

<p>Page 1</p> <p>1 State of Ohio,) ss: 2 County of Lake.) 3 - - - 4 IN THE COURT OF COMMON PLEAS 5 - - - 6 Ruth Myers,) 7 Plaintiff,) 8 vs.) Case No. 01 CV000687 9 Faissal Zahrawi, M.D. et al.,) 10 Defendants.) 11 - - - 12 13 Deposition of Frederic Bishko, M.D., a witness 14 herein, called by the defendants for oral examination, 15 pursuant to the Ohio Rules of Civil Procedure, taken 16 before Kris Adorjan, Court Reporter and Notary Public in 17 and for the State of Ohio, at University Mednet, 18599 18 Lakeshore Boulevard, Euclid, Ohio 44119, on Thursday, 19 January 31, 2002, commencing at 10:44 a.m. 20 - - - 21 22 23 24 25</p>	<p>Page 3</p> <p>1 2 O B J E C T I O N S 3 C O N T. 4 ATTORNEY PAGE-LINE 5 Ms. Vadas 92 - 13 6 Ms. Vadas 93 - 10, 19 7 Ms. Vadas 94 - 1, 17 8 Ms. Vadas 97 - 3 9 Mr. Krause 101 -17 10 - - - 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>Page 2</p> <p>1 I N D E X 2 WITNESS: CROSS 3 Frederic Bishko, M.D. 4 By Mr. Krause 5 5 - - - 6 E X H I B I T S 7 Defendants' Marked 8 1 10 9 - - - 0 O B J E C T I O N S 1 ATTORNEY PAGE-LINE 2 Ms. Vadas 8 - 23 3 Ms. Vadas 9 - 7, 12, 18 4 Ms. Vadas 10 -15 5 Ms. Vadas 38 -11 6 Ms. Vadas 71 -17 7 Ms. Vadas 72 - 12, 15, 23 8 Ms. Vadas 73 -25 9 Ms. Vadas 74 - 4, 21 10 Ms. Vadas 75 - 3, 14, 24 11 Ms. Vadas 77 - 10, 14, 19 12 Ms. Vadas 78 - 1 13 Ms. Vadas 81 - 16, 25 14 Ms. Vadas 82 - 4 15 Ms. Vadas 89 -10</p>	<p>Page 4</p> <p>1 APPEARANCES: 2 On behalf of the Plaintiff 3 Kathryn A. Vadas, Esq. 4 Becker & Mishkind 5 Skylight Office Tower 6 1660 West 2nd Street, Suite 660 7 Cleveland, Ohio 44113 8 216 241-2600 9 10 On behalf of the Defendants: 11 David Krause, Esq. 12 Reminger & Reminger 13 113 Saint Clair Avenue 14 Cleveland, Ohio 44113 15 216 687-1311 16 - - - 17 18 19 20 21 22 23 24 25</p>

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1 FREDERIC BISHKO, M.D.
2 of lawful age, being first duly sworn, as
3 hereinafter certified, was examined and testified as
4 follows:
5 CROSS-EXAMINATION
6 By Mr. Krause:
7 Q Doctor, please state and spell your name for the
8 record.
9 A Frederic Bishko, B-i-s-h-k-o, M.D.
0 Q When did you obtain your medical license?
1 A 1965.
2 Q I reviewed your original file for the first time
3 before we went on the record, and I noted I don't
4 have copies of the correspondence portion of your
5 file.
6 I will make a request on the record from
7 plaintiff's counsel to secure a copy of those and
8 forward them to me, and it would be great if we
9 could copy them before we leave, but that would
0 depend obviously on the office staff.
1 Where did you go to medical school?
2 A College of Medicine University of Cincinnati.
3 Q Are you licensed in any other states?
4 A No.
5 Q Have you ever been licensed in any other states?

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1 A Yes.
2 Q What states?
3 A Massachusetts, California, Ohio.
4 Q Ohio?
5 A Ohio.
6 Q If you could, just briefly give me a rundown of your
7 work, your professional experience after you
8 graduated from the University of Cincinnati.
9 A You mean internship, residency?
0 Q Yes.
1 A Internship Mount Sinai Hospital of Cleveland,
2 residency Mount Sinai Hospital of Cleveland,
3 Cleveland VA Hospital, rheumatology, New York
4 University, Bellevue Medical Center.
5 Q How about after you left Bellevue, did you enter
6 private practice?
7 A I went into private practice in Massachusetts for
8 one year and returned to Cleveland.
9 Q About what year would that have been?
0 A I returned to Cleveland and started practice in
1 1972.
2 MR. KRAUSE: Off the record.
3 (Discussion off the record.)
4 MR. KRAUSE: Back on the record.
5 By Mr. Krause:

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1 Q Doctor, can you describe for me the character of
2 your practice in 1972?
3 A It was internal medicine and rheumatology.
4 Q Has the nature of your practice changed from 1972?
5 A Probably more rheumatology.
6 Q Approximately, what time frame did your practice
7 shift to be more focused on rheumatology?
8 A I think it's probably been a continuum.
9 Q Do you practice any internal medicine anymore?
10 A Yes.
11 Q About what percentage of your time is spent
12 practicing internal medicine, and give me if you can
13 a breakdown.
14 A 40.
15 Q 40/60?
16 A 40 internal medicine.
17 Q And 60 rheumatology?
18 A 60 rheumatology.
19 Q Have any of your medical licenses in either
20 Massachusetts, California or Ohio been suspended --
21 A No.
22 Q -- or revoked?
23 A No.
24 Q Try to wait for me to finish the question.
25 Have you ever had your deposition taken

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1 before?
2 A Yes.
3 Q On how many occasions?
4 A I don't remember.
5 Q More than 10?
6 A No.
7 Q Less than 10?
8 A Yeah. Yes.
9 Q So you know generally how this works?
10 A Yes.
11 Q She is going to try to take down everything we say,
12 and we will try to get through this.
13 If you don't understand a question I ask,
14 let me know and I will try to rephrase it in a way
15 you can understand it, so we both are talking about
16 the same thing. Fair enough?
17 A Fine.
18 Q Have you ever been sued before, Doctor?
19 A Yes.
20 Q Have you ever been sued by a patient, by a former
21 patient for medical treatment you rendered to them?
22 A Yes.
23 MS. VADAS: Objection.
24 Q About how long ago was that?
25 A There was a case three years ago and there were a

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<p>1 couple of cases last year I believe.</p> <p>2 Q Was your deposition taken in any of those cases?</p> <p>3 A All,</p> <p>4 Q Were they in Lake County or Cuyahoga County?</p> <p>5 A Both.</p> <p>6 Q How were those cases resolved?</p> <p>7 MS. VADAS: Objection.</p> <p>8 A One case was lost, one case Mednet had the liability</p> <p>9 and one case we won.</p> <p>10 Q Other than those three cases, have you ever been</p> <p>11 sued for medical malpractice before?</p> <p>12 MS. VADAS: Objection.</p> <p>13 A No.</p> <p>14 Q In the case that you lost, when you say "lost," was</p> <p>15 there a jury verdict?</p> <p>16 A There was a jury verdict.</p> <p>17 Q Do you call the medical issues of that case?</p> <p>18 MS. VADAS: Objection.</p> <p>19 A Sure.</p> <p>20 Q Excuse me.</p> <p>21 A Yes.</p> <p>22 Q Identify those for me, please.</p> <p>23 A There was a noncompliant patient who had diabetes</p> <p>24 who had never been gainfully employed who developed</p> <p>25 an ulcer on his foot, and despite my instructions to</p>	<p>1 Q When did you first come to treat Ruth Myers, Doctor?</p> <p>2 A 5-18-94.</p> <p>3 Q For what purpose did you see Ruth Myers on that</p> <p>4 first visit?</p> <p>5 A Arthritis.</p> <p>6 Q Rheumatoid arthritis?</p> <p>7 A Yes.</p> <p>8 Q What is rheumatoid arthritis, Doctor?</p> <p>9 A It's an inflammatory condition of the joints and the</p> <p>10 body, primarily the small joints, most prominently,</p> <p>11 but also the other joints as well.</p> <p>12 Q Have you reviewed other documents, other than your</p> <p>13 chart, in preparation for your deposition today?</p> <p>14 A No.</p> <p>15 Q Did you meet with Miss Vadas prior to your</p> <p>16 deposition today?</p> <p>17 A This morning.</p> <p>18 Q Did you talk about the case?</p> <p>19 A Yes.</p> <p>20 Q What did you talk about?</p> <p>21 A We talked about Miss Myers' clinical history, her</p> <p>22 course.</p> <p>23 Q What did you tell her about Miss Myers' clinical</p> <p>24 history and course?</p> <p>25 A It's been fairly benign.</p>
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<p>1 call immediately if anything happened he did not and</p> <p>2 ended up in the hospital and underwent an</p> <p>3 amputation.</p> <p>4 He was awarded medical expenses, and I guess</p> <p>5 it's not legal for the jury to know that someone on</p> <p>6 Welfare has no medical expenses, so the recovery is</p> <p>7 from the State rather than the patient, and the sum</p> <p>8 was the total of his medical expenses.</p> <p>9 Q I take it, despite the fact there was a jury</p> <p>10 verdict, you feel your care was appropriate in</p> <p>11 regards to that patient?</p> <p>12 A I do.</p> <p>13 Q Are medical malpractice cases somewhat accustomed to</p> <p>14 doing business as a physician today?</p> <p>15 MS. VADAS: Objection.</p> <p>16 A Yes.</p> <p>17 MR. KRAUSE: Doctor, you have in</p> <p>18 front of you your original file. I would like to</p> <p>19 mark the file as one exhibit than get involved in</p> <p>20 pulling things out. You can keep the file.</p> <p>21 Mark that as Defendants' Exhibit 1.</p> <p>22 I will put it on the inside of the jacket</p> <p>23 here so it's not visible.</p> <p>24 (Defendants' Exhibit 1</p> <p>25 marked for identification.)</p>	<p>1 Q About what time did Miss Vadas get here this</p> <p>2 morning?</p> <p>3 A 20 to 10:00, and then we were looking for a room so</p> <p>4 we had a little downtime.</p> <p>5 Q Prior to your meeting with Miss Vadas, did you</p> <p>6 substantively review your chart --</p> <p>7 A No.</p> <p>8 Q -- in preparation for your deposition today?</p> <p>9 A No. Sorry.</p> <p>10 Q Did you review your chart with Miss Vadas?</p> <p>11 A Only when she would ask me a question about a</p> <p>12 specific visit. We didn't review it in total</p> <p>13 chronologically.</p> <p>14 Q Would you agree with me, Doctor, accuracy in your</p> <p>15 chart is important in your treatment of the patient?</p> <p>16 A Yes.</p> <p>17 Q Therefore, is it fair for me to assume that your</p> <p>18 charting in this case is accurate, at least as of</p> <p>19 the day you made the record itself?</p> <p>20 A Yes.</p> <p>21 Q Why is it important for you to keep accurate</p> <p>22 records, Doctor?</p> <p>23 A It serves as a reference to reflect the patient's</p> <p>24 status at a particular point in time.</p> <p>25 Q Have you reviewed Dr. Zahrawi's records?</p>

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1 A No.
 2 Q You are aware Dr. Zahrawi is a defendant in this
 3 case?
 4 A I am.
 5 Q Do you have an understanding as to Miss Myers'
 6 allegations against Dr. Zahrawi?
 7 A From her.
 8 Q From Miss Myers?
 9 A That is correct.
 10 Q What is your understanding?
 11 A She felt the operation eventuated in an untoward
 12 result with which she was not happy, and she felt
 13 the wrong procedure had been performed, meaning that
 14 she didn't need the procedure that had been
 15 performed.
 16 MS. VADAS: Kathy, can I get on the
 17 record, so I can nip a whole section of this
 18 deposition, my understanding from talking to Howard,
 19 maybe even you, that Dr. Bishko will not be called
 20 to proffer expert opinions with respect to standard
 21 of care and appropriateness of performing the
 22 procedure or informed consent?
 23 MS. VADAS: That is correct. I did
 24 not indicate to Dr. Bishko that we would ask him any
 25 opinion questions. I am not aware of any he may or

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1 may not hold. You are more than welcome to ask him.
 2 It's not our intention to call him as an
 3 expert witness in this case.
 4 MR. KRAUSE: Let's see if we can
 5 simplify things here.
 6 Q Do you have a record of seeing Ruth Myers in '91? I
 7 think I recall a record from you in '91, but I may
 8 be mistaken. 7-27 of '91, I may be wrong.
 9 A That's interesting, there is a big gap here from '90
 10 to '94, unless you find something that was out of
 11 order.
 12 Q Doctor, I believe I have a Mednet phone message from
 13 7-27-91, that is not your signature at the bottom of
 14 that phone note?
 15 A I would be glad to look at it.
 16 Q You don't have it in your chart?
 17 A That is a nurse, that would be her signature.
 18 That's my doctor number, but I don't believe that is
 19 my signature.
 20 Q I'm referring, for the record, to a telephone
 21 contact record from University Mednet dated 7-27-91
 22 with Ruth Myers listed under the patient name.
 23 The next record I have is dated 5-18-94.
 24 Doctor, is that your first record in your chart of
 25 seeing Ruth Myers?

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1 A Yes.
 2 Q What specific records did you and Miss Vadas review
 3 before your deposition today?
 4 A This note.
 5 Q Of 5-18-94?
 6 A That is correct. I believe we reviewed a couple of
 7 visits prior to her operation by Dr. Zahrawi and
 8 maybe one or two after.
 9 Q Would those be January 20th of 1998?
 10 A Let me get them as you kind of call them off and I
 11 can tell you.
 12 Q My question is simply what records have you reviewed
 13 with Miss Vadas?
 14 A Okay, not January 20th.
 15 Q 2-23-98?
 16 A I don't have 2-23-98, so we didn't review that.
 17 Q How about 3-23-98?
 18 A Yes.
 19 Q How about 5-29-98?
 20 A Yes.
 21 Q How about September 11th of 1998?
 22 A Yes.
 23 Q Let's go to this 5-18-94 record. Do you have an
 24 independent recollection, aside from your medical
 25 records of this visit?

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1 A I do not.
 2 Q Based on your review of the medical records, are you
 3 able to determine for what purpose Miss Myers came
 4 to your office?
 5 A The note states it's a consultation note. I did not
 6 state who referred the patient. I assume it was Dr.
 7 John Nemunaitis, the physiatrist who had seen
 8 arthritis patients prior to my coming to the Euclid
 9 clinic.
 10 Q You have a typed note from 5-18-94 --
 11 A I do.
 12 Q -- and a written note as well?
 13 A That is correct.
 14 Q Whose signature is that on the written note?
 15 A On the written note?
 16 Q On 5-18-94.
 17 A I don't see a signature.
 18 Q Why don't you look at mine, down here.
 19 A That is my nurse, that is not my note.
 20 Q That is a nursing note?
 21 A I can find that, but there is a written note because
 22 I regularly take a history and write it down. I do
 23 a physical and then dictate a note, but what you are
 24 looking at --
 25 Q Is this your note, Doctor?

<p style="text-align: right;">Page 17</p> <p>1 A It is. What you were looking at before is just the 2 nurse's entry. It says 5-25 -- 3 Q Would the nurse -- I'm sorry. Were you done with 4 your answer? 5 A It says 5-25-94. So that would be a different day. 6 Q I see 5-18-94. I see what you are saying. 7 On the sticker stamp -- 8 A That is correct. 9 Q -- it says 5-25-94. You would agree with me at the 0 top of the nursing note it says 5-18-94? 1 A It says referred by Dr. Kosnosky. 2 Q As per your practice in '94, would your nurse see 3 the patient before you? 4 A Yes. 5 Q Would you review the nurse's findings as contained 6 in her progress note? 7 A In her progress note? 8 Q In this record, would you have reviewed this record? 9 A Prior to seeing the patient, yes. 10 Q Doctor, about eight lines down, just tell me if I'm 11 reading this correct, wrists very painful, wants 12 injection, and that injection would be Plaquenil? 13 A No, but there is more there, sir. 14 Q Tell me. 15 A Went to Mentor, it's crossed, there is a line</p>	<p style="text-align: right;">Page 19</p> <p>1 A That is correct. 2 Q Would that have been part of the history you 3 obtained from Miss Myers? 4 A Yes. 5 Q Doctor, what is a palindromic presentation of 6 arthritis? 7 A Migratory. 8 Q What is the significance of a low level positive 9 ANA? 0 A The significance? 1 Q If there is any, if there is not tell me. 2 A I think in this case I had just received -- I must 3 have had Dr. Wilkie's lab, so it was a matter of 4 reporting what he had. There is no specific 5 significance. 6 Q What is Plaquenil for? 7 A To treat, Plaquenil is a drug used to treat malaria 8 rheumatoid arthritis and some other diseases. 9 Q What is Plaquenil referred for in rheumatoid 10 arthritis? 11 A Mild cases. 12 Q What does it do for rheumatoid arthritis? 13 A It suppresses the disease activity. 14 Q Does it assist with pain at all? 15 A The pain is usually, especially in early cases, due</p>
<p style="text-align: right;">Page 18</p> <p>1 through it. 2 Q Went to Mentor, okay. 3 A So what I would assume that means is that I was here 4 in Euclid, the patient was having painful wrists but 5 went to the wrong office because there is no 6 subsequent entry in the chart. So that would 7 explain why there is no entry, she was supposed to 8 come but went to the wrong site. 9 Q We can agree whether this note is 5-18-94 or 5-25, 0 it demonstrates Miss Myers had painful wrists, 1 plural, at that time? 2 A We can agree that's what the note says, yes, but I 3 wasn't there so I don't know. 4 Q I assume you hire competent nurses to work in your 5 office? 6 A We know that's what the patient complained of to the 7 nurse. 8 Q What did Miss Vadas ask you about specifically to 9 your typewritten 5-18-94 note? 10 A I don't think she asked me anything specific. I 11 think she just wanted to know if this was the 12 patient encounter. 13 Q The first sentence of that note indicates that Miss 14 Myers had an acute onset of polyarthritis, mainly 15 involving her hands in '86?</p>	<p style="text-align: right;">Page 20</p> <p>1 to the disease activity. So if it suppresses the 2 disease activity it will suppress the mediator of 3 inflammation and you have less pain. 4 Q Plaquenil is a medication more geared towards 5 slowing the onset of disease as opposed to Darvocet 6 which is specifically for pain -- 7 A Yes. 8 Q -- is that a fair characterization? 9 A Yes. 0 Q Are there any harmful side effects of taking 1 Plaquenil? 2 A Potentially, yes. 3 Q What are they? 4 A Probably the most common is there could be high 5 toxicity, which is rare when you use the drug in the 6 appropriate dose. You can get nerve damage, muscle 7 damage, you can get hair loss, you probably can get 8 effects on the blood counts. 9 Q I note in your record it indicates that Miss Myers 10 discontinued Plaquenil after six months, despite the 11 fact she felt it improved and had no problems until 12 January of this year when she had the onset of joint 13 discomfort similar to that that she had in 1986, but 14 in addition had the onset of diffuse aching both 15 distal and Proximal in the soft tissue of her body;</p>

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1 did I read that correctly?
 2 A Yes.
 3 Q Was Miss Myers suffering from any of the side
 4 effects you described relating to Plaquenil?
 5 A I don't believe so. The note says she stopped
 6 because she was worried about the potential
 7 toxicity.
 8 Q To your knowledge prior to Miss Myers stopping
 9 taking her Plaquenil, did she have any evidence of
 10 ophthal --
 1 A Ophthalmologic.
 2 Q -- toxicity?
 3 A No.
 4 Q Can we agree, Doctor, back on 5-18-94 the patient
 5 reported to you if she does any work using her arm,
 6 the next day her arm will be much more painful than
 7 usual?
 8 A Yes.
 9 Q I notice you had written of interest patient had
 10 been on Prozac for depression since 8-93, because
 11 Prozac can cause aching, she discontinued it without
 12 any alteration to her soft tissue aching. Why is
 13 the fact that she has been on Prozac for depression
 14 of interest?
 15 A Patients come in to your office with symptoms, and

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1 if they are on a medication that can cause those
 2 symptoms then one has to question whether the cause
 3 of the symptoms are due to one of the medications
 4 that they are on, if that is a listed side effect of
 5 that particular medication.
 6 Q I note you have in your note she discontinued it
 7 without any alteration in her joint or soft tissue
 8 aching, is that significant, Doctor?
 9 A That would indicate Prozac wasn't the cause of her
 10 aching.
 1 Q Did you form an opinion as to what was the cause of
 2 her aching?
 3 A This aching was more of a widespread muscular
 4 aching, and my opinion is in the summary. Would you
 5 want me to read that or do you wish to read it?
 6 Q I can see in the summary this patient has rheumatoid
 7 arthritis, are you referring to that section of your
 8 note?
 9 A Yes.
 10 Q And the paragraph that follows that?
 11 A The sentence that follows it, yes.
 12 Q You also noted in your note the patient's paternal
 13 aunts have rheumatoid arthritis and systemic lupus
 14 and the patient's mother has psoriasis, were those
 15 factors significant to you in rendering care for

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1 Ruth Myers on 5-18-94?
 2 A No, if there is a family history of a particular
 3 disease, sometimes that can be important if a
 4 patient had a family history of lupus, relatives of
 5 patients who have lupus tend to have positive ANA,
 6 so the patient's ANA could be positive just because
 7 her mom had lupus. The fact someone in the family
 8 has had psoriasis could have been important, as some
 9 patients characterize rheumatoid arthritis then
 10 develop psoriasis later on.
 11 Q What is the difference between rheumatoid arthritis
 12 and psoriasis?
 13 A The joints involved tend to be different, the
 14 pathology is a little different, and often the
 15 treatment is pretty much the same, but the more you
 16 know about the patient the better care you can offer
 17 them.
 18 Q What joints are typically involved in rheumatoid
 19 arthritis?
 20 A The small joints of the feet and hands earliest to
 21 most prominently, the joints are usually symmetrical
 22 in that if you have one side involved, you usually
 23 have both sides involved, and then the joints that
 24 are larger.
 25 Q One of those joints that are larger would be the

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1 distal radioulnar joint?
 2 A Could be.
 3 Q How many patients with rheumatoid arthritis have you
 4 seen over the years, Doctor?
 5 A I don't know, a lot.
 6 Q More than 1,000?
 7 A More than 1,000? I don't know, but a lot.
 8 Q Have you ever seen distal radioulnar joints in
 9 patients with rheumatoid arthritis?
 10 A It's common.
 11 Q Common?
 12 A Yes.
 13 Q The end of your visit on 5-18-94, she was placed on
 14 Zorprin, 1500 milligrams, twice daily, and she could
 15 increase the dose to 5 or 6 tablets daily?
 16 A Yes.
 17 Q Is Zorprin a form of aspirin?
 18 A Yes.
 19 Q It's a more powerful form of aspirin?
 20 A It's a long-acting aspirin product that has less
 21 gastrointestinal toxicity that is more convenient
 22 and more easily tolerated.
 23 Q Back in 1994 was Zorprin a prescription medication?
 24 A Yes.
 25 Q You placed her back on Plaquenil at the end of your

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<p>1 visits?</p> <p>2 A Yes.</p> <p>3 Q Why did you place her back on Plaquenil?</p> <p>4 A I thought she had a fairly mild disease, the</p> <p>5 Plaquenil had very little risk and that I think</p> <p>6 might benefit versus a risk basis. I thought it had</p> <p>7 something to offer.</p> <p>8 Q Did you explain those benefits and risks to Miss</p> <p>9 Myers on that 5-18-94 visit?</p> <p>10 A That's my custom.</p> <p>11 Q Is there documentation in the chart that you did so?</p> <p>12 A Not to my knowledge.</p> <p>13 Q I take it in weighing the risks and benefits and the</p> <p>14 concerns Miss Myers had about ophthalmologic</p> <p>15 toxicity compared to potential benefits with regard</p> <p>16 to the progress of the rheumatoid arthritis, you</p> <p>17 determined it would be better for her to be on</p> <p>18 Plaquenil?</p> <p>19 A Yes.</p> <p>20 Q Plaquenil helps assist in stopping the progress of</p> <p>21 the disease?</p> <p>22 A Yes.</p> <p>23 Q I'm on to your note now, Doctor, your handwritten</p> <p>24 note I should say of 5-18-94, and I see a stick</p> <p>25 figure, Doctor. I reviewed your records and I note</p>	<p>1 findings?</p> <p>2 A Yes, which would be the patient's complaints or</p> <p>3 concerns.</p> <p>4 Q Doctor, you indicated that Miss Myers' complaints of</p> <p>5 this 5-18-94 visit were somewhat muscular in nature?</p> <p>6 A Yes.</p> <p>7 Q How about her wrist pain, was that muscular in</p> <p>8 nature, Doctor?</p> <p>9 A Could you reask the question?</p> <p>10 Q We talked about the wrist pain that was documented</p> <p>11 in the nursing note from this visit.</p> <p>12 MS. VADAS: I don't think he</p> <p>13 testified the nursing note was from this visit.</p> <p>14 A I'm sorry. Are you talking about --</p> <p>15 Q Hold on a second. I want to make sure we are clear.</p> <p>16 MS. VADAS: I'm sorry. I thought</p> <p>17 this was the nursing note.</p> <p>18 Q Doctor, go back to the nursing note for this visit.</p> <p>19 A Wait a minute. I don't believe the nursing note is</p> <p>20 for this visit. The nursing note I thought was the</p> <p>21 following week and the patient went to the wrong</p> <p>22 office, and so I assume she had called my nurse or</p> <p>23 something and she ended up out there, but there is</p> <p>24 no record I saw her on 5-25.</p> <p>25 Q So your testimony is this note, and I don't know if</p>
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<p>1 on some of your written records you have an O, it</p> <p>2 says see stick figure, what is the significance of</p> <p>3 that?</p> <p>4 A Let me find it for you. The O would indicate</p> <p>5 warmth.</p> <p>6 Q The O would indicate what, Doctor?</p> <p>7 A Can we go off the record?</p> <p>8 MR. KRAUSE: Off the record.</p> <p>9 (Discussion off the record.)</p> <p>0 MR. KRAUSE: Back on the record.</p> <p>1 By Mr. Krause:</p> <p>2 Q Doctor, in your record sometimes there is just a</p> <p>3 letter O with a colon next to it. Any information</p> <p>4 following that O would be representative of your</p> <p>5 objective findings as opposed to your subjective</p> <p>6 findings?</p> <p>7 A Yes.</p> <p>8 Q In your notes for several visits I saw that stick</p> <p>9 figure.</p> <p>10 A Yes.</p> <p>11 Q Was it your common practice to use the stick figure</p> <p>12 to document your objective findings with regard to a</p> <p>13 patient's visit?</p> <p>14 A Yes.</p> <p>15 Q That would be different from the subjective</p>	<p>1 you have a copy of it in your chart, I want to be</p> <p>2 fair, if you want to look at my copy.</p> <p>3 A No, I've got it.</p> <p>4 Q This note is actually a record, it says 5-18-94 at</p> <p>5 the top and in handwriting?</p> <p>6 A Two different dates.</p> <p>7 Q Then there is a sticker on it that says 5-25-94?</p> <p>8 A The sticker is a computer sticker that generated the</p> <p>9 day the patient is supposed to come in. We didn't</p> <p>0 see the patient that day. It says went to Mentor,</p> <p>1 which means went to the wrong office. I never saw</p> <p>2 her.</p> <p>3 Q Do you know why that is crossed out?</p> <p>4 A I don't.</p> <p>5 Q So on 5-18-94, did Miss Myers complain of any</p> <p>6 problems with her wrist? I'm referring to her</p> <p>7 subjective complaints.</p> <p>8 A No.</p> <p>9 Q Objectively, Doctor, did you find any problems with</p> <p>10 Miss Myers' right wrist? Well, we will start with</p> <p>11 either of her wrists.</p> <p>12 A Joint exam reveals tenderness and swelling of the</p> <p>13 right wrist.</p> <p>14 Q Your stick figure has a line on the patient's right</p> <p>15 hand. Do you see several lines drawn through the</p>

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1 joints on her right hand?
 2 A I do.
 3 Q Do you see a line drawn to the joint of her wrist?
 4 A I do.
 5 Q Could you identify that joint for me, Doctor?
 6 A Her wrist.
 7 Q There seems to be two separate circles. There are
 8 two joints in your wrist, correct, Doctor?
 9 A There are.
 10 Q Which circle is that line going to on Miss Myers'
 11 wrist on the stick figure?
 12 A That would be the radiocarpal joint.
 13 Q Which one would be the radioulnar joint?
 14 A The other one.
 15 Q As we look at these stick figures, they are sitting
 16 there with their thumb to the outside away from the
 17 body?
 18 A This would be the radius, the inside one would be
 19 the ulna.
 20 Q The left wrist, Doctor, would that also be the
 21 radius?
 22 A Radiocarpal.
 23 Q Radiocarpal?
 24 A Yes.
 25 Q I have a second page with a stick figure on it, what

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1 is the purpose of the second stick figure?
 2 A The first page would be what the patient complained
 3 of, and the second figure would be the exam. This
 4 would be the subjective, the symptoms of the
 5 patient, the first page.
 6 Q So this stick figure on the first page --
 7 A It's written what the patient --
 8 Q Let me get my question out.
 9 The stick figure on the first page of your
 0 written office note from the 5-18-94 visit, that is
 1 representative of the subjective complaints of the
 2 patient?
 3 A Yes.
 4 Q The second stick figure in this note, on a separate
 5 page, is representative of your objective findings,
 6 correct?
 7 A Yes, sir.
 8 Q Do you have two stick figures throughout your chart
 9 for each visit?
 10 A No.
 11 Q Is that your writing next to the shoulder on the
 12 second stick figure page?
 13 A It is.
 14 Q Can you read that?
 15 A Not tender. fibrositic tender points.

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1 Q What are fibrositic tender points?
 2 A Fibromyalgic fibrositis is a disease where patients
 3 often complain of widespread muscular aching, which
 4 Miss Myers did, and the way you make the diagnosis
 5 is that there are a number of tender points on the
 6 body, usually at tendons attachments where patients
 7 are tender and you put pressure on those points.
 8 I was just stating Miss Myers did not
 9 demonstrate tenderness at any of those 18 tender
 10 points.
 11 Q I see you have on your objective stick figure, you
 12 have a line drawn, it's on the right wrist. There
 13 is no line drawn on the left wrist. Tell me which
 14 joint that goes to. I want to be fair, I don't want
 15 to characterize it for you.
 16 A Well, quite honestly it kind of looks like it's in
 17 the middle.
 18 Q If you draw the line to the middle, would that be
 19 any different from drawing the line to a certain
 20 particular joint?
 21 A Yes. There are two joints, but also right in the
 22 middle there patients complain of pain and swelling.
 23 She might have had inflammation in the middle rather
 24 than at either edge.
 25 Q Doctor, looking at your 5-18-94 written note, do you

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1 ever indicate in there that Miss Myers' complaints
 2 of pain are complaints of pain in her wrist?
 3 A I don't see that.
 4 Q Do you ever indicate in there that she complains of
 5 any loss of function with regard to her right wrist?
 6 A No.
 7 Q Based on your objective findings, Doctor, can we
 8 agree that you didn't draw that line to her right
 9 wrist for no reason, there is a significance to it?
 0 A Sure.
 1 Q What is that significance, Doctor?
 2 A That she had tenderness in the wrist.
 3 Q Did you document tenderness in her right wrist in
 4 your written note?
 5 A If you will look at some of the following office
 6 visits --
 7 Q We will get to the following office visits.
 8 A I was going to -- do you want to go off the record?
 9 Q We will stay on the record.
 0 A If you would go to any of the preprinted arthritis
 1 forms --just keep flipping through there, that is
 2 fine.
 3 If you look down in the lower left it says
 4 pain, swelling, warmth, tenderness and erythema, and
 5 each has a little -- what is the right word? It's

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<p>1 not really an abbreviation, but tenderness is a 2 little dot, warmth is a circle, swelling is a little 3 cross, and erythema is like a plus sign. 4 Q All right. 5 A That allows you to characterize what is going on in 6 each joint without writing a lot, and in 1994 this 7 was the accepted way of recording a joint exam, and 8 so the dot would be tenderness. 9 Q I have a question on the 7-22-94 visit, while we are 10 here. This is the stick figure. 11 A Homologous. 12 Q It looks to me like a stick figure. 13 A 7-22 did you say? 14 Q Yes. 15 A You said 7-22? 16 Q 7-22-94. 17 A '94. I thought it was '97. 18 Q 7-22-94. Did you find it? 19 A Yeah. 20 Q Do you see that stick figure at the bottom? 21 A I do. 22 Q At the right corner of the page compared to the 23 stick figure on your 5-18-94 visit, it looks to me 24 like now we are dealing with the hand flipped over? 25 A It's a different homologous, that is how they</p>	<p>1 distal radioulnar joint are common with rheumatoid 2 arthritis patients, are problems with the other 3 joint in the wrist as common? 4 A Which other joint? 5 Q The one you just identified for me? 6 A The ulnar and carpal joint, yes. 7 Q They are just as common? 8 A Yes. 9 Q We can agree, Doctor, on the 7-22-94 stick figure, I 10 am going to use the term stick figure, the thumb is 11 in close to the body as opposed to 5-18-94 where the 12 thumb is pointing away from the body? 13 A Yes. 14 Q The distal radioulnar joint is the joint on the 15 opposite side from where your thumb comes into the 16 wrist? 17 A That is correct. 18 Q Miss Myers' next visit with you is the 7-22-94 19 appointment? 20 A No. 21 Q You have another visit? 22 A No, I wasn't seeing her at that point. 23 Q Who saw her? 24 A Dr. Park. I didn't see her again for several years. 25 Q Is Dr. Park's note part of your chart?</p>
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<p>1 describe that. 2 Q So a stick figure is not the correct medically 3 accepted term? 4 A Stick figure works fine. 5 Q Am I correct in saying on the 5-18-94 stick figure 6 the thumb is out, and on the stick figure of 7-22-94 7 the thumb is in? 8 A Yes. 9 Q The significance of that is that it's switching the 10 sides, if you turn the hand, which a little circle 11 is representative of the distal radioulnar joint, 12 correct? 13 A Well, it looks like in the latter ones that there is 14 a radioulnar joint, I mean, a radiocarpal joint, but 15 it doesn't really look like there is an ulnar carpal 16 joint, it's a central circle. 17 Q There are two joints in the wrist, and one is the 18 distal -- 19 A Radiocarpal and radioulnar carpal. 20 Q Do rheumatoid arthritis patients have problems with 21 both, are problems with those joints common to 22 rheumatoid arthritis patients? That's a bad 23 question. I don't know why I can't get it out. Let 24 me start again. 25 You indicated before that problems with the</p>	<p>1 A It is. 2 Q Is it a record that you would review and reflect on 3 if Ruth Myers came to you for treatment afterwards 4 after that visit? 5 A Yes. 6 Q That would be your common practice? 7 A Yes. 8 Q I notice on the July 22nd, 1994 visit with Dr. Park, 9 the first line, can you read that for me, Doctor? 10 A At the top. 11 Q Yes. CC and then what does it say? 12 A Do you mean began with palindromic rheumatism, '86, 13 took Plaquenil six months? 14 Q I think we are looking at different notes, yet 15 again. I'm looking at the first page of that note 16 and you are looking at the second page, is that it? 17 A Correct. 18 Q There is a page with a half circle on it? 19 A That is correct. 20 Q Next to CC what does it say? 21 A Neck and joint pain. 22 Q Getting worse? 23 A It could be. 24 Q You don't know? 25 A No.</p>

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1 Q Well, you would read these notes as part of your
2 practice. If you can read it for me.
3 A Misunderstood about Methotrexate, has been taking
4 Methotrexate one tablet three times a week.
5 Arthritis slightly better. Waving intermittent knee
6 swelling, last on Sunday thinks. Left knee swollen,
7 a.m. stiffness about a couple hours.
8 Q Based on the arthritis slightly better, can we agree
9 it doesn't say neck and joint pain getting worse or
0 is that not fair?
1 A That's not fair, I don't think we know what that
2 says.
3 Q So if anyone suggested the arthritis was getting
4 slightly better and that meant neck and joint pain
5 getting worse, that would be unfair?
6 A I don't know what that says.
7 Q Start with the next page for me, Doctor.
8 A Began with palindromic rheumatism '86, took
9 Plaquenil six months, restarted on medicine since
10 March '94, about 30 percent better overall, slightly
11 better.
12 Overall slightly better than last visit, but
13 increased joints since visit in May, that is more
14 joints involved, neck shoulders, wrist, hands worst,
15 also around balls of feet. Knees, hips okay.

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1 A.m. stiffness about 4:00. No fever, rash,
2 mouth, no photosensitivity, no hair loss. History
3 of breast implant, '78 bilateral.
4 Are we going through the rest of it?
5 Q Where did we stop?
6 A Family history.
7 Q Of rheumatoid arthritis, let's stop there for a
8 minute, Doctor.
9 The patients who come into University Mednet
0 are seen by a variety of different physicians?
1 MS. VADAS: Objection.
2 A In general, yes.
3 Q Ruth Myers?
4 A At the time Dr. Park may have been out in Mentor. I
5 have a number of patients that will for proximate
6 reasons go to another site because it's much closer
7 for them.
8 Q Fair enough. They are still your patients?
9 A Not necessarily, I think Miss Myers saw Dr. Park for
10 a period of time and I did not, I was not her
11 treating rheumatologist at the time.
12 Q Just so I understand your testimony, you were not
13 her rheumatologist?
14 A During the time she saw Dr. Park.
15 Q During the time she saw Dr. Park was she a patient

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1 of yours?
2 A She was a patient of Mednet's, but Dr. Park was her
3 treating rheumatologist. I was not involved in her
4 care, as I remembered, during the period that covers
5 Dr. Park's notes.
6 Q You have Dr. Park's notes in your chart?
7 A I do, the Clinic chart.
8 Q That is the Mednet Clinic chart?
9 A That is correct.
10 Q Do you have an independent chart?
11 A I do not.
12 Q What chart would you use if Ruth Myers walked in
13 here today for an appointment?
14 A The Clinic chart.
15 Q The one before we marked as Defendants' Exhibit 1?
16 A That is correct.
17 Q Dr. Park's notes, increased joints since visit in
18 May, i.e., that is more joints involved?
19 A That is correct.
20 Q Then he lists the joints involved?
21 A She.
22 Q She, I'm sorry. She lists the joints involved,
23 doesn't she?
24 A She does.
25 Q She says neck, shoulders, wrist, hands worst, is

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1 that what it says?
2 A Yes,
3 Q Did Dr. Park conduct an exam of Miss Myers?
4 A Yes.
5 Q Is that reflected in this record?
6 A It is.
7 Q Is that reflected in part on the stick figure?
8 A Yes.
9 Q I see on the wrist on this stick figure there is a
10 big circle and a little circle; is that fair?
11 A You will have to show me.
12 Q Look at the right hand, there is big circle with an
13 X?
14 A We talked about that before.
15 Q Right, then there is little circle next to it?
16 A That is correct.
17 Q What joint is the little circle next to it?
18 A I would assume that part is the radiocarpal joint.
19 Q Because leading down that path to the tip of the
20 thumb there are only two joints, Doctor, right in
21 the thumb?
22 A That's what I was going over before. Oh, you know
23 what, that's not -- that's the carpal, metacarpal
24 joint.
25 Q Show me on your wrist where the carpal, metacarpal

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<p>1 joint is.</p> <p>2 A At the base of the thumb. So the one big circle is</p> <p>3 the --</p> <p>4 Q Is the wrist?</p> <p>5 A The whole wrist and it doesn't differentiate between</p> <p>6 the different joints within the wrist.</p> <p>7 Q There are two of them, correct, one is the distal</p> <p>8 radioulnar joint, and the other one is the one I can</p> <p>9 never remember the name.</p> <p>10 A The ulnar carpal and the radiocarpal yes.</p> <p>11 Q What is the significance of the S2, T1?</p> <p>12 A Swollen 2, tender 1.</p> <p>13 Q What does tenderness mean?</p> <p>14 A That it hurts when you press.</p> <p>15 Q There is pain on palpation?</p> <p>16 A That's fair.</p> <p>17 Q I notice there is no ampersand?</p> <p>18 A I'm sorry.</p> <p>19 Q You said there is a list typewritten for pain,</p> <p>20 swelling, warmth, tenderness?</p> <p>21 A Correct.</p> <p>22 Q There are symbols next to it, and it looks like the</p> <p>23 ampersand is the symbol for pain; is that correct?</p> <p>24 A That's a typo. It's correct but it's a typo.</p> <p>25 Q What is the symbol for pain?</p>	<p>1 that you can see, other than the typewritten</p> <p>2 reference next to the stick figure?</p> <p>3 A No.</p> <p>4 Q What was Dr. Park's plan for this patient as</p> <p>5 reflected in her record?</p> <p>6 A Start Prednisone 10 milligrams, start Methotrexate 5</p> <p>7 milligrams for two weeks then to 7 and a half weekly</p> <p>8 with appropriate lab tests. Start folic acid 1</p> <p>9 milligram, which you use to prevent toxicity in</p> <p>10 patients. Get metacarpal pads for feet and check</p> <p>11 hand x-rays today.</p> <p>12 Q She prescribed Prednisone?</p> <p>13 A That is correct.</p> <p>14 Q What does Prednisone do for a rheumatoid arthritis</p> <p>15 patient like Miss Myers?</p> <p>16 A Decreases inflammation.</p> <p>17 Q I see on the same page, it's next to the elbow on</p> <p>18 the stick figure, it's actually on the line wrist</p> <p>19 ROM, range of motion, 60. Do you see that, Doctor?</p> <p>20 A I do.</p> <p>21 Q What is the significance of that, Doctor?</p> <p>22 A It doesn't say which wrist, but I assume it means 60</p> <p>23 degrees of extension and 60 degrees of flexion.</p> <p>24 Q What is the normal extension, flexion of the wrist?</p> <p>25 A You can get 90 degrees each way.</p>
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<p>1 A I think it's just a line through it. I haven't used</p> <p>2 these in really a fairly long time because hospital</p> <p>3 reviewers change the way they wanted people to</p> <p>4 record data.</p> <p>5 Q Can we agree there is no line through the right</p> <p>6 wrist?</p> <p>7 A Sure.</p> <p>8 Q But we can also agree that there is no ampersand.</p> <p>9 that's what that is called?</p> <p>10 A Okay.</p> <p>11 Q Can we agree there is no ampersand next to the right</p> <p>12 wrist?</p> <p>13 A We can.</p> <p>14 Q But we can agree the note reflects the S2, T1</p> <p>15 reflects pain on palpation, can we not, Doctor?</p> <p>16 A The S means that it is swollen, and the T means it's</p> <p>17 tender on palpation.</p> <p>18 Q I asked you if tenderness means pain on palpation</p> <p>19 and you said yes?</p> <p>20 A But you said the S2, T1.</p> <p>21 Q They are distinct objective evaluations?</p> <p>22 A That's true.</p> <p>23 Q T1 means pain on palpation?</p> <p>24 A That is correct.</p> <p>25 Q Is there any reference to the word pain in this note</p>	<p>1 Q I have a note that is clearly out of order. I have</p> <p>2 a 5-7-2001 note next in my book.</p> <p>3 A Do you want me to find that?</p> <p>4 Q No. Let's go to the next note in the time sequence.</p> <p>5 What is the next record you have of Miss Myers</p> <p>6 coming to Mednet?</p> <p>7 A I have an undated record.</p> <p>8 Q What is that undated record? Are we looking at the</p> <p>9 same thing, Doctor?</p> <p>10 A We are.</p> <p>11 Q Is that your handwriting, Doctor?</p> <p>12 A It is.</p> <p>13 Q Can you read that note for me?</p> <p>14 A Sure. RA, restarted Plaquenil, took Zorprin five</p> <p>15 days no help and felt flu like, DC'd, and started</p> <p>16 Bayer eight hour aspirin 625 milligrams six a day,</p> <p>17 which is no help. On Plaquenil, swelling did not</p> <p>18 progress, although she still had some pain. Left</p> <p>19 wrist is terrible, left wrist tender, swollen.</p> <p>20 The plan was second line drugs discussed if</p> <p>21 Plaquenil not working. Steroids offered, refused.</p> <p>22 Patient requests after Betadine, alcohol prep,</p> <p>23 injected -- that's great.</p> <p>24 Q What is great?</p> <p>25 A I didn't note which joint was injected, but I would</p>

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1 have to assume it was the painful one.
 2 Q That would be the left wrist you had mentioned
 3 earlier in your note, that's fair to say that?
 4 A It is. She was also prescribed a left wrist splint.
 5 I assume at this point Dr. Park was treating her but
 6 she just saw me for whatever reason because the left
 7 wrist was really bothering her.
 8 Q Is it fair, Doctor, if you discuss in the subjective
 9 portion of your note a particular problem that a
 10 patient is having, and then you discuss solutions
 11 and you discuss your plan for those subjective
 12 complaints, that your plan would be related to the
 13 subjective complaints the patient presented with; is
 14 that fair?
 15 A At times.
 16 Q Your plan wouldn't be related to something not
 17 mentioned in her subjective complaints, would it?
 18 A No, but it kind of sounds like there were some what
 19 if questions,
 20 Patients will often come in and say I'm okay
 21 but what if this happens or what if that happens,
 22 and then you tell them what could be done if things
 23 don't go right, but it may not have anything to do
 24 with what is bothering them at that point.
 25 It looks like the main concern was the left

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1 wrist, that was terrible, but the what if's were
 2 what if the Plaquenil doesn't help.
 3 Q Okay.
 4 A Is that clear, would you like me to explain it more?
 5 Q I think it's clear. I'm thinking ahead.
 6 Is it a fair characterization, Doctor, to
 7 say that subjectively Miss Myers was not satisfied
 8 with the pain medication, with the results of the
 9 pain medication?
 10 A Would you care to rephrase that?
 11 Q Is it a fair characterization --
 12 A I heard what you said, but the medicine that she was
 13 getting wasn't just for pain, that's why I was
 14 asking you to rephrase it.
 15 Q I see. Whatever the intended purpose of the
 16 medication she was on, is it fair to say Miss Myers
 17 was unsatisfied with her results upon taking them?
 18 A Yes.
 19 Q We don't have a date for this record?
 20 A We do not.
 21 Q Do you have an independent recollection of what date
 22 this visit was?
 23 A No.
 24 Q It could have been '94?
 25 A I assume it was '94 because the follow up was to Dr.

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1 Park, so that would have to be while Dr. Park was
 2 taking care of her.
 3 Q Sometime in that time span Dr. Park was treating her
 4 you felt this note was generated?
 5 A Yes, sir.
 6 Q During her treatment with Dr. Park, she came back to
 7 you for at least a single visit?
 8 A Yes.
 9 Q What does Methotrexate do for a patient with
 10 rheumatoid arthritis?
 11 A It decreases and, if you're lucky, arrests the
 12 disease activity.
 13 Q Is it similar to Plaquenil?
 14 A Is it similar to Plaquenil?
 15 Q Not chemically.
 16 A The desired effect is.
 17 Q Similar of that to Plaquenil?
 18 A Yes, except it's more effective.
 19 Q How about Darvon?
 20 A It's an analgesic.
 21 Q An analgesic is for pain relief medication?
 22 A For pain.
 23 Q I'm on the note in Miss Myers' chart of 8-15-94.
 24 A I'm sorry I don't have it.
 25 Q You don't have it?

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1 A I have got a plain lined page, it says 8-15-94.
 2 Q The page after that, I have that page too. There's
 3 the Darvon page and then there is a page after that.
 4 A I have a page where the patient goes to a GYN visit.
 5 Then the next page is -- you know what, I have
 6 8-15-94, these were out of sequence.
 7 Q All right.
 8 Again, this is a record from Dr. Park,
 9 correct?
 10 A Yes.
 11 Q What does the plus sign in a circle mean?
 12 A Where are you?
 13 Q Seven lines down.
 14 A One, two, three, four, five, six, seven, positive
 15 wrist pain after a full day's work without numbness,
 16 or without tingling, that's paresthesia.
 17 Q A couple more lines down, wants to get off MTX,
 18 Plaquenil?
 19 A Methotrexate and Plaquenil.
 20 Q From your review of Dr. Park's plan, did she have a
 21 discussion with Miss Myers regarding continuing
 22 Methotrexate?
 23 A Would you like me to read it?
 24 Q I would like you to answer the question, but if you
 25 need to read it to answer my question.

<p style="text-align: right;">Page 49</p> <p>1 A After a lengthy discussion patient agreeable to 2 continuing Methotrexate at 5 milligram dose for now. 3 Q Keep reading that note, Doctor. 4 A CBC with diff, SGOT SGPT, creatinine today and two 5 months to continue Prednisone and Plaquenil at 6 present -- it doesn't say that, I assume that's at 7 present dose. Add Motrin 200 milligrams two tablets 8 p.o. b.i.d. with food. Return in one month, 9 dispense right wrist splint. 10 Q From your review of this note it appears Dr. Park 11 gave Miss Myers a right wrist splint? 12 A Yes. 13 Q The objective findings are noted on the stick 14 figure? 15 A That is correct. 16 Q We have the same X over a large circle which 17 represents the two joints of the wrist, correct? 18 A Yes, which would indicate swelling. 19 Q Right. Is it fair to assume, Doctor, as before when 20 she got a left wrist splint her complaints were left 21 sided, and now that she is getting a right wrist 22 splint the complaint on 8-15-94 about pain in her 23 wrist is in her right wrist? 24 A That's fair. 25 Q Doctor, on the back of all these sheets --</p>	<p style="text-align: right;">Page 51</p> <p>1 same questions at each visit. 2 Q So that's what this questionnaire is used for, it's 3 to monitor whether there is improvement or whether 4 there is not improvement or the opposite of 5 improvement where the patient is going downhill, as 6 far as the complaints? 7 A Yes, sir. 8 Q That would include question number 3 on the 9 questionnaire, right? 10 A Yes. 11 Q Which of the following best describes you today? 12 A Yes. 13 Q <i>So</i> if I wanted to see how Miss Myers was doing over 14 a period of treatment and I looked at this form, I 15 could look at question 3 and that would tell me how 16 she was feeling that day for each visit, correct? 17 A Yes. 18 Q I could compare those with later visits to see how 19 she was feeling later? 20 A Yes. 21 Q That is the intention of this form? 22 A It is. 23 Q I'm getting there, Doctor, 9-19-94. 24 A Wait. I'm sorry. Okay, I was out of sequence. 25 Q Is that another note from Dr. Park?</p>
<p style="text-align: right;">Page 50</p> <p>1 A Can we go off the record? 2 MR. KRAUSE: Off the record. 3 (Discussion off the record.) 4 MR. KRAUSE: Back on the record. 5 By Mr. Krause: 6 Q On the back of these sheets starting with the 7 8-15-94 visit there is sort of a questionnaire, for 8 lack of a better term. Who fills out this 9 questionnaire? 10 A The patient. 11 Q Is this the patient's subjective evaluation of what 12 they can and can't do? 13 A Yes. 14 Q Is this used in evaluating the severity of the 15 patient's different complaints in determining her 16 treatment? 17 A It's a standardized questionnaire that evaluates 18 function. 19 Q Is it significant in evaluating what the patient 20 feels they can or can't do? 21 A Yes. 22 Q That's why it's there, correct? 23 A And also to offer an ongoing record that anybody can 24 go back in time and see how someone was doing and 25 then see how someone is doing, later by asking the</p>	<p style="text-align: right;">Page 52</p> <p>1 A It is. 2 Q It looks like there was a note on 7-22-94. Why 3 would a note from an office visit on September 19, 4 1994 refer to a visit two months earlier, do you 5 have any idea? 6 A I don't know. 7 Q It wasn't you, you didn't write it, correct? 8 A No, that's the short answer. 9 Can we go off the record? 10 MR. KRAUSE: Go off the record for a 11 second. 12 (Discussion off the record.) 13 MR. KRAUSE: Back on the record. 14 By Mr. Krause: 15 Q Do you see any reference to Miss Myers' rheumatoid 16 arthritis in the handwritten portion of this note, 17 disregarding this stick figure? 18 A No. 19 Q The stick figure we have the thumb pointing towards 20 the body? 21 A That is correct. 22 Q We have an X through the big circle representative 23 of the two joints of the wrist? 24 A Or the wrist in total, yes. 25 Q Or the wrist in total.</p>

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1 Are there any other joints in the wrist,
2 Doctor, other than those two?
3 A No.
4 Q If you are having a problem with the joints of the
5 wrist, it has to be one or the other of those two
6 joints?
7 A Yes.
8 Q It says S2, TO next to right wrist?
9 A Yes.
10 Q What does that indicate?
11 A Swollen but not tender.
12 Q At this point in time do you know if Miss Myers was
13 still on Methotrexate?
14 A Yes.
15 Q How about Plaquenil?
16 A You can find what someone is on on the flip side,
17 the patient writes down what they are on, so it
18 would appear she is both on Plaquenil and
19 Methotrexate.
20 Q This sheet has "a lot helpful, some helpful "or
21 "none helpful," for lack of a better term, how
22 helpful the medication can be?
23 A That is correct.
24 Q Do you know if Miss Myers, other than the times we
25 already discussed, called any of the physicians at

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1 Mednet as reflected in your chart regarding concerns
2 with her prescription for Methotrexate?
3 A I don't know.
4 Q If the records suggest she did, I take it you would
5 defer to the records?
6 A I would.
7 Q I'm trying to speed things up for you. 11-16 of '94
8 Doctor, in the written portion of that note,
9 disregarding the stick figure, is there anything at
10 all that references or that you would think is
11 significant to Miss Myers' rheumatoid arthritis?
12 A Left knee pain resolved with steroid injection,
13 minimal a.m. stiffness of hands, if at all.
14 Interested in decrease in Prednisone, concerned
15 about weight gain, facial swelling, and then down
16 the assessment still active but somewhat better.
17 Q Miss Myers was concerned about potential side
18 effects of her medication that she was taking for
19 rheumatoid arthritis?
20 A Yes.
21 Q Is it fair to say she didn't really like taking the
22 medication?
23 A Yes.
24 Q Is it fair to say nobody would?
25 A No.

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1 Q Some people would?
2 A Some people would.
3 Q Is it fair to say she benefitted from the medication
4 with regard to the progression of her rheumatoid
5 arthritis?
6 A It's hard to tell.
7 Q 1-27-95, Doctor.
8 A Okay.
9 Q Any discussion of Miss Myers' rheumatoid arthritis?
10 A Arthritis about the same.
11 Q Anything other than that line?
12 A I'm looking. You mean with regard to the patient's
13 symptoms or objective findings as well?
14 Q Anything at all that you see that would be
15 significant to her rheumatoid arthritis.
16 A Sure, the first two, MCP joints are swollen, all the
17 proximal phalangeal joints are swollen, that is on
18 the right. On the -- I'm sorry. MCP joints on the
19 right and left are swollen.
20 Q You are referring to the stick figure?
21 A I am.
22 Q Can you go through the written note first, so I have
23 it clear in my mind? I thought I asked it, I might
24 not have.
25 A The question was: Was there anything more, other

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1 than what we talked about, referable to her
2 arthritis.
3 Q Other than the arthritis is about the same, is there
4 anything in the written note, disregarding the stick
5 figure, regarding rheumatoid arthritis? For
6 example, I see four lines down from the arthritis
7 about the same line, joints dot, dot, dot, some days
8 totally pain free; is that correct?
9 A Yes.
10 Q This was at a time when Miss Myers was on
11 Methotrexate, Plaquenil and Prednisone, as well as
12 an analgesic, correct?
13 A I don't know if she was on ~~an~~ analgesic. She wrote
14 dounwn Plaquenil, Methotrexate, Prednisone.
15 Q Is there any numbing, is there any pain numbing
16 function of Prozac?
17 A Not usually for joint pain.
18 Q 4-17-95, Doctor. Look at the questionnaire portion
19 of that, Doctor.
20 A I'm still looking for the note.
21 Q I'm sorry. I thought you had it. Do you see the
22 questionnaire portion?
23 A I do.
24 Q Over "The name of drug or medicine," there is a big
25 X, what does that indicate to you?

<p style="text-align: right;">Page 57</p> <p>1 A I would assume that she is not on any medication</p> <p>2 Q Under question 3, what is her response to "Which of</p> <p>3 the following best describes you today?"</p> <p>4 A "I can hardly do any of the things I want to do."</p> <p>5 Q Do you recall if she ever checked that box before in</p> <p>6 any of the previous visits when she filled out that</p> <p>7 questionnaire?</p> <p>8 A I don't recall.</p> <p>9 Q The written portion of the note there seemed to be</p> <p>0 some discussion of the flu. I don't want to go into</p> <p>1 that, but is there anything written in there</p> <p>2 significant to the rheumatoid arthritis, other than</p> <p>3 the stick figure?</p> <p>4 A Unless aching from head to toe would have anything</p> <p>5 to do with it, that's hard to tell.</p> <p>6 Q Because people get achy when they have the flu too?</p> <p>7 A That's why I said it would be hard to tell.</p> <p>8 Q Down to the A/P, the plan portion of the note. Can</p> <p>9 you read for me what is after parenthesis 1?</p> <p>0 A Increased joint symptoms, probably related to URI,</p> <p>1 rule out bacterial infection.</p> <p>2 Q How about what is after parenthesis 2, Doctor?</p> <p>3 A RA exam about the same, is that what you are asking</p> <p>4 about?</p> <p>5 Q Yes.</p>	<p style="text-align: right;">Page 59</p> <p>1 Q What is the complaint, Doctor, at the top of the</p> <p>2 page?</p> <p>3 A Bilateral hand pain and swelling.</p> <p>4 Q Is she listed on Prednisone and Plaquenil at this</p> <p>5 time, Doctor?</p> <p>6 A That's what I was going to point out to you,</p> <p>7 sometimes they don't want to fill out their medicine</p> <p>8 sheet, and so there is a discordance between what is</p> <p>9 written here of what she is on and what she says she</p> <p>0 is on, either she didn't tell Dr. Park that she was</p> <p>1 still on the Plaquenil in January and Dr. Park said</p> <p>2 increase it and she said yeah, okay and then she</p> <p>3 didn't do anything, or if she just didn't write down</p> <p>4 what she was on and she really was on it.</p> <p>5 Q Do you have any clue as to whether either of those</p> <p>6 scenarios are true?</p> <p>7 A Hopefully, Dr. Park was astute and Miss Myers if she</p> <p>8 didn't want to take something was reasonably up</p> <p>9 front about it, or if she was in fact on the</p> <p>0 Plaquenil on this visit, she was on Plaquenil and</p> <p>1 Prednisone even though she didn't so state it.</p> <p>2 Q Under the A/P portion of this note it says synovitis</p> <p>3 of hands?</p> <p>4 A Synovitis of hands up since med DC'd on own.</p> <p>5 Q What does that mean, Doctor?</p>
<p style="text-align: right;">Page 58</p> <p>1 A Patient reluctant to get on low dose Prednisone.</p> <p>2 Increased Plaquenil twice a day, add Tylenol Extra</p> <p>3 Strength three to four times a day. Do you want me</p> <p>4 to read the rest of it?</p> <p>5 Q No, that's fine.</p> <p>6 Dr. Park indicates he is going to be</p> <p>7 increasing her Plaquenil?</p> <p>8 A Yes.</p> <p>9 Q On the questionnaire that Mrs. Myers filled out, she</p> <p>0 doesn't identify Plaquenil as medication that she</p> <p>1 taking?</p> <p>2 A Correct.</p> <p>3 Q She listed previously Plaquenil, Prednisone and</p> <p>4 Methotrexate?</p> <p>5 A This is on January 27th.</p> <p>6 Q On several visits she identified all three of those</p> <p>7 medications that she was taking?</p> <p>8 A That is correct.</p> <p>9 Q The purpose of those medications was to assist in</p> <p>0 preventing the progression of her rheumatoid</p> <p>1 arthritis?</p> <p>2 A Yes.</p> <p>3 Q 6-13-95. Is this your note, Doctor, or is this</p> <p>4 still Dr. Park?</p> <p>5 A It's Dr. Park.</p>	<p style="text-align: right;">Page 60</p> <p>1 A It means she probably did stop.</p> <p>2 Q That means she stopped taking her medications?</p> <p>3 A That would indicate that she did, despite what the</p> <p>4 nurse wrote.</p> <p>5 Q Those medications were designed to help her with the</p> <p>6 progression of her rheumatoid arthritis?</p> <p>7 A Yes.</p> <p>8 Q Doctor, now that she is off the medication we have</p> <p>9 X's on the stick figure, we have X's back on both of</p> <p>0 the wrist joints, left and right, don't we?</p> <p>1 A Yes.</p> <p>2 Q We didn't have those back in the previous visit, did</p> <p>3 we?</p> <p>4 A We did not.</p> <p>5 Q Or the visit before that, Doctor, did we?</p> <p>6 A We did not.</p> <p>7 Q Doctor, we are moving to February 28th of '96, do</p> <p>8 you have a note?</p> <p>9 A I do.</p> <p>0 Q Do you have any record of having seen her or anyone</p> <p>1 at Mednet having seen her between 6-13 of '95 and</p> <p>2 February 28th of '96?</p> <p>3 A No.</p> <p>4 Q Can you read your note for me?</p> <p>5 A I can.</p>

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1 Q Please do.
 2 A 44 year old female last seen '94, followed by Dr.
 3 Park. Subsequently tried on Methotrexate without
 4 benefit and with alopecia hair loss and nausea, DC'd
 5 it when on 17.5 milligrams. Currently is on 5
 6 milligrams of Prednisone and -- it's crossed, doing
 7 okay, a cross through there -- is satisfied with
 8 level of function, Baker's cyst on left. Patient
 9 doesn't want to start anything prior to returning
 0 from Florida in April. Thick yellow green
 1 secretions, just quit smoking.
 2 Q The O represents an abbreviation for objective?
 3 A That is correct.
 4 Q That would contain your objective findings?
 5 A Yes.
 6 Q It says see stick figure?
 7 A It does.
 8 Q That was your practice to use a stick figure as
 9 representative of your objective findings in your
 0 chart?
 1 A It was.
 2 Q It has RA not doing too badly?
 3 A Yes.
 4 Q Any mention of her being on medication, whether she
 5 is or isn't at this 2-28-96 visit?

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1 A She was on Plaquenil, Prednisone.
 2 Q She is back on medication now, right?
 3 A This would mean when she came into the office on
 4 February 28th, she was on those medicines.
 5 Q Is it surprising to you, Doctor, the symptoms of her
 6 rheumatoid arthritis would get better after she
 7 resumed taking the medication, namely Plaquenil and
 8 Prednisone?
 9 A Not if the medicine was helping, no.
 0 Q Do you have any record of University Mednet visits
 1 for Ruth Myers between 2-28-96 and 1-22-97?
 2 A No.
 3 Q By the way, on 2-28-96, now that Ruth Myers is back
 4 on her medication, we don't have any X's on the
 5 wrist, on the stick figure, do we?
 6 A No.
 7 Q Could you read this note on 1-22-97?
 8 A Patient not here in one year, was to get PE, which
 9 is a physical exam. Changed jobs, was too
 0 depressed, couldn't tolerate Prozac, is functioning
 1 fairly well, is satisfied with progress but would
 2 like to get off of Prednisone; and I did this, it
 3 says Beck 24, I assume I did or someone did a Beck
 4 depression inventory test, and 24 is significant.
 5 Thinks she has seasonal affective disorder.

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1 Assessment, depression, October through April, which
 2 is what people have with seasonal affective
 3 disorder.
 4 Do you want me to continue to read?
 5 Q Yes.
 6 A Cortrosyn stimulation test. CBC diff, platelet,
 7 urinalysis, ophthalmology, 30 minute PE physical
 8 exam, to GYN. Paxil dose 20 to 50 milligrams.
 9 Check on lights, which means there are
 10 specific lights with seasonal affective disorder
 11 use. Then someone else's handwriting, stay on
 12 Prednisone and recheck.
 13 Q Was University Mednet serving the function of a PCP
 14 for Miss Myers?
 15 A Do you mean did she get her primary care here?
 16 Q Yes.
 17 A At least part of the time.
 18 Q I looked through the records and note she received
 19 OB/GYN care here?
 20 A Yes.
 21 Q She received care for the flu here?
 22 A Could be.
 23 Q If there are records that list you as her primary
 24 care physician, would it be accurate?
 25 A I would assume.

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1 Q At this 1-22-97 visit Miss Myers is back on
 2 Plaquenil and Prednisone, based on her answer to
 3 this questionnaire?
 4 A Yes.
 5 Q From the note you just read me, is it fair for me to
 6 assume she doesn't like to be on Prednisone?
 7 A It's fair to say she would like to get off
 8 Prednisone.
 9 Q If she liked being on it she wouldn't want to get
 10 off it, correct?
 11 A Yes.
 12 Q 6-16-97 I have a telephone contact record.
 13 A Would you like to show it to me?
 14 Q It looks like it's signed by a nurse?
 15 A Right.
 16 Q Is there anything in there with regard to rheumatoid
 17 arthritis?
 18 A No.
 19 Q How about in the right column, it says ECN dash?
 20 A Erythromycin, Erythromycin is an antibiotic, and
 21 Tessalon.
 22 Q Could they have anything to do with rheumatoid
 23 arthritis?
 24 A No.
 25 Q You are treating her for something there other than

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<p>1 rheumatoid arthritis?</p> <p>2 A Yes.</p> <p>3 Q Do you have any other records indicating contact</p> <p>4 between Ruth Myers and Mednet between 1-22-97 and</p> <p>5 1-20 of '98?</p> <p>6 A No.</p> <p>7 Q Other than that phone message?</p> <p>8 A No.</p> <p>9 Q Doctor, is that your note on 1-20-98?</p> <p>0 A Yes.</p> <p>1 Q Could you please read it?</p> <p>2 A 46 year old female, last seen 1-97, did not return</p> <p>3 for physical examination, too much money. Just</p> <p>4 changed health insurance. Cortrosyn stimulation</p> <p>5 says 4 to 4, didn't change.</p> <p>6 Patient is feeling fine. Has noted lump in</p> <p>7 left biceps. Status post left knee arthroscopy.</p> <p>8 Blood pressure 120/80, doing well. To GYN, 30</p> <p>9 minute physical examination, mammogram. Cortrosyn</p> <p>10 stimulation, cholesterol, stool, OB times 3. She</p> <p>11 wanted an HIV test.</p> <p>12 Q Under current medications on that handwritten note</p> <p>13 is there anything listed?</p> <p>14 A No.</p> <p>15 Q Is there a questionnaire on the back of that?</p>	<p>1 know if the patient has it right and to make them be</p> <p>2 sure of what they are taking.</p> <p>3 So the nurse may or may not independently</p> <p>4 ask the question of what you are taking because it's</p> <p>5 already pre-recorded, some nurses might or some</p> <p>6 nurses might not.</p> <p>7 So I think if something is not there, you</p> <p>8 can't draw a conclusion that the patient is taking</p> <p>9 or not taking medication for that reason.</p> <p>0 Q How many times prior to this visit on 1-20-98 did</p> <p>1 the nurse rely on the subjective questionnaire of</p> <p>2 Miss Myers as opposed to listing her current</p> <p>3 medications on the physician side of the chart?</p> <p>4 A I don't know.</p> <p>5 Q Again, Doctor, your objective findings are in the</p> <p>6 stick figure, correct?</p> <p>7 A Yes.</p> <p>8 Q She doesn't have any X's on her wrist, correct?</p> <p>9 A Correct.</p> <p>10 Q That would be consistent with her being on</p> <p>11 Prednisone and Plaquenil, I don't think she is on</p> <p>12 Methotrexate at this point, but Prednisone and</p> <p>13 Plaquenil, correct?</p> <p>14 A Consistent with her feeling well and not having</p> <p>15 demonstrable evidence of disease.</p>
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<p>1 A There is.</p> <p>2 Q What is listed there?</p> <p>3 A Plaquenil, Prednisone.</p> <p>4 MR. KRAUSE: I don't have a copy of</p> <p>5 that handwritten note, do you Kathy?</p> <p>6 MS. VADAS: No.</p> <p>7 MR. KRAUSE: I mean, her</p> <p>8 questionnaire, the portion of the note, I don't have</p> <p>9 it. The patient questionnaire. Can you mark that</p> <p>0 and send me a copy of it, please? I can give me one</p> <p>1 of my millions of little stickies.</p> <p>2 Q Doctor, that questionnaire is based on what the</p> <p>3 patient says they are doing, correct?</p> <p>4 A The patient fills it out.</p> <p>5 Q Right. Current medications you would fill out?</p> <p>6 A No.</p> <p>7 Q Who would fill out current medications on the note</p> <p>8 side of this document?</p> <p>9 A The nurse. Well, actually, it varies.</p> <p>10 Q Is it safe to say Miss Myers wouldn't be writing on</p> <p>11 the note side of the page?</p> <p>12 A That is correct, either the doctor or nurse would.</p> <p>13 Q Nothing is written next to current medications?</p> <p>14 A Nothing written, but the idea is for patient to</p> <p>15 write down what they are taking because you want to</p>	<p>1 Q Doctor, we just reviewed the records from 1994 to</p> <p>2 1998?</p> <p>3 A Yes, the medications could do that.</p> <p>4 Q Is it a fair characterization for me to say that</p> <p>5 from 1994 to 1998 at the times Miss Myers was on her</p> <p>6 medications she was getting better, specifically</p> <p>7 with regard to the pain in her wrists?</p> <p>8 A Yes.</p> <p>9 Q Is it a fair characterization when she is not taking</p> <p>0 her medication the pain in her wrist comes back?</p> <p>1 A It would appear so.</p> <p>2 Q Is it a fair characterization to say Miss Myers</p> <p>3 didn't like taking her medication?</p> <p>4 A Yes.</p> <p>5 Q Is it a fair characterization for me to say Miss</p> <p>6 Myers on her own decided to terminate taking her</p> <p>7 medication against the physician's advice?</p> <p>8 A You know, we --</p> <p>9 Q I want to make sure I have everything right here.</p> <p>10 This is my only chance to talk to you.</p> <p>11 The plaintiffs lawyer will call you at trial</p> <p>12 in this case.</p> <p>13 A Well, maybe not.</p> <p>14 Q Do you remember reading a note from Dr. Park?</p> <p>15 A Give me the date.</p>

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1 Q I'm looking for it. Here we go. 6-13-95 we talked
2 about the A/P at the bottom of that?
3 A Let me get there.
4 Q I'm sorry, Doctor.
5 A Okay.
6 Q The first line we said synovitis of hands increased
7 since meds, and then what is that?
8 A DC'd on own.
9 Q What does that mean, Doctor?
10 A Stopped, discontinued on her own. Yes.
11 Q The physician didn't tell her to do that?
12 A That is correct.
13 Q You tell me, when I say physicians making
14 recommendations to Miss Myers in this chart, they
15 are making recommendations that she stay on her
16 medication; is that a fair characterization?
17 A It is.
18 Q Doctor, we were on January 28th of 1998?
19 A Okay.
20 Q Actually, I believe we just finished talking about
21 January 20th of '98. Can I take a look at that
22 subjective form that Miss Myers fills out, the
23 questionnaire?
24 A From that date, sure.
25 Q I don't mean to stand over you.

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1 A That's okay.
2 Q Thank you. Doctor, the next visit I have is
3 somewhat marked out here. It says 2-23, I'm
4 assuming it's '98. I have a big black line through
5 my copy, maybe you can help me out. Do you see that
6 2-23, 2-23-98, do you have another visit in between
7 there?
8 A That's when she saw Dr. Convery an orthopedist. Go
9 to the next page.
10 Q That?
11 A Yes.
12 Q I have it right here, Doctor, I see. Okay. I have
13 a 2-23-98 it looks to me?
14 A That is correct.
15 Q The first line of that says PCP: Bishko, who saw her
16 on that date, Doctor, 2-23-98?
17 A I don't know.
18 Q Can you discern the writing, whose writing that is?
19 A No, I can't tell.
20 Q Is there any discussion pertinent to this patient's
21 rheumatoid arthritis?
22 A I would assume this is an acute care type visit for
23 respiratory symptoms.
24 Q Is there any subjective questionnaire on the back of
25 that paper? I don't have one.

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1 A No, I think she came in acutely for respiratory
2 symptoms.
3 Q What is your next visit for Miss Myers to Mednet?
4 A To me or Mednet? We went over Dr. Convery.
5 Q We are getting to him.
6 A That would be the next one.
7 Q May 23rd of '98?
8 A March 23rd.
9 Q March 23rd of 1998. Sorry. Do you have the
10 typewritten note, Doctor?
11 A I do.
12 Q Do you know why Miss Myers is coming to see Dr.
13 Convery on March 23rd?
14 A No.
15 Q Can you discern why she is coming to see Dr. Convery
16 from the content of that note?
17 MS. VADAS: Objection.
18 A Left shoulder pain several months, biceps deformity
19 several months, biceps muscle deformity.
20 Q Is the discussion on the typewritten note in the
21 subjective and the examination and the impression
22 limited to Miss Myers' left extremity; is that a
23 fair characterization?
24 A Left arm?
25 Q Left upper extremity?

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1 A Yes.
2 Q Are you aware at this time she was seeing Dr.
3 Zahrawi as well?
4 A Not unless I would have so stated in a prior note,
5 and I don't think that I -- the prior note would
6 have been January 20th, so I would suspect the
7 answer would be no.
8 Q If someone characterized that plan as suggesting
9 that Dr. Convery disagreed with Dr. Zahrawi's plan
10 to have surgery to do a resection of Miss Myers'
11 right distal ulna, would that be accurate?
12 MS. VADAS: Objection.
13 A No.
14 Q If someone did that, would that be misleading?
15 MS. VADAS: Objection.
16 A I don't know. It wouldn't be accurate.
17 Q Let me read you the question, Doctor.
18 Someone represented that that note indicated
19 that Miss Myers' operative treatment with Dr.
20 Zahrawi and the repair in his opinion was not
21 necessary for the shoulder, would you say that is
22 accurate?
23 MS. VADAS: Objection.
24 A Yes, for the shoulder. Yes. We were talking about
25 the shoulder?

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1 Q Correct, that's my point, we are not talking about
 2 the right distal ulna, are we?
 3 A We are not.
 4 Q That typewritten note doesn't either?
 5 A It does not.
 6 Q That typewritten note in the plan Dr. Convery says
 7 that his recommendation is that her shoulder be
 8 initially treated nonoperatively?
 9 A Yes.
 10 Q Do you see Dr. Convery's handwritten note from that
 11 same day?
 12 A I do. I guess I do.
 13 Q Do you see Dr. Zahrawi's name in that chart?
 14 A I do.
 15 Q What is written in the margin next to where it says
 16 patient, Dr. -- well, can you read that line for me?
 17 A Patient, Dr. Zahrawi, something about coverage,
 18 insurance.
 19 Q Is that OP, OP coverage?
 20 A It could be, I don't know. OP coverage, something
 21 for insurance.
 22 Q What does it say next to PT, Dr. Zahrawi, what does
 23 Dr. Convery have written on that record in the
 24 margin?
 25 MS. VADAS: Objection.

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1 A Someone wrote agree.
 2 Q Do you have any reason to believe that Dr. Convery
 3 did not write this note?
 4 MS. VADAS: Objection.
 5 A I was just looking, because the handwriting -- oh,
 6 okay, two different handwritings. It's probably the
 7 orthopedic technician. This is surmising, I wasn't
 8 there. The orthopedic technician wrote the first
 9 part, the exam is by Dr. Convery, but I don't know
 10 what he is agreeing to, he just wrote agree. I
 11 don't know if he was agreeing with the orthopedic
 12 tech or Dr. Zahrawi or what.
 13 Q That's fine. I want you to assume for me, Doctor,
 14 that Miss Myers' surgery with Dr. Zahrawi was
 15 originally scheduled for March 20, 1998, okay?
 16 A Okay.
 17 Q I want you to assume for me that in order to get
 18 insurance coverage for that surgery, she had to go
 19 back to her primary care physician, Mednet. Fair
 20 enough?
 21 MS. VADAS: Objection.
 22 A I am her primary care physician.
 23 Q Dr. Convery was filling in for he you?
 24 A No, he's an orthopedic surgeon, so he wouldn't have
 25 been filling in for me.

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1 Q Had Miss Myers ever gone to Dr. Convery, other than
 2 this date?
 3 MS. VADAS: Objection.
 4 A I don't see a record of it in the chart.
 5 Q I will represent to you plaintiff's counsel hasn't
 6 provided me with any records other than these notes
 7 from this visit.
 8 A That's all I see.
 9 Q I want you to assume that surgery with Dr. Zahrawi
 10 was scheduled for March 20th of 1998. I want you to
 11 assume further that Miss Myers' insurance company
 12 indicated that the referral had to go through her
 13 primary care physician --
 14 MS. VADAS: Objection.
 15 Q -- to get payment.
 16 A Okay.
 17 Q Do you want to review Dr. Zahrawi's records?
 18 A Not especially, unless that's what you want me to
 19 do.
 20 Q I want you to assume those two things.
 21 A That is fine.
 22 Q Who would Miss Myers go to to get a sign-off on Dr.
 23 Zahrawi's procedure?
 24 MS. VADAS: Objection.
 25 A If you are telling me it has to come from a PCP it

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1 would be me.
 2 Q Are you an orthopedic surgeon, Doctor?
 3 A I am not the orthopedic surgeon, I wouldn't be the
 4 one that would sign off on it.
 5 You are telling me her insurance company
 6 mandated her primary care provider put forth a
 7 request for approval for surgery?
 8 Q Right.
 9 A So that would have been me, if that's what would
 10 happen.
 11 Q I already went over this, but other than the single
 12 visit to Dr. Convery on 3-23 of '98, you are not
 13 aware of any other visits that mentions in the chart
 14 of her being treated by Dr. Convery?
 15 A I'm not.
 16 Q Dr. Convery is an orthopedic surgeon, correct?
 17 A He is.
 18 Q Do you have anything you need to add?
 19 A No. Can we go off the record for a second?
 20 MR. KRAUSE: Sure, Doctor. Off the
 21 record.
 22 (Discussion off the record.)
 23 MR. KRAUSE: Back on the record.
 24 By Mr. Krause:
 25 Q Doctor, I'm still on the 3-23-98 visit. Doctor. You

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1 reviewed these charts as part of your continued
2 treatment of your patients, correct?
3 A Yes.
4 Q Miss Myers was and is your patient?
5 A Yes.
6 Q This is in your chart?
7 A It is.
8 Q Can we agree that's an OP next to Zahrawi on that
9 line --
0 MS. VADAS: Objection.
1 Q -- or you do not know?
2 A I don't know.
3 Q Can we agree the next word is coverage?
4 MS. VADAS: Objection.
5 A No. You mean C/O?
6 Q No, Doctor. We're not on the same line.
7 Coverage here for insurance, is that what
8 that says, Doctor?
9 MS. VADAS: Objection.
0 A Coverage for insurance, it could be "here," I'm not
1 sure.
2 Q That's next to Dr. Zahrawi's name, right?
3 A Yes.
4 Q Next to Dr. Zahrawi's name in the margin is the word
5 agree?

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1 MS. VADAS: Objection.
2 A Sure.
3 Q Is it not next to Dr. Zahrawi's name?
4 A Sure, sure, sure.
5 Q 5-29-98, Doctor, first, I see an individual's name
6 at the top of chart, it looks like a nurse?
7 A It is.
8 Q Whose name is that?
9 A J. Farmiole.
0 Q At the bottom of the chart it says okay per Bishko,
1 and then there is the nurse's signature?
2 A That is correct.
3 Q Does that indicate the nurse wrote this note?
4 A Yes.
5 Q Do you have an independent recollection of whether
6 you saw Miss Myers on this day?
7 A I did.
8 Q You did?
9 A Because I have a handwritten note. She just wrote
0 it, probably when we were done with the patient
1 encounter. We are talking about 5-29-98?
2 Q Yes, we are.
3 A I couldn't read it for a minute and then I read it.
4 Q This is your writing?
5 A Not at the bottom it's not, it's Miss Farmiloe's.

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1 Q Is any of your writing contained on this page?
2 A Yeah.
3 Q Where?
4 A Everything between J. Farmiloe and patient wants.
5 Q What does that say the patient want?
6 A To start Minocin, despite the fact it will probably
7 be of little value, okay with me.
8 Q That word is medicine?
9 A Minocin.
0 Q What is that?
1 A A tetracycline product used in mild cases of
2 rheumatoid arthritis, I wasn't terribly struck with
3 the efficacy.
4 Q What is the sublux of joint?
5 A When the T ends of the bone don't come together,
6 malaligned, usually down.
7 Q Would it be fair to characterize the sublux a
8 partial dislocation at the joint?
9 A Sure.
0 Q Can you read for me under the subjective portion of
1 this note?
2 A Cortrosyn 18 to 27, cholesterol less than 200,
3 concerned re MCP. Questions use of Minocin. Didn't
4 get PE, no insurance. Dr. Zahrawi operating.
5 Q How about under the objective?

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1 A There isn't anything.
2 Q As in the past we would refer to the stick figure
3 for your objective findings?
4 A Yes.
5 Q How about under your plan?
6 A Hand films with Brewerton views, rheumatoid
7 arthritis. 30 minute physical, to GYN, minocin
8 discussed. 15 minute discussion about surgery.
9 Q As you sit here today, Doctor, do you have an
0 independent recollection of what you discussed?
1 A I do not.
2 Q Doctor, during the 15 minute --
3 A I --
4 Q Let me finish the question.
5 During that 15 minute discussion with Ruth
6 Myers regarding her surgery, do you have any
7 recollection at all of that?
8 A None at all.
9 Q Is it fair to say Ruth Myers had prior surgeries
0 before this 5-29-98 visit?
1 A On her knuckles I believe.
2 Q Surgery on her knee?
3 A She had arthroscopic surgery.
4 Q Have you ever documented a discussion with Ruth
5 Myers before those surgeries?

<p style="text-align: right;">Page 81</p> <p>1 A Not to my knowledge.</p> <p>2 Q Doctor, what are the symptoms of a subluxoma?</p> <p>3 A Symptoms, probably pain or limitation of motion.</p> <p>4 Q Did Miss Vadas talk to you about this note?</p> <p>5 A No.</p> <p>6 Q Doctor, let's go back to your objective findings on the stick figure. Next to the stick figure, the</p> <p>7 right wrist, what is written there?</p> <p>8 A Subluxoma.</p> <p>10 Q Who wrote that?</p> <p>11 A Me.</p> <p>12 Q That is an objective finding, correct, Doctor?</p> <p>13 A It is.</p> <p>14 Q That subluxoma would be a partial dislocation, most commonly associated with pain and loss of function?</p> <p>15 MS. VADAS: Objection.</p> <p>17 A It's a subluxoma, it doesn't portend, other than</p> <p>18 it's an objective finding.</p> <p>19 Q You identified two of the symptoms of a subluxoma as</p> <p>20 pain and loss of range of motion, correct, Doctor?</p> <p>21 A Yes.</p> <p>22 Q If you have loss of range of motion you would</p> <p>23 probably have loss of function as well, correct,</p> <p>24 Doctor?</p> <p>25 MS. VADAS: Objection.</p>	<p style="text-align: right;">Page 83</p> <p>1 side of the 5-29-98 note?</p> <p>2 A Well, except starting the Minocycline.</p> <p>3 Q Anything else?</p> <p>4 A Not on the physician side.</p> <p>5 Q Any documentation of the physician side of the note</p> <p>6 to say Miss Myers is on Plaquenil or Prednisone?</p> <p>7 A No.</p> <p>8 Q That would be the portion you or your staff fills</p> <p>9 out?</p> <p>10 A Right, because the patient often filled it out the</p> <p>11 nurse may or may not have put it down.</p> <p>12 Q The patient would never write any information on the</p> <p>13 physician side of this chart; am I right?</p> <p>14 A They shouldn't.</p> <p>15 Q That would be inappropriate?</p> <p>16 A Yes.</p> <p>17 Q Again, Doctor, we had this questionnaire and that</p> <p>18 form is used to monitor whether the patient's</p> <p>19 symptoms are getting better or worse?</p> <p>20 A Yes.</p> <p>21 Q Subjectively?</p> <p>22 A Yes.</p> <p>23 Q When is your next contact with Ruth Myers, Doctor?</p> <p>24 A September 11th of '98.</p> <p>25 Q Can you read what you have entered into this chart</p>
<p style="text-align: right;">Page 82</p> <p>1 A Yes.</p> <p>2 Q Is it not fair to say loss of range of motion goes</p> <p>3 hand-in-hand with loss of function?</p> <p>4 MS. VADAS: Objection.</p> <p>5 A Not necessarily.</p> <p>6 Q Explain to me why.</p> <p>7 A Say in the elbow, what you real really need in the</p> <p>8 elbow is this ability to flex the elbow to get it up</p> <p>9 to your mouth to do things.</p> <p>10 If you couldn't completely straighten the</p> <p>11 elbow all the way out, it may not be a lot of</p> <p>12 functional importance because there is not a lot of</p> <p>13 things one does in everyday life to necessitate</p> <p>14 complete straightening of the elbow, whereas if you</p> <p>15 lost a few degrees of flexion that could be a major</p> <p>16 problem. Does that explain it?</p> <p>17 Q I want to be fair. If you need to explain it</p> <p>18 further, I want to give you the ability to do that,</p> <p>19 this isn't like a game.</p> <p>20 A Okay.</p> <p>21 Q Is it fair for me to assume that on 5-29-98 you</p> <p>22 objectively diagnosed Miss Myers with a subluxoma on</p> <p>23 her right wrist?</p> <p>24 A Yes.</p> <p>25 Q Is there any medications listed on the physician</p>	<p style="text-align: right;">Page 84</p> <p>1 on that date?</p> <p>2 A This is not my handwriting.</p> <p>3 Q So where are you at?</p> <p>4 A I'm down under Miss Farmiloe's signature.</p> <p>5 Q Let's stop for a second. Whose writing is that at</p> <p>6 the top?</p> <p>7 A Probably Miss Farmiloe's, it looks like her</p> <p>8 handwriting.</p> <p>9 Q Do you have a recollection of Miss Myers telling you</p> <p>10 the information that is contained in Miss Farmiloe's</p> <p>11 writing?</p> <p>12 A I don't have any recollection at all. All I could</p> <p>13 attest to is what I wrote down.</p> <p>14 Q Can you read that for me?</p> <p>15 A 1-98 Cortrosyn stimulation 18 to 27 and patient</p> <p>16 decreased Prednisone to 1 milligram and had a flare</p> <p>17 of her arthritis and patient increased Prednisone to</p> <p>18 5 milligrams again. Patient upset re surgery and</p> <p>19 thinks that wrong procedure done. She is depressed.</p> <p>20 Eye check scheduled. Do you want me to continue?</p> <p>21 Q Go to your objective findings. You have see then BP</p> <p>22 120 over 80?</p> <p>23 A Yes.</p> <p>24 Q Would that be see stick figure, is that where we are</p> <p>25 going towards there. like we did in the past?</p>

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1 A That's where we are going.
 2 Q Your objective findings are once again contained in
 3 the stick figure?
 4 A That is correct.
 5 Q Is there a single mark on her right upper extremity?
 6 A No.
 7 Q Are there marks on her left upper extremity?
 8 A Yes.
 9 Q On her left hand?
 10 A Yes.
 11 Q Doctor, objectively, the fact there are no marks on
 12 the right hand would indicate that Miss Myers was
 13 not suffering from pain, am I correct?
 14 A Yes.
 15 Q Was not suffering from swelling, correct?
 16 A Yes.
 17 Q That her right hand was not warm, correct?
 18 A Yes.
 19 Q That she did not have tenderness, correct?
 20 A Yes.
 21 Q How about ery -- I can't pronounce that.
 22 A Erythema.
 23 Q Did she have that?
 24 A No.
 25 Q She didn't fill anything out on the questionnaire

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1 that day, did she, Doctor?
 2 A That is correct.
 3 Q When is the next time you saw Miss Myers, Doctor?
 4 A January 22 of '99.
 5 Q Can you read what you entered into the chart?
 6 A I can. RA SP, status post, surgery Dr. Zahrawi.
 7 Under subjective, patient upset with result, is
 8 tapering off Prednisone. Says she had second
 9 opinion saying she did not need surgery. RA is
 10 otherwise stable. Eye check.
 11 Objective, blood pressure 110/70. Left
 12 second finger tendon sheath nodule, no other joint
 13 tenderness, swelling. Doing well.
 14 Q Let's go down to that stick figure again, Doctor,
 15 that is where -- well, you have a note under your
 16 objective findings. You have some writing on this
 17 note?
 18 A Right.
 19 Q You just read that to me?
 20 A I did.
 21 Q Did you use the stick figure at all for your
 22 objective finding?
 23 A I didn't. I wrote no other joint tenderness,
 24 swelling.
 25 Q Is it fair for me to assume in regard to Miss Myers'

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1 right hand she had no pain, no swelling, no warmth,
 2 no tenderness and no --
 3 A Erythema.
 4 Q -- erythema?
 5 A Yes.
 6 Q On the questionnaire, Doctor, on that day, do you
 7 note what Miss Myers has checked with regard to her
 8 response to question 3?
 9 A "I can do most of the things I want to do, but I
 10 have some limitations."
 11 Q When is your next visit with Miss Myers?
 12 A It would appear 5-20-99.
 13 Q Is there any indication in that record that Miss
 14 Myers is complaining of pain or loss of range of
 15 motion or loss of function or any problem with her
 16 wrist?
 17 A No.
 18 Q There is no pain?
 19 A None of the above.
 20 Q No swelling, no warmth, no tenderness and no
 21 erythema?
 22 A Correct.
 23 Q Do you know what she has responded in her answer to
 24 question number 3 in her questionnaire on 5-20-99?
 25 A Same as the last visit.

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1 Q When is the next time you saw her, Doctor?
 2 A It would appear 3-28-00.
 3 Q Are there any objective findings? I see in this
 4 note you have objective findings written out as
 5 opposed to using the stick figure, correct?
 6 A Yes.
 7 Q These objective findings, do any of them describe
 8 her right wrist?
 9 A Limitation of motion right wrist.
 10 Q Anything else?
 11 A I don't know. It says with extensor tenosynovitis.
 12 Q You wrote that note?
 13 A I did.
 14 Q Do you know what her response to question 3 was on
 15 the subjective questionnaire?
 16 A Same as before.
 17 Q "I can do most of the things I want to do, but I
 18 have some limitations"?
 19 A Correct.
 20 Q When was your next visit with her, Doctor?
 21 A 1-23-01.
 22 Q In your objective findings is there any reference to
 23 problems in Miss Myers' right knee or right wrist?
 24 A No.
 25 Q I want to ask YOU if there were problems in her

<p style="text-align: right;">Page 88</p> <p>1 right wrist, and by "problems," by your use of the</p> <p>2 word, would that encompass pain, swelling,</p> <p>3 tenderness, warmth, and erythema?</p> <p>4 A Problems would be anything she complained about. I</p> <p>5 can't imagine a patient would say I have swelling</p> <p>6 tenderness, erythema and warmth in my right wrist,</p> <p>7 so it would be something that bothered them.</p> <p>8 Q It would be reasonable for them to say they had</p> <p>9 problems, wouldn't it, Doctor?</p> <p>0 MS. VADAS: Objection.</p> <p>1 A That would be reasonable.</p> <p>2 Q Do you see what Miss Myers' response was on response</p> <p>3 to number 3 on the questionnaire?</p> <p>4 A The same as before. I can do most of the things, et</p> <p>5 cetera.</p> <p>6 Q Doctor, did you see her on 5-7-2001 or is it Dr.</p> <p>7 Roter?</p> <p>8 A It's Dr. Roter.</p> <p>9 Q Do you see any reference to right wrist problems as</p> <p>0 we have been using the term in this deposition?</p> <p>1 A At that point in time you mean?</p> <p>2 Q At that point in time, correct. You are looking at</p> <p>3 the written note. You have the written note?</p> <p>4 A I do.</p> <p>5 0 Do you see any evidence of right wrist problems:</p>	<p style="text-align: right;">Page 91</p> <p>1 A Yeah. I'm just reading.</p> <p>2 Q Take your time.</p> <p>3 A No reference.</p> <p>4 Q This is important, Doctor, can you go to the</p> <p>5 correspondence section of your file?</p> <p>6 I don't have the records. Do you mind if I</p> <p>7 look over your shoulder? I am going to identify</p> <p>8 these for the record as part of Defendants' Exhibit</p> <p>9 1.</p> <p>10 I see a letter of June 8, '88 enclosing</p> <p>11 medical reports from Dr. Howard Tucker and from</p> <p>12 Malcolm Brahms to a lawyer; is that correct, Doctor?</p> <p>13 A That is Mr. Henderson, a lawyer.</p> <p>14 Q What does that say on the letterhead, Shane & Shane,</p> <p>15 Attorneys at law?</p> <p>16 A That's what it says.</p> <p>17 Q So you received medical reports from Dr. Howard</p> <p>18 Tucker from the plaintiff's lawyer?</p> <p>19 A Dr. Nemunaitis did, I assume. I am not sure. I</p> <p>20 wasn't in the picture then.</p> <p>21 Q This would be part of the Mednet chart?</p> <p>22 A Yes, if there was a GYN consult or an eye consult or</p> <p>23 whatever it would be in the chart.</p> <p>24 Q But, Doctor, in making decisions regarding the</p> <p>25 treatment of this patient, you would refer to the</p>
<p style="text-align: right;">Page 90</p> <p>1 A No.</p> <p>2 Q The typewritten note from Dr. Roter, do you have two</p> <p>3 pages of that? I only have one page. I have the</p> <p>4 A/P portion. I don't have the top part.</p> <p>5 MS. VADAS: Do you have a sticky? I</p> <p>6 will send it to you.</p> <p>7 MR. KRAUSE: I would like a copy of</p> <p>8 that.</p> <p>9 Q Is there any description of right wrist pain that is</p> <p>0 subjective or objective in that typewritten note?</p> <p>1 A No.</p> <p>2 Q 7-19-01, Doctor, is this an appointment where you</p> <p>3 saw Miss Myers?</p> <p>4 A That is correct,</p> <p>5 Q Next to the objective findings you only have the BP</p> <p>6 written; is that correct?</p> <p>7 A No.</p> <p>8 Q I'm sorry. Sorry, I didn't mean to do that. Read</p> <p>9 for me your objective findings from the visit.</p> <p>0 A Blood pressure 100/70. Right knee popliteal cyst</p> <p>1 and cyst laterally. Good quads, knee not tender and</p> <p>2 nothing else going on essentially in the other</p> <p>3 joints.</p> <p>4 Q There is no reference to any other problems in her</p> <p>5 right wrist; am I correct?</p>	<p style="text-align: right;">Page 92</p> <p>1 records in the Mednet chart that had been there</p> <p>2 prior to you treating her?</p> <p>3 A If it was germane, yes.</p> <p>4 Q The Mednet chart contains a report of June 6, 1998</p> <p>5 authored by Howard Tucker?</p> <p>6 A Yes.</p> <p>7 Q Do you know Dr. Tucker?</p> <p>8 A I do.</p> <p>9 Q It also contains a bill from Dr. Tucker, does it</p> <p>0 not?</p> <p>1 A Yes.</p> <p>2 Q \$525?</p> <p>3 MS. VADAS: Objection.</p> <p>4 A Yes.</p> <p>5 Q It also contains a letter of May 6, 1988 to Michael</p> <p>6 Djordjevic at Jacobson, Maynard, Tuschman & Kalur?</p> <p>7 A Yes.</p> <p>8 Q That is signed by Dr. Brahms, is it not?</p> <p>9 A Yes.</p> <p>10 Q Have you ever read this letter before, Doctor?</p> <p>11 A I don't know that I have.</p> <p>12 Q I have a letter, I think it looks like another</p> <p>13 report from Dr. Tucker, March 31st, 1986; is that</p> <p>14 correct, Doctor?</p> <p>15 A Yes.</p>

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1 Q Now, I have a letter authored by Ruth Myers,
2 correct, Doctor?
3 A Yes.
4 Q There is no date that I can see on it. Can you see
5 a date on that?
6 A No, sir.
7 Q Doctor, would you read for me, it's about five
8 paragraphs down, read the sentence that Miss Myers
9 wrote.
10 MS. VADAS: Objection.
11 A "I realize that some day my wrists, hands, and
12 fingers will be so bad that I probably will not be
13 able to work at all."
14 Q And this sentence at the end of this page.
15 A "But even a person without the pain and limited
16 ability of rheumatoid would find it difficult to do
17 what he is expecting of me."
18 Q Doctor, what does this sentence say right here?
19 MS. VADAS: Objection.
20 A Can we go off the record? Do you want me to go
21 through all this stuff?
22 MR. KRAUSE: Off the record.
23 (Discussion off the record.)
24 By Mr. Krause:
25 Q Can you read this sentence for me, Doctor?

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1 MS. VADAS: Objection.
2 A In addition to this, could you please let me know if
3 there is any other medication that will reduce the
4 pain and stiffness in my wrists. Forget Tylenol --
5 Q Keep going.
6 A -- it is useless, and the Ibuprofen makes me swell
7 all over. I would even consider surgery to remove
8 the garbage in the affected area that is left by the
9 rheumatoid. The inability to move my hands that
10 used to get better in a few hours now can last all
11 day and sometimes several days, depending on
12 weather, stress, and activity.
13 Do you want me to continue?
14 Q Yes.
15 A This probably sounds overreacting --
16 Q Read the rest of that letter.
17 MS. VADAS: Objection.
18 A -- to you or to someone who has arthritis in the
19 larger joints, but without the use of your hands
20 life is getting to be virtually impossible. The
21 pain alone lasts so long it makes your entire
22 feeling miserable, and I know that the arthritis is
23 in my spine, mostly the C-5/6 and 7 vertebrae. I
24 wake up with a stiff neck five days out of seven.
25 Thanks again, Ruth.

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1 Q That was to Dr. Park, correct?
2 A That is correct.
3 Q Dr. Park treated Miss Myers for the rheumatoid
4 arthritis?
5 A That's correct.
6 Q This letter of May 14, 1987 is signed from?
7 A Dr. Wilke. I assume that is a letter to the
8 patient.
9 Q Does it say anything about rheumatoid arthritis in
10 there?
11 A I am pleased to report that the Westergren
12 sedimentation rate obtained on April 27, 1987 were
13 normal. Please, continue the Clinoril 200
14 milligrams per day. The normal Westergren
15 sedimentation rate suggests to me that some of your
16 pain is due to muscular stiffness and poor sleep
17 called fibrositis.
18 Q Is there anything else in there related to
19 rheumatoid arthritis?
20 A No.
21 THE WITNESS: I have patients coming
22 in, and if there are patients out there I want to be
23 able to have my nurse give them a reliable
24 indication of how long they are going to have to
25 wait. How long do you think it would be?

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1 MR. KRAUSE: We can go off the
2 record.
3 (Discussion off the record.)
4 MR. KRAUSE: Back on the record.
5 By Mr. Krause:
6 Q I see a letter from the Cleveland Clinic to Ruth
7 Trexler, that was her name before it went to Myers.
8 A I understand.
9 Q It's the same Ruth Myers' chart?
10 A I understand, I'm assuming that's correct.
11 Q September 29, 1986 is the date of that letter?
12 A Yes.
13 Q It appears to discuss rheumatoid arthritis. Doctor,
14 can you just verify for me that that letter is
15 germane to Miss Myers' rheumatoid arthritis
16 condition?
17 A Yes.
18 Q That's a letter from Dr. Wilke?
19 A Yes.
20 That's GYN.
21 Q There is also a letter from February 3rd, 1988 from
22 Dr. Nemunaitis to an attorney Louis G. Henderson,
23 remember we ran into his name earlier, and that
24 letter is dated February 3 of 1988, correct?
25 A Yes.

Page 9	Page 9
<p>1 Q This is a letter from Mr. Henderson to Dr. 2 Nemunaitis, January 27th of 1988? 3 MS. VADAS: Objection. 4 Q Correct? 5 A Yes. 6 Q Is it not a letter? 7 A Yes. I said yes. 8 Q Here is a letter to Michael Shane from Dr. 9 Nemunaitis, dated April 23rd, 1986, correct? 10 A Yes. 11 Q The authorization is signed by Ruth Trexler allowing 12 the law firm of Shane & Shane to get her medica 13 records? 14 A Yes. 15 Q Here is a letter from Dr. Lee to Howard Bernstein 16 that is dated November 15th, 1976; is that correct? 17 A Yes. 18 Q There is a letter from Michael Shane to Dr. 19 Nemunaitis dated March 18th, 1986? 20 A Yes. 21 Q There is a letter from Howard Bernstein to Dr. Lee 22 dated October 28th, 1976? 23 A Yes. 24 Q There is a letter from Howard Berstein to the 25 Records Room at the Euclid Clinic that is dated</p>	<p>1 arthritis? 2 A Yes. 3 Q I have a letter to you, Doctor, with a questionnaire 4 from a federal agency, the Social Security agency 5 regarding a disability claim for Miss Myers; is that 6 correct? 7 A Yes. 8 Q I'm reading the second sentence. The disability is 9 alleged due to rheumatoid arthritis and depressioi 10 with an onset of 5-1-94? 11 A Yes. 12 Q Do you have any recollection -- 13 A I do not. 14 Q -- of filling out any questionnaires or responding 15 to any requests relative to that disability claim? 16 A That wasn't filled out. 17 Q It includes a form, but it appears nothing else wa 18 filled out on it, correct? 19 A Correct. 20 Q There is an authorization signed by Ruth Myers dated 21 7-22-94 with your name at the top, your name is 22 written at the top, I'm not saying you wrote it, 23 signed by Ruth Myers giving authorization for Social 24 Security to obtain your medical records? 25 A Yes.</p>
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<p>1 October 28, 1976? 2 A Yes. 3 Q There is an accident report, an Ohio traffic 4 accident report in here, isn't there, Doctor? 5 A If that's what it is, I will accept that. 6 Q The report number is 120985-977; is that correct 7 Doctor? 8 A Yes. 9 Q That is several pages long? 10 A It is. 11 Q There is another request for records, I can't ever 12 read that, the affidavit for the hospital report in 13 there, Doctor? 14 A Okay. 15 Q October 8th of 1976; is that correct? 16 A Yes. 17 Q There is a letter to Miss Myers dated April 22nd 18 1994 from Dr. Kosnosky; is that correct? 19 A Yes. 20 Q It asks Miss Myers to use this letter as a reference 21 point for making an appointment with Dr. Bishko wh 22 is a rheumatologist? 23 A Correct. 24 Q Does this appear to be a letter to send Miss Myers 25 on her way for treatment with YOU for her rheumatoid</p>	<p>1 Q Here is another letter from the Bureau of Disability 2 regarding the disability claim Miss Myers was 3 filing; is that correct? 4 A Yes. 5 Q That letter is dated July 26, 1994, correct? 6 A Yes. 7 Q It requests all your medical records? 8 A Yes. 9 Q There is another letter dated -- actually, it might 10 be a copy, July 26, 1994? 11 A Yes. 12 Q I think it was the same. 13 This form is actually filled out, Doctor? 14 A Yes, for depression. 15 Q For depression, right. This is a mental impairment 16 form. 17 A That's not my handwriting. 18 Q I understand that, Doctor. I'm not contending that 19 it is. What is this note, Doctor, is this just a 20 record of all her appointments? 21 A It would appear that's what it is. 22 Q All right, Doctor. Do you have any recollection 23 other than the facts we discussed -- 24 A I do not. 25 Q -- of Ruth Myers other than what we discussed and</p>

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1 relevant to the issue of her rheumatoid arthritis?
 2 A I do not.
 3 Q Have you been asked to testify at trial in this
 4 matter?
 5 A Yes.
 6 Q You indicated you might not be testifying at trial
 7 earlier?
 8 A I said I didn't want to due to the fact that I would
 9 have to cancel days of patients, and when I'm only
 10 here two days a week and on reasonably short notice
 11 it impacts patient care.
 12 MR. KRAUSE: Understood, Doctor. I
 13 believe that's all I have for you, other than to
 14 thank you for your time. I appreciate it.
 15 THE WITNESS: Thank you.
 16 MS. VADAS: Dr. Bishko --
 17 MR. KRAUSE: Let me put an objection
 18 on the record, Kathy.
 19 MS. VADAS: I'm not going to ask him
 20 any questions.
 21 MR. KRAUSE: You're not?
 22 MS. VADAS: Dr. Bishko, I'm not
 23 going to ask you any questions at this time. You
 24 have to get back to your patients. If we try to
 25 schedule you for trial and you are unable, would you

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1 be willing to be videotaped for trial?
 2 THE WITNESS: Yeah, I guess.
 3 MS. VADAS: I understand. Thank you
 4 for your time.
 5 MR. KRAUSE: Thanks, Doctor.
 6 (Deposition concluded at 1:22 p.m.)
 7 (Signature not waived.)
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1 I have read the foregoing transcript from page 1
 2 through page 102 and note the following corrections:
 3
 4 PAGE LINE REQUESTED CHANGE
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 19
 20 Frederic Bishko, M.D. _____
 21 Subscribed and sworn to before me this _____ day
 22 of _____, 2002.
 23 _____
 24 Notary Public
 25 My commission expires: _____

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1 State of Ohio,)
 2 County of Cuyahoga.) SS: CERTIFICATE
 3 I, Kris Adorjan, Court Reporter and Notary Public in
 4 and for the State of Ohio, duly commissioned and
 5 qualified, do hereby certify that the within named
 6 witness, Frederic Bishko, M.D. was by me first duly sworn
 7 to testify the truth, the whole truth, and nothing but the
 8 truth in the cause aforesaid; that the testimony then
 9 given by him was by me reduced to stenotypy/computer in
 10 the presence of said witness, afterward transcribed and
 11 that the foregoing is a true and correct transcript of the
 12 testimony so given by him as aforesaid.
 13 I do further certify that this deposition was taken
 14 at the time and place in the foregoing caption specified
 15 and was completed without adjournment.
 16 I do further certify that I am not a relative,
 17 counsel, or attorney of either party, or otherwise
 18 interested in the event of this action.
 19 IN WITNESS WHEREOF, I have hereunto set my hand and
 20 affixed my seal of office at Cleveland, Ohio, on
 21 this 8th day of February, 2002.
 22
 23
 24 Kris Adorjan, Court Reporter and
 25 Notary Public in and for the State of Ohio.
 My commission expires November 30, 2002.

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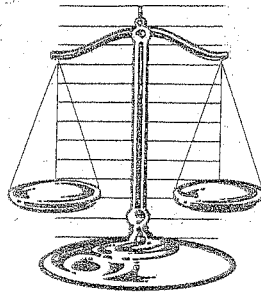
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FINCUN-MANCINI
The Court Reporters

February 12, 2002

Mr. David Krause
Rerninger & Reminger
Suite 700
113 St. Clair Building
Cleveland, OH 44114

In re: Ruth Myers
-v- Faissal Zahrawi, M.D., et al.
Case No. 01 CV 000687

Dear Mr. Krause:

Enclosed please find the corrected transcript pages from the deposition of Frederic Bishko, M.D., taken in the above-captioned matter. We apologize for any inconvenience this may have caused you.

Please feel free to contact us if we can be of any further assistance to you.

Thank you for your courtesies.

Very truly yours,

FINCUN-MANCINI COURT REPORTERS

1 A Not to my knowledge.

2 Q Doctor, what are the symptoms of a sublux ulna?

3 A Symptoms, probably pain or limitation of motion.

4 Q Did Miss Vadas talk to you about this note?

5 A NO.

6 Q Doctor, let's go back to your objective findings on

7 the stick figure. Next to the stick figure, the

8 right wrist, what is written there?

9 A Sublux ulna.

10 Q Who wrote that?

11 A Me.

12 Q That is an objective finding, correct, Doctor?

13 A It is.

14 Q That sublux ulna would be a partial dislocation, most

15 commonly associated with pain and loss of function?

16 MS. VADAS: Objection.

17 A It's a sublux ulna, it doesn't portend, other than

18 it's an objective finding.

19 Q You identified two of the symptoms of a sublux ulna as

20 pain and loss of range of motion, correct, Doctor?

21 A Yes.

22 Q If you have loss of range of motion you would

23 probably have loss of function as well, correct,

24 Doctor?

25 MS. VADAS: Objection.

1 A Yes.

2 Q Is it not fair to say loss of range of motion goes
3 hand-in-hand with loss of function?

4 MS. VADAS: Objection

5 A Not necessarily.

6 Q Explain to me why.

7 A Say in the elbow, what you real really need in the
8 elbow is this ability to flex the elbow to get it up
9 to your mouth to do things.

10 If you couldn't completely straighten the
11 elbow all the way out, it may not be a lot of
12 functional importance because there is not a lot of
13 things one does in everyday life to necessitate
14 complete straightening of the elbow, whereas if you
15 lost a few degrees of flexion that could be a major
16 problem. Does that explain it?

17 3 I want to be fair. If you need to explain it
18 further, I want to give you the ability to do that,
19 this isn't like a game.

20 4 Okay.

21 2 Is it fair for me to assume that on 5-29-98 you
22 objectively diagnosed Miss Myers with a sublux ulna on
23 her right wrist?

24 A Yes.

25 Q Is there any medications listed on the physician

