

**DEPOSITION OF JOSEPH B. BLANDA, M.D.**

THE STATE OF OHIO, }  
COUNTY OF SUMMIT. } SS: SCHNEIDERMAN, J.

IN THE COURT OF COMMON PLEAS

KENNETH D. RUTTIG, et al.,  
Plaintiffs,  
  
v.  
STEVEN LIPPITT, M.D.,  
et al.,  
Defendants.

- - -

Deposition of JOSEPH B. BLANDA, M.D., taken by  
the Plaintiffs as if upon cross-examination before Kerri  
L. Simmons, a Stenographic Reporter and Notary Public  
within and for the State of Ohio, at the offices of Blanda  
Orthopedics, 20 Olive Street, Akron, Ohio, on Wednesday,  
the 9th day of August, 2000, commencing at 7:05 a.m.

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1 APPEARANCES:

2 Caravona & Czack, P.L.L.,  
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5 1900 Terminal Tower  
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8 On behalf of the Plaintiffs.  
9  
10 Roetzel & Andress  
11 By: Anna Carulas: Esq.  
12 and  
13 David Hudak, Esq.  
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15 One Cleveland Center  
16 10th Floor  
17 Cleveland, Ohio 44114  
18 On behalf of Defendant Steven Lippitt, M.D.

- - -

JOSEPH B. BLANDA, M.D.,

called by the Plaintiff for the purpose of  
cross-examination, as provided by the Ohio  
Rules of Civil Procedure, being by me first  
duly sworn, as hereinafter certified, deposes  
and says as follows:

MR. CZACK: Okay. For the record this  
is the discovery deposition of Dr. Joseph  
Blanda taken in the case of Kenneth Ruttig  
versus Steven Lippitt, et al.

CROSS-EXAMINATION

BY MR. CZACK:

13 Q. Doctor, can you tell me who you work for, please.  
14 A. I'm self employed.  
15 Q. All right. And what's the name of your group or  
16 your sole proprietorship?  
17 A. Blanda Orthopedics Spots Medicine.  
18 Q. All right. Can you give the court reporter your  
19 full name at least for the record here.  
20 A. Joseph B. Blanda.  
21 Q. And what is the office address of Blanda  
22 Orthopedics?  
23 A. 20 Olive Street, Suite 308, Akron, Ohio 44310.  
24 Q. And is that the address we're at here today at the  
25 hospital, St. Thomas Hospital? I mean it's

1 connected to the hospital? 5  
 2 A. It's connected, but the hospital has a different  
 3 address than the office.  
 4 Q. Okay. How long have you maintained Blanda  
 5 Orthopedics?  
 6 A. For five years.  
 7 Q. Where were you prior to that?  
 8 A. I was at this same institution with a group.  
 9 Q. Okay. What was the name of that group?  
 10 A. Summit Orthopedic Group.  
 11 Q. How long were you with Summit Orthopedic Group?  
 12 A. Approximately five years, also.  
 13 Q. How many orthopedics were in that group?  
 14 A. Between four and five at different times.  
 15 Q. Do you have anybody else that works with you at  
 16 Blanda Orthopedics?  
 17 A. No other physicians.  
 18 Q. And has that been the case for the approximate five  
 19 years you've had that company?  
 20 A. Yes, sir.  
 21 Q. Now, you've been deposed before, I take it?  
 22 A. Yes, I have.  
 23 Q. All right. Let me just review a few ground rules.  
 24 If you don't understand one of my questions, I'm  
 25 going to ask you to tell me that so I can rephrase

1 or repeat the question. All right? 6  
 2 A. Okay.  
 3 Q. If you answer my question, I'm going to assume you  
 4 understood it. Fair enough?  
 5 A. Okay.  
 6 Q. If at any time you need to take a break for  
 7 something, please let me know and we'll do that.  
 8 All right?  
 9 A. Okay.  
 10 Q. You are currently now listed as an expert witness in  
 11 the Kenneth Ruttig versus Steven Lippitt case, is  
 12 that correct?  
 13 A. Yes, sir.  
 14 Q. Do you maintain a file of materials that you have  
 15 reviewed in this case, Doctor?  
 16 A. Yes.  
 17 Q. Where is that file right now?  
 18 A. Some at my office, some at home.  
 19 Q. All right. And did you receive a subpoena last  
 20 week, Doctor?  
 21 A. I don't think I received it.  
 22 MS. CARULAS: I received one.  
 23 MR. CZACK: Okay.  
 24 Q. (BY MR. CZACK) You did not receive one at your  
 25 office?

1 A. No. No, I don't think I did. 7  
 2 Q. Okay. And did you obtain any of the materials that  
 3 were asked for in that subpoena?  
 4 A. I reviewed that with these folks and, no, I was  
 5 unable to obtain any of these because they were --  
 6 it was so long ago that I had seen some of this  
 7 stuff.  
 8 Q. Okay. So you searched for those materials and you  
 9 couldn't find them?  
 10 A. Well, I'm sure I wouldn't have saved any of these  
 11 that I had received.  
 12 Q. Okay. These being? Because I don't have it in  
 13 front of me. I'm sorry.  
 14 A. They were just leaflets and promotional information  
 15 pertaining to Duract or written documents received  
 16 by me from Wyeth Laboratories.  
 17 Q. Okay. You recall having such documents, but you  
 18 just have not maintained them because of the time  
 19 period that's past?  
 20 A. That's correct.  
 21 Q. What about the other requests that are in there?  
 22 A. The other one is prescribing records or prescription  
 23 histories pertaining to Duract written by myself.  
 24 And there would be no way that I would be able to go  
 25 back through all my charts and find any of those.

1 Q. Okay. Why? 8  
 2 A. Well, I just have thousands and thousands of charts  
 3 from the years that Duract was available and it  
 4 would just be impossible to go back and track those  
 5 down.  
 6 Q. Okay. Any other requests on there, Doctor, that you  
 7 attempted to obtain records for or documents?  
 8 A. No.  
 9 Q. Now, you have provided, I think to either Mr. Hudak  
 10 or Ms. Carulas with a CV, which I have marked as  
 11 Plaintiff's Exhibit No. 1. Can you tell me is that  
 12 a current CV, Doctor?  
 13 A. Yes, it is.  
 14 Q. And that's what? Is it five pages?  
 15 A. Yes, sir.  
 16 Q. All right. On that CV you list your present  
 17 position as an assistant professor of clinical  
 18 orthopedic surgery?  
 19 A. That's correct.  
 20 Q. And can you explain that position and what your  
 21 responsibilities are?  
 22 A. Yes. That's a position through the Northeast Ohio  
 23 University College of Medicine where I'm on the  
 24 teaching staff in the orthopedic department here at  
 25 Summa Health System.

1 Q. What does that mean to be on the teaching staff, <sup>9</sup>  
 2 Doctor?  
 3 A. I teach and instruct orthopedic residents who are in  
 4 training to become orthopedic surgeons in addition  
 5 to having my private practice.  
 6 Q. Okay. How long have you held that teaching  
 7 position?  
 8 A. Since 1991 when I started practice.  
 9 Q. Now, am I correct or did I miss on this resume -- I  
 10 don't see anywhere where you mention Blanda  
 11 Orthopedics.  
 12 A. Other than my address, you're correct.  
 13 Q. Okay.  
 14 A. I don't have that on there.  
 15 Q. But everything else on here is current and updated?  
 16 A. That's correct.  
 17 Q. You have a Blanda's Fitness Center in Pennsylvania.  
 18 Tell me about that.  
 19 A. That's actually a fitness center my brother owns and  
 20 operates. At this point I'm more of a consultant to  
 21 him. Back in 1986 I helped him kind of set it up,  
 22 but I don't have any financial ties to it or  
 23 anything like that.  
 24 Q. Okay. And then the Akron Razors, who are the Akron  
 25 Razors?

1 A. That's the women's professional softball team here <sup>10</sup>  
 2 in Akron.  
 3 Q. What do you do for them? Are you the team  
 4 physician?  
 5 A. I'm the team physician.  
 6 Q. What does that involve?  
 7 A. If any of the players are injured in an orthopedic  
 8 related injury, then I'll be the one to evaluate  
 9 them.  
 10 Q. Tell me about Blanda Orthopedics. Do you have a  
 11 particular area of specialty or is it a general  
 12 orthopedic practice that you have?  
 13 A. I have a general orthopedic practice, but my area of  
 14 special interest is knee and shoulder problems.  
 15 Q. But you'll see patients that have general orthopedic  
 16 conditions like back problems, neck problems?  
 17 A. Yes, sir.  
 18 Q. And where do you get most of your referrals from?  
 19 Is there a particular source that you get your  
 20 patient referrals from?  
 21 A. Most all of them either come from referrals from  
 22 primary care physicians or from other patients.  
 23 Q. And when you were with the prior group, when you  
 24 were with Summit Orthopedics --  
 25 A. Yes.

1 Q. -- in that group you concentrated on the knee and <sup>11</sup>  
 2 shoulder while you were there?  
 3 A. Yes, sir.  
 4 Q. Why did you leave that group?  
 5 A. It was a good opportunity to start my practice, but  
 6 as time went on and I became busier it was difficult  
 7 to get things scheduled within a group that size and  
 8 it was just time to go solo.  
 9 Q. Okay. So you started Blanda Orthopedics when? In  
 10 about 1995?  
 11 A. Yes, sir.  
 12 Q. Take me through -- And I realize it changes every  
 13 week, Doctor. It changes from day-to-day, but take  
 14 me through a typical week for you at Blanda  
 15 Orthopedics. Are there certain days you do  
 16 surgeries? Approximately how many surgeries do you  
 17 do? How many patients do you see during a week or  
 18 during a day?  
 19 A. I do surgeries on Monday, Tuesday morning, and  
 20 Friday most of the day. I see patients in all those  
 21 half days or full days that I'm not in surgery. So  
 22 that would be Monday, Tuesday afternoon, all day  
 23 Wednesday, most all day Thursday, and an hour or two  
 24 on Friday after surgery.  
 25 Q. Okay. And what hospitals do you do surgeries in?

1 A. Primarily Summit Health System, but occasionally <sup>12</sup>  
 2 Akron General Hospital.  
 3 Q. Tell me in the last couple of years -- Let me ask  
 4 you a question first. How many staff do you have  
 5 that work for you at your group right now? I'm  
 6 going to call it a group. I know you're the only  
 7 physician there, but just for ease of having to say  
 8 Blanda Orthopedics every time, we'll call it a  
 9 group. How many employees do you have?  
 10 A. I have three full-time and two part-time employees.  
 11 Q. And what are their positions?  
 12 A. I have a secretary/receptionist. The second person  
 13 is an office manager and billing person. The third  
 14 person is an x-ray technician. And the other two  
 15 are technicians that assist with bringing patients  
 16 into rooms and also doing some of the basic filing  
 17 and things like that.  
 18 Q. Okay. Would any of those people be designated as a  
 19 physician assistant or none of those people have  
 20 those qualifications?  
 21 A. None of them do.  
 22 Q. You just call them technicians that assist you with  
 23 patients and those kinds of things?  
 24 A. Yes, sir.  
 25 Q. All right. Now, in regard to your teaching position

1 and your instruction of orthopedic residents, tell<sup>13</sup>  
 2 me some of the things you have had the opportunity  
 3 to instruct residents about orthopedics in the last  
 4 couple of years.  
 5 A. Well, on a near daily basis I'll have a one-on-one  
 6 opportunity to teach orthopedic residents in the  
 7 operating room or when they rotate to my office for  
 8 clinical physical examination techniques in the  
 9 office. In the operating room it's teaching  
 10 surgical techniques. In addition to that, I'll give  
 11 a few lectures a year to the group of orthopedic  
 12 residents. Most of those lectures pertain to  
 13 problems involving knee and shoulder.  
 14 Q. Okay. In the past have you had the opportunity to  
 15 teach, instruct, or lecture students about methods  
 16 and standards for prescribing medications?  
 17 A. No, sir.  
 18 Q. Do you teach your students or the residents that  
 19 you're exposed to that precision and accuracy is  
 20 important in medicine?  
 21 A. Sure.  
 22 Q. Why?  
 23 A. Well, I think that common sense tells you that that  
 24 is just the best way to perform and make decisions.  
 25 Q. Okay. Do you believe it's important as an

1 orthopedic surgeon to stay current with Literature<sup>14</sup>  
 2 in your particular field to the extent possible?  
 3 A. Yes.  
 4 Q. Let me ask you a few questions, Doctor, about your  
 5 preparation for today's deposition. You said you  
 6 had parts of the file in your office, parts of your  
 7 file at home. Let's start with home. What is at  
 8 home that is contained in your file?  
 9 A. I'm not sure of the exact break-up, but there's --  
 10 Q. Let me make it easy on you then. Tell me everything  
 11 that's contained in your file that you recall.  
 12 A. Okay. All right. I'm not even sure I can tell you  
 13 everything. I was sent a pretty large packet, and  
 14 quite frankly, I just breezed through things. There  
 15 were several copies of other depositions, and I just  
 16 breezed through those. I didn't really read them.  
 17 There was some literature pertaining to Duract  
 18 itself, and there again I just breezed through that.  
 19 I'm not sure I'm even able to describe what some of  
 20 the other information was. I didn't spend a lot of  
 21 time looking at that.  
 22 Q. Okay. You say it was a fairly voluminous, I don't  
 23 think that's the word you used, but a large packet  
 24 of information. Can you with your hand show me how  
 25 big the packet was?

1 A. It was probably a foot (indicating).<sup>15</sup>  
 2 Q. About a foot thick?  
 3 A. Yes.  
 4 Q. Okay. And you breezed through some of it and some  
 5 of it you didn't look at?  
 6 A. Most of it I didn't look at.  
 7 Q. Did you receive a copy of Dr. Lippitt's office chart  
 8 in this case?  
 9 A. Yes, I believe that was in there.  
 10 Q. Did you receive a copy of Dr. Lippitt's deposition?  
 11 A. I think that was in there, also.  
 12 Q. Did you read Dr. Lippitt's deposition?  
 13 A. No, I didn't.  
 14 Q. Did you read Dr. Lippitt's office chart concerning  
 15 Kenneth Ruttig?  
 16 A. I breezed through it.  
 17 Q. Did you receive a copy of the Plaintiff's orthopedic  
 18 expert Steven Jacob's deposition?  
 19 A. Yes, sir.  
 20 Q. Did you read that?  
 21 A. No.  
 22 Q. I guess let me ask you this way, did you read any  
 23 depositions in this case?  
 24 A. I breezed over depositions from Dr. Stoyer, Dr.  
 25 Smith, and I believe it was one or two physician

1 assistants from that group.<sup>16</sup>  
 2 Q. All right. Did you read Mr. Ruttig's depositions?  
 3 A. No, sir, I didn't.  
 4 Q. Okay. Is there a reason, understanding that Dr.  
 5 Lippitt is the Defendant in this case, you didn't  
 6 read his deposition but you read Dr. Stoyer, Dr.  
 7 Smith, and the physician assistants?  
 8 A. I think I received Dr. Lippitt's deposition quite  
 9 some time ago, and quite honestly, I can't even  
 10 remember if I had looked at it. I don't recall much  
 11 from that.  
 12 MS. CARULAS: Just to help out. We  
 13 clearly did initially send you Dr.  
 14 Lippitt's office chart and his deposition.  
 15 THE WITNESS: Yes.  
 16 MS. CARULAS: And then just recently  
 17 sent him this box that contained the  
 18 depositions he mentioned and some other  
 19 materials, so there were two different  
 20 shipments.  
 21 MR. CZACK: Okay.  
 22 Q. (BY MR. CZACK) Did you keep track anywhere, Doctor,  
 23 of the work and review you did in this case? In  
 24 other words, do you have a chart or a log showing  
 25 what you did and how much time you spent doing it?

17

1 A. I didn't keep track of that, no, sir.

2 Q. ALL right. Can you approximate for me how much time

3 you have spent reviewing the materials you told me

4 about?

5 MS. CARULAS: If you can.

6 Q. (BY MR. CZACK) And again, I know this is an

7 approximation.

8 A. Probably one hour of time.

9 Q. All right. The literature concerning Duract that

10 you mentioned, do you know if that was materials

11 from outside sources? Was it promotional material?

12 Was it package inserts? Do you know what it was

13 concerning Duract that you were given?

14 A. Most of it seemed to be promotional information.

15 P. Were these color copies?

16 A. I think they may have been, yes, sir.

17 P. And did you look at the -- or were you given the

18 package insert for Duract?

19 A. There was some material on Duract. I don't know if

20 it was a package insert or what.

21 Q. All right. Have you done any independent or

22 outside research concerning Duract or the issues in

23 this case?

24 A. No, sir.

25 Q. Tell me how you came to be an expert here. How did

18

1 Ms. Carulas get a hold of you or how did she know

2 about you?

3 A. I received a phone call from a nurse that, I believe

4 works with her and she explained briefly what was

5 happening in the case and asked me if I had

6 recollection of the period of time when Duract was

7 being promoted and if I, in fact, used Duract in my

8 practice. And then she went on to ask if I would be

9 willing to talk about my recollection of those

10 things.

11 Q. Okay. And at that point you agreed to --

12 A. Yes.

13 P. What else were you told by that nurse about the

14 case?

15 A. I don't recall. It was quite some time ago.

16 Q. Did you ever receive any Letters or correspondence

17 from Ms. Carulas or Mr. Hudak?

18 A. Yes. I believe along with the materials that they

19 sent over there was a basic cover letter.

20 Q. Were you ever given any case summaries or case

21 chronologies summarizing what people said in their

22 depositions summarizing the medical care of Dr.

23 Lippitt?

24 A. We talked about kind of a basic overview of the

25 medical care and, you know, summary of what had

19

1 transpired in the care of that patient.

2 Q. But you haven't received any written chronologies or

3 summaries?

4 A. There may have been a written chronology. I don't

5 recall exactly.

6 Q. ALL right. If you could, Doctor, when you get back

7 to your office and when you get home, I'd like you

8 to get any and all copies of correspondence you've

9 received from Anna or Dave and provide that to them.

10 Okay?

11 A. Okay.

12 Q. All right. Do you in your practice refer to any

13 orthopedic journals on a regular basis?

14 A. Yes, sir.

15 P. Which ones?

16 A. Primarily Journal of Bone and Joint Surgery,

17 American Journal of Sports Medicine, Arthroscopy,

18 Journal of Arthroplasty, Clinical Orthopedics,

19 Orthopedics. It's just one called Orthopedics, and

20 Orthopedic Review.

21 Q. Okay. And you I see you still maintain your

22 position as a manuscript reviewer for the Journal of

23 Orthopedic and Sports Therapy?

24 A. Yes.

25 P. What does that position involve? What does that

20

1 mean you're a manuscript reviewer, Doctor?

2 A. At this point in time maybe twice a year I will

3 receive a copy of a submitted article that was

4 submitted to that journal for publication and I'm

5 asked to review it and basically answer a

6 questionnaire as far as the quality of that article.

7 P. Now, a few minutes ago you told me that when the

8 nurse from Ms. Carulas' office called you, she had

9 asked you whether you had had any experience with

10 prescribing Duract or if you recall the medication,

11 is that correct?

12 A. Yes, sir.

13 Q. All right. Was your practice substantially the same

14 in terms of the number of personnel and the

15 positions of those people back in 1997 and '98 as it

16 is today?

17 A. The number would have been the same. I believe

18 maybe two of the people are new since 1997.

19 Q. Okay. But again, you were the only physician in

20 your group?

21 A. That's correct.

22 Q. All right. Do you know Dr. Steven Jacobs who is one

23 of the Plaintiff's experts in this case?

24 A. NO.

25 Q. And you said you've not read his deposition?

21

1 A. That's correct.  
 2 P. Do you know Dr. Lippitt?  
 3 A. Yes, sir.  
 4 P. All right. Tell me about how you know Dr. Lippitt.  
 5 A. I know most of the orthopedic surgeons in this  
 6 community, so I know him from some of the  
 7 combined conferences that we have with our residents  
 8 in this community.  
 9 Q. Did you ever socialize with Dr. Lippitt?  
 10 A. No, I do not.  
 11 P. Have you ever been at orthopedic or other medical  
 12 functions where Dr. Lippitt has been there?  
 13 A. Yes, there have been some conferences that I'm sure  
 14 we were both there. I remember seeing him at some  
 15 of those and we're basically on a, hi, how are you  
 16 type of relationship.  
 17 Q. All right. And again, I understand this is an  
 18 approximation. How often do you see Dr. Lippitt in  
 19 the course of a month?  
 20 A. I probably see him two or three times a year.  
 21 P. When were you retained as an expert in this case,  
 22 Doctor?  
 23 A. I don't recall the exact time.  
 24 Q. Over a year ago?  
 25 A. I don't think it was over a year ago. It may have

22

1 been more -- I'm not sure. Maybe six, eight months.  
 2 P. Did you speak to Dr. Lippitt before you agreed to  
 3 become an expert in this case?  
 4 A. No, sir.  
 5 Q. All right. Have you spoke to Dr. Lippitt about this  
 6 case since you've agreed to be an expert?  
 7 A. No, sir.  
 8 Q. Have you seen Dr. Lippitt since you've agreed to be  
 9 an expert in this case?  
 10 A. I may have seen him at the operating room at Akron  
 11 General one time.  
 12 P. And there were no conversations between you and him  
 13 about your agreeing to be an expert or anything  
 14 about this case?  
 15 A. That's correct.  
 16 P. How about any of the other partners or employees at  
 17 his group, at NOAH?  
 18 A. No, I didn't have any conversation with them either.  
 19 Q. About this case?  
 20 A. That's correct.  
 21 P. Do you know any of those people in that group on a  
 22 social basis?  
 23 A. No, sir.  
 24 Q. And I take it you see some or all of them on an  
 25 occasional basis in the community?

23

1 A. That's correct.  
 2 Q. Have you ever spoke to any of the other people at  
 3 NOAH concerning the Kenneth Ruttig case?  
 4 A. No.  
 5 Q. Now, you told me you've given some depositions  
 6 before, Doctor. I want to go into that for just a  
 7 few minutes here. Have you ever worked or been  
 8 retained as an expert witness by Anna Carulas or her  
 9 law firm Roetzel & Andress at any time in the past?  
 10 A. No.  
 11 Q. Tell me how many times you have been an expert  
 12 witness in any kind of medical negligence case.  
 13 A. This is my first.  
 14 Q. When you've been deposed before, what were the  
 15 circumstances of that deposition?  
 16 MS. CARULAS: Just note my objection,  
 17 but go ahead.  
 18 A. For information on patients I've cared for that have  
 19 had personal injury cases.  
 20 P. (BY MR. CZACK) So you testified on behalf of your  
 21 own patients who are either Workers' Comp or  
 22 accident victims?  
 23 A. That's correct.  
 24 P. And this is the first case you've ever testified in  
 25 involving medical negligence?

24

1 A. That's correct.  
 2 Q. Have you ever been represented by for any reason the  
 3 law firm of Roetzel & Andress?  
 4 MS. CARULAS: Note my objection.  
 5 A. No.  
 6 Q. (BY MR. CZACK) Have you ever been a defendant in a  
 7 medical negligence case?  
 8 MS. CARULAS: Objection.  
 9 Q. (BY MR. CZACK) Have you ever been sued before?  
 10 MS. CARULAS: Just note my objection.  
 11 Go ahead.  
 12 A. I haven't been a defendant, no.  
 13 Q. (BY MR. CZACK) What are your charges for -- or  
 14 since this is your first case, what were your  
 15 charges for reviewing this case per hour? I think  
 16 you told me you've only looked at things for one  
 17 hour. What would you charge or what have you  
 18 charged for that hour's time?  
 19 A. I haven't even talked with my office manager about  
 20 it. I think I was instructed by my office manager  
 21 to try to ask around and see what an average fee  
 22 would be.  
 23 P. What are your charges for a personal injury case for  
 24 a patient of yours?  
 25 A. I don't even know that. My business manager takes

25

1 care of that.

2 Q. What are your fees for depositions?

3 A. I don't even know that.

4 Q. Okay. You don't know what you charge. And again, I

5 understand this is your first medical negligence

6 case you said that you've testified. And you don't

7 know what your charges are in a personal injury case

8 for a deposition?

9 A. I do not.

10 Q. Can you estimate how many depositions you've given

11 over the course of your career, Doctor?

12 A. Probably between five and ten, maybe eight.

13 Q. At some point you're contacted by this nurse and

14 asked whether you'd agree to be an expert. You

15 indicate that you will be an expert witness in this

16 case. What are you asked to do, Doctor?

17 A. I was asked to be prepared to discuss my

18 recollection of the -- my interactions with the

19 sales reps pertaining to Duract.

20 Q. Anything else?

21 A. And perhaps to discuss my use of Duract.

22 Q. Anything else?

23 A. Nothing else that I can recall.

24 Q. Were you asked to discuss the standard of care when

25 prescribing a non-steroidal anti-inflammatory drug?

26

1 MS. CARULAS: Just so you know whether

2 or not I specifically came out and asked

3 him that -- I do plan to ask him at the

4 point of trial whether or not Dr. Lippitt

5 met with acceptable standards of care in

6 the way he prescribed Duract in this case.

7 MR. CZACK: I'm asking him whether

8 it's ever been indicated to him that he's

9 going to be asked to discuss that.

10 A. I don't recall exactly, but I assume that it would

11 be.

12 Q. (BY MR. CZACK) You told me that you haven't spoke

13 to Dr. Lippitt about this case. Have you spoke to

14 any other orthopedic doctors about Duract, the sales

15 reps, or any of the issues that you think may come

16 up in this case since you've agreed to be an expert

17 witness here?

18 A. No, I have not.

19 Q. Did you go back to look to see once you agreed to be

20 an expert whether or not you had maintained or

21 retained any of the Duract promotional materials?

22 A. I didn't go back and look, but I was sure that I

23 hadn't. I don't keep things like that.

24 Q. Now, you belong to the Greater Akron Medical

25 Society, is that correct?

27

1 A. Yes.

2 O. All right. You've never testified as an expert

3 witness before in a medical negligence case. Would

4 you ever testify in a medical negligence case

5 against an Akron orthopedic doctor if you were asked

6 to?

7 MS. CARULAS: Note my objection, but

8 go ahead. Speculation. Go ahead.

9 A. You know, I've never thought about that and I'm not

10 sure if I would or not quite frankly.

11 Q. (BY MR. CZACK) You're not sure?

12 MS. CARULAS: Object. Obviously it

13 would be dependent upon the facts before he

14 would just simply testify.

15 MR. CZACK: I understand that. I'm

16 just asking generally.

17 A. Yeah. Perhaps if it appeared to be a case where, you

18 know, there was some gross negligence, I guess I

19 would consider doing that.

20 Q. (BY MR. CZACK) Okay. So if you felt there was a

21 clear breach of the standard, you would consider it?

22 A. Yes, sir.

23 Q. Okay. Now, tell me what you know in your review of

24 this case about Dr. Lippitt's care of Mr. Ruttig.

25 And I'm asking you just generally to give me an

28

1 overview and then obviously you know I'm going to

2 start to ask you some more specific things. Okay?

3 A. Okay.

4 MS. CARULAS: And you can feel free if

5 you want, you have his office chart if you

6 want to review that.

7 O. (BY MR. CZACK) Let's do this. I have a copy.

8 Let me hand you what's been marked as Plaintiff's

9 Exhibit 2, Doctor. Okay?

10 A. Okay.

11 Q. Feel free to refer to it. I will represent that

12 that's been the complete chart that was given to me

13 by Dr. Lippitt's attorney. If you want to look at

14 it to discuss his care, that's fine.

15 A. In summary what I recall is that Mr. Ruttig was

16 referred to Dr. Lippitt for evaluation and

17 management of a shoulder injury that he had

18 sustained at least several months prior to his

19 presentation to Dr. Lippitt. Dr. Lippitt's

20 evaluation was done, and as I recall, he felt that it

21 was perhaps some tendinitis and some irritation to

22 the acromial clavicular joint. And at that time he

23 prescribed Duract as a medication to help in

24 management of this patient's complaint of pain.

25 I think Dr. Lippitt saw him two or three times

1 after that for follow-up evaluations. The patient<sup>29</sup>  
 2 was still having pain and Dr. Lippitt continued his  
 3 course of medical management with use of Duract.  
 4 Q. That's an overview of the treatment rendered by Dr.  
 5 Lippitt, is that correct?  
 6 A. That's correct.  
 7 Q. Okay. Now, the condition that we discussed or that  
 8 you mentioned that Dr. Lippitt was seeing Mr. Ruttig  
 9 for was noted as probably being a tendinitis  
 10 or a rotator cuff tendinitis?  
 11 A. Yes, sir.  
 12 Q. That's not a life threatening condition, is it,  
 13 Doctor?  
 14 A. No, it's not.  
 15 Q. Based on your review, how many total days of Duract  
 16 was prescribed by Dr. Lippitt for Mr. Ruttig?  
 17 MS. CARULAS: Do you want him to go  
 18 through and count this out?  
 19 Q. (BY MR. CZACK) Let's do it the easy way, Doctor.  
 20 What is your understanding or what was your  
 21 understanding as to the daily dosage that a patient  
 22 was supposed to be taking of Duract?  
 23 A. The daily dosage was that it could be taken every  
 24 six to eight hours.  
 25 Q. Okay. How many milligrams?

1 A. I believe it was 50 milligrams.<sup>30</sup>  
 2 Q. All right. So a patient could take up to six pills  
 3 a day. I think they were 25 milligrams a piece?  
 4 A. Twenty-five milligrams, yes.  
 5 Q. So a patient could take up to six pills a day?  
 6 A. Yes, sir.  
 7 Q. I'm going to show you what's been marked as  
 8 Plaintiff's Exhibit No. 8, which is the  
 9 pharmaceutical records in this case, and feel free  
 10 to look at it. It indicates that Dr. Lippitt had  
 11 given Mr. Ruttig 300 prescription Duract pills,  
 12 which if my math is correct totals out to  
 13 approximately 50 days of Duract?  
 14 A. Yes, I see that.  
 15 Q. Okay. In your review of this case, was Dr. Lippitt  
 16 prescribing that drug for pain or for  
 17 anti-inflammatory purposes or both?  
 18 A. Both.  
 19 Q. Do you know how many Duract samples Dr. Lippitt gave  
 20 to Mr. Ruttig?  
 21 A. No, I don't know.  
 22 Q. Are you aware that he did give samples to him?  
 23 A. Yes. That's a very standard procedure.  
 24 Q. Okay. Do you keep track of the samples you give to  
 25 a patient for any kind of drugs?

1 MS. CARULAS: Just note my objection.<sup>31</sup>  
 2 Go ahead.  
 3 A. We will often note that in our charts, yes.  
 4 Q. (BY MR. CZACK) Why?  
 5 A. Well, just to try to keep track of what medications  
 6 were given to a patient. I have to admit, though,  
 7 that we're -- Sometimes we do it and sometimes we  
 8 don't. It's such a common thing that we do.  
 9 Q. Are there certain drugs that you try to be more  
 10 concerned about documenting that you gave samples  
 11 out as opposed to other drugs?  
 12 A. No, not really because mostly the only drugs we deal  
 13 with are anti-inflammatories or those that are very  
 14 similar to anti-inflammatories.  
 15 Q. And did Dr. Lippitt note anywhere in his chart how  
 16 much or how many samples of Duract he gave to Mr.  
 17 Ruttig that you saw?  
 18 A. I don't know the answer to that. I'm not sure I  
 19 reviewed the chart close enough to note if that was  
 20 documented.  
 21 Q. When you gave your patients Duract, did you note in  
 22 the chart how much you gave to them?  
 23 A. Not always.  
 24 Q. You would try to sometimes?  
 25 A. Yes, sir.

1 Q. Now, we've talked about the fact that you have<sup>32</sup>  
 2 prescribed obviously Duract, which is an  
 3 anti-inflammatory -- was an anti-inflammatory. I  
 4 presume you've prescribed other anti-inflammatories,  
 5 too, in your practice?  
 6 A. Yes.  
 7 Q. You've prescribed muscle relaxers?  
 8 A. Occasionally.  
 9 Q. You prescribe pain medications?  
 10 A. Yes.  
 11 Q. What other anti-inflammatories do you, and let's go  
 12 back maybe three years, use in your practice?  
 13 A. Some of the more commonly used ones are Naprosyn.  
 14 Currently it's Viox, Celebrex. At one time or  
 15 another I probably used most all of them, but those  
 16 are some of the most common ones.  
 17 Q. Have you used Lodine?  
 18 A. Yes, sir.  
 19 Q. Relafen?  
 20 A. Yes, sir.  
 21 Q. Those are both anti-inflammatories?  
 22 A. Yes, they are.  
 23 Q. When you have a patient sitting in front of you,  
 24 Doctor, complaining of a knee or a shoulder problem,  
 25 tell me the thought process that you go through as



1 an orthopedic surgeon in deciding, No. 1, whether <sup>33</sup> you  
 2 want to prescribe a drug for that patient, and No. 2,  
 3 what drug to prescribe.  
 4 A. Based on their complaints of pain and the  
 5 interference with either daily activities or work,  
 6 if they've had difficulty with sleep or any  
 7 disruption of normal daily functions, then to me  
 8 that would be an indication to consider an  
 9 anti-inflammatory.  
 10 Q. Do risks that are associated with any particular  
 11 medication you were going to prescribe versus the  
 12 benefits of that medication come into this decision  
 13 of yours whether or not to prescribe and what to  
 14 prescribe?  
 15 A. Mainly in the class of anti-inflammatories the risks  
 16 are basically the same. So when I prescribe an  
 17 anti-inflammatory within that category, GI upset  
 18 seems to be the most common. And sometimes I'll  
 19 look at the ones that are thought to be Less Likely  
 20 to cause GI upset. So to answer your question, yes,  
 21 in some instances that's considered.  
 22 Q. So you look at oftentimes which ones are less likely  
 23 to cause GI upset?  
 24 A. Yes, sir.  
 25 Q. Which ones are those?

1 A. Celebrex and Viox are the current ones. Prior to <sup>34</sup>  
 2 that there were some coated anti-inflammatories,  
 3 some extended release-type of anti-inflammatories.  
 4 Naprosyn has an extended release version of it.  
 5 Lodine does, also.  
 6 Q. So the risks or problems with the medication versus  
 7 the benefit it's going to give the patient is  
 8 something you think about prior to prescribing?  
 9 A. Yes, sir.  
 10 P. Now, would you agree that NSAIDs are probably the  
 11 most common drug that you prescribe in your  
 12 practice?  
 13 A. Yes.  
 14 P. Can NSAIDs be used on a Long-term basis?  
 15 A. Yes.  
 16 Q. Can they safely be used on a long-term basis?  
 17 A. Yes.  
 18 P. Can all NSAIDs be used on a long-term basis?  
 19 A. Yes.  
 20 Q. Was that --  
 21 A. Well, I think maybe the one exception to that is  
 22 Toradol.  
 23 Q. Okay, Tell me about that, Doctor. Why is Toradol  
 24 different than the other ones you've mentioned?  
 25 A. I'm not sure of the pharmacology behind it all, but

1 as I recall it's pretty clearly described that it <sup>35</sup>  
 2 should only be used for a short-term basis or  
 3 limited basis. I believe it's five days or  
 4 something. I don't use it, so I'm not real familiar  
 5 with it.  
 6 P. Okay. Where is it described that it should be only  
 7 used for five or eight days or short-term?  
 8 A. I recall actually learning that from our -- from  
 9 some of our anesthesia doctors where I sometimes in  
 10 surgery will discuss medications with them. I don't  
 11 recall exactly where I learned that. Perhaps it was  
 12 from the drug rep that represents that medication.  
 13 P. What was the difference or what is the difference  
 14 with Toradol? Why is it recommended that it not be  
 15 used long-term versus Naprosyn, Lodine, Viox,  
 16 Celebrex?  
 17 MS. CARULAS: If you know.  
 18 A. Yeah. I don't know.  
 19 Q. (BY MR. CZACK) Is it because of the potential  
 20 hepatic effects of the drug?  
 21 MS. CARULAS: Objection.  
 22 A. I'm not sure.  
 23 Q. (BY MR. CZACK) Any other NSAIDs that are on the  
 24 market today that are recommended to be used only  
 25 short-term?

1 A. Not that I recall. <sup>36</sup>  
 2 Q. Okay. What about Duract when that was on the  
 3 market, what was the recommendation for that,  
 4 Doctor?  
 5 A. The way Duract was presented to me and the way I  
 6 used it was that it was to be used similar to  
 7 anti-inflammatories. And when it was presented to  
 8 me the implication from its similarity to  
 9 anti-inflammatories led me to believe and to use it  
 10 like an anti-inflammatory.  
 11 P. Was it, in fact, an anti-inflammatory?  
 12 A. I believe it was.  
 13 Q. Okay. And I want to talk about Duract in a few  
 14 minutes here, but if you have a patient on an  
 15 anti-inflammatory too long, can they develop a Liver  
 16 problem?  
 17 MS. CARULAS: I'm going to object.  
 18 Q. (BY MR. CZACK) Go ahead.  
 19 A. Yes, that has happened.  
 20 Q. All right. As an orthopedic when you prescribe  
 21 somebody Naprosyn or Lodine, do you think of the  
 22 liver effect on the patient when you first begin  
 23 prescribing it?  
 24 A. Yeah. The side effects are always in the back of my  
 25 mind. I think about that, yes.

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1 Q. All right. At what point in giving a patient an  
 2 anti-inflammatory do the side effects of liver  
 3 damage or hepatic effect come into the front of your  
 4 mind or become a concern? Is there a point in time  
 5 when that becomes a concern?  
 6 A. Well, it's always a concern, but it doesn't change  
 7 through my management of the patient.  
 8 Q. All right. If you give a patient Naprosyn or Lodine  
 9 for a month, do you have liver enzymes done, liver  
 10 studies done?  
 11 A. I don't do that in my practice.  
 12 Q. You don't prescribe for that long or you don't have  
 13 liver studies done?  
 14 A. I don't have liver studies done.  
 15 Q. At any time during your practice as an orthopedic  
 16 surgeon have you ever ordered Liver studies for a  
 17 patient that you have on an anti-inflammatory?  
 18 A. No, sir.  
 19 Q. What's the longest you've had a patient on an  
 20 anti-inflammatory drug?  
 21 A. As a general rule if I prescribe an  
 22 anti-inflammatory longer than six months, I try to  
 23 have them wean off of it after six months. I don't  
 24 recall exactly the longest I've had a patient on it.  
 25 Q. Okay. But you've never had a patient go in for

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1 liver testing at any time even when you've had them  
 2 on anti-inflammatories for over six months?  
 3 A. No. The general policy that I follow is that I will  
 4 send a report back to the referring physician or the  
 5 patient's family physician and in there, you know, I  
 6 let them know that I prescribed an  
 7 anti-inflammatory. A lot of them come to me already  
 8 on anti-inflammatories and it's kind of an unwritten  
 9 policy in this area that the primary care physicians  
 10 will decide if they want to monitor liver functions  
 11 or any other blood tests.  
 12 Q. All right. So with your patients, you're leaving it  
 13 up to their family doctor whether or not they want  
 14 to do that if you have them on an NSAID?  
 15 A. That's correct.  
 16 Q. What if the patient comes to you without a family  
 17 doctor?  
 18 A. That happens and I do everything in my power to get  
 19 them hooked up with a family doctor and we're  
 20 usually successful with that.  
 21 Q. Okay. And again, you always rely on the family  
 22 doctor to do that?  
 23 A. That's correct.  
 24 Q. If he feels it's necessary?  
 25 A. Yes, sir.

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1 Q. And you say it's an unwritten rule. What do you  
 2 mean by that?  
 3 A. Well, when I was in training I learned that that was  
 4 the way that orthopedic surgeons do that and --  
 5 Q. Okay. You learned that orthopedic surgeons do what?  
 6 A. As far as letting the primary care physicians decide  
 7 what blood work needs to be done on patients on  
 8 different medications.  
 9 Q. Okay. And in order for that primary care physician  
 10 or family doctor, whatever you want to call them, to  
 11 make that decision whether or not to have the liver  
 12 studies done, they need to know from you that the  
 13 patient is on that drug, correct?  
 14 A. Either from myself or from the patient.  
 15 Q. Or from the patient. How long have you been an  
 16 orthopedic surgeon now, Doctor, practicing?  
 17 A. Approximately ten years.  
 18 Q. And over those ten years, I take it there have been  
 19 new drugs that have come out on the market that have  
 20 been presented to you and would be beneficial to  
 21 your practice and to your patients?  
 22 A. That's correct.  
 23 Q. Vioxx, Celebrex, Duract, things like that?  
 24 A. That's correct.  
 25 Q. Tell me what your approach is in evaluating and

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1 deciding, No. 1, whether you want to use that drug  
 2 and, No. 2, educating yourself about that drug  
 3 before you use it. Tell me what Dr. Blanda does.  
 4 A. My initial decision is if I feel that the new drug  
 5 has a role in my practice, and if I see that it's  
 6 different than what I currently use, because I try  
 7 to keep the different medications limited for what I  
 8 use. So I look at a new drug and I say to myself  
 9 does it offer me something that my current group of  
 10 medication that I use -- does it offer me something  
 11 different or better either in the way it works or  
 12 its cost or ease of use for patients.  
 13 Q. Okay. So you first try to see if it's something  
 14 that fills a niche maybe that you don't already have  
 15 with the drugs you're using or maybe is more readily  
 16 -- easily taken by the patient, you make that  
 17 decision that you want to use it in your medicinal  
 18 arsenal. And I take it then you do something to  
 19 learn about the drug before you begin to use it?  
 20 A. Right. To learn about new medications, I rely  
 21 heavily on the information that drug reps tell me  
 22 and present to me. Plus I rely heavily on the fact  
 23 that once a drug is out on the market it has  
 24 received the approval of our FDA and to me that  
 25 means that it's a safe enough drug to be on our

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1 market.  
 2 Q. Okay. So obviously you want to make sure it's got  
 3 FDA approval and then you rely, you say, heavily on  
 4 the drug rep, is that correct?  
 5 A. That's correct.  
 6 Q. And when you say you rely heavily on the drug  
 7 rep, are you talking about the drug rep educating  
 8 you about that drug?  
 9 A. That's correct.  
 10 Q. And do you rely heavily on that drug rep telling you  
 11 about the benefits of that drug?  
 12 A. Yes.  
 13 Q. Do you rely heavily on that drug rep to tell you  
 14 about the risks and contraindications associated  
 15 with that drug?  
 16 A. Yes.  
 17 Q. You've obviously dealt with drug reps in the past,  
 18 Doctor?  
 19 A. Yes.  
 20 Q. Drug reps are paid by the manufacturers that make  
 21 the drugs, are they not?  
 22 A. That's correct.  
 23 Q. And I take it you're aware that drug reps receive a  
 24 commission for how much medication they sell?  
 25 A. Yes.

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1 Q. They're basically sales people, aren't they?  
 2 A. Well, I've always perceived them as highly trained  
 3 sales people.  
 4 Q. Okay. Highly trained about sales or highly trained  
 5 about the drug?  
 6 A. Hopefully both.  
 7 Q. All right. Hopefully for themselves both. They're  
 8 not physicians or pharmacologists, are they?  
 9 A. No.  
 10 Q. In fact, they probably don't even have a medical  
 11 background. You're aware of that, correct? Other  
 12 than learning about the drug, correct?  
 13 A. Correct.  
 14 Q. Is there anything else you rely upon when you're  
 15 making your decision or rather when you are  
 16 educating yourself about the safety of the drug  
 17 before you give it to a patient? Do you look at  
 18 anything else or listen to anything else?  
 19 A. I usually will look at their package insert.  
 20 Q. The package insert that comes with the medication?  
 21 A. That's correct.  
 22 Q. When a new drug comes on the market, Doctor, do you  
 23 have a policy or protocol to wait until the drug's  
 24 on the market for a certain period of time and see  
 25 how other physicians are using it and what kind of

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1 results their patients are getting, or some you'll  
 2 use right away and other ones you won't?  
 3 MS. CARULAS: Just note my objection.  
 4 Go ahead.  
 5 A. If I feel that it offers me something unique for my  
 6 patients, then I'll-- I've used them soon after  
 7 they've been on the market. I've used drugs soon  
 8 after they've been on the market.  
 9 Q. (BY MR. CZACK) Again without getting into a more  
 10 detailed discussion, did you use Duract immediately  
 11 when it came on the market?  
 12 A. Yes, I did.  
 13 Q. What is your practice with regard to meeting drug  
 14 reps at your group back in 1997?  
 15 A. I would receive information from usually my  
 16 secretary saying that a drug rep called and wanted  
 17 to talk to me about a drug. At that time I would  
 18 decide if it is a medication that I might use in my  
 19 practice. And if it was, then I would usually set  
 20 up a time when I could meet with a drug rep.  
 21 Q. And would you set up a formal meeting in your office  
 22 to sit down and talk with them about the drug?  
 23 A. In most cases usually the initial meeting we would  
 24 have a time just so it was not going to interfere  
 25 with the patient office hours or they wouldn't show

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1 up when I was in surgery, so usually the initial  
 2 meeting we did have a time set up.  
 3 Q. So you told me you rely heavily on the drug  
 4 reps, you would read the package insert. Anything  
 5 else you would rely upon? Would you rely upon the  
 6 promotional literature that the drug rep would leave  
 7 with you concerning a particular drug?  
 8 A. I usually look at that. And in some instances they  
 9 may leave an article or they may show you parts of  
 10 an article. So, yes, I sometimes rely on that,  
 11 also.  
 12 Q. Would you rely upon as a general basis listening to  
 13 other physicians tell you about a drug and how  
 14 they're using it and what results they're getting  
 15 before you would use a drug?  
 16 A. Yes. At times I've also come to use drugs based on  
 17 what I've heard other physicians say, yes, sir.  
 18 Q. Have you ever attended any meetings put on by drug  
 19 manufacturers or drug representatives outside your  
 20 office?  
 21 A. No.  
 22 Q. Have you ever taken any vacations or attended any  
 23 seminars that these people put on?  
 24 A. No.  
 25 Q. How, if at all, do the journals and periodicals you

45  
 1 told me about earlier come into play when you're  
 2 deciding whether or not to prescribe a drug to a  
 3 patient?  
 4 A. That comes into play, also. Frequently there is  
 5 advertisements in there that in some instances  
 6 that's kind of the first time I might learn of a new  
 7 drug.  
 8 Q. Okay. And if a new drug is advertised in a journal,  
 9 you'll pay attention to it if you think it's  
 10 something that could be used in your practice?  
 11 A. That's correct.  
 12 P. You mentioned earlier package insert. What is a  
 13 package insert and what is its purpose?  
 14 A. A package insert is a written description describing  
 15 the indications and recommended usage, potential  
 16 side effects, and contraindications of the  
 17 medication.  
 18 Q. And that's prepared by the manufacturer?  
 19 A. I believe it is, but I've always assumed that it's  
 20 also under some FDA guidelines.  
 21 P. Okay. It's sort of a joint effort between the two  
 22 of them?  
 23 A. That's been my impression.  
 24 Q. Okay. And is the purpose of the package insert for  
 25 you the physician or for the patients who's getting

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 1 the drug?  
 2 A. For both.  
 3 P. Do you expect your patients to read and understand  
 4 those package inserts?  
 5 A. I always recommend that they look at it. I think  
 6 it's written in a format that they can probably  
 7 understand most of it.  
 8 P. Okay. So you suggest to all your patients that  
 9 there will be instructions with it, a package  
 10 insert, and you should read those --  
 11 A. Yes.  
 12 Q. -- the first time you take it?  
 13 A. Yes.  
 14 Q. When you have a new drug that comes out on the  
 15 market like Viox, Celebrex in the last couple of  
 16 years, do you take the time to sit down and read the  
 17 entire package insert before you prescribe it?  
 18 A. No.  
 19 P. Why not?  
 20 A. Well, they're quite lengthy. And basically a lot of  
 21 them say the same thing as far as potential side  
 22 effects.  
 23 Q. And what do you mean by that?  
 24 A. Well, a lot of them -- Anti-inflammatories in  
 25 general have a lot of the same side effects that can

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 1 occur.  
 2 P. Such as?  
 3 A. GI upset. Pretty much -- I mean you name it and an  
 4 anti-inflammatory might possibly cause it.  
 5 Dizziness, Lightheadedness, or on the other extreme  
 6 of the spectrum kidney problems or liver problems.  
 7 P. Okay. And you've read about all those things in  
 8 anti-inflammatory package inserts?  
 9 A. Yes.  
 10 P. When a new drug -- I just asked you about new drugs  
 11 that come out. When a new drug does come out, you  
 12 don't read the whole package insert. Are there  
 13 certain portions, though, that you as a practicing  
 14 orthopedic surgeon make sure you do read and  
 15 understand?  
 16 A. Right. I'll glance down to it and -- You know, one  
 17 of the most important things to me is  
 18 contraindications, so I -- you know, I make a point  
 19 of looking at that.  
 20 P. Any other sections that you think are important to  
 21 read and understand?  
 22 A. Well, I always want to understand the dosage and the  
 23 recommended dosage.  
 24 P. And I think that's the section called indications  
 25 and usage?

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 1 A. Yes.  
 2 Q. What about warnings, is that an important section to  
 3 read and understand as a physician?  
 4 A. Well, if there are some highlighted warnings it  
 5 certainly would be, yes.  
 6 Q. What do you mean by highlighted warnings, Doctor,  
 7 bold letters?  
 8 A. Bold letters.  
 9 P. Capital letters?  
 10 A. Yes.  
 11 Q. Are contraindications highlighted in bold?  
 12 A. Usually the word contraindication is highlighted in  
 13 bold.  
 14 P. Okay. Usually the word warning is highlighted in  
 15 bold?  
 16 A. Yes.  
 17 P. So is it fair to state that before you begin  
 18 prescribing a drug for a patient, you're going to  
 19 read the warning section if there is a warning  
 20 section in there?  
 21 A. Yes.  
 22 P. Is it important that you understand and comprehend  
 23 what that warning or what that contraindication  
 24 section is telling you before you prescribe a drug?  
 25 A. I think it's important. And there again I myself

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1 rely a lot on what the drug rep brings to my  
 2 attention and tells me about it.  
 3 Q. Okay. But you make sure you listen to the drug  
 4 rep and you look at the insert before you begin  
 5 prescribing a drug?  
 6 A. I do.  
 7 Q. If the package insert is unclear or vague, would you  
 8 prescribe a drug for a patient? If it's unclear or  
 9 vague as to the indication, usage, dosage, duration  
 10 or as to the warnings associated with that drug, if  
 11 it's not clear to you, would you prescribe that to a  
 12 patient, Doctor?  
 13 MS. CARULAS: Just note my objection,  
 14 but go ahead.  
 15 A. I'm not sure I've ever had that happen. And there  
 16 again that's when I think I would rely on what I'm  
 17 told by the drug rep.  
 18 Q. (BY MR. CZACK) Okay. Let's assume it does happen  
 19 that one is not clear -- package insert is not  
 20 clear. And you have now prescribed this drug or  
 21 it's a new drug. What would you do in that  
 22 circumstance?  
 23 A. I would probably ask the drug rep for an explanation  
 24 of that.  
 25 Q. All right. And if what the drug rep tells you is

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1 different than what you're reading the package  
 2 insert to say, what would you do? Would you  
 3 prescribe that drug or what other action would you  
 4 take?  
 5 A. I would probably -- Once again this is all an  
 6 assumption. I haven't been in this situation.  
 7 P. I understand.  
 8 A. I would probably rely on what verbal, you know,  
 9 explanation the drug rep would give me.  
 10 Q. All right. So you would put more weight on what the  
 11 drug rep says versus what you understand as a  
 12 physician the package insert to say?  
 13 A. Well, I think that's different than what you asked  
 14 me before because, you know, I'm not -- Your  
 15 assumption was I didn't quite understand what the  
 16 package insert said.  
 17 Q. Okay. And if you don't understand what the package  
 18 insert said and you want to prescribe a drug, then  
 19 you're going to listen to what the drug rep says as  
 20 to clarify what was unclear?  
 21 A. Yes. Or at least let them try to lead me to written  
 22 articles or something else that I could factor in.  
 23 Q. Are you usually provided with a number by the drug  
 24 reps to call the manufacturer also if you're unclear  
 25 as to certain issues?

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1 A. I'm not sure. I would assume it would be easy to  
 2 get the manufacturer's phone number. I don't know  
 3 that they have specifically provided me with  
 4 numbers.  
 5 Q. All right. As you sit here today how is Duract  
 6 marketed to Dr. Lippitt in his group, if you know?  
 7 A. I don't know.  
 8 Q. You have no idea?  
 9 A. Well, I --  
 10 P. And again -- Let me stop you. That wasn't really a  
 11 clear question. Based on your review of the  
 12 materials in this case, do you know how Duract was  
 13 marketed and promoted to Dr. Lippitt in his group?  
 14 A. I know that drug reps were -- came to their group  
 15 and provided samples. I assume they did pretty much  
 16 what they do for me in my practice, too.  
 17 Q. Who were the drug reps that went to see Dr. Lippitt  
 18 in his group?  
 19 A. I know one of them was the same drug rep that came  
 20 to my group and her name was Lynn Renz.  
 21 Q. All right.  
 22 A. I believe there was a second drug rep, and I don't  
 23 recall his name, that went to their group.  
 24 Q. You never saw him?  
 25 A. I don't think I did.

52

1 P. All right. How do you know Lynn Renz went to their  
 2 group?  
 3 A. I believe I saw that in reviewing one of the  
 4 depositions.  
 5 Q. Okay. And you told me you read Dr. Smith's and one  
 6 of the other depositions and maybe some of the  
 7 physician assistants?  
 8 A. That's correct.  
 9 Q. In reading those depositions, do you recall what  
 10 they said the reps did in terms of promoting Duract?  
 11 What they told them about Duract?  
 12 A. No, I don't recall.  
 13 Q. Lynn Renz came to see you about Duract?  
 14 A. That's correct.  
 15 Q. When she first came to see you, did she provide you  
 16 with a copy of the package insert concerning that  
 17 drug?  
 18 A. The package inserts are in the samples that they  
 19 leave.  
 20 Q. Prior to her first ever coming to see you about that  
 21 drug, did you ever know her from before from other  
 22 drugs that she was marketing?  
 23 A. No.  
 24 Q. All right. So when Lynn Renz appeared and was  
 25 promoting the drug Duract, that was the first time

53

1 you ever met her?

2 A. I believe it was, yes.

3 Q. All right. I'm going to show you what's been marked

4 as Plaintiff's Exhibit 3, Doctor. It's a Duract

5 package insert. It's large so that I can read it.

6 It's a front and back copy.

7 MS. CARULAS: It's blown up?

8 MR. CZACK: It's blown up, yes.

9 Q. (BY MR. CZACK) You've seen a copy or an original of

10 that document prior to the deposition here today?

11 A. Yes.

12 Q. All right. Do you recall the first time you ever

13 saw a package insert for Duract, Doctor?

14 A. I don't recall.

15 Q. All right. Would it have been at some point prior

16 to your prescribing that medication to any of your

17 patients?

18 A. It was probably at the time I started using it, yes.

19 Q. And in your review of this case, when did Duract

20 come on the market?

21 A. I believe it was in the fall of 1997, summer or fall

22 of 1997.

23 Q. And Duract was an anti-inflammatory drug?

24 A. It was presented to me as an anti-inflammatory and a

25 type of analgesic pain medication.

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1 Q. Okay. Tell me about the dosage and the duration of

2 usage for Duract. How was it to be used?

3 A. Twenty-five milligrams every six to eight hours.

4 Q. And for how long a period of time was Duract to be

5 used for?

6 A. When it was presented to me the presentation to me

7 as far as how long it was used led me to use at my

8 practice in some instances for an extended period of

9 time. It was thought as an anti-inflammatory and it

10 could be used the same way as an anti-inflammatory.

11 Q. When you say thought to me or presented to me, are

12 you talking about Lynn Renz?

13 A. That's correct.

14 Q. Prior to Lynn Renz ever coming in to see you, did

15 you see any literature in any of your orthopedic

16 journals about the drug that it was coming on the

17 market?

18 A. I don't recall.

19 Q. All right. Did Lynn Renz bring you some promotional

20 materials comparing Duract to other drugs or

21 explaining some of the studies that had been done on

22 Duract?

23 A. I believe she did, yes.

24 Q. Okay. What else, if anything, did she bring you at

25 any time other than samples and some of the

55

1 promotional literature concerning Duract?

2 A. I don't recall exactly, but frequently they will

3 bring summaries of maybe research articles or things

4 like that.

5 Q. Do you recall her doing that in this case?

6 A. I don't recall.

7 Q. All right. Do you recall having, as you described it

8 earlier, the initial sit down conference with her to

9 discuss the drug?

10 A. I recall that, yes.

11 Q. And how many times thereafter did you meet with her

12 to discuss the drug if at all again?

13 A. Probably on two or three additional occasions she

14 would bring more samples in. And those weren't

15 scheduled meetings, but frequently if someone brings

16 a sample of a medication to my practice, I take a

17 little bit of time to talk to them about the drug.

18 Q. Okay. So the other two or three occasions that she

19 would have come in would have been a less formal

20 situation where maybe you were out at the front desk

21 and she came in with samples and you spoke to her

22 for a few minutes there?

23 A. That's correct.

24 Q. Do you remember the specifics of any of those

25 conversations?

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1 MS. CARULAS: The subsequent ones and

2 not the initial one?

3 MR. CZACK: The subsequent ones and

4 not the initial ones.

5 A. I don't remember the specifics other than her

6 telling me how other physicians are so happy with it

7 and it seems to be working very well.

8 Q. (BY MR. CZACK) Anything else?

9 A. Nothing that stands out in my mind, no.

10 Q. Just that other physicians were using it and they

11 were happy with the way it worked?

12 A. That's correct.

13 Q. Now, you told me in the initial meeting that she

14 promoted it to you as being like any other

15 anti-inflammatory, is that correct?

16 A. Yes.

17 Q. And she also promoted it to you in that initial

18 meeting that it could be used for an extended period

19 of time?

20 A. That's correct.

21 Q. Anything else that you remember in that meeting with

22 Lynn Renz in terms of your discussing the drug

23 Duract?

24 A. I don't remember specifics, but I recall after that

25 session that, you know, I was impressed that it was

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1 comparable to Percocet in its pain relief without  
 2 the addictive features of Percocet. I was impressed  
 3 with the drug to the point where I gave samples to  
 4 my mother who has pain from some orthopedic  
 5 problems.  
 6 Q. The pain relieving qualities comparable to Percocet,  
 7 is that something she told you in that meeting?  
 8 A. I believe so.  
 9 Q. Okay. And again, I want to go back to my question.  
 10 Is there anything else you remember about that  
 11 initial meeting that you had with Lynn Renz about  
 12 any discussion concerning Duract?  
 13 A. At some point -- I don't recall exactly if it was  
 14 the first meeting or one of the subsequent meetings,  
 15 but I recall her saying to me that the rare  
 16 complications that did occur and that were described  
 17 in the package insert more frequently occurred in  
 18 older people and they were very minimal compared to  
 19 other anti-inflammatories or analgesics.  
 20 Q. What rare complications that usually occur in older  
 21 people was she referring to?  
 22 A. I don't recall any specifics of that.  
 23 Q. All right. And in that first meeting is there  
 24 anything else you remember discussing with her other  
 25 than what you've told me here today?

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1 A. No, sir.  
 2 Q. Nothing else you remember her telling you?  
 3 A. That's correct.  
 4 P. Okay. You don't recall her telling you that Duract  
 5 was intended to be used on a short-term basis  
 6 generally ten days or less?  
 7 A. I don't recall that.  
 8 P. You don't recall Lynn Renz telling you in that  
 9 initial meeting that if you prescribed it for more  
 10 than four weeks a patient's liver enzymes were  
 11 supposed to be tested?  
 12 A. No, I don't recall that.  
 13 Q. And you don't recall her warning about the potential  
 14 hepatic effects of that drug if used on a long-term  
 15 basis?  
 16 A. No, I don't recall that either.  
 17 Q. When she did tell you -- You used the phrase could  
 18 be used for an extended period of time. Did you ask  
 19 her to expound upon that about what kind of time  
 20 period you're talking about?  
 21 A. I don't recall the specifics of that, but in her  
 22 comparison to other anti-inflammatories or Ultram  
 23 was another medication I recall her comparing it to,  
 24 my assumption was that it could be used for an  
 25 extended period of time just like

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1 anti-inflammatories were used.  
 2 Q. Do you remember what Miss Renz looked like?  
 3 A. I could probably recognize her if I saw her.  
 4 P. When was the last time you saw her, if you recall?  
 5 A. Probably in 1998, '97 around the time when this drug  
 6 was being promoted.  
 7 P. Did you know what her background was when she came  
 8 in to sit down and talk with you about Duract?  
 9 A. No.  
 10 Q. Other than you knew she was a salesperson for this  
 11 company?  
 12 A. That's correct.  
 13 P. Did you ask her what her background was?  
 14 A. I don't recall. I probably didn't. You know, I  
 15 sometimes ask how long have you worked in  
 16 pharmaceutical sales.  
 17 Q. And why do you ask that?  
 18 A. Just sometimes to get a feel for, you know, how  
 19 experienced they might be in presenting information  
 20 and being able to determine, you know, what the  
 21 important things are to tell us.  
 22 P. Is that sometimes important?  
 23 A. I believe it is, yes.  
 24 Q. Why?  
 25 A. Well, I would hope that if there are drug reps out

60

1 there that aren't telling us the truth, that they --  
 2 perhaps the drug companies would not let them work  
 3 with them.  
 4 P. Okay. And if a drug rep comes in that you learn had  
 5 just been doing this for a short period of time, how  
 6 does this effect your decision to rely upon what  
 7 they told you?  
 8 MS. CARULAS: Just note my objection.  
 9 Go head.  
 10 A. I would still rely on what they told me. Maybe I'd  
 11 be more inclined to ask more questions.  
 12 Q. (BY MR. CZACK) Okay.  
 13 A. I'm not sure that's ever happened to me, so it's a  
 14 hypothetical.  
 15 Q. Do you remember asking Lynn Renz any questions?  
 16 A. I don't recall.  
 17 Q. You don't recall whether you did or didn't or you  
 18 don't recall asking her any questions?  
 19 A. I don't recall if I did or didn't.  
 20 Q. You don't keep any notes of that meeting or  
 21 anything?  
 22 A. No, sir.  
 23 P. You had not prescribed any of that medication at  
 24 that point in time, had you?  
 25 A. Probably not.

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1 Q. So then she left you samples. She left you -- you  
 2 believe she left you some promotional materials.  
 3 After that you begin prescribing Duract, I take it?  
 4 A. That's correct.  
 5 Q. Do you remember what month that was if it went on  
 6 the market in July of '97?  
 7 A. No, I don't recall exactly.  
 8 Q. Prior to you writing out that first prescription,  
 9 did you look at Plaintiff's Exhibit No. 3, the  
 10 package insert?  
 11 A. I don't recall specifically, but my usual procedure  
 12 is to briefly go over it.  
 13 Q. Prior to prescribing a medication?  
 14 A. That's correct.  
 15 Q. And again the section that you would want to look at  
 16 would be the indication and usage section, which  
 17 would talk about dosage, the contraindications, and  
 18 the warnings section. Those would be the ones you'd  
 19 pay attention to?  
 20 A. The main one I pay attention to is  
 21 contraindications.  
 22 Q. And again why is that section the one you mainly pay  
 23 attention to, Doctor?  
 24 A. Well, my impression is that that to me implies that  
 25 if there are certain people who should not receive

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1 the drug, it would be listed under contraindications  
 2 and those would probably be the patients I wouldn't  
 3 use it on then.  
 4 Q. Did you look at the contraindication section in  
 5 Duract before you prescribed any of the medication?  
 6 A. I probably did.  
 7 Q. Okay. Did you look at the indication and usage  
 8 section prior to prescribing any Duract?  
 9 A. I don't recall, specifically. I may have.  
 10 Q. All right. You probably looked at  
 11 contraindications, but you may have looked at  
 12 indication and usage?  
 13 A. That's correct.  
 14 Q. All right. How about the warning section, did you  
 15 look at that prior to prescribing any Duract?  
 16 A. I probably briefly skimmed over it. I don't recall  
 17 exactly.  
 18 Q. All right. Now, you think you may have been given  
 19 some promotional materials, too. I'm going to show  
 20 you what's been marked as Plaintiff's Exhibit No. 5  
 21 and Plaintiff's Exhibit No. 6, which are -- These  
 22 are color laser copies of items we have been  
 23 provided previously.  
 24 MS. CARULAS: And just so I'm clear  
 25 because there's been so many different

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1 materials generated at different times,  
 2 these were generated from where?  
 3 MR. CZACK: These were in our file. I  
 4 assume they were generated from discovery  
 5 in this case.  
 6 MS. CARULAS: You think they came from  
 7 Wyeth?  
 8 MR. CZACK: I believe so.  
 9 MS. CARULAS: As opposed to a journal  
 10 or something?  
 11 MR. CZACK: I believe so, yes.  
 12 MS. CARULAS: And as far as the  
 13 particular order that they're in?  
 14 MR. CZACK: I copied them in the order  
 15 in which the little leaflet or brochure  
 16 came in in terms of the order. I probably  
 17 should have stapled them together. That's  
 18 all one package or one piece of promotional  
 19 literature.  
 20 MS. CARULAS: Okay. Just for my --  
 21 I've never seen this particular page that  
 22 you have the sticker marked Plaintiff's  
 23 Exhibit 6 as the first sheet of paper. But  
 24 be that as it may, that's okay. We can  
 25 just move on. I just wanted to have an

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1 idea as to where these came from. Go  
 2 ahead.  
 3 Q. (BY MR. CZACK) You've had a chance to look at  
 4 Plaintiff's Exhibit 5 and 6, Doctor?  
 5 A. Right now I've glanced over them, yes, sir.  
 6 Q. Okay. And those are materials of the type that the  
 7 sales reps would provide you to look at in terms of  
 8 further educating you about a particular drug?  
 9 A. Yes.  
 10 Q. And obviously they give you these things, too, to  
 11 promote the drug to try and get you to prescribe it,  
 12 correct?  
 13 A. Yes.  
 14 Q. Okay. I don't expect that you recall specifically  
 15 seeing either of these two pieces of promotional  
 16 literature at any time?  
 17 A. Not specific -- I couldn't specifically say which  
 18 ones I saw.  
 19 Q. Okay. But with relation to our discussions about  
 20 Lynn Renz and potentially leaving you with  
 21 documentation or promotional literature, these are  
 22 the kinds of things that she would leave with you in  
 23 terms of that drug?  
 24 A. Yes.  
 25 Q. Okay. If Lynn Renz left those with you or similar



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1 items like that with you when she first met with  
 2 you, would you take the time to read those?  
 3 A. Not always. Frequently what happens is they may  
 4 have a binder with these in and during the  
 5 presentation **they'll** kind of review highlights from  
 6 that binder and **I** rely a lot on their summary.  
 7 Q. So you would go over these things with them, the  
 8 ones they have in their own binder. If you had any  
 9 questions, ask the questions. And then they may  
 10 leave this material with you and you may refer to  
 11 it. You may not refer to it. It just depends on  
 12 each individual case, correct?  
 13 A. That's correct.  
 14 Q. Okay. Now, let's look at Plaintiff's Exhibit No. 6,  
 15 Doctor. That's the one right there. Page 1 of that  
 16 document -- Actually, down near the middle there's  
 17 an asterisk talking about short-term management of  
 18 pain is generally less than ten days. And above in  
 19 bold letters about the fifth set of lines down it  
 20 says, indicated for the short term management of  
 21 pain with the asterisk. Do you see those?  
 22 A. I do.  
 23 Q. That information was contained also in the package  
 24 insert, was it not?  
 25 A. The one that **I** just reviewed, I believe it is in

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1 there, yes, sir.  
 2 P. Okay. Now, when Lynn Renz pulled out her  
 3 promotional brochure and showed you these things,  
 4 did you see the language that it was indicated for  
 5 the short-term management of pain?  
 6 A. I don't recall, specifically.  
 7 Q. All right. You may or you may not have?  
 8 A. That's correct.  
 9 Q. Do you remember having any discussion with her about  
 10 short-term management of pain?  
 11 A. **I** don't recall.  
 12 P. Down at the bottom it talks about liver enzyme  
 13 elevations have been reported in patients treated  
 14 with Duract. In patients treated longer than four  
 15 weeks periodic monitoring of transaminase is  
 16 recommended. Please see warnings, hepatic effects,  
 17 and prescribing information. Do you see that  
 18 section?  
 19 A. **I** see it.  
 20 P. All right. Did you see that when Lynn Renz was  
 21 showing you the promotional materials when she first  
 22 met with you?  
 23 A. **I** don't recall seeing that.  
 24 Q. All right. Do you recall having any discussion with  
 25 her about that?

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1 A. No, I don't recall having any discussion about that.  
 2 Q. All right. You're aware that language is contained  
 3 in the package insert that we looked at in  
 4 Plaintiff's Exhibit 3 under the warnings section,  
 5 correct?  
 6 A. Yes, sir, **I** am.  
 7 P. Did you see that before prescribing this medication  
 8 to any of your patients?  
 9 A. I may or may not have. I don't recall. However,  
 10 it's information that is on a lot of the  
 11 anti-inflammatories that **I'll** use.  
 12 P. Okay. I'm going to show you what's been marked as  
 13 Plaintiff's Exhibits No. 9, 10, and 11, Doctor. Can  
 14 you identify those for me?  
 15 A. These are package inserts for several different  
 16 medications.  
 17 Q. Specifically Lodine, Relafen, and Naprosyn,  
 18 anti-inflammatories you've used before, correct?  
 19 A. That's correct.  
 20 P. All right. Wherein 9, 10, and 11 of those package  
 21 inserts do you see language that talks about a bold  
 22 warning about hepatic effects?  
 23 A. The one **I'm** looking at now, which is labeled No. 9,  
 24 Exhibit No. 9, **I** see on Page 2851 hepatic effects.  
 25 Q. Okay. In what section is that under, Doctor?

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1 A. Precautions.  
 2 Q. Okay. That's a section that you normally don't  
 3 read?  
 4 A. **I** may glance at it.  
 5 Q. In the warnings under Plaintiff's Exhibit No. 9  
 6 Lodine, there's no warnings in there about hepatic  
 7 effects, are there?  
 8 A. **I** haven't had a chance to look at it all, but based  
 9 on your question I can assume that there is not.  
 10 P. **I'll** give you that chance if you want to look at it,  
 11 Doctor.  
 12 A. That's okay.  
 13 Q. Okay. And also in indication and usage of  
 14 Plaintiff's Exhibit No. 9 it specifically says that  
 15 Lodine is indicated for long-term use, for  
 16 management of signs and symptoms of osteoarthritis  
 17 and rheumatoid arthritis. That's different in the  
 18 language of Duract where it says it's indicated for  
 19 short-term management of pain, is that correct?  
 20 A. Yes.  
 21 Q. Anything else you want to comment on in Exhibit 9?  
 22 A. No.  
 23 P. Okay. Let's look at Exhibit 10. Relafen, another  
 24 anti-inflammatory you prescribed.  
 25 MS. CARULAS: Just for the record **I**

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1 think -- I mean we could be here past the  
 2 9:00 deadline. I mean clearly there's  
 3 other mentions as you look through this to  
 4 hepatic effects and liver enzymes and so  
 5 forth. I just don't want to say anything  
 6 else and move on. Because we could spend a  
 7 good hour or two going through line by  
 8 line.  
 9 MR. CZACK: Well, I'm going to go  
 10 through a couple things.  
 11 Q. (BY MR. CZACK) Doctor, there's no warnings in  
 12 either the Relafen, No. 10, or the Naprosyn, No. 11,  
 13 as far as hepatic effects, are there?  
 14 A. No, I don't see any.  
 15 Q. All right. And again Relafen and Naprosyn, the  
 16 indications are for treatment of osteoarthritis and  
 17 rheumatoid arthritis. And they specifically talk  
 18 about chronic usage which is different than what the  
 19 Duract package insert said, correct?  
 20 A. That's correct.  
 21 P. So if you read the package insert for Duract prior  
 22 to prescribing it, you would have known that at  
 23 least the package insert said something different  
 24 than what these other three anti-inflammatories  
 25 which you were comfortable with using said, correct?

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1 A. Correct.  
 2 P. All right. And if you looked at the warning section  
 3 of Duract, you would have seen that there was a bold  
 4 section entitled hepatic effects and all of the  
 5 information under the warning of hepatic effects is  
 6 in bold print, correct?  
 7 A. Correct.  
 8 Q. And that warning in bold lettering is not contained  
 9 in Plaintiff's Exhibit 9, 10, or 11, correct?  
 10 A. Yes. Correct.  
 11 MS. CARULAS: Just for the record  
 12 there's a lot here in bold print as far as  
 13 hepatic function, in all of these. You're  
 14 talking specifically under the label of  
 15 warnings?  
 16 MR. CZACK: I'm talking  
 17 specifically under the section we  
 18 discussed warnings.  
 19 MS. CARULAS: Okay.  
 20 MR. CZACK: And I'm talking about bold  
 21 lettering as opposed to just the plain type  
 22 setter print that's contained at the end of  
 23 some of those other inserts.  
 24 Q. (BY MR. CZACK) I'm talking about the section that  
 25 you said you pay attention to, Doctor.

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1 A. Well, to reiterate once again the main section I pay  
 2 attention to is contraindications.  
 3 Q. Let me ask you this, Duract was FDA approved,  
 4 correct?  
 5 A. Correct.  
 6 Q. And if you think this package insert was prepared  
 7 jointly by the manufacturer and the FDA, package  
 8 insert is something you want to look at, correct?  
 9 A. It's something that I will skim over. However, I  
 10 still rely heavily on what the drug rep tells me.  
 11 P. Tell me about your experience with Duract.  
 12 A. I used it quite frequently since my impression at  
 13 the time was that it was a combination  
 14 anti-inflammatory and pain reliever.  
 15 Q. Okay. And can you approximate how many  
 16 prescriptions you wrote of it?  
 17 A. Approximately 100, but that's a real guess.  
 18 Q. Okay. For how many different patients?  
 19 MS. CARULAS: If you have a good idea.  
 20 P. (BY MR. CZACK) If you have an approximation.  
 21 MS. CARULAS: Don't guess.  
 22 A. Yeah, I don't have a good idea. It would have been  
 23 less than the number of scripts I wrote, but I'm not  
 24 sure.  
 25 Q. (BY MR. CZACK) How did you use the drug? For

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1 short-term, long-term, combination?  
 2 A. Combination. I frequently tried to help people get  
 3 better quickly, but I know in some instances I used  
 4 it for a longer period of time than ten days.  
 5 P. What's the longest period of time you recall using  
 6 it for with a patient?  
 7 A. I don't recall exactly except I know my mother took  
 8 it for at least a couple of months.  
 9 Q. Okay. And you were aware of the short-term use  
 10 language in the indications, were you not?  
 11 A. I don't recall.  
 12 Q. You don't recall whether you were or you were not?  
 13 A. That's correct.  
 14 Q. All right. And when Lynn Renz told you it could be  
 15 used for an extended period of time, did you ever  
 16 get a time limit on that from her? Did you say,  
 17 what are you talking about extended period of time?  
 18 A. I don't recall specifically asking her that except  
 19 that my impression was that it could be used as we  
 20 used anti-inflammatories or Ultram or Percocet. I  
 21 recall those were the three things she compared it  
 22 to.  
 23 Q. Did you have good results with the drug?  
 24 A. Yes. I continued to use it.  
 25 P. You know, Doctor, in your review of this case were

1 you able to come up with any cases or any instances  
 2 where Duract was prescribed for the recommended ten  
 3 days or less and a patient still had a liver  
 4 problem?  
 5 MS. CARULAS: Well --  
 6 A. No.  
 7 MS. CARULAS: Note an objection. I've  
 8 not showed him the Med watch documents  
 9 yet.  
 10 MR. CZACK: Okay. That's what I'm  
 11 asking him. I don't know what he looked  
 12 at. We don't have it here.  
 13 MS. CARULAS: Right.  
 14 Q. (BY MR. CZACK) Are you aware of any cases where a  
 15 patient was given Duract for ten days or less who  
 16 ultimately had liver failure, liver transplant, or  
 17 died?  
 18 A. No.  
 19 P. Are you aware that there were nearly three million  
 20 Duract prescriptions written around the world?  
 21 A. I wasn't aware of specifically that number.  
 22 Q. You would agree that Duract was more toxic to the  
 23 liver than other NSAIDs, would you not?  
 24 MS. CARULAS: Looking in retrospect  
 25 now?

1 A. Right. In retrospect now I understand that. At the  
 2 time I was using it, I wasn't under that impression.  
 3 Q. (BY MR. CZACK) Do you think if you looked at the  
 4 package insert you would have known that and  
 5 realized that?  
 6 MS. CARULAS: Objection.  
 7 A. Not necessarily, no.  
 8 P. (BY MR. CZACK) Why?  
 9 A. Well, once again as a general rule we -- You know, I  
 10 really skim over package inserts and once again  
 11 rely, you know, heavily on the fact that a drug is  
 12 FDA approved and I rely a lot on what the drug  
 13 rep tells me.  
 14 Q. Okay. But as you look at today this package insert  
 15 in Plaintiff's Exhibit No. 3 and, for example, we look  
 16 at Plaintiff's Exhibit 9, 10, and 11, if you took  
 17 the time back in 1997 and read this entire package  
 18 insert, would you agree that that package insert  
 19 would have made you aware that Duract was more toxic  
 20 to the liver than the other anti-inflammatories you  
 21 were prescribing?  
 22 MS. CARULAS: Objection.  
 23 Q. (BY MR. CZACK) Go ahead, Doctor.  
 24 A. I'm not sure I would have interpreted it that way.  
 25 Q. You're not sure?

1 A. Yeah.  
 2 Q. Why?  
 3 A. Well, I guess once again my impression of  
 4 interpreting side effects in medication is that, you  
 5 know, if one of them happens -- if it happens one  
 6 time to your patient, then that's a problem. And I  
 7 realize that all these things that are listed imply  
 8 that they have happened at least once, so I don't go  
 9 through and try to critically analyze which one it  
 10 might occur more frequently or which one it doesn't.  
 11 Q. Let me ask you, Doctor. Of all the other  
 12 anti-inflammatories that you prescribe, how many  
 13 other of those have language in the warning section  
 14 if a physician chooses to administer that drug for a  
 15 duration longer than four weeks, the liver should be  
 16 monitored? None of them, do they?  
 17 A. I'm not sure. I know the few that we looked at  
 18 today don't say that, but I'm not sure if the other  
 19 ones do.  
 20 P. Okay. The three that we looked at today don't say  
 21 that, right?  
 22 MS. CARULAS: Specifically under  
 23 warnings versus precautions?  
 24 MR. CZACK: Right.  
 25 A. Correct.

1 Q. (BY MR. CZACK) And of those three and any other  
 2 ones that you've looked at, do you recall any of the  
 3 other ones saying that after you use an  
 4 anti-inflammatory for four weeks the physician  
 5 should monitor the liver?  
 6 A. I don't recall for sure. It's something I don't  
 7 routinely look for because it's something I don't  
 8 routinely do as far as monitoring the liver  
 9 functions.  
 10 Q. You were aware that a dear health care provider came  
 11 out then in February of '98, correct, Doctor?  
 12 A. In February? I don't recall seeing it. In  
 13 retrospect I'm now aware that apparently that was  
 14 sent out.  
 15 Q. The other package inserts we looked at 9, 10, and  
 16 11, those are all indicated as being permissible to  
 17 use for osteoarthritis and rheumatoid arthritis,  
 18 correct?  
 19 A. Yes.  
 20 P. Those are chronic conditions or diseases?  
 21 A. In most cases, yes.  
 22 Q. All right. And there's no language in the Duract  
 23 insert about using it for osteoarthritis or  
 24 rheumatoid arthritis, are there?  
 25 A. No. However, once again in the way it was presented

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1 to me my impression back then was that I could use  
 2 it for those indications.  
 3 P. Did you prescribe Duract for more than four weeks  
 4 for some of your patients?  
 5 A. Yes.  
 6 Q. All right. And you never monitored their liver  
 7 enzymes for any of those patients?  
 8 A. That's correct.  
 9 Q. Did any of those patients have any problems with  
 10 their liver that you're aware of?  
 11 A. No.  
 12 P. Were you aware that when you were giving it to these  
 13 patients that the package insert told you to do  
 14 that?  
 15 MS. CARULAS: Objection.  
 16 A. I don't recall specifically if I was aware of that,  
 17 no.  
 18 Q. (BY MR. CZACK) If you were aware of it, would you  
 19 have ordered liver enzymes or would you have told  
 20 their family practitioner to do that?  
 21 MS. CARULAS: Objection.  
 22 A. I don't make that recommendation to family  
 23 physicians, no.  
 24 Q. (BY MR. CZACK) Okay. You don't make what  
 25 recommendation?

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1 A. I don't specifically recommend the family physicians  
 2 to monitor liver function tests.  
 3 Q. But you would tell them they were on Duract?  
 4 A. Frequently I might put in my records that they are  
 5 on an anti-inflammatory or analgesic and maybe in  
 6 some instances I would say specifically which one.  
 7 P. And then it would be up to the practitioner to make  
 8 a decision as to whether or not they want to do  
 9 that?  
 10 A. That's correct.  
 11 P. You would never say to him, hey, the package insert  
 12 says monitor after four weeks? That would be up to  
 13 him?  
 14 A. That's correct.  
 15 Q. Now, none of your patients had a problem with Duract  
 16 that you are aware of?  
 17 A. That's correct.  
 18 Q. And you told me while you were prescribing it you  
 19 don't recall whether or not you knew it was intended  
 20 for short-term use according to the package insert?  
 21 MS. CARULAS: Note my objection. I  
 22 mean he's told you what his understanding  
 23 was, but go ahead.  
 24 P. (BY MR. CZACK) Go ahead, Doctor.  
 25 A. Could you repeat it?

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1 G. Sure. At the time you were prescribing Duract for  
 2 your patients, you don't recall whether or not you  
 3 were aware it was indicated for short-term use --  
 4 MS. CARULAS: Note my objection.  
 5 Q. (BY MR. CZACK) -- according to the package insert?  
 6 A. That's correct.  
 7 P. When did you first become aware that Duract could  
 8 cause or had been causing severe hepatic reactions,  
 9 Doctor?  
 10 A. I believe it was around the time the second letter  
 11 came out.  
 12 Q. What do you mean second letter? What are you  
 13 talking about?  
 14 A. My understanding is that there were two letters, one  
 15 in February and then one that came after that. I  
 16 think it was in June or more toward the summertime.  
 17 P. Is that when you finally stopped prescribing Duract?  
 18 A. Yes.  
 19 G. You had been prescribing it all along up until that  
 20 point in time?  
 21 A. Yes.  
 22 Q. You say it's my understanding a second letter came  
 23 out. Where did you gain that understanding?  
 24 A. Well, I can recall receiving the second letter and  
 25 then I was reminded again of the time frame that

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1 they came out.  
 2 Q. Where did you receive that second letter, your  
 3 office here?  
 4 A. Yes.  
 5 Q. Regular mail? Registered mail? Certified mail?  
 6 A. I don't recall.  
 7 Q. But you never received the letter in February of '98  
 8 that you've heard about?  
 9 A. That's correct.  
 10 Q. Have you ever seen that letter?  
 11 A. Yes, I have.  
 12 Q. All right. And is that the letter here contained in  
 13 Plaintiff's Exhibit No. 7?  
 14 A. Yes.  
 15 Q. When did you first see that letter?  
 16 A. When information was provided to me by Ms. Carulas.  
 17 Q. Did you ever receive one of those before regarding  
 18 any other drugs?  
 19 A. I don't recall specifically if I did. I may have.  
 20 Q. Do you know what the purpose of that letter is and  
 21 who prepares that letter?  
 22 A. Well, I realize that it's a warning to health care  
 23 professionals about some side effects that have been  
 24 occurring.  
 25 Q. Okay. And it's prepared by the manufacturer of the

ai

1 drug to advise or give information to the  
2 physicians?  
3 A. Yes.  
4 Q. And Lynn Renz or any other drug rep never came in to  
5 show you copy of that letter or talk to you about  
6 the hepatic reactions that were seen?  
7 A. That's correct.  
8 P. At no time did any rep come in and talk to you about  
9 that, is that correct?  
10 A. That's correct.  
11 P. If you had received that letter and had you a  
12 patient who had been taking Duract for more than  
13 four weeks, what would you have done?  
14 MS. CARULAS: Note my objection, but  
15 go ahead.  
16 A. I'm not sure there's a lot I could have done.  
17 Q. (BY MR. CZACK) Okay.  
18 A. You know, it would be very difficult to track  
19 patients that had been taking it for four weeks. I  
20 would have gotten nervous.  
21 Q. I'm sorry?  
22 A. You know, I would have been worried, concerned.  
23 Q. Okay. But I mean if you knew that -- even if you  
24 had to stay all night to go through your files to  
25 figure out patients you'd been seeing since July of

a2

1 the previous year and you knew or you found a  
2 patient who had been taking it for four or five  
3 weeks, what would you have done?  
4 MS. CARULAS: Objection.  
5 A. I wouldn't have done anything.  
6 P. (BY MR. CZACK) Okay. You wouldn't have sent that  
7 patient out to have their liver tested based on that  
8 letter, Plaintiff's Exhibit 7?  
9 A. I think I misunderstood your previous question.  
10 Q. Okay.  
11 A. You're saying assuming I knew of a specific patient  
12 that had been taking it?  
13 P. I'm sorry. Yes. Assuming you received that letter,  
14 which you say you didn't, and assuming you had a  
15 patient who had been taking it for more than four  
16 weeks without having liver profiles done, what, if  
17 anything, would you have done with that patient?  
18 MS. CARULAS: Just note my objection.  
19 I guess I want to understand. Are you  
20 saying in his mind, you know, comes to his  
21 mind that Mrs. Jones had received this what  
22 would he do or if Mrs. Jones came in the  
23 day after this and was still taking  
24 medication --  
25 MR. CZACK: Either way. Right. I

a3

1 mean obviously it has to be in his mind  
2 that somebody he knows he's prescribing it  
3 for more than four weeks.  
4 MS. CARULAS: And the patient's still  
5 taking it?  
6 MR. CZACK: And the patient is still  
7 taking it, correct.  
8 MS. CARULAS: Okay. I mean if you can  
9 answer that in a hypothetical, go ahead.  
10 It's awful tough.  
11 A. Yeah. In particular retrospect now that we all know  
12 what has happened, I guess hypothetically if that  
13 would have happened I probably would have suggested  
14 they go and talk to their primary care physician  
15 about it.  
16 P. (BY MR. CZACK) Okay. About what?  
17 A. About the fact that they've been on a medication and  
18 this warning has come out.  
19 Q. Okay. You wouldn't have suggested or made a strong  
20 recommendation, hey, go have your liver checked?  
21 You wouldn't have done that? You would say go see  
22 your family doctor?  
23 A. That's correct.  
24 Q. Would you have told that patient to stop taking the  
25 medication?

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1 MS. CARULAS: Just note my objection.  
2 If you can answer in a vacuum.  
3 A. You know, I'm not sure that I would have.  
4 Q. (BY MR. CZACK) Okay. Why not?  
5 A. Well, because once again I'm aware that, you know,  
6 other medications, other anti-inflammatories have  
7 also resulted in instances where liver failure has  
8 occurred, so I'm not sure I would have felt that  
9 this was a totally unique situation.  
10 Q. Did you get letters like that from the other  
11 manufacturer of the drugs that they were having  
12 problems with liver?  
13 A. I don't recall, specifically.  
14 MS. CARULAS: Just so you know I'm  
15 looking at the clock and you're not --  
16 MR. CZACK: Remember we started at  
17 about 10 after. We didn't start right at  
18 9. I'll be done by 10 after.  
19 MS. CARULAS: Is that okay with you?  
20 I know you have patients.  
21 THE WITNESS: That's fine.  
22 P. (BY MR. CZACK) Doctor, I want you to assume that in  
23 the second week of February 1998 that a physician  
24 received a copy of Plaintiff's Exhibit 7 there which  
25 is dated February 6th, 1998. I want you to further

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1 assume that that same physician had a patient who  
2 had been taking Duract for seven weeks. Okay? I  
3 want you to further assume that doctor had never had  
4 that patient tested for liver profiles.

5 Would it be below the standard of care, in your  
6 opinion, if the physician did nothing about having  
7 that patient tested upon receiving that Letter?

8 MS. CARULAS: Note my objection to the  
9 factual basis because obviously there's no  
10 evidence whatsoever that Dr. Lippitt ever  
11 received this.

12 MR. CZACK: I understand.

13 MS. CARULAS: So you're saying in a  
14 hypothetical?

15 MR. CZACK: In a hypothetical and  
16 that's what I told him in the beginning.

17 Q. (BY MR. CZACK) It's a hypothetical, Doctor.

18 MS. CARULAS: You're not talking about  
19 Mr. Ruttig or Dr. Lippitt?

20 MR. CZACK: I'm giving him a  
21 hypothetical.

22 MS. CARULAS: All right. Note my  
23 objection.

24 MR. CZACK: I know there's a dispute  
25 as to one of those factors.

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1 MS. CARULAS: It's not a dispute.

2 There's no evidence whatsoever that Dr.  
3 Lippitt ever got this letter, so it's not  
4 even a factual issue.

5 MR. CZACK: There may be evidence of  
6 that, but go ahead.

7 Q. (BY MR. CZACK) Do you understand, Doctor, it's a  
8 hypothetical?

9 A. I understand that.

10 Q. So your lawyer or the attorney for Dr. Lippitt has  
11 made an objection. I'm asking you those facts as a  
12 hypothetical. Okay?

13 MS. CARULAS: Note my objection.

14 MR. CZACK: Yes. Your objection is  
15 noted.

16 A. Can you repeat the question?

17 Q. (BY MR. CZACK) Oh, Doctor.

18 MR. CZACK: Can you repeat the  
19 question?

20 (Question read back by reporter.)

21 MS. CARULAS: Just note the  
22 objection again since he asked you to  
23 read. Thank you.

24 A. I would not find it below the standard of care if  
25 liver function tests were not ordered on a patient.

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1 Q. (BY MR. CZACK) Why not?

2 A. Because in this area, at least in this area,  
3 orthopedic surgeons don't order the liver function  
4 tests. And personally I'm not sure even from this  
5 warning that it would alarm me to the point where I  
6 would even send this -- you know, that particular  
7 patient to their primary care physician.

8 Q. Would that warning have alerted you enough to stop  
9 the patient from taking the medication?

10 MS. CARULAS: Note my object on. I  
11 guess that assumes the patient is in the  
12 office?

13 MR. CZACK: Or that you're aware that  
14 patient so and so has been taking the  
15 medication for over four weeks.

16 MS. CARULAS: Okay. Just note my  
17 objection. Go ahead. You're asking now  
18 what he would have done as opposed to  
19 what the standard of care or whatever?

20 MR. CZACK: Yes.

21 MS. CARULAS: Okay. Go ahead.

22 A. I probably would have stopped it, the medication.

23 Q. (BY MR. CZACK) You recall the hypothetical I gave  
24 you a minute ago that the court reporter read back  
25 to you?

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1 A. Yes.

2 Q. You stated that orthopedics generally or as a rule  
3 do not order Liver profiles and that they leave that  
4 up to the family physician?

5 A. That's correct.

6 Q. Would it have been below the standard of care in  
7 that hypothetical for that hypothetical orthopedic  
8 surgeon not to order his patient to go see his  
9 family doctor to talk about having liver profiles  
10 done?

11 MS. CARULAS: Note my objection. It's  
12 been asked and answered. Go ahead.

13 A. No, I would not find that below the level of  
14 standard of care.

15 Q. (BY MR. CZACK) Why not?

16 A. Well, for one thing I'm not even sure if -- I'm not  
17 even sure that liver function tests can predict that  
18 someone is headed toward severe liver failure. And  
19 secondly, you know, I don't see specific  
20 instructions in here to do that.

21 Q. Was Duract providing any benefit -- this Duract that  
22 Dr. Lippitt was giving to Mr. Ruttig, was it  
23 providing him with any benefit at all, Doctor, based  
24 upon your review of the chart?

25 A. I'm not sure.

1 P. All right. If it wasn't providing him any benefit,<sup>a9</sup>  
 2 would you have kept one of your patients on Duract  
 3 if after five, six weeks they said they weren't  
 4 getting any relief?  
 5 A. Yes, I may have.  
 6 Q. Why?  
 7 A. Frequently in my experience it could take even  
 8 several months for someone to get over pain from an  
 9 injury. I don't make hasty changes on medications.  
 10 P. All right. So even though the patient wasn't  
 11 getting any benefit and in light of the warnings  
 12 that were contained in the package insert, you would  
 13 have kept the patient on that drug?  
 14 MS. CARULAS: Just note my objection  
 15 because I don't think that's necessarily  
 16 what the testimony's been, but go ahead.  
 17 The fact of the assumption of no pain  
 18 relief, but go ahead. Do you forget the  
 19 question now?  
 20 A. Well, you know, on one hand if I place myself back  
 21 in that period of time, I would have probably kept  
 22 him on the same regime of medications. In  
 23 retrospect knowing everything I know today, you  
 24 know, I might stop it.  
 25 P. (BY MR. CZACK) Would you ever have a patient or

1 have you ever had a patient on Duract and Lodine<sup>90</sup> at  
 2 the same time?  
 3 A. I don't recall.  
 4 Q. Would you find any reason to do that with a patient?  
 5 A. Yes. In some instances even to this date I may have  
 6 someone on Ultram and an anti-inflammatory.  
 7 P. And another anti-inflammatory?  
 8 A. Ultram and a different anti-inflammatory, yes.  
 9 P. Why? Why would you have that patient on two  
 10 different anti-inflammatories?  
 11 A. Well, I guess the way Duract and Ultram have been  
 12 presented to me, you know, they're different in a  
 13 sense that they are analgesics in addition to  
 14 anti-inflammatories. And in some instances in some  
 15 patients it seems like they need more of an  
 16 analgesic. And particularly if that analgesic is  
 17 not habit forming, then I'd be inclined to use it.  
 18 And if they're still having problems, I might have  
 19 added a second anti-inflammatory to that.  
 20 Q. In your review of this case, did you find any  
 21 evidence that Dr. Lippitt ever told or disclosed to  
 22 Mr. Ruttig about the potential hepatic effects of  
 23 Duract?  
 24 A. I don't believe I reviewed the notes closely enough  
 25 to know if that was done or not.

1 P. The notes you looked at, though, did you find anything<sup>91</sup>  
 2 to that effect?  
 3 A. Specifically, no.  
 4 Q. Is there any evidence that you found that Dr.  
 5 Lippitt ever told Mr. Ruttig or contacted Mr.  
 6 Ruttig's family physician and told him that he's on  
 7 Duract for over four weeks and I suggest he have his  
 8 liver enzymes tested?  
 9 A. I don't recall finding anything like that. I'm not  
 10 sure if that was done.  
 11 Q. You'll agree that with regard to Ken Ruttig Dr.  
 12 Lippitt did not follow the indications for usage --  
 13 duration of usage in the Duract package insert,  
 14 would you not, Doctor?  
 15 MS. CARULAS: Objection. As you  
 16 interpret it or as someone else would  
 17 interpret it?  
 18 MR. CZACK: I'm just reading it. The  
 19 indication for usage is for short-term  
 20 generally less than ten days management of  
 21 pain. I'm talking about just that section.  
 22 Q. (BY MR. CZACK) You would agree that Dr. Lippitt  
 23 prescribed it for longer than that period of time,  
 24 correct?  
 25 A. He prescribed it for longer than ten days. But with

1 the word generally in there, I guess even looking at<sup>92</sup>  
 2 this closely today I might be inclined to find that  
 3 not strong enough to even prevent me from using it.  
 4 P. And basing upon the package insert there was a known  
 5 risk of hepatic reaction with use of Duract, was  
 6 there not?  
 7 A. There was.  
 8 P. All right. Would you agree that Dr. Lippitt  
 9 increased that known risk of hepatic effect by not  
 10 suggesting that Mr. Ruttig's family doctor do liver  
 11 profiles after four weeks?  
 12 MS. CARULAS: Objection.  
 13 A. No, I wouldn't agree with that. I don't think -- in  
 14 this area I don't think orthopedic surgeons would  
 15 ever suggest to order liver functions. We would  
 16 leave that up to the discretion of a primary care  
 17 physician.  
 18 Q. (BY MR. CZACK) Mr. Ruttig when he saw Dr. Lippitt  
 19 was not disabled from work, was he?  
 20 A. I don't recall.  
 21 Q. And I think you agreed earlier the injury to a  
 22 shoulder was not a life threatening condition?  
 23 A. That's correct.  
 24 Q. Mr. Ruttig was working full-time as an engineer at  
 25 that time?

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1 A. I don't know.

2 Q. Do you recall in the notes that they did not

3 consider surgery an option at the time he was seeing

4 him and providing him with Duract?

5 A. I recall that.

6 P. And Dr. Lippitt stated that conservative treatment

7 was the appropriate line of care at that point in

8 time?

9 A. That's correct.

10 Q. If Dr. Lippitt gave Mr. Ruttig Duract for only ten

11 days, liver failure would not have occurred with Mr.

12 Ruttig, would you agree with that, Doctor?

13 MS. CARULAS: Objection. If you can

14 say.

15 A. I'm not sure about that.

16 Q. (BY MR. CZACK) You can't testify to that?

17 A. No.

18 Q. The liver's an organ that regenerates itself if the

19 insulting chemical or agent that's damaging it is

20 taken away, is that correct? Am I understanding

21 that right?

22 A. I'm not a liver expert.

23 Q. I'm just asking generally. I realize that.

24 A. I honestly don't know.

25 Q. Okay. And you've never spoke to Dr. Lippitt about

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1 this case or about what Lynn Renz told him?

2 A. That's correct.

3 Q. And you prescribed this medication based mainly upon

4 what Lynn Renz told you as opposed to what you did

5 or didn't read in the package insert?

6 A. That's correct.

7 MR. CZACK: Let me just check one

8 thing and I think I'm done. Let's go off

9 the record.

10 (Short recess taken.)

11 Q. (BY MR. CZACK) Doctor, are there any other

12 materials that might be involved with Dr. Lippitt's

13 care with the drug Duract, with any of the issues in

14 this case that you have been told you're going to be

15 provided with or that you would like to see that you

16 haven't seen yet?

17 A. No.

18 Q. Do you attend the orthopedic convention, the

19 national orthopedic convention at all?

20 A. Yes.

21 P. Did you attend a convention back in March of '98 in

22 New Orleans?

23 A. Parts of it, yes.

24 Q. Did you see Dr. Lippitt there?

25 A. No.

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1 Q. All right: Did you hear any information or talk to

2 anybody or were there any speakers or were there any

3 booths set up that somebody was discussing problems

4 that were being seen with the use of Duract, hepatic

5 problems?

6 A. I don't recall seeing that.

7 Q. All right. How long was this convention?

8 A. Usually they're about five days.

9 P. Okay. And for how long were you there?

10 A. Parts of probably three days.

11 P. The beginning, the end, and the middle, or don't you

12 recall?

13 A. I don't recall.

14 Q. Okay. Did you see anybody from Dr. Lippitt's group

15 there, from NOAH?

16 A. I don't recall if I did or didn't.

17 Q. And you have no opinion on the cause of Mr. Ruttig's

18 liver failure, do you, Doctor?

19 A. I do not.

20 Q. If you look at any other materials, do any other

21 research that changes your opinions or effects your

22 opinions that we have discussed here today, would

23 you be kind enough to let Ms. Carulas know that your

24 opinions have changed or that you've found

25 additional materials that might effect your

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1 testimony here today so I'm aware of that?

2 A. I would.

3 MR. CZACK: Okay. I don't have any

4 further questions.

5 MS. CARULAS: You know I did actually

6 try to make a list here so you know what

7 I think I've sent him. I'll try to get you

8 all of those cover letters. I know, for

9 the record, I sent him Dr. Lippitt's chart,

10 the inserts, the various letters, the

11 February and the June Letter, the

12 deposition, I believe of everyone he's

13 talked about, the two PAs, Dr. Stoyer, Dr.

14 Smith, and Dr. Lippitt.

15 I did send him your brief in response

16 to Plaintiff's motion for summary judgment

17 and the two packets of materials with those

18 documents for whatever it's worth to you.

19 I think that's it. I just want the record

20 to be complete.

21 Now, you have the right to read over

22 the transcript and make sure everything's

23 been taken down accurately and I usually

24 recommend that if you don't mind.

25 THE WITNESS: Okay.



MS. CARULAS: So we won't waive  
signature. And you'll obviously waive  
since our trial's not until October?  
You'll waive the seven days or whatever?  
Is that fair?

MR. CZACK: Yes, just so it's within a  
reasonable period of time.

- - -

(Deposition concluded at 9:15 a.m.)

- - -

I have read the foregoing transcript of my deposition  
taken on Wednesday, August 8th, 2000 from Page 1 to Page  
98 and note the following corrections:

PAGE:	LINE:	CORRECTION:	REASON:
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JOSEPH B. BLANDA, M.D.

1 THE STATE OF OHIO, }  
2 COUNTY OF CUYAHOGA. } ss: CERTIFICATE

3 I, Kerri L. Simmons, a Stenographic Reporter  
4 and Notary Public within and for the State of Ohio,  
5 duly commissioned and qualified, do hereby certify  
6 that JOSEPH B. BLANDA, M.D. was by me, before the  
7 giving of his deposition, first duly sworn to  
8 testify the truth, the whole truth and nothing but  
9 the truth; that the deposition as above set forth was  
10 reduced to writing by me by means of Stenotype and  
11 was subsequently transcribed into typewriting by  
12 means of computer-aided transcription under my  
13 direction; that the reading and signing of the  
14 deposition by the witness were expressly waived; and  
15 that I am not a relative or attorney of either party  
16 or otherwise interested in the event of this action.  
17 IN WITNESS WHEREOF, I hereunto set my hand  
18 and seal of office at Cleveland, Ohio, this 28th day  
19 of August, 2000.

21 Kerri L. Simmons, Notary Public  
22 Within and for the State of Ohio  
23 1511 Terminal Tower  
24 Cleveland, Ohio 44113

My Commission Expires: October 26, 2002.

## DEPOSITION OF JOSEPH B BLAND M D

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## DEPOSITION OF JOSEPH E. D. B. L. 4

[illegible]

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