

21 Q. Based exclusively on your independent recollection, do
22 you recall ever questioning the reality of the pain that
23 Mr. Nicholson was complaining of on presentation?

24 MR. SPISAK: I'm going to object to
25 10: these kinds of question based solely on independent

1 10:4 recollection, if that's the question, and if you can answer
2 it, answer it. If you can't answer it, tell her you can't
3 answer it. She wants only independent recollection without
4 the records in front of you.

5 10:4 A. I can't recall. It's normal practice for me to have
6 such.

7 Q. What's normal practice for you?

8 A. Can you repeat the question?

9 Q. My question was, based on your independent
10 10:4 recollection of Dennis Nicholson, upon examination of the
11 patient, did you question the reality of his pain?

12 A. I don't understand the question.

13 Q. Doctor, I'm assuming that in the course of your
14 practice of emergency medicine, you've had situations where
15 10:4 a patient presents and complains of pain which you do not
16 believe -- which upon physical exam, you do not believe is
17 reality based; correct? In layman s terms, that the patient
18 is faking or they're a drug seeker of some kind?

19 A. Occasionally, yes.

20 10:4 Q. My question is, based on your recollection of Dennis
21 Nicholson, did you question the reality of his pain?

22 A. No.

23 Q. Did you size him up as a drug seeker?

24 A. No.

25 10:4 Q. Did you believe he was a faker or hypochondriac?

1 10:44 A. No.

2 Q. You believed that pain he was complaining of was real;
3 correct?

4 A. Correct.

5 10:44 Q. And, in fact, in the course of your examination of
6 Mr. Nicholson, you did have some objective findings of pain;
7 correct?

8 A. Correct.

9 Q. Again, doctor, based on your recollection, at any
10 10:44 point in time during your treatment and care of
11 Mr. Nicholson did he refuse any care or treatment you
12 offered to him?

13 A. Not that I'm aware of.

14 Q. Do you have any, during the -- let me rephrase that.

15 10:44 During the time that you have practiced emergency
16 medicine at the Lakewood Hospital emergency department, are
17 there any protocols or procedures in place to note a refusal
18 in a patient's chart?

19 A. I'm not sure if I understand the question.

20 10:45 Q. You have, in fact, had instances where you have
21 recommended either a diagnostic test or some treatment
22 modality for a patient and they have refused; correct?

23 A. Correct.

24 Q. Is there any protocol or procedure in existence in the
25 10:45 Lakewood Hospital emergency department to chart such a

1 10:4 refusal?

2 A. I'm not sure if there's a procedure for that.

3 Q. Doctor, do you have a personal protocol and procedure
4 for charting a patient's refusal of care or treatment while
5 10:4 they are being seen by you?

6 A. No.

7 Q. Is it your practice to chart a refusal of patient care
8 and treatment?

9 A. Not necessarily.

10 10:4 Q. Dr. Bianchi, you indicated in one of your prior
11 answers that when Dennis Nicholson was discharged from the
12 Lakewood Hospital emergency department, he was in an
13 improved condition; correct?

14 A. Correct.

15 10:46 Q. Are you aware of how it was that Dennis Nicholson made
16 his way into the emergency department? And what I mean by
17 that, do you know whether or not he was able to ambulate?

18 A. He walked to his room, I believe.

19 Q. When Dennis Nicholson was discharged from the
20 10:46 emergency department, do you know how it was that he left
21 the ER? By what means?

22 A. I don't recall.

23 Q. Doctor, other than the medical records that we have
24 talked about you reviewing, the Lakewood ER record and the
25 10:4 autopsy report, prior to today's deposition, have you

1 10:47 reviewed any transcripts of other individuals who have been
2 deposed in conjunction with this matter, specifically the
3 deposition of Dr. Allsop or the deposition of Dr. Parris?

4 A. No.

5 10:47 Q. Have you received and/or reviewed any reports of
6 physicians who have been -- who have rendered opinions on
7 behalf of the Plaintiffs in this matter?

8 A. No.

9 Q. Specifically a report of Dr. Victory, a Dr. Pyeritz or
10 10:47 a Dr. Wei?

11 MR. SPISAK: I did not send him any
12 of those reports.

13 A. I did not read any of those; no.

14 Q. Doctor, I think this would be a good time to tell you
15 10:47 I'm interested in your recollection of events and your
16 recollection of what you have reviewed, so if you can
17 confine your answers to what you know and what you recall,
18 that's what I want to hear about. Okay?

19 MR. SPISAK: I think that's what you
20 10:48 have been doing, isn't it, doctor?

21 THE WITNESS: I thought so; yes.

22 MR. SPISAK: That's what I thought,
23 too.

24 BY MS. DIXON:

25 10:48 Q. Have you seen a report that has been prepared by

1 10:48 Dr. Richard Krause?

2 A. No.

3 Q. Doctor, since obtaining your license to practice
4 medicine, has it ever been suspended, revoked or called into
5 10:48 question?

6 A. No.

7 Q. Have you ever been treated for a drug or alcohol
8 problem?

9 A. No.

10 10:48 Q. Have you ever been treated for emotional problems or
11 mental illness?

12 A. No.

13 Q. You indicated earlier that you had seen a copy of the
14 coroner's report relative to Dennis Nicholson; correct?

15 10:48 A. Correct.

16 Q. You had also had a conversation with some
17 representative of the coroner's office?

18 A. Correct.

19 Q. Based on both that telephone conversation -- was it a
20 10:48 telephone conversation?

21 A. Yes.

22 Q. Based on that telephone conversation and your review
23 of the coroner's report, what is your understanding as to
24 Dennis Nicholson's cause of death?

25 10:49 A. Aortic dissection.

1 10:4 Q. Would you agree that the symptoms when you saw Dennis
2 Nicholson on February 2nd of 1998 were, in fact, likely
3 caused by an aortic dissection?

4 MR. SPISAK: Note my objection. You
5 10:4 may answer if you can.

6 A. I'm not sure.

7 Q. What is it that causes your uncertainty as to that
8 answer?

9 A. He was complaining of back pain that seemed to be
10 10:4 muscular in nature.

11 Q. Doctor, you were on duty in the Lakewood emergency
12 department on the evening of February 3rd, 1998 when Dennis
13 Nicholson was brought in and efforts to revive him were not
14 successful; correct?

15 10:50 A. I would have to look at a, you know, at a -- do you
16 have some sort of copy of when he was brought back?

17 Q. Doctor, let me represent to you Dennis Nicholson was
18 brought to the Lakewood emergency room on the evening of
19 February 3rd, 1998.

20 10:50 My question is, do you have a recollection of being
21 present when Dennis Nicholson was brought in and was unable
22 to be revived?

23 A. Vague, very vague.

24 Q. You only have a vague recollection of a patient being
25 10:5 brought in who you --

1 10:50 A. Vague; yes.

2 Q. Let me finish my question, please. -- who you had
3 treated within the prior 40 hours and was unable to be
4 revived? The only recollection you have of that is vague?

5 10:50 A. I remember, if that's when he was brought in, I
6 remember bits and pieces. I don't remember details.

7 Q. So you do recall being on duty when Dennis Nicholson
8 was brought back to Lakewood on February 3rd?

9 A. Correct.

10 10:50 Q. And were you -- was there more than one emergency
11 physician on duty at that time?

12 A. Yes.

13 Q. The other physician was Dr. Hastings?

14 A. Correct.

15 10:50 Q. Was that standard practice that Dr. Hastings was
16 working in tandem with you that night, or was Dr. Hastings
17 called in specifically to attempt to treat Mr. Nicholson?

18 A. No. I was relieving Dr. Hastings. He was working
19 until eleven o'clock and I came in at eleven o'clock to
20 10:50 relieve him.

21 Q. In your responses to Interrogatory number 17 in this
22 case, you indicated that you spoke with Dr. Hastings in
23 February of 1998 regarding the incidents involving this,
24 this Nicholson case. Do you recall providing that response?

25 10:50 A. I do not.

1 10:5 Q. Do you recall having a conversation with Dr. Hastings
2 regarding Dennis Nicholson in February of 1998?

3 A. I do not.

4 Q. Have you ever had a conversation with Dr. Hastings
5 10:5 regarding the care and treatment provided to Dennis
6 Nicholson?

7 A. I don't recall.

8 Q. Was Dr. Hastings in February of 1998 your immediate
9 supervisor?

10 10:5 A. Yes.

11 Q. Do you know a woman by the name of Sarah Doan,
12 D-O-A-N?

13 A. Yes.

14 Q. And would you agree with me that in February of 1998,
15 10:5 Miss Doan was a nurse working in the emergency department of
16 Lakewood Hospital?

17 A. I would have to see a copy of the report. I believe
18 so. You're asking me to just go on recollection?

19 MR. SPISAK: I think the question is
20 10:5 was, in general, was she an ER nurse in February of '98, not
21 at any particular time, if you know.

22 A. As far as I'm aware, yes.

23 Q. Do you know Miss Doan from any other source other than
24 Lakewood emergency department?

25 A. No.

1 10:52 Q. Are you social with Miss Doan?

2 A. No.

3 Q. Would it be fair to characterize your relationship
4 with Miss Doan as exclusively professional in nature?

5 10:53 A. Yes.

6 Q. At any point in time have you had a conversation
7 regarding -- with Sarah Doan regarding the care and
8 treatment Dennis Nicholson received in the Lakewood
9 emergency department on February 2nd of 1998?

10 10:53 A. Not that I can recall.

11 Q. Doctor, I'm going to hand you a six-page Lakewood
12 emergency room record which I have had marked as Exhibit 2
13 to your deposition. You can take an opportunity to look
14 through that if you need to.

15 MS. DIXON: Off the record.

16 (Thereupon, a discussion was had off the record.)

17 BY MS. DIXON:

18 Q. Doctor, before going off the record, I handed you what
19 I marked as Exhibit Number 2 which is a six-page emergency
20 10:55 room record of February 2, 1998 for Mr. Dennis Nicholson;
21 correct?

22 A. Yes.

23 Q. Have you had an opportunity to review that document?

24 A. Yes.

25 10:58 Q. Directing your attention to the first page which is

1 10:58 the patient registration form, what time did Dennis
2 Nicholson present to the Lakewood emergency room?

3 A. 1:45 a.m.

4 Q. Based on your experience in treating patients in the
5 10:58 emergency department, would you agree, in general, people
6 who present in the middle of the night generally have more
7 acute problems than those who come during the day?

8 MR. SPISAK: I'll object to the
9 reference "middle of the night." I don't know if that's the
10 10:58 middle of the night or not.

11 A. Disagree. I disagree with that statement.

12 Q. You indicated that you do have some independent recall
13 of Dennis Nicholson?

14 A. Yes.

15 10:58 Q. Do you have an independent recollection of,
16 recollection of his wife Colleen?

17 A. No, not really. No.

18 Q. Dr. Bianchi, who is Shanker Raja, R-A-J-A?

19 A. I don't know.

20 11:00 Q. Would you agree that on the patient registration form,
21 Shanker Raja, M.D.'s name is listed two times?

22 A. Yes.

23 Q. And that's not a physician you're familiar with?

24 A. No.

25 11:00 Q. Are you -- in February of 1998, were you familiar with

1 11:0 all the physicians that covered shifts in the Lakewood
2 emergency room?

3 A. Yes.

4 Q. And Dr. Raja is not one of those physicians?

5 11:0 A. No.

6 Q. Are you aware of who it was that would have elicited
7 the information contained under "comments" in the middle
8 section of the patient registration form?

9 A. Being the registration section?

10 11:0 Q. Based on your experience within the Lakewood emergency
11 department, how is the information contained in the comments
12 section elicited?

13 A. From the patient or patient's family or friends.

14 Q. Whomever accompanied the patient to the emergency?

15 11:0 A. Correct.

16 Q. On the lower section of the patient registration form
17 where it says "patient or nearest relative," would you agree
18 it appears to be signed by Colleen M. Nicholson?

19 A. Yes.

20 11:0 Q. Does that give you -- does that lead you to believe
21 that Mrs. Nicholson is the individual who provided the
22 information contained in the comment section?

23 MR. SPISAK: Objection.

24 A. No. Can you repeat the question?

25 11:0 Q. My question is, based on the fact that it appears

1 11:0 Mrs. Nicholson signed the patient registration form, does
2 that, based on your experience working in the Lakewood ER,
3 lead you to believe that it was Mrs. Nicholson who provided
4 the information contained in the comment block?

5 11:0 A. I don't know.

6 Q. Doctor, do you know why Colleen Nicholson signed for
7 her husband on the patient registration form?

8 A. No.

9 Q. Under what circumstances do you expect the "nearest
10 11:0 relative" to sign in lieu of the patient?

11 A, There are many circumstances which the nearest
12 relative would sign for the patient.

13 Q. Tell me what some of those circumstances would be.

14 A. If the patient cannot speak for himself in the
15 11:0 emergency room, if it facilitates the patient's care for the
16 family member or friend to sign the paper, if the patient is
17 unable to hold a pen.

18 Q. Would you disagree if I told you that on presentation
19 to the emergency department, Dennis Nicholson was too ill to
20 11:0 sign for himself and that's why Mrs. Nicholson did?

21 A. Would I disagree?

22 Q. Yes.

23 A. Yes.

24 Q. And why would you disagree?

25 11:0 A. Because he was moving all of his extremities; he was

1 11:0 able to speak; he appeared to be in no acute distress other
2 than having his pain.

3 Q. Having his pain what?

4 A. Having his back pain. I don't --

5 11:0 Q. So based on that response, is there any reason that
6 you can think of as to why Mrs. Nicholson would have
7 executed the patient registration form?

8 A. No.

9 Q. Were you aware when you first saw Dennis Nicholson
10 11:0 that his presenting complaints were nausea, vomiting, chest
11 and back pain?

12 A. No.

13 Q. Would you agree with me that in the comment section of
14 the patient registration form, it indicates, "patient states
15 11:0 nausea and vomiting, chest and back pain"?

16 A. Correct.

17 Q. Now, the patient registration form, is that
18 information you would have available to you or a document
19 you would have had available to you at the time that you
20 11:0 initially examined Mr. Nicholson?

21 A. No. Sometimes it is. Sometimes it's available and
22 sometimes it's not.

23 Q. And as it related to Mr. Nicholson, do you know
24 whether or not that information was available to you,
25 11:0 meaning the patient registration form?

1 11:04 A. It was not. I don't recall seeing it.

2 Q. You have a specific recollection of not having the
3 patient registration form available to you at the time that
4 you initially evaluated --

5 11:05 A. Actually, I'm not sure. I don't recall.

6 Q. Would you agree that prior to conducting your initial
7 assessment of a patient, it's important to have an
8 understanding of their presenting complaints?

9 A. Yes.

10 11:05 Q. Based on your experience working within the Lakewood
11 Hospital emergency department, can you tell me what
12 determines whether or not the patient registration form is
13 completed prior to the time you, as the physician, initially
14 evaluates a patient?

15 11:05 A. Can you repeat the question?

16 Q. Certainly. You have told me that you worked at
17 Lakewood emergency room for approximately three years as an
18 ER physician; correct?

19 A. Yes.

20 11:05 Q. And you indicated in one of your prior answers that
21 sometimes the patient registration form is prepared and
22 available prior to examination of the patient and sometimes
23 it's not; correct?

24 A. Correct.

25 11:05 Q. Based on your three-year experience at the Lakewood

1 11:0 emergency department, can you tell me what circumstances
2 determine when the patient registration form is available to
3 you prior to exam versus when it is not available?

4 A. Depends on the, sometimes, the condition of the
5 11:0 patient; it depends on the volume of patients in the
6 emergency room at the time the patient is registered; it
7 depends upon whether the computers are working.

8 Q. Do you know what the patient census was the early
9 morning of February 2, 1998?

10 11:0 A. I don't recall.

11 Q. Do you have a recollection of how busy the ER was at
12 the time that Dennis Nicholson presented?

13 A. I believe it wasn't very busy.

14 Q. Do you recall whether or not you had any critical
15 11:0 patients at the time Dennis Nicholson presented?

16 A. I really can't recall.

17 Q. Would you agree that -- let me rephrase the question.

18 Dr. Bianchi, is it ever your practice to speak to the
19 family member or friend that accompanied a patient to the
20 11:0 emergency department to gain an understanding of what
21 brought them to the ER that day?

22 A. Yes. Sometimes it is necessary.

23 Q. Do you know whether or not you ever spoke to
24 Mrs. Nicholson regarding what brought Dennis to the
25 11:0 emergency department on February 2, 1998?

1 11:0 A. I don't recall.

2 Q. If, in fact, you had spoken to Mrs. Nicholson
3 regarding what Dennis' presenting complaints were, would you
4 expect that would be noted in your chart somewhere?

5 11:0 A. Sometimes it is noted and sometimes it's not.

6 Q. Based on your review of what I marked as Exhibit
7 Number 2, is there any indication that you spoke with
8 Mrs. Nicholson regarding Dennis' presenting complaints?

9 A. No.

10 11:0 Q. Doctor, I want to talk about a few terms and get some
11 definitions in place so that we're both referring to the
12 same thing.

13 Can you tell me what a differential diagnosis is?

14 A. It's a list of possibilities that are the cause for a
15 11:0 person's presenting complaint or presenting illness.
16 Basically it's a list of possibilities of illnesses for a
17 patient.

Q. Based on the symptoms they present with?

A. Correct.

Q. Define the term "aortic dissection."

21 A. Basically it's a separation of the layers of the aorta
22 in which they separate. That's enough.

23 Q. What about the term "high index of clinical
24 suspicion"?

25 11:0 A. I think that's self explanatory. Basically it's how

1 11:0 suspicious you are for an or how suspicious you are for a
2 given disease process, I guess. High index of clinical
3 suspicion.

4 Q. Would you agree or are you Comfortable with the
5 11:0 definition that it's a heightened awareness for conditions
6 that present, can present, with a variety of symptoms?

7 A. Correct.

8 a. Doctor, can you identify for me some of the cardiac
9 conditions for which an emergency physician should have a
10 11:0 high index of clinical suspicion?

11 MR. SPISAK: Under what
12 circumstances?

13 BY MS. DIXON:

14 Q. Just as a general principle -- let me ask it a little
15 11:1 bit differently. Doctor, given a patient's symptoms, would
16 you agree with me an aortic dissection is a condition in
17 which an emergency room physician should have a high index
18 of clinical suspicion?

19 MR. SPISAK: Wait a minute. You said
20 11:1 given the symptoms. We don't know what symptoms you're
21 talking about. I don't think that's a fair question if you
22 are not going to --

23 A. What's the question?

24 Q. Let me ask the question differently. Doctor, would
25 11:1 you agree that an initial assessment with a patient of chest

1 11:10 pain, it's important to diagnose -- I'm sorry, that a
2 diagnosis of an acute coronary problem be considered along
3 with other life-threatening conditions?

4 A. Yes.

5 11:10 MR. SPISAK: All right.

6 A. What's the question again?

7 MR. SPISAK: I think you answered it.
8 Go ahead. Ask your next question.

9 BY MS. DIXON:

10 11:11 Q. Actually --

11 A. What's the question?

12 Q. Would you agree that initial assessment of a patient
13 with chest pain, it's important that the diagnosis of acute
14 coronary problems be considered along with other
15 11:11 life-threatening conditions?

16 A. Yes.

17 Q. In an emergency room setting, doctor, would you agree
18 that it's important to rule out the most serious or
19 life-threatening diseases or conditions first once you have
20 11:11 established the same in your differential diagnosis?

21 A. Yes.

22 Q. In the event that a differential diagnosis contained
23 pneumothorax in a patient complaining of chest pain, how
24 would you rule out pneumothorax?

25 11:11 A. By history and physical as well as any radiographic

1 11:11 studies needed.

2 Q. Such as a chest film?

3 A. Yes.

4 Q. Doctor, assume that your differential diagnosis in an
5 11:12 emergency room setting included aortic dissection. How
6 would you rule that condition in or out?

7 MR. SPISAK: Before you answer that,
8 I want that read back, please.

9 (Record read as follows:)

10 11:11 THE NOTARY: "Question: Doctor,
11 assume that your differential diagnosis in an emergency room
12 setting included aortic dissection. How would you rule that
13 condition in or out?"

14 A. By history and physical as well as any type of
15 11:12 radiologic studies as needed.

16 Q. What radiologic studies would you utilize to rule out
17 an aortic dissection?

18 A. There's multiple ones. You can use CAT scan, MRI
19 scan, echo, angiography.

20 11:13 Q. Would you agree that the diagnosis of aortic
21 dissection cannot be made only by performing a physical
22 exam?

23 MR. SPISAK: Once again, read that
24 back, please.

25 (Record read as follows:)

10 11:14 physical exam.

11 BY MS. DIXON:

12 Q. Based only on physical exam.

13 A. No.

14 Q. And your answer to that question I'm assuming relates
15 11:14 to ruling in an aortic dissection or ruling out an aortic
16 dissection?

17 MR. SPISAK: That's a different
18 question.

19 MS. DIXON: That's a follow-up
20 11:14 question.

21 MR. SPISAK: Tell me what the
22 question is because it's not clear.

23 BY MS. DIXON:

24 Q. Doctor, you indicated that, as I understood your
25 11:15 response to the last question which was you cannot -- let

1 11:1 me -- would you agree that the diagnosis of aortic
2 dissection cannot be made only by performing a physical
3 exam?

4 MS. DIXON: Actually, Denise, why
5 11:1 don't you read the question back to which he responded?

6 (Record read as follows:)

7 THE NOTARY: "Question: Would you
8 agree that the diagnosis of aortic dissection cannot be made
9 only by performing a physical exam?"

10 11:1 MR. SPISAK: You have already
11 answered that, so go ahead. She s going to ask another
12 question.

13 BY MS. DIXON:

14 Q. You indicated in one of your previous answers that the
15 11:1 diagnosis of aortic dissection is a difficult one to make;
16 is that correct? Did I understand your testimony correct?

17 A. Yes.

18 Q. And is the reason you indicated that aortic dissection
19 is a difficult diagnosis to make because that patient can
20 11:1 present with a variety of symptoms and clinical
21 presentation?

22 A. Correct.

23 Q. Would you agree with the statement -- would you agree
24 with me that by virtue of aortic dissection having a variety
25 11:1 of presentations, that mandates a high index of clinical

1 11:1 suspicion?

2 MR. RAMM: Objection.

3 MR. SPISAK: Note my objection, as
4 well.

5 11:1 A. I don't think I understand the question.

6 Q. Well, you have indicated that aortic dissection is a
7 difficult diagnosis to make, and you have explained to me
8 the reason that diagnosis is difficult to make is because
9 the patient can present with a variety of symptoms; correct?

10 11:1 A. Correct.

11 Q. And I'm assuming that there are a laundry list of
12 symptoms that may suggest a patient is suffering from an
13 aortic dissection; correct?

14 A. Correct.

15 11:1 Q. In the event you have a patient that presents with one
16 or more of the symptoms that are suggestive of aortic
17 dissection, would you agree that a physician treating that
18 patient must have a high index of clinical suspicion to rule
19 out aortic dissection?

20 11:1 A. No.

21 MR. RAMM: Objection.

22 BY MS. DIXON:

23 Q. But you do agree that in the event a physician has
24 included aortic dissection in a differential diagnosis, that
25 11:1 that condition cannot be ruled in or ruled out by physical

1 11:19 exam alone?

2 MR. SPISAK: Objection. That's not
3 what he said. Go ahead, you can answer it.

4 A. I'm not sure if I understand the question.

5 11:19 Q. The question is, doctor, in a patient in which aortic
6 dissection is part of a physician's differential diagnosis,
7 would you agree with me that aortic dissection cannot be
8 ruled in or ruled out by physical exam alone?

9 A. Yes.

10 11:19 MR. SPISAK: Read that question and
11 answer back. You're looking at me quizzically. I'm not
12 sure you understood the question.

13 MS. DIXON: Then he shouldn't have
14 answered it.

15 11:19 I told you at the beginning if you didn't understand a
16 question, ask me to rephrase it. I'd be happy to do so.

17 A. You need to rephrase all of them.

18 MR. SPISAK: Read the question back
19 and I want you to, you know, so there's no misunderstanding,
20 11:20 make sure you understood that and answer the question.

21 (Record read as follows:)

22 THE NOTARY: "Question: The question
23 is, doctor, in a patient in which aortic dissection is part
24 of a physician's differential diagnosis, would you agree
25 11:19 with me that aortic dissection cannot be ruled in or ruled

1 11:19 out by physical exam alone? Answer: Yes."

2 MR. SFISAK: She's asking whether it
3 can be ruled in or ruled out with just a physical exam.

4 A. Correct. That's fine.

5 11:21 Q. You're satisfied with your answer to that question?

6 MR. SPISAK: it can or it can't?

7 MS. DIXON: He's had it read back
8 twice.

9 MR. SFISAK: I think you're still
10 11:21 confused. That's why I'm asking.

11 THE WITNESS: I don't know.

12 MR. SPISAK: I think the question is
13 can it be ruled out with a physical exam.

14 THE WITNESS: Can aortic dissection be
15 11:21 ruled out or ruled in with a physical exam?

16 MR. SFISAK: Yeah.

17 A. No. I mean, the definitive tests, you know -- no. I
18 would just say no. I'm not sure if I understand the
19 question.

20 1 :21 Q. Doctor, would you agree that the definitive study --
21 let me rephrase that. Is there a tool available to you to
22 definitively rule in or rule out aortic dissection?

23 A. Yes.

24 Q. And what is that tool?

25 11:22 A. Well, there's several different ones. I listed them.

1 11:2 Q. And that would be the radiological studies such as CT
2 scan, MRI, an echo, angiography?

3 A. Correct.

4 Q. Okay. And each of those radiological studies that we
5 11:2 have just identified, based on your experience, education
6 and training, are reliable tests for diagnosing aortic
7 dissections?

8 A. For the most part.

9 Q. Doctor, would you agree that a thorough and accurate
10 11:2 history is important in assisting you, as a physician, in
11 ruling in or ruling out an aortic dissection?

12 A. Yes. That's part of the process.

13 Q. In diagnosing an aortic dissection, do you consider
14 the type of pain a patient is experiencing? What I mean by
15 11:2 that is how the patient would describe the pain.

16 A. Yes.

17 Q. Would you agree that the location of the pain is an
18 important factor in assisting you in the diagnosis of an
19 aortic dissection?

20 11:2 A. Yes.

21 Q. Would you agree that the timing of when the pain began
22 is an important factor in assisting you in diagnosing an
23 aortic dissection?

24 A. Yes.

25 11:2 Q. Doctor, does a sudden onset of either back pain or

1 11:2 chest pain in someone without a history of back problems
2 have any significance in the diagnosis of an aortic
3 dissection?

4 MR. RAMM: Objection.

5 11:2 A. I'm not sure. It all depends on the situation or the
6 patient presenting with the symptoms.

7 Q. My question is, in an individual without a history of
8 back problems or history of injury, does a sudden onset of
9 back or chest pain have any significance in the diagnosis of
10 11:2 an aortic dissection?

11 MR. RAMM: Objection.

12 A. I'm not sure.

13 Q. Would symptoms of nausea and vomiting in association
14 with an acute onset of chest or back pain have any
15 11:2 significance regarding the diagnosis of an aortic
16 dissection?

17 MR. RAMM: Objection.

18 A. I'm not sure.

19 Q. Would the symptom of blurred vision in association
20 11:2 with the acute onset of chest or back pain have any
21 significance regarding the diagnosis of an aortic
22 dissection?

23 A. I'm not sure.

24 MR. RAMM: Objection.

25 BY MS. DIXON:

1 11:25 Q. Doctor, would any of the above symptoms in association
2 with acute onset of chest or back pain make a cardiac
3 problem more likely the reason or cause of the patient's
4 pain?

5 11:25 A. I'm not sure.

6 Q. Doctor, would you agree that the symptoms from an
7 aortic dissection may come and go, be intermittent in
8 nature?

9 A. Yes.

10 11:25 Q. Would you agree that pain from a dissecting aorta may
11 increase and decrease over time?

12 A. Yes.

13 Q. Would you also agree that the symptom of nausea may
14 accompany an aortic dissection?

15 11:25 A. Yes.

16 Q. And that the symptom of nausea in the face of an
17 aortic dissection may come and go?

18 A. Yes.

19 Q. Would you agree that the pain from an aortic
20 11:26 dissection may change in character over time?

21 A. Yes.

22 Q. Would you agree that the pain from an aortic
23 dissection may change in location over time?

24 A. Yes.

25 11:26 Q. Doctor, during the time that you spoke or you treated

1 11:26 Q. Dennis Nicholson on February 2nd of 1998, what information
2 did you elicit from him regarding his physical complaints?

3 A. The information listed in my history.

4 Q. And what information is that?

5 11:26 A. It's listed in the history.

6 Q. I'm sorry?

7 A. It's listed in the history.

8 Q. Tell me what it is. You have the documents in front
9 of you.

10 11:26 A. You want me to read it? "Patient's is a 42 year old
11 black male who states he -- that he was playing pool earlier
12 tonight and he played about five games of pool and about two
13 hours ago his back began hurting. Patient states that he
14 was also drinking some cranberry juice earlier today. He
15 11:26 states that the pain was sort of acute in onset and he said
16 that he had some vomiting earlier tonight and some blurred
17 vision, but now his back seems to be a little bit better.
18 The patient denies any chest pain, shortness of breath or
19 numbness or weakness in his arms and legs.'"

20 11:27 Q. And there's nothing in your record to indicate that
21 you spoke with Mrs. Nicholson regarding what brought Dennis
22 to the emergency department on 2/2/98; correct?

23 A. Correct.

24 Q. Doctor, if you can set side by side the first page,
25 11:27 the registration sheet from Dennis' chart, and the first

1 11:2' typewritten page of the patient record. We talked about the
2 fact that under the comment section of the patient
3 registration form, it indicates, patient states nausea and
4 vomiting, chest and back pain; correct?

5 11:2' A. Correct.

6 Q. Would you agree that nowhere in your history of
7 present illness contained in the patient record is there an
8 indication of chest pain?

9 A. He denies it. I state, patient denies any chest pain.

10 11:28 Q. Are you able to offer any explanation for the
11 discrepancy in the information between Dennis Nicholson's
12 complaint of the chest pain on the registration sheet and
13 your note that says, "the patient denies any chest pain"?

14 A. Patients often change their story, give different
15 11:28 histories, are inconsistent in what their complaints are and
16 are often very vague in their complaints in general.

17 Q. In the face of vague complaints or a change in a
18 patient's condition while they're in the emergency
department, would you agree it's the obligation of the
physician to elicit the basis of the change in complaints?

21 A. I'm not sure. I think the obligation -- well, I'm not
22 sure.

23 Q. Is it possible that Mr. Nicholson had chest pain when
24 he was being registered and did not have chest pain when you
25 11:29 examined him?

1 11:21 MR. MOSCARINO: Objection.

2 MR. SPISAK: I'm going to object as
3 to possibilities. I don't know how you could possibly know
4 that.

5 11:21 A. Anything is possible.

6 Q. And, in fact, in the face of an aortic dissection,
7 oftentimes a patient's pain changes; correct?

8 A. Correct.

9 Q. And there was at least some information provided at
10 11:21 the Lakewood emergency room that Mr. Nicholson was suffering
11 from chest pain?

12 MR. SPISAK: To this witness?

13 MS. DIXON: No.

14 BY MS. DIXON:

15 11:21 Q. There's some information within the record that
16 suggests while at Lakewood emergency department,
17 Mr. Nicholson complained of chest pain; correct?

18 MR. SPISAK: As he sits here now with
19 this in front of him which he already indicated may or may
20 11:21 not have been available to him at the time; right?

21 THE WITNESS: Correct.

22 BY MS. DIXON:

23 Q. You have answered Mr. Spisak's question. I would like
24 you to answer mine now.

25 11:21 A. I would like you to repeat your question.

1 11:29 Q. Certainly. Would you agree with me that during the
2 time that Mr. Nicholson was at the Lakewood emergency
3 department, there is documentation that suggests he was
4 complaining of chest pain?

5 11:30 A. I'm not sure if that was there at the time.

6 Q. My question was not whether it was there at the time.
7 My question is to ask you to review the record. Based on
8 your review of the record, would you agree with me there's
9 documentation that while at the Lakewood emergency
10 11:30 department, Mr. Nicholson complained of chest pain?

11 MR. SPISAK: First of all, I think
12 your question was at the time and -- well, go ahead, doctor.

13 MR. MOSCARINO: Object.

14 MR. SPISAK: I'm objecting again.

15 11:30 A. Repeat the question.

16 Q. Doctor, you have the Lakewood emergency record from
17 Dennis Nicholson dated 2/2/98 in front of you; correct?

18 A. Correct.

19 Q. **And** my question is, based on your review of that
20 11:30 record, would you agree with me there is documentation that
21 while Dennis Nicholson was in the Lakewood ER on 2/2/98, he
22 had complaints of chest pain?

23 MR. MOSCARINO: Objection. Note my
24 objection as to whether the question is that he had in the
25 11:31 past or at the time. I think that could be mischaracterized

1 11:31 based on the question and his lack of knowledge regarding
2 this. Anyway, that's my objection.

3 A. You have to repeat the question.

4 MS. DIXON: Read it back, please.

5 (Record read as follows:)

6 THE NOTARY: "Question: And my
7 question is, based on your review of that record, would you
8 agree with me there is documentation that while Dennis
9 Nicholson was in the Lakewood ER on 2/2/98, he had
10 11:30 complaints of chest pain?"

11 A. I'm not sure.

12 Q. Doctor, would you agree with me that in eliciting
13 history from a patient, it's important to elicit both their
14 current complaints as well as their recent history of
15 11:32 symptoms?

16 A. Yes.

17 Q. And their remote history of symptoms; correct?

18 A. Correct.

19 Q. And is it your testimony that you elicited from Dennis
20 11:32 Nicholson the complaints which -- both which he was
21 experiencing at the time of your exam as well as the
22 complaints which brought him to the emergency department
23 that evening, that morning?

24 A. Correct.

25 11:32 Q. And is it your testimony that at no time Dennis

1 11:3 Nicholson told you he had suffered chest pain?

2 A. Correct.

3 Q. And you don't recall whether or not you spoke with
4 Mrs. Nicholson; correct?

5 11:3 A. Whatever I answered before.

6 Q. Doctor, would you agree that typically the pain
7 associated with an aortic dissection is most significant
8 when it onsets or begins?

9 A. Typically?

10 11:3 Q. Yes.

11 A. I'm not sure.

12 Q. Are you aware of any studies that indicate that over
13 70 percent of patients with aortic dissection have migration
14 of their pain?

15 11:3 A. No. I'm not sure.

16 Q. Was Colleen Nicholson present for any portion of your
17 physical exam of Dennis?

18 A. I'm not sure.

19 Q. Is it your practice to examine the patient and then
20 11:3 invite their family to see them, or is the family generally
21 present?

22 A. All depends on the situation.

23 Q. Since you don't have a recollection based on the
24 clinical picture that is identified in the record before
25 11:3 you, would you expect that Mrs. Nicholson would be present

1 11:3 or at least invited to be present, or would she have been
2 corralled outside of the examining room?

3 A. I'm not sure.

4 Q. Based on your review of the record, can you tell me
5 11:3 what Dennis Nicholson's blood pressure was at 1:45 a.m.?

6 A. 159 over 73.

7 Q. In your opinion, was his blood pressure elevated?

8 A. Slightly.

9 Q. And how is it that you determined his blood pressure
10 11:3 was elevated?

11 A. Systolic number is 159.

12 Q. What are you using for a baseline?

13 A. 140.

14 Q. Did you elicit any information regarding
15 11:3 Mr. Nicholson's history of hypertension?

16 A. Yes.

17 Q. And what information did you elicit?

18 A. He took no medication for hypertension.

19 Q. Is that a standard question you ask your patients?

20 11:3 A. I'm not sure if I understand the question.

21 Q. Is that a question you asked specific to Mr.
22 Nicholson, or is that part of your protocol for interviewing
23 patients in the emergency department?

24 A. All depends on the situation.

25 11:3 Q. Would it have been Mr. Nicholson's blood pressure

1 11:3 reading of 159 over 73 that would have caused you to ask if
he was taking any medication for high blood pressure?

3 A. Can you repeat the question?

4 Q. You said that it all depends whether you question a
5 11:3 patient as to whether they're taking medication for high
6 blood pressure; correct?

7 A. Correct.

8 Q. My question is, was it Mr. Nicholson's BP reading of
9 159 over 73 that caused you to question him regarding
10 11:3 medications he was taking for high blood pressure?

11 A. I'm not sure.

12 Q. Is there anything else that would have caused you to
13 ask Mr. Nicholson whether or not he was taking medication
14 for high blood pressure?

15 11:3 A. The fact he complained of back pain.

16 Q. What significance does back pain have to blood
17 pressure medication?

18 A. I'm not sure.

19 Q. You don't know why, but you're certain that or you
20 11:3 believe it may have been back pain that caused you to ask if
21 he was taking medication for high blood pressure?

22 A. It may have.

23 Q. My question is, what clinical significance would back
24 pain have as it relates to a patient's treatment for high
25 11:3 blood pressure?

1 11:38 A. I'm not sure.

2 Q. Doctor, are you aware that difference in arm blood
3 pressures can be a key diagnostic clue for the diagnosis of
4 a dissecting aneurysm?

5 11:38 MR. RAMM: Objection.

6 A. I'm not sure.

7 Q. Do you know whether or not Dennis' blood pressures
8 were taken in each arm?

9 A. I'm not sure.

10 11:38 Q. In the event Dennis had bilateral blood pressures
11 taken, would you expect that to be noted in his chart?

12 A. Yes.

13 Q. In a patient with an elevated blood pressure such as
14 159 over 73, would you expect that blood pressure to be
15 11:38 rechecked during the time the patient was under your care?

16 A. Not necessarily.

17 Q. Do you consider it important in a patient whom you are
18 considering -- who you are treating for pain that may be of
19 cardiac origin to recheck their blood pressure while they're
20 11:39 under your care?

21 A. Can you repeat the question?

22 Q. Certainly. While treating a patient for pain which
23 you consider to be potentially of cardiac origin, is it
24 important to recheck their blood pressure?

25 11:39 A. Not necessarily.

1 11:3 Q. Why is that?

2 A. I don't know.

3 Q. Are blood pressure values an important diagnostic tool
4 in diagnosing and treating patients with pain of cardiac
5 11:3 origin?

6 MR. RAMM: Objection.

7 A. Not necessarily. I'm not sure.

8 Q. Do you consider it important to recheck blood
9 pressures in patients whom you are considering for a
10 11:3 pneumothorax?

11 A. No.

12 Q. Would you find it -- believe it to be important to
13 recheck the blood pressure in a patient who you were
14 considering aortic dissection as a possible diagnosis?

15 11:4 A. I'm not sure.

16 Q. Would you agree that hypertension is a symptom of
17 aortic dissection?

18 A. I'm not sure.

19 Q. Doctor, can you explain to me the difference contained
20 11:4 on the triage sheet, first page of Exhibit 2, the
21 differences within the triage priority classifications? I
22 see there's noted immediate, urgent and non-urgent; correct?

23 A. Correct.

24 Q. And how was Mr. Nicholson classified?

25 11:4 A. Urgent.

1 11:4 Q. And what is your understanding of the definition of
2 urgent based on the triage priority classifications?

3 A. The patient should be evaluated by the physician as
4 soon as possible.

5 11:4 Q. And that would be based on the patient's presenting
6 complaints at triage; correct?

7 A. Correct.

8 Q. Is nausea ever a reason for a patient to be deemed
9 urgent based on the definition that you have just provided
10 11:4 us?

11 MR. SPISAK: Based on the definition
12 of what?

13 BY MS. DIXON:

14 Q. You have just defined urgent as based on the triage
15 11:4 priority classifications; correct?

16 A. Correct.

17 Q. And you told me that urgent within treating priority
18 classifications means that that patient needs to be seen by
19 the physician at the very first opportunity; correct?

20 11:4 A. Correct.

21 MR. SPISAK: He said as soon as
22 possible.

23 BY MS. DIXON:

24 Q. As soon as possible. I'm sorry. Based on that
25 11:4 definition of urgent, are there -- is a patient presenting

1 11:42 only with nausea ever urgent?

2 A. I'm not sure.

3 Q. Based on the definition of urgent that we have just
4 been talking about, is a patient vomiting ever deemed
5 11:42 urgent?

6 A. I'm not sure.

7 Q. Based on the definition of urgent that we have been
8 discussing, is a patient with back pain ever deemed urgent
9 based on the triage priority classifications?

10 11:42 A. I'm not sure.

11 Q. Based on the definition of urgent within the triage
12 priority classifications, is a patient with chest pain ever
13 deemed urgent?

14 A. I'm not sure.

15 11:42 Q. Do you know why it was that Mr. Nicholson was
16 classified based on the triage priority classifications as
17 urgent?

18 A. No.

19 Q. Whose decision would it be to classify Mr. Nicholson
20 11:42 as urgent?

21 A. The nurse.

22 Q. Do you know which nurse classified Mr. Nicholson as
23 urgent based on the triage priority classifications?

24 A. No.

25 11:43 Q. Is there any indication on the patient registration

1 11:4 form as to who would have assigned Mr. Nicholson as urgent?

2 MR. SPISAK: On the registration
3 form?

4 BY MS. DIXON:

5 11:4 Q. I'm sorry. On the patient registration form.

6 A. No.

7 Q. Is there any place else within the record that would
8 indicate who it was that assigned Mr. Nicholson as urgent
9 based on the triage priority classifications?

10 11:4 A. I'm not sure if I understand. Can you repeat the
11 question?

12 Q. Sure. Someone made the designation that Mr. Nicholson
13 was a patient who was urgent based on the triage priority
14 classifications; correct?

15 11:4 A. Correct.

16 Q. Is there anywhere within the six-page Lakewood
17 emergency room record that would give you information as to
18 who it was that made the classification of urgent?

19 A. Yes.

20 11:4 Q. And where is that?

21 A. I assume under nurse's signature.

22 Q. Okay. And are you familiar with the signature?

23 A. Yes.

24 Q. And would you agree with me that appears to be the
25 11:4 signature of Nurse Sarah Doan?

1 11:4 A. Yes.

2 Q. And you have told me that it was based on the nurse's
3 triage evaluation that Mr. Nicholson was classified as
4 urgent?

5 11:4 A. Yes.

6 Q. You have in front of you the emergency treatment
7 record; correct?

8 A. Yes.

9 Q. And in the section that's "physician's history and
10 11:4 physical exam," is there any portion of that page that is in
11 your handwriting?

12 A. Yes.

13 Q. And what portion of the physician's history and
14 physical exam is in your handwriting?

15 11:4 A. This, this and this and this.

16 Q. You're indicating the --

17 A. And this.

18 Q. Doctor, let's, first of all, just take the portion of
19 the page that is physician s history and physical exam. And
20 11:4 you have pointed to several areas that run along the
21 right-hand side of the page; correct?

22 A. Correct.

23 Q. And you have indicated that those are portions of the
24 record that are in your hand; correct?

25 11:4 A. Right.

1 11:45 Q. Beginning at the first notation contained under
2 "physician's history and physical" that is written in your
3 hand, can you read that into the record?

4 A. "Back, two hours ago, back hurting two hours ago,
5 11:45 drinking juice and shooting pool." Social history says,
6 "lives with wife. Doesn't smoke, doesn't drink," and he was
7 employed at Goodyear. I wrote "Toradol, 60 milligrams
8 I.M."

9 Q. That's under physician's orders?

10 11:46 A. That's under physician's orders. And going down as
11 far as discharge instructions, number 1, follow up with your
12 doctor as needed; number 2 is return for worsening symptoms;
13 number 3 is Motrin as prescribed; and going down, diagnosis,
14 musculoskeletal back pain and my signature.

15 11:46 Q. Doctor, would this document, the emergency treatment
16 record, be the source or the record of information that you
17 relied upon in dictating your patient summary?

18 A. Yes.

19 Q. Are there any other -- is there any other place within
20 11:46 the patient's records that you would have made or maintained
21 handwritten notes as it related to your physical exam and
22 history of Dennis Nicholson?

23 A. No.

24 Q. Would it be fair to say that this would be the
25 11:46 portion, this would be the document that you had available

1 11:4 to you when you did, in fact, dictate the patient summary?

2 A. Yes.

3 Q. At the top upper left-hand portion of this there's
4 what appears to be a DT circled?

5 11:4 A. That's a D plus. It means it was dictated.

6 Q. That is in your handwriting, as well?

7 A. Yes.

8 Q. Is that your history that at the conclusion, at some
9 point you dictated your notes and you make that notation on
10 11:4 the record to indicate it has been dictated?

11 A. Yes.

12 Q. At the very top center of the page it looks like PDL.

13 A. Yes.

14 Q. Do you see that?

15 11:4 A. Yes.

16 Q. Is that in your handwriting, as well?

17 A. No.

18 Q. Are you familiar with that, those initials or acronym?

19 A. No.

20 11:4 Q. Do you know whose handwriting that PDL is in?

21 A. No.

22 Q. On February 1, 1998, do you know what time you would
23 have come on duty?

24 A. Approximately 11 o'clock.

25 11:4 Q. And how long would your shift run?

1 11:48 A. Until 7 a.m., approximately.

2 Q. By review of the record that you have in front of you,
3 it appears as though you checked Dennis Nicholson's urine;
4 correct?

5 11:48 A. Correct.

6 Q. How was that done?

7 A. He urinates into a bottle and then we -- the nurse
8 takes a stick and dips it and checks for any sign of
9 infection, any evidence of bleeding and it's documented on
10 11:48 the chart.

11 Q. Was the order to have Dennis Nicholson's urine tested
12 made after you had performed your physical exam?

13 A. No.

14 Q. And what about Dennis' presenting complaints caused
15 11:48 you to have his urine checked?

16 A. I didn't order his urine to be checked.

17 Q. Who ordered Dennis' urine to be checked?

18 A. Nobody.

19 Q. Why was Dennis Nicholson's urine checked?

20 11:49 A. It's frequent that if a patient can urinate and obtain
21 a specimen, that we do a quick test of it, and that's
22 probably what Sarah Doan did was check it real quick for any
23 sign of infection or bleeding.

24 Q. Doctor, the nurse's notes indicate that you examined
25 11:49 Dennis Nicholson at approximately 2 a.m. on February 2nd,

1 11:40 1998.

2 A. Yes.

3 Q. And was that the first time that you examined
4 Mr. Nicholson?

5 11:45 A. Yes.

6 Q. What did your exam consist of?

7 A. It's documented in my physical examination.

8 Q. And tell me what that was.

9 A. Can I read it all? Do you want me to read this
10 11:50 paragraph?

11 Q. Yes.

12 A. "Nurses' notes are reviewed. Blood pressure, 159 over
13 73; pulse, 64; respiratory rate, 16; temperature, 96.2. The
14 patient is a well-developed, 42 year old black male lying in
15 11:55 bed, very comfortable and is almost asleep. HEENT:

16 Atraumatic, normocephalic. Pupils are equal, round and
17 reactive to light. TMs are clear bilaterally. Posterior
18 pharynx is clear. Neck: Supple. Lungs: Clear bilaterally
19 with no wheezes, rales or rhonchi. Chest: No crepitus to
20 11:50 palpation over the chest wall. Heart: Regular rate and
21 rhythm. Normal S1 and S2 without murmur, gallop or rub.
22 Abdomen: Soft, non-distended. Bowel sounds are present. He
23 has a horizontal scar just above the umbilicus status - post
24 a hernia repair at the age of 15. No abdominal bruits or
25 11:55 pulsatile masses. Extremities: Femoral pulses and radial

1 11:5 pulses are plus 2 over 4 without deficits. The patient has
2 a scar on his right forearm secondary to a motorcycle
3 accident and a right wrist fracture. He has no pain to
4 palpation over the thoracic spine, however, he has a lot of
5 11:5 pain to palpation, especially in the right rhomboid
6 musculature area. Back: There is pain to palpation on the
7 right side of the patient's spine in the paraspinous
8 musculature."

9 Q. Prior to examining Dennis at approximately 2 a.m. on
10 11:5 2/2/98, did you have to wake him up?

11 A. I'm not sure.

12 Q. Was Nurse Doan present for the examination?

13 A. I'm not sure.

14 Q. At the time that you examined Mr. Nicholson, was he
15 11:5 able to sit up on the bed, or did you examine him lying
16 down?

17 A. Both.

18 Q. Was he able to follow your commands?

19 A. Yes.

20 11:5 Q. In evaluating Mr. Nicholson's heart, did you use a
21 cardiac stethoscope?

22 A. Yes.

23 Q. And is that an implement that is regularly available
24 to you within the emergency department of Lakewood Hospital?

25 11:5 A. Yes.

1 11:52 Q. Is it your usual practice to utilize a cardiac
2 stethoscope?

3 A. Yes.

4 Q. Do you utilize a cardiac stethoscope for all patients
5 11:52 that you are evaluating or simply ones that you have cardiac
6 concerns?

7 A. All of them.

8 Q. Was Dennis dressed or undressed when you examined him?

9 A. I'm not sure.

10 11:52 Q. As part of your physical exam, you did palpate pain;
11 correct?

12 A. Correct.

13 Q. You found a lot of pain especially in the right
14 rhomboid musculature area; correct?

15 11:52 A. Correct.

16 Q. Would you agree this muscle holds the scapula in
17 place?

18 A. Correct.

19 Q. Would it be fair to say that that muscle, I'm sorry,
20 11:52 that that muscle is in the upper back or the scapular area?

21 A. Correct.

22 Q. Is that an unusual location for musculoskeletal pain?

23 A. No.

24 Q. In the course of your history of Dennis Nicholson, did
25 11:52 you elicit any information regarding an injury?

1 11:5 A. Yes.

2 Q. What information regarding an injury did you elicit
3 from Dennis?

4 A. What's written in the notes, that he had a motorcycle
5 11:5 accident.

6 Q. I'm sorry. Let me rephrase. I think I asked you an
7 inartfully-worded question.

8 Did you elicit any information from Dennis Nicholson
9 that would be suggestive of an injury which would be the
10 11:5 cause of his musculoskeletal pain?

11 A. Yes.

12 MR. RAMM: Objection.

13 BY MS. DIXON:

14 Q. And what injury are you referring to?

15 11:5 A. He was playing pool, five games of pool, for two
16 hours.

17 Q. Did you elicit any information from Dennis as to how
18 often he plays pool or played pool?

19 A. I can't remember.

20 11:5 Q. Did Dennis give you any indication that he recalled
21 being injured in the course of playing pool for
22 approximately two hours?

23 A. Can you repeat the question?

24 Q. Certainly. During the course of the history that you
25 11:5 elicited from Dennis Nicholson, did he give you any

1 11:54 information that would suggest he had -- he recalled being
2 injured in the course of playing pool for two hours that
3 evening, the evening of the 1st?

4 A. I'm not sure.

5 11:54 Q. Did you then just assume that Dennis had been injured
6 during the course of playing five games of pool over two
7 hours?

8 A. No.

9 Q. Ultimately you concluded that Dennis was suffering
10 11:54 from musculoskeletal pain; correct?

11 A. Correct.

12 Q. What was the etiology of the musculoskeletal pain that
13 you diagnosed Dennis Nicholson with on 2/2/98?

14 A. I'm not sure.

15 11:55 Q. If Dennis had, in fact, injured his back in the course
16 of playing pool that evening or the evening before, wouldn't
17 his lower back be a more usual location for that type of
18 musculoskeletal back pain?

19 MR. SPISAK: Objection.

20 11:55 A. I'm not sure.

21 Q. You're not sure?

22 A. Not necessarily.

23 Q. Did he report to you that during the course of playing
24 pool, he fell?

25 11:55 A. Not that I'm aware of.

1 11:5 Q. Did he report to you that during the course of his
2 games of pool, that he was struck by anything?

3 A. Not that I know of.

4 Q. Did Dennis report to you on the morning of 2/2/98,
5 11:5 that the prior evening in the course of playing pool he had
6 a recollection of straining his back?

7 A. Not that I'm aware of.

8 Q. Do you know whether he was right handed or left
9 handed?

10 11:5 A. I can't remember.

11 Q. Did you elicit information from Mr. Nicholson to
12 determine which hand dominant he was?

A. I can't remember.

MR. SPISAK: Can we take a break?

15 11:5 MS. DIXON: Sure.

16 (Thereupon, a recess was taken.)

17 BY MS. DIXON:

18 Q. Doctor, before we went off the record for a moment, we
19 were talking about the pain that you appreciated in Dennis
20 11:5 Nicholson on the morning of 2/2/98; correct?

21 A. Correct.

22 Q. Was the pain that you note in your physical exam note
23 or record in your physical exam note, was that present only
24 on palpation or was it positional?

25 11:5 A. It seemed to be mostly on palpation.

1 11:s Q. Prior to February of 1998, on how many separate
2 occasions had you diagnosed an aortic dissection?

3 A. Zero.

4 Q. Prior to February of 1998, had you ever ordered tests
5 11:s or procedures as an emergency room physician that were
6 diagnostic for an aortic dissection?

7 A. No.

8 Q. The tests that you referred to earlier, the CT scan,
9 the MRI, the echo and the angiography, are those all tests
10 12:o that would have been available to you as an emergency room
11 physician at Lakewood Hospital on February 2nd of 1998?

12 A. Yes.

13 Q. And am I correct that the radiology department at
14 Lakewood in February of 1998 was open 24 hours, correct, or
15 12:0 staffed 24 hours?

16 A. Yes.

17 Q. And that on an emergency basis, you would have had the
18 availability of a CT scan; correct?

19 A. Correct.

20 12:o Q. And on an emergency basis, you would have had the
21 availability of an MRI?

22 A. Correct.

23 Q. On physical exam, you evaluated Mr. Nicholson's heart
24 rate and heart and you noted, specifically noted, no murmur;
25 12:c correct?

1 12:08 A. Correct.

2 Q. Would you agree that with the exception of exceptional
3 circumstances, a murmur does not develop over a short period
4 of time, meaning one day? You don't have a murmur and the
5 12:08 next day you do?

6 MR. RAMM: Objection.

7 A. I'm not sure.

8 Q. Would you agree with me that a murmur or aortic
9 regurgitation is a clinical sign or symptom of an aortic
10 12:08 dissection?

11 MR. RAMM: Objection.

12 A. Yes.

13 Q. Would you agree with me that a diastolic murmur is
14 particularly significant in evaluating a patient with a
15 12:08 possible aortic dissection?

16 MR. RAMM: Objection.

17 A. I'm not sure.

18 Q. If Mr. Nicholson, let's -- and I'll assume for the
19 purposes of this question that your evaluation of
20 12:09 Mr. Nicholson not having a murmur on 2/2/98 is accurate. If
21 Mr. Nicholson had returned to your care on 2/3/98 and you
22 had appreciated a murmur, would that be significant?

23 MR. RAMM: Objection.

24 MR. SPISAK: Objection. That didn't
25 12:09 happen to this witness, so.

1 12:0 A. I'm not sure.

2 Q. You ordered 60 milligrams of Toradol I.M. for
3 Mr. Nicholson; correct?

4 A. Correct.

5 12:0 Q. And that medication was given at 2:15 a.m.?

6 A. Correct.

7 Q. Why did you order the Toradol?

8 A. Because he seemed to have a muscle injury, and as an
9 anti-inflammatory medication, it seems to relieve muscle
10 12:0 injuries.

11 Q. 60 milligrams is a maximum single dose of Toradol;
12 correct?

13 A. Correct.

14 Q. And would you agree that that is suggestive that
15 12:1 Mr. Nicholson's pain was significant at the time you ordered
16 the medication?

17 A. Correct.

18 Q. You have in front of you what I have marked as
19 Exhibit 2, and I would ask you to look at the first page of
20 12:1 the patient record, the typewritten page.

21 I'm going to hand you another copy of that page that I
22 received from a copy service pursuant to subpoena, and in
23 the upper right-hand corner, there is a notation. Is that
24 in your handwriting?

25 12:1 A. No.

1 12:10 Q. You're certain?

2 A. Fairly certain. This doesn't look like my
3 handwriting.

4 Q. Doctor, I'll ask, I'll ask you to turn, please, to
5 12:11 page 2 of your patient record under "assessment." Can you
6 read the assessment portion into the record, please?

7 A. "Involves evaluating a 42 year old complaining of back
8 pain. One should evaluate for possible aortic dissection,
9 musculature pain or possible pneumothorax. The patient is
10 12:11 very comfortable and is sleeping in bed."

11 Q. Doctor, why did you state that "one should evaluate
12 for possible aortic dissection" on the typed patient record?

13 A. I was trying to list my thought process, and someone
14 who complains of back pain, you always go through a
15 12:12 differential diagnosis in your mind and that's what I was
16 evaluating and that's what I was doing.

17 Q. So the one, the, quote, unquote, one you were
18 referring to was you because you were Mr. Nicholson's
19 physician at that time; correct?

20 12:12 A. No.

21 Q. Did you consider aortic dissection in your
22 differential diagnosis?

23 A. Yes.

24 Q. Based on your education, training and experience, what
25 12:12 should be done when aortic dissection is included in a

1 12:1 patient's differential diagnosis to rule that condition in
2 or out?

3 A. Thorough H and P and then any tests, as we discussed,
4 if indicated.

5 12:1 Q. What do you mean "if indicated"? And let me clarify,
6 you're referring to the radiological studies that we
7 identified earlier on; correct?

8 A. Correct.

9 Q. And I believe your response was that you would, after
10 12:1 the H and P, meaning the history and physical; correct?

11 A. Correct.

12 Q. That you would move towards those other diagnostic
13 studies, and I believe you stated if indicated.

14 A. Correct.

15 12:1 Q. And what would indicate to you, as an emergency room
16 physician, that additional diagnostic studies such as a CT
17 scan or an MRI are warranted to rule in or rule out an
18 aortic dissection?

19 A. Certain physical findings, high index of suspicion,
20 12:1 certain pertinent things in the history.

21 Q. Based on your education, training and experience, what
22 symptoms or clinical presentation would cause you to have a
23 high index of clinical suspicion of an aortic dissection?

24 MR. RAMM: Objection.

25 12:1 A. Complaining of numbness in an arm or leg, fainting,

1 12:14 severe pain.

2 Q. Doctor, would you agree --

3 MR. SPISAK: Are you finished?

4 THE WITNESS: Yeah.

5 BY MS. DIXON:

6 Q. I'm sorry. I didn't mean to interrupt.

7 A. That's fine.

8 Q. Doctor, would you agree that an acute onset of pain is
9 oftentimes associated with aortic dissection?

10 A. Yes.

11 Q. That chest pain --

12 MR. SPISAK: That s about the fourth
13 time you asked that question and we're not going to be
14 repeating things, please.

15 BY MS. DIXON:

16 Q. That chest pain is associated with aortic dissection?

17 A. Yes.

18 Q. That nausea and vomiting are associated with aortic
19 dissection?

20 12:16 MR. RAMM: Objection.

21 MR. SPISAK: Same objection.

22 A. Yes.

23 Q. That back pain is associated with aortic dissection?

24 MR. RAMM: Objection.

25 A. Yes.

1 12:16 Q. Elevated blood pressure is associated with aortic
2 dissection?

3 MR. RAMM: Objection.

4 A. Yes.

5 12:16 Q. Would you agree with me that on presentation to the
6 Lakewood emergency department on 2/2/98, Dennis Nicholson
7 had an acute onset of pain?

8 A. Yes.

9 Q. Would you agree with me that he had complaints of
10 12:16 chest pain?

11 MR. MOSCARINO: Objection. Same
12 objection I gave before.

13 A. No.

14 Q. Would you agree with me that he had nausea and
15 12:16 vomiting?

16 A. No. I'm not sure about that. I'm not sure.

17 Q. Well, I direct your attention to the emergency
18 treatment record signed by Nurse Sarah Doan. Would you
19 agree that indicates that he had vomiting?

20 12:16 A. Yes.

21 Q. You agree he had back pain and elevated blood
22 pressure; correct?

23 A. Yes.

24 Q. Would you agree that based on those symptoms that
25 12:17 Mr. Nicholson presented to the emergency department with on

1 12:17 2/2/98, you should have had a high index of clinical
2 suspicion of an aortic dissection?

3 MR. RAMM: Objection.

4 A. Absolutely not.

5 12:17 Q. Would you agree that failure to diagnose an aortic
6 dissection has a high likelihood of morbidity?

7 A. Yes.

8 Q. Would you agree with the statement that a high index
9 of clinical suspicion by a physician is probably the single
10 12:17 most important factor in making the diagnosis of a
11 dissecting aortic aneurysm?

12 A, Yes.

13 Q. And would you likewise agree that your inclusion^{of}
14 the evaluation for a possible aortic dissection was because
15 12:18 you had a high clinical index of suspicion?

16 MR. SPISAK: I'm going to ask you to
17 read that back, please.

18 (Record read as follows:)

19 THE NOTARY: "Question: And would
20 12:18 you likewise agree that your inclusion of the evaluation for
21 a possible aortic dissection was because you had a high
22 clinical index of suspicion?"

23 A. I don't understand the question.

24 Q. You included aortic dissection as part of your
25 12:18 differential diagnosis; correct?

1 12:1 A. Correct.

2 Q. And would you agree that it's not sufficient to simply
3 include something as part of your differential diagnosis, it
4 must be proved or disproved?

5 12:1 A. Not necessarily.

6 Q. Doctor, are you aware that posterior chest pain
7 usually in the intrascapular area is a major site of pain in
8 some patients with aortic dissection?

9 MR. RAMM: Objection.

10 12:1 A. Not necessarily; no.

11 Q. But you do agree that aortic dissection has a variety
12 of presentations; correct?

13 A. Correct.

14 Q. **And** that because of that variety of presentations, an
15 12:1 emergency room physician treating a patient that includes
16 aortic dissection as part of the differential must have a
17 high clinical index of suspicion; correct?

18 A. Not necessarily.

19 MR. SPISAK: Objection.

20 12:1 MR. RAMM: Objection.

21 A. No.

22 Q. Doctor, are there any -- is there any lab work that
23 would assist you in ruling in or ruling out the diagnosis of
24 aortic dissection?

25 12:1 A. Not necessarily.

1 12:19 Q. Would you agree that with aortic dissection, 15
2 percent of the patients have anemia?

3 A. I'm not sure.

4 Q. Would you agree that in patients with aortic
5 12:19 dissection, 62 percent have leukocytosis?

6 A. I'm not sure.

7 Q. Would you agree in 58 percent of patients with aortic
8 dissection, they have an elevated LDH?

9 A. I'm not sure.

10 12:20 Q. Doctor, as part of your differential diagnosis
11 contained in the assessment section of the patient record,
12 you identified three separate items; correct?

13 A. Correct.

14 Q. You identified possible aortic dissection, musculature
15 12:20 pain and possible pneumothorax; correct?

16 A. Right.

17 Q. Would you agree that of those three items or of those
18 three diagnoses, three of which -- two of which are
19 potentially life threatening?

20 12:20 A. Correct.

21 Q. That would be a pneumothorax and aortic dissection;
22 correct?

23 A. Correct.

24 Q. Let's talk about the pneumothorax for a moment. What
25 12:20 steps did you take to rule in or rule out a pneumothorax?

1 12:20 A. My history and physical exam.

2 Q. Why didn't you order a chest film on Dennis Nicholson?

3 A. I didn't think it was appropriate.

4 Q. Would you agree that of the three potential diagnoses
5 12:21 you have listed in the assessment section of Dennis' patient
6 record, a chest film would assist you to further rule in or
7 rule out two of the three diagnoses?

8 A. I disagree.

9 Q. Do you agree that a pneumothorax would have assisted
10 12:21 you in diagnosing -- let me rephrase that.

11 Would you agree with me that a chest film would have
12 assisted you in ruling in or ruling out a pneumothorax?

13 A. Agree.

14 Q. Would you agree with me that a chest film would have
15 12:21 assisted you in further evaluating Dennis Nicholson for an
16 aortic dissection?

17 A. I disagree.

18 Q. Would you agree that in a large percentage,
19 specifically the majority, of patients presenting with an
20 12:22 aortic dissection, a widening of the mediastinum is
21 appreciated on a chest film?

22 A. I'm not sure.

23 Q. Doctor -- and feel free to refer to the record in
24 front of you -- when did you dictate your patient record?

25 12:22 A. 2/2/98. Yes; 2/2/98.

1 12:22 Q. At what time?

2 A. I'm not sure if that time is --

3 Q. Let me ask you this: Based on your review of the
4 second page of the patient record, what time does it
5 12:22 indicate you dictated Dennis' patient record?

6 A. 2:33 Eastern Standard Time.

7 Q. Above that under "re-examination," isn't it true that
8 it indicates that you examined Dennis at 2:45 a.m.,
9 re-examined Dennis at 2:45?

10 12:22 A. Correct.

11 Q. So based on those numbers, you would have dictated
12 your summary prior to re-examining Dennis Nicholson;
13 correct?

14 A. Correct.

15 12:23 Q. And under the re-examination, it indicates that you
16 went in to re-examine the patient and that he was asleep and
17 easily arousable?

18 A. Correct.

19 Q. Now, would you agree with me if the time stamp
20 12:23 contained on page 2 of the patient record indicated you
21 dictated that summary at 2:33 a.m., you would have dictated
22 the summary in anticipation of re-examining Mr. Nicholson
23 prior to discharge?

24 MR. SPISAK: Before you answer that,
25 12:23 first of all, there's no time stamp that I see. There's

1 12:20 some typing. You referred to it as a time stamp. I think
2 of something else when you say "time stamp." Go ahead and
3 note my objection. You can answer that if you can.

4 A. I'm not sure.

5 12:20 Q. You don't know that if, in fact, you had dictated this
6 at 2:33 a.m. and you examined Mr. Nicholson at 2:45 a.m.,
7 you don't know whether the summary would have been dictated
8 prior to the examination?

9 A. I'm not sure.

10 12:20 Q. Doctor, without performing any diagnostic tests such
11 as a CT scan or MRI, you can't tell me that you ruled out an
12 aortic dissection in Dennis Nicholson, can you?

13 MR. SPISAK: Note my objection.

14 A. I'm not sure.

15 12:20 Q. Did you refer to any texts in making your diagnosis of
16 Dennis Nicholson on February 2, 1998?

17 A. Any?

18 Q. Texts, T-E-X-T.

19 A. Not that I'm aware of.

20 12:20 Q. You personally own Tintinalli's and Rosen's; correct?

21 A. Correct.

22 Q. **And** those are available to you in the course of your
23 practice?

24 A. Correct.

25 12:20 Q. Would you agree that both of those texts have sections

1 12:24 that deal with the diagnosis and treatment of aortic
2 dissection?

3 A. I'm not sure.

4 Q. At any point in time have you reviewed either
5 12:24 Tintinalli's or Rosen's on the topic of aortic dissection?

6 A. Yes.

7 Q. Do you dispute any of the contents of either Rosen or
8 Tintinalli in the diagnosis of an aortic dissection?

9 A. I'm not sure.

10 12:25 Q. Do you believe -- do you find Rosen's to be a reliable
11 source?

12 A. Yes.

13 Q. Do you find Tintinalli to be a reliable source?

14 A. Yes.

15 12:25 Q. It's your contention that Dennis Nicholson's condition
16 was improved at 2:33 a.m. as opposed to his admission or his
17 presentation time of 1:45 a.m.; correct?

18 A. It was improved at 2:45. It was improved. His course
19 was improved.

20 12:25 Q. Doctor, I'm a little confused. If Mr. Nicholson's
21 condition was improved after receiving the Toradol, why did
22 you still include aortic dissection as part of your
23 differential diagnosis?

24 A. Because everybody complaining of back pain, it's part
25 12 26 of their differential diagnosis.

1 12:20 Q. Everybody who presents with back pain, aortic
2 dissection should be included as part of their differential
3 diagnosis?

4 MR. RAMM: Objection.

5 12:20 A. I'm not sure. I'm not sure.

6 Q. You agree you took no further steps other than
7 performing a physical exam on Dennis Nicholson to rule out
8 an aortic dissection; correct?

9 A. No.

10 12:20 Q. What other steps did you take other than physical exam
11 and history to rule out aortic dissection?

12 A. Obtaining the history.

13 Q. Other than history and physical, did you undertake any
14 other steps to further rule out aortic dissection?

15 12:20 A. No.

16 Q. Is it your practice to discharge patients with a
17 potentially life-threatening condition without evaluating
18 and undertaking diagnostic tests to rule that condition out?

19 MR. SPISAK: Note my objection.

20 12:20 A. No.

21 Q. At any point in time was Dennis Nicholson placed on a
22 cardiac monitor while in the emergency department on 2/2/98?

23 A. I'm not sure.

24 Q. If he had been placed on a cardiac monitor, would you
25 12:20 expect that to be noted within his patient record?

1 A. Yes.

2 Q. There's no notation within Dennis' ER record to
3 suggest he was placed on a cardiac monitor; correct?

4 A. Correct.

5 12:27 Q. Would you agree that Dennis Nicholson presented with
6 cardiac symptoms on 2/2/98?

7 A. No.

8 Q. Do you remember having your deposition taken in the
9 case of the Estate of Sutton Kitner?

10 12:28 A. Yes.

11 Q. And do you recall Mr. Green asking you questions
12 regarding this case?

13 A. Yes.

14 Q. Did you specifically recall after identifying the
15 12:28 decedents as Dennis Nicholson, "Does that case involve any
16 issues of cardiac care," and giving the answer "yes"? I
17 will be happy to show you the page, if you like?

18 MR. SPISAK: The question is do you
19 recall that.

20 12:28 A. No.

21 Q. Do you dispute the fact that Dennis Nicholson was seen
22 in the emergency department at Lakewood on 2/2/98 for issues
23 of cardiac care?

24 A. I'm not sure.

25 12:29 Q. Doctor, let me represent to you that upon discharge of

1 12:2 Lakewood -- at Lakewood Hospital on 2/2/98, Mr. Nicholson
2 left the facility via wheelchair, and you can feel free to
3 take a look at the record to confirm that.

4 A. Okay.

5 12:2 Q. Is there any significance to the fact that
6 Mr. Nicholson was not able to ambulate from the facility?

7 A. I'm not sure. No. I would say no.

8 Q. Is there any --

9 MR. SPISAK: Did you say, "I would
10 12:2 say no"?

11 THE WITNESS: I'm not sure.

12 MR. SPISAK: I didn't hear what you
13 said.

14 BY MS. DIXON:

15 12:2 Q. Is there any significance to the fact that upon
16 discharge, Mr. Nicholson did not sign out for himself, that
17 Mrs. Nicholson did?

18 A. No.

19 Q. And the same things would be at play in signing a
20 12:2 patient out of a facility as you described at admission,
21 that based on the patient's condition, et cetera, the friend
22 or the family may actually sign for the patient?

23 A. Correct.

24 Q. Do you know whether or not Mr. Nicholson was able to
25 12:3 sign for himself at discharge at 2:45 a.m.?

1 12:30 A. It appears that he was able to.

2 Q. What in the record is it you're relying upon to
3 conclude that Mr. Nicholson was able to sign for himself in
4 leaving the facility?

5 12:30 A. "Patient is very comfortable and is sleeping in bed."

6 Q. So the fact that he was sleeping leads you to believe
7 he was able to sign for himself at discharge?

8 MR. SPISAK: You know he didn't say
9 that. That's a misrepresentation. Go ahead.

10 12:30 A. Ask the question.

11 Q. Let me rephrase it.

12 MR. SPISAK: She took half your
13 answer and wanted to see if that's what you had said.

14 BY MS. DIXON:

15 12:30 Q. How long did you personally observe Mr. Nicholson
16 prior to discharging him at 2:45 a.m. on 2/2/98?

17 A. One hour.

18 Q. Were you in the room with him the entirety of the
19 time, of the one-hour time frame?

20 12:30 A. No.

21 Q. Of the one hour you're referring to, how much time did
22 you personally spend observing Mr. Nicholson?

23 A. I'm not sure.

24 Q. Do you dispute the fact that Mr. Nicholson was there
25 12:30 for evaluation of a cardiac condition?

1 12:11 A. I'm not sure.

2 Q. In a patient who is potentially --

3 (Interruption in proceedings.)

4 BY MS. DIXON:

5 12:32 Q. Doctor, did you awaken Dennis Nicholson before you
6 discharged him to ask him whether he felt any better?

7 A. Yes.

8 Q. And what did he respond?

9 A. I'm not sure.

10 12:32 Q. You agree that an aortic dissection is a
11 life-threatening condition requiring immediate diagnosis and
12 surgical intervention; correct?

13 MR. RAMM: Objection.

14 A. I'm not sure.

15 12:33 Q. Doctor, had you been able to diagnose Dennis
16 Nicholson's aortic dissection early on February 2, 1998,
17 what specific steps would you have taken after diagnosis?

18 A. I'm not sure.

19 Q. Is Lakewood Hospital equipped, to the best of your
20 12:33 knowledge, or was it equipped in February of 1998 to perform
21 surgery on an emergency basis for an aortic dissection?

22 A. I'm not sure.

23 Q. You provided Dennis Nicholson with an off-work slip
24 for Monday February 2, 1998; correct?

25 12:33 MS. DIXON: Actually, I'll mark it

5 12:35 Q. Did you feel that his pain was so severe that he
6 needed to recuperate at home and had to be off of work?

7 A. I'm not sure.

8 Q. Doctor, in regards to Interrogatory number 23, you
9 indicated, "I was certainly anticipating the potential for
10 12:35 litigation" in this matter. Do you recall giving that
11 response?

12 MR. MOSCARINO: Objection. I didn't
13 hear that.

14 BY MS. DIXON:

15 12:35 Q. In response to Interrogatory number 23, you indicated
16 that, "I was certainly anticipating the potential for
17 litigation" in this matter. Do you recall giving that as a
18 response to one of the written questions?

19 MR. SPISAK: May I see that? I don't
20 12:35 recall the context of that and I don't have my pleading file
21 with me.

22 MR. MOSCARINO: Objection.

23 MR. SPISAK: My only comment is, I
24 have reviewed this now. It says, "In our
25 12:36 litigation-conscious society, I was certainly anticipating

1 12:30 the potential for litigation." That's the full answer.

2 A. I did not write that.

3 Q. You did not write that?

4 A. I don't believe so.

5 12:30 Q. Who did?

6 A. I'm not sure, but I don't believe I did.

7 Q. Well, in response to number 24 which said, "Please
8 identify any and all persons who assisted in the preparation
9 of the answers to these Interrogatories stating their full
10 12:30 names, business addresses and relationships with you," you
11 responded "none."

12 A. I don't remember that. That's been two years ago.

13 Q. Getting back to my question regarding Interrogatory
14 number 23, Mr. Spisak was correct that your response in full
15 12:30 was, "In our litigation-conscious society, I was certainly
16 anticipating the potential for litigation."

17 A. I don't believe I wrote that, and it's two years old.
18 I really don't --

19 MR. SPISAK: Is there a question?

20 BY MS. DIXON:

21 Q. When you learned that Mr. Nicholson had died, did you
22 believe that there would be a lawsuit?

23 A. I'm not sure.

24 Q. Are you aware of any investigation regarding the care
25 12:30 and treatment you provided to Mr. Nicholson on 2/2/98?

1 12:38 MR. MOSCARINO: Objection.

2 A. I'm not sure. I don't know.

3 Q. Were you questioned by your supervisors or employer
4 regarding the care and treatment you provided to
5 12:38 Mr. Nicholson on February 2, 1998?

6 MR. MOSCARINO: Objection.

7 MR. SPISAK: Note my objection.

8 A. I'm not sure.

9 Q. Doctor, are you aware -- let me rephrase that.

10 12:38 Doctor, can you offer any explanation as to why, when
11 my co-Counsel, Mr. Toohig, initially requested the Lakewood
12 Hospital emergency room record, the page including your
13 assessment which stated, "one should evaluate for possible
14 aortic dissection, musculature pain or possible
15 12:38 pneumothorax" was not included?

16 MR. SPISAK: Objection. That request
17 wasn't directed to you. It was for the original records.

18 MS. DIXON: I only asked him if he
19 had knowledge.

20 12:39 A. I don't know.

21 Q. Doctor, would you agree that you misdiagnosed
22 Mr. Nicholson on February 2nd, 1998?

23 MR. SPISAK: Objection. You don't
24 have to answer that.

25 12:39 A. I'm not going to answer.

7 MR. SPISAK: Come on. Objection.

8 You don't have to answer that.

9 BY MS. DIXON:

10 12:39 Q. Would you agree with that?

11 MR. SPISAK: What's "that"?

12 BY MS. DIXON:

13 Q. Let's take a look at what it means.

14 MR. SPISAK: You're not going to
15 12:39 cross-examine him based on some experts.

16 MS. DIXON: It's the State Medical
17 Board of Ohio.

18 MR. TOOHIG: It's public record.

19 (Document marked for identification as
20 Plaintiff's Deposition Exhibit 4)

21 BY MS. DIXON:

22 Q. Doctor, can you please turn to the third page of the
23 document I just marked as Exhibit 4?

24 MR. MOSCARINO: Do you have a copy of
25 12:39 that for me?

1 12:39 MR. RAMM: Yeah. I need a copy,
2 too. Thanks.

3 BY MS. DIXON:

4 Q. Would you agree this document is a photocopy of the
5 12:40 USMLE Step Three Performance Profiles, your USMLE Step Three
6 Performance Profile?

7 MR. SPISAK: Well --

8 A. I guess.

9 MR. SPISAK: Number one, this is
10 12:40 dated June of 1995. And let me just see something here.
11 Where is your CV? Here it is. If you are going to take
12 something that was done in June of 1995 and in some way,
13 shape or form try to relate that to something that occurred
14 over three years later, you're barking up the wrong tree.
15 12:40 That's number one, and so I think we're going to not go
16 anywhere with this, Debra.

17 BY MS. DIXON:

18 Q. Doctor, you have the document in front of you. Do you
19 dispute the fact that the third page of that document
20 12:41 identifies your USMLE Step Three Performance Profiles?

21 MR. SPISAK: As of June of 1995; is
22 that correct?

23 MS. DIXON: Yes.

24 A. Do I dispute it?

25 12:41 Q. Those are the scores?

1 12:41 A. I'm not sure. I would have to look at my own files.

2 Q. Based on the review of the document you have in front
3 of you, under "diagnoses," your performance was lower to
4 borderline?

5 12:41 MR. SPISAK: Once again, I'm going to
6 object to this. This says whatever it says. I don't know
7 anything about this. I don't know if you know anything
8 about this, doctor, and that's all there is to it.

9 BY MS. DIXON:

10 12:41 Q. There's still a question before you, doctor.

11 MR. SPISAK: And the question is?

12 BY MS. DIXON:

13 Q. Would you agree that under the first section,
14 "physician's tasks," subsection "diagnoses," the scores
15 12:42 recorded range from lower to borderline performance?

16 MR. MOSCARINO: Objection.

17 MR. SPISAK: I'm going to note my
18 objection. This document, to the extent that it exists,
19 speaks for itself. You don't have to try to interpret it or
20 12:42 do anything with it.

21 A. I'm not going to answer it, then.

22 Q. Do you recall receiving your USMLE Step Three
23 Performance Profiles?

24 A. No.

25 12:42 Q. Doctor, have you ever been treated for any memory

1 12:4 deficits?

2 A. No.

3 Q. You indicated you had a vague recollection of Dennis
4 Nicholson; correct?

5 12:4 A. Correct.

6 Q. Do you recall him as being a black male?

7 A. I don't recall.

8 Q. Is there anything in the chart to suggest he was a
9 black male?

10 12:4 A. I don't know.

11 MR. SPISAK: Right there.

12 A. Yes; there is.

13 Q. Do you recall Mrs. Nicholson as being white?

14 A. I don't recall.

15 12:4 Q. Do you have any issues with biracial couples, doctor?

16 A. No.

17 Q. Do you have any other explanation why a patient who
18 came in with a potential cardiac situation was admitted,
19 treated and released within 48 minutes --

20 12:4 MR. SPISAK: Wait a minute. You're
21 suggesting some racial issue here?

22 MS. DIXON: I'm onto the next
23 question.

24 MR. SPISAK: I missed something.

25 BY MS. DIXON:

1 12:4 Q. I said --

2 A. She said something about -- I'm not sure.

3 MR. SPISAK: He doesn't agree this
4 patient was there for cardiac issues, so the premise of your
5 12:4 question -- well, did you answer the question?

6 A. I'm not sure what the question is.

7 (Mr. Lenson enters the proceedings.)

8 BY MS. DIXON:

9 Q. Doctor, in your experience in the Lakewood Hospital
10 12:4 emergency department, are you able to estimate the
11 percentage of blacks patients that are seen versus white
12 patients?

13 A. No.

14 MS. DIXON: I don't have anything
15 12:4 further.

16 MR. MOSCARINO: I just have a couple,
17 Dr. Bianchi.

18 THE WITNESS: You are?

19 MR. MOSCARINO: I'm George Moscarino,
20 12:4 one of the lawyers for Lakewood Hospital in this case.

21 - - -

22

23

24 CROSS-EXAMINATION OF JAMES E. BIANCHI, M.D.

25 BY MR. MOSCARINO:

the name of Doan. That has already been referred to for
awhile in the deposition?

A. Sure.

Q. Do you have any criticisms of what she did on the
night that you mutually cared for Mr. Nicholson?

A. No.

Q. I take it when we go to trial in this case, you're not
going to blame her for some reason for this unfortunate
outcome; is that right?

A. Correct.

MR. MOSCARINO: That's all I have.

MR. SPISAK: Okay. We'll take a look
at it.

- - -

(Thereupon, the deposition was concluded
at 12:55 p.m. and signature was not waived.)

SIGNATURE PAGE

JAMES E. BIANCHI, M.D.

I certify that this deposition was signed in my
presence by JAMES E. BIANCHI, M.D. on this _____ day of
_____, 2000.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my seal of office in this City
of _____, County of _____,
on this _____ day of _____, 2000.

Notary Public

My commission expires:

[illegible]

State of Ohio) SS.
County of Cuyahoga)

CERTIFICATE

I, Denise C. Winter, a Notary Public within and for the State aforesaid, duly commissioned and qualified, do hereby certify that the above-named witness JAMES E. BIANCHI, M.D., was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by him was by me reduced to stenotypy in the presence of said witness, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony so given by him as aforesaid, and that this deposition was taken at the time and place in the foregoing caption specified.

I do further certify that I am not a relative, employee or attorney of any of the parties hereto, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand
this 30th day of June, 2000.



Denise C. Winter
Notary Public

My commission expires March 3, 2001.

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