

## Condensed Transcript

STATE OF OHIO     )  
                              )  
COUNTY OF LAKE )

### COURT OF COMMON PLEAS

MICHAEL PAOLELLA, etc.,  
Plaintiffs,

vs.

No. 03CV001425

SONIA KIRK, M.D., et al.,  
Defendants.

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### VIDEOCONFERENCED DEPOSITION OF KRISTOPHER R. BRICKMAN, M.D.

October 18, 2005  
12:05 p.m.

5300 Monroe Street  
Toledo, Ohio

Scott N. Gamertsfelder, RPR



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| <p style="text-align: center;">5</p> <p>1 Q. Doctor, may I inquire, relative to</p> <p>2 these additional small publications, do any of</p> <p>3 them have to do with the treatment and/or</p> <p>4 diagnosis of congestive heart failure in the</p> <p>5 emergency room setting?</p> <p>6 A. No, they do not.</p> <p>7 Q. Thanks. Let's just briefly go</p> <p>8 through your background. Doctor, I do, of</p> <p>9 course, understand that you are Board</p> <p>10 Certified in Emergency Room Medicine. At</p> <p>11 this point, what is your primary job? What</p> <p>12 do you do?</p> <p>13 A. My primary job is Clinical Care</p> <p>14 Physician at the Medical University of Ohio,</p> <p>15 also serving as the Medical Director of that</p> <p>16 facility, and I'm also responsible for</p> <p>17 instruction and teaching of students, residents</p> <p>18 at the Medical University of Ohio.</p> <p>19 Q. Let me just ask you to break that</p> <p>20 down for me. You said that you participate</p> <p>21 as a clinical care physician. I'm assuming</p> <p>22 in the emergency room?</p> <p>23 A. That is correct.</p> <p>24 Q. What percentage of your</p> <p>25 professional time do you spend as a clinical</p> | <p style="text-align: center;">7</p> <p>1 group?</p> <p>2 A. I would say, approximately 30 to</p> <p>3 35 physicians that are working either full</p> <p>4 time or part time.</p> <p>5 Q. All right. Do your physicians</p> <p>6 staff hospitals other than the hospital where</p> <p>7 you are the Medical Director?</p> <p>8 A. That is correct.</p> <p>9 Q. Can you tell me what hospitals you</p> <p>10 currently have contracts with?</p> <p>11 A. I have contracts with hospitals of</p> <p>12 Williams County, in Bryan; Archbold Medical</p> <p>13 Center, in Archbold; Henry County Hospital, in</p> <p>14 Napoleon, Ohio; Paulding County Hospital, in</p> <p>15 Paulding, Ohio; and I also have a different</p> <p>16 corporation in Norwalk, Ohio at Fisher Titus</p> <p>17 Medical Center. That is a separate</p> <p>18 corporation from Northwest Ohio Emergency</p> <p>19 Services, called Norwalk Emergency Services.</p> <p>20 Q. Have we covered all of your</p> <p>21 hospitals?</p> <p>22 A. That would be it.</p> <p>23 Q. I understand, of course, Doctor,</p> <p>24 that you are the Medical Director and you're</p> <p>25 the Medical Director for the Medical College</p>         |
| <p style="text-align: center;">6</p> <p>1 care physician in the emergency room?</p> <p>2 A. I would say, of the time that I</p> <p>3 am working, I would estimate around 60</p> <p>4 percent of my time is involved in clinical</p> <p>5 care, management of patients, patient care, as</p> <p>6 well as instructional activities in the E.D.,</p> <p>7 in the Emergency Department, itself.</p> <p>8 Q. Okay. In your position as a</p> <p>9 clinical care physician, are you an employee</p> <p>10 of the hospital, or do you work for a</p> <p>11 private emergency physicians' group?</p> <p>12 A. I work for an emergency physicians'</p> <p>13 group.</p> <p>14 Q. And what group is that, Doctor?</p> <p>15 A. Northwest Ohio Emergency Services.</p> <p>16 Q. Are you a partner in Northwest</p> <p>17 Ohio Emergency Physicians or an officer?</p> <p>18 What's your status?</p> <p>19 A. I'm the President of the group.</p> <p>20 Q. Is it a group that you founded?</p> <p>21 A. That's correct.</p> <p>22 Q. When did you found that group,</p> <p>23 Doctor?</p> <p>24 A. 1989, I believe.</p> <p>25 Q. How many physicians are in your</p>                                                                          | <p style="text-align: center;">8</p> <p>1 of Ohio, is that right?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. And by the marvels of the</p> <p>4 Internet reporting all kinds of information, I</p> <p>5 understand that you are paid a salary from</p> <p>6 the hospital of approximately \$56,100 a year,</p> <p>7 or at least as of 2004, is that correct?</p> <p>8 MS. CARULAS: Objection. Go</p> <p>9 ahead.</p> <p>10 A. (BY THE WITNESS:) Yes. On paper,</p> <p>11 that's correct, but I end up paying that</p> <p>12 salary myself.</p> <p>13 Q. (BY MS. TAYLOR-KOLIS:) Okay. I</p> <p>14 don't wonder about the mechanics of that, but</p> <p>15 needless to say, what amount of time do you</p> <p>16 spend fulfilling your duties as a medical</p> <p>17 director?</p> <p>18 A. I guess it depends on what you</p> <p>19 consider my duties as the Medical Director.</p> <p>20 It's kind of a gray area because my time</p> <p>21 working in the Emergency Department, I'm</p> <p>22 functioning as the Medical Director and</p> <p>23 teaching and instruction while I'm seeing</p> <p>24 patients in the E D. So, often I'm doing</p> <p>25 multiple functions at the same time. If you</p> |



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| <p style="text-align: center;">9</p> <p>1 are talking about purely administrative</p> <p>2 activities, I would roughly say 20 to 30</p> <p>3 percent of my time would be in pure</p> <p>4 administrative activities, if that's how you</p> <p>5 want me to break that down.</p> <p>6 Q. You could break it down whichever</p> <p>7 way you prefer because there was no job</p> <p>8 description on the Internet for that position.</p> <p>9 It was simply an announcement of the</p> <p>10 appointment and the salary. So I'll accept</p> <p>11 that. My next question for you is: In</p> <p>12 addition to doing clinical education, I'm</p> <p>13 assuming that you teach in a classroom</p> <p>14 setting, is that right?</p> <p>15 A. Occasionally. Not very often.</p> <p>16 Q. That would be the least of your</p> <p>17 responsibilities?</p> <p>18 A. That's correct. I have very few</p> <p>19 activities in a classroom setting. The vast</p> <p>20 majority of my teaching and instruction is in</p> <p>21 the course of clinical care in the Emergency</p> <p>22 Department, teaching as we see patients in</p> <p>23 the Emergency Department.</p> <p>24 Q. At the Medical College of Ohio, do</p> <p>25 you have an emergency physicians' residency</p> | <p style="text-align: center;">11</p> <p>1 was responsible for one of the hospital's</p> <p>2 emergency departments that we did a rotation</p> <p>3 at as a resident.</p> <p>4 Q. Did you do a rotation when Dr.</p> <p>5 Janiak was the Director of that program?</p> <p>6 A. That's correct.</p> <p>7 Q. Generally, do you have a good</p> <p>8 professional opinion of Dr. Janiak?</p> <p>9 A. I have nothing but respect for Dr.</p> <p>10 Janiak.</p> <p>11 Q. Okay. Just wanted to be clear</p> <p>12 about that. Just a few other questions.</p> <p>13 Doctor, what are you billing me for your</p> <p>14 professional time in this matter?</p> <p>15 A. I usually have to check back with</p> <p>16 my secretary, but I believe for depositions,</p> <p>17 this is at \$450 an hour, I believe, but if I</p> <p>18 could possibly -- never mind. I believe</p> <p>19 that's where we are.</p> <p>20 Q. If you will let me pay you a</p> <p>21 higher number --</p> <p>22 A. It depends how bad this goes.</p> <p>23 Q. Okay.</p> <p>24 A. I'm kidding.</p> <p>25 Q. Fair enough. At the conclusion of</p>                                                                                                                |
| <p style="text-align: center;">10</p> <p>1 program?</p> <p>2 A. No, we do not.</p> <p>3 Q. What types of students then,</p> <p>4 student doctors, are you teaching in the</p> <p>5 emergency room?</p> <p>6 A. We have both third- and fourth-year</p> <p>7 medical students from the Medical University</p> <p>8 of Ohio that we teach every month. We also</p> <p>9 have residents from virtually all other</p> <p>10 specialties within the hospital that do</p> <p>11 rotations in the Emergency Department, and</p> <p>12 that would include Internal Medicine,</p> <p>13 Orthopedics, General Surgery, Radiology, Family</p> <p>14 Practice, Pediatrics, Psychiatry even. We also</p> <p>15 have Physician Assistant students who are also</p> <p>16 rotating through the Emergency Department at</p> <p>17 the Medical University of Ohio that we are</p> <p>18 involved in instructing, as well.</p> <p>19 Q. Doctor, you are acquainted with my</p> <p>20 expert, Dr. Bruce Janiak, is that correct?</p> <p>21 A. Yes, I am.</p> <p>22 Q. Was Dr. Janiak in charge or the</p> <p>23 Director of the Residency Program which you</p> <p>24 trained in?</p> <p>25 A. He was not in charge of it. He</p>                                                        | <p style="text-align: center;">12</p> <p>1 this deposition, if you would forward to Miss</p> <p>2 Carulas's attention your bill, along with the</p> <p>3 tax ID number, I'll make sure it gets paid</p> <p>4 in a prompt fashion.</p> <p>5 A. That's great. Thank you.</p> <p>6 Q. Doctor, when did you first begin</p> <p>7 to participate in medical-legal reviews?</p> <p>8 A. I would suppose probably the first</p> <p>9 time -- I couldn't tell you for sure. I</p> <p>10 would say roughly 12, 14 years ago. I might</p> <p>11 have done one or two cases here and there.</p> <p>12 Q. Within the past five years, can</p> <p>13 you tell me the frequency with which you do</p> <p>14 medical-legal reviews?</p> <p>15 A. I guess I'm not exactly sure by</p> <p>16 frequency as far as percentage of time or how</p> <p>17 many cases. I can tell you that I would</p> <p>18 probably average four or five cases in a</p> <p>19 year.</p> <p>20 Q. Okay. To the best of your</p> <p>21 estimation -- and I know it will be an</p> <p>22 estimation only -- do you have a percentage</p> <p>23 breakdown in terms of reviews, patients versus</p> <p>24 physicians?</p> <p>25 A. You mean plaintiff versus defendant</p> |



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| <p style="text-align: center;">13</p> <p>1 cases?</p> <p>2 Q. Well, I call them patients versus</p> <p>3 physicians, but if you want to call them</p> <p>4 plaintiffs versus defendants, that's fine.</p> <p>5 A. I would probably say it would</p> <p>6 probably be around 60/40, defendants versus</p> <p>7 plaintiffs, or physicians versus patients.</p> <p>8 Q. Doctor, in the past five years,</p> <p>9 have you testified in any court of law on</p> <p>10 behalf of a patient?</p> <p>11 A. No. I only testified in one court</p> <p>12 case, and that was for a physician, in that</p> <p>13 period of time.</p> <p>14 Q. In that four- to five-year period</p> <p>15 of time, did you give any depositions on</p> <p>16 behalf of a patient?</p> <p>17 A. Yes.</p> <p>18 Q. Do you recall how many times that</p> <p>19 occurred?</p> <p>20 A. I think two to three, but I can't</p> <p>21 say exactly for sure. I did not bring that</p> <p>22 information specifically with me, but I</p> <p>23 believe it's two to three cases that I had</p> <p>24 depositions.</p> <p>25 Q. In any of the cases which you've</p>                                                                                                         | <p style="text-align: center;">15</p> <p>1 A. (BY THE WITNESS:) No, not that I</p> <p>2 can recall. I belong to a couple of</p> <p>3 academies who are involved in malpractice</p> <p>4 reform, meaning, the American Academy of</p> <p>5 Emergency Physicians and I believe it's AAEM,</p> <p>6 American Association of Emergency Medicine, and</p> <p>7 I know they are involved in that, but I've</p> <p>8 not specifically joined any organization</p> <p>9 regarding liability reform.</p> <p>10 Q. (BY MS. TAYLOR-KOLIS:) At your</p> <p>11 hospital, Doctor, do you belong to the</p> <p>12 Quality Assurance Committee?</p> <p>13 A. No, I'm not on the QA Committee.</p> <p>14 Q. Have you ever participated in a</p> <p>15 peer review committee?</p> <p>16 A. Yes, I have in the past.</p> <p>17 Q. Would you agree with me, Doctor,</p> <p>18 that sometimes physicians do not meet the</p> <p>19 standards of acceptable medical care?</p> <p>20 A. Sure.</p> <p>21 Q. Just wanted to be sure. Let's deal</p> <p>22 with this case at hand. Doctor, in</p> <p>23 anticipation of today's deposition, did you</p> <p>24 refresh your -- I don't want to call it</p> <p>25 recollection -- refresh your body of medical</p> |
| <p style="text-align: center;">14</p> <p>1 reviewed in the past five years or given</p> <p>2 depositions or the one case where you went to</p> <p>3 trial, were any of those cases involving</p> <p>4 issues of what I'm going to call acute</p> <p>5 coronary syndrome or cardiac issues?</p> <p>6 A. I cannot recall off the top of my</p> <p>7 head, but I will not say that I did not have</p> <p>8 something that involved cardiac care, but</p> <p>9 specific acute coronary care syndrome, acute</p> <p>10 MI, I can't recall that any of them in the</p> <p>11 last few years have been an acute cardiac</p> <p>12 specifically. I've had vascular cases that</p> <p>13 I've reviewed. Could I just get this phone</p> <p>14 call for a second?</p> <p>15 Q. Yes, you may, Doctor.</p> <p>16 A. Sorry. So, no, no straight,</p> <p>17 specific cardiac case that I can recall,</p> <p>18 although some of them have ventured into</p> <p>19 cardiac issues.</p> <p>20 Q. Doctor, during the past five years,</p> <p>21 have you joined any organizations, physician</p> <p>22 organizations, that advocate medical</p> <p>23 malpractice reform in the State of Ohio?</p> <p>24 MS. CARULAS: Objection. Go</p> <p>25 ahead.</p> | <p style="text-align: center;">16</p> <p>1 information by doing a literature search of</p> <p>2 any sort?</p> <p>3 A. No. Not over the last few days,</p> <p>4 no.</p> <p>5 Q. Did you at any time, once you were</p> <p>6 given the assignment to evaluate this claim,</p> <p>7 do a medical literature search?</p> <p>8 A. I can't say I actually did a</p> <p>9 literature search. I think I might have just</p> <p>10 reviewed a few topics in textbooks. I can't</p> <p>11 recall specifically what I reviewed, though.</p> <p>12 Q. Having said that, Doctor, is there</p> <p>13 a textbook which you as a physician refer to</p> <p>14 or rely on in terms of Emergency Room</p> <p>15 Medicine?</p> <p>16 A. Well, one of the textbooks we use</p> <p>17 most commonly would be Rosen's.</p> <p>18 Q. While we are on that subject, does</p> <p>19 your emergency medicine group or you,</p> <p>20 yourself, subscribe to any online medical</p> <p>21 services such as E-Medicine to use in</p> <p>22 conjunction with what you already know?</p> <p>23 A. No, we do not.</p> <p>24 Q. Doctor, when were you first</p> <p>25 contacted in this matter?</p>                                                                    |



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| <p style="text-align: center;">17</p> <p>1 A. I guess I would say, August of</p> <p>2 2004, from just checking the correspondence</p> <p>3 letters that I have. I believe. It might</p> <p>4 have been different than that.</p> <p>5 MS. CARULAS: Must have been</p> <p>6 before, because your report was June of 2004.</p> <p>7 A. (BY THE WITNESS:) I guess it was.</p> <p>8 I would say probably early in 2004, sometime.</p> <p>9 Q. (BY MS. TAYLOR-KOLIS:) All right.</p> <p>10 Doctor, did you bring with you today your</p> <p>11 complete file in this matter?</p> <p>12 A. Yes, I have.</p> <p>13 Q. Could you, as we like to say in</p> <p>14 the trade, inventory for me what it is that</p> <p>15 constitutes your file.</p> <p>16 A. I have the medical records for</p> <p>17 Beverly Paoletta. I have a deposition of</p> <p>18 John Novak; I have a deposition of Sonia</p> <p>19 Kirk; I have a deposition of Robert Sireno; I</p> <p>20 have a deposition of Richard Friedlander; and</p> <p>21 I have a deposition of David Korn and of</p> <p>22 Bruce Janiak.</p> <p>23 MS. CARULAS: We did also, Donna,</p> <p>24 send him, Dr. Brickman, the films, which he</p> <p>25 did not bring with him here today.</p> | <p style="text-align: center;">19</p> <p>1 Q. Okay. I would ask that at the</p> <p>2 conclusion of this deposition, you hand those</p> <p>3 notes to the Court Reporter, and I would ask</p> <p>4 the Court Reporter to mark that Exhibit 1,</p> <p>5 and it will be attached to your deposition so</p> <p>6 that I can see your notes, okay?</p> <p>7 A. Sure.</p> <p>8 Q. Doctor, prior to writing the</p> <p>9 report, did you look at the actual chest film</p> <p>10 that was done of Beverly in the emergency</p> <p>11 room at Lake West?</p> <p>12 A. Yes, I did.</p> <p>13 Q. My question before our short</p> <p>14 interruption was whether or not you actually</p> <p>15 reviewed the chest film before you wrote the</p> <p>16 report?</p> <p>17 A. I believe I had a chance to review</p> <p>18 that before the report.</p> <p>19 Q. Okay. Doctor, is looking at chest</p> <p>20 films in an emergency room something that you</p> <p>21 do?</p> <p>22 A. That's correct.</p> <p>23 Q. I take it you only wrote one</p> <p>24 report?</p> <p>25 A. That's correct.</p>                                                                                                                                                                                   |
| <p style="text-align: center;">18</p> <p>1 A. (BY THE WITNESS:) And I also have</p> <p>2 those, yes.</p> <p>3 Q. (BY MS. TAYLOR-KOLIS:) All right.</p> <p>4 Doctor, going backward, before you prepared</p> <p>5 your report, what did you actually review</p> <p>6 before you prepared the report?</p> <p>7 A. When I prepared the report, I</p> <p>8 believe all I really had at that point that</p> <p>9 I had reviewed was the medical records. I</p> <p>10 can't say absolutely for sure, but I do not</p> <p>11 believe I had any of the other information or</p> <p>12 any depositions when I put the report</p> <p>13 together that I authored.</p> <p>14 Q. Doctor, when you do medical-legal</p> <p>15 reviews, do you take handwritten notes, which</p> <p>16 then later you turn into a report?</p> <p>17 A. I just take a few notes that just</p> <p>18 refresh my memory on what the circumstances</p> <p>19 are of the case.</p> <p>20 Q. Do you retain those notes?</p> <p>21 A. Yes.</p> <p>22 Q. And are those notes part of your</p> <p>23 file?</p> <p>24 A. I have a page of those notes in</p> <p>25 my file, correct.</p>                                                                                    | <p style="text-align: center;">20</p> <p>1 Q. And can I gather that whatever you</p> <p>2 read in depositions that you received</p> <p>3 subsequent to writing your report in no way</p> <p>4 changed your opinions?</p> <p>5 A. No, nothing in the depositions</p> <p>6 changed my opinion.</p> <p>7 Q. I want to deal in reverse order of</p> <p>8 how I customarily deal with opinions. It's</p> <p>9 my understanding, based upon the report that</p> <p>10 I received, that you hold the following</p> <p>11 opinion; and, Doctor, reading it right out of</p> <p>12 your report, it says, "It is my opinion that</p> <p>13 the patient expired from an acute myocardial</p> <p>14 infarction that had already progressed beyond</p> <p>15 the point of reasonable probability of</p> <p>16 recovering by the time she presented to the</p> <p>17 emergency department even on her initial visit</p> <p>18 of August 22nd, 2002." Am I reading that</p> <p>19 sentence correctly?</p> <p>20 A. That's correct</p> <p>21 Q. I would like to know, with as much</p> <p>22 specificity as possible, the basis upon which</p> <p>23 you hold that opinion.</p> <p>24 A. Well, I don't have a whole lot of</p> <p>25 specifics, other than to retrospectively look</p> |



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| <p style="text-align: center;">21</p> <p>1 at what eventually must have occurred with</p> <p>2 this patient. This patient, it appears, based</p> <p>3 on the autopsy findings, and that's</p> <p>4 essentially where I'm basing that information,</p> <p>5 is what the autopsy had stated, is that it</p> <p>6 looked like there was likely multiple cardiac</p> <p>7 events, meaning multiple myocardial</p> <p>8 infarctions, one of which preceded by several</p> <p>9 days her initial evaluation, that likely</p> <p>10 resulted in such significant damage to her</p> <p>11 heart that I believe that she had ended up</p> <p>12 dying of cardiogenic shock because her heart</p> <p>13 no longer functioned, and I believe that had</p> <p>14 likely occurred, from what I can best put</p> <p>15 together from the autopsy and the clinical</p> <p>16 scenario that occurred, likely occurred before</p> <p>17 she ever presented to the hospital in the</p> <p>18 first place.</p> <p>19 Q. All right. Let me make sure I'm</p> <p>20 hearing you correctly. What you believe</p> <p>21 occurred before she presented to the hospital</p> <p>22 is somewhere within -- if I misstate it,</p> <p>23 you'll correct me -- two to three days or so</p> <p>24 before her emergency room presentation, she</p> <p>25 experienced a myocardial infarction; is that</p> | <p style="text-align: center;">23</p> <p>1 say, looking at this retrospectively, having</p> <p>2 the autopsy and the medical records available</p> <p>3 to you, that Beverly in fact was suffering</p> <p>4 from congestive heart failure on the morning</p> <p>5 of August 22, 2002?</p> <p>6 MS. CARULAS: Note an objection.</p> <p>7 Go ahead.</p> <p>8 A. (BY THE WITNESS:) Yes, I believe</p> <p>9 at that point she was in congestive heart</p> <p>10 failure, based on the retrospective review,</p> <p>11 which of course, you know, the physicians</p> <p>12 there had no access to any of that</p> <p>13 information ahead of time.</p> <p>14 MR. SHROGE: Objection. Move to</p> <p>15 strike.</p> <p>16 Q. (BY MS. TAYLOR-KOLIS:) Doctor, you</p> <p>17 have, I'm going to assume, in your years of</p> <p>18 practice, encountered folks, be they men or</p> <p>19 women or maybe sometimes, unfortunately,</p> <p>20 children, who present to the emergency room</p> <p>21 in whom you have made a diagnosis of acute</p> <p>22 congestive heart failure; would you agree with</p> <p>23 that?</p> <p>24 A. That's correct.</p> <p>25 Q. Doctor, please, once again, with as</p>                                                 |
| <p style="text-align: center;">22</p> <p>1 what you are testifying to?</p> <p>2 A. Again, I'm hypothesizing, based on</p> <p>3 the information that I have, and that's what</p> <p>4 my assumption is, my opinion is. Do I know</p> <p>5 any of this for fact? Of course not. But</p> <p>6 that is my belief, is that occurred several</p> <p>7 days before her initial visit.</p> <p>8 Q. Doctor, not to be difficult with</p> <p>9 you, although that's sometimes my job, you</p> <p>10 understand that when you testify in court</p> <p>11 that your opinions must be to a reasonable</p> <p>12 degree of medical probability, that being, in</p> <p>13 your medical opinion, that which is more</p> <p>14 likely than not, correct?</p> <p>15 A. Yes. And I do believe more likely</p> <p>16 than not that's what occurred here.</p> <p>17 Q. Okay. Doctor, as a result of your</p> <p>18 belief that there was a myocardial infarction</p> <p>19 that predated her initial morning visit of</p> <p>20 8-22-02, that cardiac infarction caused the</p> <p>21 congestive heart failure, do you agree with</p> <p>22 that?</p> <p>23 A. It could cause congestive heart</p> <p>24 failure, that's correct.</p> <p>25 Q. Do you agree with me that, as you</p>                                                                                                           | <p style="text-align: center;">24</p> <p>1 much specificity as you can garner at the</p> <p>2 noon hour on a Tuesday, tell me what the</p> <p>3 signs and symptoms of congestive heart failure</p> <p>4 are.</p> <p>5 A. Well, congestive heart failure</p> <p>6 normally would be a patient who would present</p> <p>7 with high blood pressure, shortness of breath.</p> <p>8 They tend to be older. There normally is a</p> <p>9 history of coronary artery disease. You know,</p> <p>10 those are the factors that I typically would</p> <p>11 see in a patient with congestive heart</p> <p>12 failure. They're normally experiencing chest</p> <p>13 pain, chest discomfort, and they are typically</p> <p>14 tachycardic.</p> <p>15 Q. I'm sorry, I didn't mean to</p> <p>16 interrupt your answer. So you are adding</p> <p>17 tachycardic?</p> <p>18 A. They are typically tachycardic, as</p> <p>19 well.</p> <p>20 Q. Okay. Would you agree with me</p> <p>21 that of the list of symptoms that you are</p> <p>22 associating, and I did say acute congestive</p> <p>23 heart failure, so if you want to distinguish</p> <p>24 that from ongoing, we can, but for the</p> <p>25 purposes of this question, people who present,</p> |



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| <p style="text-align: center;">25</p> <p>1 who ultimately you make a diagnosis of acute</p> <p>2 congestive heart failure, the symptoms that</p> <p>3 you listed, they don't all have to be in</p> <p>4 play for you to make that diagnosis; would</p> <p>5 you agree with that?</p> <p>6 MS. CARULAS: Objection.</p> <p>7 A. (BY THE WITNESS:) No. They are</p> <p>8 not all necessary, but it is the information</p> <p>9 that we have to take to get to that</p> <p>10 conclusion, though. So clearly a certain</p> <p>11 segment of those should be, you know, there,</p> <p>12 for us to end up with a diagnosis of</p> <p>13 congestive heart failure.</p> <p>14 Q. (BY MS. TAYLOR-KOLIS:) All right.</p> <p>15 Not necessarily related to the specific facts</p> <p>16 of this case, but as general medical</p> <p>17 principle, if you make a diagnosis of acute</p> <p>18 congestive heart failure in the emergency</p> <p>19 room, what is the next thing the standard of</p> <p>20 care would require you to do?</p> <p>21 A. We ordinarily would provide</p> <p>22 diarrhetic medication to that patient.</p> <p>23 Q. And why would you do that?</p> <p>24 A. That would help alleviate the</p> <p>25 fluid, fluid congestion on the lungs.</p> | <p style="text-align: center;">27</p> <p>1 medicine and/or cardiology involved at that</p> <p>2 point.</p> <p>3 Q. And sometimes you might even call</p> <p>4 in pulmonology, correct?</p> <p>5 A. No. That would be unlikely.</p> <p>6 Q. Okay. But at a minimum, it would</p> <p>7 be internal medicine and/or cardiology,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. If it was within -- I don't like</p> <p>11 the word "purview," but sometimes I use it.</p> <p>12 If you had a patient in your emergency room,</p> <p>13 made the diagnosis of acute CHF, would you</p> <p>14 order an emergency echocardiogram, or would</p> <p>15 you wait for the consultant to come in and</p> <p>16 do that?</p> <p>17 A. We would typically leave that for</p> <p>18 the consultants.</p> <p>19 Q. Doctor, given that you feel</p> <p>20 comfortable rendering opinions relative to what</p> <p>21 you believe is her degree of possibility to</p> <p>22 recover from her CHF, can I inquire, do you</p> <p>23 have an opinion, Doctor, as to what an</p> <p>24 emergency echocardiogram would have shown in</p> <p>25 Beverly on the morning of August 22, 2002?</p> |
| <p style="text-align: center;">26</p> <p>1 Q. What else would you do?</p> <p>2 A. We also would likely provide</p> <p>3 nitrates, which is a medication to decrease</p> <p>4 vascular resistance, meaning it decreases the</p> <p>5 pressure that the heart has to pump blood</p> <p>6 through. So it allows it to pump blood from</p> <p>7 the lungs to the rest of the body, to</p> <p>8 alleviate those failure symptoms to a certain</p> <p>9 degree.</p> <p>10 Q. Doctor, would, in your opinion, the</p> <p>11 standard of care require you as an emergency</p> <p>12 room physician in the situation where you</p> <p>13 have a first-time diagnosis of congestive</p> <p>14 heart failure -- I lost my train of thought.</p> <p>15 If it's the first-time diagnosis of congestive</p> <p>16 heart failure in the emergency room, in</p> <p>17 addition to offering immediate therapy,</p> <p>18 vis-a-vis diarrhetics and nitrates, would you</p> <p>19 call in a consultation?</p> <p>20 MS. CARULAS: Objection.</p> <p>21 A. (BY THE WITNESS:) Yes, I normally</p> <p>22 would have.</p> <p>23 Q. (BY MS. TAYLOR-KOLIS:) For</p> <p>24 hospital admission?</p> <p>25 A. I would normally have internal</p>                                         | <p style="text-align: center;">28</p> <p>1 MS. CARULAS: Objection. Go</p> <p>2 ahead.</p> <p>3 A. (BY THE WITNESS:) I really don't</p> <p>4 have an opinion.</p> <p>5 MR. SHROGE: Objection.</p> <p>6 A. (BY THE WITNESS:) I do not read</p> <p>7 echocardiograms, so I cannot tell you what an</p> <p>8 echocardiogram would have shown.</p> <p>9 Q. (BY MS. TAYLOR-KOLIS:) Okay. All</p> <p>10 right. Doctor, subsequent to the time of</p> <p>11 writing your report, I gather, based upon</p> <p>12 what you told me this morning, that you did</p> <p>13 have an opportunity to read the depositions.</p> <p>14 Have you reread them recently?</p> <p>15 A. No, I have not.</p> <p>16 Q. To the best of your recollection,</p> <p>17 Doctor, from reviewing those depositions, do</p> <p>18 you know whether Dr. Kirk actually evaluated</p> <p>19 Beverly when she returned for her second</p> <p>20 visit to Lake West Hospital on the 22nd of</p> <p>21 August?</p> <p>22 A. I really don't know, one way or</p> <p>23 another, on that.</p> <p>24 Q. Okay. What is risk stratification</p> <p>25 in the emergency room setting?</p>                                |



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| <p style="text-align: center;">29</p> <p>1 A. Risk stratification, it's analyzing<br/>2 patients that come in, based on their acuity<br/>3 and making decisions on who has the highest<br/>4 priority of clinical care, treatment, et<br/>5 cetera, and obviously providing the best care<br/>6 we can for those patients.<br/>7 Q. Okay. I'm going to make this sort<br/>8 of a short summary, and then I'm going to<br/>9 ask you some specific questions. I gather,<br/>10 based upon your report, that you believe that<br/>11 Dr. Kirk met the standard of care in this<br/>12 particular instance by making a diagnosis of<br/>13 pneumonia; is that a fair statement?<br/>14 A. That's correct.<br/>15 Q. What did Dr. Kirk, in your<br/>16 opinion, based on her deposition testimony and<br/>17 the medical record available, do to exclude<br/>18 the diagnosis of congestive heart failure?<br/>19 A. I don't know that congestive heart<br/>20 failure was part of her consideration at the<br/>21 time. The patient who presented did not<br/>22 present with symptoms that were typical of<br/>23 congestive heart failure. So it likely was<br/>24 not part of her consideration of prominence,<br/>25 in that she presented more with infectious</p> | <p style="text-align: center;">31</p> <p>1 her presentation to the emergency room?<br/>2 A. I believe there was an ongoing<br/>3 intermittent history of shortness of breath<br/>4 that had been going on for two to three<br/>5 days. I'm not sure how acute the episode<br/>6 was.<br/>7 Q. Is there anything in any of the<br/>8 medical records which you've reviewed or the<br/>9 deposition testimony that leads you to believe<br/>10 that shortness of breath was an issue for<br/>11 Beverly at any time before the two to three<br/>12 days regarding this admission?<br/>13 A. I do not know one way or another.<br/>14 Q. The fact that this was a sudden<br/>15 onset of shortness of breath, that not being<br/>16 the only thing that we look at, but that<br/>17 symptom itself could be suggestive of acute<br/>18 congestive heart failure; would you agree with<br/>19 that?<br/>20 MS. CARULAS: Objection.<br/>21 MR. SHROGE: Objection.<br/>22 A. (BY THE WITNESS:) That could, if<br/>23 she had sudden onset. I'm not really sure<br/>24 how sudden it was. It was shortness of<br/>25 breath, along with a number of other</p> |
| <p style="text-align: center;">30</p> <p>1 disease type of findings.<br/>2 Q. Okay. Well, let's talk about that<br/>3 for a second. In the emergency department<br/>4 records -- and by the way, Doctor, I gather<br/>5 you have the records available to you?<br/>6 A. That's correct.<br/>7 Q. Is that right?<br/>8 A. Yes.<br/>9 Q. Okay. At Lake Hospital System,<br/>10 they have -- the document is labeled "T<br/>11 System, Inc." and it's really just a clinical<br/>12 pathway sheet. My recollection, of course,<br/>13 now, I'm looking at the document, is that her<br/>14 chief complaint was shortness of breath.<br/>15 Would you agree that her chief complaint was<br/>16 shortness of breath?<br/>17 A. Yes, that's correct.<br/>18 Q. Okay. Doctor, shortness of breath<br/>19 is a symptom of congestive heart failure;<br/>20 would you agree with that?<br/>21 A. That's correct.<br/>22 Q. By history, did the patient, as<br/>23 far as you can tell from the medical record,<br/>24 relate that she had an onset of shortness of<br/>25 breath that occurred two to three days before</p>                                                                                                                                                  | <p style="text-align: center;">32</p> <p>1 symptoms.<br/>2 Q. (BY MS. TAYLOR-KOLIS:) All right.<br/>3 In any event, once again, directing your<br/>4 attention to the clinical pathway, at the top<br/>5 of the document, it says, "Dyspnea," and then<br/>6 in parentheses, "COPD and CHF," and others,<br/>7 correct?<br/>8 A. That's correct.<br/>9 Q. And her chief complaint we've<br/>10 already established, you agree, is shortness<br/>11 of breath, and then there's a notation,<br/>12 "Started two to three days ago." Would you<br/>13 agree with that?<br/>14 A. Correct.<br/>15 Q. And the hatch mark says, "Continued<br/>16 in ED." Do you interpret that, and/or with<br/>17 what was testified to in the depositions, to<br/>18 mean that she continued with shortness of<br/>19 breath while in the emergency department?<br/>20 A. Yes. I believe that was what she<br/>21 was presenting with.<br/>22 Q. Relative to the short list which<br/>23 you gave me of signs and symptoms of CHF,<br/>24 let's start with, first, elevated blood<br/>25 pressures. Do you believe that Mrs. Paoletta</p>                                |



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| <p style="text-align: center;">33</p> <p>1 presented with a picture of elevated blood</p> <p>2 pressures in the emergency room?</p> <p>3 A. No, not really.</p> <p>4 Q. What did you know, if anything, in</p> <p>5 reviewing these records about her history</p> <p>6 and/or status of blood pressures?</p> <p>7 A. What did I know about her blood</p> <p>8 pressure history? I did not review her</p> <p>9 primary care history before this, so I really</p> <p>10 don't know what her prior history of blood</p> <p>11 pressure had been.</p> <p>12 Q. Hypothetically, Doctor, if a person</p> <p>13 in their adult -- this is going to be a</p> <p>14 crazy question -- but in their adult medical</p> <p>15 history had previously been hypertensive, but</p> <p>16 goes into congestive heart failure, would that</p> <p>17 account for lower blood pressures?</p> <p>18 MS. CARULAS: Objection.</p> <p>19 MR. SHROGE: Objection.</p> <p>20 A. (BY THE WITNESS:) I'm going to</p> <p>21 need you to restate that. I'm not clear</p> <p>22 what you are asking there.</p> <p>23 Q. (BY MS. TAYLOR-KOLIS:) Okay. I'm</p> <p>24 asking you to make an assumption that a</p> <p>25 patient has been borderline hypertensive over</p>                            | <p style="text-align: center;">35</p> <p>1 age of 70, although obviously it can affect</p> <p>2 people at various ages, depending on their</p> <p>3 cardiac history.</p> <p>4 Q. All right. Relative to coronary</p> <p>5 artery disease, would you agree with me that</p> <p>6 there are people who present to your</p> <p>7 emergency room who actually have coronary</p> <p>8 artery disease, but don't know they have</p> <p>9 coronary artery disease?</p> <p>10 A. I'm sure there are.</p> <p>11 Q. In trying to make an assessment</p> <p>12 whether or not a person may have coronary</p> <p>13 artery disease, what medical conditions, if</p> <p>14 any, do you look at that may cause or</p> <p>15 contribute to coronary artery disease?</p> <p>16 A. Coronary artery disease, the most</p> <p>17 common scenario signs and symptoms are chest</p> <p>18 pain that a patient with coronary artery</p> <p>19 disease would be exhibiting. That's what</p> <p>20 pretty much the classic findings that we</p> <p>21 would be looking for.</p> <p>22 Q. Other than that sign or symptom,</p> <p>23 tell me what underlying medical condition</p> <p>24 places a person at risk for experiencing</p> <p>25 coronary artery disease.</p> |
| <p style="text-align: center;">34</p> <p>1 a period of time, say five years, and they</p> <p>2 have a myocardial -- they go into congestive</p> <p>3 heart failure. Would being in congestive heart</p> <p>4 failure attribute or contribute to those</p> <p>5 pressure readings more normative than on the</p> <p>6 high side?</p> <p>7 MS. CARULAS: Objection.</p> <p>8 MR. SHROGE: Objection as to the</p> <p>9 form and otherwise.</p> <p>10 A. (BY THE WITNESS:) No, I would</p> <p>11 anticipate that her pressures would be</p> <p>12 extremely high with the acute onset of</p> <p>13 congestive heart failure, particularly with a</p> <p>14 history of hypertension.</p> <p>15 Q. (BY MS. TAYLOR-KOLIS:) Okay. All</p> <p>16 right. So to the best of your knowledge,</p> <p>17 looking at this record, elevated blood</p> <p>18 pressures were not in existence at the time</p> <p>19 of that emergency room visit. We know we</p> <p>20 have shortness of breath. You said another</p> <p>21 fact you would look at, you said older</p> <p>22 people, but I don't know what that means.</p> <p>23 A. Well, congestive heart failure</p> <p>24 tends to occur in elderly individuals, so I</p> <p>25 would consider that typically people above the</p> | <p style="text-align: center;">36</p> <p>1 MR. SHROGE: Objection as to form.</p> <p>2 A. (BY THE WITNESS:) Hypertension</p> <p>3 will put them at risk, high cholesterol will</p> <p>4 put them at risk, family history of the same</p> <p>5 will put them at risk, smoking will put them</p> <p>6 at risk, obesity will put them at risk. I'm</p> <p>7 sure there are a few more that I'm not</p> <p>8 reeling off of the top of my head.</p> <p>9 Q. (BY MS. TAYLOR-KOLIS:) Okay.</p> <p>10 What about diabetes?</p> <p>11 A. Diabetes also would put them at an</p> <p>12 increased risk of coronary artery disease.</p> <p>13 Q. Okay. From your careful review of</p> <p>14 the medical record, what risk factors did</p> <p>15 Beverly Paoiella have that the emergency room</p> <p>16 doctors would have been aware of on the</p> <p>17 morning of August 22, 2002?</p> <p>18 A. I believe the diabetes would be</p> <p>19 the only thing they would really be aware of</p> <p>20 at that point.</p> <p>21 Q. Okay. Doctor, when you looked at</p> <p>22 the chest film in this matter, do you believe</p> <p>23 that the chest film itself was consistent</p> <p>24 with CHF?</p> <p>25 A. I believe it could have been CHF.</p>        |



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| <p style="text-align: center;">37</p> <p>1 I also feel it could have been pneumonia as</p> <p>2 well.</p> <p>3 Q. Do you agree with me or disagree</p> <p>4 that attempting to diagnosis CHF based upon a</p> <p>5 chest x-ray alone is not a reliable way to</p> <p>6 make the diagnosis?</p> <p>7 A. I believe it's not totally</p> <p>8 reliable, that's correct.</p> <p>9 Q. Do you agree that it is difficult</p> <p>10 to make the distinction between CHF and</p> <p>11 pneumonia based on a chest film?</p> <p>12 A. I believe you cannot make that</p> <p>13 distinction based solely off the chest film,</p> <p>14 that's correct.</p> <p>15 Q. Okay. Doctor, you've read the</p> <p>16 testimony of Dr. Janiak in this matter?</p> <p>17 A. Yes.</p> <p>18 Q. Let's talk about Dr. Janiak's</p> <p>19 opinions just briefly, and not to summarize</p> <p>20 it in this fashion, but in this particular</p> <p>21 patient, you agree that the patient had no</p> <p>22 fever, is that correct?</p> <p>23 A. Well, I believe the patient did</p> <p>24 not have a fever when she was in the</p> <p>25 emergency department. She complained of a</p> | <p style="text-align: center;">39</p> <p>1 basis, and diagnostic, but outside of the</p> <p>2 chest film, that made the diagnosis of</p> <p>3 pneumonia the correct diagnosis at that time?</p> <p>4 A. I feel the diagnosis of pneumonia</p> <p>5 or an infectious problem is based primary off</p> <p>6 of her history that she came in with. Her</p> <p>7 having a fever in the emergency department I</p> <p>8 considered totally irrelevant, as well as the</p> <p>9 white count, because we also know in</p> <p>10 diabetics that they do not mount necessarily</p> <p>11 the same immune response that another</p> <p>12 individual might mount who has a normal</p> <p>13 immune system. So, the white count is never</p> <p>14 anything we rely on as making a diagnosis of</p> <p>15 pneumonia, and neither is the fact that they</p> <p>16 do or do not have a fever. Her symptoms of</p> <p>17 cough, productive cough, yellowish sputum,</p> <p>18 fever for the last two to three days,</p> <p>19 associated with these symptoms, is clearly</p> <p>20 what I would expect most emergency physicians</p> <p>21 to lead to an infectious ideology to her</p> <p>22 symptoms.</p> <p>23 Q. Doctor, once again, folks, be they</p> <p>24 men or women, who are experiencing congestive</p> <p>25 heart failure do have productive sputum, do</p> |
| <p style="text-align: center;">38</p> <p>1 fever.</p> <p>2 Q. When you say she complained of a</p> <p>3 fever, would you direct me to the portion of</p> <p>4 the medical record that you are referring to?</p> <p>5 A. It says, "cough," it says, "fever,"</p> <p>6 under Associated Symptoms.</p> <p>7 Q. So, do you gather from the way</p> <p>8 that is written that she gave a history that</p> <p>9 she had experienced fever?</p> <p>10 A. Yes.</p> <p>11 Q. But on presentation to the</p> <p>12 emergency room on the morning of August 22,</p> <p>13 2002, she did not have a fever; would you</p> <p>14 agree with that?</p> <p>15 A. At the time she was in the E.R.,</p> <p>16 no.</p> <p>17 Q. Okay. In this particular instance,</p> <p>18 a CBC panel was run on the patient?</p> <p>19 A. Yes.</p> <p>20 Q. Do you agree that there were no</p> <p>21 elevated white counts in this particular</p> <p>22 instance?</p> <p>23 A. That's correct.</p> <p>24 Q. Doctor, that being said, what is</p> <p>25 it about this presentation from the clinical</p>                                                                                    | <p style="text-align: center;">40</p> <p>1 they not?</p> <p>2 A. No, they normally don't.</p> <p>3 MR. SHROGE: Objection. Form.</p> <p>4 A. (BY THE WITNESS:) They usually</p> <p>5 have a dry cough.</p> <p>6 Q. (BY MS. TAYLOR-KOLIS:) If I</p> <p>7 understand your testimony correctly, you're</p> <p>8 saying that pneumonia was the appropriate</p> <p>9 diagnosis, based on her history, not</p> <p>10 necessarily based on the medical examination</p> <p>11 or findings at the time of her visit?</p> <p>12 A. Based on the history that she</p> <p>13 presented with, the diagnosis of pneumonia I</p> <p>14 felt was appropriate in that scenario.</p> <p>15 Q. All right. Let's go backward to</p> <p>16 your opinions about her survivability. Are you</p> <p>17 going to be testifying, Doctor, under oath,</p> <p>18 that even if the diagnosis of CHF had been</p> <p>19 made in the morning on August 22nd, 2002,</p> <p>20 that at that point, no medical therapy could</p> <p>21 have avoided this outcome?</p> <p>22 A. That is my opinion.</p> <p>23 Q. And can you tell me, because I</p> <p>24 didn't ask it this way previously, why you</p> <p>25 believe that there was no therapy that could</p>                                                                                                                                 |



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| <p style="text-align: center;">41</p> <p>1 have resulted in avoidance of yet another</p> <p>2 myocardial?</p> <p>3 A. Because if her treatment was for</p> <p>4 congestive heart failure in the initial visit,</p> <p>5 that would have required, as I stated before,</p> <p>6 diarrhetics and likely nitrates, which in my</p> <p>7 estimation, realizing what eventually happened</p> <p>8 to this patient, would have likely resulted</p> <p>9 in her demise even quicker than it did,</p> <p>10 because she eventually developed cardiogenic</p> <p>11 shock, and it would have precipitated out</p> <p>12 cardiogenic shock immediately, and I believe</p> <p>13 that's what would have happened if that would</p> <p>14 have been the treatment initially when she</p> <p>15 came in.</p> <p>16 Q. Doctor, do you consider yourself to</p> <p>17 be qualified to offer expert opinions relative</p> <p>18 to cardiac issues?</p> <p>19 A. As it relates to emergency</p> <p>20 department cardiac issues and the management</p> <p>21 of acute MI, yes, I do.</p> <p>22 Q. In this case, you're not actually</p> <p>23 offering opinions as to emergency room</p> <p>24 treatment. It seems to me that you are</p> <p>25 offering a causation opinion that she would</p>                                            | <p style="text-align: center;">43</p> <p>1 for which she was actually admitted on the</p> <p>2 23rd. At what time did Beverly have her MI</p> <p>3 that evening?</p> <p>4 A. What time? I do not know what</p> <p>5 time she had her MI that evening.</p> <p>6 Q. Okay. What information are you</p> <p>7 lacking that prevents you from having an</p> <p>8 opinion as to what time the MI occurred?</p> <p>9 A. I don't think anybody can tell you</p> <p>10 what time the MI occurred.</p> <p>11 Q. Doctor, do you have any opinions</p> <p>12 that you are going to be offering in this</p> <p>13 case relative to the care and treatment</p> <p>14 rendered by Dr. Kotak?</p> <p>15 A. No, I have no opinions on the care</p> <p>16 of Dr. Kotak.</p> <p>17 MS. TAYLOR-KOLIS: Doctor, I don't</p> <p>18 have any further questions. I would ask you</p> <p>19 to hold on because Mr. Shroge may have a</p> <p>20 couple of things that he wants to ask you.</p> <p>21 MR. SHROGE: I don't.</p> <p>22 MS. TAYLOR-KOLIS: In that case,</p> <p>23 we are done. I'll waive the 7 days if</p> <p>24 you're going to read it, but make it no more</p> <p>25 than 30, if humanly possible.</p> |
| <p style="text-align: center;">42</p> <p>1 not have been able to recover based on what</p> <p>2 you perceive to be the events. Am I missing</p> <p>3 something?</p> <p>4 MR. SHROGE: Objection as to form.</p> <p>5 A. (BY THE WITNESS:) No, I'm basing</p> <p>6 that off of the fact that I have the autopsy</p> <p>7 report, and what the autopsy report showed,</p> <p>8 that's what I'm basing that opinion on, is</p> <p>9 that she had multiple myocardial infarctions,</p> <p>10 of which this lady arrested in the middle of</p> <p>11 the night, and she apparently had cardiogenic</p> <p>12 shock. I'm again stating, based on my</p> <p>13 opinion, that that is what would have</p> <p>14 occurred regardless of what the management</p> <p>15 would have been on that initial visit in the</p> <p>16 emergency department. So my opinion's based</p> <p>17 on an autopsy report and, of course, the</p> <p>18 arrest that occurred that I feel is a result</p> <p>19 of cardiogenic shock, and I think I'm very</p> <p>20 comfortable that, within a reasonable degree</p> <p>21 of doubt, that's what led to her death at</p> <p>22 that time.</p> <p>23 Q. (BY MS. TAYLOR-KOLIS:) Doctor,</p> <p>24 from your review of the medical records -- I</p> <p>25 take it you reviewed the inpatient records</p> | <p style="text-align: center;">44</p> <p>1 MS. CARULAS: Do you want to read</p> <p>2 it over, given the delay?</p> <p>3 THE WITNESS: I'm okay with</p> <p>4 waiving it.</p> <p>5 MS. CARULAS: We are going to</p> <p>6 waive.</p> <p>7 (The Court Reporter marked</p> <p>8 Plaintiff's Exhibit-1)</p> <p>9 (Deposition concluded and witness</p> <p>10 excused at 1:00 p.m.)</p> <p>11 (Signature waived)</p> <p>12 .</p> <p>13 .</p> <p>14 .</p> <p>15 .</p> <p>16 .</p> <p>17 .</p> <p>18 .</p> <p>19 .</p> <p>20 .</p> <p>21 .</p> <p>22 .</p> <p>23 .</p> <p>24 .</p> <p>25 .</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |



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## CERTIFICATE

I, SCOTT N. GAMERTSFELDER, a Notary Public in and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within-named witness was by me first duly sworn to tell the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given was by me reduced to stenotype in the presence of said witness and afterward transcribed; that the foregoing is a true and correct transcription of the testimony so given as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified.

I do further certify that I am not a relative, employee of, or attorney for any of the parties in this action; that I am not a relative or employee of an attorney of any of the parties in this action; that I am not financially interested in this action, nor am I or the court reporting firm with which I am affiliated under a contract as defined in the applicable civil rule.

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IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Toledo, Ohio, on this 3rd of November, 2005.

SCOTT N. GAMERTSFELDER, RPR  
Notary Public  
in and for the State of Ohio  
My Commission expires June 18, 2007.

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